

MELINDA BALL, REBECCA SCHOLL,  
and SAM NIA,

Plaintiffs,

v.

RUTGERS, THE STATE UNIVERSITY,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY  
DOCKET NO: ESX-L-3039-17

Civil Action

**COMPLAINT AND JURY DEMAND**

Plaintiffs, Melinda Ball (“Ball”), residing at 686 Summit Avenue, in the City of Jersey City, County of Hudson, State of New Jersey; Rebecca Scholl (“Scholl”), residing at 704 15th Street, Apt 307, Durham, State of North Carolina 27705; and Sam Nia (“Nia”), residing at 884 Palmer Avenue, in the Town of Mamaroneck, County of Westchester, State of New York, say:

**THE PARTIES**

1. During all times relevant to this Complaint, Plaintiffs were employees of Defendant Rutgers, The State University (hereinafter, “Defendant” or “Rutgers”) as the term “employee” is defined by the New Jersey Law Against Discrimination, *N.J.S.A. 10:5-1, et seq.* (“LAD”). Currently, Plaintiffs Scholl and Nia are no longer employees of Rutgers, but the conduct complained of herein occurred during the time they were employed by Rutgers. Plaintiff Ball is still an employee of Rutgers.

2. Defendant Rutgers is a University run by the State of New Jersey located at 65 Bergen Street, Newark, New Jersey.

3. During all times relevant to this Complaint, Defendant was an "employer" as that term is defined by the LAD.

#### VENUE

4. Pursuant to Rule 4:3-2(b), venue is proper in Essex County because Defendant is located in and actually conducts business in Essex County.

#### NATURE OF THE ACTION

5. Plaintiffs Ball and Scholl bring this action to remedy discrimination on the basis of sex (sexual harassment) and retaliation in violation of the LAD, and Plaintiff Nia brings this action to remedy derivative retaliation in violation of the LAD.

#### COUNT ONE

##### (Sexual Harassment and Retaliation in Violation of the LAD)

##### (Allegations by Melinda Ball)

6. On June 1, 2015, Plaintiff Ball was hired by Rutgers as an Anesthesia Resident at Rutgers' New Jersey Medical School campus. Plaintiff Ball was hired by Dr. Jean Daniel Eloy ("Dr. Eloy"), and, at the time of her hire, she was transitioning from a Surgical Resident to an Anesthesia Resident. Initially, Dr. Eloy praised Plaintiff Ball, making comments to her such as, "You will be my star" and "You are my golden girl."

7. Dr. Eloy was and still is the Anesthesia Residency Program Director at Rutgers. As the Program Director, Dr. Eloy has considerable authority over all of the Anesthesia residents

during their residency, including the Plaintiffs. Dr. Eloy has the authority to hire the residents, assign them to various training programs, controls their day-to-day activities, and has the ability to impose discipline on all of the residents, including the Plaintiffs. Specifically, and most importantly, as the Program Director, Dr. Eloy completes a final evaluation for each resident when they complete their three year residency. This final evaluation is sent to the residents' potential future employers. As a result of the above, Dr. Eloy is a member of "upper management" as that term is defined in Cavuoti v. New Jersey Transit Corporation, 161 N.J. 107, 128-129 (1999).

8. By mid-August, 2015, Dr. Eloy was communicating with Plaintiff Ball via text messages. Dr. Eloy's text messages were initially professional, but they began to change and become unprofessional and overly personal. By this time, Plaintiff Ball had met Plaintiff Dr. Scholl, a third-year Resident, who warned her to be careful with her dealings with Dr. Eloy. Plaintiff Scholl later told Plaintiff Ball that she had been sexually harassed by Dr. Eloy during her three year residency.

9. Dr. Eloy continued to communicate with Plaintiff Ball via text message. By September, 2015, these communications became less professional and instead very personal about Plaintiff Ball's divorce and Dr. Eloy's own personal life. Finally, Dr. Eloy texted Plaintiff Ball, telling her that he wanted "more" than a professional relationship. In other words, Dr. Eloy asked Plaintiff Ball to have a sexual relationship with him. Plaintiff Ball declined Dr. Eloy's request to engage in a sexual relationship with her supervisor, Dr. Eloy. Dr. Eloy was not dissuaded, and continued to text Plaintiff Ball, requesting that she have a sexual relationship with

him. Plaintiff Ball rebuffed Dr. Eloy's sexual advances, reminding Dr. Eloy that he was married and that Plaintiff Ball had no interest in being his mistress.

10. Once Plaintiff Ball rejected Dr. Eloy's sexual advances, his demeanor towards her changed dramatically. Dr. Eloy began to retaliate against Plaintiff Ball because she had rejected his sexual advances. Dr. Eloy did this by, among other things, becoming overly critical of Plaintiff Ball, giving, or allowing her to be given, an unusually harsh work schedule. Eventually, Plaintiff Ball was assigned to and did work more weekend shifts than any other resident.

11. During this time, Dr. Eloy continued to proposition Plaintiff Ball, asking her to provide him with a private modeling session. Plaintiff Ball again rebuffed his unwanted sexual advances.

12. In November 2015, Dr. Eloy came into the hospital on a weekend while Plaintiff Ball was working and asked her to meet with him alone in his private office. Plaintiff Ball again rejected this sexual advance.

13. Despite her rejection of Dr. Eloy's unwanted sexual advances, Dr. Eloy continued to harass Plaintiff Ball at work, commenting on her appearance at an office holiday function and telling her how "nice" it was to see her outside of work.

14. During this time period, Dr. Eloy stopped texting Plaintiff Ball and instead began to verbally abuse and sexually harass her, telling her that he has the power to fire her and reminding her that her future employers will be calling him for a reference. This abuse was designed to and did punish Plaintiff Ball because she refused to have a sexual relationship with Dr. Eloy.

15. In February 2016, Dr. Eloy again propositioned Plaintiff Ball, asking her to accompany him out to dinner. Plaintiff Ball again rejected this sexual advance.

16. By March 2016, Dr. Eloy's continued sexual harassment and retaliation took its toll on Plaintiff Ball. Plaintiff Ball began to lose weight, and was experiencing anxiety when she reported to work at Rutgers' Newark campus. Plaintiff Ball became physically ill and suffered panic attacks when she saw Dr. Eloy in the hospital.

17. On April 3, 2016, Plaintiff Ball met with Dr. Eloy to complain about her abusive and onerous work schedule, which Plaintiff Ball considered to be an additional act of retaliation. During this meeting in Dr. Eloy's office, while discussing Plaintiff Ball's work schedule and Dr. Eloy's failure to stop his sexual harassment and retaliation, Dr. Eloy pulled Plaintiff Ball's chair over to his, grabbed her shoulder, put his other hand on her thigh and asked her to hug him. Plaintiff Ball rebuffed Dr. Eloy's sexual advance and pulled away from Dr. Eloy. This physical contact was unwelcome and constitutes sexual harassment and battery.

18. Shortly thereafter, in retaliation for her rejection of his sexual advances, Plaintiff Ball's schedule was changed from a routine rotation to a new rotation where she worked everyday from 12:00 noon to 9:00 p.m. Dr. Ball was the only Anesthesia resident to receive such a work rotation.

19. By this point, Plaintiff Ball's anxiety and panic attacks had increased. On April 7, 2016, Plaintiff Ball asked to meet with Dr. Eloy to discuss this situation. During the meeting, Plaintiff Ball told Dr. Eloy that his sexual harassment of her was making her sick and that it needed to stop. Dr. Eloy admitted that his conduct was unprofessional and told Dr. Ball that because he could not separate his personal (sexual advances) communications, i.e., unwanted

sexual advances, from his business communications, he would no longer speak with Plaintiff Ball. In other words, because Plaintiff Ball had rejected Dr. Eloy's unwanted sexual advances Dr. Eloy was now going to ostracize Plaintiff Ball.

20. Since the April 7, 2016 meeting, Dr. Eloy has continued to retaliate against Plaintiff Ball, subjecting her to baseless criticism, stating that he was "wrong" about her, i.e., alleging that Plaintiff Ball is not proficient and/or will not be able to successfully complete the residency program at Rutgers.

21. In April or May 2016, Plaintiff Ball requested to be placed at Hackensack University Medical Center ("HUMC") in order to avoid Dr. Eloy, who works at Rutgers' Newark campus. After Dr. Eloy received Plaintiff Ball's form requesting the transfer, he conducted her annual review. During the annual review, Dr. Eloy berated Plaintiff Ball, telling her that he thought she was going to be a "Chief Resident," but he was now questioning her ability and skills. In other words, Dr. Eloy made it clear to Plaintiff Ball that he would give her a poor evaluation if she left Rutgers' Newark campus, where Dr. Eloy had great power and influence over her residency and future career - and where Dr. Eloy could continue to sexually harass her.

22. Finally, on or about June 23, 2016, Dr. Eloy retaliated against Plaintiff Ball by disciplining her for using off-color language in the employee lounge, out of the ear-shot of any patients or family members. While other residents and Dr. Eloy himself have used similar off-color language, Dr. Eloy singled out Plaintiff Ball for discipline.

23. Dr. Eloy's sexual harassment of Plaintiff Ball was severe and/or pervasive, and was unwelcome.

24. Defendant's actions against Plaintiff Ball constitute sexual harassment, discrimination and retaliation in violation of the LAD.

25. On August 9, 2016, Plaintiffs Ball, Scholl and Nia, by and through their counsel, advised Rutgers in writing about Dr. Eloy's sexual harassment and retaliation. Thereafter, Rutgers' Human Resources Department conducted an "internal investigation" into the Plaintiffs' complaints against Dr. Eloy. Despite the Plaintiffs providing ample evidence to support their claims, on October 13, 2016, Rutgers issued its reports and findings for all three Plaintiffs in which it white-washed the allegations and erroneously found that Dr. Eloy had not violated the LAD and/or Rutgers' internal policies and/or procedures regarding sexual harassment.

26. The foregoing notwithstanding, Defendant allowed Dr. Eloy to remain a member of its "upper management" and to continue to supervise numerous of Defendant's employees including Plaintiffs Ball, Scholl and Nia.

27. During Plaintiffs' employment, Defendant took no reasonable steps to prevent Dr. Eloy's sexually harassing conduct or to remove Dr. Eloy from Plaintiffs' work environment or the work environment of other female employees.

28. Defendant acted negligently, recklessly or intentionally by:

- (a) failing to have in place a well-publicized and enforced anti-discrimination, anti-harassment policy and anti-retaliation policy;
- (b) failing to mandate anti-discrimination, anti-harassment and anti-retaliation training for its supervisors, managers, agents, and employees;

- (c) failing to properly train its supervisors, managers, agents, and employees regarding compliance with any anti-discrimination, anti-harassment and anti-retaliation policy promulgated by it;
- (d) failing to properly supervise its supervisors, managers, agents, and employees to ensure compliance with any anti-discrimination, anti-harassment and anti-retaliation policy promulgated by it;
- (e) failing to make an unequivocal commitment from the top of the organization that any anti-discrimination, anti-harassment and anti-retaliation policy is not just words but backed up by consistent practice;
- (f) failing to protect Plaintiffs and others similarly situated from abusive discrimination, harassment and retaliation in the work place;
- (g) explicitly or implicitly condoning abusive discrimination, harassment and retaliation by its supervisors, managers, agents, and employees;
- (h) failing to conduct an adequate investigation into Plaintiffs' complaints of discrimination, harassment and retaliation; and
- (i) failing to take appropriate disciplinary action against Defendant's supervisors, managers, agents and employees who discriminated and retaliated against Plaintiffs and created a hostile work environment for them.

29. Based on the foregoing, Defendant negligently, recklessly and/or intentionally failed to take prompt, appropriate and reasonable remedial action to prevent, stop and remedy the sexual harassment and retaliation aimed at Plaintiff Ball. By and through its agents,

Defendant fostered a harassing and discriminatory atmosphere and allowed actions which constitute harassment and discrimination in violation of the LAD, *N.J.S.A. 10:5-1, et seq.*

30. As a result of Defendant's actions, Plaintiff Ball has suffered and continues to suffer severe mental anguish, humiliation, pain, distress, physical injury, reputational damage, damage to her career path, and loss of earning and other employment benefits.

## COUNT TWO

### (Sexual Harassment in Violation of the LAD)

#### (Allegations by Rebecca Scholl)

31. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 30 as if fully set forth herein.

32. In June 2016, Plaintiff Scholl completed her three year residency program under Dr. Eloy. During that three year period, Plaintiff Scholl was subjected to sexual harassment by Dr. Eloy. This sexual harassment was severe and/or pervasive, and was unwelcome. Dr. Eloy's sexual harassment included, but was not limited to:

- (a) inappropriate comments about Plaintiff Scholl's physical appearance and breasts;
- (b) inappropriate comments about Plaintiff Scholl's hair;
- (c) inappropriate comments about Plaintiff Scholl's physical appearance in the presence of patients which degraded Plaintiff Scholl;
- (d) comments by Dr. Eloy regarding his alleged "love" of women;
- (e) criticizing Plaintiff Scholl because she was not subservient and did not get him a cup of coffee after surgery;

(f) forcing Plaintiff Scholl to "hug" him in front of her peers;

(g) Dr. Eloy verbally abused Plaintiff Scholl because she rejected his unwanted affections and, when Plaintiff Scholl displayed affection for other doctors, such as Dr. Gubenko and Dr. Nia, Dr. Eloy would become enraged and publicly berate and belittle Plaintiff Scholl. One such example of this conduct occurred when Plaintiff Scholl was scheduled to do her first liver transplant. Plaintiff Scholl warmly greeted her friend and co-worker, Dr. Gubenko. Dr. Eloy witnessed this greeting, and exploded at Plaintiff Scholl, falsely accusing her of not being "excited" about doing the liver transplant and threatening to not permit Plaintiff Scholl to do the liver transplant, but rather to do it himself. Ultimately, Plaintiff Scholl performed the transplant. Plaintiff Scholl reported Dr. Eloy's outrageous behavior and abuse to Dr. Bekker. Dr. Bekker also witnessed much of Dr. Eloy's abusive behavior firsthand, but took no action to stop it. Despite this report, Rutgers took no prompt and effective remedial action to end Dr. Eloy's harassment and retaliation;

(h) during Plaintiff Scholl's third year of her residency, Dr. Eloy repeatedly told her that he only yelled at her because he "cared" about her. In other words, Dr. Eloy admitted that he singled out Plaintiff Scholl for harassment and abuse;

(i) Dr. Eloy made inappropriate comments to Plaintiff Scholl about having to remind himself that he was not Plaintiff Scholl's "boyfriend" or "husband;"

(j) Dr. Eloy made inappropriate comments about Plaintiff Scholl having children during her residency;

(k) Dr. Eloy made inappropriate comments about the types of men he envisioned Plaintiff Scholl dating;

(l) during Plaintiff Scholl's tenure, Dr. Eloy caused two female Assistant Program Directors to resign and Dr. Eloy appointed males to replace them; and

(m) other female residents told Plaintiff Scholl that they were also sexually harassed by Dr. Eloy. One female resident told Plaintiff Scholl that while she was performing a liver transplant, Dr. Eloy put his arms around her and told her that he had been wanting to do that "for a long time." This same female resident told Plaintiff Scholl that on another occasion, while she was sitting in the resident lounge, Dr. Eloy stated to her, "It's too bad you are engaged because I would hit it." This was a crude reference to Dr. Eloy having sex with the female resident. Another female resident told Plaintiff Scholl that Dr. Eloy attempted to kiss her during her exit interview.

33. Just as with Dr. Ball, Plaintiff Scholl requested to be placed at HUMC in order to escape from Dr. Eloy's sexual harassment and retaliation. Dr. Eloy refused to grant this request, and instead placed Plaintiff Scholl at Rutgers' Newark campus, telling Plaintiff Scholl that he did this because he wanted to keep her "close to him."

34. In addition to the above cited harassment, Dr. Eloy also retaliated against Plaintiff Scholl because she rebuffed his sexual advances. Dr. Eloy did this by, among other things, the following:

(a) criticizing Plaintiff Scholl by falsely stating in her semi-annual review that she was disrespectful, lazy and unprofessional. When Plaintiff Scholl requested that Dr. Eloy provide her with examples of any such behavior, Dr. Eloy was unable to do so;

(b) ostracizing Plaintiff Scholl and refusing to speak with her for lengthy periods of time; and

(c) berating Plaintiff Scholl during her post-graduation exit interview and lowering her final rating from a 5 to a 4 for no legitimate reason.

35. Defendant's actions against Plaintiff Scholl constitute sexual harassment and discrimination in violation of the LAD.

36. Defendant acted negligently, recklessly or intentionally by:

- (a) failing to have in place a well-publicized and enforced anti-discrimination and anti-harassment policy;
- (b) failing to mandate anti-discrimination and anti-harassment training for its supervisors, managers, agents, and employees;
- (c) failing to properly train its supervisors, managers, agents, and employees regarding compliance with any anti-discrimination and anti-harassment policy promulgated by it;
- (d) failing to properly supervise its supervisors, managers, agents, and employees to ensure compliance with any anti-discrimination and anti-harassment policy promulgated by it;
- (e) failing to make an unequivocal commitment from the top of the organization that any anti-discrimination and anti-harassment policy is not just words but backed up by consistent practice;
- (f) failing to protect Plaintiffs and others similarly situated from abusive discrimination and harassment in the work place;
- (g) explicitly or implicitly condoning abusive discrimination and harassment by its supervisors, managers, agents, and employees;

- (h) failing to conduct an adequate investigation into Plaintiffs' complaints of discrimination and harassment; and
- (i) failing to take appropriate disciplinary action against Defendant's supervisors, managers, agents and employees who discriminated against Plaintiffs and created a hostile work environment for them.

37. Based on the foregoing, Defendant negligently, recklessly and/or intentionally failed to take prompt, appropriate and reasonable remedial action to prevent, stop and remedy the sexual harassment and discrimination aimed at Plaintiff Scholl. By and through its agents, Defendant fostered a harassing and discriminatory atmosphere and allowed actions which constitute harassment and discrimination in violation of the LAD, *N.J.S.A. 10:5-1, et seq.*

38. As a result of Defendant's actions, Plaintiff Scholl has suffered and continues to suffer severe mental anguish, humiliation, pain, distress, physical injury, reputational damage, damage to her career path, and loss of earning and other employment benefits.

### **COUNT THREE**

#### **(Derivative Retaliation in Violation of the LAD)**

#### **(Allegations of Sam Nia)**

39. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 38 as if fully set forth herein.

40. In 2015, Plaintiff Sam Nia completed his three year residency under Dr. Eloy. During his three year residency, Plaintiff Nia was and remains to this day a close personal friend of Plaintiff Scholl. Plaintiff Nia repeatedly attempted to protect Plaintiff Scholl from Dr. Eloy's sexual harassment and retaliation. As a result, and because Dr. Eloy viewed Plaintiff Nia as a

close personal friend of Plaintiff Scholl, Dr. Eloy retaliated against Plaintiff Nia by, among other things, the following:

(a) assigning Plaintiff Nia to HUMC in order to separate Plaintiffs Nia and Scholl.

Dr. Eloy also made this assignment to punish Plaintiff Nia because he knew that Plaintiff Nia did not have a car and it was much easier for Plaintiff Nia to commute to Rutgers' Newark campus;

(b) assigning Plaintiff Nia an onerous work schedule just before Plaintiff Nia was scheduled to take his In-Training exam. Plaintiff Nia requested that Dr. Eloy modify and lighten his schedule because of the upcoming In-Training exam. Dr. Eloy refused and, as a result, Plaintiff Nia did poorly in his In-Training exam;

(c) deliberately making false statements about Plaintiff Nia to Plaintiff Scholl in an effort to destroy their close personal relationship;

(d) demeaning Plaintiffs Nia and Scholl in the presence of their peers by permitting an Attending physician to publicly state that Plaintiff Nia got Plaintiff Scholl to cover a weekend shift for him on short notice because Plaintiff Nia had a "ten inch dick" that Plaintiff Scholl liked;

(e) berating Plaintiff Nia for his e-mail submission of an absence from training form. The form was submitted so that Plaintiff Nia could attend a conference in Washington, D.C. Despite the fact that Plaintiff Nia had done nothing wrong, Dr. Eloy forced Plaintiff Nia to apologize to the program coordinator; and

(f) threatening to give Plaintiff Nia a poor character evaluation on June 30, 2015. During this same conversation, Dr. Eloy claimed that Plaintiff Nia was responsible for Dr. Eloy

having received a poor ACGME survey and stated that he [Dr. Eloy] now had the means to retaliate against Plaintiff Nia because of what he thought Plaintiff Nia did to him, stating that Plaintiff Nia had "fucked" him.

41. During this same conversation, Dr. Eloy threatened Dr. Nia, telling him that Dr. Nia's future employers would contact him [Dr. Eloy] to find out about Dr. Nia's competence. Dr. Eloy gave Dr. Nia a copy of the character evaluation form that he would have to complete for all of his future employers and stated to Dr. Nia, "[R]etaliatiion is this . . . in the background . . . where no one can see." Dr. Eloy also accused Dr. Nia of having been "difficult" during his residency, and told Dr. Nia to tell "the others" about the character evaluation form that Dr. Eloy would be filling out for them as well. Dr. Eloy's statements were designed to and did convey a direct threat to Dr. Nia that, despite the fact that Dr. Nia had successfully completed his residency program, Dr. Eloy would continue to retaliate against him in the future by poisoning Dr. Nia's ability to obtain future employment.

42. Defendant's actions against Plaintiff Nia constitute retaliation in violation of the LAD.

43. Defendant acted negligently, recklessly or intentionally by:

- (a) failing to have in place a well-publicized and enforced anti-retaliation and anti-retaliation policy;
- (b) failing to mandate anti-retaliation and anti-retaliation training for its supervisors, managers, agents, and employees;

- (c) failing to properly train its supervisors, managers, agents, and employees regarding compliance with any anti-retaliation and anti-retaliation policy promulgated by it;
- (d) failing to properly supervise its supervisors, managers, agents, and employees to ensure compliance with any anti-retaliation and anti-retaliation policy promulgated by it;
- (e) failing to make an unequivocal commitment from the top of the organization that any anti-retaliation and anti-retaliation policy is not just words but backed up by consistent practice;
- (f) failing to protect Plaintiffs and others similarly situated from abusive discrimination, harassment and retaliation in the work place;
- (g) explicitly or implicitly condoning abusive discrimination, harassment and retaliation by its supervisors, managers, agents, and employees;
- (h) failing to conduct an adequate investigation into Plaintiffs' complaints of discrimination, harassment and retaliation; and
- (i) failing to take appropriate disciplinary action against Defendant's supervisors, managers, agents and employees who retaliated against Plaintiffs and created a hostile work environment for them.

44. As a result of Defendant's actions, Plaintiff Nia has suffered and continues to suffer severe mental anguish, humiliation, pain, distress, physical injury, reputational damage, damage to his career path, and loss of earning and other employment benefits.

45. Based on the foregoing, Defendant negligently, recklessly and/or intentionally failed to take prompt, appropriate and reasonable remedial action to prevent, stop and remedy the retaliation aimed at Plaintiff Nia. By and through its agents, Defendant fostered a harassing and discriminatory atmosphere and allowed actions which constitute retaliation in violation of the LAD, *N.J.S.A. 10:5-1, et seq.*

46. As a direct and proximate result of Defendant's aforesaid retaliatory conduct, Plaintiff Nia has suffered and shall continue to suffer loss of earnings and other employment benefits, severe mental, physical and emotional distress, stress, humiliation, pain, damage to reputation and harm to his career development.

WHEREFORE, cause having been shown, Plaintiffs demand judgment against Defendant and seek the following relief:

- (a) Compensatory damages for loss of wages and benefits, physical pain, suffering, personal physical injury and sickness, stress, humiliation, mental anguish, and emotional harm;
- (b) Reimbursement for medical expenses;
- (c) Punitive damages;
- (d) Attorneys' fees, interest and costs of suit;
- (e) Injunctive relief requiring remediation of Defendant's discrimination and harassment; and

(f) Such other relief as the Court may deem equitable and just.