

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

LOIS SCHOFIELD,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	Case No. 1:13-CV-03340-JEC
v.	:	
	:	
ATLANTA WOMEN’S MEDICAL	:	
CENTER, INC.,	:	
	:	
Defendant.	:	
	:	

DEFENDANT’S INITIAL DISCLOSURES

(1) If the defendant is improperly identified, state defendant's correct identification and state whether defendant will accept service of an amended summons and complaint reflecting the information furnished in this disclosure response.

Defendant in this action is improperly pled as “Atlanta Women’s Medical Center, Inc.” Defendant’s proper identification is “Atlanta Women’s Center, Inc.” Defendant will accept service of an amended summons and complaint reflecting the information furnished in this disclosure response.

(2) Provide the names of any parties whom defendant contends are necessary parties to this action, but who have not been named by plaintiff. If defendant contends that there is a question of misjoinder of parties, provide the reasons for defendant's contention.

Not applicable at this time.

(3) Provide a detailed factual basis for the defense or defenses and any counterclaims or crossclaims asserted by defendant in the responsive pleading.

In support of its defenses, Defendant asserts that at all times Plaintiff provided services to Defendant as a part-time independent contractor, and she is not a covered employee within the meaning of the Americans with Disabilities Act, 42 U.S.C. §§ 12101, et seq. (the “ADA”), or the Age Discrimination in Employment Act, 29 U.S.C. §§ 621, et seq. (the “ADEA”). As such, she cannot proceed with her claims arising under those statutes. Even assuming, arguendo, that Plaintiff is adjudicated an employee within the meaning of the ADA and ADEA, she is unable to establish violations of those statutes. Specifically, Plaintiff failed to perform any services for Defendant for an extended period in 2011, purportedly due to surgery. To Defendant’s knowledge, she was never released by her physician to return to work at Defendant. During her absence, Defendant determined that her services were no longer needed on a regular basis. Defendant was under no obligation to hold her independent contractor position for her, or to reinstate her at such time as she was released to return to work. Defendant did not discriminate against her on the basis of her age or any alleged disability, whether perceived or otherwise. With respect to her breach of contract claim, Defendant provided written notice to Plaintiff of the termination of the Nurse Anesthetist (CRNA) Agreement (the “Agreement”). Moreover, Defendant had the right to

immediately terminate the Agreement due to Plaintiff's breach of the Agreement and/or her failure to properly perform her responsibilities thereunder.

(4) Describe in detail all statutes, codes, regulations, legal principles, standards and customs or usages, and illustrative case law which defendant contends are applicable to this action.

The following statutes, codes, regulations, legal principles, standards and customs or usages, and illustrative case law are applicable to this action: (a) the Americans with Disabilities Act, 42 U.S.C. §§ 12101, et seq. (the "ADA"); (b) the Age Discrimination in Employment Act, 29 U.S.C. §§ 621, et seq. (the "ADEA"); (c) relevant Eleventh Circuit and Supreme Court cases concerning what is an "employee" versus an independent contractor within the meaning of the ADA and the ADEA; (d) relevant Eleventh Circuit and Supreme Court cases interpreting these statutes; and (e) relevant Eleventh Circuit and Supreme Court cases pertaining to breach of contract. Defendant respectfully reserves the right to supplement its responses and to assert additional statutes, codes, regulations, legal principles and illustrative case law.

(5) Provide the name and, if known, the address and telephone number of each individual likely to have discoverable information that you may use to support your claims or defenses, unless solely for impeachment, identifying the subjects of the information. (Attach witness list to Initial Disclosures as Attachment A.)

See Defendant's "Attachment A: Defendant's Witness List," which is attached hereto.

(6) Provide the name of any person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Federal Rules of Evidence. For all experts described in Fed.R.Civ.P. 26(a)(2)(B), provide a separate written report satisfying the provisions of that rule. (Attach expert witness list and written reports to Initial Disclosures as Attachment B.)

Defendant has not identified any experts as of the time of filing these Initial Disclosures. Defendant respectfully reserves the right to supplement this response if and when necessary.

(7) Provide a copy of, or description by category and location of, all documents, data compilations or other electronically stored information, and tangible things in your possession, custody, or control that you may use to support your claims or defenses unless solely for impeachment, identifying the subjects of the information. (Attach document list and descriptions to Initial Disclosures as Attachment C.)

See Defendant's "Attachment C: Defendant's Document List and Descriptions," which is attached hereto.

(8) In the space provided below, provide a computation of any category of damages claimed by you. In addition, include a copy of, or describe by category and location of, the documents or other evidentiary material, not privileged or protected from disclosure on which such computation is based, including materials bearing on the nature and extent of injuries suffered, making such documents or evidentiary material available for inspection and copying under Fed.R.Civ.P. 34. (Attach any copies and descriptions to Initial Disclosures as Attachment D.)

Not applicable at this time. Defendant is not liable to Plaintiff for any damages.

(9) If defendant contends that some other person or legal entity is, in whole or in part, liable to the plaintiff or defendant in this matter, state the full name, address, and telephone number of such person or entity and describe in detail the basis of such liability.

Not applicable at this time.

(10) Attach for inspection and copying as under Fed.R.Civ.P. 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or to indemnify or reimburse for payments to satisfy the judgment. (Attach copy of insurance agreement to Initial Disclosures as Attachment E.)

Not applicable.

Respectfully submitted this 6th day of February, 2014

/s/ Glianny Fagundo

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Counsel for Defendant Atlanta Women's Center,
Inc.

ATTACHMENT A: DEFENDANT'S WITNESS LIST

At present, Defendant can identify the following individuals as individuals likely to have discoverable information that Defendant may use to support its claims or defenses:

- 1) Plaintiff Lois Schofield
3466 Shawnee Trail
Smyrna, GA 30080
Tel. (404) 754-4706

Plaintiff has information that may support Defendant's defenses. In particular, Plaintiff can provide information as to facts supporting her purported claims and the damages she allegedly suffered.

- 2) Randy Lazarus
Humedco Corporation
500 Kings Highway N #300
Cherry Hill, NJ 08034-1502
(To be contacted through Defendant's counsel)

As the President of Humedco Corporation, Mr. Lazarus is reasonably likely to have information regarding the facts and circumstances of Plaintiff's independent contractor relationship with Defendant and the termination of this relationship that Defendant may use to support its claims or defenses.

- 3) Susan Cohen
816 N. 25th Street
Philadelphia, PA 19130

As the former Chief Financial Officer, Ms. Cohen is reasonably likely to have information regarding the facts and circumstances of Plaintiff's independent

contractor relationship with Defendant and the termination of this relationship that Defendant may use to support its claims or defenses.

- 4) Golda Melnick
2875 Country Squire
Decatur, Georgia 30033

As the former Executive Director of AWC, Ms. Melnick is reasonably likely to have information regarding the facts and circumstances of Plaintiff's independent contractor relationship with Defendant and the termination of this relationship that Defendant may use to support its claims and defenses.

Defendant respectfully reserves the right to supplement this response to assert additional witness and information identified during discovery.

ATTACHMENT C: DEFENDANT'S DOCUMENT LIST AND DESCRIPTIONS

The following list and general descriptions consist of all documents, data, compilations, electronically stored information, and tangible things in the possession, custody or control of Defendant that the disclosing party may use to support its claims and defenses. Except as otherwise indicated, these documents are either located at Defendant or at the Law Firm of Fox Rothschild LLP, 2000 Market Street, 20th Floor, Philadelphia, PA 19103. The categories of documents upon which Defendant may rely in support of its defenses include:

1. Nurse Anesthetist (CRNA) Agreement between AWC and Plaintiff;
2. Documents concerning the cessation of Plaintiff's independent contractor relationship with Defendant;
3. Forms 1099 issued to Plaintiff; and
4. Documents produced by Plaintiff including, but not limited to, the documentation that confirms her independent contractor status.

Defendant respectfully reserves the right to supplement this response to assert additional documents identified during discovery.

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ATLANTA WOMEN’S MEDICAL	:	
CENTER, INC.,	:	
	:	
Defendant.	:	

CERTIFICATE OF SERVICE

I certify that, on this day, I electronically filed Defendant’s Initial Disclosures with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notifications of such filing to the following:

Nicholas G. Dumich

Dated: February 6, 2014

/s/ Glianny Fagundo

Glianny Fagundo
Georgia Bar No. 254033