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11 Olen A. Henry

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 OLEN A. HENRY,
15 Plaintiff,
16 vs.

17 Case No.:
18 **COMPLAINT FOR DAMAGES**
19 **DEMAND FOR JURY TRIAL**

20 HCA HEALTH SERVICES OF
21 CALIFORNIA, INC. d/b/a REGIONAL
22 MEDICAL CENTER OF SAN JOSE,
23 Defendant.

24 Plaintiff Olen A. Henry respectfully alleges as follows:

25 **PRELIMINARY STATEMENT**

26 Plaintiff Olen A. Henry brings this action for monetary damages and injunctive relief pursuant
27 to Title VII of the Civil Rights Act of 1964 as amended effective January 29, 2009, 42 U.S.C. §
28 2000e et seq.(hereinafter Title VII); and the California Fair Employment and Housing Act (“FEHA”),
California Gov’t Code § 12940 et seq.. Plaintiff seeks redress for injuries he has sustained as a result

1 of Defendant's unlawful employment discrimination against Plaintiff on the basis of his race and sex
2 and retaliation for engaging in protected activity.

3
4 **JURISDICTION**

5 1. This Court has jurisdiction over the subject matter and the parties pursuant to 28
6 U.S.C. §§ 1331 and 1343 and 42 U.S.C. § 2000e-5 to enforce the provisions of the Civil Rights Act
7 of 1964, as amended effective January 29, 2009 (42 U.S.C. § 2000e *et seq.*) and conferring original
8 jurisdiction upon this court of any civil action to recover damages or to secure equitable relief under
9 any Act of Congress providing for the protection of civil rights, and under the Declaratory Judgment
10 Statute, 28 U.S.C. § 2201.

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12 2. This Court has supplemental jurisdiction over the related state claims pursuant to 28
13 U.S.C. § 1367. Plaintiffs' claims pursuant to the FEHA, Cal. Gov't Code §§ 12940(a), 12920, and
14 California Public Policy are related, as all of Plaintiffs' claims share common operative facts.
15 Resolving all state and federal claims in a single action serves the interests of judicial economy,
16 convenience and fairness to the parties.

17
18 4. The Court has the authority to grant declaratory relief pursuant to 42 U.S.C. § 2000e-
19 5(f) & (g).

20
21 **INTRADISTRICT ASSIGNMENT AND VENUE**

22 5. Venue is proper in the district as the unlawful employment practices occurred in San
23 Jose, California. 28 U.S.C. § 1391(b)(2), 42 U.S.C. § 2002e-5(f)(3).

THE PARTIES

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6. At all times relevant to this Complaint, Plaintiff Olen A. Henry (hereinafter “Henry”) was employed by Defendant HCA Health Services of California, Inc. d/b/a Regional Medical Center of San Jose (hereinafter “RMC”) as an Assistant Department Manager of the Observation, Medical Surgical Oncology and Dialysis Unit (hereinafter “Assistant Manager”) at the RMC hospital facility in San Jose, California.

7. At all times relevant to this Complaint, Defendant RMC was a health care organization operating and existing under the laws of the State of California.

8. At all times relevant to this Complaint, Defendant is an employer covered by Title VII of the Civil Rights Act of 1964, as amended effective January 29, 2009 and California FEHA in that it is engaged in an industry affecting interstate commerce and employs at least 15 full or part-time employees for each working day of each of 20 or more calendar weeks in the current or preceding year.

FACTUAL ALLEGATIONS

9. Plaintiff Henry was employed by Defendant RMC as an Assistant Manager from February 2012 until approximately June, 2013. Plaintiff Henry is an African American male.

10. During his employment by Defendant RMC, Plaintiff Henry’s co-workers and supervisors subjected him to on-going discrimination based on his race and sex.

11. During his employment by Defendant RMC, Plaintiff Henry’s co-workers subjected him to discrimination in the form of racist and sexist stereotypes and comments regarding African Americans and/or male nurses. Defendant RMC’s supervisors informed Plaintiff Henry that Plaintiff’s subordinates did not like taking instruction from him and did not follow his directions

1 because of his African American race. Plaintiff Henry's supervisors witnessed and condoned such
2 discrimination and failed to take reasonable steps to correct or prevent such conduct.

3 12. During his employment by Defendant RMC, Plaintiff's supervisors informed him that
4 he would be better off working for a predominately Black staffed hospital than with Defendant RMC.

5 13. Plaintiff Henry attempted to implement a permanent change in regard to RMC staff
6 operations that was vehemently opposed. Plaintiff Henry was subsequently informed by RMC staff
7 that they sought his termination and would "get rid of him," through union negotiations of the RMC
8 staff's collective bargaining agreement. One nursing supervisor told Plaintiff Henry that he would
9 never follow his instructions and forcefully removed Plaintiff from his office.
10

11 14. Defendant RMC's upper management and Plaintiff's supervisors informed Plaintiff
12 that he was not a good fit due to the RMC staff's response to his efforts to implement changes.
13 Plaintiff Henry attempted to require his staff to follow federal laws and RMC policies and
14 procedures.
15

16 15. Plaintiff Henry repeatedly spoke out and complained about the race and sex
17 discrimination he was subjected to by Defendant RMC's supervisors, Plaintiff's subordinates, and
18 other RMC staff.
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20 16. In response, Defendant RMC began retaliating against Plaintiff Henry by placing him
21 on administrative leave in response to a baseless hostile work environment claim and by alleging that
22 Plaintiff had anger management issues.

23 17. On or around June 2013, Plaintiff was terminated from his employment with RMC.
24

25 18. Plaintiff has exhausted his administrative remedies and has filed a Charge of
26 Discrimination with the United States Equal Employment Opportunity Commission (hereinafter
27 "EEOC") on or around December 12, 2013.
28

1 19. On or around March 18, 2014, the EEOC issued a Notice of Right to Sue to Plaintiff
2 Henry.

3 **CAUSES OF ACTION**

4 **FIRST CAUSE OF ACTION**

5 Discrimination on the Basis of Race and Sex
6 (Title VII of the Civil Rights Act of 1964, as amended effective January 20, 2009,
7 42 U.S.C. § 2000e *et seq.*)
(Against Defendant RMC)

8 20. Plaintiff Henry incorporates the allegations of Paragraphs 1 through 19 by reference.

9 21. This is a claim for race and sex discrimination in employment brought pursuant to
10 Title VII of the Civil Rights Act of 1964.

11 22. Plaintiff Henry is a member of a protected class.

12 23. Plaintiff Henry was treated less favorably than other employees because of his race
13 and sex.

14 24. Plaintiff Henry was terminated because of his race and sex and/or Plaintiff Henry
15 believes that his race and sex was a motivating factor in Defendant RMC's decision to terminate his
16 employment in violation of 42 U.S.C. § 2000e-2.

17 25. Plaintiff Henry suffered discrimination from Defendant RMC because of his race and
18 sex.

19 26. Plaintiff Henry has suffered and continues to suffer economic and emotional distress
20 damages resulting from the race and sex discrimination.

21 27. Plaintiff Henry has incurred and continues to incur attorneys' fees and legal expenses
22 in an amount according to proof at trial.

23 WHEREFORE, Plaintiff Henry prays for relief and judgment as hereinafter set forth.

24 **SECOND CAUSE OF ACTION**

25 Discrimination on the Basis of Race and Sex

(California Government Code § 12940)
(Against Defendant RMC)

28. Plaintiff Henry incorporates the allegations of Paragraph 1 through 27 by reference.

29. This is a claim for race and sex discrimination in employment brought pursuant to FEHA.

30. Plaintiff Henry is a member of a protected class.

31. Plaintiff Henry was treated less favorably than other employees because of his race and sex.

32. Plaintiff Henry was terminated because of his race and sex and/or Plaintiff Henry believes that his race and sex was a motivating factor in Defendant RMC’s decision to terminate his employment in violation of California Government Code § 12940(a).

33. Plaintiff Henry suffered discrimination from Defendant RMC because of his race and sex.

34. Plaintiff Henry has suffered and continues to suffer economic and emotional distress damages resulting from the race and sex discrimination.

35. Plaintiff Henry has incurred and continues to incur attorneys’ fees and legal expenses in an amount according to proof at trial.

WHEREFORE, Plaintiff Henry prays for relief and judgment as hereinafter set forth.

THIRD CAUSE OF ACTION

Retaliation

(Title VII of the Civil Rights Act of 1964, as amended effective January 20, 2009,
42 U.S.C. § 2000e *et seq.*)
(Against Defendant RMC)

36. Plaintiff Henry incorporates the allegations of Paragraphs 1 through 35 by reference.

1 37. Plaintiff Henry engaged in activity protected by Title VII when he repeatedly spoke
2 out and complained to his supervisors about the race and sex discrimination he was subjected to by
3 Defendant RMC’s supervisors, Plaintiff’s subordinates, and other RMC staff.

4 38. Defendant RMC and its agents knew of Plaintiff Henry’s protected activity and
5 retaliated against him because of his protected activity. After Defendant RMC learned of Plaintiff
6 Henry’s protected activities, it took adverse actions against him because of his protected activity,
7 including but not limited to: subjecting him to unwarranted administrative leave, baselessly alleging
8 anger management issues, and terminating his employment.
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10 39. Plaintiff Henry has suffered and continues to suffer economic and emotional distress
11 damages resulting from the retaliation.
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13 40. Plaintiff Henry has incurred and continues to incur attorneys’ fees and legal expenses
14 in an amount according to proof at trial.

15 WHEREFORE, Plaintiff Henry prays for relief and judgment as hereinafter set forth.

16 SIXTH CAUSE OF ACTION
17 Retaliation
18 (Government Code § 12940(h))
19 (Against Defendant RMC)

20 41. Plaintiff Henry incorporates the allegations of Paragraphs 1 through 40 by reference.

21 42. Plaintiff Henry engaged in activity protected by FEHA when he repeatedly spoke out
22 and complained to his supervisors about the race and sex discrimination he was subjected to by
23 Defendant RMC’s supervisors, Plaintiff’s subordinates, and other RMC staff.

24 43. Defendant RMC and its agents knew of Plaintiff Henry’s protected activity and
25 retaliated against him because of his protected activity. After Defendant RMC learned of Plaintiff
26 Henry’s protected activities, it took adverse actions against him because of his protected activity,
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1 including but not limited to: subjecting him to unwarranted administrative leave, baselessly alleging
2 anger management issues, and terminating his employment.

3 44. Plaintiff Henry has suffered and continues to suffer economic and emotional distress
4 damages resulting from the retaliation.

5 45. Plaintiff Henry has incurred and continues to incur attorneys' fees and legal expenses
6 in an amount according to proof at trial.

7
8 WHEREFORE, Plaintiff Henry prays for relief and judgment as hereinafter set forth.

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10 FIFTH CAUSE OF ACTION
(Wrongful Termination in Violation of Public Policy)
(Against Defendant RMC)

11 46. Plaintiff Henry incorporates the allegations of Paragraph 1 through 45 by reference.

12 47. Jurisdiction is invoked in this court pursuant to the public policy and common law of
13 the State of California, pursuant to the case of *Tameny v. Atlantic Richfield Company* (1980) 27
14 Cal.3d 167 and *Rojo v. Kliger* (1990) 52 Cal.3d 65.

15 48. Under California law, there is a fundamental and well-established public policy
16 prohibiting discrimination against employees on the basis of their race or sex. Said public policy is
17 embodied in the Constitution of the state of California and in California statutes, particularly
18 California Government Code § 12920.
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21 49. Plaintiff Henry was terminated because of his race and sex and/or Plaintiff Henry
22 believes that his race and sex was a motivating factor in Defendant RMC's decision to terminate his
23 employment in violation of California Government Code § 12920.

24 50. Defendant RMC was aware of the discrimination and allowed the discrimination to
25 continue by failing to investigate, stop or prevent incidents of race and sex discrimination directed at
26 Plaintiff Henry. Plaintiff's supervisors even gave Plaintiff notice of the discrimination without
27 remedying the discriminatory conduct.
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1 51. Because of Defendant RMC’s wrongful termination in violation of public policy,
2 Plaintiff Henry suffered economic and emotional distress damages.

3 52. In doing the acts alleged herein, Defendant RMC acted with oppression, fraud, malice
4 and in conscious disregard of the rights of Plaintiff Henry, and Plaintiff is therefore entitled to
5 punitive damages according to proof at trial.
6

7 WHEREFORE, Plaintiff Henry prays for relief and judgment as hereinafter set forth.

8 RELIEF REQUESTED

9 WHEREFORE, Plaintiff Henry respectfully requests that this Court assume jurisdiction in this
10 entire matter and:

11 1. Grant a declaratory judgment that Defendant RMC violated the laws of the United
12 States and the State of California;

13 2. For a monetary judgment representing compensatory damages including lost wages,
14 earnings, employee benefits, and all other sums of money, together with interest on these amounts,
15 according to proof;
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17 3. For a monetary judgment for mental pain, anguish, future wage loss and emotional
18 distress, according to proof;
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20 4. For a monetary judgment for punitive damages for the Defendant’s intentional
21 discriminatory practices made with malice and/or with reckless disregard pursuant to 42 U.S.C. §
22 2000e-5, 42. U.S.C. 1981a, and in violation of California Public Policy;

23 4. For the costs of suit and attorney’s fees including attorney’s fees pursuant to 42 U.S.C.
24 § 2000e-5 and California Government Code § 12965;

25 5. For prejudgment and post judgment interest; and
26

27 6. For any further relief that is just and proper.
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JURY DEMAND

Plaintiff demands trial by jury of all claims and causes of action so triable.

Dated: June 13, 2014

Respectfully submitted,

BURTON EMPLOYMENT LAW

By: //ss// Jocelyn Burton
Jocelyn Burton
Attorney for Plaintiff
OLEN A. HENRY

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

OLEN A. HENRY

DEFENDANTS

HCA HEALTH SERVICES OF CALIFORNIA, INC. d/b/a REGIONAL MEDICAL CENTER OF SAN JOSE, CA

(b) County of Residence of First Listed Plaintiff ALAMEDA (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number) Jocelyn Burton, Burton Employment Law, 1939 Harrison Street, Suite 400, Oakland, CA 94612, (510) 350-7025

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. Section 2000-e(5)

Brief description of cause: race and sex discrimination, retaliation, wrongful termination in violation of public policy

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 06/13/2014 SIGNATURE OF ATTORNEY OF RECORD //ss// Jocelyn Burton

00F0K00PCN'CUH PO GPV'EklrIN05/4+

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.