

E-filing

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MARC I. MACHIZ
R. JOSEPH BARTON – CA State Bar No. 212340
COHEN, MILSTEIN, HAUSFELD & TOLL, P.L.L.C.
1100 New York Avenue, N.W. Suite 500
Washington, D.C. 20005
Telephone: (202) 408-4600
Facsimile: (202) 408-4699
E-mail: MMachiz@CMHT.com

JEFFREY LEWIS – CA State Bar No. 66587
VINCENT CHENG – CA State Bar No. 230827
LEWIS, FEINBERG, RENAHER & JACKSON, P.C.
1330 Broadway, Suite 1800
Oakland, CA 94612
Telephone: (510) 839-6824
Facsimile: (510) 839-7839
E-mail: jlewis@lewisfeinberg.com

Attorneys for Plaintiff

ORIGINAL
FILED
JAN 14 2005
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BZ

JAMES W. SIMPSON, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

FIREMAN'S FUND INSURANCE
COMPANY,

Defendant,

and

FIREMAN'S FUND MEDICAL PLAN,

Nominal Defendant.

605-00225
Case No. _____

COMPLAINT FOR DECLARATORY,
INJUNCTIVE, EQUITABLE AND
OTHER RELIEF (ERISA)
CLASS ACTION

1 Plaintiff James W. Simpson, by and through his counsel, alleges as follows:

2 **NATURE OF THE ACTION**

3 1. This is an action brought pursuant to Section 510 of the Employee Retirement
4 Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1140, on behalf of a class of participants
5 in the Fireman’s Fund Medical Plan established and maintained by Fireman’s Fund Insurance
6 Company and its participating affiliates. Plaintiff brings this case on behalf of (1) himself, a
7 former employee of Fireman’s Fund Insurance Company; (2) all other employees whom the
8 company has terminated as a result of its amended leave of absence policy of discharging
9 employees who, due to their disability, cannot return to work; and (3) all current employees who
10 are subject to discharge under the company’s amended policy if they are disabled or in the event
11 that they become disabled.
12

13 2. The fundamental premise of this lawsuit is that Fireman’s Fund Insurance
14 Company (“FFIC”) terminated the employment of disabled individuals for the purpose of
15 disqualifying them from continuing to obtain medical coverage under the Fireman’s Fund
16 Medical Plan (“the MEDICAL PLAN”). By these actions, FFIC violated Section 510 of
17 ERISA, 29 U.S.C. § 1140. Specifically, Section 510 of ERISA, prohibits, *inter alia*,
18 discharging any participant in an ERISA-regulated plan “for the purpose of interfering with the
19 attainment of any right to which such participant may become entitled under the plan”
20 Beginning sometime in or about 2004, FFIC changed its longstanding practice of treating
21 individuals on disability leave as employees of the company – a practice that had allowed these
22 individuals to retain their medical coverage. The company’s adoption of this new employment
23 policy was motivated, in whole or in part, by its desire to prevent these individuals from
24 receiving medical benefits under the MEDICAL PLAN. FFIC’s discharge of these individuals
25

