

Superior Court of California

County of Orange



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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF ORANGE**

12 GABRIELLA NEALE, an individual,

13 Plaintiff,

14 v.

15 KAISER FOUNDATION HEALTH PLAN,
16 INC., a business entity, exact form unknown;
17 KAISER PERMANENTE MEDICAL GROUP,
18 a business entity, exact form unknown; KAISER
19 FOUNDATION HOSPITALS, a business entity,
20 exact form unknown; SOCAL PERMANENTE
21 MEDICAL GROUP, a business entity, exact
22 form unknown; and Does I through 100,
23 inclusive,

24 Defendants.

CASE NO.: 30-2014-00732676-CU-0E-CJC
Judge Craig Griffin

COMPLAINT FOR DAMAGES:

1. HARASSMENT BASED ON RACE/NATIONAL ORIGIN/ETHNICITY IN VIOLATION OF FEHA;
2. RETALIATION IN VIOLATION OF FEHA; and
3. RETALIATION AND OR DISCRIMINATION FOR UTILIZING CFRA IN VIOLATION OF FEHA.

DEMAND FOR JURY TRIAL

25 Plaintiff GABRIELLA NEALE alleges as follows:

GENERAL ALLEGATIONS

26 1. Plaintiff GABRIELLA NEALE ("Neale" or "Plaintiff") is an individual who at all times
27 pertinent to this lawsuit was a resident of the County of Orange, State of California. Plaintiff is
28 entitled to the protections of the Fair Employment and Housing Act ("FEHA") because she was on
a California Family Rights Act ("CFRA") leave due to the cancer of her husband and is of
Mexican/Hispanic national origin and or race.

1 2. Plaintiff is informed and believes, and thereon alleges, that the Defendant KAISER
2 FOUNDATION HEALTH PLAN, INC. ("KFHP") is a business entity, exact form unknown,
3 engaged in providing medical services to the public.

4 3. Plaintiff is informed and believes, and thereon alleges, that the Defendant KAISER
5 PERMANENTE MEDICAL GROUP ("KPMG") is a business entity, exact form unknown,
6 engaged in providing medical services to the public.

7 4. Plaintiff is informed and believes, and thereon alleges, that the Defendant KAISER
8 FOUNDATION HOSPITALS ("KFH") is a business entity, exact form unknown, engaged in
9 engaged in providing medical services to the public.

10 5. Plaintiff is informed and believes, and thereon alleges, that the Defendant SOCAL
11 PERMANENTE MEDICAL GROUP ("SCPMG") is a business entity, exact form unknown,
12 engaged in providing medical services to the public.

13 6. Plaintiff is informed and believes, and based thereon alleges, that Defendants KFHP,
14 KPMG, KFH, SCPMG, and Does 1-100 are all the alter egos of each other in that there is such a
15 unity of interest between the said Defendants that to uphold the fiction of corporate separateness
16 between the said Defendants would be to sanction an injustice against the Plaintiff and others. Said
17 Defendants acted in all respects pertinent to this action as the agent of each other, and carried out a
18 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each are
19 legally attributable to the other. Alternatively, on information and belief, the said Defendants share
20 the same shareholders and directors, the same locations, the same offices, and conducting the same
21 business as each other under the same DBA, so that equity requires the said Defendants be liable
22 for the obligations of each other.

23 7. Plaintiff was at all times relevant employed by the Defendants KFHP, KPMG, KFH,
24 SCPMG and Does 1-100. The Defendants KFHP, KPMG, KFH, SCPMG and Does 1-100 will
25 hereinafter be collectively referred to as the "Employer Defendants" or "KAISER".

26 8. Plaintiff was originally hired by the Employer Defendants in 1999 as a medical assistant.
27 She worked at various KAISER facilities in that capacity. In approximately 2010, Plaintiff
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1 obtained her LVN license and began working for the Employer Defendants in that capacity.
2 Plaintiff eventually transferred to an Orange County KAISER facility located at 1188 N. Euclid
3 Street, Suite 500, Anaheim, CA 92801, which was operated by the Employer Defendants.

4 9. In approximately December 2011, Plaintiff transferred as an LVN to the Euclid Psychiatry
5 facility ("Euclid facility") as an LVN, located at 1188 N. Euclid Street, Suite 500, Anaheim, CA
6 92801. She remained there until her wrongful termination in September 2013.

7 10. While employed at the Euclid facility by the Employer Defendants, Plaintiff was
8 supervised, on information and belief, by David Caplin ("Caplin"). Plaintiff is informed and
9 believes that she was also supervised by Carol Comyns ("Comyns") who was an RN at the Euclid
10 facility.

11 11. Plaintiff was at all times relevant to this action employed by the Employer Defendants at
12 their location at 1188 N. Euclid Street, Suite 500, Anaheim, CA 92801 (hereinafter "the
13 premises"). All the torts and statutory violations alleged below occurred at the premises.

14 12. The Employer Defendants are California employers who employ more than five people,
15 and are accordingly subject to the provisions of FEHA.

16 13. Defendants Does 1 through 100 are sued under fictitious names pursuant to California Code
17 of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis alleges, that
18 each defendant sued under such fictitious names is in some manner responsible for the wrongs and
19 damages as alleged below, and in so acting was functioning as the agent, servant, manager,
20 supervisor, and/or employee of the Employer Defendants, and in doing the actions mentioned
21 below was acting within the course and scope of his or her authority as such agent, servant.

22 14. Plaintiff's husband had been diagnosed with prostate cancer in 2004. In approximately
23 March 2012, Plaintiff's husband started having problems secondary to his cancer, including, but
24 not limited to renal failure. Plaintiff informed the Employer Defendants of this fact.

25 15. Plaintiff had been required to care for her husband and had, previous to being transferred to
26 the Euclid facility, been granted intermittent leave under the California Family Rights Act
27 ("CFRA"). In 2011 and 2012, Plaintiff was required to care for her husband, including, but not
28

1 limited to taking him to medical appointments. This time was all protected under the CFRA, and
2 was approved by the Employer Defendants.

3 16. In approximately May 2012, Plaintiff's husband contracted a dangerous virus, which
4 required him to be hospitalized. Plaintiff was then given a three month leave by the Employer
5 Defendants pursuant to the CFRA to care for her husband. Prior to her going out on leave Caplin
6 told Plaintiff "when you come back, we need to have a serious talk". Also, prior to her taking this
7 leave Plaintiff had been told by Comyns, and others: "you took the job knowing your husband had
8 cancer", being told "work was not a priority", being told "how dare you go to school and take care
9 of your husband", being told "I know you were out on FMLA but you were really just going to
10 school", being told her priority was work and not her husband, being told she had to prove herself
11 to the doctors and nurses, and other comments and conduct according to proof.

12 17. Plaintiff, upon returning from her protected CFRA leave was then subjected to retaliation
13 and discrimination based on her accessing CFRA leave. This retaliation and discrimination
14 included, but was not limited to: being assigned to a different facility than the Euclid facility which
15 was a long distance away in order to go through "training", although no training was actually done,
16 and then being assigned to another facility where she was limited to observing; being placed on
17 suspension for false and pre-textual reasons; and by being terminated.

18 18. In approximately October 2012, Plaintiff complained to offsite Human Resources about the
19 comments that had been made to her and the retaliation and discrimination. Plaintiff also
20 subsequently complained to Human Resources about Carol Comyns, the workplace environment,
21 and the fact that she was mistreated. Plaintiff also complained to David Caplin. However, no real
22 action was taken and the harassment, retaliation and discrimination were allowed to continue.

23 19. Plaintiff is informed and believes that Carol Comyns was aware of this complaint. In late
24 November 2012, Plaintiff was returned to the Euclid facility where she was subjected to further
25 retaliation, discrimination and harassment by Comyns and others. This discrimination and
26 retaliation were based on her protected activities of accessing CFRA leave and complaining to
27 Human Resources and upper management.

1 20. This discrimination and retaliation by Comyns and others, included, but was not limited to:
2 having all of her possessions placed in a box, having her office moved to a storage closet, being
3 yelled at, being told "I know you were out on FMLA but you were really just going to school",
4 being told that "she was a bad person for leaving them hanging", being asked "is it true you went to
5 HR?", being told she needed to make plans to leave as the job was not for her, being told she was
6 not performing well, being told "what the hell are you doing here", being told that the doctors were
7 upset with her for going on leave, being told she should continue to go to school as this job was not
8 for her, being told "you are stupid and I want to strangle you", being told she was not performing
9 her job at even 75% , being told she needed to be there more often, being told she is very hyper,
10 being placed on suspension for false and pre textual reasons, being terminated, and other conduct
11 according to proof.

12 21. Plaintiff was subjected to harassment by Carol Comyns and others based on her race,
13 national origin, and/or ethnicity. This harassment included, but was not limited to, being constantly
14 yelled at by Comyns, being told to take English as a second language classes because she was a
15 "dumb Hispanic", repeatedly having papers thrown at her, being told to drop out of school, being
16 told "you took the job knowing your husband had cancer", being threatened with discipline, having
17 her time card constantly reviewed, being told "work was not a priority", being told "how dare you
18 go to school and take care of your husband", being told she was not a good enough nurse, being
19 told "I know you were out on FMLA, but you were really just going to school", being told that
20 "she was a bad person for leaving them hanging", being told she did not know how to speak or
21 write, being told to rewrite prescriptions, being told her priority was work and not her husband,
22 being asked "did you take your English classes?", being asked if she made plans for her husband to
23 die, being told she needed to make plans to leave as the job was not for her, being told she was not
24 performing well, being told "what the hell are you doing here", being told that the doctors were
25 upset with her for going on leave, being told she was a "stupid Hispanic", being told Hispanic
26 people are custodians, being told she should continue to go to school as this job was not for her,
27 being told "you are stupid and I want to strangle you", being told she was not performing her job at
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1 even 75%, being told she needed to be there more often, being told she was illiterate, blocking her
2 office door and interfering with her ingress and egress, being told she is very hyper, being told
3 “your spelling is not to our standards”, being told “you don’t look Hispanic, you are too light to be
4 Hispanic”, being told it would take some time for Carol Comyns to like her because Plaintiff was
5 Hispanic, being told she was lazy, being told that they were going to make her life a living hell,
6 being told to find a job with people of her kind, and other conduct according to proof.

7 22. Plaintiff is further informed and believes that Carol Comyns and others improperly
8 accessed Plaintiff’s medical chart without her consent.

9 23. Plaintiff has duly and timely exhausted her Administrative Remedies by filing charges with
10 the DFEH and receiving Right to Sue Notice.

11 **FIRST CAUSE OF ACTION**

12 **HARASSMENT BASED ON RACE/NATIONAL ORIGIN/ETHNICITY**

13 **IN VIOLATION OF FEHA**

14 **(BY PLAINTIFF AGAINST ALL DEFENDANTS)**

15 24. Plaintiff incorporates by reference, as though set forth in full herein, each and every
16 allegation contained in Paragraphs 1 through 23, inclusive above.

17 25. The Employer Defendants acting through Carol Comyns and others subjected Plaintiff to a
18 hostile work environment based on her race, national origin, and/or ethnicity.

19 26. The harassment included, but was not limited to: being constantly yelled at by Carol
20 Comyns, being told to take English as a second language classes because she was a “dumb
21 Hispanic”, repeatedly having papers thrown at her, being told to drop out of school, being told
22 “you took the job knowing your husband had cancer”, being threatened with discipline, having her
23 time card constantly reviewed, being told “work was not a priority”, being told “how dare you go
24 to school and take care of your husband”, being told she was not a good enough nurse, being told
25 “I know you were out on FMLA but you were really just going to school”, being told that “she was
26 a bad person for leaving them hanging”, being told she did not know how to speak or write, being
27 told to rewrite prescriptions, being told her priority was work and not her husband, being asked
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1 “did you take your English classes?”, being asked if she made plans for her husband to die, being
2 told she needed to make plans to leave as the job was not for her, being told she was not
3 performing well, being told “what the hell are you doing here”, being told that the doctors were
4 upset with her for going on leave, being told she was a “stupid Hispanic”, being told Hispanic
5 people are custodians, being told she should continue to go to school as this job was not for her,
6 being told “you are stupid and I want to strangle you”, being told she was not performing her job at
7 even 75%, being told she needed to be there more often, being told she was illiterate, blocking her
8 office door and interfering with her ingress and egress, being told she is very hyper, being told
9 “your spelling is not to our standards”, being told “you don’t look Hispanic, you are too light to be
10 Hispanic”, being told it would take some time for Carol Comyns to like her because Plaintiff was
11 Hispanic, being told she was lazy, being told that they were going to make her life a living hell,
12 being told to find a job with people of her kind, and other conduct according to proof.

13 27. The foregoing harassing conduct was not consented to, was based on Plaintiff’s race,
14 national origin, and/or ethnicity and created an intimidating and hostile work environment. Such
15 conduct constitutes illegal harassment in violation of Government Code § 12940(j) and other
16 provisions of FEHA.

17 28. The Employer Defendants are strictly liable for the harassment by Carol Comyns and
18 others because, at all times relevant, Carol Comyns and the other harassers were acting as the
19 Employer Defendants’ manager and/or supervisor.

20 29. The Employer Defendants are also independently liable, because they, through members of
21 management, and because Plaintiff complained to Human Resources, were aware of the illegal
22 harassment by Carol Comyns and others, and failed to take immediate and appropriate corrective
23 action. Such conduct violates Government Code § 12940(j) and other provisions of FEHA.

24 30. As a proximate result of the said harassment in violation of FEHA, Plaintiff has suffered
25 mental anguish and emotional suffering in an amount in excess of the minimum jurisdiction of this
26 Court and according to proof.

1 31. As a further proximate result of the said harassment in violation of FEHA as afore pled,
2 Plaintiff has suffered a loss of tangible employment benefits including lost wages and fringe
3 benefits in an amount in excess of the minimum jurisdiction of this Court and according to proof.

4 32. As a further and proximate result of the said harassment in violation of FEHA as afore pled,
5 Plaintiff was required to and did seek medical attention, and will need medical attention in the
6 future, all to Plaintiff's damages in a sum according to proof.

7 33. As a further proximate result of the Employer Defendants' harassment in violation of
8 FEHA as afore pled, Plaintiff was forced to and did retain attorneys, and is accordingly entitled to
9 an award of attorneys' fees and costs according to proof at the time of trial.

10 34. The afore pled conduct constitutes oppression, fraud, and malice thereby entitling Plaintiff
11 to an award of punitive damages. Plaintiff is informed and believes, and thereon alleges that the
12 Employer Defendants, and each of them, had advanced knowledge of the unfitness of Carol
13 Comyns but employed her nonetheless with a conscious disregard of the rights and safety of the
14 Plaintiff and others, or ratified or authorized the harassing conduct. Plaintiff is further informed
15 and believes and thereon alleges that this advance knowledge, or act of oppression, fraud, or malice
16 or act of, ratification or authorization of the conduct were on the part of a managing agent, director,
17 or officer of the Employer Defendants.

18 **SECOND CAUSE OF ACTION**

19 **RETALIATION IN VIOLATION OF FEHA**

20 **(BY PLAINTIFF AGAINST ALL DEFENDANTS)**

21 35. Plaintiff incorporates by reference, as though set forth in full herein, each and every
22 allegation contained in Paragraphs 1 through 34, inclusive above.

23 36. Plaintiff was subjected to harassment by Carol Comyns and others based on her race,
24 national origin and ethnicity all as afore pled. Plaintiff was also subjected to harassment
25 discrimination and retaliation for accessing CFRA leave, all as afore pled.

26 37. Plaintiff protested and complained of the harassment, discrimination and retaliation on
27 numerous occasions, both to Human Resources and upper management, but no remedial action was
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1 taken, and Plaintiff was retaliated against for engaging in these protected activities. This retaliation
2 took many forms, and included, but was not limited to both further harassment and adverse
3 employment actions including: Prior to her going out on her three month CFRA leave, Caplin told
4 Plaintiff "when you come back, we need to have a serious talk". Also, prior to her taking this leave,
5 Plaintiff had been told by Comyns and others: "you took the job knowing your husband had
6 cancer", being told "work was not a priority", being told "how dare you go to school and take care
7 of your husband", being told "I know you were out on FMLA but you were really just going to
8 school", being told her priority was work and not her husband, being told she had to prove herself
9 to the doctors and nurses. Plaintiff, upon returning from her protected CFRA leave was then
10 subjected to further retaliation which included: being assigned to a different facility than the Euclid
11 facility which was a long distance away in order to go through "training", although no training was
12 actually done, and then being assigned to another facility where she was limited to observing. In
13 late November 2012, Plaintiff was returned to the Euclid facility where she was subjected to further
14 retaliation, discrimination and harassment by Comyns and others, which included, but was not
15 limited to: having all of her possessions placed in a box, having her office moved to a storage
16 closet, being yelled at, being told "I know you were out on FMLA but you were really just going
17 to school", being told that "she was a bad person for leaving them hanging", being told "is it true
18 you went to HR?", being told she needed to make plans to leave as the job was not for her, being
19 told she was not performing well, being told "what the hell are you doing here", being told that the
20 doctors were upset with her for going on leave, being told she should continue to go to school as
21 this job was not for her, being told "you are stupid and I want to strangle you", being told she was
22 not performing her job at even 75%, being told she needed to be there more often, being told she is
23 very hyper, being placed on suspension for false and pre textual reasons, being terminated, and
24 other conduct according to proof.

25 38. The foregoing conduct by the Employer Defendants, and each of them, was in retaliation
26 for Plaintiff protesting violations of the FEHA and is accordingly a violation of Government Code
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1 § 12940(h), and other provisions of the FEHA, which preclude an employer from retaliating
2 against an employee for opposing any practices forbidden under the FEHA.

3 39. As a proximate result of the said violation of FEHA, Plaintiff has suffered mental anguish
4 and emotional suffering in an amount in excess of the minimum jurisdiction of this Court and
5 according to proof.

6 40. As a further proximate result of the said violation of FEHA as afore pled, Plaintiff has
7 suffered a loss of tangible employment benefits including lost wages and fringe benefits in an
8 amount in excess of the minimum jurisdiction of this Court and according to proof.

9 41. As a further and proximate result of the said violation of FEHA as afore pled, Plaintiff was
10 required to and did seek medical attention, and will need medical attention in the future, all to
11 Plaintiff's damages in a sum according to proof.

12 42. As a further proximate result of the Employer Defendants' violation of FEHA as afore pled,
13 Plaintiff was forced to and did retain attorneys, and is accordingly entitled to an award of
14 attorneys' fees and costs according to proof at the time of trial.

15 43. The afore pled conduct constitutes oppression, fraud, and malice, thereby entitling Plaintiff
16 to an award of punitive damages. Plaintiff is informed and believes and thereon alleges that such
17 conduct was taken by an owner, officer or managing agent of the Employer Defendants, or
18 alternatively, authorized, ratified or approved by an owner, officer or managing agent of the
19 Employer Defendants.

20 **THIRD CAUSE OF ACTION**

21 **RETALIATION/DISCRIMINATION FOR UTILIZING CFRA IN VIOLATION OF FEHA**

22 **(BY PLAINTIFF AGAINST ALL DEFENDANTS)**

23 44. Plaintiff incorporates by reference, as though set forth in full herein, each and every
24 allegation contained in Paragraphs 1 through 43, inclusive above.

25 45. Plaintiff took both intermittent CFRA leaves and a three month CFRA leave to care for her
26 husband, all as afore pled.

1 46. An employer may not retaliate or discriminate against an employee for exercising any right
2 under the CFRA. (Gov.C. §§ 12940(h), 12945.2(l)).

3 47. The Employer Defendants, acting through Carol Comyns and others, retaliated and
4 discriminated against Plaintiff in violation of Government Code sections 12940(h) and 12945.2(l)
5 for accessing/using her CFRA leave. This included, but was not limited to prior to her going out on
6 the three month CFRA leave Caplin told Plaintiff “when you come back, we need to have a serious
7 talk”. Also, prior to her taking this leave Plaintiff had been told by Carol Comyns and others: “you
8 took the job knowing your husband had cancer”, being told “work was not a priority”, being told
9 “how dare you go to school and take care of your husband”, being told “I know you were out on
10 FMLA but you were really just going to school, being told her priority was work and not her
11 husband, being told she had to prove herself to the doctors and nurses. Plaintiff, upon returning
12 from her protected CFRA leave was then subjected to retaliation and discrimination based on her
13 accessing CFRA leave. This included, but was not limited to: being assigned to a different facility
14 than the Euclid facility which was a long distance away in order to go through “training”, although
15 no training was actually done, and then being assigned to another facility where she was limited to
16 observing, once she returned to the Euclid facility this discrimination and retaliation included
17 having all of her possessions placed in a box, having her office moved to a storage closet, being
18 yelled at, being told “I know you were out on FMLA but you were really just going to school”,
19 being told that “she was a bad person for leaving them hanging”, being told “is it true you went to
20 HR?”, being told she needed to make plans to leave as the job was not for her, being told she was
21 not performing well, being told “what the hell are you doing here”, being told that the doctors were
22 upset with her for going on leave, being told she should continue to go to school as this job was not
23 for her, being told “you are stupid and I want to strangle you”, being told she was not performing
24 her job at even 75%, being told she needed to be there more often, being told she is very hyper,
25 being placed on suspension for false and pre textual reasons, being terminated, and other conduct
26 according to proof.
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1 48. As a proximate result of the said violation of CFRA, Plaintiff has suffered mental anguish
2 and emotional suffering in an amount in excess of the minimum jurisdiction of this Court and
3 according to proof.

4 49. As a further proximate result of the said violation of CFRA as afore pled, Plaintiff has
5 suffered a loss of tangible employment benefits including lost wages and fringe benefits in an
6 amount in excess of the minimum jurisdiction of this Court and according to proof.

7 50. As a further and proximate result of the said violation of CFRA as afore pled, Plaintiff was
8 required to and did seek medical attention, and will need medical attention in the future, all to
9 Plaintiff's damages in a sum according to proof.

10 51. As a further proximate result of the Employer Defendants' violation of CFRA as afore pled,
11 Plaintiff was forced to and did retain attorneys, and is accordingly entitled to an award of
12 attorneys' fees and costs according to proof at the time of trial.

13 52. The afore pled conduct constitutes oppression, fraud, and malice, thereby entitling Plaintiff
14 to an award of punitive damages. Plaintiff is informed and believes and thereon alleges that such
15 conduct was taken by an owner, officer or managing agent of the Employer Defendants, or
16 alternatively, authorized, ratified or approved by an owner, officer or managing agent of the
17 Employer Defendants.

18 **PRAYER FOR RELIEF**

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

- 20 1. For damages for lost employment income and benefits, past and future, according to proof;
 - 21 2. For general damages for pain and suffering according to proof;
 - 22 3. For damages for past and future medical expenses according to proof;
 - 23 4. For attorney's fees according to proof;
 - 24 5. For costs of suit incurred herein;
 - 25 6. For punitive damages; and
 - 26 7. For such other and further relief as the court deems just and proper.
- 27
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1 Dated: July 7, 2014

SOTTILE ■ BALTAXE

2
3 By Michael F Baltaxe

4 MICHAEL F. BALTAXE, ESQ.

Attorneys for Plaintiff Gabriella Neale

5
6 **DEMAND FOR JURY TRIAL**

7 Plaintiff hereby requests a trial by jury.

8 Dated: July 7, 2014

SOTTILE ■ BALTAXE

9
10 By Michael F Baltaxe

11 MICHAEL F. BALTAXE, ESQ.

Attorneys for Plaintiff Gabriella Neale