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Attorney for Plaintiff
 GUMARO TREVINO

FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF RIVERSIDE

MAR 22 2013

J. SIRACUSA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF RIVERSIDE

GUMARO TREVINO,
 Plaintiff,

v.

KAISER PERMANENTE
 INTERNATIONAL, a California
 corporation; KAISER
 FOUNDATION HOSPITALS, a
 California corporation; THE
 PERMANENTE MEDICAL
 GROUP, INC., a California
 corporation; and DOES 1 through
 20, inclusive,

Defendants.

Case No.

RIC 1303504

COMPLAINT FOR DAMAGES FOR:

- (1) Religious Discrimination;
- (2) Harassment;
- (3) Retaliation;
- (4) Wrongful Termination in Violation of Public Policy;
- (5) Defamation;
- (6) Failure to Pay Overtime;
- (7) Failure to Timely Pay Wages;
- (8) Intentional Infliction of Emotional Distress; and
- (9) Breach of Contract

JURY TRIAL DEMANDED

IMAGED FILE

COMES NOW Plaintiff GUMARO TREVINO and, for causes of action
 against Defendants, KAISER PERMANENTE INTERNATIONAL, KAISER
 FOUNDATION HOSPITALS, and THE PERMANENTE MEDICAL GROUP,
 INC. (collectively, "Defendants"), and each of them, alleges as follows:

PARTIES, JURISDICTION AND VENUE

1
2 1. Plaintiff GUMARO TREVINO ("Plaintiff" or "Trevino") is and, at all
3 times herein mentioned, was an individual residing in the County of Riverside.

4 2. Defendant KAISER PERMANENTE INTERNATIONAL ("KPI") is
5 and, at all times herein relevant, was a California corporation, conducting business
6 in Riverside County, California.

7 3. Defendant KAISER FOUNDATION HOSPITALS ("KFH") is and, at
8 all times herein relevant, was a California corporation, conducting business in
9 Riverside County, California.

10 4. Defendant THE PERMANENTE MEDICAL GROUP, INC.
11 ("PMGI"), is and, at all times herein relevant, was a California corporation,
12 conducting business in Riverside County, California.

13 5. Plaintiff is unaware of the true names and capacities of the Defendants
14 designated as DOES 1 through 20, inclusive, and therefore sues such Defendants
15 by their fictitious names. Plaintiff will seek leave of this Court, if required, to
16 amend this complaint to allege their true names and capacities when the same has
17 been ascertained. Plaintiff is informed and believes, and thereon alleges, that each
18 and every defendant designated herein as a DOE is, in some manner, liable or
19 responsible for the acts, occurrences and omissions set forth hereinafter, and the
20 damages proximately caused thereby.

21 6. Plaintiff is informed and believes and, thereupon, alleges that in acting
22 or failing to act, as hereinafter set forth, each and every defendant was acting as the
23 agent, servant, employee, principal, master and/or employer of each remaining co-
24 Defendants, within the course and scope of such agency, servitude and/or
25 employment, and with the express or implied consent, knowledge and ratification
26 of each such remaining co-Defendants.

1 **FACTUAL ALLEGATIONS RELEVANT TO ALL CAUSES OF ACTION**

2 7. Plaintiff is a non-denominational Christian.

3 8. In 2001, Plaintiff began working for Moreno Valley Community
4 Hospital ("MVCH") as a Registered Nurse. In or around 2008, Defendants
5 acquired ownership of MVCH and, on or about June 20, 2008, Plaintiff's contract
6 was transitioned to the new entity Kaiser Permanente Moreno Valley Community
7 Hospital ("KPMVCH").

8 9. During the entire course of Plaintiff's employment with Defendants,
9 there existed an express and an implied-in-fact contract of employment between
10 Plaintiff and Defendants, which at the time of Plaintiff's termination, included
11 (without limitation) the following conditions:

- 12 a. Plaintiff would be able to continue his employment with Defendants
13 indefinitely so long as he carried out his duties in a proper and
14 competent manner;
- 15 b. If grievances or complaints were lodged regarding him, Plaintiff
16 would be given written notice and a meaningful opportunity to
17 respond;
- 18 c. Plaintiff would be permitted to have a union representative present at
19 any investigatory interview with his or her supervisor when the
20 employee reasonably believes that the interview may lead to a
21 disciplinary action (*Weingarten* Rights);
- 22 d. Plaintiff would not be demoted, discharged or otherwise disciplined
23 without good cause and reasonable notice;
- 24 e. Defendants would adhere to proscribed progressive disciplinary
25 procedures;
- 26 f. Defendants would not make or implement employment decisions
27 affecting Plaintiff's job or his career in an arbitrary, capricious,
28 fraudulent or malicious manner; and

1 g. Defendants would protect Plaintiff from discrimination and retaliation.

2 10. Various written documents and contracts - which are in Defendants'
3 possession, custody and control - and oral representations to Plaintiff evidenced
4 this total employment contract by Defendants' agents and employees.

5 11. Throughout Plaintiff's employment he was a competent employee who
6 performed his job in a satisfactory manner.

7 12. Throughout his employment, Plaintiff was subjected to harassing and
8 abusive conduct towards him by Dr. George Salameh ("Salameh"), the Emergency
9 Department Chief. Salameh continually screamed and yelled untrue derogatory
10 and abusive comments at Plaintiff in front of co-workers, other doctors, and
11 patients. For example, Salameh would falsely state that Plaintiff was "an idiot" and
12 "punished his patients" by failing to provide them with water, warm blankets and
13 pain medication. None of these allegations were true, however, Salameh made
14 these false and defamatory statements whenever he saw Plaintiff. These untrue
15 derogatory comments damaged Plaintiff's professional reputation and caused him
16 to suffer other damages.

17 13. Salameh's harassing and abusive conduct became so extreme and
18 outrageous as to create a hostile work environment for Plaintiff, which interfered
19 with Plaintiff's ability to preform his job.

20 14. Accordingly, Plaintiff complained about Salameh's discriminatory
21 and harassing behavior to Dr. Norman Label ("Label") and to Bill Herbert
22 ("Herbert"), Plaintiff's manager at that time. However, Defendants failed to
23 effectively remedy the situation. Instead, Salameh abusive conduct towards
24 Plaintiff increased and intensified, continuing up until the last day of Plaintiff
25 employment. In addition, Salameh submitted a negative report about Plaintiff to
26 Plaintiff's supervisors and to administrative personnel in retaliation for Plaintiff's
27 complaining about his discriminatory and abusive conduct.

28 15. Moreover, after Plaintiff complained about Salameh's discriminatory

1 and abusive behavior, several members of Defendants' managerial and
2 administrative hierarchy, including Herbert, began retaliating against Plaintiff for
3 complaining.

4 16. In or around August 7, 2010, Plaintiff's team leader, Thomas Perez
5 ("Perez") began discriminating against and harassing Plaintiff because of his
6 religion, specifically that Plaintiff was a minister at a non-denominational Christian
7 church.

8 17. Perez routinely and continuously made abusive and harassing
9 comments regarding Plaintiff's religion, including, but not limited to greeting
10 Plaintiff every day by referring to him as "the devil," mocking to co-workers
11 Plaintiff's position of Christian minister, while babbling and pretending to be
12 speaking in tongues.

13 18. Moreover, Perez often verbally abused and threatened Plaintiff,
14 screaming derogatory comments to him in front of co-workers, doctors, and
15 patients. On several occasions, Perez's conduct would become so threatening that
16 Plaintiff feared that Perez was going to strike him. Perez's harassing and abusive
17 conduct became so extreme, outrageous and frequent as to create a hostile work
18 environment for Plaintiff, which interfered with his ability to perform his job.

19 19. Plaintiff complained to Herbert, Plaintiff's manager at the time,
20 regarding Perez's discriminatory, harassing and threatening behavior that was also
21 a breach of Plaintiff's employment contract, but to no avail. Instead, the
22 discriminatory, harassing, and threatening conduct increased in frequency and
23 intensity.

24 20. Thereafter, and because of Plaintiff's complaints regarding the
25 religious discrimination and harassment that was being perpetrated against him by
26 Perez, Herbert retaliated against Plaintiff by, among other things, verbally
27 reprimanding and harassing Plaintiff for complaining about religious
28 discrimination, and by further discriminating against Plaintiff.

1 21. In or around October 21, 2010, Plaintiff complained to administration
2 about Herbert's retaliatory conduct, which further breached Plaintiff's employment
3 contract.

4 22. Thereafter, and because of Plaintiff's complaints regarding the
5 religious discrimination and harassment that was being perpetrated against him by
6 Perez and Herbert, Judy Peterman ("Peterman") – who became Plaintiff's Interim
7 Manager in December 2010, Herbert, Salameh, and other members of Defendants'
8 managerial and administrative hierarchy retaliated against Plaintiff by further
9 discriminating against and harassing Plaintiff, and by further breaching Plaintiff's
10 employment contract by treating Plaintiff in ways that adversely affected and
11 violated the terms and conditions of his employment, including:

- 12 a. Downgrading and/or ignoring Plaintiff's complaints of ill-treatment,
13 discrimination and harassment;
- 14 b. Subjecting Plaintiff to an accelerated degree and rate of retaliatory
15 employment actions after he complained about the ill-treatment he was
16 subjected to in the workplace;
- 17 c. Imposing additional and unreasonable restrictions on Plaintiff's
18 performance that were not imposed on other, similarly situated
19 employees;
- 20 d. Subjecting Plaintiff to arbitrary and intensive oversight, scrutiny,
21 criticism and discipline at a more aggressive rate than similarly-
22 situated employees;
- 23 e. Verbally abusing and threatening Plaintiff by screaming and yelling at
24 him in front of his co-workers, doctors and patients;
- 25 f. Failing and refusing to provide Plaintiff with needed support in order
26 to adequately perform his job duties, including but not limited to,
27 assistance with the proper disposal of excess medications and the
28 timely administration of patient tests and evaluations;

- g. Arbitrarily changing Plaintiff's schedule to his detriment and to the benefit of other similarly-situated employees who had not complained about unlawful behavior;
- h. Frequently assigning an excessive number of patients, as well as the most difficult to care for and high-need patients to Plaintiff, including but not limited to, patients suffering from Clostridium Difficile ("C-diff"), which manifests in frequent, chronic diarrhea;
- i. Failing and refusing to provide Plaintiff with yearly evaluations;
- j. Failing and refusing to follow proscribed progressive disciplinary procedures that were and are routinely followed with similarly situated employees;
- k. Intentionally and knowingly making false statements about Plaintiff that damaged Plaintiff's reputation and career; and
- l. Termination of Plaintiff's employment based, in part, on his complaining about religious discrimination and harassment.

23. Moreover, Herbert and other members of Defendants' managerial and administrative hierarchy began to plan and set-up situations wherein Plaintiff would be forced to violate policy, or would be unable to adequately perform so that they could manufacture a pretextual reason to terminate Plaintiff's employment.

24. For example, Plaintiff was forbidden to carry patient syringes in his pockets, despite the fact that almost every other nurse was allowed to do so.

Moreover, Plaintiff was never instructed or provided with alternative methods for carrying patient syringes such that he found it difficult to timely and efficiently provide medication to his patients. This discriminatory treatment that interfered with Plaintiff's work performance, adversely affected the terms and conditions of his employment, and set him up for failure.

25. Defendants also began ordering and forcing Plaintiff to work overtime without pay. Specifically, on numerous occasions, Defendants required Plaintiff to

1 clock out, but to continue working without compensation so as to avoid having to
2 pay Plaintiff overtime.

3 26. On or about August 23, 2011, Plaintiff was accused of violating
4 company policy by failing to adjust a computer entry to reflect the actual amount of
5 medication administered to a patient after the patient requested that the full dose
6 not be given. It was very common for nurses to go back and edit the computer
7 entry to reflect the actual amount medication administer and many nurses would
8 forget. However, similarly situated nurses were not penalized for these
9 inaccuracies, while Plaintiff suffered punitive consequences, including an
10 investigation and his eventual termination. Moreover, Defendants' discriminatory
11 directive that Plaintiff not carry syringes in his pocket contributed to this incident,
12 as the partially administered syringe typically acts as a reminder to the Nurse to
13 adjust the computer entry to reflect the actual amount administered. Plaintiff is
14 informed and believes that Defendants' prohibited his from retaining the syringes
15 in this manner as a way to ensure that he would forget to edit his computer entries.

16 27. When Plaintiff asserted his right to have a union representative present
17 during his interrogations by Defendants, Defendants continued to discriminate
18 against and harass Plaintiff, and to breach their agreement with Plaintiff by failing
19 and refusing to allow Plaintiff to exercise his *Weingarten* Rights, which entitle him
20 to the presence of a union representative, while other, similarly situated employees
21 were routinely allowed the presence of a union representative when one was
22 requested.

23 28. Defendants further discriminated against Plaintiff and breached his
24 employment contract by failing to follow their policy regarding progressive
25 discipline, which they routinely followed for other similarly situated employees.
26 Instead, Plaintiff was informed by Peterman that he was being terminated on
27 August 23, 2011.

28 29. The reason for Plaintiff's termination was pretextual and resulted from

1 Defendants' attempts to set-up Plaintiff for failure and/or a violation of policy,
2 thereby giving them a fabricated reason for terminating his employment.

3 30. At the time that Defendants terminated Plaintiff's employment, there
4 remained due and owing to Plaintiff unpaid wages in the form of overtime for
5 hours worked during which Defendants required Plaintiff to punch out and remain
6 working off the clock and without compensation. Defendants failed and refused,
7 and continue to fail and refuse, to pay these wages that were due and owing to
8 Plaintiff when Defendants terminated his employment.

9 31. On or about February 21, 2012, Plaintiff filed a complaint with the
10 Department of Fair Employment and Housing ("DFEH"). Plaintiff received the
11 DFEH's right to sue letter on March 23, 2012, and timely files this complaint.

12 **FIRST CAUSE OF ACTION**

13 **Religious Discrimination**

14 (As Against All Defendants)

15 32. Plaintiff incorporates the allegations of paragraphs 1 through 31,
16 above, as though fully set forth herein.

17 33. Plaintiff is a non-denominational Christian.

18 34. During the course of Plaintiff's employment with Defendants, Plaintiff
19 was subjected to employment discrimination based on his religion as set forth
20 herein, and was treated differently than similarly-situated employees.

21 35. The discrimination was sufficiently pervasive as to alter the conditions
22 of Plaintiff's employment and create a hostile and abusive working environment.

23 36. Defendants knew or should have known about the discrimination.
24 Plaintiff advised Defendants of the discriminatory and harassing behavior and
25 actions, but to no avail.

26 37. Plaintiff's claim of employment discrimination based on religion is
27 supported by the conduct of Defendants' and each of them, as described herein,
28 above.

1 Plaintiff advised Defendants of the abusive and harassing behavior, but to no avail.

2 45. Defendants' conduct, as set forth herein, constitutes unlawful
3 employment discrimination based on harassment in violation of FEHA, California
4 Government Code § 12940 et seq.

5 46. As a direct, foreseeable and proximate result of the aforementioned
6 conduct by Defendants, and each of them, Plaintiff has suffered, and continues to
7 suffer, losses in earnings, earning capacity and other benefits of employment, all in
8 an amount all in an amount according to proof at time of trial.

9 47. As a proximate result of Defendants', and each of their, willful,
10 knowing and intentional discrimination, Plaintiff has suffered, and continues to
11 suffer, humiliation, emotional distress, and mental and physical pain and anguish,
12 all to his damage in an amount according to proof at trial.

13 48. Plaintiff is informed and believes, and thereupon alleges, that the
14 actions of Defendants, and each of them, as herein alleged, were willful, wanton,
15 malicious and oppressive, and done with knowledge that their conduct was
16 unlawful. Notwithstanding such knowledge, Defendants, and each of them,
17 despicably subjected Plaintiff to cruel and unjust hardship in conscious disregard
18 of Plaintiff's rights as hereinabove alleged. Plaintiff is, therefore, entitled to
19 punitive and exemplary damages in an amount sufficient to discourage such future
20 conduct by Defendants, and each of them, and at the Court's discretion.

21 **THIRD CAUSE OF ACTION**

22 **Retaliation**

23 (As Against All Defendants)

24 49. Plaintiff incorporates by reference paragraphs 1 through 31 of this
25 Complaint as though fully set forth herein.

26 50. During the course of his employment with Defendants, Plaintiff was
27 subjected to retaliatory employment actions after he complained about
28 discriminatory and harassing conduct perpetrated against him, which was his right

1 to do. Thereafter, the discriminatory and harassing conduct by increased, and
2 Plaintiff was subjected to adverse employment actions, culminating in his
3 termination.

4 51. As alleged herein, Defendants retaliated against Plaintiff, which
5 adversely affected the terms and conditions of Plaintiff's employment in violation
6 of California Government Code § 12940(h).

7 52. Plaintiff's retaliation claims are supported by Defendants', and each of
8 their, conduct as described herein.

9 53. As a proximate result of the wrongful acts of Defendants, Plaintiff has
10 suffered actual, consequential and incidental losses, including without limitation,
11 loss of salary, benefits and employment-related opportunities for growth, all in an
12 amount according to proof at time of trial.

13 54. As a result of Defendants, and each of their, retaliatory actions,
14 Plaintiff has suffered and continues to suffer damages, including humiliation,
15 emotional and/or physical pain and distress, in an amount according to proof at
16 trial.

17 55. The acts of Defendants, and each of them, were done with malice,
18 fraud, and/or oppression, and with conscious disregard for Plaintiff's rights and/or
19 the intent to injure Plaintiff. Defendants', and each of their, actions entitle Plaintiff
20 to punitive and exemplary damages in an amount sufficient to discourage such
21 future actions of Defendants and others.

22 **FOURTH CAUSE OF ACTION**

23 **Wrongful Termination in Violation of Public Policy**

24 (As Against All Defendants)

25 56. Plaintiff incorporates by reference paragraphs 1 through 31 of this
26 Complaint as though fully set forth herein.

27 57. Article I, Section 8 of the California Constitution and California
28 Government Code section 12940 et seq. prohibit discrimination on the basis of

1 religion and require Defendants to refrain from discriminating against or harassing
2 an employee on the basis of religion, and from retaliating against an employee for
3 protesting any such unlawful conduct.

4 58. Plaintiff's employment was terminated, in substantial part, because of
5 his religion or creed, and because he complained about his subjection to
6 discriminatory and harassing employment practices, which was his right to do.

7 59. In terminating Plaintiff's employment, Defendants' actions violated
8 California's clear public policy against employment discrimination, harassment,
9 and retaliation, as set forth in Article I, Section 8 of the California Constitution and
10 California Government Code § 12940 et seq.

11 60. Plaintiff's claim of wrongful termination in violation of public policy
12 is supported by Defendants' conduct as described herein.

13 61. As a direct, foreseeable and proximate result of the aforementioned
14 conduct by Defendants, and each of them, Plaintiff has suffered, and continues to
15 suffer, losses in earnings, earning capacity and other benefits of employment, all in
16 an amount according to proof at trial, but exceeding the jurisdictional threshold of
17 this Court.

18 62. As a proximate result of Defendants', and each of their, willful,
19 knowing and intentional acts, Plaintiff has suffered, and continues to suffer
20 humiliation, emotional distress, and mental and/or physical pain and anguish, all to
21 his damage in an amount according to proof at trial.

22 63. Plaintiff is informed and believes, and thereupon alleges, that the
23 actions of Defendants, and each of them, as hereinabove alleged, were willful,
24 wanton, malicious, and/or oppressive, and were done with knowledge that their
25 conduct was unlawful. Notwithstanding such knowledge, Defendants, and each of
26 them, despicably subjected Plaintiff to cruel and unjust hardship in conscious
27 disregard of Plaintiff's rights as hereinabove alleged. Plaintiff is, therefore,
28 entitled to punitive and exemplary damages in an amount sufficient to discourage

1 such future actions, and in the discretion of the Court.

2 **FIFTH CAUSE OF ACTION**

3 **Defamation**

4 (As Against All Defendants)

5 64. Plaintiff incorporates by reference paragraphs 1 through 31 of this
6 Complaint as though fully set forth herein.

7 65. Throughout Plaintiff's employment, including in or around August 19,
8 2011, Defendants, by and through their agents, including but not limited to
9 Salameh and Perez, made false statements of fact to Plaintiff's co-workers, doctors
10 and patients, including but not limited to, Kristin Carrothers LVN; Cathy Kirchman
11 RN; Elizabeth (Liz) Fellows, secretary; and Karen Bowser King, secretary, that
12 Plaintiff was "an idiot" and "punished his patients" by failing to provide them with
13 water, warm blankets and pain medication, among other things. None of these
14 allegations were true.

15 66. Defendants, by and through their agents, knowingly, intentionally and
16 maliciously made these false statements to discredit Plaintiff and to damage his
17 reputation and career, and in order to effect the termination of Plaintiff's
18 employment.

19 67. Such false statements have caused Plaintiff substantial humiliation,
20 embarrassment, and damage to his livelihood and his reputation within KPMVCH,
21 and the medical and nursing communities, all in an amount to be proven at trial.

22 68. The conduct of Defendants in making these false statements about
23 Plaintiff is despicable, malicious, and in conscious disregard for Plaintiff's legal
24 rights, entitling Plaintiff to an award of punitive damages, in an amount to be
25 proven at trial.

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1 **SIXTH CAUSE OF ACTION**

2 **Failure to Pay Overtime**

3 (As Against All Defendants)

4 69. Plaintiff incorporates by reference paragraphs 1 through 31 of this
5 Complaint as though fully set forth herein.

6 70. On numerous occasions throughout his employment with Defendants,
7 Plaintiff was ordered and forced to work overtime without pay. Specifically,
8 Defendants often required Plaintiff to clock out, but to continue working without
9 compensation so as to avoid having to pay Plaintiff overtime to which he was
10 entitled.

11 71. California Labor Code § 204 et seq. provides for the payment of
12 wages at an overtime rate for hours worked outside a normal workday, as
13 prescribed by law.

14 72. Defendants herein failed to pay Plaintiff for overtime worked by
15 Plaintiff. Plaintiff has been deprived of his rightfully earned compensation as a
16 direct and proximate result of Defendant's policies, and failures and refusal to pay
17 said compensation.

18 73. Plaintiff is entitled to the recovery of all unpaid overtime wages due
19 and owing to him, together with any and all penalties, as prescribed by statute.
20 Plaintiff is also entitled to recover his costs and reasonable attorneys' fees,
21 according to proof, and interest on all due and unpaid wages at the rate of interest
22 specified in California Civil Code § 3287(a).

23 **SEVENTH CAUSE OF ACTION**

24 **Failure to Timely Pay Wages**

25 (As Against All Defendants)

26 74. Plaintiff incorporates by reference paragraphs 1 through 31 of this
27 Complaint as though fully set forth herein.

28 75. Labor Code § 201(a) requires an employer who discharges an

1 employee to timely pay compensation due and owing to the employee upon
2 discharge. Labor Code § 203 provides that if an employer willfully fails to timely
3 pay compensation promptly upon discharge as required by Labor Code § 201(a),
4 the employer is liable for waiting time penalties in the form of continued
5 compensation for up to thirty (30) work days.

6 76. Defendants willfully failed and refused, and continue to fail and
7 refuse, to timely pay to Plaintiff for wages and overtime earned by not yet paid
8 when they terminated his employment, as alleged herein.

9 77. Defendants are liable to Plaintiff for the compensation due and owing
10 Plaintiff at the time of his termination, together with waiting-time penalties and
11 interest thereon as prescribed by statute.

12 EIGHTH CAUSE OF ACTION

13 Intentional Infliction of Emotional Distress

14 (As Against All Defendants)

15 78. Plaintiff incorporate by reference paragraphs 1 through 31 of this
16 Complaint as though fully set forth herein.

17 79. The conduct of Defendants, and each of them, as set forth herein,
18 above, was extreme and outrageous to a degree as to be outside the bounds of
19 decency in a civilized society.

20 80. The conduct of Defendants, and each of them, was done in reckless
21 disregard and with the intention to cause emotional distress in Plaintiff.

22 81. As a result of Defendants', and each of their, extreme and outrageous
23 conduct, Plaintiff has suffered, and continues to suffer severe emotional distress
24 and mental anguish.

25 82. The severe emotional distress and mental anguish that Plaintiff has
26 suffered, and continues to suffer, was actually and proximately caused by
27 Defendants', and each of their, extreme and outrageous conduct as set forth herein.

28 83. As a direct and proximate cause of Defendants', and each of their,

1 actions, Plaintiff has suffered, and will continue to suffer, a loss of earnings and
2 other employment benefits and job opportunities. Plaintiff is thereby entitled to
3 general and special damages in an amount to be proven at trial.

4 84. The acts of Defendants, and each of them, were done with malice,
5 fraud and/or oppression, and with conscious disregard for Plaintiff's rights, and
6 with the intent to injure Plaintiff. Defendants', and each of their, conduct was
7 extreme and outrageous to such a degree as to entitle Plaintiff to punitive and
8 exemplary damages in an amount sufficient to discourage such future actions of
9 Defendants and others.

10 NINTH CAUSE OF ACTION

11 Breach of Contract

12 (As Against All Defendants)

13 85. Plaintiff incorporate by reference paragraphs 1 through 31 of this
14 Complaint as though fully set forth herein.

15 86. In 2001, Plaintiff began working for Moreno Valley Community
16 Hospital ("MVCH") as a Registered Nurse. In or around 2008, Defendants
17 acquired ownership of MVCH and, on or about June 20, 2008, Plaintiff's contract
18 was transitioned to the new entity Kaiser Permanente Moreno Valley Community
19 Hospital ("KPMVCH").

20 87. Throughout Plaintiff's employment he was a competent employee who
21 performed his job in a satisfactory manner.

22 88. During the entire course of Plaintiff's employment with Defendants,
23 there existed an express and an implied-in-fact contract of employment between
24 Plaintiff and Defendants, which at the time of Plaintiff's termination, included
25 (without limitation) the following conditions:

- 26 a. Plaintiff would be able to continue his employment with Defendants
27 indefinitely so long as he carried out his duties in a proper and
28 competent manner;

- 1 b. If grievances or complaints were lodged regarding him, Plaintiff
2 would be given written notice and a meaningful opportunity to
3 respond;
4 c. Plaintiff would be permitted to have a union representative present at
5 an investigatory interview with his or her supervisor when the
6 employee reasonably believes that the interview may lead to a
7 disciplinary action (*Weingarten* Rights);
8 d. Plaintiff would not be demoted, discharged or otherwise disciplined
9 without good cause and reasonable notice;
10 e. Defendants would adhere to proscribed progressive disciplinary
11 procedures;
12 f. Defendants would not make or implement employment decisions
13 affecting Plaintiff's job or his career in an arbitrary, capricious,
14 fraudulent or malicious manner; and
15 g. Defendants would protect Plaintiff from discrimination and retaliation.

16 89. Various written documents and contracts - which are in Defendants'
17 possession, custody and control - and oral representations to Plaintiff evidenced
18 this total employment contract by Defendants' agents and employees.

19 90. Plaintiff relied on these promises and representations, and reasonably
20 believed that his employment was secure and that there existed a contract of
21 continued employment with Defendants. As independent consideration for this
22 contract, and evidence of Plaintiff's reliance thereon, he performed his regular
23 duties as an employee of Defendants. In addition, Plaintiff refrained from seeking
24 other employment, and during his employment with Defendants, he turned down
25 various opportunities offered to him on the basis of Defendants' promises.

26 91. Plaintiff performed all of his obligations under this total contract of
27 employment. At all relevant times, Plaintiff has been ready, willing and able to
28 perform, and has offered to perform all the conditions of this contract.

1 92. Defendants breached this total employment contract, by, among other
2 things:

- 3 a. allowing Plaintiff to be subjected to discrimination and retaliation as
4 set forth herein, above;
- 5 b. failing and refusing to effectively remedy acts of discrimination and
6 retaliation against Plaintiff,
- 7 c. failing to adequately investigate complaints made against Plaintiff, or
8 the circumstances under which they were made;
- 9 d. firing Plaintiff without good cause and reasonable notice;
- 10 e. terminating Plaintiff without adhering to progressive disciplinary
11 procedures;
- 12 f. failing and refusing to permit Plaintiff to have a union representative
13 present at an investigatory interview; and
- 14 g. making and implementing employment decisions affecting Plaintiff's
15 job or his career in an arbitrary, capricious, fraudulent and/or
16 malicious manner.

17 93. As a proximate result of Defendants' breach of contract, Plaintiff has
18 suffered, and will continue to suffer, substantial loss in earnings, bonuses, and
19 other benefits and privileges of employment, in an amount according to proof.

20 94. Plaintiff is informed and believes, and thereupon alleges, that
21 Defendants engaged in other actionable conduct not enumerated in this Complaint.
22 Plaintiff will therefore, seek leave of Court to amend this Complaint to allege the
23 specific acts when the same becomes known to him, or to conform to proof thereof
24 at trial.

25 WHEREFORE, Plaintiff prays for relief and judgment against Defendants as
26 follows:

- 27 1. For trial by jury of all issues;
- 28 2. For compensatory, special and general damages according to proof at

1 trial;

2 3. For punitive damages in an amount sufficient to discourage such
3 future actions by Defendants and others, and in the Court's discretion;

4 4. For attorneys' fees and costs according to proof at trial; and

5 5. For such other and further relief as the Court may deem just and
6 proper.

7 Dated: March 21, 2013

LAW OFFICE OF DOUGLAS E. GEYMAN

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By: 

Douglas E. Geyman, Esq.
Attorney for Plaintiff
GUMARO TREVINO

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Douglas E. Geyman, Esq. (SBN 159417) 750 B Street, Suite 2870 San Diego, CA 92101		FOR COURT USE ONLY
TELEPHONE NO.: 619-232-3533 FAX NO.: 619-232-3593 ATTORNEY FOR (Name): Plaintiff		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Riverside STREET ADDRESS: 4050 Main Street MAILING ADDRESS: Riverside, CA 92501 CITY AND ZIP CODE: BRANCH NAME:		
CASE NAME: Trevino v. Kaiswer Permanente International, et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		CASE NUMBER RIC 1303504
Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		JUDGE DEPT.

Items 1-6 below must be completed (see instructions on page 2)

1. Check one box below for the case type that best describes this case:

Auto Tort	Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)
<input type="checkbox"/> Auto (22)	<input type="checkbox"/> Breach of contract/warranty (06)	<input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Uninsured motorist (46)	<input type="checkbox"/> Rule 3.740 collections (09)	<input type="checkbox"/> Construction defect (10)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort	<input type="checkbox"/> Other collections (09)	<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Asbestos (04)	<input type="checkbox"/> Insurance coverage (18)	<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Product liability (24)	<input type="checkbox"/> Other contract (37)	<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Medical malpractice (45)	Real Property	<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
<input type="checkbox"/> Other PI/PD/WD (23)	<input type="checkbox"/> Eminent domain/inverse condemnation (14)	
Non-PI/PD/WD (Other) Tort	<input type="checkbox"/> Wrongful eviction (33)	
<input type="checkbox"/> Business tort/unfair business practice (07)	<input type="checkbox"/> Other real property (26)	
<input type="checkbox"/> Civil rights (08)	Unlawful Detainer	Enforcement of Judgment
<input type="checkbox"/> Defamation (13)	<input type="checkbox"/> Commercial (31)	<input type="checkbox"/> Enforcement of judgment (20)
<input type="checkbox"/> Fraud (16)	<input type="checkbox"/> Residential (32)	Miscellaneous Civil Complaint
<input type="checkbox"/> Intellectual property (19)	<input type="checkbox"/> Drugs (38)	<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Professional negligence (25)	Judicial Review	<input type="checkbox"/> Other complaint (<i>not specified above</i>) (42)
<input type="checkbox"/> Other non-PI/PD/WD tort (35)	<input type="checkbox"/> Asset forfeiture (05)	Miscellaneous Civil Petition
Employment	<input type="checkbox"/> Petition re: arbitration award (11)	<input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Wrongful termination (36)	<input type="checkbox"/> Writ of mandate (02)	<input type="checkbox"/> Other petition (<i>not specified above</i>) (43)
<input checked="" type="checkbox"/> Other employment (15)	<input type="checkbox"/> Other judicial review (39)	

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
- b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): 8
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: March 21, 2013

Douglas E. Geyman, Esq. (SBN 159417)
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- NOTICE**

 - Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
 - File this cover sheet in addition to any cover sheet required by local court rule.
 - If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
 - Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

FILED BY FAX

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
 - Asbestos Property Damage
 - Asbestos Personal Injury/Wrongful Death
- Product Liability (*not asbestos or toxic/environmental*) (24)
- Medical Malpractice (45)
 - Medical Malpractice—Physicians & Surgeons
 - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
 - Premises Liability (e.g., slip and fall)
 - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
 - Intentional Infliction of Emotional Distress
 - Negligent Infliction of Emotional Distress
- Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
 - Legal Malpractice
 - Other Professional Malpractice (*not medical or legal*)
- Other Non-PI/PD/WD Tort (35)

Employment

- Wrongful Termination (36)
- Other Employment (15)

Contract

- Breach of Contract/Warranty (06)
 - Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
- Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
- Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
 - Collection Case—Seller Plaintiff
 - Other Promissory Note/Collections Case
- Insurance Coverage (*not provisionally complex*) (18)
 - Auto Subrogation
 - Other Coverage
- Other Contract (37)
 - Contractual Fraud
 - Other Contract Dispute

Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
 - Writ of Possession of Real Property
 - Mortgage Foreclosure
 - Quiet Title
 - Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
 - Writ—Administrative Mandamus
 - Writ—Mandamus on Limited Court Case Matter
- Writ—Other Limited Court Case Review
- Other Judicial Review (39)
 - Review of Health Officer Order
 - Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

- Enforcement of Judgment (20)
 - Abstract of Judgment (Out of County)
 - Confession of Judgment (*non-domestic relations*)
 - Sister State Judgment
 - Administrative Agency Award (*not unpaid taxes*)
 - Petition/Certification of Entry of Judgment on Unpaid Taxes
 - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint (*not specified above*) (42)
 - Declaratory Relief Only
 - Injunctive Relief Only (*non-harassment*)
 - Mechanics Lien
 - Other Commercial Complaint Case (*non-tort/non-complex*)
 - Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition (*not specified above*) (43)
 - Civil Harassment
 - Workplace Violence
 - Elder/Dependent Adult Abuse
 - Election Contest
 - Petition for Name Change
 - Petition for Relief From Late Claim
 - Other Civil Petition

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
4050 Main Street
Riverside, CA 92501
www.riverside.courts.ca.gov

NOTICE OF ASSIGNMENT TO DEPARTMENT FOR CASE MANAGEMENT PURPOSES
AND CASE MANAGEMENT CONFERENCE (CRC 3.722)

TREVINO VS KAISER PERMANENTE INTRNATIONAL

CASE NO. RIC 1303504

This case is assigned to the Honorable Judge Craig G. Riemer in Department 05 for case management purposes. The Case Management Conference is scheduled for 09/18/13 at 8:30 in Department 05.

Case is Assigned to Department 12 for Law and Motion Purposes.

The plaintiff/cross-complainant shall serve a copy of this notice on all defendants/cross-defendants who are named or added to the complaint and file proof of service.

Any disqualification pursuant to CCP Section 170.6(a)(2) shall be filed in accordance with that section.

Requests for accommodations can be made by submitting Judicial Council form MC-410 no fewer than five court days before the hearing. See CA Rules of Court, rule 1.100.

CERTIFICATE OF MAILING

I certify that I am currently employed by the Superior Court of California, County of Riverside, and that I am not a party to this action or proceeding. In my capacity, I am familiar with the practices and procedures used in connection with the mailing of correspondence. Such correspondence is deposited in the outgoing mail of the Superior Court. Outgoing mail is delivered to and mailed by the United States Postal Service, postage prepaid, the same day in the ordinary course of business. I certify that I served a copy of the foregoing notice on this date, by depositing said copy as stated above.

Dated: 03/22/13

Court Executive Officer/Clerk

By: ILZE SIRACUSA, Deputy Clerk

ac:cmcs;cmcb;cmch;cmct;cmcc
cmccb;cmch;cmct