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AUG 03 2018

Superior Court of California
County of Placer

7 Attorneys for Plaintiff,
8 JOYCELYN MELVIN

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF PLACER**
12 **UNLIMITED JURISDICTION**

14 JOYCELYN MELVIN,

15 Plaintiff,

16 v.

17 KAISER PERMANENTE and DOES 1 to 25,

18 Defendant.

Case No.:

COMPLAINT FOR DAMAGES

1. RACIAL/NATIONAL ORIGIN DISCRIMINATION
2. RETALIATION
3. FAILING TO PREVENT RETALIATION AND DISCRIMINATION
4. AGE DISCRIMINATION
5. WRONGFUL TERMINATION

REQUEST FOR JURY TRIAL

23 COMES NOW Plaintiff, JOYCELYN MELVIN, and alleges as follows:

24 **GENERAL ALLEGATIONS**

25 1. Plaintiff, JOCELYN MELVIN ("Plaintiff"), is an adult resident of the County of Placer,
26 California. Plaintiff was employed by Defendant KAISER PERMANENTE ("KAISER") from 2014 to
27 2016. In 2016, Plaintiff's employment was involuntarily terminated.

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1 10. Ms. Melvin was born in Guyana and has been in the United States since 1977.

2 11. Ms. Melvin attended college in New Jersey and has been in the nursing industry ever
3 since.

4 12. Ms. Melvin worked at Sutter Hospital for 12 years when she began working for Kaiser at
5 the main branch in December 2014. After six months, she was transferred to the Kaiser Roseville
6 location making \$87.00 an hour working as a part-time night nurse.

7 13. On June 27, 2016 Ms. Melvin received instructions to contact the Department of
8 Homeland Security and the Social Security Administration to contest her DHS referred status.

9 14. Ms. Melvin did just that and was informed that her middle name appeared on her social
10 security identification card but not on her driver's license.

11 15. On July 15, 2016, the E-verify system issued a notification that Ms. Melvin was no
12 longer eligible to work at Kaiser.

13 16. On July 18, 2016, Ms. Melvin received a letter from you regarding a Separation of
14 Employment stating that she was terminated due to this E-Verify system notification.

15 17. Ms. Melvin immediately began the lengthy process of resolving the mix-up.

16 18. It was not rectified until after her termination, and no extension of time was given by
17 Kaiser.

18 19. Ms. Melvin had the situation corrected by August/September as it was a simple clerical
19 error.

20 20. Ms. Melvin was a union member and therefore should have union priority when applying
21 for positions within Kaiser.

22 21. Ms. Melvin has applied to over 20 positions within Defendant KAISER and has not been
23 able to get an interview or new position despite her positive work history and experience.

24 22. Ms. Melvin reasonably believes based on this, she is being subjected to discrimination,
25 retaliation and wrongful termination based on her protected characteristics of race, national origin, and
26 age.

1 FIRST CAUSE OF ACTION

2 (Racial and National Origin Discrimination in Violation of *Government Code* §12940(a)

3 Against Defendant KAISER and DOES 1 to 25)

4 23. The allegations in paragraphs 1 through 22 are re-alleged and incorporated herein by
5 reference.

6 24. FEHA, codified in *Government Code* §§12900, *et seq.* makes it unlawful for an employer
7 to discriminate against an employee on the basis of the person's race or national origin. Discrimination
8 can be established under the disparate treatment theory by looking to the totality of the evidence and that
9 evidence demonstrates that the adverse employment action was caused at least in part by a discriminatory
10 motive. As established in *Sandhu v. Lockheed Missiles & Space Co.* (1994) 226 Cal.App.4th 846, 857, it
11 is sufficient to make a claim for racial or national origin discrimination when the discriminatory animus is
12 based on "membership in a group which is perceived as distinct when measured against" the other
13 employees.

14 25. Plaintiff was perceived distinct, as measured against the other employees during the
15 relevant time period. As detailed above, Defendants engaged in unlawful employment practices in
16 violation of FEHA by treating Plaintiff differently from the employees.

17 26. Racial and national origin discrimination was the motivating factor in Defendants'
18 actions and treatment of Plaintiff in violation of *Government Code* §12940(a).

19 27. *Government Code* §12940, in pertinent part states:

20 "It shall be an unlawful employment practice... (a) For an employer, because of the ... race ...
21 medical condition ... sex, gender, or ... age ... of any person... to discharge the person from
22 employment... or to discriminate against the person in compensation or in terms, conditions, or
23 privileges of employment... (k) For an employer... to fail to take all reasonable steps necessary
24 to prevent discrimination and harassment from occurring."

25 28. In Plaintiff's case and as detailed in the factual allegations above, Defendants failed to
26 take "all reasonable steps necessary" to prevent its employees and agents from engaging in
27 discrimination.

28 29. As a proximate result of the wrongful conduct of Defendants, Plaintiff suffered the
adverse employment actions detailed above, resulting in her wrongful termination.

1 36. At the time of her termination, Defendants knew that Plaintiff had worked for KAISER
2 for more than two (2) years and that her performance had exceeded expectations for the vast majority of
3 this time.

4 37. Despite this knowledge, Defendant falsely accused Plaintiff of misconduct and
5 terminated her employment without due process and based on the false assertion that her identity could
6 not properly be verified through the I-9 required for employment. The stated reason for her termination
7 was for clearly false thought as she had previously submitted the same identification to Defendant
8 KAISER and been permitted to work.

9 38. Further, Plaintiff reasonably believes, and therefore contends, that Defendant KAISER
10 allowed the use of identification with different names, similar to this situation, when a proper explanation
11 for the variation, such as marriage, name change, or other reason was offered by the employee.

12 39. Based on the facts outlined above, Plaintiff reasonably believes that her termination was
13 actually based on her race and national origin.

14 40. Plaintiff further reasonably believes that she was barred from rehire with Defendant
15 KAISER based on her race and national origin.

16 41. As a direct and proximate result of the wrongful conduct of Defendants as alleged herein,
17 Plaintiff has suffered injury to her business and professional reputation, loss of income and benefits, and
18 further has suffered and continues to suffer embarrassment, humiliation, and anguish all to her damage in
19 an amount according to proof. Plaintiff has also suffered injury to her health and wellbeing, thereby
20 entitling her general damages in an amount to be proved at trial.

21 42. Plaintiff also seeks the recovery of her reasonable attorneys' fees and costs herein
22 incurred as authorized by law.

23 43. Defendants committed the acts alleged herein maliciously, fraudulently, and
24 oppressively, with the wrongful intention of injuring Plaintiff, from an improper and evil motive
25 amounting to malice, and in conscious disregard of Plaintiff's rights. Plaintiff is thus entitled to recover
26 punitive damages from Defendants and each of them in an amount according to proof.

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1 and thus is a member of a class of persons protected from employment discrimination by the California
2 Fair Employment and Housing Act ("FEHA") based on her age.

3 53. Defendants knew that Plaintiff was above the age of 40 and that she was qualified and
4 capable of performing her job duties.

5 54. Defendants discriminated against Plaintiff in violation of *Government Code* §12940 by
6 (1) refusing to hire Plaintiff due to her age; (2) failing to prevent discrimination and retaliation against
7 Plaintiff due to her age; and (3) otherwise discriminating against Plaintiff with regard to the terms and
8 conditions of her employment because of her age.

9 55. As a proximate result of the aforementioned violations, Plaintiff has suffered and
10 continues to suffer substantial economic losses, in earnings and other benefits which she would have
11 received.

12 56. As a direct and proximate result of Defendants' willful, knowing, and intentional
13 discrimination against Plaintiff, she has suffered and continues to suffer, humiliation, emotional distress,
14 mental and physical pain and anguish and the manifestations thereof, in an amount to be proven at trial.

15 57. Plaintiff also seeks the recovery of reasonable attorneys' fees and costs herein incurred.
16 *Code of Civil Procedure* §1021 provides that attorneys' fees are recoverable in an action for which they
17 are specifically provided by statute. *Government Code* §12965(b) provides that reasonable attorney's fees
18 and costs are recoverable by the prevailing party under FEHA, at the discretion of the court. Plaintiff has
19 retained counsel for the prosecution of this action.

20 58. The conduct of Defendants subjected Plaintiff to cruel and unjust hardship in conscious
21 disregard of Plaintiff's rights. As a consequence of the aforesaid oppressive, malicious, and despicable
22 conduct, Plaintiff is entitled to an award of punitive damages in a sum to be shown according to proof.

23
24 **FIFTH CAUSE OF ACTION**

25 **(Wrongful Termination against Defendants KAISER and Does 1 to 25)**


26 59. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 58 as though fully
27 set forth herein.

3. For exemplary damages;
4. For interest on the amount of losses incurred in earnings, deferred compensation, and other employee benefits at the prevailing rate;
5. For costs of suit, including reasonable attorneys' fees; and
6. For such other and further relief as the Court may deem just and proper.

Dated: August 3, 2018

BOWEN & NGUYEN, LLP

By:


WILLIAM L. BOWEN
Attorney for Plaintiff,
JOCELYN MELVIN


REQUEST FOR JURY TRIAL

Plaintiff, JOCELYN MELVIN, hereby requests a trial by jury.

Dated: August 3, 2018

BOWEN & NGUYEN, LLP

By:


WILLIAM L. BOWEN
Attorney for Plaintiff,
JOCELYN MELVIN