

JOSHUA D. GRUENBERG (#163281)
LAW OFFICE OF JOSHUA D. GRUENBERG
2169 First Avenue
San Diego, California 92101
Phone: (619) 230-1234; Fax: (619) 230-1074

ZACHARY T. TYSON (#211185)
LAW OFFICE OF ZACHARY T. TYSON
2550 Fifth Avenue, 9th Floor
San Diego, California 92103
Phone: (619) 237-9292; Fax: (619) 615-2173

Attorneys for ANGELICA WORST

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION

ANGELICA WORST, an individual,
Plaintiffs,

v.

KAISER FOUNDATION HOSPITALS,
and, DOES 1 through 25, inclusive,
Defendants.

Case No. 37-2013-00068941-CU-WT-CTL

PLAINTIFF'S COMPLAINT FOR:

1. Failure to Engage in the Interactive Process;
2. Failure to Accommodate;
3. Violation of Government Code § 12940 *et seq.*; and,
4. Wrongful Termination in Violation of Public Policy

[JURY TRIAL DEMANDED]

COMES NOW, the plaintiff ANGELICA WORST ("Mrs. Worst" or "Plaintiff") and alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Mrs. Worst is an individual domiciled and residing in the County of San Diego, State of California.

2. On information and belief, defendant KAISER FOUNDATION HOSPITALS (hereinafter "Kaiser" or "Defendant"), is a business entity, form unknown. Plaintiff is informed and believes, and thereon alleges, that Defendant is doing business in the County of San Diego, State of California.

1 3. Mrs. Worst worked for Defendant at its principal place of business in the County of
2 San Diego, State of California.

3 4. The true names and capacities of defendants sued under the fictitious names DOES
4 1 through 25 are unknown and, on information and belief, each such defendant
5 contributed to and is responsible for the events and damages alleged below. Plaintiff will
6 seek to amend this complaint to set forth the true names and capacities of such defendants
7 when they become known.

8 5. On information and belief, at all relevant times each of the Defendants, including
9 DOE defendants, was the agent or employee of each of the other Defendants, and at all
10 times was acting within the scope and authority of said agency or employment.

11 6. The unlawful employment practices complained of herein occurred in San Diego
12 County. Defendant allowed and/or condoned a continuing pattern of discriminatory and
13 retaliatory practices. The tortious actions and/or omissions alleged herein were performed
14 by management-level employees of Defendant.

15 7. Plaintiff filed a complaint with the Department of Fair Employment and Housing
16 ("DFEH") on _____, 2013 and was issued her Right-to-Sue letter from the DFEH on
17 _____, 2013. Copies of the charge and letter are collectively attached hereto as Exhibit
18 "A" and incorporated herein by reference. Plaintiff has exhausted her administrative
19 remedies.

20 8. Plaintiff also seeks compensatory damages, expert witness fees, costs of suit herein
21 and attorney's fees pursuant to Gov. Code § 12965(b).

22 **GENERAL ALLEGATIONS**

23 9. In August of 2006, Mrs. Worst began working as a full-time employee for Kaiser as
24 a certified surgical technician. Throughout her employment, Mrs. Worst worked loyally
25 and competently for Kaiser.

26 10. In February of 2010, Mrs. Worst suffered a shoulder injury at work. As a result of
27 that injury, Kaiser assigned Mrs. Worst a modified position doing clerical work for
28 approximately 90 days. At the expiration of 90 days, Mrs. Worst was told Kaiser would no

1 longer accommodate her by allowing her to work the modified position and Mrs. Worst
2 was placed on a leave of absence.

3 11. On July 22, 2011, Mrs. Worst underwent surgery on her shoulder. On March 26,
4 2012, Mrs. Worst had a second surgery.

5 12. On January 29, 2013, Mrs. Worst's condition was determined to be permanent and
6 stationary. On or about March 8, 2013, Kaiser told Mrs. Worst that she could not return to
7 her surgical technician position due to her disability status.

8 13. On or about March of 2013, Kaiser assigned Janet Langstaff, Human Resources Case
9 Manager, purportedly to work with Mrs. Worst in assigning her to a new or modified
10 employment position at Kaiser. Mrs. Worst requested a reevaluation of her condition.
11 Kaiser refused the reevaluation and told Mrs. Worst that she would not be allowed to
12 return to work as a certified surgical technician unless she was "at 100%." Mrs. Worst has
13 been readily, willing and able to return to work since March 2013.

14 14. In several meetings with Janet Langstaff, Mrs. Worst was told to apply for
15 employment positions at Kaiser where her disability would not be an issue. Other than
16 requesting Mrs. Worst to check the Kaiser job boards and apply for open positions no
17 other affirmative steps or actions were taken to reasonably accommodate Mrs. Worst.

18 15. Between the period of March 2013 through August 2013, Mrs. Worst applied for
19 approximately 43 employment positions with Kaiser. Most of the positions Mrs. Worst
20 applied for were clerical positions for which she was over-qualified; nevertheless, Kaiser
21 failed and refused to hire and/or reassign Mrs. Worst to any of these open employment
22 positions. Mrs. Worst was qualified, ready, willing and able to work at these employment
23 positions.

24 FIRST CAUSE OF ACTION

25 (Failure to Engage in the Interactive Process v. All Defendants)

26 16. Plaintiffs, and each of them, re-allege and incorporate herein by reference each and
27 every allegation in the preceding and subsequent paragraphs.
28

1 17. Defendants, and each of them, had a legal obligation to engage in the interactive
2 process with Plaintiff. At all relevant times, Defendants failed and/or refused to engage in
3 the interactive process and provide reasonable accommodation for Plaintiff's known
4 medical conditions and/or disability.

5 18. Mrs. Worst was willing to participate in an interactive process to determine
6 whether reasonable accommodation could be made so that she could perform the essential
7 duties of an employment position with Defendant.

8 19. Defendant failed to participate in a timely, good-faith interactive process with Mrs.
9 Worst to determine whether reasonable accommodation could be made in violation of
10 public policy and Government Code § 12940.

11 20. Mrs. Worst has suffered, and continues to suffer, harm, including but not limited
12 to, severe emotional distress, lost wages, and lost future earnings.

13 21. Defendant's failure to engage in a good-faith interactive process was a substantial
14 factor in causing Mrs. Worst's harm.

15 22. On information and believe, Defendant's conduct, as alleged herein, was done with
16 the knowledge that Mrs. Worst's emotional and physical distress would thereby increase
17 and was done with wanton and reckless disregard of the consequences to Mrs. Worst.

18 23. As a legal (proximate) result of Defendants' conduct, Mrs. Worst has been harmed
19 in that she has suffered mental anguish, humiliation, emotional and physical distress.
20 Plaintiff has been damaged in an amount according to proof at trial.

21 SECOND CAUSE OF ACTION

22 (Failure to Accommodate v. All Defendants)

23 24. Plaintiff re-alleges and incorporates herein by reference each and every allegation
24 in the preceding and subsequent paragraphs.

25 25. Defendants, and each of them, knew or thought Mrs. Worst had a physical
26 condition and/or disability that limited her ability to work.

27 26. Defendant failed to provide reasonable accommodation for Mrs. Worst's physical
28 condition and/or disability in violation of public policy and Government Code § 12940.

1 27. In lieu of engaging in an interactive process and determining reasonable
2 accommodation, Defendant constructively terminated Mrs. Worst from her employment
3 by not returning her to work.

4 28. As a legal (proximate) result of Defendant's conduct, Mrs. Worst has been harmed
5 in that she has suffered mental anguish, humiliation, emotional and physical distress.
6 Plaintiff has been damaged in an amount according to proof at trial.

7 29. As a legal (proximate) result of Defendant's conduct, Mrs. Worst has suffered the
8 loss of wages, salary, benefits, raises, and additional amounts of money she would have
9 received had she been reassigned to a new or modified employment position with
10 Defendant. Plaintiff has been damaged according to proof at trial.

11 THREE CAUSE OF ACTION

12 (Violation of Government Code § 12940 *et seq.* v. All Defendants)

13 30. Plaintiff re-alleges and incorporates herein by reference each and every allegation in
14 the preceding and subsequent paragraphs.

15 31. On information and belief, Defendant is an employer within the meaning of
16 Government Code section 12940 *et seq.* and as such, is barred from discriminating,
17 harassing and/or retaliating in employment decisions based on the Mrs. Worst's
18 disability.

19 32. Mrs. Worst is a qualified individual who suffers from a medical condition and/or
20 disability.

21 33. Defendants, and each of them, were aware of Mrs. Worst's medical condition
22 and/or disability

23 34. Defendant's conduct, as alleged herein, constitutes a violation of Government Code
24 § 12940 *et seq.* Mrs. Worst was subjected to adverse, discriminatory and/or retaliatory
25 employment action because of her disability and/or perceived disability.

26 35. On information and belief, Defendant regarded or treated Plaintiff as having a
27 physical condition and/or having suffered an injury that may become a physical
28 disability.

1 36. Mrs. Worst's reasonable request to be reassigned to a new or modified employment
2 position was a motivating reason for Defendant's discriminatory and retaliatory conduct
3 and was a substantial factor in causing harm to Mrs. Worst.

4 37. On information and belief, Defendant's conduct, as alleged herein, was oppressive
5 and done with a conscious disregard for the rights of Mrs. Worst. As such, Mrs. Worst is
6 entitled to exemplary and punitive damages from Defendant in an amount sufficient to
7 punish and deter future wrongful conduct.

8 38. On information and belief, Defendant's conduct, as alleged herein, was done with
9 the knowledge that Mrs. Worst's emotional and physical distress would thereby increase
10 and was done with wanton and reckless disregard of the consequences to Plaintiff.

11 39. As a legal (proximate) result of Defendant's conduct, Mrs. Worst has been harmed
12 in that she has suffered mental anguish, humiliation, emotional and physical distress.
13 Plaintiff has been damaged in an amount according to proof at trial.

14 40. As a legal (proximate) result of Defendant's conduct, Mrs. Worst has suffered the
15 loss of wages, salary, benefits, raises, and additional amounts of money she would have
16 received had she been reassigned to a new or modified employment position. Plaintiff has
17 been damaged according to proof at trial.

18 **FOURTH CAUSE OF ACTION**

19 **(Violation of Public Policy v. All Defendants)**

20 41. Plaintiff re-alleges and incorporates herein by reference each and every allegation in
21 the preceding and subsequent paragraphs.

22 42. Defendants, and each of them, in causing the termination and/or constructive
23 termination of Mrs. Worst violated the public policy of the State of California as described
24 in *The City of Moorpark v. Superior Court*, (1998) 18 Cal.4th 1143.

25 43. Instead of investigating Mrs. Worst's complaints, Defendant retaliated against Mrs.
26 Worst and terminated and/or constructively terminated her employment.

1 43. On information and belief, Defendant's reasons for not reassigning Mrs. Worst to a
2 new or modified employment position were bogus and concocted for the sole false
3 pretense of not reasonably accommodating Mrs. Worst.

4 44. Defendant's conduct was intentional, malicious and/or fraudulent and done for the
5 purpose of cause Plaintiff to suffer humiliation, mental anguish, and emotional and
6 physical distress.

7 45. Defendant's conduct in ratifying the above-referenced conduct was done with the
8 knowledge that Plaintiff's emotional and physical distress would thereby increase and was
9 done with wanton and reckless disregard of the consequences to Plaintiff.

10 46. As a direct (proximate) result of Defendant's conduct, Mrs. Worst has suffered the
11 loss of wages, and additional amounts of money she would have received had she been
12 reasonably accommodated for her disability. Plaintiff has been harmed in that she has
13 suffered the intangible loss of employment and employment-related opportunities and
14 experience. Plaintiffs have been damaged according to proof at trial.

15 47. As further legal (proximate) result of Defendant's conduct, Plaintiff has suffered
16 financial hardship, worry, grief, mental and emotional distress all in an amount to be
17 proven at trial.

18 **WHEREFORE**, Plaintiff prays for judgment against Defendants, and each of them,
19 as follows:

- 20 1. For general and compensatory damages according to proof at trial;
- 21 2. For special damages according to proof at trial;
- 22 3. For costs and attorney's fees pursuant to Government Code § 12965(b);
- 23 4. For punitive damages in an amount necessary to make an example and to
24 punish Defendants and deter future similar conduct;
- 25 5. For back pay, front pay, and other monetary relief;
- 26 6. For costs of suit, expert costs, and attorney's fees;
- 27 7. For interest and prejudgment interest at the legal rate of 10%; and,

1 8. For such other and further relief as the Court deems proper and just under all
2 the circumstances.

3
4 Dated: 9/13/13

LAW OFFICE OF JOSHUA D. GRUENBERG;
LAW OFFICE OF ZACHARY T. TYSON

6
7 By: 
8 Joshua D. Gruenberg
9 Zachary T. Tyson
10 Attorneys for Plaintiffs
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Courthouse News Service

Courthouse News Service

EXHIBIT *A*

**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 | Videophone 916-226-5285 | TTY 800-700-2320
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

Sep 12, 2013

RE: Notice of Filing of Discrimination Complaint

DFEH Matter Number: 162932-68402

Right to Sue: Worst / Kaiser Foundation Hospitals

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. This case is not being investigated by the DFEH and is being closed immediately. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing

Courthouse News Service

**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 | Videophone 916-226-5285 | TTY 800-700-2320
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

Sep 12, 2013

Angelica Worst
Law Office of Zachary T. Tyson 2550 Fifth Avenue, 9th Floor
San Diego, California 92103

RE: Notice of Case Closure and Right to Sue

DFEH Matter Number: 162932-68402

Right to Sue: Worst / Kaiser Foundation Hospitals, Foundation Hospitals Kaiser

Dear Angelica Worst:

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective Sep 12, 2013 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing

Enclosures

cc: Lawyers Incorporating Service CSC, Agent for Service for Kaiser Foundation Hospitals Foundation Hospitals Kaiser