

# Superior Court of California

## County of Orange



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County of Orange

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Attorneys for Plaintiff AMALI DISSANAYAKE

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE**

AMALI DISSANAYAKE,  
Plaintiff,

vs.

KAISER PERMANENTE, and  
DOES 1 through 25, inclusive,  
Defendants.

CASE NO. 30-2013-00644412-CU-WT-CJC  
*Assigned for all purposes to:*  
**Dept.:** Judge Ronald L. Bauer

**PLAINTIFF'S COMPLAINT AND  
DEMAND FOR JURY TRIAL**

1 COMES NOW, Plaintiff AMALI DISSANAYAKE, who alleges the following causes  
2 of actions in this action against Defendant KAISER PERMANENTE, and DOES 1 through  
3 25, inclusive.

4 **GENERAL ALLEGATIONS**

5 1. Plaintiff AMALI DISSANAYAKE (hereafter AMALI D.) is, and at all times  
6 herein mentioned was, a resident of the State of California.

7 2. Defendant KAISER PERMANENTE (hereafter KAISER) is, and at all times  
8 herein mentioned was, a corporation duly organized and existing under and by virtue of the  
9 laws of the State of California, and authorized to do business, and, doing business in  
10 California.

11 3. Unless otherwise specified herein, each defendant was the agent and employee  
12 of the remaining defendants, and in doing the things hereafter mentioned, were at all times  
13 acting within the course and scope of that agency and employment. Plaintiff is further  
14 informed and believes, and thereon alleges, that each of the Defendants herein, and DOES 1  
15 through 25, gave consent to, ratified, approved, and authorized the acts alleged herein to each  
16 of the remaining Defendants.

17 4. Plaintiff is not aware of the true names and/or capacities of those individuals or  
18 entities sued herein as DOES 1 through 25 and therefore sues these defendants by their  
19 fictitious names. Plaintiff will seek leave of this court to amend this Complaint to insert their  
20 true names and/or capacities when the same are ascertained.

21 5. Venue is proper in the County of Orange because Plaintiff was employed and  
22 worked at Defendant KAISER's Urgent Care Clinic in Santa Ana, CA located at 3401 S.  
23 Harbor Blvd., Santa Ana, CA 92704. The allegations described herein occurred at this  
24 location.

25 6. At all times herein mentioned, Plaintiff was, and is, a licensed Registered  
26 Nurse (RN) in California.

27 7. In or about November, 2001, Defendant KAISER hired Plaintiff AMALI D. for  
28 the position of medical assistant. In or about 2004, Plaintiff received her RN degree and

1 license. At that time, Defendant KAISER hired Plaintiff as a full-time RN at the Kaiser  
2 Permanente Medical Center in Anaheim, CA.

3 8. In or about April, 2006, Defendant KAISER transferred Plaintiff to its  
4 outpatient clinic located at 3401 S. Harbor Blvd., Santa Ana, CA 92704. KAISER'S  
5 outpatient clinic had several departments including, family practice, urgent care, pediatric,  
6 etc. Plaintiff was employed as a staff RN in the urgent care clinic at this location. In this  
7 position, Plaintiff was responsible for checking patients in, taking vital signs, and following  
8 general physician orders. For the next 5 and a half years, Plaintiff satisfactorily performed  
9 her duties as a staff RN at Defendant KAISER's urgent care clinic.

10 9. In or about late 2010 to early 2011, Defendant KAISER implemented a new  
11 RN position at its clinic in Santa Ana in the urgent care department. This position was titled  
12 "Staff Nurse/Team Leader." Every existing staff RN at KAISER's urgent care department,  
13 including Plaintiff, was automatically eligible to work in this position. Each day, a staff RN  
14 was appointed as Staff Nurse/Team Leader. In this capacity, the Staff Nurse/Team Leader  
15 would supervise all the licensed vocational nurses (LVN), medical assistants, and other RNs  
16 on duty for that day. Defendant KAISER did not provide any additional training to its staff  
17 nurses for this new supervisory position.

18 10. In or about November, 2011, the lead nurse in KAISER'S Nurse  
19 Clinic, Janet Anderson, was preparing to go on medical leave. On or about November 23,  
20 2011, Plaintiff was scheduled to work in Ms. Anderson's position as lead nurse in the Nurse  
21 Clinic, which was a different department from the urgent care clinic Plaintiff normally  
22 worked. As lead nurse in the Nurse Clinic, Plaintiff was responsible for taking care of  
23 surgical outpatients such as cancer patients, patients with staph infections, and patients with  
24 open wounds. These types of patient cases were different from the typical flus and common  
25 colds Plaintiff was accustomed to handling on the urgent care floor. The nurses that  
26 regularly work in the Nurse Clinic are generally provided with training in 1) nurse clinic  
27 competency, 2) wound care, 3) immunization/vaccine refresher courses, and 4) peripherally  
28 inserted central catheter lines refresher courses. KAISER did not provide Plaintiff with any

1 such training.

2 11. On or about November 23, 2011, upon learning of her assignment in the  
3 Nurse Clinic, Plaintiff contacted KAISER's scheduler, Abraham Llama, and told him that  
4 she did not feel comfortable working as lead nurse in the Nurse Clinic without proper  
5 training. Mr. Llama referred Plaintiff to Jennifer Viquez, the Department Administrator.  
6 Plaintiff spoke with Ms. Viquez over the phone that day and relayed her concerns regarding  
7 working in the Nurse Clinic. Ms. Viquez was aghast at Plaintiff's concerns and asked "You  
8 don't know how to do simple dressing changes?" When Plaintiff tried to explain that the job  
9 required more than simple dressing changes, Ms. Viquez said she would schedule Melissa  
10 Giles, RN to supervise and train Plaintiff in the Nurse Clinic on November 23, 2011. Ms.  
11 Viquez added, "Consider this your Day 1 of training."

12 12. However, when Plaintiff reported to the Nurse Clinic on November 23, 2011,  
13 Melissa Giles admitted that she was not trained for the Nurse Clinic and did not feel  
14 comfortable working on the floor either. When Plaintiff said she would inquire with  
15 administration regarding training for new RNs in the Nurse Clinic, Ms. Giles told Plaintiff to  
16 leave her name out of any discussions. Ms. Giles ended up leaving early that day and  
17 Plaintiff was left to treat patients in the Nurse Clinic without any supervision or training.

18 13. Shortly after November 23, 2011, Plaintiff approached Jennifer Viquez before  
19 a department meeting and asked to speak with her regarding the requisite level of training  
20 needed to work in the Nurse Clinic. Ms. Viquez told Plaintiff not to raise the issue and that it  
21 would not be discussed in the department meeting.

22 14. Despite Plaintiff's complaints regarding her lack of training, KAISER  
23 repeatedly assigned her to work in the Nurse Clinic for the next four months. On a handful  
24 of occasions, Plaintiff was assigned to work the Nurse Clinic alongside a supervisory RN.  
25 However, during these shifts, Plaintiff and the supervisory RN did not work together. Both  
26 nurses were assigned their own separate patients to treat simultaneously.

27 15. On or about December 26, 2011, Plaintiff went on a scheduled vacation. When  
28 she returned to work on or about January 10, 2012, Plaintiff was called into a meeting with

1 the Department Administrator, Jennifer Viquez, Assistant Department Administrator,  
2 Kathryn O'Hare, and Human Resources Consultant, Kathryn Vandijk. In this meeting,  
3 Plaintiff was informed that another KAISER RN, Irene Russell, reported to management that  
4 Plaintiff failed to properly assess a patient on December 22, 2011. Irene Russell was a close  
5 friend of Department Administrator, Jennifer Viquez, and the Assistant Department  
6 Administrator, Kathryn O'Hare.

7 16. On or about March, 1, 2012, Plaintiff was issued a Corrective Action-Level III  
8 from KAISER for alleged "sub-standard performance" involving patient care on December  
9 22, 2011. The Corrective Action was labeled as a Level III despite the fact that Plaintiff had  
10 never received a Corrective Action during her entire employment with KAISER. Per the  
11 collective bargaining agreement between KAISER and the United Nurses Association of  
12 CA/Union of Health Care Professionals, the first corrective action issued to an RN should be  
13 a Level I.

14 17. On or about March 6, 2012, Irene Russell, RN, again made complaints to  
15 KAISER management regarding Plaintiff's work performance on that day. On March 16,  
16 2012, Plaintiff was called into an investigative meeting with the Department Administration,  
17 Jennifer Viquez and Kathryn O'Hara. At this meeting, Plaintiff was reduced to tears and said  
18 that she felt she was being singled out, scrutinized, and retaliated against by management and  
19 other nurses, such as Irene Russell and Elena Serna.

20 18. On or about April 7, 2012, Plaintiff made an oral complaint to Kathryn O'Hara,  
21 KAISER's Assistant Department Administrator, regarding verbal abuse she received from  
22 Elena Serna, RN, the Staff Nurse/Team Leader that day. Ms. O'Hara told Plaintiff that she  
23 would contact her the following week to discuss the details of this complaint. However,  
24 Plaintiff did not hear from Ms. O'Hara regarding her complaint.

25 19. On or about May 21, 2012, KAISER presented to Plaintiff a document titled  
26 Last Chance Agreement. This agreement set forth a 6-month progress plan for Plaintiff and  
27 established that Plaintiff could be discharged at any time for any violation of the Last Chance  
28 Agreement. As part of the Last Chance Agreement, Plaintiff was required to work under two

1 “mentor” RNs, Elena Serna and Irene Russell, on May 24, May 25, and May 29, 2012.  
2 Plaintiff had previously made complaints to Kathryn O’Hara regarding these two RNs  
3 regarding harassing and hostile conduct towards her.

4 20. On or about June 7, 2012, Plaintiff was informed by Jennifer Viquez, that  
5 she was effectively placed on a paid investigatory suspension for patient care issues that  
6 allegedly occurred on June 2 and June 3, 2012, which was the weekend after Plaintiff  
7 completed her “mentored” shifts under Elena Serna and Irene Russell.

8 21. On or about June 18, 2012, Plaintiff was called into a meeting by Kaiser’s  
9 Department Administration, Jennifer Viquez, Kathryn Vandijk, and Shane Shives to discuss  
10 the patient care incidents that allegedly occurred on June 2 and June 3, 2012. Plaintiff was  
11 asked a series of questions regarding her patient care on June 2 and June 3, 2012.

12 22. On or about July 11, 2012, Plaintiff was informed by Jennifer Viquez that her  
13 employment with KAISER was terminated immediately.

14 23. At the time of Plaintiff’s termination, Plaintiff had worked for Defendant  
15 KAISER for approximately 10 years. Prior to November 23, 2011, the day that Plaintiff  
16 voiced her concerns regarding her lack of training to work in the nurse clinic, Plaintiff had  
17 never been disciplined, counseled, or given a poor performance review while employed by  
18 KAISER.

19 **FIRST CAUSE OF ACTION**

20 **(Wrongful Termination in Violation of Public Policy – Based on Violations of CA Labor**

21 **Code §§ 6310 et. seq. – Brought by Plaintiff against Defendant KAISER**

22 **PERMANENTE, and DOES 1 through 25, inclusive)**

23 24. Plaintiff realleges and incorporates herein those matters contained in  
24 paragraphs 1 through 23.

25 25. At all times herein mentioned, California Labor Code §6310 was in full force  
26 and effect. Under Labor Code §6310, it is unlawful for an employer to discharge an  
27 employee because the employee made a bona fide oral or written complaint of unsafe  
28 working conditions, or work practices, in his or her employment or place of employment.

1           26. At all times herein mentioned, Plaintiff was an employee of Defendant  
2 KAISER pursuant to Labor Code §§ 6304, 6305, and 6302.

3           27. At all times herein mentioned, Plaintiff was employed pursuant to an  
4 oral employment contract by Defendants KAISER and, DOES 1 through 25, and each of  
5 them. At all times herein mentioned, Plaintiff performed her duties and obligations under the  
6 employment agreement referenced above, and Defendants, and each of them, knew Plaintiff  
7 had fulfilled all of the duties and conditions under the agreement.

8           28. Plaintiff is informed and believes, and thereon alleges, that on or about July  
9 11, 2012, Plaintiff's employment was caused to be terminated by Defendants as a result of  
10 her complaints regarding unsafe work practices at Defendant KAISER. Such conduct by  
11 Defendants, and each of them, was in violation of public policy, including, but not limited to,  
12 Labor Code §6310 et. seq.

13           29. Defendant KAISER terminated the employment of Plaintiff on or about July  
14 11, 2012. Plaintiff registered complaints about Defendant's work practices before she was  
15 terminated. The subject matter of the pre-termination complaints of Plaintiff included  
16 concerns that Plaintiff, and other nurses, were not being properly trained to work in the Nurse  
17 Clinic department at KAISER's outpatient clinic in Santa Ana, CA.

18           30. At all times herein mentioned, the California Board of Registered Nursing  
19 (BRN) held RNs accountable under Title 16 of the Business and Professions Code, the  
20 Nursing Practice Act §2725, and the CA Code of Regulations § 1443.5-Standards of  
21 Competent Performance. Pursuant to the BRN, if an RN accepts an assignment for patient  
22 care and is not clinically competent, the RN license can be disciplined. Further, nursing  
23 administrators, supervisors, and managers have a crucial responsibility to assure appropriate  
24 and competent nursing care to patients. The BRN requires nursing administrators,  
25 supervisors, and managers to assign patient care to only RNs who are clinically competent.  
26 In addition, the Department of Health Services, Title 22, Acute Care Regulations requires  
27 competency validation for RNs and patient care personnel.

28           31. Not only did Defendant KAISER fail and/or refuse to address the aforesaid



1 complaints of Plaintiff, it took measures to single her out, intimidate, scrutinize, and retaliate  
2 against her for her complaints. A substantial motivation of Defendant KAISER in  
3 terminating Plaintiff's employment were her complaints regarding deficient training of  
4 nurses, including herself, in the Nurse Clinic.

5 32. As a direct consequence of Plaintiff's complaints about public policy matters  
6 arising under state labor laws, Plaintiff suffered retaliation, and was terminated from the  
7 employment, thus resulting in economic and non-economic damages, all in an amount  
8 according to proof at the trial of this action.

9 33. Plaintiff is entitled to an award of punitive damages in an amount according to  
10 proof from Defendant KAISER based on facts which include that Plaintiff was a high-  
11 performing and reliable employee of Defendant KAISER. Plaintiff had been employed  
12 with Defendant KAISER for about 10 years before she was terminated on account of making  
13 the aforesaid complaints about public policy matters. Before Plaintiff lodged her complaints  
14 regarding lack of training for nurses, including herself, Plaintiff was never disciplined,  
15 counseled, or documented for performance-related issues. Immediately after Plaintiff voiced  
16 the aforesaid complaints about public policy, Plaintiff was issued several high-level  
17 corrective actions and placed on a "Last Chance" progress plan before being terminated.  
18 Defendant KAISER, DOES 1 through 25, and each of them, by and through their managing  
19 agents and officers, committed the acts alleged herein recklessly, maliciously, fraudulently,  
20 and oppressively, with the wrongful intention of injuring Plaintiff, for an improper and evil  
21 motive amounting to malice (as described above), and which abused and/or prevented the  
22 existence of any conditional privilege, which in fact did not exist, and with a reckless and  
23 conscious disregard of Plaintiff's rights. All actions of Defendants, and each of them, their  
24 agents, employees, managing agents, and officers as herein alleged were known, authorized  
25 ratified and approved by Defendant KAISER, DOES 1 through 25, and each of them.  
26 Accordingly, Plaintiff is entitled to recover punitive and exemplary damages from  
27 Defendants, and each of them, for these wanton, obnoxious, and despicable acts in an amount  
28 according to proof at trial.

1 WHEREFORE, Plaintiff prays for the following relief:

- 2 1. For compensatory damages in an amount according to proof.  
3 2. For general damages in an amount according to proof.  
4 3. For attorney's fees allowable by statute.  
5 4. For punitive damages in an amount according to proof.  
6 5. For costs of the suit herein incurred.  
7 6. For such other and further relief as this Court may deem proper and just.

8  
9 Dated: April 17, 2013

10 LAW OFFICES OF JOEL W. BARUCH, P.C.

11  
12  
13 By 

14 Joel W. Baruch  
15 Nikki Fermin  
16 Attorneys for Plaintiff AMALI DISSANAYAKE

17 **DEMAND FOR JURY TRIAL**

18  
19 Plaintiff herein demands a trial by jury.

20  
21 Dated: April 17, 2013

22 LAW OFFICES OF JOEL W. BARUCH, P.C.

23  
24  
25 By 

26 Joel W. Baruch  
27 Nikki Fermin  
28 Attorneys for Plaintiff AMALI DISSANAYAKE