

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JOEL CONSING,

Case No.

Plaintiff,

COMPLAINT

U.S. DISTRICT COURT  
EASTERN DISTRICT  
OF NEW YORK

-against-

PLAINTIFF DEMANDS  
A TRIAL BY JURY

NEW YORK CITY HEALTH AND HOSPITALS  
CORPORATION, and ZENAIDA MAGNAYE-  
BANZON, *Individually*,

Defendants.  
-----X

**CV 15 - 1548**

Plaintiff, JOEL CONSING (hereinafter "Plaintiff") by and through his attorneys,  
PHILLIPS & ASSOCIATES, Attorneys at Law, PLLC, hereby complains of Defendants, upon  
information and belief, as follows:

**BLOCK, G.**

NATURE OF THE CASE

**BLOOM, M.J.**

1. Plaintiff complains pursuant to Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (amended in 1972, 1978 and by the Civil Rights Act of 1991, Pub. L. No. 102-166) ("Title VII") and the New York City Human Rights Law, New York City Administrative Code § 8-107, *et seq.* ("NYCHRL"), and seeks damages to redress the injuries he has suffered as a result of being **Discriminated against on the basis of his Gender.**

JURISDICTION AND VENUE

2. Jurisdiction of this Court is proper under 42 U.S.C. §2000e-5(f)(3), and 28 U.S.C. §§ 1331 and 1343.
3. The Court has supplemental jurisdiction over the claims of Plaintiff brought under city law pursuant to 28 U.S.C. § 1367.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) as it is a judicial district where a substantial part of the events or omissions giving rise to the claims occurred.

**PROCEDURAL PREREQUISITES**

5. Plaintiff filed charges of discrimination upon which this Complaint is based with the Equal Employment Opportunities Commission (hereinafter "EEOC").
6. Plaintiff received a Notice of Right to Sue from the EEOC, dated February 10, 2015, with respect to the herein charges of discrimination. A copy of the Notice is annexed hereto.
7. This action is being commenced within ninety (90) days of receipt of said Notice.

**PARTIES**

8. At all times relevant, Plaintiff was a resident of the State of New York.
9. At all times relevant, Defendant NEW YORK CITY HEALTH AND HOSPITALS CORPORATION ("NYCHHC") was and is a department subdivision of the City of New York and is a municipal entity duly organized and existing under and by the virtue of the laws of the State of New York.
10. At all times relevant, Defendant NYCHHC owned, operated, and/or maintained the "Queens Hospital Center," which is located at 82-68 164<sup>th</sup> Street, Queens, New York 11432.
11. At all times relevant, Defendant ZENAIDA MAGNAYE-BANZON ("MAGNAYE-BANZON") was and is a resident of the State of New York.
12. At all times relevant, Defendant MAGNAYE-BANZON was and is an employee of Defendant NYCHHC, holding the position of "Senior Associate Director" at the Queens Hospital Center.
13. At all times relevant, Defendant MAGNAYE-BANZON had the power to hire Plaintiff.

14. Defendants NYCHHC and MAGNAYE-BANZON are herein referred to together as “Defendants.”

**MATERIAL FACTS**

15. On or about January 7, 2014, Plaintiff came to learn of an opening for a position at the Queens Hospital Center in its “Labor and Delivery” division.
16. Specifically, upon information and belief, the position was for a “certified surgical technologist.”
17. Accordingly, Plaintiff sent his resume to Defendant NYCHHC and confirmed his interest in being considered for the position.
18. Thereafter, on or about January 28, 2014, Plaintiff scheduled a phone interview with Defendant MAGNAYE-BANZON, who, upon information and belief, was ultimately the individual in charge of deciding whether to hire Plaintiff as to the open certified surgical technologist position.
19. After multiple reschedulings, Plaintiff spoke with Defendant MAGNAYE-BANZON. During this conversation, Defendant MAGNAYE-BANZON told Plaintiff that this position would “not work [for him]” because the Queens Hospital Center had female patients and “this would be a conflict,” there would be some “cultural issues,” and the position would not be suitable for him “being that [he is] male.”
20. Accordingly, Defendants denied Plaintiff the opportunity to obtain this employment position solely on the basis of his gender.
21. Upon information and belief, a certified surgical technologist employed by Defendants in its Labor and Delivery division is an allied health professional working as a part of a team (the “team”) delivering surgical care to women during childbirth.

22. Upon further information and belief, this team consists of approximately five members, all of whom have different roles and responsibilities, and who are not all necessarily women. In fact, it is more common than not that a team is comprised of both men and women, and further, that the doctor performing surgery is a male more often than not.
23. Upon further information and belief, a certified surgical technologist is a position commonly held by males in the medical industry.
24. Upon further information and belief, it is the policy of Defendant NYCHHC that in the event a female patient requests a team of all females, such request is routinely granted and team members are often substituted in and out in accordance with a patient's wishes. Furthermore, it is more common than not that a patient does not object to males being members of the team.
25. Upon further information and belief, Defendants routinely maintained multiple certified surgical technologists at the Queens Hospital Center during any given shift in order to facilitate the wishes of a patient if such a request for an all-female team is made.
26. Accordingly, Defendants discriminated against Plaintiff by only considering females for the position of certified surgical technologist at the Queens Hospital Center to which Plaintiff applied.
27. But for Plaintiff's gender, he would not have faced discrimination at the hands of Defendants.
28. Plaintiff has become disturbed and distressed by the discrimination he had suffered on the basis of his gender.
29. Based on the foregoing, Defendants unlawfully refused to hire Plaintiff solely on the basis of his gender, causing him damages.

30. As a result of the acts and conduct complained of herein, Plaintiff has suffered emotional pain, suffering, inconvenience, loss of enjoyment of life, and other non-pecuniary losses. Plaintiff has further experienced severe emotional distress.
31. Defendants' conduct has been malicious, willful, outrageous, and conducted with full knowledge of the law. As such, Plaintiff demands Punitive Damages as against all Defendants, jointly and severally.
32. As a result of the above, Plaintiff has been damaged in an amount which exceeds the jurisdiction limits of the Court.

**AS A FIRST CAUSE OF ACTION  
FOR DISCRIMINATION UNDER TITLE VII  
(Not Against Individual Defendant)**

33. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this Complaint.
34. This claim is authorized and instituted pursuant to the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, for relief based upon the unlawful employment practices of the above-named Defendants. Plaintiff complains of Defendants' violation of Title VII's prohibition against discrimination in employment based, in whole or in part, upon an employee's gender.
35. Defendants engaged in unlawful employment practices prohibited by 42 U.S.C. § 2000e, *et seq.*, by discriminating against Plaintiff because of his gender.

**AS A SECOND CAUSE OF ACTION FOR DISCRIMINATION  
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE**

36. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.
37. The New York City Administrative Code § 8-107(1) provides that "It shall be an

unlawful discriminatory practice: (a) For an employer or an employee or agent thereof, because of the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, sexual orientation or alienage or citizenship status of any person, to refuse to hire or employ or to bar or to discharge from employment such person or to discriminate against such person in compensation or in terms, conditions or privileges of employment.”

38. Defendants engaged in an unlawful discriminatory practice in violation of New York City Administrative Code § 8-107(1)(a) by discriminating against Plaintiff because of his gender.

**AS A THIRD CAUSE OF ACTION FOR DISCRIMINATION  
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE**

39. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.
40. The New York City Administrative Code § 8-107(6) provides that it shall be unlawful discriminatory practice: “For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this chapter, or attempt to do so.”
41. Defendants engaged in an unlawful discriminatory practice in violation of New York City Administrative Code § 8-107(6) by aiding, abetting, inciting, compelling and coercing the above discriminatory and unlawful conduct.

**AS A FOURTH CAUSE OF ACTION FOR DISCRIMINATION  
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE**

42. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.
43. The New York City Administrative Code § 8-107(13) Employer liability for

discriminatory conduct by employee, agent or independent contractor.

- a. An employer shall be liable for an unlawful discriminatory practice based upon the conduct of an employee or agent which is in violation of any provision of this section other than subdivisions one and two of this section.
- b. An employer shall be liable for an unlawful discriminatory practice based upon the conduct of an employee or agent which is in violation of subdivision one or two of this section only where:
  1. the employee or agent exercised managerial or supervisory responsibility; or
  2. the employer knew of the employee's or agent's discriminatory conduct, and acquiesced in such conduct or failed to take immediate and appropriate corrective action; an employer shall be deemed to have knowledge of an employee's or agent's discriminatory conduct where that conduct was known by another employee or agent who exercised managerial or supervisory responsibility; or
  3. the employer should have known of the employee's or agent's discriminatory conduct and failed to exercise reasonable diligence to prevent such discriminatory conduct.
- c. An employer shall be liable for an unlawful discriminatory practice committed by a person employed as an independent contractor, other than an agent of such employer, to carry out work in furtherance of the employer's business enterprise only where such discriminatory conduct was committed in the course of such employment and the employer had actual knowledge of and acquiesced in such

conduct.

44. Defendants violated the section cited herein as set forth.

**JURY DEMAND**

45. Plaintiff requests a jury trial on all issues to be tried.

**WHEREFORE**, Plaintiff respectfully requests a judgment against the Defendants:

- A. Declaring that Defendants engaged in unlawful employment practices prohibited by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*, and the New York City Administrative Code § 8-107, *et seq.*, in that Defendants discriminated against Plaintiff on the basis of his gender;
- B. Awarding damages to Plaintiff for all lost wages and benefits resulting from Defendants' unlawful discrimination and to otherwise make him whole for any losses suffered as a result of such unlawful employment practices;
- C. Awarding Plaintiff compensatory damages for mental, emotional and physical injury, distress, pain and suffering and injury to his reputation in an amount to be proven;
- D. Awarding Plaintiff punitive damages;
- E. Awarding Plaintiff attorneys' fees, costs, and expenses incurred in the prosecution of the action; and
- F. Awarding Plaintiff such other and further relief as the Court may deem equitable, just and proper to remedy Defendants' unlawful employment practices.

Dated: New York, New York  
March 23, 2015



**PHILLIPS & ASSOCIATES,  
ATTORNEYS AT LAW, PLLC**

By:



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U.S. Department of Justice  
Civil Rights Division

CERTIFIED MAIL  
7010 0290 0000 2016 0811

950 Pennsylvania Avenue, N.W.  
Karen Ferguson, EMP, PHB, Room 4239  
Washington, DC 20530

February 10, 2015

Mr. Joel Consing  
c/o Casey Wolnowski, Esquire  
Law Offices of Phillips & Assocs.  
45 Broadway, Suite 620  
New York, NY 10006

Re: EEOC Charge Against New York City Health & Hospitals Corp.  
No. 520201402032

Dear Mr. Consing:

Because you filed the above charge with the Equal Employment Opportunity Commission, and more than 180 days have elapsed since the date the Commission assumed jurisdiction over the charge, and no suit based thereon has been filed by this Department, and because you through your attorney have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq., against the above-named respondent.

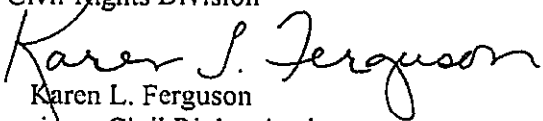
If you choose to commence a civil action, such suit must be filed in the appropriate Court within 90 days of your receipt of this Notice.

The investigative file pertaining to your case is located in the EEOC New York District Office, New York, NY.

This Notice should not be taken to mean that the Department of Justice has made a judgment as to whether or not your case is meritorious.

Sincerely,

Vanita Gupta  
Acting Assistant Attorney General  
Civil Rights Division

by   
Karen L. Ferguson  
Supervisory Civil Rights Analyst  
Employment Litigation Section

cc: New York District Office, EEOC  
New York City Health & Hospitals Corp.