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9/18/2020 10:39 AM

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF DAKOTA FIRST JUDICIAL DISTRICT

Kaya Latzke, Plaintiff, vs. Northfield Hospitals & Clinics, Defendant.	Court File No.:_____ Case Type: 7 – Employment **SUMMONS**

THIS SUMMONS IS DIRECTED TO DEFENDANT NORTHFIELD HOSPITALS & CLINICS, AT ITS PRINCIPAL PLACE OF BUSINESS: 2000 NORTH AVENUE, NORTHFIELD, MN 55057.

1. **YOU ARE BEING SUED**. The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this Summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this Summons.

2. **YOU MUST REPLY WITHIN 21 DAYS TO PROTECT YOUR RIGHTS**. You must give or mail to the person who signed this Summons a **written response** called an Answer within 21 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this Summons located at:

HALUNEN LAW
1650 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

3. **YOU MUST RESPOND TO EACH CLAIM**. The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.

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4. **YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS.** If you do not Answer within 21 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the Complaint. If you do not want to contest the claims stated in the Complaint, you do not need to respond. A default judgment can then be entered against you for the relief requested in the Complaint.

5. **LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. **Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.**

6. **ALTERNATE DISPUTE RESOLUTION.** The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.

Dated: September 14, 2020

HALUNEN LAW

/s/ Ross D. Stadheim

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ATTORNEYS FOR PLAINTIFF

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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF DAKOTA FIRST JUDICIAL DISTRICT

Kaya Latzke, Plaintiff, vs. Northfield Hospitals & Clinics, Defendant.	Court File No.:_____ Case Type: Employment **COMPLAINT AND JURY DEMAND**

Plaintiff Kaya Latzke ("Plaintiff" or "Latzke"), for her Complaint against Defendant Northfield Hospitals & Clinics ("Defendant" or "NH+C" or "the Hospital") states and alleges as follows:

PARTIES

1. Plaintiff is a resident of the City of Lakeville, County of Scott, and State of Minnesota.

2. Defendant is a Minnesota Corporation with its principal place of business located at 2000 North Avenue, City of Northfield, County of Dakota, State of Minnesota.

3. At all times relevant to this lawsuit, Plaintiff and Defendant were "employee" and "employer," respectively, as those terms are defined in Minn. Stat. § 181.931.

JURISDICTION AND VENUE

4. The jurisdiction of this Court is invoked as the violations occurred in the State of Minnesota and involve state law.

5. Venue is appropriate in Dakota County because Defendant is a resident of the State of Minnesota, County of Dakota and the facts and circumstances given rise to Plaintiff's claims occurred within County of Dakota.

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FACTS

Latzke's Employment with NH+C

6. Plaintiff Latzke was hired on July 22, 2014 as the Hospital's Manager of Endoscopy ("Endo") Program and Stress Testing in the Endoscopy Clinic.

7. Latzke was never coached, counseled, disciplined, or warned with respect to her performance, until she reported violations of medical standards implemented for the protection of patients.

Latzke Discovers Serious Breaches in Standards of Care Provided by NH+C Physicians

8. As outlined in detail below, between May 2019 and January 2020, Latzke discovered that Dr. Katya Ericson was putting patients at serious risk of harm and breaching national clinical standards in the following ways: 1) having a vast majority of her colonoscopy and polyp removal procedure times go well past the American Society for Gastrointestinal Endoscopy ("ASGE") community standard of 30 minutes, directly resulting in increased sedation medication well above national standards; 2) using an outdated and dangerous medical technique for the piecemeal removal of colorectal polyps with a forceps instead of a snare, which is now the standard of practice that must be provided; and 3) having patients who had polyps removed via piecemeal return for follow-up in three to five years, instead of six to 12 months for follow-up to ensure removal and reduce the risk of regrowth—exposing those patients heightened risks of colon cancer and even death.

9. In early May 2019, Latzke pulled together a survey of colonoscopy data for each physician from January 1 to May 10, 2019. This data revealed that 51% of Dr. Ericson's colonoscopies exceeded 30 minutes or more, as compared to 7% and 2% of Drs. Martin Gadek

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and Randolf Reister, respectively, along with other concerning data that was far outside acceptable standards of deviation.

Latzke Reports Breaches of Standards of Care to the NH+C Administration

10. Latzke first brought her concerns to the Hospital's Chief Operation Officer, Jerry Ehn, after compiling the data in early May 2019. Ehn had no response but to thank Latzke for the information and review it with others in administration.

11. With approval from Ehn, Latzke reported this data to Dr. Ericson directly on May 23, 2019. When Latzke asked how she could help Dr. Ericson with this problem, Dr. Ericson simply stated she "had enough" and stormed out of the meeting. The next day, Latzke reported the events of the meeting in an email to Ehn, Chief Nursing Executive Tammy Hayes, and Director of Surgical Services Cheryl Langford.

12. Latzke then reached out to the ASGE's office in Chicago for an opinion regarding the national clinical standard for safe and effective colonoscopy times. On June 11, 2019, she received an emailed response from the ASGE, which stated that the "standard" was 30 minutes and that "[r]outine exams in excess of this standard expose patients to undue risk of prolonged sedation." Latzke then shared her findings that Dr. Ericson was routinely in violation of this established standard of practice with Ehn, Hayes, and Langford via email on June 11, 2019 at 2:57 p.m and again on June 13 at 9:04 a.m.

13. On or around June 27, 2019, Latzke learned from her staff that Drs. Ashley Marek and Ericson were putting their patients at serious risk of injury during colonoscopies by placing an excessive amount of pressure on the abdomen, again in violation of national clinical standards established by the ASGE. Latzke sent an email out that day, reminding physicians that pressure

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should only be applied for three to five minutes, and attaching ASGE slides for safe and effective practice.

14. When Dr. Ericson responded to Latzke's concerns with a "reply all" email accusing the nursing staff at the hospital for this issue, Latzke gathered their safety write-ups on this issue. Those two write-ups demonstrated that Dr. Ericson had required a nurse to hold pressure "consistently for 30 minutes" and that Dr. Marek had done the same for approximately the same amount of time on another patient with Dr. Ericson proctoring. The safety complaints stated that "[g]uidelines for safe and effective abdominal pressure were not followed." Later in the day on July 2, Latzke reported these violations to Ehn, copying and pasting the actual safety complaints via email.

15. On July 9, 2019, Latzke emailed Ehn, Hayes, Langford, and Director of Quality Ann Reuter suggesting that NH+C provide the newer physicians in the Endo Department with more training and proper proctoring on how to perform safe and effective colonoscopies after speaking with Dr. Reister, NH+C Internist, and ASGE again in Chicago.

16. On July 17, 2019, Latzke's staff notified her that Dr. Marek had violated her Endoscopy Training Protocol, which was put in place to ensure patient safety, for a second time, by starting an esophagogastroduodenoscopy or "EGD" before her proctor, Dr. Ericson, was in the room. Latzke and her staff formally memorialized this violation in a safety report. She notified Ehn, Hayes, and Internal Counsel Laura Peterson of this via email that same day at 11:27 a.m. No one in NH+C's administration replied verbally or in writing to this email's concerns.

17. On August 12, 2019, Latzke noticed an inconsistency in Dr. Ericson's practice that made her worry that an improper standard of care was being provided. She called Reuter on August 19, asking why some patients that had piecemeal polyps removed were not being recalled for

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follow-up to ensure that no regrowth had occurred within the recommended six to 12-month period. Latzke was shocked to learn that many of Dr. Ericson's patients were instead being recalled somewhere between three to five years. Reuter replied that she would report this information to Chief Medical Officer Jeff Meland.

18. On August 23, 2019, Latzke reported to Human Resources employee Vicki Stevens that she believed she was being retaliated against for reporting the above-mentioned violations of national clinical standards to NH+C Administration. Stevens noted those concerns in a follow-up email sent at 2:20 p.m. that day, thanking Latzke for the meeting and her reports.

19. Three days later, on August 26, Latzke held an emergency meeting with Ehn to discuss concerns regarding Dr. Marek's credentialing, namely that Dr. Marek's skills were not sufficient for her to be seeing patients. Indeed, Latzke had learned from her nurses that Dr. Marek had repeatedly failed to recognize that she was at the end of the colon (Cecum) and, as such, had scraped its internal walls and had almost poked through the end of it. Following that meeting, Latzke sent an email to Ehn at 10:54 a.m. on August 27, 2019, asking him to bring up Dr. Marek's quality of care issues (referenced above) to the board, writing "[i]t's hard to imagine that anyone from a [patient's] perspective would think this is 'good enough' plus knowing what we know about anatomy and recognition issues." After she sent that email, Ehn had a verbal conversation with Latzke, stating that his hands were tied and that he "wished [he] had more power." Frustrated, Latzke then stated that Ehn was the COO and that he indeed had the power to protect patients.

20. On September 6, 2019, Latzke met with Reuter to discuss "thoughts on quality indicators" for the Endo Department. With the outlook invitation she sent, Latzke attached a draft of a document detailing key indicators that would reveal the quality of the services the department provided. During that meeting, the two analyzed the data, which addressed piecemeal

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polypectomies, unacceptable recall times after piecemeal procedures, and dangerously long colonoscopy procedure times. Both agreed that this data should be included as key indicators during each Endo physician's peer review.

21. On September 23, 2019, Latzke emailed ASGE to obtain more clarification on the standard of care Dr. Ericson was providing. In that email sent at 11:17 a.m., Latzke asked: "I have a provider that has a tendency to remove polyps with a biopsy forceps - piecemeal technique the majority of the time. This provider has done 553 colonoscopies in the last three years and done over 600 piecemeal technique polypectomies with a biopsy forceps. The polyp sizes range from 2-17mm+."

22. On September 26, 2019, ASGE gave a definitive answer, replying that, "[a]fter speaking with GI docs, they all agree that this is not the standard of care."

23. On October 7, 2019, Latzke met with Internal Counsel Peterson at 11:00 a.m. to review this concerning data and ASGE's response. During the course of that meeting, Latzke reported that Dr. Ericson was not providing the correct standard of care, as evidenced by the data disclosed to ASGE on September 23 and ASGE'S response. Peterson took down that information and the meeting ended.

24. On October 10, 2019, Latzke met with Langford, Reuter, Ehn, Hayes, and Peterson to "start the discussion of how [the Hospital] [is] going to handle the [patients] that need to be called back due to not following standards of care for recalls." After attempting to go through this information in detail, it became apparent that Administration did not fully understand the issues, so Latzke ended the meeting and scheduled another for October 24, 2019, so she could be fully prepared to educate them of the issues.

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25. During the week of October 14, 2019, Latzke learned that Peterson notified the Hospital's medical malpractice insurance carrier of the piecemeal polypectomies recall time issue. The carrier, upon information and belief, advised that the Hospital have Dr. Ericson author a letter to affected patients—candidly and fully apprising them of the issue, the standard of care that was not followed, and their rights. Upon information and belief, the insurance carrier also advised that the letter should inform the patients of: (1) their right to go wherever the patient desired to have the procedure repeated; (2) that no out-of-pocket would be incurred, and; (3) that no physician from their surgeon group would be performing the repeat procedure. A first draft of this letter was circulated amongst the Administration Team (Langford, Ehn, Hayes, Reuter, Peterson, and Latzke) on October 16, 2019.

26. On October 24, 2019, Langford, Ehn, Hayes, Reuter, and Latzke met to discuss "next steps for calling back [patients] [that have had] piecemeal polypectomies," according to the outlook invitation. Before the meeting began, Latzke distributed an "education packet" to everyone that included emails, data, and scholarly articles, all demonstrating why these practices were out of line with established national clinical standards. During the course of that meeting, Latzke reiterated the fact that Dr. Ericson's usage of a metal forceps to remove colon polyps was dangerous and noncompliant. Latzke also stated that staff had disclosed that Dr. Ericson practiced this way because she did not know and/or was unskilled at using a snare. The packet provided scholarly articles on the guidelines, pictures of Dr. Ericson's polypectomies vs. textbook, and an August 2016 email from Latzke to all Endo Physicians informing them of the serious risks of recurrence of the polyps (30%) if forceps is used; demonstrating that this technique was dangerous and noncompliant. Latzke also performed a physical demonstration as to why this technique was

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not in-line with the correct standards of care. The meeting then ended with Reuter telling Latzke that it was her belief that Administration finally understood the gravity of this situation.

27. On November 11, 2019, Latzke emailed an attachment to Ehn titled "Piecemeal Polypectomies graph." In the body of that email, Latzke wrote that "Gadek and Reister have zero bx piecemeals polypectomies because this is not standard practice." The attachment analyzed Drs. Gadek, Reister, Ericson, Christopher Nielsen, and Marek's polypectomies from June 27, 2016 to October 31, 2019.

28. Ehn emailed Latzke back later that day and stated that it was his hope that everyone would be on the same page after the meeting on November 12, 2019. Latzke also met with Ehn privately that day and shared that she felt that Dr. Ericson would make NH+C retaliate against her soon.

29. On November 12, 2019, the above-mentioned meeting was held with Dr. Saterbak discussing what the proper clinical standard/guidelines are for this type of procedure (without presenting on the actual numbers in the above-mentioned graph). Dr. Saterbak also presented on the fact that patients who had piecemeal polyps removed had to be recalled within six to 12 months to ensure no regrowth—not three to five years later. Near the end of the meeting, the decision was made that any patient who had a piecemeal polypectomy of 10mm or greater or any piecemeal polypectomy of any size where the pathology report came back with a high risk of precancerous cells (like SSA or a villous component) the patient then had to be notified of their **dire** need to have their colon reanalyzed. At the end of that meeting, the Administration Team stayed behind to discuss exactly how NH+C would notify those patients. Peterson stated that the Hospital should send a "fluffy" correspondence to the patients to guard against potential medical malpractice lawsuits. Upon hearing this, Latzke respectfully, but firmly stated her opposition to sugarcoating

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this public health concern, telling the Team that now was the time to be forthright, accurate, and honest with patients about what happened so they could make an educated decision regarding their care.

30. Eight days later, on November 20, 2019, Latzke was called into a meeting with Chief Nurse Executive Hayes and Head of Surgical Services Langford. At that meeting, Latzke was demoted in role from a 1.0 Manager to 0.5 Manager and 0.5 Floor Nurse.

31. The next day, Latzke met with HR's Vicki Stevens at 9:00 a.m. At that meeting, Latzke informed Stevens that it was her belief that the retaliation she thought was coming down the pipeline for her reporting was now real with her demotion. Stevens responded that her demotion was done in the normal course of business as a cost-saving measure.

32. On December 17, 2019, Latzke met with HR Director Jeff Mutz to share her concerns that she was being retaliated against for her reporting on deviations from established national clinical standards, and her objections about misleading patients who needed to be immediately reanalyzed to determine if they had cancerous cells remaining in their bodies. After she informed Mutz of the issues she reported and her subsequent demotion, he stated that he'd speak with Ehn.

33. On January 13, 2020, Latzke met with Ehn, Reuter, Langford, Hayes, Chief Medical Officer Meland and Drs. Ericson, Reister, Gadek, Ellie Cohen, and Marek. At that meeting, the idea was floated regarding videoing colonoscopies for the patient's medical records and usage during peer review. Not surprisingly, Dr. Ericson was the only physician who objected to this idea, asking Administration if she could "opt out." Dr. Ericson was concerned that the video would be discoverable if a medical malpractice lawsuit was initiated. Hayes replied that she'd have to check with internal counsel with regard to her request.

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34. Latzke followed up with Mutz on January 15, 2020 at 2:12 p.m., and stated that she was disappointed she had yet to hear from him. Mutz set a meeting for the next day, January 16, 2020. During the course of that meeting, Mutz stated that he did meet with Ehn and reported that it was their determination that Latzke needed to "focus on what she could control" and advised her not to be so "brash." Latzke responded that she was not being brash, but that action was needed especially considering that patients were being put at risk by certain physicians not following established ASGE guidelines and national clinical standards. The meeting ended with Latzke stating that, when patients are involved, she will always be a direct and vocal advocate.

35. On January 16, 2020, Latzke sent the Administration Team a completed list of patients between the dates of June 27, 2016 to October 31, 2019 who have been impacted by Dr. Ericson's failures that needed to be recalled to guard against serious risks of colon cancer and other gastrointestinal problems. In that email, Latzke was firm that a notification letter needed to be send out "ASAP" to be in full compliance with NH+C's Full Disclosure Policy because of the "potential risk" to the patients. Ehn thanked Latzke for the list and said he'd be in touch.

36. On January 18, 2020, Latzke met with Hayes and Langford to discuss the culture survey that was taken by Endo Staff in October 2019. In that survey, the staff strongly expressed their concerns regarding the quality of services provided by Endo physicians. Some of the staff went so far as to say that they felt like they were being required to lie to patients by physicians regarding the patient's care and the lack of some following established standards. Upon review and Latzke highlighting these concerns, Hayes stated that there was nothing she could do, because physicians govern themselves. After hearing this position, Latzke stated that she will never lie or have staff lie to patients regarding their care.

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37. On January 30, 2020, Latzke updated In-House Counsel Peterson on the list of patients that needed to be notified from September 2014 to June 2016. Latzke informed Peterson that it was taking a bit longer than expected since it was a manual review process. The two emailed back and forth on February 4, 2020 regarding the timing of the letter being sent out. Latzke was concerned it was taking too long since this was a time sensitive issue. Peterson wrote that she hoped it would be sent out in the "next few weeks."

38. On February 12, 2020, Latzke was called into a meeting at 1:30 p.m. by Langford to review a performance spreadsheet. Latzke went to Langford's office at the designated time, only to find HR's Amy Witter and CNE Hayes waiting for her in addition to Langford. Hayes began the conversation by talking about savings and cutbacks. Hayes then stated that Latzke position was being eliminated. Witter informed Latzke that February 12, 2020 would be her last day, and took Latzke's badge. She then proceeded to watch over Latzke, ushering her out of the Hospital. Latzke asked if she could gather her personal possessions. Witter replied in the negative, with the exception of her purse and coat, and stated that all of the rest of personal possessions would be shipped to her.

39. On February 18, 2020, just five days after Latzke was let go, NH+C posted for an Endoscopy Nursing position.

40. Upon information and belief, NH+C also promoted a clinical nurse to the role of clinical coordinator, taking over some of Latzke's job responsibilities.

41. Upon information and belief, when NH+C finally did send a letter to patients needing to be recalled for further analysis, it did not candidly advise them of the dire situation, nor did it advise the patient of their right to receive care elsewhere.

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CLAIM

COUNT ONE
RETALIATION IN VIOLATION OF THE MINNESOTA WHISTLEBLOWER ACT ("MWA")

Plaintiff re-alleges each and every paragraph of this Complaint.

42. Defendant, through its managers and officials acting on behalf of the Company and within the scope of their employments, engaged in unlawful employment practices involving Plaintiff in violation of the MWA, Minn. Stat. § 181.932, subd. 1. These practices include, but are not limited to, demoting and terminating Plaintiff's employment, which materially affected the terms, conditions, and privileges of her employment because of her reports of violations of a professional healthcare quality of care standard.

43. The MWA states, in relevant part, that, "[a]n employer shall not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because […] the employee, in good faith, reports a situation in which the quality of health care services provided by a health care facility, organization, or health care provider violates a standard established by federal or state law or a professionally recognized national clinical or ethical standard and potentially places the public at risk of harm." Minn. Stat. § 181.932, subd. 1(4).

44. The MWA defines "report" as follows: "a verbal, written, or electronic communication by an employee about an actual, suspected, or planned violation of a statute, regulation, or common law, whether committed by an employer or a third party." Minn. Stat. § 181.931, subd. 6.

45. As alleged above, Plaintiff made multiple reports to Defendant's management regarding what she reasonably, and in good faith, believed to be situations in which the quality of health care services provided by a health care facility, organization, or health care provider violated

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standards established by federal or state law or a professionally recognized national clinical or ethical standard which potentially placed the public at risk of harm.

46. Plaintiff's reports of standard of care violations were motivating factors in her demotion and termination.

47. Defendant failed to take all reasonable steps to prevent the retaliation based upon Plaintiff's reports from occurring.

48. The effect of the practices complained of above has been to deprive Plaintiff of equal employment opportunities and otherwise adversely affecting her status as an employee because of her protected reports.

49. The adverse employment actions described herein constitute violations of the MWA, Minn. Stat. § 181.931, *et seq*.

50. The unlawful employment practices complained above were intentional and were performed by Defendant with malice and/or reckless indifference to the laws that protect Plaintiff.

51. As a direct and proximate result of Defendant's illegal conduct, Plaintiff has suffered, and continues to suffer, emotional distress, humiliation, embarrassment, pain and suffering, loss of reputation, loss of enjoyment of life, lost wages and benefits, and has incurred attorneys' fees and expenses and other serious damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays:

a. That the practices of Defendant complained of herein be adjudged, decreed, and declared to be violations of the rights secured to Plaintiff.

b. That Defendant be required to make Plaintiff whole for its adverse, retaliatory actions through restitution in the form of back pay, with interest of an appropriate inflation factor.

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c. That Plaintiff be awarded front pay and the monetary value of any employment benefits she would have been entitled to in her position with Defendant.

d. That a permanent prohibitory injunction be issued prohibiting Defendant from engaging in the practices complained of herein.

e. That Plaintiff be awarded compensatory damages in an amount to be established at trial.

f. That the Court award Plaintiff her attorneys' fees, costs, and disbursements pursuant to state law.

g. That the Court grant such other and further relief as it deems fair and equitable.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL COUNTS WHERE JURY IS AVAILABLE.

Dated: September 14, 2020

HALUNEN LAW

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ATTORNEYS FOR PLAINTIFF

ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements, sanctions, and reasonable attorneys' fees may be awarded pursuant to Minn. Stat. § 549.211 to the party against whom the allegations in this pleading are asserted.

Dated: September 14, 2020

/s/ Ross D. Staheim
Ross D. Stadheim