



**Division of
Human Rights**

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

YOLANDA ARROYO,

Complainant,

v.

**NEW YORK INTERNAL MEDICINE PC, AYMAN
ATTIA,**

Respondents.

**NOTICE AND
FINAL ORDER**

Case No. 10193699

Federal Charge No. 16GB802483

PLEASE TAKE NOTICE that the attached is a true copy of the Recommended Findings of Fact, Opinion and Decision, and Order (“Recommended Order”), issued on April 17, 2020, by Thomas S. Protano, an Administrative Law Judge of the New York State Division of Human Rights (“Division”). An opportunity was given to all parties to object to the Recommended Order, and all Objections received have been reviewed.


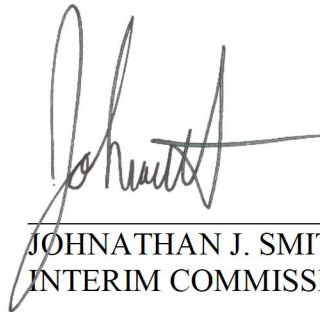
PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE JOHNATHAN J. SMITH, INTERIM COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”). In accordance with the Division's Rules of Practice, a copy of this Order has been filed in the offices maintained by the Division at One Fordham Plaza, 4th Floor, Bronx, New York 10458. The Order may be

inspected by any member of the public during the regular office hours of the Division.

PLEASE TAKE FURTHER NOTICE that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice that is the subject of the Order occurred, or wherein any person required in the Order to cease and desist from an unlawful discriminatory practice, or to take other affirmative action, resides or transacts business, by filing with such Supreme Court of the State a Petition and Notice of Petition, within sixty (60) days after service of this Order. A copy of the Petition and Notice of Petition must also be served on all parties, including the General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Please do not file the original Notice or Petition with the Division.

ADOPTED, ISSUED, AND ORDERED.

DATED: **April 16, 2021**
Bronx, New York



JOHNATHAN J. SMITH
INTERIM COMMISSIONER



**Division of
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**NEW YORK STATE
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on the Complaint of

YOLANDA ARROYO,

Complainant,

v.

**NEW YORK INTERNAL MEDICINE PC,
AYMAN ATTIA,**

Respondents.

**RECOMMENDED FINDINGS OF
FACT, OPINION AND DECISION,
AND ORDER**

Case No. **10193699**

Federal Charge No. 16GB802483

SUMMARY

Complainant alleged that Respondents subjected her to both quid pro quo sexual harassment and a sexually hostile work environment. She has established her claim for hostile environment harassment, but not quid pro quo harassment. She is entitled to awards for damages from Respondents owing to the harassment she suffered, and attorney's fees incurred in the prosecution of this case. Civil fines and penalties are also assessed against Respondents.

PROCEEDINGS IN THE CASE

On February 5, 2018, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging Respondents with unlawful discriminatory practices relating to employment in violation of N.Y. Exec. Law, art. 15 ("Human Rights Law").

After investigation, the Division found that it had jurisdiction over the complaint and that probable cause existed to believe that Respondents had engaged in unlawful discriminatory practices. The Division thereupon referred the case to public hearing.

After due notice, the case came on for hearing before Thomas S. Protano, an Administrative Law Judge (“ALJ”) of the Division. Public hearing sessions were held on July 15, 2019 and July 16, 2019.

Complainant and Respondents appeared at the hearing. Complainant was represented by Raymond Nardo, Esq. Respondents were represented by Andrew Moulinos, Esq. After the hearing, Attorney Nardo submitted a declaration of the attorney’s fees incurred by Complainant during the course of this matter. Pursuant to 9 N.Y.C.R.R. §465.12(f)(4), his declaration was placed in evidence as ALJ Exhibit 6.

FINDINGS OF FACT

1. Complainant began working for Respondent New York Internal Medicine PC (“NYIM”) in September of 2013 as an administrative assistant, front desk. (Tr. 8-9)
2. Respondent Ayman Attia, a physician, is the owner and CEO of NYIM, a professional medical corporation with two locations in Queens, New York. (Tr. 287)
3. Complainant’s duties included answering phone calls, filing, greeting patients, verifying insurance eligibility and collecting copays. (Tr. 9)
4. While Complainant was employed by Attia and NYIM, Attia gave envelopes filled with cash to Complainant approximately once a week. The cash gifts ranged from \$200.00 to \$500.00. (Tr. 19-20)

5. Attia hugged Complainant repeatedly while Complainant was employed by Respondents. Attia hugged her and “let his hands scroll down [her] y back so he could feel [her] butt. This happened so many times.” The behavior continued throughout her course of employment for Respondents. (Tr. 12, 212)

6. In addition to cash, Attia gave Complainant gifts, such as a purse and perfume. (Tr. 20-21).

7. Complainant’s co-worker, Solange Baez, saw Attia give Complainant and a co-worker named Bruna envelopes filled with cash. (Tr. 212)

8. Baez also saw Attia hug Complainant. Baez witnessed Attia as he “hugged [Complainant] really tight and she turned red and uncomfortable.” Baez believed Complainant was uncomfortable “because she didn’t hug him back.” (Tr. 212-13)

9. Attia joked about adding a stripper pole in the basement and asked Complainant if a potential employee he had interviewed was “pretty enough for the practice.” (Tr. 14)

10. On August 28, 2016, Attia sent a text message to Complainant saying, “I appreciate you and Bruna a lot and will do the best I can to make you happy.” (Complainant’s Exhibit 1)

11. On November 19, 2016, Attia sent Complainant a text message saying, “I have a gift for you Reminds (*sic*) me to give it to you on Monday.” (Complainant’s Exhibit 1)

12. On June 2, 2017, Attia sent Complainant a text message saying, “Come now to my office.” (Complainant’s Exhibit 1)

13. Later that day Attia sent Complainant two texts saying, “my wife,” and “are you cheating on me?” (Complainant’s Exhibit 1; Tr. 28)

14. Hana Abadi, NYIM's former office manager, sent Complainant that a text message saying that Attia was "always looking at [Complainant's] ass," and that he made comments about Complainant's breasts. (Complainant's Exhibit 4; Tr. 42)

15. Attia also told Complainant she did not belong in a medical office "because [her] butt was too huge," and that she "should work in a bar." (ALJ's Exhibit 2; Tr. 14)

16. Attia denied hugging or touching Complainant; he denied asking Complainant if she was "cheating" on him; he denied giving Complainant gifts or calling her into his office. I do not credit Attia's denials. In addition to Complainant's testimony, Attia's testimony conflicts with Baez's testimony and the text messages placed in evidence at the public hearing. (Complainant's Exhibit 1; Tr. 19-21; 212; 272-76)

17. As a result of Attia's behavior, Complainant felt she couldn't "function," because Attia was "harassing [her] to death." Complainant had difficulty sleeping. (Tr. 38)

18. On or about September 21, 2017, Attia was driving Complainant from one of NYIM's locations to another. Attia grabbed and rubbed Complainant's leg and called her "my friend" and "honey bunny." Complainant then told Attia, "You need to stop touching me." (Tr. 33-34; 76-77)

19. After Complainant rebuffed Attia, she alleged that Attia "began to selectively discipline" her in an effort to force her resignation. (ALJ's Exhibit 2)

20. Complainant testified that she was required to purchase a mop and detergents and clean the bathroom at her work location. (Tr. 34) She later testified that she "had to clean everything, not just the bathroom." (Tr. 79)

21. Faseeh Katel is the practice manager at NYIM. Katel was Complainant's direct supervisor from the time of his hire, in May of 2017. (Tr. 123, 125)

22. Mona Hussein was an assistant manager at NYIM. Like Katel, Hussein began working for NYIM in May of 2017. (Tr. 165)

23. Neither Katel nor Hussein saw Complainant cleaning the bathroom or do any other cleaning. (Tr. 125-26, 177)

24. The Astoria office, where Complainant worked in late 2017, had a janitorial service and 90 percent of the floors were carpeted. (Tr. 125-26)

25. Given the discrepancies in Complainant's testimony and the conflicts between her testimony and that of Katel and Hussein, I do not credit Complainant's testimony that she was forced to clean the office and bathroom.

26. Katel found Complainant's work performance to be unsatisfactory. Complainant made numerous scheduling errors, mishandled copays and was the subject of customer complaints about her demeanor. (Tr. 126)

27. Hussein also found Complainant's work to be unsatisfactory. Hussein received complaints from patients who said Complainant had discussed personal issues while at the front desk and made an incorrect copay charge. (Tr. 166)

28. Complainant mishandled a patient's stool sample; she failed to properly forward the phones at the end of the day, which caused a doctor to receive numerous messages from a call-in service; and she mishandled patient charts, leaving them exposed to the public. (Tr. 166-67)

29. As a result of these deficiencies, Hussein, Katel and Attia gave Complainant a verbal warning on October 23, 2017. (Respondent's Exhibit 4; Tr. 166)

30. After receiving the warning, Complainant indicated that she agreed with the assessment of her performance. (Respondent's Exhibit 4; Tr. 135, 166)

31. Complainant's performance did not improve after she received the warning. (Tr. 136)

32. Katel attempted to meet with Complainant to discuss her inability to perform her duties on December 5, 2017, but Complainant failed to attend the scheduled meeting. (Tr. 136-37)

33. Complainant asked Hussein for an extended leave of absence in early December of 2017, in order to deal with a family matter. Hussein granted her request. (Tr. 141)

34. In the first week of January of 2018, Katel called Complainant to tell her she should not return to work. Katel followed that up with a formal termination letter sent to Complainant via certified mail on January 9, 2018. Complainant never claimed the letter and it was returned to NYIM. (Respondent's Exhibit 6; Tr. 142-43)

35. Katel terminated Complainant's employment because her performance was poor, and she was not at work. Katel, therefore, decided to replace Complainant with "someone who can actually be at work." (Tr. 142)

36. In prosecuting the case, Complainant's attorney charged \$15,620.00. That includes 37.6 hours at a rate of \$450.00 per hour, plus \$80.00 for the service of a subpoena.¹ (ALJ Exhibit 6)

37. Mr. Nardo is a sole practitioner, concentrating on labor and employment law. He has more than 27 years of experience in labor and employment law. (ALJ Exhibit 6)

OPINION AND DECISION

It is an unlawful discriminatory practice for an employer to discriminate against an employee in the terms and conditions of employment based on sex. N.Y. Exec. Law, art. 15 ("Human Rights Law") § 296.1(a). Sexual harassment is a form of sex discrimination. *Father Belle Cmty. Ctr. v. N. Y. State Div. of Human Rights*, 221 A.D.2d 44, 642 N.Y.S.2d 739 (4th

¹ It appears Mr. Nardo may have miscalculated his fees.

Dept. 1996), *lv. denied*, 89 N.Y.2d 809, 655 N.Y.S.2d 889 (1997).

Complainant alleged that Respondents subjected her to a hostile work environment and quid pro quo sexual harassment.

To sustain a claim of hostile work environment, Complainant must show that the workplace was permeated with discriminatory intimidation, ridicule, and insult that was sufficiently severe or pervasive to alter the conditions of her employment and create an abusive work environment. *Johnson v. North Shore Long Island Jewish Health System, Inc.*, 137 A.D.3d 977, 27 N.Y.S.3d 598 (2d Dept. 2016) (quoting *Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295, 310, 786 N.Y.S.2d 382, 390 (2004)). Whether an environment is hostile or abusive can be determined only by looking at all the circumstances, including the “frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance.” *Ellison v. Chartis Claims, Inc.*, 53 Misc.3d 1203(A), 46 N.Y.S.3d 474 (Sup. Ct. Kings Co. 2016) (quoting *Forrest*, at 310-311, 786 N.Y.S.2d at 394). Moreover, “the conduct must both have altered the conditions of the victim’s employment by being subjectively perceived as abusive by the plaintiff and have created an objectively hostile or abusive environment, one that a reasonable person would find to be so.” *Id.* (quoting *Forrest*, at 311, 786 N.Y.S.2d at 394). Complainant must also demonstrate that the discriminatory conduct occurred because of her sex. *Arcuri v. Kirkland*, 113 A.D.3d 912, 914, 978 N.Y.S.2d 439, 441 (3d Dept. 2014).

Complainant has shown that she was subjected to sexual harassment based upon a hostile work environment. Attia subjected her to unwelcome hugs and physically touched her repeatedly during Complainant’s term of employment. Attia gave Complainant gifts and cash.

He sent Complainant text messages calling her his “wife” and asking if she was “cheating” on him. Attia further made comments about Complainant’s body, telling her that she should be working “in a bar.” Attia’s behavior was witnessed by Complainant’s co-worker, who noted that Complainant did not return Attia’s hug. Such behavior is objectively offensive and had the effect of altering Complainant’s work environment. Complainant has, thus, established that she was the victim of a sexually hostile work environment.

Complainant also alleged that Attia subjected her to quid pro quo sexual harassment when he targeted her for discipline and terminated her employment after she refused his advances.

To establish quid pro quo sexual harassment, Complainant must show that she was “subjected to unwelcome sexual conduct and that the reaction to that conduct was then used as a basis for decisions, either actual or threatened, affecting compensation, terms, conditions or privileges of employment.” *Bracci v. N.Y. State Div. of Human Rights*, 62 A.D.3d 1146, 878 N.Y.S.2d 830 (3d Dept. 2009) (citing *Mauro v. Orville*, 259 A.D.2d 89, 91, 697 N.Y.S.2d 704 (3d Dept. 1999), *lv. denied*, 94 N.Y.2d 759, 705 N.Y.S.2d 6 (2000)). “The relevant inquiry in a quid pro quo case is whether the employer has linked tangible job benefits to the acceptance or rejection of sexual advances.” *Mauro v. Orville*, 259 A.D.2d at 91, (quoting *Karibian v. Columbia Univ.*, 14 F.3d 773, 777 (2d Cir. 1994) *cert. denied*, 512 U.S. 1213 (1994)).

Complainant’s allegations regarding quid pro quo harassment are without merit. I do not credit the testimony that she was forced to clean the office or that she was subjected to discipline because she rejected Attia’s advances. In fact, it was Katel and Hussein who initiated the disciplinary actions against Complainant, not Attia; and, as of October 23, 2017, Complainant indicated that she agreed with their assessment of her performance. None of those disciplinary

actions, up to and including the termination of her employment, were shown to be connected in any way to her rejection of Attia's advances. She has, therefore, failed to establish a claim of quid pro quo harassment.

The Human Rights Law provides various remedies to victims of unlawful discrimination, including compensatory damages for mental anguish to a complainant who has been aggrieved. Human Rights Law § 297.4(c)(iii); *Batavia Lodge v. New York State Division of Human Rights*, 35 N.Y.2d 143, 359 N.Y.S.2d 25 (1974). An award of compensatory damages for mental anguish may be proved by complainant's own testimony. *Cosmos Forms, Ltd. v. N.Y. State Div. of Human Rights*, 150 A.D.2d 442, 541 N.Y.S.2d 50 (2d Dept. 1989). The award must bear a reasonable relationship to the wrongdoing, be supported by substantial evidence, and be comparable to awards for similar injuries. *State v. N.Y. State Div. of Human Rights*, 284 A.D.2d 882, 884, 727 N.Y.S.2d 499, 501 (3d Dept. 2001). The severity, frequency, and duration of the conduct may be considered in determining an appropriate award for compensatory damages. *State Dep't of Corr. Servs. v. N.Y. State Div. of Human Rights*, 225 A.D.2d 856, 859, 638 N.Y.S.2d 827, 830 (3d Dept. 1996).

Complainant is awarded compensatory damages for the mental anguish she suffered as a result of Attia's unlawful discriminatory actions against her. Attia subjected Complainant to continuous sexual harassment during her term of employment. Attia hugged, grabbed and touched Complainant. He made offensive comments and sent offensive texts. As a result, Complainant felt she could not function and had trouble sleeping. Accordingly, an award of \$20,000 will compensate Complainant for her mental anguish due to unlawful discrimination and will effectuate the remedial purposes of the Human Rights Law. See *HP Ronkonkoma, Inc. v. Kirkland*, 122 A.D.3d 737, 996 N.Y.S.2d 343 (2d Dept. 2014); *State Div. of Human Rights v.*

Ben Rottenstein Assoc., Inc., 89 A.D.3d 852, 932 N.Y.S.2d 519 (2d Dept. 2011).

NYIM, as Complainant's employer, is liable to Complainant for unlawful sex discrimination. In addition, Attia is personally liable, as owner and operator of the business, for his own unlawful discriminatory conduct. *Patrowich v. Chemical Bank*, 63 N.Y.2d 541, 493 N.Y.S. 659 (1984); *State Div. of Human Rights v. Koch*, 60 A.D.3d 777, 777-778, 875 N.Y.S.2d 180, 181 (2d Dept. 2009); *Gallegos v. Elite Model Mgmt. Corp.*, 28 A.D.3d 50, 60, 807 N.Y.S.2d 44, 51 (1st Dept. 2005).

Human Rights Law § 297.4(c)(vi) permits the Division to assess civil fines and penalties, "in an amount not to exceed fifty thousand dollars, to be paid to the state by a respondent found to have committed an unlawful discriminatory act, or not to exceed one hundred thousand dollars to be paid to the state by a respondent found to have committed an unlawful discriminatory act which is found to be willful, wanton or malicious."

Human Rights Law § 297.4(e) requires that "any civil penalty imposed pursuant to this subdivision shall be separately stated, and shall be in addition to and not reduce or offset any other damages or payment imposed upon a respondent pursuant to this article." The factors that determine the appropriate amount of a civil penalty are the goal of deterrence, the nature and circumstances of the violation, the degree of respondent's culpability, any relevant history of respondent's actions, respondent's financial resources, and other matters as justice may require. *Gostomski v. Sherwood Terrace Apartments*, DHR Case Nos. 10107538 and 10107540 (November 15, 2007), *aff'd*, *Sherwood Terrace Apartments v. N.Y. State Div. of Human Rights*, 61 A.D.3d 1333, 877 N.Y.S.2d 595 (4th Dept. 2009).

A civil penalty of \$20,000.00 is appropriate in this matter due to the nature and circumstances of the violation. Respondents unlawfully discriminated against Complainant on

the basis of sex. Respondents repeatedly subjected Complainant to a hostile work environment. Respondents' actions were intentional, deliberate and unlawful. *See Andrade v. Wall Street Languages, Ltd. d/b/a Rennert International, Chad Orr*, DHR Case No. 10156653 (November 3, 2014).

Complainant is entitled to recover reasonable attorney's fees expended in litigating this matter. *See Human Rights Law § 297.10.*

The standards for determining reasonable attorney's fees under the Human Rights Law are consistent with federal precedent. *See McGrath v. Toys "R" Us, Inc.*, 3 N.Y.3d 421, 429, 788 N.Y.S.2d 281, 284 (2004). Attorney's fees are to be calculated utilizing the "lodestar" method which calculates the amount of the fee award "by multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* at 430, 788 N.Y.S.2d at 285.

When seeking to determine the number of hours reasonably expended by counsel on a given case, the Division should discount duplicative or inefficient hours; disallow excessive, unnecessary, or "padded" hours; and utilize the Division's inherent knowledge, experience and expertise regarding the typical time required to complete similar activities. *See McIntyre v. Manhattan Ford, Lincoln-Mercury, Inc.*, 176 Misc. 2d 325, 328, 672 N.Y.S.2d 230, 232 (N.Y. Sup. Ct. 1997), *appeal dismissed*, 256 A.D.2d 269, 682 N.Y.S.2d 167 (1st Dept. 1998), *appeal dismissed*, 93 N.Y.2d 919, 691 N.Y.S.2d 383 (1999), *lv. denied*, 94 N.Y.2d 753, 700 N.Y.S.2d 427 (1999).

In this case, Complainant's counsel seeks compensation for 37.6 hours of substantive legal work on this case, plus \$80.00 in expenses.

Complainant's counsel submitted a description of the services he rendered and the time he expended representing Complainant as well as time records in support of his claim for

attorney's fees. An application for a fee award "should generally be documented by contemporaneously created time records that specify, for each attorney, the date, the hours expended, and the nature of the work done." *Kirsch v. Fleet St., Ltd.*, 148 F.3d 149, 173 (2d Cir. 1998).

Courts "have determined that reasonable hourly rates...are approximately \$300–\$450 per hour for partners, \$200–\$300 per hour for senior associates, and \$100–\$200 per hour for junior associates." *See id.* at 298-99 (collecting cases). The highest rates are reserved for experienced civil rights attorneys practicing in this district. *See id.* at 300.

Complainant's counsel has extensive experience litigating labor and employment cases. In fashioning an award, the Division must also consider "the relationship between the amount of the fee awarded and the results obtained." *McGrath* at 430, 788 N.Y.S.2d at 285. Accordingly, an hourly billing rate for Complainant's attorney of \$450.00, is within the prevailing rate and it is, therefore, reasonable. Therefore, an award of \$15,620.00 (which is slightly less than \$450.00 per hour) is appropriate.

ORDER

On the basis of the foregoing Findings of Fact, Opinion and Decision, and pursuant to the provisions of the Human Rights Law and the Division's Rules of Practice, it is hereby

ORDERED, that Respondents, their agents, representatives, employees, successors, and assigns, shall cease and desist from discriminating against any employee in the terms and conditions of employment; and it is further

ORDERED, that Respondents, their agents, representatives, employees, successors and assigns shall take the following affirmative action to effectuate the purposes of the Human Rights Law:

1. Within 60 days of the date of the Commissioner's Order, Respondents shall pay to Complainant the sum of \$20,000.00 as compensatory damages for the mental anguish Complainant suffered as a result of Respondents' unlawful discrimination. Interest shall accrue on this award at the rate of nine percent per year, from the date of the Commissioner's Order until payment is made by Respondents.
2. The aforesaid payment shall be made by Respondents in the form of a certified check, made payable to the order of Complainant, Yolanda Arroyo, and delivered by certified mail, return receipt requested, to her attorney, Raymond Nardo, Esq., 129 Third Street, Mineola, New York, 11501. Respondents shall submit proof of payment to New York State Division of Human Rights, Office of General Counsel, One Fordham Plaza, 4th Floor, Bronx, New York 10458.


3. Within sixty 60 days of the date of the Commissioner's Order, Respondent shall pay to Complainant's attorney, Raymond Nardo, Esq., reasonable attorney's fees in the amount of \$15,620.00. This payment shall be made by Respondent in the form of a certified check made payable to the order of Complainant's attorney, Raymond Nardo, Esq., and delivered by certified mail, return receipt requested, to Raymond Nardo, Esq., 129 Third Street, Mineola, New York, 11501. Interest shall accrue on the award at the rate of nine percent per year from the date of the Commissioner's Order until payment is made by Respondent. Respondents shall submit proof of payment to New York State Division of Human Rights, Office of General Counsel, One Fordham Plaza, 4th Floor, Bronx, New York 10458.
4. Within sixty 60 days of the date of the Commissioner's Order, Respondents shall pay to the State of New York the sum of \$20,000.00 as a civil fine and penalty for their violations of the Human Rights Law. Interest shall accrue on this award at the rate of nine percent per year, from the date of the Commissioner's Order until payment is made by Respondents.
5. The payment of the civil fine and penalty shall be made by Respondents in the form of a certified check, made to the order of the State of New York and delivered by certified mail, return receipt requested, to New York State Division of Human Rights, Office of General Counsel, One Fordham Plaza, 4th Floor, Bronx, New York 10458.

6. Within 60 days of the date of the Commissioner's Order, Respondent is directed to post in a prominent place in its offices, a copy of the Division's poster which can be found at <https://dhr.ny.gov/sites/default/files/pdf/posters/poster.pdf>. The poster must be in color, no smaller than 8.5" x 14" and be posted where all staff are likely to view it.

Respondents shall submit proof of its compliance with this directive in the form of an affidavit or attorney affirmation to Caroline Downey, Esq., Office of General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458.

7. Respondents shall cooperate with the representatives of the Division during any investigation into compliance with the directives contained in this Order.

DATED: April 17, 2020
Bronx, New York



Thomas S. Protano
Administrative Law Judge