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 5 CHRISTINE E. MENDY

FILED BY FAX

ALAMEDA COUNTY

January 20, 2015

CLERK OF
 THE SUPERIOR COURT
 By Denise Dalton, Deputy

CASE NUMBER:
RG15755259

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

CHRISTINE E. MENDY, an individual,

Case No.:

Plaintiff,

COMPLAINT FOR DAMAGES

vs.

(1) **DISABILITY DISCRIMINATION**
 (Cal. Gov. Code § 12900 *et. seq.*)

(2) **RETALIATION**
 (Cal. Gov. Code § 12900 *et. seq.*)

(3) **FAILURE TO ENGAGE IN THE
 INTERACTIVE PROCESS**
 (Cal. Gov. Code § 12900 *et. seq.*)

KAISER FOUNDATION HOSPITALS, a
 California corporation; and DOES 1-10,
 inclusive

(4) **FAILURE TO ACCOMMODATE**
 (Cal. Gov. Code § 12900 *et. seq.*)
 (5) **PREGNANCY DISCRIMINATION**
 (Cal. Gov. Code § 12900 *et. seq.*)

Defendants.

JURY TRIAL DEMANDED

Plaintiff, CHRISTINE E. MENDY ("Plaintiff" or "MENDY"), files this Complaint, and
 complains of the named Defendants, and each of them, jointly and severally, for the causes of
 action, alleges as follows:

GENERAL ALLEGATIONS

1. At all times herein mentioned, Plaintiff CHRISTINE E. MENDY was and continues to
 be an individual residing in the County of Alameda, State of California.

2. At all times herein mentioned, Defendant KAISER PERMANENTE is a healthcare provider with its headquarters and principal place of business in the County of Alameda, State of California.

3. The true names and capacities of the Defendants named herein as DOES, whether individual, corporate, associate or otherwise, are unknown to Plaintiff who therefore sues such Defendants by fictitious names pursuant to California Code of Civil Procedure § 474. Plaintiff is informed and believes that the Doe Defendants, or some of them, are California residents. Plaintiff will amend this complaint to show the true names and capacities of such Defendants when they have been determined. Plaintiff is informed and believes and thereon alleges that each of these fictitiously named Defendants are responsible in some manner for the occurrences, acts, and omissions alleged herein and that Plaintiff's injuries as alleged herein were proximately caused by the aforementioned Defendants.

4. Plaintiff is informed and believes and thereon alleges that at all times mentioned herein, each of the Defendants was acting as the partner, agent, servant, and employee of each Defendants, and in doing the things alleged herein was acting within the course and scope of such agency and with the knowledge of the remaining Defendants, and that each Defendant is responsible for the occurrences, acts, and omissions of each other Defendant complained of herein.

5. The California Department of Fair Employment and Housing ("DFEH") issued Plaintiff a Right-To-Sue letter as to the aforesaid Defendant on October 22, 2014.

FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

6. Plaintiff MENDY began her employment with Defendant KAISER on June 11, 2007, as a Surgical Technician in its Vallejo Hospital and was a member of the Service Employees International Union - United Healthcare Workers' Division.

7. Plaintiff's performance during her employment with Defendant was exemplary and received a rating of "Overall Successful" on a 2013 Annual Performance Review

8. In or around October 2011, Plaintiff became pregnant with her first child.

9. On February 9, 2012 Plaintiff's healthcare provider acknowledged that Plaintiff needed to be allowed frequent rest breaks between January 31, 2012 and April 6, 2012 due to complications with the pregnancy.

10. Plaintiff was required to attend a disciplinary meeting on March 8, 2012, regarding her attendance during the period of January 31, 2012 to February 7, 2012, during which Plaintiff was ill, had two scheduled days off, and had provided doctor's notes excusing her absences for several of the work days she missed.

11. On March 27, 2012, Plaintiff's physician signed a "Certification of Healthcare Provider for Family Leave" form covering the dates of February 2012 through February 2013. The form indicated that Plaintiff would likely miss several days of work per year between March 27, 2012 and March 26, 2013. Plaintiff received a verbal warning letters or faced investigatory meetings for attendance and punctuality infractions for the following dates: August 1, 2012; August 16, 2012; November 2, 2012; November 25, 2012; January 17, 2013; January 18, 2013; January 31, 2013; February 6, 2013; February 26, 2013; February 27, 2013; and March 7, 2013. Each of these occurring during the period Plaintiff's physician noted Plaintiff would need likely need accommodation from work.

12. On March 31, 2012, Plaintiff's physician wrote: "Patient's first pregnancy was a high risk one. Patient is concerned and anxious about her current pregnancy given her complicated

1 medical history (. . .) and given that her pain is disabling at times. She is experiencing anxiety,
2 insomnia, fatigue, disabling sharp pains, and panic attacks. I am quite concerned about the
3 impact of her anxiety and stress level on her pregnancy and fetus. Her anxiety and work/job
4 stress is increasing her painful contractions and fatigue. I have recommended that she consult
5 with another GYN-OB doctor for a second opinion and be taken off work for the remainder of
6 this pregnancy because of her high level of anxiety, fatigue, pain, and difficulty coping with
7 everyday job stress at this time.”

9 13. Once Plaintiff began seeking work accommodation to care for her health and baby,
10 Plaintiff faced an increasingly discriminatory and retaliatory workplace.

11 14. On April 29, 2013, Plaintiff received a letter from Ann Halliday notifying her that she
12 would no longer be excused during her shift for lactation purposes.

13 15. Plaintiff alleges she was discriminated and retaliated against because no other nursing
14 mother in the department was required to clock in and out for breast pumping. She further
15 alleges she was retaliated against by having her timecard altered without her consent.
16

17 16. On May 23, 2013, Plaintiff received a one-day suspension and, when asked to sign a
18 memorandum, wrote: “I feel I am being harassed in my department. I am signed under duress.”
19 Plaintiff was also denied her Annual Vacation Request.

20 17. On April 5, 2013, Plaintiff's physician signed a Family and Medical Leave Act (“FMLA”)
21 Healthcare Provider form indicating that Plaintiff required intermittent leave and care from
22 March 1, 2013 through March 1, 2014, including one to two days per occurrence and estimated
23 four to six occurrences per year. Medical facts listed for this leave and care are: radiology and
24 lab findings, office visits, and incapacitation. Plaintiff was scheduled for an investigatory
25 meeting for attendance and punctuality infractions for: July 1, 2013; August 19, 2013; August
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28, 2013; August 29, 2013; and August 30, 2013. Each of these occurred during the period Plaintiff's physician noted Plaintiff would need likely need accommodation from work.

18. Despite a rating of "Overall Successful" on her Annual Performance Review for 2013, Plaintiff was terminated on October 7, 2013 for "Unacceptable Attendance."

19. In January of 2014, Plaintiff filled out her United States Equal Employment Opportunity Commission ("EEOC") Questionnaire, as well as a DFEH Right-To-Sue Questionnaire to determine her rights as she felt her termination was wrong.

20. After filling out those questionnaires, Plaintiff found that her termination was discriminatory, retaliatory, and the result of an improper process.

21. On October 22, 2014 Plaintiff received her Right-To-Sue letter from the DFEH.

FIRST CAUSE OF ACTION

Disability Discrimination
(Cal. Gov. Code § 12900, *et. Seq.*)
As to All Defendants and Does

22. As a first, separate and distinct cause of action, Plaintiff complains of Defendant and DOES, each of them, jointly and severally, and for a cause of action, alleges:

23. The factual allegations of Paragraphs 1 through 21 above, are re-alleged and incorporated herein by reference.

24. Jurisdiction is invoked pursuant to Section 12965, as amended, of the Government Code of the State of California, seeking a declaratory judgment, injunctive relief, and damages for violations of the Plaintiff's employment rights as protected by FEHA, Government Code Section 12940, *et. seq.*, which prohibits discrimination, among others, on account of her disability.

25. Plaintiff suffers from chronic asthma, and during relevant times experienced severe anxiety and was pregnant, all of which substantially limited major life activities; therefore, Plaintiff is part of a protected class under the FEHA.

1 26. During Plaintiff's disability and thereafter, Plaintiff became subjected to the actions and
2 conduct as alleged above on account of disability in violation of FEHA, Government Code
3 Section 12940.

4 27. As a result of said actions and conduct of Defendant and DOES, Plaintiff MENDY has
5 suffered damages for loss of earnings, loss of future earnings, and related employment benefits
6 and opportunities, anguish, and indignation. Plaintiff MENDY is thereby entitled to general and
7 compensatory damages in an amount to be proven at trial.
8

9 SECOND CAUSE OF ACTION

10 Retaliation

11 (Cal. Gov. Code § 12900 *et. seq.*)

12 As to All Defendants and Does

13 28. As a second, separate and distinct cause of action, Plaintiff complains of Defendant and
14 DOES, each of them, jointly and severally, and for cause of action, alleges:

15 29. The factual allegations of Paragraphs 1 through 27 above, are re-alleged and incorporated
16 herein by reference.

17 30. Jurisdiction is invoked pursuant to Section 12965, as amended, of the Government Code
18 of the State of California, seeking a declaratory judgment, injunctive relief, and damages for
19 violations of the Plaintiff's employment rights as protected by FEHA, Government Code Section
20 12940, *et. seq.*, which retaliation against an employee for protesting or refusing to participate in
21 discriminatory employment practices prohibited by said Act.
22

23 31. Plaintiff MENDY was an employee of Defendant and DOES and is a person protected
24 by said provisions of said Act as she engaged in the protected activity of seeking
25 accommodations pursuant to her doctor's recommendations, work modifications, and
26 restrictions.
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32. During her employment, Defendant and DOES have subjected Plaintiff MENDY to a pattern of egregious retaliatory actions and conduct as alleged herein because of her requests for workplace modifications/restrictions.

33. As a result of said actions and conduct of Defendant and DOES, Plaintiff MENDY has suffered damages for loss of earnings, loss of future earnings, and related employment benefits and opportunities, anguish, and indignation. Plaintiff MENDY is thereby entitled to general and compensatory damages in an amount to be proven at trial.

THIRD CAUSE OF ACTION
Failure to Engage in the Interactive Process
(Cal. Gov. Code § 12900 *et. seq.*)
As to All Defendants and DOES

34. As a third, separate and distinct cause of action, Plaintiff complains of Defendant and DOES, each of them, jointly and severally, and for a cause of action alleges:

35. The allegations of Paragraphs 1 through 33 above, are re-alleged and incorporated herein by reference.

36. Jurisdiction is invoked pursuant to Section 12965, as amended, of the Government Code of the State of California, seeking a declaratory judgment, injunctive relief, and damages for violations of the Plaintiff's employment rights as protected by FEHA, Government Code Section 12900, *et. seq.*, which reserves an employee's right to a good faith investigation into whether a reasonable accommodation could be implemented.

37. On March 27, 2012, Plaintiff's physician signed a "Certification of Healthcare Provider for Family Leave" form covering the dates of February 2012 through February 2013. The form indicated that Plaintiff would likely need to miss several days of work per year between March 27, 2012 and March 26, 2013.

1 38. Plaintiff MENDY was willing to participate in an interactive process to determine
2 whether reasonable accommodations could be made so that Plaintiff MENDY would be able to
3 continue her high quality work.

4 39. Nonetheless, Plaintiff received a verbal warning letters or faced investigatory meetings
5 for attendance and punctuality infractions for the following days: August 1, 2012; August 16,
6 2012; November 2, 2012; November 25, 2012; January 17, 2013; January 18, 2013; January 31,
7 2013; February 6, 2013; February 26, 2013; February 27, 2013; and March 7, 2013

8 40. Each of the above days for days fell during the period of time Plaintiff MENDY'S
9 physician indicated that Plaintiff MENDY would likely need to miss days of work.

10 41. Instead of engaging in the interactive process and providing reasonable accommodation,
11 Defendants and DOES subjected Plaintiff MENDY to verbal warning letters or investigatory
12 meetings for the time her physician indicated Plaintiff MENDY would likely need to miss days
13 of work.
14

15 42. Defendants and DOES failed to participate in a good faith interactive process with
16 Plaintiff MENDY to determine whether reasonable accommodations could be made.
17

18 43. Furthermore, on April 5, 2013, Plaintiff's physician signed a FMLA Healthcare Provider
19 form indicating that Plaintiff required intermittent leave and care from March 1, 2013 through
20 March 1, 2014 including one to two days per occurrence and estimated four to six occurrences
21 per year. Medical facts listed for this leave and care are: radiology and lab findings, office visits,
22 and incapacitation. Plaintiff was scheduled for an investigatory meeting for attendance and
23 punctuality infractions for: July 1, 2013; August 19, 2013; August 28, 2013; August 29, 2013;
24 and August 30, 2013
25

26 44. Each of the above days for days fell during the period of time Plaintiff MENDY'S
27 physician indicated that Plaintiff MENDY would likely need to miss days of work.
28

1 45. Instead of engaging in the interactive process and providing reasonable accommodation,
2 Defendants and DOES subjected Plaintiff MENDY to a scheduled investigatory meeting for the
3 time her physician indicated Plaintiff MENDY would likely need to miss days of work.

4 46. Defendants and DOES failed to participate in a good faith interactive process with
5 Plaintiff MENDY to determine whether reasonable accommodations could be made.

6 47. As a result of said actions and conduct of Defendants and DOES, Plaintiff MENDY has
7 suffered a loss of earnings, loss of future earnings, and related employment benefits and
8 opportunities, anguish, and indignation. Plaintiff MENDY is thereby entitled to general and
9 compensatory damages in an amount to be proven at trial.
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12 **FOURTH CAUSE OF ACTION**
13 Failure to Accommodate
14 (Cal. Gov. Code Section 12900 *et. seq.*)
As to All Defendants and Does

15 48. As a fourth, separate and distinct cause of action, Plaintiff complains of Defendants and
16 DOES, each of them, jointly and severally, and for a cause of action alleges:

17 49. The factual allegations of Paragraphs 1 through 47 above, are re-alleged and incorporated
18 herein by reference.

19 50. Jurisdiction is invoked pursuant to Section 12965, as amended, of the Government Code
20 of the State of California, seeking a declaratory judgment, injunctive relief and damages, for
21 violations of the Plaintiff's employment rights as protected by FEHA, Government Code sections
22 12900, *et. seq.*, which requires employers to make reasonable accommodations for the known
23 physical or mental disability of an applicant or employee.
24

25 51. Plaintiff was diagnosed with the physical disability of chronic asthma, and during
26 relevant times experienced severe anxiety and was pregnant, all of which substantially limited
27 major life activities; among other things social activities and work, qualifying as a disability
28

1 under FEHA.

2 52. On March 27, 2012, Plaintiff's physician signed a "Certification of Healthcare Provider
3 for Family Leave" form covering the dates of February 2012 through February 2013. The form
4 indicated that Plaintiff would likely need to miss several days of work per year between March
5 27, 2012 and March 26, 2013.

6 53. Instead of providing reasonable accommodation, Defendant and DOES subjected Plaintiff
7 to verbal warning letters and investigatory meetings for attendance and punctuality infractions
8 for the following days: August 1, 2012; August 16, 2012; November 2, 2012; November 25,
9 2012; January 17, 2013; January 18, 2013; January 31, 2013; February 6, 2013; February 26,
10 2013; February 27, 2013; and March 7, 2013.

11 54. Each of the above days for days fell during the period of time Plaintiff MENDY'S
12 physician indicated that Plaintiff MENDY would likely need to miss days of work
13

14 55. Instead of providing a reasonable accommodation, Defendants and DOES subjected
15 Plaintiff MENDY to verbal warning letters or investigatory meetings for the time her physician
16 indicated Plaintiff MENDY would likely need to miss days of work.
17

18 56. Defendants and Does failed to determine whether reasonable accommodations could be
19 made.
20

21 57. Furthermore, on April 5, 2013, Plaintiff's physician signed a FMLA Healthcare Provider
22 form indicating that Plaintiff required intermittent leave and care from March 1, 2013 through
23 March 1, 2014 including one to two days per occurrence and estimated four to six occurrences
24 per year. Medical facts listed for this leave and care are: radiology and lab findings, office visits,
25 and incapacitation. Plaintiff was scheduled for an investigatory meeting for attendance and
26 punctuality infractions for: July 1, 2013; August 19, 2013; August 28, 2013; August 29, 2013;
27 and August 30, 2013.
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58. Each of the above days for days fell during the period of time Plaintiff MENDY'S physician indicated that Plaintiff MENDY would likely need to miss days of work

59. Instead of providing a reasonable accommodation, Defendants and DOES subjected Plaintiff MENDY to a scheduled investigatory meeting for the time her physician indicated Plaintiff MENDY would likely need to miss days of work.

60. Defendants and Does failed to determine whether reasonable accommodations could be made.

61. As a result of said actions and conduct of Defendants and DOES, Plaintiff MENDY has suffered damages for loss of earnings, loss of future earnings, and related employment benefits and opportunities, anguish, and indignation. Plaintiff MENDY is thereby entitled to general and compensatory damages in an amount to be proven at trial.

FIFTH CAUSE OF ACTION
Pregnancy Discrimination
(Cal. Gov. Code § 12900 *et. seq.*)
As to All Defendants and Does

62. As a fifth, separate and distinct cause of action, Plaintiff complains of Defendants and DOES, each of them, jointly and severally, and for a cause of action alleges:

63. The factual allegations of Paragraphs 1 through 61 above, are re-alleged and incorporated herein by reference.

64. Jurisdiction is invoked pursuant to Section 12965, as amended, of the Government Code of the State of California, seeking a declaratory judgment, injunctive relief and damages, for violations of the Plaintiff's employment rights as protected by FEHA, Government Code sections 12900, *et. seq.*, which prohibits discrimination, among others, on the basis of sex and/or pregnancy.

65. At all times, Plaintiff MENDY'S performance during her employment with Defendant was exemplary and even received a rating of "Overall Successful" on a 2013 Annual

Performance Review.

66. In or around October 2011 Plaintiff became pregnant, which required Plaintiff to schedule and attend various doctor visits for not only routine examinations, but also complications due to her pregnancy.

67. Plaintiff was ill during the period of January 31, 2012 to February 7, 2013. Plaintiff had a note from her physician excusing her from work from January 31, 2012 to February 3, 2012. Plaintiff's normal days off fell on February 4, 2012 and February 5, 2012, and then Plaintiff was still ill on February 6, 2012 and February 7, 2012. Plaintiff later produced a doctors note for her absences on the February 6, 2012 and February 7, 2012, but nonetheless was subjected to a March 8, 2012 disciplinary coaching and counseling meeting due to 'unprotected' dates of absence.

68. Later that month, Plaintiff's physician wrote: "Patient's first pregnancy was a high risk one. Patient is concerned and anxious about her current pregnancy given her complicated medical history and given that her pain is disabling at times. She is experiencing anxiety, insomnia, fatigue, disabling sharp pains, and panic attacks. I am quite concerned about the impact of her anxiety and stress level on her pregnancy and fetus. Her anxiety and work/job stress is increasing her painful contractions and fatigue. I have recommended that she consult with another GYN-OB doctor for a second opinion and be taken off work for the remainder of this pregnancy because of her high level of anxiety, fatigue, pain, and difficulty coping with everyday job stress at this time."

69. As a direct result of the acts and conduct of Defendant as alleged herein, Plaintiff has suffered loss of and continues to suffer substantial loss of earnings and related employment benefits in an amount to be proven at trial herein.

70. In doing the acts and in engaging in the conduct alleged herein, Defendant intended to

1 and did vex, harass, annoy and cause Plaintiff to suffer and continue to suffer severe emotional
2 distress.

3 71. Defendant committed the abusive actions alleged herein maliciously fraudulently, and
4 oppressive, with the wrongful intention of injuring Plaintiff and from an improper and evil
5 motive amounting to malice, and in conscious and reckless disregard of her rights as an
6 employee. Plaintiff is thus entitled to recover punitive damages from Defendants, and each of
7 them, commensurate with their conduct as alleged.
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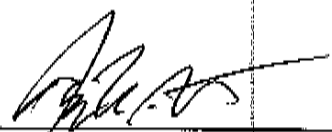
9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays for relief as follows:

- 11 1. For general damages in amounts according to proof and in no even in an amount less than
12 the jurisdictional limit of this court;
- 13 2. For special damages in amounts according to proof;
- 14 3. For punitive damages and exemplary damages in an amount according to proof;
- 15 4. For attorneys' fees as provided by law;
- 16 5. For interest as provided by law;
- 17 6. For costs of suit herein; and
- 18 7. For such other and further relief as the Court deems fair and just.
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20 Dated: January 20, 2015

SMITH PATTEN


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22 _____
23 SPENCER SMITH
24 DOW W. PATTEN
25 Attorneys for Plaintiff
26 CHRISTINE E. MENDY
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5 **JURY DEMAND**
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7 Plaintiff hereby demands trial by jury of all matters so triable.
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9 Dated: January 20, 2015

10 SMITH PATTEN

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12 _____
13 SPENCER SMITH
14 DOW W. PATTEN
15 Attorneys for Plaintiff
16 CHRISTINE E. MENDY
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