

1 Daniel B Chammas, Bar No. 204825
dchammas@fordharrison.com
2 Hilda Aguilar, Bar No. 276459
haguilar@fordharrison.com
3 **FORD & HARRISON LLP**
350 South Grand Avenue, Suite 2300
4 Los Angeles, CA 90071
Telephone: 213-237-2400
5 Facsimile: 213-237-2401

6 Attorneys for Defendant
QUEST DIAGNOSTICS CLINICAL
7 LABORATORIES, INC.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

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11 FE PALOMIQUE, an individual,
12 Plaintiff,
13 v.
14 QUEST DIAGNOSTICS CLINICAL
LABORATORIES, INC., a Delaware
15 corporation dba QUEST DIAGNOSTICS;
and DOES 1-50, inclusive,
16 Defendants.
17

CASE NO. BC656483
[Assigned for all purposes to the
Hon. Ruth Ann Kwan, Dept. 72]
**DEFENDANT QUEST DIAGNOSTICS
CLINICAL LABORATORIES, INC.'S
ANSWER TO PLAINTIFF FE
PALOMIQUE'S UNVERIFIED
COMPLAINT**
Action filed: April 4, 2017
Trial date: Not set

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19 Defendant QUEST DIAGNOSTICS CLINICAL LABORATORIES, INC. ("Defendant")
20 hereby answers the unverified Complaint of Plaintiff FE PALOMIQUE as follows:

21 **GENERAL DENIAL**

22 Pursuant to the provisions of Code of Civil Procedure section 431.30(d), Defendant
23 denies, both generally and specifically, each and every allegation, matter or fact contained in
24 Plaintiff's Complaint and the whole thereon, and further denies that Plaintiff has been injured or
25 damaged in any sum whatsoever or is entitled to any relief in any form, whether legal or
26 equitable, from Defendant.

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AFFIRMATIVE DEFENSES

Without assuming the burden of proof or persuasion, Defendant is informed and believes and on that ground alleges that Plaintiff's Complaint is subject to the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

(Facts Insufficient to State Any Cause of Action)

1. The Complaint as a whole, and each purported cause of action alleged therein, fails to state facts sufficient to constitute any cause of action against Defendant upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations)

2. The Complaint as a whole, and each purported cause of action alleged and remedy sought therein, is barred in whole or in part by the applicable statute of limitations, including but not limited to California Code of Civil Procedure sections 337, 337.1, 338, 339, 340 and 343, as well as California Business and Professions Code section 17208.

THIRD AFFIRMATIVE DEFENSE

(Lack of Standing)

3. Plaintiff's Complaint, and each purported cause of action and/or form of recovery contained therein, is barred to the extent that Plaintiff lacks standing to assert any of the causes of action and/or form of recovery contained in the Complaint because Plaintiff has not suffered any injury-in-fact or for which Plaintiff does not have a private right of action.

FOURTH AFFIRMATIVE DEFENSE

(Waiver)

4. The Complaint, and each purported cause of action alleged therein, is barred on the ground that Plaintiff has expressly and/or impliedly waived the right to assert such causes of action by virtue of her verbal and/or written expressions or conduct.

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FIFTH AFFIRMATIVE DEFENSE

(Estoppel)

5. By virtue of her conduct, Plaintiff must be estopped from asserting any of the causes of action in the Complaint against Defendant.

SIXTH AFFIRMATIVE DEFENSE

(Laches)

6. Plaintiff is barred from proceeding with this action on the ground that Plaintiff is guilty of laches in failing to timely commence this action, which has prejudiced Defendant in its ability to discover adequate witnesses, testimony, facts, and evidence to support Defendant's defenses.

SEVENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

7. Defendant is informed and believes and thereon alleges that Plaintiff, by her own conduct, is guilty of unclean hands, which completely bars or reduces recovery, if any, to which she may be entitled, all in accordance with proof at trial.

EIGHTH AFFIRMATIVE DEFENSE

(Consent)

8. The Complaint, and each purported cause of action alleged therein, is barred on the ground that at all times alleged in the Complaint, Plaintiff expressly or impliedly assented to, ratified, or concurred with the conduct alleged to be unlawful.

NINTH AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

9. Plaintiff failed to exhaust available administrative remedies and is therefore precluded from obtaining any relief under the alleged causes of action in the complaint.

TENTH AFFIRMATIVE DEFENSE

(Federal and/or State Preemption)

10. Plaintiff's Complaint, and each claim contained therein, is barred to the extent that Plaintiff's claims are preempted by federal and/or state law.

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ELEVENTH AFFIRMATIVE DEFENSE

(Good Faith)

11. All actions taken by Defendant with respect to Plaintiff, at all times relevant to this action, were taken in good faith for legitimate non-discriminatory reasons.

TWELFTH AFFIRMATIVE DEFENSE

(Unconstitutional)

12. Plaintiff's cause of action for penalties is barred because it is unconstitutionally vague and overbroad as applied to the facts and circumstances of this case.

THIRTEENTH AFFIRMATIVE DEFENSE

(No Authorization, Adoption, or Ratification)

13. Defendant alleges the Complaint, and each purported cause of action contained therein, or some of them, are barred because assuming *arguendo* that Plaintiff engaged in any of the acts alleged in the Complaint, such actions were committed outside the course and scope of employment, were not authorized, adopted or ratified by Defendant, and/or Defendant did not know, nor should they have known, of such conduct.

FOURTEENTH AFFIRMATIVE DEFENSE

(Offset)

14. Defendant alleges that it has suffered damages by reason of Plaintiff's conduct, and Defendant has a right to offset its damages against the damages, if any, of Plaintiff.

FIFTEENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

15. Without admitting any facts pled by Plaintiff, Defendant alleges that if Plaintiff sustained any loss, injury or damages either as alleged in the Complaint or at all, which Defendant expressly denies, the same were directly and proximately caused and/or exacerbated by Plaintiff's own conduct, promises and representations to Defendant, and failure to take actions to mitigate these losses, injuries, or damages.

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SIXTEENTH AFFIRMATIVE DEFENSE

(Speculative Damages and/or Penalties)

16. Plaintiff is precluded from recovering the damages alleged in the Complaint because those damages and/or penalties are too vague, ambiguous, excessive, unreasonable, uncertain and speculative to permit recovery.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Defendant Exercised Reasonable Care to Prevent and Promptly Correct Harassment)

17. Without admitting any facts pled by Plaintiff, Defendant asserted that Plaintiff's claims fail because Defendant exercised reasonable care to prevent and promptly correct the alleged harassment and because Plaintiff failed to reasonably take advantage of the corrective opportunities provided by the Defendant.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Essential Lawful Part of Business Operations)

18. Defendant alleges the Complaint, and each purported cause of action contained therein, is barred because the alleged conduct, if true, would be an essential lawful part of Defendant's business operations and/or consistent with industry practice.

NINETEENTH AFFIRMATIVE DEFENSE

(After-Acquired Evidence)

19. Defendant alleges the Complaint, and each purported cause of action contained therein, or some of them, are barred and/or relief may be limited due to after-acquired evidence of Plaintiff's on-the-job and employment-related misconduct.

TWENTIETH AFFIRMATIVE DEFENSE

(Reasonable Care)

20. Defendant alleges the Complaint, and each purported cause of action contained therein, is barred because Defendant exercised reasonable care to prevent and correct promptly any alleged discrimination and Plaintiff unreasonably failed to take advantage of any preventative or corrective opportunities provided by Defendant or to avoid harm otherwise.

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TWENTY-FIRST AFFIRMATIVE DEFENSE

(Legitimate Business Reason)

21. Defendant alleges the Complaint, and each purported cause of action contained therein, is barred because Defendant had legitimate business reasons, which were not a pretext for retaliation, for taking certain employment action.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Mixed Motive)

22. As Defendant allege the Complaint, and each purported cause of action contained therein, is barred because in the event that Plaintiff proves any wrongful acts by Defendant, the adverse employment actions about which Plaintiff complains would have been the same even if the alleged wrongful motive played no role.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Failure to Show Intent or Willfulness)

23. Plaintiff's claims for penalties, including, but not limited to penalties under California Labor Code Sections 203 are barred in whole or in part, because Plaintiff has not alleged, and cannot allege, facts demonstrating, that Defendant's conduct was willful, intentional or harmful. Without admitting any facts pled in the Complaint, Defendant alleges that it engaged in lawful conduct that was with cause and justification, and Defendant is not liable for any purported injuries or claims which Plaintiff now declares.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(No Severe Emotional Distress)

24. The alleged acts of Defendant were not outrageous, intentional, or reckless, and Plaintiff did not suffer severe emotional distress as a result of Defendant's alleged acts.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(No Punitive Damages)

25. Defendant alleges that Plaintiff is not entitled to recover the punitive damages in her Complaint as an award of punitive damages would violate Defendant's rights under the Constitution of the United States of America and under the Constitution of the State of California,

1 including Defendant’s rights to (1) procedural due process under the Fourteenth Amendment of
2 the United States Constitution and the Constitution of the State of California; (2) protection for
3 “excessive fines” as provided in the Eighth Amendment of the United States Constitution and
4 Article I, Section 17 of the Constitution of the State of California; and (3) substantive due process
5 provided in the Fifth and Fourteenth Amendments of the United States of America Constitution
6 and the Constitution of the State of California.

7 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

8 **(Avoidable Consequences Doctrine)**

9 26. Defendant alleges the Complaint, and each and every cause of action alleged
10 therein, is barred on the ground that, without admitting that it engaged in any of the acts or
11 conduct attributed to it in the Complaint, that Plaintiff’s claims and damages are barred in whole
12 or in part by Plaintiff’s failure to take reasonable and necessary steps to avoid the harm and/or
13 consequences she allegedly suffered. Plaintiff is barred from recovering any damages that she
14 could have avoided with reasonable effort by, *inter alia*, taking advantage of the Defendant’s
15 internal complaint procedures.

16 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

17 **(Pre-Existing Condition)**

18 27. To the extent Plaintiff suffered any symptoms of mental or emotional distress or
19 injury, they were the result of pre-existing psychological disorders or alternative concurrent
20 causes, and not the result of any act or omission of Defendant.

21 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

22 **(Undue Burden)**

23 28. Defendant alleges the accommodation(s) sought by Plaintiff for her alleged
24 disability and/or medical condition would impose an undue hardship on Defendant in that such an
25 accommodation would be burdensome and unduly affect the operations of the Company.

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TWENTY-NINTH AFFIRMATIVE DEFENSE

(Release)

29. The Complaint, and each purported cause of action alleged therein, is barred on the ground that Plaintiff released and waived any and all claims she may have against Defendant.

THIRTIETH AFFIRMATIVE DEFENSE

(Third Parties)

30. Defendant alleges that the Complaint, and each purported cause of action contained therein, is barred in whole or in part because any injuries or damages allegedly sustained by Plaintiff were not the result of any acts, omissions or other conduct of Defendant. Further, any alleged injuries were caused in part or in whole by third parties or intervening occurrences.

THIRTY-FIRST AFFIRMATIVE DEFENSE

(Lack of Knowledge)

31. Defendant alleges that the Complaint, and each purported cause of action contained therein, is barred in whole or in part and limited by its lack of actual or constructive knowledge. Plaintiff did not inform Defendant of any alleged discrimination, failure to engage in the interactive process, retaliation, failure to prevent, emotional distress, or wrongful termination prior to filing a lawsuit. Plaintiff, therefore, did not provide Defendant with an opportunity to correct any alleged violations and provide the appropriate remedy, if any, to Plaintiff prior to the time the Complaint was filed.

THIRTY-SECOND AFFIRMATIVE DEFENSE

(Incorrect Employer)

32. Any recovery by Plaintiff is barred as against Defendant because it was not an employer of Plaintiff nor did it employ any persons that allegedly engaged in any offensive or unlawful conduct as alleged by Plaintiff.

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THIRTY-THIRD AFFIRMATIVE DEFENSE

(Business Necessity)

33. Any recovery on Plaintiff's Complaint is barred on the ground that every action taken with respect to Plaintiff was done out of business necessity.

RESERVATION OF RIGHTS

Defendant reserves the right to amend or add any additional defenses or counterclaims which may become known during the course of discovery.

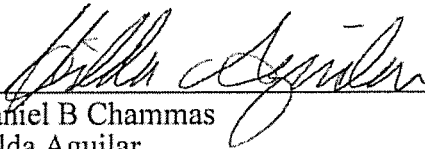
WHEREFORE, Defendant prays as follows:

- 1. That Plaintiff takes nothing by way of her Complaint;
- 2. That Defendant recover attorneys' fees, expert fees and investigator fees;
- 3. That Defendant recover costs of suit herein; and
- 4. That the Court award such other and further relief as it deems appropriate.

Dated: May 16, 2017

Respectfully submitted,

FORD & HARRISON LLP

By: 

Daniel B Chammas
Hilda Aguilar
Attorneys for Defendant
QUEST DIAGNOSTICS CLINICAL
LABORATORIES, INC.

PROOF OF SERVICE

I, Anne Moreno, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 350 South Grand Avenue, Suite 2300, Los Angeles, California 90071. On May 16, 2017, I served a copy of the within document(s):

DEFENDANT QUEST DIAGNOSTICS CLINICAL LABORATORIES, INC.'S ANSWER TO PLAINTIFF FE PALOMIQUE'S UNVERIFIED COMPLAINT

- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- by placing the document(s) listed above in a sealed FedEx Overnight envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a FedEx agent for delivery.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

Sean M. Kneafsey, Esq.
 Joyce J. Choi, Esq.
 The Kneafsey Firm, Inc.
 800 Wilshire Blvd., Suite 710
 Los Angeles, CA 90017
 Telephone: (213) 892-1200
 Facsimile: (213) 892-1208
 Email: skneafsey@kneafseyfirm.com
jchoi@kneafseyfirm.com

Jeremy Pasternak, Esq.
 Law Offices of Jeremy Pasternak
 445 Bush Street, Sixth Floor
 San Francisco, CA 94108
 Telephone: (415) 693-0300
 Facsimile: (415) 693-0393
 Email: jdp@pasternaklaw.com

Attorneys for Plaintiff
FE PALOMIQUE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 16, 2017, at Los Angeles, California.



 Anne Moreno