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SUPERIOR COURT STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SACRAMENTO

AMERY MERRIWEATHER,

Plaintiff,

v.

KAISER FOUNDATION HOSPITALS  
dba KAISER PERMANENTE  
MARTHA RUVALCABA, AND DOES 1-  
50, inclusive,

Defendants.

CASE NO.

CIVIL COMPLAINT FOR DAMAGES  
DEMAND FOR JURY TRIAL

1. Discrimination Based on Race,  
National Origin, Ethnicity  
[Government Code § 12940 (a)]
2. Harassment/Hostile Work  
Environment Based on Race,  
National Origin, Ethnicity  
[Government Code § 12940 (j)]
3. FEHA Retaliation [California  
Government Code Section 12940  
(h)]
4. Failure to Prevent  
Discrimination/harassment from  
Occurring [Govt. Code § 12940(k)]



COMES NOW Plaintiff AMERY MERRIWEATHER and complains and alleges as follows:

**I. PARTIES**

1. Plaintiff AMERY MERRIWEATHER (hereinafter "Plaintiff MERRIWEATHER") is and at all times pertinent was an African-American/Black Man and a resident of the State of California, County of Sacramento. The acts alleged occurred in the County of Sacramento. At all times mentioned herein, Plaintiff MERRIWEATHER was an "employee" of Defendant KAISER FOUNDATION HOSPITALS dba KAISER PERMANENTE within the meaning of the California Fair Employment and Housing Act" as that term is defined by Government Code section 12926 ( c). Throughout Plaintiff MERRIWEATHER's employment by Defendant KAISER, he has always performed his duties in a satisfactory manner.

2. Defendant KAISER FOUNDATION HOSPITALS dba KAISER PERMANENTE (hereinafter Defendant KAISER) is, and at all times relevant hereto was, a California Corporation (California Corporate Number C0224971) is now at all times mentioned herein is a corporation doing business within the County of Sacramento and is an employer within the meaning of California Government Code §12926(d). Plaintiff is informed and believes that the discriminatory, harassing, and/or retaliatory acts and or decisions taken against him in violation of California Government Code §§12940, et seq. occurred within the County of Sacramento, California which may be sued for the wrongful acts of its officers and employees, which are performed within the course and scope of said employment, and is an employer within the meaning of the California Fair Employment and Housing Act. The wrongful actions of Defendant KAISER and its employees causing injury to Plaintiff MERRIWEATHER occurred in the County of Sacramento.

3. Defendant MARTHA RUVALCABA is at all times mentioned herein a supervisory or management employee of Defendant KAISER and the manager/supervisor of Plaintiff MERRIWEATHER as the EVS Manager at Kaiser Sacramento-South in Sacramento County. Defendant MARTHA RUVALCABA is at all times mentioned herein a White/Caucasian American. Plaintiff is informed and believes that Defendant MARTHA

1 RUVALCABA is a resident of the County of San Joaquin, State of California.

2 4. Plaintiff MERRIWEATHER is informed and believes and thereupon alleges that  
3 DOES 1-50, except as otherwise alleged in the specific causes of action, at all times relevant  
4 hereto, were the agents/employees of the defendants were responsible in some actual manner for  
5 the acts, events and happenings referenced herein, and that at all times herein mentioned, the  
6 agents/employees of the defendants were the partners, principals, agents, co-conspirators, and/or  
7 employees of the defendants, and in doing the things herein alleged, each was acting within the  
8 course and scope of such partnership, agency, service, and/or employment, and with the  
9 permission, consent and knowledge of the defendants.

10 5. The true names and capacities of the defendants sued herein under the Code of  
11 Civil Procedure, section 474, as DOES 1 through 50 are unknown to the Plaintiff  
12 MERRIWEATHER, who therefore sues said defendants by such fictitious names and will amend  
13 this complaint to include their true names and capacities when the same are ascertained, together  
14 with appropriate charging allegations. Plaintiff MERRIWEATHER is informed and believes,  
15 and on such information and belief alleges, that each of the fictitiously named defendants, unless  
16 otherwise alleged, are responsible in some manner for the occurrences herein alleged, and that  
17 Plaintiff MERRIWEATHER's injuries were proximately caused by these defendants.

## 18 II. JURISDICTION AND VENUE

19 6. This action is brought pursuant to California Government Code sections 12920, et  
20 seq., and the rules, regulations, and directives implementing said statutes.

21 7. Plaintiff MERRIWEATHER has exhausted all of his required administrative  
22 remedies prior to the filing of this complaint by filing claims with the Department of Fair  
23 Employment and Housing and timely filing the instant action.

24 8. Plaintiff MERRIWEATHER contacted the Department of Fair Employment and  
25 Housing (hereinafter "DFEH") and filed with them a Right to Sue Packet and Complaint on  
26 December 20, 2017 alleging racial discrimination, racial harassment, retaliation, and failure to  
27 prevent discrimination, harassment, and retaliation against him by Defendant KAISER and his  
28 supervisor/manager Defendant MARTHA RUVALCABA . A true and correct copy of this Right

1 to Sue Packet and Complaint is attached hereto as "Exhibit A."

2 9. On January 18, 2018, DFEH mailed a Notice to Complainant's attorney along  
3 with a Notice of Filing of Discrimination Complaint, a Notice of Case Closure and Right to Sue,  
4 a DFEH Complaint for Case No. 201801-00846818 date December 20, 2017 with a portion of  
5 the Notice of Right to Sue packet attached. The notice of Right to Sue indicates that the instant  
6 "civil action must be filed within one year of the date of this letter" which was January 18, 2018.  
7 True and correct copies of these documents are attached hereto as "Exhibit B."

8 10. On March 20, 2018, Plaintiff MERRIWEATHER's counsel served the  
9 administrative DFEH complaint on Defendant KAISER by certified mail return receipt requested  
10 to Defendant KAISER by certified mail. A true and correct copy of the letter is attached as  
11 "Exhibit C" and incorporated herein as if stated in full. Exhibits "A" and "B" to this complaint  
12 were provided along with "Exhibit C" to Defendant KAISER at that time.

13 **III. GENERAL ALLEGATIONS-STATEMENT OF FACTS**

14 11. Plaintiff MERRIWEATHER was hired by Defendant KAISER in 2004. He was  
15 employed as a Housekeeping Aide at the Kaiser Permanente South Sacramento from as early as  
16 April 2012 until he was put on administrative leave on or about February 9, 2017. At all times  
17 mentioned herein, Plaintiff MERRIWEATHER, satisfactorily performed the duties of his  
18 position.

19 12. Plaintiff MERRIWEATHER was treated to differential treatment than other  
20 employees at Defendant KAISER by Defendant MARTHA RUVALCABA due to his race and  
21 ethnicity a African-American/Black man. Defendant MARTHA RUVALCABA from April 2012  
22 until Plaintiff MERRIWEATHER was put on administrative leave on or about February 9, 2017,  
23 on a continuous basis. The EVS Manager Martha Ruvalcaba (Hispanic) would give preferential  
24 treatment to Hispanic employees concerning the terms and conditions of their work including 1)  
25 selection of preferential job assignments; 2) ability to change the areas where they were going to  
26 work on the same day which they were scheduled elsewhere; 3) equipment which are needed for  
27 doing the job; 4) preferential consideration in hiring and promotion; 5) she would allow Hispanic  
28 employees to be paid for time which they were not working and not discipline them; and 5)

1 Hispanic employees were treated with courtesy whereas Plaintiff MERRIWEATHER was treated  
2 with hostility due to his race as an African-American/ Black man.

3 13. Plaintiff MERRIWEATHER was continuously denied the ability to switch job  
4 assignment and have received adverse treatment by my manager Martha Ruvalcaba concerning  
5 job placements. Attached as "Exhibit 1" to "Exhibit A" to this Complaint is a copy of a  
6 "Complaint Form" Plaintiff MERRIWEATHER provided to Defendant KAISER concerning his  
7 discriminatory job assignment placement on February in 2014 which is incorporated herein as if  
8 restated in full.

9 14. To cause further insult to injury, Defendant MARTHA RUVALCABA retaliated  
10 for the filing of the February "Complaint Form" and took Plaintiff MERRIWEATHER's job  
11 assignment away from him in March 2014, even though Plaintiff MERRIWEATHER provided  
12 proof during the "Rebid Meeting" of his right to remain in the position. Defendant KAISER  
13 PERMENETE's Human Resources ratified Defendant MARTHA RUVALCABA's conduct by  
14 not allowing me to remain in my job assignment.

15 15. Starting in 2015, Plaintiff MERRIWEATHER was continuously pulled out of my  
16 job assignment and was told by the supervisor that they were given specific instructions from  
17 Defendant MARTHA RUVALCABA for Plaintiff MERRIWEATHER to remain in his area  
18 assignment while others were given the options to move around to other areas.

19 16. On or about October 10, 2016, Plaintiff MERRIWEATHER made a complaint  
20 with his union and the union emailed Defendant KAISER concerning Plaintiff being pulled out  
21 of my areas.

22 17. On January 13, 2017, Plaintiff MERRIWEATHER requested Defendant  
23 MARTHA RUVALCABA to allow him to be assigned to a different area since she moved  
24 Plaintiff and allowed Misty Feliciano (Hispanic) to move the day before. Defendant MARTHA  
25 RUVALCABA refused Plaintiff's request. Plaintiff MERRIWEATHER went to the breakroom  
26 and indicated that Defendant MARTHA RUVALCABA was a racist. Plaintiff  
27 MERRIWEATHER met with Jake Rosenberg (Administrative Facility Service Director for  
28 Defendant KAISER) at 2:30 pm on that day to discuss further discrimination and favoritism by



1 Defendant MARTHA RUVALCABA concerning the manner in which she makes area  
2 assignments which adversely impacted Plaintiff. Jake Rosenberg as a management employee of  
3 Defendant KAISER ratified Defendant MARTHA RUVALCABA's discriminatory treatment of  
4 Plaintiff MERRIWEATHER by allowing her to take discipline against Plaintiff for calling her a  
5 racist.

6 18. Plaintiff MERRIWEATHER was informed by Misty Feliciano (Hispanic) and  
7 believes that Defendant MARTHA RUVALCABA would call Misty Feliciano in the morning or  
8 the night before and let Misty choose her area assignment while Plaintiff was not given any  
9 opportunity to select his assignments

10 19. Plaintiff MERRIWEATHER is informed and believes that Defendant MARTHA  
11 RUVALCABA (Hispanic) in fact has a bias in her hiring practices by hiring Hispanic employees  
12 from her home town of Stockton and giving them preferential treatment. Plaintiff is informed  
13 and believes that one of Plaintiff's coworkers Misty Feliciano (EVS Aide) was the girlfriend  
14 (fiancé) of Defendant MARTHA RUVALCABA's son (Eric Gallo) who also worked at  
15 Defendant KAISER PERMANETE. Most of the individuals in the EVS Department at Kaiser  
16 South Sacramento are Hispanic. Plaintiff MERRIWEATHER was not hired by Defendant  
17 MARTHA RUVALCABA. Plaintiff MERRIWEATHER was informed by Misty Feliciano and  
18 believes that Defendant MARTHA RUVALCABA paid for Misty's car payment in the past and  
19 that Defendant MARTHA RUVALCABA's son was a cosigner on Misty's car. Misty Feliciano  
20 also informed Plaintiff MERRIWEATHER that when an investigation of Defendant MARTHA  
21 RUVALCABA's hiring practices was being done in 2016 by Defendant KAISER that Misty was  
22 told by Defendant MARTHA RUVALCABA to put down Misty's "Sacramento" address so that  
23 the investigator would not know that Misty lived in Stockton. Misty Feliciano informed Plaintiff  
24 that she received money and gift cards from Defendant MARTHA RUVALCABA for Christmas  
25 which was confirmed to me by his co-worker Terry Drew.

26 20. Plaintiff MERRIWEATHER is informed and believes that Misty Feliciano was  
27 allowed to be paid for time she was not at work by Defendant MARTHA RUVALCABA  
28 allowing others to punch Misty into and out of work. Misty Feliciano informed Plaintiff that

1 even though she had no vacation or sick time at one point she would still get her full check even  
2 though she would miss work. Such conduct would have resulted in disciplinary action by any  
3 employee at Defendant KAISER.

4 21. Throughout Plaintiff's employment at Defendant KAISER, Defendant MARTHA  
5 RUVALCABA continually denied him necessary equipment on a continuous basis. For example  
6 in 2012, Plaintiff was denied a reasonable accommodation regarding his hearing disability for a  
7 wireless phone. When Plaintiff was reassigned from the area where he had requested the  
8 reasonable accommodation, Defendant MARTHA RUVALCABA gave the very wireless phone  
9 Plaintiff had requested to Alberto Diaz (the Hispanic employee who replaced him in the  
10 position.) A true and correct copy of the internal Complaints Plaintiff MERRIWEATHER made  
11 to Kaiser on 8/29/12 and in November 2012 are attached as "Exhibit 2" to "Exhibit A" which is  
12 attached to this complaint and incorporated herein as if restated in full.

13 22. Plaintiff MERRIWEATHER was informed by Misty Feliciano and believes that  
14 Defendant MARTHA RUVALCABA was a racist against Blacks/African-Americans and used  
15 the word "Nigger" to describe them. Plaintiff had an ongoing sexual relationship with Misty  
16 Feliciano who did not want Martha Ruvalcaba to know about our relationship as Martha would  
17 be angry that a Black Man had sex with her son's fiancé. Plaintiff experienced on a continuous  
18 basis from 2012 on ward, Martha Ruvalcaba treating me in a discriminatory hostile manner. For  
19 example, please find attached to "Exhibit A" to this complaint as "Exhibit 3" is an "Internal  
20 Complaint" which Plaintiff gave to Kaiser Permanente in February 2016, concerning  
21 discriminatory and hostile treatment which was intended to embarrass me.

22 23. Plaintiff MERRIWEATHER was wrongfully placed on paid administrative leave  
23 on or about February 9, 2017, through July 11, 2017, as a result of a false claim of sexual  
24 harassment made by Misty Feliciano. Plaintiff MERRIWEATHER is informed and believes that  
25 this false charge was made against him due to Defendant MARTHA RUVALCABA's bias  
26 against him due to his race/ethnicity as an African-American/Black Man and his complaints  
27 about Defendant MARTHA RUVALCABA as stated above.

28 24. Plaintiff MERRIWEATHER was wrongfully terminated on July 11, 2017, due to

1 his race/ethnicity as stated above. Defendant MARTHA RUVALCABA's racial animus against  
2 Plaintiff as an African-American Black Man infected the decision making process of Defendant  
3 KAISER resulting in my termination.

4 25. Prior to Plaintiff MERRIWEATHER's termination, Misty Feliciano informed  
5 Plaintiff that she and Defendant MARTHA RUVALCABA had "cooked something up" to say  
6 that Misty is being harassed on Sundays at work so she could get her shifts moved to Mondays.  
7 Misty wanted the weekends off. Defendant MARTHA RUVALCABA instructed Misty to  
8 indicate that she was being harassed by her supervisor Vinnie Ramos and/or the head aide Dennis  
9 Blanco.

10 **FIRST CAUSE OF ACTION**  
11 **(RACIAL/NATIONAL ORIGIN DISCRIMINATION)**  
12 **[GOVERNMENT CODE § 12940 (a)]**  
13 **(AGAINST Defendant KAISER ONLY)**

14 26. Plaintiff MERRIWEATHER realleges and restates all the paragraphs 1 through  
15 25, inclusive of this complaint, and incorporates them by reference as though fully set forth at  
16 length. This Cause of Action is only being brought against Defendant KAISER as Plaintiff's  
17 Employer.

18 27. Defendant KAISER, for its own motivations, to include its own benefit and for  
19 illegal purposes did, in fact, do the acts hereinabove-mentioned in paragraphs 11 to 25 of this  
20 complaint which are incorporated herein as if restated in full that deprived Plaintiff  
21 MERRIWEATHER of equal opportunity for assignment, training, promotion, tenure, retention  
22 and enjoyment of the benefits of his employment with Defendant KAISER by discriminating  
23 against and harassing Plaintiff MERRIWEATHER on the basis of his race/color/ethnicity of  
24 African-American/Black. The above-described acts of defendants, and each of them were  
25 discriminatory in nature in violation of Government Code § 12940(a). Plaintiff is informed and  
26 believes that the decisionmaking process of Defendant KAISER was infected by the Racial Bias  
27 against him on the basis of his race/color/ethnicity of African-American/Black by Defendant  
28 MARTHA RUVALCABLA

28 28. Plaintiff MERRIWEATHER is informed and believes and thereupon alleges that



1 Defendant KAISER intentionally deprived Plaintiff MERRIWEATHER of his rights under the  
2 above-described statutes by conducting, participating in, and allowing a  
3 discriminatory/retaliatory environment to exist wherein Plaintiff MERRIWEATHER was  
4 continually harassed, discriminated against, retaliated against, as a substantial motivating factor,  
5 because of his race/color/ethnicity of African-American/Black by Defendant MARTHA  
6 RUVALCABA .

7 29. As a result of the above mentioned wrongful acts Plaintiff MERRIWEATHER  
8 has suffered adverse actions as he was placed on paid administrative leave on or about February  
9 9, 2017, through July 11, 2017. Such action denied him the ability to obtain overtime which he  
10 would have ordinarily been entitled to obtain. A substantial motivating reason for the suspension  
11 was due to the discriminating and harassing conduct of Defendant KAISER's Management  
12 Employee MARTHA RUVALCABA towards Plaintiff MERRIWEATHER on the basis of his  
13 race/color/ethnicity of African-American/Black which Management Employees at Defendant  
14 KAISER ratified by failing to take corrective actions to prevent as stated above in paragraphs 1  
15 through 25.

16 30. As a result of the discriminatory practice or policy of Defendant KAISER was  
17 infected by bias of Defendant MARTHA RUVALCABA against Plaintiff MERRIWEATHER  
18 due to his being black and/or African-American. Plaintiff was wrongfully terminated on July 11,  
19 2017, due to his race/color/ethnicity as stated above. Defendant MARTHA RUVALCABA's  
20 racial animus of Plaintiff infected the decision making process of Defendant KAISER resulting  
21 in Plaintiff's termination, as part of this pattern, plan, practice, or policy of discrimination as  
22 stated above.

23 31. As a proximate result of the wrongful conduct of Defendant KAISER, Plaintiff  
24 MERRIWEATHER is unable and in the future may be unable to return to work or accept any  
25 assignments for Defendant KAISER and as such has suffered the loss of the wages, salary,  
26 benefits, and additional amounts of money Plaintiff MERRIWEATHER would have received if  
27 he had not been forced to be placed on paid administrative leave, with Defendant KAISER in an  
28 amount within the jurisdiction of the Superior Court of the State of California.

1           32.     As a proximate result of the wrongful conduct of Defendant KAISER, Plaintiff  
2 MERRIWEATHER has unable and in the future may be unable to return to work or accept any  
3 assignments for Defendant KAISER and as such has suffered the loss of the wages, salary,  
4 benefits, and additional amounts of money Plaintiff MERRIWEATHER would have received if  
5 he had not been wrongfully terminated by Defendant KAISER in an amount within the  
6 jurisdiction of the Superior Court of the State of California.

7           33.     As a further proximate result of the wrongful acts of Defendant KAISER,  
8 Plaintiff MERRIWEATHER has been harmed in that Plaintiff MERRIWEATHER has suffered  
9 the intangible loss of such employment-related opportunities as further work experience and  
10 seniority. As a result of such retaliation and consequent harm, Plaintiff MERRIWEATHER has  
11 suffered such damages in an amount to be shown at time of trial within the jurisdiction of the  
12 Superior Court of the State of California.

13           34.     As the result of the wrongful actions of Defendant KAISER, Plaintiff  
14 MERRIWEATHER was forced to employ Health Care Providers, as such defendant has incurred  
15 and will continue to incur medical expenses in the future as damages in an amount to be shown at  
16 time of trial within the jurisdiction of the Superior Court of the State of California.

17           35.     As a proximate result of the aforementioned wrongful actions of Defendant  
18 KAISER, Plaintiff MERRIWEATHER has suffered and will in the future continue to suffer  
19 physical injuries actually incurred, and emotional pain and suffering damages (including but not  
20 limited to humiliation, anxiety, severe emotional stress) in an amount to be shown at time of trial  
21 but that is within the jurisdiction of the Superior Court of the State of California.

22           36.     Defendant KAISER ratified the wrongful conduct of its employees and failed to  
23 take adequate steps necessary to prevent the hostile work environment against Plaintiff due to his  
24 race/color/ethnicity of African-American/Black and did so intentionally, oppressively,  
25 maliciously, and with an evil motive to vex, injure, annoy, and/or harass Plaintiff  
26 MERRIWEATHER in violation of his rights California Government Code section 12940, et seq.  
27 As a result Plaintiff is entitled to punitive or exemplary damages against the Defendants , and  
28 each of them, pursuant to California Government Code section 12965 in an amount to be

1 determined at time of trial imposing liability on Defendants , and each of them.

2 37. The above described acts were ratified and/or allowed by management or  
3 supervisory employees, and/or corporate officers and/or directors of Defendant KAISER with  
4 malice, oppression, and/or fraud in conscious disregard of Plaintiff's rights in that there was no  
5 evidence supporting the false allegations which were knowingly false, and/or Defendant  
6 KAISER ratified such conduct as such an award for punitive damages against Defendant  
7 Defendant KAISER, and each of them is necessary to punish and/or make an example of  
8 Defendant Defendant KAISER, pursuant to California Government Code section 12965 in an  
9 amount to be determined at time of trial

10 38. As a result of the wrongful acts of Defendant KAISER, as delineated above,  
11 Plaintiff MERRIWEATHER has been forced to employ an attorney to vindicate his rights  
12 which involves the enforcement of an important right affecting the public interest. As such  
13 Plaintiff MERRIWEATHER is entitled to attorney's fees pursuant to California Government  
14 Code sections 12948 and 12965 in an amount to be shown pursuant to law after entry of  
15 judgment in Plaintiff MERRIWEATHER's favor.

16 **SECOND CAUSE OF ACTION**

17 **(RACIAL/NATIONAL ORIGIN HARASSMENT/HOSTILE WORK ENVIRONMENT)**  
18 **[GOVERNMENT CODE § 12940 (j)]**  
**(AGAINST ALL DEFENDANTS)**

19 39. Plaintiff MERRIWEATHER realleges and restates all the paragraphs 1 through  
20 25, inclusive, of this Complaint and incorporates them by reference as though fully set forth at  
21 length.

22 40. Defendants, and each of them, for their own motivations, to include their own  
23 benefit and for illegal purposes did, in fact, do the acts hereinabove-mentioned in paragraphs 15  
24 through 25, inclusive, of this complaint that deprived Plaintiff MERRIWEATHER of equal  
25 opportunity for assignment, training, promotion, tenure, retention and enjoyment of the benefits  
26 of his employment with Defendant KAISER by harassing the Plaintiff MERRIWEATHER and  
27 causing to exist a hostile work environment, as a substantial motivating factor, on the basis of his  
28 race/color/ethnicity of African-American/Black. The above-described acts of Defendants, and

1 each of them, were a violation of Government Code § 12940(j)(1) as they were done by  
2 supervisory and management employees, including but not limited to Defendant MARTHA  
3 RUVALCABA, causing strict liability to Defendant KAISER. Defendant KAISER further  
4 subjected Plaintiff MERRIWEATHER to embarrassment and humiliation from his peers as  
5 stated above.

6 41. Plaintiff MERRIWEATHER is informed and believes and thereupon alleges that  
7 Defendants, and each of them, intentionally deprived the Plaintiff MERRIWEATHER of his  
8 rights under the above-described statutes by conducting, participating in, and allowing a hostile  
9 work environment to exist wherein Plaintiff MERRIWEATHER was harassed because of his  
10 race (Black/African-American).

11 42. As a proximate result of the wrongful conduct of Defendants, and each of them,  
12 Plaintiff MERRIWEATHER has been and in the future may be unable to return to work or accept  
13 any assignments for Defendant KAISER as he was placed on administrative leave from February  
14 9, 2017, through July 11, 2017, and as such has suffered the loss of the wages, salary, benefits,  
15 and additional amounts of money Plaintiff MERRIWEATHER would have received if he  
16 continued to work for Defendant KAISER in an amount within the jurisdiction of the Superior  
17 Court of the State of California.

18 43. As a proximate result of the wrongful conduct of Defendants, and each of them,  
19 Plaintiff MERRIWEATHER has been and in the future may be unable to return to work or accept  
20 any assignments for Defendant KAISER as he was wrongfully terminated on July 11, 2017, and  
21 as such has suffered the loss of wages, salary, benefits, and additional amounts of money  
22 Plaintiff MERRIWEATHER would have received if he continued to work for Defendant  
23 KAISER in an amount within the jurisdiction of the Superior Court of the State of California

24 44. As the result of the wrongful actions of Defendants, and each of them, Plaintiff  
25 MERRIWEATHER was forced to employ Health Care Providers, as such defendant has incurred  
26 and will continue to incur medical expenses in the future as damages in an amount to be shown at  
27 time of trial within the jurisdiction of the Superior Court of the State of California.

28 45. As a proximate result of the aforementioned wrongful actions of Defendants, and

1 each of them, Plaintiff MERRIWEATHER has suffered and will in the future continue to suffer  
2 physical injuries actually incurred, and emotional pain and suffering damages (including but not  
3 limited to humiliation, anxiety, severe emotional stress) in an amount to be shown at time of trial  
4 but that is within the jurisdiction of the Superior Court of the State of California.

5 46. The above described acts were done by Defendant MARTHA RUVALCABA  
6 with malice, oppression, and/or fraud in conscious disregard of Plaintiff MERRIWEATHER's  
7 rights and as such an award for punitive damages against Defendant MARTHA RUVALCABA  
8 is necessary to punish and/or make an example of Defendant MARTHA RUVALCABA .

9 47. Defendant KAISER ratified the wrongful conduct of its employees and failed to  
10 take adequate steps necessary to prevent the hostile work environment against Plaintiff due to his  
11 race/color of African-American/Black and did so intentionally, oppressively, maliciously, and  
12 with an evil motive to vex, injure, annoy, and/or harass Plaintiff MERRIWEATHER in violation  
13 of his rights California Government Code section 12940, et seq. As a result Plaintiff is entitled  
14 to punitive or exemplary damages against the Defendants , and each of them, pursuant to  
15 California Government Code section 12965 in an amount to be determined at time of trial  
16 imposing liability on Defendants , and each of them.

17 48. The above described acts were ratified and/or allowed by management or  
18 supervisory employees, and/or corporate officers and/or directors of Defendant KAISER with  
19 malice, oppression, and/or fraud in conscious disregard of Plaintiff's rights in that there was no  
20 evidence supporting the false allegations which were knowingly false, and/or Defendant  
21 Defendant KAISER ratified such conduct as such an award for punitive damages against  
22 Defendant Defendant KAISER, and each of them is necessary to punish and/or make an example  
23 of Defendant Defendant KAISER, pursuant to California Government Code section 12965 in an  
24 amount to be determined at time of trial

25 49. As a result of the wrongful acts of Defendants, and each of them, as delineated  
26 above, Plaintiff MERRIWEATHER has been forced to employ an attorney to vindicate his  
27 rights which involves the enforcement of an important right affecting the public interest. As such  
28 Plaintiff MERRIWEATHER is entitled to attorney's fees pursuant to California Government



Code sections 12948 and 12965 in an amount to be shown pursuant to law after entry of judgment in Plaintiff MERRIWEATHER's favor.

**THIRD CAUSE OF ACTION**  
**FEHA RETALIATION**  
**CALIFORNIA GOVERNMENT CODE SECTION 12940 (h)**  
**(AGAINST Defendant KAISER ONLY)**

50. Plaintiff MERRIWEATHER realleges and restates all the paragraphs 1 through 25, inclusive of this complaint herein and incorporates them by reference as though fully set forth at length. This cause of action is against Defendant KAISER only as Plaintiff's employer.

51. As stated above Plaintiff MERRIWEATHER made reports of discriminatory conduct to his employer Defendant KAISER on an ongoing basis concerning the disparate treatment of Defendant MARTHA RUVALCABA as stated in paragraphs 13, 16, and 17 of this Complaint which are incorporated herein concerning allegations of discrimination and harassment on the basis of his race, national origin, ethnicity, age, as well as claims of retaliation. Such acts are protected under California Government Code §12940, et seq.

52. Defendant KAISER has a duty to protect Plaintiff MERRIWEATHER and other employees from retaliation for making complaints of racial and or age, discrimination and harassment and/or disability discrimination, and/or requesting reasonable accommodations for physical and/or mental disabilities under the California Fair Employment and Housing Act pursuant to Government Code §12940 subdivision(h). Defendant KAISER failed to fulfill this duty by doing the following:

- a) By placing Plaintiff on paid administrative leave from February 9, 2017, through July 11, 2017 which denied him the ability to work overtime;
- b) By wrongfully terminating him on July 11, 2017, as stated above.

53. As a result of the above mentioned wrongful acts Plaintiff MERRIWEATHER has suffered adverse actions as he was placed on placed on paid administrative leave on or about February 9, 2017, through July 11, 2017. Such action denied him the ability to obtain overtime which he would have ordinarily been entitled to obtain. A substantial motivating reason for the suspension was due to the discriminating and harassing conduct of Defendant KAISER's

1 Management Employee MARTHA RUVALCABA towards Plaintiff MERRIWEATHER on  
2 the basis of his race/color/ethnicity of African-American/Black which Management Employees at  
3 Defendant KAISER ratified by failing to take corrective actions to prevent as stated above in  
4 paragraphs 1 through 25.

5 54. As a result of the discriminatory practice or policy of Defendant KAISER was  
6 infected by bias of Defendant MARTHA RUVALCABA against Plaintiff MERRIWEATHER  
7 due to his being black and/or African-American. Plaintiff was wrongfully terminated on July 11,  
8 2017, due to his race/color/ethnicity as stated above. Defendanty MARTHA RUVALCABA's  
9 racial animus of Plaintiff infected the decision making process of Defendant KAISER resulting  
10 in Plaintiff's termination, as part of this pattern, plan, practice, or policy of discrimination as  
11 stated above.

12 55. As a proximate result of the wrongful conduct of Defendant KAISER, Plaintiff  
13 MERRIWEATHER has been unable to work and in the future may be unable to return to work or  
14 accept any assignments for Defendant KAISER and as such has suffered the loss of wages,  
15 salary, benefits, and additional amounts of money Plaintiff MERRIWEATHER would have  
16 received if he had not been forced to be placed on paid administrative leave, with Defendant  
17 KAISER in an amount within the jurisdiction of the Superior Court of the State of California.

18 56. As a proximate result of the wrongful conduct of Defendant KAISER, Plaintiff  
19 MERRIWEATHER has been unable to work and in the future may be unable to return to work or  
20 accept any assignments for Defendant KAISER and as such has suffered the loss of the wages,  
21 salary, benefits, and additional amounts of money Plaintiff MERRIWEATHER would have  
22 received if he had not been wrongfully terminated by Defendant KAISER in an amount within  
23 the jurisdiction of the Superior Court of the State of California.

24 57. As a further proximate result of the wrongful acts of Defendant KAISER,  
25 Plaintiff MERRIWEATHER has been harmed in that Plaintiff MERRIWEATHER has suffered  
26 the intangible loss of such employment-related opportunities as further work experience and  
27 seniority. As a result of such retaliation and consequent harm, Plaintiff MERRIWEATHER has  
28 suffered such damages in an amount to be shown at time of trial within the jurisdiction of the

1 Superior Court of the State of California.

2 58. As the result of the wrongful actions of Defendant KAISER, Plaintiff  
3 MERRIWEATHER was forced to employ Health Care Providers, as such defendant has incurred  
4 and will continue to incur medical expenses in the future as damages in an amount to be shown at  
5 time of trial within the jurisdiction of the Superior Court of the State of California.

6 59. As a proximate result of the aforementioned wrongful actions of Defendant  
7 KAISER, Plaintiff MERRIWEATHER has suffered and will in the future continue to suffer  
8 physical injuries actually incurred, and emotional pain and suffering damages (including but not  
9 limited to humiliation, anxiety, severe emotional stress) in an amount to be shown at time of trial  
10 but that is within the jurisdiction of the Superior Court of the State of California.

11 60. Defendant KAISER ratified the wrongful conduct of its employees and failed to  
12 take adequate steps necessary to prevent the hostile work environment against Plaintiff due to his  
13 race/color/ethnicity of African-American/Black and did so intentionally, oppressively,  
14 maliciously, and with an evil motive to vex, injure, annoy, and/or harass Plaintiff  
15 MERRIWEATHER in violation of his rights California Government Code section 12940, et seq.  
16 As a result Plaintiff is entitled to punitive or exemplary damages against the Defendants , and  
17 each of them, pursuant to California Government Code section 12965 in an amount to be  
18 determined at time of trial imposing liability on Defendants , and each of them.

19 61. The above described acts were ratified and/or allowed by management or  
20 supervisory employees, and/or corporate officers and/or directors of Defendant KAISER with  
21 malice, oppression, and/or fraud in conscious disregard of Plaintiff's rights in that there was no  
22 evidence supporting the false allegations which were knowingly false, and/or Defendant  
23 KAISER ratified such conduct as such an award for punitive damages against Defendant  
24 Defendant KAISER, and each of them is necessary to punish and/or make an example of  
25 Defendant Defendant KAISER, pursuant to California Government Code section 12965 in an  
26 amount to be determined at time of trial

27 62. As a result of the wrongful acts of Defendant KAISER, as delineated above,  
28 Plaintiff MERRIWEATHER has been forced to employ an attorney to vindicate his rights

1 which involves the enforcement of an important right affecting the public interest. As such  
2 Plaintiff MERRIWEATHER is entitled to attorney's fees pursuant to California Government  
3 Code sections 12948 and 12965 in an amount to be shown pursuant to law after entry of  
4 judgment in Plaintiff MERRIWEATHER's favor.

5 **FOURTH CAUSE OF ACTION**  
6 **(FAILURE TO PREVENT DISCRIMINATION/HARASSMENT FROM OCCURRING)**  
7 **[Govt. Code § 12940(k)]**  
8 **(Against Defendant KAISER ONLY)**

9 63. Plaintiff MERRIWEATHER realleges and restates paragraphs 1 through 25 of  
10 this Complaint and incorporates them by reference herein as though fully restated herein. This  
11 cause of action is against Defendant KAISER ONLY.

12 64. Defendant KAISER, for illegal purposes, did, in fact, fail to protect the Plaintiff  
13 MERRIWEATHER from discrimination, harassment and/or retaliation because of his  
14 race/color/ethnicity of African-American/Black and/or from retaliation for the reporting of acts in  
15 violation of the Government Code § 12920, et seq. The above-described acts of defendants, and  
16 each of them, were in violation of Govt. Code § 12940(k). Defendant KAISER failed to fulfill  
17 this duty by doing the following:

- 18 a) By placing Plaintiff MERRIWEATHER on a paid administrative leave which  
19 did not allow him to obtain overtime payments from February 9, 2017, through  
20 July 11, 2017, ;
- 21 b) By wrongfully terminating him on or about July 11, 2018 as stated above;
- 22 c) By not taking appropriate corrective actions against Defendant MARTHA  
23 RUVALCABA to prevent her from harassing plaintiff base on his age, national  
24 origin, ethnicity, and/or race as stated above.

25 65. As a result of the above mentioned wrongful acts Plaintiff MERRIWEATHER  
26 has suffered adverse actions as he was placed on paid administrative leave on or about February  
27 9, 2017, through July 11, 2017. Such action denied him the ability to obtain overtime which he  
28 would have ordinarily been entitled to obtain. A substantial motivating reason for the suspension  
was due to the discriminating and harassing conduct of Defendant KAISER's Management

1 Employee MARTHA RUVALCABA towards Plaintiff MERRIWEATHER on the basis of his  
2 race/color/ethnicity of African-American/Black which Management Employees at Defendant  
3 KAISER ratified by failing to take corrective actions to prevent as stated above in paragraphs 1  
4 through 25.

5 66. As a result of the discriminatory practice or policy of Defendant KAISER was  
6 infected by bias of Defendant MARTHA RUVALCABA against Plaintiff MERRIWEATHER  
7 due to him being black and/or African-American. Plaintiff was wrongfully terminated on July 11,  
8 2017, due to his race/color/ethnicity as stated above. Defendant MARTHA RUVALCABA's  
9 racial animus of Plaintiff infected the decision making process of Defendant KAISER resulting  
10 in Plaintiff's termination, as part of this pattern, plan, practice, or policy of discrimination as  
11 stated above.

12 67. As a proximate result of the wrongful conduct of Defendant KAISER, Plaintiff  
13 MERRIWEATHER has been unable to work and in the future may be unable to return to work or  
14 accept any assignments for Defendant KAISER and as such has suffered the loss of wages,  
15 salary, benefits, and additional amounts of money Plaintiff MERRIWEATHER would have  
16 received if he had not been forced to be placed on paid administrative leave, with Defendant  
17 KAISER in an amount within the jurisdiction of the Superior Court of the State of California.

18 68. As a proximate result of the wrongful conduct of Defendant KAISER, Plaintiff  
19 MERRIWEATHER has been unable to work and in the future may be unable to return to work  
20 or accept any assignments for Defendant KAISER and as such has suffered the loss of wages,  
21 salary, benefits, and additional amounts of money Plaintiff MERRIWEATHER would have  
22 received if he had not been wrongfully terminated by Defendant KAISER in an amount within  
23 the jurisdiction of the Superior Court of the State of California.

24 69. As a further proximate result of the wrongful acts of Defendant KAISER,  
25 Plaintiff MERRIWEATHER has been harmed in that Plaintiff MERRIWEATHER has suffered  
26 the intangible loss of such employment-related opportunities as further work experience and  
27 seniority. As a result of such retaliation and consequent harm, Plaintiff MERRIWEATHER has  
28 suffered such damages in an amount to be shown at time of trial within the jurisdiction of the



1 Superior Court of the State of California.

2 70. As the result of the wrongful actions of Defendant KAISER, Plaintiff  
3 MERRIWEATHER was forced to employ Health Care Providers, as such defendant has incurred  
4 and will continue to incur medical expenses in the future as damages in an amount to be shown at  
5 time of trial within the jurisdiction of the Superior Court of the State of California.

6 71. As a proximate result of the aforementioned wrongful actions of Defendant  
7 KAISER, Plaintiff MERRIWEATHER has suffered and will in the future continue to suffer  
8 physical injuries actually incurred, and emotional pain and suffering damages (including but not  
9 limited to humiliation, anxiety, severe emotional stress) in an amount to be shown at time of trial  
10 but that is within the jurisdiction of the Superior Court of the State of California.

11 72. Defendant KAISER ratified the wrongful conduct of its employees and failed to  
12 take adequate steps necessary to prevent the hostile work environment against Plaintiff due to his  
13 race/color/ethnicity of African-American/Black and did so intentionally, oppressively,  
14 maliciously, and with an evil motive to vex, injure, annoy, and/or harass Plaintiff  
15 MERRIWEATHER in violation of his rights California Government Code section 12940, et seq.  
16 As a result Plaintiff is entitled to punitive or exemplary damages against the Defendants , and  
17 each of them, pursuant to California Government Code section 12965 in an amount to be  
18 determined at time of trial imposing liability on Defendants , and each of them.

19 73. The above described acts were ratified and/or allowed by management or  
20 supervisory employees, and/or corporate officers and/or directors of Defendant KAISER with  
21 malice, oppression, and/or fraud in conscious disregard of Plaintiff's rights in that there was no  
22 evidence supporting the false allegations which were knowingly false, and/or Defendant  
23 KAISER ratified such conduct as such an award for punitive damages against Defendant  
24 Defendant KAISER, and each of them is necessary to punish and/or make an example of  
25 Defendant Defendant KAISER, pursuant to California Government Code section 12965 in an  
26 amount to be determined at time of trial

27 74. As a result of the wrongful acts of Defendant KAISER, as delineated above,  
28 Plaintiff MERRIWEATHER has been forced to employ an attorney to vindicate his rights

1 which involves the enforcement of an important right affecting the public interest. As such  
2 Plaintiff MERRIWEATHER is entitled to attorney's fees pursuant to California Government  
3 Code sections 12948 and 12965 in an amount to be shown pursuant to law after entry of  
4 judgment in Plaintiff MERRIWEATHER's favor.

5 **PRAYER**

6 WHEREFORE, Plaintiff MERRIWEATHER prays judgment against defendants, and  
7 each of them;

8 1. For a money judgment representing compensatory damages including lost wages,  
9 commissions, and other employment benefits, and all other sums of money together with interest  
10 on said amounts, in an amount to be proven at the time of trial.

11 2. For a money judgment for mental pain and anguish, emotional distress and  
12 general damages in an amount to be proven at the time of trial.

13 3. For prejudgment interest, if applicable.

14 4. For exemplary and punitive damages against the defendants in an amount to be  
15 proven at the time of trial.

16 5. For costs of suit including attorney's fees as authorized by federal and/or state law,  
17 if applicable.

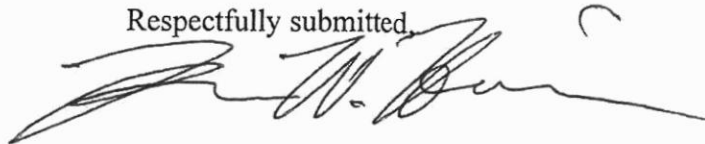
18 6. For such and other further relief as the Court may deem just and proper.

19 **DEMAND FOR JURY TRIAL**

20 Plaintiff AMERY MERRIWEATHER demands trial by jury as to all matters and issues  
21 so triable by law.

22 DATED: January 17, 2019

Respectfully submitted,



24 KEVIN W. HARRIS  
25 Attorney for Plaintiff  
26 AMERY MERRIWEATHER  
27  
28