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8 Kaiser Foundation Health Plan, Inc.,
The Permanente Medical Group, Inc.
9

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT - OAKLAND DIVISION

12 ROBIN LOVE,) Case No. C. 12-5679 YGR
13 Plaintiff,)
14 v.) DEFENDANTS' NOTICE OF MOTION AND
15 KAISER FOUNDATION HOSPITALS,) MOTION TO DISMISS FIRST AND FIFTH
16 KAISER FOUNDATION HEALTH PLAN,) COUNTS OF FIRST AMENDED
17 INC., THE PERMANENTE MEDICAL) COMPLAINT; and
18 GROUP, INC., and DOES 1 - 10, inclusive,)
Defendants.) DEFENDANTS' NOTICE OF MOTION AND
MOTION TO STRIKE REFERENCES TO
SECTION 1278.5, CAL. HEALTH & SAFETY
CODE
[Fed. R. Civ. P. 12(b)(6) & 12(f)]

19 Accompanying Documents: Memorandum;
20 Request for Judicial Notice; Proposed Order

21 Date: July 2, 2013
22 Time: 2:00 p.m.
23 Judge: Honorable Yvonne Gonzalez Rogers
24 Crtm: 5

25 **TO PLAINTIFF AND HER COUNSEL OF RECORD:**

26 **PLEASE TAKE NOTICE** that on July 2, 2013, at 2:00 p.m. in Courtroom 5 of the
27 Oakland Division of the U.S. District Court, Northern District of California, the Honorable
28 Yvonne Gonzalez Rogers presiding, defendants Kaiser Foundation Hospitals, Kaiser Foundation
Health Plan, Inc., and The Permanente Medical Group, Inc. (together, "defendants") will and
now do move pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss the first and fifth counts in plaintiff

Defs.' Notice of Motions and
Motions To Dismiss and Strike
Case no. C. 12-5679

1 Robin Love’s first amended complaint, as well as pursuant to Fed. R. Civ. P. 12(f) to strike
2 references to Cal. Health & Safety Code § 1278.5 in that complaint.

3 Defendants move to dismiss the First and Fifth counts on the ground each fails to state a
4 claim on which relief can be granted. The First Count fails as a matter of state law and is
5 preempted by section 301 of LMRA because section 1278.5, Cal. Health & Safety Code, does not
6 apply to employee complaints about worker safety. The Fifth Count is fatally flawed because
7 plaintiff does not and cannot allege that she took advantage of administrative remedies before
8 bringing suit and because the exclusive process for challenging an alleged credentialing action is
9 by an administrative writ of mandate. Accordingly, defendants request that the Court dismiss
10 plaintiff’s first and fifth causes of action without leave to amend.

11 Defendants also move to strike the following references to Cal. Health & Safety Code §
12 1278.5 in plaintiff’s first amended complaint (“FAC”):

- 13
- 14 - “Defendant KFH is subject to the requirements of Health and Safety
15 Code section 1278.5 because it owns and operates licensed health
16 care facilities governed by Health and Safety Code section 1278.5.”
17 [FAC ¶ 44 at 9:10-12];
 - 18 - “In acting as described above, Defendants, and each of them, violated
19 Health and Safety Code § 1278.5” [FAC, ¶ 46 at 9:18-19];
 - 20 - “The termination also violated the public policy expressed in
21 California Health and Safety Code section 1278.5 to protect health
22 care workers who present a grievance, complaint or report to a health
23 facility.” [FAC ¶ 55 at 11:4-6];
 - 24 - “Pursuant to Health and Safety Code section 1278.5 and Labor Code
25 section 6210...” [FAC ¶ 76 at 14:14].

26 Plaintiff fails to allege a violation of Cal. Health & Safety Code § 1278.5, and therefore these
27 references may properly be stricken as immaterial.
28

1 Respectfully submitted,

2 Dated: May 24, 2013

MARION'S INN LLP
MARK PALLEY
DAVID M. ROSENBERG-WOHL
TANYA G. CECENA

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4
5 By: Mark Palley Date: 2013.05.24
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8 Kaiser Foundation Hospitals,
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10 The Permanente Medical Group, Inc.