

10/27/2015 at 01:10:12 PM

Clerk of the Superior Court
By Rita Strom, Deputy Clerk

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF ORANGE**

10
11 JAMES SIPIN, an individual,

Case No. 30-2015-00817105-CU-WT-CJC

Judge Sheila Fell

12
13 Plaintiff,

PLAINTIFF'S COMPLAINT FOR
DAMAGES:

14
15 vs.

1. RETALIATION;
2. DISABILITY DISCRIMINATION;
3. AGE DISCRIMINATION; AND
4. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

16 KAISER FOUNDATION HOSPITAL, a
17 California Corporation; KAISER
FOUNDATION HEALTH PLAN, INC., a
18 California Corporation; THE PERMANENTE
MEDICAL GROUP, INC., a California
19 Corporation; and DOES 1 through 10,
20 Inclusive.

21 Defendants.

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23
24 Plaintiff, James Sipin, based upon personal knowledge as to all acts or events that Plaintiff
25 has undertaken or witnessed, and upon information and belief as to all others, complains and
26 alleges as follows

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PARTIES

1. Plaintiff, JAMES SIPIN, (Plaintiff or Mr. Sipin) is an individual residing in the County of San Diego, State of California.

2. Defendant KAISER FOUNDATION HOSPITAL, is and at all times herein mentioned was, an entity doing business throughout California, including, as relevant hereto, at the Irvine Medical Center, 6640 Alton Parkway, Irvine, CA 92618. Defendant Kaiser Foundation Hospital was and is subject to California law, including California's Fair Employment and Housing Act (the FEHA), codified at *California Government Code* §§12940 et seq. and 12900 et seq., Defendant Kaiser Foundation Hospital is, and at all relevant times was, a covered employer as defined in the FEHA, at *California Government Code* § 12926(d).

3. Defendant KAISER FOUNDATION HEALTH PLAN, INC., is and at all times herein mentioned was, a California Corporation doing business throughout California, including, as relevant hereto, at the Irvine Medical Center, 6640 Alton Parkway, Irvine, CA 92618. This Defendant was and is subject to California law, including California's Fair Employment and Housing Act (the FEHA), codified at *California Government Code* §§12940 et seq. and 12900 et seq., This Defendant is, and at all relevant times was, a covered employer as defined in the FEHA, at *California Government Code* § 12926(d).

4. Defendant THE PERMANENTE MEDICAL GROUP, INC. is and at all times herein mentioned was, a California Corporation, including, as relevant hereto, at the Irvine Medical Center, 6640 Alton Parkway, Irvine, CA 92618. This Defendant was and is subject to California law, including California's Fair Employment and Housing Act (the FEHA), codified at *California Government Code* §§12940 et seq. and 12900 et seq., This Defendant is, and at all relevant times was, a covered employer as defined in the FEHA, at *California Government Code* § 12926(d). The KAISER FOUNDATION HOSPITAL, the KAISER FOUNDATION HEALTH PLAN, INC., and THE PERMANENTE MEDICAL GROUP, INC. are hereinafter jointly referred to as "THE KAISER DEFENDANTS."

5. Plaintiff is ignorant of the true names and capacities of the Defendants sued as DOES 1 through 10, inclusive, and therefore sues these Doe Defendants by such fictitious names.

1 Plaintiff will amend this complaint to allege their true names and capacities when ascertained.
2 Plaintiff is informed and believes, and alleges that each of the fictitiously named Defendants is
3 responsible, at least in part, for the alleged occurrences and injuries to Plaintiff.

4 6. Plaintiff is informed, believes, and alleges that, at all times herein mentioned,
5 Defendants were the affiliates, agents, employees and the successor of the other Defendants, and
6 in doing the things hereinafter alleged, were acting within the course and scope of such agency
7 and/or employment or other business relationships and with the permission and consent of his/her
8 co-Defendants.

9 7. The named, corporate defendants were employers or joint employers of Plaintiff
10 and used trade names, such as "Southern California Permanente Medical Group," SoCal
11 Permanente," and SCPMG when communicating with Plaintiff and other employees, and are
12 hereinafter collectively referred to herein as part of "the Kaiser Defendants." The term
13 "Defendants" refers to the Kaiser Defendants, and the Doe Defendants, unless otherwise noted.

14 VENUE AND JURISDICTION

15 8. Venue is proper in this Court under *Code of Civil Procedure* §395, because
16 Plaintiff's injuries were incurred within this jurisdiction. Plaintiff worked for the Kaiser
17 Defendants in the County of Orange, State of California and commuted to work from his home in
18 the County of San Diego, State of California. The actions giving rise to Plaintiff's complaint arose
19 within this Court's jurisdiction.

20 EXHAUSTION OF ADMINISTRATIVE PROCEEDINGS

21 9. Plaintiff exhausted his administrative remedies by filing complaints of
22 discrimination and retaliation against the Defendants with the California Department of Fair
23 Employment and Housing on October 5, 2015, and thereafter, receiving "right to sue" notifications
24 of October 5, 2015. Plaintiff has duly exhausted all of the required administrative proceedings
25 and now properly files this Complaint for Damages against Defendants in this Court.

26 FACTS COMMON TO ALL CAUSES OF ACTION

27 A. The Defendants' Background

28 10. The Kaiser Defendants own and operate medical centers and hospitals at locations

1 throughout California.

2 11. In or about May 2008, the Kaiser Defendants opened a new state-of-the-art facility,
3 the Irvine Medical Center to provide health care services to Kaiser "members" in the Irvine area.
4 Charles Park has worked for the Kaiser Defendants at the Irvine Medical Center since it opened,
5 first as assistant director of operations, clinical laboratory, then as Director of Operations, Clinical
6 Laboratory.

7 B. Plaintiff James Sipin's Background

8 12. On or about June 4, 1992, Plaintiff James Sipin was hired by the Kaiser Defendants
9 to work in its clinical laboratories. Mr. Sipin worked as a Clinical Laboratory Scientist for the
10 Kaiser Defendants for over twenty-two years. He has worked at Kaiser's Irvine Medical Center
11 since it opened in May 2008. He received glowing evaluations. Throughout his 22+ years of
12 employment, Plaintiff performed his duties and responsibilities in an exemplary manner.
13 Throughout Plaintiff's long career with the Kaiser Defendants he was always a loyal and dedicated
14 employee of Kaiser.

15 C. Defendants' Discriminatory And Retaliatory Conduct

16 13. Mr. Sipin is sixty years old and a high wage earner. Within the past few years, Mr.
17 Sipin discovered that other older workers were wrongfully terminated by Kaiser for discriminatory
18 and retaliatory reasons. On one occasion, Mr. Sipin's supervisor, Cindy Schwartz, told Mr. Sipin
19 that Kaiser gets rid of unwanted workers by putting pressure on them until they quit or do
20 something to get fired. At the time this comment was made, Mr. Sipin never thought it would
21 apply to his employment.

22 14. In February 2014, the assistant department manager (ADA) Mary Lou Beaumont,
23 made ageist remarks to Mr. Sipin, asked about his retirement plans. Mr. Sipin replied, that he has
24 a child in college and can't retire, Ms. Beaumont made a negative remark about Mr. Sipin's
25 financial condition.

26 15. In May 2014, Mr. Sipin, who was diagnosed with prostate cancer, was accepted as
27 the first subject for a clinical trial research study for a novel immunotherapy. Mr. Sipin had
28 cleared it with his new supervisor to use intermittent sick days for the cancer treatment but the

1 ADA, Ms. Beaumont, objected to this plan and required Mr. Sipin to apply for a disability leave of
2 absence under the Family Medical Leave Act (FMLA). Mr. Sipin was approved for a disability
3 leave, through May 2015 so he could be treated for prostate cancer; however, Mr. Sipin continued
4 to work for the Kaiser defendants during his treatment. The Kaiser Defendants, by and through
5 their local management team at the Irvine Medical Center knew about Mr. Sipin's disability and
6 about his need for ongoing treatment and time off to care of his disability.

7 16. In July and August 2014, Mr. Sipin objected to, and complained, about his
8 supervisor Cindy Schwartz's strongly worded criticism of his work in a certain procedure. Mr.
9 Sipin complained about his supervisor's insistence that Mr. Sipin perform the procedure in a
10 manner that was contradictory and not supported by the procedure in place. Mr. Sipin
11 complained that the hospital medical staff was knowingly allowed to perform tests contradictory
12 to revised policy and procedure which could adversely affect the safety of patients at the Irvine
13 Medical Center. As a result of Mr. Sipin's complaints, a new procedure was posted in the lab that
14 mirrored Mr. Sipin's method.

15 17. In July 2014, Mr. Sipin supported a co-worker who was suspended as a form of
16 discipline for taking a nap at his station. Mr. Sipin objected to the suspension by submitting an
17 article to his supervisors that he had read in the *Los Angeles Times* about a recent class action
18 settlement of a case brought by county sanitation department employees who were permitted to
19 nap in their county-issued trucks during rest breaks. As a result of Mr. Sipin's complaint of the
20 discipline issued to his co-worker, the co-worker was promptly reinstated.

21 Defendants' Wrongful Termination of Plaintiff and Post-Termination Defamation

22 18. On or about October 28, 2014, Charles Park called Mr. Sipin into a meeting. Park
23 started the meeting by informing Mr. Sipin that he was terminating Mr. Sipin's employment,
24 allegedly for timecard fraud. Mr. Park claimed that Mr. Sipin engaged in timecard fraud by
25 editing his timecards on two or three occasions for a total of less than eight minutes to be on time.
26 During the termination meeting, Mr. Sipin asked about the application of Kaiser's time edit log,
27 which was understood to permit 3 edits per pay period in amounts up to six minutes each. Mr.
28 Sipin confirmed with Human Resources that Kaiser's policy permitted a grace period that would

1 not be counted against employees such that anything over 3 edits per pay period was considered
2 excessive. Ms. Sipin confirmed that the grace period allowed for three tardies/15 minutes per pay
3 period without discipline, yet, Mr. Park falsely stated that the lab's policy was different, and he
4 was enforcing a 2 tardy per pay period for discipline. Prior to this meeting, Mr. Sipin had zero
5 sick days for the previous year. He also noted that the payroll department frequently rounded
6 down his pay when the worked hours were not in whole numbers.

7 19. At the time of Mr. Sipin's termination, he was a tenured employee and receiving
8 cancer treatment and was on approved FMLA leave. Mr. Sipin had not been previously
9 disciplined or suspended for the alleged timecard offense, which allegedly occurred prior to
10 February 2014.

11 20. Defendants failed to perform a true or thorough investigation of the alleged
12 tardiness issue and did not treat Mr. Sipin fairly in handling the timecard "investigation" or his
13 termination.

14 21. On or about October 28, 2014, Mr. Sipin was wrongfully terminated from his
15 employment on pretextual grounds and based on discriminatory and retaliatory motives.

16 22. Mr. Sipin is informed and believes and thereon alleges that he was promptly
17 replaced by a Kaiser employee with less than five years of Kaiser experience, who is substantially
18 younger and not disabled, Martha Hunter, who is being paid less than what Mr. Sipin was being
19 paid and who is employed under a newer contract, at lower cost to Kaiser.

20 23. The Kaiser Defendants' Human Resources Director and Defendant Park defamed
21 Mr. Sipin during and after the termination meeting on October 28, 2014 by degrading his name
22 and professional occupation, and slandering his professional reputation by telling third parties that
23 Mr. Sipin had committed timecard fraud.

24 **FIRST CAUSE OF ACTION**
25 **RETALIATION**

26 (As Against the Kaiser Defendants and, DOES 1 through 4)

27 24. Defendants retaliated against Plaintiff because Plaintiff complained about
28 workplace safety issues and unlawful business practices, as further alleged above.

1 25. Defendants retaliated against Plaintiff for exercising his right to take time off from
2 work to care for and recover from his disability, cancer, pursuant to the Fair Employment and
3 Housing Act ("FEHA") and the California Family Rights Act (CFRA), which is part of FEHA.
4 CFRA and FEHA prohibit retaliation against anyone for exercising the right to leave. Plaintiff was
5 retaliated in violation of CFRA and FEHA, codified in *California Government Code* §12940(h),
6 because he had a disability.

7 26. As a proximate result of Defendants' retaliation, Plaintiff suffered economic
8 damages, including lost wages and benefits, and other compensatory damages in an amount to be
9 ascertained at the time of trial.

10 27. As a further proximate result of Defendants' retaliation, Plaintiff has suffered
11 humiliation, mental anguish, and emotional and physical distress, and has been injured in body
12 and mind all to Plaintiff's damage in an amount to be ascertained at the time of trial. Plaintiff has
13 suffered physical and mental injuries and has necessarily expended sums in the treatment of such
14 injuries, all to Plaintiff's damage in an amount to be ascertained at the time of trial. Plaintiff will
15 necessarily continue to expend sums in the future for the treatment of the physical, emotional and
16 mental injuries sustained by Plaintiff as a result of said Defendants' acts in an amount to be
17 ascertained at the time of trial.

18 28. As a direct and proximate result of Defendants' retaliation, Plaintiff has necessarily
19 incurred attorney's fees and costs. Plaintiff is entitled to recover the reasonable value of such
20 attorney's fees under the FEHA.

21 29. The above-described acts of Defendants were willful, intentional, and malicious
22 and done with the intent to vex, injure and annoy Plaintiff; and were done in conscious disregard
23 of Plaintiff's rights, and, thus, warrant the imposition of exemplary and punitive damages in an
24 amount sufficient to punish said Defendants and to deter others from engaging in similar
25 despicable conduct.

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**SECOND CAUSE OF ACTION
DISABILITY DISCRIMINATION
IN VIOLATION OF CALIFORNIA GOVERNMENT CODE §§ 12940 ET SEQ.**
(As Against the Kaiser Defendants and DOES 1 through 5)

30. Plaintiff incorporates and realleges by reference all previous paragraphs, and each and every part thereof, of this Complaint, with the same force and effect as though set forth at length herein.

31. The FEHA, *California Government Code* § 12940(a), provides in pertinent part that, "It shall be an unlawful employment practice . . . [f]or an employer, because of . . . physical disability. . . medical condition... to discharge the person from employment . . . or to discriminate against the person . . . in terms, conditions, or privileges of employment." This Cause of Action stems from Defendant's discriminatory decision to terminate Plaintiff due to Plaintiff's disability and/or perceived disability.

32. As a proximate result of discriminatory acts of Defendants, Plaintiff suffered economic damages, including lost wages and benefits, and other compensatory damages in an amount to be ascertained at the time of trial.

33. As a further proximate result of Defendants' discrimination, Plaintiff has suffered humiliation, mental anguish, and emotional and physical distress, and has been injured in body and mind all to Plaintiff's damage in an amount to be ascertained at the time of trial. Plaintiff has suffered physical and mental injuries and has necessarily expended sums in the treatment of such injuries, all to Plaintiff's damage in an amount to be ascertained at the time of trial. Plaintiff will necessarily continue to expend sums in the future for the treatment of the physical, emotional and mental injuries sustained by Plaintiff as a result of Defendants' acts in an amount to be ascertained at the time of trial.

34. As a direct and proximate result of the above-described acts of Defendants, Plaintiff has necessarily incurred attorney's fees and costs. Plaintiff is entitled to recover the reasonable value of such attorney's fees under the FEHA.

35. The above-described acts of Defendants were willful, intentional, and malicious and done with the intent to vex, injure and annoy Plaintiff, and were done in conscious disregard

1 of Plaintiff's rights, and, thus, warrant the imposition of exemplary and punitive damages in an
2 amount sufficient to punish Defendants and to deter others from engaging in similar despicable
3 conduct.

4 **THIRD CAUSE OF ACTION**
5 **AGE DISCRIMINATION**
6 **IN VIOLATION OF CALIFORNIA GOVERNMENT CODE §§ 12940 ET SEQ.**
7 (As Against THE KAISER Defendants, and DOES 1 through 6)

8 36. Plaintiff incorporates and realleges by reference all previous paragraphs, and each
9 and every part thereof, of this Complaint, with the same force and effect as though set forth at
length herein.

10 37. Each Kaiser Defendants, is an "employer" within the meaning of and subject to
11 *California Government Code* § 12900 et seq., commonly referred to as the *California Fair*
12 *Employment and Housing Act* ("FEHA").

13 38. *California Government Code* § 12940(a) provides in pertinent part that, "It shall be
14 an unlawful employment practice . . . [f]or an employer, because of . . . age... to discharge the
15 person from employment . . . or to discriminate against the person . . . in terms, conditions, or
16 privileges of employment."

17 39. California has a strong public policy interest in protecting employees that work in
18 California from discrimination on account of age. For instance, Government Code §12941
19 provides as follows: "The Legislature further reaffirms and declares its intent that the courts
20 interpret the state's statute prohibiting age discrimination in employment broadly and vigorously .
21 . . and with the goal of not only protecting older workers as individuals, but also of protecting
22 older workers as a group, since they face unique obstacles in the later phases of their careers."

23 40. California law also recognizes that the use of salary as the basis for differentiating
24 between employees when terminating employment may be found to constitute age discrimination.
25 Govt. Code §12941.

26 41. This Cause of Action stems from Defendant's discriminatory termination of
27 Plaintiff's employment by Defendants. Plaintiff is 60 years old.

28 42. After Plaintiff was terminated from his employment, his duties and responsibilities

1 were given to substantially younger employees. In addition to Plaintiff's employment being
2 terminated due to his age, his duties and responsibilities were given to employees who were
3 substantially younger than Plaintiff including, without limitation, Martha Hunter.

4 43. The discriminatory actions of Defendants against Plaintiff, including, but not
5 limited to terminating Plaintiff from Plaintiff's employment due to Plaintiff's age, constitute
6 unlawful discrimination based on age in violation of FEHA, codified in *California Government*
7 *Code* § 12940(a).

8 44. As a proximate result of the acts of Defendants, as described above, Plaintiff
9 suffered economic damages, including lost wages and benefits, and other compensatory damages
10 in an amount to be ascertained at the time of trial.

11 45. As a further proximate result of the aforementioned acts of Defendants, and each of
12 them, as alleged above, Plaintiff has suffered humiliation, mental anguish, and severe emotional
13 and physical distress, and has been injured in body and mind all to Plaintiff's damage in an amount
14 to be ascertained at the time of trial. As a proximate result of the acts of Defendants, and each of
15 them, as alleged above, Plaintiff has suffered physical and mental injuries and has necessarily
16 expended sums in the treatment of such injuries, all to Plaintiff's damage in an amount to be
17 ascertained at the time of trial. As a further proximate result of the acts of Defendants, and each of
18 them, inclusive, and each of them, as alleged above, Plaintiff will necessarily continue to expend
19 sums in the future for the treatment of the physical, emotional and mental injuries sustained by
20 Plaintiff as a result of said Defendants' acts in an amount to be ascertained at the time of trial.

21 46. As a direct and proximate result of the above-described acts of Defendants,
22 Plaintiff has necessarily incurred attorney's fees and costs and, pursuant to the provisions of
23 *California Government Code* §12965(b), Plaintiff is entitled to the reasonable value of such
24 attorney's fees and costs.

25 47. The above-described acts of Defendants, was willful, intentional, and malicious and
26 done with the intent to vex, injure and annoy Plaintiff; and were done in conscious disregard of
27 Plaintiff's rights, and, thus, warrant the imposition of exemplary and punitive damages in an
28 amount sufficient to punish said Defendants and to deter others from engaging in similar

despicable conduct.

FOURTH CAUSE OF ACTION
WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY
(As Against the Kaiser Defendants; and, DOES 1 through 10)

48. Plaintiff incorporates and realleges by reference all previous paragraphs, and each and every part thereof, of this Complaint, with the same force and effect as though set forth at length herein.

49. Under California law, no employee, whether they are an at-will employee, or an employee under a written or other employment contract, may be terminated for a reason that violates a fundamental public policy. California Courts have interpreted a fundamental public policy to be any articulable constitutional or statutory provision, or regulation that is concerned with a matter effecting society at large rather than a purely personal or proprietary interest of the employee or the employer. The public policy must be fundamental, substantial, and well established at the time of discharge. California law recognizes a public policy underlining the FEHA, prohibiting discrimination against older workers and against disabled workers.

50. The Kaiser Defendants discriminated against Plaintiff due to Plaintiff's age/or disability and terminated Plaintiff in violation of public policy, by terminating Plaintiff because of Plaintiff's status as a disabled, older employee, and in retaliation for Plaintiff's complaints of Defendants' unlawful business practices, as alleged above.

51. Plaintiff alleges that the Kaiser Defendants violated public policies underlying the FEHA and the California Labor Code.

52. As a proximate result of the acts of the Kaiser Defendants, Plaintiff suffered economic damages, including lost wages and benefits, and other compensatory damages in an amount to be ascertained at the time of trial.

53. As a further proximate result of the aforementioned acts of the Kaiser Defendants, Plaintiff has suffered humiliation, mental anguish, and emotional and physical distress, and has been injured in body and mind all to Plaintiff's damage in an amount to be ascertained at the time of trial. Plaintiff has suffered physical and mental injuries and has necessarily expended sums in

1 the treatment of such injuries, all to Plaintiffs damage in an amount to be ascertained at the time of
2 trial. Plaintiff will necessarily expend sums in the future for the treatment of the physical,
3 emotional and mental injuries sustained by Plaintiff as a result of said Defendants' acts in an
4 amount to be ascertained at the time of trial.

5 54. The above-described acts of Defendants were willful, intentional, and malicious
6 and done with the intent to vex, injure and annoy Plaintiff, and were done in conscious disregard
7 of Plaintiff's rights, and, thus, warrant the imposition of exemplary and punitive damages in an
8 amount sufficient to punish Defendants and to deter others from engaging in similar despicable
9 conduct.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for the following relief against all Defendants, to be
12 determined by a jury, as follows:

13 For all Causes of Action,

14 1. General damages in an amount according to proof, but in excess of the minimum
15 jurisdiction of this court;

16 2. For special damages in an amount according to proof, but in the excess of the
17 minimum jurisdiction of this court, in order to compensate the Plaintiff for Plaintiff's loss of past
18 and future earnings, and all damages flowing from the Plaintiff's loss of earnings, loss of job
19 security, failure to properly advance within Plaintiff's career, damage to Plaintiff's reputation; and
20 for loss of all future earnings and benefits and job promotions and privileges Plaintiff would have
21 had;

22 3. For consequential economic loss;

23 4. For all recoverable costs incurred in this suit;

24 5. For all interest as allowed by law;

25 6. Where available and proper for attorneys' fees and costs incurred in pursuing this
26 FEHA-based Complaint against Defendants;

27 7. For emotional distress damages that properly compensate Plaintiff for Plaintiff's
28 emotional injuries as a result of Defendants' actions as fully described in this Complaint for

1 damages;

2 8. For Injunctive Relief and Declaratory Relief in Accordance with Law;

3 9. For all applicable and appropriate exemplary and punitive damages; and,

4 10. For all other relief the Court deems proper and appropriate.

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7 DATED: October 26, 2015

BARRERA & ASSOCIATES

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9
10 By: 

Patricio Barrera

Attorney for Plaintiff James Sipin

11
12 DEMAND FOR JURY TRIAL

13 Plaintiff hereby demands a trial by jury.

14
15 DATED: October 26, 2015

BARRERA & ASSOCIATES

16
17 By: 

Patricio Barrera

Attorney for Plaintiff James Sipin