

This Document Is Presented Courtesy of



Workplace Champions Protecting Your Civil Rights®



Contact Us:

1-202-331-3911

Or visit us online:

<https://www.EmploymentLawGroup.com>

---

The Employment Law Group, P.C., has reproduced this document from public records as an educational service to users of its Web site. With the exception of this cover page and any other work of its own authorship herein, for which it reserves all rights, The Employment Law Group disclaims all copyright interest in this public domain work. If you believe you hold a valid copyright on any material in this document and wish to assert your rights, please contact us at [inquiry@EmploymentLawGroup.com](mailto:inquiry@EmploymentLawGroup.com).

Debra L. Wabnik (dw-2468)  
David R. Ehrlich (de-9786)  
Stagg, Terenzi, Confusione & Wabnik, LLP  
401 Franklin Avenue, Suite 300  
Garden City, New York 11530  
(516) 812-4500  
[dwabnik@stcwlaw.com](mailto:dwabnik@stcwlaw.com)  
[dehrlich@stcwlaw.com](mailto:dehrlich@stcwlaw.com)

*Attorneys for Plaintiff*  
*Michelle Tulino*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

MICHELLE TULINO,

Plaintiff,

-against-

THE CITY OF NEW YORK, THE NEW YORK CITY  
DEPARTMENT OF SMALL BUSINESS SERVICES,  
NEW YORK CITY BUSINESS ASSISTANCE  
CORPORATION, SHAAZAD ALI, ISMAIL  
MOHAMED, ROBERT WALSH, ANDREW  
SCHWARTZ, ANTHONY DELL'OLIO, SARAH  
KRAUSS, GRETTA ARENAS, NARDA AMARILLA-  
FERNANDEZ, BRYANA SHENTON, MYRNA MATEO,  
PAT DAURIA and FRANK CARNESI,

Defendants.

-----X

Docket No.: 15 Civ. 07106  
(JMF) (SN)

**SECOND AMENDED  
COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff, Michelle Tulino (“Plaintiff”), by her attorneys, Stagg, Terenzi, Confusione & Wabnik, LLP, complaining of Defendants, The City of New York (“The City”), The New York City Department of Small Business Services (“DSBS” or the “Agency”), New York City Business Assistance Corporation (“NYBAC”), Shaaazad Ali (“Ali”), Ismail Mohamed (“Mohamed”), Robert Walsh (“Walsh”), Andrew Schwartz (“Schwartz”), Anthony Dell’Olio (“Dell’Olio”), Sarah Krauss (“Krauss”), Greta Arenas (“Arenas”), Narda Amarilla-Fernandez (“Amarilla-Fernandez”), Bryana

Shenton (“Shenton”), Myrna Mateo (“Mateo”), Pat Dauria (“Dauria”) and Frank Carnesi (“Carnesi”) (collectively “Defendants”), herein alleges as follows:

1. Plaintiff worked for DSBS since 2008, and later worked for both DSBS and NYBAC, as the Executive Director.

2. In the years Plaintiff worked at DSBS and NYBAC, she was subjected to severe and pervasive sex discrimination, sexual harassment, retaliation, and wage discrimination, which forced her to resign, ending her promising career.

### **JURISDICTION, VENUE AND PARTIES**

3. This is a civil action for monetary and compensatory damages for claims of sex discrimination, sexual harassment, hostile work environment, retaliation, violation of the Equal Pay Act, violation of the Fair Labor Standards Act (“FLSA”), violations of the New York Labor Laws, and violations of the New York City and State Civil Service Laws against all Defendants, as well as defamation, battery, assault and intentional infliction of emotional distress against Defendant Ali, and defamation against Defendants Arenas, Amarilla-Fernandez, Shenton, Mateo, Dauria and Carnesi (“Defamation Defendants”).

4. This Court has jurisdiction over the action under 28 U.S.C. § 1331 and 29 U.S.C. § 206.

5. Pursuant to 28 U.S.C. § 1367, this Court has jurisdiction over the New York State and City claims by way of supplemental jurisdiction

6. At all relevant times, Plaintiff is a resident of Brooklyn, New York.

7. At all relevant times, Defendant The City is a municipal entity that is a subdivision of the State of New York.

8. At all relevant times, DSBS is a municipal agency with its principal place of business located at 110 Williams Street, New York, New York.

9. At all relevant times, NYBAC is a not-for-profit corporation incorporated under Section 1411 of the New York Not-for-Profit Corporation Law, with its principal place of business located at 110 Williams Street, New York, New York.

10. At all relevant times, Defendant Shaazad Ali was and is an individual employed by the City at DSBS as the Assistant Commissioner of Finance, and by NYBAC as the acting Treasurer.

11. Ali maintains substantial authority in the decision and policy-making hierarchy of DSBS and NYBAC, and exercised supervisory responsibility and control over Plaintiff in both her functions as Contract & Audit Manager at DSBS, and as Executive Director of the separate and distinct entity, NYBAC.

12. At all relevant times, Defendant Ismail Mohamed was and is an individual employed by the City at DSBS. Mohamed exercised supervisory responsibility and control over Plaintiff during her employment as Contract & Audit Manager at DSBS.

13. Defendant Robert Walsh was the Commissioner of DSBS during most of Plaintiff's tenure at DSBS, and exercised supervisory responsibility and control over Plaintiff and the entire Agency.

14. At all relevant times, Defendant Andrew Schwartz was and is an individual employed by the City at DSBS as the Deputy Commissioner of Legal & Regulatory Affairs, charged with ensuring that the Agency follows relevant employment laws.

15. At all relevant times, Defendant Anthony Dell'Olio was and is an individual employed by the City at DSBS as General Counsel.

16. At all relevant times, Defendant Sarah Krauss was an individual employed by the City at DSBS as the Chief of Staff.

17. At all relevant times, Defendant Greta Arenas was and is an individual employed by the City at DSBS as an Accounts Payable Officer.

18. At all relevant times, Defendant Narda Amarilla-Fernandez was and is an individual employed by the City at DSBS as Director of Budget.

19. At all relevant times, Defendant Bryana Shenton was and is an individual employed by the City at DSBS as Accounts Payable Officer.

20. At all relevant times, Defendant Myrna Mateo was and is an individual employed by the City at DSBS as Executive Director of Human Resources.

21. At all relevant times, Pat Dauria was an individual employed by the City at DSBS as Director of Budget during the majority of Plaintiff's tenure at DSBS, and later was hired as a consultant for a not-for-profit corporation affiliated with DSBS.

22. At all relevant times, Frank Carnesi was an individual employed by the City at DSBS as Dock Master during the majority of Plaintiff's tenure at DSBS.

23. All of Plaintiff's federal and state claims arose within New York County, New York, within the Southern Judicial District of New York.

24. Accordingly, venue is proper in the Southern Judicial District of New York pursuant to 28 U.S.C. §§1391(b) and 1391(c), and this case should be assigned to the federal courthouse located in New York, New York.

#### **FACTUAL ALLEGATIONS**

25. DSBS is a governmental agency charged with helping to unlock economic potential and create economic security for all New Yorkers by creating stronger businesses, and building a fairer economy.

26. DSBS created and perpetuated a sexist work environment in all aspects of its operation.

27. Plaintiff suffered discrimination in pay and promotional opportunities, and was forced to endure a hostile work environment based on sex, ultimately leading to her constructive discharge.

28. DSBS created and perpetuated a culture that essentially required female employees to perform sexual favors or engage in sexualized conduct to advance their careers.

29. For example, it was well known in the Agency and reported in the Village Voice that more than one female employee had sex with former Commissioner Walsh in exchange for employment opportunities and raises. Those female employees who did not participate in this sexist and sexualized culture, like Plaintiff, were shunned, ridiculed, harassed and deprived of career advancement.

30. Female employees, like Plaintiff, who worked hard and sought to excel in their career based on merit were viewed as unwanted intrusions by their male supervisors, threatening to their male peers and unworthy of respect by their female colleagues who participated in the sexualized culture of DSBS.

#### **Hostile Work Environment, Discrimination and Constructive Discharge**

31. Plaintiff, a smart and ambitious woman with a Master's degree in Public Finance, was hired by DSBS in 2008.

32. When Plaintiff began her employment, she learned and observed that DSBS's work environment and culture was rife with gender discrimination and sexual harassment and that the executives, supervisors and employees at DSBS all participated in creating this environment.

33. Plaintiff was often told that “women in the Agency have one of two career options: either remain in the same low-level position or be forced out.”

34. Beginning in May 2008, Chief of Staff, Larry Scott Blackmon (“Chief Blackmon”) repeatedly complained that Plaintiff, who focused on her work and did not participate in the sexualized culture at DSBS, was “frigid.”

35. Because Plaintiff did not participate in the sexualized culture, she was stonewalled from participating in the weekly high level meetings, an official function of her position, and male colleagues were asked to take her place during those functions.

36. Plaintiff and her female supervisor at the time, who was also excluded from the weekly meetings, had to conduct several individual meetings with the male staff members who attended the weekly meetings to obtain the necessary information to do their jobs.

37. When Plaintiff asked her female supervisor to remedy the situation, her supervisor explained that she was herself in a “precarious situation” with the male management and had no authority to address the situation or even control the male employees she supervised.

38. Because of the known male dominated and sexualized culture at DSBS, Defendant Ali, an older, married male with substantial authority in the Agency’s decision and policy-making hierarchy and the Assistant Commissioner of DSBS, took Plaintiff under his wing. He told Plaintiff at the start of her employment that younger female employees were required to have affairs with male DSBS leaders if they wished to remain employed.

39. Ali advised Plaintiff that since it was not her style to have sex with any of the supervisors because she “had morals” she would have to work twice as hard to remain employed at the Agency and would be required to perform uncompensated pre-shift and post-shift work, including assuming duties outside of her official title. Ali explained that Plaintiff needed to

perform this additional work so her co-workers would not assume she advanced in the Agency because of sexual favors, the norm at the Agency.

40. In a purported attempt to keep Plaintiff employed and avoid the ire of Agency staff, Ali continually directed Plaintiff to assume additional uncompensated work. Notwithstanding the above, Ali relayed to Plaintiff, on virtually a daily basis, that male co-workers discussed sexually explicit fantasies and engaged in a series of sexually derogatory and harassing behaviors directed at Plaintiff.

41. In 2010, Defendant Ali informed Plaintiff that Defendant Frank Carnesi, who was under Ali's supervision, had called Plaintiff a "slut" and a "dick climber," and instructed the remainder of the unit's employees to refuse Plaintiff's work requests and to "stay away" from her because Plaintiff allegedly reminded him of a previous employee who had sex with Commissioner Walsh in exchange for raises "and then refused to get an abortion unless he [Commissioner Walsh] paid her out." Ali told Plaintiff that Carnesi was a good friend of his and "for some reason" Carnesi continued to insist that Plaintiff was compensated for "reasons other than work," thereby insinuating sexual favors.

42. Shortly thereafter other employees under Ali's supervision, including the Defamation Defendants, also began calling Plaintiff a "whore" and insisting that she had sex with her supervisors in order to remain employed at the Agency.

43. Plaintiff asked Ali, who knew these allegations were false, to take remedial action against the employees, including the Defamation Defendants. Instead, Ali used this incident to control Plaintiff. Ali directed Plaintiff not to speak to other male employees in order to not "give off the wrong message." Ali told Plaintiff that the Agency employees had to be "absolutely convinced" that Plaintiff's salary was not the result of sexual favors, and that the "only way" the



Agency could offer Plaintiff a salary commensurate with her work was if Plaintiff performed the work of three people.

44. In 2012, Plaintiff was transferred to the position of Contract and Audit Manager of the Financial Management and Administration (“FMA”) division of DSBS under the supervision of Defendant Ali and Defendant Mohamed.

45. In addition to Plaintiff’s official job responsibility as Contract & Audit Manager for DSBS, Ali required Plaintiff to perform out-of-title and uncompensated work as both a Reimbursement Officer and a Council Discretionary Liaison for the Agency. As Reimbursement Officer, Plaintiff was tasked with tracking and distributing the Agency’s cash funds directly to employees.

46. As NYC Council Liaison for DSBS’s discretionary contracts, Plaintiff was responsible for working directly with Council Finance members on budget issues and performed the role of compliance manager to ensure that funds allocated to DSBS were properly used and within DSBS’s purview.

47. In 2012, in addition to Plaintiff’s Audit & Contract Manager duties and other out-of-title duties, Ali gave Plaintiff the responsibility of running NYBAC, which collects and processes grants for small businesses. NYBAC is housed at the same address as DSBS, but is a separate and distinct entity.

48. On March 7, 2013, Ali informed Plaintiff that co-workers in the unit, including the Defamation Defendants, “ganged up” against her and filed a complaint with the Agency’s internal EEO office for issuing Plaintiff compensation based on ‘favoritism’ and alleged sexual favors. Ali told Plaintiff that her co-workers asserted that Plaintiff’s 6 years at DSBS was not sufficient to justify her earning the salary she was receiving.

49. The Agency's Equal Employment Opportunity ("EEO") Office commenced an investigation into the complaints made by Plaintiff's co-workers. Ali informed Plaintiff that he was able to get the investigation closed.

50. Ali explained to Plaintiff that to get the EEO office to close the investigation, he promised the Defamation Defendants that Plaintiff's salary was only "temporary" and that he would soon take "her salary down." On July 10, 2013, the head of Human Resources, Defendant Myrna Mateo, one of the Defamation Defendants, requested that Plaintiff's salary be decreased. Ali told Plaintiff that if she did not want her salary to be decreased at Mateo's request, she would have to perform additional uncompensated work.

51. Plaintiff's co-workers at the Agency, including the Defamation Defendants, continued to abuse, harass and bully Plaintiff even after the EEO office closed the investigation. Those co-workers constantly made statements that Plaintiff was "a slut paid with city money," insinuating that she received raises and additional assignments in exchange for sex with supervisors.

52. In 2014, Ali formally gave Plaintiff the title of Executive Director of NYBAC, and Plaintiff continued to perform the duties of the Executive Director and bookkeeper of NYBAC in addition to her regular duties as Audit & Contract Manager, and the out-of-title work as Reimbursement Officer and Council Discretionary Liaison.

53. Plaintiff was not paid for the work she performed at NYBAC, even after being formally named Executive Director. Ali claimed he assigned her to this entirely separate and additional position as Executive Director to justify the \$5,000 raise she previously received for performing other out-of-title duties as Reimbursement Officer and Council Discretionary Liaison.

54. Ali told Plaintiff that he needed to continually assign her additional out-of-title duties and could not grant her a salary equal to the work she performed because both Commissioner Walsh and Ali “were caught in a bad position” where other employees would accuse them of favoritism for compensating Plaintiff for work performed without having had sex with a supervisor.

55. Ali further relayed to Plaintiff that a male employee, Chris Neal (“Neal”), had recently been given a substantial raise for performing work as an Executive Director of Workforce Development Corp., a not-for-profit corporation affiliated with DSBS, but she could not hope to be compensated for her duties as Executive Director of NYBAC at that time.

56. Nevertheless, other employees, including the Defamation Defendants, continued to bully Plaintiff and called her a “whore” because she was given additional assignments. The employees told her that she only received the additional assignments because she had an affair with Ali, an absolute falsehood. The employees perpetuated the fabrication because, unbeknownst to Plaintiff at the time, Ali often insinuated and stated to them that he was having an affair with Plaintiff.

57. In or about 2014, Defendant Amarilla-Fernandez, in the presence of Ali, told Plaintiff that she was going to continue telling others that Plaintiff had sex with her supervisors, despite knowing that it was untrue.

58. Plaintiff complained again to Ali about the sexist conduct and bullying by the other employees, and such conduct was observed by Commissioner Walsh. Commissioner Walsh acknowledged that Ali should have corrected the situation, but never did. Although the Commissioner acknowledged the harassment of certain employees against Plaintiff, he took no actions to remediate it.

59. During Plaintiff's tenure at DSBS, besides doing the out-of-title duties as Reimbursement Officer and Council Discretionary Liaison, and being assigned to the position of Executive Director of NYBAC without compensation, she was forced to perform other post-shift duties, such as making videos to promote the Agency, and for Commissioner Walsh's personal use.

60. Ali told Plaintiff that if she declined to perform the video assignments, which she did without additional compensation, she would be put on Defendant Walsh's "shit list" of employees to be discharged.

61. In 2014, there was a change in the Agency's administration and Ali was given a position with less power and authority. This loss of power resulted in Ali attempting to exert more control over Plaintiff after which Ali became more aggressive and jealous of Plaintiff's interactions with other employees.

62. On July 24, 2014, Shenton approached Ali, and threatened to reveal the alleged affair between Plaintiff and Ali, unless Plaintiff was demoted and Shenton placed in a permanent position at DSBS with a \$20,000 increase.

63. Ali began persistently contacting Plaintiff by phone and e-mail, including after working hours. Ali demanded that Plaintiff disclose her Facebook password to him so that he could see what she was doing during personal time. When Plaintiff avoided Ali's requests, he became increasingly agitated and more persistent and sought to find alternate ways to control Plaintiff.

64. On one of many such occasions, Ali invited to pick Plaintiff up at her home over the weekend to take her shopping and to dinner, and demanded that Plaintiff take "special pictures" of herself for him. Ali told Plaintiff that he had obtained her home address and birth

date from Human Resources and had changed all his personal passwords to her date of birth and often passed by her house at night.

65. On or about September 18, 2014, angered by Plaintiff's constant rejection of his sexual advances, Ali's actions toward Plaintiff turned violent. On this occasion, when plaintiff received bad news about her sick father in the hospital, she was walking to the bathroom crying and Ali cornered her and aggressively pinned her against a wall. He grabbed and forced himself upon Plaintiff and attempted to kiss her. Plaintiff struggled against Ali's grip for minutes before she was able to push his body away from hers and break free.

66. At that time, Plaintiff was still dealing with the sexist comments and bullying from other employees, including the Defamation Defendants. In October 2014, Ali confronted Amarilla-Fernandez, who called Plaintiff a "whore," and told her that she should not be upset over Plaintiff's additional assignment and \$5,000 raise. Ali told Amarilla-Fernandez that he would have had to hire an employee for \$50,000 if Plaintiff did not perform the Executive Director position for NYBAC.

67. Meanwhile, in October 2014 and beyond, Amarilla-Fernandez, Arenas, Shenton and Dauria told other employees that Plaintiff "received jewelry, including diamond bracelets, from her supervisors in exchange for sex."

68. On October 20, 2014, Arenas approached Ali and demanded that Plaintiff be demoted, and Arenas should replace Plaintiff. Ali informed Plaintiff that the Defamation Defendants "have made it so that I can never give you a raise again."

69. During this period, Plaintiff attempted to avoid Defendant Ali other than for specific business-related matters. When she did not stop by his office to spend "personal time"

with him, Ali aggressively ridiculed her, insinuating that if she continued to reject his advances she would be “burning a bridge” after which she would find her position terminated.

70. Shortly thereafter Plaintiff’s father passed away, and Plaintiff engaged in a conversation with another male employee about her loss. Ali observed this conversation and went into a jealous rage.

71. Ali called Plaintiff into his office, told her that she should not be talking to other men, and informed Plaintiff that such conduct is what caused the other employees to believe that she is a “whore” and having sex with male supervisors to advance at the Agency.

72. After Ali’s conversation with Plaintiff, he would not speak to her and began to take steps to hire a replacement for her.

73. Because of Ali’s conduct and the abuse from the other employees at the Agency, Plaintiff informed Ali that she was planning to file a complaint with the Agency’s internal EEO office.

74. Plaintiff’s statement to Ali caused him to behave in a disturbing fashion. Ali told Plaintiff, “I should have left you where you were” and began slapping himself, stating “I’m so stupid, I’m so stupid.” Plaintiff told Ali that “you are scaring me,” but Ali continued slapping and berating himself for being “stupid enough” to think that she would “repay him for his help.”

75. Plaintiff, fearing for her safety when witnessing Ali’s disturbing conduct, left his office. Ali then followed Plaintiff to her cube, lunged at her and again tried to physically impose himself on her.

76. Once Plaintiff made it clear to Defendant Ali that she would not tolerate his outrageous conduct, Ali and the other employees increased the intensity of their abuse, and

engaged in a concerted and systematic effort to destroy Plaintiff's reputation and to drive Plaintiff from her position.

77. No less than two days after the incident of Ali slapping himself, Ali told Plaintiff that she was receiving her "two-weeks notice." Ali sent Plaintiff an e-mail asking her to return her Agency-issued blackberry. Ali then proceeded to have her removed from her cubicle and barred her from having access to her files. Plaintiff was then demoted, as her key responsibilities as Audit & Contract Manager and Executive Director of NYBAC were taken away. Krauss and Mateo possessed authority over personnel decisions, including "demotions," and failed to take any action to curb Ali's adverse actions, and upon information and belief, approved the adverse actions.

78. Fueled by Ali's misstatements, co-workers, including Defendants Arenas, Shenton, Dauria and Mateo, filed formal complaints to the Department of Investigation ("DOI"), a law enforcement agency solely tasked with combating corruption within public institutions, falsely claiming that Plaintiff received benefits for performing sexual favors and stole City money. After a full investigation was conducted by the DOI, the complaint against Plaintiff was dismissed as a baseless complaint filed by "malicious coworkers."

79. At that time, Plaintiff was no longer working under Ali, but placed under an employee named Ismail Mohamed, who reported to Ali. Mohamed was not comfortable having Plaintiff under him because he knew of the rift between Ali and Plaintiff, and believed he could not supervise Plaintiff.

80. Shortly after being advised that Plaintiff had initiated an EEO investigation, Mohamed called Plaintiff into his office to tell her that he was uncomfortable with "snitches,"

and that in a decision between whether Ali or Plaintiff had to be discharged, “they all knew” it was Plaintiff “who would be fired.”

81. Plaintiff approached the Chief of Staff Krauss to ask that she be assigned another supervisor other than Mohamed, since Mohamed had notified Plaintiff that, in light of his support of Ali, he could not fairly act as her supervisor. Krauss told her there was no one else who could supervise her “since the entire Agency engaged in sexual discrimination.” Krauss, who happened to be a lesbian, then laughed and began to ridicule Plaintiff saying as a lesbian, she was the only woman in the Agency who could expect not to have to sleep with male supervisors to get promoted.

82. At this point, virtually all of Plaintiff’s responsibilities and duties were taken away from her.

83. Plaintiff was no longer invited to meetings which she used to previously run as Audit Manager and Executive Director of NYBAC, her duties were stripped, access to Quickbooks was restricted (which did not enable her to perform her previous duties as Audit Manager and Executive Director of NYBAC) and sick and “comp” time requests were not approved. Mohamed, who continued to act as Plaintiff’s supervisor, directed her to no longer communicate with him because he was concerned about being trapped into making incriminating admissions about his discriminatory conduct.

84. Plaintiff told the EEO Director of witnesses who could confirm the sexual harassment and overt sexist environment at the Agency. However, those witnesses were threatened by other employees and supervisors, and were never interviewed. The EEO Director also met with Ali privately, and upon information and belief, assisted him in evading the complaint process. Ali and the EEO Director then coordinated the witness testimony.



85. At a December 2014 meeting with the Krauss, which was attended by both Plaintiff and her sister, Krauss admitted that promotions were based on having sex with the Agency supervisors. Krauss referred to the known situation in which former Commissioner Walsh had sex with the female employees and stated that even though he left, all of the same people remained and are in charge. The EEO Director stated, "That is the way it is." Plaintiff and her sister were shocked at this frank admission.

86. Ali forwarded the EEO complaints made by other employees to Plaintiff and called the internal EEO office at the DSBS a "joke," and informed Plaintiff that Dell'Olio, who worked in conjunction with the EEO office, had gotten his position because of Ali.

87. In March 2015, during a meeting with the EEO office, Dell'Olio represented himself to Plaintiff as counsel for the Agency, and began to pressure Plaintiff to sign a document releasing the Agency from liability. In doing so, Dell'Olio aggressively refused Plaintiff's repeated requests to read the contents of the document. Plaintiff refused to sign the document.

88. After months of waiting, in June 2015 the EEO office concluded that Plaintiff's claims of sex harassment, sex discrimination and retaliation were inconclusive.

89. Shortly thereafter, General Counsel Andrew Schwartz told Plaintiff that her "complaint created a divide and the Agency cannot function that way," and that she "did not belong."

90. Based on the sex discrimination, sexual harassment and retaliation, Plaintiff being stripped of all of her job duties and ostracized at the Agency, the EEO's failure to recognize and correct the problem, and Schwartz's claim that Plaintiff caused the rift at the Agency and did not belong, Plaintiff could no longer bear working there.

91. As a result, Plaintiff was constructively discharged and forced to resign her employment with DSBS.

92. Upon information and belief, Ali and several other employees rejoiced at Plaintiff's resignation, stating that they achieved their goal of getting Plaintiff out of the Agency.

93. The conduct by DSBS, NYBAC, Ali, Mohamed, Walsh, Schwartz, Dell'Olio, Krauss, Arenas, Amarilla-Fernandez, Shenton, Dauria, Mateo and Carnesi caused and continues to cause Plaintiff severe emotional distress, anxiety, panic attacks, humiliation, and lost compensation and benefits. Her career at the DSBS, the perfect job for Plaintiff's skills and education, was destroyed.

#### **Pay Discrimination**

94. DSBS and NYBAC paid Plaintiff less than similarly situated male employees, despite her qualifications and exemplary performance. She was paid at a lower rate than the male employees for performing equal work on jobs requiring equal skill, effort and responsibility, and which were performed under similar working conditions.

95. When Plaintiff was hired at DSBS in 2008, she assumed the position of Client Services Manager for the New York City Mayor's Office of Industrial and Manufacturing Business ("IMB") unit of DSBS. In this position, Plaintiff was responsible for working with contractors and businesses, and paid \$38,000 a year.

96. Around that same time, a new male employee, Nino DePaola ("DePaola"), was hired by DSBS as Senior Policy Analyst with the duties of attending meetings with other governmental agencies regarding industrial manufacturing businesses and the effect legislation had on these businesses. His starting salary was \$63,000.

97. Plaintiff's and DePaola's duties were substantially similar, and were performed under the similar working conditions, but DePaola was paid significantly more.

98. In 2008, Jared Walkowitz ("Walkowitz"), a male employee who began as IMB's Empire Zone Coordinator, a position substantially similar to Plaintiff's, and who was only responsible for ensuring compliance of New York City's Empire Zone businesses was paid \$62,400.

99. Although Plaintiff had more significant substantive duties than Walkowitz and performed them under similar working conditions, Walkowitz was paid approximately \$25,000 more than Plaintiff.

100. In 2008, another male employee, Jonathon Bigelow ("Bigelow"), as Industrial Business Zone manager at DSBS, was given a starting salary that was \$15,000 greater than the one given to Plaintiff, and performed substantially more duties than him. Both Bigelow and Plaintiff were responsible for managing Agency contracts with service providers yet were not equally compensated.

101. In May 2009, Defendant Ali advised Plaintiff that she and other female unit members were paid "too much" and had to either accept a \$1,000 pay cut and revocation of education benefits or be terminated from DSBS. The male members of the unit were never presented with this ultimatum and so their salaries were not cut nor were their benefits revoked.

102. When Plaintiff inquired about the pay cut and benefits revocation, she was told that the Deputy Commissioner of Legal & Regulatory Affairs, Schwartz, said that Plaintiff should consider the salary cut a "raise" because the Agency's original plan was to slash her salary by \$5,000 or terminate her and that she did not "need" the money since she lived with her father who would "take care" of her.

103. When Plaintiff was transferred to the position of Fiscal Manager of DSBS's Workforce Development Division ("WDD"), she was responsible for meeting with clients and training her peers in areas such as report structure, client relations, data collection, data analysis and invoice management yet was paid about \$35,000 less than males tasked with the same duties.

104. The average salary of the male employees in this Division, who performed substantially the same tasks as Plaintiff, was \$69,000, but Plaintiff earned only \$52,000 per year at that time.

105. For example, Norberto Serrano ("Serrano") was a male employee at DSBS who managed and approved program budgets and requests—precisely the same tasks as Plaintiff at that time—was given the title of "Director" and made approximately \$36,000 more than Plaintiff.

106. Similarly, in or about June 2012, a 26-year old male employee, James Mettham ("Mettham"), with far less work experience than Plaintiff, had been promoted to a position as Assistant Commissioner—a position that paid more than Plaintiff's position—in less than 6 months. Prior to his promotion, Mettham received a salary of \$75,000 and was only responsible for processing and overseeing the Agency's vendor contracts, one of the many tasks Plaintiff had as Contract & Audit Manager, and she received only \$63,000.

107. Will Choi ("Choi"), DSBS's Procurement Officer, who did not have a graduate degree or prior relevant work experience, earned nearly 25% more than Plaintiff, who had more education and experience.

108. In the Procurement Officer position, a position under Ali's supervision, Choi's sole responsibility was to process contracts between vendors and the Agency, a duty Plaintiff had

as Fiscal Manager, and Contract and Audit Manager. In 2013 received a \$21,000 raise, increasing his compensation to \$89,000. Meanwhile, Plaintiff not only performed substantially similar duties as Choi in her capacity of Contract & Audit Manager, but was the Reimbursement Officer and a Council Discretionary Liaison for the Agency, and performed tasks for NYBAC, yet was only paid \$63,000 and not given a raise.

109. In 2013, at the time Choi received the \$21,000 raise, Defendant Ali explained that “in this Agency female employees are required to do extra work and get Master’s degrees while men are not.”

110. Also in 2013, Chris Neal was given a substantial raise for performing work as an Executive Director of a not-for-profit corporation affiliated with DSBS. At this time, Plaintiff was the Executive Director of NYBAC in addition to her other positions and duties.

111. Both Plaintiff’s and Neal’s duties in their positions as Executive Directors of the not-for-profit corporations included representing the corporations in board meetings and furthering the corporations’ respective missions. Besides those duties, Plaintiff also was tasked with handling personnel issues, making contract decisions and maintaining the books, duties Neal did not perform.

112. Although Plaintiff performed more duties as an Executive Director for a not-for-profit associated with DSBS than Neal did, Neal was compensated for his work, and Plaintiff was not.

113. Plaintiff was paid less than her male counterparts, including but not limited to DePaola, Walkowitz Bigelow, Serrano, Choi, Mettham and Neal, despite having equal or greater skill, effort and responsibility simply due to her gender.

**Denial of Promotions**

114. DSBS's promotion procedures and practices reflect the sexist culture of the agency.

115. Female employees were promoted not based on merit, but by acceding to the male supervisors' sexual whims. Those females who perform sexual favors or engage in the sexualized conduct promoted by their male supervisors can advance in the agency, and those who do not participate in the sexualized culture, like Plaintiff, were denied promotions and not given an opportunity to ascend at DSBS.

116. High-performing females who do not participate in the sexualized culture at the Agency were viewed as threats to the male hierarchy. As soon as these women, including Plaintiff, came within reach of promotion, they were suddenly relegated to dead-end positions, so as not to threaten the current culture.

117. By contrast, male employees effortlessly ascended through the agency's ranks.

118. This stark contrast is evidenced by the absence of women from the executive and supervisory leadership at DSBS.

119. Generally, when a promotional position became available at DSBS, management did not post the vacancy or accept applications for the position, but instead promoted individuals based on friendship, social connections and physical attractiveness. Experience and past performance were scarcely taken into consideration when filling a promotional position. Generally, when an individual was being considered for a promotion, neither an evaluation nor an interview were conducted, foreclosing the possibility that promotions were fairly and equally given.

120. In the years after Plaintiff began working at DSBS, she consistently, but unsuccessfully, attempted to progress along the Agency's career track by transferring to lateral positions in an effort to overcome the blatant gender discrimination that permeated DSBS.

121. Since it was not DSBS's practice to inform employees of vacant promotional positions, Plaintiff repeatedly informed her supervisors that she sought to be promoted. Plaintiff's desire to be promoted was acknowledged in her performance reviews and by upper management on various occasions.

122. When Plaintiff was the Client Services Manager of IMB, she informed her then-supervisor Leslie Ramos ("Ramos") that she wanted to be promoted to a Managing Director or Assistant Commissioner position. Ramos advised Plaintiff that although she was "next in line" for a promotion and was "smarter" and more qualified than her male peers, she could not be promoted before DePaola, Bigelow and Walkowitz (all males) because females in the agency cannot hold positions higher than their male counterparts.

123. DePaola, Bigelow and Walkowitz were all promoted from their positions in IMB to higher positions in the Business Development Division ("BDD"), a more prestigious and higher funded unit of DSBS.

124. In fact, just two years after being hired, DePaola received about \$30,000 in raises and was promoted to the very managerial positions Plaintiff explicitly sought and was qualified for.

125. Even after DePaola, Bigelow, and Walkowitz received their promotions, DSBS management refused to promote Plaintiff despite her performance, qualifications, and requests to be promoted.

126. Shortly thereafter, Plaintiff inquired, again, about a promotion with Chief Blackmon who informed her that she would not be promoted “unless she got with the program” and started attending happy-hour events because female employees are only “promoted for being fun, attractive, and affiliated with the right men.”

127. In June 2009, after being informed by defendant Ali that female employees unaffiliated with the male “benefactor” would be terminated, Plaintiff was forcibly removed from IMB’s promotion track and transferred to a lesser position as Agency Account Manager for the Division of Economic and Financial Opportunity (“DEFO”), a unit of DSBS. In fact, Ali informed Plaintiff that she was only given an interview for these lateral positions because Ali lied to Assistant Commissioner Walcott and assured him that if hired, Plaintiff would not attempt to break through the Agency’s glass ceiling and seek a promotion.

128. Each of Plaintiff’s attempts to obtain a promotion was met with the same sex-based discriminatory refrain: “women at the Agency have one of two career options—either be stuck in a dead-end position for years or ultimately be pushed out.”

129. During Plaintiff’s 2010 performance review, her then-supervisor, John Chapman (“Chapman”) advised Plaintiff that although her work performance exceeded all expectations, he could not give her a higher rating on her appraisal because the Agency’s policy prohibited supervisors from giving female employees the highest rating on a written review out of fear that the female employees may later use such review as a basis for requesting a raise or promotion.

130. In January 2011, Plaintiff again explicitly requested a promotion to a Managing Director or Assistant Commissioner position, but was instead offered the lateral position of Fiscal Manager at WDD. When offered the position, however, Plaintiff was promised that the next promotional position available was hers.



131. Nevertheless, over the next year, DSBS promoted three male employees within Plaintiff's unit—Justin Gale, Nate Guild and Chris Neale. Plaintiff was qualified for each of the positions these male employees were given. None of these promotional positions were posted and applications were not solicited or accepted.

132. In May 2012, Plaintiff tried again to receive a promotion. She met with WDD's Deputy Commissioner, Angie Kamath, and Assistant Commissioner Walcott, and specifically expressed her desire to be promoted to the position of Director of Contract Management. The Director of Contract Management position was not posted and it was known that internal promotions to Director positions were made without that position being formally listed. For that reason, Plaintiff met with Kamath and Walcott, and specifically requested that she be promoted to that position.

133. Plaintiff was qualified for the position of Director of Contract Management and other Director positions due to her experience, performance and education.

134. Deputy Commissioner Kamath confirmed that Plaintiff was "in queue" to make Managing Director and confirmed that Plaintiff's performance and reviews successfully demonstrated her preparation for a promotion to Managing Director.

135. Shortly thereafter, Ali forwarded an e-mail to Plaintiff from Ms. Kamath to Krauss, Schwartz and Mateo entitled "spoke to M. Tulino," wherein Ms. Kamath stated, "cleared the air and made sure that Ms. Tulino was ok with the fact that the opportunity for her promotion 'came and went,'" ending the e-mail with the words, "case closed."

136. A male employee was promoted to the position of Director of Contract Management despite the fact that Plaintiff had equal or greater qualifications. Similarly, even though Plaintiff explicitly requested a promotion to Director or Assistant Commissioner, other

male employees with less education, experience and performance ratings were promoted to these positions while Plaintiff was not.

137. In May 2012, DSBS conducted interviews for Director of NYC Business Solutions and Director of Industrial Businesses. Plaintiff expressed her interest in those positions and an interview with Deputy Commissioner Gregg Bishop and Kelvin Collins was conducted. Despite having more experience with these units than the male candidates interviewed, the positions were given to the less-qualified male employees Donald Jones and Maurice Goldstein; Plaintiff was denied the promotion.

138. Subsequently, after Plaintiff transferred to the lateral position of Contract and Audit Manager under Ali's supervision in October 2012, Plaintiff continued to explicitly request a promotion from Ali.

139. The positions for Director or Assistant Commissioner were not posted by the Agency. Rather, the Agency chose to promote employees from a "manager" position to a Director or Assistant Commissioner position without having the position formally listed; the Agency made the promotions on its own schedule.

140. Understanding that the Director or Assistant Commissioner positions were not formally posted and one cannot formally apply to such positions, Plaintiff did everything she could to make her supervisors aware that she wanted to be promoted to a Director or Assistant Commissioner position.

141. Plaintiff specifically made a request to Ali to be promoted to a Director or Assistant Commissioner position in or about November 2012, and specifically made this same request several times to Ali in both 2013 and 2014. In each request, Plaintiff explicitly told Ali that she wanted to be promoted to a Director and Assistant Commissioner position, and that she

deserved such promotion based on her skills, knowledge and experience. Each time Plaintiff made this request, Ali explicitly told Plaintiff that she could not be promoted because she was a female.

142. Meanwhile, in January 2013, Will Choi was promoted to Procurement Operations Manager, James Mettham was promoted to Assistant Commissioner, and Kris Goddard was promoted to Executive Director within the DSBS. Choi, Mettham and Goddard received those promotions without the position being formally listed, and those individuals did not submit applications for those promotions. Because the positions received by Choi, Mettham and Goddard were not listed, Plaintiff could not formally apply for those positions. Rather, as explained above, she explicitly requested to her supervisors that she should and wanted to be promoted to the position of Director or Assistant Commissioner. Plaintiff was qualified for these positions and did everything she possibly could to receive the promotions that Choi, Mettham and Goddard received.

143. Choi, Mettham and Goddard received those promotions even though Plaintiff obtained equal or greater amount of formal education, received unanimous and effusive praise for her work, and had equal or greater experience to perform the jobs given to those male employees. There was no valid reason for Choi, Mettham and Goddard to receive promotions, and not Plaintiff.

144. These promotions were all in line with the Agency's standard promotion track for males—they are all promoted from Manager to Managing Director positions after being with the Agency for approximately one year. Throughout Plaintiff's eight-year tenure with the Agency, she was never promoted to a Director or Assistant Commissioner position despite being qualified and repeatedly requesting such promotion.

145. DSBS refused to promote Plaintiff because she was a female who would not participate in the sexist culture perpetuated by DSBS's management.

**AS A FIRST CAUSE OF ACTION AGAINST DSBS, THE CITY AND NYBAC  
(Violation of the Equal Pay Act Under 28 U.S.C. § 206)**

146. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if set forth herein more fully at length.

147. Plaintiff's rights against gender discrimination under the Equal Pay Act, specifically 28 U.S.C. § 206(d), have been unlawfully denied by the actions of the Defendants.

148. During her employment, Defendants required Plaintiff to perform the same or substantially the same job position as other male employees, requiring equal skill, effort, and responsibility under similar working conditions at the same establishment and paid Plaintiff at a rate of pay, including salary and bonus, less than such male employees and/or what other male employees would have been paid for in that position.

149. While acting as Contract & Audit Manager, Plaintiff had to assume three other wholly distinct positions and was compensated less than male employees performing substantially similar duties.

150. Specifically, as Contract & Audit Manager, Executive Director of NYBAC, as well as the other additional duties described above, Plaintiff performed work that was equal to or greater than duties performed by other male employees—including but not limited to DePaola, Walkowitz Bigelow, Sarano, Choi, Mettham and Neal--under similar working conditions, but received lower pay than her male counterparts.

151. Similarly, while Plaintiff performed her duties as Contract & Audit Manager of DSBS and Executive Director of NYBAC, she received less compensation than Neal who performed equal or less work in similar working conditions.

152. The male employees at other New York City agencies, who held the title equivalent to Contract & Audit Manager, received greater compensation than Plaintiff.

153. In order to receive a “raise”, Plaintiff had to assume additional job functions outside of her title, and outside of the Agency itself, e.g., the position of Executive Director of NYBAC. Male employees received adequate compensation without having to undertake any additional work at all.

154. The male employees at DSBS, who also had a position at a not-for-profit entity related to DSBS, such as Neal, received compensation from the not-for-profit entity for performing the duties of this other job, whereas Plaintiff did not.

155. The differential rate of pay, failure to give Plaintiff raises without having to perform additional jobs, and the failure to pay Plaintiff for her work as Executive Director of NYBAC, was not part of or occasioned by a seniority system, merit system, a system based on the quantity or quality of production or upon a factor other than gender.

156. Defendants are engaged in policies and practices of employment which willfully discriminated against Plaintiff on the basis of gender by paying her a lesser rate of pay, including salary and bonus, than that paid to male employees performing the same or substantially similar job duties which require equal skill, effort, and responsibility, and under the same working conditions and at the same establishment.

157. In addition, Defendants have implemented and maintained policies and practices that have a disparate discriminatory impact on the compensation paid to its female employees, including Plaintiff.

158. By the actions described above, among others, Defendants have violated the Equal Pay Act, 29 U.S.C. § 206.

159. As a direct and proximate result of Defendants' unlawful and discriminatory conduct in violation of the Equal Pay Act, Plaintiff has suffered and continues to suffer harm for which she is entitled to an award of monetary damages and other relief.

160. Plaintiff is further entitled to liquidated damages, reasonable costs and attorneys' fees.

**AS A SECOND CAUSE OF ACTION AGAINST DSBS, THE CITY AND NYBAC  
(Violation of the New York Equal Pay Act Under N.Y.L.L. § 194 *et seq.*)**

161. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if set forth herein more fully at length.

162. Plaintiff's rights against gender discrimination under the New York Equal Pay Act, specifically N.Y.L.L. § 194 *et seq.*, have been unlawfully denied by the actions of the Defendants.

163. During her employment, Defendants required Plaintiff to perform the same or substantially the same job position as other male employees, requiring equal skill, effort, and responsibility under similar working conditions at the same establishment and paid Plaintiff at a rate of pay, including salary and bonus, less than such male employees and/or what other male employees would have been paid for in that position.

164. While acting as Contract & Audit Manager, Plaintiff had to assume three other wholly distinct positions and was compensated less than male employees performing substantially similar duties.

165. Specifically, as Contract & Audit Manager, Executive Director of NYBAC, as well as the other additional duties described above, Plaintiff performed work that was equal to or greater than duties performed by other male employees—including but not limited to DePaola, Walkowitz Bigelow, Sarano, Choi, Mettham and Neal —under similar working conditions, but received lower pay than her male counterparts.

166. Similarly, while Plaintiff performed her duties as Contract & Audit Manager of DSBS and Executive Director of NYBAC, she received less compensation than Neal who performed equal or less work that required equal or less skill in similar working conditions.

167. The male employees at other New York City agencies, who held the title equivalent to Contract & Audit Manager, received greater compensation than Plaintiff.

168. In order to receive a “raise”, Plaintiff had to assume additional job functions both inside and outside of the Agency, e.g., the position of Executive Director of NYBAC. Male employees received adequate compensation without having to undertake any additional work at all.

169. The male employees at DSBS, who also had a position at a not-for-profit entity related to DSBS, such as Neal, received compensation from the not-for-profit entity for performing the duties of this other job, whereas Plaintiff did not.

170. The differential rate of pay, failure to give Plaintiff raises without having to perform additional jobs, and the failure to pay Plaintiff for her work as Executive Director of

NYBAC, was not part of or occasioned by a seniority system, merit system, a system based on the quantity or quality of production or upon a factor other than gender.

171. Defendants are engaged in policies and practices of employment which willfully discriminated against Plaintiff on the basis of gender by paying her a lesser rate of pay, including salary and bonus, than that paid to male employees performing the same or substantially similar job duties which require equal skill, effort, and responsibility, and under the same working conditions and at the same establishment.

172. In addition, Defendants have implemented and maintained policies and practices that have a disparate discriminatory impact on the compensation paid to its female employees, including Plaintiff.

173. By the actions described above, among others, Defendants have violated N.Y.L.L § 194 *et seq.*.

174. As a direct and proximate result of Defendants' unlawful and discriminatory conduct in violation of N.Y.L.L § 194 *et seq.*, Plaintiff has suffered and continues to suffer harm for which she is entitled to an award of monetary damages and other relief.

175. Plaintiff is further entitled to liquidated damages, reasonable costs and attorneys' fees.

**AS A THIRD CAUSE OF ACTION AGAINST DEFENDANTS  
(Discrimination in Violation of New York Executive Law § 296(1))**

176. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if set forth herein more fully at length.

177. Executive Law § 296 provides that it is an unlawful discriminatory practice for an employer to discriminate against an employee because of her sex.



178. The conduct of Defendants, as alleged above, constitutes sexual harassment and sex discrimination in violation of Executive Law §296 by, among other things, creating a hostile work environment for Plaintiff and discriminating against Plaintiff based on her sex.

179. Plaintiff was constructively discharged because of the unlawful sexual harassment and discrimination.

180. As a result of the above, Plaintiff has been and continues to be damaged, including lost compensation and benefits, and emotional distress and humiliation.

**AS A FOURTH CAUSE OF ACTION AGAINST ALI,  
MOHAMED, WALSH, SCHWARTZ, DELL'OLIO, KRAUSS, ARENAS,  
AMARILLA-FERENANDEZ, SHENTON, MATEO, DAURIA AND CARNESI  
(Discrimination in Violation of Executive Law § 296(6))**

181. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if set forth herein more fully at length.

182. New York State Executive Law § 296(6) states that it is prohibited for employees to aid, abet, incite, compel or coerce an unlawful discriminatory practice.

183. As described above, Defendants Ali, Mohamed, Walsh, Schwartz, Dell'Olio, Krauss, Arenas, Amarilla-Fernandez, Shenton, Mateo, Dauria and Carnesi all engaged in conduct that created a hostile work environment, including sex harassment, discrimination and retaliation.

184. As described above, Defendants Ali, Mohamed, Walsh, Schwartz, Dell'Olio, Krauss, Arenas, Amarilla-Fernandez, Shenton, Mateo, Dauria and Carnesi all engaged in conduct that resulted in adverse employment actions, denial of raises, retaliation, stripping away her duties and responsibilities, filing false complaints, and/or failing to properly investigate Plaintiff's harassment complaints, and remediate the harassment.

185. As described above and herein, Arenas and Shenton schemed to get Plaintiff demoted, reduce her standing at DSBS, and prevent Plaintiff from receiving raises.

186. As described above and herein, Ali, Schwartz, Mateo and Amarilla-Fernandez schemed to make Plaintiff “ineligible” for any salary increases.

187. The conduct of Defendants Ali, Mohamed, Walsh, Schwartz, Dell’Olio, Krauss, Arenas, Amarilla-Fernandez, Shenton, Mateo, Dauria and Carnesi aided, abetted, incited, compelled and coerced the unlawful discriminatory and retaliatory environment created by DSBS, and the unlawful discriminatory and retaliatory conduct perpetrated by DSBS, in violation of New York State Executive Law § 296(6).

188. As a result of the above, Plaintiff has been damaged, including lost compensation and benefits, and emotional distress and humiliation.

**AS A FIFTH CAUSE OF ACTION AGAINST DEFENDANTS**  
**(Quid Pro Quo Sexual Harassment in Violation of New York Executive Law § 296)**

189. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if set forth herein more fully at length.

190. As discussed in the foregoing paragraphs, Plaintiff was demoted as a direct result of refusing the advances of Defendant Ali and for reporting his egregious actions to the Agency’s internal EEO Office.

191. Plaintiff was ultimately forced to resign from her job because she could not tolerate Ali’s outrageous behavior.

192. Defendants engaged in an unlawful discriminatory practice in violation of New York State Executive Law § 296 by engaging in quid pro quo sexual harassment. As a result of the above, Plaintiff has been damaged, including lost compensation and benefits, and emotional distress and humiliation.

**AS A SIXTH CAUSE OF ACTION AGAINST DEFENDANTS  
(Retaliation in Violation of New York Executive Law § 296(7))**

193. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if set forth herein more fully at length.

194. New York State Executive Law § 296(7) states that it is unlawful to retaliate or discriminate against an employee who opposes or complains about a discriminatory practice forbidden under that law.

195. Plaintiff complained about the sexual harassment and discrimination at DSBS, including the formal submission of a complaint to the Agency's internal EEO Office.

196. Because of Plaintiff's complaint, Defendants engaged in unlawful retaliation by demoting her, stripping her of her duties and responsibilities, ostracizing her, and creating an abusive environment that gave her no choice but to resign her employment

197. As a result of the above, Plaintiff has been damaged, including lost compensation and benefits, and emotional distress and humiliation.

**AS A SEVENTH CAUSE OF ACTION AGAINST DEFENDANTS  
(Discrimination in Violation of the New York City Administrative Code 8-107(1))**

198. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if set forth herein more fully at length.

199. The Administrative Code of City of NY § 8-107 (1) states that it is unlawful for an employer, employee or agent thereof to discriminate on the basis of gender.

200. Defendants, including DSBS, Ali, Mohamed, Walsh, Schwartz, Dell'Olio, Krauss, Arenas, Amarilla-Fernandez, Shenton, Mateo, Dauria and Carnesi, engaged in an unlawful discriminatory practice in violation of the New York City Administrative Code § 8-

107(l)(a) by creating and maintaining a hostile work environment based on Plaintiff's gender, and otherwise discriminating against her because of her gender.

201. Defendants engaged in unlawful discriminatory practice in violation of the New York City Administrative Code § 8-107(1)(a) by demoting and ostracizing Plaintiff because she refused Ali's advances, and creating a hostile work environment based on her gender, which provided her with no choice but to resign her employment.

202. As a result of the above, Plaintiff has been damaged, including lost compensation and benefits, and emotional distress and humiliation, and Plaintiff is also entitled to attorney's fees and costs.

203. Because Defendants' actions were willful and egregious, Plaintiff is also entitled to punitive damages.

**AS A EIGHTH CAUSE OF ACTION AGAINST DEFENDANTS**  
**(Retaliation in Violation of New York City Administrative Code 8-107(1)(e))**

204. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if set forth herein more fully at length.

205. The New York City Administrative Code Title 8, § 8-107(l)(e) provides that it is unlawful to retaliate or discriminate against an employee who opposes any practice forbidden by that section of the law.

206. Plaintiff complained to DSBS about hostile work environment and discrimination based on gender, and formally submitted a complaint to the EEO Office.

207. Because Plaintiff complained about the sexual harassment and discrimination, Defendants retaliated and discriminated against Plaintiff in violation of New York City Administrative Code Title 8, § 8-107(l)(e).

208. As a result of the above, Plaintiff has been damaged, including lost compensation and benefits, and emotional distress and humiliation.

209. Because Defendants' conduct was willful, reckless, outrageous, intentional and/or malicious, Plaintiff is entitled to punitive damages and attorney's fees and costs.

**AS AND FOR AN NINTH CAUSE OF ACTION AGAINST ALI,  
MOHAMED, WALSH, SCHWARTZ, DELL'OLIO, KRAUSS, ARENAS,  
AMARILLA-FERNANDEZ, SHENTON, MATEO, DAURIA AND CARNESI  
(Discrimination in Violation of New York City Administrative Code 8-107(6))**

210. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if set forth herein more fully at length.

211. The New York City Administrative Code § 8-107(6) prohibits employees from aiding, abetting, inciting, compelling or coercing any unlawful discrimination or retaliation.

212. As described above, Defendants Ali, Mohamed, Walsh, Schwartz, Dell'Olio, Krauss, Arenas, Amarilla-Fernandez, Shenton, Mateo, Dauria and Carnesi all engaged in conduct that created a hostile work environment, including sex harassment, discrimination and retaliation.

213. As described above, Defendants Ali, Mohamed, Walsh, Schwartz, Dell'Olio, Krauss, Arenas, Amarilla-Fernandez, Shenton, Mateo, Dauria and Carnesi all engaged in conduct that resulted in adverse employment actions, denial of raises, retaliation, stripping away her duties and responsibilities, filing false complaints, and/or failing to properly investigate Plaintiff's harassment complaints, and remediate the harassment.

214. As described above and herein, Arenas and Shenton schemed to get Plaintiff demoted, reduce her standing at DSBS, and prevent Plaintiff from receiving raises.

215. As described above and herein, Ali, Schwartz, Mateo and Amarilla-Fernandez schemed to make Plaintiff "ineligible" for any salary increases.

216. The conduct of Defendants Mohamed, Walsh, Schwartz, Dell'Olio, Krauss, Arenas, Amarilla-Fernandez, Shenton, Mateo, Dauria and Carnesi aided, abetted, incited, compelled and coerced the unlawful discriminatory and retaliatory environment created by DSBS, and the unlawful discriminatory and retaliatory conduct perpetrated by DSBS, in violation the New York City Administrative Code § 8-107(6).

217. As a result of the above, Plaintiff has been damaged, including lost compensation and benefits, and emotional distress and humiliation. Because Defendants' conduct was willful, reckless, outrageous, intentional and/or malicious, Plaintiff is entitled to punitive damages and attorney's fees and costs.

**AS AND FOR A TENTH CAUSE OF ACTION AGAINST SHAAZAD ALI  
(Battery)**

218. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if set forth herein more fully at length.

219. On or about September 18, 2014, Ali intentionally groped Plaintiff, and intentionally tried to forcibly hug and kiss her.

220. Plaintiff had to physically struggle to push Ali away for several minutes before managing to escape his hold of her.

221. Ali aggressively grabbed and tried to hug and kiss Plaintiff on other occasions in November 2014.

222. Ali's physical touching of Plaintiff was intentional, unwelcomed and offensive.

223. Ali acted in his individual capacity and outside the scope of his employment when he intentionally and forcibly groped and tried to hug and kiss Plaintiff.

224. Ali's groping and forcing himself on Plaintiff resulted in physical pain and extreme emotional distress and humiliation, for which Plaintiff is entitled to an award of damages, including punitive damages.

**AS AND FOR AN ELEVENTH CAUSE OF ACTION AGAINST SHAAZAD ALI**  
**(Assault)**

225. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if set forth herein more fully at length.

226. On or about September 18, 2014, Ali groped Plaintiff, and tried to forcibly hug and kiss her.

227. Plaintiff had to physically push Ali away to escape his hold of her.

228. Ali aggressively grabbed and tried to hug and kiss Plaintiff on other occasions in November 2014.

229. Ali's physical touching of Plaintiff was intentional, unwelcomed and offensive.

230. Ali's physical conduct of groping Plaintiff and forcing himself on Plaintiff placed her in imminent apprehension of harmful conduct.

231. Ali acted in his individual capacity and outside the scope of his employment when he intentionally and forcibly groped and tried to hug and kiss Plaintiff.

232. Ali's actions as described above resulted in physical pain and extreme emotional distress and humiliation, for which Plaintiff is entitled to an award of damages, including punitive damages.

**AS AND FOR AN TWELFTH CAUSE OF ACTION AGAINST SHAAZAD ALI**  
**(Intentional Infliction of Emotional Distress)**

233. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if set forth herein more fully at length.

234. On or about September 18, 2014, Ali groped Plaintiff, and tried to forcibly hug and kiss her.

235. Plaintiff had to physically push Ali away to escape his hold of her.

236. Ali aggressively grabbed and tried to hug and kiss Plaintiff on another occasion in November 2014.

237. Ali's physical touching of Plaintiff was intentional, unwelcomed and offensive.

238. After Ali's assault and battery of Plaintiff, and Plaintiff having to endure the sexual harassment from her colleagues, she informed Ali that she was going to file a complaint with the Agency's internal EEO office.

239. As a result of her informing Ali about filing the EEO Complaint, Ali charted a course of destroying Plaintiff's career.

240. In retaliation for her filing an EEO complaint, he discharged Plaintiff from all key job duties, demoted her, and isolated her within the Agency.

241. Ali's conduct was extreme and outrageous, and should not be tolerated in a civil society.

242. Ali intentionally engaged in the above conduct to cause Plaintiff severe emotional distress, or at the very least, engaged in such conduct in utter disregard that it would cause Plaintiff severe emotional distress.

243. Ali acted in his individual capacity and outside the scope of his employment when he intentionally engaged in such conduct.

244. As a result of Ali's conduct, and because of his conduct, Plaintiff suffered from extreme emotional distress, humiliation and embarrassment, for which Plaintiff is entitled to an award of damages, including punitive damages.



**AS AND FOR A THIRTEENTH CAUSE OF ACTION AGAINST ALI, ARENAS,  
AMARILLA-FERNANDEZ, SHENTON, MATEO, DAURIA and CARNESI  
(Defamation)**

245. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if set forth herein more fully at length.

246. Defendants Amarilla-Fernandez, Arenas, Shenton, Mateo, Dauria and Carnesi published defamatory statements by stating that Plaintiff received jewelry, such as diamond bracelets, for performing sexual favors for male supervisors.

247. The Defamatory Defendants published defamatory statements about Plaintiff to third parties when they filed a complaint with the DOI falsely claiming that Plaintiff received benefits and money for performing sexual favors, such as receiving raises and gifts, like diamond bracelets, for having sex with supervisors.

248. The exact false allegations that were made against Plaintiff are contained in the complaint and other paper work filed with the DOI, and are in the sole possession of Defendants.

249. The false complaint filed by the Defamatory Defendants was done with malice, solely to hurt, damage and malign Plaintiff's reputation and to get her dismissed from DSBS.

250. The Defamatory Defendants also slandered Plaintiff by constantly calling her a "whore" and stating to Ali, Plaintiff and other employees that Plaintiff was "paid for sex on the City's dime"; a statement that was repeated over and over throughout Plaintiff's tenure at the Agency, as described above.

251. All of the defamatory statements made by the Defamation Defendants related directly to Plaintiff's career and integrity in her employment and imputed unchastity upon her, which is slander per se.

252. As a result of the statements, Plaintiff suffered damage to her reputation and career.

**AS AND FOR A FOURTEENTH CAUSE OF ACTION AGAINST DEFENDANTS**  
**(Violation of the State Civil Service Law)**

253. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if set forth herein more fully at length.

254. The New York State Civil Service Law Section 61(2) prohibits an employee from performing out-of-title work without appointment to the title, grade and salary of such higher or different position.

255. Plaintiff worked as an Audit & Contract Manager for DSBS, but was also appointed as the Executive Director of NYBAC.

256. Plaintiff's work as the Executive Director of DSBS was out-of-title as it related to her title as Audit & Contract Manager.

257. Plaintiff was not compensated for the work she performed as the Executive Director.

258. Plaintiff also performed additional assignments that were out-of-title as it related to her title of Audit & Contract Manager by forcing her to assume positions as Reimbursement Officer and Council Discretionary Liaison, and prepare marketing videos for the Agency and for Commissioner Walsh's personal use.

259. Plaintiff worked several hours per week performing tasks and responsibilities as Council Discretionary Liaison for DSBS.

260. Plaintiff worked several hours per week performing tasks and responsibilities as Reimbursement Officer for DSBS.

261. Plaintiff was not compensated for the out-of-title work she performed as Reimbursement Officer and Council Discretionary Liaison.

262. The actions by Defendants violated New York Civil Service Law Section 61, and Plaintiff was damaged by not receiving compensation for her out-of-title work.

**AS AND FOR A FIFTEENTH CAUSE OF ACTION AGAINST DEFENDANTS  
(Violation of the New York City Civil Service Rules and Regulations)**

263. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if set forth herein more fully at length.

264. The New York City Civil Service Rules and Regulations Section 5.1.1 prohibit an employee from performing out-of-title work without appointment to the title, grade and salary of such higher or different position.

265. Plaintiff worked as both an Audit & Contract Manager for DSBS, but was also appointed as the Executive Director of NYBAC.

266. Plaintiff's work as the Executive Director for NYBAC was out-of-title as it related to her title as Audit & Contract Manager.

267. Plaintiff was not compensated for the work she performed as the Executive Director for NYBAC.

268. Plaintiff also performed additional assignments that were out-of-title as it related to her title of Audit & Contract Manager by forcing her to assume positions as Reimbursement Officer and Council Discretionary Liaison, and prepare marketing videos for the Agency and for the Commissioner's personal use.

269. Plaintiff worked several hours per week performing tasks and responsibilities as Council Discretionary Liaison for DSBS.

270. Plaintiff worked several hours per week performing tasks and responsibilities as Reimbursement Officer for DSBS.

271. Plaintiff was not compensated for the out-of-title work she performed as Reimbursement Officer and Council Discretionary Liaison.

272. The actions by Defendants violated New York City Civil Service Rules & Regulations Section 5.1.1, and Plaintiff was damaged by not receiving compensation for her out-of-title work.

**AS AND FOR A SIXTEENTH CAUSE OF ACTION AGAINST NYBAC  
(Violation of the Fair Labor Standards Act)**

273. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if set forth herein more fully at length.

274. Plaintiff performed the duties of Executive Director of NYBAC since 2012, and was formally given the title of Executive Director in 2014.

275. As the de facto and formal Executive Director, she was responsible in whole or part for all activities and decisions made by NYBAC.

276. Plaintiff worked approximately 25 hours per week performing tasks and responsibilities for NYBAC, in addition to working approximately 35 hours per week performing tasks and responsibilities as Audit & Contract Manager for DSBS.

277. Plaintiff did not receive any compensation for the work she performed for NYBAC.

278. NYBAC's failure to compensate Plaintiff for her work as Executive Director violated 29 U.S.C. § 206—the Fair Labor Standards Act, by failing to pay her the minimum wage (or any wage) for the work she performed.

279. Plaintiff was damaged by this violation, including lost compensation. Because NYBAC's failure to compensate Plaintiff was willful, she is also entitled to liquidated damages, punitive damages and attorney's fees and costs.

**AS AND FOR A SEVENTEENTH CAUSE OF ACTION AGAINST NYBAC  
(Violation of the New York State Minimum Wage Act)**

280. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if set forth herein more fully at length.

281. Plaintiff performed the duties of Executive Director of NYBAC since 2012, and was formally given the title of Executive Director in 2014.

282. Plaintiff worked approximately 25 hours per week performing tasks and responsibilities for NYBAC, along with working approximately 35 hours per week performing tasks and responsibilities as Audit & Contract Manager for DSBS.

283. As the Executive Director she was responsible in whole or part for all activities and decisions made by NYBAC.

284. Plaintiff did not receive any compensation for the work she performed for NYBAC.

285. NYBAC's failure to compensate Plaintiff for her work at NYBAC violated New York Labor Law Section 650, et seq.—the New York Minimum Wage Act, by failing to pay her the minimum wage (or any wage) for the work she performed.

286. Plaintiff was damaged by this violation, including lost compensation. Because NYBAC's failure to compensate Plaintiff was willful, she is also entitled to liquidated damages, punitive damages and attorney's fees and costs.

**AS AND FOR AN EIGHTEENTH CAUSE OF ACTION AGAINST DEFENDANTS  
(Failure to Promote)**

287. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if set forth herein more fully at length.

288. Plaintiff is a female and therefore a member of a protected class.

289. Plaintiff desired to be promoted to a Director and Assistant Commissioner position, but those positions were never formally posted by DSBS. Rather, DSBS promoted employees without such position being posted and without taking and considering applications.

290. Understanding the way DSBS conducted promotions to Director and Assistant Commissioner positions, she regularly and specifically requested to her supervisors that she be promoted to a Director or Assistant Commissioner position.

291. Plaintiff was qualified for these positions based on her education, experience and performance.

292. As described more fully above, in November 2012, Plaintiff explicitly made a request to Ali to be promoted to a Director or Assistant Commissioner position. She continued to explicitly make this request several times in 2013 and 2014.

293. Despite these specific and explicit requests, Plaintiff was always passed over for the promotions to Director or Assistant Commissioner position.

294. In fact, in January 2013, Choi, Mettham and Goddard received promotions, and Plaintiff did not. Choi, Mettham and Goddard received promotions to positions which were not formally posted by DSBS, and for which they did not formally apply.

295. Plaintiff was more qualified for the positions to which Choi, Mettham and Goddard received.

296. Plaintiff was not given a promotion to the positions to which Choi, Mettham and Goddard were promoted, or to any other Director or Assistant Commissioner position, because she is a female.

297. Throughout her tenure at DSBS, Plaintiff asked to be promoted to positions she was qualified for many times but was always rejected and the promotions were given to male employees who were less qualified.

298. Defendants' actions as described above violate the New York State Executive Law § 296 and the New York City Administrative Code § 8-107 by failing to promote Plaintiff to positions she was qualified for based on her gender and instead giving the positions to less qualified, male employees.

299. As a result of the above, Plaintiff has been damaged, including lost compensation and benefits, and emotional distress and humiliation, and Plaintiff is also entitled to attorney's fees and costs.

300. Because Defendants' actions were willful and egregious, Plaintiff is also entitled to punitive damages.

#### **JURY DEMAND**

Plaintiff requests a jury trial on all issues to be tried.

**WHEREFORE**, Plaintiff respectfully requests a judgment against the Defendants:

A. Declaring that the Defendants engaged in unlawful employment practice prohibited by the Equal Pay Act, the New York State Executive Law §296 et. seq. and the New York City Administrative Code Title 8, §8-107 et. seq.; and that Defendants harassed, discriminated against Plaintiff on the basis of her sex and retaliated against her for making complaints of discrimination, all resulting in her constructive discharge;

B. Declaring that Defendants engaged in conduct violative of the New York City and State Civil Service Laws, the Fair Labor Standards Act, and the New York Minimum Wage Act by forcing her to perform duties as the Executive Director of NYBAC, and other out-of-title work, without any compensation;

C. Declaring that Defendants Ali, Mohamed, Walsh, Schwartz, Dell'Olio, Krauss, Arenas, Amarilla-Fernandez, Shenton, Mateo, Dauria and Carnesi aided and abetted the discrimination and retaliation of DSBS;

D. Declaring that Defendant Ali engaged in battery, assault and intentional infliction of emotional distress against Plaintiff;

E. Declaring that the Defamation Defendants engaged in per se defamation of Plaintiff, damaging her career and reputation;

F. Awarding damages to the Plaintiff for all lost wages and benefits resulting from Defendants' unlawful employment practices, unequal and discriminatory payment practices, and constructive discharge of Plaintiff;

G. Awarding damages to Plaintiff for lost compensation and wages resulting from performing the job of Executive Director of NYBAC without any compensation, and performing out-of-title duties and jobs without compensation;

H. Awarding Plaintiff compensatory damages for mental, emotional and physical injury, distress, pain and suffering, humiliation, embarrassment, and injury to her reputation in an amount to be determined at trial;

I. Awarding Plaintiff punitive damages;

J. Awarding Plaintiff attorney's fees, costs, and expenses; and



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

Dated: Garden City, New York  
June 9, 2016

Stagg, Terenzi, Confusione & Wabnik, LLP

By: David R. Ehrlich

Debra L. Wabnik (dw-2468)

David R. Ehrlich (de-9786)

*Attorneys for Plaintiff*

*Michelle Tulino*

401 Franklin Avenue, Suite 300

Garden City, New York 11530

(516) 812-4500

TO: Zachary W. Carter, Esq.  
Corporation Counsel of the City of New York  
Attention: Shira M. Blank, Esq.  
Assistant Corporation Counsel  
*Attorneys for Defendants*  
100 Church Street, Room 2-143  
New York, New York 10007  
(212) 356-2475

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
MICHELLE TULINO,

Plaintiff,

-against-

THE CITY OF NEW YORK, THE NEW YORK CITY  
DEPARTMENT OF SMALL BUSINESS SERVICES,  
NEW YORK CITY BUSINESS ASSISTANCE  
CORPORATION, SHAAZAD ALI, ISMAIL MOHAMED,  
ROBERT WALSH, ANDREW SCHWARTZ, ANTHONY  
DELL'OLIO, SARAH KRAUSS, GRETTA ARENAS,  
NARDA AMARILLA-FERNANDEZ, BRYANA  
SHENTON, MYRNA MATEO, PAT DAURIA and  
FRANK CARNESI,

Defendants.  
-----X

Docket No.: 15 Civ. 07106  
(JMF) (SN)

**CERTIFICATE OF  
SERVICE**

I hereby certify that on June 9, 2016, the **SECOND AMENDED COMPLAINT** of Plaintiff Michelle Tulino was served in accordance with the Federal Rules of Civil Procedure, and/or the Southern District's Local Rules, and/or the Southern District's Rules on Electronic Service upon the following parties and participants:

TO: Zachary W. Carter, Esq.  
Corporation Counsel of the City of New York  
Attention: Shira M. Blank, Esq.  
Assistant Corporation Counsel  
*Attorneys for Defendants*  
100 Church Street, Room 2-143  
New York, New York 10007  
(212) 356-2475

/s/David R. Ehrlich  
David R. Ehrlich (de-9786)  
Stagg, Terenzi, Confusione & Wabnik, LLP  
401 Franklin Avenue, Suite 300  
Garden City, New York 11530  
(516) 812-4500,