

14 CV 3434

JUDGE ENGELMAVER  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

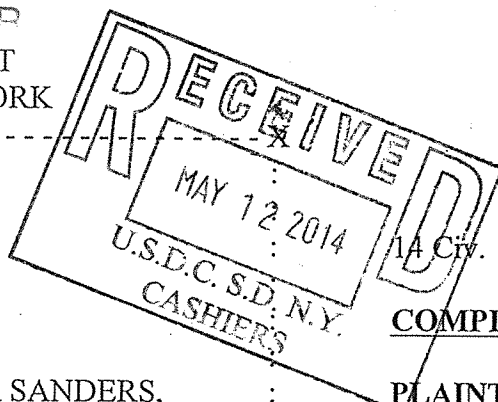
MOLLIE FERAGLICH,

Plaintiff,

- against -

NEW YORK UNIVERSITY, LAMAR SANDERS,  
EZRA SACKS, JOSEPH PICHARILLO, and  
DONALD B. GILLES,

Defendants.



14 Civ. ( ) ( )

COMPLAINT

PLAINTIFF DEMANDS  
A TRIAL BY JURY

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Plaintiff Mollie Fermaglich ("Fermaglich" or "Plaintiff"), by her attorneys,  
Hernstadt Atlas PLLC, for her complaint against defendants New York University ("NYU"),  
Lamar Sanders, Ezra Sacks, Joseph Picharillo, and Donald B. Gilles (collectively, "Defendants"  
or "AIG"), alleges as follows:

**NATURE OF THE ACTION**

1. This action is brought to remedy discrimination on the basis of gender, age and religion in the terms, conditions and privileges of employment, and to remedy retaliation for opposition to unlawful employment actions, in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* ("Title VII"), 42 U.S.C. § 1981, the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 *et seq.* ("ADEA") and the Administrative Code of the City of New York § 8-107 *et seq.* (the "City Law").

2. Mollie Fermaglich is a very successful Television writer and producer who has written and produced television segments for CBS with famous actors like Jerry Seinfeld, Rita Rudner, Jackie Mason, William Shatner and George Segal, as well as written and produced episodes of long-running shows on Nickelodeon, and entered into development deals

with cable networks like Hallmark and Nickelodeon. She has been a teacher at the NYU Tisch School Undergraduate Film and Television Department for almost 20 years, and has a far more robust and impressive resume than many of her colleagues, including younger, non-Jewish men who have been favored and even promoted over her. Ms. Fermaglich has complained to her supervisors, and even the EEO office at NYU, many times about a wide variety of discriminatory and hostile treatment to which she has been subjected, and NYU's only, and persistent, response has been to continue the discrimination and to retaliate against her, to deny Ms. Fermaglich summer and/or introductory classes, which are given to younger, male and/or non-Jewish teachers, to deny her appropriate committee assignments, and to subject her to a hostile work environment at every possible opportunity.

#### JURISDICTION AND VENUE

3. This Court has jurisdiction over Plaintiff's federal claims under 42 U.S.C. § 1981 and based upon a federal question (28 U.S.C. § 1331) presented under Title VII, 42 U.S.C. § 1981, and the ADEA.

4. Supplemental jurisdiction over Plaintiff's claims alleging violations of the New York City Human Rights Law, exists pursuant to 28 U.S.C. § 1367(a).

5. An administrative proceeding, required pursuant to 42 U.S.C. § 2000e-5 as a prerequisite to commencing an action under Title VII, was instituted with the U.S. Equal Employment Opportunity Commission ("EEOC") upon Plaintiff's filing a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC"), Charge No. 520-2011-00930, on or about January 21, 2011, complaining of the acts of gender, age and religious discrimination and retaliation alleged herein.

6. The EEOC issued a "reasonable cause" Determination dated August 8, 2013, but after conciliation failed because of Defendant NYU's refusal meaningfully to

participate in it, issued a Notice of Right to Sued dated February 7, 2014, in which it state that the “EEOC found reasonable cause to believe that violations of the statute(s) occurred with respect to some or all of the matters alleged in the charge.” Plaintiff has filed the instant action within 90 days from her receipt on or about February 12, 2014, of the Notice of Right to Sue, which was postmarked February 10, 2014.

7. Pursuant to the City Law, Plaintiff has served a copy of the Complaint on the City of New York Commission on Human Rights and the Corporation Counsel of the City of New York.

8. Venue is found within this judicial district pursuant to 42 U.S.C. § 2000e-5(f)(3). Venue also is proper under 28 U.S.C. § 1391. Acts and transactions herein complained of have taken place in this State, including the unlawful employment practices about which Plaintiff complains. The Defendants may be found in this district and Plaintiff was employed with all employment records maintained in this district.

#### PARTIES

9. At all times relevant to this Complaint, Plaintiff Mollie Fermaglich was and still an individual residing in the State of New York, employed by NYU as a professor in the NYU Tisch School Undergraduate Film and Television Department.

10. Upon information and belief, at all times relevant to this Complaint, defendant New York University was and is a private, non-profit New York Education Corporation, located and operated in New York City, New York.

11. Upon information and belief, at all times relevant to this Complaint, defendant Lamar Sanders was the Chairman of the NYU Tisch School Undergraduate Film and Television Department (“Film/TV Dept.”).

12. Upon information and belief, at all times relevant to this Complaint, defendant Ezra Sacks was the Writing Area Head of the NYU Film/TV Dept., often acting with as the *de facto* Chairman of the NYU Film/TV Dept. with Sanders' authority.

13. Upon information and belief, at all times relevant to this Complaint, defendant Joseph Picharillo succeeded Sanders as the Chairman of the NYU Film/TV Dept. in or about 2012.

14. Upon information and belief, at all times relevant to this Complaint, defendant Donald B. Gilles was named the Head of Television Writing at the NYU Film/TV Dept. in or about 2012.

### **FACTUAL ALLEGATIONS**

15. Plaintiff Mollie Fermaglich first began teaching in the NYU Undergraduate Film and Television Department as an adjunct in 1996. In or about 2004, Ms. Fermaglich was promoted to the position of full-time teacher. Ms. Fermaglich has been for almost twenty years an extremely successful and popular teacher whose students regularly rewarded with rave reviews, and who, until about 2009, was well respected and treated by the leaders of the NYU Film/TV Dept.

16. Starting in or about 2006, after Sanders became Chairman of the department, and accelerating starting in or about 2009, however, defendants Sanders and Sacks began to single out Ms. Fermglich for different and significantly worse treatment based upon her gender, age and religion, taken persistent actions against her designed to make her life at NYU miserable so that she would be forced to quit, or they could manufacture an excuse to fire her. After Ms. Fermaglich complained, first through NYU's Equal Employment Opportunity process in the Summer of 2010, and then in January 2011 by filing a charge of discrimination with the EEOC, NYU responded by retaliating against Ms. Fermaglich for daring to complain.

17. In March 2010, Ms. Fermaglich submitted materials relating to the upcoming two-year review in which, Department faculty were informed, all members of the NYU Film/TV Dept. were required to participate. Ms. Fermaglich noted that the only dates on which she would not be available to teach were March 30 and 31, 2010, as she was an observant Jew who would then be celebrating the Passover high holy day. Despite this express request by Ms. Fermaglich, however, she was informed that she was to make herself available at class for observation by a faculty observer on March 31, the second day of Passover. Because of prior harassment regarding religious observances by Sanders and Sacks, Ms. Fermaglich was afraid that further protest would result in retaliation, and did as she was requested and, against her religious principles and beliefs, worked on the second day of Passover. After Picharillo took over as Chairman of the NYU Film/TV Dept., he continued the anti-Semitic treatment of Ms. Fermaglich, scheduling her 2013 review for the first day of Passover despite Ms. Fermaglich again specifically notifying the Department that as an observant Jew she would not be available on that day.

18. Notwithstanding her personal distress, the reviewed class went well and both reviewers complimented Ms. Fermaglich on the class they observed – one in a thank you note to her. Ms. Fermaglich had also received stellar student evaluations, and was given an extraordinarily positive hour-long interview with the teacher committee. Accordingly, Ms. Fermaglich had every reason to believe that the 2010 two-year evaluation would be as strong and positive as her many prior evaluations.

19. However, this was not the case, and Ms. Fermaglich was one of only a couple of persons called in to meet with Sanders in mid-May 2010 about the review. At this meeting, Sanders made it clear that Ms. Fermaglich's teaching was "impeccable," that her students "loved" her, and that she was a great teacher. Sanders then asked Ms. Fermaglich what

committees she was on, even though he was very much aware of the committees on which she worked, since Sanders himself assigned teachers to committees, and mysteriously stated that “some” people in the department, whom he refused to identify, did not like her. Upon information and belief, the only teacher in the Department who described Ms. Fermaglich as not collegial was Sacks. Sanders then concluded the meeting by warning Ms. Fermaglich that it was his last year and wanted it to be stress-free – a bald threat to Ms. Fermaglich that he did not her to rock the boat.

20. Rather than send Ms. Fermaglich a letter notifying her of a successful review, as he did to virtually everyone in the NYU Film/TV Dept., Sanders followed up the May meeting with letter in late June that differed dramatically from the generally positive May meeting (except his bizarre questions and comments about committees and collegiality), and stating that he had recommended that she be reviewed again the following year. To add insult to injury, Sanders based this recommendation on what he called “a pattern of questionable conduct with other members of the faculty,” and this “pattern may have, in the area of service, e.g. committee assignments, that must be improved in the coming year.” Upon information and belief, the only faculty members who were singled out in this fashion were three over-50 Jewish teachers, one of whom took no action in response to the false and damaging actions taken against her and was subsequently fired (she is currently pursuing legal action against NYU).

21. Of course, Sanders has never identified any questionable activity by Ms. Fermaglich, and he himself limited Ms. Fermaglich’s committee assignments by not placing her on committees she requested. Moreover, Sanders was well aware that the negative criticism in his letter is demonstrably false, and that Ms. Fermaglich’s colleagues have come forward to state that she is an excellent colleague and performed superbly on committees. In fact, Professors Chan Roberson and Hurbris Cherrier both believed Ms. Fermaglich should pass her review and

provided sworn statements to that effect that were given to the EEOC. Professor Hurbis Cherrier stated that Ms. Fermaglich is a “highly effective and dedicated teacher,” while Professor Chan Roberson described Ms. Fermaglich’s excellent performance, and added that she “is both a colleague and an excellent professor.” Other colleagues praised her collegiality, describing her as “one of the jewels of the Department” and noted that the committees to which Ms. Fermaglich was assigned worked together “beautifully, without a single note of discord. That’s collegiality!”

22. Nor did Sanders repeat in his cryptic and condemnatory letter the strong praise he had shared with Ms. Fermaglich in May regarding the excellence of her teaching – surely the most important aspect of her job as a teacher at NYU. In short, the vague allegations in the letter are entirely false, and based not on any identifiable or identified fact, but instead demonstrate discrimination based upon Ms. Fermaglich’s age, gender and/or religion, and retaliation for her having complained about discrimination and retaliation. The recommendation that Ms. Fermaglich be reviewed again was baseless and designed to harm her standing in the department.

23. The continuing discrimination and retaliation against Ms. Fermaglich took a variety of forms. For example, even though Ms. Fermaglich had taught a summer writing class – “Writing the Feature” – for a number of years, it was taken away from her in 2008, despite what Sacks had described to her as strict seniority rules.

24. After complaining, Ms. Fermaglich was assigned a summer writing class for 2009, but at the same time Sanders was ignoring Ms. Fermaglich’s excellent evaluation, as described above, he and Sacks were also maneuvering to deny her a summer teaching assignment for 2010. Instead, a number of younger and less senior teachers – including three younger men and two younger women, none of whom had seniority over Ms. Fermaglich, were

given the summer classes, and one peer, defendant Gilles (who had at that point not yet been appointed Head of TV Writing over the vastly more experienced Plaintiff), was given two summer classes. Only Ms. Fermaglich and another over-50 woman were denied any summer class.

25. Similarly, even though he identified committee work as an area in which Ms. Fermaglich needed to improve, Sanders refused to place her on meaningful committees, and reserved those spots for her younger, male colleagues. By excluding Ms. Fermaglich from important and/or visible committee work, Sanders intended to, and succeeded in, marginalizing her by isolating her from the department decision-makers.

26. Additionally, both Sanders and Sacks have repeatedly refused to give Ms. Fermaglich a television production class, despite her significant experience in the area. For example, Ms. Fermaglich has produced television segments for CBS television, working with such celebrities as George Segal, Jackie Mason, William Shatner, Bob Saget, Jerry Seinfeld, Joy Behar, Rita Rudner, Richard Belzer and dozens more; she has helped to produce episodes of Nickelodeon shows and has had development deals for her own shows with Nickelodeon and Hallmark Entertainment.

27. Despite this vast well of actual hands-on production experience, each time Ms. Fermaglich asked to teach a television production class, she was turned down, and the class was instead given to younger, male and/or non-Jewish teachers, including faculty members with much less or no television production experience. Thus in 2010, Sanders assigned a younger, male, non-Jewish teacher with almost no television production experience to teach a class, while denying Ms. Fermaglich that slot. He even offered to train a much younger female faculty member in television production so she could teach that class, if it opened up.



28. Sanders and Sacks also refused to give Ms. Fermaglich any required or introductory classes, which are obviously much more reliable, secure, and easier to fill with students than elective classes, and assures the professor teaching the class of full enrollment. Defendants instead routinely assigned classes required by the NYU Film/TV Dept., such as "Preparing to Write the Screenplay" or "Script Analysis," "Storytelling Strategies," or "Writing the Short Screenplay," to younger, male and, as a rule, non-Jewish teachers.

29. This illegal imbalance of assignments is aided by the fact that as of 2010, when the discrimination and retaliation against Ms. Fermaglich significantly increased, only four out of more than 20 faculty members in the NYU Film/TV Dept. were women writing teachers, and the men in the writing area were, for the most part, not Jewish and much younger and less experienced than Ms. Fermaglich. During at least the first six years that Sacks was head of the writing area, he did not hire one woman.

30. Even when Sanders and Sacks undertook what they called an overhaul of the writing area of the NYU Film/TV Dept., Ms. Fermaglich was excluded and disadvantaged. Ms. Fermaglich was in 2010 and remains today the teacher with the most hands on professional writing experience in the NYU Film/TV Dept., yet Sanders and Sacks selected younger, male, non-Jewish and/or far less experienced teachers to assist in the overhaul, excluding Ms. Fermaglich.

31. The illegal and devastating conduct by Sanders and Sacks was severe or pervasive, creating a hostile work environment for Ms. Fermaglich. They used virtually every opportunity available to favor a younger, male and/or non-Jewish colleague over her, or, if they could not disadvantage her professionally, to make her life in the NYU Film/TV Dept. miserable.

32. For example, Sanders and Sacks took no action to remedy Ms. Fermaglich's complaint that a (younger, male, less senior) colleague repeatedly walked into her

classroom, often with some of his students, before Ms. Fermaglich's class was over, to place his coat, bags and coffee in the room. There was no reason for this disrespectful disruption, as his class started ten minutes after Ms. Fermaglich's class ended. When Ms. Fermaglich asked him not to disrupt her class, the adjunct teacher responded with a gendered, homophobic comment audible to the entire class. Neither Sanders, nor Sacks, nor the NYU Human Resources department, took any action of any kind in response to Ms. Fermaglich's complaint.

33. Sanders and Sacks also forced Ms. Fermaglich to share an office with a teacher about whom everyone complained because she did not respect her office mates' joint right to use the office and would take the office on days on which she had agreed the office would be reserved for her office mate. This person would also hide or destroy her office mates' personal and/or professional possessions. Her conduct was extremely disruptive and made Ms. Fermaglich's holding office hours for her students difficult or impossible, but both Sanders and Sacks refused to take any action over the teacher they supervised. Indeed, Sanders solution was to threaten to have security officers go into Ms. Fermaglich's classroom, handcuff her, and escort her from the building if he discovered that Ms. Fermaglich had entered the shared office on one of the office mate's days, and Sacks – their supervisor – wrote that "I have nothing to do with this. Zippo. Zero. Nada."

34. Even more pernicious was NYU's official response to Ms. Fermaglich's 2010 complaints of discrimination and retaliation, which was to retaliate against her up to and including threatening her with discharge during the course of a meeting with NYU's EEO officers! NYU's EEO officers have, without proof or basis, simply rejected Ms. Fermaglich's complaints and engaged in the age-old and sexist practices of blaming the victim or accusing Ms. Fermaglich of being too emotional.

35. Thus, NYU EEO director Mary Signor accused Ms. Fermaglich of creating a hostile work environment in connection with a vicious attack on Ms. Fermaglich by Vice Dean Pari Sirazi – who has since been discharged by NYU, accused of embezzlement, and sued NYU and its President John Sexton for breach of contract and defamation – at a 2010 faculty meeting at which Ms. Fermaglich dared to pose a question about Sacks’ record as Sanders *de facto* vice chairman. Indeed, Signor informed Ms. Fermaglich that her asking a question at an open faculty meeting, which was entirely appropriate considering that Sacks was then running for Chairman of the NYU Film/TV Dept., was, somehow, grounds for termination.

36. Of course, Signor informed Ms. Fermaglich of this position by NYU at a December 21, 2010 meeting during the course of which Signor first told Ms. Fermaglich that NYU had investigated her complaints of discrimination and retaliation and determined that they were unfounded because they had not found a pattern of illegal behavior. At that December 1 meeting, Signor also badgered Ms. Fermaglich about her “Jewishness” in connection with Ms. Fermaglich’s complaint that Sanders and Sacks scheduled a review of her class on the second day of Passover, a day on which Ms. Fermaglich specifically said she would not be available because she is an observant Jew. “Just *how* Jewish are you? Are you *very* Jewish? What other Jewish holidays have you taken off in the past?” Apart from being offensive and anti-Semitic in itself, this line of questioning was completely inappropriate for an EEO officer and plainly demonstrates NYU’s retaliation and bias against Ms. Fermaglich.

37. NYU also refused to address any of Ms. Fermaglich’s complaints, and in the years since the 2010 complaints described above – and notwithstanding the advent of Joseph Picharelli as the new Chairman of the NYU Film/TV Dept. – Defendants have persisted in assigning summer classes to Ms. Fermaglich’s more junior, younger, male and/or non-Jewish colleagues and not to her, refusing to assign Ms. Fermaglich to required or introductory classes,

and refusing to give Ms. Fermaglich the favored committee assignments that are important to a teacher's success at NYU and should routinely be assigned to a teacher with almost 20 years of seniority in the NYU Film/TV Dept.

38. Defendants have not only continued to retaliate and discriminate against Ms. Fermaglich by persisting in the illegal activities described above, but they have added new adverse actions whenever possible. For example, in 2012, Sacks and Picharillo took away from Ms. Fermaglich the "Developing the Screenplay" class she had taught for many years and gave it to a non-Jewish male, despite the outstanding student evaluations she was given for that class. And while they relaxed the withholding of summer class assignments in 2012 after Ms. Fermaglich filed her Charge of Discrimination with the EEOC, they asked her to return 2/3 of the pay for that class when she missed a week to sit Shiva after her father passed away. Upon information and belief, NYU has never sought reimbursement from any other teacher under similar circumstances, and singled out Ms. Fermaglich on the basis of continuing discrimination and retaliation.

39. Picharillo, and before him, Sanders and Sachs, repeatedly turned down a "Tisch Live Comedy Half-Hour" class that Ms. Fermaglich had proposed on several occasions, with the overwhelming support of the Department Faculty. Picharillo then handed the proposed class to a younger, male, non-Jewish teacher, who proposed it with his support to the Curriculum Committee, without Ms. Fermaglich's association or participation in the class she has designed and repeatedly proposed.

40. Even as this Complaint is being filed, NYU and Picharillo are discriminating and retaliating against Ms. Fermaglich by refusing to give her an assignment teaching a class in Australia, even though the professor who is running that program stated that he "had to have [Ms. Fermaglich] in Australia because I want the very best" representing the

NYU Film/TV Dept. Based upon Ms. Fermaglich's stellar evaluations and the fact that the program director has asked for her, the only possible basis for denying Ms. Fermaglich this plum assignment is discrimination and retaliation.

41. Furthermore, Picharillo promoted Donald Gilles over the vastly more experienced Ms. Fermaglich to Head of Television writing, where Gilles has used that position to continue the discrimination and retaliation against Ms. Fermaglich, including but not limited to denying her introductory and/or core classes – such as Introduction to Television, which Gilles teaches despite his lack of professional experience in the area – and aiding and abetting Picharillo's refusal to assign Ms. Fermaglich summer writing classes by failing to advocate for her (as the Area Head) and, more perniciously, taking the classes for himself.

42. Worse, Gilles has been for at least a year discouraging students from signing up for Ms. Fermaglich's classes so that at least two students subjected to Gilles' illegal and wildly inappropriate actions have gone to Ms. Fermaglich to inform her of, and complain about, his conduct. Gilles is also, upon information and belief, working with NYU to manufacture evidence that might support future adverse actions against Ms. Fermaglich by failing to respond to her emails, failing to provide her with important information and then asking her for her notes on precisely the information he failed to provide, and the like.

43. Upon information and belief, Ms. Fermaglich is also paid less than her younger, male, and/or non-Jewish peers, taking into account her seniority and length of service at NYU, and Picharillo has refused to take any action to remedy this disparate treatment.

**COUNT I**

**Discrimination in Violation of 42 U.S.C. § 1981**

44. Plaintiff repeats and realleges paragraphs 1 through 43 as if fully set forth herein.

45. Plaintiff suffered discrimination by Defendants, through its representatives, managers and supervisors, including, but not limited to, being limited, classified, stereotyped, and otherwise denied the benefits, privileges, terms and conditions of her employment, to wit, the right to make and enforce contracts, because of her race – Plaintiff is Jewish – in violation of 42 U.S.C. § 1981.

46. Defendants' actions, by and through its supervisors, agents and representatives, were willful, wanton, reckless, and malicious, and further show a complete and deliberate indifference to, and conscious disregard for, Plaintiff's rights. Therefore, Plaintiff is entitled to an award of punitive or exemplary damages in an amount sufficient to punish Defendant or deter it and others from like conduct in the future.

**COUNT II**

**Gender and Religious Discrimination in Violation of Title VII (Against NYU)**

47. Plaintiff repeats and realleges paragraphs 1 through 46 as if fully set forth herein.

48. Defendants' Plaintiff was at all relevant times herein Defendant's "employee" as that term is defined under Title VII.

49. Defendant NYU was at all relevant times herein Plaintiff's "employer" as that term is defined under Title VII. NYU employed at least 180 employees and may have

employed more than 200 employees in each of 20 or more calendar weeks in the current or preceding calendar year.

50. By its gender-based and religion-based decision making process, and gender-based and religion-based comments and commentary, Defendant, through its agents, representatives and/or employees, including supervisory employees, discriminated against Ms. Fermaglich with respect to her terms, conditions or privileges of employment, because of her gender and her religious beliefs, and/or classified or stereotyped Plaintiff on the basis of her gender and her religious beliefs, in a manner to affect adversely her status as an employee and otherwise to deny her equal opportunities for employment, in violation of Title VII.

51. By the aforementioned conduct, NYU, through its agents, representatives, and/or employees (including supervisory employees), discriminated against Ms. Fermaglich, on the basis of gender and religion, with respect to the terms, conditions and privileges of Plaintiff's employment, by creating, fostering, and participating in a work environment of intimidation, ridicule and insult, thereby exposing and subjecting Plaintiff to a work environment that was hostile and abusive, constituting severe and pervasive harassment that adversely affected the conditions of Plaintiff's employment, all in violation of Title VII.

52. Defendant knew or, in the exercise of reasonable care, should have known, of the abusive and reprehensible conduct which its agents, representatives or employees, including its supervisory employees, directed against Plaintiff but, nevertheless, did nothing, thereby acquiescing and condoning the unlawful conduct.

53. Defendant's acts and omissions were committed with malice toward Ms. Fermaglich or with a reckless indifference to Plaintiff's rights under Title VII.

**COUNT III**

**Gender, Age and Religious Discrimination  
in Violation of the New York City Human Rights Law (against Defendants)**

54. Plaintiff repeats and realleges paragraphs 1 through 53 as if fully set forth herein.

55. Plaintiff was at all relevant times herein NYU's employee as that term is defined under Title 8 of the New York City Human Rights Law.

56. NYU was at all relevant times herein Plaintiff's employer as that term is defined under the New York City Human Rights Law.

57. Defendants Lamar Sanders, Ezra Sacks, Joseph Picharillo, And Donald Gilles are personally liable under the New York City Human Rights Law as aiders and abettors of the discrimination against plaintiff.

58. By its gender-based, age-based and religious-based decisionmaking process, the individual defendants and NYU, through its agents, representatives or employees (including supervisory employees), discriminated against Plaintiff with respect to her terms, conditions or privileges of employment, because of her gender, age and religion, and/or limited, classified or stereotyped Plaintiff on the basis of her gender, age and religion, in a manner to affect adversely her status as an employee and otherwise to deny Plaintiff equal opportunities for employment, in violation of the New York City Human Rights Law.

59. By the aforementioned conduct, the individual defendants and NYU, through its agents, representatives, and/or employees (including supervisory employees), discriminated against Plaintiff, on the basis of gender, age and religion, with respect to the terms, conditions and privileges of her employment, including harassment of Plaintiff, by fostering and participating in a hostile work environment of intimidation, ridicule and insult, thereby adversely



affecting the conditions of Plaintiff's employment, in violation of the New York City Human Rights Law.

60. The actions of the individual defendants, and NYU's actions, by and through its agents and representatives, were willful, wanton, reckless, and malicious, and further show a complete and deliberate indifference to, and conscious disregard for, Plaintiff's rights under the New York City Human Rights Law. Therefore, Plaintiff is entitled to an award of punitive or exemplary damages in an amount sufficient to punish Defendants or deter them and others from like conduct in the future.

#### COUNT IV

##### **Retaliation In Violation of 42 U.S.C. § 1981, Title VII, and the New York City Human Rights Law**

61. Plaintiff repeats and realleges paragraphs 1 through 60 as if fully set forth herein.

62. Defendants were aware that Ms. Fermaglich engaged in a protected activity when she complained about and opposed the harassment and the discrimination on the basis of her gender, age and religion. After Ms. Fermaglich complained of and expressed her opposition to Defendants' discriminatory treatment of her on the basis of her religious observance and national origin, NYU, through its agents, representatives or employees, including its supervisory employees, individual defendants Lamar Sanders, Ezra Sacks, Joseph Picharillo, and Donald Gilles, who are personally liable under the New York City Human Rights Law as aiders and abettors of the discrimination against plaintiff, each retaliated against Plaintiff by adversely affecting the terms and conditions of her employment, in violation of 42 U.S.C. § 1981, Title VII, and § 8-107 of the New York City Human Rights Law.

63. That retaliation has had an adverse and severe impact upon Plaintiff's position, career and well-being and was designed to punish her for having opposed or complained about the unlawful and humiliating treatment she was forced to endure. Defendants have not only caused Plaintiff to lose wages and suffer lower comparative pay, but have caused her terrible and continuing emotional and physical pain and suffering, including devastating mental anguish and distress.

64. Defendants knew or, in the exercise of reasonable care, should have known, of the abusive and reprehensible conduct directed against Plaintiff by its supervisory employees but, nevertheless, did nothing, thereby acquiescing and condoning the unlawful conduct.

65. The retaliatory conduct and actions taken by Defendants were causally connected to Plaintiff's protected activity, *i.e.*, opposing and protesting the gender, age and religious harassment and discrimination fostered by Defendants.

66. Defendants failed effectively to remedy or prevent and, indeed, exacerbated the reprisal against Plaintiff, although it knew, or in the exercise of reasonable care, should have known, of the retaliation and its causal effect upon Plaintiff.

67. The hostile, abusive, demeaning and humiliating work environment resulting from the retaliation to which Ms. Fermaglich was subjected unreasonably interfered with Plaintiff's work unlawfully altered the terms, conditions and privileges of her employment, in violation of 42 U.S.C. § 1981, Title VII, and the New York City Human Rights Law.

COUNT V

Age Discrimination In Violation of the ADEA

68. Plaintiff repeats and realleges paragraphs 1 through 67 as if fully set forth herein.

69. Defendants' Plaintiff was at all relevant times herein Defendant's "employee" as that term is defined under the ADEA.

70. Defendant NYU was at all relevant times herein Plaintiff's "employer" as that term is defined under the ADEA. NYU employed at least 180 employees and may have employed more than 200 employees in each of 20 or more calendar weeks in the current or preceding calendar year.

71. By its age-based decision making process, and age-based comments and commentary, Defendant, through its agents, representatives and/or employees, including supervisory employees, discriminated against Ms. Fermaglich with respect to her terms, conditions or privileges of employment, because of her age, and/or classified or stereotyped Plaintiff because of her age, in a manner to affect adversely her status as an employee and otherwise to deny her equal opportunities for employment, ultimately forcing her termination from her employment, in violation of ADEA.

72. By the aforementioned conduct, NYU, through its agents, representatives, and/or employees (including supervisory employees), discriminated against Ms. Fermaglich, because of her age, with respect to the terms, conditions and privileges of Plaintiff's employment, by creating, fostering, and participating in a work environment of intimidation, ridicule and insult, thereby exposing and subjecting Plaintiff to a work environment that was hostile and abusive, constituting severe and pervasive harassment that adversely affected the conditions of Plaintiff's employment, all in violation of ADEA.

73. Defendant knew or, in the exercise of reasonable care, should have known, of the abusive and reprehensible conduct which its agents, representatives or employees, including its supervisory employees, directed against Plaintiff but, nevertheless, did nothing, thereby acquiescing and condoning the unlawful conduct.

74. Defendant's acts and omissions were committed with malice toward Ms. Fermaglich or with a reckless indifference to Plaintiff's rights under ADEA.

**Prayer for Relief**

**WHEREFORE**, Plaintiff respectfully requests that this Court enter an award:

- (a) Declaring the acts and practices complained of herein are in violation of 42 U.S.C. § 1981, Title VII, the ADEA, and the New York City Human Rights Law;
- (b) Enjoining and permanently restraining these violations of 42 U.S.C. § 1981, Title VII, the ADEA and the New York City Human Rights Law;
- (c) Directing Defendant NYU to take such affirmative action as is necessary to ensure that the effects of these unlawful employment practices are eliminated;
- (d) Directing Defendant NYU to place Plaintiff in the position she would be in but for NYU's discriminatory and retaliatory treatment of her, and to make her whole for all earnings she would have received but for NYU's discriminatory and retaliatory treatment, including, but not limited to, back wages and other lost benefits, and front wages and lost future benefits;
- (e) Directing Defendant NYU to pay punitive damages as provided by 42 U.S.C. § 1981 in excess of \$2 million;
- (f) Directing Defendant NYU to pay punitive damages as provided by Title VII to the maximum extent permitted by law;

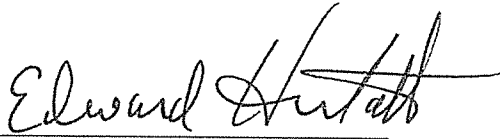
- (g) Directing Defendant NYU to pay punitive damages as provided by the ADEA to the maximum extent permitted by law;
- (h) Directing all Defendants, jointly and severally, to pay punitive damages in excess of \$5 million under the New York City Human Rights Law;
- (i) Directing Defendant NYU to pay an additional amount to compensate Plaintiff for the emotional distress, humiliation, pain and suffering, and/or mental anguish Defendants' conduct has caused Plaintiff, as provided by Title VII and the ADEA to the maximum extent permitted by such laws;
- (j) Directing all Defendants, jointly and severally, to pay an additional amount to be determined at trial but in excess of \$5 million to compensate Plaintiff for the emotional distress, humiliation, pain and suffering, and/or mental anguish Defendants' conduct has caused Plaintiff, as provided under the New York City Human Rights Law;
- (k) Awarding Plaintiff such interest as is allowed by law;
- (l) Awarding Plaintiff her reasonable attorneys' fees and costs for Defendant NYU's violations of 42 U.S.C. § 1981 (pursuant to 42 U.S.C. § 1988), Title VII, the ADEA and Defendant's violations of the New York City Human Rights Law; and
- (m) Granting such other and further relief as the Court deems necessary and proper.

**DEMAND FOR TRIAL BY JURY**

Plaintiff hereby demands, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure,  
a trial by jury in this action.

Dated: New York, New York  
May 12, 2014

HERNSTADT ATLAS PLLC

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