

CIV-161129-CIV-DS1620122-CASEEN-134702



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Complaint and Party information entered



NEW FILE

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

NOV 29 2016

BY Anne Perry
ANNE PERRY, DEPUTY

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN BERNARDINO

10 CIVDS 1620122

11 GABRIEL E. MEDINA,

COMPLAINT FOR:

12 Plaintiff,

13 vs.

14
15 KAISER FOUNDATION HOSPITALS, a
16 California corporation, XANTOS, INC., a
17 Delaware corporation, and Does 1 through 10,
inclusive,

18 Defendants.

1. VIOLATION OF CFRA
2. RETALIATION IN VIOLATION OF
CFRA
3. DISABILITY DISCRIMINATION
(REASONABLE
ACCOMMODATION)
4. DISABILITY DISCRIMINATION
(INTERACTIVE PROCESS)
5. DISABILITY DISCRIMINATION
(WRONGFUL TERMINATION)
6. RETALIATION (FEHA)
7. FAILURE TO REMEDY AND/OR
PREVENT DISCRIMINATION,
HARASSMENT AND RETALIATION
8. DEFAMATION PER SE/PER QUOD

19
20 Plaintiff complains and alleges as follows:

161129-6679 8435-A0

- 21 1. Plaintiff, GABRIEL E. MEDINA ("Mr. Medina" or "Plaintiff"), at all times relevant hereto,
22 worked for Defendants in excess of 26 years.
23 2. At all times herein relevant, Plaintiff was a resident of the State of California, County of San
24 Bernardino.
25 3. Plaintiff is informed and believes and thereon alleges that Defendant, KAISER FOUNDATION
26 HOSPITALS (KAISER), is a corporation organized and existing under the laws of California
27 with their principal place of business located at 393 East Walnut Street, Pasadena, CA 91188.

28 ///

- 1 4. Plaintiff is informed and believes and thereon alleges that Defendant, XANITOS, INC.
2 (XANITOS), is a corporation organized and existing under the laws of Delaware with their
3 principle place of business located at 3809 West Chester Pike, Suite 210, Newton Square, PA
4 19073.
- 5 5. The true names and capacities of the Defendants named herein as Does 1 through 10, inclusive,
6 whether individual, corporate, associate or otherwise, are unknown to plaintiff who therefore
7 sues such Defendants by fictitious names pursuant to California Code Civil Procedure section
8 474. Plaintiff is informed and believes that all of the Doe Defendants are California residents.
9 Plaintiff will amend this Complaint to show such true names and capacities when they have been
10 determined.
- 11 6. Plaintiff is informed and believes, and thereby alleges that each of the Defendants herein was at
12 all times relevant hereto the agent, employee or representative of the remaining Defendants and
13 was acting at least in part, within the course and scope of such relationship in doing the things
14 herein alleged.
- 15 7. Plaintiff is informed and believes, and thereby alleges that each of the Defendants were acting
16 in a single or joint employer, and/or alter ego capacity such that they are liable for the acts of
17 their agents and/or employees.

18
19 BACKGROUND FACTS COMMON TO ALL CAUSES OF ACTION

- 20 8. Mr. Medina was hired on February 20, 1990 by Kaiser as an EVS Attendant, where he performed
21 mainly janitorial-type duties.
- 22 9. In 2009, Mr. Medina received a performance evaluation of Meets Expectation.
- 23 10. In 2010, Mr. Medina received a performance evaluation of Meets Expectation. His review stated
24 that Mr. Medina: "shows a caring courteous attitude to patient's visitors and staff[.]" "ensures
25 safe work habits for self and others[.]" "does a great job with Time Management[.]" and ended
26 with "Grabiell, Thank You."
- 27 11. In 2011, Mr. Medina received a performance evaluation of Meets Expectation with an exceeds
28 expectation for his respectful and courteous interpersonal relationships.

- 1 12. In 2012, Mr. Medina received a performance evaluation of Meets Expectation with a number of
2 exceeds expectation marks for his work performance.
- 3 13. In 2013, Mr. Medina received a performance evaluation of Meets Expectation with an exceeds
4 expectations for his attitude and reporting of complaints and concerns.
- 5 14. In 2014, Mr. Medina received a performance evaluation of Meets Expectation. Mr. Media
6 received an exceeded expectations in a category that stated: "Consistently demonstrates the
7 knowledge, skills, abilities and behaviors necessary to provide superior and culturally sensitive
8 service to each other, to our members, and to customers, contracted providers and vendors. And
9 participates in service training and KP programs provided." Mr. Medina's review also stated that
10 "working with you at San Bernardino Clinic has being a great experience. Keep up the good
11 work. Thanks for your hard work."
- 12 15. In March 2015, Mr. Medina re-applied for intermittent FMLA/CFRA leave on account of his
13 son's illness. Mr. Medina's son had a significant asthma condition that required the use of a
14 sizeable nebulizer in the event of a serious asthma flare up.
- 15 16. On January 27, 2016, Mr. Medina applied for intermittent FMLA/CFRA leave for his own
16 serious health condition, specifically for his worsening back pain from scoliosis.
- 17 17. On February 2, 2016, Mr. Medina's medical care provider, Dr. Javier Melendez Sanchez,
18 submitted FMLA/CFRA certification to Kaiser for Mr. Medina's own serious health condition.
19 Mr. Medina's son's medical care provider, Pranee Thulyathan, also submitted FMLA/CFRA
20 certification to Kaiser for Mr. Medina's son's serious health condition.
- 21 18. On March 17, 2016, at about 10:40 p.m., Mr. Medina's wife called and told Mr. Medina that she
22 was very sick – running a 103 degree fever and with an illness that was getting progressively
23 worse. She also told Mr. Medina that their son needed to be treated through the nebulizer as his
24 asthma was severe and his regular inhaler was ineffective. Mr. Medina's wife then told Mr.
25 Medina that she was worried she may not be able to properly administer the necessary asthma
26 medication through the nebulizer– improper dosage could be could be dangerous for their young
27 son. Worried and in distress about his wife and son, Mr. Medina left work immediately to get
28 to his home, which was about five minutes away, to administer medication for his son's asthma

1 and to check in on his wife.

2 19. When Mr. Medina returned to work later that evening, he was confronted by his managers Luis
3 Figueroa and Sergio. Mr. Medina explained the situation to his managers and told them that he
4 was going to fill out the time log as family leave. Sergio told Mr. Medina just to log out and go
5 home.

6 20. On the very next day, Mr. Medina's wife was seen by her medical care professional and
7 diagnosed with pneumonia.

8 21. When Mr. Medina also returned to work the next day, on March 18, 2016, Mr. Medina was met
9 with his managers Mr. Figueroa and Sergio (who Plaintiff is informed and believes are
10 XANITOS subcontracted managers for KAISER), and his union supervisor, Frank Silva, to
11 discuss the events of the night before. Mr. Medina explained the situation with his wife's serious
12 illness and his fear for his young son asthma condition given his wife's illness. Mr. Medina also
13 explained that he had FMLA/CFRA leave available for his son. After the meeting, Mr. Medina
14 placed on administrative leave effective from that day.

15 22. On March 30, 2016, an investigation meeting was held by KAISER a HR representative, Estelle
16 Cordova, and attended by Mr. Medina and his union representative, Frank Silva. Mr. Medina
17 again explained what happened on the night of March 17, 2016 and explained his son's condition
18 and that Mr. Medina had FMLA/CFRA leave for his son.

19 23. Nearly three and-a-half months later, on July 22, 2016, Mr. Medina was brought in again in to
20 meet with his managers, Mr. Figueroa and Sergio, his new union representative, Sandy Lazano,
21 and Ms. Cordova. Again, Mr. Medina explained what occurred on March 17, 2016, and that he
22 had FMLA/CFRA leave available for his son's serious health condition. During the meeting Mr.
23 Medina was accused of time-card fraud for leaving the building on a number of other occasions,
24 but Mr. Medina explained that he was doing his job duties outside as had been doing for years
25 (such as cleaning the parking lot, taking out the trash, and other duties). Mr. Medina's
26 explanations were unavailing. Ultimately, Mr. Medina was terminated by KAISER for time-card
27 fraud.

28 ///

FIRST CAUSE OF ACTION

VIOLATION OF CFRA

(Cal. Gov. Code § 12945.2; 2 Cal. Code Regs. §§ 7297.4, 7297.9, 11091)

(Against KAISER, XANITOS, and DOES 1-10)

24. Plaintiff repeats and incorporates all paragraphs contained in this complaint as if the same were fully set forth herein and with the same full force and effect.

25. Plaintiff was at all times material hereto an employee covered by California Government Code §12945.2 et seq. and 2 Cal. Code Regs. §§ 7297.4, 7297.9, 11091 et seq.

26. Defendants were at all times material hereto an employer within the meaning of the California Government Code.

27. In the year prior to his discharge, Plaintiff worked in excess of 1,250 hours at Defendants.

28. Plaintiff was therefore an eligible employee under the California Family Rights Act (CFRA) (Govt. Code, § 12945.2.)

29. At all relevant times, Defendants employed over fifty employees. Defendants were thus an employer covered by CFRA. (Govt. Code, § 12945.2, subd. (c)(1).)

30. As a result of his and his son's serious health condition, Plaintiff informed Defendants of his intent to take intermittent leave for his and his son's serious health condition.

31. Defendants interfered with his right to take medical leave. Defendant denied medical leave. Defendants did not provide Plaintiff with the required CFRA paperwork. Defendants failed to give reasonable advance notice of their notice requirements. Defendants did not respond to the leave request. Defendants failed to offer Plaintiff medical leave. Defendants failed to designate the leave a qualifying or non-qualifying.

32. As a proximate result of Defendants' actions against Plaintiff, Plaintiff has suffered and continues to suffer substantial losses in earnings, and other employment and retirement benefits and has suffered and continues to suffer embarrassment, humiliation and mental anguish all to his damage in an amount according to proof.

33. Defendants did the acts herein alleged maliciously, fraudulently and oppressively, amounting to despicable conduct, and in conscious disregard of Plaintiff's rights. The acts alleged herein were

known to, authorized and ratified by Defendants. Plaintiff is thus entitled to recover punitive damages from Defendants, and each of them, in an amount according to proof.

34. As a result of Defendants' acts as alleged herein, Plaintiff is entitled to reasonable attorneys' fees and costs of said suit as provided by California Government Code section 12965, subsection (b).

35. Plaintiff filed timely charges with the California Department of Fair Employment and Housing ("DFEH") and received a Notice of Case Closure informing him of his right to sue. Therefore, Plaintiff has exhausted all of his administrative remedies. (See Exhibit A hereto.)

SECOND CAUSE OF ACTION

RETALIATION IN VIOLATION OF CFRA (Govt. Code, § 12945.2 et seq.)

(Against KAISER, XANITOS, and DOES 1-10)

36. Plaintiff repeats and incorporates all paragraphs contained in this complaint as if the same were fully set forth herein and with the same full force and effect.

37. Plaintiff was at all times material hereto an employee covered by California Government Code §12945.2 et seq. prohibiting retaliation for both requesting and/or taking medical leave under the California Family Rights Act.

38. Defendants were at all times material hereto an employer within the meaning of the California Government Code and, as such, barred from retaliating against an employee for requesting medical leave under the California Family Rights Act.

39. In the year prior to his discharge, Plaintiff worked in excess of 1,250 hours.

40. Plaintiff is therefore an eligible employee under the California Family Rights Act (CFRA) (Govt. Code, § 12945.2.)

41. At all relevant times, Defendants employed over fifty employees. Thus, Defendants were an employer covered by CFRA. (Govt. Code, § 12945.2, subd. (c)(1).)

42. As a result of his and his son's serious health condition, Plaintiff notified Defendants of his and his son's medical condition necessitating intermittent leave and his desire to take time off to treat that medical condition and medical condition of his son.

43. After notifying the employer of the serious medical condition and need for time off, Plaintiff was terminated. His assertion of his CFRA rights was a substantial motivating factor in his

1 termination.

2 44. Defendants have a pattern and practice of retaliating against persons who request medical leave.

3 45. Moreover, Defendants' facially neutral policy of non-retaliation in employment decisions has
4 an unfavorable impact on those employees who are in a similar position to Plaintiff.

5 46. As a proximate result of Defendants' retaliation against Plaintiff, Plaintiff has suffered and
6 continues to suffer substantial losses in earnings, and other employment and retirement benefits
7 and has suffered and continues to suffer embarrassment, humiliation and mental anguish all to
8 his damage in an amount according to proof.

9 47. Defendants did the acts herein alleged maliciously, fraudulently and oppressively, amounting to
10 despicable conduct, and in conscious disregard of Plaintiff's rights. The acts alleged herein were
11 known to, authorized and ratified by Defendants. Plaintiff is thus entitled to recover punitive
12 damages from Defendant, and each of them, in an amount according to proof.

13 48. As a result of Defendants' retaliatory acts as alleged herein, Plaintiff is entitled to reasonable
14 attorneys' fees and costs of said suit as provided by California Government Code section 12965,
15 subsection (b).

16 49. Plaintiff filed timely charges of retaliation with the California Department of Fair Employment
17 and Housing ("DFEH") and received a Notice of Case Closure informing him of his right to sue.
18 Therefore, Plaintiff has exhausted all of his administrative remedies. (See Exhibit A hereto.)

19 THIRD CAUSE OF ACTION

20 DISABILITY DISCRIMINATION - FAILURE TO MAKE REASONABLE ACCOMMODATION

21 IN VIOLATION OF FEHA (Govt. Code, § 12940(m))

22 (Against KAISER, XANITOS, and DOES 1-10)

23 50. Plaintiff repeats and incorporates all paragraphs contained in this complaint as if the same were
24 fully set forth herein and with the same full force and effect.

25 51. At all times herein relevant, there was an employer/employee, agency, or other qualified
26 relationship between Plaintiff and the Defendants.

27 52. It is illegal to discriminate against an individual based upon his disabilities pursuant to California
28 Government Code section 12940 et seq.

1 53. Plaintiff is/was an individual with disabilities, including chronic back pain due to his scoliosis.
2 54. Plaintiff requested Defendants to provide a reasonable accommodation for the disabilities.
3 55. Defendants knew of the disabilities.
4 56. Defendants did not provide reasonable accommodations.
5 57. Defendants have a pattern and practice of failing to accommodate employees with disabilities.
6 58. Moreover, Defendants' facially neutral policy of nondiscrimination in employment decisions has
7 an unfavorable impact on those employees who are in a similar position to Plaintiff.
8 59. As a proximate result of Defendants' discrimination against Plaintiff and failure to allow him
9 to work with reasonable accommodations, Plaintiff has suffered and continues to suffer
10 substantial losses in earnings, and other employment and retirement benefits and has suffered
11 and continues to suffer embarrassment, humiliation and mental anguish all to his damage in an
12 amount according to proof.
13 60. As a result of Defendants' discriminatory acts as alleged herein, Plaintiff is entitled to reasonable
14 attorneys' fees and costs of said suit as provided by California Government Code section 12965,
15 subsection (b).
16 61. Plaintiff filed timely charges of discrimination with the California Department of Fair
17 Employment and Housing ("DFEH") and EEOC and received a Notice of Case Closure
18 informing him of his right to sue. Therefore, Plaintiff has exhausted all of his administrative
19 remedies.

20 FOURTH CAUSE OF ACTION

21 DISABILITY DISCRIMINATION - FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS

22 IN VIOLATION OF FEHA (Govt. Code, § 12940(n))

23 (Against KAISER, XANITOS, and DOES 1-10)

24 62. Plaintiff repeats and incorporates all paragraphs contained in this complaint as if the same were
25 fully set forth herein and with the same full force and effect.
26 63. At all times herein relevant, there was an employer/employee, agency, or other qualified
27 relationship between Plaintiff and Defendants.
28 64. It is illegal to discriminate against an individual based upon his disabilities pursuant to California

1 Government Code section 12940 et seq.
2 65. Plaintiff is/was an individual with disabilities, including chronic back pain due to scoliosis.
3 66. Defendants knew of the disabilities.
4 67. Defendants had an obligation to engage in good faith in the interactive process to determine an
5 effective reasonable accommodation for these disabilities.
6 68. The Defendants failed to engage in a timely, good faith interactive process.
7 69. Defendants have a pattern and practice of failing to engage in a good faith interactive process.
8 70. Moreover, Defendants' facially neutral policy of nondiscrimination in employment decisions has
9 an unfavorable impact on those employees who are in a similar position to Plaintiff.
10 71. As a proximate result of Defendants' discrimination against Plaintiff, Plaintiff has suffered and
11 continues to suffer substantial losses in earnings, and other employment and retirement benefits
12 and has suffered and continues to suffer embarrassment, humiliation and mental anguish all to
13 his damage in an amount according to proof.
14 72. As a result of Defendants' discriminatory acts as alleged herein, Plaintiff is entitled to reasonable
15 attorneys' fees and costs of said suit as provided by California Government Code section 12965,
16 subsection (b).
17 73. Plaintiff filed timely charges of discrimination with the California Department of Fair
18 Employment and Housing ("DFEH") and EEOC and received a Notice of Case Closure
19 informing him of his right to sue. Therefore, Plaintiff has exhausted all of his administrative
20 remedies.

21 FIFTH CAUSE OF ACTION

22 DISABILITY DISCRIMINATION IN VIOLATION OF FEHA

23 (Govt. Code, § 12940(a))

24 (Against KAISER, XANITOS, and DOES 1-10)

25 74. Plaintiff repeats and incorporates all paragraphs contained in this complaint as if the same were
26 fully set forth herein and with the same full force and effect.
27 75. At all times herein relevant, there was an employer/employee, agency, or other qualified
28 relationship between Plaintiff and the Defendants.

1 76. It is illegal to discriminate against an individual based upon his disabilities pursuant to California
2 Government Code section 12940 et seq.
3 77. Plaintiff is/was an individual with disabilities, including chronic back pain due to scoliosis.
4 78. Plaintiff needed, Defendants were aware of or should have known of the disabilities, and/or he
5 requested Defendants to provide a reasonable accommodation for the disabilities.
6 79. Defendants suspended and discharged Plaintiff. A substantial motivating factor in the adverse
7 employment actions taken against Plaintiff were Plaintiff's disabilities.
8 80. Defendants have a pattern and practice of discriminating against those with disabilities.
9 81. Moreover, Defendants' facially neutral policy of nondiscrimination in employment decisions has
10 an unfavorable impact on those employees who are in a similar position to Plaintiff.
11 82. As a proximate result of Defendants' discrimination against Plaintiff, Plaintiff has suffered and
12 continues to suffer substantial losses in earnings, and other employment and retirement benefits
13 and has suffered and continues to suffer embarrassment, humiliation and mental anguish all to
14 his damage in an amount according to proof.
15 83. As a result of Defendants' discriminatory acts as alleged herein, Plaintiff is entitled to reasonable
16 attorneys' fees and costs of said suit as provided by California Government Code section 12965,
17 subsection (b).
18 84. Plaintiff filed timely charges of discrimination with the California Department of Fair
19 Employment and Housing ("DFEH") and EEOC and received a Notice of Case Closure
20 informing him of his right to sue. Therefore, Plaintiff has exhausted all of his administrative
21 remedies.

22 SIXTH CAUSE OF ACTION

23 RETALIATION IN VIOLATION OF FEHA

24 (Against KAISER, XANITOS, and DOES 1-10)

25 85. Plaintiff repeats and incorporates all paragraphs contained in this complaint as if the same were
26 fully set forth herein and with the same full force and effect.
27 86. At all times herein relevant there was an employer/employee relationship between the Plaintiff
28 and the Defendants.

1 87. It is against the law to retaliate against an employee for requesting an accommodation.
2 88. Plaintiff's requests for an accommodation were a substantial motivating factor in his termination
3 and adverse actions taken against him.
4 89. As a proximate result of Defendants' retaliation against Plaintiff, Plaintiff has suffered and
5 continues to suffer substantial losses in earnings, and other employment and retirement benefits
6 and has suffered and continues to suffer embarrassment, humiliation and mental anguish all to
7 his damage in an amount according to proof.
8 90. As a result of Defendants' retaliatory acts as alleged herein, Plaintiff is entitled to reasonable
9 attorneys' fees and costs of said suit as provided by California Government Code section 12965,
10 section (b).
11 91. Plaintiff filed timely charges of retaliation with the California Department of Fair Employment
12 and Housing ("DFEH") and received a Notice of Case Closure informing him of his right to sue.
13 Therefore, Plaintiff has exhausted all of his administrative remedies.

14 SEVENTH CAUSE OF ACTION
15 FAILURE TO REMEDY AND/OR PREVENT
16 DISCRIMINATION, HARASSMENT AND RETALIATION
17 IN VIOLATION OF FEHA
18 (Against KAISER, XANITOS, and DOES 1-10)

19 92. Plaintiff repeats and incorporates all paragraphs contained in this complaint as if the same were
20 fully set forth herein and with the same full force and effect.
21 93. At all times herein relevant, there was an employer/employee, agency, or other qualified
22 relationship between Plaintiff and the Defendants.
23 94. It is illegal to discriminate or retaliate against an individual based upon his disability, request for
24 medical leave, and/or request for reasonable accommodations pursuant to California Government
25 Code section 12940 et seq.
26 95. Defendants discriminated against and retaliated against Plaintiff. Defendants' knew of this
27 discrimination and retaliation, and/or reasonably should have known, and failed to act to prevent
28 and/or remedy it in violation of Govt. Code, § 12940, subd. (k).

1 96. As a proximate result of Defendants' failure to prevent discrimination and retaliation against
2 Plaintiff, Plaintiff has suffered and continues to suffer substantial losses in earnings, and other
3 employment and retirement benefits and has suffered and continues to suffer embarrassment,
4 humiliation and mental anguish all to his damage in an amount according to proof.

5 97. As a result of Defendants' acts as alleged herein, Plaintiff is entitled to reasonable attorneys' fees
6 and costs of said suit as provided by California Government Code section 12965, section (b).

7 98. Plaintiff filed a timely charge of discrimination, harassment, and retaliation with the California
8 Department of Fair Employment and Housing ("DFEH") and received a Notice of Case Closure
9 informing him of his right to sue. Therefore, Plaintiff has exhausted all of his administrative
10 remedies.

11 EIGHTH CAUSE OF ACTION

12 DEFAMATION PER SE/PER QUOD

13 (Against KAISER, XANITOS, and DOES 1-10)

14 99. Plaintiff repeats and incorporates all paragraphs contained in this complaint as if the same were
15 fully set forth herein and with the same full force and effect.

16 100. On or about July 22, 2016, and July 26, 2016, Defendants published that Plaintiff had engaged
17 in time card fraud.

18 101. These statements were published to Plaintiff and Frank Silva and Sandy Lazano who are
19 Plaintiff's union representatives.

20 102. The recipients of this information understood that it referred to Plaintiff.

21 103. Defendants knew the statements were false at the time they made them and/or Defendants failed
22 to use reasonable care to determine the truth or falsity of the aforementioned statements.

23 104. The statements constitute defamation per se/per quod.

24 105. As a proximate result of Defendants' conduct Plaintiff has been damaged and continues to suffer
25 substantial losses incurred in earnings, bonuses, deferred compensation and other employment
26 benefits.

27 106. As a further proximate result of Defendants' actions, Plaintiff has suffered and continues to
28 suffer emotional distress, mental anguish, embarrassment, humiliation and anxiety all to his

1 damage in an amount in excess of the minimum jurisdictional limits of this court. Plaintiff will
2 seek leave of court to amend his complaint to allege the correct amount at the time of trial or
3 according to proof at trial.

4 107. Defendants, and each of them, did the acts herein alleged maliciously, fraudulently and
5 oppressively, amounting to despicable conduct, and in conscious disregard of Plaintiff's rights.
6 The acts alleged herein were known to, authorized and ratified by Defendants. Plaintiff is thus
7 entitled to recover punitive damages against Defendants in an amount according to proof.

8 NINTH CAUSE OF ACTION

9 INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

10 (Against XANITOS, and DOES 1-10)

11 108. Plaintiff repeats and incorporates all paragraphs contained in this complaint as if the same were
12 fully set forth herein and with the same full force and effect.

13 109. There was an economic relationship with Plaintiff and KAISER.

14 110. XANITOS knew an economic relationship existed between Plaintiff and KAISER. This
15 economic relationship contained the probability of future economic benefit for Plaintiff.

16 111. XANITOS knew an economic relationship existed between Plaintiff and KAISER. This
17 economic relationship contained the probability of future economic benefit for Plaintiff.

18 112. Defendants intentionally interfered with these economic relationships for their own benefit.

19 113. Defendants' actions were wrongful pursuant to statutes cited herein this Complaint.

20 114. As a result of Defendants' intentional interference with prospective economic advantage,
21 Plaintiff has been damaged in that he has lost income rightfully his.

22 115. As a further proximate result of defendants' actions, Plaintiff has suffered and continues to suffer
23 emotional distress, mental anguish, embarrassment, humiliation and anxiety all to his damage
24 in an amount in excess of the minimum jurisdictional limits of this court. Plaintiff will seek
25 leave of court to amend his complaint to allege the correct amount at the time of trial or
26 according to proof at trial.

27 116. Defendants did the acts herein alleged maliciously, fraudulently and oppressively, amounting to
28 despicable conduct, and in conscious disregard of Plaintiff's rights. Plaintiff is thus entitled to

1 recover punitive damages from XANITOS in an amount according to proof.

2 TENTH CAUSE OF ACTION

3 INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

4 (Against KAISER, XANITOS, and DOES 1-10)

5 117. Plaintiff repeats and incorporates all paragraphs contained in this complaint as if the same were
6 fully set forth herein and with the same full force and effect.

7 118. The aforementioned acts done by the Defendants were outrageous, extreme, and uncivilized.

8 119. The acts described above have been intentional and malicious, and done for the purpose of
9 causing Plaintiff to suffer humiliation, anguish and emotional distress. All of Defendants'
10 actions were authorized or ratified by said Defendants with knowledge that Plaintiff's emotional
11 distress would increase and done with wanton and reckless disregard for the consequences to
12 Plaintiff and were uncivilized.

13 120. As a proximate result of Defendants' actions, Plaintiff has suffered and continues to suffer
14 substantial losses incurred in earnings, bonuses, deferred compensation and other employment
15 benefits.

16 121. As a further proximate result of Defendants' actions, Plaintiff has suffered and continues to
17 suffer emotional distress, mental anguish, embarrassment, humiliation and anxiety all to his
18 damage in an amount in excess of the minimum jurisdictional limits of this court.

19 122. Defendants did the acts herein alleged maliciously, fraudulently and oppressively, amounting to
20 despicable conduct, and in conscious disregard of Plaintiff's rights. The acts alleged herein were
21 known to, authorized and ratified by Defendants. Plaintiff is thus entitled to recover punitive
22 damages against Defendants in an amount according to proof.

23 PRAYER FOR RELIEF

24 WHEREFORE, Plaintiff requests relief as follows:

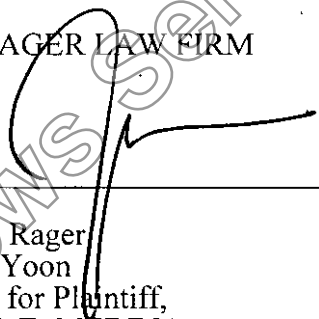
- 25 1. For compensatory economic damages according to proof including losses
26 incurred in seeking substitute employment and loss of earnings, and other
27 employment benefits;
28 2. For compensatory non-economic damages for losses resulting from humiliation,

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- mental anguish, and emotional distress according to proof;
- 3. For interest on the amount of losses incurred in earnings, deferred compensation and other employee benefits at the prevailing legal rate;
- 4. For statutory and civil penalties;
- 5. For punitive damages according to proof;
- 6. For costs incurred by Plaintiff, including reasonable attorneys' fees;
- 7. For reinstatement;
- 8. For such other and further relief as the Court may deem proper.

Dated: November 18, 2016

THE RAGER LAW FIRM

By: 

Jeffrey A. Rager
James Y. Yoon
Attorneys for Plaintiff,
GABRIEL E. MEDINA

Courthouse
Row's
Service

Courthouse News Service



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

DIRECTOR KEVIN KISH

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

November 18, 2016

Jeffrey Rager
970 West 190th Street Ste. 340
Torrance California 90502

RE: Notice to Complainant or Complainant's Attorney

DFEH Matter Number: 617932-263145

Right to Sue: Medina / Kaiser Foundation Hospitals

Dear Complainant or Complainant's Attorney:

Attached is a copy of your complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue. Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You or your attorney must serve the complaint. If you do not have an attorney, you must serve the complaint yourself. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California.

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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

DIRECTOR KEVIN KISH

November 18, 2016

RE: Notice of Filing of Discrimination Complaint

DFEH Matter Number: 617932-263145

Right to Sue: Medina / 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 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



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DIRECTOR KEVIN KISH

November 18, 2016

Gabriel Medina
3063 Belle Street
San Bernardino, California 92404

RE: Notice of Case Closure and Right to Sue
DFEH Matter Number: 617932-263145
Right to Sue: Medina / Kaiser Foundation Hospitals

Dear Gabriel Medina,

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective November 18, 2016 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



STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

GOVERNOR EDMUND G. BROWN JR.

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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DIRECTOR KEVIN KISH

Enclosures

cc: Xanitos, Inc.

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1 **COMPLAINT OF EMPLOYMENT DISCRIMINATION**

2 **BEFORE THE STATE OF CALIFORNIA**

3 **DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**

4 **Under the California Fair Employment and Housing Act**
5 **(Gov. Code, § 12900 et seq.)**

6 In the Matter of the Complaint of
7 Gabriel Medina, Complainant.
8 3063 Belle Street
9 San Bernardino, California 92404

DFEH No. 617932-263145

10 vs.

11 Kaiser Foundation Hospitals, Respondent.
12 393 East Walnut Street
13 Pasadena, California 91188

14 Complainant alleges:

15 1. Respondent **Kaiser Foundation Hospitals** is a subject to suit under the California Fair Employment and
16 Housing Act (FEHA) (Gov. Code, § 12900 et seq.). Complainant believes respondent is subject to the FEHA.

17 2. On or around , complainant alleges that respondent took the following adverse actions against complainant:
18 **Discrimination, Retaliation Denied a good faith interactive process, Denied a work environment free of**
19 **discrimination and/or retaliation, Denied family care or medical leave, Denied reasonable**
20 **accommodation, Terminated.** Complainant believes respondent committed these actions because of their:
21 **Disability, Engagement in Protected Activity, Family Care or Medical Leave, Medical Condition -**
22 **Including cancer or cancer related medical condition or genetic characteristics .**

3. Complainant **Gabriel Medina** resides in the City of **San Bernardino**, State of **California**. If complaint includes co-respondents please see below.

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2 **Co-Respondents:**

Xanitos, Inc.

3 3809 West Chester Pike
4 Newton Square California 19073
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2 **Additional Complaint Details:**

3 Mr. Medina was hired on February 20, 1990 by Kaiser as an EVS Attendant, where he
4 performed mainly janitorial-type duties. In 2009, Mr. Medina received a performance
5 evaluation of Meets Expectation. In 2010, Mr. Medina received a performance
6 evaluation of Meets Expectation. His review stated that Mr. Medina: shows a caring
7 courteous attitude to patients visitors and staff(,) ensures safe work habits for self and
8 others(,) does a great job with Time Management(,) and ended with Grabiell Thank
9 You. In 2011, Mr. Medina received a performance evaluation of Meets Expectation with
10 an exceeds expectation for his respectful and courteous interpersonal relationships. In
11 2012, Mr. Medina received a performance evaluation of Meets Expectation with a
12 number of exceeds expectation marks for his work performance. In 2013, Mr. Medina
13 received a performance evaluation of Meets Expectation with an exceeds expectations
14 for his attitude and reporting of complaints and concerns. In 2014, Mr. Medina received
15 a performance evaluation of Meets Expectation. Mr. Medina received an exceeded
16 expectations in a category that stated: Consistently demonstrates the knowledge, skills,
17 abilities and behaviors necessary to provide superior and culturally sensitive service to
18 each other, to our members, and to customers, contracted providers and vendors. And
19 participates in service training and KP programs provided. Mr. Medinas review also
20 stated that working with you at San Bernadine Clinic has being a great experience.
21 Keep up the good work. Thanks for your hard work. In March 2015, Mr. Medina re-
22 applied for intermittent FMLA/CFRA leave on account of his sons illness. Mr. Medinas
son had a significant asthma condition that required the use of a sizeable nebulizer in
the event of a serious asthma flare up. On January 27, 2016, Mr. Medina applied for
intermittent FMLA/CFRA leave for his own serious health condition, specifically for his
worsening back pain from scoliosis. On February 2, 2016, Mr. Medinas medical care
provider, Dr. Javier Melendez Sanchez, submitted FMLA/CFRA certification to Kaiser
for Mr. Medinas own serious health condition. Mr. Medinas sons medical care provider,
Pranee Thulyathan, also submitted FMLA/CFRA certification to Kaiser for Mr. Medinas
sons serious health condition. On March 17, 2016, at about 10:40 p.m., Mr. Medinas
wife called and told Mr. Medina that she was very sick running a 103 degree fever and
with an illness that was getting progressively worse. She also told Mr. Medina that their
son needed to be treated through the nebulizer as his asthma was severe and his
regular inhaler was ineffective. Mr. Medinas wife then told Mr. Medina that she was
worried she may not be able to properly administer the necessary asthma medication
through the nebulizer improper dosage could be could be dangerous for their young
son. Worried and in distress about his wife and son, Mr. Medina left work immediately
to get to his home, which was about five minutes away, to administer medication for his
sons asthma and to check in on his wife. When Mr. Medina returned to work later that
evening, he was confronted by his managers Luis Figueroa and Sergio. Mr. Medina
explained the situation to his managers and told them that he was going to fill out the
time log as family leave. Sergio told Mr. Medina just to log out and go home. On the

very next day, Mr. Medinas wife was seen by her medical care professional and diagnosed with pneumonia. When Mr. Medina also returned to work the next day, on March 18, 2016, Mr. Medina was met with his managers Mr. Figueroa and Sergio (who Plaintiff is informed and believes are XANITOS subcontracted managers for KAISER), and his union supervisor, Frank Silva, to discuss the events of the night before. Mr. Medina explained the situation with his wifes serious illness and his fear for his young son asthma condition given his wifes illness. Mr. Medina also explained that he had FMLA/CFRA leave available for his son. After the meeting, Mr. Medina placed on administrative leave effective from

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1 VERIFICATION

2 I, **Jeffrey A. Rager**, am the Attorney for Complainant in the above-entitled complaint. I have read the
3 foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those
4 matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

5 On November 18, 2016, I declare under penalty of perjury under the laws of the State of California that the
6 foregoing is true and correct.

7 **Torrance, CA**
8 **Jeffrey A. Rager**
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