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9 DAWN SPENCER

FILED BY FAX
ALAMEDA COUNTY

December 08, 2014

CLERK OF
THE SUPERIOR COURT
By Lynn Wiley, Deputy

CASE NUMBER:
RG14750696

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

DAWN SPENCER,

Plaintiff,

vs.

KAISER PERMANENTE INSURANCE
COMPANY and DOES 1 through 20,
inclusive,

Defendants.

Case No.

COMPLAINT FOR DAMAGES

1. **Wrongful Termination in Violation of Public Policy/Constructive Discharge**
2. **Breach of Employment Agreement**
3. **Waiting Time Penalties (Labor Code §§ 201, 203 and 227.3)**
4. **Failure to Provide Rest Breaks (Labor Code § 226.7)**
5. **Defamation**
6. **Misrepresentation (Labor Code §§ 1050, 1054)**
7. **Unlawful Use of Criminal Information (Labor Code § 432.7)**
8. **Intentional Infliction of Emotional Distress**
9. **Unfair Business Practices (Business and Professions Code § 17200, *et seq*)**

JURY TRIAL DEMANDED

1 Plaintiff complains and alleges as follows:

2 **PARTIES**

3 1. Plaintiff DAWN SPENCER ("Plaintiff") is an adult individual residing in San
4 Joaquin County, California.

5 2. Defendant KAISER PERMANENTE INSURANCE COMPANY ("Defendant" or
6 "Kaiser") is a California corporation doing business at various locations in Alameda County,
7 California including at its corporate headquarters located at 300 Lakeside Drive, Oakland, California
8 94612.

9 3. Plaintiff is further informed and believes, and thereby alleges, that each defendant
10 named herein as Does 1 through 20, inclusive, was, at all relevant times, the agent or employee of
11 Defendant and was acting within the course and scope of that relationship. The true names and
12 capacities of the defendants named herein Does 1 through 20, inclusive, whether individual,
13 corporate, associate, or otherwise, are unknown to Plaintiff, who therefore sues such defendants by
14 fictitious names pursuant to California Code of Civil Procedure section 474. Plaintiff will amend
15 this Complaint to show such true names and capacities of Does 1 through 20, inclusive, when they
16 have been determined.

17 **JURISDICTION**

18 4. Venue is appropriate in this judicial district pursuant to Code of Civil Procedure
19 section 395.5 because Defendant maintains its principal place of business and corporate headquarters
20 in Alameda County.

21 **FACTS COMMON TO ALL ALLEGATIONS**

22 5. Plaintiff was employed by Kaiser as a Medical Assistant in its Stockton, California
23 facility for approximately 26 years until November 2014.

24 6. Plaintiff had never committed any wrongdoing during her 26 years of dedicated
25 service to Kaiser. In fact, just two weeks before she was ultimately forced to resign, she was given
26 an award for her excellent service.

27 7. On or about October 17, 2014, Plaintiff was called into a conference room by Kaiser
28 managers and told that local police department officers were across the street.

1 8. Plaintiff met with the officers concerning an allegation related to counterfeit money.

2 9. The officers sided with Plaintiff regarding her explanation for the allegation and no
3 criminal charges were ever filed.

4 10. Despite this, Kaiser persisted with blaming Plaintiff for a counterfeit money problem
5 and placed Plaintiff on administrative leave.

6 11. Plaintiff's bosses threatened to even call the U.S. Secret Service regarding the
7 allegation, though they never actually did.

8 12. Kaiser refused to provide Plaintiff with any documents pertaining to the allegations
9 and instead just made blanket false allegations.

10 13. Kaiser even told Plaintiff that if she admitted to wrongdoing (even though she had
11 done nothing wrong) she would be placed on a 5 year letter agreement and not be terminated.
12 Plaintiff refused Kaiser's unethical demand.

13 14. Shortly thereafter Plaintiff was given a letter of termination from Kaiser.

14 15. Plaintiff was told that Kaiser would block her unemployment benefits even though
15 Plaintiff was legally entitled to the benefits because she was being involuntarily terminated and there
16 was no evidence of gross misconduct.

17 16. Kaiser also threatened Plaintiff by telling her that it would block her from getting
18 another job by defaming her if prospective employers called Kaiser for references.

19 17. Kaiser told Plaintiff that if she instead resigned Kaiser would not block her from
20 getting another job and would permit her to get unemployment benefits.

21 18. Despite the fact that Plaintiff had been a dedicated employee for 26 years, Kaiser
22 only provided her with approximately ten minutes to decide whether to resign or face termination

23 19. Since Kaiser was threatening to unlawfully deny Plaintiff's unemployment benefits
24 and preclude her from obtaining another job, Plaintiff had no choice but to resign immediately under
25 pressure and against her will. Nevertheless, this resignation was completely involuntarily and
26 actually constituted a discharge by Kaiser of Plaintiff.

20. Plaintiff's termination letter claimed that she had been deceitful and untrustworthy even though no formal investigation consistent with the applicable Collective Bargaining Agreement ("CBA") took place.

21. The applicable CBA required "just cause" for termination. Defendant did not discharge Plaintiff for just cause but instead terminated her for trivial, arbitrary and capricious reasons unrelated to business needs.

22. Defendant did not conduct an adequate investigation of the allegations against Plaintiff and did not have reasonable grounds for believing the allegations against Plaintiff were true.

23. During the investigatory process, Defendant did not give Plaintiff a fair opportunity to present her position or to correct relevant contradictory information.

24. Defendant did not retain a neutral individual to conduct the investigation, did not disclose eyewitness statements, and did not provide Plaintiff with a complete opportunity to explain what happened.

25. On information and belief, Plaintiff alleges that Kaiser knew it did not have just cause to fire her so they instead unlawfully threatened her, thereby forcing her to resign. Kaiser used threats against Plaintiff to obtain a result they could not get by properly following the CBA just cause provisions.

26. As a result of Kaiser's unlawful conduct, Plaintiff has been harmed immensely both emotionally and financially.

FIRST CAUSE OF ACTION

(Wrongful Termination in Violation of Public Policy/Constructive Discharge)

27. Plaintiff hereby incorporates by reference Paragraphs 1 through 26 and 34 to 75 of this Complaint as if fully set forth herein, and for this cause of action alleges as follows.

28. Plaintiff was threatened with termination and forced to resign against her will in violation of one or more public policies of the State of California, namely, *inter alia*, Defendant's failure to abide by relevant "just cause" provisions of applicable agreements covering Plaintiff's terms and conditions of employment.

29. Moreover, Defendant threatened to deny Plaintiff's unemployment benefits and to defame her with prospective employers. These threats were so intolerable that a reasonable person in Plaintiff's position would have had no reasonable alternative except to resign.

30. Likewise, Defendant failed to conduct a fair and reasonable investigation of the allegations pertaining to Plaintiff and did not afford Plaintiff reasonable notice or opportunity to be heard.

31. Defendant also based its discharge decision on lawful off duty conduct and on conduct that did not result in a criminal conviction, in direct violation of California law.

32. As a result of Defendant's actions, Plaintiff has been harmed through, *inter alia*, the loss of income, promotional and career opportunities, and employment benefits and has suffered other damages in an amount to be determined at trial.

33. Furthermore, because of the malicious and egregious nature of Defendant's conduct in terminating Plaintiff in this manner, punitive damages are necessary to punish Defendant for its malicious and egregious conduct.

SECOND CAUSE OF ACTION

(Breach of Employment Agreement)

34. Plaintiff hereby incorporates by reference Paragraphs 1 through 33 and 39 to 75 of this Complaint as if fully set forth herein, and for this cause of action alleges as follows.

35. As a result of Plaintiff's 26 year tenure with Defendant in which she consistently performed well, an implied employment contract existed between the parties based on mutual understanding and expectations between both sides, including oral and written promises that were made by Defendant to Plaintiff over the years as well as Defendant's past practices.

36. Given that Plaintiff and Defendant had an implied employment contract, Defendant breached its contract by terminating Plaintiff without good cause and without conducting an adequate investigation of the allegations against her.

37. Defendant did not have good cause for terminating Plaintiff because there was no honest and just reason for firing her.

38. As a result of Defendant's actions, Plaintiff has been harmed through, *inter alia*, the loss of income, promotional and career opportunities, and employment benefits and has suffered other damages in an amount to be determined at trial.

THIRD CAUSE OF ACTION

(Waiting Time Penalties in Violation of California Labor Code Sections 201, 203 and 227.3)

39. Plaintiff hereby incorporates by reference Paragraphs 1 through 38 of this Complaint as if fully set forth herein, and for this cause of action alleges as follows.

40. Defendant was required under Labor Code sections 201, 203, and 227.3 to pay Plaintiff all owed wages and other compensation on the date that she was terminated from employment, including, *inter alia*, any unpaid wages for overtime and bonuses earned and due.

41. Defendant failed to immediately provide Plaintiff with all such compensation and other wages upon her final day of employment.

42. Notably, Defendant refused to provide Plaintiff with access to her pay records so that she could cross reference whether any final payments to her were for the full amount she was owed.

43. Defendant's conduct is thereby in violation of Labor Code section 203 and Plaintiff is entitled to, *inter alia*, a penalty in the amount of 30 days of damages.

FOURTH CAUSE OF ACTION

(Failure to Provide Rest Breaks in Violation of Labor Code Sections 226.7 and 512(a))

44. Plaintiff hereby incorporates by reference Paragraphs 1 through 43 of this Complaint as if fully set forth herein, and for this cause of action alleges as follows.

45. Pursuant to California Labor Code section 226.7, no employer shall require any employee to work during any rest period mandated by an applicable order of the Industrial Welfare Commission.

46. The applicable IWC Wage Orders require that Defendant provide employees with rest breaks at the minimum rate of a net ten consecutive minutes for each four hour work period, or major fraction thereof.

47. As alleged herein, Defendant failed to provide Plaintiff with rest breaks. Throughout his employment, Plaintiff was not permitted to take proper rest breaks and instead worked through said breaks because, *inter alia*, Defendant refused to provide a replacement to substitute for Plaintiff while she took her rest breaks. Defendant knew about this but failed to take any remedial action to permit Plaintiff to take rest breaks.

48. By these actions, Defendant violated California Labor Code sections 226.7(A) and the applicable IWC Wage Orders and is liable to Plaintiff.

49. Plaintiff is entitled to recover from Defendant one additional hour of pay at the employee's regular rate of compensation for each work day that the rest period was not provided.

FIFTH CAUSE OF ACTION

(Defamation)

50. Plaintiff hereby incorporates by reference Paragraphs 1 through 49 and 58 to 75 of this Complaint as if fully set forth herein, and for this cause of action alleges as follows.

51. The tort of defamation involves (a) a publication that is (b) false, (c) defamatory, and (d) unprivileged, and that (e) has a natural tendency to injure or that causes special damage.

52. An employer may be held vicariously liable for defamatory statements regarding employees made by their supervisors or coworkers in the course and scope of employment.

53. During the course of Plaintiff's employment, Defendant made numerous defamatory statements regarding Plaintiff to other individuals, including pertaining to false allegations of possible criminal misconduct by Plaintiff arising from counterfeit money that Defendant had received.

54. For instance, Kaiser made defamatory statements to the local police department about a counterfeiting allegation that Plaintiff was blamed for. Additionally, within Kaiser, employees defamed Plaintiff about this allegation by discussing it verbally and in writing with other employees.

55. After being terminated from employment, Plaintiff was escorted out of a Kaiser facility after she had attended a scheduled medical appointment. Kaiser communicated defamatory statements about Plaintiff to other individuals including possibly non-Kaiser security personal at the building in order to preclude Plaintiff from staying in the Kaiser facility after her appointment.

56. Kaiser also threatened to defame Plaintiff if prospective employers called Kaiser for a reference and it is believed that Kaiser personnel have actually defamed Plaintiff to prospective employers since the counterfeiting allegation was first made.

57. As a result of Defendant's unlawful acts or omissions, Plaintiff has been harmed through, *inter alia*, the loss of income, promotional and career opportunities and employment benefits and has suffered other damages in an amount to be determined at trial.

SIXTH CAUSE OF ACTION

(Misrepresentation in Violation of Labor Code Sections 1050, 1054))

58. Plaintiff hereby incorporates by reference Paragraphs 1 through 57 and 64 to 75 of this Complaint as if fully set forth herein, and for this cause of action alleges as follows.

59. Under Labor Code section 1050, an employer through any misrepresentation may not prevent or attempt to prevent an employee from obtaining employment.

60. Labor Code section 1054 provides that: "In addition to and apart from the criminal penalty provided any person or agent or officer thereof, who violates any provision of sections 1050 to 1052, inclusive, is liable to the party aggrieved, in a civil action, for treble damages. Such civil action may be brought by such aggrieved person or his assigns, or successors in interest, without first establishing any criminal liability under this article."

61. Here, Defendant told Plaintiff that if she did not resign Defendant would do everything in its power to prevent her from obtaining a new position at another employer.

62. On information and belief, Plaintiff alleges that at various times Defendant's personnel engaged in actions to prevent Plaintiff from obtaining other employment. The mere fact that Kaiser personnel threatened to defame Plaintiff with prospective employers constitutes an "attempt" under section 1050 and, therefore, Kaiser has violated the statute.

63. As a result of Defendant's unlawful acts or omissions, Plaintiff has been harmed through, *inter alia*, the loss of income, promotional and career opportunities and employment benefits and has suffered other damages in an amount to be determined at trial. Plaintiff is entitled to treble damages pursuant to statute.

SEVENTH CAUSE OF ACTION

(Unlawful Use Of Criminal Records in Violation of Labor Code Section 432.7)

64. Plaintiff hereby incorporates by reference Paragraphs 1 through 63 of this Complaint as if fully set forth herein, and for this cause of action alleges as follows.

65. Under Labor Code section 432.7, an employer may not use the fact of arrest or detention in any employment decision, including discipline, unless the arrest leads to a conviction. Section 432.7(a) says in part, “nor shall any employer seek from any source whatsoever, or utilize, as a factor in determining any condition of employment including hiring, promotion, termination, or any apprenticeship training program or any other training program leading to employment, any record of arrest or detention that did not result in conviction

66. Section 432.7(c) states that, “In any case where a person violates this section, or Article 6 (commencing with Section 11140) of Chapter 1 of Title 1 of Part 4 of the Penal Code, the applicant may bring an action to recover from that person actual damages or two hundred dollars (\$200), whichever is greater, plus costs, and reasonable attorney's fees. An intentional violation of this section shall entitle the applicant to treble actual damages, or five hundred dollars (\$500), whichever is greater, plus costs, and reasonable attorney's fees. An intentional violation of this section is a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).”

67. Here, Plaintiff was detained and questioned by local police about false counterfeit money allegations that Defendant ultimately used to justify her termination.

68. These false counterfeiting allegations that caused Plaintiff to be detained and questioned by police were the sole justification for Kaiser’s termination of Plaintiff.

69. As a result of Defendant’s unlawful acts or omissions, Plaintiff has been harmed through, *inter alia*, the loss of income, promotional and career opportunities and employment benefits and has suffered other damages in an amount to be determined at trial. Plaintiff is entitled to treble damages pursuant to statute because of Defendant’s intentional actions.

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EIGHTH CAUSE OF ACTION

(Intentional Infliction of Emotional Distress)

70. Plaintiff hereby incorporates by reference Paragraphs 1 through 69 of this Complaint as if fully set forth herein, and for this cause of action alleges as follows.

71. Plaintiff has suffered severe emotional distress as a direct result of Defendant's reckless and extreme conduct, including but not limited to Defendant unjustifiable coercion of Plaintiff to force her to resign from a position she held for 26 years.

72. Plaintiff is therefore entitled to damages for the emotional distress she has suffered as a direct consequence of Defendant's actions.

NINTH CAUSE OF ACTION

(Unfair Business Practices in Violation of Business and Professions Code Section 17200, *et seq.*)

73. Plaintiff hereby incorporates by reference Paragraphs 1 through 72 of this Complaint as if fully set forth herein, and for this cause of action alleges as follows.

74. The actions of Defendant constitute unlawful and unfair business practices within the meaning of Business and Professions Code section 17200, *et seq.*

75. As a result of Defendant's unlawful conduct, Plaintiff is entitled to disgorgement, interest, costs of suit, attorneys' fees, and any other relief permitted by the statute.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment against Defendant as follows:

1. For compensatory economic damages,
2. For compensatory emotional damages;
3. For Labor Code penalties and unpaid wages as allowed by law;
4. For an award to Plaintiff of costs of suit incurred herein and reasonable attorneys' fees
5. For an award of prejudgment and post-judgment interest

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6. For punitive damages to punish Defendant for its malicious and egregious conduct.
7. For an award to Plaintiff for such other and further relief as the Court deems just and proper.

NORCAL EMPLOYMENT COUNSEL PC



Dated: December 8, 2014

By: Neville F. Fernandes
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

NORCAL EMPLOYMENT COUNSEL PC



Dated: December 8, 2014

By: Neville F. Fernandes
Attorney for Plaintiff