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FILED
Superior Court of California
County of Los Angeles
NOV 01 2018
Sherri R. Carter, Executive Officer/Clerk
By _____ Deputy
Richard Juarez

FILED
ALAMEDA COUNTY
MAR 13 2019
CLERK OF THE SUPERIOR COURT
By Erica Baker
ERICA BAKER, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

J.H.; R.N.; B.H.; and M.H.,

Plaintiffs,

v.

KAISER FOUNDATION HEALTH PLAN, INC.; KAISER FOUNDATION HOSPITALS; THE PERMANENTE MEDICAL GROUP, INC.; and DOES 1 THROUGH 10,

Defendants.

Case No.: 18STCV03612
Judge: Hon. RG19010973

COMPLAIN
(Unlimited Jurisdiction)

1. Violation of California Confidentiality of Medical Information Act – Cal. Civil Code §§ 56 et seq. (CMIA)
2. Violation of Privacy/Data Breach Notice Statute Cal. Civ. Code § 1798.82 et seq.
3. Common Law Invasion of Privacy
4. Violation of California Constitution Art 1 § 1 Right to Privacy
5. Negligence and Negligence Per Se
6. Negligent Hiring, Retention, and Supervision
7. Breach of Fiduciary Duty
8. Intentional Infliction of Emotional Distress and Negligent Infliction of Emotional Distress
9. Violation of Evidence Code § 1158 and Demand for Records
10. Employer/Healthcare Provider Retaliation and Wrongful Termination or Wrongful Constructive Termination – Violations of California Government Code §§ 12940 et seq.; California Labor Code § 132a; California Health & Safety Code § 1278.5, and Public Policy

JURY TRIAL DEMANDED

BY FAX

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Plaintiffs, J.H.; R.N.; B.H.; and M.H. (individually, "J.H.", "R.N.", "B.H.", and "M.H., respectively, and collectively "Plaintiffs")[1] hereby alleges against Defendants KAISER FOUNDATION HEALTH PLAN, INC.; KAISER FOUNDATION HOSPITALS; THE PERMANENTE MEDICAL GROUP, INC. (collectively "Kaiser") and DOES 1 through 10 (individually "Defendant" and collectively "Defendants") as follows:

I.

INTRODUCTION

1. This action arises out of Kaiser's utter failure to protect and safeguard Plaintiffs' confidential and protected personal, sensitive, medical, healthcare identifying, and/or financial information ("PHI") ultimately resulting in the unlawful access to such PHI by unauthorized persons and disclosure of such PHI to unauthorized recipients, as well as substantial damages, emotional distress, and irreparable harm. For purposes of this Complaint although the acronym PHI is most typically associated only with health information, in this Complaint and lawsuit the use of PHI is meant to be given its broadest meaning and encompass not merely medical or healthcare information, but all information of a person that may be confidential, private, or otherwise protected under the statutes relevant to this action.

2. Plaintiffs each are and were patients of Kaiser. Plaintiff J.H. also is and was an employee of Kaiser.

3. Kaiser and/or its nurse employee, over the course of a year or more, without legal authorization or consent accessed, viewed and/or disclosed confidential medical information and PHI contained in each of the Plaintiffs' electronic medical record files on multiple occasions, so much so that Kaiser went so far as to recommend that Plaintiffs obtain a temporary restraining order against the Kaiser nurse employee. However, even with Kaiser's stated grave concerns for Plaintiffs' safety and wellbeing, upon initial request, Kaiser refused to provide assistance to Plaintiffs in obtaining such

[1] To preserve necessary confidentiality and protect the privacy interests of Plaintiffs, the Complaint and action are filed under Plaintiffs' initials. Plaintiffs' counsel and Defendants/Defendants' counsel have previously been in contact regarding this matter, including without limitation Plaintiffs' counsel's correspondence(s) notifying Defendants of the facts alleged herein and attempting to resolve the matter without litigation, and thus Defendants are fully familiar with the identity of Plaintiffs and the circumstances giving rise to Plaintiffs' Complaint, claims, and action.

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Kaiser recommended temporary restraining order.

4. Kaiser and its employee's conduct was a gross violation of Plaintiffs' privacy and other rights regarding their PHI and has caused substantial damages, severe emotional distress, and continuing and irreparable harm to Plaintiffs.

II.

PARTIES

5. Plaintiff, J.H. is an individual currently residing in Minnesota.

6. Plaintiff, R.N. is an individual residing in the County of Butte, California.

7. Plaintiff, B.H. is an individual residing in the County of Butte, California.

8. Plaintiff, M.H. is an individual currently residing in Minnesota.

9. Upon information and belief, Defendant KAISER FOUNDATION HEALTH PLAN, INC. is a California licensed health care provider or health care service provider, form unknown, with offices throughout California and conducts business in and throughout California and specifically in the district and/or County in which this Court is located or over which this Court has jurisdiction.

10. Upon information and belief, Defendant KAISER FOUNDATION HOSPITALS, is a California licensed health care provider or health care service provider, form unknown and conducts business in and throughout California and specifically in the district and/or County in which this Court is located or over which this Court has jurisdiction.

11. Upon information and belief, Defendant THE PERMANENTE MEDICAL GROUP, INC., is a California licensed health care provider or health care service provider, form unknown and conducts business in and throughout, and/or provides health care and/or health care services to patients residing in and throughout, California and specifically in the district and/or County in which this Court is located or over which this Court has jurisdiction.

12. The true names and capacities of the defendants named. herein as Does 1 through 10, whether individual, corporate, associate, or otherwise, are currently unknown to Plaintiffs, and therefore Plaintiffs alleges that each of these fictitiously named defendants is responsible in some manner for the events sued upon. Plaintiffs will seek leave of this Court to amend the Complaint to assert the true identities and capacities of the defendants named herein as Does 1 through 10 when

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such identities and capacities have been ascertained.

13. Plaintiffs are informed and believes, and thereon alleges, that at all relevant times, each Defendant was the agent and/or employee of each of the other Defendant and, in doing each of the things herein alleged, was acting within the scope of such agency and/or employment.

III.

JURISDICTION AND VENUE

14. This case arises out of Defendants' illegal and wrongful disclosure and failure to protect Plaintiffs' PHI resulting in substantial statutory and other damages to Plaintiffs.

15. This Court properly has jurisdiction as certain events giving rise to the causes of action alleged herein occurred in the County of Los Angeles, State of California within this judicial district; Plaintiffs was harmed in this judicial district; that Defendants conduct business in this judicial district; and that the damages arising out of the alleged causes of action exceed the jurisdictional limits of any court such that this action is brought before this Court in the proper forum and venue.

16. Venue is proper in the district on either of the following grounds: (a) Defendants operate and provide services in this district in California, Defendants wrongfully failed to protect/keep confidential and illegally disclosed Plaintiffs' PHI in this district in California, Defendants failed to adhere to California Evidence Code § 1158 and produce requested documents in this district in California, and that Defendants' conduct caused significant harm to Plaintiffs in this district in California; and (b) Defendants are subject to personal jurisdiction in this district.

IV.

STATEMENT OF FACTS

1. Plaintiffs all were patients of Kaiser.

2. Plaintiffs J.H. also was an employee of Kaiser.

3. Kaiser is a licensed healthcare provider or health care service provider in the State of California and provides healthcare services throughout California.

4. As such, Kaiser is obligated to comply with and adhere to various Federal and State PHI privacy, confidentiality, and security laws, regulations, and rules, including without limitation HIPAA, HITECH, and CMIA.

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5. Kaiser was privy to, came into possession of, and maintained Plaintiffs' PHI, of which Kaiser has and had a legal duty to ensure the confidentiality and security.

6. Kaiser failed to protect the confidentiality of Plaintiffs' PHI and unlawfully disclosed Plaintiffs' PHI and/or allowed Plaintiffs' PHI to be disclosed to, or accessed by, persons without Plaintiffs' consent and/or who did not have authority to receive or access Plaintiffs' PHI.

7. To be clear, to the extent an employee or independent contractor of Kaiser was responsible for the unlawful access into or disclosure of Plaintiffs' PHI, or other violation of Plaintiffs' PHI privacy rights, Kaiser, as well as the individual employee or independent contractor, is, and would be, legally responsible and liable for such wrongful conduct. Indeed, Kaiser is legally responsible for the acts of its employees and contractors with respect to the protection of (or violations of) PHI privacy and further has a separate and distinct legal obligation to ensure not only that its patients' PHI is properly and adequately protected and secured, but too that its employees and contractors adhere to the relevant PHI privacy laws, that they are properly trained related to PHI privacy laws, and that proper mechanisms or procedures are in place and enforced to ensure that patients' PHI privacy is properly maintained and protected.

8. Again, Plaintiffs were patients of Kaiser. Indeed, Plaintiffs, each, had been a patient of Kaiser for many years.

9. Further, again, J.H. also was an employee of Kaiser.

10. In or about early April 2018 J.H. was advised that she was required to appear at Kaiser for a meeting ("Privacy Violation Meeting"), however no information as to the reasons for the required meeting were provided.

11. It turned out that Kaiser had discovered some time before this Privacy Violation Meeting that another Kaiser employee, a nurse, J.H.'s roommate whom J.H. at one point believed to be a friend, for a period of at least a year or more had been intentionally and without authorization accessing and viewing J.H.'s private and confidential patient medical records, J.H.'s PHI.

12. In fact, however, it became clear that Kaiser's employee had not merely accessed J.H.'s PHI, but she had also over the course of the year intentionally on multiple occasions without authorization accessed and viewed the PHI, the confidential medical records, of J.H.'s three sons

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(Plaintiffs R.N., B.H., and M.H.)

13. This all was traceable and identifiable through the audit logs that Kaiser is/was required to maintain relative to its patients' PHI, including that of Plaintiffs. In fact, on information and belief, the audit trails/logs had access to these audit trails/logs and relevant PHI privacy tracking information at the time of each individual breach and well before the Privacy Violation Meeting.

14. Critically, Kaiser did not simply indicate that Kaiser had identified some unauthorized accesses into or viewing of Plaintiffs' PHI. Rather during the Privacy Violation Meeting Kaiser specifically stated to J.H. that it was Kaiser's belief or impression that J.H. had a "Single White Female" situation on J.H.'s hands and thus recommended that J.H. immediately obtain a temporary restraining order ("TRO") against Kaiser's nurse employee.

15. The reference to "Single White Female" is critical in this case especially related to the severe negative impact and substantial emotional distress Kaiser's conduct inflicted upon J.H. The movie Single White Female essentially revolves around the story of a woman who befriends her roommate and ultimately murders her roommate's fiancé, beats and attempts to murder her roommate, and kills her roommate's puppy in an attempt to become or steal her roommate's identity.

16. Kaiser directly likened the Kaiser nurse, who violated Plaintiffs' PHI privacy rights and trolled through Plaintiffs' medical records, to the serial killer woman in the Single White Female movie. In fact Kaiser made these representations and associations when Kaiser specifically knew or should have known that Plaintiff J.H. and the Kaiser employee nurse were roommates.

17. Indeed, Kaiser's position has been that their system failed to timely and appropriately flag the Kaiser nurse employee's illegal entry into Plaintiffs' medical records because Plaintiff J.H. and the nurse employee only relatively recently became roommates and thus had the same address.

18. Leaving aside the fact that in fact J.H. and the Kaiser nurse had had the same address for months prior to Kaiser's initiating its investigation into the privacy breaches and the Privacy Violation Meeting, at bare minimum Kaiser had been investigating the breaches at issue in this action for a month prior to the Privacy Violation Meeting giving Kaiser plenty of time to conduct an investigation into the Kaiser nurse employee, her relationship if any to J.H., and the violations themselves.

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19. After such investigation, and at the time of/during the Privacy Violation Meeting, Kaiser was very much aware that J.H. and the Kaiser nurse were roommates, yet Kaiser went so far as to take the position that Kaiser did not merely have concerns about the privacy violations, but rather that J.H. and her family, the other Plaintiffs, were in significant danger, including potentially danger of severe physical harm or death, i.e. a "Single White Female situation".

20. Upon information and belief that was a significant basis for Kaiser specifically recommending that J.H. immediately seek a TRO.

21. However, when J.H. initially requested Kaiser's assistance to obtain the TRO, Kaiser refused to provide any assistance to J.H. or J.H.'s other affected/violated family members.

22. Thus J.H. was forced to engage counsel to pursue the TRO and ultimately now to protect Plaintiff's privacy rights and seek redress for the severe violation of those rights by Kaiser.

23. Only well subsequent to Plaintiffs' counsel being engaged did Kaiser provide any assistance and in fact Kaiser maintained that it could provide no actual assistance in protecting its employee, J.H. or J.H.'s family.

24. Kaiser however ultimately provided a signed sworn declaration attesting to the fact that Kaiser and/or its nurse employee violated Plaintiffs' PHI privacy rights on numerous occasions. Attached as **Exhibit "1"** is a true and correct copy of the signed declaration of Kaiser's compliance investigation employee, Jasmeet Gill.

25. Significantly, Jasmeet Gill was the Kaiser employee who conducted the Privacy Violation Meeting and informed J.H. of the privacy violations and made the "Single White Female" comment and recommendation for an immediate TRO. During the Privacy Violation Meeting, Jasmeet Gill further specifically stated to J.H. that she had significant concerns for the safety and/or wellbeing of J.H. and her family, the other Plaintiffs in this case.

26. Upon information and belief, based at minimum on the very unambiguous statements of Kaiser's privacy compliance investigator, Kaiser apparently had or has information that led it/her to believe that the Kaiser nurse employee either had severe violent tendencies, a criminal past or predilection, or potentially even was or could be a person who could commit murder or other violent crimes toward other persons, including Plaintiff J.H. and/or the other Plaintiffs, J.H.'s family.

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27. Kaiser has indicated that between the Plaintiffs, Kaiser identified at least thirteen (13) separate and distinct PHI privacy violations and/or breaches by Kaiser and/or its employee related to Plaintiffs. Upon information and belief there are more than 13 separate violations.

28. With respect to such PHI privacy violations/breaches, Kaiser either failed to provide any required notice(s) or written notice(s), or failed to provide such notice(s) within the requisite time frame and/or in compliance with all statutory requirements.

29. PHI privacy laws such as CMIA, and others, are per violation statutes. They impose the requisite statutory damages, fines, penalties, fees, and otherwise on a per violation basis.

30. For each violation Plaintiffs' PHI was unlawfully accessed, viewed, and/or disclosed without the requisite authorization to do so.

31. Such conduct is wrongful and illegal subjecting Kaiser to damages, statutory damages, punitive damages, litigation costs, and attorney's fees.

32. Indeed, Plaintiffs suffered substantial damages, emotional distress, and irreparable harm as a result of Kaiser's conduct.

33. Understandably, the privacy violations themselves and the knowledge that Kaiser and/or its employee had been trolling through J.H.'s and her family's medical records caused serious emotional trauma to J.H.

34. Moreover the fact that Kaiser took no or little to no action to protect J.H. or her family further exacerbated the damage.

35. Of course also Kaiser's description of the situation as a single white female scenario had massive detrimental and frightening impact on J.H.

36. Kaiser's other conduct related to and stemming from the privacy breaches and Plaintiffs' allegations of privacy breaches also have necessarily caused substantial damages and emotional distress and ongoing irreparable harm to Plaintiffs.

37. Indeed subsequent to Plaintiff's engagement of counsel and assertion her privacy rights including asserting Plaintiff's claims against Kaiser for such privacy violations, Kaiser took wrongful and retaliatory actions toward and against J.H.

38. Kaiser first initiated an unwarranted human resources investigation of J.H. when the

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privacy violations were the actions of Kaiser and its nurse employee, not J.H.

39. Understandably, the massive emotional trauma and distress and psychological harm Kaiser inflicted upon J.H. based upon the privacy violations and subsequent unwarranted human resources investigation and other wrongful conduct, resulted in J.H. needing to file a workers compensation claims for such harms/injuries.

40. Subsequent to J.H. asserting her and her family's privacy rights, as well as subsequent to J.H. filing her workers compensation claim, Kaiser went so far as to terminate J.H.'s pay/salary, employment benefits, and health insurance, including the health insurance for J.H. and all of her sons, at least two of which had quite severe medical conditions requiring ongoing prescription medications and medical/healthcare services. Kaiser was very much aware of J.H.'s sons' medical needs yet still terminated J.H.'s health insurance subsequent to J.H. asserting her rights because of the clear privacy violations committed by Kaiser and its employee nurse.

41. Of note, Kaiser did not technically "terminate" J.H.'s employment. Rather Kaiser intentionally left J.H. hanging in the wind with no pay, no benefits, no insurance, but still technically a Kaiser employee. Regardless, this amounts to, at bare minimum, a constructive termination as Kaiser effectively terminated J.H. other than terming its conduct as a termination.

42. Kaiser's illegal conduct violated Plaintiffs' various legal rights related to the right to confidentiality of medical information and PHI, including without limitation, HIPAA, HITECH, the California Confidentiality of Medical Information Act, Cal. Civ. Code §§ 56 et seq. ("CMIA"); California's Constitutional right to privacy under Cal. Const. Art 1 § 1, California's common law right to privacy; and other medical privacy laws analogous to CMIA and/or HIPAA/HITECH.

V.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of California Confidentiality of Medical Information Act – Cal. Civil Code §§ 56 et seq. (CMIA)

(As Against All Defendants)

43. Plaintiffs incorporate the allegations above as if fully stated herein.

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44. Plaintiffs specifically incorporate herein this claim the allegations set forth in the Statement of Facts above.

45. Defendants are licensed California healthcare providers and/or a "covered entities".

46. Defendants are and were not authorized to disclose, transmit, or otherwise allow access to Plaintiffs' PHI to or by unauthorized persons.

47. As a result of Defendants' conduct, Plaintiffs' PHI was disclosed to, or allowed to be accessed, obtained, or viewed by, unauthorized persons.

48. Defendants had, possessed and/or maintained Plaintiffs' PHI.

49. Defendants were obligated to protect and ensure the confidentiality of such PHI.

50. Defendants are obligated to adhere to the requirements of HIPAA, HITECH, CMIA, analogous State medical information confidentiality and privacy statutes, Cal. Civil Code §§ 1798.82 et seq., Cal. Health & Safety Code § 1280.15, California Business and Professions Code, and other State and Federal statutes and regulations requiring and regarding the protection of the confidentiality of PHI and patient medical information and the access and disclosure of such information.

51. Defendants had a duty to protect Plaintiffs' PHI and to prevent the unauthorized access and disclosure of Plaintiffs' PHI.

52. As a result of Defendants' conduct Plaintiffs' privacy was breached including that Plaintiffs' PHI was disclosed to unauthorized persons, was allowed to be disclosed to unauthorized persons, was made capable of access by unauthorized persons, and/or was accessed by unauthorized persons.

53. As a result of Defendants' conduct Plaintiffs' PHI was used and/or disclosed without Plaintiffs' authorization and the PHI was not kept secure, private, and/or confidential.

54. Defendants breached their duties owed to Plaintiffs.

55. Such breach and conduct proximately caused substantial damages to Plaintiffs.

56. Defendants' failure to adhere to the requirements of HIPAA, HITECH, CMIA, Cal. Civil Code §§ 1798.82 et seq., Cal. Health & Safety Code § 1280.15, California Business and Professions Code, and other State and Federal statutes and regulations requiring and regarding the protection of the confidentiality of PHI and patient medical information and the access and disclosure

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of such information constitute a breach of the standard of care and a breach of Defendants' duties owed to Plaintiffs.

57. Such breach proximately caused substantial damages to Plaintiffs.

58. Defendants' conduct violated CMIA.

59. Defendants' conduct was intentional, reckless, and/or negligent.

60. Plaintiffs is entitled to recover damages, statutory damages, punitive damages, attorney's fees, and injunctive relief as a result of Defendants' wrongful conduct pursuant to Cal. Civil Code §§ 56.35 and 56.36.

61. Plaintiffs is also entitled to statutory nominal damages of one thousand dollars per violation pursuant to Cal. Civ. Code § 56.36.

62. Plaintiffs is entitled to litigation costs.

63. Plaintiffs is entitled to attorney's fees.

64. Plaintiffs is entitled to injunctive relief. Plaintiffs' damages and irreparable harm are substantial and continuing and will continue unless restrained and/or enjoined.

SECOND CLAIM FOR RELIEF

Violation of California Privacy/Data Breach Notice Statute Cal. Civ. Code § 1798.82 et seq.

(As Against All Defendants)

65. Plaintiffs incorporate the allegations above as if fully stated herein.

66. Plaintiffs specifically incorporate herein this claim the allegations set forth in the Statement of Facts above.

67. Defendants are licensed California healthcare providers and/or a "covered entities".

68. Defendants are and were not authorized to disclose, transmit, or otherwise allow access to Plaintiffs' PHI to or by unauthorized persons.

69. As a result of Defendants' conduct, Plaintiffs' PHI was disclosed to, or allowed to be accessed, viewed, obtained, or received by, unauthorized persons.

70. Defendants are obligated to adhere to the requirements of HIPAA, HITECH, CMIA, Cal. Civil Code §§ 1798.82 et seq., Cal. Health & Safety Code § 1280.15, California Business and Professions Code, and other State and Federal statutes and regulations requiring and regarding the

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protection of the confidentiality of PHI and patient medical information and the access and disclosure of such information.

71. Defendants had a duty to protect Plaintiffs' PHI and to prevent the unauthorized access and/or disclosure of Plaintiffs' PHI.

72. As a result of Defendants' conduct Plaintiffs' privacy was breached including that Plaintiffs' PHI was disclosed to unauthorized persons, was allowed to be disclosed to unauthorized persons, was made capable of access by unauthorized persons, and/or was accessed by unauthorized persons.

73. Moreover under Cal. Civil Code § 1798.82 et seq. Defendants are obligated to provide statutorily required notices and take other actions upon privacy violations and privacy or data breaches such as the violations and breaches alleged herein.

74. However Defendants failed to adhere to and comply with their statutory and other legal obligations provided under the relevant statutes including Cal. Civ. Code §§ 1798.82 et seq.

75. Such breach proximately caused substantial damages to Plaintiffs.

76. Defendants' conduct was intentional, willful, reckless, and/or negligent.

77. As a result, Plaintiffs is entitled to damages, statutory damages, punitive damages, and attorney's fees.

78. Plaintiffs is also entitled to injunctive relief enjoining Defendants from further such wrongful conduct.

THIRD CLAIM FOR RELIEF

Negligence and Negligence Per Se

(As Against All Defendants)

79. Plaintiffs incorporate the allegations above as if fully stated herein.

80. Plaintiffs specifically incorporate herein this claim the allegations set forth in the Statement of Facts above.

81. Defendants are licensed California healthcare providers and/or a "covered entities".

82. Defendants are and were not authorized to disclose, transmit, or otherwise allow access to Plaintiffs' PHI to or by unauthorized persons.

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83. As a result of Defendants' conduct, Plaintiffs' PHI was disclosed to, or allowed to be accessed, viewed, obtained, or received by, unauthorized persons.

84. Defendants are obligated to adhere to the requirements of HIPAA, HITECH, CMIA, Cal. Civil Code §§ 1798.82 et seq., Cal. Health & Safety Code § 1280.15, California Business and Professions Code, and other State and Federal statutes and regulations requiring and regarding the protection of the confidentiality of PHI and patient medical information and the access and disclosure of such information.

85. While HIPAA may not provide for a private right of action, case law has held that the strict requirements of HIPAA placed upon healthcare professionals and healthcare facilities and their staff regarding the protection of PHI to prevent unauthorized access and disclosure of such information may be used as a standard of care for claims of negligence. In fact, case law has also indicated that breaches of HIPAA may justify imposition of liability for negligence per se not merely just negligence.

86. Defendants had a duty to protect Plaintiffs' PHI and to prevent the unauthorized access and disclosure of Plaintiffs' PHI.

87. As a result of Defendants' conduct Plaintiffs' privacy was breached including that their PHI was disclosed to unauthorized persons, allowed to be disclosed to unauthorized persons, made capable of access by unauthorized persons and/or accessed by unauthorized persons.

88. Defendants breached their duties owed to Plaintiffs.

89. Such breach and conduct proximately caused substantial damages to Plaintiffs.

90. Defendants' failure to adhere to the requirements of HIPAA, HITECH, CMIA, Cal. Civil Code §§ 1798.82 et seq., Cal. Health & Safety Code § 1280.15, California Business and Professions Code, and other State and Federal statutes and regulations requiring and regarding the protection of the confidentiality of PHI and patient medical information and the access and disclosure of such information constitute a breach of the standard of care and a breach of Defendants' duties owed to Plaintiffs.

91. Defendants' conduct constitutes negligence and negligence per se.

92. Plaintiffs is entitled to recover damages as a result of Defendants' wrongful conduct.

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93. Plaintiffs is entitled to attorney's fees.

FOURTH CLAIM FOR RELIEF

Negligent Hiring, Retention, and Supervision

(As Against All Defendants)

94. Plaintiffs incorporate the allegations above as if fully stated herein.

95. Plaintiffs specifically incorporate herein this claim the allegations set forth in the Statement of Facts above.

96. Defendants are licensed California healthcare providers and/or a "covered entities".

97. Defendants are and were not authorized to disclose, transmit, or otherwise allow access to Plaintiffs' PHI to or by unauthorized persons.

98. As a result of Defendants' conduct, Plaintiffs' PHI was disclosed to, or allowed to be accessed, viewed, obtained, or received by, unauthorized persons.

99. Defendants are obligated to adhere to the requirements of HIPAA, HITECH, CMIA, Cal. Civil Code §§ 1798.82 et seq., Cal. Health & Safety Code § 1280.15, California Business and Professions Code, and other State and Federal statutes and regulations requiring and regarding the protection of the confidentiality of PHI and patient medical information and the access and disclosure of such information.

100. While HIPAA may not provide for a private right of action, case law has held that the strict requirements of HIPAA placed upon healthcare professionals and healthcare facilities and their staff regarding the protection of PHI to prevent unauthorized access and disclosure of such information may be used as a standard of care for claims of negligence. In fact, case law has also indicated that breaches of HIPAA may justify imposition of liability for negligence per se not merely just negligence.

101. Defendants breached their duties owed to Plaintiffs.

102. Such breach proximately caused substantial damages to Plaintiffs.

103. Defendants' failure to adhere to the requirements of HIPAA, HITECH, CMIA, Cal. Civil Code §§ 1798.82 et seq., Cal. Health & Safety Code § 1280.15, California Business and Professions Code, and other State and Federal statutes and regulations requiring and regarding the

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protection of the confidentiality of PHI and patient medical information and the access and disclosure of such information constitute a breach of the standard of care and a breach of Defendants' duties owed to Plaintiffs.

104. Further, Defendant negligently hired, kept or retained, and/or supervised its employees and staff regarding the privacy violations and failure to maintain HIPAA, CMIA, and other statutory compliance.

105. As alleged more fully above, Kaiser's nurse employee over the course of at least a year trolled through Plaintiffs' medical records and PHI on numerous occasions—at least 13 separate occasions.

106. Kaiser has an entire compliance and/or privacy department and/or persons/employees directly responsible for the oversight of PHI privacy and compliance with PHI privacy related laws.

107. Moreover Kaiser, as covered entities and/or healthcare providers are required to have, has various electronic or computer monitoring systems, including a HIPAA audit log or trail system, to ensure that Kaiser and/or its employees adhere to all the relevant PHI privacy laws, including without limitation HIPAA, HITECH, and CMIA. These type of systems should have made it easy for Kaiser to monitor and identify clear privacy violations such as those that occurred to Plaintiffs. Nevertheless Plaintiffs suffered numerous PHI privacy violations and unlawful intrusions into their medical records over the course of at least a full year.

108. Defendant had a duty to Plaintiffs to act responsibly relative to the security and confidentiality of PHI and to act timely and appropriately when notified of problems, violations, or breaches. Defendant further had a duty to ensure that its staff protected the security and confidentiality of PHI and that the staff took the appropriate steps to remedy the situations of privacy breaches or violations when notified or when they should have been aware of them.

109. However Defendant and its staff failed take such actions and in so failing breached the obligations and duties owed to Plaintiffs. Defendant failed to hire the correct persons, failed to train them appropriately, failed to fire them upon their failure to maintain or protect the confidentiality of PHI or to take the necessary and requisite steps to remedy or provide notice of the violations and breaches, and failed to properly or adequately supervise its staff relative to PHI privacy, HIPAA

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compliance and otherwise.

110. Such failures and breaches of duties directly led to damages to Plaintiffs.

111. Defendants' conduct constitutes negligence and negligence per se.

112. Plaintiffs is entitled to recover damages as a result of Defendants' wrongful conduct.

113. Plaintiffs is entitled to attorney's fees.

FIFTH CLAIM FOR RELIEF

Intentional Infliction of Emotional Distress and Negligent Infliction of Emotional Distress

(As Against All Defendants)

114. Plaintiffs incorporate the allegations above as if fully stated herein.

115. Plaintiffs specifically incorporate herein this claim the allegations set forth in the Statement of Facts above.

116. Defendants are licensed California healthcare providers and/or a "covered entities".

117. Defendants are and were not authorized to disclose, transmit, or otherwise allow access to Plaintiffs' PHI to or by unauthorized persons.

118. As a result of Defendants' conduct, Plaintiffs' PHI was disclosed to, or allowed to be accessed, viewed, obtained, or received by, unauthorized persons.

119. Defendants are obligated to adhere to the requirements of HIPAA, HITECH, CMIA, Cal. Civil Code §§ 1798.82 et seq., Cal. Health & Safety Code § 1280.15, California Business and Professions Code, and other State and Federal statutes and regulations requiring and regarding the protection of the confidentiality of PHI and patient medical information and the access and disclosure of such information.

120. While HIPAA may not provide for a private right of action, case law has held that the strict requirements of HIPAA placed upon healthcare professionals and healthcare facilities and their staff regarding the protection of PHI to prevent unauthorized access and disclosure of such information may be used as a standard of care for claims of negligence. In fact, case law has also indicated that breaches of HIPAA may justify imposition of liability for negligence per se not merely just negligence.

121. Defendants had a duty to protect Plaintiffs' PHI and to prevent the unauthorized access

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and disclosure of Plaintiffs' PHI.

122. As a result of Defendants' conduct Plaintiffs' privacy was breached including that Plaintiffs' PHI was disclosed to unauthorized persons, allowed to be disclosed to unauthorized persons, made capable of access by unauthorized persons and/or accessed by unauthorized persons.

123. Defendants breached their duties owed to Plaintiffs.

124. Such breach and conduct proximately caused substantial damages to Plaintiffs.

125. Defendants' failure to adhere to the requirements of HIPAA, HITECH, CMIA, Cal. Civil Code §§ 1798.82 et seq., Cal. Health & Safety Code § 1280.15, California Business and Professions Code, and other State and Federal statutes and regulations requiring and regarding the protection of the confidentiality of PHI and patient medical information and the access and disclosure of such information constitute a breach of the standard of care and a breach of Defendants' duties owed to Plaintiffs.

126. Defendants further took significant wrongful steps or engaged in significant wrongful conduct which also and/or further led to severe emotional distress and trauma for Plaintiffs, and especially for Plaintiff J.H. Defendants intentionally and/or negligently described the privacy violations as a situation similar to that of the serial killer in Single White Female and recommended that J.H. obtain a temporary restraining order against Defendants' nurse employee. However, Defendants refused to assist in obtaining the temporary restraining order. Defendants initiated an unwarranted and intentional human resources investigation against J.H. after Defendants admitted to the multiple privacy violations and after J.H. engaged counsel and began the process of asserting and protecting her rights relative to her PHI privacy and the PHI privacy breaches. Defendants further cut off J.H.'s pay, benefits, health insurance, and other employment benefits for J.H. In particular J.H.'s health insurance benefits covered J.H.'s sons, whom Defendants were very much aware required prescription medications and other healthcare services covered under J.H.'s health insurance. Nevertheless Defendants, subsequent to J.H. asserting her PHI privacy rights and/or subsequent to filing her workers compensation claim, terminated her health insurance, pay and other benefits.

127. These wrongful acts and conduct by Defendants were extreme, outrageous and Defendants knew or should have known when they engaged in such conduct that the conduct was

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likely to result in significant mental anguish and/or other physical manifestations for Plaintiffs.

128. Indeed Defendants' wrongful conduct did result in damages to Plaintiffs including without limitation severe and significant emotional distress, mental anguish, and otherwise.

129. In committing the extreme and outrageous acts as described herein, Defendants acted with the intent to inflict injury or severe mental anguish on Plaintiffs or with the understanding that injury or severe mental anguish to Plaintiffs was substantially certain to result.

130. As a direct and proximate result of Defendants' outrageous conduct as described herein, Plaintiffs endured great mental anguish, constant worry, shock, humiliation, anxiety, and/or other severe emotional distress. Defendants' conduct resulted in Plaintiffs suffering damages and emotional distress in an amount to proven at trial.

131. Defendants acted intentionally, willfully, knowingly, recklessly and/or negligently in engaging in the wrongful conduct alleged herein. These acts were done with malice, fraud, oppression, and in reckless disregard of Plaintiffs' rights.

132. Plaintiffs suffered harm and damages as a result of Defendants' conduct and such conduct was the proximate cause of, and/or a substantial factor causing, Plaintiffs' damages and harm and continuing ongoing damages and irreparable harm.

133. Plaintiffs is entitled to damages in an amount to be proven at trial, statutory damages to the extent provided under applicable statute; costs and expenses to the extent permitted; injunctive relief; attorney's fees to the extent permitted; and punitive damages to the extent permitted.

134. Plaintiffs' damages and irreparable harm are substantial and continuing and will continue unless restrained and/or enjoined.

SIXTH CLAIM FOR RELIEF

Violation of Evidence Code § 1158 and Demand for Records

(J.H. As Against All Defendants)

135. Plaintiff incorporates the allegations above as if fully stated herein.

136. Plaintiff specifically incorporates herein this claim the allegations set forth in the Statement of Facts above.

137. Defendants are licensed California healthcare providers and/or a "covered entities".

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138. Pursuant to California Evidence Code § 1158 California healthcare providers are required to produce, or otherwise make available, a copy of all medical records demanded pursuant to a patient or patient executed medical record release authorization. The healthcare providers are obligated under the statute to comply with the request within five days of the request.

139. Failure to comply with the request and/or failure to comply with the request within the statutorily required timeframe subjects the healthcare provider to "liability for all reasonable expenses, including attorney's fees, incurred in any proceeding to enforce this section [CCP § 1158]."

140. On June 19, 2018 Plaintiff, J.H., by, through, and from her attorney in Los Angeles County, California, requested that Defendants produce Plaintiff's medical records to Plaintiffs' attorney in Los Angeles County, California. Plaintiff's attorney provided Defendants with a medical record release authorization executed by Plaintiff.

141. On June 19, 2018 Defendant confirmed to Plaintiff's counsel in Los Angeles County, California receipt of the medical record authorization and request for medical records.

142. As of the date of the filing of this action and complaint, well after the statutory time frame to produce the records, Defendants have not produced the requested medical records.

143. As such this action/proceeding and specifically this cause of action was necessitated.

144. Plaintiff J.H. thus requests that the Court issue an injunction or other relief requiring, or otherwise ordering, Defendants to immediately turn over all medical records, images, scans, results, tests, notes, and other information covered by, and requested pursuant to, the medical record release authorization previously provided to Defendants.

145. Plaintiff J.H. is entitled to costs of litigation and attorney's fees as is required under the relevant statute or otherwise.

SEVENTH CLAIM FOR RELIEF

Employer/Healthcare Provider Retaliation and Wrongful Termination or Wrongful Constructive Termination – Violations of California Government Code §§ 12940 et seq.; California Labor Code § 132a; California Health & Safety Code § 1278.5, and Public Policy

(J.H. As Against All Defendants)

146. Plaintiff incorporates the allegations above as if fully stated herein.

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147. Plaintiff specifically incorporates herein this claim the allegations set forth in the Statement of Facts above.

148. Plaintiff J.H. is and was an employee of Defendants.

149. Plaintiff J.H. is and was a patient of Defendants.

150. Defendants are California licensed healthcare providers or healthcare service providers.

151. Defendants permitted and/or failed to prevent the unauthorized access into Plaintiff's PHI and medical records by Defendants/Defendants employee(s). Indeed Defendants unlawfully accessed, viewed, and disclosed Plaintiff's PHI on numerous occasions.

152. Defendants have admitted that Plaintiff J.H.'s PHI was accessed without her legal written authorization. See **Exhibit 1**.

153. Plaintiff J.H. filed or submitted a complaint and/or grievance with Defendants relative to Defendants' violation of Plaintiffs' PHI privacy rights. Indeed Plaintiff J.H. went so far as to engage counsel through whom a complaint and/or grievance was submitted to Defendants regarding the PHI privacy violation issues. In fact, Defendants were issued a litigation hold letter specifically informing Defendants of their obligations relative to maintaining relevant documents and information and making it clear that Plaintiffs were submitting or filing a complaint or grievance and asserting their rights regarding the PHI privacy violations.

154. PHI privacy violations affect the safety, health, and wellbeing of both patients and employees of healthcare providers and/or healthcare service providers such as Defendants. The PHI privacy violations at issue in this action and about which Plaintiffs, including J.H., complained, grieved, and asserted their rights to protect such privacy and seek relief for such violations, affect or affected, or were regarding, Defendants' patients' and/or employees' health, safety, wellbeing, or other matters/issues requiring protection.

155. Subsequent to Plaintiffs engaging counsel and substantial discussions and interactions between counsel and Defendants' counsel regarding the PHI privacy violations, including Plaintiffs specific assertion that Plaintiffs are moving forward against Defendants with formal proceedings such as Court intervention to protect Plaintiffs PHI privacy rights and to seek redress for Defendants'

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violations of such rights, Defendants actively, intentionally, and/or negligently took steps and actions harmful toward to J.H. in retaliation for J.H.'s assertion of her rights relative to the PHI privacy violations.

156. Shortly after J.H. asserted her rights and made it clear, personally or through counsel, that J.H. would be pursuing/filing claims against Defendants regarding the privacy violations, Defendants retaliated and initiated a human resources investigation of J.H.

157. Subsequently Defendants went so far as to terminate J.H.'s employment benefits including without limitation J.H.'s health insurance for J.H. and her sons. Defendants also stopped paying J.H. but technically did not "terminate" J.H as an "employee". However for all intents and purposes Defendants terminated or constructively terminated J.H. as Defendants terminated all salary, pay, benefits, insurance, and otherwise related to her employment.

158. Upon information and belief Defendants took these actions in retaliation for J.H.'s actions including without limitation her asserting her rights and/or filing a complaint or grievance relative to Defendants' PHI privacy violations related to J.H. and her family the other Plaintiffs.

159. Moreover, understandably Defendants wrongful conduct including the privacy violations, indicating that J.H. was in a Single White Female situation, and initiating human resource investigations against J.H. in response to Defendants' privacy violations resulted in massive stress, anxiety, and mental distress and trauma inflicted upon J.H.

160. Subsequently J.H. filed a workers compensation claim.

161. Defendants, alternatively, terminated J.H.'s salary, benefits, heath insurance, and other employment related benefits as a result of, or in response to, J.H.'s filing and pursuing her worker's compensation claim.

162. Defendants' wrongful conduct as alleged herein above was engaged in by Defendants in retaliation against Plaintiff.

163. Defendants acted intentionally, willfully, knowingly, and/or negligently in engaging in the wrongful conduct alleged herein. The above-described actions were perpetrated and/or ratified by a managing agent or officer of Defendants. These acts were done with malice, fraud, oppression, and in reckless disregard of Plaintiff's rights.

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164. Defendants' conduct violated the relevant and applicable laws and statutes relative to employer-employee retaliation in California, including without limitation Cal. Gov. Code §§ 12940 et seq.; Cal. Labor Code § 132a; Cal. Health & Safety Code § 1278.5; and California public policy.

165. Indeed Defendants' wrongful conduct also made J.H.'s remaining an employee at Defendants so intolerable that J.H. was or would be left with no reasonable option but to no longer remain an employee, i.e. to resign or otherwise separate from Defendants. As such Defendants conduct constitutes a wrongful termination or wrongful constructive termination of Plaintiff J.H.

166. Plaintiff suffered harm and damages as a result of Defendants' conduct and such conduct was the proximate cause of, and/or a substantial factor causing, Plaintiff's damages and harm.

167. Plaintiff is entitled to damages in an amount to be proven at trial, statutory damages to the extent provided under applicable statute; penalties to the extent provided under applicable statute; costs and expenses to the extent permitted; attorney's fees to the extent permitted; and punitive damages to the extent permitted.

VI.

PRAYER

WHEREFORE, Plaintiffs prays for the following:

1. Monetary damages in an amount to be proven at trial;
2. Statutory damages to the maximum extent permitted by law, statute, the Court, or the jury;
3. Equitable relief/injunctive relief on Plaintiffs' Cal.. Civ. Code § 1798.82 claim enjoining Defendants and its officers, directors, agents, representatives, and employees from further conduct identical or similar in nature to the wrongful acts alleged herein;
4. Equitable, injunctive or other relief requiring Defendants to immediately turn over a full and complete copy of all PHI and medical records requested;
5. Treble (or other applicable multiplier of) damages if and where permitted by law, statute, the Court, or jury;
6. Penalties to the maximum extent permitted by law, statute, the Court, or the jury;
7. Punitive damages to the maximum extent permitted by law, statute, the Court, or the jury;
8. Attorney's fees to the maximum extent permitted by law, statute, case law, the Court, or

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the jury;

9. Costs of suit;

10. Such other and further relief as the Court may deem just, fair, and proper.

JURY TRIAL DEMANDED

Plaintiffs demands trial by jury on all claims and triable issues.

Dated: October 31, 2018

DORROS LAW

Torin A. Dorros
Attorneys for Plaintiffs

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11/05/2018

EXHIBIT "1"

DECLARATION OF JASMEET GILL

I, Jasmeet Gill, state and declare under penalty of perjury of the laws of the State of California and these United States the following:

1. I am an employee of Kaiser Foundation Hospitals ("Kaiser") with the title of Compliance Consultant. As part of my duties I am responsible for investigating and advising on various types of privacy concerns at Kaiser, including alleged privacy breaches or violations regarding Kaiser employees' and/or Kaiser patients' protected health information ("PHI"). In this role I have access to PHI Access Audit reports.

2. I submit this declaration in support of J[redacted] H[redacted]'s request seeking a Restraining Order against Shana Burbank.

3. I am familiar with the allegations asserted by J[redacted] H[redacted] against Shana Burbank.

4. Ms. H[redacted] is both an employee and patient of Kaiser. (Please note that Ms. H[redacted] has given me/Kaiser authorization to disclose the fact that she and her two minor sons are Kaiser patients).

5. Based on my investigation, I found that on numerous separate occasions Shana Burbank, while working as a nurse for The Permanente Medical Group, accessed the PHI of J[redacted] H[redacted] and her family members, including her two minor sons, within Kaiser's electronic medical records systems.

6. Kaiser has no written authorization by Ms. H[redacted] authorizing Shana Burbank to access Ms. H[redacted]'s or her family's PHI.

I declare under penalty of perjury of the laws of these United States that the foregoing is true and correct.

Dated: May 10, 2018

Jasmeet Gill

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DOCUMENT: Complaint (COM040)

CASE: 18STCV03612

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FILED: 11/01/2018

FILED BY: J.H. (Plaintiff)

BARCODE BY: rjuarez1 11/03/2018 7:20 AM

ENTERED BY: rjuarez1 11/03/2018 7:19 AM

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11/03/2018