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DEARIE, J.
SCANLON, M.J.

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U.S. DISTRICT COURT

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CV 14

6987

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MARIA CATENACCI

COMPLAINT

Plaintiff

Jury Trial Demanded

-against-

NEW YORK CITY DEPARTMENT OF EDUCATION,
and HOWARD KWAIT, in his Official and Individual
Capacity,

Defendants.
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Plaintiff MARIA CATENACCI, by and through her attorneys, THE LAW OFFICE OF STEVEN A. MORELLI, P.C., respectfully alleges, upon knowledge as to herself and her own actions, and upon information and belief as to all other matters, as follows:

PRELIMINARY STATEMENT

1. Plaintiff Maria Catenacci dedicated her entire seventeen year professional life to helping children learn. Indeed, over the course of her employment with Defendant New York City Department of Education ("DOE"), Ms. Catenacci proved herself as a hard-working, capable and talented educator and administrator. Despite her exemplary job performance, Defendants subjected Ms. Catenacci to relentless

harassment, discrimination, and abuse spearheaded by her direct supervisor – Mr. Howard Kwait, Principal of John Bowne High School. Indeed, after Ms. Catenacci rejected Mr. Kwait’s repeated sexual advances, Defendant Kwait targeted Plaintiff in the workplace, and subjected Plaintiff to a work environment permeated with hostility, ridicule, and torment.

2. Specifically, over the course of her tenure at John Bowne High School, Defendant Mr. Kwait made numerous sexual advances toward Ms. Catenacci. Indeed, on one occasion Defendant Kwait asked Ms. Catenacci to leave a colleague’s retirement party with him. On yet another occasion, Defendant Kwait appallingly straddled Ms. Catenacci, touched Plaintiff, and simulated sexual intercourse by pressing his fingers against Plaintiff’s legs and body. Ms. Catenacci was understandably disgusted by Defendant Kwait’s wholly unprofessional behavior, and rejected his advances each time. Following her rejections, Defendant Kwait targeted Ms. Catenacci and, among other things, (1) isolated Plaintiff from her co-workers; (2) undermined Plaintiff’s authority to her colleagues; (3) subjected Plaintiff to disparate discipline and disparate treatment; (4) made discriminatory, sexual, and lascivious remarks towards Plaintiff; and (5) frequently yelled and screamed at Plaintiff in an aggressive and angry manner, calling her, among other things, a “bitch,” a “fucking liar,” and a “motherfucker.”
3. On at least two occasions, Ms. Catenacci reported Defendant Kwait’s wholly unprofessional and clearly discriminatory conduct to the City’s Office of Special

Investigation. No remedial action was ever taken. As a last ditch effort to escape her circumstances, Ms. Catenacci reluctantly resigned from her post at John Bowne High School. Plaintiff's resignation, in the face of blatant sexual harassment, and unbridled hostility, constituted a constructive discharge. Notably, when Plaintiff informed Mr. Kwait that she was leaving the school, he proceeded to bear-hug her, pick her up off the floor, and kiss her. To add insult to injury, as Plaintiff walked out of the office, Mr. Kwait deliberately slapped her on the buttocks. In treating Ms. Catenacci as nothing more than a proverbial "piece of meat," Mr. Kwait effectively did all he could to strip Plaintiff of her dignity.

4. As more fully set forth below, in subjecting Plaintiff to a blatantly hostile work environment, while ignoring her repeated complaints for assistance, Defendants discriminated against Plaintiff on the basis of her gender, and sexual orientation, in violation of Plaintiff's rights under the Equal Protection Clause of the 14th Amendment to the U.S. Constitution, pursuant to 42 U.S.C. § 1983.

JURISDICTION AND VENUE

5. This Court has original jurisdiction over Plaintiff's federal claims pursuant to 28 U.S.C. §§ 1331 & 1343.
6. Venue is proper in this case pursuant to 28 U.S.C. § 1391 because the events which give rise to Plaintiff's claims took place in Queens County, New York, which is located in the Eastern District of New York.

PARTIES

7. Plaintiff MARIA CATENACCI is a female individual, who is a resident and domiciliary of Nassau County, NY. At all times relevant to this complaint, Plaintiff was an “employee” of Defendant New York City Department of Education. Ms. Catenacci is gay.

8. Defendant NEW YORK CITY DEPARTMENT OF EDUCATION (“DOE”) is a municipal corporation incorporated under the laws of the State of New York, which is in charge of all public schools in the City of New York. Its headquarters are located at 52 Chambers Street, New York, NY 10007. At all times relevant to this complaint, Defendant DOE was Plaintiff’s employer.

9. Defendant HOWARD KWAIT at all times hereinafter mentioned, was and still is the Principal of John Bowne High School. At all times relevant to this complaint, Mr. Kwait was Plaintiff’s direct supervisor.

FACTUAL ALLEGATIONS

Background

10. Plaintiff Maria Catenacci commenced her employment with the New York State Department of Education (“DOE”) in 1994. For the first twelve years of her career, from 1994 to 2005, Ms. Catenacci worked as a High School Science teacher. As a teacher, Plaintiff received exclusively positive performance evaluations.

11. While she was teaching full-time, Plaintiff obtained Master's Degrees in Education, and School Administration.

12. In 2005, in recognition of her outstanding performance and qualifications, Ms. Catenacci attained the high ranking position of Assistant Principal of the John Bowne High School ("John Bowne") in Queens, New York. In particular, Plaintiff was hired and charged with overseeing the school's Science and Health Departments. Ms. Catenacci was hired by Mr. Frank McQuail, the Principal at the time.

13. Over the course of her employment at John Bowne, Ms. Catenacci proved herself as a competent, hard-working, dependable, and professional administrator. She was well-respected by her peers, and well-liked by students, parents, and colleagues.

14. However, throughout her employment at John Bowne, Ms. Catenacci was subjected to systematic and continuous discrimination based upon her gender, including blatant sexual harassment, as set forth below.

Sexual Harassment and Hostility

15. Defendant Howard Kwait took over for Mr. McQuail as Principal at John Bowne in September 2006. As Principal of the school, Mr. Kwait was Plaintiff's immediate supervisor.
16. Over the course of Plaintiff's employment at John Bowne, Mr. Kwait made numerous sexual advances towards Ms. Catenacci.
17. For example, at the retirement party of one of Plaintiff's co-workers, Mr. Kwait, who had been drinking alcohol, asked Plaintiff to leave the party with him. Mr. Kwait's forward sexual advance shocked Plaintiff, and made her feel very uncomfortable.
18. Ms. Catenacci, who is gay, was not interested in engaging in any kind of sexual relationship with Principal Kwait, and made as much clear when she summarily rejected his advance.
19. On yet another occasion, while at a school function, Kwait again made a physical sexual gesture towards Ms. Catenacci. Specifically, Defendant Kwait sat with his legs open facing Ms. Catenacci and straddled her. Kwait then used his fingers to touch Ms. Catenacci's leg, and then, appallingly simulated sexual intercourse by pressing up against Plaintiff's body.

20. Ms. Catenacci was horrified, and disgusted by Defendant Kwait's actions. Once again, Plaintiff rejected Kwait's sexual advances.

21. Mr. Kwait also made several shocking and inappropriate comments of a sexual nature to Plaintiff. These comments would customarily be made when Ms. Catenacci was alone in Mr. Kwait's office.

22. For example, Principal Kwait often asked Ms. Catenacci whether she was "fucking" other female individuals. Mr. Kwait asked Plaintiff about her relationships with female teachers at the school, as well as other female DOE employees. These wholly irrelevant, and disrespectful questions made Plaintiff feel very uncomfortable.

23. On another occasion, in 2010, Mr. Kwait told Plaintiff that he "watched his mother rape his father." On yet another occasion, Mr. Kwait told Ms. Catenacci that he "once molested a girl on his sink." These bizarre and inappropriate comments from her direct supervisor made Plaintiff feel extraordinarily uncomfortable in the workplace.

Principal Kwait Targets Ms. Catenacci

24. Following Ms. Catenacci's repeated rejection of Mr. Kwait's sexual advances, Ms. Catenacci's work environment worsened considerably. Indeed, Defendant Kwait subjected Plaintiff to increased hostility and harassment. As direct

evidence of Defendant Kwait's animus towards Ms. Catenacci, Defendant Kwait told Plaintiff, "I'm gonna break you, Ms. Catenacci."

25. Mr. Kwait would often yell and scream at Plaintiff in an aggressive, hostile, and demeaning tone. The targeted harassment, especially when it occurred at cabinet meetings when other administrators were present, subjected Plaintiff to clear and unmistakable humiliation.

26. Among other things, Principal Kwait called Ms. Catenacci a "bitch," a "motherfucker," and a "fucking liar." He also told Plaintiff to "shut up."

27. In addition, Defendant Kwait targeted Ms. Catenacci's department. Indeed, Defendant Kwait took away Plaintiff's authority to oversee the budget for the AP Science Research program that Ms. Catenacci had created.

28. Defendant Kwait also took several competent teachers away from Ms. Catenacci's Science Research program and replaced them with less capable teachers to destroy her academic model for the program. Principal Kwait's actions effectively stifled the program and denied Ms. Catenacci the opportunity to expand the program within the school.

29. Defendant Kwait further attacked Ms. Catenacci professionally when he refused to open seats to more accelerated students for Ms. Catenacci's Science Research

program. Although Ms. Catenacci had the support of her colleagues to grow the program, Mr. Kwait rejected Plaintiff's requests for more seats.

30. Principal Kwait's campaign to target Ms. Catenacci continued as he denied Plaintiff the opportunity to move up in leadership within John Bowne. Indeed, on one occasion, a philanthropic donor came to the school to discuss the possibility of growing Ms. Catenacci's Science program, and making the program its own separate entity to accommodate the students. In response, Mr. Kwait outrageously announced there was "no way will there ever be a Principal Kwait and a Principal Catenacci in this building," and adamantly opposed growing Plaintiff's program.

31. These acts culminated in the eventual loss of funding for the Science Research program that Plaintiff had created, and directed since 2005.

32. Defendant Kwait also singled out Plaintiff and treated her differently than her similarly situated male counterparts. Indeed, while Mr. Kwait spoke aggressively towards Ms. Catenacci in front of her co-workers during cabinet meetings, Principal Kwait never spoke to any of the male administrators in such a disrespectful and angry tone.

33. Defendant Kwait also subjected Ms. Catenacci to disparate treatment on the basis of her gender. Kwait specifically told Plaintiff not to wear jeans to work. In

contrast, Kwait permitted male Assistant Principals, including Steven Perry and Ian Kamen, to wear jeans without incident or reprimand.

34. Over time, Ms. Catenacci's co-workers began to notice and comment on Kwait's treatment of Plaintiff. Indeed, all the members of the administrative cabinet were aware of the hostility Kwait expressed towards Ms. Catenacci. In fact, in December 2010, Mr. Kwait even told another Assistant Principal, "If you are with Maria Catenacci, you are against me."

35. On or about the morning of June 10, 2010, Mr. Kwait summoned several Assistant Principals to a secret meeting at the school. Ms. Catenacci was one of the Assistant Principals who was directed to appear at the meeting.

36. The purpose of the meeting was to review the transcripts of students who were deficient credits and were unable to graduate that school year.

37. Ms. Catenacci refused Mr. Kwait's instruction that she artificially inflate student grades.

38. Defendant Kwait's abusive and threatening behavior worsened after Ms. Catenacci spoke with Office of Special Investigation ("OSI") investigator Jason Vandermark in the Summer of 2010. Specifically, Ms. Catenacci approached Mr. Vandermark and discussed, among other things, Principal Kwait's practice of

directing teachers and administrators to change student grades in such a manner that would artificially inflate their grades. Of course, a higher student passage rate makes Mr. Kwait look like he is performing better as a Principal. Mr. Kwait regularly gave his Assistant Principals this instruction at graduation time each year.

39. Ms. Catenacci also discussed Mr. Kwait's practice of using his Assistant Principals to target teachers for "Unsatisfactory" ratings. Mr. Kwait would frequently target teachers for U ratings and other disciplinary measures regardless of the teachers' actual performance. While Mr. Kwait directed Plaintiff to give specific teachers U ratings, Ms. Catenacci refused.

40. In addition, Ms. Catenacci also told Mr. Vandermark about the sexual harassment she was subjected to by Mr. Kwait.

41. Upon information and belief, when Defendant Kwait became aware that Ms. Catenacci had spoken to OSI investigators and complained about such matters, Defendant Kwait became increasingly hostile.

42. Following her complaints to Jason Vandermark, Defendant Kwait purposely isolated Ms. Catenacci from her co-workers heightened. Indeed, Kwait falsely told Plaintiff's colleagues that Plaintiff was conspiring to have the AP of the Math

department moved out of John Bowne in what was a transparent effort to make Ms. Catenacci's colleagues turn against her.

43. Notably, in or around 2011, Ms. Catenacci learned that Mr. Kwait had been checking her emails. Following a cabinet meeting held by Principal Kwait, Plaintiff wrote an email to another Assistant Principal, which discussed the meeting. In the email, Ms. Catenacci referenced Mr. Kwait without specifically stating his name.

44. The following morning, Plaintiff was speaking to the Assistant Principal to whom she sent the email to. Mr. Kwait then walked over to Plaintiff, wedged himself next to her, and showed them his Blackberry phone. Displayed on the Blackberry screen was the email Ms. Catenacci had sent the night before. Mr. Kwait then asked Plaintiff who she was referring to when she wrote "he's." Plaintiff was shocked that Principal Kwait had been monitoring her emails. Mr. Kwait told her that the email "just appeared in [his] inbox."

45. On another occasion, when an email was sent to the school's entire staff referencing "the five star lesbian club," and listed Ms. Catenacci's name as one of the five individuals, Plaintiff immediately reported the email to Kwait and pleaded with him to investigate. Principal Kwait did nothing to investigate the heinous email. In fact, Mr. Kwait would not even permit Plaintiff and the other

individuals listed to pursue the matter with OSI. Upon information and belief, Mr. Kwait himself sent the email to the school's staff.

46. Notably, during the 2010 school year, a heterosexual female teacher was having a medical emergency, and Ms. Catenacci left the school to provide assistance to the teacher. Upon her return to the school, Mr. Kwait asked Plaintiff how the teacher was doing. However, during the 2009 school year, when Plaintiff left the school to provide assistance to a homosexual teacher who was having a medical emergency, Ms. Catenacci was subjected to formal discipline by Mr. Kwait.

47. On or about December 15, 2011, seeing no other way out, and in desperate need of an escape from her deplorable working conditions, Plaintiff informed Mr. Kwait that she would be leaving her position as Assistant Principal. Plaintiff only resigned to escape the abusive work conditions that she was subjected to after receiving no assistance from OSI investigators. Under the circumstances, Ms. Catenacci felt she had no choice but to resign. Indeed, Plaintiff was even told by her union representative that she should leave the school because of Mr. Kwait. Accordingly, Plaintiff's resignation constituted a constructive discharge.

48. Upon being told that she would be resigning, Defendant Kwait, apparently feeling untouchable, physically grabbed Plaintiff, picked her up off of the floor, kissed her, and then slapped her on the buttocks as she walked past him on her way out of the office. Plaintiff was, once again, shocked, disgusted, and humiliated.

49. As a direct result of the discrimination and harassment meted out by Defendant Kwait, Ms. Catenacci has suffered severe emotional distress and anguish. Indeed, Ms. Catenacci experienced elevated levels of stress and anxiety, loss of sleep, depression, post-traumatic stress disorder, as well as feelings of isolation and inferiority.

50. On January 31, 2014, more than two years after Plaintiff's constructive discharge, the *New York Daily News* published an article regarding the results of the City's investigation of Mr. Kwait. The article revealed that at least *three* female staff members told officials within the Special Commissioner of Investigation that Mr. Kwait had acted in a sexually inappropriate manner towards them in the workplace.

51. The *Daily News* article also noted that Mr. Kwait had improperly allowed a female school aide he was sleeping with to pay for trips they took together to Italy, Greece, Turkey, and Croatia. Mr. Kwait was fined as a result.

52. Finally, the *Daily News* article pointed out that in 2011, Mr. Kwait had five substantiated claims noted in his disciplinary file, including claims that he cursed at employees, and stole food from the school's cafeteria.

53. Despite the City's scathing investigative findings, and the fact that Principal Kwait has had at least *four* sexual relationships with female subordinates, he remains Principal at John Bowne High School.

CLAIMS FOR RELIEF

54. By way of the foregoing, in: (1) subjecting Plaintiff to repeated, unwelcome sexual advances; (2) retaliating against Plaintiff after her repeated rejections of Kwait's advances; (3) treating Plaintiff differently than her similarly situated male and heterosexual co-workers; (4) yelling and screaming at Plaintiff on a regular basis; (5) failing to adequately investigate Plaintiff's complaints of discrimination and sexual harassment; and (6) constructively discharging Plaintiff; Defendants DOE and Kwait discriminated against Plaintiff on the basis of her gender, and sexual orientation in violation of her rights as guaranteed by the Equal Protection Clause of the 14th Amendment of the United States Constitution, pursuant to 42 U.S.C. § 1983.

DEFENDANT LIABILITY

55. Defendant DOE is liable under § 1983 for the deprivation of Plaintiff's rights because such acts were taken in accordance with the Defendant's custom or practice of discriminating and/or selectively treating individuals; these practices were so persistent and widespread that they constitute the constructive acquiescence of policymakers; and the individual policymakers directly

participated in and/or tacitly condoned the discrimination to which Plaintiff was subjected.

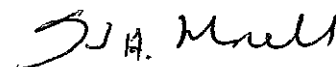
56. Defendant Kwait is individually liable under § 1983 because he directly participated in the constitutional violations alleged.

WHEREFORE, the Plaintiff demands judgment against the Defendants for all compensatory, emotional, psychological and punitive damages, lost compensation, front pay, back pay, injunctive relief, liquidated damages, and any other damages permitted by law pursuant to the above referenced causes of action. It is respectfully requested that the Court grant the Plaintiff any other relief to which she is entitled, including but not limited to:

1. Awarding reasonable attorneys fees and costs and disbursements of this action;
2. Granting such other and further relief that to the Court seems just and proper.

Dated: Garden City, New York
December 1, 2014

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