

SCANNED

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

SEP 23 2013

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Hearing Date 3/28/14
at 8:30 AM Dept 537

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

CIVDS1311690

SANDRA PURNELL, and LEAH
WILBUR,

Plaintiffs,

vs.

KAISER PERMANENTE INTER-
NATIONAL; XANITOS, INC. and
DOES 1 through 100, Inclusive,

Defendants.

CASE NO.

COMPLAINT FOR DAMAGES FOR
VIOLATIONS OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING
ACT (FEHA)

1. DISCRIMINATION BASED ON
DISABILITY

2. FAILURE TO ENGAGE IN THE
INTERACTIVE PROCESS

3. FAILURE TO PROVIDE
REASONABLE ACCOMMODATIONS

4. RETALIATION

5. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY

#435 #130924-1212M

GENERAL ALLEGATIONS

1. Plaintiffs are informed and believe and thereon allege that at all times herein mentioned, defendants, KAISER PERMANENTE INTERNATIONAL ("KAISER"), XANITOS, INC. and DOES 1 through 40, and each of them, were at all times herein mentioned, corporations engaged, as a matter of commercial actuality, in purposeful economic activity, within the County of Los Angeles, State of California. At all times herein mentioned, plaintiffs SANDRA PURNELL and LEAH WILBER

1 have been residents of the State of California. Plaintiffs were employed by KAISER
2 and XANITOS who acted and operated in a dual employment manner.

3 2. Plaintiffs are informed and believe and thereon allege that defendants
4 DOES 41 through 100, and each of them were, at all times herein mentioned, residents
5 of the State of California and were managers, officers, supervisors, managing agents
6 and/or employees of KAISER and XANITOS and each of them. Plaintiffs further
7 allege that at all times herein mentioned, defendants DOES 41 through 100, were in the
8 chain of command over the plaintiffs and had sufficient actual or reasonably perceived
9 power or control or direction in the plaintiffs' work environment to significantly affect
10 the plaintiffs' employment status.

11 3. The true names or capacities, whether individual, corporate, associate or
12 otherwise, of defendants DOES 1 through 100, inclusive, are unknown to plaintiffs and
13 therefore each plaintiff sues these defendants by such fictitious names. Plaintiffs will
14 amend this complaint to allege their true names and capacities when ascertained.
15 Plaintiffs are informed and believe and based thereon allege that each of these
16 fictitiously named defendants is responsible in some manner for the occurrences herein
17 alleged and that plaintiffs' damages as herein alleged were proximately caused by their
18 conduct.

19 4. Plaintiffs are informed and believe and thereon allege that each of the
20 defendants, including the fictitiously named defendants, was the agent and employee
21 of each of the remaining defendants and in doing some of the things hereinafter
22 alleged, was acting within the scope and course of such agency. Plaintiffs further
23 allege that the acts and conduct of said defendants, as hereinafter alleged, which were
24 intentional or harassing were not related to personnel actions and were neither a risk,
25 an incident, nor a normal part of the plaintiffs' employment.

26 5. The facts and circumstances herein that arise out of the employment
27 relationships between plaintiffs and defendants are premised upon alleged violations
28 of the Fair Employment & Housing Act (FEHA), Government Code §§12900-12996

1 which prohibit discrimination in the workplace, and are based upon similar
2 happenings and events which require a determination of common questions of law and
3 fact.

4 6. Both plaintiffs were initially employed by KAISER in the Environment
5 Services Department (EVS) or Housekeeping Department. In or about August of 2010,
6 KAISER outsourced the EVS functions to XANITOS at which time plaintiffs began
7 taking direction from both KAISER and XANITOS management who both controlled
8 their work activities. Both plaintiffs suffered injuries and made complaints regarding
9 working conditions and unlawful practices of KAISER and XANITOS which were a
10 substantial factor motivating defendant's decision to unlawfully terminate their
11 employment. Plaintiffs were both members of the local 7600 Steelworkers Union.
12 Plaintiffs were managed by German Garcia and John Ruben from XANITOS and Mary
13 Tye who was the Assistant Group Administrator at KAISER.

14 **A. PLAINTIFF LEAH WILBER**

15 7. Plaintiff began her employment with KAISER in 1999. In or about
16 January of 2011, plaintiff reported that she had sustained injuries from the repetitive
17 strain on her upper extremities due to the heavy and poorly designed carts that
18 XANITOS had put into place when its contract began. Plaintiff has initially
19 complained of the carts to German Gomez and John Ruben in October of 2010. Wilber
20 further complained to Lynn Lee who worked in Safety and it was brought to the
21 attention of the Union.

22 8. Ultimately, plaintiff sought medical treatment and filed a workers'
23 compensation claim. Plaintiff was speaking about her difficulties among her
24 co-workers and then was confronted by John Ruben who became upset and angry with
25 plaintiff and told her, "Don't every talk about your injury to anyone" and "never tell
26 anyone how the injury occurred." Wilber felt intimidated and bullied by Ruben and
27 immediately, outside of Ruben's office, called the Compliance Hotline to complain that
28 she was being harassed by Ruben because of her disability. A Union Grievance was

1 filed on her behalf and Ruben was found in the wrong and was disciplined because of
2 his unlawful conduct. Plaintiff believed from that time forward that Ruben disliked
3 plaintiff and sought retaliation against plaintiff because of her complaints and because
4 she had sustained injury and was a disabled employee.

5 9. In or about the beginning of 2011, Wilber became part of the Unit Based
6 Team (UBT) which was a group of employees who met together to bring complaints to
7 attention of management to help improve working conditions. German Gomez who
8 was a supervisor was required to attend such meetings and hear the complaints that
9 were being made. Wilber often brought complaints pertaining to health and safety to
10 the attention of the team, but they were ignored by Gomez and other management.
11 Plaintiff believes that management didn't want to hear her complaints because of her
12 prior disability harassment. Since her complaints at the UBT meeting were being
13 ignored, plaintiff made it a point to call the Union to make sure they were present at
14 each of the UBT meetings to try and effectuate some action toward resolving the
15 problem that were presented therein. Gomez was angry and unhappy with the Union
16 being present and expressed his opinion in that regard to plaintiff. Gomez would often
17 cancel the meetings when the Union was going to be present and would be further
18 infuriated when plaintiff would insist that the meetings occur without Gomez or
19 management present as she believed they were perfectly capable of running such
20 meetings. Gomez wouldn't allow that to happen and it was clear that management
21 was not there in good faith to actually take action on issues raised by the UBT.

22 10. In particular, there was a sewage flood in the basement of one of the
23 buildings in the medical center which prompted a major complaint by plaintiff
24 WILBER as there was no Protective Personal Equipment. Plaintiff and others were
25 ordered to clean up the spill immediately, which was a mixture of raw sewage and
26 other bodily fluids. This required plaintiff and other workers to stand in the waste
27 while trying to mop up the mess with blankets and whatever was available. Plaintiff
28 complained to the union and believes that state authorities were contacted regarding

1 the conditions in which they were required to work. After plaintiff complained, other
2 professional hazardous material cleaning company was brought in to finish the work
3 that plaintiff and others had started without any health and safety measures taken.
4 Leah complained thereafter about the need for all workers to have Personal Protective
5 Equipments (PPE) like gloves, goggles and proper footwear which would be safely
6 stored in the workplace for any such occurrence as such equipment previously placed
7 was in disrepair and unusable when the flood occurred. Ms. Wilber brought up all of
8 these issues at the next UBT meeting on June 13, 2012. On June 14, 2012, plaintiff was
9 placed on suspension for pretextual reasons and thereafter terminated on June 22, 2012.

10 11. On June 14, 2012, plaintiff was confronted by Gomez who advised
11 plaintiff that she was being put on suspension pending investigation. Plaintiff was
12 advised that an employee named Leno Rios reported a confrontation she had with a
13 co-worker, Amy Mariscal. Plaintiff did not understand what Gomez was talking
14 about as Amy had been a close friend with Mariscal throughout their employment
15 with Kaiser. WILBER eventually came to understand that they were referencing a
16 point in time when she and Amy were engaged in horseplay and she had pushed Amy
17 in jest. Plaintiff advised that there was no violence in the workplace and no threats
18 were ever made. Plaintiff believes that Leno Rios who reported the incident was
19 himself disciplined for violence in the workplace and reinstated back to employment
20 notwithstanding his threats to another employee, which included pulling a knife
21 during a confrontation he had with Francisco Gutierrez.

22 12. Plaintiff submitted a sworn notarized statement from Ms. Amy Mariscal
23 stating that she was "not in fear or intimidated" by any of plaintiff's actions, but
24 instead "felt like she could go to her with any concerns or problems." This was
25 completely ignored by Ruben and other management who met with plaintiff to
26 consider reinstate. Plaintiff also had no outstanding disciplinary actions. KAISER's
27 progression of discipline designates such progression of severity as levels 1 through 4.
28 On June 22, 2012, John Ruben advised plaintiff that her employment was terminated.

1 At that time, her workers' compensation action was still pending and plaintiff
2 continued to pursue that case, which Ruben had vehemently opposed from the
3 beginning and received discipline because he had initially harassed plaintiff about her
4 workers' compensation claim. Moreover, that action was a source of discipline for
5 Ruben as he threatened plaintiff when the matter was originally brought to his
6 attention. Plaintiff reasonably believes that Ruben held that against her when he
7 terminated her employment and when considering her potential reinstatement in two
8 other meetings held thereafter. After plaintiff was terminated, the UBT was eliminated
9 by management and no longer was in place for employees to provide complaints.
10 Simply put, management did not care about such complaints and sought to remove
11 those individuals from the workplace, like plaintiffs, who were the source of such
12 complaints.

13 **B. PLAINTIFF SANDRA PURNELL**

14 13. Plaintiff Sandra Purnell began her employment with KAISER in 1996
15 where she worked in the EVS department of the Kaiser Permanente Fontana Medical
16 Center, which involved cleaning patient rooms and treatment areas and making sure
17 they were properly sanitized as part of the infectious control for patients being treated
18 at the hospital. When XANITOS began its contract it required the employees to use
19 new larger carts to carry the cleaning equipment needed to perform their jobs. Plaintiff
20 had complained on many occasions to Ruben and to her direct supervisor German
21 Gomez about the fact that her cart was too heavy and poorly designed. Plaintiff also
22 complained that XANITOS would not let her use her wall mop to properly clean the
23 patient rooms. Plaintiff was often confronted with walls that had blood and other
24 bodily fluids splattered on them and plaintiff was required to make sure the rooms
25 were cleaned in a way that would prevent the spread of disease and be ready for
26 further patient care. Plaintiff advised management on numerous occasions that the
27 rooms were not being properly cleaned. That they needed germicide chemicals to
28 insure that they were disinfected and that the walls were not adequately cleaned as

1 XANITOS merely wanted to use a vacuum as opposed to washing the walls with a
2 wall mop as she had previously been taught prior to the contract with XANITOS.

3 14. After XANITOS started in August of 2010, plaintiff complained to
4 management in October 2010 that the carts that they had put in place were too heavy
5 and too difficult to turn, particularly on the carpet that had been installed. Plaintiff
6 requested to use her old cart, which was smaller and easier to handle, however, they
7 refused to allow plaintiff to use her old cart.

8 15. Like LEAH WILBER, PURCELL was a member of the UBT and posed all
9 of the aforementioned complaints to the team. In February of 2011, plaintiff
10 complained to the Union, and to the UBT, and to upper management about using the
11 wall mops and proper germicides to clean the rooms. Management had a meeting
12 with the union on the topic but still plaintiff was prevented from using any wall mops.
13 Plaintiff further complained to Lynn Lee in the safety department, and complained to
14 Mary Tye who was a manager for KAISER. Tye would, from time to time, September
15 9, 2013 do Mock OSHA walk-throughs and quiz employees about their work, like
16 OSHA would do if they were to inspect the premises.

17 16. In April of 2011, plaintiff filed a workers' compensation claim, which
18 plaintiff believes was held against her as management became even less receptive of
19 her complaints. Plaintiff believes that when German heard of the difficulties with the
20 cart he exclaimed, "that dumb broad doesn't know anything, those carts don't weigh
21 that much." Plaintiff was put on modified duty for a period of time and plaintiff
22 denied accommodations and not allowed to use the smaller carts despite her numerous
23 requests for such accommodation. Through 2011, plaintiff continued to complain to no
24 avail.

25 17. During such time plaintiff would frequently document what she would
26 find in the rooms and problems that she believed were unsafe for patients in the
27 hospital. On or about January 24, 2012, plaintiff was confronted by a supervisor
28 named Launald who observed plaintiff taking pictures of the conditions in the

1 hospital. Launald called plaintiff's supervisor, German Gomez, who immediately
2 sought out plaintiff and chastized her for taking such pictures. German told plaintiff
3 "what do you have fetish for taking dirty pictures." Plaintiff felt mocked and made
4 fun and it was clear that they didn't like her complaints and that she was documenting
5 what was happening. Plaintiff sought changes that she believed were necessary to
6 maintain the health and safety for patients and for employees.

7 18. In or about early-February of 2012, a hospital administrator, Georgina
8 Garcia, was doing another mock OSHA walk-through. Ms. Garcia told plaintiff that
9 the staff was doing a good job cleaning rooms. Plaintiff, at the beginning of her shift
10 that day, had already been confronted with rooms in which patients were scheduled to
11 be placed, but were not clean. Plaintiff advised Ms. Garcia of the difficulties she was
12 having and the complications that were occurring. Plaintiff advised Ms Garcia that she
13 had for the last 10 months been trying to effectuate change and create improvements
14 and plaintiff became upset and began to cry. Plaintiff told Ms. Garcia to follow her to
15 one of the rooms that was scheduled for a patient and deemed to be clean for that
16 purpose. She showed Ms. Garcia that there was green bile on the bed and bile on the
17 floor under the bed and that in the bathroom there was shampoo bottle that had been
18 used and a wash cloth that was used and soiled by the last patient who was in the
19 room. Plaintiff had called her supervisor German who appeared in the room. German
20 reprimanded plaintiff for showing Ms. Garcia the room and he accused plaintiff of
21 "calling in management" and told her never to call management again to show them
22 anything. Plaintiff told Gomez that she didn't call management but was approached
23 by Ms. Garcia. Plaintiff was upset and suffered an anxiety attack. Plaintiff sought
24 medical attention that day and was taken off work by her doctor from February 8, 2012
25 to approximately March 18, 2012 on stress and anxiety. In addition to her injury as a
26 result of using the carts, plaintiff was a disabled employee because of the stress and
27 anxiety condition, which was diagnosed by her treating physicians and caused by her
28 employment. Such medical conditions made various life activities more difficult.

1 19. Upon returning from her medical leave due to stress and anxiety,
2 plaintiff suffered intense scrutiny by her supervisors, German Gomez and John Ruben,
3 and was written up erroneously for matters that could not be established by
4 defendants. Plaintiff was written up for absences which were excused absences and
5 plaintiff was written up for using her cell phone after being called by management to
6 talk about her work. Management, also on a regular basis, would use "high-touch
7 jell" in the rooms plaintiff was assigned to clean. The jell was usually put on high-
8 touch locations to see if all of the pertinent surfaces were cleaned. The jell shows in
9 the dark with special light to see what has been cleaned and what hasn't been cleaned.
10 Plaintiff was advised by a co-worker, Teresa Lerma, that she rarely had Jell in the
11 rooms she cleans and that she was aware that management was following her and
12 looking for anything they could find wrong with her work. Ms. Lerma advised
13 plaintiff that she was not treated in that manner.

14 20. On one occasion in or about March of 2013, plaintiff returned after break
15 to an "infectious" room which needed to be cleaned. Plaintiff put on a gown and
16 gloves to clean the room and then observed a supervisor named Susan in the room
17 spreading excessive amounts of jell throughout the room. Plaintiff watched as she
18 proceeded to put Jell in multiple areas including areas such as windows and curtains,
19 which plaintiff was not required to clean. Of particular concern, Susan was in an
20 infectious room without gloves or any protective clothing touching all areas and
21 surfaces in the room.

22 21. Plaintiff called German Gomez to the room to complain about the health
23 and safety problems Susan had created. While plaintiff was in the room explaining her
24 concern to Susan, Gomez came into the room which was still in an infectious state.
25 Plaintiff immediately advised Gomez that he didn't have the proper attire to be in the
26 room, and then explained that Susan was touching all surfaces without any gloves,
27 which is a danger to her, other patients and employees in the workplace, as once Susan

28 / / /

1 left the room she would be touching other areas about the hospital and thereby
2 spreading whatever caused the room to be deemed infectious in the first place.

3 22. To Gomez, Susan denied that she wasn't wearing gloves while spreading
4 the Jell. Plaintiff then requested that German turn off the lights and look at her hands,
5 he would see the Jell. Susan immediately admitted that she wasn't wearing gloves.
6 Plaintiff pleaded with them to not mess with those rooms that posed a health and
7 safety hazard and not to mess with the rooms that were STAT for patients who were
8 immediately waiting for such rooms as she didn't want any delays in getting such
9 work done. Plaintiff further complained to John Ruben about the situation and
10 completely advised him of her concerns.

11 23. That notwithstanding, the pretextual disciplinary actions continued, the
12 Jell in the rooms continued, and plaintiff became aware from union members that
13 Germain Gomez and John Rubin were trying to terminate her employment, as they no
14 longer wanted to deal with her complaints about health and safety in the hospital and
15 didn't want to deal with her workers' compensation claims.

16 24. Plaintiff sustained a further industrial injury as the repetitive motion
17 while cleaning the rooms had limited her ability to grab and grasp with her hands.
18 That claim was made in or about January of 2013, shortly before her termination in
19 May.

20 25. In or about April of 2013, plaintiff made a complaint about German
21 Gomez and as a result defendants terminated plaintiff's employment. In or about that
22 time, plaintiff was erroneously written up for using her cell phone at work. Plaintiff
23 explained to Gomez that the XANITOS office had called her to see if she could work
24 overtime and thus she was using her cell phone to conduct work-related business that
25 was necessary and requested of her by defendants. Plaintiff didn't otherwise use her
26 cell phone at work as she knew Gomez and Ruben were looking to terminate her
27 employment. On or about April 8, 2013, German came up behind plaintiff
28 unexpectedly and leaned around her with the intent to aggravate plaintiff and said

1 very abruptly, "you haven't used your cell phone today have you." He was
2 unbearably close to plaintiff, which made her terribly uncomfortable as spit from his
3 mouth hit the side of her head as he spoke. Plaintiff made a complaint about Gomez's
4 conduct and was then terminated as defendant, without reason, claimed the events did
5 not occur as plaintiff stated. Although it was clear that Gomez was antagonizing
6 plaintiff inappropriately, plaintiff was punished with termination with no action taken
7 against Gomez. All such conduct escalated into further discrimination and harassment
8 which was derived from plaintiff's disability and complaints of health and safety. See
9 Roby v. McKesson Corp., 47 Cal. 4th 686 (2009). Defendants advised plaintiff on or
10 about May 10, 2013 that she was terminated. The termination notice included prior
11 pretextual disciplinary actions for absences that were excused absences. Defendant's
12 actions amount to discrimination and retaliation for asserting her rights as a disabled
13 employee. Defendants further unlawfully terminated plaintiff's employment because
14 they didn't like the complaints she made regarding health and safety in the hospital.

15 **FIRST CAUSE OF ACTION**

16 **ON BEHALF OF PLAINTIFFS LEAH WILBER AND SANDRA PURNELL**

17 **AGAINST DEFENDANT KAISER; XANITOS**

18 **AND DOES 1 THROUGH 40 AND EACH OF THEM**

19 **(DISCRIMINATION BASED ON DISABILITY)**

20 26. Plaintiffs incorporate the allegations set forth in paragraphs 1 through 25
21 as if set forth in full herein.

22 27. At all times herein mentioned Government Code §§12940 *et seq.* were in
23 full force and effect and were binding on defendant KAISER and XANITOS and each
24 of them. These sections require KAISER and XANITOS and each of them, to refrain
25 from discriminating against a disabled employee who is fully qualified and able to
26 perform the functions of an employment position.

27 28. Plaintiffs, who were both disabled individuals, were qualified to perform
28 the duties of an employment position with KAISER and XANITOS with, or without,

1 reasonable accommodation, and were subjected to an adverse employment action by
2 KAISER and XANITOS because of their disabilities. Said acts and conduct of KAISER
3 and XANITOS, as have been more fully set forth above, were on the basis of plaintiffs'
4 disability or, on account of the fact that plaintiffs were regarded as disabled by
5 defendant, or on account of the fact that plaintiffs had a record or history of a disability
6 which was known to KAISER and XANITOS. Said conduct thus constituted violations
7 of Government Code § 12940 *et seq.*

8 30. Administrative charges have been filed on behalf of LEAH WILBER with
9 the California Department of Fair Employment and Housing (DFEH) pursuant to
10 Section 12960 of the Government Code on January 20, 2011, substantially alleging the
11 acts and conduct as hereinabove described. DFEH issued "Right to Sue" notices on
12 June 12, 2013. (True and correct copies of same are attached hereto as Exhibits "1"
13 through "3"). Administrative charges have also been filed on behalf of SANDRA
14 PURNELL with the California Department of Fair Employment and Housing (DFEH)
15 pursuant to Section 12960 of the Government Code on August 14, 2013, substantially
16 alleging the acts and conduct as hereinabove described. DFEH issued "Right to Sue"
17 notices on September 18, 2013. (True and correct copies of same are attached hereto as
18 Exhibits "4" through "6").

19 31. As a result of the aforesaid unlawful acts of said defendants and each of
20 them, plaintiffs have lost income and benefits in amounts to be proven at time of trial.
21 Plaintiffs claim such amounts as damages together with prejudgment interest pursuant
22 to California Civil Code § 3287 and/or any other provision of law providing for
23 prejudgment interest.

24 32. As a result of the aforesaid unlawful acts of said defendants and each of
25 them, plaintiffs have been personally humiliated and have become mentally upset,
26 distressed and aggravated. Plaintiffs claim general damages for such mental distress
27 and aggravation in an amount to be proven at time of trial.

28 / / /

1 33. As a further result of the said acts of the said defendants and each of
2 them, plaintiffs may employ medical practitioners and physicians for care and may
3 incur medical and incidental expenses which will be shown according to proof.

4 34. The aforesaid acts directed toward the plaintiffs were carried out by
5 managerial employees, officers, and directors and were directed and ratified by
6 defendants KAISER and XANITOS with a conscious disregard of plaintiffs' rights and
7 with the intent to vex, injure, and annoy the plaintiffs, such as to constitute oppression,
8 fraud or malice under California Civil Code § 3294, entitling the plaintiffs to punitive
9 damages in a sum which is an amount appropriate to punish and set an example of
10 KAISER and XANITOS.

11
12 **SECOND CAUSE OF ACTION**

13 **ON BEHALF OF PLAINTIFF SANDRA PURNELL**

14 **AGAINST DEFENDANT KAISER; XANITOS**

15 **AND DOES 1 THROUGH 40 AND EACH OF THEM**

16 **FAILURE TO PROVIDE REASONABLE ACCOMMODATIONS**

17 **[VIOLATION OF GOVERNMENT CODE §12940(m)]**

18 35. Plaintiff incorporates the allegations set forth in paragraphs 1 through 34
19 as if set forth in full herein.

20 36. During the period of plaintiff's employment with KAISER and XANITOS
21 Government Code §12926.1(a), (e) and §12940(m), were in full force and effect and
22 were binding on KAISER and XANITOS. This section provides, in pertinent part, that
23 it is an unlawful employment practice for an employer to fail to make reasonable
24 accommodation for the known physical or mental disability of an employee. These
25 subsections impose a continuing mandatory duty upon employers to engage in an
26 informal, "*interactive process*" in order to attempt to identify a reasonable
27 accommodation so as to allow a disabled employee to continue working.

28 / / /

37. As alleged above, KAISER and XANITOS violated these subsections by failing to actively engage in the interactive process in order to determine a reasonable accommodation for plaintiff.

38. The unlawful employment practices on the part of defendants KAISER and XANITOS, and each of them, were a substantial factor in causing those damages and injuries to plaintiff as set forth by re-allegation of paragraphs 31 through 34 (in paragraph 35).

THIRD CAUSE OF ACTION

ON BEHALF OF PLAINTIFF SANDRA PURNELL

AGAINST DEFENDANT KAISER; XANITOS

AND DOES 1 THROUGH 40 AND EACH OF THEM

FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS

[VIOLATION OF GOVERNMENT CODE §12940(n)]

39. Plaintiff incorporates the allegations set forth in paragraphs 1 through 38 as if set forth in full herein.

40. During the period of plaintiff's employment with KAISER and XANITOS Government Code §12926.1(a), (e) and §§12940(m) & (n), were in full force and effect and were binding on KAISER and XANITOS. Government Code § 12940, subdivision (n), provides, in pertinent part, that it is an unlawful employment practice for an employer to fail to engage in a timely, good faith, interactive process with the employee to determine effective, reasonable accommodation(s) for the employee's known physical or mental disability. This subsection imposes a continuing mandatory duty upon employers to engage in an informal, "*interactive process*" in order to attempt to identify a reasonable accommodation so as to allow a disabled employee to continue working.

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41. As alleged above, KAISER and XANITOS violated these subsections by failing to actively engage in the interactive process in order to determine a reasonable accommodation for plaintiff.

42. The unlawful employment practices on the part of defendant KAISER and XANITOS, and each of them, were a substantial factor in causing those damages and injuries to plaintiff as set forth by reallegation of paragraphs 31 through 34 (in paragraph 39).

FOURTH CAUSE OF ACTION

ON BEHALF OF PLAINTIFFS LEAH WILBER AND SANDRA PURNELL
AGAINST DEFENDANT KAISER; XANITOS
AND DOES 1 THROUGH 40 AND EACH OF THEM
[RETALIATION]

43. Plaintiff incorporates the allegations set forth in paragraphs 1 through 42 as if set forth in full herein.

44. At all times herein mentioned Government Code § 12940(h) was in full force and effect and was binding on KAISER and XANITOS as well as supervisors and managers employed by KAISER and XANITOS. These sections require defendant KAISER and XANITOS, and DOES 1 through 40, and each of them, to refrain from retaliating against an employee for having engaged in an activity that is protected under the FEHA. Flait v. North American Watch Corp. (1992) 3 Cal.App.4th 467, 476. Plaintiff further alleges that KAISER and XANITOS was aware of plaintiff's disability and became aware the difficulties defendants were having. KAISER and XANITOS put into action the events that lead to negative employment actions because plaintiffs were asserting their rights under FEHA. Reeves v. Safeway Stores Inc. (2004) 121 Cal.App. 4th 95, 113.

45. Plaintiff alleges that the aforesaid discrimination, failure to accommodate, and adverse employment actions were in retaliation for, and were motivated by,

1 plaintiffs having engaged in the protected activity of asserting rights as disabled
2 individuals which are protected under the FEHA.

3 46. The said acts and conduct constituting retaliation by defendants toward
4 plaintiffs were not normal business or personnel management decisions that were
5 necessary to the performance of a manager's or supervisor's job.

6 47. The aforesaid actions and conduct of KAISER and XANITOS, and DOES
7 1 through 40 and each of them thereby constituted Retaliation toward plaintiff and
8 were in violation of California Government Code §12940(h).

9 48. As a direct and proximate result of the conduct of said defendants, as
10 aforesaid, plaintiff has suffered those injuries and damages set forth by re-allegation of
11 paragraphs 31 through 34 (in paragraph 43).

12
13 **FIFTH CAUSE OF ACTION**

14 **ON BEHALF OF PLAINTIFFS LEAH WILBER AND SANDRA PURNELL**

15 **AGAINST DEFENDANT KAISER; XANITOS**

16 **AND DOES 1 THROUGH 40 AND EACH OF THEM**

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

18 49. Plaintiff incorporates the allegations set forth in paragraphs 1 through 48,
19 as if set forth in full herein.

20 50. Under the laws of the State of California an employer's traditional right
21 to discharge an at-will employee is subject to limits imposed by public policy whenever
22 the basis of the discharge contravenes a fundamental public policy. Such public policy
23 must inure to the benefit of the public at large and must be grounded in some
24 statutory, constitutional, or regulatory provision.

25 51. At the time of plaintiff's discharge the fundamental public policy against
26 discrimination in the workplace was, and is, set forth by Government Code §12920
27 (FEHA) which provides: "It is hereby declared as the **public policy** of this state that it is
28 necessary to protect and safeguard the right and opportunity of all persons to seek,

1 obtain, and hold employment without discrimination or abridgment on account of . .
2 .disability, . . .". It is further noted that California has set forth and established public
3 policy through California Regulations and the Health & Safety Code as to operations of
4 health care facilities and such laws include but are not limited to Cal. Code Regs.
5 §§72613, 72609, 72624; and Cal. Health & Safety Code §§ 1275, 1276, and 1599. These
6 laws pertain to housekeeping in hospitals and the need for cleanliness and sanitary
7 conditions therein.

8 50. The wrongful discharge of plaintiffs was on account of their disability
9 and thus in violation of the public policy contained within the FEHA and their
10 termination was because they complained about the Health and safety in defendants'
11 hospital that is mandated in California statutory authority and regulations. Said
12 termination was a substantial factor in causing those damages and injuries to plaintiffs
13 as set forth by reallegation of paragraphs 31 through 34 (in paragraph 49).

14
15 WHEREFORE, plaintiff LEAH WILBER seeks judgment against defendants
16 KAISER and XANITOS and DOES 1 through 100 and each of them, on the First, Fourth
17 and Fifth Causes of Action for:

18 1. All economic damages, actual, consequential and incidental losses,
19 including but not limited to loss of income and benefits, according to proof, together
20 with prejudgment interest pursuant to California Civil Code § 3287 and/or § 3288;

21 2. General damages for emotional distress and mental suffering in a sum
22 according to proof;

23 3. Exemplary and punitive damages in a sum appropriate to punish said
24 defendants and set an example for others;

25 4. Attorneys' fees and costs of suit pursuant to Government Code §12965(b);

26 5. Such other and further relief as the Court may deem proper.

27
28 WHEREFORE, plaintiff SANDRA PURNELL seeks judgment against

1 defendants KAISER and XANITOS and DOES 1 through 40 and each of them on all
2 causes of actions for:

3 1. All economic expenses, actual, consequential and incidental losses,
4 including but not limited to loss of income and benefits, according to proof, together
5 with prejudgment interest pursuant to California Civil Code §3287 and/or §3288;

6 2. General damages for emotional distress and mental suffering in a sum
7 according to proof;

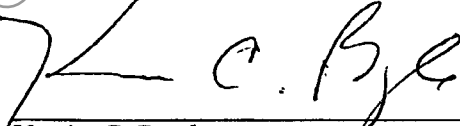
8 3. Exemplary and punitive damages in a sum appropriate to punish said
9 defendant and set an example for others;

10 4. Attorney's fees and costs of suit pursuant to Government Code §12965(b);

11 5. Such other and further relief as the Court may deem proper.

12
13 Dated: September 18, 2013

LAW OFFICES OF KEVIN C. BOYLE

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16 Kevin C. Boyle
17 Attorney for plaintiffs
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