

CIV-190304-CIV-DS1906753-CASEEN-145702



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FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN BERNARDINO
 SAN BERNARDINO DISTRICT

MAR 4 2019

BY Melissa White
 MELISSA WHITE, DEPUTY

6 Attorneys for Plaintiff MICHELLE LYON

7
 8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
 9 **FOR THE COUNTY OF SAN BERNARDINO**

10 MICHELLE LYON, an individual,

CASE NO.: CIVDS1906753

11 Plaintiff,

COMPLAINT FOR DAMAGES

12 vs.

13 KAISER FOUNDATION HEALTH PLAN,
 14 INC., a corporation; KAISER FOUNDATION
 15 HOSPITALS, a corporation; SOUTHERN
 16 CALIFORNIA PERMANENTE MEDICAL
 GROUP, a partnership; and DOES 1 through
 100, inclusive,

17 Defendants.

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1. VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE § 1278.5;
 2. VIOLATION OF LABOR CODE 1102.5;
 3. VIOLATION OF LABOR CODE § 6310;
 4. DISABILITY DISCRIMINATION IN VIOLATION OF FEHA (Cal. Gov't. Code § 12940(a));
 5. FAILURE TO ACCOMMODATE IN VIOLATION OF FEHA (Cal. Gov't Code § 12940(m));
 6. FAILURE TO ENGAGE IN A GOOD FAITH INTERACTIVE PROCESS IN VIOLATION OF FEHA;
 7. CONSTRUCTIVE TORTUOUS TERMINATION IN VIOLATION OF PUBLIC POLICY;
 8. WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY;
 9. RETALIATION IN VIOLATION OF THE FEHA; and
 10. FAILURE TO PREVENT DISCRIMINATION AND RETALIATION

DEMAND FOR JURY TRIAL

1 Plaintiff MICHELLE LYON ("Plaintiff") alleges as follows:

2 **GENERAL ALLEGATIONS**

3 1. Plaintiff MICHELLE LYON ("Lyon or Plaintiff") is an individual who at all times
4 pertinent to this lawsuit was a resident of the County of San Bernardino, State of California. Lyon
5 is entitled to the protections of the Fair Employment and Housing Act ("FEHA") because she is of
6 was physically disabled or perceived to be physically disabled, and engaged in protected activity as
7 defined by the FEHA.

8 2. Plaintiff is informed and believes that Defendants Kaiser Foundation Health Plan, Inc.
9 ("KFHP") and Kaiser Foundation Hospitals ("KFH") are business entities, exact form unknown
10 organized and existing under the laws of California, with their principal place of business located at
11 1 Kaiser Plaza, Oakland, California.

12 3. Plaintiff is informed and believes that Defendant Southern California Permanente
13 Medical Group ("SCPMG") is a business entity exact form unknown organized and existing under
14 the laws of California with its principal place of business located in Los Angeles County at 393
15 East Walnut Street, Pasadena, California.

16 4. Plaintiff is informed and believes KFHP, KFH and SCPMG do business jointly, and with
17 other entities owned and controlled by KFHP under the name "Kaiser Permanente."

18 5. Plaintiff is informed and believes that Kaiser Permanente is an "integrated" health care
19 delivery system comprised of the insurance company, KFHP, its doctors, organized as SCPMG,
20 and its hospitals, which are wholly owned and/or controlled by KFHP through its captive entity,
21 KFH, which has no separate existence or identity apart from KFHP.

22 6. Plaintiff is informed and believes and thereon alleges that Defendant KFHP is an
23 insurance company which purports to provide comprehensive total medical care to its members.
24 KFHP describes itself as the largest Health Maintenance Organization in the country. KFHP
25 exercises total control over Defendants KFH, SCPMG and a number of other corporate and
26 partnership entities such that their very existence as purported separate entities is in fact a sham
27 designed to perpetuate the myth that KFHP and KFH are legitimate "non-profit" corporations.
28 Plaintiff is informed and believes that KFHP and KFH are in fact "for profit" enterprises regularly
reporting their profitability publicly. For example, on August 5, 2011, Kaiser reported:

Kaiser Foundation Hospitals, Kaiser Foundation Health Plan, Inc., and their
respective subsidiaries (KFH/HP) reported today a combined operating revenue of
\$11.9 billion for the quarter ending June 30, 2011, compared to \$11.0 billion in the

1 same period in 2010. Operating income was \$390 million in the second quarter of
2 2011, compared to \$313 million in the same quarter last year. Net non-operating
3 income was \$273 million in the second quarter of 2011, compared to \$91 million in
4 the same quarter last year. As a result, net income for the second quarter was \$663
5 million versus net income of \$404 million in the same period last year. These are the
6 combined operating results for Kaiser Foundation Hospitals, Kaiser Foundation
Health Plan, Inc., and their respective subsidiaries.

7 7. KFHP's total dominance over KFH and SCPMG is evidenced by the fact that KFH and
8 SCPMG's entire annual budget is set by, controlled by, and approved by KFHP; all funds for KFH
9 and SCPMG's operations come from KFHP; KFHP determines what "profit" if any SCPMG is
10 allowed to make; money that SCPMG uses to pay bonuses to its doctors comes from KFHP;
11 SCPMG does not bill any patients for most of its services; barring emergencies or extremely rare
12 instances, SCPMG doctors are only allowed to work for KFHP members exclusively; and
13 SCPMG's only source of money is from KFHP. KFHP provides virtually all legal, human
14 resources, insurance, communications, advertising, billing, and other necessary services for KFH
15 and SCPMG. Members buying health care coverage only pay money to KFHP, not to SCPMG;
16 they buy insurance from KFHP and they receive services through SCPMG. Advertising for the
17 health care offered by KFHP as health insurance and provided through SCPMG doctors is done
18 predominantly by KFHP, advertising as "Kaiser Permanente" as seen in the multi-million dollar
19 "Thrive" advertising campaign. SCPMG does not own hospitals, medical buildings, or the clinics
20 where they work; they are owned by KFHP. KFHP provides all telephone, fax, and e-mail services
21 for SCPMG. KFHP also provides health insurance and medical malpractice insurance to
22 SCPMG's doctors. KFHP lawyers routinely render legal advice and counsel to KFH, SCPMG, and
23 have unfettered access to KFH and SCPMG's records; KFHP's Human Resources department
24 routinely investigates any EEOC/DFEH or other complaints of discrimination, as well as issues
25 regarding reasonable accommodations, regarding KFH and SCPMG's practices and employees,
26 reporting to KFHP's legal department on all such investigations; KFHP lawyers and human
resources staff do not obtain privacy waivers when seeking records of KFH and/or SCPMG
employees or investigating their claims; KFHP provides and pays for all facilities in which KFH
and SCPMG conduct business.

27 8. Defendants KFHP, KFH and SCPMG, if not separately noted are hereinafter collectively
28 referred to as "Kaiser" or "Defendants." These Defendants are collectively liable under either a

1 joint employer theory or a single enterprise theory.

2 9. Plaintiff was at all times employed by Defendants KFHP, KFH and SCPMG and DOES 1-
3 100 and each of them. Said defendants will hereinafter be, at times, referred to as the Employer
4 Defendants.

5 10. Plaintiff was at all times relevant employed by the Employer Defendants at their facility
6 located at 17284 Slover Ave. Fontana California, 92337 also known as Kaiser's Slover Avenue
7 Palm Court Building in Fontana California ("The Premises"). All of the acts alleged herein, on
8 information and belief, occurred at the Premises.

9 11. The Employer Defendants are California employers who employ more than five people,
10 and are accordingly subject to the provisions of FEHA.

11 12. Defendants Does 1 through 100 are sued under fictitious names pursuant to California
12 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis alleges,
13 that each defendant sued under such fictitious names is in some manner responsible for the wrongs
14 and damages as alleged below, and in so acting was functioning as the agent, servant, manager,
15 supervisor, and/or employee of the Employer Defendants, and in doing the actions mentioned
16 below was acting within the course and scope of his or her authority as such agent, servant.

17 13. Plaintiff was at all times relevant employed as Registered Nurse/Case Manager at the
18 Premises. Plaintiff was hired in approximately 2009 and retained that position until her wrongful
19 termination on approximately November 27, 2017.

20 14. On or about February of 2016, Plaintiff and other employees at the premises began to
21 notice dark "speckles" falling on their desks and tops of cabinets whenever a train went by on the
22 nearby tracks. Plaintiff and others felt it might be dangerous mold, a potential health hazard to the
23 workers and patients that frequented that facility.

24 15. These "speckles" were tested and were Aspergilis mold, a very dangerous substance that
25 could cause serious health problems, even potentially death, to those who were exposed to it.

26 16. Plaintiff and others complained both orally and in writing to Kaiser Management about
27 this potential patient care hazard and safety hazard. Each of these complaints was a protected
28 complaint pursuant to California Labor Code § 6310(a).

17. On February 1, 2016, Plaintiff and approximately 20 other Kaiser employees wrote a
letter to C. Trice (Kaiser's Environmental and Safety Manager), and to Lisa Malone-Buffong,
Julia Barrows and Yasmin Gamboa, all members of Kaiser's Population Care Management
Department, putting them on notice of the serious health hazard caused by the mold that they were

1 being exposed to.

2 18. The February 1, 2016 letter from Plaintiff and the other employees directly asked Kaiser
3 to take action to abate the mold problem.

4 19. This was a safety complaint protected by California Labor Code § 6310(a).

5 20. This was also a patient safety complaint protected by Health and Safety Code 1278.5.

6 21. Plaintiff thereafter repeatedly, on information and belief complained to management
7 about the mold issue. Each of these was a protected activity pursuant to California Labor Code §
8 6310(a) and Health and Safety Code 1278.5.

9 22. Kaiser paid lip service to addressing the issue but the mold continued to be present and
10 employees continued getting sick. The union filed a grievance and presented it to management
11 complaining about the health hazard the mold posed to herself and all those present.

12 23. After Kaiser claimed to have cleaned the premises, in May of 2016 the black spots began
13 to reappear. Plaintiff again made management aware that the mold issue had not been remedied and
14 employees continued to become ill.

15 24. Each of these was a protected activity pursuant to California Labor Code § 6310(a) and
16 Health and Safety Code 1278.5.

17 25. On October 7, 2016, Plaintiff met with OSHA Investigator, B. Dhillon along with three of
18 her co-workers, Graciela Velazquez, Maureen Hutchinson, and Margarita Sandoval. These
19 employees told the investigator about their symptoms and concerns and showed Dhillon pictures of
20 the mold spots.

21 26. On or about July 2017, Plaintiff made another patient safety complaint concerning how
22 population care referrals are handled. She was subsequently criticized for making such complaints
23 by project manager Christina Nila. Plaintiff re-iterated said patients safety complaints in writing on
24 or about August 3, 2017 and requested an investigation. Each of these was a protected activity
25 pursuant to California Health and Safety Code 1278.5.

26 27. Plaintiff as a result of making safety complaints and patient safety complaints was
27 subjected to adverse employment actions including not being accommodated, being constructively
28 terminated and being terminated.

29 28. Plaintiff, as a result of mold exposure became ill. More particularly, she was diagnosed
30 with reactive airways disease and occupational asthma.

31 29. Plaintiff accordingly suffered from a disability as defined by the Fair Employment and
32 Housing Act (FEHA) all as afore pled. More specifically, Plaintiff suffered from reactive airways

1 disease and occupational asthma which interfered with Plaintiff's major life activities, including but
2 not limited to: breathing and working. Plaintiff was a qualified individual with a disability because
3 she was a disabled individual who could either with or without reasonable accommodations
4 perform the essential functions of her job, or alternatively another job she was qualified for and
5 desired. Plaintiff is accordingly entitled to the protections of FEHA.

6 30. Alternatively, Plaintiff was perceived by the Employer Defendants as being disabled.

7 31. On or about August 25, 2017 and due to her disability, Plaintiff was placed off work on
8 what is on information and belief a protected medical leave by her physician due to her respiratory
9 condition. This leave was to run from August 25, 2017 through October 6, 2017.

10 32. Plaintiff was initially scheduled to return on October 6, 2017.

11 33. On or about October 6, 2017 Plaintiff's Physician provided a doctor's note recommending
12 that she be reassigned from the premises to another work location, without mold issues due to her
13 disability.

14 34. This was a request for an accommodation and was reasonable.

15 35. Plaintiff provided this Drs. Note with the requested accommodations to the Employer
16 Defendants.

17 36. This was a protected activity pursuant to the FEHA.

18 37. The Employer Defendants did not engage in a good faith interactive process in response
19 to this request for an accommodation.

20 38. The Employer Defendants also refused to accommodate Plaintiff.

21 39. The Employer Defendants instead of accommodating Plaintiff retaliated against her by
22 taking adverse employment actions, including, but not limited to being constructively terminated
23 and being terminated.

24 40. In October, 2017 Plaintiff was maintaining a workers compensation case claim for
25 physical injuries related to mold exposure at her workplace in the Fontana Facility. She was
26 illegally forced to resign as a prerequisite to settling her Workers Compensation claim which action
27 was found to be void and unenforceable by the Workers Compensation Appeals Board.

28 41. Despite this, the Employer Defendants told Plaintiff in writing that she had to return to
work or be terminated.

42. Upon her return to work on November 17, 2007, Plaintiff was informed she was to be
terminated effective November 27, 2017 and told to go home.

43. Plaintiff was terminated and/or illegally forced to resign as a pre- condition to settlement

1 of her workers compensation claim and was thereby constructively terminated.

2 44. Plaintiff is informed and believes that she was also given a notice of termination,
3 terminated, or alternatively constructively terminated due to her disability; in retaliation for
4 requesting accommodations; in violation of California Labor Code § 6310(a), Health and Safety
5 Code 1278.5, and Labor Code 1102.5.

6 **FIRST CAUSE OF ACTION**

7 **VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE § 1278.5**

8 **(BY PLAINTIFF AGAINST ALL DEFENDANTS)**

9 45. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

10 46. Plaintiff was, on information and belief, a health care worker covered by Health and Safety
11 Code 1278.5.

12 47. The Employer Defendants, on information and belief are entities covered by Health and
13 Safety Code 1278.5.

14 48. On or about February of 2016, Plaintiff and other employees at the premises began to
15 notice dark "speckles" falling on their desks and tops of cabinets whenever a train went by on the
16 nearby tracks. Plaintiff and others felt it might be dangerous mold, a potential health hazard to the
17 workers and patients that frequented that facility.

18 49. These "speckles" were tested and were Aspergillus mold, a very dangerous substance that
19 could cause serious health problems, even potentially death, to those who were exposed to it.

20 50. Plaintiff and others complained both orally and in writing to Kaiser Management about
21 this potential patient care hazard and safety hazard. Each of these complaints was a protected
22 complaint pursuant to Health and Safety Code 1278.5.

23 51. On February 1, 2016, Plaintiff and approximately 20 other Kaiser employees wrote a
24 letter to C. Trice (Kaiser's Environmental and Safety Manager), and to Lisa Malone-Buffong,
25 Julia Barrows and Yasmin Gamboa, all members of Kaiser's Population Care Management
26 Department, putting them on notice of the serious health hazard caused by the mold that they were
27 being exposed to.

28 52. The February 1, 2016 letter from Plaintiff and the other employees directly asked Kaiser
to take action to abate the mold problem.

53. This was a safety complaint protected by California Labor Code § 6310(a).

54. This was also a patient safety complaint protected by Health and Safety Code 1278.5, as it
addressed unsafe patient care or conditions.

1 55. Plaintiff thereafter repeatedly, on information and belief complained to management
2 about the mold issue. Each of these was a protected activity pursuant to California Labor Code §
3 6310(a) and Health and Safety Code 1278.5.

4 56. Kaiser paid lip service to addressing the issue but the mold continued to be present and
5 employees continued getting sick. The union filed a grievance and presented it to management
6 complaining about the health hazard the mold posed to herself and all those present.

7 57. After Kaiser claimed to have cleaned the premises, in May of 2016 the black spots began
8 to reappear. Plaintiff again made management aware that the mold issue had not been remedied and
9 employees continued to become ill.

10 58. Each of these was a protected activity pursuant to California Labor Code § 6310(a) and
11 Health and Safety Code 1278.5.

12 59. On October 7, 2016, Plaintiff met with OSHA Investigator, B. Dhillon along with three of
13 her co-workers, Graciela Velazquez, Maureen Hutchinson, and Margarita Sandoval. These
14 employees told the investigator about their symptoms and concerns and showed Dhillon pictures of
15 the mold spots. This was a protected activity pursuant to California Labor Code § 6310(a) and
16 Health and Safety Code 1278.5.

17 60. On or about July 2017, Plaintiff made another patient safety complaint concerning how
18 population care referrals are handled. She was subsequently criticized for making such complaints
19 by project manager Christina Nila. Plaintiff re-iterated said patients safety complaints in writing on
20 or about August 3, 2017 and requested an investigation. Each of these was a protected activity
21 pursuant to California Health and Safety Code 1278.5.

22 61. Plaintiff as a result of making safety complaints and patient safety complaints was
23 subjected to adverse employment actions including not being accommodated, being constructively
24 terminated and being terminated.

25 62. Such conduct violated the provisions of Health & Safety Code Section 1278.5.

26 63. Kaiser's failure to take any measures to protect Plaintiff and other adverse actions against
27 Plaintiff occurred within 120 days of her protests and complaints. Accordingly, under Health &
28 Safety Code Section 1278.5(d), Plaintiff is entitled to a rebuttable presumption that the adverse
actions taken against her were attributable to her complaints and protests regarding patient care.

64. As a proximate result Plaintiff suffered general damages past and future according to
proof.

65. As a further proximate result Plaintiff lost employment benefits, past and future including

1 wages and fringe benefits, in an amount in excess of the minimum jurisdiction of the court and
2 according to proof.

3 66. As a further proximate result Plaintiff has needed and will need medical attention, and will
4 incur medical expenses, past and future, to her damage according to proof.

5 67. The afore pled conduct of the Employer Defendants constitutes oppression, fraud, and
6 malice thereby entitling Plaintiff to an award of punitive damages. Plaintiff is further informed and
7 believe, and thereon allege, that this act of oppression, fraud, or malice or act of, ratification or
8 authorization were on the part of a managing agent or owner acting on behalf of the Employer
9 Defendants.

10 **SECOND CAUSE OF ACTION**
11 **RETALIATION IN VIOLATION OF FEHA**
12 **(BY PLAINTIFF, AGAINST ALL DEFENDANTS)**

13 68. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

14 69. On or about October 6, 2017 Plaintiff's Physician provided a doctor's note recommending
15 that she be reassigned from the premises to another work location, without mold issues due to her
16 disability.

17 70. This was a request for an accommodation and was reasonable.

18 71. Plaintiff provided this Drs. Note with the requested accommodations to the Employer
19 Defendants.

20 72. This was a protected activity pursuant to the FEHA.

21 73. Government Code § 12940(h), and other provisions of the FEHA, preclude an employer
22 from retaliating against an employee for engaging in protected activity under the FEHA, including
23 requesting accommodations.

24 74. Plaintiff is informed and believes that after she engaged in said protected activity, she
25 was retaliated against. The retaliation included but was not limited to: refusing to accommodate
26 Plaintiff; constructively terminating her and /or actually terminating her.

27 75. The foregoing conduct by the Employer Defendants, and each of them, was in retaliation
28 for Plaintiff's protected activity under the FEHA, and is accordingly a violation of Government
Code § 12940(h), and other provisions of the FEHA.

76. As a proximate result of the said violation of FEHA, Plaintiff has suffered mental anguish
and emotional suffering past and future in an amount in excess of the minimum jurisdiction of this
Court and according to proof.

1 77. As a further proximate result of the said violation of FEHA as afore pled, Plaintiff has
2 suffered a loss of tangible employment benefits past and future including lost wages and fringe
3 benefits in an amount in excess of the minimum jurisdiction of this Court and according to proof.

4 78. As a further and proximate result of the said violation of FEHA as afore pled, Plaintiff
5 was required to and did seek medical attention, and will need medical attention in the future, all to
6 Plaintiff's damages in a sum according to proof.

7 79. As a further proximate result of the Employer Defendants' violation of the FEHA as afore
8 pled, Plaintiff was forced to and did retain attorneys, and is accordingly entitled to an award of
9 attorneys' fees and costs according to proof at the time of trial.

10 80. The afore pled conduct constitutes oppression, fraud, and malice, thereby entitling
11 Plaintiff to an award of punitive damages. Plaintiff is informed and believes and thereon alleges
12 that such conduct was taken by an owner, officer or managing agent of the Employer Defendants,
13 or alternatively, authorized, ratified or approved by an owner, officer or managing agent of the
14 Employer Defendants.

15 **THIRD CAUSE OF ACTION**
16 **VIOLATION OF LABOR CODE § 6310**
17 **(AGAINST ALL DEFENDANTS)**

18 81. Plaintiff incorporates by this reference all the preceding and subsequent paragraphs.

19 82. California Labor Code §6310 prevents an employer from retaliating against or
20 discriminating or taking adverse employment actions against an employee because that employee
21 has made oral or written complaints to her employer or a government agency concerning "unsafe
22 working conditions, or work practices, in his or her employment or place of employment."

23 83. At all relevant times, Plaintiff was an employee of the Employer Defendants.

24 84. On or about February of 2016, Plaintiff and other employees at the premises began to
25 notice dark "speckles" falling on their desks and tops of cabinets whenever a train went by on the
26 nearby tracks. Plaintiff and others felt it might be dangerous mold, a potential health hazard to the
27 workers and patients that frequented that facility.

28 85. These "speckles" were tested and were Aspergillus mold, a very dangerous substance that
could cause serious health problems, even potentially death, to those who were exposed to it.

86. Plaintiff and others complained both orally and in writing to Kaiser Management about
this potential patient care hazard and safety hazard. Each of these complaints was a protected
complaint pursuant to California Labor Code § 6310(a).

1 87. On February 1, 2016, Plaintiff and approximately 20 other Kaiser employees wrote a
2 letter to C. Trice (Kaiser's Environmental and Safety Manager), and to Lisa Malone-Buffong,
3 Julia Barrows and Yasmin Gamboa, all members of Kaiser's Population Care Management
4 Department, putting them on notice of the serious health hazard caused by the mold that they were
5 being exposed to.

6 88. The February 1, 2016 letter from Plaintiff and the other employees directly asked Kaiser
7 to take action to abate the mold problem.

8 89. This was a safety complaint protected by California Labor Code § 6310(a).

9 90. Plaintiff thereafter repeatedly, on information and belief complained to management
10 about the mold issue. Each of these was a protected activity pursuant to California Labor Code §
11 6310(a) and Health and Safety Code 1278.5.

12 91. Kaiser paid lip service to addressing the issue but the mold continued to be present and
13 employees continued getting sick. The union filed a grievance and presented it to management
14 complaining about the health hazard the mold posed to herself and all those present.

15 92. After Kaiser claimed to have cleaned the premises, in May of 2016 the black spots began
16 to reappear. Plaintiff again made management aware that the mold issue had not been remedied and
17 employees continued to become ill.

18 93. Each of these was a protected activity pursuant to California Labor Code § 6310(a) and
19 Health and Safety Code 1278.5.

20 94. On October 7, 2016, Plaintiff met with OSHA Investigator, B. Dhillon along with three of
21 her co-workers, Graciela Velazquez, Maureen Hutchinson, and Margarita Sandoval. These
22 employees told the investigator about their symptoms and concerns and showed Dhillon pictures of
23 the mold spots. This was also a protected activity.

24 95. Plaintiff as a result of making safety complaints and patient safety complaints was
25 subjected to adverse employment actions including not being accommodated, being constructively
26 terminated and being terminated.

27 a. Such conduct violates Labor Code 6310.

28 b. As a direct and proximate result of Kaiser's acts as alleged above, Plaintiff is entitled
to reinstatement and back pay pursuant to Labor Code 6310 (b).

c. Plaintiff is entitled to attorneys' fees and costs under California Code of Civil
Procedure section 1021.5 because: (a) this action confers a significant benefit to the
general public or a large class of persons impacted by the practices alleged herein; (b)

1 the necessity and financial burden of private enforcement makes the award appropriate;
2 and (c) such fees should not in the interest of justice be paid out of the recovery to
3 Plaintiff.

4 **FOURTH CAUSE OF ACTION**

5 **DISABILITY DISCRIMINATION IN VIOLATION OF FEHA**

6 **(Cal. Gov't. Code § 12940(a))**

7 **(BY PLAINTIFF AGAINST ALL DEFENDANTS)**

8 96. Plaintiff incorporates by this reference all the preceding and subsequent paragraphs

9 97. At all times relevant, Plaintiff suffered from a physical disability or perceived physical
10 disability as defined by the FEHA, all as afore pled.

11 98. Government Code § 12940(a) precludes an employer from discriminating against an
12 employee because of a physical disability or perceived physical disability.

13 99. Plaintiff is informed and believes, and thereon alleges, that she was discriminated against
14 due to her physical disability. Said discrimination included but was not limited to: not being
15 accommodated, being constructively terminated and being terminated.

16 100. The afore pled conduct of the Employer Defendants, and each of them, constitutes
17 discrimination based on Plaintiff's physical disability, or perceived physical disability, and
18 accordingly violates Government Code § 12940(a) and other provisions of FEHA.

19 101. As a proximate result of the said discrimination, Plaintiff has suffered mental anguish
20 and emotional suffering past and future in an amount in excess of the minimum jurisdiction of this
21 Court and according to proof.

22 102. As a further proximate result of the said discrimination as afore pled, Plaintiff has
23 suffered a loss of tangible employment benefits including lost wages and fringe benefits past and
24 future in an amount in excess of the minimum jurisdiction of this Court and according to proof.

25 103. As a further and proximate result of the said violation of FEHA as afore pled, Plaintiff
26 was required to and did seek medical attention, and will need medical attention in the future, all to
27 Plaintiff's damages in a sum according to proof.

28 104. As a further proximate result of the Defendant Employers' discrimination as afore pled,
Plaintiff was forced to and did retain attorneys, and is accordingly entitled to an award of
attorneys' fees and costs according to proof at the time of trial.

105. The afore pled conduct constitutes malice, oppression, or fraud, thereby entitling
Plaintiff to an award of punitive damages. Plaintiff is informed and believes and thereon alleges

1 that such conduct was taken by an officer or managing agent of the Defendants, or alternatively,
2 authorized, ratified or approved by an officer or managing agent of the Defendants.

3 **FIFTH CAUSE OF ACTION**

4 **FAILURE TO ACCOMMODATE IN VIOLATION OF FEHA**

5 **(Cal. Gov't Code § 12940(m))**

6 **(BY PLAINTIFF AGAINST ALL DEFENDANTS)**

7 106. Plaintiff incorporates by this reference all the preceding and subsequent paragraphs

8 107. Plaintiff was physically disabled within the meaning of FEHA, all as afore pled.

9 Alternatively, the Employer Defendants perceived Plaintiff as being physically disabled.

10 108. Government Code §12940(m) requires an employer to provide reasonable
11 accommodations to employees with known physical disabilities. The Employer also has an
12 affirmative duty to inform disabled individuals of other job opportunities and ascertain whether the
13 employee is interested in, or qualified for said positions.

14 109. On or about August 25, 2017 and due to her disability, Plaintiff was placed off work on
15 what is on information and belief a protected medical leave by her physician due to her respiratory
16 condition. This leave was to run from August 25, 2017 through October 6, 2017.

17 110. Plaintiff was initially scheduled to return on October 6th 2017

18 111. On or about October 6, 2017 Plaintiff's Physician provided a doctor's note recommending
19 that she be reassigned from the premises to another work location, without mold issues due to her
20 disability.

21 112. This was a request for an accommodation and was reasonable.

22 113. Plaintiff provided this Drs. Note with the requested accommodations to the Employer
23 Defendants.

24 114. This was a protected activity pursuant to the FEHA

25 115. The Employer Defendants did not engage in a good faith interactive process in response
26 to this request for an accommodation.

27 116. The Employer Defendants also refused to accommodate Plaintiff.

28 117. The Employer Defendants instead of accommodating Plaintiff retaliated against her by
taking adverse employment actions, including, but not limited to being constructively terminated
and being terminated.

109. Such conduct violated Government Code §12940(m)

110. As a proximate result of the said violation of FEHA, Plaintiff has suffered mental

1 anguish and emotional suffering past and future in an amount in excess of the minimum
2 jurisdiction of this Court and according to proof.

3 111. As a further proximate result of the said violation of FEHA as afore pled, Plaintiff has
4 suffered a loss of tangible employment benefits past and future including lost wages and fringe
5 benefits in an amount in excess of the minimum jurisdiction of this Court and according to proof.

6 112. As a further and proximate result of the said violation of FEHA as afore pled, Plaintiff
7 was required to and did seek medical attention, and will need medical attention in the future, all to
8 Plaintiff's damages in a sum according to proof.

9 113. As a further proximate result of the Defendant Employers' violation of FEHA as afore
10 pled, Plaintiff was forced to and did retain attorneys, and is accordingly entitled to an award of
11 attorneys' fees and costs according to proof at the time of trial.

12 114. The afore pled conduct constitutes malice, oppression, or fraud, thereby entitling
13 Plaintiff to an award of punitive damages. Plaintiff is informed and believes and thereon alleges
14 that such conduct was taken by an officer or managing agent of the Defendants, or alternatively,
15 authorized, ratified or approved by an officer or managing agent of the Defendants.

16 SIXTH CAUSE OF ACTION

17 FAILURE TO ENGAGE IN A GOOD FAITH INTERACTIVE PROCESS

18 IN VIOLATION OF FEHA (GOVERNMENT CODE § 12940(n))

19 (BY PLAINTIFF AGAINST ALL DEFENDANTS)

20 115. Plaintiff incorporates by this reference all the preceding and subsequent paragraphs

21 116. Plaintiff was physically disabled within the meaning of FEHA, all as afore pled.

22 Alternatively, the Employer Defendants perceived Plaintiff as being physically disabled

23 117. *Government Code* §12940(n) requires an employer to engage in a good faith interactive
24 process with a disabled employee to ascertain effective reasonable accommodations. The
25 employer's failure to do so is a separate violation of FEHA.

26 118. On or about August 25, 2017 and due to her disability, Plaintiff was placed off work on
27 what is on information and belief a protected medical leave by her physician due to her respiratory
28 condition. This leave was to run from August 25, 2017 through October 6, 2017.

119. Plaintiff was initially scheduled to return on October 6, 2017

120. On or about October 6, 2017 Plaintiff's Physician provided a doctor's note recommending
that she be reassigned from the premises to another work location, without mold issues due to her
disability.

1 121. This was a request for an accommodation and was reasonable.

2 122. Plaintiff provided this Drs. Note with the requested accommodations to the Employer
3 Defendants.

4 123. This was a protected activity pursuant to the FEHA

5 124. The Employer Defendants did not engage in a good faith interactive process in response
6 to this request for an accommodation.

7 125. The Employer Defendants also refused to accommodate Plaintiff.

8 126. The Employer Defendants instead of accommodating Plaintiff retaliated against her by
9 taking adverse employment actions, including, but not limited to being constructively terminated
10 and being terminated.

11 118. Such conduct violated Government Code §12940(n).

12 119. As a proximate result of the said violation of FEHA, Plaintiff has suffered mental
13 anguish and emotional suffering past and future in an amount in excess of the minimum
14 jurisdiction of this Court and according to proof.

15 120. As a further proximate result of the said violation of FEHA as afore pled, Plaintiff has
16 suffered a loss of tangible employment benefits past and future including lost wages and fringe
17 benefits in an amount in excess of the minimum jurisdiction of this Court and according to proof.

18 121. As a further and proximate result of the said violation of FEHA as afore pled, Plaintiff
19 was required to and did seek medical attention, and will need medical attention in the future, all to
20 Plaintiff's damages in a sum according to proof.

21 122. As a further proximate result of the Defendant Employers' violation of FEHA as afore
22 pled, Plaintiff was forced to and did retain attorneys, and is accordingly entitled to an award of
23 attorneys' fees and costs according to proof at the time of trial.

24 123. The afore pled conduct constitutes malice, oppression, or fraud, thereby entitling
25 Plaintiff to an award of punitive damages. Plaintiff is informed and believes and thereon alleges
26 that such conduct was taken by an officer or managing agent of the Defendants, or alternatively,
27 authorized, ratified or approved by an officer or managing agent of the Defendants.

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CONSTRUCTIVE TORTUOUS TERMINATION IN VIOLATION OF PUBLIC POLICY
(BY PLAINTIFF AGAINST ALL DEFENDANTS)

125. This is an alternative legal theory in the event there is a factual finding that plaintiff was terminated, but rather quit.

127. It is the Public Policy of the State of California, as expressed in the Fair Employment and Housing Act that an employer may not retaliate against an employee for protesting violations of the FEHA

129. It is the Public Policy of the State of California, as expressed in the FEHA that an employer may not discriminate against a disabled worker.

131. These public policies were valid, fundamental, protected the public, and were binding on the Employer Defendants.

133. This conduct included but was not limited to: refusing to abate the mold so that Plaintiff became ill, retaliating against plaintiff for protesting these conditions, refusing to transfer her to a facility without mold, illegally insisting that she resign as a condition to her workers compensation case, and other conduct according to proof.

- 16 -

1 these intolerable working conditions.

2 135. As a proximate result Plaintiff suffered general damages past and future according to
3 proof.

4 136. As a further proximate result Plaintiff lost employment benefits, past and future
5 including wages and fringe benefits, in an amount in excess of the minimum jurisdiction of the
6 court and according to proof.

7 137. As a further proximate result Plaintiff has needed and will need medical attention, and
8 will incur medical expenses, past and future, to her damage according to proof.

9 138. The afore pled conduct of the Employer Defendants constitutes oppression, fraud, and
10 malice thereby entitling Plaintiff to an award of punitive damages. Plaintiff is further informed and
11 believe, and thereon allege, that this act of oppression, fraud, or malice or act of, ratification or
12 authorization were on the part of a managing agent or owner acting on behalf of the Employer
13 Defendants.

14 **EIGHTH CAUSE OF ACTION**

15 **WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY**

16 **(BY PLAINTIFF AGAINST ALL DEFENDANTS)**

17 139. Plaintiff incorporates by this reference all the preceding and subsequent paragraphs

18 140. It is the Public Policy of the State of California as expressed in California Labor Code §
19 6310 that an employer may not discharge or otherwise take action against an employee for making
20 a safety complaint to his employer.

21 141. It is the Public Policy of the State of California, as expressed in the Fair Employment and
22 Housing Act that an employer may not retaliate against an employee for protesting violations of the
23 FEHA

24 142. It is the Public Policy of the State of California, as expressed in Health and Safety Code
25 1278.5 that an employer may not discharge or otherwise take action against a health care worker
26 for making a complaint about unsafe patient care or conditions

27 143. It is the Public Policy of the State of California, as expressed in the FEHA that an
28 employer may not discriminate against a disabled worker.

144. It is the Public Policy of the State of California, as expressed in OSHA regulations that an
employer must abate safety concerns in the workplace.

145. These public policies were valid, fundamental, protected the public, and were binding on
the Employer Defendants.

1 146. Plaintiff is informed and believes that she was terminated in retaliation for making
2 complaints about unsafe working conditions, due to her disability, in retaliation for whistleblowing,
3 for making patient safety complaints, in retaliation for requesting an accommodation, and in
4 retaliation for insisting the dangerous condition be abated.

5 147. Plaintiff also had her workers compensation settlement illegally conditioned on the
6 resignation of her employment in violation of California Public Policy.

7 148. The Employer Defendants' termination of Plaintiff was in violation of these various
8 Public Policies.

9 149. The afore pled conduct caused Plaintiff to suffer general damages past and future in
10 excess of the minimum jurisdiction of this Court subject to proof at the time of trial.

11 150. The afore pled conduct caused Plaintiff to lose wages and fringe benefits past and future
12 in an amount according to proof.

13 151. The afore pled conduct caused and/or will cause Plaintiff to incur medical expenses past
14 and future according to proof.

15 152. The afore pled conduct constitutes oppression, fraud, and malice thereby entitling
16 Plaintiff to an award of punitive damages. Plaintiff is informed and believe, and thereon alleges,
17 that the Employer Defendants ratified or authorized the said conduct. Plaintiff is further informed
18 and believes, and thereon alleges, that such act of oppression, fraud, or malice, or act of ratification
19 or authorization were on the part of a managing agent acting on behalf of the Employer
20 Defendants.

21 **NINTH CAUSE OF ACTION**

22 **BY PLAINTIFF FOR FAILURE TO TAKE REASONABLE STEPS**

23 **TO PREVENT DISCRIMINATION AND RETALIATION**

24 **(AGAINST ALL DEFENDANTS)**

25 153. Plaintiff incorporates by this reference all the preceding and subsequent paragraphs

26 154. Plaintiff is informed and believes that the Employer Defendants failed to take all steps
27 reasonably necessary to prevent discrimination and retaliation from occurring to Plaintiff as
28 required by Government Code §12940(k).

155. Such conduct violated Government Code § 12940(k), and allowed Plaintiff to be
discriminated against and retaliated against as all as pled herein.

156. As a proximate result of the said conduct as afore pled, Plaintiff suffered emotional
distress damages past and future in an amount in excess of the minimum jurisdiction of this Court

1 and according to proof.

2 157. As a further and proximate result of the conduct as afore pled, Plaintiff was required to
3 and did seek medical attention, and will need medical attention in the future, all to Plaintiff's
4 damages in a sum according to proof.

5 158. As a further proximate result of this conduct as afore pled, Plaintiff lost employment
6 benefits, including lost wages and fringe benefits past and future in an amount in excess of the
7 minimum jurisdiction of the court and according to proof.

8 a. As a further proximate result of this conduct as afore pled, Plaintiff was required to
9 and did retain attorneys and is therefore entitled to an award of attorney's fees
10 according to proof.

11 b. The afore pled conduct constitutes oppression, fraud, and malice thereby entitling
12 Plaintiff to an award of punitive damages. Plaintiff is informed and believes, and
13 thereon alleges, that the Employer Defendants ratified or authorized the said
14 conduct. Plaintiff is further informed and believes, and thereon alleges, that such
15 act of oppression, fraud, or malice, or act of ratification or authorization were on the
16 part of a managing agent acting on behalf of the Employer Defendants.

17 **TENTH CAUSE OF ACTION**

18 **BY PLAINTIFF FOR RETALIATION IN VIOLATION**

19 **OF LABOR CODE §1102.5 (AGAINST ALL DEFENDANTS)**

20 159. Plaintiff incorporates by this reference all the preceding and subsequent paragraphs

21 160. California Labor Code section 1102.5, subdivision (b), provides in pertinent part that an
22 employer, or any person acting on behalf of the employer, shall not retaliate against an employee
23 for disclosing information, or because the employer believes that the employee disclosed or may
24 disclose information, to a person with authority over the employee or another employee who has
25 the authority to investigate, discover, or correct the violation or noncompliance, if the employee
26 has reasonable cause to believe that the information discloses a violation of state or federal statute,
27 or a violation of or noncompliance with a local, state, or federal rule or regulation.

28 161. Plaintiff repeatedly disclosed information about violations of a state or federal statute, or
a violation of or noncompliance with a local, state, or federal rule or regulation to management and
to the government, all as afore pled.

162. Plaintiff is informed and believes, and thereon alleges, that she had reasonable cause to
believe that the information disclosed a violation of a state or federal statute, or a violation of or

1 noncompliance with a local, state, or federal regulation.

2 163. The disclosures were a substantial motivating factor for the Employer Defendants'
3 retaliation against Plaintiff, including but not limited to: not accommodating her , subjecting her to
4 other adverse employment actions, forcing her to quit, and terminating her and thus constituted
5 unlawful retaliation in violation of California Labor Code section 1102.5, subdivision (b).

6 164. As a proximate result of the unlawful retaliation in violation of California Labor Code
7 section 1102.5 Plaintiff has suffered mental anguish and emotional suffering and other general
8 damages past and future in an amount in excess of the minimum jurisdiction of this court and
9 according to proof.

10 165. As a proximate result of the unlawful retaliation in violation of California Labor Code
11 section 1102.5, Plaintiff has suffered a loss of tangible employment benefits including lost wages
12 and fringe benefits past and future in an amount in excess of the minimum jurisdiction of the court
13 and according to proof.

14 166. As a proximate result of the unlawful retaliation in violation of California Labor Code
15 section 1102.5, Plaintiff was required to and did retain attorneys, and is accordingly entitled to an
16 award of attorneys' fees according to proof pursuant to California Code of Civil Procedure, section
17 1021.5.

18 167. As a proximate result of the unlawful retaliation in violation of California Labor Code
19 section 1102.5, Plaintiff has incurred and/or will continue to incur medical expenses in amount
20 according to proof at the time of trial.

21 168. The afore pled conduct, including the retaliation constitutes oppression, fraud, and malice
22 thereby entitling Plaintiffs to an award of punitive damages. Plaintiff is informed and believes, and
23 thereon alleges that the Employer Defendants, and each of them, ratified or authorized the
24 discriminatory conduct. Plaintiff is further informed and believes, and thereon alleges that these
25 acts of oppression, fraud, or malice or act of ratification or authorization were on the part of
26 managing agents acting on behalf of the Employer Defendants.

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1 PRAYER FOR RELIEF

2 WHEREFORE, Plaintiff prays judgment against Defendants as follows:

- 3 1. For damages for lost wages and other employment benefits past and future according to
4 proof;
5 2. For damages for pain, suffering and emotional distress past and future according to proof;
6 3. For damages for medical costs past and future according to proof;
7 4. For attorneys' fees according to proof on those causes of action which allow them;
8 5. For reinstatement and back pay
9 6. For prejudgment interest pursuant to California Civil Code section 3287 and/or California
10 Civil Code section 3288 and/or any other provision of law providing for prejudgment
11 interest;
12 7. For costs of suit incurred herein; and
13 8. For punitive damages according to proof; and
14 9. For such other and further relief as the Court deems just and proper.

15 Dated: March 4, 2019

SOTTILE ■ BALTAXE

16 By

Michael F. Baltaxe
17 MICHAEL F. BALTAXE, ESQ.
18 Attorneys for Plaintiff

19 JURY TRIAL DEMANDED

20 Plaintiff demands a jury as to all causes of action.

21
22 Dated: March 4, 2019

SOTTILE ■ BALTAXE

23 By

Michael F. Baltaxe
24 MICHAEL F. BALTAXE, ESQ.
25 Attorneys for Plaintiff
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