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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 MARCIA STEIN an individual,

11 Plaintiff,

12 v.

CASE NO.

13 KAISER FOUNDATION HEALTH
14 PLAN, INC., a California
Corporation, KAISER
15 FOUNDATION HOSPITALS, a
California Corporation, THE
16 PERMANENTE MEDICAL
GROUP, INC., a California
17 Corporation, SOUTHERN
CALIFORNIA PERMANENTE
18 MEDICAL GROUP, a California
Corporation, and KAISER
19 MEDICAL GROUP DOCTOR'S
PLAN ADMINISTRATION, a
20 California Corporation and DOES 1
through 10,

21 Defendants.
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**PLAINTIFF MARCIA STEIN'S
COMPLAINT FOR DAMAGES AND
DEMAND FOR JURY TRIAL**

I. INTRODUCTION

1.1 Plaintiff, MARCIA STEIN, brings this action for multiple violations of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.* (hereinafter, “ERISA”), the Consolidated Omnibus Budget Reconciliation Act of 1985, codified at 29 U.S.C. § 1166, *et seq.* (“COBRA”), and the Health Insurance Portability and Accountability Act of 1996, codified at 29 U.S.C. § 1181, *et seq.* (“HIPAA”). Specifically, Plaintiff alleges that Defendants KAISER FOUNDATION HEALTH PLAN, INC., KAISER FOUNDATION HOSPITALS, INC. (hereinafter “Hospital”), THE PERMANENTE MEDICAL GROUP, INC., SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP, AND KAISER MEDICAL GROUP DOCTOR’S PLAN ADMINISTRATION (hereinafter these three entities shall collectively referred to as “Medical Group”), acting by themselves or through their agents, violated certain provisions of ERISA by refusing to enroll Plaintiff in Defendant’s group benefit plans in accordance with the plan documents and Plaintiff’s eligibility for such. All Defendants shall collectively be referenced as “Kaiser.”

II. JURISDICTION AND VENUE

2.1 This Court has jurisdiction of the subject matter of this action pursuant to 29 U.S.C. § 1132(f) in that the Plaintiff brings this action pursuant to Section 502(a)(1)(B), 502(c)(1) and 502(a)(3) of ERISA, 29 U.S.C. §§ 1132(a)(1)(B), 1132(c)(1) and 1132(a)(3), respectively.

2.2 This Court has jurisdiction in that Plaintiff brings this action pursuant to 28 U.S.C. § 1331 and the Constitution of the United States.

2.3 Plaintiff seeks declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

2.4 This Claim properly lies in the United States District Court for the Central District of California, pursuant to 28 U.S.C. § 1391(b) because the Court may find Defendants and Plaintiff in this judicial district.

3.1.1 Plaintiff MARCIA STEIN (“Plaintiff”), is a former employee of Defendant Volt Management Corporation. Plaintiff was a participant in the group benefit plan sponsored by Defendants, and, due to the dual and joint nature of her employment, should have also been enrolled in certain other plans. Plaintiff resides in Los Angeles County, California.

3.1.2 Defendant KAISER FOUNDATION HEALTH PLAN, INC. is a citizen of the State of California with its principal place of business located in Oakland, California.

3.1.4 Defendant THE PERMANENTE MEDICAL GROUP, INC. is a citizen of the State of California with its principal place of business located in Oakland, California.

3.1.6 Defendant KAISER MEDICAL GROUP DOCTORS PLAN is a citizen of the State of California with its principal place of business located in Oakland, California.

3.1.7 The true names and capacities, whether individual, corporate,

1 associate, or otherwise, of DOES 1-10, inclusive, are unknown to Plaintiff, who
2 therefore sues the DOE Defendants by fictitious names. Plaintiff will amend this
3 Complaint to show their true names and capacities when they have been
4 ascertained.

5 3.2 Secretary of Labor and the Secretary

6 3.2.1 Although not parties to this Complaint, the Secretary of Labor and the
7 Secretary of Treasury are being served with a copy of this Complaint as required
8 under Section 502(h) of ERISA, 29 U.S.C. § 1132(h).

9 **IV. STATEMENT OF FACTS**

10 4.1 Plaintiff was hired to work for Defendant Kaiser Hospital in 1987.
11 Plaintiff worked for the Hospital as the Director of Medical Records, during which
12 time she reported to the Assistant Hospital Administrator. Plaintiff worked in this
13 role for seven (7) years, and her entire paycheck was charged to the Hospital
14 payroll.

15 4.2 In approximately 1994, the then-Clinic Director of Medical Records
16 quit and Kaiser asked Plaintiff to take over the role of Medical Group
17 Administrator for Clinic Records for the Doctors' Clinic Records. In this role,
18 Plaintiff was to report to the Assistant Medical Group Administrator. Plaintiff was
19 thus an employee of the Medical Group, as well as the Hospital.

20 4.3 From 1994 until her retirement in 2011, Plaintiff worked for both the
21 Medical Group and the Hospital, and divided her time equally between the entities.
22 Plaintiff's salary was paid in part by the Medical Group and in part by the
23 Hospital.

24 4.4 Plaintiff was required to attend all Medical Group Administrator
25 Meetings, create the budget, and supervised all Medical Group Medical Record
26 employees. Simultaneously, Plaintiff reported to the Assistant Hospital
27 Administrator.

28 4.5 The organizational charts for the Hospital showed Plaintiff on it, and

1 reporting to the Hospital Assistant Administrator. The organizational charts for the
2 Doctors Medical Group Clinic showed that Plaintiff reported to the Assistant
3 Administrator for the Medical Group.

4 4.6 Plaintiff retired from Kaiser on June 1, 2011.

5 4.7 To date, Plaintiff has only received retirement benefits from the
6 Hospital, and not the Medical Group. Kaiser has refused to provide Plaintiff with
7 the Summary of Plan Benefits for the Medical Group retirement plan.

8 4.8 Plaintiff is informed and believes she is eligible to receive retirement
9 benefits under both the Hospital's retirement plan and the Medical Group's
10 retirement plan, given that she was jointly employed and paid by both entities.

11 **V. FIRST CAUSE OF ACTION FOR BREACH OF FIDUCIARY DUTY**
12 **FOR MISREPRESENTATIONS**
13 **(Against All Defendants)**

14 5.1 Plaintiff realleges the facts, statements and matters set forth in
15 paragraphs 1.1 through 4.8 of this Complaint.

16 5.2 Defendants are fiduciaries of the Plan as contemplated by Section 404
17 of ERISA, 29 U.S.C. § 1104.

18 5.3 Defendants have certain fiduciary duties to participants of the Plan
19 pursuant to Section 404 of ERISA, 29 U.S.C. § 1104, which include, but are not
20 limited to: (i) providing participants with complete and accurate information; and
21 (ii) correcting any misrepresentations made to participants; and (iii) discharging
22 their duties solely in the interest of the participants of the Plan.

23 5.4 Defendants breached their fiduciary duties under Section 404 of
24 ERISA, 29 U.S.C. § 1104, by stating to Plaintiff that she was ineligible to
25 participate in the Plan and refusing to allow Plaintiff to participate in the Plan.

26 5.5 Defendants breached their fiduciary duties under Section 404 of
27 ERISA, 29 U.S.C. § 1104, by refusing to provide Plaintiff with her election forms
28 and notices as required under COBRA.

1 5.6 Defendants breached their fiduciary duties under Section 404 of
2 ERISA, 29 U.S.C. § 1104, by failing to correct statements made to Plaintiff that
3 she was not eligible to participate in the Plan for the Medical Group.

4 5.7 As a direct and proximate result of Defendants' actions, Plaintiff has
5 been caused to incur attorneys' fees and court costs in an amount not now known
6 to Plaintiff.

7 5.8 WHEREFORE, Plaintiff PRAYS that the Court will do the following
8 under Section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3):

9 5.8.1 Declare, adjudge, and decree that Defendants breached their fiduciary
10 duties under ERISA by making misrepresenting to Plaintiff that she
11 was ineligible to participate in the Medical Group Plan.

12 5.8.2 Declare, adjudge, and decree that Defendants be enjoined from
13 making further misrepresentations to other participants of the Plan.
14 Declare, adjudge, and decree that Defendants be removed from their
15 current positions and appoint an independent fiduciary to oversee the
16 future administration of the Plan.

17 5.8.3 Award Plaintiff attorneys fees, court costs and all other reasonable
18 costs incurred for filing this Claim, including post-judgment interest.

19 5.8.4 Grant Plaintiff such other and further relief as the Court may deem
20 just and proper.

21 **VI. SECOND CAUSE OF ACTION FOR VIOLATION OF**
22 **SECTION 502(c)(1) OF ERISA**
23 **(Against All Defendants)**

24 6.1 Plaintiff realleges the facts, statements and matters set forth in
25 paragraphs 1.1 through 5.8.4 of this Complaint.

26 6.2 The Plan is a "group health plan" as defined under Section 733(a) of
27 ERISA, 29 U.S.C. § 1191b(a).

28 6.3 Section 502(c)(1)(B) of ERISA, 29 U.S.C. § 1132(c)(1)(B), states that

1 a plan administrator that fails or refuses to comply with a request for any
2 information that is required to be furnished to a participant under ERISA, shall be
3 personally liable to such participant in the amount of \$100 a day (now increased to
4 \$110), after 30 days from the date of such failure or refusal, and the court may in
5 its discretion order such other relief as it deems proper.

6 **VII. THIRD CAUSE OF ACTION FOR INTERFERENCE OF RIGHTS**
7 **UNDER ERISA IN VIOLATION OF SECTION 510 OF ERISA**
8 **(Against All Defendants)**

9 7.1 Plaintiff realleges the facts, statements and matters set forth in
10 paragraphs 1.1 through 7.3 of this Complaint.

11 7.2 Plaintiff alleges that Defendant Volt, acting with and in conjunction
12 with Administrator, violated Section 510 of ERISA, 29 U.S.C. § 1140, by: (i)
13 refusing to enroll Plaintiff in the Medical Group's Plan in a timely manner and in
14 accordance with the terms of the Plan.

15 7.3 WHEREFORE, Plaintiff PRAYS that the Court will do the following
16 pursuant to § 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3):

17 7.3.1 Award Plaintiff attorneys fees, court costs and all other reasonable
18 costs incurred for filing this Claim.

19 7.3.2 Grant Plaintiff such other and further relief, including past and future
20 benefits, as the Court may deem just and proper.

21 **VIII. ADMINISTRATIVE CONDITIONS PRECEDENT**

22 8.1 Plaintiff realleges the facts, statements and matters set forth in
23 paragraphs 1.1 through 10.5.3 of this Complaint.

24 8.2 Plaintiff has completed all administrative conditions precedent for the
25 violations stated herein.

26 8.3 Alternatively, Plaintiff contends that to resort to such remedies is
27 futile and exhaustion is not required.

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5 **IX. JURY TRIAL**

6 9.1 Plaintiff demands a jury trial on all violations alleged under Section
7 510 of ERISA, 29 U.S.C. § 1140.

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10 DATED: May 30, 2014

Respectfully submitted,
THE FIGARI LAW FIRM

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/s/ Barbara E. Figari

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BARBARA E. FIGARI, ESQ.
Attorney for Plaintiff MARCIA STEIN

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DEMAND FOR JURY TRIAL

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Plaintiff Marcia Stein herewith demands a jury trial in this action.

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DATED: May 30, 2014

Respectfully submitted,
THE FIGARI LAW FIRM

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/s/ Barbara E. Figari

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BARBARA E. FIGARI, ESQ.
Attorney for Plaintiff MARCIA STEIN

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