

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

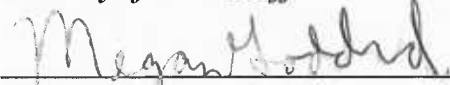
-----X	Index No.:
MAGDALENA FERNANDEZ,	:
	:
Plaintiff,	:
	:
-against-	:
	:
POP DISPLAYS and ACTIVE STAFFING SERVICES,	:
	:
Defendants.	:
	:
-----X	

TO THE ABOVE NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiff's attorney, an answer to the complaint in this action within twenty (20) days after the 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: New York, New York
May 27, 2016

NESENOFF & MILTENBERG, LLP
Attorneys for Plaintiff

By: 
Megan S. Goddard, Esq.
363 Seventh Avenue, 5th Floor
New York, New York 10001
(212) 736-4500

TO: Active Staffing Services
41 West 33rd Street
New York, New York 10001

POP Displays
555 Tuckahoe Road
Yonkers, New York 10710

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

MAGDALENA FERNANDEZ,

Plaintiff,

-against-

**POP DISPLAYS and ACTIVE STAFFING
SERVICES,**

Defendants.

Index No.:

**VERIFIED
COMPLAINT**

PLAINTIFF MAGDALENA FERNANDEZ, by her attorneys Nesenoff and Miltenberg, LLP, whose offices are located at 363 Seventh Avenue, 5th Floor, New York, New York 10001, alleges upon knowledge with respect to herself, and upon knowledge, information and belief as to all other matters, as follows:

STATEMENT OF THE CASE

Defendant Active Staffing and Defendant POP colluded to promote a quid pro quo employment arrangement by which female employees were forced to accept a hostile atmosphere of severe sexual harassment in order to 1) obtain permanent employment positions and 2) avoid termination.

THE PARTIES

1. Plaintiff Magdalena Fernandez (“Plaintiff”) is a female resident of the United States who currently resides at 2050 Davidson Avenue, Bronx, New York 10453 and who was formerly employed by the Defendants POP Display (hereinafter “POP”) and Active Staffing Services (hereinafter “Active Staffing”).

2. Upon information and belief, at all times herein, Defendant POP has been an entity duly organized and existing under the laws of the State of Delaware, with its principal place of business located at 555 Tuckahoe Road, Yonkers, New York 10710.

3. Upon information and belief, Defendant Active Staffing is an industrial recruitment and employment agency with its principal place of business located at 41 West 33rd Street, New York, New York 10001.

PERTINENT FACTUAL BACKGROUND

4. In or about 2010, Plaintiff began working with Defendant Active Staffing to procure employment. Plaintiff was told that she would be placed in temporary employment positions with the possibility of becoming a permanent employee. Plaintiff was given some work before leaving Defendant Active Staffing.

5. In or about 2015, Plaintiff returned to Defendant Active Staffing to again obtain employment. Through Defendant Active Staffing, Plaintiff secured a position with Defendant POP and commenced working for POP on or about March 31, 2015 as a machine operator. Upon information and belief, Defendant Active Staffing was directed to, and purposefully chose women to work for Defendant POP.

Defendant POP's Sordid History of Sexual Harassment and Retaliation

6. Shortly after she started working at Defendant POP, Plaintiff was shocked to find an environment rife with sexual harassment. Plaintiff learned from other female employees that Defendant POP has a long history of allowing and even encouraging its male employees to sexually harass its female employees, particularly those referred by Defendant Active Staffing.

7. For example, upon information and belief, a female employee referred by Defendant Active Staffing was regularly and openly propositioned for sex for money while working at

Defendant POP, as if she were a prostitute. Upon information and belief, when the victim reported the outrageous, offensive and humiliating behavior to her supervisor, who shall herein be referred to as “Supervisor Doe #1,” Defendant POP immediately terminated her employment. Upon information and belief, the victim was terminated for refusing to engage in Defendant POP’s sanctioned quid pro quo sexual harassment and in retaliation for reporting the sexual harassment.

8. Upon information and belief, the victim reported the reasons for her termination to Defendant Active Staffing, who did nothing to stop the behavior and continued to send females to Defendant POP’s facility knowing that they would be sexually harassed or fired.

9. Supervisor Doe #1 regularly tried to implement and promote the Defendant POP sanctioned environment of quid pro quo sexual harassment.

10. It was well known amongst Defendant POP’s female employees that if they hoped to graduate from temporary employees to permanent employees that they would need to acquiesce to the sexual harassment. Plaintiff was warned that Supervisor Doe #1 had told a female employee that she had to “loosen up” if she hoped to become a permanent employee—his warning was understood to mean that she would not be made a full time permanent employee unless and until she acquiesced to the sexual harassment at Defendant POP. When the female employee objected, Supervisor Doe #1 became angry. The following day, the woman was terminated from Defendant POP.

11. Again, upon information and belief, Defendant Active was made aware of the sexual harassment and retaliatory termination.

12. Upon information and belief, Supervisor Doe #1 similarly retaliated against yet another female employee. Specifically, upon information and belief, the female employee worked for the

Defendant POP for approximately three (3) months. However, when it came time to hire her as a permanent employee, Defendant POP refused to do so and instead chose an employee with less seniority, who, upon information and belief, had acquiesced to a sexual relationship with a male employee at Defendant POP's facility. When the female employee complained to Supervisor Doe #1 about being passed over, she was immediately terminated.

13. As yet another example of the discriminatory and caustic environment that permeates Defendant POP's facility, upon information and belief, one of the male employees pressured female employees into sleeping with him, secretly recorded them, and then humiliated his victims by openly playing the recordings throughout Defendant POP. Upon information and belief, Defendant POP knew of and allowed this behavior.

Defendant Active Staffing Purposefully Places Plaintiff in a Known Hostile Environment

14. Upon information and belief, Defendant Active Staffing knew of the rampant sexual harassment that plagued the female employees at Defendant POP but did nothing to help or support the female workers and instead continued to send unknowing female workers to Defendant POP, with the promise that they would be given permanent positions *IF* the employees at Defendant POP liked them. The women quickly learned that they would only be "liked" at Defendant POP if they gave into demands for sexual favors and pretended that they found sexual harassment charming.

15. Indeed, upon information and belief, the aforementioned women who became victims of the Defendant POP sanctioned environment of sexual harassment and gender discrimination were referred to Defendant POP from Defendant Active Staffing.

16. Accordingly, Defendant Active Staffing endorsed Defendant POP's horrid antics as it continued to send female employees to Defendant POP when they knew or should have known

that doing so would subject the women to blatant quid pro quo sexual harassment, sexual assault, gender discrimination and retaliation.

17. Despite having knowledge of the numerous instances of sexual harassment, gender discrimination, and retaliation that occurred at Defendant POP, Defendant Active Staffing sent Plaintiff, a female, to Defendant POP for employment.

Plaintiff is Harassed by Manager Doe #2

18. Plaintiff commenced employment at Defendant POP in March 2015. She performed her job responsibilities satisfactorily.

19. Approximately two weeks after commencing employment at Defendant POP, Plaintiff was involuntarily transferred to a new work area within the same department.

20. In this new area, Plaintiff worked for a male employee who was responsible for reviewing her work. (The male manager shall herein be referred to as “Manager Doe #2”). As had happened to prior female employees, Manager Doe #2 immediately saw Plaintiff as a target and subjected her to blatant disrespect and sexual harassment.

21. Indeed, Manager Doe #2 would visit Plaintiff’s work station, look Plaintiff up and down, and stare at her intimate parts. Plaintiff did what she could to discourage Manager Doe #2 and took to trying to look as unattractive as possible.

22. On one particularly egregious occasion, Manager Doe #2 visited Plaintiff’s work station and asked her if she was “half tongued.” Plaintiff was confused and concerned that Manager Doe #2 was ridiculing her accent. When Plaintiff asked Manager Doe #2 “What do you mean?,” he responded, that he wanted Plaintiff’s “whole tongue” and wanted to be her boyfriend. Plaintiff was sickened by the comment and scared for her physical safety as well as the safety of her job.

23. Plaintiff asked a co-worker to report the incident to Supervisor Doe #1 because she was scared to go to him directly and she was concerned that she would be terminated if she reported the sexual harassment.

24. Thereafter, Supervisor Doe #1 approached Plaintiff and asked, “What is happening with Manager Doe #2?” Plaintiff told Supervisor Doe #1 about the sexual harassment she was enduring from Manager Doe #2. She asked that Manager Doe #2 be told to only speak to her about work related matters.

The Harassment Continues Despite Plaintiffs Report to Defendant

25. Instead of stopping the sexual harassment, Plaintiff’s report seemed to escalate the problem. Male employees throughout Defendant POP began tormenting Plaintiff with lewd and lascivious comments, and bizarre demands for sex and relationships.

26. In particular, one male employee (the male employee shall herein referred to as “Employee Doe #3”) was especially hostile to Plaintiff.

27. Employee Doe #3 routinely talked about sex to Plaintiff and appallingly suggested that they visit hotels for the purpose of having sex. Employee Doe #3 repeatedly stated that he would have to keep their proposed “affair” secret from his wife.

28. Plaintiff always immediately rejected Employee Doe #3’s unwanted sexual advances but Employee Doe #3 continued to proposition Plaintiff and make vulgar sexual remarks to her.

29. Plaintiff was outraged to learn that Employee Doe #3 was telling their coworkers that Plaintiff was his girlfriend and that he was having sex with her. Upon information and belief, Employee Doe #3 spread other rumors that Plaintiff regularly sent him text messages asking him to leave his wife for her. Upon information and belief, Supervisor Doe #1 and Manager Doe #2,

together with other management personnel at Defendant POP heard the rumors but did nothing to dispel them. At no point did Plaintiff ever send Employee Doe #3 any text message at all.

30. After Plaintiff learned of such rumors on June 5, 2015, she advised Employee Doe #3 to stay away from her and told him she did not like that he was spreading false rumors about her to their co-workers.

31. In response, Employee Doe #3 became red faced and began screaming at Plaintiff in front of all of their co-workers.

32. Plaintiff was horrified, humiliated and extremely scared both that Employee Doe #3 might attack her and also that she might lose her job.

Defendant POP Attempts to Fire Plaintiff for Complaining about Sexual Harassment

33. On or about June 8, 2015, Plaintiff discussed Employee Doe #3's behavior to a male co-worker. The co-worker told Plaintiff that he was sorry but that there was nothing that he could do to help her. Upon information and belief, the co-worker feared that he would lose his job if he objected to the illegal sexual harassment.

34. As Employee Doe #3's behavior continued to worsen, Plaintiff realized that she had no choice but to again report him. On the evening of June 8, 2015, Plaintiff advised Supervisor Doe #1 that Employee Doe #3's behavior had worsened and that the hostile work environment was unbearable. She begged him to do something about the illegal behavior.

35. Less than two days after she reported Employee Doe #3's behavior to Supervisor Doe #1, on or about June 10, 2015, Plaintiff arrived to work and was told that she no longer worked at Defendant POP and should return to Defendant Active Staffing.

36. Plaintiff asked a co-worker where the Human Resources department was. She then spoke with Defendants' Human Resources representative and told them all about the sexual harassment and retaliation that she had incurred.

37. Plaintiff asked Human Resources why she would be fired because male employees were sexually harassing her.

38. Plaintiff was relieved when Human Resources ultimately allowed her to return to a different position at Defendant POP.

Employee Doe #3 Continues to Harass Plaintiff at her New Station

39. Soon thereafter, Employee Doe #3 began visiting Plaintiff's new work area to further harass and menace Plaintiff. It was reported to Plaintiff that Employee Doe #3 was threatening her, calling her "crazy" and saying that she was the one who wanted to have a relationship with him.

40. Employee Doe #3's actions greatly scared and alarmed Plaintiff and it was clear that he was very angry at her for reporting him and that he intended to retaliate against her.

41. Defendant POP refused to do anything to protect her.

Plaintiff is Constructively Terminated

42. Thereafter, Plaintiff was unable to return to work due to her fear of Employee Doe #3 and Defendants' failure to protect her.

AS AND FOR A FIRST CAUSE OF ACTION
(Gender Discrimination-Sexual Harassment)

43. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs "1" through "42" as if set forth herein.

44. Plaintiff is a woman and therefore a member of a protected class under the New York State and New York City Human Rights law.

45. Plaintiff was discriminated against because of her gender, in the form of repeated sexual harassment at Defendants.

46. The sexual harassment Plaintiff suffered while employed at Defendants was severe and pervasive, unwelcome by Plaintiff, and would be offensive to a reasonable person.

47. The sexual harassment that Plaintiff suffered while employed at Defendants severely affected the terms and conditions of her employment, as set forth in detail here and above, and created a hostile work environment.

48. Defendants' most senior employees and Human Resource personnel witnessed and/or were aware of the discrimination. Plaintiff repeatedly objected to the discrimination and reported the harassment to Defendants. Therefore, Defendants knew or should have known about the sexual harassment and the effect it had on Plaintiff's employment. Yet, Defendants failed to take the necessary remedial actions.

49. As a direct and proximate result of said unlawful employment practices, Plaintiff has suffered the indignity of discrimination, the invasion of her rights to be free from discrimination, and great humiliation, which has manifested in serious emotional stress and physical illness.

50. As a further direct and proximate result of said unlawful employment practices, Plaintiff has suffered extreme mental anguish, outrage, and severe anxiety about her future and her ability to support herself, harm to her employability and earning capacity, painful embarrassment among her family, friends, and co-workers, damage to her good reputation, disruption of her personal life, and the loss of enjoyment of the ordinary pleasures of everyday life.

51. Plaintiff was discriminated against and subjected to sexual harassment that created a hostile work environment by Defendants based on her gender in violation of the New York State and New York City Human Rights Law. As a result of Defendants' violation of the New York

State and New York City Human Rights Law, Plaintiff has been damaged in the sum of no less than \$1,500,000.

AS AND FOR A SECOND CAUSE OF ACTION
(Gender Discrimination-Disparate Treatment)

52. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs “1” through “51” as if set forth herein.

53. Plaintiff is female, and is therefore a member of a protected class under the New York State and New York City Human Rights law.

54. Plaintiff was illegally discriminated against when she suffered disparate treatment at Defendants because she is female.

55. The gender discrimination that Plaintiff suffered while employed at Defendant was severe and pervasive, unwelcome by Plaintiff, and would be offensive to a reasonable person.

56. The gender discrimination that Plaintiff suffered while employed at Defendant severely affected the terms and conditions of her employment, as set forth in detail here and above.

57. Senior employees of Defendants regularly witnessed and/or were made aware of the gender discrimination. Therefore, Defendant knew or should have known about the discrimination and the effect it had on Plaintiff’s employment, but failed to take the necessary remedial actions.

58. As a direct and proximate result of said unlawful employment practices, Plaintiff has suffered the indignity of discrimination, the invasion of her rights to be free from discrimination, and great humiliation, which has manifested in serious emotional stress and physical illness.

59. As a further direct and proximate result of said unlawful employment practices, Plaintiff has suffered extreme mental anguish, outrage, severe anxiety about her future and her ability to support herself, harm to her employability and earning capacity, painful embarrassment among

her family, friends, and co-workers, damage to her good reputation, disruption of her personal life, and the loss of enjoyment of the ordinary pleasures of everyday life.

60. Plaintiff was discriminated against and subjected to discrimination that created a hostile work environment by Defendant based on her gender, in violation of the New York State and New York City Human Rights Law. As a result of Defendants' violation of the New York State and New York City Human Rights Law, Plaintiff has been damaged in the sum of no less than \$1,500,000.

AS AND FOR A THIRD CAUSE OF ACTION
(Retaliation and Retaliatory Discharge)

61. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs "1" through "60" as if set forth herein.

62. Because she was an employee of Defendants at all relevant times, Plaintiff is protected from retaliation and retaliatory discharge under New York State and New York City laws.

63. Defendants were aware of the severe and pervasive gender discrimination, sexual harassment, and hostile work environment that Plaintiff was subjected to during her employment.

64. Plaintiff's complaints were repeatedly ignored and discouraged by Defendants in violation of New York State and New York City Human Rights Laws.

65. Plaintiff's protest to Defendants about the severe and pervasive sexual harassment, gender discrimination, and hostile work environment she was subjected to during her employment with Defendants was a protected activity under the New York State and New York City Human Rights Laws.

66. Defendants, unlawfully and without cause, retaliated against Plaintiff because she objected to the incidents of sexual harassment and gender discrimination.

67. The retaliation substantially interfered with the employment of Plaintiff and created an intimidating, offensive, hostile and hostile work environment in violation of New York State and New York City Human Rights Laws.

68. Defendants knew or should have known about the retaliation and the affect it had on Plaintiff's employment but failed to take any action to stop the retaliatory conduct, and in fact caused Plaintiff to be discharged.

69. As a direct and proximate result of said unlawful employment practices and disregard for Plaintiff's rights and sensibilities, Plaintiff has lost and will continue to lose substantial income including, but not limited to wages, social security, and other benefits due her.

70. Additionally, Plaintiff has suffered the indignity of discrimination and retaliation, the invasion of her rights to be free from discrimination, and great humiliation, which has manifested in serious emotional stress and physical illness.

71. As a further direct and proximate result of said unlawful employment practices, Plaintiff has suffered extreme mental anguish, outrage, severe anxiety about her future and her ability to support herself, harm to her employability and earning capacity, painful embarrassment among her family, friends, and co-workers, damage to her good reputation, disruption of her personal life, and the loss of enjoyment of the ordinary pleasures of everyday life.

72. Plaintiff was discriminated and retaliated against and suffered a retaliatory discharge by Defendant in violation of the New York State and New York City Human Rights Law. As a result of Defendants' violation of the New York State and New York City Human Rights Law, Plaintiff has been damaged in the sum of no less than \$1,500,000.

PRAYER FOR RELIEF


WHEREFORE, for the foregoing reasons, it is specifically requested that this Court grant Plaintiff judgment as follows:

- (i) On the First Cause of Action, awarding Plaintiff compensatory damages in an amount to be determined at trial but in any case no less than \$1,500,000;
- (ii) On the Second Cause of Action, awarding Plaintiff compensatory damages in an amount to be determined at trial but in any case no less than \$1,500,000;
- (iii) On the Third Cause of Action, awarding Plaintiff compensatory damages in an amount to be determined trial but in any case no less than \$1,500,000; and
- (iv) Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' fees, together with such other and further relief as this court deems equitable, proper, and just.

**Dated: New York, New York
May 27, 2016**

**NESENOFF & MILTENBERG, LLP.
Attorneys for Plaintiff**

By:


**Megan Goldard, Esq.
Gabrielle Vinci, Esq.
363 Seventh Avenue, Fifth Floor
New York, New York 10001
212.736.4500**

VERIFICATION

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


Magdalena Fernandez, being duly sworn, deposes and says:

I am the Plaintiff named in this matter. I have read the annexed Complaint against POP Displays and Active Staffing Services, know the contents thereof, and the same are true to my knowledge, except as to matters alleged upon information and belief and as to those matters, I believe them to be true.



Magdalena Fernandez

Sworn to and subscribed before me
this 27th day of May, 2016.



NOTARY PUBLIC

OMAR F. MCKENZIE
Notary Public, State of New York
Reg. No. 01MC6337492
Qualified in New York County
Commission Expires February 28, 2020