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FILED
Superior Court of California
County of Los Angeles

DEC 21 2018

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14 Attorneys for Plaintiff SERGIO RIVAS

11 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
12 FOR THE COUNTY LOS ANGELES

13 SERGIO RIVAS, an individual,
14 Plaintiff,

15 vs.

16 KAISER FOUNDATION HEALTH PLAN,
17 INC., a corporation; KAISER FOUNDATION
18 HOSPITALS, a corporation; SOUTHERN
19 CALIFORNIA PERMANENTE MEDICAL
20 GROUP, a partnership; and DOES 1 through 10,
21 inclusive.

22 Defendants.

CASE NO.: 18STCV09262

COMPLAINT FOR DAMAGES

- 1. DISCRIMINATION BASED ON AGE IN VIOLATION OF FEHA;
- 2. DISCRIMINATION BASED ON RACE/NATIONAL ORIGIN IN VIOLATION OF FEHA;
- 3. HARASSMENT BASED ON RACE/NATIONAL ORIGIN IN VIOLATION OF FEHA
- 4. SEXUAL HARASSMENT (HOSTILE WORK ENVIRONMENT) IN VIOLATION OF FEHA;
- 5. RETALIATION IN VIOLATION OF FEHA;
- 6. FAILURE TO PREVENT DISCRIMINATION AND RETALIATION IN VIOLATION OF FEHA;
- 7. VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE § 1278.5;
- 8. RETALIATION IN VIOLATION OF LABOR CODE §1102.5; and
- 9. TORTUOUS WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

BY FAX

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DEMAND FOR JURY

Plaintiff SERGIO RIVAS ("Plaintiff") alleges as follows:

GENERAL ALLEGATIONS

1. Plaintiff SERGIO RIVAS ("Rivas" or "Plaintiff") is an individual who at all times pertinent to this lawsuit was a resident of the County of Los Angeles, State of California. Rivas is entitled to the protections of the Fair Employment and Housing Act ("FEHA") because he is of Hispanic race and/or national origin, his age (over 40 years old) and he engaged in protected activity as defined by the FEHA.
2. Plaintiff is informed and believes that Defendants Kaiser Foundation Health Plan, Inc. ("KFHP") and Kaiser Foundation Hospitals ("KFH") are business entities, exact form unknown organized and existing under the laws of California, with their principal place of business located at 1 Kaiser Plaza, Oakland, California.
3. Plaintiff is informed and believes that Defendant Southern California Permanente Medical Group ("SCPMG") is a business entity exact form unknown organized and existing under the laws of California with its principal place of business located in Los Angeles County at 393 East Walnut Street, Pasadena, California.
4. Plaintiff is informed and believes KFHP, KFH and SCPMG do business jointly, and with other entities owned and controlled by KFHP under the name "Kaiser Permanente."
5. Plaintiff is informed and believes that Kaiser Permanente is an "integrated" health care delivery system comprised of the insurance company, KFHP, its doctors, organized as SCPMG, and its hospitals, which are wholly owned and/or controlled by KFHP through its captive entity, KFH, which has no separate existence or identity apart from KFHP.
6. Plaintiff is informed and believes and thereon alleges that Defendant KFHP is an insurance company which purports to provide comprehensive total medical care to its members. KFHP describes itself as the largest Health Maintenance Organization in the country. KFHP exercises total control over Defendants KFH, SCPMG and a number of other corporate and

1 partnership entities such that their very existence as purported separate entities is in fact a sham
2 designed to perpetuate the myth that KFHP and KFH are legitimate "non-profit" corporations.
3 Plaintiff is informed and believes that KFHP and KFH are in fact "for profit" enterprises regularly
4 reporting their profitability publicly. For example, on August 5, 2011, Kaiser reported:

5 Kaiser Foundation Hospitals, Kaiser Foundation Health Plan, Inc., and their respective
6 subsidiaries (KFH/HP) reported today a combined operating revenue of \$11.9 billion for the
7 quarter ending June 30, 2011, compared to \$11.0 billion in the same period in 2010.

8 Operating income was \$390 million in the second quarter of 2011, compared to \$313 million
9 in the same quarter last year. Net non-operating income was \$273 million in the second
10 quarter of 2011, compared to \$91 million in the same quarter last year. As a result, net
11 income for the second quarter was \$663 million versus net income of \$404 million in the
12 same period last year. These are the combined operating results for Kaiser Foundation
13 Hospitals, Kaiser Foundation Health Plan, Inc., and their respective subsidiaries.

14 7. KFHP's total dominance over KFH and SCPMG is evidenced by the fact that KFH and
15 SCPMG's entire annual budget is set by, controlled by, and approved by KFHP; all funds for KFH
16 and SCPMG's operations come from KFHP; KFHP determines what "profit" if any SCPMG is
17 allowed to make; money that SCPMG uses to pay bonuses to its doctors comes from KFHP;
18 SCPMG does not bill any patients for most of its services; barring emergencies or extremely rare
19 instances, SCPMG doctors are only allowed to work for KFHP members exclusively; and
20 SCPMG's only source of money is from KFHP. KFHP provides virtually all legal, human
21 resources, insurance, communications, advertising, billing, and other necessary services for KFH
22 and SCPMG. Members buying health care coverage only pay money to KFHP, not to SCPMG;
23 they buy insurance from KFHP and they receive services through SCPMG. Advertising for the
24 health care offered by KFHP as health insurance and provided through SCPMG doctors is done
25 predominantly by KFHP, advertising as "Kaiser Permanente" as seen in the multi-million dollar
26 "Thrive" advertising campaign. SCPMG does not own hospitals, medical buildings, or the clinics
27 where they work; they are owned by KFHP. KFHP provides all telephone, fax, and e-mail services
28 for SCPMG. KFHP also provides health insurance and medical malpractice insurance to

1 SCPMG's doctors. KFHP lawyers routinely render legal advice and counsel to KFH, SCPMG, and
2 have unfettered access to KFH and SCPMG's records; KFHP's Human Resources department
3 routinely investigates any EEOC/DFEH or other complaints of discrimination, as well as issues
4 regarding reasonable accommodations, regarding KFH and SCPMG's practices and employees,
5 reporting to KFHP's legal department on all such investigations; KFHP lawyers and human
6 resources staff do not obtain privacy waivers when seeking records of KFH and/or SCPMG
7 employees or investigating their claims; KFHP provides and pays for all facilities in which KFH
8 and SCPMG conduct business.

9 8. Defendants KFHP, KFH and SCPMG, if not separately noted are hereinafter collectively
10 referred to as "Kaiser" or "Defendants." These Defendants are collectively liable under either a
11 joint employer theory or a single enterprise theory.

12 9. Plaintiff was at all times employed by Defendants KFHP, KFH and SCPMG and DOES 1-
13 100 and each of them. Said defendants will hereinafter be, at times, referred to as the Employer
14 Defendants.

15 10. Plaintiff was at all times relevant employed by the Employer Defendants at their facility
16 located at 1011 Baldwin Park Boulevard, Baldwin Park, California 91706 ("The Premises"). All of
17 the acts alleged herein, on information and belief, occurred at the Premises.

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

20 12. Defendants Does 1 through 10 are sued under fictitious names pursuant to California
21 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis alleges,
22 that each defendant sued under such fictitious names is in some manner responsible for the wrongs
23 and damages as alleged below, and in so acting was functioning as the agent, servant, manager,
24 supervisor, and/or employee of the Employer Defendants, and in doing the actions mentioned
25 below was acting within the course and scope of his or her authority as such agent, servant.

26 13. Plaintiff was hired by the Employer Defendants in approximately October 2008 as a
27 Registered Nurse. He retained that position until he was terminated or forced to quit in
28 approximately January 2018.

1 14. Beginning in 2015 Plaintiff was sexually harassed by a female co-worker Sonia Miranda
2 by showing him revealing photos of herself. When he told her he was not interested, she began
3 following him around at work, putting threatening letters on his desk, and calling his wife and
4 accusing him of infidelity.

5 15. Plaintiff reported this harassment to Human Resources in 2015 and 2016 but nothing was
6 done to stop the harassment.

7 16. In or about June 2016 Plaintiff was shown a gastroenterological scope "scope" that
8 appeared to him to have a compromised rubber component. He reported this circumstance to the
9 Department Administrator Vivian Guevara.

10 17. Plaintiff was subsequently retaliated against for making this health safety report given a
11 disciplinary write-up for having reported this incident and wrongfully accused and put on a nine
12 month paid investigatory suspension for allegedly sexually harassing Jennifer Garcia, the nurse
13 who had failed to submit a compromised scope form when she had discovered the same defect in
14 the same scope some days prior to Plaintiff's having learned of it after returning from an absence
15 due to having attended his grandmother's funeral.

16 18. Upon Plaintiff's return to work from his suspension in April 2017, he was subjected to
17 harassment, discrimination and further retaliation by his new Department Administrator Marjie
18 Alcantara who took away many of his duties included but not limited to ordering equipment
19 supplies and dealing with outside vendors. She then requested that Plaintiff perform some of these
20 duties, then disciplined him for doing so, wrongfully accusing him of acting without her
21 authorization.

22 19. Marjie Alcantara took further adverse employment actions against Plaintiff based on his
23 Latino race/national origin due to her preference towards persons of Filipino national origin. Such
24 adverse actions included disciplinary counseling sessions, write-ups and unwarranted requests that
25 investigations be launched into Plaintiff's work performance.

26 20. In August 2017, Plaintiff observed that a controlled substance, the anesthesia Propofol,
27 was left unsecured and exposed on an anesthesia cart in the procedure room. Plaintiff reported this
28 to the Compliance Department, to his Department Administrator Marjie Alcantara and to Human

1 Resources. He noted several other violations of the safety protocols governing the handling of
2 medications and syringes and reported them to management. Plaintiff was subsequently subjected
3 to further unwarranted discipline in the form of verbal reprimands and unwarranted investigations
4 of Plaintiff. Plaintiff was terminated on or about January 26, 2018.

5 21. Plaintiff complained internally and externally to the EEOC of race/national origin based
6 on discrimination and harassment on or about December 26, 2017 and suffered further retaliation,
7 including termination one month later.

8 22. Plaintiff has duly and timely exhausted his Administrative Remedies by filing charges
9 with the DFEH and receiving Right to Sue Notices.

10 **FIRST CAUSE OF ACTION**

11 **DISCRIMINATION BASED ON AGE IN VIOLATION OF FEHA**

12 **(GOVERNMENT CODE § 12940(a))**

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

14 23. Plaintiff incorporates by reference, as though set forth in full herein, each and every
15 allegation contained in Paragraphs 1 through 22, inclusive above.

16 24. At all relevant times, Plaintiff was over the age of forty (40) years old and accordingly a
17 member of a protected class as defined by FEHA.

18 25. Government Code §12940(a) forbids an employer from discriminating against an
19 employee because of his age.

20 26. In January 2018, Employer Defendants wrongfully terminated Plaintiff.

21 27. Plaintiff is informed and believes, and thereon alleges, that the afore pled conduct was
22 motivated by his age. The afore pled conduct of the Employer Defendants, and each of them,
23 constitutes discrimination based on Plaintiff's age and accordingly violates Government Code
24 §12940(a) and other provisions of FEHA.

25 28. As a proximate result of the said discrimination, Plaintiff has suffered mental anguish and
26 emotional suffering in an amount in excess of the minimum jurisdiction of this court and according
27 to proof.

1 29. As a further proximate result of said discrimination as afore pled, Plaintiff has suffered a
2 loss of tangible employment benefits including lost wages and fringe benefits in an amount in
3 excess of the minimum jurisdiction of the court and according to proof.

4 30. As a further proximate result of the discrimination as afore pled, Plaintiff was required to
5 and did retain attorneys, and is accordingly entitled to an award of attorneys' fees according to
6 proof.

7 31. As a further proximate result of said discrimination, Plaintiff has incurred and/or will
8 incur medical expenses in amount according to proof at the time of trial.

9 32. 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 **SECOND CAUSE OF ACTION**

15 **DISCRIMINATION BASED ON RACE / NATIONAL ORIGIN IN VIOLATION OF FEHA**

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

17 33. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 32 of the
18 Complaint as though fully set forth herein.

19 34. Plaintiff is entitled to the protections of the FEHA because of his race and or national
20 origin, Hispanic.

21 35. Plaintiff is informed and believes that Marjie Alcantara treated him and the other
22 Hispanic Employees differently due to their race and/or national origin.

23 36. Plaintiff is informed and believes that he was written up, put on leave, given a notice of
24 termination, terminated, or alternatively constructively terminated because of his race and or
25 national origin, Hispanic.

26 37. Plaintiff was subjected to adverse employment actions due to his race and or national
27 origin, Hispanic.

1 38. Plaintiff is informed and believes that such conduct was motivated by his race and or
2 national origin, Hispanic.

3 39. Government Code § 12940(a) precludes an employer from discriminating against an
4 employee because of because of their race and/or national origin. The conduct of the Employer
5 Defendants, and each of them, accordingly constitutes discrimination based on Plaintiff's race
6 and/or national origin, and accordingly violates Government Code § 12940(a) and other provisions
7 of FEHA.

8 40. As a proximate result of the said discrimination, Plaintiff suffered emotional distress
9 damages past and future in an amount in excess of the minimum jurisdiction of this court and
10 according to proof.

11 41. As a further and proximate result of the discrimination, Plaintiff was required to and did
12 seek medical attention, and will need medical attention in the future, all to Plaintiff's damages in a
13 sum according to proof.

14 42. As a further proximate result of this discrimination, Plaintiff lost employment benefits,
15 including lost wages and fringe benefits past and future in an amount in excess of the minimum
16 jurisdiction of the court and according to proof.

17 43. As a further proximate result of this discrimination, Plaintiff was required to and did
18 retain attorneys and is therefore entitled to an award of attorneys' fees according to proof.

19 44. The Employer Defendants' conduct constitutes oppression, fraud, and malice thereby
20 entitling plaintiff to an award of punitive damages against the Employer Defendants. Further, the
21 Employer Defendants authorized or ratified the wrongful conduct. Plaintiff is further informed and
22 believes and thereon alleges that such acts of oppression, fraud and malice, and authorization and
23 ratification was on the part of an officer, director or managing agent of the Employer Defendants.

24 **THIRD CAUSE OF ACTION**

25 **HARASSMENT BASED ON RACE/NATIONAL ORIGIN IN VIOLATION OF FEHA**

26 **(GOVERNMENT CODE § 12940(i))**

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

28 45. Plaintiff re-alleges and incorporates by reference paragraphs 1- 44 of this complaint as if

1 fully set forth herein.

2 46. Government Code § 12940(j) precludes an employer from harassing an employee because
3 of his or his race, religion and/or national origin.

4 47. Plaintiff was subjected to a repeated and continuing pattern of harassment by
5 Marjie Alcantara, co-workers, and other members of management based on his race and national
6 origin. This harassment was severe and continuous, and included, but was not limited to: Plaintiff
7 having job duties taken away, unfair disciplinary counseling sessions, write-ups, unwarranted
8 requests that investigations be launched into Plaintiff's conduct and job performance and denial of
9 Plaintiff's transfer requests.

10 48. The foregoing harassing conduct was not consented to, was based on Plaintiff's race
11 and/or national origin and created an intimidating and hostile work environment. Such conduct
12 constitutes illegal harassment in violation of Government Code § 12940(j) and other provisions of
13 FEHA.

14 49. The Employer Defendants are liable because they knew or should have known about this
15 misconduct and failed to timely and adequately investigate the conduct and timely and adequately
16 take remedial measures.

17 50. Supervisors were present for much of the harassment and, in addition, Plaintiff
18 repeatedly complained to his supervisors about the harassment.

19 51. As a proximate result of the said harassment, Plaintiff has suffered mental anguish and
20 emotional suffering in an amount in excess of the minimum jurisdiction of this court and according
21 to proof.

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

25 53. As a further proximate result of the harassment as afore pled, Plaintiff was required to
26 and did retain attorneys, and is accordingly entitled to an award of attorneys' fees according to
27 proof.

28 54. As a further proximate result of said discrimination, Plaintiff has incurred and/or will

1 continue to incur medical expenses in amount according to proof at the time of trial.

2 55. The Employer Defendants' conduct constitutes oppression, fraud, and malice thereby
3 entitling plaintiff to an award of punitive damages against the Employer Defendants. Further, the
4 Employer Defendants authorized or ratified the wrongful conduct. Plaintiff is further informed and
5 believes and thereon alleges that such acts of oppression, fraud and malice, and authorization and
6 ratification was on the part of an officer, director or managing agent of the Employer Defendants.

7 **FOURTH CAUSE OF ACTION**

8 **SEXUAL HARASSMENT (HOSTILE WORK ENVIRONMENT)**

9 **IN VIOLATION OF FEHA**

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

11 56. Plaintiff incorporates by reference, as though set forth in full herein, each and every
12 allegation contained in Paragraphs 1 through 55 inclusive above.

13 57. Beginning in 2015 Plaintiff was sexually harassed by a female co-worker Sonia Miranda
14 by showing him revealing photos of herself. When he told her he was not interested, she began
15 following him around at work, putting threatening letters on his desk, and calling his wife and
16 accusing him of infidelity.

17 58. Plaintiff reported this harassment to Human Resources in 2015 and 2016 but nothing was
18 done to stop the harassment.

19 59. The foregoing conduct was unconsented to, was based on Plaintiff's sex/gender and
20 created an intimidating and hostile work environment based on his sex/gender. Such conduct
21 constitutes illegal sexual harassment in violation of Government Code § 12940(j) and other
22 provisions of FEHA.

23 60. As a proximate result of the said harassment, Plaintiff has suffered mental anguish and
24 emotional suffering, past and future, in an amount in excess of the minimum jurisdiction of this
25 Court and according to proof.

26 61. As a further proximate result of the said harassment as afore pled, Plaintiff has suffered a
27 loss of tangible employment benefits, past and future, including lost wages and fringe benefits in
28 an amount in excess of the minimum jurisdiction of this Court and according to proof. Plaintiff

1 claims such amount as damages together with pre-judgment interest pursuant to Civil Code section
2 3287 and/or any other provision of law providing for pre-judgment interest.

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

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

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

14 **FIFTH CAUSE OF ACTION**

15 **RETALIATION IN VIOLATION OF FEHA**

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

17 65. Plaintiff incorporates by reference, as though set forth in full herein, each and every
18 allegation contained in Paragraphs 1 through 64 inclusive above.

19 66. Government Code § 12940(h), and other provisions of the FEHA, preclude an employer
20 from retaliating against an employee for engaging in protected activity under the FEHA.

21 67. Plaintiff is informed and believes that he was subjected to disciplinary counseling
22 sessions, written up, put on leave, investigated, denied transfers and terminated in retaliation for
23 engaging in protected activities pursuant to the FEHA.

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

27 69. As a proximate result of the said violation of FEHA, Plaintiff has suffered mental anguish
28

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

3 70. 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 71. 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 72. As a further proximate result of the Employer Defendants' violation of the 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 73. The afore pled conduct constitutes oppression, fraud, and malice, 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 owner, officer or managing agent of the Employer Defendants,
15 or alternatively, authorized, ratified or approved by an owner, officer, director or managing agent
16 of the Employer Defendants.

17 **SIXTH CAUSE OF ACTION**

18 **FAILURE TO PREVENT DISCRIMINATION AND RETALIATION IN VIOLATION OF**

19 **FEHA (GOVERNMENT CODE § 12940(k))**

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

21 74. Plaintiff incorporates by reference, as though set forth in full herein, each and every
22 allegation contained in Paragraphs 1 through 73, inclusive above.

23 75. Plaintiff is informed and believes, and thereon alleges, that the Employer Defendants
24 failed to take all steps reasonably necessary to prevent discrimination and retaliation from
25 occurring. Such conduct violates Government Code § 12940(k).

26 76. Said violation of FEHA caused Plaintiff to be discriminated against and retaliated against
27 all as afore pled.

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

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

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

6 79. As a further proximate result of the Employer Defendants' violation of FEHA, Plaintiff
7 was forced to and did retain attorneys, and is accordingly entitled to an award of attorney's fees
8 and costs according to proof.

9 80. As a further proximate result of said violation of FEHA, Plaintiff has incurred and will
10 continue to incur medical expenses, past and future, in an amount according to proof at the time of
11 trial.

12 81. The afore pled conduct constitutes oppression, fraud, and malice, 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 owner, officer or managing agent of the Employer Defendants,
15 or alternatively, authorized, ratified or approved by an owner, officer, director or managing agent
16 of the Employer Defendants.

17 **SEVENTH CAUSE OF ACTION**

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

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

20 82. Plaintiff incorporates by reference, as though set forth in full herein, each and every
21 allegation contained in Paragraphs 1 through 81, inclusive above.

22 83. Health and Safety Code 1278.5 provides that that: No health facility shall discriminate or
23 retaliate, in any manner, against any member of the medical staff, or any other health care worker
24 of the health facility, or employee, Because that person has presented a grievance, complaint, or
25 report to the facility, to an entity or agency responsible for accrediting or evaluating the facility, or
26 the medical staff of the facility, or to any other governmental entity.

27 84. In or about June 2016 Plaintiff was shown a gastroenterological scope "scope" that
28 appeared to him to have a compromised rubber component. He reported this circumstance to the

1 Department Administrator Vivian Guevara.

2 85. Plaintiff was subsequently retaliated against for making this health safety report given a
3 disciplinary write-up for having reported this incident and wrongfully accused and put on a nine
4 month paid investigatory suspension for allegedly sexually harassing Jennifer Garcia, the nurse
5 who had failed to submit a compromised scope form when she had discovered the same defect in
6 the same scope some days prior to Plaintiff's having learned of it after returning from an absence
7 due to having attended his grandmother's funeral.

8 86. Upon Plaintiff's return to work from his suspension in April 2017, he was subjected to
9 harassment, discrimination and further retaliation by his new Department Administrator Marjie
10 Alcantara who took away many of his duties included but not limited to ordering equipment
11 supplies and dealing with outside vendors. She then requested that Plaintiff perform some of these
12 duties, then disciplined him for doing so, wrongfully accusing him of acting without her
13 authorization.

14 87. In August 2017, Plaintiff observed that a controlled substance, the anesthesia Propofol,
15 was left unsecured and exposed on an anesthesia cart in the procedure room. Plaintiff reported this
16 to the Compliance Department, to his Department Administrator Marjie Alcantara and to Human
17 Resources. He noted several other violations of the safety protocols governing the handling of
18 medications and syringes and reported them to management. Plaintiff was subsequently subjected
19 to further unwarranted discipline in the form of verbal reprimands and unwarranted investigations
20 of Plaintiff. Plaintiff was terminated on or about January 26, 2018.

21 88. Accordingly, Plaintiff engaged in activities which are legally protected under Health &
22 Safety Code Section 1278.5.

23 89. Plaintiff is informed and believes that he was subjected to disciplinary counseling
24 sessions, written up, put on leave, and terminated due to his complaints about patient care to the
25 Defendants and in violation of Health & Safety Code Section 1278.5.

26 90. Such conduct violated the provisions of Health & Safety Code Section 1278.5.

27 91. Kaiser's failure to take any measures to protect Plaintiff and other adverse actions against
28 Plaintiff occurred within 120 days of his protests and complaints. Accordingly, under Health &

1 Safety Code Section 1278.5(d), Plaintiff is entitled to a rebuttable presumption that the adverse
2 actions taken against him were attributable to his complaints and protests regarding patient care.

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

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

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

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

15 **EIGHTH CAUSE OF ACTION**

16 **RETALIATION IN VIOLATION OF LABOR CODE §1102.5**

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

18 96. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 95 of the
19 Complaint as though fully set forth herein.

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

27 98. Plaintiff disclosed violations of a state or federal statute, or a violation of or
28 noncompliance with a local, state, or federal regulation, including, but not limited to, the FEHA as

1 alleged above. Plaintiff disclosed that a defective scope was being used for procedures and that
2 controlled substances such as Propofol and syringes used for anesthesia were being mishandled and
3 not properly secured. Plaintiff also disclosed that he was being harassed and discriminated against
4 based on his age, sex and race/national origin.

5 99. Plaintiff is informed and believes, and thereon alleges, that he had reasonable cause to
6 believe that the information disclosed a violation of a state or federal statute, or a violation of or
7 noncompliance with a local, state, or federal regulation.

8 100. The disclosures were a substantial motivating factor for the Employer Defendants'
9 retaliation against Plaintiff, including but not limited to terminating him and/or forcing him to quit,
10 and thus constituted unlawful retaliation in violation of California Labor Code section 1102.5,
11 subdivision (b).

12 101. As a proximate result of the unlawful retaliation in violation of California Labor Code
13 section 1102.5 Plaintiff has suffered mental anguish and emotional suffering and other general
14 damages past and future in an amount in excess of the minimum jurisdiction of this court and
15 according to proof.

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

20 103. As a proximate result of the unlawful retaliation in violation of California Labor Code
21 section 1102.5, Plaintiff was required to and did retain attorneys, and is accordingly entitled to an
22 award of attorneys' fees according to proof pursuant to California Code of Civil Procedure, section
23 1021.5.

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

27 105. The afore pled conduct of the Employer Defendants constitutes oppression, fraud, and
28 malice thereby entitling Plaintiff to an award of punitive damages. Plaintiff is further informed and

1 believe, and thereon allege, that this act of oppression, fraud, or malice or act of, ratification or
2 authorization were on the part of an officer, director, managing agent or owner acting on behalf of
3 the Employer Defendants.

4 **NINTH CAUSE OF ACTION**

5 **TORTUOUS WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

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

7 106. Plaintiff incorporates by reference, as though set forth in full herein, each and every
8 allegation contained in Paragraphs 1 through 105, inclusive above.

9 107. It is the Public Policy of the State of California, as expressed in the FEHA that an
10 employer cannot discriminate against an employee based on their disability.

11 108. It is the Public Policy of the State of California, as expressed in the FEHA that an
12 employer may not retaliate against an employee for engaging in protected activity under the FEHA.

13 109. It is the Public Policy of the State of California, as expressed in the FEHA that an
14 employer cannot harass an employee based on their disability.

15 110. It is the Public Policy of the State of California, as expressed in the FEHA for an
16 employer to reasonably accommodate its employee's disability.

17 111. It is the Public Policy of the State of California, as expressed in the FEHA for an
18 employer to engage in a good-faith interactive process.

19 112. These public policies were valid, fundamental, protected the public, and were binding on
20 the Employer Defendants.

21 113. The Employer Defendants discriminated against Plaintiff in violation of the FEHA all as
22 afore pled. The Employer Defendants retaliated against Plaintiff in violation of the FEHA, all as
23 afore pled. The Employer Defendants harassed Plaintiff as afore pled.

24 114. Plaintiff's employment was terminated in violation of both the FEHA and the Public
25 Policy of California, all as afore pled.

26 115. As a proximate result, Plaintiff suffered emotional distress damages past and future
27 according to proof.

28 116. As a further proximate result, Plaintiff lost employment benefits, past and future

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

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

5 118. The afore pled conduct constitutes oppression, fraud, and malice thereby entitling
6 Plaintiff to an award of punitive damages. Plaintiff is further informed and believes that the
7 Employer Defendants ratified or authorized the said conduct. Plaintiff is further informed and
8 believes and thereon alleges that said act of oppression, fraud, or malice or act of, ratification or
9 authorization were on the part of an officer, director, managing agent or owner acting on behalf of
10 the Employer Defendants.

11 119. As a further proximate result Plaintiff lost employment benefits, past and future
12 including wages and fringe benefits, in an amount in excess of the minimum jurisdiction of the
13 court and according to proof.

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

16 121. The afore pled conduct of the Employer Defendants constitutes oppression, fraud, and
17 malice thereby entitling Plaintiff to an award of punitive damages. Plaintiff is further informed and
18 believe, and thereon allege, that this act of oppression, fraud, or malice or act of, ratification or
19 authorization were on the part of an officer, director, managing agent or owner acting on behalf of
20 the Employer Defendants.

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1 PRAYER FOR RELIEF

2 WHEREFORE, Plaintiff prays for judgment against Defendants, and each one of them, as
3 follows:

- 4 1. For damages for lost employment income and benefits, past and future, according to proof;
5 2. For damages for medical costs and services, past and future, according to proof;
6 3. For general damages for pain and suffering past and future according to proof;
7 4. For attorneys' fees according to proof on those claims which allow them,
8 5. For punitive damages according to proof;
9 6. For costs of suit incurred herein; and,
10 7. For such other and further relief as the court deems just and proper.

11
12
13 Dated: December 20, 2018

SOTTILE ■ BALTAKE

14 By: Timothy B. Sottile
15 TIMOTHY B. SOTTILE, ESQ.
16 Attorneys for Plaintiff Sergio Rivas
17
18

19 DEMAND FOR JURY TRIAL

20 Plaintiff hereby demands trial by jury.
21

22 Dated: December 20, 2018

SOTTILE ■ BALTAKE

23 By: Timothy B. Sottile
24 TIMOTHY B. SOTTILE, ESQ.
25 Attorneys for Plaintiff Sergio Rivas
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