

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

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**MICHAEL BENZINGER,**

**Plaintiff,**

v.

**NYSARC, INC. NEW YORK CITY CHAPTER,  
CBRE, INC. and UNIVERSAL PROTECTION  
SERVICE, LLC,**

**Defendants.**

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**No.: 1:18-CV-02709(KPF)**

**SECOND AMENDED  
COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff Michael Benzinger, by and through his attorneys, respectfully alleges upon information and belief, the following:

**NATURE OF THE ACTION**

1. Plaintiff Michael Benzinger brings this action against Defendants under the New York City Human Rights Law, N.Y.C. Admin. Code §8-107, et seq.; the Civil Rights Act of 1866, 42 U.S.C. §1981 et seq.; and the Ku Klux Klan Act, 42 U.S.C. §1985, et seq.; because of Defendants’ disparate treatment of Plaintiff Benzinger based on his race, and retaliation for his opposition to it, while a lawful guest at 83 Maiden Lane in Manhattan, New York. Plaintiff also brings a claim of negligent hiring, supervision, and retention under New York common law. Plaintiff Benzinger seeks to enjoin Defendants and to recover monetary damages resulting from Defendants’ unlawful acts.

**PARTIES**

*Plaintiff Michael Benzinger*

2. Plaintiff Michael Benzinger is a citizen of the United States and resident of Queens, New York.

3. Benzinger is Asian-American.

Defendant NYSARC, Inc. New York City Chapter

4. Defendant NYSARC, Inc. New York City Chapter (herein “AHRC NYC”) is a corporation duly authorized to do business in New York.

5. AHRC NYC has a principal place of business at 83 Maiden Lane, New York, NY, and its telephone number is 212-780-2500.

Defendant CBRE

6. Defendant CBRE, Inc. (herein “CBRE”) is a corporation authorized to do business in New York.

7. CBRE maintains a principal place of business at 200 Park Avenue, New York, NY, and its telephone number is 213-613-3333.

8. At all times relevant to this lawsuit, CBRE provided building management services to 83 Maiden Lane.

Defendant Universal Protection Service, LLC

9. Defendant Universal Protection Service, LLC (herein “Universal”) is a limited liability company authorized to do business in New York.

10. Universal maintains a principal place of business at 229 West 36th Street 11th Floor New York, NY, and its telephone number is 212-481-5777.

11. At all times relevant to this lawsuit, Universal contracted to provide security guard staff to 83 Maiden Lane.

12. At all times relevant, each of the Defendants was the agent, servant, employee, joint venturer and/or co-conspirator of each of the other Defendants, and each of the acts alleged to have

been done by each Defendant was done in that Defendant's capacity as the agent, servant, employee, joint venturer and/or co-conspirator of the other Defendants.

*The Lobby of 83 Maiden Lane is a Place or Provider of Public Accommodation*

13. The website of Access Community Health Center (herein "Access") states that Access "serves the acute & chronic health care needs of all community members."

<http://www.accesschc.org> (last accessed April 26, 2018) (emphasis added).

14. Access' website also states the following:

Our Mission: As a federally-qualified health center (FQHC), Access Community Health Center is committed to providing comprehensive, culturally competent, quality health care to everyone, including NYC's most vulnerable people, regardless of ability to pay.

<http://www.accesschc.org/who-we-are/> (last accessed April 26, 2018) (emphasis added).

15. During all times relevant to this lawsuit, Access was a tenant of 83 Maiden Lane.

16. In order to receive services from Access's location within 83 Maiden Lane, members of the public had to ingress and egress through the lobby of 83 Maiden Lane.

**JURISDICTION AND VENUE**

17. This Court has jurisdiction over this action because it involves a federal question and has supplemental jurisdiction of the plaintiff's city law claims pursuant to 28 U.S.C. § 1367.

18. Venue is proper because a substantial part of the events giving rise to this action occurred in this district.

**FACTS**

19. Plaintiff Michael Benzinger is Asian-American and teaches English as a Second Language in downtown Manhattan.

20. On Tuesday, June 21, 2016, Benzinger visited Access to make an appointment. To reach Access' offices located within 83 Maiden Lane, Benzinger had to walk through the lobby of 83 Maiden Lane. While in the lobby of 83 Maiden Lane, a porter, who was an employee, agent, and/or independent contractor of Defendant AHRC NYC and/or CBRE by the name of Sammy Rivera repeatedly uttered "Ni hao" (a phrase in Mandarin) to Benzinger in a mocking tone. At first, Benzinger attempted to ignore Rivera. But, Rivera moved closer to Benzinger and continued to repeat "Ni hao" in a mocking tone. Benzinger responded to Rivera that he was Korean, not Chinese. Rivera asked Benzinger how to say "hello" in Korean, and Benzinger told him. Rivera then repeated what Benzinger had said in Korean in a mocking tone. Rivera then smirked at Benzinger and walked to the security guard on duty in the lobby, Justin Brooks, who was an employee, agent, and/or independent contractor of Defendants, and said to him within earshot of Benzinger, "That chink says he's not Chinese, he said he's Korean. How can I tell the difference? All chinks look the same." At this remark, Rivera and Brooks burst into hysterical laughter together.

21. After visiting Access, Benzinger returned to the lobby of 83 Maiden Lane in order to exit the building. As Benzinger walked through the lobby toward the exit, Rivera uttered racial epithets toward Benzinger, including "ching chong", while Brooks laughed hysterically.

22. On Wednesday, June 22, 2016, Benzinger returned to 83 Maiden Lane, attended an appointment with Access, scheduled a follow-up appointment with Access for a date in August 2016, and reported Rivera and Brooks for harassing him the day before. Benzinger asked the person stationed at the lobby front desk of 83 Maiden Lane who he could report a complaint to regarding the lobby staff. Benzinger was directed to AHRC NYC's offices on the 11<sup>th</sup> floor. Benzinger took the elevator to the 11<sup>th</sup> floor and asked the AHRC NYC receptionist who he could

Speak with to report a complaint about the 83 Maiden Lane lobby staff. The receptionist directed Benzinger to Steve Williams, AHRC NYC's Employee Relations Manager and designated Diversity Officer. Benzinger told Williams that he wanted to report the conduct of the lobby staff from the day before. Williams ushered Benzinger into a private room and closed the doors. Williams asked Benzinger to describe what occurred and Benzinger reported the foregoing conduct of Rivera and Brooks from the day before. During the meeting, but before Benzinger described Rivera, Williams asked if Rivera was a short man with a shaved head and Benzinger confirmed that he was. Benzinger told Williams that Rivera and Brooks' discriminatory conduct toward him made him feel unsafe and unwelcome. After receiving Benzinger's name and contact information, Williams told Benzinger that immediately following their meeting, he would relay the foregoing to Pamela Minkoff, an AHRC NYC employee, and that she would call him later that day, investigate his claims, and that AHRC NYC would take appropriate action against Rivera and Brooks. Williams also told Benzinger that he would telephone Benzinger later that day to see whether Benzinger made it out of the building without further incident from Rivera and Brooks. Benzinger requested that Williams not share his contact information with anyone other than Minkoff and Williams agreed he would not.

23. Thereafter, despite Williams' knowledge that Rivera and Brooks were working that day in the lobby of 83 Maiden Lane, Williams failed to accompany Benzinger out of the lobby of 83 Maiden Lane or otherwise safeguard him against further discrimination. As a result, when Benzinger returned to the lobby of 83 Maiden Lane to exit the building, Rivera glared at Benzinger as he passed through the lobby and said, "What's up, boss?" to him. Brooks, who was standing close to Rivera said, "He ain't gonna say nothing to you." Thereafter, Rivera and Brooks both laughed.

24. Later that day on Wednesday, June 22, 2016, Williams telephoned Benzinger. Benzinger reported to Williams the foregoing discriminatory conduct of Rivera and Brooks that had occurred after Benzinger left the meeting and Williams told Benzinger that he would immediately relay that information to Minkoff and that she would follow up with him later that day.

25. However, Benzinger did not hear from Minkoff on Wednesday, June 22, 2016.

26. On Thursday, June 23, 2016 at 5:54 p.m., Benzinger e-mailed Williams that he had not heard from Minkoff as Williams had promised.

27. On Friday, June 24, 2016 at 9:45 a.m. Williams e-mailed Benzinger and claimed that Minkoff was investigating the matter and that she and a representative from CBRE would follow up with him once the investigation was complete, and that Williams would personally reach out to Minkoff and give Benzinger an update. However, Williams did not follow up with Benzinger as promised.

28. On Friday, July 1, 2016 at 1:51 p.m., Benzinger e-mailed Williams that he had still not heard from Minkoff.

29. On Friday, July 1, 2016 at approximately 2:20 p.m., Minkoff telephoned Benzinger. However, Benzinger was unable to answer the telephone. Minkoff left Benzinger a voicemail to return her call. Thereafter, Benzinger returned Minkoff's call, but she did not answer, so Benzinger left her a voicemail with his e-mail address and asked her to e-mail him.

30. On Wednesday, July 6, 2016 at 10:58 a.m., Benzinger e-mailed Williams that he had left a voicemail with Minkoff and provided Minkoff his e-mail address, but Minkoff had not followed up.

31. On Wednesday, July 6, 2016 at 11:07 a.m., Williams forwarded Benzinger's e-mail to Minkoff, and at 11:20 a.m., Williams e-mailed Minkoff, "He expects something will happen

because he filed the complaint. That we can't confirm his claims will make him angry. Then things will get interesting. Keep me in the loop."

32. On Wednesday, July 6, 2016 at 5:02 p.m., Minkoff e-mailed Benzinger, "I have done an investigation on the report I received about an incident that took place on June 21, but in order for me to complete the investigation I believe it would be really helpful for me to hear from you exactly what is the complaint. I am also, (*sic*) I did not hear that anything happened on Wednesday, June 22, and therefore, cannot investigate unless you tell me about it."

33. On Thursday, July 7, 2016 at 9:45 a.m., Benzinger e-mailed Minkoff a summary of the foregoing incidents that took place on June 21 and 22, and asked that Minkoff contact him if she had any additional questions. However, Minkoff did not reply to Benzinger's e-mail.

34. On Thursday, July 7, 2016 at 10:23 a.m., Minkoff e-mailed Dawn Shillingford, a CBRE representative, to arrange a time for them to meet with Rivera. Apparently having already discussed Benzinger's claims with Brooks, Minkoff wrote to Shillingford "I think brooks also knows more than he is admitting to."

35. On Thursday, July 7, 2016 Minkoff and Shillingford met with Rivera to discuss Benzinger's claims with him for the first time, and shortly after the meeting with Rivera, Minkoff and Shillingford met with Brooks to discuss Benzinger's claims for a second time. Although Brooks had previously denied that any incidents occurred on June 21 in the lobby of 83 Maiden Lane, the next day, July 8, Brooks wrote up an "incident report" on Universal letterhead and submitted it to Minkoff. The "incident report" stated the following, "On this day 1500 a gentlemen (*sic*) came into the building of Asian descent and was greeted by the porter in a language that he didn't speak he was offended by the approach. The issue went to pam. We had a meeting to discuss

the matter.” However, Brooks indicated on the “incident report” that the foregoing incident occurred on June 24.

36. On Tuesday, July 12, 2016 at 7:47 a.m., Benzinger e-mailed Minkoff to inquire about the status of her investigation, but Minkoff did not reply to Benzinger’s e-mail.

37. On Wednesday, July 13, 2016 at 9:42 a.m., Benzinger e-mailed Williams to inquire about the status of Minkoff’s investigation, and to inform Williams that Minkoff had not responded to his previous inquiry. In the e-mail, Benzinger went on to report that “Minkoff is supporting racism by not doing anything.” However, Williams did not reply to Benzinger’s e-mail.

38. Instead, on Wednesday, July 13, 2016 at 9:46 a.m., Williams forwarded Benzinger’s 9:42 a.m. e-mail to Minkoff. And on Thursday, July 14, 2016 at 9:05 a.m. Williams e-mailed Minkoff, “Ok I’m not responding to him unless you want me to. He’s asking for your supervisor now.”

39. Despite their knowledge that Brooks and Rivera were attempting to cover up their discriminatory actions against Benzinger, Shillingford and Minkoff tacitly went along with it, working together to conform the results of their investigations. For example, on July 12, 2016 at 5:13 p.m., Shillingford e-mailed Minkoff, “Pam, see the attached, we can go over tomorrow and tweak...I am in court tomorrow for 83ML. I can stop by after. Thanks.” And in response, on July 13, 2016 at 6:18 p.m., Minkoff e-mailed Shillingford, “Under actions taken can you add that: After Sammy acknowledged that he greeted Mr. Benzinger in Chinese, he was given direction which stated that since the building has such a diverse population of visitors, he should not try to guess people’s ethnic origin and it would be best if he greeted people in English only. Dawn, you can change the wording if you prefer, but we need to show that there was some kind of corrective action taken. Once the update is complete can you send me back the revised copy. I need to get this to our HR director.”

40. On Thursday, July 14, 2016 at 12:07 p.m., Minkoff e-mailed another AHRC NYC employee, Sharon Fong, "As you requested, attached is the file I have compiled on Michael Benzinger. I also want to thank you for your assistance in responding to him. Let me know if you need anything else from me." The e-mail contained an attachment titled "Benzinger file-1.pdf".

41. On Thursday, July 14, 2016 at 3:25 p.m., Fong e-mailed Benzinger the following:

On behalf of AHRC New York City (AHRC), I am responding to your complaint, as made to both Steve Williams, our Employee Relations Manager, and to Pamela Minkoff, our Director of Administrative Services. As the executive officer in charge of all facets of AHRC's personnel resource management, it is my responsibility to ensure that any allegations of harassment or discrimination made about the agency and/or its employees are thoroughly and objectively investigated. Therefore, I have reviewed the actions taken to address your specific case, and I can assure you that Ms. Minkoff took a highly proactive and comprehensive approach in probing your complaint and in making certain that all avenues of investigation were pursued.

As a human services agency, AHRC is passionate in its commitment to upholding the principles of non discrimination, and we have certainly reinforced our expectation of adherence to these principles to the lobby staff. In terms of your complaint, we followed a very strict protocol in investigating it in full, and the result is that we are unable to substantiate the allegation of discriminatory behavior directed towards you in the lobby of 83 Maiden Lane. We apologize for any negative experience you believe you had while in the building.

42. On Thursday, July 14, 2016 at 4:28 p.m., Benzinger replied to Fong's e-mail to express that he believed it was wrong that Rivera and Brooks were not going to face any disciplinary action for racially harassing him. Fong did not reply to this e-mail. At 4:30 p.m., Williams e-mailed Benzinger, "Wow. I expected more." Thereafter, Williams attempted to recall his e-mail.

43. On Thursday, July 14, 2016, after reading Fong's e-mail, Benzinger posted on the AHRC Foundation Facebook page that Rivera and Brooks had racially harassed him and AHRC NYC failed to take any disciplinary action after he reported the harassment to them. Thereafter, Benzinger's Facebook post was removed.

44. On or about July 17, 2016, AHRC NYC hired a third-party to investigate Benzinger. Without any warning to Benzinger and despite his request that his contact information not be shared with anyone but Minkoff, the third-party repeatedly called Benzinger's telephone and left him voicemails on August 1 and 3, 2016 and surveilled social media activity related to Benzinger.

45. Benzinger did not return to 83 Maiden Lane for his follow-up appointment with Access in August 2016 because he feared that Rivera and Brooks would racially harass him again.

**FIRST CAUSE OF ACTION**  
**Violation of N.Y.C. Admin. Code § 8-107(4)**  
**(Race Discrimination)**

46. Benzinger realleges and incorporates each allegation of the complaint as though fully set forth herein.

47. The New York City Administrative Code § 8-107(4) provides the following in relevant part:

(a) It shall be an unlawful discriminatory practice for any person who is the owner, franchisor, franchisee, lessor, lessee, proprietor, manager, superintendent, agent or employee of any place or provider of public accommodation:

1. Because of any person's actual or perceived race, creed, color, national origin, age, gender, disability, marital status, partnership status, sexual orientation or alienage or citizenship status, directly or indirectly:

(a) To refuse, withhold from or deny to such person the full and equal enjoyment, on equal terms and conditions, of any of the accommodations, advantages, facilities or privileges of the place or provider of public accommodation; or

2. Directly or indirectly to make any declaration, publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that:

(a) Full and equal enjoyment, on equal terms and conditions, or any of the accommodations, advantages, facilities and privileges of any such place or provider of public accommodation shall be refused, withheld from or denied to any person on account of race, creed, color, national origin, age, gender, disability, marital status,

partnership status, sexual orientation or alienage or citizenship status; or

(b) The patronage or custom of any person is unwelcome, objectionable, not acceptable, undesired or unsolicited because of such person's actual or perceived race, creed, color, national origin, age, gender, disability, marital status, partnership status, sexual orientation or alienage or citizenship status.

48. Defendants, through their agents, employees, or independent contractors, engaged in an unlawful discriminatory practice against Plaintiff in violation of New York City Administrative Code §8-107(4) because of his race and/or perceived race.

**SECOND CAUSE OF ACTION**  
**Violation of N.Y.C. Admin. Code § 8-107(7)**  
**(Retaliation)**

49. Benzinger realleges and incorporates each allegation of the complaint as though fully set forth herein.

50. The New York City Administrative Code §8-107(7) provides the following in relevant part:

It shall be an unlawful discriminatory practice for any person engaged in any activity to which this chapter applies to retaliate or discriminate in any manner against any person because such person has...opposed any practice forbidden under this chapter....

51. Defendants, through their agents, employees, and/or independent contractors, engaged in an unlawful discriminatory practice in violation of New York City Administrative Code §8-107(7) by retaliating and/or discriminating against Plaintiff because of Plaintiff's opposition to unlawful practices forbidden under 8-107(4).

**THIRD CAUSE OF ACTION**  
**Violation of N.Y.C. Admin. Code § 8-107(6)**  
**(Aiding and Abetting)**

52. Benzinger realleges and incorporates each allegation of the complaint as though fully set forth herein.

53. The New York City Administrative Code §8-107(6) provides that it shall be unlawful discriminatory practice:

“For any person to aid, abet, incite, compel; or coerce the doing of any of the acts forbidden under this chapter, or attempt to do so.”

54. Defendants, through their agents, employees and/or independent contractors, engaged in an unlawful discriminatory practice against Plaintiff in violation of New York City Administrative Code §8-107(6) by aiding, abetting, inciting, compelling and coercing the above discriminatory, unlawful and retaliatory conduct, and/or attempting to do so.

**FOURTH CAUSE OF ACTION  
Negligent Training, Supervision, and Retention**

55. Benzinger realleges and incorporates each allegation of the complaint as though fully set forth herein.

56. The actions of Defendants’ employees and/or agents, at set forth herein reflect, and are the result of Defendants’ negligence in training, supervising, and retaining those employees and/or agents.

**FIFTH CAUSE OF ACTION  
Violation of 42 U.S.C. § 1981, et seq.  
(Race Discrimination)**

57. Benzinger realleges and incorporates each allegation of the complaint as though fully set forth herein.

58. Benzinger made himself available to receive services ordinarily provided by Access located within 83 Maiden Lane and made himself available to enjoy the benefits, privileges, terms, and conditions of the contractual relationship with Access.

59. Defendants, through their agents, employees, and/or independent contractors, unlawfully and in a markedly hostile manner, impaired Benzinger's rights under Section 1981 in a manner that was objectively unreasonable and deliberately discriminatory on the basis of race.

**SIXTH CAUSE OF ACTION**  
**Violation of 42 U.S.C. § 1985, et seq.**  
**(Conspiracy)**

60. Benzinger realleges and incorporates each allegation of the complaint as though fully set forth herein.

61. Defendants, through their agents, employees, and/or independent contractors, conspired, directly or indirectly, to deprive Benzinger of the equal protection of the law and equal privileges and immunities of the law.

62. In furtherance of this conspiracy, among other things, defendants, through their agents, employees and/or independent contractors deliberately destroyed, or allowed to be destroyed, video surveillance footage of Brooks and Rivera harassing Benzinger in the lobby of 83 Maiden Lane; defendants directed or allowed Brooks on or about July 8, 2016, to fabricate an "incident report" related to Benzinger's complaint of racial discrimination; and directed or allowed Shillingford, on or about July 13, 2016, to fabricate a report related to Benzinger's complaint of racial discrimination.

**JURY DEMAND**

Plaintiff demands a jury trial.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Michael Benzinger respectfully requests that this Court grant judgment for him as follows:

- (a) Declaring that the discriminatory practices of Defendants violate the N.Y.C. Admin. Code § 8-107, et seq. and 42 U.S.C. §§ 1981 and 1985;
- (b) Enjoining Defendants, and all other persons in active concert or participation with any of them, from engaging in any act or practice which, because of race, denies or abridges any rights secured by 42 U.S.C. §§ 1981 and 1985, and N.Y.C. Admin. Code § 8-107, et seq.;
- (c) For an award of “garden variety” emotional distress damages;
- (d) For punitive damages;
- (e) For interest;
- (f) For reasonable attorneys’ fees and expenses;
- (g) For Plaintiff Benzinger’s costs in this lawsuit; and
- (h) For such further relief as this Court may deem proper and just.

Dated: New York, NY  
August 10, 2018

Respectfully submitted,  
**LISZKA AND GRAY, LLC**

By: /s/ Zachary J. Liszka

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 10, 2018, a copy of the foregoing Second Amended Complaint was filed electronically. Notice of this filing will be sent by e-mail to the following by operation of the Court's electronic filing system:

Stefanie Robin Munsky, Esq.  
Clifton, Budd & DeMaria, LLP  
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/s/Zachary J. Liszka  
Zachary J. Liszka, Esq.