

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL STAROPOLI,

Plaintiff,

-against-

ST. LUKE'S CORNWALL HOSPITAL,
and DEBRA TOMPKINS,

Defendants.

14 CV 3317

COMPLAINT

JUDGE KARAS

20140507 PM 4:14

Plaintiff MICHAEL STAROPOLI, through the undersigned counsel MICHAEL D. DIEDERICH, JR., complains of the defendant ST. LUKE'S CORNWALL HOSPITAL as follows:

Prefatory Statement

This is a action for damages and injunctive relief against defendant St. Luke's Cornwall Hospital for its discriminatory termination of Plaintiff's employment, in violation of, *inter alia*, the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.*, the Americans with Disabilities Act of 1990, *as amended*, 42 U.S.C.A. § 12101 *et. seq.*, and the parallel New York State Human Rights law.

THE PARTIES

1. Plaintiff Michael Staropoli is, and was at all times relevant herein, citizen of the United States and a resident of the County of Orange, State of New York.
2. Defendant St. Luke's Cornwall Hospital (hereinafter "Defendant" or "St. Luke's"), upon information and belief, is and at all times relevant herein was a business corporation organized and existing under the laws of the State of New York, with central offices located in 70 Dubois Street, Newburgh, New York 12550, in Orange County.
3. Defendant Debra Tompkins, upon information and belief, is a resident of the County of Orange, State of New York.
4. Defendant St. Luke's is an employer within the meaning of the applicable statutes.

JURISDICTION AND VENUE

5. This court has jurisdiction over this action under 28 U.S.C. § 1331 and § 1343(4).
6. Venue is proper in this Court.

FACTUAL ALLEGATIONS

Plaintiff's history of disability

7. Plaintiff is 60 years of age, and has, since early childhood, suffered from Tourette syndrome.
8. Later in life, Plaintiff also developed type II Diabetes.
9. Tourette Syndrome is a hereditary neurologic disorder usually starting in childhood and frequently manifests itself as sudden jerky movements, sudden vocal noises and even coprolalia (the involuntary uttering of obscenities).
10. The manifestations of Tourette Syndrome are made worse by stressful situations.
11. In the past, a person with Tourette syndrome was thought to be insane and or possessed by the devil. Throughout human history, many Tourettes were persecuted, tortured and even put to death due to this disorder.
12. Although times have changed and medicine recognizes this as a bona fide disorder, there still exists much prejudice and misunderstanding today towards people with Tourette syndrome.
13. From childhood, Plaintiff learned to manage the symptoms of Tourette Syndrome.
14. For example, Plaintiff used various techniques of covering up his involuntary sounds and noises by referring to them as nasal congestion, sinus condition or making comments to make people believe that he really is just fooling around.
15. Tourette syndrome is frequently made worse by stress, anxiety, agitation or incidents causing strong emotional response, such as humiliation.
16. Fear of one's diabetic condition can also trigger Tourette Syndrome symptoms.
17. In this case, and as further described below, Defendant St. Luke's essentially demanded that Plaintiff be free of the symptoms of Tourette Syndrome, for example, free of the symptom coprolalia (involuntary cursing)—a symptom that Plaintiff was usually able to control by mumbling or grunting instead of cursing.
18. By failing to accommodate Plaintiff's rare yet involuntary utterance of the word "fuck" (a word which has essentially little meaning, or many non-distinct meanings), by

engaging in conduct designed to exacerbate his Tourette Syndrome symptoms, and by terminating his employment after he complained of the mistreatment (at which time he also expressed Tourette Syndrome symptoms), St. Luke's engaged in unlawful discrimination and retaliation.

Plaintiff's Education & Experience

19. Plaintiff's background and experience reveal that he was very well qualified for his employment position at St. Luke's:

- College educations at Westchester Community College, Valhalla, NY, in Medical Laboratory Technology- A.A.S. 1976.
- College Education at St. Thomas Aquinas College, Sparkill, NY, in Natural Sciences-1978.
- Chiropractic education Palmer College of Chiropractic, Davenport, Iowa-D.C. 1982.
- EMT certificate from Mobile Life with classes ER training at St. Luke's Hospital in Newburgh, NY-1986.
- Surgical Technology education at Ulster B.O.C.E.S. in Port Ewen, NY Certificate -2007.
- Staropoli Chiropractic Office, Highland and Marlboro, NY 1984 -2006.
- Highland Podiatric Surgery – Surgical Technologist/office assistant, 2007-08.
- Orange Ambulatory Surgical Center-Surgical Technologist - Cornwall, NY – 2008-2008
- St. Luke's Cornwall Hospital – Surgical Technologist/certified - 2008 – 2013.

Employment at St. Luke's

20. Plaintiff became employed by St. Luke's after applying for a job there as a Surgical Technologist in 2008. His start date was October 6, 2008.

21. Plaintiff remained an employee of St. Luke's for almost 5 years.

22. Defendant St. Luke's Cornwall Hospital terminated Plaintiff's employment on or about July 29, 2013.

23. Plaintiff's initial training involved 11 month course at Ulster B.O.C.E.S. in Port Ewen, NY with training at 5 area hospitals and several ambulatory surgical centers in Kingston, Poughkeepsie and Rhinebeck, NY

24. Plaintiff then began working as a Surgical Technologist and became certified in 2009.

25. Staropoli was also on the O.R. Department Sharps Committee as well as O.R. Department Safety Officer while at St. Luke's Cornwall Hospital.

26. Plaintiff's duties as a Surgical Technologist included setting up cases by gathering and opening sterile instruments and sterile packs; assisting with patient positioning and transfer from bed to O.R. table and O.R. table to bed; putting together various types of surgical tables and equipment relevant to the procedure(s) being performed; maintaining sterile field; and many other duties as needed by the O.R. staff.

27. Plaintiff had an exemplary employment record during the whole period of time of his employment, as indicated by annual employee evaluations by staff and management.

Disability Animus and Discrimination at St. Luke's Cornwall Hospital

28. Approximately several days after beginning work at St. Luke's Cornwall Hospital, Plaintiff encountered bias and hostility directed at him on account of his Tourette's Syndrome.

29. Specifically, St. Luke's' staff made comments that Plaintiff is "mentally ill," "crazy" and "not all there."

30. Thereafter, comments were made on how hospital staff should "not trust or listen" to Plaintiff.

31. Derogatory comments were made about Plaintiff's "twitching", sounds or "noises," and his "talking to himself." Each of these is a symptom of Tourette syndrome.

32. Plaintiff brought these derogatory comments to the attention of management, including mention of his Tourette Syndrome.

33. The comments continued, and as a result, Plaintiff complained to his superiors on multiple occasions.

34. This included his complaints to Director Dominique Healy and Clinical Coordinator Laura Delarose-Degroat, as well as to St. Luke's Human Resources department personnel Amy Battle and Linda Yehl.

35. Notwithstanding Plaintiff's complaints, St. Luke's management did nothing to rectify the situation. The abusive, humiliating and discriminatory comments and actions continued.

36. The bias against Plaintiff on account of his disability festered.

37. Plaintiff was essentially forced to work in a hostile work environment on a daily basis, and basically was expected to "take the abuse."

38. Plaintiff felt intimidated, ridiculed and isolated. After complaining to management on repeated occasions, Plaintiff felt he had nowhere to turn for help.

Pretextual criticism

39. At St. Luke's, and in particular its Operating Room Department, other staff members would yell and curse on an almost daily basis.

40. Nurses would argue with other nurses, and argue with the surgeons and other physicians.

41. Confrontations among non-physician staff were common, almost routine. Some of this is described in the Carebridge Report, dated August 18, 2011.

42. Plaintiff did not engage in such misbehavior.

43. Plaintiff did not intentionally yell or argue with anyone.

44. Plaintiff's only "negative" behavior was totally involuntary on his part, namely, a few utterances of the "F-word" caused by his Tourette Syndrome and triggered by the stress of the hostile and discriminatory workplace, and mistreatment due to his other medical condition, diabetes.

45. Upon information and belief, criticizing Plaintiff for a few involuntary utterances of the "F-word" caused by his Tourette Syndrome and diabetes, while condoning the frequent yelling and profanity (and intentional use of the F-word) by non-disabled staff members reflects biased and disparate treatment and was unjustified.

46. St. Luke's O.R. management allowed cursing and obnoxious comments on a routine basis, and condoned this.

47. Moreover, intentional profanity used by other staff member resulted in no adverse action. For example, a traveling nurse anesthetist, Michelle ____ (last name unknown to Plaintiff), quit before her contract was up because she could not take the cursing and sexual deviant talk that existed on a daily basis. This nurse quit and wrote a letter describing her embarrassment and disgust. This letter was given to the administration and was placed as a written warning in the file of all who worked in the operating department. Eventually the write ups were reversed and purged from all of the employee files. Michelle told Plaintiff that he was one of the few people in the OR that did not participate in the lewd behavior and that she did not include him in her complaint.

48. This disparate treatment resulted from unlawful prejudice directed toward Plaintiff by certain members of St. Luke's staff.

49. Moreover, anger and animosity was directed by a supervisory nurse ("nurse in charge" Debra Tomkins) and other staff against Plaintiff, and condoned by upper management (e.g., Director Dominique Healy).

50. Disparate treatment of the kind described above contributed toward the triggering of Plaintiff's involuntary (and understandable and reasonable) Tourette Syndrome utterances.

Diabetes exacerbates Tourette Syndrome

51. Staropoli told St. Luke's when he was hired that he had diabetes.

52. Eventually, as time passed, it was obvious that Plaintiff needed an accommodation for his diabetes.

53. The reason for his need of accommodation was that he was not receiving proper lunch periods at a reasonable time frame during his shift.

54. Very frequently upon entering the department after punching in Plaintiff was approached by management or another nurse telling him "go eat lunch now because you're going to be in cases for the rest of the night."

55. Plaintiff would question this directive, as he had just eaten lunch at home.

56. Then Plaintiff would be actively participating in OR cases until he can find some time between cases to eat whatever he could find in the break room. Plaintiff would normally need to eat halfway through a shift, and would be prepared to go to the break room in the hospital at the appropriate time which was usually around 5:00 pm as his shift was 1:00 pm to 9:00 pm. There was never any time on those days to go to the cafe so he would have to skip lunch and have only a few minutes break between cases.

Reprisal

57. One peri-operative nurse supervisor in particular, Debra Tomkins, harassed, sabotaged, bullied, humiliated and tried to set Plaintiff up for failure on numerous occasions.

58. Ms. Tompkins also discriminated against and abused Plaintiff by spreading vicious comments on how Plaintiff is "crazy", "not all there", "mentally ill" and referred to Plaintiff as "dangerous."

59. Ms. Tomkins made these comments to staff, and especially to new hired staff.

60. Ms. Tompkins told staff that Plaintiff “twitches”, makes “noises” and “talks to himself”.

61. Ms. Tompkins told new hired staff to stay away from Plaintiff and “don’t have him teach or help as he is crazy and not a good tech.”

62. Remarks made by Ms. Tompkins also include: “look who is doing the case”, “I hope everything is ready for the case, look who is in the room”, “Doctor, I hope your case goes well, look who’s here” and telling new surgical technologist students how “they are better than Plaintiff.” Many occasions of this behavior but Plaintiff remembers two particular occasions where he felt like quitting the job due to these statements made by Ms. Tompkins.

63. Ms. Tompkins stated things like this in front of Plaintiff, with the obvious intent of humiliating Plaintiff and making him anxious.

64. Remarks by Ms. Tompkins included referring to Plaintiff and another staff member, Frank Salvani (apparently because Mr. Salvani was sympathetic and helpful toward Plaintiff), as “Frick and Frack”, “Mutt and Jeff”, “Dumb and Dumber” as well as “Shrek and the donkey”.

65. Ms. Tompkins would influence a few of her nurse co-workers to make similar references to Plaintiff.

66. Plaintiff felt depressed, degraded, humiliated and discriminated against on a daily basis for 5 years. In general, when Plaintiff would enter the break room, and Ms. Tompkins and several other staff members would give Plaintiff the “silent treatment”. Plaintiff found it difficult to get involved in conversation due to the coldness of staff. Plaintiff was hurt on a daily basis and felt like an outcast, “alone in a crowd.”

68. Plaintiff’s requests for help, including bringing complaints to St. Luke’s Human Resources, were to no avail.

69. Regarding the above, Plaintiff complained to Clinical Coordinator Laura Delarose-Degroat and Director of Surgical Services, Dominique Healy, on numerous occasions over the 5 years of his employment.

70. They told Plaintiff, among other things, that they would look into the problems and address the complaints promptly. Yet the complaints were never addressed or resolved, and the abuse and harassment continued.

71. Instead, Ms. Delarose-Degroat would make statements to Plaintiff such as “Maybe you heard wrong?” or “You know people sometimes say things they don’t really mean.”

72. Ms. Delarose-Degroat would always minimize Plaintiff's complaints and tell him to not worry about it and go back to work.

73. Plaintiff was on the OR sharps committee and reported to the hospital committee all matters concerning sharp injuries. In the first year, Plaintiff had himself, two injuries. After Plaintiff was made head of sharps committee for the OR, Ms. Tompkins was saying that Plaintiff had so many needle sticks that's why he is was appointed head of the sharps committee. Plaintiff was always humiliated and razzed about his appointment even with two sticks in 5 years.

74. In March of 2011, Plaintiff developed pancreatitis and he worked for several days in acute pain before going to hospital Emergency Department (3/2/2011). While the staff knew of his problem, some of them left much work for him and complained when he was too sick to finish. Management knew of his condition and told him just to ignore these other workers.

75. Director Healy repeatedly told Plaintiff that he could come to her office to vent whenever he felt angered by the treatment he received from Ms. Tompkins and anyone else.

76. The Director Healy told Plaintiff, on numerous occasions, that she would like to see Ms. Tompkins terminated as she is a problem for the O.R. department.

77. Yet Director Healy did nothing.

78. Plaintiff was told by St. Luke's Human Resources personnel (Amy Battle) that Ms. Tompkins' file was very thick with the similar complaints from other employees over the years.

Examples of abuse

79. Part of the motivation Plaintiff had for switching health field professions, from chiropractic to surgical technologist, was because of his Tourette syndrome.

80. Plaintiff's life has centered on helping people with health issues.

81. Plaintiff decided that working for an employer, such as St. Luke's, doing technical work that did not involve direct verbal communication with patients, was a better way for him to help people with their health problems, in light of his difficulties with Tourette Syndrome.

82. Yet at St. Luke's, Plaintiff was repeatedly abused, insulted and humiliated in his job as a surgical technician, ostensibly because he had been a chiropractor.

83. Hospital superiors spread the word that Plaintiff had been a Chiropractor. Plaintiff believes that they did this in order to provoke ridicule towards Plaintiff on account of their dislike for him, which dislike was founded on their disdain for his Tourette Syndrome.

84. For example, Ms. Tompkins would occasionally confront Plaintiff, asking why a chiropractor would want to be a surgical technologist.

85. Plaintiff never discussed his past chiropractic with anyone unless they specifically asked because they had heard from others at the hospital that he had been a chiropractor.

86. On one occasion Plaintiff was taunted by several nurses with questions like “do you think you are a real doctor?” and “do you think you can order tests on patients.”

87. Upon information and belief, these statements were made to irritate, annoy and ridicule Plaintiff. These nurses certainly knew that the scope of practice is defined by New York State law and regulation, and that chiropractic is a recognized profession dealing with problems with the human back (vertebral column).

88. There was another occasion where a member of St. Luke’s staff told a specific neurosurgeon that Plaintiff practiced chiropractic. When Plaintiff had the occasion to work in a case with this neurosurgeon, the neurosurgeon stated “so you’re a chiropractor, I think chiropractors are quacks and they kill people with their adjustments.” This neurosurgeon also, during a case and while sterile, pushed Plaintiff’s left shoulder while stating “is this how you chiropractors fix shoulder problems.” Plaintiff felt deep humiliation and offense to this “assault” to his person. Plaintiff did not argue but waited for the case to end and told director, Dominique Healy, of the offense. Mrs. Healy told Plaintiff that this was highly inappropriate for this surgeon to do this to him and she will confront the surgeon. Plaintiff does not believe that the Director ever approached the surgeon.

89. There was no *bona fide* reason or justification for St. Luke’s staff to inform the neurosurgeon of Plaintiff’s chiropractic background, which they did solely to make Plaintiff the whipping boy of the neurosurgeon.

90. On February 14, 2013, Plaintiff was asked to show a surgeon how to assemble an instrument called a “hysteroscope”. Ms. Tompkins was the nurse in the room and a student Surgical technologist. Apparently the hysteroscope was not properly working and when the surgeon could not use it, Ms. Tompkins blamed Plaintiff saying how “incompetent” he was and should not be called to teach others. Apparently, this instrument had a broken seal and the hospital knew of this condition and allowed it to be in service because it could be used if rigged in a certain way rendering it usable. Plaintiff was never told of this temporary rigging and did in fact properly put it together as it should be if it were a normal functioning instrument.

91. Another example of humiliation, discrimination and abuse is when Ms. Tompkins would keep track of everything that Plaintiff might have forgotten or dropped.

92. On one occasion , Ms. Tompkins accused Plaintiff of allowing a \$5,000.00 piece of equipment to be put in a washer, which destroyed the functionality of the piece of equipment (ENT navigator tracking unit). It had inadvertently been placed by another person into a tray that was on the sterile back table, to be washed and re-sterilized for the next case. This other person did not know about this item, as it was the nurse's job to place it in another area since it is not a sterile item and cannot get wet. The surgical technician, Plaintiff, did not normally deal with this item, as it is not a sterile item and his job deals with the sterile items on the sterile back table. Ms. Tompkins proceeded to suddenly look for this item and said "I bet it went to the washer". Frank Salvani witnessed this occurrence. A picture of this item was posted to main board for all to see, with Plaintiff's name as the person responsible. Director Healy took this picture down and said she would address this with Ms. Tompkins. It appears that no corrective action was taken against Ms. Tompkins.

93. In March 2011, Ms. Tompkins stated to a new student in the presence of another nurse, a surgical technologist (Frank Salvani) and the surgeon that Plaintiff ruined a \$5000.00 piece of equipment (referring to an incident of the past).

94. In March 2011, Ms. Tompkins, while in the break room, was telling other nurses and staff members that "she knows how to get a rise out of Staropoli", then proceeded to say how dangerous he was and that the nurses should not work around him. This talk was heard by Frank Salvani a surgical technologist.

95. In another incident, during the first several months of Plaintiff's employment in 2009, while working with Ms. Tompkins in a hand surgical case, there was a specimen taken and given to Plaintiff who placed it in a safe plastic magnetic tray. After the case, Plaintiff was picked by needle before he could pass off the specimen. Ms. Tompkins, nurse on the case, told him to just go to Emergency Department to take care of wound and make incident report. When Plaintiff returned she asked where the specimen was and he told her that it was in the magnetic tray she said that she tossed it out in the sharps container. Both Plaintiff and Nurse Tompkins searched for the specimen and when Plaintiff found it, Ms. Tompkins decided to throw it out and make incident report that it was lost. Ms. Tompkins told Plaintiff that if he tells anyone then both he and she will be fired. She did not give Plaintiff a chance to send what he knew was the specimen

let him feel bad and responsible for the mistake she made. The surgeon was told and approached Plaintiff and said “this time it was only a harmless cyst, but don’t let it happen again.

96. Another occurrence when Plaintiff was in a case with a surgeon who request that Plaintiff have a certain ribbon packing available to him at the start of the case. Plaintiff had acquired this ribbon packing and placed it where the nurse could open it so that Plaintiff could, when sterile, obtain it from her and present it to the surgeon when needed. Ms. Tompkins, who was the nurse in the case, knows what he wants as well. This occasion she took the ribbon packing bottle and put it away telling Plaintiff that the surgeon won’t use it for this case. When the surgeon asked for the ribbon packing and Plaintiff said he no longer had it available, the surgeon reprimanded him then Ms. Tompkins said to surgeon “this is the kind of help the hospital hires”. During a case was not the time to argue so Plaintiff States that had to let it go. Again, it was reported it to the management. No apparent discipline for Mrs. Tompkins.

97. In keeping track of everything, she would display pictures or the actual items in the hallway to “inform” others about Plaintiff’s purported errors. Plaintiff was always humiliated and felt his self esteem wither time and time again. Plaintiff would tell Director Dominique Healy about these incidences and Mrs. Healy would take these pictures down and supposedly confront Ms. Tompkins on the matter.

98. Another incident when Ms. Tompkins had saved a rubber band that Plaintiff dropped on floor before a surgical case and this rubber band was taped to her locker for about a year. One day she called Plaintiff to come into locker area to see the rubber band she had been saving for him to “eat.”

99. Another example, Ms. Tompkins telling surgeons “I hope your case goes well, look who your tech is”, referring to Plaintiff, and telling Plaintiff in front of surgeons, “I hope you don’t drop anything.”

100. On another occasion , evaluations sheets were given to staff for evaluating other staff members, Plaintiff had received forms to evaluate Ms. Tompkins, and later that week Ms. Tompkins approached Plaintiff and said “I hear you have my evaluation”, Plaintiff responded and said he did have her forms. Ms. Tompkins then said “Guess who has your evaluation, I do” and then she laughed. Plaintiff felt intimidated so he decided it be best for him to give her a good report. When the reports came out, Ms. Tompkins gave Plaintiff a “fair” report. Plaintiff felt humiliated and threatened and began to fear for his job because of her ongoing sabotage.

101. Ms. Tompkins would also repeatedly state in front of students and newly hired surgical technicians, without basis and with the intent of insulting, ridiculing, and isolating Plaintiff, that “students know more than Plaintiff” and that “no one should listen to Plaintiff as he does not know what he’s talking about.”

102. Ms. Tompkins would tell new hires and students that they could not trust Plaintiff to teach them properly.

103. Ms. Tompkins would also tell new hires that Plaintiff is “crazy,” “not all there,” and “dangerous.”

104. In 2010 Ms. Tompkins approached Plaintiff and Mr. Salvani and told them that management and other staff members want to terminate them and that she “defended “ them and it was because of her that they still have their jobs.

105. On one occasion, in 2010, when Ms. Tompkins was working evening with Plaintiff, she told him that “her husband was coming to the hospital to kick your ass”. Plaintiff asked why and then a short time later Mr. Tompkins showed up dressed in motorcycle leather and started to approach him and Mrs. Tompkins. Ms. Tompkins said to Plaintiff “here he is and he’s going to kick your ass”. Plaintiff kept calm but at this point started to believe the threat was real. This was not a joke but another intimidation attempt by Mrs. Tompkins. There is no logical reason for this type of activity in an operating room setting with a professional nurse perpetuating this type of “joke”.

106. As stated above, Plaintiff was not afforded lunch and break periods as needed to accommodate his diabetic condition (and related Tourette Syndrome flare-ups).

107. The hospital had agreed upon this accommodation, yet no actions were taken to ensure that the accommodation took place on a regular basis. Management is at fault as they did not properly stress the accommodation needs for Plaintiff to the various night staff and physicians.

108. Not having proper lunch breaks was very stressful to Plaintiff both mentally and physically. It was also very dangerous to allow Plaintiff to not eat properly as hypoglycemia can cause him to pass out. For a surgical technician to collapse in the Operating Room would have been dangerous both to the technician and the patient undergoing surgery.

109. This worry and stress aggravated the Tourette symptoms.

Retaliation for complaining of discriminatory abuse

110. Plaintiff tried his best to be a “team player,” by suffering through and enduring the abuse described above as best he could.

111. However, Ms. Tompkins’ uncontrolled discriminatory abuse was wearing him out, and becoming intolerable.

112. Plaintiff therefore finally decided to “blew the whistle” on the supervisor’s disability bias and abuse.

113. Accordingly, Plaintiff complained to St. Luke’s Human Resources Department, in writing, on or about June 5, 2013, wherein Plaintiff stated, among other things, that:

“I am also tired of hearing how she feels that I am ‘mentally ill’ and other derogatory description of me. I have, and had since I was a child, Tourette syndrome and then under to [sic] care of a neurologist. I have coprolalia as well. I do not feel that I have to explain this to everyone I meet especially ‘medically educated’ people in my workplace.

My work environment consists of ‘Hostility and Harassment and Bullying’ and this must be stopped as we are all protected under the law from such continual insults, and as a person with disabilities, I am also protected under the disability act.

There are many other incidences that I will put in writing now that I have had enough of that nonsense. Other people feel the same but are afraid of the retribution from Debbie [Tompkins] if they complain. I am no longer worried about retribution.”

(hereinafter “ June 5, 2013 complaint”).

114. Plaintiff experienced reprisal from Ms. Tompkins after he submitted this June 5, 2013 complaint.

115. As a result, on or about June 19, 2013 Plaintiff submitted a second written complaint to St. Luke’s Human Resources Department, wherein he stated, among other things, that:

“After speaking with HR over a prior occurrence with DebbieMs. Tompkins on 6/4/13, Debbie approached me to discuss my reason for reporting her to HR. ***

When I asked Debbie why she refers to me as ‘mentally ill’ and other derogatory remarks she stated only that she meant that I was a crazy worker in the sense that I worked my own crazy style and that everyone leaves me alone to do my work.

Debbie also warned me that if she finds out I made a written complaint against her to HR, that she would write up her own report and ‘it won’t be nice.’”

(hereinafter “June 19, 2013 complaint of reprisal”).

116. On same date I told Ms. Tompkins “I have Tourette Syndrome ,you know” and she stated “I know you do”. On the day after Plaintiff was terminated, on July 30, 2013, Dominique Healy called Ms. Tompkins and Frank Salvani to her office. At this meeting, Ms. Tompkins was reprimanded for her behavior over the years and apologized to Mr. Salvani saying that she was sorry for all the name calling and problems she caused for him and Plaintiff. Mrs. Healy told Frank Salvani that she regretted firing Mike and she was going to help him find another job. She did not. Rather, perhaps because she desired to help Plaintiff, Mrs. Healy was terminated approximately 3 months later and is no longer employed at St. Luke’s.

117. Plaintiff’s complaints of discrimination and reprisal did not result in an end to the abuse.

118. Instead, as described below, it resulted in Plaintiff’s employment being terminated approximately one month after his complaints, on trivial, concocted and pretextual grounds.

Pretextual and retaliatory termination of employment

119. After Plaintiff filed his written complaints of discrimination and reprisal with St. Luke’s Human Resources Department in June 2013, the hostility and abuse continued.

120. As Plaintiff set forth in his previously filed complaint to the N.Y.S. Division of Human Rights (DHR) at paragraphs 5 and 6:

July 22, 2013 I had been working in an operating room for 4 1/2 hours without a break. I had previously submitted a doctor’s note requesting an accommodation to eat at regular intervals due to my diabetes. I was granted the accommodation. I am well aware that there are times when the work does not permit me eat as soon as I need to, however on this occasion I waited until my work in the operating room was completed and then went to eat. There was not much time for me to eat between tasks, and the nurse stated to me that she was not going to stay and wait because I have to eat. I explained that I was feeling ill and believed my “sugar level was dropping low.” I called my supervisor to complain that I needed to eat. By that time I became ill (shaking) and stressed due to the diabetes, which caused a Tourettes outburst on the phone. I admit that I was verbally loud and used foul language, but only due to my disability.

July 25, 2013 I had a meeting with my director. At the meeting my director told me I could “vent” and talk to her about the problems on the job. I spoke freely and told her that I was upset that she did not act on my behalf to stop the harassment from Ms. Tompkins and the nurses. I was immediately suspended.

July 29, 2013 I was terminated. I believe the respondent terminated me due to my disabilities.”

121. The above involved St. Luke's abusive refusal to allow Plaintiff to take a food break on July 22, 2013, placing him in danger of succumbing to a hypoglycemic episode, with the risk of Plaintiff collapsing in the Operating Room while assisting in the surgical procedure.

122. Plaintiff needed a break, because his blood sugar was becoming dangerously low and he had been afforded no meal break.

123. When he was told he should have already eaten and could have no break, he was becoming light-headed due to his diabetic condition, Plaintiff began repeatedly stating words to the effect "I need to ... eat or I'll pass out."

124. Because of his low blood sugar, Plaintiff was worried that he might be going into a hypoglycemic episode.

125. A physician who saw him at this time was concerned for Plaintiff's medical health.

126. Because Plaintiff was becoming very upset and agitated due to the dangerous demands being placed upon him, Tourette symptoms developed, and with this distress Plaintiff made statements such as "I need to fucking eat or I will pass out."

127. No profanity was directed at any person, or voluntarily uttered. Later, the nurse in charge, Maureen Merchant, told Plaintiff "I'm am not going to stay late because you need to eat lunch".

128. Three days later, when on July 25, 2013 Plaintiff spoke to Director Healy (the official who has earlier told him that he could "vent" to her when angry and/or affected by Tourette Syndrome), Director Healy purported to view Plaintiff as "insubordinate" when he pointed out the obvious—that Plaintiff was not being protected, nor his illnesses reasonably accommodated at St. Luke's, thereby placing both him and patients in jeopardy.

129. Firing Plaintiff for his pointing out that he was being abused and put in harm's way on account of his diabetes and Tourette Syndrome was patently retaliatory and unlawful.

130. Thus, Plaintiff was a victim of discrimination and reprisal.

131. St. Luke's termination of Plaintiff's employment was without just cause, and was done solely because of impermissible discrimination and retaliation.

132. Plaintiff's union did not afford him a grievance arbitration.

133. Thus, Plaintiff's termination became final.

134. After notice of termination, neither the Union nor St. Luke's was willing to provide Plaintiff with any reasonable assurance that the obnoxious abuse and mistreatment directed at him on account of his diabetes and Tourette Syndrome would stop.

135. Upon information and belief, if he were not a sufferer of Tourette Syndrome and Diabetes Type II, and the age he was, Plaintiff would not have been fired.

136. Upon information and belief, Plaintiff's employment termination was manifestly discriminatory and retaliatory.

Bad Faith opposition to unemployment insurance benefits

137. After Plaintiff's termination, St. Luke's offered not to oppose his application for unemployment insurance benefits, but only if he signed a general grievance release.

138. Plaintiff did not sign this release.

139. Because he would not waive his legal right to protection under the anti-discrimination laws, St. Luke's fought Plaintiff's request for unemployment insurance benefits, and continues to do so.

140. This evidences further reprisal on the part of St. Luke's, because it was clear to St. Luke's management that Plaintiff did not engage in intentional misconduct.

141. Defendant had and has no bona fide basis for opposing Plaintiff's unemployment insurance application.

142. Plaintiff won his case for unemployment insurance benefits, after hearings, with the Administrative Law Judge finding that he did not engage in intentional misconduct due to his Tourette syndrome. (*December 20, 2013*)

Breach of Contract Claim for Breach of Duty of Good Faith and Fair Dealing

143. Upon information and belief, Defendant breached its obligations of good faith and fair dealing toward Plaintiff by its actions described above.

"Right to Sue" Letter

144. Plaintiff filed a timely charge of disability discrimination with the Equal Employment Opportunity Commission (*Federal Charge No. 16GB400055*) and brings this action within ninety (90) days of the receipt of a Notice of Right To Sue, issued by the EEOC by letter dated April 3, 2014, a copy of which is attached hereto as Exhibit "1".

**FIRST CLAIM FOR RELIEF—
AGE DISCRIMINATION IN VIOLATION OF THE
AGE DISCRIMINATION IN EMPLOYMENT ACT (“ADEA”),
29 U.S.C. § 621 *et seq.***

145. Plaintiff hereby repeats and reiterates each of the allegations above as if full repeated here at length.

146. Upon information and belief, “but for” Plaintiff’s age, Defendant would not have had such severe animus regarding Plaintiff’s disabilities.

147. Upon information and belief, a reasonable jury will find Plaintiff’s age to be a “but for” cause of his termination, together with Defendant’s disability animus.

148. Plaintiff has been damaged thereby.

149. In addition to such compensatory damages, Plaintiff is entitled to an additional award of liquidated damages under the ADEA.

**SECOND CLAIM FOR RELIEF—
DISABILITY DISCRIMINATION
IN VIOLATION OF THE AMERICANS WITH
DISABILITIES ACT OF 1990,
42 U.S.C. § 12101 *et seq.***

150. Plaintiff repeats and reiterates each of the allegations above as if full repeated here at length.

151. The Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, enforceable under 28 U.S.C. § 1331 and 1343(4), protects individuals from employment discrimination based upon physical or mental disability, or based upon being perceived as or having a record of such disability.

152. Plaintiff had one or more psychological and physical disabilities known to Defendant—namely, Tourette Syndrome and Type II Diabetes—which illnesses, separately and together, substantially limited one or more major life activities of Plaintiff; which was so perceived by Defendants, whom also had a record of such disabilities.

153. As a proximate result of Defendant’s discrimination against Plaintiff on the basis of his disability, and Defendant’s records and/or perceptions of Plaintiff’s disability, Plaintiff’s employment was terminated.

154. Plaintiff has suffered and continues to suffer substantial losses as a result of his job termination, including the loss of past and future earnings, bonuses, deferred compensation, and other employment benefits.

155. As a further proximate result of Defendant's actions, Plaintiff has suffered and continues to suffer impairment and damage to his good name and reputation by Defendant.

156. As a further proximate result of Defendant's actions, Plaintiff has suffered and continues to suffer severe and lasting embarrassment, humiliation and anguish, and other incidental and consequential damages and expenses.

157. The conduct of Defendant was outrageous and malicious, was intended to injure plaintiff, and was done with reckless indifference to Plaintiff's protected civil rights, entitling plaintiff to an award of punitive damages.

**THIRD CLAIM FOR RELIEF—
RETALIATION IN VIOLATION OF
ADEA and ADA**

158. Plaintiff's repeats and reiterates each of the allegations above as if full repeated here at length.

159. Plaintiff's reported and objected to unlawful discrimination against Plaintiff and others, and had an objective and reasonable belief that Defendant was engaged in conduct unlawful under the ADEA and ADA.

160. Plaintiff opposed such unlawful conduct by making good faith claims or complaints of discrimination to Defendant.

161. As a consequence, Defendant retaliated by engaging in adverse treatment of Plaintiff.

162. Plaintiff was damaged thereby.

**FOURTH CLAIM FOR RELIEF—
SUPPLEMENTAL NEW YORK STATE HRL CLAIMS**

163. Plaintiff's repeats and realleges each of the allegations above as if full repeated here at length.

164. Defendant's disparate treatment of plaintiff on the basis of his age, his gender and his disability was in violation of the New York State Human Rights Law. See, N.Y.S. Exec. Law § 296 et seq.

165. Defendant Tompkins aided and abetted this discrimination.

166. Plaintiff was damaged thereby.

**FIFTH CLAIM FOR RELIEF—
SUPPLEMENTAL NEW YORK STATE DEFAMATION CLAIM**

167. Plaintiff's repeats and realleges each of the allegations above as if full repeated here at length.

168. Defendant Tompkins intentionally uttered false and defamatory words regarding Plaintiff, to individuals who did not have a a business or other bona fide need for such information, causing damage to Plaintiff and injury to his professional reputation.

169. These words, repeatedly uttered about Plaintiff in the last six months of his employment, included that Plaintiff was "crazy", "not all there", "mentally ill" and "dangerous."

170. Plaintiff was damaged thereby.

DEMAND FOR JURY

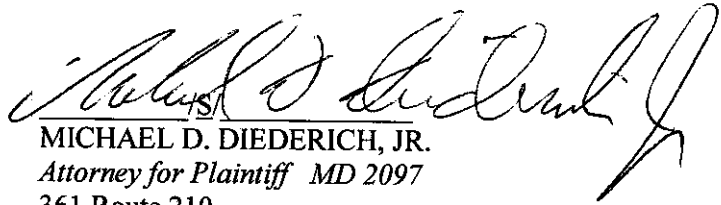
Plaintiff hereby demands trial by jury in this action.

WHEREFORE, Plaintiff prays that this Court grant him judgment containing the following relief:

1. An award of Plaintiff's actual damages in an amount to be determined at trial for loss of wages, benefits, and promotional opportunities, including an award of back pay and front pay compensating plaintiff for loss of future salary and benefits;
2. An award of damages in an amount to be determined at trial to compensate plaintiff for mental anguish, humiliation, embarrassment, and emotional injury;
3. An award of liquidated damages and punitive damages;
4. An order enjoining defendants from engaging in the wrongful practices alleged herein and to reinstate Plaintiff's employment with Defendant;
5. An award of reasonable attorneys' fees and the costs of this action; and

6. Such other and further relief as this Court may deem just and proper.

Dated: Stony Point, New York
May 7, 2014



MICHAEL D. DIEDERICH, JR.
Attorney for Plaintiff MD 2097
361 Route 210
Stony Point, NY 10980
(845) 942-0795
Mike@DiederichLaw.com

Attachment—EEOC notice

EEOC Form 161 (11/09)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Michael F. Staropoli**
105 Locust Lane
Newburgh, NY 12550

From: **New York District Office**
33 Whitehall Street
5th Floor
New York, NY 10004

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

EEOC Charge No.	EEOC Representative	Telephone No.
16G-2014-00055	Holly M. Woodyard, Investigator	(212) 336-3643

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- Your allegations did not involve a disability as defined by the Americans With Disabilities Act.
- The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge
- The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- Other (briefly state) **Charging Party wishes to pursue matter in Federal District Court.**

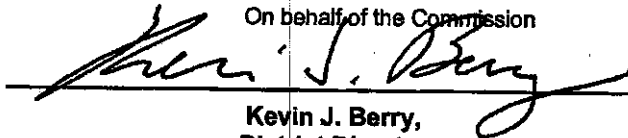
- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission


Kevin J. Berry,
District Director

April 3, 2014

(Date Mailed)

Enclosures(s)

cc:

ST. LUKE'S CORNWALL HOSPITAL
Attn: Director of Human Resources
70 DuBois Street
Newburgh, NY 12550

Michael D. Diederich, Jr., Esq.
Attorney at Law
361 Route 210
Stony Point, NY 10980

Complaint Exhibit "1"

