

1 Lawrence W. Freiman, Esq. (SBN 288917)
2 lawrence@freimanlegal.com
3 FREIMAN LEGAL
4 100 Wilshire Blvd., Ste. 700
5 Santa Monica, CA 90401
6 Telephone: (310) 917-1004
7 Facsimile: (310) 300-2603

8 Attorneys for Plaintiff Veronica Rincon

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Clerk of Court
Superior Court of CA,
County of Santa Clara
18CV333490
Reviewed By: S. Alvarez

9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

10 **COUNTY OF SANTA CLARA**

11 **VERONICA RINCON,**

12 Plaintiff,

13 v.

14 **THE PERMANENTE MEDICAL
15 GROUP, INC.; and DOES 1 through 20,
16 inclusive,**

17 Defendants.

CASE NO.: 18CV333490

COMPLAINT FOR:

1. Discrimination in Violation of FEHA
2. Failure to Prevent Discrimination in Violation of FEHA
3. Harassment in Violation of FEHA
4. Failure to Prevent Harassment in Violation of FEHA
5. Retaliation in Violation of FEHA
6. Wrongful Termination in Violation of Public Policy
7. Retaliation in Violation of Labor Code 1102.5
8. Failure to Pay Overtime Compensation (Labor Code ss. 510)
9. Failure to Pay Timely Earned Wages (Labor Code ss. 204)
10. Failure to Pay Timely Earned Wages Upon Separation of Employment (Labor Code ss. 201, 203, 227.3)
11. Failure to Provide Accurate Wage Statements in Violation of Labor Code s. 226
12. Unfair Competition (Cal B&P Code s. 17200 et seq.)
13. Failure to Engage in a Timely Good Faith Interactive Process in Violation of FEHA
14. Failure to Provide Reasonable Accommodation
15. Retaliation in Violation of Labor Code ss. 98.6
16. Failure to Pay Meal and Rest Period Compensation (Labor Code ss. 226.7 & 512)
17. Failure to Prevent Retaliation (FEHA)

DEMAND FOR JURY TRIAL

1 Plaintiff VERONICA RINCON for her Complaint against Defendant THE PERMANENTE
2 MEDICAL GROUP, INC. and DOES 1 through 20, inclusive, hereby complains and alleges as
3 follows:

4 **PARTIES, JURISDICTION AND VENUE**

5
6 1. Plaintiff Veronica Rincon was at all times relevant to the matters alleged in this
7 complaint an individual with her residence in California.

8 2. Defendant The Permanente Medical Group, Inc. is a California Corporation that is
9 licensed to do business and at all times material to this Complaint, conducted business in the State of
10 California.

11
12 3. Plaintiff is informed and believes and thereon alleges that the fictitiously-named
13 Defendants sued herein as Does 1 through 20 inclusive, and each of them, are in some manner
14 responsible for the occurrences, acts, and omissions alleged herein and that Plaintiff's damages were
15 proximately caused by their conduct. The true names and capacities of such fictitiously-named Doe
16 Defendants, whether individual, corporate, partnership, associate or otherwise, are presently
17 unknown to Plaintiff, and Plaintiff will seek leave of the Court to amend this Complaint to assert the
18 true names and capacities of such fictitiously-named Defendants when the same have been
19 ascertained. For convenience, each reference to the named Defendant herein shall also refer to Does
20 1 through 20, inclusive.

21
22
23 4. Plaintiff is informed and believes and thereon alleges that in committing certain acts
24 herein as alleged, some or all of the Defendant herein named were acting as the agents, joint ventures,
25 partners, representatives, subsidiaries, affiliates and/or employees of some or all of the other
26 Defendants, and that some or all of the conduct of such Defendant, as complained of herein, was
27 within the course and scope of such relationship.
28

1 5. Pursuant to Article VI, Section 10 of the California Constitution, subject matter
2 jurisdiction is proper in the Superior Court of California, County of Santa Clara.

3 6. Pursuant to Section 395 of the California Code of Civil Procedure, venue is proper in
4 the Superior Court of California for the County of Santa Clara, because the Defendant conducted
5 business in Santa Clara.
6

7 **FACTUAL BACKGROUND**

8 7. Defendant employed Plaintiff.

9 8. Defendant discriminated/harassed/retaliated against, and failed to prevent
10 discrimination/harassment/retaliation against its employee, Plaintiff, on the basis of her age, race,
11 national origin, medical leave, disability, medical condition, filing a worker's compensation claim
12 and in retaliation for Plaintiff's opposition to and complaints about
13 harassment/discrimination/retaliation in violation of the Fair Employment and Housing Act
14 ("FEHA") and California Labor Code and activity that violated the law.
15

16 9. Defendant discriminated/harassed/retaliated against Plaintiff on the bases of the
17 aforementioned categories through verbal harassment, reprimanding, denying promotion, suspension,
18 asking impermissible non-job related questions, denying a work environment free of harassment or
19 discrimination, denying family care or medical leave and termination from employment.
20

21 10. Defendant failed to engage in the interactive process and provide Plaintiff with a
22 reasonable accommodation for her disabilities.
23

24 11. Defendant failed to provide Plaintiff with legally required meal and rest periods.

25 12. Plaintiff complained to Defendant that it failed to provide her with the required meal
26 and rest periods and Defendant retaliated against Plaintiff based on Plaintiff's protected complaints.
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1 13. Defendant's actions constitute disparate impact and disparate treatment
2 discrimination, and are part of a pattern and practice of discrimination/retaliation.

3 14. Defendant failed to provide timely earned wages and accurate wage statements and
4 engaged in unfair competition.

5 15. Plaintiff has received a Right to Sue letter from the California Department of Fair
6 Housing and Employment and has thus exhausted all necessary administrative remedies.
7

8 **FIRST CAUSE OF ACTION**
9 **(Discrimination in Violation of FEHA)**

10 16. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as
11 though fully set forth herein.

12 17. Defendant's actions constitute discrimination in violation of the Fair Employment and
13 Housing Act ("FEHA").

14 18. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered and
15 continues to suffer a loss in earnings and other employment benefits according to proof at time of
16 trial.
17

18 19. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered
19 humiliation, emotional distress and mental pain and anguish all to Plaintiff's damages in an amount
20 according to proof at trial.
21

22 20. In doing the acts herein alleged, Defendant acted with oppression, malice, and/or
23 conscious disregard of Plaintiff's rights and Plaintiff is therefore entitled to punitive damages.
24

25 **SECOND CAUSE OF ACTION**
26 **(Failure to Prevent Discrimination in Violation of FEHA)**

27 21. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as
28 though fully set forth herein.

1 22. Under FEHA, it is unlawful for an employer to fail to take all reasonable steps to
2 prevent discrimination.

3 23. Defendant had knowledge and/or reasonable notice of the discrimination that took
4 place against Plaintiff and failed to prevent such.

5 24. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered and
6 continues to suffer a loss in earnings and other employment benefits according to proof at time of
7 trial.
8

9 25. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered
10 humiliation, emotional distress and mental pain and anguish all to Plaintiff's damages in an amount
11 according to proof at trial.
12

13 26. In doing the acts herein alleged, Defendant acted with oppression, malice, and/or
14 conscious disregard of Plaintiff's rights and Plaintiff is therefore entitled to punitive damages.
15

16 **THIRD CAUSE OF ACTION**
17 **(Harassment in Violation of FEHA)**

18 27. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as
19 though fully set forth herein.

20 28. Defendant's actions constitute harassment in violation of the Fair Employment and
21 Housing Act ("FEHA").

22 29. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered and
23 continues to suffer a loss in earnings and other employment benefits according to proof at time of
24 trial.
25

26 30. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered
27 humiliation, emotional distress and mental pain and anguish all to Plaintiff's damages in an amount
28 according to proof at trial.

1 39. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered and
2 continues to suffer a loss in earnings and other employment benefits according to proof at time of
3 trial.

4 40. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered
5 humiliation, emotional distress and mental pain and anguish all to Plaintiff's damages in an amount
6 according to proof at trial.

7 41. In doing the acts herein alleged, Defendant acted with oppression, malice, and/or
8 conscious disregard of Plaintiff's rights and Plaintiff is therefore entitled to punitive damages.
9

10 **SIXTH CAUSE OF ACTION**
11 **(Wrongful Termination in Violation of Public Policy)**

12 42. Plaintiff re-alleges and incorporates all paragraphs of this Complaint as though fully
13 set forth herein.

14 43. Defendant's actions constitute wrongful termination in violation of the public policies
15 embedded in FEHA, Age Discrimination in Employment Act, California Labor Code, and *Tameny v.*
16 *Atlantic Richfield Co.*, (1980) 27 Cal.3d 167.

17 44. As a proximate result of the aforesaid acts of Defendant, Plaintiff has suffered actual,
18 consequential and incidental financial losses, including without limitation, loss of salary and benefits,
19 and the intangible loss of employment related opportunities in his field and damage to his professional
20 reputation, emotional distress, and seeks punitive damages all in an amount subject to proof at the
21 time of trial.
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24 **SEVENTH CAUSE OF ACTION**
25 **(Retaliation in Violation of Labor Code s. 1102.5)**

26 45. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as
27 though fully set forth herein.
28

1 46. Defendant's actions constitute retaliation in violation of Labor Code s. 1102.5.

2 47. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered and
3 continues to suffer a loss in earnings and other employment benefits according to proof at time of
4 trial.

5 48. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered
6 humiliation, emotional distress, and mental pain and anguish all to Plaintiff's damages in an amount
7 according to proof at trial.

8 49. In doing the acts herein alleged, Defendant acted with oppression, malice, and/or
9 conscious disregard of Plaintiff's rights and Plaintiff is therefore entitled to punitive damages.
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12 **EIGHTH CAUSE OF ACTION**
13 **(Failure to Pay Overtime and Doubletime Compensation)**
14 **(Cal. Lab. Code Section 510)**

15 50. Plaintiff seeks all statutory damages and penalties. Plaintiff re-alleges and incorporates
16 by reference all paragraphs of this Complaint as though fully set forth herein.

17 51. Defendants failed to compensate Plaintiff with overtime for Plaintiff's hours worked
18 including over eight (8) hours per day and over forty (40) hours per week; and doubletime for her
19 hours worked over twelve (12) in a day and/or seven consecutive days.

20 52. Plaintiff seeks all statutory damages and penalties.

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22 **NINTH CAUSE OF ACTION**
23 **(Failure to Pay Timely Earned Wages)**
24 **(Cal. Lab. Code Section 204)**

25 53. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as
26 though fully set forth herein.

27 54. Labor Code Section 204 provides that all wages earned by an employee are due and
28 payable twice each calendar month.

1 55. Defendants did not pay Plaintiff Plaintiff's earned wages, overtime, and missed
2 meal/rest break period premiums.

3 56. Plaintiff seeks all statutory damages and penalties.
4

5 **TENTH CAUSE OF ACTION**
6 **(Failure to Pay Timely Earned Wages and Wages upon Separation of Employment in**
7 **Violation of Cal. Lab. Code Sections 201, 202, 203)**

8 57. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as
9 though fully set forth herein

10 58. Defendants failed to pay Plaintiff Plaintiff's accrued wages at the time of separation
11 intending to withhold earned wages, overtime pay and missed meal/rest break period premiums.

12 59. Plaintiff seeks all statutory damages and penalties.

13 **ELEVENTH CAUSE OF ACTION**
14 **(Penalties for Violations of California Labor Code § 226 for**
15 **Failure to Provide Accurate Wage Statements)**

16 60. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as
17 though fully set forth herein.

18 61. Labor Code § 226 subdivision (a) requires, in pertinent part, that "Every employer
19 shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees,
20 either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately
21 when wages are paid by personal check or cash, an accurate itemized statement in writing showing
22 (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose
23 compensation is solely based on a salary and who is exempt from payment of overtime under
24 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the
25 number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
26 rate basis, (4) all deductions, provided that all deductions made on written orders of the employee
27
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1 may be aggregated and shown as one item, (5) net wages earned, and (6) all applicable hourly rates
2 in effect during the pay period and the corresponding number of hours worked at each hourly rate
3 by the employee. . .”

4 62. Plaintiff did not receive accurate wage statements with all of the required information
5 set forth under Labor Code § 226 because it did not include the unpaid wages, overtime pay, and
6 rest break premiums and as a result suffered monetary damages.

7
8 63. On numerous occasions, an exact amount by which will be proven at trial, Defendants
9 violated various provisions of § 226, including but not limited to subdivisions (a)(1), (a)(2), (a)(4),
10 (a)(5), (a)(6), (a)(7), (a)(8), and (a)(9) by failing to provide Plaintiff, and other employees, accurate
11 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
12 employee (4) all deductions (5) net wages earned, and (6) all applicable hourly rates in effect during
13 the pay period and the corresponding number of hours worked at each hourly rate by the employee.
14

15 **TWELFTH CAUSE OF ACTION**

16 **(Unfair Competition)**

17 **(California Business & Professions Code Section 17200, et seq.)**

18 64. Plaintiff re-alleges and incorporates all paragraphs of this Complaint as though fully
19 set forth herein.

20 65. Defendant's failure to pay Plaintiff compensation for missed meal and rest periods,
21 overtime pay, wages and other Labor Code sections constitutes a violation of California's Unfair
22 Competition Law enumerated in California Bus. and Prof. Code s. 17200 et seq.

23
24 66. Plaintiff has been prejudiced by Defendant's business practices and has lost property
25 as a result. As a direct and proximate result of the unfair business practices of Defendant, Plaintiff
26 is entitled to equitable relief, including full restitution, disgorgement, and/or specific performance
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1 of payment of all wages and other earnings that have been withheld from Plaintiff as a result of the
2 unfair business acts and practices described herein.

3 **THIRTEENTH CAUSE OF ACTION**
4 **(Failure to Engage in a Timely Good Faith Interactive Process in Violation of FEHA)**

5 67. Plaintiff re-alleges and incorporates all paragraphs of this Complaint as though fully
6 set forth herein.

7 68. Defendant's actions constitute failure to engage in a timely good faith interactive
8 process in violation of FEHA.

9 69. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered and
10 continues to suffer a loss in earnings and other employment benefits according to proof at time of
11 trial.

12 70. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered
13 humiliation, emotional distress and mental pain and anguish all to Plaintiff's damages in an amount
14 according to proof at trial.

15 71. In doing the acts herein alleged, Defendant acted with oppression, malice, and/or
16 conscious disregard of Plaintiff's rights and Plaintiff is therefore entitled to punitive damages.

17 **FOURTEENTH CAUSE OF ACTION**
18 **(Failure to Provide Reasonable Accommodation in Violation of FEHA)**

19 72. Plaintiff re-alleges and incorporates all paragraphs of this Complaint as though fully
20 set forth herein.

21 73. Defendant's actions constitute failure to provide reasonable accommodation in
22 violation of FEHA.

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74. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered and continues to suffer a loss in earnings and other employment benefits according to proof at time of trial.

75. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered humiliation, emotional distress and mental pain and anguish all to Plaintiff's damages in an amount according to proof at trial.

76. In doing the acts herein alleged, Defendant acted with oppression, malice, and/or conscious disregard of Plaintiff's rights and Plaintiff is therefore entitled to punitive damages.

FIFTEENTH CAUSE OF ACTION
(Retaliation in Violation of Labor Code ss. 98.6)

77. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as though fully set forth herein.

78. Defendant's actions constitute retaliation in violation of Labor Code ss. 98.6, 1102.5.

79. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered and continues to suffer a loss in earnings and other employment benefits according to proof at time of trial.

80. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered humiliation, emotional distress, and mental pain and anguish all to her damage in an amount according to proof at trial.

81. In doing the acts herein alleged, Defendant acted with oppression, malice, and/or conscious disregard of Plaintiff's rights and Plaintiff is therefore entitled to punitive damages.

SIXTEENTH CAUSE OF ACTION
(Failure to Pay Meal and Rest Period Compensation)
(California Labor Code Sections 226.7 and 512)

1 82. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as
2 though fully set forth herein.

3 83. Defendant failed to relieve Plaintiff for rest and meal periods mandated by law among
4 other codes, Cal Lab. Code Section 226.7 and 512.

5 84. Defendant failed to compensate or provide premiums to Plaintiff for the missed rest
6 periods.
7

8 85. Plaintiff seeks all statutory damages and penalties.

9 **SEVENTEENTH CAUSE OF ACTION**
10 **(Failure to Prevent Retaliation in Violation of FEHA)**

11 86. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as
12 though fully set forth herein.

13 87. Defendant's actions constitute failure to prevent retaliation in violation of the Fair
14 Employment and Housing Act ("FEHA").

15 88. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered and
16 continues to suffer a loss in earnings and other employment benefits according to proof at time of
17 trial.
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19 89. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered
20 humiliation, emotional distress and mental pain and anguish all to Plaintiff's damages in an amount
21 according to proof at trial.
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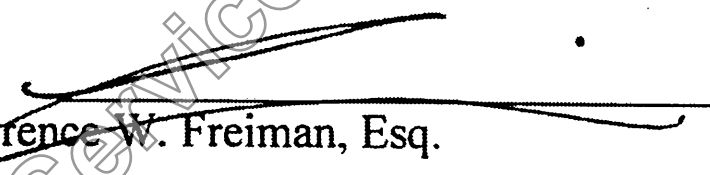
23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- 25 1. For payment of earned wages, withheld earnings, and other damages according to
26 proof in an amount to be ascertained at trial;
- 27 2. For payment of all statutory obligations and penalties as required by law;
- 28

- 1 3. For penalties, special damages, compensatory, and general damages in an amount to
- 2 be proven at trial;
- 3 4. For punitive damages as allowed by law;
- 4 5. Loss of income incurred and to be incurred according to proof;
- 5 6. For reasonable attorneys' fees;
- 6 7. For costs of suit incurred herein;
- 7 8. For interest provided by law;
- 8 9. For restitution and other equitable relief; and
- 9 10. For such other and further relief as the court deems just and proper.

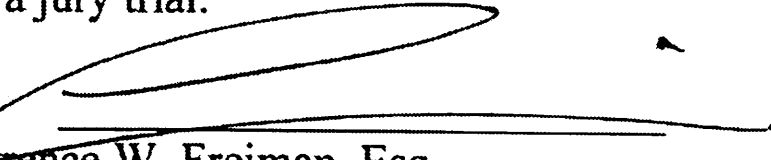
10 Dated: August 20, 2018

By: 
Lawrence W. Freiman, Esq.
Attorneys for Plaintiff Veronica Rincon

DEMAND FOR JURY TRIAL

Plaintiff VERONICA RINCON demands a jury trial.

15 Dated: August 20, 2018

By: 
Lawrence W. Freiman, Esq.
Attorneys for Plaintiff Veronica Rincon