

# Nos. 19- 4254(L), 20-31, 20-32, 20-41

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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STATE OF NEW YORK; CITY OF NEW YORK; STATE OF COLORADO; STATE OF CONNECTICUT; STATE OF DELAWARE; DISTRICT OF COLUMBIA; STATE OF HAWAII; STATE OF ILLINOIS; STATE OF MARYLAND; COMMONWEALTH OF MASSACHUSETTS; STATE OF MICHIGAN; STATE OF MINNESOTA; STATE OF NEVADA; STATE OF NEW JERSEY; STATE OF NEW MEXICO; STATE OF OREGON; COMMONWEALTH OF PENNSYLVANIA; STATE OF RHODE ISLAND; STATE OF VERMONT; COMMONWEALTH OF VIRGINIA; STATE OF WISCONSIN; CITY OF CHICAGO; AND COOK COUNTY, ILLINOIS,

Plaintiffs-Appellees,

*(Caption continued on inside cover)*

On Appeal from the United States District Court  
for the Southern District of New York

**JOINT APPENDIX VOLUME X OF X**

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*Of Counsel:*

ROBERT P. CHARROW  
*General Counsel*

SEAN R. KEVENEY  
*Deputy General Counsel*  
*U.S. Department of Health & Human Services*

JOSEPH H. HUNT  
*Assistant Attorney General*

MICHAEL S. RAAB  
LOWELL V. STURGILL JR.  
SARAH CARROLL  
LEIF OVERVOLD  
*Attorneys, Appellate Staff*  
*Civil Division, Room 7226*  
*U.S. Department of Justice*  
*950 Pennsylvania Avenue NW*  
*Washington, DC 20530*  
*(202) 532-4631*  
*Counsel for Defendants-Appellants and Consolidated-  
Defendants-Appellants*

PLANNED PARENTHOOD FEDERATION OF AMERICA, INC.; PLANNED PARENTHOOD OF  
NORTHERN NEW ENGLAND, INC.; NATIONAL FAMILY PLANNING AND REPRODUCTIVE  
HEALTH ASSOCIATION; AND PUBLIC HEALTH SOLUTIONS, INC.

Consolidated-Plaintiffs-Appellees,

v.

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; ALEX M. AZAR, II, in  
his official capacity as Secretary of the United States Department of Health and Human Service; AND  
UNITED STATES OF AMERICA,

Defendants-Appellants,

DR. REGINA FROST AND CHRISTIAN MEDICAL AND DENTAL ASSOCIATIONS,

Intervenors-Defendants-Appellants,

ROGER T. SEVERINO, in his official capacity as Director, Office for Civil Rights, United States  
Department of Health and Human Services; AND OFFICE FOR CIVIL RIGHTS, UNITED STATES  
DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Consolidated-Defendants-Appellants.

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# **Exhibit 7**



THOMAS MORE  
Law Center

██████████  
President and Chief Counsel  
Admitted to 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, [REDACTED] 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, [REDACTED] 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 [REDACTED] on paid administrative leave for reasons [REDACTED] contends were pretextual and without basis.

[REDACTED] 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, [REDACTED] 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,

[REDACTED]

*Senior Trial Counsel*

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<sup>1</sup> In late January 2017, Duke offered to let [REDACTED] 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.	)	
<hr/>		

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] 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, [REDACTED] strives to follow the Ten Commandments, which forbid—among other sins—murder.

39. According to the official *Catechism of the Catholic Church*, to which [REDACTED] 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 *respondeat 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] [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] [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] 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];
- 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 Revise (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.

Document 1-1 Filed 10/27/17 Page 2 of 2



# Exhibit 8



January 10, 2018

Centralized Case Management Operations  
U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Room 509F HHH Bldg.  
Washington, D.C. 20201

**Re: Complaint for Discrimination by State of Hawaii in Violation of Federal  
Conscience-Protecting Statutes**

*Contact attorney for complainants:*

[REDACTED]  
American Center for Law and Justice  
6375 New Hope Rd.  
P.O. Box 60  
New Hope, KY 40052  
(502) 549-7020  
[REDACTED]@aclj.org

*Complaints filed on behalf of:*

Aloha Pregnancy Care and Counseling Center,  
Inc.  
45-1151 G Kamehameha Hwy.  
Kaneohe, HI 96744  
(808) 234-7233

*Person/Agency/Organization committing  
discrimination:*

State of Hawaii  
c/o Attorney General Douglas Chin  
Department of the Attorney General  
425 Queen Street  
Honolulu, HI 96813  
(808) 586-1500

*Date and nature of discriminatory acts:*

On July 12, 2017, the Hawaii legislature enacted Hawaii Senate Bill 501 (hereafter, "the Act"), a bill which compels limited service pregnancy centers, such as the Complainant, to disseminate a message crafted by the State which is, in effect, an advertisement for free or low-cost contraceptive services and abortions. A copy of the law is attached.

Among other things, the Act requires that certain facilities, such as those operated by Complainant, post in their waiting rooms, or distribute to their clients in written or digital form, a

6375 New Hope Road  
New Hope, Kentucky 40052  
(502) 549-7020  
(502) 549-5252 (Facsimile)

message from the State of Hawaii that the State “has public programs that provide immediate free or low-cost access to comprehensive family planning services, including, but not limited to, all FDA-approved methods of contraception and pregnancy-related services for eligible women.” One of the “comprehensive family planning services” that Hawaii pays for is elective abortions.

Those who fail or refuse to comply with the Act are subject to a civil penalty of \$500 for a first offense and \$1000 for each subsequent offense.

Complainant is a non-profit, faith-based pregnancy resource center that offers pregnancy related care and counseling to its clients free of charge and consistent with Complainant’s religious beliefs. Those beliefs compel Aloha not to perform, counsel for, or provide referrals for, or education about contraceptives or abortion. Because of these beliefs, Complainant objects to posting or distributing the State’s dictated message, because they view it as requiring them to approve of and refer for contraceptives and abortions. At a minimum, the Act unlawfully requires Complainant’s counselors to tailor their discussion of contraception and abortion in a manner and at a time dictated by the State instead of by the Complainant itself.

Inasmuch as the Act compels the Complainant to participate in, and refer for contraception and abortions, it violates Complainant’s rights under at least two federal conscience-protecting statutes:

- The Public Health Service Act, 42 USC § 238n, prohibiting the federal government and any state or local government receiving federal financial assistance from discriminating against any health care entity on the basis that the entity: 1) *refuses* to undergo training in the performance of induced abortions, to require or provide such training, *to perform such abortions, or to provide referrals for such training or such abortions*; 2) refuses to make arrangements for such activities; or 3) attends (or attended) a post-graduate physician training program, or any other program of training in the health professions, that does not (or did not) perform induced abortions or require, provide, or refer for training in the performance of induced abortions, or make arrangements for the provision of such training (emphasis added);
- The Weldon Amendment, originally passed as part of the HHS appropriation and readopted (or incorporated by reference) in each subsequent HHS appropriations act since 2005. It provides that “[n]one of the funds made available in this Act [making appropriations for the Departments of Labor, Health and Human Services, and Education] may be made available to a Federal agency or program, *or to a state or local government, if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions*” (emphasis added). It also defines “health care entity” to include “an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan.”

The Complainant herein faces ongoing discrimination by the State of Hawaii which is currently defending the discriminatory aspects of the law in U.S. District Court.<sup>1</sup> The Complainant hereby requests OCR to investigate this matter and take appropriate action to remedy this ongoing discrimination in violation of federal law.

Date: January 10, 2018

AMERICAN CENTER FOR LAW AND JUSTICE

By: 

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<sup>1</sup> The Complainant and the State are currently litigating the constitutionality of the Act in the matter of *Aloha Pregnancy Care and Counseling v. Chin*, Case No. 1:17-cv-00343 (D. Haw.).

THE SENATE  
TWENTY-NINTH LEGISLATURE, 2017  
STATE OF HAWAII

**S.B. NO.** 501  
S.D. 1  
H.D. 2  
C.D. 1

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# A BILL FOR AN ACT

RELATING TO HEALTH.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that all women in Hawaii,  
2 regardless of income, should have meaningful access to effective  
3 reproductive health services. Public programs providing  
4 insurance coverage and direct services for reproductive health  
5 care and counseling to eligible, low-income women are currently  
6 available through the department of health and department of  
7 human services.

8           Thousands of women in Hawaii are in need of publicly-funded  
9 family planning services, contraception services and education,  
10 pregnancy-related services, prenatal care, and birth-related  
11 services. In 2010, sixteen thousand women in Hawaii experienced  
12 an unintended pregnancy, which can carry enormous social and  
13 economic costs to both individual families and to the State.  
14 Many women in Hawaii, however, remain unaware of the public  
15 programs available to provide them with contraception, health  
16 education and counseling, family planning, prenatal care,  
17 pregnancy-related, and birth-related services.

2017-2606 SB501 CD1 SMA-3.doc



**S.B. NO.** 501  
S.D. 1  
H.D. 2  
C.D. 1

1           Because family planning decisions are time sensitive and  
2 care early in pregnancy is important, Hawaii must make every  
3 possible effort to advise women of all available reproductive  
4 health programs. In Hawaii, low-income women can receive  
5 immediate access to free or low-cost comprehensive family  
6 planning services and pregnancy-related care through Med-QUEST  
7 and the department of health's family planning program.  
8 Providers who contract with these programs are able to  
9 immediately enroll patients in these programs at the time of a  
10 health center visit.

11           Requiring facilities that provide pregnancy- or family  
12 planning-related services to provide accurate health information  
13 and to inform clients of the availability of and enrollment  
14 procedures for reproductive health programs will help ensure  
15 that all women in the State can quickly obtain the information  
16 and services that they need to make and implement informed,  
17 timely, and personally appropriate reproductive health  
18 decisions.

19           The purpose of this Act is to ensure that women in Hawaii  
20 are able to make personal reproductive health decisions with



1 full and accurate information regarding their rights to access  
2 the full range of health care services that are available.

3 SECTION 2. Chapter 321, Hawaii Revised Statutes, is  
4 amended by adding two new sections to be appropriately  
5 designated and to read as follows:

6 "§321-A Limited service pregnancy centers; notice of  
7 reproductive health services. (a) For purposes of this  
8 section, "limited service pregnancy center" or "center":

9 (1) Means a facility that:

10 (A) Advertises or solicits clients or patients with  
11 offers to provide prenatal sonography, pregnancy  
12 tests, or pregnancy options counseling;

13 (B) Collects health information from clients or  
14 patients; and

15 (C) Provides family planning or pregnancy-related  
16 services, including but not limited to obstetric  
17 ultrasound, obstetric sonogram, pregnancy  
18 testing, pregnancy diagnosis, reproductive health  
19 counseling, or prenatal care; and

20 (2) Shall not include a health care facility. For the  
21 purposes of this paragraph, a "health care facility"



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S.D. 1  
H.D. 2  
C.D. 1

1 means any facility designed to provide comprehensive  
2 health care, including but not limited to hospitals  
3 licensed pursuant to chapter 321, intermediate care  
4 facilities, organized ambulatory health care  
5 facilities, emergency care facilities and centers,  
6 health maintenance organizations, federally qualified  
7 health centers, and other facilities providing  
8 similarly organized comprehensive health care  
9 services.

10 (b) Every limited service pregnancy center in the State  
11 shall disseminate on-site to clients or patients the following  
12 written notice in English or another language requested by a  
13 client or patient:

14 "Hawaii has public programs that provide immediate free or  
15 low-cost access to comprehensive family planning services,  
16 including, but not limited to, all FDA-approved methods of  
17 contraception and pregnancy-related services for eligible women.

18 To apply online for medical insurance coverage, that will  
19 cover the full range of family planning and prenatal care  
20 services, go to [mybenefits.hawaii.gov](http://mybenefits.hawaii.gov).



1       Only ultrasounds performed by qualified healthcare  
2 professionals and read by licensed clinicians should be  
3 considered medically accurate."

4       The notice shall contain the internet address for online  
5 medical assistance applications and the statewide phone number  
6 for medical assistance applications.

7       (c) The information required by subsection (b) shall be  
8 disclosed in at least one of the following ways:

9       (1) A public notice on a sign sized at least eight and  
10 one-half inches by eleven inches, written in no less  
11 than twenty-two point type, and posted in a clear and  
12 conspicuous place within the center's waiting area so  
13 that it may be easily read by individuals seeking  
14 services from the center; or

15       (2) A printed or digital notice written or rendered in no  
16 less than fourteen point type that is distributed  
17 individually to each patient or client at the time of  
18 check-in for services; provided that a printed notice  
19 shall be available to all individuals who cannot or do  
20 not wish to receive the notice in a digital format.



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S.D. 1  
H.D. 2  
C.D. 1

1        (d) No limited service pregnancy center that collects  
2 health information from any individual seeking or receiving its  
3 services shall disclose any individually identifiable health  
4 information to any other person, entity, or organization without  
5 express written authorization from the subject individual. Any  
6 disclosure made under this section shall be limited by the  
7 express terms of the written authorization and all applicable  
8 state and federal laws and regulations, including the federal  
9 Health Insurance Portability and Accountability Act of 1996 and  
10 title 45 Code of Federal Regulations part 164.

11        (e) A limited service pregnancy center that provides or  
12 assists in the provision of pregnancy testing shall provide the  
13 individual tested with a free written statement of the results  
14 of the pregnancy test in English or another language requested  
15 by a client or patient immediately after the test is completed.

16        (f) Upon receipt of a written request from an individual  
17 to examine or copy all or part of the individual's recorded  
18 health information or other information retained by a limited  
19 service pregnancy center, the center shall, promptly as required  
20 under the circumstances but in no case later than fifteen  
21 working days after receiving the request:



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S.D. 1  
H.D. 2  
C.D. 1

- 1        (1) Make the information available for examination by the  
2        individual during regular business hours;  
3        (2) Provide a free copy to the individual, if requested;  
4        (3) Inform the individual if the information does not  
5        exist or cannot be found; and  
6        (4) If the center does not maintain the record or  
7        information, inform the individual of that fact and  
8        provide the name and address of the entity that  
9        maintains the record or information.

10        §321-B Limited service pregnancy centers; enforcement;  
11 private right of action. (a) A limited service pregnancy  
12 center that violates section 321-A shall be liable for a civil  
13 penalty of \$500 for a first offense and \$1,000 for each  
14 subsequent offense. If the center is provided with reasonable  
15 notice of noncompliance, which informs the center that it is  
16 subject to a civil penalty if it does not correct the violation  
17 within thirty days from the date the notice is sent to the  
18 center, and the violation is not corrected as of the expiration  
19 of the thirty-day notice period, the attorney general may bring  
20 an action in the district court of the district in which the  
21 center is located to enforce this section.



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H.D. 2  
C.D. 1

1 A civil penalty imposed pursuant to this subsection shall  
2 be deposited to the credit of the general fund.

3 (b) Any person who is aggrieved by a limited service  
4 pregnancy center's violation of section 321-A may bring a civil  
5 action against the limited service pregnancy center in the  
6 district court of the district in which the center is located to  
7 enjoin further violations and to recover actual damages  
8 sustained together with the costs of the suit including  
9 reasonable attorneys' fees. The court may, in its discretion,  
10 increase the award of damages to an amount not to exceed three  
11 times the actual damages sustained. If damages are awarded  
12 pursuant to this subsection, the court may, in its discretion,  
13 impose on a liable center a civil fine of not more than \$1,000  
14 to be paid to the plaintiff.

15 A party seeking civil damages under this subsection may  
16 recover upon proof of a violation by a preponderance of the  
17 evidence.

18 For the purposes of this subsection, "person" includes a  
19 natural or legal person.

20 (c) The enforcement procedure and remedies provided by  
21 this section shall be in addition to any other procedure or



1 remedy that may be available to the State or a person aggrieved  
2 by a violation of this chapter.

3 (d) This section and section 321-A are not intended to  
4 require regulation or oversight of limited service pregnancy  
5 centers by the department of health."

6 SECTION 3. In codifying the new sections added by section  
7 2 of this Act, the revisor of statutes shall substitute  
8 appropriate section numbers for the letters used in designating  
9 the new sections in this Act.

10 SECTION 4. If any provision of this Act, or the  
11 application thereof to any person or circumstance, is held  
12 invalid, the invalidity does not affect other provisions or  
13 applications of the Act that can be given effect without the  
14 invalid provision or application, and to this end the provisions  
15 of this Act are severable.

16 SECTION 5. New statutory material is underscored.

17 SECTION 6. This Act shall take effect upon its approval.



**S.B. NO.** 501  
S.D. 1  
H.D. 2  
C.D. 1

**Report Title:**

Limited Service Pregnancy Centers; Disclosures; Privacy; Remedy

**Description:**

Requires all limited service pregnancy centers to disclose the availability of and enrollment information for reproductive health services. Defines limited service pregnancy center. Establishes privacy and disclosure requirements for individual records and information. Authorizes civil penalties and civil actions for enforcement and remedy. (CD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

2017-2606 SB501 CD1 SMA-3.doc



# **Exhibit 9**



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]
H CELL PHONE (Please include area code) [REDACTED]	W PHONE (Please include area code) [REDACTED]
STREET ADDRESS [REDACTED]	CITY [REDACTED]
S [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 The Little Sisters of the Poor	LAST NAME [REDACTED]
--	-------------------------

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): \_\_\_\_\_

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

PERSON/AGENCY/ORGANIZATION  
 Commonwealth of Pennsylvania, Attorney General Josh Shapiro

STREET ADDRESS Office of Attorney General ; Strawberry Square, 16th Floor		CITY Harrisburg
STATE Pennsylvania	ZIP 17120	PHONE (Please include area code) (717) 787-3391

When do you believe that the civil right discrimination occurred?

LIST DATE(S)  
 10/11/2017, 01/11/2018

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)

Pennsylvania is trying to force religious objectors to provide insurance coverage for abortion-inducing drugs and devices, along with contraceptives and sterilization. Pennsylvania itself does not require health insurance plans governed by state law to cover contraceptives, <https://www.governor.pa.gov/governor-wolf-calls-legislature-make-birth-control-coverage-mandate/>, but that has not stopped it from challenging the federal government's religious exemption of the Little Sisters of the Poor (LSP) from a federal contraception mandate. Pennsylvania has filed a federal

*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) 01/11/2018
-------------------------	---------------------------------

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.

<b>Region I - CT, ME, MA, NH, RI, VT</b> Office for Civil Rights, DHHS JFK Federal Building - Room 1875 Boston, MA 02203 (617) 565-1340; (617) 565-1343 (TDD) (617) 565-3809 FAX	<b>Region V - IL, IN, MI, MN, OH, WI</b> 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	<b>Region IX - AZ, CA, HI, NV, AS, GU, The U.S. Affiliated Pacific Island Jurisdictions</b> 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
<b>Region II - NJ, NY, PR, VI</b> 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	<b>Region VI - AR, LA, NM, OK, TX</b> Office for Civil Rights, DHHS 1301 Young Street - Suite 1169 Dallas, TX 75202 (214) 767-4056; (214) 767-8940 (TDD) (214) 767-0432 FAX	
<b>Region III - DE, DC, MD, PA, VA, WV</b> 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	<b>Region VII - IA, KS, MO, NE</b> 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	
<b>Region IV - AL, FL, GA, KY, MS, NC, SC, TN</b> 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	<b>Region VIII - CO, MT, ND, SD, UT, WY</b> Office for Civil Rights, DHHS 999 18th Street, Suite 417 Denver, CO 80202 (303) 844-2024; (303) 844-3439 (TDD) (303) 844-2025 FAX	<b>Region X - AK, ID, OR, WA</b> 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

**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: 01/11/2018  
\*Please sign and date \_\_\_\_\_ need to sign 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)

# **Exhibit 10**

RICHARD C. BAKER

WHITMAN H. BRISKY

JOHN W. MAUCK

NOEL W. STERETT

.....  
SORIN A. LEAHU

# MAUCK & BAKER, LLC

ONE NORTH LASALLE STREET, SUITE 600  
CHICAGO, ILLINOIS 60602

WWW.MAUCKBAKER.COM  
TEL: 312.726.1243 FAX: 866.619.8661

██████████  
OF COUNSEL

January 16, 2018

Via E-Mail and U.S. Mail: [OCRCComplaint@hhs.gov](mailto:OCRCComplaint@hhs.gov)

Centralized Case Management Operations  
U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Room 509F HHH Bldg.  
Washington, DC 20201

## Re: Complaint of Discrimination in Violation of Federal Statutes

Dear Sir or Madam:

Mauck & Baker, LLC, represents ██████████ (also known as ██████████), a licensed practical nurse ("LPN") who was subjected to unlawful discrimination by the Winnebago County Health Department, a state agency subject to the Church Amendments (42 U.S.C. § 300a-7), the Public Health Service (PHS) Act (§ 245 (42 U.S.C. § 238n)), and/or the Weldon Amendment (Continuing Appropriations Resolution, Pub. L. No. 113-164, Sec. 101(a) (Sept. 19, 2015)) by virtue of its status as a recipient of federal funding.

██████████ is a pediatric nurse with forty years of experience. She serves as a nurse in furtherance of and in conformance with her religious convictions to care for children. Her religious convictions also prohibit her from performing, assisting in, referring for, or participating in any way with abortion or abortion-causing drugs. Her right to serve as a pediatric nurse without violating her conscience or compromising her religious convictions relating to abortion or abortion-causing drugs are protected by the First Amendment to the United States Constitution, the Constitution of the State of Illinois, the Illinois Religious Freedom Restoration Act, 775 ILCS 35/15, and the Illinois Healthcare Right of Conscience Act, 745 ILCS 70/1 *et seq.*, in addition to the federal conscience clauses named above.

For nearly eighteen years ██████████ served as a pediatric nurse at the Winnebago County Health Department and until 2015 was never forced to participate in abortion related services. However, in the summer of 2015, the county's new Public Health Administrator, ██████████ informed ██████████ that she could no longer work in the health department clinics if she was unwilling to participate in the provision of abortion related

Centralized Case Management Operations  
U.S. Department of Health and Human Services  
Complaint of Discrimination  
January 16, 2018  
Page 2

services. Her termination had nothing to do with her performance as [REDACTED] had recently received the "Employee of the Week" and "Employee of the Quarter" awards.

The attached First Amended Complaint, [REDACTED] *et al.*, Case No. 2016 L 160, (attached as Exhibit 1), contains the factual and legal descriptions of specific violations of our clients' rights. The letter from [REDACTED] to [REDACTED] dated June 30, 2015 (Ex. B to the First Amend. Compl.) shows that [REDACTED] informed [REDACTED] that she was basing her decision to terminate [REDACTED] from the clinic environment on account of [REDACTED] religious convictions and conscientious objections and also on account of the terms of the federal grants the health department receives. The Defendants' "Third Affirmative Defense" (attached as Exhibit 2) shows how the Health Department has tried to justify its unlawful discrimination against Sandra by referring to the terms of Title X and the federal funds it receives. But as the aforementioned federal conscience clauses make plain, Title X and the terms of the federal grants actually *prohibited* [REDACTED] termination on account of her religious and conscientious objections.

[REDACTED] state court case is pending before the Circuit Court of Winnebago County in Rockford, Illinois. On February 15, 2018, the court will hold a status hearing at which the judge may rule on the parties' cross-motions for summary judgment.

Please promptly inform us of the actions your office plans to take regarding this violation. Thank you for your attention to this matter.

Sincerely yours,

[REDACTED]

cc: Client [REDACTED]  
[REDACTED] Assistant Deputy States Attorney for Winnebago County