

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ZA'TAYAH BALLARD,

CIVIL DIVISION

Plaintiff,

vs.

GD No.

HIGHLAND PARK CARE CENTER, LLC
operating under the fictitious name
HIGHLAND PARK CARE CENTER,

CIVIL COMPLAINT

Defendant.

Filed on Behalf of Plaintiff

Counsel of Record for this Party:

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JURY TRIAL DEMANDED

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Defendant.

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

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COMPLAINT

NOW COMES, Plaintiff Za'Tayah Ballard ("Plaintiff"), by and through her undersigned counsel, who hereby complains against Defendant Highland Park Care Center, LLC as follows:

PARTIES

1. Ballard is an adult individual currently residing at 527 Idlewood Road, Pittsburgh, Pennsylvania 15235.
2. Highland Park Care Center, LLC is a limited liability company organized under the laws of the Commonwealth of Pennsylvania, having offices located at 745 N. Highland Avenue, Pittsburgh, Allegheny County, Pennsylvania 15206.
3. Highland Park Care Center, LLC operates a skilled nursing facility under the fictitious name Highland Park Care Center, with a physical address of 745 North Highland Avenue, Pittsburgh, Allegheny County, Pennsylvania 15206, and is in the business of providing skilled nursing services to the general public.
4. Hereinafter, Highland Park Care Center, LLC operating under the fictitious name Highland Park Care Center and its facility located at 745 North Highland Avenue, Pittsburgh, Allegheny

County, Pennsylvania shall collectively be referred to as “Highland Park.”

FACTUAL ALLEGATIONS

5. On or about January 30, 2020, the World Health Organization (“WHO”) declared the 2019 novel coronavirus (COVID-19) a worldwide pandemic. Common symptoms of COVID-19 include fever, cough, and shortness of breath.

6. Around the same time, the Secretary of the United States Department of Health and Human Services (“HHS”) declared COVID-19 a public health emergency.

7. In early March 2020, when the United States began experiencing community spread of COVID-19, the United States Centers for Disease Control and Prevention (“CDC”) issued public guidance directing that, if one has tested positive for COVID-19 or is experiencing symptoms of COVID-19 or has been exposed to COVID-19, one should stay home and isolate themselves from others. This CDC guidance remains in effect to the present day.

8. On or about March 5, 2020, Pennsylvania Department of Health (“DOH”) Secretary Dr. Rachel Levine encouraged Pennsylvania residents experiencing symptoms of COVID-19 or have been exposed to COVID-19 to stay home and self-isolate.

9. On March 6, 2020, Governor Tom Wolf proclaimed the existence of a disaster emergency throughout Pennsylvania pursuant to state law.

10. On March 31, 2020, Governor Wolf, Dr Levine, and DOH issued orders directing that all residents of, *inter alia*, Allegheny County stay home to prevent the spread of COVID-19.

11. As of the filing of this complaint, Dr Levine and DOH continue to urge sick, symptomatic, or exposed Pennsylvanians to stay home and self-isolate. For example, DOH’s website continues to state: “[i]f you had a known exposure to a confirmed case, continue to quarantine until 14 days after your exposure.” Even if the person has a negative test and are experiencing no symptoms.

<https://www.health.pa.gov/topics/Documents/HAN/COVID19%20Patient%20Instructions%20for%20Self%20Isolation.pdf>

12. The Center of Disease Control has issued guidelines for assisted living facilities stating "[g]iven their congregate nature and population served, assisted living facilities (ALFs) are at high risk for SARS-CoV-2 spreading among their residents. If infected with SARS-CoV-2, the virus that causes COVID-19, assisted living residents—often older adults with underlying medical conditions—are at [increased risk](#) for severe illness." See <https://www.cdc.gov/coronavirus/2019-ncov/hcp/assisted-living.html>

13. Because of the nature of COVID-19 and the high risk to patients, the CDC, recommends that any health care provider exposed to SARS-CoV-2 without personal protective equipment "be excluded from work for fourteen days."

See <https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-risk-assesment-hcp.html>

14. On April 1, 2020, Defendant hired Ballard to work full-time as a Certified Nursing Assistant.

15. At all times relevant and material hereto, Ballard was an "at-will" employee of Defendant.

16. At all times relevant and material hereto, Ballard worked 40 hours per week and earned \$13.50 per hour.

17. On May 16, 2020, Ballard found out that she had prolonged close contact, defined as 15 minutes, or longer, without personal protective equipment, to a person with a confirmed case of COVID-19 in an enclosed space.

18. On May 16, 2020, Ballard immediately called the Defendant, and informed the registered nurse supervisor on duty, Asante (last name unknown) (hereinafter "Asante"), per weekend call-off procedures, that she was exposed to a confirmed COVID-19 case.

19. On May 16, 2020, Ballard asked Asante to remove her from the schedule so she could

quarantine for fourteen days due to her direct prolonged exposure to a confirmed COVID-19 case. Ballard knew that the patients she came into direct contact with every day were highly vulnerable to COVID-19 and did not want to harm them.

20. On May 16, 2020, Asante removed Ballard from the schedule.

21. On Monday May 18, 2020, the Director of Nursing and Administrator, who does not work on the weekend, learned of Ballard's request to quarantine.

22. On Monday May 18, 2020, Defendant denied Ballard's request to quarantine and instead terminated Ballard's employment for missing work on May 16, 2020 due to the COVID-19 exposure.

23. Upon information and belief, the decision to terminate Ballard was made after her request to quarantine due to COVID-19 exposure. Had Ballard not requested to quarantine on May 16, 2020, she would have not been terminated from her employment.

COUNT I

WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY

24. Plaintiff incorporates by reference all preceding allegations as if same were set forth more fully at length herein.

25. At all times relevant and material hereto, it was the clearly-defined public policy of the United States and the Commonwealth of Pennsylvania for individuals who had prolonged exposure to confirmed cases of COVID-19 without protective gear to isolate themselves in an effort to prevent the virus's spread.

26. By discharging Plaintiff from her employment because she stayed home and self isolated after being exposed to COVID-19, Defendant violated a clear mandate of Pennsylvania and United States public policy.

27. Given the uncertainty and fear surrounding the COVID-19 pandemic, and in light of the

fact that Plaintiff's supervisor, Asante allowed Plaintiff to stay home, Defendant's decision to discharge Plaintiff from her employment was wanton, outrageous, and in reckless disregard for Plaintiff's rights under state and federal law.

WHEREFORE, Plaintiff Za'Tayah Ballard respectfully requests that this Honorable Court enter judgment in her favor and against Defendant and award the following relief:

- a. All back pay from May 18, 2020 through the date of judgment including pre and post interest;
- b. Front pay from the date of judgment until such time as deemed equitable and just by the court;
- c. Compensatory damages for emotional distress, mental anguish, and inconvenience;
- d. Punitive damages; and
- e. Any other relief deemed proper and just by the Court.

Respectfully Submitted,



Date: October 16, 2020

Rachel L. McElroy, Esq.
PA ID No. 321624

McElroy Law Firm, LLC
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Pittsburgh, PA 15228
Phone: 412-620-8735
Email: rachel@mcelroylawfirm.com

VERIFICATION

I, Za'Tayah Ballard, hereby state that I am the plaintiff in the within action and verify that the statements made in the foregoing Civil Action Complaint are true and correct to the best of my knowledge, information and belief.

I understand that the statements made therein are subject to the penalties of 18 Pa C.S. §4904 relating to unsworn falsification to authorities.

10 / 20 / 2020



ZA'TAYAH BALLARD, Plaintiff

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted By:

/s/ Rachel L. McElroy