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FILED
 SUPERIOR COURT
 COUNTY OF SAN BERNARDINO
 SAN BERNARDINO DISTRICT

SEP 23 2014

Attorneys for Plaintiff Michael Krause

BY Josephine Contreras
 JOSEPHINE CONTRERAS, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

CIVDS1413947

MICHAEL KRAUSE, an individual,

Case No.

Plaintiff,

PLAINTIFF'S COMPLAINT FOR DAMAGES:

vs.

KAISER FOUNDATION HOSPITAL, a
 California Corporation; KAISER
 FOUNDATION HEALTH PLAN, INC., a
 California Corporation; THE PERMANENTE
 MEDICAL GROUP, INC., a California
 Corporation; ANNIE RUSSELL, an
 Individual; and DOES 1 through 10, Inclusive,

Defendants.

1. DEFAMATION;
2. RETALIATION;
3. DISABILITY DISCRIMINATION;
4. FAILURE TO PARTICIPATE IN THE INTERACTIVE PROCESS;
5. FAILURE TO PROVIDE REASONABLE ACCOMMODATIONS;
6. FAILURE TO TAKE STEPS TO PREVENT DISCRIMINATION AND RETALIATION;
7. VIOLATIONS OF THE CALIFORNIA FAMILY RIGHTS ACT; and
8. WRONGFUL TERMINATION.

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 TEL 310.802.1500 • FAX 310.802.0500

1 Plaintiff, Michael Krause, based upon personal knowledge as to all acts or events that
2 Plaintiff has undertaken or witnessed, and upon information and belief as to all others, complains
3 and alleges as follows:

4 **PARTIES**

5 1. Plaintiff, MICHAEL KRAUSE, (Plaintiff or Mr. Krause) is an individual residing
6 in the County of San Bernardino, State of California.

7 2. Defendant KAISER FOUNDATION HOSPITAL, is and at all times herein
8 mentioned was, a California Corporation doing business throughout California, including, as
9 relevant hereto, at the Fontana Medical Center Hospital located at 9961 Sierra Avenue, Fontana,
10 California, 92335. Defendant Kaiser Foundation Hospitals was and is subject to California law,
11 including California's Fair Employment and Housing Act (the FEHA), codified at *California*
12 *Government Code* §§12940 et seq. and 12900 et. seq., Defendant Kaiser Foundation Hospitals is,
13 and at all relevant times was, a covered employer as defined in the FEHA, at *California*
14 *Government Code* § 12926(d).

15 3. Defendant KAISER FOUNDATION HEALTH PLAN, INC., is and at all times
16 herein mentioned was, a California Corporation doing business throughout California, including,
17 as relevant hereto, at the Fontana Medical Center Hospital located at 9961 Sierra Avenue,
18 Fontana, California, 92335. This Defendant was and is subject to California law, including
19 California's Fair Employment and Housing Act (the FEHA), codified at *California Government*
20 *Code* §§12940 et seq. and 12900 et. seq., This Defendant is, and at all relevant times was, a
21 covered employer as defined in the FEHA, at *California Government Code* § 12926(d).

22 4. Defendant THE PERMANENTE MEDICAL GROUP, INC. is and at all times
23 herein mentioned was, a Corporation doing business in California, including, as relevant hereto, at
24 the Fontana Medical Center Hospital located at 9961 Sierra Avenue, Fontana, California, 92335.
25 This Defendant was and is subject to California law, including California's Fair Employment and
26 Housing Act (the FEHA), codified at *California Government Code* §§12940 et seq. and 12900 et.
27 seq., This Defendant is, and at all relevant times was, a covered employer as defined in the FEHA,
28 at *California Government Code* § 12926(d).

5. Defendant, ANNIE RUSSELL ("Russell"), at all relevant times, is and was a resident of California, and was employed by the Kaiser Defendants, at the Fontana Medical Center located at 9961 Sierra Avenue, Fontana, California, 92335. Russell at all relevant times held the position of Chief Administrative Officer, and all relevant times had supervisory authority over Plaintiff.

6. Plaintiff is ignorant of the true names and capacities of the Defendants sued as DOES 1 through 10, inclusive, and therefore sues these Doe Defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes, and alleges that each of the fictitiously named Defendants is responsible for the alleged occurrences and injuries to Plaintiff.

7. Plaintiff is informed, believes, and alleges that, at all times herein mentioned, Defendants were the affiliates, agents, employees and the successor of the other Defendants, and in doing the things hereinafter alleged, were acting within the course and scope of such agency and/or employment or other business relationships and with the permission and consent of his/her co-Defendants.

8. The Corporate Defendants used trade names, such as Southern California Permanente Medical Group and SCPMG, and are hereinafter collectively referred to herein as "the Kaiser Defendants." The term "Defendants" refers to the Kaiser Defendants, the individual defendant, Annie Russell, and the Doe Defendants, unless otherwise noted.

VENUE AND JURISDICTION

9. Venue is proper in this Court under *Code of Civil Procedure* §395, because Plaintiff's injuries were incurred within this jurisdiction. The actions giving rise to Plaintiff's complaint arose within this Court's jurisdiction.

EXHAUSTION OF ADMINISTRATIVE PROCEEDINGS

10. Plaintiff exhausted his administrative remedies by filing complaints of discrimination and retaliation with the California Department of Fair Employment and Housing on April 21, 2014, and thereafter, receiving "right to sue" notifications of April 21, 2014. Plaintiff has duly exhausted all of the required administrative proceedings and now properly files this

1 Complaint for Damages against Defendants in this Court.

2 **FACTS COMMON TO ALL CAUSES OF ACTION**

3 **A. The Defendants' Background**

4 11. The Kaiser Defendants own and operate medical centers and hospitals at locations
5 throughout California.

6 12. In or about May 2013, the Kaiser Defendants opened a new state-of-the-art Fontana
7 Medical Center Hospital to provide health care services to Kaiser "members" in the Inland
8 Empire. Defendant Annie Russell, RN, MBA, has worked for the Kaiser Defendants for many
9 years, primarily as an Administrator. Russell was transferred to the new facility to serve as the
10 Kaiser Defendants' Chief Administrative Officer at the Fontana Medical Center.

11 **B. Plaintiff Michael Krause's Background**

12 13. On or about January 21, 1985, Plaintiff Michael Krause, MSHS, RN, was hired by
13 the Kaiser Defendants. Mr. Krause worked for the Kaiser Defendants for twenty-nine (29) years.
14 Throughout his twenty-nine years of employment, Plaintiff performed his duties and
15 responsibilities in an exemplary manner. Throughout Plaintiff's long career with Defendants he
16 was always a loyal and dedicated employee. Plaintiff was a seasoned veteran, specializing in
17 planning and opening new healthcare/hospital facilities for the Kaiser Defendants. Prior to being
18 transferred to the new Fontana Medical Center, Mr. Krause worked at the Kaiser Defendants'
19 Ontario facility.

20 **C. Defendants' Discriminatory, Retaliatory and Defamatory Conduct**

21 14. On or about September 18, 2013, Mr. Krause underwent major reconstructive foot
22 surgery. Although Mr. Krause was placed on disability leave for eight weeks by his physician, the
23 day after Mr. Krause underwent the surgery he was forced to return to work to attend a meeting
24 with the Chief Administrative Officer, Defendant Annie Russell.

25 15. During the September 19, 2013, meeting Mr. Krause was in excruciating pain. At
26 the meeting Mr. Krause was informed by Russell that she ordered his staff at the Ontario facility
27 be terminated or reassigned from the Ontario facility to the Fontana facility. Mr. Krause had hired,
28 trained and opened a hospital with his staff. He was loyal to his staff. Plaintiff's staff was

1 considered family.

2 16. Russell told Plaintiff that she was replacing all of Plaintiff's subordinate managers
3 at the Fontana Medical Center because they were all "incompetent" and that their jobs would be
4 posted for job applicants after their termination.

5 17. Mr. Krause asked Russell why she was taking such extreme personnel measures,
6 and she replied, "I want out with the old and in with the new." After this conversation with
7 Russell, Mr. Krause was concerned that he would also be terminated, because he was a twenty-
8 nine year employee with a disability at the time that Russell was terminating all of the older, more
9 experienced supervisors.

10 18. Russell scheduled another meeting to take place on September 22, 2013. Mr.
11 Krause was required to have his doctor change his leave request from eight weeks of disability
12 leave to work with "light duty" restrictions so that Mr. Krause could attend the meetings
13 scheduled by Russell. Russell told Mr. Krause that he was expected to be at all of the planning
14 meetings regardless of his disability or his limited ability to function at the meetings.

15 19. On September 23, 2013, Mr. Krause was forced to work fourteen hours in
16 excruciating pain with surgical pins sticking out of his toes of his right foot. Mr. Krause was
17 forced to go around the facility making the announcement of the upcoming staff changes on the
18 management teams. Mr. Krause had to take pain medication to manage the pain to a tolerable
19 level while being forced to go around the facility talking to staff. Mr. Krause was in excruciating
20 pain for several weeks as a result of being forced to return to work early and without fully
21 recovering from his surgery. Mr. Krause did not heal properly and, to this day, he must deal with
22 pain in his foot that he attributes to the work he was forced to perform when Defendants refused to
23 provide Mr. Krause with a request for a reasonable accommodation, consisting of eight weeks of
24 disability leave that his doctor had initially ordered after the surgery.

25 20. Mr. Krause was forced to attend job interviews of individuals who were being
26 considered to replace his team during the time that he should have been on an approved disability
27 leave of absence. Defendants also interviewed Plaintiff's team to determine whether or not to
28 terminate them from their supervisory positions.

21. Defendants blatantly discriminated against Plaintiff's team due to their age. Russell made ageist comments and derogatory remarks regarding the older, more experienced employees that she was trying to terminate. For example in an interview of an older employee, Cindy Harris, who had a long twenty-year career working for the Kaiser Defendants and who was similar in age as Plaintiff, Russell told Mr. Krause that she was "highly motivated to remove" Harris from her employment. Russell harassed Cindy Harris by changing Harris' work schedule to a less desirable work schedule in an effort to force Cindy Harris to retire.

22. There was also an employee who had to use a scooter due to her disability. Russell told Mr. Krause that Russell did not want the disabled employee working for the Kaiser Defendants, stating, "we will not have managers on scooters working here."

23. Human Resources contacted Mr. Krause and asked Mr. Krause if he was using a scooter at work. During the early part of Mr. Krause's recovery from surgery, he had to use a scooter to move around at work, however, he got rid of the scooter as soon as he could due to fear of losing his job. Mr. Krause represented to Human Resources that he would not use a scooter at any time while at work.

24. Russell made it clear to Plaintiff that Russell was determined to get rid of all the older managers who had been working for the Kaiser Defendants for many years without regard to their age, disability or medical condition. Older employees were contacted and asked what their retirement plans were in the near future. During meetings Russell would ask the attendees, "Who is retiring in 2016? Raise your hands." When an employee represented that he or she was considering retirement, Russell separated the employees who announced an intent to retire, to humiliate and disparage them by separating them from younger employees.

25. On or about December 5, 2013, Mr. Krause was told that his work schedule was changing to a less desirable schedule. Mr. Krause felt that the schedule change was made to harass him and begin the process of forcing him out of his job.

26. It was known within the Kaiser Defendants' facilities that Plaintiff enjoyed bowling and spent his off-work hours bowling. It was known that Plaintiff bowled on Wednesdays, after work. Plaintiff was told at the meeting held on December 5, 2013 that he should stop bowling on

1 Wednesdays and work during that time to train his subordinates. Thus, not only were Defendants
2 harassing Mr. Krause by taking away his work schedule, they were also trying to control his
3 personal life and his hobbies and activities away from work.

4 27. Ultimately, Plaintiff's staff was disseminated. He lost four out of his six Assistant
5 Directors, whom he had hired, trained and whom he considered family. There was nothing Mr.
6 Krause could do to save their job. The work environment became so hostile after Russell became
7 the Chief Administrative Officer, that several employees of the Kaiser Defendants committed
8 suicide in the Ontario and Fontana Medical Centers, including two physicians, one chief of staff in
9 Anesthesiology, an OB/GYN, MD, and a security guard.

10 28. On or about December 5, 2013, Mr. Krause was invited to a Christmas party being
11 organized by some of the hospital staff. Mr. Krause was told that it was a private Christmas
12 Party, being held at a private location, and that there would be a \$50.00 charge to all attendees.
13 Mr. Krause agreed to pay the \$50.00 and he decided to attend the party. The party was held at a
14 private golf course in Chino, California. Mr. Krause arrived at the party at about 6:30 p.m., after
15 his work day ended. Mr. Krause noticed that there were some staff and doctors affiliated with the
16 Kaiser Defendants in attendance and friends and family members of Kaiser hospital staff who
17 were not associated or employed by the Kaiser Defendants. The party included music, food and
18 drinks. Mr. Krause estimated that approximately forty people attended the party. Mr. Krause
19 socialized and celebrated in a manner similar to all of the other attendees. Mr. Krause did not act
20 inappropriately at any time during the Christmas party.

21 29. On or about December 12, 2013, Mr. Krause was called to attend a meeting with
22 Human Resources and he was told that he was being suspended from his job due to allegations
23 made against him about his conduct at the December 5, 2013 Christmas party. Mr. Krause was in
24 shock. Mr. Krause asked questions about the allegations but he was not provided with any
25 information or details. Mr. Krause was ordered to leave the workplace immediately, not to talk to
26 any employee of the Kaiser Defendants and not to be anywhere near the workplace or around any
27 of the employees during his suspension.

28 30. The Kaiser Defendants' Human Resources Director, Kim Labiaga, ("Labiaga") and

1 Defendant Russell defamed Mr. Krause during and after the December 12, 2013 meeting in a
2 manner that degraded his name, professional occupation, and slandered his professional
3 reputation.

4 31. Specifically, Labiaga told Mr. Krause that he had been suspended from work
5 because he was a sexual harasser, and that he was being accused of touching a female's buttocks
6 while dancing at the Christmas party on December 5, 2013. Mr. Krause began to cry. He could
7 not believe that Defendants were not only looking to terminate his employment but that they had
8 total and complete disregard for his career and the damage the sexual harassment allegations
9 would have on his professional career, after 29 years of dedicated and loyal service to the Kaiser
10 Defendants.

11 D. Defendants' Wrongful Termination of Plaintiff

12 32. On or about December 16, 2013, Mr. Krause was called into a meeting with
13 Russell. Mr. Krause requested that EAP representative Mike Dyer attend the meeting with him but
14 Russell refused to allow Mike Dyer to attend the meeting, even after Mr. Krause told Russell that
15 he needed to have a witness in the meeting because of the false allegations against him.

16 33. Russell started the December 16 meeting by informing Mr. Krause that she was
17 terminating his employment. Russell also threatened Mr. Krause, stating that if he did not want
18 the Kaiser Defendants to provide prospective employers with a negative recommendation and
19 disclose to his future employers about the sexual misconduct he was accused of, he needed to
20 submit a resignation letter. Russell also demanded that Mr. Krause provide Russell with his
21 personal password to his email so she could review the draft resignation letter. Thereafter, Mr.
22 Krause was told to clean out his office immediately. Security stood at his office area and on the
23 first floor of the building while he cleaned out his office that packed belongings that he had
24 accumulated during a 29 year career. Mr. Krause was subjected to surveillance and escorted out of
25 the workplace as if he was a common criminal, while his coworkers stared at him. Mr. Krause
26 was embarrassed and humiliated by the events surrounding his wrongful termination.

27 34. Defendants failed to perform a true or thorough investigation of the alleged
28 incident at the private Christmas party and did not treat Mr. Krause fairly in handling the

1 “investigation,” or his termination.

2 35. On or about December 16, 2013, Mr. Krause was wrongfully terminated from his
3 employment without cause and based on discriminatory and retaliatory motives.

4 **FIRST CAUSE OF ACTION**
5 **DEFAMATION**

6 (Against ALL NAMED DEFENDANTS, and DOES 1 through 10)

7 36. Plaintiff incorporates and realleges by reference all previous paragraphs, and each
8 and every part thereof, of this Complaint, with the same force and effect as though set forth at
9 length herein.

10 37. Commencing on or about December 5, 2013, and continuing through the present,
11 Defendants caused to be published false and unprivileged communications tending to directly
12 injure plaintiff in his personal reputation and work reputation.

13 38. Defendants have stated to others, within Kaiser, including employees, staff,
14 attorneys, consultants, contractors and others inside and outside the health care business, directly
15 or by inference, that plaintiff was doing a poor job, that company problems were directly
16 attributable to Plaintiff due to his poor performance, that Plaintiff behaved in a sexually
17 inappropriate manner, that Plaintiff committed sexual harassment, and that Plaintiff was
18 terminated for “cause” due to alleged inappropriate sexual behavior.

19 39. By making these publications, Defendants published matters wherein they exposed
20 plaintiff to contempt and ridicule, and injured him in his occupation, in the industry, and in his
21 own family. As a result, these written communications were libelous and slanderous per se.
22 Defendants’ communications contained charges against Plaintiff which were capable of being
23 understood by their recipients as defamatory of Plaintiff.

24 40. The defamatory portions of these communications were false, and when made were
25 either known by Defendants to be false, or made with reckless disregard for their probable falsity,
26 thereby rendering them to be malicious.

27 41. As a further direct and proximate result of Defendants’ defamatory conduct,
28 Plaintiff suffered and continues to suffer loss of reputation, shame, mortifications, hurt feelings,

1 physical and emotional distress, and mental anguish, all in an amount to be proved at trial.

2 42. Defendants' defamatory conduct was despicable and done with a conscious
3 disregard for Plaintiff's rights and with the intent to vex, injure, and/or annoy him so as to
4 constitute oppression, fraud and/or malice under *California Civil Code* §3294, thereby entitling
5 Plaintiff to an award of punitive damages in an amount to be proven at trial, necessary to punish
6 Defendants and to deter them from engaging in such wrongful conduct in the future.

7
8 **SECOND CAUSE OF ACTION**
9 **RETALIATION**

10 (As Against the Kaiser Defendants and, DOES 1 through 4)

11 43. Plaintiff incorporates and realleges by reference all previous paragraphs, and each
12 and every part thereof, of this Complaint, with the same force and effect as though set forth at
13 length herein.

14 44. Defendants retaliated against Plaintiff because Plaintiff exercised his right to take
15 time off from work to care for and recover from his disability pursuant to the Fair Employment
16 and Housing Act ("FEHA") and the California Family Rights Act (CFRA), which is part of
17 FEHA. CFRA and FEHA prohibit retaliation against anyone for exercising the right to leave.
18 Plaintiff was retaliated in violation of CFRA and FEHA, codified in *California Government Code*
19 §12940(h), because he had a disability and was in need of reasonable accommodations, including
20 time off from work to care for and recover from his disability.

21 45. As a proximate result of Defendants' retaliation, Plaintiff suffered economic
22 damages, including lost wages and benefits, and other compensatory damages in an amount to be
23 ascertained at the time of trial.

24 46. As a further proximate result of Defendants' retaliation, Plaintiff has suffered
25 humiliation, mental anguish, and emotional and physical distress, and has been injured in body
26 and mind all to Plaintiff's damage in an amount to be ascertained at the time of trial. Plaintiff has
27 suffered physical and mental injuries and has necessarily expended sums in the treatment of such
28 injuries, all to Plaintiff's damage in an amount to be ascertained at the time of trial. Plaintiff will
necessarily continue to expend sums in the future for the treatment of the physical, emotional and

1 mental injuries sustained by Plaintiff as a result of said Defendants' acts in an amount to be
2 ascertained at the time of trial.

3 47. As a direct and proximate result of Defendants' retaliation, Plaintiff has necessarily
4 incurred attorney's fees and costs. Plaintiff is entitled to recover the reasonable value of such
5 attorney's fees under the FEHA.

6 48. The above-described acts of Defendants were willful, intentional, and malicious
7 and done with the intent to vex, injure and annoy Plaintiff; and were done in conscious disregard
8 of Plaintiff's rights, and, thus, warrant the imposition of exemplary and punitive damages in an
9 amount sufficient to punish said Defendants and to deter others from engaging in similar
10 despicable conduct.

11 **THIRD CAUSE OF ACTION**
12 **DISABILITY DISCRIMINATION**
13 **IN VIOLATION OF CALIFORNIA GOVERNMENT CODE §§ 12940 ET SEQ.**
14 (As Against the Kaiser Defendants and DOES 1 through 5)

15 49. Plaintiff incorporates and realleges by reference all previous paragraphs, and each
16 and every part thereof, of this Complaint, with the same force and effect as though set forth at
17 length herein.

18 50. The FEHA, *California Government Code* § 12940(a), provides in pertinent part
19 that, "It shall be an unlawful employment practice . . . [f]or an employer, because of . . . physical
20 disability . . . medical condition . . . to discharge the person from employment . . . or to discriminate
21 against the person . . . in terms, conditions, or privileges of employment." This Cause of Action
22 stems from Defendant's discriminatory decision to terminate Plaintiff due to Plaintiff's disability
23 and/or perceived disability.

24 51. As a proximate result of discriminatory acts of Defendants, Plaintiff suffered
25 economic damages, including lost wages and benefits, and other compensatory damages in an
26 amount to be ascertained at the time of trial.

27 52. As a further proximate result of Defendants' discrimination, Plaintiff has suffered
28 humiliation, mental anguish, and emotional and physical distress, and has been injured in body
and mind all to Plaintiff's damage in an amount to be ascertained at the time of trial. Plaintiff has

1 suffered physical and mental injuries and has necessarily expended sums in the treatment of such
2 injuries, all to Plaintiff's damage in an amount to be ascertained at the time of trial. Plaintiff will
3 necessarily continue to expend sums in the future for the treatment of the physical, emotional and
4 mental injuries sustained by Plaintiff as a result of Defendants' acts in an amount to be ascertained
5 at the time of trial.

6 53. As a direct and proximate result of the above-described acts of Defendants,
7 Plaintiff has necessarily incurred attorney's fees and costs. Plaintiff is entitled to recover the
8 reasonable value of such attorney's fees under the FEHA.

9 54. The above-described acts of Defendants were willful, intentional, and malicious
10 and done with the intent to vex, injure and annoy Plaintiff, and were done in conscious disregard
11 of Plaintiff's rights, and, thus, warrant the imposition of exemplary and punitive damages in an
12 amount sufficient to punish Defendants and to deter others from engaging in similar despicable
13 conduct.

14 **FOURTH CAUSE OF ACTION**
15 **FAILURE TO PARTICIPATE IN THE INTERACTIVE**
16 **PROCESS IN DETERMINING REASONABLE ACCOMMODATION**
17 **IN VIOLATION OF GOVERNMENT CODE §§ 12926.1(e), 12940(n)**
18 **(As Against the Kaiser Defendants; and, DOES 1 through 6)**

19 55. Plaintiff incorporates and realleges by reference all previous paragraphs, and each
20 and every part thereof, of this Complaint, with the same force and effect as though set forth at
21 length herein.

22 56. It is unlawful for an employer covered by the FEHA, *California Government Code*
23 §12940, et seq., to fail to engage in a timely, good faith, interactive process with a disabled
24 employee to determine effective reasonable accommodations, in response to a request for
25 reasonable accommodations by an employee with a known physical or mental disability or a
26 known medical condition. *California Government Code* § 12940(n). The failure of Defendants to
27 participate in a meaningful interactive process in an effort to reasonably accommodate Plaintiff's
28 disability was due to discrimination and retaliation against Plaintiff. Instead of reasonably
accommodating Plaintiff, Defendants used Plaintiff's request for reasonable accommodations to

1 terminate Plaintiff from Plaintiff's employment. Defendants' acts, as more fully described above,
2 constitute a failure by Defendants to provide to Plaintiff a good faith interactive process in
3 violation of the FEHA, codified in *California Government Code* §12926.1(e), 12940(n).

4 57. As a proximate result of Defendants' FEHA violations, Plaintiff suffered economic
5 damages, including lost wages and benefits, and other compensatory damages in an amount to be
6 ascertained at the time of trial.

7 58. As a further proximate result of the aforementioned acts of Defendants, Plaintiff
8 has suffered humiliation, mental anguish, and emotional and physical distress, and has been
9 injured in body and mind all to Plaintiff's damage in an amount to be ascertained at the time of
10 trial. Plaintiff has suffered physical and mental injuries and has necessarily expended sums in the
11 treatment of such injuries, all to Plaintiff's damage in an amount to be ascertained at the time of
12 trial. Plaintiff will continue to expend sums in the future for the treatment of the physical,
13 emotional and mental injuries sustained by Plaintiff as a result of said Defendants' acts in an
14 amount to be ascertained at the time of trial.

15 59. As a direct and proximate result of the discriminatory acts of Defendants, Plaintiff
16 has necessarily incurred attorney's fees and costs. Plaintiff is entitled to the reasonable value of
17 such attorney's fees under the FEHA.

18 60. The above-described acts of Defendants were willful, intentional, and malicious
19 and done with the intent to vex, injure and annoy Plaintiff, and were done in conscious disregard
20 of Plaintiff's rights, and, thus, warrant the imposition of exemplary and punitive damages in an
21 amount sufficient to punish Defendants and to deter others from engaging in similar despicable
22 conduct.

23 **FIFTH CAUSE OF ACTION**
24 **FAILURE TO PROVIDE REASONABLE ACCOMMODATIONS**
25 **IN VIOLATION OF GOVERNMENT CODE § 12940(m)**
(As Against the Kaiser Defendants; and, DOES 1 through 7)

26 61. Plaintiff incorporates and realleges by reference all previous paragraphs, and each
27 and every part thereof, of this Complaint, with the same force and effect as though set forth at
28 length herein.

62. The failure of Defendants to reasonably accommodate Plaintiff's disability was due to discrimination against Plaintiff. Defendants used Plaintiff's request for reasonable accommodations to terminate Plaintiff from Plaintiff's employment because they did not want to reasonably accommodate Plaintiff and instead decided to terminate Plaintiff so they would not have to accommodate Plaintiff's medical needs. Defendants' unlawful failure to provide reasonable accommodations violates the FEHA, codified in *California Government Code* § 12940(m).

63. As a proximate result of Defendants' discrimination, Plaintiff suffered economic damages, including lost wages and benefits, and other compensatory damages in an amount to be ascertained at the time of trial.

64. As a further proximate result of the aforementioned acts of Defendants, Plaintiff has suffered humiliation, mental anguish, and emotional and physical distress, and has been injured in body and mind all to Plaintiff's damage in an amount to be ascertained at the time of trial. Plaintiff has suffered physical and mental injuries and has necessarily expended sums in the treatment of such injuries, all to Plaintiff's damage in an amount to be ascertained at the time of trial. Plaintiff will necessarily continue to expend sums in the future for the treatment of the physical, emotional and mental injuries sustained by Plaintiff as a result of said Defendants' acts in an amount to be ascertained at the time of trial.

65. As a direct and proximate result of Defendants' discrimination, Plaintiff has necessarily incurred attorney's fees and costs. Plaintiff is entitled to the reasonable value of such attorney's fees under the FEHA.

66. The above-described acts of Defendants were willful, intentional, and malicious and done with the intent to vex, injure and annoy Plaintiff, and were done in conscious disregard of Plaintiff's rights, and, thus, warrant the imposition of exemplary and punitive damages in an amount sufficient to punish Defendants and to deter others from engaging in similar despicable conduct.

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SIXTH CAUSE OF ACTION
FAILURE TO TAKE ALL REASONABLE STEPS TO
PREVENT DISCRIMINATION IN VIOLATION OF
CALIFORNIA GOVERNMENT CODE § 12940(k)
(As Against the Kaiser Defendants; and, DOES 1 through 8)

67. Plaintiff hereby incorporates by this reference as if fully set forth herein, each and every allegation set forth in each and every averment of Paragraphs set forth above in this Complaint.

68. *California Government Code* Section 12940(k) makes it an illegal practice for an employer "to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring."

69. The failure of Defendants to take all reasonable steps necessary to prevent discrimination, and retaliation against Plaintiff, and terminating Plaintiff from his employment for false and pretextual reasons, and terminating Plaintiff because of his disability, constitute a failure on the part of Defendants to take all steps necessary to prevent discrimination, harassment and retaliation in the workplace, in violation of the FEHA, codified in *California Government Code* Section 12940(k).

70. As a proximate result of Defendants' FEHA violations, Plaintiff suffered economic damages, including lost wages and benefits, and other compensatory damages in an amount to be ascertained at the time of trial.

71. As a further proximate result of Defendants' FEHA violations, Plaintiff has suffered humiliation, mental anguish, and emotional and physical distress, and has been injured in body and mind all to Plaintiff's damage in an amount to be ascertained at the time of trial. Plaintiff has suffered physical and mental injuries and has necessarily expended sums in the treatment of such injuries, all to Plaintiff's damage in an amount to be ascertained at the time of trial. Plaintiff will necessarily continue to expend sums in the future for the treatment of the physical, emotional and mental injuries sustained by Plaintiff as a result of said Defendants' acts in an amount to be ascertained at the time of trial.

72. As a direct and proximate result of the above-described acts of Defendants,

1 Plaintiff has necessarily incurred attorney's fees and costs. Plaintiff is entitled to the reasonable
2 value of such attorney's fees under the FEHA.

3 73. The above-described acts of Defendants were willful, intentional, and malicious
4 and done with the intent to vex, injure and annoy Plaintiff; and were done in conscious disregard
5 of Plaintiff's rights, and, thus, warrant the imposition of exemplary and punitive damages in an
6 amount sufficient to punish Defendants and to deter others from engaging in similar despicable
7 conduct.

8 **SEVENTH CAUSE OF ACTION**
9 **VIOLATIONS OF THE CALIFORNIA FAMILY RIGHTS ACT**
(As Against the Kaiser Defendants; and, DOES 1 through 9)

10 74. Plaintiff incorporates and realleges by reference all previous paragraphs, and each
11 and every part thereof, of this Complaint, with the same force and effect as though set forth at
12 length herein.

13 75. The Kaiser Defendants are each a covered "employer" within the meaning of and
14 subject to *California Government Code* §§ 12945.2 et seq., commonly referred to as the *California*
15 *Family Rights Act* ("CFRA").

16 76. Plaintiff was and had been continuously employed by the Kaiser Defendants for
17 more than one year and worked more than 1,250 hours within the previous year before he was
18 terminated from his employment with the Kaiser Defendants. The Kaiser Defendants were and
19 continue to be a covered employer, under CFRA because they employ more than fifty employees
20 within a seventy-five mile radius.

21 77. This cause of action is based upon CFRA, *California Government Code* §§ 12945.2
22 et seq., which prohibits employers and supervisors from discriminating, harassing and retaliating
23 or interfering against, and terminating an employee on the basis of a protected characteristic, i.e.,
24 for taking time off to care for a medical condition protected by CFRA.

25 78. This cause of action includes retaliation against Plaintiff because Plaintiff exercised
26 Plaintiff's CFRA rights. To establish a prima facie case for violations of CFRA, including
27 retaliation, Plaintiff must show that: (1) the Defendant was an employer covered by CFRA; (2)
28

1 the Plaintiff was an employee eligible to take CFRA leave; (3) the Plaintiff exercised the right to
2 take leave for a qualifying CFRA purpose; and (4) the Plaintiff suffered an adverse employment
3 action, such as termination or retaliation because of the exercise of his rights to CFRA leave.

4 79. As alleged, the Kaiser Defendants were covered employers under CFRA. Plaintiff
5 was eligible to take CFRA leave. Plaintiff exercised his CFRA rights. Plaintiff was retaliated
6 against and terminated because he exercised his CFRA rights.

7 80. As a proximate result of the acts of the Kaiser Defendants, Plaintiff suffered
8 economic damages, including lost wages and benefits, and other compensatory damages in an
9 amount to be ascertained at the time of trial.

10 81. Plaintiff has suffered humiliation, mental anguish, and emotional and physical
11 distress, and has been injured in body and mind all to Plaintiff's damage in an amount to be
12 ascertained at the time of trial. Plaintiff has suffered physical and mental injuries and has
13 necessarily expended sums in the treatment of such injuries, all to Plaintiff's damage in an amount
14 to be ascertained at the time of trial. Plaintiff will necessarily continue to expend sums in the
15 future for the treatment of the physical, emotional and mental injuries sustained by Plaintiff as a
16 result of said Defendants' acts in an amount to be ascertained at the time of trial.

17 82. As a direct and proximate result of the above-described acts of the Kaiser
18 Defendants, Plaintiff has necessarily incurred attorney's fees and costs. Plaintiff is entitled to the
19 reasonable value of such attorney's fees under CFRA and the FEHA.

20 83. The above-described acts of Defendants were willful, intentional, and malicious
21 and done with the intent to vex, injure and annoy Plaintiff; and were done in conscious disregard
22 of Plaintiff's rights, and, thus, warrant the imposition of exemplary and punitive damages in an
23 amount sufficient to punish Defendants and to deter others from engaging in similar despicable
24 conduct.

25 **EIGHTH CAUSE OF ACTION**
26 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**
27 (As Against the Kaiser Defendants; and, DOES 1 through 10)

28 84. Plaintiff incorporates and realleges by reference all previous paragraphs, and each

1 and every part thereof, of this Complaint, with the same force and effect as though set forth at
2 length herein.

3 85. Under California law, no employee, whether they are an at-will employee, or an
4 employee under a written or other employment contract, may be terminated for a reason that
5 violates a fundamental public policy. California Courts have interpreted a fundamental public
6 policy to be any articulable constitutional or statutory provision, or regulation that is concerned
7 with a matter effecting society at large rather than a purely personal or proprietary interest of the
8 employee or the employer. The public policy must be fundamental, substantial, and well
9 established at the time of discharge. California law recognizes a public policy prohibiting
10 discrimination against older workers and against disabled workers.

11 86. The Kaiser Defendants discriminated against Plaintiff due to Plaintiff's age/or
12 disability and terminated Plaintiff in violation of public policy, by terminating Plaintiff because of
13 Plaintiff's status as a disabled employee, and in retaliation for Plaintiff's complaints of Defendants'
14 discrimination against older workers.

15 87. Plaintiff alleges that the Kaiser Defendants violated public policies underlying the
16 FEHA.

17 88. As a proximate result of the acts of the Kaiser Defendants, Plaintiff suffered
18 economic damages, including lost wages and benefits, and other compensatory damages in an
19 amount to be ascertained at the time of trial.

20 89. As a further proximate result of the aforementioned acts of the Kaiser Defendants,
21 Plaintiff has suffered humiliation, mental anguish, and emotional and physical distress, and has
22 been injured in body and mind all to Plaintiff's damage in an amount to be ascertained at the time
23 of trial. Plaintiff has suffered physical and mental injuries and has necessarily expended sums in
24 the treatment of such injuries, all to Plaintiffs damage in an amount to be ascertained at the time of
25 trial. Plaintiff will necessarily expend sums in the future for the treatment of the physical,
26 emotional and mental injuries sustained by Plaintiff as a result of said Defendants' acts in an
27 amount to be ascertained at the time of trial.

28 90. The above-described acts of Defendants were willful, intentional, and malicious

1 and done with the intent to vex, injure and annoy Plaintiff, and were done in conscious disregard
2 of Plaintiff's rights, and, thus, warrant the imposition of exemplary and punitive damages in an
3 amount sufficient to punish Defendants and to deter others from engaging in similar despicable
4 conduct.

5 WHEREFORE, Plaintiff prays for the following relief against all Defendants, to be
6 determined by a jury, as follows:

7 For all Causes of Action,

- 8 1. General damages in an amount according to proof, but in excess of the minimum
9 jurisdiction of this court;
 - 10 2. For special damages in an amount according to proof, but in the excess of the
11 minimum jurisdiction of this court, in order to compensate the Plaintiff for
12 Plaintiff's loss of past and future earnings, and all damages flowing from the
13 Plaintiff's loss of earnings, loss of job security, failure to properly advance within
14 Plaintiff's career, damage to Plaintiff's reputation; and for loss of all future earnings
15 and benefits and job promotions and privileges Plaintiff would have had;
 - 16 3. For consequential economic loss;
 - 17 4. For all recoverable costs incurred in this suit;
 - 18 5. For all interest as allowed by law;
 - 19 6. Where available and proper for attorneys' fees and costs incurred in pursuing this
20 FEHA-based Complaint against Defendants;
 - 21 7. For emotional distress damages that properly compensate Plaintiff for Plaintiff's
22 emotional injuries as a result of Defendants' actions as fully described in this
23 Complaint for damages;
 - 24 8. For Injunctive Relief and Declaratory Relief in Accordance with Law;
 - 25 9. For all applicable and appropriate exemplary and punitive damages; and,
 - 26 10. For all other relief the Court deems proper and appropriate.
- 27
28

1 DATED: September 22, 2014

BARRERA & ASSOCIATES

2
3
4 By: 

Patricio Barrera

Attorney for Plaintiff Michael Krause

5
6 DEMAND FOR JURY TRIAL

7 Plaintiff hereby demands a trial by jury.

8
9 DATED: September 22, 2014

BARRERA & ASSOCIATES

10
11 By: 

Patricio Barrera

Attorney for Plaintiff Michael Krause



ORIGINAL

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

CIVDS1413947

Michael Krause

Case No.

vs.

CERTIFICATE OF ASSIGNMENT

Kaiser Foundation Hospital, et al.

A civil action or proceeding presented for filing must be accompanied by this certificate. If the ground is the residence of a party, name and residence shall be stated.

The undersigned declares that the above-entitled matter is filed for proceedings in the San Bernardino District of the Superior Court under Rule 404 of this court for the checked reason:

☒ General☐ Collection

Nature of Action

Ground

- | | |
|--|--|
| <input type="checkbox"/> 1 Adoption | Petitioner resides within the district. |
| <input type="checkbox"/> 2 Conservator | Petitioner or conservatee resides within the district. |
| <input type="checkbox"/> 3 Contract | Performance in the district is expressly provided for. |
| <input type="checkbox"/> 4 Equity | The cause of action arose within the district. |
| <input type="checkbox"/> 5 Eminent Domain | The property is located within the district. |
| <input type="checkbox"/> 6 Family Law | Plaintiff, defendant, petitioner or respondent resides within the district. |
| <input type="checkbox"/> 7 Guardianship | Petitioner or ward resides within the district or has property within the district. |
| <input checked="" type="checkbox"/> 8 Harassment | Plaintiff, defendant, petitioner or respondent resides within the district. |
| <input type="checkbox"/> 9 Mandate | The defendant functions wholly within the district. |
| <input type="checkbox"/> 10 Name Change | The petitioner resides within the district. |
| <input type="checkbox"/> 11 Personal Injury | The injury occurred within the district. |
| <input type="checkbox"/> 12 Personal Property | The property is located within the district. |
| <input type="checkbox"/> 13 Probate | Decedent resided or resides within the district or had property within the district. |
| <input type="checkbox"/> 14 Prohibition | The defendant functions wholly within the district. |
| <input type="checkbox"/> 15 Review | The defendant functions wholly within the district. |
| <input type="checkbox"/> 16 Title to Real Property | The property is located within the district. |
| <input type="checkbox"/> 17 Transferred Action | The lower court is located within the district. |
| <input type="checkbox"/> 18 Unlawful Detainer | The property is located within the district. |
| <input type="checkbox"/> 19 Domestic Violence | The petitioner, defendant, plaintiff or respondent resides within the district. |
| <input type="checkbox"/> 20 Other | |
| <input type="checkbox"/> 21 THIS FILING WOULD NORMALLY FALL WITHIN JURISDICTION OF SUPERIOR COURT. | |

The address of the accident, performance, party, detention, place of business, or other factor which qualifies this case for filing in the above-designated district is:

Kaiser Foundation Hospital, 9961 Sierra Avenue

(NAME - INDICATE TITLE OR OTHER QUALIFYING FACTOR)

ADDRESS

Fontana, CA 92335

(CITY)

(STATE)

(ZIP CODE)

I declare, under penalty of perjury, that the foregoing is true and correct and that this declaration was executed on

September 22, 2014

at

Manhattan Beach

, California

Signature of Attorney/Party