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FILED

MAY 17 2013

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

E-filing

6 Attorneys for Plaintiff
7 RAMONA GROVES

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION

ORIGINAL

11 RAMONA GROVES,

12 Plaintiff,

13 v.

14 KAISER FOUNDATION HEALTH PLAN, INC.,
15 KAISER PERMANENTE RETIREMENT PLAN
16 and AON (formerly known as Hewitt),

17 Defendants.

CASE NO.

C13-2259

JSC

ADR

**COMPLAINT FOR DAMAGES AND
EQUITABLE RELIEF**

- 1) **EQUITTABLE ESTOPPEL**
- 2) **NEGLIGENCE**
- 3) **NEGLIGENT
MISREPRESENTATION**

DEMAND FOR JURY TRIAL

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Plaintiff RAMONA GROVES ("GROVES" or "Plaintiff") hereby alleges:

This is an action arising primarily under the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.* (hereinafter referred to as "ERISA").

JURISDICTION

1. This Court has subject matter jurisdiction pursuant to 29 U.S.C. §1132(e)(1). Furthermore, pursuant to 28 U.S.C § 1331, this Court has jurisdiction because claims for relief derive from the United States Constitution and the laws of the United States. Furthermore, this Court has supplemental jurisdiction of alleged violations of California law pursuant to 28 U.S.C. §1367.

VENUE

2. Venue is proper in the Northern District of California under 29 U.S.C. § 1132 (e)(2) because the Retirement Plan is administered in this District and therefore one or more of the Defendants reside and/or may be found in this District. Venue is also proper under 28 U.S.C. §1391 (b) as the events or omissions giving rise to Plaintiff's claims occurred within this District and one or more of the Defendants reside in this District.

PARTIES

3. Plaintiff, RAMONA GROVES, is, and at all times referred to in this Complaint was a resident of the State of California. Plaintiff is and at all relevant times relevant hereto was, a participant in KAISER PERMANENTE SALARIED RETIREMENT PLAN (hereinafter referred to as "PLAN") and thereby was entitled to receive benefits therefrom.

4. Defendant, the PLAN, is a salaried retirement plan organized and operating under the provisions of ERISA, 29 U.S.C. §§ 1001 *et seq.*

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1 Pension Plan Payments.” The booklet contained a Question-Answer section and specifically
2 referred to the effect of retiring in the year of 2009 versus 2010: “Q: I was planning on retiring in
3 January 2010 and taking a single-sum payment. Is it to my advantage to retire earlier? A: If you
4 were planning to retire early in 2010, but you are eligible to retire in 2009, it may be in your best
5 interest to retire before the changes become effective.”
6

7 12. The booklet also stated: “Before you make a retirement or a pension distribution
8 decision, review all your payment options carefully. Contact the Kaiser Permanente Retirement
9 Center to talk to a Retirement Specialist who can advise you about your particular options. You
10 may also want to talk to a professional financial planner. If you DO want to retire before the
11 PPA changes take effect, keep in mind that you must retire (and initiate your retirement
12 paperwork) no later than October 1, 2009 ...with the distribution date of December 1, 2009.”
13 The booklet also stated that an estimate of a pension benefit may be received over the phone by
14 contacting the Kaiser Permanente Retirement Center.
15

16 13. Plaintiff, who was 55 years old at the time, was eligible for early retirement in
17 2009. In reliance on materials provided by KAISER and particularly on the statement that “it
18 may be in her best interest” to retire early, Plaintiff contacted Kaiser Permanente Retirement
19 Center to discuss the possibility of early retirement.
20

21 14. On or about July 7, 2009, Plaintiff spoke with one of the Retirement Specialists at
22 Kaiser Permanente Retirement Center by the name of “Christopher.” Christopher stated that the
23 date of “early” retirement, prior to the implementation of retirement changes pursuant to the PPA,
24 would be November 30, 2009. Christopher quoted early retirement lump sum payout of
25 **\$729,677.05**. In response to Plaintiff’s inquiry about the amount she would receive if she chose
26 to retire AFTER January 1, 2010, Plaintiff was given a quote of \$619,697.11. Plaintiff,
27 concerned about such a big difference in the quotes, sought assurances from Christopher about
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1 the correctness of figures given. Christopher repeatedly stated that the quotes provided were
2 correct.

3 15. Plaintiff requested that Kaiser Permanente Retirement Center provide her with a
4 written statement of pension benefit estimates for both options – early retirement effective
5 November 30, 2009 and retirement effective January 1, 2010. KAISER, through statements
6 “delivered by Hewitt”, now known as AON, provided Plaintiff with the requested information.
7 The figures in the written statements matched the verbal information provided by Kaiser
8 Permanente Retirement Center during the telephone conversation on July 7, 2009. (Exhibit A.)
9 Plaintiff is informed and believes and thereon alleges that AON is a successor-in-interest to
10 Hewitt and is therefore liable for the actions, inactions, and errors and omissions committed by
11 the agents and employees of Hewitt at all relevant times alleged herein.
12

13 16. Early retirement was a life-changing decision for Plaintiff. Plaintiff’s husband
14 was unable to work due to diabetes complications and Plaintiff was the sole wage earner in her
15 household since 2003. Thus, the decision to retire early and give up stable monthly income
16 would have significantly affected Plaintiff’s financial situation.
17

18 17. After obtaining the written quotes from KAISER, Plaintiff, as suggested by
19 KAISER’s materials received in March 2009, sought the services of a professional financial
20 adviser. Plaintiff met with Kai Sonoyama of Fidelity Investments office in Sacramento,
21 California.
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23 18. Plaintiff provided Sonoyama with all relevant documents sent by KAISER and/or
24 AON reflecting the final figures of pension benefit payouts for the years of 2009 (\$729,677.05)
25 and 2010 (\$619,697.11) and all relevant information concerning Plaintiff’s personal financial
26 situation. Plaintiff explained that she needed to know whether it would be feasible to retire
27 based on the payout amounts considering: (1) her family’s living expenses and monthly financial
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1 obligations; (2) her husband's health and inability to work full-time; (3) the need to properly
2 maintain Plaintiff's residence; and (4) Plaintiff's then existing financial picture.

3 19. Sonoyama advised Plaintiff that, taking all the factors in consideration, it would
4 be feasible to retire based on the payout sum estimate of \$729,677.05.

5 20. Plaintiff was diligent in making sure that by retiring early she would not
6 jeopardize her family's financial stability. She placed numerous calls to KAISER and/or AON
7 to ensure that the information provided was correct. On each occasion the agent confirmed the
8 amount of the lump sum payout with the only exception being that the figure would slightly
9 increase over time which was reasonably understood by Plaintiff to be as a result of further
10 included amounts such as sick time and other factors, as discussed herein.

11 21. After significant consideration and in reliance on the information provided by
12 Defendants, Plaintiff decided to retire early from a successful career of 35 years with KAISER.
13 In August 2009, Plaintiff notified her manager Gregory Davies of her intent to retire effective
14 November 30, 2009. Had Plaintiff been properly informed by the PLAN of the correct
15 calculations, she would have immediately withdrawn her resignation and remained as a full-time
16 employee of KAISER.

17 22. After she gave notice of intent to retire early, Plaintiff began the process of
18 completing the required paperwork. During the process that lasted several months, she made
19 countless calls to Kaiser Permanente Retirement Center to discuss various topics, including the
20 payout amount. During each of these telephone calls the payout amount was confirmed,
21 notwithstanding minor modifications. Plaintiff relied, to her detriment, on documents provided
22 to her by Defendants which indicated that the amount calculated was "final."

23 23. The amount of payout was recalculated by KAISER and/or AON three times.
24 The total pension benefit payout sum increased to \$748,740.93, reflecting the unused paid time
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1 off and an accrued extended sick leave. In October 2009, Plaintiff was notified that her payout
2 amount increased to \$748,961.97. In January 2010, prior to receiving the payout, Plaintiff was
3 notified by KAISER and/or AON that “based on the results of the **new calculation, your final**
4 **lump sum payment will be equal to \$766,889.54.” On January 15, 2010, the PLAN issued a
5 final check in the amount of \$766,889.54. Plaintiff has since commingled these funds with
6 others and has incurred and paid substantial taxes as a result of the amount of the lump sum
7 payout as described above and having accessed portions of these funds. Furthermore, Plaintiff
8 made a substantial and life altering decision to resign after thirty-five (35) years of employment
9 and to retire early in reliance on the information provided by Defendants as to the amount of the
10 lump sum payout.
11**

12 24. Prior to March of 2009, Plaintiff never decided to take early retirement because it
13 did not make financial sense to do so. Plaintiff was the sole wage earner in her household and
14 had to remain employed to sustain an adequate standard of living. She had a well-paid
15 (\$140,000 a year) position with full benefits, which she enjoyed and found extremely rewarding.
16 Plaintiff’s decision to retire early was triggered by the March 2009 KAISER letter regarding
17 potential changes in her pension plan and the quoted (both orally and in writing) amount of the
18 lump sum payout. Plaintiff rationally planned her retirement based on the payout amounts
19 provided to her by KAISER and/or AON. She reasonably relied on the accuracy of information
20 provided to her by KAISER and/or AON to her detriment.
21

22 25. On or about November 16, 2011, over two years after the payout to Plaintiff, she
23 received a call from Christopher (last name currently unknown to Plaintiff) at Kaiser Permanente
24 Retirement Center stating that as a result of an audit, it was determined that Plaintiff’s early
25 retirement payout was overplayed in excess of \$257,000.00. Plaintiff was not given any further
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1 explanation as to the reason for the miscalculation. The Kaiser Permanente Retirement Center
2 representative informed Plaintiff that a letter with further explanations was forthcoming.

3 26. Subsequently, Plaintiff received the "Overpayment Notice" from KAISER and/or
4 AON dated November 15, 2011. The Notice stated: "As a result of a recent audit, it's been
5 determined the pension benefit you received was based on incorrect information. Specifically,
6 your benefit payment was based on incorrect pay rates beginning March 1, 2006 to February 28,
7 2007... Our records show you received a pension benefit in the amount of \$766,889.54 and the
8 correct pension benefit amount is \$526,504.26. **The difference between these amounts is an
9 overpayment plus interest of \$257,903.91 and you're required to return this amount to the
10 pension plan.**" The Notice did not provide any further explanation of miscalculation.
11

12 27. On or about December 14, 2011, Plaintiff filed a Claim Initiation Form with
13 Kaiser Permanente Human Resource Service Center disputing the alleged overpayment of her
14 pension benefit payout.
15

16 28. On or about January 24, 2012, Plaintiff received a "Notice of Denial." The
17 Notice stated: "On February 26, 2006 you received a pay increase of **\$8,367.83**. When the
18 Kaiser Permanente Retirement Center calculated your pension benefit, a monthly pay rate of
19 **\$86,367.83** was used in lieu of the correct compensation for that pay increase. This resulted in
20 an overstated Final Average Compensation (FAC) of \$12, 677.85. The correct FAC that should
21 have been used is **\$8,657.58**. This resulted in your pension benefit being overstated."
22

23 29. Plaintiff timely appealed the Denial of Benefit Claim for overpayment of pension
24 benefit. On or about June 11, 2012, KAISER and/or the PLAN denied Plaintiff's Appeal. This
25 denial was arbitrary and capricious. Plaintiff has exhausted all of the requisite administrative
26 remedies.
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1 employee of KAISER, reasonably and detrimentally relied on information provided to her by
2 Defendants.

3 37. Plaintiff chose to retire early solely based on the figures provided to her by
4 Defendants. Plaintiff had been employed with KAISER for 35 years and had a well-paid, stable
5 position with full benefits. She did not plan to retire early until KAISER notified its employees
6 about the potential change in the pension benefits due to recent change in legislation. But for the
7 quotes given to Plaintiff in 2009, she would not have retired early.
8

9 38. Pursuant to the PLAN, Plaintiff is prohibited from seeking full-time employment
10 with KAISER. No part-time positions are available at Kaiser in Plaintiff's line of work.
11

12 39. Plaintiff was the sole wage earner in her household since 2003. Her husband is
13 unable to work due to diabetes complications. Plaintiff, in exploring early retirement, took her
14 financial situation into consideration and took every possible step to make sure that the pension
15 would be sufficient to sustain an adequate standard of living for Plaintiff and her husband
16 through the rest of their lives. Plaintiff rationally planned her life based on the amounts stated by
17 Defendants.

18 40. Plaintiff was diligent in attempting to obtain correct figures from Defendants.
19 She sought assurances that figures provided were true and correct. Defendants repeatedly
20 provided oral and written estimates of what Plaintiff reasonably believed were correct pension
21 benefit payout estimates.
22

23 41. Defendants should be equitably estopped from demanding recoupment of pension
24 benefit overpayment.

25 42. Recoupment of overpayment in these unique circumstances would result in unjust
26 enrichment to Defendants. The recoupment sought by the Defendants does not belong to them in
27 good conscience. The overpayment occurred through no fault of Plaintiff. Plaintiff had no way
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1 of knowing she was being overpaid. In the event this Court finds that the facts of this unique
2 case do not warrant utilization of the equitable estoppel test typically employed by the Ninth
3 Circuit, Plaintiff respectfully requests this Court to apply a more appropriate test applicable to
4 the particularly unique circumstances of this case, in order to provide Plaintiff with the
5 appropriate equitable relief. More specifically the test utilized by the Third Circuit would be the
6 appropriate test given the unique circumstances of this case.
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8 43. As a direct and proximate result of Defendants' actions, Plaintiff has been caused
9 to incur attorneys' fees and court costs in the amount not now known to Plaintiff.

10 **SECOND CLAIM FOR RELIEF**
11 **NEGLIGENCE**
12 **(Against AON)**

13 44. Plaintiff re-alleges and incorporates paragraphs 1 through 43, inclusive, as though
14 fully set forth herein.

15 45. Plaintiff was a PLAN participant and an employee of KAISER. Plaintiff is
16 informed and believes, and thereon alleges that Defendant AON served as a non-fiduciary
17 actuary to the PLAN. As the actuary, Defendant AON had a duty of reasonable care in
18 providing Plaintiff with accurate pension benefit estimates related to her retirement from
19 KAISER. Defendants now expect her to pay \$260,934.23, plus alleged interest, in overpayment
20 to the PLAN.

21 46. Defendant AON breached its duty by failing to act with a reasonable standard of
22 care in properly calculating Plaintiff's pension benefit payout. Following the initial
23 communication of the pension benefit payout estimates, Plaintiff was given the same incorrect
24 information during the course of several months. Defendant AON "recalculated" Plaintiff's
25 pension benefits payout a number of times. Each time AON had an opportunity to discover the
26 error, but failed to do so.
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1 47. As a direct, legal and proximate result of the negligence, carelessness,
2 recklessness of Defendant AON, as alleged hereto, Plaintiff was induced into early retirement,
3 gave up lucrative and stable employment, thereby sustaining a loss of income. Plaintiff, due to
4 the provisions of the PLAN is unable to obtain full time employment with KAISER, thereby
5 sustaining further loss in income, all to Plaintiff's damage in a sum to be shown according to
6 proof.
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8 **THIRD CLAIM FOR RELIEF**
9 **NEGLIGENT MISREPRESENTATION**
 (Against AON)

10 48. Plaintiff re-alleges and incorporates paragraphs 1 through 47, inclusive, as though
11 fully set forth herein.

12 49. Plaintiff, in exploring early retirement, sought a comparison of pension benefit
13 payouts from AON. Plaintiff was given the amounts of \$729,677.05 if Plaintiff were to retire in
14 2009 and \$619,697.11 if she were to retire after January 1, 2010. AON assured Plaintiff on
15 numerous occasions that the estimates were correct. The estimates were wrong.
16

17 50. Defendant AON based its calculations on the wrong salary amount. AON could
18 not have reasonably believed that the estimates provided to Plaintiff were correct. AON was
19 fully aware of Plaintiff's salary payment history. Showing an employee's salary of \$8,367.83
20 one month and \$86,367.83 the next month is unreasonable. In providing the estimates to
21 Plaintiff, Defendant had multiple opportunities to detect and correct the error, but failed to do so.
22

23 51. AON knew KAISER sent a notice about a forthcoming change in its retirement
24 policy to its employees. AON knew that Plaintiff was among other KAISER employees (over
25 200 people) who were exploring early retirement in response to the notice. AON knew that
26 Plaintiff would act in reliance on the estimates provided to her.

27 52. Plaintiff's reliance on the negligent misrepresentation was justified and
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1 reasonable because she contacted AON to obtain pension benefit estimates, as suggested by her
2 employer, KAISER. An employee would expect specific statements concerning important
3 matters, such as retirement benefit estimates, to be accurate.

4
5 53. At the time the negligent misrepresentation regarding pension benefit estimates
6 were made by AON, Plaintiff did not know of the falsity of the representation. In reliance upon
7 the pension benefit estimates given by AON, Plaintiff was induced and did retire early. Plaintiff
8 gave up a lucrative and stable position with KAISER, thereby sustaining loss in income.
9 Plaintiff's husband is unable to work due to diabetes complications, so Plaintiff was the sole
10 breadwinner when she was employed prior to early retirement. Had Plaintiff known the true
11 figures, she would have never even considered early retirement.

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13 54. Plaintiff, pursuant to the PLAN, is prohibited from obtaining comparable full-time
14 position with KAISER. Currently, no part-time employment with KAISER is available. As a
15 proximate result of the negligent misrepresentation of the Defendant as herein alleged, Plaintiff
16 thereby sustained loss in income a sum to be shown according to proof.

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18 55. As a proximate result of the negligent misrepresentation of the Defendant as
19 herein alleged, Plaintiff was induced to retire early. She is now expected to pay \$260, 934.23 in
20 overpayment to the PLAN.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff RAMONA GROVES prays for the following relief from
23 Defendants, as specified, for each of the above causes of action:

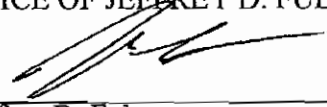
- 24 1. For equitable relief pursuant to 29 U.S.C. § 1132 (a)(3) including, but not limited
25 estopping and enjoining Defendants from demanding recoupment of overpayment
26 of pension benefits and declaratory relief prohibiting them from any further
27 collection action;

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2. For compensatory damages against Defendant AON, including general and special damages, according to proof;
3. For costs of suit including reasonable attorneys' fees against KAISER and PLAN; and
4. For all such further relief that is just and proper against all Defendants.

Dated: May 17, 2013

LAW OFFICE OF JEFFREY D. FULTON

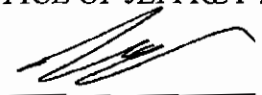
By: 
Jeffrey D. Fulton
Natalya Grunwald
Attorneys for Plaintiff
RAMONA GROVES

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury to the extent to which it is appropriate.

Dated: May 17, 2013

LAW OFFICE OF JEFFREY D. FULTON

By: 
Jeffrey D. Fulton
Natalya Grunwald
Attorneys for Plaintiff
RAMONA GROVES