

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SAMUEL FEILER,

Plaintiff,

Civil Action No.:

-against-

VERIFIED COMPLAINT

WAPPINGERS CENTRAL SCHOOL DISTRICT;
CATHERINE DEFAZIO as Head Custodian of Van
Wyck Junior High School and Individually,
THOMAS GIORNO as Head Custodian of Van
Wyck Junior High School and Individually,
JOANNE SEREDA as Director of Human
Resources/Title IX Coordinator and Individually, and
RONALD BROAS as Director of Facilities and
Operations and Individually, for aider and abetter
liability,

Electronically Filed

Defendants.

-----X
Plaintiff Samuel Feiler, by and through his attorneys, Jacobowitz & Gubits, LLP, hereby
complains of the Defendants as follows:

THE PARTIES

1. At all relevant times herein, Plaintiff maintained a residence in the City of Poughkeepsie, County of Dutchess, State of New York.
2. Upon information and belief, Defendant Wappingers Central School District (hereinafter the "District") is an employer, as that term is defined in Title VII of the Civil Rights Act of 1964, with fifteen (15) or more employees.
3. Upon information and belief, the District's principal headquarters are located at 25 Corporate Park Drive, Hopewell Junction, Dutchess County, New York.

4. At all times relevant herein, the acts and occurrences complained of herein took place at Van Wyck Junior High School (the "Junior High School"), 6 Hillside Lake Road, Wappingers Falls, Dutchess County, New York 12590, which Junior High School is part of the District.

5. At all relevant times herein, except where otherwise stated, Plaintiff's direct supervisors at the District were Defendants Catherine DeFazio and Thomas Giorno, who each held the position of "Head Custodian" during the relevant time period.

6. At all times relevant herein, Defendant Joanne Sereda was the District's Director of Human Resources and Title IX Coordinator.

7. At all times relevant herein, Defendant Ronald Broas was the Director of Facilities and Operations within the District.

8. Upon information and belief, Defendant Catherine DeFazio (hereinafter "Defendant DeFazio" or "DeFazio") is a resident of the Town of Wappingers, County of Dutchess, State of New York.

9. Upon information and belief, Defendant Thomas Giorno (hereinafter "Defendant Giorno" or "Giorno") is a resident of Wappingers Falls, County of Dutchess, State of New York.

10. Upon information and belief, Defendant Joanne Sereda (hereinafter "Defendant Sereda" or "Sereda") is a resident of the City of Beacon, County of Dutchess, State of New York.

11. Upon information and belief, Defendant Ronald Broas (hereinafter "Defendant Broas" or "Broas") is a resident of the City of Middletown, County of Orange, State of New York.

12. Defendants DeFazio, Giorno, Sereda, Broas, and the District are collectively referred to herein as the “Defendants.”

JURISDICTION AND VENUE

13. Jurisdiction is appropriate under 28 USC §1331 as this action pertains to violations of Federal Law, to wit, Title VII of the Civil Rights Act of 1964 located at 42 USC § 2000e *et. seq.*, and Section 1983 of the Civil Rights Act located at 42 USC §1983, as well as violations of New York State Human Rights Law §296 *et seq.*, which can be heard by this Court pursuant to 28 USC §1367.

14. Venue is based on the place of business of the Defendants and the place where the acts and occurrences complained of herein occurred, and is appropriate in this District pursuant to 28 USC §§ 112(b) & 1391(b).

STATEMENT OF FACTS

Employment with the District

15. Plaintiff is a Caucasian male, 63 years of age.

16. Plaintiff was initially hired by the District in the year 2007 as a part time bus driver.

17. On or around July 27, 2011, Plaintiff was interviewed and hired by Defendant Ronald Broas, Jeffrey Estremera, and Ronald Wiejaczka, to be a full time, third shift custodian at the Junior High School, which is one of the District’s schools.

18. Plaintiff has remained employed by the District since that time but was recently promoted in March 2015, to the position of Head Custodian. Upon information and belief, this promotion was effectuated in an effort to avoid liability on the present claims and was only done

after Plaintiff complained in writing that he was qualified for the job but not given the position as a form of retaliation.

19. While Plaintiff was employed as the third shift custodian he was paid a salary of approximately \$52,000.00 per year, with the opportunity for additional pay for overtime hours worked.

20. From Plaintiff's initial promotion to third shift custodian in 2011 up to approximately July 2013, Defendant DeFazio was his immediate superior with the title of Head Custodian.

21. From approximately July 2013 through approximately March 2015, Defendant Giorno was Plaintiff's immediate superior with the title of Head Custodian.

Sexual Harassment and Hostile Work Environment

22. Within several weeks of starting work at Van Wyck Junior High School, Plaintiff started being sexually harassed by his supervisor, Defendant DeFazio.

23. The instances of sexual harassment are too numerous to list here, but the most egregious will be plead with specificity.

24. In or around September of 2011, the custodial department was gathered to take a group photo for the yearbook. At that time, Defendant DeFazio grabbed Plaintiff's buttocks. Plaintiff was shocked and embarrassed by the incident. Plaintiff asked Defendant DeFazio "What are you doing?!" Defendant DeFazio responded "I wanted to see if you would yell."

25. On the same date and a few minutes later, after Defendant DeFazio saw the expression of shock and embarrassment on Plaintiff's face, she grabbed his buttocks again. Plaintiff, who was new to the position of custodian, interpreted the message from Defendant DeFazio to be "I am the boss here and will grab your buttocks whenever I want to."

26. The yearbook picture that was taken that day shows Plaintiff's shocked facial expression and Defendant DiFazio's left arm can be seen behind Plaintiff's back.

27. In addition to the two (2) incidents where Defendant DeFazio grabbed Plaintiff's buttocks, Plaintiff regularly witnessed Defendant DeFazio inappropriately touching his co-workers within the custodial/maintenance department on a weekly and sometimes daily basis.

28. For example, in or around August or September of 2011, Plaintiff witnessed Defendant DeFazio grab the buttocks of his co-worker Michael Murphy. Defendant DeFazio's grabbing of Mr. Murphy's buttocks was unsolicited and unwelcome. Mr. Murphy appeared shocked and upset by the incident. Plaintiff was also shocked and upset by witnessing the incident.

29. When Plaintiff witnessed DeFazio grabbing Mr. Murphy's buttocks on that date, DeFazio noticed Plaintiff's shocked and upset facial expression and stated to him that "this is a shitty job, so we have to have fun at it."

30. During the time that Defendant DeFazio was Plaintiff's superior, Plaintiff witnessed DeFazio grab and pinch his co-workers' buttocks on a regular basis, but most often he witnessed DeFazio grabbing and pinching his co-worker Michael Murphy's buttocks which occurred on at least a dozen occasions.

31. In addition to DeFazio grabbing Plaintiff's and his coworkers' buttocks (which would regularly occur in Plaintiff's presence), Plaintiff was constantly subjected to DeFazio's inappropriate sexual remarks at the workplace during work hours. These remarks were directed to Plaintiff as well as his co-workers.

32. For example, in or around the summer of 2012, Defendant DeFazio stated to Plaintiff's co-worker John Galloway, who was also subordinate to Defendant DeFazio,

something to the effect of: "Did your wife ever use a vibrator on you?" This statement was made in Plaintiff's presence and made him feel extremely uncomfortable.

33. Another example is that, on several occasions, Plaintiff witnessed Defendant DeFazio make a symbol with her hands towards him and his co-workers which resembled a diamond shape. Defendant DeFazio explained or made it known to the custodial/maintenance department that this symbol meant "vagina." Defendant DeFazio would, at the workplace, during business hours, and in Plaintiff's presence, make the "vagina" symbol towards Plaintiff and his male co-workers and would say: "this is what rules."

34. Yet another example of Defendant DeFazio's creation of a sexually hostile work environment is when DeFazio hung a birthday card depicting a near-naked man in a sexually provocative pose in the custodian's office for all to see. This card was visible to Plaintiff and the other male custodians and remained hanging for at least one year.

35. Defendant DeFazio made sexual references and/or sexually explicit jokes in Plaintiff's presence and/or directed at him at least several dozen times between July of 2011 and approximately February 2013. Plaintiff regularly asked his supervisor to stop making sexual references and/or sexually explicit jokes in his presence but DeFazio would not stop.

36. DeFazio's inappropriate touching of, and sexually explicit and suggestive comments towards, Plaintiff and his co-workers were part of a regularly occurring pattern of conduct that caused Plaintiff and other employees of the custodial/maintenance department substantial embarrassment and discomfort to the point of making the workplace unbearable and creating a sexually hostile work environment.

Formal Complaint

37. On February 21, 2013, Plaintiff and his co-workers Michael Murphy, John Galloway, and Angelo DiGregorio, made a formal complaint about the sexual harassment and hostile work environment created by Defendant DeFazio to the District's Director of Facilities and Operations, Defendant Ronald Broas.

38. Plaintiff did not make a formal complaint sooner because: 1) he was afraid to lose his job as he had just begun in July 2011 and believed that Defendant DeFazio had the power to fire him; 2) he was concerned that he would suffer retaliation from Defendant DeFazio and her supporters, who had the power to cut his overtime hours and make his work life even more miserable; and 3) he thought it was fruitless as he was aware that his co-worker, Michael Murphy, who had been subjected to even more physical abuse than he had been, had attempted to report the matter to their union representatives in or around September of 2012 , and nothing had been done.

39. At all relevant times herein, Defendant Broas was Defendant DeFazio's immediate supervisor.

40. Defendant Broas told Plaintiff and his co-workers that he would immediately bring the issue to the attention of Human Resources, and advised them not to talk about the issues surrounding the complaint with anyone.

41. Upon information and belief, on or around February 21, 2013, Defendant Broas reported Plaintiff and his co-workers' complaint to Defendant Sereda who was employed as the District's Human Resources Director and Title IX Coordinator.

42. Upon information and belief, Defendants did not take all steps necessary to prevent the sexual harassment and retaliation, discussed below, from occurring.

43. Upon information and belief, Defendants failed to express strong disapproval for sexual harassment and the retaliation discussed below, or to develop appropriate sanctions for perpetrators.

Retaliation

44. After Plaintiff complained about his supervisor's conduct to Defendant Broas, the quality of Plaintiff's work environment immediately changed for the worse.

45. After February 21, 2013, Plaintiff's work performance was subject to heightened scrutiny.

46. Prior to that date, Defendant DeFazio never yelled at Plaintiff or complained about the quality of his work, and Plaintiff had never received a write-up or had any disciplinary action taken against him.

47. After February 21, 2013, Defendant DeFazio started berating Plaintiff and complaining about the quality of his work on a regular basis, frequently in front of others (including students) in an attempt to embarrass and humiliate him.

48. After that date, Plaintiff also started receiving written memoranda from the District which stated that Defendant DeFazio had complained to her supervisors about the quality of his and his coworkers' (the ones who had complained) work.

49. After February 21, 2013, Plaintiff began hearing from co-workers that Defendant DeFazio was complaining to other supervisors and employees of the Junior High School about him and his co-worker Michael Murphy by stating that they were "causing problems," "didn't do their jobs," and were "troublemakers."

50. This had an impact on Plaintiff's ability to work well with the rest of the custodial staff.

51. Plaintiff also became aware that one of the supervisors that had hired him, Jeffrey Estremera, was developing a poor opinion of him given Defendant DeFazio's comments about his work performance and work ethics.

52. Prior to February 21, 2013, Defendant DeFazio regularly offered Plaintiff the opportunity to work overtime hours, which provided him with approximately \$13,000.00 extra income a year, in addition to his annual salary, during his first year at the Junior High School (i.e., July 2011 to July 2012).

53. After February 21, 2013, Plaintiff received offers to work overtime hours from Defendant DeFazio very rarely. Upon information and belief, the overtime hours that Plaintiff used to be offered started being offered to different custodians, specifically custodians Melvin ("Mel") Johnson and Juan Uribe, both of whom Plaintiff had witnessed tolerating DeFazio's inappropriate touching and sexual comments without complaint.

54. Upon information and belief, Mel Johnson was never offered any overtime hours, and never worked any overtime hours, until after the February 21, 2013, complaint against Defendant DeFazio by Plaintiff.

55. Plaintiff's regular work hours during the school year are 2:00 p.m. to 10:30 p.m. Prior to February 21, 2013, Plaintiff would regularly receive telephone calls from Mel Johnson (who was a custodian on the day shift) between 8:00 a.m. and 8:45 a.m., asking Plaintiff if he wanted to work an overtime shift beginning at 10:00 a.m. that day.

56. After February 21, 2013, on the few occasions when Defendant DeFazio did offer Plaintiff the opportunity to work overtime, Plaintiff suddenly started received calls directly from Defendant DeFazio between 6:00 a.m. and 6:30 a.m. asking Plaintiff if he would like to work an overtime shift beginning at 10:00 a.m. These early telephone calls directly from Defendant

DeFazio, received only 7.5 to 8.5 hours after finishing the prior day's work, were a noticeable and vexatious deviation from the calls that Plaintiff used to receive from Mel Johnson between 8:00 a.m. and 8:45 a.m. prior to February 21, 2013.

57. After February 21, 2013, Plaintiff and the other custodians that had complained about DeFazio started receiving more physically strenuous and less desirable job duties than the custodians that did not complain, such as Mel Johnson and Juan Uribe.

58. Upon information and belief, after February 21, 2013, custodians Mel Johnson and Juan Uribe were given light cleaning tasks and were charged with maintaining very small areas of the school, whereas Plaintiff and the complaining custodians were assigned tasks such as painting and moving furniture in addition to their regular cleaning and maintenance duties.

59. On or about April 8, 2013, during a meeting of the custodial/maintenance department, Plaintiff witnessed Defendant DeFazio approach co-worker Michael Murphy from behind, lift up her arms and clasp her hands together, which caused her shirt to lift up and expose her stomach. Defendant DeFazio then started dancing behind Michael Murphy in a gloating and mocking manner with her exposed stomach in close proximity to Mr. Murphy's head. Defendant DeFazio then walked away from Michael Murphy and started laughing along with custodian Juan Uribe.

60. This incident left Plaintiff with the impression that the purpose of Defendant DeFazio's gyrating dance was to let Plaintiff and co-worker Michael Murphy know that she knew of their complaint, was not being disciplined as a result, and that she would continue to act that way if she wanted to.

61. Another instance of retaliation occurred on or around May 3, 2013, during a High School event for the National Junior Honor Society.

62. The Junior High School was full of students, parents, employees, and school board members on that night.

63. Upon information and belief, Defendant DeFazio chose that evening to contact New York State Troopers regarding alleged vandalism that had occurred to her car and she reported to police that Plaintiff and the other custodians who had complained about her, had committed the vandalism.

64. Upon information and belief, the New York State Trooper went to the Junior High School that evening and interviewed Plaintiff and his co-workers but found that the alleged damage to DeFazio's car was a bent windshield wiper that appeared to be damaged as a result of normal wear and tear and that there was no evidence of vandalism.

65. Upon information and belief, the New York State Troopers were sent by DeFazio to interview Plaintiff and his co-workers on that very night in order to intimidate, humiliate, and harass Plaintiff and the co-workers that had complained about her abuse.

66. Upon information and belief, the District and Junior High School initiated an investigation of the Plaintiff and his co-workers' complaints in or around the Spring of 2013 and such investigation was spearheaded by District Human Resources Director and Title IX Officer, Defendant Joanne Sereda.

67. On May 6, 2013, Defendant Sereda called a meeting of the custodial/maintenance department.

68. At that time, Defendant Sereda told Plaintiff and his co-workers that Defendant DeFazio had volunteered to transfer to an alternate location and would no longer be working at the Junior High School. Defendant Sereda stressed the point that Defendant DeFazio voluntarily transferred and was not involuntarily removed from her position.

69. At that time, Defendant Sereda also stated to Plaintiff and his co-workers that Defendant DeFazio knew about their complaints “from day one.”

70. The retaliation Plaintiff was experiencing continued when Defendant Giorno took over the Head Custodian position at the Junior High School in and around July 2013.

71. Plaintiff and his co-worker Michael Murphy had been told by another custodian named Michael Pallazo that Pallazo, or Defendant Giorno, would be taking over the Head Custodian position with directions from superiors to “clean house” and “take care of the problem” at the Junior High School.

72. Upon information and belief, at the time that Defendant Giorno began as Head Custodian, he had told custodians within the District that he was going to the Junior High School to “take care of the virus” and that he was “going to war.”

73. Defendant Giorno continued to specifically give the complaining custodians, and specifically Plaintiff and co-worker Michael Murphy, the most arduous and time consuming tasks that could be given to the custodial staff.

74. When Plaintiff and co-worker Michael Murphy questioned Defendant Giorno as to why he was picking them out to do the hardest work and giving the custodians who had not complained about DeFazio the light work, Defendant Giorno replied that “this is what I do,” and “why do you think that I was sent? Why me?”

75. Plaintiff and his co-worker Michael Murphy took these statements to mean that the District had decided to send a head custodian that would make their jobs difficult in retaliation for their complaints.

76. Another specific example of Defendant Giorno retaliating against Plaintiff occurred in January 2014.

77. At that time, Plaintiff had hurt his back and had been out on disability for the month of December 2013.

78. On Plaintiff's first day back at work, he received instruction from Defendant Giorno to move several boxes of copy paper (known as "skids") weighing over 2,000 pounds each, by himself to various copy rooms on top of his normal duties which, that day, included preparing the school for national music tryouts that were being held there that weekend.

79. In the past, the task of moving and distributing the skids had been done by multiple custodians working together.

80. Upon information and belief, Defendant Giorno was aware that Plaintiff, as a member of the staff of custodians that he was charged to oversee, had been out of work for the past month due to a back injury, and purposely delegated this task to Plaintiff alone as retaliation for making complaints against Defendant DeFazio.

81. Upon information and belief, Defendant Giorno knew and was friendly with Defendant DeFazio.

82. Plaintiff reported this incident to Defendant Ronald Broas but Broas refused to come to his aid.

83. Upon information and belief, Defendant Giorno told other Junior High School custodians, including Plaintiff's co-worker Angelo DiGregorio, on several occasions and in the spring of 2014, that he would "get rid of Plaintiff by the summer time if he could."

84. Upon information and belief, during the spring of 2014, Defendant Giorno hid a wet vacuum cleaner in a closet and then accused Plaintiff and his co-worker Angelo DiGregorio (another co-worker that had complained about the sexual harassment) of stealing it.

85. Upon information and belief, at or soon after that time, a co-worker found the vacuum hidden in the back of a closet.

86. The fact that the vacuum had been found was not disclosed to Plaintiff until a disciplinary meeting with Human Resources regarding the lost vacuum, at which point Defendant Giorno's "right hand man" admitted that the vacuum had been found.

87. Another specific instance of retaliation occurred on April 16, 2014, when, upon information and belief, Defendant Giorno arrived early to the Junior High School one morning, threw an administrator's bulletin board, with pictures and documents attached to it, into the trash can and then instructed Plaintiff (who was working a morning shift that day) to go empty the garbage in that specific administrator's room.

88. For sanitary reasons, the custodial staff's usual garbage policy at the Junior High School is to retrieve the garbage from the classrooms and offices in the evenings and not in the mornings.

89. Upon information and belief, Defendant Giorno purposely instructed Plaintiff to take the garbage out of the subject administrator's room in an attempt to get Plaintiff disciplined at the Junior High School.

90. After this April 2014 incident, Plaintiff was called into a meeting with Human Resources and his superior, Defendant Broas to discuss the incident but he was not disciplined at that time because there was not enough evidence to support the allegations that Defendant Giorno had made against him.

91. During Plaintiff's employment at the District, he has always competently performed his work duties.

92. During Plaintiff's employment at the District, he has never received a negative performance evaluation.

93. During Plaintiff's employment at the District he has never received a "write-up" or been subject to any disciplinary action.

94. Although the District has a sexual harassment policy, it was not followed in this case as:

a. the sexual harassment and retaliation of Plaintiff and his co-workers was allowed to persist unchecked for years;

b. the District knew or should have known (due to its pervasive nature and the complaints of the staff) that the sexual harassment and retaliation was occurring during that time;

c. the District did not timely investigate Plaintiff and his co-workers' complaints as required under the policy;

d. the District did not timely inform Plaintiff or his co-workers the result of the District's investigation as required under the policy;

e. the District failed to suggest mediation as a potential means of resolving the complaint;

f. the District failed to suggest counseling and/or sensitivity training to the harassment and retaliation perpetrators;

g. the District failed to conduct training for the custodial/maintenance department at the Junior High School;

h. the District failed to request a letter of apology from Defendant DeFazio to Plaintiff and the other complainants; and

i. the District did not express strong disapproval for the sexual harassment and retaliation or develop appropriate sanctions for perpetrators.

95. Upon information and belief, from February 21, 2013, to the present date, the District did not take adequate disciplinary action and/or did not take any disciplinary action whatsoever against Defendants DeFazio or Giorno.

96. On or about June 21, 2013, Plaintiff filed a complaint with the Equal Employment Opportunity Commission's ("EEOC") office in New York, New York, complaining of the facts detailed above.

97. On or about December 16, 2013, Plaintiff filed a rebuttal and supplementary statement with the EEOC, complaining of the facts detailed above.

98. On or about September 29, 2014, the EEOC rendered a determination of probable cause and attempted to conciliate the matter between the parties.

99. EEOC conciliation failed and, on June 26, 2015, Plaintiff received a Notice of Right to Sue Within 90 Days (the "Notice") letter from the EEOC.

100. This action is timely as it was filed prior to the lapse of 90 days from the date of receipt of the Notice.

PLAINTIFF'S FIRST CLAIM FOR RELIEF
FOR SEXUAL HARASSMENT AND HOSTILE WORK ENVIRONMENT
UNDER TITLE VII OF THE CIVIL RIGHTS ACT

101. Plaintiff repeats and realleges each and every allegation stated or contained in Paragraphs "1" through "100" above, with the same force and to the same effect as though set forth at length in this Paragraph "101."

102. Harassment on the basis of sex is a violation of 42 USC §2000e-2, *et seq.*, and 29 CFR 1604.11.

103. Under Federal Law, unwelcome sexual advances and verbal or physical conduct of a sexual nature constitute sexual harassment when: a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; b) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or c) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

104. The conduct and statements of Defendant DeFazio constitute sexual harassment under Title VII of the Civil Rights Act and were sufficiently frequent, severe, continuous, and recurring, to alter the conditions of Plaintiff's work environment and to create a hostile or offensive work environment for Plaintiff and his co-workers.

105. The continuous, recurring, and severe harassment by Plaintiff's immediate supervisor, Defendant DeFazio, was humiliating and unreasonably interfered with Plaintiff's work performance.

106. The continuous, recurring, and severe harassment by Plaintiff's immediate supervisor, Defendant DeFazio, occurred because of his sex.

107. The conduct and statements of Defendant DeFazio, as described above, can and should be imputed to the District because they were so frequent and severe that the District knew or should have known of them, particularly after Plaintiff and his co-workers made complaints against DeFazio, and the District did not adequately address DeFazio's blatant violations of the District's sexual harassment policies.

108. Plaintiff has not previously initiated a complaint for the relief claimed herein before any other court.

109. Therefore, Plaintiff respectfully requests affirmative relief, back pay from lost overtime opportunities, compensatory damages, punitive damages, attorneys' fees, costs and disbursements, and such other and further relief that this Court deems just and proper.

PLAINTIFF'S SECOND CLAIM FOR RELIEF
FOR RETALIATION
UNDER TITLE VII OF THE CIVIL RIGHTS ACT

110. Plaintiff repeats and realleges each and every allegation stated or contained in Paragraphs "1" through "109" above, with the same force and to the same effect as though set forth at length in this Paragraph "110."

111. Title VII of the Civil Rights Act, at 42 USC §2000e-3(a), makes it an unlawful employment practice for an employer to discriminate against any of its employees because the employee has opposed any practice made an unlawful employment practice by Title VII of the Civil Rights Act, or because the employee has made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under Title VII of the Civil Rights Act.

112. Defendant DeFazio's physical grabbing of Plaintiff's buttocks on two occasions and her sexually explicit statements and gestures toward Plaintiff and his co-workers described above, constituted harassment on the basis of sex, had the effect of interfering with Plaintiff's work performance, and created an intimidating, hostile, and offensive working environment for Plaintiff.

113. Plaintiff engaged in protected activity under Title VII of the Civil Rights Act when he made a formal complaint to the District's Director of Facilities and Operations, Defendant Broas, regarding DeFazio's harassment, and when he filed a complaint with the EEOC, and the District was aware of this protected activity.

114. When Plaintiff formally complained to Defendant Broas and filed a complaint with the EEOC, he had a reasonable and good faith belief that the opposed practice, i.e., DeFazio's sexual harassment of him and his co-workers, was unlawful.

115. Within weeks of Plaintiff's formal complaint to Defendant Broas, Defendants retaliated against him by, amongst other things, suddenly subjecting his work to heightened scrutiny, drastically reducing his overtime hours, calling him at unusual times of the early morning when they knew he would be sleeping, giving him more arduous custodial tasks than the other employees who had not complained of the harassment, and setting him up to be disciplined or criminally charged through false accusations.

116. The retaliatory conduct against Plaintiff and described above continues to this day.

117. There was a causal connection between the protected activity (i.e., Plaintiff's complaints) and the retaliatory activity against Plaintiff which only began to occur after his formal complaint against DeFazio in February 2013.

118. Defendants' retaliatory actions against Plaintiff were done with malice or with a reckless indifference to his federally protected rights.

119. Plaintiff has not previously initiated a complaint for the relief claimed herein before any other court.

120. Therefore, Plaintiff respectfully requests affirmative relief, back pay from lost overtime opportunities, compensatory damages, punitive damages, attorneys' fees, costs and disbursements, and such other and further relief that this Court deems just and proper.

PLAINTIFF'S THIRD CLAIM FOR RELIEF
FOR SEXUAL HARASSMENT AND HOSTILE WORK ENVIRONMENT
UNDER NEW YORK STATE HUMAN RIGHTS LAW

121. Plaintiff repeats and realleges each and every allegation stated or contained in Paragraphs "1" through "120" above, with the same force and to the same effect as though set forth at length in this Paragraph "121."

122. Section 296(1) of the New York State Human Rights Law makes it an unlawful discriminatory practice for an employer to discriminate against an employee in compensation or in terms, conditions or privileges of employment because of the employee's sex.

123. Defendants DeFazio's actions and statements directed at Plaintiff and his co-workers, described above, constitute sexual harassment under Section 296 of the NYS Human Rights Law and together created a sexually hostile work environment for Plaintiff under the same statute.

124. Plaintiff has not previously initiated a complaint for the relief claimed herein before any other court.

125. Therefore, Plaintiff respectfully requests affirmative relief, back pay from lost overtime opportunities, compensatory damages, costs and disbursements, and such other and further relief that this Court deems just and proper.

PLAINTIFF'S FOURTH CLAIM FOR RELIEF
FOR RETALIATION
UNDER NEW YORK STATE HUMAN RIGHTS LAW

126. Plaintiff repeats and realleges each and every allegation stated or contained in Paragraphs "1" through "125" above, with the same force and to the same effect as though set forth at length in this Paragraph "126."

127. Sections 296(1)(e) and (7) of the New York State Human Rights Law make it an unlawful discriminatory practice for an employer to discriminate against an employee because said employee has opposed discrimination based on sex, sexual harassment, or the creation of a sexually hostile work environment through the filing of a complaint or providing testimony or assistance in any proceeding under the statute.

128. Plaintiff opposed discrimination based on sex, sexual harassment, or the creation of a sexually hostile work environment when he made a formal complaint to the District's Director of Facilities and Operations, Defendant Broas regarding DeFazio's harassment, and when he filed a complaint with the EEOC.

129. When Plaintiff formally complained to Defendant Broas and filed a complaint with the EEOC, he had a reasonable and good faith belief that the opposed practice, i.e., DeFazio's sexual harassment of him and his co-workers, was unlawful.

130. Within weeks of Plaintiff's formal complaint to Defendant Broas, Defendants retaliated against him by, amongst other things, suddenly subjecting his work to heightened scrutiny, drastically reducing his overtime hours, calling him at unusual times of the early morning when they knew he would be sleeping, giving him more arduous custodial tasks than the other employees who had not complained of the harassment, and setting him up to be disciplined or criminally charged through false accusations.

131. The retaliatory conduct against Plaintiff and described above continues to this day.

132. There was a causal connection between the protected activity (i.e., Plaintiff's complaints) and the retaliatory activity against Plaintiff which only began to occur after his formal complaint against DeFazio in February 2013.

133. Defendants' retaliatory actions against Plaintiff were done with malice or with a reckless indifference to his federally protected rights.

134. Plaintiff has not previously initiated a complaint for the relief claimed herein before any other court.

135. Therefore, Plaintiff respectfully requests affirmative relief, back pay from lost overtime opportunities, compensatory damages, costs and disbursements, and such other and further relief that this Court deems just and proper.

PLAINTIFF'S FIFTH CLAIM FOR RELIEF
FOR AIDING AND ABETTING
UNDER NEW YORK STATE HUMAN RIGHTS LAW

136. Plaintiff repeats and realleges each and every allegation stated or contained in Paragraphs "1" through "135" above, with the same force and to the same effect as though set forth at length in this Paragraph "136."

137. Pursuant to the statements and actions of Defendants DeFazio, Giorno, Sereda and Broas, as set forth and described above, Defendants DeFazio, Giorno, Sereda and Broas, acted to aid and abet the discriminatory actions of the District, in violation of the New York State Human Rights Law § 296(6).

138. Plaintiff has not previously initiated a complaint for the relief claimed herein before any other court.

139. Therefore, Plaintiff respectfully requests affirmative relief, back pay from lost overtime opportunities, compensatory damages, costs and disbursements, and such other and further relief that this Court deems just and proper.

PLAINTIFF'S SIXTH CLAIM FOR RELIEF
FOR VIOLATION OF
SECTION 1983 OF THE CIVIL RIGHTS ACT

140. Plaintiff repeats and realleges each and every allegation stated or contained in Paragraphs "1" through "139" above, with the same force and to the same effect as though set forth at length in this Paragraph "140."

141. By reason of the foregoing, Defendants' discriminatory treatment of Plaintiff was a violation of 42 USC §1983.

142. As a result thereof, Plaintiff suffered various severe injuries and damages.

143. By reason thereof, Plaintiff is entitled, but not limited to, back pay, compensatory damages, damages for emotional distress, attorneys' fees, costs and disbursements or any other remedy to which the Court may deem just and proper.

144. Plaintiff seeks affirmative relief which may include, but is not limited to, requiring Defendants to post the avenues to address complaints of workplace harassment, discrimination, and retaliation, requiring Defendants' employees and Defendants to undergo sexual harassment, discrimination, and retaliation training, and any other equitable relief as the Court deems appropriate, compensatory damages; attorneys' fees; costs and disbursements.

145. Plaintiff has not previously initiated a complaint for the relief claimed herein before any other court.

146. By reason of the Defendants' conduct, Plaintiff is entitled to compensatory damages, punitive damages, damages for emotional distress, costs and disbursements, and such other and further relief that this Court deems just and proper.


JURY DEMAND

147. Plaintiff demands a trial by jury.

WHEREFORE, Plaintiff prays that this Honorable Court:

- a. Accept jurisdiction over this matter;
- b. Empanel a jury to fairly hear and decide this matter;
- c. Award Plaintiff back pay and front pay;
- d. Award Plaintiff compensatory damages sustained as a result of Defendants' discriminatory practices;
- e. Award Plaintiff punitive damages for Defendants' willful and outrageous conduct;
- f. Award Plaintiff damages against the individual Defendants for their aider and abettor liability under the New York State Human Rights Law;
- g. Award Plaintiff reasonable attorneys' fees;
- h. Award Plaintiff costs and disbursements of this action; and
- i. Award any other relief deemed just and proper.

Dated: Walden, New York
September 18, 2015



JENNIFER S. ECHVARRIA (JE - 5544)
Jacobowitz & Gubits, LLP
Attorneys for Plaintiff
158 Orange Avenue
P.O. Box 367
Walden, New York 12586
(T) 845-778-2121


VERIFICATION

STATE OF NEW YORK)
) SS.:
COUNTY OF ORANGE)

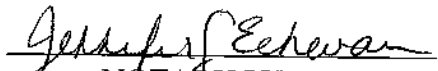
Samuel Feiler, being duly sworn says:

I am the Plaintiff in the action herein.

I have read the annexed Complaint dated September/8, 2015, know the contents thereof and the same are true to my knowledge, except those matters therein which are to be alleged upon information and belief, and as to those matters I believe them to be true.


Samuel Feiler

Sworn to before me this
18 day of September, 2015.


NOTARY PUBLIC

JENNIFER S. ECHEVARRIA
Notary Public, State of New York
No. 02EC0265405
Qualified in Orange County
My Co. My Commission Expires July 9, 2016