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Attorney for Plaintiff JOHN DOE

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

RG17876389

JOHN DOE,

Plaintiff,

v.

THE PERMANENTE MEDICAL GROUP,
DAISY L. SUNDSTROM, DPM, ALEX LAU,
MD, and DOES 1 through 10, inclusive,

Defendants.

Case No.

COMPLAINT FOR DAMAGES

1. UNLAWFUL HARASSMENT BASED
UPON RACE IN VIOLATION OF FEHA-
GOVERNMENT CODE SECTIONS 12940,
et seq.

2. UNLAWFUL HARASSMENT BASED
UPON AGE IN VIOLATION OF FEHA-
GOVERNMENT CODE SECTIONS 12940,
et seq.

3. FAILURE TO PREVENT UNLAWFUL
HARASSMENT IN VIOLATION OF
FEHA-GOVERNMENT CODE SECTIONS
12940, *et seq.*

4. RETALIATION IN VIOLATION OF
FEHA-GOVERNMENT CODE SECTIONS
12940, *et seq.*

5. FAILURE TO PREVENT UNLAWFUL
RETALIATION IN VIOLATION OF
FEHA-GOVERNMENT CODE SECTIONS
12940, *et seq.*

6. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY

COMPLAINT FOR DAMAGES

BY FAX

1
2 Plaintiff JOHN DOE alleges as follows on knowledge as to himself and his known acts,
3 and on information and belief as to all other matters:

4 I.

5 THE NATURE OF THE ACTION
6

7 1. In or near 1999, John Doe (a Black man over the age of 40) was hired by The
8 Permanente Medical Group (TPMG). Beginning immediately, Dr. Daisy Sundstrom began to
9 complain to the Department Chief (Dr. Kiest) about alleged "problems" with John Doe's job
10 performance. Dr. Kiest advised John Doe that he did not need to "worry" about Dr. Sundstrom
11 because he had the support of his managers. In 2003, John Doe was appointed as Lead
12 Orthopedic Technician for the Kaiser Orthopedic Sports Medicine and Injury Center.

13 2. Beginning in or near 2009, Dr. Alex Lau, MD (Asian), succeeded Dr. Kiest as
14 Chief of Orthopedics. Dr. Lau was (and is) married to Dr. Daisy Sundstrom. Dr. Lau began to
15 change department policies and procedures to exclude John Doe from all meetings of the
16 orthopedics department in which Doe once participated, refused to speak to John Doe at work,
17 and placed a new White employee responsible for performing several of John Doe's former
18 responsibilities. Dr. Lau told Doe to "send" any communications to Dr. Lau through Doe's
19 manager. In or near 2011 or 2012, management assigned the only other African American ortho
20 technician to work exclusively with John Doe. Doe's managers solicited complaints about Doe's
21 coworker from John Doe and expressed surprise and disappointment when Doe defended his
22 coworker's work and technical skills. In early 2012, Doe was called as a witness during the
23 coworker's discrimination and retaliation lawsuit. Doe testified positively and truthfully
24 regarding his coworker's attitude, work ethic, and technical skills, and testified that Doe believed
25 that race played a part in management's attitude toward the coworker. The coworker
26 successfully settled his case with Kaiser in or near April 2013. Doe began to hear complaints
27 from physicians, managers, and coworkers about my failure to support Kaiser's efforts to
28

1 terminate Mr. Palmer. One of Doe's Supervisors, Pat Clark, said to Doe: "I don't talk to you"
2 because "you made friends with [the coworker]". Doe complained to manager Mary Gapp, and
3 her manager Karen Qualey. and Qualey said it was "unfortunate" and that she "put it in [Pat
4 Clark's] record".

5 3. Nevertheless, John Doe experienced escalating harassment and retaliation by Dr.
6 Lau, Dr. Sundstrom, other physicians (Deng) and managers Mary Gapp, and Pat Clark. Certain
7 clinicians began to insist that ortho technicians other than John Doe treat their patients.
8 Coworkers became increasingly hostile to Doe, and medical providers began to avoid speaking
9 to Doe, and, when possible, arranged for a different ortho technician to treat their patients instead
10 of Doe. In or near June and July 2013, John Doe complained to management about ongoing
11 retaliation and/or harassment, but TPMG's HR Representative said that TPMG investigated the
12 complaint and found it "unsubstantiated". TPMG scheduled a "diversity training" for the
13 orthopedic department in/near July 30, 2013. The "diversity training" did not succeed in making
14 any improvement in the hostility, and instead, the hostility increased. Additionally, staff and
15 ortho techs began to ask Doe "how long" he would "continue to work at Kaiser". Doe
16 complained again to management in or near June, July and September 2014. Doe is not aware of
17 any effort to investigate or respond to these complaints. The hostile and retaliatory behavior
18 continued, and the manager who said she didn't speak to Doe because he associated with the
19 coworker who sued TPMG was once again assigned to manage John Doe.

20 4. In June 2015, Doe was injured at work, was placed on modified activity at work
21 and at home, and required surgery. Mr. Huff was off work prior to and after surgery. On or near
22 October 6, 2015, Doe returned to work. Physicians and medical providers, including Sundstrom,
23 Lau, Deng, Garrison, Seifert and Liao, continued to avoid speaking to or working with Doe, and
24 Doe's managers continued to avoid speaking to Doe. After approximately eight days, Doe was
25 diagnosed with stress-related heart irregularity, and placed back out on medical leave. In April
26 2017, when it was clear that Doe's disability would not allow him to return to work at TPMG,
27 Doe felt he had no choice but to resign his employment.

28 COMPLAINT FOR DAMAGES

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II.
PARTIES

5. Plaintiff is informed and believes that at the relevant times mentioned herein, Defendant THE PERMANENTE MEDICAL GROUP ("TPMG") is a corporation headquartered in Oakland, California.

6. Defendant DAISY SUNDSTROM is, and at all relevant times mentioned herein was, a resident of California.

7. Defendant ALEX LAU is, and at all relevant times mentioned herein was, a resident of California.

8. Plaintiff is, and at all relevant times mentioned herein was, a resident of California.

9. At all times mentioned herein, each of the defendants named in the caption and each DOE defendant was an agent, employee and/or partner of the remaining defendants, including the DOE defendants, and, in doing these things herein alleged, was acting within the scope of such agency, employment and/or partnership with the permission, authority and/or consent of his or her co-defendants.

10. Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES 1-10, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege the true names and capacities of said defendants when the same has been ascertained. Each of the fictitiously named defendants is responsible in some manner for the acts complained of herein. Unless otherwise stated, all references to named defendants shall include DOE defendants as well.

11. The amount in controversy in this matter exceeds the sum of \$25,000, exclusive of interest and costs.

IV.

FACTUAL ALLEGATIONS

12. John Doe was hired by TPMG in 1999. Beginning immediately, Dr. Daisy Sundstrom began to complain to the Department Chief (Dr. Kiest) about alleged "problems" with John Doe's job performance. Dr. Kiest advised John Doe that Doe did not need to "worry" about Dr. Sundstrom because Doe had the support of his managers. In 2003, John Doe was appointed as Lead Orthopedic Technician for the Kaiser Orthopedic Sports Medicine and Injury Center. Doe received a raise and was given supervisory responsibility over the scheduling, and policies and procedures, for the orthopedic department. Dr. Sundstrom continued to complain about Doe to managers, physicians and PA's. One of Doe's managers, Dr. Vostrejs told Doe not to worry, "you know how Daisy is" and "we appreciate everything you're doing; keep up the good work".

13. Beginning in or near 2009, Dr. Alex Lau, MD (Asian), succeeded Dr. Kiest as Chief of Orthopedics. Dr. Lau was (and is) married to Dr. Daisy Sundstrom. Dr. Lau changed department policies and procedures to exclude Doe from all meetings of the orthopedics department in which he once participated, and over time reduced Doe's ability to supervise scheduling and policies and procedures in the department. Doe's manager told Doe that if Doe wanted to communicate with Dr. Lau, Doe should "go through" his manager Mary Gapp. Dr. Lau also hired Pat Clark (White), as a new manager in the department to perform duties formerly performed by Doe, including setting the work schedule for the ortho technicians. Ms. Clark made arbitrary changes to the schedules on a weekly (and sometimes daily) basis, frequently resulting in Doe working alone. Doe was forced to work unpaid overtime, and work during meal and other breaks. Under Dr. Lau, Dr. Sundstrom ignored department rules and procedures. As a result, Doe was frequently unable to take scheduled breaks or eat lunch and/or was forced to work overtime. Doe complained to Ms. Gapp about Dr. Sundstrom, but received no response.

COMPLAINT FOR DAMAGES

1 14. In or near 2011 or 2012, management assigned the only other African American
2 ortho technician, to work exclusively with Doe. Manager Mary Gapp (and supervisor Pat Clark)
3 attempted to solicit complaints about the African American coworker from Doe. Mary Gapp and
4 Pat Clark expressed surprise and disappointment when Doe defended the African American
5 coworker's work and technical skills.

6 15. In early 2012, during the African American coworker's discrimination lawsuit,
7 Doe was called as a witness. Doe testified positively and truthfully regarding his coworker's
8 attitude, work ethic, and technical skills. Doe also testified that he believed that race played a
9 part in management's attitude toward the coworker. The coworker successfully settled his case
10 with Kaiser in or near April 2013.

11 16. In or near April and May 2013, Doe began to hear complaints from physicians,
12 managers, and coworkers about his failure to support Kaiser's efforts to terminate the African
13 American coworker. Doe's Supervisor, Pat Clark, said to Doe: "I don't talk to you" because
14 "you made friends with [the coworker]". Doe complained to manager Mary Gapp, and her
15 manager Karen Qualey. Karen Qualey said it was "unfortunate" and that she "put it in [Pat
16 Clark's] record".

17 17. Nevertheless, Doe experienced escalating retaliation by Dr. Lau, Dr. Sundstrom,
18 other physicians (Deng) and managers Mary Gapp and Pat Clark. Clinicians began to insist that
19 ortho technicians other than John Doe treat their patients. Coworkers became increasingly
20 hostile, and medical providers avoided speaking to Doe, and, when possible, to arrange for a
21 different ortho technician to treat their patients instead of Doe.

22 18. All efforts by Doe to enforce ordinary and necessary rules and procedures in the
23 department regarding cleaning up after performing work or engaging in routine communications
24 began to be ignored, resented and ridiculed by coworkers. One Asian coworker made
25 reference(s) to "[Doe]and his friend Lloyd". Ms. Gapp told Doe that the Asian coworker must be
26 allowed to "act out" because he is undergoing "family-related difficulties" and is forced to work
27 in the U.S. "below his station".

1 19. In or near June 2013, Doe complained to management and HR that the changes in
2 department protocol were symptomatic of the ongoing retaliation against him for testifying
3 truthfully in Mr. Palmer's case. Kaiser's HR Representative informed Doe that Kaiser
4 investigated my complaint and found it was "unsubstantiated".

5 20. In a meeting with Doe and his union representative in which Doe attempted to
6 address his concerns, Ms. Clark stated loudly "I'm not going to sit here and listen to another
7 word of this!" and left the meeting. Ms. Clark stopped talking to Doe, and Ms. Clark and Ms.
8 Gapp stopped including Doe in meetings regarding departmental policies and procedures,
9 making Doe's efforts to fulfill his role of mentoring, training and directing the work flow of ortho
10 techs and interns increasingly difficult.

11 21. TPMG scheduled a "diversity training" for the orthopedic department in/near July
12 30, 2013. The "diversity training" did not succeed in making any improvement in the hostility,
13 and instead, the hostility increased. Additionally, staff and ortho techs began to ask Doe "how
14 long" he would "continue to work at Kaiser".

15 22. Doe complained to Ms. Gapp in June, July and September 2014 about
16 experiencing hostile behavior by medical providers, managers and coworkers (isolating and
17 targeted behaviors in violation of policies and procedures). Doe is unaware of any investigation
18 of those complaints by Ms. Gapp or anyone else at TPMT. The discriminatory and retaliatory
19 behavior continued.

20 23. On September 5, 2014, Ms. Gapp announced that Ms. Clark was assuming a "new
21 position," outside the department. In the announcement, Ms. Gapp specifically referenced Ms.
22 Clark's "fair and equitable view on life".

23 24. In October, November and December 2014, Ms. Gapp announced that she would
24 be gone from the department, and that "Patricia Clark will cover in [her] absence". Doe
25 informed Ms. Gapp that he wasn't comfortable reporting to Ms. Clark or having Ms. Clark
26 manage him because of Ms. Clark's continuing hostility toward him. Ms. Gapp dismissed Doe's
27 concerns.

25. On or near February 26, 2015, during a conversation with Dr. Keist, Dr. Keist told Doe: "at least you don't have to work with Lloyd Palmer anymore." Doe was distressed to be reminded that his managers continued to suggest Mr. Palmer was a "problem" employee because he complained about racism and retaliation.

26. On or near March 2, 2015, Pat Clark told a coworker that Pat Clark "couldn't come up" to work at 450 Sixth Avenue because "[Doe] complained".

27. In June 2015, Doe was injured at work, was placed on modified activity at work, and required surgery. Doe was off work prior to and after surgery. On or near October 6, 2015, Doe returned to work. Doe discovered that another employee -- who reported to Ms. Clark -- was now sharing his office. Doe saw and heard Ms. Clark several times speaking to employees in the adjacent office - who also reported to Ms. Clark - and anticipated that Ms. Clark would be coming into Doe's office to speak to Doe's office mate. Physicians and medical providers, including Sundstrom, Lau, Deng, Garrison, Seifert and Liao, continued to avoid speaking to or working with Doe. After approximately eight days, Doe was diagnosed with stress-related heart irregularity, and placed back out on medical leave.

28. Although Doe hoped to recover enough to return to work, by April 2017 Doe realized he could not expect to return to work at TPMG because he would continue to experience the stressful effects of working in a hostile environment. Doe believed he had no choice but to resign his employment. Doe attempted to obtain items from his desk, but was informed in June 2017 by TPMG's attorney that many of his personal items could not be located (including several bottles of wine and other gifts and cards from patients, and professional materials).

V.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

29. Prior to the initiation of this lawsuit, Plaintiff filed a complaint against defendant TPMG with the California Department of Fair Employment and Housing ("DFEH") pursuant to section 12900, *et seq.*, of the California Government Code, alleging the claims described in this

1 complaint. On September 16, 2016, the DFEH issued a "right to sue" letter. On September 19,
2 2017, Plaintiff filed a complaint against defendant TPMG with the EEOC and DFEH which
3 included plaintiff's constructive termination. All conditions precedent to the institution of this
4 lawsuit have been fulfilled. This action is filed within one year of the date that the DFEH issued
5 its right to sue letters. Plaintiff will seek to amend this complaint when the EEOC issues its right
6 to sue letter.
7

8 **VI.**

9 **FIRST CAUSE OF ACTION**

10 **(Unlawful Harassment Based on Race in Violation of FEHA)**

11 **Against all Defendants**

12 30. John Doe realleges and incorporates by reference paragraphs 1-29, inclusive, of
13 this Complaint as though fully set forth herein.
14

15 31. California Government Code section 12940(a) makes it an unlawful employment
16 practice for an employer to discriminate against an employee in compensation or in terms,
17 conditions, or privileges of employment. TPMG's managers and employees violated this
18 provision by harassing John Doe based on his race, including the acts described in paragraphs 1
19 through 29 above.
20

21 32. As a proximate result of the conduct of TPMG, John Doe has suffered and will
22 continue to suffer damages in terms of lost wages and lost benefits.

23 33. John Doe has also suffered emotional injuries, including a heart condition brought
24 on by nervousness, humiliation, depression, anguish, embarrassment, fright, shock, pain,
25 discomfort, fatigue, and anxiety.
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COMPLAINT FOR DAMAGES

1 34. In committing the foregoing acts, TPMG has been guilty of oppression, fraud,
2 and/or malice under California Civil Code section 3294, thereby entitling John Doe to punitive
3 damages in a sum appropriate to punish and make an example out of TPMG.

4 VII.

5 SECOND CAUSE OF ACTION

6 (Unlawful Harassment Based on Age in Violation of FEHA)

7 Against All Defendants

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9 35. John Doe realleges and incorporates by reference paragraphs 1-34, inclusive, of
10 this Complaint as though fully set forth herein.

11 36. California Government Code section 12940(a) makes it an unlawful employment
12 practice for an employer to discriminate against an employee in compensation or in terms,
13 conditions, or privileges of employment. TPMG violated this provision by allowing managers
14 and coworkers to harass John Doe based on his age, including the acts described in paragraphs 1
15 through 29 above.
16

17 37. As a proximate result of the conduct of TPMG, John Doe has suffered and will
18 continue to suffer damages in terms of lost wages and lost benefits.

19 38. John Doe has also suffered emotional injuries, including a heart condition that
20 was brought on by nervousness, humiliation, depression, anguish, embarrassment, fright, shock,
21 pain, discomfort, fatigue, and anxiety.

22
23 39. In committing the foregoing acts, TPMG has been guilty of oppression, fraud,
24 and/or malice under California Civil Code section 3294, thereby entitling John Doe to punitive
25 damages in a sum appropriate to punish and make an example out of TPMG.
26

VIII.

THIRD CAUSE OF ACTION

(Failure to Prevent Unlawful Harassment)

Against Defendants TPMG and Does 1-10

40. John Doe realleges and incorporates by reference paragraphs 1-39, inclusive, of this Complaint as though fully set forth herein.

41. California Government Code section 12940(k) provides that it is unlawful for an employer to fail to take all reasonable steps necessary to prevent harassment from occurring. TPMG violated this provision by failing to prevent and ignoring harassment in violation of Government Code Sections 12940, *et seq.*, including the acts described in paragraphs 1 through 29 above.

42. As a proximate result of the conduct of TPMG, John Doe has suffered and will continue to suffer damages in terms of lost wages and lost benefits.

43. John Doe has also suffered a heart condition brought on by emotional injuries, including nervousness, humiliation, depression, anguish, embarrassment, fright, shock, pain, discomfort, fatigue, and anxiety.

44. In committing the foregoing acts, TPMG has been guilty of oppression, fraud, and/or malice under California Civil Code section 3294, thereby entitling John Doe to punitive damages in a sum appropriate to punish and make an example out of TPMG.

IX.

FOURTH CAUSE OF ACTION

(Retaliation in Violation of FEHA)

Against Defendants TPMG and Does 1-10

45. John Doe realleges and incorporates by reference paragraphs 1-44, inclusive, of this Complaint as though fully set forth herein.

46. TPMG retaliated against Doe for testifying in Doe's coworker's lawsuit against TPMG and refusing to assist TPMG in discriminating against his coworker, in violation of FEHA, through numerous illegal acts, including without limitation, the acts described in paragraphs 1 through 29 above.

47. As a proximate result of the conduct of TPMG, John Doe has suffered and will continue to suffer damages in terms of lost wages and lost benefits.

48. John Doe has also suffered emotional and physical injuries, including a heart condition brought on by nervousness, humiliation, depression, anguish, embarrassment, fright, shock, pain, discomfort, fatigue, and anxiety.

49. In committing the foregoing acts, TPMG has been guilty of oppression, fraud, and/or malice under California Civil Code section 3294, thereby entitling John Doe to punitive damages in a sum appropriate to punish and make an example out of TPMG.

X.

FIFTH CAUSE OF ACTION

(Failure to Prevent Unlawful Retaliation in Violation of FEHA)

Against Defendants TPMG and Does 1-10

50. John Doe realleges and incorporates by reference paragraphs 1-49, inclusive, of this Complaint as though fully set forth herein.

51. California Government Code section 12940(k) provides that it is unlawful for an employer to fail to take all reasonable steps necessary to prevent retaliation from occurring. TPMG violated this provision by failing to prevent retaliation in violation of Government Code Sections 12940, *et seq.*, including the conduct described in paragraphs 1 through 29 above.

52. As a proximate result of the conduct of TPMG, John Doe has suffered and will continue to suffer damages in terms of lost wages and lost benefits.

53. John Doe has also suffered emotional and physical injuries, including a heart condition brought on by nervousness, humiliation, depression, anguish, embarrassment, fright, shock, pain, discomfort, fatigue, and anxiety.

54. In committing the foregoing acts, TPMG has been guilty of oppression, fraud, and/or malice under California Civil Code section 3294, thereby entitling John Doe to punitive damages in a sum appropriate to punish and make an example out of TPMG.

SIXTH CAUSE OF ACTION

(Wrongful Constructive Termination in Violation of Public Policy)

Against Defendants TPMG and Does 1-10

55. John Doe realleges and incorporates by reference paragraphs 1-54, inclusive, of this Complaint as though fully set forth herein.

COMPLAINT FOR DAMAGES

1 56. The Civil Rights Act of 1964, § 704(a), 42 U.S.C. § 2000e-3(a) and California
2 Government Code Sections 12940, *et seq.*, provide that it is unlawful for an employer to harass
3 or discriminate against an employee because of race or age, because the employee has opposed
4 discrimination or because he has made a charge, testified, assisted, or participated in any manner
5 in an investigation, proceeding, or hearing regarding an accusation of discrimination. TPMG
6 violated this provision by retaliating against plaintiff in violation of the Federal Civil Rights Act
7 and California Government Code Sections 12940, *et seq.*, including the conduct described in
8 paragraphs 1 through 29 above.

10 57. As a proximate result of the conduct of TPMG, John Doe has suffered and will
11 continue to suffer damages in terms of lost wages and lost benefits.

13 58. John Doe has also suffered emotional and physical injuries, including a heart
14 condition brought on by nervousness, humiliation, depression, anguish, embarrassment, fright,
15 shock, pain, discomfort, fatigue, and anxiety.

16 59. In committing the foregoing acts, TPMG has been guilty of oppression, fraud,
17 and/or malice under California Civil Code section 3294, thereby entitling John Doe to punitive
18 damages in a sum appropriate to punish and make an example out of TPMG.

20 **PRAYER FOR RELIEF**

21 **(As to All Causes of Action)**

22 1. For general damages, including emotional distress damages, according to proof on
23 each cause of action for which such damages are available.

24 2. For special damages, according to proof on each cause of action for which such
25 damages are available.
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28 COMPLAINT FOR DAMAGES

1 3. For compensatory damages, including emotional distress damages, according to
2 proof on each cause of action for which such damages are available.

3 4. For punitive damages, according to proof on each cause of action for which such
4 damages are available.


5 5. For declaratory and injunctive relief as appropriate.

6 6. For prejudgment interest and post-judgment interest according to law.

7 7. For reasonable attorneys' fees incurred in this action pursuant to FEHA.

8 8. For such other and further relief that the Court deems proper and just.
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11 Dated: September 21, 2017
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15 Laurel A. Mousseau
16 Attorney for Plaintiff JOHN DOE
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