

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

X

Case No.: 1:24-cv-00355

OSBED BETANCOURT and NICKOLE
HUTCHINSON,

Plaintiffs,

COMPLAINT

JURY TRIAL DEMAND

- against -

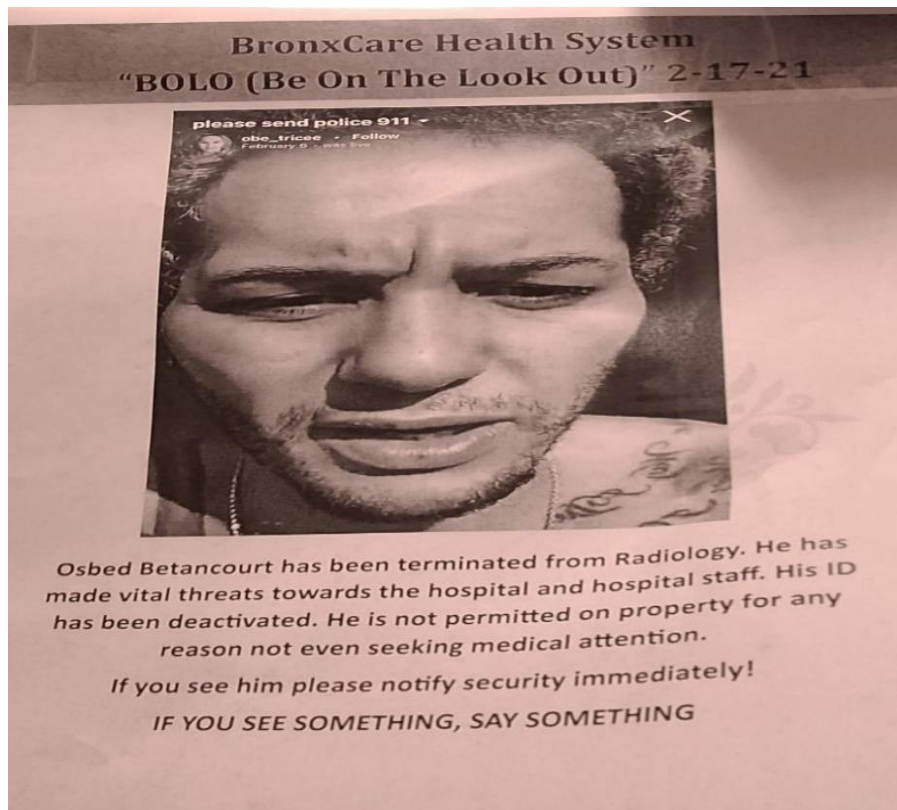
BRONXCARE HEALTH SYSTEM and
SHIRLEY ACEVEDO, *in their individual and
professional capacities,*

Defendants.

X

Plaintiffs Osbed Betancourt and Nickole Hutchinson, by and through their attorneys, Filippatos PLLC, hereby allege against Defendants BronxCare Health System (“BronxCare” or the “Hospital”) and Shirley Acevedo as follows:

NATURE OF THE CASE



BronxCare Health System “BOLO (Be On The Look Out)” 2-17-21

Osbed Betancourt has been terminated from Radiology. He has made vital threats towards the hospital and hospital staff. His ID has been deactivated. He is not permitted on property for any reason not even seeking medical attention.

*If you see him please notify security immediately!
IF YOU SEE SOMETHING SAY SOMETHING”*

1. Plaintiff Osbed Betancourt, a United States Army veteran and lifelong healthcare worker, brings this suit against BronxCare Health System and Defendant Shirley Acevedo, BronxCare’s Director of Radiology, to seek justice for the Hospital’s retaliatory and discriminatory attacks against him following his decision to take protected Family Medical Leave Act (“FMLA”) leave in February 2021 and resulting constructive discharge on January 3, 2024.

2. Mr. Betancourt’s former colleague, Plaintiff Nickole Hutchinson, a dedicated former Diagnostic X-ray Supervisor at BronxCare, also brings this suit against BronxCare and Defendant Acevedo to seek justice for the Hospital’s unlawful, retaliatory, and discriminatory termination of her employment for the simple reason that she provided support and information to Mr. Betancourt in furtherance of his protected complaints of discrimination, harassment, and retaliation against the Hospital.

3. Mr. Betancourt’s experience at BronxCare — the largest not-for-profit health and teaching hospital system that serves the South and Central Bronx, with over 4,500 employees and an annual revenue of approximately \$500 million — is, sadly, emblematic of the challenges faced by minority and disabled healthcare workers across the United States. Despite being a highly skilled and seasoned professional with 10 years of experience in healthcare, as discussed below, Mr. Betancourt was targeted because of his disabilities and mental health issues.

4. Specifically, in February 2021, while on protected FMLA leave, Mr. Betancourt was defamed, humiliated, and publicly attacked by Defendant Acevedo, who created, posted, and distributed a flyer containing false and defamatory statements about Mr. Betancourt throughout

BronxCare (see page 1, *supra*, the “Defamatory Flyer”). This incident not only brought Mr. Betancourt’s promising career to a crashing halt, but severely exacerbated his symptoms of Post-Traumatic Stress Disorder (“PTSD”) and bipolar disorder, in turn causing him to become ensnared in a mental health crisis. Eventually, Mr. Betancourt had to quit his job due to intolerable conditions at work.

5. Unbeknownst to Mr. Betancourt, Ms. Acevedo posted the Defamatory Flyer she created to denigrate Mr. Betancourt all throughout the Hospital *circa* February 17, 2021, approximately 18 days after Mr. Betancourt began his FMLA leave of absence.

6. After initially fearing retribution from Ms. Acevedo for notifying Mr. Betancourt of Ms. Acevedo’s disturbing and unlawful actions, on June 18, 2023, Ms. Hutchinson, disturbed by the invidious discrimination by which her colleague was unwittingly victimized, showed Mr. Betancourt the Defamatory Flyer that Ms. Acevedo had posted throughout the Hospital back in February 2021.

7. Understandably, and as expected, Mr. Betancourt was utterly humiliated and shocked by the false allegations made against him in the Defamatory Flyer, as well as the way Ms. Acevedo and others at BronxCare had make a mockery out of his mental health condition.

8. As is his right, on or about August 4, 2023, Mr. Betancourt, through undersigned counsel, alerted the Hospital about how his rights had been trampled upon by Ms. Acevedo and others at BronxCare by their decision to post the horrific Defamatory Flyer throughout the Hospital without his knowledge. Mr. Betancourt told the Hospital that he had been made aware of the Defamatory Flyer by his colleague, Ms. Hutchinson, and that he intended to assert legal claims against the Hospital and Ms. Acevedo through the appropriate legal channels.

9. While the Hospital inexplicably failed to respond to Mr. Betancourt’s claims as raised by his counsel and eventually forced him to quit his job through constructive discharge, it

nevertheless acted by swiftly punishing Ms. Hutchinson for her support of and assistance provided to Mr. Betancourt by terminating Ms. Hutchinson's employment on September 15, 2023.

10. In other words, the Hospital fired Ms. Hutchinson after 18 years of dedicated service within days of learning that she had assisted a colleague with regard to his protected complaints of discrimination, harassment, and retaliation against the Hospital.

11. As will be shown through further litigation, BronxCare's abhorrent conduct towards Mr. Betancourt simply for suffering from mental illness and disabilities, his resulting constructive discharge, and BronxCare's blatant retaliation against Ms. Hutchinson for her advocacy of her colleague, not only belies the Hospital's assurance that it "is an equal opportunity/affirmative action employer that values its employees,"¹ but clearly violates the law as well.

12. Accordingly, Plaintiffs bring this action against Defendants seeking injunctive, declaratory, and monetary relief for violating their rights under the Family and Medical Leave Act, 29 U.S.C. §§ 2601, *et seq.* ("FMLA"), the New York State Human Rights Law, New York State Executive Law, §§ 296, *et seq.* ("NYSHRL"), the New York City Human Rights Law, New York City Administrative Code §§ 8-107, *et. seq.*, and ("NYCHRL") New York's Whistleblower Statute, N.Y. Labor Law § 740 (amended in 2021, by NY Senate Bill S4394A).

JURISDICTION AND VENUE

13. Jurisdiction of this Court is proper under 29 U.S.C. §§ 2617 and 28 U.S.C. §§ 1331 as Plaintiffs allege claim pursuant to the FMLA.

14. The Court has supplemental jurisdiction over Plaintiffs' claims under state and local law pursuant to 28 U.S.C. § 1367(a).

¹ See <https://www.bronxcare.org/jobs/hospital-positions/>

15. Venue is proper in this district, pursuant to 28 U.S.C. § 1391(b), as BronxCare resides within the Southern District of New York, and a substantial part of the acts complained of herein occurred therein.

ADMINISTRATIVE REQUIREMENTS

16. Contemporaneously with the filing of this action, Plaintiffs will file Charges of Discrimination with the Equal Employment Opportunity Commission (“EEOC”).

17. When appropriate, Plaintiffs will seek a Notice of Right to Sue from the EEOC and to amend this action to assert corollary claims of discrimination and retaliation based on disability under the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101, et seq. (the “ADA”).

PARTIES

18. Plaintiff Betancourt is an adult resident of the State of New Jersey, Union County, and a current employee of Defendant BronxCare.

19. Plaintiff Hutchinson is an adult resident of the State of New York, Bronx County, and a former employee of Defendant BronxCare.

20. BronxCare is a not-for-profit hospital maintaining its principal place of business at 1650 Grand Concourse, Bronx, New York 10457.

21. Upon information and belief, BronxCare employs approximately 4,500 individuals on a full-time or full-time equivalent basis and thus is subject to all statutes upon which Plaintiffs are proceeding herein.

22. Upon information and belief, at all times relevant hereto, Defendant Acevedo was and is an individual residing in the State of New York, as well as an employee of BronxCare, holding the position of “Director of Radiology,” and has had the authority to affect the terms and conditions of Plaintiffs’ employment or to otherwise influence the decision making regarding the same. As such, Defendant Acevedo qualifies as Plaintiffs’ employer under all relevant statutes.

MATERIAL FACTS

I. Mr. Betancourt's Employment at BronxCare's Radiology Department

23. Mr. Betancourt first gained experience in the medical field while attending and later graduating from the Regional Training Center for Emergency Medical Technicians ("EMT") in Flushing, New York, in December 2006. Mr. Betancourt then went on to gain additional experience both in the medical field and in leadership in 2007 while going through basic training in the United States Army, studying basic first aid, trauma care, and completing a combat lifesavers course.

24. Subsequently, Mr. Betancourt served as a Military Police Officer in the U.S. Army between 2007 and 2014. During his time in service, Mr. Betancourt received an Army Commendation Medal, Meritorious Unit Commendation, Army Good Conduct Medal, National Defense Service Medal, Global War on Terrorism Service Medal, Iraq Campaign Medal, and fought in Operation Iraqi Freedom.

25. In 2013, during his junior year at Hostos Community College ("HCC"), Mr. Betancourt began his clinical training to become a Radiology Technologist at Memorial Sloan Kettering Cancer Center ("MSKCC") in New York, New York. He subsequently completed his clinical training at BronxCare during his senior year, where he performed fixed radiographs, portable exams, and fluoroscopic procedures, assessed the needs and special circumstances of critical care patients, and developed an overall passion for a career in the medical field.

26. Mr. Betancourt went on to graduate from HCC with an associate's degree in Applied Science, Radiologic Technology, in June 2014. Following graduation, Mr. Betancourt continued his training at BronxCare, which gave him the experience needed to become proficient in operating x-ray units and other equipment.

27. In September 2014, Mr. Betancourt became a full-time Radiology Technologist at BronxCare. Immediately upon starting his new role, Mr. Betancourt assumed responsibility for operating x-ray equipment to produce high-quality diagnostic images that aided in the diagnosis of various conditions, and in performing routine radiographic procedures, trauma studies, and orthopedic studies.

28. Mr. Betancourt's assimilation into, and successful functioning within the Hospital initially progressed smoothly. Mr. Betancourt was well-qualified and performed the job of a Radiology Technologist at a high level which led to increased pay and additional responsibilities. He was also well-liked and respected by his peers and superiors alike. Mr. Betancourt held the title of Radiologic Technologist right before the intolerable work conditions at BronxCare compelled him to resign.

II. Ms. Hutchinson Joins BronxCare and Flourishes at Her Job

29. Ms. Hutchinson is a seasoned professional with over 17 years of experience in radiology. After she graduated from the State University of New York at Old Westbury and Harlem School of Radiologic Technology, Ms. Hutchinson became a credentialed member of the American Registry of Radiologic Technologists ("ARRT").

30. Ms. Hutchinson then started her professional career at BronxCare in October 2005 where she worked for the next 18 years before she was callously and unlawfully fired. Ms. Hutchinson initially worked as a Diagnostic Technologist before being promoted to Diagnostic Interventional Radiology Supervisor in December 2014 due to her impressive performance.

31. Ms. Hutchinson further improved her credentials by completing a master's program in health administration from Touro University while she worked at BronxCare.

32. As a Diagnostic Interventional Radiology Supervisor, Ms. Hutchinson supervised 26 X-Ray Technologists, two Special Procedure Interventional Radiology Technologists, two Agency Technologists, and four Mammography Technologists, along with several HCC students.

33. Like Mr. Betancourt, Ms. Hutchinson's assimilation into, and successful functioning within BronxCare, initially progressed smoothly and she was often lauded for her performance, including in performance evaluations where she was consistently rated as "exceeded expectations" in multiple categories.

III. Mr. Betancourt is Humiliated, Demeaned, and Retaliated Against for Taking FMLA Leave

34. While Mr. Betancourt has unfortunately had to battle with mental illness for a large part of his life, his mental health deteriorated while working as a first responder during the COVID-19 pandemic. In particular, Mr. Betancourt's PTSD and bipolar disorder symptoms were exacerbated during this time causing him to take intermittent medical leaves pursuant to the FMLA.

35. Mr. Betancourt's symptoms worsened due to frequent and unnecessary inquiries by Ms. Acevado probing into his FMLA leave usage, including forcing him to meet with Doug Reich, Chairman of Employee Health Services, on January 14, 2021, who unnecessarily interrogated Mr. Betancourt about his mental health history and other personal information before allowing him to return to work. Mr. Reich was not a psychiatrist nor a mental health provider, and no other employee was forced by Ms. Acevedo to comply with this additional and humiliating barrier before being cleared to return to work following FMLA leave.

36. Ms. Acevedo even falsely accused Mr. Betancourt of "excessive use of FMLA" in a letter mailed to him on February 5, 2021. Ms. Acevedo's retaliatory and discriminatory behavior, in conjunction with the lack of appropriate mental health support offered by the Hospital during those trying times, was appalling, and pushed Mr. Betancourt toward a mental health crisis. As a

result, Mr. Betancourt had to exercise his FMLA rights and go on leave on or about January 31, 2021, to treat his depression and manic episodes.

37. Shockingly, on or about February 17, 2021, unbeknownst to Mr. Betancourt, and just a few weeks after he began his approved FMLA leave, Ms. Acevedo created, posted, and distributed the Defamatory Flyer containing false and defamatory statements about Mr. Betancourt.

38. This document, appearing similar to a “WANTED” poster, contained an unflattering picture of Mr. Betancourt appearing disheveled that Ms. Acevado apparently pulled from his social media. The Defamatory Flyer not only displayed Mr. Betancourt’s full name and social media handle, but falsely stated that he had “made vital threats towards the hospital and hospital staff.”

39. The Defamatory Flyer also audaciously stated that Mr. Betancourt was no longer permitted on the property, even to seek medical attention. Moreover, the fact that the Defamatory Flyer even displayed Mr. Betancourt’s Instagram username invited anyone who came across the flyer to look through Mr. Betancourt’s social media and snoop around for entertainment.

40. To make matters worse, the Defamatory Flyer was posted in all corners of the Hospital, including, but not limited to, the Hospital’s entrances and exits, security stations, service elevators, medical units, emergency department, and radiology department, and was widely distributed by hand to individuals within the Hospital.

41. Although Mr. Betancourt had no knowledge that this Defamatory Flyer had been circulated at his workplace while he was out on FMLA leave, upon returning to work in April 2021, he noticed a marked difference in the way his coworkers acted towards him when he was around them.

42. Unlike the manner in which he was treated before going on FMLA leave, Mr. Betancourt was no longer greeted, invited into conversations, or asked by his colleagues for help. Rather, Mr. Betancourt noticed that his coworkers actively avoided him, which made him feel ostracized and degraded by the very same people he regarded as friends before going on FMLA leave.

43. Mr. Betancourt chalked up the noticeable shift in his colleagues' attitudes towards him to the fact that they had not worked with him for several months. However, he never imagined in his wildest dreams that he could be publicly flogged by the very Hospital for which he was a loyal and dedicated employee since 2014 during a health crisis.

44. While the precise motivation behind the creation and distribution of the Defamatory Flyer is not entirely clear and will be borne out in litigation, Ms. Acevedo has had a history of ignoring and rejecting Mr. Betancourt's mental health concerns.

45. As referenced above, since as early as May 2020, Ms. Acevedo has repeatedly accused Mr. Betancourt, without any basis, of abusing and misusing his FMLA leave, forcing him to undergo unnecessary psychological evaluations, take part in sudden, unscheduled meetings during which his mental health and personal life were prodded into, and asking him to provide additional documentation simply to maintain his employment at BronxCare. These actions only further exacerbated Mr. Betancourt's PTSD and bipolar disorder symptoms.

IV. Ms. Hutchinson Learns About Ms. Acevado's Defamatory Flyer and Its Cover-Up

46. A few days before she distributed the Defamatory Flyer throughout the Hospital, Ms. Acevado spoke to Ms. Hutchinson and falsely accused Mr. Betancourt of threatening her. Mr. Betancourt had shared a few videos about bipolarism with Ms. Acevado to help her understand his medical condition and had posted an innocuous video on Instagram wherein he stated: "Shirley

Acevado is a woman in power, but she should be a woman empowered.” None of these videos or messages were threatening to say the least.

47. While Ms. Hutchinson was not at work on the day that the Defamatory Flyer was distributed, another X-ray Technologists sent Ms. Hutchinson a copy of the Defamatory Flyer via text message and inquired whether Mr. Betancourt had been terminated.

48. The X-ray Technologists further told Ms. Hutchinson that, on the day she posted and distributed the Defamatory Flyer around the Hospital, Ms. Acevado entered a room full of staff members, including technologists who worked with Mr. Betancourt, and told staff members: “Osbed no longer works here” and “he is not allowed in the Hospital” and “if you see him, report him because he is not allowed in the hospital.”

49. Ms. Acevado then allegedly made numerous copies of the Defamatory Flyer and distributed them throughout the Hospital.

50. Initially, James Franzo, the Hospital’s Director of Security, helped Ms. Acevado distribute the Defamatory Flyer to various departments within the Hospital, but after learning that Ms. Acevedo’s claims on the Defamatory Flyer were unfounded, allegedly told her that her actions were inappropriate.

51. However, Mr. Franzo failed to report Ms. Acevedo nor initiate an investigation into her conduct.

52. The Defamatory Flyer remained posted throughout the Hospital for several days.

53. When Mr. Betancourt returned to work at the end of his FMLA leave, his coworkers began to act differently towards him, though no one ever came forward to tell him about Ms. Acevado’s cruel act as they had been led to believe (falsely) by Ms. Acevedo that Mr. Betancourt was mentally unstable and worried about the repercussions to their own employments if they apprised him of Ms. Acevedo’s unlawful activities.

54. In fact, a few weeks after he returned from FMLA leave, a security guard refused to allow Mr. Betancourt to enter the Hospital, claiming that he had been terminated, and physically blocked him from entering. It was only after Mr. Betancourt calmly de-escalated the situation and informed the security guard that he had in fact not been terminated that he was allowed to enter the Hospital.

V. Ms. Hutchinson Informs Mr. Betancourt About the Discriminatory and Demeaning “Flyer” Posted About Him by Ms. Acevedo

55. Fearful of being retaliated against by Ms. Acevedo, Ms. Hutchinson, against her better judgment, declined to notify Mr. Betancourt about the deeply mortifying Defamatory Flyer created by Ms. Acevedo. Ultimately, however, Ms. Hutchinson could not hold this information in any longer.

56. On June 18, 2023, Ms. Hutchinson — after consulting Mr. Betancourt’s wife out of an abundance of caution to ensure that Mr. Betancourt was not in a poor mental state at the time — made the decision to inform Mr. Betancourt about Ms. Acevedo’s Defamatory Flyer, confirming that he had been unlawfully victimized because of his mental disability and decision to take protected medical leave by Ms. Acevedo and, by extension, the Hospital.

57. Ms. Hutchinson truthfully told Mr. Betancourt about how Ms. Acevedo had created the Defamatory Flyer and circulated it throughout the Hospital.

58. Initially, Mr. Betancourt was understandably shocked and utterly embarrassed by hearing about Ms. Acevedo’s (and the Hospital’s) discriminatory conduct towards him while he was undergoing a mental health crisis for which he was counting on his employer for support.

59. Mr. Betancourt found it unfathomable that his deeply personal health fears and mental health status could have been publicized and mocked by countless people at the Hospital, particularly Ms. Acevedo, with whom he had shared this personal information in confidence.

60. Mr. Betancourt's severe mental health struggles were no longer private, and he had become a target of unlawful and invidious discrimination at his workplace.

61. During this shocking conversation, it became painstakingly clear to Mr. Betancourt that one of his deepest insecurities and biggest fears had been exploited by his employer, including those whom he trusted not to disclose or misuse his private, personal health information, and to whom he looked for support during a very difficult time in his life.

62. Mr. Betancourt's mental health struggles were not just no longer private but had been plastered on a literal poster by the director of his department. Upon seeing the Defamatory Flyer, Mr. Betancourt was mortified, embarrassed, and extremely disturbed, and was flabbergasted by what may have motivated Ms. Acevedo to target and attack him in such a grotesque and evil manner.

VI. Ms. Hutchinson is Brazenly Fired for Encouraging, Supporting, and Providing Information to Mr. Betancourt, a Victim of Unlawful Workplace Discrimination and Retaliation, in Furtherance of His Protected Activities

63. On August 4, 2023, Mr. Betancourt, through his counsel, sent the Hospital a detailed letter describing his legal claims against BronxCare (and others) based on the distribution of the Defamatory Flyer. The correspondence identified Ms. Hutchinson as the employee who had disclosed the facts underlying Ms. Acevedo's discriminatory conduct to Mr. Betancourt.

64. While the Hospital failed to respond to this correspondence, it no doubt read the letter as, on September 15, 2023, Ms. Hutchinson was terminated by James Dunne, Assistant Vice President, Operations and Support Services, and Dahlia Jeffers, Director of Labor Relations, purportedly for violating Hospital "policy" by informing Mr. Betancourt about the Defamatory Flyer.

65. Specifically, Mr. Dunne stated that it was “unethical” for Ms. Hutchinson to provide such information to Mr. Betancourt and accused Ms. Hutchinson of doing so only to “spite” Ms. Acevedo.

66. Mr. Dunne further claimed that Ms. Hutchinson could have harmed Mr. Betancourt by notifying him of the existence of the Defamatory Flyer. Furthermore, in a last-ditch attempt to silence Ms. Hutchinson, Mr. Dunne presented a separation agreement and attempted to pressure Ms. Hutchinson into signing it, stating “you need to sign this now,” implying that she would receive no benefits otherwise. This move was a bold-faced attempt by the Hospital to retaliate, intimidate, and then throw hush money to cover its tracks.

67. When she refused, Ms. Hutchinson was ordered to gather her personal belongings and was humiliatingly escorted out of the Hospital to which she dedicated 18 years of her career, making it a spectacle to intimidate other cooperators.

68. After 18 loyal years of service to the Hospital, Ms. Hutchinson was brazenly fired in an unmistakable case of unlawful retaliation for engaging in protected workplace activity by supporting a colleague who was cruelly discriminated against for his disabilities. For doing the right thing and seeking to create a workplace free of unlawful discrimination, harassment, and retaliation, Ms. Hutchinson was unceremoniously cast aside and left destitute by the Hospital. She is now unemployed and without health insurance for both herself and her “special needs” child.

VII. Mr. Betancourt Suffers From a Mental Health Crisis and Is Compelled To Resign

69. Immediately after becoming aware of the Defamatory Flyer and its subsequent cover-up by superiors including Ms. Acevedo, Mr. Franzo, and others, Mr. Betancourt became so distraught and distressed that he had no choice but to take a leave of absence to address the major effects this incident was having on his mental health and career in the medical field.

70. As a result, Mr. Betancourt had to miss work from June 22, 2023, through July 1, 2023. Then, on July 2, 2023, Mr. Betancourt requested mental health intervention services and completed an intake assessment at Bridgeway Behavioral Health Services in hopes of receiving crisis care counseling.

71. During Mr. Betancourt's brief attempt to return to work on July 7, 2023, he experienced disparate treatment in which colleagues treated him differently based on the assumption that he was mentally unstable.

72. Tragically, the unearthing of the Defamatory Flyer and the circumstances and events surrounding it led to Mr. Betancourt suffering a relapse of alcohol use after two years of sobriety and further aggravated his PTSD and bipolar disorder symptoms. Like many who suffer from mental illness, Mr. Betancourt had been left to suffer in silence, effectively immobilized by a cocktail of anger, shame, fear, and depression.

73. Unable to withstand the deplorable and intolerable conditions at BronxCare, on January 3, 2024, Mr. Betancourt tendered his resignation from BronxCare. In his letter addressed to BronxCare, he stated that he had no choice **“but to resign given how intolerable the atmosphere towards [him] at the hospital ha[d] gotten.”** He mentioned he was deeply disturbed by the Hospital's failure to take action against Ms. Acevado. Mr. Betancourt added that **“being forced to work under the direct supervision of the very person who attacked me publicly is unacceptable,”** and hoped that **“the injustice that occurred can become a teachable moment and opportunity to improve working conditions and provide better support for staff members living with diagnosed mental health disorders.”**

74. The deplorable mistreatment, knowledge of the Defamatory Flyer's existence and prior publication combined with the Hospital's failure to hold Ms. Acevado accountable, caused Mr. Betancourt to suffer debilitating anxiety and distress, which eventually led him to involuntarily

resign from his job. The impact of the Hospital's conduct on Mr. Betancourt's mental health, reputation, education, and career cannot be overstated as it has brought both his professional and personal life to a dead stop. In fact, after spending years learning how to live with his conditions and manage his symptoms without drugs, Mr. Betancourt now, for the first time, is forced to take medication regularly to deal with the stress, anxiety, depression, and insomnia caused by this traumatic incident.

75. Mr. Betancourt's experience has made it clear that BronxCare's policies regarding employee rights and protections for staff with diagnosed mental health conditions are wholly lackluster, require immediate attention, and make a mockery out of mental illness to the point where employees are forced to resign from their jobs to escape the intolerable work conditions.

FIRST CAUSE OF ACTION **Retaliation In Violation of FMLA**

1. Plaintiffs repeat and reallege the allegations contained in the foregoing paragraphs of the Complaint as is fully set forth herein.

2. Section 2615(a)(2) of the Family Medical Leave Act, states in pertinent part: "Discrimination. It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this subchapter."

3. To establish a prima facie case of FMLA retaliation, a plaintiff must establish that: (1) she availed herself of a protected right under the FMLA; (2) she suffered an adverse employment action; and (3) there was a causal connection between the employee's protected activity and the employer's adverse employment action.

4. Plaintiff Betancourt exercised rights protected under the FMLA by requesting leave on or about February 1, 2021, and a second time on July 7, 2023.

5. Plaintiff Betancourt consistently performed the job of Radiology Technologist at a high level receiving positive performance reviews, additional job responsibilities, and increased pay over the course of his employment, until he took and returned from his 2021 FMLA leave. Unbeknownst to Mr. Betancourt, he was publicly defamed and exposed while on protected leave. In turn, shortly after returning to work, Mr. Betancourt found himself ostracized by his coworkers in the Radiology Department, was accosted by a security guard, and subsequently became aware of the Defamatory Flyer.

6. In response to Plaintiff Betancourt's leave, which is protected conduct under the FMLA, Defendants wrongfully retaliated against Plaintiff by creating the Defamatory Flyer and posting and distributing said flyer throughout the Hospital. This flyer was posted throughout the entire hospital and was undoubtedly seen by countless employees, patients, visitors, and others.

7. Likewise, after Plaintiff Hutchinson engaged in protected activity pursuant to the FMLA by notifying Plaintiff Betancourt that Defendants had retaliated against him for exercising his FMLA rights by, inter alia, posting and distributing the Defamatory Flyer disparaging him throughout the Hospital, Defendants unlawfully retaliated against Ms. Hutchinson by terminating her employment.

8. As a direct and proximate result of Defendants' unlawful and wrongful actions or omissions against Plaintiffs, as described in this Complaint, Plaintiffs have sustained injuries and damages, including, but not limited to: (a) loss of earnings; (b) loss of career opportunities; (c) mental and emotional distress; (d) loss of reputation and esteem in the community; and (e) loss of ordinary pleasures of everyday life, including the opportunity to pursue the gainful occupation of their choice, entitling them to all damages available under the law, including liquidated damages.

SECOND CAUSE OF ACTION
Discrimination In Violation of the NYSHRL

9. Plaintiffs repeat and reallege the allegations contained in the foregoing paragraphs of the Complaint as if fully set forth herein.

10. By the actions detailed above, among others, Defendants have discriminated against Plaintiff Betancourt in violation of the NYSHRL by, inter alia, denying him the equal terms and conditions of employment because of his disability (PTSD and bipolar disorder).

11. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYSHRL, Plaintiff Betancourt has suffered, and continues to suffer, monetary and/or economic harm, for which he is entitled to an award of monetary damages and other relief, in addition to reasonable attorneys' fees and expenses.

12. As a direct and proximate result of Defendant's unlawful discriminatory conduct in violation of the NYSHRL, Plaintiff Betancourt has suffered, and continues to suffer, mental anguish and severe emotional distress, for which he is entitled to an award of monetary damages and other relief.

13. Defendants' unlawful and discriminatory actions constitute malicious, willful, and wanton violations of the NYSHRL, for which Plaintiff Betancourt is entitled to punitive damages.

THIRD CAUSE OF ACTION
Retaliation In Violation of the NYSHRL

14. Plaintiffs hereby repeats and re-alleges each and every allegation in each of the preceding paragraphs as if fully set forth herein.

15. By the actions detailed above, among others, Defendants have retaliated against Plaintiffs based on their protected activities in violation of the NYSHRL, including, most recently, terminating Plaintiff Hutchinson's employment.

16. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of the NYSHRL, Plaintiffs have suffered, and continue to suffer, monetary and/or economic harm, for which they are entitled to an award of damages, in addition to reasonable attorneys' fees and expenses.

17. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of the NYSHRL, Plaintiffs have suffered, and continue to suffer, mental anguish and severe emotional distress, for which they are entitled to an award of damages.

18. Defendants' unlawful and retaliatory actions constitute malicious, willful, and wanton violations of the NYSHRL, for which Plaintiffs are entitled to an award of punitive damages.

FOURTH CAUSE OF ACTION
Aiding And Abetting Unlawful Discrimination and Retaliation in Violation of the NYSHRL
Against Defendant Acevedo

19. Plaintiffs hereby repeat, reiterate and re-allege each and every allegation in each of the preceding paragraphs as if fully set forth herein.

20. By the actions described above, among others, Defendant Shirley Acevedo knowingly or recklessly aided and abetted and directly participated in the unlawful discrimination and retaliation to which Plaintiffs were subjected in violation of the NYSHRL.

21. As a direct and proximate result of Defendant Acevado's unlawful conduct in violation of the NYSHRL, Plaintiffs have suffered, and continue to suffer, monetary and/or economic harm, for which they are entitled to an award of damages, in addition to reasonable attorneys' fees and expenses.

22. As a direct and proximate result of Defendant Acevado's unlawful conduct in violation of the NYSHRL, Plaintiffs have suffered, and continue to suffer, mental anguish and severe emotional distress, for which they are entitled to an award of damages.

23. Defendant Acevado's unlawful and retaliatory actions constitute malicious, willful, and wanton violations of the NYSHRL, for which Plaintiffs are entitled to an award of punitive damages.

FIFTH CAUSE OF ACTION
Disability Discrimination in Violation of the NYCHRL

24. Plaintiffs hereby repeat, reiterate and re-allege each and every allegation in each of the preceding paragraphs as if fully set forth herein.

25. New York City Administrative Code § 8-107 provides that:

1. It shall be an unlawful discriminatory practice: (a) For an employer or an employee or agent thereof, because of the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, sexual orientation or alienage or citizenship status of any person, to refuse to hire or employ or to bar or to discharge from employment such person or to discriminate against such person in compensation or in terms, conditions, or privileges of employment.

26. Based on the events described above, Defendants have discriminated against Plaintiff Betancourt on the basis of his disabilities and/or perceived disabilities in violation of the NYCHRL.

27. As a result of the acts and conduct complained of herein, Plaintiff Betancourt has suffered and will continue to suffer damages, including but not limited to, economic and pecuniary losses; severe emotional, psychological, and physical stress, distress, anxiety, pain and suffering; the inability to enjoy life's pleasures; and other non-pecuniary losses and special damages.

28. Accordingly, as a result of Defendants' unlawful conduct, Plaintiff Betancourt has been damaged as set forth herein and is entitled to the maximum compensation available under this law.

SIXTH CAUSE OF ACTION
Retaliation in Violation of the NYCHRL

29. Plaintiffs hereby repeat, reiterate and re-allege each and every allegation in each of the preceding paragraphs as if fully set forth herein.

30. By the actions detailed above, among others, Defendants have retaliated against Plaintiffs based on their protected activities, including, most recently, terminating Plaintiff Hutchinson's employment, in violation of the NYCHRL.

31. As a result of the acts and conduct complained of herein, Plaintiffs have suffered and will continue to suffer damages, including but not limited to, economic and pecuniary losses; severe emotional, psychological, and physical stress, distress, anxiety, pain and suffering; the inability to enjoy life's pleasures; and other non-pecuniary losses and special damages.

32. Accordingly, as a result of Defendants' unlawful conduct, Plaintiffs have been damaged as set forth herein and are entitled to the maximum compensation available under this law.

SEVENTH CAUSE OF ACTION
Aiding and Abetting Discrimination and Retaliation in Violation of the NYCHRL
Against Defendant Acevedo

33. Plaintiffs hereby repeat, reiterate and re-allege each and every allegation in each of the preceding paragraphs as if fully set forth herein.

34. The NYCHRL provides that it shall be an unlawful discriminatory practice "for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this chapter, or attempt to do so."

35. Defendant Acevedo engaged in an unlawful discriminatory practice in violation of the NYCHRL by aiding, abetting, inciting, compelling, and coercing the discriminatory and retaliatory conduct against Plaintiffs.

36. As a result of the acts and conduct complained of herein, Plaintiffs have suffered and will continue to suffer damages, including but not limited to, economic and pecuniary losses; severe emotional, psychological, and physical stress, distress, anxiety, pain and suffering; the inability to enjoy life's pleasures; and other non-pecuniary losses and special damages.

37. Accordingly, as a result of Defendant Acevedo's unlawful conduct, Plaintiffs have been damaged as set forth herein and are entitled to the maximum compensation available under this law.

EIGHTH CAUSE OF ACTION

Retaliation in Violation of New York Labor Law 740

38. Plaintiff Hutchinson repeats and realleges each paragraph above.

39. New York Labor Law ("NYLL") 740 prohibits covered employers from retaliating against an employee who discloses or threatens to disclose to a supervisor a practice of the employer that is in violation of a law where the violation creates and prevents a substantial and specific danger to the public health or safety.

40. Defendant is an "employer" within the meaning of NYLL 740(b).

41. Plaintiff is an "employee" within the meaning of NYLL 740(a).

42. As alleged herein, Plaintiff engaged in conduct protected from retaliation action within the meaning of the statute.

43. As alleged herein, Defendants retaliated against Plaintiff for her participation in protected activity.

44. Accordingly, as a result of Defendant's unlawful conduct, Plaintiff has been damaged as set forth herein and each is entitled to the maximum compensation available to each of them under this law.

NINTH CAUSE OF ACTION

Violation of Tort of Injurious Falsehood

45. Plaintiff Betancourt repeats and realleges each paragraph above.

46. The tort of injurious falsehood consists of (1) the knowing publication of false matter derogatory to the accused party's business; (2) of a kind calculated to prevent others from dealing with the business or otherwise interfering with its relations with other; and (3) to its detriment. *Waste Distillation Technology, Inc. v. Blasland & Bouck Engineers*, 136 A.D.2d 633, 523 N.Y.S.2d 875, 877 (2d Dep't 1998) (citing Prosser & Keeton, *Torts* § 128).

47. Here, Defendant Acevedo (1) knowingly published false matter derogatory to Plaintiff Betancourt's business because she falsely accused him of making threats to the Hospital and staff members which were contrary to his duties and responsibilities as a worker. She denigrated the quality of his work in that he did not comply with his duties and responsibilities; (2) she published the Defamatory Flyer for everyone in the Hospital to see and verbally told staff members that Plaintiff Betancourt had threatened the Hospital and staff members and had resultantly acted in a manner inconsistent with his duties, that he had been terminated, and that they had to report him if they saw him on the premises. Her actions were clearly calculated to prevent others from dealing with Plaintiff Betancourt in his business; and (3) Plaintiff Betancourt's coworkers behaved differently towards him and avoided reaching out to him for work because they perceived him as unstable and threatening due to Defendant Acevedo's false allegations.

48. Accordingly, as a result of Defendant Acevedo's unlawful conduct, Plaintiff Betancourt's business has been damaged as set forth herein and he is entitled to the maximum compensation available to him under this law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request a judgment against Defendants:

A. Declaring that Defendants engaged in unlawful employment practices prohibited by the Family and Medical Leave Act, 29 U.S.C. §§ 2601, et seq.; and the New York State Human Rights Law, New York State Executive Law, §§ 296 et. seq., and the New York City Human Rights Law, New York City Administrative Code §§ 8-107, et. seq.;

B. Awarding damages to Plaintiffs for all lost wages and benefits resulting from Defendants' unlawful employment practices, and to otherwise make them whole for any losses suffered as a result of such unlawful employment practices;

C. Awarding Plaintiffs compensatory damages for mental, emotional and physical injury, distress, pain and suffering and injury to their reputation in an amount to be proven;

D. Awarding Plaintiffs punitive damages;

E. Awarding Plaintiffs liquidated damages;

F. Awarding Plaintiffs attorneys' fees, costs, and expenses incurred in the prosecution of the action; and

G. Awarding Plaintiffs such other and further relief as the Court may deem equitable, just and proper to remedy Defendants' unlawful employment practices.

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues of fact and damages stated herein.

Dated: January 16, 2023
White Plains, New York

Respectfully submitted,

FILIPPATOS PLLC



By: _____

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