

ORIGINAL

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY LOS ANGELES

SANDRA T. LIRA, an individual,

Plaintiff,

vs.

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

Defendants.

CASE NO.: 18STCV08540

COMPLAINT FOR DAMAGES

1. DISCRIMINATION BASED ON DISABILITY IN VIOLATION OF FEHA (Government Code § 12940(a));
2. DISCRIMINATION AND RETALIATION IN VIOLATION OF CALIFORNIA FAMILY RIGHTS ACT (Government Code §§ 12900, 12945.2 et seq.);
3. DISCRIMINATION BASED ON RACE/NATIONAL ORIGIN IN VIOLATION OF THE FEHA;
4. RETALIATION IN VIOLATION OF LABOR CODE 1102.5
5. CONSTRUCTIVE TORTUOUS TERMINATION IN VIOLATION OF PUBLIC POLICY
6. VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE § 1278.5;
7. ASSOCIATIONAL DISCRIMINATION IN VIOLATION OF FEHA
8. RETALIATION IN VIOLATION OF FEHA

FILED
Superior Court of California
County of Los Angeles

DEC 14 2018

Sherri R. Charet, Executive Officer/Clerk
By Sherri R. Charet Deputy

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**9. FAILURE TO TAKE ALL
NECESSARY STEPS TO
PREVENT DISCRIMINATION
AND RETALIATION IN
VIOLATION OF FEHA
(Government Code § 12940(k))**

DEMAND FOR JURY

Plaintiff SANDRA T. LIRA ("Plaintiff") alleges as follows:

GENERAL ALLEGATIONS

1. Plaintiff SANDRA T. LIRA ("Lira or Plaintiff") is an individual who at all times pertinent to this lawsuit was a resident of the County of Los Angeles, State of California. Lira is entitled to the protections of the Fair Employment and Housing Act ("FEHA") because she is of Hispanic race and/or National Origin, was disabled or perceived to be disabled, associated with a member of a protected class, took CFRA leave, and engaged in protected activity as defined by the FEHA.

2. Plaintiff is informed and believes that Defendants Kaiser Foundation Health Plan, Inc. ("KFHP") and Kaiser Foundation Hospitals ("KFH") are business entities, exact form unknown organized and existing under the laws of California, with their principal place of business located at 1 Kaiser Plaza, Oakland, California.

3. Plaintiff is informed and believes that Defendant Southern California Permanente Medical Group ("SCPMG") is a business entity exact form unknown organized and existing under the laws of California with its principal place of business located in Los Angeles County at 393 East Walnut Street, Pasadena, California.

4. Plaintiff is informed and believes KFHP, KFH and SCPMG do business jointly, and with other entities owned and controlled by KFHP under the name "Kaiser Permanente."

5. Plaintiff is informed and believes that Kaiser Permanente is an "integrated" health care delivery system comprised of the insurance company, KFHP, its doctors, organized as SCPMG, and its hospitals, which are wholly owned and/or controlled by KFHP through its captive entity, KFH, which has no separate existence or identity apart from KFHP.

6. Plaintiff is informed and believes and thereon alleges that Defendant KFHP is an insurance company which purports to provide comprehensive total medical care to its members.

1 KFHP describes itself as the largest Health Maintenance Organization in the country. KFHP
2 exercises total control over Defendants KFH, SCPMG and a number of other corporate and
3 partnership entities such that their very existence as purported separate entities is in fact a sham
4 designed to perpetuate the myth that KFHP and KFH are legitimate "non-profit" corporations.
5 Plaintiff is informed and believes that KFHP and KFH are in fact "for profit" enterprises regularly
6 reporting their profitability publicly. For example, on August 5, 2011, Kaiser reported:

7 Kaiser Foundation Hospitals, Kaiser Foundation Health Plan, Inc., and their respective
8 subsidiaries (KFH/HP) reported today a combined operating revenue of \$11.9 billion for the
9 quarter ending June 30, 2011, compared to \$11.0 billion in the same period in 2010.

10 Operating income was \$390 million in the second quarter of 2011, compared to \$313 million
11 in the same quarter last year. Net non-operating income was \$273 million in the second
12 quarter of 2011, compared to \$91 million in the same quarter last year. As a result, net
13 income for the second quarter was \$663 million versus net income of \$404 million in the
14 same period last year. These are the combined operating results for Kaiser Foundation
15 Hospitals, Kaiser Foundation Health Plan, Inc., and their respective subsidiaries.

16 7. KFHP's total dominance over KFH and SCPMG is evidenced by the fact that KFH and
17 SCPMG's entire annual budget is set by, controlled by, and approved by KFHP; all funds for KFH
18 and SCPMG's operations come from KFHP; KFHP determines what "profit" if any SCPMG is
19 allowed to make; money that SCPMG uses to pay bonuses to its doctors comes from KFHP;
20 SCPMG does not bill any patients for most of its services; barring emergencies or extremely rare
21 instances, SCPMG doctors are only allowed to work for KFHP members exclusively; and
22 SCPMG's only source of money is from KFHP. KFHP provides virtually all legal, human
23 resources, insurance, communications, advertising, billing, and other necessary services for KFH
24 and SCPMG. Members buying health care coverage only pay money to KFHP, not to SCPMG;
25 they buy insurance from KFHP and they receive services through SCPMG. Advertising for the
26 health care offered by KFHP as health insurance and provided through SCPMG doctors is done
27 predominantly by KFHP, advertising as "Kaiser Permanente" as seen in the multi-million dollar
28 "Thrive" advertising campaign. SCPMG does not own hospitals, medical buildings, or the clinics

1 where they work; they are owned by KFHP. KFHP provides all telephone, fax, and e-mail services
2 for SCPMG. KFHP also provides health insurance and medical malpractice insurance to
3 SCPMG's doctors. KFHP lawyers routinely render legal advice and counsel to KFHP, SCPMG, and
4 have unfettered access to KFHP and SCPMG's records; KFHP's Human Resources department
5 routinely investigates any EEOC/DFEH or other complaints of discrimination, as well as issues
6 regarding reasonable accommodations, regarding KFHP and SCPMG's practices and employees,
7 reporting to KFHP's legal department on all such investigations; KFHP lawyers and human
8 resources staff do not obtain privacy waivers when seeking records of KFHP and/or SCPMG
9 employees or investigating their claims; KFHP provides and pays for all facilities in which KFHP
10 and SCPMG conduct business.

11 8. Defendants KFHP, KFHP and SCPMG, if not separately noted are hereinafter collectively
12 referred to as "Kaiser" or "Defendants." These Defendants are collectively liable under either a
13 joint employer theory or a single enterprise theory.

14 9. Plaintiff was at all times employed by Defendants KFHP, KFHP and SCPMG and DOES 1-
15 100 and each of them. Said defendants will hereinafter be, at times, referred to as the Employer
16 Defendants.

17 10. Plaintiff was at all times relevant employed by the Employer Defendants at their facility
18 located at 1011 Baldwin Park Boulevard, Baldwin Park, California 91706 ("The Premises"). All of
19 the acts alleged herein, on information and belief, occurred at the Premises.

20 11. The Employer Defendants are California employers who employ more than five people,
21 and are accordingly subject to the provisions of FEHA.

22 12. Defendants Does 1 through 10 are sued under fictitious names pursuant to California
23 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis alleges,
24 that each defendant sued under such fictitious names is in some manner responsible for the wrongs
25 and damages as alleged below, and in so acting was functioning as the agent, servant, manager,
26 supervisor, and/or employee of the Employer Defendants, and in doing the actions mentioned
27 below was acting within the course and scope of his or her authority as such agent, servant.

28 13. Plaintiff was hired by the Employer Defendants in approximately September 2008 as a

1 Registered Nurse. She retained that position until she was terminated or forced to quit in
2 approximately May 2017.

3 14. In approximately September 2016, Plaintiff's husband became very ill and Plaintiff took,
4 on information and belief a California Family Rights Act (CFRA) leave to care for her husband.

5 15. Plaintiff's husband was a member of a protected class due to his illness.

6 16. Plaintiff's husband medically treated with the Defendants KFHP, KFH and SCPMG.

7 17. Plaintiff cared for her husband during his illness and accordingly associated with a
8 member of a protected class pursuant to Government Code § 12926(o).

9 18. Plaintiff believed her husband was receiving substandard medical care from the Employer
10 Defendants (KFHP, KFH and SCPMG) and made frequent complaints both orally and in writing to
11 them about the patient care afforded to her husband.

12 19. Plaintiff also complained to the Department of Health.

13 20. Such conduct was protected under Health & Safety Code Section 1278.5.

14 21. Plaintiff's husband subsequently died in approximately December 2016.

15 22. Plaintiff believed that the substandard care given to her husband by the Employer
16 Defendants caused his death.

17 23. Plaintiff began to suffer from severe depression due to her husband's death, and the
18 circumstances surrounding his death. Plaintiff was diagnosed with severe depression by her
19 physicians.

20 24. This diagnosis limited and interfered with Plaintiff's major life activities, including but
21 not limited to caring for herself, engaging in social activities, and working. Plaintiff was a qualified
22 individual with a disability because she was a disabled individual who could either with or without
23 reasonable accommodations perform the essential functions of her job, or alternatively, another job
24 she was qualified for and desired. Plaintiff is accordingly entitled to the protections of FEHA.

25 25. Alternatively, Plaintiff was perceived by the Employer Defendants as being disabled
26 within the meaning of FEHA. Plaintiff is accordingly entitled to the protections of FEHA.

27 26. Alternatively, Plaintiff had a history of a disability within the meaning of FEHA. Plaintiff
28 is accordingly entitled to the protections of FEHA.

1 27. In approximately December 2016 or January 2017 Plaintiff sought and was given medical
2 leave due to her depression and other diagnoses.

3 28. Plaintiff took, on information and belief a California Family Rights Act (CFRA) leave due
4 to her own serious medical condition.

5 29. Alternatively, this medical leave was an accommodation under the FEHA due to her
6 disability.

7 30. This was a protected activity under the FEHA.

8 31. Plaintiff was released in approximately March 2017 with no limitations.

9 32. Plaintiff, upon her return, had a new supervisor, Marjorie Alcantara, who was Filipino.

10 33. Plaintiff, upon her return to work continued to complain that the poor medical care given
11 to her husband by the Employer Defendants caused his death.

12 34. Plaintiff is informed and believes that Marjorie Alcantara treated her and the other
13 Hispanic Employees differently due to their race and/or national origin.

14 35. Plaintiff was then written up and placed on Administrative leave by Marjorie Alcantara
15 and others for pre textual reasons shortly after she returned.

16 36. Plaintiff then received a notice of termination.

17 37. Plaintiff was told by the Employer Defendants, after receiving the notice of termination
18 that if she resigned she was eligible for rehire. This was not true.

19 38. Plaintiff resigned and was thereby constructively terminated.

20 39. Plaintiff is informed and believes that she was written up, put on leave, given a notice of
21 termination, terminated, or alternatively constructively terminated due to her race and /or national
22 origin; her disability; in retaliation for accessing CFRA leave; in retaliation for requesting
23 accommodations; in violation of Labor Code 1102.5; due to her association with her husband; and
24 in violation of Health & Safety Code Section 1278.5.

25 40. Plaintiff has duly and timely exhausted her Administrative Remedies by filing charges
26 with the DFEH and receiving Right to Sue Notices.

FIRST CAUSE OF ACTION
DISCRIMINATION BASED ON DISABILITY IN VIOLATION OF FEHA
(Government Code § 12940(a))
(BY PLAINTIFF AGAINST ALL DEFENDANTS)

41. Plaintiff incorporates by reference, as though set forth in full herein, each and every allegation contained in Paragraphs 1 through 40, inclusive above.

42. *Government Code* §12940(a) precludes an employer from discriminating against an employee based on a disability/perceived disability or history of a disability.

43. Plaintiff began to suffer from severe depression due to her husband's death, and the circumstances surrounding his death. Plaintiff was diagnosed with severe depression, among other things by her physicians.

44. This diagnosis limited and interfered with Plaintiff's major life activities, including but not limited to caring for herself, engaging in social activities, and working. Plaintiff was a qualified individual with a disability because she was a disabled individual who could either with or without reasonable accommodations perform the essential functions of her job, or alternatively, another job she was qualified for and desired. Plaintiff is accordingly entitled to the protections of FEHA.

45. Alternatively, Plaintiff was perceived by the Employer Defendants as being disabled within the meaning of FEHA. Plaintiff is accordingly entitled to the protections of FEHA.

46. Alternatively, Plaintiff had a history of a disability within the meaning of FEHA. Plaintiff is accordingly entitled to the protections of FEHA.

47. In approximately December 2016 or January 2017 Plaintiff sought and was given medical leave due to her depression and other diagnoses.

48. Plaintiff took, on information and belief a California Family Rights Act (CFRA) leave due to her own serious medical condition.

49. Alternatively, this medical leave was an accommodation under the FEHA due to her disability.

50. Plaintiff was released in approximately March 2017 with no limitations.

1 51. Plaintiff, upon her return, had a new supervisor, Marjorie Alcantara, who was Filipino.

2 52. Plaintiff was then written up and placed on Administrative leave by Marjorie Alcantara
3 and others for pre textual reasons shortly after she returned.

4 53. Plaintiff then received a notice of termination.

5 54. Plaintiff was told by the Employer Defendants, after receiving the notice of termination
6 that if she resigned she was eligible for rehire. This was not true.

7 55. Plaintiff resigned and was thereby constructively terminated.

8 56. Plaintiff is informed and believes that she was written up, put on leave, given a notice of
9 termination, terminated, or alternatively constructively terminated due to her disability.

10 57. Plaintiff is informed and believes that such conduct was substantially motivated by
11 Plaintiff's disability/perceived disability or history of a disability. Such conduct violates
12 Government Code §12940(a) and other provisions of the FEHA.

13 58. As a proximate result of the said discrimination, Plaintiff has suffered mental anguish,
14 general damages, and emotional suffering past and future in an amount in excess of the minimum
15 jurisdiction of this court and according to proof.

16 59. As a further proximate result of said discrimination as afore pled, Plaintiff has suffered a
17 loss of tangible employment benefits past and future including lost wages and fringe benefits in
18 an amount in excess of the minimum jurisdiction of the court and according to proof.

19 60. As a further proximate result of the discrimination as afore pled, Plaintiff was required to
20 and did retain attorneys, and is accordingly entitled to an award of attorney's fees and costs
21 according to proof.

22 61. As a further proximate result of said discrimination, Plaintiff has incurred and will
23 continue to incur medical expenses, past and future, in an amount according to proof at the time of
24 trial.

25 62. The afore pled conduct constitutes oppression, fraud, and malice, thereby entitling
26 Plaintiff to an award of punitive damages. Plaintiff is informed and believes and thereon alleges
27 that such conduct was taken by an owner, officer or managing agent of the Employer Defendants,
28 or alternatively, authorized, ratified or approved by an owner, officer or managing agent of the

1 Employer Defendants.

2 **SECOND CAUSE OF ACTION**
3 **DISCRIMINATION AND RETALIATION IN VIOLATION OF**
4 **CALIFORNIA FAMILY RIGHTS ACT**
5 **(Government Code §§ 12900, 12945.2 et seq.)**
6 **(BY PLAINTIFF AGAINST ALL DEFENDANTS)**

7 63. Plaintiff re alleges and incorporates here paragraphs 1 through 62 above.

8 64. In approximately September 2016, Plaintiff's husband became very ill and Plaintiff took,
9 on information and belief a California Family Rights Act (CFRA) leave to care for her husband.

10 65. In approximately December 2016 or January 2017 Plaintiff sought and was given medical
11 leave due to her depression and other diagnoses.

12 66. Plaintiff took, on information and belief a California Family Rights Act (CFRA) leave
13 due to her own serious medical condition in approximately December 2016 or January 2017.

14 67. Plaintiff was, on information and belief eligible for CFRA leave and the Employer
15 Defendants are subject to the provisions of CFRA as to each of these leaves.

16 68. Plaintiff is informed and believes that she was entitled to CFRA leaves and protection on
17 both occasions and took CFRA leaves on both occasions to care for her sick husband and then due
18 to her own serious health condition.

19 69. An employer may not retaliate or discriminate against an employee for exercising any
20 right under the CFRA (Gov. Code §§ 12940(h), 12945.2(l)). An employer is prohibited from
21 interfering with an eligible employee's right to take leave under the California Family Rights Act or
22 discriminating against an employee for taking such a leave. An employer may not discriminate
23 against or discharge an employee for exercising any right under the California Family Rights Act
24 or the Fair Employment and Housing Act.

25 70. Plaintiff is informed and believes that she was written up, put on leave, given a notice of
26 termination, terminated, or alternatively constructively terminated in retaliation for accessing
27 CFRA leave.

28 71. The foregoing conduct by the Employer Defendants' and each of them constitutes

1 discrimination and retaliation in violation of the CFRA.

2 72. As a proximate result of the said violation of CFRA, Plaintiff has suffered mental anguish
3 and emotional suffering past and future in an amount in excess of the minimum jurisdiction of this
4 Court and according to proof.

5 73. As a further proximate result of the said violation of CFRA as afore pled, Plaintiff has
6 suffered a loss of tangible employment benefits including lost wages and fringe benefits past and
7 future in an amount in excess of the minimum jurisdiction of this Court and according to proof.

8 74. As a further and proximate result of the said violation of CFRA as afore pled, Plaintiff
9 was required to and did seek medical attention, and will need medical attention in the future, all to
10 Plaintiff's damages in a sum according to proof.

11 75. As a further proximate result of the Employer Defendants' violation of CFRA as afore
12 pled, Plaintiff was forced to and did retain attorneys, and is accordingly entitled to an award of
13 attorneys' fees and costs according to proof at the time of trial.

14 76. The afore pled conduct constitutes oppression, fraud, and malice, thereby entitling
15 Plaintiff to an award of punitive damages. Plaintiff is informed and believes and thereon alleges
16 that such conduct was undertaken by an owner, officer or managing agent of the Employer
17 Defendants, or alternatively, authorized, ratified or approved by an owner, officer or managing
18 agent of the Employer Defendants.

19 **THIRD CAUSE OF ACTION**

20 **DISCRIMINATION BASED ON RACE /NATIONAL ORIGIN IN VIOLATION OF FEHA**

21 **(BY PLAINTIFF AGAINST ALL DEFENDANTS)**

22 77. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 77 of the
23 Complaint as though fully set forth herein.

24 78. Plaintiff is entitled to the protections of the FEHA because of her race and or national
25 origin, Hispanic.

26 79. Plaintiff is informed and believes that Marjorie Alcantara treated her and the other
27 Hispanic Employees differently due to their race and/or national origin.

1 80. Plaintiff is informed and believes that she was written up, put on leave, given a notice of
2 termination, terminated, or alternatively constructively terminated because of her race and or
3 national origin, Hispanic.

4 81. Plaintiff was subjected to adverse employment actions due to her race and or national
5 origin, Hispanic.

6 82. Plaintiff is informed and believes that such conduct was motivated by her race and or
7 national origin, Hispanic.

8 83. Government Code 12940(a) precludes an employer from discriminating against an
9 employee because of because of their race and/or national origin. The conduct of the Employer
10 Defendants, and each of them, accordingly constitutes discrimination based on Plaintiff=s race
11 and/or national origin, and accordingly violates Government Code ' 12940(a) and other provisions
12 of FEHA.

13 84. As a proximate result of the said discrimination, Plaintiff suffered emotional distress
14 damages past and future in an amount in excess of the minimum jurisdiction of this court and
15 according to proof.

16 85. As a further and proximate result of the discrimination, Plaintiff was required to and did
17 seek medical attention, and will need medical attention in the future, all to Plaintiff=s damages in a
18 sum according to proof.

19 86. As a further proximate result of this discrimination, Plaintiff lost employment benefits,
20 including lost wages and fringe benefits past and future in an amount in excess of the minimum
21 jurisdiction of the court and according to proof.

22 87. As a further proximate result of this discrimination, Plaintiff was required to and did
23 retain attorneys and is therefore entitled to an award of attorneys' fees according to proof.

24 88. The Employer Defendants' conduct constitutes oppression, fraud, and malice thereby
25 entitling plaintiff to an award of punitive damages against the Employer Defendants. Further, the
26 Employer Defendants authorized or ratified the wrongful conduct. Plaintiff is further informed and
27 believes and thereon alleges that such acts of oppression, fraud and malice, and authorization and
28 ratification was on the part of an officer, director or managing agent of the Employer Defendants.

FOURTH CAUSE OF ACTION
RETALIATION IN VIOLATION OF LABOR CODE §1102.5
(BY PLAINTIFF AGAINST ALL DEFENDANTS)

89. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 88 of the Complaint as though fully set forth herein.

90. In approximately September 2016, Plaintiff's husband became very ill and Plaintiff took, on information and belief a California Family Rights Act (CFRA) leave to care for her husband.

91. Plaintiff's husband was a member of a protected class due to his illness.

92. Plaintiff's husband medically treated with the Defendants KFHP, KFH and SCPMG.

93. Plaintiff cared for her husband during his illness and accordingly associated with a member of a protected class pursuant to Government Code § 12926(o).

94. Plaintiff believed her husband was receiving substandard medical care from the Employer Defendants (KFHP, KFH and SCPMG) and made frequent complaints both orally and in writing to them about the patient care afforded to her husband.

95. Plaintiff also complained to the Department of Health.

96. California Labor Code section 1102.5, subdivision (b), provides in pertinent part that "An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

97. Plaintiff disclosed violations of a state or federal statute, or a violation of or noncompliance with a local, state, or federal regulation, to the Employer Defendants and to the Department of Health as afore pled.

98. Such conduct was protected by California Labor Code section 1102.5.

1 99. Plaintiff is informed and believes, and thereon alleges, that she had reasonable cause to
2 believe that the information disclosed a violation of a state or federal statute, or a violation of or
3 noncompliance with a local, state, or federal regulation.

4 100. Plaintiff is informed and believes that she was written up, put on leave, given a notice of
5 termination, terminated, or alternatively constructively terminated in violation of Labor Code
6 1102.5.

7 101. The disclosures were a substantial motivating factor for the Employer Defendants'
8 retaliation against Plaintiff, and thus constituted unlawful retaliation in violation of California
9 Labor Code section 1102.5, subdivision (b).

10 102. As a proximate result of the unlawful retaliation in violation of California Labor Code
11 section 1102.5 Plaintiff has suffered mental anguish and emotional suffering and other general
12 damages past and future in an amount in excess of the minimum jurisdiction of this court and
13 according to proof.

14 103. As a proximate result of the unlawful retaliation in violation of California Labor Code
15 section 1102.5, Plaintiff has suffered a loss of tangible employment benefits including lost wages
16 and fringe benefits past and future in an amount in excess of the minimum jurisdiction of the court
17 and according to proof.

18 104. As a proximate result of the unlawful retaliation in violation of California Labor Code
19 section 1102.5, Plaintiff was required to and did retain attorneys, and is accordingly entitled to an
20 award of attorneys' fees according to proof pursuant to California Code of Civil Procedure, section
21 1021.5.

22 105. As a proximate result of the unlawful retaliation in violation of California Labor Code
23 section 1102.5, Plaintiff has incurred and/or will continue to incur medical expenses in amount
24 according to proof at the time of trial.

25 106. The afore pled conduct of the Employer Defendants constitutes oppression, fraud, and
26 malice thereby entitling Plaintiff to an award of punitive damages. Plaintiff is further informed and
27 believe, and thereon allege, that this act of oppression, fraud, or malice or act of, ratification or
28 authorization were on the part of a managing agent or owner acting on behalf of the Employer

1 Defendants.

2 **FIFTH CAUSE OF ACTION**

3 **CONSTRUCTIVE TORTUOUS TERMINATION IN VIOLATION OF PUBLIC POLICY**

4 **(BY PLAINTIFF AGAINST ALL DEFENDANTS EXCEPT GLENN)**

5 107. Plaintiff incorporates by reference, as though set forth in full herein, each and every
6 allegation contained in Paragraphs 1 through 106, inclusive.

7 108. It is the Public Policy of the State of California, as expressed in the Fair Employment and
8 Housing Act that an employer cannot discriminate against an employee based on their disability.

9 109. It is the Public Policy of the State of California, as expressed in the Fair Employment and
10 Housing Act that an employer may not retaliate against an employee for protesting violations of the
11 FEHA.

12 110. It is the Public Policy of the State of California, as expressed in the Fair Employment and
13 Housing Act that an employer may not retaliate against an employee for accessing CFRA leave or
14 exercising rights under the CFRA.

15 111. It is the Public Policy of the State of California, as expressed in the Fair Employment and
16 Housing Act that an employer cannot discriminate against an employee based on their association
17 with a member of a protected class.

18 112. It is the Public Policy of the State of California, as expressed in Labor Code 1102.5 that
19 the Fair Employment and Housing Act that an employer cannot retaliate against an employee for
20 disclosing information, or because the employer believes that the employee disclosed or may
21 disclose information, to a government or law enforcement agency, to a person with authority over
22 the employee or another employee who has the authority to investigate, discover, or correct the
23 violation or noncompliance.

24 113. It is the Public Policy of the State of California, as expressed in Health and Safety Code
25 1278.5 that: No health facility shall discriminate or retaliate, in any manner, against any member of
26 the medical staff, or any other health care worker of the health facility, or employee, Because that
27 person has presented a grievance, complaint, or report to the facility, to an entity or agency
28

1 responsible for accrediting or evaluating the facility, or the medical staff of the facility, or to any
2 other governmental entity.

3 114. These public policies were valid, fundamental, protected the public, and were binding on
4 the Employer Defendants.

5 115. The Employer Defendants discriminated against Plaintiff based on her disability; race
6 and/or national origin; association; for accessing rights under the CFRA; in retaliation for engaging
7 in protected activity; violated Labor Code 1102.5; and violated Health and Safety Code 1278.5.

8 116. The Employer Defendants, by the acts and conduct set forth above, either intentionally
9 created or knowingly permitted working conditions that were so intolerable that a reasonable
10 employer would realize that a reasonable person in the employee's position would be compelled to
11 resign. These conditions violated both FEHA and the Public Policy of California, all as afore pled.

12 117. Plaintiff was then written up and placed on Administrative leave by Marjorie Alcantara
13 and others for pre textual reasons shortly after she returned.

14 118. Plaintiff then received a notice of termination.

15 119. Plaintiff was told by the Employer Defendants, after receiving the notice of termination
16 that if she resigned she was eligible for rehire. This was not true.

17 120. As an alternative theory, and as a proximate result of these intolerable working conditions,
18 Plaintiff was in fact compelled to resign and was thereby constructively terminated. Plaintiff is
19 informed and believes, and thereon alleges, that at all times relevant the Employer Defendants had
20 actual knowledge of these intolerable working conditions.

21 121. As a proximate result Plaintiff suffered general damages past and future according to
22 proof.

23 122. As a further proximate result Plaintiff lost employment benefits, past and future including
24 wages and fringe benefits, in an amount in excess of the minimum jurisdiction of the court and
25 according to proof.

26 123. As a further proximate result Plaintiff has needed and will need medical attention, and will
27 incur medical expenses, past and future, to her damage according to proof.
28

1 124. The afore pled conduct of the Employer Defendants constitutes oppression, fraud, and
2 malice thereby entitling Plaintiff to an award of punitive damages. Plaintiff is further informed and
3 believe, and thereon allege, that this act of oppression, fraud, or malice or act of, ratification or
4 authorization were on the part of a managing agent or owner acting on behalf of the Employer
5 Defendants.

6 **SIXTH CAUSE OF ACTION**

7 **VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE § 1278.5**

8 **(BY PLAINTIFF AGAINST ALL DEFENDANTS)**

9 125. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

10 126. Health and Safety Code 1278.5 provides that that: No health facility shall discriminate or
11 retaliate, in any manner, against any member of the medical staff, or any other health care worker
12 of the health facility, or employee, Because that person has presented a grievance, complaint, or
13 report to the facility, to an entity or agency responsible for accrediting or evaluating the facility, or
14 the medical staff of the facility, or to any other governmental entity.

15 127. In approximately September 2016, Plaintiff's husband became very ill and treated with the
16 Defendants.

17 128. Plaintiff's husband medically treated with the Defendants KFHP, KFH and SCPMG.

18 129. Plaintiff believed her husband was receiving substandard medical care from the Employer
19 Defendants (KFHP, KFH and SCPMG) and made frequent complaints both orally and in writing to
20 them about the patient care afforded to her husband.

21 130. Plaintiff also complained to the Department of Health.

22 131. Accordingly, Plaintiff engaged in activities which are legally protected under Health &
23 Safety Code Section 1278.5.

24 132. Such conduct was protected under Health & Safety Code Section 1278.5.

25 133. Plaintiff, upon her return to work continued to complain that the poor medical care given
26 to her husband by the Employer Defendants caused his death.

27 134. Plaintiff was then written up and placed on Administrative leave by Marjorie Alcantara
28 and others for pre textual reasons shortly after she returned.

1 135. Plaintiff then received a notice of termination.

2 136. Plaintiff was told by the Employer Defendants, after receiving the notice of termination
3 that if she resigned she was eligible for rehire. This was not true.

4 137. Plaintiff resigned and was thereby constructively terminated.

5 138. Plaintiff is informed and believes that she was written up, put on leave, given a notice of
6 termination, terminated, or alternatively constructively terminated due to her complaints about
7 patient care to the Defendants and to the department of Health in violation of Health & Safety
8 Code Section 1278.5.

9 139. Such conduct violated the provisions of Health & Safety Code Section 1278.5.

10 140. Kaiser's failure to take any measures to protect Plaintiff and other adverse actions against
11 Plaintiff occurred within 120 days of her protests and complaints. Accordingly, under Health &
12 Safety Code Section 1278.5(d), Plaintiff is entitled to a rebuttable presumption that the adverse
13 actions taken against her were attributable to her complaints and protests regarding patient care.

14 141. As a proximate result Plaintiff suffered general damages past and future according to
15 proof.

16 142. As a further proximate result Plaintiff lost employment benefits, past and future including
17 wages and fringe benefits, in an amount in excess of the minimum jurisdiction of the court and
18 according to proof.

19 143. As a further proximate result Plaintiff has needed and will need medical attention, and will
20 incur medical expenses, past and future, to her damage according to proof.

21 144. The afore pled conduct of the Employer Defendants constitutes oppression, fraud, and
22 malice thereby entitling Plaintiff to an award of punitive damages. Plaintiff is further informed and
23 believe, and thereon allege, that this act of oppression, fraud, or malice or act of, ratification or
24 authorization were on the part of a managing agent or owner acting on behalf of the Employer
25 Defendants.

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1 **SEVENTH CAUSE OF ACTION**

2 **ASSOCIATIONAL DISCRIMINATION IN VIOLATION OF THE FEHA**

3 **(BY PLAINTIFF AGAINST ALL DEFENDANTS)**

4 145. Plaintiff incorporates by reference, as though set forth in full herein, each and every
5 allegation contained in Paragraphs 1 through 144, inclusive above.

6 146. Government Code§ 12926(o) and 12940(a) precludes an employer from discriminating
7 against an employee based on their association with a member of a protected class.

8 147. In approximately September 2016, Plaintiff's husband became very ill.

9 148. Plaintiff's husband was a member of a protected class due to his illness.

10 149. Plaintiff's husband medically treated with the Defendants KFHP, KFH and SCPMG.

11 150. Plaintiff cared for her husband (and associated with him) during his illness and accordingly
12 associated with a member of a protected class pursuant to Government Code § 12926(o).

13 151. As a result of her association with her husband, Plaintiff was entitled to the protections of
14 the FEHA.

15 152. Plaintiff believed her husband was receiving substandard medical care from the Employer
16 Defendants (KFHP, KFH and SCPMG) and made frequent complaints both orally and in writing to
17 them about the patient care afforded to her husband.

18 153. Plaintiff also complained to the Department of Health.

19 154. Plaintiff's husband subsequently died in approximately December 2016.

20 155. Plaintiff believed that the substandard care given to her husband by the Employer
21 Defendants caused his death.

22 156. In approximately December 2016 or January 2017 Plaintiff sought and was given medical
23 leave due to her depression and other diagnoses.

24 157. Plaintiff was released in approximately March 2017 with no limitations.

25 158. Plaintiff, upon her return, had a new supervisor, Marjorie Alcantara, who was Filipino.

26 159. Plaintiff, upon her return to work, continued to complain that the poor medical care given
27 to her husband by the Employer Defendants caused his death.
28

1 160. Plaintiff was then written up and placed on Administrative leave by Marjorie Alcantara
2 and others for pre textual reasons shortly after she returned.

3 161. Plaintiff then received a notice of termination.

4 162. Plaintiff was told by the Employer Defendants, after receiving the notice of termination
5 that if she resigned she was eligible for rehirc. This was not true.

6 163. Plaintiff resigned and was thereby constructively terminated.

7 164. Plaintiff is informed and believes that she was written up, put on leave, given a notice of
8 termination, terminated, or alternatively constructively terminated due to her association with her
9 husband.

10 165. Such conduct violated Government Code§ 12926(c) and 12940(a).

11 166. As a proximate result of the said discrimination, Plaintiff suffered emotional distress
12 damages past and future in an amount in excess of the minimum jurisdiction of this court and
13 according to proof.

14 167. As a further and proximate result of the discrimination, Plaintiff was required to and did
15 seek medical attention, and will need medical attention in the future, all to Plaintiff's damages in a
16 sum according to proof.

17 168. As a further proximate result of this discrimination, Plaintiff lost employment benefits,
18 including lost wages and fringe benefits past and future in an amount in excess of the minimum
19 jurisdiction of the court and according to proof.

20 169. As a further proximate result of this discrimination, Plaintiff was required to and did retain
21 attorneys and is therefore entitled to an award of attorneys' fees according to proof.

22 170. The Employer Defendants' conduct constitutes oppression, fraud, and malice thereby
23 entitling plaintiff to an award of punitive damages against the Employer Defendants. Further, the
24 Employer Defendants authorized or ratified the wrongful conduct. Plaintiff is further informed and
25 believes and thereon alleges that such acts of oppression, fraud and malice, and authorization and
26 ratification was on the part of an officer, director or managing agent of the Employer Defendants.

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EIGHTH CAUSE OF ACTION
RETALIATION IN VIOLATION OF FEHA
(BY PLAINTIFF AGAINST ALL DEFENDANTS)

171. Plaintiff incorporates by reference, as though set forth in full herein, each and every allegation contained in Paragraphs 1 through 170 inclusive above.

172. Government Code § 12940(h), and other provisions of the FEHA, preclude an employer from retaliating against an employee for engaging in protected activity under the FEHA.

173. In approximately December 2016 or January 2017 Plaintiff sought and was given medical leave due to her depression and other diagnoses.

174. This medical leave was, on information and belief, an accommodation under the FEHA after Plaintiff's CFRA rights had ended, and was due to her disability.

175. This was a protected activity under the FEHA.

176. Plaintiff was released from her accommodated leave in approximately March 2017 with no limitations.

177. Plaintiff, upon her return, had a new supervisor, Marjorie Alcantara, who was Filipino.

178. Plaintiff, upon her return to work continued to complain that the poor medical care given to her husband by the Employer Defendants caused his death.

179. Plaintiff was then written up and placed on Administrative leave by Marjorie Alcantara and others for pre-textual reasons shortly after she returned.

180. Plaintiff then received a notice of termination.

181. Plaintiff was told by the Employer Defendants, after receiving the notice of termination that if she resigned she was eligible for rehire. This was not true.

182. Plaintiff resigned and was thereby constructively terminated.

183. Plaintiff is informed and believes that she was written up, put on leave, given a notice of termination, terminated, or alternatively constructively terminated in retaliation for engaging in protected activities pursuant to the FEHA.

1 184. The foregoing conduct by the Employer Defendants, and each of them, was in retaliation
2 for Plaintiff's protected activity under the FEHA, and is accordingly a violation of Government
3 Code § 12940(h), and other provisions of the FEHA.

4 185. As a proximate result of the said violation of FEHA, Plaintiff has suffered mental anguish
5 and emotional suffering past and future in an amount in excess of the minimum jurisdiction of this
6 Court and according to proof.

7 186. As a further proximate result of the said violation of FEHA as afore pled, Plaintiff has
8 suffered a loss of tangible employment benefits past and future including lost wages and fringe
9 benefits in an amount in excess of the minimum jurisdiction of this court and according to proof.

10 187. As a further and proximate result of the said violation of FEHA as afore pled, Plaintiff was
11 required to and did seek medical attention, and will need medical attention in the future, all to
12 Plaintiff's damages in a sum according to proof.

13 188. As a further proximate result of the Employer Defendants' violation of the FEHA as afore
14 pled, Plaintiff was forced to and did retain attorneys, and is accordingly entitled to an award of
15 attorneys' fees and costs according to proof at the time of trial.

16 189. The afore pled conduct constitutes oppression, fraud, and malice, thereby entitling Plaintiff
17 to an award of punitive damages. Plaintiff is informed and believes and thereon alleges that such
18 conduct was taken by an owner, officer or managing agent of the Employer Defendants, or
19 alternatively, authorized, ratified or approved by an owner, officer or managing agent of the
20 Employer Defendants.

21 **NINTH CAUSE OF ACTION**

22 **FAILURE TO TAKE ALL NECESSARY STEPS TO PREVENT DISCRIMINATION AND**

23 **RETALIATION IN VIOLATION OF FEHA (Government Code § 12940(k))**

24 **(BY PLAINTIFF AGAINST ALL DEFENDANTS)**

25 190. Plaintiff incorporates by reference, as though set forth in full herein, each and every
26 allegation contained in Paragraphs 1 through 189, inclusive above.

27 191. Plaintiff is informed and believes, and thereon alleges, that the Employer Defendants
28

1 failed to take all steps reasonably necessary to prevent discrimination and retaliation from
2 occurring. Such conduct violates Government Code § 12940(k).

3 192. Said violation of FEHA caused Plaintiff to be discriminated against and retaliated against
4 all as afore pled.

5 193. As a proximate result of the said violation of FEHA, Plaintiff has suffered mental anguish,
6 general damages and emotional suffering, past and future, in an amount in excess of the minimum
7 jurisdiction of this court and according to proof.

8 194. As a further proximate result of said violation of FEHA as afore pled, Plaintiff has suffered
9 a loss of tangible employment benefits including lost wages and fringe benefits, past and future, in
10 an amount in excess of the minimum jurisdiction of this court, and according to proof.

11 195. As a further proximate result of the Employer Defendants' violation of FEHA, Plaintiff
12 was forced to and did retain attorneys, and is accordingly entitled to an award of attorney's fees
13 and costs according to proof.

14 196. As a further proximate result of said violation of FEHA, Plaintiff has incurred and will
15 continue to incur medical expenses, past and future, in an amount according to proof at the time of
16 trial.

17 197. The afore pled conduct constitutes oppression, fraud, and malice, thereby entitling Plaintiff
18 to an award of punitive damages. Plaintiff is informed and believes and thereon alleges that such
19 conduct was taken by an owner, officer or managing agent of the Employer Defendants, or
20 alternatively, authorized, ratified or approved by an owner, officer or managing agent of the
21 Employer Defendants.

22
23 **PRAYER FOR RELIEF**

24 **WHEREFORE**, Plaintiff prays for judgment against Defendants, and each one of them, as
25 follows:

- 26 1. For damages for lost employment income and benefits, past and future, according to proof;
27 2. For damages for medical costs and services, past and future, according to proof;
28 3. For general damages for pain and suffering past and future according to proof;

4. For attorneys' fees according to proof on those claims which allow them ;
5. For punitive damages according to proof;
6. For costs of suit incurred herein; and,
7. For such other and further relief as the court deems just and proper.

Dated: December 13, 2018

SOTTILE & BALTAXE

By: Michael F. Baltaxe
MICHAEL F. BALTAXE, ESQ.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury.

Dated: December 13, 2018

SOTTILE & BALTAXE

By: Michael F. Baltaxe
MICHAEL F. BALTAXE, ESQ.

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