

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

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SUSAN G. ROSENTHAL,	:	
	:	Index No. _____
Plaintiff,	:	
	:	
-against-	:	SUMMONS
	:	
ROOSEVELT ISLAND OPERATING CORPORATION,	:	
STATE OF NEW YORK, JOSEPH RABITO; KUMIKI	:	
GIBSON, SIMONIDA SUBOTIC, RUTHANNE	:	
VISNAUSKAS, ROBERT F. MUJICA, CONWAY EKPO,;	:	
JEFFREY ESCOBAR, DAVID E. KAPELL, DAVID	:	
KRAUT, HOWARD POLIVY, MICHAEL SHINOZAKI,	:	
	:	
Defendants.	:	
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The place of trial is designated in the caption of this matter. The basis of venue is:
The County where Plaintiff resides and where the incident occurred.

To the above-named Defendants:

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 the date of service (or within 30 days after the service is complete 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.

Dated: New York, New York
April 27, 2021

STORCH BYRNE LLP
By: /s/ Steven G. Storch
Steven G. Storch

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Attorneys for Plaintiff

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SUSAN G. ROSENTHAL,	:	
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Plaintiff,	:	
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-against-	:	COMPLAINT
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GIBSON, SIMONIDA SUBOTIC, RUTHANNE	:	
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KRAUT, HOWARD POLIVY, MICHAEL SHINOZAKI,	:	
	:	
Defendants.	:	
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Plaintiff Susan G. Rosenthal (“Plaintiff” or “Rosenthal”), by and through her attorneys, Storch Byrne LLP, as and for her Complaint against Defendants State of New York (the “State”), Joseph Rabito (“Rabito”), Kumiki Gibson (“Gibson”), Simonida Subotic (“Subotic”) (the State, Rabito, Gibson and Subotic are sometimes collectively referred to as the “Albany Defendants”), Roosevelt Island Operating Corporation (“RIOC”), RuthAnne Visnauskas (“Visnauskas”), Robert F. Mujica (“Mujica”), Conway Ekpo (“Ekpo”), Jeffrey Escobar (“Escobar”), David E. Kapell (“Kapell”), David Kraut (“Kraut”), Howard Polivy (“Polivy”), and Michael Shinozaki (“Shinozaki”) (the preceding defendants are sometimes collectively referred to as the “RIOC Defendants”), states as follows:

Preliminary Statement

1. This case presents a unique set of facts. Rosenthal, a Caucasian female with a long history of not only fighting for civil rights, but with a proven and undeniable track record of achieving racial and gender diversity on Roosevelt Island, was falsely branded a racist and terminated on Juneteenth on the basis of a laughably inept “investigation.” The Office of the Governor of the

State of New York (the “Governor’s Office”), had, upon information and belief, through its deputies, already been looking for an excuse to terminate Rosenthal because of her repeated complaints about the serious public safety hazard posed by deteriorating abandoned steam tunnels on Roosevelt Island. The bogus racist charge provided just that cover. In a cheap grab for publicity, and in violation of its own rules and past conduct, the Governor’s Office issued a press release which has destroyed Plaintiff’s reputation. As set forth below, this abhorrent treatment was motivated by Defendants’ belief that no one would ever question such conduct described herein being directed at a Caucasian woman. Both the investigation and the public humiliation constituted disparate treatment of Rosenthal.

2. Rosenthal, until her abrupt and improper termination on June 19, 2020, was the President and Chief Executive Officer of RIOC. Despite her exemplary record as a promoter of a diverse and equitable workplace over her more than five year tenure as President and Chief Executive Officer, Rosenthal was the subject of a malicious, false and baseless complaint of racism and use of sexist language on June 12, 2020 from a known malcontent employee (the “Employee”). The Albany Defendants immediately commenced an investigation which quickly showed that the allegations against Rosenthal were unfounded.

3. That did not deter the Albany Defendants. The Governor’s Office was already motivated to “get” Rosenthal because she had repeatedly complained about a potentially catastrophic safety situation on Roosevelt Island. Rosenthal refused to accept the Governor’s Office’s determination to just sweep the problem under the rug and wrote and had delivered a detailed memo highlighting the issue. As a result of Rosenthal’s repeated demands upon the Governor’s Office to take action on this issue, it was only then that the Albany Defendants decided to make the complaints against Rosenthal a basis for her termination. During the investigation of the unfounded complaint, the

Albany Defendants purported to learn of audio tapes which supposedly contained the voice of Plaintiff making racist and sexually harassing statements. The Albany Defendants told Rosenthal of the supposed existence of the tapes but refused to allow her the opportunity to listen to them, a refusal which continues to this day.

4. It now appears that none of the Defendants ever actually had possession of the tapes. They refuse to disclose who created the tapes, how and when they were prepared, on what type of device, all of the voices which were on the tapes, or any other identifying information. None of the Defendants made any effort to authenticate the tapes. Moreover, given the restrictions in place during the Covid-19 pandemic, it is likely that whatever it was that certain of Defendants claimed to have listened to was heard over a telephone or internet connection.

5. Rosenthal denied that she had ever used the language as attributed to her. Instead of taking the time to conduct a fair and thorough investigation, or to even allow Rosenthal to listen to the audio tapes, the Albany Defendants rushed to announce their decision to terminate Rosenthal on “Juneteenth,” a date celebrating the end of slavery in America. Not only did Defendants terminate Rosenthal in violation of their own internal policies, but they did so with a public announcement which had the anticipated and intended effect of besmirching a more than 45 yearlong exemplary career.

6. Rosenthal’s termination violated federal, city and state law, including:

- a. Title VII of the Civil Rights Act of 1964, New York State Human Rights Law and New York City Human Rights Law in that Rosenthal was treated differently because she is a Caucasian female; and

- b. New York State Labor Law §740 in that Rosenthal's termination was retaliation for complaining about a safety hazard on Roosevelt Island that an engineering report stated could have a "catastrophic" consequence.

The Parties

7. Rosenthal, a Caucasian female of seventy (70) years of age, is a resident of the State of New York and County of New York. At all times relevant, she was the General Counsel, and following her promotion, the President and Chief Executive Officer of RIOC from June 2015 through June 19, 2020 when her employment and position with RIOC was wrongfully terminated.

8. RIOC is a New York public benefit corporation with offices located at 591 Main Street, New York, New York 10044.

9. RIOC was created in 1984 by the State of New York as a public benefit corporation with a mission to plan, design, develop, operate and maintain Roosevelt Island.

10. New York State public benefit corporations and authorities operate like quasi-private corporations, with boards of directors appointed by elected officials, overseeing both publicly operated and privately operated systems. Public authorities share characteristics with government agencies, but they are exempt from many state and local regulations.

11. Upon information and belief, Defendant Rabito is a resident of the State of New York and County of Albany. At relevant times, Rabito served as Executive Secretary to the Governor.

12. Upon information and belief, Defendant Gibson is a resident of the State of New York. At relevant times, Gibson served as Counsel to the Governor.

13. Upon information and belief, Defendant Subotic is a resident of the State of New York. At relevant times, Subotic served as Deputy Secretary for Economic Development.

14. Defendant Visnauskas is a resident of the State of New York and County of New York. At relevant times, Visnauskas was Chair of the Board of Directors of RIOC and Commissioner and CEO of the New York State Homes and Community Renewal.

15. Defendant Mujica is a resident of the State of New York and County of Columbia. At relevant times, Mujica was on the Board of Directors of RIOC and Director of New York State Division of the Budget.

16. Defendant Ekpo is a resident of the State of New York and County of New York. At relevant times, Ekpo was on the Board of Directors of RIOC.

17. Defendant is a resident of the State of New York. At relevant times, Escobar was on the Board of Directors of RIOC.

18. Defendant Kapell is a resident of the State of New York and County of New York. At relevant times, Kapell was on the Board of Directors of RIOC.

19. Upon information and belief, Defendant Kraut is a resident of the State of New York. At relevant times, Kraut was on the Board of Directors of RIOC.

20. Defendant Polivy is a resident of the State of New York and County of New York. At relevant times, Polivy was on the Board of Directors of RIOC.

21. Defendant Shinozaki is a resident of the State of New York and County of New York. At relevant times, Shinozaki was on the Board of Directors of RIOC.

Rosenthal's Record of Diverse Hiring and Advancement at RIOC

22. Rosenthal is an attorney with a long and distinguished multifaceted private commercial litigation career with well known and respected law firms in New York. As a female entering litigation practice, a male dominated aspect of the legal world, during the 1970's, Rosenthal projected a tough and salty demeanor which proved not only effective for her clients, but which allowed her to gain a significant measure of acceptance from her primarily male

colleagues. Until her baseless termination on June 19, 2020, no one had ever cautioned her about her language nor suggested to her that she was a racist or used racist terminology because such a suggestion would be absurd on its face.

23. Far from being a racist, Rosenthal has had a longstanding commitment and involvement in public service, community service, diversity and inclusion, promoting equal opportunity, and anti-racism.

24. Rosenthal's record of achievement in service of the public good spurred at least one RIOC Board Member, a City Councilman, a State Assembly Member, the former Executive Director of Four Freedoms Park, a major real estate developer on Roosevelt Island, a passel of significant local businessmen, *and* her three African American "direct reports" at RIOC to all tell her in words or substance upon or shortly after her termination that she was RIOC's best President and Chief Executive Officer ever, a stellar and admirable leader and person and, in essence, the victim of a groundless and inequitable political ambush.

25. During her tenure at RIOC, Rosenthal made great strides in not only increasing racial diversity but in making sure that people of color ascended to positions of power and authority. Rosenthal's efforts included the following:

- a. Active involvement in, and encouragement of, the 2016 hiring of Shelton Haynes, an African American, as RIOC's Executive Vice President of Operations, whom Rosenthal (for good reason, based upon his obvious skills) later promoted to Chief Operating Officer;
- b. The hiring of Altheria Jackson, an African American woman as Senior Vice President of Operations, working directly with Mr. Haynes;

- c. The return of Gretchen Robinson, Esq., an African American woman, back to RIOC as its General Counsel, after Ms. Robinson's stint at the Empire State Development Corporation;
- d. The promotion of Deputy Director Kevin Brown, an African American, to Chief of the Public Safety Department ("PSD"), replacing a retiring Caucasian male;
- e. The promotion of Estella Suarez, a Hispanic woman, to be a PSD Inspector and Wanda Coleman, an African American woman, to be a PSD Captain;
- f. The hiring of Alvaro Santamaria, a Hispanic male, to be RIOC's Director of Engineering;
- g. The hiring of Abdel Boujoual, of Northern African-Arabic descent, as RIOC's Information Technology Director;
- h. Recommending the appointments of Defendant Ekpo, an African American male, and Jeffrey Escobar, Esq., of Hispanic lineage, both of whom were extremely talented and well qualified, for then-open slots on the RIOC Board of Directors; and
- i. The across-the-board promotion of numerous lower-level employees of color.

26. These are not, by any rational standard, indicia of a racially insensitive or prejudiced individual. They are among Rosenthal's hallmark achievements at RIOC. The Employee, who made the baseless allegations against Rosenthal, was promoted both in rank and compensation on Rosenthal's watch with her approval, and was African American.

Rosenthal's Staunch Support of "Black Lives Matter"

27. Of particular note in the civil rights and diversity arenas, a march was held on Roosevelt Island on June 3, 2020 to celebrate and facilitate the “Black Lives Matter” (“BLM”) movement. Under Rosenthal’s leadership, RIOC wholly supported the march and Rosenthal encouraged further community projects to realize BLM’s goals of equal justice.

28. The termination and humiliation of Rosenthal was directly contrary to what she believes as evidenced by the following press statement by David Lawson of the Roosevelt Island Residents Association (“RIRA”): “RIRA never experienced any such inappropriate language, action or gender or racial bias with Rosenthal. On the contrary, Rosenthal has been a fervent advocate of gender equality and diversity, in words and action. She recruited African Americans in RIOC senior positions. We were planning activities with RIOC to promote diversity, racial equality and equity in the aftermath of George Floyd's death. She supported the peaceful demonstration that was organized on RI a couple of weeks ago...”

Rosenthal’s Championing of Alice Childress

29. Similarly, while President and Chief Executive Officer of RIOC, Rosenthal played an active part in honoring Alice Childress, a deceased and distinguished African American resident of Roosevelt Island. Ms. Childress had been a novelist, playwright, and actress, and her work often focused on “have nots” in a “have” society. In June 2017, under Rosenthal’s leadership, a plaque honoring Ms. Childress was unveiled on Roosevelt Island, and Rosenthal spoke at the RIOC-sponsored ceremony. The next day, the local media, the *Roosevelt Island Daily*, ran an article entitled “Sun Finally Shines On Alice Childress,” reporting that “[w]ithout ... Rosenthal’s backing, the event could not have happened.” In fact, Rosenthal, later in 2017, hired a Roosevelt Island resident, Michael Rogers, (a producer, director, and actor in his own right), to produce with local actors one of Ms. Childress’ plays at the theatre on Roosevelt Island. And, in 2019 and 2020,

Rosenthal met again with Mr. Rogers regarding producing another program celebrating Roosevelt Island's diverse population.

30. Further, on Rosenthal's watch and with her full involvement and approval, RIOC co-sponsored several "Black History Month" ("BHM") art expositions at the Roosevelt Island Visual Arts Association ("RIVAA") Gallery. In 2019, to show her personal support of BHM, Rosenthal spoke at its event and moved by the power and poignancy of the work, also purchased "Free Labor," decrying the evils of slavery. This was the painting that apparently played a key role in her firing. In 2020, she spoke at another of those BHM gatherings on the importance of shedding light on African American history and, particularly, America's "original sin" of slavery; and she purchased more African American artwork at the exposition.

Rosenthal's Position on Roosevelt Island's Steam Tunnels

31. During Rosenthal's tenure as President and Chief Executive Officer of RIOC, she was actively involved with improving the quality of life on Roosevelt Island. The list of her accomplishments is too long to list herein and includes, but is not limited to, renovation of the RIOC subsidized youth center, upgrading infrastructure, restoring Roosevelt Island's many landmarks, promoting and facilitating public art projects, increasing support of community services, and personal involvement in the training of safety officers with respect to community policing which helped lower the crime rate.

32. Perhaps the major issue as to which there arose disagreements between Rosenthal and New York State officials in Albany was that of the abandoned "steam tunnels" on Roosevelt Island. These tunnels are located underground along Roosevelt Island's promenade on its eastern side, and carried steam north essentially between two hospitals, Goldwater on the south and Coler to the north. In actuality, the steam tunnels act as a

protective sea wall for Roosevelt Island. However, they have been, and are today, in serious disrepair, as demonstrated by a 2012 study by the Langan Engineering firm and a prior Army Corps of Engineers report.

33. During her time as RIOC's General Counsel, Rosenthal, after considerable study and reflection, came to the conclusion -- shared by her two successors in that job -- that the City of New York (the "City") had the ultimate legal responsibility to attend to the tunnels. The City, unsurprisingly, believed that that responsibility fell to the State. After numerous interactions with responsible and empowered City officials, Rosenthal advocated to the State that a deal be put in place, pursuant to which the State would assume the responsibility to repair the tunnels in exchange for the transfer of ownership of Roosevelt Island's steam plant (valuable real estate that the State or a public-private partnership might have developed) to it. In that connection, in or about 2017, Rosenthal retained Langan Engineering to update and complete its 2012 report. The firm's conclusion was ominous; *i.e.*, there could well be catastrophic results, were Roosevelt Island to face a major weather event, owing to the tunnels' poor condition. Nevertheless, higher-ups would not accept Rosenthal's proposal.

34. Rosenthal then proffered the only other acceptable proposal that she could devise, that is, that the State demand that the City repair the tunnels. That notion, too, gained no traction.

35. In the absence of a decision or action from Albany, Rosenthal elected to compose a short memorandum stressing both the public safety risks, as well as the State's political jeopardy, stemming from the steam tunnels. For many months, she highlighted the issue in writing to Defendant Subotic every other week as part of a "red flags -- green flags" list. Even so, no decision -- and thus no plan of action -- on the steam tunnels had emerged

from Albany as of Rosenthal's departure from RIOC. According to Rosenthal, these tunnels remain an Island-threatening "ticking time bomb."

The Complaint Against Rosenthal

36. On June 12, 2020, with racial tensions across the country at a fever pitch and the Black Lives Matter movement surging and gaining extensive national attention, the Employee, copying Rosenthal, forwarded the following complaint about Rosenthal by email (the "Complaint") to over twenty-five (25) people, including numerous public officials and stated among other things as follows:

Good morning,

In the past few days, we watched 50 states, and over 20 countries protest to demand change to police brutality and systemic racism. An outcry started after the world witnessed the murder of George Floyd, an unarmed black man by the hands of a police officer. The systemic racism and social inequalities black people face on a daily basis is nothing short of disheartening; however, the statement Black Lives Matter should not be controversial; it's a call for equality, justice and accountability.

My experience working at RIOC for the last several years have been toxic as we've experienced offensive racial comments and jokes of a sexual nature by Ms. Susan Rosenthal, RIOC's Chief Executive Officer/President. I've witnessed the lack of regard for employees as senior leadership continues to make excuses and play a blind eye on these troublesome issues. Some of my experiences include:

- Last year Ms. Rosenthal purchased a painting named "The Cotton Picker" which depicted a slave picking cotton. The painting was placed in her office until she decided to take it to her home. She faced no repercussions. In addition to making staffers feel uncomfortable, we also felt disrespected. Photo added below for your reference.
- While meeting with a resident, I overheard Ms. Rosenthal refer to her "son in law is black as hell and her daughter is white as snow."
- When her first grandchild was born, she also mentioned that her grandchild was "the real African American" as her son-

in-law is of African descent. Her statement was extremely appalling.

- She also shared and suggested that “not all black people look alike.”
- She has also mentioned in meetings with internal and external parties, that the last time she trusted someone she lost her virginity.

These insensitive statements should not be made by anyone, especially an individual trusted to lead a corporation.

The truth is Susan Rosenthal has made racist comments and sexual innuendos the norm at RIOC knowing employees will remain silent in fear of losing their livelihood while others continue to shield her, this practice should no longer be acceptable. I debated whether to send this email however, if I continue to ignore these experiences there will be no progress.

Employee’s Complaint Was Facially Baseless

37. The Employee’s widespread and public disclosure of her Complaint was itself a violation of RIOC’s procedures. The Employee suffered no discipline or other consequences for her disregard of such procedures.

38. Upon information and belief, the Employee has a long, widely known history of malfeasance and troublemaking while being employed by the RIOC, including filing numerous baseless complaints attempting to unseat and replace management. The aforesaid was not because of any earnest and good faith concern, but as retaliation against those Employee did not like or had some beef. Defendants and New York State were well aware of Employee’s history. When she was hired in 2015, Rosenthal was warned by RIOC management of a ‘cabal,’ which included Employee, which targeted management and sought to oust them from RIOC. Rosenthal was told to be careful because of their propensity. Again, further proving the axiom that no good deed goes unpunished, Rosenthal even supported the promotion and increased pay to Employee.

39. In any event, the lack of any basis for the Complaint became quickly apparent.

(i) The Cotton Picker

40. Any cursory review of “The Cotton Picker” shows that it is a thought-provoking and pointed critique, and lament about the historical horrors, of slavery. The actual title of the work is “Free Labor.” It was created by an African American artist, Andrew Nichols, and it strikingly depicts an enslaved African American picking cotton on a plantation in the South. Rosenthal, understanding, appreciating, and wanting to spread the message embodied in the work, purchased the painting at the 2019 RIVAA BHM art exposition.

41. Rosenthal bought additional African American art at the BHM event the next year. Prior to her termination, no one, and certainly not Employee, asked Rosenthal about “Free Labor” and/or her connection to or conviction about it or African American art as a whole. No one made any complaint to Rosenthal concerning her displaying the painting or expressed any concern that it was in any way racist. Had anyone bothered, they would have learned of Rosenthal’s long-standing interest in, and support for, black artists and how their work can advance social justice.

(ii) Rosenthal’s Son In Law and Daughter

42. Rosenthal denied saying that her “son in law is black as hell and her daughter is white as snow.” But, even if that statement had been made, it is hardly an indication of racism. In fact, Rosenthal’s son in law is a black man born in Nigeria and her daughter is white. She loves them, and their two children, dearly. To conjure that fact into a weapon against Rosenthal defies not only logic, but common decency.

43. Likewise, Rosenthal’s correct and proud comment that her granddaughter is “the real African American,” as opposed to her Nigerian son-in-law, is simply weaponizing Rosenthal’s racially mixed family against her.

(iii) The Allegation That Not All Black People Look Alike

44. This allegation by the Employee is likewise confounding. First, the statement allegedly made by Rosenthal on one occasion (which she vigorously denies) that “not all black people look alike” is, literally, true. In fact, had the allegation been the opposite-i.e., that black people all look alike, there would be grounds for concern. A truism of prejudice and racism in particular is that all blacks are lumped together in one biased stereotype, denying each person their human right to be treated as an individual. While Rosenthal denies making the statement, she does recall an incident where the identities of two African American employees of RIOG, one tall and lanky, the other stouter, were confused by a Roosevelt Island community leader. To the extent that Rosenthal said anything, it would have been to commiserate with her employees about the leader’s inability to properly identify the two.

(iv) The Alleged Sexist Comment

45. Finally, the alleged sexist comment is at worst salty and, to many fair-minded people, humorous. In either event, it is by no means a tenable or rational ground for termination. No one had previously told her that they had any problem with her language. A simple admonition not to do it again would have disposed of the matter.

46. In fact, a little context puts the comment in its true, innocent light. As Rosenthal explained during the sham investigation, she first made the comment in United State Bankruptcy Court before a bankruptcy judge who found it extremely funny and proceeded to tell similar stories on the same topic to the full courtroom of men and women. No one appeared to take offense.

The So Called Investigation

47. Employee’s malicious and unnecessarily widely circulated Complaint was distributed to some 25 people on Friday morning, June 12, 2020. Early the next week, at the behest of Gibson, on or about June 16, 2020, a GOER Affirmative Action Officer (“AAO”) “interviewed”

Rosenthal by telephone for approximately seventy-five (75) minutes. Prior to that, Rosenthal had no inkling that any investigation or review of her conduct at RIOC was underway.

48. Rosenthal spoke to the AAO without limitation, answering all questions put to her. She recalls being asked specifically about the details of the Employee's Complaint. In response, Rosenthal provided the AAO with provable and sound ripostes to each of the five (5) purportedly objectionable instances raised.

49. Rosenthal was also quizzed about her occasional use of salty and ribald language, to which use she freely admitted. She pointed out that this fact had been well known to the RIOC hierarchy and community for some five (5) years, as well as to New York State government officials in Albany during her prior employment with the Department of Agriculture and Markets, without any question or concern having expressly arisen.

50. As to the claim of race-related misconduct (which Rosenthal vigorously denied for obvious reasons), Rosenthal urged the AAO to speak to her three African American "direct reports," Shelton Haynes, Gretchen Robinson, Esq., and Kevin Brown.

51. The Albany Defendants quickly came to the conclusion that the Complaint against Rosenthal was unfounded and, upon information and belief, that it provided no basis for disciplinary action of any kind.

52. However, on or about June 18, 2020, Rosenthal received a second telephone call from the AAO, during which the AAO advised that GOER was in possession of certain tape recordings and notes going back to 2017 related to Rosenthal. The call lasted approximately ten (10) minutes. Rosenthal was not made privy to either the referenced recordings or notes themselves, or their source(s). Even today, Rosenthal is wholly unaware of their contents, alleged link, if any, to her termination, and/or their progenitor. In sum, as Rosenthal advised the AAO, she

may well have used salty language at or in connection with RIOC, a conceded weakness that Susan offered two or three times during her interviews to work to address, but, once more, were well known to RIOC for years. Most significantly, Rosenthal again entirely denied any form of racial and/or sexual impropriety.

53. There is a pending Article 78 proceeding in which Rosenthal is the Petitioner and Defendants herein are the Respondents which is captioned: *In the Matter of Susan Rosenthal v. Roosevelt Island Operating Corporation*, Supreme Court, New York County, Index No. 158795/2020 (the “Article 78 Proceeding”).

54. In the Article 78 Proceeding, Defendants for the first time admitted that the Complaint was found to be groundless and asserted that the real bases for Rosenthal’s termination were recorded comments attributed to Rosenthal. Georgianna Martin, a GOER AAO, submitted an affidavit in which, among other things, she claimed to have listened to the audio tapes and recognized the voice as Rosenthal’s. Despite multiple requests, Defendants refused to produce the recordings or even allow Rosenthal to listen to them.

55. Upon information and belief, Defendants never had possession of the tapes at any time. Assuming that Ms. Martin actually listened to tapes purporting to contain Rosenthal’s voice, it is likely that she did so over the telephone given that the rest of the investigation was conducted remotely.

56. Defendants, among other things, did not make any attempt to authenticate the audio tapes or establish a chain of custody to assure that the audio tapes were not altered or manipulated, that the entire conversation was recorded and not excerpts, and/or that the alleged voice was in fact Rosenthal’s. Moreover, Defendants have not commented on what other participants in the

discussions that were recorded said, how they reacted, or if any other similar comments were made by other participants.

57. Ms. Martin also claimed to have interviewed certain employees, but Defendants, consistent with their actions with respect to the tapes, produced no witness statements, or even notes of the interviews. Adding to the opaque nature of the investigation, GOER apparently never issued a written report about its investigation.

58. Rosenthal denies that she used any language as alleged and selectively construed by Defendants. Blithely ignoring the star chamber feel to their investigation, Defendants claim they were justified in terminating Rosenthal.

Rosenthal's Abrupt Termination

59. During the late afternoon of Friday, June 19, 2020, Rosenthal unexpectedly received a telephone call from Defendants Rabito, Gibson and Subotic. The three told her summarily and firmly that she had been terminated, effective immediately. Rosenthal was instructed not to go back to her RIOC office and told that her belongings would be sent to her. No reason was given for the termination. The three also thanked Rosenthal for her service to the State. Rosenthal's termination occurred after no more (and probably substantially less) than one week of "investigation," which began after internal publication of the Friday, June 12, 2020 Complaint. No RIOC Board meeting or vote was held before Rosenthal was notified of her firing. Nor was she accorded any form of hearing, before *or* after her termination. That abrupt, summary and harsh treatment contrasts directly with the position now emanating from the Governor's Office cautioning against jumping to conclusions and making rash judgments in response to complaints of harassment or discrimination.

60. Rosenthal's firing, likely not coincidentally, took place hurriedly and harshly on "Juneteenth," a date celebrating the end of slavery in America. The termination of Rosenthal, a white woman, was nothing more than a misguided effort by the Albany Defendants to humiliate Rosenthal while at the same time gain publicly for the Governor's Office. No person of good will can debate the significance and importance of Juneteenth and Rosenthal in no way means to denigrate its importance. But she does object to being labelled a racist and being humiliated in order to give publicity fodder to the Albany Defendants and the Governor's Office. Ironically, Defendants, while purporting to act to prevent discrimination, discriminated against Rosenthal on account of her race. It is hard to fathom how a nonwhite person would be terminated under these facts, particularly on Juneteenth. Rosenthal was replaced by her talented and qualified dear friend and colleague, Shelton Haynes, a younger African American man who she enthusiastically recruited and caused to be hired at RIOC.

The Immediate Aftermath

61. By the evening of June 19, 2020, a report, generated by a press release created by the Albany Defendants, had appeared in the *New York Post*, about Rosenthal's termination under the headline: "Roosevelt Island Operating Corp. head fired over 'racially and sexually offensive' remarks." The opening sentence of the article stated that "[t]he head of the state agency that oversees Roosevelt Island was fired for making 'racially and sexually offensive' remarks..." The article proceeded to state that Rosenthal's termination stemmed from "a probe by Gov. Andrew Cuomo, which was initiated by a complaint received from an employee at the agency." Confirming that the duration of the investigation was, at most, one week, the article noted that "[w]ords of Rosenthal's termination came on Juneteenth – the holiday celebrating the emancipation of slaves

in the United States.” The *New York Post* report also quoted a statement from “Cuomo senior advisor Richard Azzopardi” as follows:

A complaint was made to the Governor’s office on June 12th by an employee of the Roosevelt Island Operating Corporation that alleged that the President of the organization had used inappropriate language and engaged in inappropriate conduct in the workplace. ... This complaint was immediately referred to the New York State Governor’s Office of Employee Relations for investigation. ... **This investigation substantiated that the president had used racially and sexually offensive language, in clear violation of state policy and the strict standards set by this Administration. The president was immediately terminated...**

62. Upon information and belief, an emergency RIOC Board meeting was held on June 19, 2020. The RIOC Board approved of the appointment of Shelton Haynes as interim President and Chief Executive Officer without Rosenthal being given a chance to be heard. The RIOC Board, which itself performed no inquiry whatsoever, seemingly and astoundingly accepted GOER’s factually bankrupt “findings” at face value. But, as a reminder to Rosenthal that there remained any number of responsible and distinguished people who well knew and supported her, Gretchen Robinson, Esq., the African American female General Counsel whom Rosenthal worked so hard to bring back to RIOC, kindly reached out in writing that evening to express her confidence in and high regard for Rosenthal.

63. The RIOC Defendants were fully aware of who Rosenthal is as a person and of her record of promoting racial equality and diversity. Under their own rules, the RIOC Defendants knew that they had the power to hire and fire. Yet, they stood by and permitted this wrongful and discriminatory act to be executed in violation of both their fiduciary duties and federal law, New York City law and New York State law.

The Termination Was Discriminatory

64. Rosenthal’s termination was, among other things, arbitrary and capricious, and made in bad faith and as a subterfuge so as to conceal discriminatory purposes and effect and in violation of, among other things, federal law, New York City law and New York State law, because, among other things:

- a. Based on Defendants’ past experience with Employee, Defendants knew or should have known that Employee’s credibility was in issue, that she had made allegations that were vindictive only, and that she had her own agenda that did not conform with RIOC’s legitimate purpose and goal;
- b. Defendants turned a blind eye to what were obvious false and baseless allegations made by Employee;
- c. Defendants refused and failed to afford Rosenthal an opportunity to review all the allegations and supposed evidence against her;
- d. Defendants failed to interview relevant witnesses who would have refuted the claims against Rosenthal;
- e. The “investigation” carried out by GOER failed to abide by New York State’s own “Handbook” as to “Equal Employment Opportunity ... Rights and Responsibilities” (“Handbook”). For instance, the following is set forth therein on the subject of “Race and Color”:

No decision affecting hiring, promotion, firing or a term, condition or privilege of employment shall discriminate on the basis of a person’s race or color, nor shall employees be harassed or otherwise discriminated against on such basis, or perceived basis.

Handbook at p. 4 (emphasis supplied).

- f. The termination also palpably ran afoul of the following provision in RIOC’s enabling statute:

The corporation shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, and will undertake or continue programs of affirmative action to ensure that minority group persons and women are afforded equal employment opportunity without discrimination. Such action shall be taken with reference, but not be limited, to recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rate of pay or other forms of compensation, and selections for training or retraining, including apprenticeship and on-the-job training.

N.Y. Pub. Auth. Law §2799-g(1) (McKinney) (emphasis supplied). As to “Confidentiality and cooperation,” the Handbook states as follows:

All discrimination complaints and investigations will be kept confidential to the extent possible. Documents and reports will not be disclosed, except to the extent required to implement the policies in the Handbook.

Id. at p. 41 (emphasis supplied). Defendants violated the Handbook by defaming Rosenthal in its press release.

65. Defendants Rabito, Gibson and Subotic acted arbitrarily and capriciously by not undertaking a proper investigation. Upon information and belief, their investigation was in stark contrast to the manner in which they handled disciplinary action against non-white employees.

66. For instance, the Employee who filed and then publicized the baseless allegations of racism against Rosenthal was never disciplined, much less terminated.

67. Defendants Visnauskas, Mujica, Ekpo, Escobar, Kapell, Kraut, Polivy and Shinozaki acted arbitrarily and capricious by failing to investigate the claims against Rosenthal when they were on notice that she was being terminated, and/or aided and abetted in her unlawful termination.

As and for a First Cause of Action (Title VII of the Civil Rights Act of 1964)

68. Plaintiff realleges each and every allegation set forth in paragraphs 1 through 67 as though fully set forth herein.

69. Title VII of the Civil Rights Act of 1964 (“Title VII”) prohibits discriminatory practices by an employer. 42 U.S.C. §2000e-2(a).

70. Under Title VII, it is unlawful to discriminate against an employee on the basis of race, color, religion, sex or national origin (the “Protected Class”). 42 U.S.C. §2000e-2(b).

71. Plaintiff is a member of the Protected Class.

72. Plaintiff was qualified to be an employee of her former position with RIOC.

73. Plaintiff’s termination was, at minimum, under circumstances having an inference of discrimination in that Plaintiff’s termination was rushed to coincide with Juneteenth so that Defendants could announce the termination of Plaintiff, a white woman, on such an important and symbolic day in Black History. No black person would have been so terminated. In addition, the Albany Defendants, in terminating Plaintiff, refused to give a reason for the termination but expressly and intentionally injected race into their press release announcing the termination and accusing her of racism.

74. The Equal Employment Opportunity Commission issued a Right to Sue letter on February 12, 2021.

75. RIOC violated Title VII.

76. Pursuant to Title VII, Plaintiff is entitled to reinstatement of her position with RIOC, back pay and benefits from the date of her termination through the date that her employment with RIOC is reinstated, front pay, and her attorney’s fees and expenses as a result of prosecuting this action.

77. Plaintiff has and will continue to incur damages.

As and for a Second Cause of Action (New York State Human Rights Law)

78. Plaintiff realleges each and every allegation set forth in paragraphs 1 through 77 as though fully set forth herein.

79. Under New York State Human Rights Law (“NYSHRL”), it is an unlawful employment practice to discriminate on the basis of “age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or status as a victim of domestic violence...” N.Y. Exec. Law §296(1)(a).

80. For reasons alleged herein, Defendants violated the NYSHRL.

81. Pursuant to N.Y. Exec. Law §297, Plaintiff is entitled to reinstatement of her position with RIOC, back pay and benefits from the date of her termination through the date that her employment with RIOC is reinstated, front pay, her attorney’s fees and expenses as a result of prosecuting this action, in addition to punitive damages in an amount to be determined at trial.

82. For the reasons alleged herein, Plaintiff has and will continue to incur damages.

83. As alleged herein, Defendants’ wrongdoing evinces a high degree of moral turpitude, wanton dishonesty, and indifference to Defendants’ civil obligations.

84. The conduct of Defendants as alleged herein is discrimination that was willful, wanton negligence, reckless and/or a conscious disregard of Plaintiff’s rights entitling her to punitive damages. Punitive damages are appropriate so that Defendants do not engage in similar conduct in the future.

As and for a Third Cause of Action (New York City Human Rights Law)

85. Plaintiff realleges each and every allegation set forth in paragraphs 1 through 84 as though fully set forth herein.

86. Under New York City Human Rights Law (“NYCHRL”), it is an unlawful employment practice to discriminate on the basis of “the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, caregiver status, sexual and reproductive health decisions, sexual orientation, uniformed service or immigration or citizenship status of any person...” N.Y.C. Admin. Code §8-107(1)(a).

87. For reasons alleged herein, Defendants violated the NYCHRL.

88. N.Y.C. Admin. Code §8-502(g) provides that: “[i]n any civil action commenced pursuant to this section, the court, in its discretion, may award the prevailing party reasonable attorney's fees, expert fees and other costs.”

89. Pursuant to N.Y.C. Admin. Code §8-502(g), Plaintiff is entitled to reinstatement of her position with RIOC, back pay and benefits from the date of her termination through the date that her employment with RIOC is reinstated, front pay, her attorney’s fees and expenses as a result of prosecuting this action, in addition to punitive damages in an amount to be determined at trial.

90. For reasons alleged herein, Plaintiff has been and will continue to incur damages.

91. As alleged herein, Defendants’ wrongdoing evinces a high degree of moral turpitude, wanton dishonesty, and indifference to Defendants’ civil obligations.

92. Defendants’ conduct as alleged herein is discrimination that was willful, wanton negligence, reckless and/or a conscious disregard of Plaintiff’s rights entitling her to punitive damages. Punitive damages are appropriate so that Defendants do not engage in similar conduct in the future.

As and for a Fourth Cause of Action (Defamation)

93. Plaintiff realleges each and every allegation set forth in paragraphs 1 through 92 as though fully set forth herein.

94. Upon information and belief, the Albany Defendants disseminated false statements to the *New York Post* and others accusing Plaintiff of being a racist. The *New York Post* is a widely read newspaper publication.

95. The Albany Defendants have made no attempt to retract the false statements that accuse Plaintiff of being a racist.

96. The false statements made by one or more of the Albany Defendants has exposed Plaintiff to public contempt, hatred, ridicule, aversion and/or disgrace.

97. The false statements made by one or more of the Albany Defendants have injured and will continue to injure Plaintiff in her trade, profession and/or business.

98. For reasons alleged herein, the false statements made by one or more of the Albany Defendants accusing Plaintiff of being a racist were made with actual malice and/or reckless disregard of whether it was false or not.

99. As a result of the Albany Defendants' defamation, Plaintiff has and will continue to incur damages.

100. The Albany Defendants' conduct as alleged herein was willful, wanton negligence, reckless and/or a conscious disregard of Plaintiff's rights, entitling Plaintiff to punitive damages. Punitive damages are appropriate so that Defendants do not engage in similar conduct in the future.

As and for a Fifth Cause of Action (42 U.S.C §1983)

101. Plaintiff realleges each and every allegation set forth in paragraphs 1 through 100 as though fully set forth herein.

102. 42 U.S.C §1983 provides: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the

jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.”

103. For reasons alleged herein, the false statements made by one or more of Defendants accusing Plaintiff of being a racist coupled with the unlawful, arbitrary, capricious and wrongful termination of her employment: (i) denigrated Plaintiff's competence as a professional and impugned her professional reputation in such a fashion as to effectively put a significant roadblock in Plaintiff's continued ability to practice her profession; (ii) made stigmatizing false statements publicly; and (iii) were made concurrently in time to Plaintiff's dismissal from her employment.

As and for a Sixth Cause of Action (Labor Law §740)

104. Plaintiff realleges each and every allegation contained in paragraphs 1 through 103 as fully set forth herein.

105. Labor Law §740(2) provides: “Prohibitions. An employer shall not take any retaliatory personnel action against an employee because such employee does any of the following: (a) discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that is in violation of law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety, or which constitutes health care fraud; (b) provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such violation of a law, rule or regulation by such

employer; or (c) objects to, or refuses to participate in any such activity, policy or practice in violation of a law, rule or regulation.”

106. Labor Law §740(1)(f) provides: “Supervisor” means any individual with an employer’s organization who has the authority to direct and control the work performance of the affected...” The individual Defendants are supervisors because as directors of RIOC they had the authority to direct and control Rosenthal with respect to her employment with RIOC. A supervisor has the same liability and obligations as an “Employer” pursuant to Labor Law §740.

107. Upon information and belief, among the reasons that Rosenthal’s employment by RIOC was terminated was in retaliation for her reporting and acting upon the steam tunnel public safety issue. As a result of the aforesaid, one or more of Defendants violated Rosenthal’s rights pursuant to Labor Law §740.

108. As a result of one or more Defendants violating Labor Law §740, Rosenthal has incurred damages and will continue to incur damages.

109. Pursuant to Labor Law §740(5)(e), Rosenthal is entitled to reinstatement of her employment with RIOC, back pay and benefits from the date of her termination through the date that her employment with RIOC is reinstated, front pay, an amount of damages exceeding \$25,000 to be determined a trial, punitive damages in an amount to be determined at trial, and her attorney’s fees and expenses incurred as a result of prosecuting this action.

WHEREFORE, Plaintiff respectfully requests that the following judgment be entered:

1. As to the First Cause of Action against Roosevelt Island Operating Corporation, reinstating Plaintiff’s employment with RIOC, and awarding Plaintiff back pay and benefits from the date of her termination through the date that her employment with RIOC

is reinstated, front pay, and her attorney's fees and expenses as a result of prosecuting this action.

2. As to the Second Cause of Action against all Defendants, reinstating Plaintiff's employment with RIOC, and awarding Plaintiff back pay and benefits from the date of her termination through the date that her employment with RIOC is reinstated, front pay, her attorney's fees and expenses incurred as a result of prosecuting this action, in addition to punitive damages in an amount to be determined at trial.

3. As to the Third Cause of Action against all Defendants, reinstating Plaintiff's employment with RIOC, awarding Plaintiff back pay and benefits from the date of her termination through the date that her employment with RIOC is reinstated, front pay, her attorney's fees and expenses incurred as a result of prosecuting this action, in addition to punitive damages in an amount to be determined at trial.

4. As to the Fourth Cause of Action against all Defendants, awarding Plaintiff an amount of damages exceeding \$25,000 to be determined a trial, in addition to punitive damages in an amount to be determined at trial.

5. As to the Fifth Cause of Action against all Defendants, awarding Plaintiff an amount of damages exceeding \$25,000 to be determined a trial, in addition to punitive damages in an amount to be determined at trial.

6. As to the Sixth Cause of Action against all Defendants, reinstating Plaintiff's employment with RIOC, awarding Plaintiff back pay and benefits from the date of her termination through the date that her employment with RIOC is reinstated, front pay, an amount of damages exceeding \$25,000 to be determined a trial, punitive damages in an

amount to be determined at trial, and her attorney's fees and expenses incurred as a result of prosecuting this action.

7. Granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York
April 27, 2021

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