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Attorneys for Plaintiff LIDICE DIAZ

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

LIDICE DIAZ, an individual,

Plaintiff,

vs.

POMONA HEALTHCARE AND WELLNESS
CENTER LLC dba PARK AVENUE
HEALTHCARE & WELLNESS CENTER a
business entity, form unknown; ROCKPORT
HEALTHCARE SERVICES a business entity,
form unknown; and Does 1 through 100,
inclusive,

Defendants.

CASE NO.: 20STCV12537

COMPLAINT FOR DAMAGES

- 1. RETALIATION IN VIOLATION OF LABOR CODE 1102.5;**
- 2. VIOLATION OF HEALTH & SAFETY CODE § 1278.5;**
- 3. DEFAMATION; and**
- 4. WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY**

REQUEST FOR A JURY TRIAL

1 Plaintiff LIDICE DIAZ (“Plaintiff”) alleges as follows:

2 **GENERAL ALLEGATIONS**

- 3 1. Plaintiff LIDICE DIAZ (“Diaz or Plaintiff”) is an individual who at all times pertinent to this
4 lawsuit was a resident of the County of Los Angeles, State of California.
- 5 2. Plaintiff is informed and believes that Defendant POMONA HEALTHCARE AND
6 WELLNESS CENTER LLC dba PARK AVENUE HEALTHCARE & WELLNESS
7 CENTER(POMONA) is a business entity, exact form unknown organized and existing under the
8 laws of California.
- 9 3. Plaintiff is informed and believes that the Defendant POMONA owns, operates and runs skilled
10 nursing facilities (SNF) including a SNF called PARK AVENUE HEALTHCARE & WELLNESS
11 CENTRE located at 1550 N Park Ave, Pomona, CA 91768. Hereinafter “the Premises”.
- 12 4. Plaintiff is informed and believes that Defendant ROCKPORT HEALTHCARE SERVICES
13 (ROCKPORT) is a business entity, exact form unknown organized and existing under the laws of
14 California.
- 15 5. Plaintiff is informed and believes that the Defendant ROCKPORT owns, operates and runs
16 skilled nursing facilities (SNF) including a SNF called PARK AVENUE HEALTHCARE &
17 WELLNESS CENTRE located at 1550 N Park Ave, Pomona, CA 91768. Hereinafter “the
18 Premises.”
- 19 6. Plaintiff is informed and believes that the Defendant ROCKPORT owns the defendant
20 POMONA. Plaintiff is informed and believes that the Defendant POMONA is a wholly owned
21 subsidiary of the Defendant ROCKPORT.
- 22 7. Plaintiff is informed and believes, and based thereon alleges, that Defendants ROCKPORT and
23 POMONA and Does 1-100 are all the alter egos of each other in that there is such a unity of
24 interest between the said Defendants that to uphold the fiction of corporate separateness between
25 the said Defendants would be to sanction an injustice against the Plaintiff and others. Said
26 Defendants acted in all respects pertinent to this action as the agent of each other, and carried out a
27 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each are
28 legally attributable to the other. Alternatively, on information and belief, the said Defendants share
the same shareholders and directors, the same locations, the same offices, and conducting the same
business as each other under the same DBA, so that equity requires the said Defendants be liable
for the obligations of each other.
8. The Defendants POMONA, ROCKPORT and Does 1-100 will hereinafter be at times

1 collectively referred to as the “Employer Defendants”. Plaintiff was at all times employed by the
2 Employer Defendants. Plaintiffs were employed by the Employer Defendants, and each of them, at
3 the Premises.

4 9. Plaintiff was at all times employed by the Employer Defendants at the snf called PARK
5 AVENUE HEALTHCARE & WELLNESS CENTER located at 1550 N Park Ave, Pomona, CA
6 91768 as the director of business development. All the torts and statutory violations alleged herein
7 occurred at the Premises.

8 10. Plaintiff was hired by the Employer Defendants on approximately March 20, 2019 as the
9 Director of Business Development. She was wrongfully terminated on or about April 25, 2019

10 11. Plaintiff reported to the Director of the Premises Laura Gazarian (“Gazarian”). Gazarian
11 supervised all employees at the Premises.

12 12. The Employer Defendants at PARK AVENUE HEALTHCARE & WELLNESS CENTER
13 operated a 231 bed SNF some patients needing shorter term care and some needing longer term
14 care.

15 13. The Employer Defendants primarily had patients paid for by Medi-Cal, Medicare and some
16 private insurance, including an entity named Regal. Plaintiff is informed and believes that the
17 Medicare and private insurance patients paid better rates then MediCal patients

18 14. Nursing homes, including the Employer Defendants financially benefit by transferring low-
19 reimbursed Medi-Cal patients and replacing them with Medicare beneficiaries or the commercially
20 insured. This is called patient dumping.

21 15. Dumping patients violates 42 U.S.C. § 1983.

22 16. A SNF facility must permit each resident to remain in the facility, and not transfer or discharge
23 the resident from the facility unless:

24 17. It is necessary for the resident’s welfare and the resident’s needs cannot be met in the facility
25 (42 CFR §483.15(c)(1)(i)(A));

26 18. The residents health has improved sufficiently so the resident no longer needs the services
27 provided by the facility (42 CFR §483.15(c)(1)(i)(B));

28 19. The safety of individuals in the facility is endangered due to the clinical or behavioral status of
the resident (42 CFR §483.15(c)(1)(i)(C));

20. The health of individuals in the facility would otherwise be endangered (42 CFR
§483.15(c)(1)(i)(D));

21. The resident has failed, after reasonable and appropriate notice, to pay (42 CFR

1 §483.15(c)(1)(i)(E));

2 22. The facility ceases to operate (42 CFR §483.15(c)(1)(i)(F).

3 23. The facility must document the basis for the transfer in the resident's record. 42 CFR
4 §483.15(c)(2). If the facility claims it cannot meet the resident's needs (reason 1 above), effective
5 November 28, 2017, it must document the specific needs that cannot be met, its attempts to meet
6 the needs, and the services available at the receiving facility to meet the resident's needs. 42 CFR
§483.15(c)(2)(i)(A).

7 24. When a facility claims it cannot meet the resident's needs or the resident no longer needs its
8 services, the resident's physician must provide the documentation. 42 CFR §483.15(c)(2)(ii)(A).
9 Any physician can provide the documentation when the facility claims that the health or safety of
10 individuals in the facility would be endangered. 42 CFR §483.15(c)(2)(ii)(B).

11 25. Before transferring or discharging a resident, the facility must provide written notice to the
12 resident and the resident's representative in a language and manner they understand. 42 CFR
13 §483.15(c)(3)(i). The facility must send a copy of the notice to the long-term care ombudsman
14 program. The notice must be given at least 30 days before the resident is transferred or discharged

15 26. The facility must provide sufficient preparation and orientation to residents to ensure safe and
16 orderly transfer or discharge from the facility. 42 CFR §483.15(c)(7)).

17 27. Nursing homes must also provide discharge planning for each resident that treats the resident
18 and resident representative as partners in planning the discharge and is focused on the resident's
19 discharge goals and treatment preferences. 42 CFR §483.21(c).

20 28. When a facility is planning to transfer a resident to another nursing home, it must assist the
21 resident in using available data on the quality of facilities to help the resident select a facility that
22 can meet his or her care and treatment preferences. The facility must also share a great deal of
important care information to the "receiving provider" before initiating a transfer or discharge. 42
CFR §§483.15(c)(2)(iii), 483.21(c)(2).

23 29. If discharge to home or another community setting is planned, the nursing home must make
24 and document appropriate referrals to services and resources in the community. The facility must
25 develop a discharge summary that recapitulates the resident's stay and a post-discharge plan of care
26 that indicates where the resident plans to reside, arrangements for follow-up care and any post-
discharge medical and non-medical services. 42 CFR §483.21(c), H&S Code §1418.81.

27 30. No resident may be transferred or discharged unless all of the procedural requirements are
28 satisfied.

1 31. Nursing homes are required to provide services to allow each resident to attain or maintain
2 his/her highest practicable physical, mental and psychosocial well-being. 42 USC §1396r(b)(2), 42
3 CFR §483.24.

4 32. The Employer Defendants conduct as alleged herein violated those regulations.

5 33. The Employer Defendants were dumping Medi Cal patients as alleged herein.

6 34. Plaintiff's job duties included finding appropriate patients to be admitted to the SNF through
7 referrals and otherwise. If Plaintiff found a patient who qualified, she would take their chart to the
8 Director of Nursing who would make the admission decision. Plaintiff's job duties also included
9 finding appropriate facilities for patients who were discharged from the facility. Plaintiff's duties
also included assisting with discharge.

10 35. Not all potential patients qualified for admission and not all patients, once admitted could be
legally discharged.

11 36. Discharge and admission decisions for patients were supposed to be made by the Director of
12 Nursing combined with the Director of Social Services, and discharge required a physician's note.
13 A patient cannot be discharged without a doctor's order, unless the patient agrees to a discharge
14 "against medical consent."

15 37. However, many of the admission and discharge decisions were in fact made by the Director of
16 the Premises Laura Gazarian ("Gazarian") or she required her reports, including Plaintiff to push
17 patients to be discharged. Plaintiff was also pushed to find places for the discharged people to go.

18 38. This was illegal.

19 39. Gazarian instructed the Director of Social Services to prepare a "list" a list of "dischargeable
20 people" on a daily basis. The patients on this list were Medi-Cal patients.

21 40. On a daily basis Gazarian would call "stand up" meetings attended by all Directors including
22 Plaintiff. At these meetings, and at other times, Gazarian would look at the census and/or list of
23 patients, pick out the Medi-Cal patients and state that certain patients, generally paid for by Medi-
Cal "needed to be discharged.

24 41. These patients often would not have a doctor's order permitting or recommending discharge.

25 42. During these meetings and at other times Gazarian would tell Plaintiff and other employees that
26 "more beds were needed" and would state that certain patients, generally paid for by Medi-Cal
"needed to be discharged.

27 43. During these meetings and at other times Gazarian would pick out Medi-Cal patients and
28 instruct her employees to "discharge" them and replace them with Regal Patients or Medicare

1 patients.

2 44. Many of the people chosen by Gazarian were not medically eligible for discharge and to
3 discharge them was illegal for the reasons alleged above.

4 45. The Employer Defendants would not follow the legally required steps prior to discharging
5 patients.

6 46. During these meetings and at other times Gazarian told Plaintiff and others to call the patient's
7 families that she wanted discharged and inform them that resident patients had to be discharged,
8 and "do not take no for an answer". These patients would not have a doctor's order permitting or
9 recommending discharge.

10 47. During these meetings and at other times Gazarian told Plaintiff and others which patients to
11 discharge and to "find places for them". These patients were generally Medi-Cal patients.

12 48. Gazarian told Plaintiff to "focus" on discharging Medi-Cal patients first

13 49. This conduct was on information and belief all illegal.

14 50. The discharge of patients was a medical decision and could not be made by Gazarian.

15 51. Plaintiff told Gazarian that patients could not be discharged without a doctor's orders and to
16 do so would put the patients at risk.

17 52. This was a protected activity as defined by Labor Code 1102.5 and Health and Safety Code
18 1278.5.

19 53. Plaintiff, along with other Directors was asked to participate in illegally discharging and
20 dumping the patients chosen by Gazarian. Plaintiff was asked to participate in finding the illegally
21 discharged Patients places to go.

22 54. Plaintiff refused to engage in this illegal conduct.

23 55. Plaintiff is informed and believes that Gazarian wanted the Medi-Cal and other patients
24 discharged and replaced by Regal patients because Gazarian was receiving kickbacks from Regal.

25 56. Plaintiff is informed and believes that Gazarian asked employees to discharge patients without
26 a doctor's order by asking employees to falsely and fraudulently write on patient's charts that they
27 had spoken to the patient's family about discharge.

28 57. Plaintiff is informed and believes that patients were illegally discharged and dumped pursuant
to Gazarian's instructions. Patients who should not have been medically discharged were in fact
fraudulently and wrongfully discharged without a doctor's order at Gazarian's instruction. One
such patient, on information and belief, died.

58. The Employer Defendants would not comply with all legally required steps before discharging

1 patients.

2 59. This conduct was on information and belief all illegal.

3 60. Plaintiff refused to engage in this conduct.

4 61. Plaintiff, as part of her job would find patients that qualified for admission. These were
5 generally Medi-Cal or Medicare patients. However, Gazarian would refuse to admit them and
6 instead admit Regal patients, who were not qualified for admission.

7 62. Plaintiff is informed and believes that Gazarian preferred Regal patients for admission because
8 Gazarian was receiving kickbacks from Regal.

9 63. This conduct was on information and belief all illegal.

10 64. The admission of patients was a medical decision and could not be made by Gazarian.

11 65. Plaintiff had some of her appropriate patient referrals not admitted in favor of unqualified
12 Regal patients, despite the fact that they had been approved for admission by the Director of
13 Nursing.

14 66. Plaintiff shortly after she was hired complained to Gazarian about the illegal circumstances
15 under which patients were being discharged. Plaintiff also complained to Gazarian about the fact
16 that qualified patients were not being admitted in favor of unqualified Regal patients.

17 67. This was a protected activity as defined by Labor Code 1102.5 and Health and Safety Code
18 1278.5

19 68. Employees complained that this practice was illegal and Gazarian responded: "Everybody can
20 mind their fucking business."

21 69. Plaintiff also began keeping a list of the patients she referred to the facility and notes of
22 Gazarian's response and illegal conduct.

23 70. In approximately April 2019 Gazarian found this list and sent an email to many employees
24 telling them to delete the list, that the list was composed of lies and that Plaintiff was "a liar".

25 71. The contents of the email from Gazarian were false and defamatory.

26 72. After Gazarian found the list and defamed Plaintiff she stated to Plaintiff: "I need you to get
27 people out", "focus on discharge", "I don't care how you do it."

28 73. Plaintiff told Gazarian that this was illegal and that "nobody would take the patient" and there
was nowhere for them to go.

74. Plaintiff told Gazarian that "I can't discharge people in the state that they are in".

75. Plaintiff told Gazarian that these patients did not "qualify for discharge".

76. Plaintiff told Gazarian "we can't have these people discharged or the Department of Health

1 Services will be here”.

2 77. Plaintiff told Gazarian that she could not just dump patients.

3 78. Plaintiff told Gazarian “do you want me to drop people off at the park”.

4 79. In response Gazarian told Plaintiff “I thought you were a marketer” and “make it happen”

5 80. Plaintiff refused to engage in this conduct.

6 81. These were all protected activities as defined by Labor Code 1102.5 and Health and Safety
Code 1278.5.

7 82. Plaintiff was then wrongfully terminated.

8 83. Plaintiff is informed and believes that she was terminated for protesting illegal conduct, for
9 refusing to engage in illegal conduct and for making patient safety complaints, all in violation of
10 Labor Code 1102.5 and Health and Safety Code 1278.5.

11 84. On the day of Plaintiff’s termination Gazarian told other employees that Plaintiff was fired “for
not doing her job”.

12 85. This statement was false and defamatory.

13 86. Other employees, on information and belief including, but not limited to John Vo stated to
14 hospital clients after Plaintiff was terminated that “ plaintiff did not know what she was doing” and
15 that plaintiff “did not produce anything.”

16 87. These statements were false and defamatory.

17 88. The facility was subsequently investigated by the Department of Health Services

18 **FIRST CAUSE OF ACTION**

19 **RETALIATION IN VIOLATION OF LABOR CODE §1102.5**

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

21 89. Plaintiff re-alleges and incorporates by reference each and every allegation of the Complaint as
though fully set forth herein.

22 90. California Labor Code section 1102.5, subdivision (b), provides in pertinent part that an
23 employer, or any person acting on behalf of the employer, shall not retaliate against an employee
24 for disclosing information, or because the employer believes that the employee disclosed or may
25 disclose information, to a person with authority over the employee or another employee who has
26 the authority to investigate, discover, or correct the violation or noncompliance, if the employee
27 has reasonable cause to believe that the information discloses a violation of state or federal statute,
or a violation of or noncompliance with a local, state, or federal rule or regulation.

28 91. California Labor Code section 1102.5, subdivision (c), provides in pertinent part that an

1 employer, or any person acting on behalf of the employer, shall not retaliate against an employee
2 for refusing to participate in an activity that would result in a violation of state or federal statute, or
3 a violation of or noncompliance with a local, state, or federal rule or regulation.

4 92. Plaintiff repeatedly disclosed violations of a state or federal statute, or a violation of or
5 noncompliance with a local, state, or federal regulation, all as afore pled.

6 93. Plaintiff also refused to participate in activities that would result in a violation of state or
7 federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation ,
8 and was retaliated against as a result, as afore pled.

9 94. Not all potential patients qualified for admission and not all patients, once admitted could be
10 legally discharged.

11 95. Nursing homes, including the Employer Defendants financially benefit by transferring low-
12 reimbursed Medi-Cal patients and replacing them with Medicare beneficiaries or the commercially
13 insured. This is called patient dumping.

14 96. Dumping patients violates 42 U.S.C. § 1983 and other state or federal statutes, or a violation of
15 and/or local, state, or federal rules or regulation.

16 97. The facility must permit each resident to remain in the facility, and not transfer or discharge
17 the resident from the facility unless:

18 98. It is necessary for the resident's welfare and the resident's needs cannot be met in the facility
19 (42 CFR §483.15(c)(1)(i)(A));

20 99. The resident's health has improved sufficiently so the resident no longer needs the services
21 provided by the facility (42 CFR §483.15(c)(1)(i)(B));

22 100. The safety of individuals in the facility is endangered due to the clinical or behavioral status of
23 the resident (42 CFR §483.15(c)(1)(i)(C));

24 101. The health of individuals in the facility would otherwise be endangered (42 CFR
25 §483.15(c)(1)(i)(D));

26 102. The resident has failed, after reasonable and appropriate notice, to pay (42 CFR
27 §483.15(c)(1)(i)(E));

28 103. The facility ceases to operate (42 CFR §483.15(c)(1)(i)(F)).

104. The facility must document the basis for the transfer in the resident's record. 42 CFR
§483.15(c)(2). If the facility claims it cannot meet the resident's needs effective November 28,
2017, it must document the specific needs that cannot be met, its attempts to meet the needs, and
the services available at the receiving facility to meet the resident's needs. 42 CFR

1 §483.15(c)(2)(i)(A).

2 105. When a facility claims it cannot meet the resident's needs or the resident no longer needs its
3 services , the resident's physician must provide the documentation. 42 CFR §483.15(c)(2)(ii)(A).
4 Any physician can provide the documentation when the facility claims that the health or safety of
5 individuals in the facility would be endangered . 42 CFR §483.15(c)(2)(ii)(B).

6 106. Before transferring or discharging a resident, the facility must provide written notice to the
7 resident and the resident's representative in a language and manner they understand. 42 CFR
8 §483.15(c)(3)(i). The facility must send a copy of the notice to the long-term care ombudsman
9 program. The notice must be given at least 30 days before the resident is transferred or discharged

10 107. The facility must provide sufficient preparation and orientation to residents to ensure safe and
11 orderly transfer or discharge from the facility. 42 CFR §483.15(c)(7)).

12 108. Nursing homes must also provide discharge planning for each resident that treats the resident
13 and resident representative as partners in planning the discharge and is focused on the resident's
14 discharge goals and treatment preferences. 42 CFR §483.21(c).

15 109. When a facility is planning to transfer a resident to another nursing home, it must assist the
16 resident in using available data on the quality of facilities to help the resident select a facility that
17 can meet his or her care and treatment preferences. The facility must also share a great deal of
18 important care information to the "receiving provider" before initiating a transfer or discharge. 42
19 CFR §§483.15(c)(2)(iii), 483.21(c)(2).

20 110. If discharge to home or another community setting is planned, the nursing home must make
21 and document appropriate referrals to services and resources in the community. The facility must
22 develop a discharge summary that recapitulates the resident's stay and a post-discharge plan of care
23 that indicates where the resident plans to reside, arrangements for follow-up care and any post-
24 discharge medical and non-medical services. 42 CFR §483.21(c), H&S Code §1418.81.

25 111. No resident may be transferred or discharged unless all of the procedural requirements are
26 satisfied.

27 112. Nursing homes must also provide discharge planning for each resident that treats the resident
28 and resident representative as partners in planning the discharge and is focused on the resident's
discharge goals and treatment preferences. 42 CFR §483.21(c)

113. No resident may be transferred or discharged unless all of the procedural requirements are
satisfied.

114. Nursing homes are required to provide services to allow each resident to attain or maintain

1 his/her highest practicable physical, mental and psychosocial well-being. 42 USC §1396r (b)(2), 42
2 CFR §483.24.

3 115. The Employer Defendants conduct as alleged herein violated those regulations

4 116. The Employer Defendants were dumping Medi-Cal patients as alleged herein

5 117. Discharge and admission decisions for patients were supposed to be made by the Director of
6 Nursing combined with the Director of Social Services, and discharge required a physician's note.

7 A patient cannot be discharged without a doctor's order, unless the patient agrees to a discharge
8 "against medical consent."

9 118. However, many of the admission and discharge decisions were in fact made by the Director of
10 the Premises Laura Gazarian (Gazarian) or she required her reports, including Plaintiff to push
11 patients to be discharged. Plaintiff was also pushed to find places for the discharged people to go.

12 119. This was illegal.

13 120. Gazarian instructed the Director of Social Services to prepare a "list" a list of "dischargeable
14 people" on a daily basis. These patients were Medi-Cal patients.

15 121. On a daily basis Gazarian would call "stand up" meetings attended by all Directors including
16 Plaintiff. At these meetings, and at other times, Gazarian would look at the census and/or list of
17 patients, pick out the Medi-Cal patients and state that certain patients, generally paid for by Medi-
18 Cal "needed to be discharged."

19 122. These patients would often not have a doctor's order permitting or recommending discharge.

20 123. During these meetings and at other times Gazarian would tell Plaintiff and other employees
21 that "more beds were needed" and would state that certain patients, generally paid for by Medi-Cal
22 "needed to be discharged."

23 124. During these meetings and at other times Gazarian would pick out Medi-Cal patients and
24 instruct her employees to "discharge" them and replace them with Regal Patients or Medicare
25 patients.

26 125. Many of the people chosen by Gazarian were not medically eligible for discharge and to
27 discharge them was illegal.

28 126. During these meetings and at other times Gazarian told Plaintiff and others to call the patient's
families that she wanted discharged and inform them that resident patients had to be discharged,
and "do not take no for an answer". These patients would not have a doctor's order permitting or
recommending discharge.

127. During these meetings and at other times Gazarian told Plaintiff and others which patients to

1 discharge and to “find places for them”. These patients were generally Medi-Cal patients.

2 128. Gazarian told Plaintiff to “focus” on discharging Medi-Cal patients first.

3 129. This conduct was on information and belief all illegal.

4 130. The discharge of patients was a medical decision and could not be made by Gazarian.

5 131. Plaintiff told Gazarian that patients could not be discharged without a doctor’s orders and to
6 do so would put the patients at risk.

7 132. This was a protected activity as defined by Labor Code 1102.5 and Health and Safety Code
8 1278.5.

9 133. Plaintiff, along with other Directors was asked to participate in illegally discharging the
10 patients chosen by Gazarian. Plaintiff was asked to participate in finding the illegally discharged
11 Patients places to go.

12 134. Plaintiff refused to engage in this illegal conduct.

13 135. Plaintiff is informed and believes that Gazarian wanted the Medi-Cal and other patients
14 discharged and replaced by Regal patients because Gazarian was receiving kickbacks from Regal

15 136. Plaintiff is informed and believes that Gazarian asked employees to discharge patients without
16 a doctor’s order by asking employees to falsely and fraudulently write on patient’s charts that they
17 had spoken to the patient’s family about discharge.

18 137. Plaintiff is informed and believes that patients were illegally discharged pursuant to
19 Gazarian’s instructions. Patients who should not have been medically discharged were in fact
20 fraudulently and wrongfully discharged without a doctor’s order at Gazarian’s instruction. One
21 such patient, on information and belief, died.

22 138. This conduct was on information and belief all illegal.

23 139. Plaintiff refused to engage in this conduct.

24 140. Plaintiff, as part of her job would find patients that qualified for admission. These were
25 generally Medi-Cal or Medicare patients. However, Gazarian would refuse to admit them and
26 instead admit Regal patients, who were not qualified for admission.

27 141. Plaintiff is informed and believes that Gazarian preferred Regal patients for admission because
28 Gazarian was receiving kickbacks from Regal.

142. This conduct was on information and belief all illegal.

143. The admission of patients was a medical decision and could not be made by Gazarian.

144. Plaintiff had some of her appropriate patient referrals not admitted in favor of unqualified
Regal patients, despite the fact that they had been approved for admission by the Director of

1 Nursing.

2 145. Plaintiff shortly after she was hired complained to Gazarian about the illegal circumstances
3 under which patients were being discharged. Plaintiff also complained to Gazarian about the fact
4 that qualified patients were not being admitted in favor of unqualified Regal patients.

5 146. This was a protected activity as defined by Labor Code 1102.5 and Health and Safety Code
6 1278.5.

7 147. Employees complained that this practice was illegal and Gazarian responded: "Everybody can
8 mind their fucking business."

9 148. Plaintiff also began keeping a list of the patients she referred to the facility and notes of
10 Gazarian's response and illegal conduct.

11 149. In approximately April 2019 Gazarian found this list and sent an email to many employees
12 telling them to delete the list, that the list was composed of lies and that Plaintiff was "a liar"

13 150. After Gazarian found the list and defamed Plaintiff she stated to Plaintiff: "I need you to get
14 people out", "focus on discharge", "I don't care how you do it."

15 151. Plaintiff told Gazarian that this was illegal and that "nobody would take the patient" and there
16 was nowhere for them to go.

17 152. Plaintiff told Gazarian that "I can't discharge people in the state that they are in."

18 153. Plaintiff told Gazarian that these patients did not "qualify for discharge."

19 154. Plaintiff told Gazarian "we can't have these people discharged or the Department of Health
20 Services will be here."

21 155. Plaintiff told Gazarian that she could not just dump patients.

22 156. Plaintiff told Gazarian "do you want me to drop people off at the park?"

23 157. In response Gazarian told Plaintiff "I thought you were a marketer" and "make it happen."

24 158. Plaintiff refused to engage in this conduct.

25 159. These were all protected activities as defined by Labor Code 1102.5 and Health and Safety
26 Code 1278.5.

27 160. Plaintiff was then wrongfully terminated.

28 161. Plaintiff is informed and believes that she was terminated for protesting illegal conduct, for
refusing to engage in illegal conduct and for making patient safety complaints, all in violation of
Labor Code 1102.5 and Health and Safety Code 1278.5.

162. Plaintiff is informed and believes, and thereon alleges, that she had reasonable cause to
believe that the information she disclosed as alleged above indicated a violation of a state or

1 federal statute, or a violation of or noncompliance with a local, state, or federal regulation.

2 163. The disclosures were a substantial motivating factor for the Employer Defendants' retaliation
3 against Plaintiff, including but not limited to terminating her and thus constituted unlawful
4 retaliation in violation of California Labor Code section 1102.5.

5 164. Plaintiff's refusal to engage in the illegal conduct alleged above was a substantial motivating
6 factor for the Employer Defendants' retaliation against Plaintiff, including but not limited to
7 terminating her and thus constituted unlawful retaliation in violation of California Labor Code
8 section 1102.5.

9 165. As a proximate result of the unlawful retaliation in violation of California Labor Code section
10 1102.5 Plaintiff has suffered mental anguish and emotional suffering and other general damages
11 past and future in an amount in excess of the minimum jurisdiction of this court and according to
12 proof.

13 166. As a proximate result of the unlawful retaliation in violation of California Labor Code
14 section 1102.5, Plaintiff has suffered a loss of tangible employment benefits including lost wages
15 and fringe benefits past and future in an amount in excess of the minimum jurisdiction of the court
16 and according to proof.

17 167. As a proximate result of the unlawful retaliation in violation of California Labor Code
18 section 1102.5, Plaintiff was required to and did retain attorneys, and is accordingly entitled to an
19 award of attorneys' fees according to proof pursuant to California Code of Civil Procedure, section
20 1021.5.

21 168. As a proximate result of the unlawful retaliation in violation of California Labor Code
22 section 1102.5, Plaintiff has incurred and/or will continue to incur medical expenses in amount
23 according to proof at the time of trial.

24 169. The afore pled conduct of the Employer Defendants constitutes oppression, fraud, and
25 malice thereby entitling Plaintiff to an award of punitive damages. Plaintiff is further informed and
26 believes that the Employer Defendants had advanced knowledge of the unfitness of Gazarian but
27 employed her nonetheless with a conscious disregard of the rights and safety of Plaintiff and
28 others. Plaintiff is further informed and believe, and thereon allege, that this act of oppression,
fraud, or malice or advanced knowledge or act of, ratification or authorization were on the part of a
managing agent or owner acting on behalf of the Employer Defendants. Plaintiff is further
informed and believes that Gazarian was a managing agent of the Employer Defendants.

1 **SECOND CAUSE OF ACTION**

2 **VIOLATION OF HEALTH & SAFETY CODE § 1278.5**

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

4 170. Plaintiff incorporates by reference all preceding and subsequent paragraphs

5 171. Health and Safety Code 1278.5 provides in pertinent part: (b) (1) No health facility shall
6 discriminate or retaliate, in any manner, against any patient, employee, member of the medical
7 staff, or any other health care worker of the health facility because that person has done either of
8 the following: (A) Presented a grievance, complaint, or report to the facility, to an entity or agency
9 responsible for accrediting or evaluating the facility, or the medical staff of the facility, or to any
10 other governmental entity. (B) Has initiated, participated, or cooperated in an investigation or
11 administrative proceeding related to the quality of care, services, or conditions at the facility that is
12 carried out by an entity or agency responsible for accrediting or evaluating the facility or its
13 medical staff, or governmental entity (2) No entity that owns or operates a health facility, or that
14 owns or operates any other health facility, shall discriminate or retaliate against any person because
15 that person has taken any actions pursuant to this subdivision.

16 172. Plaintiff was, on information and belief, an employee of a health facility covered by Health
17 and Safety Code 1278.5.

18 173. The Employer Defendants, on information and belief are entities covered by Health and Safety
19 Code 1278.5.

20 174. Plaintiff made patient safety complaints as alleged above.

21 175. Plaintiff is informed and believes that she was terminated and other adverse employment
22 actions were taken against her for making patient safety complaints, all in violation of Health and
23 Safety Code 1278.5

24 176. The foregoing conduct by the Employer Defendants violated Health and Safety Code 1278.5.

25 177. Pursuant to Health and Safety Code Section 1278.5(d), Plaintiff is entitled to a rebuttable
26 presumption that the adverse actions taken against her were attributable to her complaints and
27 protests regarding patient care.

28 178. As a proximate result of these violations of Health and Safety Code 1278.5 Plaintiff suffered
general damages past and future according to proof.

179. As a further proximate result Plaintiff lost employment benefits, past and future including
wages and fringe benefits, in an amount in excess of the minimum jurisdiction of the court and
according to proof.

1 180. As a further proximate result Plaintiff has needed and will need medical attention, and will
2 incur medical expenses, past and future, to her damage according to proof.

3 181. The afore pled conduct of the Employer Defendants constitutes oppression, fraud, and malice
4 thereby entitling Plaintiff to an award of punitive damages. Plaintiff is further informed and
5 believes that the Employer Defendants had advanced knowledge of the unfitness of Gazarian but
6 employed her nonetheless with a conscious disregard of the rights and safety of Plaintiff and
7 others. Plaintiff is further informed and believe, and thereon alleges, that this act of oppression,
8 fraud, or malice or advanced knowledge or act of, ratification or authorization were on the part of a
9 managing agent or owner acting on behalf of the Employer Defendants. Plaintiff is further
informed and believes that Gazarian was a managing agent of the Employer Defendant.

10 **THIRD CAUSE OF ACTION**

11 **DEFAMATION**

12 **(AGAINST ALL DEFENDANTS)**

13 182. Plaintiff re-alleges and incorporates by reference each and every allegation of the Complaint
as though fully set forth herein.

14 183. This is a defamation case between private parties.

15 184. The Employer Defendants acting through employees including but not limited to Gazarian
16 and Vo and all acting in the course and scope of their employment repeatedly defamed Plaintiff as
afore pled.

17 185. Plaintiff began keeping a list of the patients she referred to the facility and notes of Gazarian's
18 response and illegal conduct.

19 186. In approximately April 2019 Gazarian found this list and sent an email to many employees
20 telling them to delete the list, that the list was composed of lies and that Plaintiff was "a liar"

21 187. The contents of the email from Gazarian were false and defamatory.

22 188. After Gazarian found the list and defamed Plaintiff she stated to Plaintiff: "I need you to get
23 people out", "focus on discharge", "I don't care how you do it."

24 189. These statements were made in writing and exposed Plaintiff to hatred, contempt, ridicule, or
25 obloquy, or caused Plaintiff to be shunned or avoided, or had a tendency to injure Plaintiff in her
occupation.

26 190. These statements constitute libel per se as they had a natural tendency to injure Plaintiff's
27 reputation, either generally, or with respect to her occupation.

28 191. On the day of Plaintiff's termination Gazarian told other employees that Plaintiff was fired "

1 for not doing her job.”

2 192. This statement was false and defamatory.

3 193. Other employees, on information and belief including, but not limited to John Vo stated to
4 hospital clients after Plaintiff was terminated that “ plaintiff did not know what she was doing” and
5 that plaintiff “ did not produce anything.”

6 194. These statements were false and defamatory.

7 195. These defamatory statements were made orally and constitute slander per se.

8 196. These statements or similar statements were made orally and were slanderous as they tended
9 to directly injure Plaintiff in her occupation.

10 197. Plaintiff is informed and believes that these defamatory statements were repeatedly published
11 to various third persons at various times who understood both their defamatory meaning and their
12 application to Plaintiff.

13 198. All of these statements were false. All of these statements were unprivileged. The above
14 defamatory statements were made, and understood as assertions of fact, and not as opinion.

15 199. These statements are defamatory on their face as they tended to directly injure Plaintiff in her
16 occupation.

17 200. The Employer Defendants are liable as these defamatory statements were made by employees
18 of the employer defendants including Gazarian and John Vo acting within the course and scope of
19 their employment with the employer defendants. Alternatively, the Employer Defendants are liable
20 because the defamatory statements were authorized or ratified by employees and owners and
21 managing agents of the employer defendants acting within the course and scope of their
22 employment.

23 201. Each of these false defamatory per se publications, as set forth above, were negligently,
24 recklessly, and intentionally published in a manner equaling malice and abuse of any alleged
25 conditional privilege (which Plaintiff denies existed), since the publications, and each of them,
26 were made with hatred, ill will, and an intent to vex, harass, annoy, and injure Plaintiff. These
27 publications and statements were motivated by hatred or ill will toward Plaintiff and the
28 Defendants did not believe them to be true.

202. These statements were made with malice because each of these false defamatory per se
publications were made with a reckless disregard for the truth, were excessive, were exaggerated,
overdrawn and colored to the detriment of Plaintiff, and were not stated fully and fairly with
respect to the Plaintiff.

1 203. The above complained-of publications were made with hatred and ill will towards Plaintiff
2 and the design and intent to injure Plaintiff, Plaintiff's good name, and reputation. Defendants, and
3 each of them, published these statements, not with intent to protect any interest intended to be
4 protected by any privilege, but with negligence, recklessness and/or intent to injure Plaintiff and
5 destroy her reputation. Therefore, no privilege existed to protect any of the Defendants from
6 liability for any of these aforementioned publications or re publications.

7 204. As a proximate result of the above described publications, Plaintiff may recover presumed
8 and actual damages of general damages and emotional distress including the loss of her reputation,
9 shame, mortification and hurt feelings in a sum in excess of the minimum jurisdiction of the court
10 and according to proof.

11 205. As a proximate result of the above described publications, Plaintiff may recover presumed and
12 actual damages of lost income/salary and benefits, past and future in an amount in excess of the
13 minimum jurisdiction of the court and according to proof.

14 206. The afore pled publications were published with malice and/or oppression in that is was
15 intended to cause injury to Plaintiff or was despicable conduct which was carried with a willful and
16 conscious disregard of the rights or safety of others, including Plaintiff, and was despicable
17 conduct which subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's
18 rights. Plaintiff is accordingly entitled to an award of punitive damages. The Employer Defendants
19 are liable because they engaged in, authorized, or ratified the wrongful conduct. This engagement
20 in the conduct, authorization of the conduct, or ratification was on information and belief on the
21 part of an officer, owner, director or managing agent of the Employer Defendants. Accordingly,
22 Plaintiff is entitled to an award of punitive damages against all Defendants.

23 207. As a proximate result Plaintiff was also required to see physicians and medical
24 professionals and has and will incur special damages medical expenses past and future in an
25 amount according to proof.

FOURTH CAUSE OF ACTION

WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY

(BY PLAINTIFF AGAINST ALL DEFENDANTS)

26 208. Plaintiff incorporates by reference, as though set forth in full herein, each and every
27 allegation in the complaint.

28 209. Plaintiff is informed and believes, and thereon alleges, that she was wrongfully discharged
due to engaging in conduct protected by Labor Code 1102.5 and Health and Safety Code 1278.5,

1 all as afore pled, in violation of the public policy of the State of California and of the United States
2 210. It is the public policy of the State of California as expressed in Health and Safety Code
3 1278.5 that an employer may not retaliate or discriminate against an employee for making patient
4 safety complaints.

5 211. It is the public policy of the State of California as expressed in California Labor Code §
6 1102.5 that an employer may not retaliate against or discharge an employee for making a protected
7 complaint to his employer.

8 212. It is the public policy of the State of California as expressed in California Labor Code §
9 1102.5 that an employer may not retaliate against or discharge an employee for refusing to engage
10 in illegal conduct.

11 213. It is the public policy of the State of California and the United States that an employer may
12 not retaliate against or discharge an employee for protesting or refusing to engage in patient
13 dumping as set forth in 42 U.S.C. § 1983 and its regulations, and the California statutes , rules and
14 regulations precluding patient dumping.

15 214. These public policies were at all times express, fundamental, in force, and binding on the
16 Employer Defendants.

17 215. Plaintiff was terminated for making patient safety complaints, for engaging in conduct
18 protected by Labor Code 1102.5, for protesting the violation of patient dumping laws, and for
19 refusing to engage in illegal conduct.

20 216. The Employer Defendant's termination of Plaintiff violated Public Policy.

21 217. The Employer Defendants termination of plaintiff violated each of the aforementioned public
22 policies. Plaintiff's termination accordingly constitutes a tortuous wrongful termination in violation
23 of public policy.

24 218. The Employer Defendants' termination of Plaintiff's employment legally and directly caused
25 Plaintiff to suffer general damages and emotional distress past and future in an amount in excess of
26 the minimum jurisdiction of this Court subject to proof at the time of trial.

27 219. The afore pled conduct caused Plaintiff to lose wages and fringe benefits past and future in an
28 amount in excess of the minimum jurisdiction of this Court and according to proof.

219. The afore pled conduct caused and/or will cause Plaintiff to incur medical expenses past and
future according to proof.

219. The afore pled conduct of the Employer Defendants constitutes oppression, fraud, and malice
thereby entitling Plaintiff to an award of punitive damages. Plaintiff is further informed and

1 believes that the Employer Defendants had advanced knowledge of the unfitness of Gazarian but
2 employed her nonetheless with a conscious disregard of the rights and safety of Plaintiff and
3 others. Plaintiff is further informed and believe, and thereon allege, that this act of oppression,
4 fraud, or malice or advanced knowledge or act of, ratification or authorization were on the part of a
5 managing agent or owner acting on behalf of the Employer Defendants. Plaintiff is further
6 informed and believes that Gazarian was a managing agent of the Employer Defendants.

7
8 **PRAYER FOR RELIEF**

9 Wherefore, Plaintiff prays for judgment against defendants as follows:

- 10 1. For damages for lost employment income and benefits, past and future, according to proof;
11 2. For general damages for pain and suffering past and future according to proof;
12 3. For damages for past and future medical expenses according to proof;
13 4. For attorney's fees according to proof on those claims which allow them;
14 5. For punitive damages;
15 6. For costs of suit incurred herein;
16 7. For presumed and actual damages of general damages and emotional distress including the
17 loss of Plaintiff's reputation, shame, mortification and hurt feelings in a sum in excess of
18 the minimum jurisdiction of the court and according to proof.
19 8. For presumed and actual damages of lost income/salary and benefits, past and future in an
20 amount in excess of the minimum jurisdiction of the court and according to proof.
21 9. For such other and further relief as the court deems just and proper.

22 Dated: March 30, 2020

SOTTILE ■ BALTAXE

23 By 

PAYAM I. AFRAMIAN, ESQ.

Attorneys for Plaintiff

REQUEST FOR JURY TRIAL

Plaintiffs hereby request a Trial by Jury.

Dated: March 30, 2020

SOTTILE ■ BALTAXE



By _____

PAYAM I. AFRAMIAN, ESQ.
Attorneys for Plaintiff

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