

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

-----X
JEREMY JOHNSON ,

Plaintiff,

-v.-

ACUMEN GMAT LLC,
THE HAAGEN-DAZS SHOPPE CO. INC.,
KEVIN HICKMAN and VERA KUZYK

Defendants.
-----X

X Index No.:

: Date filed:

:

: **SUMMONS**

:

:

: Venue is based on

: Defendants' principle

: place of business at

: 55 East 8th Street,

: New York, NY

:

:

X

To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the attached Verified Complaint of Plaintiff, JEREMY JOHNSON, dated September 26, 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 received it, if you were not served personally in New York State.

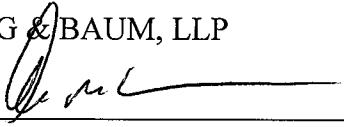
PLEASE TAKE NOTICE that should you fail to serve your Verified Answer within the time prescribed under applicable law, Plaintiff, JEREMY JOHNSON, will take judgment against you by default for the relief demanded in the Verified Complaint pursuant to section 3215 of the New York Civil Practice Law and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

Dated: New York, NY
September 26, 2016

Yours, etc.

EISENBERG & BAUM, LLP

By: _____


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

To:

ACUMEN GMAT LLC
55 East 8th Street
New York, NY 10003

THE HAAGEN-DAZS SHOPPE CO. INC.
500 Washington Avenue S, #2040
Minneapolis, MN 55415

KEVIN HICKMAN

VERA KURZYK

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

-----X
JEREMY JOHNSON , : Index No.:
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 : Plaintiff, : **VERIFIED**
 : **COMPLAINT**
 :
 -v.- :
 :
 ACUMEN GMAT LLC, : Venue is based on
 : Defendants' principle
 THE HAAGEN-DAZS SHOPPE CO. INC., : place of business at
 : 55 East 8th Street,
 KEVIN HICKMAN and VERA KUZYK, : New York, NY
 :
 Defendants. :
-----X

Plaintiff JEREMY JOHNSON, by his attorneys, EISENBERG & BAUM, LLP, as and for his Verified Complaint against Defendants, states as follows:

THE PARTIES

1. Plaintiff JEREMY JOHNSON is an individual residing in Bronx County, New York.
2. Defendant ACUMEN GMAT LLC (“Acumen”) is a domestic limited liability company organized pursuant to the laws of the State of New York and maintaining its corporate headquarters at 55 East 8th Street, New York, NY, 10003, and duly registered to do business, and doing business actively, in the State of New York.
3. Defendant THE HAAGEN-DAZS SHOPPE CO. INC. (“Haagen-Dazs”) is a business corporation organized pursuant to the laws of the State of Minnesota and maintaining its corporate headquarters at 500 Washington Ave. S., #2040 Minneapolis, MN 55415, and doing business actively, in the State of New York.
4. Defendant KEVIN HICKMAN is an individual upon information and belief employed by Acumen and upon information and belief resides in the State of New Jersey.

5. Defendant VERA KUZYK is an individual upon information and belief who in whole or in part owns, operates and controls Acumen and upon information and belief resides in the State of New Jersey.

JURISDICTION AND VENUE

6. 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 and are licensed to do business in New York and are transacting business in New York.

7. Venue is proper pursuant to C.P.L.R. § 503 based on Defendants' principle place of business in New York County.

BACKGROUND

8. Plaintiff commenced employment with defendants' ice cream retail sales location located at 1188 First Avenue, New York, NY 10021 in May of 2015 at the age of 17.

9. Beginning in July 2015, Plaintiff was subjected to repeated unwanted verbal and physical sexual harassment by the store manager and his direct supervisor Defendant Hickman.

10. The misconduct committed by Defendant Hickman against Plaintiff included, but was not limited to, the following:

- a. In or about July of 2015, Defendant Hickman made sexually inappropriate comments to Plaintiff at work which made plaintiff extremely uncomfortable.
- b. In or about November of 2015, Defendant Hickman started to frequently send Plaintiff sexually explicit text messages although he knew that Plaintiff is not homosexual, was a minor at that time and that Plaintiff

rejected his advances. The messages contained statements, including but not limited to the following:

“Hey love of my life...oh shut up. You have an 11:15 del tomorrow morning. I didn’t box it. It’s a 13” dick...I mean cake.(...)”

“ I hate you Jeremy.. but that STILLL doesn’t mean I don’t want your nachos and guacamole”

“I talked to a friend (a Priest) about you. I told him I cannot stop thinking about you and crap(...)”

“You could have a Sugar Daddy without giving up the boootayyy(...)”

“Your just a cute thannnnng and you should be open to a little slap and tickle! (...)”

“So there’s nice people out there who find u attractive and sexy (by the way, please don’t wear those red pants around me anymore. I spent a lot of that day trying to hide something (...)”

“I want to bend you over the back sink one day and eat your ass dry.

You’ll be bioting [sic] down on those blue rags to keep from screaming and moaning (...)”

“I guess that means I can’t give you a blow job either (...)”

- c. In January of 2016 Defendant Hickman told the employees at the Haagen Dazs Store that he had a crush on Plaintiff, a 17 year old minor at the time.
- d. Soon the texting escalated into physical assaults. On a Sunday in January of 2016, Defendant Hickman attempted to force kiss Plaintiff against his will for the first time.

- e. In March of 2016, Defendant Hickman groped Plaintiff's buttocks. Between March and July 2016, Defendant Hickman would grope and slap Plaintiff's buttocks during each shift.
- f. Defendant Hickman sexually lusted after the minor plaintiff and, although at all times rejected by Plaintiff, he would repeatedly make statements such as the following: "(...) I was just talking about you with a group of friends. I said unfortunately Jeremy is a 17 yr old kid. (...) When you're 18 we'll have fun (...) Hurry up and become legal."
- g. Defendant repeatedly pressured the minor Plaintiff to go on a date with him which Plaintiff always declined. Defendant stated on at least one occasion, "I DO have the power to fire you if you turn me down". On August 7, 2016 Defendant Hickman, enraged that Plaintiff was refusing his sexual advances, attempted to terminated Plaintiff.
- h. Plaintiff, in an attempt to escape the continual verbal and physical sexual abuse, changed his working hours to escape Defendant Hickman. Plaintiff notified Defendant Kuzyk that he would no longer work during the days that Defendant Hickman was working at the ice cream shop. Defendant Hickman's response when he learned that Plaintiff had changed his working shifts was "Haha Vera told me you wont be working on weekdays anymore. I hope it has nothing to do with me."
- i. Plaintiff's attempt to get away for Defendant Hickman was unsuccessful, because Defendant Hickam started to show up at the ice cream shop in his

time off to “hang out.” This would usually coincide with the times that Plaintiff was working at the store.

- j. In July of 2016, after Plaintiff finished his shift, he left the ice cream shop with a co-worker. Defendant Hickman followed them, snuck up on Plaintiff, forcefully kissed his cheek and groped his buttocks.

11. In August 2016, Plaintiff made a complaint to Defendant Kuzyk. Defendant investigated the allegations, determined that Defendant Hickman was guilty of sexual misconduct and terminated his employment, thereby admitting that Plaintiff’s complaint was accurate and justified.

12. Defendant Kuzyk was well aware of the sexual misconduct of Defendant Hickman prior to receiving Plaintiff’s complaint for reasons including but not limited to the following:

- a. In July 2016, Plaintiff requested a change of schedule so he could avoid working with Defendant Hickman as much as possible. On July 11, 2016, soon after learning about the change of schedule, Defendant Hickman sent Plaintiff a text message in which he expressed concern that Plaintiff might have sought to change his schedule because of the sexual misconduct and worry that Plaintiff might have complained about it. The next day, Defendant Hickman told Plaintiff that he had discussed the issue with Defendant Kuzyk, and that she had told him not to worry because it was “not like he kicked his dog” but rather had only been asking him out on dates, so there was no reason for Plaintiff to want to avoid him.
- b. In early August 2016, Plaintiff learned from fellow employees about an incident involving Defendant Hickman. He was told that Defendant Hickman had loudly

and repeatedly stated to others at the ice cream store, while Defendant Kuzyk was present, that Plaintiff should be fired, making disparaging comments about his work. At that point, Plaintiff was told, a fellow employee spoke up in his defense, stating that his performance was good and that Defendant Hickman was only upset because Plaintiff would not respond his sexual communications.

Defendant Kuzyk was privy to this communication.

- c. Defendant Hickman regularly exclaimed about his sexual interest in Plaintiff, and this was well known to the employees at the ice cream store including Defendant Kuzyk. It was also well known that Plaintiff was not reciprocating this interest and that this infuriated Defendant Hickman.
- d. Despite her knowledge as described above, and other such knowledge, Defendant Kuzyk did nothing to protect Plaintiff from the sexual misconduct of Defendant Hickman and to the contrary indicated to Defendant Hickman that his misconduct would be tolerated, thereby encouraging him to continue it.

13. In addition to the foregoing, the defendants failed to properly pay Plaintiff for his hours worked and for his overtime hours worked. Specifically, the defendants would only allow Plaintiff to be paid for 40 hours per week, and would withhold all wages, including straight time and overtime, for any hours they required him to work above forty in a week.

14. In September 2016, Plaintiff informed the defendants that he could no longer appear for work because the defendants had created an atmosphere in which Defendant Hickman was free to commit egregious physical and verbal acts of sexual harassment against him, and no significant changes were made in those conditions other than the separation from employment of

Defendant Hickman, and because Plaintiff's traumatic experiences made it impossible for him to continue in this environment without undue risk to his health and well-being.

15. Upon information and belief, Haagen-Dazs exercises actual control over the day-to-day operations and activities of the other defendants herein. Upon information and belief, Haagen-Dazs supervised and controlled the other Defendants' policies and practices, including but not limited to supervising and controlling its practices, policies and procedures governing sexual and racial discrimination, harassment and retaliation, such that the other defendants were the alter egos of Haagen-Dazs. Accordingly, Haagen-Dazs is accountable for their actions.

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

16. Plaintiff repeats, reiterates and re-alleges each and every allegation set forth in paragraphs numbered "1" through "15" as set forth more fully and at length herein.

17. 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.

18. Plaintiff deserved to retain his employment with Defendants and did not do anything to merit discharge or discipline. Nevertheless, Defendants denied Plaintiff the benefits of employment, including all favorable conditions and emoluments thereof and created and allowed to exist a hostile, intolerable workplace based on sexual harassment that imposed upon him by the conduct of its employees and managers, of which they were well aware of and without any non-discriminatory basis therefor, and make his workplace intolerable and constructively discharged him. 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.

19. Defendants' actions were taken under circumstances giving rise to an inference of discrimination. The corporate defendants are liable for the discriminatory acts of their individual managers and/or supervisors and/or employees. Defendant Kuzyk is liable for authorizing, ratifying, aiding and abetting the wrongful acts of Defendant Hickman.

20. 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 his detriment. His workplace became intolerable and he was constructively terminated.

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

21. Plaintiff repeats, reiterates and re-alleges each and every allegation set forth in paragraphs numbered "1" through "20" as set forth more fully and at length herein.

22. 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.

23. Plaintiff deserved to retain his employment with Defendants and did not do anything to merit discharge or discipline. Nevertheless, Defendants denied Plaintiff the benefits of employment, including all favorable conditions and emoluments thereof, and constructively discharged him, because of hostility to Plaintiff based on his gender (male) and without any non-

discriminatory basis thereof. Other employees who were male were not subject to the same acts of discrimination.

24. Defendants' actions were taken under circumstances giving rise to an inference of discrimination. The corporate defendants are liable for the discriminatory acts of their individual managers and/or supervisors and/or employees. Defendant Kuzyk is liable for authorizing, ratifying, aiding and abetting the wrongful acts of Defendant Hickman.

25. 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 his detriment.

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

26. Plaintiff repeats, reiterates and re-alleges each and every allegation set forth in paragraphs numbered "1" through "25" as set forth more fully and at length herein.

27. 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.

28. Plaintiff complained to Defendants about the mistreatment based on gender and sexual harassment inflicted upon him by employee and managers of Defendants. In response, Plaintiff was retaliated against and subjected to additional mistreatment until his working conditions became unbearable, all with the knowledge and approval of Defendant for the purpose of punishing him for attempting to assert his rights.

29. Defendants' actions were taken under circumstances giving rise to an inference of discrimination. The corporate defendants are liable for the discriminatory acts of their individual managers and/or supervisors and/or employees. Defendant Kuzyk is liable for authorizing, ratifying, aiding and abetting the wrongful acts of Defendant Hickman.

30. 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 his detriment.

AS AND FOR A FOURTH CAUSE OF ACTION
(Aiding and Abetting – Against All Defendants)

31. Plaintiffs repeat, reiterate and re-allege each and every allegation set forth in paragraphs numbered "1" through "30" as if set forth more fully and at length herein.

32. 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 aiding and abetting unlawful discriminatory practices by an employer. Defendants were employers, and Plaintiff was an employee, within the meaning of those laws.

33. Plaintiff deserved to retain his employment with Defendants and did not do anything to merit discharge or discipline. Nevertheless, Defendants, by authorizing, ratifying, failing to investigate and/or remediating, aided and abetted the denial to Plaintiff of the benefits of employment, including all favorable conditions and emoluments thereof and subjected him sexual to harassment, hostile workplace discrimination, Quid pro Quo discrimination and/or retaliation, because of hostility to Plaintiff based on his gender (male) and without any non-discriminatory basis thereof. Other employees who were male were not subject to the same acts of discrimination.

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

35. 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 his detriment.

AS AND FOR A FIFTH CAUSE OF ACTION
(Assault and Battery – Against All Defendants)

36. Plaintiff repeats, reiterates and re-alleges each and every allegation set forth in paragraphs numbered "1" through "35" as set forth more fully and at length herein.

37. Defendant Hickman inflicted unwanted and violent sexually-oriented touching and striking upon the person of Plaintiff, and/or placed him in immediate fear of receiving such attacks.

38. As a direct and proximate result of these attacks and threats of attacks, Plaintiff was caused to suffer bodily injury and extreme emotional trauma, all to his detriment.

39. Defendant Hickman intentionally assaulted and battered Plaintiff causing him to sustain physical injury and harm and humiliation, shame, fear, anxiety, and extreme emotional distress.

40. The corporate defendants and Defendant Kuzyk are liable for the acts of assault and battery committed by Defendant Hickman, who was their manager and/or supervisor and/or employee and was acting within the scope of his authority.

AS AND FOR A SIXTH CAUSE OF ACTION
(Failure to Pay Wages – Against All Defendants)

41. Plaintiff repeats, reiterates and re-alleges each and every allegation set forth in paragraphs numbered “1” through “40” as set forth more fully and at length herein.

42. Defendants violated the New York State Minimum Wage Act, New York Labor Law §650 *et seq.* by failing to pay Plaintiff for hours worked and overtime hours and spread of hours worked as per N.Y. Comp. Code R. & Regs. tit. 12, §137-1.7.

43. Defendants are liable for liquidated damages and/or statutory penalties for willful violations of §650 as defined in §663.

PRAYER FOR RELIEF

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

44. Enter a declaratory judgment, stating that Defendants’ practices, policies and procedures subjected Plaintiff to sexual harassment, gender discrimination, retaliation and assault and/or battery, making his 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.

45. Enjoin Defendants from implementing or enforcing any policy, procedure, or practice that denies employees of any gender and/or sexuality the full and equal enjoyment of Defendants’ benefits, pay increases, promotional opportunities and advancement within the company, and specifically enjoin them to take the following steps to prevent sexual harassment, including but not limited to hostile work environment and quid pro quo, and gender discrimination in their workplace:

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 and sexual harassment, discrimination 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 and sexual harassment, discrimination 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 to gender and sexual harassment, discrimination and retaliation.

46. 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;

47. 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;

48. 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;

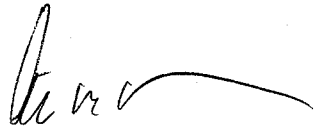
49. On the Fourth Cause of Action enter judgment against the named defendants and an award of compensatory damages for back pay, front pay, past and future employment benefits, damages for emotional distress, punitive and/or exemplary damages, attorneys' fees, pre and post-judgment interest, in an amount, 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;

50. On the Fifth 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;

51. On the Sixth 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, spread of hours, penalties, 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
September 26, 2016

EISENBERG & BAUM, LLP

By:  _____

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

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

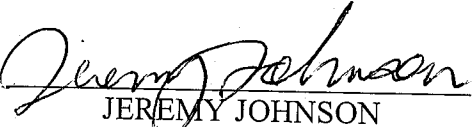
The undersigned, JEREMY JOHNSON, shows:

Deponent is JEREMY JOHNSON, Plaintiff in the above-entitled action.

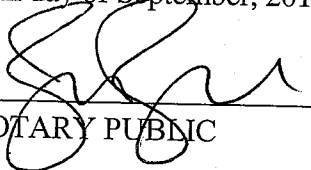
Deponent has read the foregoing Verified Complaint dated September 26, 2016, and states that, to deponent's knowledge, the same is true except as to matters herein stated to be alleged upon information and belief; as to those matters, deponent believes them to be true.

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated: September 26, 2016


JEREMY JOHNSON

Sworn to before me this
26th day of September, 2016


NOTARY PUBLIC

JASON D. JONES
NOTARY PUBLIC-STATE OF NEW YORK
No. 02JO6303553
Qualified in New York County
My Commission Expires May 19, 2018

Index No.:

Year: 2016

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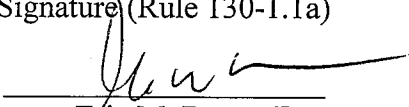
SUMMONS AND VERIFIED COMPLAINT

EISENBERG & BAUM, LLP

**Attorneys for
PLAINTIFF**

**Office and Post Address
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Signature (Rule 130-1.1a)


Eric M. Baum, Esq.
