

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X ECF CASE

ROCHELLE BAEZ,

14 CV 6221 (AT)(HP)

Plaintiff,

**AMENDED COMPLAINT
AND JURY DEMAND**

v.

ANNE FONTAINE USA, INC., ARI ZLOTKIN &
CINDY D'LUZANSKY

Defendants.

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The Plaintiff by her attorneys, Law Offices of Lauren Goldberg, PLLC, as and for her amended complaint against the Defendants allege:

NATURE OF CLAIMS

1. Plaintiff was employed as Regional Manager for Defendants and brings this action for sex discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 *et seq.* (“Title VII”), the New York State Human Rights Law, New York Executive Law §§ 290 *et seq.* (“NYSHRL”), and the New York City Human Rights Law, New York Administrative Code §§ 8-101 *et seq.* (“NYCHRL”).
2. Plaintiff also asserts pendant state claims against the company, Anne Fontaine, for unlawfully withholding her sales commission, half of which is still due and owing at the time of this filing, in contravention of New York Labor Law Article 6, § 191-C.
3. Aiding and abetting claims are made against Ari Zlotkin and Cindy D’Luzansky because they refused or failed to protect the plaintiff when she made her complaints against sexual harassment, because they protected the harasser by refusing to follow the company’s policy on sexual harassment, and because they participated in or failed to prevent the unlawful retaliatory termination of the plaintiff, and because they unlawfully withheld, or

failed to prevent the unlawful withholding of, her sales commission and vacation pay in order to extort a release from the plaintiff to prevent her from asserting her rights in a court of law.

JURISDICTION AND VENUE

4. The Court has jurisdiction over each of Plaintiff's claims pursuant to 28 U.S.C. §§ 1331 and 1343 as this action involves federal questions regarding the deprivation of plaintiff's rights under Title VII, 42 U.S.C. §2000e-2(a)(1), *et.seq.* This Court has supplemental jurisdiction over plaintiff's related claims arising under state and local law pursuant to 28 U.S.C. § 1367(a).
5. Venue against all defendants except lies in this judicial district pursuant to 28 U.S.C. § 1391(b) as this action arose, in substantial part, within the Southern District of New York, where the unlawful practices alleged herein occurred.

PROCEDURAL REQUIREMENTS

6. Ms. Baez filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") alleging violations of Title VII, 42 U.S.C. §§ 2000e et seq. and received a Right to Sue Letter dated June 23, 2014.

PARTIES

7. Plaintiff Rochelly Baez is domiciled in Queens, New York, but worked primarily in New York, New York when she was not traveling on company business.
8. Anne Fontaine USA, Inc. ("Anne Fontaine") is a French global company with its American headquarters in New York, located at 110 Greene Street, Suite 301, New York, NY 10012. Anne Fontaine is a women's clothing boutique, with U.S. stores in New York, Connecticut, California, Florida, Georgia, Illinois, Massachusetts, and Michigan.

9. Anne Fontaine has over 200 employees in the United States.
10. Ari Zlotkin is the CEO of Anne Fontaine, and was the direct supervisor of Ms. Baez during her employment with Anne Fontaine.
11. Cindy D'Luzansky was the U.S. Controller and the Human Resources representative at Anne Fontaine during all relevant times. Currently, upon information and belief, Ms. D'Luzansky resides in New York, New York.

STATEMENT OF FACTS

12. Rochelly Baez was one of two regional managers for Anne Fontaine's US operations for two years and four months. She had a stellar performance record.
13. She was hired on October 17, 2011 and terminated February 7, 2014.
14. In or around October 2013, Ms. Baez was at the NY headquarters when Julia Fricke, the U.S. Operations Manager, commented to Ms. Baez that she could see her breasts.
15. Ms. Baez was taken aback with Julia Fricke's comment but she tried not to dwell on it. She felt that it would have been futile to report it to Human Resource as little had been done about any of her prior complaints regarding Ms. Fricke.
16. In or around December 27, 2013, while Ms. Baez was visiting the Boston area Anne Fontaine Store, Dedra Estes, the Assistant Store Manager, informed Ms. Baez that Amanda Blynn, the store manager of the Boston store, had repeatedly told the staff in the store that Ms. Baez did not wear a bra and that she showed her breasts to Ari Zlotkin, the CEO of the company, who was married.
17. Upon hearing this, Ms. Baez became distraught and humiliated. She felt belittled and degraded in front of the staff.

18. On or about December 30, 2014, Ms. Baez complained to both Cindy D'Luzansky, the delegated Human Resources representative, and Ari Zlotkin, the CEO, about the comments that Ms. Blynn had made.
19. Ms. Baez insisted that there be an investigation into the comments and that appropriate action be taken for such comments.
20. Ms. Baez had follow up conversations with both Ms. D'Luzansky and Mr. Zlotkin.
21. Both Ms. D'Luzansky and Mr. Zlotkin did not seem inclined to take any action despite Ms. Baez' obvious distress over the comments.
22. On or about January 13, 2014, Ms. Baez had a meeting with Mr. Zlotkin about the comments wherein she reiterated the comments and how Ms. Baez felt that they had been circulated among upper management.
23. Recognizing that the breast comments must have initiated with Ms. Fricke, Ms. Baez questioned Ms. Fricke on or about January 14, 2014, as to whether she had been making comments about her breasts to other management employees.
24. Ms. Fricke acknowledged that the comments must have come from her, although she conveniently could not remember any specific comments.
25. On or about January 16, 2014, Ms. Baez had another conversation with Human Resources where Ms. Baez informed Ms. D'Luzansky as to what Ms. Fricke had said.
26. Ms. D'Luzansky failed to question Ms. Fricke or take any action against Ms. Fricke despite her acknowledgment.
27. In fact, when Ms. Baez informed Human Resources about Ms. Fricke's confession, Ms. D'Luzansky attempted to blame Ms. Baez for the comments and even told her to share the blame for the comments.

28. During the meeting, Ms. Baez requested that Ms. D'Luzansky administer a written warning to Amanda Blynn for her part in creating a hostile work environment and undermining her authority.
29. Ms. D'Luzansky informed Ms. Baez that Ann Fontaine's attorneys advised her not to place the comments regarding Ms. Baez and her breasts in writing. Ms. D'Luzansky refused to put the comments made by Ms. Blynn in writing.
30. After their January 16, 2014 meeting, Ms. D'Luzansky wrote an email to Ms. Baez.
31. In her email, Ms. D'Luzansky acknowledged that the comments were "unsettling" and "important to address."
32. Nonetheless, Ms. D'Luzansky advised Ms. Baez to either "be strong and say 'so be it, I make my own fashion and life choices. If they want to talk, let them, I know who I am'" or to "adjust what you are doing to prevent such rumors/gossip."
33. At the end of her email, Ms. D'Luzansky again refused to take action.
34. Ultimately, Ms. Luzansky even told Ms. Baez that if she did not like the way she was handling the investigation and procedure being followed regarding the comments, she could "take it up with Ari," referencing the CEO.
35. A few days later, Ms. Baez did again talk with Mr. Zlotkin and expressed her great angst at how nothing was happening to Ms. Blynn and how there did not seem to be any repercussion for Ms. Blynn making such statements.
36. Ms. Baez also told Mr. Zlotkin that the comments and the company's lack of response jeopardized her position and made very uncomfortable.

37. Ultimately, on January 31, 2014, when Ms. Baez and Ms. D'Luzansky met with Ms. Blynn to address performance issues, Ms. Baez then addressed the comments directly with Ms. Blynn.
38. Ms. Blynn admitted to making the comments and acknowledged that the comments were inappropriate.
39. Despite Ms. Blynn's admission, Ms. D'Luzansky continued to refuse to allow Ms. Baez to make any written record of it or to discipline her in any way. In fact, Ms. D'Luzansky did not say anything to Ms. Blynn regarding the comments.
40. On or about February 3, 2014, Ms. Baez told Mr. Zlotkin that Ms. Blynn admitted to making the comments and again complained to Mr. Zlotkin about the lack of any action being taken toward Ms. Blynn for making the comments.
41. Mr. Zlotkin stated that Ms. D'Luzansky would handle it.
42. A few days later, on or about February 7, 2014, Mr. Zlotkin fired Ms. Baez for complaining about the comments. In doing so, Mr. Zlotkin was quick to label Ms. Baez' complaints as "drama."
43. Although Mr. Zlotkin cited two other reason for Ms. Baez' termination, these reasons were pretextual.
44. Mr. Zlotkin retaliated against Ms. Baez for complaining about the comments by abruptly terminating her and refusing to pay her the special holiday bonus and unused vacation that she was owed unless she signed a release giving up her rights to address this matter in a court of law.

45. But for the fact that Plaintiff Baez complained about that the comments which she reasonably believed to be unlawful sexually harassing comments, Defendants would not have fired her.

46. Defendants had knowledge of and/acquiesced in the discrimination and sexual harassment as Plaintiff Baez complained on numerous occasions to Defendants, who rather than taking any action in response, instead turned around and terminated Plaintiff Baez employment.

47. Julia Fricke and Amanda Blynn's statements were unsolicited, unwelcome and offensive.

48. The comments were clearly meant to demean Ms. Baez by insinuating that she performed sexual acts to achieve a high ranking position.

49. Defendants' actions and conduct were intentional and intended to hurt Plaintiff Baez.

50. Plaintiff Baez was exposed to a sexually and hostile work environment.

51. Plaintiff Baez has been unlawfully discriminated against, retaliated against, humiliated, degraded, belittled, and, as a result, suffers emotional distress, loss of income and earnings.

52. As a result of Defendants discriminatory conduct, Plaintiff Baez has suffered severe emotional distress that has caused her to see both a psychologist and a psychiatrist.

53. As a result of the above, Plaintiff has been damaged in an amount which is in excess of the jurisdiction limits of the Court.

54. Defendants' conduct has been malicious, willful, outrageous and conducted with full knowledge of the law. As such Plaintiff demands punitive damages against all Defendants, jointly and severally.

AS AND FOR A FIRST CAUSE OF ACTION

(Retaliation in Violation of Title VII)

55. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation in each of the preceding paragraphs as if fully set forth herein.

56. 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) too...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.”

57. Defendants engaged in unlawful employment practices prohibited by 42 U.S.C. § 2000e et seq. by discriminating against Plaintiff with respect to the terms, conditions or privileges of employment because of her opposition to the unlawful employment practices of Defendants.

58. Because of the Title VII retaliation, Ms. Baez has, and continues to be, damaged including the loss of past and future wages and benefits, and past and future physical and emotional distress, and the attorneys' fees and costs of bringing this action.

AS AND FOR A SECOND CAUSE OF ACTION

(Retaliation in Violation of NYSHRL)

59. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation in each of the preceding paragraphs as if fully set forth herein.

60. Ms. Baez was terminated in retaliation for asserting her rights under the NYSHRL.

61. Because of the NYSHRL retaliation, Ms. Baez has, and continues to be, damaged including the loss of past and future wages and benefits, and past and future physical and emotional distress, and the attorneys' fees and costs of bringing this action.

AS AND FOR A THIRD CAUSE OF ACTION

(Discrimination in Violation of NYCHRL)

62. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation in each of the preceding paragraphs as if fully set forth herein.

63. 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."

64. Defendants engaged in an unlawful discriminatory practice in violation of New York City Administrative Code §8-107(a)(a) by creating and maintaining discriminatory working conditions, and otherwise discriminating against Plaintiff because of his gender.

65. Because of the NYCHRL violation, Ms. Baez has, and continues to be, damaged including the loss of past and future wages and benefits, and past and future physical and emotional distress, and the attorneys' fees and costs of bringing this action.

AS AND FOR A FOURTH CAUSE OF ACTION

(Retaliation in Violation of NYCHRL)

66. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation in each of the preceding paragraphs as if fully set forth herein.

67. The New York City Administrative Code §8-1-07(7) provides that it shall be unlawful discriminatory practice: “For an employer...to discharge...or otherwise discriminate against any person because such person has opposed any practices forbidden under this chapter...”

68. Defendants 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 Plaintiff’s employer.

69. Because of the NYCHRL retaliation, Ms. Baez has, and continues to be, damaged including the loss of past and future wages and benefits, and past and future physical and emotional distress, and the attorneys' fees and costs of bringing this action.

AS AND FOR A FIFTH CAUSE OF ACTION

(Aiding and Abetting in Violation of NYCHRL)

70. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation in each of the preceding paragraphs as if fully set forth herein.

71. New York City Administrative Code § 8-107(19) Interference with protected rights. It shall be an unlawful discriminatory practice for any person to coerce, intimidate, threaten or interfere with, or attempt to coerce, intimate, threaten or interfere with, any person in the exercise or enjoyment of, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected pursuant to this section.

72. Defendants Ari Zlotkin and Cindy D'Luzansky, violated the section cited herein as set forth.

73. Because of the foregoing counts, Ms. Baez has, and continues to be, damaged including the loss of past and future wages and benefits, and past and future physical and emotional distress, and the attorneys' fees and costs of bringing this action.

AS AND FOR A SIXTH CAUSE OF ACTION

(NYCHRL Employer Liability)

74. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation in each of the preceding paragraphs as if fully set forth herein.

75. New York City Administrative Code § 8-107(13) Employer liability for discriminatory conduct by employee, agent or independent contractor reads:

- 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.

76. Defendants violated the section cited herein as set forth.

AS AND FOR A SEVENTH CAUSE OF ACTION

(Failure to timely Pay Sales Commission)

77. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation in each of the
preceding paragraphs as if fully set forth herein.

78. Sales commission is due within five days of being earned.

79. Ms. Baez earned the special double holiday bonus of 2013-2014 at the end of January, 2014.

80. Of the \$10k expected, only half has been paid two months late after Ms. Baez hired attorneys to make a demand.

81. Anne Fontaine was attempting to withhold the sales bonus earned in order to extort a release from Ms. Baez so that she could not assert her rights in a court of law.

82. Anne Fontaine continues to unlawfully withhold the remaining \$5k.

83. Ms. Baez is entitled to double the amount unlawfully withheld and attorneys' fees.

AS AND FOR AN EIGHTH CAUSE OF ACTION

(Retaliatory Counterclaim)

84. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation in each of the preceding paragraphs as if fully set forth herein.

85. After this lawsuit was filed and Plaintiff produced damaging evidence during discovery, Defendants moved to amend their answer to add a counterclaim against the Plaintiff.

86. The counterclaim has no merit and Defendant only sought to add the counterclaim because Plaintiff initiated this lawsuit and produced damaging evidence against the Defendants.

87. Defendants sought to bring the counterclaim to harass the Plaintiff.

88. The counterclaim serves to damage Plaintiff's personal and professional relationship and will affect Plaintiff's future business relationships.

89. Defendants' are further retaliating against Plaintiff for bringing this lawsuit in violation of Title VII, NYSHRL and the NYCHRL.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Rochelly Baez respectfully requests that this Court enter a judgment in her favor and against defendants, awarding the following relief:

- (a) An award of damages in an amount to be determined at trial to compensate plaintiff for all monetary and/or economic damages, including but not limited to, the loss of past and future income, wages, compensation, fringe benefits, and sales bonuses and commissions;
- (b) An award of damages in an amount to be determined at trial to compensate plaintiff for all non-monetary and/or compensatory damages, including but not limited to compensation for severe mental anguish, anxiety, stress, humiliation, embarrassment, and emotional distress;
- (c) An award of any and all other monetary and/or non-monetary losses suffered by plaintiff in an amount to be determined at trial;
- (d) An award of punitive damages;
- (e) An award of all costs that plaintiff has incurred in this action, including reasonable attorneys' fees;
- (f) An award of double the amount of the sales bonus unlawfully withheld;
- (g) An award of pre-judgment interest on all amounts due from the unpaid sales bonus;
- (h) Such other relief as this Court may deem just and proper.

Dated: New York, New York
January 29, 2015

LAW OFFICES OF LAUREN GOLDBERG, PLLC

By: _____/s/_____

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