

M. Greg Mullanax, SBN 155138
greg@lawmgm.com
Law Office of M. Greg Mullanax
2140 N. Winery Ave., Suite 101
Fresno, CA 93703
(559) 420-1222
(559) 354-0997 fax

Attorney for Plaintiff,
Mary Jane Alvernaz

FILED

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO
BY Deputy DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF FRESNO

15 CE CG 00740

Mary Jane Alvernaz,

Plaintiff,

v.

The Permanente Medical Group, Inc.,
a business entity,
Kaiser Foundation Health Plan, Inc.,
a business entity,
Kaiser Foundation Hospitals,
a business entity, and
DOES 1 through 20, inclusive,

Defendants.

Case No. _____
Complaint for Damages and Demand for
Jury Trial

1. Disability Discrimination in Violation of FEHA, California Government Code § 12940(a) \$455 266501
2. Failure to Provide Reasonable Accommodation in Violation of FEHA, California Government Code § 12940(m), (n)
3. Failure to Engage in the Interactive Process in Violation of FEHA, California Government Code § 12940(m), (n)
4. Wrongful Discharge in Violation of Public Policy

A. PARTIES

1. Plaintiff, Mary Jane Alvernaz, is an individual and is a resident of Rhode Island.
2. Defendant, Permanente Medical Group, Inc. ("PMG"), is a corporation that is incorporated under the laws of the State of California. Defendant's principal place of business is in Oakland, California.
3. Defendant, Kaiser Foundation Health Plan, Inc. ("KFHP"), is a corporation that is incorporated under the laws of the State of California. Defendant's principal place of business is in Oakland, California.

1 4. Defendant, Kaiser Foundation Hospitals ("KFH") is a corporation that is
2 incorporated under the laws of the State of California. Defendant's principal place of business is
3 in Oakland, California.

4 5. Defendants PMG, KFHP and KFH are associated entities more commonly known
5 as Kaiser Permanente. Plaintiff is informed and believes and thereupon alleges that, at all times
6 material herein, each of the defendants was functioning as the agent, servant, partner, employee
7 and/or working in concert with his or its co-defendants and was acting within the course and
8 scope of such agency, partnership, employment and or concerted activity. To the extent that
9 certain acts and omissions were perpetrated by certain defendants, the remaining defendants
10 confirmed and ratified said acts and omissions of the co-defendants, and in doing the actions
11 mentioned below was acting within the course and scope of her or its authority as such agent,
12 servant, partner, and employee with the permission, consent and ratification of the co-
13 defendants.

14 6. The true names and capacities of the defendants, DOES 1 through 20, whether
15 individual, corporate, associate or otherwise, are unknown to plaintiff at the time of filing this
16 complaint and plaintiff, therefore, sues said defendants by such fictitious names and will ask leave
17 of court to amend this complaint to show their true names or capacities when the same have been
18 ascertained. Plaintiff is informed and believes, and therefore alleges, that each of the DOE
19 defendants is, in some manner, responsible for the events and happenings herein set forth and
20 proximately caused injury and damages to plaintiff as herein alleged.

21 B. VENUE

22 7. Venue is proper in this county because the action and events alleged herein
23 occurred within Fresno County.

24 C. FACTS

25 8. Defendants hired plaintiff as a radiology tech in February 2004.

26 9. Defendants regularly employ more than 5 persons in California.

27 10. In September 2008, plaintiff sustained an injury at work to her cervical spine and
28 she filed a workers' compensation claim. Plaintiff had surgery on her neck on or about October 6,

2009.

11. Since that time, plaintiff has been treated for her injury and has been treated by her workers' compensation physicians.

12. Plaintiff was off work for various periods of time recovering from her injury.

13. Plaintiff was examined by an agreed medical examiner ("AME"), Dr. James Strait. Dr. Strait issued an AME report on January 13, 2011 and concluded that plaintiff could continue working in her usual and customary occupation and was not a qualified injured worker.

14. Dr. Strait issued several supplemental reports and in his last report of July 19, 2013, Dr. Strait finally concluded that plaintiff could not lift 50 pounds and was a qualified injured worker. During the previous and intervening time periods, defendants allowed plaintiff to work on and off and would then inform her that she could not work because of her real and/or perceived disability.

15. Plaintiff wanted to continue working and requested a reasonable modification, specifically, changes in her schedule or a reassignment to a position as a CT tech which she obtained through a bidding process in January 2010. The position of CT tech was plaintiff's based on the bidding process, but defendants refused to place her in that position, even though plaintiff could have performed all of the essential functions of the job with her then current physical condition.

16. Plaintiff has also requested changes in her schedule that would give her different days off work that would enable her to perform her job as a rad tech. Despite several requests, defendants refused to consider a modification.

17. Defendants refused to enter into a good-faith interactive process, despite the fact defendants made it appear as if they were doing so. Defendants never considered plaintiff's requests for modification of her schedule and they never placed her in the CT tech position she obtained through the bidding process.

18. Plaintiff could perform all of the essential functions of her job with a reasonable modification which could include changes in her work schedule, assistance, in accordance with defendants' own policies, in lifting and/or moving heavier patients and moving her to the CT

1 tech position she obtained through the bidding process.

2 19. Ultimately defendants fired plaintiff on March 11, 2014. Defendants claimed
3 plaintiff was terminated ostensibly because of "patient mobility," meaning, defendants' believed
4 plaintiff suffered from a disability that prevented her from performing the essential functions of
5 her job, with or without a reasonable modification. This, despite the fact that defendants' own
6 workplace safety policies require employees to obtain assistance in moving heavy patients in
7 order to prevent injuries.

8 **D. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

9 20. Defendants terminated plaintiff as a result of her real and/or perceived disability
10 on March 11, 2014.

11 21. On October 15, 2013, plaintiff filed a complaint against defendants with the
12 California Department of Fair Employment and Housing alleging disability discrimination.

13 22. DFEH issued a right to sue letter on March 10, 2014.

14 23. On March 2, 2015, plaintiff filed a complaint against defendants with the
15 California Department of Fair Employment and Housing alleging disability discrimination,
16 failure to engage in the interactive process and failure to provide reasonable accommodation all
17 resulting in plaintiff's termination.

18 24. DFEH issued a right to sue letter to plaintiff on March 2, 2015.

19 **E. FIRST CAUSE OF ACTION**
20 **DISABILITY DISCRIMINATION IN VIOLATION OF FEHA**

21 25. The previous allegations herein are re-alleged and incorporated herein by
22 reference.

23 26. Defendants regularly employ five or more persons in California.

24 27. Defendants employed plaintiff since February 2004.

25 28. Defendants knew plaintiff suffered a workplace injury to her cervical spine.

26 29. Defendants treated plaintiff as if she suffered from a physical disability and was
27 therefore unable to perform the essential functions of her job.

28 30. Plaintiff was able to perform the essential functions of her job with a reasonable

1 accommodation for her cervical spine injury.

2 31. Defendants terminated plaintiff's employment.

3 32. Plaintiff's cervical spine injury was a substantial motivating reason for defendants'
4 decision to terminate plaintiff's employment.

5 33. As a result of defendants' actions, plaintiff was harmed.

6 34. Defendants' conduct in terminating plaintiff's employment was a substantial
7 factor in causing plaintiff's harm.

8
9 **F. SECOND CAUSE OF ACTION**
10 **FAILURE TO PROVIDE REASONABLE ACCOMMODATION IN VIOLATION OF FEHA**

11 35. The previous allegations herein are re-alleged and incorporated herein by
12 reference.

13 36. Defendants refused to provide a reasonable accommodation when defendants
14 refused to make reasonable changes in the workplace that would have allowed plaintiff to perform
15 the essential duties of her job as a rad tech.

16 37. Defendants refused any reasonable accommodations such as changing plaintiff's
17 job responsibilities or work schedule, reassigning plaintiff to the CT position she bid on and won,
18 and modifying or providing equipment or assistance in the rare event she would have to lift up to
19 50 pounds.

20 **G. THIRD CAUSE OF ACTION**
21 **FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS**

22 38. The previous allegations herein are re-alleged and incorporated herein by
23 reference.

24 39. Defendants' knew plaintiff had suffered an injury to her cervical spine and told
25 plaintiff, despite the fact that she was actually working and performing the essential duties of her
26 job, that she could not perform the essential functions of her job.

27 40. Plaintiff requested reasonable accommodations by bidding and winning a job as a
28 CT tech, asking for a modified schedule, among other things.

1 41. Plaintiff was willing to participate in an interactive process to determine whether
2 reasonable accommodation could be made so she would be able to perform her essential job
3 requirements without further injury.

4 42. Defendants failed to participate in a timely good-faith interactive process with
5 plaintiff to determine whether reasonable accommodation could be made.

6 43. As a result, plaintiff was harmed.

7 44. Defendants' failure to engage in a good-faith interactive process was a substantial
8 factor in causing plaintiff's harm.

9 **H. FOURTH CAUSE OF ACTION**
10 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

11 45. Defendants terminated plaintiff because of her perceived disability. The California
12 Fair Employment and Housing Act, California Government Code § 12940 et seq., prohibits
13 disability discrimination in employment.

14 46. Defendants discharged plaintiff from employment for reasons that violate this
15 public policy against disability discrimination in employment.

16 47. Plaintiff's real and/or perceived disability was a substantial motivating reason for
17 plaintiff's discharge.

18 48. Plaintiff's discharge caused her harm.

19 **I. DEMAND FOR JURY TRIAL**

20 49. Plaintiff demands a trial by jury on all issues.

21 **J. PRAYER**

22 50. For these reasons, plaintiff asks for judgment against defendants for the following
23 as more fully described above:

- 24 a. Actual damages, special and general, in an amount to be determined according
25 to proof.
- 26 b. Costs of suit, including litigation expenses.
- 27 c. Attorney's fees under California Government Code § 12965
- 28 d. Punitive damages under California Government Code § 12965.

1 e. Prejudgment and postjudgment interest.

2 f. All other relief the Court deems appropriate.

3 Dated: March 4, 2015

LAW OFFICE OF M. GREG MULLANAX

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5
6 By: 

M. Greg Mullanax
Attorney for Plaintiff,
Mary Jane Alvernaz

Courthouse News Service