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FILED
SUPERIOR COURT, METROPOLITAN DIVISION
COUNTY OF KERN

MAY - 2 2012

AUG 21 2012

FRESNO COUNTY SUPERIOR COURT
By: _____
SIX DEPUTY

Attorneys for Plaintiff
KATHRYN SMITH

TERRY McNALLY, CLERK
BY _____ DEPUTY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF FRESNO

KATHRYN SMITH, an individual,

Case No. 12 CE CG 01431

Plaintiff,

vs.

KAISER FOUNDATION HOSPITALS, a
California Corporation, and DOES 1-50
inclusive,

Defendants.

**PLAINTIFF KATHRYN SMITH'S
COMPLAINT FOR DAMAGES FOR: 1)
DISCRIMINATION IN VIOLATION OF
GOVERNMENT CODE SECTION
12940(a); 2) FAILURE TO PREVENT
DISCRIMINATION IN VIOLATION OF
GOVERNMENT CODE SECTION
12940(k); 3) FAILURE TO PROVIDE A
REASONABLE ACCOMMODATION IN
VIOLATION OF GOVERNMENT CODE
SECTION 12940(m); 4) FAILURE TO
PARTICIPATE IN THE INTERACTIVE
PROCESS IN VIOLATION OF
GOVERNMENT CODE SECTION
12940(n); 5) INTENTIONAL
INFLICTION OF EMOTIONAL
DISTRESS**

CV 12CE164334

DEMAND FOR JURY TRIAL

\$395.00

26 Plaintiff KATHRYN SMITH (hereinafter "PLAINTIFF"), an individual, alleges against
27 KAISER FOUNDATION HOSPITALS. (hereinafter "KAISER" or "DEFENDANT") as
28 follows:

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GENERAL ALLEGATIONS

1
2 1. PLAINTIFF is an individual who, at all times relevant herein, was residing in
3 Fresno County, California.

4 2. PLAINTIFF is informed and believes, and thereon alleges, that KAISER is now,
5 and at all times relevant to this Complaint was, a California corporation with its principal place
6 of business in the City of Oakland and County of Alameda, California.

7 3. PLAINTIFF is ignorant of the true names and/or capacities, whether individual,
8 partnership, limited partnership, corporate, or otherwise, of the defendants sued herein as DOES
9 1 through 50, inclusive, and each of them, and therefore sues such defendants by such fictitious
10 names pursuant to Code of Civil Procedure section 474. PLAINTIFF is informed and believes,
11 and thereon alleges, that each of the Defendants sued herein, including DOES 1 through 50,
12 inclusive, is and was negligently, tortiously, comparatively, carelessly, recklessly, willfully,
13 knowingly or intentionally proximately the cause of or contributed to cause the damages
14 hereinafter alleged, or in some other manner is responsible in whole or in part for the damages
15 which have been, are being, and will be suffered by PLAINTIFF as alleged herein. When the
16 true names and/or capacities of the defendants are ascertained, PLAINTIFF will seek leave to
17 amend this Complaint to insert the same herein with appropriate charging allegations.

18 4. PLAINTIFF is informed and believes and thereon alleges that each of the
19 DEFENDANTS named herein, including each of the DOE Defendants, were acting at all
20 relevant times herein, as the agent, ostensible agent, joint-venturer, servant, employee, co-
21 conspirator and/or associate of each of the other DEFENDANTS, and were at all times acting
22 within the course and scope of said agency, servitude, employment, joint-venture, association,
23 and/or conspiracy and with the permission and consent of the other DEFENDANTS.

24 5. PLAINTIFF timely filed charges of discrimination based on, among other things,
25 actual disability and perceived disability, with the Department of Fair Employment and Housing
26 (DFEH) against KAISER.

27 6. PLAINTIFF received Right-to-Sue letters from the DFEH with respect to
28 KAISER.

1 7. PLAINTIFF has complied with all prerequisites to jurisdiction of this Court under
2 California Government Code section 12900, et seq., and has filed this Complaint within the
3 timeframe set forth in PLAINTIFF's Right-to-Sue Notices, and has, therefore, exhausted her
4 administrative remedies.

5 8. Venue is proper in this county because, among other reasons, the majority of the
6 events and conduct complained of herein occurred in Fresno County and PLAINTIFF applied for
7 employment with KAISER while residing in Fresno County.

8 **BACKGROUND ALLEGATIONS**

9 9. From in or about April 2008 through in or about January 2011, PLAINTIFF
10 worked as an Administrative Support Coordinator I for California State University - Fresno
11 ("Fresno State"). In or about November 2010, PLAINTIFF learned of a job announcement for a
12 full-time position as an Administrative Specialist III position with KAISER in Bakersfield,
13 California. As PLAINTIFF intended to move to Bakersfield once she was able to secure
14 employment there, PLAINTIFF applied for the position.

15 10. The job announcement that PLAINTIFF reviewed in applying for the position did
16 not contain any information as to minimum physical requirements of applicants, such as a
17 minimum lifting requirement. KAISER'S job application asked whether PLAINTIFF would be
18 able to perform the requirements of the position without a reasonable accommodation, and
19 PLAINTIFF, believing that she could perform the position without an accommodation, answered
20 in the affirmative.

21 11. Following PLAINTIFF'S application, KAISER requested that PLAINTIFF
22 submit to skills testing, which tests were carried out in Fresno and Bakersfield. Having
23 successfully passed these tests, none of which apparently involved any type of minimum lifting
24 requirement, PLAINTIFF was invited by KAISER to an in-person interview in Bakersfield on
25 December 17, 2010.

26 12. The attendees to the interview included PLAINTIFF, KAISER employee Linda
27 Ephrom, who was the direct manager of the position for which PLAINTIFF applied, and two
28 other individuals from KAISER'S Bakersfield office. At no time during the interview was

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1 PLAINTIFF presented with a written job description or any other document alluding to a
2 minimum lifting requirement for the position. None of the interviewers verbally discussed any
3 minimum physical requirements, including lifting requirements, at any time during the interview.

4 13. After the in-person interview, Ms. Ephrom contacted PLAINTIFF with a verbal
5 offer of employment. PLAINTIFF accepted the verbal offer, and thereafter received a written
6 offer of employment from KAISER employee Ms. Shelly Yagers, indicating that PLAINTIFF
7 was to begin her employment with KAISER on January 24, 2011.

8 14. Again, no minimum physical requirements of the position were conveyed to
9 PLAINTIFF in either of the offers, and PLAINTIFF did not receive any written job description
10 of the position. KAISER'S written offer of employment indicated that the offer was contingent
11 upon PLAINTIFF successfully passing a pre-employment/post-offer physical examination. Upon
12 receiving KAISER'S job offer, PLAINTIFF thereafter gave notice to her current employer that
13 she had received the offer from KAISER and would therefore be resigning from her position
14 with Fresno State, effective January 20, 2011.

15 15. Shortly after being notified of KAISER'S offer of employment, PLAINTIFF
16 submitted to an examination with a KAISER physician in Bakersfield. PLAINTIFF had
17 previously received and answered a pre-examination questionnaire asking, among other things,
18 whether she required any work-related accommodation for a mental or physical condition to be
19 able to perform the essential duties of the job as identified in KAISER'S written job description.
20 Again, not having received a written job description, or having any notion that the position had a
21 minimum lifting requirement, PLAINTIFF answered that she did not require any work-related
22 accommodation to perform the duties of the job description.

23 16. Upon arriving at the examination, PLAINTIFF learned that the examining
24 physician did not have a copy of the written job description either. The KAISER doctor
25 commented that she should not even be performing the examination without the job description,
26 but decided that she would perform the examination anyway, since it was not PLAINTIFF'S
27 responsibility to provide the doctor with a copy of the job description.

28 ///

1 17. Over the course of the exam, KAISER'S doctor reviewed each of PLAINTIFF'S
 2 responses to KAISER'S pre-examination questionnaire. PLAINTIFF'S response to certain of
 3 those questions reflected PLAINTIFF'S restriction from overhead lifting, due to a work-related
 4 shoulder injury that she sustained while working for Fresno State. PLAINTIFF'S Workers'
 5 Compensation physician had placed her on restricted duty for her injury, requiring that she not
 6 lift more than 30 pounds and avoid overhead lifting. PLAINTIFF'S restrictions were to be lifted
 7 on February 18, 2011, less than one month after she was scheduled to begin working for Kaiser.

8 18. Based on this information provided by PLAINTIFF, the KAISER doctor
 9 instructed PLAINTIFF to change her response on the pre-employment questionnaire as to
 10 whether she required a work-related accommodation from "no" to "yes." Again, without the
 11 benefit of a job description indicating any minimum physical requirements, PLAINTIFF
 12 complied with the KAISER physician's directive and changed her answer. PLAINTIFF
 13 specifically told the KAISER physician that the restrictions, even if they remained in place, did
 14 not prevent her from performing the job at KAISER. The KAISER physician indicated that
 15 work restrictions were unlikely to pose a problem, but that she would review the job description
 16 further at some point.

17 19. At the end of PLAINTIFF'S final day of employment for Fresno State, just four
 18 days before PLAINTIFF was scheduled to begin working for KAISER in Bakersfield,
 19 PLAINTIFF received a voicemail from KAISER employee Shelley Yeagers, stating that
 20 KAISER was rescinding its offer based on the post-offer medical exam, in which the KAISER
 21 physician indicated that PLAINTIFF could not perform the job she had been offered.

22 20. Obviously shocked at KAISER'S revocation of the job offer, PLAINTIFF
 23 informed Ms. Yeagers that she could absolutely perform the requirements of the job she had
 24 been offered either with or without an accommodation based on the job announcement published
 25 by KAISER. PLAINTIFF noted that the only reason her current work restriction was to continue
 26 through February 18, 2011 was because the February 18, 2011 date was the date of her next
 27 appointment, and that if she were to see her physician she could have the restrictions lifted
 28 immediately. Yeagers was completely non-responsive to PLAINTIFF'S efforts communicate

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1 about her ability to work, and simply informed PLAINTIFF that she would be required to wait
2 for a year before applying for any other openings with KAISER.

3 21. PLAINTIFF thereafter called to speak with KAISER employee Marilyn Plummer
4 about the rescission of the job offer and again offered the same information about her ability to
5 perform the duties of the job as they were conveyed to her. Plummer offered a different
6 explanation for the rescission than Yeagers, stating that PLAINTIFF'S physical condition and
7 the nature of the restrictions did not matter, because PLAINTIFF had misrepresented herself on
8 KAISER'S pre-employment questionnaire.

9 22. The following day, PLAINTIFF sent an email to Plummer, summarizing the
10 events from KAISER'S job offer through KAISER'S revocation, again emphasizing that she
11 could perform the responsibilities of the position KAISER had offered, and asking for the
12 opportunity to review the file of the KAISER physician who performed the post-offer exam, and
13 offering to provide any further information about her ability to perform the requirements of the
14 Administrative Specialist job. Plummer responded only that PLAINTIFF'S stated ability to meet
15 the physical requirements of the position was not consistent with PLAINTIFF's current medical
16 restrictions and the health screening process evaluation.

17 23. Plummer's response, in addition to being incorrect, was also disingenuous in light
18 of the fact that no written or verbal description of the Administrative Specialist job that was
19 provided to PLAINTIFF ever referred to lifting requirements. Plummer's response further
20 indicated that the position had been filled, but that PLAINTIFF could apply for any positions in
21 the future for which she believed she was qualified.

22 24. In the days and weeks subsequent to KAISER'S revocation of its job offer to
23 PLAINTIFF, KAISER continued to post new job openings for the same position and at the same
24 location as the Administrative Specialist job that KAISER had offered PLAINTIFF, but with
25 reduced hours. On or about January 22, 2011, KAISER posted a part-time opening for the same
26 Administrative Specialist job, with the added requirement that the applicant be able to
27 lift/transport items of up to 20 lbs. On or about February 8, 2011, KAISER again posted a part-
28 time opening for an Administrative Specialist, which did not describe any lifting requirements.

1 PLAINTIFF applied for both positions, but did not receive any feedback or contact as to either of
2 the positions.

3 **FIRST CAUSE OF ACTION**

4 **DISCRIMINATION IN VIOLATION OF CALIFORNIA GOVERNMENT CODE**

5 **SECTION 12940(a)**

6 (Against KAISER and DOES 1-50)

7 25. The allegations contained in each of the foregoing paragraphs are re-alleged and
8 incorporated herein by this reference.

9 26. PLAINTIFF was, at all times, an "applicant" for employment with KAISER, as
10 defined by FEHA, and therefore was and is a member of the group that statute seeks to protect.

11 27. KAISER was, at all times, an "employer" as defined by FEHA, and therefore is
12 subject to the provisions of FEHA.

13 **First Count: Discrimination on the Basis of Actual Disability**

14 28. KAISER knew PLAINTIFF had a physical disability that limited a major life
15 activity.

16 29. At all relevant times, PLAINTIFF was able to perform the essential duties of the
17 job for which she applied with reasonable accommodations for her condition.

18 30. KAISER ultimately refused to select PLAINTIFF for employment.

19 31. PLAINTIFF's actual physical condition was a motivating reason for KAISER'S
20 refusal to hire PLAINTIFF.

21 32. As a direct and proximate result of KAISER'S discrimination against
22 PLAINTIFF, PLAINTIFF has suffered, and continues to suffer, damages, in the form of lost
23 wages and other employment benefits, as well as severe emotional and physical distress, the
24 exact amount of which will be proven at trial.

25 33. In doing the things herein alleged, KAISER acted oppressively, maliciously,
26 intentionally, despicably, and in conscious disregard of PLAINTIFF's rights, as KAISER knew
27 that: 1) PLAINTIFF has a right to be free from unlawful discrimination in the terms of her
28 employment; 2) KAISER recklessly failed to anticipate that the foregoing conduct would cause

1 emotional distress in PLAINTIFF; 3) KAISER'S failure to protect such right resulted in severe
 2 emotional distress in PLAINTIFF, thereby intentionally or recklessly subjecting PLAINTIFF to
 3 said emotional distress; 4) by intentionally or recklessly subjecting PLAINTIFF to said
 4 emotional distress, KAISER engaged in conduct that was oppressive, malicious, cruel and unjust.
 5 Consequently, PLAINTIFF is entitled to recover exemplary and punitive damages from KAISER
 6 in an amount according to proof.

7 34. California Code of Civil Procedure section 1021 provides that attorney's fees are
 8 recoverable in an action for which they are specifically provided by statute. California
 9 Government Code section 12965(b) provides that reasonably attorney's fees and costs are
 10 recoverable herein by the prevailing party, within the discretion of the court. PLAINTIFF has
 11 retained attorneys for the prosecution of this action. As a result, PLAINTIFF is entitled to
 12 reasonable attorney's fees and costs incurred herein.

13 **Second Count: Discrimination on the Basis of Perceived Disability**

14 35. KAISER thought PLAINTIFF had a physical disability that limited a major life
 15 activity.

16 36. At all relevant times, PLAINTIFF was able to perform the essential duties of the
 17 job for which she applied with reasonable accommodations for her condition.

18 37. KAISER ultimately refused to select PLAINTIFF for employment with KAISER.

19 38. KAISER'S belief that the physical condition it regarded PLAINTIFF as having
 20 would impair PLAINTIFF'S ability to perform the elements of her job was a motivating reason
 21 for KAISER'S refusal to select PLAINTIFF for employment with KAISER.

22 39. As a direct and proximate result of KAISER'S discrimination against
 23 PLAINTIFF, PLAINTIFF has suffered, and continued to suffer, damages, in the form of lost
 24 wages and other employment benefits, as well as severe emotional and physical distress, the
 25 exact amount of which will be proven at trial.

26 40. In doing the things herein alleged, KAISER acted oppressively, maliciously,
 27 intentionally, despicably, and in conscious disregard of PLAINTIFF'S rights, as KAISER knew
 28 that: 1) PLAINTIFF has a right to be free from unlawful discrimination in the terms of her

1 employment; 2) KAISER recklessly failed to anticipate that the foregoing conduct would cause
2 emotional distress in PLAINTIFF; 3) KAISER'S failure to protect such right resulted in severe
3 emotional distress in PLAINTIFF, thereby intentionally or recklessly subjecting PLAINTIFF to
4 said emotional distress; 4) by intentionally or recklessly subjecting PLAINTIFF to said
5 emotional distress, KAISER engaged in conduct that was oppressive, malicious, cruel and unjust.
6 Consequently, PLAINTIFF is entitled to recover exemplary and punitive damages from KAISER
7 in an amount according to proof.

8 41. California Code of Civil Procedure section 1021 provides that attorney's fees are
9 recoverable in an action for which they are specifically provided by statute. California
10 Government Code section 12965(b) provides that reasonably attorney's fees and costs are
11 recoverable herein by the prevailing party, within the discretion of the court. PLAINTIFF has
12 retained attorneys for the prosecution of this action. As a result, PLAINTIFF is entitled to
13 reasonable attorney's fees and costs incurred herein.

14 SECOND CAUSE OF ACTION

15 **FAILURE TO PREVENT DISCRIMINATION IN VIOLATION OF CALIFORNIA**

16 **GOVERNMENT CODE SECTION 12940(k)**

17 (PLAINTIFF against KAISER and DOES 1-50)

18 42. Each of the allegations of the foregoing paragraphs are re-alleged and
19 incorporated herein by this reference.

20 43. PLAINTIFF was, at all times, an "applicant" for employment with KAISER, as
21 defined by FEHA, and therefore was and is a member of the group that statute seeks to protect.

22 44. KAISER was, at all times, an "employer" as defined by FEHA, and therefore is
23 subject to the provisions of FEHA.

24 45. By KAISER'S aforesaid conduct, it:

25 (a) Failed to provide PLAINTIFF with employment where PLAINTIFF could
26 work free from unlawful discrimination;

27 (b) Failed to take appropriate action when they knew or should have known of the
28 unlawful discrimination against PLAINTIFF;

1 (c) Failed to adopt and/or disseminate, adhere to or enforce effective policies with
2 respect to the employer's duty to prevent unlawful discrimination;

3 (d) Aided and abetted unlawful discrimination.

4 **First Count: Failure to Prevent Discrimination on the Basis of Actual Disability**

5 46. PLAINTIFF was subjected to unlawful discrimination by KAISER because of her
6 actual physical disability.

7 47. By reason of KAISER'S failures enumerated hereinabove, KAISER failed to take
8 reasonable steps to prevent the unlawful discrimination against PLAINTIFF on the basis of
9 PLAINTIFF'S actual physical disability. As a direct and proximate result of KAISER'S failure to
10 prevent discrimination against PLAINTIFF, PLAINTIFF has suffered, and continues to suffer,
11 damages, in the form of lost wages and other employment benefits, as well as severe emotional
12 and physical distress, the exact amount of which will be proven at trial.

13 48. In doing the things herein alleged, KAISER acted oppressively, maliciously,
14 intentionally, despicably, and in conscious disregard of PLAINTIFF'S rights, as KAISER knew
15 that: 1) PLAINTIFF has a right to be free from unlawful discrimination in the terms of her
16 employment; 2) KAISER recklessly failed to anticipate that the foregoing conduct would cause
17 emotional distress in PLAINTIFF; 3) KAISER'S failure to protect such right resulted in severe
18 emotional distress in PLAINTIFF, thereby intentionally or recklessly subjecting PLAINTIFF to
19 said emotional distress; 4) by intentionally or recklessly subjecting PLAINTIFF to said
20 emotional distress, KAISER engaged in conduct that was oppressive, malicious, cruel and unjust.
21 Consequently, PLAINTIFF is entitled to recover exemplary and punitive damages from KAISER
22 in an amount according to proof.

23 49. California Code of Civil Procedure section 1021 provides that attorney's fees are
24 recoverable in an action for which they are specifically provided by statute. California
25 Government Code section 12965(b) provides that reasonably attorney's fees and costs are
26 recoverable herein by the prevailing party, within the discretion of the court. PLAINTIFF has
27 retained attorneys for the prosecution of this action. As a result, PLAINTIFF is entitled to
28 reasonable attorney's fees and costs incurred herein.

1 **Second Count: Failure to Prevent Discrimination on the Basis of Perceived Disability**

2 50. PLAINTIFF was subjected to unlawful discrimination by KAISER because of her
3 perceived actual disability.

4 51. By reason of KAISER'S failures enumerated hereinabove, KAISER failed to take
5 reasonable steps to prevent the unlawful discrimination against PLAINTIFF on the basis of
6 PLAINTIFF's perceived physical disability. As a direct and proximate result of KAISER'S
7 failure to prevent discrimination against PLAINTIFF, PLAINTIFF has suffered, and continues to
8 suffer, damages, in the form of lost wages and other employment benefits, as well as severe
9 emotional and physical distress, the exact amount of which will be proven at trial.

10 52. In doing the things herein alleged, KAISER acted oppressively, maliciously,
11 intentionally, despicably, and in conscious disregard of PLAINTIFF's rights, as KAISER knew
12 that: 1) PLAINTIFF has a right to be free from unlawful discrimination in the terms of her
13 employment; 2) KAISER recklessly failed to anticipate that the foregoing conduct would cause
14 emotional distress in PLAINTIFF; 3) KAISER'S failure to protect such right resulted in severe
15 emotional distress in PLAINTIFF, thereby intentionally or recklessly subjecting PLAINTIFF to
16 said emotional distress; 4) by intentionally or recklessly subjecting PLAINTIFF to said
17 emotional distress, KAISER engaged in conduct that was oppressive, malicious, cruel and unjust.
18 Consequently, PLAINTIFF is entitled to recover exemplary and punitive damages from KAISER
19 in an amount according to proof.

20 53. California Code of Civil Procedure section 1021 provides that attorney's fees are
21 recoverable in an action for which they are specifically provided by statute. California
22 Government Code section 12965(b) provides that reasonably attorney's fees and costs are
23 recoverable herein by the prevailing party, within the discretion of the court. PLAINTIFF has
24 retained attorneys for the prosecution of this action. As a result, PLAINTIFF is entitled to
25 reasonable attorney's fees and costs incurred herein.

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THIRD CAUSE OF ACTION

**FAILURE TO PROVIDE A REASONABLE ACCOMMODATION IN VIOLATION OF
GOVERNMENT CODE SECTION 12940(m)
(PLAINTIFF against KAISER and DOES 1-50)**

54. Each of the allegations of the foregoing paragraphs are re-alleged and incorporated herein by this reference.

55. PLAINTIFF was, at all times, an "applicant" for employment with KAISER as defined by FEHA, and therefore was and is a member of the group that statute seeks to protect.

56. KAISER was, at all times, an "employer" as defined by FEHA, and therefore is subject to the provisions of FEHA.

First Count: Failure to Provide Accommodation on the Basis of Actual Disability

57. KAISER knew PLAINTIFF had an actual physical disability for purposes of California Government Code section 12940(a) that limited PLAINTIFF's ability to work.

58. KAISER failed to provide a reasonable accommodation for PLAINTIFF's actual physical disability.

59. As a direct and proximate result of KAISER'S failure to provide PLAINTIFF with a reasonable accommodation for her actual physical disability, PLAINTIFF has suffered, and continues to suffer, damages, in the form of lost wages and other employment benefits, as well as severe emotional and physical distress, the exact amount of which will be proven at trial.

60. In doing the things herein alleged, KAISER acted oppressively, maliciously, intentionally, despicably, and in conscious disregard of PLAINTIFF's rights, as KAISER knew that: 1) PLAINTIFF has a right to reasonable accommodations for her physical disabilities as part of the terms of her employment; 2) KAISER recklessly failed to anticipate that the foregoing conduct would cause emotional distress in PLAINTIFF; 3) KAISER'S failure to protect such right resulted in severe emotional distress in PLAINTIFF, thereby intentionally or recklessly subjecting PLAINTIFF to said emotional distress; 4) by intentionally or recklessly subjecting PLAINTIFF to said emotional distress, KAISER engaged in conduct that was oppressive,

1 malicious, cruel and unjust. Consequently, PLAINTIFF is entitled to recover exemplary and
2 punitive damages from KAISER in an amount according to proof.

3 61. California Code of Civil Procedure section 1021 provides that attorney's fees are
4 recoverable in an action for which they are specifically provided by statute. California
5 Government Code section 12965(b) provides that reasonable attorney's fees and costs are
6 recoverable herein by the prevailing party, within the discretion of the court. PLAINTIFF has
7 retained attorneys for the prosecution of this action. As a result, PLAINTIFF is entitled to
8 reasonable attorney's fees and costs incurred herein.

9 **Second Count: Failure to Provide Accommodation on the Basis of Perceived Disability**

10 62. KAISER perceived PLAINTIFF to have a physical disability for purposes of
11 California Government Code section 12940(a) that limited PLAINTIFF's ability to work.

12 63. KAISER failed to provide a reasonable accommodation for PLAINTIFF's
13 perceived physical disability.

14 64. As a direct and proximate result of KAISER'S failure to provide PLAINTIFF
15 with a reasonable accommodation for her perceived physical disability, PLAINTIFF has
16 suffered, and continues to suffer, damages, in the form of lost wages and other employment
17 benefits, as well as severe emotional and physical distress, the exact amount of which will be
18 proven at trial.

19 65. In doing the things herein alleged, KAISER acted oppressively, maliciously,
20 intentionally, despicably, and in conscious disregard of PLAINTIFF's rights, as KAISER knew
21 that: 1) PLAINTIFF has a right to reasonable accommodations for her physical disabilities as
22 part of the terms of her employment; 2) KAISER recklessly failed to anticipate that the foregoing
23 conduct would cause emotional distress in PLAINTIFF; 3) KAISER'S failure to protect such
24 right resulted in severe emotional distress in PLAINTIFF, thereby intentionally or recklessly
25 subjecting PLAINTIFF to said emotional distress; 4) by intentionally or recklessly subjecting
26 PLAINTIFF to said emotional distress, KAISER engaged in conduct that was oppressive,
27 malicious, cruel and unjust. Consequently, PLAINTIFF is entitled to recover exemplary and
28 punitive damages from KAISER in an amount according to proof.

1 66. California Code of Civil Procedure section 1021 provides that attorney's fees are
2 recoverable in an action for which they are specifically provided by statute. California
3 Government Code section 12965(b) provides that reasonably attorney's fees and costs are
4 recoverable herein by the prevailing party, within the discretion of the court. PLAINTIFF has
5 retained attorneys for the prosecution of this action. As a result, PLAINTIFF is entitled to
6 reasonable attorney's fees and costs incurred herein.

7 **FOURTH CAUSE OF ACTION**

8 **FAILURE TO PARTICIPATE IN THE INTERACTIVE PROCESS IN VIOLATION OF**
9 **CALIFORNIA GOVERNMENT CODE SECTION 12940(n)**

10 (PLAINTIFF against KAISER and DOES 1-50)

11 67. Each of the allegations of the foregoing paragraphs are re-alleged and
12 incorporated herein by this reference.

13 68. PLAINTIFF was, at all times, an "applicant" for employment with KAISER as
14 defined by FEHA, and therefore was and is a member of the group that statute seeks to protect.

15 69. KAISER was, at all times, an "employer" as defined by FEHA, and therefore is
16 subject to the provisions of FEHA.

17 **First Count: Failure to Participate in the Interactive Process on the Basis of Actual**
18 **Disability**

19 70. KAISER knew or should have known PLAINTIFF had an actual physical
20 disability for the purposes of California Government Code section 12940(a) that limited
21 PLAINTIFF's ability to work.

22 71. PLAINTIFF requested that KAISER make reasonable accommodations for her
23 actual physical disability so that she would be able to perform her essential job requirements.

24 72. PLAINTIFF was willing to participate in an interactive process to determine
25 whether reasonable accommodations could be made so that PLAINTIFF would be able to
26 perform her essential job requirements notwithstanding PLAINTIFF's actual physical disability.

27 73. KAISER failed to participate in an adequate, timely good-faith interactive process
28 with PLAINTIFF to determine whether reasonable accommodation could be made.

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1 74. As a direct and proximate result of KAISER'S failure to adequately engage in a
2 good-faith interactive process with PLAINTIFF, PLAINTIFF has suffered, and continues to
3 suffer, damages, in the form of lost wages and other employment benefits, as well as severe
4 emotional and physical distress, the exact amount of which will be proven at trial.

5 75. In doing the things herein alleged, KAISER acted oppressively, maliciously,
6 intentionally, despicably, and in conscious disregard of PLAINTIFF's rights, as KAISER knew
7 that: 1) PLAINTIFF has a right to engage in a good-faith interactive process to determine
8 whether reasonable accommodations can be made for her physical disabilities as part of the
9 terms of her employment; 2) KAISER recklessly failed to anticipate that the foregoing conduct
10 would cause emotional distress in PLAINTIFF; 3) KAISER'S failure to protect such right
11 resulted in severe emotional distress in PLAINTIFF, thereby intentionally or recklessly
12 subjecting PLAINTIFF to said emotional distress; 4) by intentionally or recklessly subjecting
13 PLAINTIFF to said emotional distress, KAISER engaged in conduct that was oppressive,
14 malicious, cruel and unjust. Consequently, PLAINTIFF is entitled to recover exemplary and
15 punitive damages from KAISER in an amount according to proof.

16 76. California Code of Civil Procedure section 1021 provides that attorney's fees are
17 recoverable in an action for which they are specifically provided by statute. California
18 Government Code section 12965(b) provides that reasonably attorney's fees and costs are
19 recoverable herein by the prevailing party, within the discretion of the court. PLAINTIFF has
20 retained attorneys for the prosecution of this action. As a result, PLAINTIFF is entitled to
21 reasonable attorney's fees and costs incurred herein.

22 **Second Count: Failure to Participate in the Interactive Process on the Basis of Perceived**
23 **Disability**

24 77. KAISER perceived PLAINTIFF as having a physical disability for the purposes
25 of California Government Code section 12940(a) that limited PLAINTIFF's ability to work.

26 78. PLAINTIFF requested that KAISER make reasonable accommodations for her
27 perceived physical disabilities so that she would be able to perform her essential job
28 requirements.

1 79. PLAINTIFF was willing to participate in an interactive process to determine
 2 whether reasonable accommodations could be made so that PLAINTIFF would be able to
 3 perform her essential job requirements notwithstanding PLAINTIFF's perceived physical
 4 disability.

5 80. KAISER failed to participate in an adequate, timely good-faith interactive process
 6 with PLAINTIFF to determine whether reasonable accommodation could be made.

7 81. As a direct and proximate result of KAISER'S failure to adequately engage in a
 8 good-faith interactive process with PLAINTIFF, PLAINTIFF has suffered, and continues to
 9 suffer, damages, in the form of lost wages and other employment benefits, as well as severe
 10 emotional and physical distress, the exact amount of which will be proven at trial.

11 82. In doing the things herein alleged, KAISER acted oppressively, maliciously,
 12 intentionally, despicably, and in conscious disregard of PLAINTIFF's rights, as KAISER knew
 13 that: 1) PLAINTIFF has a right to engage in a good-faith interactive process to determine
 14 whether reasonable accommodations can be made for her physical disabilities as part of the
 15 terms of her employment; 2) KAISER recklessly failed to anticipate that the foregoing conduct
 16 would cause emotional distress in PLAINTIFF; 3) KAISER'S failure to protect such right
 17 resulted in severe emotional distress in PLAINTIFF, thereby intentionally or recklessly
 18 subjecting PLAINTIFF to said emotional distress; 4) by intentionally or recklessly subjecting
 19 PLAINTIFF to said emotional distress, KAISER engaged in conduct that was oppressive,
 20 malicious, cruel and unjust. Consequently, PLAINTIFF is entitled to recover exemplary and
 21 punitive damages from KAISER in an amount according to proof.

22 83. California Code of Civil Procedure section 1021 provides that attorney's fees are
 23 recoverable in an action for which they are specifically provided by statute. California
 24 Government Code section 12965(b) provides that reasonably attorney's fees and costs are
 25 recoverable herein by the prevailing party, within the discretion of the court. PLAINTIFF has
 26 retained attorneys for the prosecution of this action. As a result, PLAINTIFF is entitled to
 27 reasonable attorney's fees and costs incurred herein.

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FIFTH CAUSE OF ACTION

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(PLAINTIFF against KAISER and DOES 1-50)

84. Each of the allegations of the foregoing paragraphs are re-alleged and incorporated herein by this reference.

85. In doing the things alleged herein, KAISER engaged in outrageous and unprivileged conduct with reckless disregard of the probability of causing PLAINTIFF to suffer severe emotional distress.

86. Such outrageous and unprivileged conduct on the part of KAISER caused PLAINTIFF to suffer severe emotional distress. As a result of KAISER'S intentional infliction of emotional distress on PLAINTIFF, PLAINTIFF has suffered consequential damages in an amount according to proof for severe emotional distress.

87. In doing the things herein alleged, KAISER acted oppressively, maliciously, intentionally, despicably, and in conscious disregard of PLAINTIFF'S rights, as KAISER knew that: 1) PLAINTIFF has a right to be free from conduct intended to cause emotional distress in PLAINTIFF, or conduct which KAISER recklessly failed to anticipate would cause emotional distress in PLAINTIFF; 2) KAISER'S failure to protect such right resulted in severe emotional distress in PLAINTIFF; 4) intentionally or recklessly subjecting PLAINTIFF to said emotional distress was unlawful; and 4) by intentionally or recklessly subjecting PLAINTIFF to said emotional distress, KAISER engaged in conduct that was oppressive, malicious, cruel and unjust. Consequently, PLAINTIFF is entitled to recovery of exemplary and punitive damages, where permitted by law, in an amount according to proof.

PRAYER

WHEREFORE, PLAINTIFF prays as follows:

AS TO PLAINTIFF'S FIRST THROUGH FOURTH CAUSES OF ACTION

1. For compensatory damages in an amount to be proven at trial;
2. For an award in favor of PLAINTIFF and against KAISER of all reasonable attorneys' fees incurred, in an amount subject to proof at trial or by post-trial motion;

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- 3. For costs of suit;
- 4. For pre-judgment interest at the maximum legal rate of interest;
- 5. For exemplary damages in an amount to be proven at trial; and
- 6. For such other and further relief as the court may deem just and proper.

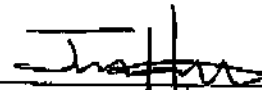
AS TO PLAINTIFF'S FIFTH CAUSE OF ACTION

- 1. For compensatory damages in an amount to be proven at trial;
- 2. For costs of suit;
- 3. For pre-judgment interest at the maximum legal rate of interest;
- 4. For exemplary damages in an amount to be proven at trial;
- 5. For such other and further relief as the court may deem just and proper.

Dated: May 2, 2012

SUTTON HATMAKER LAW CORPORATION

By



JARED HAGUE
Attorney for Plaintiff
KATTIE SMITH

Courthouse News Service