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7 Attorneys for Plaintiff
8 Mary Gomez

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 MARY GOMEZ,

12 Plaintiff,

13 vs.

14 KAISER PERMANENTE,

15 Defendant.

Case No.:

**COMPLAINT FOR DENIAL OF ERISA
BENEFITS; FRAUD; NEGLIGENT
REPRESENTATION; PROMISSORY
ESTOPPEL; AND ESTOPPEL BY
CONDUCT**

DEMAND FOR JURY TRIAL

16
17 Plaintiff Mary Gomez through her attorneys of record, hereby alleges and complains as
18 follows:

19 **JURISDICTION AND VENUE**

20 1. This action involves application of Section 502(a) of the Employee
21 Retirement Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132 *et seq.* This court has jurisdiction
22 of this action pursuant to 29 U.S.C. § 1132 *et seq.* and 28 U.S.C. § 1331.

23 2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a) and (c) in
24 that a substantial part of the events or omissions giving rise to this action occurred in the
25 Northern District of California. Moreover, Kaiser Permanente is subject to personal jurisdiction
26 in the Northern District of California.

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1 **PARTIES**

2 3. Plaintiff Mary Gomez (hereinafter "Gomez") is an individual over the age
3 of eighteen (18) and at all relevant times, was a resident of California.

4 4. Defendant Kaiser Permanente ("Kaiser") is a corporation. Defendant is
5 both the "plan sponsor," 29 U.S.C. § 1002(16)(A) and the "plan administrator," 29 U.S.C. §
6 1002(16)(B) of Kaiser's retirement plan for employees.

7 **GENERAL ALLEGATIONS**

8 5. In August 1981, Gomez was hired at Kaiser. She dedicated the next
9 fourteen years of her life to working for Kaiser. In 1995, Kaiser went through a major
10 reorganization and offered voluntary severance packages. Gomez elected the severance package
11 and left Kaiser in 1995.

12 6. After Kaiser, Gomez worked briefly for Sutter Health before starting G&R
13 Healthcare Associates, a health care consulting business. G&R Healthcare Associates' clients
14 included Kaiser, Sutter Health, Med Partners as well as international clients.

15 7. In 1999, Mary Parks, Sr. Counsel for Kaiser, contacted Gomez to ask if
16 Gomez would be interested in a claims manager position handling medical malpractice cases.
17 Over the course of a few telephone conversations, Gomez agreed to consider the position.
18 However, when Gomez was told the starting salary for the claims manager position was \$65,000
19 (far less than she earned in her growing consulting business), she declined the offer. After
20 Gomez declined the offer, Parks called Gomez and told her that in addition to the \$65,000 salary,
21 Kaiser would reinstate all Gomez's benefits to her original date of hire in August 1981. These
22 benefits included vacation, PTO, medical, supplemental medical, dental, vision, life insurance,
23 disability, and post-retirement benefits.

24 8. In light of the increased retirement benefits, Gomez decided to accept a
25 lower salary working for Kaiser. When Gomez returned to Kaiser, she was immediately
26 reinstated with the benefits she was promised.

27 9. In 2001, Gomez received a Certificate of Recognition for twenty years of
28 service. In 2004, Gomez promoted to Healthcare Ombudsman/Mediator. As part of the

1 promotion Gomez completed the California Benefits by Design worksheet to select her benefits.
2 Kaiser's preprinted form listed Gomez's date of hire as August 3, 1981.

3 10. In October 2011, Gomez decided to retire. Prior to her retirement, Gomez
4 notified Kaiser to in order to help recruit and train her replacement. From October-December
5 2011, Gomez had numerous communications with Kaiser Local, Regional and National
6 Retirement Benefits to start the retirement process. Gomez's retirement, however, was delayed.
7 Gomez was told that although her date of hire in the retirement system was August 1981.
8 Gomez was then told for the first time her original date of hire would not be honored because she
9 had more than a two year gap in employment, her original hire date would not be honored.

10 11. As a result of Kaiser not honoring Gomez's original hire date, Gomez was
11 denied benefits, including but not limited to medical benefits for her and her spouse, and life
12 insurance.

13 12. Gomez was shocked by Kaiser's position. Gomez folded her growing
14 company and accepted a \$25,000 a year reduction in pay solely because she was promised
15 (verbally and in writing) that she would receive retirement benefits based on her original date of
16 hire. After thirty years of dedicated service, Gomez was denied the benefits she earned.

17 **FIRST CLAIM FOR RELIEF**

18 **WRONGFUL DENIAL OF ERISA BENEFITS**

19 13. Gomez incorporates herein each of the foregoing paragraphs as though
20 fully set forth herein.

21 14. Kaiser induced Gomez to return to work for Kaiser by promising Gomez
22 based on false statements. Specifically, Gomez was promised her retirement benefits would be
23 based on her original date of hire – August 1981. The promise was made by Mary Parks – a
24 Senior Counsel for Kaiser – who knew or should have known that her representations were false.

25 15. Gomez believed Kaiser's representations were true. She relied on
26 Kaiser's representations and shut down her profitable consulting business to accept a \$20,000
27 annual pay decrease to return to work for Kaiser. Had Gomez known the actual facts, she would
28 not have shut down her consulting business and returned to work at Kaiser. As a result of the

1 false statements, Gomez lost the income she would have earned at her consulting firm had she
2 not resigned and has been denied the retirement benefits she earned.

3 16. Gomez was induced to shut down her profitable and growing consulting
4 firm and accept a \$20,000 reduction in pay solely because she was promised retirement benefits
5 calculated on her original hire date. As soon as she returned to Kaiser, all of her benefits were
6 based off the 1981 hire date. Gomez did not know until her retirement that here benefits were
7 not based on her 1981 hire date and was never given any indication that her 1981 hire date would
8 not be honored until she retired. Thus, Gomez's reliance was reasonable and justified. As a
9 result, Gomez worked 13 additional years for Kaiser. Kaiser's decision to not honor her original
10 hire date has cost Gomez hundreds of thousands of dollars in lost retirement benefits.

11 WHEREFORE, Plaintiff prays for relief as set forth below.

12 **SECOND CLAIM FOR RELIEF**

13 **FRAUD**

14 17. Gomez incorporates herein each of the foregoing paragraphs as though
15 fully set forth herein.

16 18. Kaiser induced Gomez to return to work for Kaiser by promising Gomez
17 based on false statements. Specifically, Gomez was promised her retirement benefits would be
18 based on her original date of hire – August 1981. The promise was made by Mary Parks – a
19 Senior Counsel for Kaiser – who knew or should have known that her representations were false.

20 19. Gomez believed Kaiser's representations were true. She relied on
21 Kaiser's representations and shut down her profitable consulting business to accept a \$20,000
22 annual pay decrease to return to work for Kaiser. Had Gomez known the actual facts, she would
23 not have shut down her consulting business and returned to work at Kaiser. As a result of the
24 false statements, Gomez lost the income she would have earned at her consulting firm had she
25 not resigned and has been denied the retirement benefits she earned.

26 20. Gomez was induced to shut down her profitable and growing consulting
27 firm and accept a \$20,000 reduction in pay solely because she was promised retirement benefits
28 calculated on her original hire date. As soon as she returned to Kaiser, all of her benefits were

1 based off the 1981 hire date. Gomez did not know until her retirement that here benefits were
2 not based on her 1981 hire date and was never given any indication that her 1981 hire date would
3 not be honored until she retired. Thus, Gomez's reliance was reasonable and justified. As a
4 result, Gomez worked 13 additional years for Kaiser. Kaiser's decision to not honor her original
5 hire date has cost Gomez hundreds of thousands of dollars in lost retirement benefits.

6 21. As a result of Kaiser's fraudulent conduct, Gomez has suffered and will
7 continue to suffer loss of income, loss of earning capacity, loss of employment benefits, mental
8 and emotional distress, and other damages in an amount according to proof.

9 22. In conducting the fraudulent activity described herein, Kaiser acted with
10 oppression, fraud and malice, in conscious derogation of Gomez's rights under applicable law.
11 Gomez is entitled to punitive damages in an amount to be determined at trial, which amount
12 would be appropriate to punish or set an example of Kaiser.

13 **THIRD CLAIM FOR RELIEF**

14 **NEGLIGENT MISREPRESENTATION**

15 23. Gomez incorporates herein each of the foregoing paragraphs as though
16 fully set forth herein.

17 24. Kaiser failed to exercise reasonable care by telling Gomez her original
18 hire date would be honored for purposes of her retirement.

19 25. Gomez was influenced by, and justifiably relied upon, the negligent
20 misrepresentations and misleading information provided by Kaiser by closing her consulting
21 business to work for Kaiser and remaining employed until her retirement.

22 26. Gomez was damaged as a direct and proximate result of Kaiser's failure to
23 exercise due care in an amount that will be determined according to proof at trial.

24 **FOURTH CLAIM FOR RELIEF**

25 **PROMISSORY ESTOPPEL**

26 27. Gomez incorporates herein each of the foregoing paragraphs as though
27 fully set forth herein.

1 28. Kaiser promised that it would honor Gomez's original date of hire for
2 purposes of determining her retirement benefits.

3 29. In doing so, Kaiser knew or should have known that Gomez would be
4 reasonably induced to rely on Kaiser's promise by working for Kaiser until she retired. Gomez
5 would not have worked for Kaiser if she did not believe she was entitled to the retirement
6 benefits.

7 30. Gomez reasonably relied on Kaiser's promise and was induced to continue
8 working for Kaiser.

9 31. Kaiser did not base her retirement benefits on Gomez's original hire date.

10 32. As a result of Kaiser's failure to perform according to the promise, Gomez
11 has been damaged in an amount equal to the value of the benefits lost.

12 33. Injustice can be avoided only by enforcing Kaiser's promise to pay Gomez
13 her retirement benefits.

14 WHEREFORE, Plaintiff prays for relief as set forth below.

15 **FIFTH CLAIM FOR RELIEF**

16 **ESTOPPEL BY CONDUCT**

17 34. Gomez incorporates herein each of the foregoing paragraphs as though
18 fully set forth herein.

19 35. Kaiser represented through conduct and verbal representations that Gomez
20 would be entitled to receive retirement benefits based on her original hire date. Kaiser intended
21 to have Gomez rely on the promise of retirement benefits. Gomez is informed and believes and
22 thereon alleges that Kaiser did not intend to pay Gomez her retirement benefits. Gomez was
23 unaware that Kaiser did not intend to pay the retirement benefits.

24 36. Gomez reasonably relied on Kaiser's representation and was induced to
25 shut down her consulting business to work for Kaiser and continue working for Kaiser until she
26 retired.

27 37. Kaiser did not base her retirement benefits on Gomez's original hire date.
28

1 38. As a result of Kaiser's failure to perform according to the promise, Gomez
2 has been damaged in an amount equal to the value of the benefits lost.

3 WHEREFORE, Plaintiff prays for relief as set forth below.

4 **PRAYER FOR RELIEF**

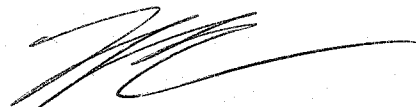
5 WHEREFORE, Plaintiff respectfully prays for relief as follows:

- 6 1. For Kaiser to pay Gomez's retirement benefits based on her original hire date;
- 7 2. For compensatory damages in amounts to be determined at trial;
- 8 3. For statutory penalties;
- 9 4. For punitive damages in amount to be determined at trial;
- 10 5. For pre-judgment interest to the extent permitted by law;
- 11 6. For an award of attorneys' fees, costs and expenses incurred in the prosecution of
12 this action; and
- 13 7. For such other and further relief as the Court may deem proper.

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15 BROWNSTEIN THOMAS, LLP

16 DATED: September 30, 2013

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18 MARK C. THOMAS
19 Attorneys for Plaintiff
20 Mary Gomez
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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands a jury trial on all issues raised in the Complaint.

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4 Dated: September 30, 2013

BROWNSTEIN THOMAS, LLP

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6 By: 

7 MARK C. THOMAS
8 Attorneys for Plaintiff
9 Mary Gomez
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