

April 28, 2017

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VIA FEDERAL EXPRESS

Clerk, Law Division
Superior Court of New Jersey
Essex County Courthouse
50 West Market Street
Newark, New Jersey 07102

Re: Elizabeth Bruno vs. Hologic, Inc. and Vishal Shah
Docket No. ESX-L-8379-16

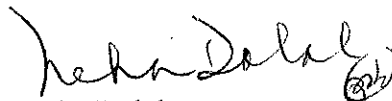
Dear Sir/Madam:

This firm represents Defendants Hologic, Inc. and Vishal Shah ("Defendants") in the above-referenced matter. We enclose for filing an original and one copy of Defendants' Answer and Defenses, a copy of which is being served simultaneously herewith on counsel for Plaintiff.

Please file the enclosed and return a filed-stamped copy to me in the enclosed return envelope. Please charge any filing fee to our Account No. 140348.

Thank you for your attention.

Very truly yours,


Neha Dalal

ND/pnk
Enclosures

cc: Nancy Erika Smith, Esq.
(via Federal Express w/encl.)

William P. McLane (N.J. Bar No. 034481996)
Neha Dalal, Esq. (N.J. Bar No. 002282003)
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973.848.4700

Attorneys for Defendants
Hologic, Inc. and Vishal Shah

ELIZABETH BRUNO,

Plaintiff,

vs.

HOLOGIC, INC. and VISHAL SHAH,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY
DOCKET NO. ESX-L-8379-16

Civil Action

DEFENDANTS' ANSWER AND DEFENSES

Defendants Hologic, Inc. ("Hologic") and Vishal Shah ("Shah") (collectively referred to as "Defendants"), by and through their attorneys, Littler Mendelson, P.C., (William P. McLane, Esq. appearing) by way of Answer to Plaintiff Elizabeth Bruno's ("Plaintiff") Complaint say:

AS TO NATURE OF THIS ACTION

1. Defendants admit Plaintiff purports to bring this action under the New Jersey Law Against Discrimination and New Jersey's Wage Payment Law, but denies any violation of either statute occurred.

AS TO PARTIES

2. Upon information and belief, Hologic admits the allegations contained in Paragraph 2.

3. Defendants admit Hologic employed Plaintiff as a Diagnostic Sales Specialist II, but deny the remaining allegations contained in Paragraph 3.

4. Defendants admit the allegations contained in Paragraph 4.

5. Defendants admit the allegations contained in Paragraph 5.

AS TO JURISDICTION AND VENUE

6. Defendants repeat and restate their answers above to Paragraphs 1 through 5 of the Complaint as if set forth fully at length herein.

7. Defendants admit the allegations contained in Paragraph 7.

8. Defendants admit the allegations contained in Paragraph 8.

9. Defendants admit the allegations contained in Paragraph 9.

AS TO COUNT ONE

10. Defendants repeat and restate its answers above to Paragraphs 1 through 9 of the Complaint as if set forth fully at length herein.

11. Hologic admits it hired Plaintiff as a “Diagnostic Sales Specialist II – New Jersey Central” on or about December 1, 2014, but denies the remaining allegations contained in Paragraph 11.

12. Defendants deny the allegations contained in Paragraph 12.

13. Defendants deny the allegations contained in Paragraph 13.

14. Defendants deny the allegations contained in Paragraph 14.

15. Defendants deny the allegations contained in Paragraph 15.

16. Defendants deny the allegations contained in Paragraph 16.

17. Defendants admit that Shah learned of Plaintiff's pregnancy in or about June 2016, but lack sufficient information or knowledge to either admit or deny when Plaintiff's co-workers learned of her pregnancy.

18. Defendants deny the allegations contained in Paragraph 18.

19. Defendants deny the allegations contained in Paragraph 19.

20. Defendants deny the allegations contained in Paragraph 20.
21. Defendants deny the allegations contained in Paragraph 21.
22. Defendants deny the allegations contained in Paragraph 22.
23. Defendants deny the allegations contained in Paragraph 23.
24. Defendants deny the allegations contained in Paragraph 24.
25. Defendants admit Plaintiff had a medical issue unrelated to her pregnancy and that she requested a leave of absence. Defendants deny the remaining allegations contained in Paragraph 25.
26. Defendants admit the allegations contained in Paragraph 26.
27. Defendants admit that Hologic terminated Plaintiff's employment on October 4, 2016, but deny the remaining allegations contained in Paragraph 27.
28. Defendants deny the allegations contained in Paragraph 28.
29. Defendants deny the allegations contained in Paragraph 29.
30. Defendants deny the allegations contained in Paragraph 30.
31. Defendants deny the allegations contained in Paragraph 31.
32. Defendants deny the allegations contained in Paragraph 32.
33. Defendants deny the allegations contained in Paragraph 33.
34. Defendants deny the allegations contained in Paragraph 34.
35. Defendants deny the allegations contained in Paragraph 35.
36. Defendants deny the allegations contained in Paragraph 36.
37. Defendants deny the allegations contained in Paragraph 37.
38. Defendants deny the allegations contained in Paragraph 38.

39. Defendants deny the allegations contained in Paragraph 39, and further deny that Plaintiff is entitled to any relief requested therein.

To the extent that the Wherefore Clause (Prayer for Relief) contains any factual allegations that require a response, Defendants deny them. Defendants specifically deny that Plaintiff is entitled to any damages or other relief whatsoever, including but not limited to compensatory damages, reimbursement for medical expenses, consequential damages, reinstatement, punitive damages, attorney's fees, costs, and interest.

AS TO COUNT TWO

40. Defendants repeat and restate the answers above to Paragraphs 1 through 39 of the Complaint as if set forth fully at length herein.

41. Paragraph 41, numbered Paragraph 2 of Count Two, is a legal conclusion to which no answer is required.

42. Defendants admit that Shah is a District Sales Manager. The remainder of Paragraph 42, numbered Paragraph 3 of Count Two, contains a legal conclusion to which no answer is required.

43. Defendants deny the allegations contained in Paragraph 43, numbered Paragraph 4 of Count Two.

44. Defendants deny the allegations contained in Paragraph 44, numbered Paragraph 5 of Count Two.

45. Paragraph 45, numbered as Paragraph 6 of Count Two, contains a legal conclusion to which no answer is required.

46. Defendants deny the allegations contained in Paragraph 46, numbered Paragraph 7 of Count Two.

47. Defendants deny the allegations contained in Paragraph 47, numbered Paragraph 8 of Count Two.

48. Defendants deny the allegations contained in Paragraph 48, numbered Paragraph 9 of Count Two, and further deny plaintiff is entitled to any relief requested therein.

To the extent that the Wherefore Clause (Prayer for Relief) contains any factual allegations that require a response, Defendants deny them. Defendants specifically deny that Plaintiff is entitled to any damages or other relief whatsoever, including but not limited to compensatory damages, reimbursement for medical expenses, consequential damages, reinstatement, punitive damages, attorney's fees, costs, and interest.

AS TO COUNT THREE

49. Defendants repeat and restate their answers above to Paragraphs 1 through 48 of the Complaint as if set forth fully at length herein

50. Defendants deny the allegations contained in Paragraph 50, numbered Paragraph 2 of Count Three.

51. Paragraph 51, numbered as Paragraph 3 of Count Three, states a legal conclusion to which no answer is required.

52. Defendants deny the allegations contained in Paragraph 52, incorrectly numbered by Plaintiff as Paragraph 5 of Count Three.

53. Defendants deny the allegations contained in Paragraph 53, incorrectly numbered by Plaintiff as Paragraph 6 of Count Three.

54. Paragraph 54, incorrectly numbered by Plaintiff as Paragraph 7 of Count Three, states a legal conclusion to which no answer is required.

55. Defendants deny the allegations contained in Paragraph 55, incorrectly numbered by Plaintiff as Paragraph 8 of Count Three.

56. Paragraph 56, incorrectly numbered by Plaintiff as Paragraph 9 of Count Three, states a legal conclusion to which no answer is required.

57. Defendants deny the allegations contained in Paragraph 57, incorrectly numbered by Plaintiff as Paragraph 10 of Count Three.

58. Defendants deny the allegations contained in Paragraph 58, incorrectly numbered by Plaintiff as Paragraph 11 of Count Three, and further deny that Plaintiff is entitled to any relief requested therein.

To the extent that the Wherefore Clause (Prayer for Relief) contains any factual allegations that require a response, Defendants deny them. Defendants specifically deny that Plaintiff is entitled to any damages or other relief whatsoever, including but not limited to additional wages, compensatory damages, consequential damages, fines, punitive damages, attorney's fees, costs, and interest.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails, in whole or in part, to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which an award of attorneys' fees may be granted.

THIRD AFFIRMATIVE DEFENSE

The Complaint fails to state facts sufficient to state a claim that would support the award

of emotional distress damages against Defendants.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, on the grounds of waiver and/or estoppel.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the equitable doctrine of unclean hands and/or laches.

SEVENTH AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which an award of punitive damages or statutory penalties or interest may be granted.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate her alleged damages, in whole or in part, and Defendants are entitled to an offset in the amount that Plaintiff has actually earned and/or in the amount that Plaintiff in the exercise of reasonable diligence could have earned.

NINTH AFFIRMATIVE DEFENSE

Hologic employed Plaintiff on an at-will basis and therefore could terminate or change the conditions of her employment at any time, with or without cause or prior notice.

TENTH AFFIRMATIVE DEFENSE

Insofar as Plaintiff purports to allege a claim or claims for negligence or for physical or mental and emotional distress, including claims for recovery of any medical expenses thereby incurred, said claims are barred by the exclusive remedy provisions of the New Jersey Workers' Compensation Act, *N.J.S.A. 34:15-1 et seq.*

ELEVENTH AFFIRMATIVE DEFENSE

Any adverse action that may have been taken against Plaintiff was based upon legitimate, non-discriminatory and/or non-retaliatory reasons.

TWELFTH AFFIRMATIVE DEFENSE

Defendants acted at all times in good faith and constantly maintained, implemented and enforced a policy in the workplace against discrimination, harassment and retaliation and otherwise exercised reasonable care to prevent and correct promptly any discrimination, harassment and/or retaliation. Plaintiff, in whole or in part, unreasonably failed to take advantage of preventative and corrective opportunities provided by Hologic or to avoid harm.

THIRTEENTH AFFIRMATIVE DEFENSE

Assuming, *arguendo* (while vigorously denying), that Defendants engaged in any unlawful conduct in connection with plaintiff's employment, Defendants still would have engaged in the same course of conduct based on legitimate, non-retaliatory and/or non-discriminatory reasons.

FOURTEENTH AFFIRMATIVE DEFENSE

The conditions precedent to the payment of any further commissions under the compensation plan governing such payments have not been satisfied.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff was compensated at all times in accordance with the New Jersey Wage Payment Law ("NJWPL"), and was fully compensated as to all sums of money to which she was entitled.

SIXTEENTH AFFIRMATIVE DEFENSE

Defendants did not knowingly or willingly violate any requirement under the NJWPL.

SEVENTEENTH AFFIRMATIVE DEFENSE

Defendants reserve the right to pursue additional affirmative defenses as they become known.

WHEREFORE, having fully answered the Complaint and having stated their defenses, Defendants respectfully request that the Complaint be dismissed and that they be awarded their costs, attorney's fees, and other such relief as the Court may deem just and proper.

DEMAND FOR STATEMENT OF DAMAGES

Pursuant to R. 4:5-2, Defendants demand that Plaintiff furnish the undersigned, within five (5) days after service hereof, with a written statement of damages claimed in each Count of the Complaint.

DEMAND FOR PRODUCTION OF DOCUMENTS

Pursuant to R. 4:18-2, Defendants demand that Plaintiff produce all documents referred to in the Complaint, either directly or by reference, within five (5) days after service hereof.

CERTIFICATION PURSUANT TO RULE 4:5-1

The undersigned hereby certifies that the within matter in controversy is not the subject of any other pending or contemplated court action or arbitration proceeding and knows of no additional parties who should be joined in this action.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Defendants hereby designate William P. McLane, Esq. as trial counsel in the matter.

LITTLER MENDELSON
A Professional Corporation
Attorneys for Defendants

By: 
William P. McLane

Dated: April 28, 2017

CERTIFICATION OF SERVICE

I hereby certify that on this date I caused defendants' Answer and Separate Defenses, Demand for Production of Documents, Demand for Statement of Damages and Designation of Trial Counsel to be served on plaintiff's counsel, Nancy Erika Smith, Esq. via Federal Express to Smith Mullin, P.C., 240 Claremont Avenue, Montclair, New Jersey 07042.



Neha Dalal

Dated: April 28, 2017

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