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CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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CARLA M. MURRAY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

CARLA M. MURRAY, an Individual,

Plaintiff,

v.

PLANNED PARENTHOOD OF THE
PACIFIC SOUTHWEST, INC., a California
Corporation; and
DOES 1 through 50, inclusive,

Defendants.

CASE NO. 37-2014-00018581-CU-WT-CTL

COMPLAINT FOR DAMAGES

1. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY
2. VIOLATION OF HEALTH & SAFETY
CODE §1278.5
3. RETALIATION IN VIOLATION OF
CALIFORNIA LABOR CODE § 1102.5

DEMAND FOR A JURY TRIAL

Plaintiff Carla M. Murray complains and alleges as follows:

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THE PARTIES

1. At all relevant times herein mentioned, Plaintiff CARLA M. MURRAY, ("Murray" or "Plaintiff") was and is an individual residing in San Diego, State of California.

2. Plaintiff is informed, and believes, and thereon alleges, that at all relevant times herein mentioned, Defendant PLANNED PARENTHOOD OF THE PACIFIC SOUTHWEST, INC. ("Planned Parenthood" or "Defendant"), is and has been a California corporation, organized and existing under and by virtue of the laws of the State of California, and doing business in San Diego, State of California. Plaintiff is informed and believes that Defendant is an "employer" as defined by California Government Code section 12940, *et seq.*

3. The true names and capacities of Does 1 through 50 are unknown to Plaintiff. Plaintiff will seek leave to amend this complaint to insert their names and capacities when the same have been ascertained. Plaintiff is informed and believes and thereon alleges that each such fictitiously named Defendant is liable to Plaintiff for the acts, events and occurrences alleged herein as a result of said Defendant's relationship to the remaining Defendants, or by participation in said acts, events and occurrences. Defendants are referred to collectively as "Defendants."

4. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each of the Defendants are legally attributable to the other Defendants.

5. Plaintiff is informed and believes and thereon alleges that except when otherwise alleged, each of the Defendants herein mentioned was the agent, employee, or representative of the remaining Defendants and was acting within the course, scope, and authority of said relationship.

6. The wrongful acts and omissions alleged to have occurred herein were performed by managing agents, servants, and employees of Defendants or were ratified by its managing agents, servants and employees.

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1 responsibilities very seriously, and strove to ensure that Planned Parenthood was providing the
2 appropriate standard of care to its patients. In Murray's last annual evaluation by Mendoza in
3 August 2012, just seven (7) months prior to her termination, Mendoza praised Murray's
4 performance as "excellent."

5 14. In or about the late summer or early fall of 2012, Plaintiff complained to Mendoza
6 that the Chula Vista clinic was in violation of the law because Mendoza was directing non-
7 licensed Clinicians to access the locked medication cabinet and dispense medication to patients.
8 Murray reported to Mendoza that it was illegal for non-licensed personnel (including Medical
9 Assistants and the Clinic Manager) to access the medication cabinet and dispense medication
10 without the knowledge, consent and/or order from a licensed Clinician. Murray told Mendoza that
11 other Planned Parenthood clinics did not allow Assistants and Managers to access the medication
12 cabinet, and she explained to Mendoza that as a licensed Clinician Murray had a duty to see that
13 laws regarding the distribution of medication were adhered to. Moreover, to not insist on proper
14 compliance might put Murray's own license in jeopardy. Despite these warnings, Mendoza
15 continued to facilitate access to the medication cabinet by unauthorized personnel who dispensed
16 medication to patients. Murray, however, refused to comply with Mendoza's violations of the
17 law and continued to complain to Mendoza that her actions and directives to the Assistants were
18 in violation of California law.

19 15. Mendoza began to retaliate against Plaintiff. Because Murray failed to follow
20 Mendoza's unlawful directives, and as a result of Murray's complaints to Mendoza about the
21 clinic violating medication access and dispensing laws, Mendoza began to reprimand Murray in a
22 retaliatory manner.

23 16. Beginning in October 2012, everything became an excuse for Mendoza to write
24 Murray up. For example, one of Murray's patient charts was not completed with Murray's
25 signature, because Mendoza had instructed the Medical Assistant to sign off on the chart. Murray
26 explained to Mendoza that by directing the Medical Assistant to sign off on the chart, Murray was
27 never provided with the chart to review and sign. When Mendoza was reprimanded by her
28 superiors over the lack of a Clinician signature, Mendoza pointed her finger at Murray. Mendoza

1 apologized to Murray for the incident, but indicated that since the patient had complained and the
2 complaint had been elevated to Mendoza's supervisor, Mendoza was obligated to write-up
3 Murray for this incident.

4 17. Other retaliatory write-ups by Mendoza included, (a) accusing Murray of not
5 documenting her time card correctly when in fact Murray did document correctly; (b) writing
6 Murray up for complaining to the Center Manager that she was upset about the time sheet write-
7 up; and (c) writing Murray up after she expressed concern over staffing ratios at the Chula Vista
8 clinic versus other clinics.

9 18. In or around December 2012, Mendoza issued to Murray a Performance
10 Improvement Plan. After enduring the meritless write-ups and now the Improvement Plan,
11 Murray attempted to speak with Mendoza about the constant criticisms of her. Mendoza refused
12 Murray's attempts to discuss the situation. Mendoza's retaliatory conduct toward Murray
13 continued.

14 19. Toward the end of February 2013, a Center Manager for another clinic location
15 advised Murray that there was a need at their clinic for an Interim Lead Clinician. Murray was
16 unofficially offered this position, which would come with increased responsibilities and a bonus.
17 Murray was informed that the Center Manager and clinic staff all wanted to work with her at their
18 location. When she was scheduling an interview, however, Murray was informed that due to the
19 Performance Improvement Plan by Mendoza, she could not be approved for the transfer.

20 20. In or about the first week of March 2013, Murray complained about Mendoza and
21 her meritless criticism to Planned Parenthood's Human Resources Department. Murray's
22 complaint was assigned to Employee Relations and Retention Manager, Denise Hunt; a meeting
23 was scheduled for March 19, 2013. Before Murray was able to speak with Hunt, the following
24 occurred at the Chula Vista clinic.

25 21. On or about March 8, 2013, a minor female patient came to the clinic with her
26 step-mother. The step-mother requested that Murray give the patient birth control. Murray
27 assessed the minor patient and determined that the birth control was neither desired, nor
28 warranted. The step-mother appeared to be coercing the daughter into getting birth control.

1 Murray believed it was inappropriate to dispense the birth control medication, but was unaware of
2 any specific protocols regarding the handling this situation. Murray therefore consulted with
3 Lead Clinician and Physician's Assistant Carrie Rathburn, regarding the proper protocols for
4 handling such a situation where a parent was requesting birth control, but the minor patient was
5 refusing. Rathburn advised Murray to contact Janeen Bulison, Quality Assurance Manager.
6 Murray called Quality Assurance and spoke with Director Jill Pierce and Ms. Bulison, who
7 informed Murray that it was appropriate to refuse to dispense the birth control and instead to
8 provide the minor with emergency contraception, condoms and educational handouts. Murray
9 then provided the emergency contraception, condoms and educational handouts to the minor.

10 22. Thereafter, Murray heard the minor's step-mother screaming in the lobby that she
11 was not going to leave without the minor receiving birth control medication. Murray contacted
12 Quality Assurance for a second time, and spoke with Julie Jura, Mendoza's supervisor. Jura
13 directed Murray to allow Mendoza to "handle" the upset step-mother. Murray complied and
14 witnessed the minor patient and her step-mother being led by Mendoza toward the counseling
15 rooms. Murray attended to other duties.

16 23. Later that afternoon, Murray was advised by Medical Assistant Erika Estrada that
17 Estrada had received an order from Mendoza to administer Depo-Provera to the minor patient.
18 Estrada knew that Mendoza could not order the injection of birth control, but understood from
19 Mendoza that the order originated from Murray. Estrada documented her actions in the patient's
20 chart as having administered Depo[-Provera], per order by Thelma [Mendoza]. Murray advised
21 Estrada that she had not given any order to administer the birth control – not to Mendoza, not to
22 anyone. Murray documented in the patient's chart that the patient had been administered Depo-
23 Provera although Murray had not ordered it. As Murray was the only licensed Clinician in the
24 clinic at that time, she realized that Mendoza, in the absence of a proper directive from a licensed
25 medical provider, unlawfully had given the order herself.

26 24. Planned Parenthood's Mission Statement in pertinent part is as follows: **"Planned**
27 **Parenthood believes in the fundamental right of each individual ... to manage his or her**
28 **fertility, regardless of the individual's [] age We believe that reproductive self-**

1 **determination must be voluntary** and preserve the individual's right to privacy. We further
2 **believe that such self-determination will contribute to an enhancement of the quality of life**
3 **and strong family relationships."** (Emphasis added.)

4 25. Despite Planned Parenthood's mission as alleged, the Chula Vista clinic manager
5 (a non-licensed staff member), authorized the injection of birth control to a minor patient, against
6 the will of the minor and absent an order by a licensed medical provider. This unauthorized
7 administration of medication without a license was, and is, a violation of California law.

8 26. California law mandates that it is unlawful to dispense medication without a
9 license or authorization to do so. Business & Professions Code section 2052 provides, "Any
10 person who practices or attempts to practice, or who holds himself or herself out as practicing ...
11 [medicine] without having at the time of so doing a valid, unrevoked, or unsuspended
12 certificate...is guilty of a public offense." Business & Professions Code section 2069 provides
13 that a Medical Assistant "may administer medication only by intradermal, subcutaneous, or
14 intramuscular injections . . . upon the specific authorization and supervision of a licensed
15 physician and surgeon or a licensed podiatrist . . . [and] may also perform all these tasks and
16 services in a clinic . . . upon the specific authorization of a physician assistant, a nurse
17 practitioner, or a nurse-midwife." Business & Professions Code section 4181 mandates, "[t]he
18 dispensing of drugs in a clinic shall be performed only by a physician, a pharmacist, or other
19 person lawfully authorized to dispense drugs, and only in compliance with all applicable laws and
20 regulations." Health & Safety Code sections 11150 and 11152, regulating clinics and health
21 facilities such as Planned Parenthood, specifically prohibit the issuance of a prescription drug, or
22 the dispensing of a prescription drug by anyone other than a physician, nurse practitioner, or other
23 licensed personnel.

24 27. The Planned Parenthood Clinician III Job Description (signed July 2012) provides
25 that it is the job of a Clinician III specifically to "[p]rescribe all FDA approved birth control
26 methods including emergency contraception and medication [sic] abortion medications" and to
27 "[d]ispense medications and label drugs as required."

28 28. Planned Parenthood's Manual and Medical Protocols and Guidelines for the birth

1 control injected drug Depo-Provera or Depot Medroxyprogesterone Acetate, known as "DMPA,"
2 mandates that "[m]edical personnel permitted by state regulations to administer IM and SubQ
3 medications may give DMPA injections. Providers must be familiar with proper injection
4 procedures, the timing of injections, and infection control guidelines."

5 29. Mendoza's actions constituted a violation of California law and a clear divergence
6 from Planned Parenthood's internal policies and procedures regulating administration of this
7 method of birth control.

8 30. Murray was distraught that the manager of the clinic dispensed medication without
9 a medical license and in violation of California law. Murray knew that each time she raised
10 concerns about the unlawful actions taken at the Chula Vista clinic, Mendoza would target her for
11 further write-ups and/or discipline. Notwithstanding her fears for continued retaliation by
12 Mendoza, on or about March 12, 2013, Murray called Planned Parenthood's Department of Risk
13 Management to report and complain about the incident. Murray received a call back from Cea
14 Ishikawa ("Ishikawa"), Senior Director of Human Resources and Risk Management. Murray
15 reported the March 8, 2013 incident and conduct of Mendoza to Ishikawa who told Murray that
16 the matter would be investigated.

17 31. On or about the following day, Murray was contacted by Compliance Officer
18 Diane Delille ("Delille"). Murray reported to Delille again what had transpired on March 8,
19 2013. Delille responded with words to the effect that Mendoza appeared to be practicing without
20 a license. Delille indicated to Murray that she would be conducting an investigation into the
21 incident.

22 32. On or about March 19, 2013, Murray met with Hunt to discuss Mendoza's
23 criticisms of Murray. Murray advised Hunt that she had been unfairly targeted by Mendoza and
24 that there existed evidence in patient charts to disprove many of Mendoza's charges about her.
25 Murray requested Hunt review the pertinent patient charts. Hunt said she would and scheduled a
26 follow up appointment for a week later.

27 33. On or about March 21, 2013, Murray was contacted by Delille. Delille informed
28 Murray that MA Estrada had been "confused" and "gave the injection on her own [accord]," and

1 Mendoza was "not aware" of the situation until the investigation began. Delille advised Murray
2 that the "investigation" was closed. Knowing that the written charts and Estrada's real time
3 report to her confirmed Mendoza's complicity, Murray requested a copy of the investigation
4 results. She was told she would not be made privy to those results.

5 34. On or about March 26, 2013, Murray met with Hunt again following up on the
6 meeting a week earlier. Hunt and Murray agreed on a plan to have weekly meetings between the
7 two of them and Mendoza to ensure that there would be no disharmony going forward.

8 35. On or about March 30, 2013, Murray was terminated. In its termination letter,
9 Planned Parenthood indicated that Murray was terminated because her performance was "below
10 expectations."

11 36. A short time later, Planned Parenthood reported to the California Employment
12 Development Department that Plaintiff was terminated because after she reported the March 8th
13 incident, Plaintiff "refused to move on."

14 37. Plaintiff is informed and believes, and thereon alleges that she was terminated
15 because she reported her supervisor's unlawful administration of medication without a license.

16 38. Defendants' conduct, as described above, was despicable, made with the intent to
17 vex, harass, annoy and injure Plaintiff, and was carried out with willful and conscious disregard
18 for Plaintiff's rights. Defendants, their agents and employees, and each of them, were aware of
19 the probable dangerous consequences of their conduct and willfully and deliberately failed to
20 avoid those consequences. Defendants' conduct constituted malice, oppression, or fraud such that
21 Plaintiffs are entitled to punitive damages under California Civil Code section 3294 in an amount
22 to punish Defendants or to set an example.

23 **FIRST CAUSE OF ACTION**

24 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

25 **(Against All Defendants)**

26 39. Plaintiff re-alleges and incorporates herein by reference each and every allegation
27 in the preceding paragraphs.

28 40. Under California law, no employee, whether an at-will employee or employee

1 under a written or other employment contract, can be terminated for a reason that is in violation
2 of a fundamental public policy. In recent years, the California courts have interpreted a
3 fundamental public policy to be any particularly constitutional or statutory provision, or
4 regulation that is concerned with a manner affecting society at large rather than a purely personal
5 or proprietary interest of the employee or employer. Moreover, said public policy is fundamental,
6 substantial, and well established at the time of Plaintiff's discharge.

7 41. The above-described conduct by Defendants, and each of them, was against the
8 public policy of the State of California as evidenced by the enactment of Business & Professions
9 Code section 2052 (the law that forbids the practice of medicine without a license), Business &
10 Professions Code section 2700 *et seq.* (laws regulating nurses' protection of the public), including
11 section 2725.1 (the law that regulates drug dispensing by nurses), Business & Professions Code
12 section 4060 (the law that forbids possession of controlled substances by non-licensed personnel),
13 Business & Professions Code section 4181 (the law that regulates who may lawfully dispense
14 drugs in a clinical setting), Health and Safety Code section 1278.5 (the law that encourages
15 reporting of suspected unsafe patient care and conditions, and forbids retaliation as a result of
16 reporting such conduct), Health and Safety Code section 11150 (the law that forbids non-licensed
17 personnel to write or issue a prescription), and Health and Safety Code section 11152 (the law
18 that forbids non-licensed personnel to write, issue, fill, compound or dispense a prescription).

19 42. By terminating Plaintiff's employment and retaliating against Plaintiff because she
20 exercised her rights protected by the public policy of the State of California, and because she
21 protested and reported conduct that violated the law, Defendants, and each of them, terminated
22 Plaintiff in violation of public policy.

23 43. As a direct and proximate result of the acts of Defendants, and each of them, as
24 alleged above, Plaintiff has incurred compensatory damages, including lost earnings, employment
25 benefits and other economic damages in an amount to be ascertained at the time of trial.

26 44. As a direct and proximate result of the acts of Defendants, and each of them, as
27 alleged above, Plaintiff has suffered pain and mental anguish, humiliation, emotional distress,
28 anxiety, and nervousness and has been generally damaged in an amount to be ascertained at the

1 time of trial.

2 **SECOND CAUSE OF ACTION**

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

4 **(Against All Defendants)**

5 45. Plaintiff re-alleges and incorporates herein by reference each and every allegation
6 in the preceding paragraphs.

7 46. Defendants are "clinics" and a "health facility" as defined by California Health &
8 Safety Code section 1200 and at all times alleged herein were subject to the provisions and
9 requirements of Health & Safety Code section 1200, *et seq.*, including the whistleblower
10 protections of Health & Safety Code section 1278.5. Section 1278.5 prohibits retaliation and
11 mandates whistleblower protections against employees who present a complaint of suspected
12 unsafe patient care.

13 47. As set forth herein, Defendants retaliated against Plaintiff for reporting and
14 protesting the administration of medication by a non-licensed staff member, conduct she believed
15 was unlawful and endangered the health, safety and welfare of patients at Planned Parenthood.

16 48. As a direct and proximate result of the acts of Defendants, and each of them, as
17 alleged above, Plaintiff has incurred compensatory damages, including lost earnings, employment
18 benefits and other economic damages in an amount to be ascertained at the time of trial.

19 49. As a direct and proximate result of the acts of Defendants, and each of them, as
20 alleged above, Plaintiff has suffered pain and mental anguish, humiliation, emotional distress,
21 anxiety, and nervousness and has been generally damaged in an amount to be ascertained at the
22 time of trial.

23 **THIRD CAUSE OF ACTION**

24 **RETALIATION IN VIOLATION OF LABOR CODE §1102.5(c)**

25 **(Against All Defendants)**

26 50. Plaintiff re-alleges and incorporates herein by reference each and every allegation
27 in the preceding paragraphs.

28 51. At all times mentioned, the public policy of the State of California, as codified,

1 expressed and mandated in California Labor Code section 1102.5 *et seq.*, is to prohibit employers
2 from: (1) implementing policies preventing employees from disclosing reasonably based
3 suspicions of violations of state or federal statutes; (2) retaliating against employees who have
4 disclosed reasonably based suspicions of violations of state or federal statutes to government or
5 law enforcement agencies or to a person with authority over the employee or to another employee
6 who has authority to investigate, discover, or correct the violation or noncompliance; and (3)
7 retaliating against employees who refuse to participate in activities that would result in violations
8 of state or federal statutes. This public policy of the State of California is designed to protect all
9 employees and to promote the welfare and well-being of the community at large.

10 52. As set forth herein, Defendants retaliated against Plaintiff for reporting, protesting
11 and refusing to participate in practices and procedures she believed constituted a violation of state
12 or federal law and endangered the health, safety and welfare of patients at Planned Parenthood;
13 and/or that Defendants feared Plaintiff would report to a government or law enforcement agency;
14 and/or because Plaintiff refused to participate in activities that would result in violations of state
15 or federal law.

16 53. As a direct and proximate result of the acts of Defendants, and each of them, as
17 alleged above, Plaintiff has incurred compensatory damages, including lost earnings, employment
18 benefits and other economic damages in an amount to be ascertained at the time of trial.

19 54. As a direct and proximate result of the acts of Defendants, and each of them, as
20 alleged above, Plaintiff has suffered pain and mental anguish, humiliation, emotional distress,
21 anxiety, and nervousness and has been generally damaged in an amount to be ascertained at the
22 time of trial.

23 **JURY TRIAL DEMANDED**

24 55. Wherefore, Plaintiff requests a jury trial in this action.

25 **PRAYER**

26 56. Wherefore, Plaintiff prays judgment against Defendants as follows:

- 27 a. For nominal, actual and compensatory damages;
28 b. For non-economic and special damages according to proof at trial;

- 1 c. For punitive damages pursuant to Civil Code section 3294;
2 d. For interest accrued to date;
3 e. For reasonable attorneys' fees and costs of suit and expenses pursuant to
4 California Health & Safety Code section 1278.5, California Code of Civil
5 Procedure section 1021.5, and as allowed by any other statute or law; and
6 f. For such other and further relief as this Court deems just and proper.
7

8 Dated: June 9, 2014

THE LAW OFFICE OF DAVID P. STRAUSS
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10 By: 
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12 DAVID P. STRAUSS
13 KRISTIN RIZZO
14 Attorneys for Plaintiff CARLA M. MURRAY
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