

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BENJAMIN H. MAINZER (CSB 257748)
ZWERDLING, BRAGG, MAINZER & FIRPO, LLP
804 3rd Street
Eureka, CA 95502
Telephone: 707-445-9628
Facsimile: 707-443-0442

GAIL F. FLATT (CSB) 104422
PROVENCHER & FLATT LLP
823 Sonoma Avenue
Santa Rosa, CA 95404-4714
Telephone: (707) 284-2380
Facsimile: (707) 284-2387

Attorney for Plaintiffs
DONNA ROTAN, PAMELA HINSON,
ALLEN McCLOSKEY and ANTONIO MORENO

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF HUMBOLDT

DONNA ROTAN, PAMELA HINSON,
ALLEN McCLOSKEY and ANTONIO
MORENO

CASE NO. **DR 160030**

Plaintiffs,
vs.

**COMPLAINT FOR VIOLATIONS OF THE
CALIFORNIA FAIR EMPLOYMENT AND
HOUSING ACT AND INJUNCTIVE
RELIEF**

ST. JOSEPH HEALTH, and DOES 1 to
50, inclusive,

Defendants.

Plaintiffs DONNA ROTAN, PAMELA HINSON, ALLEN McCLOSKEY and ANTONIO
MORENO allege as follows:

PARTIES

1. At all times herein mentioned, DONNA ROTAN, PAMELA HINSON, ALLEN
McCLOSKEY and ANTONIO MORENO, hereinafter "PLAINTIFFS," were residents of Humboldt
County, California. Defendants' conduct in relation to PLAINTIFFS hereinafter alleged occurred in
Humboldt County, California.

1 /
2 2. Plaintiffs are ignorant of the true names or capacities of the Defendants sued herein under
3 the fictitious names Doe 1 through Doe 50, inclusive. Plaintiffs will amend this complaint to allege
4 their true names and capacities when ascertained. Plaintiffs are informed and believe that each of the
5 Doe Defendants were responsible in some manner for the occurrences and injuries alleged in this
6 complaint. At all times herein mentioned, Doe Defendants 1 through 50 were California residents.

7 3. Defendant ST. JOSEPH HEALTH, HUMBOLDT COUNTY, hereinafter "SJHS-HC,"
8 is a business entity with its principal place of business in Humboldt County California. SJHS-HC is
9 an entity subject to suit under the California Fair Employment and Housing Act, Government Code
10 §12900, et. seq. ("FEHA"), in that Defendant SJHS-HC is an employer who regularly employs five
11 or more persons.

12 4. Defendant SJHS-HS owns, manages and controls St. Joseph Hospital, located in Eureka,
13 California and Redwood Memorial Hospital, located in Fortuna, California.

14 5. At all times herein mentioned, each Defendant was the agent or employee of each other
15 Defendant. In doing the things alleged herein, each Defendant was acting within the course and scope
16 of this agency or employment and was acting with the consent, permission and authorization of each
17 of the remaining Defendants. All actions of each Defendant alleged herein were ratified and approved
18 by the agents of each other Defendant.

19 6. Within one year of the date of Defendants' actions alleged herein, PLAINTIFFS each filed
20 charges of discrimination with the California Department of Fair Employment and Housing
21 ("DFEH"). A copy of these are attached hereto and marked Exhibit A and incorporated herein by
22 reference.

23 7. DFEH issued to PLAINTIFFS individually notices of right to bring civil action based on
24 the charges that are Exhibit A to this complaint. Copies of these notice of right of action are attached
25 hereto as Exhibit B and incorporated herein by reference.

26 ///

27 //
28

FACTS

(Plaintiffs Donna Rotan and Pamela Hinson)

1 /
2
3
4 8. In or around January 2015, Donna Rotan and Pamela Hinson were hired by Defendant
5 SJHS-HC as permanent nursing staff assigned to the progressive care unit (PCU) at St. Joseph
6 Hospital.

7 9. From their date of hire as permanent staff, Donna Rotan and Pamela Hinson were
8 permitted to work the same shifts in the PCU and were permitted by Defendant SJHS-HC to work
9 together as peers.

10 10. Additionally, from their date of permanent hire, Donna Rotan and Pamela Hinson were
11 permitted to work together in the PCU even when Ms. Hinson or Ms. Rotan held a supervisory
12 assignment over the other as the PCU charge nurse.

13 11. On or about October 4, 2015, Pamela Hinson transferred from the PCU to the intensive
14 care unit (ICU) at St. Joseph Hospital. At that time, Donna Rotan remained in the PCU.

15 12. In or around late October 2015, Ms. Rotan requested she also be transferred to the ICU
16 at St. Joseph Hospital.

17 13. On or about November 4, 2015, Ms. Rotan was advised that her transfer to the ICU had
18 been denied because she and Pamela Hinson were in a relationship and that such a transfer would
19 violate SJHS-HC's employment of relatives policy.

20 14. After Ms. Hinson had been transferred to the ICU, the manager of the PCU, Christine
21 Williams, advised Ms. Hinson that Ms. Hinson would not be permitted to float to the PCU when
22 Donna Rotan was working as the charge nurse of the PCU.

23 15. A nurse "floats" to another unit when, due to staffing needs, they are temporarily
24 assigned to work in a different unit.

25 16. The reason Ms. Williams gave Ms. Hinson as to why Ms. Hinson would be barred from
26 floating to the PCU was because Ms. Hinson and Ms. Rotan were in a relationship and that such a
27 transfer would violate SJHS-HC's employment of relatives policy.
28

1 /
2 17. Ms. Rotan and Ms. Hinson have not been permitted to work in the same unit despite the
3 fact that at all relevant times, Defendant SJHS-HC has allowed heterosexual couples to not only work
4 together in the same unit, but supervise each other.

5 18. Subsequent to the denial of her transfer, Ms. Rotan made a grievance to Defendant
6 SJHS-HC alleging she and Ms. Hinson experienced disparate treatment based on their sexual
7 orientation.

8 19. Ms. Rotan's grievance alleged that she and Ms. Hinson were experiencing disparate
9 treatment based on their sexual orientation. Specifically, Ms. Rotan took issue with the fact that her
10 transfer to the ICU had been denied on the basis that her partner, Ms. Hinson, was assigned there. Ms.
11 Rotan believed the denial of her transfer to be discriminatory because various heterosexual couples
12 were permitted to work together in the same units—including the PCU.

13 20. Ms. Rotan also objected to Defendant SJHS-HC's inconsistent application of its
14 employment of relatives policy insofar as Defendant SJHS-HC barred Ms. Rotan from floating to the
15 ICU when heterosexual couples were permitted to work together.

16 21. On or about November 18, 2015, Ms. Rotan was advised that Defendant SJHS-HC had
17 reviewed its employment of relatives policy and determined that the transfer of Ms. Rotan to the ICU
18 would not violate the policy.

19 22. However, while Defendant SJHS-HC determined that Ms. Rotan would be permitted
20 to transfer to the ICU, Defendant SJHS-HC conditioned Ms. Rotan's transfer on Ms. Rotan accepting
21 conditions that on information and belief, have not been required of any heterosexual couples seeking
22 to work in the same unit.

23 23. Ms. Rotan advised Defendant SJHS-HC that she and Ms. Hinson simply wished to be
24 treated the same as heterosexual couples employed by Defendant SJHS-HC and refused to agree to
25 any terms and conditions not uniformly imposed on all employees in relationships regardless of their
26 sexual orientation.
27
28

1 assistant.

2 /
3 35. On or about June 26, 2015, Mr. Spalding advised Mr. McCloskey that he would not be
4 allowed to transfer to a position in the St. Joseph Hospital laboratory as a laboratory assistant because
5 there was no way for Defendant SJHS-HC to abide by its employment of relatives policy even though
6 Mr. Spalding admitted that Defendant SJHS-HC had taken specific steps to permit two sets of related
7 employees to work in the laboratory.

8 36. Mr. Spalding also represented that there were not enough shifts to justify approving Mr.
9 McCloskey's transfer. Nonetheless Mr. Spalding advised that Defendant SJHS-HC would continue
10 to look for other candidates to fill the open position at the St. Joseph Hospital laboratory.

11 37. On or about June 27, 2015, Mr. McCloskey contacted Michele Rieke, director, human
12 resources for Defendant SJHS-HC.

13 38. Mr. McCloskey asked Ms. Rieke for clarification of the employment of relatives
14 policy. Mr. McCloskey advised Ms. Rieke that after speaking with other employees of Defendant
15 SJHS-HC concerning application of the employment of relatives policy, he felt that the employment
16 of relatives policy was being inconsistently applied to him and his husband given their sexual
17 orientation.

18 39. Mr. McCloskey expressed his desire to have Defendant SJHS-HC apply its employment
19 of relatives policy consistently irrespective of the sexual orientation of its employees.

20 40. On or about July 2, 2015, Ms. Rieke responded to Mr. McCloskey's concerns and stated
21 that having Mr. McCloskey and his husband working in the same department on the same shift has
22 the potential risk for conflict of interest and would violate Defendant SJHS-HC's employment of
23 relatives policy.

24 41. Ms. Rieke also advised Mr. McCloskey that he could apply for a position on a different
25 shift at the St. Joseph Hospital laboratory or for a position at a different facility.

26 42. On or about October 4, 2015, Mr. McCloskey accepted a laboratory assistant position
27 at Redwood Memorial Hospital.
28

1 //

2 /

3 43. On or about November 3, 2015, Mr. McCloskey informed Ms. Rieke that at the
4 Redwood Memorial Hospital laboratory, he had worked multiple shifts with a married couple. He
5 expressed concern that Defendant SJHS-HC was not uniformly applying its employment of relatives
6 policy.

7 44. Mr. McCloskey again expressed his desire that Defendant SJHS-HC apply its
8 employment of relatives policy uniformly irrespective of the sexual orientation of its employees.

9 45. On or about November 6, 2015, Ms. Rieke advised Mr. McCloskey that Warren
10 Spalding had, due to a staffing shortage, permitted a heterosexual married couple to work together in
11 the Redwood Memorial Hospital laboratory.

12 46. On or about November 16, 2015, Ms. Rieke contacted Mr. McCloskey and advised that
13 she had spoken with "the next level" and received a different interpretation of the hospital's
14 employment of relatives policy. She indicated that she wished to discuss this different interpretation
15 with Mr. McCloskey.

16 47. On or about November 19, 2015, Mr. McCloskey met with Ms. Rieke and advised Mr.
17 McCloskey that the employment of relatives policy did not bar him from working with his husband.

18 48. On or about November 21, 2015, Mr. McCloskey requested he be transferred to a
19 laboratory assistant position at the St. Joseph Hospital Laboratory.

20 49. On or about November 24, 2015, Ms. Rieke contacted regional recruiters Meri Scolari
21 and Megan Bonham as well as laboratory director Warren Spalding to advise the aforementioned that
22 Mr. McCloskey was eligible to transfer to the laboratory at St. Joseph Hospital.

23 50. On this same date, Meri Scolari directed Mr. Spalding to submit an ePAF if Mr.
24 McCloskey was transferring to the St. Joseph Hospital laboratory.

25 51. On or about December 1, 2015, Mr. Spalding advised Mr. McCloskey that his transfer
26 application was incomplete.

27 52. Later that same date, Mr. McCloskey contacted Meri Scolari and inquired as to if Mr.
28

1 Spaulding had submitted the ePAF to her. Ms. Scolari advised Mr. McCloskey that Mr. Spaulding had
2 not submitted the ePAF to her.

3 53. Later that same date, Mr. McCloskey contacted Ms. Rieke as he did not understand why
4 his transfer application was incomplete.

5 54. On or about December 2, 2015, Mr. McCloskey spoke with Mr. Spalding regarding his
6 transfer application. Mr. Spalding however told Mr. McCloskey that he would make any open
7 laboratory position available to any current employee working at St. Joseph Hospital before honoring
8 Mr. McCloskey's transfer application.

9 55. On December 3, 2015, Mr. McCloskey advised Ms. Rieke that he had spoken with Mr.
10 Spalding regarding his transfer application but advised that Mr. Spalding told him he would make any
11 open laboratory position available to any current employee working at St. Joseph Hospital before
12 honoring his transfer application.

13 56. On December 11, 2015, Mr. McCloskey advised Ms. Rieke that he had not received
14 confirmation that Mr. Spalding had provided Meri Scolari with the ePAF.

15 57. As of the date of this complaint, Mr. McCloskey has not been transferred to the
16 laboratory position at St. Joseph Hospital.

17
18 **FIRST CAUSE OF ACTION**
19 **DISCRIMINATION IN VIOLATION OF FEHA**
20 **(Against All Defendants)**

21 58. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs
22 1 through 57 as though fully set forth herein.

23 59. Defendant SJHS-HC's actions set forth in this complaint constitute discrimination based
24 on sexual orientation in violation of the California Fair Employment and Housing Act ("FEHA"),
25 Government Code §12940 (a) insofar as Defendant SJHS-HC's actions constitute discrimination
26 against Plaintiffs in terms, conditions, or privileges of employment.

27 60. As a direct and proximate result of Defendant's conduct described herein, Plaintiffs have
28 suffered damages including but not limited to, benefits, lost or diminished opportunities for
professional advancement, humiliation, mental anguish, emotional and physical distress, the exact

1 amount of which will be proven at trial.

2 /
3 61. The above-recited actions of Defendant were done with malice, fraud, or oppression, and
4 in reckless disregard of Plaintiffs rights under the FEHA.

5 **SECOND CAUSE OF ACTION**
6 **FAILURE TO PREVENT DISCRIMINATION IN VIOLATION OF FEHA**
7 **(Against All Defendants)**

8 62. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs
9 1 through 61 as though fully set forth herein.

10 63. Defendant SJHS-HC's failure to prevent discrimination as alleged herein is a violation
11 of the California Fair Employment and Housing Act ("FEHA"), Government Code §12940 (k).
12 Defendant SJHS-HC took no steps to prevent the discrimination based on sexual orientation alleged
13 herein.

14 64. As a direct and proximate result of Defendant's conduct described herein, Plaintiffs have
15 suffered damages including but not limited to, benefits, lost or diminished opportunities for
16 professional advancement, humiliation, mental anguish, emotional and physical distress, the exact
17 amount of which will be proven at trial.

18 65. The above-recited actions of Defendant SJHS-HC in failing to take all reasonable steps
19 necessary to prevent discrimination of Plaintiffs were done with malice, fraud, or oppression, and in
20 reckless disregard of Plaintiffs rights under the FEHA.

21 **THIRD CAUSE OF ACTION**
22 **INJUNCTIVE RELIEF**
23 **(Against All Defendants)**

24 66. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs
25 1 through 65 as though fully set forth herein.

26 67. Plaintiffs continue to experience discrimination based on their sexual orientation insofar
27 as Defendant SJHS-HC continues to deprive Plaintiffs of equal terms, conditions, or privileges of
28 employment.

68. Plaintiffs will continue to be harmed insofar as they will continue to be discriminated
against based on their sexual orientation and will continue to be subject to discriminatory terms,

1 conditions, or privileges of employment unless Defendant SJHS-HC is permanently enjoined from
2 applying its employment of relatives policy in a discriminatory manner.

3
4 WHEREFORE, Plaintiffs pray for judgment as follows:

- 5 1. For injunctive relief where allowable by law;
- 6 2. For noneconomic damages according to proof;
- 7 3. For economic damages according to proof;
- 8 4. For punitive damages in an amount appropriate to punish Defendants for their conduct and
9 set an example for others;
- 10 5. For interest on the sum of damages awarded from June 9, 2015, to the date of judgment;
- 11 6. For reasonable attorneys' fees and costs, including expert witness fees, pursuant to
12 Government Code §12965 (b)
- 13 7. For costs of suit incurred herein; and
- 14 8. For such other and further relief as the court deems proper.

15
16 Dated: January 21, 2016

ZWERDLING, BRAGG, MAINZER & FIRPO, LLP

17
18 By: 
19 BENJAMIN H. MAINZER

20 Attorneys for Plaintiffs, DONNA ROTAN, PAMELA
21 HINSON, ALLEN McCLOSKEY and ANTONIO MORENO

22
23
24
25
26
27
28