

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

-----X	Index No.:
IBRY BATISTA,	:
	:
Plaintiff,	: <u>SUMMONS</u>
	:
-v.-	:
	: Venue is based on
BEST BUY STORES, L.P. and MOE RAHMATI,	: Defendant Best Buy's
	: place of business at
	: 52 East 14 th Street
Defendants.	: New York, N.Y. 10003
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To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the attached Verified Complaint of Plaintiff, IBRY BATISTA, dated February 9, 2016, a true and accurate copy of which is served upon you herewith. You must serve your Verified Answer upon the undersigned attorneys either (1) within twenty days after service of this Summons and the attached Verified Complaint, exclusive of the day you received it, if you were served personally in the State of New York, or (2) within thirty days after service, exclusive of the day you were received it, if you were not served personally in New York State.

PLEASE TAKE NOTICE that should you fail to serve your Verified Answer within the time prescribed under applicable law, Plaintiff, IBRY BATISTA, will take judgment against you by default for the relief demanded in the Verified Complaint pursuant to section 3215 of the New York Civil Practice Law and Rules.

Dated: New York, NY
February 25, 2016

Yours, etc.

EISENBERG & BAUM, LLP

By: _____



Eric Baum, Esq.
Attorneys for Plaintiffs
24 Union Square East
Fourth Floor
New York, NY 10003
(212) 353-8700

To:

BEST BUY STORES, L.P.
7601 Penn Avenue South
Richfield, MN 55423

MOE RAHMATI

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

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 : Plaintiff, : **VERIFIED**
 : **COMPLAINT**
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BEST BUY STORES, L.P. and MOE RAHMATI, :
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 : Defendants. :
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Plaintiff IBRY BATISTA, by her attorneys, EISENBERG & BAUM, LLP, as and for her Verified Complaint against Defendants, states as follows:

THE PARTIES

1. Plaintiff IBRY BATISTA is an individual residing in New York County, New York.

2. Defendant BEST BUY STORES, L.P. (“Best Buy”) is a foreign business corporation organized pursuant to the laws of the State of Minnesota and maintaining its corporate headquarters at 7601 Penn Avenue South, Richfield, Minnesota, 55423, and duly registered to do business, and doing business actively, in the State of New York.

3. Defendant MOE RAHMATI is an individual upon information and belief employed by Best Buy and upon information and belief resides in State of New York. He was Ms. Feliciano’s immediate supervisor while Plaintiff Batista was employed by Defendants, and also exercised management authority over Plaintiff Batista.

JURISDICTION AND VENUE

4. This Court has personal jurisdiction over the Defendants pursuant to C.P.L.R.

§§ 301 and 302, because the Defendants are located in New York, reside in New York, are licensed to do business in New York and are transacting business in New.

5. Venue is proper pursuant to C.P.L.R. §503 based on Defendants' place of business at 52 East 14th Street, New York, NY, 10003, the location where acts of sexual harassment complained of herein occurred.

BACKGROUND

6. Plaintiff Batista began her employment with Best Buy in 2012. In 2014, she left the company for personal reasons, and returned in September 2015. She was then employed as a member of the Best Buy "Geek Squad" until January 2016, when she was constructively discharged as described below. Sherine Feliciano was her immediate supervisor, and Defendant Rahmati was the manager above Ms. Feliciano, and he routinely exercised authority over Plaintiff Batista as well. Plaintiff Batista's work was always excellent and she was never subject to any form of discipline.

7. Ms. Feliciano and Defendant Rahmati required Plaintiff and other members of the "Geek Squad" to participate in a web-based communication forum known as "Group Me". The forum was used for business communications, such as arranging for coverage in the event of absence, and other necessary exchanges of information. Both Ms. Feliciano, using the name "Geek Squad Trap Queen," and Defendant Rahmati, using his actual name, actively participated in the forum.

8. Defendant Rahmati formally invited Plaintiff Batista to join the forum, an offer she felt unable to refuse due to potential negative employment consequences.

9. Upon logging in to this forum for the first time, Plaintiff Batista was shocked to discover that it was overflowing with repulsive and inappropriate sexual and racial (anti-

Hispanic and anti-Asian) content, which was sickening to behold, including numerous inappropriate photographs. Just a few of hundreds of examples of this content are as follows:

- (a) Defendant Rahmati posted a cartoon in which an old man tells a little boy: “Sit down you little fagget.”
- (b) Defendant Rahmati stated to Ms. Feliciano: “You might have to bail me out in the actual precinct tonight.”
- (c) Defendant Rahmati instructed employees to send him private messages in the forum that other employees would not be able to see.
- (d) Ms. Feliciano posted a photograph of an Asian man with the caption: “Some stupid Asian ass raped me. Stupid Asian.”
- (e) Ms. Feliciano published a photograph of an Asian man with the caption: “I ate your girlfriend’s pussy. And her dog.”
- (f) A photograph was posted by a co-worker of an Asian woman stating: “Your new Chinese name is Fai Ling.
- (g) A photograph was posted by a co-worker of a woman in lingerie lying in bed and holding a sign stating “wrap it up” with the caption, written by the co-worker, apparently referring to another co-worker: “When Miguel tried to fuck my mom.”
- (h) A co-worker posted the statement, apparently referring to a co-worker: “Arthur’s neck is so big it aligns with his head, it actually makes him look like a walking dildo.” The same co-worker posted a sexual photograph of two Asian women sucking octopus tentacles with the caption: “When Arthur says I get pussy.”

- (i) A photograph was posted by a co-worker of a man with a pistol under his chin as if about to commit suicide.
- (j) A co-worker posted a photograph of a Latino male in clown-like makeup with the caption: "Puerto Rican niggas be like nah I don't do my eyebrows."
- (k) Ms. Feliciano stated to a co-worker who had been posting content similar to that described above: "I'm proud of your recent comebacks."

10. Defendants were fully aware of the existence of this forum and did nothing to police or control it. To the contrary, as evidenced by Ms. Feliciano's statement as well as many other similar statements, they encouraged highly inappropriate sexual and racial content to fill its virtual pages, and contributed such content themselves.

11. Defendants' actions placed undue pressure on to Plaintiff Batista that she was obligated to actively participate in the forum or face being ostracized and denial of important employment benefits including work assignments and scheduling. Plaintiff Batista was able to observe that any employee who limited or excluded participation in the forum would suffer negative employment consequences.

12. Through her interaction with him Defendant Rahmati suggested that he had sexual interest in Plaintiff Batista and that she needed to reciprocate it if she wished to advance her career at Best Buy and avoid termination. For instance, on once occasion Defendant Rahmati demanded that Plaintiff Batista accompany him on a trip to a government office to address a licensing issue, something for which she was in no way qualified and had never done before. Defendant Rahmati then tried to convince her to go to lunch with him, and when she refused they returned to the store and Defendant Rahmati bought lunch for everyone on the team

except Plaintiff Batista. She was frightened and humiliated and believed that if she did not reciprocate Defendant Rahmati's sexual advances, she would suffer employment consequences.

13. Defendant Rahmati repeatedly made sexually inappropriate comments to Plaintiff Batista. For example he put a THOT ("that ho over there") survey on bulletin board, and then asked Plaintiff questions to determine whether she was a "ho" (whore). Defendant Rahmati also made sexually inappropriate comments to other female employees in the presence of Plaintiff Batista or of which she became aware. Defendant Rahmati also made references to "choppy THOTs" a derogatory term for Dominican or Haitian "gold diggers". Plaintiff Batista is Dominican. He stated that all Hispanic women were good for was having babies, which was deeply hurtful and disturbing to Plaintiff Batista. Many other disparaging statements about certain kinds of Hispanic people had been made in the employee forum, with the apparent approval of Ms. Feliciano and Defendant Rahmati. Furthermore Defendant Rahmati routinely bullied and cyberbullied employees, including plaintiff, based upon inappropriate sexual statements and racial and gender discrimination.

14. Finally, on January 14, 2016, Defendant Rahmati approached Plaintiff Batista while she was speaking with a colleague and told Plaintiff Batista: "You like someone who would suck dick for a dollar." Two male co-workers overheard this statement and burst out laughing. Plaintiff Batista was mortified and humiliated, and found this statement and its implication absolutely intolerable. She complained to Defendant Rahmati and he admitted misconduct, but then he attempted to blame it on Plaintiff Batista and acted in a manner which made clear to Plaintiff Batista that she could expect more of the same.

15. Plaintiff Batista complained to Ms. Feliciano, her immediate supervisor, and to Defendant Rahmati's immediate supervisor, general manager Michael Suarez, but their response

indicated to Plaintiff that they did not intend to take any action to discipline Defendant Rahmati or to separate him from Plaintiff Batista's workplace. Upon information and belief, Defendant Rahmati and Mr. Suarez socialized together, and Mr. Suarez had never done anything to cause Plaintiff to believe that he had any interest in protecting his workforce from sexual or racial harassment. Ms. Feliciano, by contrast, actively and aggressively participated in the forum, engaging on communications that were openly racist and/or sexist, and likewise never gave Plaintiff any reason to believe that she was serious about protecting the workforce from sexual or racial harassment.

16. Unable to tolerate this relentless sexual, racial and gender-based harassment, and convinced that Defendant Rahmati intended to continue escalating this harassment to the level of physical sex acts, Plaintiff Batista was forced to resign from Best Buy on January 15, 2016, sustaining substantial financial harm as a result.

AS AND FOR A FIRST CAUSE OF ACTION
(Harassment, Hostile Workplace,
Constructive Discharge and Quid Pro Quo – Against All Defendants)

17. Plaintiff repeats, reiterates and re-alleges each and every allegation set forth in paragraphs numbered "1" through "16" as if set forth more fully and at length herein.

18. Section 296.1(a) of the New York Human Rights Law, N.Y. Exec. Law § 290 *et seq.*, and Title 8 of the New York City Administrative Code, §8-107, prohibit sexual harassment in employment. Defendants were Plaintiff's employers within the meaning of those laws.

19. Plaintiff deserved to retain her employment with Defendants and did not do anything to merit discharge or discipline. Nevertheless, Defendants denied Plaintiff the benefit of employment, including all favorable conditions and emoluments thereof and created and allowed to exist a hostile, intolerable workplace based on sexual and racial harassment that

imposed upon her by the conduct of its employees and managers, of which they was well aware of and without any non-discriminatory basis therefor. Defendants, who were Plaintiff's employers, supervisors and managers, made unwanted sexual advances to the plaintiff or engaged in other unwanted verbal or physical conduct of a sexual nature and they conditioned job benefits, terms and/or conditions, by words or conduct, on Plaintiff's acceptance of the sexual advances or harassing conduct, and/or employment decisions affecting the plaintiff were made based on the plaintiff's acceptance or rejection of the harasser's sexual advances or conduct.

20. Defendants' actions were taken under circumstances giving rise to an inference of discrimination.

21. As a direct and proximate result of Defendants' discriminatory conduct, Plaintiff suffered adverse employment consequences. Plaintiff was caused to suffer lost past and future wages, professional opportunities, other valuable benefits and emoluments of employment as well as to endure severe emotional pain and trauma, all to her detriment. Her workplace became intolerable and she was constructively terminated.

AS AND FOR A SECOND CAUSE OF ACTION
(Discrimination – Against All Defendants)

22. Plaintiff repeats, reiterates and re-alleges each and every allegation set forth in paragraphs numbered "1" through "21" as if set forth more fully and at length herein.

23. Section 296.1(a) of the New York Human Rights Law, N.Y. Exec. Law §290 *et seq.* and Title 8 of the New York City Administrative Code, §8-107 prohibit gender discrimination in employment. Defendants were Plaintiff's employers within the meaning of those laws.

24. Plaintiff deserved to retain her employment with Defendants and did not do anything to merit discharge or discipline. Nevertheless, Defendants denied Plaintiff the benefit of employment, including all favorable conditions and emoluments thereof, and constructively discharged her, because of hostility to Plaintiff based on her gender (female) and race (Hispanic) and nationality (Dominican) and without any non-discriminatory basis thereof. Other employees who were male or not Dominican or Hispanic were not subject to the same acts of discrimination.

25. Defendants' actions were taken under circumstances giving rise to an inference of discrimination.

26. As a direct and proximate result of Defendants' discriminatory conduct, Plaintiff suffered adverse employment consequences. Plaintiff was caused to suffer lost past and future wages, professional opportunities, other valuable benefits and emoluments of employment as well as to endure severe emotional pain and trauma, all to her detriment.

AS AND FOR A THIRD CAUSE OF ACTION
(Retaliation – Against All Defendants)

27. Plaintiff repeats, reiterates and re-alleges each and every allegation set forth in paragraphs numbered "1" through "26" as if set forth more fully and at length herein.

28. Section 296.1(a) of the New York Human Rights Law, N.Y. Exec. Law § 290 *et seq.* and Title 8 of the New York City Administrative Code, §8-107 prohibit retaliation against an employee who seeks to assert rights under the Human Rights Law. Defendants were Plaintiff's employers within the meaning of those laws.

29. Plaintiff complained to Defendants about the mistreatment based on gender, race and sexual harassment inflicted upon her by employee and managers of Defendants. In response, Plaintiff was subjected to additional mistreatment until her working conditions became

unbearable, all with the knowledge and approval of Defendant for the purpose of punishing her for attempting to assert her rights.

30. Defendants' actions were taken under circumstances giving rise to an inference of discrimination.

31. As a direct and proximate result of Defendants' discriminatory conduct, Plaintiff suffered adverse employment consequences. Plaintiff was caused to suffer lost past and future wages, professional opportunities, other valuable benefits and emoluments of employment as well as to endure severe emotional pain and trauma, all to her detriment.

AS AND FOR A FOURTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress – Against Defendant RAHMATI)

32. Plaintiff repeats, reiterates and re-alleges each and every allegation set forth in paragraphs numbered "1" through "31" as if set forth more fully and at length herein.

33. Defendant Rahmati, knowing that Plaintiff was psychologically and financially vulnerable, and solely for her own personal gratification, intentionally inflicted egregious emotional trauma upon Plaintiff.

34. As a direct and proximate result of Defendant Rahmati's actions, Plaintiff sustained a serious psychological injury. Defendants' actions caused extreme emotional trauma.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court grant the following relief against the Defendants:

35. Enter a declaratory judgment, stating that Defendants' practices, policies and procedures subjected Plaintiff to sexual harassment, gender, nationality and race discrimination, retaliation and assault and/or battery, making her work environment a hostile workplace in violation of Section 296.1(a) of the New York Human Rights Law, N.Y. Exec. Law § 290 *et seq.*

and Title 8 of the New York City Administrative Code, § 8-107.

36. Enjoin Defendants from implementing or enforcing any policy, procedure, or practice that denies employees of any gender and/or race and/or nationality the full and equal enjoyment of Defendants' benefits, pay increases, promotional opportunities and advancement within the company, or subjects such person to any form of harassment, including but not limited to sexual harassment, and specifically enjoin them:

- i. to develop, implement, promulgate, and comply with a policy providing for the training of each and every employee in the civil rights of employees in the workplace, including but not limited to gender, race and national origin discrimination, harassment, including but not limited to sexual harassment, and retaliation;
- ii. to develop, implement, promulgate, and comply with a policy providing for reporting and investigation of complaints regarding civil rights abuses, including but not limited to gender, race and national origin discrimination, harassment, including but not limited to sexual harassment, and retaliation;
- iii. to develop, implement, promulgate, and comply with a policy providing for disciplinary measures to be imposed upon any person found responsible for civil rights abuses, including but not limited gender, race and national origin discrimination, harassment, including but not limited to sexual harassment, and retaliation;

37. On the First Cause of Action, enter judgment against the named defendants and an award of compensatory damages for back pay, front pay, past and future employment benefits, damages for emotional distress, punitive and/or exemplary damages, attorneys' fees, pre and

post-judgment interest, in an amount, in excess of the jurisdictional limits of any other court, to be determined at trial by the jury, and further relief as this Honorable Court deems just, equitable and proper;

38. On the Second Cause of Action enter judgment against the named defendants and an award of compensatory damages for back pay, front pay, past and future employment benefits, damages for emotional distress, punitive and/or exemplary damages, attorneys' fees, pre and post-judgment interest, in an amount, in excess of the jurisdictional limits of any other court, in an amount to be determined at trial by the jury, and further relief as this Honorable Court deems just, equitable and proper;

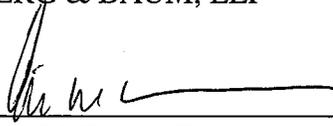
39. On the Third Cause of Action enter judgment against the named defendants and an award of compensatory damages for back pay, front pay, past and future employment benefits, damages for emotional distress, punitive and/or exemplary damages, attorneys' fees, pre and post-judgment interest, in an amount, in excess of the jurisdictional limits of any other court, to be determined at trial by the jury, and further relief as this Honorable Court deems just, equitable and proper;

40. On the Fourth Cause of Action enter judgment against the named defendants and an award of compensatory damages for back pay, front pay, past and future employment benefits, damages for emotional distress, punitive and/or exemplary damages, attorneys' fees, pre and post-judgment interest, in an amount, in excess of the jurisdictional limits of any other court, in an amount to be determined at trial by the jury, and further relief as this Honorable Court deems just, equitable and proper.

Dated: New York, New York
February 9, 2016

EISENBERG & BAUM, LLP

By: _____


Eric M. Baum, Esq.
Attorneys for Plaintiff Ibry Batista
24 Union Square East
Fourth Floor
New York, NY 10003
(212) 353-8700

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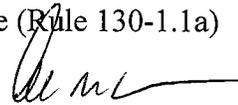
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SUMMONS AND VERIFIED COMPLAINT
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Signature (Rule 130-1.1a)



Eric M. Baum, Esq.
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