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10 Attorneys for Plaintiff,  
11 CYNTHIA LEPUR

12 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
13 COUNTY OF SAN DIEGO – CENTRAL DIVISION

14 CYNTHIA LEPUR, an individual,  
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Plaintiff,

Case No.: 37-2019-00011521-CU-OE-CTL

COMPLAINT FOR DAMAGES:

v.

KAISER FOUNDATION HEALTH PLAN,  
INC., a California Corporation; and DOES 1  
through 25, inclusive,

Defendants.

1. DISCRIMINATION BASED ON SEX/GENDER
2. DISCRIMINATION BASED ON PREGNANCY
3. FAILURE TO ACCOMMODATE
4. RETALIATION IN VIOLATION OF LABOR CODE 232.5
5. RETALIATION IN VIOLATION OF LABOR CODE 1102.5
6. RETALIATION IN VIOLATION OF THE FEHA
7. FAILURE TO PREVENT DISCRIMINATION
8. WRONGFUL CONSTRUCTIVE TERMINATION

JURY TRIAL DEMANDED

[Civil Unlimited]

COMES NOW Plaintiff CYNTHIA LEPUR (“PLAINTIFF”), and alleges the following causes of action against Defendants KAISER FOUNDATION HEALTH PLAN, INC. (“KAISER”), and DOES 1 through 25, inclusive (collectively “DEFENDANTS”), demands a jury trial, and seeks monetary compensation.

FILED  
CIVIL BUSINESS OFFICE 12  
CENTRAL DIVISION

2019 MAR -1 P 3:25

CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

1 **NATURE OF THE CASE**

2 By way of this action, PLAINTIFF seeks to recover damages for, among other things,  
3 unlawful discrimination and harassment based on her sex/gender, pregnancy, and use of  
4 protected leave, as well as in retaliation for PLAINTIFF'S protected activity.

5 **JURISDICTION AND VENUE**

6 1. This Court has jurisdiction over this action because the amount in controversy  
7 herein, exclusive of costs and interests, exceeds the sum of \$25,000.00. Venue is proper in this  
8 Court because the underlying employment which is the subject of the agreement at issue  
9 occurred in San Diego County. Furthermore, the tortious acts, as set forth below, were  
10 committed in San Diego County, and the business entity defendant does business within this  
11 Court's jurisdictional area.

12 2. This action arises under various California Fair Employment and Housing Act  
13 ("FEHA"), the California Labor Code, and California common law.

14 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

15 3. On April 4, 2018, PLAINTIFF filed a complaint against KAISER with the  
16 Department of Fair Employment and Housing ("DFEH"). On April 4, 2018, a Notice of Case  
17 Closure and Right-to-Sue was issued by the DFEH.

18 **PARTIES**

19 4. PLAINTIFF is a woman who does and at all times relevant to this matter did  
20 reside in the County of San Diego, in the State of California.

21 5. Defendant KAISER is a corporation existing under the laws of the State of  
22 California, which at all times relevant herein, conducted business within the County of San  
23 Diego, State of California. Prior to January 9, 2018, KAISER was PLAINTIFF'S employer at  
24 all times relevant to this Complaint.

25 6. The true names and capacities, whether individual, corporate, representative, or  
26 otherwise, of DOES 1 through 25, inclusive, are unknown to PLAINTIFF, who therefore sues  
27 them by such fictitious names. PLAINTIFF will seek leave to amend this Complaint to show  
28 the true names and capacities of said Defendants when they are ascertained.



1 13. On or about November 24, 2015, PLAINTIFF had a baby and took maternity  
2 leave until January 2016.

3 14. Upon her return to work, PLAINTIFF needed to express milk. PLAINTIFF was  
4 not provided an area to express milk or a reasonable amount of break time to do so. When  
5 PLAINTIFF asked management for lactation accommodation, she began to be written up for  
6 minor reasons.

7 15. PLAINTIFF'S co-workers who made errors similar to PLAINTIFF were not  
8 written up. For example, one of PLAINTIFF'S co-workers who admitted to committing time  
9 card fraud was not subject to any discipline despite such conduct being substantially worse than  
10 any conduct or errors by PLAINTIFF.

11 16. In July 2017, PLAINTIFF took leave under the Family Medical Leave Act  
12 ("FMLA")/California Family Rights Act ("CFRA") for approximately 30 days due to the stress  
13 and related medical conditions that she was experiencing as a result of the retaliation,  
14 discrimination, and harassment on the part of KAISER management.

15 17. During this time, PLAINTIFF was diagnosed with anxiety and depression as a  
16 result of the conduct by KAISER. PLAINTIFF had previously attempted to find alternative  
17 employment within KAISER and under a different supervisor, however, her attempt to transfer  
18 was denied.

19 18. In January 2018, PLAINTIFF was suspended for an incident that occurred in late  
20 December 2017, in which it is alleged that she was involved in a dispute with another  
21 employee. PLAINTIFF maintains that she did nothing wrong, and that to the best of her  
22 knowledge, the other employee involved was not disciplined.

23 19. On January 9, 2018, PLAINTIFF was constructively discharged when she was  
24 told she had to resign or else she would be terminated.

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1 **FIRST CAUSE OF ACTION**

2 **Sex/Gender Discrimination in Violation of Government Code Section 12920 et seq.**

3 **(Against KAISER)**

4 20. PLAINTIFF hereby re-alleges and incorporates by reference all previous  
5 allegations in this Complaint as though fully set forth herein.

6 21. This action is brought pursuant to the California Fair Employment and Housing  
7 Act; Government Code Section 12900 et seq.; the corresponding regulations of the California  
8 Fair Employment and Housing Commission; and the California Constitution, Article I, Section  
9 8, which protects against employment discrimination by both public and private employers on  
10 the basis of sex/gender, among other things.

11 22. KAISER discriminated against PLAINTIFF because of her sex/gender.

12 23. KAISER'S discriminatory conduct against PLAINTIFF includes, but is not  
13 limited to the following:

14 a. KAISER'S discrimination against PLAINTIFF based on her sex/gender as  
15 set forth above;

16 b. KAISER'S unwillingness to require its management to comply with its  
17 policies and regulations; and

18 c. KAISER'S inability and/or unwillingness to stop all the disparate treatment  
19 of PLAINTIFF on KAISER'S premises during working hours.

20 24. KAISER'S discriminatory actions against PLAINTIFF include its failure to  
21 monitor, restrain, and stop its managers and supervisors from their actions against PLAINTIFF.  
22 PLAINTIFF alleges and believes that her sex/gender was, in part, a determining factor in  
23 KAISER'S decision to discriminate against her and to ultimately cause the termination of her  
24 employment.

25 25. KAISER'S authorized and/or ratified the conduct of its employees, managers  
26 and/or supervisors who personally committed the acts complained of above, by failing to take  
27 appropriate action to correct the conduct of its agents or employees. KAISER failed and  
28 refused to discipline or reprimand its management and/or supervisors, or take any action to

1 rectify and resolve their treatment of PLAINTIFF, and the resulting damages as stated  
2 hereinabove.

3 26. PLAINTIFF is informed and believes, and thereon alleges, that because KAISER  
4 was fully aware of and failed to stop or prevent the conduct alleged above, KAISER had no real  
5 concern about this reprehensible conduct. Further, KAISER did not intend to do anything  
6 meaningful in response to this conduct, knowing fully that such failure to act would interfere  
7 with PLAINTIFF'S employment and her ability to continue her career at KAISER.

8 27. As a direct and proximate result of the conduct of KAISER, PLAINTIFF has  
9 suffered serious harm, including loss of income benefits, and mental anguish, and  
10 PLAINTIFF'S damages are in a sum in excess of \$25,000.00, to be proven at the time of trial.

11 28. PLAINTIFF has also been required to retain legal counsel and therefore has  
12 incurred and continues to incur attorneys' fees and legal expenses, and hereby requests recovery  
13 of her attorneys' fees and costs of suit in an amount according to proof.

#### 14 SECOND CAUSE OF ACTION

#### 15 Pregnancy, Childbirth, Breastfeeding Discrimination in Violation of Government Code

#### 16 Section 12920 et seq.

#### 17 (Against KAISER)

18 29. PLAINTIFF hereby re-alleges and incorporates by reference all previous  
19 allegations in this Complaint as though fully set forth herein.

20 30. This action is brought pursuant to the California Fair Employment and Housing  
21 Act; Government Code Section 12900 et seq.; the corresponding regulations of the California  
22 Fair Employment and Housing Commission; and the California Constitution, Article I, Section  
23 8, which protects against employment discrimination by both public and private employers on  
24 the basis of pregnancy, among other things.

25 31. KAISER discriminated against PLAINTIFF because of her pregnancy.

26 32. KAISER'S discriminatory conduct against PLAINTIFF includes, but is not  
27 limited to the following:  
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- 1 a. KAISER'S discrimination against PLAINTIFF based on her pregnancy as set
- 2 forth above.
- 3 b. KAISER'S unwillingness to require its management to comply with its
- 4 policies and regulations; and
- 5 c. KAISER'S inability and/or unwillingness to stop all the disparate treatment
- 6 of PLAINTIFF on KAISER' premises during working hours.

7 33. KAISER'S discriminatory actions against PLAINTIFF include its failure to  
8 monitor, restrain, and stop its managers and supervisors from their actions against PLAINTIFF.  
9 PLAINTIFF alleges and believes that her pregnancy was, in part, a determining factor in  
10 KAISER'S decision to discriminate against her and to ultimately cause the termination of her  
11 employment.

12 34. KAISER authorized and/or ratified the conduct of its employees, managers  
13 and/or supervisors who personally committed the acts complained of above, by failing to take  
14 appropriate action to correct the conduct of its agents or employees. KAISER failed and  
15 refused to discipline or reprimand its management and/or supervisors, or take any action to  
16 rectify and resolve their treatment of PLAINTIFF, and the resulting damages as stated  
17 hereinabove.

18 35. PLAINTIFF is informed and believes, and thereon alleges, that because KAISER  
19 was fully aware of, and failed to stop or prevent the conduct alleged above, KAISER had no  
20 real concern about this reprehensible conduct. Further, KAISER did not intend to do anything  
21 meaningful in response to this conduct, knowing fully that such failure to act would interfere  
22 with PLAINTIFF'S employment, and her ability to continue her career at KAISER.

23 36. As a direct and proximate result of the conduct of KAISER, PLAINTIFF has  
24 suffered serious harm, including loss of income benefits, and mental anguish, and  
25 PLAINTIFF'S damages are in a sum in excess of \$25,000.00, to be proven at the time of trial.

26 37. PLAINTIFF has also been required to retain legal counsel and therefore has  
27 incurred and continues to incur attorneys' fees and legal expenses, and hereby requests recovery  
28 of her attorneys' fees and costs of suit in an amount according to proof.

1 **THIRD CAUSE OF ACTION**

2 **Failure to Accommodate Lactation**

3 **(Against KAISER)**

4 38. PLAINTIFF hereby re-alleges and incorporates by reference all previous  
5 allegations in this Complaint as though fully set forth herein.

6 39. California Labor Code section 1030 states that an employer must provide its  
7 employees with a reasonable amount of time in which to express milk for the employee's infant  
8 child. Furthermore, section 1031 requires that an employer make reasonable efforts to provide  
9 an employee wishing to express milk with a private area to do so.

10 40. In this case, KAISER did not accommodate PLAINTIFF'S need to express milk.  
11 KAISER'S failure to do so violated the aforementioned Labor Code sections.

12 41. Furthermore, PLAINTIFF'S constructive termination as described above was in  
13 retaliation for PLAINTIFF'S complaints about KAISER'S failure to accommodate her need to  
14 express milk.

15 42. As a direct, proximate, and legal result of the retaliation by KAISER,  
16 PLAINTIFF has suffered and will continue to suffer, among other things, substantial losses in  
17 earnings, and additional amounts of money she would have received had she not been subjected  
18 to such adverse actions, and she will continue to suffer such losses in the future.

19 43. As a direct, proximate, and legal result of the retaliation by KAISER,  
20 PLAINTIFF has also suffered and continues to suffer from humiliation, embarrassment,  
21 financial devastation, anxiety, mortification, mental anguish, loss of sleep, and emotional  
22 distress, all to her damages in an amount according to proof.

23 44. As a further direct, proximate, and legal result of KAISER'S retaliation against  
24 PLAINTIFF, PLAINTIFF has been compelled to retain the services of counsel in an effort to  
25 redress the violations of the Labor Code and has, thereby, incurred and will continue to incur  
26 legal fees and costs.

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1 **FOURTH CAUSE OF ACTION**

2 **Retaliation in Violation of Labor Code sections 232.5**

3 **(Against KAISER)**

4 45. PLAINTIFF hereby re-alleges and incorporates by reference all previous  
5 allegations in this Complaint as though fully set forth herein.

6 46. Under Labor Code §232.5, an employee's right to discuss or disclose the terms  
7 and conditions of his or her employment without fear of discharge, formal discipline, or to be  
8 otherwise discriminated against, is protected.

9 47. At all times herein mentioned, PLAINTIFF was engaged in protected activity  
10 under Labor Code §232.5 in making complaints about KAISER'S failure to accommodate her  
11 need to express milk.

12 48. PLAINTIFF is informed and believes, and based thereon herein alleges, that  
13 there was a causal link between the adverse employment actions taken against her and her  
14 protected activities.

15 49. As a direct, proximate, and legal result of the retaliation by KAISER,  
16 PLAINTIFF has suffered and will continue to suffer, among other things, substantial losses in  
17 career opportunities, earnings, bonuses, promotions, deferred compensation, retirement, and  
18 other employment benefits, and additional amounts of money she would have received had she  
19 not been subjected to such adverse actions, and she will continue to suffer such losses in the  
20 future.

21 50. As a direct, proximate, and legal result of the retaliation by KAISER,  
22 PLAINTIFF has also suffered and continues to suffer from humiliation, embarrassment,  
23 financial devastation, anxiety, mortification, mental anguish, loss of sleep, and emotional  
24 distress, all to her damage in an amount according to proof.

25 51. KAISER committed the acts alleged herein maliciously, fraudulently and  
26 oppressively with the wrongful intention of injuring PLAINTIFF, from an improper and evil  
27 motive amounting to malice, and in conscious disregard of PLAINTIFF'S rights. PLAINTIFF  
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1 is thus entitled to recover punitive damages, to the extent available, from all DEFENDANTS in  
2 an amount according to proof.

3 **FIFTH CAUSE OF ACTION**

4 **Violation of Labor Code section 1102.5**

5 **(Against KAISER)**

6 52. PLAINTIFF hereby re-alleges and incorporates by reference all previous  
7 allegations in this Complaint as though fully set forth herein.

8 53. California Labor Code section 1102.5 prohibits retaliation against an employee  
9 who makes a complaint or raises a concern regarding conduct which he or she reasonably  
10 believes, rightly or wrongly, to be a violation of state or federal law.

11 54. At all times herein mentioned, PLAINTIFF was engaged in protected activity  
12 under Labor Code §232.5 in making complaints about KAISER'S failure to accommodate her  
13 need to express milk.

14 55. PLAINTIFF is informed and believes, and based thereon herein alleges, that  
15 there was a causal link between the adverse employment actions taken against her and her  
16 protected activities.

17 56. As a direct, proximate, and legal result of the retaliation by KAISER,  
18 PLAINTIFF has suffered and will continue to suffer, among other things, substantial losses in  
19 career opportunities, earnings, bonuses, promotions, deferred compensation, retirement, and  
20 other employment benefits, and additional amounts of money she would have received had she  
21 not been subjected to such adverse actions, and she will continue to suffer such losses in the  
22 future.

23 57. As a direct, proximate, and legal result of the retaliation by KAISER,  
24 PLAINTIFF has also suffered and continues to suffer from humiliation, embarrassment,  
25 financial devastation, anxiety, mortification, mental anguish, loss of sleep, and emotional  
26 distress, all to her damage in an amount according to proof.

27 58. KAISER committed the acts alleged herein maliciously, fraudulently and  
28 oppressively with the wrongful intention of injuring PLAINTIFF, from an improper and evil

1 motive amounting to malice, and in conscious disregard of PLAINTIFF'S rights. PLAINTIFF  
2 is thus entitled to recover punitive damages, to the extent available, from all DEFENDANTS in  
3 an amount according to proof.

4 **SIXTH CAUSE OF ACTION**

5 **Retaliation in Violation of the FEHA.**

6 **(Against KAISER)**

7 59. PLAINTIFF hereby re-alleges and incorporates by reference all previous  
8 allegations in this Complaint as though fully set forth herein.

9 60. At all times herein mentioned, PLAINTIFF was engaged in protected activity in  
10 reporting and complaining to responsible persons at KAISER the conduct that she believed to  
11 be in violation the FEHA'S prohibitions against harassment and discrimination.

12 61. As a direct, proximate, and legal result of PLAINTIFF'S protected activity,  
13 KAISER adversely affected PLAINTIFF'S employment by subjecting her to a constructive  
14 termination.

15 62. PLAINTIFF is informed and believes, and based thereon herein alleges, that her  
16 protected actions were a causal link between the adverse employment actions taken against her  
17 by KAISER.

18 63. As a direct, proximate, and legal result of the retaliation by KAISER,  
19 PLAINTIFF has suffered and will continue to suffer, among other things, substantial losses in  
20 career opportunities, earnings, bonuses, promotions, deferred compensation, retirement, and  
21 other employment benefits, and additional amounts of money she would have received had she  
22 not been subjected to such adverse actions, and she will continue to suffer such losses in the  
23 future.

24 64. As a direct, proximate, and legal result of the retaliation by KAISER,  
25 PLAINTIFF has also suffered and continues to suffer from humiliation, embarrassment,  
26 financial devastation, anxiety, mortification, mental anguish, loss of sleep, and emotional  
27 distress, all to her damage in an amount according to proof.



1 **EIGHTH CAUSE OF ACTION**

2 **Wrongful Constructive Termination in Violation of Public Policy**

3 **(Against KAISER)**

4 71. PLAINTIFF hereby re-alleges and incorporates by reference all previous  
5 allegations in this Complaint as though fully set forth herein.

6 72. At all times herein mentioned, California Constitution Article 1, Section 8, was  
7 in full force and effect, and was binding on KAISER. This section prohibits discrimination  
8 against any person on the basis of their sex/gender. In addition, the FEHA in Gov't Code, Sec.  
9 12940(a) makes it an unlawful practice for an employer to discriminate against an employee on  
10 the basis of sex/gender. These laws represent the strong public policy of the State of California  
11 prohibiting an employer from discriminating/retaliating on such grounds against a covered  
12 employee and the taking of adverse employment action against such an employee.

13 73. As hereinabove alleged, PLAINTIFF was subject to discriminatory acts, to  
14 include her wrongful constructive termination, based on her sex/gender in violation of the  
15 foregoing laws and the strong public policy of the State of California.

16 74. As a direct, proximate, and legal result of the wrongful conduct of KAISER,  
17 PLAINTIFF has suffered and will continue to suffer a loss of earnings and other employment  
18 benefits and job opportunities all in an amount not currently ascertained, but which will be  
19 proven at trial.

20 75. As a direct, proximate, and legal result of KAISER'S wrongful conduct in  
21 violation of public policy, PLAINTIFF has suffered and will continue to suffer pain,  
22 humiliation, and emotional distress, all in an amount not currently ascertained, but which will  
23 be proven at trial.

24 76. As a direct, proximate, and legal result of KAISER'S wrongful conduct against  
25 PLAINTIFF, PLAINTIFF is, therefore, entitled to general and compensatory damages in an  
26 amount to be proven at the time of trial.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment as to all of the claims for relief as  
3 follows:

- 4 1. For special damages in an amount according to proof;  
5 2. For prejudgment interest according to law;  
6 3. For punitive damages where applicable;  
7 4. For costs of suit incurred herein;  
8 5. For general damages in an amount according to proof;  
9 6. For attorneys' fees in an amount according to proof where applicable; and  
10 7. For such other and further relief as the Court deems proper.

11  
12 Dated: March 1, 2019

DONALD R. HOLBEN & ASSOCIATES, APC

13  
14 By: *Eugene R. Long, Jr.*

Eugene R. Long, Jr., Esq.  
Attorneys for Plaintiff,  
CYNTHIA LEPUR

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18 **DEMAND FOR JURY TRIAL**

19 Plaintiff CYNTHIA LEPUR hereby demands a trial by jury.

20  
21 Dated: March 1, 2019

DONALD R. HOLBEN & ASSOCIATES, APC

22  
23 By: *Eugene R. Long, Jr.*

Eugene R. Long, Jr., Esq.  
Attorneys for Plaintiff,  
CYNTHIA LEPUR