CITY OF NEW YORK
COMMISSION ON HUMAN RIGHTS

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In the Matter of

COMMISSION ON HUMAN RIGHTS
ex rel. MONICA CARDENAS,

Petitioner,

-against-

AUTOMATIC METER READING CORP.
and JERRY FUND,

Respondents.

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Complaint No. M-E-S-11-1024934

OATH Index No. 1240/13

MONICA CARDENAS,

Complainant-Intervenor,

-against-

AUTOMATIC METER READING CORP.
and JERRY FUND,

Respondents.

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DECISION AND ORDER

Monica Cardenas ("Complainant-Intervenor" or "Cardenas") initiated this employment discrimination action with the Law Enforcement Bureau of the New York City Commission on Human Rights (the "Bureau") against Respondents Automatic Meter Reading Corp. and Jerry Fund (collectively, "Respondents"). On May 4, 2011, the Bureau filed a complaint against Respondents alleging violations of the New York City Human Rights Law ("NYCHRL") Section 8-107(1)(a). The Complaint alleged that Respondent Jerry Fund ("Fund"), the sole owner of Respondent Automatic Meter Reading Corporation ("AMRC"), subjected Complainant-

Intervenor to a sexually hostile work environment and then constructively terminated her employment because of her gender. Complainant-Intervenor alleged that Fund regularly made sexualized and sexist comments to her, humiliated her, and forcibly touched her on several occasions, including, among other acts, striking her on the buttocks and shoving a newspaper into her underwear. (ALJ Exhibit 1 (Complaint)).

After issuing a Probable Cause Determination pursuant to NYCHRL Section 8-116 on December 28, 2012, the Bureau referred the Complaint to the Office of Administrative Trials and Hearings ("OATH") for trial and a recommendation ("Report and Recommendation"). Complainant-Intervenor Cardenas intervened on May 13, 2013, pursuant to NYCHRL Section 8-119 and 48 RCNY 2-25. The case was heard by the Honorable Alessandra F. Zorgniotti, Administrative Law Judge, over the course of six dates between September 12, 2013 and December 6, 2013.

On March 14, 2014, Judge Zorgniotti issued a Report and Recommendation (1) finding that Respondents had engaged in gender discrimination violating the NYCHRL by creating a hostile work environment and constructively terminating Complainant-Intervenor's employment; and (2) recommending (i) a total award of $294,553.28[1] in back pay, front pay, and emotional distress damages to the Complainant-Intervenor, (ii) the imposition of $75,000 in civil penalties against the Respondents, and (iii) that Respondents be ordered to institute a written anti-discrimination policy and train their staff on the NYCHRL.

The parties had the right to submit written comments and objections to the Report and Recommendation within twenty days after the Commission commenced consideration of the

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[1] Judge Zorgniotti recommended an award of front pay of $12,636.00 discounted to its present value by two percent. A two percent discount reduces the recommended front pay to $12,383.28 which is the value used to calculate the total recommended award.

Report and Recommendation unless good cause for additional time is shown. 47 RCNY § 1-76. The Commission granted all parties an extension to submit comments by May 22, 2014. Complainant-Intervenor Cardenas submitted written comments on May 22, 2014, addressing only the calculation of back pay and front pay damages, asserting that she is entitled to at least $96,956.72 in back pay damages, not the recommended amount of $82,170.00; and that she is entitled to at least $44,360.13, not $12,636.00 (as reduced by 2%) in front pay damages. (Complainant-Intervenor Comments to the Report and Recommendation (Compl't Comments) at 1-3.) The Bureau submitted written comments on May 21, 2014, asking the Commission to adopt the Report and Recommendation, with the following exceptions: 1) increase the back pay award to over $98,662.88 plus interest; and 2) increase emotional distress damages to $250,000. (Bureau Comments at 2.) Respondents submitted written comments on May 22, 2014, urging the Commission to reject the Report and Recommendation in its entirety. Respondents argued that Judge Zorgniotti's Report and Recommendation relied on "numerous erroneous rulings," including: 1) her consideration of events that occurred outside of the one-year statute of limitations; 2) improperly finding that Respondents constructively discharged Cardenas; 3) improperly analyzing the NYCHRL and failing to properly consider mitigation issues regarding the calculation of front pay damages and civil penalties. (Resp'ts Comments at 5-8, 19-25.)

The Commission has reviewed Judge Zorgniotti's Report and Recommendation, the trial transcript, the trial exhibits, the parties' post-trial briefs, and the parties' comments to the Report and Recommendation. For the reasons set forth in this Decision and Order, the Commission adopts the Report and Recommendation, except as indicated below.

I. STANDARD OF REVIEW

In reviewing a Report and Recommendation, the Commission may accept, reject, or modify, in whole or in part, the findings or recommendations made by the administrative law

judge. Though the findings of an administrative law judge may be helpful to the Commission in assessing the weight of the evidence, the Commission is ultimately responsible for making its own determinations as to the credibility of witnesses, the weight of the evidence, and other assessments to be made by a factfinder. *Comm'n on Human Rts. v. Shahbain*, OATH 2439/13, Dec. & Ord. (May 22, 2014); *Comm'n on Human Rts. v. Jenkins*, OATH 2331/13, Dec. & Ord. (Apr. 14, 2014); *Comm'n on Human Rts. v. Britati Realty, Inc.*, OATH 0778/13, Dec. & Ord. (Oct. 31, 2013); *Politis v. Marine Terrace Holdings, LLC*, OATH 1673/74/11, Dec. & Ord. (Apr. 24, 2012); *L.D. v. Riverbay Corp.*, OATH 1300/11, Dec. & Ord. (Jan. 9, 2012); *Comm'n on Human Rts. v. 325 Coop. Inc.*, OATH 1423/98, Dec. & Ord. (Jan. 12, 1999).

The Commission is also tasked with the responsibility of interpreting the NYCHRL and ensuring the law is correctly applied to the facts. *Politis*, OATH 1673/74/11, at 8 (Commission rejected R&R, finding that ALJ did not properly apply the NYCHRL). Therefore, the Commission has the final authority to determine "whether there are sufficient facts in the record to support the Administrative Law Judge's decision, and whether the Administrative Law Judge correctly applied the New York City Human Rights Law to the facts." *Comm'n on Human Rts. v. Ancient Order of Hibernians*, Comp. No. MPA-0362, Dec. & Ord. (Oct. 28, 1992); *see also Orlic v. Gatling*, 844 N.Y.S. 2d 366, 368 (App. Div. 2007) ("it is the Commission, not the Administrative Law Judge, that bears responsibility for rendering the ultimate factual determinations"); *Cutri v. N.Y.C. Comm'n on Human Rts.*, 977 N.Y.S.2d 909, 910 (N.Y. Sup. Ct. 2014) (Commission not required to adopt the administrative law judge's recommendation). Accordingly, the Commission reviews the Report and Recommendation *de novo* as to findings of fact and conclusions of law.

When parties submit comments, replies or objections to a Report and Recommendation pursuant to 47 RCNY § 1-76, the Commission must review the comments, replies or objections in the context of the Commission's other factual determinations and conclusions of law. Accordingly, the Commission reviews the Report and Recommendation and the parties' comments and objections *de novo* as to findings of fact and conclusions of law.

II. TRIAL TESTIMONY

Knowledge of the facts as described in Judge Zorgniotti's Report and Recommendation is assumed for purposes of this Decision and Order. Where the facts presented by the Complainant-Intervenor conflicted with facts as presented by the Respondents, Judge Zorgniotti credited Complainant-Intervenor's testimony. In doing so, Judge Zorgniotti noted that Complainant-Intervenor's testimony was consistent with the testimony of witnesses and other evidence, including testimony from Cardenas's unemployment benefits hearing, a copy of the cartoon Fund admitted to posting in the office, and Cardenas's contemporaneous writings. (Report and Recommendation (R&R) at 7.) By contrast, Judge Zorgniotti found Respondent Fund's testimony not credible, inconsistent, and often at odds with the testimony of other witnesses and at times, his own testimony. (*Id.* at 7-8.) To the extent the parties' testimonies are inconsistent, the conflicts are noted below.

It is undisputed that Respondent AMRC hired Cardenas as a billing clerk in 1995, and then promoted her to the position of Office Manager in May 2008. (*Id.* at 2.) Cardenas was the first female to hold the position. (*Id.* at 3.) In assuming this new position, Cardenas was required to meet regularly with her new immediate supervisor, Fund, and frequently privately in his office. (*Id.*) Prior to her promotion, Cardenas did not interact with Fund. (*Id.* at 2.)

Cardenas alleges that from May 2008 until she left her employment with Respondent AMRC on March 4, 2011, Fund engaged in discriminatory behavior on the basis of gender, including: (a) sexist remarks and comments suggesting different standards for women; (b) suggestive or lewd statements; and (c) unwelcome touching. The Commission addresses each alleged category in turn below.

A. Sexist Remarks and Comments Suggesting Different Standards for Women

Cardenas testified that Fund regularly made sexist remarks to her. Many of these comments were allegedly made to Cardenas in Fund's office, without any witnesses. Specifically, Cardenas testified that Fund regularly asked her rhetorically: "Why did I put a woman in charge?" (Transcript of OATH Trial (Tr.) 44; 308.) Fund denied making this statement. (*Id.* 647.) Cardenas also testified that Fund told her he wanted to hire "Asian women because they were submissive and fresh off the boat." (*Id.* 45.) Cardenas further testified that Fund told her he could only hire women to work for her because "men wouldn't take orders from [her]." (*Id.* 45-46.) As Fund did not deny making these last two statements, the Commission may consider them admitted. *See Warguleski v. Warguleski*, 435 N.Y.S.2d 857, 859 (N.Y. App. Div. 1981) (Hancock, J. and Doerr, J., dissenting) (court could consider defendant's failure to controvert or deny plaintiff's specific allegations together with defendant's admissions).

Cardenas also testified to an incident in 2008 in which Fund "threw" a $20 bill at her and told her to go "fix her hair" because she "look[ed] like a lion." (Tr. 74.) Fund admitted to throwing the money at Cardenas to fix her hair. (*Id.* 798.) He further admitted that he never did the same to any of his male employees. (*Id.* 811.)

B. Suggestive or Lewd Statements

Cardenas alleges a multitude of sexually suggestive, lewd, and highly inappropriate statements regularly made by Fund from 2008 until the end of her employment in 2011. These

include: 1) offering to rub Cardenas's chest when she had a cough (*id.* 46-47; 185); 2) telling Cardenas that "sex helps" headaches (*id.* 72); and 3) telling Cardenas they could run away together and that he would bring the Viagra and Cialis. (*id.* 49-50). Cardenas testified that each time Fund made comments like these, she would respond by saying: "No thank you; please don't say these things to me," (*id.*), or "No thank you. Please don't say those things to me. It's disrespectful." (*Id.* 49-50; 73). While Fund denied that he ever made the first two comments (*id.* 780; 796), he admitted that he may have told Cardenas that they should run away together because he has a "very well-developed sense of humor." (*Id.* 787-88.) Several key incidents were also admitted by Fund and/or established by witness testimony and documentary evidence, each of which are described in further detail below.

1. Humiliation of Cardenas with a Magazine Photo

In her testimony, Cardenas described an incident in or around February 2011 in which Fund called her into his office as he was flipping through the pages of the Sports Illustrated Swimsuit Edition. (*Id.* 59.) Cardenas sought to excuse herself but Fund insisted that she remain in his office. Fund then identified a photograph of one model in a bikini and showed it to Cardenas, stating that Cardenas resembled the model when she was younger. (*Id.* 60.) Cardenas expressed her disgust and left his office. Fund followed her out and shared the magazine with other employees, pointing to photographs and stating: "Monica used to have a body like that." (*Id.* 60.) A former employee of Respondent AMRC, Jennilyn Rivera, testified that she remembered Fund looking at the magazine and immediately referred to Cardenas, saying something to the effect of: "oh look at this [sic] is Monica's body when she was younger." (*Id.* 444.) In his testimony, Fund admitted that he looked at the magazine, and in front of four or five employees, including Cardenas, stated "this is what Monica used to look like." (*Id.* 656.)

2. Cartoon of a Sexualized Woman with the Label "Our Own Monica!" in the Office

Fund admitted that, in or around August 2010, he posted a cartoon depicting a stereotypically hyper-sexualized image of a woman (Bureau Ex. 1), in a conspicuous location in the office and wrote "OUR OWN MONICA!" on the cartoon (Tr. 648-49). Respondents kept the cartoon posted in the office for several years and only removed it after the Bureau served the Complaint on Respondents, in which the cartoon was described. (*Id.* 650-52.) Several witnesses – current or former AMRC employees – testified to seeing the cartoon posted on the wall. (*Id.* 457, 601.)

3. Sexually Explicit Comments About Cardenas to a Client

Cardenas testified that in May 2010 she heard Fund speaking with a client, Steven Leibel, on a speaker phone in Fund's office. Fund called Cardenas into his office. Fund then told Mr. Leibel, "I have my... office manager here, she'll take care of you, but just keep it work related...I'm not saying she's not good in the sack...." (*Id.* 31.) According to Cardenas, Fund continued, "you got to see her[,] she's a pretty good looking woman, a hot Latina...." (*Id.*)

Mr. Leibel testified that while he did not recall the exact language used by Fund during this conversation, it was something "of a sexual nature," and "that for [Leibel] to say something, it had to be pretty bad, because [he] said to Jerry, Jerry, you can't say that, you know, to somebody." (Deposition Testimony of Steven Leibel, admitted at trial as Bureau Ex. 16, at 25.) Mr. Leibel also testified that Fund "used to point out that [Cardenas] was a good looking woman." (*Id.*)

4. Comments About Cardenas's Appearance and Body to Other Employees

Jennilyn Rivera, a former employee of Respondent AMRC, testified that Fund regularly talked about Cardenas to other employees in the workplace. According to Rivera, Fund frequently discussed Cardenas's appearance and body with other employees, including commenting that Cardenas "was a very stunning person, that she had the best pair of legs that he [had] ever seen, that she was gorgeous, that whenever she...walked through the lobby...everybody would stare at her." (Tr. 443.)

C. Unwanted and Forcible Touching

Cardenas testified to several incidents in which Fund touched her in an unwanted and sexual manner. Fund admitted, in sum and substance, to an incident in which he struck Cardenas's buttocks twice, but denies two other incidents: one in which Fund allegedly shoved a newspaper down Cardenas's pants; and another in which Fund allegedly licked her neck.

1. Fund Admits To Striking Cardenas's Buttocks Repeatedly.

In her testimony, Cardenas described an incident on March 2, 2011, in which Fund struck her buttocks as she was standing and filing something in the office. (*Id.* 80.) Cardenas turned around after being hit and saw Fund standing there. Though she told Fund not strike her again, he struck her a second time. (*Id.* 81.) Fund admitted that the incident occurred as Cardenas described. (*Id.* 803; Bureau Ex. 6.) Further, Fund attempted to justify his actions by stating that "[a]fter fifteen years, I think I have the right to have some fun with Ms. Cardenas...." (Tr. 810; Bureau Ex. 6 at 44.)

2. Fund Denies Shoving a Newspaper Down Cardenas's Pants.

Cardenas described an incident in April 2010 in which Fund shoved a folded newspaper he was holding into her pants as she crouched in the hallway to file books. (Tr. 28-29.)

Cardenas described feeling something being "rammed...down the back of her pants." (*Id.* 29.) Cardenas screamed, jumped up and said to Fund "what is wrong with you, don't do that," to which Fund laughed and walked out of the office. (*Id.*) Cardenas testified that co-workers heard her scream, ran out of their offices, and asked her what had happened, and Cardenas explained what Fund had done. (*Id.*) Fund denied this allegation. (*Id.* 765-66.)

3. Fund Denies Licking Cardenas.

Cardenas described an incident in or around March 2012 in which Fund sought to hug Cardenas in his office. Cardenas told Fund that she did not want to hug him, but before she knew it, he was in front of her and reaching out to hug her. (*Id.* 26.) Cardenas turned her body sideways and Fund grabbed her, held her and then licked the side of her neck with his tongue. (*Id.*) Cardenas testified that she did not tell anyone about the incident because she was embarrassed and ashamed. (*Id.* 28.) Fund denied licking Cardenas's neck, but admitted that he may have hugged her. (*Id.* 764.)

III. DISCUSSION

A. Legal Standard

The NYCHRL "shall be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York State civil and human rights laws, including those laws with provisions comparably-worded to provisions of this title have been so construed." N.Y.C. Admin. Code § 8-130. Pursuant to the Local Civil Rights Restoration Act of 2005, "[i]nterpretations of New York state or federal statutes with similar wording may be used to aid in interpretation of the New York City Human Rights Law, viewing similarly worded provisions of federal and state civil rights laws as a floor below which the City's Human Rights law cannot fall, rather than a ceiling above which the local law cannot rise." Local Law No. 85 (2005).

This statutory language makes plain that while the Commission may cite federal and state anti-discrimination jurisprudence, it has neither precedential nor persuasive authority over the Commission's interpretation of the NYCHRL. Further, while the Commission's interpretation and application of state and federal case law addressing the NYCHRL informs the Commission's jurisprudence, "an agency's interpretation of the statutes it administers must be upheld absent demonstrated irrationality or unreasonableness." *Lorillard Tobacco Co. v. Roth*, 99 N.Y.2d 316, 322 (N.Y. App. Div. 2003) (citing *Seittelman v. Sabol*, 91 N.Y.2d 618, 625 (N.Y. App. Div. 1998)).

B. The Allegations Dating Back to 2008 Are Timely Under the Continuing Violation Doctrine.

The Bureau filed the Complaint on May 4, 2011, alleging facts dating back to May 2008. Generally, the Commission has jurisdiction to consider claims of unlawful discriminatory practices that occurred within one year of the date a complaint is filed with the Bureau. N.Y.C. Admin. Code § 8-109(e). However, the Commission may consider acts that occurred outside the limitations period consistent with the continuing violation doctrine. Courts assessing claims under the NYCHRL regularly apply the continuing violation doctrine in which "[t]ime-barred discrete acts can be considered timely 'where specific and related instances of discrimination are permitted by the employer to continue unremedied for so long as to amount to a discriminatory policy or practice.'" *Dimitracopoulos v. City of New York*, 26 F. Supp. 3d 200, 212 (E.D.N.Y. 2014) (quoting *Fitzgerald v. Henderson*, 251 F.3d 345, 359 (2d Cir. 2001) (internal citations and quotations omitted)). The continuing violation doctrine delays the commencement of the statute of limitations period until the occurrence of the last act in furtherance of that discriminatory practice. *Morgan v. N.Y. State Attorney Gen. Office*, No. 11 Civ. 9389, 2013 WL 491525, at *12 (S.D.N.Y. Feb. 8, 2013).

Here, the Commission finds that Judge Zorgniotti properly applied the continuing violation doctrine. As Judge Zorgniotti noted, the Bureau established a pattern of discrimination evidenced by discrete instances of discriminatory conduct throughout the three-year period. (R&R at 5.) Accordingly, the Commission applies the continuing violation doctrine and considers evidence from the date of Cardenas's promotion to Office Manager in 2008 until the end of her employment with Respondent AMRC in 2011.

C. Respondents Discriminated Against Cardenas by Engaging in Willful and Wanton Conduct that Created a Hostile Work Environment.

The NYCHRL prohibits discrimination on the basis of gender and does not delineate separate standards for discrimination and harassment claims. N.Y.C. Admin. Code § 8-107(1)(a); *Clarke v. InterContinental Hotels Grp., PLC*, No. 12 Civ. 2671, 2013 WL 2358596, at *11 (S.D.N.Y. May 30, 2013). Instead, "there is only the provision of the law that proscribes imposing different terms, conditions and privileges of employment based" on a protected characteristic. *Id.* (quoting *Sotomayor v. City of New York*, 862 F. Supp. 2d 226, 261 (E.D.N.Y. 2012) (internal quotation marks omitted)). Thus, the Bureau must demonstrate by a preponderance of the evidence that Cardenas has been treated less well than other employees in the "terms, conditions, and privileges of employment." *Mihalik v. Credit Agricole Cheuvreux N. Am., Inc.*, 715 F.3d 102, 110 (2d Cir. 2013) (quoting *Williams v. N.Y.C. Hous. Auth.*, 872 N.Y.S. 2d 27, 39 (N.Y. App. Div. 2009) (internal quotation marks omitted)). The Bureau need not establish that the conduct was severe or pervasive; severity and pervasiveness are only relevant when considering damages. *Mihalik*, 715 F.3d at 110 (citing *Williams*, 872 N.Y.S.2d at 38).

Even if the Bureau establishes that Cardenas was treated less well because of her gender, Respondents may assert an affirmative defense whereby they can avoid liability if they prove that the alleged conduct consists of nothing more than what a reasonable victim of discrimination

would consider "petty slights and trivial inconveniences." *Roberts v. United Parcel Serv., Inc.*, --- F.Supp.3d ----, No. 15 Civ. 6161, 2015 WL 4509994, at *20 (E.D.N.Y. July 27, 2015) (quoting *Mihalik*, 715 F.3d at 111 (citation omitted)). "[A] single comment ... made in circumstances where that comment would, for example, signal views about the role of [a protected class] in the workplace [,]" may be considered more than a "petty slight or trivial inconvenience[.]" *Dillon v. Ned Mgmt., Inc.*, 85 F. Supp. 3d 639, 657 (E.D.N.Y. 2015) (citing *Williams*, 872 N.Y.S. 2d at 41 n.30); *see also Hernandez v. Kaisman*, 957 N.Y.S. 2d 53, 59 (N.Y. App. Div. 2012) ("comments and emails objectifying women's bodies and exposing them to sexual ridicule, even if considered isolated, clearly signaled that defendant considered it appropriate to foster an office environment that degraded women" and actionable under NYCHRL).

After the Bureau has proffered its *prima facie* case, Respondents may present evidence of its legitimate, non-discriminatory motives to show the conduct was not caused by the discrimination. Respondents will succeed on this basis only if the record establishes as a matter of law that discrimination played no role in its actions. *Roberts*, 2015 WL 4509994, at *21 (quoting *Mihalik*, 715 F.3d at 111 n.8 (citations omitted)).

1. Cardenas Was Treated Less Well Because of Her Gender.

Even a single comment that sexually objectifies a person or evinces stereotypical views about a person's role in the workplace can establish gender discrimination under the NYCHRL. *Williams*, 872 N.Y.S. 2d at 41 n.30. Had the Bureau established *only* that Fund posted the sexually suggestive cartoon labeled "OUR OWN MONICA!" *and nothing more*, the Bureau could have met its burden under the NYCHRL. *Id.* Similarly, Fund's remarks suggesting different standards for women demonstrate actionable gender discrimination under the

NYCHRL. *Mihalik*, 715 F.3d at 110. Through Cardenas's testimony, Fund's testimony, the testimony of third-party witnesses, and documentary evidence, the Bureau demonstrated that Respondents treated Cardenas differently because of her gender and fostered an environment that repeatedly degraded Cardenas because of her gender for a three-year period through comments, unwanted physical touching, photos, and posters.

2. Respondents' Conduct Consisted of More Than "Petty Slights" or "Trivial Inconveniences."

Respondents' attempt to minimize the acts of discrimination and harassment fails. To the extent that Respondents admitted certain behavior, they assert as an affirmative defense that Fund's treatment of Cardenas constituted nothing more than petty slights or trivial inconveniences. But "[a]s with most affirmative defenses, the employer has the burden of proving the conduct's triviality under the NYCHRL." *Johnson v. Strive E. Harlem Employment Grp.*, 990 F. Supp. 2d 435, 446 (S.D.N.Y. 2014) (quoting *Mihalik*, 715 F.3d at 111). And in weighing both "the plaintiff's claim and the defendant's affirmative defense, courts must consider the 'totality of the circumstances'" without ignoring the "overall context in which [the challenged conduct occurs]." *Id.* (alteration in original) (quoting *Hernandez*, 957 N.Y.S.2d at 59).

Respondents argue that the cartoon was meant as a "humorous compliment." (Resp'ts Comments at 14, n.6.) Similarly, Respondents argued that the incident involving the Sports Illustrated magazine was a "compliment," "jesting remark," or "petty slight." (*Id.* at 15). Respondents' understanding of their behavior as either humorous or a compliment appropriate for the workplace troubles the Commission, as both examples demonstrate the type of improper sexual objectification in the workplace that the NYCHRL and other such laws are meant to

protect against. No employee should have to endure the repeated humiliation visited upon Cardenas by Fund.

Cardenas made clear that Fund's behavior was unwelcome with her words and actions. (Tr. 49-50, 80-81 (telling him to stop); *id.* 60 (walking out of the room).) However, apparently believing that he had "a right to have fun" at Cardenas's expense (Bureau Ex. 6 at 44; Tr. 810), Fund ignored Cardenas's obvious displeasure and continued the behavior. (*Id.* 60, 444, 456, 485, 799-801, 808-09, 887-88.) And, on at least one occasion, Fund laughed at Cardenas when she asked that Fund stop speaking to her in a sexual manner. (*Id.* 73.) Such wanton, deliberate and willful acts of harassment are intolerable in any workplace.

The Commission finds Fund's actions to be unlawful activity. Accordingly, Respondents are unable to avail themselves of the affirmative defense. Respondents have also failed to "present evidence of [their] legitimate, non-discriminatory motives to show the conduct was not caused by discrimination." *Roberts*, 2015 WL 4509994, at *21 (internal citations omitted).

D. Respondents Constructively Discharged Cardenas.

Under the NYCHRL, "a work environment need not be offensive, pervasive, and continuous in order to qualify as hostile." *Zick v. Waterfront Comm'n of N.Y. Harbor*, No. 11 Civ. 5093, 2012 WL 4785703, at *8 (S.D.N.Y. Oct. 4, 2012) (internal citations omitted); *see also Davis-Bell v. Columbia Univ.*, 851 F. Supp. 2d 650, 674 (S.D.N.Y. 2012). In order to state a claim under the NYCHRL, Cardenas must allege that she "has been treated less well than other employees *because of*" her membership in a protected class. *Id.* (citing *Davis-Bell*, 851 F. Supp. 2d at 671 (emphasis added) (internal citations and quotation marks omitted)). To prove a constructive discharge, the Bureau must establish that Cardenas "was subjected to an environment hostile enough to force her to quit *because of* some factor prohibited by the statute."

Id. (emphasis in original). This standard stands in contrast to the oft-cited, outdated[2] standard articulated in *Albunio v. City of New York*, in which the Appellate Division held that constructive discharge occurs when "working environments had been made *objectively so intolerable* that a reasonable person in [complainants'] respective positions would have felt compelled to leave." 67 A.D.3d 407, 408 (N.Y. App. Div. 2009), *aff'd*, 947 N.E.2d 135 (2011) (emphasis added).

The undisputed facts support the conclusion that in the three years preceding Cardenas's termination, Fund engaged in a continuous campaign of sexually hostile, offensive, and discriminatory harassment up to and including the "umbrella incident" – conduct that was "hostile enough to force [Cardenas] to quit." The Commission credits the record evidence and concludes that the "umbrella incident" was the final breaking point that caused her to leave her job. (Tr. 26-32, 44, 90-91, 396-98; Bureau Ex. 4.) Accordingly, the Commission agrees with Judge Zorgniotti that Respondents constructively discharged Cardenas.

IV. DAMAGES, PENALTIES, AND SPECIFIC PERFORMANCE

Where the Commission finds that respondents have engaged in an unlawful discriminatory practice, the NYCHRL authorizes the Commission to order respondents to cease and desist from such practices and order such other "affirmative actions as, in the judgment of the commission, will effectuate the purposes of" the NYCHRL. N.Y.C. Admin. Code § 8-

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[2] While the undisputed facts meet the *Albunio* standard, which is widely cited in NYCHRL cases, it originates in pre-Restoration Act case law and is no longer relevant to the constructive discharge analysis. *See Albunio v. City of New York*, 67 A.D.3d 407, 408 (N.Y. App. Div. 2009) (citing *Gonzalez v. Bratton*, 147 F. Supp. 2d 180, 198 (S.D.N.Y. 2001), *aff'd*, 48 F. App'x 363 (2d Cir. 2002) ("The Court finds that these actions were sufficiently severe and sustained to make working conditions intolerable for any reasonable person in Gonzalez's position.")). Given the 2005 Restoration Act's directive to construe the NYCHRL broadly, the *Albunio* analysis sets the bar too high to establish constructive discharge. The workplace need not be "so objectively intolerable" to "compel" someone to leave, but rather can be "hostile enough to force [complainant] to quit because of some factor prohibited by the [NYCHRL]." *Zick*, 2012 WL 4785703, at *8.

120(a). The Commission may also award back pay, front pay, and compensatory damages for emotional distress to the complainant. *Id.* §§ 8-120(a)(2),(8). In addition, the Commission may impose civil penalties on respondents who engage in discriminatory practices of not more than $125,000, unless the unlawful discriminatory practice was the result of the respondent's "willful, wanton or malicious act," in which case a civil penalty of not more than $250,000 may be imposed. *Id.* § 8-126(a). Finally, the Commission may order any other "affirmative actions as, in the judgment of the commission, will effectuate the purposes of" the NYCHRL. *Id.* § 8-120(a).

A. Cardenas Is Entitled to Back Pay with Interest and Front Pay.

1. Back Pay with Interest

Back pay is calculated according to what a complainant would have earned were it not for discrimination. *Claudio v. Mattituck-Cutchogue Union Free Sch. Dist.*, 955 F. Supp. 2d 118, 161 (E.D.N.Y. 2013) (citing *Kirsch v. Fleet St., Ltd.*, 148 F.3d 149, 166 (2d Cir. 1998)). Typically, "[a]n award of back pay [ ] spans from the date of [complainant's] discriminatory termination to the date of judgment and includes 'lost salary, including anticipated raises, and fringe benefits.'" *Bergerson v. N.Y. State Office of Mental Health*, 853 F. Supp. 2d 238, 243 (N.D.N.Y. 2012) (quoting *Saulpaugh v. Monroe Cmty. Hosp.*, 4 F.3d 134, 144-45 (2d Cir. 1993)); *see also Banks v. Travelers Cos.*, 180 F.3d 358, 364 (2d Cir. 1999) (holding back pay as an award that should begin to be calculated at the time of discharge from employment).

After her constructive discharge, Cardenas was obligated to mitigate her damages by making reasonable attempts to search for and obtain a new job. While the NYCHRL does not expressly require a duty to mitigate damages, courts have found "no reason to believe that this well-established legal principle would not apply to the NYCHRL." *EEOC v. Bloomberg L.P.*, 29 F. Supp. 3d 334, 340 n.9 (S.D.N.Y. 2014). The respondent employer has the burden of

demonstrating that the complainant has failed to mitigate by establishing: (1) that suitable work existed; and (2) that the employee did not make reasonable efforts to obtain it. *Hawkins v. 1115 Legal Serv. Care*, 163 F.3d 684, 695 (2d. Cir. 1998) (citing *Dailey v. Societe Generale*, 108 F.3d 451, 456 (2d Cir. 1997)); *Clarke v. Frank*, 960 F.2d 1146, 1152 (2d Cir. 1992)).

Cardenas credibly testified to her attempts to obtain work and provided comprehensive records of her job search. (Tr. 96-104 (Cardenas's testimony that she consistently sought employment from the date she was constructively terminated until she obtained full-time employment with the U.S. Postal Service); Bureau Ex. 7 (Cardenas's detailed records of the several hundred jobs for which she applied inquired about and/or applied for).) Cardenas had several job interviews, including one with an investment company, which resulted in a job offer in December 2011. (Tr. 105-06.) Cardenas did not accept that position because she felt uncomfortable in the interview; specifically, she felt as though the interviewer, who would have become her direct supervisor, was not listening to what she had to say and was instead looking at her body and "undressing [her] with his eyes." (*Id.* 106, 339-40.) The position would have paid $12.00 per hour, nearly half as much as she was earning at AMRC. (*Id.* 106.) Given Cardenas's credible testimony, the Commission finds no reason to question Cardenas's testimony about her job search.

Apparently, Respondents chose not to question Cardenas on it either. Though Respondents carry the burden of showing that she failed to mitigate her damages, they did not cross-examine her at trial on her decision to turn down an offer of employment, much less explore the reasonableness of her decision. Similarly, beyond making the conclusory statement that rejecting the job offer "was not reasonably prudent and not consistent with 'reasonable efforts[,]'" (Resp'ts Comments at 21), Respondents' comments failed to address why it would be

unreasonable for Cardenas to reject a job offer coming from someone undressing her with his eyes.

Therefore, the Commission finds that the duty to mitigate damages does not obligate Cardenas to leave one sexually hostile work environment only to work at another. "[T]he unemployed or underemployed claimant need not go into another line of work, accept a demotion, or take a demeaning position." *Ford Motor Co. v. EEOC*, 458 U.S. 219, 231 (1982); *Hawkins*, 163 F.3d at 695 (citing *Dailey*, 108 F.3d at 456 (the duty to mitigate damages "is not onerous and does not require [complainant] to be successful [in obtaining a new job]."). Accordingly, the Commission will not reduce Cardenas's back pay damages because of her decision to reject the December 2011 job offer.

Respondents have not raised other mitigation issues for the Commission to consider, as they have failed to show that suitable jobs existed for which Cardenas failed to apply. Indeed, in their comments to the Report and Recommendation, Respondents failed to address the mitigation issues for which they bear the burden, and instead focused their comments on issues irrelevant to the Commission's mitigation inquiry, while also pointing out the fact that they had failed to take testimony on these issues. (Resp'ts Comments at 19-20.)

Cardenas eventually obtained a temporary position with the United States Postal Service ("USPS") in January 2013 as a mail processing clerk. (Tr. 108, 112.) The rate was $14.89 per hour for daytime hours and $16.01 for evening hours. (*Id.* 110, 353.) Cardenas worked the morning shift until May 2013 when USPS changed her schedule to the evening shift. (*Id.*) According to her contract, Cardenas is a temporary worker for a period of one year, and after that USPS may renew her contract for another year or, based on need, could offer her a full-time career employee position. (*Id.* 111; Bureau Ex. 9.)

Judge Zorgniotti calculated Cardenas's back pay damages from the date of her constructive discharge until the date she began her subsequent job with USPS on January 28, 2013. (R&R at 24.) However, an award of back pay should be calculated from the date of termination through the date of judgment, reduced by the amount of her earnings during this period. *Saulpaugh v. Monroe Cty. Hosp.*, 4 F.3d 134, 144-45 (2d Cir. 1993), *cert. denied*, 510 U.S. 1164 (1994); *Rivera v. Baccarat, Inc.*, 34 F. Supp. 2d 870, 874 (S.D.N.Y. 1999). Therefore, Cardenas's back pay award shall be recalculated as follows. First, Cardenas is entitled to her back pay damages determined through January 28, 2013 of $82,170.00. Second, after January 28, 2013, when Cardenas began her job with USPS, she earned on average $545.64 per week, or $284.36 less than what she earned at AMRC. As such, Cardenas is entitled to $284.36 per week from January 28, 2013 through the date of judgment, October 28, 2015, which is a period of 143 weeks and three days, and when multiplied by $284.36, equals $40,783.35. Accordingly, Cardenas's total back pay award is $122,953.35.

Judge Zorgniotti declined to offset Cardenas's back pay by the amount of unemployment insurance benefits Cardenas received during her period of unemployment. (R&R at 25.) The decision of whether or not to deduct benefits received from a collateral source, such as unemployment benefits, from an award of back pay rests in the sound discretion of the factfinder. *Shannon v. Fireman's Fund Ins. Co.*, 136 F. Supp. 2d 225, 231-32 (S.D.N.Y. 2001) (citations omitted). While "collateral source payments do represent an additional benefit to the [complainant]...[a]s between the employer, whose action caused the discharge, and the employee, who may have experienced other noncompensable losses, it is fitting that the burden be placed on the employer." *Id.* Because Respondents caused Cardenas's discharge, the

Commission agrees with Judge Zorgniotti's recommendation to decline to offset Cardenas's back pay award by the amount she received in unemployment insurance benefits.

Although the NYCHRL does not expressly provide for prejudgment interest on an award of back pay, courts have awarded prejudgment interest to effectuate the statute's intent. *Insinga v. Cooperatieve Centrale Raiffeisen Boerenleenbank B.A.*, 478 F. Supp. 2d 508, 512 (S.D.N.Y. 2007) (applying statutory interest rate of 9 percent to award of back pay under NYCHRL); *McIntyre v. Manhattan Ford, Lincoln–Mercury, Inc.*, 672 N.Y.S.2d 230, 236 (N.Y. Sup. Ct. 1997) (same). Awarding pre-judgment interest prevents a respondent employer from attempting to enjoy an "interest-free loan for as long as it can delay paying out back wages." *Gierlinger v. Gleason*, 160 F.3d 858, 874 (2d Cir. 1998) (internal citations omitted). The Commission finds an award of prejudgment interest on Cardenas's back pay award is appropriate in this case because it serves to compensate her for the loss of the use of money wrongfully withheld as a result of the constructive discharge. *See Thomas v. iStar Fin., Inc.*, 508 F. Supp. 2d 252, 264 (S.D.N.Y. 2007) (internal citations omitted).

The interest should be calculated from an intermediate date between the date of the constructive discharge and the date of judgment at New York's statutory rate of interest, nine percent per annum. *See* CPLR 5004; *see also Insinga*, 478 F. Supp. 2d at 512 (citations omitted). *see also Argyle Realty Assocs. v. N.Y. State Div. of Human Rts.*, 882 N.Y.S.2d 458, 468 (N.Y. Sup. Ct. 2009). Ms. Cardenas was constructively discharged on March 4, 2011. An intermediate date between her constructive discharge and the date of judgment is July 1, 2013. Applying a simple annual interest rate of nine percent to a principal amount of $122,953.35 for the period from July 1, 2013 through the date of judgment, October 28, 2015 (a period of 2 years

and 120 days, or approximately 2.33 years), produces a total interest amount of $25,783.31 ($122,953.35 * 0.09 * 2.33 = $25,783.31).

2. Front Pay

The purpose of an award of front pay is to make the victim of unlawful retaliation whole. *Chisholm v. Mem'l Sloan-Kettering Cancer Ctr.*, 824 F. Supp. 2d 573, 576-77 (S.D.N.Y. 2011) (citing *Bergerson v. N.Y. State Office of Mental Health*, 652 F.3d 277, 285 (2d Cir. 2011)), and should not "place the plaintiff in a better position than he would have occupied had he not been fired." *Thomas*, 508 F. Supp. 2d at 260. An award of front pay cannot be "unduly speculative." *Dunlap-McCuller v. The Riese Org.*, 980 F.2d 153, 159 (2d Cir. 1992); *see Press v. Concord Mortg. Corp.*, No. 08 Civ. 9497, 2010 WL 3199684, at *2 (S.D.N.Y. Aug. 11, 2010) (denying award of front pay where its calculation would be unduly speculative). In determining the appropriate rate of front pay, the factfinder may be informed by the length of time the back pay award represents. *See Thomas*, 508 F. Supp. 2d at 261.

Cardenas testified at trial that, but for her constructive termination, she would have continued to work at AMRC until her retirement at age 65. (Tr. 91.) Having already worked there for sixteen years, there is no reason to question Cardenas's testimony. It is unduly speculative, however, to determine that Cardenas will not be able to find equivalent employment before retirement at the same or better pay paid by Respondent AMRC. *See Greenbaum v. Svenska Handelsbanken, N.Y.*, 979 F. Supp. 973, 988 (S.D.N.Y. 1997) (finding it unduly speculative to conclude that plaintiff has "no reasonable prospect of obtaining comparable alternative employment") (internal citation omitted), *on reconsideration sub nom. Greenbaum v. Handlesbanken*, 26 F. Supp. 2d 649 (S.D.N.Y. 1998).

In determining the appropriate length of a front pay award, courts consider the plaintiff's age, qualifications, and whether a plaintiff has "unique and narrowly focused skills," that may make it difficult to find comparable employment. *Osorio v. Source Enters., Inc.*, No. 05 Civ. 10029, 2007 WL 683985, at *6 (S.D.N.Y. Mar. 2, 2007) (finding former editor-in-chief of leading hip hop magazine's skills were sufficiently "unique and narrowly focused" that a five-year front pay award was reasonable); *see also Padilla v. Metro-N. Commuter R.R.*, 92 F.3d 117, 126 (2d Cir. 1996) (awarding over twenty years of front pay in age discrimination case, until plaintiff's age of retirement, because there was "no convincing evidence that [plaintiff], now in his forties...would be able to find work commensurate with his skills at a salary equal to what he received as Superintendent of Train Operations," given his high school education, the fact that he had developed "unique and narrowly focused skills," and because there was only one comparable position in the New York area).

Cardenas's skills and experience, as an office manager of a small company, are not particularly unique. There is no reason to believe that she will not eventually find employment that pays a similar salary to that at Respondent AMRC. However, despite her diligent efforts to find comparable employment, that Cardenas went from being an office manager to a temporary job as a mail processing clerk shows how dramatically Respondents' acts of discrimination derailed her career. Accordingly, the Commission finds it reasonable to award front pay of $284.36 per week for five years from the date of judgment, at a rate of $284.36 per week, which produces a total front pay award of $73,933.60. *See DeCurtis v. Upward Bound Int'l, Inc.*, No. 09 Civ. 5378, 2011 WL 4549412, at *4 (S.D.N.Y. Sept. 27, 2011); *see also Chisolm v. Liberty Lines Transit Inc.*, No. 08 Civ. 7894, 2013 WL 452408, at *9 (S.D.N.Y. Feb. 6, 2013) (finding

five years of front pay reasonable for experienced bus operator who made diligent efforts to find employment and was on a waitlist for a conductor position).

B. Complainant-Intervenor Is Entitled to Damages for Emotional Distress.

The NYCHRL empowers the Commission to award "compensatory damages" in addition to back pay and front pay. N.Y.C. Admin. Code § 8-120(a)(8). Damages for mental anguish may be supported by a complainant's credible testimony alone. *Comm'n on Human Rts. ex rel. DiLeo v. Shahbain*, OATH Index No. 2439/13 (Feb. 3, 2014), *rejected*, Dec. & Ord. at 7 (May 22, 2014); *N.Y.C. Transit Auth. v. N.Y. State Div. Human Rts.*, 577 N.E.2d 40, 45 (N.Y. 1991). Here, the record reflects far more than Complainant-Intervenor's credible testimony of mental anguish. As a result of the physical and verbal abuse Complainant suffered, and her subsequent constructive termination and loss of employment, Complainant-Intervenor was diagnosed with depression. (Tr. 117-18, 137-38.) She took prescribed medication and met regularly with a nurse as part of her treatment for that illness. (*Id.* 117-18, 130-37.) Complainant-Intervenor's testimony on these points, supplemented with documentary proof of her treatment (*id.*; Bureau Exs. 14, 15), leaves no doubt that she suffered genuine and significant mental anguish. Complainant-Intervenor's account of her experience is consistent with studies documenting the negative psychological effects of sexual harassment on employees, which include anxiety, depression, and posttraumatic stress, and can last several years after the harassment occurs. *See* Settles, I., Buchanan, N., Yap, S., Harrell, Z., *Sex Differences in Outcomes and Harasser Characteristics Associated With Frightening Sexual Harassment Appraisals*, Journal of Occupational Health Psychology, Vol. 19, No. 2, 133-142 (2014); Equal Rights Advocates, *Moving Women Forward: On the Fiftieth Anniversary of the Civil Rights Act, Part I: Sexual Harassment Still Exacting A Hefty Toll* (2014) at 7, *available at* http://www.equalrights.org/wp-

content/uploads/2014/11/ERA-Moving-Women-Forward-Report-Part-One-Sexual-Harassment-Oct-2014.pdf (sexual harassment can have dire financial, physical, and emotional consequences for women in the workplace because it undermines the long-term earning capacity, job performance, and professional credibility of women workers).

Given this record, the Commission finds that an award for emotional distress is warranted. The NYCHRL places no limitations on the size of compensatory damages awards. N.Y.C. Admin. Code § 8-120(a)(8). Where, as here, the record shows sexual harassment over the course of several years, including unwanted touching over the protestations of the employee, resulting in a medical diagnosis and treatment, only the largest awards supported by that record are appropriate. By comparison, "garden variety" emotional distress claims involve evidence of mental suffering that is generally limited to the testimony of the complainant, who describes his or her injury in vague or conclusory terms, without relating either the severity or consequences of the injury. Such claims typically lack extraordinary circumstances and are not supported by any medical corroboration. Garden variety emotional distress claims generally merit $30,000 to $125,000 awards. *Olsen v. Cnty. of Nassau*, 615 F. Supp. 2d 35, 46-47 (E.D.N.Y.2009) (internal citations and quotation marks omitted). Further, in cases demonstrating significant emotional distress, courts in the Second Circuit have routinely found that awards ranging from $100,000 to $500,000 are appropriate. *See Quinby v. WestLB AG*, No. 04 Civ. 7406, 2008 WL 3826695, at *4 (S.D.N.Y. Aug. 15, 2008) (finding $300,000 in compensatory damages for emotional distress reasonable where plaintiff was stressed, developed headaches, hives, and welts, faced intense public scrutiny, and was overwhelmed by the cost and rigors of litigating her claims); *see also Thorsen v. Cnty. of Nassau*, 722 F. Supp. 2d 277, 293-95 (E.D.N.Y. 2010) (reducing $1,500,000 award to $500,000 for "significant" damages evidenced by the plaintiff's testimony and the

testimony of his treating psychologist regarding the plaintiff's hospitalization for a "major stress attack"). Respondents' outrageous and shocking discriminatory conduct, combined with Complainant-Intervenor's documented emotional and mental manifestations of that conduct, warrant the Commission to adopt Judge Zorgniotti's recommendation, and orders Respondents to pay Complainant-Intervenor $200,000 in compensatory damages for mental anguish.

C. Civil Penalties

The NYCHRL empowers the Commission to impose civil penalties in order to vindicate the public interest and gives the Commission discretion to impose such civil penalties up to $250,000 where unlawful conduct is willful, wanton, *or* malicious. N.Y.C. Admin. Code § 8-126(a). Judge Zorgniotti considered the following factors in arriving at her recommendation of a $75,000 penalty: 1) the egregiousness of the discrimination; 2) respondent's financial situation; 3) the length of time respondents committed the discrimination; and 4) respondent's failure to cooperate with the Bureau. (R&R at 29.) With respect to these factors, the Commission does not find it appropriate to consider Respondents' financial situation at this stage, as that may be considered a "mitigating factor" to be proven by Respondents. N.Y.C. Admin. Code § 8-126(b). Instead, the Commission focuses its determination on the egregiousness of the violation. Here, Fund's testimony and other evidence presented at trial show that Fund willfully ignored Cardenas's repeated requests to stop his degrading behavior and demonstrated no remorse for his actions. (Tr. 656.) Indeed, Fund found Cardenas's reactions to his abuse entertaining and would laugh when Complainant-Intervenor asked him to stop. (R&R at 30; *id.* 49.) Fund harassed Cardenas for three years and continued to harass her until she could simply not take it any longer and was forced to resign. For these reasons, the Commission finds that Fund's wanton and willful harassment warrants a civil penalty of

$250,000, the maximum civil penalty under the NYCHRL, and orders Respondents to pay such amount to the general fund of the City of New York. N.Y.C. Admin. Code § 8-127(a).

D. Respondents Have Not Proved Any Relevant Mitigating Factors.

Respondents who are found to have violated the NYCHRL and subject to a civil penalty may "plead and prove any relevant mitigating factor" with respect to the amount of the civil penalty only. *Id.* § 8-126(b). Respondents assert in their Comments to the Report and Recommendation that the civil penalty should be downwardly adjusted to $2,500 because "the corporate respondent is a small entity with fewer than ten employees and low revenues and income and the individual respondent took no salary and is not a person of substantial means." (Resp'ts Comments at 26.) Here, Judge Zorgniotti indicated that she would assess Respondents' financial condition when recommending the amount of any civil penalty. (Tr. 735-36.)

Fund testified that Respondent AMRC is a "break even business" and that, during the period of 2010 to 2013, both Respondent AMRC and Fund each had assets of less than $250,000. (Tr. 744-45, 752.) Prior to and during trial, Judge Zorgniotti repeatedly ordered Respondents to produce documents establishing their net worth for the period between 2008 and 2013, and specifically to provide statements for the eight bank accounts that Fund swore to having. (*Id.* 735-39.) However, Respondents failed to comply with Judge Zorgniotti's orders, and instead produced only corporate tax returns from 2008 and 2012, and profit and loss statements from 2008 through 2012. (Tr. 740-41.) Respondents provided only a statement for a single checking account covering a one-month period from June 29, 2013 to July 31, 2013. (R&R 30-31). In flouting Judge Zorgniotti's orders and failing to provide the information ordered by Judge Zorgniotti, Respondents have failed to prove the existence of any mitigating factors that should be considered by the Commission. Furthermore, the Commission will not

reward Respondents' failure to comply with Judge Zorgniotti's orders and waste of OATH's judicial resources. Respondents' failure to produce all of the required bank statements compels an adverse inference regarding their resources and ability to pay damages and penalties. *See Love v. New York Hous. Auth.*, 674 N.Y.S.2d 750, 751 (N.Y. App. Div. 1998).

E. Respondents Are Required To Undergo the Commission's Anti-Discrimination Training and Post the Commission's Notice for a Period Not Shorter than Three Years.

The Commission orders Respondents to attend a Commission-led training on the NYCHRL within sixty (60) days of the date of this Order and provide proof of attendance at the training in a form to be provided by the Bureau within ten (10) days of the date of attendance. In addition, Respondents are ordered to post a notice of rights, in a form to be provided by the Bureau, for a period of three years from the date of this Order, in a conspicuous location where it will be visible to both employees and members of the public.

IT IS HEREBY ORDERED, that no later than thirty (30) calendar days after service of this Order, Respondents pay Complainant-Intervenor $422,670.26, constituting $122,953.35 in back pay, $25,783.31 in interest, $73,933.60 in front pay, and $200,000 in emotional distress damages;

IT IS FURTHER ORDERED, that no later than thirty (30) calendar days after service of this Order, Respondents pay a fine of $250,000 to the general fund of the City of New York;

IT IS FURTHER ORDERED, that no later than sixty (60) calendar days after service of this Order, Respondent must attend a Commission-led training on the NYCHRL and provide proof of attendance at the training in a form to be provided by the Bureau within ten (10) days of the date of attendance;

IT IS FURTHER ORDERED, that no later than thirty (30) calendar days after service of this Order, Respondents post a notice of rights, in a form to be provided by the Bureau, in a conspicuous location where it will be visible to both employees and members of the public for a period of three (3) years after the date of this Order.

Failure to comply with any of the foregoing provisions in a timely manner shall constitute non-compliance with a Commission Order. In addition to any civil penalties that may be assessed against Respondents, Respondents shall pay a civil penalty of one hundred (100) dollars per day for every day the violation continues. N.Y.C. Admin. Code § 8-124.

Failure to abide by this Order may result in criminal penalties. *Id.* § 8-129.

Dated: New York, New York
October 28, 2015

SO ORDERED:

New York City Commission on Human Rights

Carmelyn P. Malalis
Commissioner/Chair