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DAVID GUTIERREZ

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SOLANO

DAVID GUTIERREZ,

Plaintiff,

v.

THE PERMANENTE MEDICAL GROUP,
INC.; KAISER FOUNDATION HOSPITALS;
KAISER FOUNDATION HEALTH PLAN,
INC., d.b.a. KAISER PERMANENTE; and
DOES 1 through 50, inclusive,

Defendants.

FILED
Clerk of the Superior Court

JUN 08 2017

By

G. Wink

DEPUTY CLERK

#475 - CMFF 320852

ASSIGNED TO
JUDGE **MICHAEL MATTICE**
FOR ALL PURPOSES

Case No:

FCS 049037

PLAINTIFF'S COMPLAINT FOR DAMAGES:

1. Violation of Health & Safety Code § 1278.5;
2. Violation of Labor Code §§ 98.6 & 1102.5;
3. Violation of Labor Codes §§ 6310 & 6311;
4. Adverse Action in Violation of Public Policy;
5. Disability Discrimination:
Gov. Code § 12940, subd. (a).
6. Failure to Accommodate:
Gov. Code § 12940, subd. (m)
7. Failure to Engage in Interactive Process:
Gov. Code § 12940, subd. (n)
8. Retaliation in Violation of FEHA:
Gov. Code § 12940, subd. (h);
9. Failure to Prevent Harassment,
Discrimination, and/or Retaliation:
Gov. Code § 12940, subd. (k);
10. Sex Discrimination:
Gov. Code § 12940, subd. (a).
11. Hostile Work Environment Harassment:
Gov. Code § 12940, subd. (j);
12. CFRA Interference:
Gov. Code § 12945.2

DEMAND FOR JURY TRIAL

Plaintiff's Complaint for Damages and Demand for Jury Trial
Gutierrez v. The Permanente Medical Group, Inc., et al.
Case No.:

Lawrance A. Bohm, Esq.
Kelsey K. Ciarimboli, Esq.
Justin L. Ward, Esq.

1025261

David Gutierrez, respectfully submits the instant Complaint for Damages and Demand for Jury Trial and alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff David Gutierrez (hereafter, "Gutierrez" or "Plaintiff") was at all times relevant to this action, a member of the nursing staff of the below named Defendants. Gutierrez received his Licensed Vocational Nursing ("LVN") training at Western Career College in Sacramento, California. During his training, Gutierrez completed an internship at Mercy San Juan Medical Center in Sacramento, California. He became an LVN after passing his licensing exam in 2003. While employed by Defendants, and at all times relevant to this action, Plaintiff resided in Solano County, California.

2. Defendants, The Permanente Medical Group, Inc., Kaiser Foundation Hospitals and Kaiser Foundation Health Plan, Inc., are collectively hereafter referred to as "Kaiser". Kaiser was at all times relevant to this action, a corporation in the State of California, with its principal place of business located at 1950 Franklin Street in Oakland, California. Kaiser is a California-based not-for-profit corporation that serves Solano County with two hospitals, two medical offices, and a health plan. Kaiser was at all times relevant to this action, a business corporation, operating medical facilities in Solano County, California. Kaiser was at all times relevant to this action an acute care hospital facility providing professional medical services through licensed California Physicians. Kaiser was at all times relevant to this action an employer as defined by Government Code section 12926, subdivision (d). Kaiser was at all times relevant to this action a "hospital facility" pursuant to Health & Safety Code section 1250, subdivision (a).

3. Venue and jurisdiction are proper because the majority of the events giving rise to this action took place in Solano County; Defendants were doing business in Solano County; Gutierrez's employment was entered into in Solano County; Gutierrez worked for Defendants in Solano County; the damages sought exceed the jurisdictional minimum of this Court; and the majority of witnesses reside in Solano County.

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1 4. Gutierrez is ignorant of the true names and capacities of the Defendants sued
2 herein as DOES 1 through 50. Defendants DOES 1 through 50 are sued herein under fictitious
3 names pursuant to Code of Civil Procedure Section 474. Gutierrez is informed and believes, and
4 on that basis alleges, that each Defendant sued under such fictitious names is in some manner
5 responsible for the wrongs and damages as alleged herein. Gutierrez does not at this time know
6 the true names or capacities of said Defendants, but prays that the same may be inserted herein
7 when ascertained.

8 5. At all times relevant, each and every Defendant was an agent and/or employee of
9 each and every other Defendant. In doing the things alleged in the causes of action stated herein,
10 each and every Defendant was acting within the course and scope of this agency or employment,
11 and was acting with the consent, permission, and authorization of each remaining Defendant. All
12 actions of each Defendant as alleged herein were ratified and approved by every other Defendant
13 or their officers or managing agents.

14 **STATEMENT OF FACTS**

15 6. On or about May 30, 2011, Gutierrez began working for Kaiser as a LVN as a
16 temporary employee.

17 7. On or about September 30, 2011, Gutierrez became an on-call employee. On-call
18 employees are called to work on an as-needed basis. The assignments, per Kaiser policy, are
19 based on seniority for the employees' position. Seniority is based on the employees' start dates.
20 On-call employees do not receive health or retirement benefits and are only paid for the hours
21 they work.

22 8. On or about August 23, 2012, Gutierrez was asked by his nurse supervisor, Darlene
23 Stell (hereinafter "Stell"), to mix chemotherapy medication from two different patient syringes
24 into one patient syringe to cover the change in the patient's medication order. Gutierrez refused,
25 telling Stell that it was not proper procedure. Stell mixed the medications herself and Gutierrez
26 told her that she knew better than that. He then walked away.

27 9. On or about September 20, 2012, Gutierrez observed Stell mix chemotherapy
28 medications again for the same patient. Stell then instructed Sonja May (hereinafter "May"),

1 a Registered Nurse ("RN"), on how to mix chemotherapy medications.

2 10. On or about October 12, 2012, Gutierrez observed Stell switch a patient's
3 chemotherapy medication, when she knew the medication was meant for another patient.

4 11. On or about October 22, 2012, Gutierrez had a meeting with his supervisor,
5 Eddrick Osborne (hereinafter "Osborne"). In the meeting, Osborne questioned Gutierrez about
6 his relationship with Mary Lou Blancaflor (hereinafter "Blancaflor"), another Kaiser employee.
7 Osborne wanted to know whether Gutierrez was dating and/or living with Blancaflor. Osborne
8 informed Gutierrez that there was a Kaiser policy that prevented dating between people who work
9 with each other or where one person has authority over the other. Gutierrez informed Osborne
10 that many co-workers were dating each other without discipline.

11 12. In or about November 2012, Gutierrez informed Osborne of Stell's illegal and
12 unsafe treatment of patients Gutierrez observed on August 23, September 20, and October 12,
13 2012. Osborne told Gutierrez that the conduct would be addressed, but the complaints were never
14 addressed to Gutierrez's knowledge.

15 13. On or about November 21, 2012, RN Debbie Lewis (hereinafter "Lewis") cursed
16 at staff, stating, "I'm tired of management telling me who the fuck will work in the Nurse Clinic!"
17 She then made conditional threats to Gutierrez, saying, "If anybody messes with my girls, I will
18 mess with them! And they will never forget it. I will take care of them. My brother's a Fairfield
19 cop and my dad is retired CHP." Lewis did not appreciate management placing Gutierrez in the
20 Nurse Clinic instead of the women she preferred to work with.

21 14. On or about January 3, 2013, Gutierrez asked Stell for training on use of the
22 Glucometer, which was required. Stell informed Gutierrez that she was too busy because she was
23 doing a football pool.

24 15. On or about January 30, 2013, Gutierrez again asked for the mandatory
25 Glucometer training from both Stell and Lewis, but they both said they were too busy.

26 16. On or about February 1, 2013, Gutierrez observed Lewis cause a severe injury to
27 a patient by lancing a wound incorrectly and without the required physician supervision or orders.
28 The patient and his family spoke to Gutierrez about the injury. Gutierrez requested that RNs

1 Donna Campos (hereinafter "Campos") and May evaluate the patient. Gutierrez then documented
2 the incident and provided the documentation to Osborne.

3 17. On or about February 5, 2013, Gutierrez observed Stell apply a Lidocaine
4 concentration solution to a patient without a doctor's order and fail to document it in the patient's
5 chart. When Gutierrez questioned her, Stell stated that she did not need a doctor's order.
6 However, this was incorrect because Kaiser policy stated that doctor's order was required for
7 Lidocaine administration.

8 18. On or about February 11, 2013, Gutierrez again asked Stell and Lewis for
9 Glucometer training. They both told him they were too busy, even though they were watching
10 American Idol on YouTube in the office at the time.

11 19. On or about April 4, 2013, Gutierrez was denied an assignment to the Pediatric
12 Department in Fairfield, despite having more seniority than on-call LVN Samantha McCarthy
13 (hereinafter "McCarthy"), who was sent there. Based on the union contract with Kaiser, on-call
14 employees are assigned to a primary work location. Once an on-call employee works 16 or more
15 hours at their primary work location for four consecutive pay periods, the on-call employee is
16 guaranteed to receive at least that many hours per pay period at that location. This rule makes
17 the assignment of the LVNs very important because it is their preference to have a set location,
18 rather than being required to go all over the Solano County region. The hours that count towards
19 the 16 or more hours are called "conversion" hours.

20 20. It was Gutierrez's strong preference to work as many hours at the Fairfield location
21 as possible because that was his primary work location and closest to his home.

22 21. LVN assignments to particular departments within the hospital are important
23 because some departments, such as the Nurse Clinic, provide for more training, which leads to
24 the ability to obtain more certifications. The more certifications a LVN has, the more
25 opportunities for promotions and higher pay they will receive.

26 22. It was Gutierrez's strong preference to work in the Nurse Clinic so that he could
27 receive as much training as possible.

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23. On or about April 5, 2013, Gutierrez questioned Osborne about female LVNs with less seniority being placed ahead of him on the assignment list. Osborne did not provide an explanation.

24. In or about April 2013, Gutierrez finally received his mandatory Glucometer training from Charge Nurse Theresa Perry.

25. On or about April 25, 2013, Osborne spoke to Gutierrez and requested written documentation of the improper treatment Gutierrez observed Stell and Lewis provide to patients. Osborne informed Gutierrez that human resources had been notified about Stell and Lewis' actions.

26. On or about April 25, 2013, Gutierrez observed RN Julie Lovinger (hereinafter "Lovinger") administer the wrong medication to a patient without a doctor's order. Lovinger gave the patient 2mg of Dilaudid and 50mg of Phenergan instead of 2mg of Morphine Sulfate and 50 mg of Phenergan. Gutierrez then observed Stell advise Lovinger, "Do not document that you gave the wrong medications or that you made a mistake in Health Connect. Don't worry. I will have Dr. H cancel the Morphine Sulfate order and add Dilaudid in order to cover up the mistake."

27. On or about May 7, 2013, Gutierrez was informed by the Staffing Department that no work was available that day. He later found out that Pediatrics had a half-day available, but it was given to McCarthy.

28. On or about May 14, 2013, Gutierrez was threatened by a patient that she would harm him unless he gave her a narcotic injection. He called security three times, but they did not respond. Neither of his managers did anything to assist him.

29. On or about May 17, 2013, Gutierrez observed a severe wound on a patient that possibly was a MRSA infection. He asked Stell to evaluate the wound, but she refused. Rather, she told Gutierrez to put a new dressing on the wound and send the patient home. Gutierrez insisted that she look at the wound and Stell again refused. Only after Gutierrez asked a third time, with Nurse Practitioner (NP) Kathy Martinez (hereinafter "K. Martinez") in the room, did Stell comply. The patient did have a MRSA infection and had to be treated by a doctor.

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1 30. On or about June 12, 2013, Gutierrez observed Stell administer medication and
2 change a doctor's order without approval. He reported Stell's actions to Osborne on June 18,
3 2013.

4 31. On or about July 23, 2013, Lewis told Gutierrez that he should not be allowed to
5 work in the Nurse Clinic. When Gutierrez asked if she was speaking about all LVNs, Lewis
6 stated that she only meant him. Gutierrez reported Lewis' action to Osborne.

7 32. On or about July 24, 2013, Gutierrez was informed by Blancaflor that Lewis
8 complained to other members of the Nurse Clinic about Gutierrez's work hours and questioned
9 why he was allowed to work at other facilities.

10 33. Also on or about July 24, 2013, Osborne informed Gutierrez that McCarthy was
11 going to work in the Fairfield Nurse Clinic, even though Gutierrez has more seniority.

12 34. On or about August 8, 2013, Gutierrez found out that Marylou Lee (hereinafter
13 "Lee") was hired as an on-call LVN prior to Gutierrez without having the proper certifications.
14 Gutierrez was required to have an Intravenous Certification in order to get the job. Lee was not.
15 Gutierrez reported this to Osborne. Osborne told Gutierrez, "It's not my job to make sure [the
16 nurses] are qualified. It's HRs'."

17 35. On or about August 21, 2013, Gutierrez called the Staffing Department about
18 availability of work and was told no work assignments were available. Gutierrez later visited the
19 Fairfield hospital and saw that McCarthy was working in the Nurse Clinic. She was given the
20 assignment even though Gutierrez had more seniority and should have been offered the
21 assignment first. Gutierrez spoke to Osborne about the gender discrimination Gutierrez felt was
22 taking place because only female LVNs were being requested to work in the Nurse Clinic.
23 Osborne told Gutierrez that he would investigate and get back to him. Gutierrez also requested
24 to be paid for the hours he was not allowed to work.

25 36. On or about August 23, 2013, Osborne requested a meeting with Gutierrez.
26 Gutierrez met with Osborne. He requested information from Gutierrez on the Nurse Clinic
27 incidents where Lewis, Stell, and Lovinger improperly treated patients. They also discussed
28 Gutierrez's hours missed on August 21, 2013.

1 37. On or about August 27, 2013, Osborne informed Gutierrez that he would be paid
2 for the entire day on August 21, 2013, because Staffing improperly called McCarthy prior to
3 calling Gutierrez.

4 38. On or about September 19, 2013, Lewis continuously called Gutierrez "honey"
5 and touched him on the arm. At the end of Gutierrez's shift, Lewis grabbed Gutierrez's hand and
6 pulled him in for a hug. He rejected the hug by straightening his arms and telling Lewis, "Stop!"
7 Gutierrez immediately went and told Osborne that Lewis was calling him honey and trying to hug
8 him. Osborne stated that he would look into it, but never informed Gutierrez of any steps that
9 were taken to prevent Lewis' unacceptable behavior.

10 39. On or about September 20, 2013, McCarthy was again allowed to work in the
11 Nurse Clinic prior to Gutierrez, despite his seniority. Gutierrez informed Osborne.

12 40. On or about September 20, 2013, Gutierrez found out that the Staffing Department
13 prescheduled McCarthy for the Pediatrics Department for the next three weeks, despite Gutierrez
14 having more seniority and not being offered the assignment. Gutierrez immediately contacted
15 Christian Laughlin (hereinafter "Laughlin") in Staffing and asked why he was not offered the
16 assignment. She informed him that Pediatrics manager Maria Martinez (hereinafter "Martinez")
17 directed her to use McCarthy, rather than Gutierrez. Gutierrez then questioned Martinez and was
18 told that he was not assigned because he had not yet been oriented to Pediatrics in Fairfield.
19 Gutierrez informed her that he worked in the Pediatric Departments of Vallejo, Napa, Vacaville,
20 and Fairfield in the past. Martinez had no response. Gutierrez informed her that he would take
21 it up with his union and Martinez walked away.

22 41. On or about September 24, 2013, Gutierrez was called to work in Vallejo without
23 ever being offered the opportunity to work in Fairfield. McCarthy was called to work in Fairfield,
24 despite Gutierrez's seniority. That resulted in McCarthy getting conversion hours instead of
25 Gutierrez.

26 42. On or about September 30, 2013, Lewis used the computer Gutierrez was logged
27 into without logging him out. He told her to log him out and use her own login.

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1 43. On or about October 1, 2013, Lewis again used the computer Gutierrez was logged
2 into without logging him out. He again told her to log him out and use her own login.

3 44. On or about October 3, 2013, Gutierrez observed Lewis document a patient's file
4 using Gutierrez's initials. Gutierrez informed Osborne of Lewis' actions.

5 45. On or about October 18, 2013, Lewis was cursing loudly in the Nurse Clinic and
6 referenced Gutierrez. Gutierrez was later informed by Blancaflor that Lewis said that she was
7 going to run Gutierrez off the highway when she saw him. Lewis also said that she was going to
8 hurt Gutierrez's family. When Gutierrez contacted Osborne about Lewis' actions, Osborne told
9 Gutierrez that he could not comment on Lewis' actions.

10 46. On or about November 22, 2013, Lewis came up to Gutierrez from behind and
11 started rubbing his neck. He jerked his body away from her and told her to stop. Lewis just
12 laughed. Gutierrez reported Lewis' conduct to Osborne and stated that he would file sexual
13 harassment charges if Lewis' inappropriate touching did not stop. Osborne did not say or do
14 anything about it and just walked away.

15 47. On or about December 3, 2013, the Staffing Department called McCarthy before
16 calling Gutierrez for a work assignment in Fairfield, despite Gutierrez having priority due to his
17 seniority. As a result, Gutierrez missed out on four hours of work.

18 48. On about December 4, 2013, Gutierrez spoke to Osborne and Julie Costa
19 (hereinafter "Costa"), another supervisor, about his on-call work assignments. He explained to
20 them that Staffing continuously failed to follow protocol because it was calling McCarthy with
21 work assignments prior to Gutierrez. Gutierrez told Osborne and Costa that the actions were due
22 to Lewis' and Stell's preference to work with female LVNs, which was gender discrimination.
23 Gutierrez requested to be paid for the four hours he missed. Osborne refused to pay the four
24 hours, saying that the on call schedule was sent late. After Gutierrez requested that management
25 be consistent with their requirements for assigning shifts, Osborne said he would send a letter to
26 Human Resources ("HR") to remind HR of the requirements.

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1 49. In or about December 2013, Gutierrez was told by members of the Kaiser RN staff
2 and supervisors at the Vallejo location that in order to work in the Fairfield nurse clinic (which
3 was staffed only by female RNs) that he had to have ovaries and male reproductive parts were
4 not allowed. Gutierrez asked if they were joking and they told him they were not.

5 50. On or about December 11, 2013, Gutierrez was initially scheduled by the Staffing
6 Department to work at the Fairfield Nurse Clinic all day. Lewis changed Gutierrez's assignment
7 to the Influenza Clinic and placed McCarthy in the Nurse Clinic, despite Gutierrez having more
8 seniority. Gutierrez informed Osborne of Lewis' actions.

9 51. On or about December 13, 2013, Gutierrez was initially scheduled to work in the
10 Fairfield Nurse Clinic. His assignment was then changed by Lewis or Stell to work in the
11 Influenza Clinic, while Lee was given the Nurse Clinic assignment. Lewis and Stell were the two
12 charges nurses who had the ability to make the change. When Gutierrez asked Osborne why Lee
13 was given the more favorable assignment, he was told that it was because Lee had more seniority
14 than him.

15 52. On or about December 18, 2013, Gutierrez called the Staffing Department to see
16 if any assignments were available. He was told that no assignments were available. Gutierrez
17 later found out that McCarthy worked a half-day in the Fairfield Pediatric unit, which meant that
18 she was offered the assignment prior to Gutierrez, despite his seniority. Gutierrez informed
19 Osborne, however no action was taken.

20 53. On or about December 26, 2013, Gutierrez was scheduled by Nurse Scheduler
21 Deanna (last name unknown) to work in the Fairfield Nurse Clinic. When Gutierrez arrived at
22 Fairfield, he found that McCarthy was placed in the Nurse Clinic and he was sent to the Injection
23 Clinic, despite his seniority. Gutierrez informed Osborne, however no action was taken.

24 54. On or about January 15, 2014, Lewis used Gutierrez's resource identification code
25 to document injections without his permission. Gutierrez informed Osborne, however no action
26 was taken.

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1 55. On or about February 21, 2014, while at work in the Medicine Department,
2 Gutierrez received a call from the Staffing Department asking why he was not at work. Gutierrez
3 informed them that he was at work in the Medicine Department. They then told him to go to the
4 Pediatric Department. Gutierrez let the Staffing Department know that when he received the
5 initial assignment, he was not told to go to the Pediatric Department by Laughlin. It appeared to
6 Gutierrez that Laughlin was trying to get him in trouble for not reporting to the correct area.

7 56. On or about March 26, 2014, McCarthy was assigned to work in the Nurse Clinic
8 instead of Gutierrez, despite his seniority. Gutierrez reported this to Osborne, however no action
9 was taken.

10 57. On or about April 10, 2014, Gutierrez was not called for a Fairfield Pediatric
11 Department assignment, while on-call LVN Elaine Erickson (hereinafter "Erickson") was called,
12 despite Gutierrez's seniority over her. Gutierrez informed Osborne that another female on-call
13 LVN was being assigned ahead of him and it appeared to be gender discrimination. Osborne said
14 he would look into it.

15 58. On or about May 1, 2014, Gutierrez was notified by Osborne that he was being
16 placed in a permanent 16-hour position at the Fairfield Medicine Department, effective
17 May 5, 2014. This meant that, although Gutierrez was still an on-call employee, he was
18 guaranteed to get at least sixteen (16) hours at Fairfield Kaiser every two week pay period.
19 Gutierrez received the permanent 16-hour placement because he worked sixteen (16) hours in
20 Fairfield for four consecutive pay periods.

21 59. On or about May 27, 2014, Stell reported Gutierrez to Osborne for his performance
22 of a Nasal Swab on a patient because Stell believed LVNs were not allowed to perform nasal
23 swabs. However, LVNs are allowed to perform nasal swabs pursuant to Kaiser policy. No
24 discipline was taken against Gutierrez.

25 60. On or about June 2, 2014, the Staffing Department contacted McCarthy for a
26 Fairfield assignment without contacting Gutierrez first, in violation of the seniority rules.
27 Gutierrez reported this to Osborne, however no action was taken.

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61. On or about June 4, 2014, the Staffing Department contacted McCarthy for a Fairfield Nurse Clinic assignment without contacting Gutierrez first, in violation of the seniority rules.

62. On or about June 20, 2014, Gutierrez questioned Osborne regarding Kaiser's failure to offer him Nurse Clinic assignments. Osborne said he did not have an answer.

63. On or about July 25, 2014, Lewis interfered with Gutierrez while he was treating a patient with a large scrape by continually standing close to Gutierrez and bumping him, causing Gutierrez to injure the patient. Gutierrez demanded that Lewis stop bumping him. She smiled at him and then left the room. Gutierrez informed Osborne; however, to Gutierrez's knowledge, no action was taken against Lewis.

64. On or about August 13, 2014, at approximately 10:20 a.m., Gutierrez received a call from the Staffing Department questioning his whereabouts because he was supposed to start work in the Fairfield Pediatric Department at 8:30 a.m. Gutierrez was never notified about this assignment. He asked the unknown Staffing Department representative why it took two hours to notify him of the assignment and the representative did not know why. As a result, Gutierrez missed out on eight hours of pay.

65. On or about August 14, 2014, Gutierrez notified Martinez about his missed hours from August 13, 2014, and she told him that there was nothing that she could do about it.

66. On or about August 28, 2014, Osborne offered Gutierrez a 40-hour position in the Fairfield Medicine Department, which Gutierrez accepted because it meant he had a guaranteed full-time job at his preferred Fairfield location.

67. On or about September 8, 2014, Gutierrez started his new position as a full-time employee in the Kaiser Fairfield Medicine Department.

68. In or about October 2014, Osborne received a promotion to area manager. Sherri Buckley (hereinafter "Buckley") became Gutierrez's new manager. Osborne continued to be part of the management of Gutierrez's work locations.

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1 69. On or about October 21, 2014, Buckley assigned Gutierrez to work as a Medical
2 Assistant ("MA") because Kaiser was short-staffed. Based on seniority, other LVNs should have
3 been requested to work as Mas since it is a lower-level position.

4 70. On or about November 18, 2014, Lewis attempted to get Gutierrez disciplined by
5 telling Kaiser management that Gutierrez worked in the Nurse Clinic during the Certified Nursing
6 Assistant (CNA) strike at Kaiser, despite not being qualified. Management stated that Gutierrez
7 was qualified.

8 71. On or about November 20, 2014, during regular work hours, Lewis cursed and
9 yelled at the entire staff, including Gutierrez, after she received the staffing sheet. Lewis stated
10 that she was going to get back at the LVNs and management for what they did during the CNA
11 strike. Gutierrez contacted both his union representative, Cynthia Cooper (hereinafter "Cooper")
12 and Osborne about Lewis' threats. Osborne did not answer, so Gutierrez left a voice-mail,
13 expressing concern for his own safety and the safety of his co-workers. He then called Cooper
14 and told her that Lewis' threats needed to be addressed immediately. Buckley then came to the
15 room and spoke to Cooper, but refused to take a formal statement from Gutierrez. Gutierrez then
16 called Osborne again and was able to reach him. Gutierrez requested that Buckley come take a
17 statement. Approximately fifteen (15) minutes later, Buckley came to Gutierrez's work area and
18 stated, "I'm taking care of it." Gutierrez expressed his concern for his safety and explained to
19 Buckley that Kaiser has a zero tolerance policy for workplace violence and Lewis' actions were
20 in direct violation of the policy. Buckley told Gutierrez that he was in a safe work environment
21 and they could talk later.

22 72. On or about February 5, 2015, Gutierrez contacted Lewis regarding the
23 medications ordered for a patient because Gutierrez felt some of the medications were incorrect
24 based on the patient's health history. Lewis reviewed the file and stated, "Not my problem if she
25 dies," and then left. Gutierrez called Dr. Christopher Kai Lee and requested permission not to
26 administer the medications. Gutierrez prepared an Electronic Responsible Reporting Form
27 (ERRF) documenting the entire incident and did not give the patient any of the medications.
28 ERRFs are internal Kaiser system memoranda which are used to document any unusual

1 circumstances. They are forwarded to management immediately. Gutierrez was never contacted
2 by management regarding the ERRF he prepared.

3 73. On or about February 10, 2015, Lewis was waiting in the parking lot as Gutierrez
4 left work. Gutierrez observed Lewis follow him from the parking lot all the way to Vacaville,
5 changing lanes when Gutierrez changed lanes and slowing down when he slowed down.

6 74. On or about February 27, 2015, Gutierrez injured his left ankle at the LVN Clinic.
7 He saw Dr. Saxena for the injury and left a message with Employee Health Services ("EHS").

8 75. On or about March 13, 2015, Gutierrez was assigned to work in the Nurse Clinic
9 after the first LVN placed there was sick and a new LVN stated that she was not ready. Gutierrez
10 later spoke to Buckley that day and informed her that, due to seniority, he should have been called
11 before the new LVN to work in the Nurse Clinic

12 76. On or about March 19, 2015, Gutierrez was placed on light duty for one week by
13 Occupational Health due to his injured left ankle.

14 77. On or about March 23, 2015, Buckley told Gutierrez that she needed him to work
15 in the Nurse Clinic. While Gutierrez was working in the Nurse Clinic, Lewis stated to Stell, May,
16 and Blancaflor that Gutierrez should not be allowed to work in the Nurse Clinic.

17 78. On or about March 23, 2015, Lewis took suture removals off of the LVN schedule,
18 despite the fact that LVNs are trained and qualified to perform them. Gutierrez notified Buckley
19 of Lewis' actions. To Gutierrez's knowledge, no action was taken by Buckley.

20 79. On or about March 26, 2015, Gutierrez was placed back on full duty.

21 80. On or about April 14, 2015, the new LVN, Harprit Kaur (hereinafter "Kaur") was
22 assigned to work in the Nurse Clinic on Fridays despite Gutierrez having more seniority.

23 81. On or about April 14, 2015, Lewis assigned Gutierrez to work in Medicine Unit B
24 as a Medical Assistant instead of Kaur, despite Kaur having less seniority. Medical Assistants
25 are lower in qualifications and assignments than LVNs. When Gutierrez questioned Lewis about
26 the assignment, Lewis stated, "I'm just doing what I was told". When Gutierrez asked who told
27 her to put him in Medicine Unit B, Lewis stated, "Management!" When asked specifically who,
28 Lewis would not answer. Gutierrez contacted his union representative, Rios. Rios told Gutierrez

1 to stay at his current assignment and told Kaur to work in Medicine Unit B as a Medical Assistant
2 pursuant to the union guidelines. They both complied with Rios' request.

3 82. On or about April 17, 2015, Lewis changed the assignment schedule and placed
4 Kaur in the Nurse Clinic instead of Gutierrez in violation of seniority guidelines. Gutierrez
5 contacted his union representative, Cooper, and they had a meeting with Buckley and Laura
6 Coffman (hereinafter "Coffman"). At the meeting, Gutierrez informed them that Lewis was
7 gossiping about staff, causing disruptions amongst staff, and not following seniority guidelines
8 when assigning LVNs. Buckley stated that she would open up an investigation into Lewis'
9 actions.

10 83. On or about April 20, 2015, Buckley spoke with Gutierrez in her office. She
11 admitted to him that Lewis was gossiping and causing a disruption throughout the medical floors,
12 but that she would fix it, though she did not provide any details. Buckley stated the investigation
13 would take some time and asked Gutierrez to be patient. Buckley also said that she talked to Stell
14 and Gutierrez would not be harassed by Stell or anybody else. Finally, she told Gutierrez, "You
15 are a great asset to this organization, especially when you fill in at the Nurse Clinic." Gutierrez
16 thanked her for the compliment.

17 84. On or about July 17, 2015, Kaur was assigned to work in the Nurse Clinic ahead
18 of Gutierrez, despite his seniority. However, Kaur asked Gutierrez to work in the Nurse Clinic
19 in her place because she was not ready to work in the Nurse Clinic on a busy day. Gutierrez
20 worked at the Nurse Clinic all day.

21 85. On or about July 24, 2015, Gutierrez received an order from Dr. Danziesen to
22 perform wound care on a patient. Gutierrez then asked for help from Lewis. Lewis refused to
23 help and then left the Nurse Clinic. Blancaflor helped Gutierrez with the wound care. Gutierrez
24 notified Buckley of Lewis' abandonment of the patient. To Gutierrez's knowledge, no action was
25 taken against Lewis.

26 86. On or about August 5, 2015, Gutierrez was scheduled to work in the Nurse Clinic.
27 Lewis was the Charge Nurse in charge of the assignments that day and she changed the
28 assignment to put Kaur in the Nurse Clinic, despite Gutierrez's seniority. He reported Lewis'

1 actions to Buckley. To Gutierrez's knowledge, no action was taken against Lewis.

2 87. On or about August 6, 2015, Gutierrez was scheduled to work in the Nurse Clinic.
3 Lewis changed the assignment to put Kaur in the Nurse Clinic, despite Gutierrez's seniority.
4 When he questioned her about the assignment change, Lewis stated that she had no control over
5 the schedule. Gutierrez then spoke to Buckley about Lewis' improper schedule change and
6 Buckley stated, "You are in a woman's career field, so put your big girl panties on and deal with
7 it." Gutierrez was shocked by Buckley's statement and replied, "Are you serious?" Buckley did
8 not respond.

9 88. On or about August 7, 2015, Lewis assigned Kaur to work in the Nurse Clinic in
10 violation of the seniority guidelines because she did not first check with Gutierrez to see if he
11 wanted to work there. Gutierrez did not report this to Buckley because of Buckley's response to
12 similar actions on August 6, 2015.

13 89. On or about August 17, 2015, Kaur was assigned to work in the Nurse Clinic by
14 Buckley. Kaur told Gutierrez that Buckley told her to go to the Nurse Clinic and to disregard
15 union seniority rules. Gutierrez did not report this to Buckley because of Buckley's response to
16 similar actions on August 6, 2015.

17 90. On or about August 24, 2015, Lewis did not release the LVN assignment schedule.
18 This prevented Gutierrez from seeing where the other LVNs were assigned, so that he did not
19 know whether or not his seniority rights were being violated.

20 91. On or about August 28, 2015, Gutierrez met with Osborne and Kaiser Labor
21 Relations Representative Sandra Stowes (hereinafter "Stowes") regarding Stell, Lovinger, Lewis,
22 and Kathy Zecchini (hereinafter "Zecchini") harassing Blancaflor and not promoting her to a Staff
23 Nurse 3.

24 92. On or about August 28, 2015, Gutierrez was notified by his doctor, Dr.
25 Crisostomo, that his ultrasound results were positive for a thyroid nodule, which is an abnormal
26 growth of thyroid cells that forms a lump in the thyroid gland. The majority of thyroid nodules
27 are noncancerous, but a small portion of them contain thyroid cancer. Gutierrez scheduled an
28 appointment with his endocrinologist, Dr. Ames, for September 1, 2015, to have the nodules

1 examined. When Gutierrez notified Buckley of his doctor's appointment, she told him that he had
2 to give two weeks advanced notice and denied his request.

3 93. On or about August 31, 2015, Gutierrez again requested permission from Buckley
4 to attend his September 1, 2015 doctor's appointment. Buckley again denied his request and said
5 that she needed two weeks advanced notice. Gutierrez stated, "I just received the notice right
6 before I told you on Friday." Buckley said that did not matter and Gutierrez left her office very
7 distraught. Gutierrez knew the nodules could be cancerous and cancer is more likely to be cured
8 if it is detected early. Later that day, at approximately 4:00 p.m., Gutierrez was notified by
9 Buckley that he could go to his September 1, 2015 appointment.

10 94. On or about September 3, 2015, Lewis assigned Kaur to work in the Nurse Clinic
11 in violation of the seniority guidelines, because she did not first check with Gutierrez to see if he
12 wanted to work there.

13 95. On or about September 8, 2015, Buckley emailed Gutierrez that she wanted him
14 to go to the Influenza Training Meeting, but would not assign anyone to relieve Gutierrez in order
15 for him to be able to attend the meeting. Gutierrez was not able to go to the meeting because he
16 did not have anyone to cover his shift.

17 96. On or about September 11, 2015, Kaur was assigned to work in the Nurse Clinic
18 rather than Gutierrez, in violation of seniority guidelines. Kaur asked Gutierrez to work the Nurse
19 Clinic instead of her because she hurt her back. Gutierrez told Kaur to inform Lewis and Buckley.
20 In the meantime, Gutierrez went to the Nurse Clinic to set up for the morning patients. Lewis
21 confronted him and stated, "You are not allowed to work in the Nurse Clinic. Jasma Kernellu
22 (hereinafter "Kernellu") will work in the Nurse Clinic." Gutierrez responded, "Jasma has never
23 worked in the Nurse Clinic and she is on modified duty due to her hands being injured." Lewis
24 then stated, "I am just doing what I am told to do. Buckley said that Jasma will work in the Nurse
25 Clinic." Gutierrez then left the Nurse Clinic, went back to the Injection Clinic, and informed
26 Kernellu that she would be in the Nurse Clinic instead of him or Kaur. Kernellu stated, "No way.
27 I am not going! I have the most seniority over everyone in this department and I am going to use
28 my seniority to stay where I want to work. Besides, I am on light duty and it will mess up my

1 hands, plus I have never been trained for the Nurse Clinic, nor do I want to."

2 97. On or about September 11, 2015, Gutierrez went to Conference Room A, knocked
3 on the door, and told Buckley that he was going home because he felt sick. Gutierrez also told
4 Buckley, "This harassment and discrimination has to stop and will stop now." Buckley said,
5 "Okay." Dr. Danzeisen, Dr. Sidhu, and Dr. Sarno were also in the conference room at the time
6 Gutierrez spoke to Buckley. Gutierrez was tired of Lewis and Stell's harassing actions against
7 him while he was trying to work in the hospital. Gutierrez was also tired of his seniority rights
8 being violated when LVN shifts were assigned. Female LVNs with less seniority were constantly
9 receiving assignments ahead of Gutierrez, which he felt was due to him being male.

10 98. On or about September 11, 2015, after informing Buckley that he was leaving,
11 Gutierrez proceeded to the Nurse Clinic, opened up the door, and told Lewis and Blancaflor he
12 was leaving because he was not feeling well. He then stated, "Debbie, your harassment,
13 discrimination, and retaliatory acts will stop!" Lewis then lunged out at Gutierrez and he stepped
14 back to prevent her from hitting or touching him. Stell was also in the office, and Gutierrez stated,
15 "This also applies to you, Darlene." He then closed the door and left work for the day.

16 99. On or about September 13, 2015, Gutierrez was called into a meeting with Osborne
17 regarding the September 11, 2015 incident. Osborne questioned Gutierrez about the incident
18 without Gutierrez's union representative present, despite Gutierrez's request for representation.
19 Gutierrez also informed Osborne that the meeting was a violation of the union's contract with
20 Kaiser. Osborne refused to answer Gutierrez's questions about management's plans to address
21 the bullying and harassment by Lewis towards him. Osborne then began to question Gutierrez
22 about Gutierrez's workplace dating relationship with Blancaflor, which had nothing to do with
23 the conversation. Gutierrez asked Osborne to sign a letter stating that Kaiser would provide a
24 safe work environment, but Osborne refused to sign the letter. Osborne then threatened Gutierrez
25 with suspension, though he did not state the basis for the suspension. Gutierrez told Osborne to
26 stop harassing him and again demanded to have a union representative present. Osborne then
27 began to raise his voice. Gutierrez then got up and stated, "This is an unsafe work environment
28 and I am leaving for my safety."

1 100. On or about September 15, 2015, Gutierrez saw Buckley as he was leaving
2 Osborne's office. He asked her to sign the letter stating that Kaiser would provide a safe work
3 environment. Buckley told Gutierrez that she would have to talk to Osborne before signing it and
4 would get back to him. Gutierrez then left.

5 101. On or about September 16, 2015, Gutierrez called the Kaiser compliance hotline
6 twice to report the September 15, 2015 incidents with Osborne and Buckley, but did not reach
7 anyone. The recording stated that they were not taking calls at the time and to please contact
8 management for more assistance.

9 102. On or about September 17, 2015, Gutierrez had a meeting with Stowes. In the
10 meeting, Gutierrez asked Stowes about the status of the investigation into Lewis' sexual
11 harassment against him. Stowes told Gutierrez that she was not aware of it and was never
12 contacted by Osborne about it. She asked Gutierrez which incident report forms he filed out.
13 Gutierrez told Stowes that Osborne did not tell him to fill out any forms. He also told Stowes that
14 he trusted Osborne to get the sexual harassment investigated. Stowes informed Gutierrez that she
15 would forward him the required forms.

16 103. On or about September 17, 2015, Gutierrez was prevented from entering the Nurse
17 Clinic by a security guard who stated that she was directed by management not to allow Gutierrez
18 into the Nurse Clinic. Gutierrez's union representative, Donna Norton (hereinafter "Norton"),
19 immediately contacted Buckley to inquire about Kaiser's action against Gutierrez and its failure
20 to inform the union. Norton received a call fifteen (15) minutes later stating that Gutierrez was
21 allowed to go into the Nurse Clinic and that security was notified. The security guard informed
22 Norton that the notice about Gutierrez's banishment from the Nurse Clinic was provided to
23 Security on September 14, 2015.

24 104. On or about October 2, 2015, Lewis went into Gutierrez's work area and stared at
25 him on multiple occasions in an effort to intimidate him. Gutierrez reported her conduct to
26 Buckley.

27 105. On or about October 5, 2015, Gutierrez called in sick to work due to the stress he
28 was feeling because of his fear of workplace violence by Lewis.

1 106. On or about October 19, 2015, Gutierrez became a Union Steward, which required
2 him to have constant interaction with Kaiser management, including Buckley, Stowes, and
3 Osborne on behalf of the union members he represented.

4 107. On or about October 27, 2015, Gutierrez emailed Stowes to let her know that he
5 had not yet received the sexual harassment forms she said she would send him during their
6 September 27, 2015 meeting.

7 108. On or about October 29, 2015, Gutierrez was contacted by Arthur Jolly
8 (hereinafter "Jolly"), with Kaiser Health Connect, the Kaiser computer system. Jolly informed
9 Gutierrez that he was being monitored due to him administering vaccinations that were not
10 compliant with Kaiser's Best Practice Advisory (BPA). Gutierrez let Jolly know that the BPA
11 was incorrect at times and was advising doctors and nurses to give vaccines that were not needed.
12 Gutierrez then provided seven to eight examples of patients for whom the BPA incorrectly
13 recommended vaccinations. Jolly stated that he would look into it. Gutierrez then asked for any
14 examples of patients to whom he gave the wrong injection. Jolly could not provide any examples.
15 Gutierrez asked for the example in writing. He then contacted Osborne about being monitored.
16 Osborne stated, "It's not true."

17 109. On or about November 3, 2015, Gutierrez sent letters to Osborne and Buckley
18 advising them of the BPA requirement conflicts he found. Gutierrez told them of the seven to
19 eight examples of patients for whom the BPA incorrectly recommended vaccinations, as the
20 vaccinations would have harmed the patients.

21 110. On or about November 4, 2015, Gutierrez sent letters to the Kaiser Assistant
22 Director of Nursing William Bordessa (hereinafter "Bordessa"), the Kaiser Director of Nursing
23 Michael Kidd (hereinafter "Kidd"), Osborne, the Medicine Director of the Napa Solano area, and
24 Stowes regarding the patient safety issues Gutierrez observed. These issues included nurses
25 ignoring doctors' orders, nurses improperly mixing medications, and nurses administering the
26 wrong medications to patients. Gutierrez also mentioned the seven to eight examples of patients
27 for whom the BPA incorrectly recommended vaccinations.

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111. On or about November 9, 2015, Gutierrez sent letters to Kidd, Bordessa, Osborne, the Kaiser Medicine Director of the Napa Solano area, and Stowes regarding the patient and staff safety issues Gutierrez observed. These issues included the fact that Gutierrez and other nurses were regularly exposed to antineoplastic and cytotoxic medications (ACDs) that they regularly administered to cancer patients. ACDs present significant risks to those who handle them, including abdominal pain, hair loss, nasal sores, vomiting, liver damage, alterations to normal blood cell count, fetal loss in pregnant women, and malformation of fetuses in pregnant women. Gutierrez requested they provide him with the Kaiser policy and procedure on how to handle the medications because he was primarily in the Medicine Department and was worried about exposure to himself, fellow workers, and patients.

112. On or about November 10, 2015, Gutierrez prepared and mailed a letter to the Kaiser Equal Employment Opportunity ("EEO") Specialist, Dafna Levi (hereinafter "Levi"). This letter outlined the numerous incidents of workplace violence committed by Lewis and the continued gender discrimination Lewis was committing against Gutierrez when she refused to allow him to work in the Nurse Clinic because he was male.

113. On or about November 25, 2015, Gutierrez spoke to Buckley regarding the administration of Methotrexate. Methotrexate is a drug that is used to treat certain types of cancer. If handled improperly it can cause vomiting, blurred vision, headaches, dizziness, and fatigue to the person administering the medication. Buckley told Gutierrez that he had already been on the surveillance program to administer Methotrexate. The surveillance program is the process by which hospitals monitor hospital staff who administer ACDs. The applicable staff members are required to fill out a questionnaire and provide blood and urine samples for testing. Gutierrez requested the Kaiser policy and procedure on how to administer Methotrexate, as well as any documentation that showed he was trained on it. Gutierrez also asked for an ACD disposal container. Buckley told Gutierrez that she would look into it and get back to him. When Gutierrez asked her for a specific date and time, Buckley said that she did not have one.

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1 114. On or about December 29, 2015, Gutierrez notified Buckley that he and the other
2 nurses still had not received an ACD disposal container. This was his fifth time making the
3 request.

4 115. On or about January 8, 2016, Gutierrez had a meeting with Osborne regarding
5 Gutierrez's concerns about the procedures for administering ACD medications and the lack of
6 response Gutierrez was getting from Buckley.

7 116. On or about January 8, 2016, Gutierrez was called by the LVN Clinic and told to
8 go to the Nurse Clinic because they were short on manpower. While Gutierrez was working in
9 the Nurse Clinic, Buckley approached him and asked why he was working in there. Gutierrez
10 informed her that his union representative would be the person to answer that question. Buckley
11 then called Gutierrez into her office and began questioning him further. Gutierrez then asked to
12 have a union representative present, pursuant to the union contract with Kaiser. Buckley ignored
13 the request and continued asking questions, raising her voice while doing so. Gutierrez responded
14 that he needed a union representative and would not answer any more questions until one was
15 present. Gutierrez then left Buckley's office.

16 117. On or about January 14, 2016, Buckley went into Gutierrez's work area and started
17 harassing him by randomly quizzing him on statistics of vaccines and medications. She also
18 asked Gutierrez about the storage, administration, and documentation of vaccines and specialty
19 medications. He was able to answer to her questions accurately.

20 118. On or about January 19, 2016, Gutierrez met with management representatives
21 Goran Kalas (hereinafter "Kalas"), Gayla Odle (hereinafter "Odle"), and Stowes. He told them
22 that workplace safety rules were being violated because Clobatesol was regularly administered to
23 patients without the required doctor's order. Management refused to discuss the list of violations
24 with Gutierrez at that time. Another meeting was scheduled for January 21, 2016.

25 119. On or about January 21, 2016, Gutierrez met with union representatives Krystal
26 Logan (hereinafter "Logan") and Ambeau, as well as management representatives Michael Kidd,
27 and Odle, Kalas, and an unknown Kaiser BEO representative. Unrelated to the basis for the
28 meeting, Odle initially questioned Gutierrez as to why he called in sick on January 20, 2016.

1 Logan stated, "Because he was sick." Odle stated that Gutierrez needed to tell her the reason he
2 called in sick and the representative responded, "No he does not. All he needs to say is that he is
3 using sick leave for himself or state AB109 for a family member." Odle did not inquire further.

4 120. During this January 21, 2016 meeting, Gutierrez provided the list of safety
5 violations and Clobetasol medication incidents to the management representatives. They refused
6 to comment on either topic even though two days prior they stated they would be open to
7 discussing it. Gutierrez informed them that since they were not helping to resolve the issues, he
8 would have no choice but to contact outside agencies for help. The management representatives
9 stated that they would get back to him on the outcome of the incidents given. Gutierrez asked
10 Odle what management intended to do about the workplace safety violations that continued to
11 occur even though Odle told Gutierrez that she would ensure that he would have a safe workplace.
12 Gutierrez also showed management the Kaiser Principles of Responsibility ("POR") book he
13 obtained from the Kaiser Administration Office. Gutierrez pointed out POR Section 7, which
14 discussed employees, "Treating one another with dignity and respect." Gutierrez also pointed out
15 Section 7.1, which stated that Kaiser values workforce diversity. Additionally, he recited Section
16 7.2, which stated that Kaiser will not tolerate harassment, and if it does happen, employees are to
17 call the Kaiser Compliance Hotline at 1-888-774-9100. Gutierrez did point out that the phone
18 number leads to a recording that states if assistance is needed to contact your manger. Odle said
19 she would look into it. Gutierrez then mentioned that page 31, Section 7.3 states, "Safety and
20 environmental awareness is a priority." Further, Gutierrez stated that Section 7.3.1 focuses on
21 work place safety and Section 7.4 states, "Kaiser prohibits intimidation or retaliation of any kind"
22 and again states to call the compliance hotline if a violation occurs. Gutierrez asked Odle when
23 she was going to provide him with a safe work environment. Odle refused to answer. Finally,
24 Gutierrez asked Odle, "Will you and can you provide me a safe work environment according to
25 Kaiser Policy and Procedures in the POR?" Odle stated, "Yes!"

26 121. On or about February 1, 2016, Ericka Esteban (hereinafter "Esteban") worked all
27 day in the Nurse Clinic. Gutierrez had more seniority than Esteban and was never offered the
28 opportunity to work in the Nurse Clinic that day, in violation of seniority rules.

1 122. On or about February 4, 2016, Esteban again worked all day in the Nurse Clinic.
2 Gutierrez has more seniority than Esteban and was never offered the opportunity to work in the
3 Nurse Clinic that day, in violation of seniority rules.

4 123. On or about February 10, 2016, Gutierrez received a call from Buckley. She stated
5 that she needed to speak with him and for him to bring a union steward to the meeting. Union
6 steward Ambeau went with him. They met in Dr. Whitmore's office with Buckley and Lakietha
7 Lake (hereinafter "Lake"), manager of the Pediatric Department. Buckley stated that pursuant to
8 Odle, that Gutierrez was not allowed in the Nurse Clinic without an escort. Ambeau asked
9 Buckley to please put that in writing, along with the appropriate references to the Kaiser policy
10 and procedure codes covering exclusion. Ambeau also stated that RNs are not allowed in
11 Gutierrez's work area. Buckley then stated that Gutierrez is not allowed to give Methotrexate
12 injections. When Ambeau asked, "Why?", Buckley refused to answer. Ambeau then stated, "As
13 I said before, we want this all in writing." Buckley stated that she will pass the message on to
14 Odle.

15 124. On or about February 10, 2016, Buckley approached Gutierrez and Ambeau to tell
16 them that Odle agreed to place all items mentioned in the meeting earlier that day in writing, and
17 that RNs will stay away from Gutierrez's work area except for RN statisticians. There was one
18 patient to which Gutierrez still be able to give injections. Gutierrez and Ambeau agreed.

19 125. On or about February 11, 2016, Lewis and Stell both came into Gutierrez's work
20 area multiple times and just stared at him.

21 126. On or about February 12, 2016, Lewis came into Gutierrez's work area three
22 separate times in violation of Odle's February 10, 2016 orders. Gutierrez reported Lewis' actions
23 to his union representative, Ambeau. Ambeau and Gutierrez were then informed that Odle had
24 changed her mind and allowed RNs to enter Gutierrez's work area without any restrictions.
25 Ambeau stated that she would follow up with the union contract specialist, Logan, and write a
26 letter to management.

27 127. On or about February 16, 2016, Lewis came into Gutierrez's work area for no
28 apparent reason and constantly looked at him.

1 128. On or about February 17, 2016, Osborne approached Gutierrez and asked if their
2 meeting was tomorrow and did he receive the notification from Odle. Gutierrez let Osborne know
3 that he had not received notification of any meeting. Gutierrez then reminded Osborne that he
4 was still waiting for the protocol information on ACDs. Osborne said he would let Odle know.

5 129. On or about February 18, 2016, Lewis went into Gutierrez's work area and stared
6 at him while he worked.

7 130. On or about February 19, 2016, Gutierrez sent another letter to upper management
8 regarding who he should contact when his requests were ignored. Gutierrez notified them that
9 Odle did not respond to any of his emails. He forwarded his letter to Ambeau.

10 131. On or about February 19, 2016, Lewis went into Gutierrez's work area and stared
11 at him off and on for 45 minutes.

12 132. On or about February 23, 2016, Gutierrez received a call from Buckley, who stated
13 that Odle requested a meeting. Gutierrez inquired as to the purpose for the meeting, but Buckley
14 would not say what the meeting was about. He informed her that he would check his email.
15 Buckley then stated, "She needs to know now!" Gutierrez responded that he would have to check
16 with the availability of a union representative. Buckley hung up the phone.

17 133. On or about February 24, 2016, at 4:03 p.m., Gutierrez received a call from
18 Osborne about meeting. Gutierrez told him that he had not received any notification from any
19 union representative. Osborne then called back at 4:09 p.m. and told Gutierrez, "Odle and Stowes
20 would be in the Fairfield hospital in the morning, so hopefully you will have a union rep."
21 Gutierrez then responded, "That is fine if they return my calls. However, if they are not available,
22 then we will have to postpone the meeting until a later date." Osborne said he would pass the
23 message on to Odle.

24 134. On or about February 26, 2016, Gutierrez received a letter from Osborne stating
25 that Gutierrez was not allowed to enter the Nurse Clinic. Gutierrez also received a letter from
26 Odle which stated that he was a no show at the meeting she scheduled.

27 135. On or about March 1, 2016, Gutierrez sent a letter in response to Odle's February
28 26, 2016 letter. Gutierrez also requested reporting information for a third time.

1 136. On or about March 2, 2016, Gutierrez injured his right elbow while at work.

2 137. On or about March 3, 2016, Gutierrez sent a letter to Osborne about Kaiser's failure
3 to comply with its own policies and procedures for handling ACDs.

4 138. On or about March 4, 2016, Gutierrez had an appointment with Occupational
5 Medicine (OccMed) regarding his work injury. He was taken off work until March 7, 2016.

6 139. On or about March 8, 2016, Gutierrez returned to work on light duty due to his
7 workplace injury.

8 140. On or about March 17, 2016, Gutierrez sent letters of compliance to Odle and
9 Stowes.

10 141. On or about March 23, 2016, Buckley approached Gutierrez while he was working
11 in an examination room. She handed him some immunization papers. Buckley then told
12 Gutierrez that he had a meeting with disability claims at 10:00 a.m. He reminded her he already
13 had two appointments scheduled that day starting at 10:00 a.m. for his workers' compensation
14 injury. Buckley was previously told about the appointments by Gutierrez. He also told her that
15 he was never given a heads up on the meeting which is required in case he wanted union
16 representation. Buckley immediately changed the subject and started accusing Gutierrez of
17 violating his modified duty. Buckley stated that on March 18, 2016, Gutierrez was called to help
18 Dr. Ghuman remove a ring from a patient's finger using a ring cutter. Dr. Ghuman, Stell, and the
19 patient's family members were all present in the Exam Room. Buckley stated that she was told
20 by Dr. Ghuman that Gutierrez was using his injured right hand. Gutierrez responded, "No I was
21 not. I was using my left hand. However, it sounds as if I am being retaliated against and harassed
22 again." Buckley approached him in an aggressive manner as he was sitting at the computer and
23 started pointing her finger in Gutierrez's face. Buckley then said, "No. Dr. Ghuman confirmed
24 that you were helping in the exam room." Gutierrez then stated, "So it wasn't Dr. Ghuman that
25 reported me. It was Darlene Stell that told you. Which proves that I am being retaliated against."

26 142. Buckley became very aggressive in her speech and actions and leaned over
27 Gutierrez. He told her, "Stop! STOP! Leave me Alone!" She refused and became even more
28 agitated and placed her face right in front of Gutierrez's face. Gutierrez then pushed his chair

1 back as far as it could go to get away from her and said, "STOP!" He then stood up and attempted
2 to walk out of the room. Buckley tried to block Gutierrez's path out of the room, likely in an
3 attempt to get him to push or touch her, so that she could claim he assaulted her. Gutierrez told
4 her again, "STOP! LEAVE ME ALONE!" Buckley moved and allowed Gutierrez to walk out of
5 the exam room. Buckley then came out of the exam room and turned towards the lobby. She was
6 still talking and mumbling and Gutierrez told her, "The POR 7.1 and 7.4 states you cannot harass
7 or retaliate against me." Buckley left the hospital and did not come back that day. Annie Adams
8 (hereinafter "Adams") and Marissa Gates witnessed Buckley's actions. Adams asked Gutierrez,
9 "Are you okay Dave?" Gutierrez then went to his scheduled appointments. He prepared and filed
10 a Report of Threat or Aggressive Behavior when he returned. It was sent it by fax to Levi.
11 Gutierrez also forwarded the report to Odle and Kalas.

12 143. On or about March 24, 2016, Gutierrez was working on some projects in an exam
13 room. He observed Lewis look into the exam room and then motion to Buckley. Lewis stayed
14 outside, next to the counter by MA Hundley's desk. Buckley looked into Gutierrez's exam room
15 and acted abnormally. She walked into the exam room, stopped just past the door, and then leaned
16 forward and looked closely at Gutierrez with a blank stare. Gutierrez then got up out of his chair
17 and Buckley took a step forward towards him, putting her face in front of him and blocking his
18 exit. Gutierrez said, "Excuse me", but Buckley would not move. He then stepped to the side and
19 went around her to prevent her from hitting him or putting him in a situation where he could get
20 hurt. Gutierrez stopped right outside the exam room by the counter close to the closet door where
21 the two MAs sit.

22 144. On or about March 25, 2016, Gutierrez prepared and filed a Report of Threat or
23 Aggressive Behavior regarding the March 24, 2016 incident. He sent it by fax to Levi at 8:52
24 a.m. Gutierrez also forwarded the report to Odle and Kalas.

25 145. On or about March 25, 2016, Gutierrez emailed Osborne about the March 23, 2016
26 incident with Buckley. Osborne wanted to meet at 3:00 p.m.

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1 146. On or about March 25, 2016, Gutierrez had a meeting with disability case worker
2 Kathryn Cardwell (hereinafter "Cardwell"), Buckley, and SEIU union representative, Victoria
3 Wilcox (hereinafter "Wilcox"). Cardwell attempted to have Gutierrez sign a Temporary
4 Transitional Work Participation (TTWP) agreement. Cardwell did not cover the agreement in
5 full, but wanted Gutierrez to sign a contract stating he agreed to all the terms of the agreement.
6 After looking over the contract, Gutierrez noted a few items that concerned him and asked for
7 clarification. Cardwell and Buckley continued to pressure Gutierrez to sign the agreement.
8 Buckley stated, "Everybody has to sign it. Even I did." Gutierrez stated, "I want to read this
9 agreement and get an outside source to explain to me what I'm signing. I am not refusing to sign
10 the agreement. I just need clarification from a neutral source." Cardwell and Buckley tried to
11 convince Gutierrez that it was "nothing" to sign the agreement because "everybody has to do it."
12 Gutierrez stated, "If it is nothing, then you won't mind if I take some time to understand this
13 agreement before signing." Cardwell then stated, "If you don't sign this agreement, there is a
14 possibility that your work injury benefits will be denied." Gutierrez replied, "I am protected
15 under state and federal law for my injury, so please get your facts correct before trying to coerce
16 or intimidate me into signing something I don't fully understand." Cardwell and Buckley
17 proceeded to make a list of work accommodations for Gutierrez. He responded, "That is great!
18 I am already doing those at this time. However, I will not be able to sign this agreement until I
19 get an understanding of what I am signing." Cardwell then wrote a small hand written statement
20 on the agreement and asked Gutierrez to sign or initial it to indicate that he agreed with her written
21 statement. He apologized and stated, "I cannot sign at this time." Cardwell wanted Wilcox to
22 sign the agreement and she refused as well. They set a return appointment for Friday, April 1,
23 2016, to discuss the TTWP further.

24 147. On or About April 1, 2016, Osborne and Buckley approached Gutierrez's work
25 area. Osborne asked to talk to him and Buckley and suggest they meet in Exam Room 1 at
26 Medicine Clinic D2. Osborne started to ask Gutierrez questions that require a union
27 representative present. Gutierrez asked Osborne where Cardwell was because they were
28 supposed to meet that day. Osborne stated, "She is not here." Gutierrez told Osborne that he had

1 an appointment with Cardwell. Osborne replied, "No you don't!" Gutierrez then stated to
2 Osborne, "I need a union representative." Osborne ignored Gutierrez's request. Buckley stood
3 behind Gutierrez, blocking his ability to leave Exam Room #1. Gutierrez again stated, "I need a
4 Union rep!" He was able to get by Buckley and stated, "I will be back. I'm going to get some
5 assistance."

6 148. On or about April 1, 2016, Gutierrez went to get Ambeau because Wilcox was not
7 at work that day. When Gutierrez returned with Ambeau, Osborne and Buckley were gone.
8 Approximately 35 minutes later, Osborne appeared and stated "Are we ready?" Gutierrez
9 responded, "We've been waiting on you." He informed Ambeau and they were directed to Dr.
10 Whitmore's office. Osborne stated, "We need you to sign this agreement." Gutierrez replied,
11 "Sure, however this agreement denies or removes some of my rights as an employee. I don't
12 mind signing the agreement, but I will not give up my rights as an employee that are protected by
13 state or federal law." Osborne stated, "Either you sign it or else." Ambeau then asked, "What do
14 you mean or else?" Osborne replied, "If David does not sign this agreement, we will not
15 accommodate his work and he will have to leave work until he is released by his OccMed
16 physician." Gutierrez responded, "Ms. Cardwell, Buckley, and I already stated that we have
17 enough work for my accommodation." Osborne stated, "Will you or will you not sign this
18 agreement?" Gutierrez replied, "I have no problem signing this agreement if you remove the
19 parts that state my rights as an employee are forfeited." Osborne stated, "NO! You will sign it
20 as is. I don't have the authority to change anything." Gutierrez responded, "I will sign the
21 agreement as I stated earlier." Osborne then stated "You are relieved of your work. We can no
22 longer accommodate you. Please clock out." Ambeau asked, "Till when is this in effect?"
23 Osborne stated, "Until Dave see's the doctor and he authorizes Dave to return to work."

24 149. On April 1, 2016, Gutierrez met with Ambeau, Osborne, Buckley, and Lake
25 regarding Gutierrez's work while on modified duty and the retaliation from Buckley and Stell.
26 Osborne then quoted Buckley's statement regarding the March 18, 2016 interaction with
27 Gutierrez. Gutierrez stated, "Buckley immediately was very abrupt and aggressive in her speech
28 and actions towards me." Gutierrez then read the statement that he sent to the EEO. At the end

1 of the meeting, Gutierrez requested from Osborne, "Please follow proper protocol, policies, and
2 procedures in the future. You have been a manager for quite a while, so you know that if you
3 need to have a conversation with an employee, please do not violate our Weingarten rights."
4 Osborne just smiled and stated, "This meeting is over," and walked out of the room. Gutierrez
5 finished his project which involved the temperature charts for the refrigerators, and then clocked
6 out and left work as directed by Osborne.

7 150. From April 2, 2016 until April 19, 2016, Gutierrez did not work because Kaiser
8 would not accommodate his needed workplace modifications.

9 151. On or about April 11, 2016, Gutierrez received a call from Cardwell asking how
10 he was doing. She stated that she received an email and wanted to know when Gutierrez's next
11 appointment to see the doctor was, so that they could put him back to work. Gutierrez told
12 Cardwell, "On 4/11/2016, but you already knew this." Cardwell became agitated and requested
13 that Gutierrez return to work upon the results of his next Doctor's visit. He responded, "I never
14 wanted to leave work. And because you did not show up to our follow up meeting, I was told by
15 Osborne that Kaiser could not accommodate me." She apologized and stated that she was on
16 vacation. Then she inquired as to why Gutierrez refused to sign the agreement. He replied, "I
17 never refused to sign the agreement. I am willing to sign the agreement and to work modified at
18 all times, so long as it doesn't violate my protected rights as an employee." Cardwell asked if
19 Gutierrez got all of his questions answered. He responded, "Yes." She mentioned the email she
20 received again, then abruptly changed the subject as if she made a mistake. Gutierrez again
21 informed Cardwell, "I have always been willing to work. We even had a plan of what I would
22 do on modified duty and Sheri Buckley was there. She helped and approved of this plan. Then
23 Osborne stated on April 1, 2016, that I had to sign this agreement, otherwise they would not
24 accommodate my work, even though Kaiser has accommodated other employees including Sheri
25 Buckley without a signed agreement. Sheri Buckley denied having a modified plan in front of
26 Osborne, myself, and the union rep. So the deceit and lies that you and Kaiser managers commit
27 is very discouraging and proves that Kaiser continues to approve of its managers intimidating its
28 employees. However, you already know this by email, correct?" When Gutierrez asked who the

1 email was from, Cardwell refused to answer. She then interrupted him, and with a raised voice
2 told him, "You need to sign the agreement or you will lose my medical benefits and not be paid."
3 Gutierrez then stated, "Have a nice day," and hung up the phone.

4 152. On or about April 13, 2016, Gutierrez received a voicemail from Cardwell stating
5 that Kaiser would accommodate him without him signing the agreement and that he was directed
6 to return to work on Monday, April 18, 2016. It also stated that he would receive an email
7 confirming this request and a letter sent to his P.O. Box.

8 153. On or about April 19, 2016, Gutierrez returned to work on modified duty.

9 154. On or about April 19, 2016, Gutierrez had a meeting with Cardwell, Osborne, and
10 Ambeau. Cardwell stated, "The TTWP agreement is not mandatory, it is now voluntary and you
11 cannot lose your medical benefits if you choose not to sign it. And your pay will be corrected."
12 Cardwell also reminded Osborne to follow policy and procedure when dealing with employee
13 issues. Gutierrez assumed his duties with the limitations as described in his industrial work
14 agreement.

15 155. On or about April 19, 2016, Gutierrez provided Buckley with a copy of his
16 renewed LVN license. She accepted it and said, "Thank you."

17 156. On or about April 21, 2016, Gutierrez received an email from Buckley, dated April
18 20, 2016, at 6:29 p.m., stating that she was going to modify his work without doctor's approval.

19 157. On or about April 22, 2016, Gutierrez sent a letter responding to management
20 representatives Buckley, Osborne, Odle, and Stowes regarding Buckley's April 20, 2016 email.
21 Cardwell then called Gutierrez at work and told him that upper management had a meeting with
22 Buckley and decided that there will be no change in his modified status without physician
23 approval and all correspondence will be given to Gutierrez by Cardwell. Buckley was not to send
24 anymore emails in reference to his job duties.

25 158. On or about April 25, 2016, Gutierrez had a meeting with senior managers Odle,
26 Kalas, and Osborne regarding the January 15, 2016 incident. Two of his union representatives
27 were also present, Lori Pimintel (hereinafter "Pimintel") and Ambeau. Gutierrez provided Odle,
28 Osborne, and Kalas with copies of the EEO Complaint Forms and Threat or Aggressive Behavior

1 Reports he filed on March 23, 24, and 25, 2016, regarding the actions of Buckley and Lewis.
2 Gutierrez was then notified by management that he was being suspended for three days and would
3 be terminated from Fairfield Kaiser in thirty (30) days due to his alleged inappropriate behavior,
4 misconduct, and violations of Kaiser policies and procedures.

5 159. From April 26 through April 28, 2016, Gutierrez did not work due to his
6 suspension.

7 160. On or about May 4, 2016, Buckley approached Gutierrez and told him to clock out
8 because his LVN license expired. He showed her a copy of his renewed LVN license, with the
9 new expiration date. This was the same copy he provided her on April 19, 2016. Buckley stated
10 that was not good enough and that Gutierrez needed the actual card. Ambeau was present and
11 stated, "That's not correct. The copy has a certified receipt with the State of California stamp on
12 it." Buckley then told Gutierrez, "Clock out. You're being suspended." Buckley did not provide
13 a letter of suspension, as Kaiser policy dictated. Gutierrez then immediately went to the
14 California Board of Vocational Nursing and Psychiatric Technicians (hereinafter "CBVNPT")
15 office in Sacramento to obtain an original copy of his license. Gutierrez also made sure the
16 CBVNPT updated their website to show that his license was current. Gutierrez then returned and
17 showed Buckley the renewed LVN license.

18 161. On or about May 6, 2016, Gutierrez's workers' compensation doctor returned him
19 to fully work duty.

20 162. On or about May 17, 2016, Gutierrez was with Diane Schuman (hereinafter
21 "Schuman"), the manager of the Vacaville Kaiser Medicine Department. Schuman was with
22 Gutierrez when he was in one of the examination rooms. Gutierrez saw a lot of ACDs exposed
23 on the counters and desks in the examination room. He pointed them out to Schuman. She asked,
24 "What's wrong?" Gutierrez then explained to Schuman that ACDs are toxic and not supposed to
25 be anywhere near where people eat or drink. Schuman responded, "Oh. They're all expired, so
26 there's no problem." When Gutierrez informed her that she was incorrect, Schuman raised her
27 voice and yelled that there was no problem and told Gutierrez that he did not know what he was
28 talking about. Gutierrez then asked Schuman, "Can you tell me this [handling of ACDs] was

1 within Kaiser policy and procedure?" Schuman then left the room without providing an answer.

2 163. On or about May 20, 2016, Gutierrez sent an ACD compliance letter to Osborne,
3 Odle, Stowes, Kidd, and Bordessa. Gutierrez's letter also requested that they provide him with a
4 printout of whoever accessed his medical records pursuant to Section 29 Code of Federal
5 Regulations (CFR) 1910.1020.

6 164. On or about May 23, 2016, Gutierrez hand delivered an ACD exposure compliance
7 letter to Osborne. Gutierrez's letter also requested that Osborne provide him with a printout of
8 whoever accessed his medical records pursuant to Section 29 CFR 1910.1020. Osborne did not
9 respond to the letter, but informed Gutierrez that Kaiser made an error with his pay while he was
10 on his modified work schedule and they needed to fix it.

11 165. On or about May 24, 2016, Gutierrez work his last day at the Fairfield hospital.

12 166. On or about May 24, 2016, Gutierrez notified Osborne of the Methotrexate issues
13 again. Gutierrez also asked Osborne for a referral to OCCMED for his worker's compensation
14 injury. Osborne denied Gutierrez's request without providing a reason for the denial.

15 167. On or about May 25, 2016, Gutierrez had his first day at the Kaiser Vallejo
16 hospital.

17 168. On or about May 26, 2016, Gutierrez was informed by LVN Svetlana Udaltsova
18 (hereinafter "Udaltsova") that the Kaiser Vallejo Injection Clinic does not have an ACD
19 surveillance program. Udaltsova informed Gutierrez that Kaiser allowed her to handle ACDs
20 while she was pregnant. Pregnant women are not supposed to handle ACDs because they can
21 cause fetal death or birth defects.

22 169. On or about May 27, 2016, Gutierrez provided management (Osborne, Odle,
23 Stowes, Kidd, and Bordessa) with notice of its non-compliance with ACD medication protocol.

24 170. On or about May 30, 2016, Gutierrez was placed on stress leave by his Primary
25 Care Physician, Dr. Crisostomo, for two weeks. Dr. Crisostomo also took pictures of the growths
26 on Gutierrez's right calf.

27 171. On or about June 14, 2016, Gutierrez sent a hardship letter to Ambeau regarding
28 Kaiser's termination of him from Fairfield and involuntary placement in Vallejo.

1 172. On or about June 14, 2016, Gutierrez sent another letter to Osborne, Odle, Stowes,
2 Kidd, and Bordessa requesting they provide him with Gutierrez's ACD surveillance
3 documentation and results.

4 173. On or about June 16, 2016, Gutierrez notified his manager, Annabel Lucich
5 (hereinafter "Lucich"), that his job was very unsafe and very stressful. She told him that he
6 already received a physical for ACDs. Gutierrez was notified by Kalas that he will have a meeting
7 with Osborne and Lucich regarding Gutierrez's requests.

8 174. On or about June 17, 2016, Gutierrez had a meeting with Osborne and Lucich.
9 During the meeting, Osborne was not able to give Gutierrez a date when the unsafe work practices
10 and environment at Vallejo Kaiser would be corrected. Gutierrez mentioned multiple ideas of
11 how to make the unsafe areas safe, but Osborne refused. When Gutierrez asked, "Why?" Osborne
12 refused to answer; however, Osborne gave Gutierrez instructions on how to access Kaiser policies
13 and procedures online.

14 175. On or about June 17, 2016, Gutierrez asked Osborne if Osborne believed that
15 Gutierrez had ever been exposed to ACDs during his employment at Kaiser from May 2011 until
16 June 17, 2016. Osborne replied, "Probably." Gutierrez then asked, "Then why wasn't I referred
17 to EHS for a mandatory evaluation?" Osborne stated, "I cannot answer your questions. I don't
18 know what you are trying to do, but either sue me or Kaiser because I will not answer your
19 questions."

20 176. On or about June 17, 2016, Osborne informed Gutierrez that he had no MSDs
21 available as requested from Section 4. Osborne did not have answers to Gutierrez's multiple
22 requests for medical surveillance. He became agitated when Gutierrez asked him if he read the
23 Section 4 policy and procedure for ACD surveillance program. Gutierrez asked Osborne why
24 Gutierrez was denied the mandatory training and safety health assessment required pursuant to
25 Section 4 of Kaiser policy. He refused to answer. Gutierrez asked him, "How do I get my medical
26 surveillance records from 2011 to 2016?" Osborne stated that he did not know. Gutierrez
27 responded, "Goran stated you were going to have this information available to me." Osborne
28 stated, "I don't have it and I don't know how to get it." Gutierrez stated, "I thought you said you

1 read Section 4 of the policy and procedure?" Osborne then stated, "I will not answer any more
2 of your questions, so whatever your motive is, I won't answer. Gutierrez asked, "You won't? Or
3 you can't?" Osborne did not respond. Gutierrez then asked Osborne to give him the pink card
4 so he could see OccMed. Osborne asked, "Why?" Gutierrez stated it was personal. Osborne
5 stated the he needed to know why. Gutierrez responded, "No. You don't have the right to know
6 my medical needs. All you need to do is provide me with the access to go to OccMed. Are you
7 refusing me medical care like you did before? Do I need to notify your manager or go outside of
8 Kaiser and force you to acknowledge your denial of medical benefits?" Osborne finally gave
9 Gutierrez the pink card so he could see OccMed. Gutierrez had to wait until Monday to go
10 because it was Friday and they were already closed.

11 177. On or about June 22, 2016, Gutierrez called OccMed and left a message requesting
12 an appointment. Michelle from OccMed called him at 11:03 p.m., and made an appointment for
13 12:30 p.m. Gutierrez emailed Lucich and Osborne to let them know about his appointment. He
14 received a call at 12:10 p.m., from Michelle letting him know that his appointment with OccMed
15 was cancelled at his manager's request. Gutierrez asked, "Which manager?". Michelle refused
16 to answer. Gutierrez went to Fairfield Medical Office Building and scheduled an appointment
17 with Dr. Sacqui for the next day, June 23, 2016, at 9:00 a.m., because his primary care physician
18 was not available until July 5, 2016. Since he was not feeling well, Gutierrez called Lucich and
19 left her a voicemail message letting her know he was going home on sick leave.

20 178. On or about June 23, 2016, Gutierrez had his appointment with Dr. Sacqui. He
21 explained to her management's denial of his request to see an OccMed doctor. Dr. Sacqui referred
22 Gutierrez to see Dr. Green, a non-Kaiser therapist, and took him off work for two weeks, until
23 July 7, 2016. Gutierrez provided the time-off notice to Lucich.

24 179. On or about June 28, 2016, Gutierrez received a call from Pimintel, who informed
25 him that he was being moved back to the Fairfield hospital Medicine Department effective July
26 8, 2016. He was told not to report back to Vallejo.

27 180. On or about July 1, 2016, Gutierrez had a biopsy on a growth on his right calf to
28 make sure it was not cancerous.

1 181. On or about July 7, 2016, Gutierrez was informed by Dr. Crisostomo that the
2 biopsy determined the growth to be benign. The doctor wanted to take a wait and see approach
3 on the other growths.

4 182. On or about July 8, 2016, Gutierrez returned back to work at Fairfield Kaiser.

5 183. On or about July 8, 2016, Buckley called Ambeau and stated that Gutierrez was
6 being placed on paid administrative leave for three days, until July 12, 2016, when there was an
7 investigatory meeting. Ambeau stated, "For what reason?" Buckley did not provide a reason.
8 Ambeau then stated, "Please follow policy. You cannot just place an employee on admin leave
9 and not have a reason or a letter stating the reason why." Buckley stated that she would come to
10 Ambeau's work area shortly.

11 184. On or about July 8, 2016, Buckley arrived with the Kaiser Pharmacy Supervisor
12 and told Gutierrez, "You're on paid administrative leave for three days. We tried to get in contact
13 with you." Gutierrez responded, "I was not available. Why didn't you leave a voicemail message
14 or contact the union and have them relay the message?" Buckley did not respond to the question.
15 Buckley then stated, "You can leave now Dave." Ambeau stated, "Hold on! We just don't change
16 the rules when we want to. We have guidelines, policies, and procedures to follow! Where is the
17 letter stating he is suspended? I mean on paid administrative leave? And for what reason is this
18 happening?" Gutierrez stated, "I need to know why. And I believe I have a right to know."
19 Buckley told him, "Shoosh!", and gave Gutierrez a very evil look. She could not get cell phone
20 reception, so she used Ambeau's work phone to call Osborne. Osborne stated, "He's being placed
21 on paid administrative leave due to his questions and comments at our meetings." Ambeau stated,
22 "About what? We need a letter stating the reason why and the term of these limits." Buckley
23 listened on the phone again and stated, "Eddrick will send it by email shortly". Buckley then
24 hung up the phone and started to walk out the door. Ambeau then stated, "Sheri, in the future just
25 follow policy and procedure. It makes it a lot easier and less chaotic and retaliatory." Buckley
26 walked out mumbling so they were not able to hear what she said. Gutierrez and Ambeau waited
27 approximately 20 minutes without a response. Ambeau called Buckley at her office and Buckley
28 stated, "I'm still working on it but he (Dave) can leave if he wants to." Ambeau stated, "No. We

1 need a letter stating the reason for admin leave." Buckley responded, "He can't go upstairs in
2 medicine. He needs to stay downstairs." Ambeau asked, "why?" Buckley stated, "Because I
3 said so and Eddrick said so!" Ambeau responded, "That is not is not a valid reason why."
4 Buckley did not respond and hung up the phone.

5 185. On or about July 8, 2016, Gutierrez and Ambeau waited another 35 minutes and
6 still not received a letter or response. Ambeau called Buckley again and asked when they were
7 going to receive the letter. Buckley became very rude and disrespectful, and stated, "I am waiting
8 for HR to send me the letter!" Gutierrez asked Buckley for a letter that stated he was transferred
9 back to Fairfield Adult Medicine. She stated that was not up to her. Gutierrez responded, "Sheri,
10 you are the manager of this medicine facility. Please ensure I have a letter that states I have been
11 moved back to Fairfield medicine department with an effective date of July 12, 2016. And please
12 notify Eddrick of this request. Thank you." Buckley hung up the phone abruptly. After another
13 25 minutes, Buckley arrived at Ambeau's work station and provided a letter that stated Gutierrez
14 would be on paid administrative leave with a return date of July 12, 2016. Gutierrez and Ambeau
15 signed it and both received a copy. Gutierrez then left the hospital.

16 186. On or about July 12, 2016, Gutierrez attended a meeting with Ambeau, Pimintel,
17 Ronetta (unknown last name), an unknown EEO Representative, Kalas, Osborne, and Odle.
18 During this meeting, Gutierrez was informed that he was not allowed to go into the Nurse Clinic,
19 but was not provided a reason why. Kalas stated that there was no ACD administration by any
20 Kaiser LVNs. When Gutierrez asked if any LVNs were still giving ACDs without following
21 Kaiser policy and procedure and state and federal guidelines, Kalas stated, "No!" Gutierrez then
22 mentioned that LVNs were giving ACDs in Vallejo the day before and they did not have
23 screening, training, or proper Personal Protection Equipment ("PPE"). Osborne asked how
24 Gutierrez knew. He responded, "I asked and they told me they haven't." Kalas then stated that
25 all ACDs were taken from the Injection Clinic in Fairfield and will be administered by the RNs.
26 Gutierrez asked, "Have they been properly trained, cleared and provided with the proper PPE?"
27 Kalas stated, "Yes." However, Gutierrez personally knew multiple individuals who have not
28 gone through the requirements of of Kaiser's ACD surveillance program as of July 12, 2016.

1 187. At the July 12, 2016 meeting, Gutierrez was also asked about the May 17, 2016
2 incident with ACDs and Schuman. Gutierrez informed everyone that Schuman was the aggressor
3 and Gutierrez tried to diffuse the confrontation. He was placed with his back against the wall and
4 put his computer terminal in between Schuman and him to prevent her from injuring him. There
5 were three different instances where Schuman leaned over and got in Gutierrez's face. Schuman
6 also raised her voice.

7 188. At the July 12, 2016 meeting, Gutierrez was asked about his statement to Kalas on
8 May 25, 2016, that Gutierrez held him personally responsible for his ACD exposure. Gutierrez
9 responded, "You're taking my statements out of context. Section 4 of Kaiser policy states that it
10 is management's responsibility to ensure all employees are protected from ACDs. I was just
11 repeating what Kaiser policy states. I have been violated and threatened by not being protected
12 by management due to their neglect and have been exposed an undetermined amount of times to
13 ACDs because of management's negligence."

14 189. At the July 12, 2016 meeting, management asked Gutierrez about the June 17,
15 2016 incident with Lucich. Lucich stated he was aggressive and threatening in their meeting.
16 Gutierrez responded, "Lucich stated she wanted to meet alone, which prevented any witnesses.
17 She had the opportunity to leave if she felt threatened. Why didn't she leave? I was standing
18 against the desk at the back wall away from the door and she was standing in front of me blocking
19 the exit door. When we left, we left together and exited the room into the hallway and she
20 continued to talk to me and assured me that she would look into these violations and requests for
21 unsafe acts. I never threatened her. I have been professional in all my dealings. If anything,
22 Kaiser managers have learned quite well how to bully and how to use their authority to coerce
23 and intimidate their employees."

24 190. At the July 12, 2016 meeting, management asked Gutierrez about the June 17,
25 2016 meeting he had with Osborne. Gutierrez explained that Osborne had no solution for the
26 unsafe work acts and environment that have been apparent for so long at Vallejo Kaiser. Even
27 when Gutierrez gave him easy solutions, Osborne refused to listen or take advice from him.
28 Osborne became agitated because Gutierrez was persistent in removing the unsafe acts and work

1 environment. He told management about Osborne's comment, "The medical interns are more
2 important than the safety of Kaiser employees and the patients we serve." Gutierrez stated,
3 "When I inquired about why I was not given the opportunity to be protected by ACDs from the
4 very beginning as Section 4 of the ACD programs requires, Osborne would not answer. I asked
5 would not or could not. Osborne refused to answer. When I asked if he believes I have ever been
6 exposed to ACDs in my employment at Kaiser from May 2011 to present day, Osborne stated,
7 'Yes, probably.' He went on to tell management, "I asked Osborne why wasn't I referred to
8 Employee Health Services for evaluation, as it states it is mandatory?" Osborne stated, 'I cannot
9 answer these questions.' I stated 'cannot or will not?' Osborne stated I don't know what you are
10 trying to do, either sue me or Kaiser but I will not answer your questions. Gutierrez also explained
11 how Osborne initially refused to give him a pink card so that he could go see an OccMed Doctor.

12 191. At the July 12, 2016 meeting with management, Gutierrez asked Kalas about the
13 letter on medical surveillance records he requested multiple times. Kalas stated he would look
14 into it and get back to him. Gutierrez responded, "You said that over a month ago and I still
15 haven't received any correspondence." Kalas repeated, "I will look into it." Gutierrez asked for
16 a date by which he could expect a written answer. Kalas never provided a date. Pimintel then
17 stated, "His request is valid. Please just give him a date that he can expect you to notify him of
18 your outcome." Kalas stated, "I will have it to you on Friday." When asked if he meant the
19 upcoming Friday, July 15, 2016, Kalas stated, "Yes."

20 192. At the July 12, 2016 meeting with management, Gutierrez asked Kalas and
21 Ronetta for the status of the aggressive and threatening behavior reports he gave to Kalas and
22 Odle at their meeting. Kalas stated he would look into it. Gutierrez asked when he could expect
23 to have an answer. Ronetta stated, "Sandra Stowes is on vacation and will be back next week and
24 will follow up with these issues with Kalas." Gutierrez responded, "Good. I want to pursue these
25 issues to make sure they never happen again to any employee." No one from management
26 responded.

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28 ///

1 193. At the July 12, 2016 meeting with management, Gutierrez asked, "What about
2 Odle's statement that she would ensure him a safe work area and environment? I'm still waiting
3 for this to happen. Most of you in this room heard Gayla say I will ensure you will have a safe
4 environment. Gayla when is this going to happen?" Odle did not respond. Gutierrez asked
5 Kalas, "Can you ensure me a safe environment according to POR and state and federal laws?"
6 Kalas stated, "Yes!" Gutierrez then asked Ronetta, "Can you ensure me a safe work environment
7 free from harassment and retaliation and intimidation acts as stated in Kaiser POR?" Ronetta
8 stated, "Yes. As much as possible."

9 194. After the July 12, 2016 meeting, Gutierrez asked Osborne if he could take some
10 time off for personal reasons and be back after lunch. The meeting was very emotionally draining
11 for Gutierrez. Osborne refused his request. He stated, "We cannot always accommodate your
12 requests. You are here to work." Gutierrez stated, "We are fully staffed and there is no problem
13 with patient services in the injection clinic since we are fully staffed." Osborne still refused.
14 Kalas then stated, "It is ok, though, if you want to take your lunch break now to take care of your
15 personal issues." Gutierrez agreed and the meeting ended.

16 195. On or about July 12, 2016, Gutierrez returned to work at 11:02 a.m., and worked
17 throughout the day. Numerous coworkers came by to say hello and welcome him back. When
18 he was walking down the hallways he was greeted with hugs and positive comments and thank
19 you's from coworkers. They expressed their joy on seeing Gutierrez back at Kaiser Fairfield.

20 196. On or about July 12, 2016, at approximately 5:05 p.m., Gutierrez was in his work
21 area, cleaning and restocking for the next work day. Gutierrez was approached by Osborne and
22 Buckley. Osborne was very aggressive in his actions and speech, and asked if he could speak to
23 Gutierrez in the hallway by the pediatric fridge in Med D2. Gutierrez asked if needed union
24 representation and Osborne ignored him. Gutierrez asked Osborne, "What is this about?"
25 Osborne stated that it was about the meeting this morning. Gutierrez responded, "Then I need a
26 union rep for this." Osborne became hostile in his actions and approached Gutierrez in a very
27 threatening manner, raising his right arm at him. Buckley was on Osborne's left side, blocking
28 Gutierrez's ability to exit. As they both moved forward towards Gutierrez, Gutierrez stepped

1 back and said, "Stop! Eddrick, why do you continue to harass and retaliate and try to intimidate
2 me? Stop violating my Weingarten rights! You both know you cannot talk to me if there is no
3 union representation!" Osborne then stated, "You are being placed on paid administrative leave
4 due to recent evidence revealed." Osborne continue to walk forward in a threatening way with
5 his right arm raised as if he was going to hit Gutierrez. Gutierrez stepped back into his area to
6 protect himself because they were still blocking the exit, preventing him from leaving. As
7 Osborne walked to the corner by the door next to the electrical panel room, he glanced to his left
8 and saw Kernellu sitting at her computer. He immediately stopped, dropped the paper he had in
9 his hand, stepped back, and then looked at Buckley. He motioned Buckley to step back. Gutierrez
10 picked up the paper since it floated to him and handed it back to Osborne. Gutierrez then stated,
11 "I need a union rep, and as far as I am concerned, I will be here to work." Osborne and Buckley
12 left quickly. Gutierrez approached Kernellu and asked, "Did you just see that?" Kernellu was
13 trembling with fear in her eyes. She got up out of her chair, walked to the sink, and grabbed a
14 tissue, wiped her face, and washed her hands. Gutierrez could tell she was terrified. Kernellu
15 only said, "I'm glad I only have two more weeks to go before I retire. How can you handle this
16 pressure?" Gutierrez responded, "What choice do I have?"

17 197. On or about July 12, 2016, Gutierrez left the injection clinic and went down to
18 Pediatrics looking to see if Rios was still there because she was a union representative. He
19 explained to her what had just taken place with Osborne and Buckley. Rios went with Gutierrez
20 to administration. Osborne and Buckley were still there. Lake was in her office. Osborne,
21 Buckley, Rios, and Gutierrez went into the side office across from Lake's. Osborne gave Rios
22 the letter stating Paid Administrative Leave Indefinitely. The letter did not state was the reason
23 for the suspension. Gutierrez received the letter and walked out. He talked to Rios for a while
24 and then clocked out.

25 198. On or about July 14, 2016, Gutierrez received a call from Pimintel letting him
26 know that Kaiser administration wanted his home address. He told her that they already had it
27 and to have them send correspondence to his P.O. box. She called back and said that management
28 wanted to meet 1:00 p.m., that day in Conference Room VV. Gutierrez agreed to meet.

1 199. On or about July 14, 2016, Gutierrez received the following text message from
2 Ambeau:

3 Hey Dave, I just received a letter that I am now being investigated as well. So I can
4 no longer represent you in the upcoming meetings. It would be a conflict of interest.
5 I spoke to Lori and she will be able to continue representing you in them. I will
6 give her any notes I have from our meetings. I wish you the best in all of this.

6 200. On or about July 14, 2016, Gutierrez went to the meeting at the Vacaville Kaiser
7 Conference Room with SEIU Union representatives, Logan and Pimintel. Present at the meeting
8 from management were Osborne, Barkley, and Security Manager, Jim Stevenson. Management
9 asked Gutierrez to have a safety assessment, but would not tell him why. Gutierrez was informed
10 the assessment was scheduled for the next day, July 15, 2016, at 3:30 p.m., in Conference Room
11 VV and would last approximately two to three hours. Gutierrez asked, "Will this be with a Kaiser
12 employee?" He was informed the person was not an employee, but was contracted by Kaiser.
13 Gutierrez stated, "I will attend the assessment if the following conditions are met: It is conducted
14 off of Kaiser property. I get a list of people to choose from, not the one you want. I want an
15 attorney present." Management denied every request. Gutierrez then asked, "What if refuse?"
16 Barkley responded, "Then we will have to follow up the investigation as is." Gutierrez asked,
17 "What investigation are you talking about?" Barkley did not respond. Gutierrez said, "Okay."

18 201. On or about July 15, 2016, Gutierrez decided not to attend the Kaiser meeting
19 scheduled for July 16, 2016, at 3:30 p.m. He did not feel the conditions were proper for him to
20 succeed. He notified Pimintel by text, phone, and email.

21 202. On or about July 16, 2016, Gutierrez received an email from Pimintel stating that
22 Lori sent a message to Shannon Barkley listing Gutierrez's email address. She also requested
23 information from the meeting on July 12, 2016, that Kalas was supposed to send to Gutierrez by
24 the end of the work day on July 15, 2016. Gutierrez never got a response back from Barkley or
25 Kalas.

26 203. On or about July 20, 2016, Pimintel emailed Gutierrez, "Hi David, just reaching
27 out in regards to the email you received from Shannon. Will you be attending the meetings?
28 I'm wanting to know to make sure Krystal is available for representation." Gutierrez responded

1 to Lori by email at 11:26 a.m., stating:

2 I will not be attending assessment due to the unsafe practices, and unhealthy acts
3 from previous instances that Kaiser Managers promote. I am not refusing the
4 assessment, just the practices in which they are presenting them. I am also
5 requesting that SEIU request that Gayla Odle, Eddrick Osborne, Sheri Buckley,
6 Goran Kalas, Sandra Stowes, all Kaiser managers and upper managers plus Debbie
7 Lewis, Darlene Stell, Julie Lovingier, Sonya May all RN's participate in this same
8 safety Assessment. Especially Gayla Odle, Eddrick Osborne, Sheri Buckley,
9 Debbie Lewis, and Sandra Stowes.

10 Pimintel wrote back at 3:21 p.m., "Would you like me to inform management that you
11 will not be attending do to the reasons stated?"

12 204. On or about July 25, 2016, Gutierrez received a Notice of Termination letter in his
13 P.O. Box.

14 205. Gutierrez has fulfilled all his administrative exhaustion requirements. On or about
15 December 3, 2016, Gutierrez filed a complaint with the California Department of Fair
16 Employment and Housing and received a Right to Sue Letter, dated December 3, 2016.

17 206. On or about April 19, 2017, Gutierrez filed a complaint with the California Labor
18 and Workforce Development Agency. On April 19, 2017, pursuant to Government Code section
19 12962, subdivision (b), Plaintiff served Defendants with a true and correct copy of Plaintiff's
20 LWDA Complaint, via Certified Mail, Return Receipt Requested

21 **FIRST CAUSE OF ACTION**

22 **(Violation of Health & Saf. Code § 1278.5)**

23 207. The allegations set forth in this complaint are hereby re-alleged and incorporated
24 by reference.

25 208. This cause of action is asserted against all Defendants.

26 209. At all relevant times, Plaintiffs were employees of Defendants.

27 210. The California Legislature has determined that, in order to protect patients, "it is
28 the public policy of the State of California to encourage patients, nurses, members of the medical
staff, and other health care workers to notify government entities of suspected unsafe patient care
and hospital conditions." Kaiser is a "health facility" pursuant to Health and Safety Code section

1 1250, subdivision (a).

2 211. Therefore, pursuant to Health and Safety Code section 1278.5, subdivision (b),
3 "[n]o health facility shall discriminate or retaliate, in any manner, against any patient, employee,
4 member of the medical staff, or any other health care worker of the health facility because that
5 person . . . [p]resented a grievance, complaint, or report to the facility, to an entity or agency
6 responsible for accrediting or evaluating the facility, or the medical staff of the facility, or to any
7 other governmental entity." Pursuant to section 1278.5, subdivision (i), "'health facility' means
8 any facility defined under this chapter, including, but not limited to, the facility's administrative
9 personnel, employees, boards, and committees of the board, and medical staff."

10 212. Plaintiff was an employee of Defendants and a member of the medical staff of
11 Defendants.

12 213. Defendants discriminated and retaliated against Plaintiff because he reported
13 concerns about patient care, services, and facility conditions. Furthermore, according to The Joint
14 Commission, "[i]ntimidating and disruptive behaviors can foster medical errors . . . All
15 intimidating and disruptive behaviors are unprofessional and should not be tolerated." (A true and
16 correct copy of The Joint Commission, Sentinel Event Alert: Behaviors that Undermine a Culture
17 of Safety is attached hereto as **Exhibit 1**.)

18 214. Defendants harassed, discriminated, and retaliated against Plaintiff because he
19 reported concerns about patient care, services, and facility conditions.

20 215. Plaintiff presented a grievance, complaint, or report to the facility regarding unsafe
21 patient care and health facility conditions. These issues involved patient care as well as violations
22 of compliance statutes and regulations.

23 216. Health and Safety Code section 1278.5, subdivision (d)(1), states, "There shall be
24 a rebuttable presumption that discriminatory action was taken by the health facility, or by the
25 entity that owns or operates that health facility, or that owns or operates any other health facility,
26 in retaliation against an employee, member of the medical staff, or any other health care worker
27 of the facility, if responsible staff at the facility or the entity that owns or operates the facility had
28 knowledge of the actions, participation, or cooperation of the person responsible for any acts

described in paragraph (1) of subdivision (b), and the discriminatory action occurs within 120 days of the filing of the grievance or complaint by the employee, member of the medical staff or any other health care worker of the facility.”

217. Discriminatory and retaliatory action was taken against Plaintiff within 120 days of his complaints regarding patient care, services, and health facility conditions.

218. Health & Safety Code section 1278.5 has no administrative or judicial exhaustion requirement.

219. As an actual and proximate result of Defendants’ unlawful conduct, Plaintiff has lost wages, benefits, and has incurred other out-of-pocket expenses.

220. As a proximate result of the aforementioned violations, Plaintiff has been damaged in an amount according to proof, but in an amount in excess of the jurisdiction of this Court.

221. As an actual and proximate result of Defendants’ aforementioned acts, Plaintiff suffered physical injury. Plaintiff experienced sleeplessness, insomnia, upset stomach, dizziness, vomiting, nausea, and headaches. Plaintiff claims general damages for physical injury in an amount according to proof at time of trial.

222. As an actual and proximate result of Defendants’ aforementioned acts, Plaintiff also suffered mental upset and other emotional distress. Plaintiff claims general damages for mental distress in an amount according to proof at time of trial.

223. The above described actions were perpetrated and/or ratified by a managing agent or officer of Defendants. These acts were done with malice, fraud, oppression, and in reckless disregard of Plaintiff’s rights. Further, said actions were despicable in character and warrant the imposition of punitive damages in a sum sufficient to punish and deter Defendants’ future conduct.

SECOND CAUSE OF ACTION

(Violation of Lab. Code §§ 98.6 & 1102.5)

224. The allegations set forth in this complaint are hereby re-alleged and incorporated by reference.

225. This cause of action is asserted against all Defendants.

1 226. At all relevant times, Plaintiff was an employee of Defendants.

2 227. Labor Code section 98.6 states that an employer may not "discharge an employee
3 or in any manner discriminate against any employee . . . because the employee . . . has filed a
4 bona fide complaint or claim or instituted or caused to be instituted any proceeding under or
5 relating to his or her rights, which are under the jurisdiction of the Labor Commissioner." Labor
6 Code section 1102.5, subdivision (b), states that "[a]n employer, or any person acting on behalf
7 of the employer, shall not retaliate against an employee for disclosing information, or because the
8 employer believes that the employee disclosed or may disclose information, to a government or
9 law enforcement agency, to a person with authority over the employee or another employee who
10 has the authority to investigate, discover, or correct the violation or noncompliance, or for
11 providing information to, or testifying before, any public body conducting an investigation,
12 hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses
13 a violation of state or federal statute, or a violation of or noncompliance with a local, state, or
14 federal rule or regulation, regardless of whether disclosing the information is part of the
15 employee's job duties." Labor Code section 1102.5, subdivision (c), states that an "employer may
16 not retaliate against an employee for refusing to participate in an activity that would result in a
17 violation of state or federal statute, or a violation or noncompliance with a state or federal rule or
18 regulation."

19 228. Plaintiff made numerous protected complaints to persons with authority over him
20 at Kaiser regarding patients' medications not being properly administered, nurses ignoring
21 doctors' orders; other patient safety issues, harassment, discrimination, and retaliation. These
22 activities violated statutes such as: Health and Safety Code section 1278.5; Labor Code sections
23 6310, 6311, 6400, 6401, 6402, 6403, 6404, and 6405; and Government Code section 12940,
24 subdivisions (a), (h), (m), (n), (j), and (k).

25 229. Defendants violated Labor Code sections 98.6 and 1102.5 when it unlawfully
26 retaliated against Plaintiff by taking adverse employment actions against Plaintiff, including but
27 not limited to: making unfavorable changes to Plaintiff's schedule, creating the overall hostile
28 terms and conditions of employment, denying his reasonable accommodation, denying him

1 protected medical leave, suspending his employment, and terminating his employment.

2 230. The conduct of Defendants and its managing agents and employees was a
3 substantial factor in causing Plaintiff's harm.

4 231. As an actual and proximate result of the aforementioned violations, Plaintiff has
5 been harmed in an amount according to proof, but in an amount in excess of the jurisdiction of
6 this Court.

7 232. As an actual and proximate result of Defendants' retaliation, Plaintiff has lost
8 wages, benefits, and other out-of-pocket expenses.

9 233. As an actual and proximate result of Defendants' aforementioned acts, Plaintiff
10 suffered physical injury. Plaintiff experienced sleeplessness, insomnia, upset stomach, dizziness,
11 vomiting, nausea, and headaches. Plaintiff claims general damages for physical injury in an
12 amount according to proof at time of trial.

13 234. As an actual and proximate result of Defendants' aforementioned acts, Plaintiff
14 also suffered mental upset and other emotional distress. Plaintiff claims general damages for
15 mental distress in an amount according to proof at time of trial.

16 235. The above-described actions were perpetrated and/or ratified by a managing agent
17 or officer of Defendants. These acts were done with malice, fraud, oppression, and in reckless
18 disregard of Plaintiff's rights. Further, said actions were despicable in character and warrant the
19 imposition of punitive damages in a sum sufficient to punish and deter Defendants' future
20 conduct.

21 **THIRD CAUSE OF ACTION**

22 **(Violation of Lab. Code §§ 6310 & 6311)**

23 236. The allegations set forth in paragraphs above are hereby re-alleged and
24 incorporated by reference.

25 237. This cause of action is asserted against Defendants.

26 238. Plaintiff was at all times relevant to this action an employee of Defendants.

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239. Labor Code section 6310 states, "Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because the employee has made a bona fide oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, his or her employer, or his or her representative, of unsafe working conditions, or work practices, in his or her employment or place of employment, or has participated in an employer-employee occupational health and safety committee, shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor."

240. Labor Code section 6311 states, "No employee shall be laid off or discharged for refusing to perform work in the performance of which this code, including section 6400, any occupational safety or health standard or any safety order of the division or standards board will be violated, where the violation would create a real and apparent hazard to the employee or his or her fellow employees. Any employee who is laid off or discharged in violation of this section or is otherwise not paid because he or she refused to perform work in the performance of which this code, any occupational safety or health standard or any safety order of the division or standards board will be violated and where the violation would create a real and apparent hazard to the employee or his or her fellow employees shall have a right of action for wages for the time the employee is without work as a result of the layoff or discharge."

241. The Joint Commission states, "Intimidating and disruptive behaviors can foster medical errors, contribute to poor patient satisfaction and to preventable adverse outcomes. . . Safety and quality of patient care is dependent on teamwork, communication, and a collaborative work environment. To assure quality and to promote a culture of safety, health care organizations must address the problem of behaviors that threaten the performance of the health care team. Intimidating and disruptive behaviors include overt actions such as verbal outbursts and physical

1 threats, as well as passive activities such as refusing to perform assigned tasks or quietly
2 exhibiting uncooperative attitudes during routine activities...All intimidating and disruptive
3 behaviors are unprofessional and should not be tolerated."

4 242. The Joint Commission acknowledges, "The presence of intimidating and
5 disruptive behaviors in an organization [] erodes professional behavior and *creates an unhealthy*
6 *or even hostile work environment...*" [Emphasis added.] An unhealthy and unsafe work
7 environment threatens the physical and psychological safety of employees and members of the
8 medical staff, and creates an unsafe environment for patients seeking care in the medical facility.

9 243. During Plaintiff's employment with Defendants, Plaintiff complained to
10 Defendants about the unsafe working environment at Kaiser, understaffing, the lack of safety
11 precautions for nurses handling toxic drugs, the mistreatment of patients, nurses illegally
12 combining medication, the intimidating and disruptive behaviors of his co-workers and
13 supervisors, and the unnecessary risks to patient safety.

14 244. The unhealthy and unsafe working environment at Kaiser was physically and
15 psychologically unsafe for Plaintiff.

16 245. Defendants violated Labor Code sections 6310, 6311, 6400, 6401, 6402, 6403,
17 6404, and 6405 by retaliating against Plaintiff for his protected complaints regarding the unsafe
18 workplace, the unhealthy workplace, patient safety, and his working conditions by suspending
19 Plaintiff, making unfavorable changes to Plaintiff's schedule, denying his reasonable
20 accommodation, denying his protected medical leave, creating the overall hostile terms and
21 conditions of his employment, and terminating his employment.

22 246. As an actual and proximate result of the aforementioned violations, Plaintiff has
23 been damaged in an amount according to proof, but in an amount in excess of the jurisdiction of
24 this Court.

25 247. As an actual and proximate result of Defendants' willful and intentional
26 discrimination and retaliation, Plaintiff has lost wages, benefits, and other out of pocket expenses.

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249. As an actual and proximate result of Defendants' aforementioned acts, Plaintiff also suffered mental upset and other emotional distress. Plaintiff claims general damages for mental distress in an amount according to proof at time of trial.

250. The above described actions were done with malice, fraud, oppression and in reckless disregard of Plaintiff's rights. Further, said actions were despicable in character and warrant the imposition of punitive damages in a sum sufficient to punish and deter Defendants' future conduct.

FOURTH CAUSE OF ACTION

(Adverse Employment Action in Violation of Public Policy)

251. The allegations set forth in this complaint are hereby re-alleged and incorporated by reference.

252. This cause of action is asserted against all Defendants.

253. At all relevant times, Plaintiff was an employee of Defendants.

254. Defendants made unfavorable changes to Plaintiff's work schedule, denied his reasonable accommodations, denied him protected medical leave, created the overall hostile terms and conditions of his employment, suspended his employment, and terminated his employment.

255. Plaintiff was subjected to working conditions that violated public policy. Defendants' retaliation against Plaintiff based on Plaintiff's complaints regarding illegal conduct, including, but not limited to, harassment, discrimination, and retaliation, violated public policy codified in Government Code section 12940, subdivisions (a), (h), (m), (n), (j) and (k); Government Code section 12945.1; Labor Code sections 98.6, 1102.5, 6310, 6311, 6400, 6401, 6402, 6403, 6404, and 6405; Health and Safety Code section 1278.5; Code of Federal Regulations section 1604.10, subdivision (b); and the California Code of Regulations, title 2, sections 11019, subdivision (b), and 11021.

1 256. Defendants retaliated against Plaintiff for making protected complaints by making
2 unfavorable changes to Plaintiff's schedule, denying his reasonable accommodation, denying his
3 protected medical leave, creating the overall hostile terms and conditions of his employment,
4 suspending his employment, and terminating his employment.

5 257. Plaintiff's complaints regarding illegal harassment, discrimination, unsafe
6 working conditions, and/or patient safety were a substantial motivating reason for Plaintiff's
7 unfavorable work schedule changes, denial of his protected medical leave, denial of reasonable
8 accommodation, suspension, termination, and the creation of the overall hostile terms and
9 conditions of employment.

10 258. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

11 259. As an actual and proximate result of the aforementioned violations, Plaintiff has
12 been harmed in an amount according to proof, but in an amount in excess of the jurisdiction of
13 this Court.

14 260. As an actual and proximate result of Defendants' willful and intentional wrongful
15 adverse actions, Plaintiff has lost wages, benefits, and other out-of-pocket expenses.

16 261. As an actual and proximate result of Defendants' aforementioned acts, Plaintiff
17 suffered physical injury. Plaintiff experienced sleeplessness, insomnia, upset stomach, dizziness,
18 vomiting, nausea, and headaches. Plaintiff claims general damages for physical injury in an
19 amount according to proof at time of trial.

20 262. As an actual and proximate result of Defendants' aforementioned acts, Plaintiff
21 also suffered mental upset and other emotional distress. Plaintiff claims general damages for
22 mental distress in an amount according to proof at time of trial.

23 263. The above-described actions were perpetrated and/or ratified by a managing agent
24 or officer of Defendants. These acts were done with malice, fraud, oppression, and in reckless
25 disregard of Plaintiff's rights. Further, said actions were despicable in character and warrant the
26 imposition of punitive damages in a sum sufficient to punish and deter Defendants' future
27 conduct.

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FIFTH CAUSE OF ACTION

(Disability Discrimination: Gov. Code § 12940, subd. (a).)

264. The allegations set forth in this complaint are hereby re-alleged and incorporated by reference.

265. This cause of action is asserted against all Defendants.

266. At all relevant times, Plaintiffs were employees of Defendants.

267. At all times relevant to this matter, the Fair Employment and Housing Act, Government Code section 12940, was in full force and effect and binding on Defendants. Government Code section 12940, subdivision (a) reads: "It is an unlawful employment practice... [f]or an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment."

268. As set forth above, Defendants unlawfully discriminated against Plaintiff because of his disability. Defendants condoned an environment that, among other things, tolerated and encouraged discrimination based on disability and materially and negatively impacted the overall terms and conditions of Plaintiff's employment. Defendants' conduct complained of herein violated Government Code section 12940, subdivision (a) and the California Code of Regulations, title 2, sections 11019 and 11020.

269. Plaintiff's disability was a substantial motivating reason for Defendants' decision to make unfavorable work schedule changes, deny Plaintiff protected medical leave, deny Plaintiff reasonable accommodation, suspension, termination, and create of the overall hostile terms and conditions of employment.

270. Defendants' conduct was a substantial factor in causing Plaintiff harm.

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272. As an actual and proximate result of Defendants' aforementioned violations, Plaintiff has been damaged in an amount according to proof, but in an amount in excess of the jurisdiction of this Court. Plaintiff also seeks "affirmative relief" or "prospective relief" as defined by Government Code section 12926, subdivision (a), including back pay, reimbursement of out-of-pocket expenses and any such other relief that this Court deems proper.

273. As an actual and proximate result of Defendants' aforementioned acts, Plaintiff suffered physical injury. Plaintiff experienced sleeplessness, insomnia, upset stomach, dizziness, vomiting, nausea, headaches, and a sprained wrist. Plaintiff claims general damages for physical injury in an amount according to proof at time of trial.

274. As an actual and proximate result of Defendants' aforementioned acts, Plaintiff also suffered mental upset and other emotional distress. Plaintiff claims general damages for mental distress in an amount according to proof at time of trial.

275. The above-described actions were perpetrated and/or ratified by a managing agent or officer of Defendants. These acts were done with malice, fraud, oppression, and in reckless disregard of Plaintiff's rights. Further, said actions were despicable in character and warrant the imposition of punitive

SIXTH CAUSE OF ACTION

(Failure to Accommodate: Gov. Code §12940, subd. (m))

276. The allegations set forth in this complaint are hereby re-alleged and incorporated by reference.

277. This cause of action is asserted against all Defendants.

278. At all relevant times, Plaintiff was an employee of Defendants.

279. At all times relevant to this matter, the Fair Employment and Housing Act, Government Code section 12940, was in full force and effect and binding on Defendants. Section 12940, subdivision (m) reads: "It is an unlawful employment practice . . . [f]or an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical

1 or mental disability of an applicant or employee. Nothing in this subdivision or in paragraph (1)
2 or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by
3 the employer or other covered entity to produce undue hardship, as defined in Section 12926,
4 subdivision (t), to its operation.”

5 280. At all times relevant to this matter, Plaintiff suffered from a “mental disability” as
6 defined by Government Code section 12926, subdivision (j), and Title 2 of the California Code
7 of Regulations section 11065, subdivision (d)(1), and/or a “perceived disability” as defined by
8 Government Code section 12926, subdivision (j), and Title 2 of the California Code of
9 Regulations section 11065, subdivision (d)(5), and/or a “perceived potential disability” as defined
10 by Government Code section 12926, subdivision (j), and Title 2 of the California Code of
11 Regulations section 11065, subdivision (d)(6), and/or a “physical disability” as defined by
12 Government Code section 12926, subdivision (m), and Title 2 of the California Code of
13 Regulations section 11065, subdivision (d)(2). In spite of his disability, Plaintiff was able to
14 perform the essential functions of his position as defined by Government Code section 12926,
15 subdivision (f), and Title 2 of the California Code of Regulations section 11065, subdivision (e),
16 and was otherwise able to perform his job had Defendants provided the reasonable
17 accommodation required by Government Code section 12926, subdivision (p), and Title 2 of the
18 California Code of Regulations section 11068, subdivision (a).

19 281. Plaintiff provided notice relating to his disabilities and requested potential
20 accommodations. Despite Plaintiff’s disabilities, he was able to perform the essential duties of
21 his position with reasonable accommodations. However, Defendants refused to accommodate
22 Plaintiff. Shortly after requesting accommodations, Defendants made unfavorable changes to his
23 work schedule and terminated his employment. Defendants cannot establish that allowing
24 Plaintiff’s reasonable accommodation was an “undue hardship” as defined by Government Code
25 section 12926, subdivision (t), and the California Code of Regulations, title 2, section 11068.
26 Accordingly, Defendants’ conduct violated Government Code section 12940, subdivision (m).

27 282. Defendants’ failure to provide reasonable accommodation was a substantial factor
28 in causing Plaintiff’s harm.

1 283. As an actual and proximate result of the aforementioned violations, Plaintiff has
2 been harmed in an amount according to proof, but in an amount in excess of the jurisdiction of
3 this Court. Plaintiff also seeks "affirmative relief" or "prospective relief" as defined by
4 Government Code section 12926, subdivision (a), including back pay, reimbursement of out of
5 pocket expenses and any such other relief that this Court deems proper.

6 284. As an actual and proximate result of Defendants' willful and intentional failure to
7 reasonably accommodate, Plaintiff has lost wages, benefits, and other out-of-pocket expenses.

8 285. As an actual and proximate result of Defendants' aforementioned acts, Plaintiff
9 suffered physical injury. Plaintiff experienced sleeplessness, insomnia, upset stomach, dizziness,
10 vomiting, nausea, headaches, and a sprained left wrist. Plaintiff claims general damages for
11 physical injury in an amount according to proof at time of trial. Plaintiff claims general damages
12 for physical injury in an amount according to proof at time of trial.

13 286. As an actual and proximate result of Defendants' aforementioned acts, Plaintiff
14 also suffered mental upset and other emotional distress. Plaintiff claims general damages for
15 mental distress in an amount according to proof at time of trial.

16 287. The above-described actions were perpetrated and/or ratified by a managing agent
17 or officer of Defendants. These acts were done with malice, fraud, oppression, and in reckless
18 disregard of Plaintiff's rights. Further, said actions were despicable in character and warrant the
19 imposition of punitive damages in a sum sufficient to punish and deter Defendants' future
20 conduct.

21 SEVENTH CAUSE OF ACTION

22 (Failure to Engage in Interactive Process: Gov. Code § 12940, subd. (n).)

23 288. The allegations set forth in this complaint are hereby re-alleged and incorporated
24 by reference.

25 289. This cause of action is asserted against all Defendants

26 290. At all relevant times, Plaintiff was an employee of Defendants.

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1 291. At all times relevant to this matter, the Fair Employment and Housing Act,
2 California Government Code section 12940, was in full force and effect and binding on
3 Defendants. Government Code section 12940, subdivision (n), reads: "It is an unlawful
4 employment practice . . . [f]or an employer or other entity covered by this part to fail to engage
5 in a timely, good faith, interactive process with the employee or applicant to determine effective
6 reasonable accommodations, if any, in response to a request for reasonable accommodation by an
7 employee or applicant with a known physical or mental disability or known medical condition."

8 292. At all times relevant to this matter, Plaintiff suffered from a "mental disability" as
9 defined by Government Code section 12926, subdivision (j), and the California Code of
10 Regulations, title 2, section 11065, subdivision (d)(1), and/or a "perceived disability" as defined
11 by Government Code section 12926, subdivision (j), and the California Code of Regulations, title
12 2, section 11065, subdivision (d)(5), and/or a "perceived potential disability" as defined by
13 Government Code section 12926, subdivision (j), and the California Code of Regulations, title 2,
14 section 11065, subdivision (d)(6), and/or a "physical disability" as defined by Government Code
15 section 12926, subdivision (m), and the California Code of Regulations, title 2, section 11065,
16 subdivision (d)(2). In spite of his disability, Plaintiff was able to perform the essential functions
17 of his position as defined by Government Code section 12926, subdivision (f), and the California
18 Code of Regulations, title 2, section 11065, subdivision (e), and was otherwise able to perform
19 his job had Defendants provided the reasonable accommodation required by Government Code
20 section 12926, subdivision (p), and the California Code of Regulations, title 2, section 11068,
21 subdivision (a).

22 293. Although Plaintiff provided notice to Defendants regarding his mental disability
23 and/or physical disability, Defendants failed to accommodate Plaintiff's disabilities as set forth
24 above. Plaintiff was willing to participate in an interactive process to determine whether
25 reasonable accommodation could be made so that he would be able to perform the essential job
26 requirements. Defendants failed to approach Plaintiff to discuss the possible accommodation of
27 his mental disabilities and/or physical disabilities with him or his health care providers in good
28 faith. Defendants did not discuss the nature and extent of Plaintiff's mental health condition or

1 mental disabilities and/or physical disabilities, the advice and recommendation of his health care
2 providers, the extent of the necessary accommodation, and the need for future accommodation as
3 well as other important areas of inquiry recognized in the Unites States Equal Employment
4 Opportunity Commission's "Enforcement Guidance: Reasonable Accommodation and Undue
5 Hardship Under the Americans With Disabilities Act" noted by the California Legislature in
6 Government Code section 12926.1, subdivision (e). Defendants' obligation to engage in the
7 interactive process of accommodation was not excused or waived by Plaintiff. Because
8 Defendants failed to engage in the important interactive process between employee and employer
9 in determining reasonable accommodation, Defendants' conduct violated Government Code
10 section 12940, subdivision (n).

11 294. Defendants' failure to engage in a good-faith interactive process was a substantial
12 factor in causing Plaintiff harm.

13 295. As an actual and proximate result of the aforementioned violations, Plaintiff has
14 been harmed in an amount according to proof, but in an amount in excess of the jurisdiction of
15 this Court. Plaintiff also seeks "affirmative relief" or "prospective relief" as defined by
16 Government Code section 12926, subdivision (a), including back pay, reimbursement of out-of-
17 pocket expenses and any such other relief that this Court deems proper.

18 296. As an actual and proximate result of Defendants' willful and intentional failure to
19 engage in the interactive process, Plaintiff has lost wages, benefits, and other out-of-pocket
20 expenses.

21 297. As an actual and proximate result of Defendants' aforementioned acts, Plaintiff
22 suffered physical injury. Plaintiff experienced sleeplessness, insomnia, upset stomach, dizziness,
23 vomiting, nausea, headaches, and a sprained left wrist.

24 298. As an actual and proximate result of Defendants' aforementioned acts, Plaintiff
25 also suffered mental upset and other emotional distress. Plaintiff claims general damages for
26 mental distress in an amount according to proof at time of trial.

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299. The above-described actions were perpetrated and/or ratified by a managing agent or officer of Defendants. These acts were done with malice, fraud, oppression, and in reckless disregard of Plaintiff's rights. Further, said actions were despicable in character and warrant the imposition of punitive damages in a sum sufficient to punish and deter Defendants' future conduct.

EIGHT CAUSE OF ACTION

(Retaliation in Violation of FEHA: Gov. Code § 12940, subd. (h).)

300. The allegations set forth in this complaint are hereby re-alleged and incorporated by reference.

301. This cause of action is asserted against all Defendants.

302. At all relevant times, Plaintiff was an employee of Defendants.

303. At all times relevant to this action, it was unlawful under Government Code section 12940, subdivision (h), and the California Code of Regulations, title 2, section 11021 for Defendants to retaliate against Plaintiff for complaining about illegal discrimination and/or harassment. Defendants violated Government Code section 12940, subdivision (h), and the California Code of Regulations, title 2, section 11021, by retaliating against Plaintiff for his complaints of his disability-based discrimination and/or harassment, and his complaints of sex based discrimination and/or harassment by, among other things, making unfavorable changes to Plaintiff's schedule, denying him reasonable accommodations, suspending him, terminating his employment, and creating and the overall hostile terms and conditions of employment.

304. Plaintiff's complaints regarding illegal discrimination and/or harassment were substantial motivating reasons for Plaintiff's unfavorable work schedule changes, denial of reasonable accommodations, suspension, termination, and the creation of the overall hostile terms and conditions of employment.

305. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

306. As an actual and proximate result of Defendants' willful and intentional retaliation, Plaintiff has lost wages, benefits, and other out-of-pocket expenses.

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1 307. As an actual and proximate result of Defendants' aforementioned violations,
2 Plaintiff has been damaged in an amount according to proof, but in an amount in excess of the
3 jurisdiction of this Court. Plaintiff also seeks "affirmative relief" or "prospective relief" as defined
4 by Government Code section 12926, subdivision (a), including back pay, reimbursement of out-
5 of-pocket expenses and any such other relief that this Court deems proper.

6 308. As an actual and proximate result of Defendants' aforementioned acts, Plaintiff
7 suffered physical injury. Plaintiff experienced sleeplessness, insomnia, upset stomach, dizziness,
8 vomiting, nausea, and headaches. Plaintiff claims general damages for physical injury in an
9 amount according to proof at time of trial.

10 309. As an actual and proximate result of Defendants' aforementioned acts, Plaintiff
11 also suffered mental upset and other emotional distress. Plaintiff claims general damages for
12 mental distress in an amount according to proof at time of trial.

13 310. The above-described actions were perpetrated and/or ratified by a managing agent
14 or officer of Defendants. These acts were done with malice, fraud, oppression, and in reckless
15 disregard of Plaintiff's rights. Further, said actions were despicable in character and warrant the
16 imposition of punitive damages in a sum sufficient to punish and deter Defendants' future
17 conduct.

18 **NINTH CAUSE OF ACTION**

19 **(Failure to Prevent Harassment, Discrimination, or Retaliation:**

20 **Gov. Code § 12940, subd. (k).)**

21 311. The allegations set forth in this complaint are hereby re-alleged and incorporated
22 by reference.

23 312. This cause of action is asserted against all Defendants.

24 313. At all relevant times, Plaintiff was an employee of Defendants.

25 314. As an employer, pursuant to Government Code section 12926, subdivision (d),
26 Defendants have a duty to prevent unlawful harassment and discrimination, including retaliation.
27 Defendants knew or should have known about the harassment and/or discrimination based on the
28 disabilities of Plaintiff and Plaintiff's sex, as set forth above. Defendants failed to implement

1 adequate training, policies, or instructions that would have prevented the aforementioned
2 harassment, discrimination, and retaliation of Plaintiff. Defendants breached its duty to prevent
3 the harassment, discrimination and retaliation of Plaintiff. Accordingly, Defendants violated
4 Government Code section 12940, subdivision (k), and the California Code of Regulations, title 2,
5 section 11019, subdivision (b)(3).

6 315. Plaintiff was subjected to harassment, discrimination, and/or retaliation in the
7 course of his employment with Defendants as described above.

8 316. Defendants failed to take all reasonable steps to prevent the harassment,
9 discrimination, and/or retaliation.

10 317. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

11 318. As an actual and proximate result of the aforementioned violations, Plaintiff has
12 been harmed in an amount according to proof, but in an amount in excess of the jurisdiction of
13 this Court. Plaintiff also seeks "affirmative relief" or "prospective relief" as defined by
14 Government Code section 12926, subdivision (a), including back pay, reimbursement of out-of-
15 pocket expenses and any such other relief that this Court deems proper.

16 319. As an actual and proximate result of Defendants' willful and intentional failure to
17 prevent discrimination, and/or harassment, and/or retaliation, Plaintiff has lost wages, benefits,
18 and other out-of-pocket expenses. Plaintiff also seeks "affirmative relief" or "prospective relief"
19 as defined by Government Code section 12926, subdivision (a), including back pay,
20 reimbursement of out-of-pocket expenses and any such other relief that this Court deems proper.

21 320. As an actual and proximate result of Defendants' aforementioned acts, Plaintiff
22 suffered physical injury. Plaintiff experienced sleeplessness, insomnia, upset stomach, dizziness,
23 vomiting, nausea, and headaches. Plaintiff claims general damages for physical injury in an
24 amount according to proof at time of trial.

25 321. As an actual and proximate result of Defendants' aforementioned acts, Plaintiff
26 also suffered mental upset and other emotional distress. Plaintiff claims general damages for
27 mental distress in an amount according to proof at time of trial.

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(Sex Discrimination: Gov. Code § 12940, subd. (a).)

323. The allegations set forth in this complaint are hereby re-alleged and incorporated by reference.

324. This cause of action is asserted against all Defendants.

325. At all relevant times, Plaintiff was employees of Defendants.

326. At all times relevant to this matter, the Fair Employment and Housing Act, Government Code section 12940, was in full force and effect and binding on Defendants. Government Code section 12940, subdivision (a) reads: "It is an unlawful employment practice... [f]or an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment."

327. As set forth above, Defendants unlawfully discriminated against Plaintiff because of his sex. Defendants condoned an environment that, among other things, tolerated and encouraged discrimination based on sex and materially and negatively impacted the overall terms and conditions of Plaintiff's employment. Defendants' conduct complained of herein violated Government Code section 12940, subdivision (a) and the California Code of Regulations, title 2, sections 11019 and 11020.

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328. Plaintiff's sex was a substantial motivating reason for Defendants' decision to make unfavorable work schedule changes, deny Plaintiff protected medical leave, deny Plaintiff reasonable accommodation, suspension, termination, and create the overall hostile terms and conditions of employment.

329. Defendants' conduct was a substantial factor in causing Plaintiff harm.

330. As an actual and proximate result of Defendants' willful and intentional retaliation, Plaintiff has lost wages, benefits, and other out-of-pocket expenses.

331. As an actual and proximate result of Defendants' aforementioned violations, Plaintiff has been damaged in an amount according to proof, but in an amount in excess of the jurisdiction of this Court. Plaintiff also seeks "affirmative relief" or "prospective relief" as defined by Government Code section 12926, subdivision (a), including back pay, reimbursement of out-of-pocket expenses and any such other relief that this Court deems proper.

332. As an actual and proximate result of Defendants' aforementioned acts, Plaintiff suffered physical injury. Plaintiff experienced sleeplessness, insomnia, upset stomach, dizziness, vomiting, nausea, and headaches. Plaintiff claims general damages for physical injury in an amount according to proof at time of trial.

333. As an actual and proximate result of Defendants' aforementioned acts, Plaintiff also suffered mental upset and other emotional distress. Plaintiff claims general damages for mental distress in an amount according to proof at time of trial.

334. The above-described actions were perpetrated and/or ratified by a managing agent or officer of Defendants. These acts were done with malice, fraud, oppression, and in reckless disregard of Plaintiff's rights. Further, said actions were despicable in character and warrant the imposition of punitive

ELEVENTH CAUSE OF ACTION

(Hostile Work Environment Harassment: Gov. Code § 12940, subd. (j).)

335. The allegations set forth in this complaint are hereby re-alleged and incorporated by reference.

336. This cause of action is asserted against all Defendants.

1 337. At all relevant times, Plaintiff was an employee of Defendants.

2 338. At all times relevant to this matter, the Fair Employment and Housing Act and
3 Government Code section 12940 were in full force and effect and binding on Defendants.
4 Government Code section 12940, subdivision (j), reads: "It is an unlawful employment practice
5 . . . [f]or an employer, labor organization, employment agency, apprenticeship training program
6 or any training program leading to employment, or any other person, because of race, religious
7 creed, color, national origin, ancestry, physical disability, mental disability, medical condition,
8 genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual
9 orientation, to harass an employee, an applicant, or a person providing services pursuant to a
10 contract."

11 339. Plaintiff was subjected to unwanted harassing conduct because of his gender,
12 and/or disability. These deplorable acts were persistent throughout Plaintiff's employment by
13 Defendants. This harassing conduct was conducted by Defendants and its managing agents and
14 employees, who created an environment that, among other things, tolerated and encouraged
15 harassment and discrimination against Plaintiff that impacted the terms and conditions of
16 Plaintiff's employment. The statements and conduct on the part of Defendants and its managing
17 agents and employees complained of herein represent a violation of Government Code section
18 12940, subdivision (j), and the California Code of Regulations, title 2, sections 11019 and 11020.

19 340. A reasonable person in Plaintiff's circumstances would have considered the work
20 environment to be hostile or abusive. The environment of harassment was severe and/or
21 pervasive.

22 341. The conduct of Defendants and its managing agents and employees was a
23 substantial factor in causing Plaintiff's harm.

24 342. As an actual and proximate result of the aforementioned violations, Plaintiff has
25 been harmed in an amount according to proof, but in an amount in excess of the jurisdiction of
26 this Court. Plaintiff also seeks "affirmative relief" or "prospective relief" as defined by
27 Government Code section 12926, subdivision (a), including back pay, reimbursement of out-of-
28 pocket expenses and any such other relief that this Court deems proper.

1 343. As an actual and proximate result of Defendants' willful and intentional
2 harassment, Plaintiff has lost wages, benefits, and other out-of-pocket expenses.

3 344. As an actual and proximate result of Defendants' aforementioned acts, Plaintiff
4 suffered physical injury. Plaintiff experienced sleeplessness and insomnia, upset stomach,
5 dizziness, vomiting, nausea, and headaches. Plaintiff claims general damages for physical injury
6 in an amount according to proof at time of trial.

7 345. As an actual and proximate result of Defendants' aforementioned acts, Plaintiff
8 also suffered mental upset and other emotional distress. Plaintiff claims general damages for
9 mental distress in an amount according to proof at time of trial.

10 346. The above-described actions were perpetrated and/or ratified by a managing agent
11 or officer of Defendants. These acts were done with malice, fraud, oppression, and in reckless
12 disregard of Plaintiff's rights. Further, said actions were despicable in character and warrant the
13 imposition of punitive damages in a sum sufficient to punish and deter Defendants' future
14 conduct.

15 **TWELFTH CAUSE OF ACTION**

16 **(CFRA Interference: Gov. Code § 12945.2)**

17 347. The allegations set forth in this complaint are hereby re-alleged and incorporated
18 by reference.

19 348. This cause of action is asserted against Defendants.

20 349. At all relevant times, Plaintiff was employees of Defendants.

21 350. This is a claim for relief arising from Defendants' failure to apprise Plaintiff of his
22 right to take protected leave, right to take intermittent leave, and otherwise interfered with
23 Plaintiff's California Family Rights Act ("CFRA") rights in violation of, California Government
24 Code section 12945.2.

25 351. Defendants are eligible employers as defined by California Government Code
26 section 12945.2, subdivision (c)(2)(A). Defendants are a private employer with over fifty (50)
27 employees.

28 ///

1 352. Pursuant to CFRA, an employer must provide a covered employee with up to
2 twelve (12) weeks of job protected leave. Further, it is unlawful to interfere with, restrain, or deny
3 an employee's right to take CFRA leave. (Gov. Code, § 12945.2)

4 353. Plaintiff had been employed for approximately five (5) years at the time of his
5 potential CFRA leave, was a full-time employee, and was therefore eligible for a leave of absence
6 under the CFRA.

7 354. Defendants' conduct in failing to apprise Plaintiff of his right to take leave, right
8 to take intermittent leave, and otherwise interference with Plaintiff's CFRA rights was a
9 substantial factor in causing Plaintiff's harm.

10 355. As an actual and proximate result of the aforementioned violations, Plaintiff has
11 been harmed in an amount according to proof, but in an amount in excess of the jurisdiction of
12 this Court. Plaintiff also seeks "affirmative relief" or "prospective relief" as defined by
13 Government Code section 12926, subdivision (a), including back pay, reimbursement of out-of-
14 pocket expenses and any such other relief that this Court deems proper.

15 356. As an actual and proximate result of Defendants' willful and intentional conduct,
16 Plaintiff has lost wages, benefits, and other out-of-pocket expenses.

17 357. As an actual and proximate result of Defendants' aforementioned acts, Plaintiff
18 suffered physical injury. Plaintiff experienced sleeplessness, insomnia, upset stomach, dizziness,
19 vomiting, nausea, and headaches. Plaintiff claims general damages for physical injury in an
20 amount according to proof at time of trial.

21 358. As an actual and proximate result of Defendants' aforementioned acts, Plaintiff
22 also suffered mental upset and other emotional distress. Plaintiff claims general damages for
23 mental distress in an amount according to proof at time of trial.

24 359. The above-described actions were perpetrated and/or ratified by a managing agent
25 or officer of Defendants. These acts were done with malice, fraud, oppression, and in reckless
26 disregard of Plaintiff's rights. Further, said actions were despicable in character and warrant the
27 imposition of punitive damages in a sum sufficient to punish and deter Defendants' future
28 conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants and any other Defendants who may be later added to this action as follows:

1. For compensatory damages, including, but not limited to lost wages and non-economic damages in the amount according to proof;
2. For attorneys' fees and costs pursuant to all applicable statutes or legal principles;
3. For cost of suit incurred;
4. For punitive damages or other penalties recoverable by law;
5. For prejudgment interest on all amounts claimed pursuant to all applicable statutes or legal principles; and
6. For such other and further relief as the Court may deem proper

Date: June 8, 2017

By: 

LAWRANCE A. BOHM, ESQ.
KELSEY K. CIARIMBOLI, ESQ.
JUSTIN L. WARD, ESQ.

Attorneys for Plaintiff,
DAVID GUTIERREZ

DEMAND FOR JURY TRIAL

GUTIERREZ hereby demands trial by jury for this matter.

Date: June 8, 2017

By: 

LAWRANCE A. BOHM, ESQ.
KELSEY K. CIARIMBOLI, ESQ.
JUSTIN L. WARD, ESQ.

Attorneys for Plaintiff,
DAVID GUTIERREZ