

CITY OF NEW YORK  
COMMISSION ON HUMAN RIGHTS

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In the Matter of

COMMISSION ON HUMAN RIGHTS  
ex rel. ANA CAZARES,

Complaint No.: M-E-S-16-1033246;  
M-E-S-17-09799

Petitioner,  
-against-

OATH Index No. 1075/20

INS HANDBAGS, INC., and JUTAO DENG,

Respondents.  
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**DECISION AND ORDER**

On January 9, 2016, the Law Enforcement Bureau of the New York City Commission on Human Rights (“the Bureau”) filed a complaint (“Complaint”) on behalf of Complainant Ana Cazares (“Complainant” or “Cazares”) alleging gender-based employment discrimination against INS Handbags, Inc. (“INS”), and Jutao Deng (“Deng”) (collectively “Respondents”). The Bureau alleges that Respondents discriminated against Complainant on the basis of gender due to pregnancy status in violation of the New York City Human Rights Law, Title 8, Chapter 1 of the New York City Administrative Code (“NYCHRL” or “Law”) through multiple acts and omissions, which include differential terms and conditions of employment, termination of Complainant’s employment, and failure to provide Complainant with written notice of her right to be free from discrimination in relation to pregnancy, childbirth, and related medical conditions (“Pregnancy Notice”). (*See* Petitioner’s Exhibit (“Pet. Ex.”) 1) Trial was held before the Honorable Susan J. Pogoda, Administrative Law Judge of the New York City Office of Administrative Trials and Hearings (“OATH”) on February 18, 19, and 25, 2021.

Presently before the Office of the Chair of the New York City Commission on Human Rights (“the Commission”) are the findings and recommendations, *Comm’n on Human Rights ex rel. Ana Cazares v. INS Handbags, Inc.*, Report and Recommendation, 2022 WL 19569282 (October 5, 2022) (“Report and Recommendation” or “R & R”) of Judge Pogoda for Decision and Order. For the reasons set forth herein, the Commission adopts the Report and Recommendation’s findings on jurisdiction and liability in their entirety and the recommendations regarding damages and penalties in part. Specifically, the Commission adopts the findings that Respondents discriminated against Ms. Cazares because of her gender in violation of N.Y.C. Admin Code § 8-107(1)(a) by first transferring Ms. Cazares’ work location and subsequently terminating Ms. Cazares’ employment – both actions which took place upon learning of her pregnancy – and adopts the finding that Respondents failed to provide Complainant and other employees with the required Pregnancy Notice in violation of NYC Admin. Code § 8-107(22)(d). The Commission also adopts the Report and Recommendation’s payment proposal of \$60,287.70 in back pay plus pre-determination interest and injunctive relief

including trainings, policy creation and implementation, and ongoing compliance with notice requirements of the NYCHRL. As a result, Respondents are ordered to pay Complainant \$60,287.70 in back pay plus pre-determination interest of 9% (amounting to a total of \$85,301.07). Respondents are further ordered to: (1) train employees on the NYCHRL, and complete, along with their employees, a NYCHRL training offered by the New York City Commission on Human Rights; (2) institute and distribute a written anti-discrimination policy in all of their workplaces; and (3) post the required notice of rights of employees to be free from discrimination based on pregnancy, childbirth, and related medical conditions and disseminate this notice to employees at the commencement of their employment. The Commission adopts the Report and Recommendation's finding that emotional distress damages and civil penalties are appropriate. However, the Commission declines to adopt the proposed amounts and orders that Respondents pay Complainant \$75,000 in emotional distress damages and pay a \$50,000 civil penalty.

## **I. BACKGROUND**

The Bureau filed a verified complaint on behalf of Complainant on January 9, 2016. (Pet. Ex. 1) On February 11, 2016, Respondents filed a verified answer with the Commission. (Pet. Ex. 2) Respondents' verified answer denied the allegations in the Complaint, asserted that Respondents' transfer of Ms. Cazares' work location was not based on her gender but was due to safety concerns, and stated that Ms. Cazares was terminated due to unprofessional, delinquent job performance, the fact that she was not a team player, and her dishonesty. (*Id.*) On April 1, 2016, Complainant submitted a written rebuttal. (Pet. Ex. 19.) A Bureau investigation followed.

On October 28, 2019, following an investigation, the Bureau issued a probable cause determination pursuant to Section 8-116 of the NYCHRL. (Pet. Ex. 3) On November 26, 2019, the Bureau referred the matter to OATH for trial and Report and Recommendation. (Pet. Ex. 4.) The trial was held on February 18, 19, and 25, 2021. (Tr. at 1, 196, 319) On October 5, 2022, Judge Pogoda issued a Report and Recommendation, recommending that the Commission on Human Rights hold that Respondents are covered employers with obligations under the NYCHRL and recommending that the Commission find that Respondents: (1) discriminated against Complainant in the terms and conditions of her employment by transferring Complainant to a different workplace due to Complainant's gender, specifically her status as a pregnant person in violation of § 8-107(1)(a) of the NYCHRL; (2) discriminated against Complainant by terminating her employment based on her gender, specifically her status as a pregnant person violation of Section 8-107(1)(a) of the NYCHRL; and (3) failed to provide Complainant with the Pregnancy Notice in violation of Section 8-107(22)(d)(i) of the NYCHRL. (R & R at 20.) Judge Pogoda recommended an award to Complainant of \$60,287.70 in back pay plus interest of nine (9) percent to be calculated on the date of the Commission's final decision. (*Id.* at 24), \$40,000 in emotional distress damages (*Id.* at 27), and a \$15,000 civil penalty. (*Id.* at 29) Additionally, Judge Pogoda recommended that Respondents attend a free "Know Your Obligations and Human Rights Law" training conducted by the Commission, create a written anti-discrimination policy which outlines the rights of Respondents' workers in New York City and refers complaints to the Commission, distribute this policy to all current and future employees of Respondents' including but not limited to INS, Just Fantastic, and an online business also owned by Deng called eSwan NY, Inc., and post in all of their physical store locations, the following three employee notice of rights documents created by the Commission in English, Cantonese,

Mandarin, and Spanish: (1) the NYCHRL Notice of Rights poster for all protected categories; (2) the legally required notice regarding NYCHRL's prohibitions on sexual harassment; and (3) the legally required notice of rights regarding pregnancy, childbirth, and related medical conditions. (*Id.*)

Pursuant to 47 RCNY § 1-66, the Bureau and Respondents each submitted written comments to the Commission on September 21, 2023 ("Bureau Comments" and "Respondents' Comments" respectively).<sup>1</sup> The Bureau Comments called on the Commission to adopt in part and modify in part Judge Pogoda's R & R. Specifically, the Bureau Comments asked the Commission to adopt the R & R's conclusions regarding (1) Respondents' status as an employer, (2) Respondents' liability, and (3) the awarding and amount of backpay plus pre-judgment interest, and affirmative relief. (Bureau Comments at 4-5.) The Bureau Comments argued that the Commission should modify the emotional distress damages award by increasing the award from \$40,000 to \$75,000 and modify the civil penalty by increasing the penalty from \$15,000 to \$85,000. Respondents' Comments objected to the R & R's findings regarding liability and requested that the Commission reconsider or decrease the backpay award, emotional distress damages, and the civil penalty amount. (Respondents Comments at 5.)

## II. STANDARD OF REVIEW

In reviewing a report and recommendation, the Commission may accept, reject, or modify, in whole or in part, the findings or recommendations made by the administrative law judge. Though the findings of an administrative law judge inform the Commission's assessment of evidence, the Commission ultimately determines the credibility of witnesses, the weight of the evidence, and other findings of fact. *Comm'n on Human Rights ex rel. Fernandez v. Gil's Collision Services Inc. d/b/a D & R Collision Corp.*, OATH Index No. 1245/19, 2023 WL 3974499 at \*3; *Comm'n on Human Rights ex rel. Desir v. Empire State Realty Mgmt., LLC*, OATH Index No. 1253/19, Comm'n Dec. & Order, 2020 WL 1234455, at \*3 (March 2, 2020); *Comm'n on Human Rights ex rel. Cardenas v. Automatic Meter Reading Corp.*, OATH Index No. 1240/13, Comm'n Dec. & Order, 2015 WL 7260567, at \*2 (Oct. 28, 2015), *aff'd*, *Automatic Meter Reading Corp. v. N.Y.C. Comm'n on Human Rights*, No. 162211/2015, 2019 WL 1129210 (Sup. Ct. NY. Cty. Feb. 28, 2019); *Comm'n on Human Rights ex rel. Martinez v. Joseph "J.P." Musso Home Improvement*, OATH Index No. 2167/14, Comm'n Dec. & Order, 2017 WL 4510797, at \*2 (Sep. 29, 2017).

The Commission also interprets the NYCHRL and ensures the NYCHRL is applied to the facts correctly. *Fernandez*, 2023 WL 3974499 at \*4; *Desir*, 2020 WL 1234455, at \*3; *Martinez*, 2017 WL 4510797, at \*2; *Cardenas*, 2015 WL 7260567, at \*2. The Commission reviews an administrative law judge's report and recommendation and the parties' comments and objections *de novo* as to findings of fact and conclusions of law. *Fernandez*, 2023 WL 3974499 at \*4; *Desir*, 2020 WL 1234455, at \*3; *Comm'n on Human Rights ex rel. Ondaan v. Lysius*, OATH Index No. 2801/18, Comm'n Dec. & Order, 2020 WL 7212457, at \*2 (November 24, 2020); *Cardenas*, 2015 WL 7260567, at \*2; *Comm'n on Human Rights ex rel. Gibson v. N.Y.C. Fried Chicken Corp.*, OATH Index No. 279/17, Comm'n Dec. & Order, 2018 WL 4901030, at \*2 (Sep. 28, 2018); *Martinez*, 2017 WL 4510797, at \*3.

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<sup>1</sup> This Decision & Order references pertinent parts of the parties' comments herein.

### **III. THE EVIDENTIARY RECORD**

Knowledge of the facts as described in the Report and Recommendation is assumed for purposes of this Decision and Order. The facts are derived from the testimony of the Parties' witnesses, as well as documentary evidence submitted by the Bureau with stipulated agreements of Respondents. Over the course of the trial, the parties called five witnesses to testify. Petitioners called: (1) Complainant, Ana Cazares; (2) Cazares' Just Fantastic coworker David Canela; and (3 & 4) Cazares' sisters Erika and Laura Cazares. Respondents called their employee and a co-worker of Cazares and Canela, Desiree Li.<sup>2</sup> Respondent Deng's attorney indicated before and during the trial that Respondent Deng would testify, but ultimately, he did not provide testimony. The most pertinent facts are outlined herein.

#### **A. Respondents' Workplace Locations**

Respondent Deng operated two (2) stores with physical locations: INS, located at 124 West 30th Street, New York, NY 10001, and Just Fantastic, Inc. ("Just Fantastic"), located at 1201 Broadway, New York, NY 10001, which are less than a quarter mile away from each other. INS and Just Fantastic both sell an assortment of handbags, purses, and accessories. (Tr. at 42, 63)

##### **1. The INS Location**

Complainant Cazares worked at the INS location for approximately six (6) years, from 2009 until October 2015. (Tr. 178, 211, 337) INS consisted of a one-floor showroom with a back area, a basement connected to the showroom by a staircase, and a display window that faced the street. (Tr. at 61) Inventory was kept in the basement and back area of INS. (Tr. at 61) Canela explained that the stairs between the INS showroom and basement were steep and narrow, but not as high as the stairs between floors at Just Fantastic. (Tr. at 65) Li also described the staircase at INS as steep and added that the INS staircase had fifteen (15) to twenty (20) stairs, and a handrail on one wall only. (Tr. at 342)

Cazares testified that Respondents did not provide her with a copy of the legally required Pregnancy Notice at any time while she was working at INS, and Respondents admitted that they did not provide their employees with the Pregnancy Notice during pre-trial discovery. (Tr. at 213, Pet. Ex. 6 at 3)

##### **i. Responsibilities, Client Management & Compensation**

INS had two (2) employees during most open hours. There was one salesperson working on the showroom floor assisting customers and one inventory person who made deliveries of merchandise, and helped the salesperson at INS fulfill orders by retrieving merchandise from the basement for customers after the salesperson completed sales. (Tr. at 60, 91, 188, 340) The salesperson at INS had duties in addition to merchandise sales, which included opening and

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<sup>2</sup> Cazares and Respondent Deng were both present for the OATH proceedings and provided with live, simultaneous interpretation services. Cazares received Spanish interpretation, while Respondent Deng received Mandarin interpretation. The record indicates that Cazares and Respondent Deng were able to communicate with each other without needing interpretation during the course of Cazares' employment.

closing the store, answering the phone, sending e-mails, and creating and maintaining merchandise displays in the showroom and in the storefront display window. (Tr. at 60, 179-80, 231, 280-81)

When a customer visited INS, the salesperson took the customer's order, noted the item numbers of the products the customer sought, and provided the item numbers to the inventory person to retrieve the items from the basement or the back of INS. (Tr. at 188, 340-41) The salesperson traveled to the basement infrequently – only when the inventory person was out of the store at the time a sale was completed. (Tr. at 91-92, 340-41) Staff was compensated hourly at INS and started earning commission on sales in 2015. (Tr. at 182-83, 187)

## **2. The Just Fantastic Location**

Cazares originally was hired to work as a salesperson at the Just Fantastic location in 2005, and she was transferred back there after working at the INS location from 2009 to 2015 when Deng learned of her pregnancy in October 2015. (Tr. at 177, 209, 211) Just Fantastic was significantly larger than INS, with more showroom space for salespersons to cover. (Tr. at 57-58, 65-66) Just Fantastic had two (2) floors, each one with its own showroom. (Tr. at 280) The first floor of Just Fantastic had a small showroom stocked with jewelry and accessories, and one cash register. (Tr. at 52) Handbag displays and additional cashier stations were on the second floor, where staff desks were also located. (Tr. at 280, 357) There was no basement for merchandise. Instead, merchandise was stocked on high shelves behind display items. (Tr. at 55) Customers and employees used a steep staircase between fifteen (15) and twenty (20) feet high to traverse Just Fantastic's first and second floors. (Tr. at 54) The second-floor showroom of Just Fantastic, much larger than the first floor, included an area with desks for each salesperson and an enclosed office for Deng. (Tr. at 55, 58, 344)

Cazares testified that Respondents did not provide her with a copy of the legally required Pregnancy Notice at any time while working at Just Fantastic. (Tr. at 213) Canela testified that Respondents had an area at the back of the Just Fantastic store that contained signage related to worker's compensation, but Canela had never seen any postings there specific to employee rights regarding pregnancy, childbirth, or related medical conditions. (Tr. at 88) Similarly, Li testified that she was unaware if postings at the Just Fantastic store contained anything specific to rights related to pregnancy, childbirth, or related medical conditions. (Tr. at 351) Respondents admitted during pre-trial discovery that they did not provide their employees with the Pregnancy Notice. (Pet. Ex. 6 at 2-3)

### **i. Responsibilities, Client Management & Compensation**

Just Fantastic had between nine (9) and twelve (12) employees in 2015. Approximately eight staff would be working during open hours. Generally, this included three (3) salespeople and one (1) or two (2) cashiers on Just Fantastic's second floor as well as two (2) employees on the first floor who handled first-floor merchandise. (Tr. at 43-45, 344) At Just Fantastic, salespeople were responsible for helping customers find and select merchandise, retrieving the selected merchandise, and moving between the second and first floors as needed for customers that were seeking handbags and other accessories. (Tr. at 55-56) Salespeople at Just Fantastic did not have to act as cashiers (Tr. at 220), and often needed to climb ladders or stools to access merchandise stocked on high shelves in the showroom. (Tr. 226-27, 344-45)

The salespeople at Just Fantastic began receiving commission on their total sales in 2014 (Tr. at 72-73) In 2015, Respondent Deng asked Just Fantastic staff to create lists of their top clients so that a salesperson would receive a commission for individuals on their client list, whether they were present and made the sale, or not. (Tr. at 73-74)

## **B. Cazares' Employment & Pregnancy**

Cazares was hired to work as a salesperson at Just Fantastic in 2005, which was her primary role throughout her employment. (Tr. at 177-80) Deng transferred Cazares to INS when a salesperson position became open there in 2009. (Tr. at 178) At INS, she had added responsibilities that included acting as a cashier, cleaning the store, answering the phone, responding to emails, and occasionally picking up orders. (Tr. at 178-80) During her time at INS, Cazares cultivated client relationships with approximately thirty (30) repeat customers, between ten (10) to twenty (20) of whom bought from Cazares frequently. (Tr. at 182-3, 189) In September 2015, Respondent Deng asked Cazares if she was pregnant, after hearing rumors to that effect; Cazares confirmed her pregnancy. (Tr. at 205-06)

### **1. Transfer of Cazares to New Work Location**

In the month after learning of her pregnancy - October 2015 - Deng suggested that Cazares switch work locations, from INS to Just Fantastic. (Tr. at 206-07) Deng suggested that Cazares transfer to Just Fantastic because Deng had concerns about Cazares's health and the well-being of her pregnancy. (*Id.*) Cazares told Deng that she did not want to transfer. (Tr. at 206-08) Deng told Cazares to think about the transfer suggestion. (Tr. at 208) A few days later, Deng approached Cazares a second time, repeated his concerns about Cazares's well-being, and explained that he could not afford to hire another employee to help Cazares at INS. (*Id.*) At that time, Cazares reiterated that she did not want to transfer locations. At trial, Cazares testified that by the second meeting, the transfer seemed inevitable, and she did not have the ability to continue resisting the transfer because she relied on her job for financial security, and to support herself and her growing family. (Tr. at 209) In the same month, October 2015, Deng transferred Cazares from INS to Just Fantastic and transferred Li to INS to replace Cazares at that location. (Tr. 211, 337) The transfer to Just Fantastic had a material impact on Cazares' employment. In an effort to understand the full ramifications of the transfer, Cazares asked Respondent Deng about maternity leave and what store location she would return to post-partem. (Tr. at 211-13) Deng told Cazares not to worry about the future, only about the baby and herself. (*Id.*)

### **2. Change to Cazares' Responsibilities**

The transfer from INS to Just Fantastic was more than just a location reassignment. Cazares's job responsibilities also shifted due to how Just Fantastic structured job roles. (*See* Section IIIA1 above) While at INS, Cazares was primarily on the showroom floor and did not have to go to the basement often. (Tr. at 226) It was the primary responsibility of the warehouse staff to retrieve merchandise from the basement. (Tr. at 181) Cazares only used the stairs between the showroom floor and the basement when the warehouse staff was not at the store, which was infrequent. (Tr. at 91-92, 226, 340-41) In contrast, at Just Fantastic Cazares did not work consistently with a warehouse staff member. (Tr. at 228, 231) Complainant was responsible for retrieving her own merchandise, which was stored on shelves behind the display counters. (Tr. at 228) Additionally, the larger size of Just Fantastic, spread over multiple floors, meant that Cazares was handling requests to go between floors from Respondent Deng and when customers

needed merchandise from different areas (Tr. at 55-56, 222, 229) This amounted to traversing the stairs between the first and second floors approximately as many as three (3) to six (6) times per day. (Tr. at 222, 226, 229, 280-81) Complainant was also required to climb up on stools, chairs, or ladders to retrieve the merchandise at Just Fantastic, which Complainant, approximately six (6) months pregnant at this time, was uncomfortable doing. Complainant addressed her needs by seeking assistance from other Just Fantastic employees, or customers, to retrieve needed items. (Tr. at 226-27)

### **C. Termination of Cazares' Employment**

Shortly after Deng transferred Cazares to the Just Fantastic store, Respondent Deng asked her to provide him a list of Cazares' top clients. (Tr. at 221) Cazares did not have one and asked her coworker, Canela, to help her create one as Canela had already created his own. (Tr. at 94-95) Canela explained to Cazares that the customer list was something each salesperson at Just Fantastic made of their best clients and that the lists were used to ensure that when those clients made a purchase the commission was allocated to that salesperson, regardless of who made the sale. (Tr. at 75, 77, 97) Cazares wrote a list using the clients she had developed relationships with during her six (6) years at the INS store, who Cazares viewed as her customers. (Tr. at 233) When Cazares provided this list to Deng, he indicated that the clients Cazares had listed belonged to INS, not to her, and he instructed Cazares to make a new list and submit it the next day. (Tr. at 77, 233-34) Cazares and Deng got into a disagreement about Cazares's customer list. (*Id.*) Cazares had only been at Just Fantastic for a few weeks and could not create a new customer list because she had not yet cultivated clients at Just Fantastic. (Tr. at 233-35) Canela, who overheard Deng and Cazares discuss her first attempt at a customer list, had created his client list from his years working at Just Fantastic and attending trade shows. (Tr. 77-78) Canela believed Deng's assignment, that Cazares turn in a new list the next day, was impossible to complete. (Tr. at 78)

Cazares wanted to comply with the directive from Deng, so she submitted an updated customer list on November 4, 2015. (Tr. 234-35) Deng repeated that the customers on Cazares' list belonged to INS. (Tr. at 235) Cazares was frustrated by Deng's refusal to accept her customer list again and was not sure how to proceed. (Tr. at 286) The next day, Deng called Cazares into his office, and the two argued about Cazares' failure to create a customer list that met Deng's parameters. (Tr. 238-39) At this November 5th meeting, Deng fired Cazares. (*Id.*) He told her that her behavior was inadequate, and she had not followed rules. (*Id.*) Cazares asked Deng for clarification about why he was firing her, and Deng repeated that it was because Cazares did not follow rules, and her behavior was inadequate. (*Id.*)

Deng directed Cazares to gather her belongings, provide Deng with her computer passwords, and leave the Just Fantastic store. (Tr. at 242) Cazares became upset and began to cry because she could not believe she was being fired after working for Deng for ten (10) years. (Tr. at 241-42) She was also overwhelmed by this sudden change and the fact that after her pregnancy there would be no financial support for Cazares or her growing family. (*Id.*) For reasons that are unclear, Deng then called Cazares' coworker, Canela, to interpret Deng's statement to Cazares that she was fired and needed to gather her things and provide her passwords to Deng, but Cazares understood what Deng was saying, did not need any interpretation, and generally spoke to Deng without an interpreter. (Tr. at 79-83, 243)

Canela, the only person aside from Cazares and Respondent Deng who witnessed Cazares being terminated, testified that he spoke to Deng the same day as Cazares' termination, and several more times over the next few days. (Tr. at 84-86, 106) Canela felt that Deng should reconsider his decision to terminate Cazares because Cazares' pregnancy was not a good reason to fire her. (*Id.*) Canela eventually ceased these conversations because he was worried about jeopardizing his own employment. (Tr. at 84-86) Deng's responses to Canela's statements included comments about how Ms. Cazares's pregnancy status had a negative impact at work like "you know how pregnant women get emotional and she was actually yelling and she was, that's why I asked her to leave. That's why I let her go." (Tr. at 85-86, 105-106)

#### **D. Impacts of Change in Location and Termination on Complainant**

When Deng told Cazares that she was fired, Cazares became visibly upset and cried. (Tr. at 83, 240) At six (6) months pregnant, Cazares suddenly was facing the prospect of losing her only source of income to support herself and her new baby, was worried, and could not stop crying. (Tr. at 241, 246) Cazares was so upset that she was unable to speak when she called her sister Laura to explain that she had been fired. (Tr. at 246) Canela had to speak on the phone for Cazares to relay the information and ask Laura to come to Just Fantastic to help Cazares get home. (*Id.*) Cazares asked Deng if she could wait inside the store for one of her sisters to pick her up from work because Cazares did not feel capable of getting home alone in her emotional state. (Tr. 244-46) Deng initially agreed, but when Cazares kept crying, Deng told Cazares to leave the store because he believed Cazares was making a scene for the customers, who were asking what was wrong. (Tr. at 246-47) After Cazares was forced to leave the Just Fantastic store, she met up with a friend who worked nearby to wait for her sister, because she did not want to be alone. (Tr. 249)

##### **1. Ongoing Emotional and Physical Effects**

In the days and weeks after being fired, Cazares was sad and did not want to speak with anyone. (Tr. at 254) Cazares slept and ate less than normal because she was so worried about her financial situation and becoming a burden to her parents. Cazares explained, "I couldn't sleep. I had problems falling asleep. When I was working, I used to eat three meals . . . while I was at home . . . I was able to eat two meals. Even though I did not feel hungry, I had to eat because of the baby." (Tr. at 254-55) While Cazares applied for unemployment benefits, she worried that she would not be financially prepared for her and her baby's expenses. (Tr. at 255) Being fired suddenly after working for Respondents for ten years made Cazares feel betrayed, sad, and upset.

Cazares' sister, Erika, saw Cazares the day Deng fired her (Tr. 130, 306) and observed that Cazares was crying, upset, and did not understand why Deng fired her. (Tr. 128-32, 136-7) Erika also noticed changes in Cazares' behavior in the days and weeks after losing her job. (Tr. 132-33, 310) Whereas prior to Cazares termination, Cazares was sociable, excited about her new baby, and financially secure, in the days and weeks following November 5th, 2015, Erika saw that Cazares was depressed, appeared as though she had not been sleeping, and was anxious about how she would support herself and her new baby without a job. (Tr. at 134, 309) Erika recalled being at a laundromat with Ms. Cazares about two (2) months after Deng terminated Cazares' employment, noting that when the subject of her job came up, Cazares started crying. (Tr. at 132-33) Erika also indicated that Cazares was not someone who cried easily or often. (Tr. at 131)



Another of Cazares' sisters, Laura, helped Cazares get home from work after Deng fired her. (Tr. at 307) Laura observed that Cazares looked like she had been crying, and when Laura asked what happened, Cazares started crying again. (*Id.*) Cazares was worried about going home because she did not want to tell her parents that she had been fired. (*Id.*) Instead of taking Cazares to the home where she lived with their parents, Laura took Cazares to Laura's house to give Cazares time to calm down before going home to their parents. (Tr. at 308)

#### **E. Efforts to Secure New Employment**

Within a week of her termination, Cazares updated her resume so she could apply for new employment. (Tr. at 254) Cazares applied for jobs online during the remainder of her pregnancy. (Tr. at 255) Cazares gave birth to her daughter on February 27, 2016, and Cazares resumed looking for work approximately one (1) month later. (Tr. at 267-68) Cazares applied for multiple jobs throughout 2016, and while Cazares was able to secure interviews through her job applications, she was not selected for employment. (Tr. at 268-70) Cazares found employment with the Child Center of New York ("CCNY") in midsummer of 2017, as a part-time, temporary family visitor making \$15.00 per hour. (Tr. at 270-71, R & R at 23) Cazares was offered a full-time position with CCNY in August 2018. (Tr. at 271) During Cazares' employment with CCNY, Cazares' hourly wage increased from \$15.00 per hour to \$15.75, which was her rate of pay at the time of the trial. (Tr. at 271-72)

### **IV. DISCUSSION**

#### **A. Legal Standard**

The NYCHRL "shall be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York state civil and human rights laws, including those laws with provisions worded comparably to provisions of [the NYCHRL] have been so construed." N.Y.C. Admin. Code § 8-130(a). Pursuant to the Local Civil Rights Restoration Act of 2005, "[i]nterpretations of New York state or federal statutes with similar wording may be used to aid in interpretation of the New York City Human Rights Law, viewing similarly worded provisions of federal and state civil rights laws as a floor below which the City's Human Rights law cannot fall, rather than a ceiling above which the local law cannot rise." Local Law No. 85 § 1 (2005). *See also* Local Law No. 35 § 1 (2016).

Moreover, "case law interpreting analogous anti-discrimination statutes under state and federal law, though perhaps persuasive, is not precedential in the interpretation of the NYCHRL." *Ondaan*, 2020 WL 7212457, at \*6 (citing *Albunio v. City of New York*, 23 N.Y.3d 65, 77, n.1 (2014) ("the New York City Council's 2005 amendment to the NYCHRL was, in part, an effort to emphasize the broader remedial scope of the NYCHRL in comparison with its state and federal counterparts and, therefore, to curtail courts' reliance on case law interpreting textually analogous state and federal statutes.")).

#### **B. Respondents Constituted Employers Under the NYCHRL**

The Commission adopts the findings and analysis of Judge Pogoda that Respondent INS is a covered entity with obligations under the NYCHRL. (R & R at 11-13) INS and Just Fantastic

constitute a single employer with more than four (4) employees, owned and operated by Respondent Deng, which meets the jurisdictional threshold defined in § 8-102 of the New York City Human Rights Law to give the Commission jurisdiction over Respondents. (*Id.*)

**C. Respondents Discriminated Against Cazares by Transferring Her Work Location and Terminating Her Employment due to Gender Based on Her Pregnancy Status in Violation of NYCHRL § 8-107(1)(a)**

The Commission adopts the findings, analysis, and relevant credibility determinations of Judge Pogoda that Respondents, because of Cazares' gender, due to her pregnancy status, transferred her to a different work location based upon assumed, stereotyped concerns and terminated Cazares' employment, in violation of NYCHRL § 8-107(1)(a). (R & R at 13-19) The material changes in Cazares' work environment and responsibilities occurred soon after Respondent Deng learned of Cazares' pregnancy, evincing a link between the changes and her protected category. (Tr. at 205-07) While different terms and conditions based on a protected category are alone sufficient to establish a violation of the NYCHRL, there is additional support in the trial record for this finding. The Commission also adopts Judge Pogoda's conclusion that Respondents' alternative explanations that they did not terminate Cazares or had valid reasons to end her employment because she did not follow rules, behaved inadequately, and was not working as a team are not credible. Cazares was assigned the virtually impossible task of creating a customer list of her best repeat customers at Just Fantastic less than a month after she was transferred to that location. This request, and the reasons advanced for Cazares' termination, constitute pretext for the unlawful decision to terminate Cazares due to her gender based on her pregnancy status. (R & R at 16-19)

**D. Respondents Failed to Notify Cazares and other Employees of their Right to be Free from Discrimination Due to Pregnancy, Birth, and Related Medical Conditions, or to Otherwise Post the Pregnancy Notice in Violation of NYCHRL § 8-107(22)(d)(i)**

The Commission adopts the findings, analysis, and relevant credibility determinations of Judge Pogoda that Respondents failed provide Cazares and their other employees with the required Pregnancy Notice in violation of NYCHRL § 8-107(22)(d)(i). (R & R at 19-20) Cazares, Canela, and Li all testified that they did not see the Pregnancy Notice posted in their workplace, and Cazares testified that Respondents never gave her the written Pregnancy Notice or advised her of her rights related to pregnancy. (Tr. at 88, 213, 351) Respondents admitted in their pre-trial interrogatories that they did not provide employees with the written Pregnancy Notice, and in their post-trial closing brief to Judge Pogoda, Respondents assert that Respondent Deng verbally informed Cazares of her rights to be free from pregnancy-related discrimination. (Pet. Ex. 6 at 3, ALJ Ex. 2 at 7, referencing Pet. Ex. 7 at 108)

**V. DAMAGES, CIVIL PENALTIES, AND AFFIRMATIVE RELIEF**

Where the Commission finds that Respondents have engaged in an unlawful discriminatory practice, the NYCHRL authorizes the Commission to order Respondents to cease and desist from such practices and to take actions that effectuate the purposes of the NYCHRL.

N.Y.C. Admin. Code § 8-120(a). The Commission may also award damages to Complainants, *see id.* § 8-120(a)(8), and impose civil penalties as discussed in section B, below.

**A. Compensatory Damages**

**1. Cazares Is Entitled to \$60,287.70 in Back Pay Plus Interest**

The Commission adopts Judge Pogoda’s findings regarding the recommended back pay award of \$60,287.70 plus nine percent interest up to the issue date of this decision. (R & R, 21-24) and orders Respondents to pay the total amount of \$85,301.07 to Cazares.<sup>3</sup>

**2. Cazares Is Entitled to \$75,000 in Emotional Distress Damages**

Compensatory damages, including emotional distress damages, are intended to redress a specific loss that a complainant suffered by reason of a respondent’s wrongful conduct. *Fernandez*, 2023 WL 3974499 at \*3; *Martinez*, 2017 WL 4510797, at \*7 (citing *Comm’n on Human Rights ex rel. Agosto v. Am. Constr. Assocs.*, Dec. & Order, 2017 WL 1335244, at \*7 (Apr. 5, 2017); *Comm’n on Human Rights ex rel. Howe v. Best Apartments*, OATH Index No. 2602/14, Comm’n Dec. & Order, 2016 WL 1050864, at \*6-7 (Mar. 14, 2016)). “To support an award of emotional distress damages, the record ‘must be sufficient to satisfy the Commissioner that the mental anguish does in fact exist, and that it was caused by the act of discrimination.’” *Id.* at \*9 (citing *Howe v. Best Apartments*, 2016 WL 1050864, at \*6); *Agosto*, 2017 WL 1335244, at \*7. An award for compensatory damages can rely solely on the complainant’s credible testimony, and may also be premised on other evidence, including testimony from other witnesses, circumstantial evidence, and objective indicators of harm, such as medical evidence. *Desir*, 2020 WL 1234455, at \*8 (citing *Agosto*, 2017 WL 1335244, at \*7). *See also Martinez*, 2017 WL 4510797, at \*9; *Cardenas*, 2015 WL 7260567, at \*14. The NYCHRL places no limitation on the size of compensatory damages awards, *see* N.Y.C. Admin. Code § 8-120(a)(8), and courts have consistently recognized the Commission’s “special experience in weighing the merit and value of mental anguish claims.” *Automatic Meter Reading Corp.*, 63 Misc.3d 1211(A), at \*10 (citing *Matter of Cutri v. Comm’n on Human Rights*, 113 A.D.3d 608, 608 (2d Dep’t 2014)). In assessing compensatory damages in a particular case, the Commission evaluates the nature of the violation, the amount of harm indicated by the evidentiary record, and awards that have been issued for similar harms. *Ondaan*, 2020 WL 7212457, at \*12 (citing *Comm’n on Human Rights ex rel. Nieves v. Rojas*, 2019 WL 2252369, at \*6 (May 16, 2019)); *Desir*, 2020 WL 1234455, at \*8 (citing *In re Sch. Bd. of Educ. of the Chapel of the Redeemer Lutheran Church v. N.Y.C. Comm’n on Human Rights*, 188 A.D.2d 653, 654 (2d Dep’t 1992)); *Martinez*, 2017 WL 4510797, at \*7; *Agosto*, 2017 WL 1335244, at \*8.

The Commission agrees with Judge Pogoda that Cazares is entitled to emotional distress damages (*See* R & R at 24-27) but modifies the amount to more accurately reflect the impact that

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<sup>3</sup> “The interest [on a backpay award] should be calculated from an intermediate date between the date of [termination] and the date of judgment at New York’s statutory rate of interest, nine percent per annum.” *Fernandez*, 2023 WL 3974499 at \*18 (quoting *Martinez*, 2017 WL 4510797, at \*2 (quoting *Cardenas*, 2015 WL 7260567, at \*12 (citing CPLR 5004))); *see Argyle Realty Assocs. v. N.Y. State Div. of Human Rights*, 882 N.Y.S.2d 458, 468 (N.Y. Sup. Ct. 2009). The Commission uses, June 13, 2020, as the intermediate date between the date of termination, November 5, 2015, and the date of this Decision and Order. Applying a simple annual interest rate of nine percent to a principal amount of \$60,287.70 for the period through today’s date, January 21, 2025 (or a period of approximately 4.61 years), produces a total predetermination interest amount of \$25,013.37.

the change in terms and conditions, the termination, and the failure of Respondents to ensure Cazares was aware of her workplace rights had on Cazares. The R & R analysis focuses on the occurrence of “two separate acts of discrimination in a relatively short period of time.” (*Id.*, at 25) Respondent Deng’s decision to transfer Cazares to Just Fantastic because of Cazares’ status as a pregnant person, and the decision to fire Cazares a short time later, caused Cazares to experience anger, anxiety, and depression. The R & R notes that Respondents’ treatment of Cazares affected her relationships with family and changed Cazares’ feelings about her pregnancy from excitement and joy to fear and anxiety because Cazares suddenly found herself without a means of financial security when she was terminated. Cazares’ emotional distress due to Respondents’ unlawful and discriminatory treatment had physical manifestations, including difficulty sleeping and loss of appetite. Two (2) months after Respondents’ unlawful discriminatory acts, the mention of the loss of Complainant’s job by her sister caused her to cry.<sup>4</sup> Cazares’ family members corroborated Cazares’ testimony about her emotional distress.

The Commission finds that these violations must be examined against the specific employment relationship in the instant case and that Respondents’ failure to provide Cazares with information about her workplace rights related to pregnancy compounded the confusion that Cazares felt at the time of her termination, causing further harm. The Report and Recommendation proposes an emotional distress damages award of \$40,000. The Bureau proposed an emotional distress damages award of \$75,000 to more fully account for the individual facts in this case. (Bureau Comments at 12) For the reasons set forth below, the Commission determines that Cazares is entitled to \$75,000 in emotional distress damages and modifies the R & R to that effect.

**a. Nature of Violation**

Cazares worked for Respondents for ten years without issue. For six of those years, Cazares worked at INS. Cazares was familiar with the store’s layout, her job functions, and with working alongside one other INS employee every day. Cazares counted on her employment with Respondents for financial stability. In 2015, Cazares found out she was pregnant. Deng asked Cazares if she was pregnant in the end of September 2015, and Cazares confirmed that she was. Approximately two (2) weeks later, in mid-October, Respondent Deng transferred Cazares from INS to Just Fantastic against her wishes. Deng told Cazares that he was transferring her for her health, wellbeing, and safety and that of her baby. Cazares never asked for this transfer or for any other reasonable accommodations. Indeed, Cazares told Deng she did not want to transfer, but she did ultimately change locations in order to keep her job. Respondent Deng did not provide any information about her rights related to pregnancy, childbirth, and related medical conditions as required by the NYCHRL either before or after learning of her pregnancy status. After her transfer Cazares’ requests for information about maternity leave and her post-partem return were left unanswered. (*see* page 11)

Shortly after transferring Cazares, Respondent Deng instructed Cazares to submit a list of her top clients, ostensibly so she could earn commission at Just Fantastic. Cazares’ efforts to create a list based on the clients she cultivated during her six (6) years at INS was rejected and she was told to try again, with less than a month of recent experience at Just Fantastic. Her second attempt was also rejected by Deng. Cazares became frustrated and the two (2) argued.

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<sup>4</sup> The Commission notes that the trial record shows that Ms. Cazares began crying during the OATH trial while testifying about the discrimination Respondents subjected her to. (Tr. at 245)

The next morning Respondent Deng called Cazares into his office to discuss the client list. Cazares and Deng argued again, and Deng fired Cazares on the spot.

Transferring Cazares against her wishes to a new location with different day to day tasks, employee expectations, and a different commission structure – which Cazares was unable to successfully participate in according to the parameters Respondents put in place, and then shortly thereafter terminating her employment without notice – all after learning of her pregnancy, constitute gender-based discrimination, and weigh in favor of a \$75,000 emotional distress damages award. The failure to provide Cazares and other employees notice of the contours of their rights further contributed to the ongoing harm Cazares experienced and constitutes a standalone violation of the Law.

**b. Amount of Harm**

Immediately after her abrupt termination, Cazares started crying in Respondent Deng's office at Just Fantastic. Cazares could not believe that her employment would be terminated without warning while pregnant after ten (10) years, during which there were no complaints about her performance. Cazares was overwhelmed and could not regain composure to get back to her home. Cazares' feelings of anger and uncertainty continued after Deng terminated her employment. Cazares was depressed and anxious. Cazares developed problems sleeping and lost her appetite. While Cazares had been excited about the upcoming birth of her child, being fired introduced a new fear about how to support herself and her baby. These symptoms lasted for at least two (2) months, as corroborated by Cazares' sisters Erika and Laura.

The psychological and emotional harm, which impacted Cazares' personal relationships, further support a \$75,000.00 emotional distress damages award.

**c. Distinguishing Prior Awards**

A review of prior cases sounding in gender-based discrimination supports the determination that an emotional damages award of \$75,000.00 is appropriate for the mental anguish and harm that Ms. Cazares experienced. The impacts of the Respondents' actions are well supported by Ms. Cazares' testimony and corroborated by witnesses.

Judge Pogoda's proposed \$40,000 emotional distress damages award relies on two (2) prior Commission decision and orders, which are distinguishable from the current matter. The first, *Comm'n on Human Rights ex rel. Colon v. Del Business Systems*, is an employment case where an employee was accused of stealing funds from her employer and terminated approximately one (1) week after informing her supervisor that she was pregnant. *See* 1995 WL 1052248 (November 2, 1995). The OATH Judge's Recommended Decision and Order recommended *inter alia* an emotional damages award amount of \$35,000.00 based on the complainant's testimony of the mental harm she suffered and the corroborating testimony of a witness. *See id* at 15. The Commission's Final Decision and Order reduced the emotional damages award to \$15,000.00, focusing on the length of time Colon experienced acute mental anguish. *See Comm'n on Human Rights ex rel. Colon v. Del Business Systems*, 1995 WL 1052262 (December 21, 1995) ("in view of the relatively short duration of [c]omplainant's acute mental anguish.")

Substantial differences between *Colon* and the instant matter differentiate the analyses of emotional distress damages. Colon was employed by the Respondent employer for a

significantly shorter period than Cazares at termination: less than two and a half (2.5) years versus ten (10) years. The complainants in the two cases were also in much different circumstances overall. Colon was early in her pregnancy when terminated and found new work quickly – in about a month. Cazares, in contrast, was six (6) months into her pregnancy when terminated and struggled to secure a new position. Colon credibly testified that her emotional distress decreased when she found another job prior to giving birth. In contrast, Cazares was out of work for about nineteen months, well after the birth of her daughter. The evidentiary record in this matter, including testimony of Cazares and other witnesses illustrated physical impacts as well. Notably, the Colon matter was focused on the termination of the complainant. The current matter involves serial violations, with compounding impacts on Cazares. The Commission further notes that the *Colon R & R* was issued in 1995. *Colon* predates the Local Civil Rights Restoration Act of 2005, which clarified the broad scope and remedial nature of the NYCHRL and reaffirmed the NYCHRL’s status as one of the strongest anti-discrimination laws in the country. There is further support for a higher damages award. The last three (3) decades have generated research, legislation, case law, and greater awareness and understanding of the negative impacts of gender-based discrimination based on individuals’ pregnancy status.<sup>5</sup>

The other case cited in the R & R, *Comm’n on Human Rights ex rel. Chen v. NOC Construction, Inc.*, 2011 WL 7809916 (June 26, 2011), concerns gender-based employment discrimination where the complainant was terminated from employment two (2) days after being hired because the individual respondent felt that she would become pregnant in the future and no longer be a suitable employee. This case is sufficiently distinguishable from the instant matter, which concerns an employee of ten years that experienced discriminatory treatment related to the terms and conditions of employment, and ultimately leading to her termination, as is thus not a useful comparator for evaluation of the appropriate award in this matter.

The Bureau relies on two (2) different cases from those discussed in the R & R to support its request to increase the emotional distress damages award to \$75,000.00, the report and recommendation issued by OATH in *Comm’n on Human Rights ex rel. McGinn v. Park Slope Laundry Corporation*<sup>6</sup> and the Commission’s decision and order for *Comm’n on Human Rights ex rel. Fernandez v. Gil’s Collision Services Inc. d/b/a D & R Collision Corp.* See 2021 WL 9099215 and 2023 WL 3974499. While the Commission agrees that emotional distress damages should be increased, the Bureau’s cited cases are also distinguishable. Both *McGinn*, in which the OATH judge recommended an emotional distress damages award amount of \$125,000.00 and *Fernandez*, in which the Commission awarded the complainant \$275,000, concern gender discrimination in the form of ongoing, flagrant sexual harassment by supervisors that included

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<sup>5</sup> See e.g. Pregnant Workers Fairness Act, 42 U.S.C. 21G §§ 2000gg – 2000gg-6; Thomas, G. & Leveille, V, *The Historic New Law Protecting Fairness for Pregnant Workers*, ACLU, <https://www.aclu.org/news/womens-rights/the-historic-new-law-protecting-fairness-for-pregnant-workers> (June 27, 2023); Hackney, K. J., et al *Examining the Effects of Perceived Pregnancy Discrimination on Mother and Baby Health*, 106 J. Appl. Psychol. 643 (2021), 774–783, available at <https://faculty.fiu.edu/~aeaton/wp-content/uploads/2020/07/Hackney-et-al.-2020-Examining-the-Effects-of-Perceived-Pregnancy-Discrimination.pdf>; Robinson, B., *Pregnancy Discrimination in the Workplace Affects Mother and Baby Health*, <https://www.forbes.com/sites/bryanrobinson/2020/07/11/pregnancy-discrimination-in-the-workplace-affects-mother-and-baby-health/> (July 11, 2020).

<sup>6</sup> The *McGinn* matter settled after the issuance of the R & R.

forcible, non-consensual touching. (*Id.*) The facts of *McGinn* and *Fernandez*, as well as the impacts of the discrimination on the respective complainants, differ substantially from this case.

For the reasons stated herein, the Commission adopts the R & R's recommendation to award emotional distress damages to Ms. Cazares but modifies the amount of such award. The Commission orders Respondents to pay Ms. Cazares \$75,000.00 in emotional distress damages.

## **B. Civil Penalties**

The NYCHRL grants the Commission the authority to impose civil penalties in order to vindicate the public interest and provides the Commission with discretion to impose such civil penalties up to \$125,000 per violation and \$250,000 where the Commission determines that the unlawful conduct is willful, wanton, or malicious. N.Y.C. Admin. Code § 8-126(a); *see Automatic Meter Reading Corp.*, 2019 WL 1475080, at \*11 (upholding \$250,000.00 civil penalty issued by the Commission under the NYCHRL upon a finding that respondent engaged in willful and wanton sexual harassment over a three-year period). Factors relevant to a civil penalty determination include the length of time a respondent committed the discrimination, the egregiousness of the discrimination, a respondent's financial situation, and a respondent's failure to cooperate with the Commission. *See, e.g., Comm'n on Human Rights ex rel. Joo v. UBM Building Maintenance Inc.*, OATH Index No. 384/16, Comm'n Dec. & Order, 2018 WL 6978286 at \*10; *Comm'n on Human Rights v. A Nanny on the Net*, OATH Index Nos. 1364/14 & 1365/14, Comm'n Dec. & Order, 2017 WL 694027 at \*8 (Feb. 10, 2017); *Comm'n on Human Rights v. CU 29 Copper Rest. & Bar*, OATH Index No. 647/15, Comm'n Dec. 7 Order, 2015 WL 7260570, at \*4 (Oct. 28, 2015); *Cardenas*, at \*2; *Comm'n on Human Rights v. Tanillo*, OATH Index Nos. 105/11, 106/11 & 107/11 at 7-8 (Feb. 24, 2011), *modified on penalty*, Comm'n Dec. & Order (May 23, 2011); *Comm'n on Human Rights v. Rent The Bronx, Inc.*, OATH Index No. 1619/11, (July 27, 2011), *report and recommendation adopted*, Dec. & Order (Oct. 27, 2011).

Judge Pogoda proposes a civil penalty amount of \$15,000 in the R & R, "\$7,500 for each proven act of discrimination." In its comments, the Bureau requests a civil penalty amount of \$85,000. (Bureau Comments at 11-13.) For the reasons set forth below, the Commission finds that Respondents are liable for a \$50,000 civil penalty.

### **1. Length of Time**

Respondents' multiple violations of the NYCHRL took place over several months. Respondents' transfer of Cazares from INS to Just Fantastic and her termination occurred within two (2) months of Respondents learning of her pregnancy, Respondents failure to share with employees information about their rights, or to post the Pregnancy Notice required by the NYCHRL was over a year and a half and impacted the entire workplace. The NYCHRL provision requiring posting of the Notice went into effect on January 30, 2014, well before the discrimination faced by Cazares. The trial record documents that other employees could not recall ever seeing the statutorily required Pregnancy Notice. Respondents failed to submit evidence or otherwise assert that they were in compliance with this section of the NYCHRL at any time and admitted in pre-trial discovery that they had not provided written notice to employees.

## 2. Egregiousness of Discrimination

The Commission acknowledges, as Judge Pogoda notes, that the Bureau did not characterize Respondents' unlawful actions as willful, wanton, or malicious at trial or in their post-trial briefing. However, when determining the civil penalty necessary to vindicate the public interest, the willfulness of the violation is a relevant factor.<sup>7</sup> The Commission determines Respondents' unlawful actions of transferring Cazares despite her repeated, specific requests not to be transferred and shortly thereafter firing Cazares to be willful. This conclusion is supported by trial testimony regarding Respondent Deng's specific statements that he transferred Cazares because of his concerns about her pregnancy status and Deng's comments that he terminated her because of her pregnancy, made in close proximity to her termination. (*See* sections IIIB & IIIC)

## 3. Respondents' Financial Situation

Since this matter commenced, Respondents have put forth no evidence or otherwise requested that their finances be considered as a mitigating factor in assessing civil penalties to OATH or the Commission. (R & R at 22) Deng, in his sworn deposition which took place in the summer of 2020 – amidst the COVID-19 pandemic – indicated that at that time, he was bringing in very little income. However, at trial, Respondents remained an ongoing concern, and Respondents' witness Li indicated that she was still employed by Respondents. (Tr. at 336) Respondents did not put forward any additional evidence of their finances in either their closing brief or their comments to the Commission.

## 4. Respondents' Cooperation

Over the course of the Bureau's investigation, Respondents filed an answer, responses to a request for information, and provided responses to document demands and interrogatories during discovery. Respondent Deng attended a deposition conducted by the Bureau.<sup>8</sup> During his deposition, Respondent Deng answered substantive questions regarding the allegations in the Complaint and his financial situation.

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<sup>7</sup> *See, e.g. Nanny on the Net*, at \*8 (the Commission may consider an array of factors, including, but not limited to: "(1) respondents' financial resources; (2) the sophistication of respondents' enterprise; (3) respondents' size; (4) the willfulness of the violation; (5) the ability of respondents to obtain counsel; and (6) the impact on the public of issuing civil penalties. The Commission also considers the extent to which Respondents cooperated with the Bureau's investigation and with OATH as well as the amount of remedial action that respondents may have already undertaken.")

<sup>8</sup> The Commission notes that petitioners requested an adverse inference at the close of the OATH proceedings for the instant matter because Respondents failed to call Deng to testify despite indicating he would as late as the end of the second day of trial. Respondents only informed the Judge and Petitioner that Deng would not testify after the testimony of Respondents' only witness, Li. The Commission draws attention to the R & R's discussion of the adverse inference because the reasoning emphasized that Deng was already deposed during discovery. In denying petitioner's request, the R & R states that "[w]ith rare exception, sworn depositions are not taken in disciplinary cases," and refers to adverse inferences being drawn in disciplinary cases arising under Civil Service Law § 75. (R & R at 18) The Commission clarifies that NYCHRL proceedings are governed by Commission rules for OATH proceedings, Chapter II Subchapter C., and § 2-29(c)(3) states, "[a]ny party make take the deposition of any other party as of right." The deposition of a party in a CCHR OATH proceeding, therefore, is not extraordinary, or a rare exception, it is part of the standard course of discovery in such proceedings and, as such, does not weigh strongly against an adverse inference request.



While Respondents appeared cooperative in the investigation and discovery phases, the Commission notes that Respondents' narrative regarding key facts, including whether or not Deng terminated Cazares, changed materially throughout the investigation and trial. Additionally, Respondent Deng did not testify at trial, despite Respondents' counsel's confirmation that he would until close to the conclusion of the proceedings. (Tr. at 315)

The Commission modifies Judge Pogoda's recommended civil penalty of \$15,000 to \$50,000, based on the willful nature of the discriminatory conduct, the admission that Respondents violated the NYCHRL's Pregnancy Notice provision, and the lack of full or consistent Respondent participation in the proceedings. The Commission orders Respondents to pay a \$50,000 civil penalty.

### **C. Affirmative Relief**

The NYCHRL authorizes the Commission to require that Respondents undertake affirmative measures, including trainings to prevent further discrimination. Admin. Code § 8-120(a)(4). *See, e.g., Desir*, 2020 WL 1234455 at \*13-14; *Ondaan*, 2020 WL 7212457, at \*18, *Martinez*, 2017 WL 4510797, at \*5; *Cardenas*, 2015 WL 7260567 at \*15-16. Accordingly, the Commission adopts Judge Pogoda's recommendation and orders Respondents, at all of their open businesses, to:

1. Create and institute a written anti-discrimination policy that outlines the rights of Respondent's workers in New York City and refers complaints to CCHR and distribute this policy to all current and future employees;
2. Post the Commission's Notice of Rights poster that includes all protected categories as well as legally required notices about the NYCHRL's prohibitions on sexual harassment and discrimination based on pregnancy, childbirth, and related medical conditions in English, Cantonese, Mandarin, and Spanish; and
3. Respondents shall attend the Commission's free "Know Your Obligations and Human Rights Law" training.

## **VI. CONCLUSION**

FOR THE REASONS DISCUSSED HEREIN, IT IS HEREBY ORDERED that no later than thirty (30) calendar days after service of this Order, Respondents pay Complainant Cazares a total of \$85,301.07 (comprising \$60,287.70 in back pay, \$25,013.37 in pre-determination interest, and \$75,000 in emotional distress damages) by sending to the New York City Commission on Human Rights, 22 Reade Street, New York, New York 10007, Attn: General Counsel, a bank certified or business check made payable to Ana Cazares, including a written reference to OATH Index No. 1075/20.

IT IS FURTHER ORDERED that no later than sixty (60) calendar days after service of this Order, Respondents pay a fine of \$50,000.00 to the City of New York, by sending to the New York City Commission on Human Rights, 22 Reade Street, New York, New York 10007, Attn: General Counsel, a bank certified or business check made payable to the City of New York, including a written reference to OATH Index No. 1075/20.

IT IS FURTHER ORDERED that no later than sixty (60) calendar days after service of this Order, Respondent Jutao Deng and all other staff of INS Handbags, Inc., its related companies, and its successor companies, including but not limited to Just Fantastic, Inc., and eSwan NY, Inc., that are currently operating as of the date of this decision, must participate in the Commission's free "Know Your Obligations and Human Rights Law" training. The trainings can be arranged by calling the Director of Training and Development at (212) 416-0193 or emailing [trainings@cchr.nyc.gov](mailto:trainings@cchr.nyc.gov).

IT IS FURTHER ORDERED, that no later than thirty (30) calendar days after service of this Order, Respondents post the "Notice of Rights Poster" and the legally required notices about the NYCHRL's prohibitions on sexual harassment and discrimination based on pregnancy, childbirth, and related medical conditions at INS Handbags, Inc., its related companies, and its successor companies, including but not limited to Just Fantastic, Inc., and eSwan NY Inc., that are currently operating as of the date of this decision, available here, <https://www.nyc.gov/site/cchr/law/legal-resources.page>, on 11 x 17 paper in a conspicuous location where it will be visible to both employees and members of the public.

IT IS FURTHER ORDERED that no later than sixty (60) calendar days after service of this Order, Respondents shall create and institute, a written anti-discrimination policy that outlines the rights of Respondents' employees in NYC and refers complaints to the Commission at INS Handbags, Inc., its related companies, and its successor companies, including but not limited to Just Fantastic, Inc., and eSwan NY Inc., that are currently operating as of the date of this decision, and Respondents thereafter distribute this anti-discrimination policy to all current and future employees.

Failure to timely comply with any of the foregoing provisions shall constitute non-compliance with a Commission Order. In addition to civil penalties that are assessed against Respondents pursuant to this Order, Respondents shall pay a civil penalty of \$100.00 per day for every day the violation continues. N.Y.C. Admin. Code § 8-124. Furthermore, failure to abide by this Order may result in criminal penalties. *Id.* at § 8-129.

Civil penalties are paid to the general fund of the City of New York.

Dated: New York, New York  
January 21, 2025

**SO ORDERED:**  
**New York City Commission on Human Rights**

A handwritten signature in black ink, appearing to read "Annabel Palma", is written over a horizontal line.

Annabel Palma  
Commissioner/Chair