

**NEW YORK STATE SUPREME COURT
COUNTY OF NEW YORK**

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AARON FERGUSON,

Index No.:

Plaintiff,

-against-

SUMMONS

08109118

Date of Purchase of

Index No.:

CBS CORPORATION, MARY KELLY,
individually and as a Supervisor of The
Rachel Ray Show, CBS Television
Distributions, Inc., and CBS Corporation,
EILEEN SHERWIN, individually and as a Human
Resources Representative of The
Rachel Ray Show, CBS Television
Distributions, Inc., and CBS Corporation, and
DENNY MCCORMICK, individually and as Vice
President of Finance of The Rachel Ray Show,
CBS Television Distributions, Inc., and
CBS Corporation,

Defendants.

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FILED
JUL 02 2008
COUNTY CLERK'S OFFICE
NEW YORK

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer within twenty [20] days after the service (or within thirty [30] days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgement will be taken against you by default for the relief demanded in the complaint.

The Plaintiff designates **New York County** as the place of trial which is the county in which **the unlawful conduct giving rise to the allegations made in the complaint occurred.**

Dated: New York, New York
July 1, 2008

KAISER SAURBORN & MAIR, P.C.
Attorneys for Plaintiff

By: _____
William H. Kaiser, Esq.
111 Broadway, 18th Floor
New York, New York 10006
(212) 338-9100

**NEW YORK STATE SUPREME COURT
COUNTY OF NEW YORK**

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AARON FERGUSON,

Index No.:

Plaintiff,

-against-

COMPLAINT

CBS CORPORATION, MARY KELLY,
individually and as a Supervisor of The
Rachel Ray Show, CBS Television
Distributions, Inc., and CBS Corporation,
EILEEN SHERWIN, individually and as a Human
Resources Representative of The
Rachel Ray Show, CBS Television
Distributions, Inc., and CBS Corporation, and
DENNY MCCORMICK, individually and as Vice
President of Finance of The Rachel Ray Show,
CBS Television Distributions, Inc., and
CBS Corporation,

**PLAINTIFF HEREBY
DEMANDS A TRIAL
BY JURY**

Defendants.

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Plaintiff, Aaron Ferguson, by his attorneys, Kaiser Saurborn & Mair, P.C., as and for his
complaint against defendants, alleges as follows:

PARTIES, JURISDICTION, AND NATURE OF ACTION

1. Plaintiff, Aaron Ferguson ("Ferguson" or "plaintiff"), is a citizen of the City and State of New York.
2. The Rachel Ray Show ("the Show") is a television program, produced and broadcast at 1675 Broadway, New York, NY 10019.
3. CBS Television Distributions, Inc. ("CBSTD"), producer of the Rachel Ray Show, is a

corporation duly authorized to conduct business within the State of New York, operating its principal place of business at 1675 Broadway, New York, NY 10019. CBSTD is a wholly owned subsidiary of defendant CBS Corporation.

4. Defendant, CBS CORPORATION ("CBS"), is a corporation duly authorized to conduct business within the State of New York, operating its principal place of business at 1675 Broadway, New York, NY 10019.
5. Defendant, Mary Kelly ("Kelly"), is, upon information and belief, a citizen of the City and State of New York.
6. Defendant, Eileen Sherwin ("Sherwin"), is, upon information and belief, a citizen of the City and State of New York.
7. Defendant, Denny McCormick ("McCormick"), is, upon information and belief, a citizen of the City and State of New York.
8. Plaintiff, an anorexic, repeatedly complained about his supervisor's constant use, in his presence, of discriminatory language regarding anorexics. In response, defendants terminated plaintiff because of his disability and in retaliation for plaintiff asserting his rights by complaining of discriminatory conduct under New York State and New York City human rights laws.
9. This action seeks compensatory and punitive damages for defendants' violations of the New York State Executive Law § 296, *et. seq.* and New York City Administrative Code §§ 8-107, 8-502.
10. Venue is properly laid in this Court in that the unlawful conduct giving rise to this

complaint occurred within New York County.

BACKGROUND

I.

FERGUSON'S EMPLOYMENT

11. Mr. Ferguson began working for CBSTD, the Show, and CBS (collectively "the Company") on or about July 23, 2007, as a Payroll Accountant.
12. Mr. Ferguson has suffered from anorexia for approximately six years, beginning in or about 2002.
13. Mr. Ferguson's work performance was exemplary during the entire tenure of his employment with the company, which ended on October 31, 2007.
14. During all relevant times herein, defendants controlled the terms and conditions of Mr. Ferguson's employment.
15. During all relevant times herein, defendants were responsible for maintaining a work environment free of unlawful discrimination and retaliation.

II.

THE DISABILITY DISCRIMINATION AND RETALIATION

16. On Monday, October 22, 2007, Mr. Ferguson met with Denny McCormick, Vice President of Finance of CBSTD, to register a complaint against his direct supervisor, Mary Kelly, Production Accountant for the Show.
17. Mr. Ferguson advised Mr. McCormick that, among other objectionable conduct, Ms. Kelly regularly remarked in Mr. Ferguson's presence that:
 - (ii) On the Second Cause of Action, actual damages against defendants in an amount

- i. The Executive in Charge, Priscilla Taussig, is an anorexic that is “too skinny to do her job”;
 - ii. “Anorexics are sick in the head”;
 - iii. “Maybe if [Ms. Taussig] ate something she would be able to work”;
 - iv. “Oh, did you see Priscilla today? She has her back out, and all you see are her sickly bones”; and
 - v. “Anorexics should not be able to work.”

18. At the conclusion of this meeting, Mr. McCormick suggested that Mr. Ferguson speak directly to Ms. Kelly about the above-referenced conduct.

19. Mr. McCormick further suggested that if speaking directly to Ms. Kelly did not prove successful in resolving the issue, he would set up a meeting to discuss any other alternatives such as moving Mr. Ferguson to another office.

20. Mr. Ferguson immediately returned to his office and requested via email to meet with Ms. Kelly privately.

21. Upon meeting with Ms. Kelly, Mr. Ferguson advised her that her comments about Ms. Taussig were extremely hurtful to him personally and that she had created a hostile work environment for him.

22. Ms. Kelly cut Mr. Ferguson off and said, “I can say whatever I want to say It does not concern you; I am talking about Priscilla not you. Are you giving your two weeks notice from today?”

- (ii) On the Second Cause of Action, actual damages against defendants in an amount

23. Ms. Kelly then stormed out of her chair and began yelling at Mr. Ferguson, who quietly stood up and left the meeting.
24. That same day, several hours after Mr. Ferguson's conversation with Ms. Kelly, she sent an email to Human Resources, Mr. McCormick, and Mr. Ferguson stating, "Aaron, Thank you for meeting with me this afternoon and for sharing your concerns. Be assured that I will give your concerns all proper consideration. Hope this helps."
25. Although Mr. Ferguson repeatedly attempted to speak again with Mr. McCormick, he was repeatedly ignored.
26. Mr. Ferguson immediately set up a meeting with Eileen Sherwin, the Company's Human Resources Representative, at which Mr. Ferguson explained the situation to Ms. Sherwin.
27. Ms. Sherwin responded that "TV is TV" and that Mr. Ferguson needed to accept "that is how television works."
28. Utterly discouraged, Mr. Ferguson returned to his office and for the following two weeks was subjected not only to the same discriminatory treatment of which he already complained but also to new forms of harassment intended to retaliate against him for his complaints of discrimination.
29. Unsure whom to turn to, Mr. Ferguson even attempted to set up a meeting with Priscilla Taussig, the Executive in Charge, on October 29, 2007.
30. When Mr. Ferguson arrived at Ms. Taussig's office, she informed him that Human Resources instructed her not to meet with him.
31. Thus, as a consequence of Ms. Kelly's unrelenting mission to make Mr. Ferguson's life so
 - (ii) On the Second Cause of Action, actual damages against defendants in an amount

miserable he'd be forced to leave, Mr. Ferguson again sought the assistance of Ms. Sherwin's office and demanded that something be done immediately about Ms. Kelly's unacceptable behavior.

32. Mr. Ferguson stressed that Ms. Kelly's hostile behavior and vile comments about anorexics affected him personally due to the fact that he suffered from anorexia.
33. Ms. Sherwin responded by telling Mr. Ferguson that he could make that his last day and offered him \$4,000.00 for "all the trouble he had to go through" so long as he signed a separation agreement and waiver.
34. Given the impossible choice of remaining under Ms. Kelly's supervision or leaving, Mr. Ferguson was forced to separate from his employment on October 31, 2007.
35. Thus defendants constructively discharged plaintiff.
36. Defendants failed to state a legitimate business reason for plaintiff's termination.
37. Defendants conspired to discriminate and retaliate against plaintiff.
38. Defendants aided and abetted to discriminate and retaliate against plaintiff.
39. Upon information and belief, defendants knew that their actions violated State and City Law.
40. Upon information and belief, defendants acted maliciously and/or in reckless disregard of plaintiff's civil rights.

FIRST CAUSE OF ACTION

41. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "40" of the complaint with the same force and effect as if separately alleged and
 - (ii) On the Second Cause of Action, actual damages against defendants in an amount

reiterated herein.

42. Defendants discriminated against plaintiff in the terms and conditions of his employment because of his disability and terminated plaintiff because of said disability and in retaliation for his complaints of disability discrimination, in violation of New York State Executive Law § 296, *et. seq.*
43. As a result, plaintiff suffered damages for lost past and future earnings, other employment benefits, and emotional injuries, in an amount to be determined at trial.

SECOND CAUSE OF ACTION

44. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "40" and "42" of the complaint with the same force and effect as if separately alleged and reiterated herein.
45. Defendants discriminated against plaintiff in the terms and conditions of his employment because of his disability and terminated plaintiff because of said disability and in retaliation for his complaints of disability discrimination, in violation of New York City Administrative Code §§ 8-107, 8-502.
46. As a result, plaintiff suffered damages for lost past and future earnings, other employment benefits, and emotional injuries, in an amount to be determined at trial.

WHEREFORE, plaintiff demands judgment against defendants as follows:

- (i) On the First Cause of Action, actual damages against defendants in an amount to be determined at trial but in no event less than \$500,000.00 [FIVE HUNDRED THOUSAND DOLLARS];
- (ii) On the Second Cause of Action, actual damages against defendants in an amount

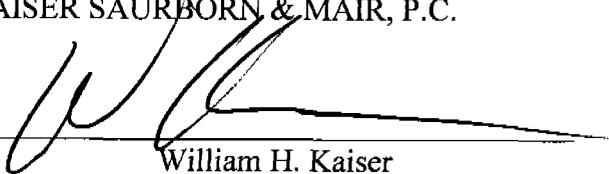
to be determined at trial but in no event less than \$500,000.00 [FIVE HUNDRED THOUSAND DOLLARS]; and punitive damages against defendants in an amount to be determined at trial but in no event less than \$500,000.00 [FIVE HUNDRED THOUSAND DOLLARS];

- (iii) Statutory attorney's fees pursuant to § 8-502 of the New York City Administrative Code;
- (iv) Disbursements and other costs; and
- (v) For such other relief which the Court deems just and proper.

Dated: New York, New York
July 1, 2008

KAISER SAURBORN & MAIR, P.C.

By:


William H. Kaiser

William H. Kaiser, Esq.
Attorneys for Plaintiff
111 Braodway, Suite 1805
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(212) 338-9100

Index No. Year 20 08
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

AARON FERGUSON,

Plaintiff,

- against -

CBS CORPORATION, MARY KELLY, EILEEN SHERWIN, and DENNY MCCORMICK,

Defendants.

SUMMONS and COMPLAINT

KAISER SAURBORN & MAIR, P.C.
COUNSELORS AT LAW

Attorneys for

Plaintiff
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NEW YORK, NEW YORK 10006
(212) 338-9100

08109118
FILED
JUL 02 2008
COUNTY CLERK'S OFFICE
NEW YORK

Pursuant to 22 NYCRR 130-1.1-a, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, (1) the contentions contained in the annexed document are not frivolous and that (2) if the annexed document is an initiating pleading, (i) the matter was not obtained through illegal conduct, or that if it was, the attorney or other persons responsible for the illegal conduct are not participating in the matter or sharing in any fee earned therefrom and that (ii) if the matter involves potential claims for personal injury or wrongful death, the matter was not obtained in violation of 22 NYCRR 1200.41-a.

Dated: Signature

Print Signer's Name.....

Service of a copy of the within is hereby admitted.

Dated:

Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box

NOTICE OF ENTRY

that the within is a (certified) true copy of a
entered in the office of the clerk of the within-named Court on

20

NOTICE OF SETTLEMENT

that an Order of which the within is a true copy will be presented for settlement to the
Hon. _____, one of the judges of the within-named Court,
at _____
on _____ 20 _____, at _____ M.

Dated:

KAISER SAURBORN & MAIR, P.C.

COUNSELORS AT LAW

JUL 02 2008