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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK:

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EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

**COMPLAINT AND JURY  
TRIAL DEMAND**

Civil Action No.: 05-4601  
(NG) (RM)

PETRONA SIMMS, FREDERICK HYLTON,  
MARIE CILUS, AND TANYA WEIR,

Plaintiffs-Intervenors,

v.

WILLIAM O. BENENSON REHABILITATION  
PAVILION & FLUSHING MANOR GERIATRIC  
CENTER, INC.,

Defendants.

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**PRELIMINARY STATEMENT**

Plaintiffs-Intervenors Petrona Simms, Frederick Hylton, Marie Cilus, and Tanya Weir seek as set forth herein declaratory, injunctive and equitable relief, compensatory and liquidated and punitive damages, litigation costs and attorneys' fees for, *inter alia*, racial

and/or national origin discrimination and retaliation suffered by them during their employment by Defendants in violation of and pursuant to Title VII of the Civil Rights Acts of 1964, as amended by Civil Rights Act of 1991, 42 U.S.C. §§ 2000e-*et seq.* ("Title VII"); New York State Human Rights Law, New York Executive Law §290, *et seq.* ("NYSHRL"), and New York City Human Rights Law, New York City Administrative Code §§ 8-101, *et seq.* and 107 ("NYCHRL").

### **THE PARTIES**

1. Plaintiff-Intervenor Petrona Simms is a Black female of Caribbean descent (Jamaican) who resides at 118-28 219<sup>th</sup> Street, Cambria Heights, NY 11411.

2. Plaintiff-Intervenor Frederick Hylton is a Black male of Caribbean descent (Jamaican) who resides at 652 Watkins Street, Brooklyn, NY 11212.

3. Plaintiff-Intervenor Marie Cilus is a Black female of Caribbean descent (Haitian) who resides at 596 East 84<sup>th</sup> Street, Brooklyn, New York 11236.

4. Plaintiff-Intervenor Tanya Weir is a Black female of Caribbean descent (Jamaican) who resides at 29 Linden Boulevard, Brooklyn, NY 11226.

5. Plaintiff, the United States Equal Employment Opportunity Commission (the "EEOC"), is the agency of the United States of America charged with the administration, interpretation, and enforcement of Title VII of the Civil Rights Acts of 1964, as amended by Civil Rights Act of 1991, 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)(I).

6. Defendants William O. Benenson Rehabilitation Pavilion and Flushing Manor Geriatric Center, Inc. ("Defendants" or "the Facilities") are domestic corporations organized and doing business under and by virtue of the laws of the State of New York and

the United States and conduct business at 36-17 Parsons Boulevard, Flushing, New York 11354, operating as rehabilitation and geriatric care health facilities.

7. At all relevant times, Defendants have employed at least fifteen (15) employees during the relevant time period.

8. Defendants have continuously been an “employer” engaged in an industry affecting commerce and are “employers” within the meaning of §§ 701(b), (g), and (h) of Title VII, 42 U.S.C. § 2000e-(b), (g), and (h); §290, *et seq.* of the New York Executive Law, and § 8-107, *et. seq.* of the New York City Administrative Code.

### **JURISDICTION**

9. Jurisdiction of this Court is invoked pursuant to 42 U.S.C. § 2000e-5(f); 28 U.S.C. §§ 1331, 1343(a)(4), 2201, and 2202. Jurisdiction over state and city law claims is invoked pursuant to 28 U.S.C. § 1367.

10. Venue is found in the Eastern District of New York pursuant to 28 U.S.C. § 1391(b).

### **PROCEDURAL HISTORY**

11. Plaintiffs-Intervenors dually filed Charges of Discrimination with the EEOC in a timely manner, and otherwise complied with all jurisdictional prerequisites for filing claims under Title VII and the NYCHRL.

12. Following an investigation, on or about July 29, 2005, the EEOC issued a probable cause determination finding that Defendants had, *inter alia*, discriminated against Plaintiffs-Intervenors and other Black and/or Caribbean employees by engaging in discriminatory practices on the basis of race and/or national origin, and subjecting them to

retaliation for complaining of, opposing, and/or refusing to participate in the discriminatory practices. See Notice of Determination, annexed hereto as Exhibit A.

13. After a failed conciliation process, the matter was recommended for enforcement by the EEOC.

14. On or about September 29, 2005, the EEOC commenced the instant action against Defendants pursuant to Sections 706(f)(1) and (3) and Section 707 of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3) and § 2000e-6 (Title VII), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

**ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

15. Plaintiffs-Intervenors are Certified Nurse Aides (“CNA’s”) licensed by the New York State Department of Health. CNA’s in New York State pass both a New York State-approved Clinical Skills Performance Examination and a New York State Nurse Aide Competency Examination before receiving certification. All Plaintiffs-Intervenors have been at all times fully qualified CNA’s and have performed their job duties in a satisfactory manner.

16. Plaintiffs-Intervenors are and/or were formerly employed by Defendants at Defendants’ Facilities.

17. In or around October 2001, Defendants, by and through their owner Dr. Esther Benenson (“Benenson”), hired Grace Barbieri (“Barbieri”), a Caucasian American, as Director of Nursing Services (“DNS”). As DNS, Barbieri was and is authorized by Defendants and Benenson to direct, manage, supervise, oversee all nursing care in the Facilities and had and has actual and/or implicit authority to recommend, impose, and effect disciplinary actions against nursing staff, including CNA’s, and to suspend and terminate employment, and in this regard had authority to undertake or recommend tangible employment decisions affecting

employees and/or direct the daily work activities of employees, including Plaintiffs-Intervenors.

18. Since October 2001, as part of a continuing violation, Defendants, Benenson, Barbieri, and other supervisors and managers, have engaged in unlawful employment practices in violation of, *inter alia*, Title VII, 42 U.S.C. § 2000e, *et seq.* As part of the unlawful employment practices, Black employees and/or those of Caribbean descent working at or employed by the Facilities have been subjected to discrimination on a continuing basis because of race and/or national origin by, among other things, being denied equal terms, conditions and privileges of employment; subjected to a racially/ethnically abusive and hostile work environment; subjected to adverse employment actions which include being suspended without pay and termination of employment; and retaliated against for complaining of the unfair and discriminatory treatment to which they have been subjected. This discriminatory treatment is not suffered by non-Black and/or non-Caribbean employees.

19. Since at least the time of Benenson's hiring of Barbieri, Barbieri, supervisors under her direction, as well as other management, have continuously discriminated against Black and/or Caribbean employees and subjected them to discrimination, harassment, and a hostile work environment on the basis of their race and/or national origin, and retaliated against them for complaining of the discriminatory treatment in violation of federal, state, and local laws.

**Racial Epithets and Remarks and Taunting of Black and/or Caribbean Employees**

20. While performing their jobs, Barbieri, supervisors, and others with the knowledge and consent of Benenson, subjected Plaintiffs-Intervenors and other Black and/or Caribbean employees to a continuous stream of racial/ethnic epithets and taunts directed at

them, made by Barbieri, supervisory staff, and/or residents at the Defendants' Facilities, which included:

- a. *"Black Nigger;"*
- b. *"Monkey;"*
- c. *"Go back on the Banana Boat where you came from;"*
- d. *"You talk like you're at a fish market;"*
- e. *"Haiti is no good; you should be glad you have a job at all;"*
- f. *"That's what you're here for...to clean up the shit;"*
- g. *"Are you all smoking weed?" (a remark directed at Jamaicans);*
- h. *"Your face looks like the back of a bus;"*
- i. *"What were you, raised by wolves?"*
- j. *"You look like you just got off 42<sup>nd</sup> Street.";*
- k. *"You're nothing but a CNA with a stethoscope;"*
- l. *"We have too many Blacks and Haitians working in this Facility;"*
- m. *"You know how those Haitians are;"*
- n. *"You are garbage...you are nothing!"*
- o. *"All the Haitians are the same, they kill one another and do voodoo."*
- p. *"Here comes the fish market.";*
- q. *"All you Niggers are good for is raping and sex."*

21. The racial/ethnic epithets and derogatory remarks were made and directed at Black and/or Caribbean employees on a continuing basis and have persisted for a number of years, and certainly since at least the time of Barbieri's hiring, and were made to discriminate against, intimidate, harass, demean, and insult Plaintiffs-Intervenors and other Black and/or Caribbean employees.

22. As further evidence of Defendants' discriminatory animus, Barbieri and those under her supervision and control have reprimanded Black and/or Caribbean CNA's for their Caribbean accents and have threatened to terminate employment on account of their accents, a threat not made to non-Black and/or Caribbean employees who speak their native language(s) at work.

**Selective Discrimination, Harassment, and Discipline Suffered  
by Black and/or Caribbean Employees**

23. Defendants, their management, Barbieri, and those supervisors under Barbieri's direction, with Benenson's knowledge and consent, fostered, condoned, encouraged, and perpetuated a racially/ethnically hostile environment at the Facilities that was intended to and did in fact deprive Plaintiffs-Intervenors and other Black and/or Caribbean employees of equal employment opportunities and adversely affected their status as employees because of their race, national origin, and/or complaint of or refusal to participate in or acquiesce to the discriminatory practices.

24. In discriminating against and depriving Plaintiffs-Intervenors and other Black and/or Caribbean employees of fair and equal employment opportunities, Barbieri and/or others acting at Defendants' and Barbieri's directives selected employees of Black and/or Caribbean descent for discrimination and harassment and then subjected them to: continual racial epithets; public ridicule; assigned them different and undesirable tasks/work assignments; badgered them in order to provoke a response or lack of response, which was then used as a basis upon which to impose an adverse employment action; fabricated false or misleading reasons to impose discipline; issued unwarranted verbal or written warnings; and suspended and/or terminated the employment of Plaintiffs-Intervenors and other Black and/or Caribbean employees. These adverse and hostile acts were committed and continue to be committed with the full knowledge, encouragement, and consent of Defendants and their owner Benenson.

25. As part of this practice of false reports, Defendants created and submitted false or unjustified write-ups as the basis upon which to impose disciplinary action to be taken against Black and/or Caribbean employees. In this regard, Barbieri and other supervisors and

managers did or attempted to direct or enlist patients and/or staff to participate in making of false, misleading, or inaccurate complaints against Black and/or Caribbean employees so as to provide a basis upon which to take adverse employment action.

26. The fabricated, misleading, or inaccurate reports, some of which are believed to have been supplied by Defendants to the New York State Department of Health ("NYSDOH"), which has authority over the Defendant Facilities, were made with the knowledge that the reports did or could have subjected CNA's to investigation by NYSDOH, jeopardized or could have threatened suspension or loss of their CNA licenses, and also potentially imposed criminal liability, and intended to intimidate and silence complaining Plaintiffs-Intervenors and other Black and/or Caribbean employees.

**Continuing Retaliation against Black and/or Caribbean CNA's**

27. Numerous complaints of racial/national origin discrimination, harassment, and retaliation were made to Defendants, including owner Benenson. These complaints of discrimination were made to Defendants continually and over the years to Defendants and their management, including, but not limited to Benenson, Administrator Richard Sherman, General Counsel Michael Borelli, Barbieri, and other supervisors at the Facilities, and also included three (3) separate occasions where formal written complaints ("Employee Complaints") were presented to Defendants and their administration(s), complaining of race/national origin discrimination, a continuing hostile work environment, and ongoing harassment and abuse.

28. After receiving the Employee Complaints, Defendants engaged in continuing retaliation against Plaintiffs-Intervenors and other signatories for their complaints of discrimination, hostile work environment, and retaliation, by making false reports against signatory Plaintiffs-Intervenors and other signatories, imposing disciplinary actions which



included, but was not limited to, suspension and termination of Plaintiffs-Intervenor(s)' and other signatories' employment, and pursuing a course of continued discrimination and harassment against them for exercise of a protected right.

***Defendants' Refusal to Conduct an Investigation and Remedy  
Ongoing Discrimination, Hostile Work Environment, and Retaliatory Acts***

29. Disturbingly, not only did Defendants fail to take remedial action with respect to the Employee Complaints made and submitted over the years, Defendants also refused to conduct proper investigations of the complaints regarding discrimination, hostile work environment, and retaliation. Indeed, Defendants and Barbieri reprimanded, and intimidated supervisors who stood in the way of or objected to Defendants' racially/ethnically discriminatory practices.

30. By way of example, Plaintiffs-Intervenor and other complaining employees prepared and submitted a formal written complaint to Defendants in September 2003 ("September 2003 Employee Complaint"). In the September 2003 Employee Complaint, Plaintiffs-Intervenor complained of and advised Defendants of the hostile work environment and the unfair and discriminatory treatment to which they and other similarly situated employees were being subjected. Plaintiff-Intervenor Weir approached owner Benenson and tried to speak with her directly to address the Employee Complaint. Benenson, though, refused to accept the Employee Complaint and directed Weir to address any complaints to Barbieri – the very individual engaged in the various discriminatory acts, retaliatory treatment and hostile work environment subject of the Employee Complaints.

31. Over the years and throughout the relevant time periods herein, Defendants and, in particular, Benenson have refused to acknowledge or address continuing complaints of racial/ethnic discrimination, harassment, and retaliation to which Black and/or Caribbean

employees are subjected at the Defendants' Facilities. Indeed, when complaints have been made about Barbieri's and other supervisors' treatment of Black and/or Caribbean employees, Defendants and Benenson have repeatedly failed to undertake measures required by law to investigate and/or effect prompt remedial action. In refusing to correct racially/ethnically discriminatory policies and practices at the Facilities, Benenson has told complaining employees, "*I don't care what Barbieri has done to you;*" "*Ms. Barbieri has saved me too much money;*" and "*If you don't like it, you know where the door is, you can leave at anytime,*" ignoring pleas that prompt remedial action be taken to rid the Facilities of the discriminatory/retaliatory treatment to which Black and/or Caribbean employees were being subjected, and which by act and by deed fostered, encouraged, condoned, and permitted Barbieri to continue the unlawful practices.

**Continuing Discrimination, Harassment, and Retaliation against Plaintiffs-Intervenors**

**Petrona Simms**

32. Plaintiff-Intervenor Petrona Simms ("Simms"), a Black female of Caribbean descent, was subjected to Defendants' continuing discriminatory and retaliatory practices. Defendants and Barbieri targeted Simms for discrimination, harassment, and retaliation for her complaints of and repeated objections to Defendants' treatment of her and other Black and/or Caribbean employees.

33. Indeed, in addition to her other complaints, Simms was also influential in the submission of the September 2003 Employee Complaint to Defendants. Shortly after Simms signed and assisted in regard to the September 2003 Employee Complaint, she received a written warning from Barbieri falsely claiming that Simms had a "*history of poor attitude.*" During a meeting, Barbieri told Simms that she spoke like she was at a "*fish market*" and that

if she did not change her accent she would fire her. This remark was heard by fellow CNA Angela Deshong (a Black female of Panamanian descent), whose recollection is that Barbieri stated something to the effect that *"You're not at the market of Jamaica...and if you don't change the way you speak, you'll be fired."*

34. Barbieri "wrote-up" Simms and then imposed further and additional disciplinary measures against Simms based on her race, national origin, and/or in retaliation for Simms having complained about the discrimination and signing the September 2003 Employee Complaint. Thereafter, Simms suffered further discrimination and harassment. Then, on or about June 9, 2004, Barbieri again falsely accused Simms of "poor patient care." Barbieri's charge, however, backfired on her when it was proven that the patient had, in fact, received proper care. Barbieri back-tracked from her accusation and claimed that someone else must have cleaned-up the patient before her inspection, which claim was disproved when several Facility staff members disputed Barbieri's charge against Simms and confirmed Simms as having given the patient proper care.

35. Despite the falsity of the charge, Barbieri still issued a written warning to Simms regarding the patient's care. Barbieri, looking for a reason to suspend Simms, baited her, causing Simms to ask Barbieri, *"Why don't you like me? Am I too Black for you?"* in answer to which Barbieri claimed that Simms had called her a "racist" by the question and suspended Simms without pay for three (3) days and further threatened to terminate her employment.

36. On or about June 29, 2004, Simms filed a Charge of Discrimination against Defendants with the New York State Division of Human Rights. On or about that same date, Barbieri suspended Simms, this time claiming that Simms was insubordinate and had engaged

in improper conduct. This charge was fabricated and further proof of retaliation for Simms' complaints of unfair treatment and/or for a discussion Simms had with a co-worker Yanick Jean-Louis ("Jean-Louis"), another Black employee of Haitian descent, who herself filed claims of race and/or national origin discrimination with the EEOC and the New York State Division of Human Rights. In this instance, Simms was off-duty and discussing with Jean-Louis the hostile work environment. When Barbieri found out about the conversation, she suspended Simms and told her not to come back to work unless she came back with a union representative.

37. Although banned from the workplace, days later Barbieri demanded that Simms appear at Defendants' Facilities on her day off and threatened termination of employment if she did not appear. Barbieri relented only after Simms made clear that she could not appear because of a prior engagement, but insisted that Simms report to her the next morning. On the following morning, on or about July 2, 2004, Barbieri suspended Simms for five (5) days without pay.

38. On or about July 7, 2004, Simms and others signed and presented another formal written complaint of discrimination and hostile work environment to Defendants and its owner Benenson ("July 2004 Employee Complaint"). When Benenson was attempted to be served the July 2004 Employee Complaint, Benenson responded, "*I don't care what Barbieri has done to you;*" "*Ms. Barbieri has saved me too much money;*" The July 2004 Employee Complaint effected no change in the discriminatory policies and practices, and following her return to work Defendants have undertaken further and additional acts intended to force Simms' termination.

39. Barbieri's baseless discriminatory/retaliatory treatment of Simms and her complaints set forth in the July 2004 Employee Complaint was then directed at Supervising Nurse Ina Zinovkina. After suspending Simms, Barbieri called in Zinovkina and reprimanded her for siding with Simms and other complaining Black and/or Caribbean employees regarding their complaint of discrimination. Barbieri threatened to fire Zinovkina and, as reported to others, have her nursing license pulled, if Zinovkina did not resign her position. Upon information and belief, Barbieri threatened that if Zinovkina did not do as Barbieri directed and immediately resign her position with Defendants: that she was "*going to make [her] life a living misery* " and would "*pull [her] license if [she] f[ought] this.*" Defendants' and Barbieri's actions forced Zinovkina's discharge from employment and in keeping with their practice of suppressing complaints of discrimination, retaliated against Zinovkina for her complaint of and refusal to participate in or condone the discriminatory treatment and hostile work environment suffered by Simms and other Black and/or Caribbean employees. This was not an isolated occurrence, but rather an ongoing practice of racially/ethnically bullying tactics by Defendants and Barbieri in response to the exercise of a legally protected right to report Title VII and other unfair employment practices.

40. Because of the hostile work environment, disparate treatment, retaliation, and fearful of being falsely written-up and/or reported to state authorities, Simms has not returned to work.

Frederick Hylton

41. Plaintiff-Intervenor Frederick Hylton ("Hylton"), a Black male of Caribbean descent, was subjected to Defendants' continuing discriminatory and retaliatory practices and still to this day is subjected to those practices. Since at least 2002, Defendants have continued

to discriminate against and repeatedly brought false charges against Plaintiff-Intevenor Hylton and imposed disciplinary measures, including suspension from work without pay, on a continuing basis. The acts for which Hylton was disciplined were unfounded and/or were taken against him on the basis of race, national origin, and/or as retaliation for him complaining of racial/ethnic discrimination and harassment, being a signatory to and having assisted in securing the various signed Employee Complaints, and for his refusal to acquiesce to the discriminatory practices.

42. In addition to his other complaints of discrimination, hostile work environment, and retaliation, Plaintiff-Intervenor Hylton was also a signatory to all three Employee Complaints regarding the mistreatment and disrespect suffered by him and other Black and/or Caribbean CNA's and was, like other Plaintiffs-Intervenors and signatories, selectively targeted for discipline and termination. For this reason, Defendants either fabricated false charges against Hylton or treated him in a dissimilar manner from other non-Black/non-Caribbean employees, who were not targeted for discipline and often excused for such infractions of rules.

43. Particularly egregious was Defendants' treatment of Hylton when he returned from recovery in December 2002 after suffering a heart condition. Once he returned, Defendants and Barbieri remained determined to subject Hylton to further and additional increased hostile treatment despite his recent medical condition. By way of example, the racially/ethnically discriminatory remarks of Barbieri seemed to intensify against Hylton with remarks such as, "*What's going on here – Are you all smoking weed?*" (a remark directed at Jamaicans) and "*You should all be mechanics.*" (a remark made to demean Black and/or Caribbean employees).

44. As part of the continuing discrimination, harassment, hostile work environment, and retaliation, Defendants and Barbieri undertook efforts designed to make an example out of Hylton to intimidate Black and/or Caribbean employees. While Hylton was subjected to ongoing discrimination, harassment, and retaliation, it escalated on or about October 29, 2004, when Defendants and Barbieri terminated Hylton's employment based upon false claims of "unsatisfactory work," "insubordination," "failure to obey orders," "leaving without permission," and "violation of Facility Policies/Rules." These claims were baseless, known to be false, and/or made only to conceal the true racially/ethnically motivated reason for the disciplinary actions and termination of Hylton's employment and in retaliation for him having brought the Employee Complaints against Defendants. Although reinstated, Defendants' motives for rehiring him were revealed later when the discrimination, harassment, and retaliation suffered by him was commenced again in order to show others what they could and/or would do to Black and/or Caribbeans and those that complained or opposed the discriminatory/retaliatory practices. Indeed, to this day, the unlawful treatment of Hylton continues without end as evidenced by Benenson calling Hylton's parents in Florida on three (3) occasions and threatening Hylton with retaliation for his having filed a Charge of Discrimination with the EEOC, Defendants and/or Barbieri having made false reports against Hylton, and taking further adverse employment actions against him.

Marie Cilus

45. Plaintiff-Intervenor Marie Cilus ("Cilus"), a Black female of Haitian descent, was subjected to Defendants' continuing discriminatory and retaliatory practices. Throughout her employment at the Facilities, despite her repeated complaints of Defendants' discrimination and harassment, she was repeatedly reprimanded, written up and/or subjected to

disciplinary action taken against her without basis. This included, but was not limited to being: (i) singled-out regarding work demands and assignments; (ii) unfairly blamed for the care of other employees' patients; (iii) suspended without pay; and (iv) harassed on a continual basis by having a supervisor follow her during shifts who subjected her to heightened scrutiny not imposed upon non-Black and/or non-Caribbean employees.

46. By way of example, on one occasion, after Cilus had completed her shift, Barbieri followed her out to her car in the parking garage and demanded to know where she was going. Cilus explained to her that she had finished her shift and had to go home to attend to her children. Barbieri then, without cause, ordered Cilus suspended from work. Barbieri, though, while believing she had suspended Cilus, actually mistakenly suspended another CNA of Haitian descent evidencing Barbieri's lack of respect and inhumane treatment of Haitians/Caribbean employees whom she considered fungible personnel. Realizing her error, Barbieri withdrew the suspension of the wrongfully suspended CNA and suspended Cilus. Indeed, this was not the only time Cilus was unlawfully suspended and otherwise subjected to unwarranted disciplinary action and differential treatment.

47. Further evidencing the hostile environment to which Cilus was subjected, Defendants, Barbieri, and Supervising Nurse Manjeet Uberoi, verbally abused Cilus and other Haitian/Caribbean CNA's. By way of example, Uberoi would make statements to Cilus such as *"You are garbage...you are nothing!"* This verbal abuse was further evidenced by the remarks of Defendants' management and non-Haitian/Caribbean employees who remarked, *"We have too many Blacks and Haitians working in this Facility"* and *"You know how those Haitians are."*



48. Defendants and Barbieri also condoned the racial/ethnic animosity exhibited against Cilus and other CNA's, who on numerous occasions were referred to as a "*Nigger*" and "*Black Monkey*" by one resident. This resident, and other supervisory staff, further indicated to Cilus and other Black and/or Caribbean CNA's that the sole reason for "people like her" working at the Facility was "*to clean up shit*," a sentiment laughed about by Barbieri and to which Barbieri would say, "*That's what you're here for...to clean up the shit.*"

49. Defendants also discriminated against Black and/or Caribbean CNA's in enforcing an "English-Only" policy. In this regard, Defendants did not allow Cilus and other employees of Caribbean descent to speak their native language and enforced the "English Only" policy by imposing disciplinary measures or retaliation if the policy was violated, while Defendants did not enforce said policy against non-Black and/or non-Caribbean employees who spoke in their native languages at work. Indeed, Supervising Nurse Uberoi personally directed Cilus and others of Caribbean descent not to speak in their native language, a policy encouraged and enforced by Defendants and Barbieri

50. The discriminatory racial and national origin/language practices were also evidenced by non-Caribbean supervisors mocking Caribbean employees' accents, mimicking their language as part of public humiliation, and otherwise suggesting or implying that their language, accent, and speech were inferior.

51. When Cilus complained about the unfair treatment and hostile work environment to which she was being subjected, Barbieri responded by saying, "*It's your word against mine; I can fire you anytime*" and "*Your country [Haiti] is no good; you should be glad you have a job at all.*"

52. Because of Defendants' abusive treatment of her and the hostile work environment to which she was subjected, Cilus requested that she be scheduled for part-time work instead of full-time status. Further, in September, 2004, Cilus once again pleaded to be assigned a supervisor other than Uberoi because of her abuse. A supervisor other than Uberoi was beginning her shift soon and Cilus requested that she be assigned to this other supervisor. Defendants denied her request and told Cilus to "punch out" and "go home," despite her protestations that she wanted to work her shift.

53. A few days later, on or about September 21, 2004, Cilus was told by Barbieri that her employment was being terminated because Cilus had "*abandoned [her] job.*" This reason was false because at no time did Cilus ever abandon her job or refuse to appear for work. The decision to terminate her employment was made to cover for Defendants' racial and ethnic discrimination against her and in retaliation for exercise of a protected right to report discriminatory and harassing treatment.

Tanya Weir

54. Plaintiff-Intervenor Tanya Weir ("Weir"), a Black female of Caribbean descent, was subjected to Defendants' continuing discriminatory and retaliatory practices. In addition to suffering from Defendants' continuing discriminatory and retaliatory policies and practices over the course of time, Weir was subjected to further and additional acts of discrimination and retaliation following the submission of the September 2003 Employee Complaint in which Weir and other Black and/or Caribbean employees complained about the hostile work environment and discriminatory treatment to which they were subjected. Defendants discriminated and retaliated against Weir at that time, beginning with her reassignment to a different floor. At that time, Barbieri stated to Weir in a threatening tone, "*You are being sent*

*up there [to the Ninth Floor] to be watched.”* This was a threat that Barbieri was overheard repeating on several occasions.

55. Consistent with her threats and in further retaliation for her complaints and being both a signatory to and having assisted in the presentation of the Employee Complaints, Barbieri issued two disciplinary notices to Weir, including a suspension without pay for three (3) days shortly after the September 2003 Employee Complaint.

56. The first disciplinary notice following the September 2003 Employee Complaint was given to Weir by Barbieri on or about October 31, 2003.

57. Shortly thereafter, on or about December 16, 2003, Barbieri issued a second disciplinary notice to Weir, this time placing her on suspension without pay, claiming that a patient had complained about her. This claim, like the others, was without basis. Not only had the patient not lodged a complaint about Weir, but upon information and belief, the patient prepared a statement attesting to Weir's skills and abilities as a CNA and praising her for the high level of care provided to her.

58. In further discrimination, harassment, and retaliation, in October 2004, Barbieri terminated Weir's employment, charging that she had "falsified" medical records by claiming that she had personally performed colostomy care on a patient. This claim was, of course, entirely false and wholly fabricated because CNA's are not responsible for making medical record entries regarding performing colostomy care on a patient. Rather, it is the responsibility of an LPN to enter such information into a Treatment Book. Because Weir was not an LPN, she never prepared a medical record stating that she had performed colostomy care on a patient, thus demonstrating the falsity of Barbieri's claims and the pre-textual basis for her termination. The termination of her employment in October 2004 was yet another

discriminatory and retaliatory act suffered by her (having previously been terminated by Defendants).

**Discriminatory Treatment and Harassment of Other Black and/or Caribbean Employees and Claimants and Additional Acts of Retaliation**

59. Upon information and belief, Tamara Resielaid, a Black female believed to be of Caribbean descent, was also subjected to adverse employment actions being taken against her on the basis of race and/or national origin by Defendants and Barbieri, including forcing her unlawful termination

60. Angela Deshong, a Black female of Caribbean descent, was also falsely written up, subjected to adverse actions being taken against her by Barbieri, including being involuntarily terminated (later rescinded), because of her race/national origin and in retaliation for Deshong's active involvement in lodging numerous complaints to Defendants regarding the ongoing discrimination, hostile work environment and retaliation to which she and others continued to be subjected. Indeed, like Simms and Weir, Deshong signed and participated in the preparation and/or submission of the Employee Complaints submitted to management regarding their complaints of on-going discrimination and the racially/ethnically hostile work environment to which they continued to be subjected by Defendants.

61. Upon information and belief, other targeted employees and Claimants subjected to this form of discriminatory and retaliatory treatment with the knowledge and approval of Defendants, include, but are not limited to: Bernadette Augustin; Marie Metellus; Maxine Campbell-Belle; Hortense Jackson; Nerleen Nickie; Christaline Ovide-Pierre; Marie Normil; Pamela Smart; Marie Apollon; and Mary Altador.

62. Defendants discriminated against these other Black and/or Caribbean employees, as they did with Plaintiffs-Intervenors, because of their race, national origin and/or

in retaliation for complaining about said treatment. Further, Defendants have fostered, condoned, encouraged, and perpetuated a racially/ethnically hostile work environment in which racially/ethnically discriminatory policies, practices, treatment, and abuses have been permitted to exist and made manifest in: the racial epithets, slurs, and remarks suffered by Plaintiffs-Intervenors and other Black and/or Caribbean employees; the constant harassment inflicted upon them on a continuing basis; false reporting as a basis upon which to impose discipline; and unlawful suspensions and terminations of employment. This discrimination, retaliation, harassment, and hostile work environment has been persistent, continuing, and relentless against Plaintiffs-Intervenors and other Black and/or Caribbean employees who continue to be aggrieved of oppressive and offensive conduct and retaliation through adverse employment conditions.

***Other Acts Taken Against Plaintiffs-Intevenors and Other Black and/or, Caribbean Employees***

63. On or about September 20, 2005, a Caucasian Charge Nurse was observed by Black and/or Caribbean CNA's push an elderly resident to the ground causing injury to the resident.

64. The Black and/or Caribbean CNA's who witnessed the Caucasian nurse pushing the resident, which included Marie Metellus, a Claimant and cooperating individual in the EEOC action, reported the matter to a Supervising Nurse Bernadette Augustin ("Augustin") and prepared written accounts of the incident causing the resident's injuries.

65. Augustin reported the matter to Defendants and Barbieri and presented them with written accounts prepared by the witness CNA's.

66. Upon information and belief, Defendants and Barbieri attempted to and undertook measures to have the Black and/or Caribbean CNA witnesses blamed for the

resident's injuries instead of the Caucasian Charge Nurse, whose actions were attempted to be suppressed and not properly reported to state agencies responsible for investigation of patient abuse matters.

67. Several days after reporting the incident, Barbieri called Augustin to her office. In the office, Augustin was confronted by Barbieri, Assistant Director of Nursing Lynn McIntyre, and another supervising nurse. Barbieri then attempted to have Augustin change her report of the assault as witnessed by the CNA's. Augustin, a Black, Caribbean refused to prepare a false or misleading report, at which time she was confronted by Barbieri who forced Augustin's termination of employment and escorted her out of the Facilities.

#### **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

68. For years, Defendants have engaged in ongoing unlawful employment practices in violation of Title VII, 42 U.S.C. § 2000e *et seq.*, as amended, which practices include, but are not limited to:

- a. Subjecting Plaintiffs-Intervenors to discrimination and hostile work environment on the basis of their race and/or national origin by terminating and suspending their employment;
- b. Subjecting Plaintiffs-Intervenors to discrimination and hostile work environment by creating, asserting, and reporting false and pre-textual reasons offered to conceal the discrimination and harassment, a result not suffered by non-Black and/or non-Caribbean employees;
- c. Subjecting Plaintiffs-Intervenors to unequal/disparate treatment in the workplace because of their race and/or national origin, causing them to suffer adverse employment actions of the kind and frequency not suffered by non-Black and/or non-Caribbean employees;
- d. Subjecting Plaintiffs-Intervenors to stricter supervision and harsher discipline on the basis of race and/or national origin as compared to other employees who were non-Black and/or of non-Caribbean descent;
- e. Subjecting Plaintiffs-Intervenors to intimidation and harassment by falsely writing-up and also reporting or threatening to report Plaintiffs-

Intervenors and other similarly situated employees to state authorities thereby threatening their licenses and livelihoods;

- f. Subjecting Plaintiffs-Intervenors to a continuous stream of verbal harassment on the basis of race and/or national origin, where Defendants and their supervisors and staff uttered, made, fostered, encouraged, and condoned racial/ethnic epithets and slurs directed at Plaintiffs-Intervenors and other Black and/or Caribbean employees;
- g. Subjecting Plaintiffs-Intervenors to discrimination and hostile work environment on the basis of national origin by forbidding them to use their native language and mocking their accents, while other non-Black and/or non-Caribbean employees were allowed to speak in their native languages;
- h. Subjecting Plaintiffs-Intervenors to discrimination and hostile work environment on the basis of race and/or national origin by continually making derogatory remarks about their national origin, culture, and customs;
- i. Disregarding Plaintiffs-Intervenors' pleas, complaints, and reports of racial and/or national origin discrimination and retaliation against them by failing to properly investigate and take prompt remedial and corrective action to correct the discriminatory and retaliatory practices and failing to discipline supervisors and other management who discriminated and retaliated against Plaintiffs-Intervenors;
- j. Engaging in further retaliation against Plaintiffs-Intervenors after their complaints of racial and/or national origin discrimination and retaliation; and
- k. Benenson's continued encouragement, condonation, and acquiescence to Defendants' practices of discrimination on the basis of race and/or national origin and retaliation as suffered by Plaintiffs-Intervenors, and her continued refusal to prevent, address, or correct Defendants' practices of discrimination or retaliation.

69. The effect of the Defendants' practices complained of above and throughout this Complaint has been to create, implement, perpetuate, foster, encourage, condone, and permit a hostile work environment suffered by Plaintiffs-Intervenors.

70. The purpose and effect of the hostile work environment has been to deprive Plaintiffs-Intervenors of equal employment opportunities and otherwise adversely affect the terms, conditions, and privileges of their employment and their status as employees because of their race, national origin, and/or refusal to participate in discriminatory practices.

71. Defendants' unlawful employment practices against Plaintiffs-Intervenors were intentional and at all relevant times Defendants have acted with malice or reckless indifference to the legally protected rights of Plaintiffs-Intervenors.

**FIRST THROUGH SIXTEENTH CAUSES OF ACTION (FEDERAL CLAIMS)**

**AS AND FOR THE FIRST THROUGH FOURTH  
CAUSES OF ACTION AGAINST DEFENDANTS  
(TITLE VII RACE AND/OR NATIONAL ORIGIN  
DISCRIMINATION CLAIMS)**

72. Plaintiffs-Intervenors Simms, Hylton, Cilus, and Weir respectively repeat, reiterate, and re-allege each and every allegation contained in Paragraphs "1" through "71" of this Complaint against Defendants with the same force and effect as if more fully set forth at length herein.

73. Plaintiffs-Intervenors were, at all relevant times, fully qualified as CNA's and performed their duties in a competent and satisfactory manner.

74. Defendants discriminated against Plaintiffs-Intervenors on the basis of their race and/or national origin by subjecting them to: (1) continuous racial epithets, slurs, insults, and derogatory remarks; (2) false write-ups and/or reports; (3) unwarranted disciplinary actions; (4) suspension of employment; (5) termination from employment; and (6) other adverse employment actions suffered by them as a result of the discrimination.

75. All acts in violation of 42 U.S.C § 2000e, *et seq.*, as amended.



**AS AND FOR THE FIFTH THROUGH EIGHTH  
CAUSES OF ACTION AGAINST DEFENDANTS  
(TITLE VII RACE AND/OR NATIONAL ORIGIN  
DISCRIMINATION - UNEQUAL/DISPARATE  
TREATMENT CLAIMS)**

76. Plaintiffs-Intervenors Simms, Hylton, Cilus, and Weir respectively repeat, reiterate, and re-allege each and every allegation contained in Paragraphs "1" through "75" of this Complaint against Defendants with the same force and effect as if more fully set forth at length herein.

77. Defendants discriminated against Plaintiffs-Intervenors on the basis of their race and/or national origin by Defendants' unequal/disparate treatment of them, who were subjected to unequal/differential treatment, stricter supervision, harsher discipline, suspension and other adverse employment actions of a different kind and at a greater frequency than non-Black and/or non-Caribbean employees not subjected to the kind of supervision, oversight, and discipline imposed upon Black and/or Caribbean employees.

78. All acts in violation of 42 U.S.C § 2000e, *et seq.*, as amended.

**AS AND FOR THE NINTH THROUGH  
TWELFTH CAUSES OF ACTION AGAINST  
DEFENDANTS (TITLE VII HOSTILE WORK  
ENVIRONMENT CLAIMS)**

79. Plaintiffs-Intervenors Simms, Hylton, Cilus, and Weir respectively repeat, reiterate, and re-allege each and every allegation contained in Paragraphs "1" through "78" of this Complaint against Defendants with the same force and effect as if more fully set forth at length herein.

80. The above-referenced discriminatory practices were intended to and did create, effect, permit, and perpetuate a hostile work environment suffered by Plaintiffs-Intervenors,

which were continuing and persistent and so severe and pervasive as to adversely affect the terms and conditions of their employment.

81. All acts in violation of 42 U.S.C § 2000e, *et seq.*, as amended.

**AS AND FOR THE THIRTEENTH THROUGH  
SIXTEENTH CAUSES OF ACTION AGAINST  
DEFENDANTS (TITLE VII RETALIATION  
CLAIMS)**

82. Plaintiffs-Intervenors Simms, Hylton, Cilus, and Weir respectively repeat, reiterate and re-allege each and every allegation contained in Paragraphs "1" through "81" of this Complaint against Defendants with the same force and effect as if more fully set forth at length herein.

83. Defendants retaliated against Plaintiffs-Intervenors for complaining about the discrimination against them on the basis of race and/or national origin and retaliation against them.

84. Defendants retaliated against Plaintiffs-Intervenors for complaining of, presenting and/or being a signatory to the Employee Complaints submitted to Defendants complaining of discrimination against them and other similarly situated employees on the basis of race and/or national origin and retaliation, protected activities known to Defendants.

85. The retaliation included, but was not limited to, constant harassment, further and additional acts of discrimination on the basis of race and/or national origin, suffering unwarranted disciplinary action, causing the suspension and/or termination of their employment, and other adverse employment actions against them.

86. All acts in violation of 42 U.S.C. § 1981.

**SEVENTEENTH THROUGH THIRTY-SECOND  
CAUSES OF ACTION (STATE CLAIMS)**

**AS AND FOR THE SEVENTEENTH THROUGH  
TWENTIETH CAUSES OF ACTION AGAINST  
DEFENDANTS (NYSHRL DISCRIMINATION  
CLAIMS)**

87. Plaintiffs-Intervenors Simms, Hylton, Cilus, and Weir respectively repeat, reiterate, and re-allege each and every allegation contained in Paragraphs "1" through "86" of this Complaint against Defendants with the same force and effect as if more fully set forth at length herein.

88. The above-referenced acts as set forth above establish Defendants' discrimination against Plaintiffs-Intervenors on the basis of their race and/or national origin.

89. Defendants' discrimination against Plaintiffs-Intervenors on the basis of their race and/or national origin violated NY Executive Law § 290, *et seq.*

**AS AND FOR THE TWENTY-FIRST THROUGH  
TWENTY-FOURTH CAUSES OF ACTION  
AGAINST DEFENDANTS (NYSHRL CLAIMS –  
UNEQUAL/DISPARATE TREATMENT)**

90. Plaintiffs-Intervenors Simms, Hylton, Cilus, and Weir respectively repeat, reiterate and re-allege each and every allegation contained in Paragraphs "1" through "89" of this Complaint against Defendants with the same force and effect as if more fully set forth at length herein.

91. The above-referenced acts as set forth above establish Defendants' discrimination against Plaintiffs-Intervenors on the basis of their race and/or national origin as applied by the unequal/disparate treatment of them.

92. Defendants' unequal/disparate treatment discriminated against Plaintiffs-Intervenors on the basis of race and/or national origin violated NY Executive Law § 290, *et seq.*

**AS AND FOR THE TWENTY-FIFTH THROUGH  
TWENTY-EIGHTH CAUSES OF ACTION  
AGAINST DEFENDANTS (NYSHRL CLAIMS -  
HOSTILE WORK ENVIRONMENT)**

93. Plaintiffs-Intervenors Simms, Hylton, Cilus, and Weir respectively repeat, reiterate and re-allege each and every allegation contained in Paragraphs "1" through "92" of this Complaint against Defendants with the same force and effect as if more fully set forth at length herein.

94. The above-referenced discriminatory practices were intended to and did create, effect, permit, and perpetuate a hostile work environment suffered by Plaintiffs-Intervenors, which was continuing and persistent and so severe and pervasive as to adversely affect the terms and conditions of their employment.

95. Defendants created, maintained, encouraged, condoned, acquiesced in, and supported a hostile work environment in violation of NY Executive Law § 290, *et seq.*

**AS AND FOR THE TWENTY-NINTH THOUGH  
THIRTY-SECOND CAUSES OF ACTION  
AGAINST DEFENDANTS (NYSHRL  
RETALIATION CLAIMS)**

96. Plaintiffs-Intervenors Simms, Hylton, Cilus, and Weir respectively repeat, reiterate and re-allege each and every allegation contained in Paragraphs "1" through "95" of this Complaint against Defendants with the same force and effect as if more fully set forth at length herein.

97. The above-referenced acts as set forth above establish the Defendants' retaliation against Plaintiff-Intervenors in the exercise of a protected activity and which caused them to suffer adverse employment actions as a result thereof.

98. Defendants' retaliation against Plaintiffs-Intervenors are all in violation of NY Executive Law § 290, *et seq.*

**THIRTY-THIRD THROUGH FORTY-EIGHTH  
CAUSES OF ACTION (NEW YORK CITY CLAIMS)**

**AS AND FOR THE THIRTY-THIRD THROUGH  
THIRTY-SIXTH CAUSES OF ACTION  
AGAINST DEFENDANTS (NYCHRL  
DISCRIMINATION CLAIMS)**

99. Plaintiffs-Intervenors Simms, Hylton, Cilus, and Weir repeat, reiterate and re-allege each and every allegation contained in Paragraphs "1" through "98" of this Complaint against Defendants with the same force and effect as if more fully set forth at length herein.

100. The above-referenced acts as set forth above establish Defendants' discrimination against Plaintiffs-Intervenors on the basis of their race and/or national origin.

101. Defendants' discrimination against Plaintiffs-Intervenors on the basis of their race and/or national origin violated NYC Admin. Code §§ 8-101, *et seq.*, and § 8-107.

**AS AND FOR THE THIRTY-SEVENTH  
THROUGH FORTIETH CAUSES OF ACTION  
AGAINST DEFENDANTS (NYCHRL  
DISCRIMINATION CLAIMS—  
UNEQUAL/DISPARATE TREATMENT)**

102. Plaintiff-Intervenors Simms, Hylton, Cilus, and Weir respectively repeat, reiterate and re-allege each and every allegation contained in Paragraphs "1" through "101" of this Complaint against Defendants with the same force and effect as if more fully set forth at length herein.

103. The above-referenced acts as set forth above establish Defendants' discrimination against Plaintiffs-Intervenors on the basis of their race and/or national origin as applied by the unequal/disparate treatment of them.

104. Defendants' unequal/disparate treatment discriminated against Plaintiffs-Intervenors on the basis of race and/or national origin violated NYC Admin. Code §§ 8-101, *et seq.*, and specifically § 8-107.

**AS AND FOR THE FORTY-FIRST THROUGH  
FORTY-FOURTH CAUSES OF ACTION  
AGAINST DEFENDANTS (NYCHRL  
DISCRIMINATION CLAIMS - HOSTILE WORK  
ENVIRONMENT)**

105. Plaintiffs-Intervenors Simms, Hylton, Cilus, and Weir respectively repeat, reiterate and re-allege each and every allegation contained in Paragraphs "1" through "104" of this Complaint against Defendants with the same force and effect as if more fully set forth at length herein.

106. The above-referenced discriminatory practices were intended to and did create, effect, permit, and perpetuate a hostile work environment suffered by Plaintiffs-Intervenors, which was continuing and persistent and so severe and pervasive as to adversely affect the terms and conditions of their employment.

107. Defendants created, maintained, encouraged, condoned, acquiesced in, and supported a hostile work environment in violation of NYC Admin. Code §§ 8-101, *et seq.*, and § 8-107.

**AS AND FOR THE FORTY-FIFTH THROUGH  
FORTY-EIGHTH CAUSES OF ACTION  
AGAINST DEFENDANTS (NYCHRL  
RETALIATION CLAIMS)**

108. Plaintiffs-Intervenors Simms, Hylton, Cilus, and Weir respectively repeat, reiterate and re-allege each and every allegation contained in Paragraphs "1" through "107" of this Complaint against Defendants with the same force and effect as if more fully set forth at length herein.

109. The above-referenced acts as set forth establish the Defendants' retaliation against Plaintiffs-Intervenors in the exercise of a protected activity and caused them to suffer adverse employment actions as a result thereof.

110. Defendants' retaliation against Plaintiffs-Intervenors are all in violation of NYC Admin. Code §§ 8-101, *et seq.*, and specifically § 8-107.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs-Intervenors pray that this Court grant the following relief:

(a) Declare the conduct engaged in by all Defendants complained of herein to be in violation of Plaintiffs-Intervenors' rights under Title VII of the Civil Rights Acts of 1964, as amended by Civil Rights Act of 1991, 42 U.S.C. §§ 2000e-*et seq.*; New York State Human Rights Law, New York Executive Law §290, *et seq.*; and New York City Human Rights Law, New York City Administrative Code §§ 8-101, *et seq.* and 107;

(b) Grant a permanent injunction enjoining Defendants and its owners, officers, management personnel, employees, agents, successors, and assigns and those acting in concert therewith from any conduct violating the rights of Plaintiffs-Intervenors under Title VII, the NYSHRL, and the NYCHRL;

(c) Order Defendants to institute and carry out policies, practices, and programs that provide equal employment opportunities for all employees, regardless of race or national origin, and that eradicate the effects of Defendants' past and present unlawful practices;

(d) Award Plaintiffs-Intervenors full compensation for past and future non-pecuniary losses resulting from the unlawful employment practices complained of herein, including, but not limited to full back pay, front pay and other compensatory damages as determined pursuant to 42 U. S. C. §§2000e, *et seq.*; 42 U.S.C. §1981(a); the New York Executive Law, NY Exec. Law §290, *et seq.*; and the New York City Human Rights Law, NYC Admin. Code §§ 8-101, *et seq.*;

(e) Compensatory Damages as determined for all losses suffered as a result of emotional pain, suffering, depression, anxiety, loss of enjoyment of life, humiliation, and other psychological and physiological symptoms and conditions, in amounts to be determined at trial;

(f) Award full liquidated and/or punitive damages as allowed under 42 U.S.C. §§ 42 U. S. C. §§2000e, *et seq.*; 42 U.S.C. §1981(a); the New York Executive Law, NY Exec. Law §290, *et seq.*; and the New York City Human Rights Law, NYC Admin. Code §§ 8-101, *et seq.*;

(g) Award Plaintiffs-Intervenors reasonable attorneys' fees, costs, and disbursements; and

(h) Grant such further relief as the Court deems necessary and proper.



**DEMAND FOR TRIAL BY JURY**

Plaintiffs-Intervenors hereby demand a trial by jury in this action.

Respectfully submitted,

THE WATANABE LAW FIRM, LLC

By: 

Laura A. Watanabe (LW 7953)  
Attorneys for Plaintiffs-Intervenors  
Petrona Simms, Frederick Hylton, Marie  
Cilus, and Tanya Weir  
100 Park Avenue, Suite 1600  
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(212) 984-0660 (Telephone)  
(646) 390-5226 (Facsimile)

Dated: New York, NY  
January 5, 2006

To: Marc S. Wenger, Esq.  
Jackson Lewis  
Attorneys for Defendants  
58 South Service Road  
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Melville, NY 11747  
(631) 247-4660 (Telephone)  
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Sunu Chandy, Esq.  
U. S. Equal Employment Opportunity Commission  
New York District Office  
Attorneys for Plaintiff  
33 Whitehall Street, 5<sup>th</sup> Floor  
New York, New York 10004-3620  
(212) 336-3706 (Telephone)  
(212) 336-3620 (Facsimile)

## **EXHIBIT A**

2005 03:35pm From-EEOC-NYDO [6]

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F-847



Spencer H. Lewis, Jr.  
District Director

**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**New York District Office**

33 Whitehall Street, 5<sup>th</sup> Floor  
New York, NY 10004-2112  
(212) 336-3721  
TTY (212) 336-3622  
General FAX (212) 336-3623

**BEOC Charges No.:**

*Tanya Weir* - 160-2005-00589

*Frederick Hylton* - 160-2005-00590

*Petrona Simms* - 160-2004-01994

*Marie Cilus* - 160-2005-01740

*Marie Cilus, Frederick Hylton, Petrona Simms & Tanya Weir*  
c/o Laura Watanabe, Esq.  
The Watanabe Law Firm, LLC  
100 Park Avenue, Suite 1600  
New York, NY 10017

**Charging Parties**

*William O. Benenson Rehabilitation Pavilion*  
*Flushing Manor Geriatric Center, Inc.*  
*Flushing Manor Nursing and Rehabilitation*  
*Flushing Manor Care Center, Inc.*  
c/o David Feldman, Esq.  
Leeds Morelli & Brow, P.C.  
One Old Country Road, Suite #347  
Carle Place, NY 11514

**Respondents**

**DETERMINATION**

Under the authority vested in me by the Commission, I issue the following determination as to the merits of the above cited charges filed under Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), and the Americans with Disabilities Act ("ADA").

The Charging Parties, Marie Cilus, Frederick Hylton, Petrona Simms and Tanya Weir have alleged that William O. Benenson Rehabilitation Pavilion, Flushing Manor Geriatric Center, Inc., Flushing Manor Nursing and Rehabilitation and Flushing Manor Care Center, Inc. (collectively "Respondents") discriminated and retaliated against Charging Parties and other similarly situated

employees, on the basis of their race (Black), and/or national origin (Caribbean) in violation of Title VII.

Charging Party Tanya Weir also alleges that Respondent discriminated against her based on her disability when it failed to accommodate her disability in violation of the ADA.

Charging Parties, Marie Cilus, Frederick Hylton and Tanya Weir began their employment with Respondents as Certified Nursing Assistants ("CNAs"), in 1998. Charging Party Petrona Simms began her employment as a CNA with Respondents in 2000.

Charging Parties allege that they endured a hostile work environment and different terms, conditions, or privileges of employment due to their race (Black) and or national origin (Caribbean).

Specifically, Charging Parties allege that Respondents made derogatory comments such as, "Go back on the banana boat where you came from." Respondents also permitted patients to make racial slurs such as, "Nigger," and "Monkey," when referring to the Charging Parties. Charging Parties also allege that Respondents reprimanded them for speaking in languages other than English and harassed them because of their Caribbean accents. Charging Parties also allege they were subjected to inferior assignments and disparate discipline.

Charging Parties further allege that Respondents retaliated against them for complaining about and objecting to the discrimination. Charging Parties allege that Respondents (1) fabricated patient complaints, (2) issued false verbal and written warnings, and (3) suspended and terminated Charging Parties and other similarly situated employees for making discrimination complaints and otherwise opposing the discriminatory treatment.

Respondents deny all allegations of discrimination and retaliation. Respondents claim that the suspensions and terminations of Charging Parties were justified based on poor performance. Respondents claim that disciplinary actions against the Charging Parties were made to protect the patients.

The investigation reveals, through the testimony of Charging Parties and other employees, that Black and/or Caribbean employees were subjected to a hostile work environment and subjected to disparate treatment, such as closer supervision, disparate discipline, and inferior terms, conditions, or privileges of employment based on their race and/or national origin.

In addition, the investigation reveals that Respondents knew of the above described discrimination and harassment, but failed to appropriately investigate and remedy the discrimination. The investigation shows that employees brought several complaints regarding the hostile environment and discriminatory treatment and the situation continued without remedy.

The investigation also supports Charging Parties' allegations that Respondents retaliated against Charging Parties and other employees for opposing employment discrimination and/or making formal complaints of discrimination.

Based on the investigation, EEOC has concluded that Respondents have violated Title VII in that they have discriminated against the Charging Parties and similar situated employees based on their race (Black) and national origin (Caribbean), and that Respondents have retaliated against the Charging Parties and other employees for opposing discrimination and making complaints of discrimination.

However, based upon the Commission investigation, I am unable to conclude that Respondents failed to accommodate Tanya Weir or discriminated against her because of her disability when it failed to accommodate her disability in violation of the ADA. This does not certify that Respondents are in compliance with the ADA, and no finding is made as to any other issues that might be construed as having been raised by this allegation, except as set forth above.

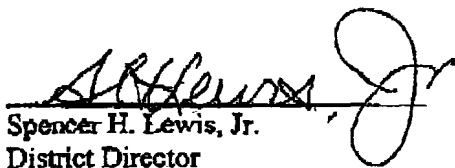
Section 706 (b) of Title VII requires, that if the Commission determines that there is reasonable cause to believe that violations have occurred, it shall endeavor to eliminate the alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Having determined that there is reasonable cause to believe that a violation has occurred, the Commission now invites the parties to join with it in a collective effort toward a just resolution of this matter.

Enclosed please find EEOC's conciliation proposal in this matter. Disclosure of information obtained by the Commission during the conciliation process will be made in accordance with the statute and Section 1601.26 of the Commission's procedural regulations.

If Respondents decline to enter into conciliation discussions, or when the Commission's representative for any other reason is unable to secure a settlement acceptable to the Commission, I will so inform the parties in writing and advise them of the court enforcement alternatives available to the Charging Party, aggrieved persons, and the Commission.

On behalf of the Commission:

07/29/05  
Date

  
Spencer H. Lewis, Jr.  
District Director

**CERTIFICATE OF SERVICE**

On January 5, 2006, I served the within Plaintiffs-Intervenors' Complaint and Jury Trial Demand via First-Class Mail by depositing a true copy of same into an official depository under the exclusive care and custody of the United Postal Service and by facsimile addressed as follows:

Marc Wenger, Esq.  
Jackson Lewis LLP  
58 South Service Road, Suite 410  
Melville, New York 11747  
(631) 247-0417 (Facsimile)

Sunu Chandy, Esq.  
U.S. Equal Employment Opportunity Commission  
33 Whitehall Street, 5<sup>th</sup> Floor  
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(212) 336-3790 (Facsimile)

Albert Van-Lare, Esq.  
The Law Offices of Albert Van-Lare  
45 John Street, 4<sup>th</sup> Floor  
New York, NY 10038  
(212) 608-9347 (Facsimile)

A handwritten signature in cursive script, reading "Laura A. Watanabe". The signature is written in black ink and is positioned above a horizontal line.

LAURA A. WATANABE (LW 7953)