

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUFFOLK SUPERIOR COURT  
C. A. NO.:

\_\_\_\_\_  
NIRVA BERTHOLD; )  
 )  
and )  
 )  
GESSY TOUSSAINT; )  
 )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
BRIGHAM AND WOMEN'S HOSPITAL; )  
 )  
MARY ANN KENYON; )  
 )  
CATHY RUMBLE; )  
 )  
PATRICE NICHOLAS; )  
Defendants. )  
\_\_\_\_\_ )

**COMPLAINT AND JURY  
DEMAND**

**PARTIES**

1. Plaintiff, Nirva Berthold ("Berthold"), is an individual residing in Brockton, Massachusetts.
2. Plaintiff, Gessy Toussaint ("Toussaint"), is an individual residing in Ashby, Massachusetts.
3. Defendant, Brigham and Women's Hospital, ("BWH"), is a hospital in Massachusetts. At all times relevant to this complaint Plaintiffs and the individually named defendants worked for Brigham and Women's Hospital at 75 Francis Street, Boston, Ma, Suffolk County.

4. Defendant Mary Ann Kenyon, ("Kenyon"), is an individual residing in Massachusetts, who, at all times relevant to this complaint worked for Brigham and Women's Hospital at 75 Francis Street, Boston, Ma, Suffolk County.

5. Defendant Cathy Rumble, ("Rumble"), is an individual residing in Massachusetts, who, at all times relevant to this complaint worked for Brigham and Women's Hospital at 75 Francis Street, Boston, Ma, Suffolk County.

6. Defendant Patrice Nicholas, ("Nicholas"), is an individual residing in Massachusetts, who, at all times relevant to this complaint worked for Brigham and Women's Hospital at 75 Francis Street, Boston, Ma, Suffolk County.

#### **BERTHOLD FACTS**

7. Berthold filed a timely Charge of Discrimination with the Massachusetts Commission Against Discrimination, ("MCAD"), regarding the allegations set forth in this complaint and the Charge has been withdrawn from the MCAD.

8. Berthold is an African American female.

9. Berthold began working at BWH as a Registered Nurse in 2004.

10. BWH is unionized. The nurses are members of the Massachusetts Nurse's Association, and the union has a contract with BWH.

11. Berthold worked in the Oncology Department from 2004 to 2012.

12. Berthold's work was stellar and she received raises and promotions. Berthold performed her job in a satisfactory manner throughout employment.

13. On or about September 15, 2012, Berthold was transferred from the Oncology Department to the "Float Pool", which is a pool of nurses that fill in for various departments based on staffing needs for the day.

14. From February 2011 to February 2013, Berthold attended school to earn a Masters in the Science of Nursing, (MSN), so that she would be eligible to work as a Nurse Educator, a position in which she would work for various hospitals training their nurses.
15. On January 19, 2013 a position became available for a Nurse Educator in the Orthopedics Department in BWH.
16. Ms. Berthold applied for the position and was granted an interview, despite the fact that she was still in school.
17. At the time Ms. Berthold interviewed for the position, she had only three weeks of school remaining before she graduated with her MSN.
18. Historically BWH has hired candidates as Nurse Educators even if the candidate had as much as a few months of classes remaining before they graduated with their MSN.
19. Specifically, Kenyon, the manager of the Orthopedics Department at BWH, previously hired a Caucasian candidate as a Nurse Educator despite the fact that the Caucasian candidate had not completed her MSN coursework at the time of hire.
20. On January 30, 2013, Berthold interviewed for the Nurse Educator position with Kenyon. Kenyon told Berthold that Berthold was the applicant with the most seniority.
21. Per the nurse's union contract with BWH, if a nurse is the applicant with the most seniority, he or she is the top choice for the job, provided that he or she does not have any disciplinary actions.
22. In or about the third week of February 2013, Berthold followed up with BWH's Human Resources Department, ("HR"), regarding the position.
23. HR emailed Berthold to say that the position had been "cancelled".

24. When Berthold asked why the position had been cancelled, HR told Berthold that Kenyon decided to cancel the position because all of the applicants were still in school.

25. Berthold told HR that as of the date of their conversation on February 28, 2013, she only had two (2) days remaining of school.

26. HR responded that the cancellation of the Nurse Educator position was Kenyon's decision.

27. Kenyon has not hired an African American Nurse Educator for the Orthopedics Department in at least the last thirteen years, perhaps more.

28. Overall, BWH does not promote persons of color or ethnicity to managerial positions.

29. In or about late March 2013, Berthold was working on Kenyon's floor when there was an incident with an agitated patient. Berthold followed protocol and called the doctor and patient relations, however a disgruntled Psychologist arrived and verbally attacked Berthold. The Psychologist complained to the Charge Nurse and the matter was referred to Rumble, Berthold's supervisor.

30. Berthold met with Kenyon, Rumble and Berthold's union representative regarding the incident. Berthold told them that she was the victim in the situation and that there were witnesses to the incident, including co-Plaintiff Gessy Toussaint, and Kenyon said she would investigate.

31. Plaintiff Gessy Toussaint told Kenyon that Berthold was the victim in the incident, that the Psychologist was the aggressor, however Kenyon wrote a report which was a blatant misrepresentation of what Toussaint told her. In Kenyon's report she wrote that Toussaint



stated that Berthold was the aggressor. As a result of Kenyon's lies, Rumble gave Berthold a verbal warning.

32. On or about April 4, 2013, Berthold was hired by Simmons College as a Nurse Educator and Berthold was scheduled to sign a contract regarding this employment after the appropriate paperwork was received from BWH.

33. To perform her job, Berthold would need to have privileges at local hospitals to train the student nurses. This process is called "credentialing".

34. Berthold would need her immediate supervisor, Rumble, to sign off on her credentialing.

35. On or about April 9, 2013, Berthold was working on the Oncology Floor. On the Oncology Floor that day was a patient who needed someone with him at all times. The patient's wife said that she did not need the nurses to sit with him, that she would do it. The patient's wife then changed her mind and became frustrated with a nurse's assistant and reported her to the Charge Nurse. Berthold was on lunch break when this happened and had no involvement in this situation.

36. On April 11, 2013, on her day off, Berthold received a call from Rumble on her personal cell phone. Rumble was screaming and said that she received a complaint about Berthold with respect to the patient's wife.

37. When Berthold returned to work on April 12, 2103, Rumble held an investigatory meeting regarding the incident with the patient's wife and Berthold told her that she was not present when the incident happened.

38. On or about April 23, 2013, Rumble issued Berthold a warning despite the fact that Berthold was not present for the incident.

39. Rumble repeatedly harassed Berthold and made derogatory comments to her, such as comparing her to the Marathon Bombers.

40. On or about April 24, 2013, Rumble signed Berthold's application to Simmons College and told Berthold that she was in good standing and her practice was fine.

41. After Berthold had applied for Simmons, the Nurse Educator position for which Berthold had applied on Kenyon's floor was re-posted and Kenyon hired a Caucasian woman.

42. On or about May 8, 2013, Berthold received an email from the credentialing coordinator at Simmons college. The coordinator forwarded Berthold an email containing derogatory and defaming comments made to Simmons about Berthold by Patrice Nicholas, a member of BWH management.

43. Nicholas indicated in the email that BWH was not going to approve Berthold's application for credentialing.

44. Nicholas went on to say that Rumble, who had just signed off on Berthold's application and told Berthold she was in good standing, had raised "significant" concerns about Berthold and that Rumble had retracted her signature on Berthold's application.

45. Nicholas further stated that Rumble raised concerns regarding alleged unprofessional conduct and stated that Berthold had received verbal and written warnings regarding a violation of patient rights and interpersonal skills.

46. Nicholas also admitted in the email to Simmons that Rumble indicated that Berthold was not offered the clinical educator position [on Kenyon's floor] at BWH because her interpersonal skills, clinical skills and ability to educate other nurses were all areas of concern.

47. This directly contradicts the reason which was given to Berthold by HR, that Kenyon "cancelled" the position because all of the applicants were still in school.

48. Nicholas then followed up her email to Simmons with a phone call to Simmons to continue to disparage Berthold.

49. Defendants went out of their way to tortiously interfere with Berthold's contractual and business relationships and disparage and defame her.

50. This is supported by the fact that after Rumble and Nicholas defamed Berthold to Simmons and represented that Berthold's interpersonal and clinical skills were lacking and her ability to educate other nurses was questionable, and after Berthold filed a Charge of Discrimination on June 14, 2013 against Defendants, on July 26, 2013, Rumble gave Berthold a stellar performance review going so far as to say that Berthold is a "good resource" and a "safe clinician".

51. Because of the discrimination and duplicity of Defendants regarding issuing Berthold proper credentials, Berthold was not able to sign an employment contract with Simmons until June 2013, which cost Berthold six (6) weeks of salary.

52. Furthermore, as Defendants have shown that they cannot be trusted to provide an accurate recommendation free from their discriminatorily biased smear campaign tactics, Berthold is postponing seeking other positions out of fear that Defendants will continue to lie about her. This is also resulting in a reduction of income for Berthold.

53. As a result of the racial discrimination, hostile work environment, retaliation, tortuous interference with contract and business relations and defamation, Berthold suffered from severe emotional distress as well as monetary loss.



### TOUSSAINT FACTS

54. Toussaint filed a timely Charge of Discrimination with the Massachusetts Commission Against Discrimination, ("MCAD"), regarding the allegations set forth in this complaint and the charge has been withdrawn from the MCAD.

55. Toussaint is an African American female born on 4/12/48.

56. Toussaint began work at BWH as a Registered Nurse on May 5, 2002.

57. Toussaint's work was stellar and she received raises and promotions every year.

58. Toussaint performed her job in a satisfactory manner throughout her employment.

59. Toussaint knew that Berthold worked at BWH, however she did not know her very well.

60. Toussaint knew that Berthold had applied for the Nurse Educator Position on Kenyon's floor and that Kenyon would not hire Berthold for the position because Kenyon is racist against African American persons.

61. On March 11, 2013, just a few weeks after Berthold was denied the Nurse Educator position, Toussaint was working on the Orthopedics floor, which was run by Kenyon.

62. Berthold was also working on this floor as a member of the Float pool.

63. An incident occurred on the floor which was not Berthold's fault and Toussaint witnessed the incident.

64. Kenyon was charged with investigating the incident.

65. Kenyon was given Toussaint's name as a witness to the incident and Kenyon came to Toussaint to get a statement.

66. Toussaint told Kenyon exactly what happened, that the incident was not the fault of Berthold, and that Berthold did nothing wrong.



67. Toussaint later learned that Kenyon completely misrepresented what Toussaint told Kenyon and fabricated a statement and attributed it to Toussaint.

68. When Berthold found out that Toussaint had told Kenyon the truth and that Kenyon lied in her report, Berthold went to her immediate supervisor, Kathy Rumble, and told Rumble that Kenyon's report was false.

69. Rumble replied: "What Maryann [Kenyon] said is final."

70. Kenyon misrepresented the incident to discredit Berthold so that Kenyon would appear justified in her decision not to hire Berthold, thus masking her racial discrimination against African Americans.

71. Toussaint knew that Kenyon racially discriminated against Berthold and Toussaint assisted and supported Berthold regarding the incident by telling Kenyon the truth, that the incident was not the fault of Berthold.

72. Immediately after Toussaint supported Berthold against Kenyon, Kenyon began to target Toussaint.

73. Berthold filed a Charge of Discrimination regarding this incident with the Massachusetts Commission Against Discrimination on or about June 14, 2013.

74. On June 27, 2013, less than two weeks after Berthold filed her Charge of Discrimination, Kenyon stated on the floor that she had to attend a 4:00 p.m. meeting with a lawyer and nine other managers at BWH about a big problem.

75. At 5:44 p.m. on the same day, the day that Kenyon met with the lawyers, Kenyon emailed Toussaint stating that she wanted to meet with her on *three separate occasions* to discuss various complaints against Toussaint which allegedly occurred in the past but which were never brought up at the time of the alleged complaints.

76. These alleged infractions purportedly occurred four to six weeks prior to Kenyon's email to her.

77. It is the policy of BWH to investigate and address complaints as they occur. It is against BWH's policy to compile allegations and address them months later, as Kenyon did in this circumstance.

78. Also, pursuant to BWH's policy, if a staff member gets *three separate* disciplinary actions they are subject to termination.

79. Kenyon requested three separate meetings to address these alleged complaints, rather than addressing them at one meeting. Kenyon insisted on three separate meetings so that Toussaint would accrue three disciplinary warnings, which would provide Kenyon with a basis to terminate Toussaint.

80. Kenyon attempted to do this because Toussaint supported Berthold against Kenyon's racial discrimination.

81. In June 2013 Toussaint injured herself at work and had to take a Leave of Absence. The Leave of Absence ("LOA") department of BWH gave her paperwork to be filled out and returned to them so that they would know how long she needed to be out of work.

82. Toussaint needed to extend her LOA and the LOA department requested that she submit paperwork to support this fact. She submitted this extension paperwork to Kenyon, her supervisor, but Kenyon did not submit the paperwork to the LOA department.

83. Kenyon then called Toussaint to say that she was no longer on her floor, that she lost her job on Kenyon's floor and that Kenyon gave her job to someone else because she did not submit the LOA paperwork to the LOA Department.

84. Toussaint then spoke to Michelle Fredette from HR and told her that she had submitted the LOA paperwork to Kenyon, that Kenyon failed to submit it to the LOA department and that Kenyon then attempted to use it as an excuse to eliminate her job on the Orthopedics floor.

85. Ms. Fredette allowed Toussaint to re-submit the paperwork. Ms. Fredette then told Kenyon that she had to take Toussaint back.

86. Toussaint returned to work from her LOA on August 16, 2013, and returned to Kenyon's floor in Orthopedics.

87. Upon Toussaint's return to work, Kenyon did not address the three purported infractions she emailed Toussaint about on June 27, 2013, after her meeting with the lawyers.

88. On October 7, 2013, there was a situation with a patient to which Toussaint rapidly responded. The doctor whose patient it was complimented Toussaint on her rapid response and handling of the situation.

89. On October 8, 2013, Kenyon called Toussaint into her office and stated that she wanted Toussaint to leave immediately because Toussaint was now on administrative leave.

90. Toussaint asked Kenyon why, and she stated that the doctor complained about Toussaint's handling of the situation on October 7, 2013.

91. Toussaint responded by asking her: "Which doctor, the one who complimented me?"

92. Kenyon then backtracked and stated: "Oh, it was the wife who complained."

93. Toussaint then pointed out that the wife was not even present at the time of the incident.



94. In response to this, Kenyon backtracked again and stated: "Oh, it was your colleagues that complained." Toussaint then asked Kenyon which colleagues complained about her, and Kenyon refused to tell her.

95. Instead, Kenyon told Toussaint: "I want you to leave now. HR and I will get in touch with you for an investigatory meeting." Kenyon at this time placed Toussaint on administrative leave.

96. Toussaint did nothing wrong in this situation, however even if she had, per BWH policy the appropriate response would be a warning, not a suspension.

97. On October 16, 2013, Toussaint attended the investigatory meeting regarding the October 7, 2013 incident.

98. Present were Kenyon, Toussaint's union representative, and Margaret Higgins, Nurse Director of Floor16CD. At this meeting, Kenyon, for the first time, brought up the vague allegations she had emailed Toussaint about after her meeting with the lawyer on June 27, 2013. These allegations consisted of an allegation which allegedly occurred on May 3, 2013, over six months earlier, as well as two other allegations which allegedly occurred months prior.

99. The incidents were not discussed at the meeting because Kenyon had failed to address them at the time that they allegedly occurred.

100. When the October 7, 2013 incident was discussed at this meeting Kenyon did not bring up her initial allegation that the doctor complained about Toussaint.

101. When Toussaint pointed out that Kenyon originally said that the doctor had complained about her, Kenyon admitted that she had misrepresented what the doctor said and that the doctor had in fact said that Toussaint responded rapidly and handled the situation appropriately.



102. On October 28, 2013, HR asked if Toussaint would be interested in resigning in return for receiving a cash settlement and signing a waiver of all claims against BWH and its agents.

103. Toussaint refused to resign.

104. On November 14, 2013, Kenyon called Toussaint to inform her that she could return to work.

105. Toussaint returned to work on November 15, 2013.

106. On November 15, 2013, Kenyon informed Toussaint that Kenyon and Toussaint would have a meeting on November 18, 2013 regarding the results of her investigation into the incident regarding the patient choking on October 7, 2013. Per practice at BWH, only Toussaint and Kenyon should have been present for this meeting.

107. When Toussaint arrived at the meeting on November 18, 2013, Margaret Higgins, ("Higgins"), Kenyon's colleague, was inexplicably and inappropriately present at this meeting. When Toussaint saw that Higgins was present, she asked that her union representative be present. Kenyon refused and stated that she had to conduct the meeting immediately. Kenyon then handed Toussaint a disciplinary warning which was based on the old incidents referenced in paragraphs 58 and 59.

108. At this point, Higgins inexplicably inserted herself into the conversation as she is not Toussaint's manager, and stated: "Your arms are crossed, that's insubordination, you're unprofessional, clearly you shouldn't be here."

109. Higgins also accused Toussaint of being insubordinate to Kenyon during the October 16, 2013 meeting.

110. Kenyon informed Toussaint the same day that Toussaint had to take a Basic Knowledge Assessment Tool, ("BKAT"), which is a test usually administered to newly hired nurses.

111. When Toussaint asked her why Toussaint, a nurse with twenty-one (21) years experience, was now being required to take the BKAT test, Kenyon stated that Toussaint's judgment was lax and she wanted to make sure that Toussaint was a fit nurse.

112. Kenyon then said, "You know as you age, your knowledge can be affected, whether you like it or not."

113. Toussaint passed the BKAT test with a score of 100%.

114. Despite Toussaint passing the BKAT test with a perfect score, Kenyon insisted that Toussaint be re-trained for several weeks by a Nurse Educator and Kenyon set up a schedule for Toussaint to train on several Mondays with the Caucasian Nurse Educator who was hired instead of Berthold.

115. Circa December 2013, Toussaint spoke with Michelle Fredette from HR on the phone, in person and via email and asked for an explanation as to why Toussaint was being subjected to re-training as a senior nurse and after she had a perfect score on the BKAT test.

116. Fredette didn't answer Toussaint so Toussaint then copied Kenyon's bosses, Mary Lou Eldrige, interim Chief Nursing Executive, Leo Buckley, VP of Patient Services, Shelly Rivers at Union Headquarters and Michael Robinson, a union representative.

117. No explanation was given to Toussaint regarding why BWH and Kenyon were requiring her to attend training despite the fact that she got a perfect score on the BKAT test, however after Toussaint complained to HR about Kenyon's harassment, Kenyon declined to enforce her demand that Toussaint attend the trainings.

118. On or about January 18, 2014, an incident with a patient occurred and Toussaint took prompt action and called a doctor. Two Caucasian nurses were on duty that day before Toussaint and compromised the patient's health with their errors and omissions in care.

119. After this incident, Kenyon emailed Toussaint to tell her she was going to call an investigatory meeting to investigate Toussaint. In this meeting, Toussaint told Kenyon that the patient's condition was a result of the mistake of the two Caucasian nurses who cared for the patient before Toussaint, and that Toussaint immediately took action when she got on shift and contacted the doctor twice. Kenyon she said nothing.

120. Upon information and belief, Kenyon did not issue a disciplinary action to the Caucasian nurses.

121. Toussaint applied for several positions to transfer off of Kenyon's floor, however she was told by the nurses supervising the floors, who are Kenyon's friends, that she doesn't have enough experience to get the position.

122. Toussaint never received an interview with a floor manager and younger nurses with less seniority than Toussaint were hired for these positions.

123. Toussaint earns a high salary at BWH.

124. BWH has historically terminated persons over 40 years old who earn high salaries, and BWH has routinely told these older persons: "You're too old, we are asking you to resign."

125. BWH has routinely replaced these older persons with persons under age 40 who earn significantly lower salaries.

126. BWH has not offered the option to the older employees who were asked to resign to stay on at a lower salary.



127. As a result of the discrimination and retaliation perpetrated by Respondents, Toussaint suffered from severe emotional distress and monetary loss.

**COUNT I: VIOLATION OF M.G.L. C. 151B -RACE/COLOR DISCRIMINATION**  
**(BERTHOLD V. DEFENDANTS)**

128. Berthold restates and re-alleges all preceding allegations as if fully recited herein.

129. To make out a prima facie case of discrimination under M.G.L. c. 151B § 4(1), plaintiff must prove that she “is a member of a protected class, that she suffered harm as a result of the employer’s adverse employment action, and the employer harbored discriminatory animus, which was the determinative cause of the adverse action.” Weber v. Cmty. Teamwork, Inc., 434 Mass. 761, 752 N.E.2d 700, 711 (2001); Lewis v. City of Boston, 321 F.3d 207, 213-14 (1st Cir.2003) (construing Massachusetts law).

130. As stated supra, Berthold is an African American woman who suffered both emotional and monetary harm as a result of Defendant's numerous adverse employment actions.

131. It is clear that Defendants harbored discriminatory animus against Berthold and that the discriminatory animus was the determinative cause of the adverse action.

**COUNT II: VIOLATION OF M.G.L. C. 151B -HOSTILE WORK ENVIRONMENT**  
**(BERTHOLD V. DEFENDANTS)**

132. Berthold restates and re-alleges all preceding allegations as if fully recited herein.

133. Hostile work environment is present when a plaintiff shows that the workplace was pervaded by harassment or abuse, with the resulting intimidation, humiliation, and stigmatization, and posed a formidable barrier to the full participation of an individual in the workplace. Cuddyer v. Stop & Shop Supermarket Co., 434 Mass. 521, 532 (2001), *quoting*



College-Town, Div. of Interco, Inc. v. Massachusetts Commn. Against Discrimination, 400 Mass. 156, 162 (1987); Prescott v. Higgins, 538 F.3d 32 (1st Cir. 2008).

134. In this case, the workplace created by Defendants was pervaded by harassment and abuse which was intimidating, humiliating and stigmatizing and posed a formidable barrier to Berthold's participation in the workplace.

**COUNT III: TORTIOUS INTERFERENCE WITH CONTRACT**  
**(BERTHOLD V. DEFENDANTS)**

135. Berthold restates and re-alleges all preceding allegations as if fully recited herein.

136. To make out a prima of tortious interference with contracts, the plaintiff must prove, “the existence of a contract; the intentional interference with the contract by one or more third parties; that such interference was improper in motive or means; and resulting harm to the plaintiff.” Dorman v. Norton Co., 64 Mass. App. Ct. 1, 830 N.E.2d 1108, 1115 (2005) *citing* Weber v. Cmty. Teamwork, Inc., 434 Mass. 761, 752 N.E.2d 700 (2001).

137. As stated supra, Berthold had a contract with Simmons.

138. BWH and its agents intentionally and improperly interfered with Berthold’s contractual relations with Simmons when they attempted to rescind Berthold's credentials and emailed and called Simmons, disparaging Berthold's nursing skills with false information.

139. This interference caused Berthold to delay harm both monetarily and to her reputation.

**COUNT IV: TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS**  
**(BERTHOLD V. DEFENDANTS)**

140. Berthold restates and re-alleges all preceding allegations as if fully recited herein.

141. To make out a prima facie case of tortious interference with business relations, the plaintiff must prove she “had a business relationship or contemplated contract for economic benefit with a third party, the defendant knew of the business relationship, defendant’s interference was intentional and involved improper motives or means, and plaintiff was harmed by defendant’s actions.” Adcom Prods., Inc. v. Konica Bus. Machs. USA, Inc., 41 Mass. App. Ct. 101, 104 (1996).

142. As stated supra, Berthold had a business relationship and/or contemplated contract for economic benefit with Simmons.

143. BWH and its agents knew of this business relationship.

144. BWH and its agents intentionally and improperly interfered with Berthold’s business relations with Simmons when they attempted to rescind Berthold's credentials and emailed and called Simmons, disparaging Berthold's nursing skills.

145. This interference caused Berthold harm both monetarily and to her reputation.

**COUNT V: DEFAMATION**  
**(BERTHOLD V. DEFENDANTS)**

146. Berthold restates and re-alleges all preceding allegations as if fully recited herein.

147. To prove defamation a Plaintiff must prove that Defendants published a false statement about Plaintiff to a third party and that the statement caused economic loss or was of the type that is actionable without proof of economic loss. Phelan v. May Dept.

Stores Co., 443 Mass. 52, 55-56 (2004); *citing* White v. Blue Cross & Blue Shield of Mass., Inc., 442 Mass. 64, 66 (2004).

148. Defendants in this case defamed Berthold through emails and calls to Simmons, publishing false and disparaging statements regarding her nursing skills.

149. These statements caused Berthold economic loss.

**COUNT VI: VIOLATION OF M.G.L. C. 151B (RACE DISCRIMINATION)**  
**(TOUSSAINT V. DEFENDANTS)**

150. Toussaint restates and re-alleges all preceding allegations as if fully recited herein.

151. To make out a prima facie case of discrimination under M.G.L. c. 151B § 4(1), plaintiff must prove that she “is a member of a protected class, that she suffered harm as a result of the employer’s adverse employment action, and the employer harbored discriminatory animus, which was the determinative cause of the adverse action.” *Weber v. Cmty. Teamwork, Inc.*, 434 Mass. 761, 752 N.E.2d 700, 711 (2001); *Lewis v. City of Boston*, 321 F.3d 207, 213-14 (1st Cir.2003) (construing Massachusetts law).

152. As stated supra, Toussaint is a member of a protected class and suffered numerous harms as a result of BWH's adverse employment actions which were motivated by discriminatory animus.



**COUNT VII: DEFENDANTS' VIOLATION OF M.G.L. C. 151B**  
**(RETALIATION - TOUSSAINT V. DEFENDANTS)**

153. Toussaint restates and re-alleges all preceding allegations as if fully recited herein.

154. Retaliation is present when a plaintiff shows that she engaged in protected conduct, she suffered an adverse action, and a causal connection existed between the conduct and the adverse action. Mole v. University of Massachusetts, 442 Mass. 582, 591 (2004).

155. If any person, employer, labor organization or employment agency discharges, expels or otherwise discriminates against any person because she has opposed any practices forbidden under this chapter or because she has filed a complaint, testified or assisted in any proceeding, they are in violation of M.G.L. c. 151B. M.G.L. c. 151B s. 4 (4).

156. As stated supra, in this case Toussaint opposed the discriminatory practices of BWH and its agents against Berthold and was retaliated against as a result.

**COUNT VIII: VIOLATION OF M.G.L. C. 151B (AGE DISCRIMINATION)**  
**(TOUSSAINT V. DEFENDANTS)**

157. Toussaint restates and re-alleges all preceding allegations as if fully recited herein.

158. An employer may not subject an employee to an adverse employment action because of the employee's age, if that employee is over forty. M.G.L. c. 151B, §§ 1(8), 4(1B).

159. As stated supra, BWH and its agents made ageist comments to Toussaint, stating: "You know as you age, your knowledge can be affected, whether you like it or not."

160. Defendants also subjected Toussaint to numerous adverse employment actions, hiring younger, less qualified nurses for positions for which Toussaint had applied.



**WHEREFORE**, the Plaintiffs respectfully request that this Court grant the following relief:

1. Enter Judgment against Defendants;
2. Award plaintiffs' attorney fees, costs and expert witness fees;
3. Award compensatory damages for lost wages and benefits, physical illness, physical and emotional pain and suffering, emotional distress, humiliation, anxiety, embarrassment, reputational damages, loss of enjoyment of life and out-of-pocket expenses or other financial losses, plus lawful interest;
4. Award punitive damages pursuant to G.L. c. 151B §9;
5. Award multiple damages pursuant to G.L. c. 151B §9;
6. Order the defendants to pay prejudgment interest from the date of the filing of this complaint with the MCAD; and
7. Award such other relief as the Court deems fair and just.

**JURY CLAIM**

The plaintiffs demand a trial by jury on all issues so triable.

**Respectfully submitted,  
Plaintiffs,**

**NIRVA BERTHOLD,  
GESSY TOUSSAINT**

By their attorney,

  
Allison MacLellan, BBO No. 654586  
MacLellan Law Firm  
550 Adams Street, #236  
Quincy, MA 02169  
Telephone: (617) 980-5999  
amaclellan@maclellanlawfirm.com

Dated: July 11, 2014