

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TONY BIRITTIERI,

Plaintiff,

- against -

WHOLE FOODS MARKET GROUP, INC. and
WHOLE FOODS MARKET,

Defendants.

Index No.:

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

Plaintiff TONY BIRITTIERI (“Plaintiff” or “BIRITTIERI”), by and through his attorneys SHEGERIAN & ASSOCIATES, as and for his Complaint against Defendant WHOLE FOODS MARKET GROUP, INC. (“Defendant” or “WHOLE FOODS”) and WHOLE FOODS MARKET (“Defendant” or “MARKET”), states and alleges on information and belief as follows:

PRELIMINARY STATEMENT

1. This is an action by Plaintiff, BIRITTIERI, whose employment with WHOLE FOODS and MARKET was wrongfully terminated by Defendants and against Defendants for disability discrimination, age discrimination, and failure to provide reasonable accommodation under: (a) Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000e *et seq.*, and its Amendments (“Title VII”); (b) the Americans with Disabilities Act, 42 U.S.C.A. § 1201 *et seq.* (“ADA”), and (c) the New York State Executive Law § 296 *et seq.* (“NYS Human Rights Law”).

2. Plaintiff brings this action against Defendants for economic, non-economic, compensatory, and punitive damages, pre-judgment interest, and costs and reasonable attorneys’ fees, and such other and further relief as this Court deems equitable and just.

JURISDICTION AND VENUE

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, as this is an action seeking redress for the violation of Plaintiff's rights under federal law.

4. Plaintiff respectfully requests that this Court exercise supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over any state court causes of action that arise from a common nucleus of operative facts that give rise to the federally based causes of action pleaded herein, and as against all parties that are so related to claims in this action within the original jurisdiction of this court that are formed as part of the same case or controversy.

5. Pursuant to New York State Executive Law § 298-a, the provisions of the NYS Human Rights Law shall apply to acts committed outside of New York state against a resident of New York state since such acts would constitute unlawful discriminatory practice if committed within New York state.

6. Venue herein is proper for the United States District Court for the Southern District of New York pursuant to 28. U.S.C. § 1391, because Defendants reside in this judicial district and is subject to this Honorable Court's personal jurisdiction with respect to this civil action in question.

ADMINISTRATIVE PROCEDURES

7. Within the time prescribed by law, Plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC") alleging violations of federal law including, but not limited to, 42 U.S.C. §§ 2000e *et seq.*, the Civil Rights Act of 1866, 42 U.S.C. § 1981, Civil Rights Act of 1991, Fair Employment and Housing Act Government Code §§ 12900, 12940-12941, *et seq.*, and the Americans with Disabilities Act, 42 U.S.C.A. § 1201 *et seq.*, annexed hereto as **Exhibit "A."**

8. The EEOC subsequently issued Plaintiff a Notice of Right to Sue, received on or around July 26, 2021, attached hereto as **Exhibit “B.”**

9. On or around October 22, 2021, a copy of this Complaint was mailed to the New York State Division of Human Rights, the New York State Department of Labor, and the Attorney General Office thereby satisfying the notice requirements of the New York State Human Rights Law and N.Y. Civ. Rights § 40-d.

JURY DEMAND

10. Pursuant to the Seventh Amendment of the United States Constitution and pursuant to Fed. R. Civ. P. 38(b), Plaintiff respectfully demands a trial by jury on all issues and claims set forth in this Complaint.

PARTIES

11. *Plaintiff:* Plaintiff BIRITTIERI is, and at all times mentioned in this Complaint was, a resident of the State of New York.

12. Defendant WHOLE FOODS was and still is a foreign corporation authorized to do business in the States of New York and Connecticut and the United States government. Defendant’s place of business where the following causes of action took place, was and is, in New York State and the State of Connecticut.

13. Defendant MARKET is authorized to do business in the States of New York and Connecticut.

14. The Defendants, and its agents, compelled, coerced, aided, and/or abetted the discrimination, retaliation, and harassment alleged in this Complaint, which conduct is prohibited under federal law including, but not limited to, (a) Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000e *et seq.*, and its Amendments (“Title VII”); (b) the Americans with Disabilities Act, 42 U.S.C.A. § 1201 *et seq.*, and (c) the New York State Executive Law § 296 *et seq.* (“NYS

Human Rights Law”).

15. The Defendants, and its agents, were responsible for the events and damages alleged herein, including on the following bases: (a) Defendants, and its agents, committed the acts alleged; (b) at all relevant times, Defendants, and its agents, was the agent or employee, and/or acted under the control or supervision, of Defendants, and its agents, and, in committing the acts alleged, acted within the course and scope of such agency and employment and/or is or are otherwise liable for Plaintiff’s damages; (c) at all relevant times, there existed a unity of ownership and interest between or among Defendants, and its agent, such that any individuality and separateness between or among those Defendants, and its agents, has ceased, and Defendants, and its agents, are the alter egos of one another. Defendants, and its agents, exercised domination and control over one another to such an extent that any individuality or separateness of Defendants, and its agents, does not, and at all times herein mentioned did not, exist. Adherence to the fiction of the separate existence of Defendants, and its agents, would permit abuse of the corporate privilege and would sanction fraud and promote injustice. All actions of Defendants, and its agents, were taken by employees, supervisors, executives, officers, and directors during employment with Defendants, were taken on behalf of Defendants, and its agents, and were engaged in, authorized, ratified, and approved of by Defendants.

16. WHOLE FOODS and MARKET, and its agents, both directly and indirectly employed Plaintiff as defined by federal law including, but not limited to, (a) Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000e *et seq.*, and its Amendments (“Title VII”); (b) the Americans with Disabilities Act, 42 U.S.C.A. § 1201 *et seq.*, and (c) the New York State Executive Law § 296 *et seq.* (“NYS Human Rights Law”).

17. In addition, WHOLE FOODS and MARKET, and its agents, compelled, coerced, aided, and abetted the retaliation and discrimination, which is prohibited under federal law including, but not limited to, (a) Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000e *et seq.*, and its Amendments (“Title VII”); (b) the Americans with Disabilities Act, 42 U.S.C.A. § 1201 *et seq.*, and (c) the New York State Executive Law § 296 *et seq.* (“NYS Human Rights Law”).

18. Finally, at all relevant times mentioned herein, Defendants, and its agents, acted as agents of each other in committing the acts alleged herein.

STATEMENT OF FACTS

19. *Plaintiff’s hiring:* Plaintiff BIRITTIERI was a dedicated employee of WHOLE FOODS and MARKET from March 15, 2019, until his termination on September 28, 2020. Plaintiff was a full-time pizza maker at the time of his termination.

20. *Plaintiff’s job performance:* Plaintiff BIRITTIERI was regarded a strong worker at Whole Foods Market, located at 90 E Putnam Avenue, Greenwich, CT 06830, as Plaintiff earned a full-time position after starting in a part-time role. Plaintiff was told by his supervisors that he was doing a great job and had a future within the company.

21. Shortly after being hired by WHOLE FOODS and MARKET, Bibany (last name unknown), manager, gave Plaintiff a pat on the back and told him he was doing great. Ian (last name unknown), supervisor, told Plaintiff that he can see Plaintiff moving forward at WHOLE FOODS and MARKET.

22. *Plaintiff’s protected status and activity:* Plaintiff was subjected to discrimination based on, among other things, his disabilities and age.

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