

JUDGE SCHOFIELD

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
KATHLEEN KOVACH,

Plaintiff,

- against -

THE CITY UNIVERSITY OF NEW YORK,  
KAREN GOULD, MICHAEL HEWITT, DENISE  
FLANAGAN, STEVE LITTLE, STEVE CZIRAK,  
RALPH CARMOSINO, and ALAN GILBERT,

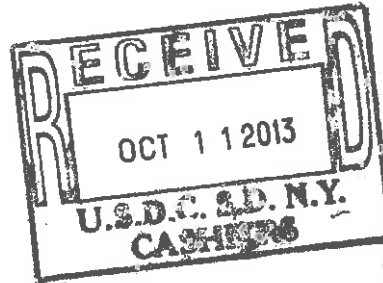
Defendants.  
-----X

**13 CV 7198**  
13 Civ.

COMPLAINT

PLAINTIFF DEMANDS  
A TRIAL BY JURY

2013 OCT 11 AM 11:23  
NYC COMMISSIONER  
OF  
MUNICIPAL  
LAW ENFORCEMENT SERVICES



2013 OCT 11 AM 11:34  
CITY OF NY LAW DEPT  
OFFICE OF CLERK

Plaintiff Kathleen Kovach ("Kovach" or "plaintiff"), through her attorneys, Vladeck, Waldman, Elias & Engelhard, P.C., complains of defendants the City University of New York ("CUNY"), Karen Gould ("Gould"), Michael Hewitt ("Hewitt"), Denise Flanagan ("Flanagan"), Steve Little ("Little"), Steve Czirak ("Czirak"), Ralph Carmosino ("Carmosino"), and Alan Gilbert ("Gilbert"), (collectively "individual defendants" and collectively with CUNY, "defendants"), as follows:

NATURE OF THE ACTION

1. Kovach has worked for CUNY for over a decade. Eventually, chemicals used in the plant below her office caused her to develop a variety of allergic symptoms, ultimately diagnosed as Multiple Chemical Sensitivity ("MCS") and occupational allergies. After trying to deal with the symptoms on her own, Kovach asked for the accommodation that she be moved to a different office. Instead of complying with this simple request, defendants retaliated against her,

threatened her job, and alternately created obstacles to the move or required her to move between spaces that often she had to find on her own. Because of defendants' refusal to accede to plaintiff's original, simple request for accommodation, her condition worsened, so that instead of only having symptoms when near the plant and its chemicals, she developed sensitivities to multiple chemicals used throughout daily life. This has made safe housing extremely difficult and caused Kovach to incur substantial expense to try to avoid triggering exposures and aggravating her illness.

2. Plaintiff brings this action to remedy defendants' unlawful discrimination and failure to provide reasonable accommodation for her disability, and retaliation for opposing unlawful employment practices, in violation of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.* (the "ADA"); the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.* (the "Rehabilitation Act"); the New York State Human Rights Law, Executive Law § 290 *et seq.* (the "Executive Law"); and § 8-107 of the New York City Charter and Code (the "City Law").

3. Plaintiff seeks injunctive and declaratory relief, compensatory and punitive damages, and other appropriate legal and equitable relief pursuant to the ADA, the Rehabilitation Act, the Executive Law, and the City Law.

#### JURISDICTION AND VENUE

4. The Court has jurisdiction under the ADA, 42 U.S.C. § 12117, which incorporates 42 U.S.C. § 2000e-5(f), and under 28 U.S.C. § 1331. Pursuant to 28 U.S.C. § 1367, the Court has supplemental jurisdiction with respect to plaintiff's claims under the Executive Law and the City Law.

5. On or about August 18, 2010, plaintiff timely filed a charge of discrimination with the New York State Division Of Human Rights ("SDHR"), which was cross-filed with the Equal Employment Opportunity Commission (the "EEOC"). The SDHR found probable cause

on or about September 18, 2012. At plaintiff's request the SDHR dismissed the claims for administrative convenience. Plaintiff received her Notice of Right to Sue from the EEOC on January 25, 2013. Plaintiff and CUNY entered a series of tolling agreements between April 8, 2013 and October 14, 2013. Plaintiff has fully complied with the administrative prerequisites to the filing of an action.

6. As some of the unlawful employment practices complained of herein occurred, and defendant regularly does business, within the Southern District of New York, venue is proper in this District pursuant to the ADA, 42 U.S.C. § 12117, which incorporates 42 U.S.C. § 2000e-5(f)(3).

#### PARTIES

7. Plaintiff is a resident of Manhattan and is a licensed architect. Plaintiff is an individual with a disability within the meaning of the ADA, the Executive Law and the City Law, and an individual with a handicap within the meaning of the Rehabilitation Act.

8. Defendant CUNY is a publicly-funded university system, comprised of senior and community colleges, graduate and professional schools, research centers, institutes and consortia. Its headquarters and principal place of business is Manhattan. One of the senior colleges within CUNY is Brooklyn College.

9. Defendant Gould has been the President of Brooklyn College since on or about May 2009.

10. Defendant Hewitt has at all relevant times been the Assistant Vice President of Human Resources at Brooklyn College.

11. Defendant Flanagan held the position of Human Resources Officer at Brooklyn College until 2012 or 2013, when she retired.

12. Defendant Little was the Vice President of Finance and Administration at Brooklyn College until early 2012.

13. Defendant Czirak was the Assistant Vice President of Facilities Planning and Operations at Brooklyn College until spring 2012.

14. Defendant Carmosino works in CUNY's Office of Facilities Planning, Construction and Management. He is the Project Manager for Brooklyn College.

15. Defendant Gilbert was Acting Vice President of Finance and Administration at Brooklyn College on a temporary basis after Little left CUNY.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

16. Kovach has been employed by Brooklyn College as the Director of Facilities for Planning and Construction since September 2002.

17. Before working for Brooklyn College, Kovach worked as a licensed architect and project manager on various projects for architectural consulting firms in New York City. The projects included new construction and renovation at costs that ranged up to \$150 million.

18. As Director of Facilities for Planning and Construction, until she requested accommodation for her disability, as discussed below, Kovach's duties included the development, implementation and management of Brooklyn College's capital program including planning, design and construction of all rehabilitation projects and new buildings; management and supervision of architects, project managers and administrative staff within Planning and Construction; and responsibility for the Assistant Vice President's portfolio in his absence.

19. From the beginning of her employment until spring 2012, Kovach reported to Czirak, who reported in turn to Little.

20. When Kovach was hired her office was originally in Roosevelt Hall. In January 2003, the Facilities Department moved to office space in the chiller plant for Brooklyn College, which holds the machinery and chemicals used to produce chilled water for the campus. Until February 2010, Kovach's office was located in the chiller plant on the second floor, immediately above the plant area.

21. Brooklyn College has thirteen buildings on its campus, of which twelve have office space.

22. In mid-2007, Kovach began to suffer from a variety of allergic symptoms when at work, including stinging, burning and visibly reddened skin; red, irritated and sticky eyes; burning mouth and throat; raspy and hoarse voice; burning and aching sinuses; lung pain and tightness, and disorientation. If she remained in her office when experiencing these symptoms, she also experienced shaking, and difficulty speaking and organizing thoughts. At times she also became agitated. Over time, her under-active thyroid, which had been stable, became difficult to control. She also experienced hair loss.

23. Initially, the symptoms abated when Kovach was not in the chiller plant. During the initial period, if Kovach left the chiller plant, the symptoms improved greatly after about 30 minutes.

24. In late summer 2008, Kovach was having some symptoms, although to a lesser degree, outside the chiller plant. She reported her symptoms when in the chiller plant to Czirak and Aldo Orlando ("Orlando"), the Campus Health and Safety Officer. Brooklyn College then performed air-sampling tests, which confirmed higher than average levels of Freon in the air in Kovach's office. Initially, nothing was done to address these heightened levels or Kovach's symptoms. Eventually Kovach was told that a leak had been found and repaired.

25. Czirak was a heavy smoker. He frequently smoked in his office and invited other smokers to join him there to smoke. In 2008, Kovach told Czirak and Hewitt that the cigarette smoke in the office caused her symptoms to worsen. Czirak initially tried to adjust the ventilation system, but it did not work and he did not stop smoking in his office. Czirak was out on medical leave from July to September 2009. During that time, Kovach's symptoms improved. When Czirak returned to work he resumed smoking in his office and Kovach's symptoms got worse again. Little and Hewitt told Czirak to stop smoking, but he ignored them. Although smoking in CUNY offices violated New York law and CUNY policy, Little and Hewitt took no action against Czirak.

26. Kovach's physical symptoms got worse over time.

27. In March 2009, Kovach discussed with Czirak the possibility of moving her to another office as an accommodation. Czirak threatened that if Kovach persisted in her request for accommodation to be moved outside the chiller plant, she would lose her job. On several other occasions Czirak repeated this threat and told her that she had to choose between her job and her health.

28. In March 2009, Kovach provided a letter from her doctor to Human Resources, describing her medical condition and requesting the reasonable accommodation of being moved to an office outside the chiller plant.

29. Soon after Kovach provided her doctor's letter, she received a call from Flanagan, the Human Resources Officer. Flanagan claimed that the doctor's letter provided was too vague. Flanagan said that Kovach would have to provide a more detailed doctor's letter, an organization chart of her department, and a written plan of how she would perform her job based on her job description. Kovach asked that Brooklyn College put its request in writing. Flanagan

refused. Later, Human Resources sent Kovach a job description that differed from the one that was used to hire Kovach and from Kovach's actual duties.

30. In the call, Flanagan threatened Kovach that she could lose her job if she officially submitted her doctor's letter. She suggested that Kovach rescind her doctor's letter. Afraid that she would lose her job and health benefits, Kovach retrieved her doctor's letter from Human Resources.

31. Because of the threats by Czirak and Flanagan, Kovach initially did not submit a revised doctor's letter or the other information requested by Flanagan.

32. Kovach's physical symptoms continued to get worse. In June 2009, she sought help from her union, the Professional Staff Congress ("PSC"). In July 2009, PSC spoke with Flanagan, who now said that all Kovach needed was a revised letter from her doctor. The PSC tried to get specific information about what needed to be included in the doctor's letter.

33. In September 2009, Kovach and a PSC representative met with Hewitt. Kovach brought with her two letters from doctors. Hewitt also claimed that the letters were too vague. Hewitt promised Kovach that if she agreed to see a Brooklyn College-appointed doctor, she would be provided an alternative office. Kovach agreed to do so.

34. On or about November 10, 2009, Kovach submitted to Hewitt a new letter from Mt. Sinai's Selikoff Center for Occupational and Environmental Medicine supporting her request for an accommodation. Upon information and belief, Hewitt shared the letter and/or its contents with Czirak.

35. On or about November 11, 2009, Czirak removed Kovach from working on Brooklyn College's Master Plan, one of the most significant Facilities' projects. The Master Plan is a study to evaluate all physical space on campus based on the college's future academic needs. The

Master Plan establishes all the facilities projects, both renovation and new buildings, for the campus for the next ten to fifteen years. All of Kovach's duties on the Master Plan were assigned to a less qualified, non-disabled employee who reported to her.

36. On November 18, 2009, Czirak sent an email to Human Resources, copying Kovach, falsely claiming problems with Kovach's behavior. Kovach sent an email rebutting Czirak's email on November 19, 2009. She also sought help from the PSC. On December 17, 2009, Kovach met with a representative of the PSC and Hewitt. Hewitt was dismissive of the issue with Czirak. Hewitt claimed that the letter from Mt. Sinai was "too vague." Kovach reminded Hewitt that the College had not made an appointment for her with Brooklyn College's doctor as previously promised, nor had it provided an alternate office.

37. In December 2009, Kovach spoke with Jennifer Rubain ("Rubain"), then-Director for Equity and Diversity, to discuss her accommodation request. Rubain promised that Kovach would be assigned a new office in later December.

38. Brooklyn College did not arrange for an appointment for Kovach with the doctor it chose until late December 2009. When Kovach arrived at the appointment on or about December 21, 2009, she discovered that the doctor was overbooked and unable to see her. Kovach rescheduled the appointment.

39. Kovach finally saw the doctor chosen by Brooklyn College on February 11, 2010. The doctor fully supported moving Kovach to another office, although he did not provide a letter until months later. The letter from the college's doctor did not provide the sort of information Hewitt and Flanagan had claimed was missing from the letters from Kovach's doctors.

40. In February 2010, Hewitt and Rubain told Kovach that an office was found and she would work in a new location, a room in Roosevelt.



41. However, the retaliation that began when Kovach first pressed for an accommodation continued after it was finally granted, resulting in her duties and level of responsibility being diminished. These actions were all taken at the initial direction of Little and/or Czirak. For example:

- a) In March 2010, Kovach was excluded from the new \$360 million Science Building Project. One of Kovach's subordinate's was made the project representative instead.
- b) Senior managers at Brooklyn College and personnel from CUNY have bypassed Kovach to provide information to, and seek help from, the employees who report to Kovach. When Kovach asks for information from CUNY, she is often stonewalled. Czirak and CUNY Project Manager Carmosino routinely went around Kovach to give work to, and get information from, Kovach's staff.
- c) Carmosino has treated Kovach disrespectfully and undermines Kovach by working with her staff behind her back.
- d) Kovach is excluded from a variety of meetings she used to attend, including but not limited to, Budget and Planning meetings related to project-funding held at CUNY's central office.
- e) Czirak relegated Kovach to increasingly less significant projects, while giving more significant work to Kovach's staff.
- f) Kovach has been given fewer responsibilities than the staff she allegedly managed. Some of Kovach's staff meet with the President, while Kovach is excluded. Kovach has never attended a working meeting with President

Gould. Kovach met with Gould's predecessor on a number of important, high-visibility projects.

42. In late May 2010, the Roosevelt room became unusable due to contamination by a material that smelled like paint or paint thinner. Kovach advised Hewitt and Security of several incidents of contamination throughout the spring of 2010, and about the office becoming unusable by late May. Hewitt told Kovach that she had to find alternative space on her own and refused to assist her.

43. Kovach was forced to return to her original office in the chiller plant because no other offices were offered to her. Working in the chiller plant continued to make her ill. Sometimes Kovach could find a desk elsewhere to sit temporarily. Other times, if she could not find an empty desk, she had to use her sick days.

44. On May 27, 2010, Kovach attended Commencement ceremonies. When she returned to the chiller plant, her symptoms were unbearable. She then went to the Roosevelt room, but found it was worse than it had ever been. Kovach asked a security officer to come to the Roosevelt room and see if he could smell anything. He said he smelled something like paint. Kovach reported this to Hewitt and Security. Kovach then went to the DASNY (Dormitory Authority of the State of New York) trailer for relief. While there, she coughed up small amounts of blood.

45. On June 22, 2010, Hewitt sent Kovach an email stating that Brooklyn College was rejecting her request for an accommodation for her disability, but agreeing to provide an alternative office based on its doctor's suggestion. At the time of the email, Hewitt was aware that the alternative office in Roosevelt being proposed was unusable.

46. Czirak frequently told Kovach that he did not believe she was actually ill, despite the medical documentation from four doctors, including the one chosen by Brooklyn College.

47. On or about August 18, 2010, Kovach filed a charge of disability discrimination and retaliation with the SDHR and EEOC.

48. In October 2010, the PSC initiated an investigation by the New York Committee on Occupational Safety and Health ("NYCOSH") into the chiller plant, which Brooklyn College agreed to permit. The NYCOSH report found a number of problems and violations in the chiller plant.

49. In response to the NYCOSH findings, Little sent a letter to the President that tried to minimize the findings. He described how some problems would be addressed and said others were too costly to fix.

50. Kovach, in a responsive email, notified the President, Little, Czirak, and Hewitt, among others, of her disagreement with statements made in Little's letter. She noted that some of the problems identified by NYCOSH were Department of Buildings code violations. Although Little promised to take certain actions, Brooklyn College for the most part did not do so, nor did it correct the other problems or violations. After Little and Czirak left CUNY, one correction was made in August 2012, upon information and belief.

51. In or about May 2011, Czirak berated Kovach for opening windows to let in fresh air.

52. Because of Kovach's MCS and the allergic asthma she developed, perfume and other fragrances cause tightening of her lungs, disorientation, blurred vision, and in some cases, shaking and agitation. Kovach asked Hewitt and Czirak to ask her co-workers to refrain from using

fragrance in the workplace, as an accommodation to her disability. Hewitt and Czirak told Kovach that CUNY had no policy on fragrance and refused to take any action. When Kovach asked co-workers to refrain from using perfume and room air fresheners, Czirak, on more than one occasion, berated Kovach. On many occasions, Kovach had to leave the building because of co-workers' use of perfume and air fresheners. In summer 2013, Kovach again had problems with fragrances in the workplace and was again told CUNY could not take any action.

53. In May 2011, Brooklyn College provided Kovach with an office in Ingersoll Hall. After Kovach had been in the office for about four weeks, the office became contaminated with the smell of polishing wax which seemed to emanate from the radiator near Kovach's desk. Kovach was then forced to look for ad hoc space on her own. On some days, she could not find a spare desk and had to work in the cafeteria or part of the library with no ability to connect to the Facilities drives which hold information and programs that the department shares.

54. In early 2012, Little's employment terminated. A few months later, Czirak left Brooklyn College. Upon information and belief, prior to their departures, Brooklyn College had investigated the activities of Little and Czirak, including allegations of theft or financial improprieties.

55. After Little left, Gilbert became Acting Vice President.

56. In or about March 2012, Kovach asked Gilbert for alternative office space. The only location Gilbert suggested was a desk in an open area next to the department copier. As the ink would trigger Kovach's symptoms, it was not a viable location. When Kovach advised Gilbert of this, he said nothing else was available.

57. Throughout Gilbert's tenure as Acting Vice President he excluded Kovach from information and meetings necessary to her job and assigned matters that should have been,

and in many cases previously had been, handled by Kovach to people either outside Facilities or who reported to Kovach.

58. In September 2012, Joseph Giovannelli ("Giovannelli") was named the permanent replacement for Little.

59. On September 18, 2012, the SDHR found that there was probable cause Brooklyn College had discriminated and retaliated against Kovach.

60. In January 2013, Francis Fitzgerald ("Fitzgerald") replaced Czirak. Kovach has tried to get Fitzgerald to restore the duties that had previously been taken away by Little, Czirak, and Gilbert, but she continues to be excluded and denied information, and projects continue to be assigned to her staff instead of her. None of Kovach's responsibilities have been restored, or even discussed, despite her repeated requests for Fitzgerald to do so.

61. By 2011, Carmosino became the only person at CUNY central with whom Kovach regularly interacted. Carmosino continues to be hostile and condescending toward Kovach and to bypass Kovach to deal directly with her staff. On more than one occasion, when Giovannelli or Fitzgerald have been present they have had to intercede to get Carmosino to back down.

62. After Kovach attended a meeting at CUNY central with Carmosino in May 2013, for the first time he began to wear fragrance. Kovach repeatedly asked Carmosino to please refrain from wearing fragrance when they would be meeting. For months, he ignored the request and continued wearing fragrance. Finally, after this conduct was reported to CUNY's General Counsel's office, Carmosino stopped wearing fragrance when meeting with Kovach.

63. In October 2012, Brooklyn College finally provided Kovach with an alternative office. The office was fine for many months. In May 2013, Kovach began to intermittently experience symptoms in the office.

64. By July 2013, Kovach's symptoms while in her new office were so steady that she could not longer use her new office. She has asked for another office, including an empty office in the Vice President's suite, but has not been provided one. She now, once again, has to use whatever empty space she can find, which means she often has no connection to shared drives and needed software. She is currently using the conference room in the Vice President's suite. She has been promised another office in an area currently under construction. It is unknown whether that office will be suitable, due to fumes caused by the new construction. The proposed office does not have a door, which will expose Kovach to any fragrances used by nearby employees.

65. Because the repeated exposure exacerbated Kovach's MCS, she became more and more sensitive to chemicals in daily life. She has had to incur expenses that those without MCS do not, such as on special products and in efforts to make her living space safe for her, as well as medical treatment and supplements not covered by insurance. She has had to live with friends and in hotels when her primary living space made her ill. Since December 2012, she has been unable to find housing that keeps her symptom-free for any extended period of time. As a result, she has had to move multiple times, incurring moving expenses and paying rent on more than one space at a time.

66. President Gould has been aware of Brooklyn College's treatment of Kovach at least since the filing of the complaint with the SDHR and EEOC. Although she has the authority to direct that Little and those reporting to him, including Czirak and Hewitt, comply with the law, she permitted Brooklyn College to violate Kovach's right for years, seriously impairing Kovach's health. As there is presently no cure or effective treatment for MCS, Kovach is expected to have to live with her condition for the rest of her life.

FIRST CAUSE OF ACTION

(ADA – DISCRIMINATION)

(Against Gould in her Official Capacity)

67. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 66 of this Complaint as if set forth fully herein.

68. Plaintiff has had, at all relevant times, a "disability" as that term is defined in the ADA. Plaintiff was able to perform the essential functions of her job and therefore was at all relevant times a "qualified individual with a disability" within the meaning of the ADA.

69. By the acts and practices described above, including failing to provide reasonable accommodation, taking adverse employment actions, and creating a hostile work environment, defendant Gould has discriminated against plaintiff on the basis of her disability, in violation of the ADA.

70. Defendant Gould should be ordered to take all steps necessary to accommodate plaintiff's disability and restore plaintiff to her duties and responsibilities as they were before she first requested accommodation.

SECOND CAUSE OF ACTION

(ADA – RETALIATION)

(Against Gould in her Official Capacity)

71. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 70 of this Complaint as if set forth fully herein.

72. Plaintiff, by requesting accommodation and complaining of discrimination, has engaged in conduct protected by the ADA.

73. By the acts and practices described above, including the creation of a

hostile work environment, defendant Gould has retaliated against plaintiff because of her protected activity, in violation of the ADA.

74. Defendant Gould should be ordered to take all steps necessary to accommodate plaintiff's disability and restore plaintiff to her duties and responsibilities as they were before she first requested accommodation.

THIRD CAUSE OF ACTION

(REHABILITATION ACT – DISCRIMINATION)

(Against CUNY)

75. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 74 of this Complaint as if set forth fully herein.

76. On information and belief, CUNY receives federal funds.

77. In violation of the Rehabilitation Act, defendant CUNY has discriminated against plaintiff in the terms and conditions of her employment by refusing to provide reasonable accommodation for her disability, taking adverse employment actions, and creating a hostile work environment.

78. As a result of defendant CUNY's unlawful acts, plaintiff has suffered irreparable injury, emotional distress and humiliation, mental anguish, stress, and other compensable damage and will continue to do so unless and until this Court grants relief.

FOURTH CAUSE OF ACTION

(REHABILITATION ACT – RETALIATION)

(Against CUNY)

79. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 78 of this Complaint as if set forth fully herein.



80. On information and belief, CUNY receives federal funds.

81. In violation of the Rehabilitation Act, defendant CUNY has retaliated against plaintiff in the terms and conditions of her employment, including by creating a hostile work environment.

82. As a result of defendant CUNY's unlawful acts, plaintiff has suffered irreparable injury, emotional distress and humiliation, mental anguish, stress, and other compensable damage and will continue to do so unless and until this Court grants relief.

FIFTH CAUSE OF ACTION

(EXECUTIVE LAW – DISCRIMINATION)

(Against the Individual Defendants in their Individual Capacities)

83. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 82 of this Complaint as if set forth fully herein.

84. Plaintiff has had, at all relevant times, a "disability" as that term is defined in the Executive Law.

85. By the acts and practices described above, including failing to provide reasonable accommodation, taking adverse employment actions, and creating a hostile work environment, the individual defendants have discriminated against plaintiff and aided and abetted CUNY in discriminating against plaintiff on the basis of her disability, in violation of the Executive Law.

86. As a result of the individual defendants' unlawful acts, plaintiff has suffered irreparable injury, emotional distress and humiliation, mental anguish, stress, and other compensable damage and will continue to do so unless and until this Court grants relief.

SIXTH CAUSE OF ACTION

(EXECUTIVE LAW – RETALIATION)

(Against the Individual Defendants in their Individual Capacities)

87. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 86 of this Complaint as if set forth fully herein.

88. Plaintiff engaged in conduct protected by the Executive law.

89. By the acts and practices described above, including by creating a hostile work environment, the individual defendants have retaliated against plaintiff and aided and abetted CUNY in retaliating against plaintiff for her protected activity, in violation of the Executive Law.

90. As a result of the individual defendants' unlawful acts, plaintiff has suffered irreparable injury, emotional distress and humiliation, mental anguish, stress, and other compensable damage and will continue to do so unless and until this Court grants relief.

SEVENTH CAUSE OF ACTION

(CITY LAW – DISCRIMINATION)

(Against the Individual Defendants in their Individual Capacities)

91. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 90 of this Complaint as if set forth fully herein.

92. Plaintiff has had, at all relevant times, a "disability" as that term is defined in the City Law.

93. By the acts and practices described above, including failing to provide reasonable accommodation, taking adverse employment actions, and creating a hostile work environment, the individual defendants have discriminated against plaintiff and aided and abetted

CUNY in discriminating against plaintiff on the basis of her disability, in violation of the City Law.

94. As a result of the individual defendants' unlawful acts, plaintiff has suffered irreparable injury, emotional distress and humiliation, mental anguish, stress, and other compensable damage and will continue to do so unless and until this Court grants relief.

EIGHTH CAUSE OF ACTION

(CITY LAW – RETALIATION)

(Against the Individual Defendants in their Individual Capacities)

95. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 94 of this Complaint as if set forth fully herein.

96. Plaintiff engaged in conduct protected by the City law.

97. By the acts and practices described above, including by creating a hostile work environment, the individual defendants have retaliated against plaintiff and aided and abetted CUNY in retaliating against plaintiff for her protected activity, in violation of the City Law.

98. As a result of the individual defendants' unlawful acts, plaintiff has suffered irreparable injury, emotional distress and humiliation, mental anguish, stress, and other compensable damage and will continue to do so unless and until this Court grants relief.

WHEREFORE, plaintiff respectfully requests that this Court enter a Judgment:


- (a) declaring the acts and practices complained of herein to be violations of the ADA, the Rehabilitation Act, the Executive Law, and the City Law;
- (b) enjoining and permanently restraining these violations of the ADA, the Rehabilitation Act, the Executive Law, and the City Law;
- (c) directing defendants to take such affirmative steps as are necessary to ensure that the effects of these unlawful practices are eliminated and do not continue to affect plaintiff's employment opportunities, including restoring duties to plaintiff that have been taken away;
- (d) directing defendants to provide plaintiff with reasonable accommodation for her disability and make her whole for all losses she has incurred as a result of defendant's failure to provide such accommodation previously;
- (e) directing defendant CUNY to pay plaintiff compensatory damages, including damages for emotional distress, humiliation, and resulting physical injury, under the Rehabilitation Act;
- (f) directing the individual defendants to pay plaintiff compensatory damages, including damages for emotional distress, humiliation, resulting and physical injury, under the Executive Law and the City Law;
- (g) directing the individual defendants to pay plaintiff punitive damages under the City Law;
- (h) awarding plaintiff the costs of this action, together with reasonable attorneys' fees, as provided by the ADA, the Rehabilitation Act and the City Law; and
- (f) granting such other and further relief as this Court deems necessary and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, plaintiff demands a trial by jury in this action.

Dated: New York, New York  
October 11, 2013

VLADECK, WALDMAN, ELIAS  
& ENGELHARD, P.C.

By:   
\_\_\_\_\_  
Anne L. Clark  
Gregory S. Chiarello  
Attorneys for Plaintiff  
1501 Broadway, Suite 800  
New York, New York 10036  
(212) 354-8330