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MARITES PUTNEY

FILED
SAN MATEO COUNTY

JUL 15 2014

Clerk of the Superior Court
By [Signature]
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO
Unlimited Jurisdiction

MARITES PUTNEY,

Plaintiff,

vs.

THE PERMANENTE MEDICAL GROUP,
INC., KAISER PERMANENTE HEALTH
PLAN, INC., KAISER PERMANENTE
VENTURES, LLC. and DOES 1 through
15, inclusive,

Defendants.

) Case No. **CIV 529554**
)
) COMPLAINT FOR: BREACH OF
) CONTRACT; INTENTIONAL
) INFLECTION OF EMOTIONAL
) DISTRESS; NEGLIGENT INFLECTION
) OF EMOTIONAL DISTRESS, AND
) BREACH OF IMPLIED COVENANT OF
) GOOD FAITH AND FAIR DEALING;
) PUNITIVE DAMAGES
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For this Complaint, Marites Putney, alleges the following.

JURISDICTION AND VENUE

1. Plaintiff Marites Putney (Hereinafter referred to as "Putney"), is an individual who resides in San Mateo County, California.

1 2. Defendants The Permanente Medical Group, Inc., Kaiser Permanente Health Plan,
2 Inc., and Kaiser Permanente Ventures, LLC are the agents, partners, joint ventures, subsidiaries,
3 and parent entities of the other. They are collectively hereinafter referred to as "Kaiser". Kaiser
4 is a corporation that maintains offices in San Mateo County, California.

5 3. Between June 16, 1987 and August 10, 2012, Putney was an employee at Kaiser's
6 offices in San Mateo County, California.

7 4. The true names and capacities, whether individual, corporate or otherwise, of
8 Defendant DOES 1 through 15, inclusive, are unknown to Plaintiff at this time. Therefore,
9 Plaintiff sues these Defendants by fictitious names pursuant to §474 of the California Code of
10 Civil Procedure. Plaintiff will seek leave of the court to amend its complaint to set forth the true
11 names of the defendants when they are ascertained.

12 5. Defendant is informed and believes, and on this basis alleges, that except
13 where otherwise expressly alleged to the contrary, each of the defendants, including Does 1
14 through 15, inclusive, is, and at all relevant times herein mentioned was, the agent, partner, joint
15 venturer, subsidiary, parent entity, employee, and/or co-conspirator of the remaining Defendants,
16 and is, and at all relevant times herein mentioned was, in performing and failing to perform the
17 acts and conduct hereinafter alleged, acting within the course and scope of such agency,
18 partnership, joint venture, employment and/or conspiracy. Plaintiff is further informed and
19 believes, and on this basis alleges, that the acts and conduct of each of the defendants were
20 known to, and authorized and ratified by, the remaining defendants, and that each of the
21 defendants are legally responsible for the conduct and damages alleged.

COMMON ALLEGATIONS

6. Putney was an employee of Kaiser from June 16, 1987 until August 10, 2012. Until approximately January 30, 2012, Putney was a Medical Assistant in the Medicine Department. After January 30, 2012, Putney held the position of Program Assistant at Kaiser.

7. Putney is an employee covered by a collective bargaining agreement with Kaiser, dated October 1, 2005. Section 1069 A. of said agreement states that "No Employee shall be disciplined or discharged without just cause. Any Employee who is discharged shall be informed in writing at the time of the discharge of the reason(s) for the discharge." Section 1071 C. of said agreement states: "It is the Employer's intent normally to make use of progressive discipline in accordance with established practices and policy."

8. On August 10, 2012, Putney was terminated from her employment with Kaiser without just cause and without the imposition of progressive discipline. Kaiser, in its termination letter to Putney dated August 10, 2012, claimed Putney's employment was terminated for violating standards of the Health Insurance Portability and Accountability Act (hereinafter referred to as "HIPAA") and for violating its internal principals of responsibility. Specifically, the letter claimed that on four different occasions Putney briefly accessed the medical records of her daughter-in-law, brother, daughter, and son. If Putney had briefly accessed these people's accounts it was for the purpose of serving them, as customers of Kaiser, and was done in accordance with standard operating customs at Kaiser.

9. Putney was not adequately educated of Kaiser's internal principals of responsibility or of Kaiser's interpretation of HIPAA. Putney did not violate HIPAA or Kaiser's internal principals of responsibility. Furthermore, even if Putney had violated HIPAA or Kaiser's internal principals of responsibility it was a minor infraction and similar alleged acts have been

1 committed by numerous other employees of Kaiser in the same timeframe without the result
2 being termination or even suspension.

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5 **FIRST CAUSE OF ACTION**

6 **(Breach of Contract)**

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8 10. Plaintiff hereby re-alleges and incorporates each and every allegation contained in
9 paragraphs 1 through 9 inclusive, as though fully set forth herein.

10 11. Putney and Kaiser entered into a contract with each other on or about October 1,
11 2005, the date of the Collective Bargaining Agreement between Kaiser and its covered
12 employees, including Putney. Based on Section 1069 A. and 1071 C. of said collective
13 bargaining agreement, more fully described in paragraph 7 of this complaint, Kaiser had a duty
14 to only terminate Putney's employment for just cause and to make use of progressive discipline.

15 12. Putney complied with all of her duties under the contract. She faithfully worked
16 without reprimand for Kaiser for 25 years before the abrupt termination on August 10, 2012 and
17 complied with all of Kaiser's established and clearly defined employment protocols for said 25
18 years.

19 13. Kaiser breached this contract by terminating Putney without just cause. Putney did
20 not violate HIPAA or Kaiser's internal principals of responsibility by briefly accessing her
21 family member's accounts for the purpose of serving them as customers of Kaiser. Even if
22 Putney's aforementioned actions had been a violation of either HIPAA or Kaiser's internal
23 principals of responsibility, Kaiser failed to adequately educate Putney of the rules. This is
24 compounded by it being common practice for Kaiser employees to take part in scheduling
25 appointments for their family members or to inform them who their primary doctor is or when an

1 appointment is scheduled. Said minor alleged violations do not amount to just cause for
2 termination. Furthermore, Kaiser breached this contract by terminating Putney instead of
3 making use of progressive discipline. Given that Kaiser did not adequately educate Putney of its
4 rules and interpretations of HIPAA, that it was customary for Kaiser employee's to access their
5 family members accounts to assist them, and that several other employees of Kaiser had received
6 significantly lower punishments for the same or even more egregious acts in the same time
7 frame, Kaiser breached the contract by not utilizing progressive discipline before terminating
8 Putney's employment.

9 14. As an actual and proximate cause of Kaiser's breaches of the contract, Putney has
10 suffered a loss of income, a loss of earning capacity, and her employment with Kaiser. All of
11 these damages were a likely and foreseeable result of Defendants' breaches of the contract.
12 Putney requests specific performance of the contract in the form of the reinstatement of her
13 employment with Kaiser.

14 **WHEREFORE**, Plaintiff seeks a judgment for damages as set forth in the Prayer.
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18 **SECOND CAUSE OF ACTION**

19 **(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)**

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21 15. Plaintiff, hereby re-alleges and reincorporates each and every allegation contained in
22 paragraphs one through 14 inclusive, as though fully set forth herein.

23 16. Putney and Kaiser entered into a contract with each other on or about October 1,
24 2005, the date of the Collective Bargaining Agreement between Kaiser and its covered
25 employees, including Putney. Based on Section 1069 A. and 1071 C. of said collective
bargaining agreement, more fully described in paragraph 7 of this complaint, Kaiser had a duty

1 to only terminate Putney's employment for just cause and to make use of progressive discipline.
2 Kaiser was aware of this duty and of Putney's reprimand free 25 year employment with Kaiser.
3 Kaiser intentionally inflicted emotional distress on Putney by terminating her employment
4 without just cause and without the use of progressive discipline. Kaiser terminated Putney for
5 the sole purpose of harassing Putney.

6 17. Kaiser's termination of Putney without just cause and without the use of progressive
7 discipline, which Kaiser knew it had a duty to implement, resulted directly in and proximately in
8 Putney suffering from a loss of income, a loss of earning capacity, her employment with Kaiser,
9 and to undergo extreme emotional distress. Putney will require therapy to overcome the
10 emotional hardships from being terminated from her 25 year reprimand free employment without
11 just cause and without the imposition of progressive discipline. Kaiser intended for Putney to
12 suffer said emotional distress and it was likely that Putney would undergo said stress from being
13 terminated from her 25 year reprimand free employment without just cause and without the
14 imposition of progressive discipline.

15 18. Furthermore, Kaiser's actions constituted malice and/or oppression, entitling Putney
16 to punitive damages. Kaiser intended to cause injury to Putney by terminating her without just
17 cause and without the imposition of progressive discipline and was done in a wilful and
18 conscious disregard of the rights of Putney.

19 **WHEREFORE**, Plaintiff seeks a judgment for damages as set forth in the Prayer.
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21 **THIRD CAUSE OF ACTION**

22 **(NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS)**
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24 19. Plaintiff, hereby re-alleges and reincorporates each and every allegation contained in
25 paragraphs one through 18 inclusive, as though fully set forth herein.

1 20. Putney and Kaiser entered into a contract with each other on or about October 1,
2 2005, the date of the Collective Bargaining Agreement between Kaiser and its covered
3 employees, including Putney. Based on Section 1069 A. and 1071 C. of said collective
4 bargaining agreement, more fully described in paragraph 7 of this complaint. Kaiser had a duty
5 to only terminate Putney's employment for just cause and to make use of progressive discipline.
6 Kaiser was aware of this duty and of Putney's reprimand free 25 year employment with Kaiser.
7 Kaiser negligently inflicted emotional distress on Putney by terminating her employment without
8 just cause and without the use of progressive discipline. Kaiser breached this duty by
9 terminating Putney without just cause and without the implementation of progressive discipline.
10 Putney's alleged actions did not amount to just cause termination of Putney's employment.
11 Kaiser knew or should have known that its' terminating of Putney without just cause and without
12 the imposition of progressive discipline would result in emotional distress to Putney.

13 21. Kaiser's termination of Putney without just cause and without the use of progressive
14 discipline, resulted directly in and proximately in Putney suffering from a loss of income, a loss
15 of earning capacity, her employment with Kaiser, and to undergo extreme emotional distress.
16 Putney will require therapy to overcome the emotional hardships from being terminated from her
17 25 year record free employment without just cause and without the imposition of progressive
18 discipline. Kaiser knew or should have known that Putney would suffer said emotional distress
19 and it was likely that Putney would undergo said stress from being terminated from her 25 year
20 reprimand free employment without just cause and without the imposition of progressive
21 discipline.

22 **WHEREFORE,** Plaintiff seeks a judgment for damages as set forth in the Prayer.
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1 **FOURTH CAUSE OF ACTION**

2 **(BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING)**

3 22. Plaintiff hereby re-alleges and incorporates each and every allegation contained in
4 paragraphs 1 through 21 inclusive, as though fully set forth herein.

5 23. Putney and Kaiser entered into a contract with each other on or about October 1,
6 2005, the date of the Collective Bargaining Agreement between Kaiser and its covered
7 employees, including Putney. Based on Section 1069 A. and 1071 C. of said collective
8 bargaining agreement, more fully described in paragraph 7 of this complaint, Kaiser had a duty
9 to only terminate Putney's employment for just cause and to make use of progressive discipline.
10 As a party to a collective bargaining agreement with Putney, Kaiser had a duty to deal with
11 Putney in good faith and in fair dealings with Putney in regards to her employment.

12 24. Putney complied with all of her duties under the contract. She faithfully worked
13 without reprimand for Kaiser for 25 years before the abrupt termination on August 10, 2012 and
14 complied with all of Kaiser's established and clearly defined employment protocols for said 25
15 years.

16 25. Kaiser breached its duty of good faith and fair dealing by terminating Putney without
17 just cause. Putney did not violate HIPAA or Kaiser's internal principals of responsibility by
18 briefly accessing her family member's accounts for the purpose of serving them as customers of
19 Kaiser. Even if Putney's aforementioned actions had been a violation of either HIPAA or
20 Kaiser's internal principals of responsibility, Kaiser failed to adequately educate Putney of the
21 rules. This is compounded by it being common practice for Kaiser employees to take part in
22 scheduling appointments for their family members or to inform them who their primary doctor is
23 or when an appointment is scheduled. Said minor alleged violations do not amount to just cause
24 for termination. Furthermore, Kaiser breached its duty of good faith and fair dealings by
25 terminating Putney instead of making use of progressive discipline. Given that Kaiser did not

1 adequately educated Putney of its rules and interpretations of HIPAA, that it was common
2 protocol for Kaiser employee's to access their family members accounts to assist them, and that
3 several other employees of Kaiser had received significant lower punishments for the same or
4 even more egregious acts in the same time frame, Kaiser breached its duty of good faith and fair
5 dealing with Putney by not utilizing progressive discipline before terminating Putney's
6 employment.

7 26. As an actual and proximate cause of Kaiser's breaches of its duty of good faith and
8 fair dealing, Putney has suffered a loss of income, a loss of earning capacity, and her
9 employment with Kaiser. All of these damages were a likely and foreseeable result of
10 Defendants' breaches of the contract. Putney requests equitable relief in the form of the
11 reinstatement of her employment with Kaiser.

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14 **PRAYER**

15 **WHEREFORE**, Plaintiff prays judgment against the each Defendant as follows:

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17 **For the First Cause of Action:**

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19 1. For Plaintiff's general damages according to proof;
20 2. Plaintiff's special damages according to proof;
21 3. For prejudgment interest according to proof, pursuant to *Civil Code* §3291;
22 4. For Plaintiff's costs of suit herein;
23 5. For an award of reasonable attorney's fees.
24 6. For specific performance in the form of the reinstatement of Plaintiff's employment; and
25 7. For such other and further relief as to the Court may deem just and proper.

1 For the Second Cause of Action:

- 2 1. For Plaintiff's general damages according to proof;
- 3 2. Plaintiff's special damages according to proof;
- 4 3. For punitive damages;
- 5 4. For prejudgment interest according to proof, pursuant to *Civil Code* §3291;
- 6 5. For Plaintiff's costs of suit herein;
- 7 6. For an award of reasonable attorney's fees.; and
- 8 7. For such other and further relief as to the Court may deem just and proper.
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11 For the Third Cause of Action:

- 12 1. For Plaintiff's general damages according to proof;
- 13 2. Plaintiff's special damages according to proof;
- 14 3. For prejudgment interest according to proof, pursuant to *Civil Code* §3291;
- 15 4. For Plaintiff's costs of suit herein;
- 16 5. For an award of reasonable attorney's fees.; and
- 17 6. For such other and further relief as to the Court may deem just and proper.
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21 For the Fourth Cause of Action:

- 22 For Plaintiff's general damages according to proof;
- 23 2. Plaintiff's special damages according to proof;
- 24 3. For prejudgment interest according to proof, pursuant to *Civil Code* §3291;
- 25 4. For Plaintiff's costs of suit herein;
5. For an award of reasonable attorney's fees.

- 1 6. For equitable relief in the form of the reinstatement of Plaintiff's employment; and
2 7. For such other and further relief as to the Court may deem just and proper.
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5 Respectfully Submitted,
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8 DATED: 7/14/2014



PETER L. BALOGH
Attorney for Plaintiff
MARITES PUTNEY