

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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| HONG PEREZ, an individual, | : | |
| | : | INDEX No. _____ |
| Plaintiff, | : | |
| vs. | : | SUMMONS |
| SPOTIFY USA, INC. and BRIAN BERNER, | : | |
| an individual, | : | |
| | : | |
| Defendant. | : | |
| ----- | X | |


To the above-named DEFENDANTS: SPOTIFY USA, INC. and BRIAN BERNER:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff’s attorney within 20 days after the service of this summons, exclusive of day of service) or within 30 days after the service is completed if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is that DEFENDANTS transact business in this County and operate and/or reside in the County; and (b) the conduct and acts of DEFENDANTS complained of herein occurred in all or in substantial part in New York County.

Executed at Randolph, New Jersey
Dated: September 18, 2018

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By: 

Seth A. Rafkin

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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| HONG PEREZ, an individual, | : | INDEX No. _____ |
| Plaintiff, | : | |
| vs. | : | COMPLAINT FOR GENDER |
| | : | DISCRIMINATION, AIDING AND |
| SPOTIFY USA, INC. and BRIAN BERNER, | : | ABETTING GENDER |
| an individual, | : | DISCRIMINATION, EQUAL PAY |
| Defendants. | : | VIOLATION AND DEFAMATION |
| ----- | X | |

Plaintiff Hong Perez, by and through her attorneys, Rafkin Esq., PLLC, as and for her complaint against Defendant SPOTIFY USA, INC. and BRIAN BERNER, alleges as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action against Defendant SPOTIFY USA, INC. for gender discrimination pursuant to the New York State Human Rights Law (N.Y. Executive Law § 290 et seq.) (“NYSHRL”) and the New York City Human Rights Law (Administrative Code § 8-107 et seq.) (“NYCHRL”), against Defendant BERNER for aiding and abetting gender discrimination pursuant to the NYSHRL and NYCHRL, against Defendant SPOTIFY for equal pay violation of the New York Labor Law and against both Defendants for defamation.

PARTIES

2. Plaintiff is an experienced, successful sales leader in the digital advertising industry. She is a resident of New York City, State of New York.

3. Defendant SPOTIFY USA, INC. (“SPOTIFY”) is incorporated under the laws of the State of Delaware. Its principal executive offices and headquarters are located in Manhattan, State of New York. SPOTIFY is a leading provider of digitally streamed music and related services.

4. Defendant BRIAN BERNER is an “employer” within the meaning of New York Executive Law § 296 (1). BERNER supervises and controls employee conditions of employment and has the authority to hire and fire employees. BERNER exercised managerial and supervisory authority within the meaning of the New York City Human Rights Law section 8-107. Throughout Plaintiff’s employment and continuing to the time of filing, BERNER was Defendant SPOTIFY’s U.S. Head of Sales and resided in New York City and worked out of SPOTIFY’s Manhattan office.

5. During all relevant times, SPOTIFY was Plaintiff’s employer within the meaning of all applicable statutes.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this matter and venue is proper in this County because: (a) DEFENDANTS reside in and transact business in this County; and (b) the conduct and acts of DEFENDANTS complained of herein occurred in all or in substantial part in this County.

ADMINISTRATIVE PROCEDURES

7. Following commencement of this action, a copy of this Complaint will be served both on the New York City Commission on Human Rights and the Office of the Corporation Counsel of the City of New York, thereby satisfying the notice requirements of the New York City Administrative Code.

8. Any and all other prerequisites to the filing of this suit have been met.

FACTS COMMON TO ALL COUNTS

9. Plaintiff, an Asian-American woman, is a senior sales executive with 17 years of experience in digital advertising and media. She was hired by Defendant SPOTIFY as its Head of Sales, East in July of 2015. For three years, she received extremely positive reviews and performance feedback. Her region was one of the top performing regions for Spotify. Plaintiff was identified by SPOTIFY as a “Hero” in a video presented to its Global Sales Force because she

had come to the aid of co-worker who was in the midst of suffering a stroke and was regarded as having saved her life.

SPOTIFY TOLERATES AND PERPETUATES BIAS AGAINST WOMEN

10. During her employment, Plaintiff became increasingly concerned about Spotify's culture with respect to its treatment of women. The tone was set by those in key leadership positions. Chief among them, Defendant BRIAN BERNER, who later engineered the termination of Plaintiff's employment on baseless grounds.

11. For example, in both 2016 and 2017, SPOTIFY sponsored attendance of sales managers at the Sundance Film Festival for client networking purposes. BERNER was in charge of selecting the key sales managers to attend. In both years, BERNER selected a men-only group to attend. This, despite the fact, there were several women in equally (if not more) senior sales positions than the men BERNER selected to attend. Further, despite the fact that Plaintiff's sales region was among the top performing regions for SPOTIFY and the fact that key clients from her region (East) were attending the festival, neither she nor any other female from any of the sales regions was permitted to attend. These trips were referred to internally by employees as BERNER's "boys' trips." SPOTIFY employees spoke of drug use by the "boys" at each trip. In addition, one of the male SPOTIFY employees became involved in a physical altercation on one of the trips. BERNER was aware of all of this, which, unsurprisingly, violated SPOTIFY's Code of Conduct. Yet, in stark contrast to how he would later act concerning a purported Code of Conduct violation by a woman, BERNER took no action to investigate or discipline these men.

12. BERNER also provided Plaintiff's male counter-part, with a higher salary increase and larger equity award than Plaintiff and another woman in the same position. Plaintiff was at least as experienced (if not considerably more so) than the male counter-part and her male counter-part had performance issues in his region.

13. BERNER is not the only executive to display an attitude dismissive of women in the workplace. BERNER's boss, SPOTIFY's Global Head of Sales also awarded higher compensation and equity to men as compared to women. Indeed, one such male employee was promoted *after* he had been the subject of a sexual harassment complaint and received multiple warnings from the company. This same executive accompanied other (male only) SPOTIFY managers to Atlantic City, purportedly as part of "business," where they visited strip clubs. The Chief Financial Officer told a large audience of SPOTIFY employees point blank at a company townhall Q&A session that he does not care about diversity at the company.

14. SPOTIFY's Human Resources Department proved to be no better. The Head of Human Resources confided to Plaintiff that HR had gone easy on a male employee found to have engaged in harassing conduct because the Head of Human Resources had "a soft spot for him." Plaintiff immediately responded by telling the Head of Human Resources that he of all people should not engage in such a double standard. It fell on deaf ears. This is the same Head of Human Resources who thought it appropriate to tell an all-hands meeting that his favorite curse word is "c#nt."

15. This sort of behavior proved to be a harbinger of things to come. As detailed below, in 2018, BERNER set about to make Plaintiff the proverbial scapegoat to protect himself when a contract process under his leadership came under scrutiny due to his procurement of concert tickets from a party to the contract during contract negotiations.

BERNER AND SPOTIFY SCAPEGOAT PLAINTIFF TO PROTECT BERNER

16. In January 2018, BERNER started working on a potential deal. As part of the deal, BERNER sought and accepted tickets for concerts at Madison Square Garden from one of the would-be parties to the agreement. Plaintiff had no involvement in BERNER seeking or obtaining the tickets. Indeed, Plaintiff played no active role in any aspect of BERNER's part of this deal until early April of 2018 – some three months after BERNER had sought the tickets – and then

only because, in BERNER's own words, he and the other person driving the deal were "OOO [out of office] at the moment."

17. It is now clear that by early March of 2018, BERNER was in hot water over this deal not only because of the tickets issue but also because of issues concerning discounting arrangements and timing of insertion orders. BERNER admitted in an email to his boss on March 6, 2018 that he "dropped the ball in not telling [him] to create the SF opportunity and follow our trading process. Since then we've spoke (sic) to multiple teams to get approval." And BERNER learned the SPOTIFY's Chief Financial Officer had expressed substantial concerns regarding the deal.

18. BERNER began scrambling to lay blame at Plaintiff's feet. He refused to attend meetings and conference calls regarding the deal with SPOTIFY's legal department, with the head of finance and accounting, with the Global Head of Sales and with the technology accounting group. It became clear that a subject of focus was BERNER's approval of insertion orders back in January of 2018. It also became clear that BERNER had kept his boss, the Global Head of Sales, in the dark with respect to the discounting arrangement BERNER put in place for the deal.

19. In April of 2018, as the heat was turning up on him, BERNER directed Plaintiff to draft a summary of the deal's status to be circulated to a group of senior executives, even though he had been leading the deal. He would not do it himself. At BERNER's direction, Plaintiff sent a draft of the summary to BERNER and another executive. The other executive then edited the summary to include a sentence stating that the discounting negotiated by BERNER "wasn't correctly factored into our equation at the time." BERNER then directed Plaintiff to send the revised summary. Similarly, BERNER directed Plaintiff to set up a meeting to ensure that his insertion orders put in place back in January were properly reflected in SPOTIFY's CRM/Order management system.

20. By May of 2018, an investigation by Spotify's Internal Audit team into the BERNER tickets and other elements of the deal had commenced. It became obvious that BERNER had been telling Internal Audit that Plaintiff was to blame for his mess. Case in point: Internal Audit fixated on the sentence quoted in the previous paragraph as indicia of Plaintiff being "at fault." However, neither BERNER, nor the executive who authored the statement, advised Internal Audit that, in fact, Plaintiff had not written that statement or had any involvement in securing the tickets or the discounting in the first place.

21. In fact, before completing an interview with Plaintiff, Internal Audit had already held an investigation "wrap up" meeting with BERNER, among others. Similarly, BERNER met with SPOTIFY's Chief Financial Officer the week before and blamed Plaintiff. It became painfully obvious that BERNER had focused Internal Audit on Plaintiff and was recommending that she be fired for his mistakes. When Internal Audit met with Plaintiff, the Director of Internal Controls was not interested in hearing anything from Plaintiff and, instead, repeatedly telling her in an intimidating fashion to be "very careful how you answer my questions." Sure enough, less than 48 hours later, BERNER met with Plaintiff and fired her ostensibly for violating the Code of Conduct. Neither BERNER nor Internal Audit ever told Plaintiff that she was suspected of having violated the Code of Conduct. Further, as noted above, BERNER was well aware of male employees violating the Code of Conduct, yet did nothing.

22. Remarkably, it turns out that other senior male executives had approved the BERNER tickets and other elements of the deal BERNER negotiated. Among them, SPOTIFY's in-house legal counsel and SPOTIFY's executive for investor relations and financial planning. Yet, they were not investigated and they were not fired. Only Plaintiff – a woman – was selected as the executive at fault for BERNER's mess.

BERNER AND SPOTIFY DEFAME PLAINTIFF

23. Adding insult to injury, BERNER, with SPOTIFY's approval, then defamed Plaintiff. Shortly after he fired Plaintiff, BERNER then sent an email to virtually everyone on the sales team, hundreds of employees and executives, that Plaintiff was fired because she "acted in ways that are against our code of conduct and guidelines for internal compliance." That statement left little to the imagination and, more importantly, was false.

24. BERNER's disparate treatment of women was evident even in this final blow. When BERNER sent an email following the termination of a male sales executive for asking clients to supply drugs and for complaints about him sexually harassing women, BERNER limited his email to a small group and admonished the recipients to keep it confidential and not to forward the message.

**COUNT I
GENDER DISCRIMINATION PURSUANT TO
THE NEW YORK STATE HUMAN RIGHTS LAW
AND NEW YORK CITY HUMAN RIGHTS LAW
[AGAINST SPOTIFY]**

25. Plaintiff hereby incorporates by reference paragraphs 1 through 24 as though fully set forth herein.

26. Plaintiff is a member of a protected class (female).

27. Plaintiff was qualified for her job and performing it satisfactorily. Indeed, she repeatedly received "Exceeds Expectations" reviews.

28. Plaintiff suffered an adverse employment action, i.e., being fired.

29. Plaintiff's gender was a motivating factor in Defendant SPOTIFY's adverse actions against Plaintiff.

30. Defendants' conduct was engaged in with malice or reckless disregard for Plaintiff's rights. Accordingly, punitive damages are warranted.

31. As a result of Defendant SPOTIFY's conduct, Plaintiff has suffered and is entitled to recover damages, including the value of lost back wages and benefits, including equity incentives, lost future earnings and benefits, including equity incentives, compensatory damages for emotional distress, punitive damages, and attorneys' fees and costs.

COUNT II
AIDING AND ABETTING GENDER DISCRIMINATION
IN VIOLATION OF THE NEW YORK HUMAN RIGHTS LAW N.Y. EXEC. LAW § 296(6)
AND NEW YORK CITY HUMAN RIGHTS LAW
[AGAINST BERNER]

32. Plaintiff hereby incorporates by reference paragraphs 1 through 31 as though fully set forth herein.

33. BERNER was Plaintiff's employer within the meaning of the New York State Human Rights Law and New York City Human Rights Law. Among other things, BERNER had the authority to hire and fire employees. BERNER aided, abetted, incited, coerced and/or compelled gender discrimination against Plaintiff as more fully set forth above.

34. BERNER's conduct was engaged in with malice or reckless disregard for Plaintiff's rights. Accordingly, punitive damages are warranted

35. As a result of Defendant BERNER's conduct, Plaintiff has suffered and is entitled to recover damages, including the value of lost back wages and benefits, including equity incentives, lost future earnings and benefits, including equity incentives, compensatory damages for emotional distress, punitive damages, and attorneys' fees and costs.

COUNT III
EQUAL PAY VIOLATION
NEW YORK LABOR LAW SECTIONS 194, 198(1-A)
[AGAINST SPOTIFY]

36. Plaintiff hereby incorporates by reference paragraphs 1 through 35 as though fully set forth herein.

37. Plaintiff is a female.

38. Plaintiff performed equal work on a job requiring equal skill, effort, and responsibility as certain men employed by SPOTIFY, and performed such job under similar working conditions.

39. SPOTIFY treated Plaintiff's and other women's compensation differently than it treated the compensation of men, including, but not limited to, Plaintiff's incentive compensation and equity incentives.

40. SPOTIFY did not treat Plaintiff's compensation differently based (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex.

41. Plaintiff suffered damages as a result of SPOTIFY's violation including the loss of compensation and equity.

42. SPOTIFY's violation of New York's Equal Pay Act was willful.

43. By reason of SPOTIFY's conduct as alleged herein, Plaintiff is entitled to all remedies available under NYLL section 198(1-a), including but not limited to lost wages and benefits, including the value of equity incentives, as well as interest, attorneys' fees, and liquidated damages.

**COUNT IV
DEFAMATION
[AGAINST SPOTIFY AND BERNER]**

44. Plaintiff hereby incorporates by reference the allegations of paragraphs 1-43 above.

45. On or about May 17, 2018, BERNER, with SPOTIFY's knowledge and approval, then sent an email to virtually everyone on the SPOTIFY sales team, hundreds of employees and executives, that Plaintiff was fired because she "acted in ways that are against our code of conduct and guidelines for internal compliance." That statement was false.

46. Plaintiff is entitled to recover compensatory damages, nominal damages and damages for emotional distress resulting from Defendants' defamation.

47. Defendants' conduct was engaged in with malice or reckless disregard for Plaintiff's rights. Accordingly, punitive damages are warranted.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff hereby prays for judgment against Defendants on all causes of action and for recovery as follows:

- a. Economic damages for past lost wages and benefits, including the value of equity incentives compensation, and future lost wages and benefits, including the value of equity incentives, in an amount to be proven at trial;
- b. Liquidated damages pursuant to statute;
- c. Damages for emotional distress and humiliation in an amount to be proven at trial;
- d. Punitive damages in an amount to be proven at trial;
- e. Prejudgment interest;
- f. Attorneys' fees and costs pursuant to statute; and
- g. For such other relief as the Court may deem just and proper.


JURY DEMAND

Plaintiff demands a trial by jury of all issues triable by jury in this action.

Executed at New York, New York.

Dated: September 18, 2018

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By: 

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