

ENDORSED
FILED
ALAMEDA COUNTY

JUL 18 2014

CLERK OF THE SUPERIOR COURT
By Lynetta M. Irvin, Deputy

1 BRYAN SCHWARTZ LAW
Bryan Schwartz (SBN 209903)
2 William C. Jhaveri-Weeks (SBN 289984)
Rachel Terp (SBN 290666)
3 1330 Broadway, Suite 1603
Oakland, California 94612
4 Tel. (510) 444-9300
Fax (510) 444-9301
5 Email: Bryan@BryanSchwartzLaw.com

6 RUKIN, HYLAND, DORIA & TINDALL, LLP
Peter Rukin (SBN 178336)
7 100 Pine Street, Suite 2150
San Francisco, CA 94111
8 Telephone: (415) 421-1800
Facsimile: (415) 421-1700
9 E-mail: peterrukin@rhdtdlaw.com

10 Attorneys for Plaintiff Latricia Amadeo

11 (Additional counsel on next page)

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF ALAMEDA

15
16 LATRICIA AMADEO and REIKO FURUYA,
17 individually and on behalf of all others
similarly situated,

18 Plaintiff,

19 vs.

20
21 SUTTER HEALTH, a California Corporation;
22 EDEN MEDICAL CENTER, a California
Corporation; SUTTER MEDICAL CENTER,
23 CASTRO VALLEY, a California Corporation;
SUTTER WEST BAY HOSPITALS, a
24 California Corporation; CALIFORNIA
PACIFIC MEDICAL CENTER; and DOES 1
25 THROUGH 50, INCLUSIVE,

26
27 Defendants.

Case No.: RG 13697528

CLASS ACTION

SECOND AMENDED COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF

1. Disability-Based Discrimination -- Failure to Provide Reasonable Accommodation in Violation of the Fair Employment and Housing Act, California Government Code § 12940, *et seq.* ("FEHA"), and California Code of Regulations title 2 § 7293.5 *et seq.*
2. Disability-Based Discrimination -- Failure to Engage in the Interactive Process in Violation of FEHA, and Cal. Code Regs. Tit. 2 § 7293.6(j).

DEMAND FOR JURY TRIAL

UNLIMITED CIVIL

28
SECOND AMENDED CLASS ACTION COMPLAINT

BY FAX

1 BRYAN SCHWARTZ LAW
Bryan Schwartz (SBN 209903)
2 William C. Jhaveri-Weeks (SBN 289984)
Rachel Terp (SBN 290666)
3 1330 Broadway, Suite 1603
Oakland, California 94612
4 Tel. (510) 444-9300
Fax (510) 444-9301
5 Email: Bryan@BryanSchwartzLaw.com

6 RUKIN, HYLAND, DORIA & TINDALL, LLP
Peter Rukin (SBN 178336)
7 100 Pine Street, Suite 2150
San Francisco, CA 94111
8 Telephone: (415) 421-1800
Facsimile: (415) 421-1700
9 E-mail: peterrukin@rhdtdlaw.com

10 Attorneys for Plaintiff Latricia Amadeo
11 (Additional counsel on next page)

COPY DELIVERED
Date: 7/18 Int: RCF
Boyd

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF ALAMEDA**

15
16 LATRICIA AMADEO and REIKO FURUYA,
17 individually and on behalf of all others
similarly situated,
18
19 Plaintiff,
20
21 vs.
22
23 SUTTER HEALTH, a California Corporation;
EDEN MEDICAL CENTER, a California
24 Corporation; SUTTER MEDICAL CENTER,
25 CASTRO VALLEY, a California Corporation;
SUTTER WEST BAY HOSPITALS, a
26 California Corporation; CALIFORNIA
27 PACIFIC MEDICAL CENTER; and DOES 1
28 THROUGH 50, INCLUSIVE,
Defendants.

Case No.: RG 13697528

CLASS ACTION

SECOND AMENDED COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF

1. **Disability-Based Discrimination -- Failure to Provide Reasonable Accommodation in Violation of the Fair Employment and Housing Act, California Government Code § 12940, et seq. ("FEHA"), and California Code of Regulations title 2 § 7293.5 et seq.**
2. **Disability-Based Discrimination -- Failure to Engage in the Interactive Process in Violation of FEHA, and Cal. Code Regs. Tit. 2 § 7293.6(j).**

DEMAND FOR JURY TRIAL

UNLIMITED CIVIL

1 Counsel continued:

2 LEVY VINICK BURRELL HYAMS LLP

3 Jean K. Hyams (SBN 144425)

4 180 Grand Avenue, Suite 1300

5 Oakland, CA 94612

6 Tel. (510) 318-7700

7 Fax (510) 318-7701

8 Email: jean@levyvinick.com

9 Attorneys for Plaintiff Reiko Furuya

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 Plaintiffs Latricia Amadeo and Reiko Furuya, on behalf of themselves and those similarly
2 situated, allege the following against Defendants Sutter Health, Eden Medical Center, Sutter Medical
3 Center-Castro Valley, Sutter West Bay Hospitals, California Pacific Medical Center, and Does 1
4 through 50 (inclusive):

5 **I. PRELIMINARY STATEMENT**

6 1. Plaintiffs Latricia Amadeo and Reiko Furuya bring this proposed class action pursuant
7 to Code of Civil Procedure (“CCP”) section 382, against Defendants Sutter Health (“Sutter”), Sutter
8 Medical Center, Castro Valley (“SMCCV”), Eden Medical Center (“EMC”), Sutter West Bay
9 Hospitals (“Sutter West Bay”), and California Pacific Medical Center (“CPMC”) on behalf of
10 themselves and a class of similarly situated individuals, alleging that Defendants maintain policies
11 and practices that deny disabled employees the timely, good faith interactive process and reasonable
12 accommodation required by the Fair Employment and Housing Act (“FEHA,”), California
13 Government Code section 12940 *et seq.*, as well as the FEHA Disability Regulations, California Code
14 of Regulations section 7293.5, *et seq.*

15 2. Defendants’ reasonable-accommodation-of-disability policy violates California
16 disability law. When an employee of a Sutter-owned affiliate, such as Eden Medical Center or
17 California Pacific Medical Center, becomes disabled and can no longer perform her job, Sutter,
18 through its regional disability coordinators, has a policy of refusing to give that employee preferential
19 placement into vacant positions that the employee can perform unless those positions are found within
20 the same facility at which the employee worked.

21 3. In Ms. Amadeo’s case, preferential placement was limited to Eden Medical Center. In
22 Ms. Furuya’s case, preferential placement was limited to facilities and departments of California
23 Pacific Medical Center.

24 4. On information and belief, non-disabled employees who work in one Sutter business
25 unit, such as EMC or CPMC, are routinely permitted to transfer as internal candidates to facilities in
26 other Sutter units, such as Sutter West Bay.

1 that they would not act until they received medical information generated through evaluations in Ms.
2 Furuya's worker's compensation matter. As a result, Ms. Furuya was ostensibly employed by
3 Defendants, but on unpaid leave, for over 18 months. During the unpaid leave, Ms. Furuya applied
4 for numerous vacant, equivalent positions at CPMC and nearby Sutter facilities that she could have
5 performed with or without reasonable accommodations. However Sutter refused to place her in those
6 positions. After she was finally permitted to participate in the preferential transfer process beginning
7 approximately July 9, 2013, Ms. Furuya continued to apply for numerous vacant, equivalent positions
8 at CPMC and nearby Sutter facilities that she could have performed with or without reasonable
9 accommodations. However, Sutter refused to place her in any of the positions outside of CPMC. It
10 was not until September 12, 2013, that Sutter finally offered Ms. Furuya a position as a Registered
11 Nurse Transfer Center Coordinator at the CPMC Transfer Center. Upon information and belief,
12 others have been injured by Sutter's common policies and practices regarding accommodating
13 disabled employees in the same way.

14 9. Plaintiffs seeks compensatory and punitive damages, injunctive relief, costs, attorneys'
15 fees and other appropriate and just relief on behalf of themselves and the following class, subclassed
16 into two parts:

- 17 a. All persons who were employed by Defendants, who interacted during
18 the Class Period (as defined below) with a Sutter disability coordinator
19 in connection with potential reassignment to a vacant position, and who
20 were subject to a policy not to offer reassignment to Sutter positions
21 outside of the facility where the employee worked as a reasonable
22 accommodation, *i.e.*, to a policy allowing reassignment outside of the
23 facility where the employee worked only through application and
24 competition for the new position (the "One-Facility" subclass).
- 25 b. All persons who were employed by Defendants and who, despite being
26 released by a health care provider to work with restrictions, were placed
27 or maintained on unpaid leave until Defendants were satisfied that their
28 medical restrictions were "permanent" or that they had reached the level
of "maximum medical improvement" (the "Unpaid Leave" subclass).

1 professionals from the various Sutter regions regularly communicate, attend meetings and trainings
2 together, and otherwise collaborate in the implementation of Sutter's disability-oriented policies.

3 17. Upon information and belief, in approximately November of 2013, Sutter Health
4 established a centralized human resources department in Sacramento to oversee and provide human
5 resources functions for all Defendants.

6 18. Defendant SMCCV is a California corporation that, upon information and belief, does
7 business as "Eden Medical Center." Upon information and belief, SMCCV is a subsidiary and an
8 affiliate of Sutter. SMCCV operates the hospital in Castro Valley (Alameda County) where Ms.
9 Amadeo is currently employed. Upon information and belief, SMCCV operated that facility for a
10 portion of the time when Ms. Amadeo was denied reasonable accommodation. Upon information and
11 belief, SMCCV is the partial successor, as of approximately December 2012, of a separate entity
12 called Eden Medical Center, which still exists and still does business as Eden Medical Center (and is
13 separately named as a defendant in this case).

14 19. Upon information and belief, Defendant Eden Medical Center is and was, at all
15 relevant times, a Sutter subsidiary. Ms. Amadeo was hired in 2010 to work for Sutter at Eden Medical
16 Center's Castro Valley hospital. Eden Medical Center operated that hospital for a portion of the time
17 when Ms. Amadeo was denied reasonable accommodation. Upon information and belief, Sutter
18 funded a new Eden Medical Center hospital facility that opened in Castro Valley in December 2012,
19 and altered its corporate relationship with Eden Medical Center and SMCCV. Eden Medical Center
20 continues to be registered as its own corporate entity, and, upon information and belief, its agent for
21 service of process is also the Regional Counsel and Corporate Secretary for Sutter's East Bay Region.
22 Because SMCCV and Eden Medical Center both do business as Eden Medical Center and both
23 operated the facility where Ms. Amadeo was employed at times relevant to this lawsuit, they are
24 referred to collectively hereafter as "Eden Medical Center" or "EMC."

25 20. Upon information and belief, Defendant California Pacific Medical Center was, at all
26 relevant times, a Sutter subsidiary. Ms. Furuya was hired in 2008 to work at CPMC's St. Luke's
27

1 Campus. When Sutter Health reorganized into a five-region structure in 2009, it moved CPMC under
2 Sutter West Bay Hospitals. Upon information and belief, CPMC is no longer registered as its own
3 corporate entity and is therefore sued as an entity, form unknown.

4 21. Upon information and belief, Defendant Sutter West Bay Hospitals is a corporation
5 and was, at all relevant times, a Sutter subsidiary. Upon information and belief, its agent for service
6 of process is Vice President of Sutter Health and its West Bay Regional Counsel and Corporate
7 Secretary of Sutter West Bay Hospitals.

8 22. Defendants Does 1-50, inclusive, are sued herein under fictitious names. Their true
9 names and capacities are unknown to Plaintiff. When their true names and capacities are ascertained,
10 Plaintiff will amend this complaint by inserting their true names and capacities herein. Plaintiff is
11 informed and believes, and thereon alleges, that each of the fictitiously-named defendants is
12 responsible in some manner for the occurrences herein alleged, and that the damages sustained by
13 Plaintiff have been proximately caused by such Doe Defendants.

14 **III. JURISDICTION AND VENUE**

15 23. Venue is proper in Alameda County, California, under California Government Code
16 § 12965(b). Plaintiff Amadeo's work site was in Alameda County, and some of the unlawful acts
17 alleged herein – the execution of Defendants' discriminatory policies – took place in Alameda
18 County. Specifically, those policies were executed by Regional Disability Coordinator Christie Lau,
19 who upon information and belief is based in Oakland, Alameda County. Defendant Eden Medical
20 Center is headquartered in Alameda County with its principal place of business in Alameda County.
21 In addition to Eden Medical Center, Sutter owns and operates other medical facilities in Alameda
22 County.

23 24. The events underlying the allegations contained herein occurred in the State of
24 California, and this court has general jurisdiction to hear the claims arising from them. Jurisdiction is
25 also proper in that the amount in controversy exceeds the jurisdictional limits of this Court according
26 to proof at trial. Jurisdiction is also proper under California Government Code § 12965(b).

1 **IV. FACTUAL ALLEGATIONS – LATRICIA AMADEO**

2 25. Ms. Amadeo worked for Defendants as a Registered Nurse at the Eden Medical Center
3 intensive care unit in Sutter’s East Bay Region beginning on or around June 14, 2010. In July 2011,
4 she became disabled when she was involved in a car accident and sustained injuries to her neck and
5 lower back, which substantially limited her ability to lift, sit, bend, and do other activities that are
6 essential job duties of an intensive care unit Registered Nurse.

7 26. After a leave of absence of approximately six months, Ms. Amadeo returned to work
8 on modified duty in January 2012, performing mostly paperwork duties. In early June 2012, Sutter’s
9 Regional Disability Coordinator, Christie Lau, informed Ms. Amadeo that Ms. Amadeo would no
10 longer be permitted to remain on modified duty, and on approximately June 8, 2012, Ms. Lau placed
11 Ms. Amadeo on unpaid leave, without attempting to engage in an interactive process to determine
12 whether Ms. Amadeo’s disability could be accommodated. Ms. Amadeo was without any Sutter
13 income from June 2012 until March 2014.

14 27. Despite Ms. Amadeo’s requests in June 2012 for an interactive process, and despite her
15 filing of a DFEH complaint in July 2012 challenging Sutter’s refusal to engage in such a process
16 (discussed below), it was not until in May 7, 2013, that Defendants began an interactive process with
17 Ms. Amadeo. At that point, Ms. Amadeo had been without pay for approximately 11 months as a
18 result of Sutter’s refusal to accommodate her disability.

19 28. Once Sutter finally began engaging in an interactive process with Ms. Amadeo in May
20 2013, Sutter and Eden Medical Center applied their policy of limiting Ms. Amadeo’s reassignment as
21 a reasonable accommodation to vacant positions *within the facility where she had worked, i.e., Eden*
22 *Medical Center*, and refusing to provide her with reassignment as a reasonable accommodation at any
23 other Sutter facility. Rather, Sutter made clear that Ms. Amadeo was required to compete for
24 vacancies at other Sutter facilities with all other non-disabled applicants. Sutter’s policy – that Sutter
25 does not reassign a disabled employee to a vacant position for which he/she might be qualified with or
26 without a reasonable accommodation anywhere other than in his/her present facility – was articulated

1 to Ms. Amadeo in written form in an August 5, 2013 email from Regional Disability Coordinator
2 Christie Lau.

3 29. As a result of Sutter and Eden Medical Center's policy, Plaintiff was denied reasonable
4 accommodation. She applied for or identified approximately 20 or more vacant positions at Sutter
5 entities in the East Bay for which she was qualified and could perform the duties. Nearly all the
6 positions were at Sutter entities other than EMC. Sutter refused to place her in those positions, stating
7 that her only option was to apply for those positions and compete on equal footing with all other
8 applicants, whether disabled or not. She applied for those positions, and was granted interviews for
9 several of them, but none of the positions were offered to her, until January 2014.

10 30. Upon information and belief, other similarly-situated Sutter and Sutter affiliate
11 employees have been subjected to the same policies as Plaintiff.

12 **V. FACTUAL ALLEGATIONS – REIKO FURUYA**

13 31. Ms. Furuya started working as a nurse in the intensive care unit ("ICU") of St. Luke's
14 Hospital, a campus of California Pacific Medical Center ("CPMC"), in July 2008.

15 32. At all times material to this Complaint, Ms. Furuya was an employee of Defendants
16 Sutter Health, Sutter West Bay Hospitals and California Pacific Medical Center and these Defendants
17 were employers within the meaning of the FEHA.

18 33. Prior to her employment with St. Luke's Hospital, Ms. Furuya worked as a nurse in a
19 burn ICU and as a traveling nurse in a telemetry unit. She has certifications as a Registered Nurse
20 (RN), Critical Care Certified Nurse (CCRN), Progressive Care Certified Nurse (PCCN), and Bachelor
21 of Science in Nursing (BSN). At St. Luke's Hospital, Ms. Furuya served as a leader in the nursing
22 department, representing her community as a member of the CPMC Ethics Committee and the CPMC
23 Nursing Research Committee.

24 34. Ms. Furuya consistently received excellent performance reviews, meeting and often
25 exceeding expectations.

1 35. On or about March 5, 2011, Ms. Furuya injured her back at work and went on medical
2 leave for three weeks, after which time she was released to work with restrictions including
3 limitations on lifting, bending and sitting or standing for long periods of time. She returned to work
4 on approximately April 6, 2011 on modified duty, handling tasks that were within her medical
5 restrictions.

6 36. On or about July 11, 2011, her employers transferred Ms. Furuya to the position of
7 Interim Nursing Educator at St. Luke's Hospital while the Nursing Educator was on maternity leave.
8 Ms. Furuya was qualified to and did perform all of the essential functions of the Nursing Educator
9 position.

10 37. The Nursing Educator eventually resigned in December 2011. Ms. Furuya continued
11 in the position after the resignation.

12 38. Sutter and its relevant affiliates were on notice of Ms. Furuya's ongoing work
13 limitations, which affected her ability to do the essential functions of her ICU job, as early as
14 December of 2011. In June 2012, Ms. Furuya's treating physician, Dr. Masami Hattori, again sent a
15 letter stating that Ms. Furuya could no longer perform her previous duties.

16 39. In January 2012, representatives from the worker's compensation and disability
17 management departments of Sutter informed Ms. Furuya that in February she would be removed from
18 her position as Interim Nursing Educator, which Sutter considered to be a modified duty placement.
19 In an email dated January 23, 2012, Workers' Compensation Technician Erika Smith explained "If
20 you are given restrictions at your next [doctor's] appointment you will be taken off work and put on
21 an occupational leave of absence until you are released to full duty and/or given permanent
22 restrictions..."

23 40. On or about February 17, 2012, Ms. Furuya was forced out on an unpaid leave that
24 lasted nineteen months.

1 41. Prior to forcing Ms. Furuya out on the unpaid leave of absence, her employers did not
2 engage in any interactive process to determine effective reasonable accommodations, including
3 transfer to an alternate position for which Ms. Furuya was qualified.

4 42. On June 21, 2012, Ms. Furuya explicitly requested reasonable accommodation in
5 writing and asked that her employer engage in the interactive process to find an alternate position for
6 which she is qualified. Prior to this request, the employer had never offered nor engaged in an
7 interactive process to determine an appropriate accommodation for Ms. Furuya.

8 43. In a letter dated July 5, 2012, Disability Coordinator Lisa Tullis responded that Sutter
9 would not commence the job search because there had been “no final determination regarding your
10 work restrictions and level of impairment” by the Agreed Medical Examiner (“AME”) in Ms.
11 Furuya’s workers’ compensation case. Under the worker’s compensation process, this determination
12 is not made until an injured worker reaches “maximum medical improvement,” a determination that
13 may take years to achieve.

14 44. The workers’ compensation medical examiner issued a report dated August 10, 2012,
15 reiterating the limitations stated by Ms. Furuya’s treating physician and confirming that, despite her
16 restrictions, there were “many nursing assignments in clinical care, as well as in education and
17 administration for which she is entirely suited.”

18 45. The Disability Coordinator then advised Ms. Furuya that the preferential job transfer
19 process would be further delayed because Sutter wanted her to undergo a Functional Capacity
20 Evaluation (“FCE”). However Sutter did not arrange for an FCE to take place, but instead waited
21 until one was scheduled through the worker’s compensation system. The worker’s compensation
22 FCE did not take place until nine months later, in May 2013.

23 46. While awaiting Defendants’ participation in the interactive process, Plaintiff continued
24 to apply to open positions throughout the Sutter system for which she was qualified in the hope of
25 returning to work.

1 47. The FCE finally took place in May 2013 and it confirmed again that Ms. Furuya was
2 able to work.

3 48. The Disability Coordinator and other employer representatives finally met with Ms.
4 Furuya on July 9, 2013 to begin the interactive process, allotting her 45 days of “non-competitive”
5 status to apply for any CPMC position for which she was qualified. The short time period to find a
6 new position was extended after Ms. Furuya appealed for additional time.

7 49. Finally, on or about September 12, 2013, Plaintiff was offered a position as an “RN
8 Transfer Center Coordinator” for the CPMC Transfer Center. She accepted the position on or about
9 September 18, 2013 and began work approximately one month later.

10 50. On information and belief, positions similar or identical to the “RN Transfer Center
11 Coordinator” position have been open and available multiple times since Ms. Furuya was forced out
12 on unpaid medical leave in approximately February of 2012.

13 51. On information and belief, non-disabled employees who work in one Sutter business
14 unit, such as CPMC, are routinely permitted to transfer as internal candidates to facilities in other
15 Sutter Health affiliates, such as Sutter East Bay or other hospitals within Sutter West Bay.

16 52. During the forced unpaid leave, Ms. Furuya applied for dozens of open positions
17 within the Sutter Health system for which she was qualified by virtue of her experience and
18 certifications. For over eighteen months, Ms. Furuya’s employer did not transfer Plaintiff to any of the
19 positions for which she applied. This included applications to hospitals and facilities outside of
20 CPMC, including but not limited to Alta Bates Summit Medical Center, Sutter Care at Home division,
21 and Sutter East Bay.

22 53. Ms. Furuya was informed on numerous occasions by her employers that she was
23 required to compete for any Sutter positions outside the CPMC business unit.

24 54. At all times material to this Complaint, Ms. Furuya has been a person with a physical
25 disability that limited one or more of her major life activities, such as work, or she has been perceived
26

1 by her employer as a person with disabilities. Being a person with disabilities or perceived as such
2 qualifies Ms. Furuya as a person protected from discrimination under the FEHA.

3 55. As a result of the above violations of her rights under the FEHA, Ms. Furuya has
4 suffered damages in the form of past and future wage loss, loss of future earning capacity, other
5 pecuniary losses, emotional distress, loss of self-esteem, grief, anxiety, mental anguish, and loss of
6 enjoyment of life in an amount to be proven at trial.

7 **VI. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

8 **A. Ms. Amadeo's First DFEH Complaint**

9 56. On or around July 26, 2012, Plaintiff Amadeo timely filed a charge with the California
10 Department of Fair Employment and Housing ("DFEH") (Case No. 42874-20551) alleging, *inter alia*,
11 that Defendants denied her the interactive process required by Federal and California disability law by
12 placing her on a leave of absence on approximately June 7, 2012, without engaging in an interactive
13 process. The DFEH has sent Ms. Amadeo two separate right to sue letters referencing Case No.
14 42874-20551, one dated October 1, 2012 and one dated July 24, 2013.¹

15 **B. Ms. Amadeo's Second DFEH Complaint**

16 57. On September 24, 2013, Plaintiff Amadeo filed a second DFEH charge (DFEH No.
17 167589-70481-R), alleging that Defendants' policy of restricting its reassignment of disabled
18 employees to vacant positions within the facility at which the employee worked violates FEHA's
19 prohibition of discrimination based on disability. The DFEH charge stated that the violation had been
20 occurring since Sutter belatedly began its interactive process with Ms. Amadeo in May 2013, and that
21

22 ¹ Ms. Amadeo maintains that her right to sue does not expire until July 24, 2014. On October 1, 2012,
23 the DFEH sent her a letter mistakenly closing the file. On November 5, 2012 the DFEH sent a letter
24 informing Ms. Amadeo that the file was being re-opened because it was "inadvertently closed," and
25 that DFEH planned to proceed with its investigation, but that October 1, 2013 would remain the
26 expiration date for her right to sue. DFEH subsequently sent Ms. Amadeo contradictory
27 correspondence stating that her right to sue had not yet accrued. On July 24, 2013, the DFEH sent Ms.
28 Amadeo a Notice of Case Closure and Right to Sue stating that Ms. Amadeo has one year from that
date to file suit.

1 the violation was occurring on a continuing basis as of the time of the DFEH charge. The charge also
2 set forth the class-wide applicability and effect of Defendants' policies.

3 58. This filing tolled the statute of limitations under FEHA. *See* California Government
4 Code § 12965(d). In her second DFEH complaint, Ms. Amadeo requested an immediate right to sue.
5 The DFEH issued a Notice of Case Closure and Right to Sue on September 24, 2013. Plaintiff
6 Amadeo served a copy of the Notice of Case Closure and Right to Sue on Sutter and Eden Medical
7 Center by certified mail, return receipt requested, on September 24, 2013. Accordingly, Plaintiff
8 Amadeo timely exhausted her administrative remedies, and the instant action is timely filed.

9 **C. Ms. Furuya's DFEH Complaint**

10 59. On or around May 13, 2014, Ms. Furuya timely filed a charge with the California
11 Department of Fair Employment and Housing ("DFEH") (Case No. 147688-62694) providing notice
12 of her factual allegations and asserting individual and class claims. The DFEH has issued a right to
13 sue letter dated May 13, 2014.

14 **VII. CLASS ALLEGATIONS**

15 60. Plaintiffs, on behalf of themselves and the proposed Class Members, allege and
16 incorporate by reference the allegations in the preceding paragraphs.

17 61. Plaintiffs bring this action on behalf of themselves and as a class action under Cal.
18 Code of Civil Procedure section 382. This action is brought, and may properly be maintained, as a
19 class action under section 382 because there is a well-defined community of interest in the litigation,
20 and the proposed class is easily ascertainable.

21 62. Numerosity: The proposed Class Members are so numerous that joinder of all
22 members is impracticable. Plaintiff is informed and believes, and on that basis alleges, that during the
23 relevant time period, Defendants employed thousands of people in Northern California, many of
24 whom satisfy the definition of the Class.

25 Typicality: Plaintiffs' claims are typical of those of the proposed Class Members. Plaintiffs are
26 informed and believe that, like other employees of Sutter (and Eden Medical Center and other Sutter
27

1 subsidiaries/affiliates), they were subjected to one or more of the following policies: (1) a policy that
2 failed to provide reasonable accommodation, in violation of FEHA, by restricting reassignment to the
3 facility where they worked; (2) a policy that denied the required interactive process by placing or
4 maintaining employees who have been released to work by a healthcare provider on unpaid leave until
5 Defendants are satisfied that their medical restrictions are “permanent” or that they have reached the
6 level of “maximum medical improvement.”

7 63. Superiority: A class action is superior to other available methods for the fair and
8 efficient adjudication of this controversy, particularly in the context of FEHA litigation where
9 individual employees may lack the financial resources to vigorously prosecute separate lawsuits in
10 court against large corporate defendants, and fear retaliation and blackballing in their industry.
11 Prosecuting dozens of identical individual lawsuits does not promote judicial efficiency, equity, or
12 consistency in judicial results.

13 64. Adequacy: Plaintiff will fairly and adequately protect the interests of the Class, has no
14 conflict with the Class’s interests, and has retained counsel experienced in class and disability
15 discrimination litigation.

16 65. Commonality: Common questions of law and fact exist as to all members of the Class
17 and predominate over any questions solely affecting individual members of the Class, including but
18 not limited to the following:

- 19 A. Whether Defendants’ policy of placement of disabled employees
20 violates FEHA by restricting such placement to positions at the facility
21 where they were employed;
- 22 B. Whether Defendants’ policy of placing or maintaining employees who
23 have been released to work by a healthcare provider on unpaid leave
24 until Defendants are satisfied that their medical restrictions are
25 “permanent” or that they have reached the level of “maximum medical
26 improvement” violates the FEHA;

1 C. The proper measure of damages sustained by Plaintiffs and the
2 proposed Class Members; and

3 D. The appropriate injunctive relief to prevent damage to Plaintiff and
4 those similarly situated going forward.

5 66. Plaintiff intends to send notice to all Class Members to the extent required by section
6 382. The names and addresses of the potential Class Members are available from the Defendants.

7 **FIRST CAUSE OF ACTION**
8 **DISABILITY DISCRIMINATION – FAILURE TO REASONABLY ACCOMMODATE**
9 **(California Government Code § 12940, *et seq.* and**
10 **California Code of Regulations title 2 § 7293.5 *et seq.*)**

11 67. Plaintiffs incorporate the foregoing paragraphs of the Complaint by reference.

12 68. In relevant part, California Government Code § 12940(a) provides that it shall be
13 unlawful for an employer to discriminate against a person in compensation or in terms, conditions, or
14 privileges of employment because of her disability. The “primary focus” in cases brought under
15 FEHA “should be whether employers and other covered entities have provided reasonable
16 accommodation to applicants and employees with disabilities, whether all parties have complied with
17 their obligations to engage in the interactive process and whether discrimination has occurred.” Cal.
18 Cod. Regs. § 7293.5(b).

19 69. All Defendants are employers as defined by FEHA.

20 70. Plaintiffs and the proposed Class Members in the One-Facility subclass were
21 employees of Defendants, under the terms of FEHA.

22 71. Plaintiffs and the proposed Class Members in the One-Facility subclass satisfactorily
23 performed their work in their positions with Defendants.

24 72. Plaintiffs and the proposed Class Members in the One-Facility subclass were or
25 became disabled.

26 73. Plaintiffs and the proposed Class Members in the One-Facility subclass were eligible
27 for placement in other positions within Sutter that were vacant.

1 privileges of employment because of her disability. Employers must engage in the interactive process
2 and take affirmative steps to make reasonable accommodation for employee disabilities.

3 82. California Code of Regulations title 2 § 7293.6(j) defines the interactive process as a
4 “timely, good faith communication between the employer or other covered entity and the applicant or
5 employee . . . to explore whether or not the applicant or employee needs reasonable accommodation
6 for the applicant’s or employee’s disability to perform the essential job functions of the job or, and if
7 so, how the person can be reasonably accommodated.” Reassignment is a possible reasonable
8 accommodation.

9 83. All Defendants are employers as defined by FEHA.

10 84. Plaintiffs and the proposed Class Members in the Unpaid Leave subclass were
11 employees of Defendants as defined by FEHA.

12 85. Plaintiffs and the proposed Class Members in the Unpaid Leave subclass satisfactorily
13 performed their work in their positions with Defendants.

14 86. Plaintiffs and the proposed Class Members in the Unpaid Leave subclass became
15 disabled, and Defendants knew of their disability.

16 87. Plaintiffs and the proposed Class Members in the Unpaid Leave subclass were placed
17 or maintained on unpaid leave without being afforded an interactive process to determine whether
18 reasonable accommodation could be made so that they would be able to perform the essential job
19 requirements or their job or another available job.

20 88. Plaintiffs and the proposed Class Members were harmed by Defendants’ practice of
21 terminating their pay without engaging in the interactive process.

22 89. Plaintiffs and the proposed Class Members were harmed by Defendants’ practice of
23 refusing to permit them to work without engaging in the interactive process.

24 90. As a direct, legal and proximate result of the discrimination, Plaintiffs and the class
25 have suffered damages, including lost wages and other economic damages and emotional distress
26 damages, in an amount to be proven at trial.

1 until Defendants are satisfied that their medical restrictions are “permanent” or that they have reached
2 the level of “maximum medical improvement;” and (3) provide mandatory and meaningful training to
3 all managers and employees regarding the laws prohibiting disability discrimination.

4 7. Such other and further relief as the Court may deem proper.

5
6 DATED: June ²⁰, 2014

BRYAN SCHWARTZ LAW

7
8 By: 

9 Bryan Schwartz (SBN 209903)
10 William C. Jhaveri-Weeks (SBN 289984)
11 Rachel Terp (SBN 290666)
12 Attorneys for Plaintiff
13 LATRICIA AMADEO

14 DATED: June ²⁰, 2014

RUKIN HYLAND DORIA TINDALL, LLP

15 By: 

16 Peter Rukin
17 Attorneys for Plaintiff
18 LATRICIA AMADEO

19 DATED: June_, 2014

LEVY VINICK BURRELL HYAMS LLP

20 By:

21 Jean K. Hyams
22 Attorneys for Plaintiff
23 REIKO FURUYA
24
25
26
27
28

1 until Defendants are satisfied that their medical restrictions are “permanent” or that they have reached
2 the level of “maximum medical improvement;” and (3) provide mandatory and meaningful training to
3 all managers and employees regarding the laws prohibiting disability discrimination.

4 7. Such other and further relief as the Court may deem proper.

5
6 DATED: June __, 2014

BRYAN SCHWARTZ LAW

7
8 By:

9 Bryan Schwartz (SBN 209903)
10 William C. Jhaveri-Weeks (SBN 289984)
11 Rachel Terp (SBN 290666)
12 Attorneys for Plaintiff
13 LATRICIA AMADEO

14 DATED: June __, 2014

RUKIN HYLAND DORIA TINDALL, LLP

15 By:

16 Peter Rukin
17 Attorneys for Plaintiff
18 LATRICIA AMADEO

19 DATED: June ²⁰__, 2014

LEVY VINICK BURRELL HYAMS LLP

20 By: 

21 Jean K. Hyams
22 Attorneys for Plaintiff
23 REIKO FURUYA
24
25
26
27
28