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CARRIE HARRIS-MULLER
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF ALAMEDA

11 CARRIE HARRIS-MULLER, an individual
12 Plaintiff,

13 v.

14 KAISER FOUNDATION HEALTH PLAN
INC., a corporation, KAISER
15 FOUNDATION HOSPITALS, a
corporation; MID-ATLANTIC
16 PERMANENTE MEDICAL GROUP, a
corporation; THE PERMANENTE
17 MEDICAL GROUP, INC., a corporation;
and DOES 1 through 10 inclusive,
18

19 Defendants.

CASE NO.

COMPLAINT FOR:

1. **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**
2. **LIBEL – CALIFORNIA CIVIL CODE §§ 45 AND 45a**
3. **SLANDER – CALIFORNIA CIVIL CODE § 46**
4. **NEGLIGENT SUPERVISION & RETENTION**
5. **INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS**

JURY TRIAL DEMANDED BY PLAINTIFF

FILED BY FAX

ALAMEDA COUNTY

October 11, 2011

CLERK OF
THE SUPERIOR COURT
By Rosanne Case, Deputy

CASE NUMBER:
RG11599464

1 Plaintiff Carrie Harris-Muller (“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. Over a decade ago, Plaintiff started her employment with Kaiser (defined below)
5 and based on her outstanding performance and excellent reviews quickly rose to the highest
6 levels of management. Plaintiff earned the executive position of Chief Administrative Officer
7 and had responsibility for a number of areas, including maintaining and assessing the risk of
8 losing Kaiser Foundation Health Plan, Inc. and Kaiser Foundation Hospitals’ 501(c)(3) tax-
9 exempt status. In this capacity, Plaintiff became aware of and reported a number of concerns to
10 Kaiser that it was abusing and was not compliant with its tax-exempt status.

11 2. Plaintiff’s reporting to Kaiser included, for example, the fact that Kaiser
12 Foundation Health Plan, Inc. and Kaiser Foundation Hospitals were: (a) funneling funds to
13 related **for-profit** Kaiser entities (Mid-Atlantic Permanente Medical Group and The Permanente
14 Medical Group, Inc.); (b) not focusing on providing benefits to patients and the community and
15 instead using its fraudulently-obtained tax-exempt status to fuel its market expansion/dominance;
16 (c) only concerned with increasing its membership numbers to increase profits, instead of
17 focusing on patient care and benefits to the community; and (d) spending funds in an unjustified
18 and non-charitable manner, such as lavish events in Hawaii.

19 3. After expressing her concerns regarding elaborate employee meetings and events,
20 and entertaining customers in lavish places in Hawaii for example, Plaintiff was unjustly accused
21 of writing a letter to Kaiser’s Chairman and Chief Executive Officer, George C. Halvorson, and
22 Kaiser’s President and Chief Operating Officer, Bernard Tyson. The Bullying Letter (defined
23 below), which Plaintiff was accused of writing, complained about the unsafe working conditions,
24 that often resulted in serious medical conditions, faced by Kaiser’s employees who are “bullied”
25 by Dr. Bernadette Loftus, The Permanente Medical Group’s Associate Executive Director. The
26 bullying complained of in the letter related to Dr. Loftus crushing any employee standing in the
27 way of Kaiser’s domination in the insurance industry.

1 11. Plaintiff is informed and believes and thereon alleges that Defendant KFHP is an
2 insurance company which purports to provide comprehensive total medical care to its members.
3 KFHP describes itself as the largest Health Maintenance Organization in the country. KFHP
4 exercises total control over Defendants KFH, MAPMG and TPMG and a number of other
5 corporate and partnership entities such that their very existence as purported separate entities is
6 in fact a sham designed to perpetuate the myth that KFHP and KFH are a legitimate "non-profit"
7 corporation. Plaintiff is informed and believes that KFHP and KFH are in fact a "for profit"
8 enterprise regularly reporting their profitability publicly. For example, on August 5, 2011,
9 Kaiser reported:

10 Kaiser Foundation Hospitals, Kaiser Foundation Health Plan, Inc., and their
11 respective subsidiaries (KFH/HP) reported today a combined operating revenue of
12 \$11.9 billion for the quarter ending June 30, 2011, compared to \$11.0 billion in
13 the same period in 2010. Operating income was \$390 million in the second
14 quarter of 2011, compared to \$313 million in the same quarter last year. Net non-
15 operating income was \$273 million in the second quarter of 2011, compared to
16 \$91 million in the same quarter last year. As a result, net income for the second
17 quarter was \$663 million versus net income of \$404 million in the same period
18 last year. These are the combined operating results for Kaiser Foundation
19 Hospitals, Kaiser Foundation Health Plan, Inc., and their respective subsidiaries.¹

20 12. KFHP's total dominance over KFH, MAPMG and TPMG is evidenced by the
21 fact that KFH, MAPMG and TPMG's entire annual budget is set by, controlled by, and approved
22 by KFHP; all funds for KFH, MAPMG and TPMG's operations come from KFHP; KFHP
23 determines what "profit" if any MAPMG and TPMG are allowed to make; money that MAPMG
24 and TPMG uses to pay bonuses to its doctors comes from KFHP; MAPMG and TPMG does not
25 bill any patients for most of its services; barring emergencies or extremely rare instances,
26 MAPMG and TPMG doctors are only allowed to work for KFHP members exclusively;
27 MAPMG and TPMG's only source of money is from KFHP. KFHP provides virtually all legal,
28 human resources, insurance, communications, advertising, billing, and other necessary services
for KFH, MAPMG and TPMG. Members buying health care coverage only pay money to
KFHP, not to MAPMG or TPMG; they buy insurance from KFHP and they receive services

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

1 through MAPMG or TPMG. Advertising for the health care offered by KFHP as health
2 insurance and provided through MAPMG or TPMG doctors is done predominantly by KFHP,
3 advertising as "Kaiser Permanente" as seen in the multi-million dollar "Thrive" advertising
4 campaign. MAPMG and TPMG do not own hospitals, medical buildings, or the clinics where
5 they work; they are owned by KFHP. KFHP provides all telephone, fax, and e-mail services for
6 MAPMG and TPMG. KFHP also provides health insurance and medical malpractice insurance
7 to MAPMG and TPMG's doctors. KFHP lawyers routinely render legal advice and counsel to
8 KFHP, MAPMG and TPMG, and have unfettered access to KFHP, MAPMG and TPMG's records;
9 KFHP's Human Resources department routinely investigates any EEOC/DFEH or other
10 complaints of discrimination, as well as issues regarding reasonable accommodations, regarding
11 KFHP, MAPMG and TPMG's practices and employees, reporting to KFHP's legal department on
12 all such investigations; KFHP lawyers and human resources staff do not obtain privacy waivers
13 when seeking records of KFHP, MAPMG and/or TPMG employees or investigating their claims;
14 KFHP provides and pays for all facilities in which KFHP, MAPMG and TPMG conduct business.

15 13. Defendants KFHP, KFHL, MAPMG and TPMG, if not separately noted are
16 hereinafter collectively referred to as "Kaiser." These Defendants are collectively liable under
17 either a joint employer theory or a single enterprise theory.

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

24 15. Plaintiff is informed and believes that at all times relevant herein, each defendant
25 designated, including Does 1 through 10, was the agent, managing agent, principal, owner,
26 partner, joint venturer, representative, manager, servant, employee and/or co-conspirator of each
27 of the other defendants, and was at all times mentioned herein acting within the course and scope

1 of said agency and employment, and that all acts or omissions alleged herein were duly
2 committed with the ratification, knowledge, permission, encouragement, authorization and
3 consent of each defendant designated herein.

4 **JURISDICTION AND VENUE**

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

7 17. Under California Code of Civil Procedure section 395(a), venue is proper in this
8 county because the defendants, or some of them, reside in Alameda County; and/or the injury
9 (the decision to terminate Plaintiff) occurred in Alameda County.

10 **FACTUAL ALLEGATIONS**

11 **A. Plaintiff's Excellent Employment Record With Kaiser**

12 18. Throughout her employment with Kaiser, Plaintiff "consistently exceeded"
13 expectations in her various roles and responsibilities. This is in part evidenced by Plaintiff's
14 performance reviews conducted and prepared by Kaiser from 2006 until 2010.

15 19. In her 2006 and 2007 performance reviews, for her position as the VP of Regional
16 Health Plan Administration, which she held for 6 years and 6 months, Plaintiff earned the overall
17 rating of "CE – Consistently Exceeded Most Expectations." These reports detail how Plaintiff
18 consistently met and even exceeded expectations to "participate in the tax exempt risk
19 assessment and play a role in the development of a remediation plan," "hit all critical goals,"
20 "take responsibility for compliance with regulatory requirements," "maintain a high ethical
21 standard at all times," "build and maintain policies and practices that achieve compliance,"
22 "move organization toward common best practice processes and systems," "surface issues and
23 manage conflicts to achieve win-win solutions," "promote effective team communication,"
24 etcetera.

25 20. Moreover, Plaintiff's manager, Marilyn Kawamura, made additional comments
26 stressing Plaintiff's excellent leadership and performance, including: "[Carrie] took this dept.
27 from the performance and reputation of the worst of the HP functions to one that is recovering at
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1 lightning speed. Internal customer feedback is tremendously improved and the impact upon the
2 organization is palpable. The transition required Carrie to demonstrate exquisite leadership,
3 courage, confidence and emotional intelligence to take this on and achieve new levels of
4 performance. Excellent.”

5 21. In 2008, having diligently and outstandingly served Kaiser for 8 years and 7
6 months, Plaintiff was promoted to the position of Chief Administrative Officer (CAO). Her
7 responsibilities in her new position included maintaining and assessing the risk of losing Kaiser
8 Foundation Health Plan, Inc. and Kaiser Foundation Hospitals’ 501(c)(3) tax-exempt status as a
9 charitable organization, government relations, human resources, communications and
10 contracting. Once again, in her 2008 and 2009 performance reviews, Plaintiff was held to be a
11 remarkable leader and earned an overall rating of “CE – Consistently Exceeded Most
12 Expectations” in her various roles. Particularly, in one of her many comments praising
13 Plaintiff’s strengths and accomplishments, Ms. Kawamura stated that “in the case of contracts
14 and benefits, Carrie assumed this function in the heat of regulatory issues with the Maryland
15 Insurance Administration and created plans to address these serious problems immediately.” Ms.
16 Kawamura went on to state that Plaintiff had the “expected result” of “[a]ctively support work to
17 remediate issues identified in 2007 tax risk assessment” and achieved the “actual result” of
18 “[s]upported 2007 tax risk assessment by: providing structure for non-member access and
19 Medicaid.”

20 22. In 2010, due to her continuously successful performance, Plaintiff was given
21 more challenging responsibilities and goals, which she executed with the utmost excellence and
22 professionalism. In fact, in her 2010 performance review, Plaintiff earned an even higher overall
23 rating of “Exceptional Performance.” Ms. Kawamura noted, “I am increasing the rating to
24 excellent performance due to the number of outstanding accomplishments this department has
25 achieved. Carrie has been instrumental in reshaping the strategic plan and ensuring the
26 department will be able to make meaningful advancements.” The review further goes on to
27 discuss Plaintiff’s skills as a leader, her loyalty to Kaiser and its staff, her compelling vision, and
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1 her ability to build strong relationships with customers, regulators and politicians. In sum,
2 Plaintiff was a remarkable employee who had every reason to have a lifelong career in
3 management at Kaiser.

4 **B. Plaintiff's Reported Concerns Regarding Kaiser Abuse Of Its Tax-Exempt Status**

5 23. To be tax-exempt under section 501(c)(3) of the Internal Revenue Code, an
6 organization must be operated **exclusively** for exempt purposes set forth in section 501(c)(3), and
7 **none of its earnings may inure to any private shareholder or individual**. As alleged herein,
8 Plaintiff raised numerous concerns to Kaiser that it was not compliant with either of these
9 requirements. Plaintiff raised these concerns to a number of members of management and
10 Kaiser's legal team, including Mark Zemelman (Senior Vice President and General Counsel of
11 Kaiser Foundation Hospitals and Kaiser Foundation Health Plan, Inc.), Raymond J. Baxter
12 (Kaiser's Senior Vice President of Community Benefit, Northern California), Ms. Kawamura
13 (President, Kaiser Foundation Health Plan of the Mid-Atlantic States), and Gregory Adams
14 (Group president, Kaiser Foundation Hospitals, Kaiser Foundation Health Plan, Inc., regional
15 president, Northern California).

16 24. Starting in approximately 2007 and continuing to her termination, Plaintiff
17 reported to Kaiser that the funneling of its earnings from the tax-exempt Kaiser Foundation
18 Health Plan, Inc. and Kaiser Foundation Hospitals to the **for-profit** Kaiser entities (Mid-Atlantic
19 Permanente Medical Group, and The Permanente Medical Group, Inc.) was a critical concern
20 and would result in losing 501(c)(3) tax-exempt status, and thereby increase tax liabilities by
21 billions of dollars.

22 25. Starting in approximately 2007 and continuing to her termination, Plaintiff
23 reported to Kaiser that to maintain the tax-exempt status of Kaiser Foundation Health Plan, Inc.
24 and Kaiser Foundation Hospitals, these entities needed to focus on providing benefits to the
25 community and patients, instead of focusing so heavily on using the billions of dollars in benefits
26 from its tax-exempt status to fuel its market expansion/dominance and further increase profits.

1 26. In 2008, Plaintiff reported to Kaiser that it was spending funds in an unjustified
2 manner, including the Kaiser Permanente's Platinum Circle event in Hawaii. The event is
3 described as:

4 Sun, fun, and relationship-building are on the agenda for brokers at Kaiser
5 Permanente's Platinum Circle event in Hawaii next spring. Be one of the top 10
6 qualified producers of 2008 and you'll be invited.
7 You'll receive complimentary airfare and accommodations for two at a luxury
8 Fairmont resort, where you'll mingle with senior Kaiser Permanente executives
9 and your counterparts from around the country. There will be plenty of time for
10 snorkeling, golf, a spa treatment, or just relaxing.²

11 27. Starting in approximately 2007 and continuing to her termination, Plaintiff
12 reported to Kaiser that it was not maintaining an appropriate threshold of revenue to meet its
13 501(c)(3) obligations of providing benefits to the community. This was a major and growing
14 concern for Kaiser. For example, in 2010, Plaintiff reported to her superiors that Kaiser's Mid-
15 Atlantic region only used 2.5% of its revenues to provide community benefits, which was
16 actually an increase over the community benefits provided in prior years. This increase was
17 based on Plaintiff's efforts as noted in her performance reviews.

18 28. Moreover, Kaiser's Mid-Atlantic region was not providing any care to indigents
19 or uninsured people – it only provides care to Kaiser members and is not a Medicaid
20 participating health plan. By comparison, an IRS study of 544 non-profit hospitals provided that
21 “the average and median percentages of total revenues reported as spent on aggregate
22 community benefit expenditures were 9% and 6%, respectively, for the overall group.”³ Kaiser's
23 intentional deficiency in charitable expenditures resulted in surplus profits exceeding \$5 billion.
24 Although Kaiser failed to come anywhere near the threshold level of community benefits
25 provided by other hospitals, Kaiser still compensated its executives, who were responsible for
26 overseeing the provision of community benefits, at approximately 110% of their target bonuses.

25 ²https://brokernet.kp.org/broker/resources/!ut/p/c0/04_SB8K8xLLM9MSSzPy8xBz9CP0os3jDEFcPU0MvIwN342BTAYPLIC8XFz9nI_9AY_2CbEdFAJY68Qg!/?PC_7_FUT5KKG100VJE0ISM25OM2004_WCM_CONTEXT=/broker/wcm/connect/BWPContent/bwp/resource+library/newsletter/nw_resource_newsletter_broker_update_mar_apr_08#2

26 ³ <http://www.irs.gov/pub/irs-tege/frepthospproj.pdf>

1 29. In early December of 2010, Plaintiff reported to the National Community Benefit
2 Board, at a meeting held in California (Plaintiff participated by conference call), that Kaiser
3 failed to use even 3% of its revenue to provide community benefits. The Chair of the Board
4 expressed great concern and further stated that Bernard Tyson did not have the authority to
5 approve Kaiser's shortfall for the region.

6 **C. The "Bullying Letter"**

7 30. In February 2011, a number of Kaiser employees (referred to in the letter as "the
8 Bullied") prepared and sent a lengthy letter to George Halvorson and Bernard Tyson pleading for
9 help (the "Bullying Letter"). The content of the Bullying Letter focused on the "hostile,
10 harassing environment" employees were subjected to on a daily basis. The abusive work
11 environment took a toll on these employees' health, caused them to lose sleep, suffer from
12 anxiety and panic, and live in continuing fear. In particular, the letter discusses Dr. Robert
13 Pearl's "intentional" hiring of Bernadette Loftus (referred to in the letter as the "bully") to
14 "whip" people into submission.

15 31. The employees go on to state that they consider Kaiser's message of wanting
16 people to "live well, be well, and thrive" to be "hypocritical" given the fact that its employees
17 are constantly assaulted, marginalized and berated by Bernadette Loftus, her "soldiers" and other
18 executives. In one of the many descriptions of Kaiser's hostile work environment, the
19 employees state: "When interacting with Bernadette and her soldiers . . . you find yourself
20 searching for help on how to battle out of control anxiety. Deep down we hope that there is
21 some way to make this work, without giving up and having to start all over again with a new job.
22 The work place bully steals our, focus, productivity, confidence, and most importantly our
23 sanity."

24 32. Furthermore, the employees explain how they are trapped in this environment
25 because they fear that reporting the unsafe working conditions to management will cause
26 retaliation against them. More specifically, they state "[w]e've tried and have been told that
27 since Dr. Pearl is in charge, and he hand picked Bernadette, reporting it would be political
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1 suicide. . . . He is 'Permanente.' Management will not thank us, protect us, or even advise us.
2 Instead, they will covertly attack and target us and join with Bernadette the 'Bully' and her
3 soldiers."

4 33. The employees end the letter by once again begging for help. "We are asking
5 you, Mr. Halvorson and Mr. Tyson, to please do something about it. You ask "what?" Conduct
6 an anonymous interview of several people (both MAPMG and health plan) in the region and
7 then, decide Many of those copied on this letter also know the truth. They, too, are afraid."

8 The letter was cc'd to: Jack Cochran, John August, Greg Adams, Robert Pearl, Marilyn
9 Kawamura, Bernadette Loftus, Ken Hunter, Dan Garcia, Kay Lewis, Susan Leggett-Johnson,
10 Stan Kramer, Doug Cappiello, Chuck Phillips, Tom Tesoriero, Susan Moriarty, Jennifer Baldwin
11 Jackie Bradley, Tam Westmorland, Ann Cahill, Beverley Brinson, Tom McNutt, Gail Heath,
12 Chris Sauter, Sharon Taylor, Ruben Burnett, and EW Emanuel.

13 34. To Plaintiff's knowledge, no corrective measures were taken against Dr. Loftus
14 and no investigation was conducted by Kaiser into the actions of Dr. Pearl and Dr. Loftus as a
15 result of the Bullying Letter.

16 **D. Kaiser's Retaliation Against Plaintiff And Plaintiff's Termination**

17 35. Around April 2011, Plaintiff's supervisor, Marilyn Kawamura, accused Plaintiff
18 of writing the Bullying Letter.

19 36. Plaintiff was shocked at the accusation and immediately denied writing the
20 Bullying Letter. Plaintiff went on to explain that she, for years, openly discussed Dr. Loftus'
21 harassing and demeaning management and the resulting unsafe working conditions directly with
22 Ms. Kawamura. Therefore, it did not make sense for Plaintiff to write an anonymous letter
23 reporting these same concerns. Ms. Kawamura ended the discussion by stating that she felt
24 Plaintiff had the whole package to be a strong leader at Kaiser but that she needed to "work on
25 her integrity."

26 37. Feeling extremely hurt and stunned by the groundless allegations, Plaintiff
27 returned to her office in tears. From that point on, Plaintiff noticed a drastic change in Ms.
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1 Kawamura's behavior toward her, which was also noticed by a number of Plaintiff's colleagues.
2 Ms. Kawamura's behavior had a mental and physical affect on Plaintiff as she was left feeling
3 anxious, uneasy, stressed and worried about her job. Plaintiff also started experiencing heart
4 palpitations and abdominal pain and saw a doctor for her anxiety and stress.

5 38. In May, Plaintiff had a meeting with Ms. Kawamura and informed her that she
6 was deeply hurt that, after 10 years of service and loyalty, Plaintiff did not know why this would
7 be happening and that she was physically being affected by Kaiser's accusations. Plaintiff then
8 asked Ms. Kawamura to conduct a full investigation into the allegation that she authored the
9 Bullying Letter and assured Ms. Kawamura that she would turn over any personal effects and
10 cooperate fully.

11 39. Plaintiff went on to explain to Ms. Kawamura that she was concerned about her
12 reputation and felt marginalized in the organization and asked whether Kaiser was trying to get
13 rid of her, given the fact that she had seen similar patterns of retaliation against other executives
14 who were targeted for termination in the past.

15 40. Ms. Kawamura responded that she would be talking to Greg Adams and Bernard
16 Tyson (in California) about the issue because she needed guidance about what to do. Plaintiff
17 then stated that she was the primary bread winner in her home and began crying. Ms. Kawamura
18 expressed that she was "concerned about Plaintiff's future at Kaiser" and asked whether Plaintiff
19 would consider transferring to another region or just leaving the company. Plaintiff responded
20 by stating that she had not fully evaluated the situation but that if Kaiser leadership had turned
21 against her, then it was not something that she could ever recover from.

22 41. The meeting ended with Ms. Kawamura asking Plaintiff to come to her if she
23 decided to leave Kaiser and that she would have a discussion with the "big boys in California,"
24 referring to Bernard Tyson and Greg Adams, about Plaintiff's situation and potential termination
25 from Kaiser. On information and belief, the order to terminate Plaintiff originated from George
26 C. Halvorson and Bernard Tyson.

1 42. After learning about the allegation and Ms. Kawamura's behavior toward her,
2 Plaintiff confided in another Kaiser executive, Ken Hunter, regarding her concern that she was
3 being targeted. Ken Hunter expressed to Plaintiff that he felt she was being pushed out of the
4 organization and that Kaiser was harassing and retaliating against her. Plaintiff was mentally
5 and physically destroyed by the humiliating allegations and fell deeper into isolation from her
6 colleagues, which made coming into work each day painful and agonizing.

7 43. After the investigation into the Bullying Letter did not lead to the conclusion that
8 Plaintiff was the author of the letter, Kaiser dug up two baseless and irrelevant accusations
9 regarding Plaintiff and placed her on administrative leave to conduct a supposed investigation
10 into these new accusations.

11 44. Kaiser's first allegation was that Plaintiff accepted the Chairperson position of the
12 Montgomery County Chamber of Commerce after being told by Ms. Kawamura that she did not
13 have her permission to do so. However, after Plaintiff provided more information about the role
14 of the Chairperson, Ms. Kawamura agreed that Plaintiff could request to be the Chair elect of
15 2010. Plaintiff was publicly acknowledged as being the Chair elect of 2010 for the Montgomery
16 County Chamber of Commerce in the presence of multiple Kaiser employees, including Ms.
17 Kawamura. Therefore, Ms. Kawamura was completely aware that Plaintiff was the Chair elect
18 for the Chamber of Commerce and did not oppose it. Furthermore, Kaiser encourages its
19 executives to actively participate in communities they live in and a number of Kaiser's
20 executives sat on other Chamber boards, including Ms. Kawamura who sat on the D.C. Chamber
21 and Ken Hunter who sat on the Fairfax County Chamber board. Yet, Plaintiff's appointment as a
22 Chairperson was somehow a reason for an investigation and grounds for her termination in direct
23 contradiction of Kaiser policy and practice.

24 45. Kaiser's second allegation had to do with Plaintiff's consultant position with GLG
25 Research, which Ms. Kawamura was aware of and agreed to. Following Ms. Kawamura's
26 instructions, Plaintiff, in an email response, had declined to participate in a particular
27 consultation with GLG Research. Plaintiff wrote "[s]ince this requires an additional level of
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1 approval, I would like to respectfully decline the invitation.” Plaintiff was accused of altering
2 this email when she forwarded it to Ms. Kawamura by removing the portion of the email that
3 stated “[s]ince this requires an additional level of approval.”

4 46. Based on these allegations, which carry microscopic weight given Plaintiff’s
5 history of exceptional performance and loyalty, Plaintiff was terminated from her employment at
6 Kaiser. In a letter to Plaintiff, Ms. Kawamura stated the pretextual reasons for Plaintiff’s
7 termination: “Your actions in accepting positions contrary to my instructions, failure to discuss
8 your activities or any disagreement with me, intentionally hiding information from me and your
9 failure to be forthright when questioned are totally unacceptable have irrevocable destroyed my
10 trust and confidence in your work and/or ability to work together. . . . Therefore, effective
11 Friday, June 24, 2011, your employment with the Health Plan will be terminated.” Since her
12 departure, Plaintiff has been informed by a few people that Ms. Kawamura told Plaintiff’s staff
13 that the decision to terminate Plaintiff was made by the highest levels of the organization,
14 including George Halvorson. Plaintiff has also received hundreds of cards, emails and calls from
15 Kaiser employee’s expressing their disappointment in Plaintiff’s departure.

16 **FIRST CAUSE OF ACTION**

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

18 **[AGAINST ALL DEFENDANTS]**

19 47. Plaintiff incorporates by this reference all the preceding paragraphs.

20 48. The decision to terminate Plaintiff was based, at least in substantial part, on: (a)
21 Kaiser’s belief that it was Plaintiff who wrote the Bullying Letter complaining about the unsafe
22 working conditions caused by Dr. Loftus; and/or (b) Plaintiff’s discovery and reporting of
23 concerns regarding Kaiser Foundation Health Plan, Inc. and Kaiser Foundation Hospitals’ non-
24 compliance with the laws regulating its tax-exempt status as alleged herein.

25 49. The actions of Kaiser as alleged herein constitute multiple violations (or were
26 reasonably believed by Plaintiff in good faith to constitute multiple violations) of California and
27 federal statutes, including:

- 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 defeat
- 5 any tax imposed by this title or the payment thereof shall, in addition to other penalties
- 6 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 pay
- 8 over any tax imposed by this title who willfully fails to collect or truthfully account for
- 9 and pay over such tax shall, in addition to other penalties provided by law, be guilty of a
- 10 felony”);
- 11 • California Labor Code § 1102.5(b) (prohibits employer retaliation against an employee
- 12 who reports a reasonably suspected violation of the law, which pursuant to Collier v.
- 13 Superior Court, 228 Cal. App. 3d 1117 (1991), extends to reports made directly to the
- 14 employer);
- 15 • California Labor Code § 6400 (“Every employer shall furnish employment and a place of
- 16 employment that is safe and healthful for the employees”); and
- 17 • California Labor Code § 6401 (“Every employer shall furnish and use safety devices and
- 18 safeguards, and shall adopt and use practices, means, methods, operations, and processes
- 19 which are reasonably adequate to render such employment and place of employment safe
- 20 and healthful. Every employer shall do every other thing reasonably necessary to protect
- 21 the life, safety, and health of employees.”).

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

1 recently come to my attention, which demonstrate that you have engaged in a
2 course of conduct that is seriously at variance with these standards. . . .

3 56. In the same letter, Ms. Kawamura (acting as an agent of Kaiser and within the
4 course of her employment), wrote false and unprivileged statements tending to injure Plaintiff's
5 profession by stating that Plaintiff was dishonest and deceitful by supposedly altering emails, had
6 poor judgment and was hiding her activities. The libelous per se statement is:

7 While conducting the review of the issues related to MCCC, we obtained access
8 to your e-mail and learned that the e-mail you forwarded to me reflecting your e-
9 mail exchange with Mr. Kerbel was altered and that you had removed several
10 comments to Mr. Kerbel stating that you were declining the consultation because
11 it required "an additional level of approval". Not only was the alteration of the e-
12 mail inherently wrong but the content of your actual response again was a part of
13 a pattern of your hiding your activities from me.

14 57. In the same letter, Ms. Kawamura (acting as an agent of Kaiser and within the
15 course of her employment), wrote false and unprivileged statements tending to injure Plaintiff's
16 profession by implying that Plaintiff approved expenditures for personal gain and usurped
17 Kaiser's funds. The libelous per se statement is:

18 In addition, Tam Westmoreland advised that if you accepted a leadership role with
19 MCCC, a firewall regarding expenditures for that body should be created (i.e. they should
20 not be approved by you or your subordinates).
21 Nevertheless, I have learned that during 2010 and 2011, you approved expenditures of
22 over \$100,000 for MCCC events. Again, you did not discuss any of those expenditures
23 with me.

24 58. The accusation that Plaintiff approved expenditures of over \$100,000 in 2010 and
25 2011 is completely false. A full accounting of Kaiser's expenditures provided by the
26 Montgomery County Chamber of Commerce reveals that Kaiser spent approximately \$100,000
27 over a three year period (from 2009-2011). Moreover, Ms. Kawamura violated the same
28 supposed "firewall" procedure Plaintiff was accused of by approving expenditures for the D.C.
Chamber of Commerce, which she is a director of, and by approving annual expenditures of over
\$100,000 for events in Howard County, where Ms. Kawamura resides. The letter with the above
libelous language was published by Ms. Kawamura (acting as an agent of Kaiser and within the
course of her employment) to multiple individuals, including Gregory Adams (Group president,
Kaiser Foundation Hospitals, Kaiser Foundation Health Plan, Inc., regional president, Northern

1 California). On information and belief, Ms. Kawamura and Gregory Adams republished the
2 libelous statements alleged above to other third-parties.

3 59. The libelous statements alleged herein were made by Ms. Kawamura (acting as an
4 agent of Kaiser and within the course of her employment) with actual malice because Ms.
5 Kawamura knew that the statements were not true or made such statements with wanton
6 disregard as to their truth or falsity, and published the statements with intent to retaliate against
7 Plaintiff for the Bullying Letter and her reports regarding Kaiser's abuse of its tax-exempt status,
8 to injure, disgrace and defame Plaintiff.

9 60. In addition to the above statements being libelous per se, as a proximate result of
10 the libelous statements, Plaintiff has suffered damages to her professional reputation, which was
11 excellent prior to Kaiser's defamation of Plaintiff. Further, the libelous statements resulted in
12 Plaintiff losing her employment with Kaiser, which resulted in economic loss to Plaintiff in an
13 amount to be proved at trial, including her salary, retirement benefits and other benefits.

14 61. 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 **THIRD CAUSE OF ACTION**

20 **SLANDER – CALIFORNIA CIVIL CODE § 46**

21 **[AGAINST ALL DEFENDANTS]**

22 62. Plaintiff incorporates by this reference all the preceding paragraphs.

23 63. In approximately June of 2011, Ms. Kawamura (acting as an agent of Kaiser and
24 within the course of her employment) published false and unprivileged oral statements to
25 multiple people, including Gregory Adams. On information and belief, these slanderous
26 statements blamed Plaintiff for authoring the Bullying Letter, accused Plaintiff of being
27

1 dishonest by hiding her activities and supposedly altering emails, and accused Plaintiff of
2 approving expenditures for personal gain and usurping Kaiser's funds.

3 64. The slanderous statements alleged herein were made by Ms. Kawamura (acting as
4 an agent of Kaiser and within the course of her employment) with actual malice because Ms.
5 Kawamura knew that the statements were not true or made such statements with wanton
6 disregard as to their truth or falsity, and published the statements (to numerous people, including
7 Gregory Adams) with intent to retaliate against Plaintiff for the Bullying Letter and her reports
8 regarding Kaiser's abuse of its tax-exempt status, to injure, disgrace and defame Plaintiff.

9 65. In addition to the above statements being defamatory per se, as a proximate result
10 of the statements, Plaintiff has suffered damages to her professional reputation, which was
11 excellent prior to Kaiser's defamation of Plaintiff. Further, the slanderous statements resulted in
12 Plaintiff losing her employment with Kaiser, which resulted in economic loss to Plaintiff in an
13 amount to be proved at trial, including her salary, retirement benefits and other benefits.

14 66. 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 **FORTH CAUSE OF ACTION**

20 **NEGLIGENT SUPERVISION/RETENTION OF EMPLOYEE**

21 **[AGAINST ALL DEFENDANTS]**

22 67. Plaintiff incorporates by this reference all the preceding paragraphs.

23 68. Kaiser owed a duty to Plaintiff to provide a safe workplace free from intimidation,
24 threats and fear of retaliation and harassment.

25 69. Kaiser knew or should have known, from Plaintiff's complaints, the complaints of
26 other employees and the Bully Letter that Bernadette Loftus was harassing employees and
27 causing employees to suffer physical and mental harm. Additionally, in April 2011, Plaintiff had

1 the opportunity to spend some individual time with Bernard Tyson and Mr. Tyson acknowledged
2 and admitted to Plaintiff that Bernadette Loftus was known in Kaiser's Northern California
3 region as a "bully" and had a reputation of being difficult to work with. Thus, the harm suffered
4 by Plaintiff as alleged below was foreseeable to Kaiser.

5 70. Kaiser failed to and/or refused to take any corrective measures with regarding to
6 Bernadette Loftus and her harassment of employees, including Plaintiff.

7 71. As a proximate result of the aforesaid acts of Kaiser, Plaintiff was damaged by
8 being harassed by Bernadette Loftus, being accused of writing the Bullying Letter, and suffering
9 extreme emotional distress, humiliation, embarrassment and mental anguish.

10 **FIFTH CAUSE OF ACTION**

11 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

12 **[AGAINST ALL DEFENDANTS]**

13 72. Plaintiff incorporates by this reference all the preceding paragraphs.

14 73. Kaiser's blaming of Plaintiff for writing the Bully Letter, retaliation against
15 Plaintiff for reporting abuses of Kaiser's tax-exempt status, the defamation of Plaintiff and the
16 wrongful termination of Plaintiff as alleged herein were extreme and outrageous acts and taken
17 with the intention of causing Plaintiff extreme emotional distress, humiliation, embarrassment
18 and mental anguish. Such conduct exceeded the inherent risks of employment and was not the
19 sort of conduct normally expected to occur in the workplace.

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

24 75. 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 **JURY TRIAL DEMANDED**

4 76. Plaintiff demands a jury as to all causes of action.

5 **PRAYER FOR RELIEF**

6 77. WHEREFORE, Plaintiff prays judgment against defendants as follows:

- 7 a. For general economic and non-economic damages according to proof;
8 b. For special damages according to proof;
9 c. For punitive damages where allowed by law;
10 d. For prejudgment interest pursuant to California Civil Code section 3287
11 and/or California Civil Code section 3288 and/or any other provision of
12 law providing for prejudgment interest;
13 e. For attorneys' fees where allowed by law;
14 f. For costs of suit incurred herein; and
15 g. For such other and further relief as this Court deems just and proper.

16 Respectfully submitted,

17 THE MATHEWS LAW GROUP

18
19
20 Dated: October 11, 2011

21 By: 

22 Charles T. Mathews
23 Attorneys for Plaintiff,
24 CARRIE HARRIS-MULLER
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