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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

JOHN BONAFEDE,

Plaintiff,

v.

MUSEUM OF MODERN ART,

Defendant.

Index No. _____

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff John Bonafede, by his attorneys Fletcher Law PLLC, for his Complaint against defendant the Museum of Modern Art (“MoMA”), hereby alleges as follows:

INTRODUCTION

1. This lawsuit arises out of repeated acts of sexual assault by multiple members of the museum-going public against Plaintiff while he worked for and performed in a critically-acclaimed art exhibition located at defendant MoMA. MoMA had actual knowledge of ongoing sexual assaults against many of its worker-performers in the exhibition, including Plaintiff, yet it intentionally and negligently failed to take corrective action to prevent the assaults from recurring.

2. During approximately 2009 and 2010, MoMA financed, supervised, curated, produced, and hosted an art exhibition by the world-renowned conceptual and performance artist Marina Abramovic. The exhibition, entitled “Marina Abramovic: The Artist is Present” (the

“Exhibition”), was conceived as a retrospective of four decades of Abramovic’s artwork in sound, video, installation, photography, and live performance. The Exhibition was mounted, displayed, and performed at MoMA from March 14 through May 31, 2010.

3. Plaintiff Mr. Bonafede is a professional artist who worked and performed live in the Exhibition for the full duration of its run. Plaintiff was employed, paid, and supervised by MoMA in doing this work.

4. As part of his duties in the Exhibition, Plaintiff performed daily in a piece entitled “Imponderabilia,” which featured two Exhibition worker-performers (“Imponderabilia Performers”) standing face-to-face with each other in a doorway approximately eighteen inches apart – silent, still, and completely nude. Members of the public who attended the Exhibition (“Exhibition Attendees”) were invited and encouraged by MoMA’s curation to pass in between the Imponderabilia Performers in moving from one gallery room to the next.

5. On seven occasions during his work for MoMA in the Exhibition, Plaintiff was sexually assaulted by five different Exhibition Attendees (“Attendee Perpetrators”). Plaintiff reported four of these individuals to MoMA staff and security immediately after the assaults occurred. The fifth was witnessed personally by MoMA security staff assaulting Plaintiff.

6. On a different occasion, Plaintiff witnessed a female Imponderabilia Performer with whom he was performing be sexually assaulted by an Attendee Perpetrator. Plaintiff also participated in conversations with Exhibition worker-performers in which sexual assaults of multiple other male Imponderability Performers by Attendee Perpetrators was discussed.

7. At the time of the Exhibition, it was reported by multiple local and national news outlets – including the New York Times, New York Post, NBC News, and the Guardian – that Imponderabilia Performers were being sexually groped by Exhibition Attendees. It was also

widely discussed within New York City's art and performance communities that Imponderabilia Performers were being subjected to non-consensual sexual touching on a regular basis.

8. MoMA had actual knowledge of the repeated sexual assaults against Imponderabilia Performers by Attendee Perpetrators. In fact, a protocol was in place to alert security guards about Attendee Perpetrators in the Exhibition after assaults had occurred, and a MoMA staff member was specifically tasked with assuaging Imponderabilia Performers after they had been assaulted. Further, during pre-Exhibition contract negotiations, the worker-performers raised in writing to MoMA their concerns around nude performers being subjected to harassment and other inappropriate visitor behavior.

9. And yet, despite MoMA's knowledge of the problem of ongoing sexual assaults by Attendee Perpetrators against Plaintiff and other Imponderabilia Performers, as well as the inherently vulnerable and risky context in which MoMA required the Imponderabilia Performers to perform each day, MoMA failed to take corrective action to protect Plaintiff and other Imponderabilia Performers *ex ante* and to prevent further sexual assaults from occurring.

10. Defendant's failure to take reasonable corrective action to prevent Plaintiff from being repeatedly sexually assaulted caused Plaintiff to suffer years of emotional distress, and substantially harmed Plaintiff's mental health, body image, and career.

11. This lawsuit is brought, *inter alia*, pursuant to New York's Adult Survivors Act ("ASA") (CPLR § 214-J), because the sexual assaults that Defendant suffered fall within the definition of multiple sections of Article 130 of the N.Y. Penal Law ("NYPL").

12. Plaintiff brings his causes of action within the ASA's "retroactive revival window," which removes the previously applicable statute of limitations, as extended by a tolling agreement between the parties executed prior to the closing of the ASA's revival window.

13. Pursuant to the ASA and other underlying causes of action – including New York tort law, New York City’s Gender-Motivated Violence Protection Act (“GBVPA”), and the New York City Human Rights Law – Defendant is liable for its intentional and negligent acts and omissions which resulted in Plaintiff being a victim of repeated gender-based sexual misconduct and suffering serious psychological, physical, and emotional harms.

PARTIES

14. Plaintiff John Bonafede is an adult male who resides in New York County, New York. Plaintiff was over the age of eighteen when the acts of sexual abuse described herein occurred.

15. Upon information and belief, Defendant MoMA is a domestic not-for-profit corporation organized and existing under the laws of New York State, with its principal place of business located at 11 West 53rd Street, New York, New York 10019.

JURISDICTION AND VENUE

16. This Court has personal jurisdiction over Defendant pursuant to CPLR 301, *et seq.*, because Defendant is domiciled and/or regularly transacts business in New York State, and because the wrongful conduct alleged in this Complaint took place in New York State and City.

17. Venue is proper in this County pursuant to CPLR § 503(a).

FACTS

A. Background to Marina Abramovic and the Exhibition

18. Marina Abramovic is a world-renowned conceptual and performance artist, known for her edgy and extreme performances exploring body art, endurance art, the relationship between performer and audience, the limits of the body, and the possibilities of the mind.

19. MoMA is a not-for-profit art museum, one of New York City’s foremost cultural

institutions, and one of the largest and most influential modern art museums in the world.

20. Upon information and belief, beginning in or about 2009, MoMA initiated a collaboration with Abramovic in advance of mounting a retrospective of Abramovic's historical work at MoMA work in spring 2010 (*i.e.*, the Exhibition).

21. During approximately 2009 and 2010, MoMA financed, supervised, curated, produced, and mounted the Exhibition, which was entitled, "Marina Abramovic: The Artist is Present." The Exhibition was displayed and performed at MoMA from March 14 through May 31, 2010.

22. The Exhibition received widespread attention from the press, art critics, and the public. Lines stretched around the block for museum attendees to gain access specifically to the Exhibition.

B. Plaintiff's Work for MoMA and Role in the Exhibition

23. In or about 2009, Plaintiff was first asked to work and perform in the Exhibition. His official job title for the Exhibition was "Re-performer," meaning that he would be re-performing certain live performance pieces from Abramovic's historical body of work.

24. Upon information and belief, MoMA ultimately employed approximately thirty-five Re-performers for the Exhibition.

25. In advance of his work as a Re-performer in the spring 2010 Exhibition, in or about August 2009, Plaintiff traveled to Abramovic's private home in upstate New York with other Re-performers to train and prepare as a group. During the five-day "retreat," Plaintiff and other Re-performers were, among other austere practices, required to fast, maintain complete silence, refrain from sexual activity, and not use running tap water to bathe.

26. Plaintiff and other Re-performers were also shown audiovisual footage of

Abramovic performing her older works. In one particular work they discussed, Abramovic was slashed on her face by a knife-wielding audience member and had her blouse ripped open to expose her breast by another, thereby becoming the victim of real-life assaults perpetrated mid-performance.

27. As a result of the group acculturation process that occurred during the August 2009 retreat, Plaintiff was made to understand that Re-performers were expected to “tough it out,” regardless of what transgressions might occur during a live performance.

28. Upon information and belief, MoMA financed the August 2009 training retreat, and a MoMA representative was present on-site to witness the training activities. A film crew was also present at the retreat, filming a documentary of the training and Exhibition in real time.

29. Plaintiff was tasked with several roles as a Re-performer in the Exhibition.

30. One of the most significant roles that Plaintiff played in the Exhibition was in the context of an Abramovic piece entitled, “Imponderabilia,” which was widely talked about in the press.

31. Imponderabilia featured two performers standing in face-to-face in a narrow doorway, approximately eighteen to twenty-four inches apart. In roughly seventy-five-minute shifts throughout the day, Imponderabilia Performers were required to stand silently, locked in gaze with each other, and completely still. The Imponderabilia Performers were also required to be completely nude.

32. Exhibition Attendees were invited and encouraged to pass through the doorway in which the nude Imponderabilia Performers stood. Given the limited space, Exhibition Attendees often had to turn their bodies sideways and come face-to-face with one of the Imponderabilia Performers as they moved through the doorway.

33. Plaintiff understood and accepted that, while he was performing *Imponderabilia*, some Exhibition Attendees might inadvertently come into contact with his nude body as they brushed passed him, moving from one gallery room to another.

34. After the Exhibition's opening night, at least one of the Re-performers was terminated from their position because they were unable to maintain the required stillness, with gaze locked straight ahead, during their performance of *Imponderabilia*. This termination communicated to Plaintiff that his continued employment in the Exhibition required him not to break his stillness, silence, or fixed gaze while performing *Imponderabilia*.

35. MoMA employed, paid, and supervised all of the Re-performers who worked and performed in this spring 2010 Exhibition, including Plaintiff.

36. At some point early during the Exhibition run, MoMA hired a stage manager to serve as a liaison between the Re-performers and MoMA curators.

C. Plaintiff Becomes a Victim of Repeated Acts of Sexual Abuse

37. Beginning in the first or second week of the Exhibition, and continuing practically until the end of the Exhibition, Plaintiff became the victim of repeated sexual assaults by Exhibition Attendees (*i.e.*, Attendee Perpetrators) while he was working as an *Imponderabilia* Performer.

38. The circumstances of each of these assaults was eerily similar: the Attendee Perpetrator – in Plaintiff's case, always an older male – would turn his body to face Plaintiff as the Attendee Perpetrator squeezed in between the *Imponderabilia* Performers' nude bodies. Then the Attendee Perpetrator would drop his hand, covertly reach between Plaintiff's legs, and fondle and/or grope Plaintiff's genitals, lingering for a moment before moving through into the next gallery room.

39. At no time did Plaintiff ever consent, expressly or implicitly, to the sexual touching to which he was subjected as an Imponderabilia Performer.

40. At no time was there ever any legitimate purpose for the sexual touching to which Plaintiff was subjected as an Imponderabilia Performer. The only purpose of such sexual touching was to degrade or abuse Plaintiff and to gratify the Attendee Perpetrator's sexual desire.

41. The acts of sexual abuse perpetrated against Plaintiff presented a serious risk of physical injury to Plaintiff, including risk of causing injury to Plaintiff's genitals and/or risk of sexually-transmitted infection.

42. The acts of sexual abuse perpetrated against Plaintiff were committed because of and on the basis of Plaintiff's gender, and were due, at least in part, to an animus based on Plaintiff's gender. The Attendee Perpetrators who assaulted Plaintiff did not, when they assaulted Plaintiff, also assault Plaintiff's female co-performers.

43. In total, Plaintiff was subjected to the aforementioned sexual assault conduct on seven separate occasions, perpetrated by five different Attendee Perpetrators.

44. On another occasion, Plaintiff personally witnessed an Attendee Perpetrator sexually assault one of his female co-performers in Imponderabilia by non-consensually kissing the performer on the mouth.

45. Plaintiff also discussed incidents of sexual assault on other Imponderability Performers with other Re-performers and had been told of at least two other male Imponderability Performers being assaulted.

46. Plaintiff was never informed that female Imponderabilia Performers were groped on their genitals, and upon information and belief, while female Imponderabilia Performers may have been subjected to some nonconsensual sexual contact, they were not subjected to

nonconsensual sexual groping of their genitals in the same manner that Plaintiff and other male performers were.

47. While the Exhibition was going on, multiple local news outlets reported on the non-consensual groping by museum visitors, with headlines such as, “Nude performers groped at Moma show” (the Guardian); “Some at MoMA Show Forget ‘Look but Don’t Touch’” (New York Times); “Don’t Grope the Art! Crowd Gets Touchy with MoMa Live Nudes” (NBC New York); and “Grope dopes inside MoMA” (New York Post). The New York Post reported on April 16, 2010 that MoMA “acknowledged that it had had trouble with visitors stroking the live art.”

48. It was also widely discussed within New York City’s performance and art world that many Imponderabilia Performers were being subjected to forms of sexual abuse as Plaintiff on a daily basis.

49. The sexual assaults committed against Plaintiff by the Attendee Perpetrators – as well as MoMA’s failure to take steps to prevent the recurrence of those assaults – have caused Plaintiff to suffer years of “garden variety” emotional distress, and have cause Plaintiff’s mental health, body image, and career to be significantly harmed.

D. MoMA’s Notice and Foreseeability

50. Plaintiff did not report the first incident of sexual assault by an Attendee Perpetrator to MoMA – largely because Plaintiff was in a state of shock after the incident – however Plaintiff did report all subsequent sexual assaults to MoMA security personnel and to the Exhibition’s stage manager.

51. Although Plaintiff did not report the first incident directly to MoMA staff, it was witnessed personally by a MoMA security guard.

52. As a result of Plaintiff’s reporting, as well as the incidents of sexual assault

perpetrated on other Imponderability Performers, MoMA had actual knowledge of the ongoing problem of sexual assaults against Imponderabilia Performers, including Plaintiff.

53. During pre-Exhibition contract negotiations between the Re-performers and MoMA, the Re-performers raised their concerns in writing about the potential for Exhibition Attendees sexually abusing or otherwise harassing nude Re-performers.

54. Further, during the first weeks of the show, Imponderabilia Performers and MoMA staff worked out a signal system whereby Imponderabilia Performers could alert MoMA security personnel and the stage manager immediately after a sexual assault had occurred.

55. Similarly, MoMA created a performer handbook, dated April 15, 2010 (“Handbook”), *i.e.*, approximately a month into the show, which also set out and codified a protocol for Imponderabilia Performers to alert MoMA staff if they were the victims of non-consensual groping or sexual touching, or felt endangered.

56. The existence of these protocols demonstrate that MoMA knew that it was placing Imponderabilia Performers in highly vulnerable and risky positions on a daily basis, and that, furthermore, sexual abuse of Imponderabilia Performers by Attendee Perpetrators was an ongoing and pervasive problem.

57. Plaintiff reported four of the individuals who sexually assaulted him to MoMA security, and, each time, Plaintiff was informed that MoMA security had ejected the Attendee Perpetrator from the museum.

58. Further, after one sexual assault incident, Plaintiff was told by MoMA staff that the Attendee Perpetrator was a MoMA corporate member. Plaintiff was told that not only had that Attendee Perpetrator been ejected from the museum, MoMA also revoked his membership.

59. During the last set of sexual assault incidents against Plaintiff, which occurred

during the final weeks of the Exhibition, an Attendee Perpetrator completed three trips through Imponderabilia – non-consensually groping Plaintiff’s genitals each time – before he was finally stopped by MoMA security. One of the sexual assaults of Plaintiff by this Attendee Perpetrator was recorded live by a camera crew which happened to be filming Plaintiff’s performance at that time.

60. Plaintiff reported each of the last four sexual assault incidents to MoMA’s Exhibition stage manager. The stage manager discussed each incident with Plaintiff and asked Plaintiff if he felt capable of continuing his performance. Plaintiff agreed to continue with his performance because he understood, based on the “tough it out” culture of the Exhibition that had been established and communicated by MoMA and Abramovic, that continuing was what was required of him as a professional (*i.e.*, the show must go on).

61. MoMA never provided Plaintiff with the identity of any of the Attendee Perpetrators who sexually assaulted him so that Plaintiff could pursue further action and/or press charges, even though, upon information and belief, MoMA maintained security logs of each of the incidents, and – with respect to one of the incidents, at least – MoMA possessed the Attendee Perpetrator’s full name and contact information because he was a MoMA corporate member.

E. MoMA’s Duty and Breach of Duty

62. As Plaintiff’s employer and the final authority over the Exhibition and the Exhibition gallery space, MoMA had a special duty to safeguard Plaintiff’s welfare.

63. As a non-profit art museum and a place of public accommodation, MoMA also had a special duty to safeguard Plaintiff’s welfare.

64. MoMA used the power, prestige, and reputation of itself and Abramovic to attract performers such as Plaintiff to work in the Exhibition and in the Imponderabilia piece.

65. MoMA's and Abramovic's status in the art world were important factors that caused Plaintiff to entrust his safety to MoMA, notwithstanding the risk and vulnerability of performing in Imponderabilia.

66. Plaintiff and the other Imponderabilia Performers were unusually vulnerable and susceptible to abuse and unwanted sexual touching. MoMA understood this to be true, as reflected in (i) the establishment of a system to alert MoMA staff to incidents of sexual abuse shortly after the Exhibition opened; (ii) the publication of a Handbook codifying that alert system; (iii) the repeated reports of sexual assault that Plaintiff and other Imponderability Performers made to MoMA; and (iv) numerous reports of sexual assault in the press, including MoMA's admission to the New York Post that it was "well aware of the challenges posed by having nude performers in the galleries for this exhibition," and MoMA's acknowledgement that some Exhibition Attendees had been groping Imponderabilia Performers.

67. As a result of the messaging he received during his MoMA-funded and MoMA supervised training with Abramovic, and his work for MoMA as a Re-performer in the Exhibition, Plaintiff was acculturated into a MoMA-sanctioned communal belief system in which Re-performers were expected to submit, silently and unwaveringly, to whatever conduct Attendee Perpetrators might choose to engage in, including repeated acts of sexual assault.

68. MoMA knew or should have known that Imponderabilia Performers faced a heightened risk of sexual assault from Attendee Perpetrators.

69. MoMA knew or should have known that Plaintiff was the victim of repeated non-consensual sexual assault.

70. MoMA understood and agreed that the sexual assaults perpetrated against Plaintiff were not consensual and had no legitimate basis, but rather were sexual abuse. The bases for this

include:

- a. Plaintiff complained to MoMA staff after four of the incidents and informed them that assaults were not consensual;
- b. MoMA established a *de facto* system with Imponderabilia Performers, which it later codified in the Exhibition Handbook, for alerting MoMA staff to the fact and identity of Attendee Perpetrators after a sexual assault had been committed;
- c. MoMA repeatedly ejected and implemented other sanctions against Attendee Perpetrators after a sexual assault had been committed.
- d. MoMA admitted to the press that Re-performers had been non-consensually groped.

71. Although MoMA took certain steps to identify and eject Attendee Perpetrators after they had committed sexual assault against Plaintiff and other Imponderabilia Performers, during the full duration of the exhibition MoMA turned a blind eye and did nothing to protect Plaintiff and other Imponderabilia Performers from being assaulted in the first place.

72. MoMA failed to establish, implement, or enforce policies and procedures to protect the health, safety, and welfare of Plaintiff and other Imponderabilia Performers, and to prevent them from being sexually assaulted in the first place.

73. For example, MoMA often allowed the physical space around the Imponderabilia Performers to become congested with large numbers of Exhibition Attendees, thereby creating an environment in which Attendee Perpetrators could engage in acts of sexual assault against Plaintiff covertly.

74. Further, for example, MoMA did not take any steps to instruct Exhibition Attendees, either verbally or in writing, immediately before engaging with Imponderabilia, that

sexual touching of the Imponderabilia Performers was not permitted.

75. Further, for example, notwithstanding MoMA's knowledge that Imponderabilia Performers were being subjected to repeated acts of sexual assault during the entire course of the Exhibition's run, MoMA chose to require Plaintiff and other Imponderabilia Performers to continue performing the Imponderabilia piece.

76. Before and shortly after the Exhibition opened, MoMA changed aspects of several of Abramovic's pieces based on both public liability concerns, as well as concerns over the Re-performers' abilities to perform physically demanding durational pieces after several Re-performers fainted mid-performance. Such changes included, for example, shortening the shift length of certain nude and/or durational performances for any given Re-performer; and widening the Imponderabilia doorway in order to enable wheelchair-bound Exhibition Attendees to pass through.

77. Yet, when confronted with the ongoing sexual assault of Imponderabilia Performers, MoMA failed to take preventative action. Instead, MoMA expected and demanded that Plaintiff and other Imponderability Performers simply to submit to repeated unwanted sexual conduct in the name of "art," and to be content with the paltry consolation prize of offending Attendee Perpetrators having their museum visits cut short.

78. MoMA's failure to protect Plaintiff and other Imponderabilia Performers from sexual assaults occurred, at least in part, because the non-consensual sexual groping of genitals was being committed by Attendee Perpetrators against male performers rather than female performers.

F. Timeliness of Plaintiff's Claims

79. This action is timely because it falls within the ASA (CPLR § 214-j) and is brought

within the revival period set forth in that section, as extended by a tolling agreement between the parties executed prior to the closing of the ASA's revival window.

80. The claims brought herein allege intentional or negligent acts or omissions for physical, psychological, and other injuries suffered as a result of conduct that would constitute sexual offenses as defined in Article 130 of the NYPL, and such acts were committed against Plaintiff when Plaintiff was over eighteen years of age.

81. Specifically, the conduct that gives rise to Plaintiff's claims would constitute violations of, *inter alia*, NYPL §§ 130.52 (Forcible touching) and 130.55 (Sexual abuse in the third degree).

82. This action is also timely because it falls within the Gender Motivated Violence Prevention Act, N.Y.C. Admin. Code § 11-1101, *et seq.* ("GMVPA"), and is brought within the separate revival period set forth in that statute. The claims brought herein allege that MoMA committed, directed, enabled, participated in, and/or conspired in the commission of a crime of violence motivated by gender.

83. MoMA is not entitled to protection under CPLR § 1601 because of the exclusions set forth in CPLR §§ 1602(2)(iv), 1602(7), and 1602(11).

84. MoMA had a non-delegable duty to Plaintiff, acted with reckless disregard for the safety of others, and/or acted knowingly or intentionally.

FIRST CLAIM FOR RELIEF
(Negligence)

85. Plaintiff hereby incorporates each of the foregoing paragraphs as if fully set forth herein.

86. MoMA, by virtue of its employment of and special relationship with Plaintiff, and by virtue of its curation of the Exhibition and control over the Exhibition space (*i.e.*, a place of public accommodation), had a duty and responsibility to provide Plaintiff with a safe environment and to supervise the Exhibition space and Exhibition Attendees.

87. MoMA failed to exercise the degree of care that a reasonably prudent person would have exercised under similar circumstances and failed to supervise and control the Exhibition space and Exhibition Attendees.

88. MoMA, having knowledge of and having been put on notice of the repeated sexual assault of Plaintiff and other Imponderabilia Performers, had a duty to take immediate steps to prevent further acts of sexual abuse by Attendee Perpetrators, and to enable and assist Plaintiff in reporting Attendee Perpetrators' misconduct to the appropriate criminal and civil authorities.

89. MoMA failed to take action to prevent Plaintiff from suffering repeated acts of sexual assault at the hands of Attendee Perpetrators.

90. MoMA failed to take appropriate action to enable and assist Plaintiff to pursue criminal or civil charges against Attendee Perpetrators after they had assaulted him.

91. Attendee Perpetrators' sexual assaults of Plaintiff would constitute violations of, *inter alia*, NYPL §§ 130.52 (Forcible touching) and 130.55 (Sexual abuse in the third degree).

92. Plaintiff's negligence claims have been statutorily revived, pursuant to CPLR § 214-J.

93. MoMA is liable to Plaintiff for negligence in failing to prevent recurring acts of sexual abuse, and in failing to properly supervise and control the Exhibition, the Exhibition space, and Exhibition Attendees.

94. MoMA is liable to Plaintiff for failing to exercise reasonable care to protect Plaintiff from a foreseeable and unreasonable risk of sexual assault.

95. MoMA's actions and omissions constituted gross negligence and were intended to harm Plaintiff.

96. As a direct and proximate result of MoMA's negligence, Plaintiff suffered "garden variety" emotional distress and harm, and his mental health, body image, and career have been substantially damaged.

97. As a direct and proximate result of MoMA's negligence, Plaintiff sustained damages in an amount to be determined at trial.

SECOND CLAIM FOR RELIEF
(Gender-Motivated Violence Protection Act)

98. Plaintiff hereby incorporates each of the foregoing paragraphs as if fully set forth herein.

99. By failing to take action to prevent Plaintiff from being subjected to repeated sexual assaults by Attendee Perpetrators, MoMA committed, directed, enabled, participated in, and/or conspired in the commission of crimes of violence motivated by gender under the Gender-Motivated Violence Prevention Act, N.Y.C. Admin. Code § 10-1101, *et seq.* ("GMVPA").

100. Plaintiff's GMVPA claims have been statutorily revived, pursuant to N.Y.C. Admin. Code § 10-1105.

101. Attendee Perpetrators' repeated sexual assaults against Plaintiff constituted misdemeanors and/or felonies under state and/or federal law.

102. The requirement that these crimes of violence be committed because of gender or on the basis of gender, and due, at least in part, to an animus based on the victim's gender is satisfied because the Attendee Perpetrators sexually assaulted Plaintiff without his consent. Gender

animus inheres when consent is absent.

103. Attendee Perpetrators' sexual assault of Plaintiff presented a serious risk of physical injury to him, including risk of injury to his genitals and risk of sexually-transmitted infection.

104. As a result of MoMA's unlawful conduct, Plaintiff suffered damages in an amount to be determined at trial and pursuant to the fee-shifting provision of the GMVPA.

THIRD CLAIM FOR RELIEF
(NYC Human Rights Law – Hostile Work Environment)

105. Plaintiff hereby incorporates each of the foregoing paragraphs as if fully set forth herein.

106. At all relevant times, MoMA was an employer and/or joint employer within the meaning of the New York City Human Rights Law, N.Y.C. Admin. Code. Tit. 8 (“NYCHRL”).

107. At all relevant times, MoMA had more than four employees and/or independent contractors in its employ.

108. At all relevant times, Plaintiff was an employee and/or person within the meaning of the NYCHRL.

109. At all relevant times, Plaintiff worked for MoMA within the meaning of the NYCHRL.

110. MoMA acted intentionally and/or negligently by discriminating against Plaintiff and exposing him to a hostile work environment, including, *inter alia*, by treating him less well because of his sex and gender, by exposing him to unwanted gender-based conduct, and by knowingly subjecting and exposing him to repeated instances of sexual assault based on sex and gender. The conduct to which Plaintiff was exposed was severe and pervasive.

111. MoMA is liable for discrimination pursuant to N.Y.C. Admin. Code § 8-107.

112. MoMA had the power to supervise and control the Exhibition, the Exhibition space,

and Exhibition Attendees.

113. MoMA knew or should have known about Attendee Perpetrators' discriminatory, sexually abusive conduct against Plaintiff.

114. MoMA failed to exercise reasonable diligence to prevent Attendee Perpetrators' discriminatory conduct from recurring.

115. MoMA's creation of a hostile work environment was a continuing violation.

116. Attendee Perpetrators' sexual assaults of Plaintiff would constitute violations of, *inter alia*, NYPL §§ 130.52 (Forcible touching) and 130.55 (Sexual abuse in the third degree).

117. Plaintiff's NYCHRL claims have been statutorily revived pursuant to CPLR § 214-J.

118. Plaintiff has suffered "garden variety" emotional distress and his mental health, body image, and career have been irrevocably damaged, as a result of MoMA's conduct.

119. MoMA's conduct constituted wanton negligence, recklessness, and/or conscious disregard of Plaintiff's rights under NYCHRL, or conduct so reckless as to amount to such disregard.

120. As a result of MoMA's conduct, Plaintiff is entitled to recover compensatory damages, punitive damages, declaratory relief, injunctive relief, attorney's fees, expert fees, and costs, pursuant to N.Y.C. Admin. Code § 8-502(a).

FOURTH CLAIM FOR RELIEF

(NYC Human Rights Law – Aiding and Abetting Employment Discrimination)

121. Plaintiff hereby incorporates each of the foregoing paragraphs as if fully set forth herein.

122. At all relevant times, MoMA was an employer and/or joint employer within the meaning of the NYCHRL.

123. At all relevant times, MoMA had more than four employees and/or independent contractors in its employ.

124. At all relevant times, Plaintiff was an employee and/or person within the meaning of the NYCHRL.

125. At all relevant times, Plaintiff worked for MoMA within the meaning of the NYCHRL.

126. MoMA acted intentionally and/or negligently by aiding and abetting the Attendee Perpetrators' discrimination of Plaintiff within the meaning of NYCHRL. Attendee Perpetrators interfered with Plaintiff's right to a discrimination-free workplace by treating him less well because of his sex and gender and by subjecting him to repeated instances of sexual assault based on his sex and gender.

127. MoMA is liable for discrimination pursuant to N.Y.C. Admin. Code § 8-107.

128. MoMA had the power to supervise and control the Exhibition, the Exhibition space, and Exhibition Attendees.

129. MoMA knew or should have known about Attendee Perpetrators' discriminatory conduct against Plaintiff.

130. MoMA knowingly and/or negligently created a working environment for Plaintiff and other Imponderabilia Performers in which sexual assaults by Attendee Performers could thrive.

131. MoMA failed to take remedial action to prevent further sexual assaults by Attendee Perpetrators against Plaintiff.

132. MoMA failed to exercise reasonable diligence to prevent Attendee Perpetrators' discriminatory conduct from recurring.

133. Attendee Perpetrators' sexual assaults of Plaintiff would constitute violations of, *inter alia*, NYPL §§ 130.52 (Forcible touching) and 130.55 (Sexual abuse in the third degree).

134. Plaintiff's NYCHRL claims have been statutorily revived pursuant to CPLR § 214-J.

135. Plaintiff has suffered "garden variety" emotional distress and his mental health, body image, and career have been irrevocably damaged, as a result of MoMA's conduct.

136. MoMA's conduct constituted wanton negligence, recklessness, and/or conscious disregard of Plaintiffs rights under the NYCHRL, or conduct so reckless as to amount to such disregard.

137. As a result of MoMA's conduct, Plaintiff is entitled to recovery of compensatory damages, punitive damages, declaratory relief, injunctive relief, attorney's fees, expert fees, and costs, pursuant to N.Y.C. Admin. Code § 8-502(a).

FIFTH CLAIM FOR RELIEF
(NYC Human Rights Law – Public Accommodation Discrimination)

138. Plaintiff hereby incorporates each of the foregoing paragraphs as if fully set forth herein.

139. At all relevant times, MoMA was a place of public accommodation within the meaning of the NYCHRL.

140. By knowingly, intentionally, and/or negligently permitting, enabling, assisting, aiding and abetting, and failing to take remedial action to prevent the Attendee Perpetrators' gender-based discrimination and sexual assault of Plaintiff within the meaning of NYCHRL, MoMA refused, withheld from, and denied to Plaintiff the full and equal enjoyment, on equal terms and conditions, of the accommodations, advantages, services, facilities, and/or privileges of its place of public accommodation.

141. MoMA's conduct was taken on account of Plaintiff's gender both because Attendee Perpetrators discriminated against Plaintiff on account of his gender, and also because Attendee Perpetrators' sexual groping of Imponderabilia Performers disparately affected male employees of MoMA.

142. MoMA is liable for discrimination pursuant to N.Y.C. Admin. Code § 8-107(4).

143. Attendee Perpetrators' gender-based sexual assaults of Plaintiff would constitute violations of, *inter alia*, NYPL §§ 130.52 (Forcible touching) and 130.55 (Sexual abuse in the third degree).

144. Plaintiff's NYCHRL claims have been statutorily revived pursuant to CPLR § 214-J.

145. Plaintiff has suffered "garden variety" emotional distress and his mental health, body image, and career have been irrevocably damaged, as a result of MoMA's conduct.

146. MoMA is strictly liable, and/or in the alternative, MoMA's conduct constituted wanton negligence, recklessness, and/or conscious disregard of Plaintiffs rights under the NYCHRL, or conduct so reckless as to amount to such disregard.

147. As a result of MoMA's conduct, Plaintiff is entitled to recovery of compensatory damages, punitive damages, declaratory relief, injunctive relief, attorney's fees, expert fees, and costs, pursuant to N.Y.C. Admin. Code § 8-502(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court enter judgment in his favor and grant the following relief:

- A. Awarding compensatory damages for “garden variety” emotional distress, psychological harm, anxiety, humiliation, family and social disruption, career disruption, and other harm, in an amount to be determined at trial;
- B. Awarding punitive damages in an amount to be determined at trial;
- C. Awarding pre- and post- judgement interest on all such damages;
- D. Awarding Plaintiff’s attorneys’ fees and costs pursuant to any applicable statute or law, including N.Y.C. Admin. Code §§ 10-1104 & 10-1105 and N.Y.C. Admin. Code § 8-502(a).
- E. Awarding such other and further relief as the Court may deem just and proper.

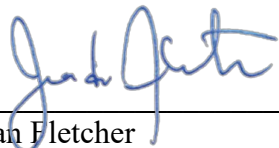
DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

Dated: January 22, 2024

FLETCHER LAW, PLLC

By: _____


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