

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: **HON. EILEEN A. RAKOWER**
Justice

PART 15

Index Number : 162179/2014
DOUGLAS, MICHAEL S. JR.
vs.
643 BROADWAY HOLDINGS LLC.
SEQUENCE NUMBER : 002
COMPEL DISCLOSURE

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 3/1/16

MAR 01 2016

 _____, J.S.C.

HON. EILEEN A. RAKOWER

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE:MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

-----X
MICHAEL S. DOUGLAS, JR.,

Plaintiff,

Index No.
162179/2014

Mot. Seq. 001, 002

- against -

Decision and
Order

643 BROADWAY HOLDINGS LLC d/b/a BLEECKER
KITCHEN & Co. and JOSHUA BERKOWITZ,

Defendants.

-----X
HON. EILEEN A. RAKOWER, J.S.C.

Plaintiff, Michael S. Douglas, Jr., brings this action for race discrimination against defendants, 643 Broadway Holdings LLC d/b/a Bleecker Kitchen & Co. (“Bleecker Kitchen”) and Joshua Berkowitz (“Berkowitz”), a majority co-owner of Bleecker Kitchen (collectively, “Defendants”). By his complaint, filed December 10, 2014, Plaintiff alleges that Defendants subjected him to racial harassment and a racially hostile workplace in violation of the New York City Human Rights Law during his period of employment as a restaurant manager for Bleecker Kitchen from March 2014 to August 2014. Plaintiff seeks a declaratory judgment; an injunction; damages related to plaintiff’s loss of compensation, including backpay; damages related to Plaintiff’s emotional suffering and distress caused by Defendants’ actions; punitive damages, prejudgment interest at 9%; and reasonable attorneys’ fees and costs.

Plaintiff moves for an Order, pursuant to CPLR §§ 3124, 3104(a), requiring Defendants to forensically preserve, review, and produce electronic documents; produce hard copy and electronic documents responsive to Plaintiff’s First Request for Production of Documents; provide responses to Plaintiff’s First Set of Interrogatories; provide an affidavit detailing their preservation of electronic documents, and requesting that the Court enter Plaintiff’s proposed confidentiality order. Plaintiff also moves for an Order requiring Defendants to produce a

privilege log in connection with their objections to Plaintiff's First Request for the Production of Documents.

Defendants oppose.

On March 1, 2016, the Court held a compliance conference at which the parties entered into a Stipulation and Order for the Production and Exchange of Confidential Information. In addition, Defendants agreed to comply with Plaintiff's motions to compel within 30 days of the Order herein, Plaintiff agreed to produce documents withheld based on confidentiality within 30 days of this Order, and the parties agreed to complete depositions within 60 days of compliance with this Order.

Defendants are directed to provide documents responsive to Plaintiff's First Request for the Production of Documents and Interrogatories within thirty days. With respect to Document Request Nos. 8, 16, 21, 24, 33, 34, and 37, Defendants may withhold documents concerning Goldbar, as a separate legal entity and non-party to this litigation.

In response to Document Request Nos. 1, 6, 7, 10, Defendants claim that such documents either do not exist, or are not in their possession, custody, or control. For each document responsive to the Plaintiff's demands that the Defendants cannot produce because such document is not in their possession, custody, or control, Defendants are directed to provide the Plaintiff with an affidavit from someone with personal knowledge of the search conducted for the document.

To the extent that Defendants claim that certain documents responsive to Plaintiff's requests are privileged, Defendants are directed to submit a privilege log covering all responsive documents that the Defendants claim are privileged and describing those withheld documents with sufficient detail to permit the Court to determine which documents are privileged and which must be produced to the Court for an *in camera* review.

Finally, with respect to Document Request No. 39, the Court agrees with Defendants that documents showing Defendants' financial assets or net worth are inappropriate at this stage in the litigation.

Wherefore it is hereby,

ORDERED that Plaintiff's motion is granted only to the extent that Defendants 643 Broadway Holdings, LLC and Joshua Berkowitz are compelled to produce

documents responsive to Plaintiff's First Request for the Production of Documents and Interrogatories within thirty (30 days) as directed above; and it is further

ORDERED that all parties are directed to appear for a compliance conference scheduled on May 3, 2016 at 9:30 AM at 71 Thomas Street, Room 205.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

DATED: MARCH 1, 2016

MAR 01 2016



EILEEN A. RAKOWER, J.S.C