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PATRICIA ARCINIEGA

FILED
Superior Court of California
County of Placer

NOV 20 2013

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

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

PATRICIA ARCINIEGA, an individual,

PLAINTIFF,

vs.

KAISER FOUNDATION HOSPITALS; and DOES 1
to 100, Inclusive.

DEFENDANTS.

Case No.:

SCV0033905

COMPLAINT FOR DAMAGES

**(1) RETALIATION FOR EXERCISE
OF RIGHTS UNDER FAMILY
AND MEDICAL LEAVE ACT
(FMLA)
(29 U.S.C. §§2601-2654)**

**Unlimited Civil
Jury Trial Requested**

1
2 **I. PARTIES**

3 1. Plaintiff PATRICIA ARCINIEGA ("Plaintiff") is now, and at all times material hereto
4 was an individual residing in Placer County and was most recently employed in the City of Roseville,
5 County of Placer, State of California.

6 2. Defendant KAISER FOUNDATION HOSPITALS ("KFH" or "Defendant") is a not-
7 for-profit provider of medical services. KFH is headquartered in Oakland, California and operates
8 hospitals primarily in Western states, with its largest presence in California.

9 3. The true names and capacities of defendants sued herein as Does 1 through 100,
10 inclusive, are unknown to Plaintiff at this time, who therefore sues said defendants by such fictitious
11 names. Plaintiff will seek leave to amend this Complaint to allege their true names and capacities
12 when the same have been ascertained. Plaintiff is informed and believes, and based thereon alleges,
13 that each of the defendants designated as a Doe is responsible in some manner for the events alleged
14 herein and the damages caused thereby.

15 4. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned
16 herein, each of the Defendants was agent, employee, representative and/or co-conspirator of one or
17 more of the remaining defendants and in doing the acts alleged was acting in the course and scope of
18 such agency, employment, and/or co-conspiracy. Each of the Defendants has ratified the conduct of
19 his, her or its agents, employees, and co-conspirators.
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21 **II. FACTUAL BACKGROUND**

22 5. Plaintiff began working at KFH's Roseville facility in 2001. She was terminated on
23 January 7, 2011, while lawfully exercising her rights under FMLA. Plaintiff used the name Patricia K.
24 Garcia during some of her employment years at Kaiser.

25 6. Plaintiff was a Patient Care Technician (PCT), providing care to patients and assisting
26 the Kaiser nursing staff. She was assigned Employee ID Number #00398745. At Kaiser, PCT's were
27 sometimes referred to as Certified Nursing Assistants, or CNA's.
28

1 7. From 2001 through the first half of 2010, Plaintiff worked on Kaiser Roseville's second
2 floor, which specialized in telemetry and stroke patients. Her supervisor was Susan Brendon. Plaintiff
3 received favorable performance reviews and enjoyed an excellent relationship with Ms. Brendon.

4 8. Plaintiff cherished her job at Kaiser Roseville and loved to assist stroke patients and
5 their families. She planned to spend the rest of career with KFH. She received pay increases during her
6 ten years of employment and was earning \$24.99 per hour when she was terminated in January 2011.

7 9. Plaintiff's late mother, Esther, suffered from kidney disease and required dialysis
8 treatments. Plaintiff was the primary caregiver to her mother, who lived with Plaintiff.

9 10. Plaintiff suffered from emotional stress due to the responsibilities of caring for her
10 ailing mother. Plaintiff applied for, and was granted, Family Medical Leave (FMLA) on an
11 intermittent basis due to her mother's illness. The certification for FMLA leave was signed by
12 Plaintiff's primary care physician, Dr. Mihir Amin of Kaiser Roseville.

13 11. Esther died on February 25, 2010.

14 12. In early 2010, Kaiser informed staff on Roseville's second floor that a re-organization
15 was underway and that they would have to bid for jobs elsewhere. Plaintiff bid for a position in the
16 Oncology Department, located on the first floor. The bid was successful and Plaintiff began working
17 as a PCT in Oncology.

18 13. Plaintiff's new manager on the first floor was Maria Camacho.

19 14. Camacho was openly opposed to Plaintiff's assignment to the first floor. Camacho
20 wanted the job to go to a PCT whom she, Camacho, handpicked. Plaintiff believed that Camacho
21 would fabricate a pretextual excuse to fire Plaintiff and replace her with someone personally close to,
22 and chosen by, Camacho. Plaintiff was told by Camacho that "it wasn't right that my CNA/PCT's
23 were bumped off" the first floor due to having lower seniority than Plaintiff.

24 15. Plaintiff was under stress from the hostile environment on the first floor. Camacho
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1 routinely used vulgarities and obscenities when talking to Plaintiff. In addition, Plaintiff was
2 experiencing bereavement from her mother's death. Plaintiff suffered from anxiety and depression.

3 16. Plaintiff again consulted with her primary physician, Dr. Amin, who certified Plaintiff
4 to have intermittent, ongoing FMLA leave due to Plaintiff's own serious health condition. Dr. Amin
5 wrote on December 18, 2010:

6
7 Patricia has a medical condition that will require [her] to miss work on an
8 intermittent basis. Her medical condition is such that at times she'll be well
9 and only miss 2-4 days per month and at other times her condition will require
[her] to be out for long lengths of time -- 3 weeks a month if needed so.

10 17. On December 14, 2010, Defendant informed Plaintiff that she met the eligibility
11 requirements for FMLA/CFRA and that her leave was approved. The letter to Plaintiff came from the
12 Kaiser Permanente HR Services Center. Plaintiff received another confirmation letter from Kaiser on
13 December 21, 2010, which also stated that she was approved for FMLA leave.

14
15 18. Plaintiff is a U.S. citizen of Mexican ancestry.

16 19. One day while performing her duties on the first floor, Plaintiff was at the nurse's
17 station with a group of co-workers. Camacho was in the middle of the group. Within Plaintiff's
18 hearing, Camacho spoke with contempt regarding people of Mexican ancestry. Camacho said, "You
19 can get these Mexicans from Mexico that come over here and work 16 hours a day and make \$6 a
20 day...and then you pay these Mexicans that are from here, making \$28 an hour who don't do nothing.
21 You can't even find them [at work]!"

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23 20. On other occasions, Camacho made disparaging remarks about Plaintiff's weight and
24 appearance, speaking directly to Plaintiff.

25 21. When Plaintiff attempted to talk with Camacho to discuss business-related matters, or
26 arrange an appointment to discuss Plaintiff's FMLA leave, Camacho always claimed to be too busy to
27 talk and avoided communication with Plaintiff.
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1 22. Plaintiff was accused of tardiness, absences and other lapses, without justification. For
2 example, on December 19, 2010, Plaintiff received permission to combine her lunch break with a rest
3 break. During this time, she briefly put her head on a table. When she returned to work, she was
4 accused of "falling asleep" and missing part of her shift. Despite Plaintiff's protests that the
5 accusations were false, an Incident Report was placed in her permanent personnel file.

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7 23. On January 2, 2011, Plaintiff was injured at work. She was aiding another staffer
8 transfer a patient using a Hoyer lift, a type of hydraulic lift that resembles a sling. The patient
9 vigorously resisted and had to be restrained. While rushing to assist her co-worker, Plaintiff tripped
10 over a hose. She landed forcefully on both kneecaps and hands and twisted her back and ankle.

11 24. Plaintiff timely informed her supervisor of her injury. She immediately went to the
12 Emergency Room and was treated by Dr. D. J. Graber.

13 25. Plaintiff applied for Workers Compensation due to her workplace injury.

14 26. On January 7, 2011 -- *a mere three weeks after receiving approval for intermittent*
15 *FMLA leave* -- Plaintiff was summoned to a meeting in Camacho's office. Present at the meeting were
16 Camacho and two other Kaiser staffers.

17 27. Plaintiff was given a letter which said that she was terminated, effective immediately.
18 The alleged reason for the termination was Plaintiff's attendance.

19 28. No mention was made in the termination letter that Defendant granted approved
20 intermittent FMLA leave to Plaintiff *less than one month previously*. The termination letter also failed
21 to mention that Plaintiff *was still eligible for intermittent FMLA leave*.

22 29. The unlawful and retaliatory termination was devastating to Plaintiff. She was unable
23 to afford health insurance. She was destitute and had to move out of her house. Plaintiff's daughter
24 had to leave a mental health program due to lack of funds. Plaintiff's son was unable to obtain
25 prescription medication for his serious health condition, due to Plaintiff's lack of medical insurance.
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30. Defendant continued its vindictive conduct toward Plaintiff. Subsequent to Plaintiff's firing, Kaiser disputed Plaintiff's claim for Workers Compensation resulting from her workplace injury on January 2, 2011. Plaintiff's claim was denied.

31. Plaintiff continues to experience anxiety and depression from her retaliatory termination. She has resumed part-time work as a caregiver at a senior facility. Plaintiff continues under a doctor's care for anxiety and depression.

III. CAUSES OF ACTION

First Cause of Action

RETALIATION FOR EXERCISE OF RIGHTS UNDER FAMILY AND MEDICAL LEAVE ACT

29 U.S.C. §§2601-2654

(Against all Defendants)

32. Plaintiff hereby realleges the preceding paragraphs, inclusive, and by this reference incorporates the same as though set forth in full therein.

33. The Family and Medical Leave Act of 1993 (“FMLA”), 29 U.S.C. §§226061-2654, makes it unlawful for covered employers to terminate or otherwise discipline an eligible employee for taking up to 12 weeks off from work to care for employee’s own serious health condition.

34. KPH employs 50 or more employees within a 75-mile radius of the Kaiser Roseville facility. KPH is an employer covered by the FMLA. (29 USC §2611(4)(A)(i); 29 C.F.R. §825.104(a)).

35. Pursuant to 29 U.S.C. §2615(a)(1), it is “unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided [by the FMLA].”).

36. The FMLA does *not* contain an exhaustion of administrative remedies requirement. An aggrieved employee may either 1) file a complaint with the Secretary of Labor, or 2) file a private civil action. 29 U.S.C. §2617; 29 C.F.R. §825.400. *Krohn v. Forsting*, 11 F. Supp. 2d 1082 (E.D. Mo. 1998).

37. Defendant willfully denied Plaintiff the exercise of her FMLA rights by terminating

1 Plaintiff *a mere three weeks* after Defendant approved Plaintiff's FMLA leave.

2 38. Defendant's above-referenced despicable actions were done with malice, fraud and
3 oppression, *and in reckless disregard of Plaintiff's rights*. Plaintiff is therefore entitled to punitive
4 damages in an amount necessary to punish Defendants and deter such conduct in the future.

5 39. As a direct and proximate result of her unlawful and retaliatory termination, Plaintiff
6 has suffered and will continue to suffer severe and extreme emotional damage.

7 40. Plaintiff is informed and believes and thereon alleges that the acts and conduct of
8 Defendant as alleged herein were willfully undertaken with conscious disregard of the rights of
9 Plaintiff with the intent to vex, injure or annoy Plaintiff such as to constitute oppression, fraud, or
10 malice entitling Plaintiff to recover punitive damages in a sum to be determined at trial.

11 41. Pursuant to 29 U.S.C. §2617(c)(1)-(2); 29 C.F.R. §400(a) and (b), an aggrieved
12 employee must either file a complaint with the Secretary of Labor or a private civil action within two
13 years of the last action alleged to be an FMLA violation, *unless the violation is "willful," in which*
14 *case the statute of limitations is extended to three years.* (emphasis added)

15 42. The FMLA does not define the term "willful." However, in the context of an
16 analogous statute, the U.S. Supreme Court ruled that a violation of the Federal Labor Standards Act
17 (FLSA) is "willful" where an employer "knew or showed reckless disregard for the matter of
18 whether its conduct was prohibited by the [Act]." *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128,
19 135, 108 S.Ct. 1677, 1680 (1988).

20 43. The lower courts have applied the FLSA "willful" standard in the context of the
21 FMLA. *See Hillstrom v. Best Western TLC Hotel*, 354 F.3d 27, 33 (1st Cir. 2003) ("There is every
22 reason to apply this FLSA standard for willfulness to FMLA claims."); *Settle v. S.W. Rodgers Co.*, 998
23 F. Supp. 657, 663 (E.D. Va. 1998) ("And there is little doubt that this standard is equally applicable in
24 the FMLA context. This is so because actions under the FLSA and the FMLA are governed by
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1 virtually identical statutory limitations schemes.”).

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3 44. Plaintiff’s retaliatory termination occurred on January 7, 2011. Plaintiff is filing this
4 Complaint in November 2013. Defendant’s act was a willful violation of Plaintiff’s statutory rights
5 under FMLA. Her filing is timely and within the three-year statute of limitations.

6
7 **IV. PRAYER FOR RELIEF**

8 Wherefore, Plaintiff prays for judgment against all defendants as follows:

- 9 1. For lost income and other economic damages on all causes of action in an
10 amount according to proof at the time of trial;
11 2. For emotional distress damages on all causes of action that allow for such a
12 recovery;
13 3. For punitive damages in an amount according to proof at the time of trial on
14 all causes of action that allow for such a recovery;
15 4. For attorneys’ fees on all causes of action that allow for such a recovery;
16 5. For prejudgment interest on all causes of action that allow for such a recovery;
17 6. For costs of suit incurred herein; and
18 7. For such other relief as may be just and proper.
19

20 DATED: November 20, 2013
21

22 **David Graulich, Esq.**

23 By: David Graulich
24 David Graulich, Esq.
25 Attorney for Plaintiff
26 PATRICIA ARCINIEGA
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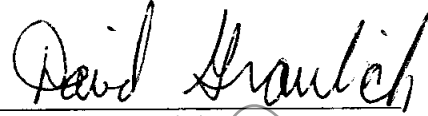
REQUEST FOR TRIAL BY JURY

The Plaintiff respectfully requests a trial by jury.

DATED: November 20, 2013

David Graulich, Esq.

By:

A handwritten signature in black ink, appearing to read "David Graulich", written over a horizontal line.

David Graulich, Esq.
Attorney for Plaintiff
PATRICIA ARCINIEGA

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