

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

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

**ANSWER OF DEFENDANT ATLANTA WOMEN’S CENTER,  
INC. TO COMPLAINT WITH AFFIRMATIVE DEFENSES**

Defendant, Atlanta Women’s Center, Inc. (improperly pled as “Atlanta Women’s Medical Center, Inc.”) (“Defendant”), hereby answers the Complaint of Plaintiff, Lois Schofield (“Plaintiff”), and asserts affirmative defenses, as follows:

**JURISDICTION AND VENUE**

1. Denied. The allegations set forth in Paragraph 1 of the Complaint state conclusions of law to which no response is required and are therefore denied.
  
2. Denied. The allegations set forth in Paragraph 2 of the Complaint state conclusions of law to which no response is required and are therefore denied.

**PARTIES**

3. Admitted in part and denied in part. It is admitted, based upon information and belief, that Plaintiff is currently approximately 79 years of age and a female citizen of the United States. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 3 of the Complaint, which are denied.

4. Admitted in part and denied in part. It is admitted that Defendant has its principal place of business at 235 West Wieuca Road, Atlanta, Fulton County, GA 30342. It is further admitted that Defendant is authorized to conduct, and has conducted at all times pertinent to this action, business in Georgia, and specifically in Atlanta. It is further admitted that, among other services, Defendant provides surgical abortion care and post-surgical care, counseling and patient educational services. It is denied as stated that all times pertinent to this action Defendant was conducting business as an “abortion clinic.” By way of further response, Defendant is a state-licensed ambulatory surgery center which provides health services to women in the Atlanta, Georgia region. The allegation that Defendant is an “Employer” as that term is defined under the laws applicable to this action

states a conclusion of law to which no response is required and is therefore denied.

The remaining allegations set forth in Paragraph 4 of the Complaint are denied.

5. Denied.

**EXHAUSTION OF ADMINISTRATIVE REMEDIES**

6. Admitted in part and denied in part. It is admitted only that on or about November 14, 2011 Plaintiff filed a charge of discrimination (the “Charge”) with the Equal Employment Opportunity Commission (the “EEOC”). The allegations that the Charge was “timely” and/or filed within 180 days of “discriminatory acts” state conclusions of law to which no response is required and are therefore denied. To the extent that those allegations are factual in nature, they are denied. The Charge is a written document that speaks for itself and any mischaracterizations of that document are denied. The remaining allegations set forth in Paragraph 6 of the Complaint are denied as conclusions of law.

7. Admitted in part and denied in part. It is admitted, based upon information and belief, that on or about July 12, 2013 the EEOC issued a Notice of Right to Sue to Plaintiff. The Notice of Right to Sue is a written document that speaks for itself and any mischaracterizations of that document are denied. The

remaining allegations set forth in Paragraph 7 of the Complaint are denied as conclusions of law.

8. Admitted in part and denied in part. It is admitted, based upon information and belief, that Plaintiff initiated the instant lawsuit on or about 90 days after receiving the Notice of Right to Sue. The allegation that Plaintiff properly exhausted her administrative remedies states a conclusion of law to which no response is required and is therefore denied.

**PERTINENT UNDERLYING FACTS**

9. Admitted in part and denied in part. It is admitted only that Plaintiff was engaged by Defendant from on or about 1995 to on or about March 30, 2011 as an independent contractor Certified Registered Nurse Anesthetist. It is admitted that she provided patient anesthesia services during that period. It also is admitted that beginning on or about March 30, 2011 Plaintiff voluntarily discontinued providing services for Defendant. Based upon information and belief, it is admitted that Plaintiff had hip replacement surgery in that timeframe. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that Plaintiff's surgery was medically necessary, which is denied. It is further denied that Plaintiff was

employed by Defendant as a full-time employee from 1995 through March 30, 2011. The remaining allegations set forth in Paragraph 9 of the Complaint are denied.

10. Admitted in part and denied in part. It is admitted that Plaintiff performed anesthesia services consistent with her status as an independent contractor Certified Registered Nurse Anesthetist, and that during operative procedures she was supervised by a surgical medical doctor who made the ultimate decisions regarding the care and treatment of the patients. By way of further response, as a licensed professional in her field, Plaintiff had the authority after an evaluation of the patient to accept or reject each patient based upon her independent assessment of the patient's ability to undergo anesthesia. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations concerning whether Plaintiff performed other jobs at Defendant on her own initiative not related to anesthesia, and they are denied. In light of Plaintiff's non-employee status, it is denied that she was on a "medical leave of absence", and that she did not make her own schedule. The remaining allegations set forth in Paragraph 10 of the Complaint are denied.

11. Admitted in part and denied in part. It is admitted only that on occasion from in or about September, 1995 through approximately 1997 Plaintiff worked a three-day schedule at Defendant. It is admitted that in or about 1997 Defendant began operating four days per week. It is denied that Plaintiff was an employee of Defendant. The remaining allegations set forth in Paragraph 11 of the Complaint are denied.

12. Admitted in part and denied in part. It is admitted, based upon information and belief, that as of June 15, 2011 Plaintiff was approximately 76 years of age. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations that Plaintiff was cleared by a physician to return to work beginning June 15, 2011, and that she was fully capable of and competent in the performing of her job at that time. The remaining allegations set forth in Paragraph 12 of the Complaint are denied.

13. Admitted in part and denied in part. It is admitted only that on or about June 6, 2011 Plaintiff attended a retirement party for Defendant's then Administrator, Golda Melnik. It is admitted that Randy Lazarus was in attendance at that party. The allegations concerning "his consequent perceived disability", and that Mr. Lazarus was the "*de facto* owner" of Defendant, state conclusions of

law to which no response is required and are therefore denied. The remaining allegations set forth in Paragraph 13 of the Complaint are denied as stated.

14. Denied. It is denied that Plaintiff called Defendant on June 8, 2011 to advise that she was ready and able to start work. It is further denied that Plaintiff was advised at that time that Defendant would not permit her to resume her position at Defendant. It is denied that Plaintiff was “replaced” by a much younger person, and that any replacement was not as competent as Plaintiff. The remaining allegations set forth in Paragraph 14 are denied as conclusions of law to which no response is required and are therefore denied. To the extent that the remaining allegations are factual in nature, they are denied.

15. Denied. The allegations set forth in Paragraph 15 of the Complaint are denied as conclusions of law to which no response is required and are therefore denied. To the extent that the allegations are factual in nature, they are denied.

## **COUNT I**

### **PERCEIVED DISABILITY DISCRIMINATION**

16. Defendant incorporates its responses to Paragraphs 1 through 15 of the Complaint as though fully set forth herein.

17. Denied. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations that Plaintiff currently possesses the education, experience, mental ability, and physical ability to perform all of the functions required of her as a CRNA at Defendant. It is denied as a conclusion of law that Defendant, through its agents, apparent agents and employees, and because of their perception of Plaintiff as being physically disabled, intentionally, maliciously and wrongfully refused to accommodate Plaintiff, and terminated the Plaintiff's employment. It is further denied that Defendant terminated Plaintiff's employment. By way of further response, Plaintiff was not an employee of Defendant. The remaining allegations set forth in Paragraph 17 of the Complaint are denied.

18. Denied. The allegations set forth in Paragraph 18 of the Complaint are denied as conclusions of law. To the extent that the allegations are factual in nature, they are denied.

19. Denied. The allegations set forth in Paragraph 19 of the Complaint are denied as conclusions of law. To the extent that the allegations are factual in nature, they are denied.



20. Denied. The allegations set forth in Paragraph 20 of the Complaint are denied as conclusions of law. To the extent that the allegations are factual in nature, they are denied.

WHEREFORE, Defendant respectfully requests that the Complaint be dismissed in its entirety, that judgment be entered in favor of Defendant and against Plaintiff, and that Defendant be awarded its costs and expenses, including attorneys' fees, and such other relief as the Court deems just and proper.

## **COUNT II**

### **UNLAWFUL AGE DISCRIMINATION**

21. Defendant incorporates its responses to Paragraphs 1 through 20 of the Complaint as though fully set forth herein.

22. Denied. The allegations set forth in Paragraph 22 of the Complaint are denied as conclusions of law.

23. Denied. The allegations that the “terminating of Plaintiff” was “discriminatory”, and that Defendant through the actions of its owner/agent erroneously concluded that because of her age and disability Plaintiff was incapable of performing her CRNA duties, state conclusions of law to which no response is required and is denied. To the extent that the allegations are factual in

nature, they are denied. It is denied that Plaintiff's employment was terminated. By way of further response, Plaintiff was not an employee of Defendant. The remaining allegations set forth in Paragraph 23 of the Complaint are denied.

24. Denied. The allegations set forth in Paragraph 24 of the Complaint are denied as conclusions of law.

25. Denied. The allegations set forth in Paragraph 25 of the Complaint are denied as conclusions of law.

26. Denied. The allegations set forth in Paragraph 26 of the Complaint are denied as conclusions of law.

27. Denied. The allegations set forth in Paragraph 27 of the Complaint are denied as conclusions of law.

WHEREFORE, Defendant respectfully requests that the Complaint be dismissed in its entirety, that judgment be entered in favor of Defendant and against Plaintiff, and that Defendant be awarded its costs and expenses, including attorneys' fees, and such other relief as the Court deems just and proper.

**COUNT III**

**BREACH OF CONTRACT**

28. Defendant incorporates its responses to Paragraphs 1 through 27 of the Complaint as though fully set forth herein.

29. Denied. The allegations set forth in Paragraph 29 of the Complaint are denied as conclusions of law. To the extent that the allegations are factual in nature, they are denied.

30. Denied. The allegations set forth in Paragraph 30 of the Complaint are denied as conclusions of law. To the extent that the allegations are factual in nature, they are denied.

31. Denied. The allegations set forth in Paragraph 31 of the Complaint are denied as conclusions of law. To the extent that the allegations are factual in nature, they are denied.

WHEREFORE, Defendant respectfully requests that the Complaint be dismissed in its entirety, that judgment be entered in favor of Defendant and against Plaintiff, and that Defendant be awarded its costs and expenses, including attorneys' fees, and such other relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Denied. The allegation concerning Plaintiff's demand for a jury trial is not directed to Defendant and is denied. It is denied that Plaintiff is entitled to any of the relief that she is seeking in the instant matter.

WHEREFORE, Defendant respectfully requests that the Complaint be dismissed in its entirety, that judgment be entered in favor of Defendant and against Plaintiff, and that Defendant be awarded its costs and expenses, including attorneys' fees, and such other relief as the Court deems just and proper.

**DEFENDANT'S AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

The claims asserted in the Complaint are barred in whole or in part by the applicable statute of limitations.

**SECOND AFFIRMATIVE DEFENSE**

The Complaint fails to state claims upon which relief can be granted or damages sought can be awarded.

**THIRD AFFIRMATIVE DEFENSE**

At all times relevant to this litigation, Defendant acted in a manner which was proper, reasonable, lawful, and in the exercise of good faith.

**FOURTH AFFIRMATIVE DEFENSE**

The claims asserted in the Complaint are barred because Plaintiff failed to exhaust her administrative remedies.

**FIFTH AFFIRMATIVE DEFENSE**

Defendant did not violate any duty to or right of Plaintiff.

**SIXTH AFFIRMATIVE DEFENSE**

If Plaintiff suffered any damages or losses, such damages or losses were caused in whole or in part by Plaintiff's own acts, omissions or conduct.

**SEVENTH AFFIRMATIVE DEFENSE**

Defendant asserts every defense available to it under the Americans with Disabilities Act, 42 U.S.C. §§12101 *et seq.* (the "ADA"), and the Age Discrimination in Employment Act, 29 U.S.C. §§621 *et seq.* (the "ADEA"), and any other applicable law.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to mitigate her alleged damages.

**NINTH AFFIRMATIVE DEFENSE**

Defendant did not engage in any unlawful employment practices with respect to Plaintiff.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiff's Complaint is barred, in whole or in part, because at the time of the alleged events set forth in Plaintiff's Complaint, Defendant had in place policies against the conduct alleged and Plaintiff unreasonably failed to avail herself of these remedial measures and/or to take advantage of any preventative or correct opportunities provided by Defendant or to voice harm otherwise.

**ELEVENTH AFFIRMATIVE DEFENSE**

The claims asserted in Plaintiff's Complaint are barred in whole or in part by the doctrine of waiver.

**TWELFTH AFFIRMATIVE DEFENSE**

The claims asserted in Plaintiff's Complaint are barred in whole or in part by the doctrine of laches.

**THIRTEENTH AFFIRMATIVE DEFENSE**

The claims asserted in Plaintiff's Complaint are barred in whole or in part by the doctrine of estoppel.

**FOURTEENTH AFFIRMATIVE DEFENSE**

The claims asserted in Plaintiff's Complaint are barred in whole or in part by the doctrine of unclean hands.

**FIFTEENTH AFFIRMATIVE DEFENSE**

The claims asserted in Plaintiff's Complaint are barred in whole or in part because Plaintiff was not an employee of Defendant, and Defendant was not an employer of Plaintiff, within the meaning of the ADA or the ADEA.

WHEREFORE, Defendant respectfully requests that the Complaint be dismissed in its entirety, that judgment be entered in favor of Defendant and against Plaintiff, and that Defendant be awarded its costs and expenses, including attorneys' fees, and such other relief as the Court deems just and proper.

Respectfully submitted,

/s/ Reginald M. Jones  
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Counsel for Defendant Atlanta Women's Center,  
Inc.

Dated: November 15, 2013



**CERTIFICATE OF SERVICE**

The foregoing Answer of Defendant Atlanta Women's Center, Inc. to Plaintiff's Complaint with Affirmative Defenses has been served by electronic means through the Court's transmission facilities on the following counsel of record:

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/s/ Reginald M. Jones \_\_\_\_\_  
Reginald M. Jones

Dated: November 15, 2013