

**NEW YORK STATE SUPREME COURT
COUNTY OF NEW YORK**

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SULEIKA ("SUNY") CASTELLANOS,	:	<u>SUMMONS</u>
	:	
Plaintiff,	:	Plaintiff designates
	:	NEW YORK COUNTY
v.	:	as the place of trial
	:	
BERKMAN CAPITAL, LLC, d/b/a BERKMAN	:	
FINANCIAL, BERKMAN FUNDING LLC d/b/a	:	
BERKMAN FINANCIAL, GEOFFREY BYRUCH,	:	
individually and professionally, and MICHAEL	:	
VULCANO, individually and professionally,	:	The basis of the venue is:
	:	residence of Defendants
Defendants.	:	
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To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorney within twenty (20) days after service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: November 18, 2016
New York, New York

WIGDOR LLP

By: 

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**NEW YORK STATE SUPREME COURT
NEW YORK COUNTY**

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SULEIKA (“SUNY”) CASTELLANOS, :
 : Index No.: _____
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 Plaintiff, :
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 :
 v. : **COMPLAINT**
 :
 BERKMAN CAPITAL, LLC, d/b/a BERKMAN : **Jury Trial Demanded**
 FINANCIAL, BERKMAN FUNDING LLC d/b/a :
 BERKMAN FINANCIAL, GEOFFREY :
 BYRUCH, individually and professionally, and :
 MICHAEL VULCANO, individually and :
 professionally, :
 :
 Defendants. :
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Plaintiff Suleika (“Suny”) Castellanos alleges against Defendants as follows:

PRELIMINARY STATEMENT

1. Defendants Geoffrey Byruch and Michael Vulcano run a financial lending company called Berkman Financial (“Berkman”) in a manner more closely resembling a “frat house” than a finance company. Mr. Byruch – who was previously fined and suspended by the Financial Industry Regulatory Authority (“FINRA”) for coordinating a widespread fraudulent scheme of selling millions of dollars in securities to unsuspecting small businesses¹ – now operates his own company where women are hired based on their attractiveness, women’s bodies are assessed and judged, pregnancy is viewed as a setback, and illegal drug use is flaunted.

2. Plaintiff Suny Castellanos was Mr. Byruch’s executive assistant and Berkman’s office manager from July 2014 through September 2016, and was ultimately fired while she was on maternity leave. While working at Berkman, Mr. Byruch and Mr. Vulcan expressly stated that they preferred to hire “**attractive**” and “**cute**” females for administrative positions, that

¹ http://www.silive.com/news/index.ssf/2014/08/securities_professionals_fined.html.

certain candidates were “**not going to work out because she was not attractive**” and that “**men are more aggressive than women,**” which is why “**women can’t do sales.**”

3. Consistent with ensuring that Berkman was constructed of male professionals and attractive female subordinates, Defendants subjected Ms. Castellanos to unwanted sexual attention such as saying that “**your breasts were the best investment you ever made**” and that “**your tits look good in [your] shirt,**” and constantly discussed the bodies of other nearby women and their own sexual lives, such as: “**Look at the ass on that one,**” “**Damn, she looks so good, the things I would do to her,**” “**Damn, look at the tits on that bitch,**” “**We had sex all day and all night,**” and “[**when I**] **woke up the next morning, there was a disgusting woman who was throwing up.**” In fact, Mr. Byruch – who is married with children – even asked Ms. Castellanos whether she had any friends or cousins that were interested in going “**out for a night with a rich guy.**” This is just a summary of the sexist, misogynistic behavior that pervaded Ms. Castellanos’ workplace at Berkman.

4. In or around January 2016, Ms. Castellanos told Defendants that she was pregnant, and they responded with demeaning comments designed to get her to leave, such as: “**after you give birth, a women’s mind changes**” and “**you may want to be a stay at home mom.**” Moreover, Defendants took away her job responsibilities without even discussing it with her, saying they did not want to “**add to her problems,**” as though being pregnant is a “problem.” While she was on maternity leave, Defendants fired Ms. Castellanos and replaced her with an attractive younger woman with less experience.

5. Plaintiff asserts claims for sexual harassment, gender discrimination and pregnancy discrimination under the New York State Human Rights Law, *N.Y. Exec. Law § 290*

et seq. (“NYSHRL”), and the New York City Human Rights Law, *N.Y.C. Admin. Code § 8-101 et seq.* (“NYCHRL”), and seeks all available declaratory, injunctive and monetary relief.

JURISDICTION AND VENUE

6. This Court has jurisdiction over Defendants pursuant to CPLR § 301.

7. Venue is proper pursuant to CPLR § 503 because one or more of the Defendants reside in New York County and because a substantial part of the events or omissions giving rise to this action occurred in New York County.

PROCEDURAL REQUIREMENTS

8. Pursuant to NYCHRL § 8-502, Plaintiff will serve a copy of this Complaint upon the New York City Commission on Human Rights and the New York City Law Department, Office of the Corporation Counsel, within ten days of its filing, thereby satisfying the notice requirements of that section.

9. Any and all other prerequisites to the filing of this suit have been met.

PARTIES

10. Plaintiff Suleika Castellanos resides in Tuckahoe, New York. At all relevant times herein, Ms. Castellanos met the definition of an “employee” under all applicable statutes. Ms. Castellanos began her employment with Defendants in or around July 2014 and worked in that position until her termination on September 7, 2016.

11. Defendant Berkman Capital, LLC (“Berkman” or the “Company”) is a domestic limited liability company doing business as Berkman Financial (www.berkmanfincial.com) and/or Berkman Funding. Berkman’s principal place of business is located in New York, New York. At all relevant times herein, Berkman met the definition of an “employer” under all applicable statutes.

12. Defendant Berkman Funding LLC is a foreign liability corporation incorporated in Delaware. Berkman Funding LLC is an associated entity of Berkman Capital LLC and also doing business as Berkman Financial. At all relevant times herein, Berkman met the definition of an “employer” under all applicable statutes. Berkman Funding LLC is herein referred collectively with Berkman Capital LLC as “Berkman” or the “Company.”

13. Defendant Geoffrey Byruch is a shareholder and managerial employee of Berkman. At all relevant times, Mr. Byruch had the authority to discipline and fire Ms. Castellanos, direct her work activities, assign job responsibilities and monitor her performance. At all relevant times herein, Mr. Byruch met the definition of an “employer” under all applicable statutes.

14. Defendant Michael Vulcano is a shareholder and managerial employee of Berkman Financial. At all relevant times, Mr. Vulcano had the authority to discipline and fire Ms. Castellanos, direct her work activities, assign job responsibilities and monitor her performance. At all relevant times herein, Mr. Vulcano met the definition of an “employer” under all applicable statutes.

FACTUAL ALLEGATIONS

Background

15. Early in 2014, Berkman was co-founded by Defendant Byruch shortly after FINRA fined and suspended him for two years for his involvement in securities fraud.

16. In July 2014, shortly after the Company was founded, Ms. Castellanos was hired as an Executive Assistant responsible for overseeing the Company’s operations and assisting the Berkman partners.

17. Just a few months later, in October 2014, Ms. Castellanos was given the title of Office Manager in recognition for the expanded role she had assumed.

18. Further recognizing her performance, Ms. Castellanos received 2014 and 2015 year-end bonuses as well as raises. Ms. Castellanos received only praise with respect to the quality of her work.

Ms. Castellanos is Exposed to Pervasive Gender Discrimination

19. In or around September 2014, Ms. Castellanos was asked to interview candidates for an office assistant position that would support and report in to her.

20. While Ms. Castellanos considered the credentials of the candidates, Defendants Byruch and Vulcano made it clear that Defendant Byruch's main focus was to find someone who **"looks like her"** (referring to Ms. Castellanos's body) and that the Company **"needs someone who is cute to work here."**

21. In fact, the first question that Defendant Byruch or Defendant Vulcano would usually ask Ms. Castellanos after she interviewed a candidate was whether the candidate was **"attractive?"**

22. Moreover, Defendants Byruch and Vulcano would require Ms. Castellanos to report to Defendant Byruch on the candidates' attractiveness, body type, and race.

23. Frequently Defendant Byruch would decline to interview candidates, simply stating that a particular candidate was **"not going to work out because she was not attractive"** or was **"too old."**

24. On one occasion, Defendant Byruch interrupted Ms. Castellanos while she was in the middle of conducting an interview to instruct her to end the interview immediately because **"we cannot have someone who is ugly."**

25. When Ms. Castellanos interviewed a candidate who was over the age of 40, Defendant Byruch said **“hell no.”**

26. Eventually, Defendant Byruch agreed to hire Sonya Kabbani for the office assistant position, who he determined was – in his own words and opinion – **“attractive enough to join the team.”**

27. In contrast to the Company’s hiring criteria for administrative roles, the Company preferred to hire men for sales positions.

28. This preference was based on Defendant Byruch’s expressed belief that **“men are more aggressive than women”** and women are unable to perform the job.

29. In fact, the only woman hired for a sales position, Lizzy Boutross, was terminated within a few months because – again as Defendant Byruch stated – **“women can’t do sales.”**

Ms. Castellanos is Subjected to Pervasive Sexualized Comments

30. Although Ms. Castellanos did her best to maintain a professional environment, she was constantly bombarded with an onslaught of sexualized comments about her appearance, particularly her breasts.

31. When Defendant Byruch would speak to Ms. Castellanos, he would noticeably stare down at her breasts and regularly make comments about her breasts, such as the following:

- **“Your breasts were the best investment you ever made.”**
- **“Your breasts look good.”**
- **“Look, your breasts were a good investment since they are helpful to carry things around the office.”**
- **“Your tits look good in your shirt.”**

32. When Ms. Castellanos walked to the bathroom or around the office, Defendant Vulcano would noticeably leer at her body.

33. Similarly, Defendant Vulcano would echo the comments Defendant Byruch made about Ms. Castellanos's breasts, as well as constantly make comments about her body, including:

- **“Suny, you looking real good.”**
- **“Damn bitch, where are you going out tonight?”**
- Saying **“damn bitch”** while checking out her butt.
- When Ms. Castellanos would change into gym clothes, commenting that it was his **“favorite time of the day.”**

34. While Ms. Castellanos would speak to Defendant Byruch in his office, he would similarly comment on the women who would occasionally walk by the glass windows, or tell her stories about his personal sexual conquests, saying such things as:

- **“Look at the ass on that one.”**
- **“Damn, she looks so good, the things I would do to her.”**
- **“We had sex all day and all night”** and when he **“woke up the next morning, there was a disgusting woman who was throwing up.”**

35. Defendant Vulcano made similar comments about other woman as well and about his efforts to vamp up his sex life with his wife, including:

- **“Damn, look at the tits on that bitch.”**
- Saying that before he had kids, he **“had sex everyday with his wife who used to be so hot.”**
- After mentioning he was trying to rekindle his sex life with his wife, that he **“massaged her and had sex for an hour that just went on and on.”**
- While recounting a bachelor party he attended, **“we had so many whores in our room, it was the greatest night of all time.”**

36. Ms. Castellanos made it clear that she was not interested in hearing these sexual comments about her and other women.

37. Often, she would give a look and walk away when she started hearing these comments from Defendant Byruch, Defendant Vulcano and other male employees.

38. At times, Ms. Castellanos would explicitly request that the offensive language stop so she could focus on her work.

39. Defendants Byruch and Vulcano would also make actual sexual advances towards Ms. Castellanos.

40. For example, Defendant Byruch would frequently tell Ms. Castellanos “**to come sit on my lap**” while he talked to her.

41. When Ms. Castellanos would decline, Defendant Byruch would call her “whack” or insult her in other ways and continue to insist that she give him “**some affection.**”

42. Defendant Vulcano would constantly touch Ms. Castellanos at the office and during the 2014 holiday party.

43. Sometime in 2015, Ms. Castellanos was shocked to feel Defendant Vulcano caressing her butt and she told him not to touch her again.

44. However, even after this rebuke, he continued to caress Ms. Castellanos’s lower back and put his arms around her.

45. In addition, Defendant Byruch would ask Ms. Castellanos whether she could “set [him] up” with someone she knew.

46. For example, Defendant Byruch would ask Ms. Castellanos whether she had any friends or cousins that were interested in going “**out for a night with a rich guy.**” Ms. Castellanos was not interested in assisting Defendant Byruch in cheating on his wife, not to

mention the insinuation that he was looking for a tacit agreement to pay one of her friends for sex.

47. Defendant Byruch would also encourage Ms. Castellanos to attend after-work outings, at which Ms. Castellanos learned that he and other Company employees would engage in sexist behavior.

48. For example, it was well known that during at least one outing – and likely many others – Defendant Byruch and other male employees went to a strip club at the Company’s expense.

49. On another occasion, Defendant Byruch insisted that a sales representative bring him to his sister’s house where he ended up sleeping over.

50. In addition to sexualizing the workplace, there was also rampant drug use.

51. Defendant Byruch, Defendant Vulcano and other employees regularly used cocaine and marijuana in the workplace.

52. While Ms. Castellanos did not engage in any drug use, Defendant Byruch asked her if she could help him buy cocaine because “she must have a connection since her dad is Dominican.”

53. At the 2014 holiday party, she observed Defendant Byruch doing cocaine while in the club’s unisex bathroom.

54. On another occasion, Defendant Byruch also asked Ms. Castellanos for a FedEx box to ship drugs to a bachelor party in Montreal, Canada.

55. On a weekly and sometimes daily basis, Ms. Castellanos would see Berkman employees rolling joints or sniffing lines of cocaine on a desk. This regular illegal drug use only fueled the sexualized comments and inappropriate behavior at Berkman.

Pregnancy Discrimination and Termination

56. In January 2016, Ms. Castellanos told Defendants Byruch and Vulcano that she was pregnant.

57. Ms. Castellanos disclosed her pregnancy in confidence, asking to handle it herself with respect to telling other employees. However, soon after telling them, other employees began congratulating and asking her about the pregnancy – presumably because Defendants Byruch and Vulcano were discussing her pregnancy with other employees.

58. Almost immediately thereafter, Defendants Byruch and Vulcano began diverting Ms. Castellanos’s responsibilities to her non-pregnant assistant, Ms. Kabbani.

59. For example, Ms. Castellanos was told to train Ms. Kabbani to be able to take over payroll, order office supplies, handle underwriting of applications and coordinate the logistics for meetings and travel.

60. Additionally, Defendants Byruch and Vulcano began directly working with Ms. Kabbani and excluding Ms. Castellanos from assignments and meetings.

61. When Ms. Castellanos questioned why she was being excluded from her prior responsibilities, and being treated differently after announcing her pregnancy, she was told that the Company wanted her to “**pay attention to her pregnancy**” and did not want to “**add to her problems.**”

62. To be clear, this was not an accommodation to Ms. Castellanos of any kind as she did not ask to be relieved of any work responsibilities.

63. Ms. Castellanos never expressed any desire to limit her work role while she was pregnant.

64. Ironically, one of the few benefits Ms. Castellanos enjoyed in the workplace following her pregnancy was that Defendant Byruch became less interested in her sexually – his sexual comments, advances and flirtations with Ms. Castellanos decreased as he turned his attentions to her non-pregnant co-workers.

65. What little attention Ms. Castellanos did receive after she disclosed her pregnancy was unwanted comments and questions about her pregnancy.

66. For example, Defendant Byruch would frequently tell Ms. Castellanos:

- **“Your breasts are developing nicely.”**
- **“Your thighs are definitely getting bigger.”**
- **“Are you still having sex while you’re pregnant?”**
- On one occasion, he told Ms. Castellanos that she had a **“pregnancy fart”** after she made a simple mistake.

67. Ms. Castellanos became concerned that her job was in jeopardy given her pregnancy and Defendant Byruch’s clear favoritism for young, attractive, non-pregnant women.

68. In May 2016, Defendant Vulcano and Ms. Castellanos discussed her continued employment after her pregnancy.

69. While Ms. Castellanos stated she planned to return to work after her maternity leave, Defendant Vulcano commented that while she may feel like that now, **“after you give birth you may not want to work anymore.”**

70. He also stated: **“After you give birth, a women’s mind changes”** and **“you may want to be a stay at home mom.”**

71. Ms. Castellanos went to the emergency room twice for heart complications and high blood pressure due to the anxiety created by the cold and exclusionary treatment at the Company.

72. On Monday, June 13, 2016, Ms. Castellanos informed Defendant Byruch that she would need to go on maternity the following week because she was being induced on June 22.

73. Defendant Byruch falsely assured Ms. Castellanos that she could take as much time as she needed for maternity leave and “not to worry” because her “job would be waiting” when she was “ready to return.”

74. However, on September 6, 2016, when Ms. Castellanos requested an additional week of leave, she was fired the very next day. Ms. Castellanos’s termination was the culmination of the Company’s misogynistic and discriminatory attitudes towards its employees.

75. Ms. Castellanos learned that while she was on leave, the Company hired another female administrative employee, Hagar Shoshany, to assist Ms. Kabbani (who is now the Director of Operations).

76. Ms. Castellanos has also learned that Ms. Shoshany is – not surprisingly – young, attractive and does not have any children, and Defendant Byruch consistently flirts and makes similar sexualized comments toward Ms. Shoshany like he previously directed at Ms. Castellanos.

FIRST CAUSE OF ACTION
(Discrimination and Harassment in Violation of the NYSHRL)
Against All Defendants

77. Plaintiff hereby repeats and realleges each and every allegation in the preceding paragraphs as if set forth fully herein.

78. By the actions described above, among others, Defendants have discriminated against Plaintiff on the basis of her pregnancy, gender and/or sex in violation of the NYSHRL by denying her equal terms and conditions of employment, including, but not limited to, denying

her the opportunity to work in an employment setting free of unlawful discrimination and sexual harassment and terminating her because of her pregnancy.

79. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, monetary and/or other economic harm for which she is entitled to an award of monetary damages and other relief.

80. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, severe mental anguish and emotional distress, for which she is entitled to an award of monetary damages and other relief.

81. To the extent that any of the individual Defendants are not individually liable as Plaintiff's employer, the individual Defendants are liable under the NYSHRL because they aided and abetted the unlawful conduct.

SECOND CAUSE OF ACTION
(Discrimination and Harassment in Violation of the NYCHRL)
Against All Defendants

82. Plaintiff hereby repeats and realleges each and every allegation in the preceding paragraphs as if set forth fully herein.

83. By the actions described above, among others, Defendants have discriminated against Plaintiff on the basis of her pregnancy, gender and/or sex in violation of the NYCHRL by denying her equal terms and conditions of employment, including, but not limited to, denying her the opportunity to work in an employment setting free of unlawful discrimination and sexual harassment and terminating her because of her pregnancy.

84. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, monetary and/or other economic harm for which she is entitled an award of monetary damages and other relief.

85. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, severe mental anguish and emotional distress for which she is entitled to an award of monetary damages and other relief.

86. Defendants' unlawful discriminatory actions constitute malicious, willful and wanton violations of NYCHRL for which Plaintiff is entitled to an award of punitive damages.

87. To the extent that any of the individual Defendants are not individually liable as Plaintiff's employer, the individual Defendants are liable under the NYCHRL because they aided and abetted the unlawful conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court enter judgment in her favor and against Defendants, containing the following relief:

- A. Declare that the actions, conduct and practices of Defendants complained of herein violate state and local law;
- B. Enjoin and permanently restrain Defendants from engaging in such unlawful conduct;
- C. Award Plaintiff an award of economic, compensatory and punitive damages in an amount to be determined at trial;
- D. Award Plaintiff her reasonable attorneys' fees and costs and disbursements in this action including, but not limited to, any accountants' or experts' fees; and
- E. Grant Plaintiff such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

Dated: November 18, 2016
New York, New York

Respectfully submitted,

WIGDOR LLP

By: _____



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