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MERCEDITA DESUMALA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

MERCEDITA DESUMALA, an individual

Plaintiff,

v.

KAISER FOUNDATION HEALTH PLAN
INC., a corporation; KAISER
FOUNDATION HOSPITALS, a
corporation; THE PERMANENTE
MEDICAL GROUP, a partnership; and
DOES 1 through 10 inclusive,

Defendants.

CASE NO.

2015794740

PLAINTIFF'S COMPLAINT FOR:

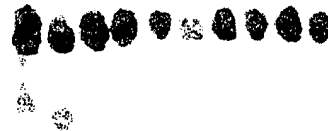
1. VIOLATIONS OF CALIFORNIA
HEALTH & SAFETY CODE § 1278.5
2. RETALIATION IN VIOLATION OF
LABOR CODE § 6310
3. RETALIATION IN VIOLATION OF
LABOR CODE § 1902.5
4. VIOLATIONS OF CALIFORNIA
BUSINESS & PROFESSIONS CODE §
510
5. RETALIATION FOR EXERCISING
RIGHTS PURSUANT TO THE
CALIFORNIA FAMILY RIGHTS ACT
(GOVERNMENT CODE § 12945.2 (I))
6. NEGLIGENT
SUPERVISION/RETENTION OF
EMPLOYEE
7. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY
8. INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS

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9. FAILURE TO PAY ALL WAGES
OWED UPON TERMINATION IN
VIOLATION OF LABOR CODE §§ 201-
203

JURY TRIAL DEMANDED BY PLAINTIFF

Courthouse News Service



1 Plaintiff Mercedita "Mercy" Desumala ("Plaintiff" or "MS. DESUMALA") alleges as
2 follows on knowledge as to herself and her own acts/interactions, and on information and belief
3 as to all other matters:

4 **INTRODUCTION & NATURE OF ACTION**

5 1. From the time Kaiser hired MS. DESUMALA until her wrongful firing, MS.
6 DESUMALA was an outstanding nurse who was a lifesaver to her patients and a fierce advocate
7 for patient health and safety as well as the health and safety of Kaiser's selfless nurses who
8 worked long hours, without meal or rest breaks or proper compensation, tirelessly caring for their
9 patients.

10 2. Despite her excellent performance as a registered nurse, Kaiser retaliated against
11 MS. DESUMALA, ultimately resulting in her wrongful firing, because of MS. DESUMALA's
12 complaints that she made regarding patient and employee safety/care in the workplace.

13 3. MS. DESUMALA's chief complaint was that chronic understaffing was leading
14 not only to diminished patient health and safety but also nurses who were so overworked that
15 their health and safety were compromised.

16 4. Access to quality care by Kaiser's healthcare professionals has been a major issue
17 for Kaiser over the last couple years and Kaiser was desperate to silence MS. DESUMALA
18 through making her job unbearable and ultimately firing her.

20 **JURISDICTION AND VENUE**

21 5. This Court has personal jurisdiction over each of the Defendants because they are
22 residents of and/or doing business in the State of California.

23 6. Under California Code of Civil Procedure section 395(a), venue is proper in this
24 county because the Defendants, or some of them, reside in this county and/or injuries alleged
25 herein occurred in this county.

1 **EXHAUSTION OF ADMINISTRATIVE PROCEEDINGS**

2 7. MS. DESUMALA exhausted her administrative remedies by timely filing a
3 complaint for the issues required to be raised herein against Defendants with the California
4 Department of Fair Employment & Housing (“DFEH”) and thereafter received a “Right to Sue”
5 letter from the DFEH, which allowed MS. DESUMALA one year from November 11, 2015.
6

7 **PARTIES**

8 8. MS. DESUMALA, at all times relevant hereto, has been a resident of the State of
9 California.

10 9. MS. DESUMALA is informed and believes that Defendants Kaiser Foundation
11 Health Plan, Inc. (“KFHP”) and Kaiser Foundation Hospitals (“KFH”) are corporations
12 organized and existing under the laws of California, with their principal place of business located
13 at 1 Kaiser Plaza, Oakland, California.

14 10. MS. DESUMALA is informed and believes that Defendant The Permanente
15 Medical Group (“TPMG”) is organized in form only as a partnership under the laws of
16 California, with its principal place of business located in Alameda County at 1950 Franklin
17 Street, Oakland, California.

18 11. MS. DESUMALA is informed and believes that KFHP, KFH and TPMG do
19 business jointly, and with other entities owned and controlled by KFHP under the name “Kaiser
20 Permanente.”

21 12. MS. DESUMALA is informed and believes that Kaiser Permanente is an
22 “integrated” health care delivery system comprised of the insurance company, KFHP, its doctors,
23 organized as TPMG, and its hospitals, which are wholly owned and/or controlled by KFHP
24 through its captive entity, KFH, which has no separate existence or identity apart from KFHP.

25 13. MS. DESUMALA is informed and believes and thereon alleges that Defendant
26 KFHP is an insurance company which purports to provide comprehensive total medical care to
27 its members. KFHP describes itself as the largest Health Maintenance Organization in the
28 country. KFHP exercises total control over Defendants KFH, TPMG and a number of other

1 corporate and partnership entities such that their very existence as purported separate entities is
2 in fact a sham designed to perpetuate the myth that KFHP and KFH are legitimate “non-profit”
3 corporations. MS. DESUMALA is informed and believes that KFHP and KFH are in fact “for
4 profit” enterprises regularly reporting their profitability publicly. For example, on August 5,
5 2011, Kaiser reported:

6 Kaiser Foundation Hospitals, Kaiser Foundation Health Plan, Inc., and their
7 respective subsidiaries (KFH/HP) reported today a combined operating revenue of
8 \$11.9 billion for the quarter ending June 30, 2011, compared to \$11.0 billion in
9 the same period in 2010. Operating income was \$390 million in the second
10 quarter of 2011, compared to \$313 million in the same quarter last year. Net non-
11 operating income was \$273 million in the second quarter of 2011, compared to
12 \$91 million in the same quarter last year. As a result, net income for the second
13 quarter was \$663 million versus net income of \$404 million in the same period
14 last year. These are the combined operating results for Kaiser Foundation
15 Hospitals, Kaiser Foundation Health Plan, Inc., and their respective subsidiaries.¹

16 14. Likewise, in their 2012 Annual Report², Defendants reported operated revenue of
17 \$50.6 billion, operating income of \$1.7 billion, and net income of \$2.6 billion.

18 15. Similarly, in their 2013 Annual Report³, Defendants reported operated revenue of
19 \$53.1 billion, operating income of \$1.8 billion, and net income of \$2.7 billion.

20 16. Most recently, in their 2014 Annual Report⁴, Defendants reported operated
21 revenue of \$56.4 billion, operating income of \$2.2 billion, and net income of \$3.1 billion.

22 17. KFHP’s total dominance over KFH and TPMG is evidenced by the fact that KFH
23 and TPMG’s entire annual budget is set by, controlled by, and approved by KFHP; all funds for
24 KFH and TPMG’s operations come from KFHP; KFHP determines what “profit” if any TPMG
25 is allowed to make; money that TPMG uses to pay bonuses to its doctors comes from KFHP;
26 TPMG does not bill any patients for most of its services; barring emergencies or extremely rare
27 instances, TPMG doctors are only allowed to work for KFHP members exclusively; and
28 TPMG’s only source of money is from KFHP. KFHP provides virtually all legal, human

¹ <http://xnet.kp.org/newscenter/pressreleases/nat/2011/080511q2financials.html>

² http://share.kaiserpermanente.org/static/kp_annualreport_2012/#by-the-numbers

³ http://share.kaiserpermanente.org/static/kp_annualreport_2013/#by-the-numbers

⁴ http://share.kaiserpermanente.org/static/kp_annualreport_2014/

1 resources, insurance, communications, advertising, billing, and other necessary services for KFHP
2 and TPMG. Members buying health care coverage only pay money to KFHP, not to TPMG;
3 they buy insurance from KFHP and they receive services through TPMG. Advertising for the
4 health care offered by KFHP as health insurance and provided through TPMG doctors is done
5 predominantly by KFHP, advertising as "Kaiser Permanente" as seen in the multi-million dollar
6 "Thrive" advertising campaign. TPMG does not own hospitals, medical buildings, or the clinics
7 where they work; they are owned by KFHP. KFHP provides all telephone, fax, and e-mail
8 services for TPMG. KFHP also provides health insurance and medical malpractice insurance to
9 TPMG's doctors. KFHP lawyers routinely render legal advice and counsel to KFHP, TPMG, and
10 have unfettered access to KFHP and TPMG's records; KFHP's Human Resources department
11 routinely investigates any EEOC/DFEH or other complaints of discrimination, as well as issues
12 regarding reasonable accommodations, regarding KFHP and TPMG's practices and employees,
13 reporting to KFHP's legal department on all such investigations; KFHP lawyers and human
14 resources staff do not obtain privacy waivers when seeking records of KFHP and/or TPMG
15 employees or investigating their claims; KFHP provides and pays for all facilities in which KFHP
16 and TPMG conduct business.

17 18. Defendants KFHP, KFHP and TPMG, if not separately noted are hereinafter
18 collectively referred to as "Kaiser." These Defendants are collectively liable under either a joint
19 employer theory or a single enterprise theory.

20 19. The true names and capacities of the defendants named herein as Does 1 through
21 10, inclusive, whether individual, corporate, associate or otherwise, are unknown to MS.
22 DESUMALA who therefore sues such defendants by fictitious names pursuant to California
23 Code of Civil Procedure section 474. MS. DESUMALA is informed and believes that all of the
24 Doe defendants are California residents. MS. DESUMALA will amend this Complaint to show
25 such true names and capacities when they have been determined.

26 20. MS. DESUMALA is informed and believes that at all times relevant herein, each
27 defendant designated, including Does 1 through 10, was the agent, managing agent, principal,
28 owner, partner, joint venturer, representative, manager, servant, employee and/or co-conspirator

1 of each of the other defendants, and was at all times mentioned herein acting within the course
2 and scope of said agency and employment, and that all acts or omissions alleged herein were
3 duly committed with the ratification, knowledge, permission, encouragement, authorization and
4 consent of each defendant designated herein.

5 PLAINTIFF'S FACTUAL ALLEGATIONS

6 21. MS. DESUMALA has been a hardworking and committed registered nurse since
7 1991. MS. DESUMALA started working for Kaiser in June of 2005. She first worked in
8 Kaiser's Fresno and Hayward locations before joining Kaiser's San Leandro Hospital.

9 22. MS. DESUMALA received numerous awards throughout her career including an
10 award from her colleagues for excellence in the nursing profession as recently as the year before
11 she was unlawfully fired.

12 23. Prior to being retaliated against for advocating for patient care and safety, MS.
13 DESUMALA consistently received stellar performance evaluations. For example, MS.
14 DESUMALA received evaluations stating:

- 15 • "Mercedita always puts the customers first, showing the highest degree of
16 courtesy and compassion to customer needs. Mercedita is a perceptive listener
17 who is exceptionally attentive to customer needs."
- 18 • "Mercedita gives positive and constructive feedback to and accepts feedback from
19 team members."
- 20 • "Mercedita is an active participant in performance improvement efforts.
21 Mercedita monitors her own work which contributes to quality and performance
22 improvement efforts in the department."

23 **Kaiser Removes Monitor Technicians From MS. DESUMALA's Floor And MS.**

24 **DESUMALA Begins To Protest And Otherwise Complain That Their Removal**

25 **Jeopardized Patient Care And Safety**

26 24. MS. DESUMALA worked on the 5th floor of Kaiser's San Leandro Hospital.
27 This floor was mostly a telemetry floor and also had some oncology patients. A hospital's
28 telemetry floor is an area where patients are sent when their hearts need special monitoring due

1 to potential cardiac complications. A hospital's telemetry floor is often referred to as its
2 "monitored floor." The cardiac monitoring on a telemetry floor is its most integral feature –
3 effective cardiac monitoring is an essential and critical element of patient care and safety.

4 25. As is the case on most telemetry floors, the 5th floor at the San Leandro Hospital
5 was traditionally staffed by Monitor Technicians who are entrusted with the crucial job of
6 monitoring the heart rhythms of patients on the floor. While monitoring these patients' heart
7 rhythms, Monitor Technicians look for irregularities that may be indicative of more serious
8 conditions. If these irregularities are not caught, they can be extremely dangerous and often fatal
9 for the patients. Monitor Technicians generally have no other responsibilities other than
10 monitoring the cardiac rhythms of their assigned patients.

11 26. In July of 2014, as part of a cost-saving initiative, Kaiser removed all the Monitor
12 Technicians from the 5th floor of the San Leandro Hospital. In lieu of employing actual trained
13 humans to monitor the precarious health of its telemetry patients, Kaiser elected to save money
14 by using electronic cardiac monitoring devices. These devices are supposed to emit a warning
15 sound if there is an irregularity with the heart rhythm of a telemetry patient. These devices were
16 in turn given to the nurses on the 5th floor who were supposed to respond to these warning noises
17 in addition to their other, regular nursing tasks. Given the volume of patients on the floor and the
18 variety of irregularities the devices detected, it was not uncommon for the device to emit more
19 than 120 alarms in a four-hour period. Clearly, the nurses were not able to be as vigilant about
20 monitoring patients' cardiac rhythms as the Monitor Technicians were since they had a multitude
21 of other job duties whereas the Monitor Technicians were able to focus solely on cardiac
22 monitoring. MS. DESUMALA is informed and believes that the only reason Kaiser chose to get
23 rid of the Monitor Technicians and replace them with electronic devices was to save money,
24 even at the cost of diminished patient care and safety.

25 27. In July 2014, MS. DESUMALA began to specifically protest and otherwise
26 complain that Kaiser's decision to remove the Monitor Technicians was jeopardizing patient care
27 and safety by raising these concerns in multiple ways.

1 28. First, MS. DESUMALA started filling out Assignment Despite Objection
2 ("ADO") forms. ADO forms are preprinted forms prepared by the California Nurses'
3 Association for the purpose of providing a mechanism for registered nurses to protest
4 assignments / working conditions that are deemed unsafe and may put the nurse's licenses on the
5 line. After these forms are completed by the objecting nurse, they are sent to the California
6 Department of Health Care Services by the nurses' union.

7 29. Second, MS. DESUMALA also made verbal complaints to her supervisors,
8 usually the Nurse Manager, Norie Bustamante, prior to filing an ADO form.

9 30. When MS. DESUMALA filled out an ADO form, one copy would go to the
10 Assistant Nurse Manager at the San Leandro Hospital, Calyn Pascual ("Ms. Pascual") and
11 another would go to a Nurse Representative, usually Deanna Pagarigan. Kaiser knew when it
12 received a copy of an ADO form that the nurses' union would also send the form to the
13 California Department of Health Care Services.

14 31. Since she was so overworked, MS. DESUMALA started maintaining worksheets
15 of patients she was assigned to, in order to attempt to avoid a potentially lethal mistake. MS.
16 DESUMALA also kept these records because she felt the threat to patient health and safety
17 posed a risk to her own nursing license and she wanted to have a record of her work if an issue
18 were to arise.

19 32. Another reason MS. DESUMALA was forced to maintain these records was due
20 to the illegal wage and hour practices she and other nurses were subjected to. When Kaiser
21 replaced the Monitor Technicians with electronic monitoring devices, this significantly increased
22 the amount of work the nurses on the 5th floor of the San Leandro Hospital had to do. Adding
23 this burden on top of their regular job duties meant that the nurses on the 5th floor would have to
24 work even longer hours and that they would more often go without proper meal and rest breaks.
25 MS. DESUMALA and other nurses were also frequently forced to work overtime in order to
26 finish all of their tasks. Often, when MS. DESUMALA and other nurses worked overtime,
27 Kaiser forced them to justify working these extra hours. However, these interrogations and
28 requests for justifications from Kaiser would come days or weeks after the dates in question.

1 Without her client worksheets, MS. DESUMALA would not have been able to point to the
2 specific reasons as to why she was forced to work late on a specific date.

3 33. As a result of working these long hours, often without proper meal and rest
4 breaks, and the incessant alarms emitted from the monitoring devices, the nurses on the 5th floor
5 of the San Leandro Hospital were dangerously fatigued which posed a huge risk to patient and
6 employee health and safety.

7 **MS. DESUMALA Strives To Improve Patient Care By Communicating Frequently And**
8 **Candidly With Kaiser Management About Patient Health and Safety Concerns**

9 34. MS. DESUMALA complained to her managers frequently that she and the other
10 nurses on the 5th floor were overworked, especially after Kaiser removed the Monitor
11 Technicians from the floor. MS. DESUMALA also alerted her supervisors that she and the other
12 nurses were scheduled to care for patients on opposite ends of the hospital floor. This lack of
13 efficiency led to wasted time and further impacted the ability of her and the other nurses on the
14 5th floor of Kaiser's San Leandro hospital to provide proper patient care.

15 35. MS. DESUMALA attempted to be proactive about rectifying patient safety
16 concerns and sent her supervisors emails about ideas of how to make nurses' assignments more
17 efficient so that nurses could be more productive with their time and assure patients received the
18 proper care they required.

19 36. When Kaiser hired MS. DESUMALA, Kaiser required that she provide Kaiser
20 with her personal email address. Thereafter, Kaiser regularly used her personal email address to
21 communicate with her. Likewise, MS. DESUMALA regularly used her personal email address
22 to communicate with various Kaiser employees, including management. Kaiser never had any
23 concerns about MS. DESUMALA's use of her personal email until it decided to retaliate against
24 her (as alleged in more detail below).

25 37. Until that point, Kaiser regularly used MS. DESUMALA's personal email address
26 to contact MS. DESUMALA directly regarding official Kaiser work-related issues. For example:

- 27 • On or around August 8, 2014, Kaiser Safety Specialist, Eric Nguyen, emailed MS.
28 DESUMALA from his Kaiser email account to her personal email account about

an important safety message from the Senior Vice President and Area Manager of Kaiser, Tom Hanenburg.

- The Assistant Nurse Manager, Ms. Pascual regularly emailed MS. DESUMALA on her personal email account to set up meetings and communicate about other work-related issues.
- The Nurse Manager, Megan Mira ("Ms. Mira") frequently emailed MS. DESUMALA on her personal email address in response to MS. DESUMALA's complaints regarding patient safety.
- Ms. Mira also emailed MS. DESUMALA on MS. DESUMALA's personal email account to set up meetings with her on multiple occasions.

MS. DESUMALA Voices Concerns About Specific Threats To Patient Health and Safety In An Attempt To Improve and Ensure Appropriate Patient Care At Kaiser

38. On or around August 4, 2014, MS. DESUMALA sent Ms. Mira an email, on behalf of herself and all of the other nurses on the 5th floor, voicing several patient health and safety concerns that she had about the 5th floor at the San Leandro Hospital. MS. DESUMALA informed Ms. Mira that most nurses do not know how to properly operate the cardiac monitoring devices because Kaiser did not provide adequate training on how to use the devices. Furthermore, there were no manuals available for the nurses to consult. MS. DESUMALA specifically advised Ms. Mira that many 5th floor nurses needed more training on how to properly operate the monitors. MS. DESUMALA further advised Ms. Mira that nurses were unable to monitor all the patients on the floor due to understaffing and this is a very serious threat to patient health and safety. MS. DESUMALA informed Ms. Mira that since there is no Monitor Technician on the floor, nurses are working overtime to perform tasks that would have otherwise been done by a Monitor Technician.

39. In addition to forcing nurses to work overtime in order to complete their tasks, Kaiser also often made it virtually impossible for nurses to take their proper meal and rest breaks, if at all. Due to chronic understaffing, MS. DESUMALA and other nurses on the 5th floor constantly had pressing tasks to complete with regards to patient health and safety and were

1 simply not able to take their meal and rest breaks. Furthermore, when MS. DESUMALA and
2 other nurses attempted to be reimbursed for missed breaks and overtime hours, managers often
3 intimidated, accused, and chastised nurses for requesting these reimbursements even though
4 working in this manner was the only way the nurses were able to accomplish all their tasks on
5 the understaffed floor. As such, MS. DESUMALA and other nurses often feared retaliation
6 when attempting to request compensation for missed breaks and overtime.

7 40. In response to her complaints, neither Ms. Mira nor Kaiser made any effort to
8 assist the nurses on the 5th floor of the San Leandro Hospital with any of their tasks. For
9 example, despite MS. DESUMALA's pleas, Kaiser refused to hire more Patient Care
10 Technicians to assist the nurses. Patient Care Technicians are essentially nurse assistants who
11 perform tasks that one does not need a nursing license to perform. For example, a Patient Care
12 Technician may respond to a patient's request for drinking water or help a patient walk to the
13 restroom. Patient Care Technicians are integral to helping patients when nurses may be involved
14 with tasks requiring more skilled attention.

15 41. On the 5th floor of the San Leandro Hospital, each Patient Care Technicians was
16 frequently responsible for 15 to 20 patients which is far too many patients for one Patient Care
17 Technician to take care of. At most hospitals that MS. DESUMALA has worked at, Patient Care
18 Technicians were responsible for fewer than 10 patients at a time. As a result of this
19 understaffing of Patient Care Technicians, nurses were often forced to do the work that would
20 usually be taken care of by a Patient Care Technician. MS. DESUMALA is informed and
21 believes that Kaiser did not hire more Patient Care Technicians in an effort to save money, at the
22 risk of jeopardizing patient health and safety.

23 42. On or around October 13, 2014, MS. DESUMALA emailed Ms. Mira about
24 health and safety concerns of nurses doing the work of Patient Care Technicians due to chronic
25 understaffing. MS. DESUMALA warned Ms. Mira that forcing nurses to do the work of Patient
26 Care Technicians is distracting them from their other pressing duties and this is compromising
27 patient safety. For example, forcing nurses to respond to calls to assist patients with using the
28 restroom or bathing the patients is extremely time consuming and can negatively impact the

1 ability of nurses to administer important medications to other patients on time. Furthermore,
2 MS. DESUMALA provided Ms. Mira with specific suggestions and recommendations to
3 ameliorate these concerns.

4 43. After this email, MS. DESUMALA received a thank you note from another nurse,
5 Tess Gonzalez, echoing the seriousness of the concerns MS. DESUMALA raised to Ms. Mira.
6 This email was also sent from Ms. Gonzalez's private email

7 44. MS. DESUMALA also routinely complained about the fact that Kaiser made
8 nurses' patient assignments in an unsafe manner. For example, Kaiser often assigned nurses to
9 patients located on the opposite ends of the San Leandro Hospital's expansive 5th floor thereby
10 not only made it difficult for the nurses to know whether their patients needed them but it also
11 made it unnecessarily arduous and time-consuming to travel back and forth between patients'
12 rooms in a timely manner. For example, on August 14, 2014, a patient on the 5th floor of the San
13 Leandro Hospital assigned to nurse Caroline Edogun ("Ms. Edogun") suffered a fall due to the
14 manner in which Kaiser assigned patients to nurses. The patient called for a nurse several times
15 but Ms. Edogun was taking care of another patient in a room that was far away from the other
16 room. By the time Ms. Edogun reached the patient's room, the patient had already attempted to
17 get up on their own and fallen. MS. DESUMALA filled out an ADO about this incident. In this
18 ADO form MS. DESUMALA alerted the Department of Health Care Services that a patient had
19 a fall because a nurse was unable to reach him in time to assist him. MS. DESUMALA also
20 specifically advised Kaiser management that assigning nurses to patients on opposite ends of the
21 floor made it extremely difficult for nurses to provide appropriate care to their patients. MS.
22 DESUMALA further complained that these assignments resulted in the nurses' fatigue (i.e.,
23 these assignments were deleterious to employee safety and health) as well as threats to patient
24 health and safety such as the incident described above with Ms. Edogun.

25 45. On or around August 19, 2014, MS. DESUMALA sent an email to Vincent
26 Portera ("Mr. Portera"), San Leandro's Safety Officer, on behalf of all the nurses on the 5th floor.
27 MS. DESUMALA advised Mr. Portera of the safety concern regarding the location of the sharps
28 containers (boxes where medical personnel discard used needles). These sharps containers were

1 placed across the room from patients' beds which meant that, after treating the patient, nurses
2 would have to cross the room with used needles in their hands, which is very dangerous. MS.
3 DESUMALA suggested the disposal containers be installed closer to patients' bed, as is
4 customary in most other hospitals.

5 46. MS. DESUMALA also repeatedly complained about the absence of Lift Teams
6 on the 5th floor of the San Leandro Hospital. A Lift Team is a team who is specially trained to
7 help lift overweight and morbidly obese patients and there was an increasing number of morbidly
8 obese patients on the 5th floor of the San Leandro Hospital. Lift Teams receive extensive
9 training on how to use specialized equipment to lift and move these patients while maintaining
10 the safety of both the patients and the health care workers.

11 47. MS. DESUMALA found that a Lift Team was not present on the 5th floor of the
12 San Leandro Hospital extremely often and so she would note, on her ADO forms, when the Lift
13 Team was not present. Without the presence of a Lift Team, MS. DESUMALA and other nurses
14 were forced to use this equipment and move the overweight and morbidly obese patients on their
15 own. Neither MS. DESUMALA nor other nurses had extensive training on how to use the Lift
16 Team equipment. Furthermore, many crucial items of Lift Team equipment were not readily
17 available for MS. DESUMALA and other nurses. As such, being forced to use what equipment
18 the nurses had to move these patients was a huge threat to patient health and safety as well as the
19 health and safety of the nurses. MS. DESUMALA frequently complained about the lack of a
20 Lift Team to her managers and through ADO forms.

21 48. MS. DESUMALA also complained about the health and safety risks associated
22 with the 5th floor of the San Leandro Hospital having inadequate janitorial staff. MS.
23 DESUMALA often noticed that 5th floor of the San Leandro Hospital was not as clean as it
24 should be. When she approached members of the janitorial staff to discuss this issue, she was
25 told there simply were not enough janitorial staff to adequately clean the 5th floor.

26 49. As a result, MS. DESUMALA frequently observed scraps of paper, plastic, and
27 even liquid on the floor. MS. DESUMALA knew that having these items scattered on the floor
28

1 was a huge safety risk as an employee or a patient could injure themselves if they were to slip
2 and fall as a result of the litter.

3 50. MS. DESUMALA also observed that there were not always enough paper towels
4 at sinks where doctors and health care professionals had to wash their hands in order to attempt
5 to prevent the spread of infections. MS. DESUMALA shocked by the lack of something as
6 simple as having adequate paper towels for employees to dry their hands after sanitizing them is
7 an extremely basic need at any hospital.

8 51. MS. DESUMALA also noticed that trash bins were frequently overflowing with
9 used and soiled protective gear such as gloves, masks, and gowns. As a result, nurses or other
10 employees would have to push the used and soiled protective gear down into the bins in order to
11 make room for more trash. Doing this further exposed nurses and other employees to dangerous
12 infections from the soiled protective gear and other used medical equipment which may have
13 been in the trash bins.

14 52. MS. DESUMALA complained about the lack of sufficient janitorial services was
15 leading to an increasingly unsanitary facility which was a huge threat to health and safety of both
16 patients and employees at the San Leandro Hospital. MS. DESUMALA reported this to several
17 people at Kaiser including Kaiser's Safety Officer at the San Leandro Hospital, Vincent Portera.

18 **Kaiser Retaliates Against MS. DESUMALA For Voicing Patient Health and Safety**
19 **Concerns**

20 53. In response to MS. DESUMALA's complaints, Ms. Mira and Kaiser became
21 angry with MS. DESUMALA and began to retaliate against her.

22 54. For example, in a staff meeting MS. DESUMALA attended with about 30 to 40
23 other Kaiser employees, Ms. Mira discussed employee's "disruptive behavior" at the San
24 Leandro Hospital. Ms. Mira went on to explain that Kaiser employees who complained about
25 working conditions at the San Leandro Hospital created a "negative environment." It was
26 blatantly obvious to MS. DESUMALA and her coworkers that Ms. Mira was referring to MS.
27 DESUMALA because MS. DESUMALA was the one who other nurses would go to when they
28 had issues at the Hospital and MS. DESUMALA would fill out the ADO forms and complain to

1 management. Furthermore, another nurse informed MS. DESUMALA that, on another occasion,
2 she heard Ms. Mira refer to MS. DESUMALA creating a negative environment at the San
3 Leandro Hospital by complaining problems at the Hospital.

4 55. On or around August 10, 2014, MS. DESUMALA emailed Robert Marth ("Mr.
5 Marth"), the Chief Nurse Representative and Union Steward at the San Leandro Hospital, out of
6 concern because Ms. Pascual approached MS. DESUMALA twice saying "we really need to
7 have a meeting" and "there are issues." MS. DESUMALA alerted Mr. Marth that she is
8 concerned that Ms. Pascual wants to have the meeting because MS. DESUMALA speaks out too
9 much about patient safety concerns during "morning huddle" meetings.

10 56. In October of 2014, after voicing patient health and safety concerns on behalf of
11 herself and all of the other nurses on the 5th floor, MS. DESUMALA received the worst
12 performance review in her nearly twenty four years as a nurse.

13 57. On or around October 21, 2014, in a meeting with Ms. Mira and Ms. Pascual, MS.
14 DESUMALA voiced her frustration about being cornered by her supervisor Jackie Buckley
15 ("Ms. Buckley") (an Assistant Nurse Manager and Nurse Educator) and Ms. Pascual a few
16 weeks prior to this meeting. MS. DESUMALA had already clocked out for the day but Ms.
17 Buckley and Ms. Pascual insisted on speaking with her. Ms. Buckley asked MS. DESUMALA if
18 she needed more training on the new technology used for monitoring patients' heart rhythms in
19 lieu of having a Monitor Technician. MS. DESUMALA found this question offensive and
20 disheartening. As such, MS. DESUMALA directly told Ms. Buckley that her question illustrated
21 that Kaiser management was not paying attention to her complaints. MS. DESUMALA further
22 explained that the problem was not that MS. DESUMALA did not personally know how to use
23 the monitoring device – the issue was that these devices were not an adequate substitute for an
24 actual person monitoring the patients. Furthermore, the devices dangerously distracted nurses
25 while they were performing their multitude of other important tasks. MS. DESUMALA felt
26 harassed when Ms. Buckley and Ms. Pascual cornered her, so MS. DESUMALA informed them
27 she did not want to speak further about this issue unless a union representative was there.
28

1 58. At a “morning huddle” meeting, MS. DESUMALA brought up the concern that
2 there were not enough nurses on the 5th floor of the San Leandro Hospital and this understaffing
3 posed a threat not only to patient health and safety but also to employee safety and health. In
4 response to her concern, the Nurse Manager, Norie Bustamante, mocked MS. DESUMALA and
5 told her to “take this up with administration.” Again, MS. DESUMALA felt humiliated and
6 ashamed about the way in which Ms. Bustamante mocked her and diminished her legitimate
7 health and safety concerns.

8 59. On another occasion, MS. DESUMALA was slightly late to a meeting because
9 she had too many tasks to accomplish and needed to administer pain medication to a patient right
10 away. MS. DESUMALA went to the “med room,” where the hospital stored its medications, in
11 order to obtain crucial pain medications for this patient. Ms. Mira followed MS. DESUMALA
12 into this small room and then accosted her for being slightly late to the meeting. MS.
13 DESUMALA explained that administering this pain medication for a patient was her top priority.
14 When MS. DESUMALA arrived at her meeting, the doctor conducting the meeting said her
15 negligible tardiness was not a problem. However, the way in which Ms. Mira cornered MS.
16 DESUMALA in a tiny room and scolded her in a menacing fashion was extremely troubling to
17 MS. DESUMALA.

18 60. On or around December 4, 2014, Ms. Mira and Ms. Pascual saw MS.
19 DESUMALA leaving work, after she had clocked out, at the end of the day with a few of her co-
20 workers. They stopped MS. DESUMALA in the hall and accosted her, in front of her co-
21 workers, for complaining about patient health and safety concerns at the San Leandro Hospital.
22 MS. DESUMALA felt harassed by this accusation and also humiliated in front of her co-
23 workers. Furthermore, MS. DESUMALA was shocked by this allegation given that her
24 complaints and related suggestions for improvement were specifically designed to ensure not
25 only appropriate patient health care but also to ameliorate problems posing threats to the health
26 and safety of patients and the nurses.

27 61. This harassing conversation left MS. DESUMALA agitated and anxious. In order
28

1 to explain to Ms. Mira the importance and prevalence of her attempts to take action and improve
2 patient safety, MS. DESUMALA forwarded to Ms. Mira several emails between nurses over the
3 past several months regarding safety concerns in the hospital and how they went about
4 attempting to rectify these problems. These emails illustrated that MS. DESUMALA worked
5 tirelessly to improve the level of patient care at Kaiser and was proactive about attempting to
6 remedy threats to patient safety.

7 62. These emails highlighted, amongst other things, patient safety concerns
8 including alarm fatigue caused by the new patient heart monitoring devices. These emails also
9 proved that MS. DESUMALA was making every effort possible to enact real change in order to
10 improve patient safety.

11 **MS. DESUMALA Goes On California Family Rights Act ("CFRA") Leave**

12 63. In the summer of 2013, MS. DESUMALA's husband was diagnosed with a very
13 severe form of liver cancer. From that time, MS. DESUMALA was vigilant about helping her
14 husband fight this disease. Following his diagnosis, MS. DESUMALA's husband was forced to
15 undergo targeted chemotherapy as well as surgery.

16 64. Finally, on December 10, 2014, MS. DESUMALA went out on CFRA leave to
17 care for her husband as he underwent a liver transplant. MS. DESUMALA's husband ended up
18 having two transplants, one on December 10, 2014 and one on December 18, 2014, as the first
19 transplant was not successful.

20 65. Due to the unforeseen complications with the first transplant surgery and the
21 necessity of a second liver transplant, MS. DESUMALA's husband was not ready to be left
22 alone yet but needed additional care and support. Therefore, while she was on CFRA leave, MS.
23 DESUMALA emailed Ms. Mira on or around January 22, 2015, asking Ms. Mira for a brief,
24 one-day extension of her CFRA leave. Even after waiting for several days, MS. DESUMALA
25 did not even receive the courtesy of a response to her email.

26 66. Due to the fact that MS. DESUMALA did not receive a response to her email and
27 that she feared retaliation, she sent another email cancelling her request for extended CFRA
28 leave.

1 67. MS. DESUMALA returned from her CFRA leave on January 30, 2015, as
2 originally planned.

3 **Kaiser Further Retaliates Against MS. DESUMALA When She Returns From CFRA**
4 **Leave**

5 68. Shortly after MS. DESUMALA returned from her CFRA leave, she received an
6 email on her personal email account from Ms. Mira, informing her that she must attend a
7 compliance meeting on February 12, 2014. Despite MS. DESUMALA's requests for
8 clarification regarding the purpose of this meeting, Ms. Mira provided no insight regarding the
9 meeting and instead ambushed MS. DESUMALA during the compliance meeting.

10 69. MS. DESUMALA attended a compliance meeting on February 12, 2015
11 accompanied by Mr. Marth and union representative, Julio Corral. During the meeting, a senior
12 HR consultant, Eden Abdul Kadir ("Ms. Kadir") asked MS. DESUMALA whether she knew
13 about HIPAA. During the same meeting, Ms. Kadir handed MS. DESUMALA a booklet MS.
14 DESUMALA had never seen before called "Principles of Responsibilities" with certain portions
15 highlighted and circled.

16 70. During this meeting MS. DESUMALA was told she violated various Kaiser
17 policies by emailing patient information to other nurses from her personal email account. In
18 reality, MS. DESUMALA was simply communicating with other nurses in order to attempt to
19 take action and rectify errors in Kaiser's operations which were compromising patient safety.
20 Several other nurses sent similar emails from their personal accounts, but MS. DESUMALA is
21 unaware of any other nurse who was disciplined or terminated. Moreover, MS. DESUMALA is
22 informed and believes that numerous other Kaiser employees, including high-level Kaiser
23 executives, have send similar emails from their personal accounts and were neither disciplined or
24 terminated.

25 71. On February 13, 2015, MS. DESUMALA was placed on paid administrative
26 leave pending an investigation into her alleged misconduct. At this time, Ms. Mira demanded
27 MS. DESUMALA turn over her "work diary" illustrating all of her various patient safety
28

1 concerns and documenting Kaiser's various wage and hour law violations. MS. DESUMALA
2 was not permitted to make a copy of this document before she turned it over.

3 72. Ms. Mira told MS. DESUMALA that at some point, Kaiser would call her with
4 the results of the investigation, but she did not give MS. DESUMALA a specific time frame for
5 when this would occur. Furthermore, Ms. Mira told MS. DESUMALA that if MS. DESUMALA
6 missed Kaiser's call, she only had "one hour to respond" to the call. MS. DESUMALA did not
7 understand what this meant and she was in too much of a state of shock to attempt to discern
8 what Ms. Mira meant by this at the time. Nevertheless, the fact that MS. DESUMALA
9 understood that she had to be ready at any moment for a call from Kaiser that would determine
10 the future of her career at Kaiser was extremely daunting and stressful. As a result, MS.
11 DESUMALA suffered a great deal of anxiety and had trouble sleeping or focusing on anything.

12 **MS. DESUMALA Is Wrongfully Fired**

13 73. After ten years of dedicated service, Kaiser fired MS. DESUMALA on March 17,
14 2015.

15 74. After her wrongful termination, MS. DESUMALA requested copies of her
16 payroll records from Kaiser, but MS. DESUMALA was told these records are confidential and
17 she was not allowed to view them.

18
19 **FIRST CAUSE OF ACTION**

20 **VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE § 1278.5**

21 **(AGAINST ALL KAISER DEFENDANTS)**

22 75. MS. DESUMALA incorporates by this reference all preceding and subsequent
23 paragraphs.

24 76. During MS. DESUMALA's employment, MS. DESUMALA repeatedly reported
25 and complained to Kaiser and their managing agents and medical staff, and each of them, serious
26 unsafe patient care and conditions as alleged herein. MS. DESUMALA also complained to the
27 appropriate government agencies, including the Department of Health Care Services regarding
28

1 unsafe patient care and conditions as alleged herein. Accordingly, MS. DESUMALA engaged in
2 activities which are legally protected under Health & Safety Code Section 1278.5.

3 77. Kaiser is an inpatient care facility covered by Health & Safety Code Section
4 1278.5.

5 78. At the time MS. DESUMALA made the complaints, instead of Kaiser addressing
6 methods of remedying the patient health and safety issues reported by MS. DESUMALA,
7 Kaiser, by and through its managing officers, focused on retaliating against MS. DESUMALA
8 and engaging in a pattern of objectionable conduct, as alleged herein, designed to retaliate
9 against MS. DESUMALA and to dissuade other nurses, for fear of similar retaliation, from
10 reporting any patient health and safety issues.

11 79. Kaiser's conduct, as alleged herein, violated the provisions of Health & Safety
12 Code Section 1278.5. As the California Legislature has declared in Health & Safety Code
13 Section 1278.5, "it is the public policy of the State of California to encourage patients, nurses,
14 members of the medical staff, and other health care workers to notify government entities of
15 suspected unsafe patient care and conditions." As such, "(b)(1) No health facility shall
16 discriminate or retaliate, in any manner, against any . . . employee, member of the medical staff,
17 or any other health care worker . . . because that person has . . . (A) [p]resented a grievance,
18 complaint or report to the facility... or the medical staff of the facility."

19 80. MS. DESUMALA was retaliated against and wrongfully terminated because of
20 her protests and complaints regarding substandard patient care as alleged herein. Kaiser's failure
21 to take any measures to protect MS. DESUMALA and other adverse actions against MS.
22 DESUMALA, occurred within 120 days of her protests and complaints. Accordingly, under
23 Health & Safety Code Section 1278.5(d)(1), MS. DESUMALA is entitled to a rebuttable
24 presumption that the adverse actions taken against her were attributable to her complaints and
25 protests regarding patient care.

26 81. The actions alleged herein were taken by managing agents and/or officers of
27 Kaiser and/or ratified by managing agents and/or officers of Kaiser. In so doing, said managing
28 agents and/or officers of Kaiser acted with oppression, fraud and malice, as those terms are used

1 in California Civil Code section 3294. As such, MS. DESUMALA is entitled to an award of
2 punitive damages.

3 82. As a direct and proximate result, MS. DESUMALA has suffered, and will
4 continue to suffer, economic and compensatory damages, including lost wages, lost benefits, and
5 loss of promotional opportunity, in an amount to be ascertained at the time of trial.

6 83. As a further proximate result, MS. DESUMALA has suffered, and will continue
7 to suffer, humiliation, mental, emotional, and physical distress, anxiety, and nervousness and has
8 been generally damaged in an amount to be ascertained at the time of trial.

9 84. MS. DESUMALA is entitled to legal costs, including attorneys' fees, pursuant to
10 Health & Safety Code section 1278.5(g).

11
12 **SECOND CAUSE OF ACTION**

13 **RETALIATION IN VIOLATION OF LABOR CODE § 6310**

14 **(AGAINST ALL KAISER DEFENDANTS)**

15 85. MS. DESUMALA incorporates by this reference all the preceding and subsequent
16 paragraphs.

17 86. California Labor Code Section 6310 prevents an employer from retaliating
18 against, discriminating against, or terminating an employee because that employee has made oral
19 or written complaints to his employer concerning "unsafe working conditions, or work practices,
20 in his or her employment or place of employment."

21 87. MS. DESUMALA was at all relevant times an employee of Kaiser.

22 88. As alleged above, MS. DESUMALA made repeated complaints to Kaiser
23 regarding unsafe working conditions and work practices for the staff at the Kaiser location where
24 MS. DESUMALA worked. More specifically, MS. DESUMALA complained that Kaiser did
25 not properly staff the fifth floor at the San Leandro hospital, causing medical staff to become
26 dangerously fatigued during work. MS. DESUMALA also complained that this chronic
27 understaffing forced nurses to take their meal and rest breaks later than they are supposed to or
28 skip them all together. MS. DESUMALA also complained to Kaiser that new patient heart

1 monitoring devices issued far too many notifications for the medical staff to respond to which
2 also contributed to the staff's fatigue.

3 89. Additionally, MS. DESUMALA complained that there was not enough janitorial
4 staff on the 5th floor of the San Leandro Hospital which resulted in threats to patient and
5 employee safety. For example, MS. DESUMALA complained that there were often pieces of
6 litter and liquid on the floor which were dangerous and could result in the injury of nurses or
7 other employees at the San Leandro Hospital. MS. DESUMALA also complained that the sinks
8 often did not have enough paper towels nearby which were imperative for reducing the spread of
9 infection at the hospital. Additionally, MS. DESUMALA complained that trash bin were often
10 overflowing with used and soiled protective gear which forced employees to push the items
11 down into the bin to make more room which further exposed employees to dangerous infections.

12 90. MS. DESUMALA also complained about the frequent lack of a Lift Team on the
13 5th floor of the San Leandro Hospital. Without a dedicated Lift Team on the floor, nurses were
14 forced to lift overweight and morbidly obese patients on their own. Nurses did not have
15 adequate training on how to use the Lift Team equipment so moving these patients without a Lift
16 Team posed a risk to both patient and employee safety.

17 91. Finally, MS. DESUMALA complained about the placement of sharps containers
18 (boxes where medical personnel discard used needles) in patients' rooms. MS. DESUMALA
19 complained that these sharps containers were placed across the room from patients' beds which
20 meant that, after treating the patient, nurses would have to cross the room with used needles in
21 their hands, which is very dangerous for medical staff and for others in the room. MS.
22 DESUMALA suggested the disposal containers be installed closer to patients' bed, as is
23 customary in most other hospitals.

24 92. Kaiser discriminated against, retaliated against, and constructively terminated
25 MS. DESUMALA because of her numerous complaints that she made to Kaiser regarding unsafe
26 working conditions for the staff.

1 93. As a direct and proximate result of Kaiser's acts as alleged above, MS.
2 DESUMALA has suffered economic and compensatory damages, including lost wages, lost
3 benefits, and loss of promotional opportunity, in an amount to be ascertained at the time of trial.

4 94. The actions alleged herein were taken by managing agents and/or officers of
5 Kaiser and/or ratified by managing agents and/or officers of Kaiser. In so doing, said managing
6 agents and/or officers of Kaiser acted with oppression, fraud and malice, as those terms are used
7 in California Civil Code section 3294. As such, MS. DESUMALA is entitled to an award of
8 punitive damages.

9
10 **THIRD CAUSE OF ACTION**

11 **RETALIATION IN VIOLATION OF LABOR CODE § 1102.5**

12 **(AGAINST ALL KAISER DEFENDANTS)**

13 95. MS. DESUMALA incorporates by this reference all preceding and subsequent
14 paragraphs.

15 96. At all times mentioned herein, California Labor Code section 1102.5 was in full
16 force and effect and binding on Kaiser.

17 97. California Labor Code section 1102.5(b) mandates:

18 An employer, or any person acting on behalf of the employer, shall not retaliate against
19 an employee for disclosing information, or because the employer believes that the
20 employee disclosed or may disclose information, to a government or law enforcement
21 agency, to a person with authority over the employee or another employee who has the
22 authority to investigate, discover, or correct the violation or noncompliance, or for
23 providing information to, or testifying before, any public body conducting an
24 investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the
25 information discloses a violation of state or federal statute, or a violation of or
26 noncompliance with a local, state, or federal rule or regulation, regardless of whether
27 disclosing the information is part of the employee's job duties.

28 98. Kaiser took adverse actions against MS. DESUMALA, as alleged herein, in
retaliation for MS. DESUMALA's protests, for reporting Kaiser's conduct to the Department of
Health Care Services, and for refusing to engage in conduct that she reasonably believed was
below the appropriate standard of care and in violation of state or federal law.

1 99. In so doing, said managing agents and/or officers of Kaiser acted with oppression,
2 fraud and malice, as those terms are used in California Civil Code section 3294. As such, MS.
3 DESUMALA is entitled to an award of punitive damages.

4 100. As a proximate result of the aforesaid acts of Kaiser, MS. DESUMALA has lost,
5 and will continue to lose, substantial earnings and fringe benefits and has suffered and/or will
6 suffer other actual, consequential and incidental financial losses, in an amount to be proven at
7 trial in excess of the jurisdictional minimum of this court.

8 101. As a proximate result of the aforesaid acts of Kaiser, MS. DESUMALA has
9 become mentally upset, distressed, embarrassed, humiliated, and aggravated. As a result of the
10 acts of retaliation, MS. DESUMALA suffered harm to her reputation and claims general
11 damages for such mental and physical distress and aggravation in a sum in excess of the
12 jurisdictional minimum of this court.

13 102. MS. DESUMALA also seeks an award of attorneys' fees and costs to counsel
14 where permitted by applicable law, including under California Code of Civil Procedure section
15 1021.5 because: (a) this action confers a significant benefit to the general public or a large class
16 of persons impacted by the practices alleged herein; (b) the necessity and financial burden of
17 private enforcement makes the award appropriate; and (c) such fees should not in the interest of
18 justice be paid out of the recovery to Plaintiff.

19
20 **FOURTH CAUSE OF ACTION**
21 **VIOLATIONS OF CALIFORNIA BUSINESS & PROFESSIONS CODE § 510**
22 **(AGAINST ALL KAISER DEFENDANTS)**

23 103. MS. DESUMALA incorporates by this reference all preceding and subsequent
24 paragraphs.

25 104. During MS. DESUMALA's employment with Kaiser, she protested and reported
26 to Kaiser and its managing agents and medical staff, and each of them, serious unsafe patient
27 care and conditions that were being engaged in by Kaiser as alleged herein. The substandard
28 patient care protested and reported by MS. DESUMALA was not consistent with that degree of

1 learning and skill ordinarily possessed by reputable health care practitioners with the same
2 license or certification and practicing according to the applicable legal standard of care. MS.
3 DESUMALA reasonably believes that these actions and omissions impaired her and Kaiser's
4 ability to provide appropriate health care to her patients. Accordingly, MS. DESUMALA
5 "advocated for appropriate health care" as defined in Business & Professions Code § 510.

6 105. At all times relevant, MS. DESUMALA was and is a "health care practitioner" as
7 that term is used in Business & Professions Code § 510. MS. DESUMALA qualifies as a health
8 care practitioner under Business & Professions Code § 510(h)(2) because she had an
9 employment contract with Kaiser (the payer) and Kaiser's practice was subject to MS.
10 DESUMALA's advocacy pursuant to Business & Professions Code § 510(b).

11 106. MS. DESUMALA was fired by Kaiser principally for advocating for appropriate
12 health care consistent with that degree of learning and skill ordinarily possessed by reputable
13 health care practitioners with the same license or certification and practicing according to the
14 applicable legal standard of care. The conduct of Kaiser as alleged herein, violated the
15 provisions of Business & Professions Code § 510.

16 107. As a proximate result of the aforesaid acts of Kaiser, MS. DESUMALA has lost,
17 and will continue to lose, substantial earnings and fringe benefits and has suffered and/or will
18 suffer other actual, consequential and incidental financial losses, in an amount to be proven at
19 trial in excess of the jurisdictional minimum of this court.

20 108. As a proximate result of the aforesaid acts of Kaiser, MS. DESUMALA has
21 become mentally upset, distressed, embarrassed, humiliated, and aggravated. As a result of the
22 acts of retaliation, MS. DESUMALA suffered harm to her reputation and claims general
23 damages for such mental and physical distress and aggravation in a sum in excess of the
24 jurisdictional minimum of this court.

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28 ///

FIFTH CAUSE OF ACTION

**RETALIATION FOR EXERCISING RIGHTS PURSUANT TO THE CALIFORNIA
FAMILY RIGHTS ACT ("CFRA") (GOVERNMENT CODE §12945.2(l))
(AGAINST ALL KAISER DEFENDANTS)**

109. MS. DESUMALA incorporates by this references all the preceding and subsequent paragraphs.

110. MS. DESUMALA requested and was entitled to take intermittent CFRA leave.

111. On or around January 22, 2015 MS. DESUMALA requested a brief extension to her CFRA leave but was never given the courtesy of a response to this request.

112. Shortly after returning from her CFRA leave on January 30, 2015, Kaiser retaliated against MS. DESUMALA by forcing her to attend a compliance meeting and putting her on administrative leave. Shortly thereafter, Kaiser fired MS. DESUMALA for pretextual reasons.

113. MS. DESUMALA is informed and believes that such adverse employment actions were taken, in substantial part, in retaliation for exercising her CFRA rights. Such conduct violates Government Code § 12945.2.

114. As a proximate result of the aforesaid acts of Kaiser, MS. DESUMALA was damaged by suffering continued threats to her safety and person, and extreme emotional distress, humiliation, embarrassment and mental anguish.

115. As a further proximate result of Kaiser's violation of CFRA, MS. DESUMALA was required to and did retain attorneys, and is therefore entitled to an award of attorney's fees according to proof.

116. The actions alleged herein were taken by managing agents and/or officers of Kaiser and/or ratified by managing agents and/or officers of Kaiser. In so doing, said managing agents and/or officers of Kaiser acted with oppression, fraud and malice, as those terms are used in California Civil Code section 3294. As such, MS. DESUMALA is entitled to an award of punitive damages.

1 **SIXTH CAUSE OF ACTION**

2 **NEGLIGENT SUPERVISION/RETENTION OF EMPLOYEE**

3 **(AGAINST ALL KAISER DEFENDANTS)**

4 117. MS. DESUMALA incorporates by this reference all the preceding and subsequent
5 paragraphs.

6 118. Kaiser owed a duty to MS. DESUMALA to provide a safe workplace free from
7 intimidation, threats and fear of retaliation and harassment.

8 119. Kaiser knew or should have known, MS. DESUMALA was being harassed and
9 retaliated against by Megan Mira, Calyn Pascual, Jackie Buckley, and others. MS. DESUMALA
10 voiced her concerns regarding retaliation and raised these issues with Kaiser management.
11 Kaiser management was also responsible for intimidating employees in retaliation for them being
12 forced to work overtime as well as miss meal and rest breaks. Employees were forced to
13 confront this intimidation each time they sought to be reimbursed for working overtime or
14 missing meal and rest breaks.

15 120. Kaiser failed to and/or refused to take appropriate preventative/corrective
16 measures with regarding to MS. DESUMALA's supervisors, which caused MS. DESUMALA to
17 suffer severe emotional distress that is far outside the normal risks of employment.

18 121. As a proximate result of the aforesaid acts of Kaiser, MS. DESUMALA was
19 damaged by suffering continued threats to her safety and person, and extreme emotional distress,
20 humiliation, embarrassment and mental anguish.

21 **SEVENTH CAUSE OF ACTION**

22 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

23 **(AGAINST ALL KAISER DEFENDANTS)**

24 122. MS. DESUMALA incorporates by this reference all the preceding and subsequent
25 paragraphs.

26 123. At all times during her employment with Kaiser, MS. DESUMALA performed
27 her employment duties with the utmost diligence and competence.
28

1 124. The decision to fire MS. DESUMALA was based, at least in substantial part, on
2 MS. DESUMALA's advocacy for patient rights and complaints regarding unsafe patient care.

3 125. The actions of Kaiser as alleged herein constitute multiple violations (or were
4 reasonably believed by MS. DESUMALA in good faith to constitute multiple violations) of
5 California and federal statutes, including:

- 6 • **Health & Safety Code § 1278.5(b)(1)** ("No health facility shall discriminate or
7 retaliate, in any manner, against any . . . employee, member of the medical staff,
8 or any other health care worker . . . because that person has . . . (A) [p]resented a
9 grievance, complaint or report to the facility... or the medical staff of the
10 facility.");
- 11 • **California Labor Code § 6310** ("No person shall discharge or in any manner
12 discriminate against any employee because the employee has done any of the
13 following: (1) Made any oral or written complaint to...his or her employer, or his
14 or her representative...Any employee who is discharged, threatened with
15 discharge, demoted, suspended, or in any other manner discriminated against in
16 the terms and conditions of employment by his or her employer because the
17 employee has made a bona fide oral or written complaint to...his or her employer,
18 or his or her representative, of unsafe working conditions, or work practices, in
19 his or her employment or place of employment...shall be entitled
20 to...reimbursement for lost wages and work benefits caused by the acts of the
21 employer.");
- 22 • **28 CCR § 1300.67.2.2(c)** (Standards for timely access to care);
- 23 • **Labor Code § 1102.5; and**
- 24 • **California Family Rights Act ("CFRA") (Government Code § 12945.2(l)).**

25 126. As a proximate result of the aforesaid acts of Kaiser, MS. DESUMALA has lost,
26 and will continue to lose, substantial earnings, and fringe benefits, and has suffered and/or will
27 suffer other actual, consequential, and incidental financial losses, in an amount to be proven at
28 trial in excess of the jurisdictional minimum of this court.

1 127. As a proximate result of the aforesaid acts of Kaiser, MS. DESUMALA has
2 become mentally upset, physically distressed, embarrassed, humiliated, and aggravated. As a
3 result of the acts of retaliation, MS. DESUMALA suffered harm to her reputation and claims
4 general damages for such mental and physical distress and aggravation in a sum in excess of the
5 jurisdictional minimum of this court.

6 128. The actions alleged herein were taken by managing agents and/or officers of
7 Kaiser and/or ratified by managing agents and/or officers of Kaiser. In so doing, said managing
8 agents and/or officers of Kaiser acted with oppression, fraud and malice, as those terms are used
9 in California Civil Code § 3294. As such, MS. DESUMALA is entitled to an award of punitive
10 damages.

11 129. MS. DESUMALA also seeks an award of attorneys' fees and costs to counsel
12 where permitted by applicable law, including under California Code of Civil Procedure § 1021.5
13 because: (a) this action confers a significant benefit to the general public or a large class of
14 persons impacted by the practices alleged herein (i.e., Kaiser's policy holders, and Kaiser's
15 patients); (b) the necessity and financial burden of private enforcement makes the award
16 appropriate; and (c) such fees should not in the interest of justice be paid out of the recovery to
17 MS. DESUMALA.

18
19 **EIGHTH CAUSE OF ACTION**

20 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

21 **(AGAINST ALL KAISER DEFENDANTS)**

22 130. MS. DESUMALA incorporates by this reference all the preceding and subsequent
23 paragraphs.

24 131. Defendants' retaliation against MS. DESUMALA for complaining about
25 inadequate patient care and employee safety as alleged herein, were extreme and outrageous acts
26 and taken with the intention of causing MS. DESUMALA extreme emotional distress,
27 humiliation, embarrassment and mental anguish. Such conduct exceeded the inherent risks of
28 employment and was not the sort of conduct normally expected to occur in the workplace.

1 132. As a result of those extreme and outrageous acts, MS. DESUMALA has suffered
2 extreme emotional distress and incurred medical expenses for the treatment of said emotional
3 distress, in an amount to be proved at the time of trial, but in any event sufficient to satisfy the
4 jurisdictional limits of this Court.

5 133. The actions alleged herein were taken by managing agents and/or officers of
6 Kaiser and/or ratified by managing agents and/or officers of Kaiser. In so doing, said managing
7 agents and/or officers of Kaiser acted with oppression, fraud and malice, as those terms are used
8 in California Civil Code section 3294. As such, MS. DESUMALA is entitled to an award of
9 punitive damages.

10
11 **NINTH CAUSE OF ACTION**

12 **FAILURE TO PAY ALL WAGES OWED UPON TERMINATION IN VIOLATION OF**
13 **LABOR CODE §§ 201-203**
14 **(AGAINST ALL KAISER DEFENDANTS)**

15 134. MS. DESUMALA incorporates by this reference all of the preceding and
16 subsequent paragraphs.

17 135. At all times relevant herein, MS. DESUMALA was an employee of Kaiser
18 covered by Labor Code Sections 201 and 203.

19 136. Pursuant to Labor Code Section 201, MS. DESUMALA was entitled, upon the
20 end of her employment with Kaiser, to payment of all earned and unpaid wages. According to
21 Labor Code Section 200, “wages” includes all amounts for labor performed by employees of
22 every description, whether the amount is fixed or ascertained by the standard of time, task, piece,
23 commission basis, or other method of calculation,” including health benefits and other fringe
24 benefits.”

25 137. At the time of her wrongful termination on March 17, 2015, MS. DESUMALA
26 was not paid all wages owed to her. Thus, Kaiser failed to pay MS. DESUMALA all wages she
27 had earned at the time of her termination.

1 138. Upon information and belief, MS. DESUMALA contends that Kaiser's failure to
2 pay her all wages earned upon her termination from employment in accordance with Labor Code
3 Section 201 was willful. At all times relevant, Kaiser had the ability to pay all earned and unpaid
4 wages in accordance with Labor Code Section 201 but intentionally chose not to comply.

5 139. Pursuant to Labor Code Section 203, MS. DESUMALA is entitled to waiting time
6 penalties, in the form of continuation of her wages, from the day her earned and unpaid wages
7 were due upon termination until paid, up to a maximum of 30 days.

8 140. As a result of Kaiser's conduct, MS. DESUMALA has suffered damages in an
9 amount, subject to proof, to the extent she was not paid all wages owed at the time of termination
10 under Labor Code Section 201. Moreover, MS. DESUMALA has suffered damages in an
11 amount, subject to proof, to the extent she was not paid waiting time penalties owed under Labor
12 Code Section 203.

13 141. Pursuant to Labor Code § 218.5, MS. DESUMALA is entitled to recover the full
14 amount of her unpaid wages, waiting time penalties, reasonable attorneys' fees, and costs of suit.
15 MS. DESUMALA is entitled to recover interest on all due and unpaid wages and waiting time
16 penalties under Labor Code § 218.6 and/or Civil Code § 3287(a).

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18 **JURY TRIAL DEMANDED**

19 142. MS. DESUMALA demands a jury as to all causes of action.

20
21 **PRAYER FOR RELIEF**

22 143. WHEREFORE, MS. DESUMALA prays judgment against Defendants as
23 follows:


- 24 a. For general economic and non-economic damages according to proof;
25 b. For special damages according to proof;
26 c. For punitive damages where allowed by law;
27
28

- 1 d. For prejudgment interest pursuant to California Civil Code section 3287
2 and/or California Civil Code section 3288 and/or any other provision of law
3 providing for prejudgment interest;
4 e. For attorneys' fees where allowed by law;
5 f. For injunctive relief;
6 g. For costs of suit incurred herein; and
7 h. For such other and further relief as this Court deems just and proper.
8

9 Respectfully submitted,

10 HELMER FRIEDMAN, LLP
11

12 Dated: November 25, 2015

13 By: 
14 Priyan Chandraratna
15 Attorneys for Plaintiff,
16 MERCEDITA DESUMALA
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