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<p>MARY ZAZZARINO, Plaintiff, vs. SUNRISE SENIOR LIVING SERVICES, INC. D/B/A BRIGHTON GARDENS OF MOUNTAINSIDE, NOEL PETERS, CHERI STEPHENSON, KATHY KRUZAZ, and JOHN DOES 1-5 (fictitious names of unidentified individuals), Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY DOCKET NO.: <u>Civil Action</u></p>
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Plaintiff Mary Zazzarino (“Plaintiff”) by way of Complaint against Defendant Sunrise Senior Living Services, Inc. d/b/a Brighton Gardens of Mountainside (“Defendant Sunrise” or “Corporate Defendant”), Defendant Noel Peters (“Defendant Peters”), Defendant Cheri Stephenson (“Defendant Stephenson”), and Defendant Kathy Kruzaz (“Defendant Kruzaz”) (collectively “Individual Defendants”), (collectively “Defendants”), allege as follows:

PARTIES

1. Plaintiff is a 73-year-old registered nurse residing at 16 Doreen Drive, Avenel, New Jersey 07001 and at all times relevant hereto was employed by Defendant Sunrise as a Wellness Nurse at the Brighton Gardens Mountainside Senior Living Facility.

2. At all times relevant hereto, Defendant Sunrise is a senior living facility organized and existing under the laws of the State of New Jersey with a principal place of business located at 1350 Route 22 West, Mountainside, New Jersey 07092.

3. At all times relevant hereto, Defendant Peters is employed as the Administrator/Executive Director of Defendant Sunrise. This claim is brought against Defendant Peters in his individual capacity and/or as an agent of Defendant Sunrise acting during the course of his employment.

4. At all times relevant hereto, Defendant Stephenson is employed as the Assisted Living Coordinator of Defendant Sunrise. This claim is brought against Defendant Stephenson in her individual capacity and/or as an agent of Defendant Sunrise acting during the course of his employment.

5. At all times relevant hereto, Defendant Kruzaz is employed as the Human Resources Representative of Defendant Sunrise. This claim is brought against Defendant Kruzaz in her individual capacity and/or as an agent of Defendant Sunrise acting during the course of her employment.

6. Defendants John Does 1 through 5 are currently unidentified individuals who acted in concert with Defendants and/or currently unidentified individuals responsible for the creation and/or implementation of harassment, anti-discrimination, and/or retaliation policies for Corporate Defendant(s) and are currently unidentified individuals who may have liability for damages

suffered by Plaintiff under any theory advanced herein.

FACTS COMMON TO ALL CLAIMS

7. Plaintiff repeats each and every allegation set forth above as if set forth fully herein at length.

8. Defendant Sunrise is a senior citizen living facility located in Mountainside, New Jersey. At all relevant times hereto, Plaintiff was employed to work at Defendant Sunrise as a Wellness Nurse.

9. Defendant Sunrise offers assisted living, memory care for those with Alzheimer's and other forms of dementia, in-home care, short-term respite care, and coordination of hospice care.

10. At all times relevant hereto, Defendant Sunrise typically had one Wellness Nurse assigned to monitor and treat approximately 115-117 residents.

11. Indeed, while Plaintiff was terminated prior to the COVID-19 pandemic, for years Defendant Sunrise has habitually failed to properly staff its facilities. As discussed below, the regular flu season presented a dire situation for Plaintiff and many of the residents staying at Defendant Sunrise's facilities.¹

12. Despite the lack of assistance and egregious understaffing, during Plaintiff's fifteen years of employment as a Wellness Nurse with Defendant Sunrise, she received high praise and annual salary increases.

13. Plaintiff was beloved by her patients and the care managers employed by Defendant Sunrise.

¹ It thus is no surprise that COVID-19 pandemic has resulted in alleged chaos and insufficient staffing/equipment to address the needs of residents. See <https://newyork.cbslocal.com/2020/04/10/coronavirus-update-family-outraged-claim-more-could-have-been-done-to-save-life-of-elderly-mother/>

14. That all changed in August 2019 when Defendant Sunrise put Plaintiff in an untenable situation – take an entitled break or leave her patients unattended, a situation that was the product of Defendant Sunrise’s chronic understaffing.

15. During the course of her employment at Defendant Sunrise, Defendants subjected Plaintiff to unlawful and unfair behavior simply because she prioritized the safety and well-being of her patients over Defendant Sunrise’s monetary interests.

16. In or around the summer of 2019, Defendants approached Plaintiff about her failure to clock out during lunch. Specifically, Plaintiff was advised that she needed to punch out during lunch and leave the office. Furthermore, Plaintiff was warned that if she failed to do so she needed to call Defendant Sunrise’s administrator at the time and explain why she was not taking her lunch break.

17. In response, Plaintiff reported issues with Defendant Sunrise’s lack of staffing, which usually prevented her from taking required lunch breaks. She also explained the lack of staffing not only was a violation of company policy, it posed a significant safety risk to the patient and violated regulations pertaining to patient care.

18. *Specifically, Plaintiff explained that it was unsafe, and likely illegal, for her to leave 117 residents unattended without any other nurses on duty. Further, it was a common occurrence for Plaintiff and other nurses to care for an exorbitant number of residents on a given day.*

19. Indeed, New Jersey administrative code, laws, and regulations mandate that adequate staffing shall be provided based on all assessed needs of residents.

20. New Jersey law requires Nursing Homes to report information on the number of staff involved in direct patient care. Under the law, Nursing Homes are required to publicly post

information that details direct patient care staffing levels within their facilities.

21. Inadequate nurse staffing has been shown to have a direct impact on patient outcomes, such as rates of infection, falls, heart attacks, and even death.

22. Defendants' facility was ill-prepared to address an emergency on a given day, let alone a viral outbreak.

23. Plaintiff, being the only Wellness Nurse on staff, knew there was not "adequate staffing" and she therefore, for the benefit of the patients, did not take breaks or lunch breaks. To do so, would have left 115-117 residents without a single Wellness Nurse on duty.

24. In-fact, during one incident in or around January 2019, Plaintiff was forced to go to the lunchroom during her shift. However, her lunch was suddenly interrupted when one of the residents began choking and no nurses were available to assist the individual. From that point forward, Plaintiff knew she could not take her lunch breaks.

25. Defendant Sunrise's understaffing generally created safety issues, and if she was to take her lunch break there would be no nurses to look after the residents. Because Plaintiff reported as much, Defendants began retaliating against Plaintiff through a multitude of different methods.

26. By way of example, in or around September 2019, Plaintiff hurt her back and needed to take three days off for sick time to rest.

27. Defendant Sunrise's nursing director was aware of Plaintiff's medical condition and approved her request for time off. Plaintiff was unconcerned about the situation because she knew she had enough time accrued.

28. Inexplicably, when Plaintiff returned to work, Defendants informed her that she was being put on administrative leave for taking off three days in a row.

29. In response, Plaintiff explained that her request for time off was approved by the

Nursing Director at Defendant Sunrise. Nonetheless, Defendants told her she needed to get a doctor's note if she wanted to avoid being put on administrative leave.

30. Immediately thereafter, Plaintiff went to her doctor and acquired a note explaining that the three days she took off were the result of back pain. Plaintiff returned to work that same day and provided Defendants the medical note.

31. Despite telling her that this would be enough for her to return to work just hours prior, Defendants spitefully refused to accept the note and instead informed Plaintiff that she was officially on leave until further notice.

32. Following this exchange, Plaintiff called Defendant Sunrise every day with the hope of figuring out her status at work. Each time Plaintiff called, however, she was advised that Defendant Sunrise's Corporate Executive had not yet made a decision regarding the situation.

33. After about a week, Plaintiff was informed that she was required to take New Jersey Family Medical Leave. Although Plaintiff did not want to be out of work, and she was fully able to perform her duties, Defendants made it clear that she was not permitted to return to work until, and unless she took medical leave.

34. Therefore, Plaintiff had her physician fill out her form for intermittent leave and she began attending weekly physical therapy pursuant to her doctor's recommendation. Plaintiff did not find it necessary to be on medical leave, but she was concerned about her job security.

35. In-fact, Plaintiff began worrying that Defendants wanted to force her out of Defendant Sunrise because of her reports of understaffing. Plaintiff believed that after the way she had been treated for taking off three days for back pain, if she was to take off another day due to sickness, Defendants would certainly try to fire her.

36. Plaintiff became even more aware of Defendants intentions while she was signing

the medical leave paperwork because Defendant Sunrise's Human Resources (HR) representative made statements that confirmed her suspicions.

37. Specifically, Defendant Sunrise's HR representative commented that Plaintiff had been "*working so long*" and asked, "*don't you want to retire soon?*"

38. Plaintiff was shocked by the question.

39. In response, Plaintiff explained that she had no intentions to retire soon. Rather, Plaintiff explained that she has been with the company for fifteen years, makes a respectable salary, and had no intention of retiring or leaving.

40. Plaintiff also expressed her concern to Defendant Kruzaz, the HR representative for Plaintiff's facility. Specifically, Plaintiff complained that she hoped she was not being used as a "*target due to her age*" and salary. Plaintiff explained, at age 73, she was one of the older nurses and after being subjected to insensitive remarks and retaliation for reporting the understaffing, it seemed that Defendants were also targeting her termination.

41. A couple months later, in or around November 2019, Defendant Sunrise received a visit from Corporate personnel. During this visit, Defendant Kruzaz called Plaintiff into a private meeting to discuss her understaffing concerns and failure to take lunch breaks or clock out during breaks.

42. At this time, another Corporate HR Representative asked if Plaintiff had called *Corporate Defendant's complaint hotline to report the situation*. Plaintiff explained that she had not called the hotline, but that even if she did, it was intended to remain anonymous according to company policy. The question was clearly an attempt by Defendants to intimidate Plaintiff.

43. Upon information and belief, Defendant Kruzaz asked Corporate to have an HR Representative investigate Plaintiff for purportedly making a complaint via the complaint hotline.

44. Defendant Sunrise's HR Representative coolly informed Plaintiff that she was aware of the anonymity requirement, yet she failed to apologize or acknowledge that she was in direct violation of such policy by asking Plaintiff whether she called.

45. Clearly, Defendants were concerned about Plaintiff's potential whistleblowing regarding Defendant Sunrise's understaffing and they were attempting to prevent her from complaining about the situation more than she already had.

46. Thus, Defendants began trying to wear Plaintiff down with frivolous accusations and unfair treatment. By way of example, following Plaintiff's reports Defendant Sunrise was denied a salary increase for the first time in the fifteen years.

47. Furthermore, for the first time ever, Plaintiff's appraisal, which was due in August 2019, was not completed until November 2019.

48. Defendants not only delayed Plaintiff's appraisal, but also advised her that her salary was capped. Not once during the course of Plaintiff's employment, was she ever made aware that her salary would be, or could be, capped.

49. Upon information and belief, Plaintiff knows that Defendants forced her to take medical leave, pressured her to retire, and refused to give her a salary increase in direct retaliation for her complaints about understaffing at Defendant Sunrise.

50. Finally, matters escalated during the winter 2020 flu season.

51. On or about January 20, 2020, Plaintiff was *alone* in the nursing office from 9a.m. until noon. The hospice nurse on staff reported that a resident's *left foot* ("Resident") was slightly bruised. The hospice nurse further informed Plaintiff that she elevated the Resident's foot but asked that Plaintiff check it later.

52. Unfortunately, that same day four other residents were reported ill with the flu,

which was starting to spread through the facility.

53. Throughout the course of the day, Plaintiff conducted numerous visits to the ill residents, she provided wound care for other residents, she called the doctors for resident care instructions, ordered medications, charted the medications ordered, and visited all the residents that were on the alerts list. Plaintiff was completely inundated with flu related patients and overwhelmed with other patients due to the lack of staffing.

54. As per usual, Plaintiff was unable to take a lunch or a break due to Defendant Sunrise's lack of staffing.

55. As a result of the flu outbreak, Plaintiff was unable to check on the Resident's left foot that day.

56. The next day, on or about January 21, 2020, Plaintiff checked the alerts immediately and found no notices or reports regarding the Resident's foot being injured. Nor were there any incident reports related to injuries that residents had sustained. Plaintiff was assigned to assist with the flu outbreak and was provided assignments by the Nursing Director. Therefore, Plaintiff was not able to check the Resident's foot this day either.

57. The following day, on or about January 22, 2020, Plaintiff had the day off.

58. When Plaintiff returned to work on January 23, 2020, she received a report that the Resident with the foot issues had an x-ray done on her right foot and the results indicated a fracture of the *right first* metatarsal. When Plaintiff first received news of the fracture, she noted she had been advised to check after the resident's *left* foot, not the right.

59. Immediately thereafter, Plaintiff called the Resident's daughter to inform her about the fracture. The Resident's daughter was extremely angry, claiming that she called the day prior and spoke to Defendant Stephenson (the assisted living coordinator at Defendant Sunrise), who

advised it was the Resident's husband was responsible for the injury because he did not report the injury. The Resident's daughter thereafter called Defendant Peters to further discuss the situation, but the administrator failed to call her back.

60. During this discussion, Plaintiff explained to the daughter that she was not able to check on her mother's foot on the 20th and 21st of January 2020 due to the flu outbreak. However, she advised the left foot was only slightly bruised while the right foot was experiencing mild pain, which was not of great concern. Plaintiff further advised that she instructed the Resident to use a wheelchair and avoid ambulating due to the pain she was feeling in her right foot. Plaintiff made clear that the left foot was not swollen nor was the resident experiencing pain in it.

61. During this conversation, Plaintiff noted it was the *left* foot she was advised to check on three days prior, not the right foot.

62. The Resident's daughter thereafter thanked Plaintiff for her honesty and expressed appreciation to Plaintiff for caring for her mother. The Resident's daughter further explained that her anger was the result of Defendant Peters' failure to call her back and Defendant Stephenson's insensitivity when they spoke.

63. Later that day, Plaintiff was approached by Defendant Sunrise's Executive Director, Defendant Peters, who advised Plaintiff she was being put on administrative leave and must leave the building immediately because of the Resident's right foot fracture – despite the fact Plaintiff was never responsible for caring after the Resident's right foot. It was the Resident's left foot that Plaintiff was supposed to check on, and the Resident's left foot was not injured.

64. In response to Defendant Peters' instructions, Plaintiff requested that Defendant Sunrise conduct an investigation before forcing Plaintiff on administrative leave. Defendant Peters declined to do so.

65. Instead, to avoid termination, Plaintiff was forced to sign a written statement admitting that Plaintiff forgot to check on the resident's right foot.

66. Plaintiff was misled and compelled to take responsibility for the Resident's right foot injury. However, it was actually the left foot Plaintiff was asked to check on. Therefore, she had no reason to know that the Resident's right foot suffered an injury.

67. On or about January 29, 2020, Plaintiff was called back into the building and informed that she was being terminated. Plaintiff was stunned.

68. Defendant Sunrise was requiring Plaintiff to sign a form stating that she was on her final warning for a serious nursing offense.

69. In response, Plaintiff refused to sign the document, knowing that any failure to see a patient was the result of Defendant Sunrise's understaffing and not the product of a ***“serious nursing offense.”***

70. When Plaintiff refused to sign the new document, Defendants informed Plaintiff that she was not permitted to work without doing so, even though she completely disagreed with the contents. Plaintiff unwillingly obliged while under duress. She amended the initial document that she signed and wrote below, ***“I resign with duress.”*** She expressed to Defendant Peters and Kruzaz, ***“you didn't even investigate. You're just looking to get rid of me.”***

71. When Defendants failed to respond, Plaintiff went on, ***“I have been here for fifteen years and have only ever received excellent performance reviews. Now you're making me resign? You're throwing me under the bus.”***

72. Plaintiff thereafter requested copies of her paperwork, performance reviews, and personal charts.

73. In response, Plaintiff was advised that she could get only get copies of her

performance reviews and must pick them up on February 2, 2020. However, on that day, Plaintiff received a call from Defendant Sunrise's HR department and was informed that she could not retrieve those documents.

74. In the fifteen years Plaintiff was employed at Defendant Sunrise, she developed a number of closing relationships with her colleagues. In-fact, as Plaintiff was leaving work, all of the care managers started crying as they learned that Defendants terminated her employment.

75. When Plaintiff objected to Defendants' requests to be forced to take lunch breaks and go on medical leave, and again complained of retaliation, Defendants immediately crafted reasons to terminate Plaintiff, knowing full-well she had nothing to do with or control over the incident regarding the Resident's foot injury.

76. To summarize, with full knowledge and clear evidence the retaliation was born out of Plaintiff's objections to unlawful wage and hour violations, Defendants terminated Plaintiff's employment. Defendants responded to Plaintiff's various complaints and reports not by remediating or correcting the situation, but instead by subjecting her to continuous acts of retaliation.

77. For fifteen years, Plaintiff experienced no issues at Defendant Sunrise. Notably, it was not until after Plaintiff opposed Defendants' actions that she began receiving pressure to retire, was denied a salary increase, and her employment was put in jeopardy. Any purported justification Defendants offer for Plaintiff's termination is purely pretextual. The reason for Plaintiff's termination was clear; namely, that Defendants consistently and openly engaged in unsafe practices and wage and hour violations, and when Plaintiff became aware of and complained of such conduct, she immediately suffered a retaliatory termination. The timing of Plaintiff's retaliatory termination alone speaks volumes of Defendants' retaliatory motive.

COUNT I

**NJLAD – INTERFERENCE/RETALIATION WITH DISABILITY
LEAVE/ACCOMODATION, DISPARATE TREATMENT & DISCRIMINATION DUE
TO DISABILITY/AGE**

78. Plaintiff repeats each and every allegation set forth above as if set forth fully herein at length.

79. Plaintiff was subjected to discrimination and disparate treatment on account of her age.

80. The above-described conduct would not have occurred but for Plaintiff's disability/age.

81. The conduct of Defendants as detailed above constitutes age discrimination, specifically making comments to Plaintiff in an attempt to pressure her into retirement.

82. Defendants did not have an effective anti-harassment policy in place, Defendants have not maintained an anti-harassment policy that is current and effective, and Defendant's anti-harassment policy existed in name only.

83. Defendants failed to institute appropriate monitoring mechanisms to check the effectiveness of the policies and complaint structures.

84. Defendants did not have a commitment from the highest levels of management that discrimination and harassment will not be tolerated.

85. As a result of the above discriminatory conduct, Plaintiff experiences ongoing emotional distress and experiences significant economic damages.

86. As the employers and/or supervisors of the Plaintiff, Corporate Defendants are vicariously, strictly, and/or directly liable to the Plaintiff pursuant to the New Jersey Law Against

Discrimination (“LAD”), *N.J.S.A.* 10:5-1, *et seq.*, in that the affirmative acts of harassment and discrimination committed by Individual Defendants occurred within the scope of their employment; allowing Individual Defendants to control day-to-day working environment; and/or Corporate Defendants and Individual Defendants were deliberately indifferent, reckless, negligent and/or tacitly approved the hostile work environment; and/or Corporate Defendants and Individual Defendants failed to create and/or have in place well-publicized and enforced anti-harassment policies, effective formal and informal complaint structures, training, and/or monitoring mechanisms for same despite the foreseeability of harassment and discrimination in the workplace; and/or by having actual knowledge of the harassment and discrimination of Plaintiff and failing to promptly and effectively act to stop it.

87. Corporate Defendants aided, abetted, incited, compelled, and/or coerced, and/or attempted to aid, abet, incite, compel and/or coerce Defendants to commit acts and omissions that were in violation of the LAD by committing affirmatively discriminatory and harassing acts towards Plaintiff in violation of its supervisory duties to halt or prevent harassment, subjecting Corporate Defendants to liability to Plaintiff pursuant to *N.J.S.A.* 10:5-12(e).

88. As a proximate result of the aforementioned acts and omissions set forth herein, Plaintiff has sustained damages.

WHEREFORE, Plaintiff demands judgment in her favor and against Defendants on this Count, together with compensatory and equitable relief, all remedies available under the NJLAD, punitive damages, pre-and post-judgment interest, attorney’s fees and costs of suit, and for such other relief that the Court deems equitable and just.

COUNT II

NJLAD – RETALIATION/IMPROPER REPRISAL

89. Plaintiff repeats each and every allegation set forth above as if set forth fully herein at length.

90. Defendants took retaliatory against Plaintiff by subjecting him to disparate treatment and/or by terminating her from employment.

91. Defendants are vicariously, strictly, and/or directly liable to Plaintiff for an unlawful retaliatory discharge in violation of the LAD pursuant to *N.J.S.A. 10:5-12(d)*.

92. As a proximate result of the aforementioned acts and omissions set forth herein, Plaintiff has sustained damages.

WHEREFORE, Plaintiff demands judgment in her favor and against Defendants on this Count, together with compensatory and equitable relief, all remedies available under the LAD, punitive damages, pre-and post-judgment interest, attorney's fees and costs of suit, and for such other relief that the Court deems equitable and just.

COUNT III

RETALIATION AND WRONGFUL TERMINATION IN VIOLATION OF NEW JERSEY CONSCIENTIOUS EMPLOYEE PROTECTION ACT ("CEPA")

93. Plaintiff repeats each and every allegation set forth above as if set forth fully herein at length.

94. CEPA's purpose, as pronounced by the New Jersey Supreme Court, "is to protect and encourage employees to report illegal or unethical workplace activities and to discourage ... employers from engaging in such conduct."

95. CEPA specifically provides that:

An employer shall not take any retaliatory action against an employee because the employee does any of the following:

- a. Discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer, or another employer,

with whom there is a business relationship, that the employee reasonably believes:

(1) is in violation of a law, or a rule or regulation promulgated pursuant to law, including any violation involving deception of, or misrepresentation to, any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity, or, in the case of an employee who is a licensed or certified health care professional, reasonably believes constitutes improper quality of patient care; or

(2) is fraudulent or criminal, including any activity, policy or practice of deception or misrepresentation which the employee reasonably believes may defraud any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity;

b. Provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation promulgated pursuant to law by the employer, or another employer, with whom there is a business relationship, including any violation involving deception of, or misrepresentation to, any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity, or, in the case of an employee who is a licensed or certified health care professional, provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into the quality of patient care; or

c. Objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes:

(1) is in violation of a law, or a rule or regulation promulgated pursuant to law, including any violation involving deception of, or misrepresentation to, any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity, or, if the employee is a licensed or certified health care professional, constitutes improper quality of patient care;

(2) is fraudulent or criminal, including any activity, policy or practice of deception or misrepresentation which the employee reasonably believes may defraud any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity; or

- (3) is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment.

N.J.S.A. 34:19-3.

96. CEPA's goal is to "prevent retaliation against those employees who object to employer conduct which they reasonably believe to be unlawful."

97. Throughout the course of her employment, Plaintiff reported and complained of unsafe and unlawful behavior.

98. Defendants had knowledge of Plaintiff's reports, objections, refusals, complaints and/or protests.

99. As a direct result of Plaintiff raising said complaints, objections, refusals, and/or threatening to disclose raising complaints, Defendants took retaliatory action against Plaintiff by discharging her from employment.

100. Defendants are vicariously, strictly, and/or directly liable to Plaintiff for an unlawful retaliatory discharge in violation of CEPA, pursuant to N.J.S.A. 34:19-1, et seq.

101. As a proximate result of the aforementioned acts and omissions set forth herein, Plaintiff has sustained damages.

WHEREFORE, Plaintiff demands judgment in her favor and against Defendants on this Count, together with compensatory and equitable relief, all remedies available under the law, punitive damages, pre-and post-judgment interest, attorney's fees and costs of suit, and for such other relief that the Court deems equitable and just.

COUNT IV

WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY

102. Plaintiff repeats each and every allegation set forth above as if set forth fully herein

at length.

103. During the course of her employment, Plaintiff reported and complained about Defendants' unlawful behavior. Defendants had knowledge of Plaintiff's protests and terminated her as a result thereof.

104. The acts of Defendants constitute a wrongful discharge in violation of public policy by which Plaintiff has been damaged and will continue to suffer damages.

WHEREFORE, Plaintiff demands judgment in her favor and against Defendants on this Count, together with compensatory and equitable relief, all remedies available under the law, punitive damages, pre-and post-judgment interest, attorney's fees and costs of suit, and for such other relief that the Court deems equitable and just.

COUNT V

NEW JERSEY STATE WAGE VIOLATIONS

105. Plaintiff repeats each and every allegation set forth above as if set forth fully herein at length.

106. At all times relevant hereto, Defendants were "employers" as defined by the New Jersey Wage and Hour Law ("NJWH"). N.J.S.A. § 34:11-56(a)(1)(g). 35.

107. At all times relevant hereto, Plaintiffs were "employees" as defined by the NJWHL. N.J.S.A. § 34:11-56(a)(1)(h).

108. The foregoing actions of Defendants constitute violations of New Jersey law.

109. Defendants intentionally and willfully failed to pay and refused to pay Plaintiff wages in violation of New Jersey Wage Payment Law, N.J.S.A. § 34:11-4.7, the New Jersey Wage and Hour Law, N.J.S.A. § 34:11-56a, and the New Jersey Wage and Hour Regulations, N.J.A.C. § 12:56-1.2(a)6.

110. Defendants' violations of New Jersey labor law entitle Plaintiff to recovery of their unpaid wages in an amount to be proven at trial, overtime wages in an amount to be proven at trial, reasonable attorneys' fees and costs of the action to be determined by the court, plus interest.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendants on this Count, together with compensatory and equitable relief, liquidated damages, punitive damages, pre- and post-judgment interest, attorney's fee and cost of suit, and for such other relief that the Court deems equitable and just.

COUNT VI

NEW JERSEY WAGE THEFT ACT VIOLATIONS

111. Plaintiff repeats each and every allegation set forth above as if set forth fully herein at length.

112. On or about August 5, 2019, Acting Governor Murphy signed Bill S1790 into law, which concerns amendments to New Jersey's state criminal laws and wage and hour laws to provide enforcement, penalties, and procedures for law regarding the failure to pay wages, revising various parts of statutory law, and supplementing articles 1 and 3 of Chapter 11 of Title 34 of the Revised Statutes.

113. Specifically, Bill S1790 provides for both civil and criminal penalties for employers who knowingly fails to pay wages owed to their employees. Indeed, Bill S1790 amends *N.J.S.A.* 34:11-4.10a to provide the following penalties and remedies:

Any employer who knowingly fails to pay the full amount of wages to an employee agreed to or required by, or in the manner required by, the provisions of article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11-2 et al.), or who knowingly violates any other provision of P.L.1965, c.173 (C.34:11-4.1 et seq.), or who takes a retaliatory action against an employee by

discharging or in any other manner discriminating against the employee because the employee has made a complaint to that employee's employer, to the commissioner, or to that employee's authorized representative, that the employer has not paid the employee the full amount of wages agreed upon or required by, and in the manner required by, the provisions of article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11-2 et al.), or because the employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to that article or those acts, or because that employee has testified or is about to testify in any proceeding under or relating to that article or those acts, or because the employee has informed any employee of the employer about rights under State laws regarding wages and hours worked, shall be guilty of a disorderly persons offense and, upon conviction for a first violation, shall be punished by a fine of not less than \$500 nor more than \$1,000 or by imprisonment for not less than 10 nor more than 90 days or by both the fine and imprisonment and, upon conviction for a second or subsequent violation, be punished by a fine of not less than \$1,000 nor more than \$2,000 or by imprisonment for not less than 10 nor more than 100 days or by both the fine and imprisonment. Each week, in any day of which any violation of article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11-2 et al.) continues shall constitute a separate and distinct offense. In the case of a discharge or other discriminatory action against the employee which is in violation of this subsection, the employer shall also be required to offer reinstatement in employment to the discharged employee and to correct the discriminatory action, and also to pay to the employee, in full, all wages lost as a result of that discharge or discriminatory action, plus liquidated damages equal to not more than 200 percent of the wages due, under penalty of contempt proceedings. Taking an adverse action against an employee within ninety days of the employee filing a complaint with the commissioner or a claim or action being brought by or on behalf of the employee in a court of competent jurisdiction for a violation of article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11-2 et al.) shall be considered presumptive evidence that the employer's action was knowingly taken in retaliation against the employee. An employee complaint or other communication need not make explicit reference to any section or provision of any State law regarding wages and hours worked to trigger the protections of this section.

114. Bill S1790's amendments further provide that an aggrieved employee may "*recover in a civil action the full amount of any wages due, or any wages lost because of any retaliatory*

action taken in violation of subsection a. of this section, plus an amount of liquidated damages equal to not more than 200 percent of the wages lost or of the wages due, together with costs and reasonable attorney's fees as are allowed by the court[.] N.J.S.A. 34:11-4.10c (emphasis added).

115. In addition, Bill S179 provides a rebuttable presumption against the employer for unlawful retaliatory action taken against the employee that occurs “within ninety days of the employee filing a . . . claim or action being brought by or on behalf of the employee in a court of competent jurisdiction” which can only be rebutted “by clear and convincing evidence that the action was taken for other, permissible, reasons.” *Id.*

116. Furthermore, under Bill S1790’s amendments, “[a]n employee complaint or other communication need not make explicit reference to any section or provision of any State law regarding wages and hours worked to trigger the protections of this section. N.J.S.A. 34:11-4.10a.

117. Plaintiff complained and/or protested and/or objected to Defendants’ retaliatory conduct as set forth at length herein, including that Defendants had withheld wages, commission, and/or monies owed to him while he was employed with Defendants.

118. Defendants had knowledge of Plaintiff’s complaints and/or protests and/or objections.

119. Defendants took unlawful retaliatory personnel action against Plaintiff by refusing to acknowledge or investigate his concerns and objections and further continued to withhold pay, tips, wages, and/or commissions earned by and owed to Plaintiff while employed with Defendants.

120. Said unlawful and retaliatory action against Plaintiff took place and occurred within ninety (90) days of Plaintiff’s aforementioned complaints and/or protests and/or objections to same.

121. Plaintiff's said protests and/or complaints and/or objections to said unlawful retaliatory action were made in good faith.

WHEREFORE, Plaintiff demands judgment in her favor and against Defendants on this Count, together with compensatory and equitable relief, all remedies, punitive damages, pre and post-judgment interest, attorneys' fees and costs of suit, and for such other relief as the Court deems equitable and just.

DEMAND FOR DISCOVERY OF INSURANCE COVERAGE

Pursuant to *Rule* 4:10-2(b), demand is made that Defendants disclose to Plaintiff's attorney whether or not there are any insurance agreements or policies under which any person or firm carrying on an insurance business may be liable to satisfy part or all of the judgment which may be entered in this action or indemnify or reimburse for payments made to satisfy the judgment and provide Plaintiff's attorney with true copies of those insurance agreements or policies, including, but not limited to, any and all declaration sheets. This demand shall include and cover not only primary insurance coverage, but also any excess, catastrophe, and umbrella policies.

DEMAND FOR TRIAL BY JURY

Plaintiff demands a trial by jury on all issues.

DESIGNATION OF TRIAL COUNSEL

Pursuant to *Rule* 4:25-4, MATTHEW A. LUBER, ESQUIRE is hereby designated as trial counsel for Plaintiff.

CERTIFICATION

Pursuant to *Rule* 4:5-1, it is hereby certified that, to the best of my knowledge, there are no other civil actions or arbitration proceedings involving this matter with respect to this matter and no other parties need to be joined at this time.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

McOMBER McOMBER & LUBER, P.C.
Attorneys for Plaintiff Mary Zaccarino

By: Matthew A. Lubber, Esq.
Matthew A. Lubber, Esq.

Dated: April 15, 2020

Civil Case Information Statement

Case Details: MIDDLESEX | Civil Part Docket# L-002349-20

Case Caption: ZAZZARINO MARY VS SUNRISE SENIOR
LIVING SERVICE

Case Initiation Date: 04/16/2020

Attorney Name: MATTHEW ALLEN LUBER

Firm Name: MCOMBER MCOMBER & LUBER, PC

Address: 54 SHREWSBURY AVE

RED BANK NJ 07701

Phone: 7328426500

Name of Party: PLAINTIFF : Zazzarino, Mary

Name of Defendant's Primary Insurance Company

(if known): Unknown

Case Type: LAW AGAINST DISCRIMINATION (LAD) CASES

Document Type: Complaint with Jury Demand

Jury Demand: YES - 6 JURORS

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Are sexual abuse claims alleged? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? YES

If yes, is that relationship: Employer/Employee

Does the statute governing this case provide for payment of fees by the losing party? YES

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO Title 59? NO Consumer Fraud? NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

04/16/2020

Dated

/s/ MATTHEW ALLEN LUBER

Signed