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Elizabeth Ontaneda, Francine Pennisi
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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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**EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,**

Plaintiff,

Civil Action No: 14-cv-3673

v.

**UNITED HEALTH PROGRAMS OF
AMERICA, INC. and
COST CONTAINMENT GROUP, INC.**

**COMPLAINT OF
PLAINTIFFS-INTERVENORS**

Defendants.

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**ELIZABETH ONTANEDA,
FRANCINE PENNISI, and
FAITH PABON,**

JURY TRIAL DEMANDED

Plaintiffs-Intervenors,

v.

**UNITED HEALTH PROGRAMS OF,
AMERICA, INC., COST CONTAINMENT
GROUP, INC.,**

Defendants.

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Plaintiffs-Intervenors, Elizabeth Ontaneda, Francine Pennisi, and Faith Pabon (“Plaintiffs”), as and for their complaint, by their attorneys, Mango & Iacoviello, LLP, allege as follows:

NATURE OF ACTION

1. This is an action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, and Title I of the Civil Rights Act of 1991, 42 U.S.C. §1981a, as amended (“Title VII”), and The New York State Human Rights Law, McKinney’s Executive Law §§290 *et seq.* (“NYSHRL”), for unlawful employment discrimination against Plaintiffs on the basis of religion, and unlawful retaliation for opposition to such discrimination. As alleged with greater detail herein, Defendants United Health Programs of America, Inc. and Cost Containment Group, Inc. (“Defendants”) discriminated against Plaintiffs by subjecting them to a hostile work environment based upon religion, by failing to accommodate Plaintiffs based on their own religions or lack thereof, by terminating Plaintiffs based upon religion, and by retaliating against Plaintiffs for their opposition to required religious practices in the workplace.

JURISDICTION AND VENUE

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1331 and §1343, conferring original jurisdiction upon this Court of any civil action to recover damages or to secure equitable relief under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§2000e-5(f)(1) and (3) and §2000e-6 (“Title VII”), and pursuant to Section 102 of The Civil Rights Act of 1991. The Court’s supplemental jurisdiction of claims arising under the New York State Human Rights Law is invoked under 28 U.S.C. §1367.

3. Venue herein is proper under 28 U.S.C. §1391(b), and 42 U.S.C. §2000e-5(f)(3) as all acts complained of occurred within the Eastern District of New York.

THE PARTIES

4. Plaintiff Elizabeth Ontaneda is a female residing in Queens, New York. Ontaneda was employed by Defendants from 2003 through August, 2010, when her employment was terminated by Defendants.

5. Plaintiff Francine Pennisi is a female residing in Farmingdale, New York. Pennisi was employed by Defendants from 2004 through August, 2010, when her employment was terminated by Defendants.

6. Plaintiff Faith Pabon is a female residing in Levittown, New York. Pabon was employed by Defendants from 2010 through March, 2012, when her employment was terminated by Defendants.

7. Defendants are Delaware corporations doing business in the Eastern District of New York and this are subject to the jurisdiction of this Court. Defendants are integrated enterprises with centralized ownership and management, and as such, jointly employ the Plaintiffs within the meaning of Title VII, 42 U.S.C. §2000e(b), and the NYSHRL.

FACTS

8. Beginning in or around the Fall of 2007, Defendants required all employees to engage in religious and spiritual practices in the workplace on a regular basis and referred to these practices by the term, "Onionhead."

9. Defendants required religious-related practices including but not limited to, praying, reading spiritual texts, discussing personal matters with colleagues and management, burning candles, and maintaining dim lighting in the workplace. Other examples of required spiritual and religious practices have included prayer circles, asking employees to thank God for their employment, and saying "I love you" to management and colleagues.

10. Defendants required Plaintiffs and other employees to take part in Onionhead practices on a daily basis and held weekly Onionhead meetings.

11. Plaintiffs were required to select Onionhead-related cards on a daily basis and place them next to their computer monitors and to wear Onionhead pins while at work.

12. Plaintiffs did not want to participate in religious and spiritual activities in the workplace but these activities and practices were mandatory.

13. The Aunt of one of the Principal Owners of Defendants and a member of Defendants' upper management team is a woman by the name of "Denali," and she is the spiritual leader of these religious and spiritual practices and activities. Denali would make monthly visits to the workplace from her home in California.

14. During the monthly visits with Denali, Plaintiffs and other employees were required to attend one-on-one sessions with Denali and to read and discuss spiritual and religious literature regarding topics such as "divine plans," "moral codes," and "enlightenment."

15. Plaintiffs and other employees were given "homework" related to religious and spiritual readings and topics to complete and discuss.

16. Plaintiffs were coerced into participating in Onionhead-related religious and spiritual activities and endured a hostile work environment as a result.

17. Defendants failed to accommodate Plaintiffs' own religious beliefs or lack thereof.

18. Defendants compelled Plaintiffs to take part in Onionhead-related religious and spiritual activities in order to maintain their employment with Defendants.

19. When Plaintiffs objected to participating in Onionhead-related religious and spiritual activities they were retaliated against and ultimately terminated for this reason.

Plaintiff Francine Pennisi

20. Plaintiff Pennisi worked for Defendants as an Account Manager/IT Project Manager, from 2004 until she was terminated in August 2010.

21. Just prior to Pennisi's termination in August, 2010, Pennisi spoke out against Onionhead-related religious practices at a managers meeting in July 2010, stating that she was Catholic and did not want to participate in any Onionhead spiritual activities. At the next monthly visit by Denali, on or about August 23, 2010, Pennisi was moved from an office to a desk on the open floor in the customer service area, and her responsibilities were changed to include answering phones – a clear and obvious demotion.

22. After Pennisi was moved from her interior office, Denali placed a large statue of a Buddha in the now-empty office.

23. The next day, Pennisi called in sick to the office and Defendants' owner called Pennisi at home. During this telephone call, Pennisi stated that she felt as if she had been demoted and was embarrassed in front of the other employees. Defendants' owner responded that Pennisi should not come back to work – he fired her.

24. Pennisi's termination by Defendants was in direct retaliation to her objections to Onionhead-related religious activities.

Plaintiff Elizabeth Ontaneda

25. Plaintiff Ontaneda worked for Defendants from 2003 until her termination in August 2010. Plaintiff most recently worked as a Senior Account Manager for Defendants, just prior to her termination.

26. At the same managers meeting at which Pennisi objected to Onionhead-related religious activities in July, 2010, Ontaneda also objected, stating that she agreed with Pennisi and

did not want to participate in any Onionhead-related religious or spiritual activities. At the next monthly visit by Denali, on or about August 23, 2010, Ontaneda was moved from her shared office to a desk on the open floor in the customer service area, and her responsibilities were changed to include answering phones – a clear and obvious demotion.

27. Denali was present during the move and commented aloud regarding “demons” in connection with Ontaneda’s and Pennisi’s resistance to Onionhead practices.

28. The next day, Ontaneda called in sick with pregnancy-related complications and Defendants’ owner called her back and left a voicemail message for Ontaneda during which he fired her.

Plaintiff Faith Pabon

29. Plaintiff Pabon worked for Defendants as a Customer Care Consultant from 2010 until her termination in March 2012.

30. On or about March 17-18, 2012, Pabon attended a required “spa weekend” in Connecticut with Denali and approximately 20 other customer service representatives.

31. While at the “spa weekend” Denali required Pabon and all other employees in attendance to engage in Onionhead-related religious and spiritual activities, including but not limited to prayer sessions during which everyone was instructed to hold hands and pray and chant together.

32. Pabon refused to take part in some of the Onionhead-related religious activities during the weekend and Denali became visibly upset and refused to accept any explanation from Pabon despite her attempts to communicate them to Denali.

33. The following Monday, March 19, 201, Denali called Pabon into her office and terminated her for “insubordination,” which Pabon understood to be a clear reference to her

refusal to participate in Onionhead-related religious and spiritual activities during the “spa weekend.”

34. The effect of Defendants’ practices in requiring Plaintiffs to participate in Onionhead-related religious activities has been to deprive Plaintiffs of equal employment opportunities and otherwise adversely affect their status as employees, because of religion.

35. The unlawful practices of Defendants in this regard were intentional.

36. The unlawful practices of Defendants were done with malice and/or with reckless indifference to the federally protected rights of Plaintiffs.

FIRST CLAIM FOR RELIEF

(Religious Discrimination In Violation Of Title VII)

37. Plaintiffs hereby reallege and incorporate by reference as if fully set forth herein, the allegations of paragraphs 1 through 36 above.

38. Defendants intentionally discriminated against Plaintiffs based upon religion in violation of Title VII and The Civil Rights Act of 1991, by denying Plaintiffs equal terms and conditions of employment and by terminating Plaintiffs’ employment.

39. Defendants’ acts of discrimination were performed with malice and reckless indifference to Plaintiffs’ protected civil rights.

40. As a proximate result of Defendants’ acts of unlawful discrimination, Plaintiffs suffered emotional harm, embarrassment, pain and suffering, humiliation and harm to their reputations.

41. As a proximate result of Defendants’ acts of unlawful discrimination, Plaintiffs have suffered and continue to suffer substantial losses of past and future earnings, and other benefits associated with their former employment.

SECOND CLAIM FOR RELIEF

(Religious Discrimination In Violation Of The NYSHRL)

42. Plaintiffs hereby reallege and incorporate by reference as if fully set forth herein, the allegations of paragraphs 1 through 41 above.

43. Defendants intentionally discriminated against Plaintiffs based on religion in violation of NYSHRL, §296(1)(a), by denying Plaintiffs equal terms and conditions of employment and by terminating Plaintiffs' employment.

44. As a proximate result of Defendants' acts of unlawful discrimination, Plaintiffs suffered emotional harm, embarrassment, pain and suffering, humiliation and harm to their reputations.

45. As a proximate result of Defendants' acts of unlawful discrimination, Plaintiffs have suffered and continue to suffer substantial losses of past and future earnings, and other benefits associated with their former employment.

THIRD CLAIM FOR RELIEF

(Retaliation In Violation Of Title VII)

46. Plaintiffs hereby reallege and incorporate by reference as if fully set forth herein, the allegations of paragraphs 1 through 45 above.

47. Defendants intentionally discriminated against Plaintiffs by retaliating against them for objecting to Defendants' discriminatory treatment of them and for refusing to participate in Defendants' discriminatory practices, in violation of Title VII and The Civil Rights Act of 1991. Such retaliation took the form of harassment and ultimately the termination of Plaintiffs' employment.

48. Defendants' acts of discrimination were performed with malice and reckless indifference to Plaintiffs' protected civil rights.

49. As a proximate result of Defendants' acts of unlawful discrimination, Plaintiffs suffered emotional harm, embarrassment, pain and suffering, humiliation and harm to their reputations.

50. As a proximate result of Defendants' acts of unlawful discrimination, Plaintiffs have suffered and continue to suffer substantial losses of past and future earnings, and other benefits associated with his their former employment.

FOURTH CLAIM FOR RELIEF

(Retaliation In Violation Of The NYSHRL)

51. Plaintiffs hereby reallege and incorporate by reference as if fully set forth herein, the allegations of paragraphs 1 through 50 above.

52. Defendants intentionally discriminated against Plaintiffs by retaliating against them for objecting to Defendants' discriminatory treatment of them and for refusing to participate in Defendants' discriminatory practices, in violation of NYSHRL, §296(1)(e). Such retaliation took the form of harassment and ultimately the termination of Plaintiffs' employment.

53. As a proximate result of Defendants' acts of unlawful discrimination, Plaintiffs suffered emotional harm, embarrassment, pain and suffering, humiliation and harm to their reputations.

54. As a proximate result of Defendants' acts of unlawful discrimination, Plaintiffs have suffered and continue to suffer substantial losses of past and future earnings, and other benefits associated with their former employment.

JURY DEMAND

55. Plaintiffs demand a jury on all claims stated herein.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs demands judgment as follows:

- (a) against defendant under the First and Third Claims for Relief under Title VII,
- (1) preliminarily and permanently restraining Defendants from engaging in the aforementioned conduct;
 - (2) awarding Plaintiffs back pay, prejudgment interest, and damages for all employment benefits they would have received but for the discriminatory acts and practices of Defendants;
 - (3) awarding Plaintiffs reinstatement or front pay;
 - (4) awarding Plaintiffs compensatory damages;
 - (5) awarding Plaintiffs punitive damages;
 - (6) awarding Plaintiffs reasonable attorneys' fees and costs incurred in this action;
- and
- (7) awarding Plaintiffs any other relief this Court deems to be just, equitable and proper; and
- (b) against Defendants under the Second and Fourth Claims for Relief under the NYSHRL,
- (1) preliminarily and permanently restraining Defendants from engaging in the aforementioned conduct;

(2) awarding Plaintiffs back pay, prejudgment interest, and damages for all employment benefits they would have received but for the discriminatory acts and practices of Defendants;

(3) awarding Plaintiffs reinstatement or front pay;

(4) awarding Plaintiffs compensatory damages; and

(5) awarding Plaintiffs any other relief this Court deems to be just, equitable and proper; and

Dated: New York, New York
June 24, 2014

Respectfully Submitted,

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