

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
WALTER TUVELL,	)	
	)	
Plaintiff,	)	
	)	C. A. No. 13-cv-11292-DJC
	)	
v.	)	
	)	
INTERNATIONAL BUSINESS MACHINES,	)	
INC.,	)	
	)	
Defendant.	)	
_____	)	

**FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL**

A. PRELIMINARY STATEMENT

This is an action in law and equity for damages and other relief based on retaliation, handicap discrimination, failure to reasonably accommodate, harassment, and other forms of employment discrimination. This case is brought pursuant to G.L. c. 151B, §§ 4(1), 4(16), 4(4), 4(5), other statutory provisions and tort claims.

B. PARTIES TO THE ACTION

1. Mr. Walter Tuvell, Plaintiff, is a White male, born in 1947. He has a BS from the Massachusetts Institute of Technology, and a PhD from the University of Chicago, both in Mathematics. He has had a long, diverse and successful career of nearly thirty years as an architect/designer/developer in the field of computer software.

2. Defendant International Business Machines, Inc. (IBM) is a corporation with one or more places of business located in Massachusetts, including in Cambridge and Marlboro, Massachusetts. At all times relevant, Defendant had and has more than six employees, and thus is an “employer” as defined in G.L. c. 151B, § 1(5).

3. Mr. Russell Mandel was and is IBM’s Director of the Concerns and Appeals Program, within the Human Resources organization.

4. Mr. Daniel Feldman is an employee of IBM.

5. Mr. Fritz Knabe was once, but is no longer, an employee of IBM.

C. JURISDICTION AND VENUE

6. All jurisdictional prerequisites to a civil action have been met. On or about March 12, 2012 and September 18, 2012, Mr. Tuvell filed charges of discrimination with the Massachusetts Commission Against Discrimination. On or about February 19, 2013, the EEOC issued Right to Sue letters for the claims raised herein.

7. Venue in this Court is proper pursuant to G.L. c. 151B, § 9, ¶ 2.

D. FACTUAL ALLEGATIONS

8. Mr. Tuvell joined Netezza Corporation on November 3, 2010, working in the Performance Architecture Group under Dan Feldman. Mr. Tuvell also reported in dotted line fashion to Fritz Knabe.

9. In or about January 2011, IBM acquired Netezza, and Mr. Tuvell, Mr. Feldman and Mr. Knabe became employees of IBM.

10. Mr. Tuvell is a qualified disabled individual under the Americans With Disabilities Act, and its Massachusetts counterpart, G.L. c. 151B, § 4(16). Mr. Tuvell suffers from Post-Traumatic Stress Disorder (PTSD). He was diagnosed with PTSD in or about 2001, which remains his primary diagnosis, and has also been diagnosed with Acute Stress Reaction Adjustment Disorder with Mixed Anxiety and Depression. Mr. Tuvell has been treated with psychotherapy and medication to treat his illness.

11. During intermittent, episodic periods of time in which Mr. Tuvell's condition is in its acute phase, his sleep is limited to approximately two hours per night, he cannot eat, and he experiences heightened anxiety. During these periods of time, Mr. Tuvell experiences very severe emotional reactions to adverse actions. Mr. Tuvell experiences flashbacks causing him to dwell upon and re-experience extremely stressful experiences from his past. Mr. Tuvell, when in the grip of this all-consuming fear and anxiety, is unable to work. He becomes a victim of obsessive thoughts. Mr. Tuvell, in this condition, becomes fearful that he will be attacked, psychologically. To be clear, however, although Mr. Tuvell experiences a sense that he is in profound danger, he has never threatened or acted out violently against anyone in response, and has never had any inclination to do so. In its untreated form, Mr. Tuvell's medical impairments would be completely debilitating in times of severe stress.

12. Beginning in December 2010, Mr. Feldman was notified of Mr. Tuvell's disability, through observations of Mr. Tuvell's demeanor, and through discussions in which Mr. Tuvell described his challenges. Mr. Feldman understood Mr. Tuvell's potential for extreme anxiety and sensitivity in the context of an abusive workplace environment, and the diagnosis of PTSD.

13. IBM required Mr. Tuvell and its other employees to report unlawful conduct. IBM's written policies, and contractual obligation to Mr. Tuvell, requires IBM to fully and fairly investigate internal complaints brought to its attention by Mr. Tuvell, and to fairly and reasonably resolve such complaints. IBM's written policies, and contractual obligation to Mr. Tuvell, also requires IBM to fully investigate, and fairly respond to requests for reasonable accommodation of handicap.

14. On or about May 18, 2011, Mr. Knabe asserted to Mr. Feldman, in Mr. Tuvell's absence, that Mr. Tuvell had failed to produce that day certain Excel graphics as instructed. These assertions were entirely false. In fact, Mr. Knabe had not instructed Mr. Tuvell to produce any work at all that day, much less produce any Excel graphics. Later in the day, Mr. Feldman reported Mr. Knabe's accusation to Mr. Tuvell, and supported Mr. Knabe's accusation, dismissing Mr. Tuvell's protests. Mr. Knabe's and Mr. Feldman's conduct constitutes harassment based on sex, age, and/or race.

15. On June 8, 2011, Mr. Knabe yelled loudly at Mr. Tuvell in front of co-workers, asserting that Mr. Tuvell failed to produce certain specified work items that day as ordered. These assertions were entirely false. In fact, Mr. Knabe had ordered Mr. Tuvell to produce certain different specified work items that day, and Mr. Tuvell had indeed produced these latter work items that day, as Mr. Knabe was already fully aware. Mr. Knabe's conduct constitutes harassment based on sex, age and/or race. On June 10, 2011, Mr. Knabe acknowledged in writing that he had indeed raised his voice at Mr. Tuvell.

16. Mr. Tuvell spoke to Mr. Feldman about Mr. Knabe's May 18 and June 8 conduct, and repeatedly disputed Mr. Knabe's (and now Mr. Feldman's) false assertions that he had failed to provide responses to work assignments. These conversations constitute protected activity under c. 151B. Mr. Feldman responded with psychological abuse, reflexively taking Mr. Knabe's side in the conflict without basis, refusing to give Mr. Tuvell credence, refusing to investigate into the matter, refusing to respond to Mr. Tuvell's repeated inquiries for more detail concerning his alleged misconduct, and refusing Mr. Tuvell's repeated requests for a three-way meeting with Mr. Feldman and Mr. Knabe to clear the air and to make plain what Mr. Tuvell's work expectations had actually been. Mr. Feldman's conduct and omissions constituted harassment based on disability and/or retaliation based on Mr. Tuvell's protected activity.

17. On June 10, 2011, Mr. Tuvell met with Mr. Feldman, who reported having met with Mr. Knabe the previous day. Mr. Feldman asserted that it was now too late to try patching over the difficulties with Knabe, and that Mr. Tuvell and Mr. Knabe could no longer work together. Mr. Feldman indicated that Mr. Knabe called Mr. Tuvell a bully and a liar, which was a false statement. Mr. Knabe's comments constitute harassment motivated by retaliation, age, gender and/or racial discrimination.

18. Mr. Feldman demoted Mr. Tuvell from the highest level work within the Performance Architecture group to the lowest. Mr. Feldman required Mr. Tuvell to switch job assignments with Ms. Sujatha Mizar, a woman of East Asian heritage, who

was far under forty years of age. This demotion constituted both harassment and a tangible job action, based on retaliation, handicap, age, gender and/or race.

19. Mr. Tuvell was far more qualified for the high-level job assignment taken over by Ms. Mizar, as he has a PhD, and she does not, and he had decades of much more relevant experience.

20. On June 12, 2011, Mr. Feldman required that all of Mr. Tuvell's further communications with him must be made in the presence of Human Resources representatives, citing Mr. Tuvell's filing of a complaint, and Mr. Feldman's knowledge of Mr. Tuvell's prior history of a single, successful ADR proceeding with a prior employer. Mr. Feldman's unilateral imposition of this stringent, and unjustified workplace limitation constitutes a tangible adverse action and/or harassment based on retaliation, disability, age, gender and/or race. In addition, after months of addressing Mr. Tuvell as "Walt," Mr. Feldman addresses his June 12, 2011 e-mail to "Dr. Tuvell." This change of tone further supports a claim of a hostile work environment based on retaliation, disability, age, gender and/or race.

21. On June 13, 2011, Mr. Tuvell met with Ms. Kelli-ann McCabe, HR Representative, and on June 14, 2011, Mr. Tuvell e-mailed Ms. McCabe. Mr. Tuvell complained about the harassment that he was experiencing from Mr. Knabe, and these communications are protected conduct under the ADA and c. 151B. Furthermore, Mr. Tuvell informed Ms. McCabe during these communications that he had PTSD, and placed IBM on further notice that he had a disability.

22. On or about June 15, 2011, Mr. Feldman demands that Mr. Tuvell submit a report on the transition of work between Mr. Tuvell and Ms. Mizar, despite the fact that Mr. Tuvell had nothing to add to the report that Ms. Mizar had already submitted on the same subject. This conduct helps to constitute a hostile work environment based on handicap, retaliation, age, gender and race. On one or more earlier occasions in November-December 2010, prior to Mr. Tuvell's complaint, Mr. Tuvell inadvertently failed to file one or more weekly reports to Mr. Feldman, but Mr. Feldman did nothing in response.

23. On or about June 15, 2011, Mr. Tuvell complains to Mr. Feldman, Ms. McCabe and Ms. Diane Adams that the requirement for duplicative transition reports constitutes continued harassment, and Mr. Tuvell again complains that he is being subjected to age, race and gender discrimination, as well as retaliatory harassment. This communication constitutes protected activity under c. 151B and the ADA.

24. On June 16, 2011, at 10:44 AM, Mr. Tuvell communicates with Ms. Adams and Ms. McCabe, again referencing his PTSD and his vulnerability to harassment, and states that it is becoming unfeasible for him to continue working with Mr. Feldman, due to fears of future harassment. At 3:47 PM the same day, Mr. Tuvell requests the reasonable accommodation of being removed from Mr. Feldman's managerial oversight. On this, and many subsequent occasions, some of which will be noted in this complaint, Mr.

Tuvell identifies himself as someone with a disability, and that his disability prevents Mr. Tuvell from continuing to work with Mr. Feldman.

25. On June 16, 2011, at 3:58 PM, Mr. Tuvell informs Ms. Adams that the idea of continuing to work with Mr. Feldman is making him feel sick. This communication is protected under G.L. c. 151B and the ADA.

26. On June 16, 2011, Mr. Feldman requires, on one day's notice, that Mr. Tuvell independently (without consulting others) establish a detailed, daily schedule for the next three upcoming weeks on all four projects that he is taking over for Ms. Mizer, based solely on Ms. Mizer's short "one-line" descriptions of her projects. Mr. Tuvell is still on a learning curve with respect for the new projects, and has never set a daily schedule for three weeks in the future, let alone for unfamiliar projects. Mr. Tuvell requests an example of such a schedule from Mr. Feldman, but none is forthcoming. All of this constitutes continuing harassment based on handicap, retaliation, age, gender and/or race.

27. On June 17, 2011, Mr. Tuvell complains of continuing harassment to Mr. Feldman, Ms. McCabe and Ms. Adams. Mr. Tuvell also complains of the fact that he is being undermined professionally, as his important contributions are being taken over by Ms. Mizar, placing her in the position of getting the credit for his ideas and work. This communication is protected conduct under G.L. c. 151B, and the ADA.

28. On June 23, 2011, Mr. Tuvell complains about continuing harassment and discrimination, and notes that the harassment/discrimination has exacerbated his medical symptoms, and that he is nearly incapacitated by PTSD, a disability known to Defendant. Mr. Tuvell requests that his disability be accommodated by having him work for someone other than Mr. Feldman. This communication is protected conduct under G.L. c. 151B, and the ADA, both as opposition to discrimination and as a request for reasonable accommodation.

29. On various occasions, including June 24, 2011 and June 28, 2011, Mr. Tuvell requests job modifications such that he no longer must interact with Mr. Feldman, as a reasonable accommodation to his disability. Mr. Tuvell notes that such an accommodation would be a preferable reasonable accommodation to the grant of disability leave. Such communications constitute protected conduct under the ADA and c. 151B, and represent requests for reasonable accommodation.

30. On June 27, 2011, Mr. Tuvell complains of discrimination, harassment, and retaliation, based on Mr. Feldman's directive that Mr. Tuvell independently draft a detailed, day-by-day, three week schedule involving four new technology projects on one day's notice. Mr. Feldman had never required such a schedule of Mr. Tuvell previously. On information and belief, Mr. Feldman did not demand that Ms. Mizar, who took over Mr. Tuvell's project, provide a similar plan.

31. On June 28, 2011, Mr. Tuvell twice complains that working with Mr. Feldman, and the constant harassment is destroying Mr. Tuvell's health, that he does not feel safe

around Mr. Feldman, and requesting the accommodation of being assigned away from Mr. Feldman. These communications are protected conduct under G.L. c. 151B, and the ADA, and represent requests for reasonable accommodation to be separated from Mr. Feldman. On these occasions, as well as the many other times when Mr. Tuvell sought similar relief, IBM failed in its obligation to reasonably accommodate Mr. Tuvell.

32. On June 29, 2011, Mr. Tuvell's internal complaint is rejected by Ms. Lisa Due. IBM conducted an insufficient and deferential investigation of Mr. Tuvell's complaint, and failed in its obligation to remediate unlawful conduct brought to its attention.

33. Ms. Due suggests that Mr. Tuvell look for another job within IBM using the Global Opportunity Marketplace (GOM) job system. On June 29, 2011, Mr. Tuvell escalates the complaint to Mr. Mandel, through the IBM Concerns and Appeals process. This action constitutes protected conduct under G.L. c. 151B, and the ADA, and constitutes a request for reasonable accommodation.

34. On June 29, 2011, Mr. Tuvell requests that he be reassigned away from Mr. Feldman due to his retaliatory conduct. This communication represents protected opposition and protected request for reasonable accommodation.

35. On June 30, 2011, Mr. Feldman harasses Mr. Tuvell with respect to requiring unnecessary status updates. This constitutes continuing harassment based on handicap, retaliation, age, gender and race. Mr. Tuvell complains to Mr. Feldman about the harassment. This complaint constitutes protected conduct under G.L. c. 151B, and the ADA.

36. On June 30, 2011, Mr. Tuvell again complains of the harassing demotion, which is protected speech under the ADA and c. 151B. In response, Mr. Feldman subjected Mr. Tuvell to further retaliatory harassment, by attacking Mr. Tuvell's professionalism.

37. As a result of Mr. Feldman's retaliatory harassment, Mr. Tuvell experiences severe symptoms from PTSD, as exacerbated by his workplace stress, and is not able to come to work in the office. Later on June 30, 2011, Mr. Tuvell again complains about improper actions, and harassment taken against him, which constitutes protected conduct under the ADA and G.L. c. 151B.

38. On June 30, 2011, Mr. Tuvell informs Mr. Feldman that Mr. Tuvell may have to petition to work at a remote work location (his home) away from Mr. Feldman for medical reasons. This constitutes a protected request for reasonable accommodation.

39. On July 1, 2011, Mr. Tuvell e-mails Mr. Mandel regarding his complaints about discrimination and retaliation, and asks to be moved away from Mr. Feldman and Mr. Knabe, and the hostile work environment. This constitutes protected opposition and a protected request for reasonable accommodation.

40. On July 5, 2011, Mr. Tuvell e-mails Mr. Mandel, stating that Mr. Tuvell fears working with Mr. Feldman, based on Mr. Feldman's record of retaliation. Mr. Tuvell states that he will do his best to continue to work with Mr. Feldman, but that he is doing so under protest. This communication represents protected opposition and a protected request for reasonable accommodation.

41. On July 5, 2011, Mr. Feldman falsely implies to Mr. Tuvell that Mr. Tuvell engaged in unprofessional and/or disrespectful conduct, participated in an inappropriate work environment, and/or failed to follow management direction (and referencing an alleged failure to develop the aforementioned plan). This communication represents harassment based on race, age, gender, handicap, and retaliation for engaging in protected conduct.

42. On July 5, 2011, Mr. Tuvell writes to Mr. Mandel, requesting that he be removed from a hostile work environment, and documenting Mr. Mandel's refusal to do so. Mr. Tuvell notes the difficulty he is experiencing working with Mr. Feldman, but promising to try his best. Mr. Tuvell's communication is protected conduct under the ADA and c. 151B.

43. On July 6, 2011, Mr. Tuvell specifically asks for guidance in preparing the type of plan that is requested of him, but he never receives substantive guidance. The failure of Mr. Feldman to respond demonstrates a recognition that the request for the unusual plan represented harassment and retaliation, and did not reflect a genuine operational requirement.

44. On July 6, 2011, when communicating about an aspect of his work, Mr. Tuvell wrote in an e-mail to Mr. Feldman and one other colleague, "You can easily find it by searching the wiki for "blktrace", or if you're lazy you can just click this link." On July 11, 2011, Mr. Feldman capriciously asserts that Mr. Tuvell's wholly innocent and colloquial use of the word "lazy" is inappropriate. Mr. Feldman's overly critical scrutiny constitutes harassment based on race, age, gender, retaliation and/or handicap.

45. While Mr. Tuvell initially apologized for using the word "lazy," after some thought, he understands that no supervisor, in good faith, could have possibly interpreted his light-hearted use of the term "lazy" in a negative fashion. On July 20, 2011, Mr. Tuvell notes in an e-mail that no apology had been necessary, and notes that his psychological issues had prevented him from advocating for himself earlier. Mr. Tuvell's communication constitutes protected opposition to unlawful harassing conduct.

46. On August 3, 2011, Mr. Tuvell meets with Mr. Feldman. Mr. Feldman asks Mr. Tuvell what he was scheduling to do next. Mr. Tuvell stated that he intended to spend some reasonable time working on his internal complaint, as the two had agreed previously. Mr. Feldman stated that Mr. Tuvell was now forbidden to work on the complaint. Mr. Tuvell's reasonable efforts to utilize some work time, without jeopardizing his work product, to prepare his opposition to unlawful work conditions represents protected conduct under the ADA and c. 151B, and Mr. Feldman's refusal to

permit Mr. Tuvell any time for that purpose is per se retaliation, and exhibits a retaliatory mindset. In reply, Mr. Tuvell then said, in a normal tone of voice, which expressed a slight tinge of surprise and exasperation, "Now wait a minute, Dan." At that point, Mr. Feldman falsely accused Mr. Tuvell of yelling, and threatened him with termination if he yelled again. This conduct constituted further harassment based on retaliation, handicap, race, gender and/or age.

47. At the August 3, 2011 meeting, Mr. Feldman falsely asserts that the lighthearted line about laziness was insulting. This conduct constitutes further harassment based on retaliation, handicap, race, gender and/or age.

48. At the August 3, 2011 meeting, Mr. Feldman presented Mr. Tuvell with a Formal Warning Letter, based on Mr. Tuvell's allegedly disruptive comments, including the "lazy" comments, and the explanatory e-mail of July 20, 2011. The Formal Warning Letter, which threatened termination without benefits for future violations was both a tangible job action, and continued harassment, based on retaliation, handicap, race, gender and/or age.

49. Because Mr. Tuvell was already experiencing symptoms of his disability at the time, having just been previously been accused of another false firing offense of yelling, he was physically unable to visualize the contents of the warning letter—he could only see a white rectangle with indistinct black lines. Mr. Tuvell placed the letter on the floor beside his chair, and politely stated that he would read it later. Mr. Tuvell then fainted in his chair, was unconscious for an un-determined period of time, and woke up covered in sweat, very dizzy and disoriented. After Mr. Tuvell recovered consciousness, the letter was no longer on the floor; it appears that Mr. Feldman picked it up. Mr. Feldman offered no assistance to Mr. Tuvell during this episode.

50. On August 3, 4, and 5, 2011, Mr. Tuvell complained to Mr. Mandel and Ms. Adams about continuing retaliation and harassment, including the fact that Mr. Feldman had forbidden the use of time to compile an internal complaint/appeal, and Mr. Tuvell requested emergency relief. These communications were protected conduct under the ADA and c. 151B.

51. On August 5, 2011, Mr. Tuvell notes that if he is subject to discipline for using the word lazy, then others should be disciplined for stating that a coworker's "raison d'etre is the regression test," under a similar level of hyper-scrutiny. Mr. Tuvell further noted that the subject of this statement is not Caucasian, and that he might be the victim of discrimination. Mr. Tuvell's communication is protected conduct under c. 151B.

52. On August 5, 2011, Mr. Mandel replies, saying that IBM does not accept third party complaints, and that if the co-worker is offended by the "raison d'etre" comment, he will have to file himself. Mr. Mandel's statement is false and pretextual, as IBM does accept third party complaints.



53. The harassment, retaliation and disparate treatment caused an exacerbation of Mr. Tuvell's PTSD symptoms. As a result, Mr. Tuvell began to feel that he was medically incapable of reporting to work. On August 11, 2011, Mr. Tuvell e-mailed Kathleen Dean, of IBM's Integrated Health Services, stating that he has come down with a medical condition, wants to know about the short term disability (STD) process, and requests a longer term solution, including an accommodation. This is a protected communication demonstrating notice of need of reasonable accommodation.

54. On August 11, 2011, Mr. Tuvell informs Mr. Feldman that he was taking sick days until his request for short term disability is acted upon. Mr. Tuvell also informed Mr. Feldman that Mr. Tuvell is seeking an accommodation. This is a protected communication requesting reasonable accommodation, and constituting notice of a need of reasonable accommodation.

55. In or about mid-August, 2011, IBM receives a Medical Treatment Report concerning Mr. Tuvell, from Mr. Tuvell's medical care-giver, in support of his STD application. The report states that Mr. Tuvell is experiencing a sleep disorder and stress reactions, as a result of which he is totally impaired with respect to performing his job responsibilities.

56. On August 17, 2011, IBM certifies Mr. Tuvell's STD status, and accords him the reasonable accommodation of STD leave. While the leave constituted one type of accommodation, it was inadequate and inappropriate, since a different, available reasonable accommodation, which would have preserved Mr. Tuvell's full salary, and equal opportunity to participate in, and excel in the workplace, would have been to simply stop the harassing and/or retaliatory conduct, and/or assign Mr. Tuvell to work with a person who did not exacerbate Mr. Tuvell's medical symptoms.

57. On August 18, 2011, pursuant to IBM policy, Mr. Tuvell files his Corporate Open Door Filing, with IBM Executive Office Staff, in which he complains about unlawful discrimination. This filing represents protected opposition under c. 151B and the ADA. However, all members of the Executive Office improperly refuse to consider it, instead sending it down the chain to Mr. Mandel, despite Mr. Tuvell's clearly stated protestations that Mr. Mandel has disqualified himself from investigating this case, because of Mr. Mandel's prior false representations to Mr. Tuvell concerning IBM's non-consideration of third party complaints.

58. On August 25, 2011, Mr. Mandel informs Mr. Tuvell that Mr. Mandel will not finalize his investigation of Mr. Tuvell's complaint until Mr. Tuvell is back from STD leave. Mr. Mandel's unilateral decision to disadvantage Mr. Tuvell on the basis of Mr. Tuvell's taking disability leave, constitutes handicap discrimination, retaliation for taking reasonable accommodation, and otherwise constitutes retaliatory harassment.

59. Given that Mr. Tuvell was forced, medically, out of the workplace, due to Mr. Feldman's discriminatory and retaliatory conduct (as well as due to IBM's failure to accord appropriate reasonable accommodation), Mr. Mandel's refusal to fully address

Mr. Tuvell's complaint until he returns to work further victimizes Mr. Tuvell. It constitutes an unlawful, tangible job action, as well as harassment based on handicap, race, age and/or gender.

60. On August 25 and 31, 2011, Mr. Tuvell opposes Mr. Mandel's retaliatory and harassing refusal to complete the investigation of Mr. Tuvell's complaints while Mr. Tuvell remains on disability leave. Mr. Tuvell's communications constitute protected conduct under c. 151B and the ADA.

61. On September 4, 2011, Mr. Tuvell files a further formal complaint (Addendum II to his original complaint) based on Mr. Mandel's refusal to finalize the investigation of the complaint during the pendency of Mr. Tuvell's disability leave. This communication constitutes protected activity under c. 151B and the ADA.

62. On September 6, 2011, Mr. Tuvell discovers that his Netezza Internet VPN access to the Netezza network has been rescinded. Mr. Tuvell inquires about the lack of access. On September 7, 2011, Mr. Mandel explained that access had been denied during the pendency of Mr. Tuvell's STD leave. Other IBM employees on STD do not have their computer access cut off. In fact, corporate policy dictates that employees on STD retain normal employee rights and privileges. This conduct constitutes a tangible job action, as well as continued harassment based on Mr. Tuvell's use of reasonable accommodation, his request(s) for reasonable accommodation, opposition to unlawful activities, his handicap, his age, race and/or gender.

63. On September 7, 2011, Mr. Tuvell opposes IBM's discriminatory and/or retaliatory decision to deny him VPN access. This communication constitutes protected conduct under c. 151B and the ADA.

64. The continued harassment, discrimination and/or retaliation exacerbates Mr. Tuvell's medical condition.

65. On or about September 7, 2011 and October 12, 2011, IBM receives additional medical documentation from Mr. Tuvell's medical care-givers supporting Mr. Tuvell's disability leave. The October 2011 documentation states that "without safe resolution of current hostile work environment without fear of reprisals . . . symptoms will persist." Further medical documentation filed with IBM in or about November 2011 states, "pt. [patient] continues to experience intense triggering of symptoms with any reference to work environment and incident of demotion and lack of investigation." Based on this documentation, IBM approves continued STD leave for Mr. Tuvell, but continues to refuse Mr. Tuvell the reasonable accommodation of not working for Mr. Feldman.

66. On September 14, 2011, Mr. Mandel confirms that Mr. Tuvell would be prevented from entering IBM facilities while he is out on STD leave. On information and belief, IBM written policy rejects such discrimination and other IBM employees on disability leave are not prevented from entering IBM facilities. This act constitutes both a tangible job action, and continued harassment. It is based on retaliation for Mr.

Tuvell's request and/or availing of the reasonable accommodation of disability leave, his oppositions to unlawful conduct, his race, age and/or gender.

67. On September 14, 2011, Mr. Tuvell e-mails his opposition to the discriminatory and/or retaliatory exclusion from the workplace. This communication is protected under c. 151B and the ADA.

68. On September 21, 2011, based on IBM's inaction on his internal complaint, Mr. Tuvell escalates his complaint to Richard Kaplan, Chief Trust and Compliance Officer for IBM. This communication is protected conduct under c. 151B and the ADA. The complaint to Mr. Kaplan is improperly forwarded by IBM back to Mr. Mandel.

69. On October 5, 2011, Mr. Tuvell receives from Mr. Feldman a notification that after thirteen weeks of STD medical leave, his benefits will be reduced to 66 2/3 % of his usual salary. On October 5, 2011, Mr. Tuvell responds, and objects to the reduction of pay. Mr. Tuvell again identifies himself as disabled under the ADA, and requested reasonable accommodation. Mr. Tuvell pointed out that he had requested on a number of occasions the reasonable accommodation of being separated from the hostile conditions that were causing his medical symptoms. Mr. Tuvell objected to IBM's continued failure to accord him reasonable accommodation of non-discriminatory and non-retaliatory workplace conditions. Mr. Tuvell further notified IBM that its reduction of benefits constituted an adverse action, because it was capable of making reasonable accommodation that permitted Mr. Tuvell's full participation in the workplace, and full compensation, but it was refusing to make such accommodation. This request for reasonable accommodation was protected under the ADA and c. 151B.

70. On October 10, 2011, Mr. Mandel rejected the request for a change of supervisor as an accommodation for Mr. Tuvell's medical condition, at this and previous points. Mr. Mandel suggests that as an alternative accommodation, Mr. Tuvell could himself utilize the Global Opportunity Marketplace (GOM), which lists IBM's available internal job opportunities, in order to find a new position. The denial of a change of supervisors is a violation of the obligation to reasonably accommodate Mr. Tuvell's disability. Furthermore, IBM had, under the ADA, at this point, an affirmative obligation to search its own vacant positions, and reassign Mr. Tuvell to a position for which he qualified. Mr. Mandel's suggestion that Mr. Tuvell make his own search for a vacant position for transfer, through a process that was available to all IBM employees regardless of disability status, was inadequate given the ADA's requirement to proactively reassign Mr. Tuvell to a vacant position, and thus constitutes an independent violation of the law.

71. On October 17, 2011, Mr. Tuvell again requests the reasonable accommodation of being removed from Mr. Feldman's influence, and requested an interactive dialogue to achieve that goal. Mr. Tuvell also complains about the failure of IBM to so far live up to these legal obligations. Mr. Tuvell's communication was protected conduct under c. 151B and the ADA.

72. On October 17, 2011, Mr. Tuvell asserts that his PTSD represents a disability covered by the ADA, and that his disability represents a medical condition that prevents him from continuing to work with Mr. Feldman. Mr. Tuvell again requests the reasonable accommodation of no longer having to work with Mr. Feldman, including the possibility of terminating Mr. Feldman. This communication represents a protected request for accommodation, and an internal complaint based on the ongoing failure to reasonably accommodate him.

73. On October 17, 2011, Mr. Mandel responds to Mr. Tuvell's October 17, 2011 e-mail, reaffirms a refusal to change Mr. Feldman as Mr. Tuvell's supervisor, and again suggests that Mr. Tuvell himself look for other positions within IBM, as part of an interactive process for determining reasonable accommodation.

74. On October 18, 2011, Mr. Mandel acknowledges understanding that Mr. Tuvell was requesting job modifications such that he would not have to interact with Mr. Feldman, or reassignment as a reasonable accommodations, and that IBM does not consider those to be a reasonable accommodations. IBM's past and continued refusal to reasonably accommodate Mr. Tuvell violates c. 151B and the ADA. Its position on what constitutes a reasonable accommodation plainly violates the law. E.g. 42 U.S.C. section 12111(9)(B).

75. On October 18, 2011, Mr. Tuvell again complains about IBM's lack of response to his internal complaint, again asserts his status as disabled under the ADA, and again opposes the discriminatory policy of refusing to act on his complaint while he is on STD leave. This communication is protected conduct under c. 151B and the ADA.

76. On October 19, 2011, Mr. Tuvell complains that Mr. Mandel's decision to stall resolution of Mr. Tuvell's internal complaint based on Mr. Tuvell's avilment of disability leave constitutes discrimination/retaliation in violation of the ADA. This communication is protected conduct under c. 151B and the ADA.

77. On or about October 19 and 20, 2011, Mr. Tuvell objects to Mr. Feldman falsely characterizing work at home days as sick days, asks for citation to the policy that supports the practice, and notes that it is inconsistent with pre-June 30, 2011, when he worked at home. Mr. Feldman's practice constitutes a tangible adverse action, as well as continuing harassment based on retaliation, handicap, race, gender, age and/or any combination thereof.

78. On November 2, 2011, Mr. Feldman made knowingly false statement mischaracterizing Mr. Tuvell's work situation with respect to sick days — casting work-at-home days as refusal to work in the office days. This adverse treatment of work-at-home days is inconsistent with the work-at-home days that Mr. Tuvell used prior to June 30, 2011. Mr. Tuvell responded by opposing these statements and practice as continuing retaliatory harassment. Mr. Tuvell did so again on October 22, 2011. Mr. Tuvell's communications are protected conduct under c. 151B and the ADA.

79. On November 3, 2011, Mr. Tuvell filed Addendum IV to his internal complaint, complaining about handicap discrimination, retaliation, and failure to accommodate. Mr. Tuvell's communication is protected conduct under c. 151B and the ADA.

80. On or about November 9, 2011, Mr. Mandel received a letter from Mr. Tuvell's attorney, Mr. Robert Mantell, identifying Mr. Tuvell's disability and requesting reasonable accommodation. Included among the requested accommodations is a request for reassignment of Mr. Tuvell away from Mr. Feldman. This communication represents protected conduct. IBM's continued failure to come to some solution whereby Mr. Tuvell would be permitted to work in a non-harassing environment without having to interact with Mr. Feldman, constitutes a many-times repeated violation of the affirmative duty to reasonably accommodate Mr. Tuvell.

81. On November 17, 2011, Mr. Mandel spoke with Mr. Tuvell on the telephone, and explained that Mr. Tuvell's June 29, 2011 internal Complaint was rejected. The overly delayed response to Mr. Tuvell's complaint, whose "investigation" took place over more than four and a half months, was inadequate and unlawful. Mr. Mandel's rejection reflected an extremely deferential take on past events, ignored evidence, improperly favored Mr. Knabe and Mr. Feldman, and disfavored Mr. Tuvell. The response failed to address or even acknowledge Mr. Tuvell's complaints of discrimination. Mr. Mandel indicated that there were a variety of complaints that Mr. Tuvell had made, that had not been investigated and were not eligible for investigation. Some of those issues that were not investigated involved Mr. Tuvell's complaints of handicap harassment, discrimination and retaliation. Moreover, Mr. Mandel's explanation revealed a biased and incomplete investigation. To note merely one example, Mr. Mandel stated that he concluded that Mr. Tuvell raised his voice to Mr. Knabe, but that Mr. Knabe did not raise his voice to Mr. Tuvell. This ignores that fact that Mr. Knabe apologized to Mr. Tuvell in writing for Mr. Knabe's raising his voice. Moreover, the investigation affirmed the discipline of Mr. Tuvell for innocently stating in e-mail that he would provide a link for those who are "lazy." Moreover, Mr. Tuvell was criticised for communications that were protected conduct under c. 151B, and so those alleged criticisms were retaliatory per se. The unjustifiably delayed result, inadequately researched investigation, unsupportable and per se illegal conclusions demonstrate that Defendant engaged in an inadequate, sham investigation in violation of the c. 151B and ADA duties to investigate and remedy unlawful discrimination and retaliation. The defective conclusions also independently further establish a continuing hostile work environment based on retaliation, handicap, gender, race and/or age, in violation of c. 151B and the ADA. Toward the end of the November 17, 2011 conversation, Mr. Mandel said that someone would contact Mr. Tuvell about engaging in an interactive process for finding a reasonable accommodation.

82. On November 23, 2011, Mr. Feldman rejected the idea of changing Mr. Tuvell's management team, or moving him from his current position, as a reasonable accommodation. Mr. Feldman stated that Mr. Tuvell could himself use IBM's Global Opportunity Marketplace to find other positions, and that Diane Adams from Human Resources would be available to assist him in this endeavor, but there was no suggestion that Ms. Adams herself would help in actually finding other positions. This

communication, denying reassignment or a change in the management team, constitutes a violation of the obligation to reasonably accommodate Mr. Tuvell. Furthermore, the suggestion that Mr. Tuvell himself use GOM to find for himself a potential reassignment, rather than Defendant taking affirmative steps to find Mr. Tuvell a vacant position for reassignment, independently constitutes a separate violation of the duty to reasonably accommodate.

83. On November 23, 2011, Mr. Tuvell requests assistance from Ms. Adams in seeking reassignment through IBM's Global Opportunity Marketplace. Nothing of substance results from this and/or any other attempt to elicit assistance in locating a vacant position for transfer. Defendant wholly fails to offer Mr. Tuvell any reassignment which would effect a reasonable accommodation, and thus, Defendant violated its duty to reasonably accommodate Mr. Tuvell's disability.

84. On November 23, 2011, Mr. Tuvell requests a written response to his internal complaint, pursuant to Section 2.8 of the Concerns and Appeals Program. Mr. Mandel replies with a non-substantive answer, saying only that after investigation, Mr. Mandel concluded that "management treated you fairly regarding the change in your work assignment, disciplinary actions, project plan request and day-to-day interactions with you." This non-responsive response not only demonstrates pretext, and confirms the inadequacy of the investigation, but fails to provide sufficient specificity to satisfy Defendant's burden to respond to Mr. Tuvell's prima facie case.

85. On November 28, 2011, after searching for alternative positions on IBM's Global Opportunity Marketplace, Mr. Tuvell applies for an internal posting SWG-0436579.

86. While on STD leave, Mr. Tuvell has an obligation to "check-in" with his employer on a weekly basis. Mr. Tuvell complies with this requirement. On November 28, 2011, Mr. Feldman falsely accuses Mr. Tuvell of not checking-in during the week. This constitutes additional harassment on the basis of retaliation, handicap, age, race and/or gender.

87. On November 28, 2011, Mr. Tuvell informs Mr. Feldman that he had checked-in, as required, and that he is medically incapable of returning to work under Mr. Feldman. Mr. Tuvell once again requests reassignment as a reasonable accommodation. This communication constitutes a protected communication and request for reasonable accommodation under c. 151B and the ADA. Mr. Feldman later acknowledges that he had indeed received Mr. Tuvell's prior, timely check-in, and that Mr. Tuvell was not deficient in checking-in.

88. Mr. Chris Kime was the manager tasked with filling the SWG-0436579 posting. On November 30, 2011, Mr. Kime informs Mr. Tuvell that Mr. Tuvell's resume demonstrates his qualification for the position, and Mr. Kime schedules a meeting to discuss the position.

89. On December 1, 2011, Mr. Tuvell informs Mr. Kime that Mr. Tuvell is returning from a STD leave, but that Mr. Tuvell is healthy to work. Mr. Tuvell, in this communication, alerts Mr. Kime of his disability status, as well as his availment of disability leave as a reasonable accommodation. Despite understanding Mr. Tuvell's status on disability leave, Mr. Kime continues to express interest in Mr. Tuvell for the open posting.

90. On December 5, 2011, Mr. Tuvell informs Mr. Feldman of his upcoming interview for the transfer, and asks for physical access to IBM facilities, as his access had previously been cut off. In addition, Mr. Tuvell asks Mr. Feldman to let Mr. Tuvell know of any other job opportunities that are available for which Mr. Tuvell is qualified. This communication constitutes a request for reasonable accommodation. On December 6, 2011, Mr. Feldman ostensibly provides permission for Mr. Tuvell to attend the job interview.

91. On December 6, 2011, Robert Mantell, attorney for Mr. Tuvell, e-mails Mr. Larry Bliss, Esq., attorney for IBM, to confirm that Mr. Tuvell's utilization of STD is utilized as a reasonable accommodation, and that barring Mr. Tuvell from facilities and denying him access based on his use of STD leave is a violation of the handicap discrimination laws, and will prevent him from attending an interview. This communication is protected conduct under c. 151B and the ADA.

92. On December 6, 2011, Mr. Bliss e-mails Mr. Mantell, falsely asserting that Mr. Tuvell's badge access was never turned off.

93. On December 8, 2011, Mr. Tuvell has an interview for the SWG-0436579 posting at IBM's Littleton facility, which went very positively. On this day, Mr. Tuvell's badge does not work, and he needs assistance to enter the building. Mr. Tuvell further undertakes significant efforts to get the badge activated, finally succeeding. The continued act of barring Mr. Tuvell from unrestricted access to IBM facilities pending his status on disability leave represents a continued violation of c. 151B and the ADA, as a tangible job action, as well as harassment.

94. On December 12, 2011, Mr. Kime e-mails Tuvell, stating that the job interview was "very positive, and I will be following up with my management chain, and will keep you posted of developments as they occur." On various occasions, Mr. Tuvell enthusiastically follows up on his application for reassignment. On December 16, 2011, Mr. Tuvell informs Mr. Kime and others considering his application for transfer that he had just been awarded a patent.

95. On December 16, 2011, Mr. Feldman writes to Mr. Tuvell, continuing to deny Mr. Tuvell the ability to have VPN computer access while he is on disability leave. Mr. Feldman states, "As for your email about systems access, since you continue to be on STD and therefore are not working[,] there is not a business need for you to have access to Netezza-specific systems." Furthermore, Mr. Feldman rejects Mr. Tuvell's request to end his STD leave prior to the end of the year, and to use his vacation days until the end

of the year. This conduct constitutes both tangible adverse actions, and/or continuing harassment based on retaliation, handicap, race, age and/or gender.

96. On or about December 19, 2011, Ms. Stephanie Ross, LICSW, Mr. Tuvell's psychotherapist, submits a Medical Treatment Report concerning Mr. Tuvell to IBM. The report states that Mr. Tuvell "continues to experience extreme triggering regarding workplace previously assigned," and that the "only modification that would be possible is a change of supervisor and setting." The report further states, "unable to return to previous setting w[ith] current supervisor and setting – PTSD symptoms exacerbate immediately." On the basis of this report, IBM extends Mr. Tuvell's disability leave. The report once again places IBM on clear notice that it was required to reassign Mr. Tuvell to a vacant position in order to comply with its duty to reasonably accommodate Mr. Tuvell.

97. On January 6, 2012, Mr. Kime noted Mr. Tuvell's "deep technical skills and ability to produce solid documentation." Mr. Kime also noted and apologized for his "earlier optimism" that Mr. Tuvell would be selected. However, Mr. Kime, at that time, rejected Mr. Tuvell's application for job posting SWG-0436579. Mr. Kime asserted that after consultation with his "up-line management," that "[w]e cannot move forward with taking you directly from being on short term disability." This rejection, based directly on Mr. Tuvell's availment of disability leave as a reasonable accommodation, constitutes discrimination based on handicap, and is retaliation per se. Furthermore, the rejection is a separate and independent violation of Defendant's affirmative obligation to provide reassignment to a vacant position as a reasonable accommodation.

98. In the January 6, 2012 e-mail, Mr. Kime gave a secondary justification for rejection, suggesting that Mr. Tuvell might not be satisfied with the work available in the position. However, that alleged "concern" is pretextual, as Mr. Tuvell gave every indication that he would be satisfied with the work responsibilities of that position. For example, on December 9, 2011, Mr. Tuvell had written to Mr. Kime, "You gave me quite a good picture of what you're doing, and it feels very much like what I'd like/want to be doing." The second, pretextual reason given for rejection demonstrates that the true motive for the rejection was unlawful discrimination and/or retaliation, in violation of c. 151B and/or the ADA.

99. On January 10, 2012, Mr. Mantell e-mails Mr. Bliss, asserting that the rejection of Mr. Tuvell's application for reassignment constituted a retaliatory job action under the handicap discrimination laws, and that direct evidence proves the violation. This communication is protected under c. 151B and the ADA.

100. On January 11, 2012, Mr. Tuvell e-mails Mr. Feldman, complaining that his use of disability leave as a reasonable accommodation has been used to justify his rejection for reassignment, and that this action constitutes unlawful retaliation in violation of handicap discrimination law. Mr. Tuvell notes that the action appeared to foreclose the avenue that Mr. Feldman himself suggested on November 23, 2011 for seeking reassignment, and Mr. Tuvell requests other ideas for obtaining reasonable



accommodation. This communication constitutes protected opposition under c. 151B and the ADA, and likewise constitutes a request for reasonable accommodation.

101. On January 16, 2012, Mr. Feldman e-mails Mr. Tuvell, and provides Mr. Tuvell with a third, different reason for rejecting his application for reassignment. Mr. Feldman states that Mr. Tuvell was rejected because the “team” did not think that Mr. Tuvell was the “right fit for the position.” This intentionally vague and pretextual reason given for rejection demonstrates that the true motive for the rejection was unlawful discrimination and/or retaliation, in violation of c. 151B and/or the ADA. Mr. Feldman again rejected the idea of changing managers as a reasonable accommodation, and again asserted that Mr. Tuvell could himself look for other positions on GOM. The repeated suggestion that Mr. Tuvell use GOM to find for himself a potential reassignment, rather than IBM taking affirmative steps to find Mr. Tuvell a vacant position for reassignment, independently constitutes a separate violation of the duty to reasonably accommodate. Furthermore, Mr. Feldman’s proffer of a false explanation for the rejection constitutes continued harassment.

102. This paragraph purposefully left blank.

103. On January 18, 2012, Mr. Tuvell notes that Mr. Feldman’s assertion that Mr. Tuvell was not the “right fit” for the transfer is false and pretextual. Mr. Tuvell notes that the rejection was expressly, and unambiguously based on Mr. Tuvell’s avilment of STD leave, and notes that his avilment of disability leave was the reason behind other adverse actions taken against him, such as loss of system and building access, and delay in acting on Mr. Tuvell’s internal complaint. Mr. Tuvell’s communication is protected conduct under c. 151B and the ADA.

104. On January 19, 2012, Mr. Tuvell utilizes Ms. Adams’ assistance to review job opportunities on GOM. Again, Defendant fails to offer Mr. Tuvell any reassignment, in violation of its obligation to reasonably accommodate Mr. Tuvell’s disability.

105. On January 20, 2012, Mr. Feldman e-mails Mr. Tuvell, offering alleged, but clearly inadequate accommodations such as having a different person providing performance feedback, leave to go to doctor’s appointments, and the opportunity to continue using GOM. Mr. Feldman’s suggested accommodations are contrary to Mr. Tuvell’s medical certifications, and Mr. Tuvell’s repeated assertions that he needs to report to a different person as part of a reasonable accommodation.

106. On January 20, 2012, Tuvell e-mails Mr. Feldman, asserting that the accommodations Mr. Feldman proposed are insufficient, and notes that Mr. Feldman knew they were insufficient when they were proposed. Mr. Tuvell further notes that his continued mere access to the GOM process is insufficient as opposed to IBM’s obligation to actively provide reasonable accommodation, and that Defendant’s continued refusal to provide him with reasonable accommodation has forced him to apply for Long Term Disability (LTD). This communication is protected opposition to unlawful conduct, and a protected request for reasonable accommodation.

107. On January 20, 2012 and/or January 22, 2012, Mr. Tuvell files a second Open Door Complaint, relating to denial of transfer, and refusal to find him a new position as a reasonable accommodation. This communication is protected conduct under c. 151B and the ADA, and represents a continuing request for reasonable accommodation.

108. On January 23, 2012, Mr. Mantell e-mails Mr. Bliss, requesting that Mr. Tuvell be transferred to the open job posting SWG-0456125, which is the reposted version of SWG-0436579, noting that IBM is legally obligated, under its duty of reasonable accommodation, to do more than simply allow Mr. Tuvell to use GOM, and placing Defendant on notice that Mr. Tuvell is entitled to the requested reassignment under the ADA, citing to EEOC Guidance and cases. This communication constitutes protected opposition, as well as a protected request for reasonable accommodation.

109. On January 24, 2012, Mr. Bliss replies to Mr. Mantell, rejecting the request for reassignment. Mr. Bliss supports Defendant's failure to accord the reassignment as a reasonable accommodation by asserting, falsely, and contrary to Mr. Tuvell's medical documentation, that he was capable of performing his job in his current position under Mr. Feldman. The denial of the reassignment constitutes a violation of the duty to reasonably accommodate under c. 151B and the ADA. Furthermore, Mr. Bliss reasserts proposed accommodations that preserve work conditions that Mr. Tuvell and his health care provider have certified to be inconsistent with a return to work. The continued assertion of proposed accommodations that violate the terms of Mr. Tuvell's medical documentation and medical limitations, constitute a continued refusal to engage in a genuine interactive dialogue.

110. On or about January 25, 2012, Mr. Tuvell exhausts his STD benefits, and is transitioned to unpaid leave.

111. On January 25, 2012, Mr. Tuvell applies for job posting SWG-0456125, which is the reposted version of SWG-0436579. At this point, Mr. Tuvell is no longer on STD leave, thereby avoiding the reason that Mr. Kime initially used to reject him for the position.

112. On January 27, 2012, Mr. Mantell replies to Mr. Bliss' e-mail of January 24, 2012, stating that Mr. Tuvell is medically incapable of performing in his present position under his current supervisor, and that Mr. Tuvell and his health care provider have certified his medical incapacity. Mr. Mantell states that by according STD leave, IBM has explicitly recognized Mr. Tuvell's medical incapacity, which fact is inconsistent with Mr. Bliss' assertion to the contrary. Mr. Mantell also placed Mr. Bliss on notice that provision of a new supervisor may be a reasonable accommodation, but that in the absence of a new supervisor, Mr. Tuvell is seeking the only accommodation available, reassignment to a vacant position. Finally, Mr. Mantell placed Mr. Bliss on notice that the accommodations proposed by Defendant is inconsistent with Mr. Tuvell's medical limitations and medical certifications. This communication constituted protected conduct under c. 151B and the ADA.

113. On or about February 7, 2012, Mr. Tuvell applies for LTD benefits. Mr. Tuvell's application makes it clear that he is able to work if provided appropriate, non-harassing work conditions, within the limits of his medical certifications.

114. On February 8, 2012, Mr. Tuvell e-mails Mr. Feldman and Mr. Mandel, informing them of his LTD application, and attaching Stephanie Ross' addendum to the LTD certification. The Ross addendum confirms Mr. Tuvell's diagnosis of PTSD, and requests a reasonable accommodation of reassignment. Mr. Tuvell specifically requests prompt investigation and resolution of his January 2012 complaint, and prompt reassignment to SWG-0456125 as a reasonable accommodation. Mr. Tuvell places Defendant on notice of its legal obligation to accord him with reasonable accommodation, and the communication is protected conduct under c. 151B and the ADA.

115. On February 13, 2012, Mr. Mandel rejects Mr. Tuvell's January 2012 second Open Door Complaint based on the rejected reassignment, purportedly because of the "performance issues we discussed previously would present a problem to your success in the role to be filled." This fourth reason given for rejection is pretextual, which demonstrates that the true motive for the rejection was unlawful discrimination and/or retaliation, in violation of c. 151B and/or the ADA. This reason simply recalls the vague, false criticisms that Mr. Mandel asserted in the November 17, 2011 conversation, which were themselves knowingly pretextual, and were retaliatory per se in that the alleged criticisms were based on protected conduct.

116. On February 14, 2012, Mr. Tuvell requested a more substantive description of the alleged "performance issues" that formed the basis Mr. Mandel's fourth reason for rejection.

117. On February 15, 2012, Mr. John Metzger, manager over Mr. Knabe and Mr. Feldman, writes to Mr. Tuvell, holding open the option of having Mr. Tuvell return to his operational position under Mr. Feldman, though with Mr. Metzger in charge of formal performance evaluations. Apparently, Mr. Mandel's alleged performance issues preventing Mr. Tuvell's reassignment do not prevent Mr. Tuvell's return to his current job, thus further demonstrating that the fourth reason given for the rejection is pretextual. IBM's continued faux proposals of accommodations that are inconsistent with Mr. Tuvell's medical limitations and medical documentations represents both a failure to reasonable accommodate, and failure to engage in a bona fide interactive process.

118. On February 16, 2012, Mr. Tuvell replies to Mr. Metzger, asserting that Mr. Tuvell is medically incapable of returning to work under Mr. Feldman, and supports that position by attaching Ms. Ross' Addendum. This communication is protected as yet another request for reasonable accommodation.

119. On February 17, 2012, Mr. Mandel asserts a fifth and sixth reason for the rejection -- Mr. Tuvell's purported "inability to work cohesively with other members,"

and the “unprofessional conduct for which he was cited on July 5, 2011.” This fifth and sixth pretextual reason given for rejection demonstrates that the true motive for the rejection was unlawful discrimination and/or retaliation, in violation of c. 151B and/or the ADA.

120. On February 28, 2012, Mr. Mandel refuses to respond substantively to Mr. Tuvell’s request for a specific description of the reasons for his rejection of his application for reassignment. Mr. Mandel states that Mr. Tuvell’s January 22, 2012 complaint had been rejected as of February 17, 2012. Mr. Mandel alleges that the interactive process is still open, but that Mr. Tuvell had rejected the proposed accommodations “because they did not satisfy your particular demands.” Yet Mr. Mandel continues to refuse to propose any accommodation that is consistent with Mr. Tuvell’s medical limitations and supporting medical documentation.

121. On February 28, 2012, Mr. Tuvell responds to Mr. Mandel’s February 28 communication, again requesting specific reasons for his rejection for reassignment, and noting that Mr. Tuvell’s requests for reasonable accommodations is supported by medical documentation, and not simply by his “demands.”

122. On March 2, 2012, Tuvell files his third internal Open Door complaint of discrimination and retaliation with Mandel. This complaint constitutes protected conduct under G.L. c. 151B, § 4(4).

123. On March 6, 2012, Mr. Mandel accuses Mr. Tuvell of misusing IBM’s “systems” by e-mailing his complaints of discrimination and retaliation to members of his team. Mr. Tuvell’s e-mails constitute explicit opposition to IBM’s unlawful conduct, seeking help for himself and warning others of the conduct. Based on Mr. Mandel’s assertion of “abuse”, IBM removes Mr. Tuvell’s access to Lotus Notes. This false assertion of abuse and misuse of the systems constitutes harassment, and the rescission of access to Lotus Notes constitutes both a tangible job action and/or harassment based on retaliation. Direct evidence demonstrates that the unlawful conduct was directly based on Mr. Tuvell’s protected opposition.

124. On March 6, 2012, Mr. Tuvell writes to Mr. Mandel and objects to the withdrawal of access to Lotus Notes, complains that the recent action is retaliation, and denies that he had abused or misused IBM systems. Mr. Tuvell further asserts his willingness/efforts to engage in an interactive dialogue with respect to accommodating his disability. This communication constitutes protected activity.

125. On March 6, 2012, Mr. Tuvell discovers that he was not merely barred from Lotus Notes, but that his access to the whole of “w3” (IBM’s internal corporate network) is rescinded. Rescinding Lotus Notes involves restricting only e-mail, although e-mail access is still available by alternate means. Rescinding w3 access means that Mr. Tuvell has no access whatsoever to corporate documents, such as the employee handbook, no access to the employee database, and he can no longer access GOM, which impairs his ability to find new career opportunities within IBM. The restriction constitutes an

adverse action, and/or continuing harassment, and an abandonment of any effort to find Mr. Tuvell a reasonable accommodation.

126. On March 6, 2012, Mr. Tuvell e-mails Mr. Mandel, objecting to the withdrawal of access from w3 as retaliation, and objecting to Mr. Mandel's misleading communication of March 6, 2010, which indicated that only Lotus Notes was affected. This is protected communication.

127. On or about March 8, 2012, Mr. Tuvell discovers that his badge access to IBM facilities was rescinded, again.

128. On March 6, 2012, Mr. Tuvell e-mails Mr. Mandel, objecting to the withdrawal of access from w3 as retaliation, and objecting to Mandel's misleading communication of March 6, 2012, which indicated that only Lotus Notes was affected.

129. On March 9, 2012, Mr. Tuvell e-mails Addendum II of his new Complaint to Mr. Mandel, and to other recipients within IBM, which contains further complaints of discrimination and retaliation. This was a protected communication under G.L. c. 151B, § 4(4).

130. On March 12, 2012, Mr. Tuvell files his first charge of discrimination with the Massachusetts Commission Against Discrimination (MCAD). This is protected conduct under G.L. c. 151B, § 4(4).

131. On March 13, 2012, Mr. Mandel e-mails Mr. Tuvell, saying that Mr. Tuvell has been disruptive for e-mailing his Addendum II to certain other recipients, and if he continues to do so, he will be terminated. Mr. Mandel asserts that Mr. Tuvell's access to IBM systems was terminated due to his disruptive conduct. In actuality, Mr. Tuvell's circulation of Addendum II is protected conduct, and Mr. Mandel's response demonstrates retaliatory hostility towards such conduct.

132. On April 25, 2012, Ms. Adams informs Mr. Tuvell that given MetLife's denial of his request for LTD benefits, that IBM would keep him on an unpaid leave of absence while the appeal of the LTD denial is pending. Mr. Tuvell responds by confirming that he will appeal the LTD denial, requesting an update on the response to his complaint of March 2, 2012, and reasserting his longstanding request for reasonable accommodation via transfer or reassignment.

133. On May 3, 2012, Ms. Joan Ackerstein, Esq., lawyer for Defendant, writes to demand that Tuvell deny any working affiliation with EMC, and threatening to assume such affiliation in the absence of a denial. Mr. Mantell, attorney for Plaintiff, writes in response that Tuvell has done nothing that would lead IBM to conclude that Tuvell works for EMC.

134. On May 7, 2012, Ms. Adams writes to Mr. Tuvell, stating that IBM believes he is working for EMC in violation of IBM's Business Conduct Guidelines, and threatening termination unless he confirms that he is not working for EMC.

135. On May 8, 2012, Mr. Tuvell responds to Ms. Adams, objecting to the inference that he is violating IBM Guidelines, and inviting IBM to produce evidence of conflicting employment. Mr. Tuvell objects to IBM's accusations as defamatory and motivated by retaliation. Mr. Tuvell requests that his response be considered as his Fourth Open Door internal complaint alleging unlawful discrimination and retaliation.

136. On May 8, 2012, Ms. Adams responds to Mr. Tuvell's request, asserting that Tuvell's LinkedIn page indicates that he is currently working for EMC.

137. On May 8, 2012 Mr. Tuvell writes to Ms. Adams, asserting that he is not working for EMC, and stating that the LinkedIn page had been unintentionally or intentionally altered to include misstatements, by LinkedIn or some other party, and that he has not edited his LinkedIn page since 2009. Mr. Tuvell had once worked for EMC in previous years, as IBM knew. Mr. Tuvell complains that the continued harping on this subject constitutes further harassment.

138. Even after Mr. Tuvell affirms that he is not working for EMC, IBM generated a new set of inquiries, and on May 9, 2012, Ms. Adams informs Tuvell to identify where he is working during his unpaid, extended leave of absence with IBM.

139. On May 10, 2012, Mr. Tuvell informs Ms. Adams that he has been complying with his contractual obligations, but that he will not tell IBM where he is working, out of fear that IBM's retaliatory strategies will interfere with his gainful employment, just as it interfered with his attempts at internal transfer.

140. On May 11, 2012, Ms. Adams writes to Tuvell, asserting that IBM's Personal Leave of Absence Policy requires Mr. Tuvell to tell IBM if he is working while on leave, and that Mr. Tuvell is in violation of that policy. However, that policy is plainly inapplicable, as Mr. Tuvell is plainly not on Personal Leave.

141. On May 14, 2012, Mr. Tuvell responds to Ms. Adams, stating that [1] he is not on a Personal Leave of Absence, and the accusation that he is violating the Personal Leave of Absence policy is retaliatory; [2] that this hostile conduct should be added to Tuvell's pending Fourth Open Door internal complaint of discrimination and retaliation; [3] reiterating that Mr. Tuvell is not working for EMC, and consenting to an inquiry to EMC to confirm this fact; [4] confirming that Mr. Tuvell is not in a conflict of interest, and offering to respond to questions about his employment to satisfy IBM's concerns about a conflict. Mr. Tuvell notes that he will not reveal the employer's identity, as that will provide a way for IBM to sabotage him, that there is no policy requiring him to reveal the identity of his employer, and that he is willing to work through a trusted third party to ease any lingering concerns on the part of IBM. Mr. Tuvell also complains that the continued inquires constitute harassment.

142. On May 15, 2012, Ms. Adams instructs Mr. Tuvell to identify the company that he is now working for by 5:00 pm the next day.

143. On May 16, 2012, Mr. Tuvell responds to Ms. Adams, stating that there is no obligation that he reveal his other employer, that IBM has forced him to accept concurrent employment for financial reasons by its refusal to pay him and failure to engage in the interactive process, and that IBM's conduct has made him feel that it is not safe to reveal information about the other employer. Mr. Tuvell complains that the repeated demands for information constitute continuing harassment and retaliation. Mr. Tuvell reasserts his request that IBM resolve his two pending Open Door complaints (Third and Fourth), and for the reasonable accommodation of transfer, and states that if IBM responds acceptably, that he will reveal the identity of the other employer.

144. On May 17, 2012, at 7:33 am, Mr. Tuvell forwards to Mandel the May 16, 2012 e-mail, and asks that it be added to Mr. Tuvell's Fourth Open Door C&A internal complaint. The May 16 and 17, 2012 e-mails constitute protected conduct under G.L. c. 151B.

145. On May 17, 2012, at 4:59 pm, Mr. Feldman writes to Mr. Tuvell, stating that Mr. Tuvell is fired, effective immediately. As reasons for the termination, Feldman stated that Tuvell had not explained why his LinkedIn page indicated that he had been consulting for EMC for the past five years, and that he was unwilling to inform IBM where Tuvell was currently working. In fact, Mr. Tuvell had explained that his LinkedIn page had been altered by LinkedIn and/or someone else, and he had explained that he did not feel safe informing IBM of his current employment due to IBM's harassing conduct.

146. In his May 17, 2012 e-mail, Mr. Feldman instructs Mr. Tuvell not to delete information from his laptop, supply all passwords to the laptop, and to make it available for pick-up by a courier. These demands about the data deletion and passwords are not usual practice, and represent retaliation or retaliatory harassment. (However, Mr. Tuvell had already sanitized his laptop the preceding Saturday, May 12, pursuant to standard usual and customary practice at Netezza/IBM.)

147. On May 22, 2012, Mr. Stephen Frazier, a consultant from the computer forensics company, AccessData, picks up the computer and two power supplies from Mr. Tuvell. On information and belief, the review of employees', or former employees' computers for forensic investigation is contrary to IBM's usual practice or policy, and constitutes a retaliatory investigation and/or retaliatory harassment.

COUNT I – FAILURE TO ENGAGE IN INTERACTIVE PROCESS – ADA AND  
CHAPTER 151B, §§ 4(16), 4(4A)

148. Plaintiff incorporates by reference all of the preceding allegations.

149. Plaintiff repeatedly asserted himself to be a qualified handicapped individual in need of reasonable accommodation, repeatedly asserted a medical inability to continue working in his present position under Mr. Feldman, and repeatedly submitted medical documentation in support of workplace conditions that would allow him to work despite those medical limitations.

150. Despite the provision of this information, Defendant failed to provide or to propose reasonable accommodations that were consistent with the medical limitations, of which it was aware.

151. When Plaintiff repeatedly made the point that the accommodations suggested by Defendant were inconsistent with his medical limitations, Defendant refused to respond with any substance. Moreover, Defendant never questioned or disputed Mr. Tuvell's self-described medical limitations, or Mr. Tuvell's supporting medical documentation in any substantive fashion, and never requested any further information concerning Mr. Tuvell's medical condition, or ability to work within various accommodations.

152. Consequently, Defendant failed to engage in the interactive process.

153. As a result of Defendant's misconduct, Mr. Tuvell suffered lost wages and benefits, lost reputation and career opportunities, and experienced physical and mental suffering for which he seeks compensation.

COUNT II – FAILURE TO REASONABLY ACCOMMODATE PLAINTIFF – ADA  
AND CHAPTER 151B, §§ 4(16), 4(4A)

154. Plaintiff incorporates by reference all of the preceding allegations.

155. Plaintiff is an otherwise qualified handicapped individual who requires reasonable accommodation to perform his job.

156. On occasions described above and on other occasions, Plaintiff asserted himself to be a qualified handicapped individual in need of reasonable accommodation, repeatedly asserted a medical inability to continue working in his present position under Mr. Feldman, and repeatedly submitted medical documentation in support of workplace conditions that would allow him to work despite those medical limitations.

157. IBM's own written policies acknowledge the option of removing a supervisor from a situation when a supervisor has engaged in misconduct.

158. Defendant engaged in a continued practice of refusing to accord Plaintiff with reasonable accommodations, such as reassignment to a vacant position, or assignment to a different supervisor, or other accommodation whereby Mr. Tuvell would be separated from Mr. Feldman.



159. All alleged accommodations suggested by Defendant required Mr. Tuvell to continue under the day-to-day supervision of Mr. Feldman, which was contrary to medical limitations and medical documentation known to Defendant.

160. Defendant failed to engage in a bona fide interactive process, and refused to directly confront and address the medical limitations and documentation that they were provided. Defendant restricted Mr. Tuvell from access to its internal listings of career opportunities, and misleadingly suggested that he apply for jobs for which it had no intention of hiring him.

161. Instead of providing requested and required reasonable accommodation, Defendant forced Plaintiff to go out on short term disability leave, and then on unpaid leave, causing economic damages and harm to Plaintiff's professional career, and preventing him an equal opportunity to participate in the workplace, as well as physical and emotional pain and suffering.

162. As a result of Defendant's misconduct, Mr. Tuvell suffered lost wages and benefits, lost reputation and career opportunities, and experienced physical and mental suffering for which he seeks compensation.

COUNT III – FAILURE TO ASSIST IN HELPING MR. TUVELL OBTAIN THE  
REASONABLE ACCOMMODATION OF REASSIGNMENT TO A VACANT  
POSITION FOR WHICH HE IS QUALIFIED – ADA AND CHAPTER 151B, §§ 4(16),  
4(4A)

163. Plaintiff incorporates by reference all of the preceding allegations.

164. While Defendant held out the potentiality of reassignment to a vacant position as a possible reasonable accommodation, Defendant made no effort beyond merely permitting Mr. Tuvell to apply for positions through the Global Opportunity Management (GOM) process, which was open and available to all IBM employees.

165. Merely making the GOM process available to Mr. Tuvell, and allowing him to apply for jobs on the same level playing field as any other IBM employee, was insufficient to satisfy Defendant's duty to affirmatively discover and offer Mr. Tuvell reassignment to a vacant position for which he qualified. Defendant should have affirmatively searched its inventory of open positions for which Mr. Tuvell qualified, and offered Mr. Tuvell such positions. Defendant wholly failed in its obligation to do so.

166. Defendant violated 42 U.S.C. section 12111(9)(B) in requiring Mr. Tuvell to undertake the GOM process to seek reassignment, and by refusing to take steps to locate open positions for which Mr. Tuvell qualified, and failing to offer Mr. Tuvell such positions.

167. As a result of Defendant's misconduct, Mr. Tuvell suffered lost wages and benefits, lost reputation and career opportunities, and experienced physical and mental suffering for which he seeks compensation.

COUNT IV – FAILURE TO REASSIGN PLAINTIFF TO OPEN JOB POSTINGS  
SWG-0456125 AND SWG-0436579 – ADA AND CHAPTER 151B, §§ 4(16), 4(4A)

168. Plaintiff incorporates by reference all of the preceding allegations.

169. Given the information available to Defendant, and given Defendant's refusal to accord the reasonable accommodation of having Mr. Tuvell separated from Mr. Feldman while continuing to work in Mr. Tuvell's current position, Defendant was obligated to provide the reasonable accommodation of reassigning Mr. Tuvell to a vacant position. Reassignment was the only viable alternative reassignment that preserved Mr. Tuvell's equality and career opportunities in the workplace.

170. Using the GOM process, Mr. Tuvell found positions for which he qualified, in open requisitions SWG-0456125 and SWG-0436579 (which are apparently both for the same position). Mr. Tuvell interviewed for the first posting, the interview was positive and Mr. Tuvell was deemed qualified by those charged with filling the position. IBM failed to provide Mr. Tuvell the reassignment to which he was entitled.

171. The position(s) remain unfilled, and so it is not the case that Mr. Tuvell was rejected in favor of a superior candidate.

172. Defendant violated 42 U.S.C. section 12111(9)(B) in refusing to provide these reassignments to vacant positions for which Mr. Tuvell is qualified.

173. As a result of Defendant's misconduct, Mr. Tuvell suffered lost wages and benefits, lost reputation and career opportunities, and experienced physical and mental suffering for which he seeks compensation.

COUNT V – FAILURE TO REASSIGN PLAINTIFF TO OPEN JOB POSTINGS SWG-  
0456125 AND SWG-0436579 ON THE BASIS OF HANDICAP DISCRIMINATION,  
RETALIATION FOR AVAILING HIMSELF OF THE REASONABLE  
ACCOMMODATION OF MEDICAL LEAVE, RETALIATION FOR ENGAGING IN  
OTHER PROTECTED CONDUCT, RACE, GENDER, AGE AND/OR ANY  
COMBINATION THEREOF – ADA AND CHAPTER 151B, §§ 4(16), 4(4A)

174. Plaintiff incorporates by reference all of the preceding allegations.

175. Mr. Tuvell applied for, and was qualified for open job posting SWG-0456125.

176. On January 6, 2012, Mr. Tuvell was rejected for the position, on the grounds that "I underestimated the difficulty of moving forward with bringing you to the team. We cannot move forward with taking you directly from being on short term disability – this

will receive very close scrutiny from the operations people in our organization.” See Exhibit 1. This rejection, based expressly on Mr. Tuvell’s avilment of disability leave as a reasonable accommodation, constitutes overt discrimination based on handicap and is retaliation per se.

177. Defendant had additionally, on other occasions, subjected Mr. Tuvell to disadvantage based on his avilment of disability leave, including without limitations disabling Mr. Tuvell’s access to IBM facilities, limiting his computer access, and refusing to progress and finalize review of Mr. Tuvell’s internal complaint, all explicitly because Mr. Tuvell was on disability leave. Furthermore, Defendant had penalized Mr. Tuvell for working at home due to his disability, by requiring to use up sick leave on those days.

178. On January 6, 2012 and subsequent occasions, Defendant provided a variety of shifting, false, and pretextual reasons for the rejection, demonstrating that the true reason(s) for rejection are discrimination and/or retaliation.

179. Mr. Tuvell was rejected for SWG-0456125 on the basis of retaliation for availing himself of the reasonable accommodation of disability leave, retaliation for taking other actions protected by the ADA and c. 151B, handicap, race, gender, age and/or any combination thereof.

180. Later, Mr. Tuvell applied for posting SWG-0436579, which apparently is the same job position. On February 28, 2012, Mr. Mandel informed Mr. Tuvell that he had been rejected for this posting for the same reasons that he had been rejected for SWG-0456125.

181. Mr. Tuvell was rejected for SWG-0436579 on the basis of retaliation for availing himself of the reasonable accommodation of disability leave, retaliation for taking other actions protected by the ADA and c. 151B, handicap, race, gender, age and/or any combination thereof.

182. As a result of Defendant’s misconduct, Mr. Tuvell suffered lost wages and benefits, lost reputation and career opportunities, and experienced physical and mental suffering for which he seeks compensation.

COUNT VI – TANGIBLE JOB ACTIONS ON ACCOUNT OF HANDICAP,  
RETALIATION, GENDER, RACE, AGE AND/OR ANY COMBINATION THEREOF  
– ADA AND CHAPTER 151B, §§ 4(16), 4(4A)

183. Plaintiff incorporates by reference all of the preceding allegations.

184. In addition to the acts described in the above counts, Defendant engaged in various other tangible job actions in violation of c. 151B and the ADA.

185. Defendant demoted Mr. Tuvell within the Performance Architecture Group because of his handicap, race, gender, age and/or any combination thereof.

186. Mr. Feldman instructed Mr. Tuvell not to communicate with Mr. Feldman outside the presence of Human Resource representatives, because of his handicap, retaliation, race, gender, age and/or any combination thereof.

187. Defendant [1] issued Mr. Tuvell a Formal Warning Letter; [2] forced Mr. Tuvell out on a disability leave instead of accommodating him or preventing continued mistreatment (resulting in reduced compensation, and later, cessation of compensation); [3] curtailed Mr. Tuvell's computer access; [4] curtailed Mr. Tuvell's access from IBM facilities; [5] refused to finalize the investigation of Mr. Tuvell's internal complaint; [6] treated work-at-home days as sick days; [7] delayed investigating Mr. Tuvell's complaints; [8] refused to permit Mr. Tuvell to cut short his disability leave in order to avail himself of vacation benefits; [9] curtailed Mr. Tuvell's access to Lotus Notes (his ability to communicate by e-mail to IBM co-workers); [10] curtailed Mr. Tuvell's VPN access to IBM's internal w3 network (cutting off his ability to search IBM's internal listings, locate IBM peers, and review IBM internal documents and policies); [11] threatened Mr. Tuvell with termination for forwarding protected complaints to others within IBM; [12] repeatedly demanded that Mr. Tuvell reveal where he was working during the forced unpaid leave, despite the absence of a policy or contract clause requiring him to reveal such information; [13] threatened Mr. Tuvell with termination for failing to confirm whether he was employed at EMC; [14] threatened Mr. Tuvell with termination for failing to tell IBM where he was working; [15] falsely accused Tuvell of violating the Personal Leave of Absence policy; and [16] fired Tuvell.

188. Each of these actions, either singly or in combination, constitute tangible job actions that were undertaken based on handicap, retaliation, race, gender, age and/or any combination thereof, in violation of c. 151B and the ADA.

189. As a result of Defendant's misconduct, Mr. Tuvell suffered lost wages and benefits, lost reputation and career opportunities, and experienced physical and mental suffering for which he seeks compensation.

COUNT VII – HARASSMENT ON THE BASIS OF HANDICAP, RETALIATION,  
RACE, GENDER, AGE AND/OR ANY COMBINATION THEREOF – CHAPTER  
151B, §§ 4(1), 4(4), 4(4A), 4(16) AND THE ADA

190. Plaintiff incorporates by reference all of the preceding allegations.

191. The prior Count lists tangible actions, each of which in isolation supports liability. However, even if those acts are not considered tangible job actions, and even if they are, they helped to form a hostile work environment, and/or, in combination, constitute one or more actionable adverse actions.

192. The harassing conduct is too voluminous to identify in its entirety in the Complaint, but much of it is described above. Defendant created a hostile work environment by victimizing Plaintiff through a series of tangible and/or non-tangible harassing acts, because of his handicap, retaliation for engaging in protected conduct, race, gender, age and/or any combination thereof.

193. Defendant failed in its ADA, c. 151B and contractual obligations to investigate and remediate and unlawful work environment brought to their attention.

194. As a result of Defendant's misconduct, Mr. Tuvell suffered lost wages and benefits, lost reputation and career opportunities, and experienced physical and mental suffering for which he seeks compensation.

COUNT VIII – FAILURE TO INVESTIGATE AND REMEDIATE HARASSMENT  
ON THE BASIS OF HANDICAP, RETALIATION, RACE, GENDER, AGE AND/OR  
ANY COMBINATION THEREOF – CHAPTER 151B, §§ 4(1), 4(4), 4(4A), 4(16) AND  
THE ADA

195. Plaintiff incorporates by reference all of the preceding allegations.

196. Once Mr. Tuvell brought unlawful harassment and/or tangible job actions resulting in a hostile work environment to the attention of IBM and its agents, Defendant had the obligation to fully and fairly investigate and remediate the situation.

197. Sometimes, Defendant failed to even acknowledge Mr. Tuvell's complaints of discrimination and/or retaliation, which reflects Defendant's contempt for the complaint process and its obligation to comply with the discrimination laws, and reflects a practice that would dissuade a reasonable person from complaining.

198. Defendant continued its campaign of refusing to progress and/or resolve Plaintiff's pending internal complaints of harassment, and failed to adequately remedy the conduct, and permitted it to continue unabated. In the instances in which it did act, Defendant instead conducted biased, inadequate and deferential sham investigations and failed to cure or remediate the misconduct brought to their attention.

199. As a result of Defendant's misconduct, Mr. Tuvell suffered lost wages and benefits, lost reputation and career opportunities, and experienced physical and mental suffering for which he seeks compensation.

WHEREFORE, Plaintiff requests:

- a. that the Defendant compensate Plaintiff for any loss of wages and/or benefits, including back pay and front pay;
- b. that the Plaintiff be awarded an amount of money which will fairly compensate his emotional and physical pain and suffering;
- c. that the Plaintiff be compensated for loss of reputation and loss of career opportunities, caused by Defendant's conduct.
- d. that the Plaintiff be awarded attorney's fees and costs.
- e. that the Plaintiff be awarded punitive and/or multiplied damages.
- f. that the Defendant pay the Plaintiff pre- and post-judgment interest;
- g. that the Plaintiff be reinstated to his position, or to a different position at IBM for which he qualifies, under conditions that are consistent with his medical limitations, and otherwise be made whole;
- h. equitable relief to prevent future misconduct;
- i. that Plaintiff's personnel file should be expunged of improper, harassing criticisms of his work performance;
- j. any other relief as may be just and proper and/or which will make the Plaintiff whole.

Respectfully submitted,

The Plaintiff,  
By his Attorneys

/s/ Robert S. Mantell  
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**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing on June 6, 2013

/s/ Robert S. Mantell  
Rodgers, Powers & Schwartz LLP

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