

W. Zev Abramson, Esq. #289387
Jeremy Levy, Esq. #309462
Christina Begakis, Esq. #316779
ABRAMSON LABOR GROUP
3580 Wilshire Blvd, Suite 1260
Los Angeles, California 90010
Tel: (213) 493-6300
Fax: (213) 382-4083

Attorneys for Plaintiff
MERLINDA KALALANG

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA**

MERLINDA KALALANG, an individual,

Plaintiff

vs.

KAISER FOUNDATION HOSPITALS dba
KAISER PERMANENTE MEDICAL
CENTER- SANTA CLARA, a California
nonprofit corporation; and DOES 1-100,
inclusive

Defendants.

Case No.:

**PLAINTIFF'S COMPLAINT FOR
DAMAGES AND DEMAND FOR JURY
TRIAL:**

1. Disability Discrimination in Violation of FEHA
2. Failure to Accommodate
3. Failure to Engage in Good Faith Interactive Process
4. Age Discrimination
5. Retaliation in Violation of FEHA
6. Wrongful Constructive Termination in Violation of Public Policy

Over \$25,000

PLAINTIFF complains and alleges as follows:

1. Plaintiff MERLINDA KALALANG is a former non-exempt employee of Defendant and a resident of the State of California.
2. At all times herein mentioned, Defendant, KAISER FOUNDATION HOSPITALS dba KAISER PERMANENTE MEDICAL CENTER- SANTA CLARA (hereinafter "KAISER PERMANENTE") was and is a nonprofit corporation licensed to do business at 700 Lawrence Expy, Santa Clara, CA 95051.

3. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or associate, of those Defendants fictitiously sued as DOES 1 through 100 inclusive and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE Defendants reside in the State of California and is in some manner responsible for the conduct alleged herein. Upon discovering the true names and capacities of these fictitiously named Defendants, Plaintiff will amend this complaint to show the true names and capacities of these fictitiously named Defendants.
4. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of that information and belief allege that at all times herein mentioned, each of the remaining co-Defendant, in doing the things hereinafter alleged, was acting within the course, scope and under the authority of his/her agency, employment, or representative capacity, with the consent of her/his co-Defendant.
5. Plaintiff was employed by Defendant KAISER PERMANENTE beginning in or around May 2008.
6. At all times herein mentioned, Defendant KAISER PERMANENTE had a "lifetime health insurance policy" for its employees who worked for Defendant for 15 years.
7. At all times herein mentioned, Plaintiff was and is an individual who suffers from disabilities and medical conditions which affects daily activities and requires ongoing treatment, including but not limited to thyroid cancer and fibromyalgia.
8. Plaintiff provided Defendants notice of her disabilities and medical conditions.
9. In or around October 2017, Plaintiff requested from Defendants to reduce her work shift from 40 hours per week to 32 hours per week as a disability accommodation.
10. Defendant granted Plaintiff her requested accommodation only for three months, until in or around January 2018.
11. In or around January 2018, Plaintiff was forced to take leave until she could return to work without accommodations.
12. In or around June 2018, Defendants cut part of Plaintiff's benefits.
13. In or around August 2018, Defendants denied Plaintiff's pension.

- 1 14. In or around October 2018, Defendants cut all available benefits for Plaintiff, including the
2 health insurance that she desperately needed as a disabled person suffering from cancer.
- 3 15. Over the last year, Plaintiff attempted to contact the Defendants on multiple occasions
4 requesting to return to work with the 32 hours per week accommodation. Despite Plaintiff's
5 multiple requests, no accommodations have been forthcoming. Instead, Plaintiff was
6 offered demotions, for less pay which were located in areas that were very far from
7 Plaintiff's position in Santa Clara, which would have required at least a hundred mile
8 commute.
- 9 16. Defendants perceived Plaintiff to be disabled, although she was able to do her essential job
10 duties with reasonable accommodation. Furthermore, Defendants failed to engage in a
11 good faith interactive process to assess what accommodations Plaintiff would require and
12 thus did not reasonably accommodate Plaintiff.
- 13 17. As Plaintiff was able to perform the essential functions of her job, but was unable to work
14 without accommodations, and Defendants would not provide Plaintiff with any reasonable
15 accommodations, Plaintiff was forced to resign on or about March 14, 2019.
- 16 18. Plaintiff is informed and believes and thereon alleges that Defendants constructively
17 terminated Plaintiff's employment due to her disability, age, and/or request for a reasonable
18 accommodation of her disability.
- 19 19. As a direct and proximate result of the unlawful acts of Defendants, Plaintiff has suffered
20 and continues to suffer from losses of earnings and otherwise in amounts as yet
21 unascertained but subject to proof at trial.

22
23 First Cause of Action

24 **DISABILITY DISCRIMINATION IN VIOLATION OF FEHA**

25 (Against all Defendants)

- 26 20. Plaintiff re-alleges the information set forth in paragraphs 1-19 as though fully set forth
27 and alleged herein.
- 28

- 1 21. This cause of action is based upon *Government Code* section 12926(m), which defines
2 physical disability as having any physiological disease, disorder, condition, cosmetic
3 disfigurement, or anatomical loss that affects one or more of the following body systems:
4 neurological, immunological, musculoskeletal, special sense organs, respiratory, including
5 speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and
6 lymphatic, skin and endocrine, and the disability limits an individual's ability to participate
7 in major life activities. This cause of action is also based upon *Government Code* section
8 12940 for discriminating against Plaintiff on the basis of physical disability.
- 9 22. Plaintiff's disability (actual and/or perceived) constituted of disabilities and medical
10 conditions as defined above in *Government Code* §12926(m).
- 11 23. Plaintiff has exhausted her administrative remedies under the California Fair Employment
12 and Housing Act by filing charges that defendants violated the California Fair Employment
13 and Housing Act and was issued the Notice of Case Closure/Right-to-Sue Letter granting
14 Plaintiff the right to bring suit against Defendants.
- 15 24. Defendants were aware that Plaintiff was disabled or at least perceived that she was
16 disabled.
- 17 25. Reasonable accommodations could have been made for Plaintiff's disabilities, such as
18 cutting her weekly work shifts from 40 hours to 32 hours.
- 19 26. Defendant discriminated against Plaintiff in violation of the *Government Code* sections set
20 forth herein by first placing her on leave and later constructively terminating Plaintiff's
21 employment because of her disabilities (actual and/or perceived) and requests for disability
22 accommodation.
- 23 27. As a direct, foreseeable, and proximate result of the conduct of Defendants, Plaintiff has
24 suffered, and continues to suffer emotional distress, losses in salary, bonuses, job benefits,
25 and other employment benefits which he would have received from Defendant, plus
26 expenses incurred in obtaining substitute employment and not being regularly employed
27 all to her damage in a sum within the jurisdiction of this court, to be ascertained according
28 to proof.

1 28. The grossly reckless, careless, negligent, oppressive and/or intentional, malicious, and bad
2 faith manner in which said Defendants engaged in those acts as described in this cause of
3 action entitle Plaintiff to punitive damages against said Defendants in an amount within
4 the jurisdiction of this court, to be ascertained by the fact finder, that is sufficiently high to
5 punish said Defendants, deter them from engaging in such conduct again, and to make an
6 example of them to others.

7 29. Plaintiff is informed and believes and based thereon alleges that the punitive conduct of
8 said Defendants was ratified by those other individuals who were managing agents of
9 Defendant. These unlawful acts were further ratified by Defendants and done with a
10 conscious disregard for Plaintiff's rights and with the intent, design and purpose of injuring
11 Plaintiff. By reason thereof, Plaintiff is entitled to punitive or exemplary damages in this
12 cause of action in a sum to be determined at the time of trial.

13 30. Plaintiff also prays for reasonable costs and attorney fees against Defendants, as allowed
14 by California Government Code §12965 and any other applicable statutes for Plaintiff's
15 prosecution of this action in reference to the time Plaintiff's attorney spends pursuing this
16 cause of action as well as any other applicable statutes.

17
18 Second Cause of Action

19 **FAILURE TO ACCOMMODATE**

20 (Against all Defendants)

21 31. Plaintiff re-alleges the information set forth in Paragraphs 1-30 as though fully set forth
22 and alleged herein.

23 32. This cause of action is based upon Government Code section 12926(m), which defines
24 physical disability as having any physiological disease, disorder, condition, cosmetic
25 disfigurement, or anatomical loss that affects one or more of the following body systems:
26 neurological, immunological, musculoskeletal, special sense organs, respiratory, including
27 speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and
28 lymphatic, skin and endocrine, and the disability limits an individual's ability to participate

1 in major life activities. Moreover, this cause of action is also based upon Government Code
2 section 12940 for discriminating against Plaintiff on the basis of her medical condition and
3 failing to provide reasonable accommodation of Plaintiff's medical condition.

4 33. Plaintiff exhausted her administrative remedies under the California Fair Employment and
5 Housing Act by filing charges with the Department of Fair Employment and Housing
6 ("DFEH") based on the aforementioned against Defendants.

7 34. Plaintiff's medical condition constituted a disability as defined above in Government Code
8 §12926(m).

9 35. Plaintiff is informed and believes, and on that basis alleges that Defendants were aware of
10 Plaintiff's medical condition as described above.

11 36. Plaintiff was otherwise able to perform all essential functions of her job and simply
12 required 8 hours cut in her weekly shift.

13 37. Defendants failed to reasonably accommodate Plaintiff's medical condition.

14 38. As a result of being subjected to Defendants' failure to accommodate, discrimination, and
15 termination of employment, Plaintiff suffered emotional distress. Further, as a result of all
16 of the foregoing actions taken towards Plaintiff as alleged herein, Plaintiff has incurred loss
17 of earnings and benefits in an amount not yet ascertained

18 39. As a direct, foreseeable, and proximate result of the conduct of defendants, Plaintiff has
19 suffered, and continues to suffer severe emotional distress, loss of earnings, medical
20 expenses, benefits plus expenses incurred in obtaining substitute employment, all to her
21 damage in a sum within the jurisdiction of this Court, to be ascertained according to proof.

22 40. As a result of the grossly reckless, and/or intentional, malicious, and bad faith manner in
23 which Defendants engaged in those acts as described in this cause of action by willfully
24 violating those statutes enumerated in this cause of action and terminating Plaintiff in
25 violation of the law, Plaintiff is entitled to punitive damages against said Defendant in an
26 amount within the jurisdiction of this court, to be ascertained by the fact finder, that is
27 sufficiently high to punish said Defendants, deter them from engaging in such conduct
28 again, and to make an example of them to others.

1 41. Plaintiff also prays for reasonable attorney fees, as allowed by the Fair Employment and
2 Housing Act for Plaintiff's prosecution of this action in reference to the legal violations
3 and code violations described herein.

4 Third Cause of Action

5 **FAILURE TO ENGAGE IN GOOD FAITH INTERACTIVE PROCESS**

6 (Against all Defendants)

7 42. Plaintiff re-alleges the information set forth in paragraphs 1-41 though fully set forth and
8 alleged herein.

9 43. As alleged herein and in violation of California Government Code section 12940(n),
10 Defendants violated the California Fair Employment and Housing Act by, among other
11 things, refusing and/or failing to engage in a timely, good faith, interactive process with
12 Plaintiff regarding her disability and accommodation of such disability.

13
14 44. As a direct and proximate result of Defendants' willful, knowing, and intentional failure to
15 engage in the interactive process, Plaintiff has sustained and continues to sustain substantial
16 losses in earnings and other employment benefits.

17
18 45. As a direct, foreseeable, and proximate result of the conduct of Defendants, Plaintiff has
19 suffered, and continues to suffer emotional distress, losses in salary, bonuses, job benefits,
20 and other employment benefits which he would have received from Defendants, plus
21 expenses incurred in obtaining substitute employment and not being regularly employed
22 all to her damage in a sum within the jurisdiction of this court, to be ascertained according
23 to proof.

24
25 46. The grossly reckless, careless, negligent, oppressive and/or intentional, malicious, and bad
26 faith manner in which said Defendants engaged in those acts as described in this cause of
27 action entitle Plaintiff to punitive damages against said Defendants in an amount within
28 the jurisdiction of this court, to be ascertained by the fact finder, that is sufficiently high to

1 punish said Defendants, deter them from engaging in such conduct again, and to make an
2 example of them to others. Plaintiff is informed and believes and based thereon alleges
3 that the punitive conduct of said Defendants was ratified by those other individuals who
4 were managing agents of said Defendants. These unlawful acts were further ratified by
5 Defendants and done with a conscious disregard for Plaintiff's rights and with the intent,
6 design and purpose of injuring Plaintiff. By reason thereof, Plaintiff is entitled to punitive
7 or exemplary damages in this cause of action in a sum to be determined at the time of trial.
8
9

10 Fourth Cause of Action

11 **AGE DISCRIMINATION**

12 (Against all Defendants)

- 13
14 47. Plaintiff realleges the information set forth in Paragraphs 1-46 as though fully set forth
15 and alleged herein.
16
17 48. This cause of action is based upon *California Government Code Section 12900, et seq.*
18 which prohibits employers from discriminating against, harassing, and terminating
19 employees on the basis of age.
20
21 49. Plaintiff exhausted her administrative remedies under the California Fair Employment
22 and Housing Act by filing charges that Defendants discriminated against and
23 constructively terminated her based upon her age and was issued the Right-to-Sue Letter
24 granting Plaintiff the right to bring suit against Defendants.
25
26 50. Defendants violated *California Government Code Section 12940, et seq.* by doing the
27 following acts all because of Plaintiff's age including but not limited to, denying Plaintiff
28 her pension and the opportunity to receive a "lifetime health insurance," as well
constructively terminating Plaintiff due to her age as described in the general allegations
above.
51. As a direct, foreseeable, and proximate result of the conduct complained of in this cause

1 of action, Plaintiff has suffered severe emotional distress, medical expenses, substantial
2 losses in salary and benefits which Plaintiff would have received from Defendants, all to
3 Plaintiff's damage in a sum within the jurisdiction of this court, to be ascertained
4 according to proof.

5 52. As a further direct and proximate result of the Defendants' denial of Plaintiff's health
6 insurance and the unlawful constructive termination, Plaintiff has suffered emotional
7 distress in a sum within the jurisdiction of this court, to be ascertained according to proof.

8 53. The grossly reckless, careless, negligent, and/or intentional, malicious, and bad faith
9 manner in which Defendants engaged in those acts described in this cause of action by
10 willfully violating those statutes enumerated in this cause of action and constructively
11 terminating Plaintiff for refusing to comply with their willful violations of the above
12 referenced statutes entitle Plaintiff to punitive damages against Defendants in an amount
13 within the jurisdiction of this court, to be ascertained by the fact finder, that is sufficiently
14 high to punish the Defendants, deter them from engaging in such conduct again, and to
15 make an example of them to others.

16 54. Plaintiff also prays for reasonable costs and attorney fees against the Defendants for the
17 Plaintiff's prosecution of this action in reference to the time the Plaintiff's attorney spends
18 pursuing this cause of action.

19
20 Fifth Cause of Action

21 **RETALATION IN VIOLATION OF FEHA**

22 (Against all Defendants)

23 55. Plaintiff re-alleges the information set forth in paragraphs 1-54 though fully set forth and
24 alleged herein.

25 56. This cause of action is based upon *California Government Code Section 12940, et seq.*
26 which prohibits employers from retaliating against employees because of a disability
27 and/or medical condition.
28

1 57. Defendant violated *California Government Code Section 12940, et seq.* by doing the
2 following acts all because of Plaintiff's disability and/or medical condition, including but
3 not limited to, failing to accommodate Plaintiff's requests for medical leave and
4 terminating and discriminating against Plaintiff because of her disability as described in
5 the general allegations above.

6 58. Plaintiff has exhausted her administrative remedies under the California Fair Employment
7 and Housing Act by filing charges that Defendants discriminated and retaliated against her
8 and her employment and violated the California Fair Employment and Housing Act and
9 has received a Right to Sue Letter.

10 59. Plaintiff was a qualified employee at the time of placing her on leave, as well as
11 constructive termination of her employment. Despite her medical condition, Plaintiff was
12 able to perform the essential functions of her employment with Defendants with reasonable
13 accommodations. After Plaintiff sought accommodation for her disabilities, Defendants
14 retaliated against Plaintiff by first placing her on leave and later constructively terminating
15 her employment.

16 60. Defendants, through their managers and supervisors, took actions against Plaintiff that
17 exhibited discriminatory motivations, intentions, and consciousness.

18 61. On the basis of the above, Plaintiff believes and alleges that her disabilities were motivating
19 factors in Defendants' constructive termination of her employment.

20 62. As a direct and proximate result of Defendants' willful, knowing, and intentional, failure
21 to engage in the interactive process, and retaliation, Plaintiff has sustained and continues
22 to sustain substantial losses in earnings and other employment benefits.

23 63. As a direct, foreseeable, and proximate result of the conduct of Defendant, Plaintiff has
24 suffered, and continues to suffer emotional distress, losses in salary, bonuses, job benefits,
25 and other employment benefits which he would have received from Defendants, plus
26 expenses incurred in obtaining substitute employment and not being regularly employed
27 all to her damage in a sum within the jurisdiction of this court, to be ascertained according
28 to proof.

1 64. The grossly reckless, careless, negligent, oppressive and/or intentional, malicious, and bad
2 faith manner in which Defendant engaged in those acts as described in this cause of action
3 entitle Plaintiff to punitive damages against Defendant in an amount within the jurisdiction
4 of this court, to be ascertained by the fact finder, that is sufficiently high to punish
5 Defendant, deter them from engaging in such conduct again, and to make an example of
6 them to others. Plaintiff is informed and believes and based thereon alleges that the
7 punitive conduct of said Defendants was ratified by those other individuals who were
8 managing agents of Defendant. These unlawful acts were further ratified by Defendant
9 and done with a conscious disregard for Plaintiff's rights and with the intent, design and
10 purpose of injuring Plaintiff. By reason thereof, Plaintiff is entitled to punitive or
11 exemplary damages in this cause of action in a sum to be determined at the time of trial.

12 65. Defendant committed the acts alleged herein recklessly, maliciously, fraudulently, and
13 oppressively, with the wrongful intention of injuring Plaintiff, for an improper and evil
14 motive amounting to malice (as described above), and with a reckless and conscious
15 disregard of Plaintiffs' rights. All actions of Defendant, and their agents and employees,
16 herein alleged were known, ratified and approved by Defendant. Plaintiff is thus entitled
17 to recover punitive and exemplary damages from Defendant, for these wanton, obnoxious,
18 and despicable acts as allowed by law, that will sufficiently punish, make an example of,
19 and deter future conduct by Defendant.

20
21 Sixth Cause of Action

22 **WRONGFUL CONSTRUCTIVE TERMINATION IN VIOLATION OF PUBLIC**
23 **POLICY**

24 (Against all Defendants)

25 66. Plaintiff hereby incorporates by reference Paragraphs 1-65 of this Complaint as if fully set
26 forth herein, and for a cause of action alleges as follows:

27 67. Plaintiff's employment was wrongfully constructively terminated, in violation of
28 substantial and fundamental public policies of the State of California that inures to the

benefit of the public, with respect to retaliation, and adverse employment actions taken against Plaintiff, all in violation of various state statutes including but not limited to violations of California's Labor Code.

68. On or about March 14, 2019, Plaintiff was constructively discharged from her employment, in that any reasonable person in Plaintiff's position subject to Defendants' actions would have resigned or quit her employment, as Plaintiff was compelled to do.

69. Defendants had actual knowledge of the Plaintiff's medical conditions, having thyroid cancer, as well as fibromyalgia. Defendants failure to take good faith steps to accommodate Plaintiff's requests for reducing the hours of her weekly work caused Plaintiff's resignation. Furthermore, Defendants knew or should have known that Plaintiff would resign as a result of Defendants' actions.

70. As a direct and proximate result of Defendant's willful, knowing, and intentional actions as discussed herein, Plaintiff has sustained and continues to sustain substantial losses in earnings and other employment benefits.

71. As a direct, foreseeable, and proximate result of the conduct of Defendants, Plaintiff has suffered, and continues to suffer emotional distress, losses in salary, bonuses, job benefits, and other employment benefits which she would have received from Defendants, plus expenses incurred in obtaining substitute employment and not being regularly employed all to her damage in a sum within the jurisdiction of this court, to be ascertained according to proof.

72. The damages herein exceed \$25,000.00.

73. Plaintiff requests a jury trial.

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages which resulted from Defendant' conduct as alleged herein;
2. For all special damages which resulted from Defendant's conduct as alleged herein;
3. For all general damages which resulted from Defendant's conduct as alleged herein;

4. For all unpaid wages due to Plaintiff;
5. For all penalties under all relevant statutes;
6. For all interest as allowed by law;
7. For all costs and disbursements incurred in this suit;
8. For attorney's fees and costs; and
9. For such other and further relief as the Court deems just and proper.

DATED: March 14, 2019

ABRAMSON LABOR GROUP

By: _____

Jeremy Levy, Esq.
Attorneys for Plaintiff,
MERLINDA KALALANG