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For All Purposes

Case Management Conference
12/05/2023 08:30 AM - Department 07

7 Attorneys for Plaintiff
8 GAIL ROBINSON

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF TULARE**

11 CASE NUMBER: VCU300675

12 GAIL ROBINSON, an individual,
13 Plaintiff,

14 vs.

15
16 KAWEAH DELTA HEALTH CARE
17 DISTRICT, a governmental entity, Kaweah
18 Delta Health Care, Inc., a California Corporation,
and DOES 1 through 50, inclusive.
19 Defendants.

COMPLAINT FOR DAMAGES:

- 1. Discrimination in Violation of The California Fair Employment and Housing Act (“FEHA”), Gov. Code §§ 12940, *et seq.*;
- 2. Failure to Prevent Discrimination, Retaliation, and/or Harassment in Violation of the FEHA.
- 3. Whistleblower Retaliation in Violation of California Labor Code § 1102.5; and
- 4. Violation of California Health and Safety Code § 1278.5

21 **DEMAND FOR JURY TRIAL**

1 COMES NOW Plaintiff GAIL ROBINSON (“Plaintiff”), and alleges, upon personal
2 knowledge as to herself and upon information and belief as to all other matters, as follows against
3 KAWEAH DELTA HEALTH CARE DISTRICT., a governmental entity, Kaweah Delta Health Care,
4 Inc., a California Corporation, and DOES 1 through 50 (collectively, “Defendants”):

5 **THE PARTIES**

6 1. At all times herein mentioned, Plaintiff GAIL ROBINSON (“Plaintiff”) was a resident
7 of State of California.

8 2. At all times herein mentioned, Defendant Kaweah Healthcare District was a
9 governmental entity registered to conduct business in the State of California. Upon information and
10 belief, Defendant conducts business in the State of California. At all time relevant herein, KAWEAH
11 was an “employer” as defined by the Fair Employment and Housing Act and California Labor Code.

12 3. At all times herein mentioned, Defendant Kaweah Delta Health Care, Inc. was a
13 corporation formed in California. Upon information and belief, Defendant conducts business in the
14 State of California. At all times relevant herein, Kaweah Delta Health Care, Inc. was an “employer”
15 as defined by the Fair Employment and Housing Act and California Labor Code.

16 4. Defendants employ five or more employees in the State of California, including the
17 County of Tulare.

18 5. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under
19 the fictitious names DOES 1 through 50 but will seek leave of this Court to amend the complaint and
20 serve such fictitiously named Defendants once their names and capacities become known.

21 6. Plaintiff is informed and believes, and based thereon alleges, that each and all of the
22 acts and omissions alleged herein were performed by, or are attributable to Defendants, each acting as
23 the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other
24 co-Defendants and within the course and scope of such agency, employment, joint venture, or
25 concerted activity with legal authority to act on the others’ behalf. Additionally, all Defendants
26 compelled, coerced, aided, and/or abetted the discrimination, harassment, and retaliation alleged in this
27 Complaint, conduct which is prohibited by Government Code section 12940(i). All actions of all
28 Defendants were taken by employees, supervisors, directors, and/or other agents of Defendants.

1 7. At all relevant times, Defendants were the employer of Plaintiff within the meaning of
2 all applicable state laws and statutes, including within the meaning of California Government Code
3 section 12926(d). Among other things, Defendants controlled the terms and conditions of Plaintiff's
4 employment, set her pay and working hours, provided her with the tools and equipment needed for
5 her job, tasked her with assignments and reviewed her work, retained the ability to hire and fire
6 Plaintiff, and required Plaintiff to follow their policies and procedures.

7 8. At all relevant times, Defendants both jointly employed Plaintiff and acted as a "single
8 employer" under the integrated enterprise test. (*Laird v. Capital Cities/ABC* (1998) 68 Cal.App.4th
9 727.) Defendants' operations are interrelated and inextricably intertwined, Defendants have common
10 management, centralized control of labor relations (including shared executives, supervisors, and
11 human resources functions), and common ownership and/or financial control.

12 9. At all relevant times, Defendants, and each of them, ratified each and every act or
13 omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted
14 the acts and omissions of each and all the other Defendants in proximately causing the damages herein
15 alleged.

16 10. Plaintiff is informed and believes, and based thereon alleges, that each of said
17 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
18 omissions, occurrences, and transactions alleged herein.

19 **VENUE**

20 11. The facts alleged herein occurred within the State of California in the County of
21 Sacramento. Pursuant to the Fair Employment and Housing Act, this case may, at Plaintiff's choice,
22 be filed alternatively in "any county in the state in which the unlawful practice is alleged to have been
23 committed, in the county in which the records relevant to the practice are maintained and administered,
24 or in the county in which the aggrieved person would have worked or would have had access to the
25 public accommodation but for the alleged unlawful practice, but if the defendant is not found within
26 any of these counties, an action may be brought within the county of the defendant's residence or
27 principal office." (Government Code § 12965(c)(3).)

28 12. "[I]n the absence of an affirmative showing to the contrary, the presumption is that the

1 county in which the title of the action shows that it is brought is, prima facie, the proper county for the
2 commencement and trial of the action.” (*Mission Imports, Inc. v. Superior Court* (1982) 31 Cal.3d
3 921, 928.) The FEHA venue statute – Section 12965(c)(3) – thus affords a wide choice of venue to
4 persons who bring actions under FEHA. (*Brown v. Superior Court* (1984) 37 Cal.3d 477, 486.) “[T]he
5 special provisions of the FEHA venue statute control in cases involving FEHA claims joined with
6 non-FEHA claims arising from the same facts.” (*Id.* at 487.)

7 **FACTUAL ALLEGATIONS**

8 13. On or around September 9, 2019, Ms. Robinson began her career with Kaweah as a
9 Health Information Management Director. Ms. Robinson was a hardworking, exemplary employee
10 with years of experience and training in her field.

11 14. Despite her performance, Ms. Robinson was subjected to harassing and discriminatory
12 treatment, including being repeatedly subjected to race-based mistreatment.

13 15. Ms. Robinson was the only African American person in her department. It was readily
14 apparent to her that her non-African American colleagues and supervisors all got along and routinely
15 excluded her from both work and social functions. Ms. Robinson found herself sitting alone during
16 meetings, while everyone else grouped together. Such behavior conveyed a hostile message to
17 Robinson and left her excluded from relevant work-related discussions.

18 16. Furthermore, whereas Defendants’ non-African American employees previously
19 recommended the hirings of relatives without issue, Ms. Robinson was repeatedly questioned about
20 whether or not she was related to another black employee/applicant whose hire she had recommended
21 (she was not). The applicant had Ms. Robinson’s maiden name. Directors at Kaweah constantly
22 questioned Ms. Robinson’s integrity by implying that she had deceitfully recommended an applicant
23 of the same race, who they claim was related to her, despite her telling them she is not related to the
24 applicant in any way. Specifically, Raleen Larenz, Director of Human Resources used coded
25 stereotyping language describing Ms. Robinson as “angry” in front of Jamie Morales, Director of
26 Talent Acquisitions, and other Kaweah employees when discussing this topic. This comment surely
27 reinforced racism towards Ms. Robinson. Not only did Ms. Robinson not demonstrate any “angry”
28 tendencies, but also her non-African American colleagues were not stereotyped as “angry” even when

1 they did become visibly upset at work.

2 17. In or around June of 2020, Mr. Robinson was given more responsibilities in her role.
3 Upon asking for higher compensation to reflect her new workload, Ms. Robinson's request was denied
4 without legitimate business reason. On the other hand, Ms. Robinson is aware of, and was present at
5 a meeting in which a similarly situated Caucasian woman was given more job duties and was offered
6 two pay raises, without having to request them. By failing to fairly compensate Robinson for her
7 additional work as they did with a similarly situated Caucasian woman, Defendants took an adverse
8 employment action against Robinson based on her race.

9 18. In or around April of 2022, Ms. Robinson learned of safety violations in the pediatric
10 department of the hospital. Specifically, she learned that Kaweah pediatricians failed to properly assess
11 the conditions of multiple babies at Kaweah. On one occasion, a baby was released from Kaweah
12 without proper evaluation. On another tragic occasion, a premature baby passed away and no notes of
13 evaluation were on file. Ms. Robinson subsequently reported these concerns that she reasonably
14 believed to violate the law and to affect patient care and safety to Malinda Tupper and Ben Cripps,
15 among others.

16 19. Throughout her employment Ms. Robinson also repeatedly reported that staff
17 improperly signed medical orders on behalf of physicians which she believed violated the law and/or
18 affected health and safety of patients. Ms. Robinson also complained that nurses were administering
19 oxygen without physicians' orders in the Intensive Care Unit. Ms. Robinson also reported an improper,
20 and she believed illegal, disclosure of thousands of documents containing private medical information
21 with identifying information of patients. She had also reported Medicare fraud which she observed in
22 her review of billing records. Ms. Robinson's numerous complaints were made to various Kaweah
23 management including, but not limited to Ms. Tupper, Amy Valero, and Mr. Cripps. Contrary to
24 Defendants' written policies and best practices, management failed to investigate and/or remedy the
25 unlawful conduct about which Robinson complained. In response to Robinson's protected complaints
26 and disclosures, management demonstrated annoyance and frustration with her complaints.

27 20. These issues continued through the fall of 2022. In fact, despite Ms. Robinson's reports,
28 the issues worsened. In or around October of 2022, Ms. Robinson again reported that doctors were not

1 filling out paperwork properly including authorizations or notations of treatment, including surgical
2 notes, placing Kaweah’s patients at risk.

3 21. On or around October 18, 2022, Ms. Robinson was notified that she was being
4 terminated. Ms. Robinson’s termination was undoubtedly connected to her history of challenging
5 Defendants’ wrongdoings and her refusal to comply with the illegalities she reported. This was the
6 norm for Kaweah. Ms. Tupper told Plaintiff that Mr. Cripps was in the process of terminating
7 employees who he believed would “blow the whistle” on the organization.

8 22. Plaintiff alleges that her termination was discriminatory in nature and in retaliation for
9 her numerous complaints of illegal behavior and health and safety concerns.

10 23. *Economic damages:* As a proximate result of Defendants’ conduct, Plaintiff has
11 suffered and will suffer harm, including lost past and future income and employment benefits, damage
12 to her career, and lost wages, in a sum to be proven at trial.

13 24. *Noneconomic damages:* As a proximate result of Defendants’ conduct, Plaintiff has
14 suffered and will suffer psychological and emotional distress, embarrassment, and mental and physical
15 pain and suffering, in a sum to be proven at trial. Plaintiff experienced severe emotional distress due
16 to Defendants’ actions.

17 25. *Attorneys’ Fees:* Plaintiff has incurred and continues to incur legal expenses and
18 attorneys’ fees.

19 26. *Exhaustion of administrative remedies:* On or about April 14, 2023, Plaintiff timely
20 submitted a government tort complaint to Kaweah in accordance with California Government Code §
21 910 et seq., which was rejected by Kaweah on April 26, 2023. On July 26, 2023, Plaintiff received a
22 Right-to-Sue Notice from the Civil Rights Department (“CCRD”).

23 **FIRST CAUSE OF ACTION**

24 **Violation of the California Fair Employment and Housing Act,**
25 **Government Code §§ 12940, *Et Seq.* (“FEHA”) – Discrimination Based on Race and Color**
26 **(Against All Defendants)**

27 27. Plaintiff restates and incorporates by reference, as though fully set forth herein, each
28 and every allegation set forth in all preceding paragraphs.

1 28. At all times relevant, California's Fair Employment and Housing Act ("FEHA")
2 was in full force and effect and was binding upon Defendants.

3 29. At all times relevant, Government Code Section 12940(a) provides that it is an unlawful
4 employment practice for an employer to discriminate against a person because of her race or color in
5 compensation or in the terms, conditions, or privileges of their employment. This includes terminating
6 employees or discriminating against them because of their race or color.

7 30. Plaintiff is a member of a protected class as an African American.

8 31. Plaintiff had satisfactory job performance and had performed successfully in her role
9 for several years.

10 32. Defendants, through their employees, made comments to and about Plaintiff that
11 showed discriminatory motivations and intentions on the bases of her race and color. Defendants also
12 subjected Plaintiff to adverse disparate treatment based on her protected classes. Plaintiff believes, and
13 on that basis alleges, that Defendants' real motivation(s) in taking adverse employment actions against
14 her were her race and color.

15 33. Defendants' discrimination against Plaintiff was a substantial factor in causing harm to
16 Plaintiff, including but not limited to: loss of earnings and other employment benefits, physical
17 injuries, pain and suffering, mental anguish, and emotional distress. As such, Plaintiff is entitled to
18 general and compensatory damages in a sum according to proof, which she is entitled to recover under
19 Government Code section 12965(c)(6).

20 34. Plaintiff has incurred and continues to incur legal expenses and attorney's fees in a sum
21 according to proof.

22 **SECOND CAUSE OF ACTION**

23 **Failure to Prevent Discrimination**

24 **in Violation of the FEHA**

25 **(Against Employer Defendants)**

26 35. Plaintiff restates and incorporates herein by reference, as though fully set forth herein,
27 each and every allegation in all preceding paragraphs.

28 36. At all times, the FEHA required employers to take all reasonable steps to prevent

1 discrimination against employees.

2 37. Due to the acts and/or omissions of Defendants, Plaintiff was subjected to
3 discrimination based on her race and color.

4 38. Defendants' failure to prevent discrimination against Plaintiff was a substantial factor
5 in causing harm to Plaintiff, including but not limited to: loss of earnings and other employment
6 benefits, physical injuries, pain and suffering, mental anguish, and emotional distress. As such,
7 Plaintiff is entitled to general and compensatory damages in a sum according to proof.

8 39. Plaintiff has incurred and continues to incur legal expenses and attorney's fees in a sum
9 according to proof, which she is entitled to recover under Government Code section 12965(c)(6).

10 **THIRD CAUSE OF ACTION**

11 **Whistleblower Retaliation in Violation of California Labor Code § 1102.5**

12 **(Against All Defendants)**

13 40. Plaintiff incorporates herein by specific reference, as though fully set forth, the
14 allegations in all preceding paragraphs.

15 41. At all times material to this Complaint, California Labor Code section 1102.5 was in
16 effect and binding on Defendants. California Labor Code Section 1102.5 requires employers to refrain
17 from retaliating against an employee for disclosing information, or because the employer believes that
18 the employee disclosed or may disclose information, to a government or law enforcement agency, to
19 a person with authority over the employee or another employee who has the authority to investigate,
20 discover, or correct the violation or noncompliance, or for providing information to, or testifying
21 before, any public body conducting an investigation, hearing, or inquiry, if the employee has
22 reasonable cause to believe that the information discloses a violation of state or federal statute, or a
23 violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether
24 disclosing the information is part of the employee's job duties.

25 42. At all relevant times, Plaintiff was employed by Defendants.

26 43. As detailed above, Plaintiff reported to her supervisors, including but not limited to her
27 supervisors, of several potential health and safety violations.
28

1 44. Plaintiff reasonably believed that Defendants conduct amounted to a violation of state
2 statute and/or local regulations.

3 45. Instead of remedying the situation and addressing Plaintiff's complaints, Defendants
4 terminated Plaintiff's employment for blowing the whistle on several occasions.

5 46. Defendants' retaliation against Plaintiff violated California Labor Code section 1102.5.
6 As a direct and proximate cause of Defendants' wrongful conduct, Plaintiff has suffered damages,
7 including but not limited to, loss of wages, future earnings, bonuses and other valuable employee
8 benefits all in an amount according to proof.

9 47. As the direct and legal result of Defendants' retaliation for whistleblowing Plaintiff has
10 suffered and will continue to suffer reasonable, foreseeable and ascertainable damages, including but
11 not limited to, loss of earnings and other employment benefits, unfair discriminatory working
12 conditions, emotional distress, attorney's fees and costs, and the imposition of a civil penalty of
13 \$10,000.00 for each violation.

14 **FOURTH CAUSE OF ACTION**

15 **Violation of California Health and Safety Code § 1278.5**

16 **(Against All Defendants)**

17 48. Plaintiff incorporates herein by specific reference, as though fully set forth, the
18 allegations in all preceding paragraphs.

19 49. Pursuant to Health and Safety Code section 1278.5 (b) (1), a health facility shall not
20 discriminate or retaliate, in any manner, against a patient, employee, member of the medical staff, or
21 other health care worker of the health facility because that person has presented a grievance, complaint,
22 or report to the facility, to an entity or agency responsible for accrediting or evaluating the facility, or
23 the medical staff of the facility, or to any other governmental entity.

24 50. As detailed above, Kaweah terminated Ms. Robinson, an employee of a health facility
25 at the time, for presenting several complaints and reports regarding health and safety violations taking
26 place at Kaweah.

27 51. Per Health and Safety Code section 1278.5(d)(1), Plaintiff will be entitled to a
28 presumption that her termination was retaliatory at trial.

1 52. Defendants' retaliation against Plaintiff violated California Health and Safety Code
2 section 1278.5. As a direct and proximate cause of Defendants' wrongful conduct, Plaintiff has
3 suffered damages, including but not limited to, loss of wages, future earnings, bonuses and other
4 valuable employee benefits all in an amount according to proof.

5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, Plaintiff prays for judgment against Defendants, jointly and severally, as
7 follows:

- 8 1. For general and compensatory damages in an amount to be ascertained at trial;
- 9 2. For all actual, consequential, and incidental losses and damages, according to proof;
- 10 3. For pre-and post-judgment interest according to proof;
- 11 4. For reasonable attorneys' fees and costs of suit incurred herein; and
- 12 5. For such other and further relief as the Court may deem proper.

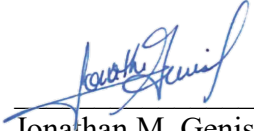
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14 **DEMAND FOR JURY TRIAL**

15 Plaintiff, on behalf of herself, hereby demands a jury trial with respect to all issues triable of
16 right by jury.

17 DATED: August 07, 2023,

Respectfully Submitted,

BLACKSTONE LAW

19
20 By: 
21 Jonathan M. Genish
22 Leo Livshits
23 Stephanie P. Chyorny

Attorney for Plaintiff
GAIL ROBINSON