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10 MERLINDA KALALANG

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **IN AND FOR THE COUNTY OF SANTA CLARA**

13 MERLINDA KALALANG, an individual,

14 Plaintiff

15 vs.

16 KAISER FOUNDATION HOSPITALS dba  
17 KAISER PERMANENTE MEDICAL  
18 CENTER- SANTA CLARA, a California  
19 nonprofit corporation; and DOES 1-100,  
20 inclusive

21 Defendants.

Case No.:

**PLAINTIFF'S COMPLAINT FOR  
DAMAGES AND DEMAND FOR JURY  
TRIAL:**

1. Disability Discrimination in Violation of FEHA
2. Failure to Accommodate
3. Failure to Engage in Good Faith Interactive Process
4. Age Discrimination
5. Retaliation in Violation of FEHA
6. Wrongful Constructive Termination in Violation of Public Policy

Over \$25,000

22 PLAINTIFF complains and alleges as follows:

- 23 1. Plaintiff MERLINDA KALALANG is a former non-exempt employee of Defendant and a  
24 resident of the State of California.
- 25 2. At all times herein mentioned, Defendant, KAISER FOUNDATION HOSPITALS dba  
26 KAISER PERMANENTE MEDICAL CENTER- SANTA CLARA (hereinafter "KAISER  
27 PERMANENTE") was and is a nonprofit corporation licensed to do business at 700  
28 Lawrence Expy, Santa Clara, CA 95051.

- 1 3. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or  
2 associate, of those Defendants fictitiously sued as DOES 1 through 100 inclusive and so  
3 Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each  
4 of the DOE Defendants reside in the State of California and is in some manner responsible  
5 for the conduct alleged herein. Upon discovering the true names and capacities of these  
6 fictitiously named Defendants, Plaintiff will amend this complaint to show the true names  
7 and capacities of these fictitiously named Defendants.
- 8 4. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of that  
9 information and belief allege that at all times herein mentioned, each of the remaining co-  
10 Defendant, in doing the things hereinafter alleged, was acting within the course, scope and  
11 under the authority of his/her agency, employment, or representative capacity, with the  
12 consent of her/his co-Defendant.
- 13 5. Plaintiff was employed by Defendant KAISER PERMANENTE beginning in or around  
14 May 2008.
- 15 6. At all times herein mentioned, Defendant KAISER PERMANENTE had a "lifetime health  
16 insurance policy" for its employees who worked for Defendant for 15 years.
- 17 7. At all times herein mentioned, Plaintiff was and is an individual who suffers from  
18 disabilities and medical conditions which affects daily activities and requires ongoing  
19 treatment, including but not limited to thyroid cancer and fibromyalgia.
- 20 8. Plaintiff provided Defendants notice of her disabilities and medical conditions.
- 21 9. In or around October 2017, Plaintiff requested from Defendants to reduce her work shift  
22 from 40 hours per week to 32 hours per week as a disability accommodation.
- 23 10. Defendant granted Plaintiff her requested accommodation only for three months, until in  
24 or around January 2018.
- 25 11. In or around January 2018, Plaintiff was forced to take leave until she could return to work  
26 without accommodations.
- 27 12. In or around June 2018, Defendants cut part of Plaintiff's benefits.
- 28 13. In or around August 2018, Defendants denied Plaintiff's pension.

1 14. In or around October 2018, Defendants cut all available benefits for Plaintiff, including the  
2 health insurance that she desperately needed as a disabled person suffering from cancer.

3 15. Over the last year, Plaintiff attempted to contact the Defendants on multiple occasions  
4 requesting to return to work with the 32 hours per week accommodation. Despite Plaintiff's  
5 multiple requests, no accommodations have been forthcoming. Instead, Plaintiff was  
6 offered demotions, for less pay which were located in areas that were very far from  
7 Plaintiff's position in Santa Clara, which would have required at least a hundred mile  
8 commute.

9 16. Defendants perceived Plaintiff to be disabled, although she was able to do her essential job  
10 duties with reasonable accommodation. Furthermore, Defendants failed to engage in a  
11 good faith interactive process to assess what accommodations Plaintiff would require and  
12 thus did not reasonably accommodate Plaintiff.

13 17. As Plaintiff was able to perform the essential functions of her job, but was unable to work  
14 without accommodations, and Defendants would not provide Plaintiff with any reasonable  
15 accommodations, Plaintiff was forced to resign on or about March 14, 2019.

16 18. Plaintiff is informed and believes and thereon alleges that Defendants constructively  
17 terminated Plaintiff's employment due to her disability, age, and/or request for a reasonable  
18 accommodation of her disability.

19 19. As a direct and proximate result of the unlawful acts of Defendants, Plaintiff has suffered  
20 and continues to suffer from losses of earnings and otherwise in amounts as yet  
21 unascertained but subject to proof at trial.

22  
23 First Cause of Action

24 **DISABILITY DISCRIMINATION IN VIOLATION OF FEHA**

25 (Against all Defendants)

26 20. Plaintiff re-alleges the information set forth in paragraphs 1-19 as though fully set forth  
27 and alleged herein.

- 1 21. This cause of action is based upon *Government Code* section 12926(m), which defines  
2 physical disability as having any physiological disease, disorder, condition, cosmetic  
3 disfigurement, or anatomical loss that affects one or more of the following body systems:  
4 neurological, immunological, musculoskeletal, special sense organs, respiratory, including  
5 speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and  
6 lymphatic, skin and endocrine, and the disability limits an individual's ability to participate  
7 in major life activities. This cause of action is also based upon *Government Code* section  
8 12940 for discriminating against Plaintiff on the basis of physical disability.
- 9 22. Plaintiff's disability (actual and/or perceived) constituted of disabilities and medical  
10 conditions as defined above in *Government Code* §12926(m).
- 11 23. Plaintiff has exhausted her administrative remedies under the California Fair Employment  
12 and Housing Act by filing charges that defendants violated the California Fair Employment  
13 and Housing Act and was issued the Notice of Case Closure/Right-to-Sue Letter granting  
14 Plaintiff the right to bring suit against Defendants.
- 15 24. Defendants were aware that Plaintiff was disabled or at least perceived that she was  
16 disabled.
- 17 25. Reasonable accommodations could have been made for Plaintiff's disabilities, such as  
18 cutting her weekly work shifts from 40 hours to 32 hours.
- 19 26. Defendant discriminated against Plaintiff in violation of the *Government Code* sections set  
20 forth herein by first placing her on leave and later constructively terminating Plaintiff's  
21 employment because of her disabilities (actual and/or perceived) and requests for disability  
22 accommodation.
- 23 27. As a direct, foreseeable, and proximate result of the conduct of Defendants, Plaintiff has  
24 suffered, and continues to suffer emotional distress, losses in salary, bonuses, job benefits,  
25 and other employment benefits which he would have received from Defendant, plus  
26 expenses incurred in obtaining substitute employment and not being regularly employed  
27 all to her damage in a sum within the jurisdiction of this court, to be ascertained according  
28 to proof.

1 28. The grossly reckless, careless, negligent, oppressive and/or intentional, malicious, and bad  
2 faith manner in which said Defendants engaged in those acts as described in this cause of  
3 action entitle Plaintiff to punitive damages against said Defendants in an amount within  
4 the jurisdiction of this court, to be ascertained by the fact finder, that is sufficiently high to  
5 punish said Defendants, deter them from engaging in such conduct again, and to make an  
6 example of them to others.

7 29. Plaintiff is informed and believes and based thereon alleges that the punitive conduct of  
8 said Defendants was ratified by those other individuals who were managing agents of  
9 Defendant. These unlawful acts were further ratified by Defendants and done with a  
10 conscious disregard for Plaintiff's rights and with the intent, design and purpose of injuring  
11 Plaintiff. By reason thereof, Plaintiff is entitled to punitive or exemplary damages in this  
12 cause of action in a sum to be determined at the time of trial.

13 30. Plaintiff also prays for reasonable costs and attorney fees against Defendants, as allowed  
14 by California Government Code §12965 and any other applicable statutes for Plaintiff's  
15 prosecution of this action in reference to the time Plaintiff's attorney spends pursuing this  
16 cause of action as well as any other applicable statutes.

17  
18 Second Cause of Action

19 **FAILURE TO ACCOMMODATE**

20 (Against all Defendants)

21 31. Plaintiff re-alleges the information set forth in Paragraphs 1-30 as though fully set forth  
22 and alleged herein.

23 32. This cause of action is based upon Government Code section 12926(m), which defines  
24 physical disability as having any physiological disease, disorder, condition, cosmetic  
25 disfigurement, or anatomical loss that affects one or more of the following body systems:  
26 neurological, immunological, musculoskeletal, special sense organs, respiratory, including  
27 speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and  
28 lymphatic, skin and endocrine, and the disability limits an individual's ability to participate

1 in major life activities. Moreover, this cause of action is also based upon Government Code  
2 section 12940 for discriminating against Plaintiff on the basis of her medical condition and  
3 failing to provide reasonable accommodation of Plaintiff's medical condition.

4 33. Plaintiff exhausted her administrative remedies under the California Fair Employment and  
5 Housing Act by filing charges with the Department of Fair Employment and Housing  
6 ("DFEH") based on the aforementioned against Defendants.

7 34. Plaintiff's medical condition constituted a disability as defined above in Government Code  
8 §12926(m).

9 35. Plaintiff is informed and believes, and on that basis alleges that Defendants were aware of  
10 Plaintiff's medical condition as described above.

11 36. Plaintiff was otherwise able to perform all essential functions of her job and simply  
12 required 8 hours cut in her weekly shift.

13 37. Defendants failed to reasonably accommodate Plaintiff's medical condition.

14 38. As a result of being subjected to Defendants' failure to accommodate, discrimination, and  
15 termination of employment, Plaintiff suffered emotional distress. Further, as a result of all  
16 of the foregoing actions taken towards Plaintiff as alleged herein, Plaintiff has incurred loss  
17 of earnings and benefits in an amount not yet ascertained

18 39. As a direct, foreseeable, and proximate result of the conduct of defendants, Plaintiff has  
19 suffered, and continues to suffer severe emotional distress, loss of earnings, medical  
20 expenses, benefits plus expenses incurred in obtaining substitute employment, all to her  
21 damage in a sum within the jurisdiction of this Court, to be ascertained according to proof.

22 40. As a result of the grossly reckless, and/or intentional, malicious, and bad faith manner in  
23 which Defendants engaged in those acts as described in this cause of action by willfully  
24 violating those statutes enumerated in this cause of action and terminating Plaintiff in  
25 violation of the law, Plaintiff is entitled to punitive damages against said Defendant in an  
26 amount within the jurisdiction of this court, to be ascertained by the fact finder, that is  
27 sufficiently high to punish said Defendants, deter them from engaging in such conduct  
28 again, and to make an example of them to others.

1 41. Plaintiff also prays for reasonable attorney fees, as allowed by the Fair Employment and  
2 Housing Act for Plaintiff's prosecution of this action in reference to the legal violations  
3 and code violations described herein.

4 Third Cause of Action

5 **FAILURE TO ENGAGE IN GOOD FAITH INTERACTIVE PROCESS**

6 (Against all Defendants)

7 42. Plaintiff re-alleges the information set forth in paragraphs 1-41 though fully set forth and  
8 alleged herein.

9 43. As alleged herein and in violation of California Government Code section 12940(n),  
10 Defendants violated the California Fair Employment and Housing Act by, among other  
11 things, refusing and/or failing to engage in a timely, good faith, interactive process with  
12 Plaintiff regarding her disability and accommodation of such disability.

13  
14 44. As a direct and proximate result of Defendants' willful, knowing, and intentional failure to  
15 engage in the interactive process, Plaintiff has sustained and continues to sustain substantial  
16 losses in earnings and other employment benefits.

17  
18 45. As a direct, foreseeable, and proximate result of the conduct of Defendants, Plaintiff has  
19 suffered, and continues to suffer emotional distress, losses in salary, bonuses, job benefits,  
20 and other employment benefits which he would have received from Defendants, plus  
21 expenses incurred in obtaining substitute employment and not being regularly employed  
22 all to her damage in a sum within the jurisdiction of this court, to be ascertained according  
23 to proof.

24  
25 46. The grossly reckless, careless, negligent, oppressive and/or intentional, malicious, and bad  
26 faith manner in which said Defendants engaged in those acts as described in this cause of  
27 action entitle Plaintiff to punitive damages against said Defendants in an amount within  
28 the jurisdiction of this court, to be ascertained by the fact finder, that is sufficiently high to

1 punish said Defendants, deter them from engaging in such conduct again, and to make an  
2 example of them to others. Plaintiff is informed and believes and based thereon alleges  
3 that the punitive conduct of said Defendants was ratified by those other individuals who  
4 were managing agents of said Defendants. These unlawful acts were further ratified by  
5 Defendants and done with a conscious disregard for Plaintiff's rights and with the intent,  
6 design and purpose of injuring Plaintiff. By reason thereof, Plaintiff is entitled to punitive  
7 or exemplary damages in this cause of action in a sum to be determined at the time of trial.  
8  
9

10 Fourth Cause of Action

11 **AGE DISCRIMINATION**

12 (Against all Defendants)

- 13  
14 47. Plaintiff realleges the information set forth in Paragraphs 1-46 as though fully set forth  
15 and alleged herein.
- 16 48. This cause of action is based upon *California Government Code Section 12900, et seq.*  
17 which prohibits employers from discriminating against, harassing, and terminating  
18 employees on the basis of age.
- 19 49. Plaintiff exhausted her administrative remedies under the California Fair Employment  
20 and Housing Act by filing charges that Defendants discriminated against and  
21 constructively terminated her based upon her age and was issued the Right-to-Sue Letter  
22 granting Plaintiff the right to bring suit against Defendants.
- 23 50. Defendants violated *California Government Code Section 12940, et seq.* by doing the  
24 following acts all because of Plaintiff's age including but not limited to, denying Plaintiff  
25 her pension and the opportunity to receive a "lifetime health insurance," as well  
26 constructively terminating Plaintiff due to her age as described in the general allegations  
27 above.
- 28 51. As a direct, foreseeable, and proximate result of the conduct complained of in this cause



1 of action, Plaintiff has suffered severe emotional distress, medical expenses, substantial  
2 losses in salary and benefits which Plaintiff would have received from Defendants, all to  
3 Plaintiff's damage in a sum within the jurisdiction of this court, to be ascertained  
4 according to proof.

5 52. As a further direct and proximate result of the Defendants' denial of Plaintiff's health  
6 insurance and the unlawful constructive termination, Plaintiff has suffered emotional  
7 distress in a sum within the jurisdiction of this court, to be ascertained according to proof.

8 53. The grossly reckless, careless, negligent, and/or intentional, malicious, and bad faith  
9 manner in which Defendants engaged in those acts described in this cause of action by  
10 willfully violating those statutes enumerated in this cause of action and constructively  
11 terminating Plaintiff for refusing to comply with their willful violations of the above  
12 referenced statutes entitle Plaintiff to punitive damages against Defendants in an amount  
13 within the jurisdiction of this court, to be ascertained by the fact finder, that is sufficiently  
14 high to punish the Defendants, deter them from engaging in such conduct again, and to  
15 make an example of them to others.

16 54. Plaintiff also prays for reasonable costs and attorney fees against the Defendants for the  
17 Plaintiff's prosecution of this action in reference to the time the Plaintiff's attorney spends  
18 pursuing this cause of action.

19  
20 Fifth Cause of Action

21 **RETALIATION IN VIOLATION OF FEHA**

22 (Against all Defendants)

23 55. Plaintiff re-alleges the information set forth in paragraphs 1-54 though fully set forth and  
24 alleged herein.

25 56. This cause of action is based upon *California Government Code Section 12940, et seq.*  
26 which prohibits employers from retaliating against employees because of a disability  
27 and/or medical condition.

1 57. Defendant violated *California Government Code Section 12940, et seq.* by doing the  
2 following acts all because of Plaintiff's disability and/or medical condition, including but  
3 not limited to, failing to accommodate Plaintiff's requests for medical leave and  
4 terminating and discriminating against Plaintiff because of her disability as described in  
5 the general allegations above.

6 58. Plaintiff has exhausted her administrative remedies under the California Fair Employment  
7 and Housing Act by filing charges that Defendants discriminated and retaliated against her  
8 and her employment and violated the California Fair Employment and Housing Act and  
9 has received a Right to Sue Letter.

10 59. Plaintiff was a qualified employee at the time of placing her on leave, as well as  
11 constructive termination of her employment. Despite her medical condition, Plaintiff was  
12 able to perform the essential functions of her employment with Defendants with reasonable  
13 accommodations. After Plaintiff sought accommodation for her disabilities, Defendants  
14 retaliated against Plaintiff by first placing her on leave and later constructively terminating  
15 her employment.

16 60. Defendants, through their managers and supervisors, took actions against Plaintiff that  
17 exhibited discriminatory motivations, intentions, and consciousness.

18 61. On the basis of the above, Plaintiff believes and alleges that her disabilities were motivating  
19 factors in Defendants' constructive termination of her employment.

20 62. As a direct and proximate result of Defendants' willful, knowing, and intentional, failure  
21 to engage in the interactive process, and retaliation, Plaintiff has sustained and continues  
22 to sustain substantial losses in earnings and other employment benefits.

23 63. As a direct, foreseeable, and proximate result of the conduct of Defendant, Plaintiff has  
24 suffered, and continues to suffer emotional distress, losses in salary, bonuses, job benefits,  
25 and other employment benefits which he would have received from Defendants, plus  
26 expenses incurred in obtaining substitute employment and not being regularly employed  
27 all to her damage in a sum within the jurisdiction of this court, to be ascertained according  
28 to proof.

1 64. The grossly reckless, careless, negligent, oppressive and/or intentional, malicious, and bad  
2 faith manner in which Defendant engaged in those acts as described in this cause of action  
3 entitle Plaintiff to punitive damages against Defendant in an amount within the jurisdiction  
4 of this court, to be ascertained by the fact finder, that is sufficiently high to punish  
5 Defendant, deter them from engaging in such conduct again, and to make an example of  
6 them to others. Plaintiff is informed and believes and based thereon alleges that the  
7 punitive conduct of said Defendants was ratified by those other individuals who were  
8 managing agents of Defendant. These unlawful acts were further ratified by Defendant  
9 and done with a conscious disregard for Plaintiff's rights and with the intent, design and  
10 purpose of injuring Plaintiff. By reason thereof, Plaintiff is entitled to punitive or  
11 exemplary damages in this cause of action in a sum to be determined at the time of trial.

12 65. Defendant committed the acts alleged herein recklessly, maliciously, fraudulently, and  
13 oppressively, with the wrongful intention of injuring Plaintiff, for an improper and evil  
14 motive amounting to malice (as described above), and with a reckless and conscious  
15 disregard of Plaintiffs' rights. All actions of Defendant, and their agents and employees,  
16 herein alleged were known, ratified and approved by Defendant. Plaintiff is thus entitled  
17 to recover punitive and exemplary damages from Defendant, for these wanton, obnoxious,  
18 and despicable acts as allowed by law, that will sufficiently punish, make an example of,  
19 and deter future conduct by Defendant.

20  
21 Sixth Cause of Action

22 **WRONGFUL CONSTRUCTIVE TERMINATION IN VIOLATION OF PUBLIC**  
23 **POLICY**

24 (Against all Defendants)

25 66. Plaintiff hereby incorporates by reference Paragraphs 1-65 of this Complaint as if fully set  
26 forth herein, and for a cause of action alleges as follows:

27 67. Plaintiff's employment was wrongfully constructively terminated, in violation of  
28 substantial and fundamental public policies of the State of California that inures to the

1 benefit of the public, with respect to retaliation, and adverse employment actions taken  
2 against Plaintiff, all in violation of various state statutes including but not limited to  
3 violations of California's Labor Code.

4 68. On or about March 14, 2019, Plaintiff was constructively discharged from her employment,  
5 in that any reasonable person in Plaintiff's position subject to Defendants' actions would  
6 have resigned or quit her employment, as Plaintiff was compelled to do.

7 69. Defendants had actual knowledge of the Plaintiff's medical conditions, having thyroid  
8 cancer, as well as fibromyalgia. Defendants failure to take good faith steps to accommodate  
9 Plaintiff's requests for reducing the hours of her weekly work caused Plaintiff's  
10 resignation. Furthermore, Defendants knew or should have known that Plaintiff would  
11 resign as a result of Defendants' actions.

12 70. As a direct and proximate result of Defendant's willful, knowing, and intentional actions  
13 as discussed herein, Plaintiff has sustained and continues to sustain substantial losses in  
14 earnings and other employment benefits.

15 71. As a direct, foreseeable, and proximate result of the conduct of Defendants, Plaintiff has  
16 suffered, and continues to suffer emotional distress, losses in salary, bonuses, job benefits,  
17 and other employment benefits which she would have received from Defendants, plus  
18 expenses incurred in obtaining substitute employment and not being regularly employed  
19 all to her damage in a sum within the jurisdiction of this court, to be ascertained according  
20 to proof.

21 72. The damages herein exceed \$25,000.00.

22 73. Plaintiff requests a jury trial.

23  
24 **WHEREFORE**, Plaintiff prays for the following relief:

- 25 1. For compensatory damages which resulted from Defendant' conduct as alleged  
26 herein;
- 27 2. For all special damages which resulted from Defendant's conduct as alleged herein;
- 28 3. For all general damages which resulted from Defendant's conduct as alleged herein;

- 1 4. For all unpaid wages due to Plaintiff;
- 2 5. For all penalties under all relevant statutes;
- 3 6. For all interest as allowed by law;
- 4 7. For all costs and disbursements incurred in this suit;
- 5 8. For attorney's fees and costs; and
- 6 9. For such other and further relief as the Court deems just and proper.

7  
8  
9 DATED: March 14, 2019

**ABRAMSON LABOR GROUP**

10  
11 By: 

12 Jeremy Levy, Esq.  
13 Attorneys for Plaintiff,  
14 MERLINDA KALALANG