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SUPERIOR COURT OF N.J.
CIVIL DIVISION
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B.J. WAGNER, ELLEN TOWNES-ANDERSON, CHRISTINE ROHOWSKY-KOCHAN, SYLVIA CHRISTAKOS, HELENE HILL, and BARBARA FADEM, PATRICIA FITZGERALD-BOCARSLY, MURIEL LAMBERT, LYNN RIPLEY, PRANELA RAMESHWAR, GUDRUN LANGE, on behalf of themselves and others similarly situated,

Plaintiffs,

v.

UNIVERSITY OF MEDICINE AND DENTISTRY OF NEW JERSEY,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – ESSEX COUNTY
DOCKET NO.: ESX-L-6097-07

Civil Action

CLASS ACTION THIRD AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, B.J. Wagner (residing at 971 Washington Valley Road, in the Township of Basking Ridge, in the County of Somerset, State of New Jersey), Ellen Townes-Anderson (residing at 50 Washington Valley Road, in the Town of Morristown, County of Morris, State of New Jersey), Christine Rohowsky-Kochan (residing at 17 Woodshire Terrace, in Towaco, County of Morris, State of New Jersey), Sylvia Christakos (residing at 43 Tempe Wick Road, in the Borough of Mendham, County of Morris, State of New Jersey), Helene Hill (residing at 3 Silver Spring Road, in the Township of West Orange, County of Essex, State of New Jersey), and Barbara Fadem (residing at 168 Igoe Road, in the Township of Morganville, County of Monmouth, State of New Jersey), Patricia Fitzgerald-Bocarsly (residing at 15 Clydesdale Court,

Town of Plainsboro, County of Middlesex, State of New Jersey), Muriel Lambert (residing at 66 Plymouth Street, Town of Montclair, County of Essex, State of New Jersey), Lynn Ripley (residing at 123 West 80th Street, 2F, in the Town of New York, State of New York), Pranela Rameshwar (residing at 217 Lexington Avenue, Town of Maplewood, County of Essex, State of New Jersey), Gudrun Lange (residing at 5 Alpine Drive, Town of Lake Hopatcong, County of Morris, State of New Jersey) on behalf of themselves and others similarly situated, by way of Complaint against Defendant, state as follows:

INTRODUCTION AND CERTAIN DEFINITIONS

1. This is an action for violations of the New Jersey Law Against Discrimination, *N.J.S.A.* 10:5-1 *et seq.* and New Jersey's Equal Pay Act, *N.J.S.A.* 34:11-56.2 by and on behalf of a class of former, current and future female faculty of the defendant University of Medicine and Dentistry of New Jersey. The Class includes the plaintiffs B.J. Wagner, Ellen Townes-Anderson, Christine Rohowsky-Kochan, Sylvia Christakos, Helene Hill, Barbara Fadem, Patricia Fitzgerald-Bocarsly, Muriel Lambert, Lynn Ripley, Pranela Rameshwar and Gudrun Lange. Because of defendant's gender-discriminatory decisions, policies, plans, acts and/or omissions, these female faculty members and other similarly situated female faculty were, continue to be and will be paid less than male faculty for the performance of substantially equal and/or similar work.

2. In this pleading, the "Class" is limited to women who reside in New Jersey and who have been, are, or in the future will be employed in New Jersey by the University of Medicine and Dentistry of New Jersey in any faculty position with the sole exception of Plaintiff Ripley who resides in New York.

3. The University of Medicine and Dentistry of New Jersey (the "University") is a body corporate and politic created by the State of New Jersey pursuant to *N.J.S.A.* 18A:64G-2, *et seq.* with its principal place of business in New Jersey, doing business in New Jersey. The defendant is the State's university of the health sciences with programs at five academic health center campuses and a network of more than 200 educational and healthcare affiliates throughout the State. The University operates the State's only three medical schools, a dental school, a teaching hospital, behavioral healthcare centers, and schools of biomedical sciences, health related professions, nursing and public health. The University is engaged in the undergraduate, graduate, post-graduate, and continuing health education of health professionals and scientists; the conduct of biomedical, psycho-social, clinical and public health research; the health promotion, disease prevention and the delivery of healthcare; and service to its communities and the State. The University has approximately 5,600 full and part-time students, 1400 medical interns and residents, and 13,000 faculty and staff.

4. The plaintiff, B.J. Wagner, is and has been, since July 1995, a Professor of the University in the Department of Biochemistry and Molecular Biology at the New Jersey Medical School. She received an M.S. and Ph.D. in Microbiology from Cornell University. She began employment with the defendant University as a Research Associate in 1973. In 1978, Dr. Wagner became an Adjunct Professor at the University. Thereafter, she held positions at the University as Assistant, Associate and full professor, serving in the Departments of Ophthalmology and Biochemistry and Molecular Biology. Dr. Wagner has received awards and honors including the defendant University's Exceptional Merit Award. She has been assigned to important committees of the National Institutes of Health, the National Science Foundation, as well as committees of the defendant's medical school. She has served as member and guest

editor on the editorial boards of major biomedical research journals. Through her efforts, she has, as a principal and co-investigator, brought millions of dollars of grant money into the defendant University. Dr. Wagner has published (as author and co-author) nearly 50 articles in peer-reviewed journals.

5. The plaintiff, Ellen Townes-Anderson, is and has been, since 1999, a Professor of the University in the Department of Neurology and Neurosciences at the medical school. After serving approximately nine (9) years on the faculty of Cornell University Medical College, Dr. Townes-Anderson undertook employment at the defendant University as an Associate Professor of Neurosciences at the medical school. From 1996 to the present, Dr. Townes-Anderson has been an Associate Professor of Ophthalmology as well as (since 1999) a Professor of Neurosciences. Dr. Townes-Anderson received her M.S. in 1971 from the University of California at Berkeley and received her Ph.D. in 1980 from the Boston University School of Medicine. She was a Research Fellow at the Harvard Medical School from 1981 to 1985. Dr. Townes-Anderson has received numerous awards and honors including (on 3 occasions) Faculty Member of the Year in the Neurosciences Graduate Program and was designated a Master Educator in the Graduate School of Biomedical Sciences. Dr. Townes-Anderson has been assigned to major committees with the National Institutes of Health as well as at defendant's medical school. She has served as an *ad hoc* reviewer for numerous scientific journals including the Journal of Neuroscience and the Journal of Neurochemistry. Through her efforts as a principal or co-investigator, Dr. Townes-Anderson has brought millions of dollars of grant money into the defendant University. Dr. Townes-Anderson has published numerous articles in peer-reviewed journals.

6. The plaintiff, Christine Rohowsky-Kochan, has been a Professor at the defendant University since July 2001 in the Department of Neurology and Neurosciences at the defendant's medical school. From 1987 to the present, Dr. Rohowsky-Kochan has been a member of the defendant University's Graduate School of Biomedical Sciences. Dr. Rohowsky-Kochan started with the defendant University in 1986 as an Assistant Professor of Neurosciences. She became an Associate Professor in July, 1990. Dr. Rohowsky-Kochan received her M.A. and Ph. D. in, respectively, 1981 and 1983 from the College of Physicians & Surgeons of Columbia University. While at the defendant University, she received awards and honors including (in 1999) the Faculty of the Year award for the Neurosciences Graduate Program. Dr. Rohowsky-Kochan has had numerous major committee assignments for the National Institutes of Health and the defendant's medical school. Through her efforts as a principal and co-investigator, Dr. Rohowsky-Kochan has brought millions of dollars of grant money into the defendant University. As principal author and/or co-author, Dr. Rohowsky-Kochan has published nearly 70 articles in peer-reviewed journals.

7. The Plaintiff, Sylvia Christakos, has been a Professor at the defendant University since July 1990 at the medical school in the Department of Biochemistry and Molecular Biology. She started employment with the University in June, 1980 as an Assistant Professor in the Department of Biochemistry and, in July 1985, became an Associate Professor in that Department. Dr. Christakos was awarded an M.A. in Physiology in 1970 by the State University of New York at the Buffalo School of Medicine and, in 1973 received her Ph.D. from the same state university's Roswell Park Memorial Institute. Dr. Christakos has received numerous honors and awards including the Golden Apple Teaching Award, the State-wide Faculty Recognition Award, the UMDNJ Distinguished Faculty Award and the Excellence in Teaching

Award. She has received numerous major committee assignments to committees of the National Science Foundation, the National Institutes of Health and committees of the defendant University. She has served on various editorial boards including the boards of Endocrinology, Bone, and the Journal of Nutrition. Through her efforts as a principal or co-investigator, she has brought substantial funds into the defendant University. As principal or co-author, Dr. Christakos published over 110 articles in peer-reviewed journals. Dr. Christakos has held the highly prestigious position of President of the American Society of Bone and Mineral Research.

8. The Plaintiffs, Helene Hill and Barbara Fadem, are Professors in the Departments of Radiology and Psychiatry, respectively, of the defendant University's New Jersey Medical School.

9. Plaintiff Patricia Fitzgerald-Bocarsly received her bachelor's degree in biochemistry from the University of California at Los Angeles in 1976. In 1977, she received her master's degree in microbiology and immunology from the University of California at Davis, and in 1980 earned her Ph.D. in microbiology and immunology from Boston University. From 1980-1982, Dr. Fitzgerald-Bocarsly performed her post-doctoral fellowship for the National Institutes of Health (NIH), and was a fellow in Immunology, Laboratory of Herpes Virus Infections, at the Sloan-Kettering Institute, New York City. Dr. Fitzgerald-Bocarsly was hired by UMDNJ in 1985 as an assistant professor of pathology, was promoted in 1992 to be an associate professor of pathology and laboratory medicine, and became a full professor of pathology and laboratory medicine in 1999. She has been awarded numerous grants as principal investigator, including $1,943,750 from 1991-1999 regarding HIV pathogenesis, $355,000 from the NIH for 2007-2008, and $1,250,000 for 2010-2015 regarding HIV pathogenesis.

10. Plaintiff Muriel Lambert received her bachelor's degree in 1966 from Sweet Briar College, and her Ph.D., in 1970 from Northwestern University. Her postdoctoral training included serving as a postdoctoral fellow at the Harvard University School of Dental and Medicine from 1970-1972, and as a research fellow at Yale University School of Medicine from 1972-76. She was initially an instructor in anatomy at Harvard Medical School from 1971-1972, and began her employment by UMDNJ in 1976 as an Associate in Pathology at UMDNJ-NJMS where she was subsequently promoted and became a full Professor of Laboratory Medicine and Pathology in 1991 and a Professor of Medicine, Division of Dermatology, in 1993. Dr. Lambert's grants as principal investigator include NIH, National Institute of Arthritis and Musculoskeletal and Skin Diseases grant of $401,188 for 1986-1991; NIH, National Institutes of Environmental Health Sciences grant for $767,850 for 1992-1997; NIH, National Heart, Blood and Lung Institute grants of $647,796 for 1995-1999; $95,146 for 1997-1999; $895,607 for 1999-2004; and $900,000 for 2004-2010.

11. Plaintiff Lynn Ripley received her bachelor's degree in microbiology and public health from Michigan State University in 1968. She subsequently received her master's degree (1970) and Ph.D. (1974) in microbiology from the University of Illinois, where she also performed her postdoctoral training in microbiology from 1974-1977. Dr. Ripley's career in UMDNJ began in 1984 as an assistant professor in the Department of Microbiology and Molecular Genetics, where she was promoted to associate professor in 1987, and full professor in 1994. She also was awarded grants from the NIH in the amounts of $450,000 for 1985-1989 and $483,000 for 1995-1999, as well as $750,000 from the American Cancer Society for 1985-1996.

12. Plaintiff Pranela Rameshwar received her bachelor's degree in medical microbiology from the University of Wisconsin, and her Ph.D. in biology in 1993 from Rutgers

University in 1985. From 1993-1995, she performed a research fellowship in UMDNJ's Department of Medicine-Hematology, and was hired by UMDNJ in 1995 as an assistant professor in that department. She was promoted to associate professor in 2001, and then to full professor in 2007. Among the grants she has been awarded as principal investigator are $597,025 from the National Institute for Health for the years 2005-2007; $295,000 from Novartis Pharmaceuticals in 2005; and close to $4,000,000 from the NIH for the years 2010-2015.

13. Plaintiff Gudrun Lange received her bachelor's degree in psychology from the State University of New York in 1988, her master's degree in psychology in 1991 from the City University of New York, and her Ph.D. in psychology/clinical neuropsychology in 1994 from the City University of New York. Dr. Lange's postdoctoral training included an internship in professional psychology/clinical neuropsychology from 1993-1994 at the Kessler Institute of Rehabilitation, as well as research fellowships in neuropsychology at Memorial Sloan-Kettering Cancer Center from 1994-1995 and the Kessler Institute from 1995-1997. In 1996 she was hired by UMDNJ as an instructor in the department of neuroscience, was promoted to assistant professor in the department of psychiatry and radiology in 1997, where she was subsequently promoted in 2001 to associate professor and then full professor in 2006. As principal investigator, Dr. Lange has been awarded grants of approximately $170,000 from the U.S. Department of Veterans Affairs from 2001 to the present; approximately $350,000 from the Department of Defense; approximately $1,500,000 from the NIH from 2005-present; and approximately $375,000 from the NIH for 1999-2002.

COUNT I

VIOLATION OF THE NEW JERSEY LAW AGAINST DISCRIMINATION:

DISPARATE TREATMENT

14. At all relevant times, defendant has been, and continues to be an "employer" within the meaning of the New Jersey Law Against Discrimination, (the "LAD"), *N.J.S.A.* § 10:5-1, *et seq.*

15. As set forth above, plaintiffs have been, during all times relevant to this cause of action, "employees" of the defendant within the meaning of the LAD.

16. During their employment by the defendant University, plaintiffs and the Class of similarly situated female faculty taught students of the University, engaged in scientific research and published results thereof in journals, participated in professional committees inside and outside the University, and lectured at or participated in panels at scientific and professional organizations.

17. Plaintiffs and the Class undertook work that was substantially equal to and/or similar to, if not identical to, the work that male members of defendant's faculty undertook during their employment by UMDNJ.

18. Although plaintiffs and the Class performed the same, substantially equal and/or similar work as that performed by defendant's male faculty, the defendant University unlawfully discriminated on the basis of gender by compensating plaintiffs and the Class at total compensation levels less than said male faculty.

19. By way of example only, without limitation and without being exhaustive, plaintiffs allege the following with respect to the University's New Jersey Medical School:

a. Overall, salaries for basic science faculty are lower for females than for males.

b. The salary difference between genders is substantial for the ranks of full and associate professors. For Full Professors, females hired into that rank more than 10 years ago earn a mean salary of $135,652 as compared to similarly hired males who earn $154,768. Female faculty who achieved the rank of Full Professor from within the medical school, without being hired into that position, earned a mean salary of $128,884 as compared to males who earned $139,684.

c. There is a five-year delay in achieving full professor rank for female faculty as compared to male faculty. Fifty percent of the aforesaid males attained the rank of full professor within 15.5 years of receiving their Ph.D. ,whereas 50% of the females achieved that rank 20.5 years after their terminal degree.

d. These earnings disparities exist although 1) the percent of female faculty at all ranks with federal and other grants over the past five years is higher than that for male faculty; average grant dollars of female faculty at all ranks is higher than that of male faculty; and 2) female faculty direct twice as many courses as their male counterparts.

20. Plaintiffs' claims are typical of the claims of the members of the Class.

21. The proposed Class is so numerous that joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the court. Although the precise number of such persons is unknown, and the facts on which the calculation of that number are presently within the sole control of Defendants, upon information and belief, there are more than two hundred (200) members of the Class.

22. Plaintiffs' claims, and the claims of the Class, present questions of law and fact

that are common to all Class members.

23. Plaintiffs' claims are typical of those claims which could be alleged by any member of the Class, and the relief sought is typical of the relief which would be sought by each member of the Class in separate actions. All the Class members were subject to the same gender-discriminatory compensation practices of defendant as alleged herein. Defendant's University-wide policies and practices affected all Class members similarly, and Defendant benefited from the same type of unfair and/or wrongful acts as to each Class member. Plaintiffs and other Class members sustained similar losses, injuries and damages arising from the same unlawful policies, practices and procedures.

24. Plaintiffs are able to fairly and adequately protect the interests of the Class and have no interests antagonistic to the Class. Plaintiffs are represented by attorneys who are experienced and competent in both class action litigation and employment litigation and have previously represented plaintiffs in LAD cases.

25. A class action is superior to other available methods for the fair and efficient adjudication of the controversy – particularly in the context of salary disparity litigation where individual class members may lack the financial resources to vigorously prosecute a lawsuit against institutional defendants. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of efforts and expense that numerous individual actions engender. Because the losses, injuries and damages suffered by each of the individual Class members are modest compared to the expenses and burden of individual litigation, non-certification of the Class would make it extremely difficult or impossible for the individual Class members to redress the wrongs done to them. On the other hand, important public interests will

be served by addressing the matter as a class action. The adjudication of individual litigation claims would result in a great expenditure of Court and public resources; however, treating the claims as a class action would result in a significant saving of these costs. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent and/or varying adjudications with respect to the individual members of the Class, establishing incompatible standards of conduct for Defendants and resulting in the impairment of class members' rights and the disposition of their interests through actions to which they were not parties. The issues in this action can be decided by means of common, class-wide proof. In addition, if appropriate, the Court can, and is empowered to, fashion methods to efficiently manage this action as a class action.

26. There are questions of law and fact common to the Class which predominate over any questions affecting only individual class members, including:

a) Whether Defendant has, on a University-wide basis, paid female faculty at rates less than paid to male faculty.

b) Whether Defendant was aware of such gender-discriminatory practices and yet took no prompt and efficient remedial measures to remedy such discrimination.

c) Whether Defendant has analyzed the aforesaid earnings disparity using flawed statistical analysis.

d) Whether specific policies, practices, programs, procedures, protocols and plans of Defendant resulted in a gender-discriminatory salary structure.

27. The class claims set forth herein are maintainable under *R.* 4:32-1(b)(1), (2) and (3).

28. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiffs and the Class members have sustained damages, including loss of past and future wages, pension benefits and other benefits.

COUNT II

VIOLATION OF THE NEW JERSEY LAW AGAINST DISCRIMINATION: PATTERN AND PRACTICE

29. Plaintiffs repeat and re-allege the allegations of Count I as if fully set forth herein.

30. The defendant University has engaged in a pattern and practice of intentional gender-based discrimination that has resulted in plaintiffs and the Class being compensated at lower rates than male faculty for the performance of substantially equal, similar and/or identical work.

31. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiffs and the Class members have sustained damages, including loss of past and future wages, pension benefits and other benefits.

COUNT III

VIOLATION OF THE NEW JERSEY LAW AGAINST DISCRIMINATION: DISPARATE IMPACT

32. Plaintiffs repeat and re-allege the allegations of Counts I and II as if fully set forth herein.

33. The defendant University has promulgated facially neutral policies that have had the effect of causing plaintiffs and the Class to receive less compensation than male faculty for the performance of substantially equal, similar and/or identical work.

34. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiffs and the Class members have sustained damages, including loss of past and future wages, pension benefits and other benefits.

COUNT IV

VIOLATION OF THE NEW JERSEY EQUAL PAY ACT

35. Plaintiffs repeat and re-allege the allegations of Counts I, II and III as if fully set forth herein.

36. By and through its aforesaid actions and inaction, policies and practices, the defendant University has violated New Jersey's Equal Pay Act, *N.J.S.A.* 34:11-56.2.

37. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiffs and the Class members have sustained damages, including loss of past and future wages, pension benefits and other benefits.

COUNT V

LAD - RETALIATION

38. Plaintiffs repeat and re-allege the allegations of Counts I, II, III and IV as if fully set forth herein.

39. Following Plaintiffs' reasonable and good faith complaints of unequal pay, defendant University acknowledged the inequities and promised to remediate them.

40. When defendant University delayed the remediation of the gender salary inequities, Plaintiffs filed this discrimination lawsuit in order to protect their rights.

41. The filing of the lawsuit was statutorily protected activity.

42. Following Plaintiffs' filing of the lawsuit, defendant University took reprisals against them and refused to implement the promised remediation to the gender salary inequities.

43. Defendant University's bad faith refusals and actions were meant to coerce, intimidate, threaten and/or interfere with the exercise or enjoyment of Plaintiffs' and similarly situated others' rights protected by the LAD in violation of N.J.S.A. 10:5-12d.

44. As a direct and proximate result of defendant University's actions, Plaintiffs have and continue to suffer loss of income, loss of benefits, and other financial losses.

COUNT VI

FAILURE TO MONITOR AND REMEDIATE INTENTIONAL DISCRIMINATION

45. Plaintiffs repeat and re-allege the allegations of Counts I, II, III, IV and V as if fully set forth herein.

46. On the March 11, 1975, the New Jersey Director of the Division on Civil Rights ("Director") found that Defendant "has engaged in a pattern and practice of sex discrimination against its female faculty members and such unlawful practice constitutes a violation of N.J.S.A. 10:5-4 and 12(a)."

47. As a result of this finding of intentional "pattern and practice" gender discrimination, the Director ordered Defendant to, among other things, engage in "in the Affirmative recruitment, hiring, and promotion of qualified women": to direct "all appropriate individuals and/or committees to consider for faculty promotions and any and all qualified women before giving consideration to any and all men who have substantially similar qualifications"; and to "establish and maintain policies which will insure salary equity between comparable male and female faculty members in the future." (the "Order).

48. The Order was affirmed by the Appellate Division of New Jersey in the case Hollingshead, et al. v. College of Medicine and Dentistry of New Jersey, et al., 163 N.J. Super. 225 (App. Div. 1976).

49. Upon information and belief, Defendant has failed to monitor and remediate the intentional pattern and practice gender discrimination it in violation of the Order and the NJLAD.

50. Defendant has failed to take other necessary steps to enforce the mandates of the Order.

51. By virtue of its failure to monitor and remediate the intentional discrimination, Defendant perpetuated the pattern and practice of sex discrimination and continued to pay women faculty members less, deny and delay promotions and otherwise adversely affect their terms and conditions of employment.

52. As a direct result of Defendant's intentional gender discrimination and its failure to monitor and remediate the intentional discrimination, Plaintiffs and the Class Members have sustained damages.

WHEREFORE, Plaintiffs, on behalf of themselves and all others in the Class, pray for relief as follows:

A. Certification of this action as a class action;

B. Designation of Plaintiffs as representatives of the Class;

C. An award of compensatory and (where permitted by law) punitive damages;

D. An award of costs of action incurred herein, including expert fees;

E. An award of Attorneys' fees, including fees pursuant to the LAD and other applicable statutes;

F. An award of pre-Judgment and post-judgment interest, as provided by law; and

I. Such other and further legal and equitable relief as this Court deems necessary, just and proper including but not limited to the imposition of an affirmative action plan aimed at fostering non-discriminatory salary and benefits treatment at the defendant University.

DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves and all others similarly situated, hereby demand a jury trial on all causes of action and claims with respect to which they have a right to a jury trial.

SMITH MULLIN, P.C.
Attorneys for Plaintiffs
and Proposed Class Members

BY: _____
NEIL MULLIN

Dated: October 17, 2011

CERTIFICATION PURSUANT TO RULE 4:5-1

Plaintiffs hereby certify that the matter in controversy is not the subject of litigation in the Superior Court, Law Division.

SMITH MULLIN, P.C.
Attorneys for Plaintiffs
and Proposed Class Members

BY: _____
NEIL MULLIN

Dated: October 17, 2011

DESIGNATION OF TRIAL COUNSEL

Plaintiff hereby designates Neil Mullin, Esq. as trial counsel in this matter.

SMITH MULLIN, P.C.
Attorneys for Plaintiffs
and Proposed Class Members

BY: _____
NEIL MULLIN

Dated: October 17, 2011