

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

-----X	:	
LISHAN WANG, M.D.,	:	
	:	Civil Action No. 1:09-cv-3236-JG-SMG
Plaintiff,	:	
	:	<u>Document Electronically Filed</u>
-against-	:	
	:	
KINGSBROOK JEWISH MEDICAL CENTER	:	
	:	<b><u>ANSWER</u></b>
Defendants.	:	
-----X	:	

Defendant Kingsbrook Jewish Medical Center (“Defendant”), by and through its attorneys, Proskauer Rose LLP, states in Answer to the Complaint (“Complaint”) of plaintiff Lishan Wang, M.D. (“Plaintiff”) as follows:

**AS TO NATURE OF CLAIM**

1. Defendant admits that Plaintiff purports to assert an action pursuant to the Civil Rights Act of 1866, 42 U.S.C. § 1981; Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*, the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*, Americans with Disabilities Act Amendments Act of 2008, the New York State Human Rights Law, New York Executive Law, Section 296, *et seq.*, and the Administrative Code of the City of New York § 8-107, *et seq.*, as alleged in paragraph 1 of the Complaint, but denies all wrongdoing therein.

2. Defendant admits that Plaintiff is represented by Christine A. Rodriguez.

**AS TO JURISDICTION**

3. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 3 of the Complaint and leaves Plaintiff to his proofs.

4. The allegations contained in paragraph 4 of the Complaint set forth legal conclusions which the Defendant is required to neither admit or deny. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 4 of the Complaint and leaves Plaintiff to his proofs.

5. The allegations contained in paragraph 5 of the Complaint set forth legal conclusions which the Defendant is required to neither admit or deny. To the extent a response is required, Defendant denies the allegations contained in paragraph 5 of the Complaint.

6. Defendant denies the allegations contained in paragraph 6 of the Complaint.

7. Defendant denies the allegations contained in paragraph 7 of the Complaint, except admits that on or about July 25, 2008, the EEOC sent Defendant a Notice of Charge of Discrimination attaching a Charge of Discrimination signed on July 1, 2008, and received on July 9, 2008 by the EEOC.

8. Defendant admits that the EEOC issued a "Dismissal and Notice of Rights" to sue to Plaintiff, dated May 8, 2009, but denies knowledge or information sufficient to form a belief as to the remaining allegation in paragraph 8 of Plaintiff's Complaint and leaves Plaintiff to his proofs.

#### **AS TO THE PARTIES**

9. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 9 of the Complaint and leaves Plaintiff to his proofs.

10. Defendant admits the allegations contained in paragraph 10 of the Complaint.

11. Defendant admits the allegations contained in paragraph 11 of the Complaint.

12. Defendant denies the allegations contained in paragraph 12 of the Complaint, except admits that Defendant has an accredited residency program which Plaintiff was a part of until the termination of his employment on July 25, 2008.

**AS TO FACTUAL ALLEGATIONS**

13. Defendant admits the allegations contained in paragraph 13 of the Complaint.

14. Defendant denies the allegations in paragraph 14 of the Complaint, except admits that Plaintiff was employed by Defendant from July 1, 2006 to July 25, 2008 and that his evaluations speak for themselves.

15. Defendant denies the allegations contained in paragraph 15 of the Complaint.

16. Defendant denies the allegations contained in paragraph 16 of the Complaint, except admits that in or about November 2006, Dr. Hinke and Plaintiff made complaints about each other which they subsequently withdrew.

17. Defendant denies the allegations contained in paragraph 17 of the Complaint.

18. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 18 of the Complaint.

19. Defendant denies the allegations contained in the first sentence of paragraph 19 of the Complaint. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 19 of the Complaint.

20. Defendant denies the allegations contained in paragraph 20 of the Complaint.

21. Defendant denies the allegations contained in the first, second, and third sentences of paragraph 21 of the Complaint. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 21 of the Complaint.

22. Defendant denies the allegations contained in paragraph 22 of the Complaint.

23. Defendant denies the allegations contained in paragraph 23 of the Complaint, except admits that Plaintiff appeared before Defendant's House Staff Affairs Committee ("Committee") in November 2007 concerning complaints about him made by doctors and nursing staff members.

24. Defendant denies the allegations contained in paragraph 24 of the Complaint, except admits that the Committee's findings speak for themselves.

25. Defendant denies the allegations contained in paragraph 25 of the Complaint, except admits that Dr. Wang was recommended for appointment to PGY-3 level and his evaluations speak for themselves.

26. Defendant denies the allegations contained in paragraph 26 of the Complaint.

27. Defendant denies the allegations contained in paragraph 27 of the Complaint.

28. Defendant denies the allegations contained in paragraph 28 of the Complaint, except admits Plaintiff took a sick day on October 19, 2006, and his emails speak for themselves.

29. Defendant denies the allegations contained in paragraph 29 of the Complaint, except admits that on or about March 13, 2008, Plaintiff reported that he felt ill, was sent to the emergency room for examination, and was sent home.

30. Defendant denies the allegations contained in paragraph 30 of the Complaint, except admits that Dr. Fuch examined Plaintiff in the emergency room and Plaintiff was then sent home.

31. Defendant denies the allegations contained in paragraph 31 of the Complaint, except admits that Plaintiff's emails speak for themselves.

32. Defendant denies the allegations contained in paragraph 32 of the Complaint, except admits that, on March 25, 2008, Plaintiff withdrew his March 14, 2008 complaint and Defendant's emails speak for themselves.

33. Defendant denies the allegations contained in paragraph 33 of the Complaint, except admits that Plaintiff's evaluations speak for themselves.

34. Defendant denies the allegations contained in paragraph 34 of the Complaint, except admits, that on November 9 and 16, 2007, the Committee reviewed complaints about Plaintiff and the Committee's findings speak for themselves.

35. Defendant denies the allegations contained in paragraph 35 of the Complaint, except admits that, on November 26 and 28, 2007, the Committee reviewed complaints about Plaintiff and the Committee's findings speak for themselves.

36. Defendant denies the allegations contained in paragraph 36 of the Complaint, except admits Plaintiff did not answer pages from the ICU on or about May 15, 2008, that Dr. Vajinder Toor was required to cover for Plaintiff at the ICU, and that Dr. Toor subsequently asked Plaintiff to explain his whereabouts.

37. Defendant denies the allegations contained in paragraph 37 of the Complaint, except admits that on May 15, 2008, Plaintiff acted in an abusive manner towards Dr. Toor and Dr. Toor reported Plaintiff's misconduct to Dr. Mukherji.

38. Defendant denies the allegations contained in paragraph 38 of the Complaint, except admits that John McKeon, Vice President of Human Resources, advised Plaintiff by letter that Defendant was considering the possible termination of Plaintiff's employment; that Plaintiff and his union appealed the proposed termination; and that Plaintiff claimed in or around July of 2008 that Defendant allegedly reversed payment deposited into Plaintiff's account.

39. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in the first three sentences of paragraph 39 of the Complaint. Defendant denies the allegations contained in the fourth sentence of paragraph 39 of the Complaint. Defendant admits the allegations contained in the fifth sentence of paragraph 39 of the Complaint.

40. Defendant admits the allegations contained in paragraph 40 of the Complaint.

**AS TO THE FIRST CAUSE OF ACTION**

**Retaliation in Violation of the Civil Rights Act of 1866, 42 U.S.C. § 1981**

41. Defendant hereby incorporates its answers to the preceding paragraphs of the Complaint as if fully set forth herein.

42. The allegations contained in paragraph 42 of the Complaint set forth legal conclusions that Defendant is required to neither admit nor deny. To the extent a response is required, Defendant admits that Plaintiff purports to recite § 1981 of the Civil Rights Act. Defendant denies that it violated the Civil Rights Act or otherwise engaged in any other unlawful conduct.

43. Defendant denies the allegations contained in paragraph 43 of the Complaint.

44. Defendant denies the allegations contained in paragraph 44 of the Complaint.

45. Defendant denies the allegations contained in paragraph 45 of the Complaint.

46. Defendant denies the allegations contained in paragraph 46 of the Complaint.

**AS TO THE SECOND CAUSE OF ACTION**  
**Racial Discrimination Under the Title VII**

47. Defendant hereby incorporates its answers to the preceding paragraphs of the Complaint as if fully set forth herein.

48. Defendant denies the allegations contained in paragraph 48 of the Complaint.

49. Defendant denies the allegations contained in paragraph 49 of the Complaint.

**AS TO THE THIRD CAUSE OF ACTION**  
**National Origin Discrimination Under the Title VII**

50. Defendant hereby incorporates its answers to the preceding paragraphs of the Complaint as if fully set forth herein.

51. Defendant denies the allegations contained in paragraph 51 of the Complaint.

52. Defendant denies the allegations contained in paragraph 52 of the Complaint.

**AS TO THE FOURTH CAUSE OF ACTION**  
**Disability Discrimination Under the ADA and ADAA**

53. Defendant hereby incorporates its answers to the preceding paragraphs of the Complaint as if fully set forth herein.

54. Defendant denies the allegations contained in paragraph 54 of the Complaint.

55. Defendant denies the allegations contained in paragraph 55 of the Complaint.

**AS TO THE FIFTH CAUSE OF ACTION**  
**Racial Discrimination Under the Executive Law**

56. Defendant hereby incorporates its answers to the preceding paragraphs of the Complaint as if fully set forth herein.

57. Defendant denies the allegations contained in paragraph 57 of the Complaint.

58. Defendant denies the allegations contained in paragraph 58 of the Complaint.

**AS TO THE SIXTH CAUSE OF ACTION**  
**National Origin Discrimination Under the Executive Law**

59. Defendant hereby incorporates its answers to the preceding paragraphs of the Complaint as if fully set forth herein.

60. Defendant denies the allegations contained in paragraph 60 of the Complaint.

61. Defendant denies the allegations contained in paragraph 61 of the Complaint.

**AS TO THE SEVENTH CAUSE OF ACTION**  
**Disability Discrimination Under the Executive Law**

62. Defendant hereby incorporates its answers to the preceding paragraphs of the Complaint as if fully set forth herein.

63. Defendant denies the allegations contained in paragraph 63 of the Complaint.

64. Defendant denies the allegations contained in paragraph 64 of the Complaint.

**AS TO THE EIGHTH CAUSE OF ACTION**  
**Racial Discrimination Under the Administrative Code**

65. Defendant hereby incorporates its answers to the preceding paragraphs of the Complaint as if fully set forth herein.

66. Defendant denies the allegations contained in paragraph 66 of the Complaint.

67. Defendant denies the allegations contained in paragraph 67 of the Complaint.

68. Defendant denies the allegations contained in paragraph 68 of the Complaint.

**AS TO THE NINTH CAUSE OF ACTION**  
**National Origin Discrimination Under the Administrative Code**

69. Defendant hereby incorporates its answers to the preceding paragraphs of the Complaint as if fully set forth herein.

70. Defendant denies the allegations contained in paragraph 70 of the Complaint.

71. Defendant denies the allegations contained in paragraph 71 of the Complaint.

72. Defendant denies the allegations contained in paragraph 72 of the Complaint.

**AS TO THE TENTH CAUSE OF ACTION**  
**Disability Discrimination Under the Administrative Code**

73. Defendant hereby incorporates its answers to the preceding paragraphs of the Complaint as if fully set forth herein.

74. Defendant denies the allegations contained in paragraph 74 of the Complaint.



75. Defendant denies the allegations contained in paragraph 75 of the Complaint.

76. Defendant denies the allegations contained in paragraph 76 of the Complaint.

**AS TO THE ELEVENTH CAUSE OF ACTION**  
**Retaliation Under Title VII**

77. Defendant hereby incorporates its answers to the preceding paragraphs of the Complaint as if fully set forth herein.

78. Defendant denies the allegations contained in paragraph 78 of the Complaint.

79. Defendant denies the allegations contained in paragraph 79 of the Complaint.

**AS TO THE ELEVENTH CAUSE OF ACTION**  
**Retaliation Under Title VII**

80. Defendant hereby incorporates its answers to the preceding paragraphs of the Complaint as if fully set forth herein.

81. Defendant denies the allegations contained in paragraph 81 of the Complaint.

82. Defendant denies the allegations contained in paragraph 82 of the Complaint.

**AS TO THE TWELFTH CAUSE OF ACTION**  
**Retaliation Under the ADA/ADAA**

83. Defendant hereby incorporates its answers to the preceding paragraphs of the Complaint as if fully set forth herein.

84. Defendant denies the allegations contained in paragraph 84 of the Complaint.

85. Defendant denies the allegations contained in paragraph 85 of the Complaint.

**AS TO THE THIRTEENTH CAUSE OF ACTION**  
**Retaliation Under the Administrative Code**

86. Defendant hereby incorporates its answers to the preceding paragraphs of the Complaint as if fully set forth herein.

87. Defendant denies the allegations contained in paragraph 87 of the Complaint.

88. Defendant denies the allegations contained in paragraph 88 of the Complaint.

89. Defendant denies the allegations contained in paragraph 89 of the Complaint.

**AS TO PLAINTIFF'S PRAYER FOR RELIEF**

Defendant denies that Plaintiff is entitled to any relief requested in the *ad damnum* clause of the Complaint or any other relief.

**GENERAL DENIAL**

Defendant denies each and every allegation in the Complaint not specifically admitted herein.

**FIRST SEPARATE DEFENSE**

The Complaint fails to state a claim upon which relief may be granted.

**SECOND SEPARATE DEFENSE**

Plaintiff did not suffer any damages attributable to any actions of Defendant.

**THIRD SEPARATE DEFENSE**

Plaintiff is estopped and barred by his own conduct from recovering any relief.

**FOURTH SEPARATE DEFENSE**

Upon information and belief, Plaintiff's claims are barred, in whole or in part, or his recoverable damages (if any, and which Defendants deny) should be reduced, because he failed to take reasonable steps to mitigate his damages.

**FIFTH SEPARATE DEFENSE**

Upon information and belief, the Complaint fails to state a claim upon which an award of compensatory damages, punitive damages, and/or attorneys' fees can be granted.

**SIXTH SEPARATE DEFENSE**

Plaintiff has failed to state a claim over which the Court should invoke supplemental jurisdiction.

**SEVENTH SEPARATE DEFENSE**

To the extent that Plaintiff seeks to recover from Defendant for personal injuries allegedly incurred in the course of or arising out of his employment, such recovery is barred by the exclusivity provision of the New York's Workers' Compensation Law.

**EIGHTH SEPARATE DEFENSE**

Plaintiff is not entitled to the relief sought in the Complaint to the extent said relief is not available under the applicable statutes, regulations, ordinances, executive orders, or other relevant provisions of law.

**NINTH SEPARATE DEFENSE**

Defendant's liability and penalties, if any, should be mitigated by virtue of the factors set forth in Section 8-107(13)(d) and (e) of the New York City Human Rights Law.

**TENTH SEPARATE DEFENSE**

Plaintiff's Complaint fails to state a claim for relief to the extent that his claims are duplicative and redundant.

**ELEVENTH SEPARATE DEFENSE**

The Complaint is barred, in whole or in part, by the failure to satisfy, exhaust, and/or comply with the necessary statutory and/or administrative prerequisites prior to the commencement of this action.

**TWELFTH SEPARATE DEFENSE**

The Complaint is barred, in whole or in part, as to any matters not contained in Plaintiff's administrative charge, for which no right to sue letter has been issued, and/or for which he has failed to exhaust, and/or has elected, administrative remedies.

**THIRTEENTH SEPARATE DEFENSE**

The Complaint is barred, in whole or in part, by virtue of Plaintiff's agreement to resolve these claims through final and binding arbitration.

**FOURTEENTH SEPARATE DEFENSE**

The Complaint is barred, in whole or in part, by virtue of Plaintiff's failure to exhaust the grievance and arbitration procedures, provided in the collective bargaining agreement applicable to Plaintiff's employment.

**FIFTEENTH SEPARATE DEFENSE**

Plaintiff's claims for relief are barred, in whole or in part, by virtue of Plaintiff's misconduct, evidence of which was acquired by Defendant after Plaintiff's termination.

**SIXTEENTH SEPARATE DEFENSE**

Defendant relied on legitimate non-discriminatory business factors for its actions and decisions with respect to all personnel actions taken with respect to Plaintiff's employment.

**SEVENTEENTH SEPARATE DEFENSE**

Defendant is not liable to Plaintiff for discrimination, harassment, or retaliation because Defendant exercised reasonable care to prevent and correct such behavior and Plaintiff unreasonably failed to take advantage of the preventative and corrective opportunities provided by Defendant and otherwise failed to avoid harm.

**EIGHTEENTH SEPARATE DEFENSE**

At all times relevant herein, including prior to the alleged discriminatory acts referred to in the Complaint, Defendant had established and complied with policies, programs, and procedures for the prevention and detection of unlawful discriminatory practices. To the extent Plaintiff availed himself of the policy/program/procedure, Defendant took prompt and effective remedial action to correct any alleged discrimination, harassment, or retaliation.

**NINETEENTH SEPARATE DEFENSE**

Plaintiff's Complaint is barred in whole or in part because Plaintiff was not treated differently than similarly-situated employees.

**TWENTIETH SEPARATE DEFENSE**

The Complaint is barred, in whole or in part, by virtue of the fact that the alleged conduct was based on a factor or factors other than race, nationality, or alleged disability.

**TWENTY-FIRST SEPARATE DEFENSE**

In the event that Plaintiff can demonstrate that an impermissible factor was a motivating factor in the employment decisions that he challenges (which Defendant expressly denies), he is not entitled to money damages, reinstatement or other relief because Defendant would have taken the same actions in the absence of any impermissible factor, and accordingly is not liable to Plaintiff.

**TWENTY-SECOND SEPARATE DEFENSE**

Plaintiff is not entitled to recover punitive damages. There is no basis, legal or factual, for any demand for punitive damages.

**TWENTY-THIRD SEPARATE DEFENSE**

Plaintiff is not entitled to recover punitive damages because at all relevant times, including prior to the allegations that form the basis of Plaintiff's claims, Defendant engaged in good faith efforts to comply with all laws governing Plaintiff's employment.

**TWENTY-FOURTH SEPARATE DEFENSE**

Defendant acted in good faith and without malice, willfulness, recklessness or evil intent.

**TWENTY-FIFTH SEPARATE DEFENSE**

Defendant cannot be held vicariously liable for punitive damages because it made good faith efforts to comply with the laws regarding unlawful discrimination.

**TWENTY-SIXTH SEPARATE DEFENSE**

Plaintiff is not entitled to punitive damages or attorneys' fees and costs under the New York State Executive Law.

**TWENTY-SEVENTH SEPARATE DEFENSE**

Plaintiff's allegations in this Complaint are not reasonably related to Plaintiff's administrative Charge of Discrimination.

**WHEREFORE**, Defendant Kingsbrook Jewish Medical Center requests that the Court enter judgment dismissing the Complaint in its entirety and with prejudice; granting to Defendant its costs and attorneys' fees; and granting to Defendant such other relief as the Court may deem just and proper.

Dated: New York, New York  
September 25, 2009

PROSKAUER ROSE LLP

By s/ David H. Diamond

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Attorneys for Defendant

*Kingsbrook Jewish Medical Center*

**CERTIFICATE OF SERVICE**

I hereby certify that, on September 25, 2009, I caused to be served the foregoing Answer and Separate Defenses to the Complaint by ECF upon the Court and on the following counsel for plaintiff:

Christine A. Rodriguez, Esq.  
225 Broadway  
Suite 2900  
New York, New York 10007

s/Harris S. Freier

Harris S. Freier



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

-----X	:	
LISHAN WANG, M.D.,	:	
	:	Civil Action No. 1:09-cv-3236-JG-SMG
Plaintiff,	:	
	:	<u>Document Electronically Filed</u>
-against-	:	
	:	
KINGSBROOK JEWISH MEDICAL CENTER	:	
	:	<b><u>RULE 7.1 STATEMENT</u></b>
Defendants.	:	
-----X	:	

Pursuant to Federal Rule of Civil Procedure 7.1 and to enable District Judges and Magistrate Judges of the Court to evaluate possible disqualification or recusal, the undersigned counsel for Defendant Kingsbrook Jewish Medical Center certifies that the following are corporate parents, affiliates and/or subsidiaries of said party, which are publicly held:

NONE

Date: September 25, 2009

s/ DAVID H. DIAMOND

**Signature of Attorney**

David H. Diamond

**CERTIFICATE OF SERVICE**

I hereby certify that, on September 25, 2009, I caused to be served the foregoing Rule 7.1 Statement by ECF upon the Court and on the following counsel for plaintiff:

Christine A. Rodriguez, Esq.  
225 Broadway  
Suite 2900  
New York, New York 10007

s/Harris S. Freier

Harris S. Freier