

FILED

MAY 18 2015

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: C. Lucchesi, Deputy

C. Lucchesi

Andrew M. Agtagma (Bar No. 180703)
LAW CENTER
1291 E Hillsdale Blvd, Suite 211B
Foster City, California 94404
(650) 372-2600 (Telephone)
(650) 372-9318 (Facsimile)

Attorney for Plaintiff
Leticia Calles

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN

LETICIA CALLES, an individual

Plaintiff,

v.

KAISER FOUNDATION HOSPITALS,
INC., ; and DOES 1 to 10, inclusive

Defendants.

Case No. **01/15 01833**

COMPLAINT FOR:

1. Retaliation for Reporting Unsafe Patient Care
2. Violation of Labor Code §§ 232.5 and 1102.5
3. Wrongful Termination in Violation of Public Policy

REQUEST FOR JURY TRIAL

Plaintiff Leticia Calles alleges:

BY FAX

THE PARTIES

1. This is a complaint by Leticia Calles ("Calles") against her former employer Kaiser Foundation Hospitals, Inc.. Calles seeks compensatory and punitive damages against Defendant, as well as attorney's fees.

2. At all times relevant to this complaint, Plaintiff Calles is and has been a resident of Marin County, California.

3. Calles is informed and believes, and on that basis alleges, that at all times relevant to this complaint, Defendant Kaiser Foundation Hospitals, Inc. ("Kaiser") is a corporation that does and has been doing business in Marin County, California.

///

SUMMONS ISSUED

LAW CENTER
A Professional Corporation
1291 E. Hillsdale Blvd., Suite 211B
Foster City, California 94404

435-5/18/15

1 4. Calles does not know the true names and capacities, whether individual,
2 corporate or otherwise, of defendants Does 1 to 10, and therefore sues them by such fictitious
3 names. Calles is informed and believes, and on that basis alleges, that each of the Doe
4 defendants is in some manner responsible for the damages alleged in this complaint.

5 5. Calles is informed and believes, and on that basis alleges, that at the various
6 times alleged in this complaint, each of the named and Doe defendants was the agent or
7 employee of each of the remaining co-defendants and, in doing the actions alleged in this
8 complaint, was acting within the course and scope of said agency, employment and service
9 with the advance knowledge, consent and/or ratification of each of the remaining defendants.
10 The named and Doe defendants are hereinafter referred to collectively in this complaint as
11 "Defendants."

12
13 FACTS COMMON TO ALL CAUSES OF ACTION

14 6. Calles started her employment with Defendant Kaiser Foundation Hospitals in
15 September 2000, when she was hired as an emergency room technician at their Santa Rosa
16 facility. After graduating from nursing school in June 2003, she transferred to their San
17 Francisco location and began working for Defendant as a nurse. Around 2006, she transferred
18 to the Cardiac Catheterization Laboratory ("Cardiac Cath Lab") of Defendant's San Francisco
19 facility, where she eventually rose to the level of Staff Nurse II.

20 7. On January 19, 2012, Calles transferred to the Cardiac Cath Lab and
21 Interventional Radiology Department ("IR Department") of Defendant's San Rafael Medical
22 Center ("the Hospital"), located at 99 Montecillo Road, San Rafael, California. At all times
23 relevant to this complaint, she was employed there as a Staff Nurse II, until her termination on
24 May 16, 2013.

25 8. Shortly after transferring to the Hospital, she complained of various practices
26 and incidents that not only affected patient safety, but violated specific regulations governing
27 patient care. She was acutely aware of these problems as a result of her experience at the San
28 Francisco facility, which had a well-established Cardiac Cath Lab. Among other things:

- a) On or about May 29, 2012, Calles submitted a complaint to the Board of Registered Nursing regarding a nurse who demonstrated practices on more than occasion that endangered patient safety;
- b) On or about July 17, 2012, she complained that a "heart alert" patient was not given priority over another that was undergoing elective surgery; and
- c) On or about September 19, 2012, Calles complained that a patient had been oversedated, resulting in a "Code Blue" situation.

9. Following these complaints, Calles was subjected to several adverse actions, including, but not limited to, the following:

- a) On or about October 3, 2012, she received a non-disciplinary "coach and counseling" session that later served, in part, as justification for her termination;
- b) On or about October 23, 2012, a transfer evaluation was altered. Whereas the original evaluation stated that Calles met or exceeded expectations, the altered evaluation indicated that she "needs improvement" in various areas;
- c) On or about October 23, 2012, Calles received a negative annual performance evaluation; and
- d) Calles received a letter notifying her that her employment was terminated effective May 16, 2013.

FIRST CAUSE OF ACTION FOR RETALIATION FOR REPORTING UNSAFE
PATIENT CARE IN VIOLATION OF HEALTH & SAFETY CODE § 1278.5

(Against Defendant Kaiser Foundation Hospitals, Inc. and Does 1-10)

10. Calles restates and incorporates by this reference, as if fully set forth herein, each and every allegation contained in paragraphs 1 through 9 of this complaint.

///

1 11. This action is brought pursuant to Health & Safety Code § 1278.5, which
2 prohibits any health care facility from discriminating or retaliating against any employee for
3 complaining about or initiating an investigation relating to the care, services or conditions of
4 that facility.

5 12. Kaiser is a Health Care Facility as defined in Health & Safety Code § 1250.

6 13. Calles complained about and initiated an investigation relating to the care,
7 services and conditions of Kaiser, including, but not limited to:

- 8 a) Submitting a complaint to the Board of Registered Nursing on or about
9 May 29, 2012, regarding a nurse who demonstrated practices on more
10 than occasion that endangered patient safety;
11 b) Complaining, on or about July 17, 2012, that a “heart alert” patient was
12 not given priority over another that was undergoing elective surgery;
13 and
14 c) Complaining, on or about September 19, 2012, that a patient had been
15 oversedated, resulting in a “Code Blue” situation.

16 14. Defendants, and each of them, including Defendant Kaiser through its agent or
17 supervisor, Victoria Miller (“Miller”), violated Health & Safety Code § 1278.5, based in
18 substantial part on Calles’s complaints, as follows:

- 19 a) Giving Calles a non-disciplinary “coach and counseling” session on or
20 about October 3, 2012, that later served, in part, as justification for her
21 termination;
22 b) Altering her transfer evaluation on or about October 23, 2012;
23 c) Giving her a negative annual performance evaluation, on or about
24 October 23, 2012; and
25 d) Terminating her employment effective May 16, 2013.

26 15. Calles is informed and believes, and on that basis alleges, that in addition to the
27 retaliatory acts enumerated above, Defendants, and each of them, have engaged in retaliatory
28

1 acts against her which are not yet fully known. At such time as said retaliatory acts become
2 known to her, Calles will seek leave of court to amend this complaint in that regard.

3 16. Calles is informed and believes, and on that basis alleges, that her complaints
4 relating to the care, services and conditions of Kaiser were a substantial and determining
5 factor in Kaiser's retaliatory acts.

6 17. As a direct and proximate result of Defendants' actions, Calles has suffered and
7 will continue to suffer a loss of earnings and other employment benefits; and has suffered and
8 will continue to suffer pain and suffering. Calles is thereby entitled to general and
9 compensatory damages in an amount to be proven at trial.

10 18. Calles is informed and believes, and on that basis alleges, that the outrageous
11 conduct of Defendants described above was malicious and oppressive, and done with a
12 conscious disregard of her rights, and with the intent to injure her. Accordingly, Calles seeks
13 an award of punitive and exemplary damages in an amount according to proof.

14 19. As a further direct and proximate result of Defendants' violation of Health &
15 Safety Code § 1278.5, as heretofore described, Calles has been compelled to retain the services
16 of counsel, and has thereby incurred, and will continue to incur, legal fees and costs. Calles
17 requests that attorney's fees be awarded pursuant to Health & Safety Code § 1278.5.

18
19 SECOND CAUSE OF ACTION FOR RETALIATION
20 IN VIOLATION OF LABOR CODE §§ 232.5 AND 1102.5

21 (Against Defendant Kaiser Foundation Hospitals, Inc. and Does 1-10)

22 20. Calles restates and incorporates by this reference, as if fully set forth herein,
23 each and every allegation contained in paragraphs 1 through 19 of this complaint.

24 21. This action is brought pursuant to Labor Code §§ 232.5 and 1102.5. Section
25 232.5 prohibits employers from discharging, disciplining or discriminating against an
26 employee for disclosing information about an employee's working conditions. Section §
27 1102.5 prohibits employers from retaliating against an employee for refusing to violate any
28

1 state or federal statute or regulation, or disclosing to any government agency any violation or
2 noncompliance with such statutes or regulations.

3 22. Calles complained about her work conditions, patient and workplace health and
4 safety violations of Kaiser, by, among other things:

- 5 a) Submitting a complaint to the Board of Registered Nursing on or about
6 May 29, 2012, regarding a nurse who demonstrated practices on more
7 than occasion that endangered patient safety;
- 8 b) Complaining, on or about July 17, 2012, that a "heart alert" patient was
9 not given priority over another that was undergoing elective surgery;
10 and
- 11 c) Complaining, on or about September 19, 2012, that a patient had been
12 oversedated, resulting in a "Code Blue" situation.

13 23. Defendants, and each of them, including Defendant Kaiser through its agent or
14 supervisor, Miller, violated Labor Code §§ 232.5 and 1102.5, based in substantial part on
15 Calles's complaints, as follows:

- 16 a) Giving Calles a non-disciplinary "coach and counseling" session on or
17 about October 3, 2012, that later served, in part, as justification for her
18 termination;
- 19 b) Altering her transfer evaluation on or about October 23, 2012;
- 20 c) Giving her a negative annual performance evaluation, on or about
21 October 23, 2012; and

22 24. Terminating her employment effective May 16, 2013. Calles is informed and
23 believes, and on that basis alleges, that in addition to the retaliatory acts enumerated above,
24 Defendants, and each of them, have engaged in retaliatory acts against her which are not yet
25 fully known. At such time as said retaliatory acts become known to her. Calles will seek leave
26 of court to amend this complaint in that regard.

27 25. Calles is informed and believes, and on that basis alleges, that her complaints
28 relating to employee working conditions, violation or noncompliance with state or federal

1 statute or regulation, and workplace health and safety violations by Kaiser were a substantial
2 and determining factor in Kaiser's retaliatory acts.

3 26. As a direct and proximate result of Defendants' actions, Calles has suffered and
4 will continue to suffer a loss of earnings and other employment benefits; and has suffered and
5 will continue to suffer pain and suffering. Calles is thereby entitled to general and
6 compensatory damages in an amount to be proven at trial.

7 27. Calles is informed and believes, and on that basis alleges, that the outrageous
8 conduct of Defendants described above was malicious and oppressive, and done with a
9 conscious disregard of her rights, and with the intent to injure her. Accordingly, Calles seeks
10 an award of punitive and exemplary damages in an amount according to proof.

11
12 THIRD CAUSE OF ACTION FOR WRONGFUL TERMINATION
13 IN VIOLATION OF PUBLIC POLICY

14 (Against Defendant Kaiser Foundation Hospitals, Inc. and Does 1-10)

15 28. Calles restates and incorporates by this reference, as if fully set forth herein,
16 each and every allegation contained in paragraphs 1 through 27 of this complaint.

17 29. Health & Safety Code § 1278.5, Labor Code § 232.5, and Labor Code § 1102.5
18 embody fundamental, substantial, and well-established public policies of the State of
19 California.

20 30. Calles is informed and believes, and on that basis alleges, that she was
21 terminated in retaliation for the protected activity specified earlier in this Complaint. In
22 giving Calles an adverse performance review, selecting Calles for lay-off, and harassing and
23 retaliating against her for her complaints, Defendants violated the fundamental, substantial,
24 and well-established public policies embodied in Health & Safety Code § 1278.5, Labor Code
25 § 232.5, and Labor Code § 1102.5.

26 31. As a direct and proximate result of Defendants' actions, Calles has suffered and
27 will continue to suffer a loss of earnings and other employment benefits; and has suffered and
28

LAW CENTER
A Professional Corporation
1291 E. Hillsdale Blvd., Suite 211B
Foster City, California 94404

1 will continue to suffer pain and suffering. Calles is thereby entitled to general and
2 compensatory damages in an amount to be proven at trial.

3 32. Calles is informed and believes, and on that basis alleges, that the outrageous
4 conduct of Defendants described above was malicious and oppressive, and done with a
5 conscious disregard of her rights, and with the intent to injure her. Accordingly, Calles seeks
6 an award of punitive and exemplary damages in an amount according to proof.
7

8 WHEREFORE, CALLES PRAYS FOR JUDGMENT AGAINST DEFENDANTS,
9 AND EACH OF THEM, AS FOLLOWS:

10 1. For compensatory damages, including loss of salary, future earnings, and other
11 valuable employment benefits on each cause of action, in an amount that exceeds the Court's
12 jurisdictional minimum and according to proof;

13 2. For consequential damages, including expenses incurred in obtaining substitute
14 employment on each cause of action, according to proof;

15 3. For the value of Calles's physical and emotional pain and suffering caused by
16 Defendants' wrongful conduct on the all causes of action, in an amount not less than \$100,000
17 and according to proof;

18 4. For punitive damages on the all causes of action, according to proof;

19 5. For an award of interest, including prejudgment interest, at the legal rate;

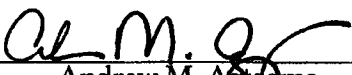
20 6. For an award of attorney's fees pursuant to Government Code § 1278.5 on the
21 First Cause of Action, and as otherwise permitted by law;

22 7. For costs incurred by Calles in prosecuting this action; and

23 8. For such other and further relief as this Court deems just and proper.
24

25 Dated: May 18, 2015

LAW CENTER
A Professional Corporation

27 
28 Andrew M. Agkema
Attorney for Plaintiff Leticia Calles

LAW CENTER
A Professional Corporation
1291 E. Hillsdale Blvd., Suite 211B
Foster City, California 94404

REQUEST FOR JURY TRIAL

Plaintiff Leticia Calles hereby demands trial by jury against Defendants Kaiser
Foundation Hospitals, Inc., and Does 1 to 10, in this action.

Dated: May 18, 2015

LAW CENTER
A Professional Corporation



Andrew M. Agnagna
Attorney for Plaintiff Leticia Calles