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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

FEB 16 2012

John A. Clarke, Executive Officer/Clerk
BY [Signature], Deputy
Amber La-Fleur-Clayton

11 Attorneys for Plaintiff,
12 BARBARA ZIPKIN, M.D.

DBA Michael Solner

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 FOR THE COUNTY OF LOS ANGELES

BC479175

15 BARBARA ZIPKIN, M.D., an individual

CASE NO.

16 Plaintiff,

PLAINTIFF'S COMPLAINT FOR:

17 v.

- 18 1. VIOLATIONS OF CALIFORNIA BUSINESS & PROFESSIONS CODE § 2056
- 19 2. VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE § 1278.5
- 20 3. VIOLATIONS OF CALIFORNIA BUSINESS & PROFESSIONS CODE § 510
- 21 4. VIOLATIONS OF CALIFORNIA LABOR CODE § 1102.5
- 22 5. DISABILITY DISCRIMINATION IN VIOLATION OF CALIFORNIA GOV'T CODE § 12490(g)
- 23 6. AGE DISCRIMINATION IN VIOLATION OF CALIFORNIA GOV'T CODE § 12490(g)
- 24 7. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY
- 25 8. VIOLATION OF CALIFORNIA PENAL CODE § 632 (CIVIL ACTION PURSUANT TO CALIFORNIA PENAL CODE § 637.2)
- 26 9. INTENTIONAL INFLICTED EMOTIONAL DISTRESS

27 KAISER FOUNDATION HEALTH PLAN INC., a corporation; KAISER FOUNDATION HOSPITALS, a corporation; SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP, a partnership; RHONDA SMALLS, an individual; DONALD MARCUS, an individual; and DOES 1 through 10 inclusive,

28 Defendants.

JURY TRIAL DEMANDED BY PLAINTIFF

CITY/CASE: BC479175 LEM/DEF#
RECEIPT #: CCHS0057103
DATE PAID: 02/16/12 04:02:42 PM
PAYMENT: \$395.00
RECEIVED:
CHECK: 395.00
CASH:
CHANGE:

1 Plaintiff Barbara Zipkin, M.D. ("Plaintiff") alleges as follows on knowledge as to herself
2 and her own acts/interactions, and on information and belief as to all other matters:

3 **INTRODUCTION & NATURE OF ACTION**

4 1. Plaintiff is an accomplished and licensed Medical Doctor and OGBYN Surgeon
5 who started working in that capacity for Kaiser (defined below) approximately thirty (30) years
6 ago.

7 2. From the time Plaintiff was hired by Kaiser until her termination, Plaintiff was an
8 outstanding doctor and adequately performed her duties. Plaintiff's exemplarily performance
9 and commitment to patient care is evidenced by her numerous performance reviews, positive
10 appraisals from her patients, and letters from her patients and supervisors showering her with
11 well-deserved praise.

12 3. On June 9, 2011, Plaintiff called a meeting to speak out against the inadequate
13 patient care that Kaiser was providing its patients. Shortly after the meeting, Plaintiff
14 complained regarding inadequate patient care and Kaiser's abuse of its "non-profit" status (by
15 putting profits before patients) to various government entities, including The Department of
16 Managed Health Care, The Medical Board of California, The California Department of
17 Insurance, and California's Franchise Tax Board. Thereafter, despite Plaintiff's thirty years of
18 dedicated service and stellar performance, Kaiser orchestrated a plan to terminate Plaintiff's
19 employment by falsely accusing her of providing services to non-members and not allowing her
20 to return to work without performing onerous tasks that were an attempt to build a record against
21 Plaintiff in retaliation for her patient advocacy and whistleblowing.

22 **JURISDICTION AND VENUE**

23 4. This Court has personal jurisdiction over each of the defendants because they are
24 residents of and/or doing business in the State of California.

25 5. Under California Code of Civil Procedure section 395(a), venue is proper in this
26 county because the defendants, or some of them, reside in Los Angeles County; and/or the injury
27 occurred in Los Angeles County.

1 **EXHAUSTION OF ADMINISTRATIVE PROCEEDINGS**

2 6. Plaintiff exhausted her administrative remedies by timely filing a complaint for
3 the issues required to be raised herein against defendants with the California Department of Fair
4 Employment & Housing (“DFEH”) and thereafter receiving a “Right to Sue” letter from the
5 DFEH, which allowed Plaintiff one year from November 28, 2011 to file this action.

6 **PARTIES**

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

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

12 9. Plaintiff is informed and believes that Defendant Southern California Permanente
13 Medical Group (“SCPMG”) is organized in form only as a partnership under the laws of
14 California, with its principal place of business located at 393 East Walnut Street, Pasadena,
15 California.

16 10. Plaintiff is informed and believes KFHP, KFH and SCPMG do business jointly,
17 and with other entities owned and controlled by KFHP under the name “Kaiser Permanente.”

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

22 12. Plaintiff is informed and believes and thereon alleges that Defendant KFHP is an
23 insurance company which purports to provide comprehensive total medical care to its members.
24 KFHP describes itself as the largest Health Maintenance Organization in the country. KFHP
25 exercises total control over Defendants KFH, SCPMG and a number of other corporate and
26 partnership entities such that their very existence as purported separate entities is in fact a sham
27 designed to perpetuate the myth that KFHP and KFH are a legitimate “non-profit” corporation.

1 Plaintiff is informed and believes that KFHP and KFH are in fact a "for profit" enterprise
2 regularly reporting their profitability publicly. For example, on August 5, 2011, Kaiser reported:

3 Kaiser Foundation Hospitals, Kaiser Foundation Health Plan, Inc., and their
4 respective subsidiaries (KFH/HP) reported today a combined operating revenue of
5 \$11.9 billion for the quarter ending June 30, 2011, compared to \$11.0 billion in
6 the same period in 2010. Operating income was \$390 million in the second
7 quarter of 2011, compared to \$313 million in the same quarter last year. Net non-
8 operating income was \$273 million in the second quarter of 2011, compared to
9 \$91 million in the same quarter last year. As a result, net income for the second
10 quarter was \$663 million versus net income of \$404 million in the same period
11 last year. These are the combined operating results for Kaiser Foundation
12 Hospitals, Kaiser Foundation Health Plan, Inc., and their respective subsidiaries.¹

13 13. KFHP's total dominance over KFH and SCPMG is evidenced by the fact that
14 KFH and SCPMG's entire annual budget is set by, controlled by, and approved by KFHP; all
15 funds for KFH and SCPMG's operations come from KFHP; KFHP determines what "profit" if
16 any SCPMG are allowed to make; money that SCPMG uses to pay bonuses to its doctors comes
17 from KFHP; SCPMG does not bill any patients for most of its services; barring emergencies or
18 extremely rare instances, SCPMG doctors are only allowed to work for KFHP members
19 exclusively; SCPMG's only source of money is from KFHP. KFHP provides virtually all legal,
20 human resources, insurance, communications, advertising, billing, and other necessary services
21 for KFH and SCPMG. Members buying health care coverage only pay money to KFHP, not to
22 SCPMG; they buy insurance from KFHP and they receive services through SCPMG.
23 Advertising for the health care offered by KFHP as health insurance and provided through
24 SCPMG doctors is done predominantly by KFHP, advertising as "Kaiser Permanente" as seen in
25 the multi-million dollar "Thrive" advertising campaign. SCPMG does not own hospitals,
26 medical buildings, or the clinics where they work; they are owned by KFHP. KFHP provides all
27 telephone, fax, and e-mail services for SCPMG. KFHP also provides health insurance and
28 medical malpractice insurance to SCPMG's doctors. KFHP lawyers routinely render legal
advice and counsel to KFH, SCPMG, and have unfettered access to KFH and SCPMG's records;
KFHP's Human Resources department routinely investigates any EEOC/DFEH or other

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

1 complaints of discrimination, as well as issues regarding reasonable accommodations, regarding
2 KFHP and SCPMG's practices and employees, reporting to KFHP's legal department on all such
3 investigations; KFHP lawyers and human resources staff do not obtain privacy waivers when
4 seeking records of KFHP and/or SCPMG employees or investigating their claims; KFHP provides
5 and pays for all facilities in which KFHP and SCPMG conduct business.

6 14. Defendants KFHP, KFHP and SCPMG, if not separately noted are hereinafter
7 collectively referred to as "Kaiser." These Defendants are collectively liable under either a joint
8 employer theory or a single enterprise theory.

9 15. Plaintiff is informed and believes that Defendant RHONDA SMALLS, M.D.
10 ("SMALLS") is, and has at all times relevant, been an individual residing in the County of Los
11 Angeles, State of California.

12 16. Plaintiff is informed and believes that Defendant DONALD MARCUS, M.D.
13 ("MARCUS") is, and has at all times relevant, been an individual residing in the County of Los
14 Angeles, State of California.

15 17. The true names and capacities of the defendants named herein as Docs 1 through
16 10, inclusive, whether individual, corporate, associate or otherwise, are unknown to Plaintiff who
17 therefore sues such defendants by fictitious names pursuant to California Code of Civil
18 Procedure section 474. Plaintiff is informed and believes that all of the Doc defendants are
19 California residents. Plaintiff will amend this Complaint to show such true names and capacities
20 when they have been determined.

21 18. Plaintiff is informed and believes that at all times relevant herein, each defendant
22 designated, including Docs 1 through 10, was the agent, managing agent, principal, owner,
23 partner, joint venturer, representative, manager, servant, employee and/or co-conspirator of each
24 of the other defendants, and was at all times mentioned herein acting within the course and scope
25 of said agency and employment, and that all acts or omissions alleged herein were duly
26 committed with the ratification, knowledge, permission, encouragement, authorization and
27 consent of each defendant designated herein.

1 **PLAINTIFF'S FACTUAL ALLEGATIONS**

2 19. At all times relevant hereto, Plaintiff was a micromanaged employee of Kaiser
3 and did not assume any personal liabilities as to Kaiser's business, did not make any investments
4 into Kaiser's business, lacked the right or ability to hire/fire employees, lacked the right or
5 ability to exercise control over Kaiser's business, reported directly to multiple supervisors, and
6 was provided a work schedule by Kaiser that instructed her as to the location, timing, and
7 structure of Plaintiff's working days.

8 20. Plaintiff called a meeting to discuss concerns she had regarding inadequate patient
9 care. The meeting took place in a conference room and at all times Plaintiff reasonably believed
10 that the conversation that took place at the meeting would be confidential. At the meeting, on
11 June 9, 2011, Plaintiff was vocal about the need for increased staffing levels, more time with
12 patients and an emphasis on care and not profits. Plaintiff also spoke out against Drs. Rhonda
13 Smalls, Gladys Loera and Lorrie Dubow by noting their refusal to see patients and refusal to
14 share their schedules, like the rest of the doctors are required to do. Plaintiff complained that
15 doctors were not able to provide adequate patient care in the time allotted to see patients, which
16 resulted in substandard patient care.

17 21. On June 24, 2011, Plaintiff was accused of providing care to a non-member,
18 which supposedly occurred on June 21, 2011. On June 21, 2011, Plaintiff met with a Kaiser
19 member (who happened to be Plaintiff's ex-husband) and his current partner, which is permitted
20 under Kaiser's policies. Plaintiff did not perform any procedure or treat the non-member.
21 However, Plaintiff is informed and believes that another Kaiser employee performed an
22 amniocentesis on the non-member without any orders or interaction from Plaintiff. Yet, in
23 retaliation for her patient advocacy, Plaintiff was blamed for the treatment of a non-member. To
24 Plaintiff's knowledge, the Kaiser employee who actually performed the amniocentesis (Dr. Joyce
25 Huffaker) was not disciplined.

26 22. On July 6, 2011, Dr. Donald Marcus called Plaintiff into his office and told
27 Plaintiff that her comments regarding inadequate patient care at the June 9, 2011 meeting were
28

1 unprofessional and disruptive. Despite the fact that five other doctors spoke out against the
2 current administration at the June 9, 2011 meeting, Plaintiff was singled out because her
3 comments focused on inadequate patient care, while the other doctors were not disciplined. For
4 example, Dr. Lance Chu called Dr. Smalls a "vile, vindictive bitch." However, to Plaintiff's
5 knowledge, Dr. Lance Chu was not disciplined for this comment. At this time, Plaintiff was
6 also informed by Dr. Marcus that the June 9th meeting had been tape recorded, despite the fact
7 that Plaintiff was never informed and never provided her consent for the meeting to be tape
8 recorded.

9 23. At this same July 6, 2011 meeting, Dr. Marcus presented Plaintiff with two
10 options: (a) Plaintiff could take "early retirement"; or (b) Plaintiff's compensation would be cut
11 by twenty percent (20%) for six (6) months and Kaiser would take action to terminate her.
12 Plaintiff refused to take early retirement.

13 24. On July 13, 2011, Kaiser placed Plaintiff on administrative leave. That same day,
14 Plaintiff sent a letter to The Department of Managed Health Care, The Medical Board of
15 California, The California Department of Insurance, and The Franchise Tax Board. A copy of
16 this letter was also sent to Kaiser and Drs. Donald Marcus, Rhonda Smalls, and Michael Tome.
17 (A copy of this letter is attached hereto as Exhibit A.) The letter reiterated and expanded upon
18 some of the points Plaintiff raised at the June 9th meeting and complained about the retaliation
19 Plaintiff was enduring at Kaiser.

20 25. More specifically, with regard to inadequate patient care, Plaintiff's letter
21 complained:

22 The administrators at Kaiser/SCPMG dictate that doctors must spend 420 minutes
23 with patients each day (seven hours). However, in these seven hours doctors are
24 expected to see approximately twenty five patients and complete all necessary
25 paperwork. Doctors, including myself, who find it necessary to spend more time
26 with a given patient, are retaliated against in a number of ways. First, there is
27 absolutely no compensation for working above 420 minutes per day, which means
28 that doctors have an incentive to make sure they move on to the next patient
quickly and on schedule. Second, doctors who choose to spend more time with
their patients (at their own expense), routinely lose vacation time, have clinics that
are important to them canceled and suffer other retaliatory measures. Third,

1 Kaiser/SCPMG administrators refuse to reschedule patient appointments where
2 the doctor needs to conduct a more serious medical procedure; rather the patient
3 load just piles up on the doctors. Fourth, Kaiser/SCPMG administrators actually
4 reduce doctors' compensation for non-compliance with the set patient schedules.
5 Finally, a number of qualified physicians refuse to see patients because they claim
6 to have "administrative duties" that are more important.

7 26. Plaintiff's advocacy was seeking care for her patients and other Kaiser patients
8 that is consistent with that degree of learning and skill ordinarily possessed by reputable
9 physicians practicing according to the applicable legal standard of care. Kaiser did not wish to
10 provide Plaintiff with sufficient time to see patients because such proper care would decrease
11 Kaiser's profits by increasing the number of necessary tests ordered by Plaintiff and decreasing
12 the number of patients that Plaintiff could see in a day. By such rushed patient examinations,
13 Kaiser wanted Plaintiff (and other doctors) to provide perfunctory examinations and rush to the
14 next patient in order to maximize profits at the expense of appropriate patient care.

15 27. With regard to Kaiser abusing its "non-profit" status, Plaintiff's letter complained:

16 I have included the Franchise Tax Board on this letter to express my concerns
17 that, contrary to its status as a non-profit organization, all business decisions made
18 by Kaiser are made with the sole intent of maximizing profit. Kaiser's sole
19 motivation of maximizing profit, rather than operating for a public or charitable
20 benefit, is antithetical to the requirements of a non-charitable organization.

21 28. After Plaintiff sent the letter to state officials and Kaiser, she was told that Kaiser
22 wanted to meet with her on July 22, 2011. At this meeting the following Kaiser employees were
23 present: Drs. Donald Marcus, Rhonda Smalls, Michael Tome, and Jennifer Sangiocomo. During
24 this meeting, Plaintiff was informed that Kaiser cut Plaintiff's salary by twenty percent (20%) for
25 six (6) months. Plaintiff was then provided the following ultimatum: she could take "early
26 retirement" or would have to perform a laundry list of conditions to be permitted to return to
27 work. These conditions included: (a) a "competency assessment"; (b) "remedial courses"; (c) a
28 "psychiatric evaluation"; (d) a "professionalism evaluation"; (e) courses regarding
"documentation procedures"; (f) a "panel of experts" evaluating Plaintiff's work; (g) "anger
management" courses; and (h) a proctor who will follow Plaintiff around at all times at work for
an indefinite period of time.

1 29. On July 27, 2011, Plaintiff decided to return to work and take care of her patients.
2 Plaintiff was informed by Kaiser's Department Administrator, Sherry Mounts, that she could not
3 see any patients but had to immediately report a conference room. In the conference room,
4 Plaintiff found Drs. Donald Marcus, Rhonda Smalls, and Michael Tome. Plaintiff was informed
5 by these individuals that she was not permitted to return to work prior to fulfilling the above
6 conditions, starting with remedial courses in San Diego through the PACE program. Plaintiff
7 refused as she was sure that Kaiser was simply attempting to create a false record against her
8 through such remedial courses and their findings. Plaintiff was then asked to return her beeper
9 and Kaiser badge and was forcefully escorted out of the building, where she had worked for
10 decades, by security. Plaintiff was informed that she could not return to Kaiser except in relation
11 to health needs for herself and her family.

12 30. After Plaintiff was forced out, Plaintiff learned that Sherry Mounts and Dr.
13 Rhonda Smalls were harassing and threatening Plaintiff's former nurse, Joy Bailey, by trying to
14 make her tell lies about Plaintiff. More specifically, Ms. Mounts was grilling Joy in an attempt
15 to have her lie and say that Plaintiff performed the amniocentesis on a non-member. Joy refused
16 to support such lies and as a retaliatory measure was then transferred to work for Dr. Rhonda
17 Smalls. (The Sworn Declaration of Jocelyn Bailey is attached hereto as Exhibit B.)

18 31. On October 20, 2011, Kaiser held a board meeting to determine whether Plaintiff
19 should be deemed to have "constructively resigned." Plaintiff spoke at this meeting and
20 explained that she was ready, willing, and able to return to work but was not permitted to do so
21 by Kaiser. Plaintiff also explained that she was merely being retaliated against for voicing her
22 concerns regarding inadequate patient care. Plaintiff went on to note that the "patient issues" she
23 was accused of having were all false and occurred years prior to the meeting.

24 32. Although Plaintiff was assured by Kaiser that a vote would be taken at the board
25 meeting, after Plaintiff spoke, Kaiser decided to postpone the vote indefinitely. Plaintiff is
26 informed and believes that, prior to taking the vote on October 20, 2011, Dr. Donald Marcus
27 conducted a headcount of those that would support Plaintiff's termination and did not have the
28

1 required number of votes to support her termination. Therefore, Dr. Donald Marcus tabled the
2 vote until a later date, so as to deprive Plaintiff the opportunity to fairly present her accurate
3 version of events.

4 33. Finally, on November 22, 2011, Plaintiff was informed that she had been
5 terminated by Kaiser.

6 **FIRST CAUSE OF ACTION**
7 **VIOLATIONS OF CALIFORNIA BUSINESS & PROFESSIONS CODE § 2056**
8 **(AGAINST ALL DEFENDANTS)**

9 34. Plaintiff incorporates by reference all of the preceding and subsequent
10 paragraphs.

11 35. At all times relevant, Kaiser (including KFH, KFHP, SCPMG and each of them),
12 Rhonda Smalls, and Donald Marcus were "persons" as that term is used in Business &
13 Professions Code Section 2056 and defined by Business & Professions Code Section 2032.

14 36. At all times relevant, Defendants were subject to Business & Professions Code
15 Section 2056(c), which provides:

16 The application and rendering by any person of a decision to terminate an
17 employment or other contractual relationship with, or otherwise penalize, a
18 physician and surgeon principally for advocating for medically appropriate health
19 care consistent with that degree of learning and skill ordinarily possessed by
20 reputable physicians practicing according to the applicable legal standard of care
21 violates the public policy of this state. No person shall terminate, retaliate
22 against, or otherwise penalize a physician and surgeon for that advocacy, nor shall
23 any person prohibit, restrict, or in any way discourage a physician and surgeon
24 from communicating to a patient information in furtherance of medically
25 appropriate health care.

26 37. As alleged herein, Defendants retaliated against Plaintiff and terminated her
27 employment with Kaiser primarily due to Plaintiff's advocacy for appropriate health care,
28 consistent with that degree of learning and skill ordinarily possessed by reputable physicians
practicing according to the applicable legal standard of care.

38. As a direct and proximate result of Defendants' acts as alleged herein, Plaintiff
has suffered, and will continue to suffer, economic and compensatory damages, including lost

1 wages, lost benefits, loss of promotional opportunity, in an amount to be ascertained at the time
2 of trial.

3 39. As a further proximate result Defendants' acts of as alleged herein, Plaintiff has
4 suffered, and will continue to suffer, humiliation, mental, emotional, and physical distress,
5 anxiety, and nervousness and has been generally damaged in an amount to be ascertained at the
6 time of trial.

7 40. Plaintiff is entitled to attorneys' fees and costs under California Code of Civil
8 Procedure Section 1021.5 because: (a) this action confers a significant benefit to the general
9 public or a large class of persons impacted by the practices alleged herein (Kaiser's patients); (b)
10 the necessity and financial burden of private enforcement makes the award appropriate; and (c)
11 such fees should not in the interest of justice be paid out of the recovery to Plaintiff.

12 **SECOND CAUSE OF ACTION**

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

14 **(AGAINST KAISER DEFENDANTS)**

15 41. Plaintiff incorporates by reference all of the preceding and subsequent paragraphs.

16 42. During Plaintiff's employment, she presented grievances, complaint and reports
17 to Kaiser, The Department of Managed Health Care, The Medical Board of California, and The
18 California Department of Insurance and their managing agents and medical staff, and each of
19 them, regarding the lack in the quality of care provided to Kaiser patients due to the restrictions
20 placed on the amount of time that Plaintiff (and other doctors) could spend examining and
21 meeting with patients.

22 43. The substandard patient care protested and reported by Plaintiff was not
23 consistent with that degree of learning and skill ordinarily possessed by reputable health care
24 practitioners with the same license or certification and practicing according to the applicable
25 legal standard of care. Plaintiff reasonably believes that these actions and omissions impaired
26 her and Kaiser's ability to provide appropriate health care to her patients. Accordingly, Plaintiff
27 engaged in activities which are legally protected under Health & Safety Code § 1278.5.

1 44. Kaiser (including KFH, KFHP, SCPMG and each of them) are inpatient care
2 facilities covered by Health & Safety Code §1278.5.

3 45. At the time that Plaintiff made the complaints, instead of Kaiser addressing
4 methods of remedying the patient health and safety issues reported by Plaintiff, Kaiser, by and
5 through their managing officers, focused on retaliating against Plaintiff and engaging in a pattern
6 of objectionable conduct, as alleged herein, designed to retaliate against Plaintiff and to dissuade
7 other employees, for fear of similar retaliation, from reporting any patient health and safety
8 issues.

9 46. Kaiser's conduct as alleged herein, violated the provisions of Health & Safety
10 Code § 1278.5. As the California Legislature has declared in Health & Safety Code § 1278.5, "it
11 is the public policy of the State of California to encourage patients, nurses, members of the
12 medical staff, and other health care workers to notify government entities of suspected unsafe
13 patient care and conditions." As such, "(b)(1) No health facility shall discriminate or retaliate, in
14 any manner, against any . . . employee . . . because that person has . . . (A) Presented a grievance,
15 complaint, or report to the facility, to an entity or agency responsible for accrediting or
16 evaluating the facility, or the medical staff of the facility, or to any other governmental entity.
17 (B) Has initiated, participated, or cooperated in an investigation or administrative proceeding
18 related to, the quality of care, services, or conditions at the facility that is carried out by an entity
19 or agency responsible for accrediting or evaluating the facility or its medical staff, or
20 governmental entity."

21 47. Plaintiff was retaliating against and terminated because of her protests and
22 complaints regarding substandard patient care as alleged herein. Plaintiff's termination occurred
23 within 120 days of her protests and complaints. Accordingly, under Health & Safety Code §
24 1278.5(d)(1), Plaintiff is entitled to a rebuttable presumption that her termination is attributable
25 to Plaintiff's complaints and protests regarding patient care.
26
27
28

1 48. As a direct and proximate result of Kaiser's acts as alleged above, Plaintiff has
2 suffered, and will continue to suffer, economic and compensatory damages, including lost wages,
3 lost benefits, loss of promotional opportunity, in an amount to be ascertained at the time of trial.

4 49. As a further proximate result Kaiser's acts of as alleged above, Plaintiff has
5 suffered, and will continue to suffer, humiliation, mental, emotional, and physical distress,
6 anxiety, and nervousness and has been generally damaged in an amount to be ascertained at the
7 time of trial.

8 50. The actions alleged herein were taken by managing agents and/or officers of
9 Kaiser and/or ratified by managing agents and/or officers of Kaiser. In so doing, said managing
10 agents and/or officers of Kaiser acted with oppression, fraud and malice, as those terms are used
11 in California Civil Code section 3294. As such, Plaintiff is entitled to an award of punitive
12 damages.

13 51. Plaintiff is entitled to legal costs, including attorney's fees, pursuant to Health &
14 Safety Code §1278.5(g).

15 **THIRD CAUSE OF ACTION**
16 **VIOLATIONS OF CALIFORNIA BUSINESS & PROFESSIONS CODE § 510**
17 **(AGAINST KAISER DEFENDANTS)**

18 52. Plaintiff incorporates by reference all of the preceding and subsequent paragraphs.

19 53. During Plaintiff's employment, she presented grievances, complaint and reports
20 to Kaiser, The Department of Managed Health Care, The Medical Board of California, and The
21 California Department of Insurance and their managing agents and medical staff, and each of
22 them, regarding the lack in the quality of care provided to Kaiser patients due to the restrictions
23 placed on the amount of time that Plaintiff (and other doctors) could spend examining and
24 meeting with patients.

25 54. The substandard patient care protested and reported by Plaintiff was not
26 consistent with that degree of learning and skill ordinarily possessed by reputable health care
27 practitioners with the same license or certification and practicing according to the applicable

1 legal standard of care. Plaintiff reasonably believes that these actions and omissions impaired
2 her and Kaiser's ability to provide appropriate health care to her patients. The substandard
3 patient care protested and reported by Plaintiff was not consistent with that degree of learning
4 and skill ordinarily possessed by reputable health care practitioners with the same license or
5 certification and practicing according to the applicable legal standard of care. Plaintiff
6 reasonably believes that these actions and omissions impaired her and Kaiser's ability to provide
7 appropriate health care to her patients. Accordingly, Plaintiff "advocated for appropriate health
8 care" as defined in Business & Professions Code § 510.

9 55. At all times relevant, Plaintiff was and is a "health care practitioner" as that term
10 is used in Business & Professions Code § 510 because Plaintiff is a "licentiate" (a physician) as
11 defined in Business & Professions Code § 805.

12 56. Plaintiff was suspended terminated by Kaiser principally for advocating for
13 appropriate health care consistent with that degree of learning and skill ordinarily possessed by
14 reputable health care practitioners with the same license or certification and practicing according
15 to the applicable legal standard of care. The conduct of Kaiser as alleged herein, violated the
16 provisions of Business & Professions Code § 510.

17 57. As a direct and proximate result of the acts of Kaiser, Plaintiff has suffered, and
18 will continue to suffer, economic and compensatory damages, including lost wages, lost benefits,
19 loss of promotional opportunity, in an amount to be ascertained at the time of trial.

20 58. As a further proximate result of Kaiser's acts, as alleged above, Plaintiff has
21 suffered, and will continue to suffer, humiliation, mental, emotional, and physical distress,
22 anxiety, and nervousness and has been generally damaged in an amount to be ascertained at the
23 time of trial.

24 59. The actions alleged herein were taken by managing agents and/or officers of
25 Kaiser and/or ratified by managing agents and/or officers of Kaiser. In so doing, said managing
26 agents and/or officers of Kaiser acted with oppression, fraud and malice, as those terms are used
27

1 in California Civil Code section 3294. As such, Plaintiff is entitled to an award of punitive
2 damages.

3 60. Plaintiff is entitled to attorneys' fees and costs under California Code of Civil
4 Procedure section 1021.5 because: (a) this action confers a significant benefit to the general
5 public or a large class of persons impacted by the practices alleged herein (Kaiser's patients); (b)
6 the necessity and financial burden of private enforcement makes the award appropriate; and (c)
7 such fees should not in the interest of justice be paid out of the recovery to Plaintiff.

8 **FOURTH CAUSE OF ACTION**

9 **VIOLATIONS OF CALIFORNIA LABOR CODE § 1102.5**

10 **(AGAINST KAISER DEFENDANTS)**

11 61. Plaintiff incorporates by this reference all the preceding and subsequent
12 paragraphs.

13 62. At all times relevant herein, California Labor Code section 1102.5(b) was in full
14 force and effect and binding on Kaiser. California Labor Code section 1102.5(b) provides: "An
15 employer may not retaliate against an employee for disclosing information to a government or
16 law enforcement agency, where the employee has reasonable cause to believe that the
17 information discloses a violation of state or federal statute, or a violation or noncompliance with
18 a state or federal rule or regulation."

19 63. Plaintiff's employment was terminated by Kaiser, at least in substantial part, due
20 to Plaintiff's reports to The Department of Managed Health Care, The Medical Board of
21 California, The California Department of Insurance, and The Franchise Tax Board. Plaintiff
22 reported her reasonably based belief that she was being retaliated against due to voicing concerns
23 of inadequate patient care. Moreover, Plaintiff reported that Kaiser was abusing its tax-exempt
24 status by placing its sole concern on maximizing profits, instead of patient care.

25 64. Plaintiff had reasonable cause to believe that her complaints to these entities
26 disclosed multiple violations of state and federal statutes/regulations, including (but not limited
27 to): Business & Professions Code § 2056 (prohibiting retaliation for complaints of inadequate
28

1 patient care); Health & Safety Code § 1278.5 (prohibiting retaliation for complaints of
2 inadequate patient care); Business & Professions Code § 510 prohibiting retaliation for
3 complaints of inadequate patient care); 26 U.S.C. § 501 (requirements for tax-exempt
4 organizations); and 26 U.S.C. §§ 7201-7202 (tax evasion).

5 65. The above acts of Kaiser constitute retaliation in violation of California Labor
6 Code section 1102.5(b).

7 66. As a direct and proximate result of the acts of Kaiser, Plaintiff has suffered, and
8 will continue to suffer, economic and compensatory damages, including lost wages, lost benefits,
9 loss of promotional opportunity, in an amount to be ascertained at the time of trial.

10 67. As a further proximate result of Kaiser's acts, as alleged above, Plaintiff has
11 suffered, and will continue to suffer, humiliation, mental, emotional, and physical distress,
12 anxiety, and nervousness and has been generally damaged in an amount to be ascertained at the
13 time of trial.

14 68. The actions alleged herein were taken by managing agents and/or officers of
15 Kaiser and/or ratified by managing agents and/or officers of Kaiser. In so doing, said managing
16 agents and/or officers of Kaiser acted with oppression, fraud and malice, as those terms are used
17 in California Civil Code section 3294. As such, Plaintiff is entitled to an award of punitive
18 damages.

19 69. Plaintiff is entitled to attorneys' fees and costs under California Code of Civil
20 Procedure section 1021.5 because: (a) this action confers a significant benefit to the general
21 public or a large class of persons impacted by the practices alleged herein; (b) the necessity and
22 financial burden of private enforcement makes the award appropriate; and (c) such fees should
23 not in the interest of justice be paid out of the recovery to Plaintiff.

1 **FIFTH CAUSE OF ACTION**

2 **DISABILITY DISCRIMINATION IN VIOLATION OF GOVT. CODE § 12940(a)**

3 **(AGAINST KAISER DEFENDANTS)**

4 70. Plaintiff incorporates by this reference all the preceding and subsequent
5 paragraphs.

6 71. At all times relevant, Plaintiff was qualified for her position at Kaiser and
7 performed her duties satisfactorily.

8 72. At all times relevant herein, Plaintiff's carpal tunnel syndrome caused the
9 performance of her and customary duties at Kaiser and other physical and social activities to be
10 difficult and therefore is a physical disability as that term is defined in Government Code §
11 12926(k).

12 73. At all times relevant herein, Plaintiff suffered from the following disabilities:
13 carpal tunnel syndrome, arthritis, ulnar nerve entrapment. Plaintiff was disabled in a manner that
14 limited her major life activity of working due to the aforementioned physical impairments and
15 disabilities. Plaintiff was forced to wear splints on all of her fingers, wrists, and forearms, and
16 required steroid injections into the joints on her hands. Plaintiff was temporarily unable to
17 perform surgery as a result of these disabilities.

18 74. At all times relevant herein, Kaiser was aware of Plaintiff's physical disability
19 and how it affected her major life activity of working. Starting in approximately 2006 and
20 continuing through her termination, Plaintiff made numerous requests to Kaiser about the need
21 for speech recognition software as a reasonable accommodation for her disability. This software
22 was intended to minimize the use of her hands while taking notes. Finally, months after
23 Plaintiff's requests, Kaiser agreed to provide Plaintiff with speech recognition software in her
24 office but refused to provide speech recognition software in Plaintiff's exam rooms. Starting in
25 approximately 2006 and continuing through her termination, Plaintiff again requested speech
26 recognition software in examination room but was refused her request by Kaiser. To exacerbate
27 the problem, Kaiser severely limits that amount of time Plaintiff is permitted to spend with

1 patients, which requires her to painfully handwrite notes or dictate notes and later input those
2 notes through speech recognition software. Moreover, Plaintiff had to take notes by hand while
3 in the exam rooms, exacerbating her disabilities and causing her unreasonable pain and
4 subsequently input her notes into the patient charts using the computer in her office.

5 75. Afterwards, Plaintiff was notified of a new rule in which she was not allowed to
6 leave the Labor and Delivery unit and go into her office to work on patient charts. As a result of
7 this arbitrary and capricious rule, Plaintiff was forced to painfully type her notes into the patient
8 charts using the computers in the examination room, without the use of her dictation software.

9 76. In December of 2010, Plaintiff again made requests to Defendant Smalls that
10 Kaiser provide her with more access to dictation software and to reasonably accommodate her
11 disability. Rather than provide this reasonable accommodation, Defendant Smalls criticized
12 Plaintiff for having "poor documentation," all while having full knowledge that Plaintiff's
13 documentation was impaired as a result of her disability.

14 77. Government Code § 12940(a) prohibits an employer from discriminating against
15 an employee in the wages, hours, and other terms and conditions of her employment, based on
16 the employee's physical disability.

17 78. Plaintiff is informed and believed that her disability and requests for reasonable
18 accommodations were a motivating factor and/or a substantial factor in Kaiser's decision to
19 terminate her employment.

20 79. The actions alleged herein were taken by managing agents and/or officers of
21 Kaiser and/or ratified by managing agents and/or officers of Kaiser. In so doing, said managing
22 agents and/or officers of Kaiser acted with oppression, fraud and malice, as those terms are used
23 in California Civil Code section 3294. As such, Plaintiff is entitled to an award of punitive
24 damages.

25 80. Government Code § 12965(b) permits the court to award reasonable attorneys'
26 fees to a plaintiff that successfully pursues a FEHA claim. Plaintiff has and will continue to
27

1 incur attorneys' fees in the pursuit of this action. As such, Plaintiff is entitled to an award of
2 reasonable attorneys' fees.

3 **SIXTH CAUSE OF ACTION**

4 **AGE DISCRIMINATION IN VIOLATION OF GOVT. CODE § 12940(a)**

5 **(AGAINST KAISER DEFENDANTS)**

6 81. Plaintiff incorporates by this reference all the preceding and subsequent
7 paragraphs.

8 82. Kaiser (including KFH, KFHP, SCPMG and each of them) is an employer, as that
9 term is used in Government Code § 12926(d), in that it regularly employs five or more persons in
10 the state of California.

11 83. At the time Plaintiff was terminated Plaintiff was fifty-eight (58) years old.

12 84. At all times relevant, Plaintiff was qualified for her position at Kaiser and
13 performed her duties satisfactorily. In fact, Plaintiff possessed superior skills and qualities
14 compared to significantly younger doctors.

15 85. Plaintiff is informed and believes and thereon alleges that Kaiser orchestrated a
16 campaign to terminate multiple employees over the age of forty by forcing their resignation or
17 unjustly terminating such older employees, while treating significantly younger workers more
18 favorably.

19 86. Over approximately the past two years, Dr. Donald Marcus would constantly ask
20 Plaintiff when she would be retiring and suggested early retirement. Plaintiff was offended from
21 the constant questions and inquired regarding why Dr. Donald Marcus kept asking these
22 questions, especially because Plaintiff was years away from the standard retirement age of sixty-
23 five (65). Marcus responded that he asked "all older people" if they were considering retiring.

24 87. Plaintiff is informed and believes that, based on her years of service with Kaiser,
25 her compensation and benefits were higher than that of significantly younger workers, which was
26 part of the reason for Kaiser's discrimination against Plaintiff based on her age. Plaintiff is also
27 informed and believes that, younger doctors at Kaiser are up to their necks in student loans and
28

1 far less likely to speak out about inadequate patient care issues, which was part of the reason for
2 Kaiser's discrimination against Plaintiff based on her age.

3 88. Plaintiff is informed and believes that significantly younger doctors made much
4 more serious errors compared to the errors supposedly made by Plaintiff.

5 89. Plaintiff is informed and believes that her responsibilities and job duties were
6 transferred to or taken over by a significantly younger employee, Dr. R. Patil, with equal or
7 inferior qualifications compared to that of Plaintiff.

8 90. Plaintiff is informed and believed that her age was a motivating factor and/or a
9 substantial factor in Kaiser's decision to terminate her employment.

10 91. Kaiser's termination of Plaintiff constituted age discrimination in violation of
11 Government Code § 12940(a).

12 92. As a direct and proximate result of this illegal behavior by Kaiser, Plaintiff has
13 suffered the loss of her job, loss of compensation, loss of job benefits, humiliation, mental
14 anguish, and severe emotional and physical distress, in an amount to be proven at trial.

15 93. The actions alleged herein were taken by managing agents and/or officers of
16 Kaiser and/or ratified by managing agents and/or officers of Kaiser. In so doing, said managing
17 agents and/or officers of Kaiser acted with oppression, fraud and malice, as those terms are used
18 in California Civil Code section 3294. As such, Plaintiff is entitled to an award of punitive
19 damages.

20 94. Government Code § 12965(b) permits the court to award reasonable attorneys'
21 fees to a plaintiff that successfully pursues a FEHA claim. Plaintiff has and will continue to
22 incur attorneys' fees in the pursuit of this action. As such, Plaintiff is entitled to an award of
23 reasonable attorneys' fees.

1 **SEVENTH CAUSE OF ACTION**

2 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**
3 **(AGAINST KAISER DEFENDANTS)**

4 95. Plaintiff incorporates by this reference all the preceding and subsequent
5 paragraphs.

6 96. At all times during her employment with Kaiser, Plaintiff performed her
7 employment duties with the utmost diligence and competence.

8 97. The decision to terminate Plaintiff was in violation of public policy and based, at
9 least in substantial part, on: (a) Plaintiff's complaints inadequate patient care as alleged herein;
10 (b) Plaintiff's complaints that Kaiser was abusing its tax-exempt status as alleged herein (c)
11 Plaintiff's age as alleged herein; and/or (d) Plaintiff's disability as alleged herein.

12 98. The actions of Kaiser as alleged herein contradicts the public policy as set forth in
13 the statutes set forth below and constitute multiple violations (or were reasonably believed by
14 Plaintiff in good faith to constitute multiple violations) of California and federal statutes,
15 including:

- 16 • California Health & Safety Code § 2056 (prohibiting retaliation against employees
17 for presenting a complaint relating to inadequate patient care);
- 18 • California Health & Safety Code § 1278.5 (prohibiting retaliation against
19 employees for presenting a complaint relating to inadequate patient care);
- 20 • California Business & Professions Code § 510 (prohibiting retaliation against
21 employees for presenting a complaint relating to inadequate patient care);
- 22 • California Labor Code § 1102.5 (prohibits employer retaliation against an employee
23 who reports a reasonably suspected violation of the law, which pursuant to Collier
24 v. Superior Court, 228 Cal. App. 3d 1117 (1991), also extends to reports made
25 directly to the employer);
- 26 • California Government Code § 12940(a) (prohibiting discrimination based on age
27 and disability);

- 1 • 26 U.S.C. § 501(c)(3);
- 2 • 26 U.S.C. § 501(e) (requirements for cooperative hospital service organizations);
- 3 • 26 U.S.C. § 501(r) (additional requirements for tax-exempt hospitals);
- 4 • 26 U.S.C. § 7201 ("Any person who willfully attempts in any manner to evade or
- 5 defeat any tax imposed by this title or the payment thereof shall, in addition to other
- 6 penalties provided by law, be guilty of a felony");
- 7 • 26 U.S.C. § 7202 ("Any person required under this title to collect, account for, and
- 8 pay over any tax imposed by this title who willfully fails to collect or truthfully
- 9 account for and pay over such tax shall, in addition to other penalties provided by
- 10 law, be guilty of a felony"); and
- 11 • Cal. Rev. & Tax. Code § 7152 (tax evasion).

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

16 100. As a proximate result of the aforesaid acts of Kaiser, Plaintiff has become
17 mentally upset, physically distressed, embarrassed, humiliated and aggravated. As a result of the
18 acts of retaliation, Plaintiff suffered harm to her reputation and claims general damages for such
19 mental and physical distress and aggravation in a sum in excess of the jurisdictional minimum of
20 this court.

21 101. The actions alleged herein were taken by managing agents and/or officers of
22 Kaiser and/or ratified by managing agents and/or officers of Kaiser. In so doing, said managing
23 agents and/or officers of Kaiser acted with oppression, fraud and malice, as those terms are used
24 in California Civil Code section 3294. As such, Plaintiff is entitled to an award of punitive
25 damages.

26 102. Plaintiff also seeks an award of attorneys' fees and costs to counsel where
27 permitted by applicable law, including under California Code of Civil Procedure section 1021.5

1 because: (a) this action confers a significant benefit to the general public or a large class of
2 persons impacted by the practices alleged herein (i.e., Kaiser's policy holders, and Kaiser's
3 patients); (b) the necessity and financial burden of private enforcement makes the award
4 appropriate; and (c) such fees should not in the interest of justice be paid out of the recovery to
5 Plaintiff.

6 **EIGHTH CAUSE OF ACTION**
7 **VIOLATION OF CALIFORNIA PENAL CODE § 632**
8 **(AGAINST ALL DEFENDANTS)**

9 103. Plaintiff incorporates by this reference all the preceding and subsequent
10 paragraphs.

11 104. Plaintiff is informed and believes that, at the request of Drs. Rhonda Smalls and
12 Donald Marcus, Kaiser and/or Drs. Rhonda Smalls and Donald Marcus used an electronic device
13 to surreptitiously tape record the meeting on June 9, 2011 that was called by Plaintiff to address
14 her concerns regarding inadequate patient care.

15 105. Plaintiff never provided her consent to the tape recording and, prior to the tape
16 recording, was never informed that the meeting would be tape recorded. The meeting took place
17 in a private conference room with a limited and select number of participants. At all times,
18 Plaintiff reasonably believed that the conversation that took place at the meeting would be
19 confidential and would not be recorded, overheard, or divulged to persons other than those who
20 were present at the meeting on June 9, 2011.

21 106. On information and belief, Defendants played and made the tape recording
22 available to others who were not present at the June 9th meeting.

23 107. At all times relevant herein, California Penal Code section 632 was in full force
24 and effect and binding on Defendants. California Penal Code section 632 provides: "(a) Every
25 person who, intentionally and without the consent of all parties to a confidential communication,
26 by means of any electronic amplifying or recording device, eavesdrops upon or records the
27 confidential communication, whether the communication is carried on among the parties in the
28

1 presence of one another or by means of a telegraph, telephone, or other device, except a radio,
2 shall be punished”

3 108. California Penal Code section 637.2 provides civil penalties and injunctive relief
4 for violations of California Penal Code section 632. More specifically, California Penal Code
5 section 637.2 provides:

6
7 (a) Any person who has been injured by a violation of this chapter may bring an action
8 against the person who committed the violation for the greater of the following
9 amounts:

- 10 (1) Five thousand dollars (\$5,000).
- 11 (2) Three times the amount of actual damages, if any, sustained by the plaintiff.
- 12 (b) Any person may, in accordance with Chapter 3 (commencing with Section 525) of
13 Title 7 of Part 2 of the Code of Civil Procedure, bring an action to enjoin and restrain
14 any violation of this chapter, and may in the same action seek damages as provided by
15 subdivision (a).
- 16 (c) It is not a necessary prerequisite to an action pursuant to this section that the
17 plaintiff has suffered, or be threatened with, actual damages.

18 109. As such, Plaintiff seeks \$5,000 from each of the Defendants and injunctive relief
19 prohibiting such future surreptitious tape recordings in the future.

20 **NINTH CAUSE OF ACTION**

21 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

22 **[AGAINST ALL DEFENDANTS]**

23 110. Plaintiff incorporates by this reference all the preceding and subsequent
24 paragraphs.

25 111. Defendants' retaliation against Plaintiff for complaining about inadequate patient
26 care and Kaiser's abuse of its "non-profit" status, deceptively "tabling" the vote at the October
27 20th meeting, harassing Plaintiff's former nurse to make up lies against Plaintiff, and
28 the illegal actions of surreptitiously recording Plaintiff, as alleged herein, were extreme and
outrageous acts and taken with the intention of causing Plaintiff extreme emotional distress,
humiliation, embarrassment and mental anguish. Such conduct exceeded the inherent risks of
employment and was not the sort of conduct normally expected to occur in the workplace.

1 112. As a result of those extreme and outrageous acts, Plaintiff has suffered extreme
2 emotional distress and incurred medical expenses for the treatment of said emotional distress, in
3 an amount to be proved at the time of trial, but in any event sufficient to satisfy the jurisdictional
4 limits of this Court.

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

10 **JURY TRIAL DEMANDED**

11 114. Plaintiff demands a jury as to all causes of action.

12 **PRAYER FOR RELIEF**

13 115. WHEREFORE, Plaintiff prays judgment against defendants as follows:

- 14 a. For general economic and non-economic damages according to proof;
15 b. For injunctive relief as requested herein;
16 c. For special damages according to proof;
17 d. For punitive damages where allowed by law;
18 e. For prejudgment interest pursuant to California Civil Code section 3287
19 and/or California Civil Code section 3288 and/or any other provision of
20 law providing for prejudgment interest;
21 f. For attorneys' fees where allowed by law;
22 g. For costs of suit incurred herein; and

23 //

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25 //

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28

1 h. For such other and further relief as this Court deems just and proper.

2
3 Respectfully submitted,

4 THE MATHEWS LAW GROUP

5
6 Dated: February 16, 2012

7 By: 

8 Charles T. Mathews
9 Attorneys for Plaintiff,
10 BARBARA ZIPKIN, M.D.
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Barbara Zipkin, M.D.
13730 Mammoth Place
Sherman Oaks, CA 91423

July 13, 2011

Department of Managed Health Care
Office Of The Patient Advocate
980 9th Street, Suite 500
Sacramento, CA 95814

California Department of Insurance
300 South Spring Street, South Tower
Los Angeles, CA 90013

The Medical Board of California
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815

Franchise Tax Board
PO Box 1565
Rancho Cordova, CA 95741

Dear State Officials,

My name is Barbara Zipkin, M.D. and I have been a doctor at Kaiser Permanente for over thirty years with a glowing record for patient care. Out of respect for my title as doctor and, more importantly, out of respect for patients, I write this letter to bring to your attention major issues with patient care at Kaiser. Additionally, I find it necessary to inform you that, although Kaiser claims that I am a "partner" of Southern California Permanente Medical Group ("SCPMG"), I am truly an employee whose every move—down to how many minutes I can spend with my patients—must be authorized and approved by "administrators." Finally, I feel it is necessary to inform you that, although Kaiser claims to be a "not for profit" HMO, the main concern at Kaiser/SCPMG is maximizing profits at the expense of patient care.

Kaiser/SCPMG spends a fortune to advertise its supposed desire for patients to "THRIVE." However, the only thing that Kaiser/SCPMG wants to THRIVE is their profits and bonuses to executives. As many of the doctors at Kaiser/SCPMG are much younger, up to their neck in student loans and would not dare speak out against the administration, I feel obligated to make this formal complaint.

Inability To Spend Sufficient Time With Patients And Lack Of Appropriate Access To Healthcare

The administrators at Kaiser/SCPMG dictate that doctors must spend 420 minutes with patients each day (seven hours). However, in these seven hours doctors are expected to see approximately twenty five patients and complete all necessary paperwork. Doctors, including myself, who find it necessary to spend more time with a given patient, are retaliated against in a number of ways. First, there is absolutely no compensation for working above 420 minutes per day, which means that doctors have an incentive to make sure they move on to the next patient quickly and on schedule. Second, doctors who choose to spend more time with their patients (at

EX. A

their own expense), routinely lose vacation time, have clinics that are important to them canceled and suffer other retaliatory measures. Third, Kaiser/SCPMG administrators refuse to reschedule patient appointments where the doctor needs to conduct a more serious medical procedure; rather the patient load just piles up on the doctors. Fourth, Kaiser/SCPMG administrators actually reduce doctors' compensation for non-compliance with the set patient schedules. Finally, a number of qualified physicians refuse to see patients because they claim to have "administrative duties" that are more important. These doctors include Rhonda Smalls, Gladys Lowera and Lorrie Dubow. These doctors, who claims to be my "partners," go to great lengths to keep their schedules confidential to conceal the fact that they are not seeing their fair share of patients. By shifting their work to other doctors, the level of care provided to all patients suffers dramatically. As a result of this minute-by-minute micromanagement and penalties for spending more time with patients, doctors at Kaiser/SCPMG simply cannot provide appropriate medical care.

I was so concerned with these practices, that I called a "partners meeting," which the administrators (my supposed fellow "partners") took great efforts to avoid. At this meeting, I was vocal about the need for increased staffing levels, more time with patients and an emphasis on care and not profits. I also spoke out against doctors Rhonda Smalls, Gladys Loera and Lorrie Dubow by noting their refusal to see patients and refusal to share their schedules, like the rest of the doctors are required to do. Shortly after this meeting, a series of retaliatory events against me started, including placing me on administrative leave without any explanation.

It is also worth noting that a number of doctors, including myself, have carpal tunnel syndrome or other disabilities that makes it difficult for us to write down patient records. I complained about this issue for a number of months before I was provided dictation software. However, this software is only in my office and not in the exam rooms where I see my patients, which means that I need to still take notes and then spend additional time dictating those notes into a more thorough patient record. This is merely one example of Kaiser/SCPMG preference to save a few hundred dollars, rather than obtain necessary resources for to ensure appropriate medical care for their patients.

"Partners" Are Really Employees, Who Are Merely Called "Partners" To Give Some Guise Of Doctor Autonomy

In addition, I firmly believe that I am a partner in name only. I have little control over my work product and professional schedule. SCPMG instructs me which location I should work at and has full control of my work schedule. If I am unable to comply with the work schedule that has been set out for me, I am threatened with having my salary lowered. When I speak out for patients' rights I am retaliated against and placed on "administrative leave" without any explanation. Moreover, my work is supervised by doctors Rhonda Smalls, Gladys Loera and Lorrie Dubow, whom I must report to. I possess no management authority and have no ability to influence the organization whatsoever. Indeed, SCPMG has questioned my ability to even call

together a partners' meeting to express legitimate concerns regarding patient care.

Kaiser/SPMG's Concern Is Strictly Profits – Not Patient Care


I have included the Franchise Tax Board on this letter to express my concerns that, contrary to its status as a non-profit organization, all business decisions made by Kaiser are made with the sole intent of maximizing profit. Kaiser's sole motivation of maximizing profit, rather than operating for a public or charitable benefit, is antithetical to the requirements of a non-charitable organization.

I Beg You To Take Action To Help Kaiser/SCPMG's Patients

In sum, Kaiser/SCPMG has started the process of making up lies against me and creating their "paper trail" to ruin my reputation, which took me decades to earn. Therefore, despite my efforts, I cannot effect change from within Kaiser/SCPMG and beg you to take action to help patients have a fighting chance for appropriate medical care. I have enclosed an article discussing how Kaiser gives its executives millions of dollars in bonus, while at the same time cutting staff on the frontlines of patient care. As a supposed "partner," I can tell you without any doubt all Kaiser cares about is profit. How can they continue to enjoy non-profit status?

Please contact me with any questions you may have or any additional information that would be helpful. My patients deserve better and the profession of medicine deserves better.

With sincere concern and appreciation,



Barbara Zipkin, M.D.
(818) 783-7979

cc:

Donald Marcus, M.D.
Rhonda Smalls, M.D.
Michael Tome, M.D.

393 E. Walnut St.
Pasadena CA 91188

4841 Hollywood Blvd.
Los Angeles, CA 90027

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As Kaiser Workers Face Cuts, Execs Have Enjoyed Lavish Benefits



First Posted: 7/12/11 04:03 PM ET Updated: 7/12/11 04:03 PM ET

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Despite strong profits and robust executive compensation at Kaiser Permanente, workers for the California-based health care giant say they're facing down cuts to their health and retirement benefits in pending contract negotiations.

Proposed cuts include freezing employees' defined-benefit pension plan and switching to a less desirable defined-contribution plan, according to a flier circulated by the National Union of Healthcare Workers. Workers are being asked to accept a more costly employee health insurance plan and cuts to their retirement health benefits, the union says.

While those cuts get debated, Kaiser executives have been living well. Pay and perks for high-ranking officials at the nonprofit have been generous in recent years, according to disclosure forms.

In 2009, the most recent year for which figures were available, George Halvorson, the CEO for Kaiser Foundation Health Plan & Kaiser Foundation Hospitals, received compensation of \$6.7 million. Halvorson's package included a \$1.2 million payment to his "supplemental non-qualified retirement plan." More than 40 other officers and employees received payments to such retirement stashes -- several of them in the hundreds of thousands of dollars.

Members of management have also received large "relocation" loans from the nonprofit. Philip Fasano, the chief information officer and vice president, was given such a loan for half a million dollars, according to Kaiser's IRS filings. Disclosure forms with the State of California indicate that two of those relocation loans -- including one for \$500,000 -- are forgivable, meaning that the principal of the loan can eventually be forgiven, so long as conditions are met in the short-term. (The state filings do not name the officers who received the forgivable loans.)

John E. Nelson, a Kaiser spokesperson, told HuffPost that the nonprofit's executive compensation is fair and reasonable, given that between its hospital network and health plans Kaiser is "by far the largest and most complex health care organization in the nation."

"Compensation paid to senior management is substantially less than that of many for-profit health plans, and less than would be expected when compared to nonprofit health care companies, once the size and complexity of Kaiser Permanente is taken into account," Nelson wrote in an email. "Kaiser Permanente's senior management have unique leadership positions, in that they have the equivalent of two roles: overseeing a major health plan with 6.8 million members, as well as a total care delivery system in multiple states with 36 hospitals, 450 medical office buildings, and 500 pharmacies."

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Kaiser reported a net income of \$921 million for the first quarter of 2011. Last month the non-profit announced it would be raising premium rates by about 11 percent on 300,000 Californians enrolled in plans through small businesses -- a hike much smaller than some other insurers have recently implemented, but a hike nonetheless.

Turusew Gedebe-Wilson, a Kaiser dietician who's been involved in the bargaining talks between workers and management, says she finds the prospect of cuts to employee retirement and health benefits "shocking."

"If the organization is making a lot of money, if the executives are making a lot of money, then why do they want to take away so much?" Gedebe-Wilson said. "To tell us that we have to be paying more is really mind-boggling to me."

Nelson would not say whether Kaiser management indeed seeks concessions from workers, noting that the negotiation process is not complete. The nonprofit intends to bargain with workers "in good faith," Nelson said, and it plans on providing "market-competitive" employee benefits to attract the best talent possible. Nelson declined to say whether executives would take cuts to their benefits if employees were asked to do so.

"Kaiser Permanente sets senior management compensation levels so that the organization can successfully attract and retain the leadership it needs to deliver affordable, high quality health care," Nelson said.

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1 SWORN DECLARATION OF JOCELYN BAILEY

2 I, Jocelyn Bailey, hereby declare as follows:

3 1. I am over the age of 18 years old and a citizen of the United States. I have
4 personal knowledge of the facts contained herein and if called as a witness, I could and would
5 competently testify thereto.

6 2. I began my career at Southern California Permanente Medical Group ("Kaiser")
7 in approximately May of 2008 as a licensed vocational nurse.

8 3. I began working with Dr. Barbara Zipkin ("Dr. Zipkin") in approximately January
9 of 2009, who I was assigned to specifically until June 21, 2011. I would work for Dr. Zipkin
10 every day she was present at work and on Dr. Zipkin's off days I was assigned as "floater nurse"
11 to assist other doctors.

12 4. On June 22, 2011, Sherry Mounts the Department Administrator for Kaiser ("Ms.
13 Mounts"), called me on my cellular phone and informed me that I would be placed on
14 suspension due to the "incident with Zipkin." Ms. Mounts would not explain further but stated
15 that she would send me letter explaining what the "incident" was referring to.

16 5. On June 23, 2011, I received a letter dated June 22, 2011 from Ms. Mounts.
17 However, the letter did not explain what the "incident" was referring to. A true and correct copy
18 of the letter from Ms. Mounts is attached hereto as Exhibit A.

19 6. On June 24, 2011, I went to see my primary care physician (Dr. Roraldo) because
20 I was very stressed, not eating and not sleeping due to the stress caused by my forced suspension.
21 Dr. Roraldo placed me on stress leave.

22 7. On June 27, 2011, Ms. Mounts called me at home and informed me that there
23 would be a meeting on June 30, 2011 in Kaiser's Human Resource Department and that I was
24 required to attend and that I should bring my Union Representative.

25 8. On June 30, 2011, I went to the meeting in the Human Resource Department. The
26 meeting was regarding an amniocentesis performed by Dr. Joyce Huffaker on June 21, 2011.
27 Ms. Mounts asked me whether I knew "the couple sitting in the laser room, waiting for the
28 amnio?" I informed Ms. Mounts that I never saw anyone sitting in the laser room.

1 9. Ms. Mounts asked me whether Dr. Zipkin performed the amniocentesis. I
2 responded that Dr. Zipkin did not perform the amniocentesis. I also informed Ms. Mounts that,
3 at the time the amniocentesis was performed, Dr. Zipkin and I were both in clinic, which is at the
4 other end of the medical building.

5 10. Ms. Mounts then asked me what the couple looked like, how tall they were, what
6 language did they speak, the color of their hair, whether there was both a man and women
7 present and whether I had seen the couple before. I responded that I never saw the couple and
8 therefore could not answer her questions. I was told by the Human Resources Representative
9 that I would be allowed to return to work after my stress leave. The Human Resources
10 Representative also asked me to inform her if anyone retaliated against me.

11 11. On September 7, 2011, I returned to work at Kaiser after my stress leave expired.
12 Immediately upon returning to work, numerous Kaiser employees asked me what happened to
13 Dr. Zipkin, who was no longer at work. I did not provide any of these employees with any
14 information because I did not know what happened to Dr. Zipkin.

15 12. On September 7, 2011, Nancy Maturano, a licensed vocational nurse working for
16 Kaiser approached me and informed me that Ms. Mounts had spoken to her and asked whether I
17 performed the amniocentesis and that she informed Ms. Mounts that I did not perform the
18 amniocentesis because I was busy in another area of the medical building at the time the
19 amniocentesis was performed.

20 13. On September 8, 2011, Ms. Mounts called me and requested that I report to her
21 office. When I arrived at Ms. Mounts' office, she informed me that I needed to get my Union
22 Representative because she wanted to have another meeting regarding Dr. Zipkin. Ms. Mounts
23 stated she wanted the meeting to be held right away. However, my Union Representative was
24 not available for a meeting on such short notice.

25 14. On a day, in between September 8, 2011 and September 20, 2011, Ms. Mounts
26 came by my desk at the nurses' station and called me into her office. I went to Ms. Mounts'
27 office and she accused me of "stealing Kaiser's time" for reading a book for waiting for my next
28 patient to check in. I believe this was in retaliation against me for not lying about Dr. Zipkin and

1 her lack of involvement in the amniocentesis because multiple other nurses at the nurses' station
2 were on the internet and gossiping but I was singled out.

3 15. On another day, in between September 8, 2011 and September 20, 2011, Debbie
4 Allen, Ms. Mounts' assistant, accused me of violating Kaiser policy for not smiling. Ms. Allen
5 informed me that Ms. Mounts and Dr. Rhonda Smalls, "would not like it if I didn't smile." I
6 believe this was in retaliation against me for not lying about Dr. Zipkin and her lack of
7 involvement in the amniocentesis.

8 16. On September 13, 2011, I was informed that I would be assigned as the nurse for
9 Rhonda Smalls ("Dr. Smalls"). I thought this was very odd because Dr. Smalls already had a
10 nurse, Fabiola Medina, who was assigned to her exclusively. I was told by Sheila Arca the
11 Registered Nurse for module 5D, the module where Dr. Smalls works, that I was assigned to Dr.
12 Smalls so that she could directly supervise me. At this time, I believed that I was being set up
13 for termination for not lying about Dr. Zipkin and her lack of involvement in the amniocentesis.

14 17. On September 20, 2011, I was with a patient and Ms. Mounts approached me and
15 demanded that I follow her to her office. Ms. Mounts stated that we were going to have the
16 meeting right now because "HR wants the meeting right away." I responded that I needed my
17 Union Representative. Ms. Mounts replied that she had a Union Steward, Marilyn Owens "Ms.
18 Owens", for the meeting. I told Ms. Mounts that she was violating my rights because I was
19 entitled to Union Representative of my choice and that I was entitled to a Union Representative
20 not a Union Steward.

21 18. Ms. Mounts demanded that the meeting continue. At this time, Ms. Owens said
22 that was Ms. Mounts' demand to proceed with the meeting "was not right" and she phoned for a
23 Union Representative. Ms. Owens was on the phone with Ardie Bowen ("Ms. Bowen"), my
24 Union Representative, and while on the phone told Ms. Mounts that Ms. Bowen needed to speak
25 with her and wanted to know what Ms. Mounts' direct dial number was. Ms. Mounts refused to
26 provide her number and Ms. Owen then left the room, leaving me alone with Ms. Mounts.

27 19. Ms. Mounts read to me a "level 4 disciplinary action," which accused me of
28 committing fraud by scheduling patients in the clinic for Dr. Zipkin who Ms. Mounts said that

1 Dr. Zipkin saw in the operating room and not in the clinic. Ms. Mounts also accused me of
2 incorrectly stating that Dr. Zipkin was unavailable to see a patient during a specific time when
3 Dr. Zipkin was supposedly available. Both of these accusations are false and relate to supposed
4 conduct that occurred well over a year prior to my meeting with Ms. Mounts.

5 20. Ms. Mounts told me I had two choices: to quit or to be fired. I informed Ms.
6 Mounts that I started feeling very sick and was going to vomit. Ms. Mounts told me to use the
7 restroom and then return to see her. I went to the restroom and vomited. After I vomited, I went
8 to see a nurse, who after seeing how sick I was, gave me oxygen and called 911. Paramedics
9 arrived and transported me to the emergency room, where various tests were performed and I
10 was given an Ativan for my anxiety.

11 I declare under penalty of perjury under the laws of the State of California that the
12 foregoing is true and correct.

13 Executed this 10th day of October, 2011, at San Marino, California.

14 
15 Jocelyn Bailey
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KAISER PERMANENTE®

Medical Care Program
Southern California Region

INTER-OFFICE MEMORANDUM

TO: Jocelyn Bailey

DATE: 6-22-11

FROM: Sherry Mounts
Department Administrator

SUBJECT: Investigatory Suspension **LOCATION:** Ob-Gyn, LAMC **EXT.:** 3-8791

CC: Mirza Meek
Tina Simmons-Parish
Ardie Bowen
Julie Long

CONFIDENTIAL

This is to inform you that you are being placed on a paid investigatory suspension effective immediately to enable the Employer time to review the circumstances and facts surrounding an incident that occurred on 6-21-11.

If the investigation results conclude that you have not violated policy, procedures, or other standards and rules established by the Employer, you will be returned to work. If the investigation results conclude that you violated policy procedures, or other standard and rules established by the employer, you will be subjected to corrective action up to and including termination of your employment. You must remain available by phone during business hours to ensure we are able to contact you for follow-up questions. The phone number we will be using to contact you is home: 818-838-4446. Please let us know if this number is not correct.

You are expected to refrain from any conduct that would interfere with or impede the gathering of accurate and truthful information from employees or other sources in this on-going investigation. You must also not retaliate against any person who brought the issues to the employer or violate any other Kaiser Permanente policy. You are also advised not to return to the Kaiser Permanente premises during this investigatory suspension period unless you are seeking medical attention or attending a prescheduled meeting with management or Human Resources. Violation of these requirements may, independently, result in corrective action, up to and including termination. You are also encouraged to refrain from any unnecessary conversation about the investigation.

If you have any questions, please contact me at 323-783-8791.

Jocelyn Bailey (Employee unavailable, Notified by phone and in writing) 6-22-2011
Employee Name Date

Ardie Bowen, (Notified via e-mail) 6-22-2011
Business Representative Date

Revised: 9/11/08

Jurat

State of California

County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 10th day of October

20 11 by Jocelyn Bailey

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Andrea Marie Mitchell

Signature

(Notary seal)



OPTIONAL INFORMATION

INSTRUCTIONS FOR COMPLETING THIS FORM

The wording of all Jurats completed in California after January 1, 2008 must be in the form set forth within this Jurat. There are no exceptions. If a Jurat to be completed does not follow this form, the notary must correct the verbiage by using a jurat stamp containing the correct wording or attaching a separate jurat form such as this one which does contain proper wording. In addition, the notary must require an oath or affirmation from the document signer regarding the truthfulness of the contents of the document. The document must be signed AFTER the oath or affirmation. If the document was previously signed, it must be re-signed in front of the notary public during the jurat process.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the jurat process is completed.
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Signature of the notary public must match the signature on file with the office of the county clerk.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-send if a sufficient area permits, otherwise complete a different jurat form.
 - ◊ Additional information is not required but could help to ensure this jurat is not misused or attached to a different document.
 - ◊ Indicate title or type of attached document, number of pages and date.
- Securely attach this document to the signed document

DESCRIPTION OF THE ATTACHED DOCUMENT

Sworn Declaration of Jocelyn Bailey
(Title or description of attached document)

and Memorandum (6-22-11) attached
(Title or description of attached document continued)

Number of Pages 5 Document Date 10-10-2011

(Additional information)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
 Charles T. Mathews (SBN 55889)
 THE MATHEWS LAW GROUP
 2596 Mission Street, Suite 204
 San Marino, CA 91108
 TELEPHONE NO.: 626-683-8291 FAX NO.: 626-683-8295
 ATTORNEY FOR (Name): Plaintiff, Barbara Zipkin, M.D.

FOR COURT USE ONLY
FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF LOS ANGELES
 FEB 16 2012
 John A. Clarke, Executive Officer/Clerk
 BY *[Signature]* Deputy
 Member La-Pera-Clayton

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles
 STREET ADDRESS: 111 N. Hill Street
 MAILING ADDRESS:
 CITY AND ZIP CODE Los Angeles, 90012
 BRANCH NAME: Central District - Stanley Mosk Courthouse

CASE NAME:
 ZIPKIN v. KAISER FOUNDATION HEALTH PLAN INC., et al.

CASE NUMBER: **BC479175**

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000)
 Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter **Joinder**
 Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

JUDGE:
 DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
- | | | |
|--|---|---|
| <p>Auto Tort</p> <input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (48) <p>Other PIPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (46)
<input type="checkbox"/> Other PIPD/WD (23) <p>Non-PIP/WD (Other) Tort</p> <input type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-PIP/WD tort (35) <p>Employment</p> <input checked="" type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | <p>Contract</p> <input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37) <p>Real Property</p> <input type="checkbox"/> Eminent domain/inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26) <p>Unlawful Detainer</p> <input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38) <p>Judicial Review</p> <input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | <p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <p>Enforcement of Judgment</p> <input type="checkbox"/> Enforcement of judgment (20) <p>Miscellaneous Civil Complaint</p> <input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42) <p>Miscellaneous Civil Petition</p> <input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |
|--|---|---|

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): NINE (9)
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: February 16, 2012
 Charles T. Mathews, Esq. *[Signature]*
 (TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in Item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PIP/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
 - Asbestos Property Damage
 - Asbestos Personal Injury/Wrongful Death
- Product Liability *(not asbestos or toxic/environmental)* (24)
- Medical Malpractice (45)
 - Medical Malpractice—Physicians & Surgeons
 - Other Professional Health Care Malpractice
- Other PIP/PD/WD (23)
 - Premises Liability (e.g., slip and fall)
 - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
 - Intentional Infliction of Emotional Distress
 - Negligent Infliction of Emotional Distress
 - Other PIP/PD/WD

Non-PIP/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
 - Legal Malpractice
 - Other Professional Malpractice *(not medical or legal)*
- Other Non-PIP/PD/WD Tort (35)

Employment

- Wrongful Termination (36)
- Other Employment (15)

Contract

- Breach of Contract/Warranty (06)
- Breach of Rental/Lease
 - Contract *(not unlawful detainer or wrongful eviction)*
- Contract/Warranty Breach—Seller Plaintiff *(not fraud or negligence)*
- Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
- Collection Case—Seller Plaintiff
- Other Promissory Note/Collections Case
- Insurance Coverage *(not provisionally complex)* (18)
 - Auto Subrogation
 - Other Coverage
- Other Contract (37)
 - Contractual Fraud
 - Other Contract Dispute

Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
 - Writ of Possession of Real Property
 - Mortgage Foreclosure
 - Quiet Title
 - Other Real Property *(not eminent domain, landlocked, or foreclosure)*

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
 - Writ—Administrative Mandamus
 - Writ—Mandamus on Limited Court Case Matter
 - Writ—Other Limited Court Case Review
- Other Judicial Review (39)
 - Review of Health Officer Order
 - Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment

- Enforcement of Judgment (20)
 - Abstract of Judgment (Out of County)
 - Confession of Judgment *(non-domestic relations)*
 - Sister State Judgment
 - Administrative Agency Award *(not unpaid taxes)*
 - Petition/Certification of Entry of Judgment on Unpaid Taxes
 - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint *(not specified above)* (42)
- Declaratory Relief Only
- Injunctive Relief Only *(non-harassment)*
- Mechanics Lien
- Other Commercial Complaint Case *(non-tort/non-complex)*
- Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition *(not specified above)* (43)
 - Civil Harassment
 - Workplace Violence
 - Elder/Dependent Adult Abuse
 - Election Contest
 - Petition for Name Change
 - Petition for Relief From Late Claim
 - Other Civil Petition

SHORT TITLE

ZIPKIN v. KAISER FOUNDATION HEALTH PLAN INC., et al.

CASE NUMBER

BC479175

**CIVIL CASE COVER SHEET ADDENDUM AND
STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? YES CLASS ACTION? YES LIMITED CASE? YES TIME ESTIMATED FOR TRIAL 7-10 HOURS DAYS

Item II. Indicate the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet form, find the main Civil Case Cover Sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

Step 2: Check one Superior Court type of action in Column B below which best describes the nature of this case.

Step 3: In Column C, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (see Column C below)

- | | |
|--|--|
| 1. Class actions must be filed in the Stanley Mosk Courthouse, central district. | 8. Location of property or permanently garaged vehicle. |
| 2. May be filed in central (other county, or no bodily injury/property damage). | 7. Location where petitioner resides. |
| 3. Location where cause of action arose. | 8. Location wherein defendant/respondent functions wholly. |
| 4. Location where bodily injury, death or damage occurred. | 9. Location where one or more of the parties reside. |
| 5. Location where performance required or defendant resides. | 10. Location of Labor Commissioner Office. |

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death - Uninsured Motorist	1., 2., 4.
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
	Product Liability (24)	<input type="checkbox"/> A7250 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 4. 1., 4.
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1., 4.
		<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1., 4.
<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress		1., 3.	
<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death		1., 4.	

SHORT TITLE:

ZIPKIN v. KAISER FOUNDATION HEALTH PLAN INC., et al.

CASE NUMBER

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Non-Personal Injury/Property Damage/Wrongful Death Tort	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 3.
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (18)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.
	Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
	Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Employment	Wrongful Termination (36)	<input checked="" type="checkbox"/> A6037 Wrongful Termination	1, 2, 3
	Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Contract	Breach of Contract/Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
	Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
	Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 6.
	Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 6.
	Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2.
	Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Real Property	Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
	Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
	Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer	Unlawful Detainer- Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2., 6.
	Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.

SHORT TITLE

ZIPKIN v. KAISER FOUNDATION HEALTH PLAN INC., et al.

CASE NUMBER

A Civil Case Cover Sheet Category No.	B Type of Act on (Check only one)	C Applicable Reasons - See Step 3 Above
Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2, 6.
Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2, 5.
Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2, 8. 2. 2
Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ/Judicial Review	2, 8.
Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1, 2, 8.
Construction Defect (10)	<input type="checkbox"/> A6007 Construction Defect	1, 2, 3.
Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1, 2, 8.
Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1, 2, 8.
Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1, 2, 3, 8.
Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1, 2, 5, 8.
Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2, 9. 2, 6. 2, 9. 2, 8. 2, 8. 2, 8, 9.
RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1, 2, 8.
Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1, 2, 8. 2, 8. 1, 2, 8. 1, 2, 8.
Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2, 8.
Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2, 3, 9. 2, 9, 9. 2, 3, 9. 2. 2, 7. 2, 3, 4, 8. 2, 9.

Judicial Review

Provisionally Complex Litigation

Enforcement of Judgment

Miscellaneous Civil Complaints

Miscellaneous Civil Petitions

SHORT TITLE: ZIPKIN v. KAISER FOUNDATION HEALTH PLAN INC., et al.	CASE NUMBER
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Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected for this case. <input type="checkbox"/> 1. <input checked="" type="checkbox"/> 2. <input checked="" type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.		ADDRESS: 4867 Sunset Boulevard
CITY: Los Angeles	STATE: CA	ZIP CODE: 90027

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Stanley Mosk courthouse in the Central District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., § 392 et seq., and Local Rule 2.0, subds. (b), (c) and (d)].

Dated: February 16, 2012


 (SIGNATURE OF ATTORNEY FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 03/11).
5. Payment in full of the filing fee, unless fees have been waived.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.