

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

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KURT DECKER and MICHAEL CIMINO,

Plaintiffs,

Index No.

v.

NBCUNIVERSAL MEDIA, LLC, and
AHMIR KHALIB THOMPSON p/k/a QUESTLOVE,

COMPLAINT

JURY TRIAL DEMANDED

Defendants.
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Plaintiffs Kurt Decker (“Decker”) and Michael Cimino (“Cimino”) (collectively, the “Plaintiffs”), by and through their attorneys, The Roth Law Firm, PLLC, hereby allege the following against Defendants NBCUniversal Media, LLC (“NBC”) and Ahmir Khalib Thompson p/k/a Questlove (“Questlove”) (collectively, the “Defendants”):

PRELIMINARY STATEMENT

1. This lawsuit was commenced because NBC fired the Plaintiffs Kurt Decker and Michael Cimino on the basis of the color of their skin.

2. NBC’s wrongful termination of these two highly accomplished employees is blatant and unjustified discrimination in violation of both New York State and New York City’s Human Rights Laws. Not only has NBC’s action devastated these two men’s finances, but NBC’s unlawful actions have also defamed Plaintiffs and irreparably damaged their reputations.

3. Plaintiffs are highly experienced camera operators with spotless performance records and over forty (40) years of combined employment at NBC.

4. On June 19, 2017, while working as camera operators on NBC’s The Tonight Show Starring Jimmy Fallon (“Tonight Show”), Plaintiffs—along with Mark Kelly, an NBC

employee and member of “The Roots” band—received an unsolicited racist and misogynist text message from a Tonight Show stagehand. Neither Plaintiff responded to the message.

5. Less than twenty-four hours after receipt of the unsolicited text message, Plaintiffs reported the text message to Keith McPhee (a manager of The Roots) and Bryon King, a technical production manager at NBC.

6. Plaintiffs, who are both Caucasian, were both immediately suspended for having received the unsolicited text message. Kelly, who is African-American, was not.

7. During an ensuing seven-week “investigation,” Defendant Questlove, upon information belief, demanded that Plaintiffs’ employment be terminated and that Kelly receive no adverse employment action whatsoever. NBC acquiesced to Questlove’s overtly discriminatory demand.

8. Simply put, Plaintiffs were terminated because they are Caucasian and Kelly was not terminated because he is African-American.

9. Defendant NBC’s adverse employment action in suspending and subsequently terminating Plaintiffs and Defendant Questlove’s aiding and abetting in such discriminatory conduct constitute unambiguous violations of the New York State Human Rights Law, as codified in New York Executive Law § 296 et seq. (“NYSHRL”), and the New York City Human Rights Law, as codified in New York City Administrative Code § 8-101 et seq. (“NYCHRL”).

10. Plaintiffs have suffered damages resulting from their reputations being irreparably tarnished, lost wages, and emotional damages. In addition, Plaintiffs are entitled to recover their attorneys’ fees pursuant to the NYSHRL.

PARTIES

11. Plaintiff Kurt Decker is an individual residing in New York, New York. At all relevant times, Decker was an employee of NBC, who worked at the Tonight Show in New York City.

12. Plaintiff Michael Cimino is an individual residing in Merrick, New York. At all relevant times, Cimino was an employee of NBC, who worked at the Tonight Show in New York City.

13. Upon information and belief, Defendant NBCUniversal Media, LLC is a limited liability company doing business in New York, which maintains a place of business in New York City. At all relevant times, NBC was Plaintiffs' employer, as that term is defined under the NYSHRL and NYCHRL.

14. Upon information and belief, Defendant Ahmir Khalib Thompson p/k/a Questlove is an individual residing in the State of New York, is employed by NBC and works at the Tonight Show in New York City as leader of the band The Roots.

JURISDICTION AND VENUE

15. Upon information and belief, each of the Defendants either reside or maintain their principal place of business, or transact or do business within the State of New York, New York County, and the conduct giving rise to this action took place in the State of New York, New York County.

FACTS

16. Plaintiffs are highly experienced camera operators with spotless performance records and over forty (40) years of combined employment at NBC.

17. Prior to his termination, Cimino had worked at NBC for seventeen (17) years.

18. Prior to his termination, Decker had worked at NBC for over twenty-four (24) years.

19. Because of both Plaintiff Decker and Cimino's long tenure and unblemished performance at NBC, working at the Tonight Show had provided them with long-term job security, which is extremely rare for camera operators.

20. At approximately 4:54 p.m. on June 19, 2017, a stagehand at the Tonight Show sent a text message containing racist and misogynist content (the "Text Message") to Plaintiffs and to Mark Kelly, an NBC employee and a member of The Roots band.

21. Plaintiffs neither solicited the Text Message (which was received on their personal cell phones) nor responded to it.

22. Neither of the Plaintiffs had any role or involvement in creating or condoning the Text Message. Both were shocked to receive it and repulsed by its content.

23. The Text Message was sent during the taping of the Tonight Show, and all three recipients (Decker, Cimino and Kelly) were working when they received it.

24. Upon receipt of the Text Message, Decker observed Kelly sharing it with other members of The Roots band on stage during the taping of the Tonight Show.

25. Neither of the Plaintiffs forwarded the Text Message to anyone.

26. Cimino did not see the Text Message until after filming of the Tonight Show had ended that evening and he was on his way home.

27. Because the Tonight Show had run late on the evening of June 19, 2017, and a flash flood warning was in effect that night, both Decker and Cimino hurried home as soon as filming was concluded for the night.

28. Distraught and confused by their receipt of the unsolicited Text Message, both of the Plaintiffs spoke to other NBC employees about it.

29. That same night, for example, Decker texted with Keith McPhee, a manager of The Roots and the liaison between the band and the stage crew, and both expressed dismay over the Text Message. They met again the next day, whereupon McPhee allayed Decker's concerns about whether other members of the band might misconstrue his involvement in the incident and think that he condoned the content of the Text Message, telling him that it was fine and not to worry about it.

30. Similarly, on his way into work the next morning (on June 20, 2017), Cimino reported the Text Message to Bryon King, a management-level technical producer employed by NBC. The producer assured Cimino that his mere receipt of the unsolicited Text Message would have no repercussions on him. King further told Cimino not to tell anyone at NBC that they had spoken about the incident.

31. Before the start of the following work day (on June 20, 2017), both Cimino and Decker were called into separate meetings with Dee Murray (a Human Resources representative) and Katie Hockmeyer, Gerrard Bradford and Brian McDonald (producers at NBC) (collectively, the "HR Representatives").

32. Before the meeting had even started, Cimino asked the HR Representatives if the meeting was about the Text Message that he, Decker and Kelly had received and immediately told them he was deeply offended by it. Cimino noted that he has a wife and two three-year-old children and that he does not condone that kind of language or "humor" at home or at work.

33. In their meetings with HR Representatives, Decker and Cimino both reiterated the same truthful story: that they did not know why they had received the Text Message, they both found it offensive, and neither had forwarded it to anyone else.

34. Notwithstanding the fact that neither Decker nor Cimino did anything wrong at all—and were themselves victims of this inappropriate conduct—the HR Representatives suspended Decker and Cimino effective immediately and told them not to speak to anyone else at NBC during their suspension.

35. Decker and Cimino both offered to share the contents of their phones with Murray, but she declined to look at them.

36. Two days later (on or about June 21, 2017), Decker and Cimino were called into another meeting at NBC, this time with their union representatives, but neither Decker nor Cimino were asked any new questions.

37. Kelly, who had also received the unsolicited Text Message, was neither suspended nor investigated.

38. During the ensuing seven-week “investigation,” neither Decker nor Cimino were asked any further questions or in any way involved in whatever inquiry NBC was conducting.

39. In fact, despite repeated entreaties and offers to help in the investigation, neither Decker nor Cimino were told what the investigators were looking for, what the purpose of the investigation was, or how long it would last.

40. In reality, the “investigation” was actually motivated by NBC’s efforts to placate the members of The Roots, and specifically Questlove, who upon information and belief, found the Text Message so offensive that he pressured NBC to fire all of the Caucasian employees involved in the incident—regardless of the fact that Decker and Cimino were also the victims of this unsolicited Text Message.

41. As a result of Questlove's insistence that all Caucasian employees who received the unsolicited Text Message be terminated, NBC terminated Decker and Cimino's employment on August 3, 2017.

42. Kelly (an African-American), who also received the unsolicited Text Message and is subject to the same NBC employment guidelines as Decker and Cimino, faced no adverse employment action whatsoever.

43. NBC's disparate treatment of Decker and Cimino is also highlighted by the way NBC treated Questlove, who has repeatedly been publicly accused of racist and misogynist language and behavior, and whose lyrics in many songs are so vile they will not be reprinted here. *See, e.g.*, Chris DeVille, "Questlove Apologizes for Racist Instagrams," Dec. 30, 2013, available at <https://www.stereogum.com/1615151/questlove-apologizes-for-racist-instagram/news/> (regarding Questlove's comments mocking Japanese accents); Questlove played "Lyn' Ass Bitch" for presidential candidate Michele Bachmann's walk-on music on Fallon's *Late Night*, "Bachmann: Fallon's 'Sexist' Song Slam Shows Media Double Standard," November 23, 2011, available at <http://abcnewsradioonline.com/politics-news/tag/ahmir-questlove-thompson>. Bachman told the press that "had Michelle Obama been on stage, the band's drummer [Questlove] who chose the song would be suspended or fired." *Id.* Instead, despite admitting that the Bachman slur was "unacceptable," in response to both of these (and other) unacceptable public incidents NBC allowed Questlove to remain in the spotlight without any repercussions. *See also* Roots' songs "The Unlocking" and "Adventures in Wonderland" written by Questlove and available on play.google.com.

44. Upon information and belief, shortly after Plaintiffs' suspension and sudden absence from work, NBC employee Mary Beth Scalici held a meeting with the Tonight Show staff in order to explain why Plaintiffs were no longer present at work.

45. Upon information and belief, during the meeting, Scalici told the staff that NBC employees are prohibited from forwarding or replying to racist and offensive text messages, and that NBC would fire anyone who did so.

46. In making this statement, Scalici clearly implied that Plaintiffs were removed from work because they had either forwarded or replied to a racist and offensive text message.

47. What's worse, Plaintiffs were prohibited from speaking to anyone at the Tonight Show during their suspension, and were therefore unable to set the record straight among their NBC co-workers regarding the true reason for their suspension and their role as mere recipients of the Text Message.

48. After unlawfully discriminating against Decker and Cimino on account of their race, NBC's attorney attempted to cover up the unlawful conduct by claiming that Decker and Cimino had run afoul of NBC's employment guidelines by failing to report the incident to management. That claim, however, is mere pretext.

49. First, neither of the Plaintiffs were told that their alleged failure to report the incident was an issue, let alone the reason for their termination. Indeed, that theory only first surfaced months after the terminations and only after NBC was contacted by Plaintiffs' counsel. Instead, Decker was simply fired, and Cimino, who had repeatedly emailed Murray offering help and asking what the investigation was about, was told he had failed to participate in the investigation.

50. Second, both Decker and Cimino were called into a meeting with management less than 24 hours after receiving the unsolicited Text Message and before either of them was even back at work. Notwithstanding whatever duty they had to report another employee's offensive remarks, they cannot be charged with the responsibility to come forward before they

even show up for work the next day (nor with the responsibility to check their personal phones during the taping of the show).

51. Third, the claim that they were fired for failing to report the incident is belied by the fact that NBC's supposed investigation into their conduct failed to address that both cameramen did report receipt of the Text Message to managers at the network: The Roots' manager Keith McPhee and NBC Technical Producer Bryon King. Finally, NBC's pretextual claim is contradicted by the fact that the Company's diversity training does not even mention an employee's obligation to report instances of offensive conduct. Instead, it informs employees that "[i]f you did not solicit the content [of an inappropriate meme], *it is not your fault that you received it.*" Emphasis in original.

52. Fourth, upon information and belief, NBC has regularly ignored its purported reporting requirements in other circumstances of wrongful conduct. For example, it has been widely reported that many employees of NBC (including, of course, female victims themselves) had actual knowledge of Matt Lauer's alleged serial sexual harassment, and yet NBC ignored and took no adverse action against any such individuals for their purported failure to report Mr. Lauer's conduct.

53. Although Plaintiffs might otherwise be subject to an arbitration agreement, that arbitration agreement is inapplicable to this dispute because Defendant Questlove (who is not a party to the arbitration agreement) aided and abetted NBC's unlawful discriminatory conduct, and is thus an indispensable party to this litigation.

54. Thus, because "a third-party would be necessary to the resolution of any claims or where the absence of the third party could subject the Company or the Covered Employee to inconsistent obligations" (as stated in the arbitration provision), the claims asserted herein by Decker and Cimino are excluded from NBC's arbitration agreement.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST
NBCUNIVERSAL MEDIA, LLC
FOR VIOLATION OF NEW YORK EXECUTIVE LAW § 296**

55. Plaintiffs repeat and reallege each and every allegation stated above as if fully stated herein in its entirety.

56. Decker and Cimino are Caucasian males and are thus within a protected group.

57. Decker and Cimino were at all relevant times qualified for their respective positions, and neither one of them has ever had any disciplinary or performance-related issues.

58. Upon receiving an unsolicited racist, misogynist and offensive Text Message from a co-worker, Decker and Cimino were both immediately suspended, and then, following a seven-week investigation (of which neither Decker nor Cimino were permitted to participate in any manner), they were terminated from their employment on August 3, 2017.

59. In contrast, Kelly, an African-American male who received the same unsolicited Text Message, faced no adverse employment action whatsoever.

60. Decker and Cimino were fired because of the color of their skin.

61. As a direct and proximate result of NBC's discriminatory conduct, Decker and Cimino's personal and professional reputations have been irreparably damaged, and they have suffered lost wages and emotional damages. Plaintiffs are also entitled to recover all of their attorneys' fees in the matter.

62. As a direct and proximate result of the above, Plaintiffs have been injured in an amount to be determined at trial, but believed to be in excess of \$1,000,000 each, exclusive of interest, and all costs associated with prosecuting this action. Because NBC's conduct was wanton and intentional, Plaintiffs also request an award of punitive damages.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST
NBCUNIVERSAL MEDIA, LLC
FOR VIOLATION OF NEW YORK CITY ADMINISTRATIVE CODE § 8-101**

63. Plaintiffs repeat and reallege each and every allegation stated above as if fully stated herein in its entirety.

64. Decker and Cimino are Caucasian males and are thus within a protected group.

65. Decker and Cimino were at all relevant times qualified for their respective positions, and neither one of them has ever had any disciplinary or performance-related issues.

66. Upon receiving an unsolicited racist, misogynist and offensive Text Message from a co-worker, Decker and Cimino were both immediately suspended, and then, following a seven-week investigation (in which neither Decker nor Cimino were permitted to participate in any manner), they were terminated from their employment on August 3, 2017.

67. In contrast, Kelly, an African-American male who received the same unsolicited Text Message, faced no adverse employment action whatsoever.

68. Decker and Cimino were fired because of the color of their skin.

69. As a direct and proximate result of NBC's discriminatory conduct, Decker and Cimino's personal and professional reputations have been irreparably damaged, and they have suffered lost wages and emotional damages. Plaintiffs are also entitled to recover all of their attorneys' fees in the matter.

70. As a direct and proximate result of the above, Plaintiffs have been injured in an amount to be determined at trial, but believed to be in excess of \$1,000,000 each, exclusive of interest, and all costs associated with prosecuting this action. Because NBC's conduct was wanton and intentional, Plaintiffs also request an award of punitive damages.

**AS AND FOR A THIRD CAUSE OF ACTION AGAINST
DEFENDANT AHMIR KHALIB THOMPSON p/k/a QUESTLOVE
FOR AIDING AND ABETTING NBC'S VIOLATION OF
NEW YORK EXECUTIVE LAW § 296 et seq.**

71. Plaintiffs repeat and reallege each and every allegation stated above as if fully stated herein in its entirety.

72. Section 296(6) of the NYSHRL states that it is “an unlawful discriminatory practice for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this article or to attempt to do so.” N.Y. Exec. Law § 296(6).

73. Upon information and belief, Defendant Questlove aided, abetted, incited, compelled and coerced NBC to violate the NYSHRL by suspending and terminating Plaintiffs’ employment solely because of their race—and NBC acquiesced in Questlove’s unlawful and discriminatory demands.

74. Upon information and belief, Defendant Questlove directly and intentionally participated in NBC’s unlawful conduct.

75. As a direct and proximate result of the above, Plaintiffs have been injured in an amount to be determined at trial, but believed to be in excess of \$1,000,000 each, exclusive of interest, and all costs associated with prosecuting this action. Because Questlove’s conduct was wanton and intentional, Plaintiffs also request an award of punitive damages.

**AS AND FOR A FOURTH CAUSE OF ACTION AGAINST
DEFENDANT AHMIR KHALIB THOMPSON p/k/a QUESTLOVE
FOR AIDING AND ABETTING NBC'S VIOLATION OF
NEW YORK CITY ADMINISTRATIVE CODE § 8-101 et seq.**

76. Plaintiffs repeat and reallege each and every allegation stated above as if fully stated herein in its entirety.

77. NYCHRL Section 8-107(6) states that “[i]t shall be an unlawful discriminatory practice for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this chapter, or to attempt to do so.” N.Y. City Admin. Code § 8-107(6).

78. Upon information and belief, Defendant Questlove aided, abetted, incited, compelled and coerced NBC to violate the NYCHRL by suspending and terminating Plaintiffs’ employment solely because of their race—and NBC acquiesced in Questlove’s unlawful and discriminatory demands.

79. Upon information and belief, Defendant Questlove directly and intentionally participated in NBC’s unlawful conduct.

80. As a direct and proximate result of the above, Plaintiffs have been injured in an amount to be determined at trial, but believed to be in excess of \$1,000,000 each, exclusive of interest, and all costs associated with prosecuting this action. Because Questlove’s conduct was wanton and intentional, Plaintiffs also request an award of punitive damages.

**AS AND FOR A FIFTH CAUSE OF ACTION AGAINST
NBCUNIVERSAL MEDIA, LLC
FOR DEFAMATION BY IMPLICATION**

81. Plaintiffs repeat and reallege each and every allegation stated above as if fully stated herein.

82. Shortly after Plaintiffs' suspension on June 20, 2017, NBC employee Mary Beth Scalici held a meeting with the Tonight Show staff. The ostensible purpose of the meeting was to explain the sudden absence of Cimino and Decker from the Tonight Show set.

83. Upon information and belief, during the meeting, Scalici told the staff that NBC employees are prohibited from forwarding or replying to racist and offensive text messages, and that NBC would fire anyone who did so.

84. The statement Scalici made was of and concerning Plaintiffs.

85. The statement was made and intended to be made publically.

86. By making this statement, Scalici clearly implied that Plaintiffs had been terminated from work because they had sent or replied to the racist Text Message they had received. This implication was false, as Scalici knew or should have known.

87. This statement was reasonably read both to impart the inference that Plaintiffs had done more than just receive the Text Message and to affirmatively suggest that Scalici intended or endorsed that inference.

88. This statement caused harm to Plaintiffs' reputations and thereby caused each Plaintiff emotional anguish.

89. Scalici was acting in the scope of her employment at NBC when she made this statement. NBC participated in, authorized, ratified and condoned her conduct.

90. As a direct and proximate result of this statement, Plaintiffs have suffered damages, including, *inter alia*, injury to their reputations, embarrassment, humiliation, and emotional distress, in an amount to be determined at trial.

JURY TRIAL DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

WHEREFORE, Plaintiffs respectfully request the relief sought herein, together with any other relief that the Court deems just and proper.

DATED: New York, New York
January 24, 2018

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