COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION and ANDY NOM Complainants	)	
v.	)	DOCKET NO. 18-WEM-02229
ACTON AUTO BODY, SONIA TRINH, JOSE MOURATO Respondents	)	

Appearances: Adam J. Rooks, Esq. and Matthew J. Fogelman, Esq. for Complainants
Saul Benowitz, Esq. for Respondents

DECISION OF THE HEARING OFFICER

I. INTRODUCTION

On August 1, 2018, Complainant, Andy Nom filed a complaint with the Massachusetts Commission Against Discrimination ("MCAD" or "Commission") charging Respondents, Acton Auto Body, Sonia Trinh, Jose Mourato (collectively referred to as "the three respondents") and Victor Azul, with national origin discrimination, race discrimination and retaliation. [1] On December 7, 2023, the Investigating Commissioner certified issues to public hearing, described in consolidated form as: (1) Whether any of the three respondents are liable for discrimination against Complainant in violation of M.G.L. c. 151B, § 4(1) based on race and/or national origin harassment in the form of a hostile work environment; (2) Whether any of the three respondents are liable for retaliation in violation of M.G.L. c. 151B, § 4(4) for taking one or more adverse actions against Complainant, including terminating his employment, after he engaged in

[1] The Certification Order states that Victor Azul was removed from the case via a withdrawal notice from Complainant signed by his counsel on March 15, 2022.

protected activity; (3) Whether any of the three respondents are liable for coercing, intimidating, threatening, or interfering with Complainant in the exercise of his right to be free from a hostile work environment and retaliation in violation of M.G.L. c. 151B, § 4(4A); (4) Whether any of the three respondents are liable for aiding, abetting, inciting, or compelling a hostile work environment or retaliation, or attempting to do so, in violation of M.G.L. c. 151B, § 4(5); and (5) If it is determined that Complainant was subjected to discrimination and/or retaliation, to what extent did Complainant suffer damages as a result of that discrimination and/or retaliation.

On May 7, 2024, I conducted a public hearing ("hearing"). Four witnesses testified: Andy Nom, Sonia Trinh, Jose Mourato and Evgeny Dobkin. Eleven exhibits were entered into evidence. The written transcript is the official record. On July 1, 2024, counsel for the three respondents filed a post-hearing brief and on July 8, 2024, counsel for Mr. Nom filed a post-hearing brief. Unless stated otherwise, where testimony is cited, I find the testimony credible and reliable, and where an exhibit is cited, I find it reliable to the extent it is cited. Having reviewed the record of the proceedings, I make the following Findings of Fact and Conclusions of Law.

II. FINDINGS OF FACT

1. The Complainant, Andy Sareat Nom ("Mr. Nom"), was born in Cambodia and speaks Khmer and English.[2] Tr. 43 (Nom).
2. In 1992, Mr. Nom graduated from Lynn Classical High School in Lynn, Massachusetts and since graduation, has had no further formal education. Since graduation from high school, Mr. Nom has attended the following trainings. On March 22, 2013, Mr. Nom received a

[2] There is a transcript of the public hearing ("Tr."). Citations to the transcript include "Tr." and the page number(s) of the transcript and name of the individual testifying, e.g. Tr. 30 (Nom). Citations to exhibits include the exhibit number and if applicable, the associated pages in the exhibit – e.g. Exhibit 5; Exhibit 3 at 21.

certificate from Universal Technical Institute reflecting satisfactory completion of a program called Diesel and Industrial Technology ("Universal Tech Certificate"). On April 27, 2016, Mr. Nom received a Certificate of Completion from Car-o-liner in Basic Training in Computerized Measurements at New England Collision Equipment Center ("Computerized Measurements Certification"). Tr. 44-45, 89, 105 (Nom); Exhibit 10.

3. Since 1997 or 1998, Mr. Nom has worked as an auto body technician. Tr. 44 (Nom).
4. Acton Auto Body ("AAB"), which is located at 135 Great Road, Acton, Massachusetts, is an auto body repair shop that offers services such as major and minor body work, painting, detailing, dent repairs and part replacement. Tr. 85-86, 105 (Nom), 253 (Dobkin). AAB is co-owned by Sonia Trinh ("Ms. Trinh") and her father, Jose Mourato ("Mr. Mourato"). Tr. 112 (Nom).
5. Ms. Trinh is Portuguese, lived in Portugal until she was 9 years old and speaks English and Portuguese. Tr. 108 (Nom).
6. Ms. Trinh's husband and children are Vietnamese. Tr. 109 (Trinh).
7. Mr. Mourato is Portuguese, speaks Portuguese as his first language and English as his second, and from 1994 to the time of hearing, co-owned and operated Arlington Center Auto Body ("Arlington Center") with his brother, Mario Mourato ("Mario"). Mario was the full-time framer at Arlington Center. Tr. 108 (Trinh), Tr. 178 (Mourato).
8. In 2017, Ms. Trinh was the manager of AAB and Arlington Center, which is located at 4 Swan Place, Arlington, Massachusetts. In 2017, Ms. Trinh's duties as manager of AAB included delegating work on the vehicles to the auto body technicians, ordering supplies, reviewing appraisals, doing payroll and managing day-to-day operations. In 2017, Ms. Trinh divided her time equally between managing AAB and Arlington Center. Tr. 106-113 (Trinh).

9. Ms. Trinh and Mr. Mourato interviewed and hired Mr. Nom for a Body Technician position ("Body Tech") at AAB. Tr. 113-114 (Trinh). In the application for employment at AAB, Mr. Nom identified his receipt of the Universal Tech Certificate but did not identify or provide AAB with the Computerized Measurements Certification. Tr. 114 (Trinh); Exhibit 2. Mr. Nom's responsibilities as a Body Tech at AAB included repairing damage such as small dents to automobiles and doing "remove and reinstall" work. Tr. 47, 78, 85 (Nom), Tr. 114 (Trinh).
10. In August 2016, Mr. Nom started working for AAB. Ms. Trinh found Mr. Nom's work performance to be good. Tr. 85 (Nom), Tr. 114-115 (Trinh).
11. In 2016 and 2017, Mr. Nom lived in Lowell, Massachusetts, and his commute from his home to AAB was approximately 30 minutes in each direction. Tr. 44 (Nom).
12. Immediately before working for AAB, Mr. Nom worked for approximately one year as an auto body technician for Ira Toyota, which was located in Danvers, Massachusetts, and required Mr. Nom to commute for 50 minutes in each direction from his home to work. Tr. 78, 89, 102 (Nom).
13. From June 1, 2017 to October 7, 2017, AAB paid Mr. Nom an hourly rate and Mr. Nom typically worked 40 hours per week. Tr. 69 (Nom). Mr. Nom generally earned $797 weekly, or $159.40 per day. Exhibits 1, 4.
14. Mr. Nom's supervisor at AAB was Eugene (Evgeny) Dobkin ("Mr. Dobkin"). Mr. Dobkin was employed as an appraiser and production manager at AAB. Tr. 48-49 (Nom), Tr. 156 (Trinh), Tr. 251-252 (Dobkin).
15. In 2017, AAB employed seven individuals: (1) Mr. Nom (Cambodian); (2) Victor Azul (Portuguese); (3) Mr. Dobkin (Russian); (4) Lester L/N/U (Guatemalan); (5) Lindsey L/N/U

(Caucasian and American); (6) Jonathan L/N/U (Mexican); and (7) Hugo L/N/U (Spanish speaking, nationality not in the record). In addition, Mr. Mourato and Ms. Trinh were co-owners who worked at AAB. Tr. 156-157 (Trinh).

16. In 2016 and 2017, Victor Azul ("Mr. Azul") was employed at AAB as a full-time frame worker. Mr. Azul speaks English and Portuguese and had between 35-40 years' experience as a frame worker. Tr. 47-49 (Nom), Tr. 116-117 (Trinh), Tr. 204 (Mourato).

17. Prior to hiring Mr. Azul, Ms. Trinh and Mr. Mourato did not know him. They observed Mr. Azul's work at AAB and believed that he did "great work" and was a "great frame guy." Tr. 115-116 (Trinh), Tr. 205 (Mourato).

18. Mr. Azul was Mr. Nom's co-worker and was paid on a salaried basis. AAB pays its framers more than its body techs, and Mr. Azul was paid more than Mr. Nom. Tr. 61 (Nom), Tr. 187 (Trinh).

19. In 2017, AAB was located in two buildings which were approximately 15 feet apart and separated by a two-way driveway: the first building had an office and a large area where vehicles were repaired and painted ("the First Building"); the second building contained the frame machine and was where the framework was done ("the Framing Building"). Mr. Nom worked in the First Building; Mr. Azul worked in the Framing Building. Tr. 47-49, 55 (Nom), Tr. 256 (Dobkin).

20. In 2017, AAB had policies posted on the board in the break room which stated, in relevant part, that it is illegal to discriminate against an individual on the basis of race and national origin, and to retaliate against any person because he has opposed any practices forbidden under the fair employment laws of Massachusetts or because the individual has filed a complaint, testified or assisted in an MCAD proceeding. Tr. 154 (Trinh); Exhibit 8.

AAB's Body Tech Position and Frame Worker Position

21. The frame machine at AAB is a big piece of machinery that structurally pulls vehicles back to specification. Some auto body shops use a computerized frame machine that measures the vehicle with lasers, which are hooked up to a computer, and measure the frame of the vehicle. The frame machine used by AAB is manual. Tr. 96 (Nom), Tr. 164 (Trinh), Tr. 254 (Dobkin). A manual frame machine requires that the frame machine operator roll the vehicle onto a large metal flat board and use pegs on the structure of the vehicle to hook the frame of the vehicle to chains on the frame machine. The frame machine operator then uses a manual measuring system -- "almost like a tape measure" -- to measure the vehicle. The frame machine operator then hooks the vehicle to heavy pillars to pull the vehicle into place. If the machine is not attached properly and the "chain comes back, it is extremely dangerous." Tr. 165 (Trinh), Tr. 207 (Mourato), Tr. 254 (Dobkin). Using the frame machine can be dangerous and "entails a lot." Tr. 114 (Trinh), Tr. 207 (Mourato). Arlington Center also has a manual frame machine. Tr. 179 (Trinh).
22. Minor body work -- referred to as "a pull" -- is not "framework" as described in Paragraph 21. An example of minor body work would include a bumper replacement where the Body Tech would slightly pull back the structure of a car, put chains on it and pull it from the floor. This process does not require the use of the frame machine. Tr. 115, 163 (Trinh).
23. During his employment at AAB, Mr. Nom did not perform framework, but did conduct minor body work on three or four occasions. I base this on the following: First, I credit Ms. Trinh and Mr. Dobkin's testimony that Mr. Nom was never assigned framework with the framing machine at AAB. Tr. 114 (Trinh), Tr. 256-258 (Dobkin). Second, Mr. Nom had undergone no formal training to do framework with a manual framing machine. While Mr.

Nom received a Computerized Measurements Certification in 2016, that training did not train him to use a manual framing machine, such as the one at AAB or Arlington Center. Tr. 86-87, 114 (Nom); Exhibit 2. Third, I credit Mr. Dobkin's testimony that using the manual framing machine required experience and training which Mr. Nom did not possess. Tr. 254-263 (Dobkin). Fourth, Mr. Nom did not identify framework as a skill on his application to AAB, from which I infer that the position he applied and was hired for -- Body Tech -- was the position he performed full-time at AAB. Exhibit 2.

September 29, 2017

24. On September 29, 2017, Mr. Nom walked into the Framing Building to get a part that he needed. Mr. Azul and Mr. Nom were the only people in the Framing Building. Mr. Azul said to Mr. Nom, "Get your fuck face off my plate before I choke you to death." Mr. Azul called Mr. Nom "ching-chong" which I infer is a derogatory slur based on national origin and race. Mr. Azul followed Mr. Nom outside of the building and yelled at him.[3] Tr. 51-54 (Nom). This incident is referred to as the "September 2017 Incident."

25. During the September 2017 Incident, Mr. Nom did not respond to Mr. Azul's threats or slur, nor did he threaten Mr. Azul. Tr. 53 (Nom).

26. After the September 2017 Incident, Mr. Nom's co-worker, Jonathan, asked Mr. Nom what happened. Mr. Nom did not respond to Jonathan. Tr. 54-56 (Nom).

27. Mr. Nom felt threatened by Mr. Azul and returned to the bay in which he was working. Tr. 54-56 (Nom).

[3] Mr. Nom did not testify as to what Mr. Azul yelled when they were outside of the Framing Building, nor did he testify as to whether the comments Mr. Azul made ("Get your fuck face off my plate before I choke you to death" and "ching-chong") were made in the Framing Building or as they were walking out of the Framing Building. Regarding the comment "get ... off [his] plate," I infer that this was a reference to the framing machine in the Framing Building and that this comment was made in the Framing Building.

28. Mr. Nom told Mr. Dobkin that he had an argument with Mr. Azul and that he was going home. Tr. 119 (Nom), Tr. 259 (Dobkin). Mr. Nom did not tell Mr. Dobkin that Mr. Azul had called him an offensive slur or threatened to kill or choke him. Tr. 268 (Dobkin).

29. Mr. Dobkin told Mr. Nom to go home and then told Ms. Trinh that Mr. Nom said that he had an argument with Mr. Azul. Tr. 260 (Dobkin).

30. On September 29, 2017, Mr. Nom went to Ms. Trinh's office at AAB and told Ms. Trinh that he wanted to have a meeting about Mr. Azul harassing him. Tr. 52, 56 (Nom).

31. There were no complaint forms for Mr. Nom to complete at that time. Tr. 56 (Nom). The record was not clear as to whether Mr. Nom informed Ms. Trinh of the racial slur and threat on September 29, 2017. Tr. 59 (Nom), Tr. 119-124 (Trinh).

32. On September 29, 2017, Ms. Trinh told Mr. Nom that Mr. Mourato was not working in the shop and Ms. Trinh and Mr. Nom agreed to meet the following Monday, October 2, 2017. Tr. 57 (Nom), Tr. 121 (Trinh).

33. Mr. Nom spoke with a coworker, Hugo, who asked him what happened. Tr. 59 (Nom). Mr. Nom told Hugo that Mr. Azul "just screamed at [him]" and in response, Hugo told Mr. Nom that Mr. Azul had screamed at Jonathan in the past. Tr. 58-59 (Nom).

34. At the time that Mr. Nom informed Ms. Trinh of the September 2017 Incident, Mr. Azul had gone home for the day. Tr. 122 (Trinh).

Mr. Azul and Mr. Nom's Work Relationship Prior to the September 2017 Incident

35. Before the September 2017 Incident, Mr. Nom had not reported any harassing conduct by Mr. Azul, nor did he inform Mr. Dobkin, Ms. Trinh or Mr. Mourato that he had interpersonal issues or conflicts with Mr. Azul. Tr. 50-51 (Nom), Tr. 233 (Mourato), Tr. 259-260 (Dobkin).

36. Other than the complaint made by Mr. Nom on September 29, 2017, and thereafter regarding the September 2017 Incident, neither Ms. Trinh nor Mr. Dobkin ever received a complaint from anyone that Mr. Azul was aggressive or harassing toward individuals. Tr. 116 (Trinh), Tr. 260 (Dobkin). On occasion, Mr. Azul had arguments with coworkers at AAB and with Mr. Dobkin. Tr. 271 (Dobkin).

37. With the exception of the present case, AAB has never received a complaint of racial or national origin discrimination. Tr. 220 (Mourato).

38. Prior to the September 2017 Incident, Mr. Nom and Mr. Azul had conflict in the workplace, such as Mr. Azul refusing to allow Mr. Nom into the Framing Building. Tr. 83-84 (Nom); Exhibit 9. I credit Mr. Nom's testimony that the only harassing comments Mr. Azul used towards Mr. Nom were those Mr. Azul used on September 29, 2017, while noting that on October 2, 2017, Mr. Nom reported to the Acton Police that Mr. Azul "threatened him and harassed him on several occasions." Tr. 84 (Nom); Exhibit 9. Without testimony as to the nature of the threats and harassment Mr. Nom reported to the Acton Police, I cannot assume that this refers to racist or xenophobic statements. In addition, the October 2 Form (see below) filled out by Mr. Nom does not indicate that Mr. Nom had been subjected to harassment from Mr. Azul prior to September 29, 2017. Exhibit 5. Based on the record, I find that Mr. Azul did not make racist or xenophobic statements to Mr. Nom prior to the September 2017 Incident.

October 2, 2017

39. On Monday, October 2, 2017, Mr. Nom brought his sister, Tina Gervais ("Ms. Gervais"), to the meeting with Ms. Trinh ("October 2 Meeting") to serve as a "witness." Mr. Mourato arrived late to the meeting. Tr. 59-60 (Nom).

40. During the October 2 Meeting, Mr. Nom told Ms. Trinh that Mr. Azul threatened to choke him and called him "ching-chong." Mr. Nom told Ms. Trinh that this "ha[d] to stop" and that he could not work "with people like this." Mr. Mourato was informed during the October 2 Meeting that Mr. Azul called Mr. Nom a racial slur on September 29, 2017. Tr. 60 (Nom), Tr. 233-234 (Mourato).

41. Mr. Nom told Ms. Trinh that only Mr. Azul and himself were involved in the September 2017 Incident. Tr. 134 (Nom). Mr. Nom did not tell Ms. Trinh or the Acton Police, who took a report from Mr. Nom that same day, that he spoke with Hugo or Jonathan about the September 2017 Incident or that they observed anything relevant to the September 2017 Incident. Tr. 99-100 (Nom); Exhibit 9.

42. During the October 2 Meeting, Ms. Gervais did most of the talking and repeatedly said that Ms. Trinh needed to take care of this and that if she did not, Ms. Trinh would "pay for it." Ms. Gervais and Mr. Nom were upset. Ms. Gervais argued with Ms. Trinh and "things escalated really quickly." Tr. 94-95 (Nom). Ms. Gervais told Ms. Trinh that Ms. Gervais worked with a big law firm and that Ms. Trinh was "going to pay for what has happened to her brother." Ms. Gervais also told Ms. Trinh that she is married into the Gervais family, that they own a big auto dealership in Lowell and that "this wasn't going to be the end of it." Tr. 158-159 (Trinh). Ms. Gervais "raised her voice and started screaming and getting loud." Ms. Trinh asked Ms. Gervais to leave the office and "it just kept getting worse." Ms. Trinh then said, "I am going to have to ask you to leave and I am going to call the cops." Tr. 177 (Trinh).

43. After Mr. Nom informed Ms. Trinh of the September 2017 Incident, Mr. Nom was never again subjected to any sort of harassment or any sort of racial slurs "or anything like that." Tr. 91-92 (Nom).

Acton Police Involvement

44. On October 2, 2017, Mr. Nom contacted the Acton Police and reported that Mr. Azul had harassed him. Tr. 62 (Nom); Exhibit 9. Ms. Trinh also called the Acton Police on October 2, 2017. Tr. 128 (Trinh).

45. At or about 1:30 p.m. on October 2, 2017, the Acton Police Department arrived at AAB. Mr. Nom and Ms. Gervais reported to the Acton Police that Mr. Azul: (1) threatened Mr. Nom and "harassed him on several occasions;" (2) told Mr. Nom that he was going to choke and kill him and that Mr. Azul told Mr. Nom "to get out of his fucking face"; and (3) called Mr. Nom "ching chong." Mr. Nom reported to the Acton Police that he thinks Mr. Azul was upset about the work Mr. Nom did on a vehicle and that Mr. Nom has had enough with Mr. Azul's threats and has filed a complaint with his employer. Exhibit 9.

46. Mr. Azul spoke with the Acton Police and stated that: (1) Mr. Azul was frustrated with Mr. Nom as he never finishes his jobs and is always losing parts; and (2) the "only thing" Mr. Azul said to Mr. Nom was that he "needs to get a screwdriver and drill a hole to fit more brains in his head." Exhibit 9.

47. Ms. Trinh and Mr. Mourato reported to the Acton Police that: (1) there had been no previous issues between Mr. Nom and Mr. Azul; (2) Mr. Nom had not filed a complaint regarding Mr. Azul prior to this one; (3) the past Friday, Mr. Nom told Ms. Trinh that he wanted to "have a meeting/file a complaint" against Mr. Azul; (4) Mr. Mourato was traveling and Ms. Trinh agreed to set up a meeting with Mr. Nom on October 2, 2017; and (5) Ms. Gervais threatened

Ms. Trinh by saying that if anything happened to her brother, "you know what would happen" and that she "works at the largest law firm in Boston." Exhibit 9.

48. The Acton Police advised Mr. Nom and Mr. Azul of their rights to file restraining orders and noted on the police report that Ms. Trinh and Mr. Mourato asked Mr. Nom and Mr. Azul to go home for the day and come back on Friday, October 6, 2017. Exhibit 9.

October 2 Form

49. On October 2, 2017, Mr. Nom filled out a form entitled "Employee Warning Notice" (October 2 Form). The handwriting on the October 2 Form is Mr. Nom's. The October 2 Form is dated October 2, 2017, checks off safety, and states in the "explanation" section: "Threatens to kill me. Called me a fuck face; get out of my way 2X. He called me you Check chop." The October 2 Form is signed by Mr. Nom. Exhibit 5; Tr. 52-53 (Nom), Tr. 126 (Trinh). Despite its title, I do not view the October 2 Form as a disciplinary action or a written warning issued by AAB to Mr. Nom, given that the October 2 Form was completed by Mr. Nom and reports the September 2017 Incident.

AAB's Investigation in to Mr. Nom's Allegations

50. Ms. Trinh investigated the September 2017 Incident by speaking with Mr. Nom, speaking with Mr. Azul and reviewing the Acton Police report. Tr. 122, 133-137 (Trinh). Mr. Mourato spoke with Mr. Azul, who denied that he had used a racial slur. Tr. 234 (Mourato).

51. When Ms. Trinh spoke to Mr. Azul, Mr. Azul denied Mr. Nom's allegations and said, "all [Mr. Azul] told Andy was that he needed to put a screw in his head for more brains." Tr. 136-138 (Trinh). This is consistent with what Mr. Azul told the Acton Police. Exhibit 9.

52. Ms. Trinh did not take notes of her interviews with Mr. Nom or Mr. Azul, nor did she prepare a written investigative report. Tr. 137 (Trinh).

53. At some point, Ms. Trinh asked Mr. Dobkin if he knew what happened between Mr. Azul and Mr. Nom. Mr. Dobkin told Ms. Trinh that they had had an argument. Tr. 270 (Dobkin).

54. Ms. Trinh did not speak with Jonathan or Hugo as part of the investigation because Mr. Nom told her the September 2017 Incident involved only Mr. Nom and Mr. Azul. Tr. 134-136 (Trinh).

55. Ms. Trinh was presented with differing stories from Mr. Nom and Mr. Azul. Tr. 136 (Trinh), Tr. 232 (Mourato). While she had no reason to disbelieve Mr. Nom, Mr. Azul denied the allegations and Ms. Trinh did not know who to believe. Tr. 121 (Trinh), Tr. 232 (Mourato). Based on this, Ms. Trinh concluded that she was unable to substantiate what occurred on September 29, 2017. Tr. 138 (Trinh) (did not "form a belief as to who was telling the truth").

AAB Suspended Mr. Nom and Mr. Azul for Three Days Without Pay

56. On October 2, 2017, Ms. Trinh sent Mr. Nom and Mr. Azul home for three days and did not pay them during this time (the "Suspension"). Tr. 63 (Nom), 132 (Trinh); Exhibit 1. This decision was made by Ms. Trinh and Mr. Mourato after they spoke with the Acton Police. Tr. 129 (Trinh). Ms. Trinh asked the Acton Police how she should handle the situation, and a police officer stated to her that she "could always just send them home for things to cool down and figure out what your next step is going to be." Tr. 139 (Trinh). There is no evidence that the Acton Police advised Ms. Trinh as to how long to send Mr. Nom or Mr. Azul home and whether to compensate them during this period.

57. With respect to the decision to not compensate Mr. Nom and Mr. Azul during the three-day suspension, Mr. Trinh stated that she wanted to treat Mr. Nom and Mr. Azul "equally" and was not trying to punish Mr. Nom. While she initially testified that Mr. Nom's three-day unpaid suspension was "discipline," I do not credit that testimony because I credit Ms.

Trinh's later credible testimony that "it wasn't punishment because I did it to both guys. I think the reason why I did it is because I thought they needed to calm down and figure a solution for this. It wasn't punishment." Tr. 127-130, 195-196 (Trinh). When Ms. Trinh was asked what she thought Mr. Nom "did that merited a three-day unpaid suspension," she testified:

> I wasn't present when it happened. So I don't know who is right and who is not. So I felt like the safe thing to do was to keep them both away from the shop to calm things down at first so we can figure out how we were going to handle it. Tr. 130 (Trinh).

58. On October 6, 2017, Mr. Nom went to Lowell District Court and obtained a Harassment Prevention Order against Mr. Azul. I infer that Mr. Nom did not work that day as he was attempting to obtain the Harassment Prevention Order, and this is consistent with the payroll records which indicate he earned less than 1/5 of his average compensation the week of October 2, 2017. Exhibit 1. The Harassment Prevention Order did not prevent Mr. Azul from going to AAB. Tr. 65-66 (Nom); Exhibit 6.

59. Mr. Nom reported back to work at AAB the following Monday, October 9, 2017. Tr. 65 (Nom).

AAB's Issuance of a Warning to Mr. Azul

60. On October 2, 2017, Ms. Trinh issued a written warning to Mr. Azul on a document entitled, "Employee Warning Notice" ("Employee Warning"). The Employee Warning states, "We got a complain (sic) about Victor Azul threatening Andy Nom how he said he would choke him." The Employee Warning does not state that Mr. Nom alleged that Mr. Azul called Mr. Nom "ching chong" or any other slur. The Employee Warning, which is not signed by Mr. Azul, states; "gave employee 3 days suspended." Exhibit 7; Tr. 125 (Trinh).

61. Ms. Trinh signed the Employee Warning, gave a copy of it to Mr. Azul, and put it in Mr. Azul's personnel file. The Employee Warning remained a part of Mr. Azul's employment file throughout his employment. Tr. 185-186 (Trinh).

AAB's Temporary Transfer of Mr. Nom to Arlington Center

62. On October 9, 2017, when Mr. Nom reported back to work at AAB, he was told that he was being transferred to Arlington Center on a temporary basis (the "Transfer"). Tr. 66-68 (Nom), Tr. 210-211 (Mourato).

63. When he went to Arlington Center, Mr. Nom brought only the tools he believed he needed to do the work on a temporary basis at Arlington Center. Tr. 68, 144 (Nom), Tr. 210 (Mourato).

64. Mr. Mourato was expecting to re-assign Mr. Nom to AAB "when everything cools down." Tr. 210 (Mourato).

65. On October 9, 2017, Mr. Mourato told Mr. Nom that after a couple of weeks, they would talk again. Tr. 238 (Mourato). In addition to Mr. Mourato's credible testimony on this point, I base this finding on Mr. Nom's testimony that he understood the Transfer to be temporary, that he brought some (but not all) of his tools to Arlington Center, and that he understood that the purpose of the Transfer was to "cool us down." Tr. 64-68 (Nom).

66. Mr. Mourato and Ms. Trinh believed that Mr. Nom and Mr. Azul needed to be separated for a couple of weeks so that they could cool down. Ms. Trinh and Mr. Mourato did not choose to transfer Mr. Azul to Arlington Center but instead, transferred Mr. Nom based on the following operational need. Each auto body shop, AAB and Arlington Center, had one full-time framer (Mr. Azul and Mario, respectively). Ms. Trinh and Mr. Mourato did not believe that AAB could transfer Mr. Azul to Arlington Center because Arlington Center would then have two, full-time framers and AAB would have no framer. Ms. Trinh and Mr. Mourato did

not believe that Mario, a co-owner of Arlington Center, would agree to transfer to AAB. Due to these concerns and AAB's decision to separate Mr. Nom and Mr. Azul, AAB transferred Mr. Nom. Tr. 178-179 (Trinh), Tr. 209, 238 (Mourato).

67. AAB did not consider terminating Mr. Azul's employment because Ms. Trinh was unable to determine what happened during the September 2017 Incident and terminating Mr. Azul would have left AAB without a full-time framer. Tr. 142, 180 (Trinh).

68. When Mr. Mourato told Mr. Nom about the Transfer, he said, "okay." Tr. 210, 214 (Mourato).

69. Mr. Nom commuted to work at AAB by driving. Tr. 58 (Nom). The Transfer increased Mr. Nom's daily commute from 30 minutes to 50 minutes in each direction. Tr. 44, 66, 102 (Nom).

70. Mr. Mourato offered to give Mr. Nom "gas certificates" which would pay for the additional cost of gas that Mr. Nom would incur as a result of the increased commute. Mr. Mourato did not give Mr. Nom "gas certificates." Tr. 249 (Mourato). I infer from the offer of "gas certificates" that Mr. Mourato knew that the Transfer increased Mr. Nom's commuting costs.

71. There was no evidence in the record as to the costs Mr. Nom incurred due to the additional 40 minutes per day of commuting time.

Mr. Nom's Transfer to Arlington Center

72. Mr. Nom continued to earn the same hourly rate at Arlington Center that he had earned at AAB. Exhibit 4.

73. Mr. Nom worked full-time the week of October 9-13, 2017 at Arlington Center. Tr. 146 (Trinh); Exhibit 4. The weeks of October 16-20, 2017 and October 23-27, 2017, Mr. Nom worked less than a full week at Arlington Center. Exhibit 4. Regardless of the work flow, the

auto body technicians at AAB and Arlington Center had set hours 8 a.m. – 5 p.m. on Monday through Friday. Tr. 187-189 (Trinh). If staffing for AAB or Arlington Center was reduced, such as when Mr. Nom was working at Arlington Center and AAB was "down a man," AAB would manage this by taking less work in from the public. Tr. 242-249 (Mourato).

74. Based on the findings of fact in paragraph 73 and Ms. Trinh's credible testimony as to this subject, I find that Mr. Nom's hours decreased at Arlington Center commencing the week of October 16, 2017 because Mr. Nom began to call in, saying that he could not come to work or needed to arrive late for personal reasons. Tr. 146, 159-161 (Trinh).

Cessation of Mr. Nom's Employment at AAB

75. The parties presented conflicting evidence regarding the circumstances of how Mr. Nom's employment with AAB ended. Mr. Nom testified that after he worked three weeks at Arlington Center -- October 9-27, 2017 -- Ms. Trinh told him to report to AAB, that he reported to AAB, and that when he returned to AAB, there was "somebody already at [his] bay."[4] Tr. 69-70 (Nom). Mr. Nom did not describe this individual's appearance or identify the individual by name. Mr. Nom also testified that when he returned to AAB, Mr. Mourato said to him, "there is no work here either" and "this is not going to work out." Mr. Nom testified that a week after Mr. Mourato allegedly said to Mr. Nom, "this is not going to work out," Mr. Nom filed for unemployment insurance. Tr. 69-70, 71-73, 90-91 (Nom); Exhibit 4. In contrast, Ms. Trinh testified that she did not tell Mr. Nom to report to AAB and testified that over the three weeks, Mr. Nom stopped coming to work at on a consistent basis at Arlington Center. Ms. Trinh further testified that after November 3, 2017, Mr. Nom

[4] Mr. Nom asserted in the Complainant's Post-Hearing Brief that his return to AAB and Mr. Mourato's termination of his employment occurred "on or about October 29, 2017." Complainant's Post-Hearing Brief, p. 13.

continued to work at Arlington Center but stopped working full weeks and came in to work a total of 3 or 4 times between November 3 and December 1, 2017. Tr. 150-152 (Trinh); Exhibits 1, 11. After November 26, 2017, Mr. Nom did not return to work at Arlington Center. Tr. 148-152; Exhibit 11. Mr. Mourato denied telling Mr. Nom not to come to work, that "this was not going to work out," and/or that he fired Mr. Nom. Tr. 217, 245 (Mourato).

76. Based on the following evidence, I find that Mr. Nom stopped coming to work (in essence, quit) and was not fired by AAB. I credit Ms. Trinh's testimony that Mr. Nom gradually reduced the number of hours that he appeared for work at Arlington Center and eventually, stopped coming to work. I credit Mr. Mourato's testimony that he did not tell Mr. Nom that "this was not going to work out." Mr. Nom's assertion that he was terminated after three weeks of working at Arlington Center (or approximately October 29, 2017) and sought unemployment insurance one week later is not credible because it is contrary to the parties' stipulation that Mr. Nom worked for Arlington Center during the pay period of November 20, 2017 to November 26, 2017 -- approximately three weeks after Mr. Nom claims that Mr. Mourato terminated his employment and two weeks after he filed for unemployment insurance.[5] Exhibits 4, 11. In addition, I found Mr. Nom's demeanor and testimony when testifying on this topic, to reflect a notable degree of uncertainty as to whether Ms. Trinh told him to report back to AAB. Tr. 69-70.[6] I do not credit Mr. Nom's testimony that he saw a person in "his" bay when he allegedly returned to AAB. Mr. Nom did not provide any detail about the individual -- no appearance or name -- and I credit Mr. Mourato's testimony that

[5] I do find that Mr. Nom sought unemployment benefits in early November 2017.

[6] Q. After those three weeks, what happened? A. After those three weeks, if I am right, Sonia the one that is sending me back to Acton Body Shop. Q. Sonia sent you back to Acton Body shop? A. If I recall right. Tr. 69-70 (Nom).

the body techs at AAB did not have their own bays but worked in the bay they were assigned on a particular day or week. Tr. 243 (Mourato). I find Mr. Nom's testimony that he saw a person in his bay to be self-serving and lacking in credibility. Ms. Trinh contacted Mr. Nom several times and left voice mail messages to ask him why she had not seen him in the shop. Tr. 160 (Trinh). I infer from the testimony that this occurred in October and November 2017. I recognize that Mr. Mourato recanted his initial testimony that he saw Mr. Nom on a security camera returning to AAB to pick up his tools, which raises questions about his credibility. Tr. 223-227 (Mourato). Mr. Mourato's credibility with regard to this is outweighed by the other factors stated in this paragraph which support my conclusion that Mr. Nom was not terminated from his employment, but in essence, quit.

77. I do not credit Mr. Dobkin's testimony that to "make up for the fact that Mr. Nom wasn't there," AAB "just scheduled the work accordingly *and I think Sonia was looking for another body man.*" Tr. 262 (Dobkin) (emphasis added). While Ms. Trinh may have replaced Mr. Nom at some point after he stopped working at AAB, I do not believe that Mr. Dobkin knew when this occurred and his testimony regarding timing is not reliable. Tr. 272-273 (Dobkin).

Emotional Distress

78. The main thrust of Mr. Nom's testimony regarding emotional distress focused on his alleged termination. Tr. 74-75, 82 (Nom).

79. Mr. Nom and his sister were upset about Mr. Azul's treatment of Mr. Nom and about Ms. Trinh's response to Mr. Nom's internal complaint during the October 2 Meeting. Tr. 95 (Nom).

80. Based on my observations of Mr. Nom's distressed demeanor during his testimony regarding the Suspension and the Transfer, I find that Mr. Nom was very upset about the Suspension

and the Transfer throughout at least the remainder of his employment at AAB.[7] I infer that Mr. Nom was genuinely surprised, hurt and frustrated by the sudden changes to his employment after he complained of the harassment and found the Transfer and the Suspension -- both of which were abrupt changes to his day-to-day experience of working at AAB -- to be upsetting and unsettling.

Financial Loss Due to Unpaid Suspension

81. AAB regularly paid Mr. Nom $797/week, or approximately $159.40/day. The Suspension from October 3-5, 2017, caused Mr. Nom to lose $478.20 in wages.

82. Based on the findings of fact in Paragraphs 72-76, I find that the reduction in compensation that Mr. Nom experienced after he was transferred to Arlington Center was due to Mr. Nom's calling in and not coming in to work. Exhibit 4.

[7] Q. Did you want to go to work at Arlington?
A. No. I don't know where that is.
Q. Are there any other reasons you didn't want to work in Arlington?
A. First of all, I don't know where. Second, when I went there, it takes me longer to commute, cost me more money, and it is not right.
Q. Did you agree to go to Arlington?
A. No. But I have no choice. I want to keep my job.
Tr. 94-95 (Nom).

III. CONCLUSIONS OF LAW[8]

A. THE NATIONAL ORIGIN AND RACE HARASSMENT CLAIMS AGAINST AAB ARE DISMISSED AS UNTIMELY

Pursuant to M.G.L. c. 151B, § 5, a complainant has 300 days after a discriminatory act occurs to file a complaint with the Commission. The Complaint in this case was filed on August 1, 2018. To be timely, the last discriminatory act must have occurred on or after October 5, 2017. The Complaint was timely as to the Suspension because it continued through October 5, 2017. The Complaint was timely as to the Transfer because it occurred after October 5, 2017. However, the September 2017 Incident is time barred, unless revived by the continuing violation doctrine.

The continuing violation doctrine, an exception to the 300-day statute of limitations, recognizes that some claims of discrimination involve a series of related events that must be viewed in their totality to adequately assess their discriminatory nature and impact. Cuddyer v. Stop & Shop Supermarket Co., 434 Mass. 521, 531-533 (2001) ("when linked together, the seemingly disparate incidents may show a prolonged and compelling pattern of mistreatment that have forced a plaintiff to work under intolerable, sexually offensive, conditions"). To invoke the continuing violation doctrine, Mr. Nom must establish a timely incident that anchors the related

[8] Mr. Nom attached two items to his Post-Hearing Brief: (1) a 7-page Massachusetts unemployment insurance printout (Exhibit A); and (2) a 3-page interrogatory answer and deposition testimony (Exhibit B). Mr. Nom requested that I take judicial notice of Exhibit A and consider Exhibit B in support of a claim for lost wages. On July 9, 2024, Respondents submitted a written objection (July 9 objection) seeking to strike Exhibits A and B, arguing that Mr. Nom had not complied with 804 CMR 1.12 (17) (2020) ("Hearing Commissioner may allow the parties, *after a showing of good cause*, to file additional evidentiary documents or exhibits within a reasonable time subsequent to the completion of the hearing") (emphasis added). In addition, Respondents argued that these documents had not been previously identified as required during the pre-hearing process, that introducing these documents at this time deprives Respondents of the opportunity to challenge them through cross-examination, and that Respondents' counsel consented to the parties making closing arguments at the end of the public hearing on the condition that the record would then be closed. For the reasons stated in the July 9 objection, I decline to take judicial notice, or otherwise consider Exhibits A or B.

but untimely incidents, thereby "making the entirety of the claim for discriminatory conduct timely." Id. at 533.[9] Specifically, the doctrine allows a complainant to recover for discriminatory or harassing conduct outside the limitations period by proving that: (1) at least one harassing or discriminatory act(s) occurred within the limitations period; (2) the timely acts have a substantial relationship to the untimely acts; and (3) the untimely acts did not trigger a complainant's "awareness and duty" to assert his rights. Ocean Spray Cranberries, Inc. v. Massachusetts Comm'n Against Discrimination, 441 Mass. 632, 643 (2004). The third element examines whether, at the time of the untimely conduct, the situation was pervasively hostile and unlikely to improve such that a reasonable person in the complainant's position would have filed a complaint within 300 days. Cuddyer, 434 Mass. at 541. For the following reasons, this doctrine does not apply.[10]

Even assuming *arguendo* that the Suspension and/or Transfer constituted harassing conduct, Mr. Nom has failed to satisfy the second requirement necessary to invoke the continuing violation doctrine. The Suspension and Transfer are not substantially related to the September 2017 Incident. The September 2017 Incident consisted of racist, xenophobic, threatening and offensive conduct directed at Mr. Nom by Mr. Azul. Nothing in the record suggests that the Suspension or the Transfer decisions were based on Mr. Nom's race or national origin. Although the Suspension and Transfer were unlawful retaliation (see below), they were based on a

[9] When facts are alleged which indicate unlawful conduct is of a continuing nature and part of an ongoing pattern of discrimination, the complaint may include actions outside of the statutory filing period so long as the last discriminatory act in the pattern occurred within the statutory filing period. 804 CMR 1.04 (4)(b) (2020).

[10] I have dismissed the retaliatory termination claim as set forth below, and therefore, do not discuss whether it anchors the September 2017 Incident under the continuing violation doctrine.

misunderstanding of AAB's legal obligations to Mr. Nom.[11] The harassment by Mr. Azul and the Suspension and Transfer were not part of an ongoing pattern. There was no evidence of a concerted effort by Mr. Azul and AAB's owners (Mr. Mourato and Ms. Trinh) to harass Mr. Nom, nor was there any continuity of the actors involved in the harassment and the Suspension and Transfer. The Suspension and Transfer cannot be said to have contributed to a "prolonged and compelling pattern of mistreatment" that forced Mr. Nom to work under intolerable, race and national origin based offensive conditions. Cuddyer, 434 Mass at 533.[12] As such, I decline to apply the continuing violation doctrine and dismiss as untimely the claims of harassment based on race and/or national origin against AAB.

B. AAB IS LIABLE FOR RETALIATION

One cannot overstate the importance of anti-retaliation provisions in the effort to eradicate unlawful employment discrimination. Anti-retaliation provisions, like those in M.G.L. c. 151B and Title VII, are targeted to prevent employers from interfering with an employee's efforts to secure or advance enforcement of the basic guarantees of anti-discrimination law. The enforcement of anti-discrimination laws depends on the cooperation of employees willing to complain internally, file complaints and act as witnesses, without fear that their employer will act

[11] In some factual circumstances, timely retaliatory conduct which is sufficiently intertwined with underlying harassment can revive an untimely harassment claim. Muise v. Credit Exchange, 17 MDLR 1684, 1689-90 (1995). For example, where an individual who harassed an employee outside the timely period is the same individual who retaliated against the employee within the timely period, where the retaliator and harasser share a common purpose, and the nature of the retaliation is "inextricably related" to the original charge of harassment, the retaliatory conduct can "anchor" a harassment claim. Id. This is not such a case. Compare Goguen v. Quality Plan Administrators, 2000 WL 282485 at *11-12, 11 Mass. L. Rptr. 288 (Mass. Super. 2000) (plaintiff could not anchor untimely sexual harassment allegations on timely allegations of retaliation where the retaliatory acts were not sexual in nature and committed by a different individual).

[12] The third requirement to prove a continuing violation, i.e. whether a reasonable person in Mr. Nom's position would have been on notice of discrimination within 300 days of the filing of the Complaint, need not be addressed here as the second requirement was not met.

adversely to them because of their complaint or participation in a discrimination case. See Burlington Northern & Santa Fe Railway v. White, 548 U.S. 53, 67 (2006) (Burlington Northern) (Title VII case). As the Supreme Court stated:

> The antidiscrimination provision seeks a workplace where individuals are not discriminated against because of their racial, ethnic, religious, or gender-based status. (citations omitted) The antiretaliation provision seeks to secure that primary objective by preventing an employer from interfering (through retaliation) with an employee's efforts to secure or advance enforcement of the Act's basic guarantees. The substantive provision seeks to prevent injury to individuals based on who they are, *i.e.*, their status. The antiretaliation provision seeks to prevent harm to individuals based on what they do, *i.e.*, their conduct. Id. at 63.

Mr. Nom alleges that AAB retaliated against him in three ways. First, he alleges that the unpaid three-day suspension (Suspension) was in retaliation for his complaint of harassment. Second, he alleges that by transferring him from AAB to Arlington Center (Transfer), AAB retaliated against him for his complaint of harassment. Third, he alleges that he was fired in retaliation for his complaint of harassment. Because I have concluded that Mr. Nom's employment at AAB was not terminated, I dismiss the claims that AAB, Mr. Mourato or Ms. Trinh retaliated against Mr. Nom by terminating his employment with AAB.[13] I now address whether the Suspension and/or Transfer constituted unlawful retaliation.

To succeed on a claim of retaliation under M.G.L. c. 151B, § 4(4), a person must prove that: (1) he reasonably and in good faith believed that his employer was engaged in wrongful discrimination (reasonable and good faith belief); (2) he acted reasonably in response to that belief through acts meant to protest or oppose such discrimination (protected conduct); (3) an employer or other person took adverse action against him (adverse action); and (4) the adverse

[13] There was no certified issue of constructive discharge, nor did the evidence warrant a finding that Mr. Nom was constructively discharged.

action was a response to the protected conduct (causation).[14] Verdrager v. Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C., 474 Mass. 382, 405-406 (2016) (Verdrager); Ambroise v. Law Office of Howard Kahalas and Howard Kahalas, 45 MDLR 67, n. 13 (2023); Massachusetts Commission Against Discrimination Guidelines on Harassment, VIII.A. (2024) ("MCAD Harassment Guidelines").

1. Reasonable and Good Faith Belief

Mr. Nom has established that when Mr. Azul threatened to "choke [him] to death" and called him "ching chong," he formed a reasonable and good faith belief that he had been subjected to unlawful harassment.[15]

2. Protected Conduct

When Mr. Nom notified Ms. Trinh of Mr. Azul's conduct, he engaged in protected conduct. Ritchie v. Dep't of State Police, 60 Mass. App. 655, 664 (2004) (complaining to management or filing an internal complaint of harassment constitutes "protected conduct"); MCAD Harassment Guidelines, VIII.A (same).

3. Adverse Action

To show that an employer has taken an adverse action in a retaliation case, the complainant must prove that he has been subjected to an action that "materially disadvantages" him. Psy-Ed Corp. v. Klein, 459 Mass. 697, 707-708 (2011); O'Brien v. Mass. Inst. of Tech., 82 Mass. App.

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[14] The final element of retaliation has been described as "forbidden motive." Verdrager v. Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C., 474 Mass. 382, 405-406 (2016). It has also been referred to as "causation." Psy-Ed Corp. v. Klein, 459 Mass. 697, 707 (2011); Mole v. University of Mass., 442 Mass. 582, 591-592 (2004).

[15] A single incident is sufficient to support a harassment claim. Green v. Harvard Vanguard Medical Assoc., Inc., 79 Mass. App. 1, 7-9 (2011); Augis Corp. v. Mass. Comm'n Against Discrimination,75 Mass. App. 398, 408-410 (2009).

905, 909 (2012); MCAD Harassment Guidelines, VIII.A. Conduct that "dissuade[s] a reasonable employee in the plaintiff's circumstances from making or supporting a complaint of discrimination" is materially adverse. Burlington Northern, 548 U.S. at 59-70; Stratton v. Bentley Univ., 113 F.4th 25, 42-44 (1st Cir. 2024); MCAD & McGrath v. City of Worcester, 35 MDLR 10, 13 (2013). This legal standard serves the function of screening out an employer's trivial conduct while effectively capturing those acts that are likely to dissuade employees from complaining or assisting in discrimination complaints by considering the reactions that a *reasonable* employee *in the same circumstances* would have to the employer's action. Burlington Northern, 548 U.S. at 69 (emphasis added).[16]

The Suspension occurred the same day that Mr. Nom formally complained to AAB that Mr. Azul had threatened him and called him a slur. Removal from the workplace immediately after asserting ones' civil rights would reasonably be experienced by a victim as punitive in nature and have the effect of dissuading an employee from coming forward with a complaint of discrimination and harassment. In addition, the loss of pay -- even three days' pay -- materially disadvantages an employee. See Burlington Northern, 548 U.S. at 73 (an indefinite suspension without pay could well act as a deterrent, even if the suspended employee eventually received backpay); see also Williams v. Robert F. Kennedy Children's Action Corps, Inc., 38 F. Supp. 3d 186, 196 (2014) (suspension without pay is an adverse employment action). Thus, the Suspension was an adverse action.

[16] In Burlington Northern, the Court discussed the importance of context in assessing whether an action would "materially disadvantage" an employee, stating: "a schedule change in an employee's work schedule may make little difference to many workers, but may matter enormously to a young mother with school-age children." Burlington Northern, 548 U.S. at 69. Thus, in evaluating whether an employer's action materially disadvantages an employee, the Court assesses whether a reasonable employee with the same concerns as the plaintiff would be likely to be dissuaded from complaining or assisting in discrimination complaints by the employer's action. Id.

As for the Transfer, when evaluating whether a job transfer is adverse in nature, courts have reviewed the totality of the circumstances. Kelley v. Commonwealth, 2014 WL 2504528 at *5 (Mass. Super. Ct. 2014), aff'd 90 Mass. App. 1111 (2016) (1:28).[17] Transferring an employee, even if there is no resulting loss of compensation, may be actionable where the new position is less desirable.[18] Several factors lead to the determination that the Transfer was an adverse action. The Transfer occurred immediately after Mr. Nom sought AAB's help in addressing the September 2017 Incident. Further, given Mr. Nom's relatively low weekly net pay, the increased commuting costs resulting from the Transfer, even if temporary, represents an outlay of expense that could dissuade a reasonable employee in Mr. Nom's circumstances from coming forward with a complaint of discrimination. Mr. Mourato's offer to provide Mr. Nom with certificates to pay for gasoline reflects his understanding that the increased commuting costs had a financial impact on Mr. Nom. Finally, the Transfer reflected a weekly loss of 200 minutes that Mr. Nom was now required to spend commuting to work. These adverse impacts are not mitigated by the fact that Mr. Nom had a similar commute at a prior job. Although the Transfer was temporary and did not modify Nom's work duties, the Transfer would discourage a reasonable person from engaging in protected conduct and was an adverse action.

[17] For example, the transfer in Kelley was determined to constitute a materially adverse action where the employee was transferred to a position which required skills greater than those that she possessed, at a different location with a longer commute, with a different schedule and with different job duties.

[18] See MCAD & Santiago v. Caregivers of Massachusetts, 44 MDLR 61, 70 n. 6 (2022) (discussing circumstances under which transfers are adverse actions); Kelley v. Plymouth County Sheriff's Dep't., 22 MDLR 208, 215 (2000) (transfer without any warning or consultation to a different position to a lower grade position constituted adverse employment action); Thomas v. Suffolk County Sheriff's Dep't., 20 MDLR 207, 211 (1998) (transfers that included disparaging comments that complainants were "not team players," constituted adverse action even though transfer did not result in loss of pay or benefits).

4. Causation

The final element in a claim of retaliation requires proof of a causal connection between the protected conduct and the adverse employment action. Verdrager, 474 Mass. at 406. The protected conduct must be a "but-for cause" of, or "determinative factor" in, the employer taking the adverse action. Downey v. Johnson, 104 Mass. App. 361, 381 (2024), citing Psy-Ed Corp. v. Klein, 459 Mass. 697, 707 (2011).[19] A cause is the but-for, or determinative cause, if it was the active efficient cause in bringing about the adverse employment action. Lipchitz v. Raytheon Co., 434 Mass. 493, 506 n. 19 (2001).

Massachusetts courts have held that the "desire to retaliate" must be a determinative factor in the employer's decision to take an adverse action. Downey v. Johnson, 104 Mass. App. at 381 (citations omitted). This case raises the question of whether an employer's "desire to retaliate" requires ill will, animosity, or an intent to punish, or whether it simply means a desire to act because the employee engaged in protected conduct. Put another way, does retaliatory desire or retaliatory intent require hostility or animosity or does it require only that the motivating force, or determinative cause of the adverse action, is the protected conduct?

In Ruffino v. State Street Bank and Trust Co., the District Court stated that retaliation is "motivated, at least in part, by a distinct intent to punish or to rid a workplace of someone who complains of unlawful practices." Ruffino, 908 F. Supp. 1019, 1040 (D. Mass, 1995) (Ruffino). For over two decades, this "distinct intent" language has been cited by the Commission[20] but

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[19] Abramian v. President & Fellows of Harvard College, 432 Mass. 107, 121 (2000); Chadwick v. Duxbury Public Schools, 97 Mass. App. 1106 at *6 (2020) (1:28); MCAD and Lauria v. Robert W. Sullivan, Inc., 41 MDLR 101, 101 (2019).

[20] See, e.g. MCAD and Suomala v. Mass. Soc'y for the Prevention of Cruelty to Animals, 41 MDLR 15, 21 (2019); MCAD and Fountas v. Medford Public Schools, 22 MDLR 264, 267 (2000).

does not appear to have been cited by Massachusetts state appellate courts. Despite the Commission's past use of the "distinct intent" language, I conclude that even in the absence of hostility or ill will, causation is proven by establishing that the adverse employment action was taken in response to the protected conduct.

M.G.L. c. 151B, § 4(4) states that it is an unlawful practice "for any person, employer, ... to discharge, expel or otherwise discriminate against any person *because* he has opposed any practices forbidden under this chapter or *because* he has filed a complaint, testified or assisted in any proceeding under section five." M.G.L. c. 151B, § 4(4) (emphasis added). By its plain language, no hostility, ill will, desire to punish or other negative impulse is required to violate M.G.L. c. 151B, § 4(4). Given the absence of such language, and liberally construing this provision as required by M.G.L. c. 151B, § 9, I decline to read into the statute a requirement that an employee must prove that the adverse action was taken with an intent to exact revenge or punish another person. While such an intent may exist in many cases brought pursuant to M.G.L. c. 151B, § 4(4), it need not exist in all such cases.

Moreover, while a claim brought pursuant to M.G.L. c. 151B, § 4(4) is commonly referred to as "retaliation," the Massachusetts Supreme Judicial Court has acknowledged that this term is "shorthand" and is not found in the statute itself. See Psy-Ed Corp. v. Klein, 459 Mass. 697, 706-707 (2011). The term "retaliation" implies a vengeful intent. See e.g. Retaliation, Oxford English Dictionary (3d ed. 2010) (defining retaliation as "[r]epayment (in kind) for injury or insult; reprisal, revenge; retribution"). However, the Massachusetts Legislature could have, but did not use the words "retaliate," "retaliation," "reprisal" or "revenge" in the statute. Malloch v. Town of Hanover, 472 Mass. 783, 792 (2015), citing Doe v. Superintendent of Schools of Worcester, 421 Mass. 117, 128 (1995) ("If the Legislature intentionally omits language from a statute, no court

can supply it"). This legislative choice supports the conclusion that no desire to punish or other type of hostile intent is required by the statute.

Further endorsement for the fact that retaliation does not require hostile intent can be found in Verdrager, which suggested that employers need not have a "distinct intent to punish" for an employee to prevail under M.G.L. c. 151B, § 4(4). In assessing whether the fourth element of retaliation has been proven, the Verdrager Court merely required that the person alleging retaliation show that he/she was subject to an adverse action because of engaging in protected conduct. Verdrager, 474 Mass. at 405-406 ("there must be evidence that the adverse action was a response to the employee's protected activity"). The Verdrager Court cited Ruffino but significantly altered the "distinct intent" language by re-focusing the inquiry *from* whether the alleged wrongdoer was motivated by a distinct intent to punish or rid a workplace of someone who complains of unlawful practices *to* the effect that the alleged retaliator's action has on the person claiming retaliation. The Verdrager Court stated, "[a]n employee bringing a retaliation claim is not complaining of discriminatory treatment as such, but rather **of treatment that 'punish[es]' her for complaining of or otherwise opposing such discriminatory treatment**." Verdrager, 474 Mass. at 405, citing Ruffino (emphasis added). Where an employer makes an employment decision that amounts to an adverse action, the only remaining question is whether the decision was made because of the protected conduct. Verdrager, 474 Mass. at 405-406 ("Third, there must be evidence that the employer took adverse action against the employee. [citation omitted] Finally, there must be evidence that the adverse action was a response to the employee's protected activity (forbidden motive).")[21] The "distinct intent to punish" language in

[21] At first glance, the term used by the Verdrager Court to describe causation -- "forbidden motive" -- may appear to imply malevolence. However, the Verdrager Court describes the motive that is forbidden as one that stems from the protected conduct with no reference to hostility or intent to harm. Id. at 406 ("The

Ruffino was not incorporated by the Verdrager Court and instead, refined, to reflect the proper and simpler causation standard to be applied in M.G.L. c. 151B, § 4(4) cases.

For purposes of M.G.L. c. 151B, § 4(4), when an employer or other person discharges, expels or otherwise discriminates against an employee for engaging in protected conduct, it matters not whether the employer's intention was to punish or was benign in nature, such as avoiding disruption in the flow of business or protecting the harassed employee from the harasser.[22] In claims brought pursuant to M.G.L. c. 151B, § 4(4), the causation inquiry is simple: was the adverse action a response to the protected conduct, or stated otherwise, but for the employee's complaint (or participation in a discrimination case), would the employer have taken the adverse action? The employer's lack of hostility, animosity, and ill intent is irrelevant.

Relatedly, the term "retaliatory animus," used by the courts and the Commission when discussing causation in retaliation cases, encompasses situations where an employer takes an adverse action because of an employee's protected conduct without malicious intent.[23] Animus

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parties dispute [] whether there is sufficient evidence of the fourth element - a forbidden motive - which requires proof that the plaintiff's protected actions were the reason the firm imposed the" adverse action.)

[22] Recent United States Supreme Court decisions are consistent with this conclusion. In the context of Title VII's proscription against sex discrimination, the United States Supreme Court has held that proving a sex discrimination case under Title VII does not require proof of the decisionmaker's bad intent or desire to mistreat an employee due to sex. Bostock v. Clayton County, 590 U.S. 644, 663-666 (2020) (describing, in part, Los Angeles Dep't of Water & Power v. Manhart, 435 U.S. 702 (1978)).

In Murray v. UBS Securities, LLC, 601 U.S. 23, 24 (2024), the United States Supreme Court held that animosity and ill will is irrelevant in retaliation cases under the Sarbanes-Oxley Act. Relying in part on the statutory text of the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514A(a), the Supreme Court held that when an employer treats a whistleblower differently, and worse, because of his protected whistleblowing activity, that is actionable discrimination and the employer's lack of animosity is irrelevant. See Murray v. UBS Securities, LLC, 601 U.S. 23, 24 (2024).

[23] Examples of cases using the term "retaliatory animus" include, but are not limited to: Stratton v. Bentley Univ., 113 F. 4th 25, 42 (1st Cir. 2024); Mireault v. Northeast Motel Associates, LP, 69 Mass. App. 1108 (2007) (1:28); MCAD & Bloomfield v. Mass. Dep't of Correction, 43 MDLR 11, 14 (2021).

does not require an employer to have a negative motivation or feel animosity toward the employee, but only that the protected conduct was the moving or animating force behind the decision, regardless of intent. See Gates v. Flood, 57 Mass. App. 739, 745 n. 13 (2003) (discrimination case determining that the animus required was solely that the decision was motivated by age). Retaliatory animus means that the protected conduct is the animating force behind the adverse action, not that hostility or animosity is required to motivate such action.

Many retaliation cases under M.G.L. c. 151B, § 4(4) will contain evidence of the decisionmaker's intent to punish, desire to cause harm, or goal of obtaining retribution. In many direct evidence cases, the evidence reflects comments of a vengeful nature or a clear effort to rid the workplace of the employee seeking to enforce M.G.L. c. 151B rights.[24] In other cases, there may be no evidence of a decisionmaker's hostility or animosity, but the employee may still prove causation through a close temporal proximity between the protected conduct and the adverse action,[25] comparative evidence,[26] a finding that the employer's proffered explanation for the

[24] MCAD & Sawyer v. Wimpy's Restaurant, 31 MDLR 27, 30 (2009) (direct evidence of retaliation where employer stated in writing that because employee filed MCAD complaint, employer would delay rescheduling employee for waitstaff shifts and after a certain date, terminate her employment); Bonds v. School Comm. of Boston, 80 Mass. App. 1113 (2011) (1.28) (causation supported by comments by decisionmaker reflecting an intent to punish that "revenge is a dish best served cold").

[25] If adverse action is taken against a satisfactorily performing employee in the immediate aftermath of the employer's becoming aware of the employee's protected conduct, an inference of causation is permissible. See Mole v. Univ. of Massachusetts, 442 Mass. 582, 592 (2004).

[26] Monteiro v. City of Cambridge, 80 Mass. App. 1103 (2011) (1:28).

adverse action is false,[27] or any other evidence which, when viewed together, permits a finding of causation.[28]

Construing M.G.L. c. 151B, § 4(4) to not require hostility or animosity does not open the proverbial flood gates to retaliation claims or immunize employees who have been subject to discipline and complain about the discipline. Where the reason for the adverse action is not the protected conduct -- but another reason -- such as a violation of the employer's policies,[29] the employee's performance prior to the adverse action,[30] or a non-retaliatory reduction in force,[31] the employee will not prove causation and the retaliation claim will fail.

With this causative framework established, I now address whether the "but for" or determinative cause of the Suspension and/or Transfer was Mr. Nom's complaint to AAB about the September 2017 Incident.

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[27] MCAD and Sweet v. Massachusetts Bay Transp. Auth., 27 MDLR 252, 259 (2005) (concluding termination was retaliatory based in part on the falsity of employer's assertion that employee was terminated for poor attitude and failing to complete tasks).

[28] Quarterman v. City of Springfield, 91 Mass. App. 254, 259 (2017) (after Quarterman filed MCAD complaint naming mayor as defendant, mayor took unusual interest in Quarterman's liquor license application).

[29] Downey v. Johnson, 104 Mass. App. 361, 381 (2024).

[30] Knightly v. Town of Amherst, 102 Mass. App. 1117 (2023) (1:28), quoting Mesnick v. General Elec. Co., 950 F.2d 816, 828 (1st Cir. 1991), cert. denied, 504 U.S. 985 (1992) ("[t]hat an employer knows of a discrimination claim and thereafter takes some adverse action against the complaining employee does not, by itself, establish causation. 'Were the rule otherwise, then a disgruntled employee ... could effectively inhibit a well-deserved [lack of promotion] by merely filing ... a discrimination complaint.'"); Mkparu v. Boston Medical Ctr., 100 Mass. App. 1129 (2022) (1:28) (no retaliation where adverse employment actions predated knowledge that employee had engaged in protected activity); Dziamba v. Warner & Stackpole, LLP, 56 Mass. App. 397, 407 (2002) (concerns about employee's work performance began well before employee exercised a protected right).

[31] Nealis v. Molecular Health, Inc., 99 Mass. App. 1123 (2021) (1:28).

Suspension

AAB suspended Mr. Nom because it wanted to keep both Mr. Nom and Mr. Azul away from the shop to calm things down and to allow AAB to "figure out" how to handle Mr. Nom's complaint about the September 2017 Incident. Further, in separating Mr. Nom and Mr. Azul, AAB wanted to treat both Mr. Nom and Mr. Azul equally.[32] The evidence establishes that AAB's decision to suspend Mr. Nom was made in response to his complaint about the September 2017 Incident. Causation is thus proved even though AAB was (1) acting benignly and lacked ill will towards Mr. Nom and (2) did not intend to violate the law.[33] With the causative element established, all the elements of retaliation have been found as to the Suspension and for this reason, AAB is liable to Mr. Nom for violating M.G.L. c. 151B, § 4(4).[34]

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[32] AAB argues that it followed the advice of the Acton Police to "just send [Mr. Nom and Mr. Azul] home for things to cool down and figure out what your next step is going to be." Tr. 139 (Trinh). The Acton Police's comment does not justify the decision to not compensate Mr. Nom for three days or protect AAB from liability for retaliation.

[33] The lack of malice or animosity does not mitigate AAB's obligation to refrain from taking steps that result in retaliatory conduct. It is incumbent on employers to understand their obligation not to take an adverse action against an employee because he has opposed practices forbidden under M.G.L. c. 151B.

[34] This decision should not be construed as holding that separating the harasser and victim will always warrant a finding of retaliation. If the employer implements the separation in a manner that does not subject the victim to an adverse action, a finding of retaliation would not be warranted. To achieve the goal of cooling things down between Mr. Nom and Mr. Azul, AAB could have suspended Mr. Azul for three days – either on an unpaid or paid basis – while retaining Mr. Nom in place. That is not the route AAB took. AAB sent the victim home without compensation.

AAB's notion of equality in its treatment of harasser and victim turns antiretaliation principles on their head. By this reasoning, a victim who came forward to try to stop a co-worker from harassing her, and sought the harasser's termination, could expect to be terminated herself because of her employer's desire to treat both parties equally. Employers cannot treat employees who allege harassment (or other kinds of discrimination) equally to those who are accused of such harassment or discrimination, even when an employer has not substantiated whether the accused engaged in the conduct alleged.

Transfer

AAB acknowledges that the reason for the Transfer, like the reason for the Suspension, was to allow Mr. Azul and Mr. Nom to cool down after the September 2017 Incident. Implementing the separation of Mr. Azul and Mr. Nom, AAB argues, raised a specific challenge for AAB: had AAB transferred Mr. Azul, rather than Mr. Nom, to Arlington Center, there would have been two framers at Arlington Center and no framers at AAB.[35] But this wrinkle in implementing a separation of Mr. Nom and Mr. Azul does not alter the fact that the reason for the Transfer was Mr. Nom's complaint about the September 2017 Incident and does not immunize it from a claim of retaliation.[36] Mr. Nom has established the causal connection between his protected conduct and the adverse act of transferring him to Arlington Center.

Based on the above, I find that AAB retaliated against Mr. Nom in violation of M.G.L. c. 151B, § 4(4) when it transferred Mr. Nom to Arlington Center.

C. INDIVIDUAL LIABILITY

For the reasons stated below, I decline to hold Mr. Mourato and Ms. Trinh individually liable under M.G.L. c. 151B, § 4(1), § 4(4), § 4(4A) and/or § 4(5) and dismiss all such claims.

Mr. Nom alleges that as the owners of AAB, Ms. Trinh and Mr. Mourato are liable for creating a hostile work environment and discriminating against Mr. Nom based on his race

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[35] AAB had alternatives to transferring Mr. Nom including: (1) putting Mr. Azul on a paid or unpaid leave and hiring a temporary framer at AAB until it satisfied itself that it had created a safe work environment; (2) engaging Mr. Nom in a discussion designed to identify steps AAB could take to keep Mr. Nom safe from any future harassment by Mr. Azul, such as reducing Mr. Azul's contact with Mr. Nom (i.e. changing Mr. Azul's schedule or requiring Mr. Azul to stay in the Framing Building) and implementing changes to create a safe work environment.

[36] This case is distinguishable from a case where strain on the operations of a company -- and not the employee's complaint of discrimination or participation in a M.G.L. c. 151B case -- leads a company to take an action ultimately found to be materially adverse to an employee. Nealis v. Molecular Health, Inc., 99 Mass. App 1123 (2021) (1:28) (reduction in force decision made without regard to employee's complaint of harassment).

and/or national origin in violation of M.G.L. c. 151B, § 4(1). I have dismissed as untimely the claim of race and national origin discrimination/harassment filed against AAB pursuant to M.G.L. c. 151B, § 4(1), and for the same reason, dismiss the claims that Mr. Mourato and Ms. Trinh are individually liable under Section 4(1).

Mr. Nom next claims that Ms. Trinh and Mr. Mourato are liable pursuant to M.G.L. c. 151B, § 4(4A) for coercing, intimidating, threatening, or interfering with Mr. Nom in the exercise of his right to be free from a hostile work environment and retaliation.[37] The evidence relative to the retaliation claim does not establish the level of deliberate disregard required to impose individual liability on Ms. Trinh or Mr. Mourato under Section 4(4A). To establish interference with a protected right where there is only circumstantial evidence, a complainant must show that the individual's action or failure to act was in deliberate disregard of the complainant's rights, allowing the inference to be drawn that there was an intent to discriminate or interfere with complainant's exercise of rights. Woodason v. Town of Norton School Comm., 25 MDLR 62, 64 (2003). Neither Ms. Trinh nor Mr. Mourato acted with deliberate disregard of Mr. Nom's right to be free from retaliation. As described above, they lacked an understanding of the anti-retaliation laws in Massachusetts, and while their response to Mr. Nom's protected conduct was misguided and retaliatory, neither acted with deliberate disregard of Mr. Nom's right to be free from retaliation. As such, I dismiss the Section 4(4A) claims against Ms. Trinh and Mr. Mourato relative to the right to be free from retaliation.

Mr. Nom claims that Ms. Trinh and Mr. Mourato are liable for aiding, abetting, inciting, or compelling a hostile work environment or retaliation, or attempting to do so, in violation of

[37] The dismissal of the underlying hostile work environment claims mandates the dismissal of the claims that Ms. Trinh and Mr. Mourato are individually liable under Section 4(4A) for creating a hostile work environment.

M.G.L. c. 151B, § 4(5). A claim of aiding and abetting requires a showing that: (1) the individual committed a wholly individual and distinct wrong separate and distinct from the claim in main; (2) the aider or abettor shared an intent to discriminate not unlike that of the alleged principal offender; and (3) the aider or abettor knew of his or her supporting role in an enterprise designed to deprive the employee of a right guaranteed him or her under M.G.L. c. 151B. Lopez v. Commonwealth, 463 Mass. 696, 713 (2012).[38] As to the Section 4(5) claims seeking to hold Ms. Trinh and Mr. Mourato individually liable for retaliation, they are dismissed for two reasons. First, Mr. Nom has not shown that either Ms. Trinh or Mr. Mourato intended to discriminate or retaliate against Mr. Nom. Second Mr. Nom has not shown that either knew of his/her supporting role in "an enterprise designed to deprive" Mr. Nom of a right (freedom from retaliation) guaranteed him under M.G.L. c. 151B.

Finally, I address whether Ms. Trinh and Mr. Mourato, as owners of AAB, are liable for retaliation in violation of M.G.L. c. 151B, § 4(4). As previously discussed, the retaliatory Suspension and Transfer were the result of a misapprehension of AAB's legal obligations rather than a deliberate disregard of Mr. Nom's rights. Low v. Costco Wholesale Corp., 31 MDLR 87 (2009) (finding corporate respondent liable pursuant to M.G.L. c. 272, § 98A, but declining to impose liability on an individual who did not display deliberate disregard for the rights of complainant). For these reasons, I decline to find Ms. Trinh or Mr. Mourato individually liable under M.G.L. c. 151B, § 4(4) and dismiss all such claims of individual liability.

[38] The Section 4(5) claims against Ms. Trinh and Mr. Mourato based upon a hostile work environment are dismissed because the main hostile work environment claim was dismissed as untimely.

IV. REMEDIES

A. LOST COMPENSATION

Mr. Nom is entitled to lost wages of **$ 478.20** for the three days of pay that he lost because of the retaliatory Suspension. While Mr. Nom may have been entitled to lost compensation resulting from the increased commuting costs that the Transfer entailed, there was no evidence in the record as to the costs incurred. Finally, where the reduction in compensation experienced by Mr. Nom after the transfer to Arlington Center was due to Mr. Nom's not coming in to work, and where Mr. Nom effectively quit his employment with AAB, I decline to award any other lost wages.

B. EMOTIONAL DISTRESS DAMAGES

The Commission is authorized to award damages for emotional distress resulting from a respondent's unlawful conduct. Stonehill College v. MCAD, 441 Mass 549 (2004). Awards for emotional distress must "be fair and reasonable, and proportionate to the distress suffered." Id. at 576. Some of the factors to be considered are: "(1) the nature and character of the alleged harm; (2) the severity of the harm; (3) the length of time the Complainant has suffered and reasonably expects to suffer; and (4) whether the complainant has attempted to mitigate the harm...." Id. The Complainant "must show a sufficient causal connection between the respondents' unlawful act and the complainant's emotional distress." Id. Complainant's entitlement to an award of monetary damages for emotional distress does not need to be based on expert testimony; it can be based solely on complainant's testimony as to the cause of the distress. Proof of physical injury or psychiatric consultation is not necessary to sustain an award for emotional distress. Id.

When Mr. Nom testified about the Suspension and Transfer, his feelings of disappointment and frustration were evident. It was clear that he was upset about the Suspension and Transfer

and that this lasted, at least, throughout the time he worked for AAB. Mr. Nom's testimony and demeanor reflected genuine surprise, hurt and frustration at the sudden changes to his employment after he complained of harassment. Moreover, he did not feel that he had any choice but to accept the Transfer. Mr. Nom found the Transfer and the Suspension -- both of which were abrupt changes to his day-to-day experience of working at AAB -- to be upsetting and unsettling. Based on the evidence before me, I award Mr. Nom **$7,500** in emotional distress damages resulting from the retaliatory Transfer and Suspension.[39]

V. ORDER

For the reasons detailed above, and pursuant to the authority granted me under Section 5 of Chapter 151B, I order the following:

1. Cease and Desist: Respondent Acton Auto Body shall immediately cease and desist from retaliating against its employees.

2. Compensatory Damages: Respondent Acton Auto Body is ordered to pay to Andy Nom damages in the amount of **$ 478.20** with interest thereon at the rate of 12% per annum from the date the Complaint was filed with the Commission until such time as payment is made or until this Order is reduced to a Court judgment and post-judgment interest begins to accrue.

3. Emotional Distress Damages: Respondent Acton Auto Body is ordered to pay to Andy Nom emotional distress damages in the amount of **$ 7,500** with interest thereon at the rate of 12% per annum from the date the Complaint was filed with the Commission until such time as payment is made or until this Order is reduced to a Court judgment and post-judgment interest begins to accrue.

4. Training: Within 60 days of receipt of this decision, Respondent Acton Auto Body is ordered to contact the MCAD's Director of Training to schedule a group training on retaliation which shall be held within 90 days of the receipt of this decision. All current owners and all employees, including but not limited to managers of Acton Auto Body, shall attend. For purposes of enforcement, the Commission shall retain jurisdiction over training requirements. Acton Auto Body shall be responsible for all training fees assessed for this training.

[39] As noted, the main thrust of Mr. Nom's testimony regarding emotional distress focused on his alleged termination – as opposed to the alleged retaliation. When presenting multiple claims of liability, counsel should offer evidence of emotional distress with respect to each such claim.

5. All claims against Respondents Sonia Trinh and Jose Mourato are dismissed.

VI. NOTICE OF APPEAL

This decision represents the final order of the Hearing Officer. Any party aggrieved by this Order may appeal this decision to the Full Commission. To do so, a party must file a Notice of Appeal within 10 days of receipt of this decision and file a Petition for Review within 30 days of receipt of this decision. 804 CMR 1.23 (2020). If a party files a Petition for Review, the other parties have the right to file a Notice of Intervention within 10 days of receipt of the Petition for Review and shall file a brief in reply to the Petition for Review within 30 days of receipt of the Petition for Review. 804 CMR 1.23 (2020). All filings referenced in this paragraph shall be made with the Clerk of the Commission with a copy served on the other parties.

VII. PETITION FOR ATTORNEYS' FEES AND COSTS

Any petition for attorneys' fees and costs for Complainants' Counsel shall be submitted to the Clerk of the Commission within 15 days of receipt of this decision. Pursuant to 804 CMR 1.12 (19) (2020), such petition shall include detailed, contemporaneous time records, a breakdown of costs and a supporting affidavit. Respondent Acton Auto Body may file a written opposition within 15 days of receipt of said petition. All filings referenced in this paragraph shall be made with the Clerk of the Commission with a copy served on the other party.

So ordered this _23rd day of October, 2024.

/s/ Simone R. Liebman
Simone R. Liebman
Hearing Officer