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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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MICHELE MALANGA,

Plaintiff,

FIRST AMENDED COMPLAINT

-against-

14-CV-9681 (WHP)

**NYU LANGONE MEDICAL CENTER AND
SCHOOL OF MEDICINE; NYU
HOSPITALS CENTER; and SILVIA
FORMENTI, M.D., Individually,**

DEMAND FOR JURY TRIAL

Defendants.

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Plaintiff MICHELLE MALANGA, by and through her attorneys, upon personal knowledge as to herself and upon information and belief as to other matters, brings this Complaint against Defendants NYU LANGONE MEDICAL CENTER AND SCHOOL OF MEDICINE (“Langone Medical Center”); NYU HOSPITALS CENTER; and SILVIA FORMENTI, M.D (“Dr. Formenti” or “Formenti”), Individually, and alleges as follows:

PRELIMINARY STATEMENT

1. Plaintiff brings this lawsuit seeking recovery against Defendants for Defendants’ violations of the anti-retaliation provisions of the Federal False Claims Act, Pub. L. No. 99-562 § 2, 100 Stat. 3153 (1986), codified at 31 U.S.C. §§ 3729-33 (“False

Claims Act”); New York Labor Law’s Healthcare Whistleblower’s Protection Act, New York Labor Law § 741 (“NYLL § 741”); New York State Human Rights Law, Executive Law § 296, *et seq.* (“NYSHRL”); and New York City Human Rights Law, N.Y.C. Admin. Code § 8-101, *et seq.* (“NYCHRL”).

JURISDICTION AND VENUE

2. This Court has jurisdiction over these claims pursuant to 28 U.S.C. § 1331 as this matter involves federal questions because this case is brought under the False Claims Act, 31 U.S.C. § 3730(h).

3. This Court has supplemental jurisdiction over the New York state law claims under 28 U.S.C. § 1367(a), as they are so related in this action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

4. Venue in this district is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions on which the claim is based occurred in this District.

5. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. § 2201 and 28 U.S.C. § 2202.

THE PARTIES

Defendants

6. Defendants Langone Medical Center; NYU Hospitals Center; and Formenti are referred to collectively as “Defendants”.

7. All actions and omissions described in this Complaint were made by Defendants directly and/or through their supervisory employees and agents.

8. Defendants' actions and omissions described in this complaint and causing injury to Plaintiff were done knowingly and willfully.

Defendant Langone Medical Center

9. Upon information and belief Defendant Langone Medical Center Domestic is a Not-for-Profit Corporation organized under the laws of the State of New York and doing business in the State of New York as an integrated medical center.

10. At all times relevant herein, Defendant Langone Medical Center had and has a principal place of business, executive offices, and facilities at NYU Langone Medical Center and School of Medicine, 550 First Avenue, New York, New York, 10016, in New York County

11. At all times relevant herein, Defendant Langone Medical Center was and is an "employer" within the meaning of NYLL § 651(6) and § 741(1).

12. At all times relevant to this Complaint, Defendant Langone Medical Center was and is an employer as that term is defined by NYSHRL § 292(5).

13. At all times relevant to this Complaint, Defendant Langone Medical Center was and is an employer as that term is defined by NYCHRL § 8-102(5).

Defendant NYU Hospitals Center

14. Defendant NYU Hospitals Center is a Domestic Not-for-Profit Corporation organized under the laws of the State of New York and designating the

following address for service of process: NYU Hospitals Center, Attention: President, 550 First Avenue, MSB 153, New York, New York, 10016

15. Defendant NYU Hospitals Center had and has a principal place of business, executive offices, and facilities at NYU Hospitals Center, 550 First Avenue, New York, New York, 10016, in New York County.

16. At all times relevant herein, Defendant NYU Hospitals Center was and is an “employer” within the meaning of NYLL, McKinney’s Labor Law § 651(6) and § 741(1).

17. At all times relevant to this Complaint, Defendant NYU Hospitals Center was and is an employer as that term is defined by NYSHRL § 292(5).

18. At all times relevant to this Complaint, Defendant NYU Hospitals Center was and is an employer as that term is defined by NYCHRL § 8-102(5).

Defendant Silvia Formenti, M.D. (“Dr. Formenti” or “Formenti”)

19. At all times relevant to this Complaint, Defendant Formenti was an employee and/or manager of Defendants with the authority to prevent unlawful practices.

20. At all times relevant herein, Defendant Formenti was and is an “employer” within the meaning of NYLL, McKinney’s Labor Law § 651(6) and § 741(1).

21. At all times relevant to this Complaint, Defendant Formenti was and is an employer as that term is defined by NYSHRL § 292(5).

22. At all times relevant to this Complaint, Defendant Formenti was and is an employer as that term is defined by NYCHRL § 8-102(5).

Plaintiff Michelle Malanga

23. Plaintiff is an adult individual who is a resident of New York, New York, in New York County.

24. Plaintiff is a woman.

25. Plaintiff is a Homosexual.

26. At all times relevant to this Complaint Plaintiff was an “employee, contractor, or agent” of Defendants within the meaning of the False Claims Act, 31 U.S.C. § 3730(h).

27. At all times relevant to this Complaint Plaintiff was an “employee” of Defendants as defined by New York Labor Law § 741(1).

28. At all times relevant to this Complaint Plaintiff was an “employee” of Defendants as that term is defined by NYSHRL § 292(6).

FACTUAL ALLEGATIONS

29. Plaintiff was employed by Defendants as the Director of Research for the Radiation Oncology Department from June 20, 2011 through October 8, 2013 when she was unlawfully terminated.

30. Throughout her employment with Defendants Plaintiff performed satisfactorily and at all times either met or exceeded Defendants' reasonable business expectations.

31. Throughout her employment with Defendants Plaintiff consistently received yearly performance reviews sufficient to award her merit increases.

32. Plaintiff was also recognized by Defendants for her exemplary efforts during Hurricane Sandy, during which Plaintiff rescued valuable specimens essential to Defendant Formenti's research.

Violations of the False Claims Act

33. In 2013 Plaintiff became aware that NYU employees were unlawfully billing tests performed on research bloods to the federal government so as to avoid using funds from study grants.

34. In 2013 Plaintiff became aware that NYU employees were unlawfully billing the federal government whereby employees overcharged federal grants for patient clinic visits, indicating that the patient visited with Defendant Formenti despite Defendant Formenti not seeing the patient.

35. Defendants' billing practices were outside the scope of Plaintiff's job duties.

36. Such unlawful billing of blood test specimens constituted and constitutes violations of the False Claims Act.

37. After Plaintiff discovered such unlawful billing practices, Plaintiff initiated an investigation into the unlawful billing practices.

38. Plaintiff's investigation was directed at exposing a fraud upon the government.

39. Plaintiff made Defendants aware that Plaintiff was investigating Defendants' unlawful billing practices.

40. Defendants were aware Plaintiff was investigating Defendants' unlawful billing practices.

41. Plaintiff's investigation revealed that, upon information and belief, Defendants had in fact submitted false claims to the Federal Government.

42. By investigating Defendants' unlawful billing practices, Plaintiff engaged in an activity protected by the False Claims Act.

43. After Plaintiff discovered a pattern of unlawful billing of blood test specimens, Plaintiff complained about said practices to Defendant Dr. Formenti.

44. After Plaintiff discovered a pattern of unlawful billing of blood test specimens and patient visits, Plaintiff complained about said practices to Maria Fenton-Kerimian, R.N., Defendants' employee.

45. After Plaintiff discovered a pattern of unlawful billing practices, Plaintiff complained about said practices to Defendant NYU's management including, but not limited to, Sheila Pope, Defendants' billing manager.

46. After Plaintiff discovered a pattern of unlawful billing practices, Plaintiff made multiple complaints that Defendants' billing practices violated federal law, including multiple complaints to Defendant Formenti,

47. After Plaintiff discovered a pattern of unlawful billing practices, Plaintiff made multiple complaints that Defendants' billing practices violated federal law, including multiple complaints to Fenton-Kerimian.

48. After Plaintiff discovered a pattern of unlawful billing practices, Plaintiff made multiple complaints that Defendants' billing practices violated federal law, including multiple complaints to Sheila Pope.

49. After Plaintiff discovered a pattern of unlawful billing practices, Plaintiff made multiple complaints that Defendants' billing practices violated federal law, including multiple complaints to Martin Donach.

50. In so complaining, Plaintiff engaged in an activity protected by the False Claims Act.

51. Plaintiff made it known to Defendants' management that Defendants' billing practices were illegal.

52. Defendants were aware that Plaintiff contemplated informing the federal government of Defendants' unlawful billing practices.

53. Immediately after Plaintiff discovered such unlawful billing of blood test specimens, Plaintiff informed Defendant Dr. Formenti that the Defendants' employees

should immediately cease such unlawful billing of blood test specimens, and should thereafter desist from any further unlawful billing of blood test specimens.

54. Immediately after Plaintiff complained about said practices, Defendant Formenti reprimanded Plaintiff and told her to “stay out of it.”

55. Defendant Formenti vocalized concerns that she (Defendant Formenti) was going to get into trouble with the authorities.

56. Defendant Formenti ordered Plaintiff to cease investigating the unlawful billing practices

57. Immediately after Plaintiff discovered such unlawful billing of blood test specimens, Plaintiff informed Fenton-Kerimian that the Defendants’ employees should immediately cease such unlawful billing of blood test specimens, and should thereafter desist from any further unlawful billing of blood test specimens.

58. Defendant Formenti did not remedy the unlawful billing practices of blood test specimens, but instead disregarded Plaintiff’s complaints and permitted employees to continue unlawfully billing tests to federal funds.

59. Fenton-Kerimian did not remedy the unlawful billing practices of blood test specimens, but instead disregarded Plaintiff’s complaints and permitted employees to continue unlawfully billing tests to federal funds.

60. On or about September 2013, Plaintiff again noticed blood test samples were being billed to federal funds—rather than the correct research grant—in violation of the False Claims Acts.

61. Plaintiff then made efforts to correct the billing on the blood test specimens to ensure that false claims would not be submitted to the federal government.

62. Making such efforts to correct Defendants' billings was outside the scope of Plaintiff's job duties.

63. In making such efforts to correct Defendants' billing practices, Plaintiff engaged in an activity protected by the False Claims Act.

64. Defendants were aware that Plaintiff made efforts to correct the billing on the blood test specimens.

65. In or around 2013, Plaintiff became aware that Defendant Formenti was paying for the salary of a post-doctorate employee Leonard Liebes, PhD out of an unrelated federal grant in exchange for free research sample processing, and Plaintiff investigated this allegation further.

66. Plaintiff's investigation revealed that, upon information and belief, said post-doctorate employee did not perform work related to the federal grant from which Defendant Formenti funded his salary.

67. Such a deal involving misuse of federal funds is a direct violation of the False Claims Act.

68. After learning of the misuse of federal grant money, Plaintiff complained to Defendant Formenti that such dealing was a misuse of federal funds.

69. Defendants were aware that Plaintiff contemplated informing the federal government of Defendants' unlawful misuse of federal grant money.

70. By complaining of the misuse of federal grant money, Plaintiff engaged in a protected activity under the False Claims Act.

71. Defendants were aware that Plaintiff engaged in activities that are protected by the False Claims Act.

Retaliation in Violation of the False Claims Act

72. After Plaintiff complained of Defendants' pattern of false billing and violations of federal law and immediately after Fenton-Kerimian noticed that Plaintiff had made efforts to correct such billing information and, thereby, engaged in a protected activity pursuant to the FCA, Fenton-Kerimian retaliated against Plaintiff by making unfounded, malicious, and false complaints to Defendants' Human Resources Department.

73. Fenton-Kerimian also complained to Defendants' Human Resources Department that Plaintiff corrected a false billing of Fenton-Kerimian.

74. Defendant Formenti corroborated Fenton-Kerimian's unfounded, malicious, and false allegations in retaliation for Plaintiff's engagement in a protected activity pursuant to the FCA.

75. Defendant Formenti further retaliated against Plaintiff by making additional unfounded, malicious, and false complaints about Plaintiff to Defendants' Human Resources Department.

76. Upon information and belief, Defendants' Human Resources Department failed to undertake a meaningful investigation of Fenton-Kerminian's complaints against Plaintiff.

77. Upon information and belief, Defendants' Human Resources Department failed to undertake a meaningful investigation of Defendant Formenti's complaints against Plaintiff.

78. Upon information and belief, Defendants' Human Resources managers took no steps whatsoever to determine whether Fenton-Kerminian's complaints were founded.

79. Upon information and belief, Defendants' Human Resources managers took no steps whatsoever to determine whether Defendant Formenti's complaints were founded.

80. Plaintiff complained to Defendants' Human Resources that Defendant Formenti and Fenton-Kerimian made false complaints about her [Plaintiff] in retaliation for having engaged in a protected activity.

81. Plaintiff complained to Defendants' Human Resources that Defendant Formenti and Fenton-Kerimian made false complaints about her [Plaintiff] in retaliation

for attempting to have Defendants' practices comply with federal laws, rules, and/or regulations.

82. Upon information and belief, Defendants failed to initiate any investigation into Plaintiff's complaints of retaliation.

83. Rather, Defendants terminated Plaintiff on October 8, 2013 for engaging in activities protected under the False Claims Act, including correcting Defendants' billing practices to prevent federal funds from being unlawfully charged and complaining of other misuses of federal funds.

84. The False Claims Act specifically protects individuals such as Plaintiff who make efforts to prevent False Claims Act violations.

85. By terminating Plaintiff in response to Fenton-Kerimian's and Defendant Formenti's unfounded complaints, Defendants violated the anti-retaliation provision of the False Claims Act.

Other Retaliation for Engaging in Protected Activities

86. At times during the course of her employment, Plaintiff provided direct supervision of the care of individual patients.

87. In Plaintiff's role of supervising the care of individual patients, Plaintiff was health care employee as that term is defined by §741.

88. In Plaintiff's role of supervising the care of individual patients, Plaintiff was required to exercise discretion about the care of the individual patients.

89. On or about September 2013, Plaintiff became aware that Fenton-Kerimian was violating protocols by conducting a study and then failing to follow-up with over three hundred (300) patients on a study conducted by Defendant Formenti and Fenton-Kerimian.

90. Plaintiff discovered that said study was being conducted in violation of relevant laws, regulations, and/or policies and in a manner that subjected the involved patients involved to unnecessary health and safety risks.

91. Upon information and belief, a patient participating in the study died while the study was still being conducted.

92. Plaintiff instructed Martin Donach, Defendants' employee and close friend of Defendant Formenti, to report the patient death to the Department of Defendant as per the terms of the contract Defendants had with the federal government and relevant protocols.

93. Upon information and belief, Donach and Fenton-Kerimian failed to report the patient death to the appropriate agencies in violation of relevant laws, regulations, and/or policies.

94. Defendant Formenti threatened Plaintiff to not report the patient death to the appropriate agencies.

95. Defendants' failure to report the patient death demonstrated substantial and specific danger to the health and safety of patients partaking in the same study.

96. Defendants' failure to report the patient death demonstrated substantial and specific danger to the health and safety of patients receiving treatment through Defendants' facility.

97. In order to fulfill her professional obligations, including the duty to exercise due diligence to ensure compliance with all applicable laws and regulation, Plaintiff reported the patient death to the Department of Defense.

98. By reporting the patient dead to the Department of Defense, Plaintiff engaged in a protected activity.

99. Upon information and belief, said study was ultimately suspended as a result of the patient death.

100. Defendant Formenti and Fenton-Kerimian discovered that Plaintiff reported the patient death to the Department of Defense.

101. Defendant Formenti chastised Plaintiff for ignoring Defendant Formenti's threats and blamed Plaintiff for her [Defendant Formenti's] study having been suspending.

102. Fenton-Kerimian immediately began retaliating against Malanga for reporting patient death to the Department of Defense.

103. Defendant Formenti immediately began retaliating against Plaintiff by, inter alia, ridiculing Plaintiff for her sexuality, making loud and aggressive grunting

noises at Plaintiff while making animal gestures, calling Plaintiff derogatory names such as “butch,” and reprimanding Plaintiff for the suspension of her study.

104. Additionally, Plaintiff discovered employees in Defendant Formenti’s department had submitted false research data regarding studies funded by federal grants.

105. The submission of false research data was in violation of relevant laws, regulations, and/or policies and in a manner that subjected the involved patients involved to unnecessary health and safety risks.

106. The submission of false research data resulted in substantial and specific danger to the health and safety of the individual patients of the study.

107. Defendants’ failure to report the patient death demonstrated substantial and specific danger to the health and safety of patients receiving treatment through Defendants’ facility.

108. Upon discovering the falsified research data, Plaintiff reported the false data to Defendant Formenti and the appropriate governmental agencies.

109. By reporting the false research data to Defendant Formenti and the appropriate governmental agencies, Plaintiff engaged in a protected activity.

110. In retaliation for Plaintiff’s reporting of the false research data, employees within Defendant Formenti’s department made false complaints to Defendants’ compliance hotline alleging that Plaintiff committed various infractions.

111. After an investigation into the anonymous allegations against Plaintiff, Peter Harrington, Defendants' Compliance Officer, determined the allegations were entirely baseless and fabricated.

112. Further, Defendants requested Plaintiff register or randomize a research patient for treatment prior to the patient signing an informed consent.

113. Plaintiff refused to register or randomize a research patient for treatment prior to the patient signing an informed consent as doing so would violate federal regulations and would jeopardize the health and safety of Defendants' patients.

114. The registration and randomization of a research patient for treatment prior to the patient signing an informed consent would violate relevant laws, regulations, and/or policies in a manner that would subject the involved patient to unnecessary health and safety risks.

115. By refusing to register or randomize a research patient for treatment prior to the patient signing an informed consent, Plaintiff engaged in a protected activity.

116. Defendant Formenti became aware that Plaintiff refused to register or randomize the research patient, and Defendant Formenti increased her harassment of Plaintiff in retaliation

117. Defendant Formenti's harassment of Plaintiff included, *inter alia*, slandering Plaintiff to attending physicians and research personnel, encouraging other employees to slander Plaintiff to attending physicians and research personnel, and disseminating personal details about Plaintiff's private life among employees.

118. Additionally, Plaintiff discovered that Fenton-Kerimian's failure to follow up with over three hundred (300) patients and other violations of relevant laws, regulations, and/or policies.

119. The failure to follow up with over three hundred (300) patients violated relevant laws, regulations, and/or policies in a manner that subjected the involved patients to unnecessary health and safety risks.

120. The failure to follow up with over three hundred (300) patients endangered the health and safety of the individual patients of the study and patients receiving treatment through Defendants' facility and violated the terms of the consent form.

121. Defendants' failure to follow up with study's over three hundred (300) patients placed the health and safety of the individual patients at risk as Defendants would be unaware of any issues that arose during the course of the patients' treatments.

122. Plaintiff began drafting a letter to remedy these actions and report to the appropriate governmental agencies documenting Fenton-Kerimian's failure to follow up with over three hundred (300) patients and other violations of relevant laws, regulations, and/or policies.

123. By drafting a letter to the appropriate governmental agencies in an attempt to remedy these violations, documenting Fenton-Kerimian's failure to follow up with over three hundred (300) patients, Plaintiff engaged in a protected activity.

124. Fenton-Kerimian discovered that Plaintiff was drafting a letter documenting violations surrounding Fenton-Kerimian's study.

125. Fenton-Kerimian immediately submitted unfounded complaints against Plaintiff to Defendants' Human Resources Department.

126. Defendant Formenti corroborated Fenton-Kerimian's false and defamatory allegations in retaliation for Plaintiff's engagement in a protected activity.

127. Plaintiff made a formal complaint to Derek Forte, manager of Defendants' Human Resources Department, that Fenton-Kerimian's unfounded complaints were made in retaliation for Plaintiff's engagement in protected activities.

128. Upon information and belief, Defendants failed to undertake a meaningful investigation into Plaintiff's complaints of retaliation or undertake any action reasonably calculate to remedy the situation.

129. Upon information and belief, Defendants' Human Resources Department failed to undertake a meaningful investigation of Fenton-Kerimian's complaints against Plaintiff and took no steps whatsoever to ensure that Fenton-Kerimian's complaints were founded.

130. Defendants promptly terminated Plaintiff in response to Fenton-Kerimian's complaints against Plaintiff.

131. Defendants terminated Plaintiff in retaliation for her engagement in protected activities.

Sexual Orientation Discrimination in Violation of NYSHRL and NYCHRL

132. At all times relevant to this Complaint Plaintiff was constantly subjected to sexual orientation discrimination in violation of NYSHRL.

133. At all times relevant to this Complaint Plaintiff was constantly subjected to sexual orientation discrimination in violation of NYCHRL.

134. Defendant Formenti had actual knowledge of Plaintiff's homosexuality.

135. Defendant Formenti perceived Plaintiff to be homosexual.

136. Because of Defendant Formenti's discriminatory animus toward homosexuals, Defendant Formenti purposely subjected Plaintiff to mental anguish and humiliation.

137. Defendant Formenti often used abusive language toward Plaintiff.

138. Specifically, Defendant Formenti routinely made comments about Plaintiff, referring to her as "dyke," "butch," and "butchy," alluding to Plaintiff's sexual orientation.

139. Defendant Formenti also routinely and maliciously made loud grunting noises and made animal gestures in an effort to harass Plaintiff based on her sexual orientation.

140. Defendant Formenti made said discriminatory actions in front of Plaintiff's colleagues so as to publicly denigrate Plaintiff.

141. Defendant Formenti's discriminatory actions humiliated Plaintiff.

142. Defendant Formenti routinely made comments regarding the sexual orientation of Plaintiff's coworkers.

143. Defendant Formenti made such with the purpose of harassing Plaintiff and in an attempt to force Plaintiff to openly come out as homosexual.

144. Defendant Formenti's actions made Plaintiff feel as though she had to hide her sexual orientation for fear of being further ostracized.

145. Defendant Formenti's discriminatory conduct of Plaintiff due to her sexual orientation was severe and pervasive.

146. Defendant Formenti's discriminatory conduct of Plaintiff due to her perceived sexual orientation was severe and pervasive.

147. On or about July 2011, Defendants' employee Dr. Chaira Magnolfi-Bozzi initiated unwanted physical conduct with Plaintiff by inappropriately touching Plaintiff and kissing her.

148. Dr. Magnolfi-Bozzi would often ask Plaintiff personal questions pertaining to Plaintiff's sexual orientation, which made Plaintiff uncomfortable.

149. Said personal comments pertaining to Plaintiff's sexual orientation, as well as the unwanted physical contact and personal questions created a hostile work environment for Plaintiff.

150. Said personal comments pertaining to Plaintiff's sexual orientation, as well as the unwanted physical contact and personal questions violated Plaintiff's rights to be free from harassment due to her sexual orientation.

151. Plaintiff complained to Defendant Formenti of the sexual harassment by Chiara Magnolfi-Bozzi, but Defendant Formenti failed to take any action reasonably calculated to remedy the situation.

152. In or around August 2013, Plaintiff complained to Ms. Taveras, Defendants' Human Resources manager, about Defendant Formenti's harassment of and discrimination against Plaintiff, but Defendants failed to take any action reasonably calculated to remedy the situation.

153. By failing to take any action reasonably calculated to remedy the situation, Defendants violated Plaintiffs rights pursuant to the NYSHRL and NYCHRL.

154. Defendants' discriminatory actions towards Plaintiff caused Plaintiff severe anxiety and mental anguish.

**FIRST CLAIM FOR RELIEF
RETALIATION IN VIOLATION OF THE FALSE CLAIMS ACT
(AGAINST DEFENDANTS NYU LANGONE MEDICAL CENTER AND
SCHOOL OF MEDICINE AND NYU HOSPITALS CENTER)**

155. Plaintiff repeats and re-alleges each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

156. Plaintiff brings this Cause of Action pursuant to the anti-retaliation

provisions of the False Claims Act, 31 U.S.C. § 3730(h).

157. By the above actions and omissions Defendants have violated the False Claims Act, 31 U.S.C. § 3730(h), by discriminating and retaliating against Plaintiff in the terms and conditions of her employment including the decision to harass Plaintiff and create a hostile work environment.

158. By the above actions and omissions Defendants have violated the False Claims Act and 31 U.S.C. § 3730(h), by discriminating and retaliating against Plaintiff in the terms and conditions of her employment including the decision to not to investigate unfounded claims made against Plaintiff.

159. By the above actions and omissions Defendants have violated the False Claims Act and 31 U.S.C. § 3730(h), by discriminating and retaliating against Plaintiff in the terms and conditions of her employment including the decision to terminate Plaintiff from her employment with Defendants.

160. Plaintiff engaged in activities protected under the False Claims Act, including complaining the unlawful billing of the United States.

161. Plaintiff engaged in activities protected under the False Claims Act, including documenting and preparing to report the unlawful billing of the United States.

162. Plaintiff documented the fact that Fenton-Kerimian was violating protocols by conducting a study and then failing to follow-up with over three hundred (300) patients and thereby engaged in activities protected by NYLL § 741.

163. Plaintiff documented the fact that Fenton-Kerimian's study was being conducted in violation of relevant protocols and in a manner that subjected the involved patients involved to unnecessary health and safety risks. Plaintiff thereby engaged in activities protected by NYLL § 741.

164. Defendants' violations of laws, statutes, regulations, and/or guidelines promulgated thereunder, created a substantial and specific danger to the public safety.

165. Plaintiff's documentation of that fact that Fenton-Kerimian was violating protocols by conducting a study, and then failing to follow-up with over three hundred (300) patients, was reasonable and was truthful.

166. No action was taken by Defendants to investigate Plaintiff's documentation that that Fenton-Kerimian was violating protocols by conducting a study and then failing to follow-up with over three hundred (300) patients.

167. No action was taken by Defendants to remedy Fenton-Kerimian's violation of protocols.

168. Fenton-Kerimian falsely told NYU's Human Resources that Plaintiff "threatened" said firearm and claimed that this was done in order to frighten Fenton-Kerimian in retaliation for Plaintiff's engagement in protected activities pursuant to the FCA.

169. Plaintiff complained to Derek Forte of Defendants' Human Resources department that Fenton-Kerimian's allegations against Plaintiff were made was retaliation for Plaintiff's engagement in a protected activity.

170. Defendants failed to initiate any meaningful investigation into Plaintiff's complaints of retaliation.

171. Defendant Formenti corroborated Fenton-Kerimian's false accusations about Plaintiff in retaliation for Plaintiff's engagement in protected activities pursuant to the FCA.

172. Defendants failed to meaningfully investigate Fenton-Kerimian's false accusations about Plaintiff in retaliation for Plaintiff's engagement in protected activities pursuant to the FCA

173. Defendant Formenti ridiculed Plaintiff for her sexuality, making loud and aggressive grunting noises at Plaintiff while making animal gestures, calling Plaintiff derogatory names such as "butch," in retaliation for Plaintiff's engagement in protected activities pursuant to the FCA.

174. Defendants failed to meaningfully investigate Plaintiff's complaints of sexual harassment and sexual orientation harassment in retaliation for Plaintiff's engagement in protected activities pursuant to the FCA.

175. Defendants were fully aware that Plaintiff was engaging in activities protected under the False Claims Act.

176. Defendants retaliated against Plaintiff because Plaintiff was engaging in activities protected under the False Claims Act.

177. Plaintiff is entitled to relief as Relief the False Claims Act and 31 U.S.C. §

3730(h), to wit, reinstatement with the same seniority status that Plaintiff would have had but for the discrimination; two (2) times the amount of back pay, interest on the back pay; and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

SECOND CLAIM FOR RELIEF
VIOLATIONS OF NEW YORK STATE LABOR LAW
(Violations of the Healthcare Whistleblower's Protection Act,
New York Labor Law § 741)
(AGAINST DEFENDANTS NYU LANGONE MEDICAL CENTER AND
SCHOOL OF MEDICINE AND NYU HOSPITALS CENTER)

178. Plaintiff repeats and re-alleges each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

179. NYLL § 741 makes it unlawful to retaliate against any employee who discloses or threatens to disclose to a supervisor, or to a public body an activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care.

180. NYLL § 741 makes it unlawful to retaliate against any employee who objects to, or refuses to, participate in any activity, policy, or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care.

181. At all relevant times, Plaintiff was employed by Defendants within the meaning of the New York State Labor Law.

182. Plaintiff documented the fact that Fenton-Kerimian was violating protocols by conducting a study and then failing to follow-up with over three hundred (300) patients and thereby engaged in activities protected by NYLL § 741.

183. Plaintiff documented the fact that Fenton-Kerimian's study was being conducted in violation of relevant protocols and in a manner that subjected the involved patients involved to unnecessary health and safety risks. Plaintiff thereby engaged in activities protected by NYLL § 741.

184. Defendants' violations of laws, statutes, regulations, and/or guidelines promulgated thereunder, created a substantial and specific danger to the public safety.

185. Plaintiff's documentation of that fact that Fenton-Kerimian was violating protocols by conducting a study, and then failing to follow-up with over three hundred (300) patients, was reasonable and was truthful.

186. No action was taken by Defendants to investigate Plaintiff's documentation that that Fenton-Kerimian was violating protocols by conducting a study and then failing to follow-up with over three hundred (300) patients.

187. No action was taken by Defendants to remedy Fenton-Kerimian's violation of protocols.

188. The aforementioned activities and practices each created a substantial and specific danger to the public.

189. The aforementioned activities and practices each created a substantial and specific danger to specific patients.

190. Plaintiff was terminated from her employment in retaliation for documenting Fenton-Kerimian was violating protocols.

191. Plaintiff was terminated from her employment in retaliation for engaging in activities protected by NYLL § 741.

192. Defendants' termination of Plaintiff's employment violated the New York State Labor Law, § 741.

193. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff has sustained damages, including loss of earnings, in an amount to be established at trial, prejudgment interest, and costs, and attorneys' fees. Plaintiff is entitled to be compensated for lost wages, benefits and other remuneration. Plaintiff is entitled to be compensated for reasonable costs, disbursements and attorney's fees. Plaintiff is entitled to reinstatement. Plaintiff is entitled to an injunction to restrain the Defendants' violation of the Labor Law.

THIRD CLAIM FOR RELIEF
SEXUAL ORIENTATION DISCRIMINATION
(NYSHRL Violations)
(AGAINST ALL DEFENDANTS)

194. Plaintiff repeats and re-alleges each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

195. At all times relevant to this Complaint Defendants were, and continue to be, employers within the meaning of NYSHRL § 292(5) and employed employees, including Plaintiff.

196. The NYSHRL makes it unlawful to discriminate against any individual on the basis of actual or perceived sexual orientation.

197. Plaintiff is homosexual and a member of a class protected by the NYSHRL.

198. Defendants engaged in unlawful discriminatory practices as that term is defined the NYSHRL § 296(1)(a) by discriminating against Plaintiff by discriminating against Plaintiff in compensation or in terms, conditions or privileges of her employment and by discharging Plaintiff from her employment.

199. With respect to allegations of harassment based on actual or perceived sexual orientation, the Defendants are strictly liable for the acts of its supervisory employees because these employees used their actual or apparent authority to further the unlawful conduct and were otherwise aided in accomplishing the unlawful conduct by the existence of an agency relationship.

200. To the extent that Defendants provided any avenue of complaint, Plaintiff reasonably availed herself of the Human Resources and other complaint procedures Defendants provided to its employees.

201. Defendants failed to exercise reasonable care to prevent and correct promptly any discrimination based on actual or perceived sexual orientation.

202. Defendant Formenti aided and abetted the discriminatory acts of Defendants NYU Langone Medical Center and School of Medicine and NYU Hospitals Center in violation of the NYSHRL.

203. Based upon the foregoing the Defendants have discriminated against Plaintiff on the basis of her actual or perceived sexual orientation and deprived her of her rights in violation of the NYSHRL.

204. As a result of such conduct by the Defendants, Plaintiff has suffered damages and is entitled and is entitled to back pay, front pay, and compensatory damages for, among other things, emotional trauma and the physical consequences thereof suffered by Plaintiff as a consequence of the Defendants' illegal conduct.

205. Defendants' discriminatory treatment of plaintiff was willful and/or in reckless disregard of Plaintiff's protected rights, due to which Plaintiff is entitled to an award of punitive damages against Defendants.

FOURTH CLAIM FOR RELIEF
SEXUAL ORIENTATION DISCRIMINATION
(NYCHRL Violations)
(AGAINST ALL DEFENDANTS)

206. Plaintiff repeats and re-alleges each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

207. At all times relevant to this Complaint Defendants were, and continue to be, employers within the meaning of NYCHRL § 8-102(5) and employed employees, including Plaintiff.

208. The NYCHRL makes it unlawful to discriminate against any individual on the basis of actual or perceived sexual orientation.

209. Plaintiff is homosexual and a member of a class protected by the NYCHRL.

210. Defendants engaged in unlawful discriminatory practices as that term is defined the NYCHRL § 8-107 by discriminating against Plaintiff by discriminating against Plaintiff in compensation or in terms, conditions or privileges of her employment and by discharging Plaintiff from her employment.

211. With respect to allegations of harassment based on actual or perceived sexual orientation, the Defendants are strictly liable for the acts of its supervisory employees because these employees used their actual or apparent authority to further the unlawful conduct and were otherwise aided in accomplishing the unlawful conduct by the existence of an agency relationship.

212. To the extent that Defendants provided any avenue of complaint, Plaintiff reasonably availed herself of the Human Resources and other complaint procedures Defendants provided to its employees.

213. Defendants failed to exercise reasonable care to prevent and correct promptly any discrimination based on actual or perceived sexual orientation.

214. Based upon the foregoing the Defendants have discriminated against Plaintiff on the basis of actual or perceived her sexual orientation and deprived her of her rights in violation of the NYCHRL.

215. As a result of such conduct by the Defendants, Plaintiff has suffered damages and is entitled and is entitled to back pay, front pay, and compensatory damages for, among other things, emotional trauma and the physical consequences thereof suffered by Plaintiff as a consequence of the Defendants' illegal conduct.

216. Defendants' discriminatory treatment of plaintiff was willful and/or in reckless disregard of Plaintiff's protected rights, due to which Plaintiff is entitled to an award of punitive damages against Defendants.

FIFTH CLAIM FOR RELIEF
SEXUAL ORIENTATION DISCRIMINATION
(NYSHRL – Aiding and Abetting)
(AGAINST DEFENDANT FORMENTI)

217. Plaintiff repeats and re-alleges each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

218. The NYSHRL makes it unlawful for any person to aid, abet, incite, compel, or coerce discrimination against any individual on the basis of actual or perceived sexual orientation.

219. Plaintiff is homosexual and a member of a class protected by the NYSHRL.

220. Defendants engaged in unlawful discriminatory practices as that term is defined the NYSHRL § 296(1)(a) by discriminating against Plaintiff by discriminating against Plaintiff in compensation or in terms, conditions or privileges of her employment and by discharging Plaintiff from her employment.

221. Defendant Formenti directly and purposefully participated in the discrimination against Plaintiff on the basis of her actual and/or perceived sexual orientation.

222. Based upon the foregoing Defendant Formenti aided and abetted the discriminatory acts of Defendants NYU Langone Medical Center and School of Medicine and NYU Hospitals Center in violation of the NYSHRL and deprived her of her rights in violation of the NYSHRL.

223. As a result of such conduct by the Defendant Formenti, Plaintiff has suffered damages and is entitled and is entitled to back pay, front pay, and compensatory damages for, among other things, emotional trauma and the physical consequences thereof suffered by Plaintiff as a consequence of the Defendant Formenti's illegal conduct.

224. Defendant Formenti's discriminatory treatment of plaintiff was willful and/or in reckless disregard of Plaintiff's rights, due to which Plaintiff is entitled to an award of punitive damages against Defendant Formenti.

SIXTH CLAIM FOR RELIEF
SEXUAL ORIENTATION DISCRIMINATION
(NYCHRL – Aiding and Abetting)
(AGAINST DEFENDANT FORMENTI)

225. Plaintiff repeats and re-alleges each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

226. The NYCHRL makes it unlawful for any person to aid, abet, incite, compel, or coerce discrimination against any individual on the basis of actual or perceived sexual orientation.

227. Plaintiff is homosexual and a member of a class protected by the NYCHRL.

228. Defendants engaged in unlawful discriminatory practices as that term is defined the NYCHRL § 8-107 by discriminating against Plaintiff by discriminating against Plaintiff in compensation or in terms, conditions or privileges of her employment and by discharging Plaintiff from her employment.

229. Defendant Formenti directly and purposefully participated in the discrimination against Plaintiff on the basis of her actual and/or perceived sexual orientation.

230. Based upon the foregoing Defendant Formenti aided and abetted the discriminatory acts of Defendants NYU Langone Medical Center and School of Medicine and NYU Hospitals Center in violation of the NYCHRL and deprived her of her rights in violation of the NYCHRL.

231. As a result of such conduct by the Defendant Formenti, Plaintiff has suffered damages and is entitled and is entitled to back pay, front pay, and compensatory damages for, among other things, emotional trauma and the physical consequences thereof suffered by Plaintiff as a consequence of the Defendant Formenti's illegal conduct.

232. Defendant Formenti's discriminatory treatment of plaintiff was willful and/or in reckless disregard of Plaintiff's rights, due to which Plaintiff is entitled to an award of punitive damages against Defendant Formenti.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief on all Claims for Relief:

- A. Damages in an amount to be determined at trial
- B. All compensatory and economic damages;
- C. All reasonable expenses incurred by Plaintiff, including court costs and reasonable and necessary attorney fees, including attorney's fees as provided by statutes, and other relief, both in law and equity, to which Plaintiff may show herself justly entitled;
- D. All punitive and statutory damages authorized by law;
- E. Pre-judgment and post-judgment interest; and
- F. Such further relief as the Court finds just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all causes of action and claims with respect to which she has a right.

Dated: Park Ridge, NJ
May 8, 2015

Respectfully submitted,

KRAKOWER DICHARA LLC

By: s/ Todd Krakower
Todd J. Krakower (TK-4568)

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