

DECLARATION OF YADIRIS RIVERA IN SUPPORT OF
EEOC CHARGE OF DISCRIMINATION

The Basis for this Charge:

1. This Charge is based on my termination from employment with Medical Imaging of Manhattan (MIM), a mammography and radiology office. I was employed at MIM, where I worked as a receptionist, from July of 2004 until February 16, 2010, when I was terminated from my employment.

2. I believe that I was fired because I chose to breastfeed my baby, and I had to express, or "pump," breast milk at work. Beginning when I returned from maternity leave in April, 2009, my employer failed to provide me with a private and sanitary location to pump breast milk, and soon told me that I should not be pumping at work at all. When I asserted my rights, my employer retaliated against me by targeting me for discipline, and ultimately firing me.

3. I believe that these actions constituted unlawful discrimination on the basis of sex, pregnancy, race, and national origin, in violation of the laws of the United States, New York State, and New York City. I was discriminated against and fired because I was pumping breast milk for my baby. This is unlawful discrimination under Title VII, New York State Human Rights Law, and New York City Human Rights Law, which prohibit discrimination on the basis of sex. The term sex includes, but is not limited to, pregnancy, childbirth, and related medical conditions. Lactation is a medical condition related to pregnancy and childbirth. Moreover, just as discrimination against a woman because she is pregnant is sex discrimination, so too is discrimination against a woman because she is lactating.

4. MIM is an employer with fifteen or more employees and as such is subject to the terms of Title VII of the Civil Rights Act.

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5. I have also filed a complaint with the New York Department of Labor claiming that MIM violated New York State Labor Law.

Factual Background:

6. MIM hired me as a patient changer in July 2004. I was promoted to the position of receptionist in 2005, and was the sole receptionist until a second receptionist position was added in 2007. During my time as a receptionist I redesigned the systems used at the front desk to make the front desk work more efficiently and more smoothly. From 2004 until December 2009 I received positive oral and written performance reviews, as well as performance-based salary raises.

7. As a receptionist, the fact that I speak Spanish was very useful, as a significant number of our clients speak only Spanish. To my knowledge other employees were also told when they were hired that speaking Spanish was a “plus” because it was useful in the office.

8. I learned I was pregnant in July 2008. During the pregnancy, I decided I would try to breast feed my baby. I felt that breast milk was the best food for my daughter’s health, because numerous medical studies have demonstrated that breastfeeding has significant benefits for children’s health and cognitive development. It has also been associated with lower rates of breast cancer in women.

9. I planned to continue to breastfeed my baby when I returned to work from maternity leave, which would mean that I would need to pump breast milk during the work day. Women who cannot be with their babies at all times need to use a breast pump to express milk so that there is a supply of milk on hand for the baby when the mother is not present to breastfeed, and to maintain their supply of breast milk. If a woman does not breastfeed or pump at frequent intervals she will stop lactating.

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10. In September, 2008, I informed my supervisors, Colleen O'Brien, Office Manager ("O'Brien"), Rachael Petrus, Administrative Manager ("Petrus"), and Kathryn Giordano, assistant to Dr. Levy ("Giordano") of my pregnancy. In January 2009 I informed O'Brien, Petrus, and Giordano that I planned to continue breastfeeding after I returned to work, and that I would need to pump breast milk at the office. All three supervisors indicated to me that I would be able to pump breast milk at work.

11. I gave birth to my daughter on February 15, 2009, and started my maternity leave the following day. When my baby was born, I successfully initiated breastfeeding and continued to do so during the duration of my maternity leave.

12. I returned from maternity leave in mid-April 2009. Upon my return I informed O'Brien that I would need a location where I could express breast milk. O'Brien told me to use the "bone density" room—an examination room used to check patients' bone density. I was allowed to use this room to express breast milk when there were no patients using the room, and with permission from the technicians who operated the machines in the room.

13. I pumped breast milk in the bone density room for two to three months after returning to work. For the first month I did not clock out while pumping, but after a month Dr. Levy asked that I clock out while pumping, which I began to do. In those first few months I would express milk before my shift started, I would clock out to express milk twice a day, and also express milk on my lunch break and after my shift was over before I left the office to commute home. Because I was paid by the hour, I was not paid for the time I took to express milk.

14. After two or three months of pumping in the bone density room I felt that I was inconveniencing the technicians and patients by using that room. I got permission from the front

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desk manager, Juana Rosario-Ortiz (“Rosario-Ortiz”), and Petrus to express milk in a waiting area that had been set up for male patients. On occasions when there were patients using that area Petrus allowed me to express milk in her private office.

15. In the late summer of 2009 MIM decided to renovate the waiting area I had been using, and turn it into a transcription office. I asked Rosario-Ortiz if I could use the medical billing and record room to express milk. There are two female employees who work in this room. Rosario-Ortiz told me that I could express milk there as long as the employees who worked in that room were comfortable with it. The two employees who worked in that room, Stacy Lespinasse and Dolly Gallardo, said they were comfortable with me expressing milk while they were in the room. My supervisors—Petrus, O’Brien, and Giordano—as well as Dr. Miriam Levy (“Levy”), the head of MIM’s medical practice, knew that I was expressing breast milk in the medical billing and records room. On at least two occasions Levy entered the room to talk to the other employees while I was expressing breast milk. Around this time I also stopped expressing milk as frequently as I had been, and instead only expressed milk before my shift began, at my lunch break, and after my shift ended.

16. In early September 2009 Rosario-Ortiz and Petrus called a meeting with me in which they told me that I was no longer allowed to express breast milk in the medical billing and records room and would only be allowed to do so in the restroom. I told Rosario-Ortiz and Petrus that I was uncomfortable expressing milk in the restroom which I felt was unsanitary.

17. Nevertheless, I began to express milk in the restroom. There was only one restroom in the area of the office where I worked and it was frequently used by both patients and staff. There was no counter in the restroom for me to put my equipment on, so I would have to place my bottles and pump on the toilet seat cover or garbage can. When I would use the

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restroom to express milk people would routinely repeatedly knock on the door, wanting to use the room. Being forced to express breast milk in the restroom, which I felt was an unsanitary location to produce my child's food, and inconveniencing the office's staff and patients caused me to feel upset, and I would often cry while I expressed milk.

18. On September 10, 2009 I arranged a meeting with O'Brien and Petrus to speak about expressing milk in the restroom. O'Brien and Petrus told me that it was not professional for me to be expressing milk in front of other employees, as I had been in the medical billing and records room. They stated something to the effect of "pumping is a personal decision; you should do it in a personal place," and told me I would have to continue to express milk in the restroom. My supervisors also told me that the office could not afford to have me step away from my desk once or twice a day for twenty minutes to express milk, and that they were concerned that when I expressed breast milk it made other employees uncomfortable. O'Brien and Petrus stated that they had originally wanted to allow me to express milk for only three months, but that they had allowed me to continue for an additional three months. I told O'Brien and Petrus that my baby was allergic to formula and that I had to continue to express breast milk to feed my baby.

19. On September 11, 2009 I emailed Levy to express my discomfort at being forced to express breast milk in the restroom.

20. On September 14, 2009 I met with Levy and O'Brien. Levy stated that she did not want me to express milk in the restroom because it inconvenienced the office's patients. Levy stated something to the effect of "I don't understand why you can't just pump at home," and suggested that I try to switch my daughter to formula. Levy also stated that at six or seven months old my baby should be eating more solid foods, and should not need as much breast

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milk. I told Levy and O'Brien that if they were telling me I could no longer express breast milk at work I would need time to figure out what to do. Levy and O'Brien told me I could express milk in the medical billing and records room for one more month but then had to stop.

21. In the days following September 14, 2009 I tried to identify a place in the office where I could continue to express breast milk. The building's manager offered to let my use a room in the basement, but traveling from the 16th floor to the basement to express milk took too much time to be a practical solution.

22. On September 25, 2009 I placed a copy of New York Labor Law § 206-c—which guarantees breastfeeding mothers the right to express breast milk in the workplace—on the desks of O'Brien, Petrus, Giordano, and Rosario-Ortiz. I then sent an email to those supervisors alerting them to the fact that I had left them a copy of the law, and asking to discuss it.

23. On October 2, 2009 Petrus gave me a written disciplinary notice for forgetting to clock out twice when I expressed breast milk. As far as I know no other employees had ever received a notice of this type; in fact the form that was used was over three years old and was from a time when MIM was at a different office location. The notice stated that the time I was not at my desk would be deducted from my pay.

24. Also on October 2, 2009 I met with O'Brien to discuss the disciplinary notice. In that meeting O'Brien told me I could continue to use the medical billing and records room to express breast milk until my daughter turned one.

25. In late September and early October 2009 I began to feel that my supervisors were subjecting me to extra scrutiny, and frequently asking my fellow employees to monitor my whereabouts. O'Brien, who usually arrived at the office around 8:30am or 9:00am, began to arrive at the office at 7:00am or earlier, when I arrived. My supervisors also began to reprimand

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me for actions that had never been prohibited in the office before, and that I believe other employees were permitted to do.

26. On October 5, 2009 I arrived at the office at 6:50am. The office is not open to patients until 7:00am. I ate my breakfast at my desk while I started my work for the day. I finished eating my breakfast by 7:10am. There were no patients in the office at that time. O'Brien called me into the office and told me I was not allowed to eat at my desk, even though there had been no patients in the office. Until that day, my colleagues and I had often eaten at our desks when the office was not open to patients, and had never been reprimanded for it. From October 5, 2009 until I was fired in February 2010 my colleagues continued to eat at their desks with no consequences.

27. Also on October 5, 2009 I clocked out for lunch at 11:05am. I returned to my desk around 11:30am but before I could clock back in I received an urgent call on my cell phone about my daughter, who was sick. I asked Rosario-Ortiz if I could step away and take the call. Rosario-Ortiz allowed me to do so. I took the call, and clocked in at 11:40am. On October 6, 2009 Petrus called I into my office and told me that I was not allowed to take personal phone calls at work unless Petrus or O'Brien approved the call first. Petrus also reprimanded me for eating at my desk and getting up too often from my desk to wash dishes. I rarely ate at my desk and almost never got up during the day to wash dishes.

28. On October 6, 2009 I sprayed myself with a perfume that I kept in my desk. I had used this same perfume twice a day at work since beginning my employment in 2004. O'Brien came out of my office and, in front of employees and patients, yelled something to the effect of "whoever has that perfume must throw it out immediately."

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29. Also on October 6, 2009 the New York Civil Liberties Union (NYCLU) sent a letter to Levy raising concerns that the office was violating N.Y. Labor Law § 206-c by failing to accommodate my need to express breast milk at work.

30. On October 7, 2009 the office had a meeting with all employees about office rules, including the dress code and rules about eating and food preparation. Employees were given a handout that stated that the office had become “fragrance free” and that all fragrances had to be taken home; that eating at the desk is prohibited; that surfing the internet is prohibited; and that employees must adhere strictly to the dress code.

31. On October 14, 2009 O’Brien and Petrus called me in for a meeting. They told me that they had received a letter from the NYCLU and berated me for contacting an attorney. They told me “you should have come to us to talk about this problem rather than calling a lawyer.” O’Brien also stated “sometimes people just get fired, we don’t know why, they just do.”

32. On October 15, 2009 I was ill. I called Rosario-Ortiz on my cell phone to tell her that I would not be able to make it to work. Since I began working at Medical Imaging of Manhattan the protocol for calling in sick was that each employee should contact her immediate supervisor and the person who is designated to cover her if she is absent, to let them know that she would not be coming in. Rosario-Ortiz was both my immediate supervisor and the person who would cover me if I could not be at work.

33. On October 16, 2009 I was given a written notice stating that I had violated an office policy on calling in sick. According to the warning a written policy from 2008 stated that an employee who is ill must call O’Brien or Giordano to notify them that she would not be working that day. As far as I know this policy had never been followed or enforced prior to

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October 16, 2009. This policy was written at a time when Giordano held a position as supervisor of the front desk, but by October 16, 2009 she had been transferred to a different position where she was not a direct supervisor of the receptionists, and had been replaced by Rosario-Ortiz.

34. In mid-October 2009, with permission from O'Brien, I began using the kitchen to express breast milk at the end of my shift, before I went home. O'Brien provided me with a sign to post on the door alerting other employees that the room was occupied. I would hang the sign on the door so that I could have privacy while I expressed milk, although sometimes my co-workers would forget about the sign and enter the kitchen anyway.

35. In December 2009 Petrus hired two part-time employees. At Petrus's request, I trained one of the new employees, Rachel Juhl, as a receptionist.

36. In December 2009 my written performance reviews were markedly different from my past reviews. One of my reviewers, who I believe was Levy, gave me only one point out of fifty, with no comments as to the reasons for the negative review. Another reviewer, who I believe was Petrus, gave me twenty points out of fifty and indicated that my poor performance review was for failing to adhere to the dress code, gossiping at work, and using my cell phone. Throughout my time at MIM I had always kept my cell phone in my bag and turned off while I was at work, and only turned it on during my lunch break or to retrieve a phone number for a fellow employee. At no time from 2004 until December 2009 was I ever told that my dress was not conforming to the office dress code. I met with O'Brien to discuss the reviews. O'Brien stated that she did not agree with the negative reviews, but that I could be more cheerful with patients.

37. In early February 2010 I began the process of weaning my daughter and expressing less milk each day. I undertook this process because I had been told I had to stop

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expressing milk at work once my daughter turned one year old. I would have liked to continue to breastfeed my daughter, but felt that MIM would not allow me to do so, and I did not want to cause any more trouble with my supervisors. The process of ending lactation was difficult and painful for me. I developed blocked milk ducts which caused painful lumps to form in my breasts.

38. By February 15, 2010, my daughter's first birthday, I had stopped lactating and breastfeeding my baby. On February 15, 2010, MIM laid off Rosario-Ortiz and the other receptionist, Khianna Lara ("Lara"). Both women are Latina, and Lara was five months pregnant at the time she was laid off.

39. On February 16, 2010 O'Brien and Giordano called me into an office and told me I was laid off for economic reasons. O'Brien stated that new Medicare rules would be going into effect that would likely decrease the number of patients the office would have, although those rules had not yet gone into effect and the number of patients coming to the office had not changed. I was given three weeks' severance pay and was paid for my unused vacation time.

40. Rachel Juhl now works as a receptionist at Medical Imaging of Manhattan. I believe that since terminating me MIM has hired two new receptionists, both of whom are Caucasian, and neither of whom speak Spanish. I also believe that MIM recently laid off its only African American employee, Regina Hurd. It is my understanding that there are no longer any people of color working at the front desk of the office.

Effects of the discrimination:

41. Since being laid off my family has struggled economically. I had been helping support my mother-in-law, who left her own job to care for my infant daughter. Now neither of us is employed and we struggle to pay our bills.

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42. The stress of the hostile work environment I endured caused me to break out in eczema during September and October 2009. My doctor has told me that this condition is caused by stress. The eczema was painful and itchy, and lasted for roughly six weeks. I could not take any medication to alleviate this condition because I was breastfeeding.

43. I also had difficulty sleeping during September and October 2009, and lost ten pounds due to the stress of having to fight for my right to express breast milk at work. The lack of sleep and weight loss caused me to feel weak throughout the day, and reduced the amount of milk I was able to produce for my daughter.

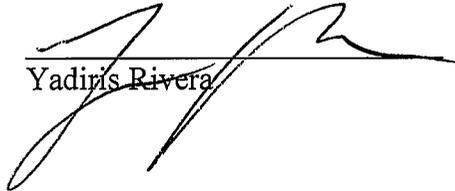
44. I did not want to stop breastfeeding my child in February 2010. I only weaned my child because I was compelled to by my employer. Being forced to wean my child prematurely caused me emotional distress.

45. Weaning my child quickly so as to comply with MIM's request that I stop expressing milk at work in February 2010 also caused me to have physical problems. I developed painful and hard lumps in my breasts due to blocked milk ducts, which lasted for roughly two to three weeks.

46. I have been looking for another job but have not yet found anything. I would like to get back pay for the time I was unemployed. I would also like to receive damages and attorney's fees.

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I declare under penalty of perjury that the foregoing is true and correct.


Yadiris Rivera

Date: 5-6-2010