

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

CATHERINA LORENA CENZON-DECARLO,

Civil Case No:

Plaintiff,

v.

VERIFIED COMPLAINT

THE MOUNT SINAI HOSPITAL, a New York Not-for-Profit Corporation,

Jury Trial Demanded

Defendant.

PRELIMINARY STATEMENT

1. This action seeks injunctive and declaratory relief on behalf of CATHERINA LORENA CENZON-DECARLO (herein “MRS. DECARLO”), a nurse who in May 2009 was forced by Defendant THE MOUNT SINAI HOSPITAL (“Mount Sinai”), to assist in the abortion of a 22-week-old preborn child despite her longstanding religious objection to participating in lethal abortions. Mount Sinai blatantly violated federal law by threatening Mrs. DeCarlo’s job and nursing license unless she would assist in the late-term abortion. Then when Mrs. DeCarlo tried to use appropriate channels to seek to have her rights of conscience respected, Mount Sinai condoned the compulsion it had exerted against Mrs. DeCarlo in May, declared that she could again be subject to such a mandate at Mount Sinai’s arbitrary discretion, and even resorted to retaliation and brash bullying tactics to get Mrs. DeCarlo to abandon her rights.

2. Mrs. DeCarlo asks the Court to order Mount Sinai to refrain from mandating employees to assist in abortion over their conscientious objection. Pursuant to the Church Amendment, 42 U.S.C. § 300a7(c), which protects the right of conscience of pro-life health care

workers employed by recipients of federal Health and Human Services funding, Mrs. DeCarlo also seeks an order requiring Mount Sinai to disgorge an appropriate portion of the millions of dollars in federal funding it has received in the last several years, and ordering that the hospital be disqualified from receiving additional funding unless and until it demonstrates compliance with the Church Amendment.

3. Mrs. DeCarlo also seeks compensatory and punitive damages for the psychological and other harms that she incurred from being forced to assist in the 22-week abortion on May 24, and for future financial harms from the retaliatory actions that Mount Sinai is taking against her by depriving her of the ability to work on-call shifts solely because of her religious objection to assisting in abortion.

JURISDICTION AND VENUE

4. Jurisdiction of this Court is invoked pursuant to Title 28 U.S.C. § 1331 and 42 U.S.C. § 300a7(c) as an action arising under the laws of the United States.

5. This Court has authority to declare the rights and legal relations of the parties and to order further relief, pursuant to 28 U.S.C. §§ 2201–02, because this is a case of actual controversy within this Court's jurisdiction.

6. Venue is proper under 28 U.S.C. § 1391(b)(1) and (c). Mount Sinai owns and operates a hospital in Queens, New York, called Mount Sinai Hospital at Queens, located at 2510 30th Avenue, Astoria, New York 11102.¹ This subjects Mount Sinai to personal jurisdiction in the Eastern District of New York, making venue proper in this district.

PARTIES

¹ Website, available at <http://www.mshq.org/Who%20We%20Are/Mount%20Sinai%20Queens%20History> (last visited on July 10, 2009).

7. Plaintiff Catherina Lorena Cenzon-DeCarlo is a natural person who at all times relevant to this action has resided in Brooklyn, New York, and has been employed by Mount Sinai Hospital.

8. Mrs. DeCarlo is a citizen of the Philippines. She has been a permanent legal resident of the United States since 2001 and is married to an American citizen, Paul DeCarlo, also of Brooklyn.

9. Defendant The Mount Sinai Hospital is a not-for-profit corporation organized under the laws of the State of New York, and is located at One Gustave L. Levy Place, New York, New York, 10029 and at 2510 30th Avenue, Astoria, New York 11102.

STATEMENT OF FACTS

10. Catherina Cenzon DeCarlo has devoted her career to the profession of operating room nursing.

11. She chose nursing over more lucrative careers because of her passion for helping patients and the fulfillment she receives from assisting in a wide variety of specialized procedures with excellence and professionalism.

12. Mrs. DeCarlo is a practicing member of the Roman Catholic Church. Her uncle is a bishop of that Church in the Philippines, and she was raised in a very devout Catholic family that was immersed in the religious culture of her community.

13. She has a strongly-held religious and moral belief that she may not participate in abortion procedures that kill preborn children.

14. Mrs. DeCarlo received her initial training and experience in nursing in her home country of the Philippines.

15. Mrs. DeCarlo graduated with a Bachelor of Science degree in nursing from St. Louis University in Baguio City, Philippines, in 1995. She passed the Philippine Board to become a Registered Nurse, she was certified by the Commission on Graduates of Foreign Nursing Schools, and she passed the TOEFL and TSE exams in English language proficiency. Mrs. DeCarlo as issued a visa screen certificate.

16. Mrs. DeCarlo served for one year in the Philippine National Red Cross working in several areas including rescue and first aid training. Then she worked for one year as a volunteer nurse in the medical unit of Baguio General Hospital and Medical Center.

17. In 1997 Mrs. DeCarlo switched fields and began working as a pharmaceutical representative, though she continued volunteering as a nurse during that time. Despite making more money than she had as a nurse, she missed the rewards and challenges of her nursing career.

18. Therefore Mrs. DeCarlo returned to nursing full-time. In 1998 she began as a staff nurse at The Medical City, a major hospital in Mandaluyong City, Philippines, near Manila.

19. While at The Medical City, she worked as an operating room, labor and delivery, and recovery room nurse. She also specialized in kidney transplants, ophthalmic, ear/nose/throat, plastic and vascular surgeries.

20. During her time at Medical City, Mrs. DeCarlo treated many patients with pregnancy complications, including many with preeclampsia. She gained extensive experience in managing such patients with the goal of preserving the life of both the woman and her unborn child. She gained knowledge of the pathologies that can arise in such patients and how to treat them. She saw that as long as they were properly monitored and medicated, patients could be

successfully managed to a stage of pregnancy where the child could be delivered alive with a good chance of survival.

21. While at Medical City Mrs. DeCarlo spoke with colleagues who had trained and worked in the United States. She learned that America offered experienced nurses such as herself tremendous opportunities to work on challenging and interesting cases, and to have the freedom to excel in their professions if they worked hard and continued to improve their skills.

22. Inspired by these stories, Mrs. DeCarlo moved to New York in 2001 to work under an alien worker immigrant visa.

23. Mrs. DeCarlo initially held staff nursing jobs at a rehabilitation facility and then at an acute care teaching hospital in Far Rockaway, New York. At the latter, she served in the endoscopy, ambulatory surgery and medical-surgical units and assisted in many surgical cases as well as providing total nursing care of patients.

24. In 2003 Mrs. DeCarlo was hired as an operating room and endoscopy staff nurse at a community teaching hospital in Far Rockaway, New York. She assumed circulating and scrub nurse responsibilities and covered many surgical cases in an environment where comprehensive knowledge and practice of nursing theories were promoted.

25. In July 2004, Mrs. DeCarlo met Paul DeCarlo of Brooklyn, and they married in 2005.

26. At the time of this lawsuit Mr. and Mrs. DeCarlo have a one-year-old child.

27. The DeCarlos are dependent on both Mr. and Mrs. DeCarlo's salaries, including the many on-call shifts that Mrs. DeCarlo works each month at Mount Sinai.

28. In August 2004, Mrs. DeCarlo was hired as an operating room nurse at The Mount Sinai Hospital.

29. Mrs. DeCarlo wanted to work at Mount Sinai because of their expertise in various and complicated surgeries, including liver transplants and neurosurgery.

30. At Mount Sinai, Mrs. DeCarlo has received exemplary performance reviews.

31. She has also earned the respect and professional appreciation of her superiors and of the doctors on whose cases she has worked.

32. Mrs. DeCarlo is recognized at Mount Sinai as having a high level of expertise among her operating room nurse peers, being experienced and highly competent in neurosurgery, gynecology, urology, orthopedics, ophthalmology, and liver transplants, as well as general surgery, vascular, otolaryngology, gastrointestinal, oral surgery, respiratory surgery, and plastic surgery.

33. During her job interview with Mount Sinai in 2004, Mount Sinai officials asked Mrs. DeCarlo about her willingness to assist in abortions.

34. Mrs. DeCarlo communicated that because of her religious views she objected to assisting in any abortion of children still living, though she did not have an objection to assisting with the removal of babies who had miscarried.

35. The Mount Sinai officials who hired Mrs. DeCarlo expressed no concerns with her objection to assisting in abortion.

36. When Mrs. DeCarlo was hired in 2004 and continuing through the present, Mount Sinai Hospital has had a written policy by which it represents to employees that they may, without penalty, object to assisting in abortion consistent with patient rights, care and treatment. That policy, Human Resources Policy—Exclusion from Patient Care—Employee Rights #15.3, is attached as Exhibit A.

37. As part of her application process, Mrs. DeCarlo filled out a form given to her by Mount Sinai, which explicitly gave her the opportunity to object to participation in abortion.

38. Consistent with her statements during her job interviews, Mrs. DeCarlo filled out the sections of that form expressing her objection to participation in abortion.

39. Neither her oral nor her written objection to participation in abortion was an obstacle to Mrs. DeCarlo being hired in August 2004.

40. In addition to working full-time work weeks at Mount Sinai, Mrs. DeCarlo often worked on-call shifts on weekends and holidays.

41. On-call shifts are a benefit and privilege of employment for qualified nursing employees at Mount Sinai such as Mrs. DeCarlo.

42. Qualified employees are allowed to volunteer for these on-call shifts, but if there are not enough volunteers, Mount Sinai will assign employees to the shifts on a mandatory basis.

43. Mount Sinai required Mrs. DeCarlo to be willing to work on-call shifts as a condition of employment.

44. Employees on the on-call shifts earn a fraction of their regular hourly rate when not called, and an increased hourly rate when they are called.

45. The on-call shifts are separated into three teams according to employee expertise.

46. “Team 1” handles surgeries of a basic expertise level for operating room nurses at Mount Sinai, and its scope includes general surgery, vascular, otolaryngology, G.I., oral surgery, respiratory surgery, and plastic surgery.

47. “Team 2” handles complex and specialized surgeries, including neurosurgery, gynecology, urology, orthopedics, and ophthalmology.

48. A third team handles liver transplants, also a specialized procedure.

49. Despite these team designations, nurses who volunteer for and are serving on one team may be assigned by Mount Sinai to handle a surgery encompassed by another team if other nurses are unavailable and if the nurse has the requisite competence for the procedure.

50. Mrs. DeCarlo is experienced and competent in the surgeries of all three teams.

51. Mrs. DeCarlo is so proficient in Team 2 surgeries that Mt. Sinai has asked her on many occasions to take Team 2 calls when other nurses have chosen not to take them.

52. Mrs. DeCarlo has always performed her on-call duties with the utmost level of expertise and professionalism.

53. In a typical month, Mrs. DeCarlo has taken 8-9 on-call shifts of various kinds, tending to focus on Team 2 surgeries.

54. Mount Sinai also performs abortions, which are generally scheduled for Saturday mornings.

55. Many abortions that occur at Mount Sinai outside of Saturday mornings are dilation and curettage (D&C) first-trimester abortions.

56. D&C is also used in cases where preborn children have miscarried, in order to remove the baby and other uterine contents from the woman.

57. In a dilation and evacuation (D&E) abortion, the mother's cervix is dilated, and after sufficient dilation the mother is placed under anesthesia or sedation. The doctor then inserts grasping forceps through the mother's cervix and into the uterus. The doctor grips a part of the preborn child with the forceps and pulls it back through the cervix and vagina even after meeting resistance from the cervix. That friction causes the preborn child to tear apart. The process of evacuating the preborn child piece by piece continues until the child has been completely removed.

58. Even though gynecology is a Team 2 category, D&C and D&E abortions are sufficiently simple that operating room nurses who qualify for Team 1 are technically competent to participate in those procedures.

59. Mrs. DeCarlo has handled and is willing to participate in D&C miscarriage cases, but not in D&C or other abortion cases where the procedure intentionally kills the child, such as D&E abortions.

60. Mount Sinai has known Mrs. DeCarlo's views on her willingness to assist in abortion since it hired her.

61. Mount Sinai has a group of nurses who are willing to participate in abortions and regularly do so when asked.

62. From August 2004 to mid-May 2009, there were some times when Mount Sinai specifically avoided assigning Mrs. DeCarlo to abortion cases by means of choosing not to call Mrs. DeCarlo to those cases in the first place.

63. In at least one instance between August 2004 to mid-May 2009, when Mrs. DeCarlo was called to work on an abortion case, Mrs. DeCarlo clarified that she only handles miscarriage cases, and Mount Sinai arranged for another nurse to take the case.

64. Upon information and belief, from August 2004 to mid-May 2009 Mount Sinai sometimes violated the right of conscience of other nurses by forcing them to assist in abortions to which they expressed a religious or moral objection.

65. On Sunday, May 24, 2009, Mrs. DeCarlo was working on call on Team 2.

66. Her shift began at 7:00 a.m.

67. Team 1 and 2 on-call nurses have the option of being off campus if they can arrive at the hospital within 30 minutes of the call and be scrubbed within 5 minutes of arrival. Alternatively, the nurses can stay in the on-call room at Mount Sinai during their shift.

68. Mrs. DeCarlo always stays in the on-call room for her on-call shifts, and that is where she was at 7:00 am on May 24th.

69. Earlier in the morning of May 24th, Dr. Michael Silverstein, Assistant Clinical Professor at the medical school that is part of Mount Sinai, had scheduled a woman via telephone through the OR receptionist for a 20-week age of gestation abortion (that later was revealed to be a 22-week age of gestation abortion) to occur that morning.

70. The abortion would be done by D&E on a preborn child still alive.

71. At 7:15 am, Mrs. DeCarlo walked to the receptionist to see if she had been assigned to any surgeries.

72. The receptionist told her she was assigned to a "D&C" case.

73. Neither the receptionist (according to what he told Mrs. DeCarlo later) nor Mrs. DeCarlo knew that she was being assigned to a second-trimester abortion on a live child.

74. Mrs. DeCarlo immediately went to the assigned surgery room and began preparing the room. The patient was not yet present.

75. While she was in the room, the case cart arrived with instruments that Mrs. DeCarlo recognized as being possibly used for non-miscarriage abortions.

76. She then examined the paperwork for the case more closely. The case form that Mrs. DeCarlo saw had virtually illegible handwriting.

77. Mrs. DeCarlo began to wonder whether the abortion was on a live child, and what the patient's diagnosis was.

78. At 7:30 am, Mrs. DeCarlo called the resident assigned to the case, Dr. Noel Strong.

79. She asked Dr. Strong about the case. Dr. Strong explained to her that the woman was diagnosed with preeclampsia, and that the preborn child in the case was still alive.

80. Mrs. DeCarlo then knew that she had been assigned to a case where a living 22-week-old preborn child would be dismembered and killed.

81. Mrs. DeCarlo also knew from experience that the mother had a diagnosis that she had personally treated in many women without any need to kill the child.

82. At 7:30 am, Mrs. DeCarlo, consistent with her prior written objection to participating in abortion, unequivocally expressed to Dr. Strong that she would not participate in the abortion.

83. Mrs. DeCarlo told Dr. Strong not to send the case up to the room until a nurse was assigned who would handle the case.

84. Mrs. DeCarlo then immediately called her nursing supervisor, Ms. Fran Carpo, and expressed her objection to participating in this case.

85. Mrs. DeCarlo reminded Ms. Carpo that her religious objection was known, was longstanding, and that she had not previously been forced to assist in an abortion

86. Ms. Carpo said she would call her supervisor, Ms. Ella Shapiro, to ask whether Mrs. DeCarlo could be excused from the case.

87. Ms. Carpo said that in the meantime Mrs. DeCarlo should call the receptionist to begin gathering contact information for other nurses who could cover this case. Mrs. DeCarlo did so.

88. In a few minutes Ms. Carpo called Mrs. DeCarlo back and told her that Mrs. DeCarlo must assist in the 22-week D&E abortion.

89. Mrs. DeCarlo repeated her longstanding objection and pleaded with Ms. Carpo that Mount Sinai not force her to assist in this abortion against her strongly held religious beliefs.

90. Mrs. DeCarlo asked Ms. Carpo to call other nurses to the case since so little time had elapsed before Mrs. DeCarlo had voiced her objection.

91. Ms. Carpo said that Ms. Shapiro had insisted that Mrs. DeCarlo assist on the case, and had prohibited Ms. Carpo from even trying to call other nurses to cover the case.

92. Ms. Carpo also said that Dr. Silverstein had yelled at her over the phone in opposition to any delay in the case as a result of Mrs. DeCarlo's request for accommodation.

93. Ms. Carpo claimed that the mother could die if Mrs. DeCarlo did not assist in the abortion.

94. Mrs. DeCarlo explained to Ms. Carpo that the patient could not be in such immediate danger because based on what Dr. Silverstein had told Ms. Carpo over the phone, the patient was not even on magnesium therapy, which is a medical requirement for preeclamptic patients in crisis. But Ms. Carpo rejected this argument.

95. Neither Mount Sinai, nor the patient's care, would have been prejudiced in any way if Mount Sinai had called another nurse to take the case when Mrs. DeCarlo expressed her specific objection 15 minutes after she was called to the case.

96. Ms. Carpo herself was qualified to perform this case herself and could have done so without any significant delay in the case.

97. Ms. Carpo said that if Mrs. DeCarlo did not participate in the case, Mrs. DeCarlo would be brought up on charges of "insubordination and patient abandonment."

98. A charge of patient abandonment would severely jeopardize Mrs. DeCarlo's employment and her nursing license and consequently her career and her and her family's livelihood.

99. A charge of insubordination would severely jeopardize Mrs. DeCarlo's employment and her future employability.

100. Mrs. DeCarlo began to cry and said she would even get her priest on the phone to explain that she could not assist in the killing of a 22-week-old child, and pleaded for this reason to be excused from the case.

101. Despite all of Mrs. DeCarlo's urgings, Ms. Carpo insisted that Mrs. DeCarlo participate in the abortion case.

102. Mrs. DeCarlo was distraught and devastated because Mrs. DeCarlo and her family could not afford for her to lose her job or her nursing license.

103. Mrs. DeCarlo therefore stated that she was acceding to Ms. Carpo's dictate, though in protest.

104. Mrs. DeCarlo returned to the surgery room and finished her pre-surgery duties.

105. She treated the patient with utmost respect and professionalism.

106. She made sure that the patient had no knowledge of her opposition to participating.

107. Nevertheless, the scrub technician and the anesthesiologist on the case expressed surprise to see Mrs. DeCarlo assisting.

108. Mrs. DeCarlo explained to them, outside of the patient's presence, that she was being forced to participate under protest, but that she would maintain excellent care for the patient.

109. The scrub technician and anesthesiologist expressed complete sympathy with Mrs. DeCarlo.

110. By being forced to participate in the abortion, Mount Sinai forced Mrs. DeCarlo to witness the killing of a 22-week-old preborn child by dismemberment.

111. Because it was included in the requirements of her nursing duties as an assistant on the case, Mount Sinai forced Mrs. DeCarlo to watch the doctor remove the bloody arms and legs of the child from its mother's body with forceps.

112. Because it was included in the requirements of her nursing duties as an assistant on the case, Mount Sinai forced Mrs. DeCarlo to view the bloody body parts of the 22-week-old preborn child in the specimen cup, to put saline in the cup, and to take it to the specimen area.

113. Mount Sinai's protocols contain several categories of surgeries to identify their urgency and priority, including various levels of emergencies. Exhibit B.

114. Surgeries placed in Category I involve "Patients requiring immediate surgical intervention for life or limb threatening conditions." *Id.*

115. None of the Mount Sinai officials or doctors on this abortion case labeled it a surgery requiring immediate surgical intervention for life or limb threatening conditions.

116. Instead Dr. Silverstein labeled the abortion a Category II, which applies to "Patients requiring surgery within 6 hours of identification and notification." *Id.*

117. The Category II designation of this abortion shows that the patient did not require Mrs. DeCarlo's immediate surgical intervention assistance.

118. At 7:30 a.m. when Mrs. DeCarlo was ordered to assist in this abortion, there was plenty of time to find a nurse to assist the surgery even within the specifications of Category II.

119. This abortion did not even rise to the level of a Category II surgery that had to be done within 6 hours.

120. Likewise, there was no need to perform actions within six hours that intentionally killed the child such as a D&E abortion.

121. The patient could have been maintained in stable condition until Mount Sinai assigned a nurse other than Mrs. DeCarlo to the case who would be willing to assist the abortion.

122. Mrs. DeCarlo observed no indications that this abortion was a medical emergency requiring her assistance.

123. For example, when the patient was brought into the room for surgery, her blood pressure was not at a crisis value, and other standard measures for patients in crisis had not been taken on this patient.

124. Preeclamptic patients can be kept stable until later in pregnancy when labor can be induced or a c-section performed so that the child is delivered intact, is not directly killed, and has a chance to survive.

125. Mount Sinai violated HR/ER # 15.3 when Ms. Carpo and Ms. Shapiro ordered Mrs. DeCarlo to assist in this abortion.

126. Being forced to assist in this abortion has caused Mrs. DeCarlo extreme emotional, psychological, and spiritual suffering.

127. Mrs. DeCarlo has experienced nightmares about children in distress, has lost sleep, and has suffered in her personal and religious relationships because of being forced to assist in this abortion.

128. Mrs. DeCarlo has had to receive treatment from her attending physician to address her psychological symptoms. He prescribed medication to help her sleep.

129. On the next business day after the abortion, Mrs. DeCarlo brought complaints to her supervisors and her union about having been forced to assist in an abortion.

130. Based on being forced to assist in this abortion, Mrs. DeCarlo caused a grievance to be filed with her union and supervisors for violation of the collective bargaining agreement between Mount Sinai and the New York State Nurses Association.

131. In informal conversations with Mrs. DeCarlo and union representatives, Mount Sinai officials stated that employees must be willing to assist in abortions in circumstances that Mount Sinai determines, including the circumstances that Mrs. DeCarlo suffered on May 24th.

132. Abortion cases such as the one that occurred on May 24th can arise during on-call shifts or during the work week.

133. Consequently, whether or not Mrs. DeCarlo is assigned to further on-call duty, she reasonably fears that she could again be compelled to participate in an abortion.

134. After having filed her grievance, Mrs. DeCarlo volunteered as usual to be assigned to on-call cases for the next month not yet scheduled, August 2009.

135. On July 1, 2009, the on-call schedule for August was finalized.

136. Mrs. DeCarlo was given only one on-call shift in August 2009, on one liver team shift.

137. Although Mount Sinai officials initially claimed that the failure to assign Mrs. DeCarlo to her usual 8–9 shifts in August was merely inadvertent, the hospital's subsequent actions indicate that it intends to retaliate against Mrs. DeCarlo because of her request that her religious objection to assisting in abortion be honored, and because of the grievance procedure that she filed.

138. On July 9, 2009, Mrs. DeCarlo's union representative Crystal Shipp called her and informed her that Mount Sinai wanted to meet on Thursday, July 16, at noon, to discuss the grievance and whether Mrs. DeCarlo may object to assisting in abortion.

139. On July 16, Mrs. DeCarlo and her attorney Joseph Ruta presented themselves at the meeting location.

140. Ms. Shipp and another representative of the union Ms. Lucille Sollazzo informed Mrs. DeCarlo that neither the union nor Mount Sinai would conduct the meeting if Mr. Ruta was present.

141. Nothing in the bargaining agreement prevents Mr. Ruta from being present at such a meeting.

142. Because Mr. Ruta was present, Mount Sinai and the union cancelled the meeting.

143. This violated the union agreement, which entitles Mrs. DeCarlo to an opportunity to resolve the grievance process through such a meeting.

144. Just a few hours later on July 16, Mrs. DeCarlo was cornered in the hospital by Beata Mastalerz, her clinical manager. Ms. Mastalerz asked Mrs. DeCarlo to come into her office.

145. Ms. Mastalerz told Mrs. DeCarlo that Mrs. DeCarlo's request to be assigned to on-call shifts in September would be conditioned upon Mrs. DeCarlo being willing to write and sign a statement promising that she was willing to assist in D&C and D&E abortions if the hospital declared that such cases were "emergencies" requiring her assistance.

146. This requirement violates 42 U.S.C. § 300a-7(c).

147. Mrs. DeCarlo refused to sign such a statement, saying that she had already signed a notice that she objects to assisting in abortion pursuant to written hospital policy.

148. Ms. Fran Carpo then came into the room and attempted to convince Mrs. DeCarlo to write and sign such a statement. Ms. Carpo was one of the Mount Sinai officials who was to be at the cancelled meeting earlier that day.

149. Mrs. DeCarlo began to cry and continued to refuse, telling Ms. Mastalerz and Ms. Carpo that she had always opposed assisting abortion from the day she was hired, and that other nurses also oppose assisting abortion but they were not being required to sign statements agreeing to assist abortions as a condition that they be assigned to on-call shifts.

150. On information and belief, Mount Sinai has not imposed against any other nurse the requirement that they fill out a specific written expression of willingness to assist in some abortions as a condition of being assigned to on-call shifts.

151. Mrs. DeCarlo asked to leave the room to compose herself but Ms. Mastalerz and Ms. Carpo refused, insisting that she sit down and continuing to try to convince her to sign away her objection to abortion.

152. As Mrs. DeCarlo became more distraught she was finally able to convince Ms. Mastalerz and Ms. Carpo to allow her to leave to compose herself.

153. By imposing this condition, Mount Sinai condoned and acquiesced in the illegal compulsion it had applied to Mrs. DeCarlo on May 24, and it imposed a policy by which it assumed the ability to compel health care personnel assistance in abortion at its discretion.

154. Mrs. DeCarlo will suffer financial damage from being deprived of the income of working on-call shifts.

155. Mount Sinai receives millions of dollars of federal funding administered by the United States Department of Health and Human Services (“HHS”).

156. In the past several years, Mount Sinai has received a grant, contract, loan, or loan guarantee under the Public Health Service Act [42 U.S.C. § 201 et seq.], the Community Mental Health Centers Act [42 U.S.C. § 2689 et seq.], and/or the Developmental Disabilities Services and Facilities Construction Act [42 U.S.C. § 6000 et seq.].

157. In the past several years, Mount Sinai has received a grant or contract for biomedical or behavioral research under a program administered by HHS.

158. Funds in the above-mentioned categories include funds described as follows:

- The most recent report from HHS shows that Mount Sinai received over \$211 million in federal discretionary grant dollars *in fiscal year 2007 alone*, ranking it 29th in the nation among grant recipients. Exhibit C.² Upon information and belief, Mount Sinai receives a similar amounts of funding every year, including 2008 and 2009.
- Mount Sinai regularly receives family planning grant funds as a delegate and clinic recognized by HHS's Office of Population Affairs. Exhibit D at 6.³ Those funds originate in subchapter VIII of the Public Health Services Act, 42 U.S.C. § 300–300a-8.
- Mount Sinai received over \$175,000 in 2007 and 2008 in grants for HIV-related dental health services. Exhibit E.⁴ Those funds are managed by HHS's Health Resources and Services Administration and they originate from subchapter XXIV of the Public Health Services Act, 42 U.S.C. § 300ff–300ff-121.
- Mount Sinai participates in grant awards under the titles of the Center for Achieving and Sustaining Improved Health in Harlem, and Collaborations for Health Improvement in East Harlem—Project Heed. Exhibit F.⁵ The grant program started in 2002 but has continued through 2009 and has totaled over \$14 million. The grants are awarded through the National Institutes of Health's National Center on Minority Health and Health Disparities, and are authorized by subchapter III of the Public Health Services Act, 42 U.S.C. §§ 241, 285, & 287c-31–c-33.
- Mount Sinai received a \$333,902 grant in late 2005 for construction and renovation of its

² Exhibit C was obtained from http://taggs.hhs.gov/AnnualReport/FY2007/documents/TAGGS_2007_Annual_Report.doc (last viewed July 17, 2009).

³ Exhibit D was obtained from <http://www.hhs.gov/opa/familyplanning/grantees/services/> and http://www.hhs.gov/opa/familyplanning/grantees/services/titlexgdcg_regii.pdf (last viewed July 17, 2009).

⁴ Exhibit E was obtained from <http://hab.hrsa.gov/programs/dentallist.htm> (identifying Mount Sinai), <http://hab.hrsa.gov/treatmentmodernization/dentalrosters.htm> (2007 award amount), and <http://hab.hrsa.gov/treatmentmodernization/dentalrosters2008.htm> (2008 award amount) (last viewed July 17, 2009).

⁵ Exhibit F was obtained through conducting a search at <http://taggs.hhs.gov> (last viewed July 17, 2009)

branch hospital in Queens, New York. See Exhibit G.⁶ The grant was received through HHS's Health Resources and Services Administration and was funded through various subchapters of the Public Health Services Act. See 118 Stat. 2809, 3122-23 (2005).

159. By accepting the funds referred to above and other federal funding, Mount Sinai has voluntarily subjected itself to the Church Amendment, 42 U.S.C. § 300a-7(c).

160. That section of the Church Amendment provides as follows:

(c) Discrimination prohibition

(1) No entity which receives a grant, contract, loan, or loan guarantee under the Public Health Service Act [42 U.S.C. § 201 et seq.], the Community Mental Health Centers Act [42 U.S.C. § 2689 et seq.], or the Developmental Disabilities Services and Facilities Construction Act [42 U.S.C. § 6000 et seq.] after June 18, 1973, may--

(A) discriminate in the employment, promotion, or termination of employment of any physician or other health care personnel, or

(B) discriminate in the extension of staff or other privileges to any physician or other health care personnel,

because he performed or assisted in the performance of a lawful sterilization procedure or abortion, because he refused to perform or assist in the performance of such a procedure or abortion on the grounds that his performance or assistance in the performance of the procedure or abortion would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting sterilization procedures or abortions.

(2) No entity which receives after July 12, 1974, a grant or contract for biomedical or behavioral research under any program administered by the Secretary of Health and Human Services may--

(A) discriminate in the employment, promotion, or termination of employment of any physician or other health care personnel, or

(B) discriminate in the extension of staff or other privileges to any physician or other health care personnel,

because he performed or assisted in the performance of any lawful health service or research activity, because he refused to perform or assist in the

⁶ Exhibit G was obtained through conducting a search at <http://taggs.hhs.gov> (last viewed July 17, 2009)

performance of any such service or activity on the grounds that his performance or assistance in the performance of such service or activity would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting any such service or activity.

161. There is no “medical necessity” exception to section (c) of the Church Amendment.

FIRST CAUSE OF ACTION:
VIOLATION OF THE CHURCH AMENDMENT
42 U.S.C. § 300a-7(c)

162. The allegations of the paragraphs above are reasserted here.

163. By threatening insubordination and patient abandonment against Mrs. DeCarlo unless she assisted in the abortion on May 24, 2009, Mount Sinai committed discrimination in the employment, promotion, or termination of employment of health care personnel, and discrimination in the extension of staff or other privileges to health care personnel in violation of 42 U.S.C. § 300a-7(c).

164. By adopting a position that refuses to honor Mrs. DeCarlo’s objection and the objections of other health care personnel to abortions in the future, but instead requires that they be willing to assist in abortions as Mount Sinai decides is necessary in its own discretion despite the health care personnel’s religious objections, Mount Sinai continues to commit discrimination in the employment, promotion, or termination of employment of health care personnel, and discrimination in the extension of staff or other privileges to health care personnel in violation of 42 U.S.C. § 300a-7(c).

165. By conditioning Mrs. DeCarlo’s ability to work on-call shifts on the requirement that she promise that she is willing to assist in abortions, Mount Sinai is committing discrimination in the employment, promotion, or termination of employment of health care

personnel, and discrimination in the extension of staff or other privileges to health care personnel in violation of 42 U.S.C. § 300a-7(c), and is discriminatorily retaliating against her on the basis of her religious objection and her attempts to protect that objection in the bargaining agreement grievance procedure and by obtaining counsel.

166. Mount Sinai Hospital is liable for the discriminatory actions of Mrs. DeCarlo's superiors because they were following Mount Sinai's policy and practice that it may violate employee conscience rights if Mount Sinai officials believed it was required for patient care.

167. Mount Sinai Hospital is liable for the discriminatory actions of Mrs. DeCarlo's superiors because it acquiesced and subsequently condoned those actions.

168. Mount Sinai Hospital is liable for the discriminatory actions of Mrs. DeCarlo's superiors under the doctrine of respondeat superior, because those superiors were acting in the scope of their authority from Mount Sinai to alter the terms and conditions of her employment on condition that she succumb to a violation of her conscientious objection rights.

169. Mount Sinai Hospital is liable for discrimination against Mrs. DeCarlo by means of its current position that it has discretion to violate Mrs. DeCarlo's and other health care personnel's conscientious objection to abortion in the future.

170. Mrs. DeCarlo has suffered and continues to suffer emotional and psychological damages from the harm caused to her by Mount Sinai's discrimination.

171. Mrs. DeCarlo will suffer financial damages from Mount Sinai's discriminatory and retaliatory removal of her from on-call shifts on the condition that she sign away her religious objection to assisting in abortions.

172. Mrs. DeCarlo and other similarly situated pro-life employees continue to suffer irreparable harm by Mount Sinai's policy that employee conscience rights may be violated and

their work privileges be removed on condition of such violations, thereby giving rise to the need for injunctive relief against Mount Sinai.

WHEREFORE, Mrs. DeCarlo respectfully seeks judgment against the Mount Sinai Defendants as follows:

A. A declaratory judgment finding that Mount Sinai Hospital has violated and continues to violate the Church Amendment, 42 U.S.C. § 300a7(c), and Mrs. DeCarlo's rights thereunder;

B. An injunction:

1. Ordering Defendants to comply with 42 U.S.C. § 300a7(c) by refraining from forcing Mrs. DeCarlo or any health care personnel to participate in abortion;
2. Ordering Defendants to restore Mrs. DeCarlo to her past level of access to on-call teams and to honor her conscientious objection to participation in abortion on those teams;
3. Ordering Defendants to disgorge the funds discussed in 42 U.S.C. § 300a7(c) as triggering that section's applicability, in an appropriate amount commensurate with Defendants' discriminatory actions to be determined at the Court's discretion and as a penalty for Defendants' violation of Mrs. DeCarlo's rights; and
4. Prohibiting Defendants from receiving qualifying funds under 42 U.S.C. § 300a7(c) unless and until Defendants demonstrate compliance with the non-discrimination provisions of that section in policy and practice.

C. Damages, in an amount to be determined at trial, for all harms that Mrs. DeCarlo has suffered and will suffer because of Mount Sinai's violation of her rights under

42 U.S.C. § 300a7(c), as well as punitive damages for Mount Sinai's blatant violation of employee rights under 42 U.S.C. § 300a7(c);

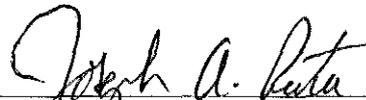
- D. An award of reasonable attorneys' fees disbursed and incurred in this action;
- E. Any other and further relief as this Court would deem necessary and proper.

Plaintiff requests a jury trial on all claims so triable.

DATED: July 21, 2009,

New York, New York.

Respectfully submitted,



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**Pro hac vice applications pending.*

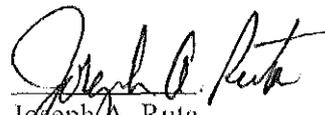
CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2009, 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 Eastern District's Local Rules, and/or the Eastern District's Rules on Electronic Service upon the following parties and participants:

The Mount Sinai Hospital
One Gustav L. Levy Place
New York, NY 10029

Service on this party was accomplished by means of service on the corporate party's agent the New York Secretary of state at the following address:

Department of State
One Commerce Plaza
99 Washington Avenue, 6th Floor
Albany, NY 12231


Joseph A. Ruta
RUTA & SOULIOS, LLP.
1500 Broadway – 21st Floor
New York, NY 10036

VERIFICATION

Pursuant to 28 U.S.C. § 1746, I, Catherina Lorena Cenzone-DeCarlo, declare the following:

I am the named plaintiff in the above mentioned case. I have read the foregoing Verified Complaint and state under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated this 17th day of July, 2009


Catherina Lorena Cenzone-DeCarlo