

CIV-180827-CIV-DS1822476-CASEEN-124602



Scanned Document Coversheet

System Code: CIV  
Case Number: DS1822476  
Case Type: CIV  
Action Code: CASEEN  
Action Date: 08/27/18  
Action Time: 12:46  
Action Seq: 0002  
Printed by: ABAYL

THIS COVERSHEET IS FOR COURT  
PURPOSES ONLY, AND THIS IS NOT  
A PART OF THE OFFICIAL RECORD.  
YOU WILL NOT BE CHARGED FOR  
THIS PAGE

**Complaint and Party information entered**

Courthouse News Service



NEW FILE

1 David M. Peer  
SBN 301952  
2 Peer & Hart, PC  
2794 Gateway Road, Suite 103  
3 Carlsbad, CA 92009  
4 (760) 239-0231  
Attorney for Plaintiff,  
5 Archana Shah

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO CIVIL DIVISION

AUG 27 2018

BY [Signature]  
ASHLEE EAYLESS, DEPUTY

6  
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 COUNTY OF SAN BERNARDINO

9  
10 ARCHANA SHAH, an individual;

Case No.:

CIVDS1822476

11 Plaintiff,

COMPLAINT FOR:

12 vs.

13 KAISER FOUNDATION HEALTH PLAN,  
14 INC., a California corporation ; KAISER  
FOUNDATION HOSPITALS; and Does 1 to 20  
15 inclusive.

16 Defendants.

1. HOSTILE WORK ENVIRONMENT HARASSMENT IN VIOLATION OF THE FEHA;
2. DISCRIMINATION IN VIOLATION OF THE FEHA;
3. FAILURE TO PREVENT DISCRIMINATION, HARASSMENT, AND RETALIATION IN VIOLATION OF THE FEHA;
4. RETALIATION IN VIOLATION OF THE FEHA;
5. BREACH OF CONTRACT; AND
6. INJUNCTIVE RELIEF.

17 Designation: Other - Employment

18 JURY TRIAL DEMANDED

19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
182527  
CIVIL  
AUG 27 2018

22 Plaintiff, ARCHANA SHAHS, demands a trial by jury and based on information and  
23 belief complains and alleges as follow:

24  
25 NATURE OF THE ACTION

26 1. Plaintiff Archana Shah brings this action against her joint-employer,  
27 KAISER FOUNDATION HEALTH PLAN, INC., and KAISER FOUNDATION HOSPITALS

1 (collectively "Kaiser"). Plaintiff alleges violations of the Fair Employment and Housing Act, Gov.  
2 Code § 12940, et seq. ("FEHA") based on Defendants' race discrimination, age discrimination, race  
3 harassment, age harassment, and retaliation against Ms. Shah for reporting and opposing to  
4 discrimination and harassment. In addition, Plaintiff alleges breach of contract.

5  
6 **PARTIES, JURISDICTION AND VENUE**

7 2. Plaintiff Archana Shah ("Plaintiff," "Ms. Shah," or "Archana") is a resident  
8 of Corona, CA. Ms. Shah was hired by Kaiser on or about March 19, 2012 as a Point of Care  
9 Testing Coordinator. Ms. Shah has worked at Kaiser's San Bernardino County medical centers,  
10 including the Fontana and Ontario medical centers, as well as medical office buildings and outlying  
11 clinics. Ms. Shah currently lives in Corona, California.

12 3. On information and belief, KAISER FOUNDATION HEALTH PLAN, INC.  
13 ("KAISER HEALTH PLAN"), is a corporation organized and existing under the laws of the state of  
14 California. KAISER HEALTH PLAN's corporate headquarters are located at One Kaiser Plaza,  
15 Oakland, California 94612.

16 4. On information and belief, KAISER FOUNDATION HOSPITALS  
17 ("KAISER HOSPITALS"), is a non-profit organized and existing under the laws of the state of  
18 California. KAISER HOSPITAL's corporate headquarters are located at One Kaiser Plaza,  
19 Oakland, California 94612.

20 5. The true names and capacities, whether individual, corporate, associated or  
21 whatever else, of the defendants sued herein as Does 1 through 20, inclusive ("DOE  
22 DEFENDANTS"), are currently unknown to Plaintiff, who therefore sues these defendants by such  
23 fictitious names under Code of Civil Procedure § 474. Plaintiffs are informed and believe, and  
24 thereon allege, that each of the defendants designated as DOES 1 through 20, inclusive, is legally  
25  
26  
27

1 responsible in some manner for the unlawful acts alleged herein. Plaintiff will seek leave of court  
2 to amend this Complaint to allege the true names and capacities of the defendants designated as  
3 DOES 1 through 10 when their identities become known.

4           6. Unless otherwise specified, Plaintiffs will hereafter refer to all Defendants  
5 collectively as "Defendants" or "Defendant" and each allegation pertains to each defendant.

6           7. Venue is proper in this Court pursuant to California Government Code  
7 section 1296(b). Plaintiff's worksite was in San Bernardino, California, and all unlawful acts  
8 alleged herein took place in San Bernardino, California.

9           8. Jurisdiction is proper in this Court because Defendants are organized and  
10 existing under the laws of the State of California, because the Kaiser headquarters are located in  
11 California, because the unlawful acts and practices alleged herein occurred within this jurisdiction  
12 and because the amount of damages sought exceeds the minimum jurisdiction of the Court  
13 (\$25,000).

14           9. Plaintiffs are informed, believe, and thereon allege, that, at all relevant times  
15 herein, Defendants, and each of them were the shareholder, officer, director, employee, agent,  
16 representative, subsidiary, parent company, affiliated entity and/or alter ego of each other  
17 defendant, and acted in all respects pertinent to this agent in concert and carried out a joint scheme,  
18 business plan, or policy in all respects regarding the unlawful acts alleged herein.

19           10. Plaintiff is informed, believes and thereon alleges that Defendants were at all  
20 times relevant hereto members of, and engaged in, a joint venture, partnership, association or  
21 common enterprise, and acting within the course and scope of, and in pursuance of, said joint  
22 venture, partnership, association or common enterprise. Furthermore, Plaintiff is informed, believes  
23 and thereon alleges that at all times relevant hereto Defendants conspired together in, aided and  
24  
25  
26  
27

1 abetted, contributed to, and/or acted as agents or employees of each other with respect to the  
2 commission of the acts complained of herein. On information and belief, Defendants were joint-  
3 employers of Plaintiff. Defendants are therefore jointly and severally liable for the injuries  
4 complained of herein.

5  
6 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

7 11. Plaintiff has satisfied all private, administrative, and judicial prerequisites to  
8 this action.

9 12. Plaintiff timely filed charges with the Department of Fair Employment and  
10 Housing (“DFEH”) against the named Defendants, and each of them, for the wrongful acts alleged  
11 herein, and was issued one or more right-to-sue letters by the DFEH within the past year.

12 **GENERAL ALLEGATIONS**

13 13. At all times relevant hereto, Defendants employed Archana at Defendants’  
14 medical facilities in Fontana, California and Ontario, California.

15 14. Archana was hired on or about March 19, 2012 as a Point of Care Testing  
16 Coordinator (“POCTC”). Archana was required to work full time and regularly worked overtime.  
17

18 15. Prior to working for Defendants, Archana had worked as a Point of Care  
19 Testing Coordinator for approximately 15 years. From the outset of Archana’s employment with  
20 Defendants, she brought her extensive experience and outstanding work ethic to bear for the benefit  
21 of Defendants. Archana’s efforts and focus on compliance ensured that the laboratories for which  
22 Archana was responsible regularly passed College of American Pathologist inspections with flying  
23 colors.  
24





1 human resources department to complain of age and race biased practices at the Fontana & Ontario  
2 Medical center Laboratories.

3 27. Defendants swiftly retaliated against Archana for this complaint with a  
4 pretextual writeup on or about February 3, 2016.

5 28. Understandably confused as to why she had been passed over for promotion  
6 three times for positions for which she was the most qualified candidates, Archana complained in or  
7 around July 2017 to Tim Controneo and others that she thought she was being not being fairly  
8 considered for these positions because of her age, her race, and her national origin.

9 29. Days later, on August 14, 2017, Defendants retaliated against Archana by  
10 stripping her of her Point of Care Testing duties, reassigning her to the CLS bench, reducing her  
11 hours, and scheduling her for weekend shifts. While Archana was on a vacation, her office was  
12 ransacked.

13 30. Archana continued to raise the issue of favoritism, age discrimination, and  
14 race discrimination at KAISER, filing an EEOC complaint on September 10, 2017 and amending  
15 said complaint on March 19, 2018.

16 31. Since these complaints, Archana has been targeted by her supervisors,  
17 managers, and coworkers. Despite Archana's mastery of her position, unparalleled dedication, and  
18 excellent track record, her managers and supervisors now search for any opportunity to give her a  
19 pretextual writeup. Defendants' retaliation of and harassment of Archana continues to this day.

20  
21  
22  
23 **ARCHANA HAS SUFFERED SEVERE EMOTIONAL DISTRESS AND SIGNIFICANT**  
24 **FINANCIAL LOSS**

25 32. Defendants' discrimination, harassment, and retaliation have caused Archana  
26 to suffer severe emotional distress. Archana has dedicated her life to her career and her sense of  
27



1 self-worth is intimately tied to her profession. For a person of Archana's dedication, the emotional  
2 toll of being passed over for a promotion for which she was the most qualified individual is difficult  
3 to quantify. Moreover, Archana now fears that, because of her age, race, national origin, and her  
4 complaints of discrimination, she will never be given fair consideration for promotion at Kaiser. As  
5 Defendants continue to harass Archana and retaliate against her, Archana's emotional distress will  
6 only deepen.

7  
8 33. Additionally, Archana's discrimination has resulted in her being underpaid  
9 for the position that she has worked since 2012 and has further resulted in her losing the increased  
10 wages that she would have received had she not been repeatedly passed over for promotion.

11 **FIRST CAUSE OF ACTION**

12 **HOSTILE WORK ENVIRONMENT HARASSMENT – AGAINST DEFENDANTS**

13  
14 34. Plaintiff re-alleges and incorporates herein by this reference the allegations  
15 contained in the preceding paragraphs.

16 35. At all relevant times, Government Code section 12940(j) was in full force  
17 and effect, and was binding upon Defendant, who is an "employer(s)" within the meaning  
18 of Section 12940(j)(4).

19 36. In perpetrating the above-described actions, Defendants engaged in unlawful  
20 harassment in violation of the California Fair Employment and Housing Act, Government Code  
21 section 12940(j).

22  
23 37. Defendants' harassment of Plaintiff was based on Plaintiff's age (58).

24 38. Defendants' harassment of Plaintiff was based on Plaintiff's race  
25 (Indian/Asian).

1 39. Defendants' harassment of Plaintiff was based on Plaintiff's national origin  
2 (Indian).

3 40. Defendants' actions were so severe and pervasive as to alter the working  
4 conditions and create a hostile and abusive working environment for Plaintiff.

5 41. As a direct and proximate result of Defendants' conduct, Plaintiff has  
6 suffered and continues to suffer damages as set forth above.

7 42. Defendants conduct was fraudulent, malicious and oppressive. Defendants  
8 knew or should have known that their harassment of Plaintiff would cause her severe emotional  
9 distress. Moreover, on information and belief, Timothy Cotroneo and Louis Cota were directors or  
10 managing agents of KAISER and directed and ratified that harassment of Plaintiff. Therefore,  
11 Plaintiff is entitled to punitive damages in an amount according to proof.  
12

13 43. Plaintiff is further entitled to attorney's fees and costs resulting from  
14 prosecuting this action.  
15

16 **SECOND CAUSE OF ACTION**

17 **DISCRIMINATION – PLAINTIFF AGAINST DEFENDANTS**

18 44. Plaintiff re-alleges and incorporate herein by this reference the allegations  
19 contained in the preceding paragraphs.

20 45. Under the FEHA, it is unlawful for an employer to discriminate against a  
21 person because of that person's age or race. Gov. Code § 12940.  
22

23 46. Defendant' discriminated against Plaintiff based on her age, her race, and her  
24 national origin, as set forth above.

25 47. Defendants' actions were so severe and pervasive as to alter the working  
26 conditions and create a hostile and abusive working environment for Plaintiff.  
27



1           55. In perpetrating the above described conduct, Defendants engaged in a pattern,  
2 practice, policy and custom of unlawful discrimination, harassment and retaliation for complaining  
3 of and/or opposing forbidden practices. Said conduct on the part of Defendants constituted a policy,  
4 practice, tradition, custom and usage which denied Plaintiffs protection of California Government  
5 Code § 12940(a), (j) and (k).  
6

7           56. At all relevant time periods there existed within the organization of  
8 Defendants a pattern and practice of conduct by their personnel which resulted in discrimination,  
9 and/or harassment, and/or retaliation, including but not necessarily limited to, conduct directed at  
10 Plaintiff and other employees.

11           57. At all relevant time periods there existed within the organization of Employer  
12 Defendants a pattern and practice of conduct by personnel which resulted in retaliation toward  
13 anyone, including but not limited to Plaintiff, who complained of age discrimination, race  
14 discrimination, national origin discrimination, age harassment, national origin harassment or race  
15 harassment.  
16

17           58. At all relevant time periods Defendants failed to make an adequate response  
18 and investigation into the conduct of offenders, and the aforesaid pattern and practice, and thereby  
19 established a policy, custom, practice or usage within the organization of Defendants which  
20 condoned, encouraged, tolerated, sanctioned, ratified, approved of, and/or acquiesced in  
21 race/age/national origin discrimination and/or race/age/national origin harassment towards  
22 employees of Defendants, including but not limited to the Plaintiff.  
23

24           59. During all relevant time periods, Defendants failed to provide any or  
25 adequate training, education, and information to their personnel and most particularly, to  
26 management and supervisory personnel with regard to policies and procedures regarding  
27

1 race/age/national origin discrimination, race/age/national origin harassment, and retaliation for  
2 complaining of or resisting race/age/national origin discrimination and race/age/national origin  
3 harassment.

4           60. Employer Defendants knew or reasonably should have known that the failure  
5 to provide any or adequate education, training, and information as to their personnel policies and  
6 practices regarding race/age/national origin discrimination, race/age/national origin harassment, and  
7 retaliation for complaining or resisting race/age/national origin discrimination and race/age/national  
8 origin harassment, would result in race/age/national origin discrimination, harassment, and  
9 retaliation against employees including but not limited to the Plaintiff, for complaining or resisting  
10 the same. Defendants also failed to reprimand, discipline, suspend or expel offenders, and/or take  
11 other forms of remedial action regarding offenders, to prevent the race/age/national origin  
12 discrimination and age/race harassment and retaliation from occurring, as required by law.  
13

14           61. By the acts or failures to act of policy making personnel within the  
15 organization of Defendants, Defendants were deliberately indifferent to the need to provide any or  
16 adequate training, education, and information to the personnel and employees of Employer  
17 Defendants as to policies regarding race/age/national origin discrimination and race/age/national  
18 origin harassment, and retaliation for complaining of or resisting the same.  
19

20           62. The failure of Defendants to provide any or adequate education, training, and  
21 information to personnel concerning policies and practices regarding age/race discrimination,  
22 age/race harassment, and retaliation for complaining of or resisting the same, constituted deliberate  
23 indifference to the rights of employees, including but not limited to those of the Plaintiffs, under  
24 California Government Code § 12940 (a) (h), (i), (j) and (k).  
25









1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

employee exercising his/her rights under the California Fair Employment and Housing Act ("FEHA");

b. for an injunction restraining Employer Defendants, along with all Defendants' supervising employees, agents and all those subject to their control or acting in concert with it from causing, encouraging, condoning or permitting the practice of harassment, discrimination, and/or retaliation and willful violations of FEHA;

c. for affirmative relief requiring Defendants to conduct training of all employees to "sensitize" them to the harmful nature of harassing, discriminating, and retaliating against an employee exercising his/her rights under FEHA. The proposed plan of education and training should also include training and detection, and correction and prevention of such retaliatory practices;

d. for affirmative relief requiring Defendants to notify all employees and supervisors, through individual letters and permanent postings in prominent locations in all offices that retaliation violates the California Fair Employment and Housing Act and the consequences of violation of such laws and policies;

e. for affirmative relief requiring Defendants to develop clear and effective policies and procedures for employees complaining of retaliation or violations of FEHA so they may have their complaints promptly and thoroughly investigated (by a neutral fact finder) and informal as well as

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

formal processes for hearing, adjudication and appeal of the complaints;  
and


f. for affirmative relief requiring Defendants to develop appropriate sanctions or disciplinary measures for supervisors or other employees who are found to have committed harassing, discriminatory and/or retaliatory acts, including warnings to the offending person and notations in that person's employment record for reference in the event future complaints are directed against that person, and dismissal where other measures fail.

**PRAYER FOR RELIEF**

- 80. WHEREFORE, Plaintiff requests the following relief, according to proof:
  - a. Compensatory damages, including emotional distress damages, lost wages and benefits, past medical expenses and future medical expenses in an amount according to proof;
  - b. Attorney fees and costs of suit, inclusive of expert witness fees;
  - c. Injunctive relief;
  - d. Punitive damages;
  - e. Any remedies referenced in each cause of action; and
  - f. Such other relief as the Court may deem just and proper.

DATED: August 27, 2018

Peer & Hart, PC

By:   
 David M. Peer  
 Attorney for Plaintiff  
 ARCHANA SHAH