

14 CV 6307

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

TATIANA SWIDERSKI,

-----X Case No.:

Plaintiff,

COMPLAINT

-against-

URBAN OUTFITTERS, INC.

Plaintiff Demands a Trial  
By Jury

Defendant.

-----X

Plaintiff, by and through her attorneys, Arcé Law Group, P.C., hereby complains of the Defendant, upon information and belief as follows:

**NATURE OF THE CASE**

1. Plaintiff complains pursuant to the Administrative Code of the City of New York and the New York Executive Law, seeking damages to redress the injuries Plaintiff has suffered as a result of being harassed and discriminated against by her employer on the basis of her sex/gender, along with sexual harassment, retaliation and constructive discharge.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1332 in that there is complete diversity of citizenship, and the matter in controversy exceeds, exclusive of interest and costs, the sum of \$75,000.00.
3. Venue is proper in this district based upon the fact that a substantial part of the events or omissions giving rise to the claim herein occurred within the Southern District of the State of New York. 28 U.S.C. §1391(b).

**PARTIES**

4. Plaintiff is a female resident of the State of New York, County of Kings.
5. At all times material, Defendant URBAN OUTFITTERS INC. (hereinafter also referred to as “URBAN OUTFITTERS” and/or “Defendant”) was and is a foreign business corporation duly incorporated under the laws of the State of Pennsylvania.
6. At all times material, Defendant URBAN OUTFITTERS was and is a foreign business corporation authorized to conduct business in the State of New York.
7. At all times material, Defendant URBAN OUTFITTERS was and is a foreign business corporation which does conduct business in the State of New York.
8. At all times material, Plaintiff was an employee of Defendant URBAN OUTFITTERS.

**MATERIAL FACTS**

9. On or about September 2013, Plaintiff began working for Defendant URBAN OUTFITTERS as a “Sales Associate” at Defendant URBAN OUTFITTERS’ 521 Fifth Avenue, New York, NY 10175 location.
10. As a sales associate, Plaintiff’s job responsibilities included direct interaction with customers, facilitating sales with customers, and ensuring customer service goals were met.
11. From the beginning of Plaintiff’s employment, Defendant URBAN OUTFITTERS, despite being aware of incidents of customer sexual harassment and placing its female staff in the “life-of-fire” for sexual harassment by male customers, failed to protect its female employees from third party and/or customer sexual harassment. Defendant URBAN OUTFITTERS also failed to implement a policy to protect its female employees from sexual harassment even after Plaintiff reported several instances of customer sexual harassment.

12. Similarly, Plaintiff was also sexually harassed and discriminated against by Defendant URBAN OUTFITTERS' store manager, Christopher Morris and Defendant's loss prevention security guard, Brian (last name currently unknown).
13. During Plaintiff's initial training period, Defendant's sales associate, Tony (last name currently unknown) commented that he could see why Plaintiff was hired by Mr. Morris because Plaintiff was "tall, pretty, thin and white."
14. On or about November 1, 2013, a member of Defendant's loss prevention security team, Brian (last name currently unknown) informed Plaintiff and another female sales associate, Brooke Becker, that he had caught a middle-aged Asian man following them around the store and videotaping them as they walked up the stairs, wearing skirts. Brian also noticed this same man videotaping the skirts of several unidentified female customers.
15. Despite this, instead of contacting the police, Brian simply took a photo of the man's identification, deleted any photos from the man's cell phone, and let him leave without further issue.
16. After telling Plaintiff about this customer's actions, rather than inquire about Plaintiff's safety, Brian instead asked Plaintiff **"What are you wearing under your skirt?"** Brian also warned Plaintiff not to speak about the incident with any of her co-workers or managers.
17. Plaintiff nevertheless reported the sexual harassment that same day to Mr. Morris responded **"It's a big city and you're a pretty girl, what did you expect?"** and **"These things happen."** Plaintiff responded "[j]ust because it happens doesn't mean it's ok!"
18. Later that same day, Plaintiff reported the sexual harassment to two other managers, Anna (last name currently unknown) and Remi (last name currently unknown), who confirmed the existence of other incidents of sexual harassment by customers against Defendant URBAN

OUTFITTERS' staff. In fact, both Anna and Remi detailed several incidents involving the same male customer who repeatedly came to Defendant URBAN OUTFITTERS' store, sat underneath the stairs, and openly stared up the skirts of female customers and staff as they were on the stairs in the store. When Plaintiff asked why the police were never contacted, both Anna and Remi stated that **the police were only brought in for incidents involving theft.**

19. A few days later, in or around the beginning of November 2013, Plaintiff was placing her purse in Defendant's office when she accidentally bumped into Mr. Morris. After Plaintiff apologized for bumping into him, Mr. Morris looked Plaintiff up and down, in a slow and sexually suggestive manner, and said, **"You never have to be sorry for bumping into me like that."**
20. On or about November 7, 2013, Plaintiff asked Brian for a copy of her harasser's identification, which he had copied. Plaintiff intended to take this information to the police and report the incident. Instead of providing the information, **Brian warned Plaintiff that she could not go to the police, that his supervisor insisted that the incident be handled internally, and that the best thing for her to do was to "forget it."**
21. On or about November 9, 2013, Plaintiff observed two customers in Defendant URBAN OUTFITTERS' 521 Fifth Avenue, New York, NY 10175 store being tackled and arrested by police for suspected shoplifting. Plaintiff felt violated and ignored given that her concerns for her safety and reported incident of sexual harassment had been ignored by Defendant URBAN OUTFITTERS.
22. That same day, at the end of her shift, Plaintiff again complained about the sexual harassment she endured. This complaint was made to Defendant URBAN OUTFITTERS' Women's

Department manager, Emily (last name currently unknown). Emily stated that she knew of **“no policies in the company to deal with such incidents.”**

23. The next day, on or about November 10, 2013, in retaliation for Plaintiff's repeated complaints, Brian confronted Plaintiff, **backing her up against a counter and demanding that she “stop being a stupid bitch” and warning her “next time I won't be there to protect you.”**
24. Brian's actions were intended to intimidate and coerce Plaintiff to not pursue her claims of sexual harassment.
25. Brian's actions were intended to intimidate and coerce Plaintiff to not go against Defendant URBAN OUTFITTERS' lax policies for sexual harassment.
26. In retaliation for her complaints, Brian's intimidation and harassment of Plaintiff continued unabated and got worse. For example, on several occasions, in or around November 2013, Brian insisted on performing pat-downs of Plaintiff at the end of her shift to avoid “internal theft.” Upon information and belief, Brian did not perform pat-downs on other female employees prior to their departure from Defendant URBAN OUTFITTERS' store. Brian also performed these pat-downs in order to sexually and inappropriately touch Plaintiff.
27. In or around late November 2013, Plaintiff was physically assaulted and again subjected to sexually harassing conduct by a customer during her shift at Defendant URBAN OUTFITTERS.
28. More specifically, as Plaintiff escorted a male customer to the men's department, he **attacked her by grabbing her top lip and pulling it very hard with both hands stating that he wanted to “see her teeth”, and then licked her cheek. The customer also grabbed Plaintiff's breasts and attempted to pull down the front of her dress, to expose**

**Plaintiff's breasts.** Neither Brian, nor any other security officer at Defendant URBAN OUTFITTERS responded while Plaintiff was being sexually assaulted.

29. In fact, nobody assisted Plaintiff during the sexual assault in retaliation for Plaintiff's complaints of sexual harassment against Defendant URBAN OUTFITTERS.
30. After running to safety, Plaintiff reported the attack to a co-worker, who in turn reported it to security. While security was able to locate and detain the individual who sexually attacked Plaintiff, **they simply escorted him out of the store and took no further action.** When Plaintiff inquired why Defendant's security did not call the police, they responded "he's obviously retarded" and "he's not your problem anymore."
31. Instead of addressing a sexual and physical assault by a customer, and yet another incident of third party sexual harassment, Defendant URBAN OUTFITTERS' security warned Plaintiff that **she could get in trouble for leaving her "zone" in the store.**
32. Defendant URBAN OUTFITTERS was aware of the customers' third-party sexual harassment and failed to remedy and/or take any precautions to prevent future harassment.
33. In or around December 2013, after numerous requests, Plaintiff was finally provided with identifying information for her first harasser. She immediately filed a police report against that individual, but was told that since Defendant URBAN OUTFITTERS' security guard had taken matters into his own hands, there wasn't much the police could do.
34. Shortly after Defendant URBAN OUTFITTERS became aware that Plaintiff filed a police report about the initial incident of sexual harassment, Defendant URBAN OUTFITTERS' retaliation escalated.

35. By way of example, Plaintiff suddenly started being scheduled to work in the stock room. When Plaintiff complained about her job reassignment, she was told to **stop complaining** because **“At least now people can’t molest you.”**
36. Defendant URBAN OUTFITTERS further retaliated against Plaintiff for filing a police report by negatively reviewing her performance, requiring her to work later hours despite her expressed concerns of safety, and threatening to never promote her if she failed to cooperate.
37. Therefore, on or about December 17, 2013, fearing her imminent termination and given the complete lack of a response by Defendant URBAN OUTFITTERS concerning Plaintiff’s complaints after two incidents of sexual harassment and a sexual assault against her at its 521 Fifth Avenue, New York, NY 10175 location, Plaintiff provided Defendant URBAN OUTFITTERS with her two week notice.
38. After Plaintiff provided her two-week notice, Defendant URBAN OUTFITTERS continued to retaliate against Plaintiff by refusing her breaks and subjecting her to more invasive pat-downs at the end of her shift.
39. On or about December 17, 2013, Defendant URBAN OUTFITTERS constructively discharged Plaintiff.
40. Defendant URBAN OUTFITTERS’ actions were intended to create a working environment that no reasonable person would tolerate.
41. Defendant URBAN OUTFITTERS’ actions were intended to constructively discharge Plaintiff.
42. Defendant URBAN OUTFITTERS’ actions did constructively discharge Plaintiff.
43. Defendant URBAN OUTFITTERS would not have harassed Plaintiff but for her sex/gender.

44. Defendant URBAN OUTFITTERS condoned the acts of sexual harassment by its customers against Plaintiff.
45. Defendant URBAN OUTFITTERS failed to take any action to protect Plaintiff, despite being specifically aware that customers were sexually harassing Plaintiff, as well as numerous other female employees.
46. As a result of Defendant URBAN OUTFITTERS' actions, Plaintiff felt and feels extremely humiliated, degraded, victimized, embarrassed, and emotionally distressed.
47. As a result of Defendant URBAN OUTFITTERS' discriminatory and intolerable treatment of Plaintiff, she suffered and continues to suffer severe emotional distress and physical ailments.
48. As a result of the acts and conduct complained of herein, Plaintiff has suffered and will continue to suffer the loss of income, the loss of a salary, bonuses, benefits and other compensation which such employment entails, and Plaintiff has also suffered future pecuniary losses, emotional pain, suffering, inconvenience, loss of enjoyment of life, and other non-pecuniary losses.
49. As a result of the above, Plaintiff has been damaged in an amount which exceeds the jurisdictional limits of all lower courts.
50. As Defendant URBAN OUTFITTERS' conduct has been malicious, willful, outrageous, and conducted with full knowledge of the law, Plaintiff demands Punitive Damages.

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

51. 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.
52. 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 . . . gender . . . 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."

53. Defendant 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 the Plaintiff because of her gender/sex, together with sexual harassment, and creating a hostile work environment.

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

54. 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.

55. New York City Administrative Code Title 8-107(7) provides that:

"It shall be unlawful discriminatory practice for any person engaged in any activity to which this chapter applies to retaliate or discriminate in any manner against any person because such person has (i) opposed any practice forbidden under this chapter, (ii) filed a complaint, testified or assisted in any proceeding under this chapter, (iii) commenced a civil action alleging the commission of an act which would be an unlawful discriminatory practice under this chapter..."

56. Defendant engaged in an unlawful discriminatory practice by retaliating, and otherwise discriminating against the Plaintiff.

**AS A THIRD CAUSE OF ACTION  
UNDER STATE LAW  
DISCRIMINATION**

57. 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.

58. Executive Law § 296 provides that:

"1. It shall be an unlawful discriminatory practice: "(a) For an employer or licensing agency, because of an individual's . . . sex . . . to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment."

59. Defendant engaged in an unlawful discriminatory practice by discriminating against the Plaintiff because of her sex, together with sexual harassment, and creating a hostile work environment.

60. Plaintiff hereby makes a claim against Defendant under all of the applicable paragraphs of Executive Law Section 296.

**AS FOURTH CAUSE OF ACTION  
UNDER STATE LAW  
RETALIATION**

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. New York State Executive Law §296(7) provides that it shall be an unlawful discriminatory practice:

"For any person engaged in any activity to which this section applies to retaliate or discriminate against any person because [s]he has opposed any practices forbidden under this article."

63. Defendant engaged in an unlawful discriminatory practice by discharging, retaliating, and otherwise discriminating against the Plaintiff because of Plaintiff's opposition to her employer's unlawful employment practices.

**WHEREFORE**, Plaintiff respectfully requests a judgment against the Defendant:

- A. Declaring that Defendant URBAN OUTFITTERS engaged in unlawful employment practice prohibited by the New York City Administrative Code Title 8, §8-107 *et. seq.*, and the New York Executive Law; and that the Defendant URBAN OUTFITTERS harassed and discriminated against Plaintiff on the basis of her gender/sex, together with sexual harassment, retaliation and constructive discharge;
- B. Awarding damages to the Plaintiff for any lost wages and benefits, past and future, back pay and front pay, resulting from Defendant URBAN OUTFITTERS' unlawful employment practice;
- C. Awarding Plaintiff compensatory damages for mental, emotional and physical injury, distress, pain and suffering and injury to reputation;
- 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 the Defendant URBAN OUTFITTERS' unlawful employment practices.

#### **JURY DEMAND**

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

**WHEREFORE**, Plaintiff demands judgment against Defendant URBAN OUTFITTERS in an amount to be determined at the time of trial plus interest, punitive damages, attorneys' fees, costs, and disbursements of action; and for such other relief as the Court deems just and proper.

Dated: New York, New York  
August 8, 2014

**ARCÉ LAW GROUP, P.C.**  
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