

CAUSE NO. _____

BEVERLY KEARNEY,
Plaintiff,

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IN THE DISTRICT COURT

v.

____ JUDICIAL DISTRICT COURT

THE UNIVERSITY OF TEXAS
AT AUSTIN,

Defendant.

TRAVIS COUNTY, TEXAS

PLAINTIFF’S ORIGINAL PETITION AND JURY DEMAND

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, BEVERLY KEARNEY, complains of Defendant, THE UNIVERSITY OF TEXAS AT AUSTIN (hereinafter “Defendant” or “the University”), and for her causes of action would respectfully show the Court and Jury the following:

I.
DISCOVERY CONTROL PLAN

1. Pursuant to Tex. R. Civ. Proc. Rule 190, Plaintiff intends discovery to be conducted under Discovery Control Plan Level 3. Plaintiffs ask the Court to assign this case a Level 3 discovery plan. Absent the parties’ agreement, Plaintiffs request that a case management conference be set at the Court’s earliest convenience so that a discovery/docket control order may be entered.

II.
PARTIES

2. BEVERLY KEARNEY (hereinafter “Plaintiff” or “Ms. Kearney”) resides in Travis County, Texas.

3. DEFENDANT is an entity duly constituted in Travis County, Texas, which may be served by process by its General Counsel, Dan Sharphorn, 201 West 7th Street, 6th Floor, Austin, Texas 78701.

III.
JURISDICTION AND VENUE

4. The District Courts of Travis County, Texas have jurisdiction over this cause of action because Plaintiff's damages are in excess of the jurisdictional minimum amount in controversy for such courts.

5. Venue is proper in Travis County, Texas pursuant to Texas Civil Practice and Remedies Code §15.001 because that is where all or part of the causes of action accrued.

IV.
EXHAUSTION OF ADMINISTRATIVE PROCEDURES AND TIMELINESS

6. All conditions precedent to jurisdiction have occurred or been complied with.

7. Plaintiff has the right to file a civil action in the appropriate Judicial District Court, because:

a. Plaintiff filed a Charge of Discrimination with the United States Equal Employment Opportunity Commission and the Texas Workforce Commission, on or about March 8, 2013, under Charge No. 451-2013-01456, alleging discrimination based on her gender, race, and retaliation.

b. Plaintiff filed her Charge of Discrimination within 180 days following the relevant unlawful employment practices of Defendant, as required by Tex. Labor Code § 21.202.

8. Plaintiff has exhausted all her administrative remedies and fully cooperated with all investigative requests.

9. PLAINTIFF brings this civil action more than 180 days following and within two years of the date of filing a Charge of Discrimination, as required by Tex. Labor Code § 21.256.

V.
FACTS

10. Ms. Kearney, who is African-American, was hired as the Head Coach of the Women's Track and Field team of THE UNIVERSITY OF TEXAS AT AUSTIN in 1992. After approximately 21 years of exemplary and devoted employment with the University, Ms. Kearney was unceremoniously fired three days after Christmas in 2012. The following is a brief overview of Ms. Kearney's accomplishments as the Head Coach of Women's Track and Field at the University of Texas:

- a. 6 NCAA National Championships;
- b. 3-time NCAA Outdoor Coach of the Year;
- c. 2-time NCAA Indoor Coach of the Year
- d. 16-time Conference Coach of the Year;
- e. Inducted into the International Women's Sports Hall of Fame in 2004;
- f. Inducted into the University of Texas Women's Hall of Honor in 2006; and
- g. Inducted into the U.S. Track and Field Country Coaches Association Hall of Fame in 2007; and
- h. Recipient of the U.S. Sports Academy's 2012 Distinguished Service Award.

11. She was the first female and first African-American to be appointed President of the NCAA Men's and Women's Track and Field Association, she is the winningest African-American coach in any NCAA sport, and prior to her termination she

was the first and only African-American head coach in any sport in the history of the University.

12. In 1994, Bubba Thornton (a Caucasian male) was hired as the Head Coach for the Men's Track and Field team, and Ms. Kearney's employment situation changed. Soon after his arrival at UT-Austin, Mr. Thornton began speaking negatively to others about Ms. Kearney, questioning and commenting negatively on her character, professionalism, and coaching abilities. She was repeatedly demeaned in front of others, including the athletes, and falsely accused of various NCAA violations. Further, Ms. Kearney was subjected to repeated internal investigations (all of which were ultimately dropped) over an almost 15 year period.

13. Accordingly, as early as 2004, Ms. Kearney began reporting to Jody Conradt, the Women's Athletic Director at the time, and to DeLoss Dodds, the Athletic Director, about the harassment she was receiving from Mr. Thornton. Ms. Kearney also appealed to Human Resources, Chris Plonsky, the Women's Athletic Director, and others. The University failed to take any action to stop or protect Ms. Kearney from this ongoing harassment.

14. For years, Ms. Kearney sought relief from the harassment by complaining to Human Resources and several individuals within the Athletics Department. She also complained to Patti Ohlendorf, UT-Austin Vice President for Legal Affairs, Greg Vincent, the Vice President of Minority Affairs, and Mr. Vincent's assistant. Although they acknowledged the existence of the harassment, they did nothing to stop it.

15. As early as 2005, Ms. Kearney began detailing to the administration about her lack of pay increases. Her Caucasian male counterparts within the Athletic

Department had all received very substantial raises over the years, while she did not. Ms. Kearney continued to raise the salary disparity issue through 2012.

16. In or about September 2012, Ms. Kearney was presented with a potential five (5) year contract which would have increased her salary from approximately \$270,000.00 per year to a starting salary of approximately \$397,000.00, plus a longevity bonus of \$25,000 in 2012-2013. Ms. Kearney's salary would have then increased yearly up to approximately \$475,000.00 plus bonuses in 2017. This contract was to have been placed on the consent agenda for the University of Texas Board of Regents' November 2012 meeting. Inexplicably, all further processing of this five year contract extension ended.

17. In or about October 2012, Ms. Kearney was informed by Ms. Plonsky that it had been reported that Ms. Kearney had had a relationship with a former student-athlete in approximately 2002. Ms. Kearney immediately admitted that the consensual relationship had existed, and Ms. Plonsky told her that as long as there were no other relationships, it should not be a problem.

18. On or about November 12, 2012, Ms. Kearney was informed that she was going to be placed on paid administrative leave pending an investigation, and the University released a press release informing the public of her suspension. Ms. Kearney was not told about any allegations that were to be investigated other than the consensual relationship she had already admitted to.

19. On or about November 29, 2012, as part of University's investigation, Ms. Kearney was required to participate in an interview with one of the University's attorneys.

20. Ms. Kearney became suspicious of the nature and purpose of the investigation when said attorney began questioning her about alleged NCAA violations from several years past that had already been fully investigated, and from which she had been entirely cleared.

21. On or about December 6, 2012, Ms. Kearney met with attorneys for the University and provided information related to her allegations of gender and race discrimination.

22. On or about December 28, 2012, Ms. Kearney was called in to a meeting with Ms. Plonsky and Ms. Ohlendorf, wherein she was informed that, after more than 20 years of dedicated service to the University, she was being fired for a consensual relationship from approximately 10 years ago. During this meeting, Ms. Ohlendorf made it clear that the University was terminating Ms. Kearney due to “the relationship” she had with a former student-athlete nearly 10 years ago, and not for failing to report the relationship. There was no other alleged basis given for Ms. Kearney’s termination, and the University has since made no effort to proffer any other alleged basis for Ms. Kearney’s termination. In fact, it has been unambiguously stated by the University in numerous media releases that “the relationship” is the only reason that Ms. Kearney was terminated. Further, the University has publicly stated that its investigation of Ms. Kearney turned up no other alleged relationships between Ms. Kearney and other student athletes.

23. On or about January 5, 2013, Ms. Kearney resigned from the University in lieu of termination.

24. Based on information and belief, other University employees (all of whom are white males) have been involved in relationships with students or direct subordinates and have not been subjected to termination, let alone any meaningful disciplinary actions. These University employees include Major Applewhite (current Defensive Coordinator for the football team), other coaches within the University's Athletic Department, current and former law school professors, current and former professors within the University's undergraduate school, and a department chairperson. Based on information and belief, a high level administrator within the University's Athletic Department has carried on a prolonged intimate relationship of approximately three years with a subordinate employee with whom he has direct involvement in setting her pay.

25. Some of these employee-student/employee-subordinate relationships occurred while the University employee was already married, and several University employees have even gone on to marry their own students. In one of the most glaring examples of the University's blatant disregard for this being an alleged problem amongst coaches and student-athletes, the University previously employed Jim Moore (current head volleyball coach at the University of Oregon) from 1997 to 2000 despite the fact that he married his former student-athlete, Stacy Metro. These relationships between a professor, coach, or administrator and a student, student-athlete, or subordinate employee, are believed to be well known by the University administration and quietly disregarded and swept under the rug. However, without citing any specific written policy, the University has singled out Ms. Kearney, an African American female, and regarded her as different based on a nearly 10 year old relationship.

26. Per University Policy 3-3050, the University acknowledges that a consensual relationship may exist between an “employee with direct teaching, supervisory, advisory, or evaluative responsibility over other employees, students, and/or student employees.” The Policy does not prohibit such relationships, but requires that employees in “supervisory, teaching, or advisory positions” must disclose any consensual relationship to his or her immediate supervisor. Ms. Kearney does not dispute that she had a consensual relationship with an athlete in her program. She readily admitted to the relationship when she was first confronted about it in or about October 2012. In numerous media outlets, the University has cited an alleged unwritten policy that it is unacceptable for a head coach, as opposed to an assistant coach, professor, or administrator, to carry on an intimate relationship with a student-athlete that he or she is coaching. Despite the fact that there is no written policy regarding this alleged heightened standard for head coaches, the University has apparently turned a blind eye toward non-African American and non-female coaches, professors, and administrators who have also carried on consensual relationships with students, student-athletes, student-employees, and subordinate employees.

27. Plaintiff would show the Court that she has been harassed and discriminated against because of her gender and race and was terminated in retaliation for having complained about discriminatory treatment.

VI. CAUSES OF ACTION

28. Plaintiff incorporates the preceding paragraphs by reference.

29. The aforementioned conduct by Defendant constitutes violations of II, Chapter 21, of the Texas Labor Code. Specifically, Defendant discriminated and

retaliated against Plaintiff because of her race, color, and/or sex, in violation of §§ 21.051 and 21.055 of the Texas Labor Code, which states in relevant part that:

[a]n employer commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, or age, the employer (1) fails or refuses to hire an individual, discharges an individual...or (2) limits, segregates, or classifies an employee or applicant for employment in a manner that would deprive or tend to deprive an individual of any employment opportunity or adversely affect in any manner the status of an employee.

[a]n employer...commits an unlawful employment practice if the employer... retaliates or discriminates against a person who, under this chapter: (1) opposes a discriminatory practice or (2) makes or files a charge...

VII. **DAMAGES**

30. As a proximate result of Defendant's improper and illegal actions, Plaintiff is entitled to recover declaratory and injunctive relief, and compensatory and exemplary damages.

31. Plaintiff seeks prospective and/or injunctive relief against Defendant to prevent racial and gender discrimination and/or future violations of civil rights by Defendant's employees.

32. Furthermore, Plaintiff has sustained and seeks the following damages as a result of the actions and/or omissions of Defendant described herein above:

- a. Front and back pay in an amount the Court deems equitable and just to make Plaintiff whole;
- b. Loss of enjoyment of life;
- c. Mental anguish in the past and future;
- d. Prejudgment and post-judgment interest as allowed by law;

- e. All reasonable and necessary costs incurred in pursuit of this suit;
- f. Expert fees as the Court deems appropriate;
- g. All reasonable and necessary attorney's fees incurred by or on behalf of Plaintiff; and
- h. All other damages to which Plaintiff may be reasonably hereby entitled.

VIII.
NO FEDERAL CAUSE OF ACTION

33. No federal cause of action has been alleged herein.

IX.
JURY DEMAND

34. Plaintiff hereby requests a trial by jury of all issues of fact in this case and herewith tenders the jury fee.

X.
REQUEST FOR DISCLOSURE

35. Under Texas Rule of Civil Procedure 194, Defendant requests that Plaintiff disclose, within 30 days of the service of this request, the information or material described in Rule 194.2(a)-(l).

XI.
RANGE OF DAMAGES

36. By order of the Texas Supreme Court effective March 1, 2013, the Court has modified TEXAS RULE OF CIVIL PROCEDURE 47(c) and now requires Plaintiff to state a range of damages. Although Plaintiff believes that such an act may impermissibly invade the province of the jury, which is aptly capable of performing its constitutional obligation to decide this case based upon the facts and arrive at a full and fair measure

of damages suffered by Plaintiff, Plaintiff will nevertheless comply with this order. Ultimately, Plaintiff will ask a jury of her peers to assess a fair and reasonable amount of money damages as compensation for her loss. However, by mandate of the Texas Supreme Court and in accordance with the TEXAS RULE OF CIVIL PROCEDURE, Plaintiff seeks monetary relief over \$1,000,000.00. However, Plaintiff reserves the right to either file a trial amendment or an amended pleading on this issue should subsequent evidence shed further light on this figure.

XII. PRAYER

WHEREFORE, premises considered Plaintiff requests that Defendant be cited to appear and answer herein, and that on final trial of the Court award the Plaintiff the following relief.

1. Issue a declaratory judgment that Defendant's acts, policies, practices, and procedures, complained of herein, violated Plaintiff's rights under the Texas Commission on Human Rights Act;
2. Issue a permanent injunction restraining Defendant from violating these rights;
3. Declare that the acts and practices complained of are in violation of law;
4. Award Plaintiff damages for Plaintiff's past and future mental anguish, loss of income, loss of earning capacity, and other losses specifically stated hereinabove;
5. Award Plaintiff prejudgment and post-judgment interest at the maximum rate allowed by law on all back pay, compensatory damages and attorney's fees and costs awarded; and

6. Award Plaintiff such further and additional relief to which she may be entitled.

Respectfully submitted,

GARCIA & KARAM, L.L.P.

By: _____

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