

COPY

ENDORSED  
FILED  
Superior Court of California  
County of San Francisco

JUN 17 2016

CLERK OF THE COURT  
BY: ROSSALY DE LA VEGA  
Deputy Clerk

ADISHIAN LAW GROUP, P.C.  
Christopher M. Adishian, Esq. [#172511]  
Pacific Corporate Towers  
222 N. Sepulveda Blvd., Ste. 2000  
El Segundo, California 90245  
Phone: (310) 726-0888  
Fax: (866) 350-0888

Attorneys for Rafael Rivera Luciano

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CGC 16-552599

RAFAEL RIVERA LUCIANO,

Plaintiff,

v.

TEACHERS INSURANCE AND  
ANNUITY ASSOCIATION OF  
AMERICA (TIAA-CREF); PAMELA  
McNULTY, an individual; VIVIAN  
TSAI, an individual; YVETTE  
MENESES HARING, an individual;  
and DOES 1 through 50, Inclusive,

Defendants.

Case No.:

Honorable  
Department

COMPLAINT FOR DAMAGES:

1. Wrongful Termination in Violation of Public Policy
2. Race Discrimination (FEHA) [GOVERNMENT CODE §12940(a)]
3. National Origin Discrimination [GOVERNMENT CODE §12940(a)]
4. Harassment [GOVERNMENT CODE §12940(j)]
5. Failure to Prevent Discrimination [GOVERNMENT CODE §12940(k)]
6. Retaliation (FEHA) [GOVERNMENT CODE §12940(h)]
7. Retaliatory Discharge [LABOR CODE §1102.5]
8. Statutory Unfair Competition [BUSINESS & PROFESSIONS CODE § 17200]
9. Intentional Infliction of Emotional Distress
10. Negligent Infliction of Emotional Distress

Complaint Filed:

Trial Date:

COMES NOW Plaintiff RAFAEL RIVERA LUCIANO and alleges the following,  
upon information and belief.

///

1 and caused the damages proximately thereby to Plaintiff as hereinafter alleged. Plaintiff  
2 will seek leave of court to amend this complaint to show the true names and capacities of  
3 said Doe defendants when same have been ascertained.

#### 4 STATEMENT OF FACTS

5 8. On or about January 9, 2012, Plaintiff Rafael Rivera Luciano ("Rafael") was hired  
6 by TIAA-CREF as a Bilingual Tuition Financing Consultant to represent California's 529  
7 college savings plan (ScholarShare). During his tenure of employment with TIAA-CREF,  
8 Rafael participated in its Work at Home program, working out of his home office in San  
9 Diego, California.

10 9. Throughout Rafael's tenure with TIAA-CREF, Rafael worked under the supervision  
11 of Ralph Clement (Clement) until Clement was fired by TIAA-CREF in late 2014 and  
12 Defendant Pamela McNulty (McNulty) as Clement was her direct report. After Clement's  
13 firing, Rafael was supervised by Defendant Vivian Tsai (Tsai) and later, by Defendant  
14 Yvette Meneses Haring (Haring) with his performance continuing to be overseen by  
15 Defendant McNulty, in her role as Senior Manager.

16 10. Rafael was rated as a "Solid" performer for TIAA-CREF in each of his year-end  
17 performance reviews through the term of his employment. In appreciation of his service to  
18 the company and his "solid" performance, Rafael was awarded a cash award each year of  
19 his employment ranging from \$4,900 to \$6,000.

20 11. Irrespective of his "solid" performance at TIAA-CREF, Rafael endured pervasive  
21 and ongoing harassment, abusive conduct and racist slurs at the hands of supervisor  
22 Clement, conduct which commenced a month after he was hired and continued until  
23 Clement was fired in late 2014, as exemplified by the following:

- 24 • On or around February 2012, Clement sent Rafael an abusive email, in which he  
25 demanded Rafael stop sending emails about "Spanish lit" which was one of the  
26 duties of Rafael's position. Clement signed off "LMAO" (translation: "laughing my  
27 ass off") in that email.
- 28 • On or around February 22, 2013, Clement sent an email to Rafael, wherein Clement

1 referred to Rafael as "McFly", a demeaning term meant to insult one's intelligence  
2 if the connection is made to the movie "Back to the Future," which Clement  
3 intended and Rafael understood.

- 4 • On or about April 8, 2013, in a telephone conversation with Rafael, Clement  
5 threatened to "send [Rafael] back to Mexico" if Rafael did not open more accounts  
6 in his San Diego territory. Rafael immediately complained to Clement in an email  
7 following the telephone conversation that he considered the comment to be racist  
8 and discriminatory and cautioned Clement about making jokes about his Hispanic  
9 heritage which he did not perceive to be funny. Rafael is not from Mexico.
- 10 • On or around September 4, 2013, during a marketing training session in San  
11 Francisco that Rafael and Clement attended, Clement targeted Rafael for criticism of  
12 his job performance, while foregoing any similar criticism of Rafael's co-workers  
13 who were performing in exactly the same manner as Rafael. When Rafael  
14 commented on the disparity, Clement responded: "Look at the bright side – I  
15 haven't made you cry yet."
- 16 • On or around October 29, 2013, during a marketing event in Chula Vista Rafael and  
17 Clement attended, Clement screamed at Rafael and reprimanded him about an  
18 alleged missing brochure in front of customers and vendors. After Clement  
19 departed, one of the vendors approached Rafael and acknowledged that several  
20 people in the immediate area had witnessed Clement's abusive, embarrassing and  
21 humiliating behavior in front of Rafael's peers.
- 22 • On or around November 16, 2013, Rafael and Clement were among 150 attendees at  
23 a ScholarShare Investment Board event at the National Hispanic University in San  
24 Jose where Rafael was slated to make an important presentation. At breakfast, prior  
25 to the event, Clement questioned Rafael's ability to make a successful presentation  
26 with the clear intention of making Rafael nervous and sabotaging his speech.  
27 Clement's harassment was unsuccessful as Rafael's presentation was a success,  
28 garnering congratulations from the president of National Hispanic University,

1 executives of Telemundo and, later, Rafael received a personal congratulatory note  
2 from Zeny Aguillana, ScholarShare Executive Director.

3 12. As a result of the stream of abusive conduct to which Rafael was subjected, in  
4 January 2014, Rafael requested a meeting with Defendant McNulty to discuss the pervasive  
5 harassment and discrimination he was experiencing. During that meeting, McNulty ratified  
6 and facilitated the harassment Rafael was experiencing by refusing to follow TIAA-CREF's  
7 harassment protocols and take any action against Clement's "bad behavior", even though  
8 acknowledging that "Ralph can be a bit rough on the edges".

9 13. In the succeeding months, Rafael voiced continuing complaints about the  
10 harassment he was experiencing at the hands of Clement, however, Defendant McNulty  
11 continued to ratify and facilitate the harassment by refusing to take any measures to end the  
12 harassment or rectify Clement's conduct.

13 14. In April 2014, when it became clear that despite Rafael's repeated complaints,  
14 Defendant McNulty would take no action to alleviate the pervasive harassment and  
15 discrimination, Rafael requested relocation within the company, but again Defendant  
16 McNulty ratified Clement's harassment by refusing to transfer Rafael, alleging there were  
17 "no open positions".

18 15. In May 2014, in Rafael's continuing effort to combat the harassment, Rafael  
19 responded to the company's request for employee feedback in a Culture Survey, an internal  
20 feedback mechanism which was guaranteed by TIAA-CREF to have no negative  
21 ramifications for those employees who responded honestly with legitimate complaints  
22 about their workplace environment. Rafael articulated in his response to the Culture  
23 Survey that he had been the target of harassment and discrimination by his direct supervisor  
24 which made his "job a nightmare".

25 16. On September 15, 2014, when TIAA-CREF continued refuse to take any affirmative  
26 action in response to Rafael's repeated complaints about workplace harassment and  
27 discrimination, Rafael took the next step, as mandated by TIAA-CRFF internal policy, and  
28 reported the specific incidents of harassment and discrimination by Clement to TIAA-

1 CREF's Chief Diversity & Inclusion Officer, Natasha Radden (Radden), copying CFO  
2 Roger Ferguson (Ferguson) and VP Skip Spriggs (Spriggs). Radden responded, promising  
3 a full investigation, however, although Rafael was initially contacted, he was never advised  
4 of any findings of the purported "investigation" and never received any follow-up from HR  
5 relating to his written complaints.

6 17. TIAA-CREF's purported investigation was headed by Joanne Gonzalez (Gonzalez),  
7 Director of Employee Relations, however, after initial contact, when Rafael attempted to  
8 re-establish contact with Gonzalez, she was unable, for over a year, to find time on her  
9 calendar to meet with Rafael and actually interview him for the purported "investigation".  
10 In its continuing failure to address Rafael's complaints of harassment and discrimination,  
11 TIAA-CREF did nothing.

12 18. Clement was terminated in late 2014, but TIAA-CREF continued to perceive Rafael  
13 as a malcontent rather than the victim of Clement's bad behavior.

14 19. The only blemish on Rafael's "solid" job performance record is a written warning  
15 generated by Defendant McNulty, on December 19, 2014, at or about the same time  
16 Clement was fired. In that written warning, Rafael was disciplined for "failing to conduct  
17 [himself] in a manner that is consistent with TIAA's values".

18 20. After receiving the written warning, Rafael sent McNulty an email, requesting the  
19 specific instances of conduct where he failed to adhere to TIAA values, especially in light  
20 of his performance reviews which commended him on his compliance with TIAA values.  
21 Rafael never received a response from McNulty during the remaining months he was  
22 employed by TIAA-CREF outlining where his "values" fell short.

23 21. In fact, the assertion that Rafael's values were inconsistent with TIAA's values was  
24 in direct contravention of the comments made by Defendant McNulty in Rafael's  
25 performance reviews. Only a few short months prior to the written warning, McNulty  
26 wrote in Rafael's mid-year 2014 performance review in the "TIAA-CREF Values" section  
27 that "Rafael certainly exemplifies and uses all the TIAA-CREF values successfully".

28 22. In Rafael's 2015 mid-year review, generated a month or so after Rafael's written

1 warning, McNulty stated that "Rafael works to embrace and actively demonstrate the  
2 TIAA-CREF values while interfacing with our clientele and internal business partners".

3 23. Even though it was clear that the path to Rafael's termination had been plotted by  
4 TIAA-CREF, the company took a "hands-off" approach to Rafael over the next several  
5 months and with Clement gone, Rafael attempted to simply focus on performing his job.

6 24. In late 2015, a job opportunity was posted on TIAA-CREF's internal job posting for  
7 a bi-lingual team manager position. Defendant Tsai, Rafael's new supervisor, confirmed  
8 Rafael's eligibility to apply for this position, however, inexplicably when Rafael applied,  
9 the FINRA licensing requirement mysteriously changed. Although the FINRA licenses  
10 Rafael possessed at the time were the same Clement had maintained during his tenure with  
11 TIAA-CREF in a like position, Rafael was told he did not qualify for the posted position.  
12 Instead of Rafael, Haring was hired without the requisite licensing requirements, but was  
13 allowed to obtain the missing license while she was already in the position, a violation of  
14 FINRA regulations.

15 25. On or around December 2015, Haring was promoted and became Rafael's  
16 supervisor. Whether by her own hand or at the direction of upper management, Rafael's  
17 leads for new clients (as dispensed by Haring), which had been shrinking for months, were  
18 further diminished such that leads in his own allegedly "sole" San Diego territory were  
19 reassigned to others.

20 26. On or around February 26, 2016, Rafael reached out to HR for the final time when  
21 his new supervisor, Haring, accused him of failing to report to the San Francisco office in  
22 contravention of her instruction to do so. In reality, Rafael had been in the San Francisco  
23 office, as documented by his log-in on the company internal network and his transmission  
24 of emails to co-worker Jennifer Benson from the San Francisco site. Rafael was out of the  
25 San Francisco office only to meet with a new client in Napa who was interested in opening  
26 two accounts with TIAA-CREF.

27 27. In order to resolve what Rafael considered a "misunderstanding", he immediately  
28 emailed Haring, requested a meeting with Radden and attempted to contact Tsai, his former

1 supervisor. Rafael never heard from Tsai and Radden purportedly had no time on her  
2 schedule to meet with Rafael for over a week.

3 28. It became clear why no was "available" to meet with Rafael when, on March 1,  
4 2016, TIAA-CREF relied upon the San Francisco incident as the reason to terminate Rafael  
5 in a telephone call with Haring for alleged "performance reasons".

6 29. None of TIAA-CREF's purported "unsatisfactory work performance" issues which  
7 allegedly led to Rafael's termination were memorialized in his annual Performance  
8 Reviews by any of the supervisors who generated the reports.

9 30. On or around May 8, 2016, Plaintiff filed a complaint with the Department of Fair  
10 Employment and Housing (DFEH) against Defendant and Plaintiff received a Right to Sue  
11 letter from DFEH as to Defendant, a true and correct copy of which is attached hereto as  
12 **Exhibit "1"** and incorporated herein by reference.

13 **FIRST CAUSE OF ACTION**

14 **(For Wrongful Termination in Violation of Public Policy**

15 **Against Defendants TIAA-CREF and DOES 1-10, inclusive)**

16 31. Plaintiff realleges and incorporates herein by reference all of the allegations set  
17 forth in paragraphs 1 through 30 as though fully set forth herein.

18 32. On or around March 1, 2016 Plaintiff was of Hispanic descent.

19 33. At all times herein mentioned, there existed fundamental and established California  
20 public policies, as codified by case law and statute, including but not limited to *California*  
21 *Government Code* §12940 et seq. providing that an employer cannot terminate an employee  
22 on the basis of certain characteristics, including but not limited to race.

23 34. On or about March 1, 2016, Defendants violated the aforesaid public policies by  
24 wrongfully terminating Plaintiff on the basis of his race and national origin.

25 35. As a proximate result of Defendants' wrongful termination in violation of public  
26 policy of the State of California, Plaintiff has sustained and continues to sustain substantial  
27 loss in past, present and future earnings, career opportunities, bonuses and other  
28 employment benefits in amounts to be proven at trial. Plaintiff's damages include all

consequential, general and special economic damages in amounts to be proven at trial.

36. As a further proximate result of Defendant's wrongful conduct, Plaintiff has suffered and continues to suffer humiliation, severe emotional distress and mental and physical pain and anguish, all to his damage in a sum according to proof.

37. The foregoing acts of Defendant were oppressive, malicious, and despicable, and Plaintiff is, therefore, entitled to an award of punitive damages against Defendant in an amount to be proven at trial.

## **SECOND CAUSE OF ACTION**

### **(For Race Discrimination**

#### **Against Defendants TIAA-CREF and DOES 1-10, inclusive)**

38. Plaintiff realleges and incorporates herein by reference all of the allegations set forth in paragraphs 1 through 37 as though fully set forth herein.

39. This cause of action is brought pursuant to *Government Code* §12940(a) which prohibits discrimination against a person in terms, conditions or privileges of employment on the basis of race, and the corresponding regulations of the California Fair Employment and Housing Commission, or its successor.

40. At all times relevant herein, Defendants regularly employed five or more persons, bringing said Defendant employer within the provision of *California Government Code* §12900 et seq., prohibiting employers or their agents from discriminating against employees on the basis of race.

41. Plaintiff is a member of a protected class within the meaning of the aforementioned *Government Code* sections. At all relevant times herein, Plaintiff satisfactorily performed his duties and responsibilities as expected by Defendant and, in fact, exceeded those expectations by his performance and generation of profitability for employer TIAA-CREF.

42. Plaintiff alleges that his race was a factor in Defendants TIAA-CREF's wrongful actions toward him, including but not limited to retaliation, discrimination and termination.

43. As a proximate result of Defendants' discriminatory conduct, Plaintiff has sustained and continues to sustain substantial loss in past, present and future earnings, career

opportunities, bonuses and other employment benefits in amounts to be proven at trial. Plaintiff's damages include all consequential, general and special economic damages in amounts to be proven at trial.

44. As a further proximate result of Defendants' discriminatory conduct, Plaintiff has suffered and continues to suffer humiliation, severe emotional distress and mental and physical pain and anguish, all to his damage in a sum according to proof.

45. The foregoing acts of Defendants were oppressive, malicious, and despicable, and Plaintiff is, therefore, entitled to an award of punitive damages against Defendants in an amount to be proven at trial.

### **THIRD CAUSE OF ACTION**

**(For National Origin Discrimination Against**

**Defendants TIAA-CREF and DOES 1-10, inclusive)**

46. Plaintiff realleges and incorporates herein by reference all of the allegations set forth in paragraphs 1 through 45 as though fully set forth herein.

47. This cause of action is brought pursuant to *Government Code* §12940(a) which prohibits discrimination against an employee on the basis of national origin or ancestry.

48. Plaintiff is a member of a protected class within the meaning of the aforementioned *Government Code* sections. At all relevant times herein, Plaintiff satisfactorily performed his duties and responsibilities as expected by Defendant and, in fact, exceeded those expectations by his performance and generation of profitability for employer TIAA-CREF.

49. Plaintiff alleges that his national origin was a factor in Defendant TIAA-CREF's wrongful actions toward him, including but not limited to retaliation, discrimination and termination.

50. As a proximate result of Defendants' discriminatory conduct, Plaintiff has sustained and continues to sustain substantial loss in past, present and future earnings, career opportunities, bonuses and other employment benefits in amounts to be proven at trial. Plaintiff's damages include all consequential, general and special economic damages in amounts to be proven at trial.

1 51. As a further proximate result of Defendants' discriminatory conduct, Plaintiff has  
2 suffered and continues to suffer humiliation, severe emotional distress and mental and  
3 physical pain and anguish, all to his damage in a sum according to proof.

4 52. The foregoing acts of Defendants were oppressive, malicious, and despicable, and  
5 Plaintiff is, therefore, entitled to an award of punitive damages against Defendants in an  
6 amount to be proven at trial.

7 **FOURTH CAUSE OF ACTION**

8 **(For Unlawful Harassment in Employment Against Defendants**

9 **TIAA-CREF, McNulty, Tsai, Haring and DOES 11-20, inclusive)**

10 53. Plaintiff realleges and incorporates herein by reference all of the allegations set  
11 forth in paragraphs 1 through 52 as though fully set herein.

12 54. This cause of action is brought pursuant to California Government Code §12940(j),  
13 which prohibits discrimination against a person in the terms, conditions or privileges of  
14 employment and the corresponding regulations of the California Fair Employment and  
15 Housing Commission, or its successor.

16 55. California law prohibits harassment in the workplace. Over a three-year period,  
17 Rafael's supervisors, including Clement, McNulty, Tsai and Haring, created a hostile work  
18 environment so pervasive that TIAA-CREF should not have tolerated it, but it did, in the  
19 face of its own policy to prohibit such behavior.

20 56. As a proximate result of Defendant's conduct in creating a hostile work  
21 environment, Plaintiff has sustained and continues to sustain substantial loss in past,  
22 present and future earnings, career opportunities, bonuses and other employment benefits in  
23 amounts to be proven at trial. Plaintiff's damages include all consequential, general and  
24 special economic damages in amounts to be proven at trial.

25 57. As a further proximate result of Defendants' hostile work environment, Plaintiff has  
26 suffered and continues to suffer humiliation, severe emotional distress and mental and  
27 physical pain and anguish, all to her damage in a sum according to proof.

28 58. The foregoing acts of Defendants were oppressive, malicious, and despicable, and

Plaintiff is, therefore, entitled to an award of punitive damages against Defendants in an amount to be proven at trial

### **FIFTH CAUSE OF ACTION**

**(For Failure to Prevent Discrimination and Harassment**

**Against Defendants TIAA-CREF and DOES 1-10, inclusive)**

59. Plaintiff realleges and incorporates herein by reference all of the allegations set forth in paragraphs 1 through 58 as though fully set forth herein.

60. Defendant TIAA-CREF had a statutory duty, pursuant to the Fair Employment and Housing Act (FEHA), to take all reasonable steps necessary to prevent discrimination in the workplace pursuant to *California Government Code* §12940(k).

61. Defendant TIAA-CREF breached its statutory duty of care to Plaintiff by failing to take all reasonable steps necessary to prevent the discrimination and harassment experienced by Plaintiff as alleged herein.

62. As a proximate result of Defendant's discriminatory conduct, Plaintiff has sustained and continues to sustain substantial loss in past, present and future earnings, career opportunities, bonuses and other employment benefits in amounts to be proven at trial. Plaintiff's damages include all consequential, general and special economic damages in amounts to be proven at trial.

63. As a further proximate result of Defendant's discriminatory conduct, Plaintiff has suffered and continues to suffer humiliation, severe emotional distress and mental and physical pain and anguish, all to her damage in a sum according to proof.

64. The foregoing acts of Defendant were oppressive, malicious, and despicable, and Plaintiff is, therefore, entitled to an award of punitive damages against Defendant in an amount to be proven at trial.

### **SIXTH CAUSE OF ACTION**

**(For Unlawful Retaliation in Employment**

**Against Defendants TIAA-CREF and DOES 1-10, inclusive)**

65. Plaintiff realleges and incorporates herein by reference all of the allegations set

1     forth in paragraphs 1 through 64 as though fully set forth herein.

2     66.     California law prohibits retaliation in the workplace. The Fair Employment and  
3     Housing Act (FEHA) protect workers who oppose discriminatory and wrongful  
4     employment practices. *Government Code* §12940(h) makes it unlawful for “any person” to  
5     retaliate against an employee who opposes discrimination and harassment in the workplace.

6     67.     As alleged herein, Defendant is charged with retaliating against Plaintiff after Rafael  
7     complained to Defendant’s Vice-President and CEO, the company’s Chief Diversity &  
8     Inclusion Officer, as well as others in the company’s management hierarchy, that he had  
9     experienced harassment and discrimination by his supervisors.

10    68.     As a result of Rafael’s stream of complaints, culminating in his written advisements  
11    to TIAA-CREF’s CEO and Vice President, Rafael received a written warning for “failing to  
12    conduct yourself in a manner that is consistent with TIAA’s values” which was  
13    contradicted by statements by the same supervisor in Plaintiff’s performance reviews both  
14    before and after the written warning.

15    69.     On or around March 1, 2016, defendants fabricated a reason for Plaintiff’s  
16    termination which is not supported by the facts as set forth herein and, in reality, fired  
17    Rafael because he had the temerity to report, on multiple occasions, discriminatory and  
18    harassing conduct by his supervisors.

19    70.     As a proximate result of Defendants’ retaliatory conduct, Plaintiff has sustained and  
20    continues to sustain substantial loss in past, present and future earnings, career  
21    opportunities, bonuses and other employment benefits in amounts to be proven at trial.  
22    Plaintiff’s damages include all consequential, general and special economic damages in  
23    amounts to be proven at trial.

24    71.     As a further proximate result of Defendants’ retaliatory conduct, Plaintiff has  
25    suffered and continues to suffer humiliation, severe emotional distress and mental and  
26    physical pain and anguish, all to her damage in a sum according to proof.

27    72.     The foregoing acts of Defendants were oppressive, malicious, and despicable, and  
28    Plaintiff is, therefore, entitled to an award of punitive damages against Defendants in an

1 amount to be proven at trial.

2 **SEVENTH CAUSE OF ACTION**

3 **(For Retaliatory Discharge pursuant to Labor Code §1102.5**

4 **Against Defendant TIAA-CREF and DOES 1-10, inclusive)**

5 73. Plaintiff realleges and incorporates herein by reference all of the allegations set  
6 forth in paragraphs 1 through 72 as though fully set forth herein.

7 74. Plaintiff invokes Labor Code §1102.5, an anti-retaliation provision, which provides  
8 that no employer shall prevent an employee from reporting on the unlawful business  
9 practices. Labor Code §1102.5 specifically protects employees from retaliation who  
10 disclose information regarding alleged violations "to a person with authority over the  
11 employee or another employee who has authority to investigate, discover or correct the  
12 violation or non-compliance".

13 75. As alleged herein, Defendant TIAA-CREF is charged with retaliating against  
14 Plaintiff because he complained on multiple occasions to, including but not limited to,  
15 TIAA-CREF CEO Roger Ferguson, Vice-President Skip Spriggs, and Chief Diversity &  
16 Inclusion Officer, Natasha Radden about the continuing episodes of harassment directed by  
17 Plaintiff by his multiple supervisors, including Clement, McNulty, Tsai and Haring.

18 76. Instead of undertaking a legitimate investigation of Plaintiff's whistleblower  
19 complaints and taking action to refute and end the harassment of which Plaintiff  
20 complained, TIAA-CREF instead retaliated against Plaintiff, by refusing to accommodate  
21 his request for transfer, by failing to offer him a position for which he was qualified and,  
22 ultimately, by terminating him for pretextual performance reasons which were directly  
23 contradicted by Plaintiff's own performance evaluations.

24 77. As a proximate result of Defendants' retaliatory conduct, Plaintiff has sustained and  
25 continues to sustain substantial loss in past, present and future earnings, career  
26 opportunities, bonuses and other employment benefits in amounts to be proven at trial.  
27 Plaintiff's damages include all consequential, general and special economic damages in  
28 amounts to be proven at trial.

1 78. As a further proximate result of Defendants' retaliatory conduct, Plaintiff has  
2 suffered and continues to suffer humiliation, severe emotional distress and mental and  
3 physical pain and anguish, all to her damage in a sum according to proof.

4 **EIGHTH CAUSE OF ACTION**

5 **(For Statutory Unfair Competition Against**

6 **Against Defendants TIAA-CREF and DOES 1-10, inclusive)**

7 79. Plaintiff realleges and incorporates herein by reference all of the allegations set  
8 forth in paragraphs 1 through 78 as though fully set forth herein.

9 80. The Business & Professions Code § 17200 prohibits any "unlawful, unfair or  
10 fraudulent business act or practice" and any "unfair, deceptive, untrue or misleading  
11 advertising."

12 81. Plaintiff is informed and believes and, based on that information and belief, alleges  
13 that Defendant TIAA-CREF created, devised, developed, supervised and approved the  
14 employment practices and protocols employed by TIAA-CREF in its nationwide network of  
15 consumer services, including the ScholarShare division which employed Plaintiff.

16 82. Plaintiff is informed and believes and, based on that information and belief, alleges  
17 that by implementing employment policies and protocols which are discriminatory and in  
18 direct contravention of public policy, TIAA-CREF intended to reduce its overhead and  
19 maximize its profits.

20 83. Plaintiff relied upon, by accepting and continuing his employment with TIAA-  
21 CREF, Defendant's representations that it did not mandate or approve discriminatory  
22 practices in hiring and retaining its employees, including but not limited to discrimination  
23 based on race and national origin. However, as described herein, Plaintiff was subjected, to  
24 his detriment, to discriminatory practices implemented and executed by Defendant.

25 84. Defendant TIAA-CREF, by the conduct described herein, has engaged in an unfair  
26 and fraudulent business practice within the meaning of Business & Professions Code §  
27 17200.

28 85. TIAA-CREF's employment policies and protocols, as implemented and described

1 herein, resulted in the unjustifiable and abrupt termination of Plaintiff's employment for  
2 which he incurred, and continues to incur, monetary loss in earnings and employment  
3 benefits.

4 86. As a direct and proximate result of Defendant TIAA-CREF's conduct, Plaintiff is  
5 entitled to restitution.

6 **NINTH CAUSE OF ACTION**

7 **(For Intentional Infliction of Emotional Distress**

8 **Against Defendant TIAA-CREF and DOES 1 through 10, inclusive)**

9 87. Plaintiff realleges and incorporates herein by reference all of the allegations set  
10 forth in paragraphs 1 through 86 as though fully set forth herein.

11 88. The actions of Defendant in causing Plaintiff's employment to be terminated in  
12 contravention of public policy as described herein were intentional, extreme, and  
13 outrageous and were done with the intent to cause emotional distress or with reckless  
14 disregard of the probability of causing Plaintiff emotional distress.

15 89. Defendant knew, or should have known, of Plaintiff's susceptibility to emotional  
16 distress based on the outrageous conduct as described herein which surrounded and led to  
17 the unjustified, abrupt and fabricated termination of Plaintiff's employment which was, in  
18 reality, based solely on pretextual reasons which had no relationship in reality to Plaintiff's  
19 job performance.

20 90. As a proximate result of Defendant's wrongful conduct, Plaintiff has suffered and  
21 will continue to suffer severe and serious emotional and physical distress, all to Plaintiff's  
22 damage in an amount to be proven at trial.

23 91. As a further proximate result of Defendant's wrongful conduct, Plaintiff has  
24 sustained and continues to sustain substantial loss in past, present and future earnings,  
25 career opportunities, bonuses and other employment benefits, all to Plaintiff's damage in an  
26 amount to be proven at trial.

27 92. The conduct of Defendant in terminating Plaintiff's employment without good, just  
28 or legitimate cause and in violation of California public policy was done in conscious

1 disregard of the rights of Plaintiff. As a consequent of the aforesaid oppressive, malicious  
2 and despicable conduct, Plaintiff is entitled to an award of exemplary and punitive damages  
3 in an amount to be proven at trial.

4 **TENTH CAUSE OF ACTION**

5 **(For Negligent Infliction of Emotional Distress**

6 **Against Defendant TIAA-CREF and DOES 1 through 10, inclusive)**

7 93. Plaintiff realleges and incorporates herein by reference all of the allegations set  
8 forth in paragraphs 1 through 92 as though fully set forth herein.

9 94. Defendant engaged in negligent conduct by terminating Plaintiff in contravention of  
10 public policy as described herein with reckless disregard of the probability of causing  
11 Plaintiff emotional distress.

12 95. Defendant knew, or should have known, of Plaintiff's susceptibility to emotional  
13 distress based on the negligent conduct as described herein which surrounded and led to the  
14 unjustified, abrupt and fabricated termination of Plaintiff's employment which was, in  
15 reality, based solely on pique.

16 96. As a proximate result of Defendant's wrongful conduct, Plaintiff has suffered and  
17 will continue to suffer severe and serious emotional and physical distress, all to Plaintiff's  
18 damage in an amount to be proven at trial.

19 97. As a further proximate result of Defendant's wrongful conduct, Plaintiff has  
20 sustained and continues to sustain substantial loss in past, present and future earnings,  
21 career opportunities, bonuses and other employment benefits, all to Plaintiff's damage in an  
22 amount to be proven at trial.

23 **DEMAND FOR TRIAL BY JURY**

24 Plaintiff hereby demands a trial by jury.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff RAFAEL RIVERA LUCIANO. prays for judgment as  
27 follows:

28 ///

FOR THE FIRST THROUGH SIXTH CAUSES OF ACTION:

1. Compensatory damages, including loss of wages (front and back pay), career opportunities, benefits and other opportunities of employment;
2. Special damages including loss of income and benefits and medical expenses;
3. Interest, including pre-judgment interest, thereon at the legal rate, including but not limited to *Civil Code* §3291;
4. Attorney's fees according to proof, pursuant to *Government Code* §12965, or other applicable statutes or contracts;
5. Punitive damages in a sum to be proven at trial;
6. Costs of suit incurred herein; and
7. Such other and further relief as the Court may deem just and proper.

FOR THE SEVENTH CAUSE OF ACTION:

1. Compensatory damages, including loss of wages (front and back pay), career opportunities, benefits and other opportunities of employment;
2. Special damages including loss of income and benefits and medical expenses;
3. Interest, including pre-judgment interest, thereon at the legal rate, including but not limited to *Civil Code* §3291;
4. Civil penalties as imposed by law;
5. Costs of suit incurred herein; and
6. Such other and further relief as the Court may deem just and proper.

FOR THE EIGHTH CAUSE OF ACTION:

1. Restitution according to proof;
2. Costs of suit incurred herein; and
3. Such other and further relief as the Court may deem just and proper.

FOR THE NINTH CAUSE OF ACTION:

1. General damages in a sum to be proven at trial;
2. Special damages including loss of income and benefits and medical expenses;
3. Interest, including pre-judgment interest, thereon at the legal rate, including but not

1 limited to *Civil Code* §3291;

2 4. Punitive damages in a sum to be proven at trial;

3 5. Costs of suit incurred herein; and

4 6. Such other and further relief as the Court may deem just and proper.

5 FOR THE TENTH CAUSE OF ACTION:

6 1. General damages in a sum to be proven at trial;

7 2. Special damages including loss of income and benefits and medical expenses;

8 3. Interest, including pre-judgment interest, thereon at the legal rate, including but not  
9 limited to *Civil Code* §3291;

10 4. Costs of suit incurred herein; and

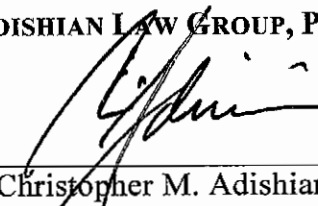
11 5. Such other and further relief as the Court may deem just and proper.

12 Dated:

6/17/16

ADISHIAN LAW GROUP, P.C.

13  
14  
15 By:

  
Christopher M. Adishian  
Attorneys for Plaintiff  
Rafael Rivera Luciano

# **EXHIBIT 1**

# **EXHIBIT 1**



**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

DIRECTOR KEVIN KISH

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758  
800-884-1684 | TDD 800-700-2320  
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

May 08, 2016

Chris Adishian  
222 N. Sepulveda Blvd., Ste. 2000  
El Segundo California 90245

**RE: Notice to Complainant or Complainant's Attorney**

DFEH Matter Number: 517501-225620

Right to Sue: Rivera / Teachers Insurance And Annuity Association Of America (TIAA-CREF)

Dear Complainant or Complainant's Attorney:

Attached is a copy of your complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue. Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You or your attorney must serve the complaint. If you do not have an attorney, you must serve the complaint yourself. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California.

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing



**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758  
800-884-1684 | TDD 800-700-2320  
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

DIRECTOR KEVIN KISH

May 08, 2016

**RE: Notice of Filing of Discrimination Complaint**

DFEH Matter Number: 517501-225620

Right to Sue: Rivera / Teachers Insurance And Annuity Association Of America (TIAA-CREF)

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. This case is not being investigated by DFEH and is being closed immediately. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

**No response to DFEH is requested or required.**

Sincerely,

Department of Fair Employment and Housing



**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758  
800-884-1684 | TDD 800-700-2320  
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

DIRECTOR KEVIN KISH

May 08, 2016

Rafael Rivera  
30770 Falcon Ridge Circle  
Menifee, California 92584

**RE: Notice of Case Closure and Right to Sue**

DFEH Matter Number: 517501-225620

Right to Sue: Rivera / Teachers Insurance And Annuity Association Of America (TIAA-CREF)

Dear Rafael Rivera,

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective May 08, 2016 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing



**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758  
800-884-1684 | TDD 800-700-2320  
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

DIRECTOR KEVIN KISH

**Enclosures**

cc: Teachers Insurance And Annuity Association Of America (TIAA-CREF) Pam  
McNulty

Teachers Insurance And Annuity Association Of America (TIAA-CREF) Vivian Tsai

Teachers Insurance And Annuity Association Of America (TIAA-CREF) Yvette  
Haring (fmrly Meneses)

1                                   **COMPLAINT OF EMPLOYMENT DISCRIMINATION**  
2                                   **BEFORE THE STATE OF CALIFORNIA**  
3                                   **DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**  
4                                   **Under the California Fair Employment and Housing Act**  
5                                   **(Gov. Code, § 12900 et seq.)**

6 In the Matter of the Complaint of  
7 Rafael Rivera, Complainant.  
8 30770 Falcon Ridge Circle  
9 Menifee, California 92584

DFEH No. 517501-225620

10 vs.

11 Teachers Insurance And Annuity Association Of  
12 America (TIAA-CREF), Respondent.  
13 8500 Andrew Carnegie Boulevard, Mail Stop  
14 SSC/C2/07  
15 Charlotte, North Carolina 28262

16 Complainant alleges:

17 1. Respondent **Teachers Insurance And Annuity Association Of America (TIAA-CREF)** is a **Private Employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.). Complainant believes respondent is subject to the FEHA.

18 2. On or around **March 01, 2016**, complainant alleges that respondent took the following adverse actions  
19 against complainant: **Discrimination, Harassment, Retaliation Asked impermissible non-job-related**  
20 **questions, Demoted, Denied a good faith interactive process, Denied a work environment free of**  
21 **discrimination and/or retaliation, Denied continuation of employer-paid health care coverage while on**  
22 **pregnancy disability leave, Denied employment, Denied equal pay, Denied family care or medical leave,**  
**Denied or forced to transfer, Denied pregnancy leave, Denied promotion, Denied reasonable**  
**accommodation, Denied reinstatement, Denied the right to wear pants, Forced to quit, Laid-off,**  
**Terminated, Tested for genetic characteristics, Other, as revealed during discovery.** Complainant believes  
respondent committed these actions because of their: **Age - 40 and over, Ancestry, Association with a**  
**member of a protected class, Color, Disability, Engagement in Protected Activity, Family Care or**  
**Medical Leave, Genetic Information [information about genetic tests or participation in clinical research**  
**or manifestation of disease], Marital Status, Medical Condition - Including cancer or cancer related**  
**medical condition or genetic characteristics, National Origin - Including language use restrictions, Race,**  
**Religion, Sex - Gender, Sex - Gender identity or Gender expression, Sex - Pregnancy, Sexual Orientation,**  
**Other, Military or Veteran status as revealed during discovery.**

3. Complainant **Rafael Rivera** resides in the City of **Menifee**, State of **California**. If complaint includes co-respondents please see below.

1  
2 **Co-Respondents:**

3 Teachers Insurance And Annuity Association Of America (TIAA-  
4 CREF)

5 Pam McNulty

6 One Hamden Center, 2319 Whitney Avenue, Suite 6A

7 Hamden Connecticut 06518

8 Teachers Insurance And Annuity Association Of America (TIAA-  
9 CREF)

10 Vivian Tsai

11 560 Mission Street, 10th Floor

12 San Francisco California 94105

13 Teachers Insurance And Annuity Association Of America (TIAA-  
14 CREF)

15 Yvette Haring (fmrly Meneses)

16 35 N. Lake Avenue, Suite 800

17 Pasadena California 91101.

1  
2 **Additional Complaint Details:**

3 The following is stated on information and belief. Rafael's supervisor repeatedly used  
4 demeaning language towards him suggesting Rafael was stupid and incompetent based  
5 on his membership or perceived membership in several protected classes. The  
6 supervisor explicitly threatened to "send you (Rafael) back to Mexico". When Rafael  
7 properly objected to his supervisors conduct, his supervisor stated "Look at the bright  
8 side -- I haven't made you cry yet." Respondents belatedly terminated Rafael's  
9 supervisor, which only aggravated Rafael's problem. The remaining supervisors began  
10 a campaign of retaliation against Rafael by marginalizing him, removing leads from his  
11 pipeline, concocting bogus critiques in his reviews and blocking his ability to transfer  
12 within Respondents' enormous organization before ultimately wrongfully terminating  
13 him.  
14  
15  
16  
17  
18  
19  
20  
21  
22

1 VERIFICATION

2 I, **Chris Adishian**, am the Attorney for Complainant in the above-entitled complaint. I have read the foregoing  
3 complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters  
4 which are therein alleged on information and belief, and as to those matters, I believe it to be true.

5 On May 08, 2016, I declare under penalty of perjury under the laws of the State of California that the foregoing  
6 is true and correct.

7 **El Segundo, California**  
8 **Chris Adishian**  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22