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CAROLYN MEDINA

FILED
Superior Court of California
County of Los Angeles

MAR 15 2016

Sherril R. Carter, Executive Officer/Clerk
By M. Soto, Deputy
Moses Soto

D-50 BEAUDET

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

CAROLYN MEDINA, an individual,
Plaintiff,

v.

SOUTHERN CALIFORNIA
PERMANENTE MEDICAL GROUP, a
partnership; KAISER FOUNDATION
HOSPITALS, a corporation; KAISER
FOUNDATION HEALTH PLAN, INC.,
a corporation; and DOES 1 through 10
inclusive,

Defendants.

CASE NO. BC613714

PLAINTIFF'S COMPLAINT FOR:

1. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY
2. VIOLATION OF GOV'T CODE § 12940(a) - DISCRIMINATION BASED ON AGE (DISPARATE TREATMENT AND DISPARATE IMPACT)
3. VIOLATION OF GOV'T CODE § 12940(a) - DISCRIMINATION BASED ON DISABILITY
4. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
5. VIOLATION OF LABOR CODE §§ 201 & 203 - FAILURE TO PAY ALL WAGES OWED UPON TERMINATION
6. VIOLATION OF CALIFORNIA LABOR CODE § 1198.5 - FAILURE TO PROVIDE PERSONNEL FILE

JURY TRIAL DEMANDED BY PLAINTIFF

CIT/CASE: BC613714
LEA/DEF#:
RECEIPT #: CCH524880047
DATE PAID: 03/15/16 02:46 PM
PAYMENT: \$435.00
RECEIVED:
CHECK: \$435.00
CASH:
CHANGE:
CARD:
310

PLAINTIFF'S COMPLAINT FOR DAMAGES & INJUNCTIVE RELIEF

1 Plaintiff Carolyn Medina ("Plaintiff") alleges as follows on knowledge as to
2 herself and her own acts/interactions, and on information and belief as to all other
3 matters:

4 **INTRODUCTION AND NATURE OF ACTION**

5 1. Plaintiff is a hardworking individual formerly employed by Kaiser (defined
6 below). Plaintiff never had any performance issues and was an exemplary employee, as
7 she excelled throughout her almost fifteen (15) year employment with Kaiser.

8 2. In approximately July of 2014, Plaintiff discovered errors in approximately
9 seventy-one (71) paychecks that resulted in Plaintiff not being paid all wages owed to
10 her. After complaining to her supervisor and Human Resources about not being paid her
11 wages properly, Plaintiff began experiencing hostile treatment at work. For example,
12 Kaiser's Assistant Medical Group Administrator (Sheryl Sack), threatened to write up
13 Plaintiff for being tardy (which was not true as Plaintiff was a punctual employee),
14 threatened that she could find discrepancies in time entries of employees compared to
15 garage swipes, and stated that if Plaintiff retired she would not have to worry about these
16 issues.

17 3. On January 21, 2015, Plaintiff suffered a debilitating injury after a fall
18 caused her to sustain serious injuries in the form of a back injury, twisted ankles and
19 knees, and a concussion. These injuries required Kaiser to provide Plaintiff with certain
20 accommodations, including weight restrictions and limited length of standing.

21 4. Following her complaints and return to work, Plaintiff was called into a
22 meeting with Kaiser's Human Resources and presented with five (5) incidents of time
23 card fraud allegations against Plaintiff for time entries that occurred months earlier.
24 Despite explaining that she could not recall the exact dates in questions and that the
25 minor discrepancies were likely a result of Plaintiff moving her car to street parking (that
26 was closer the building and had better lighting) when she was working in the evening for
27 safety purposes or to make loading materials into her car easier, Kaiser terminated
28 Plaintiff.

1 5. At the time of Plaintiff's termination, she was sixty-six (66) years old and
2 three and a half (3.5) months shy of receiving full medical benefits from Kaiser for life.
3 The logical connection is that Plaintiff's termination was due to her complaints about not
4 being paid her wages properly, her perceived and actual disability, her age, and the fact
5 that she was an older employee only three and a half (3.5) months shy of receiving full
6 medical benefits from Kaiser for life.

7 JURISDICTION AND VENUE

8 6. This Court has personal jurisdiction over Defendants (defined below)
9 because they are residents of, and/or conduct business in the State of California.

10 7. Under California Code of Civil Procedure section 395(a), venue is proper in
11 this County because Defendants reside in this County and the harm to Plaintiff occurred
12 in this County.

13 EXHAUSTION OF ADMINISTRATIVE PROCEEDINGS

14 8. Plaintiff exhausted her administrative remedies by timely filing a complaint
15 for the issues required to be raised herein against Defendants with the California
16 Department of Fair Employment & Housing ("DFEH") and thereafter received a "Right
17 to Sue" letter from the DFEH, which allowed Plaintiff one year from March 15, 2016 to
18 file this action.

19 PARTIES

20 9. Plaintiff, at all times relevant hereto, was and is a resident of the State of
21 California.

22 10. Plaintiff is informed and believes that Southern California Permanente
23 Medical Group ("SCPMG") is organized as a partnership under the laws of California,
24 with its principal place of business located in Los Angeles County at 393 East Walnut
25 Street, Pasadena, California.

26 11. Plaintiff is informed and believes that Defendant Kaiser Foundation Health
27 Plan, Inc. ("KFHP") and Defendant Kaiser Foundation Hospitals ("KFH") are
28

1 corporations organized and existing under the laws of California, with their principal
2 place of business located at 1 Kaiser Plaza, Oakland, California.

3 12. Defendants KFHP, KFH and SCPMG, if not separately noted are
4 hereinafter collectively referred to as "Kaiser" or "Defendants." These Defendants are
5 collectively liable under either a joint employer theory or a single enterprise theory.

6 13. Plaintiff is informed and believes that SCPMG, KFH, and KFHP are a
7 single enterprise and/or Plaintiff's joint employer. KFHP's total dominance over KFH
8 and SCPMG is evidenced by the fact that KFH and SCPMG's entire annual budget is set
9 by, controlled by, and approved by KFHP; all funds for KFH's and SCPMG's operations
10 come from KFHP; KFHP determines what "profit" if any SCPMG is allowed to make;
11 money that SCPMG uses to pay bonuses to its doctors comes from KFHP; SCPMG does
12 not bill any patients for most of its services; barring emergencies or extremely rare
13 instances, SCPMG doctors are only allowed to work for KFHP members exclusively; and
14 SCPMG's only source of money is from KFHP. KFHP provides virtually all legal,
15 human resources, insurance, communications, advertising, billing, and other necessary
16 services for KFH and SCPMG. Members buying health care coverage only pay money to
17 KFHP, not to SCPMG or KFH; they buy insurance from KFHP and they receive services
18 through SCPMG. Advertising for the health care offered by KFHP as health insurance
19 and provided through SCPMG doctors is done predominantly by KFHP, advertising as
20 "Kaiser Permanente" as seen in the multi-million dollar "Thrive" advertising campaign.
21 SCPMG does not own hospitals, medical buildings, or the clinics where they work, as
22 they are owned by KFHP. KFHP provides all telephone, fax, and e-mail services for
23 SCPMG. KFHP also provides health insurance and medical malpractice insurance to
24 SCPMG's doctors. KFHP lawyers routinely render legal advice and counsel to KFH and
25 SCPMG, and have unfettered access to KFH's and SCPMG's records; KFHP's Human
26 Resources department routinely investigates EEOC/DFEH or any other complaints of
27 discrimination, as well as issues regarding reasonable accommodations, KFH and
28 SCPMG's practices and employees, and reporting to KFHP's legal department on all

-3-

PLAINTIFF'S COMPLAINT FOR DAMAGES & INJUNCTIVE RELIEF

1 such investigations; KFHP lawyers and human resources staff do not obtain privacy
2 waivers when seeking records of KFHP and/or SCPMG employees or investigating their
3 claims; KFHP provides and pays for all facilities in which KFHP and SCPMG conduct
4 business.

5 14. The true names and capacities of the defendants named herein as DOES 1
6 through 10, inclusive, whether individual, corporate, associate or otherwise, are unknown
7 to Plaintiff who therefore sues such defendants by fictitious names pursuant to California
8 Code of Civil Procedure section 474. Plaintiff is informed and believes that all of the
9 DOE defendants are California residents. Plaintiff will amend this Complaint to show
10 such true names and capacities when they have been determined.

11 15. Plaintiff is informed and believes that at all times relevant herein, each
12 defendant designated, including DOES 1 through 10, was the alter ego, agent, managing
13 agent, principal, owner, partner, joint venturer, representative, manager, servant,
14 employee and/or co-conspirator of each of the other Defendants, and was at all times
15 mentioned herein acting within the course and scope of said agency and employment, and
16 that all acts or omissions alleged herein were duly committed with the ratification,
17 knowledge, permission, encouragement, authorization and consent of each defendant
18 designated herein.

19 **PLAINTIFF'S FACTUAL ALLEGATIONS**

20 16. In approximately September of 2000, Kaiser hired Plaintiff as a Health
21 Educator. Plaintiff's duties included, but were not limited to, educating Kaiser members
22 regarding issues related to improved health such as nutrition, diabetes prevention,
23 newborn care, weight management, asthma prevention, and other topics.

24 17. For almost fifteen (15) years, Plaintiff performed her duties at a very high
25 level and had never been previously written up for any workplace misconduct or
26 performance issues.

27 18. Starting in approximately 2008, Plaintiff was directly supervised by Wendy
28 Sasser ("Ms. Sasser"), Kaiser's Member Health Education Department Administrator.

-4-

PLAINTIFF'S COMPLAINT FOR DAMAGES & INJUNCTIVE RELIEF

1 19. In approximately July of 2014, Plaintiff discovered an error in her paycheck
2 that resulted in Plaintiff not being paid all wages owed to her. Specifically, Plaintiff
3 discovered that she was not paid all wages owed to her because her paycheck was
4 missing wages for evening differential pay (Kaiser compensated Plaintiff at a \$0.95
5 increased rate for work after 6:00 p.m.). (An email from Plaintiff to Ms. Sasser dated
6 July 16, 2014 about not receiving all wages owed to her is attached hereto as Exhibit 1.
7 An email from Plaintiff to Ms. Sasser dated July 31, 2014 about not receiving all wages
8 owed to her is attached hereto as Exhibit 2.)

9 20. Plaintiff learned from a fellow coworker, Silvia Delgado, that everyone in
10 the department except Plaintiff was receiving wages in the correct amount.

11 21. After looking into the issue, in early August of 2014, Plaintiff complained
12 to Ms. Sasser. When Plaintiff first brought the error to the attention of Ms. Sasser, Ms.
13 Sasser was dismissive, appeared upset by Plaintiff's complaint, and told Plaintiff she was
14 not entitled to any additional wages.

15 22. Plaintiff observed that Ms. Sasser shared Plaintiff's complaint with Arlene
16 Zepeda (Director of Human Resources).

17 23. After multiple complaints to Ms. Sasser about the error and learning that
18 others were receiving their wages, Ms. Sasser finally told Plaintiff she would fix the
19 error.

20 24. Being the diligent employee that she was, Plaintiff went back and reviewed
21 her past paychecks and discovered approximately seventy-one (71) past time cards that
22 were missing either all or part of wages owed to Plaintiff.

23 25. In approximately October of 2014, Plaintiff brought these incidents to the
24 attention of Ms. Sasser who was not pleased with Plaintiff's findings, as Ms. Sasser told
25 Plaintiff in a stern voice that that she would not be entitled to receive the wages that were
26 owed to her.

27 26. Following Plaintiff's complaints about not being paid her wages properly,
28 Ms. Sasser became more hostile in her treatment of Plaintiff. For example, Plaintiff had

1 taught classes in Spanish for years, but Ms. Sasser took away all of the classes taught by
2 Plaintiff in Spanish without prior notice claiming (for the first time) that Plaintiff was not
3 a certified interpreter.

4 27. On approximately November 3, 2014, Plaintiff was called into a meeting
5 with Ms. Sasser's supervisor and Assistant Medical Group Administrator, Sheryl Sack
6 ("Ms. Sack") and Tracy Hadfield (Kaiser's Manager of Bariatric Classes and acting
7 manager when Ms. Sasser was out of the office), where Ms. Sack indicated the need to
8 hire a social worker to replace Plaintiff.

9 28. During this meeting, Ms. Sack threatened Plaintiff by stating that she could
10 write Plaintiff up for being tardy, even though Plaintiff had a track record of being a
11 punctual employee.

12 29. Ms. Sack also threatened that she could find discrepancies in time entries of
13 employees compared to garage swipes.

14 30. After making these threats, Ms. Sack told Plaintiff numerous times that if
15 she "retired" she would not have to worry about these issues.

16 31. At the time these inappropriate comments were made, Plaintiff was sixty-
17 five (65) years old, and had no intention to retire, as she needed the job and was very
18 close to receiving lifetime medical benefits which are provided by Kaiser after fifteen
19 (15) years of service.

20 32. Despite these attempts to intimidate Plaintiff, she continued to perform her
21 work at an exceptional level.

22 33. Unfortunately, on January 21, 2015, Plaintiff suffered a debilitating injury
23 when she fell, striking her head on a wall, sustaining a concussion, twisting her ankles
24 and knees, and hurting her back in the process.

25 34. Plaintiff received urgent medical attention from Kaiser doctors and was
26 sent home with braces on both her knees and ankles and taken off work. Plaintiff's
27 doctor at Kaiser concluded that Plaintiff suffered a concussion and was told that for the
28 following month she would likely suffer from memory loss, dizziness, and disorientation

-6-

PLAINTIFF'S COMPLAINT FOR DAMAGES & INJUNCTIVE RELIEF

1 due to the trauma to her brain. Exacerbating her condition, Plaintiff already had a benign
2 brain tumor which was at risk of rupturing and intracranial bleeding.

3 35. Ms. Sasser was made aware of the injury by being present when the injury
4 occurred and when Plaintiff provided Ms. Sasser a doctor's note relating to Plaintiff
5 being taken off work by her doctor for her recovery. Plaintiff's doctor also requested that
6 Kaiser provide Plaintiff with certain accommodations, including weight restrictions and
7 length of standing. These requests related to Plaintiff's disability were also provided to
8 Kaiser Human Resources. (A copy of the work restrictions Plaintiff provided to Kaiser
9 between January 23, 2015 and March 11, 2015 is attached hereto as Exhibit 3.)

10 36. On January 23, 2015, only two days after her injury resulting in Plaintiff
11 being disabled and perceived as disabled, Ms. Sasser directed Lee Wong to pull
12 Plaintiff's past timecards and forwarded those records to Arlene Zepeda (Kaiser's Senior
13 Human Resources Consultant). (Attached hereto as Exhibit 4 is the email from Lee
14 Wong to Wendy Sasser with Plaintiff's timecards dated January 23, 2015.)

15 37. As soon as Plaintiff returned to work on approximately January 26, 2015,
16 Ms. Sasser told Plaintiff she was required to attend a meeting with Human Resources
17 where she was told about supposed errors on her time card. However, these were not the
18 timecard issues Plaintiff had complained about resulting in Plaintiff not being paid all
19 wages owed to her.

20 38. Instead, Plaintiff was called into this meeting to discuss here alleged
21 misconduct with respect to violations of Kaiser's time keeping policy on four (4)
22 occasions, which occurred months earlier (between October through December of 2014).
23 Specifically, Plaintiff was told that her timecard entries did not match her garage swipes
24 or video footage of Plaintiff leaving a specific exit.

25 39. Plaintiff was shocked and horrified because months earlier, Ms. Sack
26 threatened Plaintiff that she could find discrepancies in time entries of employees
27 compared to garage swipes.
28

1 40. Plaintiff explained that she could not recall the exact dates and requested
2 her parking garage stamps, but Plaintiff was denied her request.

3 41. Plaintiff also informed Ms. Sasser that the likely reason for the discrepancy
4 was that Plaintiff moves her car to street parking, which had better lighting and was
5 closer to the building, on certain evenings for safety purposes or to make loading
6 materials into her car easier.

7 42. Plaintiff further noted that Ms. Sasser was aware that Plaintiff had recently
8 suffered a concussion that impacted her memory.

9 43. Finally, Plaintiff also noted that any discrepancies were clearly not
10 intentional as the difference in pay caused by the discrepancies was very minor.

11 44. At the conclusion of the meeting, Plaintiff was told that an investigation
12 would be conducted and she would be informed of the results within a week. Plaintiff is
13 informed and believes that the reason for the investigation was due to Plaintiff's
14 complaints about not being paid all wages owed to her, her medical leave, perceived and
15 actual disability, her age, and due to the fact that she was three and a half (3.5) months
16 shy receiving full medical benefits from Kaiser for life.

17 45. Plaintiff is informed and believes that no other employee in her department
18 or under the supervision of Ms. Sasser was investigated for alleged time card fraud.

19 46. Despite Plaintiff's requests, the evidence that was used against her for these
20 alleged time card falsifications were never provided.

21 47. Also, after Plaintiff returned to work with restrictions, Plaintiff informed
22 Ms. Sasser that she needed to use her sick leave to attend physical therapy related to her
23 injury. Despite Plaintiff having accrued sick leave, Ms. Sasser forced Plaintiff to use her
24 paid time off (vacation time) for the time that Plaintiff was in physical therapy (twice a
25 week).

26 48. Due to these accusations and the harsh treatment Plaintiff received, she
27 began experiencing such high levels of stress that she was unable to sleep. The situation
28 caused Plaintiff severe stress and Plaintiff's doctor at Kaiser placed her on medical leave

1 starting on February 18, 2015, which was extended by Plaintiff's doctor at Kaiser.
2 Plaintiff's distress was so severe that it resulted in insomnia, anxiety depression, and
3 weight loss. For the first time in her life, Plaintiff's doctor at Kaiser prescribed her
4 powerful anti-depressants.

5 49. On approximately May 15, 2015, while on medical leave, Plaintiff received
6 a termination letter from Ms. Sasser due to allegedly "engaging in gross misconduct;
7 specifically for the falsification of your timekeeping information." Plaintiff's termination
8 letter is attached hereto as Exhibit 5.) There was no explanation regarding the massive
9 delay of over five (5) months since raising the issue with Plaintiff.

10 50. The termination letter provides five (5) supposed discrepancies with
11 Plaintiff's time records. These supposed discrepancies were calculated by comparing the
12 swipe entries from when Plaintiff entered/left the parking garage compared to Plaintiff's
13 time entries.

14 51. The dates of the five (5) supposed discrepancies were from five (5) to seven
15 (7) months prior on: (1) October 8, 2014 (107 minute discrepancy); (2) October 15, 2014
16 (56 minute discrepancy); (3) November 12, 2014 (4 minute discrepancy); (4) November
17 19, 2014 (65 minute discrepancy); and (5) December 11, 2014 (14 minute discrepancy).

18 52. Noticeably, the letter shows that with regard to the second supposed
19 discrepancy, Plaintiff entered the structure fifteen (15) minutes before she started
20 working as recorded on her timesheet. Similarly, with regard to the third supposed
21 discrepancy, Plaintiff entered the structure thirty-six (36) minutes before she started
22 working as recorded on her timesheet. This shows that Plaintiff was clearly not trying to
23 falsely increase the amount of time she worked and, if anything, was inadvertently under-
24 recording her hours worked to Kaiser's benefit.

25 53. During Kaiser's sham investigation, Plaintiff and her union representatives
26 (Silvia Delgado) explained to Kaiser that these discrepancies were easily explainable.
27 These discrepancies were attributable to Plaintiff moving her car to street parking, which
28

1 had better lighting and was closer to the building, on certain evenings for safety purposes
2 or to make loading materials into her car easier.

3 54. During Kaiser's sham investigation, Plaintiff and her union representatives
4 requested to see the video footage that Kaiser alleged showed Plaintiff leaving (to move
5 her car) but Kaiser refused. Plaintiff and her union representatives also requested to see
6 the video of the other entrance closer to Plaintiff's office, which showed her returning to
7 her office after she moved her car, but Kaiser refused.

8 55. The total amount of the supposed overage was only four (4) hours and six
9 (6) minutes (not even taking into account the times where Plaintiff appears to have
10 recorded her time fifteen (15) or more minutes after arriving to work). The resulting
11 evening differential pay for these supposed discrepancies was less than \$10.00.

12 56. When Kaiser terminated Plaintiff's employment, Plaintiff was a mere three
13 and a half (3.5) months shy of qualifying for full medical coverage for life.

14 **FIRST CAUSE OF ACTION**

15 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**
16 **(AGAINST ALL DEFENDANTS)**

17 57. Plaintiff incorporates by this reference all preceding and subsequent
18 paragraphs.

19 58. The decision to terminate Plaintiff was based, at least in substantial part, on
20 Plaintiff complaining about illegal activity (or what she reasonably perceived to be illegal
21 activity) in that Plaintiff felt she was being discriminated against based on her disability,
22 age, and in retaliation for her complaints regarding improper pay.

23 59. The actions of Kaiser as alleged herein constitute multiple violations (or
24 were reasonably believed by Plaintiff in good faith to constitute multiple violations) of
25 California statutes and regulations, including (but not limited to):

- 26 • **California Government Code § 12940(a)** (prohibiting discrimination
27 based on age);

- 1 • **California Government Code § 12941** ("The Legislature declares its
2 intent that the use of salary as the basis for differentiating between
3 employees when terminating employment may be found to constitute age
4 discrimination if use of that criterion adversely impacts older workers as a
5 group, and further declares its intent that the disparate impact theory of
6 proof may be used in claims of age discrimination.");
- 7 • **California Government Code § 12940(a)** (prohibiting discrimination
8 based on disability);
- 9 • **California Labor Code § 204** ("All wages . . . earned by any person in any
10 employment are due and payable twice during each calendar month . . .");
- 11 • **IWC Wage Order 4-2001 § 4(B)** (requiring timely payment of all wages
12 earned); and
- 13 • See Gould v. Maryland Sound Industries, Inc., 31 Cal. App. 4th 1137, 1147
14 (1995) (complaints about improper pay practices—even where the employee
15 is incorrect and the employer's practice did not violate law—constitute a
16 protected activity and a sufficient basis for a wrongful termination claim);
17 see also Vasquez v. Franklin Management Real Estate Fund, Inc., 222 Cal.
18 App. 4th 819, 829-830 (2013) ("wages are highly significant not only to the
19 employee who earns them, but also to his or her family, and to society in
20 general which will be burdened with supporting said persons if the
21 employee is denied his or her wages."); id. at 831 ("the prompt payment of
22 wages due an employee is a fundamental public policy of this state");
23 Barbosa v. IMPCO Technologies, Inc., 179 Cal. App. 4th 1116, 1118
24 (2009) ("The public policy in favor of the employer's duty to pay overtime
25 wages protects an employee from termination for making a good faith but
26 mistaken claim to overtime.")

27 60. In so doing, Kaiser acted with oppression, fraud and malice, as those terms
28 are used in California Civil Code section 3294. As such, Plaintiff is entitled to an award

1 of punitive damages. Such actions were ratified by Kaiser and also undertaken by its
2 managing agents, including but not limited to Wendy Sasser (Kaiser's Member Health
3 Education Department Administrator), Sheryl Sack (Kaiser's Assistant Medical Group
4 Administrator), and Arlene Zepeda (Kaiser's Senior Human Resources Consultant).

5 61. Based on personal observation and on information and belief regarding
6 their conduct toward each others, each of these individuals each set major corporate
7 policies for Kaiser, had the power to manage, supervise, evaluate, discipline and hire and
8 fire others, and the ability to enter into the substantial agreements on behalf of Kaiser, as
9 with vendors, contractors, employees, and Kaiser members.

10 62. As a proximate result of the aforesaid acts, Plaintiff has lost, and will
11 continue to lose, substantial earnings, promotional opportunities, fringe benefits and has
12 suffered and/or will suffer other actual, consequential and incidental financial losses, in
13 an amount to be proven at trial in excess of the jurisdictional minimum of this court.

14 63. As a proximate result of the aforesaid acts, Plaintiff has become mentally
15 upset, distressed, embarrassed, humiliated, and aggravated in a sum in excess of the
16 jurisdictional minimum of this court.

17 **SECOND CAUSE OF ACTION**

18 **VIOLATION OF GOV'T CODE § 12940(a) - DISCRIMINATION**

19 **BASED ON AGE**

20 **(AGAINST ALL DEFENDANTS)**

21 64. Plaintiff incorporates by reference all of the preceding and subsequent
22 paragraphs.

23 65. At all times relevant, Defendants were each an employer that were subject
24 to the Fair Employment and Housing Act, including California Government Code §
25 12940(a).

26 66. At the time Plaintiff was terminated, she was sixty-six (66) years old.

27 67. At all times relevant, Plaintiff was qualified for her position and performed
28 her duties satisfactorily.

1 68. Plaintiff was called into a meeting to discuss her complaints about not
2 being properly paid for her evening differential pay and was repeatedly questioned by
3 Ms. Sack about whether she would be retiring. On information and believe, Ms. Sack
4 never had any such conversation about retiring with relatively younger employees.

5 69. Plaintiff is informed and believes that her age was a motivating factor
6 and/or a substantial factor in Kaiser's decision to terminate her.

7 70. At all times material hereto, Kaiser maintained a continuing informal
8 policy, practice or conduct resulting in a disparate impact on older workers. This
9 informal policy, practice or conduct included but was not limited to discriminating
10 against older workers on the verge of obtaining lifetime medical benefits by terminating
11 those older workers under false pretenses or through unequal application of facially
12 neutral policies shortly before these older workers were scheduled to obtain lifetime
13 medical benefits through fifteen (15) years of service.

14 71. As a proximate result of the aforesaid acts, Plaintiff has lost, and will
15 continue to lose, substantial earnings, promotional opportunities, fringe benefits and has
16 suffered and/or will suffer other actual, consequential and incidental financial losses, in
17 an amount to be proven at trial in excess of the jurisdictional minimum of this Court.

18 72. As a proximate result of the aforesaid acts, Plaintiff has become mentally
19 upset, distressed, embarrassed, humiliated, and aggravated in a sum in excess of the
20 jurisdictional minimum of this Court.

21 73. In so doing, Kaiser acted with oppression, fraud and malice, as those terms
22 are used in California Civil Code section 3294. As such, Plaintiff is entitled to an award
23 of punitive damages. Such actions were ratified by Kaiser and also undertaken by its
24 managing agents, including but not limited to Wendy Sasser (Kaiser's Member Health
25 Education Department Administrator), Sheryl Sack (Kaiser's Assistant Medical Group
26 Administrator), and Arlene Zepeda (Kaiser's Senior Human Resources Consultant).

27 74. As a proximate result of the wrongful acts of Kaiser, Plaintiff has been
28 forced to hire attorneys to prosecute their claims herein, and has incurred and is expected

-13-

PLAINTIFF'S COMPLAINT FOR DAMAGES & INJUNCTIVE RELIEF

1 to continue to incur attorneys' fees and costs in connection therewith. Plaintiff is entitled
2 to recover attorneys' fees and costs under California Government Code section 12965(b).

3 **THIRD CAUSE OF ACTION**

4 **VIOLATION OF GOV'T CODE § 12940(a) - DISCRIMINATION BASED ON**
5 **DISABILITY**

6 **(AGAINST ALL DEFENDANTS)**

7 75. Plaintiff incorporates by reference all of the preceding and subsequent
8 paragraphs.

9 76. At all times relevant, Plaintiff was qualified for her position and performed
10 her duties satisfactorily.

11 77. At all times relevant herein, Plaintiff suffered from injuries sustained while
12 working for Kaiser that limited Plaintiff's ability to work, and therefore had an actual or
13 perceived physical and/or mental disability as that term is defined in California
14 Government Code § 12926.

15 78. At all times relevant, Kaiser was aware of Plaintiff's medical condition and
16 how it affected her major life activity of working, including needing to take medical
17 leave to recover.

18 79. Plaintiff is informed and believes that her disability was a substantial
19 motivating and/or a substantial factor in Kaiser's decision to terminate her.

20 80. As a proximate result of the aforesaid acts, Plaintiff has lost, and will
21 continue to lose, substantial earnings, promotional opportunities, fringe benefits and has
22 suffered and/or will suffer other actual, consequential and incidental financial losses, in
23 an amount to be proven at trial in excess of the jurisdictional minimum of this Court.

24 81. As a proximate result of the aforesaid acts, Plaintiff has become mentally
25 upset, distressed, embarrassed, humiliated, and aggravated in a sum in excess of the
26 jurisdictional minimum of this Court.

27 82. In so doing, Kaiser acted with oppression, fraud and malice, as those terms
28 are used in California Civil Code section 3294. As such, Plaintiff is entitled to an award

-14-

PLAINTIFF'S COMPLAINT FOR DAMAGES & INJUNCTIVE RELIEF

1 of punitive damages. Such actions were ratified by Kaiser and also undertaken by its
2 managing agents, including but not limited to Wendy Sasser (Kaiser's Member Health
3 Education Department Administrator), Sheryl Sack (Kaiser's Assistant Medical Group
4 Administrator), and Arlene Zepeda (Kaiser's Senior Human Resources Consultant).

5 83. As a proximate result of the wrongful acts of Kaiser, Plaintiff has been
6 forced to hire attorneys to prosecute their claims herein, and has incurred and is expected
7 to continue to incur attorneys' fees and costs in connection therewith. Plaintiff is entitled
8 to recover attorneys' fees and costs under California Government Code section 12965(b).

9 **FOURTH CAUSE OF ACTION**
10 **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR**
11 **DEALING**
12 **(AGAINST ALL DEFENDANTS)**

13 84. Plaintiff incorporates by this reference all preceding and subsequent
14 paragraphs.

15 85. In every contract, including the employment agreement between Kaiser and
16 Plaintiff, there is an implied covenant of good faith and fair dealing by each party not to
17 do anything which will deprive the other party of the benefits of the contract.

18 86. Kaiser breached the implied covenant of good faith and fair dealing by
19 purposefully terminating Plaintiff's contract approximately three and a half (3.5) short of
20 her obtaining lifetime medical benefits.

21 87. Kaiser acted intentionally to deprive Plaintiff of the bargain of obtaining
22 lifetime medical benefits after working for Kaiser for over fourteen (14) years.

23 88. The actions taken against Plaintiff deprived her from the benefits she was
24 entitled to under the terms of her employment agreement.

25 89. As a direct and proximate result of Kaiser's breach of the implied covenant
26 as alleged herein, Plaintiff has suffered and will continue to suffer economic and
27 compensatory damages in an amount to be ascertained at the time of trial.
28

FIFTH CAUSE OF ACTION**VIOLATION OF LABOR CODE §§ 201 & 203 - FAILURE TO PAY ALL WAGES
OWED UPON TERMINATION
(AGAINST ALL DEFENDANTS)**

90. Plaintiff incorporates by reference all of the preceding and subsequent paragraphs.

91. At all relevant times herein set forth, California Labor Code section 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

92. As alleged above, Kaiser intentionally and willfully failed to pay Plaintiff her wages (evening differential pay), earned and unpaid upon her termination.

93. On information and belief, Plaintiff contends that Kaiser's failure to pay all wages earned upon her termination in accordance with Labor Code section 201 was willful. At all times relevant, Kaiser had the ability to pay all earned and unpaid wages in accordance with Labor Code section 201 but intentionally chose not to comply.

94. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with section 201, then the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

95. Pursuant to Labor Code section 218.5, Plaintiff entitled to recover the full amount of her unpaid wages, waiting time penalties, reasonable attorneys' fees, and costs of suit. Plaintiff is entitled to recover interest on all due and unpaid wages and waiting time penalties under Labor Code section 218.6 and/or Civil Code section 3287(a).

SIXTH CAUSE OF ACTION**VIOLATION OF CALIFORNIA LABOR CODE § 1198.5 - FAILURE TO
PROVIDE PERSONNEL FILE
(AGAINST ALL DEFENDANTS)**

96. Plaintiff incorporates by reference all of the preceding and subsequent paragraphs.

97. California Labor Code section 1198.5(c) requires that an employer shall "maintain a copy of each employee's personnel records for a period of not less than three years after termination of employment." Labor Code section 1198.5(c)(3)(A) requires ("[t]he employer shall do all of the following . . . [w]ith regard to former employees, make a former employee's personnel records available for inspection, and, if requested by the employee or his or her representative, provide a copy thereof. . ."). Pursuant to Labor Code section 1198.5(b), the employer must provide the personnel record within 30 days of the employee making a written request. At all times relevant, Plaintiff was qualified for her position and performed her duties satisfactorily.

98. Plaintiff's prior counsel requested Plaintiff's personnel file on May 28, 2015, which Kaiser failed to provide under the time allotted under California law. (The request from Plaintiff's prior counsel is attached hereto as Exhibit 6.)

99. California Labor Code section 1198.5(l) provides that "[a] current or former employee may also bring an action for injunctive relief to obtain compliance with this section, and may recover costs and reasonable attorney's fees in such an action."

100. Accordingly, Plaintiff seeks injunctive relief in the form of an Order requiring Kaiser to immediately provide Plaintiff's personnel file, costs of suit, and reasonable attorneys' fees.

JURY TRIAL DEMANDED

101. Plaintiff demands a jury trial as to all causes of action.

PRAYER FOR RELIEF

102. WHEREFORE, Plaintiff prays judgment against Kaiser as follows:

- a. For general economic and non-economic damages according to proof;
- b. For special damages according to proof;
- c. For punitive damages where allowed by law;
- d. For prejudgment interest pursuant to California Civil Code section 3287 and/or California Civil Code section 3288 and/or any other provision of law providing for prejudgment interest;
- e. For attorneys' fees where allowed by law;
- f. For injunctive relief;
- g. For costs of suit incurred herein; and
- h. For such other and further relief as this Court deems just and proper.

Dated: March 15, 2016

AZADIAN LAW GROUP, PC



By: _____

George S. Azadian
Attorneys for Plaintiff,
CAROLYN MEDINA