

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

DEMAND FOR JURY TRIAL

3. Defendant The Kaiser Permanente, Inc., is a corporation operating and administering medical facilities, within the State of California and the Eastern District of California, organized

1 and existing under the laws of the State of California, doing business in the Eastern District of  
2 California, and having its principal place of business in Oakland, California.

3 4. The named individual defendant, FRANK HARRISON, is a former supervisor and  
4 manager who harassed and discriminated against plaintiff during her employment at Kaiser  
5 Hospital on Morse Avenue in Sacramento, California.

6 5. The named individual defendant, JEREMY ROSENBERG, was a supervisor and  
7 manager who harassed and discriminated against plaintiff during her employment at Kaiser  
8 Hospital on Morse Avenue in Sacramento, California.

9 5. The Doe defendants are employees and agents of Kaiser Permanente who were  
10 involved in the harassment of plaintiff and requested or pressured her retirement.

## 11 **II. JURISDICTION AND VENUE**

12 6. This court is the proper venue for the action under 28 USC 1391 (b) in that the  
13 actions complained of herein occurred and were committed in the Eastern District of California.

14 7. This Court has original jurisdiction over the subject matter of this action pursuant  
15 to 28 USC Section 1331, 42 USC §2000e, the Americans With Disabilities Act of 1990 (ADA), 42  
16 USC Section 12101, et seq., and 29 USC 621 (ADEA), as the issues raised by Plaintiff involve  
17 substantial questions of federal law. Further, the Court may adjudicate Plaintiff's state law claims  
18 under 28 USC Section 1367, as they are transactionally related to the federal claims raised herein.  
19 By exercising supplemental jurisdiction over these state claims, this Court will be able to resolve  
20 both state and federal claims that are factually interdependent.

21 8. A charge of employment discrimination was filed by plaintiff with the California  
22 Department of Fair Employment and Housing (DFEH) with dual submission to the Equal  
23 Employment Opportunity Commission ("EEOC"). A Notice of Case Closure and Right to Sue was  
24 issued to plaintiff by the DFEH on October 30, 2013. This complaint has been filed within one  
25 year of that right to sue letter.

26 9. Plaintiff is a "person" within the meaning of §101(7) of the ADA, 42 U.S.C.  
27 §12111(7), and §701 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, and  
28

1 applicable sections of the ADEA 29 USC 626, and defendant hospital is an employer covered by  
2 these acts. At all relevant times, Plaintiff was over the age of forty years and a person entitled to  
3 protection from age discrimination under 29 USC 621-634, the Age Discrimination in  
4 Employment Act.

5 10. Defendant employs hundreds of employees and is an "employer" within the  
6 meaning of Section 101(5)(A) of the ADA, 42 U.S.C. §12111(5)(A) and all other relevant Code  
7 sections.

8 11. All conditions precedent to jurisdiction under §706 of Title VII, 42 U.S.C.  
9 §2000e-5(f)(3), have occurred or been complied with.

### 10 III. FACTUAL BASES OF THE CLAIMS

11 12. Plaintiff is over the age of 60 years. She was hired to work in the nutrition unit at the  
12 Kaiser Hospital on Morse Avenue in Sacramento, California, in 1990. She was an exemplary  
13 employee with good reviews prior to the commencement of harassment. During her employment  
14 with Kaiser, plaintiff performed her jobs with skill and dedication. She regularly received positive  
15 evaluations, until the arrival of Frank Harrison who had a mission to harass plaintiff (and other  
16 senior employees) into ending her employment.

17 13. In 2008 defendant Hospital put a policy into effect to cause its long time employees to  
18 retire or be terminated. The particular targets were older women of color and those with  
19 disabilities. Kaiser commenced a course of harassment to accomplish its goals, including  
20 pretextual write ups. Supervisor Frank Harrison and then Jeremy Rosenberg carried out this  
21 program of harassment against plaintiff. These unwarranted attacks were very stressful to  
22 plaintiff, as they were designed to be.

23 14. In April 2009, defendant Harrison gave plaintiff a note stating there were complaints  
24 regarding meal service times. Plaintiff and only she was instructed to be on the floor at 7:30 am.  
25 Plaintiff replied she would not accept the discriminatory note unless everyone else in the depart-  
26 ment was getting the same note. Plaintiff contends she was being harassed because she was  
27 singled out undeservedly for this requirement. At the time plaintiff could not determine the  
28 specific discriminatory motive behind the instruction as the harassment was in its early stage.

1           15. During 2009 plaintiff was subjected to repeated complaints from Frank Harrison that  
2 had little or no basis in fact or that were discriminatory as she was reported for doing things other  
3 employees were doing, but they were doing so without negative comment or criticism. Plaintiff  
4 submitted a complaint to the Department of Fair Housing and Employment on August 26, 2009,  
5 regarding discrimination, harassment, denial of equal pay, false write ups and retaliation. She  
6 listed her protected status was under FEHA and she thought the most obvious reason for that  
7 discrimination was gender and age. She obtained a right to sue letter, but did not file a lawsuit at  
8 that time. Thereafter she remained employed but was subjected to continuing harassment.

9           16. The harassment and retaliation continued for four more years. Plaintiff and others  
10 were offered a retirement package in August 2013. KFH and TKP made it clear to Mrs. Zepher  
11 she would be fired if she did not accept that early retirement proposal.

12           17. In late 2013 plaintiff belatedly was diagnosed with lung cancer. As they had procured  
13 her forced retirement by then, defendant entity did not offer a leave of absence with full medical  
14 coverage or any other form of accommodation. Faced with imminent firing, plaintiff reluctantly  
15 agreed to retire. Previously during her employment, plaintiff was not apprised of the option to  
16 obtain a long-term disability plan through Kaiser. For the first few months after she had to leave  
17 the workplace, without unemployment benefits or disability payments, plaintiff had no income.  
18 This economic deprivation increased the stress she experienced while she underwent major  
19 surgery to remove a lung and suffered through chemotherapy.

20           18. Plaintiff is a person of color. The actions taken against her and others, taken in  
21 context, had racial overtones. In her first DFEH complaint plaintiff raised the issue of violation of  
22 her civil rights and interference with the exercise of her First Amendment freedoms as she did not  
23 yet recognize the racial nature of the gender discrimination or harassment duress motivation of her  
24 employer from the events and incidents that had been occurring.

#### 25                                   IV.     CLAIMS FOR RELIEF

26           19. Plaintiff alleges defendant hospital and its parent corporation adopted a discriminatory  
27 policy of harassing and then terminating long-term employees. This greatly reduced the pension  
28 entitlements of those employees who were over 60 years but wanted to work until 65 or 70. The

1 harassment and termination hand fell hardest on racial minorities and those with medical  
2 conditions and disabilities. A heavy hand also fell upon those employees who spoke up and  
3 complained about discrimination as plaintiff had been doing. In this regard, plaintiff brings her  
4 claims for relief under the cited federal and state employee protection laws, and she alleges  
5 Defendants acted intentionally to harass and intimidate her with knowledge of the discriminatory  
6 and retaliatory result they sought and achieved. Plaintiff contends the individual defendant and  
7 Does were acting wrongfully and within the course and scope of their employment, knowingly  
8 directed by or with the acquiescence of their employer to carry out its intentional discrimination.

9 **V. CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**

11 *(DISCRIMINATION AND CONSTRUCTIVE TERMINATION*

12 *IN VIOLATION OF ADEA by Kaiser)*

13 20. Plaintiff incorporates the above paragraphs as though more fully set forth herein.

14 21. Plaintiff began working for Kaiser in 1990, and was constructively terminated on  
15 December 20, 2013, when she was 61 years old and forced to retire or be fired. Plaintiff is an  
16 individual entitled to protection of the Age Discrimination in Employment Act. She is over 40  
17 years of age, and Defendant company employs more than 20 persons. Defendants discriminated  
18 against plaintiff and forced her retirement in violation of 29 USC 621-634. The asserted reasons  
19 provided for continually reporting and disciplining plaintiff prior to that were false and pretextual,  
20 but they caused plaintiff to believe she would be fired (as she saw happening to other senior  
21 employees) if she did not accept the retirement package offered. Defendants harassed plaintiff  
22 based in whole or in part upon her age.

23 22. Defendant Kaiser's course of conduct included harassment, denial of accommodation  
24 of those with injuries or disabling medical conditions and then termination or forced retirement for  
25 plaintiff and other senior employees. Older employees with disabilities were specifically singled  
26 out for discrimination or, at least, this unfair treatment was more common and manifest with older  
27 employees. Defendants' actions, in forcing her to retire, were malicious and oppressive and  
28 intended to harm plaintiff, and she should be awarded punitive damages in this regard.

**SECOND CAUSE OF ACTION**

***(DISCRIMINATION AND RETALIATION BY FRANK HARRISON)***

23. Plaintiff incorporates the above paragraphs as though more fully set forth herein.

24. In keeping with the Kaiser policy of ending the employment of those over 50 who would be eligible for substantial pension benefits, especially if they were female and persons of color, defendant Harrison began to write up plaintiff and criticize her actions with the slightest reason or for no valid reason. On March 6, 2009, he wrote a complaint accusing her of not being timely in getting meals out; this was a common unwarranted criticism. Plaintiff responded she was not the problem and should not be singled out. This was followed by a number of complaints about her location at work on or off break, all deriving from employees engaging in regular surveillance of her activities. The surveillance and extra scrutiny were disturbing and went to the extent plaintiff felt she had a constantly hostile work environment.

25. On April 23, 2009, she received a written memo stating Harrison wanted to meet with her and a Shop Steward to investigate some alleged irregularities. Plaintiff replied saying defendant Harrison had been harassing her for more than a year, and she did not want to meet with him. He labeled that as insubordination. She referenced the discriminatory nature of his allowing other employees to be tardy daily, call in sick and take vacation without having any leave. In July she received a warning for alleged insubordination from another incident.

26. On September 16, 2009, during a meeting, Harrison kicked plaintiff on the leg. He said he did not mean it. When she was out sick the next day, because the meeting and the battery had been so stressful, Harrison called her at home and demanded a doctor's note regarding her absence. No manager had requested this type of proof of her, and it was not required of other employees.

27. In October 2009 Defendant Harrison complained plaintiff was five minutes late, but on the same day a male employee was 45 minutes late and drew no criticism. That male and other employees commonly came in late, without receiving negative comments. On October 27, 2009, plaintiff received from defendant Harrison her first poor evaluation, a standard form of employer

1 harassment and retaliation. Plaintiff responded she was being treated unfairly. This was soon  
2 after she had submitted a complaint to DFEH for gender and age discrimination. She considered  
3 the evaluation to be unfair, inaccurate and purely retaliatory.

4 28. Harrison had called her into his office 10 times to take up one issue or another, being  
5 hypercritical about minor matters. He also subjected plaintiff to angry outbursts. On November  
6 10, 2009, she was suspended for one day based on another claim of insubordination. Every  
7 disagreement of speaking up, even after she was no longer shop steward seemed to be called  
8 insubordination. In January 2010, plaintiff sent a memo to Human Resources complaining about  
9 women being treated unfairly. The harassment and retaliation continued throughout the remainder  
10 of her employ at Kaiser.

11 29. Defendant Harrison's actions were malicious and oppressive and intended to harm  
12 plaintiff, and she should be awarded punitive damages in this regard.

13 **THIRD CAUSE OF ACTION**

14 *(DISCRIMINATION AND RETALIATION BY JEREMY ROSENBERG)*

15 30. Plaintiff incorporates the above paragraphs as though more fully set forth herein.

16 31. When Harrison was replaced by Jeremy Rosenberg, the pattern of harassment and  
17 retaliation continued. By September 2013 the scrutiny and unearned complaints about minor  
18 matters had become almost constant. Plaintiff was asked impermissible non-job related personal  
19 questions. Amid the surveillance, even normal actions were questioned, and plaintiff had to  
20 explain why she was standing where she was and not somewhere else; why she did or did not do  
21 something; and told to do a task one way and then told to do it another way by someone different.

22 32. As examples of the harassment she had endured, plaintiff was interrupted at lunch,  
23 watched incessantly and her workplace conversations were monitored. Other employees were told  
24 not to talk to her when they came to the department. She was called into the office and told she  
25 was a negative person and that is why no one likes her. When another employee was off work  
26 sick, he/she was not replaced, and plaintiff was required to do their work in addition to her own.  
27 This was even though there was a roving replacement available. Plaintiff was required to have a  
28 doctor's note when she called in sick even though her file showed she had a chronic illness, even  
before her cancer was diagnosed.



1           33. So petty were Rosenberg's complaints, he criticized her fingernails. He harassed her  
2 and he or another followed her. On October 1, 2013, he took issue regarding how and when she  
3 washed her hands. When she responded she could handle required hygiene, he told her to go  
4 home, and when she objected, he said he would call security. Later the nursing supervisor came to  
5 plaintiff and told her to go home for insubordination, placing her on leave, humiliating her as these  
6 scenes had played out in front of other staff.

7           34. Defendant Rosenberg's actions were malicious and oppressive and intended to harm  
8 plaintiff, and she should be awarded punitive damages in this regard.

9                           **FOURTH CAUSE OF ACTION**

10                   *(CONSTRUCTIVE TERMINATION IN VIOLATION OF PUBLIC POLICY)*

11           35. Plaintiff incorporates the above paragraphs as though more fully set forth herein.

12           36. The prohibition embodied in federal and state statutes, to refrain from terminating  
13 employees for discriminatory reasons, is a well-established public policy. It is a violation of those  
14 policies to discriminate based upon gender, age or race or in retaliation for having made a  
15 complaint of discrimination as plaintiff did in 2009. Plaintiff became noticeable as a person, in  
16 Kaiser's eyes, who was a malcontent, when she began complaining about discrimination. She  
17 originally focused upon gender discrimination without examining the age and racial motivations  
18 that were also present.

19           37. Knowing of this public policy as a supervisor and managerial employee, Frank  
20 Harrison and then Jeremy Rosenberg harassed, pressured and injured plaintiff. They forced her to  
21 take early retirement when she was experiencing serious respiratory issues, or face being fired.  
22 Plaintiff has suffered financial and emotional distress and has been harmed by the acts of the  
23 corporate and individually named defendants committed with fraud, malice and oppression, and  
24 she is entitled to punitive damages.

25                           **FIFTH CAUSE OF ACTION**

26                   *(VIOLATION OF AMERICANS WITH DISABILITIES ACT)*

27           38. Plaintiff incorporates the above paragraphs as though more fully set forth herein.  
28



39. The American's with Disabilities Act of 1990, 42 U.S.C. 12100, et seq., prohibits employers from discriminating against individuals because of their disabilities. Discrimination includes harassment, intimidation, and retaliation against those who have made a claim or needed to take a medical leave of absence. Defendant discriminated against Plaintiff, a qualified individual with a disability and a chronic illness, when it failed to provide reasonable accommodation, a medical leave, and pressured her to retire instead. Defendant KPH had already subjected her to multiple adverse employment actions, gender discrimination, harassing and hostile work conditions, and then finally constructive discharge/forced retirement. This is in addition to medical malpractice in its failure to diagnose her lung cancer at an earlier stage.

40. Defendants' actions were malicious and oppressive and intended to harm plaintiff. She should be awarded punitive damages in this regard.

**SIXTH CAUSE OF ACTION**

*(DISCRIMINATION AND RETALIATION IN VIOLATION OF FEHA)*

41. Plaintiff incorporates the above paragraphs as though more fully set forth herein.

42. Plaintiff was discriminated against for reporting her employer's violations of the various laws against discrimination. She was retaliated against for seeking gender equality in treatment, and she suffered unwarranted adverse employment actions, ending in a constructive termination in the form of a forced retirement rather than a medical leave for cancer treatment. This denial of her rights and refusal to provide needed accommodation and the resulting retaliation were performed by Jeremy Rosenberg and the individual Doe defendants acting separately and in concert, at the request and direction of KPH to carry out the unlawful policies of defendant employer.

43. Plaintiff suffered extreme emotional and financial distress and has been harmed by the acts of the corporate and individually named defendants and she should be fully compensated for her injuries. Defendants' actions were malicious and oppressive and intended to harm plaintiff and she should be awarded punitive damages in this regard.

44. Plaintiff suffered extreme emotional and financial distress and has been harmed by the acts of the corporate and individually named defendants and she should be fully compensated for

1 her injuries. Defendants' actions were malicious and oppressive and intended to harm plaintiff  
2 and she should be awarded punitive damages in this regard.

3 **SEVENTH CAUSE OF ACTION**

4 *(DISCRIMINATION BASED UPON RACE)*

5 45. Plaintiff incorporates the above paragraphs as though more fully set forth herein.

6 46. Plaintiff is an African American woman and entitled to protections from racial  
7 discrimination under 42 USC 2002(e), Govt Code 12940, et seq., and other federal and state  
8 statutes. When plaintiff was diagnosed with lung cancer and needed to be off work for surgery  
9 and treatment, Defendants declined to offer her an accommodation, a medical leave, based in  
10 whole or in part upon her race. Such an accommodation was not favored by Kaiser for persons of  
11 color. The pressure to retire prematurely, accompanied with harassment (repeated false write ups  
12 and criticism) and the threat of termination, fell mostly upon persons of color.

13 47. This course of conduct included harassment, denial of accommodation and threatened  
14 termination for plaintiff and other employees who were persons of color. Racial and ethnic  
15 minority employees with disabilities were specifically singled out for discrimination or, at least,  
16 this unfair treatment was more common and manifest with employees who obviously were persons  
17 of color or ethnic minorities. Defendants' actions were malicious and oppressive and intended to  
18 harm plaintiff, and she should be awarded punitive damages in this regard.

19 **EIGHTH CAUSE OF ACTION**

20 *(INTENTIONAL/NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS)*

21 48. Plaintiff incorporates the above paragraphs as though more fully set forth herein.

22 49. In the latter part of 2013, plaintiff was having breathing difficulties and constant  
23 uncontrollable coughing. She worked in a hospital with medical personnel all around her and yet  
24 no one, including her Kaiser physician, recognized or diagnosed her as suffering from lung cancer  
25 during this critical period. She knew she was ill but did not yet know she would be facing surgery  
26 and chemotherapy. The effect of stress on one's medical condition and the likelihood it will  
27 contribute negatively to a good recovery is well known.  
28

1           50. In light of all the above, defendant Rosenberg's harassment caused plaintiff to suffer  
2 severe emotional distress and added to her weakened medical condition, affecting her treatment  
3 outcome. The harassment she was facing and her inability to continue dealing with it in her  
4 damaged mental and physical state, were substantial factors in her acquiescence to accept the  
5 retirement package she was offered, especially with the duress of the alternative; she would be  
6 fired if she did not take the offer.

7                                   **NINTH CAUSE OF ACTION**

8                                   (MEDICAL NEGLIGENCE)

9           51. Plaintiff incorporates the above paragraphs as though more fully set forth herein.

10           52. Defendant Kimberly Larson, M. D. treated plaintiff and examined her for a pulmonary  
11 issue. At the time in early 2013, the Kaiser physician did not identify, follow up or diagnose the  
12 dark shadow in plaintiff's lung as cancer. Although plaintiff was a smoker with a chronic cough,  
13 plaintiff's condition was not recognized or diagnosed until December 2013. By that time the  
14 cancer had advanced to the point plaintiff had to have the lung removed. Thereafter, plaintiff had  
15 to undergo debilitating chemotherapy.

16           53. Dr. Larson's failure to diagnose and treat plaintiff timely was below the standard of  
17 care expected of physicians, and/or defendant lacked the skills and observational abilities to allow  
18 her to perform in conformance with professional expectations and requirements. Plaintiff has  
19 been injured by the delay in diagnosis, and that delay was a primary factor in causing her injuries  
20 and the pain and suffering she has been experiencing. Plaintiff should be compensated therefore.

21                                   **VI.**

22                                   **RELIEF REQUESTED**

23           Plaintiff requests the judgment of this Court against Defendants as follows:

- 24           (1) Find and hold Plaintiff has suffered from Defendants' acts of discrimination;  
25           (2) For money damages in an amount in excess of \$100,000;  
26           (3) For an award of punitive damages to serve as an example in an amount to be  
27 determined at trial of this matter;  
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1 (4) For an award of statutory attorney fees, including litigation expenses, and the costs  
2 of this action; and

3 (5) Such other and further relief as may be just and proper.

4 (6) **Plaintiff demands trial by jury.**

5  
6 Dated: October 27, 2013

LAW OFFICES OF ELLEN C. DOVE

7  
8 BY: /s/ Ellen C. Dove  
9 ELLEN C. DOVE, Esq.  
10 Attorney for Plaintiff  
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