

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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Garcelle N. Menos,	:	Case No. 22 Civ. _____
	:	
Plaintiff,	:	
	:	
-against-	:	<b>COMPLAINT</b>
	:	
Uncle Nearest Inc. and	:	<b><u>JURY TRIAL DEMANDED</u></b>
David Christopher Harper,	:	
	:	
Defendants.	:	
-----X	:	

Plaintiff Garcelle N. Menos (“Ms. Menos” or “Plaintiff”), by and through her attorneys, THE BOIES LAW FIRM, PLLC, brings this action for damages, legal and equitable remedies from Defendants Uncle Nearest Inc. (“Uncle Nearest”) and David Christopher Harper (“Defendant Harper”) (collectively “Defendants”) for violation of Title VII of the Civil Rights Act of 1964 (“Title VII”), as amended, 42 U.S.C. § 2000e *et seq.*, Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981a, New York State Human Rights Law, N.Y. Exec. Law § 290, *et seq.*, (“NYSHRL”), and New York City Human Rights Law, N.Y. City Admin. C. § 8-101, *et seq.*, (“NYCHRL”) for unlawful gender discrimination, sexual harassment, hostile work environment, retaliation, including, but not limited to, constructive termination of Plaintiff for objecting to and otherwise opposing Defendants’ unlawful gender discrimination, violation of New York Labor Law for failing to pay Plaintiff her bonus and alleges as follows:

**PRELIMINARY STATEMENT**

1. Respect for human dignity was partly what the Civil Rights Act of 1964 intended to promote. No one, including Ms. Menos, should be forced to work in an

environment where her boss, Defendant Harper, feels comfortable *touching her buttocks*, treating her as a sexual object and sexually harassing her at work without impunity. That's exactly what happened to Ms. Menos on two occasions during a business trip organized by and on behalf of Uncle Nearest.

2. Tellingly, when Ms. Menos informed Uncle Nearest of Defendant Harper's objectionable conduct, Uncle Nearest retaliated against Ms. Menos by, among other things, requesting several employees not to interact with Ms. Menos, isolating and excluding her from necessary updates relating to her position and market, unreasonably denying every approval she sought to do her job, ... and not paying Ms. Menos bonuses that she was entitled based on written agreement, which was unconditionally modified and confirmed by Uncle Nearest's CEO in a text message.

3. Ms. Menos seeks the protection of this Honorable Court because, among other reasons, during Uncle Nearest's first round of inadequate investigation, rather than focus on Plaintiff's claims of sexual harassment, hostile work environment, forcible touching by Defendant Harper, and take action to remedy its failure to train its employees, Uncle Nearest simply claimed that Defendant Harper's "leadership was 100-percent positive" ...and that Defendant Harper is "the best boss." Uncle Nearest's second round of laughable investigation focused on whether Plaintiff believed Defendant Harper's objectionable conduct was *intentional* or whether Defendant Harper was *drunk* as if his offensive conduct should or would be acceptable if Defendant Harper's repeated and unwelcomed conduct was unintentional or he was

drunk. Consequently, Ms. Menos seeks appropriate monetary relief as well as appropriate equitable and other relief to redress the wrongdoing complained of herein.

### **JURISDICTION AND VENUE**

4. This Court has original jurisdiction over Plaintiff's federal law claims pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, *et seq.* ("Title VII"), 28 U.S.C. §§ 1331, 1343, and 42 U.S.C. § 1981.

5. The Court has supplemental jurisdiction over Plaintiff's New York State and New York City law claims under 28 U.S.C. § 1367(a), which confers supplemental jurisdiction over all non-federal claims arising from a common nucleus of operative facts such that they form part of the same case or controversy under Article III of the United States Constitution.

6. This Court has the power to issue declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

7. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391 because Defendants operate out of or do business in the State of New York, Kings County, and are subject to personal jurisdiction in this District, Plaintiff resided in this District, and a substantial part of the events and/or omissions giving rise to this action occurred in this District, including Plaintiff's retaliation claims.

8. NYSHRL and NYCHRL are applicable because Plaintiff and Defendants regularly did business with New York State and New York City customers.

### **PARTIES**

9. Plaintiff Garcelle Menos, an African American female, and at all times relevant herein, was a Brand Steward for Uncle Nearest in the New York City area and resides in Kings County, New York.

10. Uncle Nearest Inc. is a Tennessee Corporation with a principal place of business located at 3125 US -231 North, Shelbyville, TN 37160, and at all times relevant herein, conducts business in Kings County, New York.

11. At all times relevant to the Complaint, Plaintiff was an “employee” of Uncle Nearest within the meaning of and Title VII, 42 U.S.C. § 12111(4).

12. At all times relevant to the Complaint, Plaintiff was an individual and employee of Uncle Nearest within the meaning of Title VII, NYSHRL and NYCHRL.

13. Defendant David Christopher Harper, a white male, was and is the Senior Vice President of Sales, East Coast, for Uncle Nearest and Plaintiff’s direct supervisor during the times of the incidents alleged in the Complaint herein.

14. Upon information and belief, Defendant Harper is an individual with a business address of 3125 US -231 North, Shelbyville, TN 37160.

15. Defendant Harper exercised control over the terms and conditions of Plaintiff’s employment.

**EXHAUSTION OF ADMINISTRATIVE REMEDIES**

16. On October 26, 2021, Plaintiff filed a Charge of Discrimination (“Charge of Discrimination”) with the United States Equal Employment Opportunity Commission (“EEOC”), which was assigned a Charge No. 494-2021-02406.

17. In the Charge of Discrimination, Plaintiff alleged sexual harassment, hostile work environment and retaliation against the Defendants.

18. The EEOC issued a “Notice of Right to Sue” within 90 Days to Plaintiff with reference to her Charge of Discrimination.

19. Plaintiff filed her initial Complaint in this matter within the time prescribed by the Notice of Right to Sue. *See* Exhibit 1 for the Notice of Right to Sue.

20. Plaintiff demands a jury trial to resolve all issues in this action.

### **STATEMENT OF FACTS**

#### ***A. Plaintiff's Employment with Uncle Nearest***

21. On October 13, 2020, Plaintiff began working full-time for Uncle Nearest as a Brand Steward in the New York City area.

22. According to Uncle Nearest's website, its “whiskey is currently available in all 50 states and 12 countries, in more than 25,000 stores, bars and restaurants.”<sup>1</sup>

23. Plaintiff's responsibilities included, among others, meeting with restaurants and bar owners to assist with the promotion and selling different whiskey expressions Uncle Nearest offers.

24. Plaintiff was required to report to Defendant Harper on a weekly basis until Plaintiff, through her counsel, filed her claims of sexual harassment and hostile work environment with Uncle Nearest on July 1, 2021.

25. Until July 1, 2021, Defendant Harper directly supervised Plaintiff and had the authority over the terms and conditions of Plaintiff's employment.

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<sup>1</sup> Uncle nearest premium whiskey - 100 proof from Tennessee. Uncle Nearest Premium Whiskey - 100 Proof from Tennessee. (n.d.). Retrieved January 6, 2022, from <https://unclenearest.com/>

26. On multiple occasions, Defendant Harper kept asking Plaintiff whether she has a “loved one.”

27. As detailed below, on two occasions, more precisely on Tuesday, June 15, 2021, and on Saturday, June 19, 2021, during an Uncle Nearest’s required trip in Tennessee for the opening of Uncle Nearest’s distillery, Defendant Harper groped and forcibly touched Ms. Menos’ buttocks.

28. During and after these incidents, Ms. Menos was disgusted, distraught, humiliated, shocked, extremely distressed, ashamed, extremely uncomfortable, scared, and felt violated and unsafe at work, especially when she was required to report to the same Defendant Harper that just groped and forcibly touched her.

29. On Friday, June 25, 2021, at approximately 11:30 p.m. (EST), well outside of work hours, Defendant Harper texted Plaintiff to *call* him.

30. Upon information and belief, Uncle Nearest has no Human Resources department or mechanism to report sexual harassment and hostile work environment claims.

31. On July 1, 2021, after speaking with friends and colleagues about the incidents, Ms. Menos, through her counsel, filed her written claims of sexual harassment and hostile work environment directly with Ms. Fawn Weaver, Uncle Nearest’s Chief Executive Officer, (“Ms. Weaver”).

32. On July 2, 2021, Ms. Weaver emailed Plaintiff’s counsel stating, “I oversee all aspects of our company’s [Uncle Nearest] work environment....”

33. Ms. Weaver further indicated to Plaintiff's counsel that she "will be looking into this directly."

34. Ms. Weaver then directed Plaintiff to report to her directly moving forward starting from the date Plaintiff filed her claim on July 1, 2021.

35. On July 30, 2021, Ms. Weaver emailed Plaintiff's counsel stating, among others:

"...In my meetings with each of [Defendant] David's direct reports, both men and women, their feedback regarding David's leadership was 100-percent positive. In every instance, they either said, "He's the best boss I've ever had," "He's the best person I've ever worked for," or in the case of one person, "He's one of two of the best bosses I've ever had." Each of [Defendant] David's direct reports have been in the industry for at least 15 years, so they've had a lot of bosses over their careers. I have great leaders in my company, but I must admit, none of them have I had their team members speak of them as highly as [Defendant] David."

36. August 13, 2021, upon information and belief, a third-party company hired by Uncle Nearest to investigate Plaintiff's claims, questioned Plaintiff as to whether she believed Defendant Harper's conduct was "*intentional*" or Defendant Harper was "*drunk*."

37. As detailed below, upon information and belief, Ms. Weaver retaliated against Plaintiff, including, among others: a) Ms. Weaver requested several employees not to interact with Plaintiff; b) Ms. Weaver isolated and excluded Plaintiff from important updates relating to her position and her market; c) Ms. Weaver unreasonably denied every approval Plaintiff sought from Ms. Weaver to do her job; d) on or about July 17, 2021, Ms. Weaver came to New York City and visited restaurants where Plaintiff has opened those accounts for Uncle Nearest without

informing or alerting Plaintiff, where in every other case Ms. Weaver informs the employees in the regions she is visiting for business; and e) as provided below, Ms. Weaver promised all Uncle Nearest's employees that "everyone's max bonus will be paid out for Q3, no matter what," except that Plaintiff never received her bonus notwithstanding the fact that everyone did receive their bonus for Q3.

38. Notwithstanding Plaintiff best effort, given the fact Plaintiff could not reasonably perform her duties under the circumstances described above, Plaintiff was forced to resign on December 10, 2021.

39. As a result of Defendant Harper's treatment of Plaintiff as a sexual object, the sexual harassment Plaintiff was subjected to, and Uncle Nearest's retaliation against Plaintiff, Plaintiff has been in counseling, suffered anxiety, physical and emotional distress and unable to sleep.

40. Further, Plaintiff has been experiencing significant health problems as a result of the Defendant Harper's objectionable conduct and hostile work environment to which she was subjected and which could not be tolerated without further jeopardizing Plaintiff's health.

***B. Touching Plaintiff's Buttocks #1 by Defendant Harper***

41. From June 14, 2021, to June 20, 2021, Uncle Nearest required its employees, including Plaintiff, to attend the opening of its distillery in Shelbyville, Tennessee ("Distillery Opening Summit").

42. Plaintiff was required to stay at The Joseph Hotel in Nashville, Tennessee, during the Distillery Opening Summit.

43. On Tuesday, June 15, 2021, at approximately 6:15 p.m. (CDT), about six Uncle Nearest's employees were walking from The Joseph Hotel to Pinewood Social restaurant for an Uncle Nearest's sponsored dinner that was scheduled for 6:30 p.m.

44. Plaintiff was walking in the back of the group engaging in conversations relating to each employee's role within Uncle Nearest and the cities where each employee currently works.

45. Defendant Harper was also walking in the back of the group.

46. Defendant Harper, without Plaintiff's consent, proceeded to slide his hand from Ms. Menos' upper back and down all the way down to grab her butt.

47. Defendant Harper then scurried in front of the group as if nothing occurred.

48. Later that same day, Plaintiff confronted Defendant Harper, who simply brushed Plaintiff off.

***C. Grabbing Plaintiff's Buttocks #2 by Defendant Harper***

49. During the Distillery Opening Summit, employees were required to attend scheduled events in Shelbyville, Tennessee, where Uncle Nearest's distillery and headquarter are located.

50. Plaintiff was required to assist with various activities during the Distillery Opening Summit.

51. On Saturday, June 19, 2021, at approximately 1:50 p.m. (CDT), everyone in the area where Plaintiff was assisting with was leaving.

52. Plaintiff then called Defendant Harper to inquire whether she was still needed or she could leave.

53. Defendant Harper informed Plaintiff that he was inside of the Uncle Nearest's retail store/gift shop located on the same ground where Uncle Nearest's distillery is located.

54. Plaintiff proceeded to meet Defendant Harper inside of the retail store/gift shop where Mr. Harper was standing in the center of the store.

55. Defendant Harper thanked Plaintiff for her contribution to the team and offered to purchase her something from the store.

56. Plaintiff politely declined Defendant Harper's offer.

57. Defendant Harper insisted as Plaintiff continued to decline his offer.

58. Mr. Harper went on to tell Plaintiff that she should "*enjoy Tennessee and have fun that evening.*"

59. At approximately 2:21 p.m. (CDT), as Plaintiff was getting ready to leave, without Plaintiff's consent, Mr. Harper then proceeded to touch Ms. Menos' upper back and slid his hand all the way down and, again, grabbed Plaintiff's butt.

***D. Uncle Nearest Retaliated Against Plaintiff  
After she Filed her Complaint of Sexual harassment,  
and Hostile Work Environment with Uncle Nearest***

60. After Plaintiff filed her claim with Ms. Weaver, Uncle Nearest's CEO, Ms. Weaver instructed Plaintiff to report to her directly.

61. Ms. Weaver isolated and excluded Plaintiff from important updates relating to her position and her market.

62. Ms. Weaver unreasonably denied every request Plaintiff made to do her work.

63. On or about July 17, 2021, Ms. Weaver came to New York City and visited restaurants where Plaintiff has opened those accounts for Uncle Nearest without informing or alerting Plaintiff.

64. At all times herein, Uncle Nearest had an incentive plan or bonus package agreement titled “Full-Time Brand Steward Incentive Plan” with Plaintiff to be paid based on specific milestones.

65. On August 26, 2021, Ms. Weaver sent out a text message to the senior management of Uncle Nearest informing them that notwithstanding the shortage of whiskey available to achieve those milestones set out in the incentive plan or bonus package agreement “*everyone’s max bonus will be paid out for Q3, not matter what.*”

66. Upon information and belief, everyone received their Q3 bonus as promised by Ms. Weaver, except Plaintiff.

***E. Uncle Nearest Failed to Train its Employees about Sexual Harassment and Provided no Means for Plaintiff to Report Sexual Harassment Conduct***

67. As noted above, Plaintiff began to work for Uncle Nearest on October 13, 2020.

68. Plaintiff did not receive an employee handbook until sometime in December 2021, about the time Plaintiff was constructively forced out of Uncle Nearest.

69. During Plaintiff's employment with Uncle Nearest, it was not suggested or required that Plaintiff take any sexual harassment training.

70. Upon information and belief, Uncle Nearest did not provide the required annual anti-sexual harassment "interactive-training" to its employees, including Plaintiff.

71. Uncle Nearest did not adopt an anti-sexual harassment policy and complaint form for reporting claims of sexual harassment.

72. Upon information and belief, Uncle Nearest did not provide an information sheet on sexual harassment to all employees, including Plaintiff at the time of hire and to post an anti-sexual harassment rights and responsibilities poster anywhere.

***F. Non-Payment of Wages/Bonus by Uncle Nearest in Violation of the Incentive Plan Agreement***

73. During Plaintiff's employment with Uncle Nearest, the parties entered into "Full-Time Brand Steward Incentive Plan" agreement (Incentive Plan Agreement).

74. The Incentive Plan Agreement sets forth the "Minimum Monthly POD [Point of Distribution] goal [that] must be met to qualify for all incentive dollars."

75. Plaintiff tirelessly performed the duties expected of her, working long hours and carrying out all tasks required of her.

76. On August 26, 2021, Ms. Weaver sent out a text message to the senior management of Uncle Nearest informing them that notwithstanding the shortage of

whiskey available to achieve those point of distribution goals set out in the Incentive Plan Agreement that “everyone’s max bonus will be paid out for Q3, not matter what.”

77. To date, Uncle Nearest has not paid Plaintiff any of her unpaid wages or bonus pursuant to the Incentive Plan Agreement, as reiterated and promised by Ms. Weaver.

**AS AND FOR A FIRST CAUSE OF ACTION**  
***(Sex Discrimination and/or Sexual Harassment under TITLE VII)***

78. Plaintiff hereby repeats, reiterates, and re-alleges each and every allegation as contained in each of the preceding paragraphs as if fully set forth herein.

79. 42 U.S.C. § 2000e-2(a)(1), states in relevant part:

It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to their compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, **sex**, or national origin[.] (Emphasis added).

80. Plaintiff has been discriminated against by Uncle Nearest on the basis of her sex in violation of Title VII in that Plaintiff suffered a hostile, sexist workplace, and Uncle Nearest subjected Plaintiff to unwelcome sexual harassment.

81. As a proximate result of Uncle Nearest’s discrimination, Plaintiff has suffered and continues to suffer substantial loss of past and future earnings, bonuses, other employment benefits, all to Plaintiff’s damage in an amount to be determined at trial.

82. As a further proximate result of Uncle Nearest’s actions, Plaintiff has suffered and continues to suffer severe and lasting embarrassment, humiliation,

mental anguish, pain and suffering, emotional distress, anxiety, loss of enjoyment of life, loss of self-esteem, loss of self-confidence, injury to her reputation, and other incidental and consequential damages and expenses, all to Plaintiff's damage in an amount to be determined at trial.

83. Uncle Nearest's conduct was committed with conscious disregard of Plaintiff's rights.

84. Plaintiff is entitled to an award of injunctive and equitable relief and an award of compensatory damages from Uncle Nearest in an amount to be determined at trial.

85. In addition, Uncle Nearest's unlawful and discriminatory actions were intentional, done with malice and/or showed a deliberate, willful, wanton, and reckless indifference to Plaintiff's 's rights, for which Plaintiff is entitled to an award of punitive damages.

86. Plaintiff is also entitled to recover her costs and attorneys' fees.

**AS AND FOR A SECOND CAUSE OF ACTION**  
***(Retaliation in Violation of Title VII)***

87. Plaintiff hereby repeats, reiterates, and re-alleges each and every allegation as contained in each of the preceding paragraphs as if fully set forth herein.

88. Title VII of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. §2000e-3(a) provides that it shall be unlawful employment practice for an employer:

[T]o . . . discriminate against any of his employees . . . because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

89. Plaintiff engaged in protective activity by making sexual harassment and hostile work environment claims to Uncle Nearest.

90. Uncle Nearest knew that Plaintiff was engaged in protected activity.

91. In retaliation to Plaintiff's protected complaint, Uncle Nearest engage in various retaliatory actions against Plaintiff, including isolating and excluding Plaintiff from important updates relating to her position and her market, unreasonably denying every request Plaintiff made to do her work, failing to pay Plaintiff the bonus per the Incentive Plan Agreement, which was unconditionally modified and ratified by Ms. Weaver and ultimately and constructively terminating Plaintiff's employment.

92. As a further proximate of Uncle Nearest's violation and retaliation, Plaintiff has suffered and continues to suffer severe and lasting embarrassment, humiliation, mental anguish, pain and suffering, emotional distress, anxiety, loss of enjoyment of life, loss of self-esteem, loss of self-confidence, injury to her reputation, loss of employment opportunities, and other incidental and consequential damages and expenses, all to Plaintiff's damage in an amount to be determined at trial.

93. The unlawful discriminatory actions of Uncle Nearest constitute malicious, willful, and wanton violations of Title VII, for which Plaintiff is entitled to an award of punitive damages.

**AS AND FOR A THIRD CAUSE OF ACTION**

***(Sex Discrimination and/or Sexual Harassment under NYSHRL and NYCHRL)***

94. Plaintiff hereby repeats, reiterates, and re-alleges each and every allegation as contained in each of the preceding paragraphs as if fully set forth herein.

95. Plaintiff is an African American female and is therefore a member of a protected class under the New York State and New York City Human Rights laws.

96. Plaintiff has been discriminated against by Uncle Nearest on the basis of her sex in violation of the NYSHRL and NYCHRL by creating, fostering, condoning, accepting, ratifying, and/or negligently failing to prevent or remedy a hostile work environment that included, among other things, harassment of Plaintiff based on Plaintiff's sex.

97. The sex discrimination Plaintiff suffered while employed at Uncle Nearest was severe and pervasive, unwelcome by Plaintiff, and would be offensive to a reasonable person.

98. As a result of Uncle Nearest's unlawful discriminatory conduct in violation of the NYSHRL and NYCHRL, Plaintiff has suffered, and continues to suffer, economic loss, for which she is entitled to an award of monetary damages and other relief.

99. As a proximate result of Uncle Nearest's discriminatory conduct in violation of NYSHR and NYCHRL, Plaintiff has suffered and continues to suffer substantial loss of past and future earnings, bonuses, other employment benefits, all to Plaintiff's damage in an amount to be determined at trial.

100. As a further proximate result of Uncle Nearest's actions, Plaintiff has suffered and continues to suffer severe and lasting embarrassment, humiliation, mental anguish, emotional distress, anxiety, loss of enjoyment of life, injury to her

reputation and other incidental and consequential damages and expenses, all to Plaintiff's damage in an amount to be determined at trial.

101. Uncle Nearest's conduct was committed with conscious disregard of Plaintiff's rights.

102. Plaintiff is entitled to an award of injunctive and equitable relief and an award of compensatory damages from Uncle Nearest in an amount to be determined at trial.

103. In addition, Uncle Nearest's unlawful and discriminatory actions were intentional, done with malice and/or showed a deliberate, willful, wanton, and reckless indifference to Plaintiff's 's rights, for which Plaintiff is entitled to an award of punitive damages.

104. Plaintiff is also entitled to recover her costs and attorneys' fees.

**AS AND FOR A FOURTH CAUSE OF ACTION**  
***(Retaliation Under NYSHRL and NYCHRL)***

105. Plaintiff hereby repeats, reiterates, and re-alleges each and every allegation as contained in each of the preceding paragraphs as if fully set forth herein.

106. As described above, Plaintiff engaged in protected activities, including making internal complaints regarding Uncle Nearest's discrimination based on Plaintiff's sex.

107. As described above, after Plaintiff engaged in activity protected by the NYSHRL and NYCHRL, Uncle Nearest took adverse actions against Plaintiff by, *inter alia*, isolating and excluding Plaintiff from important updates relating to her position and her market, unreasonably denying every request Plaintiff made to do

her work, failing to pay Plaintiff the bonus per the agreement, which was unconditionally ratified by Ms. Weaver and constructively terminating Plaintiff's employment, which defendants believe would dissuade a reasonable employee from making or supporting a similar complaint of discrimination.

108. As set forth in detail above, Defendants subjected Plaintiff to a hostile work environment, disparate treatment, and an atmosphere of adverse employment actions and decisions because of his gender in violation of Plaintiff's statutory rights.

109. Defendants knew, or should have known, about the retaliation and the affect it had on Plaintiff's employment, but Defendants failed to take any action to stop the retaliatory conduct, and in fact allowed Plaintiff to suffer a retaliatory termination.

110. As a result of Defendants' retaliatory conduct in violation of the NYSHRL and NYCHRL, Plaintiff has suffered, and continues to suffer pecuniary losses, severe mental anguish and emotional distress, including, but not limited to depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering, for which she is entitled to an award of monetary damages, as well as past and future lost wages and benefits and other compensatory damages, and other relief.

111. Based on the foregoing, Plaintiff was retaliated against and suffered constructive termination by Defendants in violation of Title VII of the Civil Rights Act of 1964, the New York State Human Rights Law, and the New York City Human

Rights Law. As a result of Defendants' retaliatory actions, Plaintiff has been damaged in an amount to be determined at trial.

**AS AND FOR A FIFTH CAUSE OF ACTION**  
*(Unpaid Commission in Violation of New York Labor Law)*

112. Plaintiff hereby repeats, reiterates, and re-alleges each and every allegation as contained in each of the preceding paragraphs as if fully set forth herein.

113. Plaintiff and Uncle Nearest had a written agreement regarding sales commissions/bonus between the two parties.

114. For Q3 of 2021 and until Plaintiff's constructive termination, Plaintiff earned but did not receive the commissions owed to her under the parties' written agreement, which was unconditionally ratified by Uncle Nearest's CEO, Ms. Weaver, in a text message in violation of Labor Law §§ 191(1)(c) and 191-b.

115. Upon Plaintiff's constructive termination, Uncle Nearest did not provide Plaintiff with the commissions/bonus owed to her at her date of termination or within five (5) business days of her termination, or at any time thereafter, in violation of Labor Law § 191-c.

116. As a proximate result of Uncle Nearest's unlawful conduct, Plaintiff has suffered economic damages in an amount to be determined at trial and is entitled to recover the value of those unpaid commissions plus an equivalent amount of liquidated damages pursuant to the Labor Law.

117. Plaintiff is entitled to liquidated damages equal to one hundred percent (100%) of wages owed, prejudgment interest, as well as attorneys' fees and costs expended in pursuit of the unpaid compensation owed. N.Y. Lab. Law § 198(1-a).

**DEMAND FOR TRIAL BY JURY**

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury on all questions of and damages stated herein.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests that she be awarded the following relief:

A. Declaring that Defendants engaged in unlawful employment practices prohibited by Title VII, NYSHRL and NYCHRL in that Defendants discriminated against Plaintiff on the basis of her sex;

B. A finding be entered that Defendants violated the New York Labor Law;

C. An order that Defendants engage in injunctive measures aimed at remedying the unlawful conduct described herein so that other employees will not be subject to the same unlawful conduct;

D. Restraining Defendants from any retaliation against others for participating in any form in this litigation;

E. An award of damages against Defendants, in an amount to be determined at trial, plus interest, to compensate Plaintiff for all monetary and/or economic damages;

F. An award of damages against Defendants, in an amount to be determined at trial, plus interest, to compensate for all non-monetary and/or compensatory damages, including, but not limited to, compensation for Plaintiff's

emotional and mental distress, pain and suffering and injury to her reputation in an amount to be proven at trial;

G. An award of punitive damages in an amount to be determined at trial;

H. An award of attorney's fees, expert fees, costs, and disbursements;

I. Award Plaintiff all pre-judgment interest and post judgment interest available under law; and

J. Such other and further relief as this Court may deem just and proper.

Dated: January 21, 2022  
New York, New York

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