

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ OCT 14 2009 ★

ADAM WIERCINSKI,

Plaintiff,

v.

MANGIA 57, INC., SASHA MUNIAK a/k/a
SASHA A. MUNIAK a/k/a SASHA T.
MUNIAK, ARTUR ZBOZIEN,
MALGORZATA CYMANOW a/k/a
MARGARET CYMANOW, GRZEGORZ
SAROSIEK, ROBERT BAZGIER, DARIUSZ
MASLANKA

Defendants.

BROOKLYN OFFICE

Civil Action No.:

09 4413
COMPLAINT

JURY TRIAL DEMANDED

GLASSER, J.

J. ORENSTEIN, M.J.

Plaintiff Adam Wiercinski, by his attorney Marina Trubitsky & Associates, PLLC, as for his Complaint against the Defendants herein, on information and belief, allege at all relevant times herein, the following:

(I) PRELIMINARY STATEMENT

1. Adam Wiercinski ("Plaintiff") brings this action pursuant to the New York State Human Rights Law ("NYSHRL"), and the N.Y.C. Admin. Code, seeking redress for among other things Defendants' violating Plaintiff's civil rights as guaranteed by Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000, 1981, 1985, and 1986 et seq, as amended, and the applicable New York State and City civil rights law.
2. Plaintiff alleges herein that Defendants' actions towards the Plaintiff, described below, amount to discrimination, retaliation, and illegal termination.
3. Plaintiff alleges that Defendants Muniak, Cymanow, Zbozen, Maslanks, Bazgier, and Sarosiek acted as the agents of, and with the consent, knowledge, authorization and/or ratification of Defendant Mangia.

(II) JURISDICTION

4. Jurisdiction is conferred upon the Court by 28 U.S.C. §§ 1331, 1343 and 1367, and Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000 et seq, as amended.
5. All conditions precedent to the institution of this suit has been satisfied.

(III) VENUE

6. Venue lies in the Eastern District of New York in that the unlawful actions complained of and the records relevant to such practices are maintained and administered within this district.
7. All conditions precedent to the institution of this suit has been satisfied.

(IV) EXHAUSTION OF ADMINISTRATIVE REMEDIES

8. Plaintiff has fully complied with all the prerequisites to obtain jurisdiction under New York State Human Rights Law and New York City Administrative Code.
9. On or about July 6, 2007, Plaintiff filed a Complaint with the New York State Division of Human Rights (hereinafter "NYSDHR") under case numbers 10119275 and 10125071, which was later duly filed with the New York District office of the United States Equal Employment Opportunity Commission, (hereinafter "EEOC"). This complaint charged religious discrimination and retaliation by his former employer, Mangia LLC, its owner, its managers, and employees.

10. On May 13, 2009 Plaintiff had a hearing before the NYSDHR. During this hearing Plaintiff discontinued his two cases (10119275 and 10125071).
11. On July 13, 2009 Plaintiff's attorney sent a letter to the NYSDHR asking that Plaintiff's two cases be reopened and, in the alternative, that a right to sue letter be provided.
12. On August 12, 2009 NYSDHR replied to the July 13, 2009 letter with a denial of Plaintiff's request to reopen his cases. No right to sue letter has yet been provided. Thus, this complaint was commenced to protect the Plaintiff's legal rights so as to not miss the statute of limitations.

(V) THE PARTIES

13. Plaintiff is a resident of New York, State of New York.
14. Plaintiff was an eligible employee as that term is understood within the NYSHRL and New York City Administrative Code.
15. Mangia's main office is located at 16 East 48th Street, New York, New York 10017. Defendant Mangia ("Mangia"), a private corporation that is located at 16 East 48th Street, New York, New York 10017, is in the business of providing food catering service in New York.
16. Defendant Sasha Munyak is an owner of Defendant Mangia and at all relevant times was a resident of Melville, in the State of New York.
17. Defendant Malgorzata Cymanow is the sister of Sasha Munyak and a manager of Defendant Mangia. At all relevant times she was the Plaintiff's supervisor. She resides in the State of New York.

18. Defendant Artur Zbozen is the nightshift manager at Defendant Mangia 57. He resides in the State of New York.
19. Defendant Dariusz Maslanka is a catering manager at Defendant Mangia 57. He resides in the State of New York.
20. Defendant Grzegorz Sarosiek, at all relevant times, was Plaintiff's co-worker at Defendant Mangia 57. He resides in the State of New York
21. Defendant Robert Bazgier, at all relevant times, was Plaintiff's co-worker at Defendant Mangia 57. He resides in the State of New York.
22. Upon information and belief Defendant Mangia is an "employer" within the meaning of 42 U.S.C. §2000 et seq, and the applicable New York State and City civil rights law, employing more than 15 individuals, which presently does business in the State of New York.
23. Upon information and belief, Defendant Mangia was and is a covered employer as that term is understood within the New York Executive Law s. 292.5., and the New York City Administrative Code.

(VI) STATEMENT OF FACTS

Background

24. The basis of compensation of food caterers at Defendant Mangia is a combination of an hourly rate (currently \$4.60) and a daily tip. Manager in charge of a shift pays the daily tip to food caterers at the end of the shift/workday. Amount of the daily tip differs between caterers and is based on a total dollar amount of orders a caterer handles during his or her shift/workday. The larger the dollar amount of each

individual order, the greater the daily tip is. For example, a catering order of \$100 includes a 10% tip for Mangia's caterer assigned to handle the order.

25. A manager in charge of a shift assigns catering orders to caterers on that shift. The manager determines who gets to handle larger or smaller orders, which ultimately affects the amount of the caterer's daily tip. If a caterer handles a number of large orders on any given workday, the amount of his or her daily tip can exceed by far the total hourly pay earned on that day. Daily tip is usually the main source of caterers' compensation.

26. Plaintiff was employed by Mangia LLC ("Mangia") as a caterer/deliveryman from 1992 and until 2008.

27. Throughout his employment at Mangia, Plaintiff was discriminated against because he was Jewish. Since, Mangia did not have internal procedures for filing and reviewing employee complaints of discrimination, Plaintiff directed all complaints to his supervisor, Malgorzata Cymanow, a sister of Defendant Sasha Muniak (President of Mangia).

Plaintiff's Heavy Orders

28. From 1992 to October 1998, Plaintiff worked at a branch of Mangia 57, called Mangia 48, located at 16 East 48th Street, New York, NY 10017. On or about 1995, Mr. Wojciech Lipski became an assistant manager to Ivona Brehse who was a shift manager.

29. Mr. Lipski disliked Plaintiff from the start and assigned exclusively small orders to him, thus ensuring that Plaintiff receives meager tips.

30. On or about September 1997, Plaintiff complained to Mr. Lipski about mistreatment he suffered. Mr. Lipski responded by giving Plaintiff about fifty bottles of iced tea to deliver to a client. Mr. Lipski laughed and said "This is your 'big' order, since you complain that you do not get to handle big orders." These bottles were extremely heavy. Plaintiff had to carry them in two bags on his shoulders.
31. Next morning Plaintiff felt excruciating lower back pain and fell on the floor when attempting to rise out of bed. Plaintiff's friend took Plaintiff to Dr. Ted Rusek, a chiropractor located in Queens, New York. Soon after Plaintiff's chiropractor treatment, Plaintiff saw a neurologist at New York Neuro And Rehab Center in Manhattan. Plaintiff had been diagnosed with a central disc herniation at L5-S1
32. Plaintiff continued to receive heavy orders from Mr. Lipski. Due to this discriminatory conduct Plaintiff's back condition worsened and finally in 2005 Plaintiff was diagnosed with left lumbar facet arthropathy and left lumbar radiculopathy. These injuries required a facet joint injection and three sets of lumbar epidural steroid injections performed in June and July of 2005.

Plaintiff's Decrease in Tip Revenue

33. On or about January 1998, Mr. Lipski became manager at Mangia 48, replacing Ivona Brehse.
34. Mr. Lipski assigned only either very heavy or extremely small catering orders to Plaintiff. Plaintiff's daily tips dropped from about \$60 per shift (under Ivona Brehse) to about \$35 (under Mr. Lipski's management) even though Plaintiff's work hours remained unchanged and he was one of the more experienced/senior caterers in the company. On average, Plaintiff's compensation decreased by \$25 per day or \$125 per

week (five work days) translating into \$6,500 a year. This amounted to approximately \$61,750.00 in lost wages over the past nine-and-a-half years (from January 1998 to July 2007).

35. Plaintiff expressed his concern regarding the drop in tip revenues to Mr. Lipski. Mr. Lipski expressly stated that “over my dead body will you be making any money here, you little Jew.”

Plaintiff's Improper Firing from Mangia 48

36. On or about October 1998, upon Plaintiff's return from a pre-approved vacation, Mr. Lipski fired Plaintiff. Plaintiff sought the help of Zindel Zelmanowicz who was Plaintiff's immigration sponsor to the United States and Sasha Muniak's business partner and investor in Mangia. Plaintiff was re-hired and assigned to work at Mangia's branch on Wall Street.

37. At the time Dariusz Maslanka was the manager of the Wall Street branch. He also assigned only small orders to Plaintiff which resulted in small tips.

38. On or about September 1999, in the hopes of increasing his revenues, Plaintiff asked Malgorzata Cymanow, with the assistance of Mr. Zelmanowicz, to transfer Plaintiff to Mangia's branch located at 50 West 57th Street, New York, New York 10019 (“Mangia'57”), where Plaintiff was employed until 2008.

Discrimination against Plaintiff at Mangia 57

39. On September 1999, when Plaintiff began work for Mangia '57, Mr. Artur Zbozen (“Mr. Zbozen”) was an evening/night shift manager. While carrying boxes on his first day of work, Plaintiff accidentally bumped into Mr. Zbozen. Mr. Zbozen pushed Plaintiff away and screamed “Did anybody ever fuck you, you mother-fucking Jew?!”

This incident was witnessed by Marian Krajewski who, at the time, also worked at Mangia'57. Plaintiff's co-worker Robert Rybarski told Plaintiff to keep the incident quiet because Mr. Zbozien had enough power to destroy Plaintiff and Plaintiff's family in Poland.

40. From that point on, Plaintiff was called various derogatory names, including "stinking Jew," "dirty Jew," "Jewish pederast", etc. by Mr. Zbozien and co-workers Grzegorz Sarosiek and Robert Bazgier.
41. Plaintiff unsuccessfully complained to Malgorzata Cymanow. She called Plaintiff a "kike". When Mr. Bazgier heard that Plaintiff complained to Ms. Cymanow, he pushed the Plaintiff and called him a "Jewish pederast".
42. Every workday, from September 1999 through the end of October 2005, Mangia employees lined up by a cash register operated by Mr. Zbozen to account for payments received from customers and receive their daily tip. When Plaintiff's turn would come, Mr. Zbozen would often get up and publicly call Plaintiff a "fucking Jew", "little Jew", or "dumb Jew" and state that "I am not dealing with this Jew." He would then ask and ask Mr. Bazgier to deal with the Plaintiff. After Mr. Bazgier would finish dealing with the Plaintiff, Mr. Zbozen returned to the cash register to deal with the rest of the employees.
43. When Mr. Zbozen did actually deal with Plaintiff at the cash register, he would often pay a part of Plaintiff's daily tip in pennies, instead of nickels, dimes, or quarters. If Plaintiff would inquire as to why he was being paid in pennies, Mr. Zbozen would throw the pennies at the Plaintiff.

44. Once the Plaintiff was standing near Mr. Zbozen and Mr. Zbozen asked the Plaintiff to move away "because you stink like a Jew, and I don't want to smell you."
45. Mr. Zbozien often passed gas in front of the Plaintiff. He would also sprinkle salt and say, "This is your Cyclone B, you stupid Jew."
46. Mr. Zbozen warned Plaintiff's co-workers, including Marian Krajewski and Jaroslaw Ubowski, not to be friendly with Plaintiff. Mr. Zbozen said that if they continue to be friendly with the Plaintiff, Mr. Zbozen would treat them as he treats the Plaintiff. Mr. Ubowski asked the Plaintiff not to speak to him in front of Mr. Zbozen, because Mr. Zbozen warned him not to communicate with Plaintiff or else Mr. Zbozen would make sure that he made no money at Mangia.
47. In 2004 Plaintiff confronted Mr. Zbozen regarding his anti-Semitic behavior. Mr. Zbozen told Plaintiff that he was fired. Plaintiff saw Malgorzata Cymanow the next day and told her that if she took no action regarding Mr. Zbozen's behavior, Plaintiff would start a legal action. Ms. Cymanow reinstated Plaintiff and transferred Mr. Zbozen to Mangia' branch on Wall Street for two weeks.
48. However, after only two weeks, Mr. Zbozen returned to Mangia'57 and his conduct of discrimination against the Plaintiff resumed, undeterred, to the full extent.
49. From 1999 through the end of October 2005, Mr. Zbozen deliberately gave Plaintiff only small or heavy orders with low tips. These heavy orders contributed to the deterioration of Plaintiff's back condition described above. Plaintiff also suffered from bouts of depression, anxiety, and insomnia due to Mr. Zbozen's constant humiliation.

Switch Away from the Night Shift Due to Zbozen's Harassment

50. On or about October of 2005, as a result of Mr. Zbozien's continuous discriminatory acts, Plaintiff was forced to ask Malgorzata Cymanow to remove Plaintiff from the night shift so as to avoid Mr. Zbozien.
51. As a result, Plaintiff's work hours at Mangia's dropped from eleven hours per day to five hours per day. Consequently, Plaintiff's official weekly compensation declined from \$159 per week to \$75 per week, and has remained unchanged until Plaintiff left Mangia. Accordingly, Plaintiff's official compensation decreased by \$84 per week or \$4,368 a year, and amounted to approximately \$7,308 in lost wages, as of the week of June 25, 2007.
52. The anti-Semitic incidents did not stop. From October 2005 to February 2007, on a daily basis, Plaintiff was called "stupid Jew," "stinking Jew" or "Jewish pederast" by Robert Bazgier and Grzegorz Sarosiek. Ms. Cymanow continued to call Plaintiff a kike. Mr. Maslanka continued to give Plaintiff only small orders, resulting in very small daily tips.
53. On or about February 9, 2007, while Plaintiff was away handling an order, Malgorzata Cymanow gathered Mangia's employees and told them not to speak to Plaintiff, referring to him as a Jewish traitor. Ms. Cymanow did so because Plaintiff was part of a group of Mangia's employees who contemplated starting a legal action against Mangia on other grounds. This episode was witnessed by Plaintiff's co-worker Zbigniew Zarnowski.
54. When Plaintiff returned, his co-workers avoided him and would not speak to him.
55. On or about February 13, 2007, the incidents of discrimination stopped when an attorney wrote a letter to Mangia's attorneys.

Retaliation for Filing a Complaint with the NYSDHR

56. On or about July 2007, Petitioner filed a complaint with the New York State Division of Human Rights, captioned Adam Wiercinski v. Mangia LLC, Case No. 10119275, alleging discrimination by Mangia's managers and employees on the basis of Plaintiff's religion. On or about January 28, 2008, the Division determined that probable cause exists in that matter, and a public hearing was scheduled.
57. In November 2007, while NYSDHR investigated Plaintiff's complaint, Plaintiff informed Malgorzata Cymanow and Dariusz Maslanka, catering manager, that Plaintiff was planning to take a leave of absence to go to his home country, Poland, for approximately two months to take care of his ailing mother, who just turned 99. Mr. Maslanka told Plaintiff that he could not guarantee him his job upon return. He added that in Plaintiff's absence he would have to hire a replacement. Ms. Cymanow told Plaintiff the same.
58. In the past, in or about 2002, when Plaintiff took an extended leave of absence also to go to Poland for the same reason, upon return he had no difficulty regaining his job at Mangia.
59. In November 2007, after Plaintiff's conversations with Mr. Maslanka and Ms. Cymanow, he spoke to Mr. Paavo Cymanow, a director of operations at Mangia, and informed him about Plaintiff's intention to take a leave of absence. Mr. Cymanow also told Plaintiff that he cannot guarantee him a job upon return because allegedly Mangia's employees are only entitled to a two-week leave per year. When Plaintiff said, in response, that Mangia's employees routinely take much longer leaves of absence, Mr. Cymanow told Plaintiff that Plaintiff had some nerve to sue Sasha

Muniak, Mangia's president, referring to Plaintiff's complaint with the NYSDHR, and added "fuck off" as he closed the door to his office in front of the Plaintiff.

60. Upon return from Poland, on or about February 21, 2008, Plaintiff went to Mangia to see Mr. Maslanka and requested that he be reinstated. Mr. Maslanka took Plaintiff's phone number and told Plaintiff that he was going to think about it. Approximately two days later, Mr. Maslanka called Plaintiff and told him that, based on an "order" directly from Mr. Sasha Muniak, Mangia instituted a hiring freeze in an effort to reduce Mangia's overall workforce. Accordingly, Mr. Maslanka told Plaintiff that nobody has been hired or re-hired since Plaintiff left for Poland. In response to Plaintiff's question as to whether he hired a replacement while Plaintiff was away, he said that he did not. Plaintiff told Mr. Maslanka that Plaintiff's colleague, Mr. Tomasz Kupczyk, also took an extended leave of absence around the same time Plaintiff did and he was reinstated upon return. To this, Mr. Maslanka responded saying that Mr. Kupczyk no longer works at Mangia.

61. Subsequently, Plaintiff's former co-worker at Mangia -- who still works there and who requested anonymity for the purposes of this complaint¹ for fear of retaliation by Mangia -- informed Plaintiff that in January 2008, Mr. Kupczyk was actually reinstated upon return and shortly thereafter left Mangia's employ when he found another position. Additionally, the same co-worker informed Plaintiff that on or about January 10, 2008, Mr. Tarak Ghosal, Mangia's employee, took an extended leave of absence to go to India and upon return, on or about March 5, 2008, was reinstated by Mangia

¹ The name of this and other witnesses will be disclosed to the Division of Human Rights, upon request, for the purposes of investigation and verification of the facts alleged in this complaint.

62. Another former colleague of Plaintiff's, who still works at Mangia and who at this time wants to remain anonymous also for fear of retaliation, informed Plaintiff that the following individuals were hired while Plaintiff was away, contrary to Mr. Maslanka's assertion. They are: Mohamad Nazrul Islam (hired in mid December 2007), Tomasz Dziadlowicz (hired on or about January 20, 2008), Lukasz Balcer (hired on or about January 10, 2008). All were hired for the same position as Plaintiff. Additionally, Volodymyr Spetsuk was hired by Mangia at the end of February 2008 for the same position. Uttam Isvaz was hired by Mangia in the middle of March 2008 for the same position as Plaintiff.
63. To date, Plaintiff has not been reinstated at Mangia. As demonstrated above, Mangia and its managers refused to reinstate Plaintiff solely because Plaintiff filed a Complaint with the Division of Human Rights. Plaintiff was one of the most experienced caterers/deliverymen at Mangia, having worked there for twenty four years. Additionally, contrary to Mangia's representations, there is no hiring freeze at Mangia since employees have been hired for the same position as Plaintiff's since December 2007.

(VII) LEGAL ARGUMENTS

First Cause of Action: Hostile Work Environment Under Title VII of the Civil Rights Act of 1964, as amended

64. Plaintiff repeats and realleges the allegations set forth above with the same force and effect as if fully set forth herein.
65. In violation of Plaintiff's rights under Title VII, Defendants' conduct did unfairly subject Plaintiff to a hostile work environment.

66. As herein described, Defendants acted with malice or with reckless disregard for Plaintiff's rights, proximately causing Plaintiff to suffer mental anguish, conscious pain and suffering, emotional distress, and the loss of income and other related benefits, thereby entitling Plaintiff to an award of compensatory and punitive damages and an award of reasonable attorney's fees.

Second Cause of Action: Hostile Work Environment Under §290 et seq of the New York Executive Law

67. Plaintiff repeats and realleges the allegations set forth above with the same force and effect as if fully set forth herein.

68. Defendants discriminated against plaintiff in the terms and conditions of his employment on the basis of his race, nationality, ethnicity, religion and age in violation of the State Human Rights Law, by creating a hostile work environment, treating him in a disparate manner, retaliating against him for having complained about Defendants unlawful discriminatory conduct, and terminating his employment.

69. The actions of the Individual Defendants are imputed to their employer.

70. The Individual Defendants and each one of them participated in the discriminatory practices and/or supervised discriminatory practices including creating or assisting in the creation of or permitting to exist a hostile work environment, the disciplining of plaintiff in a discriminatory manner, and/or. acted to aid in the termination of Plaintiff for legally impermissible reasons, and therefore aided and abetted in the discrimination against Plaintiff and otherwise violated the State Human Rights Law.

71. The Individual Defendants, and each of them, aided and abetted said discriminatory conduct and/or incited, compelled or coerced the doing of any of the acts forbidden under the State Human Rights Law, or to attempted to do so.

72. In addition, the Defendants had at all relevant times had the power to hire and fire employees of Mangia 57. As a result, they are liable for their discriminatory conduct as employers under the State Human Rights Law.

73. As a direct and proximate cause of Defendants' conduct, Plaintiff has lost wages, promotional opportunities, bonuses, tips, and other benefits and compensation, and has suffered and continues to suffer mental anguish, emotional distress, humiliation and other compensable injuries as a result of Defendants' discriminatory and retaliatory practices. Defendants' conduct was willful, outrageous, shocking, and evinced a lack of any good faith efforts to control or discourage such conduct.

74. As herein described, Defendants acted with malice or with reckless disregard for Plaintiff's rights, proximately causing Plaintiff mental anguish, conscious pain and suffering, emotional distress, and the loss of income and other related benefits, thereby entitling Plaintiff to an award of compensatory and punitive damages and an award of reasonable attorney's fees.

Third Cause of Action: Religion/National Origin Discrimination Under Title VII of the Civil Rights Act of 1964, as amended

75. Plaintiff repeats and realleges the allegations set forth above with the same force and effect as if fully set forth herein.

76. In violation of Plaintiff's rights under Title VII, Defendants' conduct was such that Plaintiff was disparately treated based on his national origin as a Polish Jew and his religious beliefs (Jewish).

77. As herein described, Defendants acted with malice or with reckless disregard for Plaintiff's rights, proximately causing Plaintiff mental anguish, conscious pain and suffering, emotional distress, and the loss of income and other related benefits, thereby entitling Plaintiff to an award of compensatory and punitive damages and an award of reasonable attorney's fees.

Fourth Cause of Action: Creed/National Origin Discrimination Under §290 et seq of the New York Executive Law

78. Plaintiff repeats and realleges the allegations set forth above with the same force and effect as if fully set forth herein.

79. In violation of Plaintiff's rights under the New York State Human Rights Law, Defendants' conduct was such that Plaintiff was disparately treated based on his national origin (Polish Jew) and his creed (Jewish).

80. As herein described, Defendants' acted with malice or with reckless disregard for Plaintiff's rights, proximately causing Plaintiff mental anguish, conscious pain and suffering, emotional distress, and the loss of income and other related benefits, thereby entitling Plaintiff to an award of compensatory and punitive damages and an award of reasonable attorney's fees.

Fifth Cause of Action: Retaliation under Title VII of the Civil Rights Act of 1964, as amended

81. Plaintiff repeats and realleges the allegations set forth above with the same force and effect as if fully set forth herein.

82. In violation of Title VII of the Civil Rights Act of 1964, as amended, Defendants did discriminate against Plaintiff by retaliating against said Plaintiff for opposing the discriminatory acts alleged herein, justifying an award of back pay, front pay, compensatory damages, unpaid vacation pay, reasonable attorney's fees, costs and expenses.

Sixth Cause of Action: Retaliation Under §296(7) of the New York Executive Law

83. Plaintiff repeats and realleges the allegations set forth above with the same force and effect as if fully set forth herein.

84. In violation of §296(7) of the New York State Human Rights Law, Defendants did discriminate against Plaintiff by retaliating against said Plaintiff for opposing the discriminatory acts alleged herein, justifying an award of back pay, front pay, compensatory damages, unpaid vacation pay, reasonable attorney's fees, costs and expenses.

85. In violation of §296(6) of the New York State Human Rights Law, Defendants did aid, abet, incite, compel and/or coerce the individual Defendant in engaging in the unlawful discrimination alleged herein, and/or attempting to aid, abet, incite, compel, and/or coerce the individual Defendant in engaging in unlawful discrimination herein, justifying an award of back pay, front pay, compensatory damages, unpaid vacation pay, reasonable attorney's fees, costs and expenses.

Seventh Cause of Action: Retaliation Under §8-107(6) of the New York City Administrative Code

86. Plaintiff repeats and realleges the allegations set forth above with the same force and effect as if fully set forth herein.
87. In violation of §8-107(6) of the Administrative Code of New York City, Defendants did aid, abet, incite, compel and/or coerce the unlawful discrimination alleged herein, and/or attempt to aid, abet, incite, compel, and/or coerce the unlawful discrimination alleged herein.
88. In violation of §8-107(19) of the Administrative Code of New York City, Defendants did discriminate against Plaintiff by coercing, intimidating, threatening, or interfering with Plaintiff's exercise and/or enjoyment of his civil rights, and/or attempting to coerce, intimidate, threaten, or interfere with Plaintiff's exercise and/or enjoyment of his civil rights as alleged herein.
89. Each of the said discriminatory actions of the individual Defendants were done willfully, maliciously and with reckless disregard to Plaintiff's statutory rights, warranting punitive damages in a an amount not less than One Million Dollars.
90. As a proximate result of Defendants' joint and several actions, Plaintiffs have suffered mental anguish, and injury to their persons, reputation, and well-being, loss of income, loss of their statutory rights and other compensatory damages in an amount not less than One Million Dollars.

Eight Cause of Action: Deprivation of Rights under 42 U.S.C. § 1981

91. Plaintiff repeats and realleges the allegations set forth above with the same force and effect as if fully set forth herein.

92. Defendants' discriminatory and retaliatory actions against Plaintiff, discriminatory application of its disciplinary procedures with respect to Plaintiff, creation of a hostile work environment against Plaintiff, and termination of Plaintiff's employment by Defendants on account of his ancestry, and ethnicity violated the Civil Rights Act of 1866 (42 U.S.C. § 1981) as amended by the Civil Rights Restoration Act of 1991 (Publ. Law No. 102-406.)

93. Each of the individual Defendants were involved and took part in the discrimination and retaliation against the Plaintiff.

94. As a proximate cause of Defendants' conduct and discriminatory action, Plaintiff has suffered injury, harm and damages, and has had his contractual rights respecting his existing and future employment impaired, interfered with and/or terminated and Defendants have otherwise impaired and interfered with Plaintiff's right to make and enforce contracts including the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

95. As a proximate cause of Defendants' actions, Plaintiff has suffered and continues to suffer severe and lasting embarrassment, humiliation and anguish, and other incidental and consequential damages and expenses.

96. Defendants' conduct is shocking, outrageous, and malicious, exceeds all bounds of acceptable behavior and is intolerable in a civilized society, and was done with conscious disregard for Plaintiff's civil rights, thereby entitling Plaintiff to an award of punitive damages.

Ninth Cause of Action: Conspiracy to Deprive Rights under 42 U.S.C. § 1985

97. Plaintiff repeats and realleges each and every allegation contained in the paragraphs set forth above with the same force and effect as if set forth herein.
98. Defendants engaged in a conspiracy for the purpose of depriving plaintiff of equal protection of the laws or of equal privileges or immunities under the law, the right of free speech and the freedom of religion in violation of 42 U.S.C. § 1985.
99. Defendants acted in furtherance of a conspiracy to deprive Plaintiff of the equal protections of the law and the right to free speech and right to the free exercise of his religion on account of his race, ancestry, and ethnicity.
100. Said defendants acted in concert to try and preclude Plaintiff from engaging in the free exercise of his constitutional rights. The Defendants then further acted in furtherance of the conspiracy.
101. Plaintiff was and continues to be injured in his person and property and deprived of the rights of a citizen of the United States as a result of these actions.
102. Defendants acted with class-based discriminatory animus on account of Plaintiff being or being perceived to be of Polish Jewish ancestry and descent.
103. The Defendants collectively acted to directly or indirectly deprive Plaintiff of the equal protection of the laws, and/or of equal privileges and immunities under the laws on account of race, ancestry, ethnicity and national origin.
104. One or more of the said Defendants that engaged in said conspiracy, did or caused to be done an act in furtherance of the object of such conspiracy by seeking to keep Plaintiff from continuing in gainful employment, causing or participating in discriminatory discipline, retaliating against Plaintiff and acting to exclude persons

of "Jewish" descent from being employed and making a living, and engaging in other conduct in furtherance of the conspiracy, thereby depriving Plaintiff of person and property,' depriving him the right to engage in and pursue his livelihood, and depriving them of having and exercising rights or privileges as a citizen of the United States.

105. Plaintiff has been denied employment opportunities and has suffered and continues to suffer mental anguish, emotional distress, humiliation and other compensable injuries as a result of Defendants' discriminatory practices. Defendants' conduct was and continues to be willful, outrageous, shocking, and evinced a lack of any good faith efforts to control or discourage such conduct thereby entitling plaintiff to punitive damages.

Tenth Cause of Action: Neglect or Refusal to Prevent Deprivation of Rights under 42 U.S.C. 1986

106. Plaintiff repeats and realleges each and every allegation contained in the paragraphs set forth above with the same force and effect as if set forth herein.
107. Defendants, having knowledge that the wrongs conspired to for the purpose of depriving plaintiff of equal protection of the laws or of equal privileges or immunities under the law, were about to be committed, and having power to prevent or aid in preventing the commission of the same, neglected or refused to do so in violation of 42 U.S.C. § 1986.
108. Plaintiff has been denied employment, has suffered and continues to suffer mental anguish, emotional distress, humiliation and other compensable injuries as a result of defendants' unlawful conduct. Defendants' conduct was and continues to be

willful, outrageous, shocking, and evinced a lack of any good faith efforts to control or discourage such conduct thereby entitling Plaintiffs to punitive damages.

Eleventh Cause of Action: Violation of New York City Human Rights Law, NYC Admin. Cod § 8-101 et. seq.

109. Plaintiff repeats and re-alleges the allegations set forth above with the same force and effect as if fully set forth herein.
110. Defendants discriminated against Plaintiff in the terms and conditions of his employment on the basis of his race, nationality, ethnicity, religion and age in violation of the City Human Rights Law, by creating a hostile work environment, treating him in a disparate manner, retaliating against him for having complained about Defendants unlawful discriminatory conduct, and terminating his employment.
111. The actions of the Individual Defendants are imputed to their employer.
112. The Individual Defendants and each of them participated in the conduct giving rise to Plaintiff's claim of discrimination, acted as a supervisor or manager, participated in the discriminatory practices including creating or assisting in the creation of or permitting to exist a hostile work environment, the disciplining of plaintiff in a discriminatory manner, and/or acted to aid in the termination of Plaintiff for legally impermissible reasons, and therefore aided and abetted in the discrimination against Plaintiff and otherwise violated the City Human Rights Law.
113. The Individual Defendants, and each of them, aided and abetted said discriminatory conduct and/or incited, compelled or coerced the doing of any of the acts forbidden under the City Human Rights Law, or attempted to do so.

114. In addition, the Individual Defendants had at all relevant times had the power to hire and fire employees of Mangia. As a result, they are liable for their discriminatory conduct as employers under the City Human Rights Law.
115. As a direct and proximate cause of Defendants' conduct, Plaintiff has lost wages, promotional opportunities, bonuses, tips, and other benefits and compensation, and has suffered and continues to suffer mental anguish, emotional distress, humiliation and other compensable injuries as a result of Defendants' discriminatory and retaliatory practices.
116. Defendants' conduct was willful, outrageous, shocking, and evinced a lack of any good faith efforts to control or discourage such conduct.
117. Defendants' conduct is shocking, outrageous, and malicious, exceeds all bounds of acceptable behavior and is intolerable in a civilized society, and was done with conscious disregard for Plaintiff's civil rights, thereby entitling Plaintiff to an award of punitive damages.

Twelfth Cause of Action: Unlawful Discharge

118. Plaintiff repeats and re-alleges the allegations set forth above with the same force and effect as if fully set forth herein.
119. The sole reason for Plaintiff's termination was that Plaintiff was of a Jewish ethnicity and faith.

(VIII) PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that this Court enter a judgment against Defendants as follows:

On the First, Third, Fifth Causes of Action:

- Declare that the employment practices complained of by Plaintiff in this complaint are unlawful in that they violate Title VII of the Civil Rights Act of 1964;
- Order Defendants to jointly and severally make Plaintiff whole by compensating her with back pay, front pay, loss of future earnings, lost benefits, unpaid vacation pay, and all other necessary monetary and non-monetary benefits, all in amounts to be proved at trial with interest, from date of injury pursuant to Title VII of the Civil Rights Act of 1964 for each statutory violation found;
- order each Defendant to jointly and severally pay each Plaintiff compensatory damages in an amount not less than One Million Dollars, with interest from the date of injury, pursuant to Title VII of the Civil Rights Act of 1964 for each violation found;
- order each Defendant to jointly and severally pay each of the Plaintiff's litigation costs, expenses and attorneys' fees as provided by Title VII of the Civil Rights Act of 1964 for each violation found;
- order each Defendant to pay jointly and severally punitive damages to each Plaintiff in the amount not less than One Million Dollars for each violation found under Title VII of the Civil Rights Act of 1964;

On the Second, Fourth, Fifth and Sixth Causes of Action:

- Declare that the employment practices complained of by Plaintiff in this complaint are unlawful in that they violate Article 15 of the Executive Law of the State of New York;
- order Defendants to jointly and severally make Plaintiff whole by compensating her with back pay, front pay, loss of future earnings, lost benefits, unpaid vacation pay, and all other necessary monetary and non-monetary benefits, all in amounts to be proved at trial with interest, from date of injury pursuant to Article 15 of the Executive Law of the State of New York for each statutory violation found;
- order each Defendant to jointly and severally pay each Plaintiff compensatory damages in an amount not less than One Million Dollars, with interest from the date of injury, pursuant to Article 15 of the Executive Law of the State of New York for each violation found;
- order each Defendant to jointly and severally pay each of the Plaintiff's litigation costs, expenses and attorneys' fees as provided by Article 15 of the Executive Law of the State of New York for each violation found under said Article; and
- order each Defendant to pay jointly and severally punitive damages to each Plaintiff in the amount not less than One Million Dollars for each violation found under said Article;

On the Seventh and Eleventh Causes of Action:

- declare that the employment practices complained of by Plaintiff in this Complaint are unlawful in that they violate §§8-107 and 8-101 et seq., of Administrative Code of New York;
- order each of the Defendants to jointly and severally make Plaintiff whole by compensating her with back pay, front pay, and loss of future earnings, lost benefits, unpaid vacation pay, and other monetary and nonmonetary benefits, including other special damages, all in amounts to be proved at trial with interest from date of injury pursuant to §§8-107 and 8-101 et seq., of Administrative Code of New York for each statutory violation found thereunder;
- order each of the Defendants to jointly and severally pay each Plaintiff compensatory damages in the amount not less than One Million Dollars, with interest from the date of injury, pursuant to §§8-107 and 8-101 et seq. of Administrative Code of New York for each violation found thereunder;
- order each Defendant to jointly and severally pay each of the Plaintiff's litigation costs, expenses and attorneys' fees as provided §§8-107 et seq. of Administrative Code of New York for each violation found thereunder; and
- order each Defendant to pay jointly and severally punitive damages to each Plaintiff in the amount of One Million Dollars pursuant to §§8-107 and 8-101 et seq. of Administrative Code of New York, for each violation found thereunder; and

On the Eight, Ninth, and Tenth Causes of Action

- declare that the employment practices complained of by Plaintiff in this Complaint are unlawful in that they violate 42 U.S.C. 1981, 42 U.S.C. 1985, and 42 U.S.C. 1986;
- order each of the Defendants to jointly and severally make Plaintiff whole by compensating her with back pay, front pay, and loss of future earnings, lost benefits, unpaid vacation pay, and other monetary and nonmonetary benefits, including other special damages, all in amounts to be proved at trial with interest from date of injury pursuant to 42 U.S.C. 1981, 42 U.S.C. 1985, and 42 U.S.C. 1986, for each statutory violation found thereunder;
- order each of the Defendants to jointly and severally pay each Plaintiff compensatory damages in the amount not less than One Million Dollars, with interest from the date of injury, pursuant to 42 U.S.C. 1981, 42 U.S.C. 1985, and 42 U.S.C. 1986, for each violation found thereunder;
- order each Defendant to jointly and severally pay each of the Plaintiff's litigation costs, expenses and attorneys' fees as provided 42 U.S.C. 1981, 42 U.S.C. 1985, and 42 U.S.C. 1986, for each violation found thereunder; and
- order each Defendant to pay jointly and severally punitive damages to each Plaintiff in the amount of One Million Dollars pursuant to 42 U.S.C. 1981, 42 U.S.C. 1985, and 42 U.S.C. 1986, for each violation found thereunder; and

Granting such other and further relief as the Court deems necessary, just and proper.

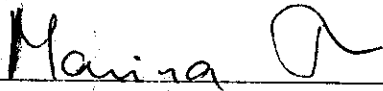
(VIII) DEMAND FOR TRIAL BY JURY

Pursuant to applicable state law, Plaintiffs demand a trial by jury in this action.

Dated: New York, New York

October 14, 2009

Respectfully submitted,



Marina Trubitsky & Associates, PLLC, Esq.

Attorney for the Plaintiff

11 Broadway, Ste. 861

New York, New York 10004

Tel.: (212) 732 7707

Fax.: (212) 732 7708

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

FILED

IN CLERK'S OFFICE

DISTRICT COURT E.D.N.Y.

OCT 14 2009

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers required by law. Except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
Adam Wiercinski
(b) County of Residence of First Listed Plaintiff United States
(EXCEPT IN U.S. PLAINTIFF CASES)
09 44 13
(c) Attorney's (Firm Name, Address, and Telephone Number)
Marina Trubitsky & Associates, PLLC

DEFENDANTS
Mangia 57, Inc., et al.
BROOKLYN OFFICE
County of Residence of First Listed Defendant United States
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES USE THE LOCATION OF THE LAND INVOLVED
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Foreign Nation
GLASSER, J.
J. ORENSTEIN, M.J.

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. 1986, 42 U.S.C. 1985, 42 U.S.C. 1981, Civil Rights Act 1964
Brief description of cause:
Discrimination based on religion, ethnicity, and creed

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$
CHECK YES only if demanded in complaint
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD
Marina Trubitsky

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE ILG MAG JUDGE JO

09-4413

ARBITRATION CERTIFICATION

I, Marina Trubitsky, counsel for Adam Wiercinski do hereby certify pursuant to the Local Arbitration Rule 83.10 that to the best of my knowledge and belief the damages recoverable in the above captioned civil action exceed the sum of \$150,000 exclusive of interest and costs. Relief other than monetary damages is sought.

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

Please refer to NY-E Division of Business Rule 50.1(d)(2)

1.) Is the civil action being filed in the Eastern District of New York removed from a New York State court located in Nassau or Suffolk County: no

2.) If you answered "no" above:

a.) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? no

b.) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County?

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes [checked]

No

Are you currently the subject of any disciplinary action(s) in this or any other state or federal court?

Yes (If yes, please explain)

No [checked]

Please provide your E-MAIL Address and bar code below. Your bar code consists of the initials of your first and last name and the last four digits of your social security number or any other four digit number registered by the attorney with the Clerk of Court.

(This information must be provided pursuant to local rule 11.1(b) of the civil rules).

ATTORNEY BAR CODE:

E-MAIL Address: marina.trubitsky@lawcontact.com

I consent to the use of electronic filing procedures adopted by the Court in Administrative Order No. 97-12, "In re Electronic Filing Procedures(EFP)", and consent to the electronic service of all papers.

Signature: Marina [handwritten signature]