

**STATE OF NEW YORK
SUPREME COURT COUNTY OF CAYUGA**

**AUBURN MEMORIAL MEDICAL SERVICES, P.C.
AUBURN COMMUNITY HOSPITAL, AUBURN
MEDICAL P.C., and FINGERLAKES CENTER FOR
LIVING,**

Index No.

**Plaintiffs designate Cayuga
County as the place of trial.**

Plaintiffs,

SUMMONS

-vs-

HAIZHU PEARL LIU, M.D.,

**The basis of the venue is
Plaintiffs' place of business is
Auburn, County of Cayuga.**

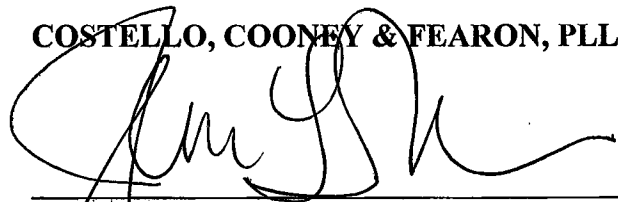
Defendant.

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiffs' attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

DATED: July 2, 2019

COSTELLO, COONEY & FEARON, PLLC



**JENNIFER L. WANG
Attorneys for the Plaintiffs,
Office and Post Office Address
500 Plum Street, Suite 300
Syracuse, New York 13204-1401
Telephone: (315) 422-1152**

**TO: HAIZHU PEARL LIU, M.D.
5103 Hardstone Road
Jamesville, New York 13078**

**STATE OF NEW YORK
SUPREME COURT****COUNTY OF CAYUGA****AUBURN MEMORIAL MEDICAL SERVICES, P.C.
AUBURN COMMUNITY HOSPITAL, AUBURN
MEDICAL P.C., and FINGERLAKES CENTER FOR
LIVING,****Index No.****COMPLAINT****Plaintiffs,****-vs-****HAIZHU PEARL LIU, M.D.,****Defendant.**

Plaintiffs, Auburn Memorial Medical Services, P.C., Auburn Community Hospital, Auburn Medical P.C., and Fingerlakes Center for Living, (collectively referred herein as "Plaintiffs"), by and through their attorneys, Costello, Cooney & Fearon, PLLC, complaining of the Defendant Haizhu Pearl Liu, M.D. (hereinafter referred to as "Defendant" or "Dr. Liu"), hereby allege as follows:

THE PARTIES

1. At all relevant times, Plaintiff Auburn Memorial Medical Services, P.C. ("AMMS PC") is a New York Professional Services Corporation affiliated with Auburn Community Hospital with its principal place of business located at 17 Lansing Street, Auburn, New York.

2. At all relevant times, Plaintiff Auburn Community Hospital ("Auburn Hospital") is a New York not-for-profit corporation licensed as a general hospital under Article 28 of New York Public Health Law, with a principal place of business located at 17 Lansing Street, Auburn, New York.

3. At all relevant times, Plaintiff Auburn Medical P.C. ("Auburn Medical") is a New York Professional Services Corporation and performs professional anesthesia services for the Hospital, with its principal place of business located at 17 Lansing Street, Auburn, New York.

4. At all relevant times, Plaintiff Fingerlakes Center for Living at Auburn Community Hospital is a skilled nursing facility, with its principal place of business located at 20 Park Avenue, Auburn, NY 13021.

5. At all relevant times, Defendant Haizhu Pearl Liu, M.D. was an employee of AMMS PC pursuant to an Employment Agreement dated on or about May 15, 2017 (the "Agreement"). Upon information and belief, Dr. Liu resides at 5103 Hardstone Road, Jamesville, New York 13078.

6. Venue is proper because Plaintiffs' principal places of business are located in Cayuga County.

FACTS RELEVANT TO CLAIMS

7. AMMS PC and Haizhu Pearl Liu, M.D. ("Dr. Liu") entered into a Psychiatrist Employment Agreement, dated May 15, 2017 (the "Agreement"), whereby Dr. Liu agreed to provide medical care for AMMS PC's private practice patients, for Auburn Hospital's patients, and for Fingerlakes Center for Living's residents. Attached hereto as Exhibit "A" is a copy of the Agreement.

8. Pursuant to the Agreement, on or about November 2017, Dr. Liu commenced employment under the Agreement ("Commencement Date").

9. Pursuant to Section 2(a) of the Agreement, titled Compensation and Scheduling, AMMS PC would pay Dr. Liu a base annual yearly compensation of \$325,000.00 ("base annual compensation") which was payable pursuant to AMMS PC's payroll cycle.

10. Pursuant to Section 2(a) of the Agreement, Dr. Liu acknowledged that receipt of the base annual compensation was contingent upon Dr. Liu “providing 2,080 hours of professional psychiatric services per year pursuant to a mutually agreed to schedule, which shall consist of a seven (7) days on consisting of five (5) weekdays per week, twelve (12) hours per day and two (2) weekend days per week, ten (10) hours per day (“7 Days on Shift”)/and seven (7) days off (“7 Days Off Shift”), the on-call services set forth in Section 2(b) and other duties specified in Section 3 and Exhibit “A” attached hereto.”

11. As such, pursuant to Section 2(a), Dr. Liu was required to provide shifts of seven (7) days on which was to consist of five (5) weekdays at 12 hours per day and two (2) weekend days at 10 hours per day (“7 Days On Shift”) followed by a seven days off shift (“7 Days Off”).

12. In exchange for Dr. Liu working these specified number of hours, AMMS PC would compensate Dr. Liu her base annual compensation pursuant to Section 2(a) of the Agreement.

13. During Dr. Liu’s employment with AMMS PC, Dr. Liu failed to work the hours required under Section 2(a) of the Agreement.

14. Instead of working the number of required hours under Section 2(a) of the Agreement, Dr. Liu worked five (5) weekdays at eight (8) hours per day every other week and provided no weekend services.

15. Pursuant to Section 2(a) of the Agreement, from the Commencement Date of November, 2017 through December, 2018 (“Relevant Period”), Dr. Liu should have worked 2,240 hours for a year of work, plus two pay periods into Dr. Liu’s second year under the Agreement. However, Dr. Liu only worked for a total of 774 hours during the Relevant Period.

16. As such, during the Relevant Period, Dr. Liu should have worked 1466 hours more than she actually did while employed by AMMS PC.

17. As Dr. Liu's rate of payment was \$156.25 per hour, Dr. Liu's compensation under the Agreement for working 774 hours should have been \$120,937.50, less applicable withholding, for such services during the Relevant Period.

18. Despite only being entitled to \$120,937.50 in compensation, Dr. Liu was paid compensation by AMMS PC in the amount of the base annual compensation, plus two pay periods, of \$350,000.00 during the Relevant Period.

19. AMMS PC overpaid Dr. Liu in the amount of \$229,062.50 for the Relevant Period.

20. Pursuant to Section 8(h) of the Agreement, titled Term and Termination, the Agreement could be terminated without cause, by either party on sixty (60) days prior written notice.

21. Pursuant to the Agreement, on or about November 9, 2018, AMMS PC noticed Dr. Liu by Certified Mail Return Receipt Requested that it was terminating her employment as of January 11, 2019 pursuant to Section 8(h) of the Agreement.

22. On or about November 30, 2018, AMMS PC notified Dr. Liu by a hand-delivered notice of the overpayment of compensation for the Relevant Period.

23. In said November 30, 2018 notice, AMMS PC demanded that Dr. Liu repay the \$229,062.50 overpayment.

24. In said November 30, 2018 notice, AMMS PC also informed Dr. Liu that during her remaining period of her Agreement (until January 11, 2019) her compensation would be offset pursuant to Section 15 of the Agreement and would be applied against the Overpayment. At the end term of Dr. Liu's Agreement, AMMS PC would provide a written notice of the remaining balance of the Overpayment.

25. Dr. Liu did not respond to the November 30, 2019 notice regarding Overpayment and did not repay any portion of the amount due and owing to AMMS PC.

26. Dr. Liu's last day of employment with AMMS PC was December 21, 2018.

27. On or about April 3, 2019, AMMS PC notified Dr. Liu via Certified Mail Return Receipt Requested of the current status of Dr. Liu's Overpayment. In said notice, AMMS PC notified Dr. Liu that from November 25, 2018 to December 21, 2018, compensation for her services was withheld pursuant to Section 15 of the Agreement totaling 128 hours worked at \$156.25 per hour. Therefore, AMMS PC deducted \$20,000.00 from the Overpayment.

28. In the April 3, 2019 notice, AMMS PC stated that the new reduced Overpayment amount was \$209,062.50 (the "Debt").

29. In the April 3, 2019 notice, AMMS PC demanded that the Debt be paid, or Dr. Liu enter into a payment plan, within thirty (30) days. If neither was done by Dr. Liu, AMMS PC would have no choice but to file an action against Dr. Liu to recover the Debt.

30. As of the filing of this lawsuit, Dr. Liu has not responded to the April 3, 2019 notice, has not repaid any of the Debt, and has not entered into a payment plan to establish repayment of the Debt.

FIRST CAUSE OF ACTION

(Breach of Contract)

31. Plaintiffs repeat and reallege the foregoing paragraphs as if fully set forth herein.

32. Pursuant to the Agreement, Dr. Liu would be provided by AMMS PC a base annual compensation in the amount of \$325,000.00 per year if Dr. Liu worked the required hours set forth in the Agreement.

33. Pursuant to the Agreement, Dr. Liu was required to provide shifts of seven (7) days on which was to consist of five (5) weekdays at 12 hours per day and two (2) weekend days at 10 hours per day ("7 Days On Shift") followed by a seven days off shift ("7 Days Off").

34. In breach of the Agreement, instead of working the number of required hours under the Agreement, Dr. Liu worked five (5) weekdays at eight (8) hours per day every other week and provided no weekend services.

35. Despite failing to work the required hours under the Agreement from November, 2017 to December 2018, during the Relevant Period, Dr. Liu was still paid her base annual compensation, plus two pay periods, for a total of \$350,000.00.

36. As such, as of November 30, 2018, Dr. Liu was Overcompensated by AMMS PC for the hours she worked under the Agreement by the amount of \$229,062.50.

37. AMMS PC has requested that Dr. Liu repay the amount of \$229,062.50 Overpayment as a result of Dr. Liu's breach of the Agreement, but Dr. Liu has not repaid any portion of said Debt.

38. In light of AMMS PC's overpayment of compensation to Dr. Liu, AMMS PC, with notice to Dr. Liu under the Agreement, withheld compensation in the amount of \$20,000.00 to Dr. Liu.

39. As of April 3, 2019, the Overpayment to Dr. Liu by AMMS PC was in the amount of \$209,062.50.

40. AMMS PC has requested that Dr. Liu repay the amount of \$209,062.50 as a result of Dr. Liu's breach of the Agreement, but Dr. Liu has not repaid any portion of the Debt.

41. In total, Dr. Liu owes AMMS PC \$209,062.50, plus interest from the date that this amount was due and owing.

42. In breach of the Agreement with AMMS PC, Dr. Liu has not paid AMMS PC the \$209,062.50 that she owes.

SECOND CAUSE OF ACTION

(Unjust Enrichment)

43. Plaintiffs repeat and reallege the foregoing paragraphs as if fully set forth herein.

44. AMMS PC had a reasonable expectation that Dr. Liu would work the required hours under the Agreement in order to receive the agreed upon compensation.

45. Between November 2017 and December 2018, AMMS PC overpaid Dr. Liu in the amount of \$229,062.50.

46. AMMS PC withheld \$20,000.00 from Dr. Liu's pay from November 25, 2018 to December 21, 2018. Given that reduction, at that time AMMS PC had overpaid Dr. Liu in the amount of \$209,062.50.

47. Dr. Liu has refused to repay AMMS PC the \$209,062.50 which she was overpaid by AMMS PC.

48. By retaining \$209,062.50 that rightfully should be paid to AMMS PC under the terms of the Agreement, Dr. Liu has been unjustly enriched at AMMS PC's expense in the amount of \$209,062.50, plus interest from the date that this amount was due and owing.

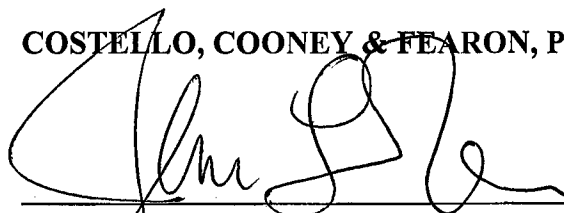
WHEREFORE, Plaintiffs AMMS PC, Auburn Hospital, Auburn Medical P.C., and Fingerlakes Center for Living demand judgment as follows:

- a. In the amount of \$209,062.50, plus interest from the date that this amount was due and owing;

- b. Reasonable attorney's fees incurred in connection with this action; and
- c. Granting such other and further relief as the Court deems just and proper.

DATED: July 2, 2019

COSTELLO, COONEY & FEARON, PLLC



JENNIFER L. WANG

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Auburn Medical P.C., and Fingerlakes Center
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