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GLORINDA K. PASTORIUS

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

GLORINDA K. PASTORIUS, individually

Plaintiff,

v.

ALAMEDA HEALTH SYSTEM, 501(c)(3)
nonprofit; ALAMEDA HEALTH SYSTEM
FOUNDATION, 501(c)(3) nonprofit; and DOES 1
through 50, inclusive.

Defendants.

Case No. **23CV051202**

COMPLAINT FOR DAMAGES

1. Retaliation for Violation of Cal. Health & Safety Code § 1278.5
2. Retaliation for Violation of Cal. Labor Code §§ 98.6, 1102.5, 1102.6, 6310, 6311
3. Negligent Hiring, Supervision and Retention
4. Retaliation and Constructive Wrongful Termination in Violation of Public Policy
5. Intentional Infliction of Emotional Distress
6. Unfair Competition in Violation of Bus. & Prof. Code, §§ 17200, et. seq.
7. Failure to Pay All Wages Upon Separation of Employment (Labor Code § 201)
8. Failure to Provide Adequate Pay Stubs, Cal. Lab. Code § 226
9. Failure to Maintain Accurate Records, Cal. Lab. Code § 1174
10. Continuing Wages, Cal. Lab. Code §§ 201, 202, 203

DEMAND FOR JURY TRIAL

1. Plaintiff GLORINDA K. PASTORIUS (“Plaintiff” or “Pastorius”) individually, brings this action against Defendants ALAMEDA HEALTH SYSTEM (“AHS”), ALAMEDA HEALTH SYSTEM

1 FOUNDATION (“AHSF”), and DOES 1 through 50, inclusive.

2 ***PARTIES***

3 2. Plaintiff is, and at all times relevant to this action was, a resident of the City of Concord,
4 California. The events giving rise to this action arose in San Leandro, California.

5 3. Plaintiff is informed and believes, and based thereon alleges, that Defendant Alameda
6 Health System was at all relevant times a California 501(c)(3) nonprofit corporation organized under the
7 laws of the State of California.

8 4. Plaintiff is informed and believes, and based thereon alleges, that Defendant Alameda
9 Health System Foundation was at all relevant times a California 501(c)(3) nonprofit corporation organized
10 under the laws of the State of California.

11 5. The true names and capacities, whether individual, corporate, associate or otherwise, of
12 defendants Does 1 through 50 (“Does”), inclusive and each of them, are not known to Plaintiff at this time.
13 Such Does are legally responsible for the events and happenings described herein and for the damages
14 proximately caused thereby. Plaintiff will seek the leave of the Court to amend this complaint to set forth
15 the true names and capacities of any such Does when they have been ascertained.

16 6. On information and belief, at all times mentioned herein, defendants, inclusive and each of
17 them, including without limitation any Does, were acting in concert and participation with each other; were
18 joint participants and collaborators in the acts complained of; and were the agents and/or employees of one
19 another in doing the acts complained of herein, each acting within the course and scope of said agency
20 and/or employment.

21 7. Alameda Health System, Alameda Health System Foundation, and Does 1 through 50,
22 inclusive, are collectively referred to hereafter as “Defendants.”

23 ***JURISDICTION AND VENUE***

24 8. This Court has jurisdiction over Defendants, because at all times relevant, they were
25 authorized to transact, and are transacting business in Alameda, California.

26 9. Venue is proper in this Court pursuant to Code of Civil Procedure § 395, because the acts,
27 events and omissions complained of herein occurred in Alameda County, California.

28 ***EXHAUSTION OF ADMINISTRATIVE REMEDIES***

1 10. On November 15, 2022, Plaintiff obtained a Right to Sue Letter from the Civil Rights
2 Department of the State of California attached hereto as **Exhibit A**.

3 ***GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION***

4 11. On May 4, 2020, Plaintiff Glorinda Pastorius began her employment with Alameda Health
5 System (“AHS”) as the Vice President of Patient Care Services at San Leandro Hospital.

6 12. Ms. Pastorius’ job duties included overseeing the day-to-day nursing care operations of San
7 Leandro Hospital (“SLH”), that included the inpatient nursing, perioperative, emergency services and
8 respiratory services departments.

9 13. Ms. Pastorius’ was hired and given the responsibility for ensuring SLH complied with
10 regulatory agencies and establishing hospital standards, practices and procedures, and in conjunction with
11 others within the leadership team, ensuring licensure and accreditation compliance.

12 14. Ms. Pastorius reported directly to her supervisor, Chief Nurse Executive, Janet McGinnes
13 (“McGinnes”). Although Ms. Pastorius’ direct supervisor was McGinnes, Ms. Pastorius’ job duties and
14 expectations were not solely directed by McGinnes or overseen by McGinnes. Her job duties and
15 expectations were, at times, directed or overseen by various individuals within the leadership team. Ms.
16 Pastorius was responsible for collaborating with Nursing, Quality Services, Medical Staff, and other
17 hospital departments to formulate corrective action plans to identify opportunities for improvement in
18 operations, and to supervise hospital staff and manage employee performance. At all times, Ms. Pastorius
19 performed her duties in an exemplary manner.

20 15. Ms. Pastorius’ was instrumental in improving San Leandro Hospital’s HCAPS scores over
21 the two years she was employed. SLH scores prior to Ms. Pastorius’ employment were in the low percentile
22 and moved up to meeting target goals on many elements.

23 16. Ms. Pastorius was instrumental in improving San Leandro Hospital’s Leapfrog ratings. In
24 the summer of 2020, San Leandro Hospital’s scores were F/D ratings and during the two years of Ms.
25 Pastorius’ employment, SLH’s Leapfrog scores improved to B ratings.

26 17. As VP of Patient Care Services, Ms. Pastorius regularly reported to the governing bodies
27 and regulating entities. She was responsible for interpreting and implementing The Joint Commission
28 (TJC) and State and Federal regulations pertaining to nursing practice at San Leandro Hospital. She was

1 accountable for evaluating and analyzing statistical data concerning quality, compassionate, competent,
2 cost-effective nursing care for San Leandro Hospital, and to identify trends or opportunities for
3 improvement utilizing appropriate statistical techniques. Shortly after beginning her employment at San
4 Leandro Hospital, Ms. Pastorius became aware of certain staffing issues and unlawful and unlicensed
5 practices occurring at San Leandro Hospital.

6 18. Initially, at the start of her employment at AHS, the Joint Commission had placed AHS on
7 immediate jeopardy in terms of patient care and safety as well as infection control issues. The goal at the
8 start of her employment was to get SLH ready for their Joint Commission follow-up survey.

9 19. Early on in her employment and as part of Ms. Pastorius' job duties, Ms. Pastorius began
10 noticing and reporting, both verbally and in writing, major State and Federal regulatory violations by
11 nursing and medical staff concerning patient health and safety procedures, as well as the lack of effort by
12 department supervisors and AHS to remedy the identified violations. These violations were causing serious
13 patient care outcomes and even resulted in a known patient's death.

14 20. At the beginning of her employment, Ms. Pastorius was unable to effectively manage
15 staffing, submit patient reports from physicians and perform department audits due to the lack of access
16 and onboard training she received on the AHS's medical software. The lack of nursing staff orientation
17 and onboard training procedures were a regular occurrence at AHS during Ms. Pastorius' employment.

18 21. Not long after being hired, Ms. Pastorius received complaints from Operating Room (OR)
19 staff that a provider was using inappropriate sedation during procedures. Patients could feel procedures
20 being performed due to lack of sedation. Ms. Pastorius reported this complaint to her supervisor, Janet
21 McGinnes.

22 22. AHS and SLH did nothing about this complaint as AHS continued to let permit the doctor
23 work in the OR/GI Lab after this event. Every case that this provider wanted to schedule had to be first
24 screened by an anesthesiologist to deem if he can perform sedation or if sedation had to be completed by
25 an anesthesiologist.

26 23. In late summer of 2020, the Emergency Department (ED) reported to Ms. Pastorius that a
27 doctor inappropriately placed a central line resulting in patient harm. As per reported by other providers,
28 there were previous reports to medical staff concerning this provider's lack of safety. Root Case Analysis

1 (RCA) was done by Quality Department and the provider was eventually removed from the ED.

2 24. Throughout her employment at SLH, the EPIC program was not adequately utilized by the
3 providers for scheduling patient procedures in the Operating Room (“OR”). Procedures were being
4 scheduled based on the providers’ own availability and not the needs of the patient. This scheduling issue
5 was continually affecting patient care and operations of the perioperative departments. The director of the
6 OR Department, Sandra S., reported to Ms. Pastorius numerous incidents where this scheduling issue was
7 affecting patient care.

8 25. One instance occurred in early June 2022, when an Operating Room patient drove himself
9 to SLH for a surgical case as an outpatient. The hospital staff reported on the OR Log and Midas (the
10 hospital's reporting system) on the day of the patient’s surgery that the patient was marked as “Urgent”.
11 However, despite the “Urgent” notation in the system, the provider scheduled the patient’s surgery based
12 on their own availability. The provider refused to have the patient typed and screened prior to surgery as
13 he informed the Peri-Op Manager that he had to be somewhere at 5:30 pm and did not have time to wait.
14 As a result, the OR patient had complications and began to bleed during the case. He was admitted to the
15 Intensive Care Unit and subsequently passed away the next day.

16 26. It was Ms. Pastorius’ job to oversee the day-to-day operations in the Operating Room. When
17 the Peri-Op Manager reported these issues to Ms. Pastorius, Ms. Pastorius reported them to her supervisors,
18 but her reports were dismissed. AHS and SLH took no action.

19 27. Ms. Pastorius was continually reporting that the electrocardiogram machines (“EKGs”) in
20 the SLH Emergency Department and other hospital departments were past their Quality Assurance
21 expiration dates. At one point, these issues with the EKGs left the Emergency Department without EKG
22 machines. Within a week of the ED reporting to Ms. Pastorius that they were without EKGs, Ms. Pastorius
23 arranged for the ED to borrow EKGs from the Post-Anesthesia Care Unit Department (“PACU”) and
24 Cardiology Department during off hours. Ms. Pastorius continued to report issues with EKGs and other
25 out of compliance hospital equipment to her supervisors and AHS management. However, her reports went
26 on being dismissed and not addressed by AHS.

27 28. Ms. Pastorius received reports from the Peri-Op Nurse Manager, Sandra Sansui, who
28 reported that medical doctors were not completing their time outs properly as required for invasive

1 procedures. The doctors were documenting the time going into the operating room and time out done when
2 they had not been fully completed. These doctors were re-educated and advised that these time outs were
3 required by the nurse manager to ensure patient and staff safety. Ms. Pastorius reported this ongoing issue
4 to her supervisors and reported this to the Regulatory Department at SLH after the issues were not
5 addressed by AHS.

6 29. Around mid-May 2022, a representative from the Regulatory Department, Nilda Perez,
7 called to discuss the time-out issue with Ms. Pastorius. She explained the doctor's time-out error persisted
8 despite retraining and that this was a safety issue. However, after Plaintiff's discussion with the Regulatory
9 Department, AHS and SLH did not correct the doctor's time-out reporting.

10 30. There was a situation where an SSPD Tech had been allowed to return to work after
11 suffering from a medical event, despite being unable to perform his duties effectively. Ms. Pastorius had
12 received a photograph via email from the Chief Medical Officer that depicted instruments on trays prepared
13 by the SSPD Tech that had not been correctly sterilized or wrapped correctly for use within an invasive
14 procedure. Ms. Pastorius reported the incident to McGinnis. Ms. Pastorius informed McGinnes that HR
15 Business Partner, Karen Hopkins and Disability Program Manager, Greg Stephens had made a request to
16 reinstate the SSPD Tech from his leave of absence and return to work. Ms. Pastorius continued to report
17 the matter until McGinnes was responsive. McGinnes notified SLH's Manager of Employee Health, Terry
18 Dixon. Dixon requested to speak with Ms. Pastorius regarding the situation as she did not believe the tech
19 had an issue.

20 31. Ms. Pastorius began noticing and receiving reports from employees of continued employee
21 abuse by providers and other hospital staff, particularly in the Peri-Op areas. Ms. Pastorius made several
22 requests to her supervisors and HR to formally investigate the hostile work environment between
23 employees and providers. SLH's human resources department failed to investigate these claims. Ms.
24 Pastorius pursued her own investigation into these matters. With the Peri-Op Manager, Sandra Sansui
25 present, Ms. Pastorius interviewed each staff member of the Peri-Op Department. She documented what
26 each worker shared with her and provided her report to executive leadership. Based on information and
27 belief of Ms. Pastorius, no action was taken by executive leadership or AHS.

28 32. A Zoom call took place between Ms. Pastorius with the ED Nurse Manager, Cheryl Duncan,

1 Karen Hopkins, HR Representative and Tugi M, Labor relations to discuss the behavior of the house
2 supervisor. Hopkins and Tugi informed Ms. Pastorius that she was not to deliver discipline to this employee
3 as this employee continually pulled the “race card” anytime she is spoken to regarding issues or concerns,
4 and then she goes out on leave of absence. These discussions with the house supervisor were documented.
5 Ms. Pastorius’ new supervisor, Chief Nursing Officer Ro Lofton (“Lofton”) who took over after McGinnis
6 left her employment with AHS, was also notified of these conversations and issues with the house
7 supervisor. Based on the information and belief of Ms. Pastorius, Ro Lofton planned discipline. Ms.
8 Pastorius was informed that she was not allowed to deliver any discipline. Lofton took these issues with
9 the house supervisor to Chief of HR, Lorna Jones. Based on information and belief of Ms. Pastorius, no
10 action was taken to discipline the house supervisor.

11 33. A Telemed Nurse Manager, Kasey McBride, notified Ms. Pastorius of mistreatment
12 occurring by Dr. Yousseff. Ms. McBride stated that several reports on his behavior had been submitted
13 previously to the Midas reporting system. Ms. Pastorius documented the report from McBride and kept
14 these notes in McBride’s employee file.

15 34. The Operating Room (OR) staff notified Ms. Pastorius that medical doctor Jenny Yu was
16 using foul language and conducting inappropriate behaviors in front of patients that were creating a hostile
17 work environment. Several incidents had been reported and behaviors were against the AHS’s code of
18 conduct. Ms. Pastorius reported this to HR. However, AHS never took any form of corrective action against
19 Dr. Yu and her behavior continued against the staff.

20 35. An Emergency Room (“ER”) investigation was requested by Ms. Pastorius regarding
21 ongoing patient abuse and employee abuse. When Ms. Pastorius reported these issues to HR, she was
22 informed by Karen Hopkins and Tugi that they did not have resources to conduct two investigations.
23 Pastorius needed to choose whether to investigate the Peri-Op Department or ER Department first.

24 36. Ms. Pastorius continually notified the Executive team of the multiple issues in the
25 departments she managed. She reported that certain medical doctors refused to perform standard
26 procedures and follow necessary processes as per hospital policies. She requested a formal investigation
27 of various departments, but no initiatives were taken to pursue the matters until her third request was made
28 where she was granted limited scope to any investigations. However, after reporting the results of her

1 investigations, Alameda Health System's failed to address any of these issues that continued to put San
2 Leandro Hospital patients and nursing licensures at risk. As a result of AHS failure to address these issues,
3 Ms. Pastorius began submitting her growing concerns and the repeated violations to Midas (AHS's safety
4 reporting system) as a standard protocol.

5 37. In and around June 2022, following submission of her concerns via Midas and emailing her
6 supervisors to confirm their receipt of the Midas submissions, Ms. Pastorius's supervisor, Ro Lofton began
7 avoiding any interaction and communication with Ms. Pastorius – even canceling their regular one-on-one
8 appointments that were previously scheduled. Eventually, Ms. Pastorius was able to communicate with
9 Lofton-via telephone before a board meeting. Ms. Pastorius told Lofton that her work ethics were being
10 compromised all the time as patient safety at AHS was repeatedly being compromised and placed at risk.
11 Ms. Pastorius told Lofton that she voiced concerns multiple times since she started working at SLH and
12 her reports were being ignored.

13 38. On July 1, 2022, Ms. Pastorius met with the onsite chaplain and talked about ethics and her
14 reporting patient safety issues at SLH. She feared being terminated due to speaking out against the
15 mistreatment and safety violations that had been occurring at SLH.

16 39. On or around July 6, 2022, shortly after the conversation Ms. Pastorius had with her
17 supervisor Lofton and her Midas reporting, a security guard met Ms. Pastorius outside the administrative
18 offices. Ro Lofton and Lorna Jones, were waiting in Lofton's satellite office.

19 40. Lofton and Jones told Ms. Pastorius that she was being terminated due to "negativity of
20 system".

21 41. Despite telling Ms. Pastorius that she was being terminated, they told Ms. Pastorius that she
22 had a strong work ethic, high productivity and she did her job very well.

23 42. Shortly after submitting her reports to Midas and voicing her concerns to her supervisor,
24 Ro Lofton, Ms. Pastorius was retaliated against and wrongfully terminated from her employment at AHS.

25 43. From May 4, 2020, until July 6, 2022, Ms. Pastorius served as a whistleblower for reporting
26 patient risk and harm occurring at San Leandro Hospital.

27 44. Shortly after AHS terminated Ms. Pastorius, she received an email from Ro Lofton that was
28 sent to the staff that claimed Ms. Pastorius had resigned from her position which clearly did not happen.

1 She was terminated. As a result of this inaccuracy, Ms. Pastorius has refused to sign any paperwork that
2 was in her separation package.

3 45. Ms. Pastorius was terminated in retaliation for reporting the ongoing critical staff shortages
4 and patient safety and licensures issues at SLH. Ms. Pastorius' made several attempts to report these issues
5 to her supervisors and Executive team at AHS, but Ms. Pastorius believed that her reports were being
6 ignored as the patient care issues continued.

7 46. On July 8, 2022, Ms. Pastorius was seen in urgent care due to stress and anxiety after being
8 wrongfully terminated by AHS. Ms. Pastorius notified Ms. Hopkins in HR of her visit.

9 47. Ms. Pastorius' final paychecks did not include premiums owed to Ms. Pastorius for her new
10 salary that started on June 26, 2022. The final paychecks were for her old salary amount. Ms. Pastorius
11 made an inquiry to Karen Hopkins in HR to report these issues with her final paychecks.

12 48. Throughout her employment, due to insufficient nursing staff at SLH, Ms. Pastorius at times
13 was called to cover nursing management duties for several hospital departments in addition to performing
14 her regular job duties as VP of Patient Care Services.

15 49. During Ms. Pastorius' employment and due to the staff shortages, Ms. Pastorius was tasked
16 with covering ICU and House Supervisors during the Nurse Manager's leave of absence time of leave. Ms.
17 Pastorius was not provided with any additional resources or help during these times, so she was asked to
18 cover these duties herself.

19 50. When Ms. Pastorius was covering additional department duties due to staff shortages, Ro
20 Lofton notified Ms. Pastorius that she was entitled to a 10-15 percent increase in wages due to the additional
21 duties she was asked to cover. However, Ms. Pastorius did not receive the pay increase for covering these
22 extra duties.

23 51. On or around July 21, 2022, Ms. Pastorius was seen by her medical provider. Ms. Pastorius
24 notified HR Karen Hopkins of the appointment. Ms. Hopkins advised Ms. Pastorius to file for disability
25 with Matrix. Ms. Pastorius filed for disability and filed a workers' compensation claim. As a result of being
26 retaliated against and wrongfully terminated, when Ms. Pastorius was seen by her primary care provider,
27 she found out that her disability application and workers' compensation claim were denied by AHS.

28 52. Ms. Pastorius is informed and believes and thereon alleges that her supervisors and AHS

1 did not conduct a reasonable or good faith investigations into any of Ms. Pastorius' reports, or arrive at
2 reasonable or good faith conclusions, in determining that the reports made by Ms. Pastorius on behalf of
3 the leadership team of managers, supervisors and employees in the departments she managed were
4 significantly impacting patient care and safety. Rather, there were no investigations done by supervisors
5 or AHS Executive team after she reported these safety concerns and were ultimately a pretext to retaliate
6 and fire Ms. Pastorius for blowing the whistle on unlawful, unsafe, and unlicensed medical practices and
7 workplace harassment and retaliation.

8 53. Defendants had advanced knowledge of the unfitness of its employees and managing agents
9 and employed them with conscious disregard of the rights and safety of others. Further, Defendants
10 authorized and ratified through their officers, directors, managing agents, partners and owners, the
11 wrongful conduct alleged above.

12 54. Since her wrongful and retaliatory termination, Ms. Pastorius has suffered, and continues
13 to suffer, from anxiety and depression requiring medical care and treatment. Ms. Pastorius has suffered
14 humiliation, embarrassment, mental anguish, emotional and physical distress, discomfort and has been
15 injured in mind and body.

16 55. As a further and proximate result of defendant's wrongful, retaliatory, and tortious conduct,
17 as alleged above, Ms. Pastorius has been harmed in that Ms. Pastorius has suffered the loss of wages, loss
18 of benefits, the intangible loss of such employment related opportunities and experience from which Ms.
19 Pastorius was terminated, and additional income and benefits Ms. Pastorius would have received from her
20 employment position with Defendants.

21 56. Prior to filing this action, Ms. Pastorius exhausted her administrative remedies by filing a
22 timely administrative complaint with the California Civil Rights Department ("CRD") and receiving a
23 CRD right-to-sue letter attached hereto as **Exhibit A**.

24 ***FIRST CAUSE OF ACTION***

25 *Retaliation for Violation of Health and Safety Code §1278.5, et. seq.*

26 [Retaliation for Reporting Unsafe Patient Care and Conditions]

27 *(Against All Defendants and DOES 1-50)*

28 57. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set

1 forth in this Complaint.

2 58. At all times herein relevant, Health and Safety Code section 1278.5 was in full force and
3 effect and binding on Defendants, stating in part:

4 (a) states, in part, that “it is the public policy of the State of California to
5 encourage patients, nurses, members of the medical staff, and other health
6 care workers to notify government entities of suspected unsafe patient care
and conditions.”

7 (b) (1) No health facility shall discriminate or retaliate, in any manner,
8 against any patient, employee, member of the medical staff, or any other
9 health care worker of the health facility because that person has done either
of the following:

10 (A) Presented a grievance, complaint, or report to the facility, to an
11 entity or agency responsible for accrediting or evaluating the facility, or the
medical staff of the facility, or to any other governmental entity.

12 (B) Has initiated, participated, or cooperated in an investigation or
13 administrative proceeding related to the quality of care, services, or
14 conditions at the facility that is carried out by an entity or agency
responsible for accrediting or evaluating the facility or its medical staff, or
governmental entity.

15 (2) No entity that owns or operates a health facility, or that owns or
16 operates any other health facility, shall discriminate or retaliate against any
17 person because that person has taken any actions pursuant to this
subdivision.

18 59. Defendants were Plaintiff’s employer, and Plaintiff was Defendant’s employee.

19 60. Plaintiff’s job responsibilities were to ensure SLH was in compliance with regulatory
20 agencies and establishing hospital standards, practices and procedures, and in conjunction with others
21 within the leadership team, ensuring licensure and accreditation compliance. She was responsible for
22 collaborating with Nursing, Quality Services, Medical Staff and other hospital departments to report and
23 formulate corrective action plans to identify opportunities for improvement in operations, and to supervise
24 hospital staff and manage employee performance. At all times, Ms. Pastorius performed her duties in an
25 exemplary manner.

26 61. Plaintiff made complaints to her supervisor Ro Lofton and the Defendants’ Executive and
27 leadership teams regarding various patient safety concerns as alleged above.

28 62. Plaintiff made the complaints because she believes that her concerns constituted a patient

1 safety concern and needed to be addressed in the interest of providing safe quality care.

2 63. In the course of Plaintiff performing her job responsibilities, Plaintiff reported perceived
3 legal violations to persons with authority over Plaintiff and other employees of Defendant that had the
4 authority to investigate, discover, or correct those legal violations.

5 64. As a result of the foregoing reports by Plaintiff, Defendants retaliated against Plaintiff by
6 terminating Plaintiff, rather than taking appropriate actions to investigate or correct the perceived unlawful
7 practices.

8 65. Plaintiff was harmed.

9 66. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

10 67. The conduct of Defendants and each of them as described above was malicious, fraudulent,
11 or oppressive and done with a willful and conscious disregard for Plaintiff's rights. Defendants and each
12 of them, and their agents/employees or supervisors, authorized, condoned, and ratified the unlawful
13 conduct of each other. Consequently, Plaintiff is entitled to punitive damages against each of said
14 Defendants.

15 ***SECOND CAUSE OF ACTION***

16 *Retaliation for Violation of California Labor Code §§ 98.6, 1102.5, 1102.6, 6310, 6311*

17 *(Against All Defendants and DOES 1-50)*

18 68. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
19 forth in this Complaint.

20 69. At all relevant times, Labor Code section 98.6 was in full force and effect and binding on
21 Defendants making it unlawful for "[a] person" to "discharge an employee or in any binding on Defendants
22 making it unlawful for "[a] person" to "discharge an employee or in any manner discriminate, retaliate, or
23 take any adverse action against any employee ... because the employee ... engaged in any conduct including
24 the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of
25 Part 3 of Division 2 " (Lab. Code, § 98.6, subd. (a).) An employee who has been discharged or retaliated
26 against in violation of Labor Code section 98.6 is entitled to recover a civil penalty against the employer
27 in an amount not exceeding ten thousand dollars (\$10,000.00) for each violation.

28 70. The whistleblower protection statute of the Labor Code prohibits retaliation against an

1 employee who, or whose family member, discloses information about, or refuses to participate in, an illegal
2 activity. (Lab. Code, § 1102.5(b), (c), (h).) Liability may be predicated on retaliation by "any person acting
3 on behalf of the employer." (Lab. Code, § 1102.5(a)-(d).) At all relevant times, Labor Code section 1102.5
4 was in full force and effect and was binding on Defendants stating, in relevant part:

5 "(a) An employer, or any person acting on behalf of the employer, shall not
6 make, adopt, or enforce any rule, regulation, or policy preventing an
7 employee from disclosing information to a government or law enforcement
8 agency, to a person with authority over the employee, or to another
9 employee who has authority to investigate, discover, or correct the
10 violation or noncompliance, or from providing information to, or testifying
11 before, any public body conducting an investigation, hearing, or inquiry, if
12 the employee has reasonable cause to believe that the information discloses
13 a violation of state or federal statute, or a violation of or noncompliance
14 with a local, state, or federal rule or regulation, regardless of whether
15 disclosing the information is part of the employee's job duties."

16 "(b) An employer, or any person acting on behalf of the employer, shall not
17 retaliate against an employee for disclosing information, or because the
18 employer believes that the employee disclosed or may disclose
19 information, to a government or law enforcement agency, to a person with
20 authority over the employee or another employee who has the authority to
21 investigate, discover, or correct the violation or noncompliance, or for
22 providing information to, or testifying before, any public body conducting
23 an investigation, hearing, or inquiry, if the employee has reasonable cause
24 to believe that the information discloses a violation of state or federal
25 statute, or a violation of or noncompliance with a local, state, or federal
26 rule or regulation, regardless of whether disclosing the information is part
27 of the employee's job duties."

28 71. "Labor Code section 1102.5, subdivision (b) protects employee reports of activity by third
parties such as contractors and employees, as well [as] unlawful activity by an employer. In support of our
conclusion, we note that an employer may have a financial motive to suppress reports of illegal conduct
by employees and contractors that reflect poorly on that employer." (*McVeigh v. Recology San Francisco*
(2013) 213 Cal.App.4th 443, 471 [152 Cal.Rptr.3d 595], internal citation omitted.) In this case, Plaintiff
reasonably believed that her supervisors, managers and AHS Executive Team's actions violated federal,
state, or local statutes, rules, or regulations and that Defendants had a reason not to want these actions to
be exposed.

 72. Pursuant to Labor Code section 1102.6, Defendant bears the burden of proving by "clear
and convincing" evidence that each adverse employment decision taken against Plaintiff would have
occurred regardless of her objecting to and complaining about each illegality alleged herein.

73. Labor Code section 6310 provides, in pertinent part, as follows:

"(a) No person shall discharge or in any manner discriminate against any employee because the employee has ... (1) Made any oral or written complaint to ... his or her employer, or his or her representative ...

"(b) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because the employee has made a bona fide oral or written complaint to ... his or her employer, or his or her representative, of unsafe working conditions, or work practices, in his or her employment or place of employment. ... shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor."

74. Labor Code section 6311 provides, in pertinent part, as follows:

"No employee shall be laid off or discharged for refusing to perform work in the performance of which this code, including Section 6400, any occupational safety or health standard or any safety order of the division or standards board will be violated, where the violation would create a real and apparent hazard to the employee or his or her fellow employees. Any employee who is laid off or discharged in violation of this section or is otherwise not paid because he or she refused to perform work in the performance of which this code, any occupational safety or health standard or any safety order of the division or standards board will be violated and where the violation would create a real and apparent hazard to the employee or his or her fellow employees shall have a right of action for wages for the time the employee is without work as a result of the layoff or discharge."

75. Ms. Pastorius is informed and believes and thereon alleges that her supervisors and AHS did not conduct a reasonable or good faith investigations, or arrive at reasonable or good faith conclusions, in determining that the reports made by Ms. Pastorius on behalf of those managers, supervisors and employees in the departments she managed were significantly impacting patient care and safety. Rather, there were no investigations done by supervisors or AHS Executive team and were ultimately a pretext to retaliate and fire Ms. Pastorius for blowing the whistle on unlawful, unsafe and unlicensed medical practices and workplace harassment and retaliation.

76. Plaintiff was harmed by this action and Defendants conduct was a substantial factor in causing this harm.

77. Defendants' conduct was extreme and outrageous and was a substantial factor in causing

1 Plaintiffs. injuries, which include, but are not limited to: loss of income, humiliation, embarrassment,
2 severe mental and emotional distress, and discomfort, all of which amount to Plaintiffs damage which
3 totals in excess of the minimum jurisdiction of this court, the precise amount to be proven at trial.

4 78. Defendants committed the acts herein alleged maliciously, fraudulently, and oppressively
5 with the wrongful intention of injuring Plaintiff, and acted with an improper and evil motive amounting to
6 malice, in conscious disregard for Plaintiffs rights and thus an award of exemplary and punitive damages
7 is justified. Further, the actions directed at Plaintiff were carried out by supervising employees acting in a
8 deliberate, callous and intentional manner in order to injure and damage Plaintiff. Plaintiff is therefore
9 entitled to recover and herein prays for punitive damages in an amount sufficient to punish and deter
10 Defendants and others for such conduct.

11 ***THIRD CAUSE OF ACTION***

12 *Negligent Hiring, Supervision and Retention*

13 *(Against All Defendants and DOES 1-50)*

14 79. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
15 forth in this Complaint.

16 80. Defendants had advanced knowledge of the unfitness of its employees and managing agents
17 and employed them with conscious disregard of the rights and safety of others. Further, Defendants
18 authorized and ratified through their officers, directors, managing agents, partners and owners, the
19 wrongful conduct alleged above.

20 81. Defendants owed a duty of care to plaintiff to appoint, hire, retain, and supervise persons
21 who would not engage in retaliatory conduct. Defendants owed a duty of care to plaintiff not to retain
22 managers or employees who would retaliate against employees for engaging in protected activities.
23 Defendants owed a duty of care to plaintiff to supervise their managers and employees closely to ensure
24 that they would refrain from retaliating against plaintiff.

25 82. Defendants breached these duties. As a result, defendants caused damages to Plaintiff. As a
26 proximate result of defendants' negligent hiring, retention, and supervision of their managers and
27 employees, plaintiff has suffered and continues to suffer damages, including losses of earnings and
28 benefits, according to proof.

83. As a direct and proximate result of Defendant's breach of duty to Plaintiff, Plaintiff was damaged in an amount to be proven at trial.

FOURTH CAUSE OF ACTION

Wrongful Termination in Violation of Public Policy

(Against All Defendants and DOES 1-50)

84. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set forth in this Complaint.

85. At all times herein mentioned, FEHA, California Health and Safety Codes and California Labor Codes, were in full force and effect and were binding on Defendants.

86. By terminating Plaintiff's employment, as herein alleged, Defendants violated the fundamental public policies of the State of California embodied in, inter alia, California Labor Code § 1102.5. California Labor Code § 1102.5 identifies the policy of this State to be a protection and safeguarding of the rights and opportunities for all persons to be free from retaliation for reporting reasonably believable illegal conduct and for refusing to participate in illegal conduct.

87. Therefore, as a direct, foreseeable, legal and proximate result of Defendants' illegal conduct, acts, or omissions, as herein alleged, Plaintiff suffered substantial and continue to suffer substantial and tangible losses in earnings and job benefits, as well as humiliation, embarrassment, mental and emotional distress and discomfort, all to his damage in an amount to be proven at trial.

88. As a further direct, foreseeable, legal and proximate result of Defendants' retaliatory conduct, acts, or omissions, as herein alleged, Plaintiff has also been caused to retain attorneys and has thus incurred legal fees, expenses and costs, entitling them to reimbursement of the same pursuant to Code of Civil Proc. § 1021.5, in an amount to be proven at trial.

89. Plaintiff has incurred and continue to incur legal expenses and attorneys' fees. Pursuant to *Code of Civil Procedure* sections 1021.5 and 1032, et seq., plaintiffs are entitled to recover reasonable attorneys' fees and costs in an amount according to proof.

90. Furthermore, Defendants committed the illegal acts and/or omissions described and alleged herein, deliberately, intentionally, oppressively, fraudulently, maliciously and in conscious disregard for

1 Plaintiff's rights and safety. As such, Defendants acted in a willful and intentional manner and their
2 conduct, as herein set forth, was and continues to be despicable, malicious and outrageous in that it caused
3 Plaintiff to needlessly suffer cruel and unjust hardship. Therefore, Defendants' retaliatory conduct justifies
4 an award of punitive damages in an amount sufficient to deter them from ever engaging in such conduct
5 again. Punitive and exemplary damages are further warranted to deter other employers who are similarly
6 situated to Defendants from also behaving in the same manner.

7 ***FIFTH CAUSE OF ACTION***

8 *Intentional Infliction of Emotional Distress*

9 *(Hughes v. Pair (2009) 46 Cal.4th 1035)*

10 *(Against All Defendants and DOES 1-50)*

11 91. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
12 forth in this Complaint.

13 92. Defendant's treatment of Plaintiff as discussed supra, exceeds the bounds of decency, is
14 intolerable within our civilized community, and is therefore outrageous.

15 93. Defendant's actions, as discussed supra, were intended to cause Plaintiff to suffer the
16 resulting emotional distress.

17 94. Defendants succeeded in their attempt to cause Plaintiff to suffer extreme emotional
18 distress, including humiliation, embarrassment, anxiety and indignity, and that are the direct and proximate
19 results of Defendant's conduct.

20 95. As a proximate result of defendants' extreme and outrageous conduct, plaintiff has suffered
21 and continues to suffer severe emotional distress. Plaintiff has sustained and continues to sustain substantial
22 losses of earnings and other employment benefits as a result of being emotionally distressed.

23 96. As a proximate result of defendants' extreme and outrageous conduct, plaintiff has suffered
24 and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish, all to
25 her damage in a sum according to proof.

26 97. The conduct of Defendant, and each of their, as described above was malicious, fraudulent,
27 or oppressive and done with a willful and conscious disregard for Plaintiff's rights. Defendant and each of
28 them, and their agents/employees or supervisors, authorized, condoned and ratified the unlawful conduct

1 of each other. Consequently, Plaintiff is entitled to punitive damages against Defendant.

2 ***SIXTH CAUSE OF ACTION***

3 *Unfair Competition in Violation of Bus. & Prof. Code, §§ 17200, et. seq.*

4 *(Against All Defendants and DOES 1-50)*

5 98. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
6 forth in this Complaint.

7 99. Plaintiff has standing to pursue this claim for public injunctive relief.

8 100. Defendants and DOES 1 through 50, and each of them, in doing the the things herein
9 alleged, including, without limitation, retaliating against Plaintiff for complaining about suspected
10 unlawful, unsafe and unhealthy workplace practices in violation of California Health & Safety Code
11 section 1278.5, Labor Code sections 98.6, 1102.5, 1102.6, 6310, and/or 6311, constitute “unlawful, unfair
12 and fraudulent” business practices within the meaning of Business and Professions Code section 17200, et
13 seq.

14 101. Plaintiff seeks on her own behalf, on behalf of those similarly situated, and on behalf of the
15 general public, full restitution and disgorgement of all employment compensation wrongfully withheld, as
16 necessary and according to proof, to restore any and all monies withheld, acquired, or converted by
17 Defendants by means of the unfair and unlawful business practices complained of herein. The restitution
18 and disgorgement requested includes all wages earned and unpaid, or otherwise promised as a term of
19 employment, including interest thereon.

20 102. The wrongful conduct of Defendants, as heretofore alleged, unless restrained and enjoined
21 by an order of this court, has and will continue to cause great and irreparable harm to Plaintiff, and
22 employees similarly situated, in that Defendants will continue to violate the rights of its employees with
23 impunity, and continue to engage in conduct prohibited by Business and Professions Code section 17200
24 et seq.

25 103. Further, Plaintiff seeks an order requiring Defendants to make restitution and disgorge all
26 employment compensation wrongfully withheld, as necessary and according to proof, o restore any and all
27 monies withheld, acquired, or converted by Defendants by means of the unfair and unlawful business
28 practices complained of herein.

1 **SEVENTH CAUSE OF ACTION**

2 *Failure to Pay All Wages Upon Separation of Employment*

3 *Labor Code § 201*

4 *(Against All Defendants and DOES 1-50)*

5 104. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
6 forth in this Complaint.

7 105. Labor Code § 201 requires that if an employer discharges an employee, the wages earned
8 and unpaid at the time of discharge are due and payable immediately.

9 106. Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly
10 upon discharge as required pursuant to Labor Code § 201, the employer is liable to the employee for
11 penalties.

12 107. Defendants have willfully, unfairly, fraudulently, and/or unlawfully failed to pay Plaintiff
13 compensation owed to her upon termination of employment. Plaintiff's employment with Defendants
14 terminated in July 6, 2022, but Defendants have failed to pay Plaintiff all of the unpaid wages and
15 compensation due to her at the time of her termination. As a result, Defendants are liable to Plaintiff for
16 waiting time penalties pursuant to Labor Code § 203 in an amount to be determined at trial according to
17 proof.

18 **EIGHTH CAUSE OF ACTION**

19 *Failure to Provide Adequate Pay Stubs*

20 *Cal. Lab. Code § 226*

21 *(Against All Defendants and DOES 1-50)*

22 108. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
23 forth in this Complaint.

24 109. Defendants employed Plaintiff but failed to provide him with the data required by section
25 226(a) of the Labor Code.

26 110. Specifically, section 226, subdivision (a) provides:

27
28 Every employer shall, semimonthly or at the time of each payment of wages,
furnish each of his or her employees, either as a detachable part of the check,

1 draft, or voucher paying the employee's wages, or separately when wages
2 are paid by personal check or cash, an accurate itemized statement in writing
3 showing (1) gross wages earned, (2) total hours worked by the employee,
4 except for any employee whose compensation is solely based on a salary
5 and who is exempt from payment of overtime under subdivision (a) of
6 [s]ection 515 or any applicable order of the Industrial Welfare Commission,
7 (3) the number of piece-rate units earned and any applicable piece rate if the
8 employee is paid on a piece-rate basis, (4) all deductions, provided that all
9 deductions made on written orders of the employee may be aggregated and
10 shown as one item, (5) net wages earned, (6) the inclusive dates of the period
11 for which the employee is paid, (7) the name of the employee and only the
12 last four digits of his or her social security number or an employee
13 identification number other than a social security number, (8) the name and
14 address of the legal entity that is the employer ... , and (9) all applicable
15 hourly rates in effect during the pay period and the corresponding number of
16 hours worked at each hourly rate by the employee

11 Cal. Lab. Code § 226(a).

12 111. Section 226 goes on to state:

13 An employee suffering injury as a result of a knowing and intentional failure
14 by an employer to comply with subdivision (a) is entitled to recover the
15 greater of all actual damages or fifty dollars (\$50) for the initial pay period
16 in which a violation occurs and one hundred dollars (\$100) per employee for
17 each violation in a subsequent pay period, not to exceed an aggregate penalty
18 of four thousand dollars (\$4,000), and is entitled to an award of costs and
19 reasonable attorney's fees.

18 *Id.* § 226(e)(1). As to "injury," section 226 provides:

19 An employee is deemed to suffer injury . . . if the employer fails to provide
20 accurate and complete information as required by any one or more items (1)
21 to (9), inclusive, of subdivision (a) and the employer cannot promptly and
22 easily determine from the wage statement alone one or more of the
23 following:

23 (i) The amount of the gross wages or net wages paid to the
24 employee during the pay period ...

24 *Id.* § 226(e)(2)(B). As also set forth in section 226, the term "'promptly and easily determine' means a
25 reasonable person would be able to readily ascertain the information without reference to other documents
26 or information." *Id.* § 226(e)(2)(C).

27 112. Wage statements issued to Plaintiff did not accurately list Plaintiff's gross, net wages, and
28

1 applicable hourly rates. Because a reasonable person necessarily would need to refer to extrinsic
2 documents or information to determine this information, Plaintiff suffered injury under section 226(a).

3 113. Accordingly, because Defendants failed to provide the information required by Labor Code
4 section 226, Defendants are liable to Plaintiff for statutory damages, attorneys' fees and costs.

5
6 ***NINTH CAUSE OF ACTION***

7 *Failure to Maintain Accurate Records*

8 *Cal. Lab Code § 1174*

9 *(Against All Defendants and DOES 1-50)*

10 114. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
11 forth in this Complaint.

12 115. Cal. Lab. Code § 1174 provides:

13 Every person employing labor in this state shall:

14 (d) Keep, at a central location in the state or at the plants or
15 establishments at which employees are employed, payroll records showing
16 the hours worked daily by and the wages paid to, and the number of piece-
17 rate units earned by and any applicable piece rate paid to, employees
18 employed at the respective plants or establishments...

19 Cal. Lab. Code § 1174 (emphasis supplied)

20 116. Cal. Lab. Code § 1174.5 provides:

21 Any person employing labor who willfully fails to maintain ... accurate and
22 complete records required by subdivision (d) of Section 1174 ... shall be
23 subject to a civil penalty of five hundred dollars (\$500).

24 117. Defendants failed to comply with Cal. Lab. Code § 1174 by failing to maintain accurate
25 records with respect to hours worked, hourly rates, and wages paid for Plaintiff. Accordingly, Defendants
26 are liable to Plaintiff for statutory damages and costs.

27 ***TENTH CAUSE OF ACTION***

28 *Continuing Wages*

Labor Code §§ 201, 202, 203

(Against All Defendants and DOES 1-50)

118. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set forth in this Complaint.

119. Labor Code section 201 provides, in pertinent part: “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Cal. Lab. Code § 201(a).

120. Likewise, Labor Code section 202 provides, in pertinent part:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Id. § 202(a).

121. Labor Code section 203(a) provides in pertinent part:

If an employer willfully fails to pay, without abatement or reduction, in accordance with [s]ections 201 . . . [or] 202, . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

Id. § 203(a).

122. As detailed above, in violation of California law, Defendants have knowingly and willfully refused to perform their obligations to compensate Plaintiff for all wages earned and all hours worked.

123. Defendants have terminated the employment of Plaintiff, yet she is still owed compensation for all wages earned and all hours worked. Accordingly, Plaintiff is entitled to the continuing wages set forth in section 203.

124. Pursuant to Labor Code section 203, Plaintiff is entitled to continuing wages for up to thirty days, restitution and damages according to proof, interest thereon, civil penalties, attorneys' fees, and costs of suit.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against the Defendants, and each of them, as

1 follows:

- 2 1. Compensatory damages including emotional distress damages and lost wages, benefits
3 and interest in a sum according to proof;
- 4 2. Interest on judgment, including prejudgment interest, at the legal rate;
- 5 3. Punitive damages in a sum according to proof;
- 6 4. Attorney's fees and costs; and
- 7 5. For any further legal and equitable relief, the Court deems proper.

8
9 Dated: November 14, 2023.

RATNER MOLINEAUX, LLP

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11 _____
12 David S. Ratner
13 Shelley A. Molineaux
14 Attorneys for Plaintiff Glorinda K. Pastorius
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