

**CASTRONOVO & MCKINNEY, LLC**  
 Thomas A. McKinney, Esq.  
 (Attorney ID 022202003)  
 71 Maple Avenue  
 Morristown, NJ 07960  
 (973) 920-7888  
 Attorneys for Plaintiff

DATE FILED	12-09-16			
BATCH #	009			
PAYMENT #	145402			
CA	CK	CC	MO	CG
PAYOR	Thomas M.			
AMOUNT	4,250			
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2016 DEC -9 PM 2:17  
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REBECCA MCCARTHY,

Plaintiff,

v.

CAREONE MANAGEMENT, LLC AND  
 ALISON FITZPATRICK-DURSKI

Defendants.

SUPERIOR COURT OF NEW JERSEY  
 LAW DIVISION – BERGEN COUNTY

Docket No. L-8057-16

Civil Action

**COMPLAINT AND JURY DEMAND**

Plaintiff, Rebecca McCarthy (“Plaintiff”), through her attorneys, Castronovo & McKinney, LLC, files this Complaint and Jury Demand seeking compensatory damages, punitive damages, attorneys’ fees, and costs of suit from Defendants, CareOne Management, LLC (“Defendant CareOne”) and Alison Fitzpatrick-Durski (“Defendant Fitzpatrick-Durski”) and alleges as follows (collectively “Defendants”):

SUPERIOR COURT BERGEN COUNTY  
**FILED**

DEC 09 2016

*Tara A. Scudlone*  
 DEPUTY CLERK

**FACTS**

**A. Jurisdiction and Venue**

1. Plaintiff resides in Piscataway, New Jersey.
2. Defendant CareOne Management, LLC has a principal place of business in Fort Lee, New Jersey.
3. Upon information and belief, Defendant Alison Fitzpatrick-Durski is Defendant CareOne’s SVP of Procurement and resides in the State of New Jersey.

*Charge*  
*CO*  
*6/8*  
*DTC*

*AL*

**B. Plaintiff's Employment**

4. Plaintiff is an African-American woman.
5. Plaintiff worked for Defendants since June 20, 2016.
6. Plaintiff was employed by Defendants as Vice President of Clinical Leadership.
7. On July 28, 2016, Plaintiff gave notice to Tammy Sapiro and Monica Helwig that she would be leaving Defendant CareOne for a position with another company.
8. In response, Ms. Sapiro and Ms. Helwig pleaded with Plaintiff to continue her employment at Defendant CareOne.
9. In fact, Elizabeth S. Straus, Defendant CareOne's Executive Vice President and the daughter of Defendant CareOne's owner, arranged for Plaintiff to meet with Tim Hodges.
10. During the meeting with Plaintiff, Mr. Hodges stated that he was on a mission from Defendant CareOne's owner to convince Plaintiff to remain with the company and that he wanted to schedule a meeting with Plaintiff and Ms. Straus to discuss her employment.
11. During the meeting with Ms. Straus and Mr. Hodges, Plaintiff was offered a \$5,000 retention bonus and a promotion from Clinical Services Consultant to Vice President of Clinical Leadership.
12. The promotion included an increase in annual salary from \$165,000 to \$190,000, plus an annual bonus of up to \$32,000.
13. Ms. Straus and Mr. Hodges explained to Plaintiff that Somerset Valley Rehabilitation ("SVR") in Bound Brook was using contract agency nurses and experiencing customer service and care issues resulting in a census crises.

14. As a result, Ms. Straus asked Plaintiff if she could focus on SVR with the primary goals being to improve customer service and alleviate the need for SVR to use contracted agency nurses.

15. Ms. Straus indicated that Plaintiff should inform her when she was ready to move to another facility.

16. At the conclusion of the meeting, Plaintiff informed Mr. Hodges and Ms. Straus that she would consider the offer.

17. That same evening, Ms. Straus sent a text message to Plaintiff and stated that she believed Plaintiff was a true leader and that Plaintiff has a long-lasting career at Defendant CareOne.

18. Two days after the meeting, Plaintiff accepted the offer and on August 10, 2016, she received a formal letter confirming her promotion, raise and bonus.

19. Following Plaintiff's promotion, she spent five days per week at SVR.

20. Less than two months after Plaintiff began focusing on SVR, she met the goals set by Ms. Straus.

21. During Plaintiff's tenure at SVR, the customer service improved drastically as evidenced by the Pinnacle survey scores.

22. As a result of the improvement in care and customer service, SVR experienced a census growth from thirty-eight to fifty-seven.

23. In addition, and as a result of Plaintiff's work, SVR no longer utilizes contracted agency nurses.

**C. Defendants' Discrimination Against Plaintiff**

24. On October 31, 2016, Defendant Alison Fitzpatrick-Durski, SVP of Procurement, became the interim administrator at SVR.

25. Plaintiff met Defendant Fitzpatrick-Durski for the first time on October 6, 2016 at a "360 Meeting" where senior leaders reviewed the progress of SVR.

26. At this meeting, Plaintiff was praised and thanked for the work she was performing at SVR.

27. Notwithstanding Plaintiff's success at SVR, on her first day as interim administrator, and without seeking to understand the past and present challenges of the facility, Defendant Fitzpatrick-Durski questioned Plaintiff regarding her role at Defendant CareOne and SVR.

28. Defendant Fitzpatrick-Durski asked Plaintiff if she was going back to be a CSC or a DON, and if not, what she planned to do. Plaintiff did not respond.

29. Shockingly, Defendant Fitzpatrick-Durski then stated "I don't want a black person walking around here in a suit as a VP. I want you in scrubs, flats, and a lab coat."

30. In response, Plaintiff asked whether the conversation was over and then left the office.

31. On November 1, 2016, Plaintiff returned to work.

32. During the afternoon, Defendant Fitzpatrick-Durski sent Plaintiff an email invite for a meeting in Defendant Fitzpatrick-Durski's office.

33. Plaintiff did not notice this invite.

34. As a result, Defendant Fitzpatrick-Durski came to the office where Plaintiff was sitting and asked her to come to her office before the scheduled wrap-up meeting.

35. Plaintiff went to Defendant Fitzpatrick-Durski's office as requested.

36. During the meeting, and in the presence of Byron Wilson, Defendant Fitzpatrick-Durski stated to Plaintiff "You have a nice résumé and may have done well in the past but I can't have you here. I don't need you here."

37. Plaintiff asked Defendant Fitzpatrick-Durski why, and in response, was told that Defendant Fitzpatrick-Durski had spoken to senior leadership and that they had lost confidence in Plaintiff's leadership ability.

38. Ms. Straus was Plaintiff's direct report.

39. Significantly, at no point during Plaintiff's tenure with Defendant CareOne did Ms. Straus raise any concerns with Plaintiff regarding her leadership ability.

40. In fact, on September 9, 2016, Ms. Straus sent Plaintiff a text message stating "Thank you so much for everything!!!! You have made such a difference and I am so happy you trusted me and decided to stay with us!! Thank you for everything!"

41. Following Plaintiff's termination, Plaintiff was replaced by Kimberly Komarowski, a Caucasian woman with merely a month's experience as a CSC.

42. In addition, Defendant Fitzpatrick-Durski promoted Cindy Merkins, another Caucasian woman.

43. Defendant Fitzpatrick-Durski has also hired a Caucasian Unit Manager and a Caucasian Director of Nursing.

## **COUNT I**

### **LAD - Race Discrimination**

44. Plaintiff repeats and incorporates the facts alleged in the preceding paragraphs.

45. Plaintiff is African-American.

46. Plaintiff had been satisfactorily performing her essential job functions.

47. Defendants terminated Plaintiff because of her race.

48. Defendants' termination of Plaintiff's employment constitutes an adverse employment action.

49. Defendants' actions constitute discrimination on the basis of Plaintiff's race that violates the Law Against Discrimination, N.J.S.A. 10:5-1, et seq.

50. Defendants' conduct was willful, malicious and/or especially egregious and done with the knowledge and/or participation of upper level management.

51. As a result of Defendants' wrongful conduct, Plaintiff has suffered, and continues to suffer, damages including: back pay, front pay, pain and suffering, and emotional distress.

## COUNT II

### **Aiding and Abetting Discrimination-- Defendant Fitzpatrick-Durski**

52. Plaintiff repeats and incorporates the facts alleged in the preceding paragraphs.

53. Defendant Fitzpatrick-Durski is Defendant CareOne's SVP of Procurement.

54. Defendant Fitzpatrick-Durski knowingly gave substantial assistance or encouragement to Defendant CareOne in its unlawful discrimination against Plaintiff.

55. Defendant Fitzpatrick-Durski discriminated against Plaintiff on the basis of her race that violates the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq.

56. Defendant Fitzpatrick-Durski is liable for aiding and abetting the unlawful discrimination against Plaintiff in violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-12(e).

57. As a result of Defendant Fitzpatrick-Durski's wrongful conduct, Plaintiff has suffered, and continues to suffer, damages including: emotional distress, pain and suffering, physical ailments, and other damages.

**WHEREFORE**, Plaintiff seeks judgment against Defendants on each count awarding her compensatory damages, punitive damages, attorneys' fees, costs of suit, pre- and post-judgment interest, and all other relief that the Court deems equitable and just.

**CASTRONOVO & MCKINNEY, LLC**

Dated: December 8, 2016

By: Thomas A. McKinney  
Thomas A. McKinney, Esq.  
(Attorney ID 022202003)  
Attorneys for Plaintiff

**DEMAND FOR TRIAL BY JURY**

Plaintiff demands a trial by jury on all issues so triable.

**CASTRONOVO & MCKINNEY, LLC**

Dated: December 8, 2016

By: Thomas A. McKinney  
Thomas A. McKinney, Esq.  
(Attorney ID 022202003)  
Attorneys for Plaintiff

**DESIGNATION OF TRIAL COUNSEL**

Plaintiff designates Thomas A. McKinney as trial counsel in this action.

**CASTRONOVO & MCKINNEY, LLC**

Dated: December 8, 2016

By: Thomas A. McKinney  
Thomas A. McKinney, Esq.  
(Attorney ID 022202003)  
Attorneys for Plaintiff

**RULE 4:5-1 CERTIFICATION**

I hereby certify that this matter is not the subject of any other pending civil action or arbitration proceeding. I further certify that I know of no other parties who should be joined in this litigation at the present time.



**CASTRONOVO & McKINNEY, LLC**

Dated: December 8, 2016

By: Thomas A. McKinney  
Thomas A. McKinney, Esq.  
(Attorney ID 022202003)  
Attorneys for Plaintiff



**Appendix XII-B1**

	<h2 style="margin:0;">CIVIL CASE INFORMATION STATEMENT</h2> <h3 style="margin:0;">(CIS)</h3> <p style="margin:5px 0 0 0;">Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule 4:5-1</i> <b>Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i>, if information above the black bar is not completed or attorney's signature is not affixed</b></p>		FOR USE BY CLERK'S OFFICE ONLY PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA CHG/CK NO. AMOUNT: OVERPAYMENT: BATCH NUMBER:
	ATTORNEY/PRO SE NAME Thomas A. McKinney, Esq.	TELEPHONE NUMBER (973) 920-7888	COUNTY OF VENUE Bergen <input checked="" type="checkbox"/>
	FIRM NAME (if applicable) Castronovo & McKinney, LLC	DOCKET NUMBER (when available) <i>L-8657-16</i>	
	OFFICE ADDRESS Castronovo & McKinney, LLC 71 Maple Avenue Morristown, New Jersey 07960	DOCUMENT TYPE Complaint & Jury Demand  JURY DEMAND <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
NAME OF PARTY (e.g., John Doe, Plaintiff) Rebecca McCarthy, Plaintiff		CAPTION Rebecca McCarthy v. CareOne Management, LLC and Alison Fitzpatrick-Durski	
CASE TYPE NUMBER (See reverse side for listing) 618	HURRICANE SANDY RELATED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A -27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.	
RELATED CASES PENDING? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		IF YES, LIST DOCKET NUMBERS	
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN	
<b>THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.</b>			
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION			
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		IF YES, IS THAT RELATIONSHIP: <input checked="" type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS	
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION			
 DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION	
WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		IF YES, FOR WHAT LANGUAGE?	
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with <i>Rule 1:38-7(b)</i> .			
ATTORNEY SIGNATURE: <i>Thomas A. McKinney</i>			

Side 2



## CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under *Rule 4:5-1*

### CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

#### Track I - 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (briefly describe nature of action)

#### Track II - 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603N AUTO NEGLIGENCE – PERSONAL INJURY (non-verbal threshold)
- 603Y AUTO NEGLIGENCE – PERSONAL INJURY (verbal threshold)
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE – PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT – OTHER

#### Track III - 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

#### Track IV - Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

#### Multicounty Litigation (Track IV)

- |  |   |
|--|---|
| 271 ACCUTANE/ISOTRETINOIN                  | 292 PELVIC MESH/BARD                                      |
| 274 RISPERDAL/SEROQUEL/ZYPREXA             | 293 DEPUY ASR HIP IMPLANT LITIGATION                      |
| 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL     | 295 ALLODERM REGENERATIVE TISSUE MATRIX                   |
| 282 FOSAMAX                                | 296 STRYKER REJUVENATE/ABG II MODULAR HIP STEM COMPONENTS |
| 285 STRYKER TRIDENT HIP IMPLANTS           | 297 MIRENA CONTRACEPTIVE DEVICE                           |
| 286 LEVAQUIN                               | 299 OLMESARTAN MEDOXOMIL MEDICATIONS/BENICAR              |
| 287 YAZ/YASMIN/OCELLA                      | 300 TALC-BASED BODY POWDERS                               |
| 289 REGLAN                                 | 601 ASBESTOS  |
| 290 POMPTON LAKES ENVIRONMENTAL LITIGATION | 623 PROPECIA  |
| 291 PELVIC MESH/GYNECARE                   |   |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category  Putative Class Action  Title 59



THOMAS A. MCKINNEY  
Partner

Castronovo & McKinney, LLC  
Direct: (973) 920-7923  
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tom@cmlaw.com

December 8, 2016

**BY FEDERAL EXPRESS**

Deputy Clerk  
Superior Court of New Jersey  
Justice Center  
10 Main Street  
Hackensack, New Jersey 07601-7699

**Re: McCarthy v. CareOne Management, LLC, et al.**  
**Docket No. To Be Provided**

Dear Sir or Madam:

We represent Plaintiff, Rebecca McCarthy. We enclose for filing:

1. Case Information Statement; and
2. Plaintiff's Complaint (Original and copy of first page to be stamped "filed").

Please charge our firm's Superior Court account number 145402 for all filing fees. Please file the original and return a copy of the first page stamped "filed" with a docket number in the enclosed self-addressed envelope.

Thank you for your attention to this matter.

Respectfully submitted,

Tom McKinney

Encls.

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FINANCE DIVISION  
 BERGEN COUNTY  
 2016 DEC -9 A 10:16

BERGEN COUNTY COURTHOUSE  
SUPERIOR COURT LAW DIV  
BERGEN COUNTY JUSTICE CTR RM 415  
HACKENSACK NJ 07601-7680

## TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (201) 527-2600  
COURT HOURS 8:30 AM - 4:30 PM

DATE: DECEMBER 12, 2016  
RE: MCCARTHY VS CAREONE MANAGEMENT  
DOCKET: BER L -008657 16

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 3.

DISCOVERY IS 450 DAYS AND RUNS FROM THE FIRST ANSWER OR 90 DAYS  
FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE PRETRIAL JUDGE ASSIGNED IS: HON ESTELA M. DE LA CRUZ

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 002  
AT: (201) 527-2600.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A  
CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING.  
PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE  
WITH R.4:5A-2.

ATTENTION:

ATT: THOMAS A. MC KINNEY  
CASTRONOVO & MCKINNEYLLC  
71 MAPLE AVE  
MORRISTOWN NJ 07960

JUBPAL5