

ORIGINAL FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO

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BY: _____
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J. STEPPE

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8 LOLITA MORADA

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11
12
13 CGC-13-534455

14 **LOLITA MORADA,**

15 Plaintiff,

16 vs.

17 **KAISER FOUNDATION HEALTH PLAN,**
18 **INC.,** a California Corporation; **THE**
19 **VANGUARD GROUP, INC.;** and DOES 1 to
20 100, Inclusive,

21 Defendants.

Case No. 2

COMPLAINT FOR:

1. **DECLARATORY RELIEF;**
2. **BREACH OF FIDUCIARY DUTY;**
3. **VIOLATION OF §502(c)(1) OF ERISA;**
4. **OTHER EQUITABLE RELIEF;**
5. **ATTORNEY'S FEES.**

22 COMES NOW Plaintiff, LOLITA MORADA, by and through undersigned counsel,
23 hereby complains against Defendants KAISER FOUNDATION HEALTH PLAN, INC., a
24 California Corporation, THE VANGUARD GROUP, INC., and DOES 1 to 100, inclusive, and
25 avers that:
26
27
28

1 PRELIMINARY STATEMENT

2
3 1. The Employee Retirement Income Security Act of 1974 (ERISA) protects the interests
4 of participants and their beneficiaries who depend on benefits from private employee benefit
5 plans. ERISA sets standards for administering these plans, including a requirement that financial
6 and other information be disclosed to plan participants and beneficiaries and requirements for the
7 processing of claims for benefits under the plans.
8

9
10 2. Although some employee benefits plans are not covered by ERISA (such as church or
11 government plans, etc.), any of the millions of participants and beneficiaries in employee benefit
12 plans that fall under ERISA’s protection have certain rights if their claim for benefits is denied.
13 One such right is that the participant is entitled to be informed of the reason for the denial in
14 writing in a manner that the participant can understand. It also must give the participant a
15 reasonable opportunity for a full and fair review of the decision.
16

17 3. As will be shown hereunder, Plaintiff was never given a reasonable opportunity for a
18 fair and full review of the decision which denied her claim.

19 4. Furthermore, under the ERISA , Defendants are considered fiduciaries of Plaintiff
20 being the provider and service administrator respectively of Plaintiff’s plan. As fiduciaries,
21 Defendants failed to discharge their duties with the care, skill, prudence and diligence required
22 under the circumstances which, among other causes, resulted into damages to Plaintiff.
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1 **THE PARTIES**

2 5. Plaintiff is now, and at all times relevant to this action, a resident of the County of San
3 Francisco, State of California.

4
5 6. Plaintiff is informed and believes, and thereon alleges, that Defendant KAISER
6 FOUNDATION HEALTH PLAN, INC. ("KAISER") is a California corporation with corporate
7 address at One Kaiser Plaza, Oakland, CA 94612. Its agent for service of process is CSC-
8 Lawyers Incorporating Service, 2710 Gateway Oaks Drive Ste 150N, Sacramento, CA 95833.

9
10 7. Plaintiff is informed and believes, and thereon alleges, that Defendant THE
11 VANGUARD GROUP, INC. ("VANGUARD") is a corporation that does business in the State
12 of California with known postal address at P.O. Box 2900, Valley Forge, PA 19482-2900.

13 8. Plaintiff does not know the true names, capacities, or basis for liability of Defendants
14 sued herein as Does 1 through Does 100, inclusive, as each fictitiously named Defendant is in
15 some manner liable to Plaintiff. Plaintiff will amend this Complaint to allege their true names
16 and capacities when ascertained. Plaintiff is informed and believes, and therefore alleges, that at
17 all relevant times mentioned in this Complaint, each of the fictitiously named Defendants are
18 responsible in some manner for the injuries and damages to Plaintiffs so alleged and that such
19 injuries and damages were proximately caused by such Defendants, and each of them.

20
21
22 9. Plaintiff is informed and believes, and thereon alleges, that at all times herein
23 mentioned, each of the Defendants was the agent, employee, servant and/or joint venturer of the
24 remaining Defendants, and each of them, and in doing the things alleged herein below, was
25 acting within the course and scope of such agency, employment and/or joint venture.

26
27 ////

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1 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

2 10. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
3 fully set forth herein.

4
5 11. Plaintiff, who was 80 years old at the time the incident subject hereof occurred¹,
6 began employment with Defendant KAISER on January 9, 1962 and retired on July 15, 1994.

7 12. On August 4, 1994, Plaintiff completed a Kaiser Permanente Tax Sheltered Annuity
8 Plan (the "Plan") Option Request form electing to defer payment of Plaintiff's benefits until
9 February 19, 2002.

10
11 13. On April 1, 2002, Plaintiff completed Defendant VANGUARD's Required Minimum
12 Distribution Request Form requesting annual payments beginning on July 15, 2002. Defendant
13 VANGUARD is believed and hereby alleged to be the Administrator or co-Administrator of the
14 said Plan.

15
16 14. Plaintiff then began receiving Plan benefits (the "annual payment plan") in July 2002
17 and she continued to receive annual payments each July thereafter through July 2011.

18 15. In 2011, it was discovered that the Required Minimum Distribution Request Form
19 which Plaintiff completed (see paragraph 13 above) with Defendant VANGUARD was invalid.

20
21 16. It was found to be invalid because according to the Defendants, and each of them, the
22 participants of the Plan were offered distributions only in the form of installments and they were
23 not offered - as required by law - the optional forms of benefit available under the Plan,
24 including the normal form of benefit-annuity payments.

25
26 17. To remedy this error committed by Defendants, Defendant VANGUARD in August
27 2011 claims to have sent a notice to Plaintiff and offered her the opportunity to choose from

28 ¹ Plaintiff's date of birth is February 19, 1932; she is already 81
years of age at the time of filing of this complaint.

1 among the appropriate available forms of benefit such as the single lump sum, installments, or
2 annuity payments.

3
4 18. This notice was allegedly sent by United States mail to Plaintiff's address based on
5 the records of Defendants.

6
7 19. The notice allegedly stated that if Plaintiff did not want to have annuities purchased
8 for her as the default form of payment, she must return a new Required Minimum Distribution
9 Form to select another distribution option before September 30, 2011.

10
11 20. The notice allegedly also stated that if no response was received from Plaintiff, a
12 Single Life Annuity would then be purchased from an insurance company, and the participant's
13 account balance would not remain in the Plan at Defendant VANGUARD.

14
15 21. The notice allegedly explained that a Single Life Annuity for unmarried participants
16 or a Qualified 50% Joint and Survivor Annuity for married participants would be purchased for
17 Plaintiff.

18
19 22. Plaintiff did not receive the alleged notice claimed to have been sent to her address in
20 San Francisco because she was living abroad from July 18, 2011 until March 24, 2012.

21
22 23. It was further claimed by Defendants that a second notice was sent to Plaintiff in
23 September 2011 and a third notice was sent in October 2011, extending Plaintiff's deadline to
24 respond to November 25, 2011.

25
26 24. Plaintiff could not have possibly received the purported notices or respond by the
27 deadlines required in those notices because she was abroad during the period of time that the
28 notices were sent.

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1 25. Defendants, and each of them, had access to other means of communicating with
2 Plaintiff such as electronic mail or email and had done so in past communications with Plaintiff
3 but they failed to utilize such means of effecting communication with Plaintiff during this three-
4 month period in 2011.
5

6 26. On December 6, 2011, based on Plaintiff's supposed failure to respond by the
7 deadline date, Defendants purchased the default Qualified Joint and Survivor Annuity from
8 MetLife using Plaintiff's account balance which already amounted to approximately
9 \$245,293.24.
10

11 27. Defendants claimed that this was done because Plaintiff did not respond to the notices
12 sent to her. Furthermore, the Qualified Joint and Survivor Annuity was purchased because
13 Plaintiff's records with Defendants indicated that she was married.
14

15 28. On March 26, 2012, and after Plaintiff returned from abroad and learned about the
16 notice that was sent to her during her absence and when she further learned on the basis of an
17 email message from Defendants, or either of them, that Plaintiff's plan was converted to an
18 annuity, Plaintiff called up Defendant VANGUARD to inquire further and requested that the
19 annuity that was purchased be reversed to the former annual payment plan.
20

21 29. Defendant VANGUARD did not grant Plaintiff's request but instead explained why
22 the purchase of the annuity had occurred.
23

24 30. On March 29, 2012, Plaintiff called Defendant VANGUARD anew to request a
25 reversal of the annuity. Plaintiff further informed Defendant VANGUARD that her husband
26 passed away in 2010 - and Defendant Kaiser was notified of this fact - therefore, the Qualified
27 Joint and Survivor Annuity for married participants was inappropriate for her.
28

1 31. Shortly thereafter, Plaintiff's Qualified Joint and Survivor Annuity was switched to a
2 Single Life Annuity.

3 32. On April 24, 2012, Plaintiff filed a Claim Initiation Form with Defendant KAISER
4 which was the provider of the Plan.
5

6 33. On April 30, 2012, Defendant KAISER denied her claim for the reason that
7 Plaintiff's form of payment was to be an annuity which was already purchased for Plaintiff
8 because she did not make an appropriate election of another form of benefit.
9

10 34. On May 4, 2012, Plaintiff called Defendant VANGUARD and requested information
11 concerning Plaintiff's beneficiaries.

12 35. Defendant VANGUARD responded that because Plaintiff was now receiving a single
13 life annuity, no benefits were payable after her death and that therefore, no beneficiaries could be
14 added to Plaintiff's annuity.
15

16 36. On May 14, 2012, Plaintiff called Defendant VANGUARD and requested for written
17 verification of who Plaintiff's beneficiaries were while Plaintiff's account was with Defendant
18 VANGUARD.

19 37. On May 30, 2012, Defendant VANGUARD responded that before the annuity
20 transfer, Josephine Liberty Morada and Peter Bryan Morada, Plaintiff's daughter and son,
21 respectively, were listed as equal primary beneficiaries but because the annuity does not provide
22 for continued benefit payments to a beneficiary after Plaintiff's death, the beneficiaries were not
23 carried over to the annuity.
24

25 38. Plaintiff on the same day appealed and requested Defendants, specifically Defendant
26 KAISER as the provider of the Plan, to return or restore her account with Defendant
27
28

1 VANGUARD in the amount of approximately \$245,293.24 and that the beneficiary status of her
2 two (2) children be reinstated.

3
4 39. On September 28, 2012, Defendant KAISER through the Chairperson of its Appeals
5 Sub-Committee of the Kaiser Permanente Administrative Committee, Ms. L. Allyson Wolfe,
6 determined that Plaintiff was properly defaulted into an annuity form and denied Plaintiff's
7 appeal without even a formal hearing which would have at least afforded Plaintiff a reasonable
8 opportunity for a full and fair review of the decision to deny her claim.

9
10 40. On April 29, 2013, Plaintiff sought the legal services of the undersigned attorney who
11 sent a letter to Defendant KAISER requesting for copies of documents, records and other
12 information relevant and to identify any documents or records that are protected or privileged in
13 case these cannot be provided.

14
15 41. No response was ever received from Defendant KAISER and no documents, records
16 or other information was ever sent to Plaintiff's undersigned attorney.

17
18 **FIRST CAUSE OF ACTION: DECLARATORY RELIEF**
19 **(Against all Defendants)**

20
21 42. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
22 fully set forth herein.

23
24 43. An actual controversy has arisen and now exists between Plaintiff and Defendants
25 regarding their respective rights and duties in that Plaintiff contends that Defendants, and each of
26 them, did not have the right to just change, convert or alter her Plan and purchase an annuity
27 upon Defendant's mistaken, arbitrary and whimsical determination that Plaintiff defaulted in
28 making an election.

1 44. Plaintiff requests that this Court find that the manner by which Plaintiff was
2 determined by Defendants to have defaulted which became the basis of changing her Plan into an
3 annuity be of no force and effect and nullified altogether and that Plaintiff's Plan and
4 beneficiaries under the Plan be restored.
5

6 45. As a result of Defendants' actions, Plaintiff has suffered damages according to proof,
7 and seeks declaratory relief that Defendants, and each of them, did not and do not have the right
8 to have declared Plaintiff to have defaulted in making an election and in purchasing an annuity
9 for her using the money in Plaintiff's account under the Plan.
10

11 46. Under the Employee Retirement Income Security Act of 1974, as amended, 29 USC §
12 1132 (a)(1)(B), a civil action may be brought – by a participant or beneficiary – to recover
13 benefits due to him under the terms of his plan, or to clarify his rights to future benefits under the
14 terms of the plan.
15

16 47. Plaintiff was actually placed in a disadvantageous position without her knowledge
17 and consent but by alleged default in making a proper election because under the single life
18 annuity purchased for her from MetLife by Defendants, and each of them, while she may still be
19 entitled to receive benefits in the form of monthly payments under the annuity, her beneficiaries
20 will not be receiving anything when she dies because under the terms of the annuity with
21 MetLife, the annuity does not provide for continued benefit payments to a beneficiary or
22 beneficiaries after Plaintiff's death. Under her former Plan, her beneficiaries will continue to
23 receive benefits under the Plan after Plaintiff's demise.
24

25 48. Under the former Plan, Plaintiff was receiving approximately \$12,000.00 per annum
26 while under the single life annuity, Plaintiff was receiving approximately \$24,000 per annum.
27 While it may appear that Plaintiff was receiving more under the single life annuity, Plaintiff's
28

1 primary concern was to leave the proceeds of her plan to her 2 children who were the
2 beneficiaries under the former Plan.

3
4
5 **SECOND CAUSE OF ACTION: BREACH OF FIDUCIARY DUTY**
6 **(Against all Defendants)**

7 49. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
8 fully set forth herein.

9
10 50. Defendants, and each of them, would be considered fiduciaries of the Plan being the
11 provider and service administrator thereof.

12 51. According to 29 USC § 1104² (a)(1)(B) – a fiduciary shall discharge his duties with
13 respect to a plan solely in the interest of the participants and beneficiaries and – with the care,
14 skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting
15 in a like capacity and familiar with such matters would use in the conduct of an enterprise of a
16 like character and with like aims.

17
18 52. Defendants, and each of them, miserably failed to discharge their duties with such
19 care, prudence and diligence expected of them under the circumstances since they failed to
20 exhaust all reasonable means of even communicating with Plaintiff who they could have also
21 reached via email but which they failed to do.

22
23 53. As a matter of fact, Plaintiff first discovered that her Plan was converted into an
24 annuity when she received an email message from Defendant VANGUARD which goes to show
25 and prove that Defendants, and each of them, knew Plaintiff's email address. There have also
26

27
28 ² Sections 1001 – 1461 of 29 USC is the chapter on the Employee Retirement Income Security Program

1 been several other instances in the past that Plaintiff received email message from Defendants,
2 and each of them.

3
4 54. Defendants, and each of them, appeared to have acted with undue haste to convert
5 Plaintiff's Plan into an annuity which would have been more detrimental to Plaintiff considering
6 that beneficiaries would not be entitled to survive the principal plan holder who was Plaintiff.

7 55. Such breach of fiduciary duty to Plaintiff by Defendants, and each of them, caused
8 Plaintiff to suffer damages and prejudice in such amount to be proven at trial.
9

10
11 **THIRD CAUSE OF ACTION: VIOLATION OF § 502(c)(1) OF ERISA**
12 **(Against Defendant KAISER)**

13 56. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
14 fully set forth herein.

15
16 57. Defendant KAISER violated § 502 (c)(1)(B) of ERISA, 29 USC §1132 (c)(1)(B) by
17 failing and refusing to comply with Plaintiff's requests coursed through undersigned counsel for
18 documents and information that is required to be furnished to a plan participant under ERISA.

19 58. Plaintiff is entitled to at least \$100 a day after 30 days from the date of Defendant
20 KAISER's failure and refusal to comply with Plaintiff's request and such other relief as this
21 Court deems proper.
22

23
24 **FOURTH CAUSE OF ACTION: OTHER EQUITABLE RELIEF**

25 59. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
26 fully set forth herein.
27

1 60. To the extent that Defendants violated any provision of Subchapter I of Title 29,
2 Chapter 18 of the United States Code, the Plaintiff is entitled to such other appropriate equitable
3 relief which the Court in the exercise of its sound discretion deems proper including but not
4 limited to an order to restore the Plan of Plaintiff before it was converted into an annuity and for
5 payment to Plaintiff of any past due amounts payable under her former Plan with prejudgment
6 interest with corresponding setoff of any amounts Plaintiff may have already received under the
7 current annuity that was forced upon her.
8

9
10
11 **FIFTH CAUSE OF ACTION: ATTORNEY'S FEES**
12 **(Against all Defendants)**

13 61. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
14 fully set forth herein.

15 62. To the extent that Defendants violated any provisions of Subchapter I of Title 29,
16 Chapter 18 of the United States Code, Plaintiff is entitled to reasonable attorney's fees and costs
17 of this action pursuant to 29 USC §1132(g)(1).
18

19
20 **PRAYER FOR RELIEF**

21
22 WHEREFORE, Plaintiff LOLITA MORADA prays for the following relief as referenced
23 in each cause of action as follows:
24

25 **As to the First Cause of Action:**

26 1. For Declaratory Relief, including but not limited to the following decrees of this

27 Court that:
28

- 1 a. Plaintiff is the prevailing party;
- 2
- 3 b. The determination or finding by Defendants, and each of them, that Plaintiff
- 4 defaulted in making an election and that her Plan be converted into an annuity be
- 5 nullified and declared of no further force and effect;
- 6 c. The Plan of Plaintiff with Defendant KAISER before the conversion into an
- 7 annuity be restored with full rights and benefits including but not limited to
- 8 restoration of her beneficiaries into the Plan.
- 9

10 As to the Second Cause of Action:

- 11 2. That Plaintiff be awarded compensatory and general damages in an amount to be
- 12 determined by proof at trial.

13 As to the Third Cause of Action:

- 14 3. That Plaintiff be awarded statutory damages of at least \$100 a day beginning May 30,
- 15 2013 up to such time Defendant KAISER has complied with Plaintiff's request for
- 16 documents and information.

17 As to the Fourth Cause of Action:

- 18 4. That Plaintiff be granted such other forms of equitable relief deemed just and proper.

19 As to the Fifth Cause of Action:

- 20 5. That Plaintiff be awarded attorney's fees and costs.
- 21
- 22
- 23

24 Dated: September 18, 2013

LAW OFFICES OF RODEL E. RODIS
Attorney for Plaintiff
LOLITA MORADA

25
26 by:

27 
28 RODEL E. RODIS