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CIVIL DIVISION
CASE PROCESSING

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
BERGEN COUNTY
DOCKET NO.: BER-L-_____

CRAIG SASHIHARA, Director of the New Jersey
Division on Civil Rights,

Plaintiff,

v.

ROCKAWAY HOTEL, LLC d/b/a HILTON
HOMewood SUITES BY HILTON,

Defendant.

CIVIL ACTION

COMPLAINT

Plaintiff Craig Sashihara, Director of the New Jersey Division on Civil Rights, with offices located at 31 Clinton Street, Third Floor, Newark, New Jersey 08625; 140 East Front Street, Sixth Floor, Trenton, New Jersey; 5 Executive Campus, Suite 107, Cherry Hill, New Jersey; and 1325 Boardwalk, First Floor, Atlantic City, New Jersey, by way of this Complaint against Defendant, Rockaway Hotel, LLC d/b/a Hilton Homewood Suites by Hilton, alleges as follows:

PRELIMINARY STATEMENT

1. At all times relevant to this Complaint, Rosa E. Lopez worked at Rockaway Hotel, LLC d/b/a Homewood Suites by Hilton (“Defendant”) as a driver of its hotel shuttle and a houseperson who cleaned the hotel common spaces, including its lobby. Lopez filed a complaint with the New Jersey Division on Civil Rights (“DCR”), alleging that she was paid differently than the male employees who performed the same duties. After she complained to the hotel’s management, she was terminated for purportedly “performance and negative attitude.”

2. Upon receiving a complaint alleging discriminatory pay and reprisal from Lopez, DCR conducted an investigation of the allegations, and found probable cause to believe that Lopez, and the only other female houseperson, were paid less than all male employees hired after them and that Defendant’s reasons for paying Lopez differently than her male comparators who performed both driving and housekeeping duties were pretext for gender discrimination.

3. Moreover, in accordance with Defendant’s own employee policy, Lopez attempted to discuss with Defendant’s management her view that she was being paid differently than her male coworkers.

4. Instead of addressing Lopez’s concerns, Defendant presented Lopez with a termination letter stating, in part, “even though you are competent the fact is that your behavior is interfering with the positive performance and full engagement of the staff.”

5. After a full and thorough investigation, DCR issued a finding of probable cause.

6. The parties participated in conciliation but the matter was not resolved.

7. DCR brings this action alleging that Defendant engaged in unlawful discrimination by paying employees who perform the same work differently based on their

gender and then retaliating against an employee who seeks information and/or complains about this pay differential.

JURISDICTION AND THE PARTIES

8. The Attorney General of New Jersey (“Attorney General”) is charged with the responsibility of enforcing the Law Against Discrimination (“LAD”), N.J.S.A. 10:5-1 et seq. The Attorney General is authorized to proceed against any person to compel compliance with any provisions of the LAD or to prevent violations or attempts to violate any such provisions and to file a complaint in Superior Court alleging unlawful discriminatory conduct. N.J.S.A. 10:5-13.

9. The Director of the Division on Civil Rights (“Director”) is charged with the responsibility of administering the LAD on behalf of the Attorney General. The New Jersey Division on Civil Rights (“DCR”) is charged, inter alia, with the responsibility of preventing and eliminating discrimination in employment, housing and access to public accommodations, as well as preventing the interference with rights protected under the LAD. N.J.S.A. 10:5-4, 10:5-6 & 10:5-12. This action is brought by the Director in his official capacity pursuant to his authority under N.J.S.A. 10:5-13.

10. Defendant Rockaway Hotel, LLC (“Defendant”) is a limited liability company formed under the laws of the State of New Jersey, having its principal place of business at 10 The Promenade in Edgewater, Bergen County, New Jersey and a business address of 7540 Windsor Drive; Suite 206 in Allentown, Pennsylvania.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

11. At all times relevant to this complaint, Defendant operates a hotel with approximately 122 guest suites spanning across 8 floors under the trade name of Homewood Suites by Hilton located at 10 The Promenade in Edgewater, New Jersey.

12. The hotel advertises its close proximity to New York City and offers a complimentary hotel shuttle service to the New Jersey Light Rail and New York Waterway Ferry.

13. Defendant stated that all employees are eligible but not guaranteed an annual pay increase on their one-year anniversary of their date of hire.

14. Rosa E. Lopez began working for Defendant on August 27, 2011 for \$8/hr as a houseperson. She received annual increases and her salary changed to \$8.20/hr on August 27, 2012, and \$8.36/hr on August 27, 2013.

15. A houseperson in the Housekeeping Department cleans and maintains the public areas and corridors of the hotel, such as the lobby, public dining area, and meeting rooms.

16. When Lopez was initially hired as a houseperson, she was the only female in that position. Defendant assigned her a starting salary of \$8/hr. Defendant uses a payroll code of 107003 for this position. The six people hired as a houseperson after her were all male and received wages between \$9-\$10/hr.

17. Lopez's son was hired as a houseperson on March 1, 2012 and received a starting salary of \$9/hr. At that time, Lopez had been working for Defendant for seven months and was still making her starting salary of \$8/hr. She would have to wait five months later until August 27, 2012 to receive her \$0.20 increase for her salary to change to \$8.20/hr.

18. The only other female houseperson began working on April 23, 2013 and was given a \$8.25/hr salary. The subsequent nine people hired as a houseperson after her were all male and all were paid at least \$9/hr.

19. On or about June 23, 2013, Defendant's General Manager for the Homewood Suites by Hilton facility, Sandy Padua, offered Lopez a position as a driver earning \$10/hr in the Transportation Department. Defendant uses a payroll code of 107012 for this position.

20. At that time, Lopez received \$8.20/hr as a houseperson and she welcomed the opportunity to increase her salary.

21. A driver in the Transportation Department operates the hotel's complimentary shuttle service. General Manager Padua explained to DCR that the shuttle operated 7 days a week from 7AM – 11PM and as a result, there were a total of 14 shifts for drivers. Drivers were paid a starting minimum wage of \$10/hr ("driver's rate") and like other employees, were eligible for an increase on the anniversary of their date of hire. When drivers were not driving guests on the hotel shuttle, they were expected to assist in the hotel where needed---and in particular, cleaning or servicing the hotel's common and public areas, which are functions typically performed by a houseperson.

22. After a period of time working with the other two drivers who were both male, Lopez realized that she was being paid differently despite her performing the same or similar duties as them. These two other male drivers were paid the driver's rate, at least \$10/hr, for all their shifts regardless of whether they were driving the shuttle or cleaning the common areas. In contrast, Lopez was paid the higher driver's rate for only four shifts when she was driving. For one shift when she was cleaning the common areas, Lopez was paid a lower houseperson rate. In June 2013, Defendant paid Lopez \$8.20/hr as a houseperson.

23. Lopez told her manager and Defendant's General Manager that it did not seem fair that the other male drivers received a single rate of pay (at least \$10/hr) regardless of the duties they were performing and that she received two rates of pay (\$10/hr and \$8.20/hr).

24. Despite these conversations, she continued to receive two rates of pay.

25. Sometime in September 2014, Lopez saw Defendant's owner, Minesh Patel, in the lobby of the hotel. During this interaction, Lopez informed Patel that she was being paid differently than the men who performed the same or similar duties as her. He told her he would look into the issue and get back to her.

26. On or about September 22, 2014, GM Padua called Lopez into her office. GM Padua presented Lopez with a letter terminating her employment.

27. Lopez stated that during this meeting; GM Padua mentioned their prior conversations about salary and referenced her displeasure with Lopez confronting Defendant's owner in the hotel's lobby.

28. On October 14, 2014, Lopez filed a verified complaint with DCR alleging that Defendant, her former employer, paid her less than her male co-workers because of her gender, and then fired her for engaging in protected activity in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. DCR initiated an investigation of the complaint. On March 31, 2016, Complainant amended her complaint to include an allegation under N.J.S.A. 10:5-12(r).

29. During DCR's investigation, Defendant stated that the two other drivers in the Transportation Department received the driver's rate of pay (at least \$10/hr) regardless of the duties they performed because they were hired as full-time drivers to operate the hotel shuttle for five shifts. In contrast, Defendant explained that Lopez was a non-full-time driver who operated

the hotel shuttle for only four shifts of driving, which were the full-time driver's days off. Defendant stated that Lopez had the option of only performing four shifts of driving but requested and received a fifth shift of employment to perform her previous duties of cleaning and servicing the common, public areas as a houseperson. Defendant also stated that it is not in its budget to pay Lopez the higher driver's rate for her fifth shift.

30. During the investigation, DCR requested and reviewed pay records for the Transportation Department. These records showed that when Lopez joined the Transportation Department, there were two other drivers, D.R. and H.G. Both were male.

31. D.R. was initially hired on September 30, 2010 as a houseperson in the Housekeeping Department at a rate of \$8.50/hr. On or about August 27, 2011, he was rehired as a driver to be paid \$10/hour. D.R. received subsequent annual increases to his wages. On August 27, 2012, he received a raise and his salary increased to \$10.20/hour. On August 27, 2013, he received an additional raise and his salary increased to \$10.51/hour.

32. D.R. told DCR that as a houseperson, he cleaned the bathrooms, took out garbage, vacuumed and shampooed carpets. He said that sometimes he worked in the lobby. D.R. explained that he left the country for two months and when he returned, Defendant gave him driving duties.

33. When asked by DCR if he knew Rosa Lopez, D.R. said that she was his friend and that she would tell him that she was paid less. D.R. said that Lopez never bothered him or annoyed him when she talked about pay. He did not complain to Defendant and he never heard from other coworkers that they were bothered by her asking about pay.

34. In reviewing Defendant's pay records, DCR found that D.R. received the single higher driving rate even when he worked outside of the Transportation Department. D.R. received the single higher driving rate (at least \$10/hr) no matter which department he worked in.

35. Although performing the same or similar duties as D.R., Lopez received a lower rate of pay than him.

36. H.G. was hired to work in the Housekeeping Department for \$10/hr on August 18, 2012. H.G. received subsequent annual increases to his wages. On August 18, 2013, he was given a raise and his salary increased to \$10.20/hr. After an additional raise on August 25, 2014, he was paid a salary of \$10.40/hr.

37. Defendant claimed that H.G. has worked solely as a full-time driver throughout his employment. However, in an interview with DCR, H.G. stated that he was hired as a driver/houseman and in his 2014 evaluation, Defendant listed H.G. as a "driver & houseman."

38. Although performing the same or similar duties as H.G., Lopez received a lower rate of pay than him.

39. During the investigation, Defendant's General Manager Padua stated that Lopez replaced a male driver named J.J.

40. J.J. started working for Defendant as a driver for \$10/hr on November 5, 2011. He received an annual increase and his salary was increased to \$10.05/hr in 2012.

41. In reviewing J.J.'s pay records, DCR learned that J.J. worked like Lopez as a houseperson and a driver. He also performed some duties in the Laundry Department.

42. The pay records for J.J. show that regardless of which department he was working in, he received the single higher driver's rate for all worked performed. In contrast, Lopez, who

replaced him, received two different rates—a lower rate when she was working as a houseperson and the higher \$10/hr rate only when she was working as a driver.

43. Defendant claims that D.R. and H.G. should be viewed differently than Lopez because they were hired as full-time drivers who should be paid the driver's rate for all duties performed regardless of which department they are needed in. However, Defendant's records show that even when D.R. and H.G. functioned more like part-time drivers, they were paid at least the single higher driving rate for all duties performed regardless of which other department they worked in. Such information calls into question Defendant's justification for paying the male drivers but not the female driver the one single higher rate of pay.

44. DCR asked Defendant about its rationale regarding Lopez's termination. GM Padua stated that Lopez was "disruptive" by continuously asking about her pay and asking other employees about their pay. GM Padua identified two individuals, H.G. and P.M., who told her that they were questioned by Lopez about pay and that this questioning made them feel uncomfortable.

45. DCR's investigation did not substantiate GM Padua's statement about Lopez's conduct. In an interview with DCR, H.G. denied ever complaining about Lopez's inquiry. DCR was unable to contact P.M. The contact information provided by Defendant was no longer valid.

46. GM Padua additionally stated that Lopez was terminated for not completing all her tasks. Padua stated that Lopez failed to throw out the garbage and did not sufficiently clean the lobby. GM Padua stated that Lopez was counseled.

47. Lopez denied ever receiving warnings or being counseled about her work performance. DCR's investigation also did not substantiate GM Padua's claim about Lopez's work performance and Lopez being counseled or warned.

48. Upon completion of DCR's investigation, the DCR Director issued a finding of probable cause as to Lopez's allegations. He thereafter intervened and was added as a complainant. Following the finding of probable cause, the parties participated in conciliation but were unable to resolve the matter.

COUNT ONE

DISCRIMINATION BASED ON GENDER
IN VIOLATION OF N.J.S.A. 10:5-12(a)

49. Plaintiff repeats the allegations of paragraphs 1 to 48 of the Complaint as if they had been set forth at length herein.

50. The LAD, at N.J.S.A. 10:5-12(a), prohibits, among other things, an employer from discriminating against employees on the basis of gender.

51. Defendant is an "employer" as that term is defined in the LAD.

52. Homewood Suites by Hilton subjected Lopez to differential treatment based on her gender, in violation of the LAD.

53. Lopez was initially hired as a "houseperson" or "attendant" who cleaned the hotel's common areas in the Housekeeping Department for \$8/hr when all male employees hired after her, including her son, received a salary of \$9-\$10/hr, for the same duties.

54. When Lopez transferred into a position driving the hotel's complimentary shuttle for guests in the Transportation Department, she was paid differently from the male employee she replaced and the two only other male employees performing the same or similar duties.

55. The male employees who drove the shuttle were guaranteed the single higher rate of pay for all shifts; whereas, Lopez, only received the higher drivers' rate for four shifts and for her fifth shift, her rate regressed to the lower houseperson rate she received.

56. Lopez raised the issue of her pay with Defendant's management; however, no action was taken to address the pay differential.

57. Other female employees were also paid less for performing the same duties as male employees.

58. The LAD violations described herein were committed by Defendant oppressively, willfully, and maliciously.

59. As a direct and proximate cause of Defendant's LAD violations, Lopez suffered damages, including but not limited to, humiliation, emotional distress, mental pain and anguish, lost wages, and continues to suffer losses in earning, job experience, retirement benefits, and other employee benefits that they would have received absent Defendant's unlawful conduct.

COUNT TWO

UNLAWFUL REPRISAL IN VIOLATION OF N.J.S.A. 10:5-12(d)

60. Plaintiff repeats the allegations of paragraphs 1 to 59 of the Complaint as if they had been set forth at length herein.

61. The LAD, at N.J.S.A. 10:5-12(d), prohibits any person from taking reprisals against any individual because he or she has objected to or made a complaint concerning conduct that is forbidden under the LAD.

62. Lopez made several complaints to her employer, including her supervisors and Defendant's owner, regarding its discriminatory pay policies and practices.

63. Defendant thereafter terminated Lopez's employment.

64. By terminating Lopez because of her protected activity, Defendant engaged in retaliatory conduct in violation of N.J.S.A. 10:5-12(d).

65. The LAD violations described herein were committed by Defendant oppressively, willfully, and maliciously.

66. As a direct and proximate result of Defendant's LAD violations, Lopez suffered damages, including but not limited to, lost wages, loss of opportunity for career advancement, humiliation, emotional distress, mental pain and anguish.

COUNT THREE

UNLAWFUL REPRISAL IN VIOLATION OF N.J.S.A. 10:5-12(r)

67. Plaintiff repeats the allegations of paragraphs 1 to 66 of the Complaint as if they had been set forth at length herein.

68. The LAD, at N.J.S.A. 10:5-12(r), prohibits an employer from taking reprisals against any employee for requesting from any other employee or former employee information regarding the job title, occupational category, and rate of compensation "if the purpose of the request for the information was to assist in investigating the possibility of the occurrence of, or in taking of legal action regarding, potential discriminatory treatment concerning pay, compensation, bonuses, other compensation, or benefits."

69. Defendant is an "employer" as that term is defined in the LAD.

70. Lopez spoke with her coworkers regarding their pay and job titles for purposes of investigating whether she was being paid differently based on her gender.

71. Defendant identified certain employees who it claimed reported Lopez's behavior; however, these named employees did not corroborate Defendant's position.

72. Moreover, Defendant's reasons for Lopez's termination were pretext for reprisal.

73. The LAD violations described herein were committed by Defendant oppressively, willfully, and maliciously.

74. As a direct and proximate result of Defendant's LAD violations, Lopez suffered damages, including but not limited to, lost wages, loss of opportunity for career advancement, humiliation, emotional distress, mental pain and anguish.

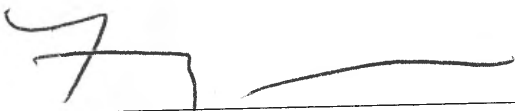
DEMAND FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant Rockaway Hotel, LLC d/b/a Homewood Suites by Hilton, and that the Court grant the following relief:

- (a) Ordering Defendant, its officers, agents and employees to cease and desist from engaging in discriminatory or retaliatory policies and practices against employees;
- (b) Ordering Defendant to modify its policies, practices, and procedures as necessary to ensure its programs, practices, and procedures are not discriminatory or retaliatory;
- (c) Ordering Defendant to submit to training and monitoring by DCR for a period of three years;
- (d) Ordering remedial relief, including but not limited to back pay, front pay, lost benefits and interests, sufficient to make whole Lopez, and to similarly situated employees of Homewood Suites by Hilton for losses suffered as a result of discrimination against them as alleged in this complaint; and
- (e) Ordering compensatory damages to Lopez, and similarly-situated employees of Homewood Suites by Hilton for emotional distress and mental pain and humiliation caused by Defendant's discriminatory or retaliatory conduct;
- (f) Awarding Plaintiff Director, Division on Civil Rights, punitive damages because of the intentional and willful nature of Defendant's conduct, pursuant to N.J.S.A. 10:5-13;

- (g) Assessing a civil monetary penalty for each violation of the LAD in accordance with N.J.S.A. 10:5-14.1a;
- (h) Awarding costs, including attorneys' fees, pursuant to N.J.S.A. 10:5-27; and
- (i) Awarding such additional relief as the interests of justice may require.

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff New Jersey Division on
Civil Rights

By: 
Fang-Yi D. Foo
Deputy Attorney General

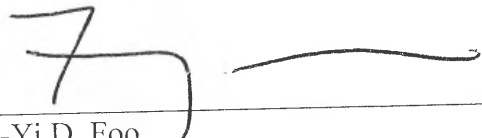
Dated: 2/10/17

RULE 4:5-1 CERTIFICATION

I certify, to the best of my information and belief, that the matter in controversy in this action is not the subject of any other action between the parties. I further certify that the matter in controversy in this action is not the subject of a pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party who should be joined in this action. There is presently pending an administrative complaint filed with the Division on Civil Rights against Rockaway Hotel, LLC d/b/a Homewood Suites by Hilton entitled Rosa E. Lopez and the Director of the New Jersey Division on Civil Rights v. Rockaway Hotel, LLC d/b/a Homewood Suites by Hilton, DCR Docket No. EB13WB-64951. Complainant Lopez has indicated that she will expeditiously withdraw their administrative complaint filed with the Division on Civil Rights upon the filing of the instant action.

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff New Jersey Division on
Civil Rights

By:



Farn-Yi D. Foo
Deputy Attorney General

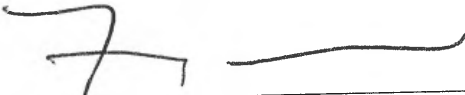
Dated:

2/10/17

RULE 4:5-1(b)(3) COMPLIANCE

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff New Jersey Division on
Civil Rights

By: 

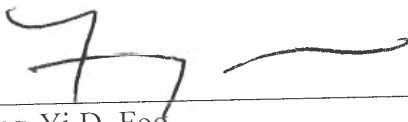
Fung-Yi D. Foo
Deputy Attorney General

Dated: 2/10/17

JURY DEMAND

Pursuant to N.J.S.A. 10:5-13, Plaintiffs demand a jury trial for all claims brought under the LAD and any other issues triable by a jury.

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff New Jersey Division on
Civil Rights

By: 

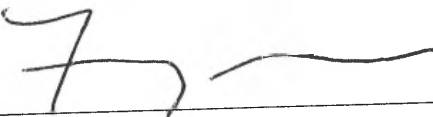
Farn-Yi D. Foo
Deputy Attorney General

Dated: 2/10/17

DESIGNATION OF TRIAL COUNSEL
PURSUANT TO R. 4:5-1(c)

Deputy Attorney General Farn-Yi D. Foo is hereby designated as trial counsel for this matter.

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff New Jersey Division on
Civil Rights

By: 

Farn-Yi D. Foo
Deputy Attorney General

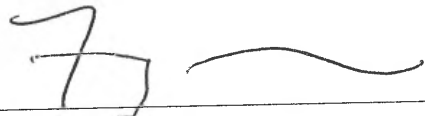
Dated: 2/18/17

DEMAND FOR DISCOVERY OF INSURANCE COVERAGE

Pursuant to R. 4:10-2(b), demand is made upon each Defendant that it disclose to Plaintiff's counsel whether or not there are any insurance agreements or policies under which any person or firm carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or indemnify or reimburse such Defendant for payments to satisfy any judgment rendered herein and provide Plaintiff's counsel with those insurance agreements or policies, including, but not limited to all and any declaration sheets. This demand shall include not only primary coverage, but also all and any excess, catastrophe and umbrella policies.

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff New Jersey Division on
Civil Rights

By: _____


Farn-Yi D. Foo
Deputy Attorney General

Dated: 2/10/17