

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

ROBERT T. GOLD, DDS, P.C. D/B/A
SMILES ON HUDSON

Plaintiff-Counter-Defendant,

v.

DEMETRA MALAMATENIOS, DDS,

Defendant-Counter-Plaintiff,

v.

ROBERT T. GOLD, DDS, *in his individual
and professional capacities,*

Counter-Defendant.

Index No. 58250/2023

**ANSWER TO COMPLAINT WITH
AFFIRMATIVE DEFENSES AND
COUNTERCLAIMS**

Defendant-Counter-Plaintiff Demetra Malamatenios, DDS (“Dr. Malamatenios” or “Defendant”), by and through her attorneys, Filippatos PLLC, hereby answers the complaint of Plaintiff-Counter-Defendant Robert T. Gold, DDS, P.C. D/B/A Smiles on Hudson (“Smiles,” the “Practice,” or “Plaintiff”) (the “Complaint”) and states as follows:

NATURE OF THE CASE¹

1. Defendant denies the allegations set forth in Paragraph 1 of the Complaint, except to admit that Dr. Malamatenios was and still is actively employed by Smiles during the relevant time periods as a Dental Associate.

PARTIES, JURISDICTION, AND VENUE

2. Defendant admits the allegations set forth in paragraph 2.

¹ For ease of reference and continuity, Defendant’s Answer duplicates the headings contained in the Complaint. Although Defendant believes that no response is required to such headings, to the extent a response is deemed required and to the extent those headings and titles could be construed to contain factual allegations, those allegations are completely denied in their entirety.

3. Defendant admits the allegations set forth in paragraph 3, except as to any legal conclusions stated therein which do not require a response by way of admission or denial.

4. Paragraph 4 contains a legal conclusion which does not require a response by way of admission or denial.

5. Defendant admits the allegations set forth in paragraph 5 insofar as she resides in Westchester County, except legal conclusions stated therein which shall be determined by the Court and do not require a response by way of admission or denial.

FACTUAL ALLEGATIONS

A. Smiles' Business

6. Defendant admits the allegations set forth in paragraph 6.

7. As to paragraph 7, Defendant admits that Dr. Robert T. Gold, DDS ("Dr. Gold") purports to be the President owner of Smiles, but lacks knowledge or information to form a belief as to the truth of whether Dr. Gold is a dentist licensed by the State of New York and the *sole* owner of Smiles.

8. Defendant lacks knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 8, but admits that she, as an employee of Smiles, provides quality dental care treatment to its patients.

B. Dr. Malamatenios' Terms of Employment with Smile

9. Defendant admits the allegations set forth in Paragraph 9 of the Complaint.

10. Defendant admits the allegations set forth in Paragraph 10 of the Complaint.

11. As to paragraph 11, Defendant admits that her employment agreement sets forth relevant terms of her employment at Smiles, but denies any implication that the employment agreement sets forth every relevant term or condition of her employment at Smiles.

12. Defendant admits that her employment agreement contains the provisions and language set forth in Paragraph 12 of the Complaint.

13. Defendant admits that her employment agreement contains the provisions and language set forth in Paragraph 13 of the Complaint.

14. Defendant admits that her employment agreement contains the provisions and language set forth in Paragraph 14 of the Complaint.

15. Defendant admits that her employment agreement contains the provisions and language set forth in Paragraph 15 but clarifies that her employment agreement provides that Plaintiff shall compensate her at the rate of 35% of her net production less 33% of the laboratory costs associated with such net production or a daily minimum pay of \$750 averaged over the number of days worked per week, and that she was to receive the greater of the two-dollar amounts.

16. Defendant admits that her employment agreement contains the provisions and language set forth in Paragraph 16 of the Complaint.

17. The matters asserted in paragraph 17 represent legal conclusions rather than an allegation of fact, therefore, do not require a response by way of admission or denial. To the extent a response is required, Defendant lacks information or knowledge to form a belief as to the truth of the allegations in Paragraph 17 of the Complaint.

18. Defendant lacks information or knowledge to form a belief as to the truth of the allegations in Paragraph 18 of the Complaint. To the extent a response is required, Defendant neither admits nor denies the allegations in Paragraph 18 of the Complaint.

19. Defendant admits that her employment agreement contains the provisions and language set forth in Paragraph 19 of the Complaint, but adds that the employee's net production shall include the doctor exam portion of a patient's hygiene visit, and employee's net production

shall not include any other services provided directly by registered dental assistants or hygienists such as those from imaging, prophylaxis, scalings, and other maintenance procedures.

20. Defendant lacks knowledge or information to form a belief as to the truth of the allegations in paragraph 20 but admits that she was paid by the net production calculation as set forth in her employment agreement.

21. Defendant admits the allegations in paragraph 21.

22. Defendant admits the allegations in paragraph 22.

23. Defendant lacks knowledge or information to form a belief as to Dr. Gold's assumption regarding Dr. Malamatenios' pay increase as alleged in paragraph 23, and clarifies that her daily minimum pay did increase in April 2021 from \$750 to \$1400.

C. Dr. Malamatenios Misrepresents Her Net Productions and Is Overpaid By Plaintiff

24. Defendant denies the allegations set forth in Paragraph 24 of the Complaint and denies that she acted unlawfully in any way.

25. Defendant denies the allegations set forth in Paragraph 25 of the Complaint and denies that she acted unlawfully in any way.

26. Defendant denies the allegations set forth in Paragraph 26 of the Complaint and denies that she acted unlawfully in any way.

27. Defendant admits that in October 2022, Dr. Gold and Stephanie Asqueri spoke to her, but denies the remaining allegations set forth in Paragraph 27 of the Complaint and denies that she acted unlawfully in any way.

28. Defendant admits that Gold falsely accused her of miscalculating the amount of the wages she was due, but denies the remaining allegations set forth in Paragraph 28 of the Complaint and denies that she acted unlawfully in any way.

29. Defendant admits that Dr. Gold falsely accused her of miscalculating the amount of the wages she was due, but denies the remaining allegations set forth in Paragraph 29 of the Complaint and denies that she acted unlawfully in any way.

30. Defendant denies the allegations set forth in Paragraph 30 of the Complaint and denies that she acted unlawfully in any way.

31. Defendant denies the allegations set forth in Paragraph 31 of the Complaint and denies that she acted unlawfully in any way.

32. Defendant denies the allegations set forth in Paragraph 32 of the Complaint and denies that she acted unlawfully in any way.

33. Defendant denies the allegations set forth in Paragraph 33 of the Complaint and denies that she acted unlawfully in any way. However, Defendant admits that Plaintiff hounded Defendant to modify her employment agreement to receive payment based on actual collections instead of the estimated net productions as stated in the existing contract. Also, Defendant admits that Dr. Gold personally communicated to her his intention to reduce her production percentage to 37%, even though he erroneously stated 35% in his Complaint.

34. Defendant denies the allegations in Paragraph 34 of the Complaint and maintains that she did not engage in any unlawful actions. However, Defendant admits that the Plaintiff persistently pressured the Defendant to alter her employment agreement, seeking compensation based on actual collections rather than the estimated net productions outlined in the current contract.

35. Defendant denies the allegations in Paragraph 35 of the Complaint and clarifies that she does not owe any monies to Dr. Gold regarding overpaid production calculations and that she did not act unlawfully in any way. Defendant also denies that Dr. Gold made erroneous payments

to her. However, Defendant admits that Dr. Gold attempted to coerce her into entering into a new employment agreement concerning the alleged overpaid production calculations.

36. Defendant admits the allegations set forth in Paragraph 36 of the Complaint.

37. Defendant denies the allegations set forth in Paragraph 37 of the Complaint and denies that she acted unlawfully in any way but does admit that she did not submit to Dr. Gold's coercive behavior and make any "repayment" as none was warranted.

38. Defendant denies the allegations set forth in Paragraph 38 of the Complaint and denies that she acted unlawfully in any way.

COUNT I
CONVERSION

39. Defendant repeats and re-alleges each and every response set forth in Paragraphs 1- 38 of the Complaint, as if fully set forth herein.

40. The matters asserted in paragraph 40 represent legal conclusions rather than allegations of fact and, therefore, do not require a response by way of admission or denial.

41. The matters asserted in paragraph 41 represent legal conclusions rather than allegations of fact and, therefore, do not require a response by way of admission or denial. To the extent the matters purport to be allegations of fact, Defendant denies such allegations set forth in paragraph 41.

42. Defendant denies the allegations in paragraph 42 and denies that she ever acted unlawfully in any way.

43. Defendant admits the allegations in paragraph 43 insofar as Plaintiff sought to coerce her into entering into a new employment agreement to arrange for the repayment of alleged overpaid monies.

44. Defendant denies the allegations in Paragraph 44 and asserts that she has not refused to pay Dr. Gold back, contrary to his allegations. In fact, after Dr. Gold claimed in October 2022 that she owed him \$4,436.90 for the month of August, Defendant instructed him to deduct that amount from her withheld paycheck on October 14, 2022, which she believed would make him cease hounding and harassing her based on baseless allegations.

45. Defendant denies the allegations in paragraph 45 and denies that she ever acted unlawfully in any way or caused Plaintiff to suffer any damages.

COUNT II
BREACH OF THE DUTY OF LOYALTY – FAITHLESS SERVANT

46. Defendant repeats and re-alleges each and every response set forth in Paragraphs 1-45 of the Complaint, as if fully set forth herein.

47. The matters asserted in paragraph 47 represent legal conclusions rather than allegations of fact and, therefore, do not require a response by way of admission or denial.

48. The matters asserted in paragraph 48 represent legal conclusions rather than allegations of fact and, therefore, do not require a response by way of admission or denial. To the extent Plaintiff has asserted an allegation of fact in paragraph 48, Defendant denies such allegations.

49. Defendant denies the allegations in paragraph 49 and denies that she ever acted unlawfully in any way.

50. Defendant denies the allegations in paragraph 50 and denies that she ever acted unlawfully in any way.

51. Defendant denies the allegations in paragraph 51 and denies that she ever acted unlawfully in any way.

52. Defendant denies the allegations set forth in Paragraph 52 of the Complaint, and further denies that she ever acted unlawfully in any way or that Plaintiff has suffered damages.

COUNT III
NEGLIGENT MISREPRESENTATION

53. Defendant repeats and re-alleges each and every response set forth in Paragraphs 1-52 of the Complaint, as if fully set forth herein.

54. The matters asserted in paragraph 54 represent legal conclusions rather than allegations of fact and, therefore, do not require a response by way of admission or denial.

55. The matters asserted in paragraph 55 represent legal conclusions rather than allegations of fact and, therefore, do not require a response by way of admission or denial.

56. Defendant denies the allegations in paragraph 56 and denies that she ever acted unlawfully in any way.

57. Defendant denies the allegations in paragraph 57 and denies that she ever acted unlawfully in any way.

58. Defendant lacks knowledge or information to form a belief as to whether or not Plaintiff reasonably relied on her representations of her production calculation when determining her pay, but denies the remaining allegations in paragraph 58 and denies that she ever acted unlawfully in any way.

59. Defendant denies the allegations in paragraph 59 and denies that she ever acted unlawfully in any way or that Plaintiff has suffered any damages.

COUNT IV
UNJUST ENRICHMENT

60. Defendant repeats and re-alleges each and every response set forth in Paragraphs 1-59 of the Complaint, as if fully set forth herein.

61. The matters asserted in paragraph 61 represent legal conclusions rather than allegations of fact and, therefore, do not require a response by way of admission or denial. To the extent the allegations in paragraph 61 require a response, Defendant denies the allegations in paragraph 61 and denies that she ever acted unlawfully in any way or that Plaintiff has suffered any damages.

RESPONSE TO PRAYER FOR RELIEF

Subparagraphs (a) – (e) set forth under the PRAYER FOR RELIEF paragraph of the Complaint set forth a demand for relief to which no response is required. To the extent a response is required, Defendant denies that Plaintiff is entitled to any relief whatsoever, including the relief requested in the Complaint, and denies that she ever acted unlawfully in any way or that Plaintiff has suffered any damages.

JURY DEMAND

Defendant acknowledge that Plaintiff has asserted a jury demand.

AFFIRMATIVE DEFENSES

As further, separate, and affirmative defenses, without assuming the burden of proof of any such defense that would otherwise rest with Plaintiff, Defendant alleges as follows:

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff has consistently and significantly violated Defendant's employment agreement by failing to promote her professional growth and causing damage to her reputation. As a result, Plaintiff's actions constitute a breach of the implied covenant of good faith and fair dealing.

THIRD AFFIRMATIVE DEFENSE

Plaintiff Gold's claims fail because, at all times, Defendant's wage calculations have consistently relied on the percentages stipulated in the employment agreement between the parties. Moreover, there has been appropriate oversight throughout the process. Notably, from 2020, when Dr. Malamatenios commenced employment at the Practice, until July 2021, the original office manager, Desiree Remling, meticulously recorded the production amounts for each patient and procedure. Subsequently, Dr. Malamatenios performed the necessary mathematical calculations, which were then reviewed and approved by Dr. Gold. Throughout this period, no issues were ever raised concerning the accuracy of the calculations.

Following Ms. Remling's departure from the Practice, Dr. Malamatenios continued to calculate her productions as Ms. Remling showed her up until October 2022 when Dr. Gold had the new office manager Stephanie Asqueri take over calculations which were then approved by Dr. Gold. Since then, there seem to be underpayments made to Dr. Malamatenios in fact.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred due to their fraudulent actions against Defendant concerning the alleged owed monies. The Plaintiff falsely asserts that Defendant owes Smiles money due to purported miscalculations. However, these calculations were approved by Dr. Gold for nearly three years, during which no issues were raised. Furthermore, since October 2022, the office manager, Ms. Asqueri, has been diligently calculating Dr. Malamatenios's productions but has been underpaying Dr. Malamatenios.

FIFTH AFFIRMATIVE DEFENSE

If damaged, which Defendant expressly denies, Plaintiff has failed to make reasonable efforts to mitigate damages.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to punitive damages, and, in any event, the Complaint fails to state a legally sufficient basis for the recovery of punitive damages.

Defendant Dr. Malamatenios reserves the right to assert such other affirmative defenses as to which she may become aware through discovery or otherwise in the instant matter.

COUNTERCLAIMS

Defendant-Counter-Plaintiff, Demetra Malamatenios, DDS (“Dr. Malamatenios”), by her attorneys, Filippatos PLLC, as and for her counterclaims against Plaintiff-Counter-Defendant Robert T. Gold, DDS, P.C. D/B/A Smiles on Hudson (“Smiles” or the “Practice”) and Counter-Defendant Robert T. Gold, DDS (“Dr. Gold”) (together, “Counter-Defendants”), alleges as follows:

NATURE OF THE COUNTERCLAIMS

1. Defendant-Counter-Plaintiff Malamatenios brings this action alleging that Smiles and Dr. Gold have violated the New York State Human Rights Law, New York State Executive Law, §§ 296 *et seq.* (“NYSHRL”).

2. Dr. Malamatenios seeks damages, as well as injunctive and declaratory relief, to redress the injuries she has suffered – physical, emotional and pecuniary – as a result of the discrimination, hostile work environment, and retaliation she has endured based on her gender/sex (female) and pregnancy.

PARTIES

3. At all times relevant hereto, Dr. Malamatenios is and has been a resident of the State of New York, County of Westchester.

4. At all times relevant hereto, Dr. Malmantios was qualified as an “employee” of Smiles and Dr. Gold under all relevant statutes alleged herein.

5. Plaintiff-Counter-Defendant Robert T. Gold, DDS, P.C. d/b/a Smiles on Hudson is a professional corporation of the State of New York, with its principal place of business at 2018 Albany Post Rd, Croton-On-Hudson, New York 10520.

6. Counter-Defendant Robert T. Gold is, upon information, an adult resident of the State of New York, County of Westchester.

7. At all relevant times, Smiles and Dr. Gold have controlled the terms and conditions of Dr. Malamatenios’s employment, including, but not limited to, her compensation, work assignment, and work schedule, and thus qualify as Dr. Malamatenios’s “employer” under all relevant statutes alleged herein.

MATERIAL FACTS

I. Dr. Malamatenios Joins the Practice

8. Dr. Malamatenios’s first day of work at Smiles occurred on or around January 14, 2020. She assumed responsibility for performing dental procedures, including composite restorations, crowns, bridges, veneers, extractions, surgical extractions, esthetic work, bone graft and membrane placement, root canals, and removable prosthodontics. Over time, Dr. Malamatenios started doing implant and orthodontics — clear aligners and Invisalign.

9. In addition, Dr. Malamatenios diagnosed patients’ dental conditions and presented comprehensive treatment plans by reviewing radiographs, photographs, and models, managed a range of complex cases, and educated patients about treatment options and at-home oral care.

10. Prior to starting work at Smiles, on December 24, 2019, Dr. Malamatenios signed an employment agreement that stated that her compensation upon hire would be 35% of the “net production” less 33% of laboratory costs associated with such net production.

11. It further stated, “[t]he employee will receive a minimum pay of \$750 averaged over the number of days worked per week. Employee will receive the greater of the two-dollar amounts.” The terms of this agreement additionally specified:

Net Production shall mean Employer’s expected collected revenues (net of write-offs, insurance adjustments, rebates, refunds, re-dos, or price discounts) generated by Employee’s dental services. Employee’s Net Production shall not include any other services provided directly by registered dental assistants or hygienists such as those from imaging, prophylaxis, scalings and other maintenance procedures.

12. During Dr. Malamatenios’s recruitment to Smiles, the Office Manager at that time, Desiree Remling, provided her with comprehensive training on performing these calculations and familiarized her with the key figures to monitor on the computer system to ensure accurate bi-weekly compensation.

13. In this regard, there were no concerns or issues whatsoever pertaining to Dr. Malamatenios’s calculations. On the contrary, her accuracy and proficiency in performing calculations were consistently creditable.

14. Indeed, there was no issue with Dr. Malamatenios’s performance whatsoever. As such, in April 2021, as a testament to her hard work and achievements, Dr. Malamatenios was duly recognized by Dr. Gold and generously rewarded with a well-deserved raise.

15. During a phone call, Dr. Gold personally conveyed to Dr. Malamatenios that he was giving her a raise, which was a significant moment for her. The raise entailed an increase in her minimum daily pay from \$750 to \$1,400, reflecting a substantial elevation in her compensation.

16. Throughout the conversation, Dr. Gold made it explicitly clear that the decision to provide this raise stemmed from his genuine appreciation for Dr. Malamatenios's contributions to Smiles. He expressed his desire to retain her valuable presence within the team and acknowledged the value she brought to the Practice. This recognition and admiration for her work served as the driving force behind his decision to offer the raise.

17. During the following year, Dr. Malamatenios continued to excel, and her professional journey remained smooth. As a result, on January 31, 2022, she was granted another raise, focusing specifically on her percentage of "net productions." This percentage was increased from 35% to 40%, demonstrating a heightened recognition of her valuable contributions to the Practice. Additionally, it is important to mention that Dr. Gold raised Dr. Malamatenios' lab costs from 33% to 37%.

18. As a result of being consistently recognized for exceeding expectations in her role, Dr. Malamatenios felt a sense of accomplishment, believing she had reached the zenith of her career in dentistry.

II. Dr. Gold Learns that Dr. Malamatenios is Pregnant and Immediately Begins to Marginalize Her

19. However, a significant and unfortunate shift occurred in July 2022 after Dr. Gold learned of Dr. Malamatenios's pregnancy. From that point forward, the circumstances took a sharp turn for the worse.

20. On June 13, 2022, Dr. Malamatenios attended her initial doctor's appointment to verify her pregnancy. At that point, she had reached the ninth week of her pregnancy, and due to concerns about potential reprisals, she made the difficult choice of not revealing her pregnancy to anyone at the Practice.

21. Approximately a month later, on or around July 20, 2022, Dr. Malamatenios, still feeling uneasy about disclosing her pregnancy, found herself in an uncomfortable encounter with Dr. Gold, whom she noticed was staring at her stomach area. This unwelcome behavior added to her worries, raising concerns about potential repercussions she might face.

22. Even though Dr. Malamatenios experienced discomfort due to Dr. Gold's behavior, she made the choice not to disclose her pregnancy to him.

23. Dr. Malamatenios grew increasingly concerned when she suspected that one of her colleagues had informed Dr. Gold about her pregnancy. Unfortunately, her fears were confirmed when the female employee approached her and revealed that Dr. Gold had pulled her aside, asking directly, "Is Demetra pregnant?"

24. That evening, Dr. Malamatenios sent a text message to Dr. Gold, seeking guidance on locating her 401-k information within the JustWorks payroll system. However, to her disappointment, Dr. Gold's response was unexpectedly and unusually cold and unhelpful, in contrast to his previous willingness to help her with these kinds of issues (hence, why she was comfortable with going to him with such a question): "Somewhere in settings; not sure where. Probably easiest to call them."

25. This message left Dr. Malamatenios perplexed, considering that Dr. Gold had helped with setting her up in the Practice's payroll system and had previously assisted employees with any 401-k-related matters.

26. Sensing a growing tension between herself and Dr. Gold, Dr. Malamatenios made the decision to disclose her pregnancy to him the following day.

27. In response to Dr. Malamatenios's disclosure, Dr. Gold initially expressed his congratulations but swiftly followed it up with a terse question, asking: "How long are you

planning on taking off?” While it is certainly appropriate for an employer to want to know how long an employee planned to take off from work in connection with a medical-related leave, it is usually done with some tact given the sensitive nature of the issue, and not in such a callous, cold, and abrupt fashion.

28. Upon learning about Dr. Malamatenios’s impending maternity leave, Dr. Gold began exhibiting a heightened level of scrutiny, meticulously scrutinizing her work and closely examining each procedure she performed. This change in behavior indicated a shift in attitude towards Dr. Malamatenios, stemming from prejudices related to her pregnancy and upcoming maternity leave.

29. The differential treatment exhibited by Dr. Gold towards Dr. Malamatenios was so evident that it even caught the attention of other employees, namely two female Dental Assistants, who inquired about the root of Dr. Gold’s aggressively pedantic behavior towards Dr. Malamatenios. The sudden mistreatment was so evident that the two women felt compelled to apologize to Dr. Malamatenios on Dr. Gold’s behalf.

30. Nevertheless, Dr. Gold’s problematic conduct persisted. Around August 2022, he took Dr. Malamatenios aside into a room, shut the door, and explicitly conveyed his decision that, contrary to her previous responsibilities, he no longer wanted her to perform sealants. Dr. Gold justified this change by citing his personal experience, claiming that, in his view, sealants lead to an increased occurrence of cavities. This marked a significant departure from Dr. Malamatenios’s prior duties at Smiles, and a component of what generated her work income.

31. Around this period, Dr. Malamatenios needed to text Dr. Gold regarding her 401-k. Initially assuming it would be a brief and straightforward exchange, the interaction unfolded with unexpected complications.

32. Regrettably, Dr. Malamatenios's initial text message to Dr. Gold was disregarded and received no response.

33. Recognizing the need to exercise patience, Dr. Malamatenios decided to give Dr. Gold a few hours before sending a follow-up text message. She believed it would be prudent to allow him some time before reaching out again. However, despite her deliberate approach, Dr. Gold chose to ignore her once more, failing to respond to her second text message.

34. Hoping that persistence would yield a different outcome, Dr. Malamatenios decided to give it another try. She patiently waited for a few more hours before sending a third text message to Dr. Gold in the evening. Disappointingly, her efforts once again went unanswered as Dr. Gold remained unresponsive.

35. Baffled by Dr. Gold's continued silence, Dr. Malamatenios chose to wait for three days before attempting to reach out to him again. With a glimmer of hope, she sent a fourth text message, only to be met with yet another lack of response from Dr. Gold.

36. Around August 18, 2022, Dr. Malamatenios took the initiative to verify whether her issue remained by checking the Practice's payroll and benefits system. To her surprise, she found out that the problem had indeed been resolved and the necessary corrections had been made. This was unexpected considering how Dr. Gold had not responded to any of her messages nor provided any assistance.

37. In the subsequent month, specifically around September 6, 2022, Dr. Malamatenios had to leave work early due to an emergency OBGYN appointment caused by a sudden and severe pain in her abdomen. Throughout this incident, Dr. Gold did not bother to check in with her or inquire about her well-being, nor did he make any effort to ascertain her availability to work the following day.

38. Despite not receiving any communication from Dr. Gold regarding her well-being, it was a sick and distressed Dr. Malamatenios who took the initiative to reach out to him herself. Notwithstanding her own health condition, she wanted to ensure that he was aware of her situation and reassured him that she was okay despite the emergency circumstances.

39. Three days later, on or about September 9, 2022, Dr. Malamatenios arrived at work later than usual due to a pre-scheduled OBGYN appointment. Upon her arrival, her assistant, visibly upset with tears in her eyes, informed her that she had spent two hours diligently working on making bleaching trays for Dr. Malamatenios's upcoming appointments. However, Dr. Gold abruptly ordered the assistant to start the task again from scratch, deeming the trays unacceptable to his standards.

III. Dr. Gold Retaliatorily Tries to Diminish Dr. Malamatenios's Earning Potential and Unlawfully Withholds Her Wages

40. Later that day, Dr. Gold confronted Dr. Malamatenios, cornering her in a room and shutting the door behind them. In this encounter, Dr. Gold explicitly communicated his decision to discontinue the existing method of producing bleaching trays, which Dr. Malamatenios and her assistants had been utilizing since she joined the practice. Dr. Gold insisted that they adopt his own method, suddenly asserting, without prior discussion or justification, that his approach was "better."

41. Two weeks later, around September 20, 2022, just as Dr. Malamatenios was preparing to attend to a patient, Dr. Gold interrupted her and took her aside. In a terse manner, he informed her that he no longer wanted her to perform Invisalign procedures because he believed it was not generating sufficient profits for the practice.

42. Dr. Malamatenios was taken aback by Dr. Gold's decision. She expressed her surprise and questioned how this could be the case, highlighting that in every office she had worked at previously, Invisalign had consistently proven to be a profitable service.

43. Dr. Gold's response to Dr. Malamatenios was rather peculiar. He stated that for the Practice to consider Invisalign profitable, it would have to deviate from the existing contract the Practice had been operating under for the past two years. According to his proposal, the lab cost of the Invisalign procedure would need to be deducted "off the top" of the fee received, and the remaining amount would then be split evenly, 50/50, between them.

44. Upon learning about the potential material diminishment in her compensation due to the abrupt change to her employment agreement, Dr. Malamatenios conveyed her need to think it over and informed Dr. Gold that she would get back to him.

45. The news deeply upset her, and her emotional distress was evident. Conversely, later, Office Manager Stephanie Asqueri informed Dr. Malamatenios that Invisalign was "back on," implying a reversal of the decision.

46. On another day, to Dr. Malamatenios's surprise, both Ms. Asqueri and Dr. Gold made the decision to contract with a new clear aligner provider, Sure Smile, without consulting her. This decision was particularly notable since Dr. Malamatenios was the *sole* practitioner at the practice who performed the clear alignment procedure.

47. Furthermore, exacerbating the situation, Dr. Gold proceeded to arrange an in-person meeting with a Sure Smile representative without taking into account the ongoing treatment of a patient. In a blatant disregard for the patient's care, Dr. Gold instructed Ms. Asqueri to abruptly interrupt Dr. Malamatenios while she was attending to the patient and insisted that she join the meeting to discuss the change in provider. This interruption not only disrupted the continuity of

the patient's treatment but also reflected a lack of consideration for their well-being, which ultimately reflected negatively on Dr. Malamatenios.

48. This unexpected interruption disrupted the continuity of patient care and demonstrated a lack of professionalism and consideration for providing uninterrupted and focused attention to patients. The incident further strained the already fraught working relationship between Dr. Malamatenios and Dr. Gold, highlighting the disregard for her role and contributions within the practice.

49. On or about September 22, 2022, Dr. Malamatenios reached out to Dr. Gold via text message concerning her last pay period's paperwork. Although confirming that he received the message, Dr. Gold responded in a stern and demanding manner, requesting that Dr. Malamatenios provide him with copies of her paperwork going forward. This sudden change in attitude and request for additional documentation raised alarms for Dr. Malamatenios, as it was a retreat from their previous interactions where such a requirement had never been imposed on her.

50. The following day, Dr. Malamatenios approached Ms. Asqueri to inquire about a new dentist who had been hired. To Dr. Malamatenios's surprise, Ms. Asqueri expressed her enthusiasm about the new dentist, referring to them as a "great new addition to the team." This implication raised concerns for Dr. Malamatenios, suggesting that the new dentist was hired with the intent of becoming a permanent staff member even after her return from maternity leave.

51. Dr. Malamatenios openly communicated her concern regarding the potential impact of the new hire remaining on the staff following her maternity leave. She recognized that this situation could significantly diminish her compensation, as there would be a redistribution of patients and responsibilities. This added worry further heightened Dr. Malamatenios's concerns about the potential financial implications of the sudden changes being made within the practice.

52. A few days later, around September 27, 2022, Dr. Gold's started yelling loudly at her for everyone to hear, accusing Dr. Malamatenios of not providing him with hard copies of her calculations, creating a confrontational and hostile atmosphere in the workplace.

53. It is worth noting that as part of their usual routine, Dr. Malamatenios would text Dr. Gold the production calculations required for her paycheck and then leave hard copies on his desk. However, in this particular instance, Dr. Malamatenios felt nervous about leaving her calculations on his desk in plain sight due to the substantial amount of money involved. Therefore, she had intended to find an opportune moment to personally hand them to Dr. Gold the next time she saw him.

54. Before Dr. Malamatenios had the chance to provide him with the numbers, Dr. Gold cornered her exclaiming: "It irks me that I don't have your paperwork!"

55. Dr. Malamatenios responded calmly, providing a detailed explanation of the situation. In spite of her efforts, Dr. Gold completely dismissed her justification and opted to retaliate instead. Outrageously, Dr. Gold informed a pregnant Dr. Malamatenios that her next paycheck would be intentionally withheld, leaving her to wait until Monday, October 3, 2022, before receiving her next paycheck, instead of the original payday of September 30.

56. Several days after she received the late wage payment, the issue of compensation once again took center stage in the interactions between Dr. Gold and Dr. Malamatenios. On or around October 7, 2022, Dr. Malamatenios proactively texted Dr. Gold to provide him with her production calculations, and simultaneously emailed him copies. She hoped that these prompt actions would lead to her receiving her paycheck in a timely manner.

57. Unfortunately, in spite of her efforts, Dr. Malamatenios did not receive her next scheduled paycheck on time. Frustrated by the delay, she reached out to Dr. Gold via text message

to inquire about the reason behind the late payment. However, to her frustration, Dr. Gold chose to ignore her, leaving her without any explanation or resolution.

58. The following day, growing increasingly concerned about her unpaid wages, Dr. Malamatenios decided to reach out to Ms. Asqueri via text message. She inquired about Dr. Gold's return date from vacation, hoping to gain some clarity regarding when she would receive her wages. In response, Ms. Asqueri informed Dr. Malamatenios that Dr. Gold would be back "sometime that day," providing only a vague timeframe without addressing the issue of her unpaid wages.

59. After a nine-day wait, around October 17, 2022, Dr. Gold finally gave Dr. Malamatenios an update. He informed her that he had personally contacted JustWorks, the payroll company the Practice used, and assured her that he had submitted all the necessary paperwork correctly. Bewildered by the situation, he expressed uncertainty as to why she had not received her payment on time, as everything appeared to be in order from his end.

IV. In Furtherance of His Retaliatory Campaign to Get Her to Just Quit, Dr. Gold Tries to Coerce Dr. Malamatenios Into Signing a New Employment Agreement Containing One-Sided Terms That Further Marginalized Her and Reduced Her Earning Ability

60. Shortly after making his initial statement, it became evident that Dr. Gold had been dishonest with Dr. Malamatenios. A few hours later, both Dr. Gold and Ms. Asqueri ordered a private meeting with Dr. Malamatenios. Behind closed doors, Dr. Gold finally confessed that he deliberately withheld her wages, alleging that he had identified a "discrepancy" in her production calculations as his justification for doing so.

61. During this private meeting, Dr. Gold made the startling claim that Dr. Malamatenios's calculations had been consistently incorrect. He further alleged that as a result,

she owed him a substantial sum of money, potentially reaching as high as \$100,000, dating back to January 2022.

62. In support of his claim, Dr. Gold informed Dr. Malamatenios that he had tasked Ms. Asqueri to review her production calculations for the past two months. To Dr. Malamatenios' astonishment, Dr. Gold asserted that the audit revealed she owed him around \$9,000 for the months of August and September 2022.

63. In response to Dr. Gold's claims, Dr. Malamatenios took immediate action and pulled up a patient chart to demonstrate the specific numbers and calculations she had been using to determine the wages she was owed. She aimed to provide concrete evidence and clarity regarding her calculations, hoping to refute the bald accusations made against her.

64. Notwithstanding Dr. Malamatenios's efforts to present her patient chart and the numbers she had used for calculations, both Dr. Gold and Ms. Asqueri remained adamant in their stance. They continued to assert that the numbers she relied on did not align with the amounts the insurance companies had actually paid to the Practice.²

65. Continuing on, in a bold and audacious manner, Dr. Gold insinuated some nefarious underhandedness by Dr. Malamatenios when he said to her: "it now makes sense why I haven't taken a paycheck home all year."

66. In the span of minutes, according to Dr. Gold, Dr. Malamatenios now owed him tens of thousands, if not hundreds of thousands of dollars over the course of a couple of years.

² Of note, Dr. Malamatenios's employment agreement clearly states: "Net Productions shall mean Employer's *expected* collected revenues (net write offs, insurance adjustments, rebates, refunds, re-dos or price discounts) generated by employee's dental services." (emphasis added).

67. It is crucial to emphasize that Dr. Gold's calculations regarding the alleged amount owed by Dr. Malamatenios are fraught with inaccuracies and flawed assumptions, which severely undermine the credibility of his claims against her.

68. With respect to Dr. Gold's claims, there are several noteworthy points that deserve attention:

- 1) Dr. Gold first raised concerns about Dr. Malamatenios's calculations only *after* she announced her pregnancy.
- 2) Dr. Malamatenios's calculations were based solely on the information provided to her by the Practice. She relied on the data she received without any objection from Dr. Gold for a period of two years.
- 3) Dr. Gold was required to review and approve her wage calculations for each pay period. Thus, Dr. Gold had the opportunity to identify any discrepancies or issues with Dr. Malamatenios's calculations during the two-year period.
- 4) Dr. Gold did review every one of Dr. Malamatenios's calculations of her wages over the two years she worked for him, and he approved each and every one of them without any objections; that is, until she announced her pregnancy.
- 5) Before Ms. Asqueri joined the Practice, the previous office manager provided Dr. Malamatenios and other employees with written breakdowns of their weekly pay amounts, requiring them to verify the figures by performing the calculations themselves. As a result, for a significant period, three individuals - the original office manager, Dr. Malamatenios, and Dr. Gold - were closely involved in the wage calculation process for Dr. Malamatenios, yet no concerns had ever been raised.

69. Assuming, *arguendo*, that there was a mathematical or clerical error (responsibility for which would lay with the employer), under the provisions of the New York Labor Law, Dr. Gold would only be entitled to recover the previous 8 weeks of alleged overpayments, provided

that he and the Practice followed the required procedure set forth in the relevant statute, which they failed to do.³

70. In addition to his baseless claims and outrageous behavior, Dr. Gold audaciously asserted to Dr. Malamatenios that she was earning too much money “for a pregnant Dental Associate,” to which he then expressed his retaliatory intention to reduce her percentage from 40% to 37%.

71. Furthermore, Dr. Gold and Ms. Asqueri, went so far as to threaten to withhold Dr. Malamatenios’s paycheck while refusing, for a period of time, to disclose the details of the alleged debt or provide an explanation of how those figures were determined. Moreover, during this same time period, Dr. Gold repeatedly attempted to coerce Dr. Malamatenios into signing a new employment agreement that significantly reduced her potential earnings without offering anything in return.

72. It should be noted that after bombarding her with indictments of embezzlement, Dr. Gold proceeded to inquire about potential resolutions to the alleged pay discrepancies. Dr. Malamatenios, who was exhausted from a long day of work while being seven months pregnant and emotionally drained by the onslaught of falsehoods she had just endured (which even led to the onset of abdominal cramping), responded: “Alright, if you’re claiming I owe you \$4,436.90 for the month of August, let’s begin there. We can deduct that amount from the paycheck that was withheld from me on 10/14, and we can continue the discussion from that point.”

73. During the following week, as Dr. Malamatenios endured intense stress and

³ See NYLL § 193 (setting forth the process for an employer to recover overpayments due to an employer’s mathematical or other clerical error, which overpayment may only be deducted from an employee’s wages under the following circumstances: (1) the employer provides a “notice of intent” to the employee at least three days before the date of a planned wage deduction if the entire deduction will be taken in a single wage payment, or three weeks prior to the start of planned wage deductions that will be taken periodically; (2) only overpayments made within the prior eight weeks before the issuance of the notice of intent can be recoup; and (3) the employer may not make wage deductions more frequently than once per pay period).

physical discomfort at work, and experienced symptoms such as extreme discomfort, cramps, loss of appetite, and sleep disturbances, on October 19, 2022, Dr. Gold entered Dr. Malamatenios's office without prior notice, closed the door behind him, and informed her of his intention to revise her employment agreement.

74. He ominously mentioned that his lawyer would provide her with a revised agreement the next day. In a menacing tone, Dr. Gold added that if Dr. Malamatenios agreed to sign the new contract—which included a significantly reduced compensation structure and required her to confess to a fabricated debt of thousands of dollars—they could “all get past this.”

75. On Friday, October 21, 2022, Dr. Gold harassingly sent multiple text messages and emails to Dr. Malamatenios, urging her to review and return the “updated contract” before her return to work on Tuesday morning.

76. To Dr. Malamatenios's dismay, upon examining the proposed new contract, she discovered numerous changes that had not been previously discussed or agreed upon, adding to her sense of unease and disappointment.

77. To highlight a few changes within the document:

- In the “compensation” section of the agreement, a new clause was added specifying that Dr. Malamatenios's pay depended on her providing the Practice with production sheets. These sheets were to include a comprehensive record of all services rendered and the anticipated Net Production and were due by the close of business every Monday. Failure to furnish these production sheets would lead to delayed or withheld wage payments;
- The definition of “Net Production” now included an additional sentence clarifying that it can fluctuate based on insurance payments or disallowances;
- Adjusted productions were to be vaguely calculated during each pay period to the best of the Practice's capabilities;
- A new paragraph entitled “Overpayment and Repayment

Obligations” required Dr. Malamatenios to acknowledge that she was in arrears due to miscalculations and misrepresentations of her Net Production from January 2020 to the present, but that the exact amount of the alleged overpayment could not be determined because she supposedly held the production sheets. However, the “anticipated” overpayment ranged from \$1,000 to \$10,000 *per month*, with Dr. Malamatenios agreeing to reimburse the Practice for such alleged overpayment through paycheck deductions based on the following schedule: one month of overpayment deducted during each pay period, commencing on October 20, 2022, and continuing for thirty-two (32) subsequent paychecks until approximately December 2023. If Dr. Malamatenios’s employment is terminated for any reason, the full overpayment amount, minus any Agreed Deductions already withheld by the employer, would be due within fifteen (15) days of the Termination Date.

78. Later, on October 24, 2022, Dr. Malamatenios had a consultation with her OBGYN, who advised her that the cramps she was experiencing caused by work were detrimental to the well-being of her baby. The OBGYN recommended that she prioritize relaxation and increase hydration.

79. Following this, Dr. Malamatenios sought assistance from her therapist, who diagnosed her with clinical anxiety resulting from her ongoing work-related stress.

80. On October 26, 2022, merely two days after Plaintiff’s notified Dr. Gold that she had retained counsel, Dr. Gold retaliated against her by sending a text message stating: “Our agreement was to do 40% of production and the same percentage for lab. Please provide evidence where it was specified that figures should be 37% for lab, and I will willingly make the adjustment. I agreed to increase net production to 40% with a corresponding rise in the lab percentage.”

81. However, despite Dr. Gold’s text messages, audits conducted by Ms. Asqueri consistently demonstrated that Dr. Malamatenios’s calculations had been performed at the rate of 37%. Nevertheless, Dr. Gold persisted in altering Dr. Malamatenios’s figures to reflect 40% up until the present time.

82. Furthermore, around October 28, 2022, Dr. Gold continuously pursued payment from Dr. Malamatenios for a dental procedure performed on her father. However, Dr. Malamatenios had already partially settled her father's bill by issuing a check on May 5, 2021, which Dr. Gold cashed on May 26, 2021. Regrettably, Dr. Gold failed to accurately record this transaction in the system. Due to this error, Dr. Gold persistently demanded payment from Dr. Malamatenios, who eventually made an additional payment to him.

83. On November 11, 2022, Dr. Gold sent a text message to Dr. Malamatenios, explicitly instructing her not to make any adjustments to the hygienist's schedule.

84. However, it is important to note that there are instances where patients are mistakenly booked, and as a routine practice, Dr. Malamatenios, together with the hygienists, review the patient list daily, carefully examining the notes to determine who the last doctor to attend to each patient was, ensuring that patients were scheduled with the appropriate doctor.

85. Therefore, it was essential to understand that Dr. Malamatenios was not attempting to take patients away from Dr. Gold, but rather, ensuring the continuity of care for each patient, which Dr. Gold himself had previously acknowledged as being highly important.

86. Also, Dr. Gold unilaterally reduced Dr. Malamatenios's work days and hours by removing her from the schedule on Fridays during the months of December and January. This decision was made without any prior discussion or consultation with Dr. Malamatenios. Additionally, Dr. Gold made multiple comments regarding her maternity leave, falsely implying that it would commence after the Christmas holiday, despite Dr. Malamatenios clearly stating on multiple occasions that her maternity leave will begin in mid-January.

87. Adding to the unjust treatment, the days and hours that were taken away from Dr. Malamatenios were given to the newly hired male dentist, Dr. Peter Lee, under the pretext of him

“assisting” while Dr. Malamatenios was on maternity leave. This further compounded the unfairness and added insult to injury in terms of the disparate treatment and allocation of working hours within the practice.

88. Towards the end of December 2022 and beginning of January 2023, Dr. Malamatenios became aware that two of her patients, originally scheduled for crown implants in the first two weeks of January, had been transferred to Dr. Gold’s schedule without her knowledge or consent.

89. Confused by this unexpected change, Dr. Malamatenios approached Suzie Strang, the part-time receptionist, seeking an explanation. Ms. Strang disclosed that she was instructed by Ms. Asqueri to move the patients to either Dr. Gold’s or Dr. Lee’s schedule. Furthermore, Ms. Strang mistakenly believed that Dr. Malamatenios would not be present in the office at all during January 2023. Dr. Malamatenios promptly clarified this misunderstanding, emphasizing that she would be available and maintaining her regular office hours during the first two weeks of January.

90. Additionally, Dr. Gold deducted compensation from Dr. Malamatenios’s wages based on collections rather than net productions. This practice went against the terms of her employment agreement.

91. Furthermore, on October 17, 2022, Dr. Gold and Ms. Asqueri asserted that they would compensate Dr. Malamatenios based on the insurance Explanation of Benefits (EOBs) they received, despite this arrangement not being specified in the contract. However, since Ms. Asqueri took charge of the calculations, Dr. Malamatenios' actual pay has consistently fallen short of the amounts indicated on the EOBs.

92. Adding insult to injury, Dr. Gold filed frivolous claims in the instant lawsuit against Dr. Malamatenios, baselessly accusing her of intentionally embezzling funds from the practice, defaming her character, and jeopardizing her professional prospects.

V. The Retaliatory Campaign Against Dr. Malamatenios Heats Up After She Returns from Maternity Leave

93. Following her return to the office from maternity leave in June 2023, Dr. Gold has persistently engaged in a campaign of retaliation against Dr. Malamatenios by intentionally scheduling her to do an increased amount of cleanings, effectively demoting her to the role of a hygienist, and diminishing her compensation potential.

94. Neither Dr. Gold nor Ms. Asqueri sought Dr. Malamatenios's preference regarding taking on additional cleanings.

95. A new dentist at Smiles who observed the situation even remarked to Dr. Malamatenios: "it looks like he's trying to wean you out."

96. Furthermore, despite Dr. Malamatenios having more experience, the new dentist has been given a higher workload of procedures compared to cleanings, effectively demoting her.

97. Additionally, both Dr. Gold and Ms. Asqueri directly asked the new dentist if he desired additional cleanings, to which he explicitly expressed that he did not want any more cleanings.

98. Another example of retaliation occurred when Dr. Malamatenios ordered a type of bur⁴. Upon seeing the bur, Dr. Gold said, "we don't need these burs; send them back."

99. However, for the brand new doctors in the office, Dr. Gold ordered new burs with no problem.

⁴ A dental bur is a tool that attaches to the rotary dental handpiece and is used for cutting, grinding, and removing hard and soft tissue. Dental burs are used to prepare the endodontic cavity, fillings, and root canals.

100. In addition, Dr. Gold instructed one of the new dentists, Dr. Joe Copeli, to obtain scrubs. However, when Dr. Malamatenios requested maternity scrubs, Dr. Gold initially denied her request, and when he finally permitted Dr. Malamatenios to order her own scrubs, he warned her not to order "too many."

101. Additionally, there is a significant outstanding and unpaid Invisalign bill that Dr. Gold refuses to settle. Normally, Dr. Gold is responsible for covering the lab bills, with Dr. Malamatenios obligated to pay 37% of the total. However, Dr. Gold now insists that Dr. Malamatenios pay the bills, "promising" to reimburse her later, which is a clear breach of her contract.

102. As long as the bills remain unpaid, Invisalign will continue to impose restrictions, preventing Dr. Malamatenios from performing any further procedures and duties for her patients. As she is the sole dentist performing these procedures, this restriction results in an estimated loss of approximately \$1,000 - \$2,000 for each patient she is unable to treat.

103. To add insult to injury, following her reinstatement at work, Dr. Malamatenios became aware of a distressing situation where her office manager, Stephanie Asqueri, had been actively spreading unfounded, malicious, and defamatory rumors about her, causing significant harm to her reputation among colleagues.

104. More specifically, Ms. Asqueri has propagated damaging falsehoods among the employees, stating that the "previous associate" (referring to Dr. Malamatenios) engaged in embezzlement, sowing seeds of mistrust. Furthermore, she has maliciously asserted that Dr. Malamatenios filed a lawsuit against Dr. Gold, accusing him of "sexual harassment," and falsely alleging that Dr. Malamatenios claimed he inappropriately touched her pregnant belly.

105. To be unequivocally clear, Dr. Malamatenios has no current plans to pursue any legal action against Dr. Gold regarding "sexual harassment." Neither she nor her legal representatives have ever implied or asserted any such claims. It is of utmost importance to stress that Dr. Malamatenios vehemently refutes any allegations of "stealing money," even though Smiles' claims remain unproven.

106. The unfortunate dissemination of these baseless and malevolent accusations has undeniably resulted in a significantly more hostile and challenging work environment for Dr. Malamatenios since her recent return from maternity leave.

107. Due to the grave nature of the actions taken by Smiles, Dr. Malamatenios' legal counsel found it imperative to issue a cease and desist letter dated June 10, 2023. As of the current date, there has been no acknowledgment or response from opposing counsel regarding the letter.

108. As result of the Counter-Defendants' actions, Dr. Malamatenios has constantly felt offended, disturbed, and humiliated by the blatantly unlawful, discriminatory and retaliatory treatment she suffered at their hands after disclosing her pregnancy and taking maternity leave.

109. Dr. Malamatenios has been unlawfully discriminated and retaliated against on the basis of her gender (female) and pregnancy.

110. Counter-Defendants' actions and conduct were intentional and aimed at harming Dr. Malamatenios.

111. There are a few additional instances of retaliation that should be highlighted. Firstly, in the employment agreement between Dr. Gold and Dr. Malamatenios, there is a restrictive covenant that restricts Dr. Malamatenios from practicing dentistry within a ten-mile radius of the practice for two years after the termination of their agreement.

112. It is important to note that Dr. Gold did not afford Dr. Malamatenios the opportunity to negotiate this provision, whereas another dentist, Dr. Joe, was allowed to negotiate a similar clause with a radius limit of only 7.5 miles.

113. Furthermore, there is a second instance of concern involving Dr. Malamatenios occurred since her return to work. She approached Dr. Gold with a request to leave early on specific days so she could spend more time with her newborn at home. Surprisingly, Dr. Gold flatly denied this reasonable request, despite having granted a similar permission to a previous employee without any objections.

114. As a result of the acts and conduct complained about herein, Dr. Malamatenios has suffered a loss of income, salary, bonus, benefits, and other compensation.

115. Dr. Malamatenios has also suffered future pecuniary losses, emotional pain, suffering, inconvenience, loss of enjoyment of life, and other non-pecuniary losses, and has experienced significant emotional distress.

FIRST COUNTERCLAIM
DISCRIMINATION UNDER THE NYSHRL

116. Dr. Malamatenios repeats and realleges each and every allegation made in the above paragraphs of her Counterclaims as if fully set forth herein.

117. N.Y. Executive Law § 296 provides that:

It shall be an unlawful discriminatory practice:

"(a) For an employer or licensing agency, because of an individual's age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status, or domestic violence victim status, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment."

118. Dr. Malamatenios has been unlawfully discriminated and retaliated against on the basis of her gender (female) and pregnancy, as detailed herein.

119. As a result of the acts and conduct complained of herein, Dr. Malamatenios has suffered and will continue to suffer damages including but not limited to economic and pecuniary losses (past and future) – such as income, salary, benefits, bonuses, commission and other compensation that her employment entailed; severe emotional, psychological and physical stress, distress, anxiety, pain and suffering; the inability to enjoy life’s pleasures; and other non-pecuniary losses and special damages.

120. Accordingly, as a result of Counter-Defendants’ unlawful conduct, Dr. Malamatenios has been damaged as set forth herein and each is entitled to the maximum compensation available to each of her under this law.

SECOND COUNTERCLAIM
RETALIATION UNDER THE NYSHRL

121. Dr. Malamatenios repeats and realleges the allegations contained in the foregoing paragraphs of her Counterclaims as if fully set forth herein.

122. As described above, Dr. Malamatenios has engaged in conduct that constitutes protected activity within the meaning of the NYSHRL.

123. In violation of the NYHSRL, Counter-Defendants have retaliated against Dr. Malamatenios for engaging in protected activity, including by filing a frivolous lawsuit against her accusing her of intentionally stealing money from the practice thereby defaming her, constructively demoting her, and harming her career prospects.

124. Counter-Defendants’ retaliatory and discriminatory act or acts would be reasonably likely to deter a person from engaging in protected activity.

125. Dr. Malamatenios is entitled to all recoverable damages.

THIRD COUNTERCLAIM
AIDING AND ABETTING DISCRIMINATION AND RETALIATION UNDER THE
NYSHRL
Against Dr. Gold

126. Dr. Malamatenios repeats and realleges the allegations contained in the foregoing paragraphs of the counterclaim as if fully set forth herein.

127. By the actions described above, among others, Dr. Gold knowingly or recklessly aided and abetted and directly participated in the unlawful discrimination and retaliation to which Dr. Malamatenios was subjected to in violation of the NYSHRL.

128. As a direct and proximate result of Dr. Gold's unlawful conduct in violation of the NYSHRL, Dr. Malamatenios has suffered, and continues to suffer, monetary and/or economic harm, for which she is entitled to an award of damages, in addition to reasonable attorneys' fees and expenses.

129. As a direct and proximate result of Dr. Gold's unlawful conduct in violation of the NYSHRL, Dr. Malamatenios has suffered, and continues to suffer, mental anguish and severe emotional distress, for which she is entitled to an award of damages.

130. Dr. Gold's unlawful and retaliatory actions constitute malicious, willful and wanton violations of the NYSHRL, for which Dr. Malamatenios is entitled to an award of punitive damages.

WHEREFORE, Dr. Malamatenios respectfully requests a judgment against Counter-Defendants as follows:

A. Declaring that Counter-Defendants engaged in, and enjoining Counter-Defendants from continuing to engage in, unlawful employment practices prohibited by the New York State Human Rights Law, New York State Executive Law, §§ 296, *et. seq.*, in that Counter-Defendants

discriminated and retaliated against Dr. Malamatenios on the basis of her gender and pregnancy and retaliated against her for engaging in protected activity;

B. Awarding damages to Dr. Malamatenios for all lost wages and benefits resulting from Counter-Defendants' unlawful discrimination and retaliation and to otherwise make her whole for any losses suffered as a result of such unlawful employment practices;

C. Awarding Dr. Malamatenios compensatory damages for mental, emotional and physical injury, distress, pain and suffering and injury to her reputation in an amount to be proven at trial;

D. Awarding Dr. Malamatenios punitive damages;

E. Awarding Dr. Malamatenios attorneys' fees, costs, disbursements, and expenses incurred in the prosecution of her counterclaims;

F. Awarding Dr. Malamatenios such other and further relief as the Court may deem equitable, just and proper to remedy the Counter-Defendants' unlawful employment practices against her.

JURY DEMAND

Plaintiff requests a jury trial on all issues to be tried.

Dated: White Plains, New York
June 30, 2023

Tanvir H. Rahman



By: _____

FILIPPATOS PLLC

Attorney for Plaintiff

199 Main Street, Ste. 800

White Plains, NY 10601

Tel/Fax: (914) 984-1111

Trahman@filippatoslaw.com