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ALAMEDA COUNTY

April 08, 2013

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 THE SUPERIOR COURT
 By Judith Sallee, Deputy

CASE NUMBER:
RG13674735

MARC S. MAZER (SBN 081163)
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Attorneys for Plaintiff
 MARJORIE FAVRO

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

MARJORIE FAVRO,

Plaintiff,

v.

KAISER PERMANENTE, a California
 nonprofit business entity, KAISER
 FOUNDATION HEALTH PLAN, INC., a
 California corporation, TAMMY FISHER, an
 individual, JANICE ROSAIRE, an
 individual, PETER ANDRADE, an
 individual, and DOES 1 through 20,
 inclusive,

Defendants.

CASE NO.:

**COMPLAINT FOR DAMAGES FOR AGE
 DISCRIMINATION (CALIFORNIA FAIR
 EMPLOYMENT AND HOUSING ACT),
 WRONGFUL TERMINATION, AND
 SLANDER**

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1 Plaintiff MARJORIE FAVRO alleges as follows:

2
3 **GENERAL ALLEGATIONS**

4 1. At all times relevant herein, Plaintiff MARJORIE FAVRO. (hereinafter referred to
5 alternatively as either "Favro" or "Plaintiff") is a resident of California.

6 2. Defendant KAISER PERMANENTE is a California nonprofit business entity, form
7 unknown. KAISER PERMANENTE's principal place of business is in the County of Alameda,
8 State of California.

9 3. Defendant KAISER FOUNDATION HEALTH PLAN, INC. is a California
10 corporation, whose principal place of business is in the County of Alameda, State of California.
11 (Defendant KAISER PERMANENTE and KAISER FOUNDATION HEALTH PLAN, INC. are
12 hereinafter referred to collectively as "Kaiser".)

13 4. Kaiser's primary business is providing health care and health insurance. Kaiser is
14 subject to suit under the California Fair Employment and Housing Act, Government Code § 12900
15 *et seq* ("FEHA"), in that Kaiser regularly employs five or more persons as required by
16 Government Code § 12926(d).
17

18 5. Defendant TAMMY FISHER ("Fisher") is an individual residing in the State of
19 California.
20

21 6. Defendant JANICE ROSAIRE ("Rosaire") is an individual residing in the State of
22 California.

23 7. Defendant PETER ANDRADE ("Andrade") is an individual residing in the State of
24 California.

25 8. Plaintiff is informed and believes and thereon alleges that Defendants Fisher,
26 Rosaire and Andrade have been and continue to be employees, officers and/or agents of Kaiser.
27 (Fisher, Rosaire and Andrade shall hereinafter be collectively referred to as "individual
28

1 defendants"). Plaintiff is further informed and believes, and thereon alleges that all of the acts of
2 said individual defendants described hereinafter were authorized by Kaiser and came within the
3 course and scope of the aforesaid agency relationship with Kaiser.

4 9. Plaintiff does not know the true names or capacities of Defendants sued herein as
5 Does 1 through 20, inclusive. Plaintiff is informed and believes, and thereon alleges, that each of
6 the Defendants designated as Doe is responsible in some manner for the acts or omissions
7 hereinafter set forth by reason of which said Doe is liable to Plaintiff for the relief prayed for
8 herein. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein,
9 each of the named Defendants and those Defendants named as "DOES", and all of them, were the
10 agents of each of the other Defendants, and in doing the things hereinafter alleged, were acting
11 within the course and scope of such agency. Plaintiff will seek leave of Court to amend this
12 Complaint to allege such true names and capacities as soon as they are ascertained. (Kaiser, the
13 individual defendants and all DOE Defendants shall hereinafter be referred to collectively as
14 "Defendants.")
15

16
17 10. The employment practices complained of herein occurred in Alameda County,
18 State of California.

19 11. At all times between June 5, 2006 and April 11, 2012, Plaintiff was an employee of
20 Kaiser. At the time of her discharge from Kaiser, as set forth below, Plaintiff was employed as
21 "Director of Account Management", earning a base annual salary of \$190,000, with the reasonable
22 expectation that she would earn at least an additional \$80,000 in annual bonuses. As part of the
23 compensation package, she was to be eligible for pension and retirement benefits, including, but
24 not limited to, lifetime medical coverage.
25

26 12. On or about March 28, 2012, when Plaintiff was 58 years of age, Plaintiff was
27 placed on administrative leave pending an investigation of what was described to her merely as
28 "compliance violations". Plaintiff was never provided with any detail as to the basis of any such

1 contentions, or any explanation as to what the alleged "compliance violations" were. Rather,
2 approximately two weeks later, on or about April 11, 2012, Plaintiff's employment was terminated
3 without further any explanation to her as to the reason for the discharge.

4 13. At all times throughout her employment at Kaiser, Plaintiff received exemplary
5 performance evaluations, the last performance evaluation rating her performance through the 2011
6 calendar year. In this last performance evaluation, the Annual Evaluation Discussion took place
7 on March 14, 2012, two weeks before Plaintiff was placed on administrative leave, as set forth
8 above. At that time, Plaintiff was rated as having "Excellent Performance" in 12 out of 16 rated
9 areas of performance, and "Satisfactory Performance" in the remaining 4 areas of performance. In
10 said performance evaluation, Plaintiff was given an overall Employee Rating of "Excellent
11 Performance" for the 2011 year by her manager.

12 14. Plaintiff is informed and believes and thereon alleges that shortly after her
13 termination, Kaiser hired a woman significantly younger than Plaintiff to take over Plaintiff's
14 position. Plaintiff is informed and believes and thereon alleges that the accusation of "compliance
15 violations" made by Defendants against her was just a sham and a ruse and made for the sole
16 purpose of justifying Plaintiff's termination so that Defendants could hire someone significantly
17 younger than Plaintiff to take over Plaintiff's position.

18 15. Plaintiff has exhausted her administrative remedies against Kaiser as required under
19 FEHA, by filing a timely complaint with the Department of Fair Employment and Housing
20 ("DFEH") which has issued a "right to sue" letter allowing the filing of this complaint against
21 Kaiser for Age Discrimination.

22 **FIRST CAUSE OF ACTION**
23 **(Age Discrimination under California Fair Employment and Housing Act)**

24 16. Plaintiff incorporates herein by this reference, as though set forth in full, all
25 allegations set forth hereinabove.
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1 17. The Fair Employment and Housing Act (Government Code §12900 *et seq.*)
2 ("FEHA") bars discrimination against or the discharge of any employee because of the employee's
3 age.

4 18. Kaiser's termination of Plaintiff based on her age constitutes discrimination in that
5 it was based on the fact that Plaintiff is a person of more than 40 years of age.

6 19. Kaiser's discriminatory actions against Plaintiff, as alleged above, constitute
7 unlawful discrimination in employment on account of age in violation of Government Code
8 §12940(a).

9 20. As a proximate result of Kaiser's discriminatory actions against Plaintiff, as alleged
10 above, Plaintiff has been harmed in that Plaintiff has suffered the loss of the wages, salary,
11 bonuses, benefits, and additional amounts of money Plaintiff would have received had Defendants
12 not terminated Plaintiff's employment with Kaiser. As a result of such discrimination and
13 consequent harm, Plaintiff has suffered such damages in the amount exceeding \$1 Million and
14 according to proof.
15

16 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as set
17 forth below.
18

19 **SECOND CAUSE OF ACTION**
20 **(Wrongful Termination in Violation of Public Policy)**

21 21. Plaintiff incorporates herein by this reference, as though set forth in full, all
22 allegations set forth hereinabove.

23 22. In discharging Plaintiff, Defendants violated the fundamental, substantial and well
24 established public policy embodied in California Government Code §12900 *et seq.*

25 23. As a proximate result of Defendants' willful, knowing and intentional
26 discrimination against Plaintiff, Plaintiff has been harmed in that Plaintiff has suffered the loss of
27 the wages, salary, bonuses, benefits, and additional amounts of money Plaintiff would have
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1 received had Defendants not terminated Plaintiff's employment with Kaiser. As a result of such
2 discrimination and consequent harm, Plaintiff has suffered such damages in the amount exceeding
3 \$1 Million and according to proof.

4 24. As a proximate result of Defendants' willful, knowing and intentional
5 discrimination against plaintiff, she has suffered and continues to suffer humiliation, emotional
6 distress, mental and physical pain and anguish, all to her damages in a sum according to proof.

7 25. The actions of Defendants, and each of them, as set forth above, were willful,
8 despicable, oppressive and malicious, and entitle Plaintiff to an award of punitive damages, in an
9 amount according to proof.

10 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as set
11 forth below.

12
13 **THIRD CAUSE OF ACTION**
14 **(Slander)**

15 26. Plaintiff incorporates herein by this reference, as though set forth in full, all
16 allegations set forth hereinabove.

17 27. Defendants, and each of them, informed other employees of Kaiser that Plaintiff's
18 employment with Kaiser had been terminated due to "compliance violations", which made it
19 appear that she was terminated for cause and that she had committed some serious wrongful or
20 unlawful act which justified such termination. At the time the statements were published by
21 Defendants, the statements were false and Defendants knew the statements were false.

22 28. The false statements made against Plaintiff by Defendants as set forth above and
23 the affect that said false statements would have on Plaintiff's standing and reputation would be
24 highly offensive to a reasonable person. Defendants had knowledge of or acted in reckless
25 disregard of the falsity of the publicized facts and the affect that said false statements would have
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1 on Plaintiff and on her reputation and standing in the community and among her co-workers and
2 future employers and clients.

3 29. The public disclosure of the false statements against Plaintiff caused Plaintiff to
4 sustain special damages, inclusive of, but not limited to, economic losses which Plaintiff has
5 sustained to date, or are reasonably certain to suffer in the future in respect to Plaintiff's business,
6 trade, profession, or occupation, including the amount of money which Plaintiff has expended as a
7 result of the false statements, and including the amount of actual damage which is a natural
8 consequence of the publication of the false statements.
9

10 30. As a proximate result of Defendants' willful, knowing, intentional and negligent
11 conduct, Plaintiff has sustained and continues to sustain losses in earnings and other employment
12 benefits.
13

14 31. As a proximate result of Defendants' willful, knowing, intentional and negligent
15 conduct, Plaintiff has suffered and continues to suffer humiliation, emotional distress, and mental
16 and physical pain and anguish, all to her damage in a sum according to proof.

17 32. The actions of Defendants, and each of them, as set forth above, were willful,
18 despicable, oppressive and malicious, and entitle Plaintiff to an award of punitive damages, in an
19 amount according to proof.
20

21 **WHEREFORE**, Plaintiff prays judgment against Defendants as follows:

22 1. For special and general damages against Defendants, and each of them, in an
23 amount yet to be ascertained;

24 2. For punitive damages against all of Defendants, and each of them, in an amount to
25 be ascertained at trial;

26 3. For reasonable attorneys fees and other costs of suit pursuant to Government Code
27 §12965(b); and
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1 4. For such other relief as the Court deems just and proper.

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3 Dated: April 8, 2013

BENJAMIN, WEILL & MAZER,
A Professional Corporation

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5 By: 

6 MARC S. MAZER
7 Attorneys for Plaintiff

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