Filed in Douglas District Court
*** EFILED ***
Case Number: D01CI160010363
Transaction ID: 0004618180
Filing Date: 12/14/2016 04:25:42 PM CST

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

LANA L. STARKEY ,	)	CASE NO. CI 16-____
	)	
Plaintiff,	)	
	)	
vs.	)	**COMPLAINT**
	)	
AMBER ENTERPRISES, INC., d/b/a AMBER PHARMACY, a Corporation, HY-VEE, INC, a Corporation, and MIKE AGOSTINO, Individually.	)	
	)	
Defendants.	)	

COMES NOW the Plaintiff, Lana L. Starkey, and for her cause of actions against the Defendants, states and alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff is a resident of Omaha, Douglas County, Nebraska, and at all times relevant to this action was employed by Defendant Amber Pharmacy and working in the office located in Omaha, Douglas County, Nebraska.

2. Defendant Amber Enterprises, Inc. d/b/a Amber Pharmacy (hereinafter "Amber Pharmacy") is Nebraska corporation with its principal place of business in Omaha, Nebraska. Amber Pharmacy conducts business in Omaha, Nebraska, as well as nationwide. The registered agent for Amber Pharmacy is Corporate Creations Network, Inc., 5000 Central Park Drive, Suite 204, Lincoln, Nebraska 68504. The Defendant is an employer as that term is defined pursuant to the applicable state and federal statutes set forth herein.

3. Defendant Hy-Vee, Inc. (hereinafter "Hy-Vee) is an Iowa corporation with its principal place of business in West Des Moines, Iowa. Upon information and belief, Hy-Vee is the parent company of Amber Pharmacy and conducts business in Omaha, Douglas County, Nebraska. The registered agent for Hy-Vee is CT Corporation System, 5601 South 59th Street,

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A

Lincoln, Nebraska 68516. The Defendant is an employer as that term is defined pursuant to the applicable state and federal statutes set forth herein.

4. Upon information and belief, Defendant Mike Agostino (hereinafter "Agostino") was the President of Defendant Amber Pharmacy at all relevant times. Defendant Agostino is currently the Vice President of Pharmacy Innovation/Business Development at Defendant Hy-Vee. At all relevant times, Defendant Agostino was a resident and working in Omaha, Douglas County, Nebraska.

5. All incidents relevant to this matter occurred in Omaha, Douglas County, Nebraska.

6. This is an action seeking redress for the violation of the rights guaranteed the Plaintiff by the Nebraska Fair Employment Practices Act, Neb. Rev. Stat. §§48-1101 to 48-1126, as amended; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, as amended; the Nebraska Age Discrimination in Employment Act, Neb. Rev. Stat. §§48-1001 to 48-1010; the Age Discrimination in Employment Act of 1967, 29 U.S.C. §621, et seq.; Consolidated Omnibus Budget Reconciliation Act ("COBRA"), 29 U.S.C. § 1166(a)(2), et seq.; and Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 et seq., for damages suffered by Plaintiff, as a result of Defendants' unlawful discrimination, whistleblowing, retaliation and constructive discharge.

7. This Court has original jurisdiction over the claims arising under state law and concurrent jurisdiction over the federal law claims.

8. Venue is proper as Defendants reside and/or are doing business within this judicial district, and a substantial portion of the events giving rise to Plaintiff's claims occurred within this judicial district. The Defendants are an employer as that term is defined pursuant to the applicable state and federal statutes set forth herein.

9. Plaintiff exhausted her administrative remedies by filing a discrimination complaint on October 5, 2015 with the Nebraska Equal Opportunity Commission ("NEOC"), NEB 02-15/16-10-47098- RD. Her charge was duly filed with the United States Equal Employment Opportunity Commission ("EEOC"), EEOC# 32E-2016-00008. A copy of Plaintiff's Charge of Discrimination is attached as Exhibit "A" and incorporated herein by reference. The NEOC issued Plaintiff's Right to Sue Letter on September 16, 2016. A copy of the NEOC's Right to Sue Letter is attached as Exhibit "B" and incorporated herein by reference. The EEOC issued Plaintiff a Right to Sue Letter on November 28, 2016. A copy of the EEOC's Right to Sue Letter is attached as Exhibit "C" and incorporated herein by reference.

FACTUAL ALLEGATIONS

10. Plaintiff is 52 years old (DOB 3/25/64).

11. Plaintiff started working at Defendant Amber Pharmacy in September 2001 as a Billing Representative and was quickly promoted to Assistant Billing Manager. In June 2007, Plaintiff was promoted to the position of National Account Manager. In June 2008, Plaintiff was promoted to the Director of Enrollment.

12. Upon information and belief, in or around February 2014, Defendant Hy-Vee acquired Defendant Amber Pharmacy.

13. In May 2014, Plaintiff assumed the position of Director of Finance, but was not provided a wage increase, thus she remained earning approximately $85,000.00. As the Director of Finance, her duties were focused on claims, posting and collections. In September 2014, based on Plaintiff's excellent evaluation and her pervious supervisor, Mr. Todd Bittner, urging of Defendant Agostino to provide Plaintiff with a wage increase, Plaintiff finally received a slight wage increase.

14. In or around December 2014 and January 2015, Defendant Amber Pharmacy replaced Plaintiff's immediate supervisor, Mr. Todd Bittner (over 40 years old), with a younger female, Ms. Lindsay Knoop (under 40 years old), as the Vice President of Finance.

15. Around the same time, there were various new policies and procedures implemented as a result of the upcoming acquisition of Defendant Amber Pharmacy by Defendant Hy-Vee. Despite the vast changes within the company, Plaintiff's supervisor, Ms. Knoop, did not provide guidance or support to Plaintiff. Yet, Plaintiff's performance continued to exceed expectations.

16. In or around February 2015, Defendant Amber Pharmacy implemented a new computer platform system entitled CPR+, in which Plaintiff obtained training and received accreditation as a CPR+ Subject Matter Certified Expert and Defendant Amber Pharmacy recognized Plaintiff's CPR+ designation. The transition to the new CPR+ computer system was extremely difficult for Defendant Amber Pharmacy and resulted in a loss of production and clients, none of which was due to Plaintiff's understanding or performance of the CPR+ system. Although it was not her responsibility or duty, Plaintiff routinely provided training to staff and was deemed the go-to person for questions relating to the CPR+ system as Defendant Amber Pharmacy recognized Plaintiff's proficiencies in CPR+.

17. On or about February 20, 2015, while Plaintiff was in a routine meeting with her subordinates, Ms. Amy Adair (under 40 years old), Claims Filing and Reconciliation Specialist, informed Plaintiff that she discovered that there were years of double payments that Defendant Amber Pharmacy was receiving from Texas Medicaid.

18. Immediately after discovering the overpayment from Texas Medicaid to Defendant Amber Pharmacy, on February 20, 2015, Plaintiff reported the overpayment issue to former Billing

Managers, Ms. Peggy Tomes (over 40 years old) and Ms. Rebecca Rice (under 40 years old). Both Ms. Tomes and Ms. Rice confirmed their awareness and knowledge of the overpayment issue. Ms. Tomes told Plaintiff that she had already informed Texas Medicaid of the overpayment issue. Ms. Rice informed Plaintiff that Texas Medicaid had requested a refund, but Defendant Amber Pharmacy was ignoring the refund request because it was too cumbersome.

19. As a result of Ms. Tomes and Ms. Rice's utter dismissal of her complaint of Texas Medicaid overpayments, the same day – February 20, 2015, Plaintiff went to Human Resources Department and reported the same to Ms. Molly Gard (under 40 years old). Ms. Gard instructed Plaintiff to email her immediate supervisor, Ms. Knoop, about the Texas Medicaid overpayment issue.

20. Following the advice of Ms. Gard, Plaintiff went up her chain of command and emailed Ms. Knoop regarding the Texas Medicaid overpayment. A copy of Plaintiff's email to Ms. Knoop dated February 20, 2015 is attached as Exhibit "D" and incorporated herein by reference. Plaintiff never received a response to said email.

21. On or about March 5, 2015, Plaintiff received a telephone call from a Texas Medicaid representative inquiring about why a claim had been reversed. Plaintiff immediately investigated the inquiry wherein Ms. Rice informed Plaintiff that it was reversed because it was a "test claim." Plaintiff relayed the "test claim" information to the Texas Medicaid representative, wherein the Texas Medicaid representative was alarmed and stated that Texas Medicaid would be reporting Defendant Amber Pharmacy to the proper authorities as submitting "test claims" was an illegal practice.

22. Based on her discovery of the "test claims" issue with Texas Medicaid, Plaintiff immediately reported the same to Ms. Tomes, Ms. Rice and Mr. Aaron Weise (under 40 years

old), Vice President of Business Development. Subsequently, on the same day, Plaintiff met with Ms. Tomes, Ms. Rice, Mr. Rice and Defendant Amber Pharmacy/Hy-Vee Attorney, Ms. Shannon Woods (under 40 years old) to discuss the Texas Medicaid issues. Attorney Woods asked if any money was owed to Texas Medicaid and Ms. Tomes stated "no." Plaintiff simultaneously stated that there was money owed due to the overpayment issue.

23. Also in March 2015, Plaintiff discovered another issue regarding Defendant Amber Pharmacy's procedures that violated HIPAA. In the process of assisting a patient with a copay card renewal wherein an email address was required, Plaintiff was told by Ms. Rice that if a patient did not have an email address, Defendant Amber Pharmacy's practice was to use a fictitious AOL email account using the patient's first letter of their first name followed by their last name @ aol.com (e.g., John Smith's account would be jsmith@aol.com).

24. Plaintiff was concerned with this practice and reported the issue to Supervisor of Customer Accounts, Ms. Jamie Loch (under 40 years old), Ms. Knoop and Mr. Weise. Plaintiff explained that using a fictitious email address could pose a violation of HIPAA if the address existed and belonged to another individual. Mr. Weise requested that Plaintiff provide him with an example via email of this copay card issue and possible HIPAA violation. Plaintiff sent Mr. Weise the requested email on March 10, 2015. A copy of Plaintiff's email to Mr. Weise dated March 10, 2015 is attached as Exhibit "E" and incorporated herein by reference. Plaintiff never received a response to said email.

25. In or around April 9, 10 and 11, 2015, Plaintiff sent emails to Defendants providing specific examples and claims of Texas Medicaid overpayments (Exhibit D). Plaintiff also identified the cause of the Texas Medicaid overpayments in that Defendant Amber Pharmacy was utilizing the incorrect coverage code in Defendant's processing system.

26. Shortly after Plaintiff reported the Texas Medicaid overpayment issue, the Texas Medicaid test claim issue and the copay card and HIPAA issue, Defendant Amber Pharmacy began stripping job duties away from Plaintiff and gave the duties to employees that were less qualified and under 40 years old. Plaintiff's duties were taken away without any notice or discussion. Throughout April and May 2015, Defendant Amber Pharmacy progressively restricted Plaintiff's access to numerous areas of the CPR+ system without informing Plaintiff.

27. On or about April 17, 2015, Ms. Rice sent an email informing all managers that Plaintiff's resolution duties were being assigned to Resolution Specialist, Ms. Stacy Stutzka (under 40 years old).

28. In May 2015, Ms. Knoop and Ms. Tomes sent an email stating that Plaintiff's duties relating to temporary posting of payments were being assigned to Mr. Tom Bergin (under 40 years old).

29. On May 29, 2015, Plaintiff was asked to meet with Defendant Agostino, Mr. Weise, Ms. Knoop, and Ms. Gard, wherein Defendant Agostino told Plaintiff that she was being demoted based on performance issues relating to errors and omissions by subordinates within her department, as well as her lack of understanding the CPR+ system. Defendant Agostino also stated that Plaintiff's salary would be reduced from $85,000.00 to $40,000.00. In the meeting, Plaintiff adamantly refuted the allegations regarding her performance and inefficiencies.

30. On May 30, 2015, Plaintiff was informed by one of her subordinates that Defendant Amber Pharmacy had posted a job which resembled Plaintiff's job duties. Plaintiff conducted an online search and discovered that Defendant Amber Pharmacy had submitted a job posting for the position of "Financial Reporting Director" which encompassed all of Plaintiff's job duties.

31. On June 1, 2015, Plaintiff sent an email to Defendant Agostino, Mr. Weise, Ms. Knoop, and Ms. Gard memorializing the May 29, 2015 meeting. A copy of Plaintiff's email dated June 1, 2015 is attached as Exhibit "F" and incorporated herein by reference. Plaintiff never received a response to said email.

32. On June 2, 2015, Plaintiff was asked to meet with Defendant Agostino, Mr. Weise, Ms. Knoop, and Ms. Gard. Defendant Agostino began the meeting by offering Plaintiff an apology and asked to "back up and start over." Defendant Agostino stated that the demotion was not based on Plaintiff's performance, but rather the "real reason" was due to Plaintiff's position of Director of Finance being eliminated as a result of an internal restructure. Defendant Agostino told Plaintiff she had the option to accept the position of Enrollment Specialist or Audit Resources Specialist. In response, Plaintiff questioned why the restructure was not discussed in the previous meeting, to which Defendant Agostino stated that he simply forgot to mention the restructure in the previous May 29, 2015 meeting.

33. Plaintiff thought the new reason of "restructuring" for her demotion was suspect, so in response, Plaintiff challenged Defendant Agostino and stated that she believed that she was being targeted and retaliated against because she reported the Texas Medicaid fraud and HIPAA violations. Plaintiff also complained that her duties were being taken away from her and assigned to younger, less qualified employees. Plaintiff also stated that she was being subjected to a hostile work environment and gave them specific examples. Plaintiff stated that she felt she was being terminated or forced to quit and inquired about a severance. In response, Defendant Agostino stated that he was not terminating Plaintiff and no severance would be offered. Defendant Agostino prompted Plaintiff to make a decision regarding the two positions, in which Plaintiff stated she would need time to think about her options and requested that the offer, salary decrease

and benefits be provided to her in writing. At the end of the meeting on June 2, 2015, Defendant Agostino instructed Plaintiff to take off the following day, June 3, 2015, to think about the offer of demotion and that he wanted Plaintiff's decision by June 4, 2015. Defendant Agostino assured Plaintiff that he would not say anything to Plaintiff's staff regarding her demotion until she had made her decision.

34. Later that day on June 2, 2015, Plaintiff was presented with a letter of demotion explaining that her position of Director of Finance was being eliminated and she had the option to accept the position of Enrollment Specialist or Audit Resources Specialist. The letter also stated that Plaintiff's salary would be gradually reduced from $85,586.00 to $40,000.00. A copy of Defendants' first demotion letter dated June 2, 2015 is attached as Exhibit "G" and incorporated herein by reference. Plaintiff requested the letter be revised so that she be paid her outstanding paid time off (PTO), and Defendant Agostino stated he would make the change.

35. Plaintiff took the day off on June 3, 2015. However, while Plaintiff was off work on June 3, 2015, Defendant Agostino told Plaintiff's department and staff that she was being placed in a different position and there would be a new reporting structure. While off work, Plaintiff's subordinates contacted her via text message to inquire about her demotion. Defendant Agostino also told employees to "steer clear of [Plaintiff]."

36. It should be noted that both positions of demotion required Plaintiff to be a subordinate to managers that she had previously hired and supervised as the Director of Enrollment and Director of Finance. Plaintiff would also be earning substantially less money than her subordinates that she supervised as the Director of Finance.

37. Upon her return to work on June 4, 2015, Plaintiff sent an email to Defendant Agostino, Mr. Weise, Ms. Knoop, and Ms. Gard memorializing the June 2, 2015 meeting and again

expressed her concerns of discrimination and retaliation. A copy of Plaintiff's email dated June 4, 2015 is attached as Exhibit "H" and incorporated herein by reference. In response, Plaintiff was asked to meet with Defendant Agostino, Ms. Knoop, and Ms. Gard on June 4, 2015. Defendant Agostino started the meeting stating that they had all received Plaintiff's email (Exhibit H) and provided everyone with a copy of the same. Defendant Agostino then handed Plaintiff the revised demotion letter. A copy of Defendants' second demotion letter dated June 4, 2015 is attached as Exhibit "I" and incorporated herein by reference. Defendant Agostino then addressed Plaintiff's email in explaining that they had all forgot to mention the restructuring in the May 29, 2015 meeting. Plaintiff challenged Defendant Agostino's explanation in stating, "All four (4) of you in the meeting 'forgot to mention it'?" Defendant Agostino reaffirmed his explanation. In response, Plaintiff stated she had no choice but to accept the Audit Resource Specialist position.

38. Plaintiff assumed the position of Audit Resource Specialist and performed the associated duties which were clerical in nature and demeaning work. Despite being demoted and stripped of all her duties, Plaintiff was still requested to assist and complete her former duties as Director of Finance. At the insistence of Defendant Agostino and management, all employees were to avoid Plaintiff, which made her feel very isolated and perpetuated the hostile work environment.

39. In June and July, 2015, Plaintiff, through correspondence from her attorney Mark Bosworth, complained of age discrimination, hostile work environment, whistleblowing, and retaliation, but Defendant Agostino, Defendant Amber Pharmacy, and Defendant Hy-Vee never responded to any of Plaintiff's attorney's correspondence. As such, Plaintiff contacted the NEOC in late July 2015 to file charges of discrimination and retaliation.

40. As a result of the discrimination, retaliation, demotion and hostile work environment, Plaintiff provided Defendants a letter of resignation on or about August 6, 2015, wherein she summarized the demotion and reasons for constructive discharge. A copy of Plaintiff's letter of resignation dated August 6, 2015 is attached as Exhibit "J" and incorporated herein by reference. Plaintiff never received a response to her letter of resignation. Instead on Plaintiff's last day of employment, August 13, 2015, Defendant Agostino approached Plaintiff and said he was "sorry it had to end this way."

41. Plaintiff's former position, the Director of Finance, was retitled and she was replaced by a younger, less qualified male, Mr. Alex Luke (under 40 years old).

42. Plaintiff's job performance was exceptional and exceeded performance standards at all times while employed by the Defendants.

43. In September 2015, Plaintiff obtained employment in the pharmaceutical industry as a Specialty Care Coordinator earning approximately $55,000.00.

44. Defendant Amber Pharmacy, Defendant Hy-Vee and Defendant Agostino failed to provide Plaintiff with notice of her rights to continue her health insurance benefits allowed under COBRA within the applicable period. Upon her own attempts, Plaintiff was provided her COBRA notice on or about November 25, 2015.

45. As a result of Defendants' wrongful conduct, Plaintiff suffered monetary damages, stress, anxiety, as well as mental anguish, loss of enjoyment of life and humiliation.

FIRST CAUSE OF ACTION

RETALIATION

46. Plaintiff incorporates Paragraphs 1 – 45 of this Complaint as if fully set forth herein.

47. In violation of Neb. Rev. Stat. §§48-1104 and 48-1114(3) of the Nebraska Fair Employment Practices Act and the Title VII of the Civil Rights Act of 1964, §§701, et seq., 42

U.S.C. §§2000e, et seq., as amended, Plaintiff was harassed, discriminated, demoted, subjected to adverse working conditions, changes to terms and conditions of her employment, and constructively discharged from her position as Director of Finance in retaliation for reporting Texas Medicaid fraud and HIPAA violations.

48. Plaintiff has been damaged as a direct and proximate cause of Defendant's discrimination and retaliation, suffering lost wages, lost fringe and plan benefits, emotional and physical distress, loss of enjoyment of life and substantial inconvenience in an amount to be determined at trial.

SECOND CAUSE OF ACTION

AGE DISCRIMINATION

49. Plaintiff incorporates Paragraphs 1 – 48 of this Complaint as if fully set forth herein.

50. Plaintiff was discriminated against as set forth above because of her age, in violation of Nebraska Age Discrimination in Employment Act (NFEPA) and the Federal Age Discrimination in Employment Act (ADEA).

51. At the time of Defendants' adverse employment actions, Plaintiff was 51 years old.

52. Plaintiff was highly qualified for her position at Defendants.

53. Plaintiff complained about the age discrimination to Defendants, but her complaints were disregarded and ignored.

54. Plaintiff was disciplined and subjected to adverse employment actions because of her age.

55. Plaintiff has been damaged as a direct and proximate cause of Defendant's discrimination and retaliation, suffering lost wages, lost fringe and plan benefits, emotional and

physical distress, loss of enjoyment of life and substantial inconvenience in an amount to be determined at trial.

56. Defendants' actions were willful entitling Plaintiff to a like sum of money to compensate her for willful age discrimination.

THIRD CAUSE OF ACTION

CONSTRUCTIVE DISCHARGE

57. Plaintiff incorporates Paragraphs 1 – 56 of this Complaint as if fully set forth herein.

58. Public policy in Nebraska is clearly defined in that it protects employees from being retaliated against for reporting unlawful activity and whistleblowing.

59. Plaintiff had a right to be treated the same as other employees who did not engage in whistleblowing activities.

60. Plaintiff had a right to be free from discrimination and constructive discharge based on her whistleblowing activities.

61. In violation of Neb. Rev. Stat. §§48-1104 and 48-1114(3) of the Nebraska Fair Employment Practices Act, Plaintiff was harassed, discriminated, demoted, subjected to adverse working conditions, changes to terms and conditions of her employment, and constructively discharged from her position as Director of Finance in retaliation for reporting Texas Medicaid fraud and HIPAA violations.

62. Plaintiff has been damaged as a direct and proximate cause of Defendant's discrimination and retaliation, suffering lost wages, lost fringe benefits, emotional and physical distress, loss of enjoyment of life and substantial inconvenience in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

63. Plaintiff incorporates Paragraphs 1 – 62 of this Complaint as if fully set forth herein.

64. Plaintiff had the right to be free from emotional distress. Defendant Amber Pharmacy, Defendant Hy-Vee and Defendant Agostino violated that right when they intentionally and/or recklessly inflicted severe emotional distress upon Plaintiff.

65. Defendants subjected Plaintiff to adverse employment action and created a hostile work environment.

66. Defendants demoted and constructively discharged Plaintiff's employment after she complained of the retaliation and whistleblowing activities.

67. Plaintiff suffered severe emotional distress that no reasonable person should be expected to endure.

68. Plaintiff has been damaged as a direct and proximate cause of Defendants' severe emotional distress, suffering lost wages, lost fringe benefits, emotional and physical distress, loss of enjoyment of life and substantial inconvenience in an amount to be determined at trial.

FIFTH CAUSE OF ACTION

COBRA/ERISA

69. Plaintiff incorporates Paragraphs 1 – 68 of this Complaint as if fully set forth herein.

70. Plaintiff participated in a group health insurance plan subject to the provisions of COBRA and ERISA.

71. Plaintiff was constructively discharged from Defendants and such termination of employment was a qualifying event.

72. Plaintiff was not notified of her right to COBRA benefits within thirty (30) days of the termination pursuant to 29 U.S.C. § 1166(a)(2).

73. Defendants Amber Pharmacy and Defendant Hy-Vee failed to notify the health plan administrator of the Plaintiff's termination and right to COBRA benefits within thirty (30) days of the termination.

74. Defendant Agostino, in his individual capacity, constructively discharged Plaintiff and intentionally failed to notify the health plan administrator of the Plaintiff's termination and right to COBRA benefits within thirty (30) days of the termination.

75. Defendant Agostino, in his individual capacity, contravened ERISA by intentionally failing to provide Plaintiff with timely notice of her COBRA benefits and is subject to personal liable to Plaintiff pursuant to 29 U.S.C. §§ 1140 and 1002(9).

76. Plaintiff has been damaged as a direct and proximate cause of Defendant's failure to provide Plaintiff with timely notice of her COBRA rights pursuant to COBRA and ERISA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant Amber Pharmacy, Defendant Hy-Vee and Defendant Agostino as follows:

A. Declare Defendant's conduct to be in violation of Title VII of the Civil Rights Act of 1964, §§701, et seq., 42 U.S.C. §§2000e, et seq., Neb. Rev. Stat. §§48-1104, 48-1228, et seq., of the NFEPA;

B. Declare that Defendants subjected Plaintiff to adverse employment actions, including demotion and constructive discharge in retaliation for Plaintiff's complaints of age discrimination and whistleblowing activities as alleged above;

C. Declare that Defendants discriminated against Plaintiff on the basis of her age.

D. Declare that Defendants intentionally inflicted severe emotional distress upon Plaintiff.

E. Declare that Defendant Amber Pharmacy and Defendant Hy-Vee failed to provide Plaintiff with timely notice of her COBRA rights pursuant to COBRA and ERISA;

F. Declare that Defendant Agostino, in his individual capacity, intentionally failed to provide Plaintiff with timely notice of her COBRA rights pursuant to COBRA and ERISA;

G. Award damages to compensate Plaintiff for her lost wages, lost fringe benefits, reasonable future wages, inconvenience, mental and emotional distress, and pain and suffering;

H. Award damages, penalties pursuant to COBRA ($100 per day penalty) and ERISA ($110 per day penalty) and equitable relief pursuant to ERISA;

I. Award Plaintiff attorney's fees and costs of this trial; and

J. Award Plaintiff for such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands trial by jury in Omaha, Douglas County, Nebraska, on all issues.

DATED this 14th day of December, 2016.

LANA L. STARKEY, Plaintiff

BY: _____

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Jamie M. Hurst # 25256
Walentine, O'Toole, McQuillan & Gordon, LLP
11240 Davenport Street
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Attorneys for Plaintiff

State of Nebraska

NEBRASKA EQUAL OPPORTUNITY COMMISSION

Ms. Lana L. Starkey
15709 S St
Omaha, NE 68135

October 15, 2015

Dear Ms. Starkey:

RE: NEB 2-15/16-10-47098-RD
Starkey vs. Amber Enterprises, Inc. d/b/a Amber Pharmacy
Nebraska Fair Employment Practice Act
Nebraska Age Discrimination in Employment Act

This letter is to acknowledge your charge(s) filed in our office on October 5, 2015. Please be advised that the Commission determines the level of investigation appropriate to your charge. You will be asked to provide information that supports your charge, which may include pertinent documents and witness statements, including address and telephone numbers.

The Commission has a backlog of cases. It will be several months from the time filed before your case is assigned. You will receive written notification from the investigator when your case is assigned.

Your case number is shown above. Please refer to this number when inquiring about your case. If you cannot provide us with the case number at the time of your inquiry, we will be unable to answer any questions about your case. If you have retained an attorney as your representative, please have the attorney provide the Commission with a letter of representation.

If you change your address and/or telephone number, you must contact the Commission immediately. Please refer to the docket number above when contacting the Commission.

On behalf of the Commission,

Rhonda Pittman
EOC Investigator II

Enclosures

MAIN OFFICE:
301 Centennial Mall, South
PO Box 94934
Lincoln NE 68509-4934
Phone: 402-471-2024
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BRANCH OFFICES:
1313 Farnam-on-the-Mall
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5055A Broadway, Suite 600
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Fax: 308-632-1341
800-839-8633

EXHIBIT
A

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

AGENCY
[X] FEPA
[X] EEOC

CHARGE NUMBER
NEB 2-15/16-10-47098-RD
32E-2016-00008

Nebraska Equal Opportunity Commission and EEOC
State or local Agency, if any

RECEIVED NEOC
OCT 05 2015
OMAHA OFFICE

NAME *(indicate Mr., Ms., Mrs.)*		HOME TELEPHONE *(Include Area Code)*
Ms. Lana L. Starkey		(402) 891-6794
STREET ADDRESS	CITY, STATE AND ZIP CODE	DATE OF BIRTH
15709 S St	Omaha NE 68135	3/25/1964

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME *(If more than one list below.)*

NAME	NUMBER OF EMPLOYEES, MEMBERS	TELEPHONE *(Include Area Code)*
Amber Enterprises, Inc. d/b/a Amber Pharmacy	101-200 Employees	(888) 370-1724
STREET ADDRESS	CITY, STATE AND ZIP CODE	COUNTY
10004 S 152nd St, Ste A	Omaha NE 68138	Douglas

CAUSE OF DISCRIMINATION BASED ON *(Check appropriate box(es))*

[ ] RACE [ ] COLOR [ ] SEX [ ] RELIGION [ ] NATIONAL ORIGIN

[ ] RETALIATION [X] AGE [ ] DISABILITY [ ] GENETIC INFORMATION

[X] OTHER - WHISTLEBLOWER

DATE DISCRIMINATION TOOK PLACE

EARLIEST	*LATEST*
4/16/2015	5/29/2015

[ ] CONTINUING ACTION

THE PARTICULARS ARE *(If additional space is needed, attach extra sheet(s)):*

I. I am 51 years old (DOB 3/25/64). My employment began in September 2001, most recently as an Audit Specialist. I complained about an illegal Medicaid overpayments and the Respondent's risk in violating HIPAA. I was stripped of assignments and demoted due to my age and in retaliation for complaining.

II. I believe I have been discriminated against on the basis of age, in violation of The Age Discrimination in Employment Act of 1967, as Amended, and Section 48-1004 of the Nebraska Age Discrimination in Employment Act; and on the basis of whistleblower retaliation, in violation of Section 48-114(3) of the Nebraska Fair Employment Practice Act, in that:

1. During a meeting with my subordinates on February 20, 2015, Claims Research Specialist Amber Adair (30's) informed me of years of overpayments the Respondent received from Texas Medicaid. The same day, I reported the overpayment to former Billing Managers Peggy Tomes (50's) and Rebecca Rice (30's). Tomes told me that she and Adair had expressed the overpayment concern with Texas Medicaid and Rice told me that she was aware of the overpayments and that Texas Medicaid asked for a refund request for each individual payments for the past 2-3 years and they haven't had time to do it. I expressed concern about the overpayment with HR Molly Gard (early30's) and Gard told me to email VP of Finance Lindsay Knoop (late 20's) about the matter, which I did the same day. I also reported this same issue during a meeting with Rice, Tomes, VP Aaron Weiss (30's) and Respondent Attorney Shannon Woods (30's) on March 5th, 2015 after I received a call from Texas Medicaid about a test claim. Subsequently, the Respondent hired BRG Consulting to review their billing practices and interviewed several employees .

2. In March 2015, I asked Rice for direction in renewing a patient's drug manufacture co-pay card via a website that required an email address for the patient. Rice responded that the practice was to enter the initial of the patient's first name and last name @aol.com. I then told Supervisor of Customer Accounts Jamie Loch (30's)Knoop and Weiss that I was not comfortable creating a fictitious email address as it could pose a violation of HIPAA if the address actually belonged to someone other than the patient. Weiss asked me to email him an example of this action which I did on March 10, 2015. Weiss never responded to my email.

Continued on Page 2

3. After my complaints, job duties began being stripped from me, some of which also affected my team. This included batch posting of credit cards into the Respondent's CPR + system on April 16, 2015 and on May 11, 2015, I discovered that I was restricted from certain areas of CPR + system. On April 17, 2015, Rice sent an email to all managers which indicated that my resolution duties were given to Resolution Specialist Stacy Stutzka (30's). Also in May 2015, Knoop and Tomes sent me an email that I would no longer be completing temporary posting of payments and that Tom Bergin (20's) would assume this assignment.

4. On May 29, 2015, I met with President Mike Agostino (40's). Weiss, Knoop, and Gard where Agostino told me that I was being demoted because one of my temporary subordinates Chris Spereman (50's) made a typing error which resulted in a million dollar loss, that there was 5 million dollars worth of checks in my office that hadn't been posted and that I wasn't getting the CPR + system but wasn't given any specifics. I later learned that the error Spereman made was resolved and did not result in a loss. I had email communications with Knoop on March 30, 2015 that I was short staff in getting payments posted and sent her a calculation of all checks and their sources and I was never addressed about how I operated the CPR + system

5. On June 2, 2015, I again met with Agostino, Weiss, Knoop, and Gard where I was told that I was demoted because my position was eliminated due to restructure and I was offered an audit specialist or enrollment specialist position. I complained that I was stripped of job duties which were given to younger and less qualified persons. Later that day, Agostino gave me a letter of how my annual salary would gradually reduce by $10,000 each quarter from $85,580 until it reached $40,000. On June 4, 2015, I met with the same individuals and chose the audit specialist position.

6. I exhibited remarkable performance and always received exceptional performance reviews.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I swear or affirm that I have read the above and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

x Lana Starkey

State of Nebraska County of Douglas

On this, the 20 day of September, 20 15, The Complainant appeared before me, known to me (or satisfactorily proven) to be the person whose name is subscribed to this instrument, and acknowledged that they executed the same for the purposes therein contained.

Notary Public Michelle Evans

Notary Seal GENERAL NOTARY - State of Nebraska MICHELLE EVANS My Comm. Exp. May 30, 2018

State of Nebraska
NEBRASKA EQUAL OPPORTUNITY COMMISSION

Lana L. Starkey, Complainant,	)	**COMMISSION DETERMINATION**
vs.	)	NEB 2-15/16-10-47098-RD EEOC 32E-2016-00008
Amber Enterprises, Inc. d/b/a Amber Pharmacy, Respondent.	)	

A determination has been made in the above-referenced matter before the Nebraska Equal Opportunity Commission. Pursuant to the **Nebraska Age Discrimination in Employment Act** and the Rules and Regulations of the Nebraska Equal Opportunity Commission, the Commission has officially dismissed this charge.

The evidence fails to support the allegations of discrimination (see attached); and there is no appeal process. This finding of no **reasonable cause** is the final determination of the Nebraska Equal Opportunity Commission and completes the Commission's handling of the charge.

Since this charge was also filed under Federal law, you may contact the U.S. Equal Employment Opportunity Commission in St. Louis within fifteen (15) days of your receipt of this notice regarding this case. Requests for a Substantial Weight Review must be made in writing to Joseph Wilson, State and Local Coordinator, U.S. Equal Employment Opportunity Commission, St. Louis District Office, 1222 Spruce Street, Room 8.100, St. Louis, MO 63103.

Due to the complexity of the law, and other avenues of redress that may exist, you may wish to consult with an attorney.

The Commission wishes to thank you for your cooperation in the processing of this charge.

For the Commission

SEP 16 2016
Date

MAIN OFFICE:
301 Centennial Mall, South
PO Box 94934
Lincoln, NE 68509-4934
Phone: 402-471-2024
Fax: 402-471-4059
800-642-6112
www.NEOC.nebraska.gov

BRANCH OFFICES:
1313 Farnam-on-the-Mall
Omaha, NE 68102-1836
Phone: 402-595-2026
Fax: 402-595-1205
800-382-7820

505A Broadway Suite 600
Scottsbluff, NE 69361-3515
Phone: 308-632-1340
Fax: 308-632-1341
800-830-8633

EXHIBIT
B

ATTACHMENT

No Reasonable Cause – Age Discrimination (Assignment; Demotion; Constructive Discharge)

The evidence fails to show the Complainant was subjected to adverse assignments. The evidence shows there were concerns about Complainant's skills in her position after Respondent acquired her employer and new software was implemented. Due to these concerns, and a recommendation from a consultant that Respondent reorganize staff, the Complainant was offered her choice in two positions. The evidence shows that both of these positions paid significantly less than Complainant's former position due to the duties involved with the positions. The evidence shows that shortly after her accepting the new position she resigned. The evidence fails to show any actions taken were because of her age.

State of Nebraska
NEBRASKA EQUAL OPPORTUNITY COMMISSION

Lana L. Starkey, Complainant,	)	**COMMISSION DETERMINATION**
vs.	)	NEB 2-15/16-10-47098-RD
Amber Enterprises, Inc. d/b/a Amber Pharmacy, Respondent.	)	

A determination has been made in the above-referenced matter before the Nebraska Equal Opportunity Commission. Pursuant to the **Nebraska Fair Employment Practice Act** and the Rules and Regulations of the Nebraska Equal Opportunity Commission, the Commission has officially dismissed this charge.

The evidence fails to support the allegations of discrimination (see attached); and there is no appeal process. This finding of **no reasonable cause** is the final determination of the Commission and completes the handling of the charge. The deadline for filing an action directly in state district court is 90 days after the receipt of this notice.

Due to the complexity of the law, and other avenues of redress that may exist, you may wish to consult with an attorney.

The Commission wishes to thank you for your cooperation in the processing of this charge.

For the Commission

SEP 16 2016
Date

MAIN OFFICE:
301 Centennial Mall, South
PO Box 94934
Lincoln, NE 68509-4934
Phone: 402-471-2024
Fax: 402-471-4059
800-642-6112
www.NEOC.nebraska.gov

BRANCH OFFICES:
1313 Farnam-on-the-Mall
Omaha, NE 68102-1836
Phone: 402-595-2028
Fax: 402-595-1205
800-382-7820

505A Broadway Suite 600
Scottsbluff, NE 69361-3515
Phone: 308-632-1340
Fax: 308-632-1341
800-830-8633

ATTACHMENT

No Reasonable Cause – Whistleblower Retaliation Discrimination (Assignment; Demotion; Constructive Discharge)

The evidence fails to show the Complainant was subjected to adverse assignments. The evidence shows that Complainant did bring issues to Respondent's attention, and Respondent addressed them accordingly. The evidence shows there were concerns about Complainant's skills in her position after Respondent acquired her employer and new software was implemented. Due to these concerns, and a recommendation from a consultant that Respondent reorganize staff, the Complainant was offered her choice in two positions. The evidence shows that both of these positions paid significantly less than Complainant's former position due to the duties involved with the positions. The evidence shows that shortly after her accepting the new position she resigned. The evidence fails to show any actions taken were in retaliation for any complaints Complainant made.

EEOC Form 161 (11/16)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Lana L. Starkey**
15709 S St
Omaha, NE 68135

From: **St. Louis District Office**
1222 Spruce Street
Room 8.100
Saint Louis, MO 63103

☐ *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.	EEOC Representative	Telephone No.
32E-2016-00008	Joseph J. Wilson, State & Local Program Manager	(314) 539-7816

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐ Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

☐ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☒ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐ Other *(briefly state)*

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

Joseph J. Wilson

James R. Neely, Jr.,
Director

November 28, 2016
(Date Mailed)

Enclosures(s)

cc:

Mic Jurgens
Assistant General Counsel
HY-VEE, INC
5820 Westown Pkwy
West Des Moines, IA 50266

Ari D. Riekes
MARKS, CLARE & RICHARDS
11605 Miracle Hills Dr, Ste 300
Omaha, NE 68154

EXHIBIT C

Enclosure with EEOC
Form 161 (3/98)

INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

(This information relates to filing suit in Federal or State court under Federal law. If you also plan to sue claiming violations of State law, please be aware that time limits and other provisions of State law may be shorter or more limited than those described below.)

PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), or the Age Discrimination in Employment Act (ADEA):

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you *receive* this Notice.** Therefore, you should **keep a record of this date.** Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was *mailed* to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/00 to 12/1/00, you should file suit before 7/1/02 – *not* 12/1/02 -- in order to recover unpaid wages due for July 2000. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII and the ADA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice, if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. **If you need help in finding a lawyer, you may call (314) 539-7911 in St. Louis, (913) 551-6609 in Kansas City, or (405) 231-5349 in Oklahoma City.** If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly **in writing** and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice.** (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

AGENCY
☒ FEPA
☒ EEOC

CHARGE NUMBER
NEB 2-15/16-10-47098-RD
32E-2016-00008
Amended Charge

Nebraska Equal Opportunity Commission and EEOC
State or local Agency, if any

RECEIVED NEOC
APR 04 2016
OMAHA OFFICE

NAME (Indicate Mr., Ms., Mrs.)	HOME TELEPHONE (Include Area Code)
Ms. Lana L. Starkey	(402) 891-6794

STREET ADDRESS	CITY, STATE AND ZIP CODE	DATE OF BIRTH
15709 S St	Omaha NE 68135	3/25/1964

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME	NUMBER OF EMPLOYEES, MEMBERS	TELEPHONE (Include Area Code)
Amber Enterprises, Inc. d/b/a Amber Pharmacy	101-200 Employees	(888) 370-1724

STREET ADDRESS	CITY, STATE AND ZIP CODE	COUNTY
10004 S 152nd St, Ste A	Omaha NE 68138	Douglas

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))
[ ] RACE [ ] COLOR [ ] SEX [ ] RELIGION [ ] NATIONAL ORIGIN
[ ] RETALIATION [X] AGE [ ] DISABILITY [ ] GENETIC INFORMATION
[X] OTHER - WHISTLEBLOWER

DATE DISCRIMINATION TOOK PLACE
EARLIEST 4/16/2015 LATEST 8/13/2015
[ ] CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):

I. I am 51 years old (DOB 3/25/64). My employment began in September 2001, most recently as an Audit Specialist. I complained about an illegal Medicaid overpayments and the Respondent's risk in violating HIPAA. I was stripped of assignments and demoted due to my age, demoted, and forced to resign my employment due to my age and in retaliation for complaining.

II. I believe I have been discriminated against on the basis of age, in violation of The Age Discrimination in Employment Act of 1967, as Amended, and Section 48-1004 of the Nebraska Age Discrimination in Employment Act; and on the basis of whistleblower retaliation, in violation of Section 48-1114(3) of the Nebraska Fair Employment Practice Act, in that:

1. During a meeting with my subordinates on February 20, 2015, Claims Research Specialist Amber Adair (30's) informed me of years of overpayments the Respondent received from Texas Medicaid. The same day, I reported the overpayment to former Billing Managers Peggy Tomes (50's) and Rebecca Rice (30's). Tomes told me that she and Adair had expressed the overpayment concern with Texas Medicaid and Rice told me that she was aware of the overpayments and that Texas Medicaid asked for a refund request for each individual payments for the past 2-3 years and they haven't had time to do it. I expressed concern about the overpayment with HR Molly Gard (early30's) and Gard told me to email VP of Finance Lindsay Knoop (late 20's) about the matter, which I did the same day. I also reported this same issue during a meeting with Rice, Tomes, VP Aaron Weiss (30's) and Respondent Attorney Shannon Woods (30's) on March 5th, 2015 after I received a call from Texas Medicaid about a test claim. Subsequently, the Respondent hired BRG Consulting to review their billing practices and interviewed several employees .

2. In March 2015, I asked Rice for direction in renewing a patient's drug manufacture co-pay card via a website that required an email address for the patient. Rice responded that the practice was to enter the initial of the patient's first name and last name @aol.com. I then told Supervisor of Customer Accounts Jamie Loch (30's)Knoop and Weiss that I was not comfortable creating a fictitious email address as it could pose a violation of HIPAA if the address actually belonged to someone other than the patient. Weiss asked me to email him an example of this action which I did on March 10, 2015. Weiss never responded to my email.

3. After my complaints, job duties began being stripped from me, some of which also affected my

team. This included batch posting of credit cards into the Respondent's CPR + system on April 16, 2015 and on May 11, 2015, I discovered that I was restricted from certain areas of CPR + system. On April 17, 2015, Rice sent an email to all managers which indicated that my resolution duties were given to Resolution Specialist Stacy Stutzka (30's). Also in May 2015, Knoop and Tomes sent me an email that I would no longer be completing temporary posting of payments and that Tom Bergin (20's) would assume this assignment.

4. On May 29, 2015, I met with President Mike Agostino (40's). Weiss, Knoop, and Gard where Agostino told me that I was being demoted because one of my temporary subordinates Chris Spereman (50's) made a typing error which resulted in a million dollar loss, that there was 5 million dollars worth of checks in my office that hadn't been posted and that I wasn't getting the CPR + system but wasn't given any specifics. I later learned that the error Spereman made was resolved and did not result in a loss. I had email communications with Knoop on March 30, 2015 that I was short staff in getting payments posted and sent her a calculation of all checks and their sources and I was never addressed about how I operated the CPR + system

5. On June 2, 2015, I again met with Agostino, Weiss, Knoop, and Gard where I was told that I was demoted because my position was eliminated due to restructure and I was offered an audit specialist or enrollment specialist position. I complained that I was stripped of job duties which were given to younger and less qualified persons. Later that day, Agostino gave me a letter of how my annual salary would gradually reduce by $10,000 each quarter from $85,580 until it reached $40,000. On June 4, 2015, I met with the same individuals and chose the audit specialist position.

6. On August 6, 2015 I notified Tomes in writing that I was resigning my position effective August 13, 2015 due to the reduction in pay, change in job status, and demoralizing assignments related to my demotion.

7. I exhibited remarkable performance and always received exceptional performance reviews.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I swear or affirm that I have read the above and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

x Lana Starkey

State of Nebraska County of Douglas

On this, the 1st day of April, 2016, The Complainant appeared before me, known to me (or satisfactorily proven) to be the person whose name is subscribed to this instrument, and acknowledged that they executed the same for the purposes therein contained.

Notary Public Carolyn Liske

Notary Seal

General Notary - State of Nebraska
CAROLYN LISKE
My Comm. Exp. Sept. 21, 2019

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

AGENCY
[X] FEPA
[X] EEOC

CHARGE NUMBER
NEB 2-15/16-10-47098-RD
32E-2016-00008

Nebraska Equal Opportunity Commission and EEOC
State or local Agency, if any

RECEIVED NEOC
OCT 05 2015
OMAHA OFFICE

NAME (Indicate Mr., Ms., Mrs.)		HOME TELEPHONE (Include Area Code)
Ms. Lana L. Starkey		(402) 891-6794
STREET ADDRESS	CITY, STATE AND ZIP CODE	DATE OF BIRTH
15709 S St	Omaha NE 68135	3/25/1964

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME	NUMBER OF EMPLOYEES, MEMBERS	TELEPHONE (Include Area Code)
Amber Enterprises, Inc. d/b/a Amber Pharmacy	101-200 Employees	(888) 370-1724
STREET ADDRESS	CITY, STATE AND ZIP CODE	COUNTY
10004 S 152nd St, Ste A	Omaha NE 68138	Douglas

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

[ ] RACE [ ] COLOR [ ] SEX [ ] RELIGION [ ] NATIONAL ORIGIN

[ ] RETALIATION [X] AGE [ ] DISABILITY [ ] GENETIC INFORMATION

[X] OTHER - WHISTLEBLOWER

DATE DISCRIMINATION TOOK PLACE

EARLIEST	LATEST
4/16/2015	5/29/2015

[ ] CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):

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II. I believe I have been discriminated against on the basis of age, in violation of The Age Discrimination in Employment Act of 1967, as Amended, and Section 48-1004 of the Nebraska Age Discrimination in Employment Act; and on the basis of whistleblower retaliation, in violation of Section 48-114(3) of the Nebraska Fair Employment Practice Act, in that:

1. During a meeting with my subordinates on February 20, 2015, Claims Research Specialist Amber Adair (30's) informed me of years of overpayments the Respondent received from Texas Medicaid. The same day, I reported the overpayment to former Billing Managers Peggy Tomes (50's) and Rebecca Rice (30's). Tomes told me that she and Adair had expressed the overpayment concern with Texas Medicaid and Rice told me that she was aware of the overpayments and that Texas Medicaid asked for a refund request for each individual payments for the past 2-3 years and they haven't had time to do it. I expressed concern about the overpayment with HR Molly Gard (early30's) and Gard told me to email VP of Finance Lindsay Knoop (late 20's) about the matter, which I did the same day. I also reported this same issue during a meeting with Rice, Tomes, VP Aaron Weiss (30's) and Respondent Attorney Shannon Woods (30's) on March 5th, 2015 after I received a call from Texas Medicaid about a test claim. Subsequently, the Respondent hired BRG Consulting to review their billing practices and interviewed several employees .

2. In March 2015, I asked Rice for direction in renewing a patient's drug manufacture co-pay card via a website that required an email address for the patient. Rice responded that the practice was to enter the initial of the patient's first name and last name @aol.com. I then told Supervisor of Customer Accounts Jamie Loch (30's)Knoop and Weiss that I was not comfortable creating a fictitious email address as it could pose a violation of HIPAA if the address actually belonged to someone other than the patient. Weiss asked me to email him an example of this action which I did on March 10, 2015. Weiss never responded to my email.

Continued on Page 2

3. After my complaints, job duties began being stripped from me, some of which also affected my team. This included batch posting of credit cards into the Respondent's CPR + system on April 16, 2015 and on May 11, 2015, I discovered that I was restricted from certain areas of CPR + system. On April 17, 2015, Rice sent an email to all managers which indicated that my resolution duties were given to Resolution Specialist Stacy Stutzka (30's). Also in May 2015, Knoop and Tomes sent me an email that I would no longer be completing temporary posting of payments and that Tom Bergin (20's) would assume this assignment.

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5. On June 2, 2015, I again met with Agostino, Weiss, Knoop, and Gard where I was told that I was demoted because my position was eliminated due to restructure and I was offered an audit specialist or enrollment specialist position. I complained that I was stripped of job duties which were given to younger and less qualified persons. Later that day, Agostino gave me a letter of how my annual salary would gradually reduce by $10,000 each quarter from $85,580 until it reached $40,000. On June 4, 2015, I met with the same individuals and chose the audit specialist position.

6. I exhibited remarkable performance and always received exceptional performance reviews.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I swear or affirm that I have read the above and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

x Lana Starkey

State of Nebraska County of Douglas

On this, the 20 day of September, 20 15.
The Complainant appeared before me, known to me (or satisfactorily proven) to be the person whose name is subscribed to this instrument, and acknowledged that they executed the same for the purposes therein contained.

Notary Public Michelle Evans

Notary Seal GENERAL NOTARY - State of Nebraska MICHELLE EVANS My Comm. Exp. May 30, 2016

TX Exx

Lana Starkey

From: Lana Starkey
Sent: Thursday, March 05, 2015 9:35 AM
To: Aaron Wiese
Subject: FW: TEXAS MEDICAID
Attachments: TMHP 1.pdf; TMHP.xlsx

Importance: High

Aaron,
Please see below & the attachments. I will get you examples of the other TX Medicaid payments that I mentioned to you this morning before noon.

Lana Starkey | Director, Financial Services
Amber PHARMACY Specialized Care for Chronic Conditions
Office: 888.370.1724 ext. 1026
Fax: 402.896.3774
lstarkey@ambernharmacy.com

From: Lana Starkey
Sent: Friday, February 20, 2015 6:45 PM
To: Lindsay Knoop
Subject: TEXAS MEDICAID
Importance: High

Lindsay,

At our posting meeting this afternoon Amy Adair informed me that Texas Medicaid has been overpaying us for years and we have not been refunding them. This is what happened. We used to file to the medical side of Texas Medicaid (TMHP) secondary after Medicare. In 2013 Texas Medicaid started accepting electronic pharmacy claims, so we started filing electronically to the pharmacy side (Vendor Drug). When Medicare pays the claim, they see that the patient has Medicaid, so they cross the claim over to Texas Medicaid (TMHP). Therefore they both have been paying us.

Amy said that this was happening when Peggy was the manager of billing, and she instructed Amy to call Texas Medicaid to inform them. They said they cannot receive a request for one lump sum, rather we would need to request a refund for each individual patient. Amy said this has not been happening.

I spoke with Rebecca and Peggy today about this also, and they were both aware that this was happening when they were managing the team. Peggy said that we tried many times to inform TX Medicaid but they insisted that they owe it & will not ask for payment back. She said she thought at some time an audit would be performed and they would re-coup it.

I did some research & have found the attached information regarding amounts. I only found 1 time when they requested the money back, and we sent it. It is also attached.

Lana Starkey | Director, Financial Services

EXHIBIT
tabbies
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TX XIX

Lana Starkey

From: Lana Starkey
Sent: Thursday, March 05, 2015 2:36 PM
To: Aaron Wiese; Peggy Tomes; Rebecca Rice
Subject: RE: Texas Medicaid

The only documentation that I could find was attached to the other email that I sent to you. Amy Adair said she had made some phone calls to inform them, and they had told her that we cannot do one lump sum request to them, it had to be for each individual patient.

I am not aware of a phone call from the nurse today.

Thank you,

Lana Starkey | Director, Financial Services
Amber PHARMACY Specialized Care for Chronic Conditions
Office: 888.370.1724 ext. 1026
Fax: 402.896.3774
lstarkey@amberpharmacy.com

From: Aaron Wiese
Sent: Thursday, March 05, 2015 1:50 PM
To: Peggy Tomes; Lana Starkey; Rebecca Rice
Subject: Texas Medicaid

Two questions:

Do we have any documentation that we attempted to return the over payments from Texas Medicaid? Do we have any correspondence asking them to stop sending us the duplicate cross over payments?

Also, did the nurse on the phone today say if she was turning the matter over to an individual at the Fraud department of TX Medicaid or just the general department?

Thanks,

Aaron Wiese | Vice President, Business Development
Amber PHARMACY Specialized Care for Chronic Conditions
Office: 402.896.7973, Internal Ext. #1232
Fax: 844.348.1240
awiese@amberpharmacy.com

TX Medicaid

Lana Starkey

From: Lana Starkey
Sent: Saturday, April 11, 2015 11:27 AM
To: Peggy Tomes
Subject: RE: MORE TEXAS MEDICAID OVERPAYMENTS

So far I have only tried Rx Solutions Bin # 610494 PCN 9999 & Superior Health plan- US Scripts Bin # 008019 PCN SHP & it work on both when secondary. I have not tried a tertiary claim as of yet.

Lana Starkey | Director, Financial Services
Amber PHARMACY Specialized Care for Chronic Conditions
Office: 888.370.1724 ext. 1026
Fax: 402.896.3774
lstarkey@amberpharmacy.com

From: Peggy Tomes
Sent: Saturday, April 11, 2015 8:34 AM
To: Lana Starkey
Subject: Re: MORE TEXAS MEDICAID OVERPAYMENTS

Good morning,

Which payers does the 08 work on?
I cannot get it to work on the RX solutions tertiary just US Scripts?
Thank you,
Pt

Sent from my iPhone

On Apr 9, 2015, at 5:54 PM, "Lana Starkey" <lstarkey@amberpharmacy.com> wrote:

> Peggy,
> Can we double check this as when I changed the other coverage code from a 02 to a 08 the claims paid according to what Medicare the MC 20% is. See example below...
>
> Lana Starkey | Director, Financial Services
> <image001.jpg>
> Office: 888.370.1724 ext. 1026
> Fax: 402.896.3774
> lstarkey@amberpharmacy.com
>
> ---
>
> **From:** Peggy Tomes
> **Sent:** Thursday, April 09, 2015 5:42 PM
> **To:** Lana Starkey; Lindsay Knoop; Aaron Wiese; Mike Agostino
> **Subject:** RE: MORE TEXAS MEDICAID OVERPAYMENTS

Hey Lana,

I am working with Berkley on this issue. Touch base with me tomorrow. I think the issue is that they are the difference between their allowable and what Medicare paid. It is probably on the Myfortic and Prograf?.
pt

Peggy Tomes | VP of Quality Initiatives
Amber Pharmacy
Office: 888.370.1724 ext. 1016

From: Lana Starkey
Sent: Thursday, April 09, 2015 5:38 PM
To: Peggy Tomes; Lindsay Knoop; Aaron Wiese; Mike Agostino
Subject: MORE TEXAS MEDICAID OVERPAYMENTS
Importance: High

This is bigger than I thought. This is a Texas Medicaid payer & we were using the other coverage code of 02 in QS1 as well so we have been paid primary for secondary claims in QS1 for some time.

Lana Starkey | Director, Financial Services
<image001.jpg>
Office: 888.370.1724 ext. 1026
Fax: 402.896.3774
lstarkey@ambernharmacy.com

From: Lana Starkey
Sent: Thursday, April 09, 2015 4:06 PM
To: Rebecca Rice; Jamie Loch
Cc: Peggy Tomes; Lindsay Knoop; Aaron Wiese; Mike Agostino
Subject: US SCRIPTS PAID PRIMARY WHEN THEY WERE SECONDARY

I have also found two entire US Scripts EOB's where we were paid primary when US Scripts was the secondary payer. I reversed invoice # 49178 for patient n as the other coverage.coded was 2. I changed it to an 8 and now the claim has paid correctly. US Scripts paid us 307.20 & it should have been 23.56.

There are many patients on these EOB's and all of the claims where US Scripts is secondary will need to be re-worked from February – April. I will work on this.

I have updated the other coverage code on this payor to default to a 08 rather than a 02.

Lana Starkey | Director, Financial Services
<image001.jpg>
Office: 888.370.1724 ext. 1026
Fax: 402.896.3774
lstarkey@ambernharmacy.com

From: Rebecca Rice
Sent: Thursday, April 09, 2015 2:02 PM

To: Jamie Loch; Lana Starkey
Cc: Peggy Tomes; Lindsay Knoop
Subject: RE: RX SOLUTIONS WHEN SECONDARY & ELECTRONICALLY ADJUDICATED

No need for a billing alert on each of the patients. I have updated the payor to default to the 08.

From: Jamie Loch
Sent: Thursday, April 09, 2015 1:06 PM
To: Lana Starkey; Rebecca Rice
Cc: Peggy Tomes; Lindsay Knoop
Subject: RE: RX SOLUTIONS WHEN SECONDARY & ELECTRONICALLY ADJUDICATED

Hi Lana,

Great info. I will also send an email to the Benefit Coords to be on the lookout and to put an Alert on the account.

Thank you!
Jamie Loch

From: Lana Starkey
Sent: Thursday, April 09, 2015 1:02 PM
To: Rebecca Rice; Jamie Loch
Cc: Peggy Tomes; Lindsay Knoop
Subject: RX SOLUTIONS WHEN SECONDARY & ELECTRONICALLY ADJUDICATED

Please note that I am coming across claims in which Medicare is primary & Rx Solutions is secondary. Rx Solutions is paying primary due to the other cvrg code entry of a 02. The other coverage code should be an 08. So far this has happened with patients H[illegible] W[illegible] & A[illegible] B[illegible]. I am entering a billing alert note on these patient indicating that the other coverage code for Rx Solutions when secondary needs to be an 08.

Lana Starkey | Director, Financial Services
<image001.jpg>
Office: 888.370.1724 ext. 1026
Fax: 402.896.3774
lstarkey@amberpharmacy.com

Lana - Copay card Docs

Lana Starkey

From:	Lana Starkey
Sent:	Tuesday, March 10, 2015 8:03 AM
To:	Aaron Wiese
Subject:	RE: Copay cards
Attachments:	Copay Card.pdf

Aaron,
See the attachment.

Lana Starkey | Director, Financial Services

Office: 888.370.1724 ext. 1026
Fax: 402.896.3774
lstarkey@amberpharmacy.com

-----Original Message-----
From: Aaron Wiese
Sent: Monday, March 09, 2015 3:32 PM
To: Lana Starkey
Subject: Copay cards

Can you send me an example of a copay card that we might have enrolled the patient without their knowledge?

Thanks,

Aaron Wiese

EXHIBIT
E

Below is website where sign up occurs. Email address is a necessary field.

Connect with HARVONI Support Path today.

1-855-7-MYPATH
(1-855-748-7284)

Please provide the following information:

*First Name:

*Last Name:

*E-mail Address:

*Confirm E-mail Address:

*Street Address 1:

Street Address 2:

*City or Town:

*State:

*ZIP Code:

Date of Birth:

Phone Number:

Important Safety Information

What should I tell my healthcare provider before taking HARVONI?

- If you have liver problems other than hepatitis C infection or kidney problems or are on dialysis, any other medical conditions, or if you are pregnant or breastfeeding or plan to become pregnant or breastfeed.
- If you take rifampin (Rifadin®, Rifamate®, Rifater®), St. John's wort or a product that contains St. John's wort. Tell your healthcare provider about all the medicines you take, including prescription and over-the-counter medicines, vitamins, and herbal supplements. HARVONI may affect the way other medicines work, and other medicines may affect how HARVONI works.

More Important Safety Information >

Pt name is E.. D

Below is FB printout from website

HARVONI

Your HARVONI Co-pay Coupon

HARVONI

Pay No More Than $5 For Co-pay!

RxBIN: 610524
RxPCN: Loyalty
RxGRP: 5077G752
ISSUER: (008440)
ID#: 020:54250

path

We are pleased to provide you with the HARVONI co-pay coupon, personalized just for you. If you already have a prescription for HARVONI, the next step is contacting your pharmacy to obtain your medicine. When filling your prescription, be sure to have your co-pay coupon and prescription available, as the pharmacist will need this information to complete your request. Your prescription may need to be filled at a specialty pharmacy.

Below are notes from QS1 that copay card was added. No mention of email address obtained from pt, or contact with pt prior to this note.

FUNC...

OPT DATE CD OUT NOMB ******** P A T I E N T O U T C O M E S ********
A) 12/18/14 KD 00519805 RAN TEST CLM REJECTS FOR PA STILL//TC TO INS S/W
ASHLEY QUEST STATUS OF PA, SHE ADV APPROVED GOOD
UNTIL 3/07/15 12 WEEKS, RAN TEST CLM PD
COPAY=$433.28, WILL ADD COPAY CARD TO BRING IT TO
$5 MONTH KDUBOSE(1262)

B) 12/16/14 KD 00516680 RAN TEST CLM REJECTS FOR PA STILL
KDUBOSE(1262)0202PM
C) 12/15/14 KD 00513773 RAN TEST CLM REJECTS FOR PA STILL-WILL FU WITH INS
12/16/14 FOR STATUS UPDATE KDUBOSE(1262)0851AM

From: Lana Starkey [mailto:lstarkey@amberpharmacy.com]
Sent: Monday, June 01, 2015 3:43 PM
To: Mike Agostino; Aaron Wiese; Lindsay Knoop; Molly Gard
Subject: MEETING 5/29/15

I just wanted to clarify with you so we are all on the same page regarding our meeting on Friday, 5/29/15, and provide you with some additional information.

1. I have been given the option of accepting a new position within the company that is consistent with a demotion.
2. My pay will be reduced to $40,000 per year and will gradually go down over a year's time
3. Reasons for my demotion
    a. One of the temps, Chris Spereman, made a typing error which resulted in a million dollar finance error, and she was under me when this happened.
        i. I do not have/was never shown how to use Rockpond reporting out of CPR +, therefore I would have no capabilities on reporting to have found this error and get it corrected.
        ii. I also was not aware that Chris had been let go until the following day after it happened. I went to her desk and she was not there. I asked Deb V. where she was and she informed me that Chris had been let go due to a million dollar error that she made.
            1. The problem was fixed and resulted in no loss of money for the company.
    b. There was five million dollars' worth of checks that had not been posted that were in my office.
        i. Due to the meeting with Lindsay shortly after she came on board, the process changed and my team would receive EOB's along with live checks
        ii. Part of the new process also included reconciliation of all EOB's, which consumed more time.
        iii. We were short staffed prior to Lindsay starting and I continually asked for help before and after she came.
        iv. On March 28th 2015, Lindsay emailed me about payment variances from insurance companies. I collected all EOB checks from employees and sent her an email that provided all information she requested.
        v. Mike A. and Lindsay came to my office at the end of March and said that posting would transition away from my team and be part of the accounting department, but it was not due to anything I had done wrong. Tom would be managing it.
    c. I'm not getting CPR +
        i. On two occasions Mike A., Lindsay, and Peggy have asked me to train other people on the system
            1. Susie
            2. The Hy-Vee temps that started on March 30th
        ii. I have worked proficiently in CPR +. Below are just a few of the areas
            1. Adjudication of claims
            2. Rebilling
            3. Ready to bill manager
            4. A/R manager

5. Batch posting
6. Master claims queue

iii. I have had many co-workers witness the work that I do in CPR +, come to me with questions, and have had many comments made to me that I work very well in the system & know it well.

4. I told Mike that I had not been given any direction from Lindsay, and have only met with her one time since she came on board.
5. Went through scenario with Mike on how I had built the Enrollment department, had done a great job, worked countless hours, and don't feel any of that is being recognized.
6. I also informed Mike that he has always been about making sure employees had no surprises when it came to their evaluation time, and that items should always be addressed right away with employees. No one ever came to me and said that I was doing anything wrong. Today is the first day I'm hearing about it.
7. I was told to think about it over the weekend, and we would meet again on Tuesday, 6/2/15.

Lana Starkey | Director, Financial Services

Amber PHARMACY

Office: 888.370.1724 ext. 1026
Fax: 402.896.3774
lstarkey@amberpharmacy.com

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877.306.3211

323 Norristown Road
Suite 100
Ambler, Pennsylvania 19002
877.853.1644

213 West Institute Place
Suite 206
Chicago, Illinois 60610
800.921.1573

Lana,

As you know, our business is dynamic and change is inevitable. As a business, we have had to make a very difficult but necessary decision to realign our staff for improved workflow efficiencies. This decision requires the elimination of the position of Director of Financial Services.

You are a valuable and valued employee. Currently, two positions for which you are qualified are open and offered for your consideration – Enrollment Specialist and Audit Resources Specialist. The hourly rate for both positions is $19.23 per hour which totals $40,000 per year.

If you accept either of these positions, beginning with the pay period starting August 31, 2015, your current annual salary of $85,586 will be reduced by $10,000 each quarter until it reaches $40,000. For example, for the pay period starting August 31, 2015, your salary will be reduced to $75,586. Subsequent reductions will occur in November 2015, February 2016, May 2016 and August 2016.

As of June 2, 2015, you have 193.50 hours of Paid Time Off (PTO) available. Should you choose to receive a payout of your available PTO as opposed to using the hours, the payout will be at your current salary of $85,586 or $41.15 per hour.

I realize this is a difficult time for you and appreciate your consideration. Please contact me with your decision and any questions you may have.

Sincerely,

Mike Agostino, R.Ph

President, Amber Pharmacy

...for life

From: Lana Starkey [mailto:lstarkey@amberpharmacy.com]
Sent: Thursday, June 04, 2015 4:22 PM
To: Mike Agostino; Aaron Wiese; Lindsay Knoop; Molly Gard
Subject: MEETING 6/2/15

Emailing you to clarify and make sure we are all on the same page regarding out meeting on 6/2/15, and provide you with some additional information. People present: Mike Agostino, Aaron Weise, Lindsay Knoop, and Molly Gard.

1. Mike apologized and said he did not handle things the right way on Friday, 5/29/15. He asked to back up and start over. He said the real reason for offering me a new position and lowering my pay is that my current job as Director of Financial Services is being eliminated due to restructure. He thanked me for emailing the rebuttal on 6/1/15 regarding our meeting on 5/29/15

    a. Additional information:

        i. There was no mention by anyone present at the meeting on Friday that my position was being eliminated due to restructure

            1. People present at Friday's meeting:

                a. Mike Agostino

                b. Aaron Weise

                c. Lindsay Knoop

                d. Molly Gard

2. Mike said that I was right regarding making sure there are no surprises with employees, and items should always be addressed right away.

3. I'm being offered one of two positions

    a. Audit Specialist

    b. Enrollment Specialist

4. I said that I feel like I'm not part of the future here, and I'm not sure why they would not want to keep someone with my experience, background, dedication, and knowledge of this business. Job responsibilities have been taken away from me, and have been given to younger less qualified employees. I'm not sure why this is happening; maybe it's due to me informing them about Texas Medicaid, or the copay cards.

    a. Additional information:

        i. Job duties taken away from me/my team prior to Friday, 6/2/15

1. Team posting of EOB's
2. Overseeing/training of the Hy-Vee temps
3. Patient payment postings
4. Credit card refunds
5. CPR + access capabilities
6. Rebilling/resolution of claims

5. I told Mike that I feel someone with my experience and background should be making more than what they are offering me.
6. I said the company does not do this to someone that they are not trying to push out. I have been here 13 years, have helped to grow the company, have been a dedicated and loyal employee, and have had excellent evaluations, therefore I would like to negotiate a severance package.
7. Mike said that they are not firing me so why would there be a severance package.
8. Mike wanted to know if I had made a decision.
9. I told him I need more time.
10. I need two things in writing.
    a. A time line of when my pay will decrease
    b. PTO paid at my current rate of 41.15/hr
        i. Current amt of PTO is 193.50 hours
11. Mike said they will get this to me by the end of today
12. Mike said that I brought something to the table that has not been discussed and is no part of my demotion.
    a. Texas Medicaid
    b. Copay cards

Molly called me back to the conference room after completing the letter that was drafted per the requests that I had made. People present were: Mike Agostino, Aaron Weise, and Molly Gard.

- I read the letter and asked that paragraph 4, regarding PTO, be changed so that all 193.5 hours would be paid out at the current rate of $85,586, or $41.15 per hour regardless of when it is taken. Mike said they would change this for me.

- Paragraph 4 regarding my PTO read as follows, "As of June 2, 2015, you have 193.5 hours of Paid Time Off (PTO) available. Should you choose to receive a payout of your available PTO as opposed to using the hours, the payout will be at you current salary of $85,586 or $41.15 per hour."

- I again told Mike that I really feel that you're trying to get rid of me. I paused and looked around the room to see if anyone reacted, and no one did. I then said, "See its true". I said I want to leave the company in good standing, and would like to negotiate a severance package.
- Mike said he does not have a severance package to offer to me.
- Mike asked if there is anything else.
- I told him that this is demoralizing and I have been experiencing a hostile work environment.
  - On 5/20/15, I overheard Aaron & Molly introducing new employees to Rebecca's empty office, and Andrea, but they did not stop at my office and in all other cases they have. Concentration on work was hard after this, as I knew something was going on.
  - Tom B. always used to consult with me regarding posting questions and now only consults with Rebecca.
    - I trained the temps and Tom on several different occasions.
  - Molly Gard made a recent comment to me that she wished more people would want to be managers as she needs more. I'm being demoted to a non-managerial position.
  - I had been in Mike's office two weeks ago and he said my director status and pay would not change. My status and pay are changing.
  - All reasons that Mike gave on Friday, 5/29/15 for my demotion, and then extending an apology to me on 6/2/15 saying that the real reason for my demotion is that my job is being eliminated due to restructure.
- Mike told me to take tomorrow, 6/3/15, off and think about what I wanted to do. He will not charge me any PTO time. He wants my decision on Thursday, 6/4/15. He said after I give him my decision he will talk with my team about the new reporting structure.

Additional information:

- On Wednesday, 6/3/15, one of my staff text me at 12:46 pm to inform me that Mike, Molly, and Jo Ann just told my team about the new reporting structure.

Amber
PHARMACY

Office: 888.370.1724 ext. 1026
Fax: 402.896.3774
lstarkey@amberpharmacy.com

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877.306.3211

323 Norristown Road
Suite 100
Ambler, Pennsylvania 19002
877.853.1644

213 West Institute Place
Suite 206
Chicago, Illinois 60610
800.921.1573

June 2, 2015

Subject: REVISED Position Offer Letter

Lana,

As you know, our business is dynamic and change is inevitable. As a business, we have had to make a very difficult but necessary decision to realign our staff for improved workflow efficiencies. This decision requires the elimination of the position of Director of Financial Services.

You are a valuable and valued employee. Currently, two positions for which you are qualified are open and offered for your consideration – Enrollment Specialist and Audit Resources Specialist. The hourly rate for both positions is $19.23 per hour which totals $40,000 per year.

If you accept either of these positions, beginning with the pay period starting August 31, 2015, your current annual salary of $85,586 will be reduced by $10,000 each quarter until it reaches $40,000. For example, for the pay period starting August 31, 2015, your salary will be reduced to $75,586. Subsequent reductions will occur in November 2015, February 2016, May 2016 and August 2016.

As of June 2, 2015, you have 193.50 hours of Paid Time Off (PTO) available. Those 193.50 PTO hours – whether utilized as time off or paid out – will be paid at your current salary of $85,586 or $41.15 per hour.

I realize this is a difficult time for you and appreciate your consideration. Please contact me with your decision and any questions you may have.

Sincerely,

Mike Agostino, R.Ph

President, Amber Pharmacy

...for life

Lana Starkey
15709 S Street
Omaha, NE 68135
(402) 891-6794

To:

Peggy Tomes
VP of Quality Initiatives
Amber Pharmacy
10004 S. 152nd St.
Omaha, NE 68138

August 8, 2015 (gave on Aug 6th)

Dear Mrs. Tomes,

I am writing to inform you of my resignation, which has been necessitated due to constructive discharge tactics in light of the following events. My last day of work will be August 13, 2015, so please accept this letter as my official letter of resignation.

a. My job and status, and pay were significantly changed in light of the following events.
    a. 2/20/15 – 4/9/15 I provided information to Lindsay Knoop, Aaron Wiese, and Peggy Tomes regarding the Texas Medicaid over payments and false email address inputs regarding co-pay cards.
    b. 4/16/15 – 5/11/15 Job duties began being stripped from me, and were given to younger less qualified employees.
    c. On 5/29/15 I was demoted and informed my pay would be reduced from 85,856 to 40,000. The pay reduction would happen over a year's time. I was also given specific reasons for my demotion, all of which I refuted.
    d. On 6/2/15 I was offered an apology and was told the real reason for my demotion was that my job was being eliminated due to restructure.

b. The current job duties that have been assigned to me are demoralizing, and my qualifications far exceed the duties of this job.

c. Since my demotion I continue to be pursued to handle the following responsibilities that would be consistent with my old position of Director of Financial Services, and inconsistent with the new position that has been assigned to me.
    a. June 11, 2015 I received an email from HR and Peggy Tomes asking me to complete an annual wage increase for one of my former employees and provide my thoughts on what the wage increase should be.
    b. June 30th & July 9, 2015 I was asked to approve PTO time in ADP for my former staff.
    c. July 9, 2015 HR asked for my opinion about the hire of a new employee, which was a Hy-Vee temp.
    d. July 10, 2015 I was pursued to be involved in the ICD-10 project.

I regret that I must hand in this resignation and will look back fondly on the good times I had at this job. I appreciate all of the knowledge and experience that I have gained throughout my years of employment with Amber Pharmacy.

Sincerely,

Lana Starkey

Filed in Douglas District Court
*** EFILED ***
Case Number: D01CI160010363
Transaction ID: 0004646450
Filing Date: 12/21/2016 03:36:44 PM CST

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

LANA L. STARKEY,	)	CASE NO. CI 16-0010363
Plaintiff,	)	
vs.	)	PRAECIPE FOR SUMMONS
AMBER ENTERPRISES, INC., d/b/a AMBER PHARMACY, a Corporation, HY-VEE, INC, a Corporation, and MIKE AGOSTINO, Individually.	)	
Defendants.	)	

TO THE CLERK OF COURT:

PLEASE ISSUE SUMMONS, along with a copy of the Complaint, for service upon the Defendants by **certified mail, return receipt requested,** as follows:

Amber Enterprises, Inc. d/b/a Amber Pharmacy
C/O Corporate Creations Network. Registered Agent
5000 Central Park Drive, Suite 204
Lincoln, Nebraska 68504

HyVee, Inc.
C/O CT Corporation System, Registered Agent
5601 South 59th Street
Lincoln, Nebraska 68516

DATED this 21st day of December, 2016.

LANA STARKEY, Plaintiff

BY: /s/Jamie M. Hurst

Raymond R. Aranza, #18523
Jamie M. Hurst, #25256
Walentine O'Toole, LLP
11240 Davenport Street
Omaha, Nebrasksa 68154
Phone: (402) 330-6300
Fax: (402) 330-6303
Email: raranza@walentineotoole.com
Jhurst@walentineotoole.com
Attorneys for Plaintiff

Image ID:
D00425982D01

SUMMONS

Doc. No. 425982

IN THE DISTRICT COURT OF Douglas COUNTY, NEBRASKA
1701 Farnam
Omaha NE 68183

Lana L Starkey v. Amber Enterprises, Inc.

Case ID: CI 16 10363

TO: Amber Enterprises, Inc.
DBA: d/b/a Amber Pharmacy

FILED BY
Clerk of the Douglas District Court
12/21/2016

You have been sued by the following plaintiff(s):

Lana L Starkey

Plaintiff's Attorney: Jamie M Hurst
Address: 11605 Miracle Hills Dr. Suite 300
PO Box 542005
Omaha, NE 68154-8005
Telephone: (402) 492-9800

A copy of the complaint/petition is attached. To defend this lawsuit, an appropriate response must be served on the parties and filed with the office of the clerk of the court within 30 days of service of the complaint/petition. If you fail to respond, the court may enter judgment for the relief demanded in the complaint/petition.

Date: DECEMBER 21, 2016 BY THE COURT: John M. Friend Clerk

FOURTH DISTRICT COURT ★ DOUGLAS COUNTY, NEBRASKA ★

PLAINTIFF'S DIRECTIONS FOR SERVICE OF SUMMONS AND A COPY OF THE COMPLAINT/PETITION ON:

Amber Enterprises, Inc.
c/o Corporate Creations Network, RA
5000 Central Park Drive, Ste 204
Lincoln, NE 68504

Method of service: Certified Mail

You are directed to make such service within ten days after the date of issue, and file with the court clerk proof of service within ten days after the signed receipt is received or is available electronically, whichever occurs first.

SERVICE RETURN

Doc. No. 425982

Douglas District Court
1701 Farnam
Omaha NE 68183

To:
Case ID: CI 16 10363 Lana Starkey v. Amber Enterprises, Inc.

Received this Summons on _____,_____. I hereby certify that on

_____, _____ at _____ o'clock __M. I served copies of the Summons upon the party:

_____

by _____

_____

_____

as required by Nebraska state law.

Service and return $ _____

Copy _____

Mileage ____miles _____

TOTAL $ _____

Date: _____ BY: _____
(Sheriff or authorized person)

CERTIFIED MAIL
PROOF OF SERVICE

Copies of the Summons were mailed by certified mail,
TO THE PARTY: _____

At the following address: _____

_____

_____

on the _____ day of _____ _____, as required by Nebraska state law.

_____

Postage $ _____ Attorney for: _____

The return receipt for mailing to the party was signed on _____, _____.

To: Amber Enterprises, Inc.
c/o Corporate Creations Network, RA
5000 Central Park Drive, Ste 204
Lincoln, NE 68504

From: Jamie M Hurst
11605 Miracle Hills Dr. Suite 300
PO Box 542005
Omaha, NE 68154-8005

ATTACH RETURN RECEIPT & RETURN TO COURT

Image ID:
D00425984D01

SUMMONS

Doc. No. 425984

IN THE DISTRICT COURT OF Douglas COUNTY, NEBRASKA
1701 Farnam
Omaha NE 68183

Lana L Starkey v. Amber Enterprises, Inc.

Case ID: CI 16 10363

TO: Amber Enterprises, Inc.
DBA: d/b/a Amber Pharmacy

FILED BY
Clerk of the Douglas District Court
12/21/2016

You have been sued by the following plaintiff(s):

Lana L Starkey

Plaintiff's Attorney: Jamie M Hurst
Address: 11605 Miracle Hills Dr. Suite 300
PO Box 542005
Omaha, NE 68154-8005
Telephone: (402) 492-9800

A copy of the complaint/petition is attached. To defend this lawsuit, an appropriate response must be served on the parties and filed with the office of the clerk of the court within 30 days of service of the complaint/petition. If you fail to respond, the court may enter judgment for the relief demanded in the complaint/petition.

Date: DECEMBER 21, 2016 BY THE COURT: John M. Friend Clerk

FOURTH DISTRICT COURT ★ DOUGLAS COUNTY, NEBRASKA ★

PLAINTIFF'S DIRECTIONS FOR SERVICE OF SUMMONS AND A COPY OF THE COMPLAINT/PETITION ON:

Amber Enterprises, Inc.
c/o CT Corporation Systems, RA
5601 South 59th Street
Lincoln, NE 68516

Method of service: Certified Mail

You are directed to make such service within ten days after the date of issue, and file with the court clerk proof of service within ten days after the signed receipt is received or is available electronically, whichever occurs first.

SERVICE RETURN

Doc. No. 425984

Douglas District Court
1701 Farnam
Omaha NE 68183

To:
Case ID: CI 16 10363 Lana Starkey v. Amber Enterprises, Inc.

Received this Summons on _____,_____. I hereby certify that on

_____, _____ at _____ o'clock __M. I served copies of the Summons upon the party:

_____

by _____

_____

_____

as required by Nebraska state law.

Service and return $ _____

Copy _____

Mileage ____miles _____

TOTAL $ _____

Date: _____ BY: _____
(Sheriff or authorized person)

CERTIFIED MAIL
PROOF OF SERVICE

Copies of the Summons were mailed by certified mail,
TO THE PARTY: _____

At the following address: _____

_____

_____

on the _____ day of _____ _____, as required by Nebraska state law.

_____

Postage $ _____ Attorney for: _____

The return receipt for mailing to the party was signed on _____, _____.

To: Amber Enterprises, Inc.
c/o CT Corporation Systems, RA
5601 South 59th Street
Lincoln, NE 68516

From: Jamie M Hurst
11605 Miracle Hills Dr. Suite 300
PO Box 542005
Omaha, NE 68154-8005

ATTACH RETURN RECEIPT & RETURN TO COURT

Filed in Douglas District Court
*** EFILED ***
Case Number: D01CI160010363
Transaction ID: 0004694216
Filing Date: 01/04/2017 03:58:31 PM CST

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

LANA L. STARKEY,	)	CASE NO. CI 16-0010363
Plaintiff,	)	
vs.	)	PRAECIPE FOR SUMMONS
AMBER ENTERPRISES, INC., d/b/a AMBER PHARMACY, a Corporation, HY-VEE, INC, a Corporation, and MIKE AGOSTINO, Individually.	)	
Defendants.	)	

TO THE CLERK OF COURT:

PLEASE ISSUE SUMMONS, along with a copy of the Complaint, for personal service upon the Defendant, Mike Agostino, by the **Polk County Sheriff** as follows:

Mike Agostino
HyVee Corporation
5820 Westown Parkway
West Des Moines, IA 50266-8223

DATED this 4th day of January 2017.

LANA STARKEY, Plaintiff

BY: /s/Jamie M. Hurst

Raymond R. Aranza, #18523
Jamie M. Hurst, #25256
Walentine O'Toole, LLP
11240 Davenport Street
Omaha, Nebrasksa 68154
Phone: (402) 330-6300
Fax: (402) 330-6303
Email: raranza@walentineotoole.com
Jhurst@walentineotoole.com
Attorneys for Plaintiff

Image ID:
D00428084D01

SUMMONS

Doc. No. 428084

IN THE DISTRICT COURT OF Douglas COUNTY, NEBRASKA
1701 Farnam
Omaha NE 68183

Lana L Starkey v. Amber Enterprises, Inc.

Case ID: CI 16 10363

TO: Mike Agostino

FILED BY
Clerk of the Douglas District Court
01/04/2017

You have been sued by the following plaintiff(s):

Lana L Starkey

Plaintiff's Attorney: Jamie M Hurst
Address: 11605 Miracle Hills Dr. Suite 300
PO Box 542005
Omaha, NE 68154-8005
Telephone: (402) 492-9800

A copy of the complaint/petition is attached. To defend this lawsuit, an appropriate response must be served on the parties and filed with the office of the clerk of the court within 30 days of service of the complaint/petition. If you fail to respond, the court may enter judgment for the relief demanded in the complaint/petition.

Date: JANUARY 4, 2017 BY THE COURT: John M. Friend Clerk

FOURTH DISTRICT COURT DOUGLAS COUNTY, NEBRASKA

PLAINTIFF'S DIRECTIONS FOR SERVICE OF SUMMONS AND A COPY OF THE COMPLAINT/PETITION ON:

Mike Agostino
HyVee Corporation
5820 Westown Parkway
West DesMoines, IA 50266-8223

BY: Foreign Officer
Method of service: Personal Service

You are directed to make such service within twenty days after date of issue, and show proof of service as provided by law.

SERVICE RETURN

Doc. No. 428084

Douglas District Court
1701 Farnam
Omaha NE 68183

To: Foreign Officer
Case ID: CI 16 10363 Lana Starkey v. Amber Enterprises, Inc.

Received this Summons on _____,_____. I hereby certify that on

_____, _____ at _____ o'clock __M. I served copies of the Summons upon the party:

_____

by _____

_____

_____

as required by Nebraska state law.

Service and return $ _____

Copy _____

Mileage ____miles _____

TOTAL $ _____

Date: _____ BY: _____
(Sheriff or authorized person)

CERTIFIED MAIL
PROOF OF SERVICE

Copies of the Summons were mailed by certified mail,
TO THE PARTY: _____

At the following address: _____

_____

_____

on the _____ day of _____ _____, as required by Nebraska state law.

_____

Postage $ _____ Attorney for: _____

The return receipt for mailing to the party was signed on _____, _____.

To: Mike Agostino
HyVee Corporation
5820 Westown Parkway
West DesMoines, IA 50266-8223

From: Jamie M Hurst
11605 Miracle Hills Dr. Suite 300
PO Box 542005
Omaha, NE 68154-8005

ATTACH RETURN RECEIPT & RETURN TO COURT