

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

SHARON L. DANQUAH; BERYL
OTIENO-NGOJE; JACQUELINE DESEO;
MARITES LINAAC; MILAGROS
MANANQUIL; JULITA T. CHING;
CRISTINA ABAD; LORNA JOSE-
MENDOZA; VIRNA BALASA; OSSIE
TAYLOR; RONETTA HABARADAS; and
FE ESPERANZA R. VINOYA;

Plaintiffs,

v.

UNIVERSITY OF MEDICINE AND
DENTISTRY OF NEW JERSEY
("UMDNJ"); BOARD OF TRUSTEES OF
UMDNJ, and its members, in their official
and individual capacities; JAMES
GONZALEZ, in his individual and his
official capacity as Acting President and CEO
of UMDNJ; SUZANNE ATKIN, in her
individual and her official capacity as Chief
Medical Officer of UMDNJ; MICHAEL
JAKER, in his individual and his official
capacity as the Cochair of UMDNJ's
Bioethics Committee; PATRICIA MURPHY,
in her individual and her official capacity as
the Cochair of UMDNJ's Bioethics
Committee; THERESA REJRAT, in her
individual and her official capacity as Vice
President of Patient Care Services and Chief
Nursing Officer of UMDNJ; PHYLLIS
LIPTACK, in her individual and her official
capacity as Director of Perioperative Services
at UMDNJ; MAGALE ARRIAGA, in her

Civil Case No:
2:11-cv-06377-JLL-MAH

[Emergency Relief Requested]

**APPLICATION FOR
TEMPORARY
RESTRAINING ORDER
AND ORDER HOLDING
DEFENDANTS IN
CIVIL CONTEMPT**

individual and her official capacity as Same Day Surgery Nurse Manager at UMDNJ; TAMMY LUDWIG, in her individual and her official capacity as Same Day Surgery Assistant Nurse Manager at UMDNJ;

Defendants.

PLEASE TAKE NOTICE that Plaintiffs, by counsel, hereby apply for a Temporary Restraining Order under FED. R. CIV. P. 65 and L. CIV. R. 65.1, holding Defendant UMDNJ in civil contempt of Court for violating this Court's November 3, 2011 Temporary Restraining Order, and further ordering Defendants and all persons acting at Defendants' behest or direction, from requiring Plaintiffs to attend meetings imposing changes in their employment privileges or conditions on the basis of their religious or moral objections to performing or assisting training, procedures or performances relating to abortions, or otherwise discriminating against them or violating this Court's November 3, 2011 order.

As grounds for this Application and Motion Plaintiffs would show:

1. Pursuant to FED. R. CIV. P. 65, Plaintiffs notified UMDNJ's counsel for UMDNJ of their intention to apply for a Temporary Restraining Order and move for a Preliminary Injunction on Friday, November 18, 2011. In addition, on the same day, Plaintiffs emailed a courtesy copy of all the documents filed in association with this Application to counsel for UMDNJ, and a notice informing

counsel of what court the documents would be filed and the approximate time they would be filed.

2. Plaintiffs attempted to confer with counsel for UMDNJ by requesting a conference on November 18, 2011, asking for voluntary compliance with the Court's order and underlying laws. Counsel for UMDNJ did not respond.

3. The grounds for this Application and Motion are set forth in Plaintiffs' Memorandum in Support of Plaintiffs' Application for Temporary Restraining Order.

4. In support of this Application and Motion, Plaintiffs also rely on Plaintiffs' Verified Complaint filed previously in this case.

5. This situation merits expedited consideration. Defendants are compelling the Plaintiffs to engage in mandatory meetings, set on November 23, 30, and/or other days before this Court's December 5 hearing and its resolution of Plaintiffs' motion for preliminary injunction. These required meetings will impose on Plaintiffs such discrimination in employment as "transfer to another nursing position" and other "changes" in their employment. Such meetings seek to thwart this Court's order maintaining the status quo until this Court has had a chance to rule on Plaintiffs' motion for preliminary injunction. Defendants indicate that they intend to impose these discriminatory actions as "reasonable accommodations," which is an inapplicable concept borrowed from Title VII that allows employers to

impose adverse employment changes as a compromise to employees with religious objections. But the underlying laws in this case do not allow employers to negotiate “reasonable accommodations” in the abortion context, and this Court’s Temporary Restraining Order does not either. Without expedited consideration, Defendants will either compel Plaintiffs to attend these meetings imposing discriminatory employment conditions, or will impose adverse actions against Plaintiffs for not attending such meetings, or will impose adverse actions unilaterally in absence of their attendance at such meetings, and will do all of the above for no reason whatsoever except that Plaintiffs have expressed moral and religious objections to assisting services relating to abortion. Plaintiffs have further established clear and convincing evidence that UMDNJ and Defendants acting therewith in their official capacities should be held in civil contempt, because they have shown “(1) that a valid order of the court existed; (2) that the defendants had knowledge of the order; and (3) that the defendants disobeyed the order.” *Marshak v. Treadwell*, 595 F.3d 478, 485 (3d Cir. 2009).

DATED: November 18, 2011,

Fair Lawn, New Jersey

Respectfully submitted,

s/ Demetrios K. Stratis
Demetrios K. Stratis
RUTA, SULIOS AND STRATIS, LLP

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mbowman@telladf.org

**Pro hac vice application pending.*

CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2011, the foregoing document was filed with the Clerk of the Court, and served in accordance with the Federal Rules of Civil Procedure, and/or the District's Local Rules and procedures, upon the following parties and participants:

University of Medicine and Dentistry of New Jersey
on behalf of itself and all Defendants named in their official capacities
Office of Legal Management
65 Bergen Street
Newark, New Jersey 07101

Service on these parties was accomplished by means of ECF.

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**MEMORANDUM IN
SUPPORT OF
PLAINTIFFS'
APPLICATION FOR
TEMPORARY
RESTRAINING ORDER
UNDER FED. R. CIV. P.
65(a) & (b)**

individual and her official capacity as Same Day Surgery Nurse Manager at UMDNJ; TAMMY LUDWIG, in her individual and her official capacity as Same Day Surgery Assistant Nurse Manager at UMDNJ;

Defendants.

Defendant UMDNJ has sent letters to Plaintiff Nurses today, November 18, 2011, violating the status quo that this Court ordered in its November 3 Temporary Restraining Order prior to its ruling on Plaintiffs' motion for injunction. Today, through Defendant Rejrat acting in her official capacity, UMDNJ ordered the Nurses to attend meetings that are scheduled for before this Court's December 5 hearing, and to do so as soon as Wednesday November 23, at which meetings Defendants propose to apply various forms of discrimination in the Nurses' employment conditions on the basis of their objections to abortion. See Rejrat Letter, Exh. 1.

This requirement violates the Court's November 3, 2011 order, to which UMDNJ claimed it consented, maintaining the status quo until this Court could rule on Plaintiffs' motion for preliminary injunction, by prohibiting Defendants from engaging in any employment discrimination against Plaintiffs on the basis of their abortion objections. Defendants' letter threatens discrimination including

“transfer” of the nurses to other units, and “changes” in their employment conditions, under the guise of “reasonable accommodations.” But in the context of abortion, the conscience rights laws at issue in this case, and this Court’s November 3 Temporary Restraining Order, do not allow the hospital to impose “reasonable accommodation” compromise of its and the employees’ interests. Instead the legislatures of the United States and New Jersey have decided that when it comes to whether personnel can be required to assist in care supporting abortion, employees have a right that hospitals cannot offset, not to be subject to any adverse change in their employment conditions that the hospital considers “reasonable”—and certainly not to be transferred and segregated out of entire health care delivery units such as outpatient surgery, Ob/Gyn, or the like. See Plaintiffs’ Memorandum of Law in Support of Motion for Preliminary Injunction, filed November 2, 2011.

Moreover, this Court’s November 3 order reserves all such questions by maintaining the status quo in this case until the issue could be considered. As explained in the Complaint, that status quo existed peaceably at UMDNJ for years, until just over a month ago. But now UMDNJ is unilaterally breaking that status, and contravening its consent to this Court’s Temporary Restraining order.

The Nurses are under a mandate, by these letters, to attend meetings (presumably without counsel present) starting as soon as November 23, at which

they will be subject to discriminatory transfer, discriminatory changes in their “duties” and/or their “scheduling, or other adverse actions the hospital considers “reasonable.” If they do not subject themselves to these discrimination-imposing meetings, the mandatory nature of the meetings as expressed in the letter will presumably be cause for additional adverse employment actions. Additionally, failure to attend the meetings may subject the Nurses to UMDNJ unilaterally imposing such “reasonable accommodations” on them. Counsel for Plaintiffs attempted repeatedly today to have counsel for UMDNJ withdraw these requirements and comply with the Court’s November 3 TRO, but to no avail. UMDNJ’s urgent, stubborn threats of discrimination will therefore persist unless this Court issues an order prohibiting such meeting requirements and holding UMDNJ in contempt for this violation of the TRO prior to the Court’s ruling on this matter.

Plaintiffs will suffer irreparable harm unless the Court issues immediate injunctive relief. Plaintiffs have also, by the facts discussed above, established clear and convincing evidence that UMDNJ and Defendants acting therewith in their official capacities should be held in civil contempt, because they have shown “(1) that a valid order of the court existed; (2) that the defendants had knowledge of the order; and (3) that the defendants disobeyed the order.” *Marshak v. Treadwell*, 595 F.3d 478, 485 (3d Cir. 2009).

DATED: November 18, 2011,

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EXHIBIT 1



The UNIVERSITY HOSPITAL

University of Medicine & Dentistry of New Jersey

Theresa Rejrat, RN, MA
Office of the Vice President and Chief Nursing Officer
Phone: 973-972-1787
Fax: 973-972-2199

150 Bergen Street
PO Box 1709
Newark, NJ 07101-1709

November 17, 2011

Ronetta Habaradas

Via-Hand-delivery & Fed-Ex

RE: Discussion Regarding Reasonable Accommodation

Dear Ms. Habaradas,

You have indicated that you have religious and/or moral objections to performing certain of your current job duties. The University again invites you to discuss with us potential reasonable accommodations of your objections. Such potential accommodations may include changes in duties, changes in scheduling, and/or transfer to another nursing position that does not involve duties that are objectionable to you for religious and/or moral reasons. We welcome your input and thoughts concerning potential reasonable accommodations. Please contact me at 973-972-1787 immediately to arrange for this discussion which must be held on or before Wednesday, November 23, 2011.

Thank you,

A handwritten signature in black ink, appearing to read "Theresa Rejrat".

Theresa Rejrat, RN, MA
Vice President of Patient Care Services & CNO