# APPENDIX

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**APPENDIX A — MEMORANDUM OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED MARCH 18, 2024**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-16684

D.C. No. 3:19-cv-03727-JD

JAMILAH TALIBAH ABDUL-HAQQ,

*Plaintiff-Appellant,*

v.

PERMANENTE MEDICAL GROUP, INC., TPMG FORM UNKNOWN, KAISER FOUNDATION HOSPITALS, (KFH) UNKNOWN FORM, TERYE GAUSTAD, DENNIS RAMAS, ROBERTO MARTINEZ, SONYA BROOKS, KAROL BURNETT-QUICK, SHELLEY ROMBOUGH, BERNARD TYSON, GREGORY ADAMS, CALIFORNIA NURSES ASSOCIATION, (CNA),

*Defendants-Appellees,*

Appeal from the United States District Court
for the Northern District of California
James Donato, District Judge, Presiding

Submitted March 18, 2024*
San Francisco, California

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* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

*Appendix A*

Before: WALLACE, FERNANDEZ, and SILVERMAN, Circuit Judges.

**MEMORANDUM**[**]

Plaintiff-Appellant Jamilah Talibah Abdul-Haqq appeals pro se from the district court's summary judgment in favor of Defendant-Appellee Permanente Medical Group, Inc. (TPMG) on Abdul-Haqq's claim of wrongful termination and the district court's summary judgment in favor of Defendant-Appellee California Nurses Association (CNA) on Abdul-Haqq's claim of breach of the duty of fair representation. We have jurisdiction pursuant to 28 U.S.C. § 1291. "We review de novo a district court's ruling on a summary judgment motion." *Cottonwood Env. L. Ctr. v. Edwards*, 86 F.4th 1255, 1260 (9th Cir. 2023). "We review the district court's rulings concerning discovery . . . for abuse of discretion." *Goodman v. Staples The Office Superstore, LLC*, 644 F.3d 817, 822 (9th Cir. 2011).

1. The district court properly granted summary judgment for TPMG on Abdul-Haqq's claim of wrongful termination based on disability discrimination and retaliation. In California, both disability discrimination and retaliation for filing workplace complaints provide a basis for a common law wrongful discharge claim. *See City of Moorpark v. Superior Ct.*, 18 Cal. 4th 1143, 1161, 77 Cal. Rptr. 2d 445, 959 P.2d 752 (1998) (disability discrimination); *Wilkin v. Cmty. Hosp. of the Monterey Peninsula*, 71 Cal. App. 5th 806, 828, 286 Cal. Rptr.

** This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

3d 729 (2021) (retaliation). When, as here, a plaintiff seeks to prove her wrongful termination claim based on circumstantial evidence, California applies the federal three-part burden-shifting test from the Supreme Court's decision in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973). *See Wills v. Superior Ct.*, 195 Cal. App. 4th 143, 159, 125 Cal. Rptr. 3d 1 (2011), citing *Guz v. Bechtel Nat'l, Inc.*, 24 Cal. 4th 317, 354-55, 100 Cal. Rptr. 2d 352, 8 P.3d 1089 (2000).

Assuming without deciding that Abdul-Haqq established a prima facie case, TPMG established a nondiscriminatory, nonretaliatory reason for terminating Abdul-Haqq—multiple violations of TPMG policy that negatively impacted patient care and the workplace environment. Abdul-Haqq does not dispute that she committed these violations. Thus, the burden shifts back to Abdul-Haqq. To establish pretext, she "must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons." *Hersant v. Dep't of Soc. Servs.*, 57 Cal. App. 4th 997, 1005, 67 Cal. Rptr. 2d 483 (1997). Abdul-Haqq contends she met this burden because she points to supposed inconsistencies in TPMG's paperwork surrounding her termination, the supposed lack of training on certain policies, and a computer problem. But these mere allegations are insufficient to show pretext when Abdul-Haqq engaged in a pattern of policy violations over multiple years, TPMG met—or attempted to meet—with Abdul-Haqq many times to address the incidents, TPMG granted her leave requests, TPMG gave Abdul-Haqq multiple verbal and

written warnings that continued violation of policy would result in termination, and TPMG only terminated Abdul-Haqq after her repeated noncompliance with reasonable requests.

Abdul-Haqq also argues that TPMG's stated reasons are mere pretext because she was terminated approximately one month after filing a complaint against TPMG with the federal Equal Employment Opportunity Commission. While evidence of temporal proximity is sufficient to demonstrate a prima facie case of retaliation, it is ordinarily insufficient to satisfy the secondary burden to provide evidence of pretext. *See Loggins v. Kaiser Permanente Int'l*, 151 Cal. App. 4th 1102, 1112, 60 Cal. Rptr. 3d 45 (2007). In this case, temporal proximity between Abdul-Haqq's termination and her complaint, when examined in the context of the record, "does not create a triable issue as to pretext, and summary judgment for the employer is proper." *See Arteaga v. Brink's, Inc.*, 163 Cal. App. 4th 327, 357, 77 Cal. Rptr. 3d 654 (2008).

2. The district court properly granted summary judgment for CNA on Abdul-Haqq's claim of breach of the duty of fair representation. A union breaches the duty of fair representation if it exercises its judgment in bad faith or in a discriminatory manner. *See Moore v. Bechtel Power Corp.*, 840 F.2d 634, 636 (9th Cir. 1988). "To establish that the union's exercise of judgment was in bad faith, the plaintiff must show 'substantial evidence of fraud, deceitful action or dishonest conduct.'" *Beck v. United Food & Commercial Workers Union*, 506 F.3d 874, 880 (9th Cir. 2007), quoting *Amalgamated Ass'n of St.,*

*Elec. Ry. & Motor Coach Employees of Am. v. Lockridge*, 403 U.S. 274, 299, 91 S. Ct. 1909, 29 L. Ed. 2d 473 (1971). The plaintiff bears the burden of proving a breach of the duty of fair representation. *See Vaca v. Sipes*, 386 U.S. 171, 177, 87 S. Ct. 903, 17 L. Ed. 2d 842 (1967). Abdul-Haqq fell short of her burden of proving that CNA breached the duty of fair representation when it opted not to pursue her case in arbitration. To the contrary, CNA faithfully attended Abdul-Haqq's disciplinary meetings, heeded Abdul-Haqq's commands regarding which arguments to raise with TPMG, and followed multiple avenues in an effort to achieve Abdul-Haqq's reinstatement or lessen TPMG's disciplinary action against her. CNA's decision not to pursue arbitration, especially considering Abdul-Haqq's significant admissions in her "rebuttal" letter, was not made in bad faith.

3. Abdul-Haqq waived her argument that the district court abused its discretion by not assisting her in discovery and not including certain documents she requested in the discovery order because she failed to object to the order or move to compel additional discovery. *See Helfand v. Gerson*, 105 F.3d 530, 536 (9th Cir. 1997) (explaining that the plaintiff waived their challenge to defendant's discovery objection by failing to bring a motion to compel); *see also Lane v. Dep't of Interior*, 523 F.3d 1128, 1134 (9th Cir. 2008) ("A district court has wide latitude in controlling discovery, and its rulings will not be overturned in absence of a clear abuse of discretion") (citation and internal quotation marks omitted); N.D. Cal. Local Rule 37-3 ("No discovery-related motions may be filed more than 7 days after the discovery cut-off"). Abdul-Haqq's pro se status

does not relieve her of her obligation to follow procedural rules. *See Briones v. Riviera Hotel Casino*, 116 F.3d 379, 381-82 (9th Cir. 1997) (per curiam).

We do not consider matters not specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

**AFFIRMED.**

## APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, FILED OCTOBER 12, 2022

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. 3:19-cv-03727-JD

JAMILAH ABDUL-HAQQ,

*Plaintiff,*

v.

PERMANENTE MEDICAL GROUP, INC., *et al.*,

*Defendants.*

October 12, 2022, Decided
October 12, 2022, Filed

### ORDER RE SUMMARY JUDGMENT RE THE PERMANENTE MEDICAL GROUP

Plaintiff Jamilah Abdul-Haqq filed this lawsuit against defendants The Permanente Medical Group (TPMG), Kaiser Foundation Hospitals (KFH), the California Nurses Association (CNA), and eight individuals, asserting various claims arising from her employment with TPMG. Dkt. No. 20. The Court dismissed all the claims except for Abdul-Haqq's wrongful termination claim against TPMG and her claim for violation of the

duty of fair representation against CNA, Dkt. No. 82, and subsequently granted summary judgment for CNA on that count, Dkt. Nos. 155, 156.

Consequently, the sole remaining claim in this case is whether TPMG wrongfully terminated Abdul-Haqq from her job as a nurse in violation of public policy. Dkt. No. 82. The Court initially understood that this claim related only to Abdul-Haqq's allegations of retaliation for filing workplace complaints, *id.*, but the parties discussed disability discrimination as another potential public policy ground in their cross-motions for summary judgment, and so that will be taken up here as well. Dkt. No. 121 (TPMG motion); Dkt. No. 126 (Abdul-Haqq motion).

The record before the Court indicated that TPMG had legitimate, non-discriminatory and non-pretextual reasons for terminating Abdul-Haqq's employment, and Abdul-Haqq did not demonstrate any genuine disputes of fact that might weigh against summary judgment. Dkt. No. 157. Even so, out of an abundance of caution in light of Abdul-Haqq's pro se status, the Court held a hearing on July 21, 2022, to allow Abdul-Haqq to identify the evidence that might warrant a trial. Dkt. Nos. 157, 177. The parties' familiarity with the record is assumed, and summary judgment is granted in TPMG's favor.

## STANDARDS

Parties "may move for summary judgment, identifying each claim or defense -- or the part of each claim or defense -- on which summary judgment is sought. The court shall

grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

A fact is material if it could affect the outcome of the suit under the governing law. *See id.* To determine whether a genuine dispute as to any material fact exists, the Court views the evidence in the light most favorable to the nonmoving party, and "all justifiable inferences are to be drawn" in that party's favor. *Id.* at 255. The moving party may initially establish the absence of a genuine issue of material fact by "pointing out to the district court that there is an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). It is then the nonmoving party's burden to go beyond the pleadings and identify specific facts that show a genuine issue for trial. *Id.* at 323-24. "A scintilla of evidence or evidence that is merely colorable or not significantly probative does not present a genuine issue of material fact." *Addisu v. Fred Meyer, Inc.*, 198 F.3d 1130, 1134 (9th Cir. 2000).

"It is not the Court's responsibility to root through the record to establish the absence of factual disputes, or to look for evidence on the nonmoving parties' behalf." *CZ Servs., Inc. v. Express Scripts Holding Co.*, No. 3:18-cv-04217-JD, 2020 U.S. Dist. LEXIS 135498, 2020 WL 4368212, at *3 (N.D. Cal. July 30, 2020) (citations

omitted); *see also Winding Creek Solar LLC v. Peevey*, 293 F. Supp. 3d 980, 989 (N.D. Cal. 2017), *aff'd*, 932 F.3d 861 (9th Cir. 2019).

## DISCUSSION

"The central assertion of a claim of wrongful termination in violation of public policy is that the employer's motives for terminating the employee are so contrary to fundamental norms that the termination inflicted an injury sounding in tort." *Roby v. McKesson Corp.*, 47 Cal. 4th 686, 702, 101 Cal. Rptr. 3d 773, 219 P.3d 749 (2009) (citing *Tameny v. Atl. Richfield Co.*, 27 Cal. 3d 167, 176, 164 Cal. Rptr. 839, 610 P.2d 1330 (1980)). To prove a wrongful-termination claim, Abdul-Haqq must show that TPMG terminated her employment, that "the termination was substantially motivated by a violation of public policy," and that "the discharge caused [her] harm." *Yau v. Allen*, 229 Cal. App. 4th 144, 154, 176 Cal. Rptr. 3d 824 (2014).

Under California law, "disability discrimination can form the basis of a common law wrongful discharge claim." *City of Moorpark v. Superior Court*, 18 Cal. 4th 1143, 1161, 77 Cal. Rptr. 2d 445, 959 P.2d 752 (1998). For Abdul-Haqq to prove wrongful termination in this context, she must show that TPMG terminated her employment "because of the disability." *Prue v. Brady Co./San Diego, Inc.*, 242 Cal. App. 4th 1367, 1378, 196 Cal. Rptr. 3d 68 (2015) (internal quotation and citation omitted).

*Appendix B*

TPMG presented solid evidence of non-discriminatory reasons for terminating Abdul-Haqq's employment. Several doctors reported that Abdul-Haqq committed errors in delivering nursing care, such as delay in administering medication and in responding to her work phone while on duty, delay in registering medication that had been administered, and failure to notify a treating physician that a patient under her care was hypotensive. *See, e.g.*, Dkt. No. 121-1, Exhs. C, D, F, H. Additionally, an investigation found that Abdul-Haqq "participated in an inappropriate, unprofessional and loud hostile verbal argument with another employee that continued on throughout patient care areas" in the emergency department. *Id.*, Exh. B. TPMG has also submitted evidence that Abdul-Haqq avoided meeting with a supervisor to discuss these incidents, and the meetings that did occur did not resolve the supervisor's concerns. Dkt. No. 121-1 ¶¶ 9-10, 14, 16, 20, 23 (Gaustad declaration); *see also id.*, Exhs. A, E. Consequently, the burden shifted to Abdul-Haqq to "demonstrate a triable issue by producing substantial evidence that the employer's stated reasons were untrue or pretextual, or that the employer acted with a discriminatory *animus*, such that a reasonable trier of fact could conclude that the employer engaged in intentional discrimination or other unlawful action." *Serri v. Santa Clara Univ.*, 226 Cal. App. 4th 830, 861, 172 Cal. Rptr. 3d 732 (2014) (internal quotation and citation omitted).

Abdul-Haqq has not adduced evidence that TPMG's reasons for terminating her employment were pretextual, or that TPMG otherwise acted with discriminatory intent.

"[G]enerally, pretext may be demonstrated by showing the proffered reason had no basis in fact, the proffered reason did not actually motivate the discharge, or, the proffered reason was insufficient to motivate discharge." *Zamora v. Sec. Indus. Specialists, Inc.*, 71 Cal. App. 5th 1, 56, 285 Cal. Rptr. 3d 809 (2021) (internal quotations and citation omitted). Again, the record shows that TPMG received multiple reports that Abdul-Haqq did not comply with its standards and policies, with implications for patient wellbeing. In response, Abdul-Haqq alleges inconsistencies in her disciplinary paperwork, disagrees with how TPMG handled her case, and says that a "computer problem was the root cause of the alleged" nursing errors. Dkt. No. 126 at 15. But the evidence she has identified is insufficient to demonstrate that TPMG's reasons were pretextual. *See Wills v. Superior Court*, 195 Cal. App. 4th 143, 160, 125 Cal. Rptr. 3d 1 (2011) ("The employee cannot simply show that the employer's decision was wrong or mistaken, since the factual dispute at issue is whether discriminatory animus motivated the employer, not whether the employer is wise, shrewd, prudent, or competent." (cleaned up)).

To the extent that Abdul-Haqq's claim for wrongful termination is premised upon retaliation, it fares no better. "In summary judgment proceedings, a FEHA [California Fair Employment and Housing Act] retaliation claim is treated the same as a FEHA discrimination claim: Where the employer presents admissible evidence . . . that the adverse employment action was based on legitimate, nondiscriminatory or nonretaliatory factors, the employer will be entitled to summary judgment unless the employee

produces admissible evidence which raises a triable issue of fact material to the employer's showing." *Wilkin v. Cmty. Hosp. of the Monterey Peninsula*, 71 Cal. App. 5th 806, 828, 286 Cal. Rptr. 3d 729 (2021) (cleaned up). Abdul-Haqq did not adduce evidence to the effect that TPMG's reasons for terminating her employment were pretextual. She points to the timing of an EEOC contact with TPMG in July 2016 and her suspension in August 2016, Dkt. No. 145 at 13, but temporal proximity alone is insufficient to carry her burden. *See Loggins v. Kaiser Permanente Int'l*, 151 Cal. App. 4th 1102, 1112, 60 Cal. Rptr. 3d 45 (2007). Temporal proximity is also insufficient to raise a genuine dispute of material fact when combined with her other evidence, such as the problems with her disciplinary paperwork.

Consequently, TPMG is entitled to judgment in its favor. Abdul-Haqq's motion for summary judgment is denied for the same reasons.

**IT IS SO ORDERED.**

Dated: October 12, 2022

/s/ James Donato
JAMES DONATO
United States District Judge

## APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, FILED MARCH 2, 2022

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. 3:19-cv-03727-JD
Re: Dkt. Nos. 132, 135

JAMILAH ABDUL-HAQQ,

*Plaintiff,*

v.

PERMANENTE MEDICAL GROUP, INC., *et al.*,

*Defendants.*

## ORDER RE MOTIONS FOR SUMMARY JUDGMENT RE CALIFORNIA NURSES ASSOCIATION

The Court's motion to dismiss order allowed pro se plaintiff Abdul-Haqq to pursue a duty of fair representation claim against her union, the California Nurses Association (CNA), solely on the basis of alleged bad faith. Dkt. No. 82 (citing *Burkevich v. Air Line Pilots Assoc., Int'l.*, 894 F.2d 346, 352-53 (9th Cir. 1990). The parties each moved for summary judgment on the bad faith claim. Dkt. No. 132 (plaintiff's motion); Dkt. No. 135 (CNA's motion). A familiarity with the record is assumed, and CNA's motion is granted. Plaintiff's motion is denied.

*Appendix C*

Parties "may move for summary judgment, identifying each claim or defense -- or the part of each claim or defense -- on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "The Court may dispose of less than the entire case and even just portions of a claim or defense." *CZ Servs., Inc. v. Express Scripts Holding Co.*, No. 3:18-CV-04217-JD, 2020 U.S. Dist. LEXIS 135498, 2020 WL 4368212, at *2 (N.D. Cal. July 30, 2020) (citing *Smith v. Cal. Dep't of Highway Patrol*, 75 F. Supp. 3d 1173, 1179 (N.D. Cal. 2014)). A dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

A fact is material if it could affect the outcome of the suit under the governing law. *Id.* To determine whether a genuine dispute as to any material fact exists, the Court views the evidence in the light most favorable to the nonmoving party, and "all justifiable inferences are to be drawn" in that party's favor. *Id.* at 255. The moving party may initially establish the absence of a genuine issue of material fact by "pointing out to the district court that there is an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). It is then the nonmoving party's burden to go beyond the pleadings and identify specific facts that show a genuine issue for trial. *Id.* at 323-24. "A scintilla of evidence or evidence that is merely colorable or not significantly probative does not

present a genuine issue of material fact." *Addisu v. Fred Meyer, Inc.*, 198 F.3d 1130, 1134 (9th Cir. 2000).

"It is not the Court's responsibility to root through the record to establish the absence of factual disputes, or to look for evidence on the nonmoving parties' behalf." *CZ Servs., Inc.*, 2020 U.S. Dist. LEXIS 135498, 2020 WL 4368212, at *3 (internal quotations and citations omitted); *see also Winding Creek Solar LLC v. Peevey*, 293 F. Supp. 3d 980, 989 (N.D. Cal. 2017), *aff'd*, 932 F.3d 861 (9th Cir. 2019). The Court's review of a union's duty of fair representation is narrow in order to give "substantial deference" to unions concerning how they represent their members. *See Peterson v. Kennedy*, 771 F.2d 1244, 1253 (9th Cir. 1985) (quoting *Johnson v. U.S. Postal Serv.*, 756 F.2d 1461, 1466 (9th Cir. 1985)). When, as here, a union's conduct involved judgment, a plaintiff may prevail only if the union's conduct was discriminatory or in bad faith. *Wellman v. Writers Guild of Am., W., Inc.*, 146 F.3d 666, 670 (9th Cir. 1998) (quoting *Marino v. Writers Guild of Am., E., Inc.*, 992 F.2d 1480, 1486 (9th Cir. 1993)); *see also Demetris v. Transp. Workers Union of Am.*, 862 F.3d 799, 805 (9th Cir. 2017) (same). The plaintiff bears the burden of establishing bad faith. *Beck v. United Food & Commercial Workers Union, Local 99*, 506 F.3d 874, 879-80 (9th Cir. 2007).

"To establish that the union's exercise of judgment was in bad faith, the plaintiff must show 'substantial evidence of fraud, deceitful action or dishonest conduct.'" *Id.* at 880 (citation omitted). A "disagreement between a union and an employee over a grievance, standing alone"

is not "evidence of bad faith, even when the employee's grievance is meritorious." *Moore v. Bechtel Power Corp.*, 840 F.2d 634, 637 (9th Cir. 1988). "[M]ere negligence and erroneous judgment calls cannot, by themselves, support an inference of bad faith." *Demetris*, 862 F.3d at 808.

Even giving Abdul-Haqq every benefit of the doubt as a pro se plaintiff, the record fails to raise a genuine dispute of material fact as to whether CNA acted in bad faith in handling Abdul-Haqq's employment issues. To the contrary, the record indicates that CNA acted in a reasoned and rational way with respect to Abdul-Haqq's concerns. To be sure, Abdul-Haqq disagreed with CNA's decision not to pursue an arbitration and other judgment calls, but that alone is not evidence of fraud, deceit, or dishonest conduct by CNA. Abdul-Haqq did not proffer any other evidence to the contrary.

Consequently, CNA is entitled to judgment in its favor. Abdul-Haqq's motion for summary judgment is denied for the same reasons.

**IT IS SO ORDERED.**

Dated: March 2, 2022

/s/ James Donato
JAMES DONATO
United States District Judge

**APPENDIX D — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED MARCH 28, 2024**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-16684

D.C. No. 3:19-cv-03727-JD
Northern District of California

JAMILAH TALIBAH ABDUL-HAQQ,

*Plaintiff-Appellant,*

v.

PERMANENTE MEDICAL GROUP, INC., TPMG FORM UNKNOWN, KAISER FOUNDATION HOSPITALS, (KFH) UNKNOWN FORM, TERYE GAUSTAD, DENNIS RAMAS, ROBERTO MARTINEZ, SONYA BROOKS, KAROL BURNETT-QUICK, SHELLEY ROMBOUGH, BERNARD TYSON, GREGORY ADAMS, CALIFORNIA NURSES ASSOCIATION, (CNA),

*Defendants-Appellees.*

**ORDER**

Before: WALLACE, FERNANDEZ, and SILVERMAN, Circuit Judges.

Plaintiff-Appellant's petition for panel rehearing is **DENIED.**