

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

-----X		:	
JOSEPH T. COOK		:	
	Plaintiff,	:	Index No. _____
		:	
	v.	:	
		:	
PERRY ELLIS INTERNATIONAL, INC. and		:	COMPLAINT
OSCAR FELDENKREIS, in his personal and		:	
professional capacities,		:	
		:	JURY TRIAL DEMAND
	Defendants.	:	
-----X		:	

Plaintiff Joseph T. Cook (“Plaintiff”), by and through undersigned counsel, Wigdor LLP, as and for the Complaint in this action against Defendants Perry Ellis International, Inc. (“Perry Ellis” or the “Company”) and Oscar Feldenkreis (“Mr. Feldenkreis”), hereby states and alleges as follows:

PRELIMINARY STATEMENT

1. Mr. Cook is a 49-year-old gay senior executive of Perry Ellis. For more than three years he has lead Original Penguin by Munsingwear (“Original Penguin”), one of Perry Ellis’ most successful brands, most recently as President of the Wholesale Division of Original Penguin.

2. Perry Ellis is a leading designer, distributor and licensor of a broad line of high quality men’s and women’s apparel, among other things, whose wide portfolio of brands includes Perry Ellis, Original Penguin, Pro Player, PGA Tour, and Nike Swim.

3. Despite its legacy and being home to iconic brands consumed by a diverse population, Mr. Cook has been forced to endure highly offensive homophobic, racial, and ethnic slurs by Mr. Feldenkreis, the Company’s President and Chief Operating Officer to

whom he reports. These include, but are not limited to, admonishing Mr. Cook and his team to make sure there are “**no Blacks in my ads**” or “**anyone who looked too gay**” and telling Mr. Cook he could avoid jury service by “**telling them you hate niggers and fags.**”

4. Mr. Feldenkreis is slated to succeed his father George and become the Company’s Chief Executive Officer early next year, despite his blatantly discriminatory beliefs.

5. The Company suffers from dominant family control at both the management and board levels, which enables Mr. Feldenkreis’ discriminatory behavior and conduct and deters employees like Mr. Cook from complaining about the Company’s discriminatory and hostile environment. By way of example only, the Company’s human resources department reports to Fanny Hanono, the Company’s Executive Vice President of Administration, who is Mr. Feldenkreis’ sister.

6. When Mr. Cook gained the courage to complain about the Company’s discriminatory practices, Mr. Feldenkreis and the Company retaliated against him by orchestrating a campaign designed to isolate and exclude Mr. Cook and diminish his role in the Company.

7. This action seeks injunctive and monetary damages as well as declaratory and equitable relief to redress Defendants’ unlawful employment practices, including unlawful discrimination and retaliation against Plaintiff in violation of the Civil Rights Act of 1866, 42 U.S.C. § 1981(a) (“Section 1981”), the New York State Human Rights Law (“NYSHRL”), N.Y. Executive Law §§ 290 *et seq.*, and the New York City Human Rights Law (“NYCHRL”), N.Y. City Administrative Code §§ 8-101 *et seq.*

JURISDICTION AND VENUE

8. This Court has jurisdiction over Plaintiff's claims under 42 U.S.C. § 1981(a) pursuant to 29 U.S.C. § 1331, because those claims arise under the laws of the United States. Pursuant to 28 U.S.C. § 1367(a), the Court has supplemental jurisdiction over Plaintiff's related claims under the NYSHRL and NYCHRL.

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to this action occurred in this district.

ADMINISTRATIVE PROCEDURES

10. A copy of this Complaint will be served both 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 requirements of the New York City Administrative Code.

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

PARTIES

12. Plaintiff Joseph T. Cook is a current employee of the Company. Mr. Cook is President of the Wholesale Division of Perry Ellis' Original Penguin brand and works in its New York City Office. He is a citizen of the State of New York and at all relevant times met the definition of a Perry Ellis "employee" and/or "eligible employee" under all relevant statutes.

13. Defendant Perry Ellis is a corporation incorporated under the laws of the State of Florida with its principal place of business located in Florida at 3000 NW 107th Avenue Miami, Florida ("Miami Office"). At all relevant times Defendant Perry Ellis met the definition of an "employer" and/or a "covered employer" under all relevant statutes.

14. Defendant Feldenkreis is President and Chief Operating Officer of Perry Ellis. Upon information and belief, Mr. Feldenkreis is a resident of Florida and works mainly from Perry Ellis' Miami Office. Mr. Feldenkreis supervises and makes decisions affecting Mr. Cook's employment and is an "employer" within the meaning of all relevant statutes.

FACTS

15. Mr. Cook is a retail apparel executive with more than twenty (20) years of experience.

16. In August 2012, Perry Ellis was eager to capitalize on Mr. Cook's experience and track record of success in the industry and so began discussing the possibility of his joining the Company.

17. On August 21, 2012, Perry Ellis provided Mr. Cook with a written offer letter.

18. The offer letter described Mr. Cook's position as "Senior Vice President of Sales."

19. The offer letter further provided that Mr. Cook's compensation would consist of a number of components: a base salary of \$250,000, health benefits, equity compensation of 2,000 shares of Perry Ellis Restricted Stock, and a bonus equal to up to 20% of his base salary.

20. Mr. Cook consistently demonstrated strong job performance in this role and was ultimately rewarded for it. In August 2014, Mr. Cook was promoted to his current position of President of the Wholesale Division of Original Penguin.

21. The terms of Mr. Cook's promotion were set forth in an August 21, 2014 offer letter. In his new role, Mr. Cook reports into Mr. Feldenkreis. The compensation components of this new role consisted of an increased base salary of \$300,000, a bonus

targeted of up to 40% of his base salary, and grant of 2,000 shares of Perry Ellis stock vested over three years.

22. In or around June 2015, while meeting with Mr. Feldenkreis and another Perry Ellis executive in the Company's New York City offices, Mr. Cook informed Mr. Feldenkreis that he had been summoned to jury duty. Mr. Feldenkreis told him that he could get out of jury service by "telling them you hate niggers and fags."

23. As a gay man, Mr. Cook was deeply disturbed by both the nature of this hateful remark and Mr. Feldenkreis' hostile tone of voice. Mr. Feldenkreis knows Mr. Cook is homosexual. He was further humiliated by having to endure this remark in the presence of a peer with the Company. The executive also present during this meeting was similarly shocked by Mr. Feldenkreis' slurs.

24. Mr. Feldenkreis' disdain for homosexuals and African-Americans extends to the Company's advertising campaigns. In fact, his aversion to Company advertisements containing African-American models or gay models is well-known throughout the Company.

25. In December of 2013, Mr. Feldenkreis was reviewing a printed joint Company and Lord & Taylor advertisement with Mr. Cook and a member of his team. During that meeting, Mr. Feldenkreis admonished both of them to make sure there are "no Blacks in my ads" and he "did not want anyone who looked too gay." Mr. Feldenkreis further ordered they show him the Company's ads before giving Lord & Taylor their approval so he could screen them first. As a gay man, Mr. Cook was humiliated, shocked, and dismayed by this outrageous business practice. Moreover, he felt humiliated in having to endure this experience before a direct report.

26. Nevertheless, Mr. Cook tried to focus on running the business and he and his direct report discussed how to handle Mr. Feldenkreis' disdain for gay and African-American models and this new requirement that he preview all such ads with Lord & Taylor. Ultimately, on January 31, 2014, his direct report emailed the buyer at Lord & Taylor obliquely stating that "Oscar was not pleased with our from your Fall Fashion Book . . . We will have to flash him ads now prior to approval" as they could not simply tell Lord & Taylor that Mr. Feldenkreis did not approve of models who looked too gay or were African-American.

27. While Lord & Taylor is frustrated with the approval process for their joint ads, even now almost two years later, it is unaware of the precise reason for which this process is now in place.

28. The Feldenkreis' dominant family control virtually ensures that Mr. Cook will indeed continue to endure this hostile environment and discriminatory conduct. In fact, Mr. Feldenkreis' daughter, Erica Feldenkreis, who was recently promoted to the position of Brand Director for Original Penguin in July 2015 – over Mr. Cook's strenuous objections – has reiterated her father's racist and homophobic positions on advertisements by stating on numerous occasions that "my Dad doesn't like having black guys in his ads, or anyone who looks too gay."

29. Notwithstanding the Company's and Mr. Feldenkreis' institutionalized process of screening-out African-American models or those who are too gay, Mr. Cook has always opposed this horrific practice. In fact, mere weeks before he complained, on August 21, 2015, Lord & Taylor's buyer emailed Mr. Cook's direct reports seeking her input on a proposed print advertisement. Mr. Cook's direct report informed him that she reviewed the

advertisement and stated that “he’s not 05” to which Mr. Cook replied “I’m bad with the codes . . . what’s 05?” Mr. Cook was referring to color codes used in connection with their products. The reply attached an image of nearly a dozen black Crayola crayons. Mr. Cook responded:

“. . . based on our prior meeting with Oscar though when he brought this up I think the fact that he’s not 05 is enough for him to be fine with the ad don’t you agree?”

Moments later Mr. Cook indicated his being sickened by having to engage in this process:

“crazy that we even have to ever discuss this . . . sooo not ok.”

30. Defendants’ ethnic and racial disdain appears to know no limits. During a recent employee meeting in the Miami office, Oscar’s father George Feldenkreis, the current Chief Executive Officer, switched from speaking English to Spanish and proclaimed to the confused audience of mostly English-speaking employees that “all you Gringos need to learn to speak Spanish.”

Complaint of Discrimination and Retaliation

31. On September 3, 2015, Mr. Cook, through his counsel, complained about the Company and Mr. Feldenkreis, not only about discrimination and the hostile environment he endured and suffered because of his sexual orientation, but also about their discriminatory conduct and behavior against African-Americans.

32. In that letter, counsel reminded the Company and Mr. Feldenkreis of their legal obligation not to retaliate against Mr. Cook or take any adverse actions against him on account of his protected activities. Notwithstanding their obligations under law and that reminder, Mr. Feldenkreis, the Company, and its executive management have orchestrated a

campaign designed to isolate and exclude him and significantly weaken his role within the Company.

33. Mr. Feldenkreis has deliberately undermined and circumvented Mr. Cook with his team. Instead of contacting Mr. Cook directly, as he did previous to September 3, 2015, Mr. Feldenkreis now contacts Plaintiff's direct reports.

34. By way of example only, on September 17, 2015, Lord & Taylor requested that Original Penguin provide a financial accommodation because it transferred some inventory to its outlet stores. Rather than meeting with Mr. Cook one-on-one as he would otherwise, as Mr. Feldenkreis was then in the Company's New York City offices, he called and emailed one of Mr. Cook's direct reports, who was surprised by the direct contact with Mr. Feldenkreis.

35. The Company's retaliatory acts are not limited to internal Company business. Mr. Feldenkreis has undermined Mr. Cook as to individuals outside the Company as well, creating the misimpression that Mr. Cook is unaware of what is happening with his own brand and team.

36. By way of example only, after Mr. Cook complained, Mr. Feldenkreis directly organized a meeting with the Merchandise Manager and Buyer at Lord & Taylor. Mr. Cook was not invited. He only learned of the meeting, one he would normally attend, from the buyer who was surprised by his absence and asked him why he was not present. Mr. Cook was forced to concede in a September 9, 2015 email to the buyer that he did not know what is going on with his own business:

“ . . . not sure why he set this meeting nor why I wasn't invited sorry to say. I know its embarrassing but not sure why he sent you an invite and not me.”

37. Over the course of his career with the Company, Mr. Cook interacted with the Company's executive management many times over the course of the workday by phone, email and in person.

38. Since he complained, Mr. Feldenkreis and the Company's executive management have ignored and effectively "froze" out Mr. Cook.

39. For instance, every Friday for the past three years of his employment, Mr. Cook sends Mr. Feldenkreis and other Company executives an Executive Management Recap or "EMR." The EMR is the lifeblood of the Company. This detailed report is usually approximately twenty (20) pages long and is the foundational tool by which Company executives manage finances, products, and employee headcount supporting the Company's wide ranging brands.

40. The first EMR Mr. Cook sent since he complained on September 3, 2015 was met with silence – no comments or replies. Mr. Feldenkreis finally did reply to Mr. Cook's September 11, 2015 EMR – the first EMR since he complained – but only on September 28, 2015. Every EMR sent by Mr. Cook was always met with replies, questions, and/or kudos shortly after it was emailed regardless of intervening holidays or business travel. This was uncharacteristically more than two weeks after it was emailed – and only after Mr. Cook, through his counsel complained about retaliation.

Retaliation Persists Even in the Aftermath of Cease and Desist Letter

41. On September 18, 2015, Mr. Cook's counsel sent a cease and desist letter to Gordon & Rees, by then Defendants' second set of attorneys, demanding that their clients immediately end their retaliatory acts and reminding them of their obligation not retaliate against Mr. Cook.

42. On September 21, 2015, Mr. Cook received an email from a fellow executive at Perry Ellis with the message “FYI” forwarding an exchange he had with Mr. Feldenkreis the day before. Mr. Cook’s business line, Original Penguin, was the subject matter of their email exchange and the issue was pricing. Normally, Mr. Feldenkreis would contact Mr. Cook directly as the President of Original Penguin. Mr. Cook was particularly jarred by a call the day after this email during which that Perry Ellis executive sought to assure Mr. Cook that he liked him and that he would never do anything behind his back and that was why he forwarded Mr. Feldenkreis’ email, but that he thought Mr. Cook should be aware of the email as he was “doing things that normally Mr. Cook would do.”

43. Despite Mr. Feldenkreis’ discriminatory statements and behavior and the hostile environment enabled by the Company, Mr. Cook has been an incredibly effective and dedicated leader with a strong track record of success running Original Penguin.

44. However, Mr. Cook’s continued success running the Original Penguin brand in this discriminatory environment in the midst of ongoing retaliation has impacted both Mr. Cook’s physical and emotional health.

45. Despite Defendants’ discrimination and retaliation, Plaintiff has performed and continues to continue to perform his role for a brand he loves and he brings this action to eradicate the pervasive discriminatory and retaliatory conduct directed at him and others in the Company.

FIRST CAUSE OF ACTION

**(Retaliation in Violation of Section 1981)
*Against All Defendants***

46. Plaintiff repeats and re-alleges each and every allegation in all of the preceding paragraphs as if fully set forth herein.

47. Defendants retaliated against Plaintiff for his engagement in protected activities.

48. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of Section 1981, Plaintiff has suffered and continues to suffer harms for which he is entitled to an award of monetary damages and other relief.

SECOND CAUSE OF ACTION

(Hostile Work Environment in Violation of New York State Human Rights Law) *Against All Defendants*

49. Plaintiff hereby repeats and re-alleges each and every allegation in the preceding paragraphs as if fully set forth herein.

50. By the actions described above, among others, Defendants discriminated against Plaintiff on the basis of his sexual orientation and by creating and tolerating a hostile environment in violation of the New York State Human Rights Law.

51. As a direct and proximate result of Defendants' unlawful and discriminatory conduct, Plaintiff has suffered and continues to suffer harm for which he is entitled to an award of monetary damages and other relief, in addition to costs and reasonable attorneys' fees.

THIRD CAUSE OF ACTION

(Hostile Work Environment in Violation of New York City Human Rights Law) *Against All Defendants*

52. Plaintiff repeats and re-alleges each and every allegation in all of the preceding paragraphs as if fully set forth herein.

53. As a direct and proximate result of Defendants' unlawful and discriminatory conduct in violation of the New York City Human Rights Law, Plaintiff has suffered and

continues to suffer harm for which he is entitled to an award of monetary damages and other relief, in addition to costs and reasonable attorneys' fees.

54. Defendants' unlawful and 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.

FOURTH CAUSE OF ACTION

**(Retaliation in Violation of New York State Human Rights Law)
*Against All Defendants***

55. Plaintiff repeats and re-alleges each and every allegation in all of the preceding paragraphs as if fully set forth herein.

56. Defendants retaliated against Plaintiff for his engagement in protected activities.

57. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of the NYSHRL, Plaintiff has suffered and continues to suffer harms for which he is entitled to an award of monetary damages and other relief.

FIFTH CAUSE OF ACTION

**(Aiding and Abetting Violations of New York State Human Rights Law)
*Against Defendant Feldenkreis***

58. Plaintiff repeats and re-alleges each and every allegation in all of the preceding paragraphs as if fully set forth herein.

59. Defendant Feldenkreis knowingly or recklessly aided and abetted the unlawful employment practices, discrimination, harassment and retaliation against Plaintiff stated herein in violation of the NYSHRL.

60. As a direct and proximate result of Defendant's unlawful retaliatory conduct in violation of the NYSHRL, Plaintiff has suffered and continues to suffer harms for which he is entitled to an award of monetary damages and other relief.

SIXTH CAUSE OF ACTION

**(Retaliation in Violation of New York City Human Rights Law)
*Against All Defendants***

61. Plaintiff repeats and re-alleges each and every allegation in all of the preceding paragraphs as if fully set forth herein.

62. Defendants retaliated against Plaintiff for his engagement in protected activities.

63. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of the NYCHRL, Plaintiff has suffered and continues to suffer harms for which he is entitled to an award of monetary damages and other relief.

64. Defendants' unlawful and discriminatory actions constitute malicious, willful and wanton violations of the NYCHRL for which Mr. Cook is entitled to an award of punitive damages.

SEVENTH CAUSE OF ACTION

**(Aiding and Abetting Violations of New York City Human Rights Law)
*Against Defendant Feldenkreis***

65. Plaintiff repeats and re-alleges each and every allegation in all of the preceding paragraphs as if fully set forth herein.

66. Defendant Feldenkreis knowingly or recklessly aided and abetted the unlawful employment practices, discrimination, harassment, and retaliation against Plaintiff stated herein in violation of the NYCHRL.

67. As a direct and proximate result of Mr. Feldenkreis' unlawful retaliatory conduct in violation of the NYCHRL, Plaintiff has suffered and continues to suffer harms for which he is entitled to an award of monetary damages and other relief.

68. Defendant Feldenkreis' unlawful and retaliatory actions constitute malicious, willful and wanton violations of the NYCHRL 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 Defendants for the following relief:

A. Enjoining Defendants from retaliating against Plaintiff in response to his engaging in protected activities in violation of Section 1981, NYSHRL, and NYCHRL;

B. Enjoining Defendants from contesting that Plaintiff endured a workplace atmosphere justifying his terminating his employment with the Company sufficient to warrant constructive discharge;

C. A declaratory judgment that the actions, conduct, and practices of Defendants complained of herein violate Section 1981, NYSHRL, and NYCHRL;

D. An injunction and order permanently restraining Defendants and its 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;

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

- F. An award of damages against Defendants, in an amount to be determined at trial, plus prejudgment interest, to compensate for all non-monetary and/or compensatory damages, including but not limited to, compensation for Plaintiff's mental anguish, humiliation, embarrassment, stress and anxiety, emotional pain and suffering, and emotional distress;
- G. An award of punitive damages in an amount to be determined at trial;
- H. Prejudgment interest on all amounts due;
- I. An award of costs that Plaintiff has incurred in this action, including, but not limited to, expert witness fees, as well as Plaintiff's reasonable attorneys' fees and costs 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: October 21, 2015
New York, New York

Respectfully submitted,

WIGDOR LLP

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