

Judge Hellerstein

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

11 CIV 0201

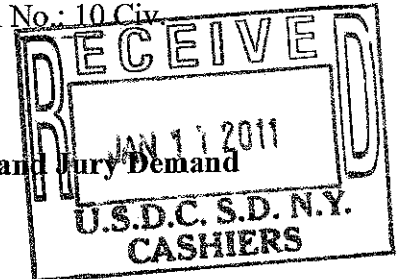
DEBORAH R. COOKE and CHRISTINA M.  
RODINO,

Civil Action No.: 10 Civ.

Plaintiffs,

-against-

Complaint and Jury Demand



DB 85 GYM CORP. d/b/a DAVID BARTON GYM,  
CV II GYM, LLC d/b/a DAVID BARTON GYM,  
CV VI, LLC d/b/a DAVID BARTON GYM, DB  
BROADWAY GYM CORP. d/b/a DAVID  
BARTON GYM, KEVIN KAVANAUGH, and  
CARL HELMLE, III,

Defendants.

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Plaintiffs, Deborah R. Cooke and Christina M. Rodino, by their attorneys, The  
Dweck Law Firm LLP, complain of Defendants and respectfully alleges to this court as  
follows:

**NATURE OF THE ACTION**

1. This is an action to recover damages for sexual orientation discrimination and gender discrimination in the terms, conditions and privileges of employment under the New York Executive Law §290, *et seq.* ("NYSHRL") and damages for sexual orientation and gender discrimination in the terms, conditions and privileges of employment under the Administrative Code of the City of New York §8-801, *et seq.*, ("NYCCRL"). This complaint is based on the fact that Defendants promoted and tolerated a hostile work environment based on a pattern and practice of sexual orientation discrimination and gender discrimination.

### JURISDICTION

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332, in that Defendants are citizens of the State of New York or Delaware and Plaintiffs are citizens of a state other than New York or Delaware, and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.00.

### VENUE

3. Venue is properly laid in the Southern District of New York, pursuant to 28 U.S.C. §1391, because the Southern District of New York is the judicial district in the state in which the unlawful employment practices are alleged to have been committed.

### PARTIES

4. Plaintiff Deborah R. Cooke (hereinafter "Plaintiff Cooke") is a homosexual female.

5. At all times hereinafter mentioned, Plaintiff Cooke was and still is a resident of the State of New Jersey.

6. At all times material herein, Plaintiff Cooke was an "employee" entitled to protection within the meaning of the NYSHRL and the NYCCRL.

7. Plaintiff Christina M. Rodino (hereinafter "Plaintiff Rodino") is a homosexual female.

8. At all times hereinafter mentioned, Plaintiff Rodino was and still is a resident of the State of New Jersey.

9. At all times material herein, Plaintiff Rodino was an “employee” entitled to protection within the meaning of the NYSHRL and the NYCCRL.

10. Upon information and belief, Defendant DB 85 Gym Corp. d/b/a David Barton Gym is a domestic corporation with its principal office located at 50 West 23<sup>rd</sup> Street, County, City, and State of New York.

11. Upon information and belief, Defendant CV II Gym, LLC d/b/a David Barton Gym is a foreign limited liability company with its principal office located in Delaware.

12. Upon information and belief, Defendant CV II Gym, LLC d/b/a David Barton Gym is conducting business in the County, City, and State of New York.

13. Upon information and belief, Defendant CV VI, LLC d/b/a David Barton Gym is a foreign limited liability company with its principal office located in Delaware.

14. Upon information and belief, Defendant CV VI, LLC d/b/a David Barton Gym is conducting business in the County, City, and State of New York.

15. Upon information and belief, Defendant DB Broadway Gym Corp. d/b/a David Barton Gym is a domestic corporation with its principal office located at 4 Astor Place, County, City, and State of New York.

16. Upon information and belief, DB 85 Gym Corp. d/b/a David Barton Gym, CV II Gym, LLC d/b/a David Barton Gym, CV VI, LLC d/b/a David Barton Gym, and DB Broadway Gym Corp. d/b/a David Barton Gym (hereinafter “Defendant Employers”) are operated by and through a common corporate office and under of the name David Barton Gym.

17. Upon information and belief, Defendant Employers were and still are a health club or fitness companies.

18. Defendant Employers are "Employers" within the meaning of the NYSHRL and the NYCCRL.

19. At all times material herein, Defendant Kevin Kavanaugh ("Kavanaugh") was the Vice President of Human Resources for the Defendant Employers.

20. Defendant Kavanaugh actually participated in and aided and abetted in the conduct giving rise to the discrimination and harassment.

21. Upon information and belief, Defendant Kavanaugh resides in the County, City and State of New York.

22. At all times material herein, Defendant Carl Helmle, III ("Helmle") was the Director of Training for the Defendant Employers and a supervisor of Plaintiff Cooke.

23. Defendant Helmle actually participated in and aided and abetted in the conduct giving rise to the discrimination and harassment.

24. Upon information and belief, Helmle resides in the County, City and State of New York.

25. This action arises out of Defendants' wrongful, illegal and tortious conduct within the State of New York.

#### **BACKGROUND OF PLAINTIFF COOKE'S EMPLOYMENT BY DEFENDANTS**

26. Plaintiff Cooke earned a Bachelor of Arts in 1996 with a concentration in Exercise Science from Gettysburg College.

27. Plaintiff Cooke earned a Masters Degree from the University of Missouri in Exercise Physiology.

28. Plaintiff Cooke has received a certification as an athletic trainer and a certification from the National Academy of Sports Medicine as a personal trainer.

29. Plaintiff Cooke commenced her employment by the Defendant Employers with the title or position of Regular Status Personal Trainer in February 2004.

30. In or about 2005, Defendants promoted Plaintiff Cooke to the title or position of Plus Status Personal Trainer.

31. In or about January 2008, Defendants promoted Plaintiff Cooke to the title or position of Specialist Status Personal Trainer and Head Trainer.

32. Until August 2008, Plaintiff Cooke reported to work at the David Barton Gym located at 30 East 85<sup>th</sup> Street in New York City (the "Uptown Gym").

33. In August 2008, Defendants promoted Plaintiff Cooke to Director of Education and transferred Plaintiff Cooke from the Uptown Gym to the corporate office.

34. In November 2008, Defendants transferred Plaintiff Cooke to the David Barton Gym located at 215 W 23<sup>rd</sup> Street in New York City (the "Chelsea Gym") with the title or position of Training Manager and Part-time Director of Education.

35. In March 2009, Defendants transferred Plaintiff Cooke to the Uptown Gym.

36. Defendants terminated Plaintiff Cooke's employment on December 2, 2010.

37. Defendants compensated Plaintiff Cooke at a rate of \$100,000.00 per year, plus benefits, at the time of the termination of her employment.

38. At all times during the course of her employment by Defendants and up until the last day of her employment, Plaintiff Cooke performed her services competently, faithfully, diligently and in an outstanding manner.

**BACKGROUND OF PLAINTIFF RODINO'S EMPLOYMENT BY DEFENDANTS**

39. Plaintiff Rodino earned a Bachelor of Arts in 1994 with a concentration in Business from Laboratory Institute of Merchandising.

40. Plaintiff Rodino is certified by the Pilates Studio as a Pilates Instructor/Teacher.

41. Plaintiff Rodino commenced her employment by the Defendant Employers with the title or position of Regular Status Pilates Instructor in March 2009.

42. In August 2009, Defendants promoted Plaintiff Rodino to the title or position of Pilates Coordinator.

43. In September 2010, Defendants promoted Plaintiff Rodino to the title or position of Plus Status Pilates Instructor/Pilates Coordinator.

44. Defendants terminated Plaintiff Rodino's employment on December 2, 2010.

45. Defendants compensated Plaintiff Rodino at a rate of approximately \$60,000.00 per year, plus benefits, at the time of the termination of her employment.

46. At all times during the course of her employment by Defendants and up until the last day of her employment, Plaintiff Rodino performed her services competently, faithfully, diligently and in an outstanding manner.

## PERVASIVELY HOSTILE WORK ENVIRONMENT

47. During Plaintiffs' employment by Defendants, Defendants created, promoted and maintained a pervasively hostile work environment and atmosphere.

48. Plaintiffs were subjected to constant discrimination based upon their sexual orientation, which included without limitation, comments, innuendos and verbal harassment.

49. These comments, innuendos and verbal harassment included, but were not limited to, the following:

a) A Training Manager asking Plaintiff Cooke on multiple occasions, while in the presence of the General Manager, whether she was "going to strap on a penis tonight;"

b) A Training Manager referring to Plaintiff Cooke as a "Fucking Dyke;"

c) Regular comments from members of Defendants' management about the "queers," "homos" and "fagots" that work out at the Chelsea Gym;

d) Requests for Plaintiff Cooke to engage in sexual relations with another woman at the workplace;

e) Requests for Plaintiff Rodino to engage in sexual relations with another woman at the workplace;

f) The constant telling of "gay jokes;"

g) Requests for Plaintiff Cooke to identify the women with whom she would like to engage in sexual relations;

h) Members of management referring to Plaintiff Cooke as “Dyke Cooke;”

i) A General manager stating that Plaintiff Cooke looks like a lesbian;

j) The Director of Training referring to Plaintiff Cooke as a lesbian each time that he called her on the telephone;

k) A General Manager suggesting that the appropriate place for Plaintiffs to vacation is Lesbos Island;

l) A General Manager stating to a Human Resources Representative that there is animosity toward Plaintiff Cooke because she is a lesbian;

m) Members of management referring to Plaintiff Cooke as “Lesbian Deb;”

n) Members of management repeatedly pointing at Plaintiff Cooke and at the same time saying the word lesbian;

o) A General Manager saving Plaintiff Cooke’s cellular phone number as a contact in his cellular phone under the contact name “Dyke Cooke;” and

p) A Sales Manager saving Plaintiff Cooke’s cellular phone number as a contact in his cellular phone under the contact name “Lesbian Deb.”

50. Plaintiffs were also subjected to constant discrimination based upon their gender.

50. Plaintiffs were subjected to a hostile work environment based upon gender discrimination, which included without limitation, regular comments and activities.



51. The comments and activities included, but were not limited to, the following:

a) David Barton molesting female staff members;

b) A male supervisor telling his female supervisee, "your ass looks great" and then threatening to never to speak to her again after she expressed that she was offended;

c) Constant discussion of female body parts and sexual innuendos in the Trainer's Lounge, which was so pervasive that the following occurred:

1) Plaintiff Rodino ate her lunch in the locker room in order to avoid the Trainer's Lounge;

2) Plaintiff Cooke issued a complaint to a General Manager. Despite the fact that Plaintiff Cooke's desk was located in the Trainer's Lounge, the General Manager told Plaintiff Cooke to stay out of the Trainer's Lounge rather than address the problem;

3) Plaintiff Cooke worked outside the Trainer's Lounge whenever possible; and

4) a female personal trainer issued a sexual harassment/hostile work environment complaint, and despite the merit of the complaint, Defendants dismissed the complaint on the ground that the Human Resources Department was only recently established.

d) Defendant Kavanaugh overhearing two male Trainers engage in a very explicit discussion concerning their desire to engage in sexual relations with a customer. Defendant Kavanaugh instructing the Trainers that the topic that they were

discussion was inappropriate and unprofessional. Defendant Kavanaugh did not, however, instruct these Trainers to discontinue discussing this topic at work. Defendant Kavanaugh instead instructed the Trainers to continue their discussion in the Trainer's Lounge.

52. Upon information and belief, a number of prior and current employees of the Defendant Employers have issued complaints concerning discrimination and the hostile work environment.

53. Upon information and belief, the Defendant Employers have no policy prohibiting discrimination/harassment.

54. Upon information and belief, the Defendant Employers have no written complaint procedure for discrimination/harassment in the workplace.

55. Various high level officials of Defendant Employers, including, but not limited to David Barton, Kevin Kavanaugh, Carl Helmle, III and David Martinez were aware of the pervasively hostile work environment and allowed it to continue.

56. Various high level officials of Defendants actually fostered the pervasively hostile work environment by engaging in the improper conduct themselves.

### **DISPARATE TREATMENT**

57. Plaintiffs were singled out for harassment/discrimination based upon sexual orientation.

58. On December 2, 2010, Defendants terminated Plaintiffs employment without notice or cause.

59. Upon information and belief, Defendants hired a non-lesbian individual to replace Plaintiff Cooke who was less experienced and less qualified.

60. Upon information and belief, Defendants hired a non-lesbian individual to replace Plaintiff Rodino who was less experienced and less qualified.

61. The reason given for Plaintiffs' terminations was that Plaintiffs were engaged in training outside clients.

62. Upon information and belief, this reason is pretext for discrimination. Similarly situated employees, who are not lesbians, but did routinely train outside clients were not disciplined. Plaintiffs' sexual orientation was a motivating factor in Defendants' decision to terminate their employment.

**AS AND FOR A FIRST COUNT**

63. Plaintiffs repeat and reallege each and every allegation contained in paragraphs of the complaint numbered "1" through "62" inclusive with the same force and effect as if fully set forth at length herein.

64. By virtue of the acts complained of herein, Defendants discriminated against Plaintiffs, based upon their sexual orientation, in violation of the New York State Executive Law.

65. As a direct and proximate result of the unlawful and discriminatory practices of Defendants, Plaintiffs have sustained substantial damages the amount of which is to be determined by a jury.

**AS AND FOR A SECOND COUNT**

66. Plaintiffs repeat and reallege each and every allegation contained in paragraphs of the complaint numbered "1" through "65" inclusive with the same force and effect as if fully set forth at length herein.

67. By virtue of the acts complained of herein, Defendants discriminated against Plaintiffs, based upon their sexual orientation, in violation of Article 8 of the New York City Administrative Code.

68. As a direct and proximate result of the unlawful and discriminatory practices of Defendants, Plaintiffs have sustained substantial damages the amount of which is to be determined by a jury.

**WHEREFORE**, Plaintiffs demand the following relief:

- a) a money judgment against Defendants for their damages, including but not limited to lost wages, lost benefits, other economic damages, shame, humiliation, embarrassment and mental distress;
- b) reinstatement or in the alternative front pay;
- c) an award of punitive damages and attorney's fees;
- d) prejudgment interest and costs; and
- e) such further and additional relief as the Court deems just and appropriate

under the circumstances.

THE DWECK LAW FIRM, LLP



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**JURY DEMAND**

Plaintiffs demand a trial by jury in this action.

Dated: New York, New York  
December 22, 2010

THE DWECK LAW FIRM, LLP



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