

CV 17-392

SPATT, J.  
LINDSAY, M.J.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
AMANDA BAKER, :  
 :  
 Plaintiff, :  
 vs. :  
 :  
 OLIVE GARDEN, DARDEN :  
 RESTAURANTS, INC., JAMES KAISER :  
 and FRED NACLERIO, :  
 :  
 Defendants. :  
-----X

Docket No.:

**VERIFIED COMPLAINT**

2017 JAN 25 AM 10:05  
FILED  
CLERK

The plaintiff, AMANDA BAKER, by her attorneys Appell & Parrinelli, as and  
for her complaint against the defendants, OLIVE GARDEN, DARDEN  
RESTAURANTS, INC., JAMES KAISER and FRED NACLERIO, respectfully alleges  
as follows:

NATURE OF THE ACTION

- 1.) This is a proceeding for damages to redress the deprivation of rights secured to the Plaintiff by Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (amended in 1972, 1978 and by the Civil Rights Act of 1991, Pub. L. no. 102-166 (“Title VII”)) and New York State Executive Law § 290, 292 and 296 and seeks damages to redress the injuries she has suffered as a result of being exposed to a hostile work environment, sexual harassment, harassment, unwanted touching and/or groping, discrimination on the basis of sex and/or gender and retaliation.
- 2.) Plaintiff brings this action pursuant to federal law and pursuant to supplemental jurisdiction of this Court, for violations by the defendants of the laws of the State of New York.

STATEMENT PURSUANT TO LOCAL RULE 9

3.) For the purposes of complying with Local Rule 9, the Plaintiff states that she has no corporate parent, subsidiary or affiliate and that there are no other interested parties.

JURISDICTION AND VENUE

4.) Jurisdiction in this Court exists pursuant to 28 U.S.C. § 1331, § 1337, § 1343 and § 1345. This action arises under Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (amended in 1972, 1978 and by the Civil Rights Act of 1991, Pub. L. no. 102-166 (“Title VII”)).

5.) Plaintiff invokes supplemental jurisdiction of this Court pursuant to 28 U.S.C. § 1367(a) for violations by the defendants pursuant to the New York State Human Rights Law, New York State Executive Law § 290, 292 and 296.

6.) Upon information and belief, the defendant OLIVE GARDEN is a domestic corporation formed under the laws of the State of New York, and/or is qualified to do business in the State of New York, and is doing business at 1715 Sunrise Highway, Bay Shore, New York 11706.

7.) Upon information and belief, the defendant DARDEN RESTAURANTS, INC. is a domestic corporation formed under the laws of the State of New York, and/or is qualified to do business in the State of New York, and is doing business at 1715 Sunrise Highway, Bay Shore, New York 11706.

8.) The unlawful employment practices alleged below were committed within Suffolk County in the State of New York. Accordingly, venue lies in the United States District Court for the Eastern District of New York.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

9.) Prior to filing this civil action, the plaintiff timely filed a written charge under oath asserting discrimination based on a hostile work environment, sexual harassment, harassment, discrimination on the basis of sex and/or gender and retaliation with the Equal Employment Opportunity Commission (“EEOC”). Copy annexed as Exhibit “1”.

10.) The EEOC issued a “right to sue” letter to the Plaintiff on or about November 22, 2016. Copy annexed as Exhibit “2”.

11.) Plaintiff satisfied all administrative prerequisites and is filing this case within ninety (90) days of receiving the “right to sue” letter from EEOC.

THE PARTIES

12.) AMANDA BAKER (the “Plaintiff”) is a female who during all relevant times hereinafter mentioned was a citizen of the State of New York and resided at 812 Wisconsin Avenue, Bay Shore, New York 11706 located in the County of Suffolk.

13.) That at all times mentioned herein, the plaintiff AMANDA BAKER was employed by the defendant OLIVE GARDEN and/or its parent company the defendant DARDEN RESTAURANTS, INC.

14.) Upon information and belief, the defendant JAMES KAISER is a citizen of the State of New York, whose domicile for purposes of this action is where he maintained his office at 1715 Sunrise Highway, Bay Shore, New York 11706.

15.) That at all times mentioned herein, the defendant JAMES KAISER was and still is a resident of the State of New York.

16.) That at all times mentioned herein, the defendant JAMES KAISER was employed by the defendant OLIVE GARDEN and/or its parent company the defendant DARDEN RESTAURANTS, INC.

17.) That at all times mentioned herein, the defendant JAMES KAISER was employed by the defendant OLIVE GARDEN and/or its parent company the defendant DARDEN RESTAURANTS, INC. as the general manager for its restaurant located at 1715 Sunrise Highway, Bay Shore, New York 11706.

18.) That on or about September 2016, the defendant JAMES KAISER was terminated from his employment with the defendant OLIVE GARDEN and/or its parent company the defendant DARDEN RESTAURANTS, INC.

19.) That at all times mentioned herein, the defendant JAMES KAISER was the supervisor of and/or had supervisory authority over the plaintiff acting within the scope of his authority over the plaintiff AMANDA BAKER.

20.) Upon information and belief, the defendant FRED NACLERIO is a citizen of the State of New York, whose domicile for purposes of this action is where he maintained his office at 1715 Sunrise Highway, Bay Shore, New York 11706.

21.) That at all times mentioned herein, the defendant FRED NACLERIO was and still is a resident of the State of New York.

22.) That at all times mentioned herein, the defendant FRED NACLERIO was employed by the defendant OLIVE GARDEN and/or its parent company the defendant DARDEN RESTAURANTS, INC.

23.) That at all times mentioned herein, the defendant FRED NACLERIO was employed as a territory and/or district manager by the defendant OLIVE GARDEN

and/or its parent company the defendant DARDEN RESTAURANTS, INC. which included its restaurant located at 1715 Sunrise Highway, Bay Shore, New York 11706.

24.) That at all times mentioned herein, the defendant FRED NACLERIO was the supervisor of and/or had supervisory authority over the plaintiff acting within the scope of his authority over the plaintiff AMANDA BAKER.

25.) That at all times mentioned herein, the defendant FRED NACLERIO was the supervisor of and/or had supervisory authority over the plaintiff acting within the scope of his authority over the defendant JAMES KAISER.

26.) That at all times mentioned herein, the defendant OLIVE GARDEN is in the restaurant and/or food service business.

27.) That at all times mentioned herein, the defendant OLIVE GARDEN was owned and/or operated its parent company the defendant DARDEN RESTAURANTS, INC.

28.) That at all times mentioned herein, the defendant DARDEN RESTAURANTS, INC. owned and/or operated the defendant OLIVE GARDEN.

29.) That at all times mentioned herein, the defendant OLIVE GARDEN was engaged in an industry affecting commerce, as defined in Title VII of the Civil Rights Act of 1964, as amended, § 701 (g)-(h), 42 U.S.C. § 2000e (g)-(h).

30.) That at all times mentioned herein, the defendant DARDEN RESTAURANTS, INC. was engaged in an industry affecting commerce, as defined in Title VII of the Civil Rights Act of 1964, as amended, § 701 (g)-(h), 42 U.S.C. § 2000e (g)-(h).

31.) That at all relevant times, the defendant OLIVE GARDEN had, and still has, at least five hundred or more employees for each working day in each twenty or more calendar weeks in the current or preceding calendar year. Therefore, the defendant is an “employer(s)” within the meaning of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C § 2000 e et seq. (“Title VII”) and New York State Executive Law § 290, 292 and 296.

32.) That at all relevant times, the defendant DARDEN RESTAURANTS, INC. had, and still has, at least five hundred or more employees for each working day in each twenty or more calendar weeks in the current or preceding calendar year. Therefore, the defendant is an “employer(s)” within the meaning of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C § 2000 e et seq. (“Title VII”) and New York State Executive Law § 290, 292 and 296.

#### STATEMENT OF FACTS

33.) The plaintiff AMANDA BAKER was hired by the defendant OLIVE GARDEN on or about October 2014 as a waitress and/or food server at the restaurant known as OLIVE GARDEN (store number 4475) located at 1715 Sunrise Highway, Bay Shore, New York 11706.

34.) The plaintiff AMANDA BAKER was hired by the defendant DARDEN RESTAURANTS, INC. on or about October 2014 as a waitress and/or food server at the aforementioned OLIVE GARDEN located at the aforementioned address.

35.) That on or about October 2014 to October 2016 the plaintiff AMANDA BAKER was employed by the defendant OLIVE GARDEN as a waitress and/or food server at the aforementioned OLIVE GARDEN located at the aforementioned address.

36.) That on or about October 2014 to October 2016 the plaintiff AMANDA BAKER was employed by the defendant DARDEN RESTAURANTS, INC. as a waitress and/or food server at the aforementioned OLIVE GARDEN located at the aforementioned address.

37.) That on or about October 2014 to September 2016 the plaintiff AMANDA BAKER was employed as a waitress under the direct supervision of the defendant JAMES KAISER at the aforementioned OLIVE GARDEN located at the aforementioned address.

38.) That on or about October 2014 to October 2016 the plaintiff AMANDA BAKER was employed as a waitress under the direct supervision of the defendant FRED NACLERIO at the aforementioned OLIVE GARDEN located at the aforementioned address.

39.) That on or about October 2014 to September 2016 the defendant JAMES KAISER was the supervisor of and/or had supervisory authority over the plaintiff AMANDA BAKER.

40.) That on or about October 2014 to October 2016 the defendant FRED NACLERIO was the supervisor of and/or had supervisory authority over the plaintiff AMANDA BAKER.

41.) That on or about October 2014 to September 2016 the defendant JAMES KAISER was employed as the general manager at the aforementioned OLIVE GARDEN located at the aforementioned address.

42.) That on or about October 2014 to September 2016 the defendant JAMES KAISER was employed as the general manager at the aforementioned OLIVE GARDEN

located at the aforementioned address under the direct supervision of the defendant FRED NACLERIO.

43.) That on or about October 2014 to September 2016 the defendant FRED NACLERIO was the supervisor of and/or had supervisory authority over the defendant JAMES KAISER.

44.) That on or about October 2014 to September 2016 the defendant FRED NACLERIO was the supervisor of and/or had supervisory authority over the plaintiff AMANDA BAKER acting within the scope of his authority over the defendant JAMES KAISER.

45.) That at all times mentioned herein, the plaintiff AMANDA BAKER was qualified for her position as a waitress and/or food server at the aforementioned OLIVE GARDEN located at the aforementioned address.

46.) That at all times material to the allegations in this complaint the individual officers, directors, supervisors, managers, employees and/or agents mentioned herein, acted within the scope of their duties as officers, directors, supervisors, managers, employees and/or agents of the defendant OLIVE GARDEN.

47.) That at all times material to the allegations in this complaint the individual officers, directors, supervisors, managers, employees and/or agents mentioned herein, acted within the scope of their duties as officers, directors, supervisors, managers, employees and/or agents of the defendant DARDEN RESTAURANTS, INC.

48.) Plaintiff AMANDA BAKER is a female.

49.) Plaintiff AMANDA BAKER is twenty-six (26) years old.



50.) Plaintiff AMANDA BAKER is a single mother of two children ages two (2) and seven (7).

51.) That at all times from October 2014 to September 2016 the defendant JAMES KAISER would make sexual remarks and/or comments and/or innuendos and/or crude verbal comments on a persistent, continuous, consistent and regular basis to the female staff members of the aforementioned OLIVE GARDEN located at the aforementioned address including to the plaintiff AMANDA BAKER.

52.) That from October 2014 to September 2016 the plaintiff AMANDA BAKER on a persistent, continuous, consistent and regular basis asked and/or requested the defendant JAMES KAISER to stop and/or refrain and/or discontinue making sexual remarks and/or comments and/or innuendos and/or crude verbal comments to herself and the female staff members of the aforementioned OLIVE GARDEN located at the aforementioned address.

53.) That at all times from October 2014 to September 2016 the defendant JAMES KAISER would grope and/or touch on a persistent, continuous, consistent and regular basis the female staff members of the aforementioned OLIVE GARDEN located at the aforementioned address including the plaintiff AMANDA BAKER.

54.) That from October 2014 to September 2016 the plaintiff AMANDA BAKER on a persistent, continuous, consistent and regular basis asked and/or requested the defendant JAMES KAISER to stop and/or refrain and/or discontinue groping and/or touching herself and the female staff members of the aforementioned OLIVE GARDEN located at the aforementioned address.

55.) That at all times from October 2014 to September 2016 the defendant JAMES KAISER had a “101 rule” where he would mark the applications of the attractive females job candidates he interviewed for employment at the aforementioned OLIVE GARDEN located at the aforementioned address with the number 101 so he would know who to hire.

56.) That at all times from October 2014 to September 2016 the defendant JAMES KAISER consistently showed up intoxicated and/or inebriated for his job and/or employment at the aforementioned OLIVE GARDEN located at the aforementioned address.

57.) That on or about October 2015 at a meeting regarding the new Ziosk computer system in the parking lot of the aforementioned OLIVE GARDEN located at the aforementioned address the defendant JAMES KAISER unzipped the sweatshirt of the plaintiff AMANDA BAKER and grabbed and/or touched her breasts.

58.) That on or about October 2015 at a meeting regarding the new Zioks computer system in the parking lot of the aforementioned OLIVE GARDEN located at the aforementioned address while the defendant JAMES KAISER unzipped the sweatshirt of the plaintiff AMANDA BAKER and grabbed and/or touched her breasts he commented to the plaintiff that “this reminded him why he hired her in the first place”.

59.) That during the aforementioned October 2015 groping and/or touching incident the plaintiff AMANDA BAKER pushed the defendant JAMES KAISER away and ran inside the aforementioned OLIVE GARDEN located at the aforementioned address.

60.) That the aforementioned October 2015 groping and/or touching incident was witnessed by non-party April Mackenzie.

61.) Upon entering the OLIVE GARDEN immediately after the October 2015 groping and/or touching incident the plaintiff AMANDA BAKER told her previous manager and OLIVE GARDEN employee non-party Victoria Palm what had just transpired in the parking lot.

62.) Thereafter OLIVE GARDEN employee non-party Victoria Palmer shrugged off this incident, rolled her eyes, told the plaintiff that the defendant JAMES KAISER was drunk again and continued with the aforementioned meeting.

63.) After arriving home from the aforementioned meeting the night of the October 2015 groping and/or touching incident the plaintiff AMANDA BAKER called the OLIVE GARDEN reaching OLIVE GARDEN employee non-party Victoria Palm and told her she needed to report the groping and/or touching incident that happened earlier that day with the defendant JAMES KAISER.

64.) OLIVE GARDEN employee non-party Victoria Palm then informed the plaintiff AMANDA BAKER that she would contact the defendant FRED NACLERIO and plaintiff would have to provide a written statement.

65.) Thereafter at the plaintiff AMANDA BAKER's next waitressing shift at the aforementioned OLIVE GARDEN located at the aforementioned address she was instructed to go to the Panera Bread across the street to give a statement to the defendant FRED NACLERIO about her aforementioned groping and/or touching incident.

66.) At this meeting with the defendant FRED NACLERIO, the plaintiff AMANDA BAKER gave a statement to the defendant FRED NACLERIO about her aforementioned groping and/or touching incident with the defendant JAMES KAISER.

67.) At this meeting with the defendant FRED NACLERIO, the plaintiff AMANDA BAKER informed the defendant FRED NACLERIO that the defendant JAMES KAISER would often come into work intoxicated, had been making sexual remarks and/or comments and/or innuendos and/or crude verbal comments on a persistent, continuous, consistent and regular basis to her and the women she had worked with since October 2014 and that other employees would confirm her story.

68.) At this meeting with the defendant FRED NACLERIO, the plaintiff AMANDA BAKER informed the defendant FRED NACLERIO that on a persistent, continuous, consistent and regular basis she asked and/or requested the defendant JAMES KAISER to stop and/or refrain and/or discontinue making sexual remarks and/or comments and/or innuendos and/or crude verbal comments to the female staff members of the aforementioned OLIVE GARDEN located at the aforementioned address including the plaintiff AMANDA BAKER.

69.) At this meeting with the defendant FRED NACLERIO, the plaintiff AMANDA BAKER informed the defendant FRED NACLERIO that the defendant JAMES KAISER would grope and/or touch on a persistent, continuous, consistent and regular basis the female staff members of the aforementioned OLIVE GARDEN located at the aforementioned address including the plaintiff AMANDA BAKER.

70.) At this meeting with the defendant FRED NACLERIO, the plaintiff AMANDA BAKER informed the defendant FRED NACLERIO that on a persistent,

continuous, consistent and regular basis she asked and/or requested the defendant JAMES KAISER to stop and/or refrain and/or discontinue groping and/or touching herself and the female staff members of the aforementioned OLIVE GARDEN located at the aforementioned address.

71.) At this meeting the defendant FRED NACLERIO informed the plaintiff AMANDA BAKER that there would be an open investigation and the defendant JAMES KAISER would be suspended until further notice.

72.) At this meeting the defendant FRED NACLERIO then told the plaintiff AMANDA BAKER to keep this situation and incident a secret and not to speak with anyone about what she told him while he investigated the matter.

73.) Thereafter the defendant FRED NACLERIO disclosed to the defendant JAMES KAISER what the plaintiff AMANDA BAKER said to him regarding his investigation into the matter.

74.) At this meeting non-party April Mackenzie also gave a statement to the defendant FRED NACLERIO regarding the aforementioned groping and/or touching incidents, the making of sexual remarks and/or comments and/or innuendos and/or crude verbal comments, raises and/or promotions and/or overtime the defendant JAMES KAISER was exchanging for sexual favors and/or sexual intercourse with certain employees and the discrepancies in the payroll.

75.) The defendant FRED NACLERIO then told non-party April Mackenzie to keep this a secret and not to speak with anyone about what she told him while he investigated the matter.

76.) Thereafter the defendant FRED NACLERIO disclosed to the defendant JAMES KAISER what non-party April Mackenzie said to him regarding his investigation into the matter.

77.) For approximately the next two to three months from October 2015 to December 2015 and/or January 2016 plaintiff AMANDA BAKER was under the impression that the defendant JAMES KAISER was terminated and/or fired.

78.) For approximately the next two to three months from October 2015 to December 2015 and/or January 2016 no one from the defendant OLIVE GARDEN and/or the defendant DARDEN RESTAURANTS, INC. said anything to the plaintiff AMANDA BAKER regarding their aforementioned investigation into the defendant JAMES KAISER.

79.) For approximately the next two to three months from October 2015 to December 2015 and/or January 2016 the defendant JAMES KAISER had been placed on medical leave by the defendant FRED NACLERIO and/or the defendant OLIVE GARDEN and/or the defendant DARDEN RESTAURANTS, INC.

80.) On or about December 2015 and/or January 2016 without any warning to the plaintiff AMANDA BAKER the defendant JAMES KAISER returned to work at the OLIVE GARDEN located at the aforementioned address to his previous position as the general manager.

81.) Upon returning to work the defendant JAMES KAISER on or about December 2015 and/or January 2016 until September 2016 at the OLIVE GARDEN located at the aforementioned address as the general manager would continuously request the plaintiff AMANDA BAKER to take cigarette breaks with him in the gated and

secluded dumpster area outside the aforementioned OLIVE GARDEN which the defendant JAMES KAISER only had the key for re-entry at which time he would talk about other female employees' bodies and/or anatomies, other female employees' breasts, how other female employees would perform during sexual intercourse, which female employees he thought would be "freaks in bed" and additional sexual and/or inappropriate conversations.

82.) The aforementioned cigarette breaks between the defendant JAMES KAISER and the plaintiff AMANDA BAKER which included the aforementioned conversation topics took place during almost every shift the plaintiff worked from December 2015 and/or January 2016 until September 2016.

83.) From December 2015 and/or January 2016 until September 2016 the defendant JAMES KAISER had conversations with other female employees at which time he would talk about other OLIVE GARDEN female employees' bodies and/or anatomies, other female employees' breasts even after he groped and/or touched and/or violated the plaintiff, how other female employees would perform during sexual intercourse, which female employees he thought would be "freaks in bed" and additional sexual and/or inappropriate conversations.

84.) From December 2015 and/or January 2016 until September 2016 the defendant JAMES KAISER continuously groped and/or touched and/or attempted to grope and/or touch the plaintiff AMANDA BAKER at the aforementioned OLIVE GARDEN located at the aforementioned address.

85.) From September 2014 until September 2016 the defendant JAMES KAISER gave certain waitresses and/or servers and/or employees at the aforementioned

OLIVE GARDEN located at the aforementioned address raises and/or promotions and/or overtime in exchange for sexual favors and/or sexual intercourse.

86.) From September 2014 until September 2016 the defendant JAMES KAISER created fake employees at the aforementioned OLIVE GARDEN at the aforementioned location to allocate money to pay for the aforementioned sexual favors and/or sexual intercourse.

87.) From December 2015 and/or January 2016 until September 2016 the defendant JAMES KAISER continuously told and/or informed the plaintiff AMANDA BAKER and other female employees at the aforementioned OLIVE GARDEN at the aforementioned location that if they wanted to receive bigger raises and/or promotions they needed to perform sexual favors for him and/or have sexual intercourse with him.

88.) From December 2015 and/or January 2016 until September 2016 the defendant JAMES KAISER continuously told and/or informed the plaintiff AMANDA BAKER and other female employees at the aforementioned OLIVE GARDEN at the aforementioned location that he had a lot of money and he could take care of them.

89.) From December 2015 and/or January 2016 until September 2016 the defendant JAMES KAISER continuously showed the plaintiff AMANDA BAKER, non-party April Mackenzie and other female employees at the aforementioned OLIVE GARDEN at the aforementioned location dirty and/or x-rated jokes and/or meme's from the internet.

90.) On or about May 2016 the defendant JAMES KAISER showed up to work at the aforementioned OLIVE GARDEN at the aforementioned location with scratches



all over his hands and/or arms and/or body and informed the staff in a sexual context that the “six (6) year old who did that to him put up a hell of fight”.

91.) On or about May 2016 plaintiff AMANDA BAKER again complained about the defendant JAMES KAISER to another manager, namely OLIVE GARDEN employee non-party Steve Ferino, at the aforementioned OLIVE GARDEN at the aforementioned location about the hostile work environment, sexual harassment, harassment, unwanted touching and/or groping, discrimination on the basis of sex and/or gender and retaliation.

92.) The plaintiff AMANDA BAKER was informed by the aforementioned OLIVE GARDEN employee non-party manager Steve Ferino that the defendant JAMES KAISER was never suspended and/or terminated from his employment with the defendant OLIVE GARDEN and/or the defendant DARDEN RESTAURANTS, INC. for the hostile work environment, sexual harassment, harassment, unwanted touching and/or groping, discrimination on the basis of sex and/or gender and retaliation but was placed on paid medical leave for an anxiety issue.

93.) From December 2015 and/or January 2016 until September 2016 multiple non-party OLIVE GARDEN employees continuously complained about the defendant JAMES KAISER to their non-party floor managers and/or inter-changing floor managers at the aforementioned OLIVE GARDEN at the aforementioned location about the hostile work environment, sexual harassment, harassment, unwanted touching and/or groping, discrimination on the basis of sex and/or gender and retaliation.

94.) On or about September 2016 the defendant JAMES KAISER was involved with another touching and/or groping incident with another female waitress

and/or server and/or employee at the aforementioned OLIVE GARDEN located at the aforementioned address.

95.) As a result of this incident, the corporate officials from the defendant OLIVE GARDEN and/or the defendant DARDEN RESTAURANTS, INC. visited the aforementioned OLIVE GARDEN located at the aforementioned address to interview its entire staff except the plaintiff AMANDA BAKER.

96.) The defendant JAMES KAISER was terminated from his employment with the defendant OLIVE GARDEN and/or the defendant DARDEN RESTAURANTS, INC. soon thereafter this September 2016 groping and/or touching incident.

97.) In September 2016 after the termination of the defendant JAMES KAISER, the plaintiff AMANDA BAKER was pulled aside by the defendant FRED NACLERIO at the aforementioned OLIVE GARDEN located at the aforementioned address where he offered his personal apology as to what the plaintiff had to go through for almost two years with the defendant JAMES KAISER, that he should have investigated the defendant JAMES KAISER further after he initially learned what the defendant JAMES KAISER was doing to the plaintiff AMANDA BAKER, he did not want the plaintiff to think because he and the defendant JAMES KAISER were friends that he did not do more to help her and that her incidents with Mr. KAISER were not handled properly.

98.) That at all time mentioned herein, for a continuous period from October 2014 to September 2016 the discrimination and/or sexual harassment and/or harassment and/or hostile work environment and/or groping or touching and/or retaliation and/or sexual advances continued against the plaintiff AMANDA BAKER.

99.) That at all time mentioned herein the plaintiff AMANDA BAKER always rejected the discrimination and/or sexual harassment and/or harassment and/or hostile work environment and/or groping or touching and/or retaliation and/or sexual advances of the defendant JAMES KAISER.

100.) That at all time mentioned herein, the plaintiff AMANDA BAKER at her employment with the defendant OLIVE GARDEN and/or the defendant DARDEN RESTAURANTS, INC. was retaliated against and/or not promoted and/or did not receive larger raises and/or promotions and/or was prevented from taking promotions and/or larger raises as a result of her not performing sexual favors and/or having sexual intercourse with the defendant JAMES KAISER and/or rejected such requests from the defendant.

101.) That at all time mentioned herein, the plaintiff AMANDA BAKER at her employment with the defendant OLIVE GARDEN and/or the defendant DARDEN RESTAURANTS, INC. was retaliated against and/or not promoted and/or did not receive larger raises and/or promotions and/or was prevented from taking promotions and/or larger raises as a result of her rejecting the sexual remarks and/or comments and/or innuendos and/or crude verbal comments made by the defendant JAMES KAISER.

102.) The actions of the defendants OLIVE GARDEN, DARDEN RESTAURANTS, INC., JAMES KAISER and FRED NACLERIO were and are intended to create a hostile work environment that no reasonable person would tolerate.

103.) That at all time mentioned herein the plaintiff AMANDA BAKER was retaliated against by her employers and/or their employees and/or her supervisors and/or managers at her employment with the defendant OLIVE GARDEN and/or the defendant

DARDEN RESTAURANTS, INC. because she opposed the defendant's unlawful employment actions.

104.) That at all times mentioned herein, the plaintiff AMANDA BAKER was discriminated against at her employment with the defendant OLIVE GARDEN and/or the defendant DARDEN RESTAURANTS, INC. under circumstances giving rise to an inference of unlawful discrimination.

105.) That at all times mentioned herein, the plaintiff AMANDA BAKER was discriminated against at her employment with the defendant OLIVE GARDEN and/or the defendant DARDEN RESTAURANTS, INC. because of her sex and/or gender.

106.) That at all times mentioned herein, the defendant OLIVE GARDEN is individually and personally liable to plaintiff for the aforementioned discrimination and harassment under Title VII § 701, 42 U.S.C. § 2000e-(b).

107.) That at all times mentioned herein, the defendant DARDEN RESTAURANTS, INC. is individually and personally liable to plaintiff for the aforementioned discrimination and harassment under Title VII § 701, 42 U.S.C. § 2000e-(b).

108.) That at all times mentioned herein, the defendant JAMES KAISER is individually and personally liable to plaintiff for the aforementioned discrimination and harassment under Title VII § 701, 42 U.S.C. § 2000e-(b).

109.) That at all times mentioned herein, the defendant FRED NACLERIO is individually and personally liable to plaintiff for the aforementioned discrimination and harassment under Title VII § 701, 42 U.S.C. § 2000e-(b).

110.) That at all times mentioned herein, the defendant OLIVE GARDEN is individually and personally liable to plaintiff for the aforementioned discrimination and harassment under New York State Law.

111.) That at all times mentioned herein, the defendant DARDEN RESTAURANTS, INC. is individually and personally liable to plaintiff for the aforementioned discrimination and harassment under New York State Law.

112.) That at all times mentioned herein, the defendant JAMES KAISER is individually and personally liable to plaintiff for the aforementioned discrimination and harassment under New York State Law.

113.) That at all times mentioned herein, the defendant FRED NACLERIO is individually and personally liable to plaintiff for the aforementioned discrimination and harassment under New York State Law.

114.) That at all times mentioned herein, as a result of defendants' actions the plaintiff was and still is suffering from severe mental, emotional and physical injuries.

115.) That at all times mentioned herein, as a result of defendants' actions the plaintiff has was and still is experiencing severe anxiety and depression due to the discriminatory, unprofessional, degrading, condescending and hostile treatment towards the plaintiff.

116.) That at all times mentioned herein, as a result of defendants' actions the plaintiff has felt extremely humiliated, degraded, victimized, embarrassed and emotionally distressed.

117.) That at all times mentioned herein, as a result of the acts and conduct complained of the defendants herein, the plaintiff has suffered and will continue to suffer

the loss of income, salary, bonuses, benefits and other compensation which such employment entails and the plaintiff has also suffered future pecuniary losses, emotional pain, suffering, inconvenience, loss of enjoyment of life, and other non-pecuniary losses.

118.) That at all times mentioned herein, the defendants' conduct has been malicious, willful, outrageous and conducted with full knowledge of the law. As such, plaintiff demands Punitive Damages as against all the defendants, both jointly and severally.

119.) As defendants conduct has been malicious, willful, outrageous and conducted with full knowledge of the law, plaintiff demands punitive damages, damages for emotional distress, physical injuries, any medical expenses, loss of past and future earnings, benefits and compensation and attorney's fees with any applicable interest as against the defendants

**AS A FIRST CAUSE OF ACTION**  
**FOR DISCRIMINATION UNDER TITLE VII**  
**(not against any individual defendant)**

120.) Plaintiff AMANDA BAKER repeats, realleges each and every allegation contained in paragraphs one through one hundred and nineteen (119), with the same force and effect as though more fully set forth at length herein.

121.) Title VII of the Civil Rights Act of 1964 states in relevant part as follows: 42 U.S.C. § 2000 e-2 [section 703] (a) Employer practices, It shall be unlawful employment practice for an employer - (1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his/her compensation, terms, conditions or privileges or employment because of the individuals race, color, religion, sex or national origin;.....

122.) Defendants engaged in unlawful employment practices prohibited by 42 U.S.C. § 2000e et seq., by allowing harassment, sexual harassment, causing a hostile work environment and discrimination against the plaintiff as a result her sex and/or gender.

123.) As a direct and proximate result of the defendants' unlawful discriminatory conduct in violation of the aforementioned code and/or statute, plaintiff has suffered and continues to suffer monetary and/or economic harm, including but not limited to, loss of past and future income, compensation and benefits, for which she is entitled to an award of monetary damages and other relief, including attorney's fees and expenses with interest.

124.) As a direct and proximate result of the defendants' unlawful discriminatory conduct in violation of the aforementioned code and/or statute, plaintiff has suffered and continues to suffer severe mental anguish and emotional distress, including but not limited to depression, humiliation, embarrassment, stress, anxiety, loss of self-esteem and self-confidence, emotional pain and suffering, as well as physical injury for which she is entitled to an award of compensatory and monetary damages and other relief.

125.) Defendants' discriminatory action in violation of the aforementioned code and/or statute were intentional, done with malice and/or showed deliberate, willful, wanton and reckless indifference to the civil rights of the plaintiff AMANDA BAKER, for which she is entitled to all legal and equitable remedies including punitive or exemplary damages.

**AS A SECOND CAUSE OF ACTION**  
**FOR DISCRIMINATION UNDER TITLE VII**  
**(not against any individual defendant)**

126.) Plaintiff AMANDA BAKER repeats, realleges each and every allegation contained in paragraphs one through one hundred and twenty-five (125), with the same force and effect as though more fully set forth at length herein.

127.) Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000 e-3 (a) provides that it shall be unlawful employment practice for an employer: (1) to....discriminate against any of his/her employees....because he/she has opposed any practice made an unlawful employment practice by this subchapter. Or because he/she has made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this subchapter.”

128.) Defendants engaged in unlawful employment practices prohibited by 42 U.S.C. § 2000e et seq., by retaliating against the plaintiff with respect to the terms, conditions or privileges of employment because of her opposition to the unlawful employment practices of the defendants.

129.) As a direct and proximate result of the defendants' unlawful discriminatory conduct in violation of the aforementioned code and/or statute, plaintiff has suffered and continues to suffer monetary and/or economic harm, including but not limited to, loss of past and future income, compensation and benefits, for which she is entitled to an award of monetary damages and other relief, including attorney's fees and expenses with interest.

130.) As a direct and proximate result of the defendants' unlawful discriminatory conduct in violation of the aforementioned code and/or statute, plaintiff



has suffered and continues to suffer severe mental anguish and emotional distress, including but not limited to depression, humiliation, embarrassment, stress, anxiety, loss of self-esteem and self-confidence, emotional pain and suffering, as well as physical injury for which she is entitled to an award of compensatory and monetary damages and other relief.

131.) Defendants' discriminatory action in violation of the aforementioned code and/or statute were intentional, done with malice and/or showed deliberate, willful, wanton and reckless indifference to the civil rights of the plaintiff AMANDA BAKER, for which she is entitled to all legal and equitable remedies including punitive or exemplary damages.

**AS A THIRD CAUSE OF ACTION**  
**FOR DISCRIMINATION UNDER NEW YORK STATE LAW**

132.) Plaintiff AMANDA BAKER repeats, realleges each and every allegation contained in paragraphs one through one hundred and thirty-one (131), with the same force and effect as though more fully set forth at length herein.

133.) The New York Executive Law § 296 provides that "1. It shall be an unlawful discriminatory practice: "(a) For an employer or licensing agency, because of the age, race, creed, color, national origin, sex or disability or marital status of any individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment."

134.) Defendants engaged in an unlawful discriminatory practice by discriminating against the Plaintiff through harassment, sexual harassment, causing a hostile work environment, sex and/or gender discrimination and retaliation.

135.) Plaintiff hereby makes a claim against defendants under all of the applicable paragraphs of Executive Law Sections 290, 292 and 296.

136.) As a direct and proximate result of the defendants' unlawful discriminatory conduct in violation of the aforementioned code and/or statute, plaintiff has suffered and continues to suffer monetary and/or economic harm, including but not limited to, loss of past and future income, compensation and benefits, for which she is entitled to an award of monetary damages and other relief, including attorney's fees and expenses with interest.

137.) As a direct and proximate result of the defendants' unlawful discriminatory conduct in violation of the aforementioned code and/or statute, plaintiff has suffered and continues to suffer severe mental anguish and emotional distress, including but not limited to depression, humiliation, embarrassment, stress, anxiety, loss of self-esteem and self-confidence, emotional pain and suffering, as well as physical injury for which she is entitled to an award of compensatory and monetary damages and other relief.

138.) Defendants' discriminatory action in violation of the aforementioned code and/or statute were intentional, done with malice and/or showed deliberate, willful, wanton and reckless indifference to the civil rights of the plaintiff AMANDA BAKER, for which she is entitled to an award of punitive or exemplary damages.

**AS A FOURTH CAUSE OF ACTION**  
**FOR DISCRIMINATION UNDER NEW YORK STATE LAW**

139.) Plaintiff AMANDA BAKER repeats, realleges each and every allegation contained in paragraphs one through one hundred and thirty-eight (138), with the same force and effect as though more fully set forth at length herein.

140.) The New York Executive Law § 296(7) provides that it shall be unlawful discriminatory practice “For any person engaged in any activity to which this section applies to retaliate or discriminate against any person because he/she has opposed any practices forbidden in this article.”

141.) Defendants engaged in an unlawful discriminatory practice by wrongfully retaliating against the Plaintiff.

142.) As a direct and proximate result of the defendants’ unlawful discriminatory conduct in violation of the aforementioned code and/or statute, plaintiff has suffered and continues to suffer monetary and/or economic harm, including but not limited to, loss of past and future income, compensation and benefits, for which she is entitled to an award of monetary damages and other relief, including attorney’s fees and expenses with interest.

143.) As a direct and proximate result of the defendants’ unlawful discriminatory conduct in violation of the aforementioned code and/or statute, plaintiff has suffered and continues to suffer severe mental anguish and emotional distress, including but not limited to depression, humiliation, embarrassment, stress, anxiety, loss of self-esteem and self-confidence, emotional pain and suffering, as well as physical injury for which she is entitled to an award of compensatory and monetary damages and other relief.

144.) Defendants’ discriminatory action in violation of the aforementioned code and/or statute were intentional, done with malice and/or showed deliberate, willful, wanton and reckless indifference to the civil rights of the plaintiff AMANDA BAKER, for which she is entitled to an award of punitive or exemplary damages.

**AS A FIFTH CAUSE OF ACTION**  
**FOR DISCRIMINATION UNDER NEW YORK STATE LAW**

145.) Plaintiff AMANDA BAKER repeats, realleges each and every allegation contained in paragraphs one through one hundred and forty-four (144), with the same force and effect as though more fully set forth at length herein.

146.) The New York Executive Law § 296(6) provides that it shall be unlawful discriminatory practice “For any person to aid, abet, incite, compel or coerce the doing of any acts forbidden under this article, or attempt to do so.”

147.) Defendants engaged in an unlawful discriminatory practice in violation of New York State Executive Law § 296(6) by aiding, abetting, inciting, compelling or coercing the discriminatory conduct.

148.) As a direct and proximate result of the defendants’ unlawful discriminatory conduct in violation of the aforementioned code and/or statute, plaintiff has suffered and continues to suffer monetary and/or economic harm, including but not limited to, loss of past and future income, compensation and benefits, for which she is entitled to an award of monetary damages and other relief, including attorney’s fees and expenses with interest.

149.) As a direct and proximate result of the defendants’ unlawful discriminatory conduct in violation of the aforementioned code and/or statute, plaintiff has suffered and continues to suffer severe mental anguish and emotional distress, including but not limited to depression, humiliation, embarrassment, stress, anxiety, loss of self-esteem and self-confidence, emotional pain and suffering, as well as physical injury for which she is entitled to an award of compensatory and monetary damages and other relief.

150.) Defendants' discriminatory action in violation of the aforementioned code and/or statute were intentional, done with malice and/or showed deliberate, willful, wanton and reckless indifference to the civil rights of the plaintiff AMANDA BAKER, for which she is entitled to an award of punitive or exemplary damages.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully prays for an Order of this Court and/or the Court enter judgment in her favor on all of her causes of action against the defendants containing the following relief:

As and for All Federal and State Causes of Action:

A.) Declaring that the defendants engaged in unlawful employment practice prohibited by Title VII of The Civil Rights Act Of 1964, as Amended, 42 U.S.C § 2000 e et. seq. and New York State Executive Law § 290, 292 and 296 in that the defendants harassed and discriminated against plaintiff on the basis of her gender and/or sex, harassed, sexually harassed, created a hostile work environment and retaliated against the plaintiff.

B.) Awarding damages to the plaintiff with interest, retroactive, for all lost wages and benefits, past and future, back pay and front pay, resulting from defendants' unlawful discrimination and to otherwise make plaintiff whole for any losses suffered as a result of such unlawful employment practice;

C.) Awarding plaintiff compensatory damages with interest for mental, emotional and physical injury, distress, pain and suffering and injury to reputation;

D.) Awarding plaintiff any and all other monetary and non-monetary losses plus interest;

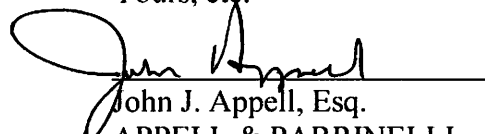
- E.) Awarding plaintiff punitive and exemplary damages;
- F.) Awarding plaintiff liquidated damages under Title VII of The Civil Rights Act Of 1964, as Amended, 42 U.S.C § 2000 e et. seq.;
- G.) Awarding plaintiff attorney's fees, costs, and expenses incurred in the prosecution of the action as provided by law and statute;
- H.) Awarding plaintiff such other and further relief as the Court may deem equitable, just and proper to remedy the defendant's unlawful employment practices;
- I.) An award of prejudgment interest on the money awards requested above for any and all Causes of Action;
- J.) That the Court retain jurisdiction over this action until the defendants have fully complied with the Orders of the Court and that the Court require the defendants to file such reports as may be necessary to supervise such compliance;
- K.) To award the plaintiff such other and further relief as this Court deems just and proper.

JURY DEMAND

151.) Plaintiff herein demands a trial by jury of all issues of fact and damages in this action.

Dated: New York, New York  
January 24, 2017

Yours, etc.



John J. Appell, Esq.  
APPELL & PARRINELLI  
Attorney for Plaintiff(s)  
3 West 35<sup>th</sup> Street  
New York, New York 10001  
(212) 947-0101


VERIFICATION

STATE OF NEW YORK )  
  ) SS:  
COUNTY OF NEW YORK )

AMANDA BAKER, hereby affirms as true, under the penalty of perjury that affirmant has read the foregoing COMPLAINT and knows the contents thereof; that same is true to affirmant's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that those matters affirmant believes to be true.

Dated: New York, New York  
January 17, 2017

  
AMANDA BAKER

  
VINCENZA VERGA  
Notary Public State of New York  
No. 01VE5048380  
Qualified in Kings County  
Commission Expires August 21, 2017