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ALAMEDA COUNTY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
ALAMEDA COUNTY

MICHELLE LEWIS,
Plaintiff,

v.

THE PERMANENTE MEDICAL GROUP,
KAISER FOUNDATION HOSPITALS,
KAISER FOUNDATION HEALTH PLAN,
AND DOES 1 through 10, inclusive,
Defendants.

Case No. **RG14747077**

COMPLAINT FOR DAMAGES AND
DECLARATORY AND INJUNCTIVE RELIEF
FOR VIOLATIONS OF THE FAIR
EMPLOYMENT AND HOUSING ACT;
ADVERSE EMPLOYMENT ACTION IN
VIOLATION OF PUBLIC POLICY; AND THE
UNFAIR BUSINESS PRACTICES ACT

DEMAND FOR JURY TRIAL

Plaintiff Michelle Lewis, for causes of action against Defendants, and each of them,
alleges as follows:

I. INTRODUCTION

1. This is an action for relief from Defendants' violations of Plaintiff's civil rights in
contravention of the Fair Employment and Housing Act (FEHA), Cal. Gov't Code § 12900, *et*
seq., and the Unfair Business Practices Act, Cal. Business & Prof. Code § 17200, *et seq.*, as well
as for Adverse Employment Action in Violation of Public Policy. Plaintiff also intends to add a
claim for violation of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101, *et*

BY FAX

1 seq. once her complaint pending before the Equal Employment Opportunity Commission has
2 completed. Plaintiff Lewis is a person with disabilities who is being denied access to her
3 workplace because of her status as a person with disabilities who uses a service dog.

4 2. Plaintiff Lewis has worked for at the Kaiser San Rafael hospital since 2001.
5 Seven years ago, she lost one of her legs when it was amputated due to cancer. She also has
6 psoriatic arthritis, which causes her to suffer significant lower back pain. Walking and standing
7 (on her remaining leg) can be extremely painful and she must measure her activity level to
8 conserve energy and avoid fatigue. She now uses a wheelchair and lives in the company of a
9 service dog, Angel, who assists her with many daily activities, helps her to conserve her energy,
10 and enables her independence.

11 II. JURISDICTION AND VENUE

12 3. This Court has jurisdiction over Plaintiff's claims pursuant to California
13 Government Code § 12965. Venue is proper in this Court because, pursuant to Section 12965,
14 because, on information and belief, Alameda County is the county in which records relevant to
15 the alleged unlawful practices, including Kaiser's human resources practices and policies, are
16 maintained and administered.

17 III. PARTIES

18 4. Plaintiff Lewis is a resident of Novato, California, and is a person with a disability
19 under the FEHA, Cal. Gov. Code § 12926, and Title I of the ADA. Plaintiff also has a record of
20 disability within the meaning of these laws. Plaintiff is informed and believes, and thereon
21 alleges, that Defendants also regard her and treat her as disabled within the meaning of these
22 laws.

23 5. Defendants Kaiser Permanente Medical Group, Kaiser Foundation Hospitals and
24 Kaiser Foundation Health Plan are covered entities for the purposes of the laws cited herein.
25 Defendants are headquartered in Oakland, California and maintain facilities throughout Northern
26 California, including in San Rafael where Plaintiff works and Oakland where they are
27 headquartered, maintain records, and direct and manage human resources for their various
28 facilities. Defendants employ more than 15 people, and are entities covered by the ADA and the

1 FEHA. Defendants are referred to herein, collectively, as "Kaiser Permanente" or "Kaiser."

2 6. The true names and capacities of Defendants DOES 1 through 10, inclusive, are
3 presently unknown to Plaintiff. Plaintiff will amend this complaint, setting forth the true names
4 and capacities of these fictitious Defendants, when they are ascertained. Plaintiff is informed
5 and believes and on that basis alleges that each of the fictitious Defendants has participated in the
6 acts alleged in this complaint to have been done by the named Defendants.

7 7. Plaintiff is informed and believes and on that basis alleges that, at all relevant
8 times, each of the Defendants, whether named or fictitious, was the agent or employee of each of
9 the other Defendants with respect to some or all of the actions taken, and in doing the things
10 alleged to have been done in the complaint, acted within the scope of such agency or
11 employment, or ratified the acts of the other.

12 IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES

13 8. On or about May 13, 2014, Plaintiff Lewis filed a written complaint of
14 discrimination with the Equal Employment Opportunity Commission (EEOC). Subsequently,
15 the EEOC and the California Department of Fair Employment and Housing (DFEH) issued a
16 joint charge of discrimination signed by Plaintiff Lewis on June 25, 2014. The charge of
17 discrimination alleged that Plaintiff Lewis was subject to disability-based discrimination.

18 9. Plaintiff received a notice of her right to sue from the DFEH dated August 13,
19 2014.

20 10. Plaintiff has not yet received a "right to sue" notice from the EEOC and therefore
21 reserves her right to amend her complaint at a later date to allege claims under the ADA.

22 V. STATEMENT OF FACTS

23 11. Michelle Lewis went to work for Kaiser Permanente in 2001 as an emergency
24 room technician. In approximately 2008, she began working in her current role as unit assistant.
25 Over the years, she has worked in virtually every unit of Kaiser's San Rafael hospital. Her
26 Kaiser supervisors and managers have consistently provided positive ratings of Ms. Lewis' job
27 performance, often praising her work ethic and contributions.

28 12. As a unit assistant, Ms. Lewis' duties involve providing administrative support for

1 medical professionals, including answering phones, monitoring and responding via intercom to
2 call lights, making patient appointments and other administrative duties. She is trained to and
3 capable of working as an assistant for any unit in the hospital. She is not charged with providing
4 any patient care.

5 13. Ms. Lewis lost one of her legs eight years ago when it was amputated due to
6 cancer. After recovery, she returned to work. Ms. Lewis also has psoriatic arthritis, which
7 causes her to suffer significant lower back pain. Walking and standing (on her remaining leg)
8 can be extremely painful and she must measure her activity level to conserve energy and avoid
9 fatigue. Consequently, she dropped down to working as on-call assistant on a part-time basis.

10 14. Kaiser most recently assigned Ms. Lewis to serve as an on-call unit assistant
11 working on the Medical/Surgical Unit at Kaiser Permanente in San Rafael.

12 15. In the fall of 2010, Ms. Lewis applied to Canine Companions for Independence
13 ("Canine Companions") for a service dog to assist her. Service dogs can and do perform many
14 functions for people with mobility problems, such as Ms. Lewis.

15 16. Ms. Lewis learned in January of 2011 that she had been placed on a waiting list to
16 receive a service dog. She waited almost a year for the opportunity to begin to train with a new
17 canine companion.

18 17. In December of 2011, after being notified that her Canine Companion training
19 would begin soon, Ms. Lewis notified her manager that she was going to obtain a service dog
20 and asked if any documentation was required by Kaiser before she could bring her dog to work
21 with her. She received no response.

22 18. On information and belief, Kaiser permits service dogs to accompany patients in
23 its hospitals and other facilities, including but not limited to Kaiser San Rafael.

24 19. On information and belief, dogs are brought in as emotional therapy for patients at
25 many Kaiser facilities, including but not limited to Kaiser San Rafael. Indeed, there is a canine
26 companion assigned to work at the infusion center at Kaiser Richmond.

27 20. On February 6, 2012, Ms. Lewis met Angel, her service dog. Angel is a female
28 Labrador Retriever bred to work as a service dog. She was raised and trained from birth to

1 perform this work. Her training culminated in six months with Canine Companions, where she
2 was professionally trained to perform tasks and to do work such as retrieving, opening doors,
3 turning lights on and off, and pushing disability access buttons. Ms. Lewis then trained with
4 Angel through Canine Companions and became a certified assistance dog handler. She
5 graduated from training on February 17, 2012.

6 21. During the period of time she was in training in February 2012, Ms. Lewis again
7 advised Kaiser that she was soon to have a dog to assist her with daily activities and that she
8 needed to bring him to work with her.

9 22. Angel is trained to assist Ms. Lewis with many aspects her life, including picking
10 things up and delivering them to her, opening doors, and assisting Ms. Lewis in getting up from a
11 seated position or transferring from one seat to another. Because Angel provides this physical
12 support on a consistent, daily basis, Ms. Lewis can conserve her energy. Without Angel, she
13 would become fatigued more quickly and more often.

14 23. A service dog is a unique mode of assistance for Ms. Lewis. For service dogs like
15 Angel to work effectively with their human companions, it is important that they work together
16 continuously and maintain their bond. Separating Angel from Ms. Lewis during work hours
17 would impair their bond, impair Angel's training, reduce opportunities for skills reinforcement,
18 and therefore, detrimentally affect Angel's efficacy as a service dog.

19 24. Before Ms. Lewis reported to work with Angel for the first time, she voluntarily
20 provided Kaiser with a card issued by Canine Companions documenting that Angel was her
21 service dog.

22 25. Ms. Lewis reported to work with Angel during the last weekend of February,
23 2012. She performed her work without incident, accompanied and assisted by Angel.

24 26. On Monday, February 27, 2012, Ms. Lewis' manager called to advise her that the
25 Human Resources Department was demanding a doctor's note to justify Ms. Lewis' need for a
26 service dog. This was the first time Kaiser had asked for any documentation related to Angel.

27 27. Ms. Lewis later received a letter from a Human Resources Department
28 representative, dated February 27, 2012, advising her that she was required to attend a meeting

1 about her need for a service dog before her next scheduled shift.

2 28. Within two days, Ms. Lewis obtained a letter from Canine Companions
3 explaining the myriad ways in which a service dog could assist her. She provided this letter to
4 Kaiser promptly.

5 29. In approximately the first week of March 2012, Ms. Lewis also met with Kaiser's
6 human resources representative who asked Ms. Lewis to explain how she was legally disabled
7 and to justify her need for a service dog. Ms. Lewis objected to the requirement that she provide
8 a doctor's note and pointed out that her status as a person with a disability is obvious given that
9 she is a below-the-knee amputee.

10 30. During the meeting, Ms. Lewis also explained that her doctor was involved in
11 overseeing her medical care and was not in a position to know how Angel assists her. She
12 further advised that Canine Companions, which had already provided a letter supporting her need
13 for Angel, was the better expert on how a service dog assists her as a person with disabilities.
14 Despite this, Kaiser insisted on a note from Lewis' physician.

15 31. At Kaiser's insistence, Ms. Lewis also provided a letter from her Kaiser doctor
16 documenting her status as an amputee and supporting her request to bring her service dog to
17 work. Although this letter was provided in advance of Ms. Lewis' next scheduled day of work,
18 Kaiser refused to permit her to return to work with Angel.

19 32. On March 28, 2012, Kaiser sent Ms. Lewis' Kaiser doctor a letter demanding that
20 the doctor detail "how the service animal will assist Michelle in performing her job duties." The
21 letter did not ask for any information with regard to non-job-related reasons why Ms. Lewis
22 needs to work with Angel, nor did it provide the doctor with information regarding Ms. Lewis'
23 job duties.

24 33. On April 30, 2012, Ms. Lewis' Kaiser doctor wrote a second letter specifying
25 some of the physical activities that cause her difficulty, specifically "bending over and opening
26 heavy doors which may cause her to lose her balance." The doctor's note went on to state "ADA
27 regulation allows her to bring her dog with her to her place of employment."

28 34. On May 18, 2012, Ms. Lewis met with a Kaiser human resources representative

1 who told her that Kaiser refused to permit Angel to assist Ms. Lewis at work. The Kaiser human
2 resources representative told Ms. Lewis in the meeting and in a follow-up letter that she had
3 determined that using a cane and automatic door openers would be "at least as effective as a
4 service dog in alleviating any difficulties with opening heavy doors and bending over."

5 35. On information and belief, Kaiser did not consult with any expert, medical or
6 otherwise, in the process of responding to the information provided by Ms. Lewis, her physician,
7 or Canine Companions regarding her need to work with Angel at her side.

8 36. Following the May 18, 2012, meeting, Kaiser stopped scheduling Ms. Lewis for
9 work shifts. Kaiser's denial of access to the workplace for Ms. Lewis and her service dog has
10 continued since late February 2012 and is ongoing.

11 37. Over time, Ms. Lewis and her union representatives made multiple requests for
12 Kaiser to permit her to return to work with Angel and provided Kaiser additional information to
13 explain why Ms. Lewis needs Angel at her side. In one such communication, a union
14 representative objected to the narrow analysis Kaiser conducted with regard to the service animal
15 request, stating, in part:

16 Kaiser's alleged engagement in the interactive process was limited, based
17 on what the service animal could do that Ms. Lewis could not, failing to
18 consider judicial rulings wherein employers have been required to allow
19 service animals in the workplace to alleviate physical fatigue on persons
20 with mobility disabilities or improve the quality of life of the disabled
21 person.

22 38. Rather than responding to the substance of the issues raised by Ms. Lewis or her
23 union representatives, Kaiser's consistent position was that it had offered alternate "reasonable
24 accommodations" and that Ms. Lewis could only come to work without Angel.

25 39. On information and belief, Kaiser maintains policies and/or practices which: (1)
26 deny access to employees with service animals; (2) only permit employees to bring service
27 animals to work if they can prove that the animal would assist with the employee's work duties;
28 (3) require individuals with obvious disabilities to provide medical documentation proving they
are disabled; (4) fail to comply with the legal requirement of engaging in a prompt, good faith
interactive process in response to any request for accommodation; (5) fail to give primary

1 consideration to the preference of individuals with disabilities when choosing between
2 accommodations which the employer considers equally effective and where no undue hardship
3 or additional cost can be shown; and/or (6) otherwise fail to comply with the legal mandates of
4 the Americans with Disabilities Act and/or California Fair Employment and Housing Act related
5 to equal access and reasonable accommodations for individuals with disabilities.

6 40. Although she has not been permitted to return to work, Ms. Lewis continues to be
7 a Kaiser employee. Kaiser's duty to accommodate her is continuous and ongoing.

8 41. Ms. Lewis has made multiple requests to return to work with Angel since March
9 of 2012, including providing the employer with additional information regarding her medical
10 condition and/or need for Angel's assistance as a service animal. This includes but is not
11 necessarily limited to requests made by her or her union representative on March 28, April 2,
12 April 10, May 4, July 26, and September 3, 2012.

13 42. The most recent request to return to work with Angel was made on November 19,
14 2013. In that communication, Ms. Lewis advised Kaiser that her disabilities have progressed to
15 the extent that she now uses a wheelchair and that this circumstance makes her need to work
16 with Angel even more imperative.

17 43. Kaiser has not permitted Ms. Lewis to return to work with Angel, nor has it even
18 responded to Ms. Lewis' November 2013 request.

19 VI. DECLARATORY RELIEF ALLEGATIONS

20 44. Plaintiff incorporates by reference as if fully set forth herein the allegations
21 contained in foregoing Paragraphs.

22 45. An actual controversy exists between Plaintiff and Defendants concerning their
23 respective rights and duties. Plaintiff contends that Defendants have violated and continue to
24 violate her rights under the ADA, the FEHA, the Unfair Business Practices Act, and
25 California's public policy. Plaintiff is informed and believes, and thereupon alleges, that
26 Defendants deny that these actions were unlawful. Declaratory relief is therefore necessary and
27 appropriate.

28 46. Plaintiff seeks a judicial declaration of the rights and duties of the respective

1 parties, including a declaration of Defendants' duty to comply with the law.

2 **VII. INJUNCTIVE RELIEF ALLEGATIONS**

3 47. Plaintiff incorporates by reference as if fully set forth herein the allegations
4 contained in foregoing Paragraphs.

5 48. If this Court does not grant the injunctive relief sought herein, Plaintiff will be
6 irreparably harmed.

7 49. No plain, adequate, or complete remedy at law is available to Plaintiff to redress
8 the wrongs addressed herein.

9 **VIII. CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**

11 Disability-Based Discrimination in Violation of
12 The Fair Employment and Housing Act
Cal. Gov't Code § 12940(a), (i)

13 50. Plaintiffs incorporate by reference as if fully set forth herein the allegations
14 contained in foregoing Paragraphs.

15 51. It is unlawful under the FEHA for an employer to discriminate because of the
16 physical disability of any person. Cal. Gov't Code § 12940(a).

17 52. Based on the facts alleged in this complaint, Defendants have violated the rights
18 of Plaintiff Lewis to be free from disability-based discrimination, to be afforded equal access
19 under the law, and/or to be provided reasonable accommodation.

20 53. Defendants' unlawful actions and inactions were and are intentional and/or done
21 with willful and conscious disregard to the right of Plaintiff Lewis to be free from
22 discrimination based on disability, thus entitling Plaintiff to punitive damages.

23 54. As a proximate result of the unlawful acts alleged herein, Plaintiff has suffered
24 injuries, including emotional distress injuries.

25 55. Plaintiff is entitled to compensatory damages, any lost benefits and compensation,
26 injunctive and declaratory relief, and attorneys' fees and costs.

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SECOND CAUSE OF ACTION

Adverse Employment Action in
Violation of Public Policy

56. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in foregoing Paragraphs.

57. Defendants discriminated against Plaintiff Lewis on the basis of disability.

58. Based on the facts alleged in this complaint, Defendants' actions violate the fundamental public policies of the State of California to bar employers and other covered entities from discriminating against their employees because of disability. These public policies are embodied, among elsewhere, in California Government Code §§19230(a) and 12940 *et seq.*, and the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.*

59. Based on the facts alleged in this complaint, Defendants have violated the rights of Plaintiff Lewis to be free from disability-based discrimination, to be afforded equal access under the law, and/or to be provided reasonable accommodation.

60. Defendants' unlawful actions and inactions were and are intentional and/or done with willful and conscious disregard to the right of Plaintiff Lewis to be free from discrimination based on disability, thus entitling Plaintiff to punitive damages.

61. As a proximate result of the unlawful acts alleged herein, Plaintiff has suffered injuries, including emotional distress injuries.

62. Plaintiff is entitled to compensatory damages, any lost benefits and compensation, injunctive and declaratory relief, and attorneys' fees and costs.

THIRD CAUSE OF ACTION

Unfair Business Practices in Violation of
California's Unlawful Business Practices Act,
Cal. Business & Prof. Code § 17200, *et seq.*
On Behalf of Plaintiff Lewis

63. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in foregoing Paragraphs.

64. Unfair practices prohibited by California's Unfair Business Practices act include "any unlawful, unfair or fraudulent business act or practice." Cal. Bus. & Prof. Code § 17200.

65. By maintaining the policies and/or practices described in this complaint,

1 Defendants have committed *unlawful* and unfair business practices, including but not limited to
2 the following:

3 (a) discriminating against Plaintiff Lewis on the basis of disability in
4 violation of the ADA and the FEHA;

5 (b) interfering with the rights of Plaintiff Lewis in violation of the ADA; and

6 (c) adverse employment action in violation of California's public policy.

7 66. Violations of these statutes were and are unlawful. Violations of these statutes
8 also violate established concepts of fairness, are immoral, unethical, oppressive, and
9 unscrupulous.

10 67. As a proximate result of the unlawful and unfair business practices of
11 Defendants, and each of them, Plaintiff has suffered injury in fact and has lost money or
12 property.

13 68. Plaintiff Lewis is entitled to restitution, declaratory relief, injunctive relief, and
14 attorneys' fees and costs.

15 **IX. RELIEF REQUESTED**

16 WHEREFORE, Plaintiffs respectfully requests that this Court:

17 1. Grant all injunctive relief necessary to bring Defendants into compliance with the
18 ADA, the FEHA, and the Unfair Business Practices Act;

19 2. Grant declaratory relief;

20 3. Order Defendants to pay Plaintiff for any compensation denied or lost by reason
21 of Defendants' violations of the law, in an amount to be proven at trial;

22 5. Order Defendants to pay compensatory damages for emotional pain and suffering
23 in an amount to be proven at trial;

24 6. Order Defendants to pay exemplary and punitive damages on the First through
25 Fifth causes of action;

26 7. Order Defendants to pay restitution;

27 8. Order Defendants to pay Plaintiff's reasonable attorneys' fees, reasonable expert
28 witness fees, and other costs of the action;

1 9. Order Defendants to pay interest on such damages as are appropriate, including
2 pre- and post-judgment interest;

3 10. Grant such other and further relief as this Court may deem proper and just.

4 **X. JURY DEMAND**

5 Plaintiff demands trial by jury of all claims and causes of action so triable.

6 LEVY VINICK BURRELL HYAMS LLP

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8 Date: November 4, 2014

9 By: 

10 Jean K. Hyams
11 Attorneys for Plaintiff
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