

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

-----X Case No.  
ANGELE YONKE,

Plaintiff, **COMPLAINT**

-against-

44 RESTAURANT, LLC D/B/A THE LAMBS CLUB, **PLAINTIFF DEMANDS  
A TRIAL BY JURY**  
JOHN FANNING, *Individually*,  
Defendant.

-----X

Plaintiff, ANGELE YONKE, by her attorneys, PHILLIPS & ASSOCIATES, Attorneys at Law, PLLC, hereby complains of the Defendants as follows:

**NATURE OF THE CASE**

1. Plaintiff complains pursuant to Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (amended in 1972, 1978 and by the Civil Rights Act of 1991, Pub. L. No. 102-166 (“Title VII”)), and the New York City Human Rights Law, New York City Administrative Code § 8-502(a), *et. seq.* (“NYCHRL”) and seeks damages to redress the injuries she has suffered as a result of being discriminated against on the basis of gender (sexual harassment) by her employer and retaliated against for her complaint of gender discrimination.

**JURISDICTION AND VENUE**

2. Jurisdiction of this Court is proper under 42 U.S.C. §2000e-5(f)(3), and 28 U.S.C. §§1331 and 1343.
3. The Court has supplemental jurisdiction over the claims of Plaintiff brought under the NYCHRL pursuant to 28 U.S.C. §1367.
4. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) as the occurrences giving rise to this action took place within the Southern District of New York.

**PROCEDURAL PREREQUISITES**

5. Plaintiff filed charges of discrimination upon which this Complaint is based with the Equal Employment Opportunity Commission (“EEOC”).
6. Plaintiff received a Notice of Right to Sue from the EEOC, dated June 6, 2016, with respect to the herein charges of discrimination. A copy of the Notice is annexed hereto.
7. This Action is being commenced within ninety (90) days of receipt of said Right to Sue.

**PARTIES**

8. Plaintiff ANGELE YONKE (“YONKE”) is a resident of the State of New York and the County of Queens.
9. Defendant 44 RESTAURANT, LLC D/B/A THE LAMBS CLUB (“THE LAMBS CLUB”) is a domestic limited liability company, duly existing pursuant to, and by virtue of, the laws of the State of New York, with its principle place of business located at 132 West 44<sup>th</sup> Street, New York, New York 10036.
10. At all times relevant hereto, Plaintiff YONKE was an employee at THE LAMBS CLUB, holding the position of Reservationist.
11. At all times relevant hereto, Defendant JOHN FANNING (“FANNING”) was an employee of THE LAMBS CLUB, holding the position of General Manager.
12. At all times relevant hereto, Defendant FANNING was Plaintiff YONKE’S supervisor and exercised supervisory authority over her. Defendant FANNING had the authority to hire, terminate and affect the terms and conditions of Plaintiff’s employment.
13. Defendants THE LAMBS CLUB and FANNING are referred to herein collectively as the “Defendants.”

**MATERIAL FACTS**

14. In February of 2015, Plaintiff YONKE began her employment with THE LAMBS CLUB as a Reservationist, earning a salary of \$15.00 per hour.
15. Since that time, Plaintiff has been an exemplary employee.
16. However, on January 28, 2016, General Manager, Defendant FANNING, slapped Plaintiff YONKE on her right buttock.
17. Plaintiff was shocked but began crying as she processed what had occurred.
18. Defendant FANNING's blatant sexual touching of Plaintiff YONKE was completely unwelcome.
19. Although Plaintiff confronted Defendant FANNING and told him his unlawful conduct was unacceptable, Defendant FANNING replied, "Oh, I'm sorry, it was just a friendly..."
20. Plaintiff formally complained to "Mirabela," Assistant Comptroller the following day. Mirabela suggested that Defendant FANNING's slap may have been a joke. Plaintiff emphasized that Defendant FANNING's conduct was unacceptable. Mirabela then suggested that Plaintiff YONKE speak with "Parul," the Comptroller.
21. Plaintiff YONKE spoke with Parul later that morning and reported Defendant FANNING's sexual harassment. In response, Parul remarked that Defendant FANNING must have been joking around. Plaintiff YONKE replied that Defendant FANNING's conduct was completely unacceptable and that her complaint must be taken seriously. Parul asked if Plaintiff YONKE wanted an incident report generated, and Plaintiff replied in the affirmative.
22. Less than one month after Plaintiff's complaint of sexual harassment, Plaintiff received a retaliatory write-up for "insubordination," dated February 24, 2016. The write-up indicated that "another warning may result in: X Suspension."

23. Unable to endure a hostile work environment in which her sexual harassment complaint was not taken seriously and for which she was retaliated against, Plaintiff was forced to resign on March 2, 2016.
24. Upon information and belief, Defendant FANNING has not faced any repercussions for his sexual harassment of the Plaintiff.
25. Defendants created a hostile working environment, which has unreasonably interfered with Plaintiff's work environment.
26. Plaintiff was treated differently by her supervisor, Defendant FANNING, solely due to her gender (sexual harassment).
27. Plaintiff was retaliated against for complaining of gender discrimination (sexual harassment).
28. Plaintiff has been unlawfully discriminated against, humiliated, degraded, and belittled, and, as a result, suffers loss of rights, emotional distress, physical distress, suffering, inconvenience, loss of enjoyment of life, and other non-pecuniary losses. Plaintiff has further experienced severe emotional and physical distress.
29. The Defendants' actions and conduct were intentional and intended to harm Plaintiff.
30. Defendants' conduct has been malicious, willful, outrageous, and conducted with full knowledge of the law. As such, Plaintiff demands punitive damages as against both Defendants, jointly and severally.

**AS A FIRST CAUSE OF ACTION  
FOR DISCRIMINATION UNDER TITLE VII  
(Not Against Individual Defendant)**

31. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.

32. This claim is authorized and instituted pursuant to the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section(s) 2000e et seq., for relief based upon the unlawful employment practices of Defendant THE LAMBS CLUB. Plaintiff complains of Defendant's violation of Title VII's prohibition against discrimination in employment based, in whole or in part, upon an employee's gender (sexual harassment).

33. Defendant engaged in unlawful employment practices prohibited by 42 U.S.C. §2000e et seq., by discriminating against Plaintiff because of her gender (sexual harassment).

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

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

35. The New York City Administrative Code §8-107(1) provides that, "It shall be an unlawful discriminatory practice: (a) For an employer or an employee or agent thereof, because of the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, sexual orientation or alienage or citizenship status of any person, to refuse to hire or employ or to bar or to discharge from employment such person or to discriminate against such person in compensation or in terms, conditions or privileges of employment."

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

**AS A THIRD CAUSE OF ACTION FOR DISCRIMINATION  
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE  
(As Against Individual Defendant Only)**

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

**AS A FOURTH CAUSE OF ACTION  
FOR RETALIATION UNDER TITLE VII  
(Not Against Individual Defendant)**

40. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.
41. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-3(a) provides that it shall be unlawful employment practice for an employer: “(1) to . . . discriminate against any of his employees . . . because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this subchapter.”
42. Defendant engaged in unlawful employment practice prohibited by 42 U.S.C. §2000e *et seq.* by discriminating against Plaintiff with respect to the terms, conditions and privileges of employment because of her opposition to the unlawful employment practices of the Defendants.

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

43. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.
44. The New York City Administrative Code § 8-107(7) provides that it shall be unlawful discriminatory practice: “For an employer . . . to discriminate against any person because such person has opposed any practices forbidden under this chapter. . .”
45. Defendant engaged in an unlawful discriminatory practice in violation of New York City Administrative Code § 8-107(7) by discriminating against Plaintiff because of Plaintiff’s opposition to the unlawful employment practices of the Defendants.

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

46. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.
47. New York City Administrative Code §8-107(13) Employer liability for discriminatory conduct by employee, agent or independent contractor.
  - a. An employer shall be liable for an unlawful discriminatory practice based upon the conduct of an employee or agent which is in violation of any provision of this section other than subdivisions one and two of this section.
  - b. An employer shall be liable for an unlawful discriminatory practice based upon the conduct of an employee or agent which is in violation of subdivision one or two of this section only where:
    1. the employee or agent exercised managerial or supervisory responsibility; or

2. the employer knew of the employee's or agent's discriminatory conduct, and acquiesced in such conduct or failed to take immediate and appropriate corrective action; an employer shall be deemed to have knowledge of an employee's or agent's discriminatory conduct where that conduct was known by another employee or agent who exercised managerial or supervisory responsibility; or
3. the employer should have known of the employee's or agent's discriminatory conduct and failed to exercise reasonable diligence to prevent such discriminatory conduct.

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

48. Defendant THE LAMBS CLUB violated the section cited herein.

**JURY DEMAND**

49. Plaintiff demands a trial by jury.

**WHEREFORE**, Plaintiff respectfully requests a judgment against the Defendants, individually, jointly, and severally:

- A. Declaring that Defendants engaged in unlawful employment practices prohibited by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e *et. seq.*, and the New York City Human Rights Law in that Defendants sexually harassed Plaintiff and discriminated against



Plaintiff on the basis of her gender and retaliated against Plaintiff for complaining of such discrimination;


- B. Awarding damages to Plaintiff resulting from Defendants' unlawful sexual harassment and retaliation and to otherwise make her whole for any losses suffered as a result of such unlawful employment practices;
- C. Awarding Plaintiff compensatory damages for mental, emotional and physical injury, distress, pain and suffering and injury to her reputation;
- D. Awarding Plaintiff punitive damages;
- E. Awarding Plaintiff attorneys' fees, costs, and expenses incurred in the prosecution of this action; and
- F. Awarding Plaintiff such other and further relief as the Court may deem equitable, just and proper to remedy Defendants' unlawful employment practices.

Dated: New York, New York

July 19, 2016

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

By: \_\_\_\_\_

  
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EEOC Form 161-B (11/09)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: Angele Yonke
9715 Horace Harding Expy
Apt. 11-H
Corona, NY 11368

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

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

Table with 3 columns: EEOC Charge No., EEOC Representative, Telephone No.
520-2016-01965, Ashraf Ahmed, Investigator, (212) 336-3781

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost.

- More than 180 days have passed since the filing of this charge.
[X] Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.
[X] The EEOC is terminating its processing of this charge.
The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:

- The EEOC is closing your case. Therefore, your lawsuit under the ADEA must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice. Otherwise, your right to sue based on the above-numbered charge will be lost.
The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought 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.

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Kevin J. Berry, District Director

6/6/2016 (Date Mailed)

Enclosures(s)

cc: Owner
Owner/Manager
THE LAMBS CLUB
132 West 44th Street
New York, NY 10036

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