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SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

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6 Attorneys for Plaintiff,
7 LISA LEVINGSTON, O.D.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF RIVERSIDE

By Fax
CRC 2.303

10 LISA LEVINGSTON, O.D., an individual
11 Plaintiff,

CASE NO. **RIC 1400688**

12 v.

PLAINTIFF'S COMPLAINT FOR:

13 KAISER FOUNDATION HEALTH PLAN
14 INC., a corporation; KAISER
FOUNDATION HOSPITALS, a
15 corporation; SOUTHERN CALIFORNIA
PERMANENTE MEDICAL GROUP, a
16 partnership; and DOES 1 through 10
inclusive,

1. VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE § 1278.5
2. VIOLATIONS OF CALIFORNIA BUSINESS & PROFESSIONS CODE § 510
3. RETALIATION IN VIOLATION OF LABOR CODE § 1102.5
4. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY
5. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

17 Defendants.

JURY TRIAL DEMANDED BY PLAINTIFF

1 Plaintiff Dr. Lisa Levingston, O.D. ("Plaintiff" or "Dr. Levingston") alleges as follows on
2 knowledge as to herself and her own acts/interactions, and on information and belief as to all
3 other matters:

4 **INTRODUCTION & NATURE OF ACTION**

5 1. Plaintiff has been a licensed Doctor of Optometry ("O.D.") and a stellar employee
6 of Kaiser (defined below) for over twenty years. Indicative of Plaintiff's performance, in an
7 "Optometrist Performance Appraisal" dated October 27, 2005, Dr. Levingston was lauded by Dr.
8 Nanine Tarbaux (Managing Optometrist at Kaiser's Riverside Service Area) as "one of the most
9 skilled and proficient optometrists in [the] department and she provides outstanding quality of
10 care. She has one of the highest customer satisfaction ratings in the region . . . Since she is
11 respected as a leader, I would like to see her take an active role in building relationships within
12 the eye services department."

13 2. Business and Professions Code section 655 prohibits certain business
14 arrangements between optometrists and opticians or persons in the optical product business.
15 More specifically, subsection (c) prohibits optometrists from having any "profit-sharing
16 arrangement in any form, directly or indirectly . . . with any person who is engaged in the
17 manufacture, sale, or distribution . . . of lenses, frames, optical supplies, optometric
18 appliances. . ."

19 3. Kaiser began to offer sales promotions that provided financial incentives to the
20 optometrists to promote the sale and/or prescription of products from certain specific frame
21 manufacturers and/or lens designs. For a number of years, Kaiser's Riverside optometrists
22 refused to participate in these sales promotions and refused the financial incentives. Starting in
23 approximately 2011, Dr. Tarbaux began to pressure these optometrists to participate in the sales
24 promotions that would financially incentivize the optometrists to sell and/or prescribe certain
25 optical products. However, Plaintiff, along with all of the Kaiser optometrists based in the
26 Riverside medical service area, continued to oppose these practices, which Plaintiff reasonably
27 and correctly believed were in violation of California law and the Code of Professional Ethics.

1 In hopes that this illegal practice would cease, Plaintiff refused to participate in these promotions
2 and made complaints regarding Kaiser's unlawful practices to many people at Kaiser, including
3 to Kaiser's Chief Compliance Officer and Kaiser's Compliance hotline.

4 4. Unfortunately, in response to Plaintiff's complaints of Kaiser's unlawful conduct,
5 Kaiser orchestrated a series of escalating disciplinary actions against Plaintiff and those
6 optometrists who supported her and shared Plaintiff's complaints. Moreso, Dr. Tarbaux (who
7 previously praised Plaintiff as "one of the most skilled and proficient optometrists in [the]
8 department") began creating a false and vindictive paper trail in order to justify terminating
9 Plaintiff and falsely portraying her in a false light. Plaintiff, who had worked for Kaiser for over
10 twenty years with a stellar employment record, suddenly became a pariah after she engaged in
11 these protected activities and was terminated as a result.

12 5. Ultimately, because Plaintiff had made complaints that Dr. Tarbaux and Kaiser
13 were engaging in unlawful conduct, Dr. Tarbaux accused Plaintiff of "not putting on a sticker on
14 her name badge quickly enough" as the reason to terminate Plaintiff (despite the fact that
15 Plaintiff had worked for Kaiser for over twenty years and who maintained excellent patient
16 reviews). Clearly, Dr. Tarbaux's reason for terminating Plaintiff was mere pretext to "justify"
17 terminating an excellent, long-term employee who had made patient care complaints.

18 JURISDICTION AND VENUE

19 6. This Court has personal jurisdiction over each of the defendants because they are
20 residents of and/or doing business in the State of California.

21 7. Under California Code of Civil Procedure section 395(a), venue is proper in this
22 county because the defendants, or some of them, reside in this county and/or injuries alleged
23 herein occurred in this county.

24 PARTIES

25 8. Plaintiff, at all times relevant hereto, has been a resident of the State of California.

26 9. Plaintiff is informed and believes that Defendants Kaiser Foundation Health Plan,
27 Inc. ("KFHP") and Kaiser Foundation Hospitals ("KFH") are corporations organized and
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1 existing under the laws of California, with their principal place of business located at 1 Kaiser
2 Plaza, Oakland, California.

3 10. Plaintiff is informed and believes that Defendant Southern California Permanente
4 Medical Group ("SCPMG") is organized in form only as a partnership under the laws of
5 California, with its principal place of business located in Los Angeles County at 393 East Walnut
6 Street, Pasadena, California.

7 11. Plaintiff is informed and believes KFHP, KFH and SCPMG do business jointly,
8 and with other entities owned and controlled by KFHP under the name "Kaiser Permanente."

9 12. Plaintiff is informed and believes that Kaiser Permanente is an "integrated" health
10 care delivery system comprised of the insurance company, KFHP, its doctors, organized as
11 SCPMG, and its hospitals, which are wholly owned and/or controlled by KFHP through its
12 captive entity, KFH, which has no separate existence or identity apart from KFHP.

13 13. Plaintiff is informed and believes and thereon alleges that Defendant KFHP is an
14 insurance company which purports to provide comprehensive total medical care to its members.
15 KFHP describes itself as the largest Health Maintenance Organization in the country. KFHP
16 exercises total control over Defendants KFH, SCPMG and a number of other corporate and
17 partnership entities such that their very existence as purported separate entities is in fact a sham
18 designed to perpetuate the myth that KFHP and KFH are legitimate "non-profit" corporations.
19 Plaintiff is informed and believes that KFHP and KFH are in fact "for profit" enterprises
20 regularly reporting their profitability publicly. For example, on August 5, 2011, Kaiser reported:

21 Kaiser Foundation Hospitals, Kaiser Foundation Health Plan, Inc., and their
22 respective subsidiaries (KFH/HP) reported today a combined operating revenue of
23 \$11.9 billion for the quarter ending June 30, 2011, compared to \$11.0 billion in
24 the same period in 2010. Operating income was \$390 million in the second
25 quarter of 2011, compared to \$313 million in the same quarter last year. Net non-
26 operating income was \$273 million in the second quarter of 2011, compared to
27 \$91 million in the same quarter last year. As a result, net income for the second
28 quarter was \$663 million versus net income of \$404 million in the same period

1 last year. These are the combined operating results for Kaiser Foundation
2 Hospitals, Kaiser Foundation Health Plan, Inc., and their respective subsidiaries.¹

3 14. KFHP's total dominance over KFH and SCPMG is evidenced by the fact that
4 KFH and SCPMG's entire annual budget is set by, controlled by, and approved by KFHP; all
5 funds for KFH and SCPMG's operations come from KFHP; KFHP determines what "profit" if
6 any SCPMG is allowed to make; money that SCPMG uses to pay bonuses to its doctors comes
7 from KFHP; SCPMG does not bill any patients for most of its services; barring emergencies or
8 extremely rare instances, SCPMG doctors are only allowed to work for KFHP members
9 exclusively; and SCPMG's only source of money is from KFHP. KFHP provides virtually all
10 legal, human resources, insurance, communications, advertising, billing, and other necessary
11 services for KFH and SCPMG. Members buying health care coverage only pay money to
12 KFHP, not to SCPMG; they buy insurance from KFHP and they receive services through
13 SCPMG. Advertising for the health care offered by KFHP as health insurance and provided
14 through SCPMG doctors is done predominantly by KFHP, advertising as "Kaiser Permanente"
15 as seen in the multi-million dollar "Thrive" advertising campaign. SCPMG does not own
16 hospitals, medical buildings, or the clinics where they work; they are owned by KFHP. KFHP
17 provides all telephone, fax, and e-mail services for SCPMG. KFHP also provides health
18 insurance and medical malpractice insurance to SCPMG's doctors. KFHP lawyers routinely
19 render legal advice and counsel to KFH, SCPMG, and have unfettered access to KFH and
20 SCPMG's records; KFHP's Human Resources department routinely investigates any
21 EEOC/DFBH or other complaints of discrimination, as well as issues regarding reasonable
22 accommodations, regarding KFH and SCPMG's practices and employees, reporting to KFHP's
23 legal department on all such investigations; KFHP lawyers and human resources staff do not
24 obtain privacy waivers when seeking records of KFH and/or SCPMG employees or investigating
25 their claims; KFHP provides and pays for all facilities in which KFH and SCPMG conduct
26 business.

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28 ¹ <http://xnet.kp.org/newscenter/pressreleases/nat/2011/080511q2financials.html>

1 19. Plaintiff began her employment with Kaiser over twenty years ago on October 19,
2 1992 at Riverside Kaiser Optometry. At all times during her employment with Kaiser, Plaintiff's
3 performance was outstanding. For example, in an "Optometrist Performance Appraisal" dated
4 October 27, 2005, Plaintiff was lauded by Dr. Nanine Tarbaux (Managing Optometrist at
5 Kaiser's Riverside Service Area) as "*one of the most skilled and proficient optometrists in [the]
6 department and she provides outstanding quality of care. She has one of the highest customer
7 satisfaction ratings in the region . . . Since she is respected as a leader, I would like to see her
8 take an active role in building relationships within the eye services department.*" (A true and
9 correct copy of Plaintiff's 2005 Optometrist Performance Appraisal is attached as Exhibit 1
10 (emphasis added).) As another example, Plaintiff was praised by her supervisor on February 13,
11 2013 for receiving very high scores on her "Member Appraisals of Physician/Provider Services"
12 ("MAPPS"), which are essentially a scorecard of patient satisfaction — a critical metric for
13 employee performance at Kaiser. Specifically, Plaintiff's supervisor stated "[y]our update [sic]
14 MAPPS score for the 2013 MAPPS year which includes July-Dec 2012 is 9.78 with 50
15 responses. *This is one of the highest scores in the department! Great job!*" (A true and correct
16 copy of the February 13, 2013 Email Regarding Plaintiff's MAPPS score is attached as Exhibit
17 2 (emphasis added).) In 2012, Plaintiff's supervisor wrote to Plaintiff "[b]elow are your MAPPS
18 score for the 2012 MAPPS year thus far(7/1/11 – 9/28/11). Our Department Average is 9.49 and
19 the Regional Average for Optometry is 9.49. *As always, you are doing fantastic with a score of*
20 *9.80. What I find the most interesting is your score for "know medical history" which is 9.59.*
21 *I believe this is one of the highest scores for this question. If you have any helpful hints for*
22 *how you communicate in this area to your patients I would like to pass it along to the other*
23 *staff here at the RPPC. Thanks for providing such great service to our members.*" (A true and
24 correct copy of the October 5, 2011 Email Regarding Plaintiff's MAPPS score is attached as
25 Exhibit 3 (emphasis added).)

26 20. Due to her amazing performance and skills, from May 2000 to January 2005,
27 Plaintiff served as the department stand-in Lead Optometrist. Additionally, from December
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1 2006 to June 2012, Plaintiff was the co-chair for the Kaiser Riverside Optometry Local
2 Professional Practice Committee ("LPPC"). The purpose of the LPPC is to provide a forum for
3 joint decision making regarding the practice of optometry as it relates to the Riverside service
4 area.

5 **PLAINTIFF MAKES COMPLAINTS THAT KAISER IS VIOLATING CALIFORNIA**
6 **LAW BY PROVIDING FINANCIAL INCENTIVES TO OPTOMETRISTS TO**
7 **SELL/PRESCRIBE CERTAIN OPTICAL PRODUCTS**

8 21. On October 20, 2010, Dr. Tarbaux and Ms. Heather Lemus (Kaiser's Department
9 Administrator) offered Kaiser Riverside Optometrists, including Plaintiff, an "opportunity" to
10 participate in the Optical Promotion Reward Program ("OPRP"). The OPRP financially
11 rewarded optometrists for meeting specific product quotas. Specifically, each Kaiser staff
12 member was incentivized with monetary rewards when sales goals were met within designated
13 time lines. For example, if the weekly goal was to sell 10 promotional units, the Optical
14 department would have to sell at least 20 promotional units by the end of the second week to
15 qualify for a financial incentive. Moreover, an optometrist's annual bonus was tied to the
16 revenue that was generated by optical sales at Kaiser's Riverside medical service area. Thus,
17 optometrists would be incentivized to promote the sale of eyeglasses and optical products in
18 order to increase the likelihood of receiving a bonus, regardless of whether the patient needed it.

19 22. On October 21, 2010, Plaintiff, on behalf of Riverside Optometry Doctors,
20 submitted a letter to Dr. Tarbaux and Ms. Lemus, declining to participate in the OPRP due to fact
21 that it would violate the Code of Professional Ethics and the Principle of Conflict of Interest. (A
22 true and correct copy of Plaintiff's October 21, 2010 Letter is attached as Exhibit 4.) Plaintiff
23 also reasonably believed that it would violate California laws prohibiting opticians, eyewear
24 companies, and other entities from directly or indirectly controlling or influencing an
25 optometrist's practice.

26 23. Soon thereafter, Dr. Tarbaux approached Dr. Marisa Pramono, a Kaiser
27 optometrist, and inquired if she changed her mind and would like to participate in the OPRP. As
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1 a result, Plaintiff (along with all of the Riverside Optometry Doctors) requested for a meeting
2 with a Kaiser Compliance officer. In response, Dr. David Lerman, Kaiser's Chief Compliance
3 Officer prepared an interoffice memorandum dated June 14, 2011, that was read at an Optometry
4 department meeting held on June 15, 2011. (A true and correct copy of Dr. Lerman's June 14,
5 2011 Interoffice Memorandum is attached as Exhibit 5.) Dr. Lerman averred that such sales
6 incentives were not unethical or unprofessional. Specifically, Dr. Lerman wrote that he was
7 asked to review "periodic promotional activities by Vision Essentials by Kaiser Permanente
8 whereby . . . employees receive monetary awards for achieving sales objectives related to these
9 promotional packages . . . I do not believe that incentivizing optometrists to promote the sale of
10 certain products is unprofessional, so long as providers continue to advise their patients
11 regarding the best options based on their vision needs."

12 24. When Plaintiff requested a direct meeting with Dr. Lerman to discuss her
13 concerns and the concerns raised by the Kaiser Riverside optometrists, Mr. Mitch Rutledge
14 (Kaiser's Regional Vision Essentials Administrator) and Nic Versteeg (Kaiser's Assistant
15 Medical Group Administrator) told Plaintiff that she would not be allowed to meet with Dr.
16 Lerman.

17 25. Plaintiff informed Mr. Rutledge and Mr. Versteeg that California law clearly
18 prohibits Doctors of Optometry from being directed by lay individuals and that Plaintiff and
19 other Kaiser Optometrists must be able to report their concerns directly to Kaiser Compliance.
20 Mr. Rutledge and Mr. Versteeg reluctantly modified their position, stating that Plaintiff and other
21 Kaiser Optometrists could contact compliance, however, they noted that such complaints will
22 just get forwarded back to them since they are in charge. Moreover, Rutledge and Mr. Versteeg
23 informed Plaintiff and other Kaiser Optometrists that they had no choice but to accept the
24 incentive payment, as the monies were going to be added to their paycheck.

25 26. Still concerned that Kaiser was violating the law, on June 24, 2011, Plaintiff
26 prepared a letter to Dr. Lerman on behalf of herself and the other optometrists at Kaiser's
27 Riverside medical facility. (A true and correct copy of Plaintiff's June 24, 2011 Letter to Dr.

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1 Lerman is attached as Exhibit 6.) In this letter, Plaintiff wrote that “[s]tate laws clearly prohibit
2 optometrists from being employed or directed by lay individuals and optical entities.” Plaintiff
3 also complained that the sales promotion offered by Kaiser “establishes sales goals with financial
4 or other forms of compensation incentives payable upon reaching such goals. Such quid pro quo
5 incentives can be seen as an attempt to influence prescribing patterns, create needs or encourage
6 steering toward options that are not necessarily best for the patient in order to obtain financial
7 reward.” Plaintiff also informed Dr. Lerman that Mr. Rutledge’s attempted to intimidate and
8 harass her. A copy of this letter was sent to Dr. Tarbaux and Dr. Richard Rajaratnam, Kaiser’s
9 Medical Director in Riverside. However, Plaintiff never received a response and instead was met
10 with a series of escalating adverse actions to create a false record against her and to justify her
11 wrongful termination.

12 **KAISER ORCHESTRATES A SERIES OF ESCALATING DISCIPLINARY ACTIONS**
13 **AND CREATES A FALSE PAPER TRAIL AGAINST PLAINTIFF**

14 27. As a result of making these complaints, Plaintiff, as well as those optometrists
15 who supported Plaintiff, were subjected to a number of escalating adverse employment actions.
16 Indeed, Kaiser began to build a record against Plaintiff with the intent of using it as justification
17 to terminate this stellar employee after she worked for Kaiser over 20 years with an excellent
18 work history.

19 28. As an example, on June 26, 2011, immediately after Plaintiff sent the June 24,
20 2011 letter, Dr. Tarbaux told Dr. John Murphy (who supported Plaintiff and refused to accept
21 financial compensation from Kaiser’s sales promotion) that there were two complaints against
22 Dr. Murphy from Membership Services and that Dr. Tarbaux had been asked to formally
23 investigate said complaints. However, when questioned about these supposed complaints, Dr.
24 Tarbaux was only able to provide information regarding one complaint. This complaint wrongly
25 accused Dr. Murphy of “scolding” a patient who had arrived late for an appointment and was
26 from May 5, 2011 (nearly two months prior). This particular complaint had already been
27 investigated and, as Dr. Tarbaux was aware, was found to be meritless.

1 29. In addition, on July 28, 2011, in retaliation for Plaintiff's complaints, Dr. Tarbaux
2 threatened Plaintiff and the optometrists supporting her that she would be setting up meetings
3 with individual optometrists regarding "Schedule Utilization" data and that this was a personal
4 performance issue. Schedule Utilization data ("SU") refers to the number of patients who
5 schedule an appointment with an optometrist compared to the number of patients who are seen
6 by the optometrists. For example, if twenty appointments are scheduled for an optometrist but
7 only eighteen patients show up and are seen by said optometrist, that optometrist would have an
8 SU of 90%. Previously, SU was not seen as a personal performance issue because it was
9 understood that the individual optometrists could not affect which of their patients showed up.
10 However, in retaliation for Plaintiff's complaints and the events of the June 15, 2011 meeting,
11 Dr. Tarbaux announced that SU would be used to reflect an optometrist's performance as another
12 way she could discipline those optometrists who supported Plaintiff.

13 30. On August 3, 2011, in retaliation for the complaints made by Plaintiff on behalf of
14 other optometrists, Dr. Linda Russell (who supported Plaintiff and refused to accept financial
15 compensation from Kaiser's sales promotion) was threatened by Dr. Tarbaux that she was in
16 violation of Kaiser's dress code. Upon review, the alleged violation was found to be meritless.

17 31. As discussed above, LPPC meetings were a forum where all issues and concerns
18 affecting the practice of optometry could be addressed and resolved. It was the only time when
19 all optometrists were able to meet, discuss, and participate in the decision making process in a
20 continual effort to achieve optimal patient care standards. In an effort to silence Plaintiff and the
21 LPPC members who had stood up against Dr. Lerman, on September 14, 2011, Dr. Tarbaux
22 suddenly made the outrageous claim that the LPPC meetings were dysfunctional and
23 unproductive. Dr. Tarbaux also stated that Plaintiff was failing in her role as co-Chair and that
24 she needed to take "co-lead" classes. Dr. Tarbaux insisted that the meetings be broken up and
25 that only one or two optometrists would be able to attend and participate. Moreover, Dr.
26 Tarbaux demanded the right to control the agenda items and the ability to censor the minutes
27 before distribution and then proceeded to abruptly leave the LPPC meeting with Ms. Lemus,
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1 Desiree O'Sullivan (Kaiser's Moreno Valley Optical Floor Supervisor/Site Supervisor), and
2 Stephanie Valencia (Kaiser's Corona Optical Floor Supervisor/Site Supervisor). As stated in the
3 LPPC Meeting Minutes September 11, 2011:

4 *Dr. Tarbaux requested for a motion to change the LPPC Meeting structure and*
5 *format . . . Following discussion and deliberation, the consensus required to*
6 *change the format and structure of the meeting was not reached, thereby the*
7 *current charter will continue. Dr. Tarbaux, Heather Lemus, Desiree O'Sullivan*
and Stephen Valencia chose to abruptly walk out of the meeting in the midst of
ongoing discussion before the rest of the agenda was completed. Dr. Tarbaux
also threatened to cancel LPPC Meetings just prior to walking out.

8 (A true and correct copy of the LPPC Meeting Minutes from September 11, 2011 is attached as
9 Exhibit 7.)

10 32. Soon thereafter, in October of 2011, Dr. Wesley Chant, on behalf of Plaintiff and
11 the optometry department, filed Kaiser Compliance Report No. 1110-TNW-10456 regarding
12 Kaiser's illegal activities. (A true and correct copy of the cover letter of Compliance Report No.
13 1110-TNW-10456 is attached as Exhibit 8.) The full complaint noted Kaiser's violation of
14 California law, attempts to influence optometrists' practice and decision making, that the
15 numbers of patients seen are not based on the ability to efficiently perform and provide quality
16 care, that the number of exams is entirely based on pre-determined optical revenue target goals,
17 and that exams for returning patients requiring medical or other follow ups that are designated as
18 "non-optical revenue generating" were strongly discouraged — all of which created a conflict of
19 interest that prevented Kaiser's optometrists from providing patient care as deemed necessary.
20 The complaint also reported that Kaiser optometrists were held responsible for the failure of the
21 incentive payout for the rest of the staff and that if the target number of "non-revenue producing"
22 exams (arbitrarily set at 14% is exceeded, Kaiser optometrists were under pressure to increase
23 capture rate by recommending the purchase of additional pairs of eyeglasses.

24 33. On December 20, 2011, Plaintiff sent an email to Arlene L. Harrity (Kaiser
25 Compliance Officer), in which she memorialized a conversation they had on December 15, 2011.
26 (A true and correct copy of Plaintiff's December 20, 2011 Email is attached as Exhibit 9.)
27 During this conversation, Plaintiff advised Ms. Harrity that she (as well as the other optometrists
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1 that supported her) would not be participating in Kaiser's incentive program as they felt it would
2 compromise patient care and violate California law. Moreover, Plaintiff told Ms. Harry of the
3 harassment and hostile work environment created by the conduct of Dr. Tarbaux, Mr. Rutledge,
4 and Mr. Versteeg.

5 34. As a result of Plaintiff's complaints, on December 27, 2011, Kaiser took
6 disciplinary action against Plaintiff by providing her with a Level 1 - Corrective Action. The
7 accusations in the Level 1 - Corrective Action were blatantly false and made with the intent of
8 creating a paper trail against Plaintiff and to portray her in a false light.

9 35. Because of the conflicts between Dr. Tarbeaux and the other optometrists at
10 Kaiser's Riverside facility, "Issue Resolution Meetings" were held between January 2012 and
11 July 2012. On June 13, 2012, an email was sent from Dr. Kim to Bill Rouse, the Executive
12 Assistant to Officers United Nurses Associations of California/Union of Health Professionals, in
13 which Dr. Kim stated "Contrary to what was led to believed, ODs are absolutely not divided but
14 frustrated and worried about retaliation to even speak out . . . *The history tells us that there is
15 retaliation. The meetings took the wrong turn when ODs went against the management and
16 rejected to accept the 'incentive' that is linked to the sales of certain products . . .* Ever since,
17 the management seems to focus on proving ineptitude of ODs." (A true and correct copy of Dr.
18 Kim's Email to Mr. Rouse is attached as Exhibit 10.) (emphasis added.)

19 36. Under Dr. Tarbaux's leadership, annual performance evaluations were an
20 uncommon event. Soon after Plaintiff filed the Compliance Report, in February 2012, Dr.
21 Tarbaux issued 2010 performance reviews that were backdated to May and September of 2010.
22 Moreover, the optometrists who supported Plaintiff and refused to accept financial compensation
23 from Kaiser's sales promotion observed that they were being retaliated against by Dr. Tarbaux
24 for supporting Plaintiff by having their performance evaluations tarnished. For example, Dr.
25 Subin Kim received negative remarks on her backdated performance evaluation and was accused
26 of having challenges with her patients because she raised concerns (like Plaintiff) that Kaiser was
27 not providing optometrists with adequate time to examine and evaluate patients. Dr. Tarbaux

1 also made negative remarks regarding the attendance of Drs. Russell and Kim despite the fact
2 that both optometrists received approval for taking time off for medical leave and worker's
3 compensation. Clearly, these backdated negative performance evaluations were a result of
4 complaints made by Plaintiff and the other optometrists who Dr. Tarbaux now wanted to
5 intimidate and harass.

6 37. Soon thereafter, Dr. Amiey To (who also supported Plaintiff and refused to accept
7 financial compensation from Kaiser's sales promotion) was called in for an investigative meeting
8 and had several privileges taken away.

9 38. On June 10, 2012, Dr. Murphy sent an email to Mr. Dennis Scott (Kaiser's Vice
10 President of Compliance) and sent him a 53 page document explaining his concerns regarding
11 the same unlawful activity that Plaintiff had made complaints about. Dr. Murphy stated that "Dr.
12 Lehrman expressed his view that the optical monetary promotional program was not a violation
13 of conflict of interest" and that within "two weeks of the [June 15, 2011] meeting, actions were
14 initiated against the department that we feel are retaliatory. An attempt to marginalize the LPPC
15 meeting by limiting the number of doctor attendees and to increase management attendees was
16 initiated. *A series of corrective action proceedings was initiated against the more vocal*
17 *members of the committee.* To date approximately 50% of the staff has had some form of
18 disciplinary action taken against them. *Prior to that meeting, only one or two optometrists have*
19 *had corrective action taken against them in 10 years. In addition, the optometrist who speaks*
20 *for the group by nature of her position as the LPPC co-chair [Plaintiff] has been constantly*
21 *targeted for disciplinary actions.*" (A true and correct copy of Dr. Murphy's Email to Mr. Scott
22 is attached as Exhibit 11.) (emphasis added.)

23 39. Given Dr. Tarbaux's intimidation and retaliatory tactics against her and the
24 optometrists who supported her, Plaintiff submitted her letter of resignation in which she
25 resigned from her position as the LPPC co-chair. In addition, the optometrists at Kaiser's
26 Riverside medical facility submitted a letter of "no confidence" against Kaiser's administrative
27 team of Dr. Tarbaux and Mr. Versteeg. Specifically, this letter stated that "[d]ue to their lack of
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1 competency, credibility and trustworthiness, the Riverside Doctors of Optometry have taken a
2 vote of ***NO CONFIDENCE*** in the administrative team of Dr. Nanine Tarbaux and Mr. Nic
3 Versteeg.” (A true and correct copy of the Letter of No Confidence is attached as Exhibit 12.)
4 (emphasis in original.)

5 40. Soon thereafter, on June 28, 2012, Mr. Versteeg and Dr. Tarbaux issued a
6 Corrective Action – Level 3 disciplinary action against Plaintiff. The original reason that Mr.
7 Versteeg gave for disciplining Plaintiff was that the email containing Plaintiff’s resignation from
8 the LPPC co-chair position contained supposed false accusations. However, when asked to do
9 so, Mr. Versteeg was unable to point out any falsehood in Plaintiff’s resignation email. Then,
10 Mr. Versteeg changed his position and stated that he thought it was an inappropriate message to
11 send via email and that it would have been fine if the message was read out loud during a
12 meeting. Mr. Versteeg then contradicted himself and said that the message itself was divisive.
13 However, Mr. Versteeg proceeded with stating that it would have been okay if Plaintiff had
14 written instead that Plaintiff could not work with Dr. Tarbaux. The LPPC was dissolved within
15 two weeks thereafter.

16 41. In a further attempt to harass and intimidate Plaintiff for making complaints that
17 Kaiser engaged in illegal conduct, Dr. Tarbaux wrote false information in the chart of one of
18 Plaintiff’s patients whom she saw on August 8, 2012. Specifically, Dr. Tarbaux wrote that
19 Plaintiff “neglected to provider [sic] her with an AVS and she would like one so she knows what
20 is going on with her eyes . . . [The patient] asked to talk to a manager since she did not receive an
21 after visit summary from her eye exam.” Plaintiff subsequently met with Dr. Tarbaux, Mr.
22 Versteeg, Ms. Jill Duplechan (Kaiser’s Riverside Medical Group Administrator), Ms. Suzie
23 Mueller (Kaiser’s Senior Human Resources Consultant), and Ms. Belkys Martin (Kaiser Labor
24 Relation). During this meeting, Plaintiff refuted the negative and false information that Dr.
25 Tarbaux wrote into the patient’s chart by providing an affidavit from the patient, which
26 showed that Dr. Tarbaux had intentionally lied about Plaintiff’s work product to create a
27 paper trail against Plaintiff that would justify her termination. The patient rebutted Dr.

1 Tarbaux's comments and specifically stated that she "never did request to speak to a manager in
2 the optical department, nor did I initiate the request for an after visit document, I know that I can
3 access information via the facility's website . . . I didn't think anything of the incident until I
4 found out that she [Dr. Tarbaux] had, without my permission, placed this request in a negative
5 manner on my file. I would like this piece of information to be deleted from my permanent file
6 and let it be known that I never had an issue . . . with the optometrist that saw me." (A true and
7 correct copy of the patient's affidavit is attached as Exhibit 13.)

8 42. As a result of the harassment and retaliation she suffered at the hands of Dr.
9 Tarbaux, Plaintiff filed an Internal Equal Employment Opportunity Complaint with Ms. Mueller
10 on November 13, 2012. (A true and correct copy of the Internal Equal Employment Opportunity
11 Complaint is attached as Exhibit 14.) Specifically, Plaintiff complained that she (as well as
12 other Kaiser optometrists) had been retaliated and harassed "when we declined to participate in a
13 quid pro quo optical sales incentive program, a monetary incentive which is unethical due to
14 conflict of interests and a violation of state law . . . A doctor expressed wanting to go shoot
15 oneself, and another broke down in tears while they openly expressed their frustrations during an
16 open meeting. Other optometrists have been placed on stress leave and have suffered bouts of
17 depression and anxiety. These punitive actions taken against me and the rest of the department
18 have subjected all [of] us to a hostile work environment and created unprecedented poor morale
19 in the department."

20 43. On January 4, 2013, Plaintiff emailed Mr. Scott and asked for his assistance in
21 the retaliation and harassment she had been suffering. Plaintiff also forwarded a copy of her
22 EEO complaint to him. Also copied on the email to Mr. Scott was Mr. Dan Garcia (Kaiser's
23 President of Compliance). In her letter, Plaintiff wrote "As the LPPC Co-chair elect, I personally
24 have been aggressively targeted simply because I was the spokesperson for the group.
25 Unfortunately the aggression continues to persist." (A true and correct copy of Plaintiff's
26 January 4, 2013 Email to Mr. Scott is attached as Exhibit 15.) Unfortunately, Mr. Scott did not
27

1 prevent Dr. Tarbaux and Mr. Versteeg from retaliating against Plaintiff and did not take any
2 corrective actions that would have ensured such conduct would cease.

3 44. Within a few weeks of Plaintiff contacting Kaiser's Vice-President of Compliance
4 concerning Dr. Tarbaux's harassment and unlawful conduct, Dr. Tarbaux took further retaliatory
5 actions against Plaintiff and issued a Corrective Action – Level 4 against Plaintiff for
6 “unacceptable behavior towards Dr. Tarbaux” and an “inability to conform to the department
7 policy for time off requests.” These accusations were untrue and intended solely to create a
8 paper trial to justify disciplinary actions taken against Plaintiff after she made complaints of Dr.
9 Tarbaux's wrongful termination. Specifically, Dr. Tarbaux wrongly accused Plaintiff of making
10 an “unapproved PIW [Personal Indirect Work] request for that afternoon [October 17, 2012] and
11 your desire to hold an unapproved union meeting during work hours.” In truth, Dr. Tarbaux sent
12 a last-minute email at 9:56 a.m. on October 17, 2012, informing Plaintiff for the first time that
13 she would like Plaintiff (as well as other optometrists at Kaiser's Riverside facility) to see
14 patients at 4:00 p.m. after a 2:00 p.m. meeting. Dr. Tarbaux stated that if any optometrists were
15 able to see patients at 4:00 p.m. after the 2:00 p.m. meeting that they should let her know.
16 Plaintiff, who did not have an opportunity to respond to the email until minutes before the 2:00
17 p.m. meeting, emailed Dr. Tarbaux at 1:54 p.m. to inform her that she was unable to work that
18 afternoon and requested PIW. Thus, it was Dr. Tarbaux's failure to send an email providing
19 Plaintiff sufficient time to respond that caused the situation that Dr. Tarbaux disciplined Plaintiff
20 for. *Tellingly, this disciplinary action against Plaintiff occurred over 3 months after the*
21 *October 17, 2012 incident occurred but only a few weeks after Plaintiff made complaints about*
22 *Dr. Tarbaux's unlawful conduct to Kaiser's Vice-President of Compliance.*

23 45. On July 17, 2013, Dr. Tarbaux continued to take retaliatory actions against
24 Plaintiff. Specifically, Dr. Tarbaux and Mr. Versteeg forced Plaintiff to give up her office and
25 share office space with another optometrist. Although office space and exam room assignments
26 had previously been based on seniority, Dr. Tarbaux and Mr. Versteeg forced Plaintiff to move
27 as retaliation for making complaints about Kaiser's illegal conduct and violation of Business and
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1 Professions Code section 655. Moreover, Dr. Tarbaux issued another Corrective Action – Level
2 4 against Plaintiff because Plaintiff moved the items from her old office to her new office on
3 Plaintiff's day off. Although Plaintiff tried to explain that there was insufficient time to do so
4 during days when she was working because of patient care issues, Dr. Tarbaux insisted on
5 disciplining Plaintiff every chance she could for even the most preposterous reasons.

6 **KAISER TERMINATES PLAINTIFF AFTER TWENTY YEARS BECAUSE**
7 **PLAINTIFF DID NOT PUT ON A STICKER QUICKLY ENOUGH**

8 46. In 2013, Kaiser patients gave Plaintiff one of the highest MAPPS scores amongst
9 the optometrists at Kaiser's Riverside facility. (See Exhibit 2.) In addition, Plaintiff had just
10 completed her twentieth year as a Kaiser employee. However, in November of 2013, Dr.
11 Tarbaux terminated Plaintiff because she would not put on a sticker quickly enough.

12 47. On November 22, 2013, Plaintiff was informed that Dr. Tarbaux was placing her
13 on administrative leave pending an investigation and that Plaintiff and Dr. Tarbaux would meet
14 on November 27, 2013 to discuss the results of this sham investigation.

15 48. On November 27, 2013, Dr. Tarbaux provided Plaintiff with a Corrective Action
16 –Level 5 and terminated Plaintiff after twenty years of working with Kaiser. Dr. Tarbaux
17 terminated Plaintiff supposedly because of an incident that occurred on November 5 and 6, 2013
18 concerning stickers. (A true and correct copy of the Corrective Action – Level 5 is attached as
19 Exhibit 16.) Specifically, on November 5, 2013, Dr. Tarbaux and Heather Lemus (Kaiser's
20 Business Line Manager) were asking Kaiser staff to put Kaiser "Thrive flu" stickers on their
21 name badges. Plaintiff, like the other optometrists, had a white coat that she wore, which already
22 had her name, position, and department name embroidered on it. In the termination
23 memorandum, Dr. Tarbaux accused Plaintiff of not responding to Dr. Tarbaux's initial knocks
24 when she came to Plaintiff's office, being insubordinate, and refusing to wear her badge so that
25 others could see the sticker.

26 49. The termination memo drafted by Dr. Tarbaux was full of lies and false
27 accusations. In truth, Plaintiff was trying to chart and return patient messages and thus was
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1 unable to quickly open the door and start a conversation with Dr. Tarbaux. Plaintiff, who was
2 behind schedule, then went back to her office to retrieve her badge to appease Dr. Tarbaux and
3 so that Dr. Tarbaux could place the sticker on Plaintiff's badge and let Plaintiff get back to
4 patient care. Later, Dr. Tarbaux returned to Plaintiff's exam room while Plaintiff was in the
5 middle of charting to inform Plaintiff that she was required to wear the badge at all times, to
6 which Plaintiff politely responded "thank you." Moreover, Plaintiff did not refuse to wear her
7 badge (with the sticker on it) and even complied the very next day when Dr. Tarbaux had
8 checked to ensure Plaintiff was wearing her sticker.

9 50. Thus, Dr. Tarbaux took the preposterous action of terminating Plaintiff (a 21-year
10 Kaiser employee with stellar patient reviews) supposedly because Plaintiff refused to put on a
11 sticker at the exact moment she was busy trying to see patients (preventing patients from having
12 to wait longer), charting, and also addressing patient messages in between patients. In reality,
13 Dr. Tarbaux terminated Plaintiff after she made numerous complaints regarding Kaiser's
14 unlawful conduct.

15 **FIRST CAUSE OF ACTION**

16 **VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE § 1278.5**

17 **(AGAINST KAISER DEFENDANTS)**

18 51. Plaintiff incorporates by this reference all preceding and subsequent paragraphs.

19 52. During Plaintiff's employment, Plaintiff repeatedly reported and complained to
20 Kaiser and their managing agents and medical staff, and each of them, serious unsafe patient care
21 and conditions as alleged herein. Accordingly, Plaintiff engaged in activities which are legally
22 protected under Health & Safety Code Section 1278.5.

23 53. Kaiser is an inpatient care facility covered by Health & Safety Code Section
24 1278.5.

25 54. At the time Plaintiff made the complaints, instead of Kaiser addressing methods
26 of remedying the patient health and safety issues reported by Plaintiff, Kaiser, by and through its
27 managing officers, focused on retaliating against Plaintiff and engaging in a pattern of

1 objectionable conduct, as alleged herein, designed to retaliate against Plaintiff and to dissuade
2 other doctors, for fear of similar retaliation, from reporting any patient health and safety issues.

3 55. Kaiser's conduct, as alleged herein, violated the provisions of Health & Safety
4 Code Section 1278.5. As the California Legislature has declared in Health & Safety Code
5 Section 1278.5, "it is the public policy of the State of California to encourage patients, nurses,
6 members of the medical staff, and other health care workers to notify government entities of
7 suspected unsafe patient care and conditions." As such, "(b)(1) No health facility shall
8 discriminate or retaliate, in any manner, against any . . . employee, member of the medical staff,
9 or any other health care worker . . . because that person has . . . (A) [p]resented a grievance,
10 complaint or report to the facility... or the medical staff of the facility."

11 56. Plaintiff was retaliated against and terminated because of her protests and
12 complaints regarding substandard patient care as alleged herein. Plaintiff's suspension,
13 termination, and other adverse actions against Plaintiff, occurred within 120 days of her protests
14 and complaints. Accordingly, under Health & Safety Code Section 1278.5(d)(1), Plaintiff is
15 entitled to a rebuttable presumption that the adverse actions taken against her were attributable to
16 her complaints and protests regarding patient care.

17 57. In so doing, said managing agents and/or officers of Kaiser, acted with
18 oppression, fraud and malice, as those terms are used in California Civil Code section 3294. As
19 such, Plaintiff is entitled to an award of punitive damages.

20 58. As a direct and proximate result, Plaintiff has suffered, and will continue to suffer,
21 economic and compensatory damages, including lost wages, lost benefits, and loss of
22 promotional opportunity, in an amount to be ascertained at the time of trial.

23 59. As a further proximate result, Plaintiff has suffered, and will continue to suffer,
24 humiliation, mental, emotional, and physical distress, anxiety, and nervousness and has been
25 generally damaged in an amount to be ascertained at the time of trial.

26 60. Plaintiff is entitled to legal costs, including attorneys' fees, pursuant to Health &
27 Safety Code section 1278.5(g).

1 actions against Plaintiff as alleged herein, at least in substantial part, in retaliation for Plaintiff's
2 protests and initial refusal to engage in conduct that she reasonably believed was below the
3 appropriate standard of care and in violation of state or federal statute.

4 73. In so doing, said managing agents and/or officers of Kaiser acted with oppression,
5 fraud and malice, as those terms are used in California Civil Code section 3294. As such,
6 Plaintiff is entitled to an award of punitive damages.

7 74. As a proximate result of the aforesaid acts of Kaiser, Plaintiff has lost, and will
8 continue to lose, substantial earnings and fringe benefits and has suffered and/or will suffer other
9 actual, consequential and incidental financial losses, in an amount to be proven at trial in excess
10 of the jurisdictional minimum of this court.

11 75. As a proximate result of the aforesaid acts of Kaiser, Plaintiff has become
12 mentally upset, distressed, embarrassed, humiliated, and aggravated. As a result of the acts of
13 retaliation, Plaintiff suffered harm to her reputation and claims general damages for such mental
14 and physical distress and aggravation in a sum in excess of the jurisdictional minimum of this
15 court.

16 76. Plaintiff also seeks an award of attorneys' fees and costs to counsel where
17 permitted by applicable law, including under California Code of Civil Procedure section 1021.5
18 because: (a) this action confers a significant benefit to the general public or a large class of
19 persons impacted by the practices alleged herein; (b) the necessity and financial burden of
20 private enforcement makes the award appropriate; and (c) such fees should not in the interest of
21 justice be paid out of the recovery to Plaintiff.

22 **FOURTH CAUSE OF ACTION**

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

24 **(AGAINST ALL DEFENDANTS)**

25 77. Plaintiff incorporates by this reference all the preceding and subsequent
26 paragraphs.

1 78. At all times during her employment with Kaiser, Plaintiff performed her
2 employment duties with the utmost diligence and competence.

3 79. The decision to terminate Plaintiff was based, at least in substantial part, on
4 Plaintiff's advocacy for patient rights and complaints regarding unsafe patient care.

5 80. The actions of Kaiser as alleged herein constitute multiple violations (or were
6 reasonably believed by Plaintiff in good faith to constitute multiple violations) of California and
7 federal statutes, including:

- 8 • California Health & Safety Code § 1278.5 (prohibiting retaliation against
9 employees for presenting a complaint relating to inadequate and unsafe patient
10 care);
- 11 • California Business & Professions Code § 510 (prohibiting retaliation against
12 employees for presenting a complaint relating to inadequate and unsafe patient
13 care);
- 14 • California Labor Code § 1102.5 (prohibits employer retaliation against an employee
15 who reports a reasonably suspected violation of the law, which pursuant to Collier
16 v. Superior Court, 228 Cal. App. 3d 1117 (1991), extends to reports made directly
17 to the employer);
- 18 • California Business & Professions Code § 655 (prohibiting certain business
19 arrangements between optometrists and opticians or persons in the optical product
20 business).

21 81. As a proximate result of the aforesaid acts of Kaiser, Plaintiff has lost, and will
22 continue to lose, substantial earnings, and fringe benefits, and has suffered and/or will suffer
23 other actual, consequential, and incidental financial losses, in an amount to be proven at trial in
24 excess of the jurisdictional minimum of this court.

25 82. As a proximate result of the aforesaid acts of Kaiser, Plaintiff has become
26 mentally upset, physically distressed, embarrassed, humiliated, and aggravated. As a result of
27 the acts of retaliation, Plaintiff suffered harm to her reputation and claims general damages for
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1 such mental and physical distress and aggravation in a sum in excess of the jurisdictional
2 minimum of this court.

3 83. The actions alleged herein were taken by managing agents and/or officers of
4 Kaiser and/or ratified by managing agents and/or officers of Kaiser. In so doing, said managing
5 agents and/or officers of Kaiser acted with oppression, fraud and malice, as those terms are used
6 in California Civil Code § 3294. As such, Plaintiff is entitled to an award of punitive damages.

7 84. Plaintiff also seeks an award of attorneys' fees and costs to counsel where
8 permitted by applicable law, including under California Code of Civil Procedure § 1021.5
9 because: (a) this action confers a significant benefit to the general public or a large class of
10 persons impacted by the practices alleged herein (i.e., Kaiser's policy holders, and Kaiser's
11 patients); (b) the necessity and financial burden of private enforcement makes the award
12 appropriate; and (c) such fees should not in the interest of justice be paid out of the recovery to
13 Plaintiff.

14 **FIFTH CAUSE OF ACTION**

15 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

16 **(AGAINST ALL DEFENDANTS)**

17 85. Plaintiff incorporates by this reference all the preceding and subsequent
18 paragraphs.

19 86. Defendants' retaliation against Plaintiff for complaining about inadequate patient
20 care and employee safety as alleged herein, were extreme and outrageous acts and taken with the
21 intention of causing Plaintiff extreme emotional distress, humiliation, embarrassment and mental
22 anguish. Such conduct exceeded the inherent risks of employment and was not the sort of
23 conduct normally expected to occur in the workplace.

24 87. As a result of those extreme and outrageous acts, Plaintiff has suffered extreme
25 emotional distress in an amount to be proved at the time of trial, but in any event sufficient to
26 satisfy the jurisdictional limits of this Court.

