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FILED/ENDORSED
Clerk of the Superior Court

MAR 01 2019

By [Signature]
DEPUTY CLERK

**ASSIGNED TO
JUDGE ALESIA JONES
FOR ALL PURPOSES**

9435 CMFF 301122

SUPERIOR COURT, STATE OF CALIFORNIA

COUNTY OF SOLANO

(UNLIMITED JURISDICTION)

JULIETA LUDOVICO,

Plaintiff,

v.

THE PERMANENTE MEDICAL GROUP,
INC.; and Does 1 through 50,
inclusive,

Defendants.

CASE NO. **FCS052487**

COMPLAINT FOR DAMAGES FOR
DISABILITY DISCRIMINATION,
FAILURE TO ACCOMMODATE
DISABILITY, FAILURE TO ENGAGE IN
THE INTERACTIVE PROCESS,
TORTIOUS IN VIOLATION OF PUBLIC
POLICY, AND VIOLATIONS OF THE
CALIFORNIA LABOR CODE

DEMAND FOR JURY TRIAL

Plaintiff JULIETA LUDOVICO complains and alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff JULIETA LUDOVICO (hereinafter "Plaintiff") is a competent adult, and at all relevant times has been a resident of the State of California, County of Solano, City of Benicia.

2. Plaintiff was formerly employed by Defendant THE PERMANENTE MEDICAL GROUP, INC. (hereinafter "Defendant").

1 3. Plaintiff is informed and believes, and based thereon alleges, that Defendant is a
2 corporation authorized to do business in the State of California and is and was at all relevant
3 times herein doing business in the State of California, County of Solano, City of Vallejo.

4 4. The employment which forms the basis of Plaintiff's complaint was made in and
5 performed in the State of California, County of Solano, City of Vallejo.

6 5. Defendant is and at all relevant times was an employer of Plaintiff within the
7 meaning of California Government Code Section 12926(d), and, subject to suit under the
8 California Fair Employment and Housing Act, Government Code Section 12900 et seq.
9 (hereinafter "FEHA"). As Defendant is an employer within the meaning of FEHA, Defendant is
10 required by California Government Code Section 12940 et seq. not to discriminate against an
11 employee based on her disability and to provide reasonable accommodations to a disabled
12 employee.

13 6. The true names and capacities of the Defendants named herein as Does 1 through
14 50 inclusive, whether individual, corporate, associate or otherwise, are unknown to Plaintiff at
15 this time. Plaintiff therefore sues those Defendants by fictitious names pursuant to California
16 Code of Civil Procedure Section 474. Plaintiff is informed and believes and thereon alleges that
17 each of these fictitiously named Defendants is an employee and/or agent of Defendant and, in
18 doing the things alleged herein, was acting within the course and scope of such employment
19 and/or agency, and is responsible for the occurrences and injuries herein alleged. Plaintiff will
20 amend this complaint to allege their true names and capacities when they have been determined.

21 7. Plaintiff has exhausted all required administrative and/or statutory remedies
22 required of her prior to commencing this civil action. Plaintiff timely filed a Complaint of
23 Discrimination under the Provisions of the FEHA against Defendant for disability
24 discrimination, failure to accommodate, and failure to engage in the interactive process and
25 received a "Notice of Case Closure" (Right-to-Sue Notice) from the California Department of
26 Fair Employment and Housing ("DFEH") on January 24, 2019, allowing her to proceed with the
27 subject action.

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FACTUAL ALLEGATIONS

8. Plaintiff was hired as a Registered Nurse for Defendant on September 1, 1997. For the substantial majority of Plaintiff's employment with Defendant, Plaintiff worked as an Emergency Room Nurse. In approximately September, 2013, Plaintiff was transferred to work as an Advice Nurse at Defendant's Call Center located in Vallejo, California.

9. From September, 2013 through the date of Plaintiff's wrongful termination from employment on June 22, 2018, Plaintiff suffered from multiple legally qualified disabilities, including injuries to her back, neck, shoulders, wrists, hands, and fingers. Plaintiff's disabilities limited her ability to perform major life activities, including working. Defendant was aware of Plaintiff's disabilities and that Plaintiff required reasonable accommodations for her disabilities, including, but not limited to, an ergonomic work station, Dragon speech recognition software, and limitations on keyboard and mouse usage. Plaintiff was at all times able to perform the essential functions of the Advice Nurse position with or without reasonable accommodations.

10. On or about May 24, 2017, Defendant notified Plaintiff that it could no longer reasonably accommodate Plaintiff's medical restrictions and placed Plaintiff on an industrial leave of absence effective on or about May 26, 2017. Specifically, Defendant informed Plaintiff that her restrictions of "a 5 minute break after each member call" and "keyboard/mouse limited to no more than 5-10 minutes per hour" could not be reasonably accommodated. These restrictions did not impose an undue hardship on Defendant. Nonetheless, Defendant failed to engage in the good faith interactive process with Plaintiff to reasonably accommodate Plaintiff's disabilities. As a result of Defendant's failure to reasonably accommodate Plaintiff's disabilities and placement of Plaintiff on an industrial leave of absence, Plaintiff suffered and continues to suffer substantial losses in wages, earnings, deferred compensation and other employment benefits.

11. After Defendant placed Plaintiff on an industrial leave of absence on or about May 26, 2017, Plaintiff applied for numerous available positions for which she was qualified based on her approximate twenty (20) years of employment with Defendant. Plaintiff was able to perform the essential functions of these positions with or without reasonable accommodations.

1 However, Defendant failed to engage in the good faith interactive process with Plaintiff to
2 reasonably accommodate Plaintiff's disabilities by refusing to place her in one of these available
3 positions. Rather, in order to discriminate against Plaintiff based on her disabilities and to avoid
4 its legal obligation to reasonably accommodate Plaintiff's disabilities, Defendant wrongfully
5 terminated Plaintiff's employment on June 22, 2018.

6 12. After Defendant placed Plaintiff on an industrial leave of absence on or about
7 May 26, 2017, Plaintiff requested that she be paid for the sick leave and unused vested vacation
8 wages she had accrued during her employment. However, Defendant refused to allow Plaintiff
9 to use her accrued sick leave and vacation wages in violation of the California Labor Code.
10 Furthermore, Defendant did not compensate Plaintiff for the accrued vacation wages owed to
11 Plaintiff, which were due and payable to Plaintiff on June 22, 2018, the date of Defendant's
12 termination of Plaintiff's employment.

13 **FIRST CAUSE OF ACTION**
14 **(Disability Discrimination, Failure to Accommodate Disability, and Failure to Engage in**
15 **the Interactive Process)**

16 13. Plaintiff hereby realleges and incorporates herein by reference the allegations of
17 Paragraphs 1 through 12 above.

18 14. At all times during Plaintiff's employment with Defendant the California Fair
19 Employment and Housing Act ("FEHA") (Govt. Code §12900 et seq.) was in effect. The FEHA
20 prohibits employment discrimination on the basis of "physical disability, mental disability or
21 medical condition." California Government Code §12940(a). The legislature has stated its
22 intent that "disability" be construed broadly so that applicants and employees are protected from
23 discrimination due to "actual or perceived physical or mental impairment that is disabling,
24 potentially disabling, or perceived as disabling or potentially disabling." California Government
25 Code Section 12926.1(b).

26 15. The FEHA requires only that the employee have a disability that limits a major
27 life activity. California Government Code § 12926(m)(1)(B). Working is a major life activity.
28 California Government Code § 12926(m)(1)(B)(iii). An employee is regarded as disabled
whether the employee cannot perform "a particular employment or class or broad range of

1 employments.” California Government Code Section 12926.1(c). Plaintiff’s disabilities limited
2 her ability to work and perform other major life activities. Accordingly, Plaintiff’s disabilities
3 are protected under the FEHA.

4 16. Defendant engaged in disability discrimination of Plaintiff and have violated the
5 above-referenced statutes by failing to accommodate Plaintiff’s disabilities and terminating
6 Plaintiff’s employment to discriminate against Plaintiff based on her disabilities and to avoid its
7 legal obligation to reasonably accommodate Plaintiff’s disabilities.

8 17. “It is an unlawful employment practice...for an employer or other entity...to fail
9 to make reasonable accommodation for the known physical or mental disability of an applicant
10 or employee.” California Government Code §12940(m). The failure to engage in the interactive
11 process is an independent cause of action under Government Code 12940(n). *Gelfo, supra*, 140
12 Cal.App.4th at p. 61. An employer must engage in a “timely, good faith, interactive process . . .
13 in response to a request for a reasonable accommodation by an employee or applicant with a
14 known physical or mental disability or non-medical condition.” California Government Code
15 §12940(n). Defendant was aware that Plaintiff suffered from physical disabilities for which she
16 required reasonable accommodations as set forth more fully above. However, Defendant did not
17 engage in the interactive process to reasonably accommodate Plaintiff’s disabilities. Rather,
18 Defendant avoided its legal obligation to reasonably accommodate Plaintiff by placing Plaintiff
19 on an industrial leave of absence and terminating Plaintiff’s employment on June 22, 2018 while
20 Plaintiff’s medical restrictions were still in place.

21 18. Defendant’s above-referenced disability discrimination, failure to accommodate
22 Plaintiff’s disabilities, and failure to engage in the interactive process with Plaintiff, all constitute
23 violations of the above-referenced provisions of the FEHA as codified in California Government
24 Code Section 12940 et seq.

25 19. As a proximate and legal result of Defendant’s disability discrimination, failure to
26 accommodate Plaintiff’s disabilities, and failure to engage in the interactive process with
27 Plaintiff, all in violation of Government Code Section 12940 et seq. and the FEHA, Plaintiff has
28 suffered and continues to suffer substantial losses in wages, earnings, deferred compensation and

1 other employment benefits which she would have received absent Defendant's wrongful
2 termination of Plaintiff's employment. Plaintiff has also suffered and continues to suffer
3 emotional distress, embarrassment, humiliation and mental anguish, which injuries exceed the
4 normal risks of the employment relationship, all to her damage in an amount according to proof,
5 but which amount Plaintiff is informed and believes and thereon alleges is an amount within the
6 jurisdiction of an unlimited civil case.

7 20. As a result of Defendant's disability discrimination, failure to accommodate
8 Plaintiff's disabilities, and failure to engage in the interactive process with Plaintiff, Plaintiff has
9 been required to retain an attorney, and to incur attorney's fees and costs in pursuing this action.
10 Plaintiff is entitled to recover her reasonable attorney's fees and costs incurred herein pursuant to
11 California Government Code Section 12965(b).

12 21. Defendant's actions were malicious, oppressive and fraudulent, entitling Plaintiff
13 to an award of punitive damages against Defendant.

14 WHEREFORE, Plaintiff requests relief as hereinafter provided.

15 **SECOND CAUSE OF ACTION**
16 **(Tortious Discharge in Violation of Public Policy)**

17 22. Plaintiff realleges and incorporates by reference the allegations of Paragraphs 1
18 through 21 above.

19 23. Defendant's conduct as alleged above violated the express provisions of
20 California Government Code Section 12940 et. seq., which prohibit discrimination in
21 employment based on disability and require employers to reasonably accommodate employees
22 with legally qualified disabilities, and which represent fundamental public policies of the State of
23 California. Defendant's termination of Plaintiff's employment therefore constituted a tortious
24 discharge in violation of public policy.

25 24. As a proximate and legal result of Defendant's wrongful discharge of Plaintiff in
26 violation of public policy, Plaintiff has suffered and continues to suffer substantial losses in
27 wages, earnings, deferred compensation and other employment benefits which she would have
28 received absent Defendant's wrongful termination of Plaintiff's employment. Plaintiff has also

1 suffered and continues to suffer emotional distress, embarrassment, humiliation and mental
2 anguish, which injuries exceed the normal risks of the employment relationship, all to her
3 damage in an amount according to proof, but which amount Plaintiff is informed and believes
4 and thereon alleges is an amount within the jurisdiction of an unlimited civil case.

5 25. Defendant's actions were malicious, oppressive and fraudulent, entitling Plaintiff
6 to an award of punitive damages against Defendant.

7 WHEREFORE, Plaintiff requests relief as hereinafter provided.

8 **THIRD CAUSE OF ACTION**
9 **(Failure to Pay Accrued Sick Leave in Violation of Labor Code Section 245 et seq.)**

10 26. Plaintiff hereby realleges and incorporates herein by reference the allegations of
11 Paragraphs 1 through 25 above.

12 27. At all times relevant times herein, the Healthy Workplaces, Healthy Families Act
13 (California Labor Code Section 245 et seq.) was in effect and applicable to Plaintiff. California
14 Labor Code Section 246(n) requires an employer to provide payment for sick leave taken by an
15 employee at the employee's hourly rate of pay, no later than the payday for the next regular
16 payroll period after the sick leave was taken. Based on Plaintiff's existing health conditions
17 Plaintiff was on an industrial leave of absence from approximately May 26, 2017 through June
18 22, 2018. Plaintiff was entitled to and requested to use her accrued sick leave during that time
19 period. However, Defendant refused to compensate Plaintiff for her accrued sick leave in
20 violation of California Labor Code Section 245 et seq. Accordingly, Plaintiff is entitled to and
21 requests compensation for her accrued sick leave in an amount according to proof.

22 28. Plaintiff also requests an award of reasonable costs and attorney's fees incurred in
23 this action pursuant to California Labor Code Sections 218.5 in an amount according to proof.

24 WHEREFORE, Plaintiff requests relief as hereinafter provided.

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1 **FOURTH CAUSE OF ACTION**
2 **(Failure to Pay Unused Vested Vacation Wages in Violation of Labor Code Section 227.3)**

3 29. Plaintiff hereby realleges and incorporates herein by reference the allegations of
4 Paragraphs 1 through 28 above.

5 30. At all times during Plaintiff's employment with Defendant, California Labor
6 Code Section 227.3 was in effect. California Labor Code Section 227.3 provides that "whenever
7 a contract of employment or employer policy provides for paid vacations, and an employee is
8 terminated without having taken off his vested vacation time, all vested vacation shall be paid to
9 him as wages at his final rate in accordance with such contract of employment or employer
10 policy respecting eligibility or time served."

11 31. As set forth above, Defendant failed to pay Plaintiff for all of her unused vested
12 vacation wages on the date of Plaintiff's termination from employment with Defendant.
13 Accordingly, Defendant clearly violated the express provisions of California Labor Code Section
14 227.3.

15 32. Based on Defendant's violation of California Labor Code Section 227.3, Plaintiff
16 is entitled to and requests to be paid for all of her unused vested vacation time which was due
17 and payable on the date of her termination in an amount according to proof.

18 33. As a result of Defendant's violation of California Labor Code Section 227.3,
19 Plaintiff is entitled and requests an award of reasonable costs and attorney's fees pursuant to
20 California Labor Code Section 218.5 in an amount according to proof.

21 WHEREFORE, Plaintiff requests relief as hereinafter provided.

22 **FIFTH CAUSE OF ACTION**
23 **(Waiting Time Penalties for Violation of California Labor Code Section 201)**

24 34. Plaintiff hereby realleges and incorporates herein by reference the allegations of
25 Paragraphs 1 through 33 above.

26 35. At all times during Plaintiff's employment with Defendant there was in effect
27 California Labor Code Section 201. California Labor Code Section 201 provides that "[i]f an
28 employer discharges an employee, the wages earned and unpaid at the time of discharge are due

1 and payable immediately.”

2 36. Defendant has violated California Labor Code Section 201 by failing to
3 compensate Plaintiff for the unused vested vacation wages she is owed, which were due and
4 payable no later than the date of Plaintiff’s termination from employment.

5 37. Based on Defendant’s willful failure to pay Plaintiff her final wages owed at the
6 time of Plaintiff’s termination from employment in violation of Labor Code Sections 201,
7 Plaintiff is entitled to California Labor Code Section 203 penalties in an amount according to
8 proof.

9 WHEREFORE, Plaintiff requests relief as follows:

10 1. For an award of economic compensatory damages including loss of earnings and
11 other employment benefits in amounts according to proof;

12 2. For an award of non-economic compensatory damages for losses resulting from
13 humiliation, mental anguish, and emotional distress in an amount according to proof;

14 3. For punitive damages in an amount according to proof;

15 4. For an award of attorney’s fees and costs incurred herein in amounts according to
16 proof;

17 5. For accrued sick leave pursuant to Labor Code Section 245 et seq. in an amount
18 according to proof;

19 6. For unused vested vacation wages pursuant to Labor Code Section 227.3 in an
20 amount according to proof;

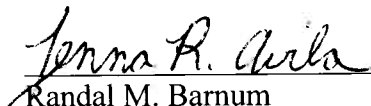
21 7. For Labor Code Section 203 penalties in an amount according to proof; and

22 8. For such other and further relief as the court may deem proper.

23 Dated: February 27, 2019

LAW OFFICES OF RANDAL M. BARNUM

24
25 By:


Randal M. Barnum
Jenna R. Avila

Attorneys for Plaintiff JULIE LUDOVICO

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands that this action be tried before a jury.

Dated: February 27, 2019

LAW OFFICES OF RANDAL M. BARNUM

By:

Jenna R. Avila

Randal M. Barnum

Jenna R. Avila

Attorneys for Plaintiff JULIE LUDOVICO