UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GORDON LAVALETTE,

Plaintiff,

- against -

ION MEDIA NETWORKS, INC.

Defendant.

Index No. 16-cv-7286

COMPLAINT

Plaintiff, **GORDON LAVALETTE**, through his attorneys, Gail I. Auster & Associates, P.C., as and for his Complaint, alleges as follows:

Preliminary Statement

1. This is a civil action for damages and remedies under the common laws of the State of New York by Plaintiff against his former employer, Defendant ION Media Networks, Inc. ("ION" or "Defendant" or "the Company") for breach of contract; breach of duty of loyalty, good faith and fair dealing; breach of fiduciary duty; and intentional infliction of emotional distress.

2. This action is also brought to remedy unlawful discriminatory hostile work environment on the basis of age, as well as retaliation for opposing unlawful discrimination, in violation of the Administrative Code of the City of New York § 8-101 et seq. ("New York City Human Rights Law" or "NYCHRL").

THE PARTIES

3. Plaintiff Gordon Lavalette ("Plaintiff" or "Lavalette") was employed by Defendant ION Media Networks, Inc. at 810 7th Avenue #31, New York, New York 10019 from April, 2014 to July 1, 2016.

4. At all times relevant, Lavalette resided, and still resides, at 15 Fieldcrest Road, town of Chester, Morris County, State of New Jersey.

5. Defendant ION Media Networks, Inc. is a privately owned Delaware corporation, with its principal place of business at 601 Clearwater Park Road, West Palm Beach, Florida 33401.

6. ION is a U.S. broadcast media and technology company which owns and operates ION Television, an American broadcast, cable, and satellite television network that serves approximately 100 million homes in America, as well as over 60 television stations.

7. ION's majority owner is Black Diamond Capital Management ("Black Diamond").

JURISDICTION

8. This Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332.

VENUE

9. Venue is proper in this District under 28 U.S.C. § 139l(b)(2) because a substantial part of the events giving rise to Plaintiff's claims occurred within the Southern District of New York.

FACTS

10. Lavalette is a 52-year-old man born on September 24, 1963.

11. Lavalette is a Certified Public Accountant ("CPA"), with both a J.D. and an LLM in tax.

12. Lavalette was employed in the position of Chief Financial Officer ("CFO") by ION Media Networks, Inc. ("ION"), a leading U.S. broadcast media and technology company, from April, 2014, until his termination by Defendant on or about July 1, 2016.

13. As CFO, Lavalette reported to Brandon Burgess ("Burgess"), the Chief Executive Officer ("CEO").

Stock Appreciation Rights Agreement

14. ION had a Management Equity Incentive Plan pursuant to which ION executives could be eligible to receive Stock Appreciation Rights ("SARs").

15. Burgess engaged in a practice of giving out SARs to certain executives and then terminating their employment before they were able to reap the profits of the SARs, e.g., by terminating their employment without cause before their SARs had vested, or by terminating them for cause after their SARs had vested and then terminating the already-vested SARs based upon the "for cause" designation, which itself was often pretextual.

16. Another way in which Burgess deprived executives of their SARs was by making their work experience so miserable and intolerable that they were forced to resign through constructive discharge.

17. Thus, ION has never had to pay out many of the SARs that were promised to ION executives, and Burgess has been at liberty to use SARs as a powerful tool to bait ION executives into abject submission, with little financial risk; in addition, each time an executive's

SAR's are terminated, Burgess' SARs value increases as the number of outstanding shares decrease.

18. To this extent, SARs are illusory, and Burgess has used SARs to manipulate ION executives into compliance for fear of displeasing Burgess, being terminated and losing their SARs, which were valued at millions of dollars.

19. Burgess' SARs are the only SARs that are exercisable on a current basis in stark contrast to the other executive's SARs which have a 10-year restriction on exercise, absent a change of control or termination by ION without cause.

20. On information and belief, Burgess has received in excess of $30 million from his SARs while all other ION executives have received $0 value to date.

21. On or about February 10, 2015, Lavalette and ION entered into a SARS Agreement for 5,109 shares of ION stock, with a base price of $641.13 per share.

22. Burgess informed Lavalette that he only gave SARs to executives who were "getting things done," and also pointedly mentioned that ION General Counsel Michael Hubner ("Hubner") would likely not receive any SARs, despite Hubner's ongoing request for SARs.

23. The SARs Agreement provided for a three-year vesting schedule, wherein 1,703 shares ("SARs") would vest on the January 1, 2016; another 1,703 SARs would vest on January 1, 2017; and the last installment of 1,703 SARs would vest on January 1, 2018, respectively, for a total of more than $2,000,000.

Lavalette's Opposition to Burgess' Bigoted Comments and Unlawful Discrimination

24. In addition to the above volatile and abusive conduct, Burgess engaged in bigoted behavior and regularly derogated African Americans and other ethnic groups, LGBT individuals, and women in the workplace, from refusing to hire them to wrongfully terminating them to

demeaning them and making offensive jokes at their expense.

25. Burgess would sometimes mock the dialect and speech of African Americans; for example, on or about February 23, 2016, Burgess gratuitously mocked and impersonated LaTrise Simmons ("Simmons"), an African American accounting manager, by imitating her in a very exaggerated "black" dialect, in a manner reminiscent of an old "black face" minstrel show, while saying "I don't know how to get da file out da folder," and other words to that effect.

26. This very ugly and hateful impersonation of Simmons, an African American ION employee, strongly conveyed that Burgess harbored racial animus toward African Americans, and such conduct was therefore extremely offensive to Lavalette.

27. Lavalette was appalled at such display of racism and immediately objected to such conduct to Burgess and to ION Chief Administrative Director Terri Santisi ("Santisi"), who also directed the Human Resources ("HR") functions and responsibilities.

28. In fact, Burgess' impersonation of Simmons was so racist and offensive that even Santisi, who normally aimed to please Burgess at all costs, asked Burgess to stop impersonating Simmons.

29. When Lavalette expressed his concerns about Burgess' racist impersonation of Simmons to Chief Commercial Officer Jeffrey Quinn ("Quinn"), Quinn replied that "Brandon [Burgess] has done much worse" and that such impersonation was nowhere near as offensive as some of the other bigoted remarks Burgess had made in the past.

30. Burgess also sometimes referred to Simmons and her group of ION accountants as "monkeys," both verbally and via email.

31. Following Burgess' example in the hostile environment that he created, Santisi also derogated African Americans in the workplace, notwithstanding the fact that she had asked

Burgess to stop his impersonation of Simmons.

32. For example, on various occasions Santisi referred to a human resources issue that had emerged in the Florida office by dismissively scoffing: "I have to go deal with a *black employee* issue."

33. Santisi referred to such "*black employee* issues" in a tone of voice that conveyed a low opinion of black employees and their plight for equality in the workplace.

34. Lavalette, as well as ION General Counsel Michael Hubner, objected to Santisi's racist comments by repeatedly informing Santisi, who was in charge of HR, that such comments were inappropriate and shocking, especially coming from an HR professional such as Santisi.

35. Santisi did not respond to Lavalette's objection to her racially biased comments in the workplace; rather, Santisi remained silent and ignored such objections altogether.

36. Burgess also derogated Italian Americans; on or about May 11, 2016 when reviewing the job applications of two Florida office job candidates with Italian names, Burgess focused solely on their ethnicity by declaring: "If we hire them both, it'll sound like we have the Mafia working for us down there!"

37. In fact, Burgess, who was born and raised in Germany, routinely discriminated against job applicants based solely upon their names and perceived ethnicity, for example by flipping quickly through stacks of résumés and exclaiming "wrong gene pool!" as he summarily eliminated certain applicants from consideration.

38. Burgess' practice of disqualifying job applicants based entirely upon their supposed "gene pool" – and indeed the underlying concept that certain "gene pools" are somehow "wrong" – was entirely shameful, and Lavalette found such ethnically bigoted conduct deeply distressing.

39. Burgess also derogated employees identifying as LGBT in the workplace, culminating in his terminating the employment of an openly gay ION manager in or about 2015; upon information and belief, Burgess had previously written a homophobic email to and about this manager that was so outrageous that Defendant and/or Burgess ultimately had to allow him to retain his Stock Appreciation Rights ("SARs") after his termination, in exchange for a general release of liability, to ensure that he did not sue Burgess or ION for unlawful discrimination based upon sexual orientation.

40. Burgess also made misogynistic comments in the workplace; for example, at a meeting on or about March 9, 2016, at about 10:30AM, Burgess verbally attacked an outside female valuation expert, repeatedly calling her a "whore."

41. Burgess also berated Santisi on a regular basis, repeatedly telling her and others, including but not limited to Lavalette, that she was "not smart enough to do any computations."

42. Santisi internalized this constant belittling of her intelligence and would often dejectedly remark, "I'd like to help but I'm not smart enough to do computations," or "per Brandon [Burgess], I'm forbidden to do any computations," and other words to that effect.

43. On several occasions in 2015, Santisi told Lavalette that she was considering filing a lawsuit against Burgess for discrimination based upon gender and age, because Burgess had excluded her from Board meetings and other management-level activities and responsibilities "because [she is] a woman."

44. By tolerating, ratifying and condoning the hostile work environment created and maintained by Burgess, Defendant sent a message that unlawful discrimination and/or retribution was acceptable at ION.

45. In February 2016, Santisi sent out an "Anonymous Survey" to the ION Finance

group to elicit feedback from within the group; respondents were directed to submit responses anonymously to *www.IONCares.com*.

46. In response to this "anonymous" survey, one of the group members anonymously commented upon some of the Human Resources ("HR") group's shortcomings.

47. When Santisi, who was responsible for ION HR, saw such commentary among the survey responses, she became incensed and shouted, in the presence of several ION executives: "I know the fucking A/P employee who wrote this and if I can trace it back to her I'm going to fire the bitch!"

48. On or about April 7, 2016, Lavalette raised the issue of Santisi's inappropriate conduct and comments regarding the anonymous survey during a meeting with Burgess and Santisi.

49. Lavalette told Santisi directly that he objected to her conduct and comments with regard to the "anonymous survey," stating that her actions with regard to the survey "were offensive and lack[ed] integrity."

50. In response, Santisi began to cry.

51. Burgess then said to Lavalette: "Talk to *me*. You've said enough to *her*."

52. Lavalette, who was extremely distressed by the severe and ongoing hostile work environment at ION, then told Burgess that Burgess' constant denigration of the accounting team, such as calling them "useless" and the "lowest of the low" on the professional hierarchy, was unacceptable, and was also an attack on Lavalette himself, given that Lavalette was himself a Certified Public Accountant, among other professional distinctions.

53. Lavalette reiterated to Burgess that as an accountant, he was finding it extremely difficult to work under a CEO that harbored such open and flagrant animosity toward

accountants as a professional group.

54. By email dated April 8, 2016 at 10:30 AM, Burgess responded to the issues Lavalette had raised in the previous day's meeting by writing: "I suggest that entitlement and turf thinking be checked at the door, in order to avoid bruised egos," thereby indicating that Lavalette was guided only by his ego in voicing his concerns about ION's hostile work environment.

55. By email dated April 8, 2016 at 11:55 AM, Lavalette reiterated to Burgess his "serious concerns" about "inappropriate behavior that questions integrity and that is creating a difficult environment."

56. By email dated April 8, 2016 at 12:05 PM, Burgess replied: "If it turns out that you are looking to fabricate some email trail, that would be disappointing."

Lavalette's Opposition to Age-Based Discrimination

57. In addition to the bigoted comments and conduct described above, Burgess created a hostile work environment on the basis of age, and also engaged in an ongoing practice of age-based discrimination in the workplace.

58. Burgess repeatedly expressed age-based animus in the workplace, for example by dismissively referring to a Board member in her seventies as "a dinosaur" and claiming she had no knowledge of modern industry.

59. As another example of age-based discrimination, Burgess terminated the employment of a number of high-performing employees and executives who were over the age of 50, including but not limited to Douglass Holloway; Lavalette therefore worried that he would be the next to be terminated on the basis of his age (along with other factors described, *supra*).

60. Santisi, who mainly acted upon and carried out Burgess' direct orders and was highly focused on pleasing Burgess, also eliminated candidates over the age of 50 for the

position of ION Vice President by saying "he won't have enough energy for the job" and "he's probably looking for a job where he can slow down before retirement, and won't have the necessary drive."

61. Lavalette found such age-based discrimination to be offensive and unacceptable, and he therefore objected to Santisi's comments and conduct by telling her directly that what she was doing was not right, and that candidates should be selected based upon merit.

62. Santisi refused to address Lavalette's vocal opposition to such express age-based discrimination.

ION's Tax Avoidance and Under-Reporting

63. In or about June, 2014, Lavalette noted ION had not been reporting as income various taxable executive perks and fringe benefits for high-ranking executives including, but not limited to Burgess, Santisi, Lavalette, Programming Director Mark Zand and Quinn; such perks included but were not limited to executive apartments in New York City, gym memberships, maid services, limousine services and high-value gift cards; for the past few years alone, the value of perks provided improperly tax free to executives exceeded $1,500,000.

64. Lavalette therefore raised such issue with Santisi in June 2014, as she was responsible for all HR, payroll and tax reporting matters on employee and executive compensation.

65. Santisi kept compensation, payroll and executive compensation tax reporting matters shrouded in such secrecy that even CFO Lavalette did not have all the financial information related to these lavish executive perks.

66. Because Santisi most likely used more executive perks than anyone at ION, the fact that Santisi was allowed to control the reporting – or indeed, non-reporting – of executive

perks presented a glaring conflict of interest.

67. Similarly, the fact that Santisi enjoyed so many executive perks gave her a clear and palpable motive for concealing such perks to the Internal Revenue Service ("IRS"), rather than properly reporting such perks as taxable income.

68. In or around June 2014, because ION Board member and Audit Committee Chair Chris Parker ("Parker") was asking questions about tax withholding for Burgess and other executives, in addition to Lavalette having articulated his concerns as CFO regarding executive perks, Santisi engaged outside legal counsel, Seyfarth Shaw, LLP, to review New York State withholding issues for executives as well as the treatment of executive perks such as New York City apartments, and to provide a summary of applicable tax law with recommendations.

69. Lavalette repeatedly followed up with Santisi regarding resolution of this matter, as ION was not meeting its federal or state income tax obligations with regard to limousine services, executive apartments, gym memberships, gift cards and maid services in New York City.

70. Each time Lavalette followed up, Santisi summarily dismissed Lavalette's questions and concerns regarding ION's unfulfilled tax obligations regarding executive perks.

71. For example, by email dated July 21, 2015 at 8:30 AM, Lavalette asked Santisi to discuss with him the matter of taxation of executive apartments in New York City; Santisi refused to answer such email, and subsequently berated Lavalette in the presence of Hubner for daring to mention such issue in an email, stating, "you don't put that in an email" as Santisi apparently did not want any record, electronic or otherwise, of ION's unlawful tax avoidance.

72. Meanwhile, on or about January 1, 2016, Lavalette's first group of 1,703 SARs vested.

73. In February 2016, a member of the Finance group informed Lavalette that Santisi had gone to him and asked him to provide her with "dirt" on Lavalette, meaning negative information that Santisi and Burgess could potentially use against Lavalette.

74. Also around this time, according to witnesses, Santisi coerced a recruiter into writing an email critical of Lavalette; Santisi insisted that open positions at ION were not being timely filled "because Gordon [Lavalette] has been unresponsive."

75. When the recruiter objected that in fact Lavalette had not been unresponsive and that the delays were not attributable to Lavalette, Santisi shouted words to the effect of: "No! It's because of Gordon [Lavalette]! Now put that in an email to me!"

76. By all appearances, since Santisi could not find any "dirt" on Lavalette, she was now trying to create "dirt" on Lavalette.

77. By email dated March 7, 2016, in preparing a representation letter for ION's upcoming financial audit, Lavalette again attempted to follow up with Santisi on the above taxation issues, but Santisi ignored Lavalette's email.

78. Lavalette subsequently approached Santisi about the tax avoidance issue in person; Santisi responded: "I'm not talking about it!"

79. When Lavalette persisted in trying to discuss the tax avoidance issue with Santisi on several occasions, she would simply repeat over and over: "Not talking about it! It's fine" in response to Lavalette's concerns.

80. By email dated March 14, 2016 at 7:59 AM, Lavalette raised this taxation issue again to Santisi, and copied Burgess on the email; at 10:15 AM, Burgess demanded via reply email: "How is this topic even relevant in the rep letter and why are we talking about it?"

81. In the same email, Burgess also said that the auditors' questions were "silly" and

criticized Lavalette for "getting into the weeds at absurd levels."

82. By reply email, Lavalette explained to Burgess and Santisi that such issue was indeed relevant to various legal compliance representations that ION was preparing to make in its representation letter for the upcoming 2015 financial audit; by email dated March 15, 2016, at 10:16 AM, Burgess responded: "Less is more. Let's wrap it up," thereby pressuring Lavalette not to dig deeper into the tax issue.

83. Lavalette further told Burgess and Santisi that he would not suborn tax avoidance and that until such taxation issue was resolved, he did not feel comfortable signing the representation letter regarding compliance with applicable taxation law.

84. Despite Lavalette's express concerns, on or about March 29, 2016, while Lavalette was on an overseas flight, Santisi surreptitiously ordered Lavalette's assistant, who was in a cab on her way to an evening medical appointment, to skip such appointment, go back to the office and use Lavalette's electronic signature stamp to sign the representation letter without Lavalette's knowledge or consent.

85. According to witnesses, directly after such phone call, Santisi "high fived" Burgess triumphantly and gloated that she had so much power over Lavalette's assistant in getting her to skip her doctor's appointment, turn around and go back to the office to falsify Lavalette's signature, or words to that effect.

86. Lavalette was extremely upset to learn of the above, not only because Santisi bullied and mistreated his assistant, and not only because it was dishonest and unlawful, but also because by falsifying his signature, ION was jeopardizing Lavalette's reputation and professional standing in the industry.

87. By email dated March 29, 2016 at 11:00 PM, Lavalette reported to Burgess that

his assistant had been ordered to falsify Lavalette's signature in violation of his express wishes, and objected that he did not authorize the use of his signature stamp and therefore had neither signed nor approved the letter; By email dated March 29, 2016 at 11:39 PM, Burgess replied: "Interesting caption to an interesting day." Burgess then acknowledged that he had ordered the falsification of Lavalette's signature, "irrespective of sentiments on process."

88. Lavalette was therefore compelled to go to ION Audit Committee Chairman Chris Parker although he was extremely reluctant to do so, fearing repercussions.

89. Lavalette recalled that, during an Audit Committee meeting on or about May 15, 2015, General Counsel Hubner provided an overview of outstanding claims, including a claim by a former employee against an executive at the Audit Committee's request; in response to Hubner's overview, Burgess became enraged and forbade Hubner to attend any more Audit Committee meetings going forward.

90. Hubner subsequently confided in Lavalette on several occasions, in the presence of other ION managers, that Hubner feared that Burgess was utterly lacking in any sense of ethics or morals whatsoever, despite Burgess's planned efforts to construct "plausible deniability."

91. Burgess also declared, in response to Hubner's legal overview, that the Audit Committee's questions were "worthless" and had "no value."

92. Burgess then expressly informed Lavalette that he wanted to terminate Hubner's employment for having provided such information to the Audit Committee, and repeated this comment to Lavalette on several occasions.

93. Burgess thereafter expressly reiterated to Lavalette on several occasions that providing ION information directly to the Board or to the Audit Committee was a "fire-able

offense."

94. Furthermore, in 2015, the Audit Committee requested that ION adopt an Audit Committee charter and had a draft prepared. Included in the draft charter was a requirement that ION establish procedures for:

- "the receipt, retention and treatment of complaints received by ION regarding accounting, internal accounting controls or auditing matters; and
- The confidential, anonymous submission by ION employees of concerns regarding questionable accounting or auditing matters

95. However, upon learning of this, Burgess became enraged, forbade Lavalette and Hubner to address such request and delegated this item to Santisi, after which this internal control was never implemented.

96. Such interdiction by Burgess was in direct conflict with Audit Committee Chairman Chris Parker's ongoing directive that Lavalette from time to time would indeed have to provide ION information to the Audit Committee without Burgess' knowledge or awareness.

97. Caught in between these two binary opposite directives of Burgess and Parker, and under express threat of termination, Lavalette found himself in a totally untenable situation, which caused him extreme emotional distress, which was then compounded by Burgess' escalating antagonism and sabotage.

98. By email dated March 30, 2016 at 9:57 AM, Lavalette asked Burgess and Parker for a meeting between the three of them regarding unreported executive perks and fringe benefits, as well as the forging of Lavalette's signature; Burgess replied that such issues were entirely immaterial with regard to the representation letter and the upcoming audit.

99. Thereafter, on that same date, Lavalette contacted Parker in distress about

Burgess' having ordered the forging of Lavalette's signature on a legal document and also raised grave concerns about Burgess' toxic abhorrent behavior more generally.

100. Lavalette also informed Parker that while Parker had directed Lavalette to be transparent with the Board and provide them with all information relative to executive tax withholdings, Burgess had meanwhile forbidden Lavalette from doing so, under the express threat of termination.

101. Parker expressly agreed with Lavalette that Burgess' behavior was outrageous, and stated that the Board had already had many similar complaints about Burgess from others, but that ION tolerated Burgess' toxic behavior because he was majority shareholder Black Diamond's best earner.

102. Parker then warned Lavalette: "Now that you've come to me directly, you won't survive here anymore – Brandon [Burgess] won't allow it."

103. Parker then said that he had, at that moment, received text messages from Burgess ordering Parker off the telephone with Lavalette because talking to Lavalette was now "out of sequence."

104. After persistent demands by Lavalette that the tax issue be addressed and resolved, Burgess finally allowed Lavalette to engage Deloitte Tax, LLP ("Deloitte") to perform a thorough financial review and report on the taxation of ION fringe benefits; Deloitte performed such review and reported that ION was not properly reporting fringe benefits and was therefore not in compliance with applicable law.

105. Rather than reporting such perks as additional wages taxable to the executives who received them, Burgess' only action in response to Deloitte's report was to cancel Lavalette's limousine service – but not Burgess' own, or that of any other ION executive – in retaliation for

Lavalette's having raised the issue in the first place, and to dissuade him from raising such issues in the future.

106. An ION accounting manager in the Florida office subsequently informed Lavalette that the fringe benefits taxation issue had been raised years ago by a prior ION controller, but such issue was never addressed and the controller who had raised the issue was ultimately terminated by ION.

107. Upon information and belief, as of the time of Lavalette's termination, this executive perk taxation noncompliance issue had not been resolved by Defendant.

Lavalette Discovers $30 Million Tax Discrepancy of Burgess' Making

108. In or about late 2015 to early 2016, while performing due diligence on ION's potential acquisition by another broadcasting entity, Lavalette discovered a large discrepancy in ION's previous tax reporting under Burgess' tenure as CEO.

109. Such tax discrepancy was related to ION's emergence from bankruptcy, which predated Lavalette's employment but was during Burgess' tenure as CEO; in essence, ION had inaccurately inflated the Company's basis in the stock of its subsidiaries, which resulted in an additional $30 million of tax exposure due to under-reporting in prior years.

110. When Lavalette asked ION's outside taxation consultants how such reporting error had occurred, they informed him that Burgess had refused to provide the information they requested and had not allowed them to perform a thorough review of the taxation treatment issues.

111. When Lavalette informed Burgess of the error he had uncovered, as above, Burgess became enraged and no longer allowed Lavalette to have any contact with the potential buyer's due diligence team on this matter.

112. Because CEO Burgess was ultimately responsible for the $30 million tax discrepancy that CFO Lavalette had uncovered, Burgess frantically began laying blame upon others, both inside and outside of the Company.

113. In addition to ION accountants, Burgess proceeded to blame ION's outside Ernst & Young taxation consultants for such error, and viciously berated and verbally abused them during several meetings with them until they both refused to have any further contact with the Company or Burgess; one such consultant literally walked off the job in protest, and the other expressly stated that he had never seen a client treat others in such a vicious and demeaning way, and that he could not subject himself to Burgess' abuse any longer.

114. Lavalette, as a member of ION's management team, was present at these meetings and was embarrassed and humiliated by Burgess' conduct as a negative reflection on his own professional reputation, as well as ION's integrity as a company.

Burgess Knowingly Provides False Information to the FCC

115. On or about October 30, 2015, ION filed an application with the Federal Communications Commission ("FCC") for a pro-forma reorganization of certain ION subsidiaries.

116. On such application, deliberately misrepresented to the FCC that the purpose of ION's corporate restructuring was corporate and tax efficiency (i.e., to save money on taxes), while in fact the purpose of such restructuring was to prepare for a sale of ION Media Networks to another broadcasting entity – a sale which the FCC would likely oppose on several grounds.

117. Upon information and belief, Burgess also used the upcoming Spectrum Broadcasting auction as a convenient disguise for the real reason for the reorganization and one which the FCC would act quickly upon as the FCC was encouraging participation in the action.

118. In fact, as Burgess was well aware, the pro-forma reorganization submitted to the FCC would actually cost ION millions of dollars in tax cost but was a necessary step to accomplish the sale to the outside broadcasting entity.

Burgess' Abusive and Sadistic Management Style

119. Soon after he commenced employment with ION, Lavalette found that Burgess was an extremely punishing and abusive boss who frequently berated his employees and made unreasonable and unfair demands of them.

120. Burgess seemed to derive a sense of perverse pleasure in making his employees miserable and diminishing their morale; for example, Burgess arbitrarily instructed Lavalette to enforce a "no Fridays off during summers for executives" policy for no apparent reason other than to prevent ION executives from putting their earned vacation time toward three-days weekends during the summer, when many people like to travel.

121. For another example, Burgess required that Lavalette schedule mandatory in-person meetings on Friday afternoons, requiring out-of-state executives to attend specifically in order to inflict emotional distress on these executives by causing them to take flights home on Saturday as Burgess explained to Lavalette, "let's impact their weekends!"

122. Such policy did indeed seriously impact the weekends of the many ION employees who were based in Florida.

123. As another example, Burgess became especially vindictive during the winter holidays, forcing ION employees and executives, including but not limited to Lavalette, to work late on non-pressing items on Christmas Eve and New Year's Eve, so that they would miss out on holiday time with their families.

124. One Christmas Eve, Burgess spent hours with Lavalette nitpicking the names used

for various departments within ION, changing them over and over again in an endless procession only to subsequently change many of those department names at a later date.

125. This was all part of Burgess' overarching scheme to inflict so much fear and ongoing emotional distress upon his employees as to completely break their will to stand up for themselves or oppose Burgess in any way.

126. Strategic disruption of weekends and vacation time was also part of Burgess' strategy of making sure his employees never had a chance to de-stress; Burgess routinely called Lavalette and other executives on Saturdays and Sundays, at all hours of the day and night, to interrogate them about trivial matters; Quinn explained that this is [Burgess'] way of keeping a constant level of stress on his folks, day in, day out, so that we become beaten and that " This constant stress is affecting my health."

127. Burgess also seemed to derive pleasure from berating, taunting and humiliating his employees, including but not limited to Lavalette; for example, Burgess often referred to ION accountants, who reported to Lavalette, as "the lowest form of professional," that accountants "provide no value or insight."

128. On one occasion, while discussing certain financial issues that he was blaming on Chief Marketing Officer Chris Addeo ("Addeo"), and Quinn, Burgess became enraged and verbally attacked Addeo and Quinn, repeatedly telling them that accountants lack intelligence and are useless, and referred to them derisively as "plumbers"; Burgess was well aware that Quinn was himself a CPA, and that a close family member of Addeo was a plumber and did so to belittle and demean them.

129. At one point, Quinn said Burgess became so volatile that he was afraid Burgess was going to physically assault him and Addeo confirmed such fear.

130. Addeo and Quinn also mentioned they were considering filing a claim against Burgess for extreme emotional distress.

131. Burgess' malevolent behavior also extended to outside accountants; several Ernst & Young, LLP advisors abruptly ceased working on an engagement in the middle of the project in direct response to Burgess' abusive behavior.

132. Moreover, after years of Burgess' abuse and bullying, and set off by Burgess' verbal abuse during a conference call, one of ION's outside lawyers abruptly hung up on Burgess as he could not tolerate Burgess' demeaning and humiliating behavior, exclaiming that he did not "have to take this anymore."

133. Additionally, as discussed further below, Burgess routinely set his employees up for failure and humiliation, abused them with foul language in the workplace.

Burgess' $1 Million Share Drive Cleanup "Fetish"

134. Around this time, Burgess also began to attribute the $30 million tax reporting error to a general disorganization of the Company's data files, which he blamed upon Lavalette and others.

135. Burgess thus became hyper-fixated on what he called a mass "cleanup" of ION's electronic "share drives," which were comprised of hundreds of thousands of electronic files accumulated over the course of decades at ION, as well as thousands of boxes of archived hardcopy records containing a vast array of ION-related information, financial and otherwise.

136. Burgess vehemently insisted that each and every file each ION group's "share drive" be reviewed, inventoried, renamed and rearranged into new folders, with redundant files deleted from the drive by each respective group, including sales, marketing, finance, legal and operations.

137. Burgess also demanded that thousands of boxes of archived hardcopy documents be individually reviewed one by one, inventoried and digitized; these old boxes contained mold, and ION employees complained that breathing the moldy air from the boxes was making them ill.

138. When Lavalette relayed such complaints to Burgess out of concern for health and safety, Burgess became enraged and demanded to know exactly which ION employees had complained about mold.

139. Burgess then became even more enraged and refused to do anything to remediate the situation he had created wherein moldy old file boxes were making employees ill.

140. Instead, Burgess put tremendous pressure on his employees, including but not limited to Lavalette, to inventory, sort and purge their share drives of all data as quickly as possible.

141. Burgess' share drive "cleanup" mandate thus monopolized the vast majority of management time and resources; ION managers began spending 30-50 hours a week on this task alone, which Burgess referred to as his "fetish," and which he irrationally prioritized above all other ION projects.

142. Over the course of just a few months, thousands of emails and hundreds of meetings and conference calls were devoted to such "cleanup," including but not limited to several conference calls during the Christmas and New Year's holidays.

143. By email dated December 24, 2015 (Christmas Eve), Burgess informed ION employees that he would be working on the "cleanup" project throughout Christmas day, and attached a Microsoft Excel spreadsheet "tracker" to keep employees "on the hook" for working on this project constantly.

144. Burgess also stated in this Christmas Eve email that performance evaluations would be linked to this project.

145. Burgess concluded this email by declaring, "Let's roll," ominously invoking the now-infamous words used on 9/11 aboard flight 93, and thus raising the specter of a life-or-death situation.

146. For Lavalette and the finance group, Burgess' mass "cleanup" mandate was an especially weighty undertaking because the finance group alone had well over 200,000 files on its share drive, whereas other groups had only about one tenth that number of files.

147. By email dated January 8, 2016, Santisi warned ION managers that upcoming management meetings would focus on the "cleanup," including individual reviews of each ION manager's share drive, to compare their respective progress with regard to cleaning up their drives as directed.

148. Santisi also warned that each manager's drive would be projected onto a large screen in the board room in order to review and critique their respective progress with regard to share drive cleanup and also warned them against doing wholesale deleting or moving of files as these actions were now "traceable and detectable."

149. Upon information and belief, ION literally spent over one million dollars on Burgess' self-described share drive "fetish," at Burgess' directive.

Retaliation, Harassment, Humiliation, and Infliction of Emotional Distress

150. Burgess continued to torment and harass Lavalette after he opposed unlawful discrimination, unlawful tax reporting practices, unpaid tax liabilities and other questionable actions.

151. For example, Burgess' standing instruction to Lavalette was to be as brief as

possible in his finance group presentations during management meetings, wherein each group would make a presentation; Burgess repeatedly told Lavalette that "less is more" when it comes to finance group presentations.

152. By email dated June 9, 2015 at 8:58 PM, Lavalette sent Burgess his planned finance and sales presentation for the following day's management meeting, in order to get Burgess' approval and make sure it satisfied Burgess.

153. In a rare showing of approval, Burgess replied via email: "Yes this tees things up nicely."

154. At the management meeting the next day on June 10, 2015, following the marketing group's fancy "sizzle graphics" product launch presentation on which ION had just spent over $100,000, Lavalette and Quinn gave the same finance and sales presentation that Burgess had approved the night before.

155. Burgess then berated and chastised Lavalette and Quinn in front of all the other managers for making a boring presentation, especially compared to the marketing group's six-figure "sizzle" presentation, despite Burgess' standing order that "less is more" for the finance presentations.

156. Burgess then went around the meeting room and polled each of approximately 20 managers present, one by one, demanding that they each declare which presentation they would prefer to sit through – i.e., the very brief and simple "less is more" finance presentation, or the $100,000 sizzle graphics marketing presentation; unsurprisingly, each manager awkwardly admitted that they found the sizzle product launch presentation more exciting.

157. Burgess then declared that the financial presentation, which had been carefully prepared in accordance with Burgess' specific instructions, were deficient and lacking compared

to the sizzle product launch presentation.

158. Lavalette and Quinn were mortified to be unfairly targeted, set up and denigrated by Burgess in the presence of their colleagues.

159. Quinn mentioned to Lavalette directly after the meeting that this was a deliberate Brandon "set-up" and his way of constant humiliation and demeaning of the finance and sales areas and that he was so sick of his behavior that he "couldn't take this much longer."

160. Moreover, it turned out that Parker had indeed been correct in predicting to Lavalette because Lavalette had complained about Burgess to Parker directly, Lavalette wouldn't "survive" at ION much longer because Burgess would not "allow it."

161. Following Lavalette's complaints about Burgess to Parker, Burgess contrived additional opportunities to retaliate against, intimidate, humiliate and punish Lavalette, both in front of other ION employees and executives and by using other ION employees and executives.

162. On or about April 28, 2016, during a managers' meeting in West Palm Beach, Florida, Burgess projected onto a large screen a slide which falsely portrayed Lavalette's finance group as falling short with regard to the share drive "cleanup" mandate.

163. Lavalette reminded Burgess that finance had about 10 times the number of files to sort through than other ION departments had, and that in fact finance had actually done much more work on share drive "cleanup" than any other department, not less, and was therefore not deficient, especially compared to others.

164. However, upon information and belief, and according to witnesses, Burgess had met with the other ION executives shortly prior to their meeting with Lavalette, in order to plot out the meeting in advance and discuss who should say what about Lavalette's alleged shortcomings.

165. Thus, undeterred by the material advances made in the "cleanup" of the finance files, after Burgess projected a slide singling out Lavalette's finance group as deficient Burgess then went around the room to ask if each of Lavalette's peers had something to say to Lavalette.

166. Burgess pointed at each ION executive in turn and called upon them to begin their rehearsed critiques of Lavalette's productivity with regard to share drive cleanup.

167. Addeo, Hubner and Santisi proceeded to critique him as commanded by Burgess, with the exception of one particular executive, who refused to participate in the critique.

168. Following Burgess' scripted and inaccurate group critique of Lavalette, Lavalette then asked his peers to leave the room and informed Burgess in private: "I can't do this anymore."

169. Lavalette further stated that the toxic work environment was utterly unbearable and that it was negatively affecting his health.

170. Burgess responded by blaming Santisi for the unbearable work environment, replying: "It's because of Terri, isn't it?"

171. Lavalette replied to Burgess: "No, while she has been part of it, it's you." Lavalette then describe the various ways in which Burgess had made the work environment unbearable at ION, as herein described.

172. Lavalette added that the toxic work environment created and maintained by Burgess was not only causing Lavalette extreme emotional distress, but was also impacting his physical health in terms of his skyrocketing blood pressure, which posed an array of major medical risks.

173. In response, Burgess simply told Lavalette: "You're not getting off that easy!"

174. Burgess then called the other executives back into the meeting room and, blaming

his employees in typical fashion, declared: "Gordon [Lavalette] wants to leave us. It is now incumbent upon each one of *you* to spend some time speaking with him about this. If he resigns, it's on *you*."

<u>Lavalette's Termination Without Cause, and ION's Breach of the Separation Agreement</u>

175. Lavalette did not resign from his employment at ION.

176. On or about May 12, 2016, Santisi gave Lavalette a sample draft Separation Agreement and Release template with blanks for his review, with the understanding that a final agreement would follow after some negotiation.

177. For Lavalette's remaining time at ION, Burgess instructed Lavalette to focus on certain financial matters related to the upcoming first quarter Audit Committee meeting, as well as the first quarter lender call.

178. From that point on, Lavalette diligently worked long hours and focused on the specific financial matters Burgess had directed him to focus on in reliance upon ION's entering into a Separation Agreement and Release.

179. Burgess also expressed concern about what Lavalette might say to anyone who inquired why he was leaving ION; it was thereafter agreed that Lavalette would respond to any such questions by saying that he wanted a new environment and a shorter commute to work.

180. In fact, Lavalette had not yet obtained alternate employment, and would ultimately have a much longer commute to work as well as a diminution in wages in his future employment.

181. ION and Burgess had driven Lavalette out of the Company as a result of Lavalette's resistance and opposition to unlawful discrimination and hostile work environment, as well as to the unlawful and unethical practices of ION and Burgess and by the Board's condonation and refusal to take corrective action.

182. On May 13, 2016, on behalf of ION, Hubner presented Lavalette with a Separation Agreement and General Release of Claims ("Agreement") for Lavalette to sign.

183. The Separation Agreement expressly stated: "***ION has decided to and shall end Employee's Employment*** at the close of business on July 1, 2016 ("Termination Date")" (emphasis added), thereby admitting that ION was terminating Lavalette's employment.

184. Nowhere in the Separation Agreement did ION represent that Lavalette had resigned or was leaving ION voluntarily.

185. Nowhere in the Separation Agreement did ION represent that Lavalette was being terminated for cause.

186. The Agreement provided that "Employee has 21 days to review and consider signing this Agreement…"

187. The Agreement specifically provided that Lavalette had a right to revoke the Agreement by express written notice "for seven days after the date on which Employee executes it."

188. The Agreement specifically provided: "ION's obligations under this Agreement, including the obligation to make any payments to Employee, are conditioned on (a) *Employee signing, dating and delivering* this Agreement to ION, and not revoking the Agreement" (emphasis added) as well as maintaining confidentiality and complying with the terms of the Agreement.

189. By contrast, the Agreement did *not* provide that Defendant's obligations thereunder depended in any way upon *Defendant* signing, dating or otherwise executing the Agreement.

190. The agreement also included a non-disparagement clause providing that:

"Employee agrees not to disparage ION or make negative comments about Employee's employment relationship or any persons associated in any capacity with ION."

191. Lavalette consulted with Hubner about possible minor non-economic edits to the Separation Agreement, such as mutuality for the non-disparagement clause and the release, to which Hubner had no objection.

192. However, in that Lavalette did not receive any written response to the proposed non-material edits, on May 18, 2016, well within the 21-day deadline to review and consider the Agreement, Plaintiff accepted the Agreement as it had been presented to him by signing it, dating it and returning it to Defendant.

193. On or about May 13, 2016, ION sent out a Company-wide announcement that May 20, 2016 was to be Lavalette's last day in the office.

194. Pursuant to the terms of the Separation Agreement and Release, the effective date of the termination by ION was July 1, 2016.

195. More than one month after Lavalette returned the signed Agreement and was terminated without cause by ION, by letter dated June 22, 2016, ION repudiated the Separation Agreement and Release, and never paid out the contractual severance benefits.

<u>ION's Breach of the SARs Agreement</u>

196. By letter dated August 16, 2016, Lavalette notified ION that, pursuant to Article II, Paragraph 6.5.1 of the Management Equity Incentive Plan, he was exercising the SARs that had vested in him on January 1, 2016.

197. ION never responded to Lavalette's letter exercising his vested SARs.

198. ION never paid Lavalette the value of the vested SARs.

199. Moreover, "but for" the overwhelmingly hostile work environment,

discrimination, retaliation and extreme emotional distress suffered by Lavalette, he would have vested in all of his SARs either through a change of control or through continued employment, for a valued amount in excess of $2,000,000.

Lavalette's Serious Medical Issues Resulting from Hostile Work Environment

200. In early 2015, Lavalette's blood pressure, which had previously been under control, climbed sharply to dangerous levels as a result of severe ongoing emotional distress and hostile work environment created and maintained by Burgess.

201. Lavalette's cardiologist therefore had Lavalette wear a "blood pressure cuff" in order on February 6 and February 7, 2016, in order to monitor his blood pressure more closely.

202. The blood pressure "cuff" revealed that Lavalette's blood pressure soared to dangerously high levels while he was at work.

203. Lavalette's cardiologist informed him that his blood pressure was too high and that Lavalette was facing severe medical risks; Lavalette's physician therefore prescribed additional blood pressure medications and advised him, in essence, to find a less stressful work environment.

FIRST CLAIM
(New York City Human Rights Law – Age Discrimination)

204. Plaintiff repeats, realleges and reincorporates by reference each allegation in the foregoing paragraphs as though fully set forth herein.

205. At all times relevant, Plaintiff was, and is, a member of a class protected by the New York City Human Rights Law, Administrative Code §8-107 et seq. (the "NYCHRL" or the "Administrative Code"), as amended by the Local Civil Rights Restoration Act ("Restoration Act"), N.Y.C. Local Law No. 85 of 2005.

206. Plaintiff was and is fully qualified for his position as Executive Vice President

and Chief Financial Officer, and performed his job duties in a satisfactory manner.

207. Defendant, by and through its agents, discriminated on the basis of Plaintiff's age in the terms and conditions of his employment by creating and maintain a hostile work environment of intimidation, denigration, and humiliation as described herein.

208. Such conduct, including but not limited to Burgess' derogatory age-based remarks, raises the inference of age-based discriminatory animus.

209. Defendant's age-based discrimination and/or harassment caused Plaintiff substantial physical injury, emotional distress, embarrassment and humiliation.

210. Defendants acted intentionally and with malice and/or reckless indifference to Plaintiff's legally protected rights, which supports an award of punitive damages.

211. Moreover, Defendant ION ratified and condoned the unlawful acts of its officers, executives and agents.

212. As a result of Defendant's unlawful discriminatory and/or harassing actions, Plaintiff has suffered lost wages, physical injury, emotional distress and other compensatory damages.

213. Therefore, Defendants are liable to Plaintiff for back pay, front pay, emotional distress, reputational damage and other compensatory damages, physical injury damages, punitive damages, pre-judgment interest, attorneys' fees, costs and disbursements.

<u>SECOND CLAIM</u>
(New York City Human Rights Law – Retaliation)

214. Plaintiff repeats, realleges and reincorporates by reference each allegation in the foregoing paragraphs as though fully set forth herein.

215. Plaintiff was, and is, a member of a class protected by the New York City Human Rights Law, Administrative Code §8-107 <u>et seq</u>. (the "NYCHRL" or the "Administrative

Code"), as amended by the Local Civil Rights Restoration Act ("Restoration Act"), N.Y.C. Local Law No. 85 of 2005, on the basis of his age.

216. Plaintiff opposed unlawful discrimination on the basis of age, as well as on the basis of race and sex was and is fully qualified for his position as Executive Vice President and Chief Financial Officer, and performed his job duties in a satisfactory manner.

217. In response to Plaintiff's protected activities, Defendants took the actions set forth herein.

218. Such actions have a "chilling effect" that would deter a reasonable employee in Plaintiff's situation from engaging in the aforementioned protected activities; such actions are therefore adverse employment actions pursuant to the NYCHRL.

219. Plaintiff's protected activities were a motivating factor in Defendant's foregoing treatment of Plaintiff, through which Defendants made affirmative efforts to punish Plaintiff for engaging in protected activities.

220. As a result of Defendants' unlawful retaliatory actions, Plaintiff has suffered emotional distress and other compensatory damages.

221. Therefore, Defendants are liable to Plaintiff for back pay, emotional distress, reputational damage and other compensatory damages, physical injury damages, punitive damages, pre-judgment interest, post-judgment interest, attorneys' fees, costs and disbursements.

THIRD CLAIM
(Breach of Contract: Separation Agreement)

222. Plaintiff repeats, realleges and reincorporates by reference each allegation inthe foregoing paragraphs as though fully set forth herein.

223. Defendants offered Plaintiff a Separation Agreement ("Agreement") on

May 13, 2016.

224. The Agreement provided that Plaintiff had twenty-one days to consider and accept by executing and returning the Agreement.

225. Plaintiff accepted this offer by signing it and returning it to Defendant on May 18, 2016 without edits to the contract's terms.

226. In breach of the Agreement, Defendants failed and refused to honor the Agreement.

227. In so doing, Defendant breach the implied covenant of good faith and fair dealing inherent in all contracts.

228. Therefore, Defendants are liable to Plaintiff in the amount two hundred and four thousand one hundred and sixty-seven dollars ($204,167) as and for his severance as outlined in the Agreement, plus prejudgment interest, post-judgment interest, costs and disbursements.

<u>FOURTH CLAIM</u>
(Breach of Contract: SARs Agreement)

229. Plaintiff repeats, realleges and reincorporates by reference each allegation in the foregoing paragraphs as though fully set forth herein, and pleads this Fourth Claim alternatively at his option.

230. On or about February 10, 2015, Lavalette and ION entered into a Stock Appreciation Rights ("SARs") Agreement for 5,109 shares of ION stock, with a base price of $641.13 per share.

231. The SARs Agreement provided that 1,703 shares ("SARs") would vest on the January 1, 2016; another 1,703 SARs would vest on January 1, 2017; and another 1,703 SARs

would vest on January 1, 2018, respectively, for a total of more than $2,000,000.

232. Plaintiff was subsequently terminated without cause by Defendant, which entitled him to exercise his vested SARs.

233. Plaintiff exercised the SARs that had vested on January 1, 2016 by signed notification letter dated August 16, 2016.

234. Defendant subsequently repudiated and breached the SARs Agreement by refusing to honor its terms.

235. In so doing, Defendant breached the SARs Agreement.

236. But for the unlawful actions of Defendant and its agents, Plaintiff would have remained in his employment by ION and become vested in his yet-unvested SARs, either through a sale of the Company and corresponding change in control, or through his continued employment through at least January 1, 2018, which was the vesting date of the latest-vesting group of SARs.

237. Therefore, Defendant is liable to Plaintiff in the amount of more than $2,000,000 plus prejudgment interest, post-judgment interest, costs and disbursements.

FIFTH CLAIM
(Breach of Duty of Loyalty, Good Faith and Fair Dealing)

238. Plaintiff repeats, realleges and reincorporates by reference each allegation inthe foregoing paragraphs as though fully set forth herein.

239. As of January 1, 2016, Plaintiff became a shareholder of defendant when his first group of 1,703 SARs vested.

240. In that Plaintiff was a shareholder of Defendant, Defendant owed Plaintiff a common law duty of loyalty, good faith and fair dealing.

241. Defendant, by and through its agents, breached such duty by deliberately and unfairly terminating his employment, as described throughout this Complaint, and thereafter refusing to pay Plaintiff the value of any of his SARs.

242. Alternatively, Defendant, by and through its agents, breached such duty by deliberately and unfairly forcing Plaintiff out of the company in May, 2016, as described throughout this Complaint, thereafter refusing to pay Plaintiff the value of any of his SARs.

243. Therefore, Defendant is liable to Plaintiff in the amount of more than $2,000,000.

244. Defendant is further liable to Plaintiff for prejudgment interest, post-judgment interest, costs and disbursements.

SIXTH CLAIM
(Breach of Fiduciary Duty)

245. Plaintiff repeats, realleges and reincorporates by reference each allegation inthe foregoing paragraphs as though fully set forth herein.

246. As of January 1, 2016, Plaintiff became a shareholder of defendant when his first group of 1,703 SARs vested.

247. In that Plaintiff was a shareholder of Defendant, Defendant owed a fiduciary duty to Plaintiff.

248. Defendant, through its CEO Burgess, had a conflict of interest; each time an executive's SAR's are terminated, Burgess' SAR's value increases as the number of outstanding shares decrease.

249. Defendant, by and through its agents, breached its fiduciary duty to Plaintiff by deliberately and unfairly forcing Plaintiff out of the Company in May, 2016, as described throughout this Complaint, and by thereafter refusing to pay Plaintiff the value of any of his

SARs, either vested or unvested.

250. Therefore, Defendant is liable to Plaintiff in the amount of more than $2,000,000, plus prejudgment interest, post-judgment interest, costs and disbursements.

SEVENTH CLAIM
(Intentional Infliction of Emotional Distress)

251. Plaintiff repeats, realleges and reincorporates by reference each allegation inthe foregoing paragraphs as though fully set forth herein.

252. Defendant, by and through its agents, engaged in extremely outrageous conduct, as described throughout this Complaint.

253. Such conduct was in fact so outrageous as to breach all bounds of decency, and was utterly intolerable in a civilized society.

254. Defendant, by and through its agents, engaged in such conduct with the intent to cause, or disregard of substantial probability of causing, severe emotional distress.

255. Such conduct was directly related to, and directly caused, Plaintiff's emotional distress.

256. Therefore, Defendant is liable to Plaintiff for physical injury, emotional distress as well as other compensatory damages, plus prejudgment interest, post-judgment interest, costs and disbursements.

EIGHTH CLAIM
(Accounting)

257. Plaintiff repeats, realleges and reincorporates by reference each allegation inthe foregoing paragraphs as though fully set forth herein.

258. Plaintiff demands an independent accounting for all monies accrued by said Defendants in connection with the SARS.

WHEREFORE, Plaintiff Gordon Lavalette demands judgment as follows:

(a) an order declaring that the acts and practices complained of herein are in violation of the New York City Human Rights Law;

(b) an order enjoining and permanently restraining these violations of the New York City Human Rights Law; and

(c) an order enjoining and permanently restraining these violations of the New York State Labor Law; and

(d) an order enjoining and permanently restraining these contract breaches; and

(e) an order enjoining and permanently restraining these breach of duties of the duty of loyalty, good faith and fair dealing; and

an order enjoining and permanently restraining these breaches of fiduciary duty.

On the First Claim (NYCHRL Discrimination):

(i) an award of back pay in the amount of lost salary, including salary increases; commissions; health care premiums and other benefits of employment;

(ii) an award of front pay;

(iii) an award of compensatory damages;

(iv) an award of punitive damages;

(v) attorney's fees;

(vi) prejudgment interest; and

(vii) costs and disbursements of this action.

On the Second Claim (NYCHRL Retaliation):

(i) an award of back pay in the amount of lost salary, including salary increases; commissions; health care premiums and other benefits of employment;

(ii) an award of front pay;

(iii) an award of compensatory damages;

(iv) an award of punitive damages;

(v) attorney's fees;

(vi) prejudgment interest; and

(vii) costs and disbursements of this action.

On the Third Claim (Breach of Contract-Severance Agreement):

(i) Severance in the amount of $204,167;

(ii) prejudgment interest; and

(iii) costs and disbursements of this action.

On the Fourth Claim (Breach of Contract-SARs Agreement):

(i) SARs in the amount of more than $2,000,000;

(ii) prejudgment interest; and

(iii) costs and disbursements of this action.

On the Fifth Claim (Breach of Duty of Loyalty, Good Faith and Fair Dealing):

(i) SARs in the amount of more than $2,000,000;

(ii) prejudgment interest; and

(iii) costs and disbursements of this action.

On the Sixth Claim (Breach of Fiduciary Duty):

(iv) SARs in the amount of more than $2,000,000;

(v) prejudgment interest; and

(vi) costs and disbursements of this action.

On the Seventh Claim (Intentional Infliction of Emotional Distress):

(i) compensatory damages for physical injury, emotional distress as well as other compensatory damages;

(ii) prejudgment interest;

(iii) post-judgment interest; and

(iv) costs and disbursements.

On the Eighth Claim (Accounting):

(i) damages in an amount to be determined through an independent accounting; and

Such other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury in this action on all claims that are triable by a jury.

Dated: New York, New York
September 19, 2016

Respectfully submitted,

LAW OFFICES OF GAIL I. AUSTER
& ASSOCIATES, P.C.

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