

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DAVID POSSNER,

Plaintiff,

-against -

**VERIFIED  
COMPLAINT  
JURY TRIAL DEMANDED**

BOARD OF EDUCATION OF THE CITY SCHOOL  
DISTRICT OF THE CITY OF NEW YORK, A/K/A  
THE NEW YORK CITY DEPARTMENT OF EDUCATION and  
RUSHELL WHITE, Individually and in her Official Capacity

Defendants.  
-----X

Plaintiff, DAVID POSSNER, by and through his attorneys, THE LAW OFFICE OF STEVEN A. MORELLI, P.C., respectfully alleges, upon knowledge as to himself and his own actions, and upon information and belief as to all other matters, as follows:

**PRELIMINARY STATEMENT**

1. Plaintiff David Possner dedicated his entire professional and personal life to helping children learn and excel in our City's school system. Indeed, for the past 10 years, Mr. Possner has worked as an Assistant Principal at the Defendant DOE's Virgil I. Grisson Middle School facility and has found joy in his ability to build relationships with, and help the students as an Assistant Principal. Despite his hard work and dedication, however, Mr. Possner was disgustingly subjected to blatant discrimination spearheaded by his fellow administrators at the Middle School. Indeed, the Principal of the Middle School, Defendant Rushell White, purposefully and callously targeted Mr. Possner, a

Jewish male, on the basis of his religion, race, and gender, with the clear intent to purge Mr. Possner from the Middle School. To that end, Defendant White (1) subjected Plaintiff to blatant verbal abuse; (2) permitted the Middle School's staff to torment Plaintiff who called Mr. Possner a "*bad Jew*" and told him he was on the "*wrong side of God*;" (3) subjected Plaintiff to physical abuse; and (4) went so far as to falsely report Mr. Possner for misconduct. Adding insult to injury, when Mr. Possner stood up for his civil rights, Defendants blatantly retaliated against him and have systematically turned Mr. Possner's world into one of torment.

2. As more fully set forth below, in: (1) subjecting Plaintiff to disparate treatment on the basis of his religion, race and gender; (2) subjecting Plaintiff to heightened scrutiny and harassment on the basis of his religion and race and gender; (3) subjecting Plaintiff to frivolous and unwarranted disciplinary action on the basis of his religion and race and gender; and (4) retaliating against Plaintiff for his lawful complaints of discrimination, Defendants discriminated against and retaliated against Plaintiff in violation of the First Amendment of the United States Constitution pursuant to 42 U.S.C. 1983, 42 U.S.C. 1981, and the Equal Protection Clause of the United States Constitution pursuant to 42 U.S.C. 1983.

### **JURISDICTION AND VENUE**

1. This Court has original jurisdiction over Plaintiff's federal claims pursuant to 28 U.S.C. §§ 1331 & 1343.

2. Venue is proper in this case pursuant to 28 U.S.C. § 1391 because (1) a substantial part of the events which give rise to the Plaintiff's claims took place in new York County, which is located in the Southern District of New York.
3. On or about July 31, 2015, Plaintiff served a Notice of Claim upon all Defendants. Defendants have not yet requested an examination of Plaintiff pursuant to General Municipal Law § 50-h.

### PARTIES

4. Plaintiff DAVID POSSNER is a Caucasian Jewish male, who is a resident and domiciliary of Richmond County, New York. At all times relevant, Plaintiff was an "employee" of Defendants.
5. Defendant BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, A/K/A THE NEW YORK CITY DEPARTMENT OF EDUCATION (hereinafter "DOE") is a municipal corporation incorporated under the laws of the State of New York, which is in charge of all public schools in the City of New York. Its headquarters are located at 52 Chambers Street, New York, NY 10007. At all times relevant to this complaint, Defendant DOE was Plaintiff's "employer".
6. Defendant Rushell White, at all times relevant to this charge, was and still is the Principal of the Virgil I. Grisson Middle School, an institution within the Defendant DOE's network. Accordingly, Defendant White, at all times relevant, was Plaintiff's "employer" and was responsible for the terms and conditions of Plaintiff's employment. Further,

Defendant Rushell White actively participated, condoned, aided, mobbed and abetted the discriminatory and retaliatory attacks on Plaintiff.

### **FACTUAL ALLEGATIONS**

7. Plaintiff David Possner is a veteran Assistant Principal of Jewish faith. He is respectfully cognizant of his religion and culturally observant.
8. Mr. Possner has been employed as an Assistant Principal (“A.P”) at the Virgil I. Grisson Middle School (hereinafter the “School”), which is a part of the DOE network, since 2005.
9. Over the course of his tenure at the School, Ms. Possner proved himself a hard-working, loyal, and effective educator, as exemplified by his positive performance evaluations.
10. At all times relevant to this charge, Defendant Ms. Rushell White was the Principal of the School. Accordingly, Defendant White was Mr. Possner’s supervisor. In addition, as Principal, Defendant White had control and final decision making authority over the terms and conditions of Plaintiff’s employment.
11. Further, upon information and belief, Defendant White is, upon information and belief, Christian and is of Jamaican descent.
12. Despite Mr. Possner’s exemplary job performance, Defendants callously and viciously targeted Plaintiff, and subjected Mr. Possner to untold discrimination on the basis of his Jewish faith, race and gender.
13. Specifically, Defendant White consistently undermined Mr. Possner’s authority as an A.P., and embarrassed Plaintiff while in the workplace.

14. For example, Defendant White routinely demanded Mr. Possner pick up garbage, including half-eaten food, which students left in the School's hallways.
15. Indeed, on one particular occasion, Defendant White summoned Mr. Possner for an "urgent" matter. When Plaintiff found Defendant White, she was accompanied by the custodial engineer and one of the School's custodians.
16. At such time, Defendant White demanded Mr. Possner pick up a half-eaten plumb from the floor. After doing so, Defendant White dismissed Plaintiff. Clearly, the "urgent" matter Defendant White needed Mr. Possner to attend to was just a ploy to embarrass Plaintiff in front of his colleagues and, indeed, subordinates.
17. Unsurprisingly, Defendant White's antics had their intended effect as Mr. Possner was constantly teased and harassed by the School's custodial staff, whom sent text messages to Plaintiff telling him to pick-up fruit stuck in their butts.
18. Furthermore, in or around September 2014, Defendant White told Plaintiff that, as the Math A.P., she held him personally accountable for the students' Math scores and would rate him unsatisfactory if the scores did not go up. Defendant White repeated this sentiment numerous times throughout the school year.
19. This was of no concern to Plaintiff as he always worked tirelessly to ensure his students excelled at math and indeed, all subjects.
20. Appallingly, however, when Plaintiff's students performed exceptionally well on the Math Regents, and the School's math scores went up, Defendant White adamantly refused to credit Plaintiff's efforts and attributed the students' performance to a "team effort."

21. Notably, when students performed well on other Regents, Defendant White specifically credited the assigned A.P., many of whom were similarly Jamaican women of Catholic faith.
22. In addition, Defendant White blamed and reprimanded Plaintiff for infractions, most if not all of which he did not commit.
23. Specifically, during the 2012-2013 academic year, the School's fire extinguishers were often discharged in Plaintiff's academy on the third floor. Notably, the extinguishers were discharged while Mr. Possner was on a completely different floor and while Plaintiff was otherwise occupied supervising students in the cafeteria on the first floor.
24. Despite this fact, Defendant White accused Mr. Possner of being the culprit. When it was later discovered that a student was responsible, Defendant White never apologized to Mr. Possner for her false accusations and, upon information and belief, never reprimanded the student responsible.
25. Furthermore, over the 2014/2015 academic school year, Defendant White issued Mr. Possner misrepresentative and erroneous negative performance evaluations.
26. Specifically, Defendant White rated Mr. Possner as 'Ineffective' during a January 21, 2015 supervisor walkthrough, and rated Plaintiff as 'not meeting standard' on Plaintiff's January 2015 mid-year review despite the lack of vital statistical data which was not released by the city and the State until way after the school year had ended.
27. Moreover, on June 26, 2015, Defendant White issued Mr. Possner a "U" rating on his year-end review despite the fact that Plaintiff's students had shown a remarkable improvement from the years prior.

28. Moreover, Defendant White never issued Mr. Possner any notice that he was in jeopardy of receiving a “U” rating, as was required under the DOE’s collective bargaining agreement.
29. Upon information and belief, Defendant White has purposefully set Mr. Possner up for termination. Indeed, due to the School’s declining student enrollment, Defendant White must excess or terminate one of the School’s A.P.’s.
30. Due to his long tenure at the School, Mr. Possner has seniority rights and, therefore, Defendant White is obligated to remove one of the newer A.P.’s, which she hired.
31. Notably, upon information and belief, all of the A.P.’s Defendant White has hired during her tenure as Principal are of Jamaican descent and Catholic faith.
32. Upon information and belief, Defendant White issued Mr. Possner the aforementioned poor performance reviews and “U” rating to justify later terminating or excessing Mr. Possner from the school.
33. Further, Defendant White harassed Mr. Possner throughout the work day by way of constantly calling him on the walkie-talkie while Plaintiff attempted to complete numerous assignments due almost immediately. Defendant White even went so far as to constantly message Mr. Possner beyond school hours.
34. Mr. Possner’s fellow A.P.s often joined in on the harassment, to which Defendant White did nothing to help Plaintiff.
35. Specifically, in October 2014, during the Yom Kippur holiday, the School’s A.P. Shirley included Mr. Possner in a group text message regarding an assignment due the following Monday. When Plaintiff answered the text message, the group began to berate him.

36. Indeed, A.P. Shirley called Mr. Possner a *“bad Jew”* and a *“sinner”* who should *“pray for his sins.”*
37. In addition, the School’s A.P. Adams often told Plaintiff that he was *“on the wrong side of Jesus.”*
38. Mr. Possner dutifully reported these deplorable comments to Defendant White who appallingly told Plaintiff *“maybe you are a bad Jew.”*
39. Defendant White additionally reported that she had *“one Jew too many”* in her school.
40. In addition, Defendants purposefully placed Mr. Possner in harm’s way. Specifically, in or around May 2014, Plaintiff was physically assaulted while breaking up a fight between students.
41. As a result, Mr. Possner was severely beaten and suffered a concussion while saving other students from getting injured during the altercation.
42. Following this incident, the School’s A.P. Adams, who is in charge of safety and security, overheard students making fun of Mr. Possner. When Plaintiff asked A.P. Adams for help, A.P. Adams outrageously responded *“Since you are white, you should handle it.”*
43. Mr. Possner complained about Defendant White’s conduct to his union representative numerous times who appallingly told him that he should simply apply elsewhere, and that there was nothing the union could do to help plaintiff alleviate his work situation.
44. As a result of the deplorable treatment Mr. Possner received at the hands of his employer, Defendants herein, Plaintiff’s life was forever altered. Indeed, Mr. Possner’s marriage disintegrated and Plaintiff has sought treatment with a mental health physician to address his symptoms of depression and anxiety.



45. Adding insult to injury, Defendants openly retaliated against Plaintiff in response to his lawful complaints of discrimination.
46. Indeed, on or about July 31, 2015, Plaintiff served all Defendants with a Notice of Claim, which outlined the above conduct and put forth allegations of discrimination and a hostile work environment.
47. Instead of addressing Plaintiff's allegations appropriately to find a solution to his complaints, Defendants callously retaliated against Plaintiff and have continued to subject Plaintiff to unfettered scrutiny and have gone so far as to attack his livelihood.
48. Indeed, since serving his Notice of Claim, Defendant White has threatened to issue Plaintiff two disciplinary letter to file for frivolous, and in fact, non-existent infractions.
49. For example, Defendant White accused Plaintiff of having a "lack of rigor" in decorating his bulletin board. Notably, however, not only was Plaintiff's bulletin boards pristine, but Mr. Possner was the *only* A.P. who had even bothered to put anything on his bulletin boards.
50. Upon information and belief, the School's other A.P.s were in no way reprimanded or disciplined for utterly failing to put anything on their boards.
51. As further example, Defendant White accused Plaintiff of audio recording a meeting with her, and issued Mr. Possner a disciplinary letter to file for misconduct.
52. At no point in time did Mr. Possner record this meeting he had with Defendant White, nor any other employee of Defendants.
53. Despite this fact, Defendant White spread rumors that Mr. Possner recorded conversations, which has severely ostracized him in the workplace. Indeed, a number of

the School's fellow A.P.s have adamantly refused to speak with Plaintiff because they heard from Defendant White that he will record them.

54. Further, Defendant White went so far as to falsely report Plaintiff for misconduct surrounding the administration of an English Language Arts ("ELA") exam.
55. Specifically, during the administration of an ELA exam, one of the A.P.s inadvertently opened an exam prematurely. Notably, Plaintiff was not present when this incident occurred and only learned of it second hand, after the fact.
56. Despite this, upon information and belief, Defendant White reported Mr. Possner for misconduct to the DOE's Office of Special Investigation ("OSI") in a clear effort to retaliate against Plaintiff and further tarnish Mr. Possner's good name.
57. Furthermore, in or around September 2011, Plaintiff's paternal grandmother passed away, and Mr. Possner requested three (3) bereavement days which he was granted by Ms. White.
58. Recently, in September 2015, Plaintiff's maternal grandmother passed away and Plaintiff again requested three (3) bereavement days off. Curiously, Defendant White issued a letter to Plaintiff this year which rescinded her approval of his bereavement days in September 2011.
59. As a result, Defendants docked Plaintiff two personal days for his bereavement leave in September 2015.
60. Furthermore, Defendant White has gone out of her way to publicly humiliate Mr. Possner. By way of example, Defendant White criticized Mr. Possner in a group text with his fellow A.P.s because he apparently misspelled the word "pencil" on the school

website. Such antics are meant only to embarrass and further ostracize Mr. Possner from his fellow A.P.s.

61. As a direct result of his intolerable work environment, Mr. Possner has experienced severe emotional distress and has felt like the joy in his life has been taken from him. Indeed, Mr. Possner has been diagnosed with Post Traumatic Stress Disorder (“PTSD”), and treats with both a therapist and psychiatrist to address his symptoms of PTSD.

### **CLAIMS FOR RELIEF**

62. By way of the foregoing, in (1) subjecting Plaintiff to a hostile work environment on the basis of his religion and race and gender; (2) subjecting Plaintiff to disparate treatment on the basis of his religion, race and gender; (3) subjecting Plaintiff to verbal and physical abuse on the basis of his religion, race and gender, and (4) subjecting Plaintiff to disparate discipline on the basis of his religion, race, and gender, Defendants discriminated against Plaintiff in violation of 42 U.S.C. 1981 and the Equal Protection Clause of the United States Constitution pursuant to 42 U.S.C. 1983.
63. Based on the foregoing, in (1) falsely reporting Plaintiff to OSI in retaliation for his lawful complaints of discrimination; (2) publicly humiliating Plaintiff for his lawful complaints of discrimination; (3) unfairly scrutinizing Plaintiff for his lawful complaints of discrimination; and (4) subjecting Plaintiff to disparate discipline for his lawful complaints of discrimination, Defendants retaliated against Plaintiff in violation of the First Amendment of the United States Constitution pursuant to 42 U.S.C. 1983, 42 U.S.C. 1981, and the Equal Protection Clause of the United States Constitution pursuant to 42 U.S.C. 1983.

**WHEREFORE**, the Plaintiff demands judgment against the Defendants for all compensatory, emotional, psychological and punitive damages, lost compensation, front pay, back pay, bonus pay, liquidated damage, injunctive relief, and any other damages permitted by law pursuant to the above referenced causes of action. It is respectfully requested that the Court grant the Plaintiff any other relief to which he is entitled, including but not limited to:

1. Awarding reasonable attorneys fees and the costs and disbursements of this action;
2. Injunctive relief ordering Defendants to immediately transfer Plaintiff from the Virgil I. Grisson Middle School to a more appropriate facility wherein he will not be subjected t continued harassment, discrimination, and retaliation; and
3. Granting such other and further relief that to the Court seems just and proper.

**Further**, Plaintiff demands a trial by jury.

Dated: Garden City, New York  
October 29, 2015

THE LAW OFFICE OF  
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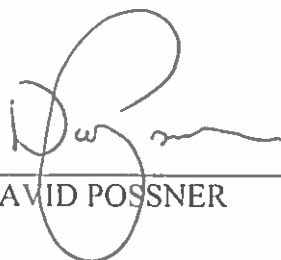
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STEVEN A. MORELLI

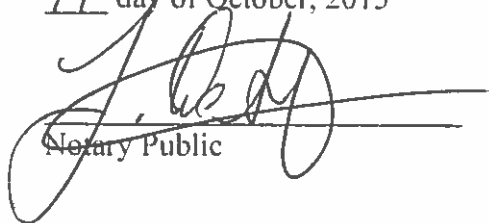
**INDIVIDUAL VERIFICATION**

STATE OF NEW YORK    )  
  ) ss.:  
COUNTY OF NASSAU    )

DAVID POSSNER, being duly sworn, deposes and says that deponent is the claimant in the within action; that she has read the forgoing **Verified Complaint** and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matter therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

  
\_\_\_\_\_  
DAVID POSSNER

Sworn to before me this  
19 day of October, 2015

  
\_\_\_\_\_  
Notary Public

