

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.: 10-23949-CIV-MORENO

LOUISE MOILERE,

Plaintiff,

vs.

**PHYAMERICA GOVERNMENT
SERVICES, INC.,** A Foreign Profit
Corporation,

Defendant.

**DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT AND MEMORANDUM OF LAW IN SUPPORT**

Under Fed. R. Civ. P. 56(c) and Local Rules 5.5 and 7.1, Defendant PhyAmerica Government Services, Inc. ("PhyAmerica" or "Defendant") moves for summary judgment in its favor on all counts alleged in Plaintiff's¹ Complaint. In support, Defendant states as follows:

I. INTRODUCTION

PhyAmerica provides health care services to government agencies, including for example, the Alexander Nininger State Veterans Nursing Home ("Nininger") at which Plaintiff worked. Plaintiff was employed as a certified nursing assistant ("CNA"). After a counseling session with her supervisor, Plaintiff refused to sign the forms, left the office, and never returned to work. Plaintiff was not fired. Employees who fail to appear for work are considered to have voluntarily resigned.

¹ Plaintiff's surname, "Moliere" is misspelled in her complaint and case caption.

Plaintiff alleges that, on the basis of her race (black) and national origin (Haitian), she was constructively discharged, denied overtime, denied promotions, denied raises, and subjected to a hostile work environment. Plaintiff attributes all of the unlawful conduct in this lawsuit to one PhyAmerica employee—her supervisor, Laurie Alves (the same supervisor who hired her). No other PhyAmerica employees are implicated. Plaintiff also alleges that Defendant retaliated against her for engaging in protected activity. Plaintiff's case is based purely upon speculation.

II. STATEMENT OF UNDISPUTED FACTS

A. Background

1. PhyAmerica is in the business of providing health care services to government entities. Declaration of Elisa Hernandez, Exhibit "A" hereto (Hernandez Decl.), ¶3. Relevant to this case, PhyAmerica contracted with the government to staff Nininger (a Miami, Florida facility) with CNAs. Declaration of Laurie Alves, Exhibit "B" hereto (Alves Decl.), ¶2. CNAs assist the government-employed nurses with feeding, cleaning, and general care of the residents. *Id.*, ¶3. PhyAmerica generally employed between 50 and 60 CNAs at Nininger during Plaintiff's employment. *Id.* Approximately 90% of the CNAs working at Nininger were black. Hernandez Decl., ¶9. Defendant does not maintain records identifying employees' national origin. *Id.*

2. Laurie Alves ("Alves") was PhyAmerica's on-site manager. Alves Decl., ¶ 2. She was responsible for hiring, firing, scheduling, and managing the day-to-day activities of the CNA staff. *Id.* Alves hired Plaintiff in December of 2006. *Id.*, ¶4. Plaintiff's starting pay was \$9.00 per hour. *Id.* PhyAmerica hired on a standard pay scale. All CNAs hired at Nininger between July 1, 2006 and June 1, 2007 received \$9.00 per hour. Hernandez Dec., ¶6; *see also* Alves Decl., ¶4. PhyAmerica conducted performance reviews on an annual basis at which time a merit pay increase would be considered. Hernandez Decl., ¶6. Between the period of July 1, 2006 and

June 1, 2007, no CNA employed at Nininger received a raise before completing a year of service. *Id.*

3. After completing a short training period in December of 2006, Plaintiff was briefly assigned to the day shift before settling in the night shift working 11:00 p.m. to 7:00 a.m. Plaintiff's Deposition Transcript, Exhibit "C" hereto ("Pl. Tr."), 67, 114. Alves assigned Plaintiff the night shift because she was trying to help Plaintiff get more hours. *Id.* at 25-26. Because of this night shift assignment, Plaintiff also received excess pay in the form of a shift differential, which is reflected in her pay records. *See* Composite Exhibit "O" hereto. Employees at Nininger were not guaranteed a set number of hours and, therefore, had to check the posted schedules each month. Alves Decl. ¶5. Alves worked the day shift, generally starting at 8:00 a.m. *Id.*, ¶6.

4. Plaintiff concedes that she rarely saw Alves because they worked different shifts. Pl. Tr., 24, 67-68. The exceptions included surprise inspections, which occurred approximately three times per month. *Id.*, 30. These inspections lasted only minutes. *Id.* Alves allegedly told Plaintiff that she did a good job. *Id.*, 33. At the beginning of her employment, Plaintiff also saw Alves once every two weeks to pick up her paycheck. *Id.*, 29. Plaintiff waited outside Alves's office and was unable to see what Alves was doing. *Id.* Alves would invite her inside and hand her the paycheck. Plaintiff would sign for the check and leave. *Id.* Nothing else happened. *Id.* After a few months, Plaintiff received pay via direct deposit and the visits stopped. *Id.*, 27-28. Alves and Plaintiff generally communicated by exchanging notes in a basket that hung from Alves's office door. Alves Decl., ¶6.

5. Plaintiff alleges that she always performed well at work. Pl. Tr., 33. She also alleges that Alves praised her performance. *Id.*, 33-34. In May of 2007, Plaintiff's grandmother

died and she requested two weeks of paid time off to travel home for the service. *Id.*, 59-60. Plaintiff made her flight reservations before resolving all of her scheduling issues. *Id.*, 76, 82, 86, 88. Plaintiff's flight departed on May 6, 2007. *Id.*, 59. Plaintiff alleges that she received final approval from Alves on May 5, 2007. *Id.*, 81-88. Her testimony on this point is not clear. *Id.*

6. Alves was frustrated at the way Plaintiff handled her request for leave. Alves Decl., ¶7. Plaintiff's last-minute haggling placed a burden on Alves and her assistant to shuffle the schedule. *Id.*, ¶8. Alves's assistant provided Plaintiff a handwritten schedule as a special courtesy. *Id.*; see Exhibit "D" hereto. Dissatisfied with the schedule, Plaintiff wrote a letter to Alves demanding additional paid time off and complaining that the schedule was unprofessional. Alves Decl., ¶8; see Exhibit "E" hereto. Plaintiff did not leave the letter in Alves's basket. Rather, she faxed it to a Nininger staff number. Alves Decl., ¶9. Alves did not receive the letter until May 8, 2007, after Plaintiff was already gone. *Id.*²

7. Alves was frustrated that Plaintiff left without first resolving her issues. *Id.*, ¶7, 10. Alves was also frustrated that Plaintiff sent a fax to the client complaining about unprofessional behavior. *Id.*, ¶10. Alves believes that Plaintiff sent the fax rather than calling her or dropping the letter in her basket to avoid any chance that her request would be denied before she left town. *Id.* Alves also considered Plaintiff's letter to be rude and insubordinate, particularly given the fact that Alves's assistant took time to help Plaintiff despite being overloaded with work. *Id.* Finally, Alves noticed that the letter contained different contact information for Plaintiff than the company records indicated. *Id.* On May 8, 2007, Alves

² Plaintiff does not recall when she sent the letter. Pl. Tr., 84-85. Thus, Alves's testimony on this issue is uncontradicted and must be credited.

prepared a disciplinary letter for Plaintiff. *Id.*; see Exhibit "F" hereto. The letter explains the aforementioned issues in greater detail.

8. Plaintiff alleges that she returned from her trip on May 19, 2007 (Saturday). Pl. Tr., 59-60. She alleges that Alves requested an office meeting the following day, May 20, 2007 (Sunday).³ *Id.*, 60. Alves disputes the allegation, as she did not work on Sundays. Alves Decl., ¶¶ 6, 11. Alves did, however, meet with Plaintiff on May 29, 2007 and documented the meeting. *Id.*, ¶11; see Exhibit "G" hereto. Alves counseled Plaintiff on the issues cited above and asked her to sign the written counseling forms. Alves Decl., ¶11; see Composite Exhibit "H" hereto. Plaintiff refused to sign the forms. Alves Decl., ¶11. Alves documented the substance of the meeting in a memo. *Id.*; see Exhibit "G." Plaintiff does not remember what was said during the meeting. Pl. Tr., 62-63. She acknowledges engaging in at least some of the conduct that resulted in her being counseled. *Id.* Plaintiff alleges that Alves "very polite[ly]" "told me that she didn't fire me, but she didn't put me on the schedule." *Id.*, 61-62. Alves agrees that she did not terminate Plaintiff. Alves Decl., ¶11.

9. PhyAmerica records confirm that Plaintiff did not work after May 5, 2007. Hernandez Decl., ¶4, 14. However, Alves did not take Plaintiff off of the schedule for disciplinary reasons. Alves Decl., ¶11. Had she done so, she would have documented the suspension, and it would have been noted in the written counseling provided to Plaintiff on May 29, 2007. *Id.* No such documentation exists. As set forth above, PhyAmerica did not guarantee Plaintiff a particular schedule and her working hours were contingent upon the company needs. *Id.* ¶3.

³ The Court can take judicial notice of the days of the week in May of 2007.

10. After the May 29, 2007 meeting, Plaintiff missed her next two shifts. *Id.*, ¶12. Accordingly, PhyAmerica considered Plaintiff to have voluntarily resigned. *Id.*; *see* Hernandez Decl., ¶4. Alves completed a termination form noting the no-call, no-show. Alves Decl., ¶12; *see* Exhibit “I” hereto. Plaintiff called Alves’s supervisor, Laura Williams, to discuss the termination. Pl. Tr. 37. Williams told Plaintiff that Alves had the authority to terminate employees. *Id.*, 38. The conversation lasted less than five minutes. Plaintiff had no additional communication with anyone from PhyAmerica. *Id.*, 38-39.

11. On or about May 23, 2007, Plaintiff filed a charge of discrimination with the Florida Commission on Human Relations. *See* Exhibit “J” hereto. Plaintiff’s charge alleges national origin discrimination, but not race discrimination. Plaintiff did not check the “race” box on the form and the detailed explanation does not allege any facts supporting a claim for race discrimination. Alves had no knowledge of the charge of discrimination prior to completing the termination form. Alves Decl., ¶13.

B. The Alleged Harassment

12. Plaintiff does not attribute discriminatory conduct to any PhyAmerica employee other than Alves. Plaintiff’s primary grievance with Alves was that she was “rude.” Pl. Tr. 20, 33, 61, 119. Otherwise, Plaintiff has “always respected Miss Alves because she gave me a job that allowed me to pay my bills[.]” *Id.*, 33. Plaintiff cannot identify any racially derogatory comments made by Alves. *Id.*, 119. The few comments that Plaintiff has identified as offensive are based solely upon national origin. Specifically, Plaintiff alleges that, on one occasion, Alves called a meeting with all employees to discuss the results of an inspection. *Id.*, 110-11. Alves was allegedly upset because “the Haitians were keeping food at places that were not designated for food, and that at one point they opened a drawer and found two boiled eggs.” *Id.*, 111. Alves

allegedly threatened to fire the “F-ing Haitian[s.]” *Id.*⁴ Other than this meeting, Plaintiff alleges generally that Alves made derogatory comments about Haitians, but she cannot recall any specifics (dates, times, witnesses). *Id.*, 112-115. For the very brief period at the beginning of her employment before she was assigned to the late shift, Plaintiff allegedly heard Alves criticize Haitians as she passed by Alves’s office to clock out. *Id.*, 113-14. Plaintiff also alleges that, on one occasion, she saw Alves hold her hand under her nose. *Id.*, 115-16.

13. Oddly, when questioned about specific instances in which she had contact with Alves, such as picking up her paychecks (*Id.*, 29), the surprise inspections (*Id.*, 30), or even her disciplinary meeting (*Id.*, 61-62), Plaintiff does not identify a single off-color comment or action. Furthermore, Plaintiff admits that she rarely saw or spoke to Alves because they worked different shifts. *Id.*, 24, 67-68. In total, Plaintiff interacted with Alves approximately three times per month for a period of five minutes each time, less than twenty minutes total. *Id.*, 24, 30, 67-68. Alves emphatically denies making any of the statements attributed to her by Plaintiff. Alves Decl., ¶14. Furthermore, she denies making any disparaging gestures with her hands. *Id.*, ¶15.

C. Relevant Workplace Policies

14. PhyAmerica employees are “at-will.” Hernandez Decl., ¶16; *see* Exhibit “K” hereto. They can be terminated “at any time, for any reason, with or without cause or notice by either the employee or the Company.” *See* Exhibit “K.” PhyAmerica provides its employees with a handbook that Plaintiff acknowledges she received. Pl. Tr. 39-40; *see* Exhibit “L” hereto.⁵ Among other things, the handbook provides that an “employee who has an unexcused

⁴ Plaintiff alleges that Alves did, in fact, fire all the Haitian employees, but offers no evidence of such action. In June of 2008, PhyAmerica’s contract was terminated and all employees at Nininger were terminated. Hernandez, Decl., ¶17.

⁵ To avoid cluttering the record, Defendant has omitted irrelevant portions of the handbook.

absence for one (1) day (shift) will be considered having voluntarily resigned.” Exhibit L, p. 3. Plaintiff understood that missing a scheduled shift without approval would constitute a voluntary resignation. Pl. Tr. 45-46.

15. PhyAmerica also issued employees an anti-discrimination policy. Hernandez Decl., ¶¶ 10-11; *see* Exhibit “M” hereto.⁶ Plaintiff acknowledges that she received a copy of this policy. Pl. Tr. 41. Plaintiff knew that the policy was intended to address workplace misconduct, including harassment. *Id.* Plaintiff also received a Corporate Compliance Code of Conduct. Pl. Tr. 42; *see* Exhibit “N” hereto. This document places an affirmative obligation on employees to report inappropriate conduct. Exhibit N, p. 4. It provides multiple telephone numbers to call, as well as a procedure to send e-mails, faxes and/or letters to report misconduct. *Id.* The policy also details the investigation process. *Id.*, p. 6.

16. Plaintiff alleges that she did not use PhyAmerica’s anti-harassment policies because she feared being terminated by Alves. Pl. Tr. 43. Plaintiff admits, however, that no PhyAmerica employee, including Alves, threatened to terminate her for doing so. *Id.*, 43-44. Similarly, no PhyAmerica employee told Plaintiff not to read the company anti-harassment policies. *Id.*, 44-45. Plaintiff admits that she never complained to PhyAmerica about Alves. *Id.*, 44. As to why, she said, “I never thought her treatment [of me] merited [a complaint].” Pl. Tr. 135.

D. Disparate Treatment

17. Plaintiff alleges that she suffered the following adverse employment actions: (1) she was denied a raise, (2) she was denied overtime, (3) she was denied a promotion, (4) she was given an unfavorable schedule, (5) she was unfairly reprimanded and subjected to increased

⁶ This policy appears under the name Sterling Health Care, a trade name under which a group of related companies, including PhyAmerica, did business.

scrutiny, and (6) she was constructively discharged. *See* Complaint, ¶¶15-17, 20, 23. Each of these allegations are addressed below.

18. Raise.

All CNAs hired on or after July 1, 2006 at Nininger were paid \$9.00 per hour to start, including Plaintiff. None of these employees received raises until completing at least a year of service. Hernandez Decl., ¶6. Plaintiff did not complete a year of work. She did not request a raise. Pl. Tr. 93. Plaintiff claims that a Jamaican (black) employee who trained her received higher pay. Pl. Tr. 102-03. However, Plaintiff cannot identify the person by name. *Id.* Plaintiff cannot identify any other non-Haitians who she alleges received better treatment with respect to pay. *Id.* at 102-04.

19. Overtime.

Plaintiff alleges that she worked no overtime whatsoever while employed by PhyAmerica. Pl. Tr. 105. Payroll records confirm that Plaintiff received overtime hours and pay for every pay period except May of 2007 when she took leave. Hernandez Decl. ¶7, 13; *see* Exhibit "O". Plaintiff also alleges that she did not receive paid time off for her leave to Haiti in May of 2007. Pl. Tr. 60. Not true. Plaintiff's last day of actual work for PhyAmerica was May 5, 2007. Hernandez Decl., ¶4. Her last two earning statements establish that she was paid through May 19, 2007. *See* Exhibit "O." Plaintiff was paid all PTO that she had acquired. Hernandez Dec., ¶13. Plaintiff speculates that every PhyAmerica employee except for her worked 112 hours per week. Pl. Tr. 100. Plaintiff cannot identify any of these exceptionally hard workers by name. *Id.*, 101. Of course, given Plaintiff's claim that at least 25% of the work force was Haitian, *id.*, 66, that would mean numerous Haitians (along with everyone else) received more favorable hours than Plaintiff. If true, this defeats her claim.

20. Promotion.

Plaintiff alleges she was denied a promotion despite knowing that no other positions were available. Pl. Tr. 98. Plaintiff did not apply for a promotion. *Id.*

21. Scheduling.

Plaintiff told her supervisor she wanted to work full time. Accordingly, Alves tried to schedule Plaintiff so she could work forty hours most weeks. Pl. Tr. 25-26. As it turned out, Plaintiff worked in excess of forty hours per week most weeks. *See* Exhibit "O." She also received excess pay in the form of a shift differential for working the night shift. *Id.* Plaintiff cannot identify any other employee who received more favorable treatment. Pl. Tr. 106.

22. Reprimands and Scrutiny.

Plaintiff was neither unfairly reprimanded nor scrutinized. Rather she claims that Alves's supervision over her was minimal—a few surprise visits (universally applied) for only minutes per month. *Id.*, 30. She says Alves praised her performance. *Id.*, 33-34. Alves did counsel Plaintiff in May of 2007 about the scheduling issues, but no dispute exists as to whether Plaintiff engaged in the conduct that resulted in discipline.

23. Constructive Discharge.

Defendant does not understand Plaintiff's constructive discharge allegation. Plaintiff has failed to offer any facts demonstrating that her working conditions were so intolerable that a reasonable person would feel compelled to resign. Defendant presumes that Plaintiff merely acknowledges that she was not terminated by Alves, but instead, voluntarily resigned.

III. LAW AND ARGUMENT

This Court is well aware of the summary judgment standard. *See Owen v. I.C. Sys., Inc.*, 629 F.3d 1263, 1270 (11th Cir. 2011). Plaintiff has brought claims of race discrimination under 42 U.S.C. § 1981 (§ 1981) (count one) and the Florida Civil Rights Act (FCRA) (count three), and a claim of national origin discrimination under the FCRA (count four). Each has the same elements, and is subject to the same analytical framework, as a claim under Title VII of the Civil Rights Act of 1964 (Title VII), so Defendant addresses them jointly. *See Standard v. A.B.E.L. Servs., Inc.*, 161 F.3d 1318, 1330 (11th Cir. 1998) (§ 1981); *Harper v. Blockbuster Entm't Corp.*, 139 F.3d 1385, 1387 (11th Cir. 1998) (FCRA). Count two contains the lone retaliation claim, which is brought under § 1981. For the reasons set forth below, Defendant is entitled to summary judgment on each of these claims.

A. Plaintiff's National Origin Discrimination Claim Fails.

Plaintiff alleges that she was subjected to two forms of discrimination, disparate treatment and hostile work environment. Neither has merit.

1. Plaintiff was not subjected to a hostile work environment.

Among other things, a hostile work environment plaintiff must prove that she was subjected to harassment so severe and pervasive that it altered the terms and conditions of her employment. *Edwards v. Prime, Inc.*, 602 F.3d 1276, 1300 (11th Cir. 2010). Additionally, the plaintiff must prove that her employer is vicariously liable for the conduct at issue. *Id.* In this case, Plaintiff cannot prove either element.

a. The alleged conduct was not sufficiently severe or pervasive.

A hostile work environment exists where the workplace is "permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter

the conditions of the victim's employment and create an abusive working environment." *Miller of Kenworth of Dothan, Inc.*, 277 F.3d 1269, 1275 (11th Cir. 2002). The conduct must be "extreme," *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998), and constitute a pattern of "extensive, long lasting, unredressed and uninhibited . . . threats or conduct that permeate[s] the plaintiff's work environment." *Indest v. Freeman Decorating, Inc.*, 164 F.3d 258, 264 (5th Cir. 1999). Courts consider the following factors: "(1) the frequency of the conduct; (2) the severity of the conduct; (3) whether the conduct is physically threatening or humiliating, or a mere offensive utterance; and (4) whether the conduct unreasonably interferes with the employee's job performance." *Miller*, 277 F.3d at 1276. Additionally, the conduct must be both subjectively and objectively sufficiently severe or pervasive. *McCann v. Tillman*, 526 F.3d 1370, 1378 (11th Cir. 2008). Courts faced with allegations far worse than present in this case have dismissed hostile work environment claims on summary judgment. *See id.* at 1378-79 (holding "sporadic and isolated" instances of offensive racially derogatory language not objectively severe or pervasive); *Webb-Edwards v. Orange County Sheriff's Office*, 525 F.3d 1013, 1027-28 (11th Cir. 2008) (concluding "taunting and boorish" gender-based discriminatory comments by male supervisor "on at least a weekly basis, over an eight-week period" not sufficiently severe or pervasive to be actionable); *Smith v. Leggett Wire Co.*, 220 F.3d 752, 760 (6th Cir. 2000) (finding racial slurs, racially derogatory cartoons, reference to African-American employee as "gorilla" and sporadic use of the term "nigger" insufficient to create hostile work environment).

In this case, Plaintiff alleges that the following conduct created a hostile work environment: First, Alves allegedly announced during a meeting that she would "fire all the f-ing Haitians" because they misplaced food that resulted in a failed inspection. Second, on one occasion only, Plaintiff witnessed Alves holding her hand under her nose. Third, Plaintiff

alleges that Alves randomly criticized Haitian employees, but she cannot recall the specifics of any such conduct. Plaintiff does not attribute discriminatory conduct to any person other than Alves. Plaintiff concedes that she rarely saw Alves because they worked different shifts. Generally, Plaintiff had less than 20 minutes of contact per month with Alves (e.g., three inspection meetings that lasted five minutes or less). Plaintiff also alleges that she performed her job well and that Alves praised her work. Thus, even assuming these events occurred, the totality of conduct grades out as: (1) low frequency, (2) low severity, (3) no physical threats, and (4) no impact on performance. Most telling, Plaintiff concedes that she herself did not consider Alves's conduct sufficiently severe to warrant a complaint to PhyAmerica management.

b. PhyAmerica is not vicariously liable for the alleged conduct.

Plaintiff's hostile work environment claim also fails because the company took reasonable steps to eliminate unlawful workplace conduct, and Plaintiff unreasonably failed to take advantage of the company's preventative or corrective measures. *Miller*, 277 F.3d at 1278. An employer takes reasonable steps to eliminate unlawful workplace conduct by disseminating adequate anti-harassment policies to employees. *Walton v. Johnson & Johnson Servs., Inc.*, 347 F.3d 1272, 1281 (11th Cir. 2003) (per curiam). An employee unreasonably fails to take advantage of the employer's corrective or preventative measures by failing to utilize the anti-harassment policies. *Id.*; see also *Madray v. Publix Supermarkets, Inc.*, 208 F.3d 1290, 1298-99 (11th Cir. 2000) (workplace discrimination cannot be cured "without the cooperation of the victims").

In this case, Plaintiff concedes that she received several anti-harassment policies. These policies provide clear statements defining inappropriate workplace conduct. They also identify numerous ways for employees to report inappropriate behavior, including providing hotline numbers, e-mail addresses, fax numbers, and other means. Nobody ever discouraged Plaintiff

from reading PhyAmerica's policies.⁷ She elected not to complain about Alves because she did not consider Alves's conduct sufficiently severe. PhyAmerica is not vicariously liable for the alleged harassment.

2. Plaintiff cannot satisfy the *McDonnell Douglas* framework.

Where, as here, there is no direct evidence of discrimination,⁸ a plaintiff may prove discrimination by use of the *McDonnell Douglas*⁹ burden-shifting framework. A plaintiff must first establish a *prima facie* case of discrimination. *E.E.O.C. v. Joe's Stone Crabs, Inc.*, 296 F.3d 1265, 1272 (11th Cir. 2002) (per curiam). This "creates a rebuttable presumption that the employer unlawfully discriminated against her" and shifts the burden to the defendant "to rebut this presumption by producing evidence that its action was taken for some legitimate, non-discriminatory reason." *Id.* If the defendant meets this minimal burden, "the presumption of discrimination is rebutted, and the inquiry 'proceeds to a new level of specificity, in which the plaintiff must show that the proffered reason really is a pretext for unlawful discrimination.'" *Id.* at 1272-73. In this case, Plaintiff cannot establish a *prima facie* case. Furthermore, PhyAmerica has set forth a legitimate, non-discriminatory reason for all alleged adverse employment actions, which Plaintiff cannot rebut.

A *prima facie* case of discrimination requires a plaintiff to prove "that (1) she belongs to a protected class; (2) she was subjected to adverse employment action; (3) her employer treated

⁷ Plaintiff's fleeting references to an unsubstantiated fear of the repercussions of complaining do not advance her case. *See Baldwin*, 480 F.3d at 1307 (fear of termination does not justify a failure to complain).

⁸ "Direct evidence is 'evidence, that, if believed, proves [the] existence of [a] fact without inference or presumption.'" *Wilson v. B/E Aerospace, Inc.*, 376 F.3d 1079, 1086 (11th Cir. 2004) (quotation omitted) (alterations in *Wilson*). Accordingly, "'only the most blatant remarks, whose intent could mean nothing other than to discriminate on the basis of' some impermissible factor constitute direct evidence of discrimination." *Id.* (quotation omitted).

⁹ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

similarly situated employees outside her classification more favorably; and (4) she was qualified to do the job.” *Wilson v. B/E Aerospace, Inc.*, 376 F.3d 1079, 1086 (11th Cir. 2004). In this case, Plaintiff cannot prove the second and third elements of her claim. The undisputed facts establish that Plaintiff did not suffer an adverse employment action, and even if she did, she cannot identify any similarly situated non-minorities who received more favorable treatment.

Raise, Overtime, and Promotion: Plaintiff never requested a raise or promotion. Pl. Tr., at 93-94, 98 Also, Plaintiff routinely worked overtime, and received excess pay for working the night shift. See Hernandez Decl., ¶7; Exhibit “O.” Plaintiff cannot identify a single person outside of her protected classifications who received better hours or pay. See Pl. Tr., 102-04. Plaintiff’s claims are meritless. See *Wilson*, 376 F.3d at 1091 (The plaintiff and her comparable non-minority must be virtually identical in all respects).

Reduced hours: Plaintiff’s hours were not reduced. To the contrary, Alves adjusted Plaintiff’s schedule to ensure that she received a full 40-hour-per-week shift. Pl. Tr., 25-26. Plaintiff had a “feeling” that Alves was trying to fire her by honoring her request for more hours, but offered no factual basis to support this feeling. *Id.* “Feelings” are insufficient to support a claim. *Holifield v. Reno*, 115 F.3d 1555, 1564 (11th Cir. 1997). Moreover, Plaintiff cannot adequately identify a single comparator (let alone a sufficiently similar comparator) who received a more favorable schedule than she did. See Pl. Tr., 102-04.

Unfair reprimands: The only criticism Plaintiff received was on May 29, 2007 when Alves counseled her over her two week leave of absence. Alves clearly was upset about Plaintiff’s leave of absence letter and Plaintiff cannot dispute that she engaged in the conduct referenced in Alves’s written disciplinary memo. Plaintiff cannot make a *prima facie* case of discrimination because the (1) written discipline did not result in an adverse action, and (2) even

if it did, Plaintiff cannot identify even one similarly situated comparator outside her protected class who was treated more favorably. *See* Pl. Tr., 106.

Leave and Constructive Discharge: Plaintiff alleges that, the day after she returned from Haiti (May 20, 2007), Alves called Plaintiff to her office to advise she was being taken off the schedule. Notably, in her interrogatory responses, Plaintiff does not identify this as one of the adverse employment actions she alleges to have suffered. Plaintiff's Objections and/or Responses to Defendant's First Set of Interrogatories to Plaintiff, ¶3, attached hereto as Exhibit "P." Nor did she identify the alleged removal from the schedule (or aftermath) as one of the circumstances in which she claimed someone outside of her protected classification was treated more favorably than she was. *Id.*, ¶5. To create an inference of discrimination, however, among other things, Plaintiff must present evidence that other employees were not removed from the schedule under similar circumstances. *Jones v. Bessemer Carraway Med. Ctr.*, 137 F.3d 1306, 1311 n.6 (11th Cir. 1998) *modified on other grounds*, 151 F.3d 1321 (11th Cir. 1998); *see also Nix v. WLCY Radio/Rahall Communications*, 738 F.2d 1181, 1186-87 (11th Cir. 1984) (same). In this case, even if Plaintiff had not disavowed her removal from the schedule as an allegedly discriminatory adverse employment action in her Interrogatory responses, it is clear that such a claim fails as a matter of law.

Preliminarily, Plaintiff cannot point to any person outside of her protected classifications who received better treatment under the same or similar circumstances. The facts are clear that Plaintiff had no problems with Alves before Plaintiff planned her trip to Haiti. Alves helped her get more hours and praised her work. It is undisputed that Alves was upset with Plaintiff about the manner in which she sought leave. To the extent that Alves may have removed Plaintiff from

the schedule for disciplinary reasons, the only reasonable inference is that she was motivated by frustration over the letter Plaintiff wrote complaining about paid time off and the leave schedule.

Plaintiff cannot state a cause of action merely by quarreling about the wisdom of an employment decision. *Tidwell v. Carter Prod.*, 135 F.3d 1422, 1426 (11th Cir. 1998); *see also Rojas v. Florida*, 285 F.3d 1339, 1342 (11th Cir. 2002) (per curiam) (“We are not in the business of adjudging whether employment decisions are prudent or fair. Instead, our sole concern is whether unlawful discriminatory animus motivates a challenged employment decision.”). Furthermore, Alves is the same person who hired Plaintiff, which cuts against any inference of discrimination. *See, e.g., EEOC v. Our Lady of Resurrection Med. Ctr.*, 77 F.3d 145, 152 (7th Cir. 1996) (inference of discrimination is substantially weakened where the hirer and firer is the same person). Even assuming that Plaintiff was improperly (or overly) disciplined—*i.e.*, Alves got it wrong or overreacted to her legitimate frustrations with Plaintiff—she still cannot state a case for discrimination. An employer may discipline and “fire an employee for a good reason, a bad reason, a reason based on erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason.” *Abel v. Dubberly*, 210 F.3d 1334, 1339 n.5 (11th Cir. 2000). PhyAmerica has given an honest explanation for its actions and that is where the court’s inquiry ends. *Chapman v. AI Transp.*, 229 F.3d 1012, 1030 (11th Cir. 2000) (en banc).

Finally, the alleged constructive discharge claim flows from all the conduct described above, and fails for all the same reasons, but it is even more amiss. Plaintiff has fallen fall short of showing even a hostile work environment, let alone the “more onerous” showing that the working conditions were so “intolerable” and so “unbearable” that Plaintiff was “compelled to resign.” *Bryant v. Jones*, 575 F.3d 1281, 1298 (11th Cir. 2009).

B. Plaintiff's Race Discrimination Claims Fail.

Plaintiff alleges that she was subjected to race discrimination under both the FCHR and § 1981. As outlined above, these claims are addressed in the same manner as Title VII claims.

Both of Plaintiff's race discrimination claims can be quickly dispatched. Plaintiff does not offer any facts in support of her race discrimination claims that are distinct from her national origin discrimination claims. Plaintiff acknowledges that (1) virtually the entire workforce at Nininger was black; (2) she cannot identify a single derogatory comment by Alves concerning race; and (3) she has no basis for asserting that Alves harbored racial animus. Also, Plaintiff cannot identify any non-black employees who received more favorable treatment. Pl. Tr. 106. Indeed, virtually all of the CNAs were black. Additionally, Plaintiff's charge of discrimination does not allege race discrimination. Thus, there is no basis to conclude that Plaintiff suffered an adverse employment action or was subjected to a hostile work environment on the basis of race.

C. Plaintiff's Claim for Retaliation Fails.

A retaliation claim under § 1981 is subject to the same analytical framework as a retaliation claim under Title VII. *See Bryant*, 575 F.3d at 1307. Where, as here, there is no direct evidence of retaliation, to establish a *prima facie* of retaliation under the familiar *McDonnell Douglas* framework "a plaintiff must prove that [s]he engaged in statutorily protected activity, [s]he suffered a materially adverse action, and there was some causal relation between the two events." *Goldsmith v. Bagby Elevator Co., Inc.*, 513 F.3d 1261, 1277 (11th Cir. 2008). If (and only if) established, these elements shift the burden of production to the defendant to articulate a legitimate, non-discriminatory reason for the adverse employment action. *Bryant*, 575 F.3d at 1308. If the defendant carries this minimal burden of production, the presumption of retaliation raised by the *prima facie* case is rebutted, and the plaintiff must "demonstrate that the defendant's proffered reason was merely a pretext to mask discriminatory actions." *Id.* In this

case, Plaintiff cannot establish any of the elements of her *prima facie* claim. Additionally, as set forth above, PhyAmerica has offered a legitimate, non-discriminatory reason for all actions taken with respect to Plaintiff's employment. Plaintiff cannot establish that PhyAmerica's stated reasons for any particular action are not worthy of belief.

1. Plaintiff has failed to state a *prima facie* case of retaliation.

Plaintiff cannot establish that she engaged in statutorily protected activity. "As with other statutory retaliation claims, such a claim under § 1981 requires that the protected activity involve the assertion of rights encompassed by the statute." *Jimenez v. Wellstar Health Sys.*, 596 F.3d 1304, 1311 (11th Cir. 2010). Unlike Title VII, § 1981 prohibits discrimination on the basis of race only, not national origin. *See Tippie v. Spacelabs Med., Inc.*, 180 F. App'x 51, 56 (11th Cir. 2006); *Bullard v. OMI Ga. Inc.*, 640 F.2d 632, 634 (5th Cir. Unit B Mar. 1981). Thus, absent evidence that Plaintiff engaged in protected activity on the basis of her race, her retaliation claim fails.

Plaintiff admits that she did not utilize PhyAmerica's anti-harassment policies to complain about Alves. Indeed, she never made any complaint about Alves to a member of PhyAmerica management. Pl. Tr., 44. Thus, the only arguably statutorily protected activity in this case is Plaintiff's filing of a charge of discrimination with the Florida Commission on Human Relations. However, the charge alleges only national origin discrimination, not race, and thus is not activity protected under § 1981. *See Tippie*, 180 F. App'x at 56; *Bullard*, 640 F.2d at 634; *see also Jimenez*, 596 F.3d 1311.

Even if Plaintiff had engaged in protected activity, she cannot demonstrate a causal connection with any adverse employment action. As explained previously, Defendant took no action against Plaintiff at all. Plaintiff simply failed to show up for her employment and was treated as having resigned. Assuming for sake of argument that Plaintiff was suspended for a

week leading up to her May 29, 2007 counseling session with Alves, her claim still fails. Alves has provided a sworn declaration that she was unaware of Plaintiff's charge of discrimination. As the Eleventh Circuit has held, even temporal proximity will not "create a genuine issue of fact as to causal connection where there is un rebutted evidence that the decision maker did not have knowledge that the employee engaged in protected conduct." *Brungart v. BellSouth Telecomms., Inc.*, 231 F.3d 791, 799 (11th Cir. 2000).

2. Plaintiff cannot rebut PhyAmerica's legitimate, non-discriminatory reasons for any employment action taken.

Assuming for sake of argument that Plaintiff could establish a *prima facie* case of retaliation (she cannot), for the reasons previously discussed, Plaintiff cannot demonstrate that Defendant's proffered, legitimate reasons for each action taken against Plaintiff were merely pretext for unlawful retaliation. *See Bryant*, 575 F.3d at 1308. To the contrary, as explained above, Plaintiff was treated in accordance with Defendant's honest belief that she had abandoned her job or engaged in other misconduct. Furthermore, to the extent Plaintiff alleges that any other employment actions are subjects of retaliation (*e.g.*, promotion, salary, overtime, etc...), Plaintiff has failed to establish that any such actions occurred *after* she engaged in the protected activity at issue.

IV. CONCLUSION

For the reasons stated above, PhyAmerica respectfully requests that the Court enter an Order granting summary judgment in favor of Defendant on all claims asserted in Plaintiff's Complaint.

DATED this 15th day of March, 2011.

ROGERS TOWERS, P.A.

By: s/René M. Fix
René M. Fix, Esq.
Florida Bar No. 189545
1301 Riverplace Boulevard, Suite 1500
Jacksonville, Florida 32207
(904) 398-3911 (telephone)
(904) 396-0663 (facsimile)

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/René M. Fix
Attorney

SERVICE LIST

LOUISE MOILERE vs. PHYAMERICA GOVERNMENT SERVICES, INC.

CASE NO.: 10-23949-CIV-MORENO

United States District Court, Southern District of Florida

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EXHIBIT "A"

DECLARATION OF ELISA HERNANDEZ

I, Elisa Hernandez, under penalty of perjury, do hereby state and declare as follows:

1. I am over the age of twenty-one and have personal knowledge of the facts set forth below.

2. I am the corporate representative for PhyAmerica Government Services, Inc. ("PhyAmerica") and serve as Vice President of Human Resources. I am familiar with PhyAmerica's employment practices and policies. I am also familiar with the facts and circumstances concerning the employment of Louise Moliere.

3. PhyAmerica is in the business of providing health care services to government entities.

4. Ms. Moliere was hired as a certified nursing assistant at Alexander Nininger State Veterans Nursing Home ("Nininger"). She began working for PhyAmerica in December of 2006 and her employment was terminated on June 1, 2007. She did not work any day after May 5, 2007. PhyAmerica considered Ms. Moliere to have voluntarily resigned from employment as a result of being a no-call, no-show for two shifts.

5. During the course of Ms. Moliere's employment with PhyAmerica, she was supervised by Laurie Alves. Ms. Alves was the on-site manager at Nininger. She was responsible for hiring and firing CNAs, scheduling shifts, ensuring that PhyAmerica complied with the terms of its contract with the government, and managing the day-to-day operations at Nininger.

6. I have reviewed employee records from Nininger for the period July 1, 2006 through June 1, 2007. During that period, everyone hired as a CNA at Nininger received starting pay of \$9.00 per hour. Employees generally are not reviewed for performance and raises until completing a year of service. No CNA employed at Nininger during the relevant period received a raise prior to completing a year of service.

7. I have located payroll records for Ms. Moliere. These records reflect that Ms. Moliere received overtime pay during most weeks she was employed. The records are attached to the declaration as Composite Exhibit "O." PhyAmerica has no reason to believe that Ms. Moliere was denied overtime opportunities.

8. PhyAmerica hired only CNAs at the Nininger facility. Thus, no promotional opportunities existed during Ms. Moliere's employment. Ms. Moliere never requested a promotion or raise.

9. The racial composition of the CNAs employed at Nininger was approximately 90% black. PhyAmerica does not keep track of employees' national origin.

10. PhyAmerica utilizes several policies to identify and correct inappropriate workplace behavior. Several of these policies appear under the name Sterling Health Care, a trade name under which a group of related companies, including PhyAmerica, did business. The relevant policies include "Anti-Harassment & Anti-Discrimination" and the "Corporate Compliance Code of Conduct." These policies were provided to employees at Nininger. The relevant policies are respectively attached to this declaration as Exhibits "M" and "N." Ms. Moliere received these policies in the course of her employment with PhyAmerica.

11. The policies described above clearly define inappropriate workplace behavior. They also provide reporting mechanisms, which include telephone numbers, e-mail addresses, and other methods of reporting inappropriate workplace behavior. For sake of brevity, I will not repeat all of the relevant policy language, as the relevant policies are attached. Additionally, the employee handbook, portions of which are also attached to this declaration as Exhibit "L," sets forth PhyAmerica's policy on no-call, no-shows. Employees who miss their shifts without permission are considered to have voluntarily resigned.

12. During Ms. Moliere's employment, PhyAmerica did not receive any complaints or grievances against Ms. Alves, including for example, complaints that she made inappropriate comments about Haitians. Ms. Moliere's charge of discrimination and subsequent lawsuit are the first.

13. Upon investigating the allegations, PhyAmerica found them to be incredible. Ms. Moliere's discrimination charge and lawsuit contain a number of statements that company records conclusively establish to be false. For example, she alleges she did not receive paid time off for her trip to Haiti in May of 2007. PhyAmerica has attached payroll records confirming that she did, in fact, receive paid time off for this trip and for all paid time off acquired. Ms. Moliere alleges she received no overtime during her six month employment history. Company records reflect that she received overtime virtually every pay period. Ms. Moliere alleges that Ms. Alves announced during a meeting with all employees in attendance that she planned to "fire all the f-ing Haitians." Yet not one employee complained after the alleged meeting, not even Ms. Moliere.

14. I have reviewed PhyAmerica's corporate records, which clearly reflect that Ms. Moliere's supervisor, Ms. Alves, became frustrated with Ms. Moliere as a result of the manner in which Ms. Moliere scheduled her leave in May of 2007. Ms. Moliere received counseling for violating several company policies. Following the counseling session, Ms. Moliere failed to return to work. Accordingly, she was considered to have voluntarily resigned. Thus, PhyAmerica considers the termination voluntary.

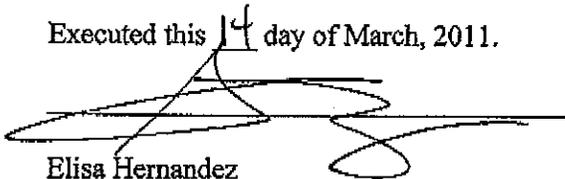
15. I have no reason to believe that any employment decisions made with respect to Ms. Moliere were motivated by unlawful reasons. Ms. Moliere failed to return to work after being counseled by her supervisor.

16. PhyAmerica employees are at-will. A copy of the relevant policy is attached to this declaration as Exhibit "K."

17. In June of 2008, PhyAmerica's contract was terminated and all employees at Nininger were terminated.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 14 day of March, 2011.



Elisa Hernandez

EXHIBIT "B"

DECLARATION OF LAURIE ALVES

I, Laurie Alves, under penalty of perjury, do hereby state and declare as follows:

1. I am over the age of twenty-one and have personal knowledge of the matters set forth below.

2. I was formerly employed by PhyAmerica Government Services, Inc. ("PhyAmerica") as a site manager at Alexander Nininger State Veterans Nursing Home ("Nininger") in south Florida. PhyAmerica entered a contract with Nininger through which PhyAmerica provided certified nursing assistants ("CNA"). I was responsible for interviewing, hiring, firing, scheduling, and managing the CNAs.

3. PhyAmerica generally needed between 50-60 CNAs to staff Nininger. CNAs assist the government-employed nurses with feeding, cleaning, and general care of the residents. CNAs worked staggered shifts. In preparing schedules for CNAs, my primary objective was ensuring that the job was properly staffed. PhyAmerica did not guarantee set hours for CNAs.

4. In December of 2006, I interviewed Louise Moliere and hired her for a CNA position starting at \$9.00 per hour. At the time, this was the starting pay rate dictated by PhyAmerica and I had no authority to modify or change it. I assigned Ms. Moliere to work the 11:00 p.m. to 7:00 a.m. shift. I assigned her this shift based upon business need.

5. Employees at Nininger were not guaranteed a set number of hours and, therefore, had to check the posted schedules each month.

6. My regularly scheduled working time was 8:00 a.m. until 5:00 p.m. Thus, I rarely saw Ms. Moliere during the course of her employment. To the extent I needed to talk to employees who worked the late shift, including Ms. Moliere, I would often exchange written communications with them in a basket attached to my office door. I did not work on Sundays.

7. In May of 2007, Ms. Moliere requested two-weeks off to travel to Haiti. I had advised her that allowing that much time would be difficult to manage on the schedule. Ms. Moliere apparently booked her flights and confirmed her travel plans before receiving final approval for the days off that she requested. I was very frustrated with the way she handled requesting leave.

8. Because Ms. Moliere was so late in requesting her time off, she placed a significant burden on me and my assistant to juggle the schedule. Given the short notice, my assistant provided her a hand-written schedule, which is attached to this declaration as Exhibit "D." In response, Ms. Moliere prepared a letter complaining about her paid time off as well as the schedule provided by my assistant. The letter is attached to this declaration as Exhibit "E."

9. Rather than leaving the letter in my box, Ms. Moliere faxed it to a Nininger number on May 5, 2007. I did not receive the letter until May 8, 2007. She should have left it in my box. Given the fact that she left for her trip on May 6, 2007, I had no meaningful opportunity to respond to her letter. She simply left town without first clarifying the unresolved leave issues.

10. Upon receiving the letter, I became more frustrated with Ms. Moliere. Faxing the letter to Nininger constituted a violation of company policy. I feel that she chose this method of communication so she could avoid the chance that I would deny her request before she actually

left. I was also upset that she would bring personnel complaints to the attention of our client, Nininger. This matter should have stayed in-house. Ms. Moliere's letter accuses PhyAmerica of being unprofessional, which is not something I wanted our client to see. I also considered the letter to be rude and insubordinate, given the efforts PhyAmerica made to work through the leave issues on such short notice. The letter also provided new contact information not contained in the company records. Employees are obligated to immediately notify the company of such a change. Based upon the foregoing, I prepared disciplinary write up, which is attached to the declaration as Exhibit "F."

11. I do not know when Ms. Moliere returned from her trip to Haiti. My next communication with her came on May 29, 2007. Ms. Moliere came to my office with her daughter. I asked her daughter to wait outside of my office because I had to discuss a confidential personnel matter with Ms. Moliere. I explained my frustration about the way she handled her leave. I provided her written counseling forms regarding the events described above. She refused to sign the forms, which are attached to this declaration as Composite Exhibit "H." I did not terminate Ms. Moliere's employment at that time. I merely counseled her. I did not remove her from the schedule or suspend her for disciplinary reasons. I documented our discussion in a memo, which is attached to the declaration as Exhibit "G." Any discipline I took against Ms. Moliere would have been documented in this memo and the written counseling provided to Ms. Moliere.

12. The May 29, 2007 meeting was my last contact with Ms. Moliere. Thereafter, she failed to appear for work for two scheduled shifts. She did not call or otherwise notify me that she was not coming to work. Accordingly, I considered her to have voluntarily resigned and terminated her employment. The termination form is attached to this declaration as Exhibit "I."

13. I did not take any actions with respect to Ms. Moliere's employment on the basis of her race or national origin. I also did not take any actions on the basis of any complaints or issues raised by her. In fact, I was not aware of any complaints she made about me at the time I completed the termination form. I was also unaware that she had filed a charge of discrimination when I completed her termination form. Additionally, I did not terminate Ms. Moliere. I simply thought she quit without telling anyone at the company.

14. I am aware of allegations that I made disparaging comments about Haitians. Specifically, Ms. Moliere alleged that I told a room full of employees during a mandatory meeting that I was planning to "fire all the f-ing Haitians." This allegation is shocking. I would estimate that approximately 50% or more of the CNAs were Haitian. Inspection meetings are also attended by persons other than PhyAmerica employees. To suggest that I would make such a statement to a room full of people, including third parties, is ludicrous. I made no such statements. Surely had I done so, somebody would have complained. That did not happen.

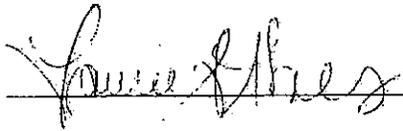
15. I am also aware of allegations that Ms. Moliere saw me hold my hand under my nose on one occasion. It's my understanding that she alleges the gesture somehow suggested that I thought Haitians have body odor. I cannot possibly recall or assess every instance in which my hand may have touched my face. I am sure, however, that I never made a gesture for the purpose of offending Haitians, or suggesting they have body odor.

16. I am also aware of Ms. Moliere's claims that she was denied overtime opportunities, raises, and promotions. Ms. Moliere routinely worked overtime. I do not understand her claim. Regarding raises, she did not request a raise and had not worked long enough to get one. Employees typically must work a year before receiving a raise. Raises are

generally part of the annual evaluation. Regarding promotions, the only position available was CNA. PhyAmerica did not have any other positions for which she could have applied. She did not ask or apply for any promotions.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 11 day of March, 2011.

A handwritten signature in cursive script, appearing to read "Laurie Alves", is written over a horizontal line.

Laurie Alves

EXHIBIT "C"

Louise Moilere

March 4, 2011

<p style="text-align: center;">1</p> <p style="text-align: center;">UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION</p> <p style="text-align: center;">CASE NO. 1:10-23949-CIV-FAM</p> <p>LOUISE MOILERE, Plaintiff, vs. PHYAMERICA GOVERNMENT SERVICES, INC., a Foreign Profit Corporation, Defendant.</p> <p style="text-align: center;">...../</p> <p style="text-align: center;">DEPOSITION OF LOUISE MOILERE TAKEN ON BEHALF OF THE DEFENDANT</p> <p style="text-align: center;">Remer & Georges-Pierre, PLLC 11900 Biscayne Boulevard, Suite 288 North Miami, Florida 33181 March 4, 2011 11:00 a.m.</p> <p style="text-align: center;">Jana Ziemba, Court Reporter</p>	<p style="text-align: center;">3</p> <p style="text-align: center;">INDEX</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">WITNESS</td> <td style="width: 50%;">DIRECT CROSS</td> </tr> <tr> <td>Louise Moilere</td> <td>5 135</td> </tr> </table> <p style="text-align: center;">EXHIBITS</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;"></td> <td style="width: 50%; text-align: right;">PAGE</td> </tr> <tr> <td>Defendant's Exhibit No. 1</td> <td style="text-align: right;">39</td> </tr> <tr> <td>Defendant's Exhibit No. 2</td> <td style="text-align: right;">39</td> </tr> <tr> <td>Defendant's Exhibit No. 3</td> <td style="text-align: right;">40</td> </tr> <tr> <td>Defendant's Exhibit No. 4</td> <td style="text-align: right;">41</td> </tr> <tr> <td>Defendant's Exhibit No. 5</td> <td style="text-align: right;">48</td> </tr> <tr> <td>Defendant's Exhibit No. 6</td> <td style="text-align: right;">67</td> </tr> <tr> <td>Defendant's Exhibit No. 7</td> <td style="text-align: right;">118</td> </tr> </table>	WITNESS	DIRECT CROSS	Louise Moilere	5 135		PAGE	Defendant's Exhibit No. 1	39	Defendant's Exhibit No. 2	39	Defendant's Exhibit No. 3	40	Defendant's Exhibit No. 4	41	Defendant's Exhibit No. 5	48	Defendant's Exhibit No. 6	67	Defendant's Exhibit No. 7	118
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<p style="text-align: center;">2</p> <p style="text-align: center;">APPEARANCES OF COUNSEL</p> <p>On behalf of the Plaintiff:</p> <p>Remer & Georges-Pierre, PLLC JOLIMA M. CABALLERO-SOLIS, ESQ. 11900 Biscayne Boulevard, Suite 288 North Miami, Florida 33181 JCS@RGJPATTORNEYS.com</p> <p>On behalf of the Defendant:</p> <p>Rogers, Towers P.A. RENÉ M. FIX, ESQ. 1301 Riverplace Boulevard, Suite 1500 Jacksonville, Florida 32207 Rfix@rtlaw.com</p> <p>On behalf of the Defendant:</p> <p>Hospital Physician Partners SARAH C. CRASS, ESQ. General Counsel and Chief Compliance Officer 6400 Atlantic Boulevard Jacksonville, Florida 32211 scrass@hpppartners.com</p> <p>Also present:</p> <p>Gardy Constant, Interpreter</p>	<p style="text-align: center;">4</p> <p>(Thereupon, Louise Moilere, having been first duly sworn, was examined and testified upon her oath through the interpreter.)</p> <p>MR. FIX: What I would like to do to the extent possible and is to understand how much English you might be comfortable with. So if I ask a question, if you can answer the question without the help of the interpreter then by all means do so. If you need the interpreter's help understanding or then answering, then by all means use the interpreter, but from our perspective we'd like to get as much as we can get that the witness understands. Do you understand that?</p> <p>THE WITNESS: I understand that, but I am more comfortable with Creole.</p> <p>THE INTERPRETER: The only reason I said what I did is some attorneys they want it to come through me and they don't want to have so much the direct relationship, but if you feel more comfortable with that, that is fine with me.</p> <p>MR. FIX: I rather get the answers from the witness that she can understand and directly. And if she doesn't understand and</p>																				



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Louise Moilere

March 4, 2011

5	<p>1 then use –</p> <p>2 MS. CABALLERO-SOLIS: Well, I think that</p> <p>3 he should go ahead and ask the question in</p> <p>4 Creole and if she does speak an answer in</p> <p>5 English at least she is understanding the</p> <p>6 question 100 percent.</p> <p>7 THE INTERPRETER: Making sure she did</p> <p>8 understand.</p> <p>9 MS. CABALLERO-SOLIS: Right.</p> <p>10 MR. FIX: That is the question, if she</p> <p>11 doesn't understand she can ask him. I just want</p> <p>12 the deposition -- if I have to go through every</p> <p>13 single question back and forth and then I am not</p> <p>14 going to have a chance to finish. And why don't</p> <p>15 we see how it goes and if it becomes a problem</p> <p>16 we can go every question through you.</p> <p>17 THE INTERPRETER: I'm very flexible.</p> <p>18 DIRECT EXAMINATION</p> <p>19 BY MR. FIX:</p> <p>20 Q. You just took an oath, correct? You</p> <p>21 understand that?</p> <p>22 A. Yes.</p> <p>23 Q. Have you ever been deposed before?</p> <p>24 A. No.</p> <p>25 Q. Are you under any medication today that</p>	7	<p>1 of age. Emmanuel Moilere, 29. Tama Moilere, same</p> <p>2 last name, 26. Rochelle Moilere, 25. Emmanuela</p> <p>3 Moilere, 23.</p> <p>4 Q. Do any of them still live with you?</p> <p>5 A. No, they do not live with her.</p> <p>6 Q. Does anyone other than your husband live</p> <p>7 with you?</p> <p>8 A. No.</p> <p>9 Q. Is your husband employed?</p> <p>10 A. No.</p> <p>11 Q. Is he actively looking for work?</p> <p>12 A. He is retired. No, he is retired.</p> <p>13 Q. What is he retired from?</p> <p>14 A. Publix, Publix Supermarket.</p> <p>15 Q. What did he do for Publix?</p> <p>16 A. Baker.</p> <p>17 Q. Are you currently employed?</p> <p>18 A. No.</p> <p>19 Q. Would you agree that you left the</p> <p>20 employment -- and the defendant in this case is</p> <p>21 PhyAmerica.</p> <p>22 A. Yes.</p> <p>23 Q. And what I will be referring today as your</p> <p>24 employer, or PhyAmerica, or the company, and I am</p> <p>25 going to be referring to PhyAmerica, is that okay</p>
6	<p>1 might impact your ability to understand things?</p> <p>2 A. No.</p> <p>3 Q. If you need to take a break today, let me</p> <p>4 know and we can take a brief break, I will finish up</p> <p>5 whatever line of questioning that I am on.</p> <p>6 A. Yes.</p> <p>7 Q. The court reporter cannot hear a nod or</p> <p>8 shake of the head so you will have to answer</p> <p>9 verbally.</p> <p>10 A. Yes.</p> <p>11 Q. Can you tell me your current address?</p> <p>12 A. Okay. 1040 Northwest 198th Street, Miami</p> <p>13 Gardens, 33169.</p> <p>14 Q. Is that a home or apartment?</p> <p>15 A. Home.</p> <p>16 Q. Who owns the home?</p> <p>17 A. Me and my husband.</p> <p>18 Q. Who is your husband?</p> <p>19 A. Wilfred Moilere.</p> <p>20 Q. Do you have children?</p> <p>21 A. Yes.</p> <p>22 Q. How many?</p> <p>23 A. Five.</p> <p>24 Q. Can I get their names and ages?</p> <p>25 A. Dieujuste Moilere. Dieujuste is 31 years</p>	8	<p>1 with you?</p> <p>2 A. Yes.</p> <p>3 Q. You left employment with PhyAmerica on or</p> <p>4 about May of 2007, correct?</p> <p>5 A. Yes.</p> <p>6 Q. Tell me every job that you have held since</p> <p>7 then?</p> <p>8 A. I worked at Jackson Hospital. I worked at</p> <p>9 Matrix Agency. And she did private duty nursing.</p> <p>10 Q. Anything else?</p> <p>11 A. No.</p> <p>12 Q. What dates were you employed by Jackson</p> <p>13 Hospital?</p> <p>14 A. 1992 -- from 1992 through 1998.</p> <p>15 Q. Was that full-time?</p> <p>16 A. Yes.</p> <p>17 Q. What was your pay?</p> <p>18 A. \$11.00 an hour.</p> <p>19 Q. Did you work overtime?</p> <p>20 A. No.</p> <p>21 Q. Was overtime available? Why didn't you</p> <p>22 work any?</p> <p>23 A. It wasn't available.</p> <p>24 Q. Where is Jackson Hospital?</p> <p>25 A. Northwest 12th Street, Jackson Hospital.</p>



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Louise Moilere

March 4, 2011

<p>9</p> <p>1 Q. Who is your direct supervisor?</p> <p>2 A. Mrs. Dureda.</p> <p>3 Q. What was your reason for leaving?</p> <p>4 A. My mother was sick in Haiti she had no one</p> <p>5 to care for her, okay. I was obligated to take a</p> <p>6 year leave of absence because she had no one else to</p> <p>7 care for her.</p> <p>8 Q. And, I'm sorry, you said your date of</p> <p>9 employment was 1992 to 1998?</p> <p>10 A. I am not that sure. I believe so.</p> <p>11 Q. This was before PhyAmerica?</p> <p>12 A. Oh, yes.</p> <p>13 Q. Okay. I am looking for employment you</p> <p>14 worked after PhyAmerica?</p> <p>15 A. Oh, afterwards I have never worked.</p> <p>16 Q. Have you drawn income from any sources</p> <p>17 since leaving PhyAmerica?</p> <p>18 A. I went to unemployment. They paid me only</p> <p>19 two weeks. And Miss Lori Alves called informing them</p> <p>20 that I did not qualify for unemployment, and they</p> <p>21 since have stopped the payment.</p> <p>22 Q. Did they explain why she didn't qualify?</p> <p>23 A. Because the agency was told by Miss Lori</p> <p>24 Alves that she was dismissed because of her attitude,</p> <p>25 the reason for the firing was her attitude.</p>	<p>11</p> <p>1 A. Once, all a lump sum.</p> <p>2 Q. And you used that money to payoff your</p> <p>3 home?</p> <p>4 A. Yes.</p> <p>5 Q. What are you currently receiving from</p> <p>6 Social Security?</p> <p>7 A. I am receiving nothing.</p> <p>8 Q. Your husband?</p> <p>9 A. I believe \$735 monthly.</p> <p>10 Q. Is there any other income coming into the</p> <p>11 house?</p> <p>12 A. Aside from the food stamp?</p> <p>13 Q. Are you currently receiving food stamp</p> <p>14 allowance?</p> <p>15 A. Yes, sir.</p> <p>16 Q. How much?</p> <p>17 A. \$365 per month.</p> <p>18 Q. How long have you been receiving that?</p> <p>19 A. Close to a year.</p> <p>20 Q. Other than the retirement payment, the</p> <p>21 Social Security, and the food stamps, have you</p> <p>22 received any other income, household income, since</p> <p>23 leaving PhyAmerica?</p> <p>24 A. No.</p> <p>25 Q. Have you filed tax returns in 2008 through</p>
<p>10</p> <p>1 Q. Did she hear that from the person working</p> <p>2 at the agency?</p> <p>3 A. They sent me a letter.</p> <p>4 Q. Do you have that letter?</p> <p>5 MS. CABALLERO-SOLIS: I would have to</p> <p>6 look, but anything that we had we gave it to</p> <p>7 you.</p> <p>8 MR. FIX: I just want to make sure there</p> <p>9 is nothing else out there.</p> <p>10 MS. CABALLERO-SOLIS: Yeah. No.</p> <p>11 BY MR. FIX:</p> <p>12 Q. What are you and your husband doing for</p> <p>13 income right now?</p> <p>14 A. My husband received \$98,000 for his</p> <p>15 retirement plan. We paid our house off, we paid our</p> <p>16 car off, and then now we are with struggling with</p> <p>17 Social Security payments, and now a few months ago I</p> <p>18 was obligated to enlist under the food stamp program.</p> <p>19 Q. When did your husband receive a retirement</p> <p>20 payment of \$98,000?</p> <p>21 A. 2008.</p> <p>22 Q. Do you remember the month?</p> <p>23 A. No.</p> <p>24 Q. Was that a lump sum payment or was that</p> <p>25 something you received over time?</p>	<p>12</p> <p>1 the present?</p> <p>2 A. The last time they filed it was 2008, and</p> <p>3 there were -- the government decided that they hold</p> <p>4 back taxes. And they are still paying an amortized</p> <p>5 amount each month.</p> <p>6 Q. So no additional tax returns have been</p> <p>7 filed since 2008?</p> <p>8 A. No, we don't qualify.</p> <p>9 Q. If I understand that correctly, you are</p> <p>10 saying that you are not obligated to file a tax</p> <p>11 return every year?</p> <p>12 A. No.</p> <p>13 Q. Since leaving PhyAmerica tell me what</p> <p>14 efforts you have been made to seek employment?</p> <p>15 A. I have my resume with Monster.Com and it</p> <p>16 is open for anyone to have interest to look at it,</p> <p>17 and I have filled out applications at many places and</p> <p>18 still no response.</p> <p>19 Q. Monster.com and you filled out</p> <p>20 applications. What else?</p> <p>21 A. I speak to friends. I try to network.</p> <p>22 Q. Can you recall for us any applications for</p> <p>23 companies that you filled out?</p> <p>24 A. I applied to Jewish Hospital, but I have</p> <p>25 filed at many other places, but I don't remember the</p>



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<p>13</p> <p>1 addresses.</p> <p>2 Q. How much time in any given week if you can</p> <p>3 say is it that you spend looking for work?</p> <p>4 A. Three, four times a week.</p> <p>5 Q. And what is the procedure? What does she</p> <p>6 do?</p> <p>7 A. They tell me that they will call me, but</p> <p>8 no one ever calls.</p> <p>9 Q. Who tells you they will call?</p> <p>10 A. Those places that I have submitted</p> <p>11 applications.</p> <p>12 Q. So during the three or four times a week</p> <p>13 are we talking about just submitting new</p> <p>14 applications, or -- is that what we are talking</p> <p>15 about? Is there anything else?</p> <p>16 A. Yeah.</p> <p>17 Q. Do you travel out to find these</p> <p>18 application or do you submit them online?</p> <p>19 A. Many times I go to these places</p> <p>20 personally.</p> <p>21 Q. And other than Jewish Hospital you can't</p> <p>22 think of any other place you went to fill out an</p> <p>23 application?</p> <p>24 A. I went to Broward Hospital. I have gone</p> <p>25 to Broward agencies, hospital.</p>	<p>15</p> <p>1 A. Three times a week; one hour three times a</p> <p>2 week.</p> <p>3 Q. Do you remember when that was?</p> <p>4 A. Last year.</p> <p>5 Q. For three months?</p> <p>6 A. Yes.</p> <p>7 Q. Other than what we have discussed in</p> <p>8 looking for jobs and the classes you took with the</p> <p>9 private school I will call it that you can't</p> <p>10 remember, what else have you done with your time?</p> <p>11 A. Nothing.</p> <p>12 Q. Do you have a CNA license?</p> <p>13 A. Yes, but it is expired. I am doing -- I</p> <p>14 have no more money so I cannot afford it, I can't</p> <p>15 renew it.</p> <p>16 Q. Do you know how much it cost?</p> <p>17 A. Last time I believe I paid for the update</p> <p>18 plus the course it cost me almost \$800. When you are</p> <p>19 not working you are supposed to update and take all</p> <p>20 the classes.</p> <p>21 Q. How much did the computer class cost?</p> <p>22 A. \$300.</p> <p>23 Q. And you believe to update and take the</p> <p>24 courses for your CNA you would need \$800?</p> <p>25 A. Yes, especially now more, it would cost</p>
<p>14</p> <p>1 Q. The Broward and Hollywood being employment</p> <p>2 agencies?</p> <p>3 A. Yes.</p> <p>4 Q. Anything else?</p> <p>5 A. No.</p> <p>6 Q. For those three or four days a week you</p> <p>7 are looking for work how much time do you spend each</p> <p>8 day looking?</p> <p>9 A. Four or five hours.</p> <p>10 Q. What are you doing on the other three or</p> <p>11 four days of the week?</p> <p>12 A. There is a place that I go to take</p> <p>13 computer classes.</p> <p>14 Q. Where would that be?</p> <p>15 A. I pay private out of my pocket. It is a</p> <p>16 private place.</p> <p>17 Q. Do you know the name?</p> <p>18 A. No, I don't remember.</p> <p>19 Q. Are you currently taking classes?</p> <p>20 A. I had to stop for a while because they</p> <p>21 want more money and I haven't been able to come up</p> <p>22 with it.</p> <p>23 Q. How long did you attend?</p> <p>24 A. Three months.</p> <p>25 Q. Do you remember the date?</p>	<p>16</p> <p>1 more now.</p> <p>2 Q. When did your CNA license expire?</p> <p>3 A. Last year.</p> <p>4 Q. In 2010?</p> <p>5 A. Yes.</p> <p>6 Q. Do you know the month?</p> <p>7 Are you unable to seek positions that you</p> <p>8 would like because you don't have a CNA license?</p> <p>9 A. Now I can't do anything. The state</p> <p>10 doesn't approve it, it is no good.</p> <p>11 Q. My question is if you had renewed your</p> <p>12 license and never lost your license do you think you</p> <p>13 could have found additional work to do?</p> <p>14 A. But I can't say yes and then I can't say</p> <p>15 no because there is really no jobs out there right</p> <p>16 now.</p> <p>17 Q. Have you been looking? You have not been</p> <p>18 looking for CNA positions, correct?</p> <p>19 A. Because the license has expired.</p> <p>20 Q. And do you know what CNA stands for when</p> <p>21 we talk about CNA?</p> <p>22 A. It is a nursing assistance license.</p> <p>23 Q. Would the C. be certified, Certified</p> <p>24 Nursing Assistant?</p> <p>25 A. Certificate or certified.</p>



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<p>17</p> <p>1 Q. After you left PhyAmerica in May of 2007</p> <p>2 were you looking for any CNA positions?</p> <p>3 A. Yes.</p> <p>4 Q. Can you identify any companies or</p> <p>5 healthcare providers with whom you sought such a</p> <p>6 position?</p> <p>7 A. Jewish Home. With many other agencies.</p> <p>8 Q. It was Jewish Home?</p> <p>9 A. Jewish Home Hospital for the aged.</p> <p>10 Q. Did you go through any interviews?</p> <p>11 A. I have submitted applications. They tell</p> <p>12 me they will call me, but they never call me. I have</p> <p>13 taken exams and passed. They have never called me.</p> <p>14 Q. So no one has explained to you why you</p> <p>15 have not been selected for a position?</p> <p>16 A. They have always told me that they were</p> <p>17 slow.</p> <p>18 Q. Did you make any notes or document your</p> <p>19 efforts to seek employment?</p> <p>20 A. Yes. In some, yes.</p> <p>21 Q. Did you produce those notes to your</p> <p>22 lawyer?</p> <p>23 A. Yes.</p> <p>24 Q. Do you know how many notes you made?</p> <p>25 A. Okay. To say too well, say I don't</p>	<p>19</p> <p>1 should expect to be paid between eleven and \$12.00 an</p> <p>2 hour. He gave me an appointment.</p> <p>3 I went. I had an interview with</p> <p>4 Miss Alves. After the interview, Miss Alves told me</p> <p>5 she would only pay me \$9.00 an hour. Since I need</p> <p>6 the job and I am happy for the job, I mentioned to</p> <p>7 her that Mr. David had told me that I should expect</p> <p>8 to be paid between eleven and \$12.00 an hour. Since</p> <p>9 then she has been -- she has had an attitude that you</p> <p>10 seem to know too much and in that she noticed that</p> <p>11 she wasn't very happy and warned her that she should</p> <p>12 be careful.</p> <p>13 She gave me a second appointment. The</p> <p>14 hour was 4:00 o'clock. There was an interview for</p> <p>15 4:00 o'clock in the afternoon, that she was no longer</p> <p>16 in the office, she left. I had an appointment with</p> <p>17 her at 4:00 o'clock in the afternoon. And so</p> <p>18 naturally I showed up at 4:00 o'clock in the</p> <p>19 afternoon at which time they told me that she had</p> <p>20 left. When I explained to them that the appointment</p> <p>21 was for 4:00 o'clock, they telephone her, Miss Alves,</p> <p>22 at which time she -- to her recollection Miss Alves</p> <p>23 recollect the appointment was for 2:00, 2:00 o'clock</p> <p>24 in the afternoon. And she made certain inferences,</p> <p>25 certain -- clarified the point. And at that point</p>
<p>18</p> <p>1 remember all.</p> <p>2 Q. Can you estimate the number of pages that</p> <p>3 you kept these notes on?</p> <p>4 A. No.</p> <p>5 Q. Did you document everyone you had applied</p> <p>6 for a position with? Did you write notes to help</p> <p>7 yourself as you looked for work?</p> <p>8 A. Those places that accepted my applications</p> <p>9 I documented. Those places that only told me that</p> <p>10 they would call me I have not.</p> <p>11 Q. With respect to all those places who said</p> <p>12 they would call that were documented, were all those</p> <p>13 notes produced to your attorney?</p> <p>14 A. Yes.</p> <p>15 Q. And you can't recall how many pages of</p> <p>16 notes that was?</p> <p>17 A. No, sir.</p> <p>18 Q. How did you come to apply for a job with</p> <p>19 PhyAmerica?</p> <p>20 A. Okay. I apply online with my resume.</p> <p>21 Mr. David -- Mr. David was recruiting. He noticed my</p> <p>22 resume online, noticed the experience that I had,</p> <p>23 asked me if I was interested, and of course I replied</p> <p>24 yes. Based on my experience he sent me to an</p> <p>25 interview with Miss Alves, Lori Alves, told me that I</p>	<p>20</p> <p>1 Miss Alves realized that she had made an error, and</p> <p>2 this is where we are now, okay. So finally -- this</p> <p>3 is over the phone -- and she did come. And so she</p> <p>4 came at a 5:00 o'clock and conducted the interview,</p> <p>5 and then gave me a start date, but since that day,</p> <p>6 since the day I started working she has always been</p> <p>7 very rude to me.</p> <p>8 When she is talking to us at the office</p> <p>9 whenever she would refer to us, particularly as</p> <p>10 Haitian, there would be the F., the F. word followed</p> <p>11 by the Haitian. When she is talking -- whenever she</p> <p>12 is talking or she is talking to a Haitian, having a</p> <p>13 conversation, it would always be with her hands over</p> <p>14 her mouth so that she doesn't breathe Haitians.</p> <p>15 Then I had to go look for my check. And I</p> <p>16 found her, that she was busy with someone waiting for</p> <p>17 her. I waited for her. So although I was there,</p> <p>18 once she finished with the interview with the person</p> <p>19 that she was interviewing with, although I was next,</p> <p>20 there were three other people of different</p> <p>21 nationalities, but she elected to interview those</p> <p>22 people overlooking her.</p> <p>23 Q. Okay. Let me get -- we kind of got off</p> <p>24 track a little bit here. I was trying to get at what</p> <p>25 happened during the interview or just how she came to</p>



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<p style="text-align: center;">21</p> <p>1 find the job. So let me start over back at some of</p> <p>2 the area that you covered and then --</p> <p>3 A. They have a lot, they have more --</p> <p>4 Q. So let's go back to the individual that</p> <p>5 you have referred to as Mr. David. Do you know his</p> <p>6 last name?</p> <p>7 A. Raines.</p> <p>8 Q. He did not specifically offer you a job,</p> <p>9 correct?</p> <p>10 A. Yes, because my resume was online. He was</p> <p>11 the one that contacted me.</p> <p>12 Q. He offered you a job. Why did you think</p> <p>13 he was offering you an interview with Miss Alves?</p> <p>14 A. His job is to recruit the prospect and it</p> <p>15 is up to Miss Alves to do the actual interview.</p> <p>16 Q. And to hire, correct?</p> <p>17 A. Yes.</p> <p>18 Q. So you knew that Miss Alves was going to</p> <p>19 be the one to decide whether or not to hire you?</p> <p>20 A. Yes.</p> <p>21 Q. And when she offered you the \$9.00 an hour</p> <p>22 you could take it or leave it, correct, you had the</p> <p>23 right to accept or reject it?</p> <p>24 A. Yes.</p> <p>25 Q. You needed the job, correct?</p>	<p style="text-align: center;">23</p> <p>1 Q. And then you came back to fill out some</p> <p>2 paperwork and started three or four weeks later?</p> <p>3 A. For the orientation, yes.</p> <p>4 Q. Tell me what you did as a CNA?</p> <p>5 A. Vital signs the patient's body, and those</p> <p>6 that can't self feed, we feed them, make them</p> <p>7 comfortable. We take their temperatures. All vital</p> <p>8 signs.</p> <p>9 Q. And that would be consistent with a</p> <p>10 nursing assistant, correct?</p> <p>11 A. If you are working in the hospital</p> <p>12 environment you do a little bit more, but in nursing</p> <p>13 home that's usually what you do.</p> <p>14 Q. Do you remember the name of the nursing</p> <p>15 home?</p> <p>16 A. Veteran Nursing Home.</p> <p>17 Q. Did you spend the majority of your time</p> <p>18 assisting patients in the nursing home?</p> <p>19 A. Yes.</p> <p>20 Q. Let me ask this question. Where was</p> <p>21 Miss Alves' office in connection with the nursing</p> <p>22 home?</p> <p>23 A. Located in the back. Okay. Her office is</p> <p>24 in the back. And the Patient Care Department is</p> <p>25 towards the front. They have four units. It is one</p>
<p style="text-align: center;">22</p> <p>1 A. Yes, sir.</p> <p>2 Q. And Miss Alves did, in fact, extend you an</p> <p>3 offer of employment, correct?</p> <p>4 A. Yes. Based on my resume, my experience,</p> <p>5 and she needed people to fill the position, and then</p> <p>6 she hired me.</p> <p>7 Q. Do you recall any discussions in</p> <p>8 particular that you had with Miss Alves during the</p> <p>9 interview process?</p> <p>10 A. The discussion wasn't really intense. It</p> <p>11 was basically where I worked, what my past experience</p> <p>12 had been.</p> <p>13 Q. How soon after that interview did you</p> <p>14 start working?</p> <p>15 A. Maybe three or four weeks.</p> <p>16 Q. And to clarify, you had one interview with</p> <p>17 Miss Alves and then you were asked to come back for a</p> <p>18 second; is that correct?</p> <p>19 A. That I came for a second one to sign</p> <p>20 papers.</p> <p>21 Q. At what point were you offered the job?</p> <p>22 A. Since the first one, since the first</p> <p>23 interview she offered it to me.</p> <p>24 Q. Miss Alves?</p> <p>25 A. Yes.</p>	<p style="text-align: center;">24</p> <p>1 unit -- well, it is one building with four units.</p> <p>2 And they have them situated different, at different</p> <p>3 zones, so to name them different. I guess they have</p> <p>4 different functions. Her office was in the back.</p> <p>5 Q. Would you agree that your hire date was in</p> <p>6 December of 2006?</p> <p>7 A. Yes.</p> <p>8 Q. During the course of a typical week how</p> <p>9 many times would you have to go visit Miss Alves in</p> <p>10 her office?</p> <p>11 A. I have never gone to see her because she</p> <p>12 has never needed me.</p> <p>13 Q. Are you saying that you have never been to</p> <p>14 her office while you were an employee for PhyAmerica?</p> <p>15 A. No.</p> <p>16 For how long a time.</p> <p>17 Q. That's what I am asking. What I am saying</p> <p>18 is on average during a given week how frequently</p> <p>19 would she have to go to her office?</p> <p>20 A. When I first started I was in orientation.</p> <p>21 Initially I was in orientation. And it was the</p> <p>22 people conducting the orientation that would give</p> <p>23 her -- that would keep her up to date and give her</p> <p>24 reports about my progress and about me in general.</p> <p>25 Q. So during that orientation period she did</p>



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<p>25</p> <p>1 not have contact with Miss Alves? 2 A. Maybe after two weeks she call me in her 3 office. 4 Q. So you worked through orientation for two 5 weeks and after that two week period Miss Alves 6 called you into her office? 7 A. Yes. 8 Q. And why did she call you? Why did she 9 tell you she was calling you into her office? 10 A. I applied for the 3:00 p.m. to 11:00 p.m. 11 shift. She wasn't able to give her a 40 hour total 12 week or work schedule following the 3:00 to 11:00 13 schedule. So she said the only way she could do it 14 is by picking it up by giving her a 7:00 to 3:00, 15 some 3:00 to 11:00, and 11:00 to 7:00, so she mixed 16 these three shifts. That is the only way she could 17 come up with a 40 hour work week. 18 Q. Did show discuss anything else during that 19 meeting? 20 A. No. 21 Q. After that meeting you began working the 22 job? 23 A. Okay. And then -- yes. And then she 24 changed it to 11:00 to 7:00 because that is the only 25 shift that allowed her to work 40 hours full-time.</p>	<p>27</p> <p>1 Q. Now after you began working the shift she 2 scheduled you for and were into the job, how 3 frequently would you have to talk to her and go visit 4 her in her office? 5 A. Because I did my job exceptionally well 6 they never had any reason to fault me. I would do my 7 job. And until Miss Lori would come in in the 8 morning I never had any reason to go into her office. 9 Q. So for the most part during your working 10 time at PhyAmerica you didn't see very much of 11 Miss Alves? 12 A. It was only during the time for the 13 paycheck. The only time was either for the payday 14 for disbursement of the checks, or sometimes they 15 would have surprise visits in the middle of the night 16 to make sure everyone was doing their job. 17 Q. Did you pickup your paycheck from 18 Miss Alves' office? 19 A. To begin with, yes. 20 Q. Did the process of picking up the paycheck 21 change? 22 A. I had it changed myself because although 23 my shift was over at 7:00 a.m. it would be until -- 24 we would have to wait for her until 10:00 o'clock to 25 the morning before she would come to work and so I</p>
<p>26</p> <p>1 Q. And you wanted to work 40 hours? 2 A. Yes. 3 Q. So you asked Miss Alves if you could work 4 40 hours and she manipulated the shift for you to be 5 able to do that? 6 A. Well, when I saw her I interpreted the 7 strategy, her strategy to give me a feeling like she 8 was going to fire me, and so what I did since that 9 was my only option then I took the 11:00 to 7:00. 10 Q. You say that was your feeling, correct? 11 A. Yes, because the way she was telling me 12 she would have to change the shifts already. 13 Q. So she told you she would have to change 14 around the shifts to get you 40 hours, correct? 15 A. Yes. 16 Q. And before that you told her you wanted 17 40 hours, correct? 18 A. Since the time of my hire they told me 19 that they were hiring me for full-time, as full-time. 20 Q. She never specifically told you I am going 21 to rearrange your shift so I can fire you? 22 A. No, she never told me that. 23 Q. And she is, in fact, the person who hired 24 you? 25 A. Yes.</p>	<p>28</p> <p>1 had the process changed to a direct deposit. 2 Q. Would you receive paychecks every two 3 weeks? 4 A. Two weeks, yes. 5 Q. So how long was it before -- if you 6 started on December 1, 2006 how soon after this did 7 you go to direct deposit? 8 A. I don't remember. 9 Q. Was it a few weeks? A month? 10 A. A few months. 11 Q. When you went to Miss Alves' office to 12 pickup a paycheck how long did that take? 13 A. Sometimes up to 30 minutes. She would 14 leave me standing, take care other people before 15 speaking to me. 16 Q. Are you saying that every time you went to 17 pickup a paycheck you had to wait 30 minutes to get 18 it? 19 A. Sometimes more. 20 Q. Every time? 21 A. Yes. Sometimes more. If she was busy -- 22 oh sorry. Sometimes more. If she was busy, if she 23 was busy she would just leave us standing. 24 Q. During these periods that you were waiting 25 for your paycheck do you have any idea what</p>



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<p>29</p> <p>1 Miss Alves was doing?</p> <p>2 A. No, I don't know. She is usually in her</p> <p>3 office and we are sitting at the front desk.</p> <p>4 Q. So you couldn't see her, you were waiting</p> <p>5 outside of her office?</p> <p>6 A. Yes, outside the office.</p> <p>7 Q. With respect to when she made the paycheck</p> <p>8 available, how long were you in her presence to</p> <p>9 pickup the paychecks?</p> <p>10 A. Five minutes.</p> <p>11 Q. Well, explain. Five minutes can be a</p> <p>12 pretty long time to pickup a paycheck. Tell me what</p> <p>13 was happening in the five minutes?</p> <p>14 A. Just that she is looking through finding</p> <p>15 the check and I am just standing there waiting for</p> <p>16 her to give me my check.</p> <p>17 Q. And then she hands you the check and you</p> <p>18 leave?</p> <p>19 A. And then I sign and then I leave.</p> <p>20 Q. The other instances in which you indicated</p> <p>21 that you would have contact with Miss Alves you</p> <p>22 referenced a surprise visit?</p> <p>23 A. Yes. Then about six months after working</p> <p>24 a member of my family became ill so I went to</p> <p>25 Miss Alves to ask her for two weeks off because it</p>	<p>31</p> <p>1 interaction with her.</p> <p>2 What you have given me so far is you had</p> <p>3 to see her at least initially until you went to</p> <p>4 direct deposit to pick up your paycheck, right?</p> <p>5 A. Every two weeks. Every two weeks I would</p> <p>6 go see her to pick up my check.</p> <p>7 Q. And other than that, three times a month</p> <p>8 Miss Alves would appear for a surprise visit?</p> <p>9 A. Yes.</p> <p>10 Q. What other circumstances may arise where</p> <p>11 you can recall having regular interaction with</p> <p>12 Miss Alves, anything?</p> <p>13 A. Yes. Okay. After that there same certain</p> <p>14 inspection at the job. Us employees weren't advised.</p> <p>15 We weren't informed. This is one time where I was</p> <p>16 preparing to go, it was around 7:30 in the morning,</p> <p>17 when they announce everyone inspector. It was a</p> <p>18 complete surprise to me. That occurred to me at the</p> <p>19 other places when I work because whenever there is an</p> <p>20 inspection usually forewarn the employees that there</p> <p>21 is an upcoming inspection so that everyone could</p> <p>22 prepare.</p> <p>23 Q. And that happened once?</p> <p>24 A. Once.</p> <p>25 Q. Anything else?</p>
<p>30</p> <p>1 was customary after six months to be qualified to</p> <p>2 have that kind of time off available.</p> <p>3 Q. Okay, I want to focus on the surprise</p> <p>4 visits. And let me ask the question. How frequent</p> <p>5 were the surprise visits?</p> <p>6 A. During her shift about three times a</p> <p>7 month.</p> <p>8 Q. How long would the surprise visit last?</p> <p>9 A. She would come at around 12:00 a.m. and</p> <p>10 she would look around to see if everyone was doing</p> <p>11 their job. And most of the time everybody was doing</p> <p>12 their job. Just to make sure no one is sleeping</p> <p>13 on-the-job. And as soon as she saw that she would</p> <p>14 just leave.</p> <p>15 Q. You don't have any problem Miss Alves</p> <p>16 doing inspections of the staff, do you?</p> <p>17 A. No.</p> <p>18 Q. This was a perfectly acceptable business</p> <p>19 thing to do, correct?</p> <p>20 A. Yes, of course. They have always done</p> <p>21 that other places that I have worked.</p> <p>22 Q. Now, we are going to get to the point</p> <p>23 where you asked Miss Alves and had some discussions</p> <p>24 with her about leave time. What I would like to do</p> <p>25 before we get there is to discuss your other</p>	<p>32</p> <p>1 A. This inspection lasted three days. She</p> <p>2 wasn't ready. We didn't pass. We had an inspection</p> <p>3 that was pretty hostile. She had a meeting, an</p> <p>4 employee meeting that was pretty hostile. And any</p> <p>5 place where we have an inspection if you don't pass</p> <p>6 inspection it reflects on everyone. And then</p> <p>7 throughout meeting she blamed it on the F. Haitians,</p> <p>8 and she was going to fire all the F. Haitians.</p> <p>9 Q. We have talked about picking up the</p> <p>10 paychecks. We have talked about a surprise visit.</p> <p>11 We talked about the one job inspection.</p> <p>12 Do you remember the date of that job</p> <p>13 inspection?</p> <p>14 A. It was 2007. And I don't remember the</p> <p>15 exact month.</p> <p>16 Q. With respect to the surprise visit how</p> <p>17 long would Miss Alves be around for those, the ones</p> <p>18 that occurred three times a month?</p> <p>19 A. The only one I can speak of is my floor.</p> <p>20 And my floor there was never anything any abnormal,</p> <p>21 because I never slept on-the-job. And she would come</p> <p>22 in and spend maybe five, ten minutes, and then she</p> <p>23 would go to another floor.</p> <p>24 Q. Did Miss Alves tell you during the</p> <p>25 surprise visit that your floor was acceptable?</p>



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<p>33</p> <p>1 A. Yes.</p> <p>2 Q. Did she praise your work?</p> <p>3 A. Everyone that I have worked with,</p> <p>4 especially my patients.</p> <p>5 Q. Including Miss Alves?</p> <p>6 A. She never complained. She never told me I</p> <p>7 have done anything wrong.</p> <p>8 Q. In fact, she told you during these</p> <p>9 surprise visits on your floor that you had done a</p> <p>10 good job?</p> <p>11 A. Yes.</p> <p>12 Q. You are not suggesting that every</p> <p>13 interaction you had with Miss Alves is negative, are</p> <p>14 you?</p> <p>15 A. I have always respected Miss Alves because</p> <p>16 she gave me a job that allowed me to pay my bills,</p> <p>17 but she is a person that is very rude.</p> <p>18 Q. Well, my question is though from what you</p> <p>19 are telling me when she conducted surprise visits on</p> <p>20 your floor she was positive to you, correct?</p> <p>21 A. Yes.</p> <p>22 Q. She was not rude during those occasions,</p> <p>23 correct?</p> <p>24 A. Because she didn't even talk to us, just</p> <p>25 look and visit and go.</p>	<p>35</p> <p>1 want to know if there are any other circumstances</p> <p>2 where you had occasion to meet with Miss Alves</p> <p>3 related to your job?</p> <p>4 A. Yes.</p> <p>5 Q. Tell me what else.</p> <p>6 A. Okay. I noticed that everyone else was</p> <p>7 working overtime, so I went to her office to ask</p> <p>8 about overtime, possibly for overtime.</p> <p>9 Q. Okay. And before we discuss what happened</p> <p>10 there, what other meetings do you recall having with</p> <p>11 her?</p> <p>12 A. No.</p> <p>13 Q. When Miss Alves was in her office handing</p> <p>14 out paychecks was anyone else in there other than the</p> <p>15 employees to pick them up?</p> <p>16 A. No.</p> <p>17 Q. Was there a line of employees waiting for</p> <p>18 their paycheck?</p> <p>19 A. At the beginning, yes, there is usually a</p> <p>20 crowd, but as the day goes on, as she gives out the</p> <p>21 check, and it lessens.</p> <p>22 Q. When the surprise visits occurred you said</p> <p>23 that that took about five minutes?</p> <p>24 A. Because the other people that I work with</p> <p>25 seem to all know when she is coming, when the</p>
<p>34</p> <p>1 Q. But at some point during the visits she</p> <p>2 would say it looks good, good job?</p> <p>3 A. Yes.</p> <p>4 Q. So you wouldn't consider this to be a rude</p> <p>5 statement, would you?</p> <p>6 A. Only.</p> <p>7 Q. I don't understand.</p> <p>8 A. Okay. It is the only time where she would</p> <p>9 come to my floor and seeing that everything was in</p> <p>10 order that she would say good job and then she would</p> <p>11 leave.</p> <p>12 MR. FIX: Let's take a brief break.</p> <p>13 (Thereupon, a brief recess was taken,</p> <p>14 after which the following proceedings were</p> <p>15 resumed.)</p> <p>16 BY MR. FIX:</p> <p>17 Q. We just took a brief break. And before</p> <p>18 the break we were talking about the times at work</p> <p>19 where you would have occasion to see Miss Alves. And</p> <p>20 we had talked about picking up the paychecks. We had</p> <p>21 talked about the three surprise visits. And we had</p> <p>22 talked about the meeting that followed a job</p> <p>23 inspection. And we are going to talk about the issue</p> <p>24 of your leave. I know you had some discussions with</p> <p>25 Miss Alves about that. And before we get to that, I</p>	<p>36</p> <p>1 surprise visits are coming, but I never know.</p> <p>2 Q. But it was five minutes?</p> <p>3 A. Because they never find anything wrong.</p> <p>4 Q. But five minutes?</p> <p>5 A. Five, yes.</p> <p>6 Q. This is what you make lawyer's jobs</p> <p>7 difficult, you know.</p> <p>8 A. This is my first time, I'm sorry.</p> <p>9 Q. That's okay. Mine, too.</p> <p>10 All right. Other than Miss Alves did you</p> <p>11 have contact with any other member of management from</p> <p>12 PhyAmerica while you were employed?</p> <p>13 A. No.</p> <p>14 Q. Did you ever have any occasion to speak to</p> <p>15 another member of management during your employment</p> <p>16 with PhyAmerica?</p> <p>17 A. No.</p> <p>18 Q. Did you ever have an occasion to write</p> <p>19 something to a person other than Miss Alves in</p> <p>20 management at PhyAmerica?</p> <p>21 A. There was one person that I tried to get</p> <p>22 ahold of and I placed a phone call and that person</p> <p>23 was to return my call. This was during the time of</p> <p>24 the leave of absence. And it was when I came back</p> <p>25 from the leave of absence that person still hadn't</p>



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<p>37</p> <p>1 gotten in touch with me. I made subsequent phone 2 call and eventually I asked to speak to someone that 3 was over this person that I was trying to get ahold 4 of. 5 Q. Do you remember the name of the person? 6 A. Lori Williams. 7 Q. How many calls do you believe you placed 8 to Miss Williams? 9 A. One. 10 Q. She did not return that call? 11 A. Yes, I spoke with her. 12 Q. Is it your understanding that Miss 13 Williams was the supervisor for Miss Alves? 14 A. That's what they told me. 15 Q. Do you remember the date of your 16 discussion with Miss Williams? 17 A. So after a few months that Miss Alves 18 never called me so I called. I don't remember the 19 exact date. 20 Q. What did you discuss with Miss Williams? 21 A. Okay. She didn't live in Florida, she 22 lived up north. I called her to inform her that I 23 had the two weeks leave of absence and then when I 24 came back Miss Alves told me that I was no longer 25 employed and that not to call and if I showed onto</p>	<p>39</p> <p>1 A. Yes. 2 MR. FIX: I would like to mark this as 3 Defendant's Exhibit 1. I am also going to mark 4 No. 2. 5 (Thereupon, Defendant's Exhibit Nos. 1 and 6 2 were marked For Identification.) 7 MR. FIX: Let me give her the marked 8 exhibit and take this one and if you want one 9 for your file. 10 MS. CABALLERO-SOLIS: Sure. 11 BY MR. FIX: 12 Q. Miss Moilere, am I saying that correctly? 13 A. Yes, perfect. 14 Q. Exhibit 1 appears to be a signature page 15 for a handbook, would you agree with that? 16 A. Yes, sir. 17 Q. Is that your signature? 18 A. Yes. 19 Q. You agree that you did, in fact, receive 20 the PhyAmerica Government Services, Inc. Handbook? 21 A. Yes. 22 Q. Are you able to read and understand 23 English? 24 A. Yes. 25 Q. Do you understand the words written on</p>
<p>38</p> <p>1 the property that she would call the security or the 2 police. 3 Q. That's what Miss Williams told you? 4 A. No, Alves, Miss Lori, that's why I told 5 her. 6 Q. You told Miss Williams that Miss Alves had 7 terminated your employment and advised you that if 8 you return to the property she would have you 9 escorted off? 10 A. Yes, sir. 11 Q. What was Miss Williams' response? 12 A. She told me that Miss Alves was the one in 13 charge at that facility and whatever she says or does 14 she is the final authority. 15 Q. What else can you remember about that 16 conversation? 17 A. That's it. 18 Q. How long did it last? 19 A. Less than five minutes. 20 Q. Did you have communications with any 21 member of management other than Miss Williams or 22 Miss Alves? 23 A. No. 24 Q. And that would include oral or written 25 communications?</p>	<p>40</p> <p>1 this Exhibit 1 handbook page? 2 A. Yes. 3 Q. Can you tell me what it says? 4 A. Okay. It says here that I have received 5 the orientation book outlining the policy of the work 6 place. 7 Q. Now, (this is something you received when 8 you started work, correct? 9 A. Yes. 10 Q. Along with this you actually, in fact, 11 received the handbook, correct? 12 A. Yes. 13 Q. Now the handbook is pretty thick so what I 14 have done is taken a few pages from it and put the 15 cover on it. And that is why it is not as quite as 16 thick as the one that we actually have. 17 And please take a moment to look at 18 Exhibit 2. Now, if you flip through the page you 19 will notice that a number of pages as I have just 20 suggested are missing, but do you have any reason to 21 dispute that this is the handbook that you received? 22 A. I have no reason to. 23 MR. FIX: Mark No. 3 as well. 24 (Thereupon, Defendant's Exhibit No. 3 was 25 marked For Identification.)</p>



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<p style="text-align: center;">41</p> <p>1 BY MR. FIX: 2 Q. I am also handing you what has been marked 3 as Defendant's Exhibit No. 3. This is a Human 4 Resource Policy and Procedure. Do you recall 5 receiving this document? 6 A. Yes. 7 Q. And generally speaking you were aware 8 while employed by PhyAmerica that the company had a 9 policy to handle work place misconduct such as 10 harassment? 11 A. Yes. 12 Q. You were aware, correct, that if you had a 13 problem with another employee you could use the 14 company policy to report conduct to that person's 15 supervisor or a member of Human Resources? 16 A. Okay. I am aware that places that I have 17 worked in the past there was always a separate office 18 where you can address your grievances, but in this 19 place Lori was the sole person and she was the final 20 authority as far as what we were able to do and any 21 complaints that we may have had. 22 MR. FIX: I am going to also mark No. 4. 23 (Thereupon, Defendant's Exhibit No. 4 was 24 marked For Identification.) 25</p>	<p style="text-align: center;">43</p> <p>1 We have provided Exhibits 1 through 4. 2 And those are written corporate policies. What 3 I am trying to get at is did you ever consult 4 these written policies in an effort to determine 5 whether there was somebody you could call at the 6 company to express concerns over harassment? 7 THE WITNESS: Okay. From the initial time 8 of employment, yes, I am aware of the different 9 books that they gave us, but Miss Alves also 10 told us from the very onset that the owner of 11 the facility didn't even reside in Florida, that 12 they live up north, and that if there was any 13 problem whatsoever that she was the sole person 14 that they could consult in trying to resolve 15 whatever problem they may have. 16 BY MR. FIX: 17 Q. Were you aware that the Corporate 18 Compliance Code of Conduct marked as Exhibit No. 4 19 has a hotline of phone numbers that you can call? 20 A. Yes, I am aware of that. I am aware of 21 the number, but I was really afraid because as Lori 22 said she was the only boss that we had, I didn't want 23 to lose my job. 24 Q. Miss Alves never told you, you would be 25 fired if you resorted to the employee hotline?</p>
<p style="text-align: center;">42</p> <p>1 BY MR. FIX: 2 Q. Mrs. Moilere, I have handed you 3 Defendant's Exhibit No. 4 which is entitled Corporate 4 Compliance Code of Conduct. This is a document that 5 was provided to all employees. Did you receive this? 6 A. Okay. Yes, I do recognize this. And, 7 yes, they did give it to us, but we don't have anyone 8 at the job site that you can go to complain to. 9 Q. Now, you made a complaint to Miss Williams 10 in connection with your leave, correct? 11 A. Yes, sir. 12 Q. How did you find Miss Williams? 13 A. An employee gave me the telephone. 14 Q. You asked somebody for a phone number? 15 A. A coworker. 16 Q. What specifically did you ask? 17 A. Is there someone above Miss Alves that we 18 can go to. 19 Q. Now, we have provided you a number of 20 handbook policies marked Exhibits 1 through 4. Did 21 you consult with any of those written policies in 22 attempting to determine who to call? 23 THE INTERPRETER: Could you repeat that, 24 please? 25 MR. FIX: Sure.</p>	<p style="text-align: center;">44</p> <p>1 A. No, she never actually told us that she 2 would fire us, but she told us that she was the only 3 boss in there, there was no one above her. 4 Q. But you are aware she did have a boss and 5 you even called her, correct? 6 A. After she fired me I tried to find someone 7 that I could explain my situation to that would allow 8 me to keep my job. 9 Q. So it would be true to say that you never 10 made a complaint about Miss Alves to a member of 11 PhyAmerica management? 12 A. Okay. At the time the single thing that 13 worried me the most is not getting my job upon my 14 return. 15 Q. My question is you never made a complaint 16 to PhyAmerica management about Miss Alves? 17 A. No. 18 Q. The company documents you received such as 19 the compliance manual and other handbook policies did 20 you understand the language in those? 21 A. They never really gave us anytime to go 22 over them or to examine them, they just give it to us 23 and told us that we can read them at home or at 24 leisure. 25 Q. Did you ever read them?</p>



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<p style="text-align: center;">45</p> <p>1 A. Sometimes, yes, but not all.</p> <p>2 Q. And the parts that you did read did you</p> <p>3 understand them?</p> <p>4 A. Yes.</p> <p>5 Q. And the fact that you may not have read</p> <p>6 them all, this was a voluntary decision on your part,</p> <p>7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. No one told you, you should not read the</p> <p>10 company policies?</p> <p>11 A. No.</p> <p>12 Q. I want to refer you to Exhibit No. 2. And</p> <p>13 if you flip to Page 3 -- I'm sorry, let's start with</p> <p>14 Page 2. You are on the right page. If you see the</p> <p>15 very bottom of Page 2 there is a sub-heading called</p> <p>16 attendance. Do you see that?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Let me give you just a moment to review</p> <p>19 the attendance policy which carries over to Page 3.</p> <p>20 Please take a moment to review that.</p> <p>21 A. Okay.</p> <p>22 Q. You have had the opportunity to review the</p> <p>23 attendance policy on Exhibit 2?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Now, the policy states that requests for</p>	<p style="text-align: center;">47</p> <p>1 A. Just two weeks.</p> <p>2 Q. Ten work days?</p> <p>3 A. Ten days total which included my days off.</p> <p>4 Q. Did you make a request for that time off?</p> <p>5 A. Yes.</p> <p>6 Q. Who did you make that request to?</p> <p>7 A. Miss Alves.</p> <p>8 Q. Did you request that in writing?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Do you know what form the writing was?</p> <p>11 Was it a letter, a form that the company provided?</p> <p>12 A. Yes.</p> <p>13 Q. Which?</p> <p>14 A. She gave me a letter to fill out, yes.</p> <p>15 She gave me the form. And I filled out a form.</p> <p>16 Q. You filled out a form and requested</p> <p>17 certain days off?</p> <p>18 A. Yes.</p> <p>19 Q. Who did you turn the form back into?</p> <p>20 A. Miss Alves.</p> <p>21 Q. Did you have a discussion with her when</p> <p>22 you turned the form back in?</p> <p>23 A. No, I gave it to her and she approve it.</p> <p>24 Q. When you say she approved it how did she</p> <p>25 tell you it was approved? Did she write on the form?</p>
<p style="text-align: center;">46</p> <p>1 time off must be pre-approved by the employee's</p> <p>2 supervisor. Do you agree that is the rule?</p> <p>3 A. That is the rule and I did the right</p> <p>4 thing.</p> <p>5 Q. And so what that means is before you take</p> <p>6 time off you have to get approval from your</p> <p>7 supervisor, correct?</p> <p>8 A. Yes, sir.</p> <p>9 Q. And if we look at the very last paragraph</p> <p>10 in the policy just above job abandonment read along</p> <p>11 with me the first sentence. "Any employee who has an</p> <p>12 un-excused absence for one day shift will be</p> <p>13 considered having been voluntarily resigned." Do you</p> <p>14 see that?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Does that mean if you have an un-excused</p> <p>17 absence your employment will end?</p> <p>18 A. But I have never done that.</p> <p>19 Q. I am asking about the policy. Is that</p> <p>20 your understanding of what the policy is?</p> <p>21 A. Yes.</p> <p>22 Q. Now, there was a period in May of 2007</p> <p>23 where you made a request for time off, correct?</p> <p>24 A. Yes, sir.</p> <p>25 Q. You wanted ten days of work off, correct?</p>	<p style="text-align: center;">48</p> <p>1 Did she verbally say this is fine? What did she say?</p> <p>2 A. She looked at it, she signed it, she</p> <p>3 returned it to me. Plus, on my schedule she wrote in</p> <p>4 the off on the given days.</p> <p>5 Q. Do you have this form?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Where is it?</p> <p>8 A. My lawyer.</p> <p>9 Q. You gave that form to your lawyer?</p> <p>10 A. Yes, sir.</p> <p>11 MS. CABALLERO-SOLIS: It was provided to</p> <p>12 you.</p> <p>13 MR. FIX: Let me mark No. 5.</p> <p>14 (Thereupon, Defendant's Exhibit No. 5 was</p> <p>15 marked For Identification.)</p> <p>16 BY MR. FIX:</p> <p>17 Q. I am handing you what has been marked as</p> <p>18 Defendant's Exhibit No. 5. This is a document we</p> <p>19 received from your lawyers that attached presumably</p> <p>20 the documents that you provided to your lawyers. If</p> <p>21 you want to take a moment to look through it. Let me</p> <p>22 see if I can short circuit this.</p> <p>23 A. Yes, thank you.</p> <p>24 Q. On Exhibit No. 5 I have located some kind</p> <p>25 of -- would you refer to this as a schedule?</p>



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<p>49</p> <p>1 A. Yes, sir.</p> <p>2 Q. Is this a document you produced to us in</p> <p>3 discovery? Why don't you open yours to the same</p> <p>4 page. I am not sure what page it is because they are</p> <p>5 not numbered, but --</p> <p>6 MS. CABALLERO-SOLIS: On the very top it</p> <p>7 says 31 out of 44.</p> <p>8 BY MR. FIX:</p> <p>9 Q. All right. We had just finished talking</p> <p>10 about some forms that you filled out for leave time</p> <p>11 and you had referenced a request schedule or a</p> <p>12 document that you produced to your attorneys. And</p> <p>13 that document appears to be part of the Composite</p> <p>14 Exhibit 5 on the fax Page 31 out of 44; is that</p> <p>15 correct?</p> <p>16 A. Yes, sir.</p> <p>17 Q. What is this document?</p> <p>18 A. That is a schedule of off and on days for</p> <p>19 work. I was very surprised that a company of that</p> <p>20 size and stature would use such a crude method of</p> <p>21 keeping an employee's schedule.</p> <p>22 Q. Well, why don't we talk about this. If</p> <p>23 you know, whose writing is this on this form?</p> <p>24 A. Miss Alves.</p> <p>25 Q. And you did not write anything?</p>	<p>51</p> <p>1 be sure on which dates I was to return.</p> <p>2 Q. So it is your testimony that on the 5th is</p> <p>3 when Miss Alves filled in all this information?</p> <p>4 A. No, that is the time she gave it to me,</p> <p>5 the copy. That is the day that I ask her for a copy</p> <p>6 of the schedule.</p> <p>7 Q. So if we look at this it says PTO. Is</p> <p>8 that what you understand these initials to be on the</p> <p>9 9th, 10th, 11th, and 12th?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And the same PTO would be on 16th, 17th,</p> <p>12 18th, and 19th?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And what does the -- I can't read those.</p> <p>15 On the 8th -- I'm sorry, on the 23rd, 24th, and 25th</p> <p>16 what is that, a DG?</p> <p>17 A. These are my scheduled days to work.</p> <p>18 Q. Do you know what it stands for?</p> <p>19 A. That is the way she did it. The days with</p> <p>20 the crosses are the days off, and the days with the</p> <p>21 letters written in are the days of my work.</p> <p>22 Q. And my question is do you know what the</p> <p>23 letters "DG" stand for?</p> <p>24 A. No.</p> <p>25 Q. Now I am a little confused. Did you say</p>
<p>50</p> <p>1 A. No.</p> <p>2 Q. Did you see her write on this form?</p> <p>3 A. She is the one that make the schedule..</p> <p>4 And she gave some time to us, but she never --</p> <p>5 Q. My question is did you see her write the</p> <p>6 information that is contained on this form?</p> <p>7 A. Yes.</p> <p>8 Q. So you were having a discussion with her</p> <p>9 and she pulled this document and wrote every number</p> <p>10 and letter on the form?</p> <p>11 A. Yes.</p> <p>12 Q. Do you remember the date of that</p> <p>13 discussion?</p> <p>14 A. Before I left for the two weeks.</p> <p>15 Q. Well, if we look at this it looks like you</p> <p>16 may have left for the two weeks starting on May 6,</p> <p>17 correct?</p> <p>18 A. Yes. No, those three days are my days</p> <p>19 off.</p> <p>20 Q. Well, I am talking about when you left.</p> <p>21 A. Yes.</p> <p>22 Q. So you would have had the discussion with</p> <p>23 her about the schedule how soon before the 6th?</p> <p>24 A. Okay. The request was made on the 5th so</p> <p>25 that I could have a copy of the schedule so I would</p>	<p>52</p> <p>1 she filled out this document in front of you?</p> <p>2 A. Yes, she is the one that does the</p> <p>3 schedule. When she finished, she posts it so we can</p> <p>4 see our days off schedule.</p> <p>5 Q. My question is did you see her handwrite</p> <p>6 this information on this schedule?</p> <p>7 A. Yes.</p> <p>8 Q. And when did you see her handwrite this</p> <p>9 information in?</p> <p>10 A. When I went to her office and I asked her</p> <p>11 and that's when she gave me the schedule.</p> <p>12 Q. That was the 5th of May?</p> <p>13 A. Yes.</p> <p>14 Q. So on the 5th of May it is your testimony</p> <p>15 that you watched Miss Alves fill out every piece of</p> <p>16 information on this document?</p> <p>17 A. No, she didn't see it. She didn't see</p> <p>18 when she did the schedule. The 5th is when she</p> <p>19 actually requested for a copy of the schedule, but</p> <p>20 when she actually wrote the schedule she says that</p> <p>21 she didn't see her do it.</p> <p>22 Q. But this document that is part of</p> <p>23 Exhibit 5 on Page 31 of 44 is the document this</p> <p>24 Miss Alves gave you on your meeting with her on</p> <p>25 May 5th?</p>



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<p style="text-align: center;">53</p> <p>1 A. Yes.</p> <p>2 Q. And that is the day that you first</p> <p>3 requested from her the paid time off?</p> <p>4 A. No.</p> <p>5 Q. When did you first request the paid time</p> <p>6 off?</p> <p>7 A. Two weeks before.</p> <p>8 Q. Did you have a conversation with her two</p> <p>9 weeks before about this?</p> <p>10 A. It is the rule of the company before that</p> <p>11 you have to request time off two weeks in advance.</p> <p>12 Q. So two weeks before and that would be</p> <p>13 sometime in mid-April, correct?</p> <p>14 A. Yes.</p> <p>15 Q. You asked her for certain leave time off,</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. And it is your testimony she approved</p> <p>19 that?</p> <p>20 A. Yes.</p> <p>21 Q. And in mid-April is that when you handed</p> <p>22 her the form that requested the time off?</p> <p>23 A. Yes.</p> <p>24 Q. And you don't have a copy of that form?</p> <p>25 A. No.</p>	<p style="text-align: center;">54</p> <p>1 Q. But it is your testimony that she told you</p> <p>2 that that leave was acceptable?</p> <p>3 A. Yes.</p> <p>4 Q. When did the schedule come out?</p> <p>5 A. I don't remember, sometime April or</p> <p>6 beginning of May she displays it.</p> <p>7 Q. Did Miss Alves put the schedule up for the</p> <p>8 entire month?</p> <p>9 A. Yes.</p> <p>10 Q. Was that for all – how would you know</p> <p>11 which shift she had assigned you to?</p> <p>12 A. That is what was so surprising to me, is</p> <p>13 that when I ask her for a copy of it she put a blank</p> <p>14 paper to I guess erase some of the other names and</p> <p>15 then copied it so that only my name appeared, and</p> <p>16 then she handed it to me like that which was very</p> <p>17 surprising.</p> <p>18 Q. You didn't have any need to see everybody</p> <p>19 else's schedule, did you?</p> <p>20 A. No, but in most places or other places</p> <p>21 that I have worked it is always everyone's schedule</p> <p>22 so you can see where the openings are so in case you</p> <p>23 want to work overtime you can go ahead and submit.</p> <p>24 Q. Did you agree with this document when you</p> <p>25 received it? When you received this did you say this</p>
<p style="text-align: center;">55</p> <p>1 is okay with me?</p> <p>2 A. Sir, we have nothing to do with it, what</p> <p>3 she does. That's what she does. She just give it to</p> <p>4 me and then I was surprised, but you cannot say</p> <p>5 anything else.</p> <p>6 Q. So you are claiming that you received this</p> <p>7 document that we have been talking about, Page 31 of</p> <p>8 44 of Exhibit 5 on or about May 5th of 2007, correct?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And this is the first time that you had</p> <p>11 seen the May schedule, is that what you are telling</p> <p>12 me?</p> <p>13 A. Yes, sir. And this is the first schedule</p> <p>14 she made it like that, because always everybody name</p> <p>15 was like --</p> <p>16 Q. How did you know what shift you were going</p> <p>17 to work on May 1st or May 2nd?</p> <p>18 A. That's what surprised me.</p> <p>19 THE INTERPRETER: She said yes.</p> <p>20 BY MR. FIX:</p> <p>21 Q. Yes. What I am asking is how if the first</p> <p>22 time you saw the May schedule was on May 5th, how did</p> <p>23 you know when you were going to work before that?</p> <p>24 A. I know only that I work 11:00 to 7:00.</p> <p>25 Q. Are you saying that you didn't rely on a</p>	<p style="text-align: center;">56</p> <p>1 schedule typically?</p> <p>2 A. This is the first time she has done the</p> <p>3 schedule like this.</p> <p>4 Q. I understand the schedule didn't include</p> <p>5 other people's names on it, that is not my question.</p> <p>6 My question is, if the first time you saw the May</p> <p>7 schedule was May 5th how would you have known when to</p> <p>8 show up for work May 1st through the 4th?</p> <p>9 A. Only one thing I know for sure is that my</p> <p>10 job end on the 15th. No, not 15th, the 8th. That is</p> <p>11 how I gave my request.</p> <p>12 Q. Is it your testimony that you would not</p> <p>13 receive the month's schedule in advance of working</p> <p>14 that month?</p> <p>15 A. I have never asked and she has never given</p> <p>16 it to me. And she has always posted it.</p> <p>17 Q. So you had seen a schedule for May before</p> <p>18 May 1st, correct, it was posted?</p> <p>19 A. Yes, she did it. Well, it was only after</p> <p>20 I asked her for a copy that she put a form on it.</p> <p>21 Q. So you are saying that you saw this</p> <p>22 document before she gave it to you on the 5th? I</p> <p>23 think what you are saying is you just saw it on the</p> <p>24 5th in a different form?</p> <p>25 A. Yes, sir.</p>



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<p>57</p> <p>1 MS. CABALLERO-SOLIS: It appears from here 2 that her schedule is fixed. I mean, if you are 3 looking at it, it is four days on, three days 4 off; four days on, three days off. 5 BY MR. FIX: 6 Q. So then from your memory when you looked 7 at the May schedule, was it the same schedule that we 8 are looking at here on Exhibit 5? Let me see if I 9 can clarify. 10 At the beginning of the month or before 11 the beginning of the month at some point a schedule 12 is posted somewhere so you can look and see what your 13 shifts are, correct? 14 A. Yes. 15 Q. And at some point before May 1st you look 16 for the May schedule where it was typically posted, 17 correct? 18 A. Yes. 19 Q. And then sometime after that, and May 5th, 20 Miss Alves gave you another schedule that was 21 different because it didn't contain the other names, 22 correct? 23 A. Yes. 24 Q. Was there any difference between the 25 posted May schedule in terms of your shifts then the</p>	<p>59</p> <p>1 2007 did you ever go to Miss Alves a previous time to 2 discuss what was placed on a schedule? 3 A. No. 4 Q. So after you spoke to Miss Alves on the 5 5th what did she tell you about your schedule during 6 that discussion? 7 A. The only thing I went to ask her for is a 8 copy because I already knew the schedule and it 9 already showed the days off. 10 Q. That was the end of the discussion? 11 A. Yes, sir. 12 Q. Nothing else was said? 13 A. No. 14 Q. What was the purpose for your asking for 15 time off? 16 A. The death of a family member in Haiti. 17 Q. Which family member was that? 18 A. My grandmother. 19 Q. Did you, in fact, travel to Haiti during 20 that period of time? 21 A. Yes, sir. 22 Q. Do you remember what day you left? 23 A. I left? It was Sunday -- I work on Sunday 24 the 5th and I leave the 6th. 25 Q. Do you remember when you returned?</p>
<p>58</p> <p>1 shifts on this schedule? 2 A. Yes, this was all the same. The only 3 difference is that the other one contained the names 4 of all the other employees. 5 Q. So you had a conversation with Miss Alves 6 in mid-April you asked for leave. And after you 7 asked for leave your testimony is that Miss Alves 8 sometime before May 1st posted a schedule that 9 contained the same shifts as listed on Exhibit 5, 10 Page 31? 11 A. Yes. 12 Q. What is your purpose then for going to see 13 Miss Alves on May 5th, because she had already posted 14 the schedule with this very same information? 15 A. To make sure that when it was time for me 16 to come to work that I didn't gain or lose a day's 17 work. 18 Q. Why was that a concern? 19 A. I was going for ten long days so I wanted 20 to make sure I knew which days to come back on. And 21 also all the other places that I work it always 22 included all of the other employees names so that in 23 case you wanted to bid for overtime that you would 24 know which days were available. 25 Q. Prior to going to Miss Alves on May 5th of</p>	<p>60</p> <p>1 A. I returned the 19th. 2 Q. What happened after you returned? 3 A. The day of my return which was on the 20th 4 Miss Lori call and at 11:00 o'clock in the morning 5 asking me to report to the office. 6 Q. Did you, in fact, report to the office? 7 A. The same time, sir. 8 Q. So it is your testimony that the day after 9 you returned from your leave Miss Alves called you on 10 the 20th and asked you to come to her office? 11 A. Yeah. 12 Q. Would it be true that trip had exhausted 13 all of your paid time off? 14 A. She was supposed to pay me for two weeks. 15 She didn't pay me a dime. 16 Q. Are you saying that you did not receive 17 pay for the time you were away in Haiti for your 18 family? 19 A. No, sir, not a penny. 20 Q. And if company records reflect that you 21 had, in fact, been paid, those records would be 22 false? 23 A. No, it couldn't be true, because I didn't 24 receive any check. I didn't cash any check. 25 Q. Now according to this schedule that you</p>



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<p>61</p> <p>1 were provided in May you were obligated to appear for 2 work on the 23rd, 24th, 25th, and 26th; correct? 3 A. Yes, sir. 4 Q. You did not work those days, did you? 5 A. No. No. 6 Q. Now when Miss Alves called you to her 7 office after you returned from Haiti tell me what 8 happened when you arrived? 9 A. I reached the office. She was very polite 10 that I am not on the schedule to work 11:00 o'clock 11 that night, don't come, don't call until she herself 12 calls me to work. And until today I have never heard 13 from her again. 14 Q. Did you bring anybody with you to this 15 meeting? 16 A. Yes, sir. 17 Q. Your daughter? 18 A. I went with my daughter. And she left her 19 in - and she was rude with her. And she said stay 20 outside. And she went and she sat in the lobby until 21 I finish. 22 Q. Would you agree that or do you think it is 23 inappropriate for a company to ask someone who is not 24 an employee to leave during a discussion of a 25 personal matter?</p>	<p>63</p> <p>1 fax? 2 A. I don't remember. 3 Q. And during that discussion where you 4 brought your daughter to work, did Miss Alves talk to 5 you about being rude and insubordinate with respect 6 to communicating with others about your schedule? 7 A. I have never been rude to her. I have 8 never discussed my business with her or any other 9 employees. 10 Q. You have complained that the way the 11 schedule was done was unprofessional, correct? 12 A. Absolutely. Yes, sir. 13 Q. During the course of that meeting when you 14 brought your daughter to work did Miss Alves 15 criticize you for violating company policy by not 16 notifying the company of a change in addresses? 17 A. I have never changed addresses. I have 18 been in the same house for twenty years. 19 Q. Have you ever changed a phone number? 20 A. Maybe, yes, but not while I was working 21 with her. 22 Q. All right. Looking back at this schedule 23 here, had this schedule been fulfilled as it was 24 written you were working in this schedule, correct? 25 A. It is not professional.</p>
<p>62</p> <p>1 A. I had no problem with that, but it was the 2 way she acted. 3 Q. Is that the last conversation that you can 4 recall having with Miss Alves? 5 A. Yes, sir. 6 Q. Other than telling you that you should not 7 work until you hear from her, did she tell you 8 anything else? 9 A. She told me that she didn't fire me, but 10 she didn't put me on the schedule. 11 Q. Did she mention anything else to you 12 during that discussion about other issues? 13 A. No. 14 Q. Did she talk to you about having sent a 15 fax to the wrong person in violation of the 16 confidentiality policy? 17 A. The only thing I ever did is fax some 18 papers that she gave me the number to. And she told 19 me who to send it to and I faxed that paper. 20 Q. Well, my question is, is that part of the 21 discussion that you had with her when you appeared 22 with your daughter? 23 A. No, she didn't tell me anything. 24 Q. Is it your testimony that Miss Alves never 25 criticized your work performance for sending that</p>	<p>64</p> <p>1 Q. I am just talking about when you saw this 2 schedule when it was posted you were okay with the 3 shifts you were assigned here, correct? 4 A. Yes, sir. 5 Q. Now after you last heard from Miss Alves, 6 and you claim that occurred on May 20th of 2007, at 7 some point after that you had a conversation with 8 Miss Williams, correct? 9 A. Yes, when she didn't call me. 10 Q. And do you remember the date that was? 11 Was it a few days? Was it a week? 12 A. Maybe a week or two weeks. 13 Q. And other than the conversation which we 14 have already covered with Miss Williams, you had no 15 other conversations with anyone from the company? 16 A. No. 17 Q. Do you recall speaking to Miss Alves very 18 late one night, calling her late at night at home? 19 A. No. 20 Q. Isn't it true that you had a number of 21 discussions with Miss Alves in which she told you 22 that she could not fill certain days that you had 23 requested off? 24 A. No. 25 Q. That didn't happen?</p>



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<p style="text-align: center;">65</p> <p>1 A. No.</p> <p>2 Q. Do you ever recall having called</p> <p>3 Miss Alves late at night at her home?</p> <p>4 A. For what? And I don't have a private</p> <p>5 phone.</p> <p>6 Q. So then you never did that?</p> <p>7 A. No. Oh, yes. Okay. One night, yes, I do</p> <p>8 remember. There was a night I showed up to work. It</p> <p>9 was for the 11:00 to 7:00 shift. And when I got</p> <p>10 there the people were surprised, asking me what was I</p> <p>11 doing here. And I said, well, I am on my shift. And</p> <p>12 they said, well, you are not on the shift, and you</p> <p>13 are not expected here, to her surprise. And she</p> <p>14 tried to resolve the issue. No one was able to</p> <p>15 resolve the issue. And so when the person in charge</p> <p>16 call Miss Alves from the office and at which time she</p> <p>17 spoke to Miss Alves who verified indeed whether she</p> <p>18 was scheduled or not and she sent me home.</p> <p>19 Q. Do you remember when that was?</p> <p>20 A. No, sir.</p> <p>21 Q. Do you know if it was in May or --</p> <p>22 A. Oh, not in May, before. Maybe in April or</p> <p>23 before April.</p> <p>24 THE INTERPRETER: Okay. She just said she</p> <p>25 wants to add something, because she has so much</p>	<p style="text-align: center;">67</p> <p>1 resumed.)</p> <p>2 (Thereupon, Defendant's Exhibit No. 6 was</p> <p>3 marked For Identification.)</p> <p>4 BY MR. FIX:</p> <p>5 Q. I am going to show you what we have marked</p> <p>6 as No. 6. I have handed you what has been marked as</p> <p>7 Defendant's Exhibit No. 6. Do you recognize this</p> <p>8 document?</p> <p>9 A. I am reading. Yes, sir.</p> <p>10 Q. Is this a letter that you prepared and</p> <p>11 sent to Miss Alves?</p> <p>12 A. Yes, because she asked me to.</p> <p>13 Q. Do you remember the date that you sent</p> <p>14 this?</p> <p>15 A. No.</p> <p>16 Q. No.</p> <p>17 You worked a Tuesday to Saturday shift</p> <p>18 regularly?</p> <p>19 A. Yes.</p> <p>20 Q. This was from 11:00 p.m. to 7:00 a.m.</p> <p>21 A. Yes, sir.</p> <p>22 Q. And Miss Alves worked the day shift,</p> <p>23 correct?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And for that reason you rarely saw her?</p>
<p style="text-align: center;">66</p> <p>1 that she would like to say. And that there are</p> <p>2 four units in that building. And she is</p> <p>3 assigned to one, but every night for the eight</p> <p>4 hours she is there they work her all four units.</p> <p>5 BY MR. FIX:</p> <p>6 Q. Would you agree that the majority of the</p> <p>7 work force at your facility who worked for PhyAmerica</p> <p>8 were black?</p> <p>9 A. Yes.</p> <p>10 Q. And what percentage of the work force</p> <p>11 while you were employed would you consider to have</p> <p>12 been Haitian?</p> <p>13 MS. CABALLERO-SOLIS: Can you give me a</p> <p>14 second? I'm sorry.</p> <p>15 MR. FIX: Can we finish the question?</p> <p>16 THE WITNESS: It was 25 percent Haitian</p> <p>17 and 75 percent Jamaican.</p> <p>18 MR. FIX: Would you agree that probably at</p> <p>19 any one time you had between 50 and 60</p> <p>20 PhyAmerica employees?</p> <p>21 THE WITNESS: I never counted them, but,</p> <p>22 yeah, that sounds right.</p> <p>23 MR. FIX: Let's take a break.</p> <p>24 (Thereupon, a brief recess was taken,</p> <p>25 after which the following proceedings were</p>	<p style="text-align: center;">68</p> <p>1 A. Yes.</p> <p>2 Q. Were there ever any communication problems</p> <p>3 between you and anybody at work? I notice you need</p> <p>4 an interpreter here today. Were there any problems</p> <p>5 understanding people at work?</p> <p>6 A. No, but it is better when I can explain to</p> <p>7 him.</p> <p>8 Q. So are you saying that you have never had</p> <p>9 trouble understanding anybody at work?</p> <p>10 A. No.</p> <p>11 Q. You were going back to Haiti for a</p> <p>12 funeral; is that correct?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Do you know when that funeral was</p> <p>15 scheduled for?</p> <p>16 A. Between the 8th -- let me see. I am</p> <p>17 pretty certain that it was between the 11th and the</p> <p>18 12th, but I am not 100 percent.</p> <p>19 Q. Now, at the bottom of this you asked</p> <p>20 Miss Alves to contact you and you leave two numbers,</p> <p>21 do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. What are those numbers?</p> <p>24 A. One was mine, one was my daughter.</p> <p>25 Q. Did anyone help you write this letter?</p>



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<p>69</p> <p>1 A. Yes.</p> <p>2 Q. Who?</p> <p>3 A. My daughter.</p> <p>4 Q. Why did your daughter help you write this</p> <p>5 letter?</p> <p>6 A. Because it is -- especially in the</p> <p>7 computer. They don't let me use the computer. They</p> <p>8 are always busy on the computer.</p> <p>9 Q. Did you ask your daughter to help you this</p> <p>10 because she was better at English?</p> <p>11 A. Yes, but in the computer, when they in the</p> <p>12 computer I have no choice to ask them a favor.</p> <p>13 Q. So you are saying it was somebody else's</p> <p>14 computer?</p> <p>15 A. The computer is in my house, but it is my</p> <p>16 kids that usually use those computers.</p> <p>17 Q. Then I don't understand. Are you saying</p> <p>18 that you didn't know how to use the computer?</p> <p>19 A. At this time, yes, but my daughter always</p> <p>20 on the computer.</p> <p>21 Q. How did she know what to write?</p> <p>22 A. I told her what to write.</p> <p>23 Q. Did you tell her generally or did you tell</p> <p>24 her word by word? How did you tell her?</p> <p>25 A. I told her. I dictated the letter to her</p>	<p>71</p> <p>1 a Tuesday. Let me show that to you.</p> <p>2 A. Okay.</p> <p>3 Q. And that would be consistent with a letter</p> <p>4 because your regular shift was Tuesday through</p> <p>5 Saturday, correct?</p> <p>6 A. Yes.</p> <p>7 Q. And so in this letter you were asking off</p> <p>8 for May 8th, correct?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Now if we go back and look at Exhibit 5,</p> <p>11 and Page 31, we see an X. on May 8th, correct?</p> <p>12 A. Yes.</p> <p>13 Q. That would be an error, isn't it? We</p> <p>14 should have letters in there because that is a</p> <p>15 regularly scheduled shift?</p> <p>16 A. She made it.</p> <p>17 Q. I am just saying that is an error,</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. And so this document is not correct in</p> <p>21 that it shows that you were not scheduled to work on</p> <p>22 the 8th when, in fact, you were?</p> <p>23 A. No, I wasn't supposed to work.</p> <p>24 Q. I don't understand. If your regular shift</p> <p>25 was May 8th, if you had not made this request for</p>
<p>70</p> <p>1 and then she went and typed it on the computer.</p> <p>2 Q. And you wrote this letter because you</p> <p>3 wanted to make sure that you got time off, correct?</p> <p>4 A. She had asked me to put it in writing.</p> <p>5 Q. Well, did you take care to make sure that</p> <p>6 the dates you were listing in this letter were the</p> <p>7 actual dates you needed off?</p> <p>8 A. Yes, sir.</p> <p>9 Q. And so based upon this letter you were</p> <p>10 scheduled to work on May 8th, correct? That would</p> <p>11 have been a Tuesday through Saturday, May 8th?</p> <p>12 A. No. May 8th -- my day off was Sunday and</p> <p>13 Monday.</p> <p>14 Q. Right. My question is then when you are</p> <p>15 asking for these days off May 8th is a Tuesday,</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. And that is day you are regularly</p> <p>19 scheduled to be at work, correct?</p> <p>20 A. When, sir?</p> <p>21 Q. May 8th. If May 8th is a Tuesday --</p> <p>22 A. Yes.</p> <p>23 Q. Now I have a computer programmed telephone</p> <p>24 here that we can look back on to check dates. And</p> <p>25 based on this program it shows that May 8th, 2007 was</p>	<p>72</p> <p>1 time off, you would have been working on May 8th,</p> <p>2 correct?</p> <p>3 A. Yes.</p> <p>4 Q. And every other day you requested off we</p> <p>5 see PTO in the box where you claim you were supposed</p> <p>6 to get your paid time off dates, correct?</p> <p>7 A. Yes.</p> <p>8 Q. We do not see a PTO mark in May 8th, do</p> <p>9 we? It is an X., correct?</p> <p>10 A. Oh, maybe it is in error, but I can't be</p> <p>11 sure it is in error.</p> <p>12 Q. Well, we know it is in error because you</p> <p>13 were scheduled to work May 8th, correct?</p> <p>14 A. No.</p> <p>15 Q. When you met with Lori Alves did you tell</p> <p>16 her wait a minute, there is a mistake in this</p> <p>17 schedule because I should be getting PTO on the 8th,</p> <p>18 it should be marked as PTO, and it is marked here as</p> <p>19 if I am not supposed to work that day?</p> <p>20 A. I can't be sure, because all I know is</p> <p>21 that Sunday, Monday I was off, and on that Tuesday my</p> <p>22 PTO was to have begun.</p> <p>23 Q. No. In the second paragraph of your</p> <p>24 letter marked as Exhibit 6 it says the schedule that</p> <p>25 I was given has eight days of PTO and two extra days</p>



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<p>1 off which equals ten days. What schedule are you 2 talking about there? 3 A. The ten days that I requested off plus the 4 two days that I would normally be off. 5 Q. And my question is what schedule are you 6 talking about? 7 A. I am requesting that, the schedule as I 8 usually work that my days normally off and the days 9 that I usually begin to work. 10 Q. Now, you claim that you got this document 11 marked as Page 31 on Exhibit 5 on May 5th when you 12 met personally with Miss Alves, correct? 13 A. Yes, she give it to me. 14 Q. When, in fact, did you meet her on 15 May 5th, what was the time of day? 16 THE INTERPRETER: This is to clarify. 17 THE WITNESS: I didn't really meet with 18 Lori, I just went to her to ask her for the 19 schedule. So I am telling you that's what we 20 mean by meet. 21 BY MR. FIX: 22 Q. So on May 5th you did not have a 23 discussion with her? 24 A. I was asking her for the schedule, and for 25 the schedule.</p>	<p>1 A. Because I knew that I was qualified for 2 ten days of PTO, and because I needed that amount of 3 time, I was going to Haiti, and so I asked for it. 4 Q. Right. And your sentence here says the 5 schedule that I was given has eight days of PTO, do 6 you see this? 7 A. We are talking about the May schedule, 8 correct? 9 Q. Yes. And whatever May schedule you 10 received had eight days of PTO and that's why you 11 wrote this sentence, correct? 12 A. I wrote it before she made the schedule. 13 Q. I am not suggesting that this 14 Exhibit No. 5 is the same schedule here. You are 15 referring here to some schedule you received, right? 16 You are not sure which one, correct? 17 A. I am not sure, sir. 18 Q. But you are clearly responding to having 19 seen a schedule. 20 A. After I gave it to her, because I had my 21 reservation. And when I found out what flight I was 22 supposed to return on this is when I made the 23 revision. 24 Q. Well, are you having trouble understanding 25 my question?</p>
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<p>1 Q. Because you worked different shifts was 2 there a pattern and practice where you would slip 3 papers under her door and then she would put papers 4 back on the outside of the door for you? 5 A. Sometime, yes. 6 Q. Did that happen here? 7 A. I don't remember. 8 Q. You don't remember? 9 A. No. 10 Q. Now, you would agree with me, would you 11 not, that there was something wrong with whatever 12 schedule you had and that is what this letter was 13 about, because whatever schedule you had gave you 14 eight days of PTO and you wanted ten, correct? 15 A. As this is what I needed, this is what I 16 requested. And she gave it to me and I accepted it. 17 Q. Well, that is not my question. My 18 question is you received some kind of schedule and 19 after you received it you wrote this letter saying 20 wait a minute, your schedule has only eight days of 21 PTO and I am due ten. 22 A. No, this is the letter that we gave to 23 Lori two weeks after the schedule. 24 Q. Well, my question to you is why are you 25 asking for ten days of PTO here?</p>	<p>1 A. Sir, I don't remember because this is past 2 a long time. 3 Q. That's okay. If you don't remember, you 4 don't remember, but my question is simply this. The 5 fact that you wrote a sentence that says the schedule 6 that I was given has eight days of PTO, would you 7 agree that before writing this letter you had 8 received some kind of schedule for May that reflects 9 the eight days of PTO? 10 A. I don't remember. 11 Q. But do you have any reason why you would 12 have written this sentence if that wasn't true? 13 A. Maybe on the amount of days that I 14 requested wasn't given and so I had to go back and 15 resubmit my request. 16 Q. And, in fact, that is what you are doing 17 here, you are asking Miss Alves to give you more than 18 the eight days, and to give you ten days, correct? 19 A. Because I had already made my reservation. 20 Q. And because you had already made your 21 reservation you were asking Miss Alves for ten days 22 instead of eight? 23 A. Yes. 24 Q. And when we refer to Exhibit No. 5, the 25 schedule you claim that you were given by Miss Alves</p>



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<p>1 the day before you left, correct --</p> <p>2 A. Yes.</p> <p>3 Q. -- if we look at that, count for me how</p> <p>4 many days of PTO are identified on this schedule?</p> <p>5 A. One, two, three, four. This is my day</p> <p>6 off. Four, five, six, seven, eight. And, yeah.</p> <p>7 Q. There are eight days total of PTO</p> <p>8 identified on the schedule that you claim Miss Alves</p> <p>9 gave you, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And this does not reflect that you were</p> <p>12 given ten days of PTO, correct?</p> <p>13 A. Maybe she gave me eight days, but I asked</p> <p>14 for two more days. I don't remember.</p> <p>15 Q. There are not ten days of PTO reflected on</p> <p>16 this form that is part of Exhibit 5 on Page 31,</p> <p>17 correct? That is not reflected on this form?</p> <p>18 A. The other days I was supposed to be off,</p> <p>19 that's all I can tell you.</p> <p>20 Q. But, again, the question is, there are not</p> <p>21 ten days of PTO listed on this schedule, correct?</p> <p>22 A. No.</p> <p>23 Q. All right. And we know for a fact that</p> <p>24 you were originally scheduled to work on May 8th,</p> <p>25 correct?</p>	<p>1 MS. CABALLERO-SOLIS: You are assuming</p> <p>2 that it is in error. How do you know it is in</p> <p>3 error?</p> <p>4 MR. FIX: Because her regularly scheduled</p> <p>5 shift is a Tuesday and it is marked as an X.</p> <p>6 MS. CABALLERO-SOLIS: And on this letter</p> <p>7 it shows that she asked for the 8th off. And it</p> <p>8 matches the 8th on the schedule.</p> <p>9 MR. FIX: What it shows is she requested</p> <p>10 PTO time for the 8th and that was not given.</p> <p>11 MS. CABALLERO-SOLIS: The PTO was not</p> <p>12 given, but the 8th is.</p> <p>13 MR. FIX: That is for somebody else.</p> <p>14 MS. CABALLERO-SOLIS: Once again, you are</p> <p>15 assuming facts not in evidence.</p> <p>16 MR. FIX: She can answer whether she</p> <p>17 knows.</p> <p>18 MS. CABALLERO-SOLIS: That is my</p> <p>19 objection. My objection is that you are</p> <p>20 assuming facts not evidence. You don't know</p> <p>21 that is an error, yes or no?</p> <p>22 MR. FIX: I think the testimony has been</p> <p>23 established.</p> <p>24 Now, with respect to getting documents</p> <p>25 from Miss Alves, you were absolutely sure that</p>
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<p>1 A. No, I was not supposed to work on the 8th.</p> <p>2 Q. That was your regular shift. That is a</p> <p>3 Tuesday. That was your regular shift, correct?</p> <p>4 A. But she give it to me. I asked her and</p> <p>5 she give it to me. I requested, she give it to me.</p> <p>6 Q. Well, you would agree with me that there</p> <p>7 is a mistake on this form? This form should reflect</p> <p>8 like the other days that you were scheduled to work?</p> <p>9 A. Because I notice that -- because I had</p> <p>10 already made my reservation when I noticed that she</p> <p>11 didn't give it to me. I went to see her and she gave</p> <p>12 it to me.</p> <p>13 MS. CABALLERO-SOLIS: Let the record show</p> <p>14 that in Exhibit 5 on the 8th it does mark it as</p> <p>15 her not scheduled to work which matches</p> <p>16 Exhibit 6.</p> <p>17 MR. FIX: That is a speaking objection.</p> <p>18 If you have an objection, state it. And you are</p> <p>19 testifying now. I don't want to hear you</p> <p>20 testifying. I am going to ask this witness the</p> <p>21 question and that's it. If you have an</p> <p>22 objection -- what is the objection?</p> <p>23 MS. CABALLERO-SOLIS: You are assuming</p> <p>24 facts that are not in evidence.</p> <p>25 MR. FIX: I am not.</p>	<p>1 she handed you this, or did you get this from</p> <p>2 her door? Did you get this from someplace else?</p> <p>3 THE WITNESS: She left it in the box.</p> <p>4 BY MR. FIX:</p> <p>5 Q. Well, so you're saying that you had gotten</p> <p>6 this out of Miss Alves' box?</p> <p>7 A. Because we are different shifts, the</p> <p>8 different shifts, so she left it in the box.</p> <p>9 Q. Now, you had told me earlier that she</p> <p>10 actually wrote this in front of you and then you said</p> <p>11 she hadn't, correct?</p> <p>12 A. That Miss Lori made all the schedules.</p> <p>13 Q. All right. I am confused, because when we</p> <p>14 first started asking you about this you told me that</p> <p>15 you saw her actually handwrite this document?</p> <p>16 A. She is the one that I have always seen do</p> <p>17 the schedules.</p> <p>18 Q. So the facts as we understand them now are</p> <p>19 that you did not see her write this document?</p> <p>20 A. No.</p> <p>21 Q. And you did not even meet with her in</p> <p>22 person to get this document on the 5th, correct?</p> <p>23 A. She left it in her mailbox, but when I</p> <p>24 needed the day I went to her and she gave it to me.</p> <p>25 Q. And on the 5th you never spoke to or saw</p>



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<p style="text-align: center;">81</p> <p>1 Miss Alves, correct?</p> <p>2 A. Yes, I spoke to her on the 5th.</p> <p>3 Q. Did you speak to her about this document</p> <p>4 that you pulled out of the box?</p> <p>5 A. I spoke to her on the 5th to give me the</p> <p>6 extra day off.</p> <p>7 THE INTERPRETER: She is pointing towards</p> <p>8 the 8th.</p> <p>9 BY MR. FIX:</p> <p>10 Q. Well, you arrived for your shift at</p> <p>11 11:00 p.m. on the 5th, correct?</p> <p>12 A. Yes.</p> <p>13 Q. Is it your testimony that Miss Alves was</p> <p>14 still in her office at 11:00 p.m.?</p> <p>15 A. I didn't say that, sir.</p> <p>16 Q. Well, tell me when you spoke to her?</p> <p>17 A. When I need her I either wait for her in</p> <p>18 the morning, and at 10:00 she was in the office.</p> <p>19 Q. Are you telling me now that you went to</p> <p>20 her office in the morning of the 5th --</p> <p>21 A. Wait for her.</p> <p>22 Q. -- and you waited for her?</p> <p>23 A. Yes.</p> <p>24 Q. But I guess I am confused. She didn't</p> <p>25 give you this schedule, you pulled it out of the box.</p>	<p style="text-align: center;">83</p> <p>1 eight days. She didn't tell you to write that, did</p> <p>2 she? She didn't say go write me for more than the</p> <p>3 eight days I am giving you?</p> <p>4 A. Sir, she is my boss. If I need something</p> <p>5 I have to ask her.</p> <p>6 Q. But do you understand what I am saying?</p> <p>7 A. I think I understand.</p> <p>8 Q. Did you have a face-to-face meeting with</p> <p>9 Miss Alves when you initially requested your vacation</p> <p>10 leave in April?</p> <p>11 A. Yes.</p> <p>12 Q. During that meeting she asked you to write</p> <p>13 her a letter, and that letter you are claiming is</p> <p>14 Exhibit 6, correct?</p> <p>15 A. Yes.</p> <p>16 Q. Did she ask you to go ahead and request</p> <p>17 you to make her clarify ten days instead of eight?</p> <p>18 Did she tell you to put that?</p> <p>19 A. Yes, sir, because --</p> <p>20 Q. So she says I will go ahead and approve</p> <p>21 eight, why don't you send me a letter and ask me for</p> <p>22 ten? Is that what you are saying?</p> <p>23 A. Well, I ask her.</p> <p>24 Q. I am trying to understand what happened.</p> <p>25 A. That's what I needed. I ask her and she</p>
<p style="text-align: center;">82</p> <p>1 Did you pull it out of the box in the morning or that</p> <p>2 evening?</p> <p>3 A. That evening or in the morning, I am not</p> <p>4 sure because it is past too long.</p> <p>5 Q. All right. And so what do you remember</p> <p>6 her saying to you on the morning of May 5th?</p> <p>7 A. The only thing I remember is that I had to</p> <p>8 request for this extra day off because that didn't</p> <p>9 make any sense for me to work a Sunday, Monday, and</p> <p>10 then Tuesday but I am not sure, because I didn't have</p> <p>11 any problem with her. I needed that day off which</p> <p>12 was the 8th and then she -- I asked her for it and</p> <p>13 she gave it to me.</p> <p>14 Q. So your testimony is that you went to</p> <p>15 Miss Alves' office on the 5th because at that time</p> <p>16 you did not believe that you had been excused from</p> <p>17 work on the 8th; is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. All right. Now, you told me earlier that</p> <p>20 you had a meeting with Miss Alves in mid-April where</p> <p>21 you straightened everything out and she had granted</p> <p>22 all the leave you requested?</p> <p>23 A. And she made me write this for her.</p> <p>24 Q. Well, she made you write a letter, but in</p> <p>25 this letter you are asking her for more than the</p>	<p style="text-align: center;">84</p> <p>1 gave it to me.</p> <p>2 Q. But she did not give you the ten days when</p> <p>3 you first asked for it, you had to go back with this</p> <p>4 letter and ask her for ten instead of eight, correct?</p> <p>5 A. This is after I made my reservation. And</p> <p>6 I went to her and asked her to give me the ten days</p> <p>7 instead of eight days, and that's when she asked me</p> <p>8 to write it and to ask her for the two additional</p> <p>9 days. I did that and she gave it to me.</p> <p>10 Q. So you had another meeting where she</p> <p>11 allegedly gave you ten days, is that what you are</p> <p>12 saying?</p> <p>13 A. Yes.</p> <p>14 Q. And that meeting -- was this the meeting</p> <p>15 of the 5th?</p> <p>16 A. When she didn't give me the day off I went</p> <p>17 and asked her for it and she gave it to me.</p> <p>18 Q. Well, wait a minute. You are saying you</p> <p>19 asked her for the ten days in this letter. And you</p> <p>20 don't know when you wrote this letter?</p> <p>21 A. I already known what she was telling me</p> <p>22 and what I needed. And everything that I needed I</p> <p>23 put on the letter, but I didn't know is that she</p> <p>24 wasn't going to give me this day.</p> <p>25 Q. When did you write this letter?</p>



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<p>85</p> <p>1 A. Sir, I don't remember.</p> <p>2 MS. CABALLERO-SOLIS: Objection, asked and</p> <p>3 answered.</p> <p>4 MR. FIX: Well, I have heard a lot of</p> <p>5 changing testimony today so I am trying to get</p> <p>6 the facts straight.</p> <p>7 THE WITNESS: I don't remember.</p> <p>8 BY MR. FIX:</p> <p>9 Q. You don't remember when you wrote this?</p> <p>10 A. No, sir.</p> <p>11 Q. Just to be clear, you had a verbal</p> <p>12 discussion where Miss Alves asked you to write this</p> <p>13 letter. After you wrote this letter you had one</p> <p>14 other discussion with her and this was on the 5th?</p> <p>15 A. When I noticed that she didn't give me</p> <p>16 that day off, I told her that the reservation had</p> <p>17 already been made and I have to have that day off,</p> <p>18 and she looked at it and she gave me the day off.</p> <p>19 Q. She looked at what?</p> <p>20 A. When I asked her and she gave me the day</p> <p>21 off. And I took --</p> <p>22 Q. You said she looked at it. She looked at</p> <p>23 what? Did she lift the schedule back out when you</p> <p>24 were having an oral discussion?</p> <p>25 A. No.</p>	<p>87</p> <p>1 day. And I asked her for this day at that time and</p> <p>2 she gave it to me.</p> <p>3 Q. And that is your claim, that she gave it</p> <p>4 to you orally, she didn't give you anything in</p> <p>5 writing?</p> <p>6 A. Orally, yes. She put in two days off.</p> <p>7 People ask her for it and she gives it.</p> <p>8 Q. But she didn't write anything down for you</p> <p>9 other than what you claim in Exhibit 5?</p> <p>10 A. Orally. I didn't see her write anything.</p> <p>11 Q. Now you told me earlier that you had</p> <p>12 submitted a form. There was a form that you had</p> <p>13 submitted requesting the time?</p> <p>14 A. The days, the specific days that I</p> <p>15 requested was the days that I put in that form that I</p> <p>16 gave to her.</p> <p>17 Q. Did you ever receive a signed form back</p> <p>18 from Miss Alves?</p> <p>19 A. No. I don't remember. No. I don't</p> <p>20 remember. The only thing I do remember is that she</p> <p>21 asked me to write what I needed.</p> <p>22 Q. If the leave was not approved what would</p> <p>23 you have done given the fact that you had already</p> <p>24 booked the flight?</p> <p>25 A. Yeah, I would have cancelled it, but she</p>
<p>86</p> <p>1 Q. You are saying she approved the extra day</p> <p>2 without even looking at a schedule?</p> <p>3 A. I am sure she looked at the schedule. I</p> <p>4 don't remember, but she must have looked at it.</p> <p>5 Q. You don't remember?</p> <p>6 A. Sir, the past a long time ago, I don't</p> <p>7 remember.</p> <p>8 Q. So you went there the morning of May 5th.</p> <p>9 You said I already booked my flight so I need this</p> <p>10 extra day, correct?</p> <p>11 A. Yes.</p> <p>12 Q. And according to your testimony she said</p> <p>13 that's fine, and you don't recall her ever looking at</p> <p>14 a schedule?</p> <p>15 A. Sir, I don't remember.</p> <p>16 Q. You don't remember.</p> <p>17 And you claim that you picked up the</p> <p>18 schedule identified in Exhibit 5 later that day, not</p> <p>19 at that time, correct? You picked it up out of her</p> <p>20 box?</p> <p>21 A. Yes.</p> <p>22 Q. And after you picked it up out of the box</p> <p>23 did you make any other attempts to communicate with</p> <p>24 her about the ten versus eight PTO days?</p> <p>25 A. That is when I asked her I needed that</p>	<p>88</p> <p>1 gave it to me.</p> <p>2 Q. You would have cancelled the trip to</p> <p>3 Haiti?</p> <p>4 A. Yes.</p> <p>5 Q. Were there any witnesses to your</p> <p>6 discussions with Miss Alves about your vacation and</p> <p>7 leave time?</p> <p>8 A. No.</p> <p>9 Q. Now when you went to talk to Miss Alves on</p> <p>10 the 5th of May you did it because you realized that</p> <p>11 your flights were booked and you needed the extra</p> <p>12 day, the 8th, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Well, what led you to believe that you had</p> <p>15 not been granted the 8th off, because you have told</p> <p>16 me all along that she always approved everything you</p> <p>17 requested?</p> <p>18 A. Because when the schedule came out and I</p> <p>19 noticed she hadn't given it to me I went to the</p> <p>20 office.</p> <p>21 Q. Isn't it true the first time you noticed</p> <p>22 this was an X. is and not a PTO or some other</p> <p>23 denomination, isn't the first time you noticed that</p> <p>24 is today during this deposition?</p> <p>25 A. Well, yes, my first time.</p>



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<p style="text-align: center;">89</p> <p>1 Q. So then it is not possible that you would 2 have noticed this and had a communication with her 3 about it on May 8th of 2007 if you noticed it for the 4 first time just now.</p> <p>5 A. No, I have never seen this document. It 6 was I needed that day, I went to her and requested 7 it, and she asked me to write a document, and I wrote 8 this.</p> <p>9 Q. But you said this document earlier was the 10 exact same as the schedule that had been posted?</p> <p>11 A. It was posted. They are both the same. 12 That's what she gave me, she give to me.</p> <p>13 Q. Again, I am very confused as to why you 14 would have gone to her on the 8th if she had already 15 told you that all your leave was approved and your 16 position that this X. in the box there means that 17 that day is clear for you, why would you need to go 18 see her again on the 8th --</p> <p>19 A. I didn't go to see here on the 8th.</p> <p>20 Q. -- on the 5th about that?</p> <p>21 A. This day wasn't showing a clear day. 22 That's when I went to her on the 5th, ask her why, 23 that I needed this day because my reservation was for 24 this day.</p> <p>25 Q. So now you are saying that the 8th on the</p>	<p style="text-align: center;">91</p> <p>1 this is not the same schedule as was on the board, 2 that this schedule had showing you that you were 3 working that day?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. So what you are telling me now is 6 that the schedule you looked at on the board had you 7 working on this Tuesday of May 8th, 2007?</p> <p>8 A. Yes.</p> <p>9 Q. Do you remember your earlier testimony 10 when you told me that the days off listed on this 11 document marked as Exhibit 5 were exactly the same as 12 the schedule that was posted on the board?</p> <p>13 A. That's what I said. I told you the same 14 thing. That is what I said.</p> <p>15 Q. Are you now telling me that it was exactly 16 the same?</p> <p>17 A. It is the same except for the 8th. That's 18 what it comes down to. The 8th -- I went and asked 19 her on the 8th to give me the day off and she gave it 20 to me.</p> <p>21 Q. Isn't it true that the only reason you are 22 testifying to that right now is because I pointed out 23 that the 8th was a Tuesday you were supposed to work?</p> <p>24 A. I don't remember the 8th because it is 25 past too long.</p>
<p style="text-align: center;">90</p> <p>1 schedule you looked at on the bulletin board had you 2 working on the 8th?</p> <p>3 A. On the 8th I was already in Haiti. This 4 all happened on the 5th.</p> <p>5 Q. No. No. I am saying we had already 6 established that you got this from Miss Alves on the 7 5th, correct?</p> <p>8 A. Yes.</p> <p>9 Q. That night in her box, correct?</p> <p>10 A. Yes.</p> <p>11 Q. Now, before that time you had seen a 12 schedule that you said was the exact same schedule 13 except that it had other names on it, correct?</p> <p>14 A. Yes.</p> <p>15 Q. That was posted on the board, correct?</p> <p>16 A. Yes.</p> <p>17 Q. If that was the exact same schedule, then 18 why did you need to go see her about what was going 19 to happen on the 8th?</p> <p>20 A. Because Sunday and Monday were my day off. 21 I went to see her on the 5th. And the 6th and 7th 22 were okay, but I noticed that the 8th she didn't give 23 it to me. And so I went to her office and asked her 24 for it and she gave it to he.</p> <p>25 Q. So then what you are telling me is that</p>	<p style="text-align: center;">92</p> <p>1 Q. You don't remember what happened, is that 2 what you are saying?</p> <p>3 A. What happened? Not what happened. When I 4 ask her for it there wasn't a big discussion about 5 it, she just told me --</p> <p>6 Q. We have established that you have asked 7 her. What I am talking about is this particular 8 document. Why did you tell me when I was asking you 9 questions about this earlier that the marks on this 10 were the exact same as the schedule posted on the 11 wall? And now you are telling me that it is not, 12 that the 8th has been changed.</p> <p>13 A. I change it. I ask her and she change it. 14 It wouldn't make sense for me to have Sunday, Monday 15 off and to work Tuesday and then to go to Haiti on 16 Wednesday.</p> <p>17 Q. That is not my question.</p> <p>18 A. Sir --</p> <p>19 Q. My question is, do you remember telling me 20 earlier that the schedule you saw on the board had 21 the exact same markings all the way across? Do you 22 remember telling me that?</p> <p>23 A. Yes. I said yes, except that the other 24 name, the name of the other people she didn't put.</p> <p>25 Q. Just so I understand correctly, your</p>



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<p>93</p> <p>1 position right now is that just an hour or so ago you 2 told me that you clearly identified for us that the 3 schedule on the bulletin board was, in fact, 4 different than this one because the marking on the 5 8th, is that what you are saying? 6 A. I don't remember, I told you that. I 7 don't remember that. The schedule was a schedule 8 that was made such a long time ago I don't remember 9 all these details. 10 Q. Now you were paid \$9.00 an hour while you 11 were employed by PhyAmerica, correct? 12 A. Yes. 13 Q. And your rate stayed at \$9.00 an hour? 14 A. Yes. 15 Q. Do you know how PhyAmerica went through 16 the process of calculating how raises were decided? 17 A. No. 18 Q. Did you ask anyone at PhyAmerica for a 19 raise? 20 A. There is no one else in PhyAmerica but 21 Lori. 22 Q. Did you ask Lori for a raise? 23 A. No. 24 Q. Did you ever apply for a promotion with 25 the company?</p>	<p>95</p> <p>1 A. No. 2 There was as time went by and I noticed 3 that I wasn't going to get a promotion I did contact 4 Mr. David and he told me that he thought that I would 5 soon get a promotion. 6 Q. You called the recruiter to ask for a 7 promotion? 8 A. Yeah, it is the one that told me that. 9 Q. Did this recruiter have any direction over 10 your day-to-day employment? 11 A. I don't know. He is the one that called 12 me. 13 Q. You are saying that he called you at some 14 time while you were employed and said you ought to 15 get a promotion? 16 A. No, I asked him. 17 Q. You asked him? 18 A. Yes. 19 Q. When did you do this? 20 A. I don't remember, but I knew the position 21 became available so I asked him. 22 Q. What position? 23 A. Supervise the CNA's. 24 Q. You called him about that particular 25 position?</p>
<p>94</p> <p>1 A. I never requested for a promotion, but 2 Mr. David had send my resume he had suggested that 3 because of my experience that I would be, I would 4 qualify for a promotion in the future. 5 Q. Did he tell you when you might qualify for 6 a promotion? 7 A. No. 8 Q. Was there a position at PhyAmerica that 9 you can identify that you are turned down for? 10 A. Yes. 11 Q. What position were you turned down for? 12 A. Because they saw that I had to supervise 13 the other CNA's because there were a lot of people 14 not really doing their jobs well, but they saw that I 15 was doing such a good job that they thought that I 16 qualified for a supervisory position. 17 Q. Who told you that? 18 A. The nurse that worked the floor. 19 Q. That was a PhyAmerica employee? 20 A. No, the nurses didn't work for PhyAmerica. 21 Q. Who at PhyAmerica told you other than the 22 recruiter that you might be in line for a promotion? 23 A. We never saw or spoke to anyone else but 24 Lori. 25 Q. And Lori never told you that?</p>	<p>96</p> <p>1 A. Yes, sir. 2 Q. What did he say? 3 A. He told me to file my request and as the 4 position became available she would get it. 5 Q. Did you file your request? 6 A. I don't remember if I did. And Lori had 7 told all the other workers that I would become the 8 next supervisor, and then everybody became jealous 9 and the feeling wasn't really positive. 10 Q. Lori Alves told everyone you were going to 11 be the next supervisor? 12 A. Anything that you ask her she tell 13 everybody on-the-job. 14 Q. But that is what Lori Alves said -- 15 A. Yes. 16 Q. -- that you were going to be a supervisor 17 in the near future? 18 A. Yes. Yes. 19 Q. Did Lori Alves tell you that? 20 A. No. 21 Q. When you heard this from these other 22 people did you go talk to Lori Alves and tell her, 23 gosh, these other people think I might be due for a 24 promotion, can I have one? 25 A. This position was not for Lori to issue it</p>



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<p style="text-align: center;">97</p> <p>1 to someone. This was a position that only the 2 government could issue, but Lori didn't want me to 3 have that position. 4 Q. If Lori didn't want you to have the 5 position why would she be going around telling 6 everybody that you should have the position? 7 A. She didn't tell me that I was the one that 8 is supposed to get it. She is the one that told all 9 others I was going to become their boss. So it is 10 maybe she knew because they were going to give me the 11 position that she put the word out. 12 Q. Who is they? 13 A. Lori. 14 Q. Who is they are going to give you the 15 position? 16 A. The government. 17 Q. The government? 18 A. The government, yeah. 19 Q. Would that be a position away from 20 PhyAmerica? 21 A. Okay. The PhyAmerica governed the CNA's. 22 As soon as you became -- you obtain a level higher 23 than CNA then you became under the hospices of the 24 government. 25 Q. So the position that you are talking about</p>	<p style="text-align: center;">99</p> <p>1 A. Absolutely, yes. 2 Q. What do you mean by that? 3 A. It was Christmas. She was shorthanded. 4 Lori was shorthanded. She called me at home and she 5 begged me to work overtime. I worked 88 hours for 6 two weeks. Following two weeks I worked 72 hours. 7 And they took off -- she took off the eight hours, 8 the extra eight hours and gave me three days off. 9 Q. Do you have a record of any of this? 10 A. Yes, I have a paycheck 88 hours and I have 11 one 72 hours. 12 Q. And I am not sure I understand what you 13 are saying. You are saying over a two week period 14 you worked 88 hours? 15 A. Yes. 16 Q. And over the next two week period you 17 worked 72 hours? 18 A. Yes, sir. 19 Q. And I don't understand, why that is a 20 problem? 21 A. Because I am a full-time employee. 22 Well, I worked two weeks for 88 hours. 23 The following week she wasn't shorthanded or had an 24 excess amount of workers, but she made me work 25 72 hours. And then sent me home for three days. And</p>
<p style="text-align: center;">98</p> <p>1 is a position working directly for the government and 2 not PhyAmerica? 3 A. Yes. 4 Q. So PhyAmerica would have no control over 5 that? 6 A. No. 7 Q. Just to be clear, you did not apply for 8 any promotions within PhyAmerica, correct? 9 A. PhyAmerica didn't have any position. It 10 is only one position. It is CNA. You are where you 11 are and that's it, whatever. 12 Q. And you didn't ask for a raise while you 13 were at PhyAmerica? 14 A. No. 15 Q. Do you know how pay rates were decided at 16 PhyAmerica? 17 A. Okay. So you have a period that the 18 orientation and I suppose you have a period of 19 90 days probationary period, then once that is over 20 then you qualify for a raise. It was decided that 21 you would at least qualify. 22 Q. Be eligible you mean? 23 A. Be eligible, yes. 24 Q. Now do you claim in this lawsuit that you 25 were denied hours?</p>	<p style="text-align: center;">100</p> <p>1 the reason is that she did that I believe is so that 2 she wouldn't pay me the eight hours overtime the 3 previous two weeks. So she paid me -- it became 80 4 hours for the first two weeks and 80 hours for the 5 seconds two weeks. And at the job everyone works 6 sixteen hours a day, seven days a week and they just 7 make overtime. They set me up. 8 Q. You are saying everyone working for 9 PhyAmerica works sixteen hours a day for seven days a 10 week? 11 A. Almost, yes. Yes, sir. 12 Q. And how do you know that? 13 A. Well, my coworkers tell me. 14 Q. This comes from somebody telling you? 15 A. They work sixteen hours. I saw them 16 everyday working sixteen hours, 3:00 to 11:00, 11:00 17 to 7:00. 18 Q. Did you have any responsibility for 19 managing time sheets, other peoples time sheets? 20 A. It wasn't my responsibility, but the 21 schedules available were public knowledge. So when I 22 would look and to see where there was certain 23 overtime that could have been had and I would request 24 Lori for them, even though initially she would say 25 yes, she would never give them to me.</p>



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<p style="text-align: center;">101</p> <p>1 Q. So your understanding of the hours worked 2 by other employees were based on what the other 3 employees told you and what you remember from the 4 schedule? 5 A. So because the schedule is available for 6 everyone to see. And if someone doesn't do overtime, 7 then PhyAmerica agency will send additional workers 8 to fill that void. 9 Q. So your testimony concerning all the hours 10 worked by others are based upon observing the others? 11 A. No. 12 Q. No? 13 A. By looking at the schedule. 14 Q. Looking at the schedule? 15 A. Yes. When the overtime is available. 16 Q. You don't have those schedules handy? 17 A. No, sir. 18 Q. Give me the name of everyone who you claim 19 worked sixteen hours a day for seven days a week? 20 A. I don't know their name. I don't remember 21 the name, but they always in the facility sixteen 22 hours, seven days a week. 23 Q. And you can't give me any other name? 24 A. I don't remember. If you find out -- they 25 work sixteen hours all the time.</p>	<p style="text-align: center;">103</p> <p>1 started at the job they paid her \$10.00 an hour -- 2 Q. What was this person's name? 3 A. -- fresh out of school. 4 To tell you the truth, I don't remember, 5 but if you find out you are going to know -- but if 6 you look into it, you will find out who it was that 7 give me my initial orientation. 8 Q. All right. Is there anyone else you can 9 identify who received better pay than you who didn't 10 deserve it? 11 A. I didn't say they don't deserve it, sir. 12 Q. Is there anyone else you compare yourself 13 to who you say the company should have paid me the 14 same as them and I got unfairly paid because of that? 15 A. Well, the Jamaican that I just spoke to 16 you about. And I should have gotten more than her. 17 Q. Can you tell me anybody else? 18 A. No, there was no one that I was really 19 close to. This one I happened to know because she 20 was doing my orientation and we started talking, you 21 know, discussing personal issues. 22 Q. You are alleging in this lawsuit that you 23 were underpaid based upon your race and national 24 origin, correct? 25 A. Yes, sir.</p>
<p style="text-align: center;">102</p> <p>1 Q. And it is your testimony that you believe 2 Miss Alves altered your schedule because she didn't 3 went to pay overtime -- 4 A. No. 5 Q. -- right? 6 A. Maybe. Yes. 7 Q. Is there any other reason you think she 8 would have juggled the hours? 9 A. No, sir. 10 Q. So with respect to any other employees 11 schedule who were more favorable than yours, you 12 can't tell us any of those either by name -- 13 A. No, I don't remember the name. 14 Q. Now, do you claim that you were unfairly 15 paid in comparison to other employees? 16 A. Yes, sir. 17 Q. What employee do you claim received better 18 pay than you who shouldn't have? 19 A. Well, it was the Jamaican that initially 20 give me my initial training. And when she saw how 21 well I was performing, the first thing she said is 22 wow, you are full of experience and asked me what I 23 was getting an hour. They were paying me \$9.00 an 24 hour with 17 years experience. And she told me that 25 she had just gotten out of school and when she first</p>	<p style="text-align: center;">104</p> <p>1 Q. Is the entire basis of that claim the 2 communications that you had with this unidentified 3 Jamaican person? 4 A. Yes. 5 MR. FIX: Do you mind if we take a five 6 minute break? Is that okay? 7 (Thereupon, a brief recess was taken, 8 after which the following proceedings were 9 resumed.) 10 BY MR. FIX: 11 Q. We were talking about the schedule and you 12 had mentioned the one incident around Christmas time 13 where you felt like you got your hours manipulated. 14 Can you think of any other scheduling events that you 15 believe were unfairly handled in this case? 16 A. The only other thing that I can mention is 17 initially when she felt that I should work this 7:00 18 to 3:00, 3:00 to 11:00, and 11:00 to 7:00 just to 19 make 40 hours, make up a 40 hour work week I thought 20 it was kind of unfair, but other than that, no. 21 Q. Do you know how overtime decisions were 22 made? 23 A. As normal as that person is available they 24 feel that that person feels he can work up to sixteen 25 hours a day he will submit or put his name down and</p>



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<p style="text-align: center;">105</p> <p>1 they would give it to him.</p> <p>2 Q. Did you make requests for overtime?</p> <p>3 A. Yes.</p> <p>4 Q. And did you receive overtime?</p> <p>5 A. No, never.</p> <p>6 Q. You never once received overtime?</p> <p>7 A. No, not once.</p> <p>8 Q. Now you said that over Christmas you were</p> <p>9 asked to work overtime and worked 88 hours. Isn't</p> <p>10 that overtime?</p> <p>11 A. Not overtime, because the next pay period</p> <p>12 she gave me 72 hours which took over the 88.</p> <p>13 Q. Do you have your pay stubs from that</p> <p>14 period?</p> <p>15 A. I have it at home. I think I gave it to</p> <p>16 my attorney.</p> <p>17 Q. Did you give all of the pay stubs you had</p> <p>18 to your attorney?</p> <p>19 A. No, not all.</p> <p>20 Q. Okay. Can you get those for me and give</p> <p>21 them to your attorney?</p> <p>22 A. Yes.</p> <p>23 Q. Are these stubs that we can determine what</p> <p>24 your hours were while you were working for</p> <p>25 PhyAmerica?</p>	<p style="text-align: center;">107</p> <p>1 anywhere?</p> <p>2 A. This is the only place that I would have</p> <p>3 them, but, look, she took them off.</p> <p>4 Q. You have alleged in this case that</p> <p>5 Miss Alves made some offensive statements, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Tell me every occasion you can recall in</p> <p>8 which Miss Alves made an offensive statement?</p> <p>9 A. I can't tell you if it was actually</p> <p>10 personal or if that is just the way she was, but</p> <p>11 whatever I spoke to her about it would always come</p> <p>12 down to F. Haitian this, F. Haitian that. And after</p> <p>13 that meeting where we failed the inspection she only</p> <p>14 said in the meeting that she was going to fire Fg</p> <p>15 Haitian.</p> <p>16 Q. All right. We have got the one specific</p> <p>17 incident during that meeting where she said I am</p> <p>18 going to fire every Fg Haitian, okay, right?</p> <p>19 A. Yes.</p> <p>20 Q. Now we have covered a number of different</p> <p>21 conversations today that you had with Miss Alves.</p> <p>22 Several of those conversations involve discussion</p> <p>23 over your schedule and vacation, correct?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And in any of those discussions where you</p>
<p style="text-align: center;">106</p> <p>1 A. Yeah.</p> <p>2 Q. So if the company records reflected that</p> <p>3 you received overtime, in fact, on a regular basis</p> <p>4 those records would be inaccurate?</p> <p>5 A. Well, it can't happen because it never</p> <p>6 happened. I never worked overtime.</p> <p>7 Q. And you are certain about that?</p> <p>8 A. 100 percent.</p> <p>9 Q. Would it be fair to say but for the few</p> <p>10 instances where Lori Alves made a surprise visit or</p> <p>11 you were picking up your check you really didn't see</p> <p>12 her for the week?</p> <p>13 A. No.</p> <p>14 Q. No, meaning she didn't see her?</p> <p>15 A. She didn't have any other contact.</p> <p>16 Q. Is there any employee of PhyAmerica that</p> <p>17 you can identify by name who you believe received</p> <p>18 more favorable treatment whether by pay, scheduling,</p> <p>19 overtime, or anything else?</p> <p>20 A. I can't cite them by name, but I can tell</p> <p>21 you that almost every Jamaican that worked there</p> <p>22 received overtime.</p> <p>23 Q. But you don't know their names?</p> <p>24 A. No, I don't remember.</p> <p>25 Q. Do you have their names written down</p>	<p style="text-align: center;">108</p> <p>1 were talking about your schedule with her did she say</p> <p>2 F. the Haitians?</p> <p>3 A. When I would go to speak to her concerning</p> <p>4 overtime she would talk to me about the Fg Haitian.</p> <p>5 Q. So when you went to speak to her about</p> <p>6 overtime and this one meeting she says Fg Haitians?</p> <p>7 A. Because she is always upset.</p> <p>8 Q. So how many meetings did you have with her</p> <p>9 about overtime?</p> <p>10 A. I asked her for overtime two or three</p> <p>11 times.</p> <p>12 Q. And on each of those occasions it is your</p> <p>13 testimony that she made a comment about Fg Haitians?</p> <p>14 A. Okay. She is always upset, always</p> <p>15 agitated. You can ask anyone. She is always like</p> <p>16 that. She is always loud.</p> <p>17 Q. Right, but my question is if you go into</p> <p>18 talk to her about overtime why do you believe that</p> <p>19 she would just all of a sudden say F. Haitian?</p> <p>20 A. Well, it seems to me that ever since that</p> <p>21 day that I told her during the initial interview that</p> <p>22 I told her that Mr. David had promised me that I</p> <p>23 would be getting between \$11.00 and \$12.00 an hour</p> <p>24 she just decide right there and then that she would</p> <p>25 hate me for life. And she told me at that point</p>



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<p style="text-align: center;">109</p> <p>1 if – she wanted to know if I know more than her.</p> <p>2 Q. So you thought that Miss Alves didn't like</p> <p>3 you because you told her that you were promised</p> <p>4 \$11.00 an hour?</p> <p>5 A. Yes.</p> <p>6 Q. Was there any other reason that you felt</p> <p>7 she didn't like you?</p> <p>8 A. I guess that is the only thing I can come</p> <p>9 up with because I respected everyone. I did what I</p> <p>10 was supposed to do. And I did my job well. And I am</p> <p>11 always on time, never late.</p> <p>12 Q. Do you remember the specific dates of</p> <p>13 those or three times you asked Miss Alves for</p> <p>14 overtime?</p> <p>15 A. No.</p> <p>16 Q. Were there any witnesses to those</p> <p>17 discussions?</p> <p>18 A. No, because she is in the office alone all</p> <p>19 the time.</p> <p>20 Q. Well, given the fact that you worked the</p> <p>21 late shift and she worked days, were these other</p> <p>22 occasions where you had waited in the morning?</p> <p>23 A. Yes.</p> <p>24 Q. So these two or three conversations</p> <p>25 happened the first thing in the morning when</p>	<p style="text-align: center;">111</p> <p>1 A. Yes, and she did.</p> <p>2 Q. And after she made this statements what</p> <p>3 else did she say?</p> <p>4 A. She says because of the Haitians she</p> <p>5 failed the inspections. So she was going to fire</p> <p>6 every F'g Haitian, and she did.</p> <p>7 Q. Do you have any idea why she blamed the</p> <p>8 Haitians for the inspection?</p> <p>9 A. She said they didn't do their jobs well.</p> <p>10 She said that they weren't following proper</p> <p>11 procedures, and that but what really got her upset is</p> <p>12 that the Haitians were keeping food at places that</p> <p>13 were not designated for food, and that at one point</p> <p>14 they opened a drawer and found two boiled eggs. And</p> <p>15 that was it, but nobody knows who did it. Nobody</p> <p>16 knows who did it. Not my shift though. It was a</p> <p>17 different shift that did.</p> <p>18 Q. It was the belief that it was the Haitians</p> <p>19 that did that?</p> <p>20 A. Yes, nobody else.</p> <p>21 Q. Well, you suspect Miss Alves believed that</p> <p>22 it is the Haitians?</p> <p>23 A. Yes, she believes that the Haitians put it</p> <p>24 there.</p> <p>25 Q. So if I understand correctly, during an</p>
<p style="text-align: center;">110</p> <p>1 Miss Alves came to the office?</p> <p>2 A. Yes.</p> <p>3 Q. And you would say to her I would like</p> <p>4 overtime and then she would just get very upset and</p> <p>5 start screaming?</p> <p>6 A. She always – that is the way she is.</p> <p>7 That's the way she was whenever you spoke to her.</p> <p>8 Q. Do you know what time Miss Alves arrived</p> <p>9 to work?</p> <p>10 A. Sometimes she came at 9:00, she came at</p> <p>11 10:00. Whenever she wanted. She was the boss.</p> <p>12 There was no one above her.</p> <p>13 Q. And your shift ended at 7:00 a.m.</p> <p>14 A. 7:30.</p> <p>15 Q. So you would wait for an hour-and-a-half</p> <p>16 or two hours to talk to her?</p> <p>17 A. Sometimes, yes.</p> <p>18 Q. What would you do while you were waiting?</p> <p>19 A. Sit down in the front desk because when I</p> <p>20 get home that's when I can get me some sleep, I can</p> <p>21 rest. I can't go back to the office.</p> <p>22 Q. All right. At the meeting where she made</p> <p>23 the derogatory comment about Haitians and she said</p> <p>24 something to the effect of firing all the Haitians;</p> <p>25 is that correct?</p>	<p style="text-align: center;">112</p> <p>1 inspection, whoever was doing the inspection found</p> <p>2 hidden food?</p> <p>3 A. Yes.</p> <p>4 Q. And for whatever reason Miss Alves thought</p> <p>5 that a group of Haitians had left that food?</p> <p>6 A. That is what Miss Alves said in the</p> <p>7 meeting, but she was already home, because she wasn't</p> <p>8 even present for the inspection because it was her</p> <p>9 shift was already done.</p> <p>10 Q. So you are saying that this meeting at</p> <p>11 which Miss Alves said she was going to fire all the</p> <p>12 Haitians you were not at that meeting?</p> <p>13 A. I was, yes.</p> <p>14 Q. Okay.</p> <p>15 A. Yes, my shift was over, but she was so</p> <p>16 upset – this is not for the inspection, this is for</p> <p>17 the meeting concerning the inspection – that</p> <p>18 everybody that was to be at the meeting and that's</p> <p>19 when she made the comments. And so that's why I went</p> <p>20 home, went to the meeting, and went back home and</p> <p>21 came back to work.</p> <p>22 Q. What time was the meeting?</p> <p>23 A. I think between 3:00 and 4:00.</p> <p>24 Q. P.M., afternoon?</p> <p>25 A. P.M., yes.</p>



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<p>113</p> <p>1 Q. How many people attended that meeting?</p> <p>2 A. All CNA's and Miss Alves.</p> <p>3 Q. And we talked before that, that might have</p> <p>4 been somewhere between 50 and 60 people?</p> <p>5 A. Yes, because she call every shift; 11:00</p> <p>6 to 7:00, and 7:00 to 3:00. She made them wait.</p> <p>7 Q. Where did the meeting take place?</p> <p>8 A. In the conference room.</p> <p>9 Q. Have you ever known any of the Haitians to</p> <p>10 put food in the drawers and take food –</p> <p>11 A. My shift, 11:00 to 7:00, we don't eat.</p> <p>12 Q. After that meeting nobody was talking</p> <p>13 about who put the food where?</p> <p>14 A. No.</p> <p>15 Q. Do you have any idea why Miss Alves would</p> <p>16 have thought the Haitians did that?</p> <p>17 A. Had she not said that I would have never</p> <p>18 been aware of this, because my shift has nothing to</p> <p>19 do with it. We don't eat. And it is the comment</p> <p>20 that revealed to me that that was going on, that was</p> <p>21 even happening.</p> <p>22 Q. All right. What other times have you</p> <p>23 heard Miss Alves make a negative comment about</p> <p>24 Haitians?</p> <p>25 A. I had to go by her office to clock out</p>	<p>115</p> <p>1 Miss Alves' office and hear her talking negatively</p> <p>2 about Haitians?</p> <p>3 A. In addition, sometimes when I am waiting</p> <p>4 to get my check I hear her talking to other people</p> <p>5 about Haitians. And when other Haitians go get their</p> <p>6 checks she treats them very badly, holds her nose</p> <p>7 like she doesn't want to smell the Haitians at all.</p> <p>8 Q. Well, what specific bad comments have you</p> <p>9 heard her make about Haitians other than the ones</p> <p>10 that you have already discussed?</p> <p>11 A. Well, other words I heard the F'g Haitian.</p> <p>12 I really don't pay that much attention, that I am</p> <p>13 really paying that much attention to what she is</p> <p>14 saying. And she is talking to other people about</p> <p>15 Haitians badly and screams.</p> <p>16 Q. And what you are saying is she may have</p> <p>17 been and talking negatively about another employee</p> <p>18 that you knew to be Haitian?</p> <p>19 A. Yes.</p> <p>20 Q. As opposed to just saying, boy, do I hate</p> <p>21 Haitians?</p> <p>22 A. When she is talking to a Haitian she just</p> <p>23 speaks badly.</p> <p>24 Q. Did you ever witness Miss Alves hold her</p> <p>25 hand under her nose?</p>
<p>114</p> <p>1 because you have to pass by her office to get to the</p> <p>2 punch clock and I always overhear her talking bad</p> <p>3 about Haitians.</p> <p>4 Q. Always?</p> <p>5 A. Not everyday, but when I hear it, I hear</p> <p>6 it.</p> <p>7 Q. Well, I guess I am confused because if</p> <p>8 your shift ends at 7:30 and she gets in there at</p> <p>9 9:00, how can you overhear anything?</p> <p>10 A. My initial shift which is what I had</p> <p>11 originally requested was from 3:00 to 11:00, so I</p> <p>12 worked 3:00 to 11:00. And it was during those days.</p> <p>13 And she eventually took me out of the 3:00 to 11:00</p> <p>14 and put me on the 11:00 to 7:00, but my original</p> <p>15 shift was 3:00 to 11:00.</p> <p>16 Q. So if I understand your testimony that</p> <p>17 period was for two weeks, correct?</p> <p>18 A. No two weeks. I had two weeks orientation</p> <p>19 followed by two more weeks actually working the</p> <p>20 shift, and then I was changed shifts 3:00 to 11:00.</p> <p>21 Maybe four.</p> <p>22 Q. So for about four weeks total maybe?</p> <p>23 A. Maybe more, but I don't remember.</p> <p>24 Q. All right. So for this few week period</p> <p>25 are you saying you would walk by to clock out by</p>	<p>116</p> <p>1 A. Yes.</p> <p>2 Q. How many times?</p> <p>3 A. Once I saw her.</p> <p>4 Q. What are the names of the Haitians you</p> <p>5 heard her criticizing?</p> <p>6 A. Like I said, I left the job quite a while</p> <p>7 ago and I can't remember the name of anyone. I would</p> <p>8 have to have the list in front of me and I would tell</p> <p>9 you who is who.</p> <p>10 Q. But right now you cannot identify any</p> <p>11 particular Haitian about whom Miss Alves was making</p> <p>12 negative comments?</p> <p>13 A. No.</p> <p>14 Q. Have we covered all the comments you can</p> <p>15 you recall by Miss Alves about Haitians?</p> <p>16 A. Yes.</p> <p>17 Q. Have you heard any other employee of</p> <p>18 PhyAmerica make negative comments about Haitians?</p> <p>19 No?</p> <p>20 A. To tell the truth, she fired every Haitian</p> <p>21 in there. It is when the business was sold to</p> <p>22 another company that they fired Lori, Miss Alves,</p> <p>23 then they rehired all the Haitians because it became</p> <p>24 a government owned facility.</p> <p>25 Q. Where are you getting this information?</p>



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<p style="text-align: center;">117</p> <p>1 A. Just so when I run into my ex coworkers 2 and then we talk about things that used to go on. 3 And they told me that Lori fired all the Haitians. 4 Q. So your basis for assuming that Miss Alves 5 fired all the Haitians is comments you heard from 6 people on the street? 7 A. So I meet with them, some of them have 8 been fired, and they tell me about it. And they said 9 she is firing all the Haitians. 10 Q. What are their names? 11 A. I don't remember their names, but when I 12 meet up with one or two of them that's what they tell 13 me. 14 Q. Is there any other factual basis from 15 which your drawing this assumption that she fired all 16 the Haitians? 17 A. I didn't really have a vested interest and 18 I wasn't really trying to find out really what was 19 going on because I was already fired and I wasn't 20 seeking re-employment, but when I would meet with 21 these ex-workers and we would be talking about what 22 happened, they would just tell me that I was fired by 23 Lori and she is firing all the other Haitians. 24 Q. Do you also believe that you were 25 discriminated against on the basis of your race,</p>	<p style="text-align: center;">119</p> <p>1 from her attitude in her response to me I knew that 2 she didn't like me because of being Haitian and 3 black. 4 Q. Well, why did you draw that conclusion? 5 A. Well, I am not inside of her so I can't 6 really speak to her, but she is just a very rude 7 person. And also my daughter came, and came into the 8 office, and the way she told her to get out and go 9 sit over there was not really appropriate so. She is 10 a very rude person. 11 Q. Have you ever heard Miss Alves make 12 racially derogatory comments? 13 A. I don't sit in the office 24/7 so I don't 14 know. 15 Q. You can't identify any, correct? 16 A. No. 17 Q. Can you identify any non-blacks at 18 PhyAmerica during your employment who received more 19 favorable treatment than you? 20 A. Jamaican population. 21 Q. Would you consider Jamaicans black? 22 A. They are black, but she likes them maybe. 23 Maybe, but she doesn't a Haitian. I can't tell you. 24 Q. So you believe that Miss Alves treated the 25 Jamaicans favorably?</p>
<p style="text-align: center;">118</p> <p>1 black? 2 A. Absolutely. 3 MR. FIX: Mark this. 4 (Thereupon, Defendant's Exhibit No. 7 was 5 marked For Identification.) 6 BY MR. FIX: 7 Q. I am handing you what has been marked as 8 Defendant's Exhibit No. 7. Have you ever seen this 9 document before? 10 A. I don't remember. Yes, I signed it. Yes, 11 I saw it. 12 Q. Please take a look at the second page for 13 me. Take a moment to look at that. I am just asking 14 you to take a look at that. Let me know when you are 15 finished looking at that. 16 A. I finish. 17 Q. Is this something that you prepared in 18 filing a charge of discrimination? 19 A. Yes. 20 Q. Now, when is the first time that you felt 21 you were discriminated against on the basis of your 22 race, black? 23 A. From the very first day that I went and 24 mentioned to her that Mr. David had promised me the 25 \$11.00 to \$12.00 an hour. From that minute on I saw</p>	<p style="text-align: center;">120</p> <p>1 A. Yes, sir. 2 Q. And you don't think she resented them 3 because they were black? 4 A. I don't know. I am not inside of her, but 5 that is the way she is. 6 Q. What is the way she is? 7 A. Rude with Haitians. 8 Q. Well, again, we are talking about race 9 discrimination. Now, you told me about national 10 origin discrimination. 11 A. I don't know. For the way she has treated 12 me I can say yes. 13 Q. You can say yes to what? I mean, race, 14 black color, do you understand that? 15 A. Yes. 16 Q. Do you understand that you would be black 17 and you would also be Haitian? 18 A. Both. 19 Q. Now, the Jamaicans you would agree are 20 black also? 21 A. Yes. 22 Q. And wouldn't you agree that if Miss Alves 23 is treating them favorably that it is not because 24 they are black? 25 A. Okay. The only thing that I can say is</p>



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March 4, 2011

<p style="text-align: center;">121</p> <p>1 that maybe it is because the Jamaicans speak English</p> <p>2 without accent, but Haitian speak English with</p> <p>3 accent, and so maybe that is what turns her off, I</p> <p>4 don't know.</p> <p>5 Q. But you don't know as you sit here today</p> <p>6 that Miss Alves just doesn't like people because of</p> <p>7 the color of their skin?</p> <p>8 A. I can't say that, no.</p> <p>9 Q. And, in fact, when you filled out your</p> <p>10 Exhibit A, your charge of discrimination, you didn't</p> <p>11 mention anything in here about the race of being</p> <p>12 black, it was all related to being Haitian; isn't</p> <p>13 that right?</p> <p>14 A. Haitian and black both together.</p> <p>15 Q. Where in here does it say black, Exhibit</p> <p>16 7? Tell me where in there you have alleged that you</p> <p>17 felt you were subjected to race discrimination on the</p> <p>18 basis of being black?</p> <p>19 A. Okay. Well, I wrote it like this because</p> <p>20 from what I observed of her, the only thing that I</p> <p>21 can say is that she is acting that way because she</p> <p>22 doesn't like Haitians.</p> <p>23 Q. And if you flip the page over to the</p> <p>24 front, if you see the box it says cause of</p> <p>25 discrimination based on. Do you see that Box C? Do</p>	<p style="text-align: center;">123</p> <p>1 that she didn't like Haitians?</p> <p>2 A. That she doesn't like Haitian and black</p> <p>3 together.</p> <p>4 Q. That is what I am getting at. What is it</p> <p>5 about -- have you told me everything that you can</p> <p>6 think of as to why Miss Alves may not like black</p> <p>7 people?</p> <p>8 A. Only one thing I can tell you is the way</p> <p>9 she treats us is that it is not professional and that</p> <p>10 people shouldn't talk to other people at work like</p> <p>11 this.</p> <p>12 Q. Anything else?</p> <p>13 A. Nothing else, sir.</p> <p>14 Q. Are you receiving medical treatment?</p> <p>15 A. Okay. I suffer high blood pressure, high</p> <p>16 cholesterol. And as a matter of fact, it has been</p> <p>17 two weeks since my high blood pressure medication has</p> <p>18 expired and I haven't been able to afford it.</p> <p>19 Q. How long have you had high blood pressure?</p> <p>20 A. Because after the job it elevated. Right</p> <p>21 after the job it became very high and I gained</p> <p>22 weight.</p> <p>23 Q. You never had high blood pressure before</p> <p>24 you worked for PhyAmerica?</p> <p>25 A. It was like between -- before it was</p>
<p style="text-align: center;">122</p> <p>1 you see that?</p> <p>2 A. Yes, sir.</p> <p>3 Q. National origin box is checked, correct?</p> <p>4 A. Yes.</p> <p>5 Q. The race box is not checked, is it?</p> <p>6 A. No.</p> <p>7 Q. Did you have a chance to look this over</p> <p>8 before it was filed?</p> <p>9 A. When I spoke about Haitians I felt that I</p> <p>10 was speaking about Haitians and black at once.</p> <p>11 Q. But you can't give me a reason why</p> <p>12 Miss Alves doesn't like black people. You have given</p> <p>13 me reasons why she may not like Haitians in your</p> <p>14 mind, but what about black people in general?</p> <p>15 A. I am not in her office 24 hours a day so I</p> <p>16 can't really tell you everything, and particularly</p> <p>17 what is in her mind, but I can tell you that with</p> <p>18 Jamaican people she gives them overtime whenever they</p> <p>19 ask for it and she just doesn't like Haitians.</p> <p>20 Q. Well, do you understand we are here</p> <p>21 because you have filed a lawsuit against this company</p> <p>22 alleging race discrimination. And what you are</p> <p>23 telling me now in this lawsuit is you have no basis</p> <p>24 for thinking that Miss Alves had anything against</p> <p>25 black people, the only thing you are telling me is</p>	<p style="text-align: center;">124</p> <p>1 between 120 over 80, 120 over 90, but it was never as</p> <p>2 high as it is today, 250.</p> <p>3 Q. Has a physician told you why he believes</p> <p>4 or she believes that your blood pressure is high?</p> <p>5 A. No, they haven't really told me, but they</p> <p>6 just said that one of the things that might be</p> <p>7 because of my overweight, but I am overweight because</p> <p>8 I am not working. And when I am not working I sit</p> <p>9 around the house all day and I am getting fat.</p> <p>10 Q. Is there any reason you can't exercise?</p> <p>11 A. I walk.</p> <p>12 Q. You do exercise?</p> <p>13 A. I walk, yes, sir.</p> <p>14 Q. Well, what is preventing you from trying</p> <p>15 to lose weight?</p> <p>16 A. After the job I used to have three kids at</p> <p>17 the university and I had to send them money. And</p> <p>18 whenever they were out of money and I always help.</p> <p>19 And now they are calling for money and I can't help.</p> <p>20 And I am sitting there worried about me and worried</p> <p>21 about them and all this is making me fatter. It is</p> <p>22 making me --</p> <p>23 Q. Are you under any physical limitations</p> <p>24 that would prevent you from exercising?</p> <p>25 A. I do it. Yes, I exercise. I walk.</p>



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1 Q. So you are under no physical restrictions?	1 cholesterol right now?
2 A. No, I walk one hour everyday, sometimes 3 four times a week, sometimes five times.	2 A. I can't go back. I can't go back to the 3 doctor because -- yes. Well, it used to be very 4 hyper and very agitated. Now she is very calm, but 5 the thing is she can't afford to go to the doctor.
4 Q. And do you have any special dietary needs?	6 Q. What other medical conditions do you 7 suffer from?
5 A. No.	8 A. Nothing.
6 Q. Do you agree that weight loss can come 7 with dieting and exercise?	9 Q. So you consider yourself a healthy person?
8 A. Yes.	10 A. I can't say that I am completely, I 11 haven't gone to the doctor lately, but -- I can't say 12 that I am completely healthy, but I feel much better 13 now.
9 Q. Have you tried a diet or exercise program 10 other than just walking?	14 Q. Have you seen any health care 15 professionals for mental issues whether it be 16 depression or something else?
11 A. Yes.	17 A. No.
12 Q. What have you tried?	18 Q. Your house is that paid off now?
13 A. I don't eat greasy foods or fried foods. 14 I eat less and worry less.	19 A. Yes, sir.
15 Q. So it is your position that you are 16 overweight today in 2011 because you lost your job 17 with PhyAmerica in May of 2007?	20 Q. What is the estimated value of your home?
18 A. I was 219 pounds, now I am 208. I lose 19 weight because I don't worry anymore.	21 A. Now?
20 Q. And you attribute all of that to a job you 21 lost four years ago?	22 Q. Yes.
22 A. Yes. I used to work two jobs. I love to 23 work. And especially now, everywhere we went no job. 24 It is we will call you. And I am 51 years old and it 25 is not easy to get a job now, especially nursing.	23 A. I don't -- maybe \$200,000.
	24 Q. And there is no mortgage on it?
	25 A. No, just tax and insurance.
126	128
1 Q. Is it your position that there is nothing 2 you can do right now to lose weight and get down to 3 208 pounds?	1 And to tell you the truth, this year we 2 didn't buy any insurance, we couldn't afford it.
4 A. I am doing it. I was 219. Now I am 208.	3 Q. Do you know how many square feet your home 4 is?
5 Q. Well, congratulations.	5 A. Oh, I don't know.
6 A. Thank you, sir.	6 Q. How many bedrooms?
7 Q. I'm sorry, what did you weigh when you 8 were at PhyAmerica?	7 A. Four and two.
9 A. More than 219. Once I was 230. Oh, I was 10 down 202 or 204 a long time ago, I can't tell you 11 exactly when.	8 Q. Four bedroom, two bath?
12 Q. Okay. High cholesterol you mentioned 13 that. What are you taking for that?	9 A. Yes.
14 A. I used to buy very expensive medications. 15 Now I can't afford it anymore so I do my own 16 treatment.	10 Q. Do you have a cable TV?
17 Q. What is your own treatment?	11 A. Yes.
18 A. This is her secret.	12 Q. Do you have a big screen television?
19 Q. You have to tell me.	13 A. Not really. I have two TV's at home, but 14 they are not that big.
20 A. I put oatmeal, I soak it overnight. In 21 the morning I put in a blender. I don't cook it. 22 And drink it raw. And that lowers my cholesterol.	15 Q. How big are they?
23 Q. Have you been successful with that?	16 A. 27 and 32.
24 A. Yes, sir.	17 Q. 27 and 32.
25 Q. Are the doctors happy with your	18 Do you know what brand they are?
	19 A. Samsung.
	20 Q. Both?
	21 A. Yes.
	22 Q. Are they mounted on the wall?
	23 A. No. They are not new.
	24 Q. Pardon?
	25 A. They are not new.



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Louise Moilere

March 4, 2011

<p>129</p> <p>1 Q. How old are they?</p> <p>2 A. Maybe five years ago I buy them.</p> <p>3 Q. Do you have a car?</p> <p>4 A. Yes, sir.</p> <p>5 Q. What kind of car do you have?</p> <p>6 A. Toyota. It is a pickup.</p> <p>7 Q. Toyota pickup. What year?</p> <p>8 A. 2002, but my husband pay it off. We just</p> <p>9 pay insurance.</p> <p>10 Q. What kind of car does your husband drive?</p> <p>11 A. Same car. We drive together.</p> <p>12 Q. You just have the one car?</p> <p>13 A. One.</p> <p>14 MR. FIX: Give me a break. I think we can</p> <p>15 wrap it up and be done.</p> <p>16 (Thereupon, a brief recess was taken,</p> <p>17 after which the following proceedings were</p> <p>18 resumed.)</p> <p>19 BY MR. FIX:</p> <p>20 Q. See if I can get you guys out of here.</p> <p>21 What was your highest level of education?</p> <p>22 A. College, but didn't graduate.</p> <p>23 Q. Where did you go to college?</p> <p>24 A. Miami-Dade.</p> <p>25 Q. How far did you get?</p>	<p>131</p> <p>1 A. Since the license expired.</p> <p>2 Q. And I'm sorry, when was that, 2008?</p> <p>3 A. 2009 if I am sure, because I don't look.</p> <p>4 I know I need a lot of classes to have it back.</p> <p>5 Q. Now, when we talked about some of these</p> <p>6 other agencies that you were going to look for work</p> <p>7 through, were those for CNA positions?</p> <p>8 A. Yes.</p> <p>9 Q. That was before your license expired?</p> <p>10 A. Before, yes, sir.</p> <p>11 Q. And after your license expired you just</p> <p>12 stopped looking?</p> <p>13 A. Yes, I stopped looking.</p> <p>14 Q. For any kind of work?</p> <p>15 A. Any kind of work. Especially now, I don't</p> <p>16 know nothing to do, nothing else to do.</p> <p>17 Q. Let me refer you back real quick to</p> <p>18 Exhibit No. 5. And if you go to Page 32 out of 44 on</p> <p>19 the fax line of Exhibit 5, we had talked earlier</p> <p>20 about a list that you had kept showing efforts that</p> <p>21 you had made to secure additional employment. Do you</p> <p>22 remember that?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Is this that list?</p> <p>25 A. Yes.</p>
<p>130</p> <p>1 A. One year, a couple months.</p> <p>2 Q. What did you study?</p> <p>3 A. Mathematics and English.</p> <p>4 Q. Do you have a high school equivalent or</p> <p>5 degree?</p> <p>6 A. In Haiti I have it.</p> <p>7 Q. Did Miami-Dade require any kind of</p> <p>8 certification from high school or anything of that</p> <p>9 nature to get accepted there?</p> <p>10 A. I took many preliminary classes which</p> <p>11 allowed Miami-Dade to allow me to enter the studies,</p> <p>12 college level studies. That is a long time ago. And</p> <p>13 I am going back.</p> <p>14 Q. How many times have you been married, just</p> <p>15 once?</p> <p>16 A. Once.</p> <p>17 Q. Same husband?</p> <p>18 A. Yes, sir, 30 years.</p> <p>19 Q. The jobs you are currently in the market</p> <p>20 for now, given the fact that your CNA license</p> <p>21 expired, what kind of jobs are you looking for?</p> <p>22 A. Now I am not even looking anymore. And</p> <p>23 that is the only type of work that I have done for</p> <p>24 more than 20 years, nursing.</p> <p>25 Q. When did you stop looking for work?</p>	<p>132</p> <p>1 Q. And we are referring to a document, Page</p> <p>2 32 of 44, correct?</p> <p>3 A. Yes.</p> <p>4 Q. What is Kimberly Agency?</p> <p>5 A. It is an agency that sends people out to</p> <p>6 do private duty work.</p> <p>7 Q. Is that a nursing private duty?</p> <p>8 A. Nursing, yes, sir.</p> <p>9 Q. Did you ever gain employment through them?</p> <p>10 A. No.</p> <p>11 Q. What did they tell you?</p> <p>12 A. Everyone says that they are slow.</p> <p>13 Q. Caregiver Agency?</p> <p>14 A. Same thing, yes.</p> <p>15 Q. Do you know the dates that you sought</p> <p>16 employment from Kimberly?</p> <p>17 A. Sir, I don't remember. It was sometime --</p> <p>18 Q. What is Sunshine?</p> <p>19 A. Same thing, agency.</p> <p>20 Q. Nursing?</p> <p>21 A. Not nursing agency.</p> <p>22 Q. Okay.</p> <p>23 A. They send you out to private residences to</p> <p>24 do I guess private duty nursing, but not to nursing</p> <p>25 homes.</p>



ESQUIRE
an Alexander Gallo Company

Toll Free: 800.211.3376
Facsimile: 305.493.3322

Aventura Corp. Center I, Suite 202
20801 Biscayne Blvd
Aventura, FL 33180
www.esquiresolutions.com

Louise Moilere

March 4, 2011

<p style="text-align: center;">133</p> <p>1 Q. And you didn't get a job with them?</p> <p>2 A. No, sir.</p> <p>3 Q. And you can't recall the dates that you</p> <p>4 had spoken?</p> <p>5 A. No, I supposed to go --</p> <p>6 Q. What is Dade County School Program?</p> <p>7 A. Okay. Where they send you to go to</p> <p>8 schools, to work at schools.</p> <p>9 Q. To do what?</p> <p>10 A. For child care. If in the event that you</p> <p>11 are posted at a public school in the event that</p> <p>12 children get hurt and need primary care, then they</p> <p>13 would be there to do first aid and preliminary</p> <p>14 treatment maybe before 911 arrives.</p> <p>15 Q. And you can't recall the date you sought</p> <p>16 employment with Dade County Schools?</p> <p>17 A. I can't say, because I don't remember the</p> <p>18 date and I don't want to lie.</p> <p>19 Q. What is Miami-Dade.gov?</p> <p>20 A. Where I seeking job. It is a job posting</p> <p>21 site.</p> <p>22 Q. And did you get any leads through that</p> <p>23 site?</p> <p>24 A. I am not lucky. I wish, but --</p> <p>25 Q. Jewish Home. Is that Jewish Home Care?</p>	<p style="text-align: center;">135</p> <p>1 your lawyers you made an effort to get as much</p> <p>2 information as you could?</p> <p>3 A. Yeah, that's what I gave her.</p> <p>4 Q. So you looked and this is all could find,</p> <p>5 correct?</p> <p>6 A. Yes, sir.</p> <p>7 MR. FIX: That's all.</p> <p>8 MS. CABALLERO-SOLIS: I have a few</p> <p>9 questions.</p> <p style="text-align: center;">CROSS EXAMINATION</p> <p>10 BY MS. CABALLERO-SOLIS:</p> <p>11 Q. Louise, counsel stated before that there</p> <p>12 was a hotline for the discrimination. Was this</p> <p>13 hotline number posted anywhere in the actual area</p> <p>14 that you worked?</p> <p>15 A. Okay. While I was working there if it was</p> <p>16 posted I have no idea.</p> <p>17 Q. Okay. Had you seen the hotline number</p> <p>18 would you have called to complain?</p> <p>19 A. Until the time when she sat me down and</p> <p>20 without calling me back to work I never thought that</p> <p>21 her treatment merited this kind of an action and I</p> <p>22 didn't really want to lose my job.</p> <p>23 Q. When you said previously that you hadn't</p> <p>24 worked overtime, did you mean you hadn't worked even</p> <p>25</p>
<p style="text-align: center;">134</p> <p>1 A. Just like in a hospital, but for the aged.</p> <p>2 Q. And do you remember anything about the</p> <p>3 efforts you tried to get employment there?</p> <p>4 A. I went there, but -- this is where these</p> <p>5 people also have a school portion through which she</p> <p>6 got her nursing license. And she went back to them</p> <p>7 and they give her a test which she passed, but they</p> <p>8 haven't contacted her.</p> <p>9 Q. Now this is the extent of notes that you</p> <p>10 have, correct?</p> <p>11 A. Yes. A set, if you will, of places that I</p> <p>12 have gone to that have given me an application.</p> <p>13 Q. But are there other notes that you kept</p> <p>14 that you threw away?</p> <p>15 A. If yes I don't remember.</p> <p>16 Q. So this is the only list of job efforts</p> <p>17 that you have documented?</p> <p>18 A. These are the people that have given me</p> <p>19 applications. The other people haven't given me</p> <p>20 application, they have just turned me away.</p> <p>21 Q. But you are not aware of any other written</p> <p>22 document that would contain handwriting identifying</p> <p>23 the efforts that you made to secure employment?</p> <p>24 A. If I have them at home I don't remember.</p> <p>25 Q. But when you are gathering documents for</p>	<p style="text-align: center;">136</p> <p>1 one hour, or you meant more than five hours? What</p> <p>2 did you mean by not working overtime?</p> <p>3 A. Not even thirty minutes. No, not even</p> <p>4 thirty minutes. And sometimes I work a little bit</p> <p>5 longer than I have to, but it is of my own volition.</p> <p>6 And if one of my patients needs extra care and I</p> <p>7 happen to be there and I need to take care of them</p> <p>8 before I leave, then I do so, but they don't pay me</p> <p>9 and I don't expect it.</p> <p>10 MS. CABALLERO-SOLIS: I don't have anymore</p> <p>11 questions.</p> <p>12 MR. FIX: Okay. You have the right to</p> <p>13 read the deposition transcript after it is</p> <p>14 transcribed and check it for accuracy, or you</p> <p>15 can waive your right, it is up to you, but you</p> <p>16 have to let the court reporter know.</p> <p>17 THE WITNESS: She waives the right. I</p> <p>18 waive the right. I don't really need to.</p> <p>19 MR. FIX: Thank you very much.</p> <p>20 THE WITNESS: You are welcome, sir.</p> <p>21 (Thereupon, the deposition was concluded</p> <p>22 at approximately 5:00 p.m. Signature and</p> <p>23 formalities were waived.)</p> <p>24</p> <p>25</p>



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Louise Moilere

March 4, 2011

137

1
2
3 CERTIFICATE OF OATH
4
5 STATE OF FLORIDA)
6 COUNTY OF MIAMI-DADE)
7
8 I, the undersigned authority, certify that
9 the witness, Louise Moilere, and the interpreter,
10 Gardy Constant, personally appeared before me and
11 were duly sworn.
12
13 Dated this 6th day of March, 2011.
14 *Jane Ziemba*
15 Jane Ziemba, Court Reporter
16 Notary Public - State of Florida
17 My Commission No. DD 745404
18 My Commission Expires: January 13, 2012
19
20
21
22
23
24
25

138

1 REPORTER'S DEPOSITION CERTIFICATE
2
3 STATE OF FLORIDA
4 COUNTY OF MIAMI-DADE
5 I, Jane Ziemba, Shorthand Reporter,
6 certify that I was authorized to and did
7 stenographically report the deposition of
8 Louise Moilere; that a review of the transcript was
9 not requested; and that the transcript is a true and
10 complete record of my stenographic notes.
11 I further certify that I am not a
12 relative, employee, attorney, or counsel of any of
13 the parties, nor am I a relative or employee of any
14 of the parties' attorney or counsel connected with
15 the action, nor am I financially interested in the
16 action.
17 Dated this 6th day of March, 2011.
18  *Jane Ziemba*
19 _____
20 Jane Ziemba, Court Reporter
21 Notary Public - State of Florida
22 Commission No. DD 745404
23 Commission Expires: January 13, 2012
24
25



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EXHIBIT "D"

EXHIBIT "E"

Louise Marie Moliere
1040 NW 198th Street
Miami, Florida 33169

Laurie Alves
Human Resources
8401 W. Cypress Dr.
Pembroke Pines, Florida 33025

Dear Ms. Alves:

This is a confirmation letter in regards to my vacation that is quickly approaching. For clarity reasons, I would like to brief you of the vacation days that we agreed on. My requested time off were for the following days: Tuesday-Saturday, May 8, 9, 10, 11, 12 and Tuesday-Saturday, May 15, 16, 17, 18, 19. The given days are Sunday and Monday being that those are my fixed days off.

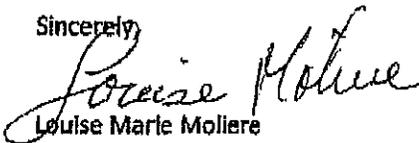
I would like confirmation on the Paid Time Off (PTO). The schedule that I was given has 8 days of PTO and 2 extra days off, which equals to 10 days off. I would like you to clarify if it should be 10 days of PTO or not.

I am also requesting a revised copy of the requested time off that was given to me. The schedule is not professional, and it seems very "homemade". I would greatly appreciate a schedule that represents the company. A schedule representing the company would have the company emblem and contact information, followed by your signature confirming the time off.

If you could please mail this revised copy to 1040 NW 198th St., Miami, FL 33169. If there are any discrepancies please contact me at 786-216-2216 or 786-488-3943. I thank you in advance.

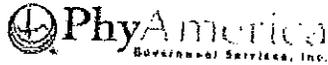
I have attached a copy of the schedule that was given to me.

Sincerely,


Louise Marie Moliere

Enc

EXHIBIT "F"



Laurie A. Alves SLPN

ANNH

PhyAmerica Government Services

8401 W Cypress Drive

Pembroke Pines, FL 33025

954-985-4824 ext 136

Louise M. Moliere
1040 NW 198th St.
Miami, FL 33169

Ms. Moliere,

5-8-07

This notice serves as an attachment "**Written Disciplinary Action**" and will be included in your performance & Human Resources file.

- 1.) With regard to the letter you faxed to a "state employee" (Kareen Williams) with Attention to my office; please be aware, On Nov 27, 2006, you oriented with PhyAmerica and signed a "Non-Disclosure/ Non-Interference Agreement" The agreement specifically states that "*the employee will not directly or indirectly disclose any of the Proprietary Information to any person or entity directly or indirectly in competition with the company.*" The definition of "*Proprietary information*" includes but is not limited to "*operating and performance information and data, employee information and other documentation embodied in machine-readable form.*" Ms. Moliere, you are at this time in violation of this agreement.

Corrective Action: Employee will maintain confidentiality as stated in Non-Disclosure/Non-Interference Agreement.

- 2.) With regard to your request for clarity of your "*agreed upon vacation days*": Ms. Moliere, we did not "*agree upon your vacation days*". You submitted an "*Employee Leave Request Form*". In doing so, you are "*asking*" for Paid Time Off, with respect to planning / scheduling coverage of workload demands and the evaluation of other leave requests, at my discretion. Subsequently you spoke with my Assistant (Claudette Brown) and demanded a "*written schedule*". She took the time out of her day to write you a copy of her "Master Schedule"; She could have referred you to me. This action would have delayed your approval of time off, so her decision at the time was in your best interest. On 5-5-07 you wrote a letter that stated, "I am requesting a revised copy of the requested time off that was given to me. The schedule is not professional, and it seems very "homemade". It is my opinion that this statement is insubordinate in nature and for this you will also receive a written statement of discipline in your File.

EXHIBIT "G"



May 29,2007

Appointment with Louise Moliere CNA
10:55am

Louise Moliere arrived at my office (through the rear entrance of the building) with a young woman. I asked her to introduce the person to me. She answered this is my daughter (Rachel). I informed Ms Moliere that her daughter needed a Visitor's pass. She instructed her daughter to go to the front desk to retrieve one. I asked Ms Moliere to follow me to the Library. Her daughter started to enter the room, I asked her to remain out side as I wished to speak with my employee alone. Once in the room I asked Ms Moliere to read the letter she sent via fax to the state fax. She could not read the letter. It appeared as though she was reading it for the first time. Her language skills were also very minimal. I then asked Ms Moliere, if in fact she had written the letter? She became very defensive and stated that sometimes she needed her daughter to write things for her. I then asked her if she understood the content of the letter. She stated she did. She became impatient and stated "I didn't do anything wrong. Ms Brown is the one who did this to me. She covered up everything except my schedule. What was she hiding from me?" I then explained to Ms Moliere that Ms Brown had covered everyone else's schedule to maintain their privacy as the copy of the schedule she was copying from was the "Master". It contains information regarding PTO, Sick Leave etc... Ms Moliere continued to escalate the situation stating "She did this to me". When I asked Ms Moliere why she sent the fax to a "facility" fax rather than the PhyAmerica fax, she again stated "I don't see anything wrong with it". I again, explained that when she was hired she signed a "nondisclosure/non interference agreement" and that I explained the form upon her signing it. She became argumentative and stated I explained nothing and that I just yell and don't listen. I concluded the meeting by asking Ms Moliere to sign the counseling forms and to contact only me for any future communication with the PhyAmerica office. She refused to sign the forms and then stated, "You need me, that's why you are afraid to fire me" I again asked Ms Moliere to sign her counseling forms. She refused. I then stated I believed the meeting needed to end and that we were not coming to an understanding.

EXHIBIT "H"

PhyAmerica Government Services, Inc.
Employee Counseling

Employee Louise Moline Date of Counseling 5-29-07

Purpose of Counseling

Quality of work _____ Attendance Communication _____
Quantity of work Attitude _____ Other _____

Date of incident 5-07-07

Description of behavior / performance / incident:

(1) Violation of Non-Disclosure / Non-Interference Agreement
- See Attached

Content of counseling:

See Attached

Employee comments:

Results:

Written warning _____ Disciplinary Probation _____
_____ Extended Probation _____ Termination _____ Other _____

[Signature]
Employee Signature (Date)
[Signature]
Witness Signature (Date)

[Signature] 5-29-07
Supervisor Signature (Date)

Original copy to Corporate office
cc: Employee
Supervisor (file)

**PhyAmerica Government Services, Inc.
Employee Counseling**

Employee Louise Moline Date of Counseling 5-29-07

Purpose of Counseling

_____ Quality of work _____ Attendance Communication
_____ Quantity of work Attitude _____ Other

Date of incident _____

Description of behavior / performance / incident:

② Insubordination + Poor Attitude

See Attached

Content of counseling:

See Attached

Employee comments:

Results:

Written warning _____ Disciplinary Probation
_____ Extended Probation _____ Termination _____ Other

Employee refused to sign

Employee Signature (Date)

Witness Signature (Date)

[Signature] 5-29-07

Supervisor Signature (Date)

Original copy to Corporate office
cc: Employee
Supervisor (file)

PhyAmerica Government Services, Inc.
Employee Counseling

Employee Louise Molino Date of Counseling 5-29-07

Purpose of Counseling

_____ Quality of work _____ Attendance Communication
_____ Quantity of work Attitude _____ Other

Date of incident _____

Description of behavior / performance / incident:

(3) Neglect to follow procedure/policy with regard
to updating contact information
see attached.

Content of counseling:

_____ See attached _____

Employee comments:

Results:

Written warning _____ Disciplinary Probation
_____ Extended Probation _____ Termination _____ Other

Employee refused
to sign

Employee Signature (Date)

[Signature] 5-29-07

Supervisor Signature (Date)

Witness Signature (Date)

Original copy to Corporate office
cc: Employee
Supervisor (file)



Personal Information Sheet

Name: _____

Address: _____

City: _____

State: _____ Zip: _____

Home Phone: _____

Cell Phone: _____

First Preference : Home Cell

Shift Preference: Days Eves Nights

Double Shifts: Yes No Maybe

Overtime: Yes No Maybe Weekends

EXHIBIT "I"

Employee Information

Name (Last, First, MI) Moline, Louise SSN 7C
Address 1040 NW 198th St City Miami Zip Code 33169
County Dade Home Phone 350 770-3904 Birthdate 9-17-59

Position Information

Company Data KW2, P65 Cost Center 800027
Position Title CNA Reports to (Name) Laurie & Theresa SBN
Status 7 Perm 40 Class Reg FLSA Non exempt

Action Requested

Action Termination Effective Date 6/1/07 Hours per Week 40
*Required to complete comments section

Compensation/Health & Welfare

Current Annual/Hourly Rate _____ New Annual/Hourly Rate _____ Increase Amount _____
% of Change _____ Bonus _____ *Required to complete comments section Health & Welfare _____

Termination Information

Termination Type Voluntary Eligible for Rehire _____ Reason See attached
Last Date Worked 5/5/07 Effective Date* 6/1/07 *Effective Date of termination is day after last day worked PTO payout

Leave of Absence Information

Type of Leave _____ Effective Date _____ Return Date _____
Hours Used in Last 12 Months _____ Net Hours Left to Use _____

Specific Job Information

Job Code _____ Position _____ PTO Accrual Rate _____ Earned Leave _____
Benefits (SCA/PTB/EMP) _____

Comments Section

Employee was recall/no show for 2 shifts
proceeding counseling session of 5/29/07
See attached

Manager/Vice President Approval <u>Laurie & Theresa</u>	Date <u>6-1-07</u>
Division Head (Sr. Vice President, C.F.O., President) Approval <u>Laura Walker</u>	Date <u>6/6/07</u>
Date Received by Corporate: <u>6/6/07</u>	For HR use only Date Processed: _____ Initials: _____

PhyAmerica Government Services, Inc.
Employee Counseling

Employee Louise Moline Date of Counseling 5-29-07

Purpose of Counseling

Quality of work _____ Attendance Communication _____
Quantity of work Attitude _____ Other _____

Date of incident _____

Description of behavior / performance / incident:

(3) Neglect to follow procedure / policy with regard
to updating contact information
see attached.

Content of counseling:

See attached

Employee comments:

Results:

Written warning _____ Disciplinary Probation _____
 Extended Probation _____ Termination _____ Other _____

Employee refused
to sign

Employee Signature (Date)

[Signature] 5-29-07
Supervisor Signature (Date)

Witness Signature (Date)

Original copy to Corporate office

cc: Employee
Supervisor (file)

**PhyAmerica Government Services, Inc.
Employee Counseling**

Employee Louise Moline Date of Counseling 5-29-07

Purpose of Counseling

_____ Quality of work _____ Attendance Communication

_____ Quantity of work Attitude _____ Other

Date of incident _____

Description of behavior / performance / incident:

② Insubordination + Poor Attitude

See Attached

Content of counseling:

See Attached

Employee comments:

Results:

Written warning

_____ Disciplinary Probation

_____ Extended Probation

_____ Termination

_____ Other

Employee refused to sign

Witness Signature (Date)

[Signature] 5-29-07

Supervisor Signature (Date)

Original copy to Corporate office
cc: Employee
Supervisor (file)

PhyAmerica Government Services, Inc.
Employee Counseling

Employee Louise Moline Date of Counseling 5-29-07

Purpose of Counseling

Quality of work _____ Attendance Communication _____
Quantity of work Attitude _____ Other _____

Date of incident 5-07-07

Description of behavior / performance / incident:

(1) Violation of Non-Disclosure / Non-Interference Agreement

- See Attached

Content of counseling:

See Attached

Employee comments:

Results:

Written warning _____ Disciplinary Probation _____
_____ Extended Probation _____ Termination _____ Other _____

[Signature]
Employee Signature (Date)
[Signature]
Witness Signature (Date)

[Signature] 5-29-07
Supervisor Signature (Date)

Original copy to Corporate office
cc: Employee
Supervisor (file)



Personal Information Sheet

Name: _____

Address: _____

City: _____

State: _____ Zip: _____

Home Phone: _____

Cell Phone: _____

First Preference : Home Cell

Shift Preference: Days Eves Nights

Double Shifts: Yes No Maybe

Overtime: Yes No Maybe Weekends

EXHIBIT "J"

FLORIDA COMMISSION ON HUMAN RELATIONS
 2009 Apalachee Parkway, Suite 100, Tallahassee, Florida 32301

EMPLOYMENT COMPLAINT OF DISCRIMINATION

Date Stamp.(FCHR Use Only)
2007 MAY 20 PM 1:18 EEOC 510-2007-04354

A. PERSONAL INFORMATION	FCHR No. <u>200701709</u>	
Name LOUISE MOLIERE	E-Mail Address	Date of Birth 09/17/59
Mailing Address 7C	Home Telephone Number (area code) 7C	
City, State, and Zip Code MIAMI, FL 33169	Work (if possible to call you there)	

B. BUSINESS INFORMATION (employer, labor organization, employment or government agency, etc.)		
Name PhyAmerica Government Services, Inc.	Number of Employees 15+	Telephone Number 1-800-476-4157
Street Address (Branch/Office in Florida) 1000 Park Forty Plaza Suite 500	City, State and Zip Code Durham, NC 27713	County
C. CAUSE OF DISCRIMINATION BASED ON - Check appropriate box(es) <input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> DISABILITY/HANDICAP <input checked="" type="checkbox"/> NATIONAL ORIGIN <input type="checkbox"/> AGE <input type="checkbox"/> MARITAL STATUS <input type="checkbox"/> RETALIATION		DATE DISCRIMINATION TOOK PLACE EARLIEST LATEST

D. DISCRIMINATION STATEMENT:

See Attached Exhibit A

RECEIVED
TALLAHASSEE, FLORIDA OFFICE
2007 JUN 11 PM 4:11

I REQUEST TO BE AFFORDED FULL RELIEF TO WHICH I AM ENTITLED TO UNDER THE LAW(S).
 Under penalties of perjury, I declare that I have read the foregoing complaint of discrimination and that the facts stated in it are true. I will advise the agency if I change my address or telephone number and I will cooperate fully with them in the processing of my complaint in accordance with their procedures.

SIGNATURE OF COMPLAINANT	DATE
<i>Louise Moliere</i>	05/23/07

CHARGE #510-2007-04354

Exhibit A

I. I am a Haitian female. I have been discriminated against by the above employer because of my national origin. Since I began to work for above employer on December 1, 2006, Supervisor Laurie Alvis has been continuously treating me less favorably because of my national origin. Supervisor Laurie on numerous occasions has made derogatory remarks against me because I am Haitian. While at a company meeting Ms. Alvis stated "I am going to get rid of all Haitians". Also, every time a Haitian, including myself walks in her office, she proceeds to cover her nose and tell us to get out or we will get fired. I have been denied a raise, over time and an opportunity for promotion because of my national origin. My hours have been cut from 40 hours per week to 30 hours per week and I have been put on leave since May 21, 2007 for no apparent reason.

II. Respondents did not give me a reason for their actions.

III. I believe I have been discriminated against in violation of Title VII of the Civil Rights Act of 1964, as amended, and in violation of the Florida Civil Rights Act.

EXHIBIT "K"



PhyAmerica
Government Services, Inc.

Subject: Employment at Will
Policy Number: 110
Effective Date: July 1, 2000
Previous Version Date: May 1994
Applies To: All Employees

Purpose

To define the organization's policy regarding terms of employment.

Policy

Employment with the Company is at-will and may be terminated at any time, for any reason, with or without cause or notice by either the employee or the Company. Completion of an introductory or probationary period does not alter the at-will provision.

No policy or procedure contained in this manual, the employee handbook, forms, memorandums, offerory letters of employment or other materials provided to employees shall be construed as a contract of employment.

All employment contracts will have specific provisions regarding the terms of employment. All employment contracts will be in writing and shall be authorized by the President or designee of the Company.

Procedure

All employees will be notified that the Company is At-Will.

The Company retains the right to exercise all customary managerial functions including, but not limited to the following:

- a) To assign, dismiss, supervise and discipline employees;
- b) To determine and change starting times, quitting times and shifts;
- c) To transfer employees within departments or into other departments and other classifications;
- d) To determine and modify the size of and qualification of the work force;
- e) To establish, revise or abolish its policies, practices, rules and regulations at will, as deemed necessary;
- f) To determine, set or change operational methods;
- g) To determine and change the nature, location, services rendered, quantity and continued operation of the business; and
- h) To assign or remove duties to and from employees in accordance with the Company needs and requirements, and to carry out all requisite administrative and management functions.

Prior to any termination decision, please review and follow, if applicable, the procedures set forth in this manual and consult with Human Resources.

EXHIBIT "L"

WELCOME TO OUR TEAM....

Employee Orientation Handbook

Non-personal Services



revised September 2006

employment exceeds six months, please contact Human Resources regarding the necessity of continued employment as a temporary employee or conversion to another status type. All temporary employees need to complete a Temporary Employment Agreement.

Summer: employees who work for a specific time during the summer months and are paid by the company. This is equivalent to a temporary employee.

Note: Classification of employee positions is determined by Human Resources based on federal Wage and Hour guidelines, the job description and other information provided by the supervisor. The Department of Labor has strict guidelines and exemptions tests which must be met before a position can be classified as exempt.

Confidentiality

Employees of PhyAmerica Government Services, Inc. are expected and required to maintain the confidentiality of employee, client, applicant, patient or facility records. Information from such records should only be shared with appropriate personnel who have a business or medical need to know. Employees will refer to medical record procedures when dealing with questions regarding patient information and comply with HIPPA regulations regarding compliance with applicable laws governing the Patient's Bill of Rights.

Attendance

Regular work attendance is essential and required to ensure the successful operation of the company and our continued ability to provide safe, consistent and quality healthcare to our clients. While we recognize that employees will occasionally have a need to be absent, excessive absenteeism has a negative impact on our ability to provide high quality standards of care and services.

Requests for time-off must be pre-approved by the employee's supervisor and documented on an employee leave request form. Excusable absences from work fall into two categories;

1. paid time off from work in accordance with the paid time off policy, and
2. absences caused by an emergency or accident.

An unexcused absence is any period of time an employee is absent from work during their scheduled shift without prior approval of the supervisor. All unexcused absences will be documented in the employee's personnel file with a written reprimand. Unexcused absences will be charged against an employee's leave balance.

Any employee who has an unexcused absence for one (1) day (shift) will be considered having voluntarily resigned. Unexcused absences of less than one day or shift will be grounds for disciplinary action, up to and including discharge.

Job Abandonment

Job Abandonment occurs when an employee leaves the work site when scheduled to work, and does so without permission or notifying their supervisor prior to departure. Job abandonment will be considered a voluntary resignation and will result in immediate discharge.

Tardiness

Tardiness is defined as the failure of an employee to arrive in his or her work area at the designated starting time.

Employees that are tardy will be counseled on the need for timely attendance. Excessive tardiness may lead to disciplinary action up to and including discharge.

Tardiness, due to extenuating circumstances such as weather or accidents, may be excused by the supervisor..

Standards of Conduct

PhyAmerica Government Services, Inc. will not tolerate employee misconduct or unlawful practices in the work place. It is the responsibility of all employees to report any illegal behavior to their supervisor.

Sexual Harassment

Sexual Harassment, physical, verbal, and/or non-verbal is an unlawful practice and will not be tolerated by PhyAmerica Government Services, Inc.

Definition

Unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.

Any employee complaints or concerns related to this issue should be immediately submitted in writing to the supervisor, unless the supervisor is involved. If the complaint involves the supervisor, the employee should report the complaint to the next level of management, who in turn will consult with the Human Resources Director. In all instances, the Senior Vice President of Operations will be informed of each incident.

All complaints received by management or supervisory personnel will immediately be reported to Human Resources for investigation and resolution. The Human Resources Director will conduct an investigation into the facts and determine whether the complaint has merit. All employees potentially involved in a sexual harassment complaint will fully cooperate with Human Resources staff conducting the investigation. Any employee found to be engaging in harassment

EXHIBIT "M"

	Human Resources Policies & Procedures	No: HR - 705
	Topic: Anti-Harassment & Anti-Discrimination	Date: January 1, 2007
Issuer: Director of Human Resources Department	Responsibility of: Human Resources	Supersedes: Policy 705
		Date: July 1, 2006

HR - 705 HARASSMENT

- I. SCOPE:** All employees of Sterling Healthcare
- II. PURPOSE:** To define the Company's policy regarding harassment.
- III. FORMS:** Not Applicable
- IV. POLICY:**

Sterling Healthcare is committed to a work environment in which all individuals are treated with respect and dignity. Each individual has the right to work in a professional atmosphere that promotes equal employment opportunities and prohibits discriminatory practices, including harassment. Therefore, the Company expects that all relationships among persons in the workplace will be business-like and free of bias, prejudice and harassment.

Definitions of Harassment

- a. Sexual harassment constitutes discrimination and is illegal under federal, state and local laws. For the purposes of this policy, sexual harassment is defined, as in the Equal Employment Opportunity Commission Guidelines, as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when, for example: (i) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; ii) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (iii) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Sexual harassment may include a range of subtle and not so subtle behaviors and may involve individuals of the same or different gender. Depending on the circumstances, these behaviors may include, but are not limited to: unwanted sexual advances or requests for sexual favors; sexual jokes and innuendo; verbal abuse of a sexual nature; commentary about an individual's body, sexual prowess or sexual deficiencies; leering, catcalls or touching; insulting or obscene comments or gestures; display or circulation in the workplace of sexually suggestive objects or pictures (including through e-mail); and other physical, verbal or visual conduct of a sexual nature. Sex-based harassment that is, harassment not involving sexual activity or language (e.g., male manager yells only at female employees and not males) may also constitute discrimination if it is severe or pervasive and directed at employees because of their sex.

- b. Harassment on the basis of any other protected characteristic is also strictly prohibited. Under this policy, harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her race, color, religion, national origin, age, disability, [alienage or citizenship status, marital status, creed, genetic predisposition or carrier status, sexual orientation] or any other characteristic protected by law or that of his/her relatives, friends or associates, and that: (i) has the purpose or effect of creating an intimidating, hostile or offensive work environment; (ii) has the purpose or effect of unreasonably interfering with an individual's work performance; or (iii) otherwise adversely affects an individual's employment opportunities.

Harassing conduct includes, but is not limited to: epithets, slurs or negative stereotyping; threatening, intimidating or hostile acts; denigrating jokes and display or circulation in the workplace of written or graphic material that denigrates or shows hostility or aversion toward an individual or group (including through e-mail).

Retaliation Is Prohibited

The Company prohibits retaliation against any individual who reports discrimination or harassment or participates in an investigation of such reports. Retaliation against an individual for reporting harassment or discrimination or for participating in an investigation of a claim of harassment or discrimination is a serious violation of this policy and, like harassment or discrimination itself, will be subject to disciplinary action.

Reporting an Incident of Harassment, Discrimination or Retaliation

The Company strongly urges the reporting of all incidents of discrimination, harassment or retaliation, regardless of the offender's identity or position. Individuals who believe they have experienced conduct that they believe is contrary to Company policy or who have concerns about such matters should file their complaints with the Director of Human Resources or any member of the Human Resources Department. Individuals should not feel obligated to file their complaints with their immediate supervisor first before bringing the matter to the attention of one of the other Company designated representatives identified above.

Early reporting and intervention have proven to be the most effective method of resolving actual or perceived incidents of harassment. Therefore, while no fixed reporting period has been established, the Company strongly urges the prompt reporting of complaints or concerns so that rapid and constructive action can be taken.

The availability of this complaint procedure does not preclude individuals who believe they are being subjected to harassing conduct from promptly advising the offender that his or her behavior is unwelcome and requesting that it be discontinued.

The Investigation

Any reported allegations of harassment, discrimination or retaliation will be investigated promptly. The investigation may include individual interviews with the parties involved and, where necessary, with individuals who may have observed the alleged conduct or may have other relevant knowledge. Confidentiality will be maintained throughout the investigation process to the extent consistent with adequate investigation and appropriate corrective action.

Responsive Action

Misconduct constituting harassment, discrimination or retaliation will be dealt with appropriately. Responsive action may include, for example, training, referral to counseling and/or disciplinary action such as warning, reprimand, withholding of a promotion or pay increase, reassignment, temporary suspension without pay or termination, as the Company believes appropriate under the circumstances.

If an employee making a complaint does not agree with its resolution, the employee may appeal to any member of the Executive Leadership Team or a senior level manager.

Individuals who have questions or concerns about these policies should talk with the Director of Human Resources or a member of the Human Resources Department.

Finally, these policies should not, and may not, be used as a basis for excluding or separating individuals of a particular gender, or any other protected characteristic, from participating in business or work-related social activities or discussions in order to avoid allegations of harassment. The law and the policies of the Company prohibit disparate treatment on the basis of sex or any other protected characteristic, with regard to terms, conditions, privileges and perquisites of employment. The prohibitions against harassment, discrimination and retaliation are intended to complement and further these policies, not to form the basis of an exception to them.

The availability of this complaint procedure does not preclude individuals who believe they are being subjected to harassing conduct from promptly advising the offender that his or her behavior is unwelcome and requesting that it be discontinued.

EXHIBIT "N"

CORPORATE COMPLIANCE CODE OF CONDUCT

The logo for Sterling Healthcare is centered on a black rectangular background. It features the word "STERLING" in a large, white, serif font. Above "STERLING" are two horizontal white lines. Below "STERLING" is the word "HEALTHCARE" in a smaller, white, sans-serif font, with two horizontal white lines above it.

STERLING
HEALTHCARE

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Section 1:

STERLING COMPLIANCE

"Real integrity is doing the right thing,
knowing that nobody's going to know
whether you did it or not."

—Oprah Winfrey

The Corporate Compliance Program

Sterling and its Board of Directors recognize the harm that deliberate or accidental misconduct or noncompliance in the healthcare industry can pose to society and believe that an appropriate Code of Conduct and an effective Corporate Compliance Program are critical to the success of the organization and its employees, clients, and stakeholders. As evidence of its commitment to continued compliance with all applicable federal, state, and local laws, rules, and regulations, the Sterling Board of Directors directed the dedication of resources toward the development and implementation of a Compliance Program.

The Compliance Program is implemented under the guidance and supervision of the Compliance Officer, who is appointed by the CEO with advice and consent of the Board of Directors. The Compliance Officer is supported in the development, implementation, and maintenance of the Compliance Program by a multidisciplinary Compliance Committee representing all subsidiaries and key operating areas of the organization. The Compliance Program is set forth via a set of compliance policies and procedures and this Code of Conduct; these documents will remain posted at all times on the Sterling Intranet for your reference.

The Compliance Officer will ensure that the Compliance Program includes documented compliance standards, that education and training are provided to all employees, that clear pathways for reporting violations are established, that compliance standards are enforced with clear disciplinary guidelines, and that the program is evaluated for effectiveness through ongoing auditing and monitoring activities.

Code of Conduct—Sterling's "Silver" Standards

As you carry out your daily job responsibilities, you will make many decisions. Some will be very simple, others more complicated. This Code of Conduct has been prepared to serve as your guide to making the right choices in various situations. The Code elaborates on Sterling's established standards of conduct, and you will learn that the behavior that is expected of everyone associated with Sterling falls within Sterling's "Silver" Standards.

This Code of Conduct, as well as all laws, regulations, guidelines, and organizational policies and procedures, must be followed by everyone associated with Sterling. No one, regardless of position, will be allowed to compromise adherence to the Code of Conduct.

The Code of Conduct will be provided to all new employees at their time of hire and to all contracted physicians and other healthcare professionals upon their retention. All employees, physicians, and others will be provided a copy of the Code of Conduct whenever substantive revisions are made, and an updated version will be continuously maintained on Sterling's website. All employees must provide a signed certification that they have received and understand the Code, and that they agree to adhere to it. This certification will be maintained on file by Sterling. A new certification must be signed if there are substantial revisions to the Code.

This Code of Conduct will also remain posted on the company Intranet for your reference, along with associated compliance policies and procedures. You may also request a hard copy of the Code of Conduct at any time by contacting the Compliance Officer at 800-476-4587, ext. 4612 or at compliance@sterlinghealthcare.com.

Remember, if you have any concerns or questions about a decision you make, there are people available to help you at Sterling; these include your immediate supervisor, other company management, and the Compliance Officer. You can also contact the Compliance Hotline anonymously, and Sterling will provide a response via that mechanism.

Reporting Known or Suspected Violations

In addition to your responsibility for your personal compliance, you have a responsibility to Sterling to report any activities that you either know or suspect are in violation of federal, state, or local laws, rules, regulations, or organizational policies and procedures. If you know or suspect that something is being done that violates either regulatory requirements or policies and procedures, you are expected to report that information through appropriate channels. Depending on the situation and the people who could potentially be involved, examples of appropriate reporting channels include your immediate supervisor, other Sterling management, or the Compliance Officer. If you do not report serious violations or illegal activity of which you have direct knowledge, you could be subject to disciplinary action even if you were not directly involved in the prohibited activity.

How to Report Violations. If you have questions or concerns about an activity that you either know or suspect is illegal, immoral, or noncompliant, what should you do?

A. TALK TO YOUR SUPERVISOR.

In many cases, you may wish to talk to your immediate supervisor first about your questions or concerns. Your supervisor is responsible for creating and maintaining an environment that encourages and supports honest and open communications. Your supervisor is also responsible for addressing and responding to your questions and concerns in a timely manner.

B. CONTACT OTHER STERLING MANAGEMENT.

If you feel uncomfortable talking to your supervisor, or if your supervisor could be involved in something you are concerned about, consider contacting other Sterling management or Sterling's General Counsel. If you feel uneasy about doing this, Sterling has provided other ways, as noted below, for you to ask your questions or express your concerns.

C.

CONTACT THE COMPLIANCE OFFICER.

You may contact the Compliance Officer in several ways:

1. By e-mail to compliance@sterlinghealthcare.com
2. By telephone or voice mail to the compliance line at 866-625-8048
3. By telephone or voice mail directly to our Compliance Officer at 919-768-4612 or 800-478-4587, ext. 4612
4. By personal meeting with our Compliance Officer (please use phone number or e-mail above to schedule)
5. By letter addressed to: Compliance Officer, Sterling, 1000 Park Forty Plaza, Suite 500, Durham, NC 27713

D.

CALL THE COMPLIANCE HOTLINE at 800-826-6762.

The Compliance Hotline is available 24 hours a day, 7 days a week, 365 days a year for reporting known or suspected criminal activity, illegal or unethical conduct, or other potential compliance violations (this includes fraud and abuse issues, human resources issues, and privacy or security concerns).

The Compliance Hotline is administered by an independent third party, National Hotline Services. All calls are answered by a live operator who will ask questions to learn more about the activity or perceived violation. This is necessary for the Compliance Officer or other designated individual(s) to conduct a thorough investigation. All callers are treated professionally and with empathy. You may report to the Hotline anonymously, and no attempts will be made to identify you. You may schedule a callback to the Hotline for follow-up information on what is being done about the report; the Compliance Officer will provide a response to National Hotline Services that will be read to you on the callback date. You may reach the Hotline by calling 800-826-6762.

Confidentiality and Non-Retaliation

If you report a known or suspected violation "in good faith," your identity will be kept confidential to the extent permitted by law, and to the extent this does not prevent investigation of the situation. No disciplinary action or retaliation will be taken against you when you report a perceived issue, problem, concern, or violation to management, the Compliance Officer, or the Hotline "in good faith." (The "in good faith" requirement means you actually believe or perceive to be true the information reported. "Good faith" does not require that what you believe to be true is actually true.) If you feel you are being subjected to disciplinary action or retaliation because of your reporting of a suspected violation, you should immediately report this through an appropriate channel, including the Compliance Officer or to the Hotline.

Responding to Reported Violations

All reports of compliance concerns are kept confidential, and no report or call will go unaddressed. All reports received, including reports to the Hotline, will be investigated promptly and with the utmost integrity under the supervision of the Compliance Officer. If a report pertains to the behavior or activity of the Compliance Officer, Sterling's General Counsel will handle the matter.

If the investigation determines that a violation has occurred, Sterling may respond in several ways. An action plan may be developed and implemented. Disciplinary action shall be instituted based on the severity of the violation and in accordance with the organization's Progressive Discipline Policy. Employees who are in violation will be informed of the allegations against them and will be given the opportunity to state their position before disciplinary action is imposed. The employees' response may be considered when disciplinary action is being imposed. In addition, managers and supervisors are responsible for monitoring their employees and operations for ongoing compliance and taking appropriate action when non-compliant behavior or violations are detected. Managers and supervisors will be held accountable for failure to detect non-compliant behavior when reasonable diligence on the part of the manager or supervisor could have led to the discovery of problems or violations of the Code of Conduct.

Section 2:

**YOUR
RESPONSIBILITIES
TOWARD OTHERS**

“Ethical Conduct” means doing the right thing. Know Sterling’s “Silver” Standards and apply them to all that you do.

Follow the Rules

The operations of Sterling are governed by the laws, rules, and regulations of many federal, state, and local agencies, as well as various company policies and procedures. Sterling is committed to consistent compliance with all legal and ethical requirements that apply to our organization.

As an employee or associate of Sterling, you have a personal duty and responsibility to comply with all legal and ethical requirements, all applicable professional standards, and all policies and procedures that apply to you and the organization. You should not assist or encourage any third party in the violation of any law or regulation regardless of whether such assistance is itself unlawful.

Compliance will be one criterion used in evaluation of performance, particularly performance of supervisors, managers, directors, and senior management. Your compliance is a condition of your employment or other association with Sterling. Any employee who is determined to have violated any applicable law, rule, regulation, policy, or procedure will be subject to disciplinary action, up to and including discharge from employment.

Be Honest

Honesty is an expectation that cannot and will not be compromised. You are expected to be honest in all aspects of your role as an employee or associate of Sterling. We view dishonesty in very simple terms:

- Lying
- Cheating
- Stealing
- Falsifying records
- Unauthorized access to, use of, or disclosure of, confidential information

Dishonesty is taken very seriously at Sterling. Your failure to be honest in your work-related activities could result in your immediate termination.

Respect Everyone

Every individual associated with Sterling possesses special talents and skills that are needed to live out our values and accomplish our vision. This includes members of our Board of Directors, senior management, administrative staff, employees, contracted healthcare professionals, vendors and suppliers, and many others. Treat everyone you come in contact with in your role at Sterling with the utmost courtesy and respect.

Customer Relations. Sterling's fundamental objective is to ascertain and satisfy the needs of its customers and clients in a fair, honest, and courteous manner, to live up to all obligations to its customers and clients; and to resolve legitimate complaints fairly and in a timely manner.

Harassment. Verbal, sexual, physical, or emotional harassment of any Sterling employee will not be tolerated. Harassment results from lack of respect for others and violates federal and state laws and regulations. If you experience any type of harassment, you should immediately report the situation to the Director of Human Resources or to any member of the Human Resources Department. You may also report harassment concerns to the Compliance Officer or to the Hotline.

Discrimination. You are expected to treat every person associated with Sterling with respect and dignity. Discrimination against any person because of his or her race, ethnic background, religion, national origin, age, or disability (including immigrant or citizenship status, marital status, creed, genetic predisposition or carrier status, or sexual orientation) will not be tolerated. Discrimination is prohibited by federal and state laws and regulations. Sterling also expects others not to discriminate against you for the reasons listed above. If you feel you are being discriminated against, promptly notify the Director of Human Resources or any member of the Human Resources Department. You may also report discrimination concerns to the Compliance Officer or to the Hotline.

Anti-Social Gifts or Gratuities

No employee, associate, or any member of his or her family shall directly or indirectly seek or solicit gifts or other personal or business favors from any customer, vendor or supplier of Sterling or from any individual or company seeking to do business with Sterling.

Acceptance of cash gifts is strictly prohibited.

Employees, associates, and family members are encouraged not to accept gifts; however, any gift or gratuity received that is valued at more than \$100 must be reported to the Compliance Officer via the Gifts and Gratuities Disclosure Form.

Examples of such gifts and gratuities, including those received in connection with normal business, that must be reported to the Compliance Officer (if valued at more than \$100) are:

- Normal business courtesies, such as meals, involving no more than ordinary amenities
- Recreational events such as golf or fishing expeditions
- Tickets to sporting events or concerts
- Paid trips or guest accommodations in connection with proper company business and with the approval of management
- Fees or other compensation received from any organization in which membership or an official position is held if approved by the CEO
- Gifts related to family bereavement
- Food or gift baskets (these should be shared with other departmental employees but must also be reported, if valued at more than \$100)

Protect Privacy and Confidentiality

Information about Sterling, its employees, contracted healthcare professionals, financial status, internal operations, and other proprietary information, including that obtained in the course of providing services to customers and clients, is strictly confidential. This information may not be removed from the organization's premises. You are not to access or disclose any confidential information unless you are authorized to do so, or your job requires it. Any disclosure of confidential or proprietary information must be limited to the minimum necessary to accomplish the task. All employees must comply with patient care and confidentiality standards, set forth in organizational policies and procedures, particularly the HIPAA Privacy and Security policies. Sterling is committed to strict enforcement of confidentiality policies, and violations will result in disciplinary action, up to and including termination.

14 Provide High Quality Care and Services

Sterling believes that being a world-class healthcare team includes a commitment to providing the best service to all its customers. Providing quality service on a daily basis is our goal, and every employee is expected to uphold our quality standards including the following:

- We have a duty at every level of the organization to maintain the integrity and quality of our job performance.
- We will employ only individuals who are fully competent to perform their job responsibilities and will conduct appropriate screening to ensure employees and contracted healthcare professionals have not been excluded from participating in government health programs or been convicted of a criminal offense related to the provision of healthcare.
- We will treat all customers, clients, and each other with dignity and respect.
- We will periodically assess and evaluate the goals and objectives established for medical care and related services provided to assure delivery of services according to current standards of practice and the most current knowledge in the field.
- We will encourage each employee to continually evaluate existing methods of delivery of services in order to discover more effective ways of serving our customers and clients.
- We have a duty and responsibility to address any deficiency or error by reporting it to a supervisor or manager who can assess the problem, take appropriate action, and follow the problem to resolution.

- With respect to care and services provided to patients, we will:
 - Respect the human dignity of each patient by responding to all patient questions, concerns, and needs in a timely and sensitive manner
 - Ensure that only fully licensed and properly credentialed healthcare professionals with proper expertise and experience are permitted to care for patients
 - Ensure that admissions, transfers, and discharges are medically appropriate and in accordance with all legal requirements
 - Not discriminate against any patient for any reason including race, color, creed, gender, national origin, religion, sexual orientation, marital status, veteran status, disability, source of payment, or ability to pay

Responding to Government Investigations

Sterling desires to cooperate fully with any government investigation into our business and/or ethical practices. However, we do have rights under the law and are allowed to protect our legitimate business interests. If a government agent approaches you as an employee, whether at home or at work, refer the agent to your supervisor or manager. The General Counsel and Compliance Officer should be notified immediately so that the process can be managed to ensure proper corporate response. You should also contact the General Counsel and the Compliance Officer immediately, and prior to any other action, if your records, documents, or other items are requested or if you have questions or concerns about any contact or request you receive.

Section 3:

**FINANCIAL AND
BUSINESS STANDARDS**

Sterling's assets are to be used
only for conducting authorized business.

Keep Accurate and Timely Records

You are expected to ensure that all records for which you are responsible are accurate and completed on a timely basis. Failure to accurately record material information or the recording of false or misleading information is not acceptable under any circumstances and could result in your immediate termination.

All actions and transactions, regardless of whether they are medical, financial, operational, or administrative, must be accurately documented on a timely basis according to organizational policies and procedures and all applicable federal, state, and local laws, rules, and regulations.

It is particularly important that you remember that all records pertaining to care provided to patients and supporting documentation for diagnoses and patient charges are the medical and legal documents that describe the services the patients receive. It is imperative that these records are complete and accurate, and that services are documented when they are performed by the person who performed them.

Ensure Accurate Billing and Coding Practices

Sterling is committed to ensuring that its billing and reimbursement practices comply with all federal and state laws, regulations, guidelines, and policies so that bills presented to all patients and payors are accurate and compliant. All employees and contracted healthcare professionals, and particularly those whose job responsibilities require involvement in patient registration, submission of charges, diagnostic or procedural coding of charges, or billing of charges, are expected to comply with all applicable federal rules and guidelines and to support Sterling's standards of billing and coding as outlined below:

- We will bill only for services that are medically necessary, actually provided, and properly documented in the patient's medical record.
- We will not knowingly submit for payment or reimbursement a claim we know to be false, fraudulent, or fictitious.
- We will assign diagnostic, procedural, or billing codes, as appropriate, that accurately reflect the services that were provided. Upcoding, unbundling, or any other means of artificially enhancing reimbursement is unlawful and strictly prohibited.
- We will periodically review coding practices, policies, and software edits to ensure they are consistent with applicable federal, state, and private payer healthcare program requirements.
- We will regularly review our records for credit balances and promptly refund any overpayments.
- We will not routinely waive insurance co-payments or deductibles.
- We will ensure that all claims for services submitted to all carriers, including Medicare, Medicaid, or other state or federally funded healthcare programs, are accurate and correctly identify the services ordered and performed.
- We will comply with laws and regulations related to government cost reporting, billing, and documentation and/or submission of health information.
- We will maintain records in a secure location for the period of time required by law. The premature destruction or alteration of any document in response to, or in anticipation of, a request for those documents by any government agency or court is strictly prohibited.
- We will respond to questions and complaints related to a patient's bill in a direct and honest manner.

Anti Conflicts of Interest

As part of your association with Sterling, you are expected to avoid situations in which your personal interests conflict or even appear to conflict with your responsibilities to the organization. A conflict of interest occurs if an outside interest or activity may influence or appear to influence your ability to be objective in your decision making, affect your job performance, or result in personal financial gain.

You may be in a position with Sterling to influence decisions related to purchasing goods or services, releasing confidential information, or making patient referrals. If you are in such a position, you are prohibited from offering, soliciting, or accepting any item of significant value that could affect your decisions or cause you to use your influence or position with Sterling in an inappropriate or unethical manner. Bribes and kickbacks include not only cash but also free or significantly discounted goods or services, office space, use of equipment, or other services provided to or by a person or company at less than fair market value. All financial arrangements must reflect the fair market value of the goods or services provided.

Federal and state laws and regulations are very strict regarding kickbacks, especially when related to physicians and the referral of patients. It is very important to be sure that any activity or transaction we enter into does not violate federal anti-kickback statutes.

The following are examples of situations that could result in a conflict of interest:

- Accepting substantial gifts from any source (refer to "Don't Solicit Gifts or Gratuities" in Section Two).
- Accepting lavish entertainment offers from vendors or contractors, as such may be considered a violation of the gifts standard.
- Serving as an officer, consultant, director, or employee of an organization that is a competitor of Sterling or could do business with Sterling as a supplier, contractor, or customer, without prior disclosure to and approval of management.
- Hiring Sterling vendors or contractors to perform personal work for you or your family without appropriate administrative approval.
- Endorsing or giving a testimonial for a vendor, supplier, contractor, or trade organization without prior administrative approval.
- Misusing confidential information for personal gain or for the benefit of others.
- Engaging in outside employment, i.e., moonlighting, that negatively affects or compromises your work at Sterling. (Please note that Sterling does not intend to prohibit or limit any employee's or associate's legitimate right to work.)
- Promoting a business on company time in which you have either a direct or indirect interest.
- Selling items or soliciting donations on company time.
- Engaging in political or lobbying activities on company time.

Protect Company Assets

Sterling's assets are solely for use in conducting authorized company business. These assets are not to be used for personal reasons. Company assets include items such as office equipment, computers, software and office supplies, as well as other types of property such as cash, company records, and patient information.

You are responsible for protecting company assets and conserving company resources by making sure you do not waste or misuse them and by reporting any inappropriate use by others.

You are not to remove assets from the premises without prior authorization from your manager. If such authorization is granted, then all such assets should be returned promptly.

Upon termination of employment, contract, or other association, an individual may not copy, take, or retain any documents containing confidential information. No employee or associate should ever destroy Sterling documents, other than in accordance with the company's document retention and destruction policies and procedures. No employee or associate should alter finalized Sterling documents. Destruction and/or alteration of documents should never occur once litigation is initiated on particular issues or in anticipation of a request for those documents from any government agency or court.

Employees who improperly use company property, funds, or information or assist in the inappropriate use of company assets will be subject to disciplinary action, up to and including termination and legal action. Disciplinary action does not depend on whether the employee actually benefits from the infraction.

Board members, senior management, and designated other Sterling personnel or associates will be required to sign a Conflict of Interest Disclosure Statement on an annual basis. This statement will serve as disclosure of any business arrangements that may present a potential conflict of interest, as well as a statement that all gifts/gratuities received that had a value of more than \$100 have been reported.

If you are involved in a situation or activity that could result or appear to result in a conflict of interest, you are expected to disclose that to your supervisor or other appropriate person. If you are not sure if a conflict of interest exists, you can contact the Compliance Officer for a determination.

Section 4:

OUR COMMITMENT TO YOU

Your personal compliance and reporting of non-compliant activity are critical to the long-term success of Sterling, its employees, clients, and stakeholders.

Training, Education, and Guidance

Sterling is committed to ensuring that all employees, as well as others associated with the organization, are aware of the conduct that is expected of them while performing their job responsibilities. In addition to providing of this Code of Conduct, training and education on ethical and compliant behavior will be provided on an ongoing basis and as warranted. Compliance training is mandatory for all employees.

Additionally, the following ETHICS QUICK TEST may help you decide what you should do if you are confronted with an ethical situation and are unsure how to handle it.

1. Does this situation violate any laws, regulations, or policies and procedures?
2. Why does this situation make me feel uncomfortable?
3. How would I feel if I did it?
4. How would it look to my family and friends or if it was printed in the newspaper?
5. If you think it is wrong—don't do it!
6. **ASK QUESTIONS!** If you cannot get a satisfactory answer from your supervisor, contact the Compliance Officer or the Hotline.

Important Contact Information

Corporate Compliance Officer

Corporate Compliance Officer

Sterling

1000 Park Forty Plaza, Suite 500

Durham, NC 27713

Phone: 919-768-4612

Toll Free: 800-476-4587, ext. 4612

Fax: 919-768-4498 (secure)

E-mail: compliance@sterlinghealthcare.com

General Corporate Compliance Contact Information

Compliance Phone: 866-625-8048

Compliance Hotline: 800-826-6762*

Compliance E-mail: compliance@sterlinghealthcare.com

*Administered by National Hotline Services.

Available 24 hours per day, 7 days a week, 365 days a year.

Section 5:

WE WANT YOUR FEEDBACK

"None of us is as smart as all of us."

—Ken Blanchard

Statement of Understanding and Compliance

I certify that I have read and understand the Code of Conduct and agree to abide by it and all associated compliance policies and procedures during the entire term of my employment or association with Sterling. I acknowledge that I have a duty to report any known or suspected violation of the Code of Conduct to the Compliance Officer.

I also certify that I have not been convicted of, or charged with, a criminal offense related to healthcare nor have I been listed by a federal agency as debarred, excluded, or otherwise ineligible for participation in federally funded health programs. In the event I become the subject of any such charges or incidents, I will immediately report it to the Compliance Officer.

Please check the appropriate box:

I certify that this is my first review of the Code of Conduct following my initial employment.

I certify that this is my review of the Code of Conduct that was recently revised.

Print Name _____

Date _____

Position/Department _____

Signature _____

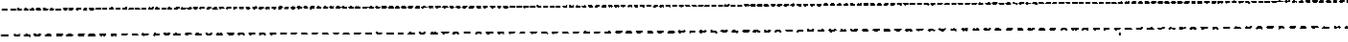
Date _____

Please return this form to the Compliance Officer for filing.

It is critical that our Compliance Program effectively communicates compliance issues at all levels of the organization. We encourage you to bring suggestions, ideas, concerns, and problems to our attention through the regular chain of command or by contacting the Compliance Officer or the Hotline.

The Compliance Program and this Code may be modified to reflect future changes in laws and regulations or to improve compliance.

Please submit your suggestions to make the Compliance Program better.



**CORPORATE COMPLIANCE
CODE OF CONDUCT**

STERLING
HEALTHCARE

1000 Park Forty Plaza, Suite 500
Durham, NC 27713



CONTACT INFORMATION FOR STERLING'S CORPORATE COMPLIANCE OFFICER

Please use any of the following options to contact our Corporate Compliance Officer:

- By e-mail to our compliance e-mail box: compliance@sterlinghealthcare.com
- By telephone or voice mail to our compliance hotline: 866-625-8048
- By telephone or voice mail directly to the corporate compliance officer at 919-768-4612 or toll-free at 800-476-4587, ext. 4612
- By personal meeting with the Corporate Compliance Officer (please use phone number or e-mail above to schedule).
- By letter addressed to: Corporate Compliance Officer,
Sterling Healthcare, 1000 Park Forty Plaza, Suite 500, Durham, NC 27713
- By calling our confidential Compliance Hotline at 800-826-6762. The Hotline is available 24 hours/day, 7 days/ week, 365 days/year for reporting known or suspected criminal activity, illegal or unethical conduct, or other potential compliance violations (such as issues related to Medicare/Medicaid, confidentiality/privacy, or potential conflicts of interest). *You may report to the Hotline anonymously, and no attempt will be made to identify you.* Sterling has a strict non-retaliation policy; no disciplinary action or any form of retribution will be taken against any individual who reports "in good faith" a compliance concern or violation.

NOTE: Our Corporate Compliance Officer also has oversight for our HIPAA Privacy and Security Program. Please use the contact information above on matters involving HIPAA Privacy or Security.

EXHIBIT "O"

Earnings Statement

Period Ending: 12/16/2006
 Pay Date: 12/26/2006

Taxable Marital Status: Married
 Exemptions/Allowances:
 Federal: 00

LOUISE MOLIERE
 1040 NW 198TH STREET
 MIAMI, FL 33169

<u>Earnings</u>	<u>rate</u>	<u>hours</u>	<u>this period</u>	<u>year to date</u>	<u>Important Notes</u>
Regular	9.0000	88.00	792.00		
Overtime		0.50	6.75		
Shift 2			10.20		
Shift 3			9.00		
Shift 4			8.13		
Gross Pay			\$ 826.08	826.08	
<u>Deductions</u>					
<u>Statutory</u>					
Federal Withholding Tax			51.84-	51.84-	
Social Security Tax			51.22-	51.22-	
Medicare Tax			11.98-	11.98-	
<u>Other</u>					
Net Pay			\$ 711.04		

Payroll check number: 80638110
 Period Ending: 12/16/2006
 Pay Date: 12/26/2006
 Employee ID: 101271

Pay to the
 order of

LOUISE MOLIERE

This Amount: **SEVEN HUNDRED ELEVEN AND 04/100 DOLLARS**

\$711.04

NON-NEGOTIABLE
 (THIS IS NOT A CHECK)

Earnings Statement

Period Ending: 12/30/2006
 Pay Date: 01/09/2007

Taxable Marital Status: Married
 Exemptions/Allowances:
 Federal: 00

LOUISE MOLIERE
1040 NW 198TH STREET
MIAMI, FL 33169

Earnings	rate	hours	this period	year to date	Important Notes
Regular	9.0000	72.50	652.50		
Overtime		8.00	108.00		
Holiday		8.00	72.00		
Shift 2			0.15		
Shift 4			14.00		
Shift 3			15.75		
Gross Pay		\$	862.40	862.40	
Deductions					
Statutory					
Federal Withholding Tax			55.47-	55.47-	
Social Security Tax			53.47-	53.47-	
Medicare Tax			12.50-	12.50-	
Other					
Net Pay		\$	740.96		

Payroll check number: 80658316
 Period Ending: 12/30/2006
 Pay Date: 01/09/2007
 Employee ID: 101271

Pay to the order of **LOUISE MOLIERE**
 This Amount: **SEVEN HUNDRED FORTY AND 96/100 DOLLARS** **\$740.96**

NON-NEGOTIABLE
 (THIS IS NOT A CHECK)

Earnings Statement

Period Ending: 01/13/2007
 Pay Date: 01/23/2007

Taxable Marital Status: Married
 Exemptions/Allowances:
 Federal: 00

LOUISE MOLIERE
1040 NW 198TH STREET
MIAMI, FL 33169

Earnings	rate	hours	this period	year to date	Important Notes
Regular	9.0000	80.00	720.00		
Overtime		9.25	124.88		
Holiday		8.00	72.00		
Shift 3			18.00		
Shift 2			0.30		
Shift 4			14.31		
Gross Pay		\$	949.49	1,811.89	

Deductions	Statutory		
	Federal Withholding Tax	46.38	101.85
	Social Security Tax	56.66	110.11
	Medicare Tax	13.28	25.76
	Other		
	Supp Life	2.46	
	*Health	35.54	
	401k	142.42	
	Net Pay	\$	652.77

* This deduction reduces taxable gross.

Payroll check number: 80674888
 Period Ending: 01/13/2007
 Pay Date: 01/23/2007
 Employee ID: 101271

Pay to the order of **LOUISE MOLIERE**
 This Amount: **SIX HUNDRED FIFTY-TWO AND 77/100 DOLLARS** **\$652.77**

NON-NEGOTIABLE
 (THIS IS NOT A CHECK)

Earnings Statement

Period Ending: 01/27/2007
 Pay Date: 02/06/2007

Taxable Marital Status: Married
 Exemptions/Allowances:
 Federal: 00

LOUISE MOLIERE
 1040 NW 198TH STREET
 MIAMI, FL 33169

Earnings	rate	hours	this period	year to date	Important Notes
Regular	9.0000	80.00	720.00		
Overtime		1.25	16.88		
Shift 2			0.30		
Shift 4			4.31		
Shift 3			20.25		
Gross Pay		\$	751.74	2,573.63	
Deductions					
Statutory					
Federal Withholding Tax			30.42	132.27	
Social Security Tax			45.03	155.16	
Medicare Tax			10.53	36.29	
Other					
Supp Life			2.46		
*Health			35.54		
401k			114.26		
Net Pay		\$	523.50		

* This deduction reduces taxable gross.

Payroll check number: 80691314
 Period Ending: 01/27/2007
 Pay Date: 02/06/2007
 Employee ID: 101271

Pay to the order of

LOUISE MOLIERE

This Amount: **FIVE HUNDRED TWENTY-THREE AND 50/100 DOLLARS**

\$523.50

NON-NEGOTIABLE
 (THIS IS NOT A CHECK)

Earnings Statement

Period Ending: 02/10/2007
 Pay Date: 02/20/2007

Taxable Marital Status: Married
 Exemptions/Allowances:
 Federal: 00

LOUISE MOLIERE
1040 NW 198TH STREET
MIAMI, FL 33169

Earnings	rate	hours	this period	year to date	Important Notes
Regular	9.0000	80.60	720.00		
Overtime		1.75	23.63		
Shift 4			8.56		
Shift 2			0.45		
Shift 3			18.00		
Gross Pay			770.64	3,344.27	

Deductions	Statutory		
	Federal Withholding Tax	31.18	163.45
	Social Security Tax	45.57	200.73
	Medicare Tax	10.66	46.95
	Other		
	Supp Life	2.46	
	*Health	35.54	
	401k	115.60	
	Net Pay		\$ 529.63

* This deduction reduces taxable gross.

Payroll check number: 80707918
 Period Ending: 02/10/2007
 Pay Date: 02/20/2007
 Employee ID: 101271

Pay to the order of **LOUISE MOLIERE**

This Amount: **FIVE HUNDRED TWENTY-NINE AND 63/100 DOLLARS** **\$529.63**

NON-NEGOTIABLE
 (THIS IS NOT A CHECK)

Earnings Statement

Period Ending: 02/24/2007
 Pay Date: 03/06/2007

Taxable Marital Status: Married
 Exemptions/Allowances:
 Federal: 00

LOUISE MOLIERE
 1040 NW 198TH STREET
 MIAMI, FL 33169

Earnings	rate	hours	this period	year to date	Important Notes
Regular	9.0000	80.00	720.00		
Overtime		1.50	20.25		
Shift 2			0.38		
Shift 4			8.50		
Shift 3			18.00		
Gross Pay		\$	767.13	4,111.40	
Deductions					
Statutory					
Federal Withholding Tax			30.88	194.33	
Social Security Tax			45.36	246.09	
Medicare Tax			10.60	57.55	
Other					
Supp Life			2.46		
*Health			35.54		
401k			115.07		
Net Pay		\$	527.22		

* This deduction reduces taxable gross.

Payroll check number: 80724417
 Period Ending: 02/24/2007
 Pay Date: 03/06/2007
 Employee ID: 101271

Pay to the order of **LOUISE MOLIERE**

This Amount: **FIVE HUNDRED TWENTY-SEVEN AND 22/100 DOLLARS** \$527.22

NON-NEGOTIABLE
 (THIS IS NOT A CHECK)

Earnings Statement

Period Ending: 03/10/2007
 Pay Date: 03/20/2007

Taxable Marital Status: Married
 Exemptions/Allowances:
 Federal: 00

LOUISE MOLIERE
 1040 NW 198TH STREET
 MIAMI, FL 33169

Earnings	rate	hours	this period	year to date	Important Notes
Regular	9.0000	79.50	715.50		
Overtime		1.00	13.50		
Shift 3			18.00		
Shift 4			7.88		
Shift 2			0.45		
Gross Pay			\$ 755.33	4,866.73	

Deductions	Statutory		
	Federal Withholding Tax	29.88	224.21
	Social Security Tax	44.63	290.72
	Medicare Tax	10.44	67.99
	Other		
	Supp Life	2.46	
	*Health	35.54	
	401k	113.30	
	Net Pay	\$ 519.08	

* This deduction reduces taxable gross.

Payroll check number: 80740976
 Period Ending: 03/10/2007
 Pay Date: 03/20/2007
 Employee ID: 101271

Pay to the order of

LOUISE MOLIERE

This Amount:

FIVE HUNDRED NINETEEN AND 08/100 DOLLARS

\$519.08

NON-NEGOTIABLE
 (THIS IS NOT A CHECK)

Earnings Statement

Period Ending: 03/24/2007
 Pay Date: 04/03/2007

Taxable Marital Status: Married
 Exemptions/Allowances:
 Federal: 00

LOUISE MOLIERE
 1040 NW 198TH STREET
 MIAMI, FL 33169

Earnings	rate	hours	this period	year to date	Important Notes
Regular	9.0000	80.00	720.00		
Overtime		2.25	30.38		
Shift 3			18.00		
Shift 4			8.81		
Shift 2			0.53		
Gross Pay			\$ 777.72	5,644.45	

Deductions	Statutory		
	Federal Withholding Tax	31.78-	255.99-
	Social Security Tax	46.02-	336.74-
	Medicare Tax	10.76-	78.75-
Other			
	Supp Life	2.46-	
	*Health	35.54-	
	401k	116.66-	
Net Pay		\$ 534.50	

* This deduction reduces taxable gross.

Payroll check number: 80758354
 Period Ending: 03/24/2007
 Pay Date: 04/03/2007
 Employee ID: 101271

Pay to the order of **LOUISE MOLIERE**
 This Amount: **FIVE HUNDRED THIRTY-FOUR AND 50/100 DOLLARS** **\$534.50**

NON-NEGOTIABLE
 (THIS IS NOT A CHECK)

Earnings Statement

Period Ending: 04/07/2007
 Pay Date: 04/17/2007

Taxable Marital Status: Married
 Exemptions/Allowances:
 Federal: 00

LOUISE MOLIERE
1040 NW 198TH STREET
MIAMI, FL 33169

Earnings	rate	hours	this period	year to date	Important Notes
Regular	9.0000	80.00	720.00		
Overtime		2.50	33.75		
Shift 3			18.00		
Shift 4			8.88		
Shift 2			0.60		
Gross Pay		6	781.23	6,425.68	

Deductions	Statutory		
	Federal Withholding Tax	32.02	288.97
	Social Security Tax	46.23	382.97
	Medicare Tax	10.82	89.57
	Other		
	Supp Life	2.46	
	*Health	35.54	
	401k	117.18	
	Net Pay	5	536.92

* This deduction reduces taxable gross.

Payroll check number: 80775370
 Period Ending: 04/07/2007
 Pay Date: 04/17/2007
 Employee ID: 101271

Pay to the order of **LOUISE MOLIERE**
 This Amount: **FIVE HUNDRED THIRTY-SIX AND 92/100 DOLLARS** **\$536.92**

NON-NEGOTIABLE
 (THIS IS NOT A CHECK)

Earnings Statement

Period Ending: 04/21/2007
 Pay Date: 05/01/2007

Taxable Marital Status: Married
 Exemptions/Allowances:
 Federal: 00

LOUISE MOLIERE
1040 NW 198TH STREET
MIAMI, FL 33169

Earnings	rate	hours	this period	year to date	Important Notes
Regular	9.0000	80.00	720.00		
Overtime		1.75	23.63		
Shift 3			18.00		
Shift 4			8.69		
Shift 2			0.38		
Gross Pay			770.70	2,196.38	

Deductions	Statutory		
	Federal Withholding Tax	31.19-	319.26-
	Social Security Tax	45.58-	428.55-
	Medicare Tax	10.65-	100.22-
	Other		
	Supp Life	2.46-	
	*Health	35.54-	
	401k	115.61-	
	Net Pay	529.67	

* This deduction reduces taxable gross.

Payroll check number: 80792847
 Period Ending: 04/21/2007
 Pay Date: 05/01/2007
 Employee ID: 101271

Pay to the order of **LOUISE MOLIERE**
 This Amount: **FIVE HUNDRED TWENTY-NINE AND 67/100 DOLLARS** **\$529.67**

NON-NEGOTIABLE
 (THIS IS NOT A CHECK)

Earnings Statement

Period Ending: 05/05/2007
 Pay Date: 05/15/2007

Taxable Marital Status: Married
 Exemptions/Allowances:
 Federal: 00

LOUISE MOLIERE
1040 NW 198TH STREET
MIAMI, FL 33169

Earnings	rate	hours	this period	year to date	Important Notes
Regular	9.0000	80.00	720.00		
Overtime		1.75	23.63		
Shift 2			0.38		
Shift 4			8.69		
Shift 3			18.00		
Gross Pay		\$	770.70	7,967.08	

Deductions	Statutory		
	Federal Withholding Tax	30.49	349.75
	Social Security Tax	45.15	473.70
	Medicare Tax	10.56	110.78
	Other		
	Supp Life	2.46	
	*Health	42.46	
	401k	115.61	
	Net Pay	\$	523.97

* This deduction reduces taxable gross.

Payroll check number: 80809816
 Period Ending: 05/05/2007
 Pay Date: 05/15/2007
 Employee ID: 101271

Pay to the order of

LOUISE MOLIERE

This Amount: **FIVE HUNDRED TWENTY-THREE AND 97/100 DOLLARS** **\$523.97**

NON-NEGOTIABLE
 (THIS IS NOT A CHECK)

Earnings Statement

Period Ending: 05/19/2007
 Pay Date: 05/29/2007

Taxable Marital Status: Married
 Exemptions/Allowances:
 Federal: 00

LOUISE MOLIERE
1040 NW 198TH STREET
MIAMI, FL 33169

Earnings	rate	hours	this period	year to date	Important Notes
Pto		33.75	303.75		
Gross Pay			\$ 303.75	8,270.63	
Deductions					
Statutory					
Federal Withholding Tax				349.75-	
Social Security Tax			16.20-	489.90-	
Medicare Tax			3.79-	114.57-	
Other					
Supp Life			2.46-		
*Health			42.46-		
401k			45.56-		
Net Pay			\$ 193.28		

* This deduction reduces taxable gross.

Payroll check number: 80827519
 Period Ending: 05/19/2007
 Pay Date: 05/29/2007
 Employee ID: 101271

Pay to the order of **LOUISE MOLIERE**

This Amount: **ONE HUNDRED NINETY-THREE AND 28/100 DOLLARS** **\$193.28**

NON-NEGOTIABLE
 (THIS IS NOT A CHECK)

EXHIBIT "P"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 10-23949-CIV-FAM

LOUISE MOILERE,

Plaintiff,

v.

PHYAMERICA GOVERNMENT
SERVICES, INC. A Foreign Profit
Corporation,

Defendant.

**PLAINTIFF'S OBJECTIONS AND/OR RESPONSES TO DEFENDANT'S FIRST SET
OF INTERROGATORIES TO PLAINTIFF**

Plaintiff, LOUISE MOILERE, by and through her undersigned counsel, and pursuant to Fed. R. Civ. P. 33, hereby objects and/or responds to Defendant's First Set of Interrogatories to Plaintiff as follows:

I. GENERAL STATEMENT

Plaintiff does not intend to disclose information that is privileged or is otherwise immune from discovery. Disclosure of any information protected by the attorney-client privilege, work product doctrine or any other applicable privilege, except pursuant to a specific written agreement covering such information, shall be deemed inadvertent. Inadvertent disclosure of any such information shall not constitute a waiver or prejudice of any privilege or any other ground for objecting to discovery with respect to any such information, nor shall such

inadvertent disclosure waive or prejudice the right of Plaintiff to object to the use of any such information during this or any subsequent proceeding.

The responses herein are based on the best information available to Plaintiff as of this date. Plaintiff reserves the right to modify, amend and/or supplement these responses. Plaintiff's response to any of these Interrogatories shall not constitute an admission by Plaintiff that information is properly discoverable or admissible at trial, and shall not constitute a waiver of any objection which might otherwise be made to the use of such information. Subject to the foregoing, Plaintiff objects and/or responds as follows:

II. GENERAL RESPONSES

1. Plaintiff's response to the Interrogatories is made to the best of his/her present knowledge, information, and belief. Said response is at all times subject to such additional or different information that discovery or further investigation may disclose and, while based on the present state of Plaintiff's recollection, is subject to such refreshing of recollection, and such additional knowledge of facts as may result from its further discovery or investigation. Plaintiff reserves the right to make any use of, or to introduce at any hearing and at trial, information and/or documents responsive to the Interrogatories but discovered subsequent to the date of this response, including, but not limited to, any such information or documents obtained in discovery herein.

2. Plaintiff reserves all objections or other questions as to the competency, relevance, materiality, privilege or admissibility as evidence in any subsequent proceeding in trial of this or any other action for any purpose whatsoever of Plaintiff's responses herein and any document or thing identified or provided in response to the Interrogatories.

3. Plaintiff reserve the right to object on any ground at any time to such other or

supplemental interrogatories as Defendant may at any time propound involving or relating to the subject matter of these interrogatories.

III. GENERAL OBJECTIONS

Plaintiff make the following general objections, whether or not separately set forth in response to each interrogatory, to each and every instruction, definition, and interrogatory made in the Interrogatories:

1. Plaintiff objects to the Interrogatories, Definitions and Instructions to the extent that they purport to impose obligations on Plaintiff that are inconsistent with or beyond the scope of those proposed by the Federal Rules of Civil Procedure. This objection includes, but is not limited to, an objection to each of the Interrogatories and Definitions to the extent that they purport to seek information outside of Plaintiff's knowledge.
2. Plaintiff objects to Defendant's Interrogatories to the extent they may seek the disclosure of mental impressions, conclusions, opinions, or legal theories of Plaintiff or its counsel subject to the work product rule.
3. Plaintiff object generally to the Interrogatories, insofar as any such interrogatory seeks information protected by the attorney-client privilege or the work product doctrine. Such information shall not be provided in response to the Interrogatories and any inadvertent disclosure thereof shall not be deemed a waiver of any privilege with respect to such information or of any work product doctrine that may attach thereto.
4. Plaintiff object to any definition, instruction, or interrogatory to the extent it seeks to

require Plaintiff to identify anything other than the specific claim of privilege or work product being made and the basis for such claim, on the grounds that the additional information sought by Defendant would subject Plaintiff to unreasonable and undue annoyance, oppression, burden, and expense, and constitutes information protected from discovery by privilege and as work product.

5. Plaintiff object to any definition, instruction, or interrogatory to the extent it seeks to require Plaintiff to identify documents not currently in Plaintiff's possession, custody or control, or to identify or describe persons, entities or events not known to Plaintiff, on the grounds that such definition, instruction, or interrogatory seeks to require more of Plaintiff than any obligation imposed by law, would subject Plaintiff to unreasonable and undue annoyance, oppression, burden, and expense, and would seek to impose upon Plaintiff an obligation to investigate or discover information or materials from third parties or sources who are equally accessible to Defendant.
6. Plaintiff objects to any definition or instruction to the extent it purports to enlarge, expand, or alter in any way the plain meaning and scope of any specific interrogatory on the ground that such enlargement, expansion, or alteration renders said interrogatory vague, ambiguous, unintelligible, unduly broad, and uncertain.
7. Plaintiff object to any definition, instruction, or interrogatory to the extent it seeks to require Plaintiff to identify natural persons by providing an address other than the last known business address on the grounds that the additional information sought by Defendant would subject Plaintiff to unreasonable and undue annoyance, oppression, burden, and expense, and materials from third parties or sources who are equally

accessible to Defendant.

8. Plaintiff objects to the Interrogatories and Definitions to the extent that they are vague, ambiguous, and fail to state a clear and understandable manner for the information that is requested. This includes Plaintiff's objection to unclear, vague, or ambiguous terms used in the Interrogatories, including terms that have not been properly defined in the Interrogatories.
9. To the extent that these Interrogatories seek information involving topics other than those addressed by the claim(s) at issue in this action or Plaintiff's defenses thereto, Plaintiff objects to the Interrogatories as irrelevant to the subject matter of the pending action and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff's responses therefore are limited to information involving the claim(s) and defenses at issue in this action.
10. The responses set forth are made without waiving the following:
 - a. the right to object on the grounds of competency, privilege, relevancy, materiality, attorney-client privilege, the work product doctrine, or any other proper ground to the use of any of these responses for any purpose and any subsequent step or proceeding in the action;
 - b. the right to object on any and all grounds to other Interrogatories or other discovery involving or relating to the same subject matter of the discovery request answered; and

- c. the right to correct, add to, or clarify any of Plaintiff's answers.

PLAINTIFF'S ANSWERS TO INTERROGATORIES

1. Identify all contracts or agreements you claim existed between you and Defendant as alleged in paragraph 5 of your complaint.

ANSWER: Agreement with David Raines (HR Recruiter): Starting pay of \$11.00/hr, Laurie Alvis changes it to \$9.00/hr. Agreement: Laurie approved a two week leave due to death in family. When I returned to work she took back the approval. When I started work it was under the agreement that I would work full time from 3pm-11pm. However, Laurie tried to reduce my hours and changed my shift to a later shift of 11pm to 7am.

2. For each contract or agreement referenced in response to Interrogatory No. 1, identify the material terms, effective dates, and all writings evidencing such contract or agreement.

ANSWER: Letter of starting pay offer by David Raines \$11.00, letter to request time off schedule, and a copy of schedule.

3. Identify every adverse employment action you allege to have suffered during your employment with Defendant as a result of alleged discrimination.

ANSWER: When Laurie Alvis and the company failed the health inspection, she became angry at employees and stated she would fire every "F Word" Haitian there is. Laurie Alvis hired other people of different national origins with higher pay rates despite their lack of experience. I had to endure profane language in almost every conversation with Laurie.

4. Identify all persons outside of your protected classification who you allege received more favorable treatment than you while employed by Defendant.

ANSWER: The Jamaican population

5. For each person identified in response to Interrogatory No. 4, identify every circumstance in which you claim such person was treated more favorably than you.

ANSWER: Starting pay, over time opportunities, flexible hours and confidentiality.

6. Identify every derogatory or offensive statement, comment, or act made by an employee or agent of Defendant that you allege supports your claim for discrimination.

ANSWER: Laurie Alvis used profane language whenever communicating with the Haitian population at work, including at me.

7. Identify every complaint you made to Defendant concerning the terms and conditions of your employment and, for each complaint, provide the response you received from Defendant, if any.

ANSWER: It was difficult to approach Laurie because she wasn't open to any suggestions or concerns.

8. Identify all persons who you believe have knowledge of the claims raised in your lawsuit and describe the knowledge you attribute to each such person.

ANSWER: Louise Mollie (I received the discriminatory treatment) and Laurie Alvis (She discriminated against me).

9. Identify all employers for whom you have worked during the past five (5) years, including any self-employment.

ANSWER: Matrix Agency and Private Home Health Care

10. For each job identified in response to Interrogatory No. 9, state the dates of employment, salary, and reason for leaving if applicable.

ANSWER:

-Matrix Agency was seasonal (\$9.00/hr)
-Private Home Health care. Left when the patient deceased. (\$12/hr – 16 hours a day)
(\$33,280 yearly)

11. Identify all lawsuits, criminal or civil, to which you have been a party during the past ten (10) years, excluding this case.

ANSWER: I have never been a party prior to this case.

12. Identify all physical or psychological symptoms you claim to have suffered as a result of actions you attribute to Defendant.

ANSWER: Psychological – Depression, spent all saved money for comfort measures.
Physiological – My health is deteriorating. I have severe hypertension (high blood pressure) and couldn't afford to pay for insurance since I was declined unemployment services because Laurie stated I had a bad attitude to unemployment. My insurance benefits were revoked. I had no money for food. The list goes on. *Poverty* My CNA license was revoked. I couldn't renew it

because I had no money.

13. Identify all health care providers with whom you have sought treatment during the past five (5) years.

ANSWER: Dr. Astel Wright

14. For each health care provider identified in response to Interrogatory No. 13, identify the dates of treatment, medications or therapy prescribed, and prognosis provided to you explaining your condition.

ANSWER: I went to Jackson Health Center 2 years ago. I paid out of pocket for check-up. Doctor diagnosed severe hypertension. I did not receive further treatment due to lack of income.

15. Provide a detailed calculation of damages you claim to have suffered as a result of actions you attribute to Defendant in this lawsuit.

ANSWER:

Plaintiff seeks compensatory damages, punitive damages, front pay, back pay, lost benefits, costs of litigation, and attorney's fees.

- o Back-pay sought: \$66,220.00
- o Front-pay sought: \$100,100.00
- o Compensatory damages, consisting of emotional distress, pain and suffering (such as grief, fright, anxiety, humiliation, and depression): To be determined by a jury.
- o Punitive damages sought: To be determined by a jury.
- o Litigation costs and attorney's fees sought by Plaintiff continue to accrue at \$300 an hour.

16. Identify all efforts you made in an attempt to secure employment since leaving Defendant's employment, including for example, employment agencies, job interviews, resumes sent, offers received, and any other job searching tasks you utilized to become employed.

ANSWER: On Monster.com I posted and updated my resume. I left it open for all employers to view. I applied at Jewish Home Care, Care Giver Agency and Kimberly Agency. Also, I looked for jobs on www.miamidade.gov/jobs.

17. Identify all instances in which you have been criticized, reprimanded, suspended, demoted, disciplined, or otherwise received a review that you considered to be unfavorable in connection with providing health care services during the past ten (10) years.

ANSWER: None in over 20 years of experience in the U.S. workforce.

18. To the extent not referenced elsewhere, identify all sources from which you have drawn income during the past five (5) years, including without limitation, unemployment benefits.

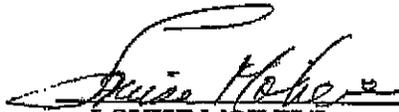
ANSWER: I used some money that was saved because both food stamps and unemployment were declined.

VERIFICATION

STATE OF FLORIDA

COUNTY OF Dade)

Louise Moilere, first being duly sworn, deposes and says that he/she has reviewed the foregoing answers to interrogatories, and that said answers are true and correct.


LOUISE MOILERE

STATE OF FLORIDA)

COUNTY OF Dade)

The foregoing instrument was acknowledged before me this 14 day of January, 2011, by Louise Moilere, who is personally known to me or has produced Driver's License as identification.



Jolima Caballero-Solis
COMMISSION #EE050711
EXPIRES: DEC. 21, 2014
WWW.AARONNOTARY.COM

Notary Public, State of Florida

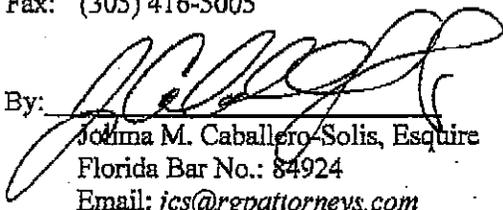
My Commission Expires: 12/21/14

My Commission Number: EE050711

Dated this 20th day of January, 2011

Respectfully submitted,

Jolima M. Caballero-Solis, Esquire
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By: 

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Plaintiff's Response and Objections to Defendant's First Request for Production hereof was E-mailed this 20th day of January, 2011, to:

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