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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ARTHUR GUTIERREZ,

Plaintiff,

v.

KAISER PERMANENTE, a California
Corporation; SERVICE EMPLOYEES
INTERNATIONAL-UNITED
HEALTHCARE WORKERS WEST (SEIU-
UHW), a California Union; and DOES 1-50,
inclusive,

Defendants.

Case No.:

COMPLAINT FOR:

- 1. FAILURE TO PREVENT
DISCRIMINATION AND
RETALIATION IN THE
WORKPLACE;**
- 2. RETALIATION;**
- 3. VIOLATION OF CALIFORNIA LABOR
CODE §1102.5;**
- 4. BREACH OF COLLECTIVE
BARGAINING AGREEMENT 29 U.S.C
184 and 29 U.S.C. 185 *et.seq.*;**
- 5. BREACH OF DUTY OF FAIR
REPRESENTATION 29 U.S.C. 185
et.seq.;**
- 6. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY**

DEMAND FOR JURY TRIAL

I. JURISDICTION

This Complaint seeks relief for breach of collective bargaining agreement and related state laws. This Court has jurisdiction of these claims under 29 U.S.C § 185 (a) (§ 301 of the Labor Management Relations Act of 1947), providing for jurisdiction over claims from violations of

collective bargaining agreements. The claims asserted arising under state law, and form part of a single case or controversy within the meaning of Article III of the Constitution of the United States and are within this Court's supplemental jurisdiction under 28 U.S.C. § 1367.

II. VENUE

The venue is appropriate in this Court under 28 U.S.C. § 1391(b) as all of the acts and events giving rise to the claim occurred within this judicial district, and the defendant's place of business is located within this judicial district.

III. PARTIES

1. Plaintiff ARTHUR GUTIERREZ ("Plaintiff") is and at all times relevant herein was, an individual residing in the City of Vacaville, County of Solano, State of California.

2. Defendant KAISER PERMANENTE OF VACAVILLE ("KAISER") is, and at all relevant times herein was, a corporation organized and existing under the laws of California, and is qualified to business and is doing business in the County of Solano, State of California.

3. Defendant SERVICE EMPLOYEES INTERNATIONAL UNION-UNITED HEALTHCARE WORKERS WEST (hereinafter "SEIU-UHW") is a California union consisting of over 90,000 hospital workers.

4. The true names and capacities of defendants sued herein as DOES 1 through 50 are unknown to Plaintiff who therefore sues these Defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes, and thereon alleges that each of these fictitiously named Defendants is responsible in some manner, jointly and/or severally, for the occurrences herein alleged, and that Plaintiff's injuries.

5. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned the defendants, and each of them, were the principals, agents, servants, employees, joint-ventures and partners of their co-defendants, and that as aforesaid, when acting as co-defendants, were jointly, severally and/or together with their co-defendants, liable for the injury to Plaintiff as hereinafter alleged. Plaintiff is also informed and believes and upon such information alleges that the defendants and each of them authorized and/or ratified the conduct of each and every one of the co-defendants, as complained of herein.

6. All conditions precedent (exhaustion of administrative remedies) to the jurisdiction of SEIU-UHW have been met. Plaintiff timely filed charges against Defendants KAISER and SEIU-UHW with the California Department of Fair Employment and Housing (“DFEH”) and the Equal Employment Opportunity Commission (“EEOC”) and received “Right to Sue” notices.

IV. STATEMENT OF FACTS

7. Plaintiff was employed as a Patient Care Technician at KAISER for 12 years; from approximately September 21, 2003, through December 18, 2015.

8. Plaintiff has been a union member in good standing with SEIU-UHW since approximately 2003.

9. Kaiser Permanente of Northern and Southern California and SEIU-UHW had a Collective Bargaining Agreement (“CBA”) which was effective from approximately 2012 to September 30, 2016. Plaintiff’s employment with KAISER was subject to the CBA.

10. In September 2014, Plaintiff began working in KAISER's Outpatient Unit. He worked alongside Erica Ulshoeffer, ("ULSHOEFFER") a registered nurse. USLSHOEFFER is an African-American woman. Plaintiff and ULSHOEFFER also worked with another registered nurse, Patricia Adams ("ADAMS"). ADAMS is a Caucasian woman

11. In approximately May 2015, Plaintiff was working with ULSHOEFFER and ADAMS in a patient room at KAISER, when he witnessed ADAMS forcefully and intentionally push ULSHOEFFER out of her way. Based on Plaintiff's previous interactions with ADAMS, he believes that ADAMS is prejudiced against non-Caucasian employees. He believes that ADAMS assaulted ULSHOEFFER because ULSHOEFFER is African-American.

12. In May 2015, Plaintiff became aware that ULSHOEFFER made a complaint to her and Plaintiff's KAISER supervisor, William Bordessa ("BORDESSA") regarding the assault on her by ADAMS.

13. After ULSHOEFFER had filed her complaint in May 2015, Plaintiff believed that BORDESSA would follow KAISER's protocols regarding workplace harassment and workplace violence and not schedule him and ULSHOEFFER to work alongside ADAMS. However, BORDESSA continued to schedule the three employees to work together on the same shift.

1 14. In approximately June 2015, Ramon (last name currently unknown), an employee of
2 KAISER's Security Services Department, interviewed Plaintiff about the assault. Plaintiff told Ramon
3 that he saw ADAMS intentionally push ULSHOEFFER.

4 15. In approximately June or July 2015, BORDESSA also interviewed Plaintiff about the
5 assault. Plaintiff complied with KAISER's "*Principles of Responsibilities-Kaiser Permanente's Code*
6 *of Conduct*" sections 7.31 and 7.3.2 and told BORDESSA that he saw ADAMS intentionally push
7 ULSHOEFFER. Plaintiff was concerned that if he did not tell BORDESSA what he had witnessed,
8 ADAMS would continue to assault and harass ULSHOEFFER.

9 16. Plaintiff does not recall KAISER disciplining ADAMS for her assault on
10 ULSHOEFFER. ADAMS continues to work at KAISER.

11 17. In approximately June or July 2015, shortly after Plaintiff was questioned about the
12 assault, ADAMS falsely accused Plaintiff of sexual harassment.

13 18. On or around August 3, 2015, Plaintiff was called into a meeting with a KAISER
14 Human Resources EEO Investigation Specialist, Robert Hill ("HILL") a SEIU-UHW union shop
15 steward, and Lori Pimentel ("PIMENTEL") a SEIU-UHW union contract specialist, to discuss the
16 sexual harassment claim. HILL and PIMENTEL also work for KAISER. During the meeting,
17 Plaintiff was asked a series of misleading and confusing questions that he could not understand.

18 19. Plaintiff told the meeting attendees that he had never engaged in any sexually
19 inappropriate conduct towards ADAMS or any other KAISER employees.

20 20. Plaintiff believes that ADAMS concocted the fraudulent sexual harassment claims
21 against him as retaliation for telling BORDESSA that he had seen her intentionally push
22 ULSHOEFFER.

23 21. Plaintiff asked the KAISER Human Resources EEO Investigation Specialist to show
24 him the evidence ADAMS provided to support her claim. At no time during the August 3, 2015,
25 meeting did KAISER's Human Resources EEO Investigation Specialist present any evidence to
26 Plaintiff to substantiate ADAMS' claim, thus violating the CBA.

27 22. Between August 4, 2015, through December 17, 2015, Plaintiff was not contacted by
28 any additional KAISER employees regarding ADAMS' sexual harassment claim against him.

1 23. Plaintiff was never put on administrative leave pending an investigation of ADAMS'
2 sexual harassment claim against him.

3 24. Between August 4, 2015, through December 17, 2015, BORDESSA continued to
4 schedule Plaintiff and ADAMS to work together in violation of the CBA and KAISER's "*Principles*
5 *of Responsibilities-Kaiser Permanente's Code of Conduct*" despite ADAMS' false claim of sexual
6 harassment against Plaintiff. Thus, Plaintiff believed that KAISER found ADAMS' sexual
7 harassment claim false.

8 25. On or around December 18, 2015, Plaintiff was called into a meeting with BORDESSA
9 and a representative of KAISER's Human Resources Department. Plaintiff brought BALIBREA to
10 the meeting. During the meeting, BORDESSA informed him that Kaiser was terminating his
11 employment. BORDESSA gave Plaintiff a letter of termination ("KAISER LETTER") dated
12 December 18, 2015.

13 26. The KAISER LETTER stated that Plaintiff was, "interviewed by an EEO Investigation
14 Specialist regarding allegations of unwelcome, offensive contact that, although denied by you, were
15 found to be substantiated after a thorough investigation. Your conduct is in direct violation to Kaiser
16 Permanente's policy on harassment-free work environment section 5.1.2 and 5.2.3.2 and the Principles
17 of Responsibility section 7.2."

18 27. During the meeting, Plaintiff asked BORDESSA to see the evidence that allegedly
19 substantiated the termination. BORDESSA violated the CBA when he refused to provide Plaintiff
20 with the evidence.

21 28. Plaintiff also requested a copy of KAISER's policies that were referenced in the
22 KAISER LETTER. Again, BORDESSA refused. BORDESSA's refusal to provide Plaintiff with
23 the copy of KAISER's policies was a violation of the CBA.

24 29. Plaintiff believes KAISER terminated his employment to retaliate against him for
25 telling BORDESSA that he had witnessed ADAMS intentionally push ULSHOEFFER in
26 approximately May 2015.

27 30. Plaintiff believes that KAISER he was discriminated retaliated against and wrongfully
28 terminated from KAISER due to his race and national origin. Plaintiff alleges that he and

1 ULSHOEFFER, two non-Caucasian KAISER employees, were subjected to termination after they
2 reported the assault by ADAMS, a Caucasian KAISER employee. ADAMS was not subjected to
3 discipline for the assault and continues to work at KAISER.

4 31. After the meeting on December 18, 2015, Plaintiff met with PIMENTEL to file a
5 grievance against KAISER. Per the CBA, PIMENTEL's role as contract specialist is to "assist
6 [Union] stewards in the administration of the Collective Bargaining Agreement...including but not
7 limited to processing grievances ...attending investigatory meetings."

8 32. On December 28, 2015, PIMENTEL filed Plaintiff's SEIU-UHW grievance against
9 KAISER for wrongful termination. PIMENTEL did not give Plaintiff an opportunity to review the
10 grievance or provide Plaintiff with a copy of the grievance before she filed the document.

11 33. In approximately late December 2015 or early 2016, ULSHOEFFER was terminated
12 from her employment at KAISER.

13 34. On or around February 2016, Plaintiff wrote BORDESSA a letter requesting copies of
14 KAISER's policies and the evidence from the EEO Investigation that led to his termination.
15 BORDESSA did not respond to Plaintiff's letter.

16 35. On or around March 2016, Plaintiff became concerned that his SEIU-UHW grievance
17 had not been resolved in a timely manner per the CBA. Plaintiff filed charges of discrimination and
18 retaliation against KAISER with the Equal Employment Opportunity Commission ("EEOC") and the
19 DFEH. Plaintiff received 'right to sue letters' from both agencies. Plaintiff also filed a charge
20 of discrimination and retaliation with the DFEH against SEIU-UHW.

21 36. On or around March 3, 2016, BALIBREA emailed Ronetta Morgan ("MORGAN"),
22 a KAISER ELRC representative, "I would like the following information (1) All evidence relied upon
23 by employer to support the termination. (2) Signed statement of individuals interviewed that were
24 involved in the incident. (3) Summary of the investigation report that indicates the findings,
25 conclusions, witness list, exhibits and evidence list." MORGAN emailed back, "I have confirmed that
26 the investigation report is privileged and will not be provided."

27 37. On March 23, 2016, Plaintiff and BALIBREA appeared at a Step One hearing,
28 the first step in the grievance procedure between SEIU-UHW and KAISER. Neither Plaintiff

1 nor BALIBREA was provided with the evidence that KAISER claimed substantiated ADAMS'
2 sexual harassment claims against Plaintiff and led to Plaintiff's termination.

3 38. Per the CBA, KAISER was to notify Plaintiff within ten calendar days once a Step One
4 resolution is reached. Plaintiff and BALIBREA did not receive a response within the CBA time
5 period. Plaintiff repeatedly asked BALIBREA for KAISER's response.

6 39. BALIBREA sent numerous emails to Emily Millar ("MILLAR") requesting a Step One
7 response. MILLAR is a KAISER labor specialist who was assigned to Plaintiff's grievance.
8 BALIBREA also sent numerous emails to PIMENTEL requesting a response.

9 40. Plaintiff was not notified of the Step One decision until approximately August 2016.
10 Plaintiff immediately appealed and submitted a formal grievance for a Step Two hearing.

11 41. On September 27, 2016, Plaintiff and BALIBREA appeared at the Step Two meeting.
12 Again, neither Plaintiff nor BALIBREA was provided with the evidence that KAISER claims
13 substantiated ADAMS' sexual harassment allegations against Plaintiff and led to Plaintiff's
14 termination.

15 42. Per the CBA, parties in a Step Two action should attempt to resolve the grievance
16 within ten days of the appeal submittal. If a resolution cannot be made within that time frame, a
17 grievance response shall be given ten calendar days thereafter.

18 43. The Step Two meeting occurred over six months ago, and Plaintiff still has not
19 received a response from KAISER. Both BALIBREA and Plaintiff have sent numerous emails to
20 PIMENTEL and MILLAR requesting a response. Neither PIMENTEL nor MILLAR has provided
21 Plaintiff with a response.

22 44. Per the CBA, the goal of the parties to a grievance is to resolve the grievance within
23 ninety (90) days of the filing of the grievance. Plaintiff's grievance was filed sixteen (16) months ago,
24 and it still has not been resolved.

25 45. In late 2016-early 2017, ULSHOEFFER settled her lawsuit against KAISER for
26 wrongful termination.

27 46. Plaintiff received conflicting verbal information from SEIU-UHW as to
28 whether it was still representing him in his grievance. SEIU-UHW has not provided Plaintiff

1 with any written updates about his grievance.

2 47. SEIU-UHW's conflicting statements as to whether it was still representing Plaintiff in
3 his grievance against KAISER, led Plaintiff to seek legal counsel and file this lawsuit.

4 **V. FIRST CAUSE OF ACTION**

5 **Failure to Take All Reasonable Steps to Prevent Discrimination and Retaliation in Work
6 Environment in violation of FEHA**

7 **(Against All Defendants and DOES 1-50, inclusive)**

8 48. Plaintiff repeats and re-alleges paragraphs 1 through 47 above, and incorporates them
9 herein by reference as though set forth in full.

10 49. At all times mentioned in this Complaint, the California Fair Employment and Housing
11 Act ("FEHA"), *Government Code* §§ 12940 *et seq.*, was in full force and effect and was binding on
12 Defendants, and each of them. These sections required Defendants, and each of them, to take all
13 reasonable steps to maintain a workplace environment free from unlawful discrimination, harassment,
14 and retaliation.

15 50. FEHA-*Government Code* §§ 12940 *et seq.*, prohibit employers from discriminating and
16 retaliating against any individual on the grounds of race, religious creed, color, national origin,
17 ancestry, physical disability, mental disability, medical condition, genetic information, marital status,
18 sex, gender, gender identity, gender expression, age, sexual orientation, or military and
19 veteran status.

20 51. Defendants, and each of them, and DOES 1-50, inclusive embarked on a
21 campaign of discrimination and retaliation in violation of FEHA-*Government Code* §§ 12940 *et seq.*
22 against Plaintiff after he was questioned by BORDESSA about ADAMS' assault upon
23 ULSHOEFFER. Plaintiff stated that he believed ADAMS' assaulted ULSHOEFFER because
24 ULSHOEFFER is a black female. Based on Plaintiff's previous interactions with ADAMS, he
25 believes that ADAMS is prejudiced against non-Caucasian employees.

26 52. KAISER continued to schedule Plaintiff and ADAMS to work together, in
27 violation of the CBA, Kaiser's "*Principles of Responsibilities-Kaiser Permanente's*
28 *Code of Conduct*," and KAISER's workplace harassment and workplace safety procedures,
which created a hostile work environment.

53. Plaintiff believes KAISER made ADAMS aware of his statements to BORDESSA. ADAMS later retaliated against Plaintiff by filing a false complaint of sexual harassment against him. KAISER subsequently terminated Plaintiff based on ADAMS' fraudulent claims.

54. SEIU-UHW knew or should have known that Plaintiff was experiencing discrimination and retaliation at KAISER in violation of FEHA-*Government Code* §§ 12940 *et seq.* SEIU-UHW failed to prevent those violations or attempt to remedy them.

55. By engaging in the above-referenced acts and omissions, Defendants, and each of them, failed to take all reasonable steps to maintain a workplace environment free from unlawful discrimination, harassment and retaliation in violation of FEHA-*Government Code* §§ 12940 *et seq.*

56. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has sustained and continues to sustain economic damages in earnings and other employment benefits in an amount according to proof.

57. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has sustained and continues to sustain non-economic damages and emotional distress, pursuant to Civ. Code § 3333 including but not limited to, loss of sleep, anxiety, tension, depression, and humiliation. The exact nature and extent of said damages are presently unknown to Plaintiff, who will pray leave of court to assert the same when they are ascertained.

58. Plaintiff has sustained general and special damages within the jurisdictional limits of this Court.

59. The aforementioned acts of Defendants were willful, wanton, malicious, intentional, oppressive and despicable and were done in willful and conscious disregard of the rights, welfare, and safety of Plaintiff, and were done by managerial agents and employees of Defendants. Such conduct subjected Plaintiff to cruel and unjust hardship, was done with reckless disregard constituting gross negligence, and was an intentional misrepresentation and/or concealment of material facts known to Defendants, and each of them with the intent or reckless disregard to deprive Plaintiff of property, legal rights, or to otherwise cause injury, such as to constitute malice, oppression and/or fraud under Civ. Code § 3294. Such conscious disregard thereby justifies the awarding of punitive and exemplary

1 damages in an amount sufficient to punish Defendants or to set an example of Defendants to prevent
2 such conduct by others in an amount to be determined at the time of trial.

3 60. Because of the discriminatory acts of Defendants as alleged herein, Plaintiff is entitled
4 to reasonable attorneys' fees, expert witness fees and costs of said suit as specifically provided in
5 Govt. Code § 12965(b) and Code Civ. Proc. § 1021.5.

6 WHEREFORE, Plaintiff prays for judgment against Defendants, as hereinafter set forth.

7 **VI. SECOND CAUSE OF ACTION**
8 **Violation of FEHA-Government Code§ 12940 et seq.,**
9 **(Against All Defendants and DOES 1-50, inclusive)**

10 61. Plaintiff repeats and re-alleges paragraphs 1 through 60 above, and incorporates them
11 herein by reference as though set forth in full.

12 62. At all times mentioned in this Complaint, FEHA-Government Code§ 12940 et seq.,
13 were in full force and effect and was binding on Defendants, and each of them. These sections
14 required Defendants, and each of them, to refrain from retaliating against Plaintiff because he
15 participated in protected activities or taking adverse employment actions against him for
16 engaging in a protected activity.

17 63. FEHA-Government Code§ 12940 et seq., prohibit employers from discriminating and
18 retaliating against any individual on the grounds of race, religious creed, color, national origin,
19 ancestry, physical disability, mental disability, medical condition, genetic information, marital
20 status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran
21 status.

22 64. Plaintiff participated in the protected activity of reporting unlawful discrimination
23 and workplace harassment and violence after witnessing ADAMS assault ULSHOEFFER.

24 65. KAISER subjected Plaintiff to retaliation by continuing to schedule Plaintiff and
25 ADAMS to work together, violation of the CBA, KAISER's "Principles of Responsibilities-Kaiser
26 Permanente's Code of Conduct," and KAISER's workplace harassment and workplace safety
27 procedures, which created a hostile work environment.

28 66. Plaintiff believes KAISER made ADAMS aware of his statements to BORDESSA.

1 ADAMS later retaliated against Plaintiff by filing a false complaint of sexual harassment against
2 him.

3 67. KAISER discriminated and retaliated against Plaintiff by failing to conduct a fair and
4 thorough investigation of ADAMS' claims.

5 68. KAISER retaliated against Plaintiff by terminating his employment based on ADAMS'
6 fraudulent and unsubstantiated claims.

7 69. Plaintiff believes that he was discriminated and retaliated against due to his race and
8 national origin. Plaintiff alleges that he and ULSHOEFFER, two non-Caucasian KAISER employees,
9 were subjected to termination after they reported the assault by ADAMS, a Caucasian KAISER
10 employee. ADAMS was not subjected to discipline for the assault and continues to work at KAISER.

11 70. KAISER further retaliated against Plaintiff when KAISER refused to show Plaintiff the
12 evidence that allegedly substantiated his termination.

13 71. SEIU-UHW knew or should have known that Plaintiff was experiencing discrimination
14 and retaliation at KAISER. SEIU-UHW failed to prevent those violations or attempt to remedy them.

15 72. By engaging in the above-referenced acts and omissions, Defendants, and each of
16 them, discriminated and retaliated against Plaintiff. Defendants and each of them violated FEHA-
17 *Government Code* § 12940 *et seq.*

18 73. By engaging in the above-referenced acts and omissions, Defendants, and each of
19 them, discriminated against Plaintiff as he was subjected to discipline and ADAMS was not.
20 Defendants, and each of them violated FEHA-*Government Code* § 12940 *et seq.*

21 74. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has
22 sustained and continues to sustain economic damages in earnings and other employment benefits in an
23 amount according to proof.

24 75. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has
25 sustained and continues to sustain non-economic damages and emotional distress, pursuant to Civ.
26 Code § 3333 including but not limited to, loss of sleep, anxiety, tension, depression, and humiliation.
27 The exact nature and extent of said damages are presently unknown to Plaintiff, who will pray leave of
28 court to assert the same when they are ascertained.

76. Plaintiff has sustained general and special damages within the jurisdictional limits of this Court.

77. The aforementioned acts of Defendants were willful, wanton, malicious, intentional, oppressive and despicable and were done in willful and conscious disregard of the rights, welfare, and safety of Plaintiff, and were done by managerial agents and employees of Defendants. Such conduct subjected Plaintiff to cruel and unjust hardship, was done with reckless disregard constituting gross negligence, and was an intentional misrepresentation and/or concealment of material facts known to Defendants, and each of them with the intent or reckless disregard to deprive Plaintiff of property, legal rights, or to otherwise cause injury, such as to constitute malice, oppression and/or fraud under Civ. Code § 3294. Such conscious disregard thereby justifies the awarding of punitive and exemplary damages in an amount sufficient to punish Defendants or to set an example of Defendants to prevent such conduct by others in an amount to be determined at the time of trial.

78. Because of the discriminatory acts of Defendants as alleged herein, Plaintiff is entitled to reasonable attorneys' fees, expert witness fees and costs of said suit as specifically provided in Govt. Code § 12965(b) and Code Civ. Proc. § 1021.5.

WHEREFORE, Plaintiff prays for judgment against Defendants, as hereinafter set forth.

VII. THIRD CAUSE OF ACTION

**Violation of Labor Code § 1102.5- California Whistleblower Protection Act
(Against All Defendants and DOES 1-50, inclusive)**

79. Plaintiff repeats and re-alleges paragraphs 1 through 78 above, and incorporates them herein by reference as though set forth in full.

89. Plaintiff participated in the protected activity of disclosing unlawful discrimination and workplace harassment and violence to KAISER after witnessing ADAMS assault ULSHOEFFER.

81. Plaintiff had reasonable cause to believe that the information he provided to KAISER disclosed violations of FEHA and violations of the CBA, KAISER's "*Principles of Responsibilities-Kaiser Permanente's Code of Conduct*," and KAISER's workplace harassment and workplace safety procedures

1 82. California Labor Code§1102.5 provides protection against employer retaliation to
2 “whistleblowers”, employees who disclose information to a person with authority over the employee
3 with the authority to investigate, discover or correct the violation or non-compliance where the
4 employee has reasonable cause to believe that the information discloses a violation of a state or federal
5 statute, a violation or non-compliance with a local, state or federal rule or regulation, or with reference
6 to employee safety or health, unsafe working conditions or work practices in the employee’s
7 employment or place of employment.

8 83. KAISER retaliated against Plaintiff by continuing to schedule Plaintiff and ADAMS to
9 work together, in violation of violation of the CBA, KAISER’s “*Principles of Responsibilities-Kaiser*
10 *Permanente’s Code of Conduct*,” and KAISER’s workplace harassment and workplace safety
11 procedures.

12 84. Plaintiff believes KAISER made ADAMS aware of his statements. ADAMS later
13 retaliated against Plaintiff by filing a false complaint of sexual harassment against him.

14 85. KAISER retaliated against Plaintiff by failing to conduct a fair and thorough
15 investigation of ADAMS’ claims.

16 86. KAISER retaliated against Plaintiff by terminating his employment based
17 on ADAMS’ fraudulent and unsubstantiated claims.

18 87. KAISER further retaliated against Plaintiff when KAISER refused to show Plaintiff the
19 evidence that allegedly substantiated the termination.

20 88. SEIU-UHW knew or should have known that Plaintiff was experiencing retaliation at
21 KAISER. SEIU-UHW failed to prevent this violation or attempt to remedy it.

22 89. By engaging in the above-referenced acts and omissions, Defendants, and each of
23 them, engaged in retaliation against Plaintiff in violation of California Labor Code§ 1102.5.

24 90. As a proximate result of Defendants’ discriminatory actions against Plaintiff, as alleged
25 above, Plaintiff has been harmed in that he has suffered the loss of the wages, salary, benefits, and
26 additional amounts of money he would have received if the Plaintiff had not been retaliated against by
27 the Defendants. Because of such retaliation and consequent harm, Plaintiff has suffered damages in an
28 amount according to proof.

1 91. As a further and proximate result of Defendants' conduct against Plaintiff, as alleged
2 above, Plaintiff has been harmed in that Plaintiff has suffered the intangible loss of such employment-
3 related opportunities such as further experience in the position. Because of such retaliation and
4 consequent harm, Plaintiff has suffered such damages in an amount according to proof. Further,
5 Plaintiff will continue to suffer these damages to an indefinite date in the future.

6 92. The above-recited actions of Defendants were done with malice, fraud, or oppression,
7 and in reckless disregard of the Plaintiff's rights under California Labor Code § 1102.5

8 93. No adequate remedy exists at law for the damages suffered by Plaintiff herein. Insofar
9 as the employment opportunity that Defendants have denied to Plaintiff cannot be secured absent
10 injunctive relief. If this court does not grant injunctive relief of the type and for the purpose specified
11 below, Plaintiff will suffer irreparable injury. Therefore, Plaintiff requests the following injunctive
12 relief: Requiring KAISER to place Plaintiff back in his position and to require KAISER to develop a
13 program for all of its managers and supervisory employees to recognize discrimination and/or
14 retaliation in the workplace, conduct fair and impartial investigations and comply FEHA and develop
15 strategies to eliminate discrimination and retaliation in the workplace.

16 94. Because of Defendants' discriminatory, and retaliatory acts as alleged herein, Plaintiff
17 is entitled to reasonable attorneys' fees and costs of said suit as provided by Govt. Code § 12965(b)
18 and other statutes.

19 WHEREFORE, Plaintiff prays for judgment against Defendants, as hereinafter set forth.

20
21 **VIII. FOURTH CAUSE OF ACTION**

22 **Breach of Collective Bargaining Agreement 29 U.S.C. § 184**
23 **Labor Management Relations Act; 29 U.S.C. §185, *et. seq.***
(Against all Defendants and DOES 1-50, inclusive)

24 95. Plaintiff repeats and re-alleges paragraphs 1 through 94 above, and incorporates them
25 herein by reference as though set forth in full.

26 96. Jurisdiction for this claim is invoked pursuant to §301 of the Labor Management
27 Relations Act, as amended, 29 U.S.C. § 185.
28

97. Kaiser Permanente of Northern and Southern California and SEIU-UHW had a Collective Bargaining Agreement (“CBA”) which was effective from approximately 2012 to September 30, 2016. Plaintiff’s employment with KAISER was subject to the CBA.

98. Plaintiff reasonably relied upon the protocols and procedures of the CBA throughout his employment with KAISER.

99. Said CBA provided, inter alia, that no employee shall be discharged without just cause, and also established a procedure for grievances.

100. By the aforementioned acts and failures. Defendants KAISER, SEIU-UHW and DOES 1-50, inclusive, breached the terms of the CBA which was created for the benefit of Plaintiff and other such employees.

101. As a direct and proximate result of the breach of the CBA pursuant to 29 U.S.C. § 184, by each of these Defendants, Plaintiff has suffered economic and non-economic damages according to proof, including the loss of past and future wages and benefits therewith.

WHEREFORE, Plaintiff prays for judgment against Defendants, as hereinafter set forth.

IX. FIFTH CAUSE OF ACTION

Breach of Duty of Fair Representation

Labor Management Relations Act; 29 U.S.C. §185, et. seq.

(Against Defendant SEIU-UHW and DOES 1-50, inclusive)

102. Plaintiff repeats and re-alleges paragraphs 1 through 101 above, and incorporates them herein by reference as though set forth in full.

103. Jurisdiction for this claim is invoked pursuant to Section 301 of the Labor Management Relations Act, as amended, 29 U.S.C. § 185.

104. At all times relevant herein, the SEIU-UHW were and are labor organizations engaged in business in the State of California, maintaining duly authorized officers or agents engaged in representing or acting for employee members, including Plaintiff, in Solano County, State of California, within the judicial district of this Court.

105. At all times pertinent herein, SEIU-UHW was and is a labor organization as defined by Section 2(5) of the Labor Management Relations Act, 29 U.S.C. § 152, and has been and is the statutory exclusive collective bargaining representative of Plaintiff pursuant to 29 U.S.C. §159.

1 106. At all times pertinent herein, Plaintiff was a duly authorized member in good standing
2 of the SEIU-UHW and was employed by KAISER, located in the County of Solano.

3 107. At all times relevant herein, the CBA was and is in effect between the SEIU-UHW
4 and KAISER, covering Plaintiff and other such employees. Said CBA provided, inter alia, that no
5 employee shall be discharged without just cause, and also established a procedure for grievances.

6 108. Plaintiff's union contract specialist, PIMENTEL filed a grievance on behalf of Plaintiff
7 against KAISER for wrongful termination on December 28, 2015.

8 109. PIMENTEL did not give Plaintiff an opportunity to review the grievance before it was
9 filed.

10 110. Plaintiff attended a Step One meeting with SEIU-UHW and KAISER on March 23,
11 2016. Plaintiff did not receive a Step One response within the time frame required by the CBA.

12 111. The issues in his grievance were not resolved at the Step One meeting. Plaintiff
13 subsequently appealed for a Step Two meeting.

14 112. Plaintiff attended a Step Two meeting with SEIU-UHW and KAISER on September
15 27, 2016. Plaintiff nor BALIBREA never received a Step Two grievance response from SEIU-UHW
16 or KAISER after the meeting, a violation of the CBA.

17 113. On numerous occasions, Plaintiff and BALIBREA requested information via emails
18 and phone calls from SEIU-UHW representatives, including PIMENTEL regarding the Step Two
19 grievance response, Plaintiff's grievance status and the resolution of Plaintiff's grievance.

20 114. SEIU-UHW representatives, including PIMENTEL, either failed to respond or
21 provided misleading and inconsistent information to Plaintiff and BALIBREA regarding Plaintiff's
22 grievance status.

23 115. To date, Plaintiff has not received any additional written information from SEIU-UHW
24 regarding its representation of his grievance.

25 116. Per the CBA, the joint goal of SEIU-UHW is to resolve grievances within 90 days.

26 117. Plaintiff's grievance was filed almost a year and a half ago. To date, there has
27 been no resolution of his grievance.
28

1 118. SEIU-UHW owed and owe a duty of fair representation to Plaintiff and to all its
2 members employed by and subject to said collective bargaining agreement, and all others
3 represented by said Defendants.

4 119. The duty of fair representation is a duty to represent Plaintiff and all other such
5 employees and union members in the administration of said agreement in a manner which is not
6 arbitrary, discriminatory, nor in bad faith, because the SEIU- UHW are, by statute, the exclusive
7 collective bargaining representatives of such persons.

8 120. At all times pertinent herein, SEIU-UHW breached its duty of fair representation to
9 Plaintiff by arbitrarily and discriminatorily, if not in bad faith, failing and refusing to represent
10 Plaintiff fairly with respect to the breaches of the CBA described herein.

11 121. As a direct and proximate result of the aforesaid breach of the duty of fair
12 representation by SEIU-UHW, Plaintiff has suffered damages according to proof.

13 122. As a further direct and proximate result of each SEIU-UHWs breach of the duty of fair
14 representation, Plaintiff was compelled to retain legal counsel to prosecute the instant action, in an
15 effort to secure his rights pursuant to the CBA. Plaintiff is, therefore, entitled to reasonable attorneys'
16 fees and costs of suit

17 WHEREFORE, Plaintiff prays for judgment against Defendants, as hereinafter set forth.

18
19 **X. SIXTH CAUSE OF ACTION**
20 **Wrongful Termination in Violation of Public Policy**
21 **(Against KAISER and DOES 1-50, inclusive)**

22 123. Plaintiff repeats and re-alleges paragraphs 1 through 122 above, and incorporates them
23 herein by reference as though set forth in full.

24 124. At all times mentioned herein, the public policy of the State of California, as codified,
25 expressed and mandated in Govt. Code § 12940 et seq. was to prohibit employers from discriminating
26 and retaliating against any individual on the grounds of race, religious creed, color, national origin,
27 ancestry, physical disability, mental disability, medical condition, genetic information, marital status,
28 sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

1 125. Plaintiff believes that he was discriminated and retaliated against due to his race and
2 national origin. Plaintiff alleges that he and ULSHOEFFER, two non-Caucasian KAISER employees,
3 were subjected to termination after they reported the assault by ADAMS, a Caucasian KAISER
4 employee. ADAMS was not subjected to discipline for the assault and continues to work at KAISER.

5 126. This public policy of the State of California is designed to protect all employees and to
6 promote the welfare and well-being of the community at large and as set forth in other statutes, codes,
7 regulations, constitutional provisions, and laws of this State. Accordingly, the actions of Defendants,
8 in terminating Plaintiff on the grounds alleged and described herein were wrongful and in
9 contravention violating the express public policy of the State of California, to wit, the policy set forth
10 in Govt. Code §§ 12940 et seq., and the laws and regulations promulgated thereunder.

11 127. As a direct result of the discriminatory, retaliatory acts, as hereinbefore alleged, by
12 Defendants, Plaintiff was terminated. The discriminatory acts by Defendants and Plaintiff's
13 termination violated public policy. Defendants, and each of them, knew or reasonably should have
14 known of the intolerable discriminatory acts and conditions and their impact on Plaintiff and other
15 employees similarly situated and could have remedied the situation.

16 128. By the aforesaid acts and conduct of Defendants have been directly and legally caused
17 to suffer actual damages pursuant to Civ. Code § 3333 including, but not limited to, loss of earnings
18 and future earning capacity, medical and related expenses for care and procedures both now and in the
19 future, attorneys' fees and other pecuniary loss not presently ascertained, for which Plaintiff will seek
20 leave of court to amend when ascertained.

21 129. As a further direct and legal result of the acts and omissions of Defendants, Plaintiff
22 has been caused, and did suffer, and continues to suffer severe and permanent emotional and mental
23 emotional distress and anguish, humiliation, embarrassment, fright, shock, pain, discomfort and
24 anxiety. The uncertainties and consequential financial loss and damages has compounded to produce
25 such distresses. The exact nature and extent of said injuries are presently unknown to Plaintiff, who
26 will pray leave of court to assert the same when they are ascertained.

27 130. Plaintiff has been generally damaged in an amount within the jurisdictional limits of
28 this Court.

131. The aforementioned acts of Defendants were willful, wanton, malicious, intentional, oppressive and despicable and were done in willful and conscious disregard of the rights, welfare, and safety of Plaintiff, and were done by managerial agents and employees of Defendants. Such conduct subjected Plaintiff to cruel and unjust hardship, was done with reckless disregard constituting gross negligence, and was an intentional misrepresentation and concealment of material facts known to Defendants, and each of them with the intent or reckless disregard to deprive Plaintiff of property, legal rights, or to otherwise cause injury, such as to constitute malice, oppression and/or fraud under Civ. Code § 3294. Such conscious disregard thereby justifies the awarding of punitive and exemplary damages in an amount sufficient to punish Defendants or to set an example of Defendants to prevent such conduct by others in an amount to be determined at the time of trial.

132. Because of the discriminatory acts of Defendants, as alleged herein, Plaintiff is entitled to reasonable attorneys' fees, expert witness fees and costs of said suit as specifically provided in Govt. Code § 12965(b) and Code Civ. Proc. § 1021.5. Plaintiff is also entitled to treble damages pursuant to Civ. Code § 3345.

WHEREFORE, Plaintiff prays for judgment against Defendants, as hereinafter set forth.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF PRAYS FOR JUDGMENT against all Defendants, and each of them, and DOES 1-50, jointly and severally, as follows:

1. For actual damages according to proof;
2. For compensatory damages as permitted by law;
3. For consequential damages as permitted by law;
4. For statutory damages according to law;
5. For attorney's fees, expert costs and costs of suit pursuant to Government Code section 12965(b) and Code Civil Procedure section 1021.5;
6. For money judgment for pain and anguish and emotion distress according to proof;
7. For injunctive relief;
8. For loss of earnings according to proof;

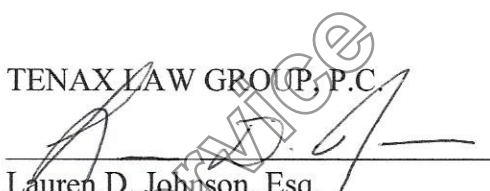
9. For punitive damages;
10. For prejudgment and post judgement interest; and
11. For such other relief as the court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial.

Date: April 27, 2017

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