

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Stuart Rice

1 **HUA GALLAI & GONZALEZ, LLP**

Nicholas T. Hua, Bar No. 231035

2 Nick@hua-gallai.com

Giacomo Gallai, Bar No. 227544

3 gg@hua-gallai.com

433 N. Camden Drive, 4th Floor

4 Beverly Hills, CA 90210

Tel: (310) 279-5239

5 Fax: (480) 393-4433

6 Attorneys for Plaintiff

HELEN KERSEY

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

10 **FOR THE COUNTY OF LOS ANGELES**

11
12 HELEN KERSEY, an individual,

13 Plaintiff,

14 vs.

15 SOUTHERN CALIFORNIA PERMANENTE
MEDICAL GROUP, an entity unknown;
16 KAISER FOUNDATION HEALTH PLAN,
INC., a California corporation; KAISER
17 FOUNDATION HOSPITALS, a California
corporation; VALERIE McPHERSON, an
18 individual; and DOES 1-50, inclusive,

19 Defendants.

CASE NO.: **20STCV18864**

COMPLAINT FOR DAMAGES, INJUNCTIVE
RELIEF, AND OTHER RELIEF

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 Plaintiff HELEN KERSEY (“Plaintiff” or “Kersey”), seeking damages, injunctive relief and
3 other relief as set forth below, hereby complains against SOUTHERN CALIFORNIA
4 PERMANENTE MEDICAL GROUP (“Defendant” or “Kaiser”); VALERIE McPHERSON, an
5 individual; DOES 1 through 50, inclusive, and each of them (collectively “Defendants”), and alleges
6 thereon:

7 **THE PARTIES**

8 1. Plaintiff HELEN KERSEY is an individual who is a citizen of California and who at
9 all relevant times was residing in Los Angeles County. This court has jurisdiction over this matter in
10 Los Angeles County and venue is proper.

11 2. Plaintiff is informed and believes that, at all relevant times, Defendant SOUTHERN
12 CALIFORNIA PERMANENTE MEDICAL GROUP (“Kaiser”) is an entity of form unknown
13 headquartered in southern California which, *inter alia*, operates hospitals and clinics within the
14 County of Los Angeles, including, but not limited to, the Kaiser Permanente Medical Center in
15 Woodland Hills where Plaintiff works as set forth herein. Venue is proper and this Court has personal
16 jurisdiction over Kaiser.

17 3. Plaintiff is informed and believes that, at all relevant times, Defendant KAISER
18 FOUNDATION HEALTH PLAN, INC. (“Kaiser Foundation”), is a California corporation
19 headquartered in California who, *inter alia*, operates hospitals and clinics within the County of Los
20 Angeles, including, but not limited to, the Woodland Hills, California location where Plaintiff works
21 as alleged herein.

22 4. Plaintiff is informed and believes that, at all relevant times, Defendant KAISER
23 FOUNDATION HOSPITALS (“Kaiser Foundation”), is a California corporation headquartered in
24 California who, *inter alia*, operates hospitals and clinics within the County of Los Angeles, including,
25 but not limited to, the Woodland Hills, California location where Plaintiff works as alleged herein.

26 5. Plaintiff is informed and believes that, at all relevant times, Defendant VALERIE
27 McPHERSON (“McPherson”) is a resident of California, and is responsible for the claims and
28 damages that McPherson inflicted upon Kersey as set forth below. The Court has personal

1 jurisdiction over McPherson, and venue is proper in this Court.

2 6. Plaintiff does not know the true names and capacities of defendants DOES 1 through
3 50, inclusive, and therefore sues them by said fictitious names. Plaintiff will amend this Complaint to
4 allege their true names and capacities when ascertained. Plaintiff is informed and believes that, in
5 addition to the named Defendants herein, each of the Defendants sued herein as a DOE defendant is
6 also legally responsible for the events that gave rise to Plaintiff's causes of action against Defendants
7 and each of them, and also unlawfully caused injuries and damages to Plaintiff as alleged in this
8 Complaint.

9 7. Plaintiff is informed and believes, and thereon alleges that each Defendant was in
10 some way responsible for Plaintiff's injuries and damages alleged herein, that each Defendant was
11 the joint employer of Plaintiff and controlled her working conditions, contributed to and participated
12 in acts alleged herein, and that, in contributing to and participating in such conduct, each Defendant
13 was the agent of each other Defendant and was acting in the course and scope of such agency and/or
14 each Defendant acted with permission, consent, ratification, authorization, or notification of the other
15 Defendants. In this Complaint and as follows any reference to "Defendants" also includes the Doe
16 Defendants 1-50.

17 8. Southern California Permanente Medical Group, Kaiser Foundation Health Plan, Inc.
18 and Kaiser Foundation Hospitals are collectively referred to herein as "Kaiser" or "Kaiser
19 Defendants."

20 9. Venue is proper and the Court has personal jurisdiction over all Defendants in this
21 action.

22 10. The Kaiser Defendants and DOES 1-50 are collectively referred to herein as "Kaiser"
23 or "Defendants."

24 11. Plaintiff has exhausted her administrative remedies by filing a timely complaint with
25 the Department of Fair Employment and Housing and obtaining a right-to-sue letter, a copy of which
26 is attached hereto as **Exhibit A**.

27 **FACTUAL BACKGROUND AND COMMON ALLEGATIONS**

28 12. Plaintiff re-alleges and incorporates by reference all prior paragraphs of this

1 Complaint as though fully set forth hereat.

2 13. Plaintiff Kersey is a very experienced nurse and Kaiser hired her in June 2018 as
3 Interim Administrator and then promoted her in September 2018 to Director of Nursing in the
4 Maternal Child Health Department of Kaiser’s Woodland Hills, California hospital, which position
5 she diligently performed.

6 14. As the Director of Nursing, Kersey undertook her position at Kaiser with the
7 understanding that Kaiser would hire at least two (2) managers who would report to her and that
8 would interface with the nursing staff and would be supervising the nursing staff.

9 15. However, after Kersey began working at Kaiser, and due to Kaiser’s understaffing of
10 the hospital, Kersey found herself having to not only perform her job as the Director of Nursing but
11 also perform the two jobs of managing and supervising nurses directly and without the support of the
12 supervising managers that were supposed to assist her.

13 16. At the relevant times, Kersey was, and continues to be, a disabled individual suffering
14 from stress, anxiety and depression. Due to her disability and the physical symptoms thereof, Kersey
15 was under medical care and took prescription medication, including for hair loss due to the stress and
16 anxiety as well as other prescription medication. Despite being a disabled individual, Kersey
17 continued to perform the essential functions of her job at all relevant times, including also having
18 received good performance results.

19 17. Valerie McPherson (“McPherson”), Chief Nurse Executive, spoke with Kersey in
20 April, 2020, telling her that there is something wrong with her, that she was crying, perceiving her as
21 suffering from depression and anxiety. Ms. McPherson kept taunting Kersey telling her “you are sick;
22 there’s something wrong with you.” Kersey cried in front of McPherson.

23 18. On other instances in April 2020 as well as earlier, there had been other times when
24 McPherson would keep telling Kersey that she is sick mentally and that she needed to be on anti-
25 depressants, and that “no one likes you”. McPherson kept telling Kersey that she needed to be on
26 medication and told Kersey she should take Wellbutrin.

27 19. However, when Kersey spoke to Human Resources at Kaiser, Human Resources told
28 Kersey that everyone has low surveys, and that people actually do not like McPherson, and that’s

1 why McPherson did not receive an internal promotion that McPherson had been was seeking.

2 20. When McPherson kept telling Kersey that “no one likes you” or similar words, Kersey
3 asked McPherson to name names. However, McPherson refused to do so. Kersey also told
4 McPherson that other nurses have come up to her and/or spoken with Kersey praising Kersey and
5 were adoring towards her. In fact, one of these nurses told Kersey that they will call McPherson to
6 tell her that the nurses do like Kersey, but McPherson did not answer that nurse’s phone calls.
7 McPherson also kept taunting and harassing Kersey telling her repeatedly that she was sick and
8 telling her “nobody wants you there [i.e. at work]” or similar words. The nurses who told Kersey that
9 they support her and/or texted Kersey with words of support, are Soudy Mehizadeh and Carole Fiori.

10 21. Further, Kersey repeatedly complained to Kaiser and to her own manager, McPherson,
11 the Chief Nurse Executive, that they were understaffed and that she needed help because she was
12 doing all management work and interfacing with the nursing staff without the support of the two
13 managers that Kaiser was supposed to have to help her. Kersey also had informed Kaiser and
14 McPherson that she was dealing with stress, anxiety and depression and that she needed the help that
15 she was requesting. Yet, Kaiser delayed getting any help for Kersey despite her pleas, and the one
16 person that they later hired as a manager to help Kersey, ended up taking a medical leave, thereby
17 leaving Kersey in the same mentally draining situation. Ultimately, after having forced Kersey to
18 work without help, Kaiser hired a nursing manager but that person then quickly went on an extended
19 medical leave which resulted in Kersey being left yet again without assistance, which is a situation
20 that persisted during her employment now for over two (2) years.

21 22. Defendants and McPherson knew that Plaintiff was a disabled employee and, in any
22 event, they also perceived and regarded her as being disabled. Plaintiff also has a medical
23 documentation showing her history of disability.

24 23. Instead of providing Kersey, a disabled employee, with assistance for her to perform
25 her job, Kaiser and McPherson did nothing to help Kersey and instead McPherson and Kaiser began
26 making excuses, continued harassing and taunting Kersey, began retaliating against Kersey making
27 up false accusations of performance problems such as accusing Kersey of being disliked by nurses
28 and interviewing and surveying nurses for the purpose of forcing Kersey out of her job and getting rid

1 of her and she was forced on leave. Kersey even proposed allowing her to perform work at home as
2 an accommodation but McPherson and Kaiser refused telling her that she should leave. Kaiser and
3 McPherson also pressured Kersey attempting to get rid of her by having her resign and leave her job
4 at Kaiser, which Kersey refused because Kersey had done nothing wrong and the Defendants were
5 violating her rights. Ultimately, instead of providing Kersey with the support and accommodations
6 that would have allowed her to continue working and perform the essential functions of her job, the
7 Defendants forced her to go on a leave.

8 24. Kaiser discriminated against Kersey because of her disability (actual and/or
9 perceived), harassed her because of her disability (actual and/or perceived), failed to provide
10 reasonable accommodations to her, retaliated against her and failed to engage in a good faith
11 interactive process all in violation of the California Fair Employment and Housing Act (“FEHA”)
12 and despite the fact that Plaintiff was performing the essential functions of her job and just needed a
13 reasonable accommodation.

14 **FIRST CAUSE OF ACTION**

15 **DISABILITY DISCRIMINATION IN VIOLATION OF FEHA**

16 **(ACTUAL AND/OR PERCEIVED DISABILITY)**

17 **(AGAINST KAISER DEFENDANTS AND DOES 1-50)**

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

20 26. California Government Code section 12940(a) provides, inter alia, that it is an
21 unlawful employment practice: “For an employer, because of the ... physical disability [or] mental
22 disability ... of any person, to refuse to hire or employ the person ... or to bar or to discharge the
23 person from employment ... or to discriminate against the person in compensation or in terms,
24 conditions, or privileges of employment.”

25 27. As alleged above, Plaintiff was a qualified individual with a disability within the
26 meaning of California Government Code section 12926. Plaintiff could have satisfactorily performed,
27 and did satisfactorily perform, the essential functions of her job with reasonable accommodation.
28 Moreover, the Defendants regarded Plaintiff as having a disability, and Plaintiff has a history of

1 having a disability.

2 28. Kaiser discriminated against Kersey because of her disability (actual and/or
3 perceived), failed to provide reasonable accommodations to her, retaliated against her and failed to
4 engage in a good faith interactive process all in violation of the California Fair Employment and
5 Housing Act (“FEHA”) and despite the fact that Plaintiff was performing the essential functions of
6 her job and just needed a reasonable accommodation.

7 29. As a direct, legal, and proximate result of Defendants’ malicious, oppressive, and
8 outrageous conduct, Plaintiff suffered and continues to suffer, among other things, lost wages, future
9 damages, lost employment benefits, and other sums of money, as well as humiliation, severe
10 emotional distress, injuries to Plaintiff’s psyche, and all of Plaintiff’s general and special damages, in
11 an amount to be determined according to proof at trial.

12 30. Defendants acted intentionally, maliciously, and oppressively, with an evil and
13 malevolent motive; acted through officers, directors, or managing agents; sought to injure Plaintiff;
14 and acted with a conscious disregard of Plaintiff’s rights under California law. Based on the
15 outrageous conduct of Defendants, Plaintiff is entitled to punitive and exemplary damages in an
16 amount to be determined according to proof at trial.

17 **SECOND CAUSE OF ACTION**

18 **RETALIATION IN VIOLATION OF FEHA**

19 **(AGAINST KAISER DEFENDANTS AND DOES 1-50)**

20 31. Plaintiff re-alleges and incorporates by reference all prior paragraphs of this
21 Complaint as though fully set forth here.

22 32. The FEHA, at California Government Code section 12940(h), provides that it is an
23 unlawful employment practice for any employer or person to discharge or otherwise discriminate
24 against any person because the person has opposed any practices forbidden under the FEHA.

25 33. Further, Government Code section 12940(m)(2), provides that it is an unlawful
26 employment practice for any employer to retaliate or otherwise discriminate against a person for
27 requesting accommodation, regardless of whether the request was granted.

28 34. Plaintiff asserted her rights under the FEHA by seeking accommodation and help from

1 Kaiser and McPherson. Instead of providing Kersey, a disabled employee, with assistance for her to
2 perform her job, Kaiser and McPherson did nothing to help Kersey and instead McPherson and
3 Kaiser began making excuses, began retaliating against Kersey making up false accusations of
4 performance problems such as accusing Kersey of being disliked by nurses and interviewing and
5 surveying nurses for the purpose of forcing Kersey out of her job and getting rid of her and she was
6 forced on leave. Kaiser and McPherson also pressured Kersey attempting to get rid of her by having
7 her resign and leave her job at Kaiser, which Kersey refused.

8 35. Kaiser discriminated against Kersey because of her disability, failed to provide
9 reasonable accommodations to her, retaliated against her and failed to engage in a good faith
10 interactive process all in violation of the California Fair Employment and Housing Act (“FEHA”)
11 and despite the fact that Plaintiff was performing the essential functions of her job and just needed a
12 reasonable accommodation.

13 36. Upon information and belief, the Defendants retaliated against Plaintiff and violated
14 her rights under the FEHA being motivated by her acts of opposing the Defendants’ illegal failures to
15 respect her rights under FEHA and illegal attempts to force her out of her job.

16 37. In so retaliating against Plaintiff, the Defendants violated the FEHA and caused injury
17 to Plaintiff, including lost wages and emotional distress. As a direct, legal, and proximate result of
18 Defendants’ intentional conduct and willful disregard of the rights of Plaintiff, Defendants have
19 caused Plaintiff to suffer, and Plaintiff continues to suffer, among other things, humiliation,
20 deprivation of sleep, grief, worsened depression, and other emotional distress and physical
21 symptoms, and all of Plaintiff’s general and special damages in an amount to be determined
22 according to proof at trial, in excess of \$25,000.00.

23 38. Plaintiff also alleges that all of the Defendants’ conduct was intentional, oppressive,
24 and malicious, aimed at causing the above damages to Plaintiff, and as such, Plaintiff is entitled to
25 punitive and exemplary damages against Defendants in an amount to be determined according to
26 proof at trial.

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1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS**

3 **(AGAINST KAISER DEFENDANTS AND DOES 1-50)**

4 39. Plaintiff re-alleges and incorporates by reference all prior paragraphs of this
5 Complaint as though fully set forth hereat.

6 40. California Government Code section 12940(n) provides that it is an unlawful
7 employment practice “[f]or an employer ... to fail to engage in a timely, good faith, interactive
8 process with the employee ... to determine effective reasonable accommodations, if any, in response
9 to a request for reasonable accommodation by an employee ... with a known physical or mental
10 disability”

11 41. California Code of Regulations, title 2, section 11069 provides that an employer must
12 initiate an interactive process to identify or implement an effective, reasonable accommodation for an
13 employee with a disability when an employee with a known physical or mental disability or medical
14 condition requests reasonable accommodations, and shall identify potential accommodations and
15 assess the effectiveness each would have in enabling the employee to perform the essential function
16 of the position held.

17 42. As alleged above, Plaintiff was a qualified individual with a disability within the
18 meaning of California Government Code section 12926. Plaintiff could have satisfactorily performed,
19 and did satisfactorily perform, the essential functions of her job with reasonable accommodation.
20 Moreover, the Defendants regarded Plaintiff as having a disability, and Plaintiff has a history of
21 having a disability.

22 43. As a direct, legal, and proximate result of Defendants’ failure to engage in the
23 interactive process, in violation of FEHA, Defendants caused Plaintiff to suffer, and Plaintiff
24 continues to suffer, damages, including without limitation, lost wages, earnings, severe emotional
25 distress , injuries to psyche, employment benefits, and all sums of money, as well as humiliation, and
26 all of Plaintiff’s general and special damages, in an amount to be determined according to proof at
27 trial in excess of \$25,000.00.

28 44. Defendants acted intentionally, maliciously, and oppressively, with an evil and

1 malevolent motive; acted through officers, directors, or managing agents; sought to injure Plaintiff;
2 and acted with a conscious disregard of Plaintiff's rights under California law. Based on the
3 outrageous conduct of Defendants, Plaintiff is entitled to punitive and exemplary damages in an
4 amount to be determined according to proof at trial.

5 **FOURTH CAUSE OF ACTION**

6 **FAILURE TO REASONABLY ACCOMMODATE PLAINTIFF**

7 **(AGAINST KAISER DEFENDANTS AND DOES 1-50)**

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

10 46. California Government Code section 12940(m)(1) provides that it is an unlawful
11 employment practice "[f]or an employer ... to fail to make reasonable accommodation for the known
12 physical or mental disability of an ... employee."

13 47. California Code of Regulations, title 2, section 11065(p)(2) provides that reasonable
14 accommodations may include, without limitation, reallocation or redistribution of non-essential job
15 functions in a job with multiple responsibilities, providing a part-time or modified work schedule,
16 permitting an alteration of when and/or how an essential function is performed, modifying an
17 employer policy, permitting an employee to work from home, and providing reassignment to a vacant
18 position.

19 48. California Code of Regulations, title 2, section 11068 provides that an employer is
20 required to consider any and all reasonable accommodations of which it is aware or that are brought
21 to its attention by the employee, except ones that create an undue hardship.

22 49. As alleged above, Plaintiff was a qualified individual with a disability within the
23 meaning of California Government Code section 12926. Plaintiff could have satisfactorily performed,
24 and did satisfactorily perform, the essential functions of her job with reasonable accommodation.
25 Moreover, the Defendants regarded Plaintiff as having a disability, and Plaintiff has a history of
26 having a disability.

27 50. As a direct, legal, and proximate result of the Defendants' failure to make reasonable
28 accommodation for Plaintiff's disability, in violation of FEHA, Defendants caused Plaintiff to suffer,

1 and Plaintiff continues to suffer, damages, including without limitation, lost wages, earnings, severe
2 emotional distress , injuries to psyche, employment benefits, and all sums of money, as well as
3 humiliation, and all of Plaintiff’s general and special damages, in an amount to be determined
4 according to proof at trial in excess of \$25,000.00.

5 51. Defendants acted intentionally, maliciously, and oppressively, with an evil and
6 malevolent motive; acted through officers, directors, or managing agents; sought to injure Plaintiff;
7 and acted with a conscious disregard of Plaintiff’s rights under California law. Based on the
8 outrageous conduct of Defendants, Plaintiff is entitled to punitive and exemplary damages in an
9 amount to be determined according to proof at trial.

10 **FIFTH CAUSE OF ACTION**
11 **HARASSMENT IN VIOLATION OF FEHA**
12 **(AGAINST ALL DEFENDANTS)**

13 52. Plaintiff re-alleges and incorporates by reference all prior paragraphs of this
14 Complaint as though fully set forth hereat.

15 53. California Government Code section 12940(J)(1) provides that it is an unlawful
16 employment practice to harass an employee, *inter alia*, because of “mental disability, medical
17 condition.”

18 54. California Government Code section 12940(J)(3) provides that “[a]n employee of an
19 entity subject to this subdivision is personally liable for any harassment prohibited by this section that
20 is perpetrated by the employee, regardless of whether the employer or covered entity knows or should
21 have known of the conduct and fails to take immediate and appropriate corrective action.

22 55. Here, Kaiser and McPherson violated the FEHA and harassed Plaintiff Kersey because
23 of her actual and/or perceived medical condition as alleged herein and they are liable to Kersey for all
24 damages so caused to her. The Defendants have caused Kersey to suffer severe emotional distress as
25 a result of the harassment to which Defendants subjected her as well as other damages and Plaintiff is
26 entitled to her attorney’s fees and costs, as well punitive damages and interest against Defendants.

27 56. Defendants acted intentionally, maliciously, and oppressively, with an evil and
28 malevolent motive; acted through officers, directors, or managing agents; sought to injure Plaintiff;

1 and acted with a conscious disregard of Plaintiff's rights under California law. Based on the
2 outrageous conduct of Defendants, Plaintiff is entitled to punitive and exemplary damages in an
3 amount to be determined according to proof at trial.

4 **SIXTH CAUSE OF ACTION**

5 **FAILURE TO PREVENT HARASSMENT AND/OR DISCRIMINATION IN VIOLATION**
6 **OF FEHA**

7 **(AGAINST KAISER DEFENDANTS AND DOES 1-50)**

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

10 58. California Government Code section 12940(k) provides that it is an unlawful
11 employment practice for any employer to fail to take all reasonable steps to prevent discrimination
12 and harassment from occurring.

13 59. California Government Code section 12940(J) further provides that: "[a]n entity shall
14 take all reasonable steps to prevent harassment from occurring."

15 60. By failing to engage in the interactive process with Plaintiff, by failing to have
16 appropriate mechanisms to ensure that it made reasonable accommodation as required by FEHA,
17 thereby resulting in unlawful discrimination against Plaintiff, Defendants failed to take all reasonable
18 steps to prevent such discrimination from occurring. Defendants also failed to take all reasonable
19 steps to prevent harassment of Plaintiff.

20 61. In failing to comply with Government Code section 12940(k) and 12940(J),
21 Defendants violated the FEHA and caused injury to Plaintiff, including lost wages and emotional
22 distress. As a direct, legal, and proximate result of Defendants' conduct and willful disregard of the
23 rights of Plaintiff, Defendants have caused Plaintiff to suffer, and Plaintiff continues to suffer, among
24 other things, humiliation, deprivation of sleep, grief, worsened depression, and other emotional
25 distress and physical symptoms, and all of Plaintiff's general and special damages in an amount to be
26 determined according to proof at trial, in excess of \$25,000.00.

27 62. Plaintiff also alleges that all of the Defendants' conduct was intentional, oppressive,
28 and malicious, aimed at causing the above damages to Plaintiff, and as such, Plaintiff is entitled to

1 punitive and exemplary damages against Defendants in an amount to be determined according to
2 proof at trial.

3 **SEVENTH CAUSE OF ACTION**
4 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
5 **(AGAINST ALL DEFENDANTS)**

6 63. Plaintiff re-alleges and incorporates by reference all prior paragraphs of this
7 Complaint as though fully set forth hereat.

8 64. By harassing Plaintiff Kersey because of her actual and/or perceived disability and by
9 discriminating against her and other misconduct in violation of FEHA, as well as by retaliating
10 against her and trying to force her out of her job, the Defendants engaged in outrageous and
11 oppressive conduct which caused Plaintiff to suffer severe emotional distress.

12 65. The above conduct of Defendants was not part of the regular course and scope of
13 employment of Plaintiff with Defendants and was outrageous and extreme conduct.

14 66. As a direct, legal, and proximate result of Defendants' misconduct and illegal
15 retaliation against Plaintiff in violation of California law and public policy, said Defendants caused
16 Plaintiff to suffer, and Plaintiff continues to suffer, severe or extreme emotional distress, including
17 without limitation, humiliation, deprivation of sleep, grief, worsened depression, and other emotional
18 distress symptoms, injuries to psyche, and all sums of money, and all of Plaintiff's general and
19 special damages, in an amount to be determined according to proof at trial in excess of \$25,000.00.

20 67. Plaintiff seeks damages against Defendant, including but not limited to, general and
21 special damages, punitive damages for causing her to suffer severe emotional distress, psychological
22 medical bills due to emotional distress, and so forth.

23 68. Defendants did the above things as alleged in this Complaint intentionally,
24 maliciously, and oppressively, with an evil and malevolent motive to injure Plaintiff and with a
25 conscious disregard of Plaintiff's rights under California law. Based on the outrageous conduct of
26 said Defendants, Plaintiff is entitled to punitive and exemplary damages in an amount to be
27 determined according to proof at trial.

28

1 **EIGHTH CAUSE OF ACTION**
2 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**
3 **(AGAINST ALL DEFENDANTS)**

4 69. Plaintiff re-alleges and incorporates by reference all prior paragraphs of this
5 Complaint as though fully set forth hereat.

6 70. Defendants were Plaintiff's employer and supervisor of Plaintiff and owed Plaintiff a
7 duty of care. Defendants breached their duty of care to Plaintiff, acting below the standard of care
8 required, by engaging in the misconduct alleged herein causing Plaintiff to suffer emotional distress.
9 Defendants, in the exercise of reasonable caution, should have known that by engaging in such
10 misconduct and violations of their duty of care, they were likely to cause Plaintiff to suffer severe
11 emotional distress.

12 71. As a result of Defendants' breach of their duties, Defendants caused Plaintiff to suffer
13 from emotional distress.

14 72. The above conduct of Defendants caused Plaintiff severe or extreme emotional
15 distress and other general and special damages according to proof at trial.

16 73. The above conduct of Defendants was not part of the regular course and scope of
17 employment of Plaintiff for Defendants.

18 74. As a direct, legal, and proximate result of Defendants' negligence and careless
19 disregard of the rights of Plaintiff, Defendants caused Plaintiff to suffer, and she continues to suffer,
20 among other things, humiliation, deprivation of sleep, grief, worsened depression, and other
21 emotional distress symptoms, and all of Plaintiff's general and special damages in an amount to be
22 determined according to proof at trial in excess of \$25,000.00.

23 **NINTH CAUSE OF ACTION**
24 **VIOLATION OF BUSINESS & PROFESSIONS CODE SECTION 17200 ET SEQ.**
25 **(AGAINST KAISER DEFENDANTS AND DOES 1-50)**

26 75. Plaintiff re-alleges and incorporates by reference all prior paragraphs of this
27 Complaint as though fully set forth hereat.

28 76. Business and Professions Code section 17200 et seq. makes it illegal to engage in

1 “unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue or misleading
2 advertising.”

3 77. Through the acts complained of in this Complaint, including through their violations
4 of the FEHA, as alleged above, Defendants engaged in unfair competition within the meaning of
5 Section 17200.

6 78. Defendant committed, and continue to commit, unlawful, unfair, and/or fraudulent
7 business acts or practices, as defined in Business & Professions Code section 17200, by among other
8 things, engaging in the unlawful, unfair, and/or fraudulent acts complained of by Plaintiff in this
9 Complaint.

10 79. Defendant engaged in and continue to engage in acts and practices in violation of
11 Business & Professions Code section 17200 by violating, among other things, California common
12 law for tortious conduct, the Labor Code, FEHA, and California law as alleged herein.

13 80. Defendant’s conduct, acts, and practices in violation of California statutes and
14 common law above each constitute a separate and independent violation of Business & Professions
15 Code section 17200 et seq.

16 81. Defendants’ actions have damaged and continue to damage Plaintiff by, among other
17 things, violating Plaintiff’s rights under the aforementioned California statutes, common law, and as
18 otherwise alleged in this Complaint.

19 82. Accordingly, Plaintiff is entitled to restitution of all monies that Defendant
20 improperly, unfairly, fraudulently, and/or unlawfully withheld from Plaintiff, to be determined
21 according to proof at trial, as well as to disgorgement.

22 83. Pursuant to Business & Professions Code § 17200, Plaintiff also seeks and is entitled
23 to an injunction prohibiting Defendants from engaging in any further acts of unfair competition in
24 violation of Section 17200 et seq.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff HELEN KERSEY, prays for judgment against Defendants
27 SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP; KAISER FOUNDATION
28 HEALTH PLAN, INC.; KAISER FOUNDATION HOSPITALS; VALERIE MCPHERSON and

1 DOES 1 through 50, inclusive and each of them as follows:

2 1. For general damages in an amount to be determined according to proof at trial, but at
3 least in excess of this Court's jurisdictional amount of \$25,000;

4 2. For special damages in an amount to be determined according to proof at trial, but at
5 least in excess of this Court's jurisdictional amount of \$25,000;

6 3. For statutory damages and penalties to the fullest extent provided by law;

7 4. For attorney's fees and costs to the fullest extent provided by law;

8 5. For restitution to Plaintiff in an amount to be determined according to proof at trial;

9 6. For interest as allowed by law, including, but not limited to, prejudgment and post-
10 judgment interest;

11 7. For punitive and exemplary damages in an amount to be determined according to
12 proof at trial;

13 8. For injunctive relief in the form of, among other things, preliminary and permanent
14 injunctions;

15 9. For recovery of costs of suit herein, and for Plaintiff's attorney's fees in connection
16 with any of Plaintiff's causes of action in this Complaint but not specifically requested in this Prayer
17 for Relief; and

18 10. For such other and further relief as this Court deems just and proper.

19 **DEMAND FOR JURY TRIAL**

20 Plaintiff hereby demands a jury trial on all issues and claims regarding this Complaint.

21
22 DATED: May 18, 2020

By: _____

Giacomo Gallai
Nicholas T. Hua

Giacomo Gallai

Attorneys for Plaintiff HELEN KERSEY

Courthouse News Service

EXHIBIT "A"



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

KEVIN KISH, DIRECTOR

May 18, 2020

Helen Kersey
, California

RE: Notice of Case Closure and Right to Sue

DFEH Matter Number: 202005-10189018

Right to Sue: Kersey / Southern California Permanente Medical Group, Inc. et al.

Dear Helen Kersey,

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective May 18, 2020 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing