

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

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SEBASTIAN ALONZO,

Plaintiff,

-against-

SCHULTE, ROTH & ZABEL LLP.,

Defendant.
-----X

Index No. :

SUMMONS

Plaintiff designates
New York County
as the place of trial

The basis of venue is
Defendant's Place of Business

TO THE ABOVE -NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after service is complete if this summons is not personally delivered to you with the State of New York); and in case of your failure to appear or answer, judgement will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
August 20, 2019

Respectfully Submitted,

GODDARD LAW, PLLC
Attorneys for Plaintiff

By: **s/Megan S. Goddard**
Megan S. Goddard, Esq.
39 Broadway, Suite 1540
New York, NY 10006
Office: 646-504-8363

TO: SCHULTE, ROTH & ZABEL LLP
919 Third Avenue
New York, New York 10022

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

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SEBASTIAN ALONZO,

Plaintiff,

-against-

SCHULTE, ROTH & ZABEL LLP,

Defendant.

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COMPLAINT

Jury trial Demanded

PLAINTIFF SEBASTIAN ALONZO, by his attorney Goddard Law PLLC, whose offices are located at 39 Broadway, Suite 1540, New York, NY 10006, alleges upon knowledge with respect to himself, and upon information and belief as to all other matters, as follows:

PRELIMINARY STATEMENT

1. This is an action to remedy unlawful discrimination, harassment, and wrongful termination based on Plaintiff’s race, gender and perceived sexual orientation in violation of the New York State Human Rights Law and New York City Human Rights Law.

2. Plaintiff seeks declaratory relief, monetary, and punitive damages.

PARTIES

3. Plaintiff Sebastian Alonzo (“Plaintiff”) is a male citizen of the United States who was born in the Bronx, New York. Plaintiff was subject to race, gender, and sex discrimination that resulted, ultimately, in his constructive termination from Defendant Schulte, Roth & Zabel (hereinafter “Defendant”).

4. Plaintiff is and was, at all times relevant herein, Defendant’s “employee” within the meaning of New York State Human Rights Law, New York City Human Rights Law, and New York Labor Law.

5. Upon information and belief, at all times herein, Defendant was and is a limited

liability partnership (LLP) in New York and permitted to do business in New York. Upon information and belief, Defendant's New York offices are located at 919 Third Avenue, New York NY 10022. At all times herein, Plaintiff worked at this location.

6. Defendant is and was, at all times relevant herein, Plaintiff's "employer" within the meaning of New York State Human Rights Law, New York City Human Rights Law, and New York Labor Law.

7. Plaintiff demands a jury trial.

FACTUAL BACKGROUND

Plaintiff is Hired Upon the Recommendation of an Executive at Defendant

8. In or about January 2008, Plaintiff was hired to work as a temporary employee in Defendant's Facilities Department (hereinafter "the Department").

9. While Plaintiff was a temporary employee in the Department, Gary Fiebert, an Executive at Defendant (hereinafter "Executive Fiebert") recommended that the Department hire Plaintiff full-time, and in March 2008, he was hired as a full-time Maintenance Assistant.

10. As a Maintenance Assistant, Plaintiff reported to Jason Philbert, Facilities Supervisor (hereinafter "Supervisor Philbert"), Daniel Appleby, Manager of Facilities (hereinafter "Manager Appleby") and Joe Soileau, the Director of Facilities and Conference Services (hereinafter "Director Soileau").

11. Plaintiff and the rest of the Department worked closely with the Conference Services Department at Defendant, which was run by Senior Coordinator Collette Williams (hereinafter "Senior Coordinator Williams").

Plaintiff's Work Environment Involves Close Contact With All Members of the Department, Including His Supervisors

12. The Department consisted of a collection of cubicles, one for each staff member including Plaintiff. Supervisor Philbert and Manager Appleby's offices were in the same room and

just steps away from the cubicles; their doors were always open, and they could easily hear what went on in the Department between staff members.

13. When Plaintiff arrived at his desk, he checked his computer or his “Blackberry” hand-held device for his daily assignments, and then asked his supervisors whether they needed help with anything.

14. Most days, Defendant had meetings, conferences, and lunches in their conference and meeting rooms, and so employees of the Department and the Conference Services Department, including Supervisor Philbert, Manager Appleby, and Senior Coordinator Williams, would gather together to “break down” Defendant’s Conference and meeting rooms by moving chairs and tables, cleaning, and straightening the rooms. They would then prepare the conference and meeting rooms for events in the afternoon and evening.

15. In the afternoon, Plaintiff would complete any other necessary tasks that had been assigned to him. This included, among other things, moving furniture, file cabinets, tables, chairs, and boxes from one office to another, or to and from the storage room; delivering office supplies to Defendant’s employees; making repairs; picking up recycling and responding to water or electrical emergencies in the building. These tasks would be done alone, and/or with his supervisors or other members of the department.

16. Plaintiff was solely responsible for making duplicates of keys to locksmith off-site for Defendant’s employees and delivering keys to key-holders.

17. Male employees of the Department were generally in charge with performing the heavy lifting of furniture, file cabinets, tables and chairs, while female employees did less physical work.

**Plaintiff's Supervisors and Employee
Create a Sexist, Male-Dominated, and Sexually Harassing Environment**

18. As soon as he joined the Department, Plaintiff was alarmed to witness the Department's supervisors and employees engaging in blatant and overt sexist and sexually harassing behavior.

19. Plaintiff witnessed Supervisor Philbert and Manager Appleby regularly laugh and join in as Plaintiff's co-worker Ronnie Hickman (hereinafter "Harasser Hickman") made disgusting comments about women and bragged about sexually harassing female employees.

20. Harasser Hickman talked about women every single day. He looked at women at Defendant in a sexual and sexist way. He regularly told Supervisor Philbert and Manager Appleby in front of Plaintiff that particular female employees had a "great ass," "great tits" or "fat ass," and said, "I would f*ck [various female employees]."

21. Harasser Hickman sexually harassed female employees at Defendant and female secretaries by stopping by their desks and making unwanted sexual advances towards them. These female employees regularly complained about these incidents of sexual harassment.

22. Harasser Hickman took a particular sexual interest in a certain female employee. He repeatedly asked her to date him or sleep with him even though she consistently declined his advances.

23. Supervisor Philbert and Manager Appleby observed and knew well of this behavior and never stopped Harasser Hickman from engaging in sexual harassment or sexist behavior of the particular female employee.

24. Plaintiff refused to join in on the sexual harassing behavior and made it clear that he did not approve of same.

25. Plaintiff refusal to join in on their sexist and harassing behavior and his obvious disapproval of same resulted in Harasser Hickman questioning Plaintiff's masculinity, and his

sexual orientation. Harasser Hickman would ask, “What are you, gay?” in a derogatory manner in front of Supervisor Philbert and Manager Appleby.

26. Neither Supervisor Philbert nor Manager Appleby did anything when Harasser Hickman repeatedly commented on and questioned Plaintiff’s sexuality.

**Plaintiff Experiences a Severe Hostile Work Environment because of his
Gender and Perceived Sexual Orientation**

27. Thereafter, Plaintiff continued to experience gender and perceived sexual orientation discrimination at the hands of Harasser Hickman.

28. Harasser Hickman constantly referred to Plaintiff as “faggot,” “homo,” and “gay,” openly and in front of Plaintiff’s co-workers and Supervisor Philbert, Manager Appleby, and Senior Coordinator Williams.

29. Harasser Hickman regularly made humiliating and offensive comments to Plaintiff including, but not limited to,

“Good boy,”

“Don’t get hit by a car,”

“You do it,”

“That’s a good girl,”

“Your man wants you to stay in bed,”

“Your man lets you come to work,”

“That’s it bitch,”

“Help your daddy out,”

“Help your Uncle out,”

“Good job son,” and

“Son, daddy thought you [were] not coming in but your man let you come to work.”

30. Upon information and belief, Harasser Hickman harbored severe animosity towards

Plaintiff because he perceived him to be gay and because he is homophobic.

31. Harasser Hickman further harassed Plaintiff because of his religion. When he learned that Plaintiff was a practicing Catholic, he took to calling him “the devil,” in front of his colleagues and supervisors.

32. Though Supervisor Philbert, Manager Appleby, and Senior Coordinator Williams regularly witnessed these overtly hostile discriminatory attacks, neither took any action to stop the illegal behavior, and in fact, endorsed it by laughing along with his co-workers and harasser.

33. Plaintiff tried his best to ignore the harassment because he feared that Mr. Hickman’s attacks would increase if he stood up for himself.

34. Upon information and belief, just like Harasser Hickman, Supervisor Philbert, Manager Appleby, and Senior Coordinator Williams perceived Plaintiff as gay and/or effeminate, and further believed that he was not “manly” enough to work in the Facilities Department.

35. Due to these homophobic and gender-based stereotypes, upon information and belief, Harasser Hickman, Supervisor Philbert, Manager Appleby, and Senior Coordinator Williams believed it was ok for an employee to deride another employee because he was perceived as gay.

**Plaintiff Experiences a Hostile Work Environment Because of
His National Origin**

36. Throughout his employment, Plaintiff was also subjected to a hostile work environment based on his national origin.

37. Discriminatory and hostile comments were regularly made in front of Supervisor Philbert and Manager Appleby, both of whom laughed at the comments.

38. Harasser Hickman repeatedly told Plaintiff to “go back to [his] country,” and to “go back to Ecuador.”

39. A second co-worker, Javier Medero (hereinafter “Co-worker Medero”) harassed

Plaintiff by saying that he should “Go back to [his] country.” When Plaintiff defended himself by saying “I was born in New York City,” Co-worker Medero stated that he did not “believe” that Plaintiff had been born in the United States, and repeatedly yelled, “Go back to Ecuador you fucking Ecuadorian!”

**Supervisor Philbert Ridicules Plaintiff’s
Non-Stereotypically-Masculine Clothes**

40. In addition, Supervisor Philbert repeatedly ridiculed Plaintiff about his clothing. Upon information and belief, he did so because he did not believe that Plaintiff’s clothing - jeans or khakis and brightly colored polo shirts tucked into his belt - were “masculine” enough.

41. Supervisor Philbert regularly examined Plaintiff’s clothing and then made sarcastic comments while touching his sleeve, such as, “I like your shirt,” “nice shirt,” “nice pants” or “nice shoes.”

42. These comments were clearly meant to insult Plaintiff and made for the amusement of the other employees who witnessed the comments. Upon information and belief, Supervisor Philbert was simply ridiculing Plaintiff for not being “masculine” enough, and because he perceived him as being “gay.”

43. Upon information and belief, Supervisor Philbert did not comment on the clothing choices of any other employee at Defendant.

Plaintiff Experiences Serious Emotional Distress Because of the Abuse

44. From the moment the harassment of Plaintiff began, he experienced severe anxiety and depression as a result.

45. He felt anxious, short of breath, and physical ill from anxiety. He suffered depression and had a difficult time getting out of bed.

46. Many times, after he suffered the abuse at Defendant, he locked himself into a private bathroom at Defendant and cried during his breaks.

47. At the same time, his salary in the Department was more than he had ever made, and he was terrified that if he left, he would never get a job, or one that paid as well as the one he had.

48. Plaintiff kept hoping and praying that his hard work would show his co-workers that he deserved respect and that the abuse would stop, so he kept going to work and doing his job exceptionally.

49. Plaintiff felt trapped and felt that it was not fair that he should have to be the one to leave the abusive and hostile work environment.

Plaintiff is Promoted to Facilities Clerk But Denied a Raise

50. Despite the abuse, Plaintiff continued to do exceptional work at Defendant. He always arrived on time, completed his tasks thoroughly and without complaint, and went above and beyond his duties.

51. In August 2013, Plaintiff was promoted to a “Facilities Clerk” position because of this excellent work.

52. Plaintiff asked for a promotional raise with his promotion, which was standard practice within the Department. Director Soileau told Plaintiff that he would get the raise, but Plaintiff never received it and instead he continued to be paid the same salary as the Maintenance Assistant in the Department.

Plaintiff Reports the Harassment and Hostile Work Environment in his Self-Evaluation

53. In or about October 2016, before Plaintiff’s 2016 evaluation meeting with his supervisors, he filled out a self-evaluation. In this self-evaluation, Plaintiff wrote that he “treat[ed] others with kindness, civility, and respect” and “maintain[ed] professionalism in situations of conflict towards [him]” (emphasis added). In the “comments” section Plaintiff wrote that he “accept[ed] constructive criticism and suggestions but one must not confuse this with putting

someone down or being discouraging.”

54. Plaintiff had never made these kinds of comments in his prior self-evaluations, but the abuse had become overwhelming and it was clear to Plaintiff that his supervisors, who were well aware of the discrimination, did not intend to do anything about it.

55. Plaintiff knew that this self-evaluation would be given to Supervisor Philbert, Manager Appleby, and HR Director Kaback before they provided him with his yearly evaluation and that they would see that he was complaining formally about the discriminatory behavior that they regularly witnessed, engaged in and allowed.

56. Plaintiff anxiously awaited the meeting that he knew would occur concerning his performance evaluation and hoped that his complaints of harassment would finally be addressed.

**Plaintiff Reports the Discrimination to Supervisor Philbert,
Manager Appleby and HR Director Kaback, But They Attack Him**

57. About one month later, in or about the beginning of November 2016, Director Soileau, Supervisor Philbert, Manager Appleby, and HR Director Kaback called Plaintiff into a conference room to discuss his 2016 performance evaluation.

58. The tone of the meeting immediately became hostile when the discussion turned to Plaintiff's self-evaluation.

59. Supervisor Philbert said angrily that “no one was ‘against him’” and told him that he was being “too sensitive.” Neither Director Soileau, Supervisor Philbert, Manager Appleby nor HR Director Kaback allowed him to elaborate on or asked him any questions about his claims of mistreatment and in fact, made him feel stupid for saying anything at all.

60. HR Director Kaback, who also had not asked Plaintiff any questions about the behavior alleged, immediately sided with Supervisor Philbert, and criticized and blamed Plaintiff for being “too emotional.”

61. HR Director Kaback then sarcastically asked Plaintiff, “Do YOU want to be the

manager here?” Plaintiff, confused, replied quietly, “But I never asked to be a supervisor or manager?”

62. As he left, Supervisor Philbert approached him. He looked at Plaintiff with hostility and, under the feign of a handshake, squeezed his hand so hard that Plaintiff winced. Upon information and belief, Supervisor Philbert did so because he wanted Plaintiff to know how angry he was that he had tried to report the discrimination and because he wanted Plaintiff to feel threatened and dissuaded from any further reporting. Supervisor Philbert had never shaken Plaintiff’s hand in that aggressive manner before.

**Plaintiff Reports the Discrimination and Harassment to
HR Director Kaback and She Dismisses His Concerns**

63. One week later, Plaintiff had a meeting with HR Director Kaback alone.

64. He said again that he was “treated differently” than other employees and told HR Director Kaback about the bizarre and hostile handshake after Supervisor Philbert learned about his allegations of mistreatment.

65. HR Director Kaback said with an exasperated tone, “People have different handshakes” and dismissed Plaintiff’s concerns.

66. She sarcastically told Plaintiff that she would “investigate” his claims that he was “treated differently.”

67. A few days later, HR Director Kaback asked Plaintiff for another meeting.

68. She told Plaintiff that she had done an “investigation,” and that all of his claims of mistreatment were all in his head, that he was imagining things, that no one was after him.

69. Upon information and belief, HR Director Kaback did no such “investigation.” In the alternative, upon information and belief, HR Director Kaback’s alleged “investigation” consisted of simply advising Supervisor Philbert and Manager Appleby that Plaintiff was once again accusing them of unfair treatment.

70. Plaintiff was extremely anxious and upset. He had finally worked up the courage to complain about the harassment and discrimination he faced at Defendant and it simply was not taken seriously. Furthermore, he knew he was likely to be the victim of additional retaliation because he had tried to report the discrimination.

Plaintiff is Fiercely Berated for Pretextual Reasons

71. Thereafter, Plaintiff was treated with even more hostility. First, he was berated for attempting to get a new Blackberry.

72. Specifically, he sent an email to Manager Appleby and Supervisor Philbert that read:

My “[B]lackberry must’ve malfunctioned. I have an outdated [B]lackberry that has these issues from time to time, but I was denied a new [B]lackberry a [sic] every time in the past.”

73. Upon information and belief, because he was angry that Plaintiff had reported discrimination, , Manager Appleby sarcastically responded: “Sebastian, who has denied you a new device?” Plaintiff responded:

[Ms. Williams] has denied me a new [B]lackberry every time I had issues, after it was seen by [Mr. German] each time I had these issues, but I still continued to have issues with my [B]lackberry. They gave me Temesgian’s [B]lackberry when he left the firm (from Conference Services). Everyone received a new [B]lackberry except for me.

74. In response, on Wednesday, March 8, 2017, Manager Appleby asked Plaintiff to meet him in Director Soileau office.

75. Director Soileau immediately screamed at Plaintiff in fury, telling him to never, ever tell him that other employees “were not doing their job.” When Plaintiff told Director Soileau that he had no idea what he was talking about, Director Soileau referred to Plaintiff’s email to Manager Appleby concerning his requests for a Blackberry from Ms. Williams.

76. Upon information and belief, Defendant employees were angry that he had reported

discrimination.

77. Director Soileau warned Plaintiff to stop “bullshitting him” and threatened that he would be fired if he ever reported any of his other colleagues.

**Manager Appleby Reprimands Plaintiff Falsely
for Pretextual Reasons**

78. Thereafter the hostility continued, and Plaintiff began to be bizarrely singled out. On March 30, 2017, Plaintiff was tasked with distributing keys to new offices that had just been renovated, by putting one key in each new office. This involved almost 300 keys.

79. Manager Appleby called Plaintiff down to his office, where Director Soileau was waiting.

80. Manager Appleby and Director Soileau attacked Plaintiff for allegedly losing a key that was missing from one of the offices that is known as the “privacy room.”

81. Manager Appleby screamed at him: “Why don't you have the keys to the ‘privacy’ room??”

82. Confused and caught off guard about what he was being accused of, Plaintiff explained that he had been busily working and tried to explain that he would fix whatever the issue was.

83. Manager Appleby cut him off and said, “Oh so that’s what you’re going with, you were busy??”

84. After Manager Appleby screamed at Plaintiff, he turned to Director Soileau “[Director Soileau], he’s all yours.”

85. Director Soileau then yelled at him, asking why he would have said that he was “too busy.” Plaintiff stated that he had been busy working.

86. Director Soileau then said to Plaintiff: “You are bullshitting,” and that he had “failed in this project.” Plaintiff was stunned and asked how he had failed. Director Soileau said

“Because you didn't get the job done,” and said, “You failed!” He told Plaintiff that he would give the keys to someone else to get the task done correctly.

87. Plaintiff was flabbergasted, as he absolutely had not lost a single key for which he was responsible. At any rate, Plaintiff knew that even if he had lost one key, other employees made mistakes that were far more serious than this, and were not belittled, screamed at, and harassed in this way.

88. Director Soileau furiously told Plaintiff to “Just go home.”

89. Plaintiff was terrified that he had just been fired and said, “Go home for good, or do you want me to come back to work tomorrow?” Director Soileau thought for a moment and ordered him to return the next day.

90. Plaintiff walked out of the office extremely upset and anxious.

Plaintiff Reports the Abuse to Human Resources

91. On the same day that Director Soileau told him to “go home,” Plaintiff walked to Human Resources to tell HR Director Kaback about what occurred.

92. He said calmly and clearly to HR Director Kaback that Director Soileau and Manager Appleby were threatening his job.

93. Plaintiff told HR Director Kaback that Director Soileau had furiously told him to “Go home!” and that he was terrified that he had lost his job.

94. HR Director Kaback asked Plaintiff whether Director Soileau had told him to come back the next day. Plaintiff responded that he had, but that he feared being terminated when he returned.

95. HR Director Kaback told Plaintiff that she would “talk to Director Soileau,” and told him to go home, but to come back to work the next day.

96. Plaintiff reluctantly went home, severely anxious and depressed thinking that he

was going to lose his job the next day.

97. Upon information and belief, HR Director Kaback told Director Soileau and Manager Appleby that Plaintiff had again reported discrimination and harassment in the Department, causing them to retaliate against Plaintiff.

Plaintiff's Responsibilities Are Taken Away and Given to Other Employees

98. The next day, when Plaintiff returned to work, Manager Appleby ordered Plaintiff to come to his office, and as Plaintiff stood fearfully in his doorway, he screamed at him that he was "not working on keys anymore," and he was "giving [his] job to someone who knows how to do it!" Plaintiff was always trusted with "working on keys" before he reported the discrimination.

99. Notably, numerous employees in the Department had lost keys, but they were never screamed at, reprimanded, belittled, or degraded by Manager Appleby and/or Director Soileau.

100. Upon information and belief, tasks were being taken away from Plaintiff in retaliation of his reports of discrimination.

Plaintiff Reports the Hostile Work Environment to Human Resources Yet Again

101. That same day, after Manager Appleby took away Plaintiff's key responsibilities, he reported the retaliation as well as the repeated harassment and hostile work environment again to Human Resources.

102. At 12:13 pm, Plaintiff wrote the following email to HR Representative Kaback:

Good afternoon Denise,

I am just letting you know that I am in the office as you requested me to do. I also wanted to follow up with the incident that happened yesterday evening between [Director Soileau] and [Manager Appleby] attacking me (Mentally, emotionally, verbally, cursing at me, degrading me, intimidating me, provoking me, discouraging me, yelling at me) and insinuating that I have failed on the project with the new floors (Particularly with 1 room on the 24th floor that

I did not receive any keys for). I was sent home by [Director Solieau] yesterday evening at 6pm for no reason as well as having this project taken away from me and letting me know that the keys for this project will be given to another individual. Lastly, I spoke to you about certain topics similar to this incident that has [sic] been repeatedly and wrongfully done towards me. Please let me know if you like to see me?

103. HR Director Kaback wrote the following email back to Plaintiff that same day at 1:04 pm:

Sebastian,

Thank you for letting me know you are here. Unless you feel it is necessary, you don't have to see me today.

Thanks,
DZK.

104. HR Director Kaback never asked Plaintiff about this incident again.

Plaintiff Has an Intake Interview with the EEOC

105. Because of Defendant's refusal to take his complaints seriously, and due to the ongoing hostile work environment where Plaintiff's sexuality and manliness was constantly questioned, Plaintiff realized that he had no choice but to go to the EEOC.

106. On June 5, 2017, Plaintiff reported the discrimination and harassment he faced to the EEOC. In response to the question on the intake form as to the basis for his claim, Plaintiff checked that he had suffered "race" and "sex" discrimination. He listed Director Soileau, Manager Appleby, Supervisor Philbert, and HR Director Kaback as "Person(s) Responsible" for the discriminatory actions.

107. In addition, he stated, he was "always getting treated differently for a very long time (not [because of] work performance but [because of] the way I look, I talk, what I wear, etc.)"

108. He reported the "issues [were] still ongoing," and that he had "many more incidents as well."

**Supervisor Philbert Hears Several Employees Talk About
Physically Assaulting Plaintiff**

109. On August 9, 2017, Plaintiff was assigned overtime¹ and asked to come in to work early. While working in an adjoining room, he overheard Harasser Hickman, Co-worker Santos, Supervisor Philbert and Co-worker Thomas complaining about him and talking about physically assaulting him.

110. Upon information and belief, the discussion concerned Defendant employees' anger that Plaintiff had reported discrimination and their general hatred towards him.

111. Co-worker Santos said that she would "send [her] son to fuck [Plaintiff's] ass up!" and "When my son used to work here, he wanted to jump on him so bad!" Harasser Hickman laughed and said he would "send [his] son to fuck [Plaintiff] up too!" Co-worker Thomas said that her son would "fuck him up" too.

112. Upon information and belief, Plaintiff's co-workers were talking about their sons physically assaulting Plaintiff because he had reported discrimination, and because they thought he was gay, and because of his non-masculine presenting gender.

113. Co-worker Santos then asked Supervisor Philbert: "What the fuck is [Plaintiff] doing here so early in the morning? Why did you let him come this early in the morning?!"

114. Shockingly, Supervisor Philbert abjectly failed to address Plaintiff's co-workers for their threats against Plaintiff. He only blandly told Co-worker Santos and the others that Plaintiff was "doing overtime."

**Super Philbert and Manager Appleby Fail to Act When Plaintiff's
Co-worker Physically Threatens Him**

115. On September 14, 2017, Plaintiff walked into the Facilities Office where Harasser Hickman, Co-worker Thomas, and Co-worker Santos were. He said good morning to Co-worker

¹ Plaintiff further alleges that he was not properly compensated for overtime.

Nife Rexhepi, who was also in the Facilities Office

116. Harasser Hickman immediately approached Plaintiff and said in front of his three other co-workers: “Why don’t you say good morning to all of us, you fucking bitch!”

117. Plaintiff was caught off guard by the attack, since other employees regularly ignored him. When Plaintiff questioned the attack, Harasser Hickman told him angrily, “You have to say good morning to everyone mother fucker, [or] I will punch you in your fucking face!”

118. When Plaintiff replied “Don’t talk to me like that,” Harasser Hickman became even more irate and screamed, “I’m going to wait for you outside and I’m going to fuck you up!,” “I’m going to punch you in your fucking face,” and “Wait until I catch you outside.”

119. Plaintiff became more and more terrified at Harasser Hickman’s threats, but tried to remain calm as he walked away from his coworkers.

120. Upon information and belief, Harasser Hickman’s threats towards Plaintiff were gossiped about for the rest of the day. Upon information and belief, Supervisor Philbert, Manager Appleby, and Director Soileau were informed by several of Plaintiff’s co-workers of these threats.

121. Shockingly, the incident was not reported or investigated by anyone. Supervisor Philbert, Manager Appleby and Director Soileau never came to Plaintiff to see if he was ok or to otherwise manage the situation in any way. Upon information and belief, Supervisor Philbert, Manager Appleby and Director Soileau all hoped that Plaintiff would finally quit.

122. After work that day, Plaintiff was terrified to leave work in fear that Harasser Hickman would be waiting for him outside. He exited through a different entrance at Defendant, and hurried home.

123. That night, he was so anxious he could not sleep at the thought of what Harasser Hickman would do to him the next workday. Plaintiff was incredibly anxious about returning to work. He continued to be terrified and lost sleep for several days.

124. Harasser Hickman continue to try to physically intimidate him and engaged in even more aggressive and frequent verbal discrimination in front of co-workers and supervisors, calling him “faggot,” “gay” and other derogatory names.

Plaintiff is Moved Departments and Demoted

125. On November 1, 2017, Manager Appleby and Director Soileau called Plaintiff into a conference room on the 19th floor and told him that he was being transferred out of the Facilities Department and to the Conference Services Department full time. They said that Co-worker Andrew Sanichar (hereinafter “Co-worker Sanichar”) would be taking over his position in the Facilities Department.

126. Plaintiff was shocked, because this was a clear demotion: While he had many and diverse responsibilities in the Facilities Department - such as, among other things moving furniture, delivering supplies, making keys, collecting recycling, interacting with employees who needed services - he would have little to no responsibilities in Conference Services – just setting up tables and chairs for Defendant’s conference and meeting rooms.

127. When he asked why this occurred, Manager Appleby said coldly that they were “making the change” and there were “other things that were happening,” without giving an explanation.

128. Upon information and belief, Plaintiff was demoted in retaliation for his complaints of discrimination and because Defendant did not want to have to discipline the wrongdoers.

129. Plaintiff was devastated that he was being demoted. When he told Manager Appleby that he “did not agree” with the changes, he responded furiously, “Whether you agree or not, this is what’s happening.”

Plaintiff Reports the Discrimination to Human Resources Again

130. On November 3, 2017, Plaintiff wrote an email to HR Director Kaback about the demotion. In the email, he wrote to HR Director Kaback:

I understand the company's [objective] to have a satisfactory employee. I'm not sure how transferring one employee to another department will help. Furthermore, Andrew Sanichar has been switched from the office facilities department as a maintenance assistant [sic] then to conference services clerk in the conference services dept, then is going to take my job title and position as facilities clerk back into the office facilities dept. I am being demoted from my facilities clerk position and I am not the one with performance issues.

After the meeting, I felt bullied and I am being targeted yet again. I do not agree with the switch. I hope you can understand how this has impacted my mental health. There have been several incidences where Daniel and Joe have made me feel this way. I just wanted to let you know how I feel.

131. Instead of responding to his report of discrimination and harassment, HR Director Kaback called Plaintiff and left a voicemail saying, shortly, and without any discussion, that he was to report to his new job in Conference Services that Monday.

132. Meanwhile, in or about November 2017, the Department threw a birthday party for Harasser Hickman.

Plaintiff is Harshly Reprimanded Again for Pretextual Reasons

133. On November 8, 2017, Plaintiff was busy fixing a task that Co-worker Sanichar had not done correctly.

134. Plaintiff's co-worker Laura Criollo (hereinafter "Co-worker Laura") saw Plaintiff moving the table and screamed at him "I need you to [go downstairs to the lounge] NOW. It wasn't done and I needed it done NOW."

135. Co-worker Laura, like other employees, had become especially rude to Plaintiff since he had reported unlawful behavior.

136. Plaintiff responded “Ok, Laura, calm down, I will take care of it, but don’t give me attitude.”

137. A few moments later, Plaintiff was called to HR Director Kaback’s office, where he found HR Director Kaback and Director Soileau.

138. Plaintiff tried to explain himself to Director Soileau and HR Director Kaback were not interested in or willing to listen to Plaintiff’s side of the story. HR Director Kaback immediately stated, “If you don’t like [anyone’s] tone, maybe you don’t want to work here anymore!”

139. She then asked Plaintiff “Are you trying to get fired?” and berated him for getting “an attitude” with Co-worker Laura, even though it was Laura who had gotten an attitude with him. Plaintiff told her that this was not true, but that Co-worker Laura had gotten an attitude with him, he just told her calmly not to speak to him that way.

140. HR Director Kaback then belittled Plaintiff’s repeated reports of harassment and discrimination. She said: “You’re too busy thinking that we are out to get you, but that is not my issue, that’s yours.”

141. HR Director Kaback said “If you ever speak to [Co-worker] Laura that way again, we will have a different conversation,” and Director Soileau added: “If you speak to anyone that way.”

142. Plaintiff was shocked that his coworkers were allowed to call him a “faggot,” “gay” and “Homo” and threaten to physically assault him while their supervisors laughed, but when he asked a screaming co-worker to not give him attitude, his job was threatened.

143. Director Soileau and HR Director Kaback made it clear that they considered it to be Plaintiff’s problem if he could not find a way to get along with his harassing co-workers. HR Director Kaback also told Plaintiff “if you are getting treated so bad then why do you continue to

work here? Maybe you should find somewhere else to work.”

144. Director Soileau further warned, “If you don’t like the people you work with, then I suggest you find employment elsewhere, because its not going to work for you, and it’s not going to work for us.”

**Plaintiff is Forced to Leave a Job He Had for Ten Years Because of the Blatant
Harassment and Hostile Work Environment Based on his
Race, National Origin, and Gender**

145. Thereafter, Plaintiff was treated worse than ever. It was clear that all of the employees had been warned to stay away from him. On December 15, 2017, Plaintiff finally could not take the severe abuse by his co-workers and supervisors any longer. His mental health had deteriorated to a point where he could no longer function at work.

146. Plaintiff wrote an email message to Human Resources and numerous employees detailing the harassment, hostile work environment, and discrimination he faced because of his race, national origin, sexual orientation and gender.

147. Plaintiff reiterated the fact that Harasser Hickman had called him “fagot” [sic], “homo” and “gay” and said “don’t come back,” “get lost,” “good boy,” “don’t get hit by a car,” “good job son,” “you do it,” “that’s a good girl,” “your man wants you to stay in bed,” “your man let you come to work,” “that’s a bitch,” “help your daddy/uncle out” and “son, daddy thought you was [sic] not coming in but your man let you come to work.” He also stated that Harasser Hickman had called him “the devil.” Plaintiff also told Defendant that his co-workers told him to “Go back to Ecuador,” “Go back to [his] country,” and “Go back to Ecuador you fucking Ecuadorian.”

148. Plaintiff stated in the letter that Supervisor Philbert had been present when three of his co-workers threatened to commit assault against him. Two employees said separately that they wanted to “send [their] son[s] to fuck [his] ass up” another wanted to “fuck him up,” and a third said his son wanted to “jump on him so bad.”

149. He also told Defendant that he was physically threatened with assault by Harasser Hickman, who called him a “fucking bitch,” and said that he would “fuck [him] up,” “punch [him] in [his] fucking face” when he “caught [him] outside.”

**Human Resources Fails in Its Legal Responsibility to Investigate Plaintiff’s
Shocking Allegations of National Origin and Perceived Sexual Orientation
Discrimination and Harassment**

150. On December 20, 2017, HR Director Kaback sent a letter to Sebastian. She told Plaintiff that she received his resignation letter and that she “regret[ed] that he “believed” that he was “harassed, bullied, retaliated [against] and discriminated against by so many [of Defendant’s] employees, including but not limited to co-workers, supervisors and me.”

151. Shockingly, instead of acknowledging Plaintiff extremely serious allegations of discrimination, harassment, and threats of violence against him, HR Director Kaback attempted to revise history and create a record by accusing Plaintiff of failing to report the allegations.

AS AND FOR PLAINTIFF’S FIRST CAUSE OF ACTION

*(Gender and Sex Discrimination in Violation of the New York State Human Rights Law
and the New York City Human Rights Law)*

152. Plaintiff re-alleges and incorporates by reference each and every allegation in each and every aforementioned paragraph as if fully set forth herein.

153. Defendant has discriminated against Plaintiff in violation of the New York State Human Rights Law and the New York City Human Rights Law by subjecting him to different treatment on the basis of his gender, sex and and/or perceived sexual orientation. Plaintiff has suffered both disparate impact and disparate treatment as a result of Defendant’s wrongful conduct.

154. Defendant has discriminated against Plaintiff by treating him differently from and less preferably than similarly-situated males, more stereotypically “masculine” males, and/or heterosexual employees and by subjecting him to disparate terms and conditions of employment, and other forms of discrimination on the basis of his gender, sex and/or perceived sexual

orientation in violation of the New York State Human Rights Law and the New York City Human Rights Law.

155. Defendant's conduct has been intentional, deliberate, willful, malicious, reckless and conducted in callous disregard of the rights of Plaintiff, entitling Plaintiff to punitive damages.

156. By reason of Defendant's discrimination, Plaintiff is entitled to all remedies available for violations of the New York State Human Rights Law and the New York City Human Rights Law.

AS AND FOR PLAINTIFF'S SECOND CAUSE OF ACTION

(Race and/or National Origin Discrimination in Violation of the New York State Human Rights Law and the New York City Human Rights Law)

157. Plaintiff re-alleges and incorporates by reference each and every allegation in each and every aforementioned paragraph as if fully set forth herein.

158. Defendant has discriminated against Plaintiff in violation of the New York State Human Rights Law and the New York City Human Rights Law by subjecting him to different treatment on the basis of his race and/or national origin. Plaintiff has suffered both disparate impact and disparate treatment as a result of Defendant's wrongful conduct.

159. Defendant has discriminated against Plaintiff by treating him differently from and less preferably than Caucasian and Non-Ecuadorian employees by subjecting him to disparate terms and conditions of employment, and other forms of discrimination in violation of the New York State Human Rights Law and the New York City Human Rights Law.

160. Defendant's conduct has been intentional, deliberate, willful, malicious, reckless and conducted in callous disregard of the rights of Plaintiff, entitling Plaintiff to punitive damages.

161. By reason of Defendant's discrimination, Plaintiff is entitled to all remedies available for violations of the New York State Human Rights Law and the New York City Human Rights Law.

AS AND FOR A THIRD CAUSE OF ACTION
*(Retaliation Under New York State Human Rights Law and
New York City Human Rights Law)*

162. Plaintiff re-alleges and incorporates by reference each and every allegation in each and every aforementioned paragraph as if fully set forth herein.

163. Plaintiff was an employee of Defendant and is protected by New York State Human Rights Law and New York City Human Rights Law from retaliation and retaliatory discharge.

164. Plaintiff complained to Defendant about the discrimination he was subjected to during his employment with Defendant.

165. Plaintiff's complaints were ignored and discouraged by Defendant's managerial employees in violation of New York State Human Rights Law and New York City Human Rights Law.

166. Plaintiff notified Defendant's Management of the discrimination he was subjected to and protested the harassment.

167. Plaintiff's protest to Defendant about the discrimination he was subjected to during his employment with Defendant was a protected activity under the New York State Human Rights Law and City Human Rights Law.

168. Defendant, unlawfully and without cause, retaliated against Plaintiff as a direct result of Plaintiff complaining about the incidents of discrimination.

169. Because he protested Defendant's unlawful behavior, Plaintiff was subjected to retaliation, and he was terminated.

170. The retaliation substantially interfered with the employment of Plaintiff and created an intimidating, offensive, hostile and hostile work environment in violation of New York State Human Rights Law and New York City Human Rights Laws.

171. Defendant knew or should have known about the retaliation and the effect it had on Plaintiff's employment but failed to take any action to stop the retaliatory conduct.

172. As a direct and proximate result of said unlawful employment practices and disregard for Plaintiff's rights and sensibilities, Plaintiff has lost and will continue to lose substantial income including, but not limited to wages, social security, and other benefits due him.

173. Additionally, Plaintiff has suffered the indignity of discrimination and retaliation, the invasion of his rights to be free from discrimination, and great humiliation, which has manifested in serious emotional stress and physical illness.

174. As a further direct and proximate result of said unlawful employment practices, Plaintiff has suffered extreme mental anguish, outrage, severe anxiety about his future and his ability to support himself and his family, harm to his employability and earning capacity, painful embarrassment among his family, friends, and co-workers, damage to his good reputation, disruption of his personal life, and the loss of enjoyment of the ordinary pleasures of everyday life.

175. As a result of Defendant's violation of the New York State Human Rights Law and New York City Human Rights Law, Plaintiff has been damaged in the sum of no less than \$1,500,000.

AND AS FOR A FOURTH CAUSE OF ACTION
(Failure to Pay Overtime in Violation of New York Labor Law)

176. Plaintiff re-alleges and incorporates by reference each and every allegation in each and every aforementioned paragraph as if fully set forth herein.

177. During the relevant time period, Defendants willfully failed to pay Plaintiff at the overtime rate for hours worked in excess of 40 hours per workweek as required by NYLL and the supporting regulations of the New York State Department of Labor.

178. Plaintiff seeks and is entitled to recover his unpaid compensation, liquidated damages pursuant to NYLL § 198, attorneys' fees, costs, pre- and post-judgment interest along with such other relief as this Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, for the foregoing reasons, it is specifically requested that this Court grant Plaintiff judgment as follows:

i. On Plaintiff's First Cause of Action, awarding Plaintiff compensatory and other damages, including punitive damages in an amount to be determined at trial but in any case, no less than \$1,500,000.00;

ii. On Plaintiff's Second Cause of Action, awarding Plaintiff compensatory and other damages, including punitive damages in an amount to be determined at trial but in any case, no less than \$1,500,000.00;

iii. On Plaintiff's Third Cause of Action, awarding Plaintiff compensatory and other damages, including punitive damages in an amount to be determined at trial but in any case, no less than \$1,500,000.00;

iv. On Plaintiff's Fourth Cause of Action, awarding Plaintiff the overtime wages he is owed under New York Labor Law together with all other relief available under the New York Labor Law;

v. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' fees, together with such other and further relief as this court deems equitable, proper, and just.

Dated: New York, New York
August 20, 2019

Respectfully submitted,

GODDARD LAW PLLC
Attorney for Plaintiff

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