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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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LINDA BRODSKY, M.D.  
65 LeBrun Circle  
Amherst, New York 14226

Plaintiff,

**COMPLAINT**

v.

Civil Action No.:

KALEIDA HEALTH  
100 High Street  
Buffalo, New York 14203

Defendant.

---

Plaintiff, Linda Brodsky, M.D. (“Dr. Brodsky”), by and through her attorneys, Kavinoky Cook LLP, for her complaint against defendant, Kaleida Health (“Kaleida”), alleges:

**NATURE OF CLAIM**

1. This is an action for declaratory and injunctive relief, back-pay, compensatory and punitive damages and other relief to redress the violation of plaintiff's rights under The Equal Pay Act of 1963, as amended (29 U.S.C. §206(d), *et seq.*)(“EPA”), Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000e, *et seq.*)(“Title VII”), §296 of the New York Human Rights Law, (N.Y. Executive Law §296(1)(a) and (e), (6) and (7)) (“NYHRL”) and under the New York Equal Pay Law, (N.Y. Labor Law §190 *et seq.*)(“NYEPL”).

2. Dr. Brodsky claims that Kaleida retaliated against her because she pursued and attempted to enforce her employment rights under Title VII, the EPA, the NYHRL and the NYEPL.

### **JURISDICTION**

3. Jurisdiction is predicated on 28 U.S.C. §§1331, 1343(4), 1367(a), 2201 and 2202; and Section 706(f) and (g) of Title VII, 42 U.S.C. §2000e-5(f) and (g).

### **VENUE**

4. Venue is proper in this judicial district under Section 706(f)(3) of Title VII, 42 U.S.C. §2000e-5(f)(3), and under 28 U.S.C. §1391(b).

### **PARTIES**

5. Dr. Brodsky is a female medical doctor specializing in pediatric otolaryngology. Dr. Brodsky has resided at all relevant times in Erie County, New York.

6. Kaleida is a not-for-profit corporation organized and existing under the Laws of the State of New York, having its principal office in Erie County, New York.

7. Kaleida is, and at all relevant times was, an employer engaged in interstate commerce employing more than 500 persons, subject to Title VII, the EPA, the NYHRL and the NYEPL.

8. Kaleida is a successor by merger to the Children's Hospital of Buffalo ("CHOB").

9. Dr. Brodsky has been employed by Kaleida since 1998. Before that Dr. Brodsky was employed by CHOB, beginning in 1987. Through February 2, 2007, Dr. Brodsky had been employed continuously by CHOB and then Kaleida for more than 20 years.

### **OPERATIVE FACTS AND PROCEDURE**

10. During the 300 days immediately preceding the Charge referred to in the next paragraph, Kaleida discriminated and retaliated against Dr. Brodsky because of her gender and her complaints of gender discrimination and retaliation.

11. Dr. Brodsky filed a charge of discrimination and retaliation against Kaleida with the EEOC on or about January 12, 2007 (Charge No.525-2007-00431). Dr. Brodsky's Charge is annexed as Exhibit A and incorporated by reference.

12. Kaleida fired Dr. Brodsky on February 2, 2007.

13. Dr. Brodsky filed an amendment to her Charge on February 12, 2007 adding the retaliatory termination of her employment. A copy of the amended Charge is annexed as Exhibit B and incorporated by reference.

14. The EEOC issued a "Notice of Right to Sue" letter to Dr. Brodsky for the Charge on March 9, 2007. A copy of the right to sue letter is annexed as Exhibit C and incorporated by reference. This complaint was filed within 90 days of Dr. Brodsky's receipt of the right to sue letter she received from the EEOC.

### **FIRST CLAIM**

15. Plaintiff incorporates paragraphs 1 through 14 by this reference.

16. Kaleida Health retaliated against Dr. Brodsky because she opposed the defendant's discriminatory and retaliatory acts and practices, as is set forth in detail in her charges of discrimination incorporated herein, in violation of Title VII.

17. Kaleida Health retaliated against Dr. Brodsky because she filed the EEOC charges incorporated herein to oppose the defendant's discriminatory and retaliatory acts and practices, in violation of Title VII.

18. Dr. Brodsky has suffered, is now suffering and will continue to suffer certain kinds of irreparable injury and monetary damages unless and until this Court grants relief to the plaintiff.

## **SECOND CLAIM**

19. Plaintiff incorporates paragraphs 1 through 14 by this reference.

20. Kaleida Health retaliated against Dr. Brodsky because she opposed the defendant's discriminatory and retaliatory acts and practices, as is set forth in detail in her charges of discrimination incorporated herein, in violation of the EPA.

21. Kaleida Health retaliated against Dr. Brodsky because she filed the EEOC charges incorporated herein to oppose the defendant's discriminatory and retaliatory acts and practices, in violation of the EPA.

22. Dr. Brodsky has suffered, is now suffering and will continue to suffer certain kinds of irreparable injury and monetary damages unless and until this Court grants relief to the plaintiff.

## **THIRD CLAIM**

23. Plaintiff incorporates paragraphs 1 through 14 by this reference.

24. Kaleida Health retaliated against Dr. Brodsky because she opposed the defendant's discriminatory and retaliatory acts and practices, as is set forth in detail in her charges of discrimination incorporated herein, in violation of the NYHRL.

25. Kaleida Health retaliated against Dr. Brodsky because she filed the EEOC charges incorporated herein to oppose the defendant's discriminatory and retaliatory acts and practices, in violation of the NYHRL.

26. Dr. Brodsky has suffered, is now suffering and will continue to suffer certain kinds of irreparable injury and monetary damages unless and until this Court grants relief to the plaintiff.

#### **FOURTH CLAIM**

27. Plaintiff incorporates paragraphs 1 through 26 by this reference.

28. Kaleida Health retaliated against Dr. Brodsky because she opposed the defendant's discriminatory and retaliatory acts and practices, as is set forth in detail in her charges of discrimination incorporated herein, in violation of the NYEPL.

29. Kaleida Health retaliated against Dr. Brodsky because she filed the EEOC charges incorporated herein to oppose the defendant's discriminatory and retaliatory acts and practices, in violation of the NYEPL.

30. Dr. Brodsky has suffered, is now suffering and will continue to suffer certain kinds of irreparable injury and monetary damages unless and until this Court grants relief to the plaintiff.

#### **REQUEST FOR RELIEF**

WHEREFORE, the plaintiff respectfully requests that this Court:

A. Enter a judgment declaring that the acts and practices of the defendant complained of herein are in violation of Title VII, the EPA, the NYHRL and the NYEPL;

B. Issue a permanent injunction enjoining and permanently restraining these violations of Title VII, the EPA, the NYHRL and the NYEPL;

C. Issue a permanent injunction requiring and directing the defendants to take such affirmative action as is necessary to ensure that the effects of these unlawful acts and practices are eliminated and do not continue to affect plaintiff's employment;

D. Issue a permanent injunction requiring and directing the defendants to place the plaintiff in the position she would have occupied but for defendant's discriminatory acts and practices and retaliatory treatment of her, and make her whole for all earnings and benefits she would have received but for defendant's discriminatory actions and retaliatory treatment;

E. Award to the plaintiff back pay, liquidated damages and front pay (as appropriate), as and to the extent allowed by Title VII, the EPA, the NYHRL and the NYEPL;

F. Award to the plaintiff compensatory damages as and to the extent allowed by Title VII, the EPA, the NYHRL and the NYEPL;

G. Award to the plaintiff punitive damages as and to the extent allowed by Title VII and the NYHRL;

H. Award to plaintiff the costs of this action, including her reasonable attorneys' fees, as and to the extent allowed by Title VII, the EPA, the NYHRL and the NYEPL;

I. Grant interest and such other and further relief as this Court deems just and proper.

**PLAINTIFF DEMANDS A TRIAL BY JURY**

Dated: Buffalo, New York  
March 27, 2007

Respectfully submitted,

KAVINOKY COOK LLP

By: /s/ Randolph C. Oppenheimer  
Randolph C. Oppenheimer, Esq.  
*Attorneys for Plaintiff*  
*Linda Brodsky, M.D.*  
726 Exchange Street, Suite 800  
Buffalo, New York 14210  
Tel. (716) 845-6000  
Fax (716) 845-6474  
E-mail: [roppenheimer@kavinokycocook.com](mailto:roppenheimer@kavinokycocook.com)

05022/24296/285624

# **EXHIBIT A**



**Attachment to Charge of Discrimination: Linda Brodsky, M.D., v Kaleida Health et al.**

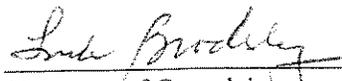
Additional named employer, labor organization, employment agency apprenticeship committee, state or local government agency who discriminated against me:

Name: **Margaret Paroski, M.D.**  
Address: Executive Vice President and Chief Medical Officer  
Kaleida Health  
100 High Street  
Buffalo, New York 14203  
County: Erie  
Telephone: (716) 859-2834

Name: **Robert Nolan**  
Address: Senior Vice President  
General Counsel/ Legal Services  
100 High Street  
Buffalo, New York, 14203  
County: Erie  
Telephone: (716) 859-2834

Name: **James Foster, M.D.**  
Address: Chief Medical Officer  
Women and Children's Hospital/Kaleida Health  
219 Bryant Street  
Buffalo, New York 14222  
County: Erie  
Telephone: (716) 878-7000

I swear or affirm that this page is page 2 of my charge dated January 11, 2007, that I have read page 1 through page 4 of my charge and that my charge is true to the best of my knowledge.

  
\_\_\_\_\_  
Signature of Complainant

  
\_\_\_\_\_  
Subscribed and sworn to before me  
this 11 day of January, 2006

**ELISHA J. BURKART**  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires 05/15/20 10

**Attachment to Charge of Discrimination and Retaliation:**  
**Linda Brodsky, M.D., v Kaleida Health et al.**

**The particulars of my charge of discrimination are:**

I am a medical doctor (Otolaryngologist) and have been employed by Kaleida Health (Kaleida) and its predecessor, the Children's Hospital of Buffalo since 1984. I am the Chief of Pediatric Otolaryngology at the Women's and Children's Hospital of Buffalo ("Hospital"), which is part of the Kaleida Health system.

I am the plaintiff in a lawsuit pending in the United States District Court for the Western District of New York (01-CV-0676Sr) commenced September 25, 2001, alleging gender discrimination and retaliation by Kaleida pertaining to my employment with Kaleida. ("federal discrimination lawsuit"). The federal discrimination lawsuit was preceded by the filing of two charges of discrimination and retaliation with the EEOC respecting Kaleida: Charge No. 165A00725 (July 21, 2000) and Charge No. 165A10387 (March 26, 2001) and the EEOC issuance of "right to sue" letters to these charges on June 27, 2001. I have been actively pursuing my claims in that lawsuit. As a result, Kaleida has continued to relentlessly retaliate against me. The purpose and effect of the retaliation has been to negatively affect the terms and conditions of my employment and make them so intolerable that I will be constructively discharged (i.e., forced to resign). Moreover, Kaleida is trying to build a paper trail of disciplinary action to support what Kaleida hopes will become a basis on which to terminate my employment without appearing to do so in retaliation for my pursuit of my claims.

Specifically, since approximately March 18, 2006, solely motivated by its intent to retaliate against me as a result of my ongoing federal discrimination lawsuit, Kaleida has done the following:

1. My employment relationship with the Hospital is now inappropriately supervised, controlled and filtered by Robert Nolan, Senior Vice President General Counsel/Legal Services (Kaleida's attorney). No other Kaleida physician has had this supervisory filter and control imposed. The result of this negative job condition is that no one in Kaleida's administration will talk with me about any subject without Mr. Nolan's approval and the general Hospital staff, with knowledge that Mr. Nolan is watching me, now view me as a pariah, thereby impeding effective communications and work relationships on matters vital to my livelihood which occur at the Hospital (including administration, teaching, research, surgery, clinical work and patient care). My professional existence has been primarily based at the Hospital since 1983. This global-punitive action of Kaleida exemplifies Kaleida's determination to undermine my livelihood in an effort to constructively force me to depart from my Kaleida employment.
2. Similarly, Margaret Paroski, M.D., Executive Vice President and Chief Medical Officer at Kaleida, has made it her mission to "catch me" in rules violations. She has given instructions to people in the Hospital to watch me and report me for any technical rule violation. No other Kaleida physician is being watched and reported upon in this manner. The result has been selective enforcement of hospital policies concerning, among other things, wearing a surgical "mask" or being a "disruptive physician." As a result, colleagues now keep a distance from me or refuse to work with me for fear they will be targeted by Dr. Paroski or James Foster, M.D., Chief Medical Officer at the Hospital, simply because they are talking to me or working with me. Moreover, Dr. Paroski tried to have my license to practice medicine revoked by reporting one of these rules violations to

the New York State Office of Professional Medical Conduct (OPMC), which ultimately dismissed the complaint, but not until I went through an anxiety producing process with the OPMC.

3. Although I have provided services to the Hospital since 1983, and have had offices in the Hospital since 1983, Kaleida has recently taken away my office space and other support, including personnel and use of the D1 ENT Clinic which sees more than 7000 patients per year.
4. Kaleida has taken steps to remove me as Chief of Pediatric Otolaryngology by engaging in active recruitment of other pediatric otolaryngology surgeons to take my place, including attempting to recruit my partners and break up our partnership in violation of our partnership agreement, all of which has undermined my position as Chief, and affected my relations with hospital staff. I am one of the most senior Hospital employees in this administrative post and maintain an exemplary work record. (I was first appointed Co-Director of Pediatric Otolaryngology at the Hospital in 1987 and was subsequently appointed full director (now known as Chief) in 1994 and have held that position since that date.)
5. Because I have refused to give up my lawsuit about discrimination, wherever I go in the hospital, staff look at me the way one looks at a person who is the object of rumor and innuendo, all because Kaleida, through Dr. Paroski, Dr. Foster, Mr. Nolan and others, have made it their personal business to advertise that I am not welcome at the hospital, notwithstanding my life's work there.

My extraordinary record of outstanding responsibilities, qualifications, achievements and contributions as a Kaleida employee is undeniable. There is absolutely no legitimate justification for any of Kaleida's negative terms, and conditions of employment or retaliatory actions against me.

As a result of these and other discriminatory actions against me I have suffered considerable financial loss and injury to my reputation and career. I believe these actions have been in willful violation of the Equal Pay Act, Title VII of the Civil Rights Act of 1964, the New York Human Rights Law, and the New York Equal Pay Law, as amended.

I swear or affirm that these pages are pages 3 and 4 of my charge dated January 11, 2007, and that I have read pages 1 through 4 of my charge and that my charge is true to the best of my knowledge, information and belief.

  
\_\_\_\_\_  
Signature of Complainant

  
\_\_\_\_\_  
Subscribed and sworn to before me  
this 11 day of January, 2006

# **EXHIBIT B**

**AMENDED CHARGE OF DISCRIMINATION**

This form is affected by the Privacy Act. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

FEPA  
 EEOC

**AMENDED 525-2007-00431**

**New York State Division of Human Rights**

and EEOC

State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.)

**LINDA BRODSKY, M.D.**

Date of Birth

Street Address

**65 LeBrun Circle**

City, State and ZIP Code

**Amherst, NY 14226**

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two are named, list under PARTICULARS below.)

Name

**KALEIDA HEALTH**

No. Employees, Members

**500**

Phone No. with Area Code

**(716) 859-2834**

Street Address

**100 High Street**

City, State and ZIP Code

**Buffalo, NY 14203**

Name

**See attachment for additional parties**

No. Employees, Members

Phone No. with Area Code

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

RACE  COLOR  SEX  RELIGION  NATIONAL ORIGIN  
 RETALIATION  AGE  DISABILITY  OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

**07/1983**

**Continuing**

CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

**The particulars are attached**

**RECEIVED**

**12 FEB 2007**

**E.E.O.C. BULO**

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

02/12/2007  
Date

Linda Brodsky  
Charging Party Signature  
**LINDA BRODSKY, M.D.**

NOTARY - When necessary for State or Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

Linda Brodsky  
SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE  
(month, day, year) 12 day of February, 2007.

**ELISHA J. BURKART**  
Notary Public, State of New York

New York Qualified in Erie County  
My Commission Expires 05/15/2010

**Attachment to Amendment to Charge of Discrimination:**  
**Linda Brodsky, M.D., v Kaleida Health et al.**  
**Amended Charge #525-2007-00431**

Additional named employer, labor organization, employment agency apprenticeship committee, state or local government agency who discriminated against me:

Name: **Margaret Paroski, M.D.**  
Address: Executive Vice President and Chief Medical Officer  
Kaleida Health  
100 High Street  
Buffalo, New York 14203  
County: Erie  
Telephone: (716) 859-2834

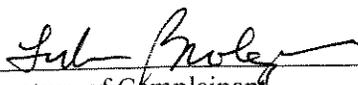
Name: **Robert Nolan**  
Address: Senior Vice President  
General Counsel/ Legal Services  
Kaleida Health  
100 High Street  
Buffalo, New York, 14203  
County: Erie  
Telephone: (716) 859-2834

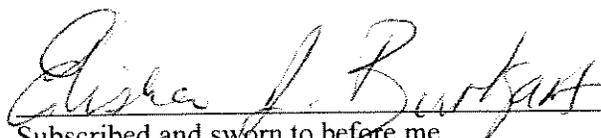
Name: **David R. Whipple**  
Address: Senior Vice President  
Human Resources  
Kaleida Health  
100 High Street  
Buffalo, New York, 14203  
County: Erie  
Telephone: (716) 859-2834

Name: **Cheryl Klass**  
Address: President  
Women and Children's Hospital/Kaleida Health  
219 Bryant Street  
Buffalo, New York 14222  
County: Erie  
Telephone: (716) 878-7000

Name: **James Foster, M.D.**  
Address: Chief Medical Officer  
Women and Children's Hospital/Kaleida Health  
219 Bryant Street  
Buffalo, New York 14222  
County: Erie  
Telephone: (716) 878-7000

I swear or affirm that this page is page 2 of my charge dated February 12, 2007, that I have read page 1 through page 3 of my charge and that my charge is true to the best of my knowledge.

  
\_\_\_\_\_  
Signature of Complainant

  
\_\_\_\_\_  
Subscribed and sworn to before me  
this 12 day of February, 2007

FLISHA J. BURKART  
Notary Public, State of New York  
Qualified in Erie County  
Commission Expires 05/15/2010

**Attachment to Amendment to Charge of Discrimination and Retaliation:**  
**Linda Brodsky, M.D., v Kaleida Health et al.**  
**Amended Charge #525-2007-00431**

**The particulars of my charge of discrimination are:**

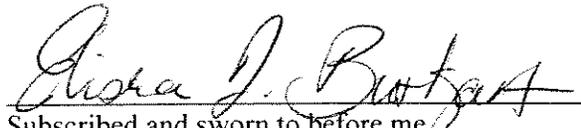
In addition to those things complained of in charge number 525-2007-00431 which was filed on January 12, 2007, and since that time, the charged party, Kaleida Health, did terminate my employment effective February 2, 2007. As noted in my original charge of discrimination, Kaleida has been trying to create a paper trail of "behavioral issues" and "rules violations" in order to justify terminating me when the real reason is retaliation for pursuing my claims of discrimination. Kaleida has now fabricated a reason for my termination which is completely false and pretextual.

As a result of these and other discriminatory actions against me I have suffered considerable financial loss and injury to my reputation and career. I believe these actions have been in willful violation of the Equal Pay Act, Title VII of the Civil Rights Act of 1964, the New York Human Rights Law, and the New York Equal Pay Law, as amended.

I swear or affirm that this is page 3 of my charge dated February 12, 2007, and that I have read pages 1 through 3 of my charge and that my charge is true to the best of my knowledge, information and belief.



Signature of Complainant

  
Subscribed and sworn to before me  
this 12 day of February, 2007

# EXHIBIT C

**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)**

To: **Linda Brodsky**  
**65 Le Brun Circle**  
**Amherst, NY 14226**

F **Buffalo Local Office - 525**  
 r **6 Fountain Plaza**  
 o **Suite 350**  
 m **Buffalo, NY 14202**  
 :

*On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR § 1601.7(a))*

Charge No.	EEOC Representative	Telephone No.
<b>525-2007-00431</b>	<b>David Ging, Investigator</b>	<b>(716) 551-3035</b>

*(See also the additional information enclosed with this form.)*

**NOTICE TO THE PERSON AGGRIEVED:**

**Title VII of the Civil Rights Act of 1964 and/or the Americans with Disabilities Act (ADA):** This is your Notice of Right to Sue, issued under Title VII and/or the ADA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII or the ADA **must be filed in federal or state court WITHIN 90 DAYS** of your receipt of this Notice or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

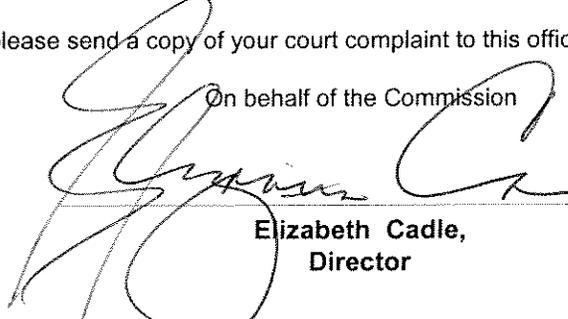
- More than 180 days have passed since the filing of this charge.
- Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of the charge.
- The EEOC is terminating its processing of this charge.
- The EEOC will continue to process this charge.

**Age Discrimination in Employment Act (ADEA):** You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, **the paragraph marked below applies to your case:**

- The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice.** Otherwise, your right to sue based on the above-numbered charge will be lost.
- The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of your charge, you may file suit in federal or state court under the ADEA at this time.

**Equal Pay Act (EPA):** You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission  
  
**Elizabeth Cadle,**  
**Director**

MAR 09 2007  
 (Date Mailed)

Enclosure(s)

cc: **Robert C. Weissflach, Esq.**  
**Harter Secrest & Emery**  
**12 Fountain Plz., Suite 400**  
**Buffalo, NY 14203**

**Kaleida Health**  
**100 High Street**  
**Buffalo, NY 14203**

**Elisha J. Burkart, Esq.**  
**Kavinoky Cook**  
**726 Exchange Street**  
**Buffalo, NY 14210**

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