

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

APRIL MURGA,

Plaintiff,

-against-

COSTCO WHOLESALE CORPORATION d/b/a COSTCO,

Defendant.

Case No. 21-cv-06179

COMPLAINT

**PLAINTIFF
DEMANDS A
TRIAL BY JURY**

Plaintiff, April Murga, by her attorney, The Law Office of Joshua P. Frank, PLLC, hereby complains of Defendant, Costco Wholesale Corporation d/b/a Costco, as follows:

NATURE OF THE CASE

1. Plaintiff April Murga complains pursuant to the New York State Human Rights Law, New York State Executive Law § 296 *et seq.* (“NYSHRL”), seeking to redress the injuries she has suffered as a result of being subjected to sex discrimination (sexual harassment) as an employee of Defendant Costco Wholesale Corporation d/b/a Costco.

JURISDICTION AND VENUE

2. Jurisdiction of this Court is proper under 28 U.S.C. § 1332 in that there is complete diversity of citizenship, and the matter in controversy exceeds, exclusive of interest and costs, the sum of \$75,000.00.
3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) in that the discriminatory conduct alleged herein occurred within the Eastern District of New York (Suffolk County).

PARTIES

4. Plaintiff April Murga is a resident of the State of New York and Suffolk County.

5. Defendant Costco Wholesale Corporation d/b/a Costco (hereinafter “Costco”) is a foreign business corporation, duly existing pursuant to, and by virtue of, the laws of the State of Washington, with its corporate headquarters located at 999 Lake Drive, Issaquah, Washington 98027.
6. At all times relevant, Costco owned and/or operated a branch retail market located at 625 Broadhollow Road, Melville, New York 11747, wherein the discriminatory conduct at issue occurred.

MATERIAL FACTS

7. Plaintiff April Murga has been a dedicated employee of Costco for 17 years, since 2004.
8. At all times relevant, the Plaintiff worked at Costco’s Melville location as a Stocker.
9. In April of 2021, the Plaintiff began reporting to a new Manager, Jessica Arcone.
10. As a Manager, Ms. Arcone exercised supervisory authority over the Plaintiff. Ms. Arcone had the power to affect the terms and conditions of the Plaintiff’s employment.
11. In or around June, 2021, Ms. Arcone began making explicit her sexual interest in the Plaintiff.
12. More specifically, Ms. Arcone often flirted with the Plaintiff, and she bluntly asked the Plaintiff whether she had ever “been with” a woman. In response, the Plaintiff, who was stocking shelves, shook her head (indicating a negative response) and looked away.
13. Furthermore, Ms. Arcone described to the Plaintiff details regarding her past sexual experiences with other women. For example, Ms. Arcone told the Plaintiff that she would often have her partners wear a “strap-on” and that she was always “the receiver.” Ms. Arcone also bragged to the Plaintiff that she had been sexually active with a former Costco female employee.

14. The Plaintiff, who is heterosexual, felt increasingly uncomfortable with Ms. Arcone's persistent sexual advances.
15. Nonetheless, the Plaintiff, who remains invested in her career and has children to support, repeatedly attempted to maintain professionalism in the face of Ms. Arcone's sexual harassment by not responding to her and/or by walking away. Despite the fact that the Plaintiff did not express reciprocal interest in her, Ms. Arcone proved incapable of ceasing her sexual harassment of the Plaintiff.
16. By way of example, the Plaintiff had asked Ms. Arcone where to place a pallet of product. In response, Ms. Arcone smiled suggestively and replied with a laugh, "Do you really want to know?"
17. As the Summer progressed, the Plaintiff found it increasingly difficult to cope with Ms. Arcone's sexual harassment. Meanwhile, Ms. Arcone made certain that the Plaintiff consistently worked near her.
18. At this juncture, although the Plaintiff had previously enjoyed working at Costco's Melville location since the commencement of her employment, the Plaintiff felt she needed to remove herself from Ms. Arcone. The Plaintiff determined that the most effective way to do so would be to request a transfer, which she did on August 11, 2021. The Plaintiff directed her request to General Manager Michael Matukonis, who said he would get back to her.
19. Two days later, on August 13, 2021, however, Ms. Arcone's sexual harassment of the Plaintiff became even more egregious.

20. While the Plaintiff was tagging pallets for inventory, Ms. Arcone approached the Plaintiff and rubbed her pelvic area, less than an inch above the Plaintiff's vagina. Ms. Arcone kept walking, turning around to look at the Plaintiff and smiling at her. The Plaintiff was stunned.
21. The following day, after having gone through the day without eating, the Plaintiff was extremely hungry. Although the Plaintiff did not want to text Ms. Arcone, the only discreet way she could find out if there was food in the breakroom would be to ask her; if there had been food available, the Plaintiff would have taken her break much earlier than usual in order to eat. When the Plaintiff asked Ms. Arcone if there was any food left in the breakroom, however, Ms. Arcone replied by text, "I'm your food."
22. The Plaintiff realized that she was not going to be able to work under Ms. Arcone without subjecting herself to continued sexual harassment. Therefore, on August 17, 2021, the Plaintiff complained to Mr. Matukonis about the foregoing sexual harassment to which she had been subjected. The Plaintiff also reiterated her request for a transfer.
23. Mr. Matukonis asked the Plaintiff to write a statement, which the Plaintiff provided. Furthermore, Mr. Matukonis said that he would investigate and follow Costco protocol.
24. Mr. Matukonis, however, further victimized the Plaintiff by forcing her to sign a confidentiality agreement.
25. Moreover, Mr. Matukonis kept the Plaintiff in Ms. Arcone's section of the warehouse for the entire following day.
26. In fact, Mr. Matukonis did not remove the Plaintiff from Ms. Arcone's section until the next day, after the Plaintiff specifically requested that she be removed.

27. Ms. Arcone, however, followed the Plaintiff around the warehouse. It appeared as though Ms. Arcone was attempting to intimidate the Plaintiff in retaliation for the Plaintiff's sexual harassment complaint.
28. Therefore, the Plaintiff reported Ms. Arcone's behavior to Mr. Matukonis in an e-mail dated August 29, 2021, stating, *inter alia*, "Lately she is always hanging around wherever I am working. No matter which area of center I'm in. She's right there. Even when I'm on the fronted [*sic*] [front end]. She hangs around making me feel uncomfortable. I feel she's doing it on purpose. It's as if she's taking this like she got away with what happened and that she's untouchable. She basically got a slap on the wrist. I do not believe the situation is over and needs to be addressed. As a manager she should be held accountable to higher standards."
29. Furthermore, the Plaintiff learned that Ms. Arcone had spoken to other managers and employees about her sexual harassment complaint; and when there appeared to be no consequences for Ms. Arcone, the Plaintiff was made to feel further degraded.
30. In fact, Ms. Arcone openly made a mockery of the Plaintiff's sexual harassment complaint by subjecting another female employee to sexual harassment and then remarking, "I better stop. I'm in trouble for sexual harassment."
31. Upon information and belief, the aforementioned female employee also complained to Mr. Matukonis about Ms. Arcone's sexual harassment. Furthermore, the Plaintiff is aware of a former female Costco employee who had been sexually harassed by Ms. Arcone and complained to Costco. Notwithstanding Ms. Arcone's history, Costco continues to permit her to work as a Manager.

32. In light of the foregoing, on September 4, 2021, the Plaintiff sent another e-mail to Mr. Matukonis to express her dissatisfaction with the handling of, and investigation of, her sexual harassment complaint and to communicate her impression that Mr. Matukonis had not taken her complaint seriously. Specifically, the Plaintiff wrote, *inter alia*, “I just want to let you know I’m having a hard time dealing with this. I feel sick to my stomach. It’s hard not to think about it. I haven’t eaten in days. I’m not ok with the outcome. I honestly feel the outcome would have been very different if a man touched me the way she did. She got away with sexual harassment and is talking about it. She asked a manager where the cameras are in the back. Which makes her look guilty. Why would she ask where the cameras are? Also like I said how did Cecil and Amanda know? I strongly suggest you speak to all of your managers about it or question them. A few of them know and not only morning managers.”
33. Despite the Plaintiff’s recommendations regarding a proper investigation, Mr. Matukonis told the Plaintiff the following day that he did not want to speak with any Managers because they might deny having witnessed any sexual harassment.
34. Not only does Mr. Matukonis’ explanation lack any sense and contravene the basic principles of a workplace sexual harassment investigation, but (in conjunction with the improper confidentiality agreement the Plaintiff was forced to sign), it reveals Mr. Matukonis’ overriding concern with sweeping the Plaintiff’s complaint under the carpet as expeditiously as possible.
35. While the Plaintiff’s transfer request was approved, with September 5, 2021 being her last day at the Melville location, the Plaintiff’s hostile work environment has not been

adequately remedied to date, and the Plaintiff left her job at the Melville warehouse feeling upset and dejected.

36. As a result, the Plaintiff has been unlawfully discriminated against, degraded, humiliated, and victimized due to her sex.
37. The Plaintiff has endured a hostile work environment based upon her sex (sexual harassment).
38. Despite knowledge of Ms. Arcone's sexual harassment of the Plaintiff (and prior complaints against her), Costco has failed to take reasonable steps to prevent Ms. Arcone from engaging in sexual harassment of Costco employees, and Costco has failed to take reasonable steps to remedy the Plaintiff's hostile work environment.
39. As a result of the acts and conduct complained of herein, the Plaintiff has suffered, and will continue to suffer, from significant emotional distress, mental anguish, pain and suffering, and other non-pecuniary losses.
40. The Defendant's conduct has been malicious, willful, outrageous, and/or reckless and was undertaken with full knowledge of the law. As such, the Plaintiff demands punitive damages from the Defendant.

**FIRST CAUSE OF ACTION FOR DISCRIMINATION
UNDER THE NYSHRL**

41. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this Complaint and incorporates same herein.
42. The NYSHRL, § 296 (1)(a), provides, in pertinent part, that:
 1. It shall be an unlawful discriminatory practice: (a) For an employer or licensing agency, because of an individual's age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability,

predisposing genetic characteristics, familial status, marital status, or domestic violence victim status, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

43. As alleged in the factual averments of this Complaint, the Defendant engaged in unlawful employment practices prohibited by the NYSHRL by discriminating against the Plaintiff because of her sex and by subjecting the Plaintiff to a hostile work environment due to her sex (sexual harassment).

JURY DEMAND

44. Plaintiff April Murga hereby requests a trial by jury.

WHEREFORE, Plaintiff April Murga respectfully requests a judgment against the Defendant, as follows:

- A. Declaring that the Defendant engaged in unlawful employment practices prohibited by the NYSHRL in that the Defendant discriminated against the Plaintiff because of her sex and subjected the Plaintiff to a hostile work environment due to her sex (sexual harassment);
- B. Awarding damages to the Plaintiff resulting from the Defendant's unlawful employment practices and conduct, and to otherwise make Plaintiff whole for any losses suffered as a result of such unlawful employment practices;
- C. Awarding Plaintiff compensatory damages for mental anguish, emotional distress, and pain and suffering;
- D. Awarding Plaintiff punitive damages;

- E. Awarding Plaintiff attorney's fees, costs, and expenses incurred in the prosecution of this action; and
- F. Awarding Plaintiff such other and further relief as the Court may deem equitable, just and proper to remedy the Defendant's unlawful employment practices.

Dated: Carle Place, New York
November 5, 2021

**THE LAW OFFICE OF
JOSHUA P. FRANK, PLLC**

Joshua P. Frank

By:

Joshua P. Frank, Esq.
Attorney for Plaintiff
1 Old Country Road, Suite 385
Carle Place, New York 11514
(516) 416-4444
jfrank@jpfranklaw.com