

CV 12 - 2930

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

GAMAL ELLISTON,

-----X Case No. WALL, M.J.

Plaintiff,

COMPLAINT

COATT, J.

SPATT, J.

SAFELITE FULFILLMENT, INC., SAFELITE GROUP, INC.,
and KEITH DESSLER, *Individually*,

PLAINTIFF DEMANDS
A TRIAL BY JURY

Defendants.

WALL, M.J.

SUMMONS ISSUED

Plaintiff, GAMAL ELLISTON, by his attorneys, PHILLIPS & PHILLIPS Attorneys at

Law, PLLC, upon information and belief, complains as follows:

FILED
CLERK
2012 JUN 12 AM 8:29
U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

NATURE OF THE CASE

1. Plaintiff brings this action charging that Defendants violated Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e et. seq. ("Title VII"), and New York State Executive Law §296, et. seq. ("NYSEL"), seeking to recover lost wages, damages for emotional distress, punitive damages, reasonable attorney's fees and costs as a result of

2. Specifically, Defendants discriminated against Plaintiff solely due to his race (Black) and

and 1343.

4. The Court has supplemental jurisdiction over the claims of Plaintiff brought under state law, pursuant to 28 U.S.C. § 1367.
5. Venue is proper in this district, pursuant to 28 U.S.C. §1391(b), based upon Defendants'

residence within the Court's jurisdiction.

New York.

PROCEDURAL PREREQUISITES

12. Upon information and belief, Defendant SAFELITE FULFILLMENT, INC. and Defendant SAFELITE GROUP, INC. are “joint employers” and/or “integrated employers” for purposes of Title VII coverage.
13. At all times material, Defendant SAFELITE FULFILLMENT, INC. and Defendant SAFELITE GROUP, INC. are jointly referred to herein as “Defendant SAFELITE.”
14. At all times material, Defendant SAFELITE owns, operates and does business as “Safelite

Auto Glass,” a windshield repair and replacement service provider facility, located at 70 Mall Drive, Commack, New York 11725.

15. At all times material, Plaintiff ELLISTON was an employee of Defendant SAFELITE.
16. Upon information and belief, at all times material, Defendant KEITH DESSLER (“DESSLER”) was and is a resident of the State of New York, County of Suffolk.
17. At all times material, Defendant DESSLER was and is an employee of SAFELITE

Defendant SAFELITE's trucks in order to deliver automobile windshields to customers throughout Suffolk, Nassau and Queens counties, and operating "picker" machines at Defendant SAFELITE.

23. Plaintiff ELLISTON's performance had been, upon information and belief, above-average during the course of his employment with Defendant SAFELITE.

fourteen (14) hours per week overtime.

25. Despite working full-time hours plus overtime, Plaintiff ELLISTON was not paid

29. Plaintiff ELLISTON relied on the income he received at Defendant SAFELITE and requested additional work hours from Plaintiff ELLISTON.

However, when Mr. Rivera attempted to increase Plaintiff ELLISTON's allotted work hours, Defendant DESSLER decreased them, causing financial harm to Plaintiff ELLISTON.

30. From in or about December 2009 through in or about March 2011, Defendant DESSLER refused to perform Defendant SAFELITE's required, formal annual review of Plaintiff ELLISTON, thereby preventing him from receiving any increase in pay, hours or benefits

34. By way of further example, Defendant DESSLER asked Plaintiff ELLISTON if he smoked, and when Plaintiff ELLISTON replied no, he stated, "**You are the first Jamaican I know who doesn't smoke weed.**" Plaintiff ELLISTON was extremely offended by this discriminatory and derogatory comment, as would likely be the case for any reasonable person with Black Jamaican roots.

35. Defendant DESSLER persisted in singling out Plaintiff ELLISTON because of his race and nationality. For instance, on several occasions, **Defendant DESSLER ASKED PLAINTIFF ELLISTON TO SUPPLY HIM WITH MARIJUANA, TELLING HIM, "ALL JAMAICANS SMOKE WEED" AND ASKING HIM "WHY DON'T YOU SMOKE WEED?"**

36. Defendant DESSLER seemed to take advantage of any opportunity to demean and harass Plaintiff ELLISTON. For instance, **Defendant DESSLER frequently asked Plaintiff ELLISTON WHETHER HE CAME TO THE UNITED STATES "LEGALLY OR**

ILLEGALLY."

ELLISTON was embarrassed and humiliated by these harassing comments.

39. Defendant DESSLER sought to harm Plaintiff ELLISTON in other ways as well. For example, Plaintiff ELLISTON received a traffic violation ticket as a result of following

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

43. Plaintiff ELLISTON felt that no matter what he did, he could not escape Defendant DESSLER's abuse and harassment. For instance, in or about October 2010, Plaintiff ELLISTON received a mandatory medical examination from the Department of Transportation (DOT), at the conclusion of which he was provided with a two-year

counter Defendant DESSLER's discriminatory and abusive accusations that he smoked marijuana.

44. However, Defendant DESSLER exclaimed he did not believe Plaintiff ELLISTON had passed the medical examination and that the Certificate was valid. Indeed, Defendant DESSLER retained the Certificate for over a week and told Plaintiff ELLISTON he was

and belief, Defendant DESSLER discriminatory animus was additionally fueled by a desire for retaliatory revenge. For instance, he constantly maligned Plaintiff ELLISTON for applying for worker's compensation in connection with his work-related injury.

48. On or about March 1, 2011, Plaintiff ELLISTON notified Mr. Rivera via text message that he might be thirty (30) minutes late for work, but arrived at work on time and timely began his work shift.

49. **Nevertheless, later that same day, on or about March 1, 2011, Mr. Rivera approached Plaintiff ELLISTON, handed him a termination letter, and told him that, pursuant to Defendant DESSLER's instructions, Plaintiff ELLISTON's employment was terminated.** Plaintiff ELLISTON was completely shocked and mortified, as no advance notice of any kind had been provided to him.

53. On or about June 16, 2011, at a post-termination workers compensation hearing, Mr. Rivera told ELLISTON that Defendant SAFELITE forged his signature on its version of the termination letter.
54. Upon information and belief, from in or about December 2009 through in or about March 2011, Defendant DESSLER systematically terminated non-white, non-European (Black, Jamaican, Latino, and Multi-racial) employees in his department and illegally replaced them with white employees who were afforded full-time statuses and benefits.
55. Upon information and belief, at least one of these rehired white employees had previously been terminated for theft of Defendant SAFELITE's property, but had still been afforded full-time status upon rehiring.
56. Upon information and belief, Plaintiff ELLISTON's discharge was a continuation of Defendant DESSLER's systematic termination of non-white, non-European employees and in retaliation for Plaintiff ELLISTON's complaints about Defendant DESSLER's outrageous and illegal discriminatory and harassing conduct.
57. Plaintiff ELLISTON's performance had been, upon information and belief, above average during the course of his employment with Defendants.
58. Indeed, as previously mentioned, Plaintiff ELLISTON had never received any counseling

70. Defendants' conduct has been malicious, willful, outrageous, and conducted with full knowledge of the law. As such, Plaintiff ELLISTON demands Punitive Damages as against all Defendants, jointly and severally.

**AS A FIRST CAUSE OF ACTION
FOR DISCRIMINATION UNDER TITLE VII
(Not Against Individual Defendant)**

71. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.
72. This claim is authorized and instituted pursuant to the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section(s) 2000e et seq., as amended, ("Title VII"), for relief based upon the unlawful employment practices of the above-named Defendants.
73. Plaintiff complains of Defendants' violation of Title VII's prohibition against discrimination in employment based, in whole or in part, upon an employee's race or national origin.
74. Defendants engaged in unlawful employment practices prohibited by 42 U.S.C. §2000e et seq., by discriminating against Plaintiff because of his race and national origin.

**AS A SECOND CAUSE OF ACTION
FOR DISCRIMINATION UNDER TITLE VII
(Not Against Individual Defendant)**

75. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.
76. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-3(a) provides that it shall be unlawful employment practice for an employer: "(1) to . . . discriminate against any of his employees . . . because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted

on terminated

77. Defendants engaged in unlawful employment practice prohibited by 42 U.S.C. §2000e et seq. by discriminating against Plaintiff with respect to the terms, conditions or privileges of employment because of his opposition to the unlawful employment practices of Defendants.

**AS A THIRD CAUSE OF ACTION
FOR DISCRIMINATION UNDER STATE LAW**

78. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

discriminatory practice: “For any person engaged in any activity to which this section applies to retaliate or discriminate against any person because he has opposed any practices forbidden under this article.”

83. Defendants violated the section cited herein as set forth.

**AS A FIFTH CAUSE OF ACTION
FOR DISCRIMINATION UNDER STATE LAW**

84. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

85. New York State Executive Law §296(6) provides that it shall be an unlawful discriminatory practice: “For any person to aid, abet, incite compel or coerce the doing of any acts forbidden under this article, or attempt to do so.”

JURY DEMAND

87. Plaintiff demands a trial by jury.

back pay and front pay, resulting from Defendants' unlawful employment practices,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

unlawful employment practices;

C. Awarding Plaintiff compensatory damages for mental, emotional and physical injury, distress, pain and suffering and injury to his reputation in an amount to be proven;

D. Awarding Plaintiff punitive damages;



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
New York District Office

33 Whitehall Street, 5th Floor
New York, NY 10004-2112
For General Information: (800) 669-4000
TTY: (800)-669-6820
District Office: (212) 336-3630
General FAX: (212) 336-3625

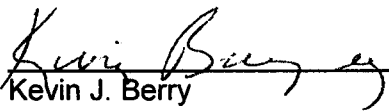
Mr. Gamal Elliston
42 Stuyvesant Street
Brentwood, NY 11717

Re: Gamal Elliston v. Safelite Fulfillment, Inc.
EEOC Charge No.: 520- 2011 -03587

Dear Mr. Elliston:

We have received your request for a Notice of Right to Sue through your attorney. Enclosed is your Notice of Right to Sue.

On behalf of the Commission,



Kevin J. Berry
District Director

MAY 30 2012

Dated

Attn.: W. K. Phillips, Esq.
Phillips & Phillips
30 Broad Street, 35th Floor
New York, NY 10004

Attn.: C. L. Elliott,
Senior Corporate Counsel
Safelite Fulfillment, Inc.
P. O. BOX 18200
Columbus, OH 43218-2000

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: **Gamal Elliston**
42 Stuyvesant Street
Brentwood, NY 11717

From: **New York District Office**
33 Whitehall Street
5th Floor
New York, NY 10004

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.	EEOC Representative	Telephone No.
520-2011-03587	Arlean C. Nieto, Supervisory Investigator	(212) 336-3676

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA **must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

- More than 180 days have passed since the filing of this charge.
- Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.
- The EEOC is terminating its processing of this charge.
- The EEOC will continue to process this charge.

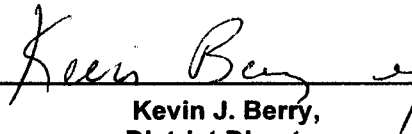
Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:

- The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice**. Otherwise, your right to sue based on the above-numbered charge will be lost.
- The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission


Kevin J. Berry,
District Director

Enclosures(s)

(Date Mailed)

CC: **Attn.: Ms. C. L. Elliott**
Senior Corporate Counsel
SAFELITE FULFILLMENT INC/BELRON US
P.O. Box 182000
Columbus, OH 43218

Kosta Kollef, Esq.
PHILLIPS & PHILLIPS ATTORNEYS AT LAW
30 Broad Street, 35th Floor
New York, NY 10004