

1 KAREN ASPLUND VELEZ, ESQ. (SBN 142287)
2 MARK P. VELEZ, ESQ. (SBN 163484)
3 KELLEN CROWE, ESQ. (SBN 289820)
4 **THE VELEZ LAW FIRM**
5 6940 Destiny Drive
6 Rocklin, California 95677
7 Telephone: (916) 774-2720
8 Facsimile: (916) 774-2730

9 Attorneys for Plaintiff ELISA QUINTERO

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

ELISA QUINTERO,

Plaintiff,

v.

KAISER FOUNDATION HOSPITALS, a
California corporation; THE PERMANENTE
MEDICAL GROUP, INC., a California
corporation; SILVAN SUNG, individually; and
DOES 1 through 50, inclusive,

Defendants.

CASE NO.

**PLAINTIFF'S COMPLAINT
FOR DAMAGES**

1. Breach of Govt. Code §12900, et seq.:
Physical/Medical Condition
Discrimination, including Perceived
Physical/Medical Condition
Discrimination;
2. Breach of Govt. Code §12900, et seq.:
Medical/Physical Condition Harassment,
and/or Perceived Medical/Physical
Condition Harassment;
3. Breach of Gov. Code §12900, et seq.:
Retaliation;
4. Breach of Gov. Code §12900, et seq.:
Failure to Engage in the Interactive
Process and provide a reasonable
accommodation;
5. Breach of Govt. Code §12900, et seq.:
Failure to Make Reasonable
Accommodations;
6. Breach of Gov. Code §12900, et seq.:
Failure To Prevent Discrimination;
7. Wrongful Termination in Violation of
a Clear Public Policy.

[UNLIMITED CIVIL CASE]

JURY DEMANDED

1 Plaintiff ELISA QUINTERO (hereinafter "Plaintiff") states her complaint against
2 Defendants KAISER FOUNDATION HOSPITALS, THE PERMANENTE MEDICAL GROUP,
3 INC., SILVAN SUNG, and DOES 1 through 50, as follows:

4 **I. STATEMENT OF THE FACTS**

- 5 1. Plaintiff is a resident of Elk Grove, County of Sacramento, in the State of California and
6 a former employee of Defendant TPMG, a California Corporation.
- 7 2. Defendants KAISER FOUNDATION HOSPITALS and THE PERMANENTE
8 MEDICAL GROUP, INC. (hereinafter collectively referred to as "Defendant KAISER"),
9 are corporations doing business in Sacramento, California, located within the County of
10 Sacramento. Defendant KAISER was at all times herein relevant, Plaintiff's "employer"
11 as that term is defined in the California Fair Employment and Housing Act ("FEHA"),
12 California Government Code Section 12900., et. seq. Defendant KAISER, had actual
13 and constructive notice of the wrongful conduct and harassment perpetrated upon
14 Plaintiff, set forth below, had both the authority and the duty to prevent and correct the
15 same, failed to take reasonable action to prevent and correct the same and, by its conduct,
16 condoned, supported and ratified such wrongful conduct and harassment.
- 17 3. Defendant SILVAN SUNG (hereinafter "Defendant SUNG") is an employee and agent
18 of Defendant KAISER and was at all times herein relevant, Plaintiff's supervisor.
- 19 4. The true names and capacities, whether individual, corporate, associate, or otherwise of
20 defendants named herein as DOES 1 through 50 are unknown to Plaintiff, who therefore
21 sues said defendants by such fictitious names. Plaintiff will amend this Complaint to
22 show their true names, involvement and capacities when the same have been ascertained.
23 DOES 1 through 50 are residents of the State of California and/or are authorized to do
24 business in the State of California and/or have their principal place of business in the
25 State of California. Plaintiff is informed and believes, and on that basis alleges that each
26 of the defendants named herein as a DOE was, in some manner, responsible for the
27 injuries and losses suffered by Plaintiff.
- 28 5. At all times herein mentioned, each of the Defendants were the actual and apparent

1 agents, servants, and employees of each of the remaining Defendants and, in doing the
2 things herein after alleged, each was acting within the course and scope of his/her actual
3 and apparent agency and employment and with the knowledge, notification, consent and
4 subsequent ratification of each of the other defendants.

- 5 6. At all times herein relevant, Defendant KAISER owed Plaintiff a duty to take all
6 reasonable action to provide Plaintiff with a workplace free from unlawful
7 discrimination, harassment and retaliation, and to take all reasonable action to prevent
8 and correct discrimination, harassment, and retaliation in the workplace. Specifically,
9 Defendant KAISER owed Plaintiff a duty: (1) to promulgate, in an effective way,
10 policies, practices and guidelines regarding employment discrimination, harassment and
11 retaliation; (2) to provide effective and adequate training to managers, supervisors and
12 employees regarding employment discrimination, harassment and retaliation, how to take
13 effective, timely and reasonable action to prevent employment discrimination,
14 harassment and retaliation and, particularly, how to handle, in a reasonable, prompt and
15 effective manner, complaints and noticed situations raising issues of employment
16 discrimination, harassment and retaliation; (3) to provide realistic assurance to
17 employees that defendants were serious about enforcing such policies against
18 discrimination, harassment and retaliation; (4) to protect from retaliation employees who
19 made or supported discrimination, harassment or retaliation complaints; (5) to conduct,
20 in response to a complaint or actual or constructive notice of discrimination, harassment
21 and retaliation, a good faith, reasonable, fair and prompt investigation of such complaint
22 or in response to such notice; (6) to bring such investigation to a conclusion in a timely
23 manner; (7) to take prompt and effective remedial action, where appropriate, to prevent
24 and correct discrimination, harassment and retaliation; (8) to maintain reasonably
25 thorough and adequate records regarding discrimination, harassment and retaliation
26 complaints, investigations, conclusions and remedial action; and (9) to avoid engaging in
27 and promoting actions which have the intended purpose and foreseeable effect of
28 silencing and quashing the voices of discrimination, harassment or retaliation

1 complainants and others who support or have supported discrimination, harassment or
2 retaliation complaints.

3 7. Defendants, and each of them, breached the above-mentioned duties in that, at all times
4 herein relevant, defendants acted in a manner which they knew, should have known, and
5 did not care to know, condoned and supported discrimination, harassment and retaliation
6 in the workplace. Defendants failed and refused to take reasonable action to publish and
7 promulgate, in an effective manner, policies, practices and guidelines regarding
8 discrimination, harassment and retaliation. Defendants failed and refused to take
9 reasonable action to provide adequate and effective training to managers, supervisors and
10 employees regarding discrimination, harassment and retaliation, failed to effectively train
11 managers, supervisors and employees regarding how to prevent employment
12 discrimination, harassment and retaliation, and failed to adequately train managers,
13 supervisors and employees in how to reasonably, promptly and effectively handle
14 complaints and notice situations raising issues of employment, discrimination,
15 harassment and retaliation. Defendants responded to actual and constructive notice of
16 and complaints regarding discrimination harassment and retaliation in a manner
17 calculated to defendant and delay, rather than fairly and timely investigate situations
18 noticed and complaints regarding discrimination, harassment and retaliation, with the
19 intended purpose and foreseeable effect of supporting management at all costs,
20 condoning and supporting discrimination, harassment and retaliation. Defendants
21 engaged in the above acts and omissions knowingly and as a matter of general business
22 practice, without regard to the rights of employees, including Plaintiff.

23 8. At all times herein mentioned, each of the Defendants was the actual and apparent agent,
24 servant and employee of each of the remaining defendants and in doing the things herein
25 after alleged were acting within the course and scope of their actual and apparent agency
26 and employment and with the knowledge, notification, consent and subsequent
27 ratification of each of the other defendants.

28 9. Defendants engaged in the above acts and omissions knowingly and as a matter of

- 1 general business practice, without regard to the rights of employees, including Plaintiff.
- 2 10. At all times relevant to this action as alleged herein above and below, and prior thereto,
- 3 Plaintiff suffered from a physical disability with a diagnosis of gastric bypass surgery
- 4 with post-surgery complications including a hernia and pancreatitis. Plaintiff's gastric
- 5 bypass surgery and post-surgery complications limit major daily life activities including
- 6 working in a substantial way.
- 7 11. Plaintiff began working as a Laboratory Assistant II with Defendant KAISER on
- 8 November 1, 2001. Plaintiff's job duties included collection of routine patient test
- 9 specimens, utilizing reports and audits of laboratory operations, review of reports and
- 10 audits related to employee performance, and observation of performance of instrument
- 11 function required for pre-analytical test performance. Plaintiff first worked at Defendant
- 12 KAISER's Roseville location.
- 13 12. Plaintiff was a loyal long-term employee with Defendant KAISER and received
- 14 numerous praises and accolades from supervisors and during her annual performance
- 15 evaluations. From the beginning of her employment in late 2001 through her final
- 16 performance evaluation on December 28, 2012, Plaintiff was rated as meeting or
- 17 exceeding in every aspect of her position, including attendance. One such review stated
- 18 that Plaintiff "[worked] in an efficient and productive manner, with minimal supervisory
- 19 direction." The review also stated that Plaintiff "[reported] to work as scheduled," was
- 20 "consistently punctual and ready to start work on time," and Plaintiff "[w]illingly
- 21 work[ed] additional hours as needed." Other reviews described Plaintiff as a "very hard
- 22 worker," a "valued member of the team," and an "asset" to the company. Plaintiff
- 23 received similar satisfactory reviews throughout her employment with Defendant
- 24 KAISER. For over a decade Plaintiff was a model employee with no significant and
- 25 ongoing performance problems.
- 26 13. In about April 2008, Plaintiff transferred to Defendant KAISER's South Sacramento
- 27 location. In about 2010, Defendant SUNG became Plaintiff's direct supervisor.
- 28 14. On March 26, 2012, Plaintiff had gastric bypass surgery. Plaintiff took a leave of

1 absence from work under the Family Medical Leave Act (FMLA) and/or California
2 Family Rights Act (CFRA). Plaintiff's medical providers initially approved her for four
3 to six weeks of medical leave for recovery. However, before she could return to work,
4 Plaintiff developed serious complications from the surgery, including pancreatitis and a
5 hernia. Symptoms from these complications were so severe, that Plaintiff's medical
6 providers extended her FMLA/CFRA leave until June 2012.

- 7 15. Plaintiff returned to work in June 2012, but still experienced complications from her
8 surgery. These complications caused her to miss work on several occasions. Each time
9 Plaintiff was absent or tardy, she provided notes from her medical providers. Defendant
10 KAISER ignored Plaintiff's medical notes and listed each instance as a "no call no
11 show."
12 16. During one of Plaintiff's medical absences, her symptoms were so severe that she was
13 hospitalized. While in the hospital, Plaintiff attempted to call Defendant KAISER to
14 report that she would miss work. A technician named Sandy answered the phone. Sandy
15 questioned Plaintiff about missing work and whether Plaintiff was truly in the hospital.
16 During this conversation, Sandy harassed Plaintiff about her medical condition and made
17 it difficult for her to call in sick to work.
18 17. On December 7, 2012, Defendant KAISER began escalating discipline of Plaintiff under
19 the pretext of attendance problems. Defendant KAISER issued Plaintiff a "Last Chance
20 Agreement" and suspended Plaintiff for one day.
21 18. Plaintiff continued to experience symptoms of her physical disability and missed more
22 work. Defendant KAISER's employees including Defendant SUNG continued to harass
23 Plaintiff about her medical condition. In January 2013, Defendant SUNG falsely accused
24 Plaintiff of substance abuse. While Plaintiff was taking medications proscribed by her
25 medical providers, none affected her ability to perform her job. As a result of the false
26 accusations, Plaintiff was investigated and forced to submit to a drug test. Plaintiff
27 passed the drug test, and the investigation revealed no evidence of substance abuse.
28 When asked about the false drug accusations, Defendant SUNG was evasive and could

not provide any evidence of wrongdoing by Plaintiff.

19. In March 2013, Plaintiff was driving to work when she became very ill, causing her to pull her car off the road for a short time. This incident was a result of physical disability. However, when she arrived to work she was harassed and recorded as tardy.
20. In June 2013, Plaintiff's disability continued to cause her serious problems, and Plaintiff filed a disability insurance claim.
21. Thereafter, Defendant KAISER retaliated against Plaintiff and terminated her employment on July 2, 2013. Defendant SUNG issued Plaintiff a "Letter of Termination" citing continued attendance problems as the pretextual reason for the termination. Each absence or instance of tardiness cited in the letter was excused by Plaintiff's medical providers due to her medical condition.
22. Within the time provided by law, Plaintiff has filed a complaint with the California Department of Fair Employment and Housing, in full compliance with the FEHA and has received a "right-to-sue" letter.
23. The physical disability discrimination, harassment, and retaliation described above as it relates to Plaintiff herein, constitute the "incident" giving rise to this action or proceeding, as that term "incident" is used on page 1 of the Form Interrogatories approved by the Judicial Council of the State of California.

FIRST CAUSE OF ACTION

Breach of Cal. Govt. Code §12900, et seq.: Medical/Physical Condition Discrimination, And/or Perceived Medical/Physical Condition Discrimination (Against All Defendants)

24. Plaintiff incorporates by reference the allegations set forth above and below.
25. Defendants and each of them, have breached their statutory and self-imposed duties owed to Plaintiff under Defendants' representations, policies and procedures, and under California law, including Sections 12900, 12940(a) and 12926, et seq., of the California Government Code. At all times, Government Code Sections 12900, 12940(a), 12940(k)(1)(A)(B)(i)(iii) including 12940(k)(4) and 12926, et seq., were in full force and effect and binding upon Defendants. These sections provide that no employer shall

1 discriminate against an employee because of a "physical disability" or "medical
2 condition." At all times herein relevant Plaintiff had a protected medical condition
3 and/or physical disability of gastric bypass surgery with post-surgery complications such
4 as pancreatitis and a hernia. Defendant KAISER did discriminate against Plaintiff based
5 on her protected medical condition and/or physical disability.

6 26. At all times relevant, herein, (1) Plaintiff suffered from a disability and/or was regarded
7 as disabled, to wit, perceived by Defendant KAISER as having a disability; (2) was
8 otherwise qualified to do the job, and; (3) suffered an adverse employment condition
9 because of her disability. Plaintiff suffered from a physical disability with a diagnosis of
10 gastric bypass surgery with post-surgery complications including pancreatitis and a
11 hernia. As a result of her physical disability, Plaintiff occasionally became seriously ill
12 sometimes requiring hospitalization, which affected her body systems including digestive
13 and limited major life activities including working. These physical disabilities were
14 communicated to Defendant KAISER through Plaintiff and Plaintiff's medical providers.
15 Additionally, Defendant KAISER, through its actions, acknowledged Plaintiff's physical
16 disability. Thereafter, on July 2, 2013, Defendant KAISER took an adverse employment
17 actions against Plaintiff because of her physical disabilities and terminated her
18 employment.

19 27. Plaintiff is a member of the class entitled to protection under these code sections.
20 Plaintiff has exhausted her administrative remedies under the California Fair
21 Employment and Housing Act, and has obtained a "Right to Sue" letter.

22 28. As a result of Defendants' conduct and breach of the code section, Plaintiff has suffered,
23 and will continue to suffer damages, the exact amount of which has not been fully
24 ascertained, but is within the jurisdiction of this Court. Plaintiff is entitled to damages,
25 including, but not limited to lost wages, salary, benefits, and certain other incidental and
26 consequential expenses and damages in an amount to be shown at the time of trial. In
27 addition, Plaintiff has been forced as a result of Defendant's breach to retain a law firm
28 to enforce her rights, and has incurred and will continue to incur costs and reasonable

attorneys' fees in connection herewith, recovery of which Plaintiff is entitled to according to proof.

29. Plaintiff is informed, believes and thereon alleges that Defendants, and each of them, acted fraudulently, maliciously and oppressively with a conscious, reckless and willful disregard, and/or with callous disregard of the probable detrimental and economic consequences to Plaintiff, and to the direct benefit to Defendants, knowing that Defendants' conduct was substantially certain to vex, annoy and injure plaintiff and entitle her to punitive damages under California Civil Code §3294, in an amount sufficient to punish or to make an example of Defendants.

WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, as hereinafter set forth.

SECOND CAUSE OF ACTION

Breach of Cal. Govt. Code §12900, et seq.: Medical/Physical Condition Harassment, And/or Perceived Medical/Physical Condition Harassment (Against All Defendants)

30. Plaintiff incorporates by reference the allegations set forth above and below.
31. Defendants and each of them, have breached their statutory and self-imposed duties owed to Plaintiff under Defendants' representations, policies and procedures, and under California law, including Sections 12900, 12940(a) and 12926, et seq., of the California Government Code. At all times, Government Code Section 12900, 12940(a), 12940(k)(1)(A)(B)(i)(iii) including 12940(k)(4) and 12926, et seq., was in full force and effect and binding upon Defendants. These sections provide that no employer shall harass an employee because of a "physical disability" or "medical condition." At all times herein relevant, Plaintiff had a protected medical and/or physical condition. As set forth above, Defendant SILVAN SUNG and other employees of Defendant KAISER harassed Plaintiff because of her protected medical condition/ physical condition. The harassment altered Plaintiff's work environment to sufficiently severe and/or pervasive to create a hostile work environment for Plaintiff.
32. Plaintiff is a member of the class entitled to protection under these code sections.

1 Plaintiff has exhausted her administrative remedies under the California Fair
2 Employment and Housing Act, and have obtained a "Right to Sue" letter.

3 33. As a result of Defendants' conduct and breach of the code section, Plaintiff has suffered
4 and will continue to suffer damages, the exact amount of which has not been fully
5 ascertained but is within the jurisdiction of this Court. Plaintiff is entitled to damages
6 including but not limited to lost wages, salary, benefits, and certain other incidental and
7 consequential expenses and damages in an amount to be shown at the time of trial. In
8 addition, Plaintiff has been forced as a result of Defendant's breach to retain a law firm
9 to enforce her rights, and has incurred and will continue to incur, costs and reasonable
10 attorneys' fees in connection herewith, recovery of which Plaintiff is entitled to
11 according to proof.

12 34. Plaintiff is informed, believes and thereon alleges that Defendants, and each of them,
13 acted fraudulently, maliciously and oppressively with a conscious, reckless and willful
14 disregard, and/or with callous disregard of the probable detrimental and economic
15 consequences to Plaintiff, and to the direct benefit to Defendants, knowing that
16 Defendants' conduct was substantially certain to vex, annoy and injure Plaintiff and
17 entitle her to punitive damages under California Civil Code §3294, in an amount
18 sufficient to punish or to make an example of Defendants.

19 **WHEREFORE**, Plaintiff prays judgment against Defendants, and each of them, as
20 hereinafter set forth.

21 **THIRD CAUSE OF ACTION**

22 **Breach of Cal. Govt. Code §12926, et seq.: Retaliation**
23 **(Against All Defendants)**

24 35. Plaintiff incorporates by reference the allegations set forth above and below.

25 36. Defendants and each of them, have breached their statutory and self-imposed duties
26 owed to Plaintiff under Defendants' representations, policies and procedures, and under
27 California law, including Sections 12900 and 12926, et seq., of the California
28 Government Code. At all times, Government Code Section 12926, et seq., including

1 12926(k)(4), was in full force and effect and binding upon Defendants. These sections
2 provide that no employer shall retaliate against an employee because of a "physical
3 disability" or "medical condition" or a perceived "physical disability" or "medical
4 condition" and/or for because the employee has engaged in protected activity including
5 opposing discrimination under these sections and filing a disability insurance claim.

6 37. At all times herein relevant Plaintiff had a protected medical and/or physical condition.
7 Defendant KAISER retaliated against Plaintiff because of her protected medical and/or
8 physical conditions and engagement in protected activity. Plaintiff incorporates by
9 reference the allegations set forth above and below. Plaintiff suffered from a physical
10 disability of gastric bypass surgery with post-surgery complications such as pancreatitis
11 and a hernia. These physical disabilities were communicated to Defendant KAISER
12 through Plaintiff and Plaintiff's medical providers. Additionally, Defendant KAISER,
13 through its actions, acknowledged Plaintiff's physical disability. Plaintiff repeatedly
14 opposed the unfair discrimination and harassment against her because of her disability.
15 Additionally, in June 2013, Plaintiff filed a disability insurance claim. Thereafter, on July
16 2, 2013, Defendant KAISER took an adverse employment action against Plaintiff and
17 terminated her employment. The July 2, 2013 termination was causally connected to
18 Plaintiff's physical disability and engagement in protected activities.

19 38. Plaintiff is a member of the class entitled to protection under these code sections.
20 Plaintiff has exhausted her administrative remedies under the California Fair
21 Employment and Housing Act, and has obtained a "Right to Sue" letter.

22 39. As a result of Defendants' conduct and breach of the code section, Plaintiff has suffered
23 and will continue to suffer damages, the exact amount of which has not been fully
24 ascertained but is within the jurisdiction of this Court. Plaintiff is entitled to damages,
25 including, but not limited to lost wages, salary, benefits, and certain other incidental and
26 consequential expenses and damages in an amount to be shown at the time of trial. In
27 addition, Plaintiff has been forced as a result of Defendant's breach to retain a law firm
28 to enforce her rights, and has incurred and will continue to incur costs and reasonable

attorneys' fees in connection herewith, recovery of which Plaintiff is entitled to according to proof.

40. Plaintiff is informed, believes and thereon alleges that Defendants, and each of them, acted fraudulently, maliciously and oppressively with a conscious, reckless and willful disregard, and/or with callous disregard of the probable detrimental and economic consequences to Plaintiff, and to the direct benefit to Defendants, knowing that Defendants' conduct was substantially certain to vex, annoy and injure Plaintiff and entitle her to punitive damages under California Civil Code §3294, in an amount sufficient to punish or to make an example of Defendants.

WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, as hereinafter set forth.

FOURTH CAUSE OF ACTION

Breach of Cal. Govt. Code §12940(n): Failure to Engage in the Interactive Process (Against Defendant KAISER)

41. Plaintiff incorporates by reference the allegations set forth above and below.
42. Defendants, and each of them, have breached their statutory and self-imposed duties owed to Plaintiff under California law, including Section 12940(n) of the California Government Code. At all times, Government Code Section 12940(n) was in full force and effect and binding upon Defendants. This section makes it unlawful for an employer "to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effect reasonable accommodations, if any, in response to a request for a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition." California case law has established that the request need not include any particular 'magic words' to trigger an employer's duty to engage in the interactive process. (*Prilliman v. United Air Lines, Inc.*, (1997) 53 Cal.App. 4th 935.
43. Plaintiff has a protected medical/physical condition. Plaintiff suffered from a physical disability with a diagnosis of gastric bypass surgery with post-surgery complications such

1 as pancreatitis and a hernia. As a result of her physical disability, Plaintiff required
2 breaks and intermittent time off work when her symptoms caused problems. These
3 physical disabilities were communicated to Defendant KAISER through Plaintiff and
4 Plaintiff's medical providers. Additionally, Defendant KAISER, through its actions,
5 acknowledged Plaintiff's physical disability. Plaintiff utilized her FMLA leave and
6 sought continuing treatment for her medical condition. However, Defendant KAISER
7 never engaged Plaintiff in the interactive process to accommodate Plaintiff's medical
8 needs. Instead, Defendant KAISER refused to acknowledge Plaintiff's condition and
9 escalated discipline against Plaintiff resulting in termination under the pretext of
10 attendance problems. At no time did Defendant KAISER engage in the interactive
11 process mandated by Section 12940(n) of the California Government Code.

12 44. Plaintiff is a member of the class entitled to protection under these code sections.

13 Plaintiff has exhausted her administrative remedies under the California Fair
14 Employment and Housing Act, and has obtained a "Right to Sue" letter.

15 45. As a result of Defendants' conduct and breach of the code section, Plaintiff has suffered
16 and will continue to suffer damages, the exact amount of which has not been fully
17 ascertained but is within the jurisdiction of this Court. Plaintiff is entitled to damages,
18 including, but not limited to lost wages, salary, benefits, and certain other incidental and
19 consequential expenses and damages in an amount to be shown at the time of trial. In
20 addition, Plaintiff has been forced as a result of Defendant's breach to retain a law firm
21 to enforce her rights, and has incurred and will continue to incur costs and reasonable
22 attorneys' fees in connection herewith, recovery of which Plaintiff is entitled to
23 according to proof.

24 46. Plaintiff is informed, believes and thereon alleges that Defendants, and each of them,
25 acted fraudulently, maliciously and oppressively with a conscious, reckless and willful
26 disregard, and/or with callous disregard of the probable detrimental and economic
27 consequences to Plaintiff, and to the direct benefit to Defendants, knowing that
28 Defendants' conduct was substantially certain to vex, annoy and injure Plaintiff and

entitle her to punitive damages under California Civil Code §3294, in an amount sufficient to punish or to make an example of Defendants.

WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, as hereinafter set forth.

FIFTH CAUSE OF ACTION

Breach of Cal. Govt. Code §12940(m): Failure to Make Reasonable Accommodations (Against Defendant KAISER)

47. Plaintiff incorporates by reference the allegations set forth above and below.
48. Defendants, and each of them, have breached their statutory and self-imposed duties owed to Plaintiff under California law, including Section 12940(m) of the California Government Code. At all times, Government Code Section 12940(m) was in full force and effect and binding upon Defendants. The statute provides that “[i]t shall be an unlawful employment practice . . . for an employer . . . to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee.”
49. Plaintiff has a protected medical/physical condition. Plaintiff suffered from a physical disability with a diagnosis of gastric bypass surgery with post-surgery complications such as pancreatitis and a hernia. As a result of her physical disability, Plaintiff required breaks and intermittent time off work when her symptoms caused problems. These physical disabilities were communicated to Defendant KAISER through Plaintiff and Plaintiff’s medical providers. Additionally, Defendant KAISER, through its actions, acknowledged Plaintiff’s physical disability. Plaintiff utilized her FMLA leave and sought continuing treatment for her medical condition. However, Defendant KAISER never engaged Plaintiff in the interactive process to accommodate Plaintiff’s medical needs. Instead, Defendant KAISER refused to acknowledge Plaintiff’s condition and escalated discipline against Plaintiff resulting in termination under the pretext of attendance problems. At no time did Defendant KAISER engage in the interactive process mandated by Section 12940(n) of the California Government Code.

1 50. Plaintiff is a member of the class entitled to protection under these code sections.

2 Plaintiff has exhausted her administrative remedies under the California Fair
3 Employment and Housing Act, and has obtained a "Right to Sue" letter.

4 51. As a result of Defendants' conduct and breach of the code section, Plaintiff has suffered
5 and will continue to suffer damages, the exact amount of which has not been fully
6 ascertained but is within the jurisdiction of this Court. Plaintiff is entitled to damages,
7 including, but not limited to lost wages, salary, benefits, and certain other incidental and
8 consequential expenses and damages in an amount to be shown at the time of trial. In
9 addition, Plaintiff has been forced as a result of Defendant's breach to retain a law firm
10 to enforce her rights, and has incurred and will continue to incur costs and reasonable
11 attorneys' fees in connection herewith, recovery of which Plaintiff is entitled to
12 according to proof.

13 52. Plaintiff is informed, believes and thereon alleges that Defendants, and each of them,
14 acted fraudulently, maliciously and oppressively with a conscious, reckless and willful
15 disregard, and/or with callous disregard of the probable detrimental and economic
16 consequences to Plaintiff, and to the direct benefit to Defendants, knowing that
17 Defendants' conduct was substantially certain to vex, annoy and injure Plaintiff and
18 entitle her to punitive damages under California Civil Code §3294, in an amount
19 sufficient to punish or to make an example of Defendants.

20 **WHEREFORE**, Plaintiff prays judgment against Defendants, and each of them, as
21 hereinafter set forth.

22 **SIXTH CAUSE OF ACTION**

23 **Breach of Cal. Govt. Code §12940(k): Failure to Take Reasonable Steps to Prevent**
24 **Discrimination**
(Against Defendant KAISER)

25 53. Plaintiff incorporates by reference the allegations set forth above and below.

26 54. Defendants and each of them, have breached their statutory and self-imposed duties
27 owed to Plaintiff under Defendant's representations, policies and procedures, and under
28 California law, including Section 12940(k) of the California Government Code. At all

times, Government Code Section 12940 (k) was in full force and effect and binding upon Defendants. This section provides that it is unlawful for an employer to "fail to take all reasonable steps necessary to prevent discrimination or harassment from occurring." By allowing the discrimination and harassment described herein, Defendant KAISER breached its duty to prevent such conduct.

55. Plaintiff is a member of the class entitled to protection under these code sections. Plaintiff has exhausted her administrative remedies under the California Fair Employment and Housing Act, and has obtained a "Right to Sue" letter.

56. As a result of Defendants' conduct and breach of the code section, Plaintiff has suffered and will continue to suffer damages, the exact amount of which has not been fully ascertained but is within the jurisdiction of this Court. Plaintiff is entitled to damages, including, but not limited to lost wages, salary, benefits, and certain other incidental and consequential expenses and damages in an amount to be shown at the time of trial. In addition, Plaintiff has been forced as a result of Defendant's breach to retain a law firm to enforce her rights, and has incurred and will continue to incur costs and reasonable attorneys' fees in connection herewith, recovery of which Plaintiff is entitled to according to proof.

57. Plaintiff is informed, believes and thereon alleges that Defendants, and each of them, acted fraudulently, maliciously and oppressively with a conscious, reckless and willful disregard, and/or with callous disregard of the probable detrimental and economic consequences to Plaintiff, and to the direct benefit to Defendants, knowing that Defendants' conduct was substantially certain to vex, annoy and injure Plaintiff and entitle her to punitive damages under California Civil Code §3294, in an amount sufficient to punish or to make an example of Defendants.

WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, as hereinafter set forth.

///

///

SEVENTH CAUSE OF ACTION

**Wrongful Termination in Violation of a Clearly Stated Public Policy
(Against All Defendants)**

58. Plaintiff incorporates by reference the allegations set forth above and below.
59. Pursuant to the California Fair Employment and Housing Act, California Government Code Section 12900., et. seq., Defendants owed Plaintiff a duty to take all reasonable action to prevent and correct discrimination and retaliation in the workplace and to provide Plaintiff and other employees with a work environment free from medical/physical discrimination and retaliation. At all times herein relevant, Plaintiff and Defendant KAISER were in an employee – employer relationship; that Plaintiff's termination was a violation of public policy; and, there is causation between the protected activity and/or protected physical, medical condition and the adverse employment action.
60. The conduct of Defendant KAISER, as set forth herein, constitutes unlawful physical and/or medical condition discrimination and retaliation, in violation of Public Policy including the California Fair Employment and Housing Act, Government Code Sections 12900, 12926, et seq. In engaging in, fostering, promoting and conducting such wrongful employment discrimination, Defendants and each of them violated public policy. Moreover, the termination of Plaintiff by Defendant KAISER amounted to a wrongful discharge in violation of public policy. The FEHA establishes fundamental public policy upon which a common law tort claim for disability discrimination in violation of public policy may be based. *City of Moorpark v. Superior Court*, (1998) 18 Cal.4th 1143.
61. Plaintiff is a member of the class entitled to protection under these code sections. Plaintiff has exhausted her administrative remedies under the California Fair Employment and Housing Act, and has obtained a "Right to Sue" letter.
62. As a result of Defendants' conduct and breach of the code section, Plaintiff has suffered and will continue to suffer damages, the exact amount of which has not been fully

1 ascertained but is within the jurisdiction of this Court. Plaintiff is entitled to damages,
2 including, but not limited to lost wages, salary, benefits, and certain other incidental and
3 consequential expenses and damages in an amount to be shown at the time of trial. In
4 addition, Plaintiff has been forced as a result of Defendant's breach to retain a law firm
5 to enforce her rights, and has incurred and will continue to incur costs and reasonable
6 attorneys' fees in connection herewith, recovery of which Plaintiff is entitled to
7 according to proof.

8 63. Plaintiff is informed, believes and thereon alleges that Defendants, and each of them,
9 acted fraudulently, maliciously and oppressively with a conscious, reckless and willful
10 disregard, and/or with callous disregard of the probable detrimental and economic
11 consequences to Plaintiff, and to the direct benefit to Defendants, knowing that
12 Defendants' conduct was substantially certain to vex, annoy and injure Plaintiff and
13 entitle her to punitive damages under California Civil Code §3294, in an amount
14 sufficient to punish or to make an example of Defendants.

15 **WHEREFORE**, Plaintiff prays judgment against Defendants, and each of them, as
16 hereinafter set forth.

17
18 **WHEREFORE**, Plaintiff prays judgment against Defendants, and each of them, as
19 hereinafter set forth.

- 20 a. For general, special and consequential damages in an amount of excess of the
21 jurisdictional limits of this Court, according to proof;
22 b. For exemplary damages in an amount necessary to punish defendants and to deter such
23 conduct in the future, according to proof;
24 c. For reasonable attorney's fees under the FEHA and under any applicable statute, costs
25 and expenses of litigation, according to proof;
26 d. For pre-judgment and post-judgment interest;
27 e. For Injunctive relief to abate physical disability discrimination; including all
28 reasonable attorney's fees under the holding of *Harris v. City of Santa Monica*, (2013) 56

1 Cal.4th 203;

2 f. For economic damages;

3 g. For non-economic damages;

4 h. For such other and further relief as the Court may deem proper.

5
6 DATED: 8-1-14
April 22, 2014

THE VELEZ LAW FIRM

7
8 [Signature]
By: Mark P. Velez, Esq.,
Attorneys for Plaintiff QUINTERO

10 **JURY DEMAND**

11 Plaintiff ELISA QUINTERO hereby demands trial by jury.

12 DATED: 8-6-14
April 22, 2014

THE VELEZ LAW FIRM

13
14 [Signature]
By: Mark P. Velez, Esq.,
Attorneys for Plaintiff QUINTERO