

# **Exhibit 4**



**Thomas More  
SOCIETY**



**THE ALLIANCE**

*Via Electronic Submission*

March 27, 2018

U.S. Department of Health and Human Services  
Office for Civil Rights  
Attention: Conscience NPRM, RIN 0945-ZA03  
Hubert H. Humphrey Building, Room 509F  
200 Independence Avenue, SW  
Washington, DC 20201

**RE: Public Comment Supporting Proposed Rule “Protecting Statutory Conscience Rights in Health Care,” RIN 0945-ZA03**

To Whom It May Concern:

On behalf of the National Catholic Bioethics Center, the National Association of Catholic Nurses, U.S.A., Thomas More Society, the Christian and Missionary Alliance, the Alliance Community for Retirement Living, Town and Country Manor, Shell Point Retirement Community, and Chapel Pointe, First Liberty Institute<sup>1</sup> submits the following comments in support of the proposed rule entitled “Protecting Statutory Conscience Rights in Health Care.” 83 Fed. Reg. 3880 (Jan. 26, 2018). We are a diverse group of faith-based ministries supportive of religious and conscience rights in healthcare.

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<sup>1</sup> First Liberty Institute is a non-profit law firm dedicated to defending and protecting religious freedom for all Americans.

We applaud the Department of Health and Human Services (“the Department”) for creating its new Division on Conscience and Religious Freedom as well as for promulgating a proposed rule designed to protect conscience rights in healthcare. For the wellbeing of patients and the integrity of the profession, doctors, nurses, and other healthcare professionals must be free to practice medicine in accordance with their professional judgment and ethical beliefs. Without conscience protections such as this rule, healthcare professionals throughout the country risk discrimination for refusing to perform, facilitate, or refer for procedures that they believe are unethical.

The proposed rule is designed to implement twenty-five currently existing federal statutory conscience rights, including the Church Amendments<sup>2</sup>, the Coats-Snow Amendment<sup>3</sup>, the Weldon Amendment<sup>4</sup>, and Section 1553 of the Affordable Care Act<sup>5</sup>. These statutes primarily provide conscience protections for those who hold religious or moral objections to abortion, sterilization, or euthanasia. The proposed rule ensures that presently existing laws protecting healthcare providers are implemented and enforced by the Department.

We write to emphasize the importance of this rule in preventing discrimination against healthcare professionals. We begin by explaining that it is the responsibility of the Department to ensure that existing conscience protections are enforced. We continue by exploring the constitutionality of the proposed rule. We conclude by documenting examples of violations against conscience rights in healthcare, indicating that the threat to conscience rights is rising.

## **I. The Department’s Responsibility to Ensure Conscience Protections Are Implemented**

Over the past five decades, twenty-five federal laws protecting conscience rights in healthcare have been enacted into law. These have been enacted by Democratic administrations and Republican administrations, and many have enjoyed bipartisan support.<sup>6</sup>

However, for the past several years, these statutes have not been vigorously enforced.<sup>7</sup> Perhaps due to a lack of enforcement, there has been a rise in intolerance toward individuals seeking to exercise their conscience rights and a general lack of awareness about the conscience rights of healthcare practitioners. The sharp increase in administrative complaints over the past

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<sup>2</sup> 42 U.S.C. § 300a-7.

<sup>3</sup> 42 U.S.C. § 238n.

<sup>4</sup> See, e.g., Consolidated Appropriations Act, 2017, Pub. L. 115-31, Div. H, sec. 507(d), 131 Stat. 135.

<sup>5</sup> 42 U.S.C. § 18113.

<sup>6</sup> For example, the Coats-Snowe Amendment was signed into law by President Clinton in 1996.

<sup>7</sup> For example, the previous administration proposed rescinding an administrative rule protecting conscience rights, 74 Fed Reg. 10207 (Mar. 10, 2009), and promulgated a final rule that struck most of the initial rulemaking, 76 Fed. Reg. 9968 (Feb. 23, 2011).

year shows that without an administrative enforcement mechanism, coercions of conscience may continue unchecked.

Administrative enforcement is necessary to ensure that existing conscience statutes carry the force of law. Some courts have held that certain conscience protections, such as the Church Amendments, lack a private right of action.<sup>8</sup> Thus, individuals whose conscience rights have been violated may not be able to seek redress in court. Instead, they are dependent upon agency enforcement of conscience rights.

Even in instances where there exist private rights of action, the burden of litigation and the fear of retaliation may deter many individuals from seeking to vindicate their rights in the court system. Administrative enforcement of conscience rights can help to assuage these concerns and encourage compliance with the law.

## II. Constitutionality of the Proposed Rule

The proposed rule fully comports with the requirements of the First Amendment to the United States Constitution by ensuring that existing federal conscience protections are enforced. The First Amendment protects our freedom of conscience in addition to our freedom of religion.<sup>9</sup> In fact, the Supreme Court of the United States has stated that an “individual’s freedom of conscience” is “the central liberty that unifies the various Clauses in the First Amendment.”<sup>10</sup> The Court has recognized that it is important to “preserv[e] freedom of conscience to the full.”<sup>11</sup>

Conscience protection laws are common, particularly in the realm of healthcare law. In the wake of *Roe v. Wade*, the federal government and state governments passed a number of laws respecting the right not to be compelled to facilitate abortions.<sup>12</sup> At the same time, the Supreme Court repeatedly recognized that the substantive due process requirements created in *Roe v. Wade* did not require objecting states or local governments to pay for or promote abortions.<sup>13</sup> Neither did the ruling require taxpayers pay for abortions.<sup>14</sup>

<sup>8</sup> See, e.g., *Cenzon-DeCarlo v. Mount Sinai Hosp.*, 626 F.3d 695 (2d Cir. 2010).

<sup>9</sup> The first draft of the First Amendment, other states’ constitutions, and other founding documents refer to the sacred right of conscience as synonymous or closely related to the right of religious freedom. See Daniel L. Dreisbach & Mark David Hall, *The Sacred Rights of Conscience: Selected Readings on Religious Liberty and Church-State Relations in the American Founding*, Indianapolis, IN: Liberty Fund Press, 2009.

<sup>10</sup> *Corp. of Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 341 n.2 (1987) (Brennan, J., concurring) (quoting *Wallace v. Jaffree*, 472 U.S. 38, 50 (1985)).

<sup>11</sup> *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 646 (1943).

<sup>12</sup> See Denise M. Burke & Anna Franzonello, *Healthcare Rights of Conscience: A Survey of Federal and State Law*, <http://www.aul.org/wp-content/uploads/2012/04/survey-fed-state-law.pdf>.

<sup>13</sup> *Beal v. Doe*, 432 U.S. 438, 445-46 (1977); *Maher v. Roe*, 432 U.S. 464, 477 (1977); *Poelker v. Doe*, 432 U.S. 519, 521 (1977).

<sup>14</sup> See *Harris v. McRae*, 448 U.S. 297, 326 (1980)



As with all other civil rights protected by federal law, religious and conscience rights are often protected through anti-discrimination regulations. For instance, the Department of Justice has promulgated regulations protecting individuals against race discrimination implementing the Title VI of the Civil Rights Act of 1964,<sup>15</sup> and the Department of Education has promulgated regulations protecting against sex discrimination implementing Title IX of the Education Amendments of 1972.<sup>16</sup> Statutes such as the Church Amendments operate in a similar way as other civil rights statutes, by protecting individuals against discrimination including coerced violations of deeply held beliefs against abortion. This proposed rule adopts the enforcement procedures for other civil rights laws and applies them to existing federal law respecting conscience rights.

### III. Conscience Rights are Incompatible with Compelled “Referrals”

The provider, physician, or practitioner who refuses to perform an objectionable procedure for reasons of religious or moral conviction should never be compelled to “refer” the requesting person to an alternative provider, physician, or practitioner known or believed to provide the objectionable procedure.

Many healthcare professionals consider referrals for an objected-to procedure the moral equivalent of having done the objected-to procedure oneself. To them, it is tantamount to arranging for someone else to do what one considers to be immoral.<sup>17</sup>

Recently, healthcare professionals in Vermont brought a lawsuit in order to ensure that they were not compelled to refer suicide-seeking patients to physicians known to perform “assisted suicide”—in direct violation of their religious or moral conviction. After much effort, the Vermont physicians obtained a stipulated agreement that they would not have to refer for physician assisted suicide.<sup>18</sup> Retaining clear and strong prohibitions against required referrals eliminates the need for conscientious healthcare professionals to resort to litigation.

Because of the moral weight of referrals, the proposed rule gives an appropriately broad definition of the term “referral”:

*Referral or refer for* includes the provision of any information (including but not limited to name, address, phone number, email, website, instructions, or description) by any method (including but not limited to notices, books, disclaimers, or pamphlets, online or in print), pertaining to a health care service, activity, or procedure, including related to availability, location, training, information resources, private or public funding or financing, or directions that could provide any assistance in a person obtaining, assisting, training in, funding,

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<sup>15</sup> 42 U.S.C. § 2000d.

<sup>16</sup> 20 U.S.C. § 1681.

<sup>17</sup> *Transfer of Care vs. Referral: A Crucial Moral Distinction*, THE NATIONAL CATHOLIC BIOETHICS CENTER (May 1, 2015), <https://www.ncbcenter.org/resources/news/transfer-care-vs-referral-crucial-moral-distinction/> (noting that a patient always retains the right to be transferred to an alternate provider of the patients selection).

<sup>18</sup> Consent Agreement and Stipulation, *Vermont Alliance for Ethical Healthcare, Inc. v. Hoser*, No. 5:16-cv-205 (D. Vt., May 3, 2017).

financing, or performing a particular health care service, activity, or procedure, where the entity or health care entity making the referral sincerely understands that particular health care service, activity, or procedure to be a purpose or possible outcome of the referral.<sup>19</sup>

The current broad scope of referral should be maintained in order to allow healthcare professionals to best abide by their own professional and ethical judgment. No one should be forced to refer against their conscience.

#### **IV. Examples of Widespread Discriminatory Conduct Violating Conscience Rights in Healthcare**

The Department wrote that it is seeking information, including any facts, surveys, audits, or reports, about the occurrence or nature of coercion, discriminatory conduct, or other violations of the Federal health care conscience and associated anti-discrimination laws. We would like to provide the following examples of discrimination against religious health care practitioners in response to the Department's request.

First Liberty Institute has represented or advised multiple healthcare professionals or organizations seeking to freely exercise their religious conscience rights without discrimination:

- First Liberty represented Dr. Byron Calhoun, a medical doctor who was discriminated against because of his pro-life volunteer work. Dr. Calhoun is a West Virginia University School of Medicine Professor and Vice Chairman of the Department of Obstetrics and Gynecology at the West Virginia University Hospital's Charleston Division. He volunteered his personal time to act as a national medical advisor for the National Institute of Family and Life Advocates, a pro-life advocacy group, due to his religious convictions on the sanctity of life. After Dr. Calhoun's involvement received media attention, the university threatened him with a written, professional reprimand. However, after First Liberty intervened, the university withdrew its threat of reprimand for engaging in pro-life activities, and the university claimed it never officially filed the reprimand against Dr. Calhoun, despite having provided him with a copy.<sup>20</sup>
- First Liberty represented a Catholic health educator who was terminated after being previously granted a conscience protection in the form of a minor religious accommodation. The accommodation allowed her to focus on teaching about chronic health conditions and exempted her from personally teaching about contraceptive use. She was told to "put aside" her "personal beliefs" and teach the class or be terminated, even though other employees had volunteered to teach the birth control class. After First Liberty

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<sup>19</sup> 83 Fed. Reg. 3880, 3924.

<sup>20</sup> For more information, see <https://firstliberty.org/cases/calhoun/>.

filed an EEOC charge, an amicable resolution was reached that respected free speech and religious liberty.<sup>21</sup>

- First Liberty Institute represented three faith-based pregnancy resource centers (“PRCs”) and filed a lawsuit challenging a 2010 Austin law requiring PRCs that oppose abortion and certain forms of birth control to post false and misleading signs at their front entrances. A federal district court held that Austin’s ordinance was unconstitutionally vague, and Austin was forced to pay almost a half-million dollars as a result of their violation of the PRCs’ constitutional rights.<sup>22</sup>
- First Liberty protected multiple clients’ conscience rights through litigation against the HHS Abortifacient Mandate (the “Mandate”). First Liberty sought and received injunctive relief from the Mandate’s requirement that client churches and faith-based ministries facilitate the coverage and dispensation of abortifacients that violated the sincerely held religious beliefs of Insight for Living Ministries, The Christian and Missionary Alliance Foundation, Inc. d/b/a Shell Point Retirement Community, The Alliance Community for Retirement Living, Inc., The Alliance Home of Carlisle Pennsylvania d/b/a Chapel Pointe at Carlisle, Town and Country Manor of the Christian and Missionary Alliance, Simpson University, and Crown College.<sup>23</sup>
- First Liberty filed an amicus brief in support of the Stormans family, who operate Ralph’s Thriftway in Olympia, Washington, and hold religious beliefs against dispensing abortion-causing drugs. The Ninth Circuit ordered the pharmacy to dispense these drugs. The Stormans appealed to the Supreme Court to protect their right to follow their conscience rather than be forced to be complicit in ending a human life. The amicus brief was signed by forty-three (43) members of Congress. The Supreme Court declined to hear the case.<sup>24</sup>
- First Liberty attorneys counseled a Texas physician who declined to refill the Viagra® and Levitra® prescriptions for an unmarried man based on sincerely held religious beliefs but immediately provided a referral to two urologists who would refill the prescription. After reviewing the patient’s complaint, the evidence, the jurisprudence arising under the Texas Religious Freedom and Restoration Act, the Texas Medical Board determined that the allegations did not violate the Medical Practice Act.

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<sup>21</sup> For more information, see <https://firstliberty.org/cases/palma/>.

<sup>22</sup> *Austin Lifecare, Inc. v. City of Austin*, No. A-11-CA-875-LY (W.D. Tex. June 23, 2014).

<sup>23</sup> For more information, see <https://firstliberty.org/cases/hhs-mandate/>.

<sup>24</sup> *Stormans, Inc. v. Selecky*, 586 F.3d 1109 (9th Cir. 2009).

- First Liberty attorneys have counseled myriad other healthcare practitioners, professionals, and organizations regarding rights of conscience vis-à-vis abortion, contraception, fertility treatments, hormone therapies, and end-of-life medical directives.

In addition to the cases and controversies cited above, the following examples evince the pervasive and growing discrimination and hostility against religious healthcare practitioners or conscience rights generally:

### *Abortion*

- In 2018, Washington state legislature passed a bill (SB 6219) requiring insurance plans to provide coverage for abortions if they provide coverage for maternity care. It also requires coverage of sterilizations and contraceptives, including abortion-inducing drugs. The bill has not yet been signed by the governor.<sup>25</sup>
- Baltimore’s city council passed an ordinance that compelled limited-service PRCs, such as those maintained by religious organizations, to post signs stating that they do not provide or make referrals for abortion or birth control services. Claiming the church’s free speech, free exercise of religion, and equal protection rights were violated, the Roman Catholic Congregation, Inc., and the Greater Baltimore Center for Pregnancy Concerns, Inc., sued the city. In 2018, the Fourth Circuit affirmed a decision holding the law unconstitutional.<sup>26</sup>
- In 2016, Illinois amended its Health Care Right of Conscience Act to require doctors and other healthcare personnel to explain the benefits of abortions, contraceptives, and sterilizations, even if such procedures are contrary to his or her conscience. Several doctors and clinics in Illinois filed a lawsuit challenging the new law. A state judge and a federal judge have issued preliminary injunctions against the amendment.<sup>27</sup>
- The American Civil Liberties Union (“ACLU”) sued Trinity Health Corp., a Catholic hospital group with eighty-six hospitals in twenty-one states, because the Catholic hospitals would not violate their religious beliefs by performing abortions. A federal judge dismissed the lawsuit, holding that the ACLU had no standing to sue the Catholic hospitals.<sup>28</sup>

<sup>25</sup> *SB 6219*, WASHINGTON STATE LEGISLATURE (last viewed Mar. 26, 2018), available at <http://app.leg.wa.gov/billsummary?BillNumber=6219&Year=2017>.

<sup>26</sup> *Greater Balt. Ctr. for Pregnancy Concerns, Inc. v. Mayor & City Council of Balt.*, No. 16-2325 (4th Cir. Jan. 5, 2018).

<sup>27</sup> *The Pregnancy Care Center of Rockford v. Rauner*, No. 2016-MR-741 (Ill. Ckt. Ct., Dec. 20, 2016); *Nat. Inst. of Family & Life Advocates v. Rauner*, No. 3:16-cv-50310 (N.D. Ill. July 19, 2017).

<sup>28</sup> *Am. Civil Liberties Union v. Trinity Health Corp.*, No. 15-cv-12611 (E.D. Mich., Apr. 11, 2016).

- In 2014, California issued a new interpretation of the Knox-Keene Act requiring all organizations, including churches with religious objections to abortion, to provide insurance coverage for abortion if they cover maternity services. Three churches filed a lawsuit against the California Department of Managed Health Care challenging the requirement that the churches violate their religious beliefs by providing coverage for abortions.<sup>29</sup>
- The University of Medicine and Dentistry of New Jersey adopted a policy that requires all nursing students to participate in abortion procedures, even if it is against their religious convictions. A group of nurses filed suit against the university in November 2011, alleging Fourteenth Amendment and medical personnel rights violations. The case settled, and the nurses may now refuse to participate in abortions for religious reasons.<sup>30</sup>
- A nurse at Mount Sinai Hospital in New York was forced to participate in a late-term abortion against her conscience and religious convictions. She was threatened with severe penalties including termination and loss of license if she refused to participate in the abortion. Following a request from her attorneys, the U.S. Department of Health and Human Services investigated the hospital for civil rights violations. Mount Sinai Hospital now has a policy that no person can be forced to participate in an abortion against that person's conscience.<sup>31</sup>
- The Department's rule implementing Section 1557 of the Affordable Care Act declined to include a religious conscience exemption and instead required religious practitioners to sue in order to vindicate their conscience rights. The rule interpreted sex discrimination to include discrimination based upon "termination of pregnancy" or gender identity, which could be interpreted to require doctors to perform abortions or gender transitions, even if they do not believe it to be in the best interest of the patient and even if doing so would violate the doctor's religious beliefs. A group of religious health care systems and states filed a lawsuit, which resulted in an injunction against the rule.<sup>32</sup>

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<sup>29</sup> *Foothill Church v. Rouillard*, No. 2:15-cv-02165 (E.D. Cal., Oct. 23, 2017).

<sup>30</sup> See Seth Augenstein, *UMDNJ, 12 Nurses Settle Lawsuit Claiming They Were Forced to Assist with Abortions*, NJ.COM (DEC. 22, 2011), [http://www.nj.com/news/index.ssf/2011/12/umdnj\\_settles\\_with\\_nurses\\_over.html](http://www.nj.com/news/index.ssf/2011/12/umdnj_settles_with_nurses_over.html).

<sup>31</sup> *Cenzon-DeCarlo v. Mount Sinai Hosp.*, 626 F.3d 695 (2d Cir. 2010).

<sup>32</sup> *Franciscan All., Inc. v. Burwell*, No. 7:16-cv-108 (N.D. Tex., filed Aug. 23, 2016); see also *The Jurisprudence of the Body: Conscience rights in the Use of the Sword, Scalpel, and Syringe*, 21 TEX. REV. LAW & POL. 409 (2017).



- After a patient gave birth to a healthy baby, she complained that a doctor at Mercy Regional Medical Center had advised her to consider abortion. In response, the Catholic hospital's chief medical officer instructed the doctor not to recommend abortions in order to uphold the hospital's religious, pro-life stance. The ACLU demanded that the state Department of Public Health and Environment investigate and end the hospital's policy.<sup>33</sup>
- The American Civil Liberties Union ("ACLU") filed a lawsuit in 2016 against the U.S. Department of Health and Human Services as part of an effort to force Roman Catholic relief agencies to refer immigrants for abortions and contraceptives, in violation of Catholic religious beliefs.<sup>34</sup>
- California passed the Reproductive FACT Act, which requires pro-life pregnancy centers to display notices advertising California programs that provide state-subsidized abortions. Several lawsuits have been filed challenging the Reproductive FACT Act, and several pro-life pregnancy centers have announced that advertising abortions violates their religious beliefs and they would either close or refuse to obey such a law. The case is currently pending before the Supreme Court of the United States.<sup>35</sup>

### ***Sterilization***

- The American Civil Liberties Union ("ACLU") on behalf of Rachel Miller threatened to sue a Dignity Health Catholic hospital in Redding, California. The hospital initially refused to allow a doctor to conduct a sterilization procedure in its facilities because Catholic doctrine teaches that voluntary sterilization is gravely immoral. After the ACLU threatened to sue, the hospital allowed the procedure to go forward.<sup>36</sup>

### ***Contraceptives and Abortion-Inducing Drugs***

- Dr. Doris Fernandes, a Catholic physician working in Philadelphia's District Health Center, was fired for refusing to prescribe contraceptives or abortion-causing drugs. Patients seeking these drugs would be transferred to another physician at the clinic. In 2013, Dr. Fernandes was terminated after refusing to obey an order to begin prescribing

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<sup>33</sup> See *ACLU: Durango Hospital Illegally Bans Abortion Discussion*, CBS Denver (Nov. 13, 2013), <http://denver.cbslocal.com/2013/11/13/aclu-durango-hospital-illegally-bans-abortion-discussion/>.

<sup>34</sup> *Am. Civil Liberties Union of N. Cal. v. Burwell*, No. 3:16-cv-03539 (N.D. Cal., filed June 24, 2016); see also *Am. Civil Liberties Union of Mass. v. Sebelius*, No. 1:09-cv-10038-RGS (D. Mass., Mar. 23, 2012) (involving a similar case out of Massachusetts).

<sup>35</sup> *Nat. Inst. of Family & Life Advocates v. Becerra*, No. 16-1140.

<sup>36</sup> Bob Egelko, *Catholic Hospital Backs Down on Tubal Ligation Refusal*, SF GATE (Aug. 24, 2015), <https://www.sfgate.com/health/article/Catholic-hospital-backs-down-on-tubal-ligation-6463205.php>.

contraceptives. Following a lawsuit, Dr. Fernandes received a settlement in which the city agreed to respect the deeply held religious beliefs of medical providers.<sup>37</sup>

- For six years, Walgreens accommodated Pharmacist Dr. Philip Hall’s deeply held religious beliefs, including his strong objection to the dispensation of abortion-inducing drugs. When customers asked for these drugs, he either referred them to another pharmacist there or another nearby pharmacy. However, in August 2013, Walgreens attempted to coerce Hall to violate his religious beliefs. After he was fired, Hall filed a lawsuit in federal court to protect his religious freedom. The case settled.<sup>38</sup>
- Pharmacists Luke Vander Bleek and Glen Kosirog filed a lawsuit after Governor Rod Blagojevich issued an “Emergency Rule” stating that pharmacists cannot refuse to fill prescriptions for emergency contraceptives. After a five year legal battle, an Illinois judge ruled that the “Emergency Rule” violated the First Amendment and the Illinois Religious Freedom Restoration Act.<sup>39</sup>
- An Illinois state trial court issued a temporary restraining order protecting a Catholic-owned business from state law requiring contraceptive coverage in its health care plans to employees. The court held that the law imposes a substantial burden on the free exercise of religion.<sup>40</sup>
- Eight faculty members of Belmont Abbey College filed a complaint with the Equal Employment Opportunity Commission (“EEOC”) because the college declined to provide coverage for contraceptives in accordance with Catholic teachings. After initially ruling in support of the college, the EEOC then reversed its opinion and declared the college had engaged in sex discrimination by denying oral contraceptives to its female employees.<sup>41</sup>
- A pharmacist was fined over \$20,000 and had restrictions placed on his license after he refused to give a patient oral contraceptives because their use is against his religious beliefs as a Roman Catholic.<sup>42</sup>

<sup>37</sup> *Fernandes v. City of Philadelphia*, No. 2:14-cv-05704 (E.D. Pa., filed Oct. 7, 2014).

<sup>38</sup> *Hall v. Walgreen Company*, No. 2:14-cv-00015 (M.D. Tenn. Feb. 19 2015).

<sup>39</sup> *Morr-Fitz, Inc. v. Blagojevich*, No. 2005-495 (Ill. Ck. Ct. Apr. 5, 2011).

<sup>40</sup> *Yep v. Ill. Dep’t of Ins.*, No. 2012 CH 5575 (Dupage Co. IL Cir. Ct., Jan. 15, 2013).

<sup>41</sup> See Patrick J. Reilly, *Look Who’s Discriminating Now*, WALL STREET JOURNAL (Aug. 13, 2009), <https://www.wsj.com/articles/SB10001424052970203863204574346833989489154>.

<sup>42</sup> *Noesen v. Dep’t. of Regulation & Licensing*, 311 Wis. 2d 237 (Wis. Ct. App. 2008).

**V. Conclusion**

As the Department considers modifications to the rule, we urge the Department to continue to provide broad protections for religious freedom. Healthcare practitioners must be free to work in a way that is consistent with their ethical beliefs and professional judgments in order to be able to provide the best care to their patients. This proposed rule serves to protect First Amendment religious freedom rights, healthcare professionals' capacity to uphold the tenets of the Hippocratic Oath, and the ethical integrity of the medical profession.

Thank you for your consideration of these comments.

Respectfully submitted,

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# **Exhibit 5**



*A Passionate Voice for Compassionate Care*

March 27, 2018

Department of Health and Human Services  
Office for Civil Rights  
Attn: Conscience NPRM  
RIN 0945-ZA03  
Room 509F Herbert H. Humphrey Building  
Washington, DC 20201

**REF: RIN 0945-ZA 03**

**Protecting Statutory Conscience Rights in Health Care; Delegations of Authority;  
Proposed Rule, 83 Fed. Reg. 3880, January 26, 2018**

Dear Sir or Madam:

The Catholic Health Association of the United States (CHA) is pleased to submit these comments in support of the referenced proposed rule to implement, enforce and promote awareness of existing Federal laws protecting conscience rights in the context of health care.

CHA is the national leadership organization of the Catholic health ministry, representing more than 2,000 Catholic health care sponsors, systems, hospitals, long-term care facilities and related organization across the continuum of care. CHA represents the largest not-for-profit provider of health care services in the nation:

- 1 in 6 patients in the United States is cared for in a Catholic hospital each year
- More than 5 million admissions to Catholic hospitals each year, including one million Medicaid admissions
- All 50 states and the District of Columbia are served by Catholic health care organizations
- Approximately 750,000 individuals are employed in Catholic hospitals

As a Catholic health ministry, our mission and our ethical standards in health care are rooted in and inseparable from the Catholic Church's teachings about the dignity of each and every human person, created in the image of God. Access to health care is essential to promote and protect the inherent and inalienable worth and dignity of every individual. These values form the basis for our steadfast commitment to the compelling moral implications of our health care ministry and have driven CHA's long history of insisting on and working for the right of everyone to affordable, accessible health care. As lawmakers were developing the health care reform package that culminated in the passage of the Affordable Care Act, we made clear that our vision

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for health care demanded that everyone receive the same level and quality of care, without limits or variation based on age, race, ethnicity, or financial means, or one's health, immigration or employment status. Our members are committed to providing health care services to any person in need of care, without regard to race, color, national origin, sex, age, or disability, or any other category or status. Every individual seeking health care should always be treated with kindness and respect, and failure to do so because of discomfort with or animus against an individual on any basis is unacceptable. At the same time, we firmly believe that organizations and individuals should not be required to participate in, pay for, provide coverage for or refer for services that directly contradict their deeply held religious or moral beliefs and convictions.

For over two hundred years, individual and institutional Catholic health care providers have carried out this mission in a manner consistent with our religious and moral convictions, the source of both our work and the limits on what we will do. For the past several decades we have had the explicit protection of federal laws which defend our right to provide health care in accord with our convictions. CHA has long supported and worked for the enactment of conscience clause protections such as the Church Amendments, Section 245 of the Public Health Service Act, the Weldon Amendment and the Affordable Care Act. Legal protections such as these are essential for the continuation of both our own ministry and our nation's commitment to freedom of religion and of conscience. The lack of implementing regulations and of clarity concerning enforcement mechanisms for these laws has stymied their effectiveness. We welcome the proposed rule, which effectively reflects the intent and content of the underlying laws, and offer the following comments.

- **Definition of “health care entity” and “referral”**

We support the proposed definition of “health care entity.” Including the terms “sponsor” and “third party administrator” clarifies that the Weldon amendment protections for provider-sponsored organizations, health maintenance organizations and health insurance plans are not limited only to the issuers of such plans but extend to the plan sponsors and third-party administrators. We also welcome the definition of “referral or refer for,” which makes clear that providers cannot be compelled in any way to assist in the procurement of services which their religious and moral convictions would prevent them from performing.

- **Minimizing Administrative Burden**

The proposed rule would require certain recipients to submit written assurances and certifications of compliance with federal health care conscience and anti-discrimination laws. We believe this is appropriate and consistent with the requirements of other civil rights laws. The preamble notes that this requirement would be implemented through “modified versions of the applicable civil rights clearance forms ... or similar forms that may be developed and implemented in the future.” (83 Fed.Reg. 3896). We urge OCR to implement this requirement by amending the

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existing forms relevant recipients are already required to submit, in order to minimize the administrative burden on recipients.

- **Compliance and Enforcement**

As indicated above, the lack of effective and reasonable enforcement mechanisms has been an obstacle to ensuring that the conscience protections intended by Congress in laws such as the Church Amendments, Section 245 of the Public Health Service Act, the Weldon Amendment and the Affordable Care Act have been fully realized. We support the broad range of enforcement options included in the proposed rule. We endorse the expressed preference for informal settlement among the parties when there appears to have been a failure to comply. When the withholding of federal funds is an appropriate enforcement option, we agree that there should be flexibility to suspend funding in whole or in part. We also believe it is important to establish meaningful due process measures, including forms of notice, hearing and appeal, when OCR finds a compliance violation that cannot be resolved informally.

- **Further clarification**

We suggest that the final rule provide further clarification in two areas.

We support the requirement to post notices concerning Federal health care conscience and associated anti-discrimination laws, and request clarification on what language translation requirements apply to such notices.

Certain conscience laws, such as the Weldon amendment, forbid States receiving federal funds from discriminating against health care entities because they decline to participate in certain services or procedures. The final rule should clarify that once a State receives federal funds, the non-discrimination requirement applies to all agencies and offices of the State whether or not the specific agency or office in question itself receives federal funds.

Thank you for the opportunity to provide comments on the proposed rule implementing key Federal conscience protections. If you should have any questions about these comments or would like additional information, please do not hesitate to contact Kathy Curran, Senior Director, Public Policy, at 202-296-3993.

Sincerely,



Sr. Carol Keehan, DC  
President and CEO

# **Exhibit 6**



DEPARTMENT OF HEALTH AND HUMAN SERVICES  
 OFFICE FOR CIVIL RIGHTS (OCR)  
**CIVIL RIGHTS DISCRIMINATION COMPLAINT**

Form Approved: OMB No. 0990-0269.  
 See OMB Statement on Reverse.



YOUR FIRST NAME [REDACTED]		YOUR LAST NAME [REDACTED]	
HOME PHONE (Please include area code) [REDACTED]		WORK PHONE (Please include area code) [REDACTED]	
STREET ADDRESS [REDACTED]		CITY [REDACTED]	
STATE [REDACTED]	ZIP [REDACTED]	E-MAIL ADDRESS (If available) [REDACTED]	

Are you filing this complaint for someone else?  Yes  No  
 If Yes, whose civil rights do you believe were violated?  
 FIRST NAME \_\_\_\_\_ LAST NAME \_\_\_\_\_

I believe that I have been (or someone else has been) discriminated against on the basis of:

- Race / Color / National Origin     Age     Religion     Sex  
 Disability     Other (specify): Federal Weldon Amendment conscience protections

Who or what agency or organization do you believe discriminated against you (or someone else)?

PERSON/AGENCY/ORGANIZATION

State of California - Department of Managed Health Care

STREET ADDRESS <u>980 Ninth Street, Suite 500</u>		CITY <u>Sacramento</u>
STATE <u>California</u>	ZIP <u>95814</u>	PHONE (Please include area code)

When do you believe that the civil right discrimination occurred?

LIST DATE(S)

Describe briefly what happened. How and why do you believe that you have been (or someone else has been) discriminated against? Please be as specific as possible. (Attach additional pages as needed)

contravention of the federal Weldon Amendment by a California state government agency action. We believe that abortion is a grave moral evil and object to being morally complicit in abortion through the provision of insurance coverage for abortion to our employees. [Provide any relevant information about your church] On August 22, 2014, the California Department of Managed Health Care (DMHC) notified all private health care insurers in the state, including those through whom we purchase our employee plan, that all health care plans issued in California must immediately cover elective  
This field may be truncated due to size limit. See the "Allegation Description" file in the case folder.

Please sign and date this complaint. You do not need to sign if submitting this form by email because submission by email represents your signature.

SIGNATURE [REDACTED]	DATE (mm/dd/yyyy) <u>10/09/2017</u>
-------------------------	--

Filing a complaint with OCR is voluntary. However, without the information requested above, OCR may be unable to proceed with your complaint. We collect this information under authority of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and other civil rights statutes. We will use the information you provide to determine if we have jurisdiction and, if so, how we will process your complaint. Information submitted on this form is treated confidentially and is protected under the provisions of the Privacy Act of 1974. Names or other identifying information about individuals are disclosed when it is necessary for investigation of possible discrimination, for internal systems operations, or for routine uses, which include disclosure of information outside the Department of Health and Human Services (HHS) for purposes associated with civil rights compliance and as permitted by law. It is illegal for a recipient of Federal financial assistance from HHS to intimidate, threaten, coerce, or discriminate or retaliate against you for filing this complaint or for taking any other action to enforce your rights under Federal civil rights laws. You are not required to use this form. You also may write a letter or submit a complaint electronically with the same information. To submit an electronic complaint, go to OCR's web site at: [www.hhs.gov/ocr/civilrights/complaints/index.html](http://www.hhs.gov/ocr/civilrights/complaints/index.html). To mail a complaint see reverse page for OCR Regional addresses.

The remaining information on this form is optional. Failure to answer these voluntary questions will not affect OCR's decision to process your complaint.

Do you need special accommodations for us to communicate with you about this complaint? (Check all that apply)

- Braille       Large Print       Cassette tape       Computer diskette       Electronic mail       TDD
- Sign language interpreter (specify language): \_\_\_\_\_
- Foreign language interpreter (specify language): \_\_\_\_\_  Other: \_\_\_\_\_

If we cannot reach you directly, is there someone we can contact to help us reach you?

FIRST NAME		LAST NAME	
HOME / CELL PHONE (Please include area code)		WORK PHONE (Please include area code)	
STREET ADDRESS		CITY	
STATE	ZIP	E-MAIL ADDRESS (If available)	

Have you filed your complaint anywhere else? If so, please provide the following. (Attach additional pages as needed)

PERSON/AGENCY/ORGANIZATION/ COURT NAME(S)

DATE(S) FILED	CASE NUMBER(S) (If known)
---------------	---------------------------

To help us better serve the public, please provide the following information for the person you believe was discriminated against (you or the person on whose behalf you are filing).

ETHNICITY (select one)      RACE (select one or more)

Hispanic or Latino       American Indian or Alaska Native       Asian       Native Hawaiian or Other Pacific Islander

Not Hispanic or Latino       Black or African American       White       Other (specify): \_\_\_\_\_

PRIMARY LANGUAGE SPOKEN (if other than English) \_\_\_\_\_

How did you learn about the Office for Civil Rights?

- HHS Website/Internet Search       Family/Friend/Associate       Religious/Community Org       Lawyer/Legal Org       Phone Directory       Employer
- Fed/State/Local Gov       Healthcare Provider/Health Plan       Conference/OCR Brochure       Other (specify): \_\_\_\_\_

To mail a complaint, please type or print, and return completed complaint to the OCR Regional Address based on the region where the alleged violation took place. If you need assistance completing this form, contact the appropriate region listed below.

<p><b>Region I - CT, ME, MA, NH, RI, VT</b></p> <p>Office for Civil Rights, DHHS JFK Federal Building - Room 1875 Boston, MA 02203 (617) 565-1340; (617) 565-1343 (TDD) (617) 565-3809 FAX</p>	<p><b>Region V - IL, IN, MI, MN, OH, WI</b></p> <p>Office for Civil Rights, DHHS 233 N. Michigan Ave. - Suite 240 Chicago, IL 60601 (312) 886-2359; (312) 353-5693 (TDD) (312) 886-1807 FAX</p>	<p><b>Region IX - AZ, CA, HI, NV, AS, GU, The U.S. Affiliated Pacific Island Jurisdictions</b></p> <p>Office for Civil Rights, DHHS 90 7th Street, Suite 4-100 San Francisco, CA 94103 (415) 437-8310; (415) 437-8311 (TDD) (415) 437-8329 FAX</p>
<p><b>Region II - NJ, NY, PR, VI</b></p> <p>Office for Civil Rights, DHHS 26 Federal Plaza - Suite 3312 New York, NY 10278 (212) 264-3313; (212) 264-2355 (TDD) (212) 264-3039 FAX</p>	<p><b>Region VI - AR, LA, NM, OK, TX</b></p> <p>Office for Civil Rights, DHHS 1301 Young Street - Suite 1169 Dallas, TX 75202 (214) 767-4056; (214) 767-8940 (TDD) (214) 767-0432 FAX</p>	
<p><b>Region III - DE, DC, MD, PA, VA, WV</b></p> <p>Office for Civil Rights, DHHS 150 S. Independence Mall West - Suite 372 Philadelphia, PA 19106-3499 (215) 861-4441; (215) 861-4440 (TDD) (215) 861-4431 FAX</p>	<p><b>Region VII - IA, KS, MO, NE</b></p> <p>Office for Civil Rights, DHHS 601 East 12th Street - Room 248 Kansas City, MO 64106 (816) 426-7277; (816) 426-7065 (TDD) (816) 426-3686 FAX</p>	
<p><b>Region IV - AL, FL, GA, KY, MS, NC, SC, TN</b></p> <p>Office for Civil Rights, DHHS 61 Forsyth Street, SW. - Suite 16T70 Atlanta, GA 30303-8909 (404) 562-7886; (404) 562-7884 (TDD) (404) 562-7881 FAX</p>	<p><b>Region VIII - CO, MT, ND, SD, UT, WY</b></p> <p>Office for Civil Rights, DHHS 999 18th Street, Suite 417 Denver, CO 80202 (303) 844-2024; (303) 844-3439 (TDD) (303) 844-2025 FAX</p>	<p><b>Region X - AK, ID, OR, WA</b></p> <p>Office for Civil Rights, DHHS 701 Fifth Avenue, Suite 1600, MS - 11 Seattle, WA 98104 (206) 615-2290; (206) 615-2296 (TDD) (206) 615-2297 FAX</p>

**Burden Statement**

Public reporting burden for the collection of information on this complaint form is estimated to average 45 minutes per response, including the time for reviewing instructions, gathering the data needed and entering and reviewing the information on the completed complaint form. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: HHS/OS Reports Clearance Officer, Office of Information Resources Management, 200 Independence Ave. S.W., Room 531H, Washington, D.C. 20201. **Please do not mail complaint form to this address.**

HHS-699 (7/09) (BACK)





## COMPLAINANT CONSENT FORM

The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) has the authority to collect and receive material and information about you, including personnel and medical records, which are relevant to its investigation of your complaint.

To investigate your complaint, OCR may need to reveal your identity or identifying information about you to persons at the entity or agency under investigation or to other persons, agencies, or entities.

The Privacy Act of 1974 protects certain federal records that contain personally identifiable information about you and, with your consent, allows OCR to use your name or other personal information, if necessary, to investigate your complaint.

Consent is voluntary, and it is not always needed in order to investigate your complaint; however, failure to give consent is likely to impede the investigation of your complaint and may result in the closure of your case.

Additionally, OCR may disclose information, including medical records and other personal information, which it has gathered during the course of its investigation in order to comply with a request under the Freedom of Information Act (FOIA) and may refer your complaint to another appropriate agency.

Under FOIA, OCR may be required to release information regarding the investigation of your complaint; however, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

Please read and review the documents entitled, *Notice to Complainants and Other Individuals Asked to Supply Information to the Office for Civil Rights* and *Protecting Personal Information in Complaint Investigations* for further information regarding how OCR may obtain, use, and disclose your information while investigating your complaint.

**In order to expedite the investigation of your complaint if it is accepted by OCR, please read, sign, and return one copy of this consent form to OCR with your complaint. Please make one copy for your records.**

- As a complainant, I understand that in the course of the investigation of my complaint it may become necessary for OCR to reveal my identity or identifying information about me to persons at the entity or agency under investigation or to other persons, agencies, or entities.





- I am also aware of the obligations of OCR to honor requests under the Freedom of Information Act (FOIA). I understand that it may be necessary for OCR to disclose information, including personally identifying information, which it has gathered as part of its investigation of my complaint.
- In addition, I understand that as a complainant I am covered by the Department of Health and Human Services' (HHS) regulations which protect any individual from being intimidated, threatened, coerced, retaliated against, or discriminated against because he/she has made a complaint, testified, assisted, or participated in any manner in any mediation, investigation, hearing, proceeding, or other part of HHS' investigation, conciliation, or enforcement process.

**After reading the above information, please check ONLY ONE of the following boxes:**

**CONSENT:** I have read, understand, and agree to the above and give permission to OCR to reveal my identity or identifying information about me in my case file to persons at the entity or agency under investigation or to other relevant persons, agencies, or entities during any part of HHS' investigation, conciliation, or enforcement process.

**CONSENT DENIED:** I have read and I understand the above and do not give permission to OCR to reveal my identity or identifying information about me. I understand that this denial of consent is likely to impede the investigation of my complaint and may result in closure of the investigation.

Signature: \_\_\_\_\_ Date: 10/09/2017  
\*Please sign and date \_\_\_\_\_ if submitting this form by email because submission by email represents your signature.

Name (Please print): \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_



## NOTICE TO COMPLAINANTS AND OTHER INDIVIDUALS ASKED TO SUPPLY INFORMATION TO THE OFFICE FOR CIVIL RIGHTS

### **Privacy Act**

The Privacy Act of 1974 (5 U.S.C. §552a) requires OCR to notify individuals whom it asks to supply information that:

— OCR is authorized to solicit information under:

- (i) Federal laws barring discrimination by recipients of Federal financial assistance on grounds of race, color, national origin, disability, age, sex, religion under programs and activities receiving Federal financial assistance from the U.S. Department of Health and Human Services (HHS), including, but not limited to, Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794), the Age Discrimination Act of 1975 (42 U.S.C. §6101 et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. §1681 et seq.), and Sections 794 and 855 of the Public Health Service Act (42 U.S.C. §§295m and 296g);
- (ii) Titles VI and XVI of the Public Health Service Act (42 U.S.C. §§291 et seq. and 300s et seq.) and 42 C.F.R. Part 124, Subpart G (Community Service obligations of Hill-Burton facilities);
- (iii) 45 C.F.R. Part 85, as it implements Section 504 of the Rehabilitation Act in programs conducted by HHS; and
- (iv) Title II of the Americans with Disabilities Act (42 U.S.C. §12131 et seq.) and Department of Justice regulations at 28 C.F.R. Part 35, which give HHS "designated agency" authority to investigate and resolve disability discrimination complaints against certain public entities, defined as health and service agencies of state and local governments, regardless of whether they receive federal financial assistance.
- (v) The Standards for the Privacy of Individually Identifiable Health Information (The Privacy Rule) at 45 C.F.R. Part 160 and Subparts A and E of Part 164, which enforce the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (42 U.S.C. §1320d-2).

OCR will request information for the purpose of determining and securing compliance with the Federal laws listed above. Disclosure of this requested information to OCR by individuals who are not recipients of federal financial assistance is voluntary; however, even individuals who voluntarily disclose information are subject to prosecution and penalties under 18 U.S.C. § 1001 for making false statements.

Additionally, although disclosure is voluntary for individuals who are not recipients of federal financial assistance, failure to provide OCR with requested information may preclude OCR from making a compliance determination or enforcing the laws above.



OCR has the authority to disclose personal information collected during an investigation without the individual's consent for the following routine uses:

- (i) to make disclosures to OCR contractors who are required to maintain Privacy Act safeguards with respect to such records;
- (ii) for disclosure to a congressional office from the record of an individual in response to an inquiry made at the request of the individual;
- (iii) to make disclosures to the Department of Justice to permit effective defense of litigation; and
- (iv) to make disclosures to the appropriate agency in the event that records maintained by OCR to carry out its functions indicate a violation or potential violation of law.

Under 5 U.S.C. §552a(k)(2) and the HHS Privacy Act regulations at 45 C.F.R. §5b.11 OCR complaint records have been exempted as investigatory material compiled for law enforcement purposes from certain Privacy Act access, amendment, correction and notification requirements.

#### **Freedom of Information Act**

A complainant, the recipient or any member of the public may request release of OCR records under the Freedom of Information Act (5 U.S.C. §552) (FOIA) and HHS regulations at 45 C.F.R. Part 5.

#### **Fraud and False Statements**

Federal law, at 18 U.S.C. §1001, authorizes prosecution and penalties of fine or imprisonment for conviction of "whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry".



## **PROTECTING PERSONAL INFORMATION IN COMPLAINT INVESTIGATIONS**

To investigate your complaint, the Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) will collect information from different sources. Depending on the type of complaint, we may need to get copies of your medical records, or other information that is personal to you. This Fact Sheet explains how OCR protects your personal information that is part of your case file.

### **HOW DOES OCR PROTECT MY PERSONAL INFORMATION?**

OCR is required by law to protect your personal information. The Privacy Act of 1974 protects Federal records about an individual containing personally identifiable information, including, but not limited to, the individual's medical history, education, financial transactions, and criminal or employment history that contains an individual's name or other identifying information.

Because of the Privacy Act, OCR will use your name or other personal information with a signed consent and only when it is necessary to complete the investigation of your complaint or to enforce civil rights laws or when it is otherwise permitted by law.

Consent is voluntary, and it is not always needed in order to investigate your complaint; however, failure to give consent is likely to impede the investigation of your complaint and may result in the closure of your case.

### **CAN I SEE MY OCR FILE?**

Under the Freedom of Information Act (FOIA), you can request a copy of your case file once your case has been closed; however, OCR can withhold information from you in order to protect the identities of witnesses and other sources of information.

### **CAN OCR GIVE MY FILE TO ANY ONE ELSE?**

If a complaint indicates a violation or a potential violation of law, OCR can refer the complaint to another appropriate agency without your permission.

If you file a complaint with OCR, and we decide we cannot help you, we may refer your complaint to another agency such as the Department of Justice.

### **CAN ANYONE ELSE SEE THE INFORMATION IN MY FILE?**

Access to OCR's files and records is controlled by the Freedom of Information Act (FOIA). Under FOIA, OCR may be required to release information about this case upon public request. In the event that OCR receives such a request, we will make every effort,



as permitted by law, to protect information that identifies individuals, or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

If OCR receives protected health information about you in connection with a HIPAA Privacy Rule investigation or compliance review, we will only share this information with individuals outside of HHS if necessary for our compliance efforts or if we are required to do so by another law.

**DOES IT COST ANYTHING FOR ME (OR SOMEONE ELSE) TO OBTAIN A COPY OF MY FILE?**

In most cases, the first two hours spent searching for document(s) you request under the Freedom of Information Act and the first 100 pages are free. Additional search time or copying time may result in a cost for which you will be responsible. If you wish to limit the search time and number of pages to a maximum of two hours and 100 pages; please specify this in your request. You may also set a specific cost limit, for example, cost not to exceed \$100.00.

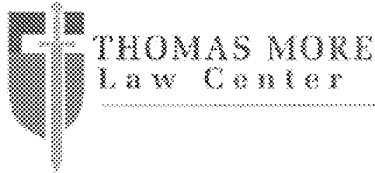
If you have any questions about this complaint and consent package,  
Please contact OCR at <http://www.hhs.gov/ocr/office/about/contactus/index.html>

*OR*

Contact your OCR Regional Office  
(see Regional Office contact information on page 2 of the Complaint Form)

contravention of the federal Weldon Amendment by a California state government agency action. We believe that abortion is a grave moral evil and object to being morally complicit in abortion through the provision of insurance coverage for abortion to our employees. [Provide any relevant information about your church] On August 22, 2014, the California Department of Managed Health Care (DMHC) notified all private health care insurers in the state, including those through whom we purchase our employee plan, that all health care plans issued in California must immediately cover elective abortions under DMHC's interpretation of California state law (See DMHC's letter to insurers of August 22, 2014 <https://www.dmhc.ca.gov/Portals/0/082214letters/abc082214.pdf> ). Because no religious exemption exists from the DMHC order of August 22, 2014, our church's staff health insurance plans must include elective abortion coverage without our authorization and over our objections. All the health plans offered to our church included full and unrestricted coverage for direct abortion without limitation. Having no alternative, we were compelled to enroll in a plan that covers all abortions for all plan participants. This development is morally and religiously unacceptable to our faith ministry, as it burdens our conscience rights by compelling us to fund, through our premium payments, abortion on demand for our employees. Since 2005, the Weldon Amendment in federal law (Section 507 of the Consolidated Appropriations Act, 2017, Pub L. No 115-31 (May 5, 2017)) requires States to maintain neutrality on abortion by prohibiting precisely the sort of coercive, discriminatory, and divisive action the DMHC has taken with its abortion insurance mandate. Specifically, DMHC is "subject[ing]" our "health insurance plan" "to discrimination," by denying approval for a plan that omitted abortion coverage, solely "on the basis that the [plan] does not ... provide coverage of ... abortions." We request that this Office enforce the terms of the Weldon Amendment and prevent California from discriminating against us in violation of this federal law. DMHC is immediately forcing our Church to offer our employees a health plan that includes coverage of abortion, in violation of our deeply-held religious and moral convictions, and forcing us to consider cancellation of these plans. We ask that you act urgently to remedy this violation of our rights.

# **Exhibit 7**



██████████  
President and Chief Counsel  
Advocating for Michigan

December 4, 2017

**VIA FED EX OVERNIGHT**  
**US AIRBILL NO. 8099 2085 0046**

██████████  
Chief of Staff, Office of Civil Rights  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
██████████ HHH Building  
Washington, D.C. 20201

Re: ██████████ *v. Duke University and Duke University Health System, Inc.*, Case No. ██████████ CCE-JEP (M.D.N.C.)

Dear Mr. Bell:

As we have discussed previously, the Thomas More Law Center represents ██████████ with respect to charges of unlawful religious discrimination and retaliation against her employer, Duke University Health System, Inc., as well as Duke University (collectively, "Duke").

We recently filed a civil action on behalf of ██████████ against Duke in the United States District Court for the Middle District of North Carolina. A copy of our complaint accompanies this letter. The complaint sets out Ms. Pedro's claims in detail, but the relevant facts are summarized here.

██████████ is a devout Catholic nurse with many years of experience in nursing. In August 2016, she began work in the Emergency Department of Duke University Hospital in Durham, North Carolina. During orientation, one of the nurses providing training stated that Duke does not allow employees a religious accommodation with regard to abortion and explained that even if a nurse has a religious objection to abortion, she must still participate in aborting a baby because Duke categorically refuses to grant this religious accommodation.

In October 2016, ██████████ requested a religious accommodation with respect to vaccinations. That request was promptly granted. In the process, however, Duke (including two of ██████████ supervisors in the Emergency Department) became aware of her strong pro-life religious views. At this point, ██████████ contends that Duke began harassing and discriminating against her, as described in her complaint.



Additionally, on December 7, 2016, ██████████ made a second request for religious accommodation, which included (among other things) an explicit request to be excused from assisting with or participating in abortions. Unlike her first request, which Duke promptly granted, ██████████ never received a final response to this second request in spite of numerous inquiries and assurances that a decision would be forthcoming. At the end of December 2016, Duke placed ██████████ on paid administrative leave for reasons ██████████ contends were pretextual and without basis.

██████████ complaint alleges that Duke intended to force her out of her job rather than grant her second request for religious accommodation, including her request to be excused from assisting in abortions. Indeed, despite the fact that she continues to be on an unpaid personal leave of absence from Duke, ██████████ has never received a *final* decision as to her second request for religious accommodation.<sup>1</sup>

Accordingly, because of Duke's potential violation of federal laws that the Office of Civil Rights enforces, we write to respectfully inform your office of these issues. Please do not hesitate to contact us if we can provide any further information, answer any questions, or otherwise be of assistance. I may be reached at your convenience on my cell phone at (336) 707-8855 and by email at [tbrooks@thomasmore.org](mailto:tbrooks@thomasmore.org).

Respectfully,


██████████

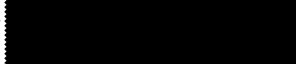
*Senior Trial Counsel*

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<sup>1</sup> In late January 2017, Duke offered to let ██████████ return to work under a *temporary* grant of the accommodation request—ostensibly until Duke could decide whether it presented an undue hardship. Even at that time, however, Duke stated that a final decision would be reached within a couple weeks, but no such decision ever came.

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:17-cv-985
	)	
DUKE UNIVERSITY and	)	COMPLAINT AND
DUKE UNIVERSITY HEALTH	)	JURY DEMAND
SYSTEM, INC.,	)	
	)	
Defendants.	)	
_____	)	

Plaintiff  hereby brings this action against Duke University and Duke University Health System, Inc., including their respective employees, agents, successors, and assigns (collectively, "Defendant Duke"), and alleges upon information and belief as follows:

**INTRODUCTION**

1. At its heart, this case presents a simple yet important question: Must a devout Catholic abandon fundamental tenets of her faith if she wishes to be employed as a nurse at Duke University Hospital? Despite the fact that Defendant Duke has answered "yes" to this question, federal and state civil rights laws say otherwise. Therefore, Plaintiff  brings this action to vindicate her rights under the law.

2. An employee does not forfeit her right to practice her religion and abide by the tenets of her faith when she enters the workplace.

3. To the contrary, federal and state laws generally prohibit discrimination on the basis of religion.

4. Title VII specifically prohibits discrimination on the basis of religion, which includes "all aspects of religious observance and practice, as well as belief[.]" 42 U.S.C. § 2000e(j).

5. Therefore, under Title VII, an employer is required to reasonably accommodate an employee's sincerely held religious beliefs and religious practices, unless doing so would impose an undue hardship.

6. [REDACTED] has worked as a nurse for close to a decade.

7. Because of her Catholic faith, she objects to assisting in abortions, dispensing birth control and contraceptives, and receiving as well as administering vaccines. [REDACTED] employer, Defendant Duke, discriminated against her because of these religious beliefs and practices.

8. Furthermore, after [REDACTED] made known her religious beliefs and requested religious accommodations, Defendant Duke subjected her to a degrading series of actions designed to punish and retaliate against her for engaging in federally-protected activity.

9. The accommodations requested in this case by [REDACTED] would not have imposed an undue hardship on Defendant Duke.

10. In fact, this complaint is filed more than ten months after [REDACTED] [REDACTED] made the second of two requests for religious accommodation, and

Defendant Duke has *still* not responded to [REDACTED] with a final decision as to her second request or otherwise provided an explanation as to how the request presented an undue hardship.

11. Defendant Duke has engaged in a course of conduct that was designed to discriminate and retaliate against [REDACTED] because of her religion and her federally-protected activities, all with the intent of forcing her out of her job with Defendant Duke.

12. Defendant Duke's conduct toward [REDACTED] likewise violated her rights under other federal and state laws, as described more fully herein.

13. Therefore [REDACTED] hereby sues under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, as well as the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.*, and North Carolina statutory and common law.

#### THE PARTIES

14. Plaintiff [REDACTED] is a devout Catholic nurse, who currently resides in New York City.

15. In August 2016, [REDACTED] began work as a nurse for Defendant Duke in the Emergency Department of Duke University Hospital in Durham, North Carolina. At some point after Defendant Duke hired [REDACTED] it became aware that [REDACTED] is a devout Catholic.

16. [REDACTED] is currently on a personal leave of absence for medical reasons from Defendant Duke as a result of injuries Defendant Duke caused.

17. Defendant Duke University is incorporated under the laws of the State of North Carolina with its principal place of business located in Durham, North Carolina.

18. Defendant Duke University employs in excess of 500 employees and is subject to the requirements of Title VII of the Civil Rights Act of 1964.

19. Defendant Duke University is an entity capable of being sued under both federal and North Carolina law.

20. Defendant Duke University Health System, Inc., is incorporated under the laws of the State of North Carolina with its principal place of business located in Durham, North Carolina.

21. Defendant Duke University Health System, Inc., employs in excess of 500 employees and is subject to the requirements of Title VII of the Civil Rights Act of 1964.

22. Defendant Duke University Health System, Inc., is an entity capable of being sued under both federal and North Carolina law.

23. Upon information and belief, at all times relevant to this complaint, Defendant Duke University acted as the parent corporation of Defendant Duke University Health System, Inc.

24. At all times relevant to this complaint, Defendant Duke University provided centralized human resources, labor relations, and legal personnel to Defendant Duke University Health System, Inc.

25. Additionally, upon information and belief, the relevant activities of Defendant Duke University and Duke University Health System, Inc., have been so interrelated and overlapping in terms of management, control, ownership, operations, finances, decisionmakers, and personnel policies and decisions as to constitute a "single employer" or "integrated enterprise."

26. With respect to the allegations contained herein, Defendant Duke University and Defendant Duke University Health System, Inc., acted as alter egos of one another.

27. Duke University Hospital in Durham, North Carolina, is owned, operated, and controlled by Defendant Duke.

28. Defendant Duke is legally responsible for the actions of those employed by Defendant Duke at Duke University Hospital as well as all of the other individuals identified in this complaint as employees or agents of Defendant Duke.

#### **JURISDICTION AND VENUE**

29. This Court has federal question jurisdiction over [REDACTED] claims under federal law pursuant to 28 U.S.C. §§ 1331 and 1343 as well as 42 U.S.C. § 2000e-5(f)(1).

30. [REDACTED] state law claims are properly before this Court pursuant to 28 U.S.C. § 1332 due to diversity of citizenship between the parties and the fact that the amount in controversy exceeds \$75,000 and also pursuant to 28 U.S.C. § 1367(a) because [REDACTED] state law claims are so related to the claims in the action that are within the Court's original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

31. On August 1, 2017, the EEOC mailed [REDACTED] a Right to Sue letter.

32. This complaint has been timely filed.

33. [REDACTED] has complied with all applicable requirements for administrative exhaustion of her claims.

34. Venue is properly laid in this court pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2) because it is a judicial district in which the defendants reside as well as a judicial district in which a substantial part of the events or omissions giving rise to the claims occurred.

#### FACTS

*[REDACTED] is a Devout Catholic and Thus Cannot Participate in the Taking of Innocent Human Life*

35. [REDACTED] takes seriously adherence to the tenets of her Catholic faith.



36. She attends daily Mass and prays the Rosary of the Unborn, on which the Blessed Mother promises that every "Hail Mary" prayed with Love saves a baby from abortion, along with many other Catholic prayers and devotions on a daily basis.

37. Until recently being evicted from her home due to an inability to pay her rent, she kept a miraculous image of the Blessed Mother on her wall above a home shrine she made alongside the American flag presented to her father at his retirement from the National Guard.

38. As part of the exercise of her Catholic faith, ██████████ strives to follow the Ten Commandments, which forbid—among other sins—murder.

39. According to the official *Catechism of the Catholic Church*, to which ██████████ adheres, abortion violates the Commandment that prohibits killing. The *Catechism* states: "Human life must be respected and protected absolutely from the moment of conception."

40. The *Catechism* also states: "Formal cooperation in an abortion constitutes a grave offense. The Church attaches the canonical penalty of excommunication to this crime against human life." In Catholicism, excommunication is the most severe penalty the Church can impose and results in, among other things, being prohibited from participating in public worship and receiving any of the Sacraments of the Church.



41. Furthermore, in his encyclical *Evangelium Vitae*, Pope Saint John Paul II condemned abortion as “a most serious and dangerous crime” that “always constitutes a grave moral disorder, since it is the deliberate killing of an innocent human being.”

42. In accordance with her Catholic faith, [REDACTED] cannot participate in the taking of innocent, unborn human life through complicity with or participation in abortion.

43. Abortion is the intentional termination of an innocent human life.

44. Numerous other Christian denominations in the United States share the same respect for human life at all stages of development as the Catholic Church on the issue of abortion, including the Eastern Orthodox Church, the Southern Baptist Convention, the African Methodist Episcopal Church, the Presbyterian Church in America, the Orthodox Presbyterian Church, the Lutheran Church-Missouri Synod, the Reformed Church in America, the Christian Reformed Church in North America, the Mennonite Church USA, the Assemblies of God, the Church of God in Christ, the Church of the Nazarene, the Church of Jesus Christ of Latter Day Saints, the Coptic Church, and the Anglican Church in North America. The same is true for countless nondenominational evangelical Christian churches. Orthodox Judaism, Hinduism, and traditional Buddhism also oppose abortion except when the mother’s life is in danger.

45. The Catholic Church prohibits all forms of contraception and birth control because, in order to have a valid marriage (a necessary condition for moral sexual activity), the man and woman must be open to the possibility of children and are prohibited from using artificial methods to prevent conception.

46. The Catholic Church also prohibits the use of hormonal contraceptives because such contraceptives reduce the likelihood that a conceived human life will implant in the uterus, thereby increasing the likelihood that an innocent human life will be aborted.

47. [REDACTED] has multiple concerns and sincerely held religious beliefs about vaccines, especially the fact that many vaccines are derived from aborted fetal cells. As previously stated, [REDACTED] strives to obey the Ten Commandments, and the First Commandment is that God must be placed above all else.

48. To remain faithful to her Catholic religious beliefs, [REDACTED] cannot participate in abortions, dispense birth control or contraceptives, or administer or receive vaccines.

49. [REDACTED] convictions regarding abortion, birth control, contraceptives, and vaccines constitute sincerely held religious beliefs.

50. [REDACTED] religious beliefs regarding abortion, birth control, contraceptives, and vaccines are protected by Title VII.

██████████ *Achieves Her  
Dream of Becoming a Nurse*

51. ██████████ faith motivated her to pursue a career as a nurse because, as a nurse, she could help heal the sick.

52. ██████████ received her nursing education at Mount Saint Mary College, graduating in 2008 with a Bachelor of Science in Nursing (BSN).

53. At graduation, ██████████ received the Spirit of Nursing Award in recognition of her love for nursing, her outstanding dedication to her patients, and her deep compassion for those who suffer.

54. After graduating from Mount Saint Mary College ██████████ sat for her nursing boards on Fulton Street in New York City. Following her examination, she went to daily Mass at Our Lady of Victory and prayed to God that she would pass. She promised God that, if she passed her boards, she would serve Him as a nurse and always strive to be faithful to His teachings.

55. ██████████ passed her nursing boards and was licensed as a nurse in the State of New York in 2008.

*After Working in New York, ██████████ Moves to  
North Carolina to Work for Defendant Duke*

56. ██████████ worked as a nurse in New York City for eight years.

57. She first worked in the Neuroscience Unit and Neurosurgery ICU at NYU Langone Medical Center ("NYU") for five years.

58. She then worked for three years in the Burn ICU at New York Presbyterian-Weill Cornell Medical Center ("Cornell").

59. Additionally, while in New York, she performed *per diem* home care/private duty nursing and also trained to be a birth doula.

60. ██████████ compiled an impeccable record while working as a nurse in New York.

61. In fact, while working at NYU, ██████████ helped develop a new hospital guideline for patient care in pentobarbital comas, which was featured as a poster presentation at the April 2012 conference of the American Association of Neuroscience Nurses in Seattle, Washington.

62. During her eight years of working in New York, ██████████ never once received any form of discipline from her employers.

63. After much prayer and deliberation, ██████████ decided to move to the Triangle and work as a nurse in the Emergency Department of Duke University Hospital.

64. ██████████ employment with Defendant Duke began in August 2016.

65. In August 2016, ██████████ attended approximately two weeks of classroom orientation with Defendant Duke.

66. On August 15, 2016, while still in classroom orientation, ██████████ ██████████ received a document regarding Defendant Duke's policies from Clinical

Team Lead [REDACTED] [REDACTED] served as one of Defendant Duke's principal educators during [REDACTED] orientation.

67. In explaining the aforementioned document to six new Emergency Department nurses (including [REDACTED], [REDACTED] discussed how Duke University Hospital operates. She stated that Defendant Duke does not allow employees a religious accommodation with regard to abortion. When [REDACTED] discussed the section titled, "Patient Care and Staff Beliefs," she explained that even if a nurse has a religious objection to abortion, she must still participate in aborting a baby because Defendant Duke categorically refuses to grant this religious accommodation.

68. [REDACTED] then further stated that a large number of abortions are performed in Defendant Duke's Emergency Department.

69. When making each of the statements described above, [REDACTED] was speaking on behalf of, and with authority from, Defendant Duke.

70. Additionally, due to her seniority and the nature of her position, [REDACTED] is privy to information regarding how Defendant Duke reviews and decides requests for religious accommodation and other human resource matters.

71. [REDACTED] statements about Defendant Duke's policy on religious exemptions had a chilling effect on the exercise of Title VII rights.

72. [REDACTED] statements about Defendant Duke's policy on religious exemptions constituted religious discrimination and harassment in violation of Title VII in that they required or coerced employees to abandon or alter religious beliefs or practices as a condition of employment with Defendant Duke.

73. Defendant Duke, acting through [REDACTED] intended the aforementioned statements regarding religious accommodations to intimidate and dissuade employees from exercising their rights under Title VII.

74. Furthermore, the statements of [REDACTED] evidenced Defendant Duke's hostility and discriminatory attitude towards persons of religious faith.

75. The existence and enforcement of a policy like that described by [REDACTED] violates (1) Title VII; (2) 42 U.S.C § 300a-7 (also known as the Church Amendments); (3) the Weldon Amendment; and (4) Section 1303(b) of the Affordable Care Act, both as written and as interpreted and implemented by President Obama's Executive Order No. 13535.

76. At all relevant times during the August 2016 training in which [REDACTED] participated, [REDACTED] was an employee of Defendant Duke and acting within the course and scope of her employment with Defendant Duke.

77. The acts and omissions of [REDACTED] in this case are imputable to Defendant Duke under the doctrines of *respondent superior* and vicarious liability.

[REDACTED] *Requests Reasonable  
Religious Accommodations*

78. Though she was fearful of how Defendant Duke would respond (in light of [REDACTED] comments), [REDACTED] nevertheless made a request for religious accommodation by letter dated October 5, 2016.

79. Specifically, [REDACTED] letter of October 5, 2016, requested that she be exempt from receiving vaccines for religious reasons and provided a description of her pro-life religious views.

80. Defendant Duke granted [REDACTED] request on October 27, 2016.

81. On the same day (October 27, 2016), one of Defendant Duke's Clinical Team Leads in the Emergency Department, [REDACTED] (now [REDACTED]), asked [REDACTED] for a copy of her letter of October 5th and also asked that it be forwarded to [REDACTED] nurse manager.

82. As a result, [REDACTED] supervisors in the Emergency Department immediately became aware of [REDACTED] religious beliefs as well as the fact that those beliefs compel her to adhere to pro-life positions.



*Defendant Duke Begins to Discriminate Against  
Because of Her Religion and Retaliate  
Against Her Because She Engaged in Protected Activity*

83. Despite granting [REDACTED] request for a religious accommodation, Defendant Duke thereafter began a pattern of employment actions and decisions adverse to [REDACTED] that negatively affected her status as an employee of Defendant Duke and more generally as a nurse.

84. Prior to making a request for religious accommodation and making her religious views known to Defendant Duke, [REDACTED] had not been disciplined or reprimanded by Defendant Duke.

85. Barely two weeks after two of [REDACTED] supervisors received the October 5th letter describing her religious beliefs, however, [REDACTED] (one of the two supervisors who had received a copy of [REDACTED] request for religious accommodation) and [REDACTED] (who had stated during [REDACTED] training that employees can never refuse to participate in an abortion in the Emergency Department) asked to meet with [REDACTED] on November 15, 2016.

86. During that November 15, 2016 meeting, [REDACTED] and [REDACTED] provided vague and unsubstantiated criticisms of [REDACTED] work performance in the Emergency Department.

87. Both [REDACTED] and [REDACTED] however, emphasized that they had no concerns about [REDACTED] clinical skills.



88. Defendant Duke has never provided any objective evidence that [REDACTED] work performance was less than satisfactory.

89. The criticism [REDACTED] received during the November 15, 2016 meeting had no basis in fact, but was rather a pretext designed to mask Defendant Duke's unlawful discrimination and retaliation against [REDACTED]

90. During the November 15, 2016 meeting, [REDACTED] stated that she would convene a meeting including herself, [REDACTED] and [REDACTED] preceptor in the Emergency Department, [REDACTED] on November 17, 2016.

91. [REDACTED] failed to convene the meeting on November 17, 2016, as had been represented merely two days earlier.

92. On November 25, 2016, [REDACTED] emailed Clinical Team Lead [REDACTED] to inquire about a clinical ladder promotion, which would have provided her an increase in pay.

93. On November 26, 2016, [REDACTED] emailed [REDACTED] in response, saying that she would talk with her about the next steps in applying for a promotion.

94. [REDACTED] however, never spoke with [REDACTED] and on December 8, 2016, [REDACTED] emailed to say that [REDACTED] (who had stated during [REDACTED] training that employees can never refuse to participate in

an abortion in the Emergency Department) had informed her that she [REDACTED] [REDACTED] was not able to apply for the promotion.

95. Notably, as described more fully below, the email from [REDACTED] [REDACTED] to [REDACTED] denying her the ability to seek the clinical ladder promotion came the day after [REDACTED] made the second of her two requests for religious accommodation based on her pro-life religious views.

96. Due to concern as to why she was still considered to be in her “orientation” period, even though her cohorts were being, or had already been, moved out of “orientation” and into regular status [REDACTED] emailed [REDACTED] and [REDACTED] on November 30, 2016, to inquire about this issue.

97. Neither [REDACTED] nor [REDACTED] responded to [REDACTED] email of November 30, 2016.

98. When she made inquiries of other supervisors in November and December as to the reason for her excessive “orientation” period, [REDACTED] received differing and contradictory answers.

99. Upon information and belief, other members of [REDACTED] cohort had not made requests for religious accommodations and did not share [REDACTED] [REDACTED] same religious views.

100. Accordingly, Defendant Duke kept [REDACTED] on “orientation” longer than necessary so as to discriminate and retaliate against her with the goal of forcing her to quit.

101. Due to the excessive length of her "orientation" period and other harassment initiated by her supervisors [REDACTED] became the subject of gossip, rumors, and degrading and embarrassing comments by some of her fellow employees in the Emergency Department.

102. For example, on one occasion, [REDACTED] heard nurses [REDACTED] talk about her being terminated, which resulted from her supervisors' sharing sensitive personnel issues with her fellow employees.

103. On another occasion, when nurse [REDACTED] did not immediately see [REDACTED] told [REDACTED] that she was happy [REDACTED] was no longer working there.

104. [REDACTED] supervisors also encouraged nurse [REDACTED] to complain about [REDACTED] work performance and, upon information and belief, even failed to discipline [REDACTED] in order to persuade her to provide negative feedback regarding Ms. Pedro.

105. Additionally, when the mother of a young patient wrote a note praising the care [REDACTED] had provided, one or more employees of Defendant Duke ensured the letter was hidden or destroyed.

106. Similarly, [REDACTED] supervisors failed to tell [REDACTED] about letters and other forms of praise she would receive from her patients.

107. [REDACTED] reported these comments and other harassing actions to her supervisors, but her supervisors failed to take any steps to remedy the conduct and even encouraged harassment of [REDACTED]

108. This harassment and Defendant Duke's failure to take remedial action were both motivated by [REDACTED] religious beliefs as well as her protected activity.

109. On December 1, 2017, [REDACTED] asked [REDACTED] to meet with her and [REDACTED] Clinical Team Lead in Defendant Duke's Emergency Department. During this meeting, [REDACTED] was presented with a Performance Improvement Plan that was inexplicably dated November 15, 2016.

110. The meeting of December 1, 2016, was the first time [REDACTED] had been presented with, or had otherwise seen, this Performance Improvement Plan. [REDACTED] asked [REDACTED] to sign this document. When [REDACTED] expressed concern that the allegations listed were untrue, [REDACTED] replied that she ([REDACTED]) would be able to change it later.

111. [REDACTED] was thereby coerced into signing the Performance Improvement Plan because she was fearful that, if she refused to sign, Defendant Duke would claim she was being insubordinate.

112. Also during the December 1, 2016 meeting, it was stated that [REDACTED] would be formally disciplined for the sole reason of not meeting with

her preceptor, [REDACTED] on November 17th, even though the failure to have said meeting was the fault of [REDACTED] rather than [REDACTED]

113. On December 7, 2016, [REDACTED] submitted another request for religious accommodation, as was her right under the law.

114. This request for religious accommodation read, in pertinent part, as follows:

Dear Sir or Madam:

[ . . ]

Since abortion is a grave violation of my religious beliefs, I am unable to assist with or participate in an abortion in any way, including giving drugs intended to induce an abortion.

Methods of birth control and contraception are also grave violations of my religious beliefs, so I am unable to administer drugs intended as birth control or contraception.

As outlined in my previous request for religious accommodation dated on October 5, 2016, vaccines are a violation of my religious beliefs. Therefore, I am unable to administer any vaccines.

[ . . ]

Thank you for your time and attention to this matter.

Sincerely,  
Sara Pedro

115. Defendant Duke and, more specifically, [REDACTED] supervisors in the Emergency Department, were not pleased that [REDACTED] had now made two requests for religious accommodation.

116. When asking [REDACTED] about her second religious accommodation request, [REDACTED] who was at the time Defendant Duke's Emergency Department Clinical Operations Director, said he did not consider it to be a request for a religious accommodation but rather a "dilemma."

117. On December 8, 2016—the day after making her second request for religious accommodation—[REDACTED] was disciplined by means of a written warning from [REDACTED] for not satisfying the benchmarks set out in the Performance Improvement Plan.

118. The reasons for the written warning had therefore expanded beyond the sole basis given a few days earlier on December 1, 2016—namely, [REDACTED] not meeting with her preceptor.

119. Moreover, with only one exception, the benchmarks set out in the Performance Improvement Plan did not even become due until seven days later on December 15, 2016.

120. Accordingly, in violation of Defendant Duke's own policies and procedures, Defendant Duke disciplined [REDACTED] without affording her an opportunity to make any necessary improvements.

121. The areas of alleged deficiencies described in the written warning of December 8, 2016, had no basis in fact, but were rather a pretext

designed to mask Defendant Duke's unlawful discrimination and retaliation against [REDACTED]

122. During the meeting with [REDACTED] on December 8, 2016, at which she was given this written warning, [REDACTED] asked why she was still in "orientation" while her cohorts were being advanced. [REDACTED] denied having knowledge of the reasons for this action, but indicated that it was a decision made by [REDACTED] (Again, it was [REDACTED] who stated during [REDACTED] training that employees can never refuse to participate in an abortion in the Emergency Department.)

123. When [REDACTED] said to [REDACTED] in the December 8th meeting that she had not once received any form of disciplinary action in the previous eight years that she had worked as a nurse, [REDACTED] responded by saying that she did not care what happened before [REDACTED] came to work for Defendant Duke.

*Defendant Duke Places [REDACTED] on  
Administrative Leave for Pretextual Reasons*

124. After the December 8, 2016 meeting, [REDACTED] attempted to formally dispute the written warning through Defendant Duke's human resources representatives.

125. On December 22, 2016, [REDACTED] met with [REDACTED] a human resources representative of Defendant Duke, to complete paperwork

necessary to file a dispute against the written warning that she had been given on December 8.

126. Prior to the meeting with [REDACTED] [REDACTED] emailed [REDACTED] [REDACTED] human resources representative, and [REDACTED] regarding concerns that she was being discriminated against.

127. During her meeting with [REDACTED] asked whether her email asserting that she was being discriminated against on the basis of her religion had been received. [REDACTED] confirmed that she did indeed receive the email and informed [REDACTED] that [REDACTED] would address her concerns when she returned from vacation on January 3, 2017.

128. To [REDACTED] knowledge, Defendant Duke has never completed an investigation into [REDACTED] allegations or otherwise addressed her concerns about discrimination and harassment.

129. Both [REDACTED] complaints to her supervisors about harassment from her co-workers, and her complaints to Defendant Duke's human resources personnel about suspected religious discrimination constituted activity protected by Title VII.

130. Both [REDACTED] complaints to her supervisors and her complaints to Defendant Duke's human resources personnel were reasonable.

131. Nevertheless, Defendant Duke failed to take reasonable steps to prevent and promptly correct the actions complained of by [REDACTED]



132. Upon information and belief, [REDACTED] supervisors in the Emergency Department (including [REDACTED]) quickly became aware that [REDACTED] had complained to Defendant Duke's human resources personnel regarding suspected religious discrimination.

133. On December 30, 2016—a mere eight days after complaining to Duke about alleged religious discrimination and thus engaging in activity protected by Title VII—Ms. Pedro was asked to attend a meeting with [REDACTED] and her preceptor, nurse [REDACTED].

134. In the December 30, 2016 meeting, [REDACTED] informed [REDACTED] that she was being placed on paid administrative leave effective immediately.

135. Once again, the reasons provided by Defendant Duke for its decision had no basis in fact, but were rather a pretext designed to mask Defendant Duke's unlawful discrimination and retaliation against [REDACTED].

136. Also during the December 30, 2016 meeting, while disciplining [REDACTED] inquired into the status of [REDACTED] request for a religious accommodation.

137. [REDACTED] further stated that she wanted to know the results of the request for a religious accommodation before making a final decision about [REDACTED] administrative leave.

138. Such statements by Ms. Denis constitute direct evidence of unlawful discrimination and retaliation.

139. By placing [REDACTED] on administrative leave, human resources personnel—pursuant to Defendant Duke’s policies—were prevented from further investigating [REDACTED] allegations of religious discrimination, retaliation, and harassment as well as her challenge to her written warning.

140. Therefore, Defendant Duke did not exercise reasonable care to prevent discriminatory, retaliatory, and harassing actions and further failed to have in place measures to prevent and correct illegal discrimination, retaliation, and harassment.

141. Defendant Duke’s decision to place [REDACTED] on administrative leave was based on her religion and the fact that she had engaged in protected activity and was further designed and motivated to cover up the true (and illicit) reasons for Defendant Duke’s disciplining of [REDACTED]

142. In addition to its other adverse effects, subjecting [REDACTED] to discipline would also threaten her professional standing (both at Defendant Duke and generally) and her licensure as a nurse.

143. At all times relevant to this complaint, [REDACTED] work for Defendant Duke was more than satisfactory.

144. While working for Defendant Duke, [REDACTED] had no problems with absenteeism, tardiness, insubordination, or violation of any specific hospital rule or policy.

145. In fact, on more than one occasion, [REDACTED] distinguished herself in the course of her work, often preventing acts of malpractice or other violations of law by Defendant Duke. Examples include, but are not limited to, the following:

- a. While [REDACTED] was assisting an HIV-positive patient, the patient vomited large amounts of blood onto [REDACTED] leaving her shoes and clothes saturated with blood. Throughout the situation, though, [REDACTED] remained calm and continued to ensure the patient received proper care. Afterwards [REDACTED] had to discard her scrubs and shoes and receive an HIV test due to the fact that she had been exposed to this virus.
- b. While assigned to work in the psychiatric section of the Emergency Department, [REDACTED] learned a nurse had provided a patient a television remote control, which the patient then used to engage in a sex act in one of the hospital rooms. [REDACTED] was the only nurse who thought to ensure that proper cleaning and sanitization were undertaken so as to protect the health and safety of staff and other patients.
- c. [REDACTED] received a patient who had been assaulted by a brick to his head. When she learned the patient was to be discharged, [REDACTED] approached the attending physician to state that,

based on the patient's clinical findings, she strongly suspected he had a fracture. On reexamining an x-ray of the patient, doctors discovered the x-ray had been misinterpreted previously and that the patient did indeed have a fracture as [REDACTED] suspected.

- d. One of [REDACTED] preceptors, [REDACTED] asked [REDACTED] to prepare a dose of Decadron for a teenage patient. [REDACTED] voiced concern about the amount of the dose and sought clarification from the pharmacist on the correct dose. The pharmacist then agreed with [REDACTED]. An incident report indicating how [REDACTED] prevented this dosing error was then filed.
- e. On November 27, 2016, [REDACTED] was assigned as the primary nurse for a three-year-old boy. His mother was greatly displeased at the care he had received as a patient prior to the beginning of [REDACTED] shift. As a result of the level of care [REDACTED] then provided, the boy's mother later wrote a letter praising the care she gave him.
- f. [REDACTED] is skilled at placing IV's in patients, particularly in pediatric and infant patients. In one specific instance, she placed an IV on the first attempt in a 5-pound premature baby.

g. A veteran nurse with decades of experience commented to [REDACTED] that she had exceptional pediatric IV skills and clinical capabilities.

h. Nurse [REDACTED] a so-called "Epic Superuser" with advanced training in Defendant Duke's new electronic trauma charting system, specifically praised [REDACTED] for the quality of her charting.

i. On December 21, 2016, [REDACTED] received a trauma patient transferred to her from another section of the Emergency Department. [REDACTED] noticed that he had difficulty breathing, which she addressed immediately. Although a trauma reassessment is required for every trauma patient once every hour [REDACTED] noticed that no trauma reassessment had been documented on this patient for more than six hours, and even the last assessment recorded was incomplete. [REDACTED] then documented a thorough physical assessment to ensure proper care. [REDACTED] the oncoming nurse for the next shift, specifically commended [REDACTED] for this work

j. On December 29, 2016, [REDACTED] was supplying a patient with a meal tray for dinner, but [REDACTED] was concerned about his clinical presentation. Though [REDACTED] was unalarmed, [REDACTED]

██████████ checked his blood glucose and found it to be significantly abnormal. The patient was then treated for hypoglycemia.

k. ██████████ received a trauma patient into the Emergency Department who had been involved in a serious motor vehicle accident. The patient admitted he had been using illicit drugs prior to the accident, and his physical assessment and behavior were consistent with illicit drug use. ██████████ then asked a Patient Care Technician to obtain evidence bags for his clothes. Nurse ██████████ however, would not allow the Patient Care Technician to do this and told ██████████ "We don't do that here." ██████████ then raised concerns that the Emergency Department at Defendant Duke was unlawfully withholding information from law enforcement.

l. Several weeks after this incident, on December 27, 2016, Clinical Nurse Specialist ██████████ emailed the nurses in the Emergency Department a new guideline on obtaining and communicating blood and urine sample results to law enforcement. ██████████ thoroughly reviewed the new guidelines and emailed ██████████ several questions, especially since the new guidelines conflicted with instructions previously provided by her supervisors. ██████████ responded and said, "What you were told is wrong. That is

why we have written this document as we have not been complying with the law by such refusal to give information to law enforcement.” The verbatim text of [REDACTED] question and [REDACTED] response were then used at the January 2017 Emergency Department staff meeting in explaining the new policy.

146. At no time did [REDACTED] ever jeopardize or adversely affect the quality of care received by any patient of Defendant Duke.

147. At no time has Defendant Duke ever been able to substantiate any concern about [REDACTED] clinical skills or knowledge.

148. During the December 30th meeting, [REDACTED] stated that she would give [REDACTED] a final decision about her administrative leave by 5:00 pm on January 4, 2017.

149. [REDACTED] received no such answer from Defendant Duke at any time on January 4, 2017.

150. On January 12, 2017, however, [REDACTED] received a letter dated January 6, 2017, from [REDACTED], Defendant Duke’s Director of Staff and Labor Relations.

151. The letter from [REDACTED] stated that Defendant Duke was *still* investigating whether it could accommodate [REDACTED] request for a religious accommodation.

152. Also on January 12, 2017, [REDACTED] emailed [REDACTED] and [REDACTED] continuing to raise multiple concerns about Defendant Duke's handling of her administrative leave.

153. On January 13, 2017, [REDACTED] emailed [REDACTED] asking for an explanation as to what [REDACTED] meant by the word "vaccines" in her request for religious accommodation.

154. On January 16, 2017, [REDACTED] responded to [REDACTED] seeking clarification of her question, but [REDACTED] did not receive any response until she emailed her again on January 23, 2017.

155. On January 23, 2017, [REDACTED] emailed [REDACTED] and [REDACTED] to again raise concerns about repeated discrimination and harassment.

156. On January 25, 2017, [REDACTED] sent [REDACTED] a hostile email challenging her request for a religious accommodation.

157. In her email of January 25, 2017, [REDACTED] advised [REDACTED] that, if she had such concerns, she could call [REDACTED] Assistant Vice President for Harassment, Discrimination and Compliance, in Duke University's Office of Institutional Equity.

158. [REDACTED] email of January 25, 2017, was the first time that [REDACTED] had been directed to contact [REDACTED]. [REDACTED] emailed [REDACTED] the core of her concerns the same day.



159. During this time, it also became necessary for [REDACTED] to renew her ACLS (nursing) certification. Due to the fact that she was still on administrative leave on the date of the test (January 5, 2017), as well as other failures on the part of Defendant Duke [REDACTED] was unable to attend the ACLS class and testing provided by Defendant Duke.

160. As a result [REDACTED] had to pay for a private ACLS class herself and renew her certification on her own. Defendant Duke nonetheless charged [REDACTED] for the cost of the ACLS class she was unable to attend due to Defendant Duke's own actions.

*Defendant Duke Attempts to Interfere  
with the EEOC Investigative Process*

161. On January 26, 2017 [REDACTED] emailed [REDACTED] to ask her to meet with her and [REDACTED] the next day on January 27, 2017.

162. In response, on January 26, 2017 [REDACTED] emailed [REDACTED] [REDACTED] to inform them that she had complained of religious discrimination to the EEOC.

163. [REDACTED] also emailed [REDACTED] [REDACTED] to inform them that she had retained an attorney and that she wanted him to attend the meeting with her.

164. The email from [REDACTED] also politely asked Defendant Duke to have an attorney present at the meeting.

165. The presence of counsel for both parties at the meeting of January 27th would have been beneficial and prudent for each side, given that [REDACTED] had already made an internal complaint and had also contacted the EEOC to initiate a formal investigation of Defendant Duke's conduct.

166. [REDACTED] received no response from Defendant Duke on January 26, 2017.

167. Moments before [REDACTED] was about to leave her home to report for the meeting on January 27th, she finally received a response to her email of the prior day.

168. In the email, Defendant Duke prohibited [REDACTED] attorney from being present during the meeting, even though the meeting with [REDACTED] [REDACTED] would address her complaint to the EEOC.

169. [REDACTED] then participated in a conference call that included herself, her attorney, and an in-house attorney for Defendant Duke, [REDACTED] [REDACTED] of Duke University's Office of Counsel.

170. In that call, [REDACTED] reiterated Defendant Duke's denial of [REDACTED] request to have an attorney presenting during the meeting with [REDACTED]

171. [REDACTED] further stated that [REDACTED] EEOC charge was a valid topic of discussion during the meeting with [REDACTED] and [REDACTED]

172. As such, Defendant Duke attempted to have *ex parte* discussions with [REDACTED] even though she was represented by counsel, about a matter before the EEOC without having her attorney present.

173. Upon information and belief, statements made by [REDACTED] and other information obtained during the meeting that Defendant Duke sought to conduct with [REDACTED] on January 27, 2017, would have been shared with Defendant Duke's legal counsel and used by Defendant Duke to defend against the EEOC charge filed by [REDACTED]

174. During the conference call with [REDACTED] attorney appealed to [REDACTED] on the grounds of professional courtesy between fellow members of the Bar.

175. In response [REDACTED] stated that Defendant Duke has such a large number of employee complaints that it would be impossible for its legal department to accommodate requests to discuss an employee's concerns in person with the employee's counsel.

176. At all times relevant to this complaint, Defendant Duke's Office of Counsel has employed a staff of over a dozen attorneys, including [REDACTED]

177. Additionally, Defendant Duke has ready access to highly skilled and knowledgeable outside counsel.

178. [REDACTED] began to hyperventilate and suffer a severe panic attack as a direct result of [REDACTED] response.

179. [REDACTED] attorney then again called [REDACTED] and was told she was unavailable. He left her a voicemail asking her to return his call. She never did.

180. [REDACTED] thereafter sought and received immediate medical attention from a WakeMed urgent care facility.

181. After being discharged from WakeMed, [REDACTED] sought follow up care from [REDACTED] M.D., of WakeMed, as well as [REDACTED] LPC.

182. After assessing [REDACTED] [REDACTED] referred [REDACTED] for trauma counseling several times per week.

183. [REDACTED] then met with [REDACTED] Psy.D., L.P., for trauma counseling. Following a psychological examination, [REDACTED] opined, by letter dated February 6, 2017, that [REDACTED] was "experiencing significant psychological distress and . . . struggling with maintenance of daily function." [REDACTED] further opined that [REDACTED] was unable to return to work, as it would likely exacerbate her symptoms.

184. [REDACTED] was, therefore, medically unable to return to work and began availing herself of her paid time off through a personal leave of absence for medical reasons until her paid time off was entirely depleted.

185. Even though she has exhausted her paid time off [REDACTED] is still unable to return to work.

186. Though [REDACTED] had been hopeful that Defendant Duke would grant her second request for religious accommodation, based on her first-hand experience while working for Defendant Duke [REDACTED] contends that Defendant Duke never intended to grant her second request for a religious accommodation, but Defendant Duke also lacked any valid grounds to deny her request. [REDACTED] contends that Defendant Duke therefore intended to force her from her position rather than grant her second request for religious accommodation, which included her request to be excused from assisting in any abortions.

*Defendant Duke Continues to Harass  
[REDACTED] and Deny Her Pay and Benefits*

187. Prior to the meeting set by Defendant Duke for January 27, 2017, Defendant Duke offered [REDACTED] the option of returning to work *or taking a personal leave of absence.*

188. After [REDACTED] suffered her medical emergency on January 27th and was therefore unable to return to work, [REDACTED] emailed her

supervisor to inform her that she was medically unable to attend the meeting.

189. Following receipt of medical attention at WakeMed, [REDACTED] emailed her supervisor that she had a medical note excusing her from work on January 28, 2017.

190. Despite the fact that [REDACTED] had expressly been given the option of taking a personal leave of absence and she informed Defendant Duke of her decision to do so *more than the required amount of time prior to her previously scheduled shift of January 28, 2017*, Defendant Duke nevertheless recorded [REDACTED] absence as “unscheduled.”

191. An “unscheduled” absence is considered a basis for discipline.

192. Subsequent efforts to inquire of Defendant Duke as to whether it indeed considered this “unscheduled” absence to be a basis for discipline of [REDACTED] went unanswered by Defendant Duke.

193. Wrongfully classifying [REDACTED] absence as “unscheduled” constituted retaliation for her protected conduct, including filing a charge with the EEOC.

194. Defendant Duke further engaged in unlawful harassment and retaliation of [REDACTED] in several ways following the incident of January 27, 2017.

195. Defendant Duke failed to correct [REDACTED] address with her insurers when [REDACTED] informed Defendant Duke that this information was out of date.

196. Notably, one of her insurers, Cigna, previously had [REDACTED] current address correct, but Defendant Duke changed it to one of her old addresses at some point during her employment.

197. Again, attempts to inquire of Defendant Duke as to [REDACTED] concerns with the address being provided by Defendant Duke to her insurers went unanswered.

198. Defendant Duke moreover failed to provide timely and proper payment to [REDACTED] after January 27, 2017.

199. More specifically, [REDACTED] was not timely compensated for the pay period of 1/23/17 to 2/5/17.

200. [REDACTED] had specifically made written requests for paid time off to cover part of this pay period (1/27/17-2/5/17).

201. Defendant Duke nevertheless inexplicably failed to honor [REDACTED] requests for paid time off, even though [REDACTED] emailed [REDACTED] that it would apply her PTO to January 27 and January 28, and only then compensated her well after it was due to be paid to her.

202. Additionally, at the same time, Defendant Duke issued [REDACTED] a check that included thirty-six hours of paid administrative leave, even



though it had previously informed her in writing that her paid administrative leave ended on January 27th. Because of this erroneous allocation of income by Defendant Duke [REDACTED] was afraid to deposit the check for fear of later being accused of acting improperly.

203. As with almost all of her other inquiries, Defendant Duke did not respond to [REDACTED] when she attempted to obtain clarification and thereby allay her concerns about depositing the check.

204. Furthermore, Defendant Duke also failed to directly deposit [REDACTED] [REDACTED] check into her checking account and instead held the check, telling her to retrieve it from its offices in Durham.

205. [REDACTED] was not able to pick up this check, however, because she lived in Raleigh and did not have a car.

206. Only after causing [REDACTED] much unnecessary trouble, did Defendant Duke eventually send [REDACTED] her check.

207. Because she was forced to take a personal leave of absence for medical reasons, [REDACTED] no longer received income or benefits from Defendant Duke once her PTO had been depleted.

208. Moreover, because Defendant Duke had disciplined [REDACTED] prior to her entering unpaid administrative leave, she was ineligible to participate in its PTO donation program, which would have provided her an opportunity for income.

209. As a result of Defendant Duke's canceling of her health insurance and denying her income, [REDACTED] was unable to obtain the trauma counseling and treatment she required.

210. Additionally, by letter dated October 19, 2016, Defendant Duke had accepted [REDACTED] into its competitive Nurse Loan Forgiveness Program, by which it would satisfy the balance of [REDACTED] remaining student loans. To date, Defendant Duke has made no such payments.

211. Furthermore, Defendant Duke failed to provide [REDACTED] testing to follow up on the HIV exposure she received during her treatment of an HIV-positive patient at Defendant Duke, and [REDACTED] was unable to afford such testing due to her loss of income from Defendant Duke.

212. Thus, following [REDACTED] initial request for a religious accommodation, her subsequent request for a second religious accommodation, and her decision to engage in other forms of protected conduct, Defendant Duke treated [REDACTED] differently than other, similarly situated employees. Such treatment was motivated by [REDACTED] religion and was in retaliation for engaging in activity protected by Title VII. [REDACTED] [REDACTED] was also subjected to a hostile work environment that was permeated with harassment by Defendant Duke. Additionally, she suffered severe harassment from fellow employees that was the result of Defendant Duke failing to correct, and even initiating, said harassment.

213. At all times relevant to the series of event described above, Defendant Duke's employees and agents—including [REDACTED] [REDACTED] [REDACTED]—were acting within the course and scope of their employment or agency relationship with Defendant Duke.

214. The acts and omissions of Defendant Duke's employees and agents in this case—including [REDACTED] [REDACTED]—are imputable to both Defendant Duke University and Defendant Duke University Health System, Inc., under the doctrines of *respondeat superior* and vicarious liability.

215. Defendant Duke engaged in discriminatory practices with malice or with reckless indifference to [REDACTED] federally protected rights.

216. Furthermore, Defendant Duke discriminated in the face of a perceived risk that its actions would violate federal law.

*Effects of Defendant Duke's  
Violation of [REDACTED] Civil Rights*

217. [REDACTED] is currently suffering from Post-Traumatic Stress Disorder ("PTSD").

218. The actions of Defendant Duke have also exacerbated [REDACTED] preexisting medical conditions, including asthma, an injury to her back, and an autoimmune disorder.

219. The actions of Defendant Duke described above (and to be more fully established by the proof at trial), constitute the direct and proximate cause of [REDACTED] current manifestation of PTSD and current problems associated with her other medical issues.

220. Though she desires to work [REDACTED] PTSD and other injuries preclude her from regularly engaging in gainful employment, resulting in a nearly total loss of income.

221. [REDACTED] PTSD is expected to preclude her from regularly engaging in gainful employment for the foreseeable future.

222. [REDACTED] suffers significant psychological and emotional distress on a daily basis as a direct and proximate result of the actions of Defendant Duke.

223. Due to her lack of income, [REDACTED] was evicted from her apartment in Raleigh by a Wake County Sheriff's deputy. [REDACTED] then returned to the New York City area, which she could only accomplish by taking a bus. Consequently, she had to abandon countless personal possessions by leaving them in her Raleigh apartment.

224. She has suffered other consequential injuries from her loss of income.

225. [REDACTED] loss of income, loss of personal property, and other related injuries are the direct and proximate result of Defendant Duke's actions.

**COUNT I:  
Religious Discrimination in  
Violation of Title VII  
(Disparate Treatment)**

226. The preceding paragraphs are hereby realleged and incorporated herein by reference.

227. Religion constitutes a protected class under Title VII.

228. [REDACTED] supervisors at Defendant Duke do not hold [REDACTED] [REDACTED] same religious beliefs.

229. [REDACTED] was subjected to adverse employment actions by Defendant Duke.

230. [REDACTED] protected status (religion) was a motivating factor in the decisions of Defendant Duke that constituted adverse employment actions.

231. The above allegations of this complaint describe conduct that constitutes direct evidence of invidious discrimination on the basis of religion in violation of Title VII.

232. At the time Defendant Duke took adverse employment actions against [REDACTED] job performance was satisfactory.

233. At the time Defendant Duke took adverse employment actions against [REDACTED] was qualified for her position and for the position(s) for which she applied.

234. Employees outside of the protected class were treated more favorably than [REDACTED] including by receiving promotions from "orientation" status and by receiving clinical ladder promotions like that for which [REDACTED] applied.

235. Upon information and belief, Defendant Duke has actively discriminated against others who hold pro-life religious views on prior occasions.

236. Defendant Duke's discrimination against [REDACTED] was intentional.

237. Defendant Duke's discrimination against [REDACTED] on the basis of her religion took several forms.

238. Defendant Duke discriminated against [REDACTED] on the basis of her religion in numerous specific ways, including but not limited to the following: (1) its failure to promote [REDACTED] from "orientation" to regular status and denying [REDACTED] a clinical ladder promotion; (2) its repeated disciplining of [REDACTED] wrongfully and without basis, in ways that would

negatively affect her professional standing (both with Defendant Duke and generally) and her licensure; (3) its denial and interference in myriad ways with [REDACTED] receipt of income and fringe benefits, including insurance, from Defendant Duke; (4) its placing [REDACTED] on administrative leave and later compelling her to take an unpaid personal leave of absence for medical reasons; (5) failing to make any payments under the Nurse Loan Forgiveness Program; and (6) other ways described in this complaint or otherwise to be established by the proof at trial.

239. Defendant Duke lacked any justification for the adverse employment actions taken against [REDACTED]

240. Any justification offered by Defendant Duke for its adverse employment actions is either false or insufficient to support the nature of the adverse employment actions taken.

241. Defendant Duke therefore violated Title VII, and [REDACTED] is entitled to the relief set out more fully below, including compensatory damages, back pay, front pay, compensation for benefits under the Nurse Loan Forgiveness Program, past and future medical and counseling expenses, interest, and reasonable attorneys' fees and costs of the action.

242. The events described here further justify an award of punitive damages under Title VII.



**COUNT II:  
Religious Discrimination in  
Violation of Title VII  
(Harassment/Hostile Work Environment)**

243. The preceding paragraphs are hereby realleged and incorporated herein by reference.

244. Defendant Duke also subjected [REDACTED] to harassment and a hostile work environment because of her religion.

245. The statements of [REDACTED] during training regarding Defendant Duke's policy on religious accommodations and abortion constituted *quid pro quo* harassment on the basis of religion in violation of Title VII.

246. The statements of [REDACTED] during training regarding Defendant Duke's policies constituted part of a hostile work environment.

247. Additionally, the harassment and hostile work environment suffered by [REDACTED] on account of her religion further arose from a series of actions by Defendant Duke that include, but are not limited to, the following:

- a. Imposing discipline on [REDACTED] for baseless, unsubstantiated, and ultimately pretextual reasons;
- b. Imposing discipline that negatively affects [REDACTED] professional standing and/or licensure;
- c. Violating its own internal policies and procedures regarding the imposition of discipline on employees;

- d. Failing to articulate objective benchmarks by which to measure Ms. Pedro's progress as an employee;
- e. Failing to properly communicate with [REDACTED];
- f. Keeping [REDACTED] on "orientation" status longer than necessary and without cause, thereby subjecting her to embarrassment and ridicule;
- g. Denying [REDACTED] the clinical ladder promotion she sought;
- h. Failing to take steps to address harassing and hostile comments made to [REDACTED] by co-workers and otherwise failing to address hostile actions directed toward [REDACTED];
- i. Sharing sensitive information about [REDACTED] employment status with her co-workers and even initiating harassment of [REDACTED] [REDACTED];
- j. Interfering with an internal investigation by its own human resources personnel into [REDACTED] allegations of unlawful discrimination and harassment;
- k. Unreasonably delaying a decision on [REDACTED]'s second request for a religious accommodation;
- l. Misleading [REDACTED] about when she might receive a decision on her second request for a religious accommodation as well as about other aspects of her request;

- m. Not allowing [REDACTED] to work while her second request for a religious accommodation was pending;
- n. Attempting to force [REDACTED] to engage in *ex parte* discussions with employees or agents of Defendant Duke related to her EEOC charge, and expressly denying [REDACTED] the right to have the assistance of counsel during such discussions;
- o. Forcing [REDACTED] into taking a personal leave of absence due to medical reasons, thereby denying her pay and fringe benefits, including health insurance;
- p. Wrongfully classifying [REDACTED] absence on January 28, 2017, as “unscheduled” and therefore subject to discipline;
- q. Forcing [REDACTED] to pay for her own recertification exam and charging her a fee for not attending her previously scheduled ACLS class at Defendant Duke;
- r. Preventing [REDACTED] from participating in Defendant Duke’s PTO leave sharing program;
- s. Failing to timely pay [REDACTED] and imposing unjustified obstacles to, and delays in, [REDACTED] receipt of her pay;
- t. Violating federal and state wage and hour laws;

- u. Exposing [REDACTED] to HIV in the course of her work and then failing to provide follow up HIV testing after denying her the economic means to obtain testing herself;
- v. Failing to make any payments under the Nurse Loan Forgiveness Program;
- w. Failing to update and maintain correct contact information with her insurers, thereby affecting her receipt of benefits;
- x. Failing to respond to numerous inquiries regarding important employment issues; and/or
- y. Other ways to be established by the proof at trial.

248. This course of conduct by Defendant Duke was motivated by [REDACTED] religion, including her religious beliefs and practices.

249. As such, Defendant Duke engaged in a series of separate acts which constitute one unlawful employment practice for purposes of anti-discrimination law.

250. The harassing conduct was so severe and pervasive that a reasonable person in [REDACTED] position would find her work environment to be hostile or abusive.

251. Defendant Duke has no training program to specifically educate its managers and other employees on the need to respect pro-life religious views or religious views that oppose vaccinations.

252. [REDACTED] complained of harassment to Defendant Duke. Nevertheless, Defendant Duke did nothing to remedy it.

253. Defendant Duke therefore violated Title VII, and [REDACTED] is entitled to the relief set out more fully below, including compensatory damages, back pay, front pay, compensation for benefits under the Nurse Loan Forgiveness Program, past and future medical and counseling expenses, interest, and reasonable attorneys' fees and costs of the action.

254. The events described here further justify an award of punitive damages under Title VII.

**COUNT III:  
Religious Discrimination in  
Violation of Title VII  
(Denial of Religious Accommodation)**

255. The preceding paragraphs are hereby realleged and incorporated herein by reference.

256. Defendant Duke further discriminated against [REDACTED] by failing to grant (and/or constructively denying) her second request for religious accommodation of her sincerely held religious beliefs and religious practices.

257. [REDACTED] *bona fide* religious beliefs and practices conflict with certain of Defendant Duke's employment requirements.

258. [REDACTED] brought this conflict to the attention of Defendant Duke.

259. [REDACTED] religious beliefs and practices were the basis for Defendant Duke's adverse employment actions.

260. Accommodating [REDACTED] second request for religious accommodation would not have imposed an undue hardship on Defendant Duke.

261. Defendant Duke therefore violated Title VII, and [REDACTED] is entitled to the relief set out more fully below, including compensatory damages, back pay, front pay, compensation for benefits under the Nurse Loan Forgiveness Program, past and future medical and counseling expenses, interest, and reasonable attorneys' fees and costs of the action.

262. The events described here further justify an award of punitive damages under Title VII.

**COUNT IV:  
Retaliation in  
Violation of Title VII**

263. The preceding paragraphs are hereby realleged and incorporated herein by reference.

264. [REDACTED] engaged in activity protected by Title VII on several occasions while employed by Defendant Duke, including (but not limited to) making requests for religious accommodation, complaining about perceived discrimination and harassment, and filing a charge with the EEOC.

265. As set forth in the preceding paragraphs of this complaint, Defendant Duke subjected [REDACTED] to adverse employment actions at the time, and after, her protected conduct took place.

266. These adverse employment actions were serious enough that they well might have discouraged a reasonable worker from engaging in protected activity.

267. [REDACTED] was subjected to these adverse employment actions because of her protected conduct.

268. Defendant Duke therefore violated Title VII, and [REDACTED] is entitled to the relief set out more fully below, including compensatory damages, back pay, front pay, compensation for benefits under the Nurse Loan Forgiveness Program, past and future medical and counseling expenses, interest, and reasonable attorneys' fees and costs of the action.

269. The events described here further justify an award of punitive damages under Title VII.

**COUNT V:  
Constructive Discharge in  
Violation of Title VII**

270. The preceding paragraphs are hereby realleged and incorporated herein by reference.

271. To the extent it is found that [REDACTED] left her employment with Defendant Duke without being formally terminated, such action was the



result of conditions so intolerable that a reasonable person in [REDACTED] position would feel compelled to resign. Therefore, such action constitutes a constructive discharge in violation of Title VII.

272. Defendant Duke therefore violated Title VII, and [REDACTED] is entitled to the relief set out more fully below, including compensatory damages, back pay, front pay, compensation for benefits under the Nurse Loan Forgiveness Program, past and future medical and counseling expenses, interest, and reasonable attorneys' fees and costs of the action.

273. The events described here further justify an award of punitive damages under Title VII.

**COUNT VI:  
Termination in Violation of  
North Carolina Public Policy**

274. The preceding paragraphs are hereby realleged and incorporated herein by reference.

275. To the extent that Defendant Duke has terminated, or will in the future terminate, [REDACTED] employment, such termination (whether actual or constructive) was unlawful and in violation of North Carolina public policy.

276. Defendant Duke's action therefore gives rise to a claim pursuant to the North Carolina Equal Employment Practices Act, N.C. Gen. Stat. § 143-422.2, and North Carolina common law.

277. As a natural, foreseeable, and proximate result of the wrongful acts alleged herein, [REDACTED] has suffered loss of income and severe emotional distress and mental anguish as well as injury to her reputation.

278. Accordingly, [REDACTED] is entitled to the relief set out more fully below, including compensatory damages, back pay and front pay, compensation for benefits under the Nurse Loan Forgiveness Program, as well as past and future medical and counseling expenses and interest.

**COUNT VII:  
Violation of the  
Fair Labor Standards Act**

279. The preceding paragraphs are hereby realleged and incorporated herein by reference.

280. Defendant Duke failed to timely pay [REDACTED] certain wages and benefits (including benefits under the Nurse Loan Forgiveness Program) she was owed.

281. Defendant Duke's failure to make timely payment of [REDACTED] wages and benefits violated the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.*

282. Defendant Duke's failure to pay [REDACTED] did not result from good faith and reasonable grounds for believing that its act or omission was not a violation of the Fair Labor Standards Act.

283. Defendant Duke is liable to [REDACTED] for compensatory and liquidated damages as well as attorneys' fees, expenses, and costs of the action under 29 U.S.C. § 216(b).

**COUNT VIII:  
Violation of the  
North Carolina Wage & Hour Act**

284. The preceding paragraphs are hereby realleged and incorporated herein by reference.

285. From August 2016 to the present, Defendant Duke has been [REDACTED] [REDACTED] "employer" within the meaning of N.C. Gen. Stat. § 95-25.2(5) in that it acted directly or indirectly in the interest of an employer in relation to [REDACTED] [REDACTED]

286. From August 2016 to the present, [REDACTED] has been an "employee" of Defendant Duke within the meaning of N.C. Gen. Stat. § 95-25.2(4).

287. As described above, Defendant Duke failed to pay [REDACTED] certain wages and benefits (including benefits under the Nurse Loan Forgiveness Program) within the time periods mandated pursuant to North Carolina law, including N.C. Gen. Stat. § 95-25.6 and/or N.C. Gen. Stat. § 95-25.7.

288. Defendant Duke knew that it owed [REDACTED] these wages and benefits.

289. Defendant Duke nonetheless failed to tender them in a timely manner.

290. Defendant Duke failed to tender these wages and benefits in the usual and customary manner.

291. As a direct and proximate result of Defendant Duke's failures, [REDACTED] suffered unreasonable delay and difficulty in receiving wages and benefits that Defendant Duke was legally obligated to pay her.

292. Defendant Duke's violations of the North Carolina Wage and Hour Act were knowing and willful.

293. Accordingly, [REDACTED] is entitled to compensatory damages as well as liquidated damages pursuant N.C. Gen. Stat. § 95-25.22(a1) in addition to interest under N.C. Gen. Stat. § 24-1, and attorneys' fees, costs, and fees related to bringing this action pursuant to N.C. Gen. Stat. § 95-25.22(d).

**COUNT IX:  
Breach of Contract**

294. The preceding paragraphs are hereby realleged and incorporated herein by reference.

295. A legally valid and enforceable contract exists between Defendant Duke and [REDACTED] with respect to the Nurse Loan Forgiveness Program.

296. All conditions precedent to performance of the contract have occurred.

297. No conditions subsequent have excused Defendant Duke's performance.

298. Defendant Duke has breached this contract.

299. Defendant Duke's breach of contract was unjustified and without cause.

300. [REDACTED] has been damaged by Defendant Duke's breach of contract.

301. Accordingly, [REDACTED] is entitled to damages for Defendant Duke's breach of contract.

**COUNT X:  
Breach of the Covenant of  
Good Faith and Fair Dealing**

302. The preceding paragraphs are hereby realleged and incorporated herein by reference.

303. Defendant Duke was under an obligation to act in good faith and with fair dealing as to the terms of the contract it had with [REDACTED] for repayment of her student loans under the Nurse Loan Forgiveness Program.

304. Defendant Duke has breached its obligation to act in good faith and with fair dealing with respect to repayment of [REDACTED] student loans under the Nurse Loan Forgiveness Program.

305. Defendant Duke's breach of the covenant of good faith and fair dealing was unjustified and without cause.

306. [REDACTED] has been harmed as a result of Defendant Duke's breach of the covenant of good faith and fair dealing.

307. Accordingly, [REDACTED] is entitled to damages for Defendant Duke's breach of the covenant of good faith and fair dealing.

**COUNT XI:  
Intentional Infliction of  
Emotional Distress**

308. The preceding paragraphs are hereby realleged and incorporated herein by reference.

309. As described above, Defendant Duke has engaged in extreme and outrageous conduct, which was intended to cause severe emotional distress.

310. Defendant Duke's conduct has been without legal justification.

311. [REDACTED] has in fact sustained severe emotional distress as a direct and proximate result of Defendant Duke's conduct, entitling her to an award of compensatory damages, including past and future loss of income, compensation for benefits under the Nurse Loan Forgiveness Program, and past and future medical and counseling expenses.

**COUNT XII:  
Negligent Infliction of  
Emotional Distress**

312. The preceding paragraphs are hereby realleged and incorporated herein by reference.

313. Alternatively, the actions of Defendant Duke negligently inflicted emotional distress upon [REDACTED]

314. Defendant Duke owed a duty of care to [REDACTED]

315. Defendant Duke negligently breached that duty.

316. Defendant Duke was negligent in the following respects:

- a. Violating its own internal policies regarding employee discipline;
- b. Failing to reasonably manage its response to allegations of discrimination, harassment, and retaliation;
- c. Failing to take reasonable steps to protect [REDACTED] following her complaints of discrimination, harassment, and retaliation;
- d. Failing to properly manage [REDACTED] leave days, income, and fringe benefits so as to ensure she received what she was entitled to receive;
- e. Providing incorrect wage payments and failing to promptly correct or clarify its errors;
- f. Exposing [REDACTED] to HIV in the course of her work and then failing to provide follow up HIV testing after denying her the economic means to obtain testing herself; and/or
- g. Other ways to be established by the proof at trial.

317. It was reasonably foreseeable that this negligent conduct would cause [REDACTED] severe emotional distress and mental anguish.



318. As a direct and proximate result of Defendant Duke's negligence, [REDACTED] has in fact sustained severe emotional distress and mental anguish, entitling her to an award of compensatory damages, including past and future loss of income, compensation for benefits under the Nurse Loan Forgiveness Program, and past and future medical and counseling expenses.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff [REDACTED] respectfully prays that the Court grant her the following relief:

1. Grant her a trial by jury on all claims so triable;
2. Grant her compensatory damages for back pay, lost fringe benefits, benefits under the Nurse Loan Forgiveness Program, past and future medical and counseling expenses, past and future emotional distress, past and future pain and suffering, past and future loss of enjoyment of life, loss of personal property, expenses necessary to secure new employment, and past and future injury to her reputation;
3. Grant her an award of front pay, including future fringe benefits;
4. Grant her an award of punitive damages pursuant to 42 U.S. Code § 1981a(b)(1);
5. Grant her liquidated damages pursuant to 29 U.S.C. § 216(b) and N.C. Gen. Stat. § 95-25.22(a1);
6. Grant her prejudgment and post-judgment interest;

7. Grant her attorneys' fees and costs pursuant 42 U.S.C. § 2000e-5(k), 29 U.S.C. § 216(b), N.C. Gen. Stat. § 95-25.22(d), and as may be otherwise allowed by applicable law;

8. Tax costs of this action against Defendant Duke University and/or Defendant Duke University Health System, Inc.; and

9. Grant her such other and further relief as the Court may deem just and proper.

Respectfully submitted, this the 27th day of October, 2017.

THOMAS MORE LAW CENTER

BY: s



\*Admitted to practice law in North Carolina, South Carolina, and Tennessee. Not admitted to practice law in Michigan.

† *Pro hac vice* pursuant to L.R. 83.1(d).

JS-44 (Rev. 06/17)

### CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

**I. (a) PLAINTIFFS**

Sara Theresa Pedro

(b) County of Residence of First Listed Plaintiff Bronx (New York)  
*(EXCEPT IN U.S. PLAINTIFF CASES)*

(c) *(Address, City, State, and Zip Code of Plaintiff)*

**DEFENDANTS**

Duke University and Duke University Health System, Inc.

County of Residence of First Listed Defendant Durham (North Carolina)  
*(BY U.S. PLAINTIFF CASES ONLY)*

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

*Attorneys (If Known)*

**II. BASIS OF JURISDICTION** *(Place an "X" in One Box Only)*

- 1 U.S. Government Plaintiff
- 3 Federal Question *(U.S. Government Not a Party)*
- 2 U.S. Government Defendant
- 4 Diversity *(Indicate Citizenship of Parties in Item III)*

**III. CITIZENSHIP OF PRINCIPAL PARTIES** *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

- |   |                            |                             |   |                             |                             |
|---|----------------------------|-----------------------------|---|-----------------------------|-----------------------------|
|   | PTF                        | DEF                         |   | PTF                         | DEF                         |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 2  | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 3  | <input type="checkbox"/> 4  |
| Citizen of Another State                | <input type="checkbox"/> 5 | <input type="checkbox"/> 6  | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 7  | <input type="checkbox"/> 8  |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 9 | <input type="checkbox"/> 10 | Foreign Nation  | <input type="checkbox"/> 11 | <input type="checkbox"/> 12 |

**IV. NATURE OF SUIT** *(Place an "X" in One Box Only)*

CONTRACT	TORTS	PROPERTY/INJURY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 118 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans <i>(Excludes Veterans)</i> <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care <input type="checkbox"/> 368 Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 369 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 605 Drug Related Suits of Property, 21 USC 881 <input type="checkbox"/> 690 Other <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 420 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 420 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 420 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 325 False Claims Act <input type="checkbox"/> 370 Civil Pen (31 USC 3729a-c) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Arbitration <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 435 Commerce <input type="checkbox"/> 460 Disposition <input type="checkbox"/> 470 Ruckelshaus Injunction and Corporate Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 690 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statute
REAL PROPERTY	CIVIL RIGHTS	PRISONER RIGHTS	LABOR	SOCIAL SECURITY
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Eminent Domain <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts in Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 250 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<input type="checkbox"/> 460 Habeas Corpus <input type="checkbox"/> 461 Alien Detention <input type="checkbox"/> 510 Business to Vacate Sentence <input type="checkbox"/> 520 General <input type="checkbox"/> 521 Death Penalty <input type="checkbox"/> 530 Misdemeanor & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input type="checkbox"/> 560 Civil Detention - Conditions of Confinement	<input type="checkbox"/> 700 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 750 Other Labor Litigation <input type="checkbox"/> 791 Equalization Reimbursement Income Security Act	<input type="checkbox"/> 801 SSA (1935) <input type="checkbox"/> 802 Black Lung (923) <input type="checkbox"/> 803 OPWC/DIFW (405(g)) <input type="checkbox"/> 804 SSD Title XVI <input type="checkbox"/> 805 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7509 <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7509

**V. ORIGIN** *(Place an "X" in One Box Only)*

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District *(court)*
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*.  
42 U.S.C. § 2000e et seq.; 29 U.S.C. § 201 et seq.; 28 U.S.C. § 1347(a).  
 Brief description of cause:  
Religious discrimination, harassment, and retaliation under Title VII; FLSA; NC statutory and common law claims.

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.C.P. DEMAND \$ \_\_\_\_\_ CHECK YES only if demanded in complaint.  
 JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

*(See Instructions)* JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE 10/27/2017 NUMBER OF PAGES OF RECORD \_\_\_\_\_  
 FOR OFFICE USE ONLY

RECEIVED \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING FIP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

JS 44 Reverse (Rev. 06/17)

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. **Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation -- Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation -- Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC 553. Brief Description: Unauthorized reception of cable service
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

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