

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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ELIJAH CRAWFORD AND ISHMAEL COX,

Plaintiffs,

- against -

NORTH SHORE - LONG ISLAND JEWISH HEALTH SYSTEM, INC.  
MARIO NISTICO, individually,  
CHARLES MILITANA, M.D., individually, and  
NORTH AMERICAN PARTNERS IN ANESTHESIA, L.L.P.

Defendants.  
-----X

Case No.

**COMPLAINT**

PLAINTIFFS DEMANDS A  
TRIAL BY JURY

**BIANCO, J.**  
**BROWN, M. J.**

Plaintiffs by their attorneys, DEREK SMITH LAW GROUP, PLLC, hereby complains of the Defendants, upon information and belief, as follows:

1. Plaintiffs ELIJAH CRAWFORD and ISHMAEL COX complain pursuant to 42 U.S.C.A. § 1981, and Title VII of the Civil Rights Act of 1964 as Amended and the laws of the State of New York, seeking damages to redress the injuries Plaintiffs have suffered as a result of harassment, discrimination, and retaliation by their employers.
2. This Court has jurisdiction in that this case involved a Federal Question under 42 U.S.C. Section 1981 as well as Title VII and the Court has supplemental jurisdiction under the State laws.
3. Venue is proper in that the events arose in Nassau County within the Eastern District of New York.
4. Plaintiff CRAWFORD is an African American man.
5. Plaintiff COX is an African American man.

6. At all times material, Defendant NORTH SHORE - LONG ISLAND JEWISH HEALTH SYSTEM, INC. (herein after also referred to as "NSLIJ") is a domestic not for profit corporation duly existing by virtue of the laws of the State of New York.
7. At all times material, Defendant NORTH AMERICAN PARTNERS IN ANESTHESIA, L.L.P. ("NAPA") is a domestic limited liability partnership duly existing by virtue of the laws of the State of New York.
8. At all times material, Defendant MARIO NISTICO was and is an individual residing in the State of New York.
9. At all times material, Defendant CHARLES MILITANA was and is an individual residing in the State of New York.
10. At all times material, Defendant MARIO NISTICO was and is a Surgical technician for Defendant NSLIJ.
11. At all times material, Defendant MARIO NISTICO was and is a Surgical technician for Defendant NAPA.
12. At all times material, Defendant CHARLES MILITANA was and is an Anesthesiologist Defendant NSLIJ.
13. At all times material, Defendant CHARLES MILITANA was and is an Anesthesiologist Defendant NAPA.
14. At all times material, Plaintiff CRAWFORD is a Perioperative Assistant for Defendant NSLIJ.
15. At all times material, Plaintiff COX is a Perioperative Assistant for Defendant NSLIJ.
16. At all times material, Plaintiffs were employees of Defendant NSLIJ.
17. At all times material, Plaintiffs were and employees of Defendant NAPA.

18. At all times, Defendants NSLIJ and NAPA were joint employers of Plaintiffs.
19. At all times material, Defendant CHARLES MILITANA held supervisory authority over Plaintiffs.
20. At all times material, Defendant MARIO NISTICO held supervisory authority over Plaintiffs.
21. Plaintiff CRAWFORD began working for Defendants around October 1997 in the Ambulatory Surgery Building of Defendants.
22. Plaintiff COX began working for Defendants around August of 1996. In 2002 Plaintiff Cox was moved to the Ambulatory Surgery building.
23. Throughout Plaintiffs' employment in Ambulatory Surgery Building, Defendant CHARLES MILITANA would harass Plaintiffs and treat Plaintiffs in a discriminatory fashion on account of Plaintiffs' race.
24. Throughout Plaintiffs' employment, Defendant MARIO NISTICO would harass Plaintiffs and treat Plaintiffs in a discriminatory fashion on account of Plaintiffs' race.
25. By way of example, Defendant MARIO NISTICO would make comments to Plaintiff CRAWFORD such as telling Plaintiff CRAWFORD he had big lips because he was black or telling Plaintiff CRAWFORD that his hair was like a big Brillo Pad.
26. By way of example, Defendant MARIO NISTICO would refer to blacks as "Niggers" in Plaintiff COX's presence. He would state "You Niggers are all the same." He would go on about how he hated "Niggers."
27. By way of further example, Defendant CHARLES MILITANA would make comments to Plaintiff CRAWFORD such as telling Plaintiff CRAWFORD that he must have a big penis

because he is black and telling Plaintiff CRAWFORD that President Obama cannot be smart because he is black.

28. By way of further example, Defendant CHARLES MILITANA would make comments to Plaintiff COX such as "It's about time they brought in some Whites here."
29. The harassment and discrimination continued throughout Plaintiffs' employment and resulted in Defendants making and displaying a noose on two (2) separate occasions as an extreme display of hostility and discrimination towards Plaintiffs because of race.
30. In the summer of 2011, Plaintiff CRAWFORD walked into the Operating Room #5 in order to clean the room and Plaintiff CRAWFORD saw a noose hanging from the operating room light. Defendant MARIO NISTICO was the only one in the room and he was separating his instruments. Plaintiff CRAWFORD was terrified and panic stricken. Plaintiff CRAWFORD gathered himself in order to complete his job of cleaning the operating room and then quickly left the room.
31. As is commonly known, the noose is heavily tied to racism in America associated with racially motivated murders of African Americans and is used to invoke terror in African Americans.
32. Plaintiff CRAWFORD complained to and informed PLAINTIFF COX about the noose as well as to Gail Okerfore, a Nurse Anesthetist, who has supervisory authority over Plaintiffs. The response was "We know that's the way they are" referring to Defendant MARIO NISTICO, Defendant CHARLES MILITANA and other members of their group of employees at Defendant NSLIJ. Plaintiffs were both terrified.
33. Plaintiffs began to fear for their jobs as well as their own personal safety. The racist comments continued. In fact, for example around the end of June, 2012, Plaintiff

CRAWFORD and Defendant CHARLES MILITANA were discussing President Obama. Defendant CHARLES MILITANA started to get extremely angry at Plaintiff CRAWFORD and making comments such as President Obama is a stupid black man and "How can Obama be smart? He is black." The heated conversation lasted approximately 20 minutes and Defendant CHARLES MILITANA became more and more angry with Plaintiff CRAWFORD telling Plaintiff CRAWFORD how dumb he was for voting for a black man and accusing Plaintiff CRAWFORD of wanting to vote for Obama just because he was black. Plaintiff CRAWFORD objected and told Defendant CHARLES MILITANA that he was offended and to not say such discriminatory comments.

34. Defendant CHARLES MILITANA continued with the "Nigger" comments throughout Plaintiff's employment on an on-going and continual basis.

35. In retaliation for Plaintiffs' protests and as discriminatory conduct by itself, on or about July 19, 2012, Plaintiffs went to the public employee locker room and saw another noose hanging from the locker of Defendant MARIO NISTICO. Plaintiffs were both terrified. Plaintiff CRAWFORD garnered the courage to find a security personnel to come witness the noose.

Below is a picture of the noose in question:







36. Defendants' Security Guard, "Pat" came in and witnessed the noose. Both Plaintiff COX and CRAWFORD witnessed the noose hanging from Defendant MARIO NISTICO's locker. Pat radioed to get another security guard and obtain a camera. Pat then left and Plaintiff CRAWFORD was waiting for the other security guard. At that time, Defendant MARIO NISTICO went to his locker and took the noose down himself.
37. Then the second security officer came and Plaintiff CRAWFORD filed a report with the security guard.
38. Plaintiffs were called into a meeting with Plaintiffs' Director Patricia Moliski, Patricia Magnota, Assistant Director of the Recovery Room, Defendant CHARLES MILITANA, and Defendant MARIO NISTICO.
39. Patricia Moliski asked Plaintiffs what they could do to "make this go away." Plaintiffs told her they wanted management to handle the matter appropriately.
40. Defendants failed to take appropriate action in response to Plaintiffs' complaint.
41. During the meeting Defendant MARIO NISTICO half-heartedly apologized to Plaintiffs for hanging the noose and Defendant CHARLES MILITANA also half-heartedly apologized to Plaintiffs for helping make the noose. Defendant MARIO NISTICO also admitted to making the first noose that he hung in the operating room for Plaintiff CRAWFORD to see when he went to clean the room in addition to the noose on his locker.
42. Debbie Sullivan, the Human Resources Manager called Plaintiffs in for an interview on July 20, 2012 and Plaintiffs explained what had happened and that they afraid and anxious at work because of the racial acts.
43. Defendant MARIO NISTICO made some ridiculous excuse that he made and hung the nooses to show off his knot making skills.

44. Upon information and belief, both individual Defendants are not being terminated and Plaintiffs are still forced to work with and for them greatly contributing to their anxiety and fear at work.
45. Defendants have failed to take appropriate action.
46. The above are just some of the examples of discrimination to which Plaintiffs were subjected.
47. During Plaintiffs' employment with the Defendants, Plaintiffs were regularly exposed to offensive conduct such as listed above and a hostile work environment.
48. Defendants' actions and conduct were intentional and intended to harm the Plaintiffs.
49. After Plaintiffs protested to Defendants, Plaintiffs became the subject of retaliation by the Defendants.
50. As a result of Defendants' actions, Plaintiffs felt extremely humiliated, degraded, victimized, embarrassed, and emotionally distressed.
51. Defendants created a hostile working environment which no reasonable person could be expected to tolerate.
52. As a result of the defendants' discriminatory and intolerable treatment, Plaintiffs suffered severe emotional distress.
53. As a result of the acts and conduct complained of herein, Plaintiffs have suffered and will continue to suffer the loss of income, the loss of a salary, bonuses, benefits and other compensation which such employment entails, and Plaintiffs have also suffered future pecuniary losses, emotional pain, suffering, inconvenience, loss of enjoyment of life, and other non-pecuniary losses. Plaintiffs have further experienced severe emotional and physical distress.



54. As a result of the above Plaintiffs have been damaged in an amount which exceeds the Jurisdictional limits of all Lower Courts.
55. As Defendants' conduct has been willful, reckless, outrageous, intentional and/or malicious, Plaintiffs also demand punitive damages in an amount which exceeds the Jurisdictional limits of all Lower Courts.

**AS A FIRST CAUSE OF ACTION FOR  
DISCRIMINATION UNDER 42 U.S.C. Section 1981**

56. Plaintiffs repeat, reiterate and reallege each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.
57. 42 USC Section 1981 states in relevant part as follows:

(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined

For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

42 U.S.C.A. § 1981

58. Defendants violated the section cited herein as set forth.

**AS A SECOND CAUSE OF ACTION  
FOR DISCRIMINATION UNDER STATE LAW**

59. Plaintiffs repeat, reiterate and reallege each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.
60. Executive Law § 296 provides that "1. It shall be an unlawful discriminatory practice: "(a) For an employer or licensing agency, because of an individual's age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status, or domestic violence victim status, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment."
61. Defendants violated the section cited herein as set forth.

**AS A THIRD CAUSE OF ACTION  
FOR DISCRIMINATION UNDER STATE LAW**

62. Plaintiffs repeat, reiterate and reallege each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.
63. New York State Executive Law §296(7) provides that it shall be an unlawful discriminatory practice:
- "For any person engaged in any activity to which this section applies to retaliate or discriminate against any person because he has opposed any practices forbidden under this article."
64. Defendants violated the section cited herein as set forth.

**AS AN FOURTH CAUSE OF ACTION  
FOR DISCRIMINATION UNDER STATE LAW**

65. Plaintiffs repeat, reiterate and reallege each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

66. New York State Executive Law §296(6) provides that it shall be an unlawful discriminatory practice:

"For any person to aid, abet, incite compel or coerce the doing of any acts forbidden under this article, or attempt to do so."

67. Defendants violated the section cited herein as set forth.

**AS A FIFTH CAUSE OF ACTION  
FOR DISCRIMINATION UNDER TITLE VII  
(Not Against Individual Defendants)**

68. Plaintiffs repeat, reiterate and reallege each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

69. Plaintiffs repeat and realleges each and every allegation made in the above paragraphs of this complaint.

70. On or around August and September 2012, Plaintiffs filed charges with the EEOC based upon the facts contained herein.

71. On or around June 18, 2013, the EEOC issued Right to Sue Letters for the Plaintiffs.

72. This action is being commenced within 90 days of receipt of the Right to Sue Letters.

73. Title VII states in relevant part as follows: SEC. 2000e-2. [Section 703] (a) Employer practices It shall be an unlawful employment practice for an employer - (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with

respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; . . . . .

74. Defendants engaged in unlawful employment practices prohibited by 42 U.S.C. §2000e *et seq.*, by discriminating against Plaintiffs because of their national origin, color, race, religion, as set forth herein.

**AS A SIXTH CAUSE OF ACTION  
FOR DISCRIMINATION UNDER TITLE VII  
\*(Not Against Individual Defendants)\***

75. Plaintiffs repeat and realleges each and every allegation made in the above paragraphs of this complaint.

76. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-3(a) provides that it shall be unlawful employment practice for an employer:

“(1) to . . . discriminate against any of his employees . . . because [s]he has opposed any practice made an unlawful employment practice by this subchapter, or because [s]he has made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this subchapter.”

77. Defendants engaged in unlawful employment practice prohibited by 42 U.S.C. §2000e *et seq.* by retaliating against Plaintiffs with respect to the terms, conditions or privileges of employment because of their opposition to the unlawful employment practices of Defendants.

**JURY DEMAND**



Plaintiffs request a jury trial on all issues to be tried.

WHEREFORE, Plaintiffs respectfully request a judgment against the Defendants:

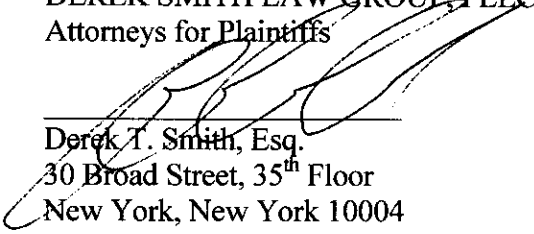
- A. Declaring that the Defendants engaged in unlawful employment practice prohibited by 42 U.S.C.A. § 1981, Title VII, and New York Executive Law; and that the Defendants discriminated against, and retaliated against Plaintiffs because they opposed Defendants' unlawful conduct.
- B. Declaring that the Defendants intentionally caused Plaintiffs to become emotionally distressed.
- C. Awarding damages to the Plaintiffs, retroactive to the date of discharge, for all lost wages and benefits, past and future, back pay and front pay, resulting from Defendants' unlawful termination of employment and to otherwise make Plaintiffs whole for any losses suffered as a result of such unlawful employment practices;
- D. Awarding Plaintiffs compensatory damages for mental, emotional and physical injury, distress, pain and suffering and injury to reputation in a amount in excess of the jurisdiction of all lower courts;
- E. Awarding Plaintiffs punitive damages;
- F. Awarding Plaintiffs attorney's fees, costs, and expenses incurred in the prosecution of the action;
- G. Awarding Plaintiffs such other and further relief as the Court may deem equitable, just and proper to remedy the Defendant's unlawful employment practices.

**WHEREFORE**, Plaintiffs demand judgment against Defendants, jointly and severally in an amount to be determined at the time of trial plus interest, punitive damages, attorneys' fees, costs, and disbursements of action; and for such other relief as the Court deems just and proper.

Dated: New York, New York  
July 8, 2013

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By:



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