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FILED
Superior Court of California
County of Placer

JAN 07 2014

Jake Chatters
Executive Officer & Clerk
By: B. Burke, Deputy

9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF PLACER

11 GARY HORTON,

) CASE NO:

S CV0034119

) COMPLAINT FOR DAMAGES

- 12) 1. Hostile Environment;
13) 2. Sexual Harassment;
14) 3. Negligent Infliction of Emotional
15) Distress; and
16) 4. Intentional Infliction of Emotional
17) Distress

18 KAISER FOUNDATION HOSPITALS,
19 DOUG MCLAUGHLIN, LARRY PERRIN
20 NATHAN HUNTER, JOHN SUTER,
21 DANIELLE HELLBAUM
22 and DOES 1-100

23 Defendants:
24
25

26 PLAINTIFF GARY HORTON, based upon information and belief, alleges as
27 follows:

28 GENERAL ALLEGATIONS

1. At all times mentioned herein, plaintiff was and is a resident of Loomis, Placer
County, CA.

2. At all times mentioned herein, plaintiff was employed by and performed work
on behalf of defendants, and each of them.

1 3. At all times mentioned herein, the unlawful employment acts complained of
2 occurred in the County of Placer as well as in the County of Sacramento.

3 4. At all times mentioned herein, plaintiff was a trained and experienced
4 operating and maintenance engineer employed in such capacity by defendants, and
5 each of them.
6

7 5. At all times mentioned herein, plaintiff suffered pain and disability as a result
8 of cumulative work trauma to his shoulders, elbows, back and knees.

9 6. At all times mentioned herein, defendants, and each of them knew, or in the
10 exercise of reasonable investigation should have known of plaintiff's disabilities.
11

12 7. At all times mentioned herein, defendant DOUG MCLAUGHLIN was an
13 individual residing in the State of California and was a supervisor and/or manager
14 employed by KAISER FOUNDATION HOSPITALS (hereinafter referred to as KAISER)
15 and DOES 1-20.
16

17 8. At all times mentioned herein, defendant LARRY PERRIN was an individual
18 residing in the State of California and was a supervisor and/or manager employed by
19 KAISER and DOES 1-20.

20 9. At all times mentioned herein, defendant NATHAN HUNTER was an
21 individual residing in the State of California and was a supervisor and/or manager
22 employed by KAISER and DOES 1-20.
23

24 10. At all times mentioned herein, defendant JOHN SUTER was an individual
25 residing in the State of California and was a supervisor and/or manager employed by
26 KAISER and DOES 1-20.
27
28

1 11. At all times mentioned herein, defendant DANIELLE HELLBAUM was an
2 employee employed by defendants KAISER and DOES 1-20.

3 12. At all times mentioned herein, KAISER FOUNDATION HOSPITALS and
4 DOES 1-20, were and are California corporations doing business in Placer and
5 Sacramento Counties, as well as other counties in Northern California and are entities
6 subject to suit under the California Fair Employment and Housing Act, Government
7 Code §12900, et seq. (FEHA), in that defendant is an employer who regularly employs
8 five or more persons.
9

10 9. At all times herein mentioned, defendants DOES 1-20 were and are business
11 entities the character of which is unknown to plaintiff who will seek leave to amend his
12 complaint when such character is ascertained.
13

14 10. The true names and capacities of the defendants named herein as DOES
15 21-100, whether individual, corporate, associate or otherwise, are unknown to plaintiff
16 who therefore sues such defendants by fictitious names pursuant to California Code of
17 Civil Procedure §474. Plaintiff is informed and believes that such DOE defendants are
18 California residents. Plaintiff will amend this complaint to show such true names and
19 capacities when they have been determined. Each defendant was an agent of the other
20 defendants and ratified the conduct of the other defendants and the other employees of
21 KAISER.
22
23

24 11. Whenever in this complaint reference is made to "defendants, and each of
25 them," such allegation shall be deemed to mean the acts of defendants acting
26 individually, jointly and/or severally.
27
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1 12. At all times mentioned herein, each of the defendants was the agent, servant
2 and/or employee, joint venture and/or co-conspirator of each of the remaining
3 defendants, and was at all times mentioned herein acting within the course, scope,
4 purpose, consent, knowledge, ratification and authorization of such agency,
5 employment, joint venture and conspiracy.
6

7 **FIRST CAUSE OF ACTION**

8 **(Hostile Environment)**

9 13. Plaintiff incorporates paragraphs 1-12 above in this the first cause of action
10 as though fully set forth in writing.
11

12 14. Plaintiff commenced working for KAISER and DOES 1-20 on or about
13 October 5, 2005 and was terminated in March, 2013. Plaintiff was initially hired with a
14 basic work structure on an 8-hour shift where he was assigned to a group of equipment
15 and was responsible for preventative maintenance work, inspections to insure proper
16 working order of the equipment in which he would make "rounds" on a regular basis,
17 and a final phase called "watch," consisting of service calls throughout the facility for
18 emergency repairs.
19

20 14. Plaintiff was an operating engineer for approximately 28 years and known to
21 have a high degree of technical skills such that he was relied upon heavily to perform
22 work on behalf of KAISER and DOES 1-20. Plaintiff was required to repair/replace
23 parts on heavy equipment throughout the KAISER facility, requiring him to walk long
24 distances carrying heavy tools for as many as 20-40 jobs per shift during watch shift.
25

26 15. Defendant NATHAN HUNTER, on many occasions, including May 2, 2006,
27 disagreed with the manner and/or method of repair and/or replacement conducted by
28

1 plaintiff and began harassing plaintiff by filing formal derogatory complaints in daily logs
2 concerning plaintiff's work. Plaintiff was unable to stop the harassment by meeting with
3 said defendant, and therefore reported it to defendant JOHN SUTER and LARRY
4 PERRIN.

5
6 16. Defendant NATHAN HUNTER then became supervisor over plaintiff and
7 began to make assignments to plaintiff that gave rise to a heavier work load, despite
8 plaintiff's disabilities, causing plaintiff to obtain further medical treatment and suffer
9 heightened stress.

10
11 17. Defendants, and each of them, assigned a disproportionate share of work on
12 plaintiff by placing him on watch duty for 10-hour days with weekend work as well.
13 Despite plaintiff's complaint that the work was aggravating his back pain and causing
14 him stress because he could not get to his paperwork—for which he was receiving
15 complaints from his supervisors—he was required to continue working at a heightened
16 pace. During 2006 plaintiff was assigned 107 watch shifts, which was 18% more than
17 an equal division between the four engineers.

18
19 18. On or about January 9, 2012, plaintiff could no longer work due to the
20 increase in his pain and the horrendous stress he suffered on the job, and his
21 employment with defendant KAISER was therefore terminated.

22
23 19. Defendants, and each of them, acted with indifference to plaintiff's
24 complaints of harassment by defendant HUNTER, and the extent of heavy watch duty
25 and overtime placed upon plaintiff aggravating his preexisting disabilities and causing
26 him frustration with work, sleeplessness, emotional distress and a feeling of
27 hopelessness. Such failure to act resulted in a hostile working environment for plaintiff,
28

1 who had physical limitations and disability, and the behavior of defendants, and each of
2 them until plaintiff's termination on March, 2013.

3 20. Defendants, and each of them, knew or in the exercise of reasonable care
4 and investigation should have known of the aforementioned hostile behavior, the
5 severity of which was so pervasive that it ultimately resulted in plaintiff's physical and
6 mental breakdown, and did nothing to intervene and address such behavior sufficiently
7 to make such behavior cease.
8

9 WHEREFORE, plaintiff prays for relief as hereinafter set forth.

10 **SECOND CAUSE OF ACTION**

11 **(Sexual Harassment)**

12
13 21. Plaintiff incorporates each and every allegation set forth in paragraphs 1-20
14 above as though fully set forth in writing.

15 22. On or about October 9, 2005 through January 9, 2012, the defendant
16 DANIELLE HELLBAUM was an employee and supervisor for defendant KAISER.
17 During said time, said defendant DANIELLE HELLBAUM continuously used sexual
18 innuendos, body language and unwanted touching to sexually harass plaintiff, a married
19 man.
20

21 23. Plaintiff avoided being in the company of said defendant HELLBAUM as
22 much as possible. When she continued to harass plaintiff, he complained to
23 defendants, and each of them. On or about September 11, 2011, defendant was
24 confronted by defendant and advised to cease her behavior. Defendant continued to
25 harass plaintiff whenever the opportunity arose, the last incident occurring on or about
26
27
28

1 January 8, 2012, causing tremendous emotional distress to plaintiff and causing, among
2 other things, plaintiff to terminate his employment.

3 24. Defendants, and each of them, failed to take all reasonable steps to prevent
4 discrimination and harassment against plaintiff from occurring and to take immediate
5 and appropriate corrective action to remedy the harassment in violation of California
6 Government Code §12940, et seq., by engaging in the course of conduct set forth in the
7 foregoing paragraphs, among other things.
8

9 25. Plaintiff is informed and believes and thereon alleges that prior to plaintiff's
10 discriminatory termination, defendants and each of them have never conducted any
11 harassment training, sexual or otherwise, to prevent supervisors, in a capacity to
12 exercise power over other employees, from creating a hostile work environment.
13

14 26. Defendants, and each of them, knew or in the exercise of reasonable care
15 and investigation should have known that such conduct by defendants, and each of
16 them, was occurring and that such conduct would and did result in physical and
17 emotional injury and damages to plaintiff according to proof.
18

19 WHEREFORE, plaintiff prays for damages and relief as hereinafter set forth.

20 **THIRD CAUSE OF ACTION**

21 **(Negligent Infliction of Emotional Distress)**

22 27. Plaintiff incorporates each and every allegation set forth in paragraphs 1-26
23 above.
24

25 28. Defendants, and each of them, had a duty to their employees, including
26 plaintiff herein, to take all reasonable steps to prevent harassment by defendants as
27 aforementioned.
28

1 29. The harassment by defendants, and each of them, by overworking plaintiff,
2 harassing him with inappropriate, unfounded and unnecessary written complaints into
3 daily logs, and subjecting him to unwanted sexual harassment and stalking by
4 defendant HELLBAUM, became so outrageous that plaintiff became shaken and fearful
5 in performing duties for which he was well qualified and for moving about his work
6 environment to avoid contact with a harassing employee. Plaintiff became afraid and
7 unwilling to enjoy social environments and crowds and began to suffer from
8 sleeplessness, nightmares, weight loss, fatigue and constant fear until he suffered an
9 emotional breakdown. Plaintiff continues to suffer from severe emotional distress as a
10 result of the conduct of each defendant herein.
11

12
13 30. As a result of the conduct of defendants, and each of them, plaintiff was
14 required to employ physicians and specialists to provide him care and to ingest
15 medications all to his damage according to proof.
16

17 31. The negligent conduct of all defendants was a substantial factor in causing
18 the ongoing severe emotional distress suffered by plaintiff.
19

20 WHEREFORE plaintiff prays for damages and relief as hereinafter set forth.

21 **FOURTH CAUSE OF ACTION**

22 **(Intentional Infliction of Emotional Distress)**

23 32. Plaintiff incorporates the allegations of paragraphs 1-31 above as though
24 fully set forth in writing.

25 33. The conduct set forth hereinabove was extreme and outrageous and an
26 abuse of the authority and position of defendants, and each of them. Said conduct was
27 intended to cause severe emotional distress, or was done in conscious disregard of the
28

1 probability of causing such distress. Said conduct exceeded the inherent risks of
2 employment and was not the sort of conduct normally expected to occur in the
3 workplace. Defendants, and each of them, abused their position of authority toward
4 plaintiff and engaged in conduct intended to humiliate plaintiff and to convey the
5 message that he was powerless to defend his rights. Defendants abused their authority
6 and directly injured plaintiff by their ratification of the acts of defendants, and each of
7 them, and by defendants employees actions in failing to protect and violating the rights
8 of plaintiff herein.

10 34. The foregoing conduct did in fact cause plaintiff to suffer extreme emotional
11 distress. As a proximate result of said conduct, plaintiff suffered embarrassment,
12 anxiety, humiliation and emotional distress and will continue to suffer said emotional
13 distress in the future in an amount according to proof.

15 WHEREFORE, plaintiff prays for:

- 16 1. General damages;
- 17 2. Special damages, according to proof;
- 18 3. Compensatory damages in an amount to be set forth at trial;
- 19 4. Punitive damages;
- 20 5. Interest at the legal rate of ten (10) percent;
- 21 6. For costs of suit; and
- 22 7. For such other and further relief as the court deems just and proper.

25 Dated: January 4, 2014

LAW OFFICES OF ALLAN R. FRUMKIN, INC.

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27 ALLAN R. FRUMKIN, ESQ.
28 Attorney for Plaintiff