

Superior Court of California

County of Orange



Case Number : 30-2016-00892160-CU-WT-CJC

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE COUNTY-CENTRAL DISTRICT

YASMINA CHIN, an individual.

Plaintiff,

v.

KAISER PERMANENTE INSURANCE
COMPANY, a business entity and DOES 1
through 25, inclusive,

Defendants.

Case No. 30-2016-00892160-CU-WT-CJC
Judge Frederick P. Horn

COMPLAINT FOR:

**1. BREACH OF THE COVENANT OF
GOOD FAITH AND FAIR DEALING;
2. DISCRIMINATION IN VIOLATION
OF THE FAIR EMPLOYMENT AND
HOUSING ACT
3. DISCRIMINATION IN VIOLATION
OF THE AMERICANS WITH
DISABILITIES ACT**

UNLIMITED JURISDICTION
[AMOUNT EXCEEDS \$25,000.00]

COMES NOW, Plaintiff who alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff YASMINA CHIN (hereinafter "Plaintiff") was at all times mentioned
herein, an individual residing in Riverside County, California.

2. Defendant KAISER PERMANENTE INSURANCE COMPANY (hereinafter
"Defendant") is a business entity and at all times mentioned herein was doing business in the State
of California at 441 North Lakeview Avenue, Anaheim, CA 92807.

3. The true names, identities and capacities whether individual, associate, corporate or Otherwise, of defendants DOES 1-50, inclusive, and each DOE in between, are unknown to Plaintiff at this time, who, therefore sues said Defendants by such fictitious names.

4. When the true names and capacities or participation of such factitiously designated Defendants are ascertained, Plaintiff will ask leave of the court to amend this Complaint to insert true names, identities and capacities, together with the proper charging allegations. Plaintiff is informed and believes and thereon alleges that each of the Defendants sued herein as DOE is responsible in some manner for the occurrences herein alleged and caused her injury.

5. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, each of the Defendants, and DOES 1 through 25, were the agents, employees and/or joint venturers, or working in concert with, the other co-defendants and were acting within the course and scope of such agency, employment and/or joint venture or concerted activity. To the extent that said conduct was perpetrated by certain defendants, the remaining defendants and DOES confirmed and ratified the same.

6. Whenever and wherever reference is made in this Complaint to any conduct by any Defendant, such allegations and references shall also be deemed to mean the conduct of each of the DOE defendants, acting individually as well as jointly and severally.

7. Venue is proper because the contracts that are the subject of this action were entered into and to be performed within the jurisdictional boundaries of this Court and because the acts or omissions giving rise to the claims herein took place in Riverside, California.

FACTUAL BACKGROUND

8. On or about October 20, 2014 Defendant hired Plaintiff as a customer service representative at the Member Service Contact Center located in Corona, California.

9. Plaintiff was required to complete training and after completing training, she would

1 be assigned to a desk and transferred from the "training area" to the "permanent area."

2 10. In or around January, 2015 Plaintiff fell ill and was hospitalized. As a result,
3 Plaintiff missed two weeks of work; Plaintiff was given a doctor's note for her absence.

4 11. When Plaintiff returned back to work she was harassed because of her time off due
5 to illness and asked personal questions regarding her illness. Plaintiff's operations manager,
6 Kathryn Stone, made inappropriate comments about Plaintiff's illness and pressed her for specific
7 information regarding her illness. Meanwhile, Defendant allowed other same time hire employees
8 to take time off work for a variety of medical issues. In one instance, Defendant called an
9 ambulance for a same time hire employee due to migraine complaints; however, when Plaintiff had
10 a relapse of her medical condition she was sent home. Thereafter, Plaintiff's parents immediately
11 drove her to the emergency room to seek medical attention.

12 12. Thereafter, Plaintiff's supervisor failed to continue to train her or offer any
13 substantive criticism or feedback. Proper ongoing training and constructive feedback was necessary
14 so that Plaintiff could move on from the "training area" to the "permanent area" wherein Plaintiff
15 would engage in permanent full time employment.

16 13. On or about January 26, 2015 Plaintiff was subject to a meeting with her supervisor
17 Jessica Fisikava and operations manager, Kathryn Stone. In said meeting Plaintiff was asked to
18 resign and was assured that if she failed to promptly resign that she would never be employed by
19 Defendant again.

20 14. Plaintiff was subject to two (2) other meetings on February 05, 2015 and February
21 09, 2015 wherein Plaintiff was again pressured to resign.

22 15. On or about February 10, 2015 Plaintiff requested a meeting with her supervisor
23 wherein she explained that she believed she was being harassed without cause. Plaintiff's
24 supervisor failed to take any action on the matter.

1 16. On February 11, 2015 Plaintiff's deductible manager, Esther Munoz called Plaintiff
2 in for a "side by side" meeting wherein Plaintiff was told that she was performing fine.

3 17. On February 17, 2015 Plaintiff was subject to another "side by side" meeting with
4 Elise Belt.

5 18. Said "side by side" meetings were held without cause, would last up to two (2)
6 hours and were solely for the purpose to harass Plaintiff and take Plaintiff away from her primary
7 responsibility of being on the phone.

8 19. On or about February 25, 2015 all of the employees, except Plaintiff moved desks
9 and were transferred from the "training area" to the "permanent area," even though Plaintiff had a
10 higher score average than other employees and was salutatorian of her training class. Plaintiff did
11 not have a desk for the last two weeks she was employed by Defendant; yet another effort to induce
12 Plaintiff to resign voluntarily rather than continue to be mistreated by employer personnel.

13 20. Plaintiff's probationary period ended March 03, 2015.

14 21. Plaintiff was the subject of three (3) additional "side by side" meetings on or about
15 March 03, 2015; March 04, 2015 and March 09, 2015, again for the purpose to harass Plaintiff.

16 22. On or about March 10, 2015 Plaintiff was declined time off of work for medical
17 reasons even though Plaintiff provided the requisite amount of notice and explained that she had an
18 appointment for tests to be conducted by her doctor and other specialists. Meanwhile other same
19 time hire employees were granted time off of work for a variety of reasons without the requisite
20 amount of notice.

21 23. On or about March 25, 2015 Plaintiff fell ill and immediately went to the emergency
22 room. She left messages for her supervisor informing her of her illness and sent a doctor's note
23 requiring her to be off work for two days.

24 24. On or about March 27, 2015 Plaintiff received a termination letter from Defendant
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1 via UPS.

2 25. Defendant terminated Plaintiff from her position as a customer care representative
3 without cause and after being consistently harassed by her supervisors. Said harassment took the
4 form of constant surveillance of her work, being pulled aside constantly by management without
5 any legitimate purpose for meetings that would last up to two hours, consistently asking personal
6 and specific questions about her medical condition and being denied time off work and
7 rescheduling for legitimate medical appointments.

8
9 26. Plaintiff filed a complaint with the California Department of Fair Employment and
10 Housing (“DFEH”) for her wrongful termination.

11 **FIRST CAUSE OF ACTION**

12 (Breach of the Covenant of Good Faith and Fair Dealing
13 and DOES 1-25, inclusive)

14 27. Plaintiff realleges and incorporates paragraphs 1 through 26 of this Complaint as
15 though fully set forth herein.

16
17 28. On or about October 20, 2014 Defendant hired Plaintiff as a customer service
18 representative.

19 29. In every employment contract there is an implied covenant of good faith and fair
20 dealing.

21 30. Defendant unfairly frustrated Plaintiff’s right to receive the benefits of the
22 employment contract in that Defendant refused to continue to train Plaintiff or offer her any
23 substantive criticism or feedback, thus violating the implied covenant of good faith and fair
24 dealing. Ongoing training and constructive feedback was imperative so that Plaintiff could move on
25 from the “training area” to the “permanent area” wherein Plaintiff would engage in full time
26 employment.
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31. Defendant held Plaintiff hostage for nine (9) “side by side” meetings for the sole purpose to harass Plaintiff and take her away from her primary responsibilities as a customer care service representative. The side by side meetings resulted in her inability to fully discharge her duties, further frustrating her ability to receive the benefits of the employment agreement and causing her call volume numbers to fall below the standard.

32. Moreover, Plaintiff's supervisors constantly harassed Plaintiff and asked her personal and specific information regarding her medical condition in violation of privacy laws, including but not limited to HIPPA and denied Plaintiff's requests for time off work and rescheduling for legitimate medical appointments.

33. As a result of Defendant's acts Plaintiff has suffered damages including but not limited to loss of earnings and emotional distress in an amount to be proven at trial.

SECOND CAUSE OF ACTION

(Discrimination in Violation of the California Fair Employment and Housing Act
and DOES 1 through 25, inclusive)

34. Plaintiff realleges and incorporates paragraphs 1 through 33 of this Complaint as though fully set forth herein.

35. Under the California Fair Employment and Housing Act (“FEHA”) it is unlawful for an employer to refuse to select a person for a training program leading to employment, bar or discharge a person from a training program leading to employment or to discriminate against a person in terms, conditions or privileges of employment because of a medical condition. (*See Cal. Gov. Code § 12940*).

36. Defendant violated the FEHA by discriminating against Plaintiff on the basis of her medical condition. Plaintiff's medical condition was a substantial motivating factor in denying Plaintiff her employment benefits and in her wrongful termination.

37. As a result of Plaintiff's medical condition and subsequent requests for time off and rescheduling for legitimate medical appointments, Defendant failed to continue to train her or offer Plaintiff any substantive criticism or feedback. In fact, Defendant actively and intentionally took steps to prohibit Plaintiff from completing her assigned tasks. Proper ongoing training and constructive feedback was necessary so that Plaintiff could move on from the "training area" to the "permanent area" wherein Plaintiff would engage in permanent full time employment.

38. Defendant engaged in a discriminatory training selection and purposefully subjected Plaintiff to nine (9) “side by side” meetings that would last up to two hours in order to harass Plaintiff and keep her away from her primary responsibilities as a customer care representative.

39. Plaintiff was the only person in her hiring class that did not move desks to the “permanent area” after the requisite training period even though Plaintiff had a higher score average than other employees. In fact, Plaintiff did not have a desk for the last two weeks she was employed by Defendant.

40. As a result of Defendant's acts Plaintiff has suffered damages including but not limited to loss of earnings and emotional distress in an amount to be proven at trial.

THIRD CAUSE OF ACTION

(Discrimination in Violation of the Americans with Disabilities Act
and DOES 1 through 25, inclusive)

41. Plaintiff realleges and incorporates paragraphs 1 through 40 of this Complaint as though fully set forth herein.

42. The Americans with Disabilities Act (“ADA”) prohibits discrimination on the basis of mental or physical disability with regard to any hiring, advancement, termination, training or other terms, conditions and privileges of employment. (*See 42 U.S.C. 1201 et. seq.*).

1 43. Defendant violated the ACA by discriminating against Plaintiff on the basis of her
2 physical condition. Plaintiff's physical condition was the motivating reason for denying Plaintiff
3 her employment benefits and in her wrongful termination.

4 44. Plaintiff was an employee of Defendant and Defendant knew that Plaintiff had a
5 physical condition that limited Plaintiff; however, despite Plaintiff's physical condition, Plaintiff
6 was able to perform her essential job duties with reasonable accommodation for her condition.

7 45. As a result of Plaintiff's medical condition and subsequent request for time off and
8 rescheduling for legitimate medical appointments, Defendant refused to continue to train her or
9 offer Plaintiff any substantive criticism or feedback. In fact, Defendant actively and intentionally
10 took steps to prohibit Plaintiff from completing her assigned tasks and eventually discharged
11 Plaintiff. Proper ongoing training and constructive feedback was necessary so that Plaintiff could
12 move on from the "training area" to the "permanent area" wherein Plaintiff would engage in
13 permanent full time employment.

14 46. Defendant engaged in a discriminatory training selection and purposefully
15 subjected Plaintiff to nine (9) "side by side" meetings that would last up to two hours in order to
16 harass Plaintiff and keep her away from her primary responsibilities as a customer care
17 representative.

18 47. Plaintiff was the only person in her hiring class that did not move desks to the
19 "permanent area" after the requisite training period even though Plaintiff had a higher score
20 average than other employees. In fact, Plaintiff did not have a desk for the last two weeks she was
21 employed by Defendant.

22 48. As a result of Defendant's acts Plaintiff has suffered damages including but not
23 limited to loss of earnings and emotional distress in an amount to be proven at trial.

24 //

1 **WHEREFORE**, the Plaintiff prays as follows:

2 **For the First Cause of Action for Breach of the Covenant of Good Faith and**

3 **Fair Dealing Against Defendant:**

- 4 1. For compensatory damages according to proof;
- 5 2. For general damages according to proof;
- 6 3. Punitive damages;
- 7 4. Lost wages;
- 8 5. For costs of suit incurred; and
- 9 6. For such other and further relief as the Court deems just and proper

10 **For the Second Cause of Action for Discrimination in Violation of The Fair**

11 **Employment and Housing Act :**

- 12 **Employment and Housing Act :**
- 13 1. For compensatory damages according to proof;
- 14 2. For general damages according to proof;
- 15 3. Punitive damages;
- 16 4. Lost wages;
- 17 5. For costs of suit incurred;
- 18 6. For such other and further relief as the Court deems just and proper

19 **For the Third Cause of Action for Discrimination in Violation of The**

20 **Americans With Disabilities Act :**

- 21 **Americans With Disabilities Act :**
- 22 1. For compensatory damages according to proof;
- 23 2. For general damages according to proof;
- 24 3. Punitive damages;
- 25 4. Lost wages;
- 26 5. For costs of suit incurred;
- 27
- 28

1 6. For such other and further relief as the Court deems just and proper

2
3 Dated: December 12, 2016

4 **RALLO LAW FIRM, PC**

5 

6
7 Arthur J. Travieso, Esq.
8 Amy Bingham, Esq.
9 Lacey L. London, Esq.
Attorneys for Plaintiff

10 VERIFICATION

11 I, Yasmina Chin, am Plaintiff in the above-entitled proceeding. I have read the above
12 complaint and know the contents thereof. The same is true of my own knowledge, except as to
13 those matters which are therein alleged on information and belief, and as for those matters, I
14 believe them to be true.

15
16 I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct.

18 **FAX SIGNATURE ATTACHED**

19 Dated:

20 Yasmina Chin

1 6. For such other and further relief as the Court deems just and proper
2

3 Dated: December 12, 2016
4

5 **RALLO LAW FIRM, PC**
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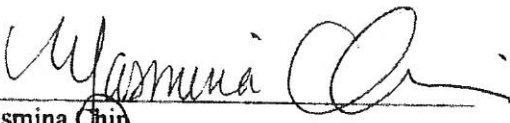
7 _____
8 Arthur J. Travieso, Esq.
9 Amy Bingham, Esq.
10 Lacey L. London, Esq.
11 Attorneys for Plaintiff

12 VERIFICATION
13

14 I, Yasmina Chin, am Plaintiff in the above-entitled proceeding. I have read the above
15 complaint and know the contents thereof. The same is true of my own knowledge, except as to
16 those matters which are therein alleged on information and belief, and as for those matters, I
17 believe them to be true.
18

19 I declare under penalty of perjury under the laws of the State of California that the
20 foregoing is true and correct.
21

22 Dated: 12-12-16
23

24 
25 _____
26 Yasmina Chin
27
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