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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISO DIVISION

PATRICIA H. MINTZ, an individual,

Plaintiff,

v.

KAISER FOUNDATION HEALTH PLAN, INC., in its capacity as Plan Administrator and fiduciary of the Kaiser Permanente Salaried Retirement Plan, and KAISER PERMANENTE SALARIED RETIREMENT PLAN,

Defendants.

Case No.: 15-CV-1924

COMPLAINT FOR VIOLATIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 ("ERISA")

Now comes the Plaintiff, PATRICIA MINTZ, who alleges as follows:

JURISDICTION

1. Jurisdiction of this Court is based on the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and in particular, ERISA §§ 502(e)(1) and (f), 29 U.S.C. §§ 1132(e)(1) and (f). Those provisions give the district courts jurisdiction to hear civil actions brought for breach of fiduciary duty under ERISA. In addition, this action may be brought before this Court pursuant to 28 U.S.C. § 1331, which gives the district courts jurisdiction over actions that arise under the laws of the United States.

VENUE

2. Venue is proper under ERISA § 502(e)(2), 29 U.S.C. §1132(e)(2), in that the employee benefit plan that is the subject of Plaintiff's claims is administered in this District and/or the breaches described below occurred within the territorial limits of this District and/or one or more defendants may be found within the territorial limits of this District.

PARTIES

3. PATRICIA H. MINTZ (hereinafter "Plaintiff") is, and at all times mentioned herein was, a participant and beneficiary, within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7), in the KAISER PERMANENTE SALARIED RETIREMENT PLAN, and entitled to benefits thereunder. Plaintiff is, and at all times mentioned herein was, a California resident, residing in Alameda County, California.

4. Defendant KAISER PERMANENTE SALARIED RETIREMENT PLAN, (the "Plan") is an ERISA-regulated retirement benefit plan, administered in this judicial district.

5. Plaintiff is informed and believes that Defendant KAISER FOUNDATION HEALTH PLAN, INC. (hereinafter "Kaiser") is a corporation with its principal place of business in the Northern District of California, authorized to transact and transacting business in this judicial district, and can be found in the Northern District of California. Plaintiff is informed and believes that Kaiser is the Plan Administrator as that term is defined by ERISA § 3(16), 29 U.S.C. § 1002(16) for the Plan, and is a fiduciary as that term is defined in ERISA § 3(21), 29 U.S.C. § 1002(21).

6. The Plan is, and at all times mentioned herein was, a retirement plan within the meaning of ERISA § 3(1), 29 U.S.C. § 1002(1), administered in California, and within this judicial district. The Plan is named as a defendant in this action to ensure that complete relief can be awarded.

FACTUAL ALLEGATIONS

7. Plaintiff was formerly employed by Kaiser and at all times relevant hereto, was a participant and beneficiary of the Plan. After leaving employment with Kaiser, Plaintiff went into business for herself as a professional health policy consultant. From 2000 through 2012, she diligently generated a network of contacts, building a business that provided her with an annual income averaging between $135,000 and $145,000.

8. On or about March 31, 2009, Plaintiff contacted the Kaiser Permanente Retirement Center ("KPRC") regarding her retirement benefits in order to begin planning her retirement. Upon information and belief, the KPRC is the means by which Kaiser provides information about the retirement benefits provided under the Plan to Plan participants. Plaintiff logged into the KPRC website made available to her by Kaiser and was

advised that the lump sum value of her pension benefits if she elected to retire and receive the benefits on November 1, 2014 would be $1,026,157 and the value of monthly pension payments as of the same retirement date would range from $5,297 to $18,627 for the different annuity options available to Plaintiff. Plaintiff followed up with an email to the KPRC requesting the assumptions used for years of service and final average median compensation in the calculation.

9. On or about April 8, 2009, Plaintiff called the telephone number for the KPRC and spoke with a representative of the KPRC. Upon information and belief, the KPRC representative was Kaiser's employee or agent. The KPRC representative told Plaintiff that the lump sum value of her pension benefits would be $892,602.41 if she elected to retire and receive the benefits on November 1, 2014 and $904,187.37 if she elected to retire and receive the benefits on November 1, 2016.

10. On or about April 9, 2009, Plaintiff received a written Pension Estimate Calculation letter dated April 8, 2009 from Kaiser in response to Plaintiff's telephone call on April 8, 2009. The letter stated the lump sum value of her pension benefits would be $892,602.41 if she elected to receive the benefits on November 1, 2014. The letter stated that the value of her monthly pension payments ranged from $5,331 to $16,765 for the different annuity options available to Plaintiff if she elected to begin receiving the benefits on November 1, 2014.

11. On numerous subsequent occasions, Plaintiff contacted KPRC by telephone to confirm that the information previously provided was accurate. Each time she contacted KPRC, she was consistently provided with pension estimates in a range between $800,000 and over $1,000,000 for

a lump sum distribution of her pension benefits if she elected to retire on November 1, 2014.

12. On numerous subsequent occasions, Plaintiff also logged into the KPRC website to confirm that the information previously provided was accurate. Each time she logged into the KPRC website, she was consistently provided with pension estimates in the range between $800,000 and over $1,000,000 for a lump sum distribution of her pension benefits if she elected to retire on November 1, 2014

13. Plaintiff thereafter contacted her financial adviser so she could plan her retirement. Relying upon the information provided by Kaiser, and KPRC's repeated oral and written assurances that the lump sum value of her pension benefits would be somewhere between $800,000 and over $1,000,000 if she elected to retire on November 1, 2014, Plaintiff and her financial adviser devised a plan whereby Plaintiff would systematically reduce the number of consulting clients in her business so that she could retire in 2014, at age 63.

14. Plaintiff followed the plan devised by her financial adviser to systematically phase out her consulting practice, terminating client relationships and reducing her workload to 50% of her capacity beginning in 2012, using her savings to supplement her earnings. She similarly reduced her workload again in 2013, relying on Kaiser's representations through the KPRC that she would receive a lump sum distribution of pension benefits on November 1, 2014 valued at approximately $1,025,173.66. By July of 2013, Plaintiff had successfully reduced her workload and her income by 90% in anticipation of retiring on November 1, 2014.

15. On or about August 6, 2013, Plaintiff again logged into the KPRC website to confirm the lump sum value of her pension benefits based upon her retirement date of November 1, 2014. The website confirmed that the lump sum value of her pension benefits as of November 1, 2014 would be $983,894.33 and the value of monthly payments in the form of a single life annuity as of November 1, 2014 would be $6,056.24.

16. On or about August 6, 2013, Plaintiff called the KPRC and spoke with a representative named Thomas who confirmed telephonically that the lump sum value of her pension benefits payable as of November 1, 2014 would be $983,894.

17. On or about June 1, 2014, Plaintiff logged into the KPRC website to confirm the lump sum value of her pension benefits payable as of November 1, 2014. The website confirmed that the lump sum value of her pension benefits payable as of November 1, 2014 would be $988,844. The same day, Plaintiff called the KPRC and spoke with another representative who telephonically confirmed that the lump sum value of her pension benefits payable as of November 1, 2014 would be $988,844. Plaintiff specifically inquired as to whether the amount would vary significantly in the six months remaining prior to her planned retirement date of November 1, 2014. KPRC 's representative told her that the amount would only vary slightly, perhaps by five percent, depending on market conditions.

18. On or about July 10, 2014, Plaintiff called the KPRC and spoke with a representative named Jennifer who confirmed that the lump sum value of Plaintiff's pension benefits would be in excess of $1,000,000, but also stated that Plaintiff would not be eligible to receive the benefits until

November 1, 2016, when Plaintiff attained age 65. On or about July 11, 2014, KPRC's representative Jennifer called Plaintiff to inform her that she was actually eligible to retire as of November 1, 2014. Plaintiff asked Jennifer to confirm the amount of her pension benefits payable as of November 1, 2014. Jennifer did not provide the information, but said that it would be provided by mail in the near future.

19. On or about July 12, 2014, Plaintiff logged into the KPRC website to confirm the amount of the lump sum benefit payable as of November 1, 2014, she re-entered the same personal information, as she had each prior time she logged into KPRC's website. For the first time, Plaintiff was informed that the lump sum value of her pension benefits based upon her retirement date of November 1, 2014 would be only $175,582.94. The amount was a massive reduction to less than 20% of the amount Plaintiff had been repeatedly promised she would receive. Plaintiff received no explanation or information regarding the dramatic decrease in the amount of retirement benefits she could expect upon retirement.

20. At the time Plaintiff received notice from Kaiser and KPRC that her pension benefits would only be a small fraction of what she had been repeatedly promised by Kaiser and KPRC, Plaintiff had already taken steps in reliance on the pension benefit information provided Kaiser and KPRC to reduce her workload and begin her phased retirement plan. In reliance on Kaiser's promises of a lump sum distribution of her pension benefits in the range between $800,000 and over $1,000,000, Plaintiff terminated a majority of her client relationships, reducing her workload and her income by 90% in accordance with the retirement plan she developed with her financial adviser.

21. On August 6, 2014, Plaintiff requested a benefit commencement kit from the KPRC. On August 13, 2014, Plaintiff received a letter from the KPRC stating that there would be a delay in processing her benefit commencement kit. The letter stated that "further research is necessary to ensure the accuracy of your benefit calculation." The letter did not state the amount of benefits that Plaintiff could expect upon retirement. The letter stated that the research was anticipated to take four to six weeks. It was not until approximately ten weeks later that Plaintiff received her retirement application packet. The packet stated that the lump sum payment of retirement benefits to be disbursed to her as of her November 1, 2014 retirement date was only $176,972.

22. Defendant Kaiser breached its fiduciary duties to Plaintiff when Kaiser and KPRC provided incorrect information to Plaintiff upon which she relied, resulting in pecuniary loss to Plaintiff. Plaintiff's phased retirement plan was based upon consistent information repeatedly provided by Kaiser and KPRC, both orally and in writing. Plaintiff was diligent in attempting to confirm that the information provided by Kaiser and KPRC was correct, and Kaiser and KPRC repeatedly provided oral and written confirmation. In exploring potential retirement, Plaintiff took her financial situation into consideration, consulted with a retirement planning professional, and took every possible step to make sure that her pension benefits would be sufficient to sustain an adequate standard of living for Plaintiff and her husband through the remainder of their lives. Plaintiff based her retirement plan upon the pension amounts stated and confirmed repeatedly by Kaiser and KPRC and executed her retirement plan accordingly.

23. Plaintiff suffered pecuniary loss due to Kaiser's fiduciary breaches. In anticipation of retirement, Plaintiff terminated 90% of her client relationships, which generated an annual income to her between $135,000 and $145,000. Plaintiff has since attempted to resurrect her business, re-establish her former client relationships, and solicit new client relationships, but she has had very little success in doing so. Her annual income from her consulting business has decreased dramatically to approximately $12,000 in anticipation of relying on her pension benefits from Kaiser and she has not been able to restore her prior annual income.

24. Plaintiff has not been able to reestablish the client relationships and has not been able to re-establish the income stream attributable to the terminated client relationships. Plaintiff's income has dropped precipitously and she is unable to maintain the standard of living she expected to maintain based upon Kaiser's repeated promises of a lump sum distribution of her retirement benefits in the range between $800,000 and over $1,000,000.

25. To the extent the representatives from KPRC who provided the incorrect information to Plaintiff were agents of Kaiser, Kaiser breached its fiduciary duties to Plaintiff to exercise prudence in the selection and retention of such agents.

FIRST CAUSE OF ACTION

(Claim for Surcharge under ERISA § 503(a)(3))
(Against Defendant Kaiser)

26. Plaintiff realleges and incorporates by reference all allegations contained in paragraphs 1 through 25, as if fully stated herein.

27. ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A), requires fiduciaries to discharge their duties solely in the interests of employee benefit plan participants and beneficiaries and for the exclusive purpose of providing benefits and defraying reasonable expenses of administering the plan.

28. ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B), requires fiduciaries to discharge their duties with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

29. ERISA § 503(a)(3), 29 U.S.C. § 1132(a)(3) empowers this Court to grant appropriate equitable relief to redress any violations of ERISA or to enforce any provisions of ERISA.

30. In committing the acts and omissions herein alleged, Defendant Kaiser breached its fiduciary duties in violation of ERISA §§ 404(a)(1)(A) and (B), 29 U.S.C. §§ 1104(a)(1)(A) and (B) by providing inaccurate information to Plaintiff which she relied upon and by failing to prudently select and retain service providers to act on Kaiser's behalf.

31. As a result of Kaiser's breaches of fiduciary duty, Plaintiff has been harmed, suffered pecuniary loss, and Kaiser has been permitted to retain assets and generate earnings on those assets to which assets and earnings Kaiser is not entitled.

32. As a result of Kaiser's breaches of fiduciary duty, Plaintiff is entitled to judgment and recovery pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), which entitles Plaintiff to appropriate equitable relief including but not limited to injunction, disgorgement, and surcharge, in an

amount to be proven at trial.

SECOND CAUSE OF ACTION

(Statutory Penalties for Withholding Documents under ERISA § 502(c))
(against Defendant Kaiser)

33. Plaintiff hereby realleges and incorporates by reference all allegations contained in paragraphs 1 through 32, as if fully stated herein.

34. ERISA § 502(c), 29 U.S.C. § 1132(c), allows the Court in its discretion to award Plaintiff a statutory penalty in an amount up to $110 per document per day when plan administrators fail within 30 days to provide copies of documents requested in writing pursuant to 29 C.F.R. § 2560.503-1 and ERISA §§ 102, 104(b)(4), and 502(c), 29 U.S.C. §§ 1022, 1024(b)(4), and 1132(c).

35. More than 30 days prior to the filing of this action, Plaintiff made a written request for documents to the administrators of the Plan to which Kaiser never responded, nor produced any documents whatsoever.

36. Wherefore, Plaintiff prays for judgment as set forth herein below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

A. For appropriate equitable relief pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), including but not limited to a declaration of Plaintiff's rights hereunder with respect to Kaiser and the Plan; disgorgement of any profits or ill gotten gain realized by Kaiser; and surcharge for any pecuniary injuries Plaintiff has suffered as a consequence of Kaiser's breaches of its ERISA fiduciary duties;

B. For as award of statutory penalties under ERISA § 502(c), 29

U.S.C. § 1132(c), in the amount of $110 per day per document, for Kaiser's failure to provide documents upon written request;

C. For reasonable attorneys' fees and costs incurred by Plaintiff in the prosecution of this action pursuant to ERISA § 502(g)(1), 29 U.S.C. § 1132(g)(1);

D. For pre-judgment interest and post-judgment interest on any and all amounts awarded to Plaintiff; and

E. For all such other relief as the Court deems appropriate and equitable.

DATED this 29th day of April 2015.

Creitz & Serebin LLP

By /s/ Joseph A. Creitz
Joseph A. Creitz
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