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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SALVATORE J. MARCHIANO,

Plaintiff,

v.

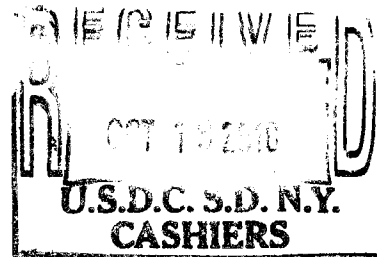
BETTY ELLEN BERLAMINO, in her professional
and individual capacities,

Defendant.
-----X

Civil Action No.

COMPLAINT

JURY TRIAL DEMANDED



COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Salvatore (“Sal”) J. Marchiano (“Plaintiff” or “Mr. Marchiano”), by and through his undersigned counsel, Thompson Wigdor & Gilly LLP, as and for his Complaint in this action against Defendant Betty Ellen Berlamino (“Defendant” or “Ms. Berlamino”), hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for declaratory, injunctive and equitable relief, as well as monetary damages, to redress Defendant’s unlawful employment practices against Plaintiff, including discriminatory treatment of Plaintiff due to his Age in violation of the New York State Human Rights Law, New York Executive Law §§ 290 *et seq.* (“NYSHRL”), and the New York City Human Rights Law, New York Administrative Code §§ 8-101 *et seq.* (“NYCHRL”).

2. Defendant’s conduct was knowing, malicious, willful and wanton and/or showed a reckless disregard for Plaintiff, which has caused and continues to cause Plaintiff to suffer substantial economic and non-economic damages, permanent harm to

his professional and personal reputations, and severe mental anguish and emotional distress.

JURISDICTION AND VENUE

3. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, as there is diversity of citizenship between Plaintiff, a resident of the State of Connecticut, and Defendant, a resident of the State of New Jersey, and this action involves a matter in controversy that exceeds the sum of \$75,000, exclusive of interest and cost.

4. The Court has personal jurisdiction over Defendant because a significant portion of the unlawful employment practices and events giving rise to the claims herein occurred in this District.

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events or omissions giving rise to this claim, including the unlawful employment practices alleged herein, occurred in this District.

PARTIES

6. Plaintiff Marchiano, a former employee of WPIX-TV (Channel 11) (“WPIX”), was born on March 3, 1941, and is a resident of the State of Connecticut. At all relevant times Mr. Marchiano worked in New York City and met the definition of an “employee” under all applicable statutes throughout his employment with Defendant.

7. Upon information and belief, Ms. Berlamino is a resident of the State of New Jersey. At all relevant times she was employed as General Manager for WPIX, in which capacity she participated directly in the unlawful discrimination as alleged herein.

Upon information and belief, on or about June 8, 2010, Ms. Berlamino was terminated by WPIX.

PROCEDURAL REQUIREMENTS

8. Plaintiff has complied with all statutory prerequisites to filing this action.

9. Prior to commencement of this action, a copy of this Complaint was served on the New York City Commission on Human Rights and the Office of the Corporation Counsel of the City of New York, thereby satisfying the notice requirement of § 8-502 of the New York City Administrative Code.

10. Any and all other prerequisites to the filing of this suit have been met.

FACTUAL ALLEGATIONS

Plaintiff's Employment at WPIX

11. Mr. Marchiano, who is currently 69 years old, is one of the New York area's most respected and beloved sports personalities. Mr. Marchiano joined WPIX in 1994, when he was already a legendary television sports reporter and broadcaster.

12. By the end of 2008, when his employment at WPIX ended, Mr. Marchiano had 41 years of experience in sports television, and more than 44 years in sports broadcasting generally, all in New York, the top television market in the country. In 2010, broadcasting historian David Halberstam called Sal "the dean of New York TV sports reporters" and ranked him 11th on his all-time list of the most prominent 25 sportscasters in New York. During Mr. Marchiano's tenure, WPIX's news programs benefited from increased ratings and critical success. Between 2002 and 2008, as part of an acclaimed WPIX evening news ensemble, Mr. Marchiano won at least four New York Area Emmy Awards and was nominated for another.

13. Mr. Marchiano's sports segment on the 10 p.m. news consistently maintained its sponsor relationship with Hyundai, and he remained popular with the station's viewers. In addition, Mr. Marchiano received consistently good feedback from the station's managers, including News Director Karen Scott ("Ms. Scott"), and enjoyed great working relationships with his colleagues, both on and off the air.

14. Mr. Marchiano manifested his sincere commitment to the interests of WPIX and his co-workers when he took on the role of a mentor to reporter Lolita Lopez, who eventually succeeded him as the station's sports anchor. His storied career also has supplied him with many personal relationships and friendships with professional athletes, which is increasingly uncommon among sports journalists.

15. Mr. Marchiano is identified closely with New York itself, to an extent achieved by few other local broadcast personalities. Mayor Rudy Guiliani congratulated Mr. Marchiano in 1997 on his 30th year on the air, proclaiming a day in his honor for spending his entire career working in his hometown, New York City.

16. Among other awards and accolades, Mr. Marchiano also has received the Ellis Island Medal of Honor, which pays tribute to Americans who have made outstanding professional contributions while dedicating themselves to community service and maintaining a significant connection to their cultural heritage.

WPIX's Non-Renewal of Mr. Marchiano's Contract and Later Announcement of His Purported Retirement.

17. On or around October 30, 2008, with tears in her eyes, Ms. Scott told Mr. Marchiano that his contract with WPIX was not going to be renewed. Attempting to hold back her emotion, Ms. Scott informed Mr. Marchiaon that Ms. Berlamino, WPIX's General Manager at the time, had decided not to renew his contract.

18. Mr. Marchiano was not given an explanation for the nonrenewal of his contract and no further communication from Defendant regarding his contract was forthcoming.

19. On or around December 22, 2008, around four days after Mr. Marchiano's final broadcast at the station, WPIX falsely reported to the New York Daily News that Mr. Marchiano had "retired" voluntarily from his position at the station. No one at WPIX told Mr. Marchiano about this announcement, and he was stunned when he learned about it reading the newspaper that day.

20. Although this story circulated from the Daily News to other media outlets, the report of Mr. Marchiano's retirement was incorrect and premature. Mr. Marchiano did not, in fact, retire, but was forced by Ms. Berlamino to leave WPIX after 14 years of service, numerous awards and accolades, and consistently good ratings.

21. WPIX would not have characterized Mr. Marchiano's departure from the station as a "retirement" if he were an even somewhat younger reporter or anchor.

22. Mr. Marchiano learned after his last day at the station that he was replaced as WPIX's sports anchor by Lolita Lopez, who, upon information and belief, is his junior by a few decades.

23. Mr. Marchiano's forced and unceremonious "retirement" is only one example of a concerted and barely concealed effort by Ms. Berlamino to push out older members of the broadcast team.

24. Karen Scott filed an age discrimination suit in connection with her own, August 2009 termination. Ms. Scott's complaint reveals that WPIX characterized her

termination as a “voluntary resignation.” It is a gambit redolent of the one it used with respect to Mr. Marchiano.

25. By way of example only, Ms. Scott’s complaint points to at least three other well-known reporters and anchors targeted by Ms. Berlamino and WPIX because of their age. Ms. Scott’s complaint alleges that, in 2009, WPIX demoted Marvin Scott, 72, a well-respected television reporter, from weekday to weekend programming. Ms. Berlamino had frequently made age-related remarks about Mr. Scott, including “why doesn’t he just retire already?”

26. Ms. Scott’s complaint also alleges that, in 2009, WPIX tried to force anchor Kaity Tong, 59, to quit by directing her to undertake tasks and responsibilities which differed from those assumed by other anchors and reporters.

27. Ms. Scott’s complaint further alleges that, in 2009, WPIX decided not to retain feature reporter Larry Hoff, 58, despite the positive feedback he received from a consultant WPIX retained. Ms. Berlamino is alleged to have made age-related comments about Mr. Hoff as well.

28. By way of example only, Ms. Scott has said that Ms. Berlamino would remark harshly on Mr. Marchiano’s appearance, remarking to Ms. Scott that because of his age he “doesn’t look good on the air.”

29. Ms. Berlamino’s comments about his age did not come to Mr. Marchiano’s attention until he learned about the allegations in Ms. Scott’s complaint, which was filed only in June 2010.

30. Ms. Berlamino took a negative view of Mr. Marchiano in spite of his otherwise great working relationships with the station’s executives and managers.

Michael Eigner, the previous General Manager, had told Mr. Marchiano that the station wanted him to remain until he was actually ready to retire.

31. Both WPIX's staff and the general public have voiced their strong disapproval of the station's discriminatory practices since Mr. Marchiano's departure from the station. A flurry of articles has appeared online discussing the prevalence of age discrimination in the local broadcast television industry. These items have attracted many comments affirming the likelihood that age-related discriminatory motives were behind various personnel moves at WPIX, including Mr. Marchiano's termination.

AS AND FOR A FIRST CAUSE OF ACTION

(Discrimination in Violation of New York State Human Rights Law)

32. Plaintiff hereby repeats and realleges each and every allegation in paragraphs 1 through 31, inclusive, as if fully set forth herein.

33. Defendant has discriminated against Plaintiff on the basis of his age in violation of the New York State Human Rights Law by subjecting Plaintiff to disparate treatment based upon his age, including, but not limited to, by terminating Plaintiff's employment because of his age.

34. As a direct and proximate result of Defendant's unlawful discriminatory conduct in violation of the New York State Human Rights Law, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm for which he is entitled to an award of monetary damages and other relief.

35. As a direct and proximate result of Defendant's unlawful discriminatory conduct in violation of the New York State Human Rights Law, Plaintiff has suffered, and continues to suffer, severe mental anguish and emotional distress, including, but not

limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, as well as emotional pain and suffering, for this he is entitled to an award of monetary damages and other relief.

AS AND FOR A SECOND CAUSE OF ACTION

(Aiding and Abetting Violations of New York State Human Rights Law)

36. Plaintiff hereby repeats and realleges each and every allegation in paragraphs 1 through 35, inclusive, as if fully set forth herein.

37. Defendant knowingly and/or recklessly aided and abetted the unlawful, discriminatory employment practices against Plaintiff in violation of the New York State Human Rights Law.

38. As a direct and proximate result of Defendant's unlawful and discriminatory conduct, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm for which he is entitled to an award of monetary damages and other relief.

39. As a direct and proximate result of Defendant's unlawful and discriminatory conduct, Plaintiff has suffered, and continues to suffer 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 he is entitled to an award of monetary damages and other relief.

AS AND FOR A THIRD CAUSE OF ACTION

(Discrimination in Violation of New York City Human Rights Law)

40. Plaintiff hereby repeats and realleges each and every allegation in paragraphs 1 through 39, inclusive, as if fully set forth herein.

41. Defendant has discriminated against Plaintiff on the basis of his age in violation of the New York City Human Rights Law by subjecting Plaintiff to disparate treatment based upon his age, including, but not limited to, by terminating Plaintiff because of his age.

42. As a direct and proximate result of Defendant's unlawful discriminatory conduct in violation of the New York City Human Rights Law, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm for which he is entitled to an award of monetary damages and other relief.

43. As a direct and proximate result of Defendant's unlawful discriminatory conduct in violation of the New York City Human Rights Law, Plaintiff has suffered, and continues to suffer, severe mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, as well as emotional pain and suffering, for which he is entitled to an award of monetary damages and other relief.

44. Defendant's unlawful discriminatory conduct constitutes a willful and wanton violation of the New York City Human Rights Law, was outrageous and malicious, was intended to injure Plaintiff, and was done with reckless indifference to Plaintiff's civil rights, entitling Plaintiff to an award of punitive damages.

AS AND FOR A FOURTH CAUSE OF ACTION

(Aiding and Abetting Violations of New York City Human Rights Law)

45. Plaintiff hereby repeats and realleges each and every allegation in paragraphs 1 through 44, inclusive, as if fully set forth herein.

46. Defendant knowingly or recklessly aided and abetted the unlawful, discriminatory employment practices against Plaintiff in violation of the New York City Human Rights Law.

47. As a direct and proximate result of Defendant's unlawful and discriminatory conduct, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm for which he is entitled to an award of monetary damages and other relief.

48. As a direct and proximate result of Defendant's unlawful discriminatory conduct, Plaintiff has suffered, and continues to suffer, 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 he is entitled to an award of monetary damages and other relief.

49. Defendant's unlawful discriminatory actions constitute malicious, willful and wanton violations of the New York City Human Rights Law for which Plaintiff is entitled to an award of punitive damages.

PRAYER FOR RELIEF

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

A. A declaratory judgment that the actions, conduct and practices of Defendant 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 Defendant from engaging in such unlawful conduct;

C. An order directing Defendant to place Plaintiff in the position he would have occupied but for Defendant's discriminatory and/or otherwise unlawful treatment of him, as well as to take such affirmative action, including but not limited to reinstatement, as is necessary to ensure that the effects of these unlawful employment practices and other unlawful conduct are eliminated and do not continue to affect Plaintiff;

D. An award of damages 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, the loss of past and future income, wages, compensation, job security and other benefits of employment;

E. An award of damages in an amount to be determined at trial, plus prejudgment interest, to compensate Plaintiff for all non-monetary and/or compensatory damage, including, but not limited to, compensation for his severe mental anguish and emotional distress, humiliation, depression, embarrassment, stress and anxiety, loss of self-esteem, self-confidence and personal dignity, and emotional pain and suffering and any other physical or mental injuries;

F. An award of damages in an amount to be determined at trial, plus prejudgment interest, to compensate Plaintiff for harm to his professional and personal reputation and loss of career fulfillment;

G. An award of damages for any and all other monetary and/or non-monetary losses suffered by Plaintiff in an amount to be determined at trial, plus prejudgment interest;

H. An award of punitive damages;

I. An award of costs that Plaintiff has incurred in this action, as well as Plaintiff's reasonable attorneys' fees to the fullest extent permitted by law; and

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

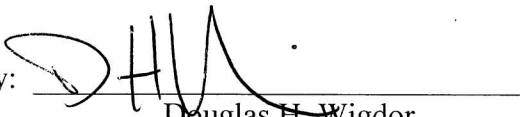
JURY DEMAND

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

Dated: New York, New York
October 13, 2010

Respectfully submitted,

THOMPSON WIGDOR & GILLY LLP

By: 
Douglas H. Wigdor

85 Fifth Avenue
New York, New York 10118
Telephone: (212) 257-6800
Facsimile: (212) 257-6845
dwigdor@twglaw.com

Attorneys for Plaintiff Salvatore J. Marchiano