

Eliasson was hopeful that the Club would respond in an appropriate manner to her extremely serious complaint.

3. Tragically, the Club's response was anything but appropriate. After Ms. Eliasson came forward – rather than simply suspending or terminating Menendez – the Club took away from Ms. Eliasson all shifts she shared with the Club's manager, Defendant Menendez, including some of her weekend shifts, which were her most profitable. The Club also effectively prevented her from picking up additional shifts from other staff, which was her usual practice.

4. Further, although Defendants Seigny and McPeck promised to investigate the incident, they claimed to have trouble locating an investigator, and ultimately retained a red-carpet security firm to interview Ms. Eliasson under highly-unusual and unprofessional circumstances.

5. While Ms. Eliasson remained at home unable to work some of her most profitable shifts, by contrast, Defendant Menendez remained the Club's general manager, untarnished, and in control of critical aspects of Ms. Eliasson's employment.

6. It was not until Defendants learned that Ms. Eliasson had retained legal counsel that they belatedly terminated Menendez in an attempt to avoid legal liability.

7. Moreover, Ms. Eliasson's complaints were mishandled mere days after a March 9, 2018 Yelp review described the following incident at the Club: "My friend, who is a woman, was assaulted at this bar last night and the security did nothing about it after being alerted. No police were called, no one assisted. A 6 foot man was choking out my 5'2 friend while security sat and watched. . . They should be disgusted with themselves. I'm filing a police report so expect their cameras to be checked and management can see just what they're paying their security to do."

NATURE OF THE CLAIMS

8. Plaintiff seeks declaratory, injunctive and equitable relief, as well as monetary damages, to redress Defendants' unlawful employment practices in violation of the New York State Human Rights Law, N.Y. Executive Law §§ 290, *et seq.* ("NYSHRL"), the New York City Human Rights Law, N.Y.C. Admin. Code §§ 8-101, *et seq.* ("NYCHRL") and the Gender Motivated Violence Act, New York City Administrative Code §§ 8-901, *et seq.* ("GMVA"), as well as assault and battery in violation of New York common law.

ADMINISTRATIVE PREREQUISITES

9. Plaintiff will be filing a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC") and will file an Amended Complaint alleging violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* following the EEOC's issuance of a Notice of Right to Sue.

10. Pursuant to NYCHRL § 8-502, Plaintiff will serve a copy of this Complaint upon the New York City Commission on Human Rights and the New York City Law Department, Office of the Corporation Counsel within ten days of its filing, thereby satisfying the notice requirements of this action.

11. Plaintiff has complied with any and all other prerequisites to filing this action.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this matter pursuant to New York Civil Practice Laws and Rules ("CPLR") § 301.

13. Venue is proper in this County pursuant to CPLR § 503 because Plaintiff resides in New York County and a substantial part of the events giving rise to Plaintiff's claims took place in New York County.

PARTIES

14. Plaintiff Sylvia Eliasson is a former employee of Paul's Casablanca who, at all relevant times, worked at the Company's 305 Spring Street, New York, New York 10013 location. Ms. Eliasson is a resident of the State of New York and, at all relevant times herein, met the definition of an "employee" under all relevant statutes throughout her employment with Defendants.

15. Defendant Sway Lounge, LLC d/b/a Paul's Casablanca is a New York domestic limited liability company located at 305 Spring Street, New York, New York 10013. At all times relevant herein, the Company was and is an "employer" under all relevant statutes.

16. Defendant Paul Sevigny was, at all relevant times, a Co-Owner of Paul's Casablanca. At all relevant times herein, Mr. Sevigny was Plaintiff's "employer" under all relevant statutes.

17. Defendant Brian McPeck was, at all relevant times, a Co-Owner of Paul's Casablanca. At all relevant times herein, Mr. McPeck was Plaintiff's "employer" under all relevant statutes.

18. Defendant Joshua Menendez was, at all relevant times, the General Manager of Paul's Casablanca. At all relevant times herein, Mr. Menendez was Plaintiff's "employer" under all relevant statutes.

FACTUAL ALLEGATIONS

I. BACKGROUND

19. Ms. Eliasson is a Swedish citizen who has lived in New York for over ten years and who is fluent in English, Swedish and Norwegian.

20. Ms. Eliasson has a highly-impressive background. She worked at the Swedish Embassy and Consulate in New York for four years while pursuing her Bachelor's Degree in Business Administration, which she obtained in 2010. Ms. Eliasson has extensive experience in the service industry, as well as extensive professional experience in sales and marketing positions.

21. Ms. Eliasson began working as a bottle server at Paul's Casablanca in or around June 2017 after interviewing with the Club's general manager, Defendant Joshua Menendez.

22. Ms. Eliasson immediately noticed that Paul's Casablanca and Defendants treated their female employees differently than their male employees.

23. For example, Defendants only employed women as hostesses and bottle servers and would not allow women to work behind the bar or in management roles.

24. Likewise, although male staff regularly consumed alcohol while on shift, often beginning their shifts with a Negroni cocktail, Club management frowned upon female staff consuming alcohol unless they were providing bottle service to a \$600 minimum table, in which case accepting drinks from customers was considered to be good customer service.

II. MS. ELIASSON IS RAPED BY THE CLUB'S MANAGER, DEFENDANT MENENDEZ

25. On Saturday, October 7, 2017, Ms. Eliasson worked her shift at the Club. She did not consume any alcohol while on shift that evening.

26. When the Club closed at 4:00 a.m., the staff reconciled their receipts upstairs and were happy to learn that the Club had made impressive profits, earning approximately \$60,000 that night.

27. As was the usual practice, after cashing out the receipts upstairs, the staff brought their cash and receipts downstairs to give to the Club's general manager, Defendant Menendez.

28. It was clear to Ms. Eliasson that Defendant Menendez was under the influence of drugs and alcohol that evening, and it was commonplace for Menendez to consume alcohol and cocaine while at the Club.

29. Defendant Menendez suggested that he open a bottle of champagne to celebrate the profitable evening with the staff.

30. Ms. Eliasson, along with Ashley Ziegler and two other female servers at the Club, joined Defendant Menendez for a glass of champagne in the small office located in the downstairs of the Club.

31. Ms. Eliasson, who has worked in the service industry and in nightclubs for many years, has always been able to consume alcoholic beverages without compromising any of her faculties. In fact, throughout her entire adult life, she has never experienced a “blackout” or complete memory loss due to alcohol consumption.

32. However, after consuming a single glass of champagne on October 7, 2017, Ms. Eliasson blacked out and now remembers only short flashes of the remainder of the night.

33. The first flash she remembers is crying upstairs at the Club. She does not know or remember why she was crying, or how she got upstairs.

34. The second flash she remembers is Defendant Menendez putting a white powdery substance to her nose for her to sniff.

35. The third flash she remembers is coming in and out of consciousness and looking behind her and seeing Defendant Menendez having sexual intercourse with her from a rear-entry position.

36. The following afternoon, Ms. Eliasson awoke in her apartment covered in blood, and with cuts and bruises all over her body. She was naked and had no recollection of how she

got home. She went into her bathroom where the toilet seat had been ripped off, and there was blood everywhere.

37. Ms. Eliasson was shocked and terrified, especially given the large gaps in her memory.

38. Upon information and belief, Ms. Eliasson was given a date rape or other similar drug by Defendant Menendez.

39. At no time during the evening of October 7, 2017 did Ms. Eliasson give her consent to Defendant Menendez to have sex with her, nor was she capable of providing consent given her compromised mental state.

40. Ms. Eliasson spent the next few days trying desperately to recount further details from the evening, but to no avail.

41. Ms. Eliasson also contacted Club staff who had been present when the champagne was consumed, but they were able to provide her with few details other than telling her that they had all left the Club and Ms. Eliasson and Defendant Menendez had remained behind.

42. Desperate to learn more about what had occurred, Ms. Eliasson approached Defendant Menendez within a couple of weeks to ask what he had done.

43. Defendant Menendez responded that he did not want “any drama,” and he refused to discuss what he had done. Defendant Menendez also smugly indicated that he was impressed that Ms. Eliasson had even mustered the courage to approach him.

III. MS. ELIASSON REPORTS THE SEXUAL ASSAULT TO CLUB OWNERSHIP, AND THEY RETALIATE AGAINST HER BY TAKING AWAY SOME OF HER MOST PROFITABLE SHIFTS

44. Ms. Eliasson loved her job and did not want to jeopardize her position. Concerned that she would not be believed, as well as that she would be retaliated against if she complained, Ms. Eliasson did not immediately report to Club management that she was raped.

45. However, Ms. Eliasson began experiencing frequent panic attacks, especially when she was forced to discuss or interact with Defendant Menendez.

46. In March 2018, the stress of keeping the sexual assault a secret became a bigger burden than Ms. Eliasson could bear and, on March 10, 2018, Ms. Eliasson contacted Defendants Sevigny and McPeck and requested to set up a meeting with them. The meeting was eventually scheduled for March 20, 2018.

47. On March 17, 2018, just three days before her scheduled meeting with Defendants Sevigny and McPeck, Defendant Menendez, presumably aware of the scheduled meeting, emailed Ms. Eliasson and instructed her to sign a Non-Disclosure Agreement as a condition of her employment.

48. Incredibly, the Non-Disclosure Agreement had been backdated to January 1, 2017, and Defendant Menendez instructed her that she had to sign the Non-Disclosure Agreement even if she had signed it in 2017. This was a clear attempt by Club management to silence and intimidate Ms. Eliasson and prevent her from reporting the assault. Ms. Eliasson did not sign the Non-Disclosure Agreement.

49. On March 20, 2018, Ms. Eliasson reported the assault to the Club's owners, Defendants Sevigny and McPeck.

50. Defendants Sevigny and McPeck informed Ms. Eliasson that they would investigate the matter and that, in the meantime, she would not work her shifts with Menendez.

51. As a result of her being taken off of shifts she worked with Menendez, Ms. Eliasson was deprived of her normal shifts, including some of her weekend shifts, which were her most profitable shifts. Ms. Eliasson was also unable to pick up additional shifts by covering

the shifts of her co-workers, which was her usual practice. This resulted in a large pay cut, overdraft issues and financial stress.

52. A couple of days later, Defendant Sevigny contacted Ms. Eliasson and informed her they were having difficulty locating an investigator because no one was willing to take the job.

53. When Ms. Eliasson questioned why the Club had not terminated or even suspended Menendez, Defendant Sevigny responded that the Club had been advised by legal counsel that it could be sued for unlawful termination if it took such action.

54. A full week after she reported the sexual assault, with still no response from the Club, Ms. Eliasson emailed Defendants Sevigny and McPeck and explained the unbearable anxiety and worry she was experiencing as a result of Defendant Menendez continuing to manage the Club while she was being denied her shifts and income.

55. Ms. Eliasson explained that the Club's conduct was retaliatory and unfair.

IV. THE CLUB HIRES AN UNQUALIFIED EVENT SECURITY COMPANY TO PERFORM AN "INVESTIGATION"

56. The Club ultimately hired Preferred Security and Investigations ("PSI"), a company based in Garden City, New York, to perform an "investigation" for the Club regarding Ms. Eliasson's complaint.

57. On the "About Us" section of its website, PSI markets itself primarily as an event security firm: "Our experience covers store security, building security and F&B [food and beverage] security. We have experience in helping our retail clients with their inventory and

minimizing their shrinkage. We also have experience in trademark counterfeiting with our retail clients.”¹

58. On the “What We Do” section of its website, the company states that “Preferred Security & Investigations help organizers and venues create safe event environments and audience experiences through the delivery of award winning specialist venue and event security. The individually customized services we offer are achieved through the professional implementation of a wide array of progressive crowd management and security techniques.”²

59. Nowhere on PSI’s website does the company mention any experience with conducting workplace investigations or investigations into sexual assault or rape.

60. PSI’s lack of experience investigating sexual assault claims in the workplace was immediately clear. The first contact PSI made with Ms. Eliasson was through its director of operations, Roger Akiki.

61. Mr. Akiki first contacted Ms. Eliasson on March 29, 2018 via text message. Specifically, after confirming he had the right number, Mr. Akiki texted: “I will pick out a place for us to meet and discuss. I will be coming from a different meeting so 1:30pm for sure, I might be a few minutes earlier but not exactly sure yet. And we will meet on the upper east side.”

62. Shortly after this text message, Mr. Akiki sent a follow up text: “[T]here’s a [sic] italian restaurant on the corner of 64th St. and Madison I will meet you there at 1:30.”

63. In response, Ms. Eliasson texted: “Roger, please give me a call as soon as possible. I have some concerns I need to address before meeting with you.”

64. Ms. Eliasson explained to Mr. Akiki that she felt extremely uncomfortable meeting at a public Italian restaurant to discuss her sexual assault.

¹ See <http://preferredsecurityinvestigations.com/pages/about-us/>.

² See <http://preferredsecurityinvestigations.com/pages/our-work/>.

65. At Ms. Eliasson's urging, Mr. Akiki agreed to conduct the interview in Ms. Eliasson's home, with Ms. Eliasson's friend, a licensed psychologist, present.

66. However, Mr. Akiki's unprofessional conduct continued through his two-hour interview of Ms. Eliasson, during which time he continuously spoke over and interrupted her.

67. At the start of the interview, Mr. Akiki identified himself as primarily "a mediator," who would investigate and then propose options and solutions to make both sides happy.

68. During the interview, Mr. Akiki became noticeably agitated when Ms. Eliasson was unable to recollect specific details of events.

69. Additionally, when Ms. Eliasson began to cry during the interview, he told her "please, I didn't want you to cry. I don't like your crying."

70. Incredibly, Mr. Akiki also informed Ms. Eliasson that it was *her* responsibility to reach out to other Club staff to request that they speak to him as part of his investigation. He requested she convey to the staff that the Club had hired a private investigator and that he wanted to talk to them. He jokingly followed that she should also tell them that "you think he's a decent guy."

71. Shockingly, weeks after her interview with Mr. Akiki, Defendant Menendez was still working at the Club, with no action taken against him. Ms. Eliasson could no longer tolerate working under the control of the man who sexually assaulted her while the Club took no action, and she informed the Club that as a result, she could no longer come into work.

72. Only after the Club was informed that Ms. Eliasson had obtained legal representation, did the Club terminate Defendant Menendez's employment.

V. JUST BEFORE MS. ELIASSON REPORTED THE SEXUAL ASSAULT, A YELP REVIEWER STATED THAT A WOMAN WAS ASSAULTED BY A MAN AT THE CLUB IN FRONT OF SECURITY, AND SECURITY DID NOTHING

73. A March 9, 2018 Yelp review of the Club described the following incident at the Club: “My friend, who is a woman, was assaulted at this bar last night and the security did nothing about it after being alerted. No police were called, no one assisted. A 6 foot man was choking out my 5’2 friend while security sat and watched. . . They should be disgusted with themselves. I’m filing a police report so expect their cameras to be checked and management can see just what they’re paying their security to do.”

74. Despite the fact that the Club had received this Yelp review, it still failed to adequately investigate and respond to Ms. Eliasson’s complaints.

FIRST CAUSE OF ACTION
(Hostile Work Environment, Sexual Harassment and Gender
Discrimination Under the NYSHRL)
Against All Defendants

75. Plaintiff hereby repeats and realleges each and every allegation in the preceding paragraphs as if set forth fully herein.

76. Defendants have discriminated against Plaintiff on the basis of her gender in violation of the NYSHRL by subjecting Plaintiff to disparate treatment based upon her gender including, but not limited to, subjecting her to sexual assault and harassment and a hostile work environment.

77. As a direct and proximate result of Defendants’ unlawful discriminatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm for which she is entitled to an award of monetary damages and other relief.

78. As a direct and proximate result of Defendants’ unlawful discriminatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, severe mental

anguish and emotional distress for which she is entitled to an award of monetary damages and other relief.

SECOND CAUSE OF ACTION
(Retaliation in Violation of the NYSHRL)
Against All Defendants

79. Plaintiff hereby repeats and realleges each and every allegation in the preceding paragraphs as if set forth fully herein.

80. By the actions described above, among others, Defendants retaliated against Plaintiff on the basis of her protected activities in violation of the NYSHRL by, including, but not limited to, taking away Plaintiff's shifts as a result of her complaining of sexual assault at the hands of her supervisor, Defendant Menendez.

81. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, monetary and/or other economic harm for which she is entitled an award of monetary damages and other relief.

82. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, severe mental anguish and emotional distress for which she is entitled to an award of monetary damages and other relief.

THIRD CAUSE OF ACTION
(Hostile Work Environment, Sexual Harassment and Gender
Discrimination Under the NYCHRL)
Against All Defendants

83. Plaintiff hereby repeats and realleges each and every allegation in the preceding paragraphs as if set forth fully herein.

84. Defendants have discriminated against Plaintiff on the basis of her gender in violation of the NYCHRL by subjecting Plaintiff to disparate treatment based upon her gender

including, but not limited to, subjecting her to sexual assault and harassment and a hostile work environment.

85. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm for which she is entitled to an award of monetary damages and other relief.

86. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, severe mental anguish and emotional distress for which she is entitled to an award of monetary damages and other relief.

87. Defendants' unlawful and discriminatory actions were intentional, done with malice and/or showed a deliberate, willful, wanton and reckless indifference to Plaintiff's rights under the NYCHRL for which Plaintiff is entitled to an award of punitive damages.

FOURTH CAUSE OF ACTION
(Retaliation in Violation of the NYCHRL)
Against All Defendants

88. Plaintiff hereby repeats and realleges each and every allegation in the preceding paragraphs as if set forth fully herein.

89. By the actions described above, among others, Defendants retaliated against Plaintiff on the basis of her protected activities in violation of the NYSHRL by, including but not limited to, taking away Plaintiff's shifts as a result of her complaining of sexual assault at the hands of her supervisor, Defendant Menendez.

90. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, monetary and/or other economic harm for which she is entitled to an award of monetary damages and other relief.

91. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, severe mental anguish and emotional distress for which she is entitled to an award of monetary damages and other relief.

92. Defendants' unlawful and retaliatory actions were intentional, done with malice and/or showed a deliberate, willful, wanton and reckless indifference to Plaintiff's rights under the NYCHRL for which Plaintiff is entitled to an award of punitive damages.

FIFTH CAUSE OF ACTION
(Gender-Motivated Violence Pursuant to NYC Admin. Code §§ 8-901, *et seq.*)
Against Defendant Menendez

93. Plaintiff hereby repeats and realleges each and every allegation in the preceding paragraphs as if set forth fully herein.

94. The above-described conduct of Defendant Menendez, including, but not limited to, Defendant Menendez's sexual assault of Plaintiff, constitutes a "crime of violence" and a "crime of violence motivated by gender" against Plaintiff as defined by NYC Admin. Code § 8-903.

95. The above-described conduct of Defendant Menendez, including, but not limited to, Defendant Menendez's sexual assault of Plaintiff, constitutes a "crime of violence" against Plaintiff motivated: (i) by her gender; (ii) on the basis of her gender; and/or (iii) due, at least in part, to an animus based on her gender.

96. Defendant Menendez committed a "crime of violence" against Plaintiff because she is a woman and, at least in part, because he has an animus towards women. Defendant Menendez's gender-motivated animus towards women is demonstrated by, among other things, his sexually violent treatment of women.

97. As a direct and proximate result of the aforementioned gender-motivated violence, Plaintiff has sustained in the past and will continue to sustain, monetary damages, physical injury, pain and suffering, and serious psychological and emotional distress, entitling her to an award of compensatory damages.

98. Defendant Menendez's gender-motivated violence against Plaintiff entitles her to punitive damages and an award of attorneys' fees and costs.

SIXTH CAUSE OF ACTION
(Assault)
Against Defendant Menendez

99. Plaintiff hereby repeats and realleges each and every allegation in the preceding paragraphs as if set forth fully herein.

100. The violent sexual acts committed intentionally by Defendant Menendez against Plaintiff and without her consent, including, but not limited to, his sexual assault of Plaintiff, created a reasonable apprehension in Plaintiff of immediate harmful or offensive contact to Plaintiff's person.

101. As a direct and proximate result of the aforementioned assault, Plaintiff has sustained in the past, and will continue to sustain, inter alia, physical injury, monetary damages, pain and suffering, psychological and emotional distress, humiliation and loss of career fulfillment.

102. Defendant Menendez's conduct was wanton, malicious, willful and/or cruel, entitling Plaintiff to an award of punitive damages.

SEVENTH CAUSE OF ACTION
(Battery)
Against Defendant Menendez

103. Plaintiff hereby repeats and realleges each and every allegation in the preceding paragraphs as if set forth fully herein.

104. The violent sexual acts committed intentionally by Defendant Menendez against Plaintiff and without her consent, including, but not limited to, his sexual assault of Plaintiff, constitutes a harmful and offensive contact to Plaintiff's person.

105. As a direct and proximate result of the aforementioned assault, Plaintiff has sustained in the past, and will sustain in the future, inter alia, physical injury, monetary damages, pain and suffering, psychological and emotional distress, mental anguish, embarrassment, humiliation and loss of career fulfillment.

106. Defendant Menendez's conduct was wanton, malicious, willful and/or cruel, entitling Plaintiff to an award of punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court enter judgment in her favor and against Defendants, containing the following relief:

A. A declaratory judgment that the actions, conduct and practices of Defendants complained of herein violate the laws of the State of New York and the City of New York;

B. An injunction and order permanently restraining Defendants and their partners, officers, owners, agents, successors, employees and/or representatives, and any and all persons acting in concert with them, from engaging in any such further unlawful conduct, including the policies and practices complained of herein;

C. An award of damages against Defendants, or any jointly or severally liable entity or person, in an amount to be determined at trial, plus prejudgment interest, to compensate Plaintiff for all monetary and/or economic damages, including, but not limited to, loss of past and future income, wages, compensation, seniority, and other benefits of employment;

D. An award of damages against Defendants, or any jointly or severally liable entity or person, in an amount to be determined at trial, plus prejudgment interest, to compensate Plaintiff for all non-monetary and/or compensatory damages, including, but not limited to, compensation for her emotional distress;

E. An award of damages for any and all other monetary and/or non-monetary losses suffered by Plaintiff, including, but not limited to, loss of income, earned bonus pay, reputational harm and harm to professional reputation, in an amount to be determined at trial, plus prejudgment interest;

F. An award of punitive damages, and any applicable penalties and/or liquidated damages in an amount to be determined at trial;

G. Prejudgment interest on all amounts due;

H. An award of costs that Plaintiff has incurred in this action, including, but not limited to, expert witness fees, as well Plaintiff's reasonable attorneys' fees and costs to the fullest extent permitted by law; and,

I. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues of fact and damages stated herein.

Dated: June 3, 2018
New York, New York

Respectfully submitted,

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