

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

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MILOCYS DOMINGUEZ,

Plaintiff,

-against-

SHAI GRUBER individually and CALIBER
ASSOCIATES II, INC.,

Defendants.

-----X

Index No.

Plaintiff designates: NEW YORK
COUNTY as the Place of trial

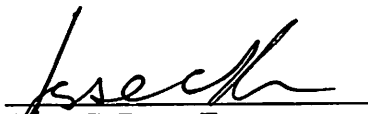
SUMMONS

The basis of the venue is:
The County in which Defendant's
Principal Office is Located

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 20 days after the service of this summons, exclusive of the day of service (or within 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 your failure to appear or answer, judgment will be taken against you by default for the inconvenience relief demanded in the complaint.

Dated: New York, New York
January 28, 2014

**PHILLIPS & ASSOCIATES,
ATTORNEYS AT LAW, PLLC**

By: 

Jesse C. Rose, Esq.
Of Counsel

Edward J. Kennedy, Esq.
Attorneys for Plaintiff
45 Broadway, Suite 620
New York, New York 10004
(212) 248-7431

Defendants' Addresses:

CALIBER ASSOCIATES II, INC.
211 East 43rd Street, # 711
New York, New York, 10017

SHAI GRUBER
211 East 43rd Street, # 711
New York, New York, 10017

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VERIFIED COMPLAINT

**PLAINTIFF DEMANDS
A TRIAL BY JURY**

Plaintiff, Milocys Dominguez, by her attorneys, PHILLIPS & ASSOCIATES, Attorneys at Law, PLLC, hereby brings this action against the Defendants, upon information and belief, as follows:

NATURE OF THE CASE

1. Plaintiff complains pursuant to the New York City Human Rights Law, New York City Administrative Code § 8-502(a), *et. seq.* (“NYCHRL”), and seeks damages to redress the injuries her minor child has suffered as a result of being **sexually harassed, sexually battered and discriminated against** by her employer and supervisor.
2. That at all times relevant hereto, Plaintiff Milocys Dominguez (“Dominguez”) is and was a resident of the State of New York and the New York County.
3. That at all times relevant hereto, Defendant Caliber Associates II, Inc. (“Caliber”) is a Domestic Business Corporation operating under the laws of the State of New York, with its headquarters located at 211 East 43rd Street, #711, New York, New York, 10017.
4. That at all times relevant hereto, Plaintiff Dominguez was an employee of Defendant Caliber.
5. That at all times relevant hereto, upon information and belief, Defendant Shai Gruber

("Gruber") was a resident of the State of New York.

6. That at all times relevant hereto, Defendant Gruber was an employee and owner of Defendant Caliber.
7. That at all times relevant hereto, Defendant Gruber was Plaintiff Dominguez's supervisor and had supervisory authority over Plaintiff Dominguez.
8. Defendant Caliber and Defendant Gruber are collectively referred to herein as "Defendants."

MATERIAL FACTS

9. In or around May of 2013, Plaintiff Dominguez interviewed with Defendant Gruber and was subsequently offered a position with Defendant Caliber.
10. In or around June of 2013, Plaintiff Dominguez began working for Defendant Caliber as a real estate agent in training.
11. Plaintiff Dominguez was trained for the first approximate two months by Defendants. As part of this training, Plaintiff Dominguez was required to come into the office every day for certain hours to perform various tasks in the office. Defendant Gruber would frequently encourage Plaintiff Dominguez to come into office earlier and do more than she was doing.
12. Throughout this time, while Plaintiff Dominguez was paid nothing for this work and went without the possibility of earning any income as Defendant Caliber solely paid commission without any base salary or hourly wage.
13. Plaintiff Dominguez was also taught Defendants' computer system, digital editing, set up her accounts and had her photo taken for Defendants' website.
14. Defendants also provided Plaintiff Dominguez lists of apartments for Plaintiff Dominguez to take pictures for Defendants' website and other real estate agents.

15. Once Plaintiff Dominguez obtained her real estate license on or about July 31, 2013, she was promoted to the title of real estate agent.
16. As a real estate agent Plaintiff Dominguez is required to be in the office from approximately 10:00 AM until 6:00 PM when possible or perform equivalent work from home or remotely.
17. As a real estate agent, Defendants provided Plaintiff Dominguez access to many listings for apartments throughout New York City and was tasked with marketing those listings using Defendant Caliber's resources.
18. Defendant Gruber would frequently review Plaintiff Dominguez's work and question her about how she was performing her work.
19. In or around October of 2013, Defendant Gruber began to sexually harass Plaintiff Dominguez by making inappropriate comments such as telling Plaintiff Dominguez that she needs to use her looks to rent apartments and take clients out for drinks. Defendant Gruber also commented on Plaintiff Dominguez's "qualifications," referring to her looks and body.
20. When Plaintiff Dominguez told Defendant Gruber that the individuals looking for clients were typically married couples or men in relationships with their significant other. Defendant Gruber would tell Plaintiff Dominguez had to take them "by the balls."
21. This continued for several months. Plaintiff Dominguez ignored the comments and attempted to perform her job despite the harassment.
22. On or about December 11, 2013, Defendant Gruber approached Plaintiff Dominguez and asked her how she "gets by" based on how little she was being paid. Upon information and belief, Defendant Gruber's questions were meant to ascertain how vulnerable Plaintiff Dominguez was financially so he could use it against her.

23. Defendant Gruber also commented that Plaintiff Dominguez was one of the best dressed employees in the office and that she did not appear as if she was struggling financially. Plaintiff Dominguez told Defendant Gruber that she studied fashion and that she was very careful about how she presented herself.
24. On or about December 13, 2013, Defendant Caliber held its annual holiday party which Plaintiff Dominguez decided to attend. At the end of the party, Plaintiff Dominguez and a friend from the office decided to leave and go to a local bar where she had been frequently. Defendant Gruber joined them without being invited by Plaintiff Dominguez.
25. Once they reached this other bar, Plaintiff Dominguez sat at the bar between her friend and Defendant Gruber.
26. After a short time in the bar, Defendant Gruber again began telling Plaintiff Dominguez to use her looks to get men to rent apartments, essentially telling her to manipulate men using her sexuality. Despite Plaintiff Dominguez expressing disinterest in the conversation, Defendant Gruber continued with his comments.
27. At this point, Plaintiff Dominguez was fully intoxicated and exhibited signs that made it clear that she was intoxicated. Defendant Gruber decided to take advantage of Plaintiff Dominguez's vulnerability.
28. When Plaintiff Dominguez faced away from Defendant Gruber, he **began to sexually batter Plaintiff Dominguez by grabbing her buttocks, breasts and pulling her onto his lap.** Plaintiff Dominguez consistently pushed away from Defendant Gruber but he persisted.
29. Plaintiff Dominguez then left the bar to smoke a cigarette with her friend and Defendant Gruber joined them. Once outside, Defendant Gruber sent Plaintiff Dominguez's friend to get the tab at the bar. Once alone with Plaintiff Dominguez, **Defendant Gruber told**

Plaintiff Dominguez that she was very attractive and that he wanted to be her “sugar daddy.” He also began to tell her that he would buy her anything she wanted.

30. Defendant Gruber then **began to sexually batter Plaintiff Dominguez by grasping her hand and forcing her to reach down his pants until she could feel his pubic hair.**

When Plaintiff Dominguez pulled her hand away Defendant Gruber told her “it’s ok, nobody is going to know, nobody is going to see, it’s fine.” Plaintiff Dominguez pulled away and told Defendant Gruber that she is not a whore, forcefully objecting to Defendant Gruber’s sexual advances.

31. When Plaintiff Dominguez’s friend approached Defendant Gruber immediately walked away and jumped into a cab.

32. Plaintiff Dominguez felt that any ordinary person in her shoes would have felt compelled to resign from her employment.

33. Plaintiff Dominguez felt offended, disturbed, and humiliated by this illegal sexual harassment and discrimination.

34. The above are just some of the acts of sexual harassment and discrimination that Plaintiff Dominguez experienced while employed by Defendants.

35. Defendants **treated** Plaintiff Dominguez **different (sexually harassed and battered her) solely due to her gender (female).**

36. **But for the fact that Plaintiff Dominguez is a female, Defendants would not have treated her different (subjected her to sexual harassment and sexual battery).**

37. Defendant Gruber’s actions were unsolicited, unwelcome and offensive.

38. Defendants’ actions and conduct were intentional and intended to harm Plaintiff Dominguez.

39. Defendant Gruber, who was Plaintiff Dominguez’s supervisor, regularly exposed

Plaintiff Dominguez to a sexually offensive and hostile work environment.

40. Plaintiff Dominguez has been unlawfully discriminated against, sexually harassed, retaliated against, humiliated, degraded and belittled, and as a result, suffers loss of rights, emotional distress, loss of income, earnings and physical injury.
41. As a result of Defendants' actions, Plaintiff Dominguez feels extremely humiliated, degraded, victimized, embarrassed, and emotionally distressed.
42. As a result of the Defendants' discriminatory and intolerable treatment of Plaintiff Dominguez, she has suffered severe emotional distress and physical ailments.
43. As a result of the acts and conduct complained of herein, Plaintiff Dominguez has suffered a loss of income, the loss of a salary, bonus, benefits, and other compensation which such employment entails, and Plaintiff Dominguez has also suffered future pecuniary losses, emotional pain, suffering, inconvenience, loss of enjoyment of life, and other non-pecuniary losses.
44. As a result of the above, Plaintiff Dominguez has been damaged in an amount which exceeds the jurisdiction limits of the Court.
45. Defendants' conduct has been malicious, willful, outrageous, and conducted with full knowledge of the law. As such, Plaintiff Dominguez demands Punitive Damages as against both Defendants, jointly and severally.

**AS A FIRST CAUSE OF ACTION
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE**

46. PLAINTIFF repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.
47. The Administrative Code of City of NY § 8-107 [1] provides that, "It shall be an unlawful discriminatory practice: (a) For an employer or an employee or agent thereof,

because of the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, sexual orientation or alienage or citizenship status of any person, to refuse to hire or employ or to bar or to discharge from employment such person or to discriminate against such person in compensation or in terms, conditions or privileges of employment.”

48. Defendants engaged in an unlawful discriminatory practice in violation of New York City Administrative Code Title 8, §8-107(1)(a) by creating and maintaining discriminatory working conditions, and otherwise discriminating against PLAINTIFF because of her gender (sexual harassment).

**AS A SECOND CAUSE OF ACTION FOR DISCRIMINATION
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE**

49. PLAINTIFF repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.
50. The New York City Administrative Code Title 8, §8-107(6) provides that it shall be unlawful discriminatory practice: “For any person to aid, abet, incite, compel; or coerce the doing of any of the acts forbidden under this chapter, or attempt to do so.”
51. Defendants engaged in an unlawful discriminatory practice in violation of New York City Administrative Code Title 8, §8-107(6) by aiding, abetting, inciting, compelling and coercing the above discriminatory, unlawful and retaliatory conduct.

**AS A THIRD CAUSE OF ACTION FOR DISCRIMINATION
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE**

52. PLAINTIFF repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.
53. New York City Administrative Code Title 8-107(19) Interference with protected rights. It shall be an unlawful discriminatory practice for any person to coerce, intimidate, threaten

or interfere with, or attempt to coerce, intimidate, threaten or interfere with, any person in the exercise or enjoyment of, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected pursuant to this section.

54. Defendants violated the section cited herein as set forth.

**AS A FOURTH CAUSE OF ACTION FOR DISCRIMINATION
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE**

55. PLAINTIFF repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

56. New York City Administrative Code Title 8-107(13) Employer liability for discriminatory conduct by employee, agent or independent contractor.

a. An employer shall be liable for an unlawful discriminatory practice based upon the conduct of an employee or agent which is in violation of any provision of this section other than subdivisions one and two of this section.

b. An employer shall be liable for an unlawful discriminatory practice based upon the conduct of an employee or agent which is in violation of subdivision one or two of this section only where:

1. the employee or agent exercised managerial or supervisory responsibility; or

2. the employer knew of the employee's or agent's discriminatory conduct, and acquiesced in such conduct or failed to take immediate and appropriate corrective action; an employer shall be deemed to have knowledge of an employee's or agent's discriminatory conduct where that conduct was known by another employee or agent who

exercised managerial or supervisory responsibility; or

3. the employer should have known of the employee's or agent's discriminatory conduct and failed to exercise reasonable diligence to prevent such discriminatory conduct.

c. An employer shall be liable for an unlawful discriminatory practice committed by a person employed as an independent contractor, other than an agent of such employer, to carry out work in furtherance of the employer's business enterprise only where such discriminatory conduct was committed in the course of such employment and the employer had actual knowledge of and acquiesced in such conduct.

57. Defendants violated the section cited herein as set forth.

**AS A FIFTH CAUSE OF ACTION FOR DISCRIMINATION
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE**

58. PLAINTIFF repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

59. The New York City Administrative Code Title 8, §8-107(7) provides that it shall be unlawful discriminatory practice: "For an employer . . . to discriminate against any person because such person has opposed any practices forbidden under this chapter. . ."

60. Defendants engaged in an unlawful discriminatory practice in violation of New York City Administrative Code Title 8, §8-107(7) by discriminating against PLAINTIFF because of PLAINTIFF's opposition to the unlawful employment practices of her employer.

**AS AN SIXTH CAUSE OF ACTION FOR
BATTERY**

61. PLAINTIFF repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

62. Defendant Gruber's sexual batteries of PLAINTIFF amounted to a series of harmful and offensive contacts to PLAINTIFF's person, all of which were done intentionally by Defendant Gruber without PLAINTIFF's consent.
63. As a direct and proximate result of the aforementioned batteries, PLAINTIFF has sustained in the past, and will sustain in the future, physical injury, pain and suffering, serious psychological and emotional distress, mental anguish, embarrassment and humiliation.
64. As a direct and proximate result of the aforementioned batteries, PLAINTIFF has been unable to pursue her usual activities due to her physical, psychological, and emotional injuries and damage.

JURY DEMAND

65. PLAINTIFF demands a trial by jury.

WHEREFORE, PLAINTIFF respectfully requests a judgment against the Defendants:

- A. Declaring that Defendants engaged in unlawful employment practices prohibited by the New York City Administrative Code §8-107 et. seq., in that Defendants sexually harassed, sexually battered, discriminated against, and retaliated against PLAINTIFF on the basis of her gender;
- B. Awarding damages to PLAINTIFF for all lost wages and benefits resulting from Defendants' unlawful discrimination and to otherwise make her whole for any losses suffered as a result of such unlawful employment practices;
- C. Awarding PLAINTIFF compensatory damages for mental, emotional and physical injury, distress, pain and suffering and injury to her reputation in an amount to be proven;
- D. Awarding PLAINTIFF punitive damages;
- E. Awarding PLAINTIFF attorneys' fees, costs, and expenses incurred in the prosecution of the


action;

F. Awarding PLAINTIFF such other and further relief as the Court may deem equitable, just and proper to remedy Defendants' unlawful employment practices.

Dated: New York, New York
January 28, 2014

**PHILLIPS & ASSOCIATES,
ATTORNEYS AT LAW, PLLC**

By:



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ekennedy@tpglaws.com

**SUPREME COURT OF THE STATE OF NEW YORK
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MILOCYS DOMINGUEZ,

Plaintiff,

VERIFICATION

-against-

SHAI GRUBER individually and CALIBER
ASSOCIATES II, INC.,

Defendants.

-----X

Milocys Dominguez, being duly sworn, deposes and states:

I am the Plaintiff in the above-entitled action. I have read the annexed Complaint, know the contents and information and facts stated therein, except those matters therein which are stated to be alleged on information and belief, and as to those matters not stated upon knowledge, I believe them to be true.



MILOCYS DOMINGUEZ

Sworn to before me on this
28th day of January, 2014



Notary Public/State of New York

EDWARD J. KENNEDY
NOTARY PUBLIC-STATE OF NEW YORK
No. D2KE6244234
Qualified in Nassau County
My Commission Expires July 05, 2015

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NO. 0319314337
ROBERT MATHC-2116 OF NEW ADM
EDWARD T. KENNEDY

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