

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

CHRIS ANN O'NEILL,
Plaintiff,

v.

ALURE HOME IMPROVEMENTS, LLC d/b/a
Alure Home Improvement and d/b/a Alure Home
Solutions, HOMERENEW BUYER, INC., and
RENOVO HOME PARTNERS,

Defendants.

-----X

Case No. 24-cv-05955

COMPLAINT

Jury Trial Demanded

Plaintiff, CHRIS ANN O'NEILL ("Plaintiff"), by and through her attorneys, Rapaport Law Firm, PLLC, as and for her Complaint against defendants ALURE HOME IMPROVEMENTS, LLC d/b/a Alure Home Improvement and d/b/a Alure Home Solutions (collectively, "Alure"), HOMERENEW BUYER, INC. ("HomeRenew"), and Renovo Home Partners ("Renovo") (collectively, "Defendants"), alleges as follows:

NATURE OF CASE

1. Plaintiff complains pursuant to Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e *et seq.* ("Title VII"), and the New York State Human Rights Law, N.Y. Exec. Law § 296 *et seq.* ("NYSHRL"), and seeks damages to redress the injuries she has suffered as a result of being subjected to discrimination on the basis of sex and retaliation against her by her employer. Plaintiff also brings claims pursuant to sections 191(1)(c) and 193 of the New York Labor Law ("NYLL") to recover unpaid, agreed-upon commissions.

2. Beginning on or about July 25, 2014, Plaintiff worked as a sales professional for Alure, a Suffolk County based direct-to-consumer remodeling business. Initially,

Plaintiff handled sales in Alure’s Extreme Kitchen and Bath Department. As described below, in or about July 2017, Plaintiff complained to Alure’s Chief Financial Officer, Lisa DiFilippi (“DiFilippi”), that her manager, Mike Goldberg (“Goldberg”), was subjecting her to pervasive sexual harassment, which included unwanted touching and crude sexual remarks, and other forms of discriminatory and unequal treatment based on her sex. In response to Plaintiff’s complaint, Plaintiff was transferred away from Goldberg to Alure’s Custom Kitchen and Bath Department, where, for the next six years, Plaintiff worked as a Kitchen and Bathroom Specialist, and was a leader in sales.

3. In or about late 2021, Alure was one of three direct-to-consumer home improvement companies that were acquired by Audax Management Company, LLC d/b/a Audax Private Equity (“Audax”), a private equity firm. Upon information and belief, Audax combined these three, formerly independent businesses (which are now referred to as “brands”) under the ownership and control of a newly-formed parent company, HomeRenew, which operates under the trade name Renovo Home Partners.¹

4. Upon information and belief, from its inception, and continuing to the present, the Renovo Enterprise had a centralized human resources department that handled personnel issues for each of Renovo’s brands, including, *inter alia*, Alure.

5. After Alure was acquired by (and absorbed into) the Renovo Enterprise, Defendants assured Plaintiff that her job was secure, and that Defendants wanted Plaintiff

¹Plaintiff’s belief and understanding that the corporate name, HomeRenew, and the trade name, Renovo, are the corporate and trade names, respectively, of a single business enterprise that is the parent company of Alure, is based on recent representations by Audax’s outside counsel to Plaintiff’s counsel. For convenience, with limited exceptions, HomeRenew and Alure are interchangeably and collectively referred to herein as “Renovo” or the “Renovo Enterprise.” Based on Audax’s representations that it had no involvement in any personnel decisions relating to HomeRenew, Alure or Plaintiff, and solely has the status of an outside investor in Renovo, Plaintiff does not assert claims against Audax, but reserves her rights to amend her pleading to name Audax in the event that information obtained through discovery should discredit Audax’s assurances regarding its role and status with respect to the Renovo Enterprise.

to stay at the newly combined enterprise to “continue on here doing what you do best.” However, in or about late May 2023, Defendants demanded that Plaintiff return to Goldberg’s supervision. Plaintiff implored Defendants not to carry out their foregoing directive, explaining to Defendants that she was traumatized by the prospect of being subjected to the whims of her former abuse. Making matters worse, Goldberg had reacted vindictively when Plaintiff complained about his harassing conduct in 2017.

6. Less than one month after Plaintiff engaged in protected conduct of opposing Defendant’s demand that she return to the supervision of her sexual harasser (and, notably, less than one month after Defendants assured Plaintiff that they wished for her to continue her employment with Defendants), Defendants retaliated against Plaintiff by terminating her from her job and willfully depriving her of substantial commission pay that she had earned prior to the date of her termination.

JURISDICTION AND VENUE

7. This Court has jurisdiction over Plaintiff’s federal claims pursuant to 28 U.S.C. § 1331. This Court has supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367.

8. Venue in the Eastern District of New York is proper pursuant to 28 U.S.C. § 1391(b)(2), as a substantial part of the events or omissions giving rise to the claims asserted occurred in this judicial district.

9. All prerequisites to the institution of this action have been met. A charge of discrimination was filed with the U.S. Equal Opportunity Commission (“EEOC”). A Right to Sue Letter was issued by the EEOC on May 29, 2024. This action is filed within 90 days thereof. A copy of the Right to Sue Letter is annexed hereto as Exhibit A.

PARTIES

O’Neill.

10. Plaintiff was at all relevant times (and she continues to be) a resident of Levittown, New York. Levittown is located in Nassau County.

11. At all relevant times, Plaintiff was employed by Defendants in New York, handling the marketing and sales of high-end kitchen and bath renovations and remodeling services to consumers.

12. At all relevant times, Plaintiff, female, was an “employee” of Alure, Renovo, and HomeRenew (to wit, of the Renovo Enterprise), entitled to protection as defined by Title VII and the NYSHRL, as she worked for Defendants in New York.

13. At all relevant times, Plaintiff was jointly employed by all of the Defendants, each of which had the status of Plaintiff’s joint “employer,” under the NYLL.

Defendants and the Renovo Enterprise.

14. Upon information and belief, at all relevant times, Alure was and is a domestic limited liability company organized and existing under the laws of the State of New York and/or a foreign limited liability company authorized to conduct business under the laws of the State of New York, and maintains offices for the transaction of business at 70 Mall Drive, Commack, New York 11725. Alure has substantially more than 15 employees.

15. Upon information and belief, the Renovo Enterprise is a centrally operated and managed home improvement enterprise that is comprised of seven, jointly-managed “brands” (including, *inter alia*, Alure). Each of these “brands” was an independent

company until they were combined by Audax into a unified home improvement enterprise known as Renovo and/or HomeRenew.

16. The Renovo Enterprise has a centralized human resources department that oversees personnel decisions at all of the “brands,” including, *inter alia*, human resources decisions relating to employees at Alure.

17. Upon information and belief, Renovo has executive offices in Dallas, Texas; Boston, Massachusetts; and Commack, New York.

18. Plaintiff is informed and believes that Renovo is the trade name or fictitious business name of HomeRenew Buyer, Inc., a foreign corporation with executive offices in Dallas, Texas; Boston, Massachusetts; and Commack, New York. Plaintiff’s information and belief with respect to HomeRenew on based on verbal representations made by Audax’s outside counsel, and it is unclear whether HomeRenew has any legal authority to function under the fictional name of Renovo.²

19. On Renovo’s website³, under the banner “OUR BRANDS,” Renovo lists Alure, Dreamstyle Remodeling, Minnesota Rusco, NEWPRO Home Solutions, Reborn, Remodel USA, and Woodbridge Home Solutions (collectively, the “Brands”). <https://www.renovohomepartners.com/> (accessed on August 21, 2024).⁴

20. Based on Renovo’s public statements in which Renovo repeatedly refers to itself as a “Company”, Plaintiff is informed and believes that Renovo is a foreign corporation with its principal executive offices located in Dallas, Texas.

²In the position statement submitted by Renovo, Alure and Audax to the EEOC, they did not make any reference to HomeRenew, and, instead, referred to “Renovo’s management” of the brands.

³Upon information and belief, also one of the websites of HomeRenew.

⁴<https://www.renovohomepartners.com/#brands>

21. Upon information and belief, the Renovo Enterprise was formed in or about December 2021 by Audax Management Company, LLC d/b/a Audax Private Equity, a private equity firm.

22. In a press release dated January 31, 2022, Audax described its business model of operating and combining previously-independent home improvement businesses, including Alure, under Renovo's centralized management as follows:

With multiple leading brands under one management team, Renovo Home Partners aims to centralize back office operations and invest in best-in-class technology capabilities to drive commercial alignment amongst regionally focused businesses today, with the opportunity to cross-sell product offerings at national scale in the near term.⁵

23. Upon information and belief, in late 2021, Audax acquired Alure, Dreamstyle Remodeling and Remodel USA. Audax combined the operations of these previously-independent businesses, and began operating them as "brands," under the unified control and management of the newly-formed umbrella, the Renovo Enterprise.

24. Audax explains on its website that initially Renovo "was formed through the combination of three regional remodeling businesses: Dreamstyle, Remodel USA, and Alure Home Improvements."⁶ According to Audax, the culmination of these acquisitions and combinations is a single, unified "company":

Given the long-term success of the three brands, we saw significant potential in combining the businesses under one umbrella to create a larger, more diversified company and ultimately working to become one of the nation's leading DTC home repair and remodel services company[.]⁷

⁵ <https://www.businesswire.com/news/home/20220131005284/en/Audax-Private-Equity-Announces-Creation-of-New-Home-Services-Platform-Renovo-Home-Partners> (accessed on August 21, 2024)

⁶ <https://www.audaxprivateequity.com/news/audax-private-equity-announces-creation-of-new-home-services-platform-renovo-home-partners> (accessed on November 28, 2023)

⁷ *Id.*

25. Upon information and belief, from the outset, Renovo planned to exercise, and it does exercise, authority and decision-making over the human resources functions relating to the Brands. In June 2022, shortly after Audax formed Renovo, Renovo's then CEO, John Dupuy, stated, "Renovo is building a corporate team in Dallas to lead functions in finance and accounting, information technology, and human resources and recruiting."⁸

26. Upon information and belief, at all relevant times, Malcolm O'Neal ("O'Neal"), the Renovo's Enterprise's "Chief Human Resources Officer," exercised ultimate decision making authority regarding employees of Alure, and O'Neal was responsible for the decision to unlawfully terminate Plaintiff's employment in retaliation for Plaintiff's request that she not be forced to work under the direct supervision of Goldberg due to Goldberg's prior conduct in sexually harassing Plaintiff and discriminating against Plaintiff on the basis of sex.

27. In or about March 2023, on LinkedIn, O'Neal touted Renovo's purported commitment to "helping women" working at Renovo's Brands "advance in the workplace," posting on LinkedIn:

We want to take a moment to celebrate and recognize the incredible women working in the home improvement industry.

Renovo Home Partners and all of our partner companies are committed to helping women advance in the workplace and creating learning opportunities for all of our employees.⁹

28. In a subsequent post, O'Neal highlighted, by name, female employees at Renovo's various brands whom he deemed to be "superstars." O'Neal wrote, "we're

⁸ <https://middlemarketgrowth.org/executive-peer-profile-john-dupuy/> (accessed on August 21, 2024)

⁹ <https://www.linkedin.com/feed/update/urn:li:activity:7039245946559287296/> (accessed on November 28, 2023)

thrilled to have them as part of our team.”¹⁰ O’Neal’s foregoing praise of female employees and purported emphasis on fostering their success is in stark contrast to Renovo’s actions, particularly Renovo’s failure to protect Plaintiff from sex-based discrimination and its retaliatory actions against Plaintiff almost immediately after Plaintiff opposed Defendants’ decision to place her under the direct supervision of her harasser.

29. Upon information and belief, Defendants’ employed and employ an excess of two hundred employees.

MATERIAL FACTS

30. Beginning on or about June 25, 2014, continuing through approximately June 2017, Plaintiff worked as an outside sales person in Alure’s Extreme Kitchen and Bath Department under Goldberg’s supervision.

31. Plaintiff was subjected to unlawful gender discrimination at the hands of Goldberg, which included Goldberg’s crude remarks that were laden with sexual innuendo. Solely by way of example, during a sales meeting, Goldberg made the comment, “size matters. Right, Chris Ann?”

32. On another occasion, Goldberg – leering at Plaintiff – said words to the effect, “I would marry you.”

33. Goldberg also subjected Plaintiff to unwanted physical contact, touching her hair and shoulders. On one occasion, he stated to her that he did not expect her hair to be “so soft.” Goldberg also made it a habit to regularly stand uncomfortably close to Plaintiff.

¹⁰ *Id.*

34. In addition, Goldberg noticeably singled out female employees for unwarranted criticism regarding their work performance. Goldberg was dismissive of Plaintiff's efforts to give input, and he would abruptly shut down her efforts to contribute at department-wide meetings. Goldberg delegated menial tasks to Plaintiff – duties that were not asked of Plaintiff's male counterparts. For example, Goldberg would ask Plaintiff to make photocopies and perform similar clerical tasks that were not required of her male co-workers.

35. Upon information and belief, Goldberg's pervasive and materially adverse treatment of female employees (in comparison to similarly-situated male employees) was widely known by employees and managers of Alure.

36. In approximately July 2017, in response to Plaintiff's complaints about Goldberg's sexually harassing and discriminatory conduct, Alure's Chief Financial Officer, DiFilippi, transferred Plaintiff away from Goldberg's department, and assigned her to work in Alure's Custom Kitchen and Bath Department ("Custom Department").

37. Notably, when Goldberg learned that Plaintiff had complained about his sexually harassing and discriminatory conduct, Goldberg reacted vindictively by spreading false accusations of poor work performance on the part of Plaintiff.

38. Upon information and belief, Alure took no disciplinary action against Goldberg or otherwise implement measures to induce Goldberg to cease his bullying and discriminatory conduct toward female employees. Over the years, Goldberg continued to be known for his bullying and harassing conduct toward female employees. Upon information and belief, no actions were taken to stop him from continuing this conduct.

39. In her new sales role in the Custom Department, Plaintiff was supervised by Gina Bonura (“Bonura”), and Plaintiff had minimal, if any, contact with Goldberg.

40. In her position in the Custom Department, Plaintiff successfully handled sales of custom bathroom and kitchen remodeling services.

41. Bonura praised Plaintiff for leading the team in sales and gross profit margins throughout her approximately five years in the Custom Department. Plaintiff’s sales averaged approximately \$1.5 Million per year. Plaintiff’s demonstrably successful work performance was common knowledge, and is irrefutable.

42. Plaintiff’s stellar sales performance in the Custom Department continued, unabated, after Alure was acquired by Renovo.

43. In 2021 and 2022, Alure gradually came under the control, unified management, and centralized human resources of Renovo. The first of the three Brands acquired by Audax (Alure, Dreamstyle, and Remodel USA) were placed under Renovo’s umbrella, and began to operate as a single enterprise with unified personnel and human resources policies, procedures and departments. With this shift, Alure and Renovo became joint employers of Plaintiff, with Renovo assuming responsibility for personnel decisions.

44. Upon information and belief, after the merger/comboination (through which Alure came under the control of Renovo), Renovo’s human resources personnel had ultimate authority for supervising, disciplining, hiring and firing employees at the Alure brand.

45. In late 2022, as Renovo’s merger plans took effect, Defendants repeatedly assured Plaintiff that her job was secure, and that structural changes would not hinder

Plaintiff's continued employment. Indeed, Plaintiff was among the employees who participated in implementing key changes made by Renovo to Alure's operations.

46. Plaintiff's sales performance continued to excel in 2022, with sales totaling \$1.5 Million Dollars.

47. Until early 2023, pursuant to Plaintiff's agreement with Defendants, Plaintiff was compensated on a commission basis, as follows: Plaintiff was paid a commission rate of 6% of her total sales. She received a weekly draw of \$1,000.00, which was credited against her commission pay. Plaintiff's commissions were earned on the signing of sales contracts with customers.

48. Defendants paid commissions to Plaintiff in two installments, as follows: 65% of Plaintiff's 6% commission was paid to Plaintiff on the signing of each customer's contract; and the balance (35% of the 6% commission) was paid upon the completion of the home improvement work.

49. In early 2023, when Renovo implemented organization changes at Alure, Plaintiff's compensation was increased, and the formula upon which her compensation was based was changed, reflecting her newly-assigned, non-sales roles. Plaintiff's \$1,000.00 fixed weekly pay was changed from a draw against commissions to a salary; and her commission rate was increased from 6% to 7%.

50. Plaintiff was informed that the foregoing increase in her compensation reflected increased responsibilities delegated to Plaintiff that reduced the amount of time she could devote to outside sales, and Defendants' desire to incentivize Plaintiff to continue working.

51. Indeed, in an email to Plaintiff of May 24, 2023, Daniel Mocci (“Mocci”), who had managerial responsibilities with two Renovo Brands (Alure and NEWPRO), wrote, “I’m hopeful you still want to have a home at Alure, I/we certainly want you to continue on here doing what you do best!” Given Mocci’s foregoing statement, similar statements by other managers, as well as Plaintiff’s long track record of success, Plaintiff had every reason to believe that her future employment with Defendants was secure. Moreover, she had every intention of remaining in her job, regardless of which department she was assigned to work in.

52. However, during the same week, Plaintiff learned that Defendants were requiring her to return to Goldberg’s direct supervision. Plaintiff received this unwelcome and ominous information directly from Goldberg, who approached her office and said words to the effect, “you work for me now.”

53. Given the years of distress Plaintiff had endured because of Goldberg’s gender-based harassment and unequal treatment, and Goldberg’s retributive conduct after Plaintiff complained to management about Goldberg’s discrimination in 2017, Plaintiff was justifiably alarmed and distraught. Plaintiff immediately began efforts to convince Defendants to reverse their decision.

54. On or about May 25, 2023, via email, Plaintiff complained to Mocci and Frank Stehlik (“Stehlik”), a General Manager, about being forced to return to the supervision of someone who had subjected her to years of sex-based mistreatment that created a hostile work environment and, worse yet, had been unrepentant (indeed, hostile) after he had learned that Plaintiff had complained about his discriminatory conduct.

55. On May 30, 2023, Plaintiff met with Stehlik. She explained to Stehlik that she was uncomfortable working with Goldberg, let alone being compelled to report to him.

56. A follow-up meeting was scheduled for May 31, 2023. Plaintiff was told that Stehlik and Mocci would be participating. But when Plaintiff arrived for the May 31st meeting, Stehlik informed her that she would be required to voice her concerns in the physical presence of Goldberg. Plaintiff observed that Mocci, Stehlik and Goldberg had already been speaking with each other. Plaintiff asked that she be allowed to explain her concerns without having to directly confront Goldberg.

57. Given Goldberg's prior history of verbally attacking Plaintiff after she previously conveyed her concerns about his conduct, Plaintiff was understandably and correctly skeptical that Goldberg would be willing to engage in a constructive conversation.

58. In light of what had transpired six years earlier (namely, Alure's prior investigation that culminated in the granting of Plaintiff's departmental transfer request, and Goldberg's vindictive conduct), it should have been readily apparent that Goldberg's physical presence would have served no valid purpose, and would only have gratuitously exacerbated Plaintiff's distress.

59. Without any valid explanation, Defendants dismissed out of hand Plaintiff's complaint regarding Defendants' decision to place her under Goldberg's supervision.

60. Plaintiff then escalated her complaint to the Renovo Human Resources Department. Upon information and belief, O'Neal, Renovo's Chief Human Resources

Officer, referred Plaintiff's complaint to Heather Rotondi who, upon information and belief, was and is Renovo's Director of HR.

61. In an email to O'Neal and a telephone call with Rotondi, Plaintiff explained that Goldberg's conduct of subjecting Plaintiff to sexual harassment and unequal treatment based on gender made it utterly inappropriate to return her to Goldberg's supervision. In an email of June 5, 2023, Rotondi told Plaintiff that Defendants would investigate her complaint, and, in the meantime, Plaintiff would report to Jean Esposito.

62. After working from home for a week, Plaintiff returned to the workplace on or about June 12, 2023 to drop off paperwork relating to a sale. Her co-workers forewarned her that Goldberg had begun a campaign to get her fired. Among other things, according to co-workers, Goldberg had said (paraphrasing) "we have to get Chris Ann out of here. She's got to go." Plaintiff continued to work remotely.

63. On June 20, 2023, Plaintiff was called into a meeting, when she was informed of her termination from her job. The reason given (clearly a pretext) was that Defendants' made a decision to discontinue the Custom Department. However, as noted above, only weeks earlier, Plaintiff was assured Defendants wanted her to remain, regardless of whether she handled sales in the Custom Department or another department of Alure.

64. Crucially, Plaintiff's sales experience with Defendants had not been limited to the Custom Department. Her sales skills and experience would have made her a valuable asset at any department, at least one of which was actively recruiting candidates for sales positions.

65. Upon information and belief, when Defendants terminated Plaintiff's employment, Defendants were simultaneously recruiting sales personnel. Upon information and belief, Defendants continued to recruit candidates for kitchen and bath sales positions throughout the summer of 2023.

66. Even worse, despite Mocci's representation to Plaintiff on or about May 24, 2023, that Defendants intended and wished for her continue her employment, after Plaintiff opposed Defendants' decision to place her under Goldberg's supervision, Defendants concocted a fictional and demonstrably false narrative that Plaintiff's sales performance was poor.

67. Upon information and belief, Defendants claimed that they investigated Plaintiff's claims, but their investigation was a charade insofar as Defendants were readily able to communicate with and obtain information from persons with knowledge of the circumstances that led Alure to transfer Plaintiff away from Goldberg, but Defendants refused and failed to do so.

68. Upon information and belief, Defendants also falsely and pretextually claimed that Plaintiff was terminated in connection with a reduction in force, yet Defendants continued to post job openings for kitchen and bath sales professionals.

69. At bottom, the timing and circumstances surrounding Defendants' decision to terminate Plaintiff's employment compel the conclusion that the reasons Defendants gave for their termination of Plaintiff were false and/or pretextual, and Plaintiff was fired in retaliation for her protected conduct, to wit: complaining about the decision to place her under the immediate supervision of someone who had long subjected her to sexual harassment and sex discrimination.

70. Defendants would not have terminated her employment, and they would not have deprived Plaintiff of commissions that she had earned, had Plaintiff not opposed Defendants' requirement that she return to working under the supervision of Goldberg.

71. Plaintiff continues to feel the emotional distress, trauma, physical injuries, and financial loss of what she was forced to endure. She suffered a significant drop in wages as a result of the loss of her employment.

72. As a result of the acts and conduct complained of herein, Plaintiff has suffered and will continue to suffer the loss of income, the loss of salary, benefits and other remuneration which her employment entailed, and from future pecuniary losses, emotional pain, inconvenience, loss of enjoyment of life, and other non-pecuniary losses.

73. Defendants further retaliated against Plaintiff, and violated sections 191(1)(c) and 193 of the NYLL, by refusing to pay approximately \$35,187.00 in commissions that Plaintiff had earned prior to her termination. Plaintiff is likely owed even more in unpaid commissions; however, she does not have access to the most recent reports reflecting same.

74. Defendants provided sales employees access to reports of their anticipated commission compensation, each bearing the heading "Estimated Commissions by Salesperson" ("Commission Reports") that contained line-by-line itemizations of customer names, job names, contract dates, and contract prices.

75. Upon terminating Plaintiff, Defendants terminated Plaintiff's access to the Commission Reports, as well as to any of the information contained therein. Defendants refused Plaintiff's request for this information.

76. Defendants' foregoing denial of access to this crucial information had the intention and effect of obfuscating and concealing Defendants' willful refusal to pay the full amount of commissions that Plaintiff had already earned.

77. Solely by way of example, Plaintiff understands and believes that she was not paid the full amount of her commissions in connection with her sale of renovation services and materials, totaling more than \$155,000.00 to the Breres family.

78. By way of further example, upon information and belief, Defendants never paid Plaintiff any portion of the 7% commission she earned for her \$86,000.00 sale of goods and services to the Liferidge family in Long Island.

79. Plaintiff conservatively estimates that Defendants have unjustifiably withheld, retained and failed to pay at least \$35,000.00 of commission pay she earned and is due, but the precise amount will be determined at trial.

**AS AND FOR A FIRST CAUSE OF ACTION FOR DISCRIMINATION
UNDER TITLE VII**

80. Plaintiff repeats and realleges each and every allegation contained in the above paragraphs of this complaint as if set forth fully herein.

81. During the full statutory period, Plaintiff was protected by the provisions of Title VII, 42 U.S.C. §§ 2000e, and all applicable regulations thereunder.

82. Defendants, all of whom had the status of Plaintiff's employer, unlawfully discriminated against Plaintiff on the basis of her complaints of discrimination in violation of Title VII of the 1964 Civil Rights Act, 42 U.S.C. Sections 2000e *et seq.*

83. As set forth above, Plaintiff engaged in protected activities under Title VII by, *inter alia*, complaining of and opposing Defendants' demand that she return to working under the direct supervision of her former manager, Goldberg, who had

subjected her to years of a hostile work environment, sexual harassment, and unequal treatment based on sex.

84. By the actions described above, among others, Defendants discriminated against Plaintiff based on her sex, and in retaliation for her protected conduct in complaining about and opposing conduct that she reasonably and in good faith believed was discriminatory on the basis of sex (and, in fact, was discriminatory on the basis of sex), by terminating her employment and withholding her agreed-upon, earned commissions.

85. As a proximate result of Defendants' unlawful employment practices, Plaintiff has suffered extreme mental anguish, emotional distress, outrage, anxiety about her future and her ability to support herself and her family, harm to her employability and earning capacity, painful embarrassment among her friends and co-workers, damage to her good reputation, disruption of her personal life, and loss of enjoyment of the pleasures of everyday life.

86. Defendants' unlawful discriminatory actions were intentional, done with malice and/or showed deliberate, willful, wanton, and reckless indifference to Plaintiff's rights under Title VII.

87. As a result of Defendants' unlawful discriminatory and retaliatory actions, inactions and decision making, Plaintiff has suffered and continues to suffer harm and has been injured, including but not limited to loss of income, loss of benefits, emotional distress, and humiliation, for which she is entitled to an award of damages to the greatest extent permitted by law in amounts to be determined at trial.

88. Upon information and belief, Defendants' actions were engaged in with malice and reckless indifference to Plaintiff's statutory rights, entitling her to punitive damages under Title VII.

AS AND FOR A SECOND CAUSE OF ACTION
NEW YORK EXECUTIVE LAW

89. Plaintiff repeats and realleges each and every allegation contained in the above paragraphs of this complaint as if set forth fully herein.

90. During the full statutory period, Plaintiff was protected by the provisions of the NYSHRL, N.Y. Exec. Law §§ 290, *et seq.*, and all applicable regulations thereunder.

91. During the full statutory period, Defendants, each having the status of Plaintiff's employer, were subject to the provisions of the NYSHRL, N.Y. Exec. Law §§ 290, *et seq.*, and all applicable regulations thereunder.

92. As set forth above, Plaintiff engaged in protected activities under the NYSHRL by, *inter alia*, complaining of and opposing Defendants' demand that she return to working under the direct supervision of her former manager, Goldberg, who had subjected her to years of a hostile work environment, sexual harassment, and unequal treatment based on sex.

93. By the actions described above, among others, Defendants retaliated against Plaintiff for engaging in protected activities by, *inter alia*, terminating her employment and withholding her earned commissions.

94. As a result of the Defendants' discriminatory acts, Plaintiff was discriminated against in violation of New York Executive Law §296 *et seq.*

95. As a result of Defendants' unlawful discriminatory conduct, Plaintiff has suffered and continues to suffer harm, including but not limited to loss of income, loss of benefits, other economic losses, emotional distress, and humiliation, for which she is entitled to an award of damages to the greatest extent permitted by law in amounts to be determined at trial.

AS AND FOR A THIRD CAUSE OF ACTION
NEW YORK LABOR LAW § 191(1)(c)

96. Plaintiff repeats and realleges each and every allegation contained in the above paragraphs of this complaint as if set forth fully herein.

97. A commission is considered a wage under Section 190(1) of the NYLL.

98. Section 191(1)(c) of the NYLL provides, in pertinent part:

A commission sales person shall be paid the ... commissions ... earned or payable in accordance with the agreed terms of employment, ... if monthly or more frequent payment of wages, salary, ... or commissions are substantial, then additional compensation earned ... may be paid less frequently than once in each month, but in no event later than the time provided in the employment agreement or compensation plan.

99. Defendants entered into agreements with Plaintiff pursuant to which Defendants were obligated to pay Plaintiff commissions of 6%, and, beginning in early 2023, 7%, of Plaintiff's sales, and these commissions were earned when customers signed sales contracts with Defendants.

100. Plaintiff performed her obligations in accordance with her agreement with Defendants. But Defendants willfully and maliciously breached the contract they entered into with Plaintiff by failing to timely pay her the full amount of the commissions she had earned prior to Defendants' retaliatory termination of her employment, and Defendants

unjustifiably continue to withhold Plaintiff's earned commissions, which caused Plaintiff to suffer damages.

101. Accordingly, Plaintiff is entitled to recover from Defendants, jointly and severally, in the amount of actual, compensatory, and consequential damages that resulted from Defendants' breach, including unpaid commissions, plus liquidated (double) damages for all amounts owed, pre-judgment and post-judgment interest, and reasonable costs and attorneys' fees.

AS AND FOR A FOURTH CAUSE OF ACTION
BREACH OF CONTRACT

102. Plaintiff repeats and realleges each and every allegation contained in the above paragraphs of this complaint as if set forth fully herein.

103. In accordance with Defendants' agreement with Plaintiff, Plaintiff was entitled to commission pay of 6% of the amount of her kitchen and bath sales, and, beginning in or about early 2023, 7% of such sales, which were earned when customers signed sales contracts with Defendants.

104. In accordance with their agreement, Plaintiff asked Defendants to pay her the full amount of the unpaid commissions, and requested an itemization of her sales and commissions. Defendants unjustifiably refused these requests.

105. As a result of the foregoing, Defendants breached their contract with Plaintiff, and Plaintiff is entitled to the full amount of unpaid commissions, plus interest thereon at 9% from the date of breach.

AS AND FOR A FIFTH CAUSE OF ACTION
UNLAWFUL CONVERSION OF WAGES

106. Plaintiff repeats and realleges each and every allegation contained in the above paragraphs of this complaint as if set forth fully herein.

107. Defendants engaged in the unlawful conversion of Plaintiff's earned commissions, to which she is entitled to immediate compensation in amounts to be determined at trial.

AS AND FOR A SIXTH CAUSE OF ACTION
UNJUST ENRICHMENT

108. Plaintiff repeats and realleges each and every allegation contained in the above paragraphs of this complaint as if set forth fully herein.

109. By retaining and misappropriating Plaintiff's earned commissions, Defendants were unjustly enriched at Plaintiff's expense, and it is against equity and good conscience for Defendants to retain the amount of unpaid commissions that Plaintiff earned but was not paid.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Chris Ann O'Neill, respectfully requests that this Court enter a Judgment:

(a) Declaring that Defendants engaged in unlawful employment practices prohibited by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and the New York Executive Law § 296 *et seq.* on the basis of sex, and retaliated against Plaintiff for opposing, objecting to, and making complaints about, the unlawful conduct.

(b) Awarding damages to Plaintiff in amounts to be determined at trial for all lost wages and benefits resulting from Defendants' unlawful discrimination and

retaliation and to otherwise make her whole for any losses suffered as a result of such unlawful employment practices;

(c) Awarding Plaintiff compensatory damages for mental, emotional, and physical injury, humiliation, mental anguish, anxiety, emotional distress, pain and suffering, and injury to her reputation in an amount to be proven at trial;

(d) Awarding Plaintiff punitive and liquidated damages to be determined at trial;

(e) Compelling Defendants to provide a complete and detailed accounting of sales made by Plaintiff and all commissions earned by Plaintiff during her employment;

(f) Prejudgment interest from the date each commission was due;

(g) Awarding Plaintiff the costs of this action, together with reasonable attorney's fees; and

(h) Awarding Plaintiff such other and further relief as the Court may deem equitable, just, and proper to remedy Defendants' unlawful employment practices.

DEMAND FOR TRIAL BY JURY

Pursuant to 42 U.S.C. §1981A and Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury in this action.

Dated: New York, New York
August 26, 2024

RAPAPORT LAW FIRM, PLLC

By: /s/ Marc A. Rapaport
Marc A. Rapaport
80 Eighth Ave., Suite 206
New York, New York 10011
Tel. (212) 382-1600
mrapaport@rapaportlaw.com

Attorneys for Plaintiff