

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

<p>RANDY HAGEN,</p> <p style="text-align: center;">Plaintiff,</p> <p>-against-</p> <p>US FERTILITY, LLC,</p> <p style="text-align: center;">Defendant.</p>

Date Filed:

Index No.

SUMMONS

TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby summoned and required to serve upon Plaintiff’s attorneys an answer to the complaint in this action within 20 days after the service of this summons, exclusive of the day of service, or within 30 days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue designated is the County of Defendant’s principal office pursuant to Section 802 of the Limited Liability Company Law, is in the State of New York, New York County.

Dated: Melville, New York
April 11, 2024

Respectfully submitted,

By: /s/ Troy L. Kessler
Troy L. Kessler

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RANDY HAGEN,

Plaintiff,

-against-

US FERTILITY, LLC,

Defendant.

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COMPLAINT

Plaintiff Randy Hagen, by and through his attorneys, Kessler Matura P.C., complaining of Defendant US Fertility, LLC (“USF” or Defendant), alleges as follows:

PRELIMINARY STATEMENT

1. Mr. Hagen is a highly regarded health services executive with more than 28 years of experience in the industry.

2. Mr. Hagen holds an earned Doctorate in Health Sciences with a concentration in Leadership and Organizational Behavior, a Master’s in Business Administration, and an undergraduate degree in Accounting. Additionally, Mr. Hagen is a Fellow in the American College of Medical Practice Executives (FACMPE), a Certified Ambulatory Surgery Center Administrator maintaining the CASC credential, and a member of the American College of Healthcare Executives (ACHE).

3. In November 2021, Mr. Hagen brought his years of highly successful healthcare management experience to USF, where he was hired as Regional Executive Director at USF’s Shady Grove Fertility, based in New York City. Early in his employment with USF, Mr. Hagen’s title changed to Executive Director.

4. USF sells itself as “the largest physician-owned, physician-led partnership of top-tier fertility practices in the U.S. The company claims to be “united under a shared mission: to drive innovation and leverage best practices to enhance both the patient experience and improve treatment outcomes.” <https://www.shadygrovefertility.com/about-sgf/about-us-fertility/> (last accessed, Feb. 24, 2024).

5. USF pays lip service to promising employees that they’ll “be part of a dynamic team that is in the business of solving meaningful problems and overcoming obstacles — physical, financial, and emotional.”

6. Despite USF’s lofty rhetoric, Mr. Hagen quickly started to notice and report red flags in the company’s business and financial practices. Mr. Hagen saw and reported significant holes in contract management, with many important payor contracts seemingly nowhere to be found. The negligent contract management corresponded with dubious budgeting and revenue reporting. Mr. Hagen also witnessed and complained of substandard patient care policies, instead of the so-called “best practices.”

7. Mr. Hagen would later come to find that USF’s issues went well beyond mismanagement to illegal conduct, such as submitting inaccurate billing to insurance companies and pumping up revenue in financial documents sent to outside financial institutions.

8. USF even sought to brush aside serious allegations of workplace discrimination and harassment after Mr. Hagen reported a lurid incident at a company holiday party.

9. Instead of living up to its supposed high standards, USF’s method of “solving meaningful problems” was to engage in workplace retaliation, which ultimately resulted in Mr. Hagen’s termination on August 4, 2023.

10. As described herein, Mr. Hagen repeatedly objected to USF's improper conduct. Instead of properly investigating Mr. Hagen's complaints, USF engaged in a pattern of avoidance by "looking into his complaints," which it sought to use as an aegis against him.

11. In response to Mr. Hagen's repeated complaints, USF sought to silence him by retaliating against him. Initially, USF reduced Mr. Hagen's bonus, and, when he would not back down, USF ultimately terminated him.

NATURE OF THE CLAIMS

12. USF's unlawful retaliation violates the New York State Labor Law § 740 ("Section 740" or "NYLL § 740"), the New York State Human Rights Law, N.Y. Executive Law § 290 *et seq.* ("NYSHRL"), and the New York City Human Rights Law, N.Y.C. Admin. Code § 8-107 *et seq.* ("NYCHRL").

13. Following commencement of this action, a copy of this Complaint will be served both on the New York City Commission on Human Rights and the Office of the Corporation Counsel of the City of New York, thereby satisfying the notice requirements of the NYCHRL.

14. Through this action, Plaintiff seeks damages for Defendant's violations of Section 740, the NYSHRL, and the NYCHRL.

THE PARTIES

Plaintiff

15. Plaintiff Randy Hagen is a resident of the State of New Jersey.

16. At all times hereinafter mentioned, Plaintiff was and still is an "employee" within the meaning of NYLL § 740(a), the NYSHRL, and the NYCHRL.

Defendant

17. At all times relevant to the Complaint, Defendant USF is a foreign limited liability company authorized to do business in the State of New York.

18. Shady Grove Fertility is a founding member of USF.

19. Pursuant to Section 802 of the Limited Liability Company Law, USF's principal office in the State of New York is in New York County.

20. At all times hereinafter mentioned, Defendant was and still is an "employer" within the meaning of NYLL § 740(b), the NYSHRL, and the NYCHRL.

FACTS

21. In November 2021, Mr. Hagen was hired as Regional Executive Director at USF's Shady Grove Fertility based in New York City.

22. Shortly thereafter, Mr. Hagen's job title changed to Executive Director.

23. Mr. Hagen's position gave him wide-ranging insight into the company's business practices. Mr. Hagen's job duties and responsibilities included: providing strategic direction and management to ensure smooth and efficient day-to-day operations for the entire region; enhancing and improving the operational efficiency and operation controls of the region, including, but not limited to process improvement, workflow, RN clinical processes, systems implementation, MD workflow, organizational dynamics, managerial mentoring and professional development; creating and implementing a new social media strategy to promote online patient referrals that became the benchmark for all Shady Grove Fertility/USF practices, increasing promotional new patient visits while increasing same practice revenue and reducing operating costs; developing an annual budget and corrected 5-year strategy formulation to ensure profitability; overseeing recruitment, selection, retention, training, and supervision of practice physicians and personnel to

ensure the delivery of the highest quality of services; and developing two new locations in the New York City metro market, recruitment and onboarding of new physicians and support staff while ensuring development activities were completed on their projected timeline.

24. Throughout his employment, Mr. Hagen reported directly to USF's Vice President of Operations, Vicki Gerber ("Gerber"), and also reported to Anate Brauer, M.D. ("Brauer") and Tomer Singer, M.D ("Singer").

25. Within weeks of commencing his employment with USF, Mr. Hagen began to see red flags in the company's financial practices. Mr. Hagen found and reported missing revenue/billing, improper coding, lack of contracts/fee schedules, and an inability to determine if payments were understated and/or missing.

26. Instead of listening to Mr. Hagen, USF stonewalled him at every corner, refusing his requests for assistance and for the tools to properly fulfill the responsibilities of his position.

27. USF repeatedly denied Mr. Hagen information, avoided accountability, and issued general denials via multiple levels of management in the organization.

28. Throughout his employment at USF, Mr. Hagen reported missing and fraudulent billing, inflated/fraudulent financial statements and budgets, and patient and staff safety concerns.

29. Mr. Hagen also complained of conduct that violated the NYSHRL and the NYCHRL.

30. Despite all his complaints, USF did nothing to correct the many problems Mr. Hagen raised.

31. Instead, USF embarked on a course of retaliation, which initially resulted in depriving Plaintiff of his bonus, and ultimately led to his termination.

Financial Improprieties at USF

32. From January 2022 until the summer of 2022, during regularly scheduled financial calls with Defendant's senior leadership, department leaders, and regional directors, Mr. Hagen mentioned USF's lack of contracts and fee schedules.

33. Over the course of his employment, it became clear that USF was sending fraudulent bills to insurance companies, which were obscured through contract mismanagement.

34. Furthermore, Defendants were misstating their revenue numbers to outside financial institutions and again obscuring their improprieties through contract mismanagement.

35. Mr. Hagen repeatedly made his concerns clear. For example, on July 21, 2022, Mr. Hagen emailed USF's leadership team complaining about the lack of payor contracts, stating: "[there are] material issues with payor contracting. We need to address the payor contract issues for NY, that is, once we can obtain the contracts for NY." Email from Randy Hagen to David Aldo, et al. (July 21, 2022 10:26 a.m. EDT).

36. Throughout his employment, Mr. Hagen met approximately one to two times per month with Gerber. During almost every meeting with Gerber, Mr. Hagen complained about Defendant's lack of payor contracts and fee schedules, along with questionable billing practices.

37. In the fall of 2022, Mr. Hagen attended a USF leadership retreat in Florida.

38. During a meeting at the retreat with then USF Chief Operating Officer Keith Hennigan ("Hennigan"), Gerber, and other USF regional directors, Plaintiff raised the issue of financial improprieties at USF.

39. For example, during the meeting, Mr. Hagen complained that USF was adding fictitious anesthesia to its budgets, and that he had been trying to obtain payor contracts and fee schedules for more than eight months.

40. Throughout 2022, USF Vice President of Revenue Cycle Management, Rachel Litten (“Litten”), denied Mr. Hagen’s numerous attempts to obtain payor contracts and fee schedules.

41. Litten was replaced by JoAnn Meyers (“Meyers”). Meyers confirmed to Plaintiff that there were claims being sent to payors that were different from those on the approved fee sheets. Mr. Hagen informed Meyers that she should seek an external audit and reported his conversation with Meyers to Gerber, Brauer, and Singer.

42. On February 15, 2023, Mr. Hagen again complained to Gerber about the missing payor contracts, stating:

The payor contracting issue was something I tried to address early Q1 2022 and continued to try all year long during financial review meetings with senior leadership, and even at COPS with you [Gerber], [Hennigan], and the [Regional Executive Directors] . . . Please keep in mind, we still don't have all payor contracts for NYC, I have yet to see 1 contract for the region and have been told within the last 60 days (approximately) that we still don't have them.

Email from Randy Hagen to Vicki Gerber (Feb. 14, 2023 7:12 a.m. EST).

43. On February 24, 2023, Mr. Hagen sent another email complaining of missing payor contracts, stating: “Please note, I have been unsuccessfully trying to obtain copies of contracts for NY since December. My understanding from [Meyers] is that we don’t have them in our possession.” Email from Randy Hagen to Michael Levy, et al. (Feb. 24, 2023 8:58 a.m. EST).

44. While continuing to regularly complain verbally regarding Defendant’s billing practices, on June 30, 2023, Mr. Hagen again put his concerns in writing, stating: “[I] have advocated for improved payor contracts since within 30 days of my starting in my position after I discovered we were missing billing, billing incorrectly, and our contracts were extremely poor.”

Email from Randy Hagen to Jo Ann Meyer, et al. (June 30, 2023 12:21 p.m. EDT).

45. Mr. Hagen further questioned USF's revenue-inflation practices. For instance, in mid-July 2023, on a finance call that included USF's executive leadership team, Chief Financial Officer Andre Morales ("Morales") advised Mr. Hagen that he needed to "find" more earnings before interest, taxes, depreciation, and amortization if Amulet Capital, USF's chief financial backer, wanted it.

46. Mr. Hagen objected to Morales's request on the call.

47. Approximately two weeks later, Mr. Hagen was terminated.

Concerns with Patient Care at USF

48. Mr. Hagen frequently complained about patient care at USF. For example, Mr. Hagen objected to USF physicians failing to provide feedback to patients regarding test results. These problems were a regular practice at USF causing widespread frustration among USF staff. Staff regularly vented about USF practice of seeing 50 to 100 patients per day without providing time to provide patients with timely feedback.

49. For example, on April 19, 2023, Mr. Hagen emailed USF's leadership team indicating that "great nurses" were going to leave due to Drs. Brauer and Singer's repeated failure to timely provide information essential to patient care. Email from Randy Hagen to Michael Levy, et al (Apr. 19, 2023 6:19 p.m. EDT). As part of Plaintiff's April 19 email, he forwarded to USF's leadership team a nurse's statement that "Dr. Singer left right after his last consult, which was completed at 4:15pm. He did not put eyes on his list once today. His staff had multiple questions, tasks that have to be completed with him, or calls to patients with bad news that were neglected."

Id.

50. Delay in communicating lab results/patient care plans to patients jeopardizes safe, efficient, and quality patient care. In many instances, this information is extremely time sensitive for women trying to get pregnant and any delays can set them back months.

51. The failure to timely provide USF patients with feedback was such a serious issue that USF's Governing Board informed senior physicians that they would withhold some of their compensation and pay the junior partners to cover their workload.

52. Mr. Hagen also sent multiple text messages to Gerber regarding Drs. Brauer and Singer's repeated failure to provide timely feedback to staff so that they could properly advise patients.

Complaints About Sexual Harassment at USF

53. On December 15 and 16, 2022, Plaintiff complained to USF regarding the conduct of employee Nick Dominy ("Dominy") at USF's holiday party.

54. Dominy's outrageous and potentially unlawful conduct included: attempting to lick a USF employee's face; grabbing a USF employee's skirt to wipe his face with it; repeatedly trying to kiss a USF employee; groping a USF employee's chest and buttocks; urinating in front of USF employees (and the public in general); and harassing USF employees after the party concluded.

55. Mr. Hagen interviewed USF employees who witnessed Dominy's behavior, and they were all deeply disturbed.

56. On December 18 and 19, 2022, Hagen again complained to USF regarding Dominy's conduct.

USF Retaliated Against Plaintiff

57. In response to Mr. Hagen's repeated complaints, USF embarked on a course of retaliation.

58. Initially, in December 2022, to silence Mr. Hagen after his repeated complaints, USF awarded Plaintiff a bonus of 1.17% of his base salary, despite the fact that he was eligible for a bonus of 10%. During Plaintiff's hiring process, USF touted the bonus Mr. Hagen would receive, in part leading him to take the job.

59. Mr. Hagen did not back down.

60. Instead, Mr. Hagen continued to complain about USF's improper conduct as set forth above.

61. Instead of taking account of the warnings and insights of Mr. Hagen's experience, on August 4, 2023, USF terminated him.

62. As a consequence of Defendants' retaliatory conduct, Mr. Hagen has suffered lost wages and significant emotional distress, including significant anxiety and sleeplessness.

FIRST CAUSE OF ACTION
(Violation of NYLL § 740)

63. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

64. NYLL § 740 provides that "An employer shall not take any retaliatory action against an employee . . . because such employee . . . discloses, or threatens to disclose . . . an activity, policy or practice of the employer that the employee reasonably believes is in violation of law, rule or regulation or that the employee reasonably believes poses a substantial and specific danger to the public health or safety . . . or (c) objects to, or refuses to participate in any such activity, policy or practice."

65. By the conduct described above, in response to Plaintiff's protected complaints, Defendant subjected Plaintiff to discrimination and retaliation, including but not limited to termination and/or reducing his compensation.

66. Defendant's retaliatory action was willful, malicious, or wanton.

67. As a direct and proximate result of Defendant's retaliatory conduct in violation of Section 740, Plaintiff has suffered, and continues to suffer, monetary and non-monetary loss for which he is entitled to an award of monetary damages and other relief, to the greatest extent permitted by law.

68. Plaintiff is entitled to all other available remedies and/or damages, including but not limited to punitive damages, and attorneys' fees and expenses.

SECOND CAUSE OF ACTION
(Violation of the NYSHRL)

69. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

70. Defendant retaliated against Plaintiff because he opposed unlawful discrimination.

71. As a direct and proximate result of Defendant's unlawful retaliatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, monetary and non-monetary loss for which he is entitled to an award of monetary damages and other relief, to the greatest extent permitted by law.

72. Plaintiff is entitled to all other available remedies and/or damages, including but not limited to punitive damages, and attorneys' fees and expenses.

THIRD CAUSE OF ACTION
(Violation of the NYCHRL)

73. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

74. Defendant retaliated against Plaintiff because he opposed unlawful discrimination.

75. As a direct and proximate result of Defendant's unlawful retaliatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, monetary and non-monetary loss for which he is entitled to an award of monetary damages and other relief, to the greatest extent permitted by law.

76. Plaintiff is entitled to all other available remedies and/or damages, including but not limited to punitive damages, and attorneys' fees and expenses.

PRAYER FOR RELIEF

Wherefore, Plaintiff Randy Hagen demands that a judgment be entered in his favor and that the Court order and award Plaintiff the following relief against Defendant:

A. An award of damages against Defendant, in an amount to be determined at trial, plus interest, to compensate for all compensatory damages;

B. An award of damages against Defendant, in an amount to be determined at trial, plus interest, to compensate for all non-monetary and/or compensatory damages, including, but not limited to, compensation for Plaintiff's emotional distress;

C. A civil penalty not to exceed \$10,000;

D. Pre-judgment interest on all amounts due;

E. An award of attorneys' fees and costs;

F. An award of punitive damages; and

G. Such other and further relief as the Court may deem just and proper.

Dated: Melville, New York
April 11, 2024

Respectfully submitted,

By: /s/ Troy L. Kessler
Troy L. Kessler

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