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Attorneys for Plaintiff JARONDA SESSION, an individual

**SUPERIOR COURT OF CALIFORNIA FOR THE
COUNTY OF SAN DIEGO- CENTRAL DIVISION**

JARONDA SESSION, an individual,

Plaintiff,

vs.

KAISER FOUNDATION HOSPITALS, a
California nonprofit corporation; and
DOES 1-100, inclusive,

Defendant.

CASE NO. 24CU029615C

COMPLAINT FOR DAMAGES

1. Discrimination Based on Race/Color, Disability and Association with a Protected Class in Violation of Cal. Gov't Code § 12940(a)
2. Retaliation for Requesting a Medical Leave of Absence for Self or Family Member in Violation of Cal. Gov't Code § 12945.2(k)
3. Retaliation for Requesting a Reasonable Accommodation in Violation of Cal. Gov't Code § 12940(m)(2)
4. Retaliation for Requesting Sick Leave to Care for a Family Member (*Kincare*) in Violation of 233(c)/246(c) and 246.5(c)(1)
5. Retaliation for in Violation of Cal. Gov't Code § 12940(h)
6. Failure to Prevent Discrimination and Harassment from Occurring in Violation of Cal. Gov't Code § 12940(k)

7. Retaliation for Exercise of Rights Under the Labor Code in Violation of the Cal. Labor Code § 98.6
8. Unlawful Adoption and Enforcement of Policy Preventing an Employee from Disclosing Violations of Law in Violation of Cal. Labor Code § 1102.5(a) and 232.5(a)
9. Retaliation for Disclosing Information Reasonably Believed to Constitute a Violation of State or Federal Statute, Local, State or Federal Rule or Regulation in Violation of Cal. Labor Code § 1102.5(b)
10. Retaliation for Refusal to Participate in Conduct Reasonably Believed to Constitute a Violation of State or Federal Statute, Local, State or Federal Rule or Regulation in Violation of Cal. Labor Code § 1102.5(c)
11. Discrimination and Retaliation for Taking Time Off for Jury Duty in Violation of Labor Code § 230(a)
12. Failure to Maintain a Safe and Healthful Work Environment in Violation of Labor Code §§ 6400-6401 and 6403
13. Interference and Failure/Neglect to Maintain a Safe & Healthful Work Environment in Violation of Cal. Labor Code § 6406
14. Penalties Pursuant to the Private Attorney's General Act of 2004 ("PAGA") [Cal. Labor Code § 2699, *et seq.*]

DEMAND FOR JURY TRIAL

1 Plaintiff JARONDA SESSION, an individual, on information and belief, makes the
2 following allegations to support her unverified Complaint.

3
4 **JURISDICTION AND VENUE**

5 1. This Court has personal jurisdiction over the Defendant because they are residents
6 of and/or are doing business in the State of California.

7 2. Venue is proper in this county in accordance with Section 395(a) of the California
8 Code of Civil Procedure because the Defendant, or some of them, reside in the County of San
9 Diego. Venue is further and/or alternatively proper in the County of San Diego pursuant to Cal.
10 Gov't Code § 12965(b) because the alleged wrongs occurred, and it is the county where Plaintiff
11 would have worked but for the alleged unlawful practices of Defendant.

12 **NATURE OF ACTION**

13 3. This action arises out of, *inter alia*, Defendant's violations of the Fair
14 Employment & Housing Act ("FEHA") (Cal. Gov't Code §§ 12920 and 12940, *et seq.*),
15 violations of the California Labor Code, California Civil Code and intentional torts. Specifically,
16 this action alleges fourteen (14) causes of action for violations of the FEHA for discrimination
17 based on race/color and association with a protected class (Gov't Code § 12940(a)), retaliation
18 for requesting a medical leave for self or family member (§ 12945.2(k)), retaliation for requested
19 reasonable accommodations (§ 12940(m)(2)), retaliation for opposing/reporting discrimination
20 and retaliation (§ 12940(h)), failure to prevent discrimination and retaliation from occurring (§
21 12940(k)). Plaintiff also alleges claims for violations of the California Labor Code including
22 retaliation for exercise of rights (§ 98.6) imposition of unlawful policies or procedures to silence
23 whistleblowers (§§ 1102.5(a) and 232.5(a)), retaliation for requesting sick leave to care for a
24 family member (*Kincare*) (§§ 233(c)/246(c)/246.5(c)(1)), retaliation for disclosure and refusal to
25 participate in conduct reasonably believed too violate state or federal law, rule or regulation (§
26 1102.5(b)-(c)); discrimination and retaliation for requesting and taking time off to serve on jury
27 duty (§ 230); retaliation for disclosing working conditions (§ 232.5(c)); and failure to maintain a
28 safe and healthful work environment (§§ 6400-6401 and 6403).

4. Plaintiff also brings a representative action on behalf of herself and other
employees similarly aggrieved to obtain penalties against Defendant pursuant to the California

Private Attorney's General Act of 2004 (Cal. Labor Code § 2699, *et seq.*) based on violations of California Labor Code §§ 98.6, 230, 232.5(a) and (c), 233(c)/246(c)/246.5(c)(1), 1102.5(a)-(c), 6400-6401 and 6403.

5. Defendant's unlawful conduct caused Plaintiff to suffer emotional and financial distress and caused the deprivation of civil rights more fully alleged herein.

PLAINTIFF

6. Plaintiff JARONDA SESSION (hereinafter "Plaintiff" or "Ms. Session"), an individual, is a Black female who is a resident of the State of California, County of San Diego. At all relevant times mentioned herein, Ms. Session was employed for almost 25 years by Defendant KAISER FOUNDATION HOSPITALS as a Psychosocial Clinician II (title of Licensed Clinical Social Worker) until Ms. Session was subjected to discrimination, harassment and retaliation by her supervisors, Erika Glenn, Program Manager and Thomas Mercadante, Licensed Clinical Social Worker to whom Ms. Session directly reported. As a result of their unlawful adverse actions, Ms. Session was forced to go on a leave of absence for her disability.

DEFENDANT

7. Defendant KAISER FOUNDATION HOSPITALS (hereinafter "Kaiser"), is a California-based non-profit corporation and the parent corporation of Kaiser Permanente Medical Group in San Diego, California where Plaintiff was employed. Kaiser is a nation-wide health coverage corporation with many locations across the United States.

8. In doing the acts herein alleged, Defendant's employees, subcontractors, and agents acted within the course and scope of their employment and agency; and, engaged in the acts alleged herein and/or condoned, permitted, authorized, and/or ratified the conduct of its employees, subcontractors, and agents, and is vicariously liable for the wrongful conduct of its employees, subcontractors, and agents alleged herein.

9. Plaintiff is further informed and believes and thereon alleges that each Defendant is, and at all times mentioned was, the agent, employee or representative of each other Defendant. Each Defendant, in doing the acts, or in omitting to act as alleged in this Complaint, was acting within the scope of his or her actual or apparent authority or the alleged acts and

omissions of each Defendant as agent subsequently were ratified and adopted by each other Defendant as principal.

10. Defendant DOES 1 through 100, inclusive, are other possible Defendant responsible for the wrongful conduct alleged herein. The true names and capacities of Defendant named herein as DOES 1 through 100, inclusive, whether individual, corporate, associate, or otherwise, are unknown to Plaintiff who therefore sues such Defendant by such fictitious names pursuant to California Code of Civil Procedure § 474. Plaintiff is informed and believes that the DOE Defendant are California residents. Plaintiff will amend this Complaint to show true names and capacities when they have been determined. Plaintiff is informed and believes, and on grounds of such information and belief alleges, that each Defendant DOE herein is in some manner responsible for the discrimination-based denial of medical leave, disability, retaliation and wrongful termination, and damages herein alleged.

EXHAUSTION OF REMEDIES

11. On July 19, 2024, Plaintiff timely filed complaints against all Defendants with the Department of Fair Employment & Housing and received a notice of case closure and right to sue as to all Defendants, CRD Matter No. 202407-25507319. Plaintiff has exhausted her administrative remedies as to her state law discrimination claims under the Fair Employment & Housing Act pursuant to Cal. Gov't Code § 12965(d), served via certified, return/receipt mail on August 19, 2024 pursuant to Cal. Gov't Code § 12962.

12. On August 19, 2024 (Amended August 19, 2024), Plaintiff timely filed a complaint against Defendant KAISER with the California Occupational Safety & Health Agency's ("Cal-OSHA) Van Nuys Division via email submission to doshnv@dir.ca.gov pursuant to Cal-OSHA's online complaint filing protocols, alleging health and safety violations of Cal. Labor Code §§ 6400-6401 and 6406; filed pursuant to Cal. Labor Code § 2699.3(b)(1) prior to filing a PAGA Notice of Claim. Cal-OSHA did not accept Plaintiff's complaint for investigation nor issue a violation, and therefore Plaintiff exhausted administrative remedies prior to filing her Labor Code §§ 6400-6401 and 6406 claims for penalties under the PAGA. Cal. Labor Code § 2699.3(b)(1)

13. On August 19, 2024 (Amended August 19, 2024 and December 19, 2024), Plaintiff filed a PAGA Claim Notice against Defendant KAISER with the Labor Workforce

1 Development Agency (“LWDA”), Case No. LWDA-CM-1046289-24. Plaintiff also submitted
2 for filing Plaintiff’s August 19, 2024 Cal-OSHA Notice of Claim re Health & Safety Violations
3 to the LWDA as contained in the Notice of PAGA Claim, served on September 1, 2023 via
4 certified return receipt pursuant to Cal. Labor Code § 2699.3(b)(6). More than 60 days elapsed
5 from the postmark of Plaintiff’s Notice of PAGA Claim and more than 65 days have elapsed
6 since the filing of her Notice of PAGA claim without response from the LWDA. Therefore,
7 Plaintiff has exhausted her administrative remedies as to her PAGA claim under Labor Code §
8 2699.3(a).

9 **FACTS COMMON TO ALL CAUSES OF ACTION**

10 14. Ms. Session is a Black psychotherapist. She has worked at Kaiser for almost
11 twenty-five years. She began her career at Kaiser on June 18, 1999, as a mailroom clerk in
12 Oakland, California. After she earned her Master of Social Work degree from California State
13 University in 2005, she transferred to Kaiser’s Los Angeles County location in 2006 and became
14 a Medical Social Worker. In 2013 she obtained her License in Clinical Social Work. Then, in
15 2014, she transferred to Kaiser’s San Diego, California location and became an Inpatient
16 Medical Social Worker. Since August 2014, Ms. Session has worked at Kaiser as a Licensed
17 Clinical Social Worker (“LCSW”) in San Diego, and she has specialized in special needs case
18 management since 2015. In 2021, she enrolled in the Kaiser Permanente Mental Health Scholars
19 Program at Loma Linda University, where she is pursuing her Doctor of Social Work in Clinical
20 Leadership. She graduated from this program in June 2024.

21 15. As an LCSW, she is also a special needs case manager and she worked in Kaiser’s
22 department that handles dual eligibility for Medicare and Medi-Cal coverage. She provided
23 annual assessments and managed a caseload of 400-800 patients each year. Depending on the
24 client’s needs during each assessment, she would coordinate other healthcare as needed and
25 answer client phone calls and inquiries. She also assisted Kaiser’s doctors, nurses, staff, and
26 community partners with different tasks, as needed.

27 16. Since 2014, Ms. Session has reported to Thomas Mercadante (“Mr. Mercadante”),
28 LCSW, a White man.

17. Throughout her employment at Kaiser, she performed well, and from 1999-2022,
she maintained an unblemished performance history. In her most recent role, from 2015 through

2022, she received overwhelmingly positive performance evaluations and was consistently rated as “excellent” to “successful expert” in her role. Additionally, in 2015, Kaiser recognized Ms. Session as a key team player in successfully representing the department in a Regional Audit. In 2018, Kaiser identified her as the New SNP (Special Needs Plan) Assessment Champion.

18. Despite over two decades of dedication and unblemished performance history, Kaiser discriminated against Ms. Session in the terms and conditions of her employment based on her race by refusing to provide her with the same support as her non-Black peers, subjecting her to heightened performance standards, assigning her a disproportionate workload, and subjecting her to an increasingly hostile work environment. When Ms. Session took a protected leave to care for her son’s medical conditions following a severe accident, Kaiser retaliated against her by placing her on a Corrective Action Plan. Then, when Ms. Session requested medical leave for her own medical condition, her supervisor Mr. Mercadante, retaliated against her by submitting a pretextual report to Kaiser Compliance Hotline accusing her of being violation of Kaiser’s “Conflict of Interest” policy for operating a private practice. Mr. Mercadante was in fact fully aware that she was operating a private practice following her disclosure in 2021 establishing that the report was pretextual. Kaiser Compliance later contacted Ms. Session to advise that she was not in any violation of Kaiser’s policies, that many therapists operate a private practice, and further that Mr. Mercadante should have simply given her the form to complete regarding disclosure of her practice. There was simply no legitimate reason for Mr. Mercadante to report her to Compliance other than to retaliate against her. She was forced to continue medical leave due to the severe stress and anxiety these discriminatory actions caused. Kaiser’s discriminatory and retaliatory treatment towards Ms. Session has severely impacted her mental and physical health, requiring continued medical treatment.

19. Ms. Session was the only Black employee in her department at Kaiser. She was one of two LCSWs working full-time in the department. Patricia Smith (“Ms. Smith”), a non-Black woman, was the other LCSW working full-time in the department and performed the same role as Ms. Session. The other LCSWs and registered nurses in that department at Kaiser only spent part of their time with overlapping responsibilities with Ms. Session, including conducting annual assessments. These non-Black employees include:

A. Deborah Parker (“Ms. Parker”), RN

- B. Heather Matovu (“Ms. Matovu”), LCSW
- C. Hedy Magallanes (“Ms. Magallanes”), RN
- D. Irene Mikami (“Ms. Mikami”), RN
- E. Jennifer Stevens (“Ms. Stevens”), LCSW
- F. Katrina Bullard (“Ms. Bullard”), LCSW
- G. Kirsten Clayton (“Ms. Clayton”), LCSW
- H. Sophie Gonzalez (“Ms. Gonzalez”), RN
- I. Patricia Smith (“Ms. Smith”), LCSW

20. There were also two Program Managers working in the same department as Ms. Session. Program Managers oversee the department, serving as liaisons between registered nurses, LCSWs, and regional leadership. The Program Managers manage departmental changes, enforce policies, and allocate resources. Erika Glenn (“Ms. Glenn”), a White woman, became one of the Program Managers for Ms. Session’s department in/or about January 2021.

21. Between 2014 and 2022, Ms. Session’s second-line supervisor was Pamela Reger (“Ms. Reger”), Director of Continuing Care Services. Ms. Reger directly supervised Mr. Mercadante. During 2014 to 2022, Ms. Reger was a fair and equitable second-line supervisor and helped ensure that the Kaiser work environment was a place where all employees could thrive. Ms. Session’s outstanding work performance, reviews, and awards during this period reflect this work environment and the ability to succeed. Ms. Reger retired in the Summer of 2022. Immediately after Ms. Reger retired, however, Mr. Mercadante and Ms. Glenn began subjecting Ms. Session to disparate treatment in the terms and conditions of her employment compared to her similarly situated non-Black counterparts. Mr. Mercadante and Ms. Glenn subjected her to heightened performance criticism and disproportionate performance expectations, blamed her for complaints intended for her White counterparts, and assigned her a disproportionate workload compared to her non-Black peers. From 2014 to 2022, Ms. Reger’s commitment to a fair work environment prevented Mr. Mercadante’s racial biases from coming to light; however, once Ms. Reger retired, Mr. Mercadante and Ms. Glenn began treating Ms. Session in an extremely hostile and discriminatory manner.

22. Mr. Mercadante refused to provide Ms. Session with the same support as her non-Black peers and held her to a heightened performance standard based on her race. For example,

1 in early 2023, Ms. Session's department implemented a new workflow. Initially, this adjustment
2 was challenging for the entire team. However, Kaiser afforded her non-Black peers the patience,
3 support, and guidance to adjust to this new workflow. Whenever her non-Black peers needed
4 more time or support to adapt to the new workflow, Mr. Mercadante encouraged them and gave
5 them the space and opportunity to learn. Unfortunately, despite Ms. Session's significant efforts
6 and unblemished performance history, Mr. Mercadante refused to treat her with the same
7 patience and support as her non-Black peers. When Ms. Session experienced the same challenges
8 as her peers or requested support related to the new workflow, Mr. Mercadante scrutinized her in
9 a way that he did not do to her peers. Mr. Mercadante's refusal to provide her with the same
10 support as her non-Black peers impeded her ability to succeed in her role and caused her
11 significant distress.

12 23. In April or May 2023, Mr. Mercadante gave Ms. Session a negative performance
13 review based on her race. This was the first performance review she had received since Ms.
14 Reger's retirement and the first time she received a negative review during her entire 24-year
15 tenure at Kaiser. While Ms. Reger was Ms. Session's second-line supervisor, every performance
16 review she received was positive and she earned regular praise for her performance. However,
17 after Ms. Reger's retirement, Mr. Mercadante used her performance review to target her because
18 of her race. Mr. Mercadante criticized her learning speed and adjustment to the new workflow.
19 On several occasions before her performance review, she contacted Mr. Mercadante for support
20 adjusting to the new workflow. Mr. Mercadante refused to provide her with any support or
21 guidance. Her non-Black peers, such as Ms. Parker, Ms. Bullard, Ms. Mikami, and Ms.
22 Gonzalez, also needed time and support to adjust to the new workflow; however, she was the
23 only employee criticized for this alleged deficiency. Ms. Session was the only Black employee
24 on the team, and the only employee Mr. Mercadante held to this heightened performance
25 standard.

26 24. In May or June 2023, Ms. Glenn began copying Mr. Mercadante on all of her
27 email correspondences with Ms. Session. Ms. Glenn and Mr. Mercadante used these email
28 threads to intimidate and unfairly criticize her and thereby subjected her to heightened
performance criticism compared to her non-Black peers. For example, her non-Black peers,
including Ms. Smith, Ms. Bullard, and Ms. Clayton, sometimes fell behind on their weekly goals

1 but were never criticized in the same manner or to the same extent as Ms. Session. Ms. Glenn did
2 not copy Mr. Mercadante on every correspondence with her non-Black peers and never
3 explained this sudden change. By copying her supervisor on every single email with her, Ms.
4 Glenn conveyed that she did not trust Ms. Session (the only Black team member) and that she
5 felt the need to escalate her communications to a supervisor. Unfortunately, Black employees are
6 often subjected to the untrue and harmful stereotype that they are untrustworthy. This distrust
7 and micromanagement made Ms. Session's working conditions unbearable and negatively
8 impacted her mental health. Ms. Glenn and Mr. Mercadante did not treat her non-Black peers
9 this same way.

10 25. Mr. Mercadante and Ms. Glenn also falsely accused Ms. Session of neglecting
11 member calls and subjected her to heightened performance expectations concerning client calls
12 compared to her similarly situated non-Black peers. Mr. Mercadante and Ms. Glenn did not
13 expect her non-Black peers to return all phone calls they received instantly; this would be
14 impossible because of the nature of their work. Kaiser does not set specific expectations for how
15 soon LCSWs and registered nurses in the department must return calls. The primary expectation
16 is that they check their voicemails daily and return calls when they are able to do so. Although
17 Ms. Session managed a significantly larger caseload than all of her non-Black peers, and,
18 therefore, she received more calls than her non-Black peers, she always complied with this
19 requirement.

20 26. However, in or about June 2023, one patient complained that Ms. Session did not
21 immediately return his call. Mr. Mercadante and Ms. Glenn messaged her in a hostile and
22 accusatory manner, questioning why she did not immediately return this client's call. When Mr.
23 Mercadante and Ms. Glenn brought the patient's complaint to her attention, Ms. Session quickly
24 returned his call, but the patient did not answer. Although she attempted to contact the patient,
25 Mr. Mercadante and Ms. Glenn reassigned this patient to her White colleague, Ms. Matovu. Ms.
26 Matovu later informed Ms. Session that this patient also did not answer her call and, yet, Mr.
27 Mercadante and Ms. Glenn did not subject Ms. Matovu to the same criticism as her or reassign
28 Ms. Matovu's work to another employee. Mr. Mercadante and Ms. Glenn always subjected Ms.
Session to heightened performance standards compared to her non-Black peers.

1 27. Around this time, Mr. Mercadante demanded that Ms. Session modify her
2 voicemail message to state that she would return all client calls and clinical staff messages within
3 two business days. She was the only Black employee on the team and the only employee to
4 whom Mr. Mercadante gave this instruction. Moreover, Ms. Session always returned calls as
5 quickly as possible. She managed a large caseload, and it would have been impossible to
6 immediately return all client calls. In the past, she had always returned client calls within 1-5
7 days, depending on her current caseload and call volume. This timeframe was never a problem.

8 28. Additionally, Mr. Mercadante blamed Ms. Session for a complaint that was
9 unrelated to her work and intended for her non-Black peer. Specifically, in June or July 2023,
10 Mr. Mercadante messaged Ms. Session and Lisa Carroll (“Ms. Carroll”), her local union
11 representative, after another staff member complained to Mr. Mercadante that her White
12 counterpart did not respond promptly to a care coordination inquiry. The complaint clearly
13 indicated that the inquiry concerned a patient who was in her White colleague’s caseload.
14 However, Mr. Mercadante was extremely hostile and accusatory towards Ms. Session and
15 automatically assumed that the complaint was about her, the only Black employee on the team.
16 Ms. Carroll responded that the complaint was not directed toward Ms. Session, but toward her
17 White colleague, and Mr. Mercadante did not respond. Mr. Mercadante never apologized for this
18 incident or, at the very least, acknowledged that the complaint was not intended for Ms. Session.

19 29. In September 2023, Ms. Session’s son was involved in a severe accident requiring
20 her care. She took protected leave to care for her son from about September 25, 2023, through
21 October 4, 2023. She provided Kaiser with a caregiver note, and Mr. Mercadante was aware that
22 she was using paid sick leave as Kin Care leave to care for her injured son. After Ms. Session
23 took protected leave, Mr. Mercadante began retaliating against her for taking leave.

24 30. Ms. Session’s Union’s contract included provisions for support and workload
25 adjustment in similar situations, and the Company had previously honored similar requests from
26 her non-Black colleagues when they took medical or family leave. Unfortunately, however,
27 Kaiser denied Ms. Session’s request for support and workload adjustment. She was the only
28 Black LCSW in her department and the only LCSW to whom Kaiser denied this benefit. The
Company explained that any available assistance would be allocated department-wide and not to
individuals. Unsurprisingly, Kaiser continued to provide more support to her non-Black peers.

1 31. Then, on November 1, 2023, Ms. Session served one day of jury duty. While she
2 was on jury duty, Mr. Mercadante repeatedly contacted her about a training due the day before.
3 Mr. Mercadante threatened unpaid leave and termination if she did not immediately complete the
4 training. Of course, she could not complete the training while on jury duty. Therefore, Ms.
5 Session completed the training after jury duty ended around 4:00 PM. This was the first time in
6 her career that she had ever been delayed or behind, and several non-Black employees who
7 report to Mr. Mercadante have completed online trainings late without Mr. Mercadante
8 threatening to terminate their employment.

9 32. When Ms. Session submitted her jury duty hours, Mr. Mercadante accused her of
10 falsifying her timecard. He deducted six hours from her leave balance and two hours for jury
11 duty. Ms. Session obtained a Jury Activity Sheet confirming her full day of service and provided
12 this sheet to Mr. Mercadante and his timekeeper. Mr. Mercadante refused to correct her leave
13 balance. In December 2023, she submitted the Jury Activity Sheet to Mr. Mercadante's
14 timekeeper, and she finally corrected Mr. Mercadante's incorrect time deduction. Mr.
15 Mercadante did not subject her non-Black peers to such undue skepticism and hostility. Again,
16 Mr. Mercadante was subjecting her to the harmful stereotype that Black employees are
untrustworthy.

17 33. On November 28, 2023, less than two months after Ms. Session returned from
18 protected leave, she received a written "Initial Discussion," or Level 1 of Kaiser's Corrective
19 Action process. This Initial Discussion was concerning for several reasons, and it was clear that
20 Mr. Mercadante issued this document as pretext to eventually terminate her employment in
21 retaliation for her protected leave and based on her race.

22 34. Mr. Mercadante's reprimand criticized Ms. Session for being behind schedule in
23 reaching the number of annual assessments Kaiser required her to meet that year. However, this
24 was a direct result of Kaiser assigning her a disproportionate workload based on her race and Mr.
25 Mercadante's refusal to support her because of her race and in retaliation for her protected leave.
26 Specifically, as of December 12, 2023, Ms. Session's annual target was 784 assessments. This
27 was significantly higher than any of her similarly situated non-Black peers. Ms. Smith, the other
28 LCSW working full time in her department and who is not Black, had a substantially lower
target. Ms. Smith and Ms. Session performed the exact same role. However, Ms. Smith's target

1 was 686 assessments—98 less than Ms. Session’s. There is simply no non-discriminatory
2 explanation for this difference. Moreover, Mr. Mercadante has repeatedly refused to support her
3 since Ms. Reger retired, including after her protected leave. If Mr. Mercadante had provided Ms.
4 Session with the same level of support and assigned her a similar workload to her non-Black
5 peers, she would have been able to exceed performance expectations. Unfortunately, because of
6 her race and in retaliation for her protected leave, Mr. Mercadante intentionally subjected her to
7 impossible goals and unfair expectations compared to her non-Black peers.

8 35. Mr. Mercadante also falsely claimed that Ms. Session had problems completing
9 required trainings on time. Several non-Black employees who did not take protected leave have
10 completed online trainings late without Mr. Mercadante threatening to terminate their
11 employment or initiating the formal corrective action process. Moreover, in her entire career at
12 Kaiser, she handed in only one training late, on November 1, 2023, the day she served jury duty,
13 and only one day behind schedule. Mr. Mercadante based his accusation on this single instance.
14 Ms. Session never witnessed him subject her similarly situated non-Black peers to formal
15 corrective action based on a single, minor occurrence.

16 36. The requirements of the Corrective Action Plan were entirely unrelated and
17 disproportionate to the purported performance concerns identified by Mr. Mercadante in the
18 Initial Discussion. Through the Corrective Action Plan, Mr. Mercadante required Ms. Session to
19 be physically present in the office every work day and to send Mr. Mercadante screenshots of her
20 computer upon her arrival at 8:30 AM and departure at 5:00 PM “until further notice.” Her non-
21 Black peers were not subject to this requirement. Mr. Mercadante was intentionally
22 micromanaging her work to intimidate her and ostracize her from her peers based on her race and
23 in retaliation for her protected leave. In 24 years, this is the first Corrective Action Plan that she
24 received. Like the “Initial Discussion,” reprimand, Mr. Mercadante did not draft this plan to help
25 Ms. Session succeed in her role but as pretext to eventually terminate her employment based on
26 her race and in retaliation for her protected leave.

27 37. Kaiser’s discriminatory and retaliatory treatment has significantly harmed Ms.
28 Session’s mental and physical health. As a direct result of Kaiser’s unlawful conduct, she has
experienced and continue to experience panic attacks, severe anxiety, and physical symptoms of

1 stress requiring medical treatment. By December 2023, Ms. Session's working conditions at
2 Kaiser became so unbearable that she was forced to take medical leave.

3 38. Ms. Session took sick leave from December 1, 2023, through December 7, 2023,
4 supported by her primary care physician. Then, on December 11, 2023, she began an extended
5 medical leave of absence, supported by her mental health care provider.

6 39. Mr. Mercadante immediately retaliated against Ms. Session for requesting
7 medical leave. Specifically, on December 1, 2023, the same day that she requested medical
8 leave, Mr. Mercadante reported to Kaiser's Compliance Hotline that she did not report her
9 secondary employment to the Company. Tellingly, Mr. Mercadante was aware that she had
10 sought secondary employment since 2019, but he only submitted this report after she requested
11 her medical leave as a reasonable accommodation for her disabilities. Several other therapists at
12 Kaiser also work second jobs with no issue. Moreover, Mr. Mercadante never informed Ms.
13 Session that she was required to separately report this additional employment, and her secondary
14 employment was never a problem until she submitted a request for medical leave related to the
15 injuries that Kaiser's discriminatory and retaliatory treatment had caused to her mental and
16 physical health. The Kaiser Compliance Officer informed Ms. Session that she was not in trouble
17 because of Mr. Mercadante's report and then asked her to complete a standard form regarding
18 conflicts of interest. There were no conflicts of interest, and her private practice did not violate
19 any of Kaiser's rules. Based on Mr. Mercadante's increasingly hostile treatment towards Ms.
20 Session and the timing of his report, it was clearly his intention for this report to negatively
21 impact her employment at Kaiser.

22 40. Ms. Session received two extensions on her leave request through December 18,
23 2024, when she is required to return to work under the Union NUHA Agreement following a
24 year of leave. To avoid returning to the same work environment, permeated with discrimination
25 and retaliation, Ms. Session was required to request a transfer to the Psychiatry Department as a
26 Psychosocial Clinician/Counselor Level II, beginning January 13, 2025.

27 41. Notwithstanding her transfer, to date, management has failed and refused to
28 conduct an appropriate investigation upon notice of Ms. Session's complaints, failed to
undertake any remedial measures, and continue to discriminate and retaliate against her for

engaging in protected opposing and reporting activities resulting in the injuries and damages as alleged herein.

FIRST CAUSE OF ACTION

Discrimination Based on Race/Color and Association with a Protected Class in Violation of Cal. Gov't Code § 12940(a)

(Against Defendant KAISER FOUNDATION HOSPITALS, a California nonprofit corporation; and DOES 1-100, inclusive)

42. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-41, above.

43. California Government Code § 12940(a) makes it unlawful for an employer to discriminate against a person based on race/color or association with a protected class. Discrimination under § 12940(a) is broadly construed and includes, without limitation, acts of differential treatment, harassment, denial of benefits of employment poor performance reviews and other retaliation.

44. Plaintiff is Black female and a member of protected class of persons based upon her race and color. Ms. Session is likewise a member of a protected class of persons of color as a group.

45. As more fully alleged herein, Defendant, and each of them, intentionally discriminated and retaliated against Plaintiff in the terms and conditions of employment because of her race/color and for opposing unlawful discrimination against her and against Black employees as a group. Without limitation, Defendant refused to provide her with the same support as her non-Black peers, subjected her to heightened performance standards, assigned her a disproportionate workload, and subjected her to an increasingly hostile work environment including engaging in adverse actions when she exercised her rights to take medical leave for her son, later for her own serious medical condition and request for reasonable accommodations and for requesting jury duty. Some of these actions included, giving her a false and pretextual performance review and Corrective (Performance) Action Plan, levying false accusations of misconduct followed by a "Step 1" disciplinary action ("Initial Discussion"), and making a knowingly false report to Kaiser compliance that she violated Kaiser's "Conflict of Interest" policy for operating a private practice. Defendant further violated Plaintiff's rights by denying

1 her a work environment free of discrimination and harassment, failing to investigate her
2 complaints of discrimination and retaliation and thereby failing to take all reasonable steps
3 necessary to prevent discrimination from occurring as required by California Government Code
4 § 12940(k).

5 46. By aforesaid acts and omissions of Defendant, and each of them, Plaintiff has
6 been directly and legally caused to suffer actual damages including, but not limited to, medical
7 expenses and special damages, loss of earnings and future earning capacity, and other pecuniary
8 loss not presently ascertained.

9 47. As a further direct and legal result of the acts and conduct of Defendant, and each
10 of them, as aforesaid, Plaintiff has been caused to and did suffer and continues to suffer
11 emotional and mental distress, trauma, anguish, humiliation, embarrassment, fright, shock, pain,
12 discomfort and anxiety. The exact nature, duration, and extent of said injuries is presently
13 unknown to Plaintiff, but she is informed and believes and thereon alleges that some if not all of
14 the injuries are reasonably certain to be permanent in character.

15 48. Plaintiff is informed and believes and thereon alleges that Defendant and their
16 managers, officers, and/or directors committed the acts alleged herein maliciously, fraudulently,
17 and oppressively, with the wrongful intention of injuring Plaintiff and acted with an improper
18 and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's
19 rights. Moreover, Defendant and their managers, officers, and/or directors authorized or ratified
20 the wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or
21 malice. As such, Plaintiff is entitled to recover punitive damages from Defendant in an amount
22 according to proof. Cal. Civ. Code §3294.

23 49. As a result of Defendant's retaliatory and discriminatory acts as alleged herein,
24 Plaintiff is entitled to reasonable attorney's fees and costs of suit as provided in Section 12965(b)
25 of the California Government Code.

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SECOND CAUSE OF ACTION

Retaliation for Requesting Medical Leave Under the *Moore-Brown Roberti* California Family Rights Act (“CFRA”) in Violation of Cal. Gov’t Code § 12945.2(k) (Against Defendants KAISER FOUNDATION HOSPITALS, INC., a California non-profit corporation; and DOES 1 through 100, inclusive)

50. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-49, above.

51. The CFRA, subsection (k) of Cal. Gov’t Code § 12945.2(k) makes it an unlawful employment practice for employers with five (5) or more employees to discharge, suspend, expel, or discriminate against any eligible employee who exercises the right to family care and medical leave provided by subdivision (a) of the CFRA. In addition to the protections against retaliation afforded under subsection (h) of Cal. Gov’t Code § 12940 and *Kin Care Law* (Labor Code §§ 230 and 233(c)); subdivision (k) of § 12945.2 provides for a separate and distinct cause of action and primary right for retaliation specific to the employer’s denial of medical leave.

52. As more fully alleged herein, Defendants, and each of them retaliated against Plaintiff because she exercised her right to request a medical leave of absence for her son and for her own serious medical condition associated with her disability. When Plaintiff exercised her rights to take medical leave for her son and later for her own serious medical condition Defendant immediately engaged in adverse actions, including, giving her a false and pretextual performance review and Corrective (Performance) Action Plan, levying knowingly false accusations of misconduct followed by a “Level 1” disciplinary action (“Initial Discussion”), and making a knowingly false report to Kaiser compliance that she violated Kaiser’s “Conflict of Interest” policy for operating a private practice.

53. Defendant’s decisions to retaliate against Plaintiff were based solely on her protected reporting and opposition activities and exercise of rights. The close proximity of time between Plaintiff’s protected opposition and reporting activities and Defendant’s adverse actions was immediately following each exercise of rights. Timing alone is sufficient evidence of pretext and retaliatory motive under § 12945.2(k) and demonstrates a causal nexus between the protected activity and adverse action without a superseding intervening act. See *Flait v. North American Watch Co.* (1992) 3 Cal.App.4th 471, 480. Defendant further violated Plaintiff’s rights by denying her a work environment free of discrimination and harassment, failing to investigate

1 her complaints of discrimination and retaliation and thereby failing to take all reasonable steps
2 necessary to prevent discrimination from occurring as required by California Government Code
3 § 12940(k).

4 54. By discriminating and retaliating against Plaintiff because she exercised her right
5 to request a medical leave of absence, Defendants violated Cal. Gov't Code § 12945.2(k).

6 55. By aforesaid acts and omissions of defendants, and each of them, Plaintiff has
7 been directly and legally caused to suffer actual damages including, but not limited to, medical
8 expenses and special damages, loss of earnings and future earning capacity, and other pecuniary
9 loss not presently ascertained.

10 56. As a further direct and legal result of the acts and conduct of defendants, and each
11 of them, as aforesaid, Plaintiff has been caused to and did suffer and continues to suffer
12 emotional and mental distress, trauma, anguish, humiliation, embarrassment, fright, shock, pain,
13 discomfort and anxiety. The exact nature, duration, and extent of said injuries is presently
14 unknown to Plaintiff, but she is informed and believes and thereon alleges that some if not all of
15 the injuries are reasonably certain to be permanent in character.

16 57. Plaintiff is informed and believes and thereon alleges that defendants and their
17 managers, officers, and/or directors committed the acts alleged herein maliciously, fraudulently,
18 and oppressively, with the wrongful intention of injuring Plaintiff and acted with an improper
19 and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's
20 rights. Moreover, defendants and their managers, officers, and/or directors authorized or ratified
21 the wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or
22 malice. As such, Plaintiff is entitled to recover punitive damages from defendants in an amount
23 according to proof. Cal. Civ. Code §3294.

24 58. As a result of defendants' retaliatory and discriminatory acts as alleged herein,
25 Plaintiff is entitled to reasonable attorney's fees and costs of suit as provided in Section 12965(b)
26 of the California Government Code.

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THIRD CAUSE OF ACTION

**Denial of Sick Leave and Retaliation for Requesting Sick Leave to Care for
a Family Member in Violation of 233(c)/246(c)/246.5(c)(1)
(Against Defendants KAISER FOUNDATION HOSPITALS, a California nonprofit
corporation; and DOES 1-100, inclusive)**

59. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-58, above.

60. California Labor Code § 245(a) is known as the “Healthy Workplaces, Healthy Families Act of 2014 (“HWHFA”). The legislature created a private right of action for violation of the HWHFA “in addition to and independent of any other rights, remedies, or procedures available under any other law and do not diminish, alter, or negate any other legal rights, remedies, or procedures available to an aggrieved person.”

61. Plaintiff was, at all times relevant herein, an employee eligible to use sick leave for herself or her family member within the meaning of the HWHFA, Labor Code § 245. *Id.* at 245.5(a)(1)(2),(c)(1). Defendant was, at all times relevant herein, an employer subject to the proscriptions of Labor Code § 245. *Id.* at 245.5(b).

62. California Labor Code § 246.5(c)(1) prohibits employers from:
[D]ischarg[ing], threaten[ing] to discharge, demote, suspend, or in any manner discriminate against an employee for using accrued sick days, attempting to exercise the right to use accrued sick days[.]

Section 246.5(c)(1) further creates “rebuttable presumption of unlawful retaliation if an employer denies an employee the right to use accrued sick days, discharges, threatens to discharge, demotes, suspends, or in any manner discriminates against an employee within 30 days of any of the “[t]he cooperation of an employee with an investigation or prosecution of an alleged violation of this article [or] [o]pposition by the employee to a policy, practice, or act[.]” Cal. Labor Code § 246.5(b)(c)(2).

63. California Labor Code § 233(c) prohibits an employer from:
[D]eny[ing] an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness or the preventive care of a family member, or for any other reason specified in subdivision (a) of Section 246.5.

64. Defendants, and each of them, engaged in multiple adverse actions against Plaintiff in direct response to her the exercise her rights to take sick leave for herself and her child, including, without limitation, denying her the right to use her sick leave pay, giving her a false and pretextual poor performance review and Corrective (Performance) Action Plan, levying knowingly false accusations of misconduct followed by a “Step 1” disciplinary action (“Initial Discussion”), and making a knowingly false report to Kaiser compliance that she violated Kaiser’s “Conflict of Interest” policy for operating a private practice. Defendant’s decisions to retaliate against Plaintiff were based solely on her protected reporting and opposition activities and exercise of rights. The close proximity of time between Plaintiff’s protected opposition and reporting activities and Defendant’s adverse actions was immediately following each exercise of rights. Timing alone is sufficient evidence of pretext and retaliatory motive under the *Kin Care Act* and HWHFA and demonstrates a causal nexus between the protected activity and adverse action without a superseding intervening act. See *Flait v. North American Watch Co.* (1992) 3 Cal.App.4th 471, 480.

65. By discriminating and retaliating against Plaintiff because she exercised her rights to request and use sick leave, Defendants violated Labor Code §§ 233(c)/246(c) and 246.5(c)(1).

66. By aforesaid acts and omissions of Defendants, and each of them, Plaintiff has been directly and legally caused to suffer actual damages, loss of earnings, future earning capacity, other pecuniary loss not presently ascertained and is entitled to “equitable relief or one day’s pay, whichever is greater, and to appropriate equitable relief. Labor Code § 233(d)

67. As a further direct and legal result of the acts and conduct of defendants, and each of them, as aforesaid, Plaintiff has been caused to and did suffer and continues to suffer emotional and mental distress, trauma, anguish, humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. The exact nature, duration, and extent of said injuries is presently unknown to Plaintiff, but he is informed and believes and thereon alleges that some if not all the injuries are reasonably certain to be permanent in character. Labor Code § 233(f)

68. As a result of defendants’ retaliatory and discriminatory acts as alleged herein, Plaintiff is entitled to reasonable attorney’s fees and costs of suit as provided in Cal. Labor Code § 233(e).

FOURTH CAUSE OF ACTION

**Retaliation for Requesting Reasonable Accommodations in Violation of
Cal. Gov't Code § 12940(m)(2)
(Against Defendants KAISER FOUNDATION HOSPITALS, a California nonprofit
corporation; and DOES 1-100, inclusive)**

69. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-68, above.

70. In addition to the protections against retaliation afforded under subsection (h) of Cal. Gov't Code § 12940, subdivision (m)(2) provides for a separate and distinct cause of action for retaliation when the employer's adverse actions were triggered by or in response to the employee's exercise of rights to request reasonable accommodations for disability. An employee's request for reasonable accommodation based on disability is a "protected activity" as a matter of law pursuant to within the meaning of § 12940(m)(2).

71. As more fully alleged herein, during her employment, Plaintiff was a qualified person with a known mental disability who exercised her right to request reasonable accommodation in the form of a finite leave of absence from December 2023 to December 2024. Defendants, and each of them, engaged in multiple adverse actions against Plaintiff in direct response to the exercise of her right to request a reasonable accommodation including, without limitation, making a knowingly false report to Kaiser compliance that she violated Kaiser's "Conflict of Interest" policy for operating a private practice on the same day she requested leave—December 1, 2023.

72. Defendant's decisions to retaliate against Plaintiff were based solely on the exercise of right to a reasonable accommodation for her disability. The close proximity of time between Plaintiff's protected opposition and reporting activities and Defendant's adverse actions was immediately following each exercise of rights. Timing alone is sufficient evidence of pretext and retaliatory motive under the FEHA and demonstrates a causal nexus between the protected activity and adverse action without a superseding intervening act. See *Flait v. North American Watch Co.* (1992) 3 Cal.App.4th 471, 480. Defendant further violated Plaintiff's rights by denying her a work environment free of discrimination and harassment, failing to investigate her complaints of discrimination and retaliation and thereby failing to take all reasonable steps

1 necessary to prevent discrimination from occurring as required by California Government Code
2 § 12940(k).

3 73. By aforesaid acts and omissions of defendants, and each of them, Plaintiff has
4 been directly and legally caused to suffer actual damages including, but not limited to, medical
5 expenses and special damages, loss of earnings and future earning capacity, and other pecuniary
6 loss not presently ascertained.

7 74. As a further direct and legal result of the acts and conduct of defendants, and each
8 of them, as aforesaid, Plaintiff has been caused to and did suffer and continues to suffer
9 emotional and mental distress, trauma, anguish, humiliation, embarrassment, fright, shock, pain,
10 discomfort and anxiety. The exact nature, duration, and extent of said injuries is presently
11 unknown to Plaintiff, but she is informed and believes and thereon alleges that some if not all of
12 the injuries are reasonably certain to be permanent in character.

13 75. Plaintiff is informed and believes and thereon alleges that defendants and their
14 managers, officers, and/or directors committed the acts alleged herein maliciously, fraudulently,
15 and oppressively, with the wrongful intention of injuring Plaintiff and acted with an improper
16 and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's
17 rights. Moreover, defendants and their managers, officers, and/or directors authorized or ratified
18 the wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or
19 malice. As such, Plaintiff is entitled to recover punitive damages from defendants in an amount
20 according to proof. Cal. Civ. Code §3294.

21 76. As a result of defendants' retaliatory and discriminatory acts as alleged herein,
22 Plaintiff is entitled to reasonable attorney's fees and costs of suit as provided in Section 12965(b)
23 of the California Government Code.

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27 **FIFTH CAUSE OF ACTION**

28 **Retaliation in Violation of Cal. Gov't Code § 12940(h)**

(Against Defendant KAISER FOUNDATION HOSPITALS, a California nonprofit corporation; and DOES 1-100, inclusive)

77. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-76, above.

78. Gov't Code Section 12940(h) makes it unlawful for an employer to retaliate against an employee for making a complaint of discrimination and/or opposing or protesting unlawful employment practices.

79. As more fully alleged herein, Defendant, and each of them, intentionally discriminated and retaliated against Plaintiff in the terms and conditions of employment because of her race/color and for opposing unlawful discrimination against her and against Black employees as a group. Without limitation, Defendant refused to provide her with the same support as her non-Black peers, subjected her to heightened performance standards, assigned her a disproportionate workload, and subjected her to an increasingly hostile work environment including engaging in adverse actions when she exercised her rights to take medical leave for her son, later for her own serious medical condition and request for reasonable accommodations and for requesting jury duty. Some of these actions included, giving her a false and pretextual performance review and Corrective (Performance) Action Plan, levying false accusations of misconduct followed by a "Step 1" disciplinary action ("Initial Discussion") and making a knowingly false report to Kaiser compliance that she violated Kaiser's "Conflict of Interest" policy for operating a private practice.

80. Defendant's decisions to retaliate against Plaintiff were based solely on her protected reporting and opposition activities and exercise of rights. The close proximity of time between Plaintiff's protected opposition and reporting activities and Defendant's adverse actions was immediately following each exercise of rights. Timing alone is sufficient evidence of pretext and retaliatory motive under § 12945.2(k) and demonstrates a causal nexus between the protected activity and adverse action without a superseding intervening act. See *Flait v. North American Watch Co.* (1992) 3 Cal.App.4th 471, 480. Defendant further violated Plaintiff's rights by denying her a work environment free of discrimination and harassment, failing to investigate her complaints of discrimination and retaliation and thereby failing to take all reasonable steps

necessary to prevent discrimination from occurring as required by California Government Code § 12940(k).

81. By aforesaid acts and omissions of Defendant, and each of them, Plaintiff has been directly and legally caused to suffer actual damages including, but not limited to, medical expenses and special damages, loss of earnings and future earning capacity, and other pecuniary loss not presently ascertained.

82. As a further direct and legal result of the acts and conduct of Defendant, and each of them, as aforesaid, Plaintiff has been caused to and did suffer and continues to suffer emotional and mental distress, trauma, anguish, humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. The exact nature, duration, and extent of said injuries is presently unknown to Plaintiff, but she is informed and believes and thereon alleges that some if not all the injuries are reasonably certain to be permanent in character.

83. Plaintiff is informed and believes and thereon alleges that Defendant and their managers, officers, and/or directors committed the acts alleged herein maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted with an improper and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's rights. Moreover, Defendant and their managers, officers, and/or directors authorized or ratified the wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or malice. As such, Plaintiff is entitled to recover punitive damages from Defendant in an amount according to proof. Cal. Civ. Code §3294.

84. As a result of Defendant's retaliatory and discriminatory acts as alleged herein, Plaintiff is entitled to reasonable attorney's fees and costs of suit as provided in Section 12965(b) of the California Government Code.

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SIXTH CAUSE OF ACTION

**Failure to Prevent Discrimination and Retaliation from Occurring
in Violation of Cal. Gov't Code § 12940(k)
(Against Defendant KAISER FOUNDATION HOSPITALS, a California nonprofit
corporation; and DOES 1-100, inclusive)**

85. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-84, above.

86. G.C. §12940(k) provides as follows: “It shall be an unlawful employment practice, [f]or an employer ... to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.” A violation of Section (k) of the Gov’t Code is a independent cause of action under the FEHA predicated on discrimination or retaliation. See *Taylor v. City of Los Angeles Dept. of Water and Power* (2006) 144 Cal.App.4th 1216, 1240, disapproved on other grounds in *Jones v. Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158, 1162; see also CACI Jury Instr. 2527.

87. As more fully alleged herein, Defendant, and each of them, intentionally discriminated and retaliated against Plaintiff in the terms and conditions of employment because of her race/color and for opposing unlawful discrimination against her and against Black employees as a group. Without limitation, Defendant refused to provide her with the same support as her non-Black peers, subjected her to heightened performance standards, assigned her a disproportionate workload, and subjected her to an increasingly hostile work environment including engaging in adverse actions when she exercised her rights to take medical leave for her son, later for her own serious medical condition and request for reasonable accommodations and for requesting jury duty. Some of these actions included, giving her a false and pretextual performance review and Corrective (Performance) Action Plan, levying false accusations of misconduct followed by a “Step 1” disciplinary action (“Initial Discussion”) and making a knowingly false report to Kaiser compliance that she violated Kaiser’s “Conflict of Interest” policy for operating a private practice.

88. Defendant’s decisions to retaliate against Plaintiff were based solely on her protected reporting and opposition activities and exercise of rights. The close proximity of time between Plaintiff’s protected opposition and reporting activities and Defendant’s adverse actions was immediately following each exercise of rights. Timing alone is sufficient evidence of pretext

1 and retaliatory motive under § 12945.2(k) and demonstrates a causal nexus between the
2 protected activity and adverse action without a superseding intervening act. See *Flait v. North*
3 *American Watch Co.* (1992) 3 Cal.App.4th 471, 480.

4 89. Defendant further failed and refused to maintain or enforce adequate anti-
5 discrimination and anti-retaliation policies, failed to provide or train on anti-discrimination or
6 anti-retaliation policies nor otherwise follow substance or procedure contained in their
7 employment policies or mandated by law. Defendant further failed and refused to respond or
8 investigate Plaintiff's complaints and opposition to discrimination and retaliation, failed to
9 discipline Plaintiff's supervisors who provided input into the adverse employment decisions
10 heretofore alleged, nor otherwise take any steps to prevent the discrimination and harassment
11 from occurring in violation of their duty under law as proscribed in subsection (k) of the Gov't
12 Code § 12940.

13 90. By aforesaid acts and omissions of Defendant, and each of them, Plaintiff has
14 been directly and legally caused to suffer actual damages including, but not limited to, medical
15 expenses and special damages, loss of earnings and future earning capacity, and other pecuniary
16 loss not presently ascertained.

17 91. As a further direct and legal result of the acts and conduct of Defendant, and each
18 of them, as aforesaid, Plaintiff has been caused to and did suffer and continues to suffer
19 emotional and mental distress, trauma, anguish, humiliation, embarrassment, fright, shock, pain,
20 discomfort and anxiety. The exact nature, duration, and extent of said injuries is presently
21 unknown to Plaintiff, but she is informed and believes and thereon alleges that some if not all the
22 injuries are reasonably certain to be permanent in character.

23 92. Plaintiff is informed and believes and thereon alleges that Defendant and their
24 managers, officers, and/or directors committed the acts alleged herein maliciously, fraudulently,
25 and oppressively, with the wrongful intention of injuring Plaintiff and acted with an improper
26 and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's
27 rights. Moreover, Defendant and their managers, officers, and/or directors authorized or ratified
28 the wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or
malice. As such, Plaintiff is entitled to recover punitive damages from Defendant in an amount
according to proof. Cal. Civ. Code §3294.

93. As a result of Defendant's retaliatory and discriminatory acts as alleged herein, Plaintiff is entitled to reasonable attorney's fees and costs of suit as provided in Section 12965(b) of the California Government Code.

SEVENTH CAUSE OF ACTION

**Retaliation for Exercise of Rights in Violation of Cal. Labor Code § 98.6
(Against Defendant KAISER FOUNDATION HOSPITALS, a California nonprofit corporation; and DOES 1-100, inclusive)**

94. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-93, above.

95. Cal. Labor Code § 98.6(a)-(b)(1) makes it unlawful to discharge an employee or retaliate "in any manner" or take any adverse action against an employee because the employee exercised any rights afforded to her under the Labor Code.

96. As more fully alleged herein, Defendant, and each of them retaliated against Plaintiff because she exercised her rights under the Labor Code to request and use sick leave for her son's own serious medical condition (§ 233(c)) and for engaging in protected speech to oppose, refuse to participate and disclose violations of state or federal law, rule or regulation (§ 1102.5(a)-(c)), including for making complaints of an unhealthy work environment (§§ 6400-6401, 6403) due to the denial of and retaliation for requesting and taking sick leave among other violations of law, heretofore alleged.

97. Defendant's decisions to retaliate against Plaintiff were based solely on her protected reporting and opposition activities and exercise of rights and violates multiple sections of the Cal. Labor Code, including, without limitation, §§ 98.6, 232.5(a) and (c), 230, 233(c)/246(c)/246.5(c)(1), 1102.5(a)-(c), 6400-6401, 6403 triggering the anti-retaliation protections of Labor Code § 98.6.

98. The close proximity of time between Plaintiff's protected opposition and reporting activities and Defendant's adverse actions was immediately following each exercise of rights. Timing alone is sufficient evidence of pretext and retaliatory motive under § 98.6) and demonstrates a causal nexus between the protected activity and adverse action without a superseding intervening act. See *Flait v. North American Watch Co.* (1992) 3 Cal.App.4th 471, 480.

1 99. Pursuant to § (b)(3) of § 98.6, “[i]n addition to other remedies available, an
2 employer who violates this section is liable for a civil penalty not exceeding ten thousand dollars
3 (\$10,000) per employee for each violation of this section, to be awarded to the employee ... who
4 suffered the violation.

5 100. Defendant’s violation of Cal. Labor Code § 98.6 with respect to Plaintiff and
6 other employees similarly aggrieved trigger the protections for the PAGA. As a result of the
7 aforesaid violations of § 98.6, Plaintiff is further entitled to civil penalties on behalf of herself
8 and other employees similarly aggrieved in the amount of \$100.00 for each aggrieved employee
9 per pay period for the initial violation and \$200.00 per employee per pay period for each
10 subsequent violation. Cal. Labor Code § 2699(f)(2).

11 101. Plaintiff is entitled to attorney’s fees pursuant to the PAGA for any violation of
12 Labor Code § 98.6, pursuant to Labor Code § 2699(g)(1).

13 **EIGHTH CAUSE OF ACTION**

14 **Unlawful Adoption and Enforcement of Policy Preventing an Employee from Disclosing** 15 **Violations of Law in Violation of Cal. Labor Code §§ 1102.5(a) and 232.5(a)** 16 **(Against Defendant KAISER FOUNDATION HOSPITALS, a California nonprofit** 17 **corporation; and DOES 1-100, inclusive)**

18 102. Plaintiff realleges and incorporates by reference, as though fully set forth herein,
19 each and every allegation set forth in paragraphs 1-101, above.

20 103. California Labor Code § 1102.5(a) prohibits employers from:

21 [M]ak[ing], adopt[ing], or enforce[ing] any rule, regulation, or policy preventing an
22 employee from disclosing information to a government or law enforcement agency, to a
23 person with authority over the employee, or to another employee who has authority to
24 investigate, discover, or correct the violation or noncompliance, or from providing
25 information to, or testifying before, any public body conducting an investigation, hearing,
26 or inquiry, if the employee has reasonable cause to believe that the information discloses
27 a violation of state or federal statute, or a violation of or noncompliance with a local,
28 state, or federal rule or regulation, regardless of whether disclosing the information is part
of the employee’s job duties.

104. Similarly, Labor Code § 232.5(a) prohibits employers from requiring, that “as a
condition of employment, that an employee refrain from disclosing information about the
employer's working conditions.”

105. As more fully alleged herein, Defendant made, adopted and enforced unwritten policies, mandates and rules applicable to all employees as a group or class of which Plaintiff was a member, from disclosing Defendant's violations of law. In so doing, Defendant violated their own policies and supplanted their own unlawful policies to discriminate and retaliate against Plaintiff for exercising her rights to oppose discrimination and retaliation against Black employees, including, *inter alia*, subjecting Plaintiff to differential treatment not experienced by her non-Black counterparts. Defendant's unlawful policies involved an intentional and definite illegal course or method selected by Defendant among many lawful alternatives to discriminate and retaliate against Plaintiff for engaging in protected reporting and opposition activities. These policies were designed to silence whistleblowers who reasonably fear retaliation.

106. Plaintiff reasonably believed that Defendant's policies violated the law and in fact did violate the law, including without limitation, Cal. Constit. Art. 1, § 1; U.S. Constit. Amend. 1, 3, 5, 9 & 14; Cal. Gov't Code §§ 12940, *et seq.*; Cal. Health & Safety Code § 1278.5; Cal. Civ. Code §§ 44-46; Cal. Labor Code §§ 98.6, 230, 232.5(a) and (c), 233(c)/246(c)/246.5(c)(1), 1102.5(b)-(c), 6400-6401 and 6406 and 2698, *et seq.* ("PAGA").

107. By making, adopting, and enforcing policies prohibiting workplace whistleblowers as a group or class of which Plaintiff was a member from reporting employer conduct reasonably believed to be in violation of law, Defendant violated Labor Code § 1102.5(a).

108. By aforesaid acts and omissions of Defendant, and each of them, Plaintiff has been directly and legally caused to suffer actual damages including, but not limited to, medical expenses and special damages, loss of earnings and future earning capacity, and other pecuniary loss not presently ascertained. Cal. Labor Code § 1105.

109. As a further direct and legal result of the acts and conduct of Defendant, and each of them, as aforesaid, Plaintiff has been caused to and did suffer and continues to suffer emotional and mental distress, trauma, anguish, humiliation, embarrassment, fright, shock, pain, discomfort, and anxiety. The exact nature, duration, and extent of said injuries is presently unknown to Plaintiff, but she is informed and believes and thereon alleges that some if not all of the injuries are reasonably certain to be permanent in character. Cal. Labor Code § 1105.

110. Plaintiff is informed and believes and thereon alleges that Defendant and their managers, officers, and/or directors committed the acts alleged herein maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted with an improper and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's rights. Moreover, Defendant and their managers, officers, and/or directors authorized or ratified the wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or malice. As such, Plaintiff is entitled to recover punitive damages from Defendant in an amount according to proof. Cal. Civ. Code §3294.

111. Defendant's violation of Cal. Labor Code § 1102.5(a) with respect to Plaintiff and other employees similarly aggrieved trigger the protections for the PAGA. As a result of the aforesaid violations of § 1102.5(a), Plaintiff is entitled to civil penalties on behalf of herself and other employees similarly aggrieved in the amount of \$100.00 for each aggrieved employee per pay period for the initial violation and \$200.00 per employee per pay period for each subsequent violation. Cal. Labor Code § 2699(f)(2). Plaintiff is further entitled to attorney's fees pursuant to the PAGA for any violation of Labor Code § 1102.5(a), pursuant to Labor Code § 2699(g)(1).

112. Plaintiff is entitled to an award of reasonable attorney's fees and costs pursuant to Cal. Labor Code § 1102.5(j).

NINTH CAUSE OF ACTION

Retaliation for Disclosing Information Reasonably Believed to be a Violation of State or Federal Statute, Local, State or Federal Rule or Regulation in Violation of Cal. Labor Code § 1102.5(b)

(Against Defendant KAISER FOUNDATION HOSPITALS, a California nonprofit corporation; and DOES 1-100, inclusive)

113. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-112, above.

114. California Labor Code §1102.5(b) prohibits an employer from retaliating against an employee because the employer believes that the employee disclosed or may disclose information to a government or law enforcement agency, or to a person with authority over the employee if the employee has reasonable cause to believe that the information discloses a

1 violation of state or federal statute, or a violation or noncompliance with a state or federal rule or
2 regulation.

3 115. As more fully alleged herein, Defendant, and each of them, implemented and
4 imposed unlawful unwritten policies and protocols and retaliated against Plaintiff because she
5 exercised her right of protected speech to disclose conduct by Defendant that she reasonably
6 believed violated law. Defendant's conduct involved an intentional and definite illegal course or
7 method selected by Defendant from among many lawful alternatives designed to silence
8 whistleblowers who fear retaliation. Defendant's decisions to discriminate and retaliate against
9 Plaintiff because she engaged in protected reporting activities involving, without limitation,
10 opposing and reporting workplace discrimination, retaliation and conduct by her employer she
11 reasonably believed to be unlawful. Instead of conducting an investigation, Defendant engaged
12 in adverse actions. The close timing between Plaintiff's protected reporting and disclosure
13 activities, exercise of rights and Defendant's adverse actions demonstrates a causal nexus and is
14 evidence of pretext and retaliatory motive prohibited by law. See *Flait v. North American Watch*
15 *Co.* (1992) 3 Cal.App.4th 471, 480.

16 116. Plaintiff's belief that the conduct of Defendant she disclosed violated law was
17 reasonable and in fact did violate the law, including, without limitation, violations of the Cal.
18 Constit. Art. 1, § 1; U.S. Constit. Amend. 14; Gov't Code §§ 12940(a),(m),(m)(2),(n),(h) and (k);
19 Cal. Health & Safety Code § 1278.5; Cal. Labor Code §§ 98.6, 230, 232.5(a) and (c),
20 233(c)/246(c)/246.5(c)(1), 1102.5(a) and (c), 6400-6401, 6403 and 2698, *et seq.* ("PAGA").

21 117. By retaliating against and terminating Plaintiff's employment because she
22 disclosed or Defendant feared she would disclose information about Defendant's unlawful
23 conduct to a government or law enforcement agency, or to a person with authority over her
24 responsible for investigating, discovering or correcting violations of legal non-compliance,
25 Defendant violated Cal. Labor Code § 1102.5(b) and thereby caused injury and damage to
26 Plaintiff.

27 118. By aforesaid acts and omissions of Defendant, and each of them, Plaintiff has
28 been directly and legally caused to suffer actual damages including, but not limited to, medical
expenses and special damages, loss of earnings and future earning capacity, and other pecuniary
loss not presently ascertained. Cal. Labor Code § 1105.

1 119. As a further direct and legal result of the acts and conduct of Defendant, and each
2 of them, as aforesaid, Plaintiff has been caused to and did suffer and continues to suffer
3 emotional and mental distress, trauma, anguish, humiliation, embarrassment, fright, shock, pain,
4 discomfort and anxiety. The exact nature, duration, and extent of said injuries is presently
5 unknown to Plaintiff, but she is informed and believes and thereon alleges that some if not all the
6 injuries are reasonably certain to be permanent in character. Cal. Labor Code § 1105.

7 120. In addition to other remedies available, Defendant is liable for a civil penalty not
8 exceeding ten thousand dollars (\$10,000) per employee for each violation of this section to be
9 awarded to the employee who was retaliated against. Cal. Labor Code § 1102.5(f)(1)

10 121. Plaintiff is informed and believes and thereon alleges that Defendant and their
11 managers, officers, and/or directors committed the acts alleged herein maliciously, fraudulently,
12 and oppressively, with the wrongful intention of injuring Plaintiff and acted with an improper
13 and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's
14 rights. Moreover, Defendant and their managers, officers, and/or directors authorized or ratified
15 the wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or
16 malice. As such, Plaintiff is entitled to recover punitive damages from Defendant in an amount
according to proof. Cal. Civ. Code §3294.

17 122. Defendant's violation of Cal. Labor Code § 1102.5(b) with respect to Plaintiff and
18 other employees similarly aggrieved trigger the protections for the PAGA. As a result of the
19 aforesaid violations of § 1102.5(b), Plaintiff is entitled to civil penalties on behalf of herself and
20 other employees similarly aggrieved in the amount of \$100.00 for each aggrieved employee per
21 pay period for the initial violation and \$200.00 per employee per pay period for each subsequent
22 violation. Cal. Labor Code § 2699(f)(2). Plaintiff is further entitled to attorney's fees pursuant to
23 the PAGA for any violation of Labor Code § 1102.5(b), pursuant to Labor Code § 2699(g)(1).

24 123. Plaintiff is entitled to an award of reasonable attorney's fees and costs pursuant to
25 Cal. Labor Code § 1102.5(j).

26
27
28 **TENTH CAUSE OF ACTION**

Retaliation for Refusal to Participate in Conduct Reasonably Believed to Constitute a Violation of State or Federal Statute, Local, State or Federal Rule or Regulation in Violation of Cal. Labor Code § 1102.5(c) (Against Defendant KAISER FOUNDATION HOSPITALS, a California nonprofit corporation; and DOES 1-100, inclusive)

124. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-123, above.

125. Cal. Labor Code § 1102.5(c) makes it an unlawful employment practice for an employer, or any person acting on behalf of the employer, to retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.

126. As more fully alleged herein, Defendant, and each of them, implemented and imposed unlawful unwritten policies and protocols and retaliated against Plaintiff because she refused to participate in conduct by Defendant that she reasonably believed violated law. Defendant's conduct involved an intentional and definite illegal course or method selected by Defendant from among many lawful alternatives designed to silence whistleblowers who fear retaliation. Defendant's decisions to discriminate and retaliate against Plaintiff because she engaged in protected reporting activities involving, without limitation, opposing and reporting workplace discrimination, retaliation and refusing to participate in the conduct by her employer she reasonably believed to be unlawful. Instead of conducting an investigation, Defendant responded by engaging in adverse actions against Plaintiff. The close timing between Plaintiff's protected reporting and activities, her exercise of rights and Defendant's adverse actions demonstrates a causal nexus and is evidence of pretext and retaliatory motive under Cal. Gov't Code § 12940(h). See *Flait v. North American Watch Co.* (1992) 3 Cal.App.4th 471, 480.

127. Plaintiff's refusal to participate in conduct she reasonably believed violated the law, did in fact violate the law, including, without limitation, violations of the Cal. Constit. Art. 1, § 1; U.S. Constit. Amend. 14; Gov't Code §§ 12940(a),(m),(n),(h) and (k); Cal. Civ. Code §§ 44-46; Cal. Health & Safety Code § 1278.5; Cal. Labor Code §§ 98.6, 230, 232.5(a) and (c), 233(c)/246(c)/246.5(c)(1), 1102.5(a) and (b), 6400-6401, 6403 and 2698, *et seq.* ("PAGA").

1 128. By retaliating against and terminating Plaintiff's employment because she refused
2 to participate in conduct she reasonably believed would result in a violation of state or federal
3 statute, or a violation of or noncompliance with a local, state, or federal rule or regulation,
4 Defendant violated Cal. Labor Code § 1102.5(c) thereby causing injury and damage to Plaintiff.

5 129. By aforesaid acts and omissions of Defendant, and each of them, Plaintiff has
6 been directly and legally caused to suffer actual damages including, but not limited to, medical
7 expenses and special damages, loss of earnings and future earning capacity, and other pecuniary
8 loss not presently ascertained. Cal. Labor Code § 1105.

9 130. As a further direct and legal result of the acts and conduct of Defendant, and each
10 of them, as aforesaid, Plaintiff has been caused to and did suffer and continues to suffer
11 emotional and mental distress, trauma, anguish, humiliation, embarrassment, fright, shock, pain,
12 discomfort and anxiety. The exact nature, duration, and extent of said injuries is presently
13 unknown to Plaintiff, but she is informed and believes and thereon alleges that some if not all the
14 injuries are reasonably certain to be permanent in character. Cal. Labor Code § 1105.

15 131. In addition to other remedies available, Defendant is liable for a civil penalty not
16 exceeding ten thousand dollars (\$10,000) per employee for each violation of this section to be
17 awarded to the employee who was retaliated against. Cal. Labor Code § 1102.5(f)(1)

18 132. Plaintiff is informed and believes and thereon alleges that Defendant and their
19 managers, officers, and/or directors committed the acts alleged herein maliciously, fraudulently,
20 and oppressively, with the wrongful intention of injuring Plaintiff and acted with an improper
21 and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's
22 rights. Moreover, Defendant and their managers, officers, and/or directors authorized or ratified
23 the wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or
24 malice. As such, Plaintiff is entitled to recover punitive damages from Defendant in an amount
25 according to proof. Cal. Civ. Code §3294.

26 133. Defendant's violation of Cal. Labor Code § 1102.5(c) with respect to Plaintiff and
27 other employees similarly aggrieved trigger the protections for the PAGA. As a result of the
28 aforesaid violations of § 1102.5(c), Plaintiff is entitled to civil penalties on behalf of herself and
other employees similarly aggrieved in the amount of \$100.00 for each aggrieved employee per
pay period for the initial violation and \$200.00 per employee per pay period for each subsequent

violation. Cal. Labor Code § 2699(f)(2). Plaintiff is further entitled to attorney's fees pursuant to the PAGA for any violation of Labor Code § 1102.5(c), pursuant to Labor Code § 2699(g)(1).

134. Plaintiff is entitled to an award of reasonable attorney's fees and costs pursuant to Cal. Labor Code § 1102.5(j).

ELEVENTH CAUSE OF ACTION

Discrimination and Retaliation for Taking Time Off for Jury Duty

in Violation of Labor Code § 230(a)

(Against Defendant KAISER FOUNDATION HOSPITALS, a California nonprofit corporation; and DOES 1-100, inclusive)

135. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-134, above.

136. Labor Code § 230(a) makes it an unlawful employment practice for an employer to discriminate or retaliate against an employee for taking time off to serve on a jury following reasonable notice and provides for a private cause of action. See *Deschane v. Pinole Point Steel Co.* (1999) 76 Cal.App.4th 33, 42.

137. As more fully alleged herein, on November 1, 2023, Plaintiff served one day of jury duty. While she was on jury duty, Mr. Mercadante repeatedly contacted her about a training due the day before. Mr. Mercadante threatened unpaid leave and termination if she did not immediately complete the training. Of course, she could not complete the training while on jury duty. When Ms. Session submitted her jury duty hours, Mr. Mercadante accused her of falsifying her timecard. He deducted six hours from her leave balance and two hours for jury duty. Ms. Session obtained a Jury Activity Sheet confirming her full day of service and provided this sheet to Mr. Mercadante and his timekeeper. Mr. Mercadante refused to correct her leave balance.

138. By retaliating against Plaintiff because she requested and took time off to serve on jury duty, Defendant violated Cal. Labor Code § 230(a) thereby causing injury and damage to Plaintiff.

139. By aforesaid acts and omissions of Defendant, and each of them, Plaintiff has been directly and legally caused to suffer actual damages including, but not limited to, loss of earnings and future earning capacity, loss of benefits and other pecuniary loss not presently

1 ascertained, entitling her to recover such damages as well as appropriate equitable relief. Cal.
2 Labor Code § 230(g)(2).

3 140. Plaintiff is informed and believes and thereon alleges that Defendant and their
4 managers, officers, and/or directors committed the acts alleged herein maliciously, fraudulently,
5 and oppressively, with the wrongful intention of injuring Plaintiff and acted with an improper
6 and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's
7 rights. Moreover, Defendant and their managers, officers, and/or directors authorized or ratified
8 the wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or
9 malice. As such, Plaintiff is entitled to recover punitive damages from Defendant in an amount
10 according to proof. Cal. Civ. Code §3294.

11 141. Defendant's violation of Cal. Labor Code § 230(a) with respect to Plaintiff and
12 other employees similarly aggrieved trigger the protections for the PAGA. As a result of the
13 aforesaid violations of § 230(a), Plaintiff is entitled to civil penalties on behalf of herself and
14 other employees similarly aggrieved in the amount of \$100.00 for each aggrieved employee per
15 pay period for the initial violation and \$200.00 per employee per pay period for each subsequent
16 violation. Cal. Labor Code § 2699(f)(2). Plaintiff is further entitled to attorney's fees pursuant to
17 the PAGA for any violation of Labor Code § 230(a), pursuant to Labor Code § 2699(g)(1).

18 **TWELFTH CAUSE OF ACTION**

19 **Retaliation for Disclosing Working Conditions in Violation of Labor Code § 232.5(c)** 20 **(Against Defendant KAISER FOUNDATION HOSPITALS, a California nonprofit** 21 **corporation; and DOES 1-100, inclusive)**

22 142. Plaintiff realleges and incorporates by reference, as though fully set forth herein,
23 each and every allegation set forth in paragraphs 1-141, above.

24 143. Labor Code § 232.5(c) provides that it is an unlawful employment action for any
25 employer to: "[d]ischarge, formally discipline, or otherwise discriminate against an employee
26 who discloses information about the employer's working conditions."

27 144. As more fully alleged herein, Defendant, and each of them, implemented and
28 imposed unlawful unwritten policies and protocols and retaliated against Plaintiff because she
exercised her right of protected speech to disclose conduct by Defendant that she reasonably
believed violated law. Defendant's conduct involved an intentional and definite illegal course or

1 method selected by Defendant from among many lawful alternatives designed to silence
2 whistleblowers who fear retaliation. Defendant's decisions to discriminate and retaliate against
3 Plaintiff because she engaged in protected reporting activities involving, without limitation,
4 opposing and reporting workplace discrimination, retaliation and conduct by her employer she
5 reasonably believed to be unlawful. Instead of conducting an investigation, Defendant engaged
6 in adverse actions. The close timing between Plaintiff's protected reporting and disclosure
7 activities, her exercise of rights and Defendant's adverse actions demonstrates a causal nexus and
8 is evidence of pretext and retaliatory motive under Cal. Gov't Code § 12940(h). See *Flait v.*
9 *North American Watch Co.* (1992) 3 Cal.App.4th 471, 480.

10 145. Defendant thereby violated the public policy of the State of California requiring,
11 at a minimum that employers comply with state and federal law, rules and regulations that
12 prohibit employers from discriminating or retaliating against persons based on their race/color or
13 association with a protected group, who require reasonable accommodations or medical leave for
14 themselves or a family member or who are required to serve on jury duty. California's public
15 policy supporting the enactment of Labor Code § 232.5 as applied under these facts, clearly
16 "touch[es] on interests so deeply rooted in local feeling and responsibility" authorizing a private
17 right of action. *Haney v. Aramark Uniform Services, Inc.* (2004) 120 Cal.App.4th 609, 633, fn. 3;
18 see also, Cal. Health & Safety Code § 1278.5.

19 146. By imposing unlawful policies that required, as a condition of employment, that
20 Plaintiff refrain from disclosing information about Defendant's working conditions, discharging
21 and discriminating against Plaintiff for disclosing unlawful working conditions, Defendant
22 violated Labor Code § 232.5(c).

23 147. Defendant's violation of Cal. Labor Code § 232.5(c) with respect to Plaintiff and
24 other employees similarly aggrieved trigger the protections for the PAGA. As a result of the
25 aforesaid violations of § 232.5(c), Plaintiff is further entitled to civil penalties on behalf of
26 herself and other employees similarly aggrieved in the amount of \$100.00 for each aggrieved
27 employee per pay period for the initial violation and \$200.00 per employee per pay period for
28 each subsequent violation. Cal. Labor Code § 2699(f)(2).

148. Plaintiff is entitled to attorney's fees pursuant to the PAGA for any violation of
Labor Code § 232.5(c), pursuant to Labor Code § 2699(g)(1).

THIRTEENTH CAUSE OF ACTION

**Failure to Maintain a Safe and Healthful Work Environment in Violation of
Labor Code §§ 6400-6401 and 6403
(Against Defendant KAISER FOUNDATION HOSPITALS, a California nonprofit
corporation; and DOES 1-100, inclusive)**

149. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-148, above.

150. California Labor Code § 6400(a) sets for the general obligation of employers to “furnish employment and a place of employment that is safe and healthful for the employees therein.” California Labor Code §§ 6401 and 6403 set forth the specific requirements of employers necessary to comply with § 6400 to maintain a safe and healthful work environment as follows:

California Labor Code § 6401 requires that “every employer furnish and use safety devices and safeguards, ... adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful.”

California Labor Code § 6403 further makes it unlawful for any employer to fail or neglect to provide safety devices and safeguards, ... adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful.”

151. As more fully alleged herein, without limitation, by denying Plaintiff the right to request and use sick leave to care for her child in violation of the HWHFA and Kin Care Act and retaliating against her for taking a medical leave of absence, for requesting a reasonable accommodation, for serving on jury duty, and for opposing unlawful discrimination and retaliation against her and Black employees as a group. Defendant Kaiser knowingly and with reckless disregard failed and refused to furnish appropriate workplace safety “practices, means, methods, operations, and processes” to ensure a safe and healthful work environment, and instead supplanted their own illegal policies, procedures and processes, designed to silence Plaintiff a create a hostile and unhealthy work environment.

152. Defendant’s decisions to disregard necessary practices, means, methods, operations, and processes to ensure a safe and healthful work environment for their employees

1 was chosen from many other lawful alternatives designed to silence whistleblowers. All which
2 was intended to prevent Plaintiff from exercising her rights and from making complaints about
3 an unhealthy work environment intended to cause Plaintiff emotional distress and prevent her
4 from exercising rights afforded to non-Black employees. Defendant thereby failed to ensure a
5 safe and healthful work environment in violation of Labor Code §§ 6401 and 6403.

6 153. By aforesaid acts and omissions of Defendant, and each of them, Plaintiff has
7 been directly and legally caused to suffer lost wages and other pecuniary loss not presently
8 ascertained and is therefore entitled to a right of action to for such losses pursuant to Cal. Labor
9 Code § 6311.

10 154. Defendant's violation of Cal. Labor Code §§ 6400-6401 and 6403 with respect to
11 Plaintiff and other employees similarly aggrieved trigger the protections for the PAGA. As a
12 result of the aforesaid violations of §§ 6401 and 6403, Plaintiff is entitled to civil penalties on
13 behalf of herself and other employees similarly aggrieved in the amount of \$100.00 for each
14 aggrieved employee per pay period for the initial violation and \$200.00 per employee per pay
15 period for each subsequent violation. Cal. Labor Code § 2699(f)(2). Plaintiff is further entitled to
16 attorney's fees pursuant to the PAGA for any violation of Labor Code §§ 6400-6403, pursuant to
17 Labor Code § 2699(g)(1).

18 **FOURTEENTH CAUSE OF ACTION**

19 **Penalties for Violation of Cal. Labor Code §§ 98.6, 230, 232.5(a) and (c),**
20 **233(c)/246(c)/246.5(c)(1), 1102.5(a)-(c), 6400-6401 and 6403 Pursuant to the California**
21 **Private Attorney's General Act, Cal. Labor Code §§ 2698, *et seq.* ("PAGA")**
22 **(Against Defendants PRECISION WIRE PRODUCTS, INC., a California**
23 **corporation; and DOES 1-100, inclusive)**

24 155. Plaintiff realleges and incorporates by reference, as though fully set forth herein,
25 each and every allegation set forth in paragraphs 1-154, above.

26 156. Pursuant to the California Private Attorney's General Act of 2004, Cal. Labor
27 Code §§ 2699, *et seq.* ("PAGA"), Plaintiff brings this action for penalties against Defendant on
28 behalf of herself and all other current and former employees who have been similarly aggrieved,
employed in California one year before Plaintiff filed the Notice of PAGA Complaint on
November 7, 2023 to present who (1) have been retaliated against for making complaints arising

under the Labor Code (§ 98.6); (2) who have been subjected to an unlawful policy or procedure imposed to silence whistleblowers (§§ 1102.5(a) and 232.5(a)); (3) who have been retaliated against for engaging in protected reporting activities or because they refused to participate in conduct reasonably believed to violate state or federal law (§§ 1102.5(b)-(c)); (4) who have been retaliated against for requesting and taking time off for jury duty (§ 230(a)); (5) who have been retaliated against for requesting sick pay under the HWHFA and *Kin Care Act* (§§ 233(c)/246(c)/246.5(c)(1)); and on behalf of those who (6) failed to maintain or provide a safe and healthful workplace (Cal. Labor Code § 6400-6401 and 6403).

157. As more fully alleged herein under “Exhaustion of Remedies,” Plaintiff timely complied with all filing and service requirements set forth in Labor Code § 2699.3 prior to bringing this action.

158. The LWDA did not respond to Plaintiff’s Notice of PAGA Complaint within 65 days of filing and therefore Plaintiff exhausted her administrative remedies prior to filing Plaintiff’s claim for PAGA penalties in Court.

159. Plaintiff is therefore entitled to penalties on behalf of herself and on behalf of all similarly aggrieved current and former employees of Defendant that were employed in California four years before the date this action was filed to the present, pursuant to Cal. Labor Code §§ 2698, *et seq.*

160. As a result of the foresaid violations, Plaintiff and all employees similarly aggrieved are entitled to civil penalty up to \$10,000 against Defendant per employee for each violation of Cal. Labor Code § 98.6 under § 2699(f); and, are further entitled to recover penalties for violations of §§ 230, 232.5 (a) and (c), 233(c)/246(c)/246.5(c)(1), 1102.5(a)-(c) and 6400-6401 and 6403 pursuant to the default penalty formula afforded by Labor Code § 2699.3(f)(2), providing for a penalty of \$100 for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

161. Plaintiff is further entitled to an award of reasonable attorney’s fees and costs pursuant to Cal. Labor Code § 2699(g)(1).

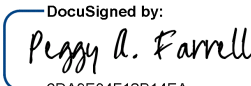
CLAIM FOR DAMAGES

WHEREFORE, the Plaintiff, on behalf of herself prays as follows:

1. That the Plaintiff be awarded all costs and litigation expenses incurred in bring this action;
2. For reasonable attorneys' fees and costs incurred in bringing this action as follows:
 - a. For Plaintiff's First through Third and Fifth through Sixth Causes of Action pursuant to Cal. Gov't Code § 12965(b);
 - b. For Plaintiff's Fourth, Seventh through Eighth and Eleventh through Fourteenth Causes of Action pursuant to Cal. Labor Code 2699(g)(1);
 - c. For Plaintiff's Eighth through Tenth Causes of Action pursuant to Labor Code § 1102.5(j);
3. For penalties pursuant to Cal. Labor Code §§ 98.6(b)(3), 2699(f)(2);
4. For an award of prejudgment and post judgment interest;
5. For injunctive and equitable relief;
6. For general damages, according to proof;
7. For special damages, including medical expenses, and loss of earnings and earnings capacity, in an amount according to proof;
8. For punitive damages pursuant to Cal. Civ. Code § 3294.
9. For such other and further relief as the Court deems just and proper.

Dated: December 19, 2024

LAW OFFICE OF PEGGY A. FARRELL ^{APC}

By: 
Peggy A. Farrell
Attorney for Plaintiff JARONDA SESSION

DEMAND FOR JURY TRIAL

Plaintiff, JARONDA SESSION, hereby demands a trial by jury.

Dated: December 19, 2024

LAW OFFICE OF PEGGY A. FARRELL, APC

DocuSigned by:

By: *Peggy A. Farrell*
Peggy A. Farrell
Attorney for Plaintiff JARONDA SESSION

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