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SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO

JAMES ROBILLARD,

Plaintiff,

v.

FRESNO COMMUNITY HOSPITAL AND
MEDICAL CENTER, a California
corporation; COMMUNITY MEDICAL
CENTER, form of business unknown;
COMMUNITY REGIONAL MEDICAL
CENTER, form of business unknown;
PERVAIZ CHAUDHRY; VALLEY
CARDIAC SURGERY MEDICAL
CORPORATION; and DOES 1 through 20,
inclusive

Defendants.

FILED

APR 17 2015

SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO

BY

DEPUTY

CASE NO. 15 CE CG 01236

COMPLAINT FOR DAMAGES

DAMAGES EXCEED \$25,000

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I

BACKGROUND ALLEGATIONS

1. Defendant Fresno Community Hospital and Medical Center ("FCHMC") is a business with its principal place of business in Fresno County, California. Defendant Community Medical Center ("CMC") is a business with its principal place of business in Fresno County, California. Defendant Community Regional Medical Center ("CRMC") is a business with its principal place of business in Fresno County, California. Plaintiff does not presently know the true names of CMC and CMRC or their forms of business organization and will amend this Complaint to state the true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that CRMC and CMC are business names used by FCHMC insofar as CRMC and CMC are not incorporated business entities. For purposes of this Complaint, CRMC, CMC and FCHMC will be referred to collectively as "CMC."

2. Defendant Pervaiz Chaudhry ("Chaudhry") is an individual who resides in Fresno County, California. From approximately 2005 to the present date, Chaudhry performed heart surgeries at CMC and also held medical staff leadership positions as Multispecialty Peer Review Committee Vice Chairman at CMC and President-Elect of the medical staff at a CMC entity known as the Fresno Heart & Surgical Hospital ("FHSH").

3. Defendant Valley Cardiac Surgery Medical Corporation ("VCS") is a California domestic stock corporation with its principal place of business in Fresno County, California. Chaudhry is a shareholder, director, employee and controller of VCS.

4. Plaintiff James Robillard ("Robillard") is a resident of Fresno County, California. From 2012 through 2014, Robillard was an employee of CMC and provided services to CMC and FHSH. From 1998 to 2011, Robillard was employed by and was the President of Perfusion Associates of California, Inc. ("PAIC"). PAIC is a dissolved California business corporation which had done business in Fresno County, California. During his employment with CMC, Robillard was the Director of Perfusion at CMC. During his employment with PAIC, PAIC provided perfusionist services for CMC. A "perfusionist,"

1 also known as a "clinical perfusionist" or a "cardiovascular perfusionist," is "a specialized
2 healthcare professional who uses the heart-lung machine during cardiac surgery and other
3 surgeries that require cardiopulmonary bypass to manage the patient's physiological status."
4 From approximately 2001 to approximately 2014, either Robillard or one of his subordinates
5 provided perfusionist services for all heart surgeries performed at CMC or FHS.

6 5. Plaintiff does not presently know the names or capacities of the parties sued
7 herein as Does 1 through 20, inclusive. Plaintiff is informed and believes and thereon alleges
8 that each of said fictitiously-named defendants is a partner, agent, principle, alter ego of the
9 other defendants or is in some way legally responsible for the acts and injuries alleged herein.
10 Plaintiff will amend this Complaint to state such defendant's true names and capacities when
11 ascertained.

12 6. On or about April 2, 2012, Chaudhry as an agent of VCS performed cardiac
13 surgery on a 71 year old patient ("Perez"). Chaudhry left the operating room prior to moving
14 the patient to the Intensive Care Unit and prior to closing the chest and stabilization in
15 violation of hospital medical staff bylaws. Chaudhry left his physician's assistant to close
16 the patient's chest, although she was not qualified to be in charge of the operating room. The
17 patient was bleeding an abnormal amount and was never taken off the operating table.
18 Chaudhry left the operating room at approximately 12:35 pm, was informed of the patient's
19 bleeding at approximately 12:45, and was called at approximately 12:58 to return to the
20 operating room, and returned to the operating room at approximately 1:29 pm.
21 Approximately one hour after he had left the operating room, Chaudhry returned, but by this
22 time the patient had gone into hypovolemic shock because of the loss of blood from the
23 surgical complications. Chaudhry asked an aide to get his car keys and repark his car from
24 the patient drop off area so that it would not get towed. Plaintiff is informed and believes
25 and thereon alleges that Chaudhry had left the hospital grounds and traveled to the north end
26 of Fresno approximately ten miles away to get lunch. The conclusion of the operation found
27 the patient suffering brain death. Perez has been in a vegetative state since the operation.
28

1 7. Robillard was informed of the facts about patient Perez on April 2, 2012, after
2 the operation. Robillard had his informant prepare a written report. Robillard and his
3 informant then reported the incident to the California Department of Public Health (the
4 "CDPH") on or about April 14, 2012. Robillard believed the truth of the report because he
5 believed the veracity of his informant and because he had performed perfusionist services
6 for surgeries by Chaudhry during which Chaudhry had allowed his assistant to close.

7 8. Robillard and his informant made the complaint to the CDPH on the condition
8 of anonymity because they feared that their exposure as whistle-blowers would subject them
9 to retaliation by the hospital at the request of Chaudhry.

10 9. On or around February 14, 2013, the CDPH suspended Chaudhry for fourteen
11 days because of the Perez incident and fined the hospital approximately \$75,000. Chaudhry
12 was instructed by the CDPH that he was to either be present or to provide suitable coverage
13 until the patient was stable in the ICU. The CDPH concluded that "as a result, there was an
14 untimely response to the patient's deteriorating condition." With respect to CRMC, the
15 CDPH concluded: "This facility failed to prevent the deficienc(ies) as described above that
16 caused, or is likely to cause, serious injury or death to the patient and therefore constitute an
17 immediate jeopardy within the meaning of Health and Safety Code Section 1280.1(c)."

18 10. The family of patient Perez filed an action for medical malpractice and
19 negligence against CRMC and Dr. Chaudhry in approximately December of 2013.

20 11. In the meantime, the Perez matter drew national media attention that was
21 embarrassing to Defendants and each of them. For example, Yahoo.com ran the story
22 entitled "Consumer Watchdog Calls For Suspension of 'Out To Lunch' Heart Surgeon Who
23 Reportedly Left Surgeries Early & Investigation Of Hospital Involved In Cover-Up" -
24 [http://news.yahoo.com/consumer-watchdog-calls-suspension-lunch-heart-surgeon-reportedly-](http://news.yahoo.com/consumer-watchdog-calls-suspension-lunch-heart-surgeon-reportedly-182800778.html)
25 [182800778.html](http://news.yahoo.com/consumer-watchdog-calls-suspension-lunch-heart-surgeon-reportedly-182800778.html) - about the Perez matter. Huffington Post ran a story entitled "Dr. Parvaiz
26 Chaudhry Allegedly Left Surgery To Have Lunch, Leaving Patient Brain Damaged." ABC
27 News posted a story entitled "Man Left Brain Damaged After Doctor Allegedly Abandons
28

1 Man's Open-Heart Surgery" - [http://abcnews.go.com/Health/man-left-brain-damaged-doctor-](http://abcnews.go.com/Health/man-left-brain-damaged-doctor-allegedly-abandons-mans/story?id=21491894)
2 allegedly-abandons-mans/story?id=21491894

3 12. Although the CDPH had found negligence in the operation that resulted in the
4 injury to Perez, none of the Defendants informed the Perez family about the connection
5 between their conduct and the injury to Perez. In the ABC News story, the report was made
6 that an anonymous caller told Perez's stepson that the CDPH report provided information on
7 why his stepfather was in a vegetative state. Plaintiff is informed and believes and thereon
8 alleges that Defendants and each of them read that story or were informed about the content
9 of the story and decided to look for the person who had blown the whistle on them to the
10 CDPH and the Perez family.

11 13. In addition, in 2014, other patients who concluded that they had been injured
12 by the negligence of Defendants also filed legal actions because of the notoriety of and media
13 attention given to the Perez case. By the summer of 2014, the Fresno Bee was reporting
14 "FRESNO HEART SURGEON FACING FOURTH LAWSUIT" in stories pertaining to
15 legal actions filed against Chaudhry.

16 14. Prior to June of 2014, Defendants did not know that Robillard had reported
17 them to the CDPH with respect to the Perez operation. However, as part of the discovery in
18 the Perez medical malpractice lawsuit, pursuant to a subpoena for records served on the
19 CDPH, the CDPH produced its files on the Perez investigation matter. In its investigative
20 notes, Robillard was identified as the whistle-blower. Chaudhry has filed pleadings where
21 he admitted "it was not until June 2014 that Plaintiffs knew, or could have known, that it was
22 Defendant Robillard who had made intentionally anonymous false reports in or about April
23 of 2012, or that it was Defendant Robillard who contacted the Perez family in or about
24 October 2013, leading to the Perez decision to file suit against Plaintiffs in December of
25 2013."

26 15. In approximately August of 2014, Chaudhry filed a complaint, which was
27 dismissed approximately three weeks later, alleging that Robillard had defamed him by
28

1 making a report to the CDPH. Prior to that, Chaudhry had his attorney make a demand on
2 Robillard to identify other whistle-blowers.

3 16. At approximately the same time, CMC began to retaliate against Robillard. At
4 the same time that Chaudhry began his retaliation against Robillard, CMC was following suit
5 in retaliating against Robillard's employment. In August of 2014, CMC began an
6 investigation into Robillard's review of the files he had worked on as a perfusionist.
7 Robillard and other providers of medical service had reviewed patient files in the past for a
8 variety of purposes, e.g., checking up on outcomes of past services, research, education, and
9 other reasons. Robillard had never been warned or questioned or disciplined in the past
10 concerning his review of patient files for those purposes. No one had ever been warned,
11 questioned or disciplined for looking at their patient's files. However, in August of 2014,
12 an investigation was begun on Robillard and only Robillard. Robillard was told by CMC that
13 he had been singled out because he had been revealed as the whistle-blower. CMC looked
14 only at files pertaining to Chaudhry that Robillard had looked at. CMC's investigation
15 revealed that he had looked at files of patients who had been discharged and on that basis
16 CMC terminated Robillard's employment in September of 2014. Prior to his discharge,
17 Robillard believed that he was complying with all applicable laws and regulations and
18 policies regarding patient privacy and he believed that his report to the CDPH was required
19 by CMC policies in that, *inter alia*, Perez was an "elder" as defined by the Elder Abuse Act
20 (Welfare & Institutions Code Section 15600 et seq.), and Chaudhry's conduct might have
21 violated CMC's elder abuse policy, as part of which employees were required to make
22 reports to governmental agencies, or the Elder Abuse Act.

23 17. In late September of 2014, CMC sent notices to Robillard's patients advising
24 them that HIPAA had been violated with respect to their patient files. The notices implied
25 that the patient's financial information might want to check their credit report and that the
26 person who had accessed the files was "unauthorized" to do so and that "disciplinary actions
27 will be taken." Although Robillard was not directly named in those releases, at
28 approximately the same time, on or around October 15, 2014, the Fresno Bee ran a story on

1 Chaudhry's short-lived legal action against Robillard which identified Robillard as the
2 "whistle blower" who had "defamed" Chaudhry because he allegedly believed that
3 "Chaudhry wanted him to lose his contract" to provide perfusionist services to CMC.
4 Further, in making this statement, CMC represented that Robillard had not acted in good
5 faith and that he was disciplined for this breach. Among other persons, CMC sent these
6 notices out to families of patients who had died while Chaudhry was operating on them and
7 who were, at that time, suing CMC for Chaudhry's negligence.

8 18. Within a very short time after the initial Fresno Bee article, on or around
9 October 22, 2014, Chaudhry dismissed his action against Robillard without prejudice, his
10 attorney explaining to the Fresno Bee that "Leighton said the suit was dismissed without
11 prejudice for strategic reasons."

12 II

13 FIRST CAUSE OF ACTION

14 (Retaliation and Wrongful Termination in Violation of 15 Health and Safety Code Section 1278.5 against CMC)

16 19. Plaintiff incorporates the allegations contained in paragraphs 1 through 18 of
17 this Complaint as if fully set forth herein, and incorporate those allegations verbatim herein
18 by this reference.

19 20. Health and Safety Code Section 1278.5 states that "It is the public policy of the
20 State of California to encourage patients, nurses, members of the medical staff, and other
21 health care workers to notify government entities of suspected unsafe patient care and
22 conditions."

23 21. Health and Safety Code Section 1278.5(b) provides that "no health facility shall
24 discriminate or retaliate, in any manner, against any ... employee.... because that person has
25 ...[p]resented a grievance, complaint, or report to the facility....or the medical staff of the
26 facility...[or]...[h]as initiated, participated, or cooperated in an investigation or
27 administrative proceeding related to, the quality of care, services, or conditions at the facility
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1 that is carried out by an entity or agency responsible for accrediting or evaluating the facility
2 or its medical staff, or governmental entity."

3 22. Robillard engaged in activities protected by Health and Safety Code Section
4 1278.5 in that CMC was a health facility and Robillard was an employee or medical staff
5 member of CMC who initiated and participated in an investigation or administrative
6 proceeding related to the quality of care at CMC carried out by the CDPH when filed the
7 report of Chaudhry's conduct during the Perez operation.

8 23. Robillard was terminated from employment with CMC in September of 2014.
9 Robillard is informed and believes and thereon alleges that he was terminated in September
10 of 2014 by CMC because of his protected action in making a report pursuant to Health and
11 Safety Code Section 1278.5. Robillard bases this allegation on the fact that CMC discovered
12 that he had made the report to the CDPH concerning Perez in approximately June or July of
13 2014 and only then investigated his access to patient files and that it penalized him for
14 conduct he had previously engaged in without warning or discipline only after he had been
15 identified as a whistle-blower.

16 24. Robillard suffered adverse employment actions as a result of his protected
17 activities. Robillard was terminated within 120 days of making CMC's discovery that he
18 had made the complaint about Chaudhry's conduct of the Perez operation, and that he was
19 the person responsible for the fact that it was fined \$75,000 as a result of its failures with
20 respect to monitoring Chaudhry.

21 25. As a proximate result of his termination from employment with CMC,
22 Robillard has suffered damages, including lost wages and benefits, and emotional distress
23 caused by the anxiety, uncertainty, humiliation and depression arising from his termination,
24 the way he was terminated, including advising his patients that he had purportedly violated
25 their privacy rights, and, possibly, committed fraud against them, and from the fact that he
26 was the victim of retaliation because he was attempting to protect patients from unsafe care
27 and conditions. Robillard is entitled to his legal costs and attorney's fees pursuant to Health
28 & Safety Code Section 1278.5.

26. Robillard is informed and believes and thereon alleges that CMC's conduct was malicious, fraudulent and oppressive. Plaintiff therefore requests exemplary according to proof at trial.

III

SECOND CAUSE OF ACTION

(Retaliation and Wrongful Termination in Violation of Penal Code Section 11160 et seq and the Elder Abuse Act (Welfare & Institutions Code Section 15600 et seq.) against CMC)

27. Plaintiff incorporates the allegations contained in paragraphs 1 through 26 of this Complaint as if fully set forth herein, and incorporate those allegations verbatim herein by this reference.

28. Penal Code Section 11160 provides in pertinent part that “(a) Any health practitioner employed in a health facility, clinic, physician’s office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department who, in his or her professional capacity or within the scope of his or her employment, provides medical services for a physical condition to a patient whom he or she knows or reasonably suspects is a person described as follows, shall immediately make a report in accordance with subdivision (b)... (2) Any person suffering from any wound or other physical injury inflicted upon the person where the injury is the result of assaultive or abusive conduct.” “Assaultive and abusive conduct” is defined by Penal Code Section 11160(d)(23) as including “Elder abuse, in violation of Section 368.” Penal Code Section 368 provides “Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by

1 imprisonment in a county jail not exceeding one year, or by a fine not to exceed six thousand
2 dollars (\$6,000), or by both that fine and imprisonment, or by imprisonment in the state
3 prison for two, three, or four years." In addition, Welfare and Institutions Code Section
4 15600 makes neglect or abuse of an "elder" an unlawful act. Pursuant to Welfare &
5 Institutions Code Section 15630, Plaintiff was a mandatory reporter of elder abuse with
6 respect to the elderly patients that he provided services to in that by performing perfusionist
7 services for incapacitated elderly individuals, he "assumed full or intermittent responsibility
8 for the care or custody of an elder."

9 29. Plaintiff is informed and believes and thereon alleges that at the relevant time:
10 (a) Perez was an "elder" in that he was over 70 years of age and (b) Perez was also a
11 dependent adult at the time of the surgery in that he was in Chaudhry's medical care and
12 custody and (c) Chaudhry willfully caused or permitted Perez to be placed in a situation
13 where his health was endangered, and/or willfully caused or permitted Perez's health to be
14 injured, by leaving Perez in a situation where his condition was not stabilized and there was
15 no qualified cardiac surgeon to intervene in a timely manner in the event of medical
16 problems.

17 30. On April 14, 2012, Plaintiff complied with Penal Code Section 11160 and the
18 Elder Abuse Act by notifying the CDPH of the matters pertaining to the abuse and injury to
19 Perez.

20 31. Penal Code Section 11160(g) provides that "no supervisor or administrator shall
21 impede or inhibit the reporting duties required under this section and no person making a
22 report pursuant to this section shall be subject to any sanction for making the report."

23 32. Robillard was terminated from employment with CMC in September of 2014.
24 Robillard is informed and believes and thereon alleges that he was terminated in September
25 of 2014 by CMC because of his protected action in making a report pursuant to Health and
26 Safety Code Section 1278.5 and Welfare & Institutions Code Section 15630 concerning
27 Perez. Robillard bases this allegation on the fact that CMC discovered that he had made the
28 report to the CDPH concerning Perez in approximately June or July of 2014 and only then

1 investigated his access to patient files and only investigated him and only investigated his
2 access of Chaudhry's files and that it penalized him for conduct he had previously engaged
3 in without warning or discipline and only after he had been identified as a whistle-blower.

4 33. Robillard is informed and believes and thereon alleges that CMC violated
5 Penal Code Section 11160(g) and the Elder Abuse Act by terminating him for making a
6 report required by Penal Code Section 11160.

7 34. Robillard suffered adverse employment actions as a result of his protected
8 activities. Robillard was terminated within 60 days of making CMC's discovery that he had
9 made the complaint about Chaudhry's conduct of the Perez operation, and that he was the
10 person responsible for the fact that it was fined \$75,000 as a result of its failures with respect
11 to monitoring Chaudhry.

12 35. As a proximate result of his termination from employment with CMC,
13 Robillard has suffered damages, including lost wages and benefits, and emotional distress
14 caused by the anxiety, uncertainty, humiliation and depression arising from his termination,
15 the way he was terminated, including advising his patients that he had purportedly violated
16 their privacy rights, and, possibly, committed fraud against them, and from the fact that he
17 was the victim of retaliation because he was attempting to protect patients from unsafe care
18 and conditions.

19 36. Robillard is informed and believes and thereon alleges that CMC's conduct
20 was malicious, fraudulent and oppressive. Plaintiff therefore requests exemplary according
21 to proof at trial.

22 IV

23 THIRD CAUSE OF ACTION

24 (Retaliation and Wrongful Termination in Violation of Labor Code

25 Section 1102.5 against CMC)

26 37. Plaintiff incorporates the allegations contained in paragraphs 1 through 36 of
27 this Complaint as if fully set forth herein, and incorporate those allegations verbatim herein
28 by this reference.

1 38. Labor Code Section 1102.5 recognizes the public policy of encouraging
2 employees to report their employer's violations of the law.

3 39. Labor Code Section 1102.5 provides that "An employer, or any person acting
4 on behalf of the employer, shall not retaliate against an employee for disclosing information,
5 or because the employer believes that the employee disclosed or may disclose information,
6 to a government or law enforcement agency, to a person with authority over the employee
7 or another employee who has the authority to investigate, discover, or correct the violation
8 or noncompliance, or for providing information to, or testifying before, any public body
9 conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to
10 believe that the information discloses a violation of state or federal statute, or a violation of
11 or noncompliance with a local, state, or federal rule or regulation, regardless of whether
12 disclosing the information is part of the employee's job duties."

13 40. Robillard engaged in activities protected by Labor Code Section 1102.5 in that
14 he reported to the CDPH his concerns about patient treatment which violated state laws and
15 regulations, including Health and Safety Code Section 1278.5 and Penal Code Section 11160
16 and the Elder Abuse Act as specified in the prior causes of action, and was responsible for
17 the commencement of an investigation into such patient care issue and was responsible for
18 the CDPH's decision to suspend Chaudhry and fine CMC \$75,000.

19 41. Robillard suffered adverse employment actions as a result of his protected
20 activities. Robillard was terminated within 60 days of making CMC's discovery that he had
21 made the complaint about Chaudhry's conduct of the Perez operation, and that he was the
22 person responsible for the fact that it was fined \$75,000 as a result of its failures with respect
23 to monitoring Chaudhry.

24 42. As a proximate result of his termination from employment with CMC,
25 Robillard has suffered damages, including lost wages and benefits, and emotional distress
26 caused by the anxiety, uncertainty, humiliation and depression arising from his termination,
27 the way he was terminated, including advising his patients that he had purportedly violated
28 their privacy rights, and, possibly, committed fraud against them, and from the fact that he

1 was the victim of retaliation because he was attempting to protect patients from unsafe care
2 and conditions.

3 43. Robillard is informed and believes and thereon alleges that CMC's conduct
4 was malicious, fraudulent and oppressive. Plaintiff therefore requests exemplary according
5 to proof at trial.

6 **V**

7 **FOURTH CAUSE OF ACTION**

8 **(Penalties for Violation of the Private Attorney General Act - Labor Code**

9 **Section §2699, et seq.)**

10 44. Plaintiff incorporates the allegations contained in paragraphs 1 through 43 of
11 this Complaint as if fully set forth herein, and incorporate those allegations verbatim herein
12 by this reference.

13 45. Under the Labor Code Private Attorney General Act of 2004 ("PAGA") Labor
14 Code Section 2699 et seq., an employee person aggrieved by the violation of specified Labor
15 Code provisions may bring an action seeking recovery of penalties for the violation of those
16 specified provisions. Labor Code Section 2699.5 provides: "The provisions of subdivision
17 (a) of Section 2699.3 apply to any alleged violation of the following provisions: ...
18 1102.5...." Labor Code Section 2699.3(a) provides that an aggrieved party may obtain
19 authorization to bring an action for penalties under the PAGA by giving specified written
20 notice to the Labor and Workforce Development Agency ("LWDA") and receiving a
21 response from the LWDA that it does not intend to pursue the claim.

22 46. The PAGA permits the aggrieved employee to recover the penalties specified
23 by the applicable Labor Code which was violated together with Labor Code Section 1102.5
24 provides that "an employer that is a corporation or limited liability company is liable for a
25 civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section."

26 47. Robillard engaged in activities protected by Labor Code Section 1102.5 in that
27 he reported to the CDPH his concerns about patient treatment which violated state laws and
28 regulations, including Health and Safety Code Section 1278.5 and Penal Code Section 11160,

1 and was responsible for commencing an investigation into such patient care issue and was
2 responsible for the CDPH's decision to suspend Chaudhry and fine CMC \$75,000.

3 48. CMC violated Labor Code Section 1102.5 by retaliating against him for
4 disclosing a violation of state or federal statute, or a violation of or noncompliance with a
5 local, state, or federal rule or regulation as set forth in this Complaint.

6 49. Robillard is informed and believes and thereon alleges that CMC is a
7 corporation.

8 50. Accordingly, Robillard seeks recovery of the maximum penalty available under
9 Labor Code Section 1102.5, i.e., \$10,000.

10 51. Labor Code Section 2699(g)(1) provides that "any employee who prevails in
11 any action shall be entitled to an award of reasonable attorney's fees and costs."

12 VI

13 FIFTH CAUSE OF ACTION

14 (Wrongful Termination in Violation of Public Policy against CMC)

15 52. Plaintiff incorporates the allegations contained in paragraphs 1 through 51 of
16 this Complaint as if fully set forth herein, and incorporate those allegations verbatim herein
17 by this reference.

18 53. In Health and Safety Code Section 1278.5, Penal Code Section 11160, the Elder
19 Abuse Act, and Labor Code Section 1102.5, California recognized a fundamental public
20 policy in protecting employees from retaliation where they make reports of conduct that
21 violates state or federal laws and regulation. In Penal Code Section 368, California
22 recognizes a fundamental public policy with respect to protecting elders and dependent adults
23 from willful misconduct risking or injuring their health.

24 54. In April of 2012, Robillard reported Chaudhry's medical negligence relating
25 to an elderly person to the CDPH.

26 55. Robillard engaged in activities protected by California public policy, including
27 Labor Code Section 1102.5, Health and Safety Code Section 1278.5, and Penal Code Section
28 11160 and the Elder Abuse Act, when his report to the CDPH was responsible for

1 commencing an investigation into such patient care issue and was responsible for the
2 CDPH's decision to suspend Chaudhry and fine CMC \$75,000.

3 56. Robillard suffered adverse employment actions as a result of his protected
4 activities. Robillard was terminated within 60 days of making CMC's discovery that he had
5 made the complaint about Chaudhry's conduct of the Perez operation, and that he was the
6 person responsible for the fact that it was fined \$75,000 as a result of its failures with respect
7 to monitoring Chaudhry.

8 57. As a proximate result of his termination from employment with CMC,
9 Robillard has suffered damages, including last wages and benefits, and emotional distress
10 caused by the anxiety, uncertainty, humiliation and depression arising from his termination,
11 the way he was terminated, including advising his patients that he had purportedly violated
12 their privacy rights, and, possibly, committed fraud against them, and from the fact that he
13 was the victim of retaliation because he was attempting to protect patients from unsafe care
14 and conditions.

15 58. Robillard is informed and believes and thereon alleges that CMC's conduct
16 was malicious, fraudulent and oppressive. Plaintiff therefore requests exemplary according
17 to proof at trial.

18 VII

19 SIXTH CAUSE OF ACTION

20 (Intentional Interference with Contract against Chaudhry and VCS)

21 59. Plaintiff incorporates the allegations contained in paragraphs 1 through 58 of
22 this Complaint as if fully set forth herein, and incorporate those allegations verbatim herein
23 by this reference.

24 60. In or about June of 2014, Chaudhry and VCS knew that Robillard was an
25 employee of CMC.

26 61. Plaintiff is informed and believes and thereon alleges that Chaudhry on behalf
27 of VCS communicated with CMC about Robillard's involvement in making the report to the
28 CDPH about Chaudhry, and that Chaudhry on behalf of VCS told CMC that Robillard had

1 committed defamation and had violated HIPAA in order to assist patients in bringing medical
2 malpractice, and that Chaudhry on behalf of VCS caused CMC to investigate Robillard's
3 access to medical files involving Chaudhry, and that Chaudhry and VCS caused CMC to
4 terminate Robillard's employment with false representations that Robillard had defamed
5 Chaudhry or violated HIPAA and that Chaudhry would pursue legal action against CMC if
6 CMC did not terminate Robillard for whistle-blowing. Plaintiff is further informed and
7 believes and thereon alleges that Chaudhry and VCS threatened to take their business from
8 CMC if CMC did not terminate Robillard, and CMC was induced to terminate Robillard
9 because of these threats.

10 62. At all relevant times, Chaudhry and VCS were aware that Robillard's report
11 to the CDPH was conduct that was legally protected from retaliation, but nonetheless
12 Chaudhry and VCS engaged in conduct intended to cause the disruption and termination of
13 Robillard's economic relationship with CMC.

14 63. As a proximate result of the conduct of Chaudhry and VCS, Robillard has
15 suffered damages, including lost wages and benefits, and emotional distress caused by the
16 anxiety, uncertainty, humiliation and depression arising from his termination, the way he was
17 terminated, including advising his patients that he had purportedly violated their privacy
18 rights, and, possibly, committed fraud against them, and from the fact that he was the victim
19 of retaliation because he was attempting to protect patients from unsafe care and conditions.

20 64. Robillard is informed and believes and thereon alleges that Chaudhry and
21 VCS's conduct was malicious, fraudulent and oppressive. Plaintiff therefore requests
22 exemplary according to proof at trial.

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VIII

SEVENTH CAUSE OF ACTION

(Retaliation in Violation of the Fair Employment and Housing Act

(Government Code Section 12940) against CRMC)

72. Plaintiff incorporates the allegations contained in paragraphs 1 through 73 of this Complaint as if fully set forth herein, and incorporate those allegations verbatim herein by this reference.

73. In or about March 17, 2014, a surgeon employed by VCS engaged in sexually harassing conduct toward a 77 year old female patient and to other employees by removing a warming tube from the patient and placing that tube into his surgical pants and simulating a sexual maneuver. Plaintiff reported this conduct out of concern that the conduct could constitute sexual harassment, particularly if the surgeon engaged in similar behavior in front of other female patients and/or female employees and/or female visitors.

74. Plaintiff reported this conduct to CRMC as an instance of inappropriate behavior. Plaintiff is informed and believes and thereon alleges that CRMC told VCS and Chaudhry that Plaintiff had made the report and that Chaudhry and VCS incited, compelled, aided and/or abetted CRMC to retaliate against Plaintiff for having made such a report, by, inter alia, demanding that Plaintiff be terminated and by refusing to permit Plaintiff to act as a perfusionist in any operation that a VCS doctor was involved in. CRMC complied with VCS demands and incitements by concocting false and pretextual grounds for Plaintiff's termination, which occurred in September of 2014.

75. Government Code Section 12940(h) provides that it is an unlawful employment action under the Fair Employment and Housing Act (the "FEHA") "[f]or any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part."

1 76. Government Code Section 12940 (i) of the FEHA provides that it is an
2 unlawful employment "[f]or any person to aid, abet, incite, compel, or coerce the doing of
3 any of the acts forbidden under this part, or to attempt to do so."

4 77. Plaintiff is informed and believes and thereon alleges that CRMC committed
5 an unlawful employment action by terminating Plaintiff because of his report of sexual
6 harassment. Plaintiff is further informed and believes and thereon alleges that VCS
7 committed and unlawful employment action in violation of the FEHA by inciting, aiding,
8 abetting, compelling or coercing CRMC to terminate Plaintiff for reporting sexual
9 harassment on the part of one of its doctors.

10 78. As a proximate result of the conduct of CRMC and/or Chaudhry and/or VCS,
11 Robillard has suffered damages, including lost wages and benefits, and emotional distress
12 caused by the anxiety, uncertainty, humiliation and depression arising from his termination
13 and the way he was terminate in an amount which will be shown at trial.

14 79. Robillard is informed and believes and thereon alleges that each of CRMC's
15 and Chaudhry's and VCS's conduct was malicious, fraudulent and oppressive. Plaintiff
16 therefore requests exemplary according to proof at trial.

17 80. Robillard is entitled to attorney's fees under the FEHA.

18 81. Robillard has complied with all requirements for exhaustion of administrative
19 remedies under the FEHA

20 WHEREFORE, Robillard prays judgment as follows:

- 21 1. For compensatory damage according to proof;
- 22 2. For punitive damages according to proof;
- 23 3. For \$10,000 in penalties pursuant to Labor Code Section 1050 and the Private
24 Attorney General Act;
- 25 4. For costs of suit herein incurred;
- 26
- 27

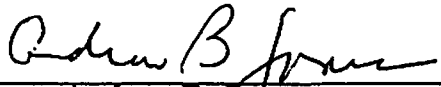
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- 5. For attorney's fees as herein alleged, and
- 6. For such other and further relief as the Court deems proper.

Dated: April 14, 2015

Wagner, Jones, Kopfman & Artenian

By 
Andrew B. Jones
Attorneys for Plaintiff