

1 Kissandra L. Tysman (SBA# 024577)
2 TYSMAN LAW FIRM, PLC
2812 N. Norwalk, Suite 122
3 Mesa, Arizona 85215-1149
Tel: (480) 654-6540
4 Fax: (480) 654-6544
tysman@legaljustice.com
Attorney for Plaintiff

MICHAEL K. JEANES
Clerk of the Superior Court
By Kristy Kee, Deputy
Date 09/25/2009 Time 14:39:35

Description	Amount
CASE# CV2009-092649	
CIVIL NEW COMPLAINT	301.00
TOTAL AMOUNT	301.00

Receipt# 20064086

6 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
7 **FOR THE COUNTY OF MARICOPA**

9 **SUSAN M. GIPSON,**
Plaintiff,

10 vs.

11 **BANNER HEALTH** an Arizona
12 Corporation, d.b.a. "Banner Thunderbird
Medical Center"; **TERESA BUCHDA**
13 and **JOHN DOE BUCHDA**, wife and
husband; **AMY WARENGO** and **JOHN**
14 **DOE WARENGO**, wife and husband;
LAURA WITT and **JOHN DOE**
15 **WITT**, wife and husband; **JOHN DOE**
and **JANE DOE**, husband and wife,

16 Defendants.

Case # CV2009-092649

COMPLAINT

(Tort Non-Motor Vehicle)

18 Plaintiff Susan M. Gipson and her undersigned attorney, Kissandra L.
19 Tysman of Tysman Law Firm, PLC, present this verified Complaint for relief
20 against the Defendants, jointly and severally, for the intentional tort of wrongful
21 termination of employment ("whistleblowing"), A.R.S. 23-1501(3)C(ii), pursuant
22 to Arizona Rules of Civil Procedure, Rules 7(a) and 8(a):

23 **FACT ALLEGATIONS**

24 1. Plaintiff Susan M. Gipson ("Gipson") is, and has been at all times
25 material to this Complaint, an adult resident of Maricopa County, Arizona.

26 2. Defendant Banner Health ("Banner") is, and has been at all times
27 material to this Complaint (A) an Arizona corporation with its principal place of
28

1 business located in Maricopa County, Arizona, and (B) the owner and operator of
2 a hospital in Glendale, Maricopa County, Arizona, called "Banner Thunderbird
3 Medical Center".

4 3. Defendant Teresa Buchda ("Buchda") is, and has been at all times
5 material to this Complaint: (A) an adult resident of Maricopa County, Arizona;
6 (B) a supervisor or management employee ("Director") of Banner authorized to
7 act on its behalf; and (C) upon information and belief, she has been married to
8 John Doe Buchda and acting on behalf of their marital community while
9 employed by Banner. The true name of John Doe Buchda is presently unknown
10 to Gipson, and she will seek leave to amend to insert his true name pursuant to
11 A.R.S. Rules of Civil Procedure, Rules 10(f) and 15(a).

12 4. Defendant Amy Warengo ("Warengo") is, and has been at all times
13 material to this Complaint: (A) an adult resident of Maricopa County, Arizona;
14 (B) a supervisor or management employee (senior clinical manager) of Banner
15 authorized to act on its behalf; and (C) upon information and belief, she has been
16 married to John Doe Warengo and acting on behalf of their marital community
17 while employed by Banner. The true name of John Doe Warengo is presently
18 unknown to Gipson, and she will seek leave to amend to insert his true name
19 pursuant to A.R.S. Rules of Civil Procedure, Rules 10(f) and 15(a).

20 5. Defendant Laura Witt ("Witt") is, and has been at all times material to
21 this Complaint: (A) an adult resident of Maricopa County, Arizona; (B) a human
22 resources supervisor for Banner at its Banner Thunderbird Medical Center
23 authorized to act on its behalf; and (C) upon information and belief, she has been
24 married to John Doe Witt and acting on behalf of their marital community while
25 employed by Banner. The true name of John Doe Witt is presently unknown to
26 Gipson, and she will seek leave to amend to insert his true name pursuant to
27 A.R.S. Rules of Civil Procedure, Rules 10(f) and 15(a).

1
2 6. Defendants John Doe and Jane Doe are, and have been at all times
3 material to this Complaint: (A) adult residents of Maricopa County, Arizona; (B)
4 a supervisor or management employee of Banner authorized to act on its behalf;
5 and (C) upon information and belief, John Doe or Jane Doe has been married and
6 acting on behalf of their marital community while employed by Banner.
7 Banner's Employee Handbook and operating policy states:

8 "All involuntary terminations of employees with more than
9 five years of service will be approved by the **Chief Executive**
10 **or designee of the operating unit prior to termination.**"

11 As alleged infra, Gipson was involuntarily terminated as a Banner employee on
12 September 26, 2008, and therefore, her termination was, in part, the act and
13 decision of the "Chief Executive or designee . . .", supra. **This person is**
14 **identified herein as John or Jane Doe** because the identity of such person is
15 presently unknown to Gipson. The true names of John Doe and Jane Doe (the
16 Chief Executive or designee and their spouse, if any) are presently unknown to
17 Gipson, and she will seek leave to amend to insert their true names pursuant to
18 A.R.S. Rules of Civil Procedure, Rules 10(f) and 15(a).

19 7. Gipson earned her A.A. degree in surgical technology in November,
20 1999. She graduated with a 3.9 grade point average, and awards for academic
21 excellence (being in the top 5% of her graduating class) and perfect attendance.
22 Her coursework included a 320 hour externship at Banner's Good Samaritan
23 Regional Medical Center in Phoenix.

24 8. On May 2, 2000, Banner commenced her employment as a surgical
25 technician in labor and delivery, and she held that position until she was suddenly
26 fired without good cause on September 26, 2008. She was originally employed
27 at Banner's Good Samaritan facility (where she did her externship supra), and on
28 October 26, 2003, she transferred to Banner's Banner Thunderbird Medical

1 Center ("BTMC") in Glendale to be closer to her home in Glendale where she
2 working when she was fired.

3 9. As a surgical technician for Banner, Gipson was responsible for (1)
4 preparing the operating room ("OR") for surgery including selection and
5 placement of surgical instruments, supplies and equipment in the OR, and (2)
6 scrubbing and providing instruments, sutures, and other sterile supplies during
7 surgical procedures. She was also required to communicate effectively to
8 optimize patient care, promote positive human relations, and contribute to a
9 supportive and cooperative work environment. The Banner Health surgical
10 technician position is a technician level position designed to provide support and
11 assistance to Banner's medical providers, doctors and nurses. At all times,
12 Gipson performed these and all of her work duties in a very competent and
13 satisfactory manner.

14 10. After transferring to Banner's BTMC, Gipson began to notice
15 problems and health and safety issues that she had not seen or experienced at
16 Good Samaritan, and she became increasingly concerned about them and their
17 effect on patient care. The person who created or caused almost all of these
18 problems was Elizabeth Ricca, a registered nurse who was Gipson's supervisor in
19 the labor and delivery ORs.

20 11. Starting in approximately April, 2004 and continuing until shortly
21 before she was fired, Gipson reported and complained to her superiors at Banner
22 about numerous incidents, problems and concerns including, inter alia:

23 A. Multiple holes in the walls of the Operating Room which allowed dirt,
24 dust, and insects to permeate the operating room, causing serious contamination;

25 B. Rust on instruments used during surgeries;

26 C. Air vents, electrical outlets and other equipment in the actual operating
27 rooms where patients are taken for surgery which were liberally covered in mold,

28 dust, rust, dirt, and even blood;

1 D. Supply rooms filled with medication and sterile supplies was ridden
2 with mold, dust, blood, animal feces and insects;

3 E. Supplies and medications that were expired were kept and used
4 nonetheless;

5 F. Medications and needles were unlocked and unsecured, sitting in the
6 open for anyone to steal or use improperly causing harm or injury;

7 G. Filth composed of various biological debris such as blood and amniotic
8 fluid were strewn around the ORs;

9 H. On one occasion Ricca actually defecated inside her clothes during a
10 surgery and continued to work with fecal matter pouring down her legs and onto
11 the floor, while in an operating room containing a woman in the midst of having
12 a Caesarian operation with her uterus and other organs fully exposed. Nothing
13 was done except to simply put a towel on the floor, covering the feces;

14 I. Ricca repeatedly jeopardized patient safety by intentionally hiding
15 instruments and/or gauze, laps, etc. when such instruments and gauze were being
16 counted by Mrs. Gipson and others (as per hospital policy) to ensure that they
17 were not retained in the patient during surgery;

18 J. Ricca frequently entered sterile operating rooms, wearing contaminated
19 scrubs from prior surgeries (without a gown, shoe covers, etc.), resulting in the
20 legally required sterility of the OR being totally compromised;

21 K. Ricca frequently applied dressings to patients without wearing gloves,
22 instead using her bare hands, or the sleeves of her gown to wipe away blood
23 clots, and even used her bare hands to evacuate blood clots directly out of
24 patients' bodies;

25 L. After Gipson reported one of Ricca's violations in writing to her
26 superior, Janice Baker, Ricca learned of the report and retaliated by physically
27 striking (assaulting) and threatening her. She was cornered by Ricca in a small

1 closet (an instrument closet) and prevented from leaving. Ricca threatened her
2 with further violence and said "what goes around comes around."

3 12. Banner was either indifferent or hostile to Gipson in response to
4 Gipson's numerous complaints and reports, supra. Not only was she not
5 commended for her efforts in ensuring a clean and sterile OR, but she was
6 ridiculed for "tattling".

7 13. In frustration and desperation, and out of concern for patient safety,
8 Gipson contacted Banner's Infection Control Unit, making them aware of the
9 violations she had reported to her superiors which had been ignored and which
10 had lead to hostility from her superiors.

11 14. On April 30, 2007, during an emergency c-section operation on a
12 patient, a hospital surgeon, Dr. Shah, negligently cut through Mrs. Gipson's
13 middle finger, piercing through it and then going on to slice into her ring finger.
14 See Exhibit #20 infra. Gipson's injury required stitches and ultimately reparative
15 surgery. Dr. Shah apologized to Gipson for his error but Mrs. Gipson was faced
16 with the fear of contracting a blood borne disease and not being able to use her
17 fingers in their pre-injury manner.

18 15. The reports and complaints that Gipson made to her superiors at
19 Banner, supra, concerned subjects and matters that Gipson reasonably believed to
20 be violations of the statutes of Arizona, to-wit:

21 A. A.R.S. 36-601(A) 1;

22 B. A.R.S. 36-601(A) 5;

23 C. A.R.S. 36-405(A), specifically the Standards of the Joint Commission
24 on Accreditation of Hospitals incorporated by reference into that statute;

25 D. Arizona Administrative Code ("AAC") regulations adopted by the
26 Director of the Arizona Dept. of Health Services pursuant to A.R.S. 36-136(F)
27 and 36-405(A, B), including, inter alia:

28 AAC R9-10-214 (surgical services)

1 AAC R9-10-217 (pharmaceutical services)

2 AAC R9-10-222 (perinatal services)

3 AAC R9-10-229 (infection control)

4 AAC R9-10-230 (environmental services)

5 AAC R9-10-232 and AAC R9-1-412 (physical plant standards); and

6 E. Arizona Administrative Code ("AAC") regulations adopted by the
7 Arizona Board of Nursing pursuant to A.R.S. 32-1606(A)1 and 32-1606(B)21,
8 including, inter alia: AAC R4-19-403(B).

9 16. Gipson made her reports and complaints supra, to Banner and/or
10 representatives of Banner in a managerial or supervisory position who had the
11 authority to investigate the information she provided and to take action to prevent
12 further violations of the statutes of Arizona.

13 17. After Gipson had recovered from the injuries to her fingers caused by
14 Dr. Shah, she was able to resume her duties in the labor and delivery ORs at
15 BTMC on December 28, 2007. At that time, she was told by Defendants Teresa
16 Buchda and Laura Witt that she would not be allowed to resume her work as a
17 labor and delivery surgical tech because "there had been conflict in the OR and
18 moving Gipson out of the OR was 'best for the safety of the patients'." Gipson
19 protested and said that it was wrong and unfair to punish her for reporting serious
20 violations and trying to improve safety in the OR. However, Buchda and Witt
21 made it clear that Banner's decision to remove her from the labor and delivery
22 room was final.

23 18. Gipson was then demoted to a secretarial position which did not utilize
24 her surgical tech skills, and was thereafter falsely accused of performance
25 deficiencies.

26 19. Thereafter, Gipson repeatedly applied to transfer back to the labor and
27 delivery OR but was and told each time that there were no openings despite the
28 fact that such openings (vacancies) were publicly posted.

1 20. Banner fired Mrs. Gipson on September 26, 2008, based upon false
2 grounds of performance deficiencies, which were in fact a pretext to punish and
3 get rid of Gipson so that she would not be able to observe and report unsafe,
4 unhealthy and unsanitary conditions, and not be reporting again to Banner
5 Health's Infection Control Unit about the continuing violations in the ORs where
6 Gipson had worked at BTMC.

7 21. Upon information and belief, the retaliatory decision of Banner to
8 demote and then fire Gipson was made and carried out jointly by Defendants
9 John or Jane Doe (paragraph six supra), Amy Warengo, Theresa Buchda, and
10 Laura Witt, who with Banner, were all acting as joint tortfeasors in wrongfully
11 terminating Gipson's employment by Banner.

12 22. Gipson is an amateur photographer, and she was very concerned about
13 the health and safety violations she observed at Banner. During the course of her
14 employment, and to document her concerns, she took some photographs of some
15 of the conditions that were the subjects of her internal complaints and reports.
16 Those photographs are attached hereto as Exhibits 1 through 21, and incorporated
17 herein by reference pursuant to A.R.S. Rules of Civil Procedure, Rule 10(c).

18 23. Upon information and belief, the unsafe and unhealthy conditions
19 reported by Gipson caused, in whole or in part, the deaths of two female Banner
20 patients in 2009.

21 24. Banner added "injury to insult" when it unlawfully and inexcusably
22 delayed giving Gipson her final paycheck after it fired her, in direct violation of
23 A.R.S. 23-350 through 23-355, and in particular, A.R.S. 23-351(C) and 23-
24 353(A).

25 25. The Defendants' conduct in terminating Gipson's employment was
26 done with an evil intent and with reckless disregard with respect to (A) her rights
27

1 as an employee, (B) the health and welfare of Banner's patients, and (C)
2 compliance with the Arizona statutes cited supra.

3 26. As the direct and proximate result of the Defendants' conduct alleged
4 herein, Gipson has suffered damages including, physical injury, post-traumatic
5 stress disorder, high blood pressure, fear, depression, humiliation,
6 embarrassment, a loss of income and a promising career which she planned to
7 continue with until retirement, a loss of self-esteem, loss of friendships she
8 enjoyed at Banner with co-workers, and the likelihood of continuing
9 unemployment because of her age (she was fifty-one years old when she was
10 fired by Banner) and the fact that she was fired from her (last) job with Banner.

11 27. Since her termination by Banner, Gipson has made efforts to find new
12 suitable employment but has been unsuccessful, primarily because of her age and
13 the fact that she was fired from her job with Banner.

14 28. Since her termination by Banner, when Gipson has applied to
15 prospective employers for a new job, she has had to disclose the fact that she was
16 fired by Banner and the reasons for termination given to her by Banner even
17 though such reasons were false and a pretext to cover-up its retaliation for her
18 internal whistleblowing at Banner.

19 RELIEF REQUESTED

20 Based upon the foregoing allegations, Gipson respectfully requests the
21 following relief against all Defendants, jointly and severally, on her claim for
22 wrongful termination of employment (whistleblowing), A.R.S. 23-1501(3) C (ii):

23 1. Compensatory and general damages in excess of the minimum for the
24 jurisdiction of the Superior Court.

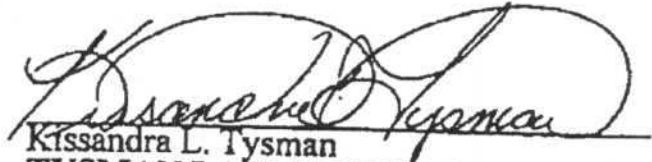
25 2. Punitive damages in an amount to be determined by the trier-of-fact.

26 3. Taxable costs pursuant to A.R.S. 12-341, 12-332(A), and A.R.S. Rules
27 of Civil Procedure, Rule 54(f).

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

Dated this 25th day of September, 2009.

TYSMAN LAW FIRM PLC



Kassandra L. Tysman
TYSMAN LAW FIRM PLC
Attorney for Plaintiffs