

LAWRANCE A. BOHM, (SBN 208716)  
 VICTORIA L. BAIZA, (SBN 282715)  
**BOHM LAW GROUP**  
 4600 Northgate Blvd., Suite 210  
 Sacramento, CA 95834  
 Phone (916) 927-5574  
 Fax (916) 927-2046

Attorneys for Plaintiff  
 TEMESHA IVY

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 COUNTY OF STANISLAUS

NOV 19 2013

TEMESHA IVY,

Plaintiff,

v.

KAISER FOUNDATION HOSPITALS; and  
 DOES 1-50, inclusive,

Defendant.

Case No.

**PLAINTIFF'S VERIFIED COMPLAINT  
 FOR DAMAGES:**

- 1) HEALTH AND SAFETY CODE § 1278.5
- 2) LABOR CODE § 1102.5
- 3) LABOR CODE § 6310
- 4) RETALIATION
- 5) DISABILITY DISCRIMINATION
- 6) FAILURE TO PREVENT RETALIATION AND DISCRIMINATION
- 7) LABOR CODE §§ 201 AND 226.7
- 8) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

**DEMAND FOR JURY TRIAL**

Plaintiff, TEMESHA IVY, respectfully submits the instant Verified Complaint for Damages and Demand for Jury Trial and alleges as follows:

**OVERVIEW OF CASE**

KAISER PERMANENTE ("KAISER") is the largest managed healthcare organization in the United States with a community of over 17,000 physicians. KAISER subjected Temesha Ivy ("IVY") to a hostile work environment full of discriminatory conduct, harassment, and

1 retaliation based on IVY's disability, as well as IVY's numerous complaints regarding patient  
2 health and safety hazards. KAISER ultimately terminated IVY.

3  
4 **PARTIES AND JURISDICTION**

5 1. Plaintiff TEMESHA IVY (hereafter "IVY" or "Plaintiff") was at all times  
6 relevant to this action, a recruit or employee of Defendant, KAISER FOUNDATION  
7 HOSPITALS. While employed by KAISER FOUNDATION HOSPITALS and at all times  
8 relevant to this action, Plaintiff resided in San Joaquin County.

9 2. Defendant, KAISER FOUNDATION HOSPITALS (hereafter referred to as  
10 "KAISER" or "Defendant," was at all times relevant to this action, an entity of the state of  
11 California operating medical facilities throughout the state of California. Defendant KAISER  
12 was at all times relevant, an employer as defined by Government Code §12926(d). Defendant  
13 KAISER was at all times relevant to this action an acute care hospital facility and providing  
14 professional medical services through licensed California physicians.

15 3. Venue and jurisdiction are proper because Defendants were doing business in  
16 Stanislaus County, because the majority of events took place in Stanislaus County, and because  
17 the damages sought exceed the jurisdictional minimum of this Court.  
18

19 4. Plaintiff is ignorant of the true names and capacities of the Defendants sued  
20 herein as DOES 1 through 50. Defendants DOES 1 through 50 are sued herein under fictitious  
21 names pursuant to California Code of Civil Procedure section 474. Plaintiff is informed and  
22 believes, and on that basis alleges, that each Defendant sued under such fictitious names is in  
23 some manner responsible for the wrongs and damages as alleged herein. Plaintiff does not at  
24 this time know the true names or capacities of said Defendants, but prays that the same may be  
25 inserted herein when ascertained.  
26

27  
28 ///

1           5.     At all times relevant, each and every Defendant was an agent and/or employee  
2 of each and every other Defendant. In doing the things alleged in the causes of action stated  
3 herein, each and every Defendant was acting within the course and scope of this agency or  
4 employment, and was acting with the consent, permission, and authorization of each remaining  
5 Defendant. All actions of each Defendant as alleged herein were ratified and approved by  
6 every other Defendant or their officers or managing agents.  
7

8                                   **STATEMENT OF FACTS**

9           6.     In or approximately 2008, IVY began her employment with Kaiser in Modesto,  
10 California, as an Obstetrician Technician ("OB Tech") for the Labor and Delivery Department  
11 during her employment at Kaiser.  
12

13           7.     IVY's primary job duties included preparing and assisting physicians for "Code C"  
14 emergency C-sections, stabilization of patients in the Labor and Delivery Operating Room, and  
15 stocking twelve delivery rooms, two operating rooms and six triage rooms. IVY was always  
16 responsible for twelve labor rooms and six triage rooms at any given time.  
17

18           8.     Upon IVY's commencement of employment with Kaiser, she immediately felt  
19 "culture shock" as Kaiser did not follow proper safety, staffing, and procedural protocols.  
20

21           9.     On or approximately October 25, 2008, IVY sent Curtis Everett a complaint via  
22 text, on Leadership Connection, regarding safety of patients and employees having to conduct  
23 hearing screenings, hiring only one OB Tech per shift, instrument sets having excessive  
24 instruments in them for each particular need, pediatric retractor being used in C-sections, poor  
25 staffing in several departments, Operating Rooms ("OR") and delivery rooms being dirty for two  
26 or more hours, and management not listening or responding to employee concerns. (SEE  
27 EXHIBIT A)  
28

1           10.    On or approximately December 5, 2008, IVY verbally complained at a Unit Base  
2 Team Meeting to Manager Lori Harris regarding visitor policies, seniority violations, engaging in  
3 job duties outside of her job description (conducting hearing screens and escorting patients to  
4 their car), and saving placentas for twenty-four hours.

5           11.    On or approximately December 18, 2008, IVY verbally complained at a meeting  
6 to Manager Lori Harris regarding staff's delay in making changes to instrument sets, needing help  
7 during emergency C-sections, being subject to bad attitudes from nurses, mid-wives, and doctors  
8 for reminding them to count raytex, nurses not having step stools ready in a delivery, nurses  
9 placing bio-hazardous waste in regular trash-bins instead of bio-hazard trash-bins, nurses and  
10 mid-wives using water from the faucet to clean patients' genital area instead of using sterile water  
11 as required, the inability to open and pop sterile cups onto the sterile table without contaminating  
12 cups, doctors preference cards needing to be edited, OB techs draping baby warmers for C-  
13 sections (which threatened a higher chance of contamination), needing signs saying no cameras or  
14 video recorders allowed in the ORs, having taping going on while baby is being pulled from  
15 abdomen and while the ICU nurse is trying to get the baby to take a breath, issues with  
16 discharging patients (as it was not in OB Tech job posting), and issues with doing hearing  
17 screenings (as it was not in OB Tech job posting).

18           12.    In or approximately 2009, IVY was diagnosed with migraines by her doctor, Dr.  
19 Grey. During this same time period, IVY informed Kaiser of her diagnosis.

20           13.    On or approximately January 3, 2009, IVY complained to Debby Schneider, a  
21 union representative, via email, regarding Main OR Techs making \$8.00 more than OB Techs,  
22 having a feeling of discrimination against OB Techs because of this pay difference, and voicing  
23 the unfairness of OR Techs having more job responsibilities than Main OR Techs.

24  
25  
26  
27  
28    ///

1           14.    On or approximately March 24, 2009, IVY issued a complaint on Leadership  
2 Connection, via email, regarding cameras and camcorders being allowed in the rooms during C-  
3 sections, doctors not taking cases seriously, doctors taking short-cuts in patient care, not  
4 following protocol/policy, parents being allowed in the room during a circumcision, inviting  
5 pregnant women under 35 weeks to come into Kaiser Modesto when the hospital was not  
6 equipped to take care of the premature baby if needed. (SEE EXHIBIT B)  
7

8           15.    On or approximately July 15, 2009, IVY submitted a complaint, via email, to Judy  
9 Moore (hereafter "MOORE"), the Maternal Child Director, regarding the OR being down and not  
10 being reset while she was assisting in another C-section. IVY informed MOORE that this was an  
11 unsafe practice and needed to be addressed immediately. (SEE EXHIBIT C)  
12

13           16.    On or approximately July 14, 2009, IVY was given a "coaching and counseling"  
14 from MOORE regarding tardiness. MOORE informed IVY, "Don't worry. This is just to bring it  
15 to your attention."  
16

17           17.    On or approximately August 1, 2009, IVY suffered a work injury. As she was  
18 preparing for a C-section in the OR, IVY picked up the instrument setup and attempted to place it  
19 on a back table when she felt her arm come out of the socket. IVY ran out of the OR crying, and  
20 went to inform Latanya Ford, the Assistant Manager, what had happened. Ford immediately sent  
21 IVY to the ER to be examined. IVY was placed off of work due to her injury.  
22

23           18.    IVY returned to work on or approximately September 17, 2009. Plaintiff was  
24 placed on light duty for approximately 1-2 weeks as an accommodation.  
25

26           19.    On or approximately September 27, 2009, IVY emailed a complaint to Gail  
27 Willingham (hereafter "WILLINGHAM") regarding nurses not handling confidential paperwork  
28 properly, nurses not documenting their counts on the white boards as required by hospital policy,  
and issues with the way C-section instruments are set up. (SEE EXHIBIT D)

1           20.    On or approximately October 9, 2009, IVY made a complaint during a meeting to  
2 Manager WILLINGHAM and MOORE regarding transporting patients, being asked not to leave  
3 the facility during her meal period, and being required to carry a SpectraLink phone while on her  
4 meal period.

5           21.    On or approximately October 9, 2009, IVY spoke with WILLINGHAM inquiring  
6 about the steps to become a Senior ("SR") Tech.  
7

8           22.    On or approximately December 8, 2009, IVY made a complaint during a meeting  
9 to WILLINGHAM regarding hearing screens, circumcisions, OR concerns, emergency and  
10 hysterectomy trays, shift reports, and staffing concerns.

11           23.    In or approximately March 2010, IVY contacted her Union (SCIU-UHW)  
12 regarding how Tori Benton got converted to a thirty-two hour shift. Union Representative  
13 Shawna Stewart (hereafter "STEWART") and IVY met with WILLINGHAM to talk about the  
14 situation. Tori Benton, at the time of this conversation, was on-call. IVY and other OB Techs  
15 had seniority over Benton, but were not given an option for a shift change. At that time IVY had  
16 only a twenty-four hour shift.  
17

18           24.    In or approximately March 2010, IVY made a complaint to WILLINGHAM  
19 regarding Tori Benton confronting employees regarding the work not being completed on their  
20 shifts.  
21

22           25.    On or approximately April 7, 2010, IVY made an appointment with Dr. Grey  
23 regarding her continual suffering from migraine headaches.

24           26.    On or approximately April 11, 2010, IVY received a notification letter from  
25 Assistant Manager Gabriela McCown (hereafter "McCOWN") regarding IVY's attendance,  
26 incremental overtime, and tardiness. During this same time period, IVY met with  
27 WILLINGHAM and told her she felt it wasn't fair that she was being written-up for tardiness  
28

1 when she had sufficient sick time to cover it. IVY also told WILLINGHAM, she felt like she was  
2 being reprimanded because of her migraines. IVY voiced this concern to WILLINGHAM  
3 approximately two to three times during her tenure with Kaiser.

4 27. On or approximately May 1, 2010, IVY was involved in a car accident. As a  
5 result, IVY had neck and shoulder pain.

6 28. On or approximately May 3, 2010, IVY reported to work despite still being in pain  
7 from the car accident. IVY reported the accident to Assistant Manager Tanya Ford and informed  
8 her that she was still experiencing pain. Later that same day IVY went to see Dr. Gilliland for  
9 treatment due to the excessive pain she was experiencing.

10 29. In or approximately June 2010, IVY complained to Assistant Manager Tanya Ford  
11 regarding unsterilized back tables and operation packs being used.

12 30. On or approximately July 13, 2010, IVY was called into WILLINGHAM's office.  
13 IVY was given the option of having a union representative present. STEWART became IVY's  
14 union representative.

15 31. On or approximately July 18, 2010, IVY indicated to WILLINGHAM and  
16 STEWART, over the phone, that she was ten minutes away from work and that her vehicle had  
17 broken down on the freeway. Ivy explained to WILLINGHAM that her vehicle was towed to  
18 Manteca, California.

19 32. On or approximately July 22, 2010, IVY indicated to WILLINGHAM over the  
20 phone that she wouldn't be able to make it to work due to her vehicle being repaired and a lack of  
21 transportation.

22 33. In or approximately August 2010, IVY made a complaint during a meeting to  
23 WILLINGHAM and MOORE regarding not being allotted six minutes before or after her 3:00  
24

1 p.m. shift began to change into her scrubs as practiced at a Kaiser Sacramento location. IVY was  
2 written up for being late on one occasion due to this practice.

3 34. In or approximately August 2010, IVY complained to coworkers Jovie Casanmos  
4 and Ida Abella regarding Christina Lynch being the only OB Tech to have a schedule of forty  
5 hours per week.

6 35. On or approximately September 28, 2010, IVY made a complaint to Coworker  
7 Tracy Simms and MCCOWN regarding an employee by the name of Tena, who despite her lack  
8 of experience, trained a technician and did not make sure to put two baby warmers in the OR due  
9 to notice of Twins being on board.

10 36. In or approximately November 2010, Ivy made a complaint to WILLINGHAM  
11 regarding there being only one OB Tech per shift. IVY also asked if another OB Tech was going  
12 to be hired per shift.

13 37. On or approximately February 18, 2011, IVY issued a complaint to Jerrod  
14 Mayhugh, a Field Representative for the union, regarding her pay difference (as compared to  
15 Main OR Techs).

16 38. On or approximately March 2, 2011, IVY indicated to WILLINGHAM that she  
17 was having issues at home, her children were ill, and that she was suffering from really bad  
18 migraines.

19 39. On or approximately March 2, 2011, IVY received a Letter of Warning from  
20 WILLINGHAM regarding IVY's attendance.

21 40. On or approximately March 2, 2011, IVY made a complaint to Union  
22 Representative Cali Lombarti regarding her received Letter of Warning.

23 ///

24 ///



1           41.    On or approximately March 21, 2011, IVY made a complaint, by phone, to Union  
2 Rep Cali Lombarti regarding being required to engage in job duties outside of her scope of  
3 practice.

4           42.    On or approximately March 23, 2011, Cali Lombarti emailed a Cease and Desist  
5 Letter to WILLINGHAM, Human Resource Consultant Janis Lacy (hereinafter referred to as  
6 "Lacy"), and Jerrod Mayhugh, a Union Field Representative regarding OR Tech's being required  
7 to conduct hearing screenings. The order was not met. (SEE EXHIBIT E)

8  
9           43.    On or approximately March 23, 2011, Cali Lombarti emailed WILLINGHAM  
10 requesting a Step 1 Grievance meeting.

11           44.    On or approximately April 28, 2011, IVY began to work the night shift.

12           45.    In or approximately May 2011, IVY broke down at work and began crying to  
13 fellow co-workers, indicating to them that she was feeling harassed and retaliated against by  
14 WILLINGHAM. IVY also stated that she felt "jumpy" whenever an Assistant Manager or  
15 WILLINGHAM wanted to speak with her.

16  
17           46.    On or approximately June 15, 2011, IVY attended a meeting with Cali Lombarti,  
18 STEWART, and Jerrod Mayhugh. At the meeting IVY presented a binder she had prepared to  
19 prove that her department deserved a pay raise. IVY indicated that her department was doing at  
20 least four job duties not within their job description.

21           47.    In or approximately June 2011, IVY issued a complaint during a meeting to  
22 WILLINGHAM regarding medications not being disposed and baby warmers not being reset  
23 promptly.

24  
25           48.    In or approximately June 2011, IVY made a complaint to the Compliance Hotline  
26 regarding the dangerous situation they encountered in a back-to-back "Code C" (emergency C-  
27 Section), by not having enough staff on shift.

1           49. In or approximately July 2011, IVY made a complaint during a meeting to  
2 WILLINGHAM regarding Pediatricians wanting to do circumcisions at various times of the  
3 night, placentas being left in rooms for extended amounts of time after delivery, and for not  
4 having an assigned person to help in a "Code C" emergency C-section.

5           50. In or approximately July 2011, Jovy Cosomos, an OB Tech, complained to IVY  
6 that WILLINGHAM made her stay and do over time by indicating that Cosomos was abandoning  
7 the patients. Per Union Contract an employee cannot be forced to work overtime.

8           51. On or approximately July 25, 2011, IVY emailed WILLINGHAM stating that she  
9 felt harassed by WILLINGHAM.

10           52. On or approximately July 27, 2011, STEWART and MOORE engaged in a heated  
11 argument regarding IVY'S unjust treatment. At one point MOORE said that STEWART needed  
12 to respect her because she was the director of that department. The argument escalated to the  
13 point that MOORE ended the meeting and indicated that IVY would be suspended for one day.

14           53. On or approximately July 28, 2011, IVY received a Letter of Suspension from  
15 WILLINGHAM that she was being placed on an unpaid suspension starting on July 30, 2011 and  
16 IVY would return to work July 31, 2011.

17           54. In or approximately August 2011, employees complained to management about  
18 the backup doctor living an hour away and stated that it may be a problem when he/she is needed  
19 urgently.

20           55. On or approximately August 26, 2011, STEWART filed a grievance in regarding  
21 IVY's suspension on or approximately July 28, 2011.

22           56. In or approximately September 2011, IVY called the Compliance Hotline  
23 regarding filing a complaint against WILLINGHAM and MOORE for allowing patient family  
24 members to spend the night and sleep on the floor. Other nurses also complained about this

1 situation. In addition, IVY called the California State Fire Marshall and left a voicemail regarding  
2 this matter.

3 57. On or approximately September 12, 2011, IVY emailed WILLINGHAM regarding  
4 changing IVY's dates of vacation. Due to IVY'S shift change to the night schedule, she wanted  
5 to ensure her specific requests for vacation were still in effect.  
6

7 58. On or approximately September 20, 2011, IVY resent the September 12, 2011  
8 email due to WILLINGHAM not responding to the initial email regarding her vacation time.

9 59. On or approximately September 21, 2011, WILLINGHAM emailed Cheryl Seal  
10 asking her to change IVY's vacation time to accommodate her night schedule.

11 60. On or approximately September 30, 2011, IVY had to take a day off due to a  
12 family emergency regarding her husband and son having a panic attack.  
13

14 61. On or approximately October 3, 2011, WILLINGHAM left IVY a message  
15 indicating that IVY was not to return to work until she received a PPD (TB skin test).  
16 Management is always contacted 30 days before an employee's PPD is due. IVY was never  
17 notified of the due date, as she had always been previously.

18 62. On or approximately October 3, 2011, IVY contacted STEWART and informed  
19 her that she was not told by management about her PPD due date. STEWART responded to IVY  
20 that it was her responsibility for remembering when her PPD is due.  
21

22 63. On or approximately October 3, 2011, IVY was suspended for three days (October  
23 3, 4, 5) as a result of not receiving her PPD.

24 64. IVY was given a Notice of Suspension Letter after she had already begun her  
25 suspension on or approximately October 3, 2011.

26 65. On or approximately October 7, 2011, Gloria Santos gave IVY a Notice of  
27

28 ///

1 Suspension Letter indicating to IVY that WILLINGHAM requested that IVY sign it. The only  
2 signature on the letter was IVY's.

3 66. On or approximately October 10, 2011, WILLINGHAM left IVY a message  
4 indicating she needed to speak to her about IVY's call on September 30, 2011.  
5

6 67. In or approximately October 2011, IVY made a complaint to WILLINGHAM  
7 regarding IVY's previous position being posted as a SR Tech. IVY had previously asked and  
8 requested WILLINGHAM if her position could be converted to a SR Tech, that request was  
9 denied.

10 68. On or approximately October 28, 2011, Tracy Simms took over IVY'S night shift  
11 from 3:00-11:30 p.m. Simms's position, however, was now considered a SR OR Tech. Simms  
12 engaged in the same duties as IVY. IVY, at the time, changed to night shift from 11:00 p.m. -  
13 7:30 a.m. around May 2011.  
14

15 69. In or approximately November 2011, IVY issued a complaint to Assistant  
16 Manager Jennifer Thompson along with Eva Hernandez regarding Dr. Olgunjimmy leaving a  
17 delivery before the placenta was delivered (which was contrary to hospital procedure). Dr.  
18 Olgunjimmy left to attend to another matter after the placenta was taking too much time to  
19 descend. The doctor only returned after the nurse sent for her.  
20

21 70. On or approximately November 2, 2011, STEWART met with WILLINGHAM  
22 and LACY regarding the grievance filed on IVY's behalf on or approximately August 26, 2011.

23 71. On or approximately November 2, 2012, IVY received an email from  
24 WILLINGHAM indicating to her that she wanted to meet with IVY regarding the day IVY called  
25 on or approximately September 30, 2012.

26 72. On or approximately November 4, 2012, IVY received a phone call from  
27 WILLINGHAM regarding September 30, 2012.  
28

1           73.    On or approximately November 7, 2011, IVY attended an investigatory meeting  
2 with WILLINGHAM and MCCOWN in regards to IVY being late on or approximately August 9,  
3 2011, and on or approximately September 30, 2011. STEWART attended the meeting on a  
4 conference call. During the meeting WILLINGHAM questioned IVY as to the reason she was  
5 late on August 9, 2011. IVY responded that she was not late and that she went straight to report  
6 and forgot to clock-in, and didn't correct it in the log because employees were getting in trouble  
7 for dangles, so she just didn't get paid. WILLINGHAM then proceeded to question IVY about  
8 September 30, 2011. IVY indicated that her aunt-in law had a heart attack and that her husband  
9 and son had a panic attack and that her husband wanted me to stay home with them. IVY  
10 indicated to WILLINGHAM that she had available sick time to use and didn't understand why  
11 she was being reprimanded. WILLINGHAM indicated to IVY that the regular attendance rules  
12 did not apply to her because she was on disciplinary action for her attendance and that she could  
13 not use her sick time.  
14

15           74.    On or approximately November 11, 2011, IVY emailed WILLINGHAM that she  
16 was not two minutes late and that she planned on correcting it in the correction log. IVY later  
17 forgot to make the correction.  
18

19           75.    On or approximately November 20, 2011, IVY notified Assistant Manager Martha  
20 Shomacker, by phone, at around 11:00 a.m., that she had overslept and did not hear her alarm go  
21 off. IVY clocked in to work at approximately 12:01 p.m.  
22

23           76.    On or approximately November 30, 2011, IVY received a voicemail from Sheryl  
24 Seal indicating that WILLINGHAM had denied IVY paid time off for her absence on or  
25 approximately September 30, 2011, because it did not qualify under AB109.  
26

27           77.    On or approximately December 13, 2011 IVY and STEWART received an email  
28

///

1 from WILLINGHAM stating that she needed to meet with the two women as soon as possible.  
2 They arranged to meet on or approximately December 15, 2011 around 8:00 a.m.

3 78. After receiving this email IVY called STEWART crying and indicated to her that  
4 WILLINGHAM was really stressing her out and that she feared WILLINGHAM was planning on  
5 giving IVY a five day suspension.  
6

7 79. On or approximately December 14, 2011, IVY emailed WILLINGHAM  
8 requesting a copy of all material used in her attendance discipline procedure. IVY also requested  
9 that WILLINGHAM bring a copy of the policy and procedure on attendance before and after  
10 disciplinary actions, which IVY never received.

11 80. On or approximately December 15, 2011, WILLINGHAM questioned IVY about  
12 November 20, 2011, regarding IVY over sleeping and arriving to work late.  
13

14 81. On or approximately December 26, 2011, IVY was scheduled to work although  
15 she had requested that day off per her vacation time. IVY was called by management to come in  
16 but IVY refused because she had already been approved by WILLINGHAM for the night off and  
17 had also had a few glasses of wine. WILLINGHAM then called IVY and indicated to her that she  
18 had to work or would be considered a no call no show. IVY refused and told her that she had  
19 emails from WILLINGHAM saved that indicated WILLINGHAM had approved IVY's requested  
20 vacation time for December 26, 2011.  
21

22 82. On or approximately December 27, 2011, IVY forwarded the email to  
23 WILLINGHAM regarding her approved dates of vacation time.

24 83. On or approximately December 26, 2011, IVY reported to work where she  
25 discovered Tori Benton was there covering IVY's shift. IVY questioned why Benton was  
26 working her shift and Benton replied that IVY's schedule indicated that she was on vacation; IVY  
27 was supposed to be scheduled to work this day. Martha Shomacker, Assistant Manager, called  
28

1 staffing and they indicated that the schedule for IVY for this date was documented as a vacation  
2 day per WILLINGHAM. IVY was sent home.

3 84. On or approximately December 28, 2011, WILLINGHAM sent IVY an email  
4 thanking her for resending the email regarding IVY's requested vacation days. In  
5 WILLINGHAM's email, she told IVY that she asked Cheryl Seal to approve IVY'S vacation days  
6 that she had previously granted. However, IVY's request for the float holiday on December 27,  
7 2011 off was denied. WILLINGHAM then stated that because IVY did not validate whether she  
8 was off or not before that requested date, IVY was expected to be at work. She further stated that  
9 because IVY wasn't at work that day, it would be considered a "no call, no show."  
10 WILLINGHAM proceeded to tell IVY she would like to meet with her and STEWART the  
11 following week.  
12

13 85. On or approximately December 28, 2011, STEWART received an email from  
14 LACY regarding denying the Step 2 Grievance.  
15

16 86. On or approximately December 29, 2011, IVY responded to WILLINGHAM's  
17 email. IVY indicated that because she asked for December 26, 2011 off and because her shift had  
18 changed to the night schedule, her December 26, 2011 request which was approved, would have  
19 changed to December 27, 2011. The day that was denied was December 27, 2011, which would  
20 have changed to the December 28, 2011, had it been approved. IVY also questioned  
21 WILLINGHAM if she looked at the time system or had spoken with Martha Shomacker. IVY  
22 explained that she did report for work on the 27<sup>th</sup> and the 28<sup>th</sup> and was told she was on vacation  
23 per WILLINGHAM. IVY then stated that the mistake was not on her part and if WILLINGHAM  
24 still wanted to have a meeting with STEWART, she would let her know. IVY also stated that it  
25 seemed as if WILLINGHAM was waiting for her to "mess up" her attendance, that the work  
26 environment was beginning to be hostile and that she felt the harassment was escalating.  
27  
28

1           87.    On or approximately December 28, 2011, STEWART received a letter of denial  
2 regarding IVY'S Step 2 Grievance submitted in regards to her receiving a suspension on July 28,  
3 2011.

4           88.    On or approximately January 3, 2012, STEWART sent IVY an email regarding  
5 scheduling a meeting with WILLINGHAM on or approximately January 5, 2012, at 8:30 a.m. At  
6 approximately 3:50 p.m. WILLINGHAM emailed IVY ordering IVY to clock out at 7:30 a.m.  
7 and back in at 8:30 a.m.  
8

9           89.    On or approximately January 5, 2012, IVY attended a meeting with STEWART,  
10 WILLINGHAM, and MCCOWN. During the meeting, STEWART indicated that she did not  
11 agree with the interactions that took place via email regarding IVY's vacation dates. This upsets  
12 WILLINGHAM and she responds that IVY is a grown woman and that IVY is responsible for  
13 checking her own schedule. WILLINGHAM then gets up and leaves to call LACY. As IVY and  
14 STEWART are waiting in the meeting room they hear WILLINGHAM and MCCOWN laughing  
15 down the hallway and as WILLINGHAM enters the meeting room she states, "we're just going to  
16 move forward with termination," and hands IVY a letter to sign. IVY refuses to sign the letter  
17 and walks out. WILLINGHAM continues to scream down the hallway for IVY to return and sign  
18 the letter.  
19

20           90.    The termination letter referenced IVY's attendance as the reason for termination.  
21 The letter documented November 20, 2011 as the last time IVY was late; yet, IVY was not  
22 terminated until January 5, 2012.  
23

24           91.    IVY was later given a check for vacation time, however, was not paid her sick  
25 time, which was approximately 59.8 hours.

26           92.    At some point after termination, IVY filed for unemployment benefits. On  
27 appeal, IVY's benefits were granted. The California Unemployment Insurance Appeals Board  
28



1 stated that "the employer did not meet its burden of proof of proving the claimant had ongoing  
2 absenteeism or tardiness following her suspension." (SEE EXHIBIT F)

3 93. Plaintiff has fulfilled all administrative exhaustion requirements. On December  
4 18, 2012, Plaintiff filed a complaint with a Department of Fair Employment and Housing (DFEH)  
5 and was issued an immediate Right to Sue Notice. On December 27, 2012, Plaintiff filed a  
6 complaint with the Labor and Workforce Development Agency (LWDA).  
7

8 **FIRST CAUSE OF ACTION**  
9 **(Violation of Health and Safety Code § 1278.5)**

10 94. The allegations set forth in this complaint are hereby re-alleged and incorporated by  
11 reference.

12 95. The California Legislature has determined that, in order to protect patients, "it is the  
13 public policy of the State of California to encourage patients, nurses, members of the medical staff,  
14 and other health care workers to notify government entities of suspected unsafe patient care and  
15 conditions." UCI is a "hospital facility" pursuant to Health and Safety Code § 1250(a).

16 96. Therefore, pursuant to California Health & Safety Code § 1278.5(b), "[n]o health  
17 facility shall discriminate or retaliate, in any manner, against any patient, employee, member of the  
18 medical staff, or any other health care worker of the health facility because that person . . .  
19 [p]resented a grievance, complaint, or report to the facility, to an entity or agency responsible for  
20 accrediting or evaluating the facility, or the medical staff of the facility, or to any other  
21 governmental entity." Pursuant to § 1278.5(i), "'health facility' means any facility defined under  
22 this chapter, including, but not limited to, the facility's administrative personnel, employees,  
23 boards, and committees of the board, and medical staff."

24 97. Plaintiff was an employee of KAISER and a member of the nursing staff.

25 98. KAISER harassed, discriminated, and retaliated against Plaintiff because she  
26 reported concerns about patient care, services, and hospital conditions. Furthermore, according to  
27 The Joint Commission, "Intimidating and disruptive behaviors can foster medical errors . . . . All  
28

1 intimidating and disruptive behaviors are unprofessional and should not be tolerated.” (A true and  
2 correct copy of The Joint Commission, Sentinel Event Alert is attached hereto as Exhibit G.)

3 99. Additionally, Defendants intentionally jeopardize the health and safety of patients at  
4 KAISER hospital.

5 100. Section 1278.5(d)(1) states, “There shall be a rebuttable presumption that  
6 discriminatory action was taken by the health facility, or by the entity that owns or operates that  
7 health facility, or that owns or operates any other health facility, in retaliation against an employee,  
8 member of the medical staff, or any other health care worker of the facility, if responsible staff at  
9 the facility or the entity that owns or operates the facility had knowledge of the actions,  
10 participation, or cooperation of the person responsible for any acts described in paragraph (1) of  
11 subdivision (b), and the discriminatory action occurs within 120 days of the filing of the grievance  
12 or complaint by the employee, member of the medical staff or any other health care worker of the  
13 facility.”

14 101. Discriminatory and retaliatory action was taken against Plaintiff within 120 days of  
15 filing grievances regarding patient care, services, and hospital conditions.

16 102. California Health & Safety Code § 1278.5 has no administrative or judicial  
17 exhaustion requirement.

18 103. As an actual and proximate result of the aforementioned violations, Plaintiff has  
19 been harmed in an amount according to proof, but in an amount in excess of the minimum  
20 jurisdiction of this Court.

21 104. The above described actions were perpetrated and/or ratified by a managing agent  
22 or officer of Defendant. These acts were done with malice, fraud, oppression, and in reckless  
23 disregard of Plaintiff’s rights. Further, said actions were despicable in character and warrant the  
24 imposition of punitive damages against the individual defendants, other than REGENTS, in a sum  
25 sufficient to punish and deter Defendants future conduct.  
26

27 ///

**SECOND CAUSE OF ACTION**  
**(Violation of Labor Codes § 1102.5)**

105. The allegations set forth in this complaint are hereby re-alleged and incorporated by reference.

106. California Labor Code §1102.5(c) states that an "employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation."

107. Defendant KAISER violated Labor Code § 1102.5 when it unlawfully discriminated against Plaintiff by creating a hostile work environment which led to Plaintiff's termination of the employment relationship because Plaintiff made bona fide oral complaints to her supervisors regarding patient safety, disability discrimination and retaliation.

108. Plaintiff seeks to enforce her rights under § 1102.5 pursuant to the authority of the Private Attorney Generals Act of 2004 codified at Labor Code §2698 et seq. on behalf of herself and any other current and former employees of Defendant. In that regard, Plaintiff has complied with the provisions of §2699.3 as they pertain to actions seeking to enforce statutory provisions referenced in §2699.5.

109. Plaintiff has exhausted all administrative procedures required under California Labor Code §§ 2698, 2699, and 2699.3, and as a result, is justified as a matter of right in bringing this cause of action. Therefore, Plaintiff seeks penalties under California Labor Code §§ 2698 and 2699 due to Defendant's violations of the California Labor Code.

110. As an actual and proximate result of the aforementioned violations, Plaintiff has been harmed in an amount according to proof, but in an amount in excess of the jurisdiction of this Court.

111. The above described actions were perpetrated and/or ratified by a managing agent or officer of Defendant. These acts were done with malice, fraud, oppression, and in reckless disregard of Plaintiff's rights. Further, said actions were despicable in character and warrant the imposition of punitive damages in a sum sufficient to punish and deter Defendant's future conduct.

**THIRD CAUSE OF ACTION**  
**(Violation of Labor Code § 6310)**

112. The allegations set forth in this complaint are hereby re-alleged and incorporated by reference.

113. California Labor Code § 6310 states, "Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because the employee has made a bona fide oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, his or her employer, or his or her representative, of unsafe working conditions, or work practices, in his or her employment or place of employment . . . shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer."

114. During Plaintiff's employment with Defendant, Plaintiff complained orally to management about patient safety violations, disability discrimination and retaliation. Defendant discriminated and retaliated against Plaintiff by creating a hostile work environment which led to Plaintiff's wrongful termination of the employment relationship because Plaintiff made bona fide oral complaints to her supervisors regarding patient safety, disability discrimination and retaliation. Therefore, Defendant's conduct violated the provisions of Labor Code § 6310.

115. In addition to any other remedies and laws, Plaintiff seeks to enforce her rights and the rights of current and former employees pursuant to the Private Attorney Generals Act of 2004 codified at Labor Code § 2698 et seq. In that regard, Plaintiff has complied with the provisions of § 2699.3 as they pertain to actions seeking to enforce statutory provisions referenced in § 2699.5.

116. Plaintiff has exhausted all administrative procedures required under California Labor Code §§ 2698, 2699, and 2699.3, and as a result, is justified as a matter of right in bringing this cause of action. Therefore, Plaintiff seeks penalties under California Labor Code

1 §§ 2698 and 2699 due to Defendant's violations of the California Labor Code.

2 117. As an actual and proximate result of the aforementioned violations, Plaintiff has  
3 been harmed in an amount according to proof, but in an amount in excess of the jurisdiction of  
4 this Court.

5 118. The above described actions were perpetrated and/or ratified by a managing agent  
6 or officer of Defendant. These acts were done with malice, fraud, oppression, and in reckless  
7 disregard of Plaintiff's rights. Further, said actions were despicable in character and warrant the  
8 imposition of punitive damages in a sum sufficient to punish and deter Defendant's future  
9 conduct.

10 **FOURTH CAUSE OF ACTION**  
11 **(Retaliation; Government Codes § 12940(h))**

12 119. The allegations set forth in this complaint are hereby re-alleged and incorporated  
13 by reference.

14 120. During Plaintiff's employment with Defendant, Plaintiff complained orally to  
15 management about patient safety violations, disability discrimination and retaliation. Defendant  
16 discriminated and retaliated against Plaintiff by creating a hostile work environment which led to  
17 Plaintiff's wrongful termination of the employment relationship because Plaintiff made bona fide  
18 oral complaints to her supervisors regarding patient safety, disability discrimination and  
19 retaliation. Specifically, Defendant subjected Plaintiff to written warnings, suspension, and  
20 finally termination. Defendant's adverse employment actions were motivated, at least in part, by  
21 Plaintiff's protected activities.  
22

23 121. As a proximate result of the aforementioned violations, Plaintiff has been damaged  
24 in an amount according to proof, but in an amount in excess of the jurisdiction of this Court.  
25 Plaintiff also seeks "affirmative relief" or "prospective relief" as defined by Government Code  
26 §12926(a).  
27

28 122. The above described actions were perpetrated and/or ratified by a managing agent

1 or officer of Defendant. These acts were done with malice, fraud, oppression, and in reckless  
2 disregard of Plaintiff's rights. Further, said actions were despicable in character and warrant the  
3 imposition of punitive damages in a sum sufficient to punish and deter Defendant's future  
4 conduct.

5  
6 **FIFTH CAUSE OF ACTION**  
7 **(Disability Discrimination, Gov. Code §12940(a))**

8 123. The allegations set forth in this complaint are hereby re-alleged and incorporated  
9 by reference.

10 124. At all times relevant to this matter, Plaintiff suffered from a "physical disability"  
11 as defined by Government Code §12926(l) and Title 2 of the California Code of Regulations  
12 §7293.6(c). In spite of her disability, Plaintiff was able to perform the essential functions of her  
13 position as defined by Government Code §12926(f) and Title 2 of the California Code of  
14 Regulations §7293.6 (e) and was otherwise able to perform her job had Defendant provided the  
15 reasonable accommodation required by Government Code §12926(o) and Title 2 of the California  
16 Code of Regulations §7293.9(a).

17  
18 125. Defendant KAISER's conduct violated Government Code 12940(a) consistent  
19 with Title 2 of the California Code of Regulations §7293.6(d). Specifically, Defendant subjected  
20 Plaintiff to written warnings, suspension, and finally termination. Defendant's actions were  
21 motivated, at least in part, by Plaintiff's disability.

22  
23 126. As a proximate result of the aforementioned violations, Plaintiff has been damaged  
24 in an amount according to proof, but in an amount in excess of the jurisdiction of this Court.  
25 Plaintiff also seeks "affirmative relief" or "prospective relief" as defined by Government Code  
26 §12926(a).

27 127. The above described actions were perpetrated and/or ratified by a managing agent  
28

1 or officer of Defendant. These acts were done with malice, fraud, oppression, and in reckless  
2 disregard of Plaintiff's rights. Further, said actions were despicable in character and warrant the  
3 imposition of punitive damages in a sum sufficient to punish and deter Defendant's future  
4 conduct.

5  
6 **SIXTH CAUSE OF ACTION**

7 **(Failure to Prevent Retaliation and Discrimination; Gov. Code §12940(k))**

8 128. The allegations set forth in this complaint are hereby re-alleged and incorporated  
9 by reference.

10 129. At all times relevant to this matter, Plaintiff was subjected to adverse employment  
11 action because of her disability and protected activities as set forth in this complaint.

12 130. Defendant knew or should have known about the retaliation and discrimination of  
13 Plaintiff. Defendant failed to implement adequate training, policies, instructions, investigation,  
14 discipline or monitoring sufficient to prevent the aforementioned retaliation and discrimination.  
15 Defendant's breach of this important duty resulted in the harm to Plaintiff. Accordingly,  
16 Defendant has violated Government Code §12940(k) and Title 2 of the California Code of  
17 Regulations §7287.6(3).  
18

19 131. As a proximate result of the aforementioned violations, Plaintiff has been damaged  
20 in an amount according to proof, but in an amount in excess of the jurisdiction of this Court.  
21 Plaintiff also seeks "affirmative relief" or "prospective relief" as defined by Government Code  
22 §12926(a).  
23

24 132. The above described actions were perpetrated and/or ratified by a managing agent  
25 or officer of Defendant. These acts were done with malice, fraud, oppression, and in reckless  
26 disregard of Plaintiff's rights. Further, said actions were despicable in character and warrant the  
27 imposition of punitive damages in a sum sufficient to punish and deter Defendant's future  
28

1 conduct.

2 **SEVENTH CAUSE OF ACTION**  
3 **(Violation of Labor Code §§ 201 and 226.7)**

4 133. The allegations set forth in this complaint are hereby re-alleged and incorporated  
5 by reference.

6 134. Plaintiff was classified as an employee of KAISER PERMANENTE and is eligible  
7 to receive certain rights under the Labor Code.

8 135. Plaintiff was terminated from her employment with Defendant on January 2, 2012.  
9 Plaintiff was never paid her sick time which was approximately 59.8 hours.

10 136. Pursuant to Labor Code § 201, "If an employer discharges an employee, the wages  
11 earned and unpaid at the time of discharge are due and payable immediately." Accordingly,  
12 Defendant violated Labor Code § 201.

13 137. Labor Code § 226.7(a) states that "[n]o employer shall require any employee to  
14 work during any meal period . . . ." Labor Code § 226.7(b) states that "[i]f an employer fails to  
15 provide an employee a meal break or rest period . . . the employer shall pay the employee one  
16 additional hour of pay at the employee's regular rate of compensation for each work day that the  
17 meal or rest period is not provided."

18 138. KAISER PERMANENTE forced Plaintiff to work during meal breaks and rest  
19 periods which did not provide her with the full allotted time required by law.

20 139. As an actual and proximate result of the aforementioned violations, Plaintiff has  
21 been harmed in an amount according to proof, but in an amount in excess of the jurisdiction of  
22 this Court.

23 140. The above described actions were perpetrated and/or ratified by a managing agent  
24 or officer of Defendant. These acts were done with malice, fraud, oppression, and in reckless  
25



1 disregard of Plaintiff's rights. Further, said actions were despicable in character and warrant the  
2 imposition of punitive damages in a sum sufficient to punish and deter Defendant's future  
3 conduct.

4  
5 **EIGHTH CAUSE OF ACTION**  
6 **(Wrongful Termination in Violation of Public Policy)**

7 141. The allegations set forth in this complaint are hereby re-alleged and incorporated  
8 by reference.

9 142. Defendant's termination of Plaintiff based upon Plaintiff's physical disability and  
10 her protected complaints regarding disability discrimination, retaliation and patient health and  
11 safety, violated important public policies codified in Government Code, including but not limited  
12 to, §§ 12940(a), 12940(h), 12940(k), Labor Code §§ 1102.5, 6310, and Health and Safety Code §  
13 1278.5, and multiple sections in Title 2 of the California Code of Regulations.

14 143. Plaintiff alleges that Defendant's termination of her employment on or around  
15 January 2, 2012, was a discriminatory and retaliatory act in violation of the FEHA, the Labor  
16 Code and the Health and Safety Code that was motivated, at least in part, by Plaintiff having  
17 exercised her right to make protected complaints pursuant to said sections.

18 144. The termination of Plaintiff was in violation of important public policies including  
19 FEHA, Labor Code §§ 1102.5, 6310 and Health and Safety Code § 1278.5 as well as State and  
20 Federal Laws pertaining to the exercise of free speech.

21 145. Plaintiff's disability and protected activities were not merely a remote or trivial  
22 reason for the adverse employment actions by Defendant, but rather a substantial motivating  
23 reason that actually contributed to the adverse employment actions by Defendant.

24 146. Defendant's discriminatory and retaliatory conduct was a substantial factor  
25 causing Plaintiff to suffer general and special damages including economic damages and non-  
26

1 economic damages in excess of this court's jurisdiction according to proof at trial.

2 147. As an actual and proximate result of the aforementioned violations, Plaintiff has  
3 been damaged in an amount according to proof, but in an amount in excess of the jurisdiction of  
4 this Court.

5 148. As an actual and proximate result of Defendant's unlawful conduct, Plaintiff has  
6 lost wages, benefits, and other out of pocket expenses.

7 159. As an actual and proximate result of the aforementioned acts of Defendants,  
8 Plaintiff has become mentally upset, distressed, and aggravated. Plaintiff claims general damages  
9 for mental and emotional distress in an amount according to proof at time of trial.

10 160. The above-described actions were perpetrated and/or ratified by a managing agent  
11 or officer of Defendant. These acts were done with malice, fraud, oppression, and in reckless  
12 disregard of Plaintiff's rights. Further, said actions were despicable in character and warrant the  
13 imposition of punitive damages in a sum sufficient to punish and deter Defendant's future  
14 conduct.

15 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

16  
17  
18 **PRAYER FOR RELIEF**

19  
20 WHEREFORE, Plaintiff demands judgment against Defendant and any other Defendant  
21 who may be later added to this action as follows:

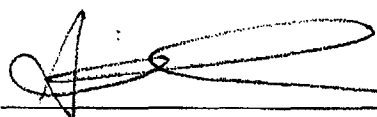
22 1. For compensatory damages, including, but not limited to lost wages and non-  
23 economic damages in an amount according to proof;

24 2. For attorneys' fees and costs pursuant to all applicable statutes or legal  
25 principles;

26 3. For cost of suit incurred;

- 1           4.     For punitive damages or other penalties recoverable by law;  
2           5.     For prejudgment interest on all amounts claimed pursuant to Civil Code section  
3 3287 and/or 3288; and  
4           6.     For such other and further relief as the court may deem proper.  
5

6  
7 Dated: November 19, 2013

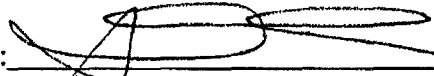
By:   
LAWRANCE A. BOHM, ESQ.  
VICTORIA L. BAIZA, ESQ.

8  
9 Attorneys for Plaintiff  
10 TEMESHA IVY

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff hereby demands trial by jury for this matter.  
13

14  
15 Dated: November 19, 2013

By:   
LAWRANCE A. BOHM, ESQ.  
VICTORIA L. BAIZA, ESQ.

16  
17 Attorneys for Plaintiff  
18 TEMESHA IVY  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28