

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
CARMEN GARCIA

Plaintiff,

Index # 15 CV 0767 (NSR)
Date Purchased:

-against-

**AMENDED
COMPLAINT**

YONKERS BOARD OF EDUCATION, EDWIN
QUEZADA, ANGELA ARIAS, RAFAEL PASIAN,
ANTOINE ATINKPAHOUN, RAMON MARTINEZ

Defendants.
-----X

The Plaintiff, CARMEN GARCIA, by her attorney, Barry D. Haberman, Esq.,
complaining of the Defendants, YONKERS BOARD OF EDUCATION, EDWIN QUEZADA,
ANGELA ARIAS, RAFAEL PASIAN, ANTOINE ATINKPAHOUN, and RAMON
MARTINEZ (collectively, the “Defendants”), respectfully alleges as follows:

1. The Plaintiff, Carmen Garcia (“Plaintiff” and/or “Garcia”), is a New York
resident, domiciled at 14 Malone Avenue, Garnerville, NY 10923, which is located in Rockland
County, New York, which is located in the Southern District of New York.

2. Upon information and belief, Defendant, Yonkers Board of Education, (the
“School Board” or “YBOE”) is a legally constituted body, charged with establishing policy for
the maintenance and operation of the City of Yonkers School District, and said YBOE is
authorized to conduct business in the State of New York.

3. Upon information and belief, YBOE maintains offices located at One Larkin
Center, Yonkers, New York 10701.

4. Said office of YBOE is located in Westchester County which is located in the
Southern District of New York.

5. Upon information and belief, Defendant Edwin Quezada, hereinafter referred to as “Quezada” is a New York resident domiciled at 8 Broward Drive, New City, New York 10956.

6. Upon information and belief, Defendant, Quezada’s last known actual place of employment, and the actual place of employment during all times relevant herein, is 375 Kneeland Avenue, Yonkers, New York 10704.

7. Defendant Quezada’s domicile is located in Rockland County which is located in the Southern District of New York. Defendant Quezada’s last known actual place of employment, and the actual place of employment during all times relevant herein, is located in Westchester County which is located in the Southern District of New York.

8. Upon information and belief, Defendant Rafael Pasion, hereinafter referred to as “Pasion” is a New York resident domiciled at 29 Pinehurst Avenue, Apartment 3, New York, New York 10033.

9. Upon information and belief, Defendant Pasion’s last known actual place of employment, and the actual place of employment during all times relevant herein, is 375 Kneeland Avenue, Yonkers, New York 10704.

10. Defendant Pasion’s domicile is located in New York County which is located in the Southern District of New York. Defendant Pasion’s last known actual place of employment is located in Westchester County which is located in the Southern District of New York.

11. Upon information and belief, Defendant Antoine Atinkpahoun, hereinafter referred to as “Atinkpahoun” is a New York resident domiciled at 307 W. 120th Street, New York, New York 10027.

12. Upon information and belief, Defendant Atinkpahoun's last known actual place of employment, and the last known actual place of employment at all times relevant herein, is 375 Kneeland Avenue, Yonkers, New York 10704.

13. Defendant Atinkpahoun's domicile is located in New York County which is located in the Southern District of New York. Defendant Atinkpahoun's last known actual place of employment is located in Westchester County, which is located in the Southern District of New York.

14. Upon information and belief, Defendant Angela Arias, hereinafter referred to as "Arias", is employed by Defendant YBOE at Lincoln High School, located at 375 Kneeland Avenue, Yonkers, New York 10704.

15. Defendant Arias's actual place of employment is located in Westchester County, which is located in the Southern District of New York.

16. Upon information and belief, Defendant Ramon Martinez, hereinafter referred to as "Martinez", is employed by Defendant YBOE at Lincoln High School, located at 375 Kneeland Avenue, Yonkers, New York 10704.

17. Defendant Martinez's actual place of employment is located in Westchester County, which is located in the Southern District of New York.

18. The dominant subject matter of this Verified Complaint is grounded in Title VII of the Civil Rights Act of 1964, 42 U.S.C. sec. 2000e et. seq., as amended in 1991, ("Title VII").

19. Actions grounded in Title VII of the Civil Rights Act of 1964, 42 U.S.C. sec. 2000e et. seq. as amended in 1991, ("Title VII"), are permitted to be brought before United States Courts.

20. As YBOE is located and conducts business in a locality lying within the Southern District of New York, under 28 U.S.C. sec. 1391(b), the Southern District of New York is the proper venue for this action.

21. Plaintiff filed a Complaint with the United States Equal Employment Opportunity Commission (“EEOC”). Said Charging Complaint was designated as EEOC NO.: 16G-2014-02287.

22. On November 4, 2014 the EEOC issued Plaintiff a “Notice of Right to Sue.” Said “Notice of Right to Sue” is attached herein as Exhibit 1.

23. The filing of the initial Complaint was made on February 2, 2015, said date being within 90 days of the receipt of said “Notice of Right to Sue”.

24. The filing of the within Amended Complaint is permitted pursuant to an Order of this Court.

25. Plaintiff demands a jury trial to resolve all issues herein.

FACTUAL ALLEGATIONS

26. Plaintiff repeats and reiterates each and every allegation set forth above as if fully set forth herein.

27. Garcia is a female and of Hispanic descent.

28. Defendant YBOE hired Plaintiff in January 2000.

29. In 2001, Plaintiff commenced teaching for the Defendant YBOE at Lincoln High School.

30. At all times relevant to this action, Garcia properly performed the duties of her employment.

31. At all times prior to the events which form the basis of this action, Garcia had either satisfactory or superior employment evaluations. Any “below satisfactory” evaluations Garcia received were based on the discriminatory acts of the Defendants in this action. Thus, any “below satisfactory” evaluations Garcia received were inaccurate, were in retaliation for the Plaintiff’s lawful filing of a claim of sexual harassment, and hence, same were pre-textual to justify the Defendants enactments of adverse employment actions.

32. At all times relevant to this action, Plaintiff was a teacher of mathematics at YBOE schools, including Lincoln High School.

33. The Plaintiff’s proficiency and competency in employment was recognized by the Defendant YBOE.

34. As a mathematics teacher at Lincoln High School, the Plaintiff enjoyed success in the classroom and growth in her career.

35. Garcia received consistent satisfactory evaluations from supervisors and administrators within Lincoln High School and the Defendant YBOE.

36. Garcia performed her duties as a mathematics teacher at Lincoln High School at a satisfactory level or greater, throughout the entirety of her teaching position at Lincoln High School, as is evidenced by the evaluations by the Defendant YBOE and its administrators and supervisors.

37. While teaching at Lincoln High School, Ms. Garcia endured continued sexual harassment by Defendant Edwin Quezada, Principal of Lincoln High School at the times relevant herein, Defendant Antoine Atinkpahoun, Defendant Rafael Pasian and Defendants Angela Arias and Ramon Martinez, the other named individual Defendants employed by the Defendant School

Board at all times relevant herein. Said sexual harassment was continuing through the date of Plaintiff's eventual retaliatory termination.

38. Beginning in the 2006 – 2007 school year, Plaintiff Garcia was repeatedly sexually harassed by fellow mathematics teacher, Defendant Pasion.

39. During the 2006 – 2007 school year, Defendant Pasion began inviting Ms. Garcia out for drinks in a one on one setting. Ms. Garcia told Defendant Pasion she was not interested, but Defendant Pasion continued to ask Ms. Garcia out for drinks. Mr. Pasion continued to pressure Ms. Garcia despite her rejections.

40. During the same school year, Defendant Pasion began making lewd statements to Ms. Garcia. On one particular occasion, near the very end of the school year, Defendant Pasion told Ms. Garcia that he had a dream about her where he was licking her body, and then Defendant Pasion pushed Ms. Garcia into an empty classroom, hovered over her, put his arms around her, and was saying they should be together. Ms. Garcia felt threatened, intimidated, scared, and also disgusted that another teacher would act this way toward her.

41. The day after the incident described in paragraph 40 above, the Plaintiff, Ms. Garcia, went directly to the School Principal, Defendant Quezada, and reported what happened to Defendant Quezada as well as to Defendant Arias who, at the time, was working as Defendant Quezada's assistant.

42. After Ms. Garcia reported the incident, Defendant Arias told Ms. Garcia that she would speak to the Defendant, Pasion, and ensure that the sexual harassment would cease. Defendant even called Ms. Garcia that night, to inform Ms. Garcia that she had spoken with Pasion, that the sexual harassment would cease. Defendant Arias even told Ms. Garcia that this was not the first complaint of this kind against the Defendant Pasion, as another teacher at the

school, Ms. Cameron, had also been complaining about sexual harassment from Defendant Pasion.

43. Despite Ms. Garcia's reporting of the sexual harassment by Defendant Pasion, Defendant Quezada, the Principal of Lincoln High School, did nothing to keep Defendant Pasion away from the Plaintiff Ms. Garcia and did absolutely nothing to end the sexual harassment.

44. In fact, rather than spare Ms. Garcia from Defendant Pasion's sexual harassment and deviant behavior, Mr. Quezada attempted to place Ms. Garcia in even closer contact with Defendant Pasion.

45. When the teachers returned for the 2007 – 2008 school year, Defendant Principal Quezada informed Ms. Garcia that she was to be sharing a room with the Defendant Pasion. Ms. Garcia immediately went to a school administrator, Mr. Jeff Olender, and explained to Mr. Olender the situation with Defendant Pasion. Ms. Garcia explained to Mr. Olender that she had been repeatedly sexually harassed by the Defendant Pasion during the previous school year, and that she did not feel comfortable sharing a room with him.

46. After Mr. Garcia's visit to Mr. Olender, the room was changed and Ms. Garcia was no longer required to share a room with Defendant Pasion. However, it should be noted that, Ms. Garcia had already reported the sexual harassment to Defendant Quezada when Defendant Quezada told Ms. Garcia she was required to share a room with Defendant Pasion for the 2007 – 2008 school year. It is completely irresponsible of the Defendant Quezada, knowing that Ms. Garcia was being sexually harassed by Defendant Pasion, to require that Ms. Garcia share a classroom with Defendant Pasion.

47. Ms. Garcia also provided a written complaint of the sexual harassment by Defendant Pasion to a school administrator, Mr. Jeff Olender, who was also mentioned above.

But despite Ms. Garcia's written and oral complaints to the administration, nothing was done to curb the sexual harassment. Despite her requests for a copy of her written complaint and the file on the complaint, Ms. Garcia was never provided with same.

48. And despite her complaints, Defendant Pasion continued to sexually harass Ms. Garcia during the 2007 – 2008 school year. Defendant Pasion continued to make sexual comments and gestures to Ms. Garcia during this school year. And Defendant Pasion even sent students to Ms. Garcia with messages, where Defendant Pasion was having students tell Ms. Garcia that she should be together with Defendant Pasion. Thus, Defendant Pasion even resorted to using students in the school for his sexual harassment of Ms. Garcia.

49. Continuing throughout the course of Ms. Garcia's employment at Lincoln High School, the sexual harassment by Defendant Pasion continued, and Ms. Garcia also suffered continued sexual harassment committed by other teachers and professionals at Lincoln High School, including the Defendant Quezada, another mathematics teacher Defendant Atinkhapoun, Defendant Martinez, and Defendant Arias.

50. By the 2008 – 2009 school year, the sexual harassment had not stopped, despite Ms. Garcia's complaints. And during this school year, another mathematics teacher, Defendant Atinkpahoun told Ms. Garcia that if she wanted to continue working at Lincoln High School, the Principal, Defendant Quezada said that everything in Ms. Garcia's teaching career would be better if she has a sexual orgy with Defendants Quezada, Martinez, and Arias. Defendant Atinkpahoun would continue this sexual harassment along with Quezada, Martinez and Arias sending Defendant Atinkpahoun to deliver this message to Ms. Garcia through the date Ms. Garcia was transferred out of Lincoln High School in 2012.

51. Ms. Garcia vehemently responded that she would never agree to what Defendants Mr. Quezada and Mr. Atinkpahoun were suggesting.

52. As set forth above, the sexual harassment by Defendants Quezada and Atinkpahoun continued. On numerous occasions, continuing through the date Ms. Garcia was illegally transferred out of Lincoln High School, Defendants Quezada and Atinkpahoun continued to propose to the Plaintiff that she take part in a sexual orgy with Quezada, Martinez and Arias and that if Ms. Garcia participated in such an orgy that her career would start to improve and she would no longer have problems at the school. Such reprehensible suggestions constitute continuing sexual harassment that has no place in any work environment, let alone in a school where said Defendants are teaching and supervising children.

53. Ms. Garcia properly reported this sexual harassment to Defendant Quezada, Principal of her school, and Mr. Quezada, participating in the sexual harassment, did nothing. The Defendant Quezada failed to address the sexual harassment, as same continued as against Ms. Garcia by the above named Defendants.

54. Ms. Garcia also told another teacher, Dr. Roldan, about the sexual harassment of Defendant Atinkpahoun. And another Lincoln High School teacher, Mr. Ishola, also was a witness Defendant Atinkpahoun telling Ms. Garcia that she should have an orgy with Defendants Quezada, Martinez and Arias.

55. The Defendant Quezada retaliated against Ms. Garcia and committed adverse actions in the terms of Ms. Garcia's employment, through the Defendant School Board, by effectuating the illegal transfer of Ms. Garcia out of her teaching position at Lincoln High School due to Ms. Garcia's refusal to participate in the sexual orgy with the individual Defendants.

56. As set forth in the following paragraphs, Defendant Quezada, through the Defendant School Board, used an incident with an unruly student in the Plaintiff Garcia's classroom as pretext to effectuate the illegal transfer of the Plaintiff from her teaching position at Lincoln High School, when in fact the transfer was because the Plaintiff refused to participate in the sexual orgy with the individual Defendants as proposed during the repeated sexual harassment the Plaintiff endured.

57. On March 6, 2012, one of Ms. Garcia's students was misbehaving in her classroom. Ms. Garcia promptly and properly called a school safety officer, who temporarily removed the student from Ms. Garcia's classroom, only to have the student return to the room a short while later.

58. On March 7, 2012, the same student once again misbehaved in Ms. Garcia's classroom. Ms. Garcia once again called the safety officer. However, on this occasion, an administrator of Lincoln High School, Mr. Cartica, a school administrator, went to Ms. Garcia's classroom, and instead of removing the student and asking for Ms. Garcia's description of the incident, Mr. Cartica removed Ms. Garcia from the classroom and asked the student for his description of the incident.

59. Ms. Garcia requested the presence of her union representative and in the presence of the union representative Ms. Garcia prepared a report of the incident.

60. After the incident, the Defendant Quezada required Garcia to meet with Mr. Constantino, an administrator at the Defendant YBOE's office.

61. Defendant Quezada, who sexually harassed Ms. Garcia by making advances toward her suggesting that Ms. Garcia participate in a sexual orgy with Mr. Quezada and two

other Defendants (Angela Arias, Ramon Martinez), simply stated that he did not like Ms. Garcia for his teaching staff.

62. After meeting with Mr. Constantino, Garcia awaited instruction to return to her official teaching position at Lincoln High School, while Ms. Garcia reported for work to the Central Office for the Defendant School Board, upon the demand of the Defendant School Board, due to the involuntary and illegal transfer out of Lincoln High School. Sadly, Garcia was never allowed to return to her official position. And while reporting to the Central Office for the Defendant School Board, Ms. Garcia again reported the sexual harassment she endured at Lincoln High School to both members of the School Board as well as the Yonkers Federation of Teachers.

63. After the illegal transfer in March 2012, Plaintiff, Ms. Garcia, also reported the sexual harassment to the Yonkers Police Department.

64. Due to Ms. Garcia's refusal to participate in the sexual orgy with Mr. Quezada, Mr. Martinez, and Ms. Arias, and Ms. Garcia's reporting of the sexual harassment incidents, Defendant Quezada and the Defendant School Board discriminated and retaliated against Ms. Garcia because she is a female and would not participate in the sexual orgy by prohibiting Ms. Garcia from returning to her teaching position at Lincoln High School.

65. Upon information and belief, the School Board selectively enforces its procedures. When a student in Ms. Garcia's classroom was misbehaving, the Defendant School Board willfully ignored standard procedure and removed Ms. Garcia from the classroom as opposed to removing the student. The School Board willfully ignored procedure and had the student fill out a report of the incident rather than the teacher.

66. Upon information and belief, when other teachers require the assistance of a safety officer or other administrator in their classroom due to a behavioral problem with a student, the misbehaving student is removed from the classroom and the teacher is asked to write a report of the incident. In Ms. Garcia's case, this procedure was not followed because the Defendant Quezada and the Defendant School Board discriminated against Ms. Garcia on the basis of sex and because of the sexual harassment incidents where Ms. Garcia refused to participate in a sexual orgy with the Defendant Quezada and other faculty members of Lincoln High School.

67. Ms. Garcia was a tenured mathematics teacher at Lincoln High School for the Defendant Yonkers Board of Education and the Yonkers Public Schools District. The Defendant Quezada and the Defendant School Board willfully ignored procedure set forth in Ms. Garcia's union contract as concerns transfers of teachers to a different school.

68. The Defendant School Board and Defendant Quezada told Ms. Garcia she was to be transferred to another school, in violation of Ms. Garcia's union contract. When other students misbehave at Lincoln High School, teachers are not transferred.

69. On several occasions after the transfer, that is after March 2012, Ms. Garcia had the opportunity to speak with administrators of the Defendant School Board and the Yonkers Federation of Teachers, including Ms. Pat Puleo, concerning the illegal transfer out of Lincoln High School. Ms. Garcia attempted to explain the circumstances surrounding the illegal transfer, and again reported the sexual harassment Ms. Garcia had endured from Defendant Quezada and the other faculty members.

70. Ms. Garcia was told by administrators of the Defendant School Board and the Yonkers Federation of Teachers, including Ms. Pat Puleo, that they were working to resolve the

issue with the illegal transfer and have Ms. Garcia assigned back to her official teaching position at Lincoln High School.

71. The Defendant School Board and Defendant Quezada refused to allow Ms. Garcia to return to her position at Lincoln High School. And on October 15, 2012, the Defendant School Board unilaterally stopped paying Ms. Garcia's biweekly salary guaranteed to her under the union contract.

72. When the Defendant YBOE stopped paying the Plaintiff's biweekly salary on October 15, 2012, the Plaintiff was making a biweekly gross salary of \$5,104.08.

73. In February 2013, Ms. Garcia again reported the sexual harassment incidents, providing written reports to the Defendant YBOE and Ms. Garcia received nothing in response.

74. Ms. Garcia remained in limbo for over a year after she was taken out of her teaching position at Lincoln High School on March 7, 2012. And finally, on June 24, 2013, after spending over a year waiting, instead of being rightfully reassigned to her previous position, Ms. Garcia was abruptly informed that the Defendant YBOE had probable cause for charges against her for wrongdoing in her teaching position. Again, Ms. Garcia was treated in a discriminatory manner based on her sex and based on the sexual harassment she endured. The Defendant School Board neglected proper procedure and failed to abide by the provisions of the union contract, waiting over a year before erroneously creating accusations against Ms. Garcia as a pretext for her eventual termination.

75. On October 22, 2013, the Defendant School Board again violated proper law and procedure and required Ms. Garcia to attend an illegal hearing based on the fabricated, false and erroneous charges conjured up against Ms. Garcia.

76. When Ms. Garcia arrived at the hearing, she requested the representation due to her based upon her union agreement and as required by law. Ms. Garcia was told by the Defendant School Board that the Union representative was not present and thus could not represent her, but that she had the right to represent herself at the hearing. Ms. Garcia relied upon this representation by the Defendant and the hearing commenced with Ms. Garcia representing herself. Ms. Garcia was thus essentially “tricked” into moving forward with the hearing and representing herself (as the proper course of conduct of the Defendant School Board would have been adjourning the hearing to enable Ms. Garcia to obtain legal Counsel of her own.

77. At the hearing on October 22, 2013, Ms. Garcia attempted to present her defense and state the facts and circumstances surrounding the sexual harassment and discrimination by Defendants Quezada, Pasian, Arias and Martinez.

78. Ms. Garcia attempted to describe the incidents of sexual harassment and provided those conducting the hearing with a copy of the Yonkers Police Report concerning the sexual harassment complaint made by Ms. Garcia. The parties conducting the hearing went outside, and when they returned, the hearing was abruptly ended and thus Ms. Garcia was prohibited from presenting her sexual harassment claims and defenses to the charges brought against her. Thus, Ms. Garcia was denied a full and fair opportunity to present her case at the hearing. The hearing was not on the merits, and Ms. Garcia was denied legal representation by the Defendant School Board.

79. Following the illegal hearing, on November 29, 2013, the Superintendent of schools for the Defendant School Board in the Yonkers Public Schools District, terminated Ms. Garcia’s without any valid charge against her.

80. Therefore, the last discriminatory act by Defendants occurred on November 29, 2013.

AS AND FOR A FIRST CAUSE OF ACTION

VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

81. Plaintiff repeats and reiterates each and every allegation set forth above as if fully set forth herein.

82. The acts complained of above constitute a continuing series of adverse and retaliatory employment acts.

83. The acts complained of above constitute a violation of the Plaintiff's rights pursuant to the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et. seq., as amended in 1991.

84. The Plaintiff seeks all remedies provided under Title VII for the discrimination based upon sex, and the retaliation of the Defendant School Board for Ms. Garcia reporting the sexual harassment of the Defendants Mr. Quezada, Ms. Arias, and Mr. Martinez.

85. Thus, there is now due and owing from the Defendants to the Plaintiff, back pay in the amount of \$306,244.80, with interest from October 15, 2012, front pay in an amount to be determined by the court, punitive damages in the amount of \$300,000.00, reinstatement of the Plaintiff's official teaching position, the monetary value of health care and pension benefits the Plaintiff, "Garcia" has been deprived of by the actions of the Defendants, as well as Attorney's fees, the remedies provided a Plaintiff under the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. sec. 2000e et seq. as amended in 1991, for suffering retaliation, and sexual harassment, in the workplace.

AS AND FOR A SECOND CAUSE OF ACTION

VIOLATION OF NYS HUMAN RIGHTS LAW

86. Plaintiff repeats and reiterates each and every allegation set forth above as if fully set forth herein.

87. As a result of the discriminatory and retaliatory acts of the Defendants as alleged above, the Plaintiff has suffered physical and emotional illness.

88. The physical and emotional illnesses constitute pain and suffering.

89. Said actions of Defendant discriminating against the Plaintiff because of her sex, and in retaliation for complaining about and reporting the sexual harassment by Defendants Quezada, Arias, and Martinez, constitute violations of the Plaintiff's rights under New York State Human Rights Law, Executive Law (Article 15), § 290 et. seq.

90. Plaintiff seeks all remedies available under New York State Human Rights Law, including recovery for pain and suffering.

91. Due to the actions of the Defendants, Plaintiff has suffered cognizable damages recoverable under New York State Human Rights Law.

92. Thus, because of Defendants violations of New York State Human Rights Law, there is now due and owing from the Defendants to the Plaintiff, restoration of Plaintiff to her official teaching position, back pay in the amount of \$306,244.80, with interest from October 15, 2012, front pay in an amount to be determined by the court, lost benefits in an amount to be determined at trial, liquidated damages in an amount to be determined by the court, plus benefits to be determined at trial, and pain and suffering in the amount of \$2,000,000.00, the remedies provided a Plaintiff under the provisions of New York State Human Rights Law, Executive Law

(Article 15), Sec. 290 et. seq. for suffering the unlawful retaliatory termination and sexual harassment in the work place.

AS AND FOR A THIRD CAUSE OF ACTION

VIOLATION OF WESTCHESTER HUMAN RIGHTS LAW

93. Plaintiff repeats and reiterates each and every allegation set forth above as if fully set forth herein.

94. The acts complained of above constitute a continuing series of adverse and retaliatory employment acts.

95. The acts complained of above constitute a violation of the Plaintiff's rights pursuant to the provisions of the Westchester County Human Rights Law § 700.01 et seq. (the "Westchester Human Rights Law").

96. The Plaintiff seeks all remedies provided under the Westchester Human Rights Law for the Defendants' discrimination based upon sex, and the retaliation of the Defendant School Board for Ms. Garcia reporting the sexual harassment of the Defendants Mr. Quezada, Ms. Arias, and Mr. Martinez.

97. Thus, there is now due and owing from the Defendants to the Plaintiff, back pay from October 15, 2012, through and including this date, reinstatement of Ms. Garcia's position and seniority as a mathematics teacher at Lincoln High School, restoration of all of Ms. Garcia's benefits and wage supplements, and costs in the form of reimbursement for actual expenses reasonably incurred including but not limited to reasonable attorney's fees.

98. Under Westchester Human Rights Law, Plaintiff is entitled to recover punitive damages where the acts of the Defendants were willful, wanton or malicious.

99. Upon information and belief, the Defendants discriminated against the Plaintiff in a manner that was willful, wanton and/or malicious.

100. Thus, there is now due and owing from the Defendants to the Plaintiff, punitive damages in the amount of \$10,000.00 pursuant to Westchester Human Rights Law § 700.11(h)(4).

AS AND FOR A FOURTH CAUSE OF ACTION

BREACH OF CONTRACT

101. Plaintiff repeats and reiterates each and every allegation set forth above as if fully set forth herein.

102. Upon information and belief, the terms of Plaintiff's employment were covered by the agreement executed by the Defendant YBOE and the Plaintiff's Union, the Yonkers Federation of Teachers (the "Agreement").

103. The Defendant YBOE breached the Agreement covering Plaintiff's terms of employment by transferring Plaintiff out of her teaching position at Lincoln High School, as the Defendant YBOE did not follow the procedures set forth in the Agreement for such a transfer.

104. The Defendant YBOE also breached the Agreement covering Plaintiff's terms of employment by holding the illegal hearing, as the Defendant YBOE did not follow the proper procedures for holding and conducting such a hearing as set forth in the Agreement.

105. As a result of the Defendant YBOE's breach of the Agreement, Plaintiff has suffered damages consisting of Plaintiff's lost wages since the Defendant unlawfully ceased to pay Plaintiff her biweekly salary on October 15, 2012.

106. Thus, there is now due and owing from the Defendant YBOE to the Plaintiff, reinstatement of Plaintiff's official teaching position at Lincoln High School, front pay in an

amount to be determined by the court, and back pay in the amount of \$306,244.80, with interest from October 15, 2012.

WHEREFORE, the Plaintiff, Carmen Garcia, demands judgment:

- (1) Against the Defendants for the violation of the Plaintiff “Garcia’s” rights under the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. sec. 2000e et. seq., as amended in 1991, (“Title VII”);
- (2) Against the Defendants, awarding the Plaintiff “Garcia, back pay in the amount of \$306,244.80, with interest from October 15, 2012, front pay in an amount to be determined by the court, punitive damages in the amount of \$300,000.00, reinstatement of the Plaintiff’s official teaching position, the monetary value of health care and pension benefits the Plaintiff, “Garcia” has been deprived of by the actions of the Defendants, as well as Attorney’s fees, the remedies provided a Plaintiff under the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. sec. 2000e et seq. as amended in 1991, for the discrimination Plaintiff suffered on the basis of sexual harassment.
- (3) Against the Defendants for the retaliatory actions after the Plaintiff alleged discrimination and sexual harassment in her employment, in violation of the Plaintiff’s rights under the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. sec. 2000e et. seq., as amended in 1991, (“Title VII”).
- (4) Against the Defendants, awarding the Plaintiff “Garcia, back pay in the amount of \$306,244.80, with interest from October 15, 2012, front pay in

an amount to be determined by the court, punitive damages in the amount of \$300,000.00, reinstatement of the Plaintiff's official teaching position, the monetary value of health care and pension benefits the Plaintiff, "Garcia" has been deprived of by the actions of the Defendants, as well as Attorney's fees, the remedies provided a Plaintiff under the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. sec. 2000e et seq. as amended in 1991, for suffering retaliation in the workplace.

- (5) Against the Defendants, for the retaliation suffered by the Plaintiff, "Garcia" in her employment for Plaintiff's reporting of sexual harassment discrimination, resulting in termination of employment, in violation of the Plaintiff, "Garcia's" rights under the provisions of New York State Human Rights Law, Executive Law (Article 15), Sec. 290 et. seq.
- (6) Against the Defendants awarding the Plaintiff, restoration of Plaintiff to her official teaching position, back pay in the amount of \$306,244.80, with interest from October 15, 2012, front pay in an amount to be determined by the court, lost benefits in an amount to be determined at trial, liquidated damages in an amount to be determined by the court, plus benefits to be determined at trial, and pain and suffering in the amount of \$2,000,000.00, the remedy provided a Plaintiff under the provisions of New York State Human Rights Law, Executive Law (Article 15), Sec. 290 et. seq. for suffering the unlawful retaliatory termination.
- (7) Against the Defendants, for the discrimination suffered by the Plaintiff, "Garcia" in her employment for Plaintiff's on the basis of sexual

harassment discrimination, resulting in termination of employment, in violation of the Plaintiff, "Garcia's" rights under the provisions of New York State Human Rights Law, Executive Law (Article 15), Sec. 290 et. seq.

- (8) Against the Defendants awarding the Plaintiff, restoration of Plaintiff to her original teaching position, back pay in the amount of \$306,244.80, with interest from October 15, 2012, front pay in an amount to be determined by the court, lost benefits in an amount to be determined at trial, liquidated damages in an amount to be determined by the court, plus benefits to be determined at trial, and pain and suffering in the amount of \$2,000,000.00, the remedy provided a Plaintiff under the provisions of New York State Human Rights Law, Executive Law (Article 15), Sec. 290 et. seq. for the unlawful discrimination and sexual harassment.
- (9) Against the Defendants, for the discrimination and sexual harassment Plaintiff suffered in her employment, pursuant to Westchester Human Rights Law, resulting in the retaliation and unlawful termination suffered by the Plaintiff.
- (10) Against the Defendants, awarding the Plaintiff, back pay in the amount of \$306,244.80, with interest from October 15, 2012, reinstatement of Ms. Garcia's position and seniority as a mathematics teacher at Lincoln High School, restoration of all of Ms. Garcia's benefits and wage supplements, and costs in the form of reimbursement for actual expenses reasonably incurred including but not limited to reasonable attorney's fees.

- (11) Awarding Plaintiff attorney fees, costs and expenses as applicable under “Title VII”, New York State Human Rights Law and the Westchester Human Rights Law.
- (12) Against the Defendant YBOE for breach of the Agreement covering the terms of Plaintiff’s employment.
- (13) Against the Defendant YBOE, awarding the Plaintiff reinstatement of Plaintiff’s official teaching position at Lincoln High School, front pay in an amount to be determined by the court, and back pay from October 15, 2012, for said Defendant’s breach of the Agreement covering the terms of Plaintiff’s employment.
- (14) Granting to Plaintiff such other and further relief as the Court deems just and proper.

Dated: New City, New York
June 23, 2015

/s/ Barry D. Haberman
BARRY D. HABERMAN, ESQ.
Attorney for Plaintiff
CARMEN GARCIA
254 South Main Street, #404
New City, New York 10956
845-638-4294
bdhlaw@aol.com

EXHIBIT

1

DISMISSAL AND NOTICE OF RIGHTS

To: Carmen Garcia
14 Malone Avenue
Garnerville, NY 10923

From: New York District Office
33 Whitehall Street
5th Floor
New York, NY 10004

Empty checkbox

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(e))

Table with 3 columns: EEOC Charge No., EEOC Representative, Telephone No.
Row 1: 16G-2014-02287, Holly M. Woodyard, State & Local Program Manager, (212) 336-3643

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- List of reasons for closing file with checkboxes:
- The facts alleged in the charge fail to state a claim...
- Your allegations did not involve a disability...
- The Respondent employs less than the required number...
- Your charge was not timely filed...
- The EEOC issues the following determination...
- [X] The EEOC has adopted the findings of the state or local...
- Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice, or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission

Handwritten signature of Kevin J. Berry

November 4, 2014

Enclosures(s)

Kevin J. Berry, District Director

(Date Mailed)

cc:

YONKERS BOARD OF EDUCATION
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