

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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EQUAL EMPLOYMENT OPPORTUNITY :
COMMISSION, :
: :
Plaintiff, :
: :
and :
: :
ELIZABETH ONTANEDA, :
FRANCINE PENNISI, and FAITH PABON, :
: :
Plaintiff-Intervenors,: :
: :
v. :
: :
UNITED HEALTH PROGRAMS OF :
AMERICA, INC. AND :
COST CONTAINMENT GROUP, INC., :
: :
Defendants. :
-----X

Civil Action No: 14-cv-3673

**FIRST AMENDED
COMPLAINT AND
JURY DEMAND**

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of religion and to provide appropriate relief to Charging Parties Elizabeth Ontaneda, Francine Pennisi, Faith Pabon and a class of similarly aggrieved individuals who were adversely affected by such practices. As alleged with greater particularity in paragraphs 11 through 16 below, Defendants United Health Programs of America, Inc. and Cost Containment Group, Inc. (“Defendants”) subjected Ontaneda, Pennisi, Pabon and other similarly aggrieved employees to a hostile work environment based on religion, failed to accommodate their religious beliefs, terminated them based on religion, and retaliated against them for opposing coerced religious practices in the

workplace. Defendants also constructively discharged some employees by subjecting them to these required religious practices.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Sections 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended (“Title VII”), 42 U.S.C. §§2000e-5(f)(1) and (3), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Eastern District of New York.

3. Plaintiff, Equal Employment Opportunity Commission (the “Commission” or “EEOC”), is the agency of the United States of America charged with the administration, interpretation, and enforcement of Title VII and is expressly authorized to bring this action by Sections 706 (f)(1) and (3) of Title VII, 42 U.S.C. §§2000e-5 (f)(1) and (3).

4. At all relevant times, Defendants have been Delaware corporations doing business in the State of New York and have jointly and continuously had at least 15 employees.

5. At all relevant times, Defendants have continuously engaged in an industry affecting commerce within the meaning of Sections 701 (b), (g), and (h) of Title VII, 42 U.S.C. §§ 2000e (b), (g), and (h).

6. At all relevant times, Defendants employed Ontaneda, Pennisi, Pabon and the other aggrieved individuals.

STATEMENT OF CLAIMS

7. More than thirty days prior to the institution of this lawsuit, Charging Parties Ontaneda, Pennisi, and Pabon filed EEOC charges with the Commission alleging violations of Title VII by Defendants.

8. The Commission issued to Defendants a Letter of Determination dated March 13, 2014, notifying Defendants that the Commission found reasonable cause to believe that Defendants had discriminated against Ontaneda, Pennisi, Pabon and other aggrieved individuals based on religion.

9. The conciliation efforts required by law have occurred and were unsuccessful.

a) On March 13, 2014, the Commission issued to Defendants a Letter of Determination inviting Defendants to join with EEOC in informal methods of conciliation.

b) On April 22, 2014, EEOC issued a Notice of Conciliation Failure advising Defendants that despite its efforts EEOC was not able to secure an agreement acceptable to the Commission.

10. All conditions precedent to the institution of this lawsuit have been met.

11. Beginning in the fall of 2007, Defendants have engaged in unlawful employment practices at their Syosset, Long Island worksite, in violation of Sections 701(j) and 703(a) of Title VII, 42 U.S.C. §§ 2000e and 2000e-2. These practices include but are not limited to the practices described below.

12. Defendants have required employees to engage in coerced religious practices pursuant to a belief system called “Harnessing Happiness” or “Onionhead.”

a) Beginning in 2007, Defendants flew the founder and leader of Harnessing Happiness / Onionhead—a woman who lived in Mount Shasta, California, and went by the name “Denali”—to the New York worksite to conduct mandatory group meetings and one-on-one sessions with employees regarding the Harnessing Happiness / Onionhead belief system. Defendants would bring Denali to the New York worksite on at least a monthly basis to conduct these meetings and sessions. But even when Denali was not in New York, other managers would use her teachings to lead additional Harnessing Happiness / Onionhead meetings.

b) When Defendants’ owner first brought Denali to the worksite, he introduced her as the company’s “spiritual advisor.” Denali is the aunt of Defendants’ owner. She was a member of upper management and had the power to hire, fire, and discipline Defendants’ employees.

c) The materials associated with the Harnessing Happiness / Onionhead belief system, which Defendants provided the employees and required them to use at work, describe various religious tenets of the system:

- i. “Upon entering the world, we are infused with the Universe’s unlimited potential and intense joyful energy.”
- ii. “When we become exposed to traumatic events, our soul goes into hiding and our ego, which is connected to the dark side, takes over.”
- iii. “Our souls are seekers. They strive for unity, scream for harmony and speak only of love.”

- iv. “When we access our higher wisdom and fill our life with love, we harness a happiness that resonates to the blissful vibration of....as above – so below.”
[ellipsis in original]
- v. “When we respond to our problems in the presence of our true spirituality, our Divine Spark ignites, diminishing darkness.”
- vi. “We declare our Divinity.”
- vii. “We know we can part the sea and make one fish into five thousand.”
- d) The materials associated with the Harnessing Happiness / Onionhead belief system also contain religious symbols and iconography:
 - i. The materials contain imagery of a golden hummingbird. The golden hummingbird is described as a “totem of happiness” that “carries a heart over the fire in the cup because our true happiness is sparked from the radiant energy of love.” The materials also describe “The Hummingbird’s A-Z Path to a Happy Life,” which lists various rules for living.
 - ii. The materials contain imagery of the golden hummingbird carrying a heart in its beak, as well as imagery of the golden hummingbird flying over a flaming, golden chalice that is flanked by white wings.
 - iii. The materials also contain imagery of a golden dove, which the materials refer to as “The Golden Dove.” The Golden Dove is described as being “designed with sublime wisdom” and “a powerful totem which enables us to fly while in our material world.” The materials also describe “The Golden Dove’s Flight Plan to an Elevated Life,” which lists various rules for living.

13. On a regular basis, Defendants have required employees to participate in religious practices under the Harnessing Happiness / Onionhead belief system.

- a) Ontaneda, Pennisi, Pabon and other aggrieved individuals felt pressured and coerced into participating in various religious practices at work and endured a hostile work environment as a result.
- b) On a regular basis, Defendants required employees to pray, hold hands in a prayer circle, read spiritual texts, light candles, burn incense to remove bad energy, listen to meditation music playing throughout the workplace, and use low lighting in their offices because, according to Denali, demons came through the overhead lights.
- c) On a daily basis, Defendants required employees to select a card from a stack of “Universal Truths Cards,” to keep the card next to their computer monitors, and to “contemplate the truth” of the message on the card throughout the day. The cards covered topics such as Divinity, Destiny, Faith, Miracles, Sacredness, and Enlightenment.
- d) According to the materials associated with these religious practices, the purpose of the “Universal Truths Cards” was to “shed truths in order to reunite us with our potential, power and purpose,” which would result in “signs of transmutation” that signified “the awakening of our bliss because we become imbued with our original DNA blueprint.” “The purpose of the Universal Truth Cards is to shed Light, in order to reunite you with the ecstatic Universal Realm.”
- e) On a daily basis, Defendants required employees to wear and display Onionhead-related pins on their person.
- f) On a regular basis, Defendants’ managers sent employees work-related emails and instant messages that included references to Onionhead-related religious tenets like

“energetic force fields of spirit” and “universal consciousness joining with other sun universes.”

- g) On a routine basis, Defendants required employees to thank God for their employment, and say “I love you” to colleagues and management.
- h) On a weekly basis, Defendants required employees to take part in group staff meetings where managers led discussions of religious issues.
- i) At multiple staff meetings, Defendants required employees to hold hands in a prayer circle. On some occasions, even though the customer service phones were ringing, the phones were left unanswered, as everyone had to remain in the circle holding hands until each employee said a prayer and gave thanks to God.
- j) Denali assigned some of Defendants’ employees to work on developing Onionhead-related material on company time.
- k) At mandatory weekly and monthly group staff meetings led by Denali and at least one other upper manager, and at required monthly one-on-one sessions between Denali and individual employees, Defendants pressured employees to share personal and private, non-work-related matters, including a friend’s suicide, parental issues, family and marital strife, the death of loved ones, and the employee’s serious health conditions such as breast cancer. At least one employee ran out of a group meeting crying because of the personal and painful, non-work-related issues she was forced to discuss.
- l) At these mandatory meetings and sessions, Denali would issue coaching and directives about the employees’ personal lives, including that the employee should divorce her husband or that the employee should discipline her child differently.

m) At mandatory weekly and monthly meetings and sessions, Defendants required employees to read and discuss literature about “divine plans,” “moral codes,” and “enlightenment,” and issued homework on these topics for them to complete at home outside work hours.

n) If employees did not schedule a one-on-one session with Denali, she would schedule one for them and notify them, for example, “You need to talk to me, come by around 3:00.”

o) After employees discussed their private matters in one-on-one sessions under Denali’s guarantees of confidentiality, Denali frequently revealed the private matters to other employees, including family members of the sharing employee. Denali would often use the private, confidential information to pit employees against each other.

p) Denali would often move desks in the office allegedly in reaction to negative energy.

q) Even when Denali was in California, she kept abreast of the events and personal matters in New York by using co-worker informants as her eyes and ears at the office, requiring them to notify her of any expression of opposition to the religious practices so that she could work to ensure that the complaining employee maintained compliance.

r) On at least one occasion, Denali required employees to gather around her and chant loving things to her as part of a meeting that lasted until 1:30 a.m.

14. Defendants’ managers pressured employees to participate in the religious practices, and regularly disciplined, demoted, or terminated employees that did not participate.

- a) Ontaneda, Pennisi, Pabon and other aggrieved individuals did not want to participate in these practices on a regular and routine basis and experienced these practices as both religious and mandatory.
- b) Employees viewed the Harnessing Happiness / Onionhead belief system and religious practices as a “religion,” “cult,” or “spiritual cult.”
- c) Employees did not agree with the belief system and did not want to participate in the required religious practices, but felt pressured to participate in order to keep their jobs.
- d) In some meetings, employees would oppose the religious practices, stating, “I am here to do my job, not pray,” and “What does this have to do with my job?”
- e) Employees saw that others who did not participate were ostracized by management and terminated. For example, one employee, despite warnings from managers, used overhead lights and stopped wearing Onionhead pins; when she also stopped signing up for the religious meetings, Defendants terminated her.
- f) Defendants’ managers, including Denali and the owner, spoke about demons and negative energies in the workplace. Denali described uncooperative employees as having demons in them or having dark spirits in their eyes.
- g) Despite Defendants’ policy that “[t]he usual sequence of corrective actions includes an oral warning, a written warning with probation, and finally termination of employment,” Defendants often issued discipline, demotions, or terminations against employees that opposed the religious practices without following this progressive discipline policy.

- h) Defendants terminated employees who opposed the religious practices, often citing the reason for termination as being that the employee was not a “team player.”
- i) One employee who outwardly opposed the religious practices, was warned by the owner that she needed to “get on board with the office,” and then was terminated.
- j) One employee complained soon after Denali began working for Defendants, stating that she [the employee] did not want to participate in prayers and just wanted to do her job. Soon after her opposition, Defendants terminated her.
- k) If Denali observed someone not fully participating in the religious practices at a meeting, she would tell them to join her in the “Quiet Room” where she would talk with them one on one.
- l) Denali sent at least one email to staff with a poem that began, “Do not REFUSE ME.”
- m) If an employee did not respond to an email announcing an ostensibly voluntary Harnessing Happiness / Onionhead meeting, a manager or supervisor would approach the employee to pressure them to attend. The Chief Operating Officer told at least one employee that by framing an invitation as voluntary, Defendants were “testing” the employee to see whether she would attend on her own.
- n) After Pennisi and Ontaneda filed charges of discrimination, Defendants distributed forms for employees to sign verifying the voluntariness of their participation in the religious practices. At least one employee who did not sign was approached by a manager and sternly told, “You forgot to sign,” in an effort to pressure her to sign.
- o) Defendants ostracized and denied a bonus to one employee after he participated in the EEOC investigation of the underlying charges. The employee had been given

bonuses in years prior. After the employee apologized for participating in the EEOC investigation, Defendants stopped ostracizing him and granted his bonus.

15. Defendants failed to accommodate employees who opposed these religious practices because of their religious beliefs by refusing to allow them to forgo participating in the religious practices.

a) Defendants failed to accommodate Ontaneda, Pennisi, Pabon and other aggrieved individuals' own religious beliefs. Defendants compelled employees to take part in Onionhead-related religious activities on a routine basis to maintain their employment with Defendants, despite the employees expressing that they objected to these practices because they were against their religious beliefs.

b) Ontaneda, Pennisi, Pabon and other aggrieved individuals ultimately did not welcome these religious practices and many were terminated for failing to do so. For example, Pennisi expressed to the Chief Operating Officer that she objected to being forced to participate in the Harnessing Happiness / Onionhead religious practices at work, but Defendants still required her to participate in the religious practices, including using the Universal Truth Cards and participating in group meetings with religious content. When Pennisi finally refused to continue her participation, Defendants terminated her.

c) As another example, Defendants instructed one employee to remove a rosary and statute of a saint from her desktop. But Defendants placed Harnessing Happiness / Onionhead-related iconography and other religious-related objects such as Buddha statues throughout the workplace, and Defendants maintained a "team building" room with incense and statues of angels.

16. Pennisi, Ontaneda, Pabon and other aggrieved individuals were adversely affected by Defendants' actions.

a) Pennisi worked for Defendants as an Account Manager/ IT Project Manager, starting in November 2004. She was a good employee with a record of strong performance and positive evaluations.

b) Ontaneda began working for Defendants in 2003 and most recently had the title of Senior Accounting Manager for Customer Service. She was a good employee with a record of strong performance and positive evaluations.

c) In early 2010, Pennisi expressed to the Chief Operating Officer that she objected to being forced to participate in the Harnessing Happiness / Onionhead religious practices at work. Defendants still required her to participate in the religious practices, including using the Universal Truth Cards and participating in group meetings with religious content.

d) Later, at a managers' meeting in July 2010, Pennisi again expressed to managers her objection to participating in the Harnessing Happiness / Onionhead religious practices. In that meeting, Pennisi stated that she was Catholic and did not want to participate in the religious practices.

e) At the same managers' meeting in July 2010, when Pennisi spoke up against participating in the Harnessing Happiness / Onionhead religious practices because she was Catholic, Ontaneda said to Denali that she agreed with Pennisi and felt the same way.

f) After the managers' meeting, Denali returned to California.

- g) At about that time, Pennisi and Ontaneda stopped wearing Onionhead pins, started using overhead lighting, and ceased participating in other religious practices. Defendants' managers began treating Pennisi and Ontaneda more negatively, including avoiding interaction with them and removing some of their work responsibilities.
- h) Approximately one month after the July 2010 managers' meeting when Pennisi and Ontaneda spoke up against participating in the Harnessing Happiness / Onionhead religious practices, and after Pennisi and Ontaneda continued to refuse to participate in the religious practices, Denali returned from California for her monthly visit to New York. This was around August 23, 2010.
- i) On August 23, 2010, Denali removed Pennisi and Ontaneda from their shared office and moved their desks to the open area on the customer service floor. While moving them, Denali yelled so that other employees could hear, "The demons are mad. They are so angry with us, but we are not going to let them get us." Immediately upon removing Pennisi and Ontaneda from their office, Denali placed a statute of Buddha in their now-empty office.
- j) On that day, after moving Pennisi and Ontaneda's desks, Defendants handed Pennisi and Ontaneda headsets and told them that their work responsibilities were changing, that they would now be answering customer service phonecalls. Defendants told them that the other managers would also be answering customer service calls, but that did not occur.
- k) Pennisi and Ontaneda experienced these actions as a demotion, and other employees in the office recognized these actions as a demotion.

l) The next day, Pennisi still felt physically and emotionally drained from the prior day's events. For that reason, she called Defendants and left a voicemail message notifying them that she would be absent from work. Later that day, Defendants' owner called Pennisi at home and talked to her. During the telephone call, Pennisi said that she felt like she had been demoted the day prior, and that she felt embarrassed by being demoted in front of the other employees. The owner responded that she should not come back and that she no longer had a job because she was "not a team player."

m) The same day, Ontaneda was suffering from sudden complications with her pregnancy. Ontaneda called Defendants and left a voicemail message notifying them that she would be absent from work. Later that day, Defendants' owner called Ontaneda and left a voicemail message stating that it was clear how Ontaneda felt about the company, that she did not have the "spirit of a team player," and that she should not return to work.

n) Defendants' policies did not list "taking sick days due to illness" as grounds for immediate termination. With regard to sick days, Defendants' policies only required an employee to notify the employer of the absence: if the employee left a voicemail message notifying of the absence, "a follow-up call must be made later that day."

o) Defendants' policies allowed for five paid sick days and three paid personal days.

p) Pabon began her employment with Defendants on October 6, 2010, as a Customer Care Consultant. She was a good employee with a record of strong performance and positive evaluations.

q) On March 17-18, 2012, Pabon attended a company spa weekend in Connecticut with Denali and about 20 other customer service representatives. During the trip, Denali instructed the employees to hold hands and said that the foremost reason for the trip was

spiritual enlightenment. Denali required that the employees be together all the time, hold hands, pray and chant. Pabon refused to take part in some of the group activities during that weekend, including a late-night meditation session. Denali refused to accept any explanations from Pabon despite her attempts to communicate them to Denali.

r) On March 19, 2012, the Monday following the company spa weekend, Denali called Pabon into her office and terminated her for “insubordination,” which Pabon understood to be a clear reference to her refusal to participate in coerced religious practices during the company spa weekend.

s) Defendants’ policies did not list “refusing to participate in religious activities during voluntary company spa weekends” as grounds for immediate termination.

t) Other aggrieved individuals were also terminated in retaliation for opposing Onionhead-related religious activities. This opposition included, for example, protesting to Denali and other upper management about forced prayers in the workplace. Within weeks of such protests, Defendants terminated the opposing employees.

u) Other aggrieved individuals faced constructive discharge based on Onionhead-related religious practices when the religiously hostile environment became intolerable. Aggrieved individuals were forced to participate in the above-described religious practices against their will. Defendants refused to provide employees with a religious accommodation, but instead required everyone to participate in the religious practices.

v) At least one employee was unwilling to subject herself to coerced participation in these religious practices, which were against her religious beliefs. This employee, and others, felt that the only way to avoid the hostile and religiously discriminatory environment created by these coerced religious practices was to involuntarily resign.

17. The effect of the practices complained of in paragraphs 11 through 16 above has been to deprive Ontaneda, Pennisi, Pabon and other aggrieved individuals of equal employment opportunities, and otherwise adversely affect their status as employees, because of religion.

18. The unlawful employment practices complained of in paragraphs 11 through 16 above were intentional.

19. The unlawful employment practices complained of in paragraphs 11 through 16 above were done with malice or with reckless indifference to the federally protected rights of Ontaneda, Pennisi, Pabon and other aggrieved individuals.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendants, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in religion-based discrimination.

B. Grant a permanent injunction enjoining Defendants, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in retaliation.

C. Order Defendants to institute and carry out policies, practices, and programs that provide equal employment opportunities for individuals regardless of their religion, and that eradicate the effects of their past and present unlawful employment practices.

D. Order Defendants to make Ontaneda, Pennisi, Pabon and other aggrieved individuals whole, by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of Defendants' unlawful employment practices.

E. Order Defendants to make Ontaneda, Pennisi, Pabon and other aggrieved individuals whole, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraph 11 above, including but not limited to job search expenses and medical expenses, in amounts to be determined at trial.

F. Order Defendants to make Ontaneda, Pennisi, Pabon and other aggrieved individuals whole, by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraph 11 above, including losses such as emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

G. Order Defendants to pay Ontaneda, Pennisi, Pabon and other aggrieved individuals punitive damages for their malicious and/or reckless conduct described in paragraph 11 above, in amounts to be determined at trial.

H. Grant such further relief as the Court deems necessary and proper in the public interest.

I. Award the Commission its costs of this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

Dated: New York, New York
October 9, 2014

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General Counsel

James Lee
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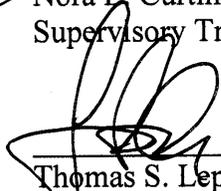
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