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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

SHEILA KENNEDY

Plaintiff

vs.

**KAISER FOUNDATION HEALTH
PLAN, INC; KAISER FOUNDATION
HOSPITALS, INC.; and THE
PERMANENTE MEDICAL GROUP;
all doing business as KAISER
PERMANENTE MEDICAL CARE
PROGRAM**

Defendants

Case No. **RG 16822544**

COMPLAINT FOR DAMAGES
(Employment discrimination)

DEMAND FOR JURY TRIAL

INTRODUCTION

1. This is an action for employment discrimination and retaliation against Kaiser Permanente entities, arising out of a pattern and practice of race discrimination against its African American employees. Plaintiff Sheila Kennedy is an African American woman who was employed at Kaiser for more than 18 years. Throughout her employment, Ms. Kennedy was subject to systemic discrimination and retaliation due to her race and disability, including hostile work environment and denial of numerous employment opportunities, in the Chemical Dependency and Rehabilitation Department (CDRD) where she had worked since 2002, and throughout the Kaiser Northern California organization. Plaintiff's administrative charge of discriminatory termination is pending with the Department of Fair Employment and Housing, and an amended complaint will be filed here if that claim is not resolved in the administrative process.

2. Although a substantial percentage of Kaiser's workforce is comprised of African-American employees, due to systemic discrimination by a management that is predominately non-African-American, this class of employees are too often denied training, job reclassifications, positive performance reviews, transfers and promotions, and they are disproportionately subjected to discipline and termination. As a result, Kaiser's workforce is rigidly stratified with a disparate distribution by race and gender, with African-American and African-American women predominantly assigned to the lowest paying positions with the least chance of advancement, and predominantly excluded from higher paying and more secure supervisory and management positions – positions with the greatest influence and decision-making authority over reviews, promotions, retention, and termination.

3. Plaintiff's claims are brought pursuant to the California Fair Employment and Housing Act (FEHA), Cal. Government Code §12940 *et seq.* She seeks to end Kaiser's discriminatory practices and obtain monetary relief, including punitive damages.

THE PARTIES

4. Plaintiff Sheila Kennedy is an African American woman who resides in California. She was employed at Kaiser Permanente from for more than 18 years, until her termination in February 2016. Ms. Kennedy worked in various positions, including CPRD related positions of intern, substance abuse counselor, and instructor at the domestic violence program, among others.

5. Kaiser Foundation Health Plan, Inc. is a nonprofit corporation, licensed as a health care service plan, headquartered in Alameda County. Health Plan enrolls members in individual and group plans, and in Northern California, provides hospital and medical services for its members through separate contracts with Medical Group and Hospitals.

6. Kaiser Foundation Hospitals, Inc., is a nonprofit corporation, headquartered in Alameda County; it operates hospitals and medical centers in California. Hospitals receives its funding from Health Plan, and provides infrastructure and facilities for the benefit of Medical Group.

1 different regions nationwide, employing over 180,000 people. In Northern California,
2 Kaiser serves approximately 3.2 million members at 21 medical centers and 160 offices,
3 employing thousands of people in non-physician capacities. Using a centralized
4 employment opportunity system, people external to Kaiser and current employees are able
5 to apply for open positions throughout Kaiser's operations, including by region. Current
6 employees are told they will be provided with opportunities for employment that are not
7 available to external applicants, including access to job postings prior to their disclosure to
8 the general public, and a system by which employees may post their resumes for other
9 Kaiser departments to match to openings for hiring decisions.

10 12. Kaiser maintains a unique business and organization structure, with regional
11 oversight of Northern California non-physician operations by a single executive
12 management hierarchy. Within each division of Kaiser's operations, the employer has
13 created departmental hierarchies of similar nature and structure, including: entry level
14 positions, trained or skilled-level positions, team leaders and sub-leads, supervisors and
15 office-level managers, and divisional directors and assistant directors. Kaiser also
16 maintains uniform employment and personnel policies applicable to all of its employees,
17 with centralized human resources, general counsel, payroll services, and labor and other
18 employment data. Regardless of the department or division, there are uniform policies and
19 procedures for employee orientation, supervisory management, salary and incentive options,
20 job classifications, human resources, progressive discipline, rules of conduct, and
21 requirements for transfers, promotions and terminations.

22 13. Within each department or function of Kaiser's operations, the employer has
23 developed its own unique procedures, information systems and business technologies
24 requiring specialized training and adaptive capabilities. Employees are told they need
25 establish in their work performances that they are trained in and proficient with those
26 unique processes in order to be retained and/or promoted within Kaiser. Access to that
27 training uniformly depends upon the discretion of divisional management, however,
28 including influence and decision-making at the supervisory and team management levels.

1 Similarly, performance reviews, job classification decisions, pay and salary structure
2 changes, and disciplinary actions all depend upon the discretion of that same divisional
3 management. Few objective requirements or measurements are used for employment
4 decisions, which instead are largely based on subjective judgments of the supervisors and
5 managers within Kaiser's operations.

6 14. Kaiser's executive and divisional managements for positions in EEO job groups
7 2F and 2G are predominately neither African-American nor African-American women.
8 African-Americans and African-American women are rarely promoted to supervisory or
9 management positions capable of influencing a significant proportion of the employer's
10 decision-making. As a result, the decisions as to which employees receive specialized
11 training, particular assignments, job classifications, pay raises and incentives, transfer or
12 promotions, positive performance reviews and progressive disciplinary actions are made
13 and influenced principally by non-African-Americans. Subjective judgments of Kaiser's
14 stratified supervisory and management system are often infected with conscious or
15 unconscious prejudices and race and/or race-gender based stereotypes, which explains why
16 so few African-American and African-American women out of Kaiser's large African-
17 American and African-American female employee population advance to supervisory and
18 management positions.

19 15. This pattern of unequal training, assignments, classifications, pay, discipline and
20 advancement opportunities is not the result of random or non-discriminatory factors. Rather,
21 it is the result of an on-going and continuous pattern and practice of intentional race and
22 race-gender discrimination in training, assignments, classifications, pay, discipline,
23 performance reviews, terminations and promotions, and reliance on policies and practices
24 that have an adverse impact on African-American and African-American female employees
25 that cannot be justified by business necessity, and for which alternative policies and
26 practices with less discriminatory impact could be utilized that equally serve any asserted
27 justification. Plaintiff is informed and believes that such policies and practices include,
28 without limitation:

- a. Failure to consistently train African-American and African-American women in the unique Kaiser processes and practices necessary for desirable assignments and advancement.
- b. Reliance upon vague, arbitrary and subjective criteria utilized by a nearly non-African-American managerial workforce in making assignments, training, pay, performance review, discipline, promotion and termination decisions. Even where Kaiser's policy states objective requirements, these requirements are often applied in an inconsistent manner and ignored at the discretion of management.
- c. Reliance on race and race-gender stereotypes in making employment decisions such as assignments, promotions, pay and training.
- d. Pre-selection and "grooming" of non-African-American and non-African-American women employees for advancement, favorable assignments and training.
- e. Maintenance of largely race and race-gender segregated job categories and departments.
- f. Deterrence and discouragement of African-American and African-American female employees from seeking advancement, training, and favorable assignments and pay.
- g. Giving African-American and African-American employees lower compensation, lower job classifications and lower pay raise incentives than similarly situated non-African-American and non-African-American women employees.
- h. Providing unjustified negative performance reviews, false pretexts for disciplinary action, omission of positive job performance recognition and other adverse personnel actions to African-American and African-American women employees, in disproportion to the same actions taken against non-African-American employees.

- 1 i. Providing less training and support to African-American and African-
2 American female employees and managers than that given to non-African-
3 American employees and managers.
- 4 j. Providing less or refusing to make reasonable accommodations for disabilities
5 and sick leave policies with respect to African-American and African-
6 American female employees, and unlawfully discriminating against African-
7 American-employees due to their disabilities because of both their disabilities
8 and their race and/or race-gender.
- 9 k. Harassing African-American and African-American female employees
10 interested in advancement and subjecting them to a hostile work environment.
- 11 l. Maintaining and fostering a reputation for discriminatory conduct which
12 deters African-Americans and African-American females from pursuing
13 promotional opportunities with Kaiser;
- 14 m. Establishing and maintaining arbitrary and subjective requirements for
15 discipline and promotions which have the effect of excluding qualified
16 African-Americans and African-American females and which have not been
17 shown to have any significant relationship to job performance or to be
18 necessary to the safe and efficient conduct of Kaiser's business;
- 19 n. Failing and refusing to take adequate steps to eliminate the effects of its past
20 discriminatory practices; and
- 21 o. Retaliating against African-American and African-American women
22 employees who complain of unequal treatment.

23 16. Kaiser's racially stratified workforce and discriminatory patterns and practices
24 are propagated, entrenched and protected by centralized policies and practices directed at
25 the highest levels of Kaiser management. Although Kaiser operates many different
26 departments at many different locations throughout the Northern California Region, it has
27 centralized, company-wide policies and practices concerning supervisory training, human
28 resources, EEO reporting and compliance and Kaiser's response to EEO complaints. These

1 company-wide policies and practices include, among others:

- 2 a. Directing, authorizing and training supervisors and directors to conceal
3 discriminatory actions and retaliate against those employees who might assist
4 the disclosure of false or trivial discipline as pretext for discrimination,
5 without regard to the specific facts and circumstances of the individual
6 employee or supervisor.
- 7 b. Directing, authorizing and assist supervisors and directors in their
8 discriminatory and retaliatory employment actions, through a centralized
9 human resources department and, ultimately, the office of the general counsel,
10 in favor of supervisors and directors, and against the interests and complaints
11 of African American employees, without regard to the specific facts and
12 circumstances of the individual employee or supervisor, and in contravention
13 of obligation of Human Resources and general counsel to protect employees
14 from unlawful discrimination.
- 15 c. Suppressing and falsifying information in connection with complaints over
16 employment actions made internally and to administrative agencies and courts
17 by African American employees, including unreasonable, one-sided, pre-
18 determined internal investigations conducted by a select few individuals for
19 the purpose of permitting, perpetuating and covering up discriminatory and
20 retaliatory actions and patterns, without regard to the specific facts and
21 circumstances of the individual employee or complaint.
- 22 f. Concealing and entrenching discriminatory patterns and practices by making
23 false and misleading representations and statements, and engaging in
24 intentionally misleading conduct, to EEOC and OFCCP regarding its
25 compliance with federal regulations, including the requirement that Kaiser
26 conduct internal reviews and self-inquiry of statistical patterns, report
27 disparities, propose remedial plans (including affirmative action plans) and
28 monitor results over time.

- 1 g. Misrepresent EEO practices and non-compliance to employees, government
2 agencies, in the courts and to the public, included a public relations effort to
3 promote a diversity department that is knowingly, purposefully and
4 intentionally limited to only existing managers – not covering the intermediate
5 and promotion position workforce – and is responsible for only token
6 representation of African Americans at highly visible positions in the
7 organization.
- 8 h. Retaliating against African American employees who complain of
9 discrimination, in order to reduce its liability to employees victimized by
10 Kaiser's discriminatory employment decisions and to chill the exercise of
11 rights by such employees in the future, without regard to specific facts and
12 circumstances of the complaint; including elimination of positions, false bases
13 for discipline, termination, job reassignment and changes to other terms and
14 conditions of employment.
- 15 i. Designating African American employees, and in particular, those employees
16 who may have complaints against the company, as "not eligible for rehire,"
17 without regard to the specific facts and circumstances of the individual
18 employee's employment, and indeed, pursuant to a practice over which
19 Kaiser, at least until March of 2013, has been unwilling to manage through
20 clear, uniform standards.
- 21 Abusing administrative and judicial processes to further patterns and practices
22 of racial discrimination and in retaliation against African American employees
23 who complain about the violation of their civil rights, including unreasonable
24 litigation tactics in defense of claims of discrimination regardless of the merits
25 of the employees' claims or the existence of substantial evidence of Kaiser's
26 violations of law.
- 27 k. Perpetuating, protecting and concealing unlawful discrimination and patterns
28 of disparate treatment by requiring employees who raise civil rights claims to

1 agree to confidentiality of the terms of settlement, without bargaining for such
2 an agreement at arms length, and without justification in work product,
3 attorney client privilege, trade secret or other basis for confidentiality.

- 4 1. Kaiser's stand-alone litigation policy and practice – adopted and applied by
5 general counsel in cases brought under anti-discrimination laws, without
6 regard to specific facts and circumstances – requiring, as a condition of
7 settlement, former employees to sign agreements not to work at Kaiser in the
8 future, is a violation of federal and state civil rights laws; including whether
9 plaintiff is entitled to a declaration that all such agreements are against public
10 policy, unenforceable and null and void.

11 17. Because of its discriminatory policies and practices, Kaiser retains, promotes,
12 disciplines and terminates African Americans and African American women in statistically
13 significant disproportionate rates, based on the proportion of qualified African Americans
14 and African American women. This in turn has the effect of diminishing the pool of
15 eligible African Americans and African American women for promotion to supervisory,
16 management and executive positions. Kaiser's pattern and practice of discrimination is so
17 pervasive and entrenched throughout that race and race-gender discrimination and unlawful
18 retaliation can be said to be its modes of operations

19 **DENIAL OF EMPLOYMENT OPPORTUNITIES**

20 18. Plaintiff Kennedy began working at Kaiser in October of 1997. Like many other
21 African American employees at Kaiser, she performed her work according to the
22 employer's needs, was well qualified and tried to improve her employment position over the
23 years. In 2002, Ms. Kennedy began working at Kaiser's Chemical Dependency and
24 Rehabilitation Program (CDRP), where she learned the department's particular procedures
25 and processes. In September 2003, complainant took responsibility for conducting bi-
26 monthly educational presentations for Day Treatment.

27 19. Despite her qualifications and excellent work performance, complainant was
28 denied promotions, transfers, pay raises and other employment benefits that were given to

1 non-African American employees. Since being employed at Kaiser, complainant has
2 applied at many different positions at Kaiser, within and outside the CDRP. These
3 included, but are not limited to the following:

- 4 a. In 2004, complainant enrolled in a certification program for the California
5 Association of Alcohol and Drug Abuse Counselors (CAADAC) at UC
6 Berkeley extension, which included a requirement of 500 hours internship.
7 Ms. Kennedy was denied the opportunity to perform her internship at Vallejo,
8 CDRP. Kaiser management falsely informed complainant that it was not
9 possible for employees and prior patients to perform internships as it would be
10 "confusing" to patients. In fact, several non-African American employees
11 who had been patients were permitted to perform their internships at Kaiser.
- 12 b. In 2004, complainant fulfilled her 500 hour internship requirement at a
13 residential recovery program, receiving a diploma. Kaiser failed to provide
14 assistance to complainant, as it had provided other non-African American
15 employees with internships. Kaiser not only failed to provide equal
16 assistance, it purposefully mandated complainant appear for work outside her
17 schedule, interfering with her ability to complete her program and obtain
18 advancement.
- 19 c. Complainant in 2006 gained even more qualifications, performing a total of
20 1500 hours to become a CAADAC-II at an all womens' treatment facility.
21 Thereafter, she began applying for openings at Kaiser within the CDRP
22 department, but was denied. Denial of these employment opportunities was
23 based on complainant's race. Such positions were awarded to non-African
24 American employees with less qualifications and training. For example, in
25 2007, the position was given to a Registered Nurse without the credentials,
26 training or education possessed by Ms. Kennedy.
- 27 d. In 2009, after 6 years conducting the Domestic Violence program, including a
28 class that she herself had developed, Kaiser told complainant that she could

1 no longer conduct the class. Instead, she was instructed to train a white
2 employee how to conduct the class.

3 e. Ms. Kennedy continued to improve her training and education, but Kaiser
4 continued to deny her advancement. In 2010, complainant obtained a total of
5 2,000 hours required to become a CAADAC-I. In 2012, she had a total of
6 6,000 hours, and passed a written and oral exam. During these times,
7 complainant continued to apply for open positions at Kaiser pertaining to
8 Substance Abuse Counselors. Kaiser denied each application, refusing to
9 even grant an interview.

10 f. Complainant was finally granted an opportunity to interview for positions in
11 2014, but the employment opportunities were denied by Kaiser on account of
12 her race. An interview for a position in Walnut Creek was granted in March
13 2014, and for a position in Sacramento in August 2014. These positions were
14 either not filled, or given to non-African American employees.

15 g. Throughout this period, including times after Ms. Kennedy filed her initial
16 administrative charge with DFEH, complainant and other African American
17 employees have been denied advancement on account of race. This has been
18 a continuing practice at Kaiser for at least 15 years.

19 **HOSTILE WORK ENVIRONMENT**

20 20. Throughout her employment, plaintiff was supervised by individuals who were
21 not African-American or African-American woman. While under the supervision of non-
22 African American women, plaintiff was subject to a hostile work environment, was denied
23 promotions along her chosen career paths, was threatened, retaliated against and terminated
24 because of her race and disability and the fact they made complaints regarding the
25 employer's non-compliance with civil rights laws. This included false negative comments
26 on performance reviews, inferior job assignments, denial of promotions to better paying
27 jobs and supervisory positions, termination and denial of reasonable accommodation. The
28 discriminatory treatment was manifested by plaintiff being treated differently by the

1 employer compared with similarly-situated employees who are not African American
2 women, African born and/or not disabled.

3 21. The hostile environment grew so intolerable that plaintiff suffered mental
4 distress leading to a psychological disability, requiring plaintiff to take medical leave from
5 Kaiser. Plaintiff and her treating psychologist informed Kaiser of the psychological
6 disability, and requested reasonable accommodation, including assignment to a department
7 which did not reflect Kaiser's culture of race discrimination. Kaiser refused to accomodate,
8 and it denied Ms. Kennedy access to its internal employment application process.

9 22. Following plaintiff's attempt to address her unequal and unlawful treatment at
10 Kaiser, and to assert her civil rights, plaintiff was subject to Kaiser's unlawful retaliatory
11 policies and practices, including designation of plaintiff as not eligible for rehire;
12 unreasonable, pre-determined one-sided investigations conducted outside the standards for
13 workplace investigations for the purpose of covering up Kaiser's violations; unreasonable
14 and abusive litigation tactics designed to punish plaintiff for asserting her rights; and efforts
15 by Kaiser's office of the general counsel to make sure that plaintiff, in any settlement, agree
16 to never apply to work at Kaiser again in the future.

17 **DAMAGES**

18 23. As a direct and proximate result of defendants' actions as alleged herein,
19 defendants have breached their duties imposed on all employers as established by statute.

20 24. As a direct and proximate result of the refusal to promote plaintiff's employment,
21 plaintiff has suffered and will continue to suffer lost wages, salary increases, earnings
22 capacity and other benefits of employment, in an amount to be proven at trial.

23 25. As a further proximate result of defendants' unlawful actions, plaintiff has
24 suffered emotional pain, humiliation, mental anguish, and emotional distress.

25 26. The conduct of all of the defendants alleged above was deliberate, wilful and
26 malicious. Further, the actions taken against plaintiff were carried out with reckless
27 disregard to the truth and the rights of plaintiff, and were despicable actions taken without
28 privilege or justification.

CAUSE OF ACTION
(Violation of California Government Code 12940, et seq.,
California Fair Employment and Housing Act)

16. Plaintiff realleges and incorporates herein the allegations of paragraphs 1 through 15 of this complaint, as though fully set forth herein.

17. Defendant Kaiser is an entity subject to suit under the Fair Employment and Housing Act (FEHA) in that defendant regularly employs five or more persons, pursuant to Cal. Govt. Code 12926(d).

18. Plaintiff is a member of a protected class as set forth in Government Code 12940 et seq.

19. The harms alleged herein occurred within the jurisdiction of this Court and the amount in controversy, exceeds the minimum jurisdictional amount required by this Court.

20. The discriminatory treatment of plaintiff's employment and retaliatory actions, as set forth herein, were done with discriminatory motive, in violation of public policy and was based on the fact that plaintiff was over the age of 45, is African American and is a woman, and had complained about management's Equal Employment practices.

PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgement against defendants, and each of them as follows:

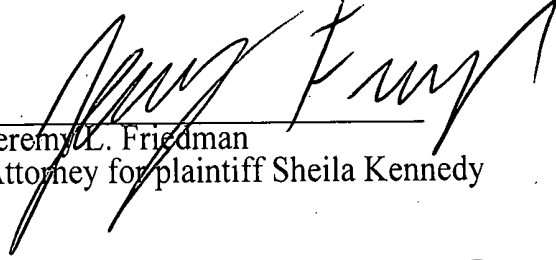
1. For general and special damages, in an amount to be determined at trial;
2. For back pay and wages and loss of other benefits due as a result of the wrongful conduct of defendants, in an amount to be determined at trial;
3. For an order instating plaintiff to the position denied her and ordering defendant to cease engaging in a pattern and practice of discrimination,
4. For statutory interest on plaintiff's past wage loss;
5. For damages of pain and suffering and emotional distress;
6. For exemplary and punitive damages in an amount to be determined at trial;
7. For reasonable attorney fees and costs of suit; and
8. For other such relief as the Court may deem just and proper.

Respectfully submitted,

Dated: July 8, 2016

LAW OFFICE OF JEREMY L. FRIEDMAN

By:


Jeremy L. Friedman
Attorney for plaintiff Sheila Kennedy

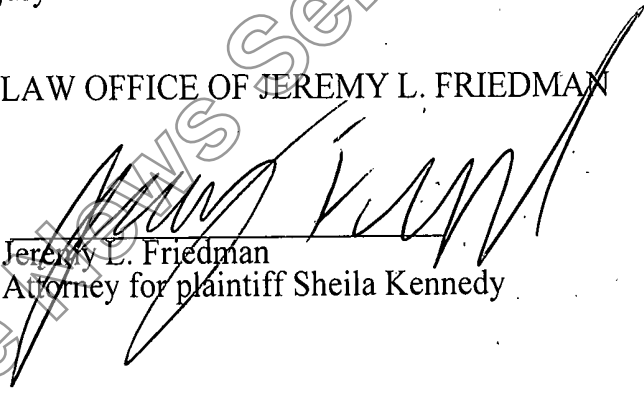
DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all issues.

Dated: July 8, 2016

LAW OFFICE OF JEREMY L. FRIEDMAN

By:


Jeremy L. Friedman
Attorney for plaintiff Sheila Kennedy