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9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SACRAMENTO**
11

12
13 IRVIN REYES

Case No.:

14 Plaintiff,

COMPLAINT FOR DAMAGES

15 vs.

16 KAISER FOUNDATION HOSPITALS, a
17 corporation, CHA XIONG, an individual, and
18 DOES 1-100, inclusive.

19 Defendants
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1. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;
2. DISCRIMINATION IN VIOLATION OF GOV. CODE §12940(a);
3. GENDER DISCRIMINATION GOV. CODE § 12940 (a);
4. DISABILITY DISCRIMINATION GOV. CODE §12940(a);
5. FAILURE TO ACCOMMODATE DISABILITY GOV. CODE §12940 (m)
6. FAILURE TO ENGAGE IN INTERACTIVE PROCESS GOV. CODE § 12940 (n)
7. RETALIATION IN VIOLATION OF GOV. CODE §12940 (h);
8. DEFAMATION, LIBEL, SLANDER

25
26 **DEMAND FOR JURY TRIAL**

BY FAX

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28 **PLAINTIFF'S COMPLAINT FOR DAMAGES**

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PRELIMINARY ALLEGATIONS

1. Plaintiff, IRVIN REYES ("REYES") is, and at all times mentioned in this complaint, a resident of SACRAMENTO COUNTY, State of California and a former employee of defendant, KAISER FOUNDATION HOSPITALS.

2. Defendant, KAISER FOUNDATION HOSPITALS ("KAISER") is a California corporation, and at all times relevant herein mentioned a corporation doing business in SACRAMENTO COUNTY, State of California. KAISER is an employer within the meaning of the applicable state laws and is a qualified employer under the California Government Code.

3. Plaintiff is informed and believes that Defendant CHA XIONG ("CHA"), is a KAISER employee, and is and at all times herein was a resident of SACRAMENTO COUNTY.

4. Plaintiff is a qualified individual under the California Government Code and KAISER is a qualified employer under the Government Code. Plaintiff has filed timely charges of discrimination with the Department of Fair Employment and Housing ("DFEH") against KAISER. True and accurate copies of plaintiff's Charge of Discrimination filed on or about March 7, 2013 and Right to Sue letter issued on March 7, 2013 are attached hereto as Exhibits "A" and "B" and are fully incorporated by reference herein.

5. Unless otherwise alleged in this complaint, plaintiff is informed and believes, and on the basis of that information and belief alleges, that at all times mentioned in this complaint, defendants were the agents and employees of their codefendants, and in doing the things alleged in this complaint, were acting within the course and scope of that agency and employment.

6. Plaintiff does not know the true names of defendants DOES 1 through 100, inclusive, and therefore sues them by those fictitious names. Plaintiff is informed and believes

1 that DOES defendants are residents of the State of California. Plaintiff will seek leave of the
2 court to amend this complaint to set forth their true names when they are ascertained.

3 7. Each act alleged in the complaint herein was done with malice, oppression or fraud
4 and entitles plaintiff to punitive and exemplary damages where allowed by law.
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6 **GENERAL BACKGROUND FACTS**

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8 8. Plaintiff started working for defendant KAISER in Environmental Services "EVS"
9 on September 8, 1998. Plaintiff did a good job carrying out his job duties and he did not receive
10 any performance write-ups over the course of his employment.

11 9. Plaintiff and CHA, a co-worker, had a two year romantic relationship starting in
12 2010. Plaintiff and CHA decided to keep their dating private and did not discuss it with co-
13 workers.

14 10. In June 2012, CHA asked plaintiff to accompany her to a friend's wedding. At the
15 wedding plaintiff saw another KAISER employee Ed Correa ("ED"), who asked plaintiff what he
16 was doing at the wedding. Plaintiff told ED that he was CHA'S date and asked that ED keep their
17 relationship private.

18 11. When ED returned to work after the wedding, he tried to embarrass plaintiff by
19 making sexual comments to plaintiff's coworkers about plaintiff's romantic relationship with
20 CHA. Plaintiff complained to Sandra Hall, ED'S supervisor, about ED'S sexual comments and
21 ED was suspended for four days.

22 12. After ED was suspended, plaintiff learned that CHA had been romantically
23 involved with multiple Kaiser employees at the same time, and had been living at one of ED'S
24 rental properties.

25 13. CHA was angry with plaintiff for complaining about ED'S sexual comments
26 because ED was suspended and the incident exposed the fact that CHA had been dating multiple
27 Kaiser employees at the same time.

28 14. CHA retaliated against Plaintiff by contacting human resources and falsely telling

1 them that she had never had a romantic relationship with plaintiff and that plaintiff was harassing
2 her.

3 15. KAISER'S human resources representative, Cecilia Sandoval ("CECILIA")
4 investigated CHA'S false allegations against plaintiff in a discriminatory manner. During the
5 investigation CECILIA failed to verify plaintiff's side of the story or to interview witnesses that
6 could have disputed CHA'S story. Plaintiff and his union representative complained to CECILIA
7 that she was not considering Plaintiff's witnesses. CECILIA also made unsupported allegations
8 that plaintiff had harassed other employees. As a result of the investigation plaintiff was
9 suspended and terminated.

10 16. CECILIA, CHA and ED are of Asian descent and plaintiff is informed and
11 believes that he was discriminated against based on his race, color, national origin, and ancestry
12 during the investigation, suspension, and termination. Plaintiff is informed and believes that he
13 was discriminated against based on his gender in the investigation, suspension and termination.

14 17. In June 2012 plaintiff injured his eye while working, which has damaged his
15 vision. Plaintiff is also had a work injury to his knee in FebruaryMarch 2012 work injury to his
16 knee. After plaintiff's knee injury KAISER discouraged plaintiff from seeing a worker's
17 compensation doctor and told him he should take time off work for his knee injury instead. Per
18 advice from his union, plaintiff went to the worker's compensation doctor. After plaintiff went to
19 the worker's compensation doctor, Saul, plaintiff's night supervisor, told plaintiff he had to write
20 him up for going to "occupational health."

21 18. Plaintiff told Saul that he wanted a copy of the write up for his union grievance
22 and that he was going to take it to compliance and the Labor Board. When plaintiff asked for the
23 write up, he never received it. Plaintiff was out for two weeks with his knee injury.

24 19. Plaintiff is informed and belives and thereon alleges that that a motivating reason
25 for his termination was disability discrimination based on his eye and knee injury and retaliation
26 for engaging in a protected activity when he complained about his supervisor. Saul's,
27 discriminatory write up after he reported his knee injury.

20. Plaintiff is informed and believes that a motivating reason for his termination was retaliation for engaging in a protected activity when he complained to Sandra Hall about ED'S sexual harrasment.

21. Plaintiff is also informed and believes that a motivating reason for his termination was retaliation for reporting Kaiser to the California Medical Board for negligent removal of his gallbladder in January 2009 without plaintiff's consent and for plaintiff's 2005 lawsuit wherein the plaintiff opposed defendant's illegal discrimination in investigating a sexual harassment claim.

FIRST CAUSE OF ACTION:
WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY
[Against KAISER and DOES 1-49, Inclusive]

22. Plaintiff re-alleges the information set forth in Paragraphs 1-21 above, and incorporates these paragraphs into this cause of action as if they were fully alleged herein.

23. Under California law, no employee, whether they are an at-will employee, or an employee under written contract, can be terminated for a reason that is in violation of a fundamental public policy.

24. At all times mentioned in this complaint, Gov. Code § 12940 et seq. was in full force and effect and was binding on KAISER. This section prohibits defendant employer from discriminating against any employee on the basis of their race, color, national origin, ancestry, gender, physical disability, or medical condition.

25. Plaintiff believes and thereon alleges that his race, color, national origin, ancestry, gender, physical disability, and/or medical condition was a motivating reason(s) in KAISER'S decision to terminate him. Such discrimination is in violation of the public policy of the State of California as reflected in Gov. Code § 12940 et. seq. and has resulted in damages and injury to plaintiff as alleged herein.

26. Defendants were required to engage in a good faith interactive dialogue and to

1 provide reasonable accommodations so plaintiff would be able to perform his job with his
2 physical disability. Defendants did not fulfill these obligations but rather elected to terminate the
3 plaintiff's employment.

4 27. Defendants were required to not retaliate against plaintiff for engaging in a
5 protected activity including: complaining about ED'S sexual harassment, suffering a work injury,
6 filing a complaint with member services and the medical board regarding the negligent medical
7 services plaintiff received, and filing a sexual harassment discrimination lawsuit in 2005.

8 28. The actions of KAISER, as mentioned, including without limitation, KAISER'S
9 discrimination based on race, color, national origin, ancestry, gender, physical disability, medical
10 condition, and retaliation for engaging in a protected activity violated the following public
11 policies of the State of California designed to protect society at large:
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- 13
- 14 a. Cal. Const., Article 1, Section 1, which provides: "All people are by
15 nature free and independent and have inalienable rights. Among these
16 are enjoying and defending life and liberty, acquiring, possessing, and
17 protecting property, and pursuing and obtaining safety, happiness, and
18 privacy;"
 - 19 b. Cal. Const., Article 1, Section 8, which provides: "A person may not
20 be disqualified from entering or pursuing a business, profession,
21 vocation, or employment because of sex, race, creed, color, or national
22 or ethnic origin;"
 - 23 c. Gov Code §12940 et seq., "It shall be an unlawful employment practice
24 . . . For an employer, because of the race, religious creed, color,
25 national origin, ancestry, physical disability, mental disability, medical
26 condition, marital status, sex, age, or sexual orientation of any person,
27 to refuse to hire or employ the person or to refuse to select the person
28 for a training program leading to employment, or to bar or to discharge
the person from employment or from a training program leading to
employment, or to discriminate against the person in compensation or
in terms, conditions, or privileges of employment;"
 - d. Gov Code §12940 (h) "For any employer, labor organization,
employment agency, or person to discharge, expel, or otherwise
discriminate against any person because the person has opposed any

practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part...

- e. Gov Code §12940 (k) "For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring."
- f. Gov. Code § 12940(m) which provides that it is illegal for a covered employer to "...fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee."
- g. Gov. Code § 12940 (n) which provides that it is illegal for a covered employer "... to fail to engage in a timely, good faith, interactive process with the employer or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition."
- h. Labor Code § 132(a), which provides: "It is the declared policy of this state that there should not be discrimination against workers who are injured in the course and scope of their employment;"
- i. Civil Code § 3333 "For breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this Code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not."
- j. California Business and Professions Code §800 "(a) The Medical Board of California, the Board of Psychology, the Dental Board of California, the Osteopathic Medical Board of California, the State Board of Chiropractic Examiners, the Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric Technicians, the State Board of Optometry, the Veterinary Medical Board, the Board of Behavioral Sciences, the Physical Therapy Board of California, the California State Board of Pharmacy, the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board, the California Board of Occupational Therapy, the Acupuncture Board, and the Physician Assistant Board shall each separately create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority from that board. Each central file shall be created and maintained to provide an individual historical record for each licensee with respect to the following information: (1) Any conviction of a crime in this or any other state that constitutes unprofessional conduct pursuant to the reporting requirements of Section 803. (2)

1 Any judgment or settlement requiring the licensee or his or her insurer
2 to pay any amount of damages in excess of three thousand dollars
3 (\$3,000) for any claim that injury or death was proximately caused by
4 the licensee's negligence, error or omission in practice, or by rendering
5 unauthorized professional services, pursuant to the reporting
6 requirements of Section 801 or 802. (3) Any public complaints for
7 which provision is made pursuant to subdivision (b). (4) Disciplinary
8 information reported pursuant to Section 805, including any additional
9 exculpatory or explanatory statements submitted by the licensee
10 pursuant to subdivision (f) of Section 805. If a court finds, in a final
11 judgment, that the peer review resulting in the 805 report was
12 conducted in bad faith and the licensee who is the subject of the report
13 notifies the board of that finding, the board shall include that finding in
14 the central file. For purposes of this paragraph, "peer review" has the
15 same meaning as defined in Section 805. (5) Information reported
16 pursuant to Section 805.01, including any explanatory or exculpatory
17 information submitted by the licensee pursuant to subdivision (b) of
18 that section. (b) Each board shall prescribe and promulgate forms on
19 which members of the public and other licensees or certificate holders
20 may file written complaints to the board alleging any act of misconduct
21 in, or connected with, the performance of professional services by the
22 licensee. If a board, or division thereof, a committee, or a panel has
23 failed to act upon a complaint or report within five years, or has found
24 that the complaint or report is without merit, the central file shall be
25 purged of information relating to the complaint or report.
26 Notwithstanding this subdivision, the Board of Psychology, the Board
27 of Behavioral Sciences, and the Respiratory Care Board of California
28 shall maintain complaints or reports as long as each board deems
necessary. (c) The contents of any central file that are not public
records under any other provision of law shall be confidential except
that the licensee involved, or his or her counsel or representative, shall
have the right to inspect and have copies made of his or her complete
file except for the provision that may disclose the identity of an
information source. For the purposes of this section, a board may
protect an information source by providing a copy of the material with
only those deletions necessary to protect the identity of the source or by
providing a comprehensive summary of the substance of the material.
Whichever method is used, the board shall ensure that full disclosure is
made to the subject of any personal information that could reasonably
in any way reflect or convey anything detrimental, disparaging, or
threatening to a licensee's reputation, rights, benefits, privileges, or
qualifications, or be used by a board to make a determination that
would affect a licensee's rights, benefits, privileges, or qualifications.
The information required to be disclosed pursuant to Section 803.1
shall not be considered among the contents of a central file for the
purposes of this subdivision. The licensee may, but is not required to,

1 submit any additional exculpatory or explanatory statement or other
2 information that the board shall include in the central file. Each board
3 may permit any law enforcement or regulatory agency when required
4 for an investigation of unlawful activity or for licensing, certification,
5 or regulatory purposes to inspect and have copies made of that
6 licensee's file, unless the disclosure is otherwise prohibited by law.
7 These disclosures shall effect no change in the confidential status of
8 these records."

9
10 k. California Business and Professions Code §§ 17200 et seq. which
11 prohibits any unlawful, unfair or fraudulent business act or practice;

12 and such other further and alternative laws, policies, regulations and ordinances that the evidence
13 shows were violated.

14 29. Plaintiff alleges that KAISER violated articulated, fundamental public policies,
15 affecting society at large, by violating the statutes described above.

16 30. As a direct, foreseeable, and proximate result of KAISER'S numerous violations,
17 plaintiff has suffered and continues to suffer humiliation, embarrassment, mental and emotional
18 distress, substantial losses in salary, bonus, job benefits, and other employment benefits he would
19 have received from defendants, all to plaintiff's damage, in an amount unknown at this time but to
20 be proven at trial.

21 31. Based on the grossly reckless and/or intentional, malicious, and bad faith manner
22 in which KAISER and its managing agents conducted themselves as described herein, by
23 willfully violating those statutes enumerated above, plaintiff prays for punitive damages against
24 KAISER in an amount to be determined at the time of trial, that is sufficiently high to punish
25 KAISER and deter KAISER from engaging in such conduct in the future, and to make an
26 example of them to others.

27 32. Plaintiff is informed and believes and thereon alleges that the outrageous conduct
28 of KAISER described above, was done with oppression and malice and was ratified by the other

1 individuals who were managing agents of those directly responsible.

2 33. These unlawful acts were further ratified by KAISER and done with a conscious
3 disregard for plaintiff's rights and with the intent, design and purpose of injuring plaintiff. By
4 reason thereof, plaintiff is entitled to punitive or exemplary damages against KAISER for its acts
5 as described in this cause of action in a sum to be determined at the time of trial.
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7 **SECOND CAUSE OF ACTION**
8 **DISCRIMINATION IN VIOLATION OF FEHA GOV. CODE § 12940 (a)**
9 **[Against KAISER and Does 1 through 49, Inclusive]**

10 34. Plaintiff re-alleges and incorporates paragraphs 1 through 33 above as though set
11 forth in full herein.

12 35. This cause of action is based upon California Government Code Section 12940,
13 which states:
14

15 "It shall be an unlawful employment practice, unless based upon a
16 bona fide occupational qualification, or, except where based upon
17 applicable security regulations established by the United States or the
18 State of California:

19 (a) For an employer, because of the race, religious creed, color,
20 national origin, ancestry, physical disability, mental disability,
21 medical condition, marital status, sex, age, or sexual orientation of
22 any person, to refuse to hire or employ the person or to refuse to
23 select the person for a training program leading to employment, or to
24 bar or to discharge the person from employment or from a training
25 program leading to employment, or to discriminate against the person
26 in compensation or in terms, conditions, or privileges of employment."

27 36. Defendants discriminated against plaintiff based on his race, color, national origin
28 and/or ancestry because he is Belizean. As stated above plaintiff was discriminated against in the
investigation because he is Belizean and not Asian.

1 37. CECILIA, who is Asian, refused to consider plaintiff's side of the story or speak to
2 plaintiff's witnesses when she investigated CHA'S complaint. Most of the witnesses CECILIA
3 considered, including CHA, were Asian.

4 38. Plaintiff is informed and believes that his race, color, ancestry, and national origin
5 were motivating reasons in defendant's decision to terminate his employment.
6

7 39. At all times hereinafter mentioned, defendant was an employer required to comply
8 with the California Fair Employment and Housing Act in respect to employment practices, and
9 specifically, was prohibited from discriminating against any employee based on race, color,
10 national origin, or ancestry.

11 40. At all times hereinafter mentioned, plaintiff was an employee protected by the
12 California Fair Employment and Housing Act.

13 41. Plaintiff filed a charge of discrimination against defendants with the California
14 Department of Fair Employment and Housing on or about March 7, 2013, alleging that
15 defendants violated the Act and plaintiff was issued a RIGHT TO SUE letter on March 7, 2013.
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17 42. As a direct and proximate result of the actions of defendants, plaintiff has
18 sustained and will sustain monetary damages, which will be established by proof at trial.
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20 43. As a direct further proximate result of the actions of the defendants described
21 herein, plaintiff has sustained severe emotional distress and mental anguish, and has been
22 damaged thereby, the amount of such damages will be established by proof at trial.

23 44. The actions complained of herein were done maliciously and oppressively, by
24 reason whereof plaintiff is entitled to an award of punitive damages, the amount of such damages
25 to be established by proof at trial.
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1 45. The plaintiff is entitled to an injunction requiring defendants to reinstate plaintiff's
2 employment, and, further, not to discriminate against plaintiff because of his race, color, national
3 origin, or ancestry in the future.

4 46. Plaintiff is entitled to an award of reasonable attorney's fees in connection with the
5 prosecution of this action.
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7 **THIRD CAUSE OF ACTION**
8 **SEX DISCRIMINATION GOV. CODE § 12940(a)**
9 **[Against Defendant KAISER and Does 1 through 49, Inclusive]**

10 47. Plaintiff re-alleges and incorporates paragraphs 1 through 46 above as though set
11 forth in full herein.

12 48. This cause of action is based upon California Government Code Section 12940,
13 which states:
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15 "It shall be an unlawful employment practice, unless based upon a bona
16 fide occupational qualification, or, except where based upon applicable
17 security regulations established by the United States or the State of
California:

18 (a) For an employer, because of the race, religious creed, color,
19 national origin, ancestry, physical disability, mental disability,
20 medical condition, marital status, sex, age, or sexual orientation of
21 any person, to refuse to hire or employ the person or to refuse to
22 select the person for a training program leading to employment, or to
bar or to discharge the person from employment or from a training
program leading to employment, or to discriminate against the person
in compensation or in terms, conditions, or privileges of employment."

23 49. Plaintiff is informed and believes that his sex was a motivating reason in
24 KAISER'S decision to terminate him in that they favored his female coworker CHA in
25 investigating her sexual harassment complaint because she was a woman and then used that
26 investigation as a justification for terminating the plaintiff.
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1 50. At all times hereinafter mentioned KAISER was an employer required to comply
2 with the California Fair Employment and Housing Act in respect to employment practices, and
3 specifically, was prohibited from discriminating against any employee based on their sex.

4 51. At all times hereinafter mentioned, plaintiff was an employee protected by the
5 California Fair Employment and Housing Act.

6 52. Plaintiff's sex was a motivating reason for his termination because KAISER
7 assumed that what his accuser, CHA, said was true while assuming that plaintiff was the
8 aggressor because he is a man. Had KAISER investigated what happened before taking action,
9 they would have realized that CHA was lying about what happened and that plaintiff was not
10 harassing CHA.
11

12 53. Plaintiff filed a charge of discrimination against defendants with the California
13 Department of Fair Employment and Housing on or about March 7, 2013, alleging that
14 defendants violated the act on account of their actions taken against plaintiff because of his sex
15 and was issued a right to sue letter on or about March 7, 2013.
16

17 54. As a direct and proximate result of the actions of defendants, plaintiff has
18 sustained and will sustain monetary damages, which will be established by proof at trial.
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20 55. As a direct further proximate result of the actions of the defendants, plaintiff has
21 sustained severe emotional distress and mental anguish, and has been damaged thereby; the
22 amount of such damages will be established by proof at trial.

23 56. The actions complained of herein were done maliciously and oppressively, by
24 reason whereof plaintiff is entitled to an award of punitive damages, the amount of such damages
25 to be established by proof at trial.
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57. The plaintiff is entitled to an injunction requiring defendants to reinstate plaintiff's employment, and, further, not to discriminate against plaintiff because of his sex in the future.

58. Plaintiff is entitled to an award of reasonable attorney's fees in connection with the prosecution of this action.

59. Plaintiff is entitled to prejudgment interest under and by virtue of any provision of law entitling him thereto.

FOURTH CAUSE OF ACTION
DISABILITY DISCRIMINATION IN VIOLATION OF FEHA GOV. CODE § 12940 (a)
[Against KAISER and Does 1 through 49, Inclusive]

60. Plaintiff re-alleges and incorporates paragraphs 1 through 59 above as though set forth in full herein.

61. This cause of action is based upon California Government Code Section 12940,
which states:

"It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.”

62. Plaintiff is informed and believes a motivating reason for his termination was discrimination based on plaintiff's physical disability/medical condition, knee and eye disability/injury.

63. At all times hereinafter mentioned, defendant KAISER was an employer required

1 to comply with the California Fair Employment and Housing Act in respect to employment
2 practices, and specifically, was prohibited from discriminating against any employee based on
3 physical disability or medical condition.

4 64. At all times hereinafter mentioned, plaintiff was an employee protected by the
5 California Fair Employment and Housing Act. Plaintiff filed a charge of discrimination against
6 defendants with the California Department of Fair Employment and Housing on or about March
7 7, 2013, alleging that defendants violated the Act on account of their actions taken against
8 plaintiff because of his physical disability/medical condition and he was issued a RIGHT TO SUE
9 letter on or about March 7, 2013. True copies of plaintiff's charge of discrimination and RIGHT
10 TO SUE letter are attached hereto as exhibits "A" and "B" to this complaint.
11

12 65. As a proximate result of the wrongful conduct of defendants and each of them,
13 plaintiff has suffered and continues to sustain losses in earnings and other employment benefits in
14 an amount according to proof at trial.
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16 66. As a proximate result of the wrongful conduct of defendants and each of them,
17 plaintiff has suffered humiliation, emotional distress, and mental pain and anguish, all to his
18 damage in an amount according to proof at trial.

19 67. In doing the acts herein alleged, defendants, and each of them, acted with
20 oppression, fraud, malice and in conscious disregard of the rights of plaintiff, and plaintiff is
21 therefore entitled to punitive damages according to proof at trial.

22 68. Plaintiff is entitled to an award of reasonable attorney's fees in connection with the
23 prosecution of this action.

24 **FIFTH CAUSE OF ACTION**
25 **FAILURE TO ACCOMMODATE DISABILITY GOV. CODE § 12940 (m)**
26 **[Against KAISER and DOES 1-49, Inclusive]**

27 70. Plaintiff re-alleges and incorporates the allegations of paragraphs 1 through 69
28

1 above as though set forth in full herein.

2 71. Government Code § 12940 (m) provides that it is unlawful for an employer to fail
3 to make reasonable accommodation for the known physical disability of an employee.

4 72. Defendant failed to make reasonable accommodation for plaintiff's known
5 disability, knee and eye disability/injury.

6 73. As a proximate result of the wrongful conduct of defendants and each of them,
7 plaintiff has suffered and continues to sustain losses in earnings and other employment benefits in
8 an amount according to proof at trial.

9 74. As a proximate result of the wrongful conduct of defendants and each of them,
10 plaintiff has suffered humiliation, emotional distress, and mental pain and anguish, all to his
11 damage in an amount according to proof at trial.

12 75. In doing the acts herein alleged, defendants, and each of them, acted with
13 oppression, fraud, malice and in conscious disregard of the rights of plaintiff, and plaintiff is
14 therefore entitled to punitive damages according to proof at trial.

15 76. Plaintiff is entitled to an award of reasonable attorney's fees in connection with the
16 prosecution of this action.

17 **SIXTH CAUSE OF ACTION**
18 **FAILURE TO ENGAGE IN INTERACTIVE PROCESS GOV. CODE § 12940(n)**
19 **[Against KAISER and DOES 1-49, Inclusive]**

20 77. Plaintiff re-alleges and incorporates the allegations of paragraphs 1 through 76
21 above as though set forth in full herein.

22 78. Government Code § 12940(n) provides that it is unlawful for an employer to fail to
23 engage in a timely, good faith, interactive process with an employee to determine effective
24 reasonable accommodations, if any.

25 79. Defendants failed to engage in a timely, good faith, interactive process with
26 plaintiff to determine effective reasonable accommodations for plaintiff's known disability
27 involving his knee and eye. Instead defendant elected to terminate the plaintiff's employment.
28

1 80. As a proximate result of the wrongful conduct of defendants, and each of them,
2 plaintiff has suffered and continues to suffer losses in earnings and other employment benefits in
3 an amount according to proof at trial.

4 81. As a proximate result of the wrongful conduct of defendants, and each of them,
5 plaintiff has suffered humiliation, emotional distress, and mental anguish, all to his damage in an
6 amount according to proof at trial.

7 82. In doing the acts herein alleged, defendants, and each of them, acted with
8 oppression, fraud, malice, and in conscious disregard of the rights of plaintiff, and plaintiff is
9 therefore entitled to punitive damages according to proof at the time of trial.
10

11
12 **SEVENTH CAUSE OF ACTION**
13 **RETALIATION IN VIOLATION OF GOV. CODE §12940(h)**
14 **[Against Defendant KAISER and Does 1 through 49, Inclusive]**

15 83. Plaintiff re-alleges and incorporates paragraphs 1 through 82 above as though set
16 forth in full herein.

17 84. This cause of action is based upon California Government Code §12940(a) and (h),
18 which provides that it is an unlawful employment practice “[f]or any employer, labor
19 organization, employment agency, or person to discharge, expel, or otherwise discriminate against
20 any person because the person has opposed any practices forbidden under this part or because the
21 person has filed a complaint, testified, or assisted in any proceeding under this part...”

22 85. At all times herein mentioned, plaintiff was a protected employee under this
23 provision of the California Fair Employment and Housing Act (FEHA).
24

25 86. As discussed in detail above plaintiff engaged in protected activities by opposing
26 unlawful discrimination. For example plaintiff engaged in protected activity when he complained
27 about ED’S sexual harassment and complained to CECILIA that she was not considering his
28

1 witnesses in her investigation. Plaintiff engaged in a protected activity when he complained to his
2 supervisor Saul about the fact that Saul gave plaintiff a write up because he went to occupational
3 health after he was disabled by an on the job injury.

4 87. Plaintiff is informed and believes that a motivating reason for his termination was
5 retaliation for complaining about unlawful discrimination.
6

7 88. Plaintiff has exhausted his administrative remedies by timely filing a complaint
8 with the DFEH. Plaintiff's charge of discrimination and right to sue letter are attached hereto as
9 Exhibits "A" and "B" to this complaint and are incorporated herein by reference.

10 89. As a direct and proximate result of the actions of defendants, plaintiff has
11 sustained and will sustain monetary damages, which will be established by proof at trial.
12

13 90. As a direct further proximate result of the actions of the defendants, plaintiff has
14 sustained severe emotional distress and mental anguish, and has been damaged thereby; the
15 amount of such damages will be established by proof at trial.

16 91. The actions complained of herein were done maliciously and oppressively, by
17 reason whereof plaintiff is entitled to an award of punitive damages, the amount of such damages
18 to be established by proof at trial.

19 92. The plaintiff is entitled to an injunction requiring defendants to reinstate plaintiff's
20 employment, and, further, not to discriminate or retaliate against plaintiff in the future.
21

22 93. Plaintiff is entitled to an award of reasonable attorney's fees in connection with the
23 prosecution of this action.

24 94. Plaintiff is entitled to prejudgment interest under and by virtue of any provision of
25 law entitling him thereto.
26

27 **EIGHTH CAUSE OF ACTION**
28 **DEFAMATION, LIBEL, SLANDER**

[Against All Defendants and DOES 1 through 100, Inclusive]

95. Plaintiff re-alleges and incorporates the allegations of paragraphs 1 through 94 above as though set forth in full herein.

96. CHA in the presence of plaintiff and other persons including KAISER employees made false statements about plaintiff. CHA called plaintiff a liar when she falsely said that she never had any relationship with plaintiff and that she had never been to his house. Plaintiff is informed and believes that CHA made these statements in retaliation for plaintiff engaging in a protected activity when he reported ED'S sexual harassment to the supervisor.

97. These false and unprivileged statements made by CHA subjected the plaintiff to hatred, contempt, ridicule, and disgrace. They damaged plaintiff in his profession and caused plaintiff to be suspended and later terminated. KAISER is liable for CHA'S defamation under respondeat superior.

98. As a proximate result of CHA'S unlawful conduct, plaintiff has suffered loss of income, deferred income, bonuses and other employment-related benefits in an amount unknown at this time, but according to proof at trial.

99. As a further proximate result of defendants' conduct, plaintiff has suffered depression, loss of self-esteem, illness and emotional distress, to plaintiff's damage in an amount unknown at this time, but according to proof at trial.

100. As a further proximate result of the aforementioned wrongful conduct, plaintiff has had to employ the services of attorneys to pursue his legal rights, to plaintiff's damage in an amount unknown at this time, but according to proof at trial.

101. Defendants committed the acts alleged herein maliciously, fraudulently, and oppressively, in bad faith, with the wrongful intention of injuring plaintiff, from an improper and evil motive amounting to malice, and/or in conscious disregard of plaintiff's rights. Thus, plaintiff is entitled to an award of exemplary and punitive damages according to proof at trial.

WHEREFORE, plaintiff prays for judgment against defendants as follows:

1. For general economic and non-economic damages according to proof;
2. For special damages according to proof;
4. For punitive damages where allowed by law;
5. For pre-judgment interest;
6. For costs of suit incurred herein;
7. For attorney's fees as allowed by law;
8. For such other and further relief as this Court deems just and proper;
9. For trial by jury.

DATED: May 21, 2013

THYBERGLAW

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