

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK-----X
CARMELA HARDING

Plaintiff,

- against -

DONATELLA GCT, LLC, DONATELLA ARPAIA and
MARK GERAGOS, individually and in their professional
capacities,Defendants.
-----X: **Index No.:**: **SUMMONS**

: Date Filed:

: Plaintiff designates
New York County as the
place of trial.: Basis of venue is Defendants'
place of business.

To the above-named Defendants:

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 attorney within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty [30] days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of failure to appear or answer, judgment will be taken against you by default of the relief demanded in the complaint.

Dated: New York, New York
October 5, 2017

Yours,

FITAPELLI & SCHAFFER, LLP

Brian S. Schaffer

Dana M. Cimera

Attorneys for Plaintiff

28 Liberty Street, 30th Floor

New York, New York 10005

(212) 300-0375

Defendants' addresses:

Donatella GCT, LLC
Lower Level, Grand Central Terminal
89 East 42nd Street
New York, New York 10017

Donatella Arpaia
1280 5th Avenue, Apt 19A
New York, New York 10029

Mark Geragos
4134 Commonwealth Avenue
La Canada Flintridge, CA 91011

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

-----X
CARMELA HARDING

: **Index No.:**

Plaintiff,

: **COMPLAINT**

- against -

:

:

DONATELLA GCT, LLC, DONATELLA ARPAIA and :
MARK GERAGOS, individually and in their professional :
capacities,

Defendants.

-----X

Plaintiff by and through her counsel, FITAPELLI & SCHAFFER, LLP, states the following as her Complaint against the Defendants:

NATURE OF ACTION

1. Carmela Harding (hereinafter "Plaintiff"), brings this action against her former employer, Donatella GCT, LLC, Donatella Arpaia, and Mark Geragos (hereinafter collectively "Defendants" or "Prova Pizzabar") to seek relief for Defendants' violations of her legal rights. This action seeks to recover damages for discrimination based upon sex/gender (female) and retaliation committed by Defendants against Plaintiff in violation of the New York City Human Rights Law, N.Y.C. Admin. Code §8-107 *et seq.*

2. Plaintiff seeks compensatory and punitive damages, attorneys' fees and costs, and other legal and equitable relief.

JURISDICTION AND VENUE

3. The Court has jurisdiction over this matter pursuant to N.Y.C. Admin. Code §8-502. This Court has jurisdiction over the parties pursuant to C.P.L.R. §503(a) because New York County is where Defendant Donatella GCT, LLC is located.

4. Pursuant to, and as required by §8-502 of the New York City Human Rights Law, Plaintiff has also served a copy of this complaint upon the City Commission on Human Rights and Corporation Counsel.

PARTIES**Plaintiff****Carmela Harding**

5. Plaintiff resides in Staten Island, New York.

6. Plaintiff was employed by Defendants from approximately January 2017 until August 10, 2017.

7. Plaintiff is a female and was discriminated against based on sex/gender (female) and unlawfully retaliated against by Prova Pizzabar, and its principals, for complaining of the unlawful discrimination.

8. At all times relevant, Plaintiff met the definition of employee under the NYCHRL.

Defendants**Donatella GCT, LLC**

9. Defendant Donatella GCT, LLC ("Donatella") was at all times relevant Plaintiff's employer.

10. Donatella GCT, LLC is a domestic limited liability company. The New York State Division of Corporations lists its DOS address as 1280 Fifth Avenue, PH-C, New York, New York 10029.

11. Defendant Donatella GCT, LLC was Plaintiff's employer within the meaning of N.Y.C. Admin. Code §8-102 at all times relevant.

12. Donatella employs over 4 individuals.

13. At all times relevant, Donatella asserted substantial control over Plaintiff's working conditions, and over the unlawful policies and practices herein.

Donatella Arpaia

14. Upon information and belief, Defendant Donatella Arpaia (hereinafter "Arpaia") is a resident of the State of New York.

15. Arpaia was at all relevant times a principal of Donatella GCT, LLC.

16. Arpaia is identified as the person to accept mail process on behalf of Donatella GCT, LLC with the New York Department of State – Division of Corporations. *See Exhibit A.*

17. Arpaia is identified as a "Principal" of Donatella GCT, LLC doing business as Prova Pizzabar, with the New York State Liquor Authority. *See Exhibit B.*

18. Additionally, Arpaia has been featured in the media as a principal of Prova Pizzabar.¹

¹ Nick Solares, *Donatella Arpaia and the Prova Team to Take Over Two Boots Space in Grand Central Terminal*, Eater New York (available at <https://ny.eater.com/2016/1/11/10748178/donatella-arpaia-reveals-details-about-prova-pizzabar>, last accessed October 3, 2017); Pix11 News, *Food Network's Donatella Arpaia Cooks One of Her Specialties for Pix11* (available at <http://pix11.com/2017/08/15/food-networks-donatella-arpaia-cooks-one-of-her-pasta-specialties-for-pix11>, last accessed October 3, 2017); Marina Kennedy, *Chef Spotlight: Donatella Arpaia of PROVA PIZZABAR in Grand Central Station*, Broadway World (available at <https://www.broadwayworld.com/bwwfood-wine/article/Chef-Spotlight-Donatella-Arpaia-of-PROVA-PIZZABAR-in-Grand-Central-Station-20170505>, last accessed October 3, 2017).

Mark Geragos

19. Upon information and belief, Defendant Mark Geragos (hereinafter “Geragos”) is a resident of the State of California.

20. Geragos was at all relevant times a principal of Donatella GCT, LLC.

21. Geragos is identified as a “Principal” of Donatella GCT, LLC doing business as Prova Pizzabar, with the New York State Liquor Authority. *See Id.*

22. Additionally, Geragos identified Prova Pizzabar as he and Arpaia’s “newest spot” on his personal Twitter page. *See Exhibit C.*

FACTS

23. Defendants employed Plaintiff beginning in approximately January 2017 as a cashier at Prova Pizzabar.

24. Prova Pizzabar is a restaurant inside Grand Central Station owned by television personality and restaurateur Donatella Arpaia and celebrity criminal defense attorney Mark Geragos.

25. Plaintiff was subject to severe and ongoing discrimination based on her sex at the hands of her co-worker Kwame Murdock (“Murdock”) throughout her employment, creating an extremely hostile and intimidating work environment. In this regard, she was subject to constant sexual advances and sexually charged comments toward her. At no time did Plaintiff consent to these advancements or comments.

26. For example, Murdock would comment that Plaintiff was “getting slim” and that she “needs to get [her] butt.”

27. Additionally, Plaintiff was a witness to Murdock's constant "cat-calling" and derogatory, sexually charged comments about female customers.

28. Murdock frequently used derogatory comments about the appearance of female customers including, but not limited to, "fat butt" and "fat ass."

29. These comments were not out of character for Murdock who openly posts sexually charged and racially derogatory comments on his public Facebook page on a nearly daily basis. *See* Kwame Freeman, Facebook (*available at* <https://www.facebook.com/kwame.bovell>, *last accessed* October 4, 2017).

30. As a means of example, Murdock has recently posted the following on his public Facebook page:

- Murdock: "That tight ass dress you still ain't got no butt [emojis]"
- Murdock: "When I see a big butt I wonder if it's soft or a rock"
- Murdock: "The new joint at my store is on my body"
- Murdock: "You bitches don't be humble and yes I said bitches"
- Murdock: "Heard ya pussy on yuck guess you needed a Pap [emojis] that was funny I won't front"
- Murdock: "Ever put a pop Bitch on the block list?"
- Murdock: "A relationship with condoms is one that won't last."
- Murdock: "Avocado is really helping these white girls get thick"
- Murdock: "There was a girl fight at work";
[Friend: "Wtu tittittittittities pop out"];
Murdock: "No [sad face emoji]"
- Murdock: "Why are 'baby mothers' put on such a high pedestal"
- Murdock: "If you look preggo in your sundress leave it at home"
- Murdock: "Women CAN'T drive"
- Murdock: "I like my chick with some cellulite"
- Murdock: [In response to a post from Brittany France] "I'LL TIP WHATEVER THE FUCK I WANT, FUCK YOU ALL SERVERS DEADASS, DONT TELL ME TO STAY HOME, FIND A BETTER JOB YOU BROKE CRYBABY"
- Murdock: "Are there any women left that use condoms during sex?!"
- Murdock: "I'm at this day party and I've come to realize I don't like being around snooty chicks in cheap dresses"

See Exhibit D.

31. The hostile work environment came to a culmination on or around August 9, 2017. On this day Murdock aggressively groped Plaintiff's buttock in a manner such that his fingers neared her anus. Plaintiff did not consent nor welcome this groping.

32. This unwanted contact took place in an area of the restaurant where cameras were present.

33. The unwanted touching caused Plaintiff to immediately report the sexual harassment to her Manager, Steven Rudemyer ("Rudemyer").

34. The next day, on or around August 10, 2017, Defendants terminated Plaintiff.

35. Specifically, Rudemyer phoned Plaintiff on her day off, while she was not at work, to terminate her, stating that there were not enough hours for Plaintiff.

36. Defendants terminated Plaintiff for no other reason than her complaint of unlawful discrimination. Any other alleged reason, such as lateness, would be pretext.

37. On or about September 7, 2017 and September 26, 2017, Fitapelli & Schaffer, LLP ("F&S") reached out to Defendants on behalf of Plaintiff to attempt to resolve this matter pre-litigation. *See Exhibit E.*

38. Further, Defendants were instructed to maintain documents and electronically stored information which would include surveillance video. *See Id.*

39. On September 29, 2017, Defendants, and their Counsel, Geragos & Geragos, responded with a letter which spends a single paragraph denying the allegations, and the next six paragraphs threatening monetary sanctions against Plaintiff and F&S if we pursue her claims further. *See Exhibit F.*

40. Specifically, the Defendants sent the letter to advise that if Plaintiff and F&S pursue “this frivolous action and take any legal [action] against Prova, we will seek monetary sanctions against you and your client pursuant to CPLR 8303-a and 22 NYCRR § 130-1.1 . . .” *Id.*

41. Defendants’ “threat” of monetary sanctions repeatedly cites to CPLR 8303, an inapplicable law relating to the recovery of damages for personal injury, injury to property or wrongful death.

42. This threat by Geragos & Geragos was authorized by Geragos and Arpaia who are principals of Prova Pizzabar, and was obviously in retaliation for Plaintiff sending a pre-suit demand letter, and intended to harass, punish and dissuade Plaintiff from prosecuting this meritorious case.

FIRST CAUSE OF ACTION

New York City Human Rights Law –Discrimination Based on Sex/Gender Brought on behalf of Plaintiff against Donatella GCT, LLC

43. Plaintiff incorporates the above paragraphs as if fully rewritten herein.

44. By and through their course of conduct, Defendant Donatella, its managers, agents and/or employees’ agents, unlawfully discriminated against Plaintiff based on sex/gender in violation of the New York City Human Rights Law, N.Y.C. Admin. Code § 8-107 *et seq.*

45. The conduct described in this Complaint was unwelcomed and opposed by Plaintiff.

46. The discrimination based on sex was in contravention of Defendant Donatella’s own internal policy.

47. Defendant Donatella did not effectively communicate, follow, enforce or properly instruct their managers, agents and/or employees of any policy against discrimination.

48. Defendant Donatella is directly and vicariously liable for said discrimination based on Mr. Rudemyer's actions as a manager of Prova Pizzabar.

49. As a direct and proximate result of Defendant Donatella's unlawful discriminatory actions, Plaintiff suffered damages and injuries, including but not limited to, loss of pay and emotional distress.

50. That the aforesaid conduct of Defendant Donatella, their managers, agents and/or employees engaged in such discrimination intentionally and maliciously, and showed a deliberate, willful, wanton and reckless disregard of Plaintiff, and deprived her of her rights under the New York City Human Rights Law, thereby entitling her to an award of punitive damages.

SECOND CAUSE OF ACTION

**New York City Human Rights Law – Retaliation
Brought on behalf of Plaintiff against Donatella GCT, LLC**

51. Plaintiff incorporates all preceding paragraphs as if fully rewritten herein.

52. By and through their course of conduct, Defendant Donatella, its managers, agents and/or employees retaliated against Plaintiff after she complained about discrimination in violation of the New York City Human Rights Law, N.Y.C. Admin. Code §8-107 *et seq.*

53. Defendant Donatella retaliated against Plaintiff by terminating her in response for complaining about the sexual harassment.

54. Defendant Donatella, its managers, agents and/or employees engaged in such conduct intentionally and maliciously, and showed a deliberate, willful, wanton and reckless disregard of Plaintiff's rights under the New York City Human Rights Law, by retaliating against her.

55. Said conduct was in contravention of Defendant Donatella's own internal policy.

56. Defendant Donatella did not effectively communicate, follow, enforce or properly

instruct its agents, managers and/or employees of any policy against retaliation.

57. Defendant Donatella is directly and vicariously liable for said retaliation based on Mr. Rudemyer's actions as manager of Prova Pizzabar.

58. As a direct and proximate result of Defendants' unlawful retaliation, Plaintiff suffered damages and injuries, including, but not limited to, loss of pay and emotional distress.

59. That the aforesaid conduct of Defendants, their managers, agents and/or employees engaged in such discrimination intentionally and maliciously, and showed a deliberate, willful, wanton and reckless disregard of Plaintiff, and deprived her of her rights under the New York City Human Rights Law, thereby entitling her to an award of punitive damages.

THIRD CAUSE OF ACTION

New York City Human Rights Law – Retaliation Brought on behalf of Plaintiff against Defendants Geragos and Arpaia

60. Plaintiff incorporates all preceding paragraphs as if fully rewritten herein.

61. By and through their course of conduct, Defendant Geragos and Defendant Arpaia retaliated against Plaintiff after she complained about discrimination in violation of the New York City Human Rights Law, N.Y.C. Admin. Code §8-107 *et seq.*

62. Defendant Geragos and Defendant Arpaia retaliated against Plaintiff by sending the aforementioned letter threatening Plaintiff and F&S with baseless sanctions.

63. The sole purpose of Geragos' letter was to dissuade Plaintiff from pursuing her lawful action and enforcing her rights under the New York City Human Rights Law.

64. As a principal and the "face" of Prova Pizzabar, Defendant Arpaia was aware of the claims against Defendants, made the decision to hire Defendant Geragos' law firm, and authorized the letter.

65. Defendant Geragos, acting on his own behalf and as a principal of Prova Pizzabar, authorized the letter as he is copied on the email from Tina Glandian of Geragos & Geragos to Brian S. Schaffer of Fitapelli & Schaffer, LLP. *See Exhibit G.*

66. Defendants Geragos and Arpaia engaged in such conduct intentionally and maliciously, and showed a deliberate, willful, wanton and reckless disregard of Plaintiff's rights under the New York City Human Rights Law, by retaliating against her.

67. As a direct and proximate result of Defendants Geragos and Arpaia's unlawful retaliation, Plaintiff suffered damages and injuries, including, but not limited to, loss of pay and emotional distress.

68. That the aforesaid conduct of Defendants Geragos and Arpaia engaged in such discrimination intentionally and maliciously, and showed a deliberate, willful, wanton and reckless disregard of Plaintiff, and deprived her of her rights under the New York City Human Rights Law, thereby entitling her to an award of punitive damages.

FOURTH CAUSE OF ACTION

New York City Human Rights Law – Aiding and Abetting Brought on behalf of Plaintiff against Defendants Geragos and Arpaia

69. Plaintiff incorporates all preceding paragraphs as if fully rewritten herein.

70. Defendants Geragos and Arpaia aided and abetted Donatella GCT, LLC in perpetrating sex/gender discrimination and retaliation against Plaintiff, in violation of New York City Human Rights Law, N.Y.C. Admin. Code § 8-107.

71. Defendants Geragos and Arpaia engaged in such unlawful aiding and abetting intentionally and maliciously, and showed a deliberate, willful, wanton and reckless disregard of Plaintiff and her rights under the New York City Human Rights Law.

72. As a direct and proximate result of Defendant Geragos and Arpaia's unlawful aiding and abetting, Plaintiff has suffered damages and injuries, including, but not limited to, loss of pay and emotional distress for which Defendants are directly and vicariously liable.

73. The aforesaid conduct of Defendants Geragos and Arpaia showed a deliberate, willful, wanton and reckless disregard of Plaintiff, and deprived her of her rights under the New York City Human Rights Law, thereby entitling Plaintiff to an award of punitive damages.

JURY DEMAND

74. Plaintiff requests a jury trial on all issues to be tried.

WHEREFORE, Plaintiff prays that this Court enter judgment in her favor against Defendants and grants the following relief:

(a) An award of damages in an amount to be determined at trial, plus prejudgment interest to compensate Plaintiff for all monetary and/or economic damages, including, but not limited to, the loss of past and future income, wages, compensation, seniority, and other benefits of employment;

(b) An award of damages in an amount to be determined at trial, plus prejudgment interest to compensate Plaintiff for all non-monetary damages, mental anguish and emotional distress, including, but not limited to, humiliation, embarrassment, stress, anxiety, loss of self-esteem, loss of self-confidence, loss of personal dignity and any other physical and mental injuries;

(c) An award of punitive damages in an amount to be determined at trial;

(d) An award of attorneys' fees, costs and expenses incurred in the prosecution of this action;

(e) Such other and further relief as this court deems just and proper.

Dated: October 5, 2017
New York, New York

Respectfully submitted,

By:



FITAPELLI & SCHAFFER, LLP

Brian S. Schaffer

Dana M. Cimera

28 Liberty Street, 30th Floor

New York, New York 10005

(212) 300-0375

Attorneys for Plaintiff

ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, BRIAN S. SCHAFFER, the undersigned, am an attorney admitted to practice in the Courts of New York State, and say that:

I am a member of Fitapelli & Schaffer, LLP, the attorneys for Plaintiff Carmela Harding ("Plaintiff"). I have read the annexed COMPLAINT, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon the following:

Interviews and/or discussions with Plaintiff and papers and/or documents in the file.

The reason I make this Verification instead of Plaintiff is because she resides outside of the county from where Fitapelli & Schaffer, LLP maintains its office of the practice of law.

Dated: New York, New York
October 5, 2017


BRIAN S. SCHAFFER

EXHIBIT A

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through October 3, 2017.

Selected Entity Name: DONATELLA GCT, LLC

Selected Entity Status Information

Current Entity Name: DONATELLA GCT, LLC

DOS ID #: 4798556

Initial DOS Filing Date: AUGUST 03, 2015

County: ALBANY

Jurisdiction: NEW YORK

Entity Type: DOMESTIC LIMITED LIABILITY COMPANY

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

DONATELLA ARPAIA
1280 FIFTH AVENUE, PH-C
NEW YORK, NEW YORK, 10029

Registered Agent

NONE

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies. Professional limited liability companies must include the name(s) and address(es) of the original members, however this information is not recorded and only available by [viewing the certificate](#).

*Stock Information

# of Shares	Type of Stock	\$ Value per Share
No Information Available		

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
AUG 03, 2015	Actual	DONATELLA GCT, LLC

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

EXHIBIT B

8/29/2017

New York State Liquor Authority



Andrew M. Cuomo, Governor
Vincent G. Bradley, Chairman
Greeley T. Ford, Commissioner

[Home](#)[Public License Query](#)[Wholesale](#)[Forms Quick-Find:](#)[Wholesale Forms](#)[Retail Forms](#)[Help](#)

Public Query - Results

License Information

Serial Number: 1295892
License Type: ON-PREMISES LIQUOR
License Status: License is Active
Credit Group: 4
Filing Date: 07/01/2016
Effective Date: 08/23/2016
Expiration Date: 07/31/2018

Premises Information

Principal's Name: ARPAIA, DONATELLA
GERAGOS, MARK
KOLAJ, MODESTA
KOLAJ, MIGDALIA
SCALLON, THOMAS
Premises Name: DONATELLA GCT LLC
Trade Name: PROVA PIZZABAR
Zone: 1
Address: 89 E 42ND ST
SPACE LC-31
NEW YORK, NY 10017
County: NEW YORK

You can select one of the following links to perform another search:

- [Search by Name](#)
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- [Search by Location](#)
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New York State Liquor Authority • 80 S. Swan Street • 9th Floor • Albany, New York • 12210-8002

EXHIBIT C



Mark Geragos ●
@markgeragos

Follow



About time you revealed our newest spot!



Donatella Arpaia ● @donatellaarpaia

Love that my neighbors at shake shack love to come to my new spot for pizza 🍕

9:28 PM - 28 Sep 2016

6 Likes




6



Tweet your reply

Trends for you

#MadeByGoogle  Promoted by Made by Google #NationalTacoDay Rex Tillerson
#WednesdayWisdom Google Home Pixel #AskAnArchivist John Beilman HAPPENING NOW
#WorldAnimalDay

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EXHIBIT D



Kwame Freeman



May 18 · Tannersville, PA · 🌐

That tight ass dress you still ain't got no butt



Like



Share



Kwame Freeman



April 25 · New York, NY · 🌐

When I see a big butt I wonder if it's soft or a rock



Like



Share



Kwame Freeman

4 hrs



...

The new joint at my store is on my body



Like



Share



10



Shante Hargrave Scoop it

Like 4 hrs



Kwame Freeman Nah, I don't sh1t where I eat

Like



5

4 hrs



Shante Hargrave Lmfaooooo bye you annoying

Like



1

4 hrs



Domo Hundos



**Kwame Freeman**

June 11 · New York, NY · 🌐

...

You bitches don't be humble and yes I said bitches

👍 Like ➦ Share

👁️ 👤 25



Jamal King Edwards Yesterday the van driver said "This why I hate bitches. Not women. I love women. But I can't stand Bitches". Sometimes you have to call a spade a spade bro smh

Like 👁️ 7 · June 11 at 10:10am



Kiara Sease 🗣️ I'm tellingggggggggg

Like 👁️ 2 · June 11 at 11:02am



Wynter Sol Rt ^ @telling

Like 👁️ 2 · June 11 at 11:53am

↩️ 🗣️ Kiara Sease replied · 5 Replies



Ronald Murdock Respect all women.you came from a woman.

Like June 14 at 9:25pm

NYSCEF DOC. NO. 1



Kwame Freeman

...

March 10 · New York, NY · 🌐

Heard ya pussy on yuck guess you needed a
Pap 😊👤 that was funny I won't front



Like



Share

RECEIVED NYSCEF: 10/05/2017



Kwame Freeman



September 29 at 11:21pm · 🌐

Ever put a pop Bitch on the block list?

👍 Like

➦ Share

👍 🍷 2



Kwame Freeman



August 18 · New York, NY · 🌐

A relationship with condoms is one that won't last.



Like



Share

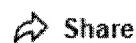


Kwame Freeman

April 24 · New York, NY · 🌐



Avocado is really helping these white girls get thick





Kwame Freeman

September 22 at 5:28pm · 🌐

There was a girl fight at work 😊



Like



Share



2



Homeyhill Wtu titittittittitties pop out?

Like · September 22 at 5:31pm



Kwame Freeman No 🙄

Like · September 22 at 5:31pm



Kwame Freeman

July 6 · New York, NY · 🌐

...

Why are "baby mothers" put on such a high pedestal?



Like



Share



Kwame Freeman

...

May 17 · 🌐

If you look preggo in your sundress leave it at home



Kwame Freeman

August 30 · New York, NY · 🌐

...

Women CAN'T drive



Like



Share



Kwame Freeman

...

March 9 · New York, NY · 🌐

I like my chick with some cellulite 🍑



Like



Share

**Kwame Freeman**

May 31 · 🌐

I'LL TIP WHATEVER THE FUCK I WANT, FUCK ALL YOU SERVERS
DEADASS, DONT TELL ME TO STAY HOME, FIND A BETTER JOB YOU
BROKE CRYBABY

**Brittney France**

May 27 · 🌐

I don't normally post this kind of stuff on social media but I'm so mad right now I could
throat punch somebody. I'm a single mom of 2 beautiful kids...I work m...

[See More](#)

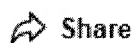


Kwame Freeman

May 30 · New York, NY · 🌐

...

Are there any women left that use condoms during sex?!





Kwame Freeman



August 27 · 🌐

I'm at this day party and I've come to realize I don't like being around snooty chicks in cheap dresses



Like



Share

EXHIBIT E

28 Liberty Street, 30th Floor • New York, NY 10005

Telephone: (212) 300-0375 • Facsimile: (212) 481-1333 • www.fslawfirm.com

**CONFIDENTIAL SETTLEMENT COMMUNICATION
PURSUANT TO FED. R. EVID. 408**

September 7, 2017

Via FedEx

Donatella GCT, LLC d/b/a Prova Pizzabar
1280 Fifth Avenue, 19A
New York, New York 10029
Attn: Donatella Arpaia

Re: Sexual Harassment & Retaliation at Prova Pizzabar

Dear Ms. Arpaia:

Please be advised that the undersigned law office represents Carmela Harding ("Client" or "Plaintiff") in connection with her employment at Prova Pizzabar located at Grand Central Terminal, owned and/or operated by Donatella GCT, LLC, Donatella Arpaia, Mark Geragos, Modesta Kolaj, Migdalia Kolaj, and Thomas Scallon (collectively, "Defendants"). It is our position that Ms. Harding was subjected to retaliation immediately following a report she made of sexual harassment during her employment with Prova Pizzabar, which ultimately resulted in her termination in violation of the New York City Human Rights Law ("NYCHRL"). We write to inform Prova Pizzabar of these claims and determine whether we can reach an amicable resolution before costly litigation ensues. Therefore, this letter is confidential, for negotiation purposes only.

I. MS. HARDING'S EMPLOYMENT HISTORY

Ms. Harding joined Prova Pizzabar in approximately January 2017 as a counter worker. During her employment for Defendants, Ms. Harding was subjected to a hostile work environment based on her gender due to sexual harassment in the form of physical groping. At no time did our Client consent to, or otherwise welcome the inappropriate groping. Specifically, on August 9, 2017, our Client's co-worker, Kwame I/n/u aggressively groped our Client's buttocks in a manner such that his fingers neared her anus, while our Client was performing her job duties towards the end of her shift. Our Client reprimanded Kwame and immediately reported the sexual harassment to the Manager at Prova Pizzabar, Steve Rudemyer ("Rudemyer"). Prova Pizzabar nor its management did anything to address the hostile work environment targeted at our Client. Instead, on August 10, 2017, the day after reporting the sexual harassment, Rudemyer phoned our Client on her day off, while she was not even at work, to terminate her. This is blatantly retaliation, any other reason given by Defendants is clearly pre-text.

Our Client's termination came one day after her complaint to Rudemyer about the sexual harassment she experienced at the hands of her co-worker. Clearly, Defendants terminated our

FITAPELLI & SCHAFFER, LLP
September 7, 2017
Page 2 of 5

Client for no other reason than her complaint about the sexual harassment she experienced the prior day.

II. SEXUAL HARASSMENT AND RETALIAION

These facts constitute unlawful sexual harassment and retaliation under the NYCHRL. To analyze claims under the NYCHRL, courts are guided by the Local Civil Rights Restoration Act of 2005 (the "Restoration Act"). See *Albunio v. City of New York*, 16 N.Y.3d 472 (2011); *Bennett v. Health Management Systems, Inc.*, 92 A.D.3d 29 (1st Dept. 2011); *Williams v. New York City Hous. Auth.*, 61 A.D.3d 62, 64 (1st Dept. 2009).

The Restoration Act was enacted by City Council to clarify that the NYCHRL is to be "construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York State civil and human rights laws . . . have been so construed." NYCHRL § 8-130. After the passage of the Restoration Act, the First Department explained that, "[i]t is beyond dispute that the NYCHRL now 'explicitly requires an independent liberal construction analysis in all circumstances.'" *Bennett*, 92 A.D.3d at 34 (quoting *Williams*, 61 A.D.3d at 66 (emphasis in original)). The New York Court of Appeals explained further that the Restoration Act's amendment of Section 8-130 was enacted to ensure the liberal construction of the NYCHRL by requiring that all provisions be construed "broadly in favor of discrimination plaintiffs, to the extent that such a construction is reasonably possible." *Albunio*, 16 N.Y.3d at 477-78. Finally, the United States Court of Appeals has reached the same conclusion. As the Second Circuit explained in *Loeffler v. Staten Island University Hosp.*:

There is now a one-way ratchet: "Interpretations of New York state or federal statutes with similar wording may be used to aid in interpretation of New York City Human Rights Law, viewing similarly worded provisions of federal and state civil rights laws *as a floor below which the City's Human Rights law cannot fall.*"

582 F.3d 268, 278 (2nd Cir. 2009) (quoting Restoration Act § 7) (emphasis added).

This chain of events clearly outlines that Ms. Harding's termination was based on retaliation. Defendants terminated Ms. Harding's employment for no other reason than that she complained about the sexual harassment she experienced at Prova Pizzabar, and as such Ms. Harding is entitled to an award of damages consistent with such discriminatory practices, including lost pay, uncapped compensatory damages, punitive damages, and attorneys' fees under the NYCHRL.

A. Our Client Was a Victim of Unlawful Discrimination Under the NYCHRL.

Our Client easily meets her burden in showing a prima face case for discrimination based on gender under the NYCHRL. Under the NYCHRL, a plaintiff must establish she is a member of a protected class, she was qualified for her position, that she suffered an adverse employment

FITAPELLI & SCHAFFER, LLP
September 7, 2017
Page 3 of 5

action, and that the adverse action “occurred under circumstances giving rise to an inference of discrimination.” See *Brathwaite v. Frankel*, 98 A.D. 3d 444, 445 (1st Dept. 2012). Here, our Client is a member of a protected class as a female employee of Prova Pizzabar, and was qualified to perform her job as a cashier. As such, Defendants did not give our Client verbal or written warnings during the course of her employment. She suffered the adverse employment of being terminated in retaliation for her complaint as to the unwelcomed groping.

The groping that our Client endured raises an inference of discrimination because not only are the areas touched traditionally sexual in nature (buttocks), but the manner of the touching – aggressive, physical groping of the buttocks – is lewd, offensive, and shocks the conscience. Therefore, our Client easily meets her prima facie case showing discrimination based upon gender.

Prova Pizzabar will not have a defense against this action on the basis that the sexual groping was not severe or pervasive because our Client alleges discrimination under the NYCHRL. Under the NYCHRL, the “severe and pervasive” standard no longer applies to liability. See *Williams*, 61 A.D.3d at 76. Rather, so long as the complained acts are not a “petty slight or trivial inconvenience,” liability is established even where the complained acts would not traditionally be considered “severe and pervasive.” *Id.* at 79-80. In fact, the severe and pervasive standard is only relevant, at most, to the consideration of damages, and *not* liability. *Id.* Liability will be established here because the facts establish that our Client was “treated less well than other employees because of her gender.” *Id.* at 78. Likewise, a court will find that Kwame’s aggressive, sexual grouping of our Client was not merely a petty slight or trivial inconvenience.

B. Defendants Retaliated Against Our Client in Violation of the NYCHRL.

Our Client also has a strong retaliation claim against Defendants for her termination under the NYCHRL. To establish retaliation under the NYCHRL:

[A] plaintiff must show that (1) he or she engaged in a protected activity as that term is defined under the NYCHRL, (2) his or her employer was aware that he or she participated in such activity, (3) his or her employer engaged in conduct which was reasonably likely to deter a person from engaging in that protected activity, and (4) there is a causal connection between the protected activity and the alleged retaliatory conduct.

Brightman v. Prison Health Serv., Inc., 108 A.D.3d 739, 740 (2d Dept. 2013); see also *Fletcher v. Dakota, Inc.*, 99 A.D.3d 43, 51 (1st Dept 2012); *Albunio v. City of New York*, 67 A.D.3d 407, 413 (2009), *affd.* 16 N.Y.3d 472 (2011).

The Restoration Act also broadened the interpretation of retaliation claims arising under the NYCHRL. See *Albunio*, 16 N.Y.3d at 477-78. Prior to the Restoration Act, despite its proscription of retaliation “in any manner,” courts had interpreted NYCHRL retaliation claims in the same manner they interpreted state and federal retaliation claims – rendering actionable only

FITAPELLI & SCHAFFER, LLP
September 7, 2017
Page 4 of 5

conduct that has caused a “materially adverse” impact on terms and conditions of employment. NYCHRL § 8-107[7]; *Williams*, 872 N.Y.S.2d at 33. Through the Restoration Act, the council modified the statute to state explicitly:

The retaliation or discrimination complained of under this subdivision need not result in an ultimate action with respect to employment . . . or in a materially adverse change in the terms and conditions of employment . . . provided, however, that the retaliatory or discriminatory act or acts complained of must be reasonably likely to deter a person from engaging in protected activity.

Id., see also *Mihalik v. Credit Agricole*, 715 F.3d 102, 112 (2nd Cir. 2013).

Our Client was a victim of retaliation when Prova Pizzabar terminated her on her day off, only one day after she complained about Kwame’s sexual harassment. Prova Pizzabar terminated Ms. Harding because she complained about the sexual harassment she experienced, and any other non-discriminatory rationale is pre-text.

Firing an employee due to her objections about sexual harassment without a doubt constitutes actions “reasonably likely to deter a person from engaging in protected activity.” N.Y.C. Admin. Code § 8-107[7]. It is also well settled that even if the underlying conduct complained of does not rise to the level of unlawful sexual harassment, making complaints about the conduct is still protected under the NYCHRL’s anti-retaliation provision. See, e.g., *Summa v. Hofstra Univ.*, 708 F.3d 115 (2d Cir. 2013) (noting that a plaintiff “need not establish that the conduct [he] opposed was actually a violation of [the law], but only that [he] possessed a good faith, reasonable belief that the underlying employment practice was unlawful.”); *Knight v. City of New York*, 303 F. Supp. 2d 485, 496 (S.D.N.Y. 2004) *aff’d*, 147 F. App’x 221 (2d Cir. 2005) (explaining that under Title VII, NYSHRL, and NYCHRL, “[T]o establish that [her] activity is protected, [plaintiff] need not prove the merit of [her] underlying discrimination complaint, but only that [s]he was acting under a good faith, reasonable belief that a violation existed.”) (citations omitted). Therefore, our Client will be successful on her claim for retaliation under the NYCHRL.

III. PRESERVATION OF DOCUMENTS

Having received notice of these claims, Defendants are under an obligation to preserve all documents relevant to the allegations raised in this letter. Absent a negotiated resolution, in the course of litigation we will request data and information including, but not limited to, emails, time and payroll records, telephone and computer log-in records, and other electronically stored information, plus all information pertaining to any good-faith defense that Defendants may raise in this litigation. Such information could also include, but are not limited to, e-mails, word processing documents, spreadsheets, calendars, network access information, employee policy manuals, personnel files, and other relevant interoffice memoranda. Because electronic information can be easily deleted, modified, or corrupted, Defendants should take every reasonable step to preserve this information until the resolution of this matter. This includes, but is not limited to, an obligation to discontinue all data destruction and back-up tape recycling policies.

FITAPELLI & SCHAFFER, LLP
September 7, 2017
Page 5 of 5

IV. PROPOSAL FOR RESOLUTION

We are willing to postpone our plan to file Ms. Harding's claims with the appropriate agency and/or court if Defendants are willing to engage in pre-suit settlement discussions. Please contact us to discuss these allegations and to negotiate an amicable resolution of this matter. We request your reply on or before September 22, 2017. This process could substantially reduce Defendants' exposure to damages and attorneys' fees and costs, and limit the interference with ongoing operations. In addition, we request that you place your insurance carrier(s) on notice regarding these claims.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, reading "Brian Schaffer". The signature is written in a cursive, flowing style.

Brian S. Schaffer

EXHIBIT F

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LAWYERS

7 West 24th Street, Suite 2
New York, New York 10010
Telephone (213) 625-3900
Facsimile (213) 625-1600
geragos@geragos.com

September 29, 2017

VIA MAIL AND E-MAIL

Brian S. Schaffer, Esq.
Fitapelli & Schaffer
28 Liberty Street, 30th Floor
New York, NY 10005
bschaffer@fslawfirm.com

RE: Alleged Sexual Harassment & Retaliation at Prova Pizzabar

Dear Mr. Schaffer,

This office represents Donatella GCT LLC dba Prova Pizzabar ("Prova"). We are in receipt of your September 7, 2017 letter sent to Prova on behalf of Carmela Harding, in which it is alleged that Ms. Harding was terminated from Prova due to retaliation after making a report of sexual harassment. In your letter, you indicate your intent to file Ms. Harding's claims with the appropriate agency and/or the court.

It appears that your letter was sent without a thorough and diligent investigation of the facts as required by New York law. Indeed, even the most cursory investigation into these allegations would reveal that Ms. Harding's claims are entirely without any basis. Not only does Kwame vehemently deny her allegations but Steve Rudemyer, the manager she purportedly reported the incident to, denies that any report of sexual harassment was made to him, as Ms. Harding alleges. In fact, management at Prova was not even aware of these allegations until they received your September 7, 2017 letter. And after investigating this matter and questioning other employees of Prova, it was confirmed that no report of sexual harassment was ever made by Ms. Harding to anyone. Rather, Ms. Harding was terminated for cause due to her chronic and repeated tardiness for work, which was well documented throughout her employment. Her claims of sexual harassment and retaliation following her termination are clearly her own efforts to retaliate against Prova for her justified termination.

It is well settled that an attorney or party who fails to properly investigate the facts and proceeds to take legal action may be subjected to financial sanctions for conducting "frivolous" litigation. CPLR 8303; 22 NYCRR § 130-1.1; *see also Mitchell v. The Herald Co.*, 137 A.D.2d 213, 529 N.Y.S.2d 602 (4th Dep't 1988) (defendant was entitled to sanctions because plaintiff and plaintiff's attorney knew or should have known that claim lacked merit). Moreover, attorneys have a duty to analyze a case and to make a determination of merit independent of the client. *Heilbut v. Heilbut*, 18 AD3d 1 (1st Dep't 2005).

We are sending you this letter to advise you that if you pursue this frivolous action and take any legal action against Prova, we will seek monetary sanctions against you and your client pursuant to CPLR 8303-a and 22 NYCRR § 130-1.1 based on the fact that you know, or should

Mr. Schaffer
September 29, 2017
Page 2

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know, that such a complaint is without basis in law and fact, lacking in evidentiary support, presented for an improper purpose, and otherwise deficient.

When a court finds that an action is frivolous under CPLR 8303-a, the court *must* impose an award of costs and fees against the adverse party. *Xing v. Leckel*, 2012 WL 1274177 (Sup. Ct. NY Mar. 23, 2012); *Nyitray v. New York Athletic Club in City of New York*, 274 A.D.2d 326, 712 N.Y.S.2d 89 (1st Dep't 2000); *Fritze v. Versailles*, 158 A.D.2d 669, 551 N.Y.S.2d 854 (2d Dep't 1990). The court may order that such costs and fees be paid by the party, by the party's attorney, or both, based on the individual circumstances of each case. Under CPLR 8303-a, a claim may be found to be frivolous if either the action was commenced, used, or continued in bad faith, solely to delay or prolong the resolution of the litigation, or to harass or maliciously injure another, CPLR 8303-a(c)(i), or if the action was commenced, used, or continued in bad faith, without any reasonable basis in law or fact, and could not be supported by a good faith argument for an extension, reversal, or modification of existing law, CPLR 8303-a(c)(ii). *See, e.g., Jacobson v. Chase Manhattan Bank, N.A.*, 174 A.D.2d 709, 571 N.Y.S.2d 559 (2d Dep't 1991) (lack of reasonable investigation rendered action frivolous because lack of fault would have been apparent).

Courts have not been reluctant to use CPLR 8303-a to deter frivolous litigation. *See, e.g., Entertainment Partners Group, Inc. v. Davis*, 155 Misc.2d 894, 590 N.Y.S.2d 979 (Sup. Ct. NY Co. 1992) (sanctions were appropriate because the action was commenced and continued with no reasonable basis in law or fact); *Sicignano v. Town of Islip*, 41 A.D.3d 830, 838 N.Y.S.2d 655 (2d Dept 2007) (sanctions were appropriate when party stated defense without merit); *see also Mitchell v. The Herald Co.*, 137 A.D.2d 213, 529 N.Y.S.2d 602 (4th Dep't 1988) (sanctions are mandated after a finding of frivolousness).

22 NYCRR § 130-1.1 has an even farther reach for imposing monetary sanctions for frivolous conduct than CPLR 8303-a. This section authorizes courts to impose costs and attorneys' fees as well as financial sanctions for any "frivolous conduct" by any party or attorney in a civil action or proceeding. *See Maroulis v. 64th Street Third Ave. Assoc.*, 77 N.Y.2d 831, 566 N.Y.2d 584, 567 N.E.2d 978 (1991) (attorney sanctioned for submitting motions clearly beyond the court's jurisdiction and repetitive motions for reargument). Under 22 NYCRR § 130-1.1, conduct is frivolous if it is completely without merit in law or fact and cannot be supported by a good faith argument for an extension, reversal, or modification of existing law, is undertaken primarily to delay or prolong resolution of litigation, or to harass or maliciously injure another, or if it asserts material factual statements that are false. 22 NYCRR § 130-1.1 does not include a bad faith requirement. The greater coverage of 22 NYCRR § 130-1.1 enables courts to sanction frivolous activities which may otherwise be outside the scope of CPLR 8303-a.

Here, filing Ms. Harding's claims with any agency and/or with the court would be entirely frivolous as that term is defined by both CPLR 8303-a and by 22 NYCRR § 130-1.1 because not a shred of evidence exists to support the allegations except your client's self-serving and unsupported claims. Furthermore, since you have now been put on notice as to the frivolousness of these claims, any such action by you without a proper and diligent investigation would indicate bad faith on your part. I am confident that once you conduct a thorough

Mr. Schaffer
September 29, 2017
Page 3

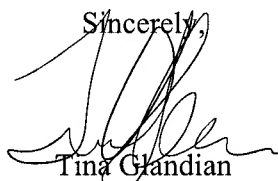
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investigation of these allegations, you will discover facts which will help you avoid filing a frivolous action. However, if such a frivolous action is nonetheless filed by you, we will seek all legal remedies available to my client including monetary sanctions pursuant to CPLR 8303-a and 22 NYCRR § 130-1.1.

In the interim, we have placed our client's insurance carrier on notice of your threatened claims, and we will preserve all documents relevant to your client's allegations, to the extent they exist.

Please govern yourself accordingly.

Sincerely,



Tina Glandian

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EXHIBIT G

Brian Schaffer

From: Tina Glandian <tina@geragos.com>
Sent: Friday, September 29, 2017 5:40 PM
To: bschaffer@fslawfirm.com
Cc: Mark Geragos
Subject: RE: Alleged Sexual Harassment & Retaliation at Prova Pizzabar
Attachments: Letter to Brian Schaffer 9.29.2017 signed.pdf

Mr. Schaffer,

Please see the attached letter.

Thank you,

TINA GLANDIAN, ESQ.
*ADMITTED IN NY, CA, NV, & FL



GERAGOS & GERAGOS
A PROFESSIONAL CORPORATION

7 WEST 24TH STREET, SUITE 2
NEW YORK, NEW YORK 10010
TELEPHONE (213) 625-3900
FACSIMILE (213) 625-1600
WWW.GERAGOS.COM

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