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October 6, 2004

Clerk of the Court
United States District Court
Eastern District of New York-Long Island Division
100 Federal Plaza
Central Islip, New York 11722-4438

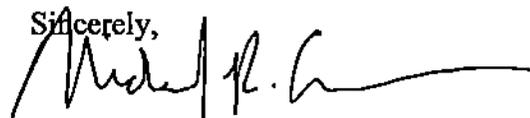
Re: EEOC et al. v. Boston Market Corporation, No. 03-CV-4227 (LDW) (WDW)

Dear Sir/Ms.:

Enclosed please find an original copy of Plaintiff-Intervenor's Complaint & Jury Trial Demand ("Plaintiff-Intervenor's Complaint") in the above-referenced action, which has also been filed via the Electronic Case Filing system. Please note the filing:

1. The Plaintiff-Intervenor's Complaint has been dated February 13, 2004, the date that the Plaintiff-Intervenor was permitted to intervene in this matter by the Hon. William D. Wall, United States Magistrate Judge.
2. Plaintiff-Intervenor's Complaint does not have any exhibits annexed thereto. The exhibits that were originally submitted with the motion to intervene and proposed Plaintiff-Intervenor's Complaint in November 2003 are subject to a court-ordered seal and to a Protective Order and may not be disclosed to any party for any reason without an order by United States Magistrate Wall. These exhibits should not be filed within the regular court file and must be maintained in a secure status.

Kindly contact the undersigned if you have any questions.

Sincerely,


Michael R. Curran
Attorney for the Guardian of the Person & Property of
Plaintiff-Intervenor Christine Gagliardi

cc: Hon. William D. Wall, USMJ
Hon. Leonard D. Wexler, USDJ
Ms. Patricia Howlett, Esq. (Guardian)

Ms. Judy Keenan, Esq. (EEOC)
Ms. Jean Schmidt, Esq. (Defendant)

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND DIVISION**

-----		X
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	:	Civil Action
	:	No. 03-CV-4227 (LDW) (WDW)
	:	
Plaintiff,	:	
	:	
and	:	
	:	
CHRISTINE GAGLIARDI, by the Guardian of her Person and Property, PATRICIA HOWLETT, ESQ.,	:	PLAINTIFF-INTERVENOR'S COMPLAINT & <u>JURY TRIAL DEMAND</u>
	:	
Plaintiff-Intervenor,	:	
	:	
-against-	:	
	:	
BOSTON MARKET CORPORATION,	:	
	:	
Defendant.	:	
-----		X

Plaintiff-Intervenor CHRISTINE GAGLIARDI (hereinafter "GAGLIARDI" and "Plaintiff-Intervenor"), residing at 61 Woodview Lane, Centerreach, New York, for her Complaint against Defendant BOSTON MARKET CORPORATION (hereinafter "BOSTON MARKET" or "Defendant"), by the Guardian of her Person and Property, PATRICIA HOWLETTT, ESQ. (hereinafter the "Guardian"), and by the attorney to the Guardian, Michael R. Curran, Attorney-at-Law, states and alleges as follows:

NATURE OF THE ACTION

1. Plaintiff-Intervenor has brought this action against Defendant to redress discrimination by Defendant who engaged in unlawful discriminatory practices relating to employment pertaining to disability and gender, and who engaged in retaliatory acts and constructive discharge of Plaintiff-

Intervenor for attempting to exercise her rights pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq. ("ADA"), Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e et seq. ("Title VII"), the Civil Rights Act of 1991, 42 U.S.C. § 1981a ("1991 CRA"), the New York State Human Rights Law, Art. 15 of the New York State Executive Law, §§ 290 et seq. ("NYSHRL"), prohibiting employment discrimination, and to provide relief to Plaintiff-Intervenor, who has been mentally, emotionally and physically abused by employees and agents of Defendant, on account of her disabilities (Asperger's Syndrome, Emotional Handicap, Learning Disabilities and Attention Deficit Disorder), her psycho-social impairment and her gender.

2. Plaintiff-Intervenor GAGLIARDI formerly worked for Defendant BOSTON MARKET for about two years during which time she was subjected to unwelcome touching and physical molestation in response to and in connection with her disabilities and gender by Defendant's employee Santos Padilla ("Defendant's employee Padilla") and other employees of BOSTON MARKET, through constant insulting, taunting and abusive remarks directed to her disabilities, sexual harassment, gender harassment, threats and retaliation by Defendant's employee Padilla and other employees of BOSTON MARKET and by Supervisor and Defendant's employee Kimberley Lopez ("Defendant's employee Lopez" and "Defendant's supervisor Lopez") and by other supervisory or managerial employees of Defendant BOSTON MARKET, the same or similar harassment for complaining about this treatment, a hostile work environment as a result of the foregoing, and, toward the end of her employment, sexual assault by Defendant's employee Padilla, and possibly other employees of BOSTON MARKET, of whom on multiple occasions Plaintiff-Intervenor warned management as to the dangerous and violent propensity and intention by Defendant's employee Padilla and others to inflict injury upon her. Following the assault, Plaintiff-Intervenor attempted to complain to and seek aid from company officials, but no proper contact information had

been posted or was available, and no named agent was denominated as responsible in or at the workplace for complaints pertaining to discrimination on the basis of disabilities and gender and discrimination in general. When Plaintiff-Intervenor attempted to complain about the assault to the immediate supervisory staff of Defendant BOSTON MARKET, Plaintiff-Intervenor's supervisors, in particular Defendant's employee Lopez, harassed and retaliated against her complaints by giving her unfavorable work assignments, reducing her hours and subjecting her to further verbal and mental abuse, which ultimately resulted in an intolerable working atmosphere and Plaintiff-Intervenor's termination, and which aided and abetted the acts of discrimination by Defendant BOSTON MARKET. (It is believed Defendant's employee Lopez was romantically involved with Defendant's employee Padilla and that Defendant's employee Lopez furthered Padilla's sexual harassment against Plaintiff-Intervenor GAGLIARDI by aiding and abetting the harassment and by personally engaging in retaliation against Plaintiff-Intervenor GAGLIARDI.)

3. As a result of the foregoing, Plaintiff-Intervenor suffered, inter alia, a loss of earnings, severe emotional distress, severe depression, the loss of enjoyment of life and emotional and mental scarring pertaining to her mental and emotional disabilities and psycho-social impairment.

JURISDICTION AND VENUE

4. Jurisdiction over this controversy is invoked and the action instituted pursuant provisions of:

(a) the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., in particular § 12117(a), incorporating by reference applicable sections of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-5(f) et seq. and by invocation of 28 U.S.C. §§ 1331, 1343(a)(3),(4) and 2201;

(b) Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e et seq., in particular § 706(f)(3) of Title VII, 42 U.S.C. § 2000e-5(f)(3), and by invocation of 28 U.S.C. §§ 1331, 1343(a)(3),(4) and 2201;

(c) the Civil Rights Act of 1991, 42 U.S.C. § 1981a, and by invocation of 28 U.S.C. §§ 1331, 1343(a)(3)(4) and 2201;

(d) pursuant to Meritor Savings Bank v. Vinson, 477 U.S. 57, 106 S.Ct. 2399 (1986), and progeny, interpreting 42 U.S.C § 2000e-2(a), as to claims concerning sexual harassment; and

(e) 28 U.S.C. § 1367(a), in that the federal and state claims herein arise from a common nucleus of operative fact such that they are so related one to the other that they form part of the same case or controversy under Article III of the United States Constitution. In particular, this Court has pendent jurisdiction over state law claims by Plaintiff pursuant to Article 15 of the New York State Executive Law §§ 290 et seq.

5. This action properly lies within the United States District for the Eastern District of New York, Long Island Division, pursuant to 28 U.S.C. 1391(b), because the claim arose in this judicial district, and pursuant to § 706(f)(3) of Title VII, 42 U.S.C. § 2000e-5(f)(3), because the unlawful employment practices were committed within the territorial jurisdiction of this judicial district.

PARTIES

6. Plaintiff EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (hereinafter the "EEOC") is the duly authorized agency of the government of the United States of America charged with the administration, interpretation and enforcement of Title I of the ADA and Title VII of the Civil Rights Act of 1964, as amended, and is expressly authorized to bring this action by Section 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference Sections 706(f)(1),(3) of Title VII, 42 U.S.C. §§ 2000e-5(f)(1),(3) and -6; by Sections 706(f)(1),(3) of Title VII, 42 U.S.C. §§ 2000e-5(f)(1),(3); and by Section 102 of the 1991 CRA, 42 U.S.C. § 1981a.

7. At all relevant times herein, Plaintiff-Intervenor GAGLIARDI was a natural person, a citizen of the United States and a resident of Suffolk County in New York State. GAGLIARDI was

employed as a regular part-time employee by Defendant BOSTON MARKET for approximately two years from 1999 until 2001. Plaintiff-Intervenor GAGLIARDI has mental and emotional disorders and a psycho-social impairment. Plaintiff-Intervenor is a person entitled to protection pursuant to the provisions of the ADA, 42 U.S.C. § 12111(8) and, pursuant to 42 U.S.C. § 12131(2) as a “qualified person with a disability,” or alternatively and conjunctively, as a woman who has suffered discrimination in employment and sexual harassment pursuant to Title VII and relevant provisions of the 1991 CRA. Plaintiff-Intervenor GAGLIARDI is authorized to intervene in this action pursuant Fed. R. Civ. P. 24 and 42 U.S.C. § 2000e-5(f)(1).

8. Upon information and belief, at all relevant times herein, Defendant BOSTON MARKET was a foreign corporation organized under the laws of the State of Delaware, whose corporate address is 14103 Denver West Parkway, Denver, Colorado 80401, and doing business under and by virtue of the laws of the State of New York, maintaining as one of its principal places of business at all times relevant a location at 605 Portion Road, Ronkonkoma, New York 11779, continuously having at least 15 employees, and also having 500 or more employees at the time of the acts complained of.

9. Upon information and belief, at all relevant times herein, Defendant's employee Lopez was a natural person, a citizen or resident alien of the United States and a resident of Suffolk County in New York State. At all times relevant herein, Defendant's employee Lopez was a supervisory or management employee of Defendant BOSTON MARKET.

10. Upon information and belief, at all relevant times herein, Defendant's employee Padilla was a natural person, an undocumented alien residing within the territorial borders of the United States and a citizen of the foreign nation of Honduras and a resident of Suffolk County in New York State. At all times relevant herein, Defendant's employee Padilla was an employee of Defendant BOSTON

MARKET.

PROCEDURAL ASPECTS

11. Plaintiff-Intervenor GAGLIARDI repeats and realleges each and every allegation contained in Paragraphs "1" through "10" of this Complaint as if set forth fully herein.

12. Plaintiff-Intervenor GAGLIARDI commenced this action by filing a charge of discrimination against BOSTON MARKET with the EEOC, alleging acts of disability-based and gender-based discrimination and sexual harassment more particularly described below.

13. The EEOC initiated a vigorous and sympathetic investigation into the charges. On July 23, 2002, Hon. Spencer H. Lewis, Jr., District Director, New York District Office of the EEOC, issued a Determination that there was "reason to believe that violations have occurred" and that Plaintiff-Intervenor was a "victim of unwanted conduct of a sexual nature," "victim of discrimination on account of her disability," and a "victim of retaliation," by BOSTON MARKET, its agents, and employees, and that as a result of discriminatory conduct by Defendant, Plaintiff-Intervenor was subjected to intolerable working conditions and "was constructively discharged."

14. Informal attempts at conference, conciliation and persuasion by the EEOC with Defendant BOSTON MARKET during the Summer and Fall-Winter of 2002 were rejected by said Defendant. On or about August 26, 2003, the EEOC filed the instant enforcement action.

15. Plaintiff-Intervenor sought to intervene in this action pursuant to 42 U.S.C. § 12117(a), which incorporates by reference 42 U.S.C. § 2000e-5, and pursuant to Fed. R. Civ. P. 24(a) & 24(b). Plaintiff-Intervenor GAGLIARDI sought to intervene as she might be bound by the judgment pursuant to Fed. R. Civ. P. 24(a)(2) and her claim had questions of law and fact in common with the main action pursuant to Fed. R. Civ. P. 24(b)(2). Intervention would result in the claims of Plaintiff-Intervenor GAGLIARDI and Plaintiff EEOC against Defendant being adjudicated in one forum at

one time for purposes of judicial economy and consistency of result.

16. On or about February 13, 2004, this Honorable Court issued an Order permitting Ms. GAGLIARDI to intervene in this action.

17. Plaintiff seeks injunctive and declaratory relief, money damages and other appropriate legal and equitable relief under the ADA and Title VII, pursuant to § 706(g) of Title VII, 42 U.S.C. §2000e-5(g), and 42 U.S.C. § 12117. Compensatory and punitive damages are sought pursuant to 42 U.S.C. § 1981a.

18. Costs and attorney's fees may be awarded pursuant to 29 U.S.C. § 1132(g); 42 U.S.C. § 2000e-5(k) and Rule 54 of the Federal Rules of Civil Procedure.

STATEMENT OF FACTS

19. Plaintiff-Intervenor GAGLIARDI repeats and realleges each and every allegation in paragraphs "1" through "18" of this complaint with the same force and effect as if more fully set forth herein.

20. Plaintiff-Intervenor GAGLIARDI was diagnosed shortly after birth in June of 1975 with a disabling condition that affects her short- and long-term memory and which makes it difficult for her to interact with other individuals, particularly adults. She has received a number of psychological evaluations for her disabling condition which is apparently genetic or the result of a prenatal condition which has been difficult to label with precision as it has been recognized as having characteristics in common with a number of psychological disorders. Plaintiff-Intervenor has been diagnosed with Asperger's Syndrome (or Disorder under the DSM IV), Cognitive Disorder, and other neuro-psychological disorders and psycho-social impairments.

21. The nature of Plaintiff-Intervenor's condition makes it difficult for her to function in jobs other than those of a very basic or routine nature. In addition, the condition is an obstacle or

impediment to her ability to socialize with other persons in an adult or mature manner. As a result, she is most comfortable interacting with pets and animals and has long held a volunteer position where she can care for and interact with animals. Up until the end of 2002, Plaintiff-Intervenor, who is twenty-eight (28) years of age, had lived all of her life with her parents. Her father was employed as a New York State Court Officer and her mother as a self-employed private investigator.

22. Plaintiff-Intervenor was enrolled for much of her life in special education classes. Following her graduation from high school, she was aided by the Eastern Suffolk County Board of Cooperative Educational Services ("BOCES") program because of her special needs via a job development, placement, training and evaluative program. The BOCES program did not prove effective in placing Plaintiff-Intervenor; thus, Plaintiff-Intervenor's mother found a position for Ms. GAGLIARDI with BOSTON MARKET in or about the Spring-Summer of 1999 at the Defendant's store located at 605 Portion Road, Ronkonkoma, New York (the "Ronkonkoma store"). (The BOCES personnel continued to observe Plaintiff-Intervenor during her employment at the Ronkonkoma store.)

23. Plaintiff-Intervenor had some difficulties learning the functions of a cashier because of her learning disorders, particularly her Mathematics Disorder and difficulty with arithmetic, but was generally satisfied performing her duties as a dining room porter and maintenance person with Defendant BOSTON MARKET.

24. In or about December 2000, or possibly a month or so earlier, BOSTON MARKET hired Defendant's employee Padilla, as he identified himself, who was in actuality an undocumented alien national from Honduras whose real name was "Naum Galileo Matute-Caballero" (as later ascertained during a police investigation and criminal prosecution flowing from events herein).

25. Almost from the beginning of Defendant's employee Padilla's employment with BOSTON MARKET, he began to harass and make comments to Plaintiff-Intervenor of a sexual nature. One of

the manifestations of Plaintiff-Intervenor's disorders is that she cannot bear to be touched, as being touched places her in a state of extreme fear and anxiety. Realizing this, Defendant's employee Padilla often made lewd and sexually suggestive comments to Plaintiff-Intervenor and, on at least one occasion, roughly touched her arm, leaving marks or bruises. At least two BOSTON MARKET employees, Albert Corso ("Corso") and Ann Pichardo ("Pichardo"), witnessed the behavior of Defendant's employee Padilla in his harassment of Plaintiff-Intervenor and later made sworn statements in connection with a police investigation. At least two other male employees, who were encouraged by Defendant's employee Padilla, joined in harassment of Plaintiff-Intervenor.

26. Plaintiff-Intervenor GAGLIARDI began to dread going to work and went to work in a state of fear and anxiety. When she reported Defendant's employee Padilla's behavior to manager Donna Robinson ("Robinson") and Defendant's supervisors Lopez, Jennifer Palmer ("Palmer") and Kenneth McLeod ("McLeod"), they did nothing to intervene despite the fact that BOSTON MARKET apparently had personnel policies concerning sexual harassment that were not followed in this instance. In fact, one of the supervisors, Defendant's employee Lopez, in violation of BOSTON MARKET employee policy, publicly boasted of sexual liaisons with Defendant's employee Padilla, admitted he lived with her, and is alleged to have shown pornographic pictures of Defendant's employee Padilla to Plaintiff-Intervenor and other staff members.¹ Defendant's employee Lopez was openly hostile about Plaintiff-Intervenor's complaints concerning Defendant's employee Padilla.

27. Due to the fact that nothing was done to restrain Defendant's employee Padilla despite Plaintiff-Intervenor's complaints to supervisory and managerial staff of Defendant BOSTON MARKET, Defendant's employee Padilla continued his physical and verbal sexual harassment of

¹It is alleged that Defendant's employee Padilla was married with a wife and children in Honduras.

Plaintiff-Intervenor.

28. On or about March 18, 2001, Defendant's employee Padilla, while at the Ronkonkoma store of BOSTON MARKET,² grabbed Plaintiff-Intervenor GAGLIARDI, bruising her arm, threw her against the wall and began to roughly grind his pelvis into her. This assault and other acts of harassment were witnessed by Corso who usually attempted to take Plaintiff-Intervenor's part in order to protect and defend her from harassment. (Corso was an ordinary hourly employee.) Following the assault, Plaintiff's employee Padilla continued to make remarks of a sexual nature to Plaintiff-Intervenor, engaged in unwanted touching and may have joined with others in another harassing incident involving physical abuse.

29. When Plaintiff-Intervenor reported the assault to Robinson, the store manager, she did nothing, giving the reason that she did not want to get involved as she was transferring the next day to another BOSTON MARKET store, upon information and belief, located in Selden, New York.

30. Later, when regional manager, John Fronhoffer, heard about the assault, he stated that Plaintiff-Intervenor "shouldn't have made such a big deal about it," or words to that effect.

31. After living with severe emotional distress following the assault at work, Plaintiff-Intervenor began to suffer from severe emotional distress, anxiety and an intense fear of her workplace.

32. Finally, Plaintiff-Intervenor informed her parents, with whom she was living at the time, about what had happened to her at work, after GAGLIARDI's parents found a telephone number lying on the kitchen table on or about April 29, 2001, and asked Plaintiff-Intervenor what the number signified. The telephone number allegedly recited the number for BOSTON MARKET Human

²Plaintiff-Intervenor is reasonably certain that this is the most likely date that the incident happened, but is impeded as to her memory to some degree by her disabilities as to the exact date. Part of the confusion lies in the fact that Defendant's employee Padilla was constantly present in the BOSTON MARKET Ronkonkoma store whether he was working or not in order to be with his friends in the store and his girlfriend, Defendant's employee Lopez.

Resources which Plaintiff-Intervenor had copied from a posting on a wall at the Ronkonkoma store.

33. When Plaintiff-Intervenor's parents attempted to call the telephone number, there was no answer over a prolonged period of time and long afterward her parents were informed that the number had been changed but had never been revised on the posting.

34. Plaintiff-Intervenor's parents immediately took Plaintiff GAGLIARDI to the police where she made a complaint on April 30, 2001. The police launched an investigation and Defendant's employee Padilla was charged with a number of crimes, including stalking, to which Defendant's employee Padilla pleaded guilty under a plea bargain arrangement. An order of protection was entered against Defendant's employee Padilla in favor of Plaintiff-Intervenor by the court.

35. Defendant's employee Padilla was later found to have violated the order of protection and failed to comply with a court-ordered appearance because he had been arrested at Defendant's employee Lopez' house on an unrelated charge for driving while intoxicated, having hit a pole in the shopping center containing the BOSTON MARKET Ronkonkoma store, and having fled the scene of the accident.

36. Defendant's employee Padilla was fired by Defendant BOSTON MARKET after his arrest and conviction for stalking Plaintiff-Intervenor.

37. Following the arrest and conviction of Defendant's employee Padilla, Plaintiff-Intervenor's schedule and hours changed, with Plaintiff-Intervenor believing her hours were being purposely decreased over the long term.

38. Supervisor and Defendant's employee Lopez constantly harassed Plaintiff-Intervenor and threatened to see that she was fired. Management allegedly made an effort to separate the shifts of Defendant's employee Lopez and Plaintiff-Intervenor, but Plaintiff-Intervenor still encountered Defendant's employee Lopez almost each day she worked with LOPEZ launching most times into a

tirade of insults and remarks pertaining to Plaintiff-Intervenor's disability ("*re-tard*," etc.).

39. As a result of the foregoing, Plaintiff-Intervenor's condition worsened due to the severe emotional distress she experienced and she was evaluated by two separate psychologists in May and September of 2001. (She was also evaluated early the following year in January of 2002.) Both psychologists found that Plaintiff-Intervenor had suffered permanent and significant emotional and psychological damage from the events complained of and management's failure to intervene.

40. Plaintiff-Intervenor felt management was insensitive to what had happened and had been happening to her and her feelings of hopelessness and isolation increased as management allowed Plaintiff's employee Lopez to interact and to threaten Plaintiff-Intervenor following Defendant's employee Padilla's conviction. In addition, management, apparently knowing that Plaintiff-Intervenor's disorder included difficulty with arithmetic and mathematics, cynically continued to assign her to work as a cashier. On other occasions, Plaintiff-Intervenor was sent out to canvass the parking lot and to weed the Ronkonkoma store lawn, because that was "all [she] was good for."

41. By July of 2001, the environment at the BOSTON MARKET Ronkonkoma store had become unbearable and intolerable for Plaintiff-Intervenor, plus her scheduling and other terms and conditions of employment had been unfavorably changed. Plaintiff-Intervenor felt that she had been fired by BOSTON MARKET due to the hostile attitude of its management at the Ronkonkoma store, that she was unwelcome at work and that she could no longer bear the way she was being treated. As a result, her employment terminated.

42. Defendants' actions were intentional and in reckless disregard for the mental and physical health of Plaintiff-Intervenor GAGLIARDI. As a result of the foregoing acts, Plaintiff-Intervenor has suffered grievous, extensive and continuing damages, including, but not limited to, pain and suffering, humiliation and embarrassment, severe emotional distress, a worsening of her

neuropsychological disability, lost wages and benefits and attorney's fees.

FIRST COUNT

43. Plaintiff-Intervenor repeats and realleges each and every allegation in paragraphs numbered "1" through "42" of this Complaint with the same force and effect as if fully set forth herein.

44. Defendant BOSTON MARKET intentionally discriminated against Plaintiff-Intervenor in violation of Title VII by purposely subjecting her to severe and/or pervasive sexual harassment and an offensive, unbearable and hostile working environment, for which it is vicariously liable.

SECOND COUNT

45. Plaintiff-Intervenor repeats and realleges each and every allegation in paragraphs numbered "1" through "44" of this Complaint with the same force and effect as if fully set forth herein.

46. Defendant BOSTON MARKET intentionally discriminated against Plaintiff-Intervenor in violation of the ADA incorporating by reference Title VII by purposely subjecting her to severe and/or pervasive harassment on account of her mental, emotional and neuropsychological disorders, and because of perception of Plaintiff-Intervenor as an individual with a mental impairment, and by subjecting here to an offensive, unbearable and hostile working environment, for which it is vicariously liable.

THIRD COUNT

47. Plaintiff-Intervenor repeats and realleges each and every allegation in paragraphs numbered "1" through "46" of this Complaint with the same force and effect as if fully set forth herein.

48. Violating both Title VII and the ADA, BOSTON MARKET retaliated against the Plaintiff-Intervenor for engaging in protected activity by complaining about the discriminatory acts of Defendant's agents and employees, taking adverse action or failing to contain continuing harm, negatively affecting Plaintiff-Intervenor's terms and conditions of employment.

FOURTH COUNT

49. Plaintiff-Intervenor repeats and realleges each and every allegation in paragraphs numbered "1" through "48" of this Complaint with the same force and effect as if fully set forth herein.

50. Defendant BOSTON MARKET condoned and/or ratified the actions of its agents, servants or employees Defendant's employee Padilla and Defendant's employee Lopez.

51. BOSTON MARKET denied Plaintiff-Intervenor equal terms, conditions and privileges of employment due to her gender and disability in violation of the NYSHRL, justifying an award of back pay, etc. and all appropriate compensatory damages making Plaintiff-Intervenor whole commensurate with the provisions of New York State law.

FIFTH COUNT

52. Plaintiff-Intervenor repeats and realleges each and every allegation in paragraphs numbered "1" through "51" of this Complaint with the same force and effect as if fully set forth herein.

53. Defendant's employee and Supervisor Lopez aided and abetted Defendant BOSTON MARKET's discriminatory acts committed against Plaintiff-Intervenor.

54. Defendant's employee Lopez accordingly discriminated against Plaintiff-Intervenor in violation of the NYSHRL.

SIXTH COUNT

55. Plaintiff-Intervenor repeats and realleges each and every allegation in paragraphs numbered "1" through "54" of this Complaint with the same force and effect as if fully set forth herein.

56. Defendant's employee Padilla facilitated, aided and abetted Defendant BOSTON MARKET's discriminatory acts committed against Plaintiff-Intervenor.

57. Defendant's employee Padilla accordingly discriminated against Plaintiff-Intervenor in violation of the NYSHRL.

SEVENTH COUNT

58. Plaintiff-Intervenor repeats and realleges each and every allegation in paragraphs numbered "1" through "57" of this Complaint with the same force and effect as if fully set forth herein.

59. Defendant BOSTON MARKET intentionally discriminated against Plaintiff-Intervenor in violation of Title VII, the ADA and the NYSHRL, by causing the constructive discharge and termination of employment of Plaintiff-Intervenor for complaining of sexual harassment and harassment on account of her disabling conditions, disorders and impairments.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff-Intervenor respectfully requests the following relief::

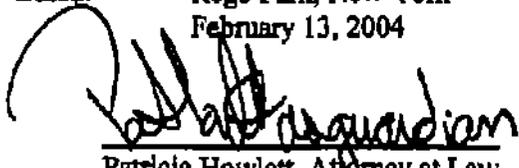
- A. that this Court accept jurisdiction of this case;
- B. that this Court declare the conduct engaged in by Defendants is in violation of Plaintiff's rights under Title VII, the ADA, and the NYSHRL;
- C. that this Court grant a permanent injunction enjoining Defendant BOSTON MARKET, its owners, officers, management personnel, supervisors, employees, agents, attorneys, successors and assigns and those acting in concert therewith from any conduct discriminating against individuals on account of their gender or having mental impairment(s) and/or disorder(s) and enjoining them from any conduct violating the rights of Plaintiff-Intervenor as secured by Title VII, the ADA, and the NYSHRL;
- D. that this Court award a money judgment to Plaintiff-Intervenor representing compensatory damages, including lost wages, past and future wages and front pay, all other sums of money, including any and all benefits and any other employment benefits together with interest on said amounts;

- E. that this Court award Plaintiff-Intervenor prejudgment interest for the entire period;
- F. that this Court award Plaintiff-Intervenor compensatory damages to be determined by the jury at time of trial;
- G. that this Court award Plaintiff-Intervenor punitive damages to be determined by the jury at time of trial;
- H. that this Court award Plaintiff-Intervenor damages for emotional distress under New York law (see Luciano v. Olsten Corporation, 912 F.Supp. 663 (E.D.N.Y. 1996); Kuper v. Empire Blue Cross & Blue Shield, 2003 WL 359462 (S.D.N.Y. 2003));
- I. that this Court award Plaintiff-Intervenor costs and disbursements and reasonable attorneys' fees, including the fees and costs of experts, incurred in prosecuting this action; and
- J. that this Court grant such other relief as it may deem just and proper.

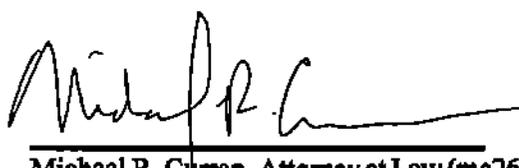
JURY DEMAND

Plaintiff demands a trial by jury as to all issues so triable under the facts raised herein.

Dated: Rego Park, New York
February 13, 2004



Patricia Howlett, Attorney at Law
Guardian of Person & Property
of Plaintiff-Intervenor Christine Gagliardi
22 Evelyn Road
West Islip, New York 11795
(631) 661-4305 (tel.)



Michael R. Curran, Attorney at Law (mc2639)
Attorney to Guardian for Plaintiff-Intervenor
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Rego Park, New York 11374
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**UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF NEW YORK
 LONG ISLAND DIVISION**

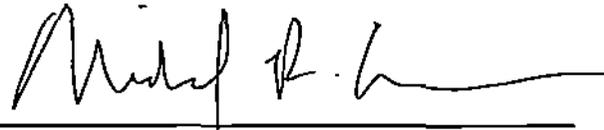
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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	:	Civil Action
	:	No. 03-CV-4227 (LDW) (WDW)
	:	
Plaintiff,	:	
	:	
and	:	
	:	
CHRISTINE GAGLIARDI, by the Guardian of her Person and Property, PATRICIA HOWLETT, ESQ.,	:	<u>CERTIFICATION OF SERVICE</u>
	:	
Plaintiff-Intervenor,	:	
	:	
-against-	:	
	:	
BOSTON MARKET CORPORATION,	:	
	:	
Defendant.	:	
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MICHAEL R. CURRAN, an attorney duly licensed to practice law in the State of New York, certifies as to the following:

1. I am the attorney to the Guardian of the Person and Property of Christine Gagliardi, Ms. Patricia Howlett, Esq., and am familiar with the facts and circumstances of this matter through my initial investigation of the complaint, discussions with family matters and meetings with the incapacitated person herein, Christine Gagliardi.
2. On October 6, 2004, the undersigned mailed conformed copies of Plaintiff-Intervenor's Complaint & Jury Trial Demand to the following: (a) Ms. Judy Keenan, Esq., Senior Trial Attorney, U.S. Equal Employment Opportunity Commission, New York District Office, 33 Whitehall Street, 5th Floor, New York, New York 10004-2112, attorneys for plaintiff; (b) Ms. Jean L. Schmidt, Esq.,

Brown Raysman Millstein Felder & Steiner LLP, 900 Third Avenue, New York New York 10022-4728, attorneys for defendant; and (c) Ms. Patricia Howlett, Esq., 22 Evelyn Road, West Islip, New York 11795, Guardian of Person and Property of Christine Gagliardi, placing same into a postage-prepaid wrapper and into the exclusive care and custody of the United States Postal Service at a depository within the City, County and State of New York.

Dated: Rego Park, New York
October 6, 2004

A handwritten signature in black ink, appearing to read "Michael R. Curran", written over a horizontal line.

Michael R. Curran
Attorney for Guardian of Person &
Property of Christine Gagliardi