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KEN BERRY

PUBLIC ACCESS COPY
NOT OFFICIAL COURT DOCUMENT

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS, CIVIL DIVISION**

KEN BERRY, *an individual,*

Plaintiff,

vs.

**KAISER FOUNDATION HEALTH PLAN,
INC., *a California Corporation*; KAISER
FOUNDATION HOSPITALS; SOUTHERN
CALIFORNIA PERMANENTE GROUP;
DEANNE MCCOY, *an individual*; MONICA
HOYLE, *an individual*; and DOES 1-100,
*inclusive,***

Defendants.

Case No.: **19-339**

**(UNLIMITED CIVIL ACTION)
(DEMAND EXCEEDS \$25,000)**

**COMPLAINT FOR DAMAGES AND
OTHER RELIEF**

COMES NOW Plaintiff KEN BERRY, through his counsel of record, Koul Law Firm
and Matthews Law Group, and files this Complaint seeking damages and other relief for
violations of California law and as grounds for her action, Plaintiff alleges as follows:

INTRODUCTION

1
2 1. This is an action brought by the Plaintiff, KEN BERRY, (hereinafter referred to
3 as "Plaintiff") pursuant to California statutory, decisional, and regulatory laws. Plaintiff was an
4 employee of Defendants, KAISER FOUNDATION HEALTH PLAN, INC., KAISER
5 FOUNDATION HOSPITALS, and SOUTHERN CALIFORNIA PERMANENTE GROUP,
6 (hereinafter collectively referred to as "KAISER"), companies, operating as corporations and
7 doing business within the state of California.

8 2. Plaintiff alleges that California statutory, decisional and regulatory laws prohibit
9 the conduct by Defendants herein alleged, and therefore Plaintiff has an entitlement to monetary
10 relief on the basis that Defendants violated such statutes, decisional law, and regulations.

JURISDICTION AND VENUE

11
12 3. This Court has subject matter jurisdiction over this action, and this Court has
13 personal jurisdiction over all Defendants by virtue of Defendants transacting, doing, and
14 soliciting business in the county of Stanislaus, at least two defendants reside in this county, and
15 because the conduct of all Defendants' that harmed Plaintiff occurred within this county.

PARTIES

16
17 4. At all times herein mentioned, Plaintiff is and was a resident of San Joaquin
18 county, state of California.

19 5. At all times herein mentioned, Plaintiff was an employee of Defendants KAISER.

20 6. Defendants KAISER is a healthcare provider in the state of California.
21 Defendants are corporations doing business in California with the capacity to sue and be sued,
22 and doing business, in the country of Stanislaus, state of California with its principal place of
23 business located at 4601 Dale Road, Modesto, CA.

24 7. Prior to filing this complaint, Plaintiff fulfilled any legal requirement or exhausted
25 any administrative remedy imposed on her by having filed a complaint with the California
26 Department of Fair Employment and Housing (hereinafter "DFEH"), and has received the Right
27 to Sue Letter from the DFEH. Plaintiff has therefore substantially complied with all requirements
28 for the filing of this Complaint and has exhausted his administrative remedies prior to filing,

1 commencing, and serving the within action. A copy of Plaintiff's FEHA complaint to the
2 Department along with its response is attached hereto as Exhibit A.

3 8. Defendants KAISER are private entities doing business in California with the
4 capacity to sue and to be sued, and doing business, in the county of Stanislaus, state of
5 California.

6 9. On information and belief, Defendant DEANNE MCCOY (hereinafter
7 "Defendant MCCOY") is an individual residing in the county of Stanislaus, state of California.

8 10. On information and belief, Defendant MONICA HOYLE (hereinafter "Defendant
9 HOYLE") is an individual residing in the county of Stanislaus, state of California.

10 11. Defendants KAISER and its agents herein willfully committed, ordered, directed,
11 supervised, allowed, planned, ratified, concealed, organized or otherwise participated in the
12 unlawful acts complained of herein, including those unlawful acts of Defendant and DOES 1-
13 100.

14 12. Plaintiff is unaware of the names and capacities of defendants sued herein as
15 DOES 1 through 100, inclusive, and therefore sues these Defendants by such fictitious names.
16 When their true names and capacities are ascertained, Plaintiff will amend this Complaint by
17 inserting their true names and capacities. Plaintiff is informed and believes, and thereon alleges,
18 that each of the fictitiously named Defendants is responsible in some manner for the occurrences
19 alleged and that these defendants proximately caused Plaintiff's damages.

20 13. Plaintiff is informed and believes, and thereon alleges, that at all times herein
21 mentioned, each of the defendants was the alter ego, joint venturer, co-employer, joint employer,
22 agent, and/or employee of each of the remaining defendants, and in doing the things hereinafter
23 alleged, were acting within the course and scope of such agency and employment. Defendant is
24 vicariously liable and strictly liable for the acts and/or omissions of any owner, supervisor or
25 manager, which were committed within the course and scope of his or her employment.

26 14. Plaintiff is informed and believes and thereon alleges that a defendant may have
27 committed other wrongful acts or omissions of which Plaintiff is presently unaware. Plaintiff
28

1 will seek leave of court to amend this Complaint when Plaintiff discovers these other acts and/or
2 omissions.

3 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

4 15. Prior to filing this Complaint, Plaintiff fulfilled any legal requirement or
5 exhausted any administrative remedy imposed on her by having filed a complaint with the
6 California Department of Fair Employment and Housing (hereinafter referred to as "DFEH"),
7 and on July 17, 2018 received a Right to Sue Letter from the DFEH. Plaintiff has therefore
8 substantially complied with all requirements for the filing of this Complaint and has exhausted
9 her administrative remedies prior to filing, commencing, and serving the within action. A copy
10 of Plaintiff's FEHA complaint to the Department along with the Department's response is
11 attached hereto as Exhibit "A."

12 **FACTUAL ALLEGATIONS**

13 16. Plaintiff commenced employment with Defendants KAISER on or around
14 September 20, 1997 at Defendant's Modesto Hospital located at 4601 Dale Road, Modesto,
15 California 95320.

16 17. In or around June 2017, Plaintiff was transferred to Defendants' Compliance
17 Department after his position as Manager Clinical Consulting had been eliminated. Plaintiff's
18 new position was a Compliance Consultant.

19 18. As a Compliance Consultant, Plaintiff earned an hourly rate of approximately
20 \$50.00 per hour.

21 19. At all relevant times herein, Plaintiff's supervisor was Defendant MCCOY, the
22 Compliance Officer.

23 20. Prior to Plaintiff's transfer, Plaintiff had no issues relating to work. However,
24 once Plaintiff began working in the Compliance Department, he was subject to harassment and
25 discrimination by his two female colleagues: Defendant HOYLE and Defendant MCCOY.

26 21. Despite Plaintiff's years of experience, Defendants HOYLE and MCCOY began
27 to treat Plaintiff like their personal assistant, rather than their equal. For example, they would ask
28 Plaintiff to grab them water, take out the trash, and pick up or drop off the mail.

1 22. Furthermore, Plaintiff was subject to embarrassment after Defendant MCCOY
2 laughed at Plaintiff for requesting an ergonomic chair for his back injury in August 2017.

3 23. During the course of his employment in the Compliance Department, Plaintiff's
4 elderly father was battling cancer. Plaintiff had informed Defendant MCCOY of his father's
5 condition and frequently updated her on his status. In addition, Plaintiff informed Defendant
6 MCCOY that he had plans on taking a leave of absence pursuant to the Family and Medical
7 Leave Act ("FMLA"). Even more important, Plaintiff had initiated the FMLA paperwork
8 through Kaiser in order to move forward with the leave.

9 24. On or around November 3, 2017, Plaintiff again updated Defendant MCCOY of
10 his father's condition and requested that he work remotely in the afternoons in order to look after
11 his father.

12 25. The same day, Defendant MCCOY called in a meeting with Plaintiff and
13 Defendant's Human Resources Manager, Sherri Stegg, and terminated Plaintiff's employment
14 under the guise of an at-will employment.

15 26. At the time of his termination, Plaintiff was waiting to receive FMLA documents
16 from Defendants KAISER. In or around December 2017, Defendant KAISER had approved
17 Plaintiff's leave.

18 27. In addition, Defendants KAISER failed to pay Plaintiff all of the sick days he had
19 accrued throughout his employment with Defendants. To date, Plaintiff has not received payment
20 for his sick days.

21 **FIRST CAUSE OF ACTION**

22 **DISCRIMINATION BY ASSOCIATION**

23 **Violation of FEHA, Government Code Section 12940**

24 **(Against Defendants KAISER FOUNDATION HEALTH PLAN, INC., KAISER**
25 **FOUNDATION HOSPITALS, and SOUTHERN CALIFORNIA PERMANENTE**
26 **GROUP)**

27 28. As a separate and distinct cause of action, Plaintiff complains and re-alleges all
28 the allegations contained in this Complaint, and incorporates them by reference into this cause of

1 action as though fully set forth herein, excepting those allegations which are inconsistent with
2 this cause of action.

3 29. California Government Code §12940 provides that "It shall be an unlawful
4 employment practice, unless based upon a bona fide occupational qualification, or, except where
5 based upon applicable security regulations established by the United States or the State of
6 California (a) For an employer, because of the race, religious creed, color, national origin,
7 ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or
8 sexual orientation of any person, to refuse to hire or employ the person or to refuse to select the
9 person for a training program leading to employment, or to bar or to discharge the person from
10 employment or from a training program leading to employment, or to discriminate against the
11 person in compensation or in terms, conditions, or privileges of employment.

12 30. Defendants are business entities regularly employing at least the minimum
13 number of employees upon which certain legal duties and obligations arise under various laws
14 and statutes, including the Fair Employment and Housing Act. At all times herein mentioned in
15 this complaint, Government Code §12940 and Government Code §12926.1 were in full force and
16 effect and were binding on the Defendants and the Defendants were subject to its terms. These
17 sections require Defendants, as employers, to refrain from discriminating against any employee
18 on the basis of being associated to a disabled family member.

19 31. Plaintiff was at all times herein mentioned an "employee" who had a father
20 battling cancer.

21 32. Plaintiff believes and thereon alleges that he was somewhat inattentive at work
22 because his father's physical condition required Plaintiff's attention, but not so inattentive that to
23 perform to Defendants' satisfaction would need an accommodation.

24 33. Plaintiff believes and thereon alleges that similarly situated non-protected
25 employees were treated more favorably.

26 34. Such employment practices are unlawful and discriminatory and in violation of
27 Government Code Section 12940 et seq., and have resulted in damages and injury to Plaintiff, as
28 alleged herein.

1 35. Defendants' discrimination against Plaintiff constituted disparate treatment in
2 violation of Government Code Section 12940 in that Defendants intentionally discriminated
3 against Plaintiff because of Plaintiff's intentions of taking FMLA leave.

4 36. As a direct and legal result of Defendants' discrimination and retaliatory actions
5 against Plaintiff for his association with his disabled father, Plaintiff has been harmed and
6 suffered damages in an amount according to proof.

7 37. As a further proximate result of Defendants' unlawful and intentional
8 discriminatory action against Plaintiff as alleged above, Plaintiff has been harmed in that
9 Plaintiff has suffered emotional pain, humiliation, mental anguish, loss of enjoyment of life, and
10 emotional distress in an amount according to proof.

11 38. Defendants committed the acts herein alleged maliciously, fraudulently and
12 oppressively, with the wrongful intention of injuring Plaintiff and acted with the improper and
13 evil motive amounting to malice and in conscious disregard of Plaintiff's rights.

14 **SECOND CAUSE OF ACTION**

15 **DISCRIMINATION FOR ENGAGING IN A PROTECTED ACTIVITY**

16 **(FEHA, Cal.Gov.Code § 12940 et. seq.)**

17 **(Against Defendants KAISER FOUNDATION HEALTH PLAN, INC., KAISER**
18 **FOUNDATION HOSPITALS, and SOUTHERN CALIFORNIA PERMANENTE**
19 **GROUP)**

20 39. Plaintiff incorporates by reference and re-alleges paragraphs 1-38 above, as
21 though fully set forth herein.

22 40. The Fair Employment and Housing Act prohibits an employer, labor organization,
23 or employment agency from discharging, expelling, or otherwise discriminating against a person
24 who has opposed an unlawful employment practice or who has filed a complaint, testified, or
25 assisted in a proceeding under the Act. (Govt.C. 12940(h).

26 41. Defendants are business entities regularly employing at least the minimum
27 number of employees upon which certain legal duties and obligations arise under various laws
28 and statutes, including the Fair Employment and Housing Act. At all times herein mentioned in

1 this complaint, Government Code §12940 and Government Code §12926.1 were in full force and
2 effect and were binding on the Defendants and the Defendants was subject to its terms. These
3 sections require Defendants, as an employer, to refrain from discriminating against any employee
4 on the basis of engaging in a protected activity of reporting harassment.

5 42. Plaintiff was at all times herein mentioned an "employee" with who had been
6 authorized to take FMLA leave, and was associated to a person with a known disability and/or
7 medical condition.

8 43. As of commencement of his employment, and at all times herein mentioned,
9 Plaintiff was in all respects qualified for his position. Plaintiff had, at all times, performed his
10 job duties competently and diligently throughout his employment with Defendants KAISER.

11 44. Plaintiff believes and thereon alleges that needing to take a leave of absence
12 pursuant to the FMLA was a substantial factor in Defendants' adverse employment action taken
13 against him when Defendants terminated him after he requested to work remotely in the
14 afternoons in order to take care of his ill father.

15 45. Plaintiff believes and thereon alleges that similarly situated non-protected
16 employees were treated more favorably.

17 46. Such employment practices are unlawful and discriminatory and in violation of
18 Government Code Section 12940 et seq., and have resulted in damages and injury to Plaintiff, as
19 alleged herein.

20 47. Defendants' discrimination against Plaintiff constituted disparate treatment in
21 violation of Government Code Section 12940 in that Defendants intentionally discriminated
22 against Plaintiff because of Plaintiff's initiation of taking FMLA leave, and for being associated
23 with a disabled family member.

24 48. As a direct and legal result of Defendants' discrimination and retaliatory actions
25 against Plaintiff for engaging in the protected activity herein referenced, Plaintiff has been
26 harmed and suffered damages in an amount according to proof.

27 49. As a further proximate result of Defendants' unlawful and intentional
28 discriminatory action against Plaintiff as alleged above, Plaintiff has been harmed in that

1 Plaintiff has suffered emotional pain, humiliation, mental anguish, loss of enjoyment of life, and
2 emotional distress in an amount according to proof.

3 50. Defendants committed the acts herein alleged maliciously, fraudulently and
4 oppressively, with the wrongful intention of injuring Plaintiff and acted with the improper and
5 evil motive amounting to malice and in conscious disregard of Plaintiff's rights.

6 **THIRD CAUSE OF ACTION**

7 **FMLA DISCRIMINATION**

8 **(FEHA, Cal.Gov.Code § 12940 et. seq.)**

9 **(Against Defendants KAISER FOUNDATION HEALTH PLAN, INC., KAISER**
10 **FOUNDATION HOSPITALS, and SOUTHERN CALIFORNIA PERMANENTE**
11 **GROUP)**

12 51. Plaintiff incorporates by reference and re-alleges paragraphs 1-50 above, as
13 though fully set forth herein.

14 52. California Government Code §12940 provides that "It shall be an unlawful
15 employment practice, unless based upon a bona fide occupational qualification, or, except where
16 based upon applicable security regulations established by the United States or the State of
17 California (a) For an employer, because of the race, religious creed, color, national origin,
18 ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or
19 sexual orientation of any person, to refuse to hire or employ the person or to refuse to select the
20 person for a training program leading to employment, or to bar or to discharge the person from
21 employment or from a training program leading to employment, or to discriminate against the
22 person in compensation or in terms, conditions, or privileges of employment.

23 53. Defendants are business entities regularly employing at least the minimum
24 number of employees upon which certain legal duties and obligations arise under various laws
25 and statutes, including the Fair Employment and Housing Act. At all times herein mentioned in
26 this complaint, Government Code §12940 and Government Code §12926.1 were in full force and
27 effect and were binding on the Defendants and the Defendants were subject to its terms. These
28

1 sections require Defendants, as employers, to refrain from discriminating against any employee
2 on the basis of requesting and filing for FMLA leave.

3 54. Plaintiff was at all times herein mentioned an "employee" who was authorized
4 and approved to take protected FMLA leave.

5 55. As of commencement of his employment, and at all times herein mentioned,
6 Plaintiff was in all respects qualified for his position. Plaintiff had, at all times, performed his
7 job duties competently and diligently throughout his employment with Defendants, and was
8 qualified and authorized to take FMLA leave.

9 56. Plaintiff believes and thereon alleges that requesting and being approved to take
10 FMLA leave was a substantial factor in Defendants' adverse employment action taken against
11 him when Defendants terminated him.

12 57. Plaintiff believes and thereon alleges that similarly situated non-protected
13 employees were treated more favorably.

14 58. Such employment practices are unlawful and discriminatory and in violation of
15 Government Code Section 12940 et seq., and have resulted in damages and injury to Plaintiff, as
16 alleged herein.

17 59. Defendants' discrimination against Plaintiff constituted disparate treatment in
18 violation of Government Code Section 12940 in that Defendants intentionally discriminated
19 against Plaintiff because of Plaintiff's qualified and authorized FMLA leave.

20 60. As a direct and legal result of Defendants' discrimination and retaliatory actions
21 against Plaintiff for engaging in the protected activity herein referenced, Plaintiff has been
22 harmed and suffered damages in an amount according to proof.

23 61. As a further proximate result of Defendants' unlawful and intentional
24 discriminatory action against Plaintiff as alleged above, Plaintiff has been harmed in that
25 Plaintiff has suffered emotional pain, humiliation, mental anguish, loss of enjoyment of life, and
26 emotional distress in an amount according to proof.
27
28

62. Defendants committed the acts herein alleged maliciously, fraudulently and oppressively, with the wrongful intention of injuring Plaintiff and acted with the improper and evil motive amounting to malice and in conscious disregard of Plaintiff's rights.

FOURTH CAUSE OF ACTION

GENDER DISCRIMINATION

(Violation of California Government Code §§12940, et seq)

(Against Defendants KAISER FOUNDATION HEALTH PLAN, INC., KAISER FOUNDATION HOSPITALS, and SOUTHERN CALIFORNIA PERMANENTE GROUP)

63. Plaintiff realleges the statements and allegations contained in paragraphs 1 through 62 of this Complaint as if fully set forth herein.

64. As set forth more fully above, Defendants discriminated against Plaintiff on account of his gender in violation of California Government Code §12940, et seq.

65. Plaintiff was terminated from his employment with defendants on November 3, 2018 on account of unlawful discrimination in violation of California Government Code §12940, et seq.

66. As a direct, legal and proximate result of Defendants' conduct, as alleged above, Plaintiff endured emotional distress, loss of wages, loss of future career, professional opportunities, loss of pecuniary gain, and loss of the benefits of employment, all of which entitle Plaintiff to damages according to proof.

67. Plaintiff is informed and believes and thereupon alleges that Defendants' acts and omissions, and each of them, were done with malice, fraud, oppression and/or willful, reckless, and/or conscious disregard of Plaintiff's rights. Accordingly, Plaintiff is entitled to punitive damages in an amount to be determined at the time of trial.

68. As a direct, legal and proximate result of Defendants' conduct, Plaintiff was caused to and did employ the services of counsel to prosecute this action, and is accordingly entitled to an award to attorney's fees according to proof.

///

FIFTH CAUSE OF ACTION

HARASSMENT

Violation of FEHA, Government Code Section 12940(j)

(Against ALL DEFENDANTS)

69. As a separate and distinct cause of action, Plaintiff complains and re-alleges all the allegations contained in this Complaint, and incorporates them by reference into this cause of action as though fully set forth herein, excepting those allegations which are inconsistent with this cause of action.

70. At all applicable times mentioned in this Complaint, Defendants KAISER regularly employed persons, including but not limited to, Defendant MCCOY and Defendant HOYLE, in the state of California, bringing Defendants within the provisions of the California Fair Employment and Housing Act which proscribe harassment. Defendants, and each of them, and DOES 1-100 are separately and individually liable under FEHA for harassment.

71. Plaintiff was regularly harassed by Defendant KAISER'S employees Defendant MCCOY and Defendant HOYLE as prohibited under FEHA. This constant, daily harassment was so despicable, severe and pervasive as to materially alter Plaintiff's work environment. Plaintiff was harassed on the basis of his gender, perceived disability, association with a disabled family member, and engagement in a protected activity or activities.

72. Plaintiff suffered psychologically, emotionally, and physically from being the victim of the harassment committed by Defendant MCCOY, Defendant HOYLE and DOES 1-100, and also due to Defendants KAISER'S failure to prevent such harassment from occurring. Defendant KAISER's employees, including but not limited to, Defendant MCCOY and Defendant HOYLE are liable for creating a "hostile work environment" by subjecting Plaintiff to constant, severe, and pervasive harassment and intentional torts. Defendants KAISER is liable to Plaintiff for the conduct of their employees, managers, supervisors, and owners towards Plaintiff, including but not limited to the conduct of Defendant MCCOY, Defendant HOYLE and DOES 1 through 100.

1 73. As a direct and legal result of Defendants' willful, knowing, and intentional
2 violation(s) of FEHA, Plaintiff has sustained and continues to sustain substantial losses in
3 earnings and other employment benefits.

4 74. As a further proximate result of Defendants' willful, knowing, and intentional
5 violation(s) of FEHA, Plaintiff has suffered and continues to suffer humiliation, emotional
6 distress, and mental and physical pain and anguish, all to his damage in a sum according to
7 proof.

8 75. Defendants committed the aforementioned acts against Plaintiff herein alleged
9 maliciously, fraudulently and oppressively, with the wrongful intention of injuring Plaintiff.
10 Defendants acted with the improper and evil motive amounting to malice and in conscious
11 disregard of Plaintiff's right to be free from such illegal behavior, such as to constitute
12 oppression, fraud, or malice pursuant to California Civil Code section 3294 entitling Plaintiff to
13 punitive damages in an amount appropriate to punish and set an example of each Defendants
14 named herein.

15 76. Plaintiff has incurred and continues to incur legal expenses and attorney's fees.
16 Plaintiff is presently unaware of the precise amount of these expenses and fees and prays leave of
17 court to amend this Complaint when the amounts are more fully known.

18 **SIXTH CAUSE OF ACTION**

19 **FAILURE TO TAKE ALL STEPS NECESSARY TO STOP**
20 **DISCRIMINATION AND HARASSMENT FROM OCCURRING**

21 **Violation of FEHA, Government Code Section 12940(k)**
22 **(Against Defendants KAISER FOUNDATION HEALTH PLAN, INC., KAISER**
23 **FOUNDATION HOSPITALS, and SOUTHERN CALIFORNIA PERMANENTE**
24 **GROUP)**

25 77. As a separate and distinct cause of action, Plaintiff complains and re-alleges all
26 the allegations contained in this Complaint, and incorporates them by reference into this cause of
27 action as though fully set forth herein, excepting those allegations which are inconsistent with
28 this cause of action.

1 78. At all applicable times mentioned in this complaint, Defendants KAISER
2 regularly employed five (5) or more persons bringing Defendants within the provisions of the
3 California Fair Employment and Housing Act (FEHA).

4 79. Defendants failed to take all reasonable steps necessary to prevent discrimination
5 and harassment of Plaintiff from occurring in violation of Government Code section 12940(k).

6 80. As a proximate result of Defendants KAISER'S willful, knowing, and intentional
7 violation(s) of FEHA, Plaintiff has sustained and continues to sustain damages.

8 81. As a proximate result of Defendants KAISER'S willful, knowing, and intentional
9 violation(s) of FEHA, Plaintiff has suffered and continues to suffer humiliation, emotional
10 distress, and mental and physical pain and anguish, all to his damage in a sum according to
11 proof.

12 82. Plaintiff has incurred and continues to incur legal expenses and attorney fees.
13 Plaintiff is presently unaware of the precise amount of these expenses and fees and prays leave of
14 court to amend this complaint when the amounts are more fully known.

15 **SEVENTH CAUSE OF ACTION**

16 **RETALIATION**

17 **Violation of FEHA, Government Code Section 12940(h), and Public Policy**

18 **(Against Defendant TEAMSTERS and DOES 1-100)**

19 83. As a separate and distinct cause of action, Plaintiff complains and re-alleges all
20 the allegations contained in this Complaint, and incorporates them by reference into this cause of
21 action as though fully set forth herein, excepting those allegations which are inconsistent with
22 this cause of action.

23 84. Government Code section 12940(h) provides that it is an unlawful employment
24 practice "[f]or any employer, labor organization, employment agency, or person to discharge,
25 expel, or otherwise discriminate against any person because the person has opposed any practices
26 forbidden under this part or because the person has filed a complaint, testified, or assisted in any
27 proceeding under this part."
28

1 85. Plaintiff engaged in a protected activity or protected activities during his
2 employment with Defendants KAISER, including but not limited to, being associated to a
3 disabled family member and requesting to take FMLA leave.

4 86. Defendants retaliated against Plaintiff by terminating Plaintiff from his
5 employment on or around November 3, 2017.

6 87. Said retaliation was in violation of public policy.

7 88. As a direct and legal result of Defendants' retaliatory actions against Plaintiff for
8 engaging in the protected activities herein referenced, Plaintiff has suffered and continues to
9 suffer general and special damages, in an amount according to proof.

10 89. As a further proximate result of Defendants' willful, knowing, and intentional
11 violation(s) of FEHA, Plaintiff has suffered and continues to suffer humiliation, emotional
12 distress, and mental and physical pain and anguish, all to his damage in a sum according to proof

13 90. Defendants committed the aforementioned acts against Plaintiff herein alleged
14 maliciously, fraudulently and oppressively, with the wrongful intention of injuring Plaintiff.
15 Defendants acted with the improper and evil motive amounting to malice and in conscious
16 disregard of Plaintiff's right to be free from such illegal behavior, such as to constitute
17 oppression, fraud, or malice pursuant to California Civil Code section 3294 entitling Plaintiff to
18 punitive damages in an amount appropriate to punish and set an example of Defendants.

19 91. Plaintiff has incurred and continues to incur legal expenses and attorney's fees.
20 Plaintiff is presently unaware of the precise amount of these expenses and fees and prays leave of
21 court to amend this Complaint when the amounts are more fully known.

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EIGHTH CAUSE OF ACTION

WRONGFUL TERMINATION

In Violation of Public Policy

(Against Defendants KAISER FOUNDATION HEALTH PLAN, INC., KAISER FOUNDATION HOSPITALS, and SOUTHERN CALIFORNIA PERMANENTE GROUP)

92. As a separate and distinct cause of action, Plaintiff complains and re-alleges all the allegations contained in this Complaint, and incorporates them by reference into this cause of action as though fully set forth herein, excepting those allegations which are inconsistent with this cause of action.

93. "[W]hen an employer's discharge of an employee violates fundamental principles of public policy, the discharged employee may maintain a tort action and recover damages traditionally available in such actions." (*Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167, 170 [164 Cal.Rptr. 839, 610 P.2d 1330].)

94. At all times herein mentioned, Plaintiff was employed by Defendants KAISER.

95. Defendants KAISER terminated Plaintiff's employment on or around November 3, 2017.

96. Plaintiff is informed and believes that he was discriminated against, harassed, retaliated against, and unlawfully treated, resulting in her wrongful termination. Defendants terminated Plaintiff's employment for reasons that violated public policy and despite having no valid grounds for terminating Plaintiff's employment. Discrimination, harassment, and retaliation based on a person's engagement in protected activities herein mentioned is in violation of the public policy of the state of California and the United States prohibiting discrimination on the basis of engagement in a protected activity, association with a disabled person, and requesting FMLA, the public policy prohibiting retaliation against an employee for engaging in a protected practice. (42 U.S.C.A. §§ 2000e et seq.; Cal. Const. Art. 1, § 8; Gov. Code, §§ 12940 et seq.; and Gov. Code, § 8547); *Petermann v. International Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 396*, 174 Cal. App. 2d

1 184, 344 P.2d 25 (2d Dist. 1959); *Green v. Ralee Engineering Co.*, 19 Cal. 4th 66, 78 Cal. Rptr.
2 2d 16, 960 P.2d 1046 (1998).

3 97. Plaintiff believes that Defendants retaliated against him and wrongfully
4 terminated for engaging in the protected activities referenced herein.

5 98. As a result of Defendants' unlawful conduct, Plaintiff was terminated in violation
6 of public policy. He has suffered a loss of income and general damages in the nature of
7 emotional distress, all in a sum to be established according to proof at trial.

8 99. Plaintiff has incurred and continues to incur legal expenses and attorney's fees.
9 Plaintiff is presently unaware of the precise amount of these expenses and fees and prays leave of
10 court to amend this Complaint when the amounts are more fully known.

11 **NINTH CAUSE OF ACTION**

12 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

13 **(Against All Defendants)**

14 100. As a separate and distinct cause of action, Plaintiff complains and re-alleges all
15 the allegations contained in this Complaint, and incorporates them by reference into this cause of
16 action as though fully set forth herein, excepting those allegations which are inconsistent with
17 this cause of action.

18 101. Plaintiff is informed and believes and thereon alleges that Defendants, by and
19 through its principals, agents and employees conducted themselves unlawfully in violation of
20 public policy and applicable law as described above with conscious disregard of the result or
21 outcome of such act. The unlawful harassment, retaliation, and conduct towards Plaintiff, due to
22 its improper motivations and surrounding circumstances constitute extreme and outrageous
23 conduct by the Defendants, and each of them.

24 102. Through the outrageous conduct described above, Defendants acted with the
25 intent to cause, and with reckless disregard for the probability of causing Plaintiff to suffer
26 severe emotional distress.
27
28

1 103. At all relevant times, Defendants had actual or constructive knowledge of extreme
2 and outrageous conduct described herein, and condoned, ratified and participated in such
3 extreme and outrageous acts.

4 104. As a direct and proximate result of Defendants' willful, knowing and intentional
5 acts, and Defendants' failure to act, Plaintiff has suffered and will continue to suffer mental
6 distress and anguish. Plaintiff has suffered and will continue to suffer a loss of earnings, her
7 pension, and other employment benefits and job opportunities. Plaintiff is thereby entitled to
8 general and compensatory damages in amount to be proven at trial.

9 105. The acts of Defendants, as alleged herein, were done with fraud, oppression and
10 malice, with a conscious disregard for Plaintiff's rights; and with the intent, design and purpose
11 of injuring Plaintiff, with an improper and evil motive amounting to malice, in conscious
12 disregard of Plaintiff's rights. Plaintiff is therefore entitled to recover punitive damages against
13 Defendants, and each of them.

14 **TENTH CAUSE OF ACTION**

15 **FOR FAILURE TO PAY WAGES DUE UPON SEPARATION**

16 **(LABOR CODE §§ 201, 203)**

17 **(Against Defendants KAISER FOUNDATION HEALTH PLAN, INC., KAISER**
18 **FOUNDATION HOSPITALS, and SOUTHERN CALIFORNIA PERMANENTE**
19 **GROUP)**

20 106. Plaintiff hereby incorporates all other paragraphs of this complaint as if set forth
21 in full.

22 107. Pursuant to California Labor Code § 201, upon former employee Plaintiff's
23 termination date, Defendants were required to pay Plaintiff all earned wages. At the time of all
24 former employee Plaintiff's termination date, former employee Plaintiff had unpaid wages. In
25 violations of Labor Code § 201, Defendant failed to pay former employee Plaintiff any amount
26 of wages due and owing them, in amounts to be proven at the time of trial, but not in excess of
27 the jurisdiction of this Court.
28

1 108. Defendants' failure to pay former employee Plaintiff the wages due and owing
2 them was willful, and done with the wrongful and deliberate intention of injuring Plaintiff, from
3 improper motives amounting to malice, and in conscious disregard of Plaintiff's rights. Plaintiff
4 is thus entitled to recover nominal, actual, compensatory, punitive, and exemplary damages in
5 amounts according to proof at time of trial, but not in amounts in excess of the jurisdiction of this
6 Court.

7 109. Defendants' willful failure to pay Plaintiff the wages due and owing them
8 constitutes violations of Labor Code §§ 201 and 203, which provides that an employee's wages
9 will continue as a penalty for up to thirty (30) days from the time the wages were due.
10 Therefore, Plaintiff is entitled to statutory penalties pursuant to Labor Code § 203.

11 110. Pursuant to Labor Code § 218.5, Plaintiff is also entitled to an award of
12 reasonable attorneys' fees, expenses, and costs incurred in this action.

13 WHEREFORE, Plaintiff requests relief as hereafter provided.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff further prays that this Court:


- 16 1. For back pay, with prejudgment interest, to the date of judgment herein;
- 17 2. For front pay, for the period from the date of judgment to the date at which
18 Plaintiff actually reaches a position with earnings equivalent to those which she would have
19 received from Defendant had she continued to work for Defendant and been compensated by
20 Defendant as required;
- 21 3. For award of compensatory, consequential, and special damages in amount
22 according to proof at trial;
- 23 4. For statutory penalties;
- 24 5. For an award of exemplary damages for the purpose of punishing Defendants and
25 deterring its unlawful conduct in the future;
- 26 6. For interest on all sums awarded;
- 27 7. For reimbursement of the costs, including attorney fees, as afforded under
28 applicable law, including pursuant to Government Code sections 12965, 8547.10 and other

1 applicable laws, including but not limited to Code Civ. Proc., §§ 998, 1021.1 and 1021.5, and
2 for a contingency fee enhancement beyond the lodestar in accordance with *Ketchum v. Moses*,
3 24 Cal. 4th 1122, 104 Cal. Rptr. 2d 377, 17 P.3d 735 (2001), and related authorities; and

- 4 8. For such further relief as is appropriate in the interest of justice;
5 9. For an accounting, under administration of Plaintiff and subject to Court review;
6 10. A declaration of the rights and interests of the parties.

7
8 DATED: January 17, 2019

9 KOUL LAW FIRM


10 
11 BY: Nazo Koulloukian, Esq.
12 Christine Harmandayan, Esq.
13 Attorneys for Plaintiff,
14 KEN BERRY

15 **JURY TRIAL DEMANDED**

16
17 Plaintiff demands trial by jury of all issues so triable.

18
19 DATED: January 17, 2019

20 KOUL LAW FIRM

21 
22 BY: Nazo Koulloukian, Esq.
23 Christine Harmandayan, Esq.
24 Attorneys for Plaintiff,
25 KEN BERRY
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27
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