

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

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 ERIKA OLSON, :
 :
 Plaintiff, :
 :
 - against - :
 :
 MONTEFIORE MEDICAL CENTER; :
 MONTEFIORE HEALTH SYSTEMS, INC.; :
 MILAN KINKHABWALA; and :
 RESET CONTENT, LLC, :
 :
 Defendants. :
 -----X

Index No.:

SUMMONS

Venue is based on
Defendants'
Place of Business

To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the attached Verified Complaint of Plaintiff ERIKA OLSON, dated September 24, 2020, 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 the State of New York.

PLEASE TAKE NOTICE that should you fail to serve your Verified Answer within the time prescribed under applicable law, Plaintiff, ERIKA OLSON, 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 24, 2020

Respectfully Submitted,
EISENBERG & BAUM, LLP
By: /s/ Eric M. Baum, Esq.

Eric M. Baum, Esq.
Attorneys for Plaintiff
24 Union Square East, 4th Fl.
New York, NY 10003
(212) 353-8700

TO: MONTEFIORE MEDICAL CENTER
111 E 210th St
Bronx, NY 10467

MONTEFIORE HEALTH SYSTEMS, INC.
555 South Broadway
Tarrytown, NY 10591

MILAN KINKHABWALA
111 E 210th St
Bronx, NY 10467

RESET CONTENT, LLC
1616 17th St
Santa Monica, CA 90401

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

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ERIKA OLSON, :

Plaintiff, :

- against - :

MONTEFIORE MEDICAL CENTER; :

MONTEFIORE HEALTH SYSTEM, INC.;

MILAN KINKHABWALA; and :

RESET CONTENT, LLC, :

Defendants. :

-----X

Plaintiff, ERIKA OLSON, by and through her attorneys, EISENBERG & BAUM, LLP,

as and for her Verified Complaint against Defendants, states as follows:

THE PARTIES

1. Plaintiff ERIKA OLSON is an individual residing in New York County, New York.

2. Defendant MONTEFIORE MEDICAL CENTER (“MMC”), is a domestic not-for-profit corporation organized pursuant to the Laws of the State of New York and maintaining its corporate headquarters at 111 EAST 210th STREET, BRONX, NEW YORK 10467, and duly registered to do business and actively doing business in the State of New York.

3. Defendant MONTEFIORE HEALTH SYSTEM, INC. (“MHS”) (collectively with MMC the “Montefiore Defendants”), is a domestic not-for-profit corporation organized pursuant to the Laws of the State of New York and maintaining its corporate headquarters at 555 SOUTH BROADWAY, TARRYTOWN, NEW YORK 10591, and duly registered to do business and actively doing business in the State of New York. Upon information and belief, MHS is the parent company to MMC.

4. Upon information and belief, Defendant MILAN KINKHABWALA, is a medical doctor employed by MMC as Chief of the Division of Transplantation Surgery, Director of Abdominal Transplantation at Montefiore Einstein Center for Transplantation, and Director of Hepatobiliary Cancer at Montefiore Einstein Center for Cancer Care.

5. Upon information and belief, Defendant RESET CONTENT, LLC (“RESET”), is a foreign corporation organized pursuant to the Laws of the State of California and maintaining a corporate headquarters at 1616 17th STREET, SANTA MONICA, CA 90404, and mailing address at 1299 OCEAN AVE STE 333, SANTA MONICA, CA 90401. Upon information and belief, RESET is actively doing business in the State of New York.

JURISDICTION & 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, reside in New York, 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’ place of business in Bronx County and a substantial part of the events or omissions giving rise to the claim occurring in the county of the Bronx.

BACKGROUND

8. Plaintiff Erika Olson is an aspiring actor who lives in New York.

9. As an actor, Plaintiff auditions for roles with the hope of getting cast. This is a highly competitive process.

10. On or about February 27, 2020, Plaintiff was cast to play the lead in an advertising campaign produced by RESET, that was promoting the organ donor and transplant program at Montefiore.

11. The advertising campaign involved commercial and print advertisements.
12. The advertising campaign involved both medical professionals and professional actors.
13. On or about March 8, 2020, Plaintiff Olson was in the Bronx, working as an actress on set for the commercial.
14. As part of the advertising campaign, Plaintiff Olson played a character who was an organ donor and surgical patient being treated by Defendant KINKHABWALA.
15. Upon information and belief, Defendant KINKHABWALA is a surgeon employed by Defendant MONTEFIORE.
16. Upon information and belief, Defendant KINKHABWALA's wife is also a surgeon employed by Defendant MONTEFIORE and portrayed another surgeon during the advertising campaign.
17. Plaintiff Olson portrayed the lead character in the advertising campaign, a character with significant screen time as the commercial followed her character's journey in volunteering to donate an organ to a pediatric patient.
18. Plaintiff Olson was strapped to a surgical bed and mock-intubated during the scene portraying the surgery with Defendant KINKHABWALA as her surgeon.
19. While Plaintiff Olson was strapped to the surgical bed and pretending to be unconscious, Defendant KINKHABWALA used this time as an opportunity to touch, grope, and/or fondle Ms. Olson's right breast multiple times without her consent.
20. Defendant KINKHABWALA continued to touch, grope, and/or fondle Plaintiff Olson's right breast multiple times without her consent up until Defendant KINKHABWALA's wife entered the scene and she performed the pretend surgery on Plaintiff without touching her

once. Defendant KINKHABWALA's conduct was unwanted, shocking, disgusting, and offensive, and done with the purpose of harassing Plaintiff Olson on the basis of her gender and/or sex.

21. After filming concluded on or about March 8, 2020, Plaintiff reported the assault to a Production Assistant before leaving the set.

22. Later that night, the Producer called Plaintiff to apologize for the incident and validated that it was not supposed to have happened. The Producer informed Plaintiff that she would have to alert her superiors of the incident but would not inform the Director. The Producer reassured Plaintiff that the commercial would continue shooting the following day.

23. On or about March 9, 2020, at around 7:45 am, the Producer informed Plaintiff that the advertising campaign had been canceled and would not proceed as scheduled, despite her reassurances the previous day. The cancellation resulted in lost income to Plaintiff.

FIRST CAUSE OF ACTION

(Assault and Battery – Against Defendant Kinkhabwala)

24. Plaintiff repeats, reiterates and re-alleges each and every allegation set forth in paragraphs numbered “1” through “23” as if set forth more fully and at length herein.

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

26. 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 her detriment.

27. Defendants' intentionally assaulted and battered Plaintiff causing her to sustain physical injury and harm and humiliation, shame, fear, anxiety, and extreme emotional distress.

SECOND CAUSE OF ACTION

(Sexual Harassment: Hostile work environment – Against All Defendants)

28. Plaintiff repeats, reiterates and re-alleges each and every allegation set forth in paragraphs numbered “1” through “23” as if set forth more fully and at length herein.

29. 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, §S. 8-107 *et seq.*, prohibit sexual harassment in employment. Defendants were Plaintiff’s employers within the meaning of those laws.

30. Plaintiff deserved to retain her employment free of sexual harassments with Defendants and did not do anything to merit 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 her by the conduct of its employees and managers, of which they were well aware of and without any non-discriminatory basis therefor.

31. Defendants’ actions were taken under circumstances giving rise to an inference of discrimination.

32. 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 her detriment.

FOURTH CAUSE OF ACTION

(Gender Discrimination – Against All Defendants)

33. Plaintiff repeats, reiterates, and re-alleges each and every allegation set forth in paragraphs numbered “1” through “23” as if set forth more fully and at length herein.

34. 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 *et seq.*, prohibit gender

discrimination in employment. Defendants were Plaintiff's employers within the meaning of those laws.

35. Plaintiff deserved to retain her employment free of Gender discrimination with Defendants and did not do anything to merit discharge or discipline. Nevertheless, Defendants denied Plaintiff the benefit of employment, including all favorable conditions and emoluments thereof, because of hostility to Plaintiff based on her gender (female) and without any non-discriminatory basis thereof. Other employees who were male were not subject to the same acts of discrimination.

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

37. 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 her detriment.

FIFTH CAUSE OF ACTION
(Retaliation – Against All Defendants)

38. Plaintiff repeats, reiterates and re-alleges each and every allegation set forth in paragraphs numbered "1" through "23" as if set forth more fully and at length herein.

39. 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 *et seq.*, 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.

40. Plaintiff complained to Defendants about the mistreatment based on gender and sexual harassment inflicted upon her by employees, her immediate supervisors and managers of

Defendants. In response, Plaintiff was subjected to additional mistreatment, all with the knowledge and approval of Defendants for the purpose of punishing her for attempting to assert her rights.

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

42. 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 her detriment.

PRAYER FOR RELIEF

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

1. 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 her 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.

2. 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 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 investigating 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.

3. 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, attorney's 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.

4. 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, attorney's 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.

5. 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, attorney's 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.

6. 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, attorney's 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.

7. 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, attorney's 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.

Dated: New York, NY
September 24, 2020

EISENBERG & BAUM, LLP

By: /s/ Eric M. Baum, Esq.

Eric M. Baum, Esq.
24 Union Square East, 4th Fl.
New York, NY 10003
(212) 353-8700
Attorneys for Plaintiff Erika Olson

VERIFICATION

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

The undersigned, ERIKA OLSON, shows:

Deponent is ERIKA OLSON, Plaintiff in the above-entitled action. Deponent has read the foregoing Verified Complaint dated September 24, 2020, 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 24, 2020



ERIKA OLSON

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

On the **24th day of September** in the year 2020, before me by audio-video conference, the undersigned, personally appeared ERIKA OLSON, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, she executed the instrument.

Pursuant to NY Executive Order [Andrew M. Cuomo] No. 202.7 [9 NYCRR 8.202.7, effective March 19 - April 18, 2020], I certify that this notarial act was performed utilizing audio-

individual and me; the (each) individual whose name is subscribed to the within instrument presented valid photo ID to me during the video conference if not personally known to me, affirmatively represented that she is physically situated in the County of Kings, State of New York, and transmitted by fax or electronic means a legible copy of the signed document directly to me on the same date it was signed; and, whereas I may notarize the transmitted copy of the document and transmit the same back to the individual, if I repeat the notarization of the original signed document as of the date of execution then I shall have received such original signed document together with the electronically notarized copy within thirty days after the date of execution.

Yasmine Shreiteh

YASMINE SHREITEH
Notary Public - State of New York
No. 01SH6395610
Qualified in Kings County
My Comm. Expires July 29, 2023

Notary Public State of New York