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WANDA WOTEN

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County of San Diego

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

WANDA WOTEN, an individual,

Plaintiff,

v.

SOUTHERN CALIFORNIA
PERMANENTE MEDICAL GROUP;
TODD GAPEN, an individual; DR. BRETT
PARTRIDGE, an individual; and DOES 1
through 25, inclusive,

Defendants.

Case No.: 37-2019-00031596-CU-WT-CTL

COMPLAINT FOR DAMAGES FOR

- 1. Discrimination Based on Age,**
- Sex/Gender, Disability and Veteran**
- status (Gov. Code, Sec. 12940, et seq.);**
- 2. Harassment Based on Age, Sex/Gender,**
- Disability and Veteran Status (Gov.**
- Code, Sec. 12940, et seq.);**
- 3. Failure to Prevent Discrimination and**
- Harassment (Gov. Code, Sec. 12940(k);**
- 4. Retaliation (Gov. Code, Sec. 12940, et**
- seq.);**
- 5. Violation of Labor Code Section 232.5**
- 6. Violation of Labor Code 1102.5**
- 7. Violation of Labor Code 98.6**
- 8. Hostile Work Environment**
- 9. Wrongful Termination**
- 10. Negligent Infliction of Emotional**
- Distress**

DEMAND FOR A JURY TRIAL

COMES NOW Plaintiff, WANDA WOTEN ("PLAINTIFF"), and alleges the following
causes of action against Defendants, SOUTHERN CALIFORNIA PERMANENTE MEDICAL
GROUP, TODD GAPEN, DR. BRETT PARTRIDGE, and DOES 1 through 25 inclusive

1 (collectively referred to as “DEFENDANTS”), demands a jury trial and seeks monetary
2 compensation.

3 **I.**

4 **NATURE OF THE CASE**

5 By way of this action, PLAINTIFF is seeking to recover damages for the following: (1)
6 unlawful discrimination based on her age, sex/gender, disability and veteran status; (2) unlawful
7 harassment based on her age, sex/gender, disability and veteran status; (3) failure to prevent
8 unlawful discrimination and harassment; (4) retaliation (5) violation of Labor Code Section
9 232.5; (6) violation of Labor Code Section 1102.5; (7) violation of Labor Code Section 98.6
10 (8) hostile work environment; (9) wrongful termination; (10) negligent hiring, supervising and
11 retention; (11) negligent infliction of emotional distress; and (12) intentional infliction of
12 emotional distress.

13 **II.**

14 **PARTIES**

15 1. PLAINTIFF is an individual who resides in and at all times relevant to this
16 matter did reside in the County of San Diego, in the State of California.

17 2. Defendant, SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP
18 aka KAISER PERMANENTE (“KAISER”), is a business existing under the laws of the State of
19 California, which at all times relevant herein conducted business within the County of San
20 Diego, State of California. KAISER, was and at all times relevant herein, PLAINTIFF’s
21 employer.

22 3. PLAINTIFF is informed and believes, and thereon alleges, that Defendant,
23 TODD GAPEN (“GAPEN”), is an individual who does and at all times relevant to this matter,
24 did reside in the County of San Diego, State of California. At all times relevant herein, GAPEN
25 is an agent, employee or representative of KAISER, and acted in a supervisory capacity over
26 PLAINTIFF.

27 4. PLAINTIFF is informed and believes, and thereon alleges, that Defendant, DR.
28 BRETT PARTRIDGE (“PARTRIDGE”), is an individual who does and at all times relevant to

1 this matter, did reside in the County of San Diego, State of California. At all times relevant
2 herein, PARTRIDGE is an agent, employee or representative of KAISER, and acted in a
3 supervisory capacity over PLAINTIFF.

4 5. The true names and capacities, whether individual, corporate, representative, or
5 otherwise, of DOES 1 through 25, inclusive, are unknown to PLAINTIFF, who therefore sues
6 them by such fictitious names. PLAINTIFF will seek leave to amend this Complaint to show
7 the true names and capacities of said Defendants when they are ascertained.

8 6. PLAINTIFF is informed and believes, and thereupon alleges, that each of the
9 Defendants named as a DOE, along with the named Defendants, is responsible in some manner
10 for the occurrences herein alleged, and that PLAINTIFF's injuries herein alleged were legally or
11 proximately caused by said Defendants. Wherever it is alleged that any act or omission was
12 also done or committed by any specifically named Defendant, or by DEFENDANTS generally,
13 PLAINTIFF intends thereby to allege, and does allege, that the same act or omission was also
14 done and committed by each and every Defendant named as a DOE, and each named
15 Defendant, both separately and in concert or conspiracy with the named Defendants.

16 7. PLAINTIFF is informed and believes, and thereon alleges, that each Defendant
17 herein was an agent, employee, or representative of the remaining Defendants, and that each
18 Defendant was acting within the scope, course, and authority of that relationship, within the
19 County of San Diego.

20 III.

21 JURISDICTION AND VENUE

22 8. The Court has jurisdiction over this action because the amount in controversy,
23 exclusive of costs and interest, exceeds the sum of \$25,000.00. Venue is proper in this judicial
24 district, pursuant to California Code of Civil Procedure § 395(a). DEFENDANTS reside and/or
25 transact business in the County of San Diego and are within the jurisdiction of this Court for
26 purposes of service of process.

27 9. At all times relevant, KAISER regularly employed five (5) or more persons,
28 bringing it within the provisions of California Government Code, Section 12900 et seq., which

1 prohibits employers or their agents from discriminating against and harassing an individual on
2 the basis of his or her sex/gender, age, veteran status, or disability, among other things.

3 **IV.**

4 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

5 10. Prior to the filing of this action, PLAINTIFF filed a complaint with the
6 California Department of Fair Employment and Housing and obtained a right to sue notice from
7 said agency which was issued on or about February 4, 2019.

8 **V.**

9 **CENTRAL FACTS**

10 11. PLAINTIFF, a licensed and registered nurse, was first hired by KAISER in
11 January of 2016 as an assistant manager in the gastroenterology department. She has worked in
12 that position for approximately 3 years and is now 59 years of age. She has performed all her
13 duties in a competent and professional manner.

14 12. In January of 2017, PARTRIDGE became the new chief physician for the
15 gastroenterology department. In May of 2017, GAPEN was hired to manage PLAINTIFF and
16 her department within gastroenterology.

17 13. PARTRIDGE and GAPEN proceeded to overschedule procedures in the
18 gastroenterology department. PLAINTIFF notified GAPEN and PARTRIDGE that the
19 department was understaffed and unable to handle the increased patient load.

20 14. PLAINTIFF advised both GAPEN and PARTRIDGE that staff were missing
21 breaks and suffering from work-related injuries and stress as a result of the increased patient
22 load and decreased staffing. Notably, at one point there were eight (8) staff members out on
23 leave for job-related injuries.

24 15. GAPEN and PARTRIDGE called PLAINTIFF an “obstructionist” when she
25 advised them on multiple occasions that it was not possible to adequately staff all of the
26 additional procedures they wanted scheduled. GAPEN and PARTRIDGE thereafter reported
27 PLAINTIFF to Human Resources, and made it known to other KAISER employees, that they
28 believed that PLAINTIFF was an “obstructionist” and that they had labeled her as such.

1 16. On one occasion, PARTRIDGE scheduled three procedures all on the same date
2 and at the same time. When PLAINTIFF informed PARTRIDGE that it would not be possible
3 to perform each of the procedures due to staffing shortages, PARTRIDGE reprimanded her by
4 demanding that she “just get those sedated patients out of here sooner,” implying that the
5 patients should be moved or released without giving them an adequate time to recover from the
6 effects of the anesthesia. PLAINTIFF voiced her concern to PARTRIDGE regarding the
7 potential dangers associated with such a directive. GAPEN and PARTRIDGE thereafter
8 retaliated against PLAINTIFF as herein alleged when she exercised her protected rights,
9 including reporting the aforementioned unsafe medical practices that PARTRIDGE sought to
10 implement within the gastroenterology department.

11 17. In 2018, when PLAINTIFF was informed that she was due for a performance
12 evaluation, she requested that she be given a “three-sixty” evaluation whereby personnel both
13 above and beneath PLAINTIFF, as well as her colleagues, fill out a survey with respect to her
14 job performance and competence. Although PLAINTIFF had previously received that type of
15 evaluation, in this instance, GAPEN denied her request. Consequently, PLAINTIFF asked if
16 she could, at the very least, have someone perform the evaluation who knew her work, as
17 GAPEN had been her supervisor for a very short period of time. This request was denied as
18 well.

19 18. After labeling PLAINTIFF as an “obstructionist,” PARTRIDGE and GAPEN
20 began treating her in a hostile and offensive manner which made it virtually impossible for her
21 to perform her assigned job duties. GAPEN belittled her on a regular basis and told staff not to
22 respond to her emails or assignments. GAPEN made PLAINTIFF uncomfortable when he
23 repeatedly called her into his office for closed door meetings and PLAINTIFF eventually
24 moved her office down the hallway to get away from GAPEN. Subsequently, GAPEN told
25 staff that PLAINTIFF was “relocating” in such a manner so as to imply that PLAINTIFF was
26 no longer going to be working for the department.

27 19. On another occasion, PARTRIDGE told PLAINTIFF “to get her head out of her
28 ass” when PLAINTIFF was not ready for a procedure because PARTRIDGE had not notified

1 her of a schedule change. PARTRIDGE also told department staff that PLAINTIFF “didn’t
2 know what the fuck she was doing,” and repeated that “she just needed to get those sedated
3 patients out of here quicker, so they could squeeze more into a day.”

4 20. GAPEN and PARTRIDGE perpetuated a “boy’s club atmosphere” that resulted
5 in PLAINTIFF being left out of the decision-making process. They also limited her access to
6 important information that was necessary to her overall job performance (i.e., waiting until
7 PLAINTIFF went on emergency family leave to fire one of her staff members). If PLAINTIFF
8 voiced her opinion, she was subjected to a closed-door meeting reminding her that she was “not
9 one of the boys.”

10 21. Additionally, when the department hired new physicians, the physician’s
11 assistants were required to give up their offices. Although each male assistant was relocated to
12 a new office, the only female physician assistant in the department was not given a new office.

13 22. PARTRIDGE also created an intimidating and hostile work environment by
14 storming around yelling orders and telling her to work faster in an attempt to get her to crack
15 under the stress that he was putting on her.

16 23. On other occasions, PARTRIDGE mocked PLAINTIFF’s military service and
17 intimated that her service-induced post-traumatic stress disorder was a joke. PARTRIDGE
18 repeatedly stated in front of other department employees that he couldn’t believe that
19 PLAINTIFF used to represent our country and that she must have been some sailor.
20 PARTRIDGE’s harassing and discriminatory conduct in that regard was based entirely on
21 PLAINTIFF’s status as a veteran suffering from a service-connected disability.

22 24. On or about December 19, 2018, PLAINTIFF was called to meet with GAPEN
23 and PARTRIDGE. At this meeting, GAPEN and PARTRIDGE provided PLAINTIFF with a
24 poor performance review and remarked that she had exercised poor managerial skills.
25 PLAINTIFF had never before received a negative performance evaluation. During the course
26 of that same meeting, GAPEN and PARTRIDGE confronted PLAINTIFF about complaint that
27 PLAINTIFF’s staff had filed against them (GAPEN and PATRIDGE) with Compliance and
28

Human Resources because of the way in which they treated PLAINTIFF. PATRIDGE and GAPEN accused PLAINTIFF of coercing her staff into filing the complaint.

25. Also during the course of that December 19, 2018 meeting, GAPEN brought to PLAINTIFF'S attention an email that she drafted and accidentally sent out to more recipients than she had originally intended; notwithstanding the fact that PLAINTIFF had already apologized for that miscommunication and added that the unintended recipients already knew about the content of the email. The email was not one of a sensitive or confidential nature and was the result of an innocent mistake. Nevertheless, GAPEN and PATRIDGE threatened PLAINTIFF's job security and sense of wellbeing when they advised her that the "mishap" could result in her termination. It was at that time that PLAINTIFF was suspended for two weeks.

26. After PLAINTIFF returned from suspension, on January 6, 2019, she was assigned to clean out cabinets, answer the phone, and perform other mundane tasks. PLAINTIFF was not allowed to work or communicate with the gastroenterology staff. Her job reassignment continued until her March 14, 2019 termination.

VI.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Discrimination Based on Age, Sex/Gender, Disability, and Veteran Status

Pursuant to Gov. Code, Sec. 12940, et seq.

(Against KAISER and DOES 1-25)

27. PLAINTIFF incorporates and re-alleges by reference all previous paragraphs, and each and every part thereof, of this Complaint, with the same force and effect as though fully set forth herein.

28. At all times herein mentioned, California Government Code sections 12940, et seq. (the "FEHA") were in full force and effect and were binding on KAISER and DOES 1-25. These sections required KAISER and DOES 1-25 to refrain from discriminating against any employee on the basis of age, sex/gender, disability and veteran status. Due to KAISER'S

1 disparate treatment towards PLAINTIFF as described above, PLAINTIFF alleges that she was
2 discriminated against based on her age, sex/gender, disability and veteran status in violation of
3 California Government Code sections 12940, et seq.

4 29. PLAINTIFF was reprimanded, given a poor performance evaluation, suspended,
5 was systematically stripped of her previous duties, and was subsequently terminated based upon
6 her status as a female veteran over the age of forty who was suffering from a service-connected
7 disability. These actions constitute discrimination in violation of the FEHA.

8 30. As PLAINTIFF did not fit in with the “boy’s club atmosphere” that they sought
9 to foster within the department, GAPEN and PARTRIDGE engaged in the unlawful
10 discriminatory practices as alleged herein, with GAPEN even telling PLAINTIFF in a closed-
11 door meeting that she was not “one of the boys.”

12 31. GAPEN and PARTRIDGE engaged in a severe and pervasive pattern and
13 practice of discriminating against PLAINTIFF based upon her membership in one or more
14 protected classes. They intentionally increased PLAINTIFF’S workload, set unrealistic
15 performance goals, and refused to provide her with the appropriate information she needed to be
16 successful and reprimanding her.

17 32. At no time did PLAINTIFF require any special accommodations for her post-
18 traumatic stress disorder, as she remained professional and competent to perform her duties as
19 she had throughout her entire career. Her first negative performance evaluation, as detailed
20 herein, came at the hands of GAPEN and PARTRIDGE.

21 33. The discriminatory conduct to which PLAINTIFF was subjected interfered with
22 PLAINTIFF’s ability to adequately perform her job duties and for her to properly manage her
23 staff. No other similarly situated male employees were treated this way.

24 34. PARTRIDGE also singled out PLAINTIFF for disparate treatment based upon
25 her membership in one or more protected classes by setting her up to fail (i.e. changing
26 procedures times with no advance notice) and potentially subjecting her to disciplinary action,
27 up to and including termination.

1 35. DEFENDANTS also excluded PLAINTIFF from the decision-making process
2 when it came time to make important decisions that affected her department and her ability to
3 adequately perform her essential job functions. By way of example, GAPEN and PARTRIDGE
4 fired one of PLAINTIFF's staff members while PLAINTIFF was out of town on emergency
5 family leave while in another instance they relegated her to a ministerial position upon her
6 return from a leave of absence.

7 36. KAISER furthered and ratified all of the above-referenced discrimination when it
8 failed to properly investigate staff complaints made regarding the way in which PLAINTIFF
9 was treated by PARTRIDGE and GAPEN.

10 37. As a direct, proximate, and legal result of KAISER'S willful, knowing, and
11 intentional discrimination against PLAINTIFF in the workplace, PLAINTIFF has suffered and
12 will continue to suffer pain, humiliation, stress, anxiety, and emotional distress, all of which are
13 not currently ascertained, but which will be proven at trial.

14 38. The foregoing has caused PLAINTIFF loss and damage to her professional
15 reputation and to the opportunity to advance in her profession. As a direct, proximate and legal
16 result of KAISER'S aforementioned willful, knowing conduct and intentional discrimination
17 against PLAINTIFF, PLAINTIFF has suffered and will continue to suffer a loss of earnings and
18 other employment benefits and job opportunities in an amount not currently ascertained, but
19 which will be proven at trial. PLAINTIFF is therefore entitled to general and compensatory
20 damages in an amount to be proven at the time of trial.

21 39. As a further direct, proximate, and legal result of KAISER'S violation of the
22 FEHA, as hereinabove described, PLAINTIFF has been compelled to retain the services of
23 counsel in an effort to enforce the terms and conditions of the employment relationship with
24 KAISER, and to redress its violation of the FEHA, and has, thereby, incurred and will continue
25 to incur legal fees and costs, the full nature and extent of which are presently unknown to
26 PLAINTIFF.

27 40. The conduct of KAISER, as herein alleged, was done with malice, oppression
28 and fraud as defined in Section 3294 of the California Civil Code. Such conduct was intended

1 to annoy, harass and injure the PLAINTIFF, and was despicable, and carried on by KAISER
2 with willful and conscious disregard for the rights of the PLAINTIFF, thereby subjecting the
3 PLAINTIFF to cruel and unjust hardship. PLAINTIFF is further informed and believes and
4 thereon alleges that the acts of malice, oppression and fraud on the part of KAISER, as alleged
5 herein, were committed by an officer, director and/or managing agent of the KAISER.
6 Accordingly, PLAINTIFF is entitled to recover punitive damages from the KAISER, and each
7 of them, pursuant to Section 3294 of the California Civil Code in an amount to be shown
8 according to proof at trial.

9 **SECOND CAUSE OF ACTION**

10 **Harassment Based on Age, Sex/Gender, Disability and Veteran Status**

11 **Pursuant to Gov. Code, Sec. 12940, et seq.**

12 **(Against All DEFENDANTS)**

13 41. PLAINTIFF incorporates and re-alleges by reference all previous paragraphs,
14 and each and every part thereof, of this Complaint, with the same force and effect as though
15 fully set forth herein.

16 42. At all times herein mentioned, California Government Code sections 12940, et
17 seq. (the "FEHA") were in full force and effect and were binding on DEFENDANTS. These
18 sections required DEFENDANTS to refrain from harassing any employee on the basis of age,
19 sex/gender, disability and veteran status. Due to DEFENDANTS' treatment of PLAINTIFF as
20 described above, PLAINTIFF alleges that she was harassed based on her age, sex/gender,
21 disability and veteran status, in violation of California Government Code sections 12940, et seq.

22 43. GAPEN and PARTRIDGE subjected PLAINTIFF to a severe and pervasive
23 pattern of harassing conduct that commenced in or about 2017 and continued through the date
24 of her termination on March 14, 2019. As alleged herein, they took actions which effectively
25 precluded PLAINTIFF from properly performing her job functions. They made personnel and
26 key staffing decisions in her absence, set her up for failure by changing scheduled procedures
27 without providing her with advance notice, consistently demeaned her in front of her
28

1 colleagues, stripped her of her job duties, mocked her military service, and made jokes about
2 her service-connected post-traumatic stress disorder.

3 44. Additionally, GAPEN directed all of PLAINTIFF'S staff not to respond to her
4 assignments or emails. That directive undermined PLAINTIFF'S credibility with her staff and
5 interfered with her ability to effectively manage her staff.

6 45. KAISER ratified the conduct of all DEFENDANTS herein by terminating
7 PLAINTIFF's employment and by failing to properly investigate complaints about the way that
8 PLAINTIFF was being treated by GAPEN and PARTRIDGE.

9 46. As a direct, proximate, and legal result of DEFENDANTS' conduct as alleged
10 herein, PLAINTIFF has suffered and will continue to suffer pain, humiliation, stress, anxiety,
11 and emotional distress, all of which are not currently ascertained, but which will be proven at
12 trial.

13 47. The foregoing has caused PLAINTIFF loss and damage to her professional
14 reputation and to the opportunity to advance in her profession. As a direct, proximate and legal
15 result of DEFENDANTS' aforementioned willful, knowing conduct and intentional
16 discrimination against PLAINTIFF, PLAINTIFF has suffered and will continue to suffer a loss
17 of earnings and other employment benefits and job opportunities in an amount not currently
18 ascertained, but which will be proven at trial. PLAINTIFF is therefore entitled to general and
19 compensatory damages in an amount to be proven at the time of trial.

20 48. As a further direct, proximate, and legal result of DEFENDANTS' violation of
21 the FEHA, as hereinabove described, PLAINTIFF has been compelled to retain the services of
22 counsel in an effort to enforce the terms and conditions of the employment relationship with
23 KAISER, and to redress its violation of the FEHA, and has, thereby, incurred and will continue
24 to incur legal fees and costs, the full nature and extent of which are presently unknown to
25 PLAINTIFF.

26 49. The conduct of DEFENDANTS, and each of them, as herein alleged, was done
27 with malice, oppression and fraud as defined in Section 3294 of the California Civil Code.
28 Such conduct was intended to annoy, harass and injure the PLAINTIFF, and was despicable,

1 and carried on by the DEFENDANTS with willful and conscious disregard for the rights of the
2 PLAINTIFF, thereby subjecting the PLAINTIFF to cruel and unjust hardship. PLAINTIFF is
3 further informed and believes and thereon alleges that the acts of malice, oppression and fraud
4 on the part of the DEFENDANTS, and each of them, as alleged herein, were committed by an
5 officer, director and/or managing agent of the DEFENDANT KAISER. Accordingly,
6 PLAINTIFF is entitled to recover punitive damages from the DEFENDANTS, and each of
7 them, pursuant to Section 3294 of the California Civil Code in an amount to be shown
8 according to proof at trial.

9 **THIRD CAUSE OF ACTION**

10 **Failure to Prevent Discrimination and Harassment**

11 **(Gov. Code, Sec. 12940, et seq.)**

12 **(Against KAISER and DOES 1-25)**

13 50. PLAINTIFF incorporates and re-alleges by reference all previous paragraphs,
14 and each and every part thereof, of this Complaint, with the same force and effect as though
15 fully set forth herein.

16 51. KAISER knew or should have known that PLAINTIFF was subjected to a work
17 environment in which her age, gender/sex, veteran status and disability were substantial factors
18 in her being subjected to harassment and discrimination, in addition to the adverse employment
19 actions that were against her, as KAISER received complaints from PLAINTIFF's staff as to
20 the way in which she was being treated by GAPEN and PARTRIDGE.

21 52. Furthermore, KAISER ratified GAPEN and PARTRIDGE'S conduct by failing
22 to properly investigate the complaints filed against them with Compliance and Human
23 Resources and by thereafter terminating PLAINTIFF under the pretext of "poor managerial
24 skills" and "insubordination." These actions and failures to act by KAISER constitute a failure
25 to take all reasonable steps to prevent discrimination and harassment from occurring, in
26 violation of California Government Code Section 12940(k).

1 53. As a direct, proximate, and legal result of KAISER'S conduct, as alleged herein,
2 PLAINTIFF has suffered and will continue to suffer pain, humiliation, stress, anxiety, and
3 emotional distress, all of which are not currently ascertained, but which will be proven at trial.

4 54. The foregoing has caused PLAINTIFF loss and damage to her professional
5 reputation and to the opportunity to advance in her profession. As a direct, proximate and legal
6 result of KAISER'S aforementioned willful, knowing conduct and intentional discrimination
7 against PLAINTIFF, PLAINTIFF has suffered and will continue to suffer a loss of earnings and
8 other employment benefits and job opportunities in an amount not currently ascertained, but
9 which will be proven at trial. PLAINTIFF is therefore entitled to general and compensatory
10 damages in an amount to be proven at the time of trial.

11 55. As a further direct, proximate, and legal result of KAISER'S violation of the
12 FEHA, as hereinabove described, PLAINTIFF has been compelled to retain the services of
13 counsel in an effort to enforce the terms and conditions of the employment relationship with
14 KAISER, and to redress its violation of the FEHA, and has, thereby, incurred and will continue
15 to incur legal fees and costs, the full nature and extent of which are presently unknown to
16 PLAINTIFF.

17 56. KAISER'S conduct was done with malice, oppression and fraud as defined in
18 Section 3294 of the California Civil Code. Such conduct was intended to annoy, harass and
19 injure the PLAINTIFF, and was despicable, and carried on with willful and conscious disregard
20 for PLAINTIFF's rights, thereby subjecting her to cruel and unjust hardship. Accordingly,
21 PLAINTIFF is entitled to recover punitive damages from the KAISER pursuant to Section 3294
22 of the California Civil Code in an amount to be shown according to proof at trial.

23 **FOURTH CAUSE OF ACTION**

24 **Retaliation (Gov. Code, Sec. 12940(k);**

25 **(Against KAISER and DOES 1-25)**

26 57. PLAINTIFF incorporates and re-alleges by reference all previous paragraphs,
27 and each and every part thereof, of this Complaint, with the same force and effect as though
28 fully set forth herein.

1 58. As alleged herein, PLAINTIFF complained to KAISER, and KAISER knew or
2 reasonably should have known that PLAINTIFF made such complaints, about the harassing and
3 discriminatory conduct to which she was being subjected based upon her status as a member of
4 one or more protected classifications. She had also complained to PARTRIDGE and GAPEN,
5 who were in supervisory capacities over her, about the fact that the gastroenterology department
6 was understaffed and ill-equipped to handle the surgical caseload that PARTRIDGE demanded
7 she accommodate. She also complained about the fact that it was not a safe medical practice to
8 move patients who were still heavily sedated in order to accommodate an increased patient load
9 which, in turn, would bring in more money to KAISER. Such complaints were made in good
10 faith and raising them constitutes a protected activity.

11 59. After making her complaints, KAISER undertook the following course of
12 conduct: (1) refused to grant her a “three-sixty” performance review (2) gave her a negative
13 performance evaluation; (3) subjected her to unwarranted and unjustified disciplinary action; (4)
14 subjected her to a severe and pervasive course of discriminatory conduct; and (5) terminated her
15 employment.

16 60. To the extent that either PARTRIDGE or GAPEN retaliated against PLAINTIFF
17 following her participation in the protected activities (i.e., complaining about PARTRIDGE’S
18 and GAPEN’S unlawful and/or unethical conduct) as herein alleged, such retaliation was
19 ultimately ratified by KAISER.

20 61. At all times relevant, PLAINTIFF reasonably believed that she was complaining
21 about unlawful discrimination and harassment based on PLAINTIFF’S status as described
22 above as well as potentially dangerous medical practices which PLAINTIFF reasonably
23 believed to be unlawful, unethical, and/or against KAISER’S established policies.

24 62. As a direct, proximate, and legal result of KAISER’S conduct as herein alleged,
25 PLAINTIFF has suffered and will continue to suffer pain, humiliation, stress, anxiety, and
26 emotional distress, all of which are not currently ascertained, but which will be proven at trial.

27 63. The foregoing has caused PLAINTIFF loss and damage to her professional
28 reputation and to the opportunity to advance in her profession. As a direct, proximate and legal

1 result of KAISER'S aforementioned conduct, PLAINTIFF has suffered and will continue to
2 suffer a loss of earnings and other employment benefits and job opportunities in an amount not
3 currently ascertained, but which will be proven at trial. PLAINTIFF is therefore entitled to
4 general and compensatory damages in an amount to be proven at the time of trial.

5 64. As a further direct, proximate, and legal result of KAISER'S conduct as herein
6 alleged, PLAINTIFF has been compelled to retain the services of counsel in an effort to enforce
7 the terms and conditions of the employment relationship with KAISER, and to redress its
8 violation of the FEHA, and has, thereby, incurred and will continue to incur legal fees and costs,
9 the full nature and extent of which are presently unknown to PLAINTIFF.

10 65. KAISER'S conduct was done with malice, oppression and fraud as defined in
11 Section 3294 of the California Civil Code. Such conduct was intended to annoy, harass and
12 injure the PLAINTIFF, and was despicable, and carried on with willful and conscious disregard
13 for PLAINTIFF's rights, thereby subjecting her to cruel and unjust hardship. Accordingly,
14 PLAINTIFF is entitled to recover punitive damages from the DEFENDANT KAISER pursuant
15 to Section 3294 of the California Civil Code in an amount to be shown according to proof at
16 trial.

17 **FIFTH CAUSE OF ACTION**

18 **Violation of Labor Code Section 232.5**

19 **(Against KAISER and DOES 1-25)**

20 66. PLAINTIFF incorporates and re-alleges by reference all previous paragraphs,
21 and each and every part thereof, of this Complaint, with the same force and effect as though
22 fully set forth herein.

23 67. At all times herein mentioned Labor Code Section 232.5 was in full force and
24 effect and was binding on KAISER. This Section prohibited KAISER from discharging,
25 formally disciplining, or otherwise discriminating against an employee who discloses
26 information about the employer's working conditions.

27 68. As alleged herein, PLAINTIFF complained to KAISER, and KAISER knew or
28 reasonably should have known that PLAINTIFF made such complaints, about the harassing and

1 discriminatory conduct to which she was being subjected based upon her status as a member of
2 one or more protected classifications. She had also complained to PARTRIDGE and GAPEN,
3 who were in supervisory capacities over her, about the fact that the gastroenterology department
4 was understaffed and ill-equipped to handle the surgical caseload that PARTRIDGE demanded
5 she accommodate. She also complained about the fact that it was not a safe medical practice to
6 move patients who were still heavily sedated in order to accommodate an increased patient load
7 which, in turn, would bring in more money to KAISER. Such complaints were made in good
8 faith and raising them constitutes a protected activity.

9 69. Additionally, PLAINTIFF complained to GAPEN and PATRIDGE about the
10 fact that as many as eight employees were out at one time with work-related injuries because of
11 unsafe working conditions within the department.

12 70. After making her complaints, KAISER undertook the following course of
13 conduct: (1) refused to grant her a “three-sixty” performance review (2) gave her a negative
14 performance evaluation; (3) subjected her to unwarranted and unjustified disciplinary action; (4)
15 subjected her to a severe and pervasive course of discriminatory conduct; and (5) terminated her
16 employment.

17 71. To the extent that either PARTRIDGE or GAPEN participated in the conduct
18 alleged herein, such conduct is imputed to KAISER as each were agents of KAISER who had
19 supervisory responsibilities over PLAINTIFF.

20 72. At all times relevant, PLAINTIFF reasonably believed that she was complaining
21 about unlawful discrimination and harassment based on PLAINTIFF’S status as described
22 above as well as potentially dangerous medical practices which PLAINTIFF reasonably
23 believed to be unlawful, unethical, and/or against KAISER’S established policies.

24 73. As a direct, proximate, and legal result of KAISER’S conduct, as herein alleged,
25 PLAINTIFF has suffered and will continue to suffer pain, humiliation, stress, anxiety, and
26 emotional distress, all of which are not currently ascertained, but which will be proven at trial.

27 74. The foregoing has caused PLAINTIFF loss and damage to her professional
28 reputation and to the opportunity to advance in her profession. As a direct, proximate and legal

1 result of KAISER'S aforementioned conduct, PLAINTIFF has suffered and will continue to
2 suffer a loss of earnings and other employment benefits and job opportunities in an amount not
3 currently ascertained, but which will be proven at trial. PLAINTIFF is therefore entitled to
4 general and compensatory damages in an amount to be proven at the time of trial.

5 75. As a further direct, proximate, and legal result of KAISER'S conduct as herein
6 alleged, PLAINTIFF has been compelled to retain the services of counsel in an effort to enforce
7 the terms and conditions of the employment relationship with KAISER, and to redress its
8 violation of the FEHA, and has, thereby, incurred and will continue to incur legal fees and costs,
9 the full nature and extent of which are presently unknown to PLAINTIFF.

10 **SIXTH CAUSE OF ACTION**

11 **Violation of Labor Code 1102.5**

12 **(Against KAISER and DOES 1-25)**

13 76. PLAINTIFF incorporates and re-alleges by reference all previous paragraphs,
14 and each and every part thereof, of this Complaint, with the same force and effect as though
15 fully set forth herein.

16 77. At all times herein, Labor Code Section 1102.5 was in full force and effect and
17 binding on KAISER. This Section prohibited KAISER from retaliating against or taking
18 adverse employment action against an employee who has disclosed a violation of the law to
19 anyone with authority over that employee. The employee only needs to have a reasonable belief
20 that the law is being violated.

21 78. As alleged herein, PLAINTIFF complained to KAISER, and KAISER knew or
22 reasonably should have known that PLAINTIFF made such complaints, about the harassing and
23 discriminatory conduct to which she was being subjected based upon her status as a member of
24 one or more protected classifications. She had also complained to PARTRIDGE and GAPEN,
25 who were in supervisory capacities over her, about the fact that the gastroenterology department
26 was understaffed and ill-equipped to handle the surgical caseload that PARTRIDGE demanded
27 she accommodate. She also complained about the fact that it was not a safe medical practice to
28 move patients who were still heavily sedated in order to accommodate an increased patient load

1 which, in turn, would bring in more money to KAISER. Such complaints were made in good
2 faith and raising them constitutes a protected activity.

3 79. Additionally, PLAINTIFF complained to GAPEN and PATRIDGE about the
4 fact that as many as eight employees were out at one time with work-related injuries because of
5 unsafe working conditions within the department.

6 80. After making her complaints, KAISER retaliated against PLAINTIFF by, among
7 others, (1) refusing to grant her a “three-sixty” performance review (2) giving her a negative
8 performance evaluation; (3) subjecting her to unwarranted and unjustified disciplinary action;
9 (4) subjecting her to a severe and pervasive course of discriminatory conduct; and (5)
10 terminating her employment.

11 81. To the extent that either PARTRIDGE or GAPEN participated in the conduct
12 alleged herein, such conduct is imputed to KAISER as each were agents of KAISER who had
13 supervisory responsibilities over PLAINTIFF.

14 82. At all times relevant, PLAINTIFF reasonably believed that she was complaining
15 about unlawful discrimination and harassment based on PLAINTIFF’S status as described
16 above as well as potentially dangerous medical practices which PLAINTIFF reasonably
17 believed to be unlawful, unethical, and/or against KAISER’S established policies.

18 83. As a direct, proximate, and legal result of KAISER’S conduct as herein alleged,
19 PLAINTIFF has suffered and will continue to suffer pain, humiliation, stress, anxiety, and
20 emotional distress, all of which are not currently ascertained, but which will be proven at trial.

21 84. The foregoing has caused PLAINTIFF loss and damage to her professional
22 reputation and to the opportunity to advance in her profession. As a direct, proximate and legal
23 result of KAISER’S aforementioned conduct, PLAINTIFF has suffered and will continue to
24 suffer a loss of earnings and other employment benefits and job opportunities in an amount not
25 currently ascertained, but which will be proven at trial. PLAINTIFF is therefore entitled to
26 general and compensatory damages in an amount to be proven at the time of trial.

27 85. As a further direct, proximate, and legal result of KAISER’S conduct as herein
28 alleged, PLAINTIFF has been compelled to retain the services of counsel in an effort to enforce

1 the terms and conditions of the employment relationship with KAISER, and to redress its
2 violation of the FEHA, and has, thereby, incurred and will continue to incur legal fees and costs,
3 the full nature and extent of which are presently unknown to PLAINTIFF.

4 **SEVENTH CAUSE OF ACTION**

5 **Violation of Labor Code Section 98.6**

6 **(Against KAISER and DOES 1-25)**

7 86. PLAINTIFF incorporates and re-alleges by reference all previous paragraphs,
8 and each and every part thereof, of this Complaint, with the same force and effect as though
9 fully set forth herein.

10 87. At all times herein mentioned Labor Code Section 98.6 was in full force and
11 effect and was binding on KAISER. This Section prohibited KAISER from taking adverse
12 action against any employee for exercising their rights under the Labor Code.

13 88. As alleged herein, PLAINTIFF complained to KAISER, and KAISER knew or
14 reasonably should have known that PLAINTIFF made such complaints, about the harassing and
15 discriminatory conduct to which she was being subjected based upon her status as a member of
16 one or more protected classifications. She had also complained to PARTRIDGE and GAPEN,
17 who were in supervisory capacities over her, about the fact that the gastroenterology department
18 was understaffed and ill-equipped to handle the surgical caseload that PARTRIDGE demanded
19 she accommodate. She also complained about the fact that it was not a safe medical practice to
20 move patients who were still heavily sedated in order to accommodate an increased patient load
21 which, in turn, would bring in more money to KAISER. Such complaints were made in good
22 faith and raising them constitutes a protected activity.

23 89. Additionally, PLAINTIFF complained to GAPEN and PATRIDGE about the
24 fact that as many as eight employees were out at one time with work-related injuries because of
25 unsafe working conditions within the department.

26 90. After making her complaints, KAISER retaliated against PLAINTIFF by, among
27 others, (1) refusing to grant her a “three-sixty” performance review (2) giving her a negative
28 performance evaluation; (3) subjecting her to unwarranted and unjustified disciplinary action;

1 (4) subjecting her to a severe and pervasive course of discriminatory conduct; and (5)
2 terminating her employment.

3 91. To the extent that either PARTRIDGE or GAPEN participated in the conduct
4 alleged herein, such conduct is imputed to KAISER as each were agents of KAISER who had
5 supervisory responsibilities over PLAINTIFF.

6 92. At all times relevant, PLAINTIFF reasonably believed that she was complaining
7 about unlawful discrimination and harassment based on PLAINTIFF'S status as described
8 above as well as potentially dangerous medical practices which PLAINTIFF reasonably
9 believed to be unlawful, unethical, and/or against KAISER'S established policies.

10 93. As a direct, proximate, and legal result of KAISER'S conduct, as herein alleged,
11 PLAINTIFF has suffered and will continue to suffer pain, humiliation, stress, anxiety, and
12 emotional distress, all of which are not currently ascertained, but which will be proven at trial.

13 94. The foregoing has caused PLAINTIFF loss and damage to her professional
14 reputation and to the opportunity to advance in her profession. As a direct, proximate and legal
15 result of KAISER'S aforementioned conduct, PLAINTIFF has suffered and will continue to
16 suffer a loss of earnings and other employment benefits and job opportunities in an amount not
17 currently ascertained, but which will be proven at trial. PLAINTIFF is therefore entitled to
18 general and compensatory damages in an amount to be proven at the time of trial.

19 95. As a further direct, proximate, and legal result of KAISER'S conduct as herein
20 alleged, PLAINTIFF has been compelled to retain the services of counsel in an effort to enforce
21 the terms and conditions of the employment relationship with KAISER, and to redress its
22 violation of the FEHA, and has, thereby, incurred and will continue to incur legal fees and costs,
23 the full nature and extent of which are presently unknown to PLAINTIFF.

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1 **EIGHTH CAUSE OF ACTION**

2 **Hostile Work Environment**

3 **(Against All DEFENDANTS)**

4 96. PLAINTIFF incorporates and re-alleges by reference all previous paragraphs,
5 and each and every part thereof, of this Complaint, with the same force and effect as though
6 fully set forth herein.

7 97. PLAINTIFF was, at all relevant times herein, an employee of KAISER. As
8 alleged above, DEFENDANTS subjected PLAINTIFF to a continuous, pervasive, and severe
9 pattern of unwanted harassing and discriminating conduct based upon PLAINTIFF'S status as a
10 member of several protected classifications.

11 98. The nature of the harassing and discriminating conduct was of such severity and
12 pervasiveness that a reasonable person in PLAINTIFF's circumstances would have considered
13 the work environment to be severely hostile or abusive.

14 99. PLAINTIFF, at all times relevant herein, considered the work environment to be
15 both hostile and abusive. DEFENDANTS sanctioned illegal harassment and discrimination and
16 actually terminated PLAINTIFF based upon PLAINTIFF's membership in one or more
17 protected groups; specifically her age, veteran status, sex/gender and disability.

18 100. The conduct complained of herein was carried out by all DEFENDANTS.

19 101. GAPEN and PARTRIDGE, each of whom directly supervised PLAINTIFF,
20 perpetuated the conduct complained of herein with such conduct being imputed to KAISER.
21 KAISER knew or should have known of the offending conduct and KAISER failed to take
22 immediate and appropriate corrective action to prevent the conduct from occurring.

23 102. As a direct, proximate, and legal result of KAISER'S conduct as herein alleged,
24 PLAINTIFF has suffered and will continue to suffer pain, humiliation, stress, anxiety, and
25 emotional distress, all of which are not currently ascertained, but which will be proven at trial.

26 103. The foregoing has caused PLAINTIFF loss and damage to her professional
27 reputation and to the opportunity to advance in her profession. As a direct, proximate and legal
28 result of KAISER'S aforementioned conduct, PLAINTIFF has suffered and will continue to

1 suffer a loss of earnings and other employment benefits and job opportunities in an amount not
2 currently ascertained, but which will be proven at trial. PLAINTIFF is therefore entitled to
3 general and compensatory damages in an amount to be proven at the time of trial.

4 104. As a further direct, proximate, and legal result of KAISER'S conduct as herein
5 alleged, PLAINTIFF has been compelled to retain the services of counsel in an effort to enforce
6 the terms and conditions of the employment relationship with KAISER, and to redress its
7 violation of the FEHA, and has, thereby, incurred and will continue to incur legal fees and costs,
8 the full nature and extent of which are presently unknown to PLAINTIFF.

9 **NINTH CAUSE OF ACTION**

10 **Wrongful Termination in Violation of Public Policy**

11 **(Against KAISER and DOES 1-25)**

12 95. PLAINTIFF re-alleges and incorporates by reference all previous allegations in
13 the Complaint as though fully set forth herein.

14 96. Plaintiff hereby re-alleges and incorporates by reference all previous allegations
15 in this Complaint as though fully set forth herein.

16 97. KAISER wrongfully terminated PLAINTIFF because of her actual and/or
17 perceived disability or medical condition as well as her status as a female veteran over the age
18 of forty who was suffering from service-connected post-traumatic stress disorder as alleged
19 herein.

20 98. KAISER'S wrongful termination of PLAINTIFF's employment violates the Fair
21 Employment and Housing Act, as set forth in Government Code Section 12940 et seq., which
22 mandates that employees be free from discrimination based on actual and/or perceived
23 disability, age, gender, and veterans status.

24 99. As a direct, proximate, and legal result of KAISER'S conduct as herein alleged,
25 PLAINTIFF has suffered and will continue to suffer pain, humiliation, stress, anxiety, and
26 emotional distress, all of which are not currently ascertained, but which will be proven at trial.

27 100. The foregoing has caused PLAINTIFF loss and damage to her professional
28 reputation and to the opportunity to advance in her profession. As a direct, proximate and legal

1 result of KAISER'S aforementioned conduct, PLAINTIFF has suffered and will continue to
2 suffer a loss of earnings and other employment benefits and job opportunities in an amount not
3 currently ascertained, but which will be proven at trial. PLAINTIFF is therefore entitled to
4 general and compensatory damages in an amount to be proven at the time of trial.

5 101. As a further direct, proximate, and legal result of KAISER'S conduct as herein
6 alleged, PLAINTIFF has been compelled to retain the services of counsel in an effort to enforce
7 the terms and conditions of the employment relationship with KAISER, and to redress its
8 violation of the FEHA, and has, thereby, incurred and will continue to incur legal fees and costs,
9 the full nature and extent of which are presently unknown to PLAINTIFF.

10 **ELEVENTH CAUSE OF ACTION**

11 **Negligent Infliction of Emotional Distress**

12 **(Against ALL DEFENDANTS)**

13 102. PLAINTIFF incorporates and re-alleges by reference all previous paragraphs,
14 and each and every part thereof, of this Complaint, with the same force and effect as though
15 fully set forth herein.

16 103. Negligent Infliction of Emotional Distress is severe emotional distress that is
17 proximately caused by a Defendant's negligent conduct or willful violation of a statutory
18 standard. California law mandates that an employer take the necessary action that is reasonably
19 calculated to end illegal and inappropriate conduct creating a harmful work environment for an
20 employee. California law also mandates that an employer not discriminate or retaliate against
21 an employee for requesting family and medical leaves of absences to care for their own serious
22 medical condition. An employer is thereby liable for the injury caused to an employee by its
23 failure to eradicate the harmful conduct of another of its employees that is causing another
24 foreseeable harm. DEFENDANTS had a duty to avoid and prevent discriminatory, harassing
25 and retaliatory conduct towards PLAINTIFF. In doing the things herein alleged, the conduct of
26 DEFENDANTS violated known public policy as set forth in the California FEHA and
27 corresponding federal regulations and laws.

104. The conduct of DEFENDANTS as set forth above, caused PLAINTIFF severe emotional distress when they discriminated, harassed and retaliated against her. DEFENDANTS knew of the discriminatory, harassing, and retaliatory conduct and the harm it was causing PLAINTIFF, but either willfully or negligently failed to take any effective action to end the discrimination and harassment and retaliatory conduct, thereby causing PLAINTIFF to suffer the effects of severe emotional distress including anxiety and depression.

105. As a direct result of the negligent conduct of DEFENDANTS against PLAINTIFF, PLAINTIFF has sustained and continues to sustain substantial losses in earnings and other employment benefits.

106. As a direct result of the negligent conduct of DEFENDANTS against PLAINTIFF, PLAINTIFF has suffered and continues to suffer damages including but not limited to, stress, anxiety, depression, sleeplessness, humiliation, emotional distress, mental and physical illness, pain and anguish, all to their damages in a sum according to proof.

P R A Y E R

WHEREFORE, PLAINTIFF prays for Judgment against DEFENDANTS, and each of them, as follows:

1. For special damages according to proof;
2. For compensatory damages according to proof;
3. For prejudgment interest on such damages as may be authorized by law;
4. For reasonable attorneys' fees and costs incurred in this action;
5. For punitive damages; and
6. For such other and further relief as the court deems just and proper.

Dated: June 19, 2019

DONALD R. HOLBEN & ASSOCIATES, APC

By:

Jack S. Fischer, Esq.
Attorneys for Plaintiff,
WANDA WOTEN

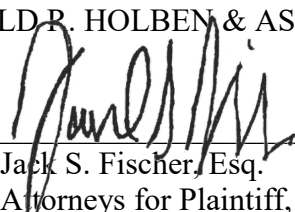
DEMAND FOR JURY TRIAL

PLAINTIFF hereby demands a trial by jury.

Dated: June 19, 2019

DONALD R. HOLBEN & ASSOCIATES, APC

By: _____


Jack S. Fischer, Esq.
Attorneys for Plaintiff,
WANDA WOTEN

Courthouse News Service