

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

KIMBERLY FRENCH, GLORIA REID, TIESHA  
BRANCH, MARQUITA MILLS, PROVIDENCE  
NGOH, VALENCIA WASHINGTON, and  
LATONYA JOHNSON,

Case No. 1:18-cv-405  
Honorable Janet T. Neff

Plaintiffs,

v.

PROVIDENCE HEALTHCARE &  
REHABILITATION CENTER,

Defendant.

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**DEFENDANT’S ANSWER TO PLAINTIFFS’ FIRST AMENDED COMPLAINT AND  
RELIANCE UPON JURY DEMAND**

Defendant, Providence Healthcare & Rehabilitation Center (“Defendant”), by and through its attorneys, Jennifer A. Naber and Brian K. Jackson of Laner Muchin, Ltd., hereby submits its Answer and Affirmative Defenses to Plaintiffs’ First Amended Complaint as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiffs, Kimberly French, Gloria Reid, Tiesha Branch, Marquita Mills, Providence Ngoh, Valencia Washington, and Latonya Johnson (hereinafter “Plaintiffs”), are citizens of the United States and reside in the State of Michigan.

**ANSWER:** Defendant admits that Plaintiffs are citizens of the United States. Defendant lacks knowledge or information sufficient to form a belief regarding the truth of the remaining allegations of Paragraph 1.

2. Defendant, Providence Healthcare & Rehabilitation Center (hereinafter “Defendant”), is a not-for-profit organization located in the County of Ottawa, State of Michigan.

**ANSWER:** Defendant admits the allegations of Paragraph 2.

3. This is a civil action brought pursuant to a Federal claim under 42 U.S.C. § 1981 for racial discrimination.

**ANSWER:** Defendant admits that this civil action brought pursuant to 42 U.S.C. § 1981, concerns alleged racial discrimination. Defendant denies that Plaintiffs have been subject to racial discrimination prohibited by 42 U.S.C. § 1981 during their employment at Defendant.

4. This Court has federal question jurisdiction over this case under 28 U.S.C. § 1331 and diversity jurisdiction under 28 U.S.C. § 1332.

**ANSWER:** Defendant admits that this Court has federal question jurisdiction over this case. Defendant denies that Plaintiffs have pled sufficient facts to establish diversity jurisdiction and denies that such facts exist.

#### **ALLEGED RELEVANT FACTS**

5. Plaintiffs are African American.

**ANSWER:** Defendant admits the allegations of Paragraph 5.

6. Plaintiffs are all current or former Certified Nursing Assistants for Defendant.

**ANSWER:** Defendant admits that it formerly employed Kimberly French, Gloria Reid, and Tiesha Branch in the position of Certified Nursing Assistant (“CNA”). Defendant admits that Marquita Mills, Providence Ngoh, Valencia Washington, and Latonya Johnson worked for Defendant at various times as CNAs, but Defendant denies it directly employed them, as they were employed by a third-party employer and were assigned by that third-party employer to

work at one of Defendant's facilities on a temporary basis. Defendant denies the remaining allegations in paragraph 6.

7. Plaintiffs are qualified to work as Certified Nursing Assistants for Defendant.

**ANSWER:** Defendant admits that each of the Plaintiffs had a Certified Nursing Assistant license during the time periods they worked for Defendant. Defendant lacks knowledge or information sufficient to form a belief regarding the truth of any remaining allegations of Paragraph 7, as the term "qualified" is not defined. Defendant denies the remaining allegations in Paragraph 7.

8. Plaintiffs were either directly employed with Defendant or employed through an agency and assigned to work at Defendant [sic] facility.

**ANSWER:** Defendant admits the allegations of Paragraph 8.

9. All Plaintiffs were required to follow Defendant's policies, report to Defendant's supervisors, and were provided identification as a Certified Nursing Assistant with Defendant.

**ANSWER:** Defendant admits the allegations of Paragraph 9, to the extent such statements are limited to the time periods Plaintiff worked at Defendant. Defendant denies the remaining allegations in Paragraph 9.

10. Over the past several years, some residents of Defendant, who Plaintiffs were responsible to care for, requested they did not want African Americans caring for them.

**ANSWER:** Defendant denies the allegations of Paragraph 10.

11. Defendant granted the residents' request, put said requests in the residents' care plan, and/or failed to appropriately address such requests.

**ANSWER:** Defendant denies the allegations of Paragraph 11.

12. Afterwards, when Plaintiffs were assigned to care for said patients, they would be switched with a Caucasian employee, they would be told not to care for the patient, or if they cared

for the patients, they were called racist names by the patients who believed such requests were permissible because of Defendant's failure to properly address.

**ANSWER:** Defendant denies the allegations of Paragraph 12.

13. Plaintiffs felt harassed, humiliated and discriminated against because of the segregation of their job duties, being unable to perform their job responsibilities because of their race, and racial harassment.

**ANSWER:** Defendant denies the allegations of Paragraph 13.

14. Plaintiffs complained at various times about the racial harassment, however, nothing was done by Defendant and it continued and, in most cases, escalated.

**ANSWER:** Defendant admits that one of the Plaintiffs complained about one incident in which a cognitively-impaired resident allegedly called this particular Plaintiff a "black bitch," and that, on or about January 5, 2018, certain Plaintiffs, through their attorney, submitted a letter complaining of alleged race discrimination and harassment allegedly engaged in by Defendant's residents. Defendant denies the remaining allegations of Paragraph 14.

15. On or about January 5, 2018, Plaintiffs, through their attorney, made a formal complaint to Defendant's Administrator, Rick Vandenberg about race discrimination and harassment.

**ANSWER:** Defendant admits that Mr. Vandenberg received a written complaint from an attorney representing Plaintiffs Kimberly French, Gloria Reid, Tiesha Branch, Marquita Mills, Providence Ngoh, and Valencia Washington. With respect to Plaintiff Latonya Johnson, Defendant denies the allegations of Paragraph 15.

16. Defendant was also provided a draft copy of Plaintiffs' lawsuit and Defendant was advised Plaintiffs intended to file this said lawsuit.

**ANSWER:** Defendant admits the allegations of Paragraph 16.

17. Afterwards, Defendant retaliated against the Plaintiffs who were employed with Defendant at the time.

**ANSWER:** Defendant denies the allegations of Paragraph 17.

18. On or about January 11, 2018, Defendant indefinitely suspended Plaintiff Kimberly French after forcing her to train someone else while assigning her twice as many patients.

**ANSWER:** Defendant admits that, on or about January 11, 2018, pursuant to applicable law governing potential abuse/neglect of the elderly, Kimberly French was placed on a short-term investigatory suspension, which consistent with past practices would have led to reinstatement with back pay if she had been cleared of any elderly abuse/neglect. Defendant denies the remaining allegations of Paragraph 18.

19. In addition, under information and belief, Defendant reported Plaintiff Kimberly French and falsely accused her of abusing a resident.

**ANSWER:** Defendant admits that, pursuant to applicable law governing mandated reporting of potential abuse/neglect of the elderly, it reported Kimberly French's aggressive and loud outburst in a common area located near residents to the proper authorities. Defendant denies the remaining allegations of Paragraph 19.

20. Plaintiff Kimberly French resigned her employment on or about January 18, 2018 based on Defendant's creation of intolerable working condition.

**ANSWER:** Defendant admits that Kimberly French chose to voluntarily terminate her employment with Defendant. Defendant denies the remaining allegations of Paragraph 20.

21. Plaintiff Tiesha Branch was also falsely accused of abusing and neglecting a resident and suspended on or about March 19, 2018.

**ANSWER:** Defendant admits that, on or about March 19, 2018, pursuant to applicable law governing potential abuse/neglect of the elderly, Tiesha Branch was placed on a short-term investigatory suspension, which consistent with past practices would have led to reinstatement with back pay if she had been cleared of any elderly abuse/neglect. After Tiesha Branch was

cleared of any wrongdoing in connection with elderly abuse/neglect, she was returned to work with back pay. Defendant denies the remaining allegations of Paragraph 21.

22. On or about January 15, 2018, Plaintiff Gloria Reed was harassed because she did not want to sign a training form.

**ANSWER:** Defendant admits that, on or about January 15, 2018, Gloria Reed refused to sign an acknowledgment form in connection with general training provided to all Certified Nursing Assistants who provide direct services to residents at Defendant's facility and who all were required to sign the acknowledgment form in accordance with past practice. Defendant also admits that Gloria Reed was informed that she would have to re-accomplish that training in the future because there would be no record of her receipt of the training based on her refusal to sign the training form. Defendant denies that Gloria Reed was "harassed" and denies the remaining allegations of Paragraph 22.

23. Plaintiffs have suffered damages as a result of the above.

**ANSWER:** Defendant denies the allegations of Paragraph 23.

**COUNT I – ALLEGED 42 USC §1981 RACE DISCRIMINATION CLAIM  
AGAINST DEFENDANT WITH REGARD TO DENIAL OF  
ENJOYMENT OF ALL BENEFITS, PRIVILEGES, TERMS AND  
CONDITIONS OF EMPLOYMENT AND/OR  
CONTRACTUAL RELATIONSHIP**

24. Plaintiffs hereby re-allege and incorporate by reference paragraphs 1 through 23 above.

**ANSWER:** Defendant hereby incorporates its answers to paragraphs 1 – 23 as though set forth fully herein as its answer to Paragraph 24.

25. Defendant intentionally discriminated against African American employees, including Plaintiffs, by failing to properly address requests for care based on race by residents.

**ANSWER:** Defendant denies the allegations of Paragraph 25.

26. The said racial discrimination related to Plaintiffs' employment and/or contractual relationship with Defendant and Plaintiffs were denied the enjoyment of all benefits, privileges, terms and conditions of that relationship because of her [sic] race.

**ANSWER:** Defendant denies the allegations of Paragraph 26.

27. Accordingly, Plaintiffs hereby assert a 42 U.S.C. § 1981 claim against Defendant.

**ANSWER:** Defendant denies the allegations of Paragraph 27.

28. Pursuant to *McCrary v. Oakwood Healthcare, Inc.* 170 F. Supp. 3d 981 (E.D. Mich. 2016), Defendant's actions are actionable for race discrimination.

**ANSWER:** The statements in this paragraph are legal conclusions, not statements of fact. To the extent that a factual response is required, Defendant denies the allegations of Paragraph 28.

29. That as a direct and proximate result of Defendant's aforesaid violations of Plaintiffs' rights, Plaintiffs have suffered and sustained reassignment, harassment, emotional distress and mental anguish, past and future injuries to feelings including extreme embarrassment and humiliation, past and future outrage, damages to reputation, and whatever punitive damages are recoverable herein.

**ANSWER:** Defendant denies the allegations of Paragraph 29.

**COUNT II – ALLEGED 42 USC §1981 RACE HARASSMENT CLAIM  
AGAINST DEFENDANT WITH REGARD TO DENIAL OF  
ENJOYMENT OF ALL BENEFITS, PRIVILEGES, TERMS AND  
CONDITIONS OF EMPLOYMENT AND/OR  
CONTRACTUAL RELATIONSHIP**

30. Plaintiffs hereby re-allege and incorporate by reference paragraphs 1 through 29 above.

**ANSWER:** Defendant hereby incorporates its answers to paragraphs 1 – 29 as though set forth fully herein as its answer to Paragraph 30.

31. Plaintiffs were subjected to racial harassment in the workplace throughout the course of their employment.

**ANSWER:** Defendant denies the allegations of Paragraph 31.

32. Plaintiffs complained to Defendant at various times about the said racial harassment.

**ANSWER:** Defendant admits that one of the Plaintiffs complained about one incident in which a cognitively-impaired resident allegedly called this particular Plaintiff a “black bitch,” and that, on or about January 5, 2018, certain Plaintiffs, through their attorney, submitted a letter complaining of alleged race discrimination and harassment allegedly engaged in by Defendant’s residents. Defendant denies the remaining allegations of Paragraph 32.

33. Despite Plaintiffs’ complaints, the racial harassment continued.

**ANSWER:** Defendant denies the allegations of Paragraph 33.

34. The said racial discrimination related to Plaintiffs’ employment and/or contractual relationship with Defendant and Plaintiffs were denied the enjoyment of all benefits, privileges, terms and conditions of that relationship because of her [sic] race.

**ANSWER:** Defendant denies the allegations of Paragraph 34.

35. Accordingly, Plaintiffs hereby assert a 42 U.S.C. § 1981 claim against Defendant.

**ANSWER:** Defendant denies the allegations of Paragraph 35.

36. That as a direct and proximate result of Defendant’s aforesaid violations of Plaintiffs’ rights, Plaintiffs have suffered and sustained reassignment, harassment, emotional distress and mental anguish, past and future injuries to feelings including extreme embarrassment and humiliation, past and future outrage, damages to reputation, and whatever punitive damages are recoverable herein.

**ANSWER:** Defendant denies the allegations of Paragraph 36.

**COUNT III – ALLEGED 42 USC §1981 RETALIATION CLAIM AGAINST  
DEFENDANT WITH REGARD TO DENIAL OF ENJOYMENT OF  
ALL BENEFITS, PRIVILEGES, TERMS AND CONDITIONS OF  
EMPLOYMENT AND/OR CONTRACTUAL RELATIONSHIP**

37. Plaintiffs hereby re-allege and incorporate by reference paragraphs 1 through 36 above.

**ANSWER:** Defendant hereby incorporates its answers to paragraphs 1 – 36 as though set forth fully herein as its answer to Paragraph 37.

38. Plaintiffs were subjected to retaliation in the workplace after their complaints of race discrimination.

**ANSWER:** Defendant denies the allegations of Paragraph 38.

39. Plaintiffs complained to Defendant at various times about the said racial harassment.

**ANSWER:** Defendant admits that one of the Plaintiffs complained about one incident in which a cognitively-impaired resident allegedly called this particular Plaintiff a “black bitch,” and that, on or about January 5, 2018, certain Plaintiffs, through their attorney, submitted a letter complaining of alleged race discrimination and harassment allegedly engaged in by Defendant’s residents. Defendant denies the remaining allegations of Paragraph 39.

40. Despite Plaintiffs’ complaints, the racial harassment continued.

**ANSWER:** Defendant denies the allegations of Paragraph 40.

41. In addition, after Plaintiffs provided Defendant with notice that formal legal action was being taken to challenge the ongoing race discrimination and harassment, several Plaintiffs were subject to actions, which would have dissuaded a reasonable employee from making or supporting a charge or discrimination.

**ANSWER:** The statements in this paragraph are legal conclusions, not statements of fact. To the extent that a factual response is required, Defendant denies the allegations of Paragraph 41.

42. The said retaliation because of complaints of race discrimination and harassment related to Plaintiffs’ employment and/or contractual relationship with Defendant and Plaintiffs were denied the enjoyment of all benefits, privileges, terms and conditions of that relationship because of her [sic] race.

**ANSWER:** Defendant denies the allegations of Paragraph 42.

43. Accordingly, Plaintiffs hereby assert a 42 U.S.C. § 1981 claim against Defendant.

**ANSWER:** Defendant denies the allegations of Paragraph 43.

44. That as a direct and proximate result of Defendant's aforesaid violations of Plaintiffs' rights, Plaintiffs have suffered and sustained reassignment, harassment, emotional distress and mental anguish, past and future injuries to feelings including extreme embarrassment and humiliation, past and future outrage, damages to reputation, and whatever punitive damages are recoverable herein.

**ANSWER:** Defendant denies the allegations of Paragraph 44.

#### **AFFIRMATIVE DEFENSES**

1. To the extent that any Plaintiff is asserting a claim for lost back wages, a Plaintiff is barred from recovering back wages if the Plaintiff voluntarily separated from her employment with Defendant.

2. To the extent that any Plaintiff is asserting a claim for lost back wages, a Plaintiff is barred from recovering back wages if the Plaintiff's actual employer chose to not assign her to work at Defendant's facility.

3. To the extent that any Plaintiff is asserting a claim for lost back wages, and such Plaintiff is not otherwise barred from recovering lost back wages, Defendant is entitled to a set-off from any liability for sums earned by any Plaintiff since their respective, separation of employment from Defendant.

4. Plaintiffs are obligated to mitigate their respective, alleged damages with respect to claims for monetary relief. Those claims should be barred, or, in the alternative, reduced if Plaintiffs have failed to mitigate their damages.

5. Defendant is not liable for the claims of racial harassment because Defendant has implemented an anti-harassment policy, and Plaintiffs failed to adequately report their claims.

Therefore, Plaintiffs unreasonably failed to take advantage of any preventive or corrective opportunities provided by Defendant.

6. Certain Plaintiffs' affirmative requests that Defendant make race based assignments, which Defendant refused, estops them from pursuing their claim based upon their own improper actions and/or course of improper conduct.

WHEREFORE, Defendant denies each and every allegation not expressly admitted herein, including Plaintiffs' requests for relief, and respectfully requests that Plaintiffs' First Amended Complaint be dismissed with prejudice and that the Court grant any additional relief to Defendant as this Court deems appropriate.

Dated: June 11, 2018

Providence Healthcare & Rehabilitation  
Center

By: s/Jennifer A. Naber  
One of Its Attorneys

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**CERTIFICATE OF SERVICE**

Brian K. Jackson, an attorney, hereby certifies that, on June 11, 2018, he caused the **DEFENDANT'S ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT AND RELIANCE UPON JURY DEMAND** in the above-captioned matter to be filed through the clerk of court's electronic filing system, which shall serve a copy of same upon:

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*/s/Brian K. Jackson*  
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Brian K. Jackson