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FILED Santa Clara Co
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David H. Yamagaki
Chief Executive Officer
Bd. at Ramirez DT001/04
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CK \$435.00
TL \$435.00
Case: 1 13-CV-249233

IN THE SUPERIOR COURT STATE OF
CALIFORNIA, COUNTY OF SANTA CLARA

LILLY PHILIP,

Plaintiff,

VS.

KAISER FOUNDATION HEALTH
PLAN INC., and DOES 1-50,
Inclusive,

Defendants,

Case No. **113CV249233**

COMPLAINT FOR DAMAGES
MONETARY RELIEF FOR
EMPLOYMENT DISCRIMINATION
UNDER THE RETALIATION FOR
DISCRIMINATION IN VIOLATION OF
THE FAIR EMPLOYMENT AND
HOUSING ACT OF THE STATE OF
CALIFORNIA (CAL GOVERNMENT
CODE SECTION 12940)
RETALIATION FOR ASSERTION
OF RIGHTS UNDER THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING
ACT, VIOLATION OF CALIFORNIA
LABOR CODE SECTION 132 AND
TERMINATION IN VIOLATION OF
CALIFORNIA PUBLICV POLICY

JURY TRIAL DEMANDED

Plaintiff makes complaint against Defendants and each of them and for causes of action

alleges as follows.

COUNT I

DISCRIMINATION IN VIOLATION OF CALIFORNIA

GOVERNMENT CODE SECTION 12940 Et.. Seq.

1. Plaintiff is an adult female and at all herein mentioned was and is disabled as defined by the Fair Employment and Housing Act of California, California Government Code section 12940 et seq. in that she had a physical impairment that substantially limited a major life activity and was regarded by Defendant as having a substantial impairment which substantially limited a major life activity in that Plaintiff by virtue of a herniated lumbar disc which at all time herein mentioned up and including February precluded her lifting objects weighing more than ten pounds or engaging in any repetitive motion and at all times herein mentioned from May 2010, impaired Plaintiff's ability to lift more than twenty five pounds.

2. Defendant Kaiser Foundation Health Plan Inc.(Kaiser) defined by California's Fair Employment and Practice Acts in each of the calendar weeks in the year immediately prior to the filing of this action it regularly employed more than five persons.

3. The true names and capacities of Defendants designated herein as Does One through Fifty are unknown to Plaintiff. Plaintiff is informed and believes however that each of said fictitiously named Defendants in responsible for the acts and events herein alleged and Plaintiff will amend this complaint to allege the true names and capacities of these Defendants when ascertained.

4. At all times herein mentioned Jessica Warner, Belinda Jamarillo, Kaen Goodwin, Linda Slack, and Monique Beebe were managerial agents, servants and employees of Defendant Kaiser and in doing the things and committing the acts hereinafter alleged were acting in

1 the course and scope of their employment..

2 5. Defendant has continually employed Plaintiff as a registered nurse at its
3 Santa Theresa Facility from the year 1998 to the present in the county of Santa Clara.

4 6. Plaintiff because of the aforesaid medical condition she can with reasonable
5 accommodation perform the essential functions of her position as a registered nurse at Defendant
6 Kaiser's facility in San Jose, California.

7 7. During the period from 2010 to May 24, 2012 Defendant Kaiser by and
8 through its managerial employees has engaged in a continuous course of conduct which
9 discriminated against Plaintiff because of her disability. Said conduct was engaged in for the
10 purpose of forcing Plaintiff to resign from her employment with Defendant by making Plaintiff's
11 working conditions so intolerable no reasonable person would be required to endure them, said
12 conduct consisted of the following.

13 a. Defendant initially failed and refused to make reasonable accommodation
14 for Plaintiff's disability, then after accepting Plaintiff's demand it
15 accommodate Plaintiff's disability refused to accommodate Plaintiff's
16 disability as agreed.

17 b. Monique Beebe instructed Plaintiff to not communicate with her co-
18 employees.

19 c. Falsely accused Plaintiff of misconduct on February 8, 2012, February
20 12, 2012, March 29, April 10, 2012 and April 11, 2012

21 d. Suspended Plaintiff from employment on March 29 and on May 24 2012
22 for pretextual reasons.

23 8. The above discrimination has caused and will continue to cause Plaintiff loss of earning
24 and other benefits of employment as well as the loss of employment opportunities all to her damage
25

1 in a sum within this court's jurisdictional limits.

2 9. As a further direct and proximate result of the discrimination as herein above
3 alleged Plaintiff has suffered severe and emotional distress and has incurred medical expenses all to
4 her damage in a sum according proof.

5 10. Plaintiff has timely filed charges with the California Department of Fair Employment
6 and Housing within one year of the discrimination alleged and has within one year of the filing of
7 this charge obtained a notice of right to sue from said agency.

8
9 COUNT II.

10 Retaliatory Termination of Employment

11 11 The allegations of Count I of this complaint are incorporated herein by reference as
12 though set forth in full herein.

13 12 During the period from May 2010 up to and including May 4, 2012, Plaintiff made
14 Defendant's managerial employees aware of her disability and requested Defendant Kaiser
15 accommodate said disability in compliance with California Government Code section 12940 et.
16 Seq.

17 13. Defendant Kaiser by and through its managerial employees did retaliate against Plaintiff
18 because of her request Defendant Kaiser accommodate her disability by:

19 A . initially failing and refusing make reasonable accommodation for
20 Plaintiff's disability, then after accepting Plaintiff's demand it
21 accommodate Plaintiff's disability refused to accommodate Plaintiff's
22 disability as agreed.

23 B. Monique Beebe instructing Plaintiff to not communicate with her co-
24 employees

25 C Falsely accused Plaintiff of misconduct on February 8, 2012, February
26
27
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12, 2012 , March 29, April 10, 2012 and April 11, 2012

D. Terminating Plaintiff's employment on March 24 2012

14. The above retaliation has caused and will continue to cause Plaintiff loss of earning and other benefits of employment as well as the loss of employment opportunities all to her damage in a sum within this court's jurisdictional limits.

15. As a further direct and proximate result of the retaliation as herein alleged Plaintiff has suffered severe and emotional distress and has incurred medical expenses all to her damage in a sum according proof .

COUNT III.

Retaliation for Assertion of Rights

Under the California Fair Employment and Housing Act

16. The allegations of Count I and II of this complaint are incorporated herein by reference as though set forth in full.

17. In 2010 Plaintiff filed charges of discrimination with the California DFEHA alleging disability discrimination in violation of the California Fair Employment and Housing Act. Cal Gov code section 12940 et seq. charge # E200910G06452 .

18. Thereafter from the date of service of said charge on Defendant until May 4, 2012 Defendant has engaged in a continuous course conduct designed and intended to retaliate against Plaintiff because of the assertion of her rights under the ADA consisting of the following.

a. Defendant initially failed and refused make reasonable accommodation for Plaintiff's disability, then after accepting Plaintiff's demand to accommodate Plaintiff's disability refused to accommodate Plaintiff's disability as agreed.

b. Monique Beebe instructed Plaintiff to not communicate with her co employees.

1 c. .Falsely accused Plaintiff of misconduct on February 8, 2012 , February
2 12, 2012 , March 29, April 10, 29012 and April 11, 2012

3
4 d. Suspended Plaintiff from employment on March 29 and May 24, 2102 for
5 pretextual reasons.

6 19. The above retaliation has caused and will continue to cause Plaintiff loss of earning
7 and other benefits of employment as well as the loss of employment opportunities all to her damage
8 in a sum within this court's jurisdictional limits.

9 20 As a further direct and proximate result of the retaliation as herein alleged
10 Plaintiff has suffered severe and emotional distress and has incurred medical expenses all to her
11 damage in a sum according proof.

12
13 21 Plaintiff has timely filed charges with the DEFH and within one year prior to the
14 filing of this complaint has received her notice of right to sue.

15 COUNTY IV

16 Violation of California Labor code Section 132a

17 22. Plaintiff incorporates herein by reference counts one through three of this complaint
18 as though set forth in full herein.

19
20 23. Prior to May of 2010 Plaintiff suffered an industrial injury while in the course and
21 scope of her employment with Defendant Kaiser which resulted in her disability as hereinabove
22 alleged consisting of a herniated disc and did file a claim of work injury in compliance with the
23 workers compensation laws of the State of California as well as informed Defendant Kaiser's
24 managerial agent of her intent to pursue benefits under California workers compensation laws.
25 Thereafter during the period from May 2010 to May of 2012 Defendant continuously discriminated
26 against Plaintiff because of her assertion of California Workers' compensation rights and did on or
27 about May 24, 2012 terminate Plaintiff form employment because of her assertion of these rights all
28

1 in violation of California Labor Code Section 132 .

2 24. The above discrimination has caused and will continue to cause Plaintiff loss of
3 earning and other benefits of employment as well as the loss of employment opportunities all to her
4 damage in a sum within this court's jurisdictional limits

5
6 25. As a further direct and proximate result of the discrimination as herein alleged
7 Plaintiff has suffered severe and emotional distress and has incurred medical expenses all to her
8 damage in a sum according proof.

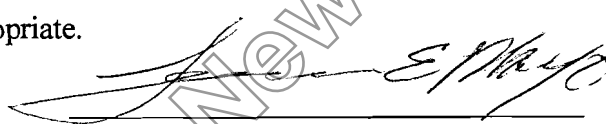
9 Wherefore Plaintiff prays judgment against Defendant as follows:

10 On. Counts One and Three for plaintiffs back pay, front pay damages, for emotional distress,
11 attorney fees according to proof ;

12 On count Two and Four for Plaintiff's damages according to proof;

13 On Counts One through Four for Plaintiff's costs of suit and such other and further relief
14 as this court deems appropriate.

15 Dated: June 24, 2013

16 
17 Frank E. Mayo, Attorney for Plaintiff