

SMITH EIBELER, LLC
Christopher J. Eibeler, Esq. ID# 031772004
Lisa Hernandez, Esq. ID# 018402005
101 Crawfords Corner Road, Suite 1-126
Holmdel, New Jersey 07733
732-444-1300
Attorneys for Plaintiff

DR. CHRIS PERNELL,

Plaintiff,

v.

**UNIVERSITY HOSPITAL, THE STATE ETHICS
COMMISSION, JOHN/JANE DOES
(1-10) (fictitious names of unknown persons)
and ABC COMPANIES (1-10) (fictitious names of
unknown entities)**

Defendants.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY
DOCKET NO. ESX-L-**

COMPLAINT AND JURY DEMAND

Plaintiff, Dr. Chris Pernell (hereinafter referred to as "Plaintiff"), having an address of 1 Fineran Way, Apt 435, Short Hills, New Jersey, by way of Complaint against Defendants University Hospital, the State Ethics Commission, John/Jane Does (1-10) and ABC Companies (1-10) says as follows:

FACTS COMMON TO ALL COUNTS

A. Relevant Parties and Persons

1. Defendant University Hospital (hereinafter the "Hospital" or "UH") is a hospital with a principal place of business located at 150 Bergen Street, Newark, New Jersey.
2. The State Ethics Commission ("SEC") is a New Jersey state agency that is made up of a board of seven appointed members and a full-time staff headed by an Executive Director. The Board consists of four public member and three Executive Branch employees, all appointed

by the Governor. Executive Branch members serve at the pleasure of the Governor during the term of the Governor appointing the member and until the member's successor is appointed and qualified. Public members serve staggered terms of four years and until the appointment and qualification of their successors. The Governor designates one public member to serve as chair and one member to serve as vice-chair of the Commission. The SEC has the regulatory power to undertake investigations and hold hearings regarding alleged violations of the Conflicts Law of state employees. The SEC's power includes subpoena broad power, including ordering persons to appear and testify before the Commission staff, ordering persons provide them evidence and the ability to compel such persons to comply with such a subpoena by applying for a Court Order for same.

3. Defendants ABC Companies (1-10) are fictitious sole proprietorships, companies, limited liability companies, partnerships, and/or other companies/entities who are not specifically named defendants, who are unknown to Plaintiff at this time but who may be identified during discovery in this matter, and who are responsible to Plaintiff for the claims set forth herein and/or which companies are responsible to Plaintiff as an employer, and/or an aider and/or abettor for claims set forth herein.

4. Defendant John and Jane Does 1-10, represent fictitious names for defendants whose names are presently unknown, who were employees who worked for the Hospital during the time of Plaintiff's employment. Upon information and belief, these defendants live in the State of New Jersey. These individual defendants engaged in discriminatory, harassing, retaliatory, illegal and tortious conduct against Plaintiff and/or conspired to engage in such conduct.

5. Mary Maples (hereinafter “Maples”) at relevant times herein was Chief Legal Officer or Interim CEO for the Hospital.

6. Tracey Forsyth (hereinafter “Forsyth”) at relevant times herein was the Deputy Legal Counsel or the Interim Chief Legal Officer for the Hospital.

B. Plaintiff Was Forced to Work in a Racist and Sexist Hostile Work Environment

7. Plaintiff commenced her employment with the Hospital in the position of Chief Strategic Integration and Health Equity Officer in October, 2019.

8. Plaintiff is a Black female.

9. Plaintiff consistently performed above the expectations of the Hospital throughout her employment.

10. Plaintiff received constant praise from the highest levels of the Hospital’s Leadership on multiple occasions related to the new or improved initiatives her office spearheaded, including:

- growing the population health department in its services around trauma-informed care, the hospital-based violence intervention program, and population health analytics;
- creating a social marketing campaign called Care Around the Clock during the COVID-19 pandemic and a comprehensive community health needs assessment;
- transforming the patient experience department to the human experience department and putting the team on the path to improve system-wide performance and worker well-being;

- launching the Hospital’s first-ever voter registration kiosk in the emergency department; and
- distinguishing the Hospital as one of the first hospitals to design a justice, equity, diversity, and inclusion (JEDI) department with a comprehensive cultural competency assessment, system-wide JEDI goals, and implicit bias training.

11. In the one performance evaluation she received, Plaintiff was informed that she had received the highest rating of any executive in the ELG/C-suite.

12. Throughout her employment, Plaintiff was subjected to pervasive, severe and continuing instances of racial discrimination, harassment and hostile work environment through regular unfair treatment, microaggressions, and other racist and sexist conduct as set forth herein.

13. The ongoing discrimination, harassment and other discriminatory conduct of other employees and Board members created a hostile and offensive work environment for Plaintiff and other Black employees who worked for the Hospital.

14. The Hospital failed to take appropriate action in response to learning of the hostile work environment directed at Plaintiff and other Black employees who worked for the Hospital.

15. Instead of taking prompt remedial action to stop and prevent rampant discrimination, the Hospital sought to silence victims and witnesses of discrimination by and through the use of certain confidentiality directives, policies and practices.

16. During her employment Plaintiff was asked to get involved with the Hospital’s response to an incident where someone wrote “WLM” in a common workspace area or bathroom.

17. “WLM” was short for "White Lives Matter", which was interpreted as being hostile given what was happening in society around the Black Lives Matter movement and other social justice initiatives to combat systemic racism.

18. At first, the incident was kept confidential within the executive’s office, which was responsible for overseeing the department in which the incident occurred, but the executive vice president eventually asked Plaintiff to get involved.

19. Plaintiff had been made aware multiple times of allegations by Black staff in that particular department about racist and discriminatory behavior in hiring and firing decisions and workplace incidents.

20. Plaintiff was specifically asked to quell the concerns of the Black workers who found the incident to be offensive and threatening.

21. After conducting an investigation, the Hospital learned the identity of the staff person who had written the “WLM” graffiti.

22. The Hospital decided not to terminate the staff person but rather to reassign him.

23. This action was part of a larger pattern of behavior by the Hospital in responding to several other racially inflammatory situations, which Plaintiff repeatedly objected to and complained about.

24. On one occasion, Plaintiff received an anonymous phone call on her work phone and the caller called Plaintiff, “a nigger bitch.”

25. Plaintiff complained to the Hospital about the threatening and racist incident.

26. The Hospital informed Plaintiff that they looked into the incident but were unable to determine the origin of the call and therefore would not take any action.

27. The Hospital took no meaningful action to investigate Plaintiff's complaints.

28. The Hospital referred to the Executive Team that reported directly to the CEO as "Chiefs."

29. Plaintiff was the only Black woman employed by the Hospital in a "Chief" position.

30. Towards the beginning of Plaintiff's employment, Plaintiff was instructed by another Chief to leave a meeting after being told "you are not needed."

31. The Chief who told Plaintiff that she was "not needed" during the meeting made the discriminatory comment because of Plaintiff's race and gender.

32. Plaintiff felt totally disrespected and reasonably believed that the comment was racially motivated.

33. Plaintiff made a complaint to the Hospital about the incident.

34. The Hospital took no meaningful action to investigate the incident.

35. The same Chief subsequently made a comment that Plaintiff was there "to carry our water."

36. After making this comment, the Chief observed that Plaintiff was upset about the comment, and acknowledged to Plaintiff, "I should not have said that."

37. The Hospital took no meaningful action to address the Chief's conduct, which Plaintiff reasonably believed was motivated by discriminatory animus.

38. Upon being offered the position of Chief Strategic Integration and Health Equity Officer, Plaintiff was offered a low salary which was commensurate with her subordinates rather than her C-Suite comparators.

39. Plaintiff was frequently undermined by less experienced non-Black team members and male team members who, along with other subordinates, instructed junior staff that work Plaintiff assigned them was less important than other work they were assigned.

40. Upon Plaintiff's hiring, the Hospital informed her that two employees who were to report to Plaintiff had "broken into her" private employment file.

41. Plaintiff was told that one of these employees was terminated for the incident, while the other one kept his job.

42. Plaintiff objected to the Hospital about the retention of this employee, but this objection was ignored.

43. The employee who was retained was thereafter routinely insubordinate to Plaintiff.

44. The employee would constantly surreptitiously record Plaintiff during work.

45. The employee also told others who reported to Plaintiff that he would do everything in his power to get Plaintiff terminated.

46. Plaintiff, who had never met this employee prior to her employment, reasonably believed this employee targeted Plaintiff to harass her because of her race and gender.

47. Despite this employee's insubordination toward Plaintiff and the confirmed instances of harassment and other retaliatory conduct, the Hospital prevented Plaintiff from terminating his employment.

48. It was only after two male Chiefs determined that the employee should be fired for misconduct that the Hospital finally moved forward with his termination.

49. The roles Plaintiff developed for her departments were consistently devalued by the Hospital by offering them less competitive salaries and questioning Plaintiff's hiring decisions.

50. Plaintiff was consistently undermined by HR on the DEI best practice of promoting and hiring locally, with insinuations that people from Newark were not the best candidates.

51. Plaintiff was described as "aggressive" by another white colleague in the Chief suite, who also complained that Plaintiff made her feel "uncomfortable".

52. Plaintiff reasonably believed this was motivated by and based upon Plaintiff's race and gender.

C. The Hospital's Restraining of Plaintiff's Speech of Public Concern

53. As a nationally known leader in the field of health equity and public health, Plaintiff is often invited to share her expertise, opinion and thought leadership on issues of significant public concern in certain group or media settings.

54. Plaintiff was told by the Hospital leadership that her media appearances on certain media outlets during which she discussed issues of public concern angered certain employees, including some members of the Hospital's Board of Directors.

55. Plaintiff was informed by Hospital leadership that Board Chair Tanya Freeman would routinely send text messages complaining about Plaintiff, Plaintiff's commentary, and Plaintiff's appearance while she was on the air during media appearances.

56. On one occasion, Plaintiff was told that Ms. Freeman was the "most angry" they had ever seen her as a result of one of Plaintiff's media appearances.

57. It was also shared with Plaintiff that Ms. Freeman knew Plaintiff had approval and support from her direct supervisor, the CEO of the Hospital, to make the media and other public appearances.

58. Despite having her direct supervisor's approval and support, Plaintiff was subjected to an internal investigation from November 2020 through January 2021 concerning her exercise of free speech during the media and other public appearances.

59. The Hospital investigation ultimately resulted in a finding of no wrongdoing.

60. Despite having done nothing wrong, as evidenced by the Hospital's finding of no wrongdoing, Plaintiff was prevented from participating in certain activities while the investigation was pending, which resulted in the restriction of protected speech.

D. Grassroots Support for Plaintiff to Pursue the CEO Position

61. In or about May 2022, the CEO of the Hospital stepped down from his position.

62. In response, members of the local community encouraged Plaintiff to pursue the position, including former U.S. Representative Donald Payne Jr., former Governor James McGreevey and Dr. Perry N. Halkitis, the Dean of the Rutgers School of Public Health.

63. Plaintiff was also encouraged to pursue the position by numerous members of the Newark Board of Education and City Council.

64. On or about June 15, 2022, NJ.com published an article reporting that more than 100 leaders from a variety of sectors statewide wrote an open letter to Governor Murphy and the Board of Directors calling for them to name Plaintiff the Hospital's next CEO.

65. Plaintiff was surprised and honored by the grassroots local support for her candidacy and ultimately decided to pursue the open CEO position.

66. Plaintiff informed the Hospital of her intent to pursue the open CEO position.

67. After the June 15, 2022 article, Plaintiff learned that certain Board members and influential persons employed or associated with the Hospital were very unhappy over the possibility that Plaintiff could be named CEO and the fact she had significant public support for her candidacy.

68. Plaintiff was also informed that the Governor and Governor's Office did not support her candidacy for the CEO position and that they were "not going to be strong-armed" into allowing the Hospital to offer her the position.

69. Plaintiff also heard rumors that some of the people who were supporting her candidacy and who worked at the Hospital were being criticized and questioned by others in the Hospital concerning their support of Plaintiff.

70. While Plaintiff was away on travel in June, 2022, the Hospital scheduled the Executive Leadership Team to have pictures taken outside the presence of Plaintiff. Plaintiff viewed this decision to be discriminatory and retaliatory.

71. In or about early July 2022, one of Plaintiff's direct reports informed Plaintiff that the direct report was being harassed as a result of supporting Plaintiff's CEO application.

E. The Hospital Opens a Frivolous Retaliatory Sham Investigation Into Plaintiff to Destroy Plaintiff's Candidacy of the CEO Position

72. By email dated July 25, 2022, Plaintiff was informed by Forsyth that the Hospital had "been made aware of concerns that have resulted in an investigation" and that Plaintiff was being requested to participate in an interview by the Hospital's Outside Counsel.

73. Forsyth was placed in the interim position of Chief Legal Counsel at this time with the intention to apply for the vacant Chief Legal Counsel position that Maples formerly held prior to her being placed in the interim CEO/President position.

74. Plaintiff asked Forsyth what the investigation was about and Forsyth refused to provide any details or answer any of Plaintiff's questions about the investigation.

75. At no time prior to her interview did anyone from the Hospital inform Plaintiff of any details about the investigation, including the fact that she was the target of the investigation.

76. At the interview, Plaintiff learned that she was the target of the investigation.

77. Specifically, the Outside Counsel informed Plaintiff that her office had been retained to investigate certain allegations of wrongdoing on the part of Plaintiff in connection with the vacant CEO/President position.

78. At the interview, Outside Counsel imposed a strict confidentiality directive upon Plaintiff regarding the details and the "existence" of the investigation, in clear violation of her Constitutionally protected free speech rights, as well as other state law.

79. Outside Counsel further told Plaintiff that her office was conducting a "privileged investigation" and instructed Plaintiff to not disclose or discuss what they talked about during the interview outside the Hospital.

80. Outside Counsel further advised Plaintiff that the basis for this request was so they could maintain the attorney client privilege, even though Plaintiff was not being represented by the Outside Counsel and was the target of the investigation.

81. Outside Counsel's unlawful "confidentiality" instruction was consistent with the Hospital's Discrimination, Harassment and Intimidation Policy, which specifically requires:

All participants in the complaint and/or investigation are expected to maintain confidentiality, except if disclosure is required by law, or when lack of disclosure impedes a full and fair investigation of the complaint or implementation of complaint remedies.

(hereinafter referred to as the “Confidentiality Directive”).

82. During the interview, Plaintiff complained to the Hospital’s Outside Counsel that she believed she was being unlawfully and racially targeted, a complaint she repeated on several occasions throughout the investigation.

83. Specifically, Plaintiff complained and objected to the Outside Counsel that she was being targeted as a Black female and the investigation was an attempt to push her out of the Hospital and make her less competitive as a CEO candidate.

84. Plaintiff further complained that she believed the investigation was conducted in retaliation for Plaintiff engaging in protected speech and her plan to apply for the CEO position, was targeted against her because of her race, and was designed to inflict reputational harm.

85. After the interview, Plaintiff raised the same complaints to Interim CEO Maples that the investigation was retaliatory and targeted against her because of her race.

86. Plaintiff also informed Maples that she believed the investigation was initiated to ruin her credibility, devalue her within the Hospital, and to intimidate and coerce her to no longer pursue and formally apply for the CEO position.

87. Plaintiff further complained to Maples that the Hospital’s accusations that she committed wrongdoing in connection with her CEO candidacy was causing detrimental harm to her ability to perform the work necessary to her current position and in the CEO position if she were hired for that position.

88. Plaintiff further told Maples that despite Maples' intentions to seek the same CEO position, she should have allowed the process to proceed fairly to allow the best candidate to obtain the position.

89. Plaintiff further complained to Maples that the decision to launch a baseless and retaliatory investigation into her had significantly impacted her ability to continue in her employment and apply for the CEO position.

90. By letter dated August 3, 2022, Outside Counsel demanded Plaintiff produce certain electronic communications to them by no later than 4:00 p.m., August 4, 2022.

91. In the letter, Outside Counsel repeated the Confidentiality Directive as follows:

Finally, this is a reminder that this investigation is privileged and protected by the attorney-client privilege, and your obligation to maintain the confidentiality of this investigation is ongoing. As such, we ask that you refrain from sharing the contents of our communications with you, including the above requests, with anyone outside of University Hospital's legal department. Should you have any questions about this obligation, please contact University Hospital's Chief Legal Officer, Tracy Forsyth.

E. The Hospital's Imposition of an Unlawful Confidentiality Directive Upon Plaintiff

92. Plaintiff was called into a meeting with Maples and Forsyth on August 4, 2022.

93. At the time of the meeting, Plaintiff understood that the investigation remained open and no conclusions or findings had been made in connection therewith.

94. During the meeting, Plaintiff repeated the same complaints she raised with the Outside Counsel and Maples to Forsyth.

95. Plaintiff told Maples and Forsyth that she believed she was being discriminated against and that she no longer felt safe working in the Hospital as a result of the Hospital's conduct.

96. Forsyth became irate and verbally reprimanded Plaintiff throughout the meeting for her protected complaints.

97. Maples attempted to calm Forsyth down, and repeatedly asked Plaintiff what she thought she could do to help the situation.

98. Plaintiff responded to Maples that the adverse, discriminatory and retaliatory actions taken by the Hospital were destroying her reputation and credibility, have undermined the work she has accomplished and have irreparably impacted her ability to perform her current job duties and those of the CEO should she be offered the position.

99. Maples (who at the time was anticipated to also be applying for the permanent CEO role) and Forsyth (who was anticipated to be applying for the Chief Legal Officer position) took no action in response to Plaintiff's complaints of discrimination and retaliation.

100. In a subsequent meeting with Maples, Plaintiff and Maples again discussed Plaintiff's continued employment at the Hospital.

101. During this conversation, Plaintiff agreed to amicably work with Maples to engage in negotiations in order to facilitate a graceful exit from the Hospital, which would include a mutually acceptable severance agreement.

102. Maples and Forsyth began attempting to negotiate the specific material terms and conditions of Plaintiff's separation of employment during this meeting.

103. Specifically, Maples offered Plaintiff severance and her bonus if she agreed to a release of her legal claims.

104. Plaintiff specifically expressed her concern that some of the equity and inclusion initiatives would not survive or be sustained and, as a result, requested that she be permitted to stay in her position for at least eight (8) weeks to properly transition her work.

105. At no time did the Hospital inform Plaintiff that the Hospital would require any confidentiality or non-disparagement clause as material terms to the agreement to separate Plaintiff from her employment and obtain her commitment to not apply for the CEO position.

106. After receiving Plaintiff's commitment to enter into negotiations to leave the Hospital and not apply for the CEO position in exchange for these material terms – including severance, bonus, at least eight (8) weeks to properly transition her work, mutual releases and other terms to facilitate a graceful exit from the Hospital – the Hospital then officially published the open job position of CEO on the Hospital's website on August 8, 2022.

107. Maples, Forsyth, Board members and others purposely withheld publishing the open job position of CEO until they launched a frivolous investigation into Plaintiff in order to coerce her into no longer pursuing the CEO position and obtaining her commitment to engage in negotiations to leave the Hospital in exchange for severance and a release of her claims.

108. During conversations with Maples concerning the Outside Counsel's investigation, Plaintiff repeatedly complained that she did nothing wrong, the investigation was retaliatory and demanded to know the results of same.

109. Maples responded asking Plaintiff why she cared about the results of the investigation, which further evidences the frivolous and retaliatory nature of Outside Counsel's investigation.

110. While the sham and retaliatory investigation continued, Maples presented Plaintiff with written terms concerning her separation from the Hospital on August 9, 2022.

111. The written terms set forth in the settlement agreement ran contrary to the terms previously discussed and/or were never discussed during their meeting concerning Plaintiff's proposed separation from the Hospital.

112. In the email dated August 9, 2022, the Hospital denied Plaintiff's request to remain at the Hospital for eight (8) weeks, and instead, instructed Plaintiff that her last day of work at the Hospital would be September 2, 2022.

113. The Hospital also informed Plaintiff that it would require her to enter into a confidentiality and non-disparagement agreement, despite the fact that both terms violate the Law Against Discrimination.

114. Specifically, Maples wrote, in relevant part:

1. Over the next four weeks, we will focus on transitioning a variety of open projects, to include an update to our DEI strategy, conclusion of the Community Health Needs Assessment, Patient Experience projects (HCAHPS/AIDET), and population health effectiveness metrics. With that, I would like to plan for your last day at UH to be Friday, September 2, 2022. As mentioned, your benefits would then terminate on September 30th per State policy.
2. We will pay you the value of the Fiscal Year 2022 executive incentive compensation following your departure once final achievements for the organization are tallied and calculated. I expect to present that to our Board at our September 21st Executive Committee meeting.
3. In addition, UH will provide a severance payment that equates to four weeks' salary at your current base salary rate. We discussed that severance is conditioned on reaching an agreement, and that such an agreement would also include mutual non-disparagement and confidentiality terms, among others.

4. Also, UH will provide you with access to outplacement services for a period of 12 months following your last day. This arrangement is handled via a contract between UH and the vendor (A.J. O'Connor), which means you will not receive a bill for these services. It will be paid for directly by UH. I have attached a description of these services, but have not yet been able to confirm with the company whether any of these offerings have changed. I am working on that today and will advise of any changes as soon as we know.
5. I mentioned when we spoke that you will also receive a payout of any unused vacation time (not including accrued sick time or float days) following your departure.

115. Shortly thereafter, Plaintiff was informed that the Hospital wanted Plaintiff to exit her position ASAP and were allowing her to stay solely for the purpose of negotiating the settlement agreement.

116. Plaintiff objected to the Hospital's proposed terms, including the requirement that she would only have her executive incentive bonus, which she had earned the previous fiscal year, and which was approximately 30% of her salary, if she agreed to confidentiality and a non-disparagement agreement.

117. In an email dated August 23, 2022, Counsel for Hospital further explained the confidentiality and non-disparagement material terms that were being required by Hospital to be included in the agreement as follows:

First, regarding non-disparagement, Ms. Washington advised that you would agree to "speak in general terms about the barriers that [you] experienced as a black executive in health care," including having [your] authority undermined, boundaries being placed and being subject to differential treatment than [your] non-black counterparts." She also advised that you would refrain from "mentioning the Hospital or any of its employees by name or give specific information/incidents." In your letter of resignation, you indicated that you would "not agree to any restrictive confidentiality and non-disparagement clauses in order to have the full agency and freedom to operate

in my professional practice.” It may be that what Ms. Washington conveyed on your behalf and what you stated in your email amount to the same thing, practically speaking. Are you interested in retaining the ability to discuss your experience in general terms, or are you seeking to maintain the ability to specifically disparage University Hospital and its employees by name? Can you please give me some more context to better understand what you are seeking?

As to confidentiality, there is certain information that you gathered during the course of your employment at University Hospital that you cannot disclose, regardless of the circumstances of your departure from UH and the existence of an agreement between you and UH. Such information includes protected health information that is protected from disclosure by HIPAA, and confidential and proprietary operational information that you may have learned by way of your position as an executive here.

As to the incentive bonus, both you and Ms. Washington took the position that UH orally agreed to provide the executive incentive bonus to you. To be clear, payment of the executive incentive-bonus was a proposed term offered in exchange for a release of claims and confidentiality/non-disparagement in connection with negotiating your departure from University Hospital and not an oral promise to provide the bonus to you. It is our position that you are not entitled to the bonus absent a negotiated agreement in connection with your departure from UH. However, as part of these ongoing negotiations, UH will agree to pay to you the incentive bonus in exchange for a release and waiver of any legal claims you believe you have against UH and its employees. As part of the written release and waiver, and to the extent we separately can agree to the scope of the non-disparagement, we can include those terms specifically in the written document. Please note that these two issues are separate, however, and if we fail to reach agreement as to the non-disparagement we would still consider payment of the incentive bonus in exchange for a release and waiver of claims against UH.

118. Plaintiff responded via email August 24, 2022, in relevant part:

..... Here are some summary bullets with my responses and to help guide any additional further conversations:

- I am not represented by counsel. My position and principles are firm on several issues and I am confident I can communicate those items clearly. I understand that I must remain confidential around any PHI or protected health information as dictated by HIPAA and any proprietary operational information. To be clear I will not remain confidential around any specific events or incidents that happened to me, for instance, the fact that I was subjected to two investigations during my work tenure which were retaliatory in nature and meant to disparage me, lessen my credibility and/or value to the organization and my competitiveness in the CEO search process. This is part of the pattern of targeted, discriminatory behavior that I faced as a Black woman healthcare executive, and as I have done in my past professional practice, I will continue to use personal narrative and storytelling to explain the inequalities that those in historically excluded groups face and to offer solutions around systems reform, disruption and overhaul to mitigate systemic racism, etc.
- I will not agree to or sign any non-disparagement clause because it will limit my ability to tell my story about what has happened to me specifically during my career, including what has happened to me at UH. I want the personal freedom to be able to describe how white supremacy and white privilege operate to scrutinize and create double standards for people from historically excluded groups, using my narrative as an example. I have done this throughout my professional career and have done so throughout the pandemic with the experiences and narrative around how my family was impacted by the COVID pandemic in order to spur policy reform and action and transform society. For instance, in the past, I have openly described how a nurse at another hospital called security on me for asking too many questions while my sister was undergoing treatment for a pulmonary embolism during her bout with breast cancer. I've used that to describe implicit bias. I will use similar instances that have happened to me during my tenure at UH to describe implicit and explicit bias. The aim of this is to educate and to enact change. In these scenarios I have and would use terms like senior leaders, nurse, doctor, executives, etc..., In my professional practice, I have even described a specific encounter I had with Dr. Benjamin Carson where he publicly insulted me and other women for wanting to enter competitive surgical fields. Given his public stature and his public comment, I described that incident using his name. I shared this with both Mary and Tracy in a previous conversation. My aim/goal is to transform the world about me and in order to do that I have to shine a light

on what those in historically [] groups face and what I have endured myself. I have raised in multiple conversations and not just those around my departure how I have been treated while here and that I've been disparaged by the board chair and other staff and that I have been treated like a second-tier chief or ELG member. I will not forego the ability to describe what has happened to me at any point in my career because then I become complicit with the systems of oppression designed to protect social, cultural, political and economic castes in our society.

119. In response to Plaintiff's engaging in protected activity concerning the Hospital's insistence on an unlawful confidentiality and non-disparagement clause in the settlement agreement, as well as in further retaliation for Plaintiff engaging in prior protected activity concerning issues of discrimination, the Hospital took further retaliatory action against Plaintiff by separating her employment through a public announcement, without the parties reaching a resolution to the written terms discussed during negotiations concerning Plaintiff's separation from the Hospital.

120. While at the same time participating with the negotiations on behalf of the Hospital with Plaintiff, including offering Plaintiff a severance, bonus and a non-disparagement, Forsyth continued to communicate and participate with Outside Counsel to conduct a sham investigation into Plaintiff.

121. As part of that investigation, Plaintiff was again instructed that she could not disclose the "existence and details of [the] investigation" with anyone other than her legal counsel..

122. On or about August 25, 2022, the Hospital issued a public news release claiming that Plaintiff resigned from her position as Chief Strategic Integration and Health Equity Officer and to pursue new opportunities.

123. The Hospital's public announcement of Plaintiff's separation from employment after it became clear that Plaintiff would not agree to confidentiality and a non-disparagement clause, and without a severance agreement in place, is further evidence of retaliation and discrimination, and also constitutes an involuntary termination of employment.

124. The Hospital's Counsel responded via email August 26, 2022:

Hi Dr. Chris,

Thanks for your email and for your patience. I think our respective positions on these issues are pretty close. Let me explain what I mean.

Although we disagree on your entitlement to the executive incentive bonus, UH will agree to pay you that bonus in exchange for a release of claims. By release of claims, we mean that you agree not to sue UH or any of its staff at a future date. To be clear, UH cannot pay you the executive bonus without a release of claims. A draft agreement is attached for your review.

We also understand from Ms. Washington that you are interested in purchasing COBRA after the termination of your health benefits on September 30th. UH will agree to reimburse you for any COBRA premiums paid by you through the end of December 2022.

I also see common ground in your desire to tell your story as you move forward in your future endeavors. In the attached draft agreement, I tried to honor your stated goal. As I mentioned earlier, failing to reach agreement on non-disparagement does not preclude agreement on the bonus and release, but I think having an agreement on non-disparagement in writing benefits us both and limits potential future disagreements.

Please review the attached draft and let me know if you have any questions, or if you have any suggestions on the language, I'm happy to review that as well.

.....

125. The draft written “Negotiated General Release” document specifically contained the following provision:

Dr. Pernell agrees to not make or publish any statement (orally or in writing) that would libel, slander or disparage University Hospital, its employees, officers or directors. Notwithstanding the above, University Hospital recognizes that Dr. Pernell is free to discuss, in general terms, her experiences in health care and any boundaries she believes to have been placed on her and/or differential treatment to which she believes she has been subjected, without making specific reference to University Hospital or its employees, officers or directors.

126. Plaintiff responded via email August 31, 2022:

Morning,

..... I do not think we are close on the respective positions, however. Here is a brief summary of where I currently stand and what I see as non-negotiable terms:

- Previously, I asked for a copy in writing of the eligibility criteria for executive leadership team members to qualify for the incentive bonus. I never received that but based on past awareness, the bonus is earned by performance on specific organization-wide metrics and is dispersed to the entire group after the board has reviewed and validated the outcomes. I have earned the bonus just as other team members of ELG have earned the bonus. The performance period ended on June 30, 2022 so I am being denied something which other ELG members will receive. Will you require all ELG members to sign a release of legal claims and a waiver should they depart the organization prior to the funds being dispersed? Will this be put in writing and will other ELG members be informed that in order to receive the bonus they will need to forgo their legal rights? As a matter of principle, I will not agree to a waiver or release of legal claims to receive a bonus which I have already earned and was promised to me orally. I will never agree to a waiver or release of legal claims because as a practitioner of equity, this premise is inherently flawed and unfair. It only serves to perpetuate power imbalances and usurps the rights of workers and especially those in protected classes to hold systems accountable for their behaviors, actions and decisions.

- Second, as a matter of principle, I will not sign any confidentiality or non-disparagement clause and never have because it violates a fundamental belief, practice and principle that I have upheld throughout my profession and life. Narrative medicine and storytelling are tools to enact reforms and shape the policy and practice landscape. When workers sign such agreements they have rendered themselves powerless against a system or institution and have been effectively silenced. As part of my professional practice and justice orientation, I use narrative to illuminate occurrences, especially biases, in order to affect meaningful change. It is important that I am the arbiter of my experiences in the professional and personal realm. As a black woman in a society where White supremacy has defined social, political, cultural, religious and economic castes, I will not allow myself to be rendered mute or powerless. To ask me to do so is the exact opposite of what I stand for and who I have espoused to be.
- The offer to pay my COBRA expenses for 3 months is of no real value to me. I have been uninsured before which I do not recommend to anyone, especially anyone with chronic health conditions. I mention this because when I was uninsured, I wrote about it for the Washington Post as part of the push to get meaningful healthcare reform in the United States. Universal healthcare is a goal that those of us in Health Equity have been adamant is necessary, especially for there to be significant and consequential gains for those in historically excluded groups such as Black, Brown and Indigenous communities. So, I will not accept that offer of reimbursement. I only want from University Hospital what I have earned dutifully which is my executive bonus and any unused vacation time.

At this point, I do not intend to sign any documents and will move forward in my life and career, grateful for the opportunity to serve in this role and wiser about how to redesign healthcare systems. Thank you.

127. Plaintiff continued to refuse to agree to include any provision in the agreement that would restrict or limit her ability to speak freely about the underlying facts of her potential discrimination claims.

128. As a result, the Hospital refused to provide her any severance, including the severance they agreed to provide to her so long as she agreed to the confidentiality and non-disparagement clauses.

129. Plaintiff also requested a copy of the bonus criteria documents, but the Hospital refused to provide same.

130. Plaintiff was involuntarily separated from the Hospital effective September 2, 2022, without being provided any severance or any of the other benefits discussed during the severance negotiations.

131. The Hospital never paid Plaintiff her earned executive bonus.

132. The Hospital also never offered any severance agreement that did not include unlawful confidentiality and non-disparagement terms.

133. Months later, Plaintiff requested that the Outside Counsel provide her with a copy of her taped interview.

134. Outside Counsel refused to provide her a copy of the taped interview claiming it was confidential.

135. After Plaintiff objected to the Hospital's refusal to provide her a copy of the interview, Outside Counsel informed Plaintiff that the investigation concluded with a finding she did some sort of undefined and unexplained wrongdoing during her employment.

G. [REDACTED]

136. On September 13, 2022, N.J.com published a story entitled "Racism pervades this N.J. hospital, former exec says. She was forced out because of it, she claims."

137. As part of the article, Plaintiff was interviewed concerning her complaints of race discrimination, which included the following relevant portions:

Pernell, who is Black, told NJ Advance Media that University Hospital officials hampered diversity efforts, scrutinized her more than other administrators and retaliated against her for expressing interest in the open CEO position. She said her decisions — including

employee hiring — were constantly questioned, she was accused by a male executive of lying about her COVID-19 community vaccination efforts and the hospital launched two “baseless” noncompliance investigations into her conduct in two years.

At the heart of the investigations was the insinuation, “How dare you, as a Black woman, aspire to that [CEO] role? How dare you get out of place?” she told NJ Advance Media in her first public comments since her departure.

“This last investigation was a bridge too far,” Pernell said in a nearly three-hour interview last week at her apartment complex in Short Hills, referring to the probe into whether she misused state resources to pressure staff to support her candidacy.

“I told them, ‘I’m being targeted as a Black female.’ I said, ‘This is an attempt to push me out and make me less competitive [as a CEO candidate].’ I felt it was retaliation and to inflict reputational harm. I felt demeaned and disrespected.”

138. In the article, Plaintiff was quoted as saying she was not ruling out of litigation.

139. Plaintiff was also quoted as saying that she refused to sign a non-disclosure agreement in order to receive her earned bonus.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A series of horizontal black bars of varying lengths, representing redacted text. The bars are arranged in a list-like fashion, with some bars being longer than others, suggesting different levels of redaction or different types of information being withheld.

145. The SEC has a policy and practice of sharing evidence and other information regarding their investigation with the state agency in which the employee being targeted is employed.

146. State agencies/entities may also investigate complaints of State ethics violations about employees or special State officers within their agencies and have at their disposal the same secret discovery tools to gain evidence confidentiality.

147. The Commission may take action against a former State officer or employee or special State officer or employee for violations that occurred during State service. The investigation, however, must be commenced within two years of the termination of State service. Under SEC regulations, any person who willingly violates the provisions of [Conflict Laws] is a

disorderly person, and shall be subject to a fine not to exceed \$1,000 or imprisonment not to exceed six months, or both.

[REDACTED]

A series of horizontal black bars of varying lengths, some starting from the left edge and others indented, creating a rhythmic pattern. The bars are arranged in a sequence that suggests a list or a series of related items, with the lengths of the bars varying significantly.

159. The SEC has a policy and practice of initiating post-termination investigations into state employees after and because they engage in protected activity and/or have informed the State they will be asserting legal claims against the State and/or powerful State government officials, and keep those investigations open and/or pending for significantly longer than is necessary to reach a determination.

160. N.J.A.C.19:61-3.1 (c)(4) expressly permits the SEC Commission staff to “disclose the contents of the investigation file to another State or Federal agency based on a belief that the contents of the file raise issues within that agency’s jurisdiction.”

161. The SEC uses the aforesaid policy and practice to restrain public employees from speaking publicly about their allegations of harassment, discrimination and/or other wrongful conduct in the workplace.

162. The SEC uses the aforesaid policy and practice in retaliation against public employees who initiate litigation against the State and/or its agencies or organizations, including the Hospital and/or powerful state employees and/or public officials.

163. The SEC also uses the aforesaid practice to secretly obtain evidence they would not otherwise be entitled to under the Rules of Court and also create evidence to assist the State agency and powerful persons within the State government being accused of legal wrongdoing in the anticipated lawsuit.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A series of horizontal black bars of varying lengths and positions, resembling a barcode or a stylized text representation. The bars are arranged in a vertical sequence, with some starting from the left edge and others being indented. The lengths vary significantly, with some bars spanning most of the width and others being much shorter. The overall effect is a rhythmic, abstract pattern of solid black shapes against a white background.

██████████

© 2006 The Authors

[REDACTED]

[REDACTED]

[REDACTED]

193. As a result of the Hospital's and the SEC's conduct, Plaintiff has suffered emotional distress, economic loss and other compensatory damages.

FIRST COUNT

**VIOLATION OF NEW JERSEY LAW AGAINST DISCRIMINATION ("LAD")
§121 "NDA" PROHIBITIONS**

194. Plaintiff repeats, realleges and incorporates by reference each and every allegation stated above as if fully set forth herein.

195. In August 2022, Plaintiff and the Hospital attempted to negotiate a separation agreement that would allow Plaintiff to exit the Hospital in an amicable and graceful manner.

196. During the negotiations, Plaintiff indicated to the Hospital that she would need to stay on in her employment for at least eight (8) weeks to properly transition certain ongoing initiatives as a material term of her separating from the Hospital.

197. The Hospital offered Plaintiff her bonus and severance if she agreed to a mutual release.

198. After these discussions during which Plaintiff agreed to negotiate her exit from the Hospital, the Hospital required the inclusion of unlawful terms of confidentiality and non-disparagement in the settlement agreement.

199. Plaintiff refused to agree to the proposed confidentiality and non-disparagement provision.

200. Even after Plaintiff expressed her refusal to agree to confidentiality and non-disparagement provision, the Hospital insisted that such claims be included in the settlement agreement.

201. After Plaintiff's continued refusal, the Hospital effectuated Plaintiff's termination as of September 2, 2022 and refused to provide her any severance or bonus.

202. The Hospital's actions in refusing to provide her severance and bonus unless Plaintiff also agreed to the contractual terms set forth by the Hospital is a violation of the LAD and its NDA provisions.

203. N.J.S.A. 10:5-12.8(a) reads, in relevant part:

A provision in any...settlement agreement which has the purpose or effect of concealing the details relating to a claim of discrimination, retaliation, or harassment (hereinafter referred to as a "non-disclosure provision") shall be deemed against public policy and unenforceable against a...former employee (hereinafter referred to as "employee") who is a party to the contract or settlement. If the employee publicly reveals sufficient details of the claim so that the employer is reasonably identifiable, then the non-disclosure provision shall also be unenforceable against the employer...

204. N.J.S.A. 10:5- 12.8(b) reads, in relevant part:

Every settlement agreement resolving a discrimination, retaliation, or harassment claim by an employee against an employer shall include a bold, prominently placed notice that although the parties may have agreed to keep the settlement and underlying facts confidential, such a provision in an agreement is unenforceable against the employer if the employee publicly reveals sufficient details of the claim so that the employer is reasonably identifiable.

205. The provisions set forth in the proposed agreement was required by the Hospital for an unlawful purpose and for the effect of concealing details relating to Plaintiff's claims of discrimination, retaliation and harassment, including the existence of the separation agreement, amount of settlement and other details of Plaintiff's claims of discrimination, retaliation, and

harassment.

206. Such confidentiality and non-disparagement provisions are against public policy and in violation of the LAD.

207. Defendants ABC Companies (1-10) and John/Jane Does (1-10) engaged in, participated in, condoned, ratified, perpetuated, conspired, incited, coerced, induced and/or aided and/or abetted the LAD violations.

208. Plaintiff has been damaged as a result of the aforesaid LAD violations, including being unlawfully terminated from her employment, not being hired in the position of CEO, and loss of severance, bonus and other benefits.

WHEREFORE, Plaintiff demands judgment against the Hospital for harm suffered due to the violation of the LAD as follows:

- A. Reinstatement of employment and all benefits in her former position of Chief Strategic Integration and Health Equity Officer or CEO of the Hospital;
- B. Back pay and benefits;
- C. Front pay and benefits;
- D. Compensatory damages;
- E. Consequential damages;
- F. Reputational damages;
- G. Punitive damages;
- H. Prejudgment interest and enhancements to off-set negative tax consequences;
- I. Any and all attorneys' fees, expenses and/or costs, including, but not limited to, court costs, expert fees and all attorneys' fees incurred by Plaintiff in the

prosecution of this suit (including enhancements thereof required to off-set negative tax consequences and/or enhancements otherwise permitted under law);

- J. Ordering the Hospital to take appropriate corrective action to stop and prevent retaliation at the workplace;
- K. Ordering the Hospital to undergo anti-discrimination training;
- L. Ordering the Hospital to undergo anti-retaliation training;
- M. Ordering the Hospital to engage a research organization to assess the effectiveness of their anti-discrimination training;
- N. Ordering the Hospital to engage a research organization to assess the effectiveness of their anti-retaliation training;
- O. Ordering the Hospital to identify an appropriate professional to investigate any future complaints of discrimination;
- P. Ordering the Hospital to identify an appropriate professional to investigate any future complaints of retaliation; and
- Q. Equitable Relief; and
- R. Such other and further relief as may be available and which the Court deems just and equitable.

SECOND COUNT

LAD - §121 “NDA” RETALIATION

209. Plaintiff repeats, realleges and incorporates by reference each and every allegation stated above as if fully set forth herein.

210. It is unlawful to take retaliatory action, including but not limited to failure to hire, discharge, suspension, demotion, discrimination in the terms, conditions or privileges of employment, or other adverse action, against a person, on the grounds that the person does not enter into a contract that contains a provision deemed against public policy and unenforceable under the LAD.

211. The Hospital took unlawful retaliatory actions against Plaintiff because of her refusal to agree to the confidentiality and non-disparagement clause.

212. During negotiations concerning Plaintiff's exit from the Hospital and no longer pursuing the CEO position, the Hospital offered Plaintiff a severance and her bonus in exchange for Plaintiff to be able to graciously exit from the Hospital in at least eight (8) weeks time and mutual releases.

213. Thereafter, the Hospital included in the settlement agreement confidentiality and non-disparagement clauses, which Plaintiff refused to agree.

214. Plaintiff's refusal to agree to the inclusion of the confidentiality and non-disparagement clauses, and her private and public complaints concerning this refusal, constitute protected activity under the LAD and New Jersey State Constitution.

215. As a direct result of Plaintiff engaging in the aforesaid protected activity, the Hospital took the unlawful retaliatory action, including, not paying Plaintiff severance, her earned bonus, termination of employment [REDACTED]

216. ABC Companies (1-10) and John/Jane Does (1-10) engaged in, participated in, condoned, ratified, perpetuated, conspired, incited, coerced, induced and/or aided and/or abetted the LAD violations.

217. Plaintiff has been damaged as a result of the Hospital's aforesaid LAD violations, including being unlawfully terminated from her employment, not being hired in the position of CEO, damage to professional reputation and loss of severance, bonus and other benefits.

WHEREFORE, Plaintiff demands judgment against the Hospital for harm suffered due to the violation of the LAD as follows:

- A. Reinstatement of employment and all benefits in her former position of Chief Strategic Integration and Health Equity Officer or CEO of the Hospital;
- B. Back pay and benefits;
- C. Front pay and benefits;
- D. Compensatory damages;
- E. Consequential damages;
- F. Reputational damages;
- G. Punitive damages;
- H. Prejudgment interest and enhancements to off-set negative tax consequences;
- I. Any and all attorneys' fees, expenses and/or costs, including, but not limited to, court costs, expert fees and all attorneys' fees incurred by Plaintiff in the prosecution of this suit (including enhancements thereof required to off-set negative tax consequences and/or enhancements otherwise permitted under law);
- J. Ordering the Hospital to take appropriate corrective action to stop and prevent retaliation at the workplace;
- K. Ordering the Hospital to undergo anti-discrimination training;

- L. Ordering the Hospital to undergo anti-retaliation training;
- M. Ordering the Hospital to engage a research organization to assess the effectiveness of their anti-discrimination training;
- N. Ordering the Hospital to engage a research organization to assess the effectiveness of their anti-retaliation training;
- O. Ordering the Hospital to identify an appropriate professional to investigate any future complaints of discrimination;
- P. Ordering the Hospital to identify an appropriate professional to investigate any future complaints of retaliation; and
- Q. Equitable Relief; and
- R. Such other and further relief as may be available and which the Court deems just and equitable.

THIRD COUNT

LAD - RACE DISCRIMINATION

218. Plaintiff repeats, realleges and incorporates by reference each and every allegation stated above as if fully set forth herein.

219. During all times relevant to this cause of action, the Hospital was an “employer” as that term is defined by the LAD, N.J.S.A. 10:5-5(a) and (c).

220. During all times relevant to this cause of action, Plaintiff is a “person” and “employee” as those terms are defined by the LAD, N.J.S.A. 10:5-5(a) and (f).

221. The discrimination and other adverse employment actions taken against Plaintiff by Defendant, including failing to conduct a complete and thorough investigation into any of

Plaintiff's complaints, initiation of frivolous ethics investigations, termination of Plaintiff's employment, failure to consider and promote her into the CEO/President position, [REDACTED]

[REDACTED] were motivated by and the result of Plaintiff's race.

222. Defendants ABC Companies (1-10) and John/Jane Does (1-10) engaged in, participated in, condoned, ratified, perpetuated, conspired, incited, coerced, induced and/or aided and/or abetted the LAD violations.

223. The Hospital's acts or omissions were the cause of Plaintiff's harm and were actuated by actual malice or accompanied by wanton and willful disregard of Plaintiff, who foreseeably was harmed by those acts or omissions.

224. The aforementioned conduct by the Hospital violated the LAD.

225. Plaintiff has been damaged as a result of the Hospital's aforesaid LAD violations, including being unlawfully terminated from her employment, not being hired in the position of CEO, damage to professional reputation and loss of severance, bonus and other benefits.

WHEREFORE, Plaintiff demands judgment against the Hospital for harm suffered in violation of the LAD as follows:

- A. Reinstatement of employment and all benefits in her former position of Chief Strategy and Health Equity Officer or CEO of the Hospital;
- B. Back pay and benefits;
- C. Front pay and benefits;
- D. Compensatory damages;
- E. Consequential damages;
- F. Reputational damages;

- G. Punitive damages;
- H. Prejudgment interest and enhancements to off-set negative tax consequences;
- I. Any and all attorneys' fees, expenses and/or costs, including, but not limited to, court costs, expert fees and all attorneys' fees incurred by Plaintiff in the prosecution of this suit (including enhancements thereof required to off-set negative tax consequences and/or enhancements otherwise permitted under law);
- J. Ordering the Hospital to take appropriate corrective action to stop and prevent retaliation at the workplace;
- K. Ordering the Hospital to undergo anti-discrimination training;
- L. Ordering the Hospital to undergo anti-retaliation training;
- M. Ordering the Hospital to engage a research organization to assess the effectiveness of their anti-discrimination training;
- N. Ordering the Hospital to engage a research organization to assess the effectiveness of their anti-retaliation training;
- O. Ordering the Hospital to identify an appropriate professional to investigate any future complaints of discrimination;
- P. Ordering the Hospital to identify an appropriate professional to investigate any future complaints of retaliation; and
- Q. Such other and further relief as may be available and which the Court deems just and equitable.

FOURTH COUNT

LAD - SEX DISCRIMINATION

226. Plaintiff repeats, realleges and incorporates by reference each and every allegation stated above as if fully set forth herein.

227. During all times relevant to this cause of action, the Hospital was an “employer” as that term is defined by the LAD, N.J.S.A. 10:5-5(a) and (c).

228. During all times relevant to this cause of action, Plaintiff is a “person” and “employee” as those terms are defined by the LAD, N.J.S.A. 10:5-5(a) and (f).

229. The discrimination and other adverse employment actions taken against Plaintiff by the Hospital, including failing to conduct a complete and thorough investigation into any of Plaintiff’s complaints, initiation of fraudulent ethics investigations, termination of Plaintiff’s employment, failure to consider and promote her into the CEO/President position [REDACTED] [REDACTED] were motivated by and the result of Plaintiff’s sex.

230. Defendants ABC Companies (1-10) and John/Jane Does (1-10) engaged in, participated in, condoned, ratified, perpetuated, conspired, incited, coerced, induced and/or aided and/or abetted the LAD violations.

231. The Hospital's acts or omissions were the cause of Plaintiff’s harm and were actuated by actual malice or accompanied by wanton and willful disregard of Plaintiff, who foreseeably was harmed by those acts or omissions.

232. The aforementioned conduct by the Hospital violated the LAD.

233. Plaintiff has been damaged as a result of the Hospital's aforesaid LAD violations, including being unlawfully terminated from her employment, not being hired in the position of

CEO, damage to professional reputation and loss of severance, bonus and other benefits. .

WHEREFORE, Plaintiff demands judgment against the Hospital for harm suffered in violation of the LAD as follows:

- A. Reinstatement of employment and all benefits in her former position of Chief Strategy and Health Equity Officer or CEO of the Hospital;
- B. Back pay and benefits;
- C. Front pay and benefits;
- D. Compensatory damages;
- E. Consequential damages;
- F. Reputational damages;
- G. Punitive damages;
- H. Prejudgment interest and enhancements to off-set negative tax consequences;
- I. Any and all attorneys' fees, expenses and/or costs, including, but not limited to, court costs, expert fees and all attorneys' fees incurred by Plaintiff in the prosecution of this suit (including enhancements thereof required to off-set negative tax consequences and/or enhancements otherwise permitted under law);
- J. Ordering the Hospital to take appropriate corrective action to stop and prevent retaliation at the workplace;
- K. Ordering the Hospital to undergo anti-discrimination training;
- L. Ordering the Hospital to undergo anti-retaliation training;
- M. Ordering the Hospital to engage a research organization to assess the

effectiveness of their anti-discrimination training;

- N. Ordering the Hospital to engage a research organization to assess the effectiveness of their anti-retaliation training;
- O. Ordering the Hospital to identify an appropriate professional to investigate any future complaints of discrimination;
- P. Ordering the Hospital to identify an appropriate professional to investigate any future complaints of retaliation; and
- Q. Such other and further relief as may be available and which the Court deems just and equitable.

FIFTH COUNT

LAD - RETALIATION

234. Plaintiff repeats, realleges and incorporates by reference each and every allegation stated above as if fully set forth herein.

235. The Hospital's conduct and/or treatment of Plaintiff, including but not limited to failing to conduct a complete and thorough investigation into any of Plaintiff's complaints, initiation of frivolous ethics investigations, failure to consider and promote her into the CEO/President position, [REDACTED] and the termination of Plaintiff's employment were in retaliation for Plaintiff complaining to the Hospital about race and sex discrimination.

236. The retaliatory actions taken by the Hospital against Plaintiff are in violation of the LAD.

237. Defendants ABC Companies (1-10) and John/Jane Does (1-10) engaged in,

participated in, condoned, ratified, perpetuated, conspired, incited, coerced, induced and/or aided and/or abetted the LAD violations.

238. The Hospital's acts or omissions were the cause of Plaintiff's harm and were actuated by actual malice or accompanied by wanton and willful disregard of Plaintiff, who foreseeably was harmed by those acts or omissions.

239. The aforementioned conduct by the Hospital violated the LAD.

240. Plaintiff has been damaged as a result of the Hospital's aforesaid LAD violations, including being unlawfully terminated from her employment, not being hired in the position of CEO, damage to professional reputation and loss of severance, bonus and other benefits. .

WHEREFORE, Plaintiff demands judgment against the Hospital for harm suffered in violation of the LAD as follows:

- A. Reinstatement of employment and all benefits in her former position of Chief Strategy and Health Equity Officer or CEO of the Hospital;
- B. Back pay and benefits;
- C. Front pay and benefits;
- D. Compensatory damages;
- E. Consequential damages;
- F. Punitive damages;
- G. Prejudgment interest and enhancements to off-set negative tax consequences;
- H. Any and all attorneys' fees, expenses and/or costs, including, but not limited to, court costs, expert fees and all attorneys' fees incurred by Plaintiff in the prosecution of this suit (including enhancements thereof required to off-set

negative tax consequences and/or enhancements otherwise permitted under law);

- I. Ordering the Hospital to take appropriate corrective action to stop and prevent retaliation at the workplace;
- J. Ordering the Hospital to undergo anti-discrimination training;
- K. Ordering the Hospital to undergo anti-retaliation training;
- L. Ordering the Hospital to engage a research organization to assess the effectiveness of their anti-discrimination training;
- M. Ordering the Hospital to engage a research organization to assess the effectiveness of their anti-retaliation training;
- N. Ordering the Hospital to identify an appropriate professional to investigate any future complaints of discrimination;
- O. Ordering the Hospital to identify an appropriate professional to investigate any future complaints of retaliation; and
- P. Such other and further relief as may be available and which the Court deems just and equitable.

SIXTH COUNT

VIOLATIONS OF THE NEW JERSEY CIVIL RIGHTS ACT

N.J.S.A. 10:6-1 et seq.

241. Plaintiff repeats, realleges and incorporates by reference each and every allegation stated above as if fully set forth herein.

242. N.J.S.A. 10:6-2(c) states, in pertinent part:

Any person who has been deprived of any substantive due process or equal

protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, or whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief.

243. Article I, Section 6 of the New Jersey State Constitution states, in relevant part:

Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press.

244. The issues set forth in detail herein concerning Plaintiff's ability to speak freely to the press about health equity are of significant public interest.

245. The issues set forth in detail herein concerning Plaintiff's ability to speak freely about her experience of race discrimination are of significant public interest.

246. The Hospital's directive to Plaintiff that she could not speak on matters of public concern to the media was an unconstitutional prior restraint on the free speech rights of Plaintiff.

247. The Hospital's directive to Plaintiff that she could not speak about her experience of race discrimination was an unconstitutional prior restraint on the free speech rights of Plaintiff.

248. The Hospital's directives to Plaintiff violated Plaintiff's right to speak freely concerning issues that are of public concern.

249. Barring Plaintiff from speaking on matters of public concern is not a restriction on speech that is necessary for the Hospital to operate efficiently and effectively.

250. By the actions set forth herein, the Hospital interfered with, intimidated, coerced, restrained and retaliated against Plaintiff in the exercise of her rights to speak freely on matters of public concern.

251. The Hospital further violated Plaintiff's free speech rights by filing a frivolous

ethics charge with the SEC because Plaintiff refused to agree to confidentiality and non-disparagement clauses in further retaliation of her exercise of free speech.

252. The unlawful actions set forth herein were made by persons acting under color of law.

253. Plaintiff's rights under Article I, Section 6 of the New Jersey State Constitution are substantive rights, privileges or immunities secured by the Constitution of this State, within the meaning of N.J.S.A. 10:6-2(c).

254. As set forth in detail herein, Plaintiff was deprived of her right to substantive due process and/or equal protection and/or substantive rights, privileges and/or immunities secured by the New Jersey Constitution and/or laws of New Jersey and her exercise and enjoyment of those substantive rights, privileges and/or immunities has been interfered with and/or attempted to be interfered with, by threats, intimidation and/or coercion by Defendants.

255. The Hospital's acts or omissions were the cause of Plaintiff's harm, and the Hospital's acts or omissions were actuated by actual malice or accompanied by a wanton and willful disregard of persons who foreseeably might be harmed by those acts or omissions.

256. Defendants John Does (1-10) participated in, condoned, ratified, perpetuated and/or aided and abetted the violations.

257. As a direct and proximate result of the Hospital's unlawful conduct, Plaintiff has suffered and continues to suffer career damage, financial loss, damage to her reputation and emotional distress.

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in her favor and against the Hospital as follows:

- A. Compensatory damages for loss of wages and benefits, pension losses, pain, suffering, stress, humiliation, mental anguish and other emotional harm;
- B. Damages for harm to reputation and career development;
- C. Consequential damages;
- D. Any and all attorneys' fees, expenses and/or costs, including, but not limited to, Court costs, expert fees and all attorneys' fees incurred by Plaintiff in the prosecution of this suit (including enhancements thereof required to off-set negative tax consequences and/or enhancements otherwise permitted under law);
- E. Punitive damages;
- F. Injunctive relief requiring remediation of the Hospital Civil Rights violations; and
- G. Such other relief as the Court may deem equitable and just.

SEVENTH COUNT

**DECLARATORY JUDGMENT THAT THE STATE'S ANTI-HARASSMENT POLICY VIOLATES
EMPLOYEES' CONSTITUTIONAL AND STATUTORY RIGHTS AND VIOLATES NEW JERSEY STATE
PUBLIC POLICY**

258. Plaintiff repeats and realleges each and every prior allegation of the Complaint as if set forth at length herein.

259. Plaintiff seeks relief under the New Jersey Declaratory Judgment Act, N.J.S.A. 2A:16-50 et seq. which allows parties to sue for a judicial declaration in order to declare and settle the rights and obligations of the parties.

260. Plaintiff seeks a declaration that the Hospital's Confidentiality Directive runs contrary to and is in violation of the State Constitution, the LAD and New Jersey state public

policy.

261. Article I, Section 6 of the New Jersey State Constitution states, in relevant part:

Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press.

262. New Jersey maintains a strong public policy against discrimination.

263. It is of significant public interest that victims be able to freely and openly speak about discrimination and exercise their rights under the New Jersey State Constitution and the LAD.

264. In enacting the LAD, the Legislature found and declared that practices of discrimination against any of its inhabitants, because of race, creed, color, national origin, ancestry, age, sex, gender identity or expression, affectional or sexual orientation, marital status, familial status, liability for service in the Armed Forces of the United States, disability or nationality, are matters of concern to the government of the State, and that such discrimination threatens not only the rights and proper privileges of the inhabitants of the State but menaces the institutions and foundation of a free democratic State.

265. The Legislature further found that because of discrimination, people suffer personal hardships, and the State suffers a grievous harm.

266. The Legislature intends that damages resulting from LAD violations be available to all persons protected by this act and that this act shall be liberally construed in combination with other protections available under the laws of this State.

267. The LAD requires employers to maintain an effective anti-harassment policy in place that includes the employer conducting fair, prompt and thorough investigations into

complaints of sexual harassment and not retaliating against persons who are involved in a harassment investigation.

268. Under the LAD, the Hospital is directly and strictly liable for all equitable damages and relief to the extent any employees, who is subjected to discrimination or sexual harassment [including but not limited to Plaintiff,] seeks equitable remedies, that is, restoration to the terms, conditions and privileges of employment the employee would have enjoyed but for the workplace discrimination or harassment.

269. The Hospital has used the Confidentiality Directive to silence victims of discrimination and complaints of discrimination.

270. Such actions have contributed to rampant discrimination within the Hospital's work environment, much of which Plaintiff complained of throughout her employment, both of herself and others who were victims of discrimination.

271. The Confidentiality Directive runs contrary to and is in violation of the State Constitution, the Law Against Discrimination and the New Jersey state public policy.

272. Plaintiff made numerous disclosures and/or complaints to the Hospital and public concerning the discrimination.

273. The Hospital's threatening and attempting restraint of Plaintiff through its Confidentiality Directive is a violation of Plaintiff's constitutional and state rights.

274. Plaintiff seeks a declaration that the Hospital's policies in procedures for investigation complaints of discrimination and matters of public concern, are ineffective and unlawful and in violation of the State Constitution, LAD and Public Policy.

275. Plaintiff further seeks a declaration that the Hospital be restrained and enjoined

from forcing Plaintiff and any other witnesses to keep confidential any speech to which is protected under the law.

276. Plaintiff further seeks a declaration that Defendants may not attempt to preclude, deter, discourage or discipline any witness from discussing this matter with anyone at any time by reasons of the Confidentiality Directive.

277. Plaintiff further seeks a declaration that the Hospital's confidentiality provisions, policies and practices in connection with investigations are in violation of Plaintiff's and other state employee's free speech rights, the LAD, and public policy and therefore must be deemed null and void.

278. Plaintiff seeks equitable relief in requiring the Hospital to revise its investigation policies and procedures in a meaningful and significant way in which it would become compliant with the State constitution, state law and state public policy.

WHEREFORE, in addition to the equitable and injunctive relief sought herein and above, Plaintiff respectfully requests that the Court enter judgment in their favor and against the Hospital as follows:

- A. Declaring that the Hospital's policy and procedures concerning investigations of claims of discrimination and other matters of public concern are ineffective as a matter of law;
- B. Enjoining the Hospital from implementing any further revisions to policies and practices concerning investigations of claims of discrimination and other matters of public concern that do not comply with and/or are contrary to the State Constitution, the LAD and public policy;

- C. Requiring Defendant State to take appropriate measures to revise its policies and procedures concerning investigations of claims of discrimination and other matters of public concern to be effective and not violate employees' rights;
- D. Declaring that the Confidentiality Directive violates state law, including the First Amendment and the LAD as applied to Plaintiff and similarly situated employees of the State of New Jersey;
- E. Requiring the Hospital to notify any persons who have been subjected to the Confidentiality Directive that the Directive is null and void by so informing by means of: 1. Oral notification; 2. Written notification; and 3. Publicly posted notification; and
- F. Attorney's fees and costs; and Awarding any and all such other relief as deemed just and warranted.

EIGHTH COUNT

MALICIOUS PROSECUTION

279. Plaintiff repeats, realleges and incorporates by reference each and every allegation stated above as if fully set forth herein.

280. The Hospital and John/Jane Does (1-10) instituted against Plaintiff a frivolous ethics inquiry based upon the same facts and allegations in which the Hospital conducted its own frivolous investigation through Outside Counsel [REDACTED]

281. The Hospital and John/Jane Does (1-10) initiated the ethics investigation [REDACTED] [REDACTED] in retaliation for Plaintiff engaging protected activity under the First Amendment and Law Against Discrimination, including refusing to enter into a settlement agreement that

required Plaintiff to keep confidential the underlying facts of her claims of discrimination and speaking publicly about incidents of discrimination and other unlawful activity during her employment with the Hospital.

282. There was no probable cause for the Hospital, John/Jane Does (1-10) and ABC Companies (1-10) to file an ethics inquiry [REDACTED] against Plaintiff.

283. The Hospital, John/Jane Does (1-10) and ABC Companies (1-10) instituted the ethics investigation [REDACTED] for malicious and retaliatory motives, including to further retaliate against Plaintiff for making protected complaints of discrimination and retaliation, refusing to enter into a confidentiality and non-disparagement agreement, speaking publicly after her termination of her experiences of discrimination and retaliation and other conduct set forth herein.

284. As a direct and proximate result of the Hospital's unlawful conduct, Plaintiff has suffered and continues to suffer career damage, financial loss, damage to her reputation and emotional distress.

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in her favor and against Defendants as follows:

- A. Compensatory damages for loss of wages and benefits, pension losses, pain, suffering, stress, humiliation, mental anguish and other emotional harm;
- B. Damages for harm to reputation and career development;
- C. Consequential damages;
- D. Any and all attorneys' fees, expenses and/or costs, including, but not limited to, Court costs, expert fees and all attorneys' fees incurred by Plaintiff in the

prosecution of this suit (including enhancements thereof required to off-set negative tax consequences and/or enhancements otherwise permitted under law);

- E. Punitive damages;
- F. Injunctive relief; and
- G. Such other relief as the Court may deem equitable and just.

NINTH COUNT

VIOLATIONS OF THE NEW JERSEY CIVIL RIGHTS ACT AGAINST THE STATE ETHICS COMMISSION

285. Plaintiff repeats, realleges and incorporates by reference each and every allegation stated above as if fully set forth herein.

286. N.J.S.A. 10:6-2(c) states, in pertinent part:

Any person who has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, or whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief.

287. Article I, Section 6 of the New Jersey State Constitution states, in relevant part:

Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press.

288. The issues set forth in detail herein concerning Plaintiff's ability to speak freely to the press about health equity are of significant public interest.

289. The issues set forth in detail herein concerning Plaintiff's ability to speak freely

about her experience of race discrimination are of significant public interest.

290. Plaintiff's and all State employees' right to pursue litigation, by and through the Rules of Court, is a matter of significant public interest.

A series of horizontal black bars of varying lengths and positions, resembling a barcode or a stylized text representation. The bars are arranged in a vertical sequence, with some starting from the left edge and others being indented. The lengths vary significantly, with some bars spanning most of the width and others being much shorter. The overall effect is a rhythmic pattern of solid black shapes against a white background.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

300. Plaintiff's rights under Article I, Section 6 of the New Jersey State Constitution are substantive rights, privileges or immunities secured by the Constitution of this State, within the meaning of N.J.S.A. 10:6-2(c).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

TENTH COUNT

NJLAD – POST-TERMINATION RETALIATION AGAINST THE HOSPITAL AND SEC

304. Plaintiff repeats and realleges each of the prior allegations of the within Complaint as if set forth at length herein.

305. The SEC is a person and/or employer as those terms are defined by the LAD.

306. As set forth herein, Plaintiff opposed and complained to the Hospital and others concerning issues and instances of discrimination and other acts prohibited by the LAD.

307. During negotiations concerning Plaintiff's separation from the Hospital and no longer pursuing the CEO position, Maples and Forsyth, on behalf of the Hospital, offered Plaintiff a severance and her bonus in exchange for Plaintiff to be given at least eight (8) weeks time to enable her to graciously exit the Hospital, along with mutual releases.

308. Thereafter, the Maples, Forsyth and the Hospital included in the settlement agreement confidentiality and non-disparagement clauses, which Plaintiff refused to agree to.

309. Plaintiff's refusal to agree to the inclusion of the confidentiality and non-disparagement clauses, and her private and public complaints concerning this refusal, constitute protected activity under the LAD.

© 2006 The Authors

██████████

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

315. ABC Companies (1-10) and John/Jane Does (1-10) engaged in, participated in, condoned, ratified, perpetuated, conspired, incited, coerced, induced and/or aided and/or abetted the LAD violations.

316. Plaintiff has been damaged [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

319. Defendants' acts or omissions were the cause of Plaintiff's harm and Defendants' acts or omissions were actuated by actual malice or accompanied by a wanton and willful disregard of persons who foreseeably might be harmed by those acts or omissions.

320. Defendant SEC participated in, condoned, ratified, perpetuated and/or aided and abetted the aforesaid NJLAD violations.

WHEREFORE, Plaintiff demands judgment against the Hospital and the SEC for harm suffered in violation of the LAD as follows:

- A. Reinstatement of employment and all benefits in her former position of Chief Strategy and Health Equity Officer or CEO of the Hospital;
- B. Back pay and benefits;
- C. Front pay and benefits;
- D. Compensatory damages;
- E. Consequential damages;
- F. Punitive damages;
- G. Prejudgment interest and enhancements to off-set negative tax consequences;
- H. Any and all attorneys' fees, expenses and/or costs, including, but not limited to, court costs, expert fees and all attorneys' fees incurred by Plaintiff in the prosecution of this suit (including enhancements thereof required to off-set negative tax consequences and/or enhancements otherwise permitted under law);
- I. Ordering the Hospital to take appropriate corrective action to stop and prevent retaliation at the workplace;
- J. Ordering the Hospital to undergo anti-discrimination training;
- K. Ordering the Hospital to undergo anti-retaliation training;
- L. Ordering the Hospital to engage a research organization to assess the

effectiveness of their anti-discrimination training;

- M. Ordering the Hospital to engage a research organization to assess the effectiveness of their anti-retaliation training;
- N. Ordering the Hospital to identify an appropriate professional to investigate any future complaints of discrimination;
- O. Ordering the Hospital to identify an appropriate professional to investigate any future complaints of retaliation; and
- P. Such other and further relief as may be available and which the Court deems just and equitable.

ELEVENTH COUNT

DECLARATORY JUDGMENT THAT [REDACTED] VIOLATES EMPLOYEES' CONSTITUTIONAL AND STATUTORY RIGHTS AND VIOLATES NEW JERSEY STATE PUBLIC POLICY

321. Plaintiff repeats and realleges each and every prior allegation of the Complaint as if set forth at length herein.

322. Plaintiff seeks relief under the New Jersey Declaratory Judgment Act, N.J.S.A. 2A:16-50 et seq. which allows parties to sue for a judicial declaration in order to declare and settle the rights and obligations of the parties.

323. The SEC regulations require that its investigations be “confidential.”

324. Specifically, N.J.A.C. 19:61-3.1 reads, in relevant part:

(a)(3)... Any preliminary investigation of an alleged ethics violation, whether conducted by Commission staff or a State agency, shall be confidential...

...

(c)(2)...Throughout the preliminary investigation, whether conducted by the Commission or a State agency, the allegations shall be considered confidential...

...

(c)(3)...The contents of the Commission's investigative file are confidential and shall not be released except upon the authorization of the Commission, pursuant to court order or administrative rule.

325. By regulation, as well as in practice, the SEC imposes strict confidentiality upon the accused and witnesses of an ethics investigation.

A series of horizontal black bars of varying lengths, representing redacted text. The bars are arranged in a list-like fashion, with some bars being longer than others, suggesting different levels of redaction or different types of information being withheld. The bars are solid black and have sharp edges.

329. Plaintiff seeks a declaration that SEC Confidentiality Requirement constitutes a prior restraint of protected speech and runs contrary to and is in violation of the State Constitution, the LAD and New Jersey state public policy.

330. The First Amendment of the New Jersey State Constitution § 6 states, in relevant

part: Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press.

331. New Jersey maintains a strong public policy against discrimination and retaliation.

332. It is of significant public interest that victims be able to freely and openly speak about discrimination and exercise their rights under the New Jersey State Constitution and the LAD.

333. In enacting the LAD, the Legislature found and declared that practices of discrimination against any of its inhabitants, because of race, creed, color, national origin, ancestry, age, sex, gender identity or expression, affectional or sexual orientation, marital 55 status, familial status, liability for service in the Armed Forces of the United States, disability or nationality, are matters of concern to the government of the State, and that such discrimination threatens not only the rights and proper privileges of the inhabitants of the State but menaces the institutions and foundation of a free democratic State.

334. The Legislature further found that because of discrimination, people suffer personal hardships, and the State suffers a grievous harm.

335. The Legislature intends that damages resulting from LAD violations be available to all persons protected by this act and that this act shall be liberally construed in combination with other protections available under the laws of this State.

336. Under the LAD, the SEC "is directly and strictly liable for all equitable damages and relief to the extent any state employees, who is subjected to discrimination or sexual harassment [including but not limited to Plaintiff,] seeks equitable remedies, that is, restoration to the terms,

conditions and privileges of employment the employee would have enjoyed but for the workplace discrimination or harassment.” See *Aguas v. State of New Jersey*, 220 N.J. 449, 509 (2015) quoting *Lehman v. Toys ‘R’ Us*, 132 N.J., 587, 617 (1993).

[REDACTED]

[REDACTED]

338. The SEC maintains significant police power over state employees and other persons who it determines has violated its rules and regulations, including monetary fines, demotion, censure or reprimand, restitution, suspension, removal of employment, barring of future employment and/or imprisonment.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

341. Plaintiff seeks a declaration that the SEC’s Confidentiality Requirement”, and all of its proposed revisions, are ineffective as a matter of law and in violation of the State Constitution, LAD and State Public Policy.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

344. Plaintiff further seeks a declaration that SEC's Confidentiality Requirement and related confidentiality provisions, policies and practices in connection with ethics investigations, are in violation of Plaintiff's and other state employee's First Amendment rights, the LAD, and public policy and therefore must be deemed null and void.

345. The SEC's Confidentiality Requirement, by its expressed terms and through the SEC's enforcement of same, is ineffective as a matter of law.

346. Plaintiff seeks equitable relief in requiring the SEC to revise its confidentiality rules, policies and procedures in a meaningful and significant way in which it would become compliant with the State constitution, state law and state public policy.

347. Such revisions to the State Policy may include, but are in no way limited to, the following:

- (A) Eliminate the SEC Confidentiality Requirement and replace it with "All persons interviewed, including complainants and witnesses, shall be asked to use discretion in communicating any aspect of the investigation so as to avoid interfering with the investigation. Nothing in this request should be interpreted as any restriction upon any state employee's rights under state or federal law, including their right of free speech and/or right to communicate any allegations to another other person[.]";

WHEREFORE, in addition to the equitable relief sought herein and above, Plaintiff respectfully requests that the Court enter judgment in their favor and against Defendants as follows:

- A. Declaring that the SEC's Confidentiality Directive is ineffective as a matter of law;
- B. Requiring the SEC to take appropriate measures to revise its confidentiality

regulations, rules, procedures and requirements to be effective and not violate State employees' rights;

- C. Declaring that the SEC Confidentiality Requirement violates state law, including the First Amendment and the LAD as applied to Plaintiff and similarly situated employees of the State of New Jersey;
- D. Requiring the SEC to notify any State employees who have been subjected to the SEC Confidentiality Requirement that it is null and void by so informing by means of: 1. Oral notification; 2. Written notification; and 3. Publicly posted notification;
- E. Attorney's fees and costs; and
- F. Awarding any and all such other relief as deemed just and warranted.

SMITH EIBELER, LLC

DATED: August 13, 2025

**By: /s/Christopher J. Eibeler
CHRISTOPHER J. EIBELER
Attorney for Plaintiff**

JURY DEMAND

Plaintiff hereby demands trial by jury on all issues so triable.

SMITH EIBELER, LLC

DATED: August 13, 2025

**By: /s/ Christopher J. Eibeler
CHRISTOPHER J. EIBELER
Attorney for Plaintiff**

CERTIFICATION

Pursuant to R. 4:5-1, it is hereby stated to the best of my knowledge and belief that the matter in controversy is not the subject of any other action pending or contemplated in any other Court or of a pending arbitration proceeding. Further, Plaintiff is unaware of any non-party who should be joined in the action pursuant to R. 4:28 or who is subject to joinder pursuant to R. 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts. I further certify that confidential personal identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

SMITH EIBELER, LLC

DATED: August 13, 2025

**By: /s/Christopher J. Eibeler
CHRISTOPHER J. EIBELER
Attorney for Plaintiff**

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Christopher J. Eibeler, Esq. is designated as trial counsel for the above-captioned matter.

SMITH EIBELER, LLC

DATED: August 13, 2025

**By: /s/ Christopher J. Eibeler
CHRISTOPHER J. EIBELER
Attorney for Plaintiff**

Civil Case Information Statement

Case Details: ESSEX | Civil Part Docket# L-006126-25

Case Caption: PERNELL DR. VS UNIVERSITY HOSPITAL

Case Initiation Date: 08/13/2025

Attorney Name: CHRISTOPHER J EIBELER

Firm Name: SMITH EIBELER LLC

Address: 101 CRAWFORDS CORNER RD STE 1-126
HOLMDEL NJ 07733

Phone: 7324441300

Name of Party: PLAINTIFF : PERNELL, DR. CHRIS

Name of Defendant's Primary Insurance Company
(if known): Unknown

Case Type: LAW AGAINST DISCRIMINATION (LAD) CASES

Document Type: Complaint with Jury Demand

Jury Demand: YES - 6 JURORS

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Does this case involve claims related to COVID-19? NO

Are sexual abuse claims alleged by: DR. CHRIS PERNELL? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? YES

If yes, is that relationship: Employer/Employee

Does the statute governing this case provide for payment of fees by the losing party? YES

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO Title 59? NO Consumer Fraud? NO
Medical Debt Claim? NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

08/13/2025

Dated

/s/ CHRISTOPHER J EIBELER

Signed

