16-1493-cv

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NICOLE CORRADO,
Plaintiff-Appellant,

and

NEW YORK STATE UNIFIED COURT SYSTEM, LUIS GONZALEZ, JOHN MCCONNELL, ROY REARDON, JORGE DOPICO, ANGELA CHRISTMAS, NAOMI GOLDSTEIN,
Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of New York

BRIEF FOR APPELLANT

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TABLE OF CONTENTS

Page

PRELIMINARY STATEMENT....1

JURISDICTION....1

STATEMENT OF THE CASE....2

STATEMENT OF ISSUES....3

STATEMENT OF FACTS....7

POINT I
THE DISTRICT COURT'S DISMISSAL OF THE COMPLAINT WITH PREJUDICE CONSTITUTED AN ABUSE OF DISCRETION....31

POINT II
THE DISTRICT COURT ERRED BY DISMISSING THE CLAIM OF "CONTINUOUS PRACTICE AND POLICY OF DISCRIMINATION" BY THE DISCIPLINARY COMMITTEE....45

POINT III
ON REMAND, THE MATTER SHOULD BE REASSIGNED TO A DIFFERENT JUDGE....50

CONCLUSION....54

CERTIFICATION OF COMPLIANCE (Fed. R. App. P. 32 *et seq.*)

TABLE OF AUTHORITIES

Page

Cases

Anderson v. New York 2012 U.S. Dist.LEXIS 142628 (S.D.N.Y.)........................13
Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)..8
Baptiste v. Sommers, 768 F.3d 212, 216 (2nd Cir. 2014)....................................33
Camilli v. Grimes, 436 F.3d 120 (2nd Cir. 2006)..39
Castro v. United States, 540 U.S. 375, 386 (2003)...31
Coats v. VA, 268 Fed. Appx. 125 (2nd Cir. 2008)..41
Coleman v. Donohue, 667 F.3d 835, 860 (2nd Cir. 2012).....................................46
Corrado v. East End Pool & Hot Tub, S. CT. Queens Co.
(Index No. 022430/2005)..16
Corrado v. Vetter, S.Ct. Nassau Co. (Index No. 200836/2008) (Uncontested
Divorce Granted) 11/5/2008..8
Danzer v. Norden Systems., 151 F.3d 50, 57 (2nd Cir. 2016)...............................45
Hoefer v. Bd. of Ed. Etc., 820 F.3d 58 (2nd Cir. 2016)....................................32,47
Intl. Electronics Corp. v. Flanzer, 527 F.2d 1288 (2nd Cir. 1975)..........................52
Lewis v. Frayne, 595 Fed. Appx. 35 (2nd Cir. 2014)..................................33,37,42
Le Sane v. Hall's Sec. Analyst, Inc., 239 F.3d 206, (2nd Cir. 2001).......................41
Smith v. Artus, 522 Fed. Appx. 82 (2nd Cir. 2013)..34,40
TechnoMarine SA v. Giftports, Inc., 758 F.3d 493, 498 (2nd Cir. 2014).................45
United States v. Mangone, 2016 U.S. App. LEXIS 10707
(2nd Cir. decided 6/14/16)..50
U.S. ex rel. Drake v. Norden, Sys., 375 F.3d 248, 254
(2nd Cir. 2004)...34,40,41
United States v. Katz, 425 F.2d 928, 930 (2nd Cir. 1970)....................................44
United States v. Woltmann, 610 F.3d 37 (2nd Cir. 2010).....................................50
Walsh v. New York City Housing Authority, 2016 U.S. App.
LEXIS 12496 (2nd Cir. 7/7/2016)..46
Wik v. City of Rochester, 632 Fed. Appx. 661 (2nd Cir. 2015)...............................38
Zagano v. Fordham Univ., 900 F.2d 12 (2nd Cir. 1990)................................*passim*

Statutes

Rule 12(b), Fed. Rules Civ. Proc...23
Rule 41, Fed Rules Civ. Pro...29,33
Rule 54, Fed. Rules Civ. Pro...46
Rule 58, Fed rules Civ. Pro..46,47
28 U.S.C. § 1291..1
28 U.S.C. § 1331..1
28 U.S.C. § 1337..1
29 U.S.C. § 2601 et seq. 21
42 U.S.C. § 2000 (e) et seq. 7

New York State Human Rights Law § 290, *et seq*..21
the New York City Human Rights Law 8 N.Y.C. R.R. § 107, *et seq*.......................21

Secondary Source

Assessing Evidence in Employment Cases on Summary Judgment
(by Geoffrey A. Mort, N.Y.L.J. 8/15/2016)..45

UNITED STATES COURT OF APPEALS
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--X
NICOLE CORRADO,
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-v- Dkt. No. 16-1493

NEW YORK STATE UNIFIED COURT SYSTEM,
LUIS GONZALEZ, JOHN MCCONNELL,
ROY REARDON, JORGE DOPICO,
ANGELA CHRISTMAS, NAOMI GOLDSTEIN,
Defendants-Appellees.
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PRELIMINARY STATEMENT

Nicole Corrado appeals from a final judgment of the United States District Court, Eastern District of New York (Irizarry, J.), entered on April 11, 2016, dismissing her employment discrimination case with prejudice. Judgment was entered pursuant to an ECF order dated April 8, 2016 ("Electronic Order") that was in response to Ms. Corrado's letter to the District Court asking that her case be "discontinued."

JURISDICTION

Jurisdiction in the District Court was predicated on 28 U.S.C. §§1331 and 1337. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1291. Final judgment was entered in the District Court on April

11, 2016 (A032), and a timely notice of appeal was filed on May 10, 2016 (A 262).[1]

STATEMENT OF THE CASE

Ms. Corrado was a Senior Staff Attorney for the Disciplinary Committee of the New York State Appellate Division, First Department ("DC").[2] Up until the time she filed her complaint, her work evaluations were fine. However, all that changed when she complained that she was being sexually harassed by two coworkers. The DC and their supervisors at the Unified Court System turned a blind eye to her harassment. Indeed, one of Ms. Corrado's perpetrators (Andral Brennan) had to be hospitalized in a mental institution because he could not stop obsessing over her. Yet, incredibly, upon his release from the hospital he was sent right back to work next to her! When she continued to complain, the DC circled the wagons and began to constantly harass Ms. Corrado by ginning up false negative work evaluations, dumping excessive amounts

[1] "A" followed by numbers refers to pages in the Appendix filed with this brief.

[2] Prior to going to work for the Disciplinary Committee, she worked as an Assistant District Attorney in Queens County from 1989-95, then went out into private practice with her now ex-husband before going to work for the New York State Unified Court System.

of work on her, micro-managing her work, and ridiculing her in front of her coworkers and subordinates.

Ms. Corrado's complaint named as defendants several high-ranking officials of the New York State Unified Court system who Ms. Corrado claimed either acted in concert with the perpetrators, or turned a blind eye to the sexual harassment and abuse of her during her employment at the DC.

The attorneys for the defendants – all New York State employees themselves – did everything in their power to prevent the depositions of the public-figure defendants from taking place. Counsel for defendants employed numerous dilatory tactics to prevent this case from moving forward. Defendant Roy Reardon went so far as to order the office staff at his law firm, Simpson Thatcher Bartlett, LLP, to not accept service of process on his behalf. Frivolous motions to dismiss were made. In short, a significant portion of the delay that the District Court attributed to Ms. Corrado was in fact due to the defendants.

STATEMENT OF ISSUES

The District Court knew full well that Ms. Corrado was seeking to discontinue the case while she sought a new attorney, and not dismissal

with prejudice. Ms. Corrado had fired three attorneys during the course of this litigation due to their glaring incompetence in handling this matter. Magistrate Judge Marilyn Go castigated counsel for violating the Rule 26 (FRCP) pretrial disclosure rules, failing to attend scheduled court proceedings, and being rude and disrespectful to the Court. Ms. Corrado had good reasons to fire those attorneys and hire new counsel to represent her in this very personal and important lawsuit.

However, because of the high-ranking status of several of the named defendants, it proved extremely difficult for Ms. Corrado to find capable counsel willing to represent her in this matter. Many attorneys, especially those who practice in the jurisdiction of the Appellate Division, First Department, simply would not prosecute a lawsuit against the DC for fear of retribution.

It is our contention that the District Court abused its discretion in dismissing the lawsuit with *prejudice* without first issuing a fair warning to Ms. Corrado that it would do so with prejudice, and giving her an opportunity to withdraw the motion to discontinue. Accordingly, we respectfully submit that the decision of the lower court should be vacated

and the matter restored to the District Court to continue pretrial proceedings. Point I.

We further submit that the District Court erred in its February 17, 2016, Opinion and Order dismissing Ms. Corrado's claim that she was constructively discharged from her employment due to the defendants' "continuous practice and policy of discrimination" that caused Ms. Corrado to resign. In dismissing this cause of action, the District Court myopically focused on the discrete acts of particular defendants and did not consider the collective impact of their acts on plaintiff, or the relevance and materiality of those collective acts as evidence of a discriminatory practice and policy that created a hostile work environment. Point II.

Finally, this is one of those rare cases where the appearance that the District Court may not be able to be fair and impartial warrants reassigning this case to another judge on remand. As a former ethics officer, Ms. Corrado believed that it was her obligation to apprise the District Court of multiple potential conflicts of interests that were operating in this case. First, Ms. Corrado notified Judge Irizarry that Patricia M. Hynes, Esq., the wife of defendant Roy Reardon, had once

wrote a scathing letter to Congress against the appointment of Judge Irizarry to the federal bench based on Ms. Hynes' perception that Judge Irizarry lacked the right temperament to be a federal judge. Judge Irizarry became irate when Ms. Corrado disclosed this information via a letter filed ECF (Dist. Ct. #140). Judge Irizarry mistakenly construed the letter as a personal attack by Ms. Corrado on her; in fact, nothing could have been further from the truth: Imagine a prospective juror being allowed to sit in a case where the juror testified as a witness against the spouse of one of the party's to the litigation? What Ms. Corraro did was imminently proper.

Second, Judge Irizarry found it frivolous and vexatious that Ms. Corrado had challenged the propriety of Lisa M. Evans – an attorney at the New York State Office of Court Administration – representing the individual defendants because they were Ms. Evans' colleagues and supervisors. Yet, Ms. Evans acknowledged the questionable ethical propriety and stated that, for that very reason, the Office of Court Administration had arranged to have the New York Attorney General's Office represent the individual defendants at trial.

Judge Irizarry also mistakenly believed that Ms. Corrado had orchestrated the admittedly inappropriate behavior of her attorneys; that, too, was not the truth.

In sum, a reasonable review of the record, looked at in the light most favorable to the plaintiff, reveals that Judge Irizarry's palpable hostility toward Ms. Corrado was misplaced; and that this lawsuit was dismissed with prejudice due to that misplaced hostility. Accordingly, the proper remedy is to reassign this case to a different judge. Point III.

STATEMENT OF FACTS

A. THE GRAVAMEN OF THE COMPLAINT

This action was initially commenced on April 10, 2012, against the New York State Unified Court System alleging sexual harassment and retaliation under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) (A001, 211). The complaint was subsequently amended to add individual defendants. In her Amended Complaint (A125-152), Ms. Corrado alleged a pattern of sexual harassment and retaliation during her employment with the UCS. The lower court appropriately assumed,

for purposes of defendants' motions to dismiss,[3] that the facts set forth in the Amended Complaint were true.

Employment History with Disciplinary Committee

Ms. Corrado began her employment with the UCS on November 8, 2001 (A128). She was assigned to the Disciplinary Committee ("DC") of the Appellate Division, First Department ("First Department") (A205). She began her career as an Associate Attorney, and in 2006 was promoted to Principal Attorney (A129, 205). As Principal Attorney, she investigated and prosecuted serious attorney misconduct cases (A 129). Ms. Corrado's work evaluations were excellent until she began complaining that she was being sexual harassed by defendant Andral Bratton after he became aware that she was getting divorced. The harasser was her supervisor (A128).

Only two of the defendants named in the lawsuit were directly involved in the sexual harassment: Vincent Raniere, Chief Investigator at the Disciplinary Committee (retired); and Andral Bratton.

Defendant Alan Friedberg, Chief Counsel to the Disciplinary Committee (retired) was directly involved in the creation of a hostile work

[3] See A226 citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

environment in retaliation and retribution for Ms. Corrado making the complaints.

And the remaining defendants – top administrators at the Unified Court System – did nothing to stop the work-place intimidation and violence against her, despite Ms. Corrado's numerous administrative complaints and pleas for help; the list includes: Honorable Luis A. Gonzalez, Presiding Justice at the Appellate Division, First Department; John W. McConnell, former Court Clerk, Appellate Division, First Department (present Counsel to Unified Court System); Roy Reardon, Esq., former Chairman of the Disciplinary Committee, First Department (and partner at Simpson Thacher & Bartlett, LLC); Jorge Dopico, Chief Counsel to the Disciplinary Committee; C. Angela Christmas, Deputy Counsel to the Disciplinary Committee; and Naomi Goldstein, Deputy Counsel to the Disciplinary Committee (A205).

The Beginning of the Harassment

The harassment first began in 2003, and was promptly reported by Ms. Corrado. Sadly, the same people who are charged with holding lawyers to the highest ethical standards circled the wagons to protect their own when she complained (A126).

Defendant Andral Bratton began sexually harassing Ms. Corrado shortly after he became her supervisor. Bratton would make unwelcome sexually comments like, "with you Nicole, a little skin showing goes a long way." Bratton obsessed over Ms. Corrado, constantly calling her at her home during the evenings and on the weekends. He would enter her office unannounced just to smile and stare at her. Bratton would not take no for an answer, warning Ms. Corrado that she "need[ed] to be nice to [him]" (A206).

Bratton was married. But seeing Ms. Corrado made him want to be divorced; he once told Ms. Corrado, "I feel like someone ripped into my chest and ripped my heart out and stomped it to the floor." Statements like those, and constant barging into her office for no purpose other than to flirt with her and stare at her, adversely effected Ms. Corrado's ability to concentrate and do her job (A130).

Bratton's obsession with Ms. Corrado became so severe that he had to admit himself into the psychiatric ward at St. Vincent's hospital in 2007 for "severe, deep depression and suicidal tendencies" (A132).

Ms. Corrado had no option but to file a complaint with human resources. Bratton admitted that he was sexually attracted to Ms.

Corrado; and that he was "foolish as hell for crossing an emotional boundary" with her (A129).

The New York State Unified Court System Refused to Intervene

Bratton remained hospitalized for mental observation for two months due to a diagnosis of "severe, deep depression and suicidal tendencies" (A132). Incredibly, upon his release from the mental hospital, he was allowed to continue to be Ms. Corrado's immediate supervisor, purportedly because he had been rehabilitated (A131-32). Obviously, no consideration was given to Ms. Corrado's feelings or legitimate safety concerns.

It should be no surprise that shortly after Bratton returned to work (in August 2007), he resumed his sexual harassment of Ms. Corrado, causing her unremitting fear, alarm and extreme emotional distress for another year (A 131, 206).

This time, however, Ms. Corrado renewed complaints were met with assertions of disbelief and disdain. It was then that defendant Friedberg, Chief Counsel to the DC, began micro-managing her work and placing negative performance evaluations in her employee file. Because

those negative evaluations were not disclosed to Ms. Corrado, she had no opportunity to challenge the false accusations (A132, 206).

Defendant Raniere Begins to Sexually Harass Ms. Corrado

Beginning in 2004 thru 2008, defendant Raniere (a friend and co-worker of Bratton) joined Bratton in making unwelcomed sexual advances to Ms. Corrado (A126). As Chief Investigator, Raniere was also a supervisor (A 133). Raniere's comments were equally offensive, such as: "I can force you to be with me if I want to;" "I can take care of you in other ways even if I can't take care of you sexually;" and "what I wouldn't do to be with you." (A133, 133). Raniere's misconduct escalated from the verbal to the physical, when he started touching and kissing Ms. Corrado without her consent. Since Ms. Corrado's complaints against Bratton had fallen on deaf ears at the UCS, her complaints about Raniere's behavior were similarly ignored (A 134, 206-07).[4]

[4] In assessing the likelihood of the truth and veracity of this claim, it must be noted that defendant Raniere had a history of sexually harassing women at the DC, for which UCS and the individual defendants had actual and/or constructive notice, but took no affirmative steps to address, stop, discipline, discourage or curtail his unlawful conduct (A126).

During the summer 2008, Ms. Corrado was going to be a witness for a coworker in a discrimination lawsuit brought against the UCS and the DC by another former female employee. Defendant Bratton "warned" Ms. Corrado not to testify (A132). *See Anderson v. New York,* 2012 U.S. Dist. LEXIS 142628 (S.D.N.Y. 2012) (requesting motion for new trial because Ms. Corrado refused to testify out of fear).

On September 17, 2008, Ms. Corrado complained to defendant Friedberg that Bratton and Raniere were still sexually harassing her. Friedberg reported her allegations against Bratton but not Raniere (A 134, 207).

During the subsequent investigation by the Office of Inspector General (OIG), Bratton admitted making sexual comments to Ms. Corrado and being "smitten" with her (A134). The OIG investigation was supervised by defendants Justice Gonzalez, McConnell, and Reardon. At the conclusion, they determined that Bratton's behavior was inappropriate, but did not constitute sexual harassment. The UCS ordered Bratton transferred to another unit but placed no restriction on his access to, or interactions with, Ms. Corrado (A135, 207).

Retribution and Retaliation at the Disciplinary Committee

In November, 2008, the defendants, in a concerted effort, renewed their retaliation against the whistleblower, Ms. Corrado. Friedberg continued to severely scrutinize her work, looking for any reason to reprimand her – often in the presence of others so as to embarrass her. Friedberg would then file false allegations of poor work performance in Ms. Corrado's file.

In July of 2009, Ms. Corrado requested a lateral job transfer within the UCS in an attempt to extricate herself from her antagonists, but that request was denied (A 134, 207-208).

The Retaliation Following the First EEOC Complaint

Ms. Corrado's complaints to the UCS (specifically to defendants McConnell, Justice Gonzalez, and Roy Reardon) continued to fall on deaf ears (A 135).

Meanwhile, in May, 2009, when defendant Friedberg learned that Ms. Corrado had filed a complaint with the Equal Opportunity Employment Commission ("EEOC") alleging sexual harassment and retaliation, he ordered Ms. Corrado to attend "counseling sessions" and threatened to fire her if she did not attend. Incredibly, even though

Friedberg knew that he was the subject of part of her complaints, he appointed himself to be the "counsellor" during these purported "sessions" (A 136-137, 208; see also, Order dated 1/10/14, ECF 71, at 3).

From January, 2009 thru July, 2009, defendants collectively continued their retaliation and retribution of Ms. Corrado by increasing her job assignments to the breaking point, and by placing other unreasonable demands and deadlines on her. In addition, they continued to demean her dignity and professional self-respect by requiring that she be supervised one-on-one by other attorneys, and by continually criticizing the manner in which she handled her cases (A136).

The Second OIG Investigation (Against Defendant Raniere)

In the summer of 2009, Ms. Corrado filed a sexual harassment complaint with the Office of Inspector General against defendant Raniere. Despite the ongoing investigation, she was forced to continue to have daily contact with Raniere (A136).

In August, 2009, defendant McConnell told Ms. Corrado that he believed she was making false accusations against Raniere (A 137, 208).

Defendants Investigate Ms. Corrado's Civil Attorney

In 2008, Ms. Corrado retained an attorney to represent her in *Corrado v. East End Pool & Hot Tub, et al.* (S. Ct. Queens Co. Index No. 022430/2005), a state court civil action involving her home. Upon information and belief, in August 2009, defendants Raniere and Friedberg, acting at the direction of defendants Reardon, Gonzalez, and McConnell, initiated an ethics investigation against the civil attorney. In May of 2010, the civil attorney abruptly (without explanation) withdrew as her counsel; shortly after his withdrawal, all ethical charges against him were dismissed as unfounded. However, upon information and belief, in 2011, defendants Dopico, Christmas, Justice Gonzalez, Reardon, and McConnell reopened the Disciplinary Committee's investigation into that attorney (A139-140, 208).

Leaves of Absence, This Action, and Additional Retaliation

1. First Leave of Absence

The avalanche of sexual harassment, retaliation and retribution that Ms. Corrado endured caused her severe psychological trauma and emotional pain, including anxiety, loss of appetite and insomnia, forcing

her to take a two-year unpaid leave of absence beginning August 24, 2009 (A138, 208).[5]

In August, 2011, Ms. Corrado returned to work. By then her harassers Bratton and Raniere had resigned or retired (A138). But the EEOC complaint was still pending. To her chagrin, her return was met with renewed rigorous scrutiny and strict monitoring. Unbeknownst to Ms. Corrado at the time, defendant Reardon was holding private meetings to discuss Ms. Corrado returning to work. Reardon made fervent attempts to conceal these meetings from Ms. Corrado. Significantly, during the time these meetings were being held, Reardon was writing to the EEOC false unfavorable comments about Ms. Corrado.

2. Instant Action

On or about March 5, 2012, Ms. Corrado's attorney sent a notice of intent to sue to defendants UCS, Dopico, Christmas, Reardon and other Disciplinary Committee members.

On April 10, 2012, Ms. Corrado filed a lawsuit naming only the Unified Court System (UCS) as a defendant (A140).

[5] Judge Irizarry suspected that Ms. Corrado had experienced mental health issues but made no actual finding (Compare A138 with A208).

Upon information and belief, just before or just after she filed her lawsuit, the Disciplinary Committee started an investigation into her then-attorney (A140-141).

Meanwhile, her (third) request for a transfer to a different part department within the Unified Court System was denied (A141).

3. Second (FMLA) Leave of Absence

On March 4, 2013, Ms. Corrado was a divorced single parent raising her teen-age daughter who became seriously ill. Ms. Corrado had to take a family medical leave of absence (A141-142).

She returned to work on March 25, 2013. She was at her desk less than one hour when she was served with a negative performance evaluation by defendants Dopico and Christmas; they had a clerical employee deliver the missive to her (A142). The evaluation contained "false," "pre-textual," and "retaliatory" material much of which they never discussed with her. Defendant Dopico signed the evaluation; defendants Goldstein and Christmas had authored; and it was approved

by defendants Reardon, McConnell, and Justice Gonzalez. Id., at ¶ 87 (A 209).[6]

As stated, between 2001 and 2007, Ms. Corrado had received favorable yearly performance evaluations, resulting in her being promoted to Senior Attorney in 2006. However, after she lodged her sexual harassment and retaliation complaint with Friedberg in 2008, her troubles began and continued through 2013 (A142-143, A 210).

On March 25, 2013, Ms. Corrado was again denied a work transfer (A143).

On May 8, 2013, defendants McConnell, Reardon, Justice Gonzalez, Christmas and Dopico ordered Ms. Corrado to attend a counseling session because of alleged time and leave issues. These "'time and leave' issues were related to her three-week family leave of absence (A 143).

On July 30, 2013, defendants Christmas and Dopico ordered Ms. Corrado to attend a counseling session (A143). Other instances of abusive

[6] Duplicitously, defendant Dopico had previously told Ms. Corrado that her performance was "great" and that there "were no problems" the first few months after Ms. Corrado returned to work in 2011 (A142).

behavior included defendant Christmas instigating verbal altercations with Ms. Corrado and otherwise bullying her (A144, A210).

On August 2, 2013, the Clerk of the Court sent Ms. Corrado a letter on behalf of Justice Gonzalez, directing her to attend a "counseling session" with her supervisors (on August 8, 2013). The letter warned that her failure to attend "might" be deemed insubordination, which could constitute grounds for her termination (A 145). (Justice Gonzalez had repeatedly denied Ms. Corrado's requests to meet with him to discuss the hostile work environment and to request a transfer out of the Disciplinary Committee (A144).)

On August 7, 2013, faced with unrelenting retaliation, following years of sexual harassment, Ms. Corrado resigned from her position.

Because no reasonable person could continue to work in such an adverse environment, her resignation was, in fact, a constructive discharge. As a result of the individual defendants' actions, she has and will continue to suffer lost earnings, loss of other employment benefits, damage to her reputation, and physical and mental anguish (A 145-146, A 210).

B. PROCEDURAL HISTORY

On August 7, 2013, Ms. Corrado moved to amend the complaint to add individual defendants and other causes of action. Her motion was opposed by defendant Unified Court System.

On September 15, 2014, Magistrate Judge Marilyn Go granted the motion to amend ("Sept. 15 Order" (A92-124)). Ms. Corrado was told to submit a conforming proposed amended complaint in accordance with the lower court's ruling.

On November 5, 2014, Ms. Corrado filed the Amended Complaint (A016, A125-152).

The Amended Complaint asserted seven claims against the defendants pursuant to Title VII, the New York State Human Rights Law §290 ("NYSHRL"), the New York City Human Rights Law 8 N.Y.C.R.R. § 107 ("NYCHRL"), the Family Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq. ("FMLA"), and state tort law.

Claim One was a Title VII claim against the UCS only (A146-147).

Claims Two and Three alleged that the UCS and all the individual defendants violated the NYSHRL and the NYCHRL, respectively, by aiding and abetting, the sexual harassment of Ms. Corrado, and by

retaliating against her for complaining about the sexual harassment (A147-148).

Claim Four alleged a violation of the FMLA, to wit: the UCS along with defendants Christmas, Dopico, Justice Gonzalez, Reardon, McConnell, and Goldstein retaliated against Ms. Corrado for exercising her rights under the FMLA (A 149).

Claim Five alleged that defendants Christmas, Dopico, Justice Gonzalez, Reardon, McConnell, and Goldstein violated the NYCHRL by retaliating against Ms. Corrado for exercising her rights under the FMLA. *Id.*

Claim Six alleged negligent supervision against all defendants (A150-151).

Finally, Claim Seven alleged intentional infliction of emotional distress ("IIED") against all defendants (A151).

The lower court subsequently So-Ordered the stipulation of the parties, dismissing the sixth and seventh claims against UCS (A017).

Based on these claims, Ms. Corrado sought compensation for mental anguish, emotional pain and suffering, physical pain and suffering, embarrassment and humiliation as well as for all of her

financial losses, including, but not limited to, all of her lost financial opportunities and entitlements; including back and front pay, her irreparably damaged name, title, standing and professional reputation (A151). Ms. Corrado also sought reasonable attorney fees, equitable relief including reinstatement and other relief (A152).

The individual defendants filed two separate motions to dismiss the Amended Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure[7].

By Order dated February 26, 2016 (A204-243), the lower court ruled on the motion to dismiss as follows: (i) all claims against Raniere and Friedberg were dismissed with prejudice (based on the statute of limitations); (ii) Claims Five, Six, and Seven as to each Individual

[7] Reardon also moved to dismiss under Rule 12(b)(2) and (5) for lack of personal jurisdiction based on insufficient service of process under Rule 12(b)(2) and (5). He was the only defendant to object to service and personal jurisdiction. The Amended Complaint was served by leaving a copy at Reardon's law firm, Simpson Thachter Bartlett, LLP, and mailed to him on two occasions first in December 2015 and then in March 2016. The lower court found that Corrado's efforts to serve Reardon were both reasonable and diligent, and Reardon's efforts to avoid service were unreasonable. The lower court also found that Reardon was not prejudiced by receiving service one day late and extended the time to serve *nunc pro tunc* (A222).

Defendant, were dismissed with prejudice (based on statute of limitations); and (iii) those portions of Claims Two and Three alleging sexual harassment and aiding and abetting sexual harassment as to each Individual Defendant were dismissed with prejudice (based on statute of limitations).

The only surviving claims as to the six remaining Individual Defendants were: (i) Claim Four; and (ii) those portions of Claims Two and Three alleging retaliation (A242). The claims against UCS were not affected by this ruling.

<u>The Case Was Marred by Ms. Corrado's Problems with Her Lawyers</u>

Although Ms. Corrado is an attorney, she knew she was unable to proceed pro se. The record is clear she suffered severe mental trauma due to the unremitting abuse and harassment that she endured while working at the DC. Indeed, Judge Irizarry even surmised that Ms. Corrado may have suffered a mental breakdown during this horrible episode in her life.

Ms. Corrado had three different counsel during the four years this case was pending. She had good reason to discharge each lawyer.

Unfortunately, the District Court mistakenly believed that Ms. Corrardo was the cause of her attorney's (mis)conduct.

First was the law firm of Borelli and Associates, PLLC ("Borelli"). Ms. Corrado fired them on August 1, 2012, after the complaint was filed on April 10, 2012 (A033). Shortly thereafter, Ms. Corrado learned that Borelli had destroyed documents Ms. Corrado had obtained from the EEOC via her Freedom of Information Act ("FOIA") request. Attorney Borelli scanned the documents that he deemed pertinent to the lawsuit and destroyed others that he felt were not pertinent. He tried to justify his actions by saying that the items he destroyed – i.e., copies of investigative notes and scratch notes from the EEOC investigators – were non-discoverable attorney work-product that was inadvertently provided by the EEOC and would not be admissible in evidence anyway (A042). Tragically, the "originals" of the documents he destroyed were also destroyed by Super Storm Sandy in a storage locker. Magistrate Go also criticized Attorney Borelli for destroying Ms. Corrado's documents without consulting with her first (A048).

Attorney Ambrose W. Wotorson. Jr. replaced Borelli. Magistrate Go described him as: "one of the most disrespectful attorneys I ever had to

deal with . . . ." (A046). Judge Irizarry accused Wotorson of delaying discovery, making frivolous motions, failing to comply with the Court's rules, and failing to make deadlines set by the Court. Judge Irizarry ultimately threatened to sanction Wotorson if his contumacious behavior continued (A014, 020).[8]

Shortly after a December 12, 2012 court conference, Wotorson (at the request of his client) moved to be relieved (A074-075). The lower court granted the motion and extended Ms. Corrado's time to disclose certain document to February 25, 2013 (A005).

Ms. Corrado's time to disclose was further extended to May 15, 2013, due to her inability to find a competent lawyer who was willing to go against the Disciplinary Committee, and also because she was primarily focused on caring for her sick daughter (which necessitated the family medical leave discussed above (A 007).

Unable to find suitable substitute counsel, Ms. Corrado asked Attorney Wotorson to return to the case. On April 30, 2013, Wotorson

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[8] For example, Wotorson "completely ignored the October 25th deadline" for disclosure ordered by Magistrate Go (A065-69).

filed a new notice of appearance (A007).[9] But as usual, he failed to timely serve required discovery material on defendants (A008). Magistrate Go granted Wotorson's motion to extend time to serve the discovery, but warned Wotorson that "further delay in responding to discovery requests will not be tolerated and may result in sanctions" (A009).

As the case proceeded, Attorney Wotorson failed to attend two conferences on November 10, 2014 (A016), and then again on February 18, 2015 (A018). After the November 10th failure to appear, Magistrate Go issued a stern new warning that "[c]ontinued failure to appear for scheduled court conferences could result in sanctions, including the imposition of a fine and attorneys' fees and/or dismissal of this action" (A 153).

On April 3, 2015, after defendants' motions to dismiss were briefed, Wotorson again moved to be relieved. On April 9, 2015, the motion was granted (A022, 159-161). However, Magistrate Go stated that if Ms.

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[9] Wotorson failed to register for ECF, further aggravating Judge Irizarry, who warned him: "Plaintiff's counsel, Ambrose W. Wotorson, Jr., filed a notice of appearance with the court on 4/30/13 but is not registered for ECF and is not receiving notices of Electronic case filings. Mr. Wotorson is also directed to comply with this order by May 10 and register for ECF or be fined as above" (A008 [ECF entry dated 5/2/13]).

Corrado were unable to find suitable replacement counsel, she would have to be ready to proceed pro se; and that any further failures to appear or not comply with court orders "could" result in sanctions, including a fine or, ultimately, dismissal of the action for failure to prosecute (A160).

On April 8, 2015, Ms. Corrado wrote a letter to Judge Irizarry to inform her of a potential conflict of interest; namely, that defendant Roy Reardon's wife, Patricia M. Hynes, Esq. as chair of the American Bar Association's Standing Committee on the Federal Judiciary, had provided "negative and adverse" testimony at a U.S. Senate Judiciary Committee hearing on Judge Irizarry's qualifications (temperament) to be a federal judge. The defendants responded by assuring Judge Irizarry that they did not feel Ms. Hynes' submission created a conflict of interest.

On April 10, 2015, Judge Irizarry rejected Ms. Corrado's suggestion that the Judge recuse herself. Making no effort to hide her indignation and dislike of Ms. Corrado. Judge Irizarry ruled:

> the utter frivolousness of this recusal motion is yet another reflection of the vexatious nature in which Plaintiff has litigated this matter through her failure to follow proper procedure and obey court rulings, and submission of meritless requests, such as the requests concerning information about Defendant Reardon's spouse (ECF 144).

On May 7, 2015, Attorney Frank Housh was granted permission to represent Ms. Corrado *pro hac vice* but moved to be relieved on January 14, 2016. (A028). Housh refused to return Ms. Corrado's files to her until ordered to do so by Magistrate Go on March 18, 2016 (A031).

On February 25, 2016, Magistrate Go once again reminded Ms. Corrado that she had to retain counsel or proceed pro se. Ms. Corrado said she did not want to proceed pro se.

The District Court's Dismissal with Prejudice

On April 4, 2016, faced with impending discovery deadlines and unable to retain counsel, Ms. Corrado asked the District Court to "discontinue" her case, not to *dismiss* it.

In its decision and Order, Judge Irizarry nevertheless dismissed the case with prejudice. Judge Irizarry first noted that a plaintiff may not move to discontinue under Rule 41(a)(1) once the defendants have answered. See Rule 41(a)(1)(A)(i)-(ii). Thus, the Court *sua sponte* converted the motion to a motion to dismiss under Rule 41(a)(2) which permits the district court to issue an order "on terms that the court considers just and proper." See Rule 41(a)(2). Judge Irizarry concluded that: "Upon review of the record, it is ORDERED that this case be, and

hereby is, dismissed with prejudice" and directed the Clerk to close this case (A031-032). Based on that order, the clerk entered Judgment on April 11, 2016 (A 261).

This appeal follows.

POINT I
THE DISTRICT COURT'S DISMISSAL OF THE COMPLAINT WITH PREJUDICE CONSTITUTED AN ABUSE OF DISCRETION

Ms. Corrado was a Senior Attorney for the Disciplinary Committee of the First Department. She prosecuted attorney misconduct on a daily basis and was well versed in attorney ethics. That was her career; a career she was forced to abandon due to the unremitting harassment of her supervisors. Before going to work for the DC, Ms. Corrado was an Assistant District Attorney in Queens County, a job she held for several years. These facts alone strongly suggest that something terrible happened here.

Public policy strongly favors disposing of lawsuits on the merits. Dismissal with prejudice is a harsh sanction that should be imposed only as a last resort; and it must be preceded by notice of the sanctionable conduct, the standard by which it will be assessed, and an opportunity to be heard. There must be an opportunity to be head because a court's first and foremost responsibility is to "do no harm" to the litigant's rights. *Castro v. United States,* 540 U.S. 375, 386 (2003) (Scalia, J., concurring) (holding that absent a fair warning by the district court of its intention to convert a Rule 33 (Fed. Crim. Proc.) motion for a new trial into a §2255

writ of habeas corpus, a subsequent writ brought by a prisoner will not be governed by onerous "successive writ" rules).

Here, Ms. Corrado was denied her constitutional right to fair notice and an opportunity to be heard when the District Court dismissed her complaint with prejudice simply because she asked to discontinue the case until she could find a competent lawyer to represent her. The District Court should have given Ms. Corrado the choice of either going forward or face dismissal with prejudice. The failure to give her that choice was an abuse of discretion that violated Ms. Corrado's right to due process.[10]

At the outset, it must be noted that defendants never asked the lower court to dismiss the complaint with prejudice; and the District Court gave no reason as to why, or on what basis, it was dismissing the complaint with prejudice. The failure of the lower court to give reasons for imposition of the harsh sanction of dismissal with prejudice is, by

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[10] The standard of review is abuse of discretion. *See Zagano v. Fordham University,* 900 F.2d 12, 14 (2nd Cir. 1990). A district court abuses its discretion if it bases its ruling on an erroneous view of the law, on a clearly erroneous assessment of the evidence, or renders a decision that cannot be located within the range of permissible decisions. *See Hoefer v. Bd. of Ed, etc.,* 820 F.3d 58, 63 (2nd Cir. 2016).

itself, sufficient grounds to vacate the judgment. *See, Lewis v. Frayne*, 595 Fed. Appx. 35 (2nd Cir. 2014) (dismissal with prejudice of § 1983 action for failure to prosecute, based on plaintiff not complying with scheduling order, vacated notwithstanding district court's order to show cause that stated dismissal of action was possible if plaintiff failed to comply; "the record contains no indication that the district court considered any of the required factors in reaching its decision to dismiss plaintiff's case for failure to prosecute." *Id.* *37).[11] In any event, for purposes of this appeal, we presume the District Court dismissed the case based on Rule 41(a)(2) of the Federal Rules of Civil Procedure (FRCP).

Rule 41(a)(2) provides that except where all parties agree to a stipulation of dismissal, an action shall not be dismissed at the plaintiff's instance except upon "court order, on such terms and conditions as the court deems proper."

In *Zagano v. Fordham Univ., supra,* this Court held that in deciding a Rule 41, *et seq.* motion to dismiss (with or without prejudice), a district

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[11] "And while 'we do not expect district courts to make exhaustive factual findings . . . a decision to dismiss stands a better chance on appeal if the appellate court has the benefit of the district court's reasoning'." *Lewis, Id.* *36 (quoting *Baptiste v. Sommers,* 768 F.3d 212, 216 (2nd Cir. 2014]).

court must consider: (1) plaintiff's diligence in bringing the motion; (2) any undue vexatiousness on plaintiff's part; (3) the extent to which the suit has progressed, including the defendant's effort and expense in preparation for trial; (4) the duplicative expense of re-litigation; and (5) the adequacy of plaintiff's explanation for the need to dismiss. *Id.* 900 F.2d at 14. Those factors must be considered *in toto* in deciding whether or not to dismiss with prejudice. *See, e.g., Smith v. Artus*, 522 Fed. Appx. 82 (2nd Cir. 2013). No one factor is dispositive. Furthermore, this Court on appellate review will consider the propriety of dismissal with prejudice in light of the record as a whole. *See United States ex rel. Drake v. Norden, Sys.,* 375 F.3d 248, 254 (2nd Cir. 2004).

In *Zagano,* this Court upheld the district court's decision (a) denying the plaintiff's Rule 41(a)(2) motion to dismiss without prejudice and (b) granting the defendant's Rule 41(b) cross-motion to dismiss with prejudice. After the district court had denied Zagano's motion to "place[] the case on the suspense calendar, subject to restoration by either side" (900 F.2d at 13), she attempted to do an end-run around that ruling by bringing a separate (second) motion to dismiss the complaint (without prejudice) pursuant to Rule 41(a)(2). That motion was made just one

week before the trial was scheduled to begin, and after discovery was complete, at great expense to the defendant. This Court held Zagano's motion, having been brought on "the eve of trial," was brought "far too late." *Id.* 14. Zagano was placed on notice that her case would be involuntarily dismissed when the district court "ordered her to go to trial. Her motion having been denied, Zagano was obliged to go to trial, 'failing which involuntary dismissal for failure to prosecute [was] appropriate'. In sum, Zagano's refusal to proceed when the moment of truth arrived fully warranted dismissal of her case with prejudice." *Id.* 15 (citations omitted).

Applying the *Zagano* factors to this case establishes that the District Court improvidently dismissed the complaint with prejudice.

1) Plaintiff was Diligent in Bringing the Motion

At a hearing on February 25, 2016, Magistrate Go ordered Ms. Corrado to be ready to proceed *pro se* if Ms. Corraro could not obtain new counsel (compare A243 with A259). On April 4, 2016, Ms. Corrado brought the motion to discontinue, after being unable to find a replacement lawyer to represent her. It must be noted that Magistrate Go allowed defendants every leeway to file repeated discovery motions,

which were opposed by Ms. Corrado's lawyers, and which collectively took two years to decide. Yet, she had little sympathy for Ms. Corrado's plight of having difficulty finding a competent attorney willing to represent her to challenge powerful members of the Unified Court System. Magistrate Go's hostility toward Ms. Corrado was the primary reason why she wrote to Judge Irizarry seeking her help.

2) The Motion was Not Brought for a Vexatious Purpose

Unlike in *Zagano,* here Ms. Corrado did not disobey Magistrate Go's order to retain new counsel or be prepared to proceed pro se; rather, she sought the aegis and intervention of the District Court. This was not a strategic maneuver, as in *Zagano*; Ms. Corrado in heartfelt terms explained the reasons why she was incapable of competently representing herself, i.e., because she knew nothing about federal civil procedure and the substantive law governing Title VII claims; because she emotionally was unable to proceed on her own; and because she had an ill daughter who she was caring for as a single parent and who needed her constant attention (A259). While attorneys are generally not entitled to the leniency afforded *pro se* litigants, Ms. Corrado's obvious and palpable inability to prosecute this case on her own – due to lack of

federal practice inexperience, delicate emotional state, and immediate family concerns – militated in favor of treating her like an ordinary *pro se* plaintiff. *See, generally, Lewis v. Frayne, supra,* 595 Fed. Appx. at *36-37 ("*pro se* plaintiffs should be granted special leniency regarding procedural matters," and their claims should be dismissed for failure to prosecute "only when the circumstances are sufficiently extreme").

Ms. Corrado had already provided the defendants all the documentary evidence she had, i.e., her EEOC file (that she obtained via a FOIA request). It is well known that in Title VII cases, it is the employer who most often has control over the evidence that the plaintiff needs to establish her claims. That's why it was so imperative for Ms. Corrado to be able to depose the individual defendants. She had no reason to be vexatious or dilatory in moving forward.

Finally, Ms. Corrado did not say that she no longer wanted to prosecute her case, just that she was not capable of doing so on her own. *Compare Wik v. City of Rochester,* 632 Fed. Appx. 661 (2nd Cir. 2015) (affirming dismissal with prejudice where plaintiff "no longer wished to proceed to trial because a trial would be a 'farce' and an 'exercise in futility'").

3) Extent to which Suit Had Progressed

The lawsuit was filed in 2012. But a significant portion of that time involved motion practice by defendants attempting to have this case dismissed (for reasons not pertinent to this appeal) in order to avoid the public-figure defendants having to face questioning at a deposition. Defendants opposed the motion to amend which was granted nine months after it was filed. Just three months after Magistrate Go granted the motion to amended the complaint, defendants were permitted to file another motion to dismiss the complaint – when the rules of procedure allow just one such motion. This renewed motion to dismiss remained pending with for over a year. Collectively, two years of this lawsuit were spent litigating frivolous (vexatious) motions *brought by the defendants.* Depositions had not yet begun. The case was not on the trial ready calendar.

4) Duplicative Expense of Re-litigation

Defendants had already expended the time and expense in gathering the discovery that was provided to Ms. Corrado. And she had already provided defendants with all the discovery she had, namely, the EEOC file that she had obtained via a FOIA request. The next step was

depositions. Had the lawsuit been dismissed without prejudice and shortly thereafter reinstituted, the burden on defendants would have been de minimis, given they had already done most of the heavy lifting (i.e., gathering the documents and turning them over to the plaintiff). In this regard, it is important to note that defendants did not cross-move for dismissal with prejudice; so they should not now be heard to claim that they would have been prejudiced by dismissal without prejudice. *Cf. Camilli v. Grimes,* 436 F.3d 120 (2nd Cir. 2006).

5) Adequacy of Plaintiff's Explanation for Need to Discontinue

In her April 4, 2016 letter to Judge Irizarry, Ms. Corrado adequately explained why she needed more time to proceed and believed that a voluntary discontinuance without prejudice would be the best way to accomplish that (A259). Ms. Corrado had three lawyers in this case. She fired each one, and for good reasons: The record clearly reveals that those three lawyers did not serve her well. The numerous procedural *faux pas* her and her attorneys had made during the pretrial proceedings was proof positive of that (and is set forth in the statement of facts). Hence, her request for more time to find a competent lawyer to represent her was imminently reasonable under the circumstances. And the difficulty

she was having finding a competent lawyer in downstate New York willing to go up against the Disciplinary Committee of the First Department is not hard to imagine.

The case law that has developed post-*Zagano* is clear that notice and an opportunity to be heard are due process essentials when a district court considers involuntary dismissal with prejudice.

For example, in *Smith v. Artus,* 522 Fed. Appx. 82 (2nd Cir. 2013), the complainant did not specify whether he was seeking dismissal of certain state law claims with or without prejudice, and the district court failed to inquire: "Because Smith did not explain in his pro se submission why he wished to withdraw his claims, and because the district court did not seek clarification, the district court likely lacked the information necessary to conduct a full analysis under *Zagano*." Accordingly, this Court held that the proper relief was to vacate the district court's order and "permit Smith to renew his request for dismissal of his state law claims without prejudice or to withdraw his request to dismiss those claims."

Similarly, in *Coats v. VA,* 268 Fed. Appx. 125 (2nd Cir. 2008), this Court held that the district court abused its discretion in dismissing the complaint with prejudice for failure to prosecute – even though the *pro se* plaintiff had failed to comply with the district court's scheduling order for over one year, and even though the district court "weighed five factors that assisted in its determination" – because the district court's "notice to plaintiff to amend his complaint did not indicate that, if he failed to do so, it would dismiss his complaint with prejudice." *Id.* *126 [quoting *Le Sane v. Hall's Sec. Analyst, Inc.,* 239 F.3d 206, 209 (2nd Cir. 2001]).

In *U.S. ex rel. Drake v. Norden Sys., Inc.*, 375 F.3d 248, 254 (2nd Cir. 2004), this Court held that the absence of specific notice that the lawsuit would be dismissed with prejudice if the plaintiff failed to comply with the district court's order was fatal to the judgment of dismissal with prejudice. There, this Court vacated a dismissal with prejudice even though the plaintiff had failed to amend the complaint for 17 months following the district court order dismissing with leave to refile the complaint within 60 days; this Court held that the plaintiff was entitled to fair warning that the case would be closed with no option to reopen after 60 days.

Significantly, in *Drake,* this Court noted that albeit the 17-month delay was lengthy, the case was filed three years earlier during which time substantial delays were the result of motion practice by the defendants; in other words, the delay did not prove that the plaintiff "deliberately proceeded in dilatory fashion, or ignored repeated warnings and deadlines, or where plaintiff's conduct was contumacious with respect to the district court's directions." *Id.* 375 F.3d at 258.

Drake is instructive of the type of warning the district court must give. There, a court clerk had warned the plaintiff that dismissal was a "possibility" for disobedience of court orders. *Drake* held those types of conditional warnings lack the "criticalness of immediate compliance" necessary for adequate warnings. *Id* at 256. *See also, Accord, Lewis v. Frayne, supra,* 595 Fed. Appx. *36 (vacating dismissal with prejudice under Rule 41(b) for failing to comply with court order where the district court order to shows cause said, "'This is may be dismissed by order of the court if you do not respond by 2/14/2014,'" rather than "warn[ing] him that his case 'would be dismissed if there was *further* delay'" (quoting *Drake, supra,* 375 F.3d at 255 [emphasis in original]).

Similarly, in the case at bar, Magistrate Go warned Ms. Corrado and her counsel that failure to comply with court orders "could" result in a variety of sanctions, including dismissal, not that her failure to comply *would* result in dismissal.

It should further be noted that in *Drake*, 375 F.3d at 255, this Court, in considering the "efficacy of lesser sanctions," did an "apportionment of blame between counsel and client" before concluding that dismissal with prejudice was an unduly harsh sanction.

Here, by adverse contrast, Judge Irizarry apparently undertook no apportionment of blame in considering how much Ms. Corrado's lawyers had to do with the lack of compliance with Magistrate Go's orders, or defendants' vexatious litigation tactics, before imposing the harsh sanction of dismissal. As set forth in the statement of facts, there was much blame to go around. This case represents another variant of the truism that "[i]f [plaintiff's counsel] decides to flail around and raise considerable dust, . . ., the inevitable risk [is] that some may settle on his client." *United States v. Katz,* 425 F.2d 928, 930 (2nd Cir. 1970).

Finally, here, as in *Drake,* the defendants made no showing as to how they would have been prejudiced had the District Court granted Ms.

Corrado's motion to dismiss without prejudice. Nor could any such showing have been made, as several claims had already been dismissed based on statutes of limitations, and the clock would have continued to run on the remaining claims. *See* Drake *Id.* 256-57 (In cases where "delay is more moderate or excusable, the need to show actual prejudice is proportionately greater").

For all the foregoing reasons, the judgment should be vacated and the matter remanded back to the District Court for further proceedings.

POINT II
THE DISTRICT COURT ERRED BY DISMISSING THE CLAIM OF "CONTINUOUS PRACTICE AND POLICY OF DISCRIMINATION" BY THE DISCIPLINARY COMMITTEE

The District Court unfairly dismissed appellant's theory of liability that the sexual harassment and retaliation by the members of the Disciplinary Committee reflected a continuous practice and policy of discrimination. The District Court rejected this claim by myopically focusing on the discrete acts of the various defendants, and not looking at the evidence as a whole, as it was required to do *See* A. 229-31.

This issue presents a matter of law that requires de novo review. *E.g., TechnoMarine SA v. Giftports, Inc.,* 758 F.3d 493, 498 (2nd Cir. 2014) ("We review *de novo* the dismissal of a complaint under Rule 12(b)(6) accepting all allegations in the complaint as true and drawing all inferences in favor of the plaintiff").[12]

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[12] There is presently an ongoing debate as to whether the federal district court judges in the Second Circuit grant summary judgment motions too readily in employment law cases. *See Assessing Evidence in Employment Cases on Summary Judgment* (by Geoffrey A. Mort, N.Y.L.J. 8/15/2016) ("In granting summary judgment motions, some district courts in the Second Circuit have repeatedly demonstrated an inclination to view independently pieces of the plaintiff's evidence in opposition to summary judgment, determining that each was too insignificant and did not in itself show discrimination").

In *Danzer v. Norden Systems.,* 151 F.3d 50, 57 (2nd Cir. 2016), this Court held that in deciding motions for summary judgment in Title VII employment discrimination cases, district courts must take pieces of evidence "altogether as true." Accordingly, in *Walsh v. New York City Housing Authority,* 2016 U.S. App. LEXIS 12496 (2nd Cir. 7/7/2016), this Court reversed an award of summary judgment where the district court myopically focused on discrete items of evidence:

> The district court erred when it failed to view [the plaintiff's] evidence as a whole and instead set aside each piece of evidence after deeming it insufficient to create a triable issue of fact.

And in *Coleman v. Donohue,* 667 F.3d 835, 860 (2nd Cir. 2012), this Court poignantly observed that "[u]nder the convincing mosaic approach, a [discrimination] case can be made by assembling a number of pieces of evidence *none meaningful in itself,* consistent with the proposition of statistical theory that a number of observations each of which supports a proposition only weakly can, when taken as a whole, provide strong evidence it all point in the same direction."

In the case at bar, rather than viewing defendants' conduct collectively – in light of the fact that the complaint alleged both individual and organizational misconduct, i.e., acting in concert – the

District Court unfairly examined each discrete improper act in isolation and failed to consider whether the individual acts established a pattern of misbehavior. We submit that viewing plaintiff's allegations in *toto,* and in the light most favorable to her, establishes that the District Court here erred in dismissing the "continuous practice and policy of discrimination" theory of liability.

Jurisdiction

We submit that under the so-called "merger" doctrine, this Court has jurisdiction to reach the merits of this issue on appeal. The merger doctrine derives from Rule 54(b), FRCP, and imposes two disjunctive conditions for an interlocutory order to be justiciable on appeal; first, the district court may order the court clerk to make a Rule 58(a), FRCP, "separate filing;" or second, the interlocutory order must effectively end the action as to all other claims. *See, e.g., Hoefer v. Bd. of Ed. Etc.,* 820 F.3d 58 (2nd Cir. 2016).[13]

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[13] In *Hoefer*, this Court held that it had no appellate jurisdiction over the district court's decision granting the defendant partial summary judgment, but did have jurisdiction over the district court's decision dismissing the entire case with prejudice. The district court dismissed because the plaintiff had failed to move to reinstate the action within the time prescribed by the district court. This Court reversed the dismissal

In the case at bar, we submit that the District Court's order dismissing the "continuous practice and policy of discrimination" claim was a final order cognizable on appeal because, unlike an order on summary judgment (as in *Hoefer*), the District Court's order here preventing any evidence being introduced at the trial as to the "continuous practice and policy of discrimination" by the Disciplinary Committee would effectively doom Ms. Corrado's ability to prove her remaining (surviving) claims vis-à-vis retaliation by the members of the Disciplinary Committee. Specifically, as the statement of facts herein establishes, the allegations of continuous practice and policy of discrimination are inextricably intertwined with the claims of retaliation and retribution – that are the core of this lawsuit – and derive from the same nucleus of operative facts.

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with prejudice because the district court's prior order did not include the nuclear option of filing on time or face permanent dismissal.

This Court held that partial summary judgment did not end that matter in the district court because it could have revisited its decision during the trial if the facts warranted. Had the district court intended to foreclose any possible re-evaluation of its decision, it would have ordered the court clerk to enter judgment on that issue in a separate filing pursuant to Rule 58(a) of the FRCP. Because the district court did not order a separate filing, this Court held that the interlocutory order granting partial summary judgment did not merge into the final order of dismissal and therefore could not be considered on appeal.

For all the foregoing reasons, the District Court's order striking the claim of "continuous practice and policy of discrimination" should be vacated and the claim restored.

POINT III
ON REMAND, THE MATTER SHOULD BE REASSIGNED TO A DIFFERENT JUDGE

While we fully recognize that remanding a case to a different judge is a serious request rarely made and rarely granted, *e.g., United States v. Mangone,* 2016 U.S. App. LEXIS 10707 (2nd Cir. decided 6/14/16), we respectfully submit that Judge Irizarry's decisions and ultimate order dismissing the case with prejudice expressed views that could affect her ability to be fair and impartial (or, at the very least, creates the appearance of partiality) going forward. Under these circumstances, reassignment of this case to a different judge would be appropriate.

In *United States v. Woltmann,* 610 F.3d 37 (2nd Cir. 2010), three considerations guided this Court in ordering that the case be reassigned on remand: (1) whether the original judge would reasonably be expected upon remand to have substantial difficulty in putting out of his or her mind previously-expressed views or findings determined to be erroneous; (2) whether reassignment is advisable to preserve the appearance of justice; and (3) whether reassignment would entail waste and duplication out of proportion to any gain in preserving the appearance of fairness.

(1) Judge Irizarry Would have Difficulty Putting out of Mind Her Expressed Views

Judge Irizarry did not try to hold back her anger in her decision and order rejecting appellant's request to consider disqualification due to conflict of interest: "the utter frivolousness of this recusal motion is yet another reflection of the vexatious nature in which Plaintiff has litigated this matter through her failure to follow proper procedure and obey court rulings, and submission of meritless requests . . " (ECF #144, p.2)

Notwithstanding Judge Irizarry's palpable anger, as a former ethics officer, Ms. Corrado believed that it was her duty to remind Judge Irizarry that the wife of defendant Roy Reardon had once wrote a scathing letter to Congress against the appointment of Judge Irizarry to the federal bench based on Reardon's wife's perception that Judge Irizarry lacked the right temperament to be a federal judge. Contrary to Judge Irizarry's apparent assumption, Ms. Corrado was not making a personal attack on her. Ms. Corrado's actions were imminently proper. To repeat, it is hard to imagine a case where a prospective juror would be allowed to sit in a case where the juror was once a witness against a spouse of one of the parties.

Judge Irizarry also found it frivolous and vexatious that Ms. Corrado had challenged the propriety of Lisa M. Evans – an attorney at the New York State Office of Court Administration – representing the individual defendants because they were Ms. Evans' colleagues and supervisors. But that concern was not unfounded. The claim that Ms. Evans should not have been permitted to represent her supervisors at the Unified Court System who were defendants on trial was not frivolous because doing so would enable Ms. Evans to implicitly vouch for the veracity of her cohorts. *Compare, Intl. Electronics Corp. v. Flanzer,* 527 F.2d 1288 (2nd Cir. 1975). Indeed, in response to Ms. Corrado's motion, Ms. Evans acknowledged this could be a real problem, and thus had made arrangements with the New York State Attorney General's Office to try the case after pretrial motion practice was complete (A081).

Judge Irizarry also mistakenly believed that Ms. Corrado had orchestrated the admittedly inappropriate behavior by her attorneys; but there is no basis for that assumption in the record.

2) Reassignment is Advisable to Preserve the Appearance of Justice

A reasonable review of the record, looked at the in the light most favorable to the plaintiff, reveals that Judge Irizarry's palpable hostility

toward Ms. Corrado was misplaced; and that this lawsuit may have been dismissed *with prejudice* because of that hostility. Accordingly, the proper remedy is to reassign this case to a different judge.

3) Reassignment Would Not Entail Waste and Duplication out of Proportion to any Gain in Preserving the Appearance of Fairness

Depositions had not yet begun when this case was dismissed. It is common knowledge that in most Title VII cases, the employer possesses most of the evidence. So no duplication of effort or waste of resources (judicial or otherwise) is implicated. In this regard, it is important to note that defendants did not move to dismiss the case with prejudice; they made no argument that they would have been prejudiced by the requested discontinuance. In any event, at this stage in the proceeding, Ms. Corrado is ready to have depositions and promptly proceed to trial.

For all the foregoing reasons, the case should be reassigned to a different Judge.

CONCLUSION

FOR ALL THE FOREGOING REASONS, THE JUDGMENT SHOULD BE VACATED, AND THE MATTER REMANDED BACK TO THE DISTRICT COURT TO BE PLACED BACK ON THE CALENDAR AND ASSIGNED TO A DIFFERENT JUDGE

Dated: August 23, 2016
Garden City, NY

RIchard M. Langone

Digitally signed by RIchard M. Langone
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Dated: Garden City, N.Y.

August 23, 2016

/s/ *Richard M. Langone*

16-1493-cv

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NICOLE CORRADO,
Plaintiff-Appellant,

and

NEW YORK STATE UNIFIED COURT SYSTEM, LUIS GONZALEZ, JOHN MCCONNELL, ROY REARDON, JORGE DOPICO, ANGELA CHRISTMAS, NAOMI GOLDSTEIN,
Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of New York

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TABLE OF CONTENTS

	Page
Docket Entries	A1
Withdrawal Motion dated August 15, 2012	A33
Transcript dated December 14, 2012	A38
Withdrawal Motion dated December 20, 2012	A73
Transcript dated February 8, 2013	A76
Order filed September 15, 2014	A92
Amended Complaint dated November 5, 2014	A125
Order filed November 12, 2014	A153
Order filed January 13, 2015	A154
Withdrawal Motion dated April 3, 2015	A158
Order filed April 9, 2015	A159
Letter requesting Adjournment, dated January 11, 2016	A162
Transcript dated January 14, 2016	A166
Order filed January 20, 2016	A200
Letter requesting Adjournment, dated February 11, 2016	A202
Opinion and Order filed February 17, 2016	A204
Transcript dated February 25, 2016	A243
Order dated February 26, 2016	A254
Motion to extend time to supplement discovery, dated March 16, 2016	A256
Response to Motion to extend time to supplement discovery, dated March 17, 2016	A257

Plaintiff's Letter Motion dated April 4, 2016 . . . . A259

Judgment entered April 11, 2016. . . . . A261

Notice of Appeal entered May 10, 2016 . . . . A262

APPEAL

U.S. District Court
Eastern District of New York (Brooklyn)
CIVIL DOCKET FOR CASE #: 1:12-cv-01748-DLI-MDG

Corrado v. New York State Unified Court System
Assigned to: Chief Judge Dora Lizette Irizarry
Referred to: Magistrate Judge Marilyn D. Go
Cause: 28:1331 Fed. Question

Date Filed: 04/10/2012
Date Terminated: 04/11/2016
Jury Demand: Plaintiff
Nature of Suit: 442 Civil Rights: Jobs
Jurisdiction: Federal Question

Date Filed	#	Docket Text
04/10/2012	1	COMPLAINT against New York State Unified Court System Disclosure Statement on Civil Cover Sheet completed -No,, filed by Nicole Corrado. (Attachments: # 1 Civil Cover Sheet) (Davis, Kimberly) (Entered: 04/16/2012)
04/10/2012		Summons Issued as to New York State Unified Court System. (Davis, Kimberly) (Entered: 04/16/2012)
04/10/2012		FILING FEE: $ 350.00, receipt number 9241 (Davis, Kimberly) (Entered: 04/16/2012)
05/14/2012	2	WAIVER OF SERVICE Returned Executed by Nicole Corrado. New York State Unified Court System waiver sent on 4/17/2012, answer due 6/18/2012. (Joseph, Bennitta) (Entered: 05/14/2012)
06/13/2012	3	NOTICE of Appearance by Lisa M. Evans on behalf of New York State Unified Court System (aty to be noticed) (Evans, Lisa) (Entered: 06/13/2012)
06/14/2012	4	First MOTION for Extension of Time to File Answer by New York State Unified Court System. (Evans, Lisa) (Entered: 06/14/2012)
06/15/2012		ORDER granting 4 Motion for Extension of Time to Answer: Defendant's time to answer or otherwise respond to the complaint is extended to 7/18/2012. Ordered by Magistrate Judge Marilyn D. Go on 6/15/2012. (Abdallah, Fida) (Entered: 06/15/2012)
07/17/2012	5	ANSWER to 1 Complaint by New York State Unified Court System. (Attachments: # 1 Affidavit of Service) (Evans, Lisa) (Entered: 07/17/2012)
07/20/2012	6	ORDER GOVERNING INITIAL CONFERENCE AND REQUIRED DISCLOSURE: An initial conference will be held in the above-captioned case on August 15, 2012, at 11:00 a.m., before Marilyn D. Go, United States Magistrate Judge. Counsel for plaintiff is responsible for confirming that all necessary participants are aware of this conference. Ordered by Magistrate Judge Marilyn D. Go on 7/20/2012. (Attachments: # 1 Order Governing

		Discovery) (Abdallah, Fida) (Entered: 07/20/2012)
07/25/2012	7	First MOTION to Adjourn Conference by Nicole Corrado. (Joseph, Bennitta) (Entered: 07/25/2012)
07/26/2012		ORDER granting 7 Motion to Adjourn Conference: The conference is adjourned to August 28, 2012, at 10:30 a.m. Ordered by Magistrate Judge Marilyn D. Go on 7/26/2012. (Abdallah, Fida) (Entered: 07/26/2012)
08/06/2012	8	MOTION for Leave to Electronically File Document under Seal by Nicole Corrado. (Joseph, Bennitta) (Entered: 08/06/2012)
08/14/2012		ORDER denying 8 Motion for Leave to Electronically File Document under Seal, without prejudice. Counsel's letter should not have been filed under seal since it did not contain any confidential information and failed to explain why counsel was seeking to file communications with his client. Upon further inquiry, the Court learned that plaintiff may have discharged counsel. The fact of discharge is not itself a confidential communication absent other discussion. Counsel is advised if he seeks to withdraw, he must comply with Local Civil Rule 1.4 which requires that a motion be served on the client. Any motion to withdraw must be promptly filed and will be heard on August 28, 2012, at 10:30 a.m. If any submission contains confidential attorney-client communications or other privileged information, such information may be redacted from the ECF filing. Applicant is given leave to file a complete and un-redacted copy of the submission under seal and must provide the Court with a complete copy that is marked to indicate the portions of the submission deemed confidential. Ordered by Magistrate Judge Marilyn D. Go on 8/14/2012. (Go, Marilyn) (Entered: 08/14/2012)
08/15/2012	9	MOTION to Withdraw as Attorney by Nicole Corrado. (Attachments: # 1 Exhibit, # 2 Affidavit Affidavit of Service) (Joseph, Bennitta) (Entered: 08/15/2012)
08/28/2012		Minute Order for proceedings held before Magistrate Judge Marilyn D. Go:Motion Hearing held on 8/28/2012. Appearances by Nicole Corrado, Bennitta Joseph for plaintiff; Lisa Evans for defendant. The motion to withdraw 9 by plaintiff's counsel is granted, without opposition. Client and counsel shall arrange for transfer of files. This action is stayed until September 28, 2012 to give plaintiff an opportunity to obtain new counsel. Next conference scheduled for Oct. 11, 2012 at 11:00 a.m. (FTR: 10:43-10:48) (Abdallah, Fida) (Entered: 08/28/2012)
09/18/2012	10	Letter dated 8/31/12 filed by Nicole Corrado regarding the electronic transfer of her case file from the Borrelli & Associates law firm. (Abdallah, Fida) (Entered: 09/18/2012)
09/18/2012		SCHEDULING ORDER: Borrelli & Associates shall respond to the 10 Letter filed by Nicole Corrado by 9/28/12. Ordered by Magistrate Judge Marilyn D. Go on 9/18/2012. (Abdallah, Fida) (Entered: 09/18/2012)
09/25/2012	11	Letter *response to letter filed by Nicole Corrado on September 18, 2012* by

		The Law Office of Borrelli & Associates, P.L.L.C. (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B) (Joseph, Bennitta) (Entered: 09/25/2012)
10/11/2012		Minute Entry for proceedings held before Magistrate Judge Marilyn D. Go: Initial Conference/Status Conference held on 10/11/2012. Appearances by A. Wotorson for pl.; L. Evans for deft. Plaintiff's response to the 9/25/12 letter of Borrelli & Assocs. must be filed by 10/18/12 via ECF, but any confidential information may be redacted and an unredacted version faxed to chambers and Borrelli. Borrelli must fax to the Court and plaintiff, but not publicly file, any response by 11/1/12. Any objections to public filing of any portion of Borrelli's submission must be faxed to the Court by 11/5/12. Defense counsel must file a status report by 10/19/12 if she cannot obtain and file by 10/19/12 a letter from the EEOC confirming statements made to her that plaintiff's file was destroyed by flooding. Schedule established pursuant to Fed. R. Civ. P. 16 (b) as follows: (1) Automatic disclosures must be served by 10/25/12. (2) Prior to seeking leave to amend and/or join other parties, plaintiff must provide defendant with a copy of a proposed amended complaint by 11/8/12. Any motion must indicate whether defendant consents and must be filed by 11/13/12. Any opposition is due 11/20/12. (3) Discovery must be completed by 4/30/13. (4) Any party intending to call an expert, other than in rebuttal, must give notice by 4/2/13 of the type of expert to be retained and general subject matter to be addressed by the expert. If notice is given, the parties must promptly confer and file a proposed expert discovery schedule by 4/16/13. Next conference scheduled for May 1, 2013 at 11:30 a.m. (FTR 11:16-11:47) (Abdallah, Fida) (Entered: 10/16/2012)
10/16/2012	12	NOTICE of Appearance by Ambrose W. Wotorson, Jr on behalf of All Plaintiffs (aty to be noticed) (Wotorson, Ambrose) (Entered: 10/16/2012)
10/17/2012	13	MOTION for Extension of Time to File Response/Reply by Nicole Corrado. (Wotorson, Ambrose) (Entered: 10/17/2012)
10/18/2012		ORDER granting 13 Motion for Extension of Time to File Response/Reply. Plaintiff's time to respond to the 9/25/12 letter of Borrelli & Assocs. is extended to 11/1/12. Borrelli's response must be faxed by 11/15/12 and any objections to public filing of any portion of Borrelli's submission must be faxed to the Court by 11/19/12. Ordered by Magistrate Judge Marilyn D. Go on 10/18/2012. (Proujansky, Josh) (Entered: 10/18/2012)
10/18/2012	14	Letter *letter regarding EEOC file* by New York State Unified Court System (Evans, Lisa) (Entered: 10/18/2012)
10/18/2012	15	Letter by The Law Office of Borrelli & Associates, P.L.L.C. (Joseph, Bennitta) (Entered: 10/18/2012)
11/05/2012	16	REPLY in Support filed by Nicole Corrado. (Wotorson, Ambrose) (Entered: 11/05/2012)
11/16/2012	17	Letter *in response to plaintiff letter* by New York State Unified Court System (Evans, Lisa) (Entered: 11/16/2012)

11/21/2012	18	REPLY in Support *of request for investigation or evidentiary hearing* filed by Nicole Corrado. (Wotorson, Ambrose) (Entered: 11/21/2012)
11/30/2012	19	Letter dated 11/15/12, from Bennitta L. Joseph, Esq., to Judge Go, in response to plaintiff's 10 letter regarding her case file. (Abdallah, Fida) (Entered: 11/30/2012)
11/30/2012		SCHEDULING ORDER: an in-person conference will be held on 12/14/12 at 3:30 p.m. regarding plaintiff's EEOC file. An attorney or attorneys from Borrelli & Associates who are familiar with the contents of the file transferred by plaintiff to the firm and the contents of the file transferred by the firm to plaintiff must participate by telephone. By 12/10/12, Borrelli & Associates must send the Court a copy of the EEOC file that it sent to plaintiff. Ordered by Magistrate Judge Marilyn D. Go on 11/30/2012. (Proujansky, Josh) (Entered: 11/30/2012)
12/14/2012		Minute Entry for proceedings held before Magistrate Judge Marilyn D. Go: Status Conference held on 12/14/2012. Appearances by A. Wotorson for plaintiff and plaintiff; L. Evans for defendant; B. Joseph, M. Borrelli, A. Coleman for former counsel Borrelli & Associates ("Borelli"). Continued hearing regarding electronic files returned to plaintiff from Borrelli. Plaintiff has not demonstrated that there are any documents missing from the file transmitted to her by Borrelli. Court will send plaintiff a copy of the disk Borrelli provided to the Court. Plaintiff's 10 request to refer this matter to the U.S. Attorney's Office or FBI is denied. After conferring with Judge Irizarry's chambers, any motion by plaintiff to disqualify counsel must be served by 1/9/13; opposition served by 1/23/13; and any reply by 1/30/13. Submissions should be filed and courtesy copies provided to Judge Irizarry's chambers in accordance with her individual motion practice and rules. The prior scheduling order is extended as follows: 1) plaintiff, who failed to serve automatic disclosures as ordered, must do so by 1/4/13; 2) any motion to amend must be filed by 2/28/13 and must indicate whether the other side consents; 3) discovery must be completed by 7/19/13; 4) any party intending to call an expert, other than in rebuttal, must give notice by 6/19/13 of the type of expert to be retained and general subject matter to be addressed by the expert. If notice is given, the parties must promptly confer and file a proposed expert discovery schedule by 7/3/13. Next conference scheduled for 7/23/13 at 10:00 a.m. (FTR# 4:02-4:54) (Abdallah, Fida) (Entered: 12/18/2012)
12/17/2012	20	Letter dated 12/17/12 from Chambers of Judge Go to Plaintiff's counsel regarding the electronic case file of Nicole Corrado. (Abdallah, Fida) (Entered: 12/17/2012)
12/20/2012	21	MOTION for Extension of Time to File *Rule 72 appeal, automatic disclosures, motion to disqualify and stay of discovery pending retention of new counsel.* by Nicole Corrado. (Wotorson, Ambrose) (Entered: 12/20/2012)
12/21/2012		ORDER granting 21 Motion for Extension of Time to File. On 12/20/12, plaintiffs counsel hand delivered to the chambers of Judge Irizarry an application requesting leave to withdraw. Since Judge Irizarry's individual

		motion practice and rules provide that such motions should be decided by the assigned magistrate judge, that request will be addressed by this Court. Counsel is directed to file publicly on ECF the cover letter and affidavit submitted, but is granted leave to file under seal the exhibit attached. A hearing will be held on the motion to withdraw on 1/9/13 at 10:00 a.m. unless plaintiff confirms in writing in advance of the hearing that she consents to withdrawal. If objections are filed, plaintiff and her counsel must appear in person at the hearing. Plaintiff's counsel also filed 21 a letter requesting that discovery and other deadlines, including an appeal of rulings made at a conference held on 12/14/12, be stayed pending plaintiff's retention of new counsel. That application is granted. Discovery is stayed until 2/8/13 to give plaintiff time to retain new counsel. Plaintiff's time to file a Rule 72 appeal of the rulings made at the 12/14/12 conference and to provide automatic disclosures is extended to 2/25/13. A conference will be held on 2/8/13 at 10:00 a.m. to set remaining deadlines for motions and discovery. Since this is the second time in less than 6 months that a counsel for plaintiff has sought leave to withdraw, this case will be expected to proceed forthwith. Ordered by Magistrate Judge Marilyn D. Go on 12/21/2012. (Proujansky, Josh) (Entered: 12/21/2012)
12/27/2012	22	TRANSCRIPT of Proceedings held on 12/14/12, before Judge Go. Court Reporter/Transcriber TYPEWRITE WORD PROCESSING SERVICE, Telephone number 718-966-1401. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/17/2013. Redacted Transcript Deadline set for 1/28/2013. Release of Transcript Restriction set for 3/27/2013. (Hong, Loan) (Hong, Loan). (Entered: 12/27/2012)
01/04/2013	23	Letter dated 1/2/13 from Nicole Corrado to Judge Go re Ambrose W. Wotorson's application for withdrawal as counsel. (Abdallah, Fida) (Entered: 01/04/2013)
01/04/2013	24	Second MOTION to Withdraw as Attorney *for Plaintiff (by Ambrose W. Wotorson, Jr)* by Nicole Corrado. (Wotorson, Ambrose) (Entered: 01/04/2013)
01/07/2013		ORDER granting 24 Motion to Withdraw as Attorney. In light of Ms. Corrado's letter confirming that she has no objection to her counsel's withdrawal and consenting to his application to withdraw, counsel's application is granted and the hearing scheduled for 1/9/13 is canceled. As directed in this Court's 12/21/12 order, discovery is stayed until 2/8/13 to give plaintiff time to retain new counsel. Plaintiff's time to file a Rule 72 appeal of the rulings made at the 12/14/12 conference and to provide automatic disclosures is extended to 2/25/13. A conference will be held on 2/8/13 at 10:00 a.m. to set remaining deadlines for motions and discovery. This case is expected to proceed without further delays. Ordered by Magistrate Judge Marilyn D. Go on 1/7/2013. (Proujansky, Josh) (Entered: 01/07/2013)
02/08/2013		Minute Entry for proceedings held before Magistrate Judge Marilyn D. Go:

		Status Conference held on 2/8/2013. Appearances by N. Corrado plaintiff pro se; L. Evans for defendant. Plaintiffs' time to provide automatic disclosures is extended to 3/1/13. As previously set, plaintiffs' Rule 72 appeal of rulings made at the 12/14/12 conference must be filed by 2/25/13. Plaintiff's motion to disqualify counsel must be served by 3/4/13; opposition served by 3/18/13; and any reply by 3/25/13. Discovery is not stayed pending resolution of the motion. The prior scheduling order is extended as follows: 1) any motion to amend must be filed by 5/1/13 and must indicate whether the other side consents; 2) discovery must be completed by 9/16/13; 3) any party intending to call an expert, other than in rebuttal, must give notice by 8/1/13 of the type of expert to be retained and general subject matter to be addressed by the expert. If expert notice is given, the parties must promptly confer and file a proposed expert discovery schedule by 8/21/13. (FTR: 10:09-10:39) (Abdallah, Fida) (Entered: 02/11/2013)
02/25/2013	27	OBJECTION to Mag. Judge Go's ruling in the Status Conference held on 12/14/12, filed by pro se Nicole Corrado. (Layne, Monique) (Main Document 27 replaced on 3/5/2013) (Layne, Monique). (Main Document 27 replaced on 3/6/2013). (Layne, Monique). (Entered: 03/05/2013)
03/04/2013	25	Notice of MOTION to Disqualify Counsel *"for Defendant, Affirmation of Nicole Corrado and Memorandum of Law"* by Nicole Corrado. (Attachments: # 1 Cover Letter) (Abdallah, Fida) (Entered: 03/04/2013)
03/05/2013	26	Letter MOTION for Extension of Time to Complete Discovery *"plaintiff's initial disclosure/discovery requreiments"* by Nicole Corrado. (Abdallah, Fida) (Entered: 03/05/2013)
03/05/2013		ORDER REFERRING MOTION: 25 Notice of MOTION to Disqualify Counsel *"for Defendant, Affirmation of Nicole Corrado and Memorandum of Law"* filed by Nicole Corrado --- Motion referred to Magistrate Judge Marilyn D. Go. So Ordered by Judge Dora Lizette Irizarry on 3/5/2013. (Carosella, Christy) (Entered: 03/05/2013)
03/06/2013		ORDER granting in part and denying in part 26 Motion for Extension of Time to Complete Discovery. Plaintiff's time to serve initial disclosures is extended nunc pro tunc to 3/13/13. Ordered by Magistrate Judge Marilyn D. Go on 3/6/2013. (Proujansky, Josh) (Entered: 03/06/2013)
03/13/2013	28	First MOTION for Extension of Time to File Response/Reply as to 25 Notice of MOTION to Disqualify Counsel *"for Defendant, Affirmation of Nicole Corrado and Memorandum of Law"* by New York State Unified Court System. (Evans, Lisa) (Entered: 03/13/2013)
03/13/2013		ORDER granting 28 Motion for Extension of Time to File Response: Opposition due by 4/8/13; reply, if any, by 4/22/13. No further extensions will be granted absent exigent circumstances, which will not include other work obligations, anticipated events, etc. Ordered by Magistrate Judge Marilyn D. Go on 3/13/2013. (Abdallah, Fida) (Entered: 03/13/2013)
03/14/2013	29	Letter MOTION for Extension of Time to Complete Discovery by Nicole

		Corrado. (Abdallah, Fida) (Entered: 03/14/2013)
03/14/2013		ORDER granting 29 Motion for Extension of Time to Complete Discovery. Plaintiff's time to serve initial disclosures is extended nunc pro tunc to 3/29/13. Other deadlines remain unchanged. Ordered by Magistrate Judge Marilyn D. Go on 3/14/2013. (Proujansky, Josh) (Entered: 03/14/2013)
03/25/2013	30	TRANSCRIPT of Proceedings held on 2/8/13, before Judge Go. Court Reporter/Transcriber TYPEWRITE WORD PROCESSING SERVICE, Telephone number 718-966-1401. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 4/15/2013. Redacted Transcript Deadline set for 4/25/2013. Release of Transcript Restriction set for 6/24/2013. (Hong, Loan) (Entered: 03/25/2013)
03/28/2013	31	Letter MOTION for Extension of Time to Complete Discovery by Nicole Corrado. (Abdallah, Fida) (Entered: 03/28/2013)
03/29/2013	32	RESPONSE to Motion re 31 Letter MOTION for Extension of Time to Complete Discovery filed by New York State Unified Court System. (Evans, Lisa) (Entered: 03/29/2013)
04/02/2013	33	Letter dated 3/30/13 from Nicole Corrado to Judge Go, re New York State Unified Court System's response to the motion for extension of time to complete discovery (doc #31). (Abdallah, Fida) (Entered: 04/02/2013)
04/08/2013	34	ORDER granting 31 Motion for Extension of Time to Complete Discovery. Plaintiff's for a request for a stay of discovery is granted. This action is stayed until 5/15/13. Defendant's opposition to plaintiff's motion to disqualify must be filed by 5/30/13 and plaintiff's reply is due by 6/12/13. A conference will be held on June 13, 2013 at 10:00 a.m. Ordered by Magistrate Judge Marilyn D. Go on 4/8/2013. (Go, Marilyn) (Entered: 04/08/2013)
04/30/2013	35	NOTICE of Appearance by Ambrose W. Wotorson, Jr on behalf of Nicole Corrado (notification declined or already on case) (Wotorson, Ambrose) (Entered: 04/30/2013)
05/02/2013		ORDER DIRECTING FILING OF NOTICE OF APPEARANCE AND ANSWER TO COMPLAINT - A review of the docket reveals that, although counsel for defendant Law Office of Borrelli & Associates, P.L.L.C. ("Borrelli"), have participated in various proceedings before the magistrate judge, counsel for Borrelli have yet to file a notice of appearance in this case, register for ECF or otherwise comply with the ECF requirements of this court. The magistrate judge has accepted certain submissions by fax and Borrelli has filed some documents with the court, but has not complied with these important requirements. Moreover, Borrelli has yet to file an answer to the complaint. Borrelli's counsel are hereby ORDERED to file a notice of appearance, register for ECF and otherwise comply with the ECF requirements of the court and file an answer to the complaint NO LATER THAN MAY 13, 2013. For every business day that Borrelli does not comply

		with this Order a sanction of a fine of $25 shall be imposed. Plaintiff's counsel, Ambrose W. Wotorson, Jr., filed a notice of appearance with the court on 4/30/13 but is not registered for ECF and is not receiving notices of Electronic case filings. Mr. Wotorson is also directed to comply with this order by May 10 and register for ECF or be fined as above. Counsel for defendant the Unified Court System, who apparently is the only attorney who has properly complied with the ECF requirements is hereby ORDERED to serve a copy of this Electronic Order on defendant Borrelli and counsel Wotorson no later than May 6, 2013 and immediately thereafter file proof of such service with the court. SO ORDERED by Judge Dora Lizette Irizarry on 5/2/2013. (Irizarry, Dora) (Entered: 05/02/2013)
05/03/2013	36	Letter by The Law Office of Borrelli & Associates, P.L.L.C. (Attachments: # 1 Exhibit Judge Go's 8/28/12 Order) (Joseph, Bennitta) (Entered: 05/03/2013)
05/03/2013		Email Notification Test - DO NOT REPLY (Levine, Evelyn) (Entered: 05/03/2013)
05/03/2013		Email Notification Test - DO NOT REPLY (Levine, Evelyn) (Entered: 05/03/2013)
05/03/2013		ORDER re 36 Letter filed by The Law Office of Borrelli & Associates, P.L.L.C. -- Apparently, former counsel for plaintiff, The Law Office of Borrelli & Associates, P.L.L.C., was relieved from this case and was incorrectly listed as a defendant in this case. Accordingly, the Clerk of the Court is directed to correct the caption and delete The Law Office of Borrelli & Associates, P.L.L.C. as a defendant in the caption. Counsel for plaintiff, Mr. Wotorson, is directed to serve a copy of this Electronic Order on The Law Office of Borrelli & Associates, P.L.L.C. within five days of the date of this Order and immediately thereafter file proof of such service with the Court. The Court thanks The Law Office of Borrelli & Associates, P.L.L.C. for clarifying its status in this case and it need not comply with this court's May 2, 2013 Order. SO ORDERED by Judge Dora Lizette Irizarry on 5/3/2013. (Irizarry, Dora) (Entered: 05/03/2013)
05/06/2013	37	Letter *regarding ECF registration* by Nicole Corrado (Wotorson, Ambrose) (Entered: 05/06/2013)
05/23/2013	38	Fourth MOTION for Extension of Time to Complete Discovery *relating to automatic disclosures served on May 20, 2013* by Nicole Corrado. (Wotorson, Ambrose) (Entered: 05/23/2013)
05/23/2013	39	Fourth MOTION for Extension of Time to Complete Discovery *(corrected) relating to Automatic Disclosures Served on May 20, 2013* by Nicole Corrado. (Wotorson, Ambrose) (Entered: 05/23/2013)
05/24/2013	40	RESPONSE in Opposition re 39 Fourth MOTION for Extension of Time to Complete Discovery *(corrected) relating to Automatic Disclosures Served on May 20, 2013* filed by New York State Unified Court System. (Evans, Lisa) (Entered: 05/24/2013)

05/29/2013	41	MEMORANDUM in Opposition re 25 Notice of MOTION to Disqualify Counsel *"for Defendant, Affirmation of Nicole Corrado and Memorandum of Law"* filed by New York State Unified Court System. (Evans, Lisa) (Entered: 05/29/2013)
05/29/2013	42	AFFIDAVIT/DECLARATION in Opposition re 25 Notice of MOTION to Disqualify Counsel *"for Defendant, Affirmation of Nicole Corrado and Memorandum of Law"* filed by New York State Unified Court System. (Evans, Lisa) (Entered: 05/29/2013)
05/29/2013	43	REPLY in Support *Fourth Request to Extend Discovery relating to automatic disclosures served on 5-20-13* filed by Nicole Corrado. (Wotorson, Ambrose) (Entered: 05/29/2013)
05/30/2013	44	REPLY in Opposition re 43 Reply in Support filed by New York State Unified Court System. (Evans, Lisa) (Entered: 05/30/2013)
06/04/2013		ORDER granting 39 Motion for Extension of Time to Complete Discovery. Without excusing the lateness of plaintiff's initial disclosures, in the interest of proceeding on the merits, plaintiff's motion for an extension is granted. However, further delay in responding to discovery requests will not be tolerated and may result in sanctions. Future requests for an extension after a deadline has passed will be summarily denied. The cumulative delay by plaintiff in providing these basic disclosures has thwarted the timely resolution of this case. Ordered by Magistrate Judge Marilyn D. Go on 6/4/2013. (Proujansky, Josh) (Entered: 06/04/2013)
06/12/2013	45	REPLY in Support *Motion to Disqualify Counsel* filed by Nicole Corrado. (Wotorson, Ambrose) (Entered: 06/12/2013)
06/13/2013		Minute Entry for Status Conference held on 6/13/2013 before Magistrate Judge Marilyn D. Go: Appearances by A. Wotorson for plaintiff; L. Evans for defendant. The scheduling order is extended as follows: (1) plaintiff must send defendant a proposed amended complaint by 6/25/13 and the parties should attempt to resolve the substance of any contemplated new claim, with defendant responding by 7/9/13; (2) if the parties cannot resolve the new claims and/or agree to amendment, plaintiff's motion to amend must be filed by 7/29/13 and any opposition by 8/29/13; (2) fact discovery must be completed by 10/31/13 ; and (3) any party intending to call an expert, other than in rebuttal, to support an affirmative claim or defense must give notice by 7/29/13 of the type of expert to be retained, areas of expertise and subject matter to be addressed by the expert, except defendant's time to give notice of its intent to call a mental health expert, shall be within two weeks of plaintiff's deposition, if later; (4) the parties must confer and file a proposed expert discovery schedule by 9/6/13. Discovery is not stayed pending determination of plaintiff's motion to disqualify defense counsel. Defendant must promptly provide plaintiff with the last known addresses of Bratton and Raniere and advise whether they will appear for deposition voluntarily. Defendant must also promptly confirm whether any written determination regarding plaintiff's internal complaint was sent to her. Next conference scheduled for 11/1/13 at

		10:00 a.m. (Tape #10:08-10:46.) (Hugh, Lewis) (Entered: 06/17/2013)
06/25/2013	46	First MOTION for Discovery *of Investigative Reports and last known addresses* by Nicole Corrado. (Wotorson, Ambrose) (Entered: 06/25/2013)
06/27/2013	47	Letter *in response to Plaintiff's letter dated June 25, 2013* by New York State Unified Court System (Evans, Lisa) (Entered: 06/27/2013)
06/27/2013		ORDER granting in part and denying in part 46 Motion for Discovery. Any future applications must show that the applicant attempted to resolve the dispute prior to filing the motion as required by Local Civil Rule 37.3. Plaintiff requests that the Court draw an adverse inference that there is no distinction between "written determination" and "final written report" of plaintiff's sexual harassment claims. Assuming this is relief that a party may seek and that this request is properly raised at this juncture, the request is denied. The two are distinct under the terms of defendant's Sexual Harassment Policy and Procedures Manual (submitted by plaintiff) and plaintiff has offered no logical reason for drawing such an inference against defendant. Plaintiff's request to compel production of the Inspector General's report is premature before a document demand has been served on defendant. However, the Court notes that any privilege asserted by defendant must be supported by a privilege log and an appropriate affidavit by a person with knowledge. Since defendant has confirmed that plaintiff was not provided a written determination of her complaint as required by the defendant's policy, it must be produced by 7/3/13. As for defendant's request that plaintiff's opportunity to amend the complaint be deemed waived, the Court will address any future application for leave to amend according to the governing legal principles. Ordered by Magistrate Judge Marilyn D. Go on 6/27/2013. (Proujansky, Josh) (Entered: 06/27/2013)
06/28/2013	48	First MOTION for Reconsideration *of Plaintiff's Motion to Compel* by Nicole Corrado. (Wotorson, Ambrose) (Entered: 06/28/2013)
06/28/2013	49	Letter *in response to Plaintiff's letter dated June 28, 2013* by New York State Unified Court System (Evans, Lisa) (Entered: 06/28/2013)
06/28/2013	50	ORDER denying 48 Motion for Reconsideration. Ordered by Magistrate Judge Marilyn D. Go on 6/28/2013. (Proujansky, Josh) (Entered: 06/28/2013)
07/30/2013	51	CERTIFICATE OF SERVICE by Nicole Corrado *of Expert Witness Notice, Deposition notices and Document/Interrogatory Demands on 7/29/13* (Wotorson, Ambrose) (Entered: 07/30/2013)
08/15/2013	52	First MOTION to Amend/Correct/Supplement *Complaint* by Nicole Corrado. (Wotorson, Ambrose) (Entered: 08/15/2013)
08/22/2013	53	Letter *in response to Plaintiff's Letter of 8/15* by New York State Unified Court System (Evans, Lisa) (Entered: 08/22/2013)
09/11/2013		SCHEDULING ORDER: re 53 Letter filed by New York State Unified Court System, 52 First MOTION to Amend/Correct/Supplement Complaint filed by Nicole Corrado. A conference will be held on 9/26/13 at 2:30 p.m. Ordered by

		Magistrate Judge Marilyn D. Go on 9/11/2013. (Proujansky, Josh) (Entered: 09/11/2013)
09/25/2013		SCHEDULING ORDER: Due to a conflict in Judge Go's schedule, the conference on 9/26/13 is moved to **1:15 p.m.** If the parties prefer to have the conference by telephone, please notify chambers in advance. Ordered by Magistrate Judge Marilyn D. Go on 9/25/2013. (Hugh, Lewis) (Entered: 09/25/2013)
09/27/2013		Minute Entry for Status Conference held on 9/27/2013 before Magistrate Judge Marilyn D. Go: Appearances by A. Wotorson for plaintiff; L. Evans for defendant. Defendant must produce investigative reports and related notes, which are subject to a blanket confidentiality order. The parties and counsel may not disclose the materials to any other person or reveal the contents thereof until such time a formal protective order is issued. Defendant's motion for a protective order must be filed by 10/25/13, opposition by 11/1/13 and reply by 11/6/13. Plaintiff's motion to amend the complaint must be filed by 10/25/13, opposition by 11/8/13 and reply by 11/15/13. Should there be any other discovery dispute as to requests made to date that have not been resolved, any motion to compel discovery must be filed by 11/5/13 and opposition by 11/12/13. Parties must promptly confer on whether they are ready for mediation and should promptly notify the court. Next conference scheduled for 11/25/13 at 2:00 p.m. FTR 10:12-10:38. (Hugh, Lewis) (Entered: 09/30/2013)
10/24/2013	54	MOTION for Protective Order by New York State Unified Court System. (Evans, Lisa) (Entered: 10/24/2013)
10/24/2013	55	AFFIDAVIT/AFFIRMATION re 54 MOTION for Protective Order *Affidavit of KayAnn Porter Campbell* by New York State Unified Court System (Evans, Lisa) (Entered: 10/24/2013)
10/24/2013	56	AFFIDAVIT/AFFIRMATION re 54 MOTION for Protective Order *Affidavit of Lisa M. Evans* by New York State Unified Court System (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B) (Evans, Lisa) (Entered: 10/24/2013)
10/24/2013	57	MEMORANDUM in Support re 54 MOTION for Protective Order filed by New York State Unified Court System. (Evans, Lisa) (Entered: 10/24/2013)
10/24/2013	58	AFFIDAVIT of Service for Notice of Motion, Affidavits and Exhibits and Memorandum of Law served on Ambrose Wotorson, Esq on 10/24/13, filed by New York State Unified Court System. (Evans, Lisa) (Entered: 10/24/2013)
10/26/2013	59	MOTION to Amend/Correct/Supplement *Complaint* by Nicole Corrado. (Wotorson, Ambrose) (Entered: 10/26/2013)
11/05/2013	60	MEMORANDUM in Opposition re 54 MOTION for Protective Order filed by Nicole Corrado. (Wotorson, Ambrose) (Entered: 11/05/2013)
11/08/2013	61	REPLY to Response to Motion re 54 MOTION for Protective Order filed by New York State Unified Court System. (Evans, Lisa) (Entered: 11/08/2013)

11/08/2013	62	RESPONSE in Opposition re 59 MOTION to Amend/Correct/Supplement *Complaint* filed by New York State Unified Court System. (Evans, Lisa) (Entered: 11/08/2013)
11/14/2013	63	REPLY in Support *of Motion to Amend Complaint* filed by Nicole Corrado. (Wotorson, Ambrose) (Entered: 11/14/2013)
11/15/2013	64	First MOTION to Compel *Discovery* by Nicole Corrado. (Wotorson, Ambrose) (Entered: 11/15/2013)
11/20/2013		ORDER finding as moot 59 Motion to Amend/Correct/Supplement. Plaintiff filed a new proposed amended complaint as her reply on the motion to amend. I deem docket number 63 as superceding docket number 59 as the operative motion to amend. Defendant's responses to the 63 motion to amend and plaintiff's 64 motion to compel must be filed by 11/27/13. Plaintiff's replies on her 63 motion to amend and 64 motion to compel must be filed by 12/4/13. The next conference is adjourned to 12/10/13 at 2:00 p.m. Ordered by Magistrate Judge Marilyn D. Go on 11/20/2013. (Proujansky, Josh) (Entered: 11/20/2013)
11/20/2013	65	First MOTION for Extension of Time to File Response/Reply by New York State Unified Court System. (Evans, Lisa) (Entered: 11/20/2013)
11/20/2013		ORDER granting 65 Motion for Extension of Time to File Response/Reply. Defendants' response to plaintiff's motion to amend must be filed by 12/11/13 and plaintiff's reply must be filed by 12/18/13. The schedule set for remaining briefing on plaintiff's motion to compel is unchanged and the conference on 12/10/13 will be held by telephone. Ordered by Magistrate Judge Marilyn D. Go on 11/20/2013. (Proujansky, Josh) (Entered: 11/20/2013)
11/22/2013	66	Letter *Objecting to Order, requesting clarification and seeking status of written decision* by Nicole Corrado (Wotorson, Ambrose) (Entered: 11/22/2013)
11/25/2013		ORDER re 66 Letter filed by Nicole Corrado. In response to plaintiff's letter seeking clarification of the Court's 11/20/13 scheduling order, the parties are reminded that only a current party to the action has standing to contest plaintiff's motion to amend. See Copantitla v. Fiskardo Estiatorio, Inc., 2010 WL 1327921, at *5 (S.D.N.Y. 2010); State Farm Mut. Auto. Ins. Co. v. CPT Med. Servs., P.C., 246 F.R.D. 143, 146 n.1 (E.D.N.Y. 2007). Ordered by Magistrate Judge Marilyn D. Go on 11/25/2013. (Proujansky, Josh) (Entered: 11/25/2013)
11/26/2013	67	RESPONSE in Opposition re 64 First MOTION to Compel *Discovery* filed by New York State Unified Court System. (Evans, Lisa) (Entered: 11/26/2013)
12/10/2013	68	ORDER granting 54 Motion for Protective Order. The parties should confer and submit an appropriate protective order to the Court in accordance with this order. Ordered by Magistrate Judge Marilyn D. Go on 12/10/2013. (Proujansky, Josh) (Entered: 12/10/2013)
12/10/2013		Minute Order granting in part and denying in part 64 Motion to Compel;

		Motion Hearing held on 12/10/2013 re 64 First MOTION to Compel *Discovery* filed by Nicole Corrado for proceedings held before Magistrate Judge Marilyn D. Go: Appearances by A. Wotorson for plaintiff; L. Evans for defendant. Argument heard and rulings made on the record granting in part and denying in part 64 plaintiff's motion to compel. Defendant must supplement its response to Interrogatory #10 to include complaints regarding Mr. Raniere and any written records of verbal complaints against either Mr. Bratton or Mr. Raniere. Defendant must supplement its response to Interrogatory #11, which is limited to any written complaint or written record of any oral complaint from 2006 to 2012 in the First Department. Defendant must produce documents responsive to Document Request #27, but limited to the monitoring of professional staff from 2006 to 2012. Plaintiff's motion to compel regarding Document Request #32 is denied without prejudice. Prior to renewing her motion, plaintiff must confer with the law firms involved and consider whether any further application should be made to the state courts. Plaintiff's motion to compel a response to Document Request #3 is deemed moot but the court will review in-camera unredacted copies of the documents produced. Defendant must produce documents for in camera review by 12/13/13, and supplemental responses to the interrogatories and document requests discussed by 12/20/13. FTR/C 2:04-2:52. (Hugh, Lewis) (Entered: 12/11/2013)
12/11/2013	69	REPLY in Opposition re 63 Reply in Support *Reply in Opposition to Plaintiff's Revised proposed Amended Complaint* filed by New York State Unified Court System. (Evans, Lisa) (Entered: 12/11/2013)
12/16/2013		ORDER: after reviewing in camera documents 1478-1487, I find that the redacted portions are not responsive to plaintiff's Document Request No. 3 and need not be produced. Ordered by Magistrate Judge Marilyn D. Go on 12/16/2013. (Proujansky, Josh) (Entered: 12/16/2013)
12/18/2013	70	REPLY in Support *Motion to Amend Complaint* filed by Nicole Corrado. (Wotorson, Ambrose) (Entered: 12/18/2013)
01/10/2014	71	ORDER denying 25 without prejudice Motion to Disqualify Counsel. Ordered by Magistrate Judge Marilyn D. Go on 1/10/2014. (Proujansky, Josh) (Entered: 01/10/2014)
03/04/2014	72	Letter *Seeking clarification of court's expectations regarding discovery while motion to amend is pending* by Nicole Corrado (Wotorson, Ambrose) (Entered: 03/04/2014)
03/14/2014	73	First MOTION for Recusal by Nicole Corrado. (Wotorson, Ambrose) (Entered: 03/14/2014)
03/17/2014	74	ORDER denying 73 Motion for Recusal. Ordered by Magistrate Judge Marilyn D. Go on 3/17/2014. (Proujansky, Josh) (Entered: 03/17/2014)
04/22/2014	75	CERTIFICATE OF SERVICE by Nicole Corrado *of Plaintiff's Second Set of Document Demands* (Wotorson, Ambrose) (Entered: 04/22/2014)

04/23/2014	76	First MOTION to Expedite *Decision and Order on Plaintiff's Motion to Amend the Complaint* by Nicole Corrado. (Attachments: # 1 Exhibit) (Wotorson, Ambrose) (Entered: 04/23/2014)
05/26/2014	77	Second MOTION to Expedite *Decision on Amended Complaint* by Nicole Corrado. (Wotorson, Ambrose) (Entered: 05/26/2014)
05/27/2014		ORDER denying, without prejudice 77 Motion to Expedite - Pursuant to my Individual Rules and Practices, motions to amend pleadings in civil matters are automatically referred to the assigned magistrate judge. This request was improperly made to the undersigned district judge. SO ORDERED by Judge Dora Lizette Irizarry on 5/27/2014. (Irizarry, Dora) (Entered: 05/27/2014)
05/27/2014	78	First MOTION for Reconsideration *of Plaintiff's Second Motion to Expedite* by Nicole Corrado. (Wotorson, Ambrose) (Entered: 05/27/2014)
05/27/2014		ORDER denying 78 Motion for Reconsideration -- Plaintiff's motion for reconsideration of this Court's Order issued today denying her request for expedited determination on her motion to amend the complaint is DENIED. It is this Court's understanding, having conferred with the magistrate judge, that the matter is *sub judice* and that an opinion should be forthcoming soon. Plaintiff has made a practice of delaying discovery and filing distracting motions, most of which have been without merit. Moreover, the proposed amended complaint, which comes more than a year after the initial complaint was filed, seeks to add 8 new individuals and 15 new causes of action. As such, plaintiff and her counsel are best served not to waste the court's scarce time and resources with frivolous motions such as the instant one or the court will consider the imposition of sanctions pursuant to 28 U.S.C. Section 1927. SO ORDERED by Judge Dora Lizette Irizarry on 5/27/2014. (Irizarry, Dora) (Entered: 05/27/2014)
05/27/2014		ORDER re 27 Objection to Ruling of Magistrate Judge at Status Conferenceheld on 12/14/12, filed by *pro se* Nicole Corrado - Plaintiff, who was initially represented by counsel filed an objection, *pro se*, to a December 14, 2012 discovery ruling by Hon. Marilyn D. Go, U.S.M.J. Plaintiff subsequently retained counsel, Ambrose W. Wotorson, Jr., Esq., and the parties have continued to pursue discovery. Accordingly, in light of the fact that Plaintiff was proceeding *pro se* at the time she filed the objection, but is now represented by counsel, Plaintiff is directed to clarify whether she still objects to Magistrate Judge Go's ruling NO LATER THAN JUNE 10, 2014. SO ORDERED by Judge Dora Lizette Irizarry on 5/27/2014. (Irizarry, Dora) (Entered: 05/27/2014)
06/10/2014	79	First MOTION to Amend/Correct/Supplement *Rule 72 Motion* by Nicole Corrado. (Wotorson, Ambrose) (Entered: 06/10/2014)
07/17/2014	80	ORDER denying 79 Motion to Amend/Correct/Supplement -- Plaintiff's Rule 72(a) motion to set aside or modify the decision of the Magistrate Judge denying Plaintiff's application to refer this action to a federal agency for an investigation of "potential criminal and/or unethical activity" relating to the alleged spoliation of evidence is denied. SO ORDERED by Judge Dora

		Lizette Irizarry on 7/17/2014. (Irizarry, Dora) (Entered: 07/17/2014)
07/22/2014	81	Letter *Regarding July 17, 2014 Summary Order* by Nicole Corrado (Wotorson, Ambrose) (Entered: 07/22/2014)
09/15/2014	82	ORDER granting in part and denying in part 63 (superceding ct. doc. 52 which was misdesignated as a motion to amend) Motion to Amend/Correct/Supplement. Plaintiff must submit a further revised proposed amended complaint in accordance with this order by October 6, 2014. Ordered by Magistrate Judge Marilyn D. Go on 9/15/2014. (Proujansky, Josh) (Entered: 09/15/2014)
09/16/2014		ORDER finding as moot 76 Motion to Expedite. Ordered by Magistrate Judge Marilyn D. Go on 9/16/2014. (Proujansky, Josh) (Entered: 09/16/2014)
09/17/2014		SCHEDULING ORDER: a telephone conference will be held on 10/15/14 at 3:30 p.m. Ordered by Magistrate Judge Marilyn D. Go on 9/17/2014. (Proujansky, Josh) (Entered: 09/17/2014)
10/06/2014	83	Second MOTION to Amend/Correct/Supplement *Second Amended Complaint* by Nicole Corrado. (Wotorson, Ambrose) (Entered: 10/06/2014)
10/15/2014		Minute Entry for Status Conference held on 10/15/2014 before Magistrate Judge Marilyn D. Go: Appearances by A. Wotorson for plaintiff; L. Evans for defendant. Discussions held regarding plaintiff's proposed amended complaint. Plaintiff must provide a revised complaint and the defendants must provide comments on state tort claims by 10/22/14. After further conferring, the parties must file a status report by 10/29/14. Next conference scheduled for 10/31/14 at 11:30 a.m. FTR/C 3:31-3:58. (Hugh, Lewis) (Entered: 10/16/2014)
10/29/2014	84	STATUS REPORT *and request for adjournment of Status Conference* by New York State Unified Court System (Evans, Lisa) (Entered: 10/29/2014)
10/29/2014		SCHEDULING ORDER: plaintiff's request to adjourn the next conference is granted. Plaintiff must submit a proposed amended complaint to defendant and the Court by 11/3/14 which will be discussed at a conference to be held on 11/10/14 at 3:00 p.m. Ordered by Magistrate Judge Marilyn D. Go on 10/29/2014. (Proujansky, Josh) (Entered: 10/29/2014)
11/04/2014	85	Third MOTION to Amend/Correct/Supplement *Amended Complaint* by Nicole Corrado. (Wotorson, Ambrose) (Entered: 11/04/2014)
11/05/2014		ORDER terminating 83 Motion to Amend/Correct/Supplement; terminating 85 Motion to Amend/Correct/Supplement -- Plaintiff's original motion to amend the complaint was granted in part and denied in part by the magistrate judge by Order dated September 15, 2014 (Docket Entry #82). Plaintiff was directed to file proposed amended complaints by the magistrate judge. In doing so, plaintiff improperly filed the proposed complaints as second and third motions to amend the complaint. The motions are terminated as they should not have been filed as motions. Plaintiff is admonished to file documents properly and not further waste court time and resources in failing

		to do so. Improperly filed documents will be stricken summarily. SO ORDERED by Judge Dora Lizette Irizarry on 11/5/2014. (Irizarry, Dora) (Entered: 11/05/2014)
11/05/2014	86	AMENDED COMPLAINT against New York State Unified Court System, filed by Nicole Corrado. (Wotorson, Ambrose) (Entered: 11/05/2014)
11/06/2014		NOTICE: the conference scheduled for 11/10/14 at 3:00 p.m. will be held by telephone. (Proujansky, Josh) (Entered: 11/06/2014)
11/07/2014	87	Letter *in response to plaintiff's third revised proposed amended complaint* by New York State Unified Court System (Evans, Lisa) (Entered: 11/07/2014)
11/10/2014		Minute Entry for Docket Call held on 11/10/2014 before Magistrate Judge Marilyn D. Go: Appearances by L. Evans for defendant. Plaintiff's counsel failed to appear and neither the defendant nor the Court were able to reach him by telephone. Next conference scheduled for 11/19/14 at 12:00 p.m. (by tel.) See order to follow. (Hugh, Lewis) (Entered: 11/12/2014)
11/12/2014	88	ORDER: Plaintiff's counsel failed to appear for a conference scheduled for November 10, 2014, a date which was set in an electronically filed notice sent to all the parties. He is advised that if he is unable to appear for a court conference, he must make prior arrangements to change the date of the conference. Continued failure to appear for scheduled court conferences could result in sanctions, including the imposition of a fine and attorneys' fees and/or dismissal of this action. The parties are directed to appear for another telephonic conference on November 19, 2014 at 12:00 p.m. If any party needs to request an adjournment or change the time, he must first call the other party to discuss a new time and submit a request to the Court at least seventy-two (72) hours before the scheduled conference. The Clerk is directed to mail a copy of this Order to all parties and/or counsel appearing in this case. SO ORDERED.Ordered by Magistrate Judge Marilyn D. Go on 11/12/2014. (Hugh, Lewis) (Entered: 11/12/2014)
11/17/2014	89	REPLY in Opposition filed by Nicole Corrado. (Wotorson, Ambrose) (Entered: 11/17/2014)
11/19/2014		Minute Entry for Status Conference held on 11/19/2014 before Magistrate Judge Marilyn D. Go: Appearances by A. Wotorson for plaintiff; L. Evans for Unified Court System. As discussed, the Amended Complaint docketed as 86 shall be the operative pleading in this case and discovery shall proceed based on that pleading, except as to the state tort claims against UCS which plaintiff concedes should not have been asserted. Plaintiff must promptly provide UCS with a stipulation withdrawing those claims against UCS. Although the Court agrees with certain arguments raised by UCS as to insufficiency of the state tort claims against the individual defendants, those are arguments not raised earlier in opposition to plaintiff's motion to amend and not discussed in the Court's prior order regarding the motion. Also, since plaintiff has asserted other claims against the individual defendants, the existence of the state tort claims against the individual defendants will not affect the scope of discovery. Defendant must provide the last known addresses of the individual defendants

		who are current or former employees of the Unified Court System. Plaintiff must promptly serve the individual defendants with the Amended Complaint. Next conference scheduled for 2/18/15 at 11:00 a.m. FTR/C 12:01-12:36. (Hugh, Lewis) (Entered: 11/20/2014)
12/11/2014	90	Amended Summons Issued as to Angela Christmas, Jorge Dopico, Alan Friedberg, Naomi Goldstein, Luis Gonzalez, John McConnell, New York State Unified Court System, Vincent Raniere, Roy Reardon. (Riquelme, Claudia) (Entered: 12/11/2014)
12/20/2014	91	STIPULATION of Dismissal *of negligent supervision claim (sixth cause of action) and intentional infliction of emotional distress claim (seventh cause of action) against New York State Unified Court System.* by Nicole Corrado (Wotorson, Ambrose) (Entered: 12/20/2014)
12/22/2014		ORDER electronically endorsing 91 Stipulation of Dismissal, filed by Nicole Corrado. The sixth and seventh causes of action are dismissed pursuant to this stipulation. So Ordered by Judge Dora Lizette Irizarry on 12/22/2014. (Carosella, Christy) (Entered: 12/22/2014)
01/06/2015	92	SUMMONS Returned Executed by Nicole Corrado. Luis Gonzalez served on 12/15/2014, answer due 1/5/2015. (Wotorson, Ambrose) (Entered: 01/06/2015)
01/06/2015	93	SUMMONS Returned Executed by Nicole Corrado. Jorge Dopico served on 12/15/2014, answer due 1/5/2015. (Wotorson, Ambrose) (Entered: 01/06/2015)
01/06/2015	94	SUMMONS Returned Executed by Nicole Corrado. Angela Christmas served on 12/15/2014. (Wotorson, Ambrose) (Entered: 01/06/2015)
01/06/2015	95	SUMMONS Returned Executed by Nicole Corrado. Alan Friedberg served on 12/15/2014, answer due 1/5/2015. (Wotorson, Ambrose) (Entered: 01/06/2015)
01/06/2015	96	SUMMONS Returned Executed by Nicole Corrado. Vincent Raniere served on 12/15/2014, answer due 1/5/2015. (Wotorson, Ambrose) (Entered: 01/06/2015)
01/06/2015	97	SUMMONS Returned Executed by Nicole Corrado. John McConnell served on 12/15/2014, answer due 1/5/2015. (Wotorson, Ambrose) (Entered: 01/06/2015)
01/06/2015	98	SUMMONS Returned Executed by Nicole Corrado. Naomi Goldstein served on 12/15/2014, answer due 1/5/2015. (Wotorson, Ambrose) (Entered: 01/06/2015)
01/06/2015	99	SUMMONS Returned Executed by Nicole Corrado. Roy Reardon served on 12/22/2014, answer due 1/12/2015. (Wotorson, Ambrose) (Entered: 01/06/2015)
01/07/2015	100	First MOTION for Extension of Time to File Answer *, Move, or otherwise Respond to Am. Compl.* by Alan Friedberg, Luis Gonzalez, John McConnell,

		Vincent Raniere. (Berg, Michael) (Entered: 01/07/2015)
01/07/2015	101	RESPONSE in Opposition re 100 First MOTION for Extension of Time to File Answer , *Move, or otherwise Respond to Am. Compl.* filed by Nicole Corrado. (Wotorson, Ambrose) (Entered: 01/07/2015)
01/08/2015	102	REPLY in Support re 100 First MOTION for Extension of Time to File Answer , *Move, or otherwise Respond to Am. Compl.* filed by Alan Friedberg, Luis Gonzalez, John McConnell, Vincent Raniere. (Berg, Michael) (Entered: 01/08/2015)
01/08/2015	103	RESPONSE to Motion re 100 First MOTION for Extension of Time to File Answer , *Move, or otherwise Respond to Am. Compl.* filed by Nicole Corrado. (Wotorson, Ambrose) (Entered: 01/08/2015)
01/09/2015	104	*Amended* ANSWER to 86 Amended Complaint by New York State Unified Court System. (Evans, Lisa) (Entered: 01/09/2015)
01/13/2015	105	ORDER granting 100 Motion for Extension of Time to Answer. The time to answer or otherwise respond to the Amended Complaint for the newly named individual defendants (Dopico, Christmas, Goldstein, Reardon, Gonzalez, McConnell, Friedberg and Raniere) is extended to February 27, 2015. Ordered by Magistrate Judge Marilyn D. Go on 1/13/2015. (Proujansky, Josh) (Entered: 01/13/2015)
01/16/2015	106	First MOTION for Reconsideration *of Court's 1-13-15 Decision and Order* by Nicole Corrado. (Wotorson, Ambrose) (Entered: 01/16/2015)
01/20/2015	107	RESPONSE in Opposition re 106 First MOTION for Reconsideration *of Court's 1-13-15 Decision and Order* filed by Angela Christmas, Jorge Dopico, Alan Friedberg, Naomi Goldstein, Luis Gonzalez, John McConnell, Vincent Raniere, Roy Reardon. (Berg, Michael) (Entered: 01/20/2015)
01/20/2015	108	REPLY to Response to Motion re 106 First MOTION for Reconsideration *of Court's 1-13-15 Decision and Order* filed by Nicole Corrado. (Wotorson, Ambrose) (Entered: 01/20/2015)
01/20/2015	109	REPLY to Response to Motion re 106 First MOTION for Reconsideration *of Court's 1-13-15 Decision and Order (Corrected)* filed by Nicole Corrado. (Wotorson, Ambrose) (Entered: 01/20/2015)
01/26/2015	110	ORDER denying 106 Motion for Reconsideration. Ordered by Magistrate Judge Marilyn D. Go on 1/26/2015. (Proujansky, Josh) (Entered: 01/26/2015)
02/18/2015		Minute Entry for Status Conference held on 2/18/2015 before Magistrate Judge Marilyn D. Go: Appearances by L. Evans for defendant N.Y.S. Unified Court System; M. Berg for individual defendants. Plaintiff failed to appear. Mr. Wotorson is advised that sanctions will be imposed if he fails to appear at the next conference. Defendants must file a report by 2/24/15 as to service on the individual defendants. Plaintiff's supplemental initial disclosures must be served by 3/12/15 and defendants' supplemental initial disclosures by 3/26/15. Next conference scheduled for 4/1/15 at 3:00 p.m. FTR: 11:36-11:51 (Hugh,

		Lewis) (Entered: 02/19/2015)
02/24/2015	111	STATUS REPORT *Of Service of Process on Named Individual Defendants* by New York State Unified Court System (Evans, Lisa) (Entered: 02/24/2015)
02/24/2015	112	Letter *re Service of Process* by Angela Christmas, Jorge Dopico, Alan Friedberg, Naomi Goldstein, Luis Gonzalez, John McConnell, Roy Reardon (Berg, Michael) (Entered: 02/24/2015)
02/24/2015	113	STATUS REPORT *Regarding service of process on individual defendants* by Nicole Corrado (Wotorson, Ambrose) (Entered: 02/24/2015)
02/26/2015	114	MOTION for Extension of Time to File Answer re 86 Amended Complaint by Vincent Raniere. (Berg, Michael) (Entered: 02/26/2015)
02/26/2015	115	NOTICE of Appearance by Michael A. Berg on behalf of Angela Christmas, Jorge Dopico, Alan Friedberg, Naomi Goldstein, Luis Gonzalez, John McConnell, Roy Reardon (aty to be noticed) (Berg, Michael) (Entered: 02/26/2015)
02/26/2015	116	RESPONSE to Motion re 114 MOTION for Extension of Time to File Answer re 86 Amended Complaint filed by Nicole Corrado. (Wotorson, Ambrose) (Entered: 02/26/2015)
02/26/2015	117	RESPONSE to Motion re 114 MOTION for Extension of Time to File Answer re 86 Amended Complaint *(corrected)* filed by Nicole Corrado. (Wotorson, Ambrose) (Entered: 02/26/2015)
02/27/2015	118	Letter *submitted in response to Plaintiff's Counsel's letter dated 2/24/15* by New York State Unified Court System (Evans, Lisa) (Entered: 02/27/2015)
02/27/2015		ORDER granting 114 Motion for Extension of Time to Answer. Although this Court agrees with plaintiff that the representation decision should have been made earlier, defendant Vincent Raniere's time to answer or otherwise respond to the complaint is extended to 3/27/2015. No further extensions will be granted. Ordered by Magistrate Judge Marilyn D. Go on 2/27/2015. (Proujansky, Josh) (Entered: 02/27/2015)
02/27/2015	119	Motion to Dismiss for Failure to State a Claim by Angela Christmas, Jorge Dopico, Alan Friedberg, Naomi Goldstein, Luis Gonzalez, John McConnell, Roy Reardon. (Attachments: # 1 Affidavit of Service) (Berg, Michael) (Entered: 02/27/2015)
02/27/2015	120	DECLARATION re 119 Motion to Dismiss for Failure to State a Claim *of Michael A. Berg* by Angela Christmas, Jorge Dopico, Alan Friedberg, Naomi Goldstein, Luis Gonzalez, John McConnell, Roy Reardon (Attachments: # 1 Exhibit) (Berg, Michael) (Entered: 02/27/2015)
02/27/2015	121	DECLARATION re 120 Declaration, *of Roy L. Reardon re Service of Process* by Roy Reardon (Berg, Michael) (Entered: 02/27/2015)
02/27/2015	122	DECLARATION re 119 Motion to Dismiss for Failure to State a Claim *of Jacqueline Williams re Service of Process* by Roy Reardon (Attachments: # 1

		Exhibit) (Berg, Michael) (Entered: 02/27/2015)
02/27/2015	123	MEMORANDUM in Support re 119 Motion to Dismiss for Failure to State a Claim filed by Angela Christmas, Jorge Dopico, Alan Friedberg, Naomi Goldstein, Luis Gonzalez, John McConnell, Roy Reardon. (Berg, Michael) (Entered: 02/27/2015)
03/14/2015	124	RESPONSE to Motion re 119 Motion to Dismiss for Failure to State a Claim filed by Nicole Corrado. (Wotorson, Ambrose) (Entered: 03/14/2015)
03/19/2015	125	RESPONSE in Opposition re 119 Motion to Dismiss for Failure to State a Claim *(Amended Brief with affidavit of service)* filed by Nicole Corrado. (Attachments: # 1 Affidavit) (Wotorson, Ambrose) (Entered: 03/19/2015)
03/19/2015	126	SUMMONS Returned Executed by Nicole Corrado. Roy Reardon served on 3/6/2015, answer due 3/27/2015. (Wotorson, Ambrose) (Entered: 03/19/2015)
03/19/2015	127	MOTION to Amend/Correct/Supplement 124 Response to Motion *pursuant to 12(b)(6) and (5), and to terminate 12(b)(6) motion as improper* by Nicole Corrado. (Wotorson, Ambrose) (Entered: 03/19/2015)
03/20/2015		ORDER striking 127 Motion to Amend/Correct/Supplement; ORDER re 125 Response in Opposition to Motion filed by Nicole Corrado -- As an initial matter, plaintiff's counsel improperly addressed a motion to amend plaintiff's response to defendant's motion to dismiss the amended complaint to the magistrate judge instead of addressing it to the undersigned district judge. Consistent with the failure to follow not only my rules, but the general rules of civil procedure exhibited by plaintiff throughout this case, counsel went ahead and filed the amended response BEFORE even filing the motion amending the response. Indeed, this "motion" is nothing more than a statement that plaintiff already amended the response. No leave was sought from the court to do so. Accordingly, this motion is striken as is the amended response. Plaintiff is admonished that further failures to comply with my rules and to further waste the court's time by filing inaccurate or erroneous documents will be met with sanctions pursuant to Federal Rule of Civil Procedure 11 and/or 28 U.S.C. Section 1927. SO ORDERED by Judge Dora Lizette Irizarry on 3/20/2015. (Irizarry, Dora) (Entered: 03/20/2015)
03/20/2015	128	MOTION to Amend/Correct/Supplement 124 Response to Motion *(Renewed)* by Nicole Corrado. (Wotorson, Ambrose) (Entered: 03/20/2015)
03/20/2015	129	REPLY in Support re 119 Motion to Dismiss for Failure to State a Claim filed by Angela Christmas, Jorge Dopico, Alan Friedberg, Naomi Goldstein, Luis Gonzalez, John McConnell, Roy Reardon. (Attachments: # 1 Affidavit in Support of Roy L. Reardon, # 2 Certificate of Service) (Berg, Michael) (Entered: 03/20/2015)
03/23/2015		ORDER denying 128 Motion to Amend/Correct/Supplement -- As Defendants already have replied to Plaintiff's response to their motion to dismiss, leave to amend the response is denied. Plaintiff had ample opportunity to move to amend, but waited until the day before Defendants' reply was due and then

		failed to follow the Federal Rules of Civil Procedure as well as my Individual Rules and Practices, in her motion practice. Moreover, Plaintiff and her counsel should have exercised greater care in plaintiff's submission to the court. The docket is replete with plaintiff's corrections and amendments to documents. If more time was needed to get the response right, then a timely request for an extension of the briefing deadline in accord with my rules should have been made; but it was not. The motion is deemed fully briefed. SO ORDERED by Judge Dora Lizette Irizarry on 3/23/2015. (Irizarry, Dora) (Entered: 03/23/2015)
03/24/2015	130	MOTION for Leave to File *Sur-reply* by Nicole Corrado. (Wotorson, Ambrose) (Entered: 03/24/2015)
03/25/2015		ORDER denying 130 Motion for Leave to File: Plaintiff's request to file a sur-reply to Defendants' motion to dismiss is denied for the same reasons that Plaintiff's motion to amend her response to Defendants' motion to dismiss was denied. Plaintiff cannot seek a run around of the Court's denial by requesting permission to file a sur-reply. So Ordered by Judge Dora Lizette Irizarry on 3/25/2015. (Carosella, Christy) (Entered: 03/25/2015)
03/25/2015	131	NOTICE of Appearance by Wendy Stryker on behalf of Vincent Raniere (aty to be noticed) (Stryker, Wendy) (Entered: 03/25/2015)
03/25/2015	132	MOTION for Extension of Time to Complete Discovery *Motion for Extension of Time for Defendant Vincent Raniere to file initial disclosures* by Vincent Raniere. (Stryker, Wendy) (Entered: 03/25/2015)
03/26/2015	133	NOTICE of Appearance by Nicole Bergstrom on behalf of Vincent Raniere (aty to be noticed) (Bergstrom, Nicole) (Entered: 03/26/2015)
03/26/2015		ORDER granting in part and denying in part 132 Motion for Extension of Time to Complete Discovery. Defendant Raniere's time to serve initial disclosures is extended to 4/2/15. The conference previously scheduled for 4/1/15 is adjourned to 4/14/15 at 2:00 p.m. Ordered by Magistrate Judge Marilyn D. Go on 3/26/2015. (Proujansky, Josh) (Entered: 03/26/2015)
03/27/2015	134	Motion to Dismiss for Failure to State a Claim by Vincent Raniere. (Stryker, Wendy) (Entered: 03/27/2015)
03/27/2015	135	MEMORANDUM in Support re 134 Motion to Dismiss for Failure to State a Claim filed by Vincent Raniere. (Stryker, Wendy) (Entered: 03/27/2015)
04/03/2015	136	MOTION to Withdraw as Attorney *(Application of Ambrose Wotorson, Esq.)* by Nicole Corrado. (Wotorson, Ambrose) (Entered: 04/03/2015)
04/03/2015		SCHEDULING ORDER: any opposition to Mr. Wotorson's motion to withdraw must be filed by 4/8/15. The parties are advised that briefing of defendant Raniere's motion to dismiss is not stayed by the pendency of this motion to withdraw. Ordered by Magistrate Judge Marilyn D. Go on 4/3/2015. (Proujansky, Josh) (Entered: 04/03/2015)
04/06/2015	137	MOTION for Extension of Time to File Response/Reply *to defendant*

		Raniere's 12(b)(6) motion by Nicole Corrado. (Wotorson, Ambrose) (Entered: 04/06/2015)
04/06/2015	138	Letter *regarding Plaintiff's Rule 26(a)(1) Disclosures* by Angela Christmas, Jorge Dopico, Alan Friedberg, Naomi Goldstein, Luis Gonzalez, John McConnell (Berg, Michael) (Entered: 04/06/2015)
04/06/2015		SCHEDULING ORDER: plaintiff's response to defendants' 138 Letter must be filed by 4/10/15. Ordered by Magistrate Judge Marilyn D. Go on 4/6/2015. (Proujansky, Josh) (Entered: 04/06/2015)
04/07/2015		ORDER granting 137 Motion for Extension of Time to File Response/Reply re 137 to defendant Raniere's 12(b)(6) motion -- In light of plaintiff's counsel's motion to withdraw from this case, his request for an extension of time to respond to the motion to dismiss is granted. However, no further requests will be granted. The motion has been pending for more than ten days. Plaintiff must either obtain new counsel immediately or reply herself. Plaintiff's opposition to the motion shall be due on May 7, 2015 and defendants' reply shall be due May 28, 2015. The parties are reminded to forward hard courtesy copies of their papers to chambers immediately upon filing and that papers that do not comply with my rules will be striken summarily. Responses due by 5/7/2015 Replies due by 5/28/2015. SO ORDERED by Judge Dora Lizette Irizarry on 4/7/2015. (Irizarry, Dora) (Entered: 04/07/2015)
04/08/2015	139	Letter by New York State Unified Court System (Evans, Lisa) (Entered: 04/08/2015)
04/08/2015	140	Motion for Recusal dtd. 4/2/15 from Nicole Corrado to Judge Irizarry, "informing the court as to why she has discharged her atty., Ambrose Wotorson." Returned to chambers. (Layne, Monique). Modified on 4/9/2015 as per request from chambers to change from letter to motion for recusal. (Layne, Monique).. (Entered: 04/08/2015)
04/08/2015	141	Letter *in response to defendant Reardon's objections to plaintiff's supplemental initial disclosures* by Nicole Corrado (Wotorson, Ambrose) (Entered: 04/08/2015)
04/08/2015	142	Letter *Responding to Plaintiff's Letter Dated 4/2/2015* by Angela Christmas, Jorge Dopico, Alan Friedberg, Naomi Goldstein, Luis Gonzalez, John McConnell, Roy Reardon (Berg, Michael) (Entered: 04/08/2015)
04/09/2015	143	ORDER granting 136 Motion to Withdraw as Attorney. Attorney Ambrose W. Wotorson, Jr terminated. This action is stayed until April 23, 2015, 21 days after Mr. Wotorson was discharged, to give plaintiff an opportunity to obtain new counsel. Until such time as new counsel for plaintiff enters a notice of appearance, service of papers by mail upon her at 242-18 Van Zandt Avenue, Douglaston, New York 11362 shall be deemed sufficient service. A status conference will be held on May 8, 2015 at 10:00 a.m. Withdrawing counsel must immediately send a copy of this order and any outstanding discovery requests and motion papers to plaintiff. Ordered by Magistrate Judge Marilyn D. Go on 4/9/2015. (Proujansky, Josh) (Entered: 04/09/2015)

04/10/2015	144	ORDER denying 140 Motion for Recusal -- For the reasons set forth in the ATTACHED WRITTEN SUMMARY ORDER, Plaintiff's recusal motion is denied. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal would not be taken in good faith and, therefore, *in forma pauperis* status is denied for purpose of an appeal. *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962). The Clerk of the Court is directed to mail a copy of this Electronic Order and the Attached Written Summary Order to *pro se* plaintiff. SO ORDERED Judge Dora Lizette Irizarry on 4/10/2015. (Irizarry, Dora) (Entered: 04/10/2015)
04/14/2015		NOTICE: the conference scheduled for today, 4/14/15, is canceled in light of the stay in effect. (Proujansky, Josh) (Entered: 04/14/2015)
05/07/2015	145	First MOTION for Leave to Appear Pro Hac Vice Filing fee $ 150, receipt number 0207-7724168. by Nicole Corrado. (Housh, Frank) (Entered: 05/07/2015)
05/07/2015		ORDER granting 145 Motion for Leave to Appear Pro Hac Vice subject to filing of a certificate of good standing by 5/29/15. The admitted attorney, Frank Housh, is permitted to argue or try this action in whole or in part as counsel or advocate for plaintiff. Since the docket sheet indicates that the admission fee has been paid, the Clerk of the Court is respectfully requested to enter the appearance of counsel promptly on the docket sheet for this action and to make a notation of the attorney's admission pro hac vice on this Court's roll of attorneys. If not already registered for Electronic Case Filing ("ECF") with this Court, the admitted attorney must register for ECF or submit an application for exemption within two weeks of the date of this order. Ordered by Magistrate Judge Marilyn D. Go on 5/7/2015. (Proujansky, Josh) (Entered: 05/07/2015)
05/07/2015	146	First MOTION to Adjourn Conference , First MOTION for Extension of Time to File Response/Reply by Nicole Corrado. (Housh, Frank) (Entered: 05/07/2015)
05/07/2015		ORDER denying 146 Motion to Adjourn Conference. The conference scheduled for 5/8/15 is converted to a telephone conference. The parties should call chambers at 718-613-2550 at the scheduled time once they are all on the same line. Plaintiff's motion for an extension of time will be addressed by Judge Irizarry. Ordered by Magistrate Judge Marilyn D. Go on 5/7/2015. (Proujansky, Josh) (Entered: 05/07/2015)
05/07/2015		ORDER granting 146 Motion for Extension of Time to File Response/Reply -- Plaintiff is granted until June 5, 2015 to respond to Defendant Raniere's motion. Defendant Raniere's reply, if any, must be filed by June 19, 2015. So Ordered by Judge Dora Lizette Irizarry on 5/7/2015. (Carosella, Christy) (Entered: 05/07/2015)
05/08/2015		Minute Entry for Status Conference held on 5/8/2015 before Magistrate Judge Marilyn D. Go: Appearances by F. Housh for plaintiff; L. Evans for Unified Court System; M. Berg for individual defendants; W. Stryker, N. Bergstrom for defendant Raniere. Plaintiff must supplement her initial disclosures, as

		previously agreed, by 5/29/15. Plaintiff and the individual defendants must confer on the remaining issues raised in defendants' 138 April 6, 2015 letter regarding the sufficiency of her prior disclosures. If any issues remain, any motion to compel must be filed by 6/5/15, opposition by 6/12/15 and reply by 6/17/15. A new discovery schedule will be set at the next conference scheduled for 6/23/15 at 11:30 a.m. As parties were warned, discovery will be expected to proceed expeditiously.FTR/C 9:56-10:15. (Hugh, Lewis) (Entered: 05/11/2015)
05/11/2015	147	NOTICE by Nicole Corrado re 145 Motion for Leave to Appear Pro Hac Vice,,, *Certificate of Good Standing* (Housh, Frank) (Entered: 05/11/2015)
05/29/2015	148	First MOTION for Extension of Time to File *Supplement to Initial Disclosures* by Nicole Corrado. (Housh, Frank) (Entered: 05/29/2015)
05/29/2015		ORDER granting in part and denying in part 148 Motion for Extension of Time to supplement initial disclosures to 6/5/15. Plaintiff's counsel should have acted more promptly in getting the necessary documents directly from plaintiff or seeking assistance in getting the documents from prior counsel. The schedule for any motions to compel related to initial disclosures is extended as follows: any motion to compel must be filed by 6/12/15; opposition by 6/19/15 and reply by 6/24/15. The next conference is adjourned to 7/1/15 at 11:30 a.m. Ordered by Magistrate Judge Marilyn D. Go on 5/29/2015. (Proujansky, Josh) (Entered: 05/29/2015)
06/05/2015	149	MEMORANDUM in Opposition re 134 Motion to Dismiss for Failure to State a Claim *by Vincent Raniere* filed by Nicole Corrado. (Housh, Frank) (Entered: 06/05/2015)
06/05/2015	150	RESPONSE to Discovery Request from Assistant Attorney General Michael A. Berg by Nicole Corrado. (Housh, Frank) (Entered: 06/05/2015)
06/08/2015		NOTICE re 150 Response to Discovery. The parties are reminded that Federal Rule of Civil Procedure 5(a)(1)(C) prohibits the filing of discovery requests, responses and disclosures. (Proujansky, Josh) (Entered: 06/08/2015)
06/12/2015	151	MOTION to Compel *Initial Disclosures* by Angela Christmas, Jorge Dopico, Alan Friedberg, Naomi Goldstein, Luis Gonzalez, John McConnell, Roy Reardon. (Berg, Michael) (Entered: 06/12/2015)
06/12/2015	152	MEMORANDUM in Support re 151 MOTION to Compel *Initial Disclosures* filed by Angela Christmas, Jorge Dopico, Alan Friedberg, Naomi Goldstein, Luis Gonzalez, John McConnell, Roy Reardon. (Berg, Michael) (Entered: 06/12/2015)
06/12/2015	153	AFFIDAVIT/DECLARATION in Support re 151 MOTION to Compel *Initial Disclosures* filed by Angela Christmas, Jorge Dopico, Alan Friedberg, Naomi Goldstein, Luis Gonzalez, John McConnell, Roy Reardon. (Berg, Michael) (Entered: 06/12/2015)
06/15/2015	154	Letter by Angela Christmas, Jorge Dopico, Alan Friedberg, Naomi Goldstein, Luis Gonzalez, John McConnell, Roy Reardon (Berg, Michael) (Entered:

		06/15/2015)
06/18/2015		ORDER re 154 Letter filed by Jorge Dopico, Roy Reardon, Angela Christmas, Luis Gonzalez, Naomi Goldstein, John McConnell, Alan Friedberg -- To the extent that Plaintiff makes any arguments regarding the other Defendants in her response to Defendant Vincent Raniere's motion to dismiss, the Court will not consider them. Plaintiff is admonished, yet again, that the Court will not tolerate Plaintiff's attempts to circumvent its rulings by adding these extraneous arguments to its response or by any other means. Plaintiff's current counsel is on notice that counsel and Plaintiff, herself an attorney, will be sanctioned for any further failures to adhere to the Court's rulings. Plaintiff's contempt of the Court's rulings, local rules, Federal Rules of Civil Procedure and overall process will not be tolerated. She has unduly prolonged this litigation through her vexatious conduct. SO ORDERED by Judge Dora Lizette Irizarry on 6/18/2015. (Irizarry, Dora) (Entered: 06/18/2015)
06/19/2015	155	REPLY to Response to Motion re 134 Motion to Dismiss for Failure to State a Claim filed by Vincent Raniere. (Stryker, Wendy) (Entered: 06/19/2015)
06/19/2015	156	RESPONSE to Motion re 151 MOTION to Compel *Initial Disclosures* filed by Nicole Corrado. (Housh, Frank) (Entered: 06/19/2015)
07/01/2015		Minute Entry for Status Conference held on 7/1/2015 before Magistrate Judge Marilyn D. Go: Appearances for plaintiffs by F. Housh; L. Evans for Unified Court System; W. Stryker, N. Bergstrom for def. Raniere; M. Berg for other defs. Rulings made on the record granting 151 defendants' motion to compel in part. Plaintiff must supplement initial disclosures by 7/29/15 as follows: a) as to witnesses named in the complaint, if the plaintiff believes the witness has information regarding incidents or topics not described in allegations to the amended complaint relating to such witness, plaintiff must describe the topics of such anticipated information; b) as to witnesses not mentioned in the complaint, plaintiff must describe the topics of their expected testimony; and c) plaintiff must provide more specific information regarding her claimed economic damages and produce documents supporting her calculation of damages. As discussed, plaintiff must provide defendants by 7/17/15 the non-privileged portion of the computer file of documents scanned by original counsel for plaintiff and subsequently produced in hard copy to Ms. Evans. The parties must confer on a discovery plan and file a proposed discovery schedule by 8/19/15 which includes the number of depositions and proposed order, as discussed. Preliminary settlement discussions held. Next conference scheduled for 8/31/15 at 11:30 a.m. FTR 11:42-12:18. (Hugh, Lewis) (Entered: 07/02/2015)
07/17/2015	157	Letter *requesting inclusion of electronic discovery with deadline for other mandated discovery* by Nicole Corrado (Housh, Frank) (Entered: 07/17/2015)
07/21/2015		SCHEDULING ORDER: re 157 Letter filed by Nicole Corrado. Plaintiff's request for an extension to 7/29/15 to produce the non-privileged portion of the computer file of documents scanned by original counsel for plaintiff is granted since she claims that it is not currently in her possession. I note

		however that in a letter to the Court, plaintiff acknowledges having received documents from her case file electronically from former counsel. See ct. doc. 10. In addition, former counsel stated in a letter to the Court that he sent plaintiff her file both electronically and on a CD-ROM. See ct. doc. 11. No further extensions will be granted absent exceptional circumstances. Ordered by Magistrate Judge Marilyn D. Go on 7/21/2015. (Proujansky, Josh) (Entered: 07/21/2015)
07/29/2015	158	Letter *Confirming Compliance With Court Order and Suggesting Times for Counsel to Discuss Deposition Schedule* by Nicole Corrado (Attachments: # 1 Certificate of Service) (Housh, Frank) (Entered: 07/29/2015)
08/18/2015	159	Proposed Scheduling Order by Nicole Corrado (Housh, Frank) (Entered: 08/18/2015)
08/24/2015		SCHEDULING ORDER: the parties' request to appear by telephone for the 8/31/15 conference is granted. The parties must call chambers after all parties are on the line. The parties' 159 Proposed Scheduling Order will be addressed at the conference but the Court notes its concern with the extended schedule proposed. Ordered by Magistrate Judge Marilyn D. Go on 8/24/2015. (Proujansky, Josh) (Entered: 08/24/2015)
08/31/2015		Minute Entry for Status/Settlement Conference held on 8/31/2015 before Magistrate Judge Marilyn D. Go: Appearances by F. Housh for plaintiff; L. Evans for Unified Court System; W. Stryker, N. Bergstrom for defendant Raniere; M. Berg for other individual defendants. The discovery schedule is extended as follows: 1) each party must serve initial document requests and interrogatories by 9/25/15 and respond by 10/26/15; 2) plaintiff's deposition must be held by 12/15/15; fact discovery must be completed by 3/30/16; 3) any party intending to call an expert, other than in rebuttal, must give notice by 2/16/16 of the type of expert to be retained, areas of expertise and general subject matter to be addressed by the expert; and 4) if expert notice is given, affirmative expert reports must be served by 4/15/16, rebuttal reports by 5/16/15 and expert discovery completed by 6/16/16. Preliminary settlement discussions held. The parties must file a report by 11/30/15 on the status of settlement discussions and are encouraged to contact the Court to schedule a settlement conference earlier if they feel it would be useful. FTR/C 12:01-12:14. (Hugh, Lewis) (Entered: 09/01/2015)
10/27/2015	160	Letter MOTION for Protective Order by Roy Reardon. (Berg, Michael) (Entered: 10/27/2015)
10/28/2015		SCHEDULING ORDER: re 160 Letter MOTION for Protective Order filed by Roy Reardon. Plaintiff's response must be filed by 11/3/2015. A telephone conference regarding the motion will be held on 11/9/15 at 10:00 a.m. Ordered by Magistrate Judge Marilyn D. Go on 10/28/2015. (Proujansky, Josh) (Entered: 10/28/2015)
10/29/2015		ORDER re 160 Letter MOTION for Protective Order filed by Roy Reardon -- For the reasons explained in greater detail in a forthcoming memorandum and order, Mr. Reardon's motion to be dismissed from this case is denied. So

		Ordered by Judge Dora Lizette Irizarry on 10/29/2015. (Carosella, Christy) (Entered: 10/29/2015)
10/29/2015		ORDER denying 160 Motion for Protective Order in light of Judge Irizarry's denial of defendant Reardon's motion to dismiss. The conference set for 11/9/15 is canceled. Ordered by Magistrate Judge Marilyn D. Go on 10/29/2015. (Proujansky, Josh) (Entered: 10/29/2015)
11/25/2015	161	MOTION for pre motion conference *to Compel Discovery* by Angela Christmas, Jorge Dopico, Alan Friedberg, Naomi Goldstein, Luis Gonzalez, John McConnell, Roy Reardon. (Berg, Michael) (Entered: 11/25/2015)
11/30/2015		SCHEDULING ORDER: A response to the 161 MOTION for pre motion conference to Compel Discovery must be filed by 12/3/15. A conference will be held on Dec. 4, 2015 at 10:00 a.m. The parties may appear by telephone, but are responsible for arranging a conference call. Ordered by Magistrate Judge Marilyn D. Go on 11/30/2015. (Go, Marilyn) (Entered: 11/30/2015)
12/03/2015	162	RESPONSE to Motion re 161 MOTION for pre motion conference *to Compel Discovery* filed by Nicole Corrado. (Housh, Frank) (Entered: 12/03/2015)
12/04/2015		Minute Entry for proceedings held before Magistrate Judge Marilyn D. Go: Motion Hearing held on 12/4/2015. Appearances by F. Housh for plaintiff; L. Evans for Unified Court System; W. Stryker, N. Bergstrom for def. Raniere; M. Berg for individual State defs. Discussion held regarding issues raised in Mr. Berg's 161 motion for pre-motion conference. Plaintiff must immediately produce outstanding documents to Raniere. Plaintiff must send the Court a disc containing files for her original and revised responses to the discovery requests and the individual defendants should send the files for their requests. The individual defendants must send no later than 12/7/15 to plaintiff lists describing the inadequacies in plaintiff's discovery responses and should coordinate responses as to overlapping requests. The parties must meet and confer regarding plaintiff's discovery responses by 12/10/15. Any motion to compel must be filed by 12/22/15, opposition filed by 12/31/15 and reply by 1/8/16 and will be heard on 1/14/16 at 2:00 p.m. A new discovery schedule, including a deadline for plaintiff's deposition, which is to be held before other depositions, will also be set. The parties must also be prepared to discuss settlement. (Tape #10:05-10:40) (Brucella, Michelle) (Entered: 12/07/2015)
12/11/2015	163	Letter MOTION to Produce *Documents and Other Relief* by Nicole Corrado. (Housh, Frank) (Entered: 12/11/2015)
12/21/2015	164	Letter *Responding to Plaintiff's Letter of 12/11/15* by Angela Christmas, Jorge Dopico, Alan Friedberg, Naomi Goldstein, Luis Gonzalez, John McConnell, Roy Reardon (Berg, Michael) (Entered: 12/21/2015)
12/21/2015	165	Letter *in response to Plaintiff's letter motion of Dec. 11, 2015, objecting to Magistrate Go's Dec. 4, 2015 Order* by Vincent Raniere (Stryker, Wendy) (Entered: 12/21/2015)
12/22/2015	166	Letter MOTION to Compel *plaintiff to produce documents and to amend*

		certain interrogatory responses by Vincent Raniere. (Attachments: # 1 Exhibit A, # 2 Exhibit B) (Stryker, Wendy) (Entered: 12/22/2015)
12/22/2015	167	MOTION to Compel *Discovery* by Angela Christmas, Jorge Dopico, Alan Friedberg, Naomi Goldstein, Luis Gonzalez, John McConnell, Roy Reardon. (Berg, Michael) (Entered: 12/22/2015)
12/24/2015	168	REPLY to Response to Motion re 166 Letter MOTION to Compel *plaintiff to produce documents and to amend certain interrogatory responses* filed by Nicole Corrado. (Housh, Frank) (Entered: 12/24/2015)
12/31/2015	169	RESPONSE to Motion re 167 MOTION to Compel *Discovery*, 166 Letter MOTION to Compel *plaintiff to produce documents and to amend certain interrogatory responses* filed by Nicole Corrado. (Housh, Frank) (Entered: 12/31/2015)
01/08/2016	170	REPLY in Support re 166 Letter MOTION to Compel *plaintiff to produce documents and to amend certain interrogatory responses* filed by Vincent Raniere. (Stryker, Wendy) (Entered: 01/08/2016)
01/08/2016	171	REPLY in Support re 167 MOTION to Compel *Discovery* filed by Angela Christmas, Jorge Dopico, Alan Friedberg, Naomi Goldstein, Luis Gonzalez, John McConnell, Roy Reardon. (Berg, Michael) (Entered: 01/08/2016)
01/11/2016	172	First MOTION to Adjourn Conference by Nicole Corrado. (Housh, Frank) (Entered: 01/11/2016)
01/11/2016		ORDER denying 172 Motion to Adjourn Conference. The conference set for 1/14/16 will be held by telephone. Plaintiff's counsel must arrange a conference call with all parties and the Court. Ordered by Magistrate Judge Marilyn D. Go on 1/11/2016. (Proujansky, Josh) (Entered: 01/11/2016)
01/20/2016	173	Minute entry and order for proceedings held before Magistrate Judge Marilyn D. Go on 1/14/16. Appearances by tel. by F. Housh for plaintiff, plaintiff N. Corrado; L. Evans for defendant Unified Court System; W. Stryker, N. Bergstrom for defendant Raniere; M. Berg for individual State defendants. Plaintiff Nicole Corrado participated. Argument heard and rulings made on the record granting in large part [166, 167] motions to compel of defendants. Plaintiff must produce to defendant Raniere those documents already produced to the other defendants, as previously ordered, by 1/21/16. Plaintiff must supplement by 2/18/16 her responses to Raniere's and the individual State defendants' interrogatories and document requests, as set forth in the attached Minute Order. Plaintiff must verify her responses. Upon plaintiff's oral request, Mr. Housh is relieved as counsel for plaintiff. Mr. Housh must file a letter by 1/15/16 advising whether he asserts a retaining lien. Plaintiff shall have four weeks to obtain new counsel. If new counsel does not file a notice of appearance by 2/11/16, plaintiff will be expected to proceed pro se. Next conference scheduled for 2/25/16 at 10:30 a.m. (Tape #FTR/C 2:08-3:07.) (Proujansky, Josh) (Entered: 01/20/2016)
01/20/2016		ORDER: at a conference held on 1/14/16, this Court granted plaintiff's oral

		request that Mr. Housh be relieved as her counsel and directed Mr. Housh to file a letter by 1/15/16 as to whether he asserts a retaining lien. Since Mr. Housh has failed to do so, he must promptly transmit his client's files to plaintiff or her new counsel upon request, with the reasonable costs of reproduction to be borne by plaintiff. The Clerk of the Court is respectfully requested to terminate Frank Housh as counsel for plaintiff and to note on the docket sheet the following address and telephone number for plaintiff: 242-18 Van Zandt Avenue, Douglaston, NY 11362, 917-337-6153. Since Ms. Corrado is an attorney and apparently has accessed the electronic docket sheet, the Clerk of the Court is requested to add her ECF registration email address. Until such time as new counsel appears for plaintiff, notices shall be sent directly to plaintiff. Ordered by Magistrate Judge Marilyn D. Go on 1/20/2016. (Proujansky, Josh) (Entered: 01/20/2016)
01/21/2016	174	TRANSCRIPT of Proceedings held on January 14, 2016, before Judge Go. Court Reporter/Transcriber TypeWrite Word Processing Service. Email address: transcripts@typewp.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.File redaction request using event "Redaction Request - Transcript" located under "Other Filings - Other Documents". Redaction Request due 2/11/2016. Redacted Transcript Deadline set for 2/22/2016. Release of Transcript Restriction set for 4/20/2016. (Hong, Loan) (Entered: 01/21/2016)
02/12/2016	175	Letter faxed to chambers on 2/11/2016 from Edward Griffith, Esq. requesting extension of time for plaintiff to retain counsel. (Hugh, Lewis) (Entered: 02/12/2016)
02/12/2016		ORDER re 175 Letter: plaintiff's request for an extension of time to 2/25/16 to obtain new counsel is granted. Plaintiff should note that she may obtain new counsel at any time. The date set at the last conference for new counsel to file a notice of appearance was merely intended to ensure that there would be no delay in producing outstanding discovery by the deadline set. Nonetheless, the Court reluctantly extends plaintiff's time to 2/29/16 to supplement her responses to Raniere's and the individual State defendants' interrogatories and document requests. No further extensions of this deadline will be granted since the outstanding discovery should have been provided long before plaintiff discharged her most recent counsel. Ordered by Magistrate Judge Marilyn D. Go on 2/12/2016. (Proujansky, Josh) (Entered: 02/12/2016)
02/17/2016	176	ORDER granting in part and denying in part 119 Motion to Dismiss for Failure to State a Claim -- The two motions to dismiss the complaint before the Court are granted in part, as follows: (i) all claims against defendants Raniere and Friedberg are dismissed, with prejudice; (ii) Claims Five, Six, and Seven are dismissed as to each defendant that is a natural person (the "Individual Defendants"), with prejudice; and (iii) those portions of Claims Two and Three alleging sexual harassment and aiding and abetting sexual harassment are dismissed as to each Individual Defendant, with prejudice. As for the six remaining Individual Defendants and the remaining claims, the

		motions are denied with respect to: (i) Claim Four; and (ii) those portions of Claims Two and Three alleging retaliation. For clarity, the only Individual Defendants who remain in this action are defendants Gonzalez, McConnell, Rearden, Dopico, Christmas, and Goldstein; the only claims that survive as to these defendants are Claim Four and the retaliation allegations contained in Claims Two and Three. The Clerk of the Court is directed to note the termination of defendants Raniere and Friedberg on the docket. This case is referred to the magistrate judge for further pretrial proceedings. SO ORDERED by Judge Dora Lizette Irizarry on 2/17/2016. (Irizarry, Dora) (Entered: 02/17/2016)
02/23/2016	177	First MOTION for Extension of Time to File Answer *Amended Complaint* by Angela Christmas, Jorge Dopico, Naomi Goldstein, Luis Gonzalez, John McConnell, Roy Reardon. (Berg, Michael) (Entered: 02/23/2016)
02/26/2016		Minute entry and order for status conference held on 02/25/2016 before Magistrate Judge Marilyn D. Go. Appearances by plaintiff pro se N. Corrado (by tel.); L. Evans for defendant Unified Court System; M. Berg for individual defendants. Plaintiff failed to appear for the conference but was reached by telephone. Rulings made on the record granting 177 individual defendants' motion for an extension of time to answer to 3/16/16. Since plaintiff advises that she is having difficulty obtaining new counsel, the Court extends plaintiff's time to supplement her responses to the individual defendants' interrogatories and document requests as ordered to 3/16/16. No further extensions will be granted as to this outstanding discovery. Next conference scheduled for 3/29/16 at 10:00 a.m. (Tape #10:53-11:08.) (Proujansky, Josh) Modified on 2/26/2016 to include date of conference(Hugh, Lewis). (Entered: 02/26/2016)
02/26/2016	178	ORDER: as discussed in the attached order, plaintiff is advised that she is required to appear, in person or through counsel, at any scheduled conferences set by the Court. The next conference will be held on March 29, 2016 at 10:00 a.m. All parties must appear. Ordered by Magistrate Judge Marilyn D. Go on 2/26/2016. (Proujansky, Josh) (Entered: 02/26/2016)
02/26/2016	179	TRANSCRIPT of Proceedings held on February 25, 2016, before Judge Go. Court Reporter/Transcriber TypeWrite Word Processing Service, Telephone number 718-966-1401. Email address: transcripts@typewp.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.File redaction request using event "Redaction Request - Transcript" located under "Other Filings - Other Documents". Redaction Request due 3/18/2016. Redacted Transcript Deadline set for 3/28/2016. Release of Transcript Restriction set for 5/26/2016. (Hong, Loan) (Entered: 02/26/2016)
03/16/2016	180	ANSWER to 86 Amended Complaint by Luis Gonzalez. (Berg, Michael) (Entered: 03/16/2016)
03/16/2016	181	ANSWER to 86 Amended Complaint by John McConnell. (Berg, Michael)

		(Entered: 03/16/2016)
03/16/2016	182	ANSWER to 86 Amended Complaint by Jorge Dopico. (Berg, Michael) (Entered: 03/16/2016)
03/16/2016	183	ANSWER to 86 Amended Complaint by Angela Christmas. (Berg, Michael) (Entered: 03/16/2016)
03/16/2016	184	ANSWER to 86 Amended Complaint by Naomi Goldstein. (Berg, Michael) (Entered: 03/16/2016)
03/16/2016	185	Consent MOTION for Extension of Time to File Answer by Roy Reardon. (Berg, Michael) (Entered: 03/16/2016)
03/17/2016	186	ANSWER to 86 Amended Complaint by Roy Reardon. (Berg, Michael) (Entered: 03/17/2016)
03/17/2016		ORDER granting on consent 185 Motion for Extension of Time to Answer for defendant Roy Reardon. Ordered by Magistrate Judge Marilyn D. Go on 3/17/2016. (Proujansky, Josh) (Entered: 03/17/2016)
03/17/2016	187	Letter *Response to Plaintiff's Letter Request to Extend Time to Supplement Discovery* by Angela Christmas, Jorge Dopico, Naomi Goldstein, Luis Gonzalez, John McConnell, Roy Reardon (Berg, Michael) (Entered: 03/17/2016)
03/18/2016	188	MOTION for Extension of Time to Complete Discovery by Nicole Corrado. (Hugh, Lewis) (Entered: 03/18/2016)
03/18/2016		ORDER granting 188 Motion for Extension of Time. Plaintiff's former counsel, Frank Housh, must send plaintiff's client files by 3/21/16 via overnight delivery. Plaintiff's time to supplement her responses to the individual defendants' interrogatories and document requests is extended to 4/5/16. The status conference previously set for 3/29/16 is adjourned to 4/14/16 at 2:00 p.m. Ordered by Magistrate Judge Marilyn D. Go on 3/18/2016. (Proujansky, Josh) (Entered: 03/18/2016)
04/05/2016	189	Letter dtd. 4/4/16 from pltff. Nicole Corrado to Judge Irizarry and Mag. Judge Go, "requesting this case be discontinued." Fwd. to chmbrs. (Layne, Monique) (Entered: 04/06/2016)
04/06/2016		Attorney Wendy Stryker; Michael A. Berg (as counsel for Raniere) and Nicole Bergstrom terminated. Ordered by Magistrate Judge Marilyn D. Go on 4/6/2016. (Proujansky, Josh) (Entered: 04/06/2016)
04/08/2016		ORDER re (189) -- By letter dated April 4, 2016, Plaintiff advises the Court that, since discharging her previous attorney, she has not been able to retain new counsel. She also refuses to prosecute her case pro se. Accordingly, Plaintiff requests that her "case be discontinued." Because the defendants have filed answers, and because Plaintiff has not procured a stipulation of dismissal signed by all parties, Plaintiff may not move for dismissal under Rule 41(a)(1). See Rule 41(a)(1)(A)(i)-(ii). Instead, Plaintiff may only dismiss her case under Rule 41(a)(2), which requires an order of this Court, "on terms that the

		court considers just and proper." See Rule 41(a)(2). Upon review of the record, it is ORDERED that this case be, and hereby is, dismissed with prejudice. The Clerk is directed to close this case. So Ordered by Judge Dora Lizette Irizarry on 4/8/2016. (Carosella, Christy) (Entered: 04/08/2016)
04/11/2016	190	CLERK'S JUDGMENT in favor of New York State Unified Court System, Angela Christmas, John McConnell, Jorge Dopico, Luis Gonzalez, Naomi Goldstein, Roy Reardon against Nicole Corrado. ORDERED and ADJUDGED that the case is dismissed with prejudice. Ordered by Clerk of Court, by J. Hamilton, Deputy Clerk on 4/8/2016. c/m to pltff. (Layne, Monique) (Entered: 04/11/2016)
05/10/2016	191	NOTICE OF APPEAL as to 190 Clerk's Judgment and Electronic Order of 4/08/16 Dismissing Case, by Nicole Corrado. Filing fee $ 505.00. Receipt #4653101658. Service done electronically. (McGee, Mary Ann) (Entered: 05/10/2016)
05/10/2016		Electronic Index to Record on Appeal sent to US Court of Appeals. 191 Notice of Appeal Documents are available via Pacer. For docket entries without a hyperlink or for documents under seal, contact the court and we'll arrange for the document(s) to be made available to you. (McGee, Mary Ann) (Entered: 05/10/2016)

PACER Service Center			
Transaction Receipt			
08/05/2016 11:34:05			
PACER Login:	pt0078_1997:2617835:0	**Client Code:**	643.16
Description:	Docket Report	**Search Criteria:**	1:12-cv-01748-DLI-MDG
Billable Pages:	24	**Cost:**	2.40

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August 15, 2012

Via ECF
Honorable Marilyn Go, USDJ
Alfonse M. D'Amato Federal Building
United States District Court
100 Federal Plaza
Central Islip, New York 11722-9014

Re: *Nicole Corrado v. New York State Unified Court System*
Docket No.: 12 CV 0178 (DLI) (MDG)

Dear Judge Go:

This Firm represents Plaintiff Nicole Corrado, in the above-referenced matter and we submit this motion to withdraw as counsel for Plaintiff.

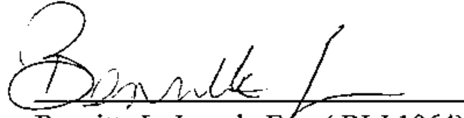
Plaintiff filed the Complaint on April 10, 2012 in the Eastern District alleging violations under Title VII of the Civil Rights Act of 1964. Defendant filed an Answer to the Complaint and the initial conference has been scheduled before Your Honor on August 28, 2102.

On August 1, 2012, Plaintiff sent an email advising us that she will be retaining new counsel. (***See*** email annexed hereto as Exhibit 1). Our office asserts no lien on this matter. And a copy of this motion was served on the Plaintiff in accordance with Local Rule 1.4.

Based on the foregoing, it is respectfully requested that our motion to be relieved as Plaintiff's counsel be granted in its entirety.

Very truly yours,

The Law Office of
BORRELLI & ASSOCIATES, P.L.L.C.



Bennitta L. Joseph, Esq. (BLJ 1064)
For the Firm

cc: Lisa Evans, Esq.
Nicole Corrado, Plaintiff

Exhibit 1

From: Nicole Corrado [mailto:ncorrado242@yahoo.com]
Sent: Wednesday, August 01, 2012 11:43 PM
To: Bennitta Joseph
Subject: Substitution of Counsel

Bennitta, as I informed you in my email and as discussed with Michael earlier today, I am retaining new counsel and would appreciate an expeditious transition in this regard. Since you are leaving for vacation this Friday, I would like this to be done as soon as possible.
Thank you,
Nicole

AFFIDAVIT OF SERVICE

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

I, Ana G. Guevara, being duly sworn, depose and state: That I am not a party to this action, am over 18 years of age, and reside in Nassau County, State of New York.

That on August 15, 2012, I served the *Motion to Withdraw as Counsel* upon:

Ms. Nicole Corrado
242-18 Van Zandt Avenue
Douglaston, New York 11362
Email: Ncorrado242@yahoo.com

the address designated by said party(s) or attorney(s) for that purpose in the matter of:

Nicole Corrado v. New York State Unified Court System
Docket No.: 12 CV 0178 (DLI) (MDG)

[X] by depositing a true copy of the same, enclosed in a post-paid properly addressed wrapper, VIA FIRST CLASS MAIL, in a post office depository under the exclusive care of the United States Postal Service within the State of New York.

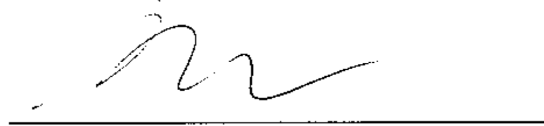
[X] by depositing a true copy of the same, enclosed in a post-paid properly addressed CERTIFIED MAIL/RETURN RECEIPT wrapper, in a post office depository under the exclusive care of the United States Postal Service within the State of New York.

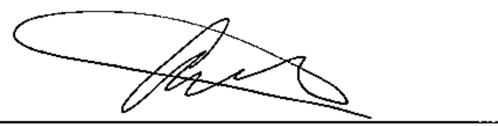
[ ] by dispatching a copy by overnight delivery via Fedex OVERNIGHT MAIL to the parties above named at the address so indicated.

[ ] by PERSONALLY delivering a true copy of same to each person above named at the address so indicated. I knew each person mentioned and described in said papers a party therein;

[X] by transmitting a true copy of same to the parties above named by Electronic Mail at the address so designated by said parties.

Sworn to before me on August 15, 2012





NOTARY PUBLIC

ANA G. GUEVARA

DAVID H. ROSENBERG
Notary Public, State of New York
No. 02RO6133117
Qualified in Nassau County
Commission Expires Sept. 12, 20 13

1 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
2

3 ------------------------------------X
:
4 NICOLE CORRADO, :
: 12-CV-1748 (DLI)
5 Plaintiff, :
:
6 v. : 225 Cadman Plaza East
: Brooklyn, New York
7 NEW YORK STATE UNIFIED COURT SYSTEM, :
et al., :
8 : December 14, 2012
Defendants. :
9 ------------------------------------X

10 TRANSCRIPT OF CIVIL CAUSE FOR HEARING
BEFORE THE HONORABLE MARILYN D. GO
11 UNITED STATES MAGISTRATE JUDGE

12
APPEARANCES:
13
For the Plaintiff: AMBROSE W. WOTORSON, JR., ESQ.
14 Law Offices Ambrose Wotorson
26 Court Street
15 Suite 1811
Brooklyn, New York 11242
16
For the Defendants: LISA M. EVANS, ESQ.
17 NYS Office of Court Administration
25 Beaver Street
18 New York, New York 10004

19 MICHAEL BORRELLI, ESQ.
BENNITTA JOSEPH, ESQ.
20 Borrelli & Associates, PLLC
1010 Northern Boulevard
21 Suite 328
Great Neck, New York 11021
22

23
Court Transcriber: SHARI RIEMER
24 TypeWrite Word Processing Service
211 N. Milton Road
25 Saratoga Springs, New York 12866

Proceedings recorded by electronic sound recording, transcript produced by transcription service

1 (Proceedings began at 4:02 p.m.)
2 THE CLERK: Civil Cause for Hearing, Corrado v. New
3 York State Unified Court System, Docket Number 12-1748.
4 Will the parties please state their appearances for
5 the record starting with plaintiff?
6 MR. WOTORSON: Yes. Good afternoon, Your Honor.
7 Ambrose Wotorson, 26 Court Street, Suite 1811, Brooklyn, New
8 York for the plaintiff.
9 MS. EVANS: Lisa Evans, Unified Court -- for the
10 Unified Court System, 25 Beaver Street, New York, New York
11 10004.
12 THE COURT: Appearing by telephone at the Court's
13 direction, prior counsel for plaintiff. Could you please
14 state your names?
15 MS. JOSEPH: Bennitta Joseph, Michael Borrelli and
16 Alice Hogan from the law office of Borrelli & Associates, 1010
17 Northern Boulevard, Suite 328, Great Neck, New York.
18 THE COURT: Now, I had scheduled this conference to
19 discuss the plaintiff's letter regarding the production of
20 documents made by the defendants -- I mean made by Borrelli
21 and we've certainly looked at the documents. It's not clear
22 to me what the plaintiff contends is missing from the records
23 provided. Plaintiff's submissions really are quite general
24 and notably absent from the submission is any kind of
25 statement from the plaintiff regarding what documents were in

1 the file before she turned over the file to Borrelli.
2 Your Honor, what --
3 THE COURT: I note for the record that's Ms. Corrado
4 speaking. So go ahead.
5 MR. WOTORSON: I can't hear.
6 THE COURT: Ms. Corrado will respond to that
7 question.
8 MS. CORRADO: Thank you, Your Honor. As indicated in
9 our letter, in my original letter as well as the follow up
10 letters submitted by Mr. Ambrose on my behalf. The main item
11 in question is the paper file, the paper EEOC file which was
12 first not sent to me and then it was not sent to me in its
13 entirety. That is the crux of the problem.
14 THE COURT: Well, no. What I'd like to know from you
15 is what was in the EEO file that you saw that you contend is
16 missing. Having seen many government files, I think
17 there's -- it's frequently disappointing what's not there.
18 MS. CORRADO: Well, the problem is, Your Honor, the
19 fact that we don't have an actual paper file at this point
20 from any source it's impossible to identify each and every
21 item that is missing.
22 THE COURT: Did you look at the file? Did you --
23 MS. CORRADO: However -- yes, I did. But the file
24 is -- was approximately two and a half inches, three inches
25 thick. Some of the documents were duplicative. Some were

1 individual documents contained within it and it pertained to
2 various individuals. Throughout the course of the EEOC's
3 investigation which as Your Honor knows was over a two and a
4 half year period. So the difficult part here is that in order
5 to identify for the Court specifically there would have to be
6 an actual file to compare it to. Without that I don't
7 think -- that's where the difficulty lies because I know what
8 I received from Mr. Borrelli's firm. I know what I picked up
9 from the EEOC and they are not similar at all.
10 THE COURT: Well, it's not -- what I was just trying
11 to find out is what documents you saw in the file that you
12 turned over to Borrelli that are not part of the electronic
13 files that were ultimately produced by Borrelli.
14 MR. WOTORSON: Your Honor, I --
15 THE COURT: This is actually a side issue in
16 discovery but I just wanted to get this behind us and move
17 forward on the merits of this case because as you probably
18 know there's serious evidentiary issues in the admissibility
19 of any of these documents in the EEOC file. Secondly, it's
20 not clear to me whether or not there would be any other
21 internal records in the EEOC file and I was trying to get from
22 the plaintiff some guidance as to whether or not she saw any
23 documents that are missing.
24 MR. WOTORSON: Your Honor, let me address that. Let
25 me also try to address that. My client had previously

1 represented to me that a -- I'm sorry. Can everyone hear me?
2 THE COURT: Did you hear, Ms. Joseph?
3 MR. WOTORSON: My client had previously represented
4 to me that there are also in the file that she originally
5 obtained from the EEOC were investigative notes and scratch
6 from investigators and those were missing when she got the
7 file from the Borrelli firm. I disagree with the Court as to
8 the admissibility. Those documents by themselves do not come
9 in but if there is a document purporting to summarize an
10 interview, purporting to summarize what someone said those
11 documents can be used for impeachment purposes. If a person
12 says I don't recall saying that or I did or I did not say that
13 then those responses may be admissible but those were -- at
14 least two of the items that my client had represented to me
15 that she had picked up from the EEOC that absolutely were not
16 present when she got the digital and electronic file from her
17 former attorneys.
18 And, Your Honor, if I could just -- that I think
19 also serves as a second area of inquiry that we raise in our
20 letter, both of our letters as to whether or not the EEOC also
21 has any other documents left that might be on servers, that
22 might still be on some hard drive or something like that and
23 it's sort of hard to imagine that some of that interoffice
24 memoranda and some of that scratch might not be com -- may not
25 be committed to servers or may have been scanned or anything.

1 But those -- that item, that area of documents certainly were
2 missing from the file that she got from the Borrelli firm.
3 MR. BORRELLI: Your Honor, if I may. This is
4 Michael Borrelli.
5 THE COURT: Okay. Go ahead. Mr. Borrelli, go ahead.
6 MR. BORRELLI: Your Honor?
7 MS. JOSEPH: Go ahead, Mike.
8 THE CLERK: We can hear you. We can hear you. The
9 Court is having a short conference. Just wait a second.
10 THE COURT: I'm sorry. One moment.
11 THE CLERK: Mr. Borrelli, just a second, please.
12 THE COURT: We just want to make sure everybody can
13 hear. They can hear him from that phone and I can hear from
14 this phone.
15 THE CLERK: Please continue, sir.
16 THE COURT: Go ahead, Mr. Borrelli.
17 MR. BORRELLI: Okay. It's clear to me that there's a
18 major disconnect. Section -- the EEOC compliance manual
19 Section 83 requires that the file be sanitized before its
20 release to anybody. Part of that sanitizing requires the
21 removal of intake notes, memos, other documents analyzing the
22 merits of the charges, the investigator's reports, memos or
23 other notes, memos or items prepared by the EEOC that would
24 reveal strategy, recommendations, impressions or deliberative
25 processes related to any aspect of case handling.

1 So I find it amazing that those documents somehow
2 found their way into Ms. Corrado's file because they simply
3 weren't there.
4 MR. WOTORSON: Your Honor --
5 MR. BORRELLI: What we received from EEOC was
6 produced to Ms. Corrado.
7 MS. JOSEPH: And, Your Honor --
8 MR. WOTORSON: Your Honor, may I --
9 THE COURT: Wait, wait. Ms. Joseph is going to speak
10 next.
11 MS. JOSEPH: I wanted to add that when Ms. Corrado
12 dropped the file off to our office she sat there in our
13 office, went through it and was somewhat unimpressed with the
14 EEOC file and its contents in light of the length of the
15 investigation. So to the extent that she's now asserting that
16 there were these memorandums and notes, that was actually one
17 of the things she commented on was missing from the file.
18 MR. WOTORSON: Your Honor, may I address this? As
19 an attorney who has been admitted to practice for 19 years and
20 I've been doing EEOC type work at least for 15 years, quite
21 the contrary. It is not uncommon that you can send a FOIA
22 request and it is not uncommon to get scratch notes, such
23 investigative files that we're talking about regardless of
24 whether or not there may be an internal policy that may or may
25 not be very recent saying that type of stuff should not be

1 turned over.
2 I also would request --
3 THE COURT: Excuse me, excuse me. Just forgive me
4 for interrupting but there's an issue of -- the issue is
5 really what was in the files. Whether or not there are other
6 documents that the EEOC may have is a separate issue and I
7 realize now that perhaps I was premature in telling you to
8 delay in conducting discovery on the EEOC. Needless to say as
9 you know when you conduct discovery on a governmental agency
10 you're subject to the Toohey regulations. So it's a little
11 more difficult but the issue with respect to Borrelli is
12 whether or not there were any documents that were not
13 produced.
14 MR. WOTORSON: Judge, that's what I've been
15 addressing. We've already said --
16 THE COURT: No, no, no. You said from your
17 experience. I have to say --
18 MR. WOTORSON: Judge, please don't do that. Your
19 Honor has a tendency of cutting it off and it's not going to
20 happen in this case. No, no, Judge.
21 THE COURT: Mr. Wotorson --
22 MR. WOTORSON: What I said to Your Honor --
23 THE COURT: I am the judge and you will listen to me.
24 MR. WOTORSON: I understand that, Judge. I
25 understand that, Judge, but we're going to try to get some

1 justice in this case.
2 THE COURT: I am going to stop you right now.
3 MR. WOTORSON: Judge --
4 THE COURT: You have been one of the most
5 disrespectful attorneys I ever had to deal with and I always
6 give you a chance to speak but you're going to hear me out
7 right now. The issue is, and I want focus on this --
8 MR. WOTORSON: We agree but -- we agree with that.
9 THE COURT: You just interrupted me. It is reflexive
10 on your part never to let anyone finish a sentence. So just
11 chill. Sit.
12 MR. WOTORSON: Chill?
13 THE COURT: Sit there.
14 MR. WOTORSON: Judge --
15 THE COURT: I will give you --
16 MR. WOTORSON: Judge, I've been sitting. Judge, it's
17 not --
18 THE COURT: You have interrupted me every time. I
19 will give you a chance to speak and I'll tell you when you can
20 speak but you are not going to interrupt me right now.
21 I want to make clear that you can conduct whatever
22 discovery you want of the EEOC but it will be difficult. What
23 you have said has -- is based on your experience. It doesn't
24 mean those documents --
25 MR. WOTORSON: Judge, that's not what I said.

1 THE COURT: You just interrupted.
2 MR. WOTORSON: That's not what I said.
3 THE COURT: No, no, no. Based on your experience you
4 have gotten notes and other scratch from EEOC files. You did
5 not see the EEOC file that was produced in this case.
6 MR. WOTORSON: Judge, I specifically told the Court
7 what my client said she found.
8 THE COURT: You just interrupted me. You just
9 interrupted me, Mr. Wotorson.
10 MR. WOTORSON: Yes, I did because your predicate is
11 wrong, Judge. I did not say that.
12 THE COURT: I would appreciate if you don't interrupt
13 me so we can finish this discussion and then you can say that
14 again but restrain yourself so that we can finish this
15 conference sooner rather than later.
16 The issue is what was in Ms. Corrado's file, not
17 what was in any other file, and I can speak as to my
18 experience in looking at EEOC files in the past. So certainly
19 I apologize for telling you to wait in conducting discovery
20 against the EEOC but it's not easy. I do think that everybody
21 is premature in pointing fingers and calling for a criminal
22 investigation. If there's anything that we know -- I know
23 from my experience is that EEOC investigations take a long
24 time in part because cases that are open have to wait in line
25 for all the cases ahead. So the length of the pendency of

1 this case from this Court's perspective is unfortunate but it
2 doesn't mean that we have little investigators running all
3 over town for two and a half years trying to ferret out every
4 fact relating to the claims asserted, period.
5 So what I'd like to do is -- I think it's really --
6 this is a side issue and --
7 MS. JOSEPH: Your Honor, may we --
8 THE COURT: You're doing the same thing. Wait, wait.
9 I'll give you a chance to speak.
10 This is a side issue. Let's just get onto
11 discovery. I'm going to require Borrelli to continue
12 participating insofar as we're talking about documents that
13 may be in their file but I'll allow -- hear from you in
14 response to my proposal that we just move on with discovery
15 and if you want to file your separate complaint file your
16 separate complaint. It's not so clear to me based on Ms.
17 Corrado's statements as to the size of the files that there
18 might have been documents that were not reproduced in the
19 electronic file.
20 I already expressed my -- I think my view about
21 appropriateness of Borrelli's practices and certainly I hope
22 Borrelli does change because you can't put in your retainer
23 agreement one thing and not follow through but in any case you
24 shouldn't be destroying documents without first notifying the
25 client. I'm glad you're proud of the fact that you have

1 electronic records but that is a separate matter from
2 maintaining the integrity of the actual documents because
3 sometimes having the originals are important. I mean having
4 original documents is important in a litigation, period.
5 MS. JOSEPH: Your Honor, just for clarification.
6 There were no original documents. These were just copies and
7 plaintiff conceded that this was a certified copy that she
8 gave us. We were never in possession of original documents
9 from the EEOC.
10 THE COURT: Now I'll hear from the plaintiff.
11 MR. WOTORSON: Your Honor, I'll try again. What I
12 said was that my client had represented to me that she also
13 had in the file that she obtained were investigative notes and
14 scratch. In response to one of the attorneys from the
15 Borrelli firm suggesting that this was new or false or not
16 true, that's when I said in response, Judge, in my 15 years at
17 least of doing EEOC type stuff it is not uncommon for that to
18 be in the file. The bottom line is she said that there were
19 scratch and investigative notes in the file, and I think the
20 Court misunderstood me to simply say in my experience and in
21 fact I started off by saying what the plaintiff said she
22 actually had. That's all.
23 THE COURT: There were some notes of interviews in
24 the EEOC records that were produced.
25 MR. WOTORSON: In that case, Your Honor, it may be

1 helpful, and I'm not suggesting that this is going to end the
2 issue and I realize the Court wants to get onto the discovery
3 but it may be helpful at some point to make a comparison
4 between what Your Honor received because I haven't seen what
5 Your Honor received versus what we do have on a disk.
6 In addition, I don't --
7 THE COURT: I have a disk.
8 MR. WOTORSON: Sure, Judge.
9 THE COURT: We'll make a copy or -- I'm not in the
10 business of comparing disks. We will make a copy.
11 MR. WOTORSON: We can do it, Judge.
12 THE COURT: I will go through and take this home or
13 send it down to systems and make a copy and we'll send you
14 what we have. That's it. We'll move on.
15 MR. WOTORSON: Understood.
16 THE COURT: But -- I'll hear from Ms. Corrado.
17 MS. CORRADO: Thank you, Your Honor. Your Honor --
18 THE CLERK: You have to use the microphone.
19 MS. JOSEPH: Your Honor, we can't hear her.
20 THE COURT: She hasn't spoken.
21 MS. CORRADO: Your Honor, the EEOC file is absolutely
22 the backbone of this case. Everything that the EEOC conducted
23 in terms of its investigation with regard to the various
24 parties interviewed, contacted, whatever information was
25 obtained is extremely relevant in this case. The fact that

1 the Borrelli law firm not only violated the terms of the
2 retainer agreement but violated some serious procedural and
3 substantive law both at the federal and the state level. I
4 think this is a very serious issue. It is not something that
5 can simply be said well, Mr. Borrelli, don't do this again and
6 we appreciate the fact that you operate a paperless office but
7 don't do this again. This is an extreme ordinary circumstance
8 and the fact is without an actual document anywhere to compare
9 it to at this point it's impossible to know specifically what
10 items were produced by the EEOC, what items are currently in
11 existence within the file that was produced by Mr. Borrelli's
12 firm.
13 Mr. Borrelli and Ms. Joseph know better than to
14 destroy evidence. Ms. Joseph was a former Assistant District
15 Attorney. One of the basic principles that they teach you as
16 a practitioner in the District Attorney's Office is that you
17 do not destroy evidence. Whether it's paper evidence,
18 physical, whatever type of evidence it is you do not destroy
19 it under any circumstances.
20 The fact is that Ms. Joseph continually says this
21 was not an original file. Again, our position is in fact the
22 document that I picked up from the EEOC as provided to me was
23 in fact an original for us to utilize during the course of
24 this litigation. Whatever original file in possession of the
25 EEOC office, that is completely irrelevant. The fact is our

1 file was the one that was provided as evidence given by the
2 EEOC as a result of their investigation.
3 Your Honor, the spoilation of evidence is an act
4 that is prohibited by the American Bar Association Model Rules
5 of Professional Conduct as well as the State Rules of
6 Professional Conduct, Rule 37 of Federal Rules of Civil
7 Procedure and Title 18 of the United States Code. Tampering
8 with evidence, destruction of evidence, altering of any type
9 of evidence is something that is not lightly to be taken and
10 that is what we're trying to impress upon the Court because I
11 think not only does it violate all of these rules but the
12 Court's order of discovery specifically instructed all of the
13 parties to preserve all evidence in relation to this case, all
14 evidence including paper documents which no longer exist.
15 THE COURT: Ms. Corrado --
16 MS. CORRADO: Yes, Your Honor.
17 THE COURT: -- I'm not impressed. We will proceed in
18 this case. I'm not here to conduct an ethical investigation
19 of Borrelli. I've expressed my view of their practices. I am
20 not going to conduct a disciplinary hearing in this case. I
21 think what is fortunate is irrespective of what may have been
22 in the EEOC file you are not precluded under our civil
23 discovery rules to conduct the same investigation and I have
24 no doubt that Mr. Wotorson will probably do a far better job
25 than any EEOC investigator. Those EEOC notes could be helpful

1 but they're a) they're not necessarily admissible and are most
2 likely not to be admissible. They can only assist you in your
3 investigation.
4 It is time to get to the work of conducting
5 discovery in this case and obtaining admissible evidence. So
6 I've seen your letters to the U.S. Attorney's Office. I'd be
7 very surprised if there will be a response but whatever it is
8 will be. My job is to make sure that you have a full
9 opportunity for discovery. The rules you cite in fact I've
10 read. I am positive I've read far more cases regarding
11 spoilation. I've read Rule 37 far more times. I've read the
12 rules, the various codes of professional responsibility
13 applicable here far more times than most people in this room.
14 Anyway, we will talk about discovery. I think in
15 the first instance -- I will leave open ended the question of
16 discovery against the EEOC because it's going to take a long
17 time. Whatever the EEOC might have done doesn't mean that you
18 can't recover -- you can't retrace the same steps. They
19 interviewed a G. Sevish. I would hope if you think that G.
20 Sevish in the notes of interview that were produced provides
21 important information you will take appropriate action to
22 depose G. Sevish or whoever else is mentioned in what was
23 produced and that -- that's my view.
24 Life would have been much easier for Mr. Wotorson if
25 he had -- he does have the file. If he could feel confident

1 that the file was complete. There are notes of interviews as
2 I said. I don't know what's missing and if we had the paper
3 file, the original, we don't know whether or not the EEOC had
4 other documents but you have my blessing. Go try to get those
5 documents from the EEOC.
6 Now, let's go try to conduct some discovery. If
7 need be I will personally take this home and make a copy of
8 this disk but before -- and we'll get it to you as quickly as
9 possible. So let's now move ahead with discovery. I have set
10 a schedule that obviously is not going to work here. So let's
11 go forward.
12 MR. WOTORSON: Well, Your Honor, if we're going
13 forward I guess the Borrelli firm can be released and they
14 don't to have to stay on the phone any further.
15 THE COURT: Yes, but I am not -- I'm reserving
16 judgment on whether or not they need to appear in the future.
17 All right, Ms. Joseph?
18 MS. JOSEPH: Yes, Your Honor.
19 THE COURT: You've never, ever acknowledged my
20 comments about your practices. Have you in fact reconsidered
21 your practices?
22 MS. JOSEPH: I will --
23 MR. BORRELLI: Your Honor, I can speak to that. This
24 is Michael Borrelli. With respect to putting language in the
25 retainer that we maintain the file electronically we certainly

1 [inaudible] that.
2 THE COURT: Well, it's something as simple as calling
3 the client and telling them you've scanned it and we're
4 returning the documents.
5 MR. BORRELLI: I agree. That would definitely help
6 prevent any -- this is the first time we've ever had this
7 situation with respect to our obtaining of the documents. We
8 always [inaudible] maybe keeping the client a little bit
9 better informed starting with the retainer and moving forward
10 [inaudible] situation again.
11 THE COURT: In any event, you're not saving paper by
12 destroying paper. So we'll -- I hope this discussion never
13 arises in another case I have with your firm. So I'm going to
14 disconnect.
15 MS. JOSEPH: Thank you, Your Honor.
16 MR. BORRELLI: Thank you.
17 MR. WOTORSON: Your Honor, moving on to discovery I
18 realize the Court is eager to get onto discovery as are --
19 THE CLERK: Please speak into the microphone.
20 MR. WOTORSON: As are we. Unfortunately or
21 fortunately late last night I completed what I think are the
22 finishing touches on a premotion letter for disqualification.
23 That premotion letter is probably going to be ECF'd sometime
24 tonight if not tomorrow but sometime within the next 24 hours.
25 We're just putting the finishing touches on it.

1 THE COURT: I don't think -- excuse me for
2 interrupting.
3 MR. WOTORSON: I checked the rules, Judge.
4 THE COURT: Wait.
5 MR. WOTORSON: I actually had checked the rules. We
6 were going to just file the motion and Judge Irizarry's rules
7 apparently do require a premotion letter.
8 THE COURT: For disqualification?
9 MR. WOTORSON: Yes, she actually lists a bunch of
10 things that --
11 THE COURT: All right. I apologize.
12 MR. WOTORSON: As a matter of fact I was actually in
13 the process of finishing the motion and in -- because I've
14 been buried before I checked the rules and she has a list of
15 things that you can just file a motion on without contacting
16 the Court and it seems that a motion for disqualification
17 isn't your typical discovery issue and so we expect to file
18 that either tonight or certainly sometime within the next 24
19 hours.
20 Unfortunately the letter also does request a stay of
21 discovery pending a decision on the disqualification issue.
22 THE COURT: Can I make a suggestion?
23 MR. WOTORSON: Sure, Judge. Absolutely.
24 THE COURT: Whatever discovery you want to conduct
25 against the EEOC you -- isn't affected by this. It doesn't

1 hurt to propound the discovery requests. It would have been I
2 think helpful for you to have discussed the motion with
3 defense counsel.
4 MR. WOTORSON: I did.
5 THE COURT: Okay.
6 MR. WOTORSON: We did.
7 THE COURT: All right.
8 MR. WOTORSON: If Your Honor recalls, Your Honor was
9 pressing enough to actually say to us that it might be wise to
10 raise it with counsel, maybe this could be resolved, and maybe
11 about a week or two weeks after we had the last conference I
12 had a pretty fruitful conversation with counsel and counsel
13 conceded quite a lot but counsel disagreed that a motion to
14 disqualify was warranted at this juncture and obviously we
15 disagree with that.
16 MS. EVANS: Your Honor, may I be heard?
17 THE COURT: Very briefly because we're not --
18 MS. EVANS: I did have a conversation with Mr.
19 Wotorson but I don't recall conceding on anything other than
20 he asked me about John McConnell, my boss, and I answered the
21 question about that and I asked for a concession. I'm not
22 quite -- it's not quite clear to me what he's referring to
23 because that was about the extent of our conversation on
24 whether or not what role -- whether or not Mr. McConnell will
25 be a witness or not, a fact witness, and that his -- and my

1 statement that he has no involvement in this litigation. So
2 I'm not quite sure and I'm not going -- I'm not here to
3 dispute this but I am letting you know for the record I have
4 conceded nothing other than John McConnell is counsel and John
5 McConnell may very well be a fact witness in this matter and
6 John McConnell has -- is not involved in this litigation at
7 all.
8 MR. WOTORSON: Well, Your Honor, I respect counsel
9 very highly and like I said we had a very fruitful discussion
10 and I need not get into an argument here with counsel but we
11 are in agreement that where there was a concession counsel did
12 say that Mr. McConnell who is her boss may well be a witness
13 and based on some of the documents I reviewed Mr. McConnell is
14 a material and key witness but we need not have that argument
15 now. The premotion letter is going to be filed.
16 THE COURT: Can I make a suggestion?
17 MR. WOTORSON: Sure, Judge.
18 THE COURT: Just wait till Monday. We will contact
19 Judge Irizarry's chambers to make sure she wants to follow the
20 premotion letter route because it adds another layer of time
21 and sometimes the reason judges, district judges have a
22 premotion conference is to try to check people out --
23 MR. WOTORSON: Judge --
24 THE COURT: Wait, wait. Mr. Wotorson --
25 MR. WOTORSON: I worked so hard on that letter.

1 THE COURT: No, no. It's going to be -- that work
2 will not be for naught. It will -- you can present the very
3 same arguments in the actual motion and not have to have a
4 premotion conference. So we will let you know. We'll confer
5 with Judge Irizarry and then we'll file an order, a scheduling
6 order as to what you need to do an we'll talk about the
7 alternatives now.
8 I have to say, and perhaps you can take this back to
9 your office, Ms. Evans. I was surprised that you came from
10 the Office of Court Administration and not from some other
11 state att -- attorney's office but that's the only comment I
12 have. I'm not deciding the motion at this juncture and
13 certainly there are facts that may warrant further
14 consideration. You don't need to respond but --
15 MS. EVANS: No, Your Honor, I'd like to respond
16 because the implications of that concerns me. We have an --
17 we have an arrangement with the New York State Attorney
18 General's Office on matters that we will handle versus matters
19 that they will handle and at what juncture. So it has nothing
20 to do with the fact that John McConnell is my boss or may or
21 may not be a witness in this matter. So I want to be clear on
22 that. I have not appeared before you in a Title VII matter
23 but I assure you that if I appear before you in a Title VII
24 matter and if there's a defendant, the New York State Unified
25 Court System is a defendant in a Title VII matter in the

1 future it will be either me or someone else from my office
2 because that is a part of the arrangement that we had with the
3 Attorney General's Office.
4 THE COURT: All right. Well, anyway, I'm going to
5 ask Mr. Wotorson to just wait until Monday -- maybe Tuesday
6 but we will file a scheduling order as soon as we talk to
7 Judge Irizarry.
8 Assuming no premotion conference is necessary, how
9 much time would you need to file a formal motion?
10 MR. WOTORSON: Well, if there's no pre -- if there's
11 no letter necessary I think -- I shouldn't admit this. It
12 will probably be a cut and paste job. I would say two or
13 three days, Judge, because it's already done.
14 THE COURT: That's how I feel about most motion
15 papers I see. Anyway, okay. So the 21st? That's a Friday.
16 MR. WOTORSON: Yes, Judge. I would say we require
17 three days just to change the format around to a full motion.
18 THE COURT: Actually -- I understand we bump into the
19 holiday Christmas, New Year week. So I'll schedule it
20 accordingly. If we're later than Monday or Tuesday, how much
21 time would you then need? Would you be around working --
22 MR. WOTORSON: Judge, honestly I don't know because
23 right now I'm down to just me and I'm in the process of trying
24 to get a new office manager. So it's been tough. But to the
25 extent that the work has already been done I just -- I hope

1 there's not some emergency between now and the 21st but if we
2 start getting like a day close to Christmas then it's going to
3 have to be next year unfortunately because I had planned to
4 spend some time with my family.
5 THE COURT: Well, that was my question. If we can't
6 get out a scheduling order on Monday or Tuesday and it's later
7 I wanted to know how much time you needed.
8 MR. WOTORSON: I would say sometime early next year,
9 early in 2013.
10 THE COURT: Okay. So now we'll deal with the first
11 schedule. We'll have two schedules that we've discussed
12 depending --
13 MS. EVANS: Well, Your Honor, may I be heard?
14 THE COURT: Wait. Just wait a second. If Mr.
15 Wotorson files his motion on the 21st of December, when would
16 you like to respond?
17 MS. EVANS: Your Honor, I will be out of the office
18 between Christmas. I will not return until the new year. The
19 court, the state courts are closed for the most part. So
20 we're in sort of in recess. So I will not be back until
21 January.
22 THE COURT: No, I recognize that. The difficulty of
23 that week. It's my favorite week for coming into work as a
24 matter of fact but that's me. So I'm asking for a date for a
25 response and I think Mr. Wotorson understands that you may

1 very well be unavailable after the motion is filed.
2 MS. EVANS: January 8th.
3 THE COURT: And a reply a week later?
4 MR. WOTORSON: Yes, Judge.
5 THE COURT: Now, if we don't get out an order until
6 later next week when will you file your motion?
7 MR. WOTORSON: I would say the first, the end of the
8 first week in January.
9 THE COURT: Is that the 4th or the 11th? They're both
10 Fridays.
11 MR. WOTORSON: I would go for the 11th. Let me just
12 check the calendar.
13 THE COURT: Why don't we move it to the 9th? I'll
14 give -- how's that? That's a Wednesday.
15 MR. WOTORSON: That's good, Judge.
16 THE COURT: If it's the 9th --
17 MR. WOTORSON: Again, the 4th is definitely not -- the
18 9th would be much better.
19 THE COURT: If it's the 9th, Ms. Evans, when can you
20 respond?
21 MS. EVANS: Two weeks, Judge.
22 THE COURT: Okay. So that's the 23rd, and the 30th for
23 a reply. So you will get one of these two schedules. If not
24 Mr. Wotorson will file a premotion letter. In fact, why don't
25 I just state if you have to go through a premotion conference

1 I'll give you until the 21st for a premotion letter because
2 it's just not -- it doesn't make any difference since Ms.
3 Evans isn't going to be around to respond. Then I'll give you
4 until the 4th to reply. It's just a premotion letter rather
5 than the motion.
6 MS. EVANS: Judge, could I have until the 7th? I'll
7 be back in the office on the 2nd. That doesn't give me very
8 much time to do my research.
9 THE COURT: Okay.
10 [Pause in proceedings.]
11 THE COURT: What I would request is that you defer
12 making a motion to stay discovery because it depends on what
13 discovery is being sought. I would think the paper discovery
14 is fairly straightforward and it would be in everybody's
15 interest to get the written discovery done sooner rather than
16 later.
17 MS. EVANS: Your Honor, I've already done my initial
18 disclosure. I have not received anything from plaintiff which
19 includes documents.
20 THE COURT: Well, you should definitely finish your
21 initial disclosures. I set October 25th as the deadline. So
22 when are you going to finish? Next time -- there's a reason
23 for the deadlines and we shouldn't have to waste time talking
24 about extensions.
25 MR. WOTORSON: I agree.

1 THE COURT: And we shouldn't have to talk about
2 making a late request for an extension but that being said
3 we'll just set a new date and you'll finish. So when are you
4 going to provide your initial disclosures?
5 MR. WOTORSON: Your Honor, the initial disclosure
6 will comprise what we have on the disk and maybe some other
7 documents. We won't have much as part of the automatic
8 disclosures. That's about it.
9 THE COURT: You know what it requires. So how about
10 the end of the week of the 21st?
11 MR. WOTORSON: Apparently my client does have some
12 additional documents in her possession.
13 THE COURT: It's all right. Just identify them and
14 you'll produce them later. List your witnesses, damages. If
15 you're already relying on the documents in the record that's
16 fine but get the written, the new written disclosures done.
17 The whole point is so that everybody knows what the scope of
18 discovery should be.
19 MR. WOTORSON: Your Honor, I don't disagree but I
20 will tell the Court honestly that is going to be something of
21 a hardship because there apparently is a universe of documents
22 that I don't have in my possession. So it --
23 THE COURT: I'm not requiring --
24 MR. WOTORSON: You want me to at least identify the
25 documents. I'm saying I don't think I'm even able to identify

1 the documents because -- unless I have them and it's just
2 tough for Ms. Corrado to say here are the documents I have in
3 order to properly identify them. I don't think I'll be able
4 to do that until sometime the first -- the second week in
5 January to be perfectly candid with the Court.
6 THE COURT: I'll let you supplement. Let's get the
7 witnesses, the explanation of the damages. That's all
8 necessary to get discovery rolling. You don't have to
9 describe every document or produce every document. Just
10 basically describe the categories of documents. For instance,
11 personal records in so and so's file.
12 MR. WOTORSON: You want us to complete basically the
13 Rule 26 format as part of the initial disclosure format?
14 THE COURT: The rule speaks for itself just so
15 respond.
16 MR. WOTORSON: All right, Judge.
17 THE COURT: I'll give you until the 4th. How's that?
18 MR. WOTORSON: That's fair.
19 THE COURT: No extensions. This is a gift. You
20 completely ignored the October 25th deadline and that was even
21 before the hurricane or storm more accurately.
22 MS. CORRADO: We filed a central part of the
23 discovery, Your Honor --
24 THE CLERK: We can't hear anything you're saying
25 unless you --

1 MS. CORRADO: Your Honor, what I --
2 THE CLERK: You have to speak up.
3 MS. CORRADO: What am I saying to the Court, Your
4 Honor, is that the EEOC file is a central part of the
5 discovery because within it it contains letters, various
6 interviews, correspondence with regard to the different
7 witnesses that will likely be a part of this litigation.
8 Without -- that's why that EEOC file is so important.
9 THE COURT: Ms. Corrado, you don't quite understand
10 the initial disclosure required under Rule 26. So you will be
11 entitled to all the discovery that the federal rules provide
12 and the initial disclosures are intended to jump start
13 discovery. You have a duty to supplement seasonably, i.e.
14 promptly after you discover the information and in this case
15 it appears that you're going to have to go out and get the
16 information from the -- hopefully you'll be able to get some
17 more information from the EEOC but --
18 MS. EVANS: Your Honor, I'm not quite -- I
19 understand obviously the initial disclosure requirements but
20 Mr. Wotorson represented that he -- there's a universe of
21 documents that he hasn't seen that Ms. Corrado is not -- you
22 can correct me, is not giving over to him. I'm not quite sure
23 how we move this along if we're doing sort of piecemeal -- if
24 there are documents that are out there clearly we are entitled
25 to know --

1 THE COURT: Let me -- excuse me for interrupting. I
2 will read for Ms. Corrado's benefit -- I'm sure Mr. Wotorson
3 and you, Ms. Evans, don't need it. Rule 26(a)(1)(a), initial
4 disclosures. You have to provide to the other party's name
5 and if known the address and telephone number of each
6 individual likely to have discoverable information that the
7 disclosing party may use to support its claims or defenses
8 unless the use is solely for impeachment. 2) A copy or a
9 description by category and location of all documents,
10 electronically stored information and tangible things that the
11 disclosing party has in its possession, custody or control and
12 are used to support the claims. So you can discuss it by
13 categories and location. A computation of each category of
14 damages, et cetera, and for inspection and copying insurance
15 under Rule 34.
16 So, anyway, I appreciate your interest in this case
17 but you have to just trust that federal rules are different
18 from state court rules. You have an attorney and you have to
19 let Mr. Wotorson handle -- have the primary responsibility for
20 handling this litigation, Ms. Corrado. So you'll get all the
21 discovery you're entitled to under the federal rules.
22 MS. CORRADO: I appreciate that, Your Honor. Thank
23 you very much.
24 THE COURT: Okay. That's enough.
25 MS. CORRADO: But I do have the Court's written order

1 with respect to discovery and I'd like the Court to understand
2 I've read it several times and that is my position with regard
3 to the importance of the EEOC file. But we have every
4 interest in complying with every order that the Court issues.
5 THE COURT: I don't want to hear about that again.
6 You are revisiting the first issue we discussed today and
7 we're going to move ahead. I'm actually as hard as it is to
8 believe because I think I've put up with a lot so far today
9 very patient. I'm going to ask unless it's absolutely
10 necessary in the future to have Mr. Wotorson speak. Generally
11 when I have two attorneys appearing on a case I hear from only
12 one. In the future.
13 So after initial disclosures discovery will proceed.
14 I will admittedly set an arbitrary deadline for both discovery
15 but what's not going to be so arbitrary is amendment.
16 Obviously if there's disqualification or if there's a delay in
17 the determination of the disqualification motion there may
18 have to be an expansion of the discovery schedule. We'll see
19 where we go there on that.
20 So assuming discovery proceeds I would think in
21 light of the circumstances in this case that after written
22 discovery the parties should have available all the
23 information they need to determine whether or not there's a
24 need to amend the complaint or join new parties. Right? So
25 let's set a new deadline for that. Maybe the end of February.

1 MR. WOTORSON: Yes, Judge. That's fine.
2 THE COURT: The 28th. As I've said, we'll just set an
3 arbitrary cutoff. It's not so arbitrary. Let's hope that we
4 can complete discovery. We had actually set a deadline of
5 April. So let me extend it by two and a half months
6 approximately.
7 MR. WOTORSON: I think we're going to need a little
8 bit more time. I just want to make sure. Is the Court saying
9 that we can amend the complaint as of right by February? Do
10 we still have to do it by motion or are you --
11 THE COURT: Yes, but as I discussed you can confer
12 with the defendants on that. As you know, I'm a firm believer
13 in both notice, pleading and in the mandate -- they call it a
14 mandate in Rule 15 that amendments should be liberally
15 granted. So do you have any sense of what new claims you're
16 going to bring?
17 MS. CORRADO: No. Don't say anything right now,
18 please.
19 MR. WOTORSON: Yes.
20 MS. CORRADO: We haven't done discovery.
21 MR. WOTORSON: I don't know yet but as I actually did
22 say to the Court previously that I don't know whether or not
23 there will be a Section 1983 component and even then if we did
24 it would only be against individuals because I'm not so sure
25 we can bring a Section 1983 case against the state. I'm not

1 terribly interested in Court of Claims but we're looking at
2 it, Judge. I think I've raised this with Your Honor before.
3 So I'm not sure at this juncture.
4 THE COURT: Okay. Well, it just depends. Certainly
5 there is value in when you confer with defense counsel before
6 seeking leave to amend and join new parties to have a draft
7 proposed amended complaint or at least the new claims that
8 you're asserting so that everybody has a better idea of
9 exactly what you're asserting.
10 So a fact discovery deadline of July 19th. I'll set
11 a conference for the close of fact discovery and if we do have
12 any motions if I feel it's necessary then I'll schedule an
13 earlier hearing.
14 How about our next conference will be July 23rd at
15 10:00?
16 MS. EVANS: Judge, I will be on vacation that week.
17 THE COURT: How about the 19th at ten?
18 MS. EVANS: That's fine.
19 THE COURT: I had what I called expert notice. So
20 we'll change the expert notice deadline to a month before the
21 close of fact discovery. That will be June 19th.
22 As you may recall from my scheduling order if expert
23 notice is given of an expert other than a rebuttal you will
24 confer with the other side and file a proposed schedule with
25 the Court within two weeks after the notice. You don't have

1 to file the expert notice with the Court. Just exchange it
2 with each other but you need to then take the affirmative step
3 of conferring and proposing a schedule with the Court.
4 So we will -- the next to act if given the lateness
5 of today's timing I might even be able to just put a schedule
6 for either the motion for disqualification or premotion letter
7 schedule in the minute entry but -- just to save paper but if
8 you'd prefer it in a separate notice that's fine too. We'll
9 try to get the minute entry done as quickly as possible and it
10 will just all depend on when we hear from Judge Irizarry's
11 chambers.
12 Anything else?
13 MS. EVANS: Thank you.
14 * * * * *
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1 I certify that the foregoing is a court transcript from
2 an electronic sound recording of the proceedings in the above-
3 entitled matter.

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6 Shari Riemer
7 Dated: December 27, 2012
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LAW OFFICES OF
AMBROSE WOTORSON
A PROFESSIONAL CORPORATION
SUITE 1811
26 COURT STREET
BROOKLYN, N.Y. 11242-1118
TELEPHONE: 718-797-4861
FACSIMILE: 718-797-4863

December 20, 2012

By Hand
Honorable Judge Dora Irizarry, U.S.D.J.
United States District Court
Eastern District of New York
225 Cadman Plaza
Brooklyn, New York 10007

Re: *Nicole Corrado v. New York State Unified Court System.*
12-CV-1748 (DLI) (MDG)

Dear Honorable Judge Irizarry:

I represent the plaintiff in the above-styled matter.

I am herewith submitting an affidavit requesting that I be relieved as Counsel in this case, as Ms. Corrado terminated my services as of last night.

I have submitted a copy of my affidavit upon Ms. Corrado and upon defendant's attorney, Lisa Evans, Esq., via email (PDF). I *have not* disclosed Ms. Corrado's letter to me terminating my services, nor have I have ecf'd my affidavit requesting that I be relieved.

I am requesting, consistent with Ms. Corrado's wishes, that I be relieved immediately.

Respectfully Submitted,

Ambrose W. Wotorson (AWW-2412)

cc: Magistrate Judge Go, USMJ
Nicole Corrado, Esq.
Lisa Evans, Esq.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
---X
NICOLE CORRADO

Plaintiff

12-CIV-1748 (DLI)(MDG)
Affidavit of Ambrose Wotorson
Pursuant to Local Rule 1.4

-- against --

NEW YORK STATE UNIFIED
COURT SYSTEM,

Defendant
---X

Ambrose Wotorson, an attorney duly admitted to practice law in the state of New York, and in this Court, states under penalty of perjury, as follows:

1. Pursuant to Local Rule 1.4., I submit the instant affidavit in support of an application to withdraw as plaintiff's counsel.

2. The instant affidavit has been served upon opposing counsel, and upon Ms. Corrado, via e-mail (PDF).

3. The instant affidavit *has not* been ecf'd, and will only be done upon order of this Court.

4. Last night at 10:36 p.m., I received an e-mail from Ms. Corrado relieving me of my services.

5. I have attached the email for this Court's review, but I *have not* submitted a copy of that letter to opposing counsel. (Exhibit "A").

6. Ms. Corrado also requested that all of the materials in her case be returned to her by today, December 20, 2012.

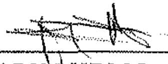
7. I believe that Ms. Corrado's wishes should be honored promptly. I therefore respectfully request that I be relieved immediately.

8. I am not imposing any lien of any kind.

9. I am available for a conference or *in camera* proceedings upon the Court's notice, although I do not think one is necessary given that Ms. Corrado has terminated my services., and I have submitted her letter to me explaining her dissatisfaction with my advocacy.

______________________________x

Ambrose Wotorson (AWW-2412)
Law Offices of Ambrose Wotorson
26 Court Street, Suite 1811
Brooklyn, NY 11242
718-797-4861
718-797-4863



______________________________x

NOTARY PUBLIC

KAMAL P. SONI
Notary Public, State of New York
No. 01SO6089949
Qualified in Kings County
Commission Expires March 31, 2015

Signed before me
this 20th day of
December 2012

1 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
2
3 ------------------------------------X
:
4 NICOLE CORRADO, :
: 12-CV-1748 (DLI)
5 Plaintiff, :
:
6 v. : 225 Cadman Plaza East
: Brooklyn, New York
7 NEW YORK STATE UNIFIED COURT SYSTEM,:
et al., :
8 : February 8, 2013
Defendants. :
9 ------------------------------------X

10 TRANSCRIPT OF CIVIL CAUSE FOR STATUS CONFERENCE
BEFORE THE HONORABLE MARILYN D. GO
11 UNITED STATES MAGISTRATE JUDGE

12
APPEARANCES:
13
For the Plaintiff: NICOLE CORRADO, Pro Se
14 242-18 Van Zandt Avenue
Douglaston, New York 11362
15

16
For the Defendants: LISA M. EVANS, ESQ.
17 NYS Office of Court Administration
25 Beaver Street
18 New York, New York 10004

19

20

21

22 Court Transcriber: SHARI RIEMER
TypeWrite Word Processing Service
23 211 N. Milton Road
Saratoga Springs, New York 12866
24

25

Proceedings recorded by electronic sound recording, transcript
produced by transcription service

1 (Proceedings began at 10:09 a.m.)
2 THE CLERK: Civil Cause for Status Conference,
3 Corrado v. New York State Unified Court System, Docket Number
4 12-1748.
5 Will the parties please state their appearances for
6 the record starting with plaintiff?
7 MS. CORRADO: Nicole Corrado, plaintiff and
8 proceeding pro se.
9 MS. EVANS: Lisa Evans representing the New York
10 State Unified Court System.
11 THE COURT: Good morning both.
12 MS. CORRADO: Good morning, Your Honor.
13 THE COURT: I didn't see notice of appearance filed
14 by counsel. So as you indicated you're proceeding pro se, Ms.
15 Corrado.
16 MS. CORRADO: I am, Your Honor.
17 THE COURT: Okay. I see we have your email address.
18 Are you registered for electronic case filing with this Court?
19 MS. CORRADO: I am not registered for filing. I am
20 registered on PACER. I receive notification but not with
21 regard to filings.
22 THE COURT: We generally can arrange for pro se
23 litigants to receive electronic notices and so you don't have
24 to go on PACER to get the notices. I would think that if you
25 register electronically -- for ECF registration -- are you

1 admitted in this Court?
2 MS. CORRADO: I am and I do receive those
3 notifications, Your Honor. I am registered for that.
4 THE COURT: Okay. Anyway, if you lack the capability
5 to file because you're not registered perhaps we can make
6 arrangements for you to file but you could simply arrange to
7 do so by registering for ECF because as an admitted attorney
8 to this Court you can register for ECF.
9 MS. CORRADO: Thank you.
10 THE COURT: Due to security reasons, security of our
11 database we don't generally let pro se litigants receive --
12 have the capability to file electronically but since you're an
13 attorney admitted to court I think we should -- you would be
14 able to do so as long as you're registered.
15 Now, we need to proceed in this case then. I only
16 set one date at the last conference with the view that there
17 should be some time for new counsel to at least respond to the
18 initial disclosures that I had ordered quite some time ago and
19 I will expect you to abide by the deadline as we had discussed
20 at our last conference and as I've reflected in my order
21 granting Mr. Wotorson's motion for leave to withdraw as
22 counsel. So your initial disclosures are due on February 23rd
23 as you know.
24 MS. CORRADO: Your Honor, if I may. Before we
25 address that --

1 THE COURT: I'm sorry, the 25th, yes.
2 MS. CORRADO: Actually on the last conference date
3 there was an issue with regard to our intent to file a motion
4 to disqualify counsel. Mr. Ambrose actually addressed to the
5 Court. In fact, he indicated we had a letter drafted and we
6 were prepared to send it to Judge Irizarry and Your Honor
7 indicated that we should wait for the court's directive in
8 terms of whether or not to do that or to wait until the next
9 court date for a subsequent instruction.
10 THE COURT: I am not going to delay -- I'm not going
11 to extend -- delay that deadline. As I said, you're going to
12 file because one way or the other discovery needs to proceed
13 and that the automatic disclosures are the most basic,
14 encompass the most basic discovery to enable the case to
15 proceed quickly.
16 MS. CORRADO: Well, the problem, Your Honor, is that
17 if I may -- I have now informed the Court that as of today I
18 am proceeding pro se. Actually, this decision was made within
19 the last couple of days. So February 25th with regard to
20 discovery or disclosure is practically around the corner. I
21 am asking the Court in light of the fact that I'm a pro se
22 litigant and for the same reasons I've indicated to the Court
23 actually prior to retaining Mr. Ambrose with regard to the
24 issues and the problems surrounding the ability to retain
25 counsel in this case have exactly been the problem this time

1 again. So my efforts in that regard have been made one
2 hundred percent but at this point I would ask Your Honor I
3 think that this qualification motion is imperative. Even
4 prior to the discovery --
5 THE COURT: No. I've already said that this basic
6 discovery will proceed. This qualification motion has no
7 bearing on the disclosures. You're required to produce. I
8 have ordered these disclosures to be made long before I was
9 advised that you intended to move to disqualify defense
10 counsel. I'm not -- I've already made that clear.
11 MS. CORRADO: However, there have been intervening
12 factors, Your Honor, with regard to what happened with the
13 file.
14 THE COURT: That's not -- no, no, no. I'm sorry.
15 The withdrawal of counsel is not an intervening factor. You
16 are not the typical pro se litigant. You have been told as --
17 I'm looking for the date of our last conference. December 20th
18 that you would be expected to provide the automatic
19 disclosures. You were ordered at conferences long before then
20 and you were in attendance at every conference if I recall,
21 you were ordered to provide the automatic disclosures.
22 Whether or not Ms. Evans remains counsel has no bearing on
23 your responsibility to provide the disclosures and in any
24 event if new counsel were to step in for defendants the
25 defendants would have the right to review the discovery you

1 provide with the clients, and I would assume that Ms. Evans
2 would then be involved.
3 One way or the other the discovery has to be
4 provided. If you want to make a motion we'll set a motion
5 schedule. I have to say upon second thought I spoke hastily
6 about the motion to disqualify and so be it. If you want to
7 make a motion, go make the motion and we'll address it. If
8 you want to make it to Judge Irizarry she will refer it to me
9 but -- and I'll set a motion schedule. There's just no need
10 for discovery to be delayed at this point. At most --
11 MS. CORRADO: Your Honor --
12 THE COURT: At most as far as I can see from my
13 perspective having Ms. Evans or someone from her office remain
14 as counsel would be perhaps -- may perhaps be a concern at
15 trial and we're not even at that phase. Sometimes motions to
16 disqualify are granted on the condition that the substitution
17 be made before trial.
18 MS. EVANS: Your Honor, may I be heard on that point?
19 It is our relationship with the Attorney General's Office that
20 we represent our Title VII matters up to the time of trial at
21 which point the Attorney General's Office would then conduct
22 the trial.
23 THE COURT: All right. Well, put that in writing
24 beforehand so Ms. Corrado can consider that and in any event
25 Ms. Corrado, if you want to make a motion to disqualify we'll

1 set the schedule. I'm not going to delay discovery.
2 MS. CORRADO: Your Honor, I would like to make a
3 record on this. I think this is absolutely important and
4 critical. Again, actually the ECF notification was that the
5 Court today would be setting a whole new schedule for purposes
6 of filing a motion to disqualify as well as my motion to file
7 a Rule 72 appeal or review request to Judge Irizarry regarding
8 this Court's decision with the Borrelli law firm on the last
9 court date and as well as dealing with the discovery issues.
10 This is -- the motion schedule is something that I
11 would ask the Court to consider setting and to extend the date
12 for the discovery. This has all been extremely -- it's quite
13 irregular in terms of what occurred especially with the
14 Borrelli law firm. That took up a great deal of time and
15 unfortunately that is the reason for the various delays. That
16 has not been a delay due to anything that I've done and is not
17 anything I'm sure Ms. Evans is responsible for. However, I
18 would ask the Court to consider the fact that there has been a
19 very significant development and that is the reason for why
20 we're here in this position today.
21 So I'm asking the Court to extend this discovery
22 date at least to a March date because this is not enough time.
23 THE COURT: March 1st.
24 MS. EVANS: Judge, ordinarily --
25 THE COURT: Ms. Evans, that's fine. I'm going to

1 accommodate you. I have to say in December it was clear the
2 motion to disqualify was going to be made, that objections to
3 my rulings would be made, an appeal from my rulings would be
4 made and as I -- I set that date so these new circumstances
5 have long developed beforehand. You've been at every
6 conference.
7 As I explained to you at the last conference and
8 perhaps you didn't quite understand what's required of
9 automatic disclosures, this is fairly straightforward and I
10 refer you to Rule 26. I'll give you a little more time but
11 I've stated unequivocally at the last conference that you
12 would need to provide those disclosures. They're long overdue
13 and they're part of the standard discovery process in federal
14 court and they're designed to streamline discovery and to
15 facilitate the early exchange of important information to
16 complete discovery. So, fine, you've got a March date, March
17 1st.
18 MS. EVANS: Judge, may I be heard?
19 THE COURT: Not on that.
20 MS. EVANS: I'd like to note for the record that
21 defendant did provide the initial disclosure in a timely
22 manner. So throughout all this delay we managed to get it
23 done despite the fact that we've been called into court
24 several times to deal with issues involving Ms. Corrado and
25 her counsel. So I'd like to note that for the record.

1 THE COURT: Okay. Perhaps Ms. Corrado would be well
2 put to look at what the disclosures encompass and again I
3 refer you to Rule 26(a).
4 MS. CORRADO: Well, my request to Ms. Evans will
5 include quite an extensive list of items that are not included
6 but I will not address that.
7 THE COURT: You cannot make discovery requests until
8 you've made the initial disclosures, period.
9 MS. CORRADO: I understand that.
10 THE COURT: Okay. So you have now until March 1st.
11 This is more time that I -- than I had indicated you are
12 entitled to but I'll give you until the end of the week, that
13 week.
14 Now, we'll move forward. I said I would set a
15 motion schedule on the motion to disqualify and extend your
16 time to object to my ruling. So I'll extend your time by the
17 14 days. So you're starting afresh as if the rulings were
18 made today and you will have until February 22nd.
19 MS. CORRADO: To file which motion, Your Honor?
20 THE COURT: Wait. Objections to my rulings --
21 MS. CORRADO: I see.
22 THE COURT: -- regarding Borrelli and we'll set a
23 motion schedule to disqualify.
24 MS. CORRADO: I'm sorry, Judge. Did you say the 22nd
25 or 7th?

1 THE COURT: I'm sorry, 22nd.
2 MS. CORRADO: 2-2?
3 [Pause in proceedings.]
4 THE COURT: I'm sorry. My law clerk points out that
5 the February 25th date was also the date for the motion to file
6 objections. So it was not my intent to shorten that deadline.
7 So any objections to my prior discovery rulings concerning the
8 Borrelli law firm must be filed by the 25th and you will need
9 to send a copy to the Borrelli law firm.
10 Now, on the motion to disqualify. I note I'm not
11 going to stay discovery while the motion to disqualify is
12 pending. So I'll give you a week after the 25th. March 4th.
13 Opposition, ten days or two weeks?
14 MS. EVANS: Two weeks, Judge. Thank you.
15 THE COURT: March 18th, and a reply by March 25th.
16 Are there any contemplated amendments?
17 MS. CORRADO: Yes.
18 THE COURT: What sorts of amendments are contemplated
19 and if you're not in a position to amend now, how much
20 discovery would you need before you can make a motion for
21 leave to amend?
22 MS. CORRADO: I think that unfortunately my answer
23 would be premature without discovery.
24 THE COURT: Well, I'm asking how much discovery --
25 MS. CORRADO: I don't understand what Your Honor is

1 asking me. You're asking me how I intend to go forward in
2 amending the complaint? I'm sorry.
3 THE COURT: I'm not -- I'm talking about dates. So
4 generally I frown upon amendments, motions to amend being made
5 at the close of discovery. To the extent that you contemplate
6 amendments based on new theories that require discovery of
7 certain facts or other individuals to sue then I would expect
8 discovery to be tailored to ascertaining the necessary --
9 those necessary facts in a motion for leave to amend to be
10 made shortly after the completion of that phase of discovery.
11 In other words, you phase discovery to try to get all the
12 information you need to bring a motion to amend sooner rather
13 than later and that way if the new parties that are brought in
14 are represented by different counsel or there are new theories
15 that require further depositions that we not treat ourselves
16 to two rounds of depositions. I'm not going to let parties
17 just willy-nilly amend simply to get a second crack at
18 deposing another witness. Because sometimes new claims and
19 new -- the bringing in of new theories and new parties will
20 necessitate additional discovery including depositions and
21 that those depositions have already been taken. It is
22 certainly an inefficient and expensive way to proceed. So
23 that's why I want discovery targeted through ascertaining the
24 facts necessary to determine if there is a need for amendment
25 because there are viable new claims or new parties to join.

1 Do you understand?
2 MS. CORRADO: I do understand.
3 THE COURT: Okay. So two or three months of
4 discovery, that should suffice. I'll give you two months
5 after you make your initial disclosures. That will give you a
6 month to propound requests and the defendant's response and if
7 you need to -- if you need additional time you'll make a
8 motion for an extension of that time.
9 Any motions for leave to amend or join new parties
10 will be due April 25th. I'll just push it to the next month so
11 we will have easier dates to remember. May 1st for amendment
12 or joinder motions and discovery to be completed -- I usually
13 measure it from the date of the initial disclosures. So five
14 or six months after the disclosures are made. Five months,
15 that would take us to August 1st -- no, actually not. That's
16 six months. July 1st. No, March 1st. August 1st would be five
17 months for discovery.
18 MS. CORRADO: August 1st you said?
19 THE COURT: Yes. It's difficult to make that
20 determination without having seen the initial disclosures
21 because I don't know how many witnesses you claim have
22 knowledge. How many did you put on your list, Ms. Evans?
23 MS. EVANS: I'm not sure, Judge, off the top of my
24 head.
25 THE COURT: A guesstimate, five, ten?

1 MS. EVANS: Somewhere between five and ten.
2 THE COURT: Okay. Maybe I'll err on the side of
3 giving more time then. September 16th for the close of fact
4 discovery.
5 Are there any experts contemplated?
6 MS. CORRADO: Yes.
7 THE COURT: What sorts?
8 MS. CORRADO: Actually, I'm not certain at this point
9 but likely two or three.
10 THE COURT: Okay. What I'll ask you to -- the
11 parties to do is give what I call expert notice. There's no
12 federal rule on this. This is my procedural device to insure
13 that expert discovery not delay the progress in the case. So
14 on April -- I'm sorry, August 1st the parties will give what is
15 called expert notice and that's notice of any expert you
16 intend to retain other than in rebuttal. You don't have to
17 name the expert but you have to identify the type of expert
18 you're going to have, the subject matter of the expert
19 testimony to be offered.
20 If expert notice is given I'll ask the attorneys to
21 try to confer and provide a proposed expert schedule by August
22 21st, three weeks later. If you can't reach an agreement
23 you'll just tell me what each side proposes and we'll either
24 have a conference to discuss that schedule or I'll set the
25 schedule based on what I read in the submissions. So these

1 are the disclosure of experts other than in rebuttal.
2 Anything else? So we will set a conference after
3 disposition of the motion to disqualify.
4 [Off the record.]
5 THE COURT: We're back on the record. You had some
6 questions to clarify or to restate what I just told you, Ms.
7 Corrado.
8 MS. CORRADO: No, Your Honor, it's not with regard to
9 that. It's not with any of the motions.
10 THE COURT: Let me just put it on the record. As I
11 advised you we will expect that Judge Irizarry will want me to
12 decide the motion to disqualify. If we feel we need oral
13 argument we will schedule oral argument. Otherwise we will
14 issue a decision and schedule a hearing -- a conference after
15 the decision. If we schedule a hearing we will have a
16 conference.
17 MS. CORRADO: What I was going to ask the Court,
18 going back to Your Honor's initial question with regard to ECF
19 filing, would Your Honor permit me to submit my correspondence
20 to the Court or to counsel via mail, certified mail, regular
21 service mail in lieu of ECF filing since that's not something
22 I'm registered -- well, I am registered to receive ECF
23 notifications but that's about it.
24 THE COURT: You can certainly mail it to the Clerk's
25 Office and to Ms. Evans.

1 MS. CORRADO: Thank you. That was all I wanted to
2 ask.
3 THE COURT: It's certainly very easy to learn how to
4 file via ECF and --
5 MS. CORRADO: I know. I have quite a bit to learn in
6 a fairly short span of time. I do understand, Your Honor,
7 that it is something that is relatively simple and I will do
8 my very best.
9 THE COURT: You can certainly send a hard copy but
10 ultimately it would be very -- it will be very difficult for
11 attorneys to practice in New York State without knowing how to
12 file electronically. Both the state and federal courts have
13 electronic case filing. They're slightly different but
14 they're not so different that the skills learned are not
15 transferrable.
16 MS. CORRADO: Thank you.
17 (Off the record at 10:38 a.m.)
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1 I certify that the foregoing is a court transcript from
2 an electronic sound recording of the proceedings in the above-
3 entitled matter.

4
5 ______________________________
6 Shari Riemer
7 Dated: March 25, 2013
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - X

NICOLE CORRADO,

Plaintiff,

- against -

ORDER

CV 2012-1748 (DLI)(MDG)

NEW YORK STATE UNIFIED COURT SYSTEM,

Defendant.

- - - - - - - - - - - - - - - - - - X

Plaintiff brought this action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. asserting claims of sexual harassment and retaliation against the New York State Unified Court System (the "UCS"). Plaintiff moves to amend the complaint to add eight individual defendants and the Departmental Disciplinary Committee of the New York State Supreme Court Appellate Division, First Department (the "DDC").[1] In addition,

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[1] As a preliminary matter, I note that I have the authority to decide plaintiff's motion to amend pursuant to 28 U.S.C. § 636(b)(1)(A). See Fielding v. Tollaksen, 510 F.3d 175, 178 (2d Cir. 2007) ("a district judge may refer nondispositive motions, such as a motion to amend the complaint, to a magistrate judge for decision without the parties' consent"); Kilcullen v. New York State Dept. of Transp., 55 Fed. App'x 583, 584 (2d Cir. 2003) (referring to motion to amend as a non-dispositive matter that may be referred to a magistrate judge for decision pursuant to 28 U.S.C. § 636(b)(1)(A)); Marsh v. Sheriff of Cayuga County, 36 Fed. App'x 10 (2d Cir. 2002) (holding "that the magistrate judge acted within his authority in denying this motion to amend the complaint"). Thus, Fed. R. Civ. P. 72(a) governs any objections to this order.

plaintiff seeks to add new claims brought under 42 U.S.C. §§ 1981 and 1983, the New York State Human Rights Law (the "NYSHRL"), the New York City Human Rights Law ("NYCHRL"), the Family Medical Leave Act (the "FMLA") and state tort law.

FACTUAL BACKGROUND

Plaintiff commenced this action on April 10, 2012 asserting claims against the New York State Unified Court System for sexual harassment and retaliation, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000(e) et seq. ("Title VII"). Specifically, plaintiff alleged in her complaint that while working as an attorney for the New York State Supreme Court Appellate Division, First Department, Departmental Disciplinary Committee, she was subjected to sexual harassment from 2003 to 2009 by two male supervisors, Andral Bratton and Vincent Raniere. Plaintiff further alleges that she was subject to retaliation for complaining about the harassment and for testifying in a co-worker's race discrimination suit against UCS.

At an initial conference held on October 11, 2012, this Court issued a scheduling order which required, inter alia, that plaintiff file any motion for leave to amend and/or join other parties by November 13, 2012, and that, prior to doing so, plaintiff provide defendant with a copy of a proposed amended complaint. After plaintiff changed counsel, this Court issued a new scheduling order extending the time to file a motion to amend

to May 1, 2013 and further extended the time for such a motion to July 13, 2013. Although plaintiff did not file a motion to amend by this deadline, this Court further extended the time for plaintiff to file a motion to October 25, 2013 in light of her one page letter filed on August 15, 2013 (ct. doc. 52), improperly denominated as a motion to amend, in which she advised that she had been terminated from employment. She subsequently filed a proposed amended complaint on October 26, 2014, which she again improperly denominated as a motion to amend and did not accompany with a memorandum or other document with legal discussion. Ct. doc. 59. When defendant objected to plaintiff's attempt to rely on the proposed pleading as constituting a motion to amend (ct. doc. 62), plaintiff filed a reply containing some legal argument and attaching a further revised proposed amended complaint ("Prop. Am. Compl.") on November 14, 2013. Ct. doc. 63. This Court then gave defendant an opportunity to respond.

In this second proposed amended complaint, plaintiff alleges at great length and detail the events alleged in the original complaint and includes allegations concerning events occurring since commencement of this action. The following is a summary of the allegations contained in plaintiff's 60 page revised proposed amended complaint, which are assumed to be true for purposes of the instant motion.

Plaintiff alleges that after Bratton became plaintiff's immediate supervisor in 2003, he was infatuated with her and

subjected her to sexual harassment, including making unwelcome, sexually laden comments at work, and staring at her. Prop. Am. Compl. at ¶¶ 21(d-j). He also routinely called her at night at her home. Id. at ¶ 21(k). After plaintiff requested in June 2007 a transfer to another supervisor, Bratton took a medical leave for a few months but then persisted in pursuing plaintiff upon his return to work. Id. at ¶ 21(m-o).

Plaintiff alleges that Raniere, who, at the time, was Chief Investigator at the DDC, also subjected plaintiff to sexual harassment between 2004 and 2008. Id. at ¶ 21(v-w). Besides making unwanted, sexually laden comments to plaintiff, Raniere kissed and inappropriately touched plaintiff. Id. at ¶ 21(x-bb).

In June 2008, after plaintiff provided corroborating testimony in an unrelated race discrimination suit against the UCS, Alan Friedberg, then Chief Counsel to the Appellate Division, First Judicial Department, Departmental Disciplinary Committee, began closely monitoring plaintiff and adding memos to plaintiff's personnel file reflecting negative evaluations of plaintiff's work. Id. at ¶ 21(q). Prior to 2008, plaintiff had received positive annual performance reviews. Id. at ¶ 21(eeee).

In September 2008, plaintiff lodged a complaint with Alan Friedberg regarding Bratton's and Raniere's conduct. Id. at ¶ 21(t). Friedberg subsequently referred plaintiff's complaints regarding Bratton, but not against Raniere, for investigation by the Inspector General's Office for the Unified Court System. Id.

at ¶ 21(dd), (vv). During the investigation, Bratton admitted to making inappropriate comments and to his infatuation with plaintiff. Id. at ¶ 21(ee). Despite Bratton's admission, the UCS, DDC, Judge Gonzalez, Mr. Reardon and court administrators determined that Bratton engaged only in inappropriate conduct, but not sexual harassment, and would be transferred to another unit. Id. at ¶ 21(ii). However, plaintiff continued to have contact with Bratton when he appeared at the DDC intermittently and at a meeting in November 2008 that plaintiff was required to attend. Id. at 21(jj-kk). After the investigation concluded in November, plaintiff alleges that Friedberg retaliated against her by intensifying his monitoring of plaintiff, routinely ridiculing and reprimanding plaintiff, criticizing her work and demanding that she attend counseling sessions or face termination. Id. at ¶ 21(gg), (hh), (nn).

From January 2009 through July 2009, plaintiff was assigned unreasonable work loads and received negative performance evaluations. Id. at ¶ 21(ss), (tt). As a result of continued contact with Bratton and Raniere and scrutiny by Friedberg, plaintiff felt threatened.

In January 2009, plaintiff's home was "virtually destroyed" by a flood caused by a broken pipe and the following month, one of plaintiff's other properties burned down. Id. at ¶ 21(ll). Plaintiff reported these events to Friedberg and her view they were "highly suspicious," but Friedberg was indifferent. Id. at

¶ 21(mm).

In May 2009, plaintiff filed a charge of discrimination and retaliation with the United States Equal Employment Opportunity Commission alleging that she was subjected to a hostile work environment, sexually harassed and retaliated against. Id. at ¶ 21(pp).

In July 2009, Mr. Friedberg further increased his close monitoring of plaintiff at work. Id. at ¶ 21(ss). Plaintiff, who was becoming "increasingly anxious," sought to take a leave of absence or transfer to another division of UCS but her requests were denied. Id. at ¶ 21(uu). She was directed on July 16, 2009 by Friedberg, Gonzalez, McConnell and Reardon to attend counseling sessions under threat of termination if she did not attend. Id. at ¶ 21(ss), (ww).

In or around July or August 2009, the Inspector General's office commenced an investigation into plaintiff's complaints regarding Raniere's conduct. Id. at ¶ 21(vv). In August 2009, plaintiff was informed that the Inspector General's investigation into her complaint regarding Raniere resulted in a finding that her allegations were unfounded. Id. at 21(yy).

Also in August 2009, the DDC commenced an investigation into an attorney plaintiff had retained to represent her in an unrelated civil case. Id. at ¶ 21(fff). In May 2010, plaintiff's counsel in the unrelated case abruptly withdrew. Id. at ¶ 21(ggg). That same month, the ethical charges against

plaintiff's counsel were dismissed as unfounded. Id. at ¶ 21(hhh). In January 2012, plaintiff discovered the investigation files regarding her former counsel. Id. at ¶ 21(mmm).

Plaintiff took an unpaid leave of absence from her position from August 2009 to August 2011. Id. at ¶ 21(zz), (aaa). Upon her return to work, plaintiff was subjected to rigorous scrutiny of her work and her attendance was strictly monitored. Id. at ¶ 21(ddd). In addition, within her first month back at work, two of plaintiff's office desk chairs collapsed under her. Id. at ¶ 21(ddd). On at least two occasions at the office, she suddenly began to experience severe irritation, swelling and blurry vision in her eyes. Id.

In 2012, plaintiff was criticized for her handling of a disciplinary hearing, including that she had missed important documents in the file. Id. at ¶ 21(www). Plaintiff contends that those documents were not in the file when she prepared for the hearing. Id.

After plaintiff filed the instant lawsuit on April 10, 2012, she renewed her request for a transfer from the DDC, which was denied. Id. at ¶ 21(sss). She alleges that she was also then subjected to increased hostility from DDC management and staff, strict monitoring and excessive work assignments. Id. at ¶ 21(ttt).

From on or about March 4, 2013 through March 25, 2013,

plaintiff took an approved FMLA leave of absence to care for her daughter. Id. at ¶ 21(xxx), (zzz). Upon her return from FMLA leave, on or about March 25, 2013, plaintiff was given a negative evaluation. Id. at ¶ 21(zzz). Plaintiff again renewed her request for a transfer, which was ignored and/or denied. Id. at ¶ 21(ffff). Plaintiff resigned her position on August 7, 2013 after being ordered to attend counseling sessions under threat of termination for insubordination. Id. at ¶¶ 21(ffff), (iiii), (oooo), (qqqq).

Plaintiff seeks to add as defendants: Justice Luis Gonzalez, Presiding Justice of the Appellate Division, First Department; John McConnell, former Clerk of the Court, Appellate Division, First Department; Roy Reardon, Chairman of the Policy Committee for the DDC; Jorge Dopico, current Chief Counsel of the DDC; Angela Christmas, Deputy Counsel of the DDC; Allen Friedberg, Vincent Raniere and Naomi Goldstein, Deputy Counsel of the DDC.

DISCUSSION

I. Rule 8 Pleading Requirements

This Court first addresses defendants' argument regarding the deficiencies in how plaintiff drafted the proposed amended complaint. Rule 8 of the Federal Rules of Civil Procedure requires that a complaint set forth a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). In Salahuddin v. Cuomo, the Second

Circuit stated that "[w]hen a complaint does not comply with the requirement that it be short and plain, the court has the power . . . to strike any portions that are redundant or immaterial, see Fed. R. Civ. P. 12(f), or to dismiss the complaint." 861 F.2d 40, 42 (2d Cir. 1988). This is "because unnecessary prolixity in a pleading places an unjustified burden on the court and the party who must respond to it because they are forced to select the relevant material from a mass of verbiage." Id. Since this issue generally arises in the context of pro se plaintiffs, see, e.g., Jones v. Nat'l Comm'cs & Surveillance Networks, 266 Fed. App'x 31 (2d Cir. 2008); Salahuddin, 861 F.2d 40, it is notable that the proposed amended complaint was drafted by an attorney on behalf of an attorney.

Defendant contends that the allegations contained in the proposed amended complaint are presented "in a manner so vague, ambiguous and confused that it would make unacceptably difficult defendants' . . . preparation of a responsive pleading." Ct. doc. 69 at 4. While I do not find that the proposed amended complaint is "unintelligible" or "a labyrinthian prolixity of unrelated and vituperative charges that def[y] comprehension," see Shomo v. State of New York, 374 Fed. App'x 180, 183 (2d Cir. 2010), the pleading is indeed unnecessarily prolix, labyrinthian and redundant. For example, paragraph 21 of the proposed amended complaint consists of 92 lettered subparagraphs running from subparagraph (a) to (nnnn). Many of those subparagraphs are unnecessarily verbose containing multiple allegations. See,

e.g., Proposed Am. Compl. at ¶ 21(k), (aa), (kk), (uuu), (www), (zzz).

Subparagraph 21(kk) is a notable example of plaintiff's failure to comply with Rule 8(a)(2); it consists of a rambling 14 sentence narrative describing a host of matters covering plaintiff's anxiety and fear from August 2008 to August 2009 arising from defendants' conduct, plaintiff's attendance at a seminar in November 2008 which she was required to attend even though Bratton would also be present, a discussion she had with defendant Roy Reardon at the seminar, and her experience visiting the Federal Bureau of Investigation ("FBI") following the seminar. Suffice to say, by including unnecessary, excessive detail, plaintiff failed miserably in providing a "short and plain statement" of her claims, as required by Rule 8(a)(2). Rather, plaintiff indulged in unnecessary minutiae in recounting events, such as detailing conversations she had with Friedberg and Mr. Reardon.

In addition, many allegations concerned occurrences that are not central to her claims. Plaintiff's terse conversation with Mr. Reardon and her making a complaint to an FBI Agent who expressed inability to take action about her treatment at work have little, if anything, to do with "plaintiff's entitlement to relief" against the defendants. Given the convoluted organization of her pleading which was not chronological, plaintiff also repeated allegations, such as the allegation about her fear and anxiety in subparagraph (kk) which appears elsewhere

in the proposed amended complaint, including in subparagraphs (mm), (oo) and (uu) of paragraph 21, thereby unnecessarily increasing the length of this pleading. See, e.g. Proposed Am. Compl. at ¶¶ 21(ss), (ww).

In addition, each cause of action listed in the complaint consists of allegations of the violation of multiple statutes. To confuse things further, plaintiff does not correlate specific factual allegations to each of the various "causes of action" or violations of a particular statute. Instead, she perfunctorily "repeats and realleges each allegation in each numbered paragraph above." As such, the reader cannot distinguish which factual allegations correspond to the violation of which statute, particularly since there is a considerable overlap between the various factual allegations and the statutory violations to which they could relate. Thus, it is not clear how the many overlapping claims vary and what facts each overlapping claim is dependent on. See Hadley v. Radioshack Corp., 2002 WL 1159871, at * 2 (S.D. Fla. 2002) ("'shotgun pleading' . . . makes it difficult if not impossible, to discern what claims plaintiff is attempting to state"). Once plaintiff specifies which factual allegations correspond to which claim, it will be easier to determine whether any of the claims that remain are duplicative.

Related to this issue is the fact that plaintiff appears to have asserted claims to maximize the number of claims, with citation to different federal and state statutes as to each cause of action. While the federal statutes may involve different

material elements arising from the same facts, the state and local laws that plaintiff reflexively cites with each federal claim -- whether under Title VII, Section 1983 and Section 1981 – may not. Even though there may be a need to plead federal claims separately, plaintiff's reflexive referral to state and local statutes with each federal claim may result in duplicative claims under the NYSHRL and NYCHRL as to each "cause of action" asserted. For example, the state and local statutory claims in claims One, Two, Six and Seven would appear to be duplicative. Compare Proposed Am. Compl. at ¶¶ 27, 29, 37, 39. Plaintiff should consider separating the state and local statutory claims from the federal statutory claims and consolidate the state and local statutory claims to avoid redundancy.

While these problems may not rise to the level that would warrant dismissal of the complaint, the repetition of allegations and the organization of the proposed pleading would unnecessarily burden the defendant in attempting to respond. Since plaintiff will have to conform her amended complaint in accordance with the rulings set forth below, plaintiff must submit an amended complaint which "omits unnecessary detail," Loeber v. Spargo, 144 Fed. App'x 168, 170 (2d Cir. 2005), and reflects consideration of the Court's other comments in re-drafting. In doing so, plaintiff is reminded of Rule 8's requirement that "[e]ach allegation must be simple, concise and direct." Fed. R. Civ. P. 8(d)(1). Further, Rule 10 provides that "[a] party must state its claims and defenses in numbered paragraphs, each limited as

far as practicable to a single set of circumstances." Fed. R. Civ. P. 10(b).

II. Motion to Amend

Rule 15(a) of the Federal Rules of Civil Procedure provides that the Court should freely grant leave to amend a pleading when justice so requires. See Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321 (1971); Andersen News, LLC v. American Media, Inc., 680 F.3d 162, 185 (2d Cir. 2012). Thus, courts should ordinarily grant leave to amend in the absence of bad faith by the moving party, undue prejudice or futility. Friedl v. City of New York, 210 F.3d 79, 87 (2d Cir. 2000); Manson v. Stacescu, 11 F.3d 1127, 1133 (2d Cir. 1993) (citing Foman v. Davis, 371 U.S. 178, 182 (1962)). Delay alone does not justify denial of leave to amend. See Ruotolo v. City of N.Y., 514 F.3d 184, 191 (2d Cir. 2008); Rachman Bag Co. v. Liberty Mutual Ins. Co., 46 F.3d 230, 234 (2d Cir. 1995); Richardson Greenshields Sec., Inc. v. Lau, 825 F.2d 647, 653 n.6 (2d Cir. 1987). Ultimately, the decision to grant or deny a request to amend is within the discretion of the district court. Foman, 371 U.S. at 182; John Hancock Mut. Life Ins. Co. v. Amerford Int'l Corp., 22 F.3d 458, 462 (2d Cir. 1994).

Although defendants do not argue that plaintiff's motion should be denied on grounds of timeliness, it bears noting that plaintiff ignored the Court ordered deadline to file a motion for

leave to amend by October 25, 2013, instead filing a proposed amended complaint one day after the deadline passed without any argument in support. Following defendants' opposition to the proposed amended complaint, plaintiff revised her proposed amended complaint. Rather than instructing plaintiff to properly file a motion to amend, the Court deemed plaintiff's reply as the operative motion to amend as a matter of efficiency. Since the Court gave defendants a fresh opportunity to oppose the revised proposed amended complaint, defendants were not prejudiced by plaintiff's flouting of this Court's procedures. However, plaintiff has exhibited a pattern of both tardy applications and failure to follow the governing rules which will not be permitted in the future.

Defendant opposes plaintiff's motion to amend on futility grounds. An amendment is futile if the complaint's allegations would not withstand a Rule 12(b)(6) motion to dismiss. See Majad ex rel. Nokia Retirement Sav. and Inv. Plan v. Nokia, Inc., 528 Fed. App'x 52, 53 (2d Cir. 2013). On a motion to dismiss, as to those factual allegations that are well-pled, the court must determine whether they "plausibly give rise to an entitlement to relief." Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009). Plausibility "is not akin to a probability requirement" but it requires more than "a sheer possibility that a defendant has acted unlawfully." Id. at 678. "In ruling on a motion pursuant to Fed. R. Civ. P. 12(b)(6), the duty of a court is merely to

assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof." DiFolco v. MSNBC Cable L.L.C., 622 F.3d 104, 113 (2d Cir. 2010) (internal quotation marks and citations omitted). The factual allegations in the complaint are accepted as true and all reasonable inferences are drawn in plaintiff's favor. See Rescuecom Corp. v. Google, 562 F.3d 123, 127 (2d Cir. 2009).

Adding the DDC as a Defendant

Defendant argues that the DDC is not a proper party to this action.

The capacity of an entity to be sued is determined by state law. See Fed. R. Civ. P. 17(b). Plaintiff alleges in the proposed amended complaint that the DDC is an independent committee appointed by the UCS. Indeed, the DDC is part of the Appellate Division and has "no separate judicial, administrative or legislative identity." Rapaport v. Departmental Disciplinary Committee for First Judicial Department, 1989 WL 146264, at *1 (S.D.N.Y. 1989); see N.Y. Comp. Codes R. & Regs., tit. 22, § 603.4(a) ("[t]his court shall appoint a Departmental Disciplinary Committee for the Judicial Department, which shall be charged with the duty and empowered to investigate and prosecute matters involving alleged misconduct by attorneys"). Accordingly, the DDC is not a suable entity.

Although plaintiff alleges that she "worked for [the DDC],"

she also states that the UCS "was and is an 'employer' that 'employs' at least 15 'employees' within the meaning of Title VII." Prop. Am. Compl. at ¶ 11. Plaintiff does not make similar allegations regarding the DDC and merely argues that the DDC is an agency within the UCS where she worked. Based on the allegations in the complaint, it appears that defendant is correct that plaintiff's claims of employment discrimination are more appropriately directed at the UCS rather than the DDC. Ct. doc. 69 at 6. Further, even if the DDC were a suable entity, it is immune from suit under the Eleventh Amendment as an arm of the State. See McKeown v. New York State Commission on Judicial Conduct, 377 Fed. App'x 121 (2d Cir. 2010); Bernstein v. State of New York, 591 F. Supp. 2d 448, 465-66 (S.D.N.Y. 2008). Therefore, plaintiff's motion to add the DDC as a party is denied as futile.

FMLA Claim

Defendant argues that amendment to add FMLA claims against the individual defendants in the fourth claim would be futile because they are entitled to qualified immunity. Qualified immunity "protects government officials from liability where the officials' conduct was not in violation of a 'clearly established' constitutional right." Sudler v. City of N.Y., 689 F.3d 159, 174 (2d Cir. 2012). "If the conduct did not violate a clearly established constitutional right, or if it was

objectively reasonable for the [official] to believe that his conduct did not violate such a right, then the [official] is protected by qualified immunity." Id. (quoting Doninger v. Niehoff, 642 F.3d 334, 345 (2d Cir. 2011)).

Defendant argues that it was not clearly established in this Circuit that supervisors at public agencies could be held individually liable under the FMLA. However, qualified immunity is intended to provide a defense to those individuals acting in good faith in the exercise of their duties. See Pearson v. Callahan, 555 U.S. 223, 232 (2009) ("[t]he doctrine of qualified immunity protects government officials from liability for civil damages insofar as the conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known"). Here, defendants cannot claim that it was unclear whether the conduct alleged was unlawful. The proposed individual defendants are not entitled to qualified immunity since the rules governing their conduct were clearly established, even if the rules pertaining to their personal liability for such conduct were not clearly established. See Bonzani v. Shinseki, 2013 WL 5486808, at *14-*15 (E.D. Cal. 2013); Brunson v. Forest Preserve Dist. of Cook Cty., 2010 WL 780331, at *8 (N.D. Ill. 2010); see also Gray v. Baker, 399 F.3d 1241, 1245 (10th Cir. 2005); but see Modica v. Taylor, 465 F.3d 174 (5th Cir. 2006) (finding defendant entitled to qualified immunity); Wanamaker v. Westport Bd. of Educ., 899 F. Supp. 2d

193, 202-04 (D. Conn. 2012) (same).

In addition, defendant argues that the allegations in the proposed amended complaint relating to retaliation under the FMLA fail to describe the proposed defendants' personal involvement.

Personal liability under the FMLA depends on whether the individual qualifies as an "employer" under section 2611(4)(A)(ii)(I). In determining individual liability under the FMLA, district courts in this Circuit have applied the "economic reality" test adapted from the Fair Labor Standards Act context. Under the economic reality test, "the Court must determine 'whether each named individual defendant controlled in whole or in part plaintiff's rights under the FMLA.'" Smith v. Westchester Cty., 769 F. Supp. 2d 448, 475 (S.D.N.Y. 2011) (quoting Holt v. Welch Allyn, Inc., 1997 WL 210420, at *2 (N.D.N.Y. 1997)); see Singh v. N.Y. State Dept. of Taxation and Fin., 911 F. Supp. 2d 223, 242 (W.D.N.Y. 2012). To survive a motion to dismiss, plaintiff must "'plead that the proposed individual defendants had substantial control over the aspects of employment alleged to have been violated.'" Smith, 769 F. Supp. 2d at 475 (quoting Augustine v. AXA Fin., Inc., 2008 WL 50250147, at *4 (S.D.N.Y. 2008)).

As defendant recites in its opposition, plaintiff alleges that shortly after she returned from FMLA leave, proposed defendants Christmas and Goldstein gave plaintiff a negative evaluation which was signed by proposed defendant Dopico and was

written at the direction of proposed defendants Reardon, McConnell and Gonzalez. Plaintiff also alleges that after returning from FMLA leave, she was ordered to attend counseling sessions by Christmas and Dopico "at the direction, mandate and approval" of Reardon, McConnell and Gonzalez. Plaintiff's allegations are sufficient to describe each individual's participation in the alleged retaliation.

Finally, defendant argues that the retaliatory acts alleged are insufficient to give rise to liability. As discussed more fully below, the adverse actions required to sustain a retaliation claim need not affect the "terms and conditions" of plaintiff's employment.

Section 1981 Claim

Defendant correctly argues that plaintiff's fifth claim brought pursuant to section 1981 is futile. Section 1981 claims against an agency of the state, such as the UCS, are barred by the Eleventh Amendment.[2] See Wang v. Office of Professional Medical Conduct, N.Y., 354 F. App'x 459, 460 (2d Cir. 2009); Concey v. N.Y. State Unified Court System, 2011 WL 4549386, at *7

[2] Plaintiff argues that defendant has waived the defenses of sovereign immunity and qualified immunity by failing to raise the defenses in its original answer. However, the only claims plaintiff asserted in her original complaint were brought under Title VII to which the defense of sovereign immunity does not apply. Similarly, qualified immunity is not a defense to a Title VII claim nor is it a defense available to the UCS, the only defendant originally named in the complaint.

(S.D.N.Y. 2011). Further, as noted above, even if the DDC were a suable entity, it is immune from suit under the Eleventh Amendment as an arm of the State. See McKeown v. New York State Commission on Judicial Conduct, 377 Fed. App'x 121 (2d Cir. 2010); Bernstein v. State of New York, 591 F. Supp. 2d 448, 465-66 (S.D.N.Y. 2008).

Similarly, the individual defendants enjoy sovereign immunity against section 1981 claims brought against them in their official capacities. See Bailey v. N.Y. Dep't of Motor Vehicles, 2013 WL 3990770, at *10 n.10 (E.D.N.Y. 2013). Finally, section 1983 is the exclusive damages remedy for the violation of rights guaranteed by section 1981 when brought against government entities or "state actors" sued in their individual capacities. See Hogan v. County of Lewis, N.Y., 929 F. Supp. 2d 130, 151 (N.D.N.Y. 2013); Buckley v. New York, 959 F. Supp. 2d 282, 298 (E.D.N.Y. 2013); Westbrook v. City Univ. of N.Y., 591 F. Supp. 2d 207, 222-23 (E.D.N.Y. 2008); see also Jett v. Dallas Independent Sch. Dist., 491 U.S. 701, 735 (1989). Therefore, plaintiff is denied leave to amend to add a section 1981 claim against all the defendants.

Retaliation under Title VII- DDC Investigation into Plaintiff's Attorney in an Unrelated Action

In the ninth cause of action asserted in the proposed amended complaint, plaintiff alleges that defendants' continued

retaliation was "prompted by Plaintiff's January 2012 discovery of ethics files relative to her civil attorney and his firm, which caused the loss of her employment." Prop. Am. Compl. at ¶ 43. Defendant argues that this allegation does not state a Title VII retaliation claim because it "lack[s] any nexus with Title VII protected activity." However, defendant's reading of the complaint is unduly narrow. Plaintiff alleges that in 2012 she discovered that the DDC had, unbeknownst to her, conducted an ethics investigation regarding an attorney she had retained in a civil matter and concluded that the charges were unfounded. Id. at ¶ 21 (eee), (fff), (hhh), (mmm). When plaintiff discovered that an investigation had been conducted, she immediately brought it to the attention of Jorge Dopico who later informed plaintiff that there were no findings of DDC impropriety, quid pro quo, conflict of interest or other issues giving rise to recusal. Id. at ¶ 21 (nnn), (ppp). Plaintiff further alleges that "from the time that Plaintiff discovered the circumstances surrounding her civil attorney's disciplinary investigations, Plaintiff encountered enhanced hostility from DDC management and staff," and was again closely monitored, given excessive work assignments and treated so as to "discredit Plaintiff's credentials." Id. at ¶ 21(ttt). Defendant is correct that her discovery of the ethics investigation itself is not a protected activity. However, implicit in plaintiff's allegations is the charge that the DDC's investigation into her attorney was commenced in retaliation for

her filing an EEOC charge, a protected activity. Id. at ¶ 21(fff). To the extent plaintiff claims that she was also retaliated against for complaining about retaliation for filing an EEOC charge, I cannot find that such a claim is futile.

Section 1983 Claims for Retaliation

Defendant is also correct that plaintiff cannot bring section 1983 claims against defendant UCS or the proposed individual defendants for retaliation in claims Three,[3] Four, Six, Seven, Eight and Ten. Neither a state nor its employees sued in their official capacities are considered "persons" that can be sued under section 1983 because of the state's Eleventh Amendment immunity. See Will v. Michigan Dep't of State Police, 491 U.S. 58, 71 (1989); Posr v. Court Officer Shield No. 207, 180 F.3d 409, 414 (2d Cir. 1999).

Likewise, the retaliation claims against defendants in their individual capacities brought under section 1983 are futile. In order to state a claim under section 1983, plaintiff must allege that defendants deprived her of a right, privilege or immunity guaranteed by the Constitution or the laws of the United States. See 42 U.S.C. § 1983. Plaintiff's section 1983 claims are based on violations of the equal protection and due process clauses. See Proposed Am. Compl. at ¶¶ 31, 33, 37, 39, 41, 45. The

[3] Claim Three also includes allegations not pertaining to retaliation and are not addressed in this section.

retaliation claims brought by plaintiff may be cognizable under Title VII, but retaliation for complaints of sexual harassment and gender/sex discrimination is not cognizable as a claim under the due process or equal protection clauses as alleged by plaintiff.[4] See Bernheim v. Litt, 79 F.3d 318, 323 (2d Cir. 1996) ("although claims of retaliation are commonly brought under the First Amendment, and may also be brought under Title VII . . . we know of no court that has recognized a claim under the Equal Protection Clause for retaliation following complaints of racial discrimination"); Rosenberg v. City of New York, 2011 WL 4592803, at *10 (E.D.N.Y. 2011); Worthington v. Cty. of Suffolk, 2007 WL 2115038, at *2 (E.D.N.Y. 2007).

In addition, plaintiff raises the First Amendment as a ground for a section 1983 claim for retaliation. See Proposed Am. Compl. at ¶ 37. The Supreme Court has held that an employee's speech is protected by the First Amendment only if the employee speaks "as a citizen on a matter of public concern."

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[4] Although the Second Circuit allowed a section 1983 retaliation claim to proceed on an equal protection theory in Hicks v. Baines, 593 F.3d 159, 171 (2d Cir. 2010), the court did not cite to or discuss Bernheim. Since the Second Circuit has not expressly overruled Bernheim, it appears to still be good law. Since courts in the Second Circuit are divided on the question whether the Second Circuit overruled Bernheim in Haines, it is clear that "the right to be free from retaliation under the Equal Protection clause is not clearly established, barring (under the doctrine of qualified immunity) the individual-capacity § 1983 retaliation claims." Siani v. State University of New York at Farmingdale, --- F. Supp. 2d ----, 2014 WL 1260718 (E.D.N.Y. 2014) (discussing cases).

Garcetti v. Ceballos, 547 U.S. 410, 418 (2006). Complaints of gender discrimination in the workplace are not matters of "public concern" where they relate to a personal employment grievance. See Saulpaugh v. Monroe Community Hosp., 4 F.3d 134, 143 (2d Cir. 1993); DeFillippo v. N.Y. State Unified Court Sys., 2006 WL 842400, at *15 (E.D.N.Y. 2006); see also Sousa v. Roque, 578 F.3d 164, 174 (2d Cir. 2009). Here, plaintiff filed EEOC charges regarding sexual harassment and retaliation concerning conduct that was directed solely towards her rather than system-wide discrimination. Therefore, plaintiff's activity in filing an EEOC complaint against the UCS is not protected by the First Amendment and cannot serve as the basis for plaintiff's section 1983 claim.

However, insofar as plaintiff's claim of a First Amendment violation is based on her testimony in a race discrimination lawsuit, such a claim must be analyzed differently. As the Supreme Court recognized in Lane v. Franks, 134 S.Ct. 2369, 2380 (U.S. 2014), sworn testimony by a public employee at a trial may be speech of public concern. Although the speech in Lane, which concerned public corruption, is more readily recognizable as speech of public concern, the Supreme Court observed that "'testimony under oath has the formality and gravity necessary to remind the witness that his or her statements will be the basis for official governmental action, action that often affects the rights and liberties of others.'" Id. (quoting at United States

v. Alvarez, 132 S.Ct. 2537, 2546 (2012) (plurality opinion)).

Nonetheless, plaintiff's claims for violation of her First Amendment rights in this regard are not viable, since, as the Supreme Court found in Lane, the right to be free from retaliatory action for testifying in a proceeding was not "'clearly established' at the time of the challenged conduct." Id. at 2381-82. Thus, the defendants are entitled to qualified immunity from suit for claims in their personal capacities, id., and immunity under the Eleventh Amendment for claims in their official capacity, as previously discussed.

NYC Human Rights Law Claims

Defendant correctly argues that certain of plaintiff's proposed claims brought under the New York City Human Rights Law would be futile. The state has not waived its Eleventh Amendment immunity with respect to such claims either against its agencies or employees sued in their official capacities. See Feingold v. New York, 366 F.3d 138, 149 (2d Cir. 2004); Jallow v. Office of Court Administration, 2012 WL 4044894, at *5 (S.D.N.Y. 2012), adopted by 2012 WL 4793871 (S.D.N.Y. 2012); Schwartz v. York College, 2009 WL 3259379, at *3 (E.D.N.Y. 2009). Therefore, any such claims brought against the UCS or the proposed individual defendants in their official capacities would be futile.

NYS Human Rights Law Claims

Defendant argues that plaintiff's proposed New York State Human Rights Law retaliation claims fail to state a cause of action. Specifically, defendant contends that the employment actions plaintiff alleges that she was subjected to were not sufficiently "adverse" to give rise to a claim of retaliation.

The standards for retaliation under the NYSHRL are the same as under Title VII. See Rivera v. Rochester Genesee Regional Transp. Auth., 743 F.3d 11, 25 n.8 (2d Cir. 2014) (quoting Schiano v. Quality Payroll Sys., Inc., 445 F.3d 597, 609 (2d Cir. 2006)). To show a prima facie case of retaliation, plaintiff must demonstrate that "(1) he was engaged in protected activity, (2) the employer was aware of that activity, (3) the employee suffered a materially adverse action and (4) there was a causal connection between the protected activity and that adverse action." Rivera, 743 F.3d at 24. In Burlington Northern and Santa Fe Ry. Co. v. White, 548 U.S. 53 (2006), the Supreme Court broadened the definition of "material adverse action" for retaliation claims. Unlike disparate treatment claims where adverse action must relate to the terms and conditions of employment, a retaliation plaintiff "must show that a reasonable employee would have found the challenged action materially adverse, which in this context means it well might have dissuaded a reasonable worker from making or supporting a charge of discrimination." 548 U.S. at 68.

On the other hand, "those petty slights or minor annoyances that often take place at work and that all employees experience" are not actionable. Id. "'[C]ontext matters,' as some actions may take on more or less significance depending on the context." Tepperwien v. Entergy Nuclear Operations, Inc., 663 F.3d 556, 568 (2d Cir. 2011) (quoting Burlington Northern, 548 U.S. at 69). The significance of workplace conduct "depends on a constellation of surrounding circumstances, expectations, and relationships" such that "an act that would be immaterial in some situations is material in others." Burlington Northern, 548 U.S. at 69. In addition, "alleged acts of retaliation need to be considered both separately and in the aggregate, as even minor acts of retaliation can be sufficiently 'substantial in gross' as to be actionable." Hicks v. Baines, 593 F.3d 159, 165 (2d Cir. 2010) (quoting Zelnik v. Fashion Institute of Tech., 464 F.3d 217, 227 (2d Cir. 2006)).

Defendant misstates the applicable standard for material adverse action and cites cases that either precede the Supreme Court's decision in Burlington or involve disparate treatment claims, which, as noted above, require that adverse action affect the terms and conditions of employment.[5] As characterized by defendant, plaintiff alleges the following acts of retaliation: 1) she was closely monitored and micro-managed; 2) she was

[5] Plaintiff also cites the wrong standard. See ct. doc. 70 at 5.

routinely and viciously ridiculed, reprimanded and criticized for her investigative and litigation work and memos reflecting negative accounts of her productivity and practices were placed in her personnel file; 3) she was subjected to numerous hours of one-on-one supervision; 4) she was subjected to unreasonable workloads, demands and deadlines; 5) she was strictly monitored on her time and leave and memos reflecting her arrival and departure times were placed in her personnel file; 6) she was repeatedly ordered to attend counseling sessions of performance and time and leave issues, under threat of termination if she failed to attend these sessions; 7) she was given a negative performance evaluation; 8) she was denied a request for transfer; and 9) she was constructively discharged. See ct. doc. 69 at 11-12.

At the outset, plaintiff's alleged constructive discharge, standing alone, clearly qualifies as an adverse employment action sufficient to sustain her retaliation claim. See Fitzgerald v. Henderson, 251 F.3d 345, 357 (2d Cir. 2001) ("[a]dverse employment actions include discharge from employment . . . [which] may be either an actual termination of the plaintiff's employment by the employer or a 'constructive' discharge"); Sandvik v. Sears Holding/Sears Home Improvement Prods., Inc., 2014 WL 24225, at *11 (E.D.N.Y. 2014). As to the other allegations in the complaint, although some of the conduct cited may be considered "trivial" when considered in isolation, in the

aggregate, when viewed in the light most favorable to plaintiff, the course of conduct described by plaintiff is sufficient to constitute adverse action. See Penn v. N.Y. Methodist Hosp., 2013 WL 5477600, at *16 (S.D.N.Y. 2013) ("alleged instances of retaliation, in the aggregate, allow for the inference that Defendants subjected Plaintiff to closer scrutiny because he engaged in protected activity"); Rowe v. N.Y. State Div. of Budget, 2013 WL 6528841, at *3 (N.D.N.Y. 2013) ("course of action in excluding Plaintiff from various meetings, projects and training and in changing Plaintiff's title might nevertheless represent adverse actions supporting her retaliation claim"); Friel v. Cty. of Nassau, 947 F. Supp. 2d 239, 254 (E.D.N.Y. 2013) (audit of plaintiff's computer usage in combination with reduction in assignments supports a plausible inference of retaliation); Kirkweg v. N.Y. City Dep't of Educ., 2013 WL 1651710, at *5 (S.D.N.Y. 2013) (loss of performance bonus, excessive scrutiny and poor performance review qualify as adverse actions); Kretzmon v. Erie Cty., 2013 WL 636545, at *7 (W.D.N.Y. 2013) ("incidents, considered in their totality" constitute adverse actions). Plaintiff complains of a sustained campaign of retaliation over the course of several years involving increased scrutiny, criticism of her work, negative evaluations and denials of her transfer requests to remove herself from the allegedly toxic environment in which she worked. I find that, in context, even the minor acts of retaliation recited by plaintiff are

sufficiently "substantial in gross" so that they might dissuade a reasonable worker from engaging in protected activity.

In addition, defendant argues that the NYSHRL claims are futile since they are duplicative of the Title VII claims. Although the standards are "analytically identical," see EEOC v. Mavis Discount Tire, 2013 WL 5434155, at *5 (S.D.N.Y. 2013), defendant has not provided any authority that claims under the NYSHRL cannot proceed simultaneously with Title VII claims.

State Law Tort Claims

Defendant correctly argues that plaintiff's state law tort claims against it and the individual defendants in their official capacities are barred by sovereign immunity. See DeLee v. White, 2011 WL 7415124, at *16 (W.D.N.Y. 2011); Moore v. City of N.Y., 2011 WL 795103, at *7 n.3 (E.D.N.Y. 2011); Reeves v. City of N.Y., 1999 U.S. Dist. LEXIS 21763, at *11 (S.D.N.Y. 1999); see also Sank v. City Univ. of N.Y., 112 Fed. Appx. 761, 763 (2d Cir. 2004). In response, plaintiff contends that the Court may exercise pendent jurisdiction over these state claims. The Court cannot exercise pendent jurisdiction over claims which cannot be brought against the state in federal court. See Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 120-21 (1984) ("neither pendent jurisdiction nor any other basis of jurisdiction may override the Eleventh Amendment").

Thus, claims 11, 12, 13, 14 and 15 are futile and may not be

asserted in an amended complaint. Also, insofar as plaintiff asserts a claim against all defendants for joint and several liability and under respondeat superior under Claim 16, any part of that claim relating to claims 11 through 15 are likewise futile. Although not raised by defendants, this Court is constrained to note that this type of "claim" does not appear to be a claim at all. While such a "claim" is perhaps pled in state court pleadings, these two theories of vicarious liability are not considered to provide a separate basis for relief apart from the statutory claim asserted.

CONCLUSION

For the foregoing reasons, plaintiff's motion for leave to amend is granted in part and denied in part. Plaintiff's motion is denied as to the following claims: all claims brought against the DDC; the section 1981 claim brought against all defendants; the section 1983 claims based on retaliation; the section 1983 claims brought against the UCS and the individual defendants in their official capacities; the NYCHRL claims against the UCS and the individual defendants in their official capacities; and the state law tort claims against the UCS and the individual defendants in their official capacities.

Plaintiff must submit a further revised proposed amended complaint in accordance with this order by October 6, 2014. Specifically, plaintiff must specify, inter alia, which factual

allegations correspond to each claim, eliminate redundant and unnecessary factual detail, limit each paragraph as far as practicable to a single set of circumstances and consider reorganizing the various claims asserted.

SO ORDERED.

Dated: Brooklyn, New York
September 15, 2014

/s/
MARILYN DOLAN GO
UNITED STATES MAGISTRATE JUDGE

APPENDIX A
SUMMARY OF CLAIMS NOT PERMITTED

Type of Claim/Persons Dismissed	**Claims Affected** (by number alleged in the Proposed Revised Amended Complaint)
DDC	1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, 15, 16
Section 1981	5
Section 1983 claim against defendants in their official capacity	3, 4, 6, 7, 8, 9, 10
Section 1983 claim for retaliation	4, 6, 7, 8, 10, 3 (part of claim)
NYCHRL claims against defendants in their official capacity	1, 2, 3, 4, 5, 6, 7, 8, 9, 10 (in official capacity)
State Tort Claims against defendants in their official capacity	11, 12, 13, 14, 15, 16, to the extent based on 11-15

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
---X

NICOLE CORRADO,

Plaintiff,

AMENDED COMPLAINT
CV 12-1748 (DLI)(MDG)

JURY TRIAL DEMANDED

--Against –

NEW YORK STATE UNIFIED COURT SYSTEM;
LUIS GONZALEZ, *in his individual capacity;*
JOHN McCONNELL, *in his individual capacity*;
ROY REARDON, *in his individual capacity*;
JORGE DOPICO, *in his individual capacity*;
ANGELA CHRISTMAS, *in her individual capacity*;
ALAN FRIEDBERG, *in his individual capacity*;
VINCENT RANIERE, *in his individual capacity;*
NAOMI GOLDSTEIN, *in her individual capacity.*

Defendants.
---X

Plaintiff, NICOLE CORRADO, by her attorneys, LAW OFFICES OF AMBROSE WOTORSON, alleges as follows:

I. INTRODUCTION

1. Plaintiff, Nicole Corrado, brings employment discrimination claims on the basis of her sex, alleging sexual harassment, gender discrimination, retaliation, hostile work environment and constructive discharge against the New York State Unified Court System, Luis Gonzalez, John McConnell, Roy Reardon, Jorge Dopico, Angela Christmas, Alan Friedberg, Vincent Raniere and Naomi Goldstein (in their individual capacities as "Defendants").

2. Plaintiff alleges that Defendants altered the terms, conditions, and privileges of her employment and subjected her to sexual harassment, retaliation, a hostile work environment and constructive discharge due to her gender and sex, her protected activities and in opposing such discrimination.

3. Plaintiff's protected activities included, but were not limited to, formally complaining about sexual harassment to agents of the New York State Unified Court System and complaining about sexual harassment and retaliation to the United States Equal Opportunity Commission, for prosecuting the instant lawsuit, and for taking medical leave to care for her child.

4. Further, Defendants, collectively and individually, had notice of the likelihood that Plaintiff would be subjected to unwanted and unwelcome sexual advances and harassment. Indeed, one of Plaintiff's supervisors, Andral Bratton, upon information and belief, had personality and/or emotional disorders, which Defendants were aware of, had actual and/or constructive knowledge of, and reasonably should have been aware of, which made him prone to unacceptable and unlawful behavior in the workplace.

5. Further, upon information and belief, Vincent Raniere had a history of sexually harassing women at the DDC, for which Defendants had actual and/or constructive notice, but never took affirmative steps, to address, stop, discipline, discourage or curtail his unlawful conduct.

6. Thus, Vincent Raniere was emboldened to continue such unlawful activity over the course of many years towards Plaintiff and towards other female DDC employees.

7. Defendants also interfered with Plaintiff's right to take leave under the Family Medical Leave Act (hereinafter "FMLA") and retaliated against her precisely because she did exercise her right to FMLA .

8. In August 2009 and, again in 2013, Defendants constructively discharged Plaintiff as the penultimate act of a continuing, systematic, unbroken and well-orchestrated scheme of micro-management and retaliation against her. Defendants did so as a direct and proximate cause of Plaintiff engaging in protected activities.

9. At present, plaintiff is unemployed, despite her best efforts at obtaining employment as an attorney.

II. JURISDICTION AND VENUE

10. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. Section 1391, as substantial events occurred within this judicial district. Further, this matter was initially commenced within 90 days after receipt of a right to sue letter from the United States Equal Employment Opportunity Commission.

11. At all times relevant to this action, Plaintiff was an employee of the New York State Unified Court System, and, as such, was entitled to the protections of Title VII, the NYSHRL and the NYCHRL.

12. Subject matter jurisdiction before this Court is pursuant to 28 U.S.C. Section 1331.

13. The Court also has supplemental jurisdiction over Plaintiff's NYSHRL and NYCHRL claims in accordance with the provisions of 28 U.S.C. Section 1367, as well as any common law claims.

III. PARTIES

14. At all relevant times herein, NICOLE CORRADO ("Plaintiff"), a female, of Italian national origin and descent, has been a resident of the State of New York, in the County of Queens. At all relevant times herein, Plaintiff was employed as an attorney with Defendant, New York State Unified Court System. She was and is a qualified person to work, she was an employee entitled to leaves, including intermittent leaves, during successive 12-month periods in which she worked 1250 or more hours.

15. Defendant, New York State Unified Court System is the official name of the judicial system of New York, with offices and Courthouses all over the State of New York, in each and every county. At all times relevant herein, Plaintiff worked for this Defendant, at this Defendant's office located at 61 Broadway, 2nd Floor New York, New York 10006.

16. Defendants, LUIS GONZALEZ, JOHN McConnell, ROY REARDON, JORGE DOPICO, ANGELA CHRISTMAS, ALAN FRIEDBERG, VINCENT RANIERE, and NAOMI GOLDSTEIN, in their individual capacities, at all relevant times, had supervisor control and disciplinary purview over Plaintiff. They are all herein sued in their individual capacities for participating in illegal actions against Plaintiff. They may sue and be sued, and they not entitled to qualified or judicial immunity for any of bad acts that they undertook as alleged in the instant complaint. Their addresses are unknown at this time.

IV. FACTS

17. Plaintiff's performance was satisfactory at all relevant times since her employment began with Defendants on November 8, 2001.

18. However, the terms, conditions, and privileges of Plaintiff's employment were adversely affected because of her sex/gender and because of her protected activities in the in the following ways.

19. Plaintiff commenced her employment with Defendant on November 8, 2001.

20. Plaintiff was initially hired as an Associate Attorney and was promoted to the position of Principal Attorney in 2006.

21. As Principal Attorney, Plaintiff was assigned to investigate and prosecute serious attorney misconduct cases.

Bratton's sexually harassing behavior

22. In or around of 2003, Andral Bratton became Plaintiff's immediate supervisor. From 2003 until 2008, while supervising Plaintiff, Bratton developed a strong sexual attraction to Plaintiff resulting in pervasive comments about his desire to have a sexual relationship with Plaintiff. He later admitted during a subsequent investigation that he wanted to be in a relationship with Plaintiff and that he was "foolish as hell for crossing an emotional boundary with Plaintiff."

23. From 2003 until 2008, Bratton, continually subjected Plaintiff to a hostile work environment by pervasively making inappropriate, unwanted and unwelcome statements filled with sexual innuendos, by making unwanted emotionally and sexually laden advances and overtures to Plaintiff, by intimidating and threatening Plaintiff;

frequently calling her at home in the evening and on week-ends, expressing his need to speak with Plaintiff, relentlessly seeking Plaintiff's attention, affection and time.

24. Specifically, during the course of his supervision of Plaintiff, Bratton would pervasively make statements such as "I feel like someone ripped into my chest and ripped my heart out and stomped it to the floor" because he was married and wanted to have an intimate relationship and/or extra-marital affair with Plaintiff. The cumulative effect of such pervasive comments interrupted and interfered with Plaintiff's ability to concentrate and do her job.

25. Bratton would incessantly look into Plaintiff's office, and/or scan Plaintiff up and down with lust in his eyes. On one occasion Plaintiff was wearing a loose sweater that slightly exposed her shoulder, Bratton remarked, "With you Nicole a little skin showing goes a long way."

26. On another occasion, in response to Plaintiff's objection to Bratton's conduct and asking him to conduct himself in an appropriate manner, because Plaintiff was extremely uncomfortable with his numerous advances, Bratton responded, in sum and substance, that he felt like "a loaded pistol" in describing his compelling attraction to the Plaintiff. Such comments would not have been made to plaintiff but for the fact that she is a woman. The cumulative effect of the repeated unwanted and unwelcome comments like being a "loaded pistol" interrupted and interfered with Plaintiff's ability to concentrate and do her job.

27. Plaintiff continued to discourage Bratton from making sexually charged remarks, overtures and/or advances, but Bratton, would pervasively state things like, "you need to be nice to me" or "you weren't nice to me last week."

28. Bratton would also pervasively call Plaintiff at home on random nights. In distressed tones he would often state, "I have no one else to turn to," further demonstrating his obsessive need to remain in contact with Plaintiff.

29. As well, in 2008, Bratton began to brazenly follow Plaintiff in and around locations at work, causing Plaintiff fear, alarm and extreme emotional distress.

30. At no time did Plaintiff ever share or return any of Bratton's feelings, and she frequently expressed to him that his comments, sexual innuendos, lustful gazes and overall actions toward her were highly inappropriate and made her exceedingly uncomfortable.

Plaintiff's first transfer Request

31. In or about June of 2007, Plaintiff requested to be transferred to another supervisor as a result of Bratton's pervasive sexually –charged comments, phone calls during and after work hours, and on weekends.

32. Shortly after Plaintiff's request for transfer to another supervisor, Bratton took, upon information and belief, a medical leave of absence from the DDC for several months, returning in August 2007.

Bratton's continued sexual harassment after leave

33. Upon Bratton's return, Plaintiff kept her distance and attempted to avoid contact with him, but Bratton would persistently seek out Plaintiff, would make repeated efforts to communicate with Plaintiff, would purposely create situations to be near Plaintiff, would telephone Plaintiff, would make unsolicited and random remarks to Plaintiff, addressing plaintiff as "princess", and repeatedly seeking Plaintiff's attention.

34. In or around June of 2008, in retaliation for Plaintiff 's transfer request, and agreeing to provide corroborating testimony on a matter of public concern, Alan Friedberg, one of her supervisors, began to closely monitor Plaintiff and to write memos reflecting pretextual accounts concerning Plaintiff's productivity and work while not disclosing this to Plaintiff.

35. In or around August 2008, Bratton informed plaintiff that in 2007, he admitted himself into the psychiatric ward at St. Vincent's hospital for "severe, deep depression and suicidal tendencies," because she had spurned his romantic advances. Bratton told her that he was disclosing this to her as a "warning" right before she was scheduled to give testimony which could have reflected negatively upon him.

36. When Plaintiff asked Bratton why he was "warning" her, Bratton repeated, "I'm just warning you" causing Plaintiff extreme fear, stress and emotional pain.

37. On or about September 17, 2008, Plaintiff reported Bratton's pattern of sexual harassment and, his newly threatening behavior to Friedberg. During the course of the conversation, she also reported that Vincent Raniere, another employee, had also subjected her to sexual harassment.

38. Further, Plaintiff informed Friedberg that she had also previously reported Raniere's sexual harassment to Andral Bratton, and to defendant's Policy Committee members, but nothing was done to stop it.

Raniere's sexual harassment of Plaintiff

39. During the 2003-2010 time period, Raniere was employed by Defendant as the Chief Investigator, having supervisory authority over cases being investigated by

the DDC, as well as maintaining supervisory authority over the daily internal office operations and personnel.

40. From 2004 through 2008, Raniere would repeatedly make unwanted sexual statements to Plaintiff such as "I can force you to be with me if I want to" and "I can take care of you in other ways even if I can't take care of you sexually."

41. Raniere also pervasively made statements like, "you don't need anyone but me," as well as frequently commenting on Plaintiff's clothing and appearance and specifically stating how good she looked in her clothes, how well she wore them, how beautiful and attractive she was, that Plaintiff's daughter was very lucky to have such a beautiful mother, and often asked Plaintiff if her daughter was as gorgeous as "her mother."

42. Raniere would often state – in a pervasive manner -- that he dreamed of Plaintiff at night and the he would awake at times during the night thinking of Plaintiff.

43. Moreover, Raniere would repeatedly and routinely call Plaintiff at work and make such statements as "I love you," "I miss you" or "call me if you need anything whether in or out of work." Further, Raniere routinely referred to Plaintiff as "honey," "sweetheart," "sexy."

44. Raniere would pervasively kiss Plaintiff in an unexpected manner, on her mouth, and at other times, would hug and caress Plaintiff's hair, back, shoulders and arms. Raniere would grab Plaintiff's face with his hands, pull her towards him or lean into her, kiss her, and stroke her hair, back and arms. Raniere's actions would also be accompanied with statements expressing desire to be in an intimate relationship with Plaintiff, and pervasively stating such things as "what I wouldn't do to be with you."

45. At no time did Plaintiff ever share or return any of Raniere's feelings and frequently expressed to him that his sexual comments, statements and inappropriate touching and kissing had to stop, but it did not.

46. In 2008, Friedberg elected to only to report Plaintiff's allegations of sexual harassment involving Bratton to the Office of Inspector General for the Unified Court System ("OIG")

47. From September 2008 thru November 2008, the OIG conducted an investigation into Plaintiff's allegations only as to Bratton.

48. During the OIG's investigation Bratton admitted to making sexual comments to Plaintiff and being "smitten" with her.

More intense micromanagement of Plaintiff

50. Once the OIG investigation ended in or about November of 2008, Friedberg, significantly intensified his monitoring of Plaintiff, at times making daily notations about her in her personnel file. Upon information and belief, this was done at the direction, mandate and approval of Roy Reardon, Luis Gonzalez, John McConnell, the Office of Court Administration and/or other DDC and court administrators.

51. Friedberg also began to routinely ridicule and reprimand Plaintiff, criticizing Plaintiff's investigative and litigation skills and techniques, and scrutinizing all of Plaintiff's activities and movements.

Defendants' determination in Bratton's favor

52. Despite Bratton's direct admissions, the Unified Court System, Luis Gonzalez, John McConnell, Roy Reardon and other court administrators concluded that

Bratton had only "engaged in inappropriate conduct and not sexual harassment. He was merely transferred him to another unit with the same salary and benefits.

53. Friedberg informed Plaintiff that Bratton would still be permitted unrestricted access to plaintiff's workspace and that she should just "avoid" him if she saw him.

Strange Fires and floods

54. From August 2008 through August 2009, Plaintiff grew increasingly anxious, distressed and greatly feared for her and her family's safety because Bratton continued to physically pursue her Westhampton Beach home was virtually destroyed by a flood in January 2009, and in February 2009, one of Plaintiff's other properties located in Queens County, NY was destroyed by a fire. Plaintiff informed Friedberg that she feared all these actions were related, but he quickly dismissed Plaintiff's worries.

55. Upon information and belief, the Unified Court System, McConnell, Gonzalez, Reardon, and Raniere, all of whom had supervisory control and purview over Plaintiff, and had actual notice of Plaintiff's formal sexual harassment charges against both Bratton and Raniere, directed and approved Friedberg's actions of amassing a pre-textual paper trail of alleged performance issues against Plaintiff.

Plaintiff's EEOC Complaint

56. As a direct result of such mistreatment and remarks, Plaintiff informed Friedberg in April 2009, that she would be filing sexual harassment and retaliation charges with the EEOC.

57. In May of 2009, Plaintiff filed sexual harassment and retaliation charges with the EEOC against the Unified Court System.

58. Significantly, in or around October of 2008, during the OIG's investigation, Friedberg admitted to having actual knowledge of Raniere's inappropriate sexual comments and behavior towards other females working at the DDC. However, Defendants, failed to take any affirmative steps to stop Raniere's unlawful discriminatory practices or to take any type of disciplinary or other legal action against him.

59. In or around July of 2009, despite Plaintiff's pending allegations against Raniere, Defendant instructed Plaintiff to continue to have daily contact and interaction with Raniere, one of her harassers.

Counseling sessions and continued micromanagement

60. In or around July 2009, Friedberg repeatedly ordered plaintiff to "counseling sessions." Then, at the direction of Presiding Justice Luis Gonzalez, John McConnell emailed Plaintiff and threatened Plaintiff with termination if she failed to comply with directives to attend "counseling sessions" as mandated by Friedberg, all in fits of retaliatory ardor.

61. From January of 2009 through July 2009, Defendant New York State Unified Court System, the DDC, Luis Gonzalez, Roy Reardon, Alan Friedberg and John McConnell assigned Plaintiff unreasonable workloads, created draconian demands and deadlines for certain matters assigned to Plaintiff, subjected Plaintiff to numerous hours of one-on-one supervision with another member of the DDC Policy Committee, challenged Plaintiff's decisions and recommendations in various assigned matters, repeatedly and continually criticized the manner in which she handled her cases, and gave her negative performance evaluations, all in fits of retaliatory ardor.

Plaintiff's second transfer request

62. Plaintiff became increasingly anxious, distressed and suffered extreme emotional pain, loss of appetite and numerous bouts of insomnia as a result of the prior acts of sexual harassment and defendant's subsequent protracted course of retaliation against her. Plaintiff even sought to take a leave of absence and/or to be transferred to another position within the Unified Court System, but Defendants blocked and, otherwise, denied her transfer request.

63. On or about June 2009, Plaintiff confirmed to Friedberg that she had, in fact, filed an EEOC complaint against the agency regarding Bratton and Raniere's sexual harassment, as well as the continued pattern of retaliation and the pervasively hostile and toxic work environment she was subjected. Immediately thereafter, in or around July-August 2009, Defendants' Inspector General commenced a sexual harassment investigation into Raniere.

64. On or about July 16, 2009, Alan Friedberg, Luis Gonzalez, John McConnell and Roy Reardon, who had supervisory and disciplinary purview over Plaintiff, and who notice of Plaintiff's pending EEOC complaint, ordered Plaintiff to attend another "counseling session," and advised her that termination could result if she failed to attend.

65. In August 2009, McConnell informed Plaintiff that her sexual harassment allegations against Raniere were unfounded.

Plaintiff's first leave of absence

66. On August 24, 2009, as a direct and proximate cause of the anxiety and extreme emotional distress stemming from the retaliatory harassment along with

Defendants' decision to completely exonerate Vincent Raniere, Plaintiff took an unpaid leave of absence during the height of her career, which lasted two years.

67. This caused Plaintiff to lose enormous employment opportunities, job advancement, and the ability to obtain or secure other legal employment.

68. Further, Plaintiff's physical health was severely affected. Plaintiff's serious health problems were a proximate result of the pervasively toxic events, which she encountered.

Plaintiffs' returns from her first leave of absence

69. In or around August 2011, Plaintiff, returned to work at the DDC and resumed her prior position as Principal Attorney, once her sexual harassers had resigned and/or retired. However, her EEOC Complaint was still pending at the time.

70. Other supervisory officials who had notice of Plaintiff's protected activities, such as John McConnell, Luis Gonzalez and Roy Reardon remained within the court system, Yet, John McConnell was later promoted from Chief Clerk of the Appellate Division, First Department to Chief Counsel for the Office of Court Administration to the Unified Court System.

71. Upon information and belief, and at relevant times herein, Defendant Roy Reardon held DDC Policy Committee meetings to privately discuss Plaintiff's sexual harassment and retaliation complaints, and to design a course of action to counter or to deflect Plaintiff's allegations. Upon information and belief, Roy Reardon, made various attempts to conceal, hide and/or cover-up the unlawful activities and discriminatory practices engaged in by defendants. Further, upon information and belief, Roy Reardon wrote to the EEOC and presented disparaging, negative remarks about Plaintiff.

Continued retaliatory scrutiny and micromanagement

72. Shortly after returning to the DDC, Plaintiff almost immediately began to experience disparate treatment, a continuing hostile work environment and continued adverse treatment from staff. Within the first month, Plaintiff had two broken office desk chairs that collapsed under her as she attempted to sit at her desk. On at least two separate occasions, as Plaintiff was working in her office, she suddenly began to experience severe burning in her eyes, irritation, swelling and blurred vision in both her eyes. Plaintiff was further subjected to strict demands to prosecute certain cases in prescribed fashion, her work and performance became increasingly more rigorously scrutinized and reviewed, and her attendance was strictly monitored. All these events were reported to Defendants Jorge Dopico, Angela Christmas and Naomi Goldstein.

73. Separately, in 2008, Plaintiff retained the services of an attorney with law offices in New York City to represent her in a Supreme Court civil action involving a property claim to her home (Corrado v. East End Pool & Hot tub, James King et al., Index # 22430/2005).

Ethics complaint against Plaintiff's civil attorney

74. While Plaintiff's above civil matter was pending and subsequent to her filing the EEOC charge of sexual harassment and retaliation, Alan Friedberg, Vincent Raniere and other staff initiated, in August 2009, initiated an ethics investigation against her attorney alleging serious ethical charges of bribery and forgery. Upon information and belief, this was done at the direction, mandate and express or implied approval of Roy Reardon, Luis Gonzalez, John McConnell and/or other court administrators.

75. In May of 2010, Plaintiff's attorney in the underlying civil action abruptly withdrew as Plaintiff's counsel. Plaintiff's case of five years was subsequently dismissed, requiring the retention on new counsel and expending considerable sums of money, time and effort to have her case ultimately resolved through settlement at a fraction of its value.

76. In May 2010, all of the serious ethical charges against Plaintiff's attorney initiated by Defendants, the Unified Court System, and/or Alan Friedberg, Roy Reardon, Luis Gonzalez, John McConnell and Vincent Raniere, which would ordinarily result in formal disciplinary action were dismissed as unfounded.

77. However, later in 2011, the instant disciplinary matters were reopened and reinvestigated by the DDC at the direction and supervision of Jorge Dopico, Angela Christmas, Luis Gonzalez, Roy Reardon and John McConnell.

Instant lawsuit filed

78. On or about April 10, 2012, Plaintiff filed the instant lawsuit against the New York State United Court System, alleging sexual harassment and retaliation, and diligently prosecuted the matter in Federal Court. Plaintiff was represented by the Law Offices of Michael Borrelli and Associates.

79. Upon information and belief, Defendants, including the named individual Defendants, all had actual knowledge of Plaintiff's instant lawsuit filed in April 2012. Indeed, on or about February 29, 2012, Plaintiff's attorneys, the Borrelli law firm sent a written "Notice of Intent to Sue" to Defendants at the DDC, to the Appellate Division and to the Office of Court Administration to inform them that they represented Plaintiff in the instant action, and further provided a description into the nature of the matter.

Plaintiff's second transfer request

80. Subsequently, Plaintiff unequivocally expressed her wishes to be transferred from the DDC to an office or agency outside the jurisdiction of the First Department and, preferably to a different judicial department. Plaintiff's requests for transfer were all denied.

81. From the time that Plaintiff commenced the instant lawsuit and from the time that Plaintiff discovered the circumstances surrounding her civil attorney's disciplinary investigations, Plaintiff encountered enhanced hostility from management and staff, was again placed under strict monitoring of her cases, performance, time, attendance, was given excessive work assignments, was given firm deadlines in various assignments which, generally called for more flexible and less stringent schedules, and was treated with hostility, retaliatory animus, and with underhanded, disingenuous methods purposely designed to undermine Plaintiff's professional standing.

Ethics charges against plaintiffs employment counsel

82. Upon information and belief, on or about March 5, 2012, Jorge Dopico, Angela Christmas, Roy Reardon and/or other DDC and court personnel, assigned DDC docket number 2012.0484 to a matter relative to Plaintiff's counsel, Michael Borrelli, Esq., but failed to disclose same.

Plaintiff's second leave of absence

83. On or about March 4, 2013, plaintiff's daughter became very ill. Thus, Plaintiff took an unexpected and unplanned leave of absence under the Family Medical Leave Act due to a serious medical condition suffered by her teenage daughter. Plaintiff

was subsequently approved for such leave, and had performed 1250 hours in the preceding 12 months prior to her leave.

84. Plaintiff is a divorced, single mother.

85. Plaintiff returned from her FMLA leave on or about March 25, 2013, and within 45 minutes of her return, Defendants Jorge Dopico and Angela Christmas had the DDC office manager deliver and present to Plaintiff her annual performance evaluation. The evaluation contained false and utterly pretextual commentary, review and critique and was unsigned by the preparer.

86. Plaintiff discussed the negative and unsigned evaluation with Jorge Dopico and raised objections to the evaluation and explained to Jorge Dopico why she believed, under the circumstances, it was a retaliatory and pretextual review of her work and performance. Indeed, the evaluation included performance issues that Plaintiff's supervisors had never contemporaneously raised and/or discussed with her in the course of her work.

87. Plaintiff's negative, pretextual and fabricated performance evaluation was signed and adopted by Jorge Dopico, and was written, upon information and belief, at the direction of Defendants Roy Reardon, John McConnell, Luis Gonzalez and other DDC or court administrators. Upon information and belief, defendants Naomi Goldstein and Angela Christmas authored the performance evaluation.

88. Notably, Jorge Dopico, himself, had expressed and informed Plaintiff that her performance was "great…and that there were no problems the first few months after returning to the DDC in 2011."

89. From the start of Plaintiff's employment at the DDC in November

2001 through 2007, Plaintiff had received excellent and very favorable yearly performance evaluations. Then in 2008, once Plaintiff reported her complaints of sexual harassment and retaliation, Plaintiff immediately began to receive and was given negative/adverse yearly performance evaluations, which continued through to 2013.

Plaintiff's third transfer request

90. On or about March 25, 2013, Plaintiff renewed her request for a transfer from the DDC, and into another department of the New York State Unified Court System. Once again, Plaintiff's request was ignored and/or denied.

91. On or about May 8, 2013, approximately 43 days after Plaintiff returned from an FMLA leave of absence, Angela Christmas and Jorge Dopico ordered Plaintiff to attend a "counseling session" because of her alleged time and leave issues. Upon information and belief, this was done at the direction, mandate and approval of John McConnell, Luis Gonzalez and Roy Reardon and other and/or court supervisors.

92. Plaintiff's "time and leave" issues were inextricably intertwined with her three-week leave of absence to care for her teenage daughter, who suffered from a serious medical condition.

More Counseling sessions ordered

93. On July 30, 2013 Angela Christmas and Jorge Dopico again ordered Plaintiff to attend a "counseling session." On several dates and times, Angela Christmas intentionally and deliberately instigated verbal altercations with Plaintiff in Plaintiff's office, made false accusations, and upon information and belief, communicated such false information to Jorge Dopico, Luis Gonzalez, Roy Reardon and/or other court personnel. Upon information and belief, Angela Christmas even falsely reported that

Plaintiff acted in a "threatening loud manner" towards her. Over time, Angela Christmas continued to manifest retaliatory animus harsh towards Plaintiff, often in a bullying fashion and in an effort to discredit, demean and further tarnish Plaintiff's employment standing, performance and reputation, and for the purpose of pretextually recommending Plaintiff's employment termination and/or to instigate and/or to force and/or prompt

Plaintiff's Final Pleas For Help

94. Upon information and belief, Angela Christmas' retaliatory, and adverse treatment were, in fact, authorized and carried out by and with the affirmative and express consent, mandate and approval of Jorge Dopico, Luis Gonzalez, Roy Reardon, John McConnell, Naomi Goldstein and/or other DDC and court administrators.

95. At various times, Plaintiff had made repeated requests to the Clerk of the Court, Susanna Molina Rojas, to personally meet with Justice Gonzalez to discuss with him the impending hostile work environment she was subjected to and to request a transfer from the DDC. Plaintiff's requests to meet with Justice Gonzalez and to discuss with him the serious nature and circumstances surrounding her employment were all denied.

More counseling sessions and alleged insubordination

96. By letter dated August 2, 2013, the Clerk of the Court, Susanna Molina Rojas, wrote to Plaintiff to inform her, among other things, that on behalf of Justice Gonzalez, Plaintiff was directed to attend a "counseling session" scheduled on August 8, 2013, at the DDC with her supervisors. This time, however, Plaintiff was instructed that her failure to attend "might" be deemed insubordination, which could constitute grounds

for her termination. This letter was emailed and mailed to Plaintiff's home by regular and certified mail.

Constructive discharge

97. No reasonable person would subject themselves to such harsh and continued micro-management, repeated threats of termination, pervasively hostile and toxic work environment, pretextual criticism and adverse treatment, from the New York State Unified Court System and the individual defendants herein.

98. After consecutive, uninterrupted years of malicious and premeditated efforts by all Defendants to cause plaintiff extreme personal and professional harm, pain and humiliation, Plaintiff decided she could no longer sustain the toxicity of such a pervasively hostile work environment, and, ultimately, did resign from her position as Principal Attorney on August 7, 2013.

99. As a direct and proximate cause of all Defendants' illegal employment actions against her, Plaintiff has suffered, and Plaintiff will suffer into the future, a loss of earnings and other employment benefits to which she was accustomed and to which she was entitled. Indeed, Plaintiff has not, despite her diligent and good faith efforts, been able to find or secure other employment as an attorney. Plaintiff has had to relinquish a $125,000/year salary, plus professional title, standing, position, health and medical insurance, retirement benefits, pension rights, past and future salary/earnings as a direct consequence of Defendants' constructive discharge of Plaintiff in August 2009 and, again, in August 2013.

100. As a direct and proximate cause of all Defendants' illegal employment

actions taken against her, Plaintiff has suffered, and Plaintiff will suffer in the future, impairment and damage to Plaintiff's good name and reputation. Despite her diligent and good faith efforts, Plaintiff has been unable to find and secure other legal employment because her name and professional reputation and standing have been detrimentally, irreparably and severely damaged, and the stigma of the instant lawsuit has further tarnished her personal and professional reputation and standing, and has greatly impacted and limited her current and future employment prospects.

101. As a further direct and proximate cause of all Defendants' illegal employment actions taken against her, Plaintiff has suffered emotional stress, mental anguish, physical illness, emotional and physical injury, pain and suffering, embarrassment and humiliation, and will continue to suffer such damages into the future.

102. Defendants' illegal employment actions were conducted and/or carried out with impunity, were willful, intentional, deliberate, egregious, malicious, purposely designed, orchestrated and intended to permanently cause injury and harm to Plaintiff's personal and professional reputation, status and standing. Defendants, collectively and individually, engaged in a protracted and systematic scheme and pattern of unlawful discriminatory practices and responded with deliberate and reckless indifference/disregard to Plaintiff's protected legal activities and rights, entitling Plaintiff to punitive damages where available, and as against the individual Defendants herein.

V. <u>CAUSES OF ACTION</u>

AS FOR A FIRST CAUSE OF ACTION

103. Plaintiff hereby repeats and re-alleges each allegation in each numbered

paragraph above.

104. Defendant NEW YORK STATE UNIFIED COURT SYSTEM, violated 42 U.S.C. 2000(e) by subjecting, and/or allowing Plaintiff to be subjected to, pervasive sexual harassment on account of her sex/gender, by failing to take effective measures to stop and/or to correct such sexual harassment, and by retaliating against her because she opposed such sexual harassment and opposed the toxic work environment she was subjected to because of her gender and her protected activities. The protected activities include, but are not limited to, her internal complaints of sexual harassment, her complaints regarding the inadequacy of alleged corrective measures following defendants' internal investigations, her formal EEOC complaint, and instances of retaliation after the filing of the instant lawsuit, which relate back to her original which related back to her original EEOC complaint, all which lead to plaintiff's constructive discharge from defendants' employ.

AS FOR A SECOND CAUSE OF ACTION

105. Plaintiff hereby repeats and re-alleges each allegation in each numbered paragraph above.

106. All defendants, violated the New York State Human Rights Law as codified at Section 290, et seq. of the New York Executive Law, by aiding and abetting, by subjecting, and/or allowing Plaintiff to be subjected to, pervasive sexual harassment on account of her sex/gender, by failing to take effective measures to stop and/or to correct such sexual harassment, and by retaliating against her because she opposed such sexual harassment and retaliatory activities against her.

107. The protected activities included, but are not limited to, her internal complaints of sexual harassment, her complaints regarding the inadequacy of alleged corrective measures following defendants' internal investigations, her formal EEOC and dual-filed administrative complaints, and instances of retaliation after the filing of the instant lawsuit, which relate back to her original EEOC and dual-filed administrative complaints, all which lead to plaintiff's constructive discharge from defendants' employ.

AS FOR A THIRD CAUSE OF ACTION

108. Plaintiff hereby repeats and re-alleges each allegation in each numbered paragraph above.

109. All individual defendants violated N.Y.C. ADMIN. CODE Section 8 – 107 (1)(a) [NYCHRL], by aiding and abetting, by subjecting, and/or allowing Plaintiff to be subjected to, pervasive sexual harassment on account of her sex/gender, by failing to take effective measures to stop and/or to correct such sexual harassment, and by retaliating against her because she opposed such sexual harassment and opposed the toxic work environment she was subjected to because of her gender and her protected activities. The protected activities include, but are not limited to, her internal complaints of sexual harassment, her complaints regarding the inadequacy of alleged corrective measures following defendants' internal investigations, her formal EEOC and dual-filed administrative complaints, and instances of retaliation after the filing of the instant lawsuit, which related back to her original EEOC and dual-filed administrative complaints, all which lead to plaintiff's constructive discharge from defendants' employ.

AS FOR A FOURTH CAUSE OF ACTION

110. Plaintiff hereby repeats and re-alleges each allegation in each numbered paragraph above.

111. Defendant, NEW YORK STATE UNITFIED COURT SYSTEM, and individual defendants, Angela Christmas' Jorge Dopico, Luis Gonzalez, Roy Reardon, John McConnell and Naomi Goldstein, violated 29 U.S.C. Section 2601, et seq., the Family Medical Leave Act, by altering the terms, conditions and privileges of Plaintiff's employment as a result of Plaintiff's taking a leave of absence to attend to the serious medical condition of her daughter, and did so to punish and to otherwise retaliate against Plaintiff because she exercised her right to utilize the FMLA, and took a leave of absence to care for her daughter who was suffering from a serious medical condition, all which lead to plaintiff's constructive discharge from defendants' employ.

AS FOR A FIFTH CAUSE OF ACTION.

112. Plaintiff hereby repeats and re-alleges each allegation in each numbered paragraph above.

113. Individual defendants, Angela Christmas, Jorge Dopico, Luis Gonzalez, Roy Reardon, John McConnell and Naomi Goldstein Defendants violated N.Y.C. ADMIN. CODE Sections 8-107 (1) (a), 8-107 (6) and 8-107 (7) [NYCHRL] by altering the terms, conditions and privileges of Plaintiff's employment as a result of Plaintiff's taking a leave of absence to attend to the disabling and serious medical condition of her daughter.

AS FOR A SIXTH CAUSE OF ACTION

114. Plaintiff hereby repeats and re-alleges each allegation in each numbered paragraph above.

115. All defendants, including individual defendants, engaged in wanton, reckless, and grossly negligent supervision under New York's common laws, including, but not limited to, failing to implement reasonable procedures and safeguards to prevent sexual harassment and retaliation in the workplace, deliberately ignoring legal standards to prevent and stop sexual harassment and continued retaliation in the workplace, grossly failing to supervise employees to prevent sexual harassment and continued retaliation in the work place, deliberately interfering with Plaintiff's right to access the courts, and directly causing the loss of her job, title, standing, and damage to her name, reputation, severe emotional and physical pain and suffering.

116. Indeed, as plaintiff's employer and as her supervisors, defendant and individual defendants had a special duty, once plaintiff complained about misconduct and sexual harassment, to ensure that she was not subjected to further sexual harassment or retaliatory conduct.

117. Moreover, at least one of the plaintiff's harassers had a prior history of sexual harassment, and thus, defendants knew, or reasonably should have known that he was likely to subject plaintiff to such illegal conduct. Defendants has a special duty, as Plaintiff's employer and as Plaintiff's supervisors, or as persons with special purview over human resources policies and practices, to prevent plaintiff from being subjected to sexual harassment.

118. All respects, all defendants failed in their special duties towards Plaintiff, and thus, violated New York's Common Laws against Negligent Supervision.

AS FOR A SEVENTH CAUSE OF ACTION

119. Plaintiff hereby repeats and re-alleges each allegation in each numbered paragraph above.

120. Defendants, engaged in intentional infliction of emotional distress, by engaging in extreme or outrageous conduct that intentionally caused severe emotional distress to Plaintiff by deliberately retaliating against Plaintiff in exercising her right to the FMLA to care for her sick child, in prosecuting the instant lawsuit, in intentionally causing Plaintiff's constructive discharge, loss of her job, title, standing, and damage to her good name and reputation; in causing Plaintiff extreme professional embarrassment, and humiliation as a government attorney.

VI. DEMAND FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in her favor awarding the following relief:

a. An award of compensatory and consequential damages to be determined at the time of trial to compensate Plaintiff for mental anguish, emotional pain and suffering, physical pain and suffering, embarrassment and humiliation for relating to all of the cause of action herein; and for all of her financial losses, including, but not limited to, all of her lost financial opportunities and entitlements; including back and front pay, her irreparably damaged name, title, standing and professional reputation;

b. An award of punitive or liquidated damages where available, to be determined at the time of trial as against each and all individual defendants, or wherever available

due to willfully illegal activity;

c. An award of reasonable attorney fees and the costs of this action;

d. Reinstatement and/or any other legal and/or equitable relief available; and,

e. Such other and further relief as this Court may deem just and proper.

Dated: New York, New York
November 5, 2014

Respectfully Submitted,

Law Offices of Ambrose Wotorson

By__________s//______________

Ambrose W. Wotorson (AWW-2412)
30 Vesey Street, Suite 1803,
New York, New York 10007
(646) 242-3227
Loaww1650@aol.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -X

NICOLE CORRADO,

Plaintiff,

- against -

NEW YORK STATE UNIFIED COURT SYSTEM, et al.

Defendants.

- -X

ORDER

CV 12-1748 (DLI)(MDG)

Plaintiff's counsel failed to appear for a conference scheduled for November 10, 2014, a date which was set in an electronically filed notice sent to all the parties. He is advised that if he is unable to appear for a court conference, he must make prior arrangements to change the date of the conference. Continued failure to appear for scheduled court conferences could result in sanctions, including the imposition of a fine and attorneys' fees and/or dismissal of this action.

The parties are directed to appear for another telephonic conference on November 19, 2014 at 12:00 p.m. If any party needs to request an adjournment or change the time, he must first call the other party to discuss a new time and submit a request to the Court at least seventy-two (72) hours before the scheduled conference.

The Clerk is directed to mail a copy of this Order to all parties and/or counsel appearing in this case.

SO ORDERED.

Dated: Brooklyn, New York
November 12, 2014

/s/_______________________
MARILYN DOLAN GO
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - X

NICOLE CORRADO,

Plaintiff,

- against -

NEW YORK STATE UNIFIED COURT SYSTEM, et al.,

Defendants.

- - - - - - - - - - - - - - - - - - X

ORDER

CV 2012-1748 (DLI)(MDG)

On January 7, 2015, the Office of the Attorney General of the State of New York (the "OAG") filed a request for a 60 day extension of time to answer on behalf of the newly added individual defendants, whom the OAG does not yet represent. The OAG seeks an extension in order to make a determination required under N.Y. Pub. Off. Law § 17 regarding representation of those defendants who have requested representation by the OAG and because other defendants may yet request representation. Plaintiff opposes the request as untimely and argues that the OAG lacks standing to make a request on behalf of parties it does not represent.

The motion for an extension is granted, in light of the expressed preference of the Second Circuit that cases be determined on the merits. See Pecarsky v. Galaxiworld.com Ltd.,

249 F.3d 167, 174 (2d Cir. 2001). Moreover, the additional time to answer sought is appropriate because a considered determination by the OAG regarding representation of the individual defendants sued under Section 1983 is critical. See Patterson v. Balsamico, 440 F.3d 104, 114 (2d Cir. 2006) (recognizing the potential for "a conflict of interest is inherent in Section 1983 cases").

Although the OAG has not provided authority as to its standing to make requests on behalf of individuals it does not yet represent, other courts have routinely granted requests for an extension under similar circumstances. Since the requests are ordinarily made with the consent of opposing counsel, rulings have not been accompanied by written explanation. This Court notes that under Section 17 of the New York Public Officers Law, the State is required to provide representation to employees subject to claims under Sections 1981 and 1983 as to acts or omissions alleged "to have occurred while the employee was acting with the scope of his public employment or duties." Pub. Off. Law § 17(2)(a). In fact, the statute specifies that "the employee shall be entitled to be represented by the attorney general..." Id. at § 17(2)(b) (emphasis added). Accordingly, by operation of statute, the OAG may appropriately act to protect the interests of employees who potentially are covered by Section 17 as prospective clients. Cf. Hassan v. Fraccola, 851 F.2d 602, 604 (2d Cir. 1988) (examining comparable provisions of Pub. Off.

Law § 18 and finding that "the only reasonable interpretation of section 18(3)(a) is that the allegations in the complaint trigger the [municipality's] duty [to defend]").[1]

Moreover, an extension will not cause undue delay, particularly in this case where plaintiff sought in her amended complaint filed less than three months ago to add new claims based in part on events occurring after she commenced this action. Plaintiff has also contributed to considerable delay, including failing to provide her initial disclosures until more than two years after commencement of this action. See electronic order filed on 6/4/13 (excusing plaintiff's untimely initial disclosures served on 5/20/13, but noting that "the cumulative delay by plaintiff in providing these basic disclosures has thwarted the timely resolution of this case").

For the foregoing reasons, this Court grants to the newly named individual defendants (Dopico, Christmas, Goldstein, Reardon, Gonzalez, McConnell, Friedberg and Raniere) a 45 day

---

[1] New York Public Officers Law § 18 provides for the defense and indemnification of officers and employees of public entities, including a "county, city town, village or any other political subdivision or civil division of the state...," id. § 18(a)(1) while Section 17 provides for defense of state officers and employees. The Second Circuit in Hassan examined section 18(3)(1) which states that:

> the public entity shall provide for the defense of the employee in any civil action or proceeding, state or federal, arising out of any alleged act or omission which occurred or allegedly occurred while the employee was acting within the scope of his public employment or duties.

extension of time to February 27, 2015 to answer or otherwise respond to the Amended Complaint.

SO ORDERED.

Dated: Brooklyn, New York
January 13, 2015

/s/
MARILYN DOLAN GO
UNITED STATES MAGISTRATE JUDGE

LAW OFFICES OF
AMBROSE WOTORSON
A PROFESSIONAL CORPORATION
41st FLOOR
225 BROADWAY
NEW YORK, N.Y. 10007
TELEPHONE: 646-242-3227
LOAWW1650@AOL.COM

April 3, 2015

Via ECF
Honorable Marilyn D. Go, U.S.D.J.
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Corrado v. New York State Unified Court System
12-Cv-1748 (DLI) (MDG)

Dear Honorable Magistrate Judge Go:

This office represents plaintiff in the above-captioned matter.

Pursuant to Rule III (A) (9) of Judge Irizarry's individual rules and local Rule 1.4, I respectfully write to request that I immediately be relieved as counsel for plaintiff, Nicole Corrado, Esq.

I also respectfully request that I be permitted to forgo an affidavit, as Ms. Corrado does not oppose this application and she discharged me as her counsel in an email exchange last night. Upon inquiry, Ms. Corrado will promptly confirm the discharge.

As is customary, I request that all deadlines in this matter be extended for at least 30 days or more, for plaintiff to find new counsel, if she wishes.

I am not imposing any lien on this matter.

Respectfully Submitted,
s//
Ambrose W. Wotorson, Jr.

Cc: Nicole Corrado (via email)
Michael Berg (via email)
Lisa Evans (via email)
Wendy Stryker (via email)
Nicole Bergstrom (via email)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - X

NICOLE CORRADO,

Plaintiff,

- against -

NEW YORK STATE UNIFIED COURT SYSTEM, et al.,

Defendants.

- - - - - - - - - - - - - - - - - - - X

ORDER

CV 2012-1748 (DLI)(MDG)

Ambrose Wotorson of the Law Offices of Ambrose Wotorson has moved to withdraw as counsel for plaintiff Nicole Corrado. See ct. doc. 136. Ms. Corrado has confirmed that she discharged Mr. Wotorson. See ct. doc. 140 at 1. Defendants have not opposed the motion.

This Court finds that Mr. Wotorson has presented "satisfactory reasons" for counsel's withdrawal. See Local Civil Rule 1.4.

Therefore, it is hereby

ORDERED that the motion of Ambrose Wotorson to withdraw as counsel for plaintiff is granted; and it is further

ORDERED, that withdrawing counsel, who has advised that he is not asserting a lien against the client files, must promptly transmit client files to plaintiff or her new counsel upon request, with the reasonable costs of reproduction to be borne by plaintiff; and it is further

ORDERED that this action is stayed until April 23, 2015, 21 days after Mr. Wotorson was discharged, to give plaintiff an

opportunity to obtain new counsel; and it is further

ORDERED that until such time as new counsel for plaintiff enters a notice of appearance, service of papers by mail upon her at 242-18 Van Zandt Avenue, Douglaston, New York 11362 shall be deemed sufficient service; and it is further

ORDERED that a status conference will be held on **May 8, 2015 at 10:00 a.m.**; and it is further

ORDERED that withdrawing counsel must immediately send a copy of this order and any outstanding discovery requests and motion papers to plaintiff.

Warnings to Plaintiff

Plaintiff, Nicole Corrado, is advised that she is required to appear, in person or through counsel, at any scheduled conferences set by the Court. Plaintiff is warned that failure to appear at a conference or to comply with court orders could result in sanctions, including a fine. Continued failure to comply could ultimately result in dismissal for failure to prosecute.

Plaintiff is also advised that various individual defendants have moved to dismiss. Her opposition papers to defendant Raniere's motion are due on May 7, 2015.

Plaintiff is further advised that if she fails to obtain new counsel, she will be expected to proceed in this action by herself. If she proceeds without counsel, she is advised that every communication sent to the Court must also be sent to the opposing counsel. Any document received by a district judge or

magistrate judge which fails to indicate that a copy has been sent to the attorneys for defendants may be disregarded by the Court.

SO ORDERED.

Dated: Brooklyn, New York
April 9, 2015

/s/
MARILYN D. GO
UNITED STATES MAGISTRATE JUDGE

January 11, 2016

Via ECF
Honorable Marilyn D. Go, U.S.M.J.
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Corrado v. New York State Unified Court System
12-CV-1748 (DLI) (MDG)

Dear Judge Go:

I respectfully request an adjournment of approximately two (2) weeks of January 14, 2016 Hearing on the Motions to Compel.

The grounds for the request are related to the development of certain important legal issues raised by the Motions and the necessity that they be resolved prior to the Hearing. In addition, local weather reports predict a lake-effect snow storm which will include several feet of snow making travel to New York impossible.

Thank you in advance for your consideration.

/s/ Frank Housh

Frank Housh, Esq.
HOUSH LAW OFFICES, PLLC
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c: Lisa M. Evans
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Michael A. Berg
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Nicole Bergstrom
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wstryker@fkks.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NICOLE CORRADO

Plaintiff,

v.

NEW YORK STATE UNIFIED
COURT SYSTEM ET AL.

Docket No: 12-CV-01748

Defendant.

CERTIFICATE OF SERVICE

I hereby certify that I am Owner of the Housh Law Offices, PLLC and that on January 11, 2016 I electronically filed the foregoing with the Clerk of the District Court using its CM/ECF system, which would then notify the following CM/ECF participants in this case:

Lisa M. Evans
NYS Office of Court Admin
25 Beaver Street
New York, NY 10004
lievans@courts.state.ny.us

Michael A. Berg
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Litigation Bureau
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Wendy Stryker
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488 Madison Avenue
New York, NY 10022
wstryker@fkks.com

DATED: Buffalo, New York
January 11, 2016

Respectfully Submitted,

/s/ Frank Housh

Frank Housh, Esq.
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frank@houshlaw.com

1 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
2
3 ------------------------------------X
4 CORRADO, : 12-CV-01748 (DLI)
5 Plaintiff, :
6 v. :
: 225 Cadman Plaza East
7 NEW YORK STATE UNIFIED COURT : Brooklyn, New York
SYSTEM, :
8 :
Defendant. : January 14, 2016
9 ------------------------------------X
10
11 TRANSCRIPT OF MINUTE ENTRY AND ORDER OF PROCEEDINGS OF
TELEPHONIC CONFERENCE
12 BEFORE THE HONORABLE MARILYN D. GO
UNITED STATES MAGISTRATE JUDGE
13
14 APPEARANCES:
15 For the Plaintiff: FRANK HOUSH, ESQ.
(via telephone) Housh Law Offices
16 70 Niagra Street
Buffalo, New York 14202
17
For Defendant Luis MICHAEL A. BERG, ESQ.
18 Gonzalez: Office of the NYS Attorney General
(via telephone) Litigation Bureau
19 120 Broadway, 24th Floor
New York, New York 10271
20
For Defendant New York LISA M. EVANS, ESQ.
21 Unified Court System: NYS Office of the Court Admin
(via telephone) 25 Beaver Street
22 New York, New York 10004
23 For Defendant Vincent WENDY STRYKER, ESQ.
Raniere: NICOLE BERGSTROM, ESQ.
24 *(via telephone)* Frankfurt Kurnet Klein & Selz, P.C.
488 Madison Avenue, 9th Floor
25 New York, New York 10022

Proceedings recorded by electronic sound recording,
transcript produced by transcription service

1
2
3 APPEARANCES (Continued):
4
5 Court Transcriber: SHARI RIEMER, CET-805
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1 (Proceedings began at 2:08 p.m.)
2 THE CLERK: Corrado v. New York State Unified Court
3 System, Docket Number 2012-CV-1748.
4 Will counsel please state your names for the record?
5 MR. HOUSH: Frank Housh appearing on behalf of the
6 Plaintiff Nicole Corrado.
7 MR. BERG: Michael Berg of the Office of the
8 Attorney General appearing for the State Defendant, the
9 individual state defendant.
10 MS. EVANS: Lisa Evans for the New York State
11 Unified Court System.
12 MS. STRYKER: Wendy Stryker and Nicole Bergstrom for
13 Vincent Raniere.
14 THE COURT: Good afternoon everybody. I'm not
15 pleased to see the motions and certainly surprised by what --
16 what the submissions revealed. I'll just take the motions of
17 the items one by one.
18 With respect to Defendant Raniere's motion, the --
19 and tell me if the issue has since been resolved. There was a
20 claim that the plaintiff had not produced the documents
21 previously produced to the other defendants.
22 MS. STRYKER: Correct, and as of right now, we have
23 not received anything.
24 THE COURT: Well, this is deja vu all over again.
25 We did talk about this on December 4th and -- and I had

1 ordered that the documents be immediately produced. So you
2 need to produce them. I'll give you one week -- the plaintiff
3 one week and if you don't produce them, then I'll -- I'll
4 entertain a motion for sanctions.
5 I don't need to -- we've done this in the past and
6 this is a gift to you, to the plaintiff, because I had already
7 warned the plaintiff in the past that there's been a delay in
8 -- that the plaintiff has delayed in providing discovery
9 that's been ordered many times, but I'll give you one more
10 week to try to comply. So January 21st.
11 And then Raniere states in the application that he
12 joins in the other defendants' request to compel on any
13 interrogatories that overlap. I don't quite understand what
14 that means. Are you moving to compel? You know, you didn't -
15 - any of the other interrogatory responses? I, you know -- if
16 you did, it -- it hasn't really been properly addressed in my
17 view.
18 MS. STRYKER: Well, Mr. Berg briefed a number of
19 interrogatories that he felt were not properly responded to
20 and since they were -- the ones that he included in his motion
21 were the same as ours. He took the (indiscernible). I
22 allowed him to take the lead where his motion couldn't really
23 be improved on, so I just joined -- I joined in it. So I
24 think he's better prepared to address the deficiencies --
25 THE COURT: No, no, no.

1 MS. STRYKER: -- in the interrogatories.
2 THE COURT: No, no, I'm just simply trying to
3 ascertain if there's anything more than the specific
4 interrogatories addressed in Mr. Berg's motion that you're
5 seeking to compel responses for.
6 MS. STRYKER: No, nothing else.
7 THE COURT: Okay. And without knowing specifically
8 the overlap, is it fair to assume that you will be satisfied
9 with the disposition by the court of any of the
10 interrogatories that have been specifically addressed in Mr.
11 Berg's motion?
12 MS. STRYKER: Yes. I mean the -- in the letter that
13 we attached as Exhibit B, there's a chart that laid out the
14 overlap but -- but yes, they are -- they are virtually
15 identical to interrogatories and to the extent they result
16 from Mr. Berg's motion, that (indiscernible).
17 THE COURT: Okay. All right. Then we'll move on to
18 the motion of the individual defendants. And they have
19 advised that the plaintiff produced no documents in response
20 to the defendants' document request and barely responded to
21 any of the interrogatories.
22 And specifically with respect to the document
23 request, there were requests that were originally due October
24 26th and I -- I don't quite understand the plaintiff's
25 response that you've already provided everything before

1 because these were requests made after whatever you might have
2 previously provided.
3 MR. BERG: Your Honor, this is Michael Berg and --
4 and the court is exactly right. Unlike Mr. Raniere's counsel,
5 we have received a copy of those documents that plaintiff had
6 previously produced to the Unified Court System when the
7 Unified Court System was the sole defendant.
8 What we're looking for is any additional documents
9 that are responsive to our requests that were due October
10 26th, as were the interrogatory answers, and that are in the
11 custody, control or possession of the plaintiff.
12 Mr. Housh, I'm sure, can address but he is seemingly
13 indicated a couple of times in our various back and forth that
14 his office has no additional documents to give us, but he also
15 said at one point that he would redouble his efforts with
16 plaintiff herself to see if she had responsive documents,
17 which of course is the point of the exercise.
18 So I'm not sure where that stands, but we would
19 certainly want to receive all responsive -- all documents
20 responsive to our -- to our requests. And we sort of take the
21 position that with respect to both the interrogatories and the
22 document requests that we served pursuant to the court's
23 August 31st order of September 25th, the date of October 26th
24 came and went without any objection by plaintiff and therefore
25 leaving aside possible claims of privilege which, you know, we

1 wouldn't go that far but any other objections we -- we view as
2 having been waived. And we set that forth in our letter.
3 THE COURT: Yes. I am puzzled by the plaintiff's
4 position and -- and certainly at the last conference, I was
5 read -- led to believe that there would be revised discovery
6 responses which appears were never forthcoming and -- and it
7 also appears that there were never any original responses
8 provided. I think this, Ms. --
9 MR. BERG: Well, not never, Your Honor. I want to
10 be -- I want to be clear and -- and not -- I want my concerns,
11 if I may, about plaintiff's responses not to be misunderstood
12 by the court or Mr. Housh or Ms. Corrado.
13 There was -- there has been one document requests
14 and interrogatories propounded by this office on behalf of the
15 state defendants on September 26th. Responses were due
16 October 26th. They were received on December 3rd and that was
17 after we had written our first pre-motion conference letter to
18 the court because they hadn't been produced by a -- a promised
19 date that we exceeded to of November 20th.
20 So there have been precisely one set propounded and
21 one set of responses and in our recent letter motion of
22 December 22nd, it'll be explained why -- why we believe those
23 are inadequate but at -- at this point, I would say that
24 plaintiff was extremely tardy but not -- I would not accuse
25 her of not having responded at all.

1
2 I would just say the responses don't help advance
3 the litigation because they're -- they're responses in form
4 only.
5 THE COURT: Certainly, I'm -- I guess I didn't quite
6 understand what you were saying. But just, you know, I mean
7 to the extent that the plaintiff has filed an objection to my
8 discovery order of December 4th -- and I don't think -- part
9 of the problem was it wasn't properly designated, but we did
10 advise Judge Irizarry about the filing.
11 You have to be careful how you file documents. I
12 can't remember what the event was but if you're objecting or
13 filing an appeal from Magistrate Judge's orders, you have to
14 so note there's a specific DCM filing you have. So just let
15 that be future caution for everyone. It's not our job to go -
16 - go behind and clarify your filings. It gets to be an
17 impossible task given our caseloads.
18 MR. BERG: Your Honor, our view for the state
19 defendants is that there has been no word from Judge Irizarry
20 in response to plaintiff's letter for our response and so
21 therefore, we -- we view the court's August 31st and December
22 4th orders as binding on the parties and we would appreciate
23 some, albeit belated, compliance by the plaintiff.
24 THE COURT: Well, certainly the objections have been
25 waived with respect to the earlier order. They're tardy.

1 MR. BERG: And in light of that, Your Honor, perhaps
2 we could -- perhaps plaintiff can commit to providing the --
3 the supplemental responses that we've asked for in our letter
4 motion.
5 THE COURT: You know, we've talked through that. I
6 don't think -- yeah, I don't think the plaintiff has made any
7 sort of specific response to the defendants' letter regarding
8 the inadequacies of the -- plaintiff's responses.
9 MR. BERG: And in our view, therefore, has waived
10 any right to argue the merit. I mean we've read their
11 December 31st letter and we responded with a reply, if the
12 court could authorize them previously, and that's a one page
13 letter that does not get into any of -- does not claim that
14 any of our requests for supplementation were incorrect,
15 disproportionate or in any other way overreaching.
16 And so, I mean I think it's a -- it is a matter that
17 is not in dispute, at least on the present record and I think
18 it's too late for plaintiff to dispute it but that's -- that
19 is for the court to decide.
20 THE COURT: Well, as I mentioned, I don't hear
21 specific discussion of the -- the defendants' listed
22 inadequacies and I -- I agree, but perhaps what might be more
23 efficient is for me to focus on the interrogatories and -- and
24 that certainly will make -- and I'll just discuss the
25 substance of them.

1 I think there are a couple interrogatories that
2 might merit some limiting, notwithstanding what I'm inclined
3 to be an insufficient objection by the plaintiff both in an
4 interrogatory response and in her response to the motion to
5 compel.
6 So for -- and I'll just go down the list. For
7 Interrogatory Number 2, the identification of all persons with
8 relevant knowledge with whom plaintiff discussed the pertinent
9 facts or intends to call as witnesses, there's an objection.
10 We've already discussed this. We discussed this in July, at
11 the July 1st conference. So I'm going to grant the motion to
12 compel a response now. I cannot understand the basis of such
13 an objection.
14 Interrogatory 4 seeks the identification of
15 documents that the plaintiff will rely on in computing damages
16 and I agree with the defendants that the response is
17 inadequate. We already previously ordered the plaintiff to
18 supplement her initial disclosures by providing more specific
19 information regarding her claim, economic damages. And I also
20 required her to produce documents supporting her calculation
21 of damages.
22 So plaintiff has to supplement and itemize her
23 economic damages, including her emotional distress damages.
24 And, excuse me, I should say including and her emotional
25 distress damages.

1 And there are three interrogatories concerning
2 medical and mental healthcare providers and documents relating
3 and physical evidence relating to treatment. The plaintiff
4 responded she has no documents in her possession and that's
5 fair enough, but she doesn't respond to the interrogatories to
6 identify the doctors and I think she must.
7 She doesn't have to unless, you know, she's going to
8 claim some related medical issue she won't need to identify
9 doctors that she's seen for conditions not related to her
10 claims of medical and mental -- I mean mental distress and
11 such as perhaps a routine gynecological examination, but I --
12 I'm going to require her to identify the doctors and that --
13 that could lead to the basis for additional requests.
14 But, you know, she's making claims for damages,
15 which is fair enough, but if there is medical support for it
16 then she needs to provide information about the doctors that
17 she's seeing that will support her claim.
18 MR. BERG: Your Honor, this is Michael Berg. I
19 appreciate the court's rulings. I just wanted to note that
20 our Request Number 5, Interrogatory Number 5, attempts to get
21 at the possibility of pre-existing conditions and so it seeks
22 the identification of healthcare providers dating back to
23 1997.
24 We don't have to go back that far in time and I
25 would certainly understand if the court wanted to limit that

1 to anybody, any healthcare providers or mental health
2 providers who have treated plaintiff for -- for or consulted
3 with plaintiff for -- or then plaintiff for matters similar to
4 those that she is claiming.
5 You know, obviously an orthopedic for a broken ankle
6 wouldn't be something we would need but I -- I just didn't
7 want that to fall through the cracks.
8 THE COURT: Okay. No, I -- thank you. I should've
9 addressed the scope of your request, which I -- I agree that
10 going back to 1997 is overly broad.
11 So to the extent that plaintiff is claiming medical
12 damages relating to her medical and mental condition, then
13 I'll require her to disclose the providers from four years
14 before the date of the first claim -- I mean the first --
15 before the date of the conduct giving rise to the claim so
16 that I'm trying to think of -- I didn't write down the date
17 but what's -- what's the earliest date of activity alleged in
18 the complaint? It was 2000 -- it was quite some time ago.
19 MR. BERG: I think it was 2003.
20 THE COURT: Oh, really? Okay. Well, I'll just move
21 it back to 2000. I think that's -- that's a sufficient time
22 frame to provide a baseline, particularly since it's not so
23 clear that she's claiming damages with respect to her medical
24 and mental condition at the onset of these interactions. If
25 she does, then we can come back and revisit this issue.

1 Interrogatory 8, that's the basic identifying
2 information that's being sought. I don't quite understand why
3 there's an objection. Plaintiff's date of birth, marital
4 status, residence before and social security number. I'm
5 going to require the plaintiff to provide that information.
6 Plaintiff's employment history, I -- I think that's
7 appropriate and it has bearing both on future damages, as well
8 as providing some basis for analyzing her claims. So she
9 should provide her employment history.
10 Number 10, this is basically disciplinary and other
11 adverse employment actions by the employer other than UCS. I
12 agree, the plaintiff has already said she's never been subject
13 to dismissal or termination, so I think that's a sufficient
14 answer.
15 MR. BERG: I was looking at the response, Your
16 Honor. I don't -- if Your Honor goes back with this case
17 longer than (indiscernible) but in her response to Number 10,
18 plaintiff objected and further objected and made no
19 affirmative basis or coordinated basis that she's never been
20 disciplined.
21 THE COURT: Hang on.
22 MR. BERG: Or my -- unless I'm being thrown off by
23 the misnumbering.
24 THE COURT: Oh.
25 MR. BERG: Oh, no. I apologize. I was thrown off

1 by the misnumbered answers. The answer to the question is
2 negative, so I --
3 THE COURT: Yes.
4 MR. BERG: -- I withdraw what I just said.
5 THE COURT: Yes. Yes. Yes, you're right about the
6 misnumbering. It's not helpful if you misnumber your -- your
7 answers -- I mean the questions and answer, but the -- since
8 the plaintiff does set forth the interrogatory, it's clear
9 that what's on her response to the state defendants'
10 interrogatories as to Interrogatory 9, it's -- that's on
11 defendants' list as Interrogatory 10 and she does response.
12 So you have to be more careful, Mr. Housh.
13 Then there's Interrogatories 11, 13 and 14, which
14 seek more specific information regarding -- or specific
15 instances of sexual harassment, sexually inappropriate conduct
16 or discrimination and communications with the plaintiff and
17 UCS and I -- that's the heart of this case. I don't
18 understand why there's an objection.
19 MR. HOUSH: Your Honor, may I be heard briefly?
20 THE COURT: Are you going to say something you
21 didn't put in your papers, Mr. Housh?
22 MR. HOUSH: Yes.
23 THE COURT: Why didn't you put it in your paper --
24 your response?
25 MR. HOUSH: These are specific objections not

1 related to the interrogatories themselves but rather to the --
2 rather to the right of the defendants to seek discovery in the
3 first place.
4 THE COURT: What? I don't quite understand what
5 you're saying.
6 MR. HOUSH: Your Honor, it's the plaintiff's
7 position that the -- the discovery motions are improperly made
8 due to the fact that the individual defendants filed renewed
9 motions to dismiss plaintiff's complaint (indiscernible) and
10 Judge Irizarry makes -- although she's indicated what her
11 ruling is.
12 Until the substance of that ruling is made, it's
13 very difficult for the plaintiff to proceed to answer all of
14 the interrogatories. So it's procedural objection that --
15 THE COURT: Well, I'm making my --
16 MR. HOUSH: -- is the --
17 THE COURT: I'm making my ruling now and I will -- I
18 don't see that Judge Irizarry's -- any fuller ruling by Judge
19 Irizarry is going to save you from your obligation to respond.
20 I, you know, this --
21 MR. HOUSH: I understand. Thank you.
22 THE COURT: I just don't understand how there could
23 be a valid objection. It really borders on frivolousness and
24 then don't bother bringing claims for sexual harassment.
25 Anyway, Number 12, prior litigation involving the

1 plaintiff. I think that that's an appropriate area of
2 inquiry. I'm going to grant the motion.
3 15 and 18 are interrogatories regarding acts of
4 retaliation against the plaintiff for taking leaves of
5 absences -- absence and again, I mean that's one of her
6 claims. I don't understand why the plaintiff objected. I'm
7 granting the motion.
8 On 17, acts of omission that the plaintiff claims
9 aided and abetted in the sexual harassment against her or --
10 and certainly omissions on the part of the defendant to take
11 measures to stop the harassment, I mean I think they're
12 appropriate because that's a very -- that's another part of
13 her claim, one her many claims in this case.
14 19, basis for her constructive discharge claim, it's
15 a standard contention interrogatory and I'm going to permit
16 it.
17 20, her efforts to obtain employment. She has a
18 duty to mitigate as you know and she needs to respond to that.
19 21, articles, essays, social media, information
20 concerning the defendants or employment or other litigation in
21 which the plaintiff has been a party, I -- I think it's so far
22 as there's information that relates to her employment or any
23 of the allegations in the amended complaint.
24 I think it's -- it's an appropriate -- it's
25 appropriate that the plaintiff disclose such information. She

1 doesn't have to disclose information as to any other -- such
2 information as to any other litigation. Okay.
3 MS. STRYKER: Your Honor, I think that you skipped
4 over 18.
5 THE COURT: No, that was acts of retaliation. I
6 included it with 15. 15 and 18 basically --
7 MS. STRYKER: Oh.
8 THE COURT: -- deal with acts of retaliation.
9 MS. STRYKER: Okay. Thank you, Your Honor.
10 THE COURT: It's not really a matter of housekeeping
11 but I do note that the interrogatory responses are not
12 verified and she's required under the rule to verify the
13 responses.
14 Generally, as far as the document requests are
15 concerned, the -- the plaintiff states that she's -- she has
16 no documents, responsive documents, to each request. Is that
17 because she's claiming she's already produced everything?
18 MR. HOUSH: Yes, Your Honor.
19 THE COURT: Well, she needs to make clear that's the
20 case and if that's the case, she needs to identify which
21 documents are responsive in any event to which request. All
22 right.
23 Because defendant is entitled to know what documents
24 you're going to rely on with respect to certain issues in the
25 case, so you need to identify the documents that you've

1 already produced and you need to state very clearly that you
2 have no other documents since, as you can appreciate, if there
3 are other documents produced, you know, she may be precluded.
4 She has an obligation to produce documents and
5 respond to discovery requests in a -- in a good faith manner
6 and to construe all requests that are (indiscernible). So she
7 needs to respond and she may need -- necessarily need to
8 reproduce the -- the documents, but she needs to identify
9 which ones.
10 So certainly that's with respect to Interrogatory 1,
11 all documents relating to events in the complaint -- excuse
12 me, document -- Document Request Number 1.
13 And with Request -- Document Request 2 and 8, which
14 deal with communications between the plaintiff and others
15 regarding the defendants or events alleged in the amended
16 complaint, I want to reiterate that she does have an
17 obligation to produce electronically stored information and
18 social -- information posted on the social media accounts
19 concerning the events alleged in the amended complaint.
20 And, you know, in any event having -- it's the same
21 ruling for 5, 6 and 7, communication -- 5 and 6 deal with
22 communications between the defendants and the plaintiff or of
23 any other person. Obviously with respect to Request Number 5,
24 plaintiff can only produce what she has with respect to
25 communications between the defendants and any other person.

1 But certainly with respect to 6, I mean she has to
2 produce whatever she has. I would think that she would have
3 documents reflecting communication that she had with the
4 defendants.
5 And same with respect to 7, which are documents
6 concerning any statement by plaintiff concerning the
7 defendants or her employment.
8 And then last, Document Request Number 23 deals with
9 a request for plaintiff's wages from 2010 to the present. I -
10 - that deals with damages and so she needs to produce them,
11 including her tax records from 2010 to the present.
12 So essentially other than the few limited requests
13 that I've discussed, I -- I'm granting the motions to compel
14 in substantial part. So I'm going to set dates for responses.
15 I think there -- I hate to delay this case but I'll give a --
16 give some time to respond.
17 I'll give three weeks. The plaintiff has already
18 had time to review these discovery requests and let's just
19 move this case forward. Produce the documents. Let's get the
20 depositions done and then we'll see if this case can be set
21 for trial or for motion. So three weeks from now would put us
22 to February 4th.
23 And I -- the defendants did also make a request for
24 an extension of discovery. Given the dispute over these
25 written discovery requests, I -- I think it's appropriate to

1 extend discovery. If you wanted to keep to the original
2 discovery deadline, you're more than welcome to, Mr. Housh,
3 but the defendants are entitled to get these responses and --
4 and to depose the plaintiff.
5 Are there any other depositions the defendant
6 intends to take?
7 (No response.)
8 THE COURT: Hello?
9 (No response.)
10 THE COURT: I can't believe it. We've been
11 disconnected? Is there anybody there?
12 (No response.)
13 THE COURT: Okay. Okay.
14 (Recess from 2:45 p.m. to 2:50 p.m.)
15 UNIDENTIFIED SPEAKER: Hi, Judge.
16 THE COURT: Yes. Everybody on the line? Mr. Housh,
17 Evans, Berg, Stryker and Bergstrom?
18 ALL ATTORNEYS: Yes, Your Honor.
19 MR. HOUSH: Is Ms. Corrado still on the line?
20 MS. CORRADO: Yes, I am.
21 THE COURT: Okay. When did I lose you? I didn't
22 discover that the line wasn't working until I finished all my
23 rulings. Maybe that's why you were all so strangely quiet.
24 (Laughter.)
25 THE COURT: I don't have the time or energy to go

1 through this. I think what needs to be done is just to get a
2 transcript of this and then we'll continue this conference.
3 Well, how much did you hear?
4 UNIDENTIFIED SPEAKER: (Indiscernible.)
5 THE COURT: How much did you hear before we lost --
6 MR. BERG: I believe, Your Honor, you got to the --
7 the very end of state defendants' document requests and then -
8 - that was where I (indiscernible) order of the court. Is
9 that how anybody else recalls it?
10 MS. STRYKER: Yes. And I believe plaintiff was
11 speaking.
12 THE COURT: Well, I got to the document requests.
13 Then there isn't too much more. I'll -- so you heard my
14 comment about plaintiff needing to verify her interrogatory
15 responses.
16 MS. STRYKER: Yes.
17 MR. BERG: Yes.
18 THE COURT: Okay. Document Request Number 1?
19 MS. STRYKER: Yes. Judge, I believe you got through
20 all of them, 20 -- up to 23.
21 THE COURT: Okay. Then all that was left was to set
22 a date and -- and I said that the plaintiff would have to
23 comply within three weeks and provide the responses that I've
24 ordered by February 4th.
25 MR. HOUSH: Your Honor, did you hear my -- my client

1 spoke briefly. I don't know if you heard that.
2 THE COURT: No.
3 MR. HOUSH: I don't know if my client would like to
4 -- to repeat that.
5 MS. CORRADO: I would like Mr. Housh to repeat my
6 position to the court and to the parties.
7 MR. HOUSH: My client, I believe, is referring to
8 objections she wants me to interpose to which she may not have
9 actually heard. I did interrupt the court's ruling earlier
10 and made objections related to the fact that Judge Irizarry's
11 formal decision has not yet been made and therefore, we had a
12 procedural objection to the discovery being ordered and we --
13 THE COURT: I --
14 MR. HOUSH: -- also had some substantive issues.
15 The court heard my argument and determined that they were
16 either improper or invalid at the time, so just so -- while my
17 client is referring to our specific objections, which I did
18 make while the court was ruling, the court did rule on them
19 and I -- I didn't feel it was appropriate for me to continue.
20 THE COURT: Well, I mean insofar as your objecting
21 to production because of your original appeal from my prior
22 rulings, or at least from my ruling of December 4th, I -- I'm
23 not going to change my -- the deadline I set. I have to say
24 again, and I'm sure you heard it, some of the objections just
25 make no sense to me and the requests deal with the heart of

1 many of plaintiff's claims.
2 And I cannot understand why there would be any
3 objections to responding, though there were a few instances
4 that, as I noted, where I think the requests were too broad.
5 We'll bring this Judge Irizarry's attention and I -- assuming
6 she rules before January -- excuse me, February 4th, I will
7 expect the plaintiff to comply.
8 In any event, there's just no reason for her to get
9 her responses in order so that she can promptly comply.
10 What's surprising is that notwithstanding the delay caused by
11 the plaintiff's failure to provide discovery and I have
12 already written on this in the past regarding her failure to
13 provide initial disclosures and other kinds of --
14 MS. CORRADO: I object, Your Honor. May I speak in
15 my behalf please?
16 THE COURT: No. No. I'm not going to hear that.
17 That is the past and we're moving --
18 MS. CORRADO: Okay.
19 THE COURT: -- forward.
20 MS. CORRADO: My position is this. Mr. Housh is no
21 longer my attorney, okay?
22 THE COURT: That's fine but --
23 MS. CORRADO: Thank you.
24 THE COURT: -- but then you --
25 MS. CORRADO: I would like --

1 THE COURT: No. I'm not going --
2 MS. CORRADO: -- I am --
3 THE COURT: -- to give you time --
4 MS. CORRADO: -- retaining new counsel --
5 THE COURT: Look. I --
6 MS. CORRADO: Thank you.
7 THE COURT: -- I'm not going to --
8 MS. CORRADO: Is that permitted by this court?
9 THE COURT: You can obtain new counsel, but I'm not
10 changing the deadlines. I am --
11 MS. CORRADO: Well, I am objecting to --
12 THE COURT: -- well, then you can file --
13 MS. CORRADO: -- this motion made by Mr. Berg and
14 counsel --
15 THE COURT: It's too late.
16 MS. CORRADO: -- and I have expressed my position.
17 Mr. Housh has not adequately represented what I asked him to
18 in this conversation and I am officially asking this court to
19 relieve Mr. Housh.
20 THE COURT: You have the right to counsel of your
21 choice but --
22 MS. CORRADO: Uh-hum.
23 THE COURT: -- and I assume Mr. Housh will abide by
24 his client's request that he withdraw from representation of
25 this case.

1 MR. HOUSH: Of course.
2 THE COURT: So --
3 MS. CORRADO: Okay. And --
4 THE COURT: -- but I'm not giving you --
5 MS. CORRADO: -- since I am asking that --
6 THE COURT: -- initial --
7 MS. CORRADO: -- Mr. Housh be relieved, Your Honor.
8 I am objecting to this court's ruling of today --
9 THE COURT: Well, that's fine.
10 MS. CORRADO: -- and to --
11 THE COURT: You can --
12 MS. CORRADO: -- counsel's motion to compel.
13 THE COURT: -- you --
14 MR. BERG: Your Honor, this Michael Berg. I have no
15 -- I have nothing to say about plaintiff's decision regarding
16 her counsel but I would object to counsel -- to plaintiff
17 being heard as to matters that counsel has already argued
18 before the court.
19 THE COURT: That's right. You can make your appeal
20 for my rulings. We'll give you the information, the recording
21 information, for today's conference. You can get a transcript
22 and file your objections.
23 MS. CORRADO: I will. Thank you.
24 THE COURT: Okay. I need an address to put --
25 MS. CORRADO: Pardon?

1 THE COURT: I need your address where we can send
2 communications to you and I'll tell --
3 MS. CORRADO: No. I am asking -- I am asking --
4 THE COURT: Wait, wait, wait.
5 MS. CORRADO: -- based on what --
6 THE COURT: Wait. Stop. Stop.
7 MS. CORRADO: -- happened today, Your Honor --
8 THE COURT: Stop.
9 MS. CORRADO: -- for an opportunity retain counsel.
10 THE COURT: Ms. Corrado --
11 MS. CORRADO: I am not representing myself pro se.
12 THE COURT: Ms. Corrado?
13 MS. CORRADO: Yes.
14 THE COURT: We've talked about change of counsel
15 before and --
16 MS. CORRADO: Right. I understand --
17 THE COURT: Stop.
18 MS. CORRADO: -- but this case --
19 THE COURT: Stop!
20 MS. CORRADO: -- started --
21 THE COURT: Stop. Will you --
22 MS. CORRADO: -- in April of 2012 and I am objecting
23 to what happened today. I have a right to seek counsel.
24 THE COURT: You have. And I'll --
25 MS. CORRADO: Okay.

1 THE COURT: I'll give you an extra two weeks before
2 the 4th. So February 18th for you to file a response to the
3 discovery I've ordered. You can promptly get new counsel if
4 you -- if you wish. I'm not otherwise staying compliance.
5 I will -- I'm happy to have new counsel come in, but
6 we're going to move forward in this case and if you want to
7 file objections for my rulings today, you are more than
8 welcome to. But in the interim --
9 MS. CORRADO: And I have --
10 THE COURT: Stop! Stop!
11 MS. CORRADO: -- a right to counsel.
12 THE COURT: Stop.
13 MS. CORRADO: I have a right to counsel --
14 THE COURT: Stop.
15 MS. CORRADO: -- and I am asking for an opportunity
16 to retain new counsel --
17 THE COURT: Ms. Corrado?
18 MS. CORRADO: -- Your Honor.
19 THE COURT: Ms. Corrado?
20 MS. CORRADO: Yes?
21 THE COURT: Until new counsel appears, the court has
22 to have a means of communicating with you and we need your
23 address, telephone number. If you wish to participate in the
24 receipt of electronic notices, you can file a consent to
25 receive electronic notices, but you cannot just simply not

1 provide me with information that can be put on --
2 MS. CORRADO: Your Honor --
3 THE COURT: -- the court (indiscernible) --
4 MS. CORRADO: -- has all that information. It's
5 been given to the court numerous times.
6 THE COURT: Well, it's no longer in the docket sheet
7 so would you be kind enough to give it to me again? I need an
8 address --
9 MS. CORRADO: Ask me again what information are you
10 seeking, Your Honor.
11 THE COURT: I need a mailing address for you and a
12 telephone number.
13 MS. CORRADO: Okay.
14 THE COURT: And if you wish to receive electronic
15 notices, which I understand I think you had previously
16 indicated you would --
17 MS. CORRADO: I --
18 THE COURT: -- you --
19 MS. CORRADO: I am already registered, Your Honor.
20 THE COURT: You're getting notices?
21 MS. CORRADO: Yes, I am.
22 THE COURT: Okay. Maybe as an attorney, you never
23 technically filed a consent. That's fine then. I'll so note
24 that you've advised the court that you receive electronic
25 notices, but I still need your --

1 MS. CORRADO: Yes.
2 THE COURT: -- address and telephone number.
3 MS. CORRADO: Address, mailing address, is 242-18
4 Van Zandt Avenue, V-A-N, new word, Zandt, Z-A-N-D, as in
5 David, T, as in Thomas, Avenue, Douglaston, D-O-U-G-L-A-S-T-O-
6 N, New York 11362.
7 THE COURT: Okay. Van Zandt, Z-A-N-D-T, Avenue.
8 And your phone --
9 MS. CORRADO: Van Zandt, V-A-N Z-A-N-D-T.
10 THE COURT: Yes.
11 MS. CORRADO: Correct.
12 THE COURT: Your telephone number?
13 MS. CORRADO: (917) 337-6153.
14 THE COURT: Okay. Thank you.
15 MS. CORRADO: Thank you.
16 THE COURT: Okay. So you'll --
17 MR. BERG: I apologize, Your Honor. Could plaintiff
18 repeat the phone number please?
19 MS. CORRADO: (917) -- who's speaking?
20 MR. BERG: This is Michael Berg in case we need to
21 contact you about any litigation matters before you retain new
22 counsel.
23 MS. CORRADO: All right. (917) 337-6153.
24 MR. BERG: Thank you.
25 MS. STRYKER: Okay.

1 MS. CORRADO: You're welcome.
2 MS. STRYKER: Your Honor, this is Wendy Stryker.
3 Are we going to continue with the January 21st deadline for
4 production of the -- the documents previously to the other
5 defendants?
6 THE COURT: Yes.
7 MS. STRYKER: Okay. Thank you.
8 THE COURT: Because that's just documents that
9 should be readily produced. And then --
10 MS. CORRADO: And, Your Honor?
11 THE COURT: -- (indiscernible) -- excuse me.
12 MS. CORRADO: This is --
13 THE COURT: Excuse me.
14 MS. CORRADO: -- Nicole Corrado --
15 THE COURT: Stop, stop, stop --
16 MS. CORRADO: -- again.
17 THE COURT: -- stop.
18 MS. CORRADO: I --
19 THE COURT: Stop.
20 MS. CORRADO: -- Mr. Housh --
21 THE COURT: Stop.
22 MS. CORRADO: -- has these documents. I -- I would
23 ask for him to follow-up with that.
24 THE COURT: You can't have it both ways. I'll ask -
25 -

1 MS. CORRADO: I don't have them. He does. Today's
2 January 14th. I am, again, requesting an opportunity to
3 retain new counsel to represent me in this matter. I am not
4 proceeding pro se.
5 THE COURT: You -- I've extended your time to get --
6 to provide responses. I'm not going to repeat myself because
7 we've already dealt with the issue of changing counsel. I
8 gave Mr. Housh an extension of time before and I gave
9 appropriate warnings at that time and I believe you were
10 participating at the conference. So --
11 MS. CORRADO: When? No, I'm not sure -- this is the
12 first phone conference that I am participating on, Your Honor.
13 THE COURT: At the first conference that Mr. Housh
14 (indiscernible) in person as I recall --
15 MS. CORRADO: I was not there.
16 THE COURT: Well, look. I'm -- whatever the case
17 may be, I'm standing by my ruling. You have more than -- I've
18 increased the time from three weeks to five weeks. You get
19 your attorney promptly and if your attorney appears and asks
20 for a short extension, I will consider it but that is it, so -
21 -
22 MS. CORRADO: Wait.
23 MR. BERG: Your --
24 MS. CORRADO: May I understand --
25 MR. BERG: Your Honor?

1 MS. CORRADO: -- clearly, Your Honor? My request
2 again is that I am not proceeding pro se.
3 THE COURT: You have --
4 MS. CORRADO: I would like the opportunity to retain
5 new counsel. When is the court -- what is the date that the
6 court is providing for that purpose?
7 THE COURT: February 11th.
8 MS. CORRADO: February 11th?
9 THE COURT: Yes.
10 MS. CORRADO: All right.
11 THE COURT: That's four weeks.
12 MS. CORRADO: Uh-hum.
13 THE COURT: But it's now -- now you're hearing it
14 from me. I'm reasonably sure that this was communicated to
15 you, that you can't just simply change counsel to buy more
16 time and any (indiscernible) --
17 MS. CORRADO: I --
18 THE COURT: Stop!
19 MS. CORRADO: -- that is not what is happening, Your
20 Honor, and I object to that characterization.
21 THE COURT: I'm not --
22 MS. CORRADO: That is not at all what is happening.
23 THE COURT: Ms. Corrado, you are welcome to seek new
24 counsel and I -- I'm not going to repeat myself. We'll --
25 MS. CORRADO: I have no --

1 THE COURT: -- (indiscernible) --
2 MS. CORRADO: -- desire to delay this.
3 THE COURT: That's fine.
4 MS. CORRADO: I am the one interested in moving this
5 case forward since it started in April of 2012.
6 THE COURT: Anyway, we will have a conference the
7 following week on February 25th at 10:30.
8 MR. BERG: Your Honor, this is Michael Berg. I hate
9 to put on this, but I just -- because there are ethical
10 considerations, I don't know who defendants are supposed to
11 communicate with between now and the 11th, whether it's Mr.
12 Housh or Ms. -- or Ms. Corrado.
13 THE COURT: You'll with Ms. Corrado because Mr.
14 Housh is no longer her attorney.
15 MR. BERG: Thank you, Your Honor.
16 THE COURT: And are you asserting a retaining lien,
17 Mr. Housh?
18 MR. HOUSH: I'm sorry. I didn't hear the question,
19 Your Honor.
20 THE COURT: Are you asserting a retaining lien here?
21 MR. HOUSH: I -- I would rather not say right now,
22 Your Honor.
23 THE COURT: Well, you'll advise --
24 MR. HOUSH: I --
25 THE COURT: You'll advise the court tomorrow.

1 MR. HOUSH: Thank you, Your Honor.
2 THE COURT: Thank you, with a letter so that
3 everybody will be on notice.
4 MR. HOUSH: Understood. Thank you.
5 THE COURT: Okay. Anything else?
6 MS. STRYKER: I'm sorry. So, Your Honor, so the
7 conference is February 25th?
8 THE COURT: Yes, at 10:30.
9 MS. STRYKER: Is it in person or telephonic?
10 THE COURT: In person.
11 MS. STRYKER: Thank you, Judge.
12 THE COURT: Okay. Have a good day everybody.
13 (Proceedings concluded at 3:07 p.m.)
14 * * * * *
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MINUTE ORDER

CORRADO V. NEW YORK STATE UNIFIED COURT SYSTEM
12cv01748 (DLI)

This order summarizes the rulings made on the record at a hearing on January 14, 2016 regarding the motions to compel of defendant Raniere and the individual New York State defendants. See DE 166, 167. Both motions[1] are granted in large part since, as discussed on the record, the discovery sought relates to matters pertinent to plaintiff's claims. However, a few requests are overly broad and have been limited. Because plaintiff did not number all her responses according to the discovery requests propounded, the discussion below of discovery requests is based on the numbering of the interrogatories and document requests of the individual State defendants.

1. Plaintiff must produce to defendant Raniere those documents already produced to the other defendants, as previously ordered. The documents must be produced by January 21, 2016.

2. Defendants' motions to compel is granted as to interrogatories 2, 4, 6-9, 11-15, and 17-20.

3. Defendants' motions to compel are granted in part as to the following interrogatories to the following extent:

(a) Interrogatory 5 regarding medical providers is limited to disclosure of the providers who rendered services only from 2000 to present and need not include those medical providers from whom plaintiff sought only routine medical examinations, unless the services also included consultation for her general mental condition.

(b) Interrogatory 21 is limited to materials regarding plaintiff's employment with the Unified Court System or the allegations in the amended complaint.

4. Defendants' motion to compel is denied as to interrogatory 10.

5. Plaintiff must provide verified responses to the interrogatories.

6. Defendants' motion to compel is granted as to document

[1] Although Raniere made a separate request as to production of documents previously produced to other defendants, which is discussed in ¶ 1, Raniere essentially joins the motion to compel of the individual State defendants as to overlapping discovery requests.

requests 1, 2, 5-8 and 23 and plaintiff must supplement her responses. To the extent plaintiff contends that she has already produced documents responsive to a particular request, she must identify by bates number the documents produced that are responsive to each request. To the extent plaintiff contends that she has no responsive documents other than those she has already produced, she must so state clearly. To the extent she is unable to produce responsive documents which once existed, she must describe the documents and state the reasons why she is unable to produce the documents.

7. In light of plaintiff's discharge of her attorney, plaintiff's time to supplement her responses is extended from three weeks to February 18, 2016.

SO ORDERED.

Dated: Brooklyn, New York
January 20, 2016

/s/
MARILYN D. GO
UNITED STATES MAGISTRATE JUDGE

THE GRIFFITH FIRM

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February 11, 2016

BY FAX (718-613-2555)

Magistrate Judge Marilyn D. Go
United States District Court for the
Eastern District of New York
225 Cadman Plaza East
Room 1214-S
Brooklyn, New York 11201

Re: Corrado v. New York State Unified Court System, et al., 12-cv-01748-DLI-MDG.

Dear Judge Go,

I write on behalf of plaintiff Nicole Corrado to request a two-week extension of her time to retain new counsel in this matter. Your January 20, 2016 minute entry and order [ECF 173] provided Ms. Corrado with four weeks to obtain new counsel, stating that she would be expected to proceed *pro se* unless new counsel filed a notice of appearance by today, February 11, 2016.

After being referred to me by a mutual acquaintance, Ms. Corrado contacted me on January 27, 2016 regarding the possibility of retaining me. Since then, I have been reviewing the docket to determine whether I can assist her in this matter. Unfortunately, on January 29, 2016, I left for Europe on a business trip and vacation and I will not return until this coming Saturday, February 13, 2016. As a result, I have not been able to complete my review of the docket. In the interim, Ms. Corrado has continued her search for new counsel.

Accordingly, Ms. Corrado requests that her time to obtain new counsel be extended by two weeks, from today, February 11, 2016, to February 25, 2016 at 10:30 a.m., the date and time of the next scheduled status conference. I will be able to complete my review of the docket by then and Ms. Corrado believes that she will be able to retain new counsel by then, regardless of whether she retains me. This short extension therefore will enable Ms. Corrado to obtain new counsel without requiring a postponement of the February 25, 2016 status conference.

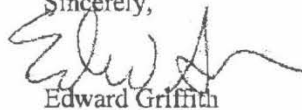
THE GRIFFITH FIRM

Judge Marilyn D. Go
February 11, 2016
Page 2

I originally intended to file this letter via the ECF system as per your Individual Motion Practices. Unfortunately, my ECF credentials for the Eastern District expired and I won't be able to renew them until next week. One of your clerks granted my telephone request to submit this letter via fax. Copies have been faxed and emailed to counsel for all defendants.

Thank you for considering this request.

Sincerely,



Edward Griffith

EG:gb
cc: Lisa M. Evans (fax: 212-428-2155)
lievans@courts.state.ny.us

Wendy Stryker (fax: 212-593-9175)
wstryker@fkks.com

Michael A. Berg (fax: 212-416-6075)
michael.berg@ag.ny.gov

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
--x
NICOLE CORRADO,

Plaintiff,

- against -

NEW YORK UNIFIED COURT SYSTEM,
LUIS GONZALEZ, in his individual capacity,
JOHN McCONNELL, in his individual capacity,
ROY REARDEN, in his individual capacity,
JORGE DOPICO, in his individual capacity,
ANGELA CHRISTMAS, in her individual capacity,
ALAN FRIEDBERG, in his individual capacity,
VINCENT RANIERE, in his individual capacity,
NAOMI GOLDSTEIN, in her individual capacity,

Defendants.
--X

OPINION AND ORDER
12-CV-1748(DLI)(MDG)

DORA L. IRIZARRY, U.S. District Judge:

Before the Court are two defense motions to dismiss the amended complaint for failure to state a claim upon which relief can be granted. For the reasons set forth below, the motions are granted in part, as follows: (i) all claims against defendants Raniere and Friedberg are dismissed, with prejudice; (ii) Claims Five, Six, and Seven are dismissed as to each defendant that is a natural person (the “Individual Defendants”), with prejudice; and (iii) those portions of Claims Two and Three alleging sexual harassment and aiding and abetting sexual harassment are dismissed as to each Individual Defendant, with prejudice. As for the six remaining Individual Defendants and the remaining claims, the motions are denied with respect to: (i) Claim Four; and (ii) those portions of Claims Two and Three alleging retaliation. For clarity, the only Individual Defendants who remain in this action are defendants Gonzalez, McConnell, Rearden, Dopico, Christmas, and Goldstein; the only claims that survive as to these defendants are Claim Four and the retaliation allegations contained in Claims Two and Three.

BACKGROUND

I. Facts[1]

The Parties

Plaintiff Nicole Corrado ("Plaintiff") is an attorney who began her employment with defendant New York State United Court System ("UCS") on November 8, 2001. Amended Complaint ("Am. Compl.," Dkt. Entry No. 86), at ¶¶ 14 and 17. UCS initially hired Plaintiff as an associate attorney, promoting her to the position of Principal Attorney in 2006. *Id.*, at ¶ 20. One of Plaintiff's responsibilities as a Principal Attorney involved investigating cases of attorney misconduct. *Id.*, at ¶ 21. Within UCS, Plaintiff worked in the Department Disciplinary Committee ("DDC"), Appellate Division, First Department ("First Department"). First Motion to Dismiss, filed February, 27, 2015 ("First MTD," Dkt. Entry. No. 119), at 1.

Each of the Individual Defendants worked at UCS at some point during Plaintiff's employment. *See generally,* Am. Compl. The Honorable Louis A. Gonzalez ("Gonzalez") is the Presiding Justice of the First Department. First MTD, at 1. John W. McConnell ("McConnell") is the former Clerk of the First Department, and in December of 2009, became Counsel to UCS. *Id.*, at 21. Roy Reardon, Esq. ("Reardon") is an attorney in private practice with the law firm of Simpson Thacher & Bartlett, LLC ("Simpson Thacher"), and former volunteer chairman of the DDC and its policy committee. *Id.*, at 1. Jorge Dopico ("Dopico") is Chief Counsel to the DDC. *Id.* Angela Christmas ("Christmas") is a DDC Deputy Chief Counsel. *Id.* Alan Friedberg ("Friedberg") is a former DDC Chief Counsel who is now retired. *Id.* Vincent Raniere ("Raniere") is a former Chief Investigator of the DDC who is now retired. *Id.* Finally, Naomi Goldstein ("Goldstein") is a DDC Deputy Chief Counsel. *Id.* According to Plaintiff, each of the Individual

---

[1] The following facts are taken from the amended complaint and are assumed true for the purposes of this Order.

Defendants had supervisory and disciplinary authority over her at some point when she worked at UCS. Am. Compl., at ¶ 16.

The Sexual Harassment

Sometime in 2003, a UCS employee named Andral Bratton ("Bratton") became Plaintiff's immediate supervisor and began sexually harassing her. *Id.*, at ¶ 22. Allegedly, Bratton constantly made unwelcome sexually laden comments to Plaintiff, such as "with you Nicole, a little skin showing goes a long way." *Id.*, at ¶¶ 23-25. Bratton frequently called Plaintiff at her home in the evenings and on weekends, exhibiting an obsessive need to speak with her. *Id.*, at ¶¶ 23 and 28. Bratton purportedly would look into Plaintiff's office in order to stare at Plaintiff in a sexually suggestive manner. *Id.*, at ¶ 25. Whenever Plaintiff attempted to discourage Bratton's inappropriate behavior, he would threaten Plaintiff by saying things like "you need to be nice to me." *Id.*, at ¶¶ 23 and 27.

In June of 2007, Plaintiff requested a transfer to another supervisor, but shortly thereafter, Bratton took a two-month medical leave of absence. *Id.*, at ¶¶ 31-32. Upon returning to UCS in August of 2007, Bratton allegedly resumed his sexual harassment of Plaintiff, which continued until sometime in 2008. *Id.*, at ¶¶ 32-33. In June of 2008, Friedberg began to monitor closely Plaintiff's work and wrote "pretextual" memos containing negative accounts of her productivity. *Id.*, at ¶ 34. Friedberg placed these memos in Plaintiff's employee file without disclosing them to Plaintiff. Second Proposed Amended Complaint (Dkt. Entry No. 63), at ¶ 21.q. Plaintiff alleges that Friedberg did this in retaliation for Plaintiff's transfer request, and in retaliation for testimony given by Plaintiff against the DDC in an unrelated racial discrimination lawsuit. *Id.*, at ¶ 21.s.

From 2004 to 2008, Raneire allegedly also sexually harassed Plaintiff by routinely making sexually charged comments to Plaintiff, and often inappropriately kissing and touching Plaintiff.

Am. Compl., at ¶¶ 40-45. Plaintiff claims she frequently asked Raneire to stop making sexual advances toward her, but the harassment persisted. *Id.*, at ¶ 45.

The Retaliation

On September 17, 2008, Plaintiff allegedly reported to Friedberg that Bratton and Raniere had sexually harassed and threatened her, and that she previously had reported Raniere's sexual harassment to Bratton and to UCS's policy committee. *Id.*, at ¶¶ 37-38. She further informed Friedberg that neither Bratton nor the UCS Policy Committee had taken any action to prevent Raniere from sexually harassing Plaintiff. *Id.*

Friedberg purportedly reported Plaintiff's allegations with respect to Bratton to the UCS Office of Inspector General ("OIG"), but failed to report Plaintiff's allegations as to Raniere. *Id.*, at ¶ 46. From September 2008 to November 2008, OIG investigated Plaintiff's allegations against Bratton only. *Id.*, at ¶ 47. At the conclusion of the investigation, UCS, along with defendants Gonzalez, McConnell, and Reardon, concluded that, although Bratton's behavior was inappropriate, it did not rise to the level of sexual harassment. *Id.*, at ¶ 52. Bratton was transferred to another unit within UCS, but was still permitted unrestricted access to Plaintiff's workspace. *Id.*, at ¶ 52-53.

Plaintiff claims that, shortly after the end of the OIG investigation in November of 2008, Friedberg's scrutiny of Plaintiff significantly increased. *Id.*, at ¶ 50. He began to reprimand Plaintiff regularly, criticize her work product, and closely monitor all of her activities and movements. *Id.*, at ¶ 51. According to Plaintiff, Friedberg's attentiveness to Plaintiff's work activities was initiated at the direction of Reardon, Gonzalez, and McConnell. *Id.*, at ¶ 50. This was done in order to create pretextual performance issues in retaliation for Plaintiff's formal complaints against Bratton and Raniere. *Id.*, at ¶ 55. This concerted campaign of pretextual

negative performance reviews, unreasonable workloads and deadlines, and constant criticism allegedly continued through July of 2009. *Id.*, at ¶ 61. Plaintiff again requested a transfer to another position within UCS, but her request was denied. *Id.*, at ¶ 62.

In May of 2009, Plaintiff filed a complaint with the Equal Opportunity Employment Commission ("EEOC") alleging sexual harassment and retaliation. *Id.*, at ¶ 57. On July 16, 2009, allegedly in retaliation for the EEOC complaint, Friedberg, Gonzalez, McConnell, and Reardon purportedly ordered Plaintiff to appear for a counseling session and stated they would fire her if she did not attend. *Id.*, at ¶ 64. In July or August of 2009, OIG initiated a sexual harassment investigation against Raniere, and, in August, McConnell informed Plaintiff that her allegations against Raniere were unfounded. *Id.*, at ¶ 63 and 65.

The Ethics Investigation

In 2008, Plaintiff retained an attorney to represent her in an unrelated state court civil action involving her home. *Id.*, at ¶ 73. Plaintiff contends that, in August 2009, Raniere and Friedberg, acting at the direction of Reardon, Gonzalez, and McConnell, initiated an ethics investigation against Plaintiff's attorney in the state court action. *Id.*, at ¶ 74. In May of 2010, Plaintiff's state court attorney abruptly withdrew as counsel, and, shortly thereafter, all ethical charges against the attorney were dismissed as unfounded. *Id.*, at ¶¶ 75-76. However, in 2011, the ethics investigation was reopened allegedly at the direction of Dopico, Christmas, Gonzalez, Reardon, and McConnell. *Id.*, at ¶ 77.

The First Leave of Absence, This Action, and Additional Retaliation

These events allegedly caused Plaintiff to suffer severe physical and mental health issues, such as anxiousness, loss of appetite, and insomnia. *Id.*, at ¶¶ 62, 66, and 68. As a result, Plaintiff took a two-year unpaid leave of absence beginning August 24, 2009. *Id.*, at ¶ 66. By the time

Plaintiff returned to her position at UCS in August of 2011, Bratton and Raniere no longer worked at UCS, but the EEOC complaint was still pending. *Id.*, at ¶ 69. Shortly after her return, Plaintiff was "rigorously scrutinized," "strictly monitored" and "further subjected to strict demands." *Id.*, at ¶ 72. On two occasions, when she attempted to sit at her desk, her chair collapsed. *Id.* At other times, while working in her office, she purportedly experienced severe burning in her eyes and blurred vision. *Id.* Plaintiff reported these events to Defendants Dopico, Christmas, and Goldstein. *Id.*

On April 10, 2012, Plaintiff filed this action against UCS only. *See* Original Complaint ("Original Compl.," Dkt. Entry No. 1). Sometime thereafter, for the third time, Plaintiff requested a transfer to another office or agency, which request again was denied. Am. Compl., at ¶¶ 78 and 80. After Plaintiff filed her lawsuit, unnamed UCS "management and staff" continued to treat Plaintiff in a hostile and unduly rigorous manner. *Id.*, at ¶ 81.

The FMLA Leave of Absence, Continued Retaliation, and the Constructive Discharge

On March 4, 2013, Plaintiff took a leave of absence under the Family Medical Leave Act ("FMLA") to care for her daughter who was seriously ill (the "FMLA Leave"). *Id.*, at ¶ 83. Plaintiff returned from her FMLA Leave on March 25, 2013. *Id.*, at ¶ 85. Almost immediately upon her return, Dopico and Christmas directed an office manager to deliver to Plaintiff her annual performance evaluation. *Id.* The evaluation was negative, and contained material that Plaintiff describes as "false," "pre-textual," and "retaliatory." *Id.*, at ¶ 85-86. The evaluation also contained performance issues that Plaintiff's supervisors never had raised previously. *Id.*, at ¶ 86. Dopico signed the evaluation, but Plaintiff alleges that Goldstein and Christmas authored it at the direction of Reardon, McConnell, and Gonzalez. *Id.*, at ¶ 87.

Between 2001 and 2007, Plaintiff had received only favorable yearly performance evaluations. *Id.*, at ¶ 89. However, in 2008, after Plaintiff lodged her sexual harassment and retaliation complaint with Friedberg, she began to receive negative annual evaluations. *Id.* The adverse evaluations continued through 2013. *Id.*

On March 25, 2013, Plaintiff again requested a transfer, and was denied. *Id.*, at ¶ 90. On May 8, 2013, Christmas and Dopico ordered Plaintiff to attend a counseling session because of alleged time and leave issues. *Id.*, at ¶ 91. Plaintiff alleges that McConnell, Reardon, and Gonzalez directed Christmas and Dopico to summon Plaintiff for the counseling session. *Id.* Plaintiff states that her "'time and leave' issues were inextricably intertwined with her three-week [FMLA] leave of absence. . . ." *Id.*, at ¶ 92.

Christmas and Dopico ordered Plaintiff to attend a counseling session on July 30, 2013, and Gonzalez ordered Plaintiff to attend a counseling session on August 8, 2013. *Id.*, at ¶¶ 93 and 96. Plaintiff contends that on various occasions, Christmas instigated verbal altercations with Plaintiff, otherwise bullied Plaintiff, and communicated false information about Plaintiff to other UCS employees, including Dopico, Gonzalez, and Reardon. *Id.*, at ¶ 93. Plaintiff alleges that Dopico, Gonzalez, Reardon, McConnell, and Goldstein authorized Christmas to behave in such an intimidating manner toward Plaintiff as another form of retaliation against her. *Id.*, at ¶ 94.

Plaintiff resigned her position on August 7, 2013. *Id.*, at ¶ 98. However, Plaintiff states that her resignation actually was a constructive discharge, because no reasonable person could continue to work in such an adverse environment. *Id.*, at ¶¶ 97-98. Plaintiff alleges that, as a result of the Individual Defendants' actions, she has and will continue to suffer lost earnings, loss of other employment benefits, damage to her reputation, and physical and mental anguish. *Id.*, at ¶¶ 99-102.

II. Procedural History

On April 10, 2012, Plaintiff filed this action against UCS only, alleging sexual harassment and retaliation under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e. et seq. ("Title VII"). On October 26, 2013, Plaintiff moved to amend her complaint to add defendants Gonzalez, McConnell, Dopico, Reardon, Goldstein, and Christmas ("Motion to Amend," Dkt. Entry No. 59). Plaintiff attached to her Motion to Amend the first proposed amended complaint ("First Proposed Amended Complaint"). *Id.*

On November 8, 2013, UCS moved to dismiss the First Proposed Amended Complaint as futile. (Dkt. Entry No. 62). On November 14, 2013, Plaintiff filed a reply, to which she improperly attached a second proposed amended complaint ("Second Proposed Amended Complaint"), seeking to add Friedberg and Raniere to the action.[2] (Dkt. Entry. No. 63). By order dated November 20, 2013, the magistrate judge ruled that the Second Proposed Amended Complaint superseded the First Proposed Amended Complaint, and directed UCS to respond to the former. On December 11, 2013, UCS filed its opposition to the Second Proposed Amended Complaint, arguing that, it too was futile (Dkt. Entry No. 69).

By order dated September 15, 2014, ("Sept. 15 Order") the magistrate judge granted in part and denied in part the Second Proposed Amended Complaint, and directed Plaintiff to submit a further revised proposed amended complaint in accordance with the Sept. 15 Order.[3] On November 5, 2014, Plaintiff filed the Amended Complaint that is currently before the Court. (Dkt. Entry No. 86).

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[2] The Second Proposed Amended Complaint sought to add Friedberg and Raniere in addition to the six defendants she sought to add in the First Proposed Amended Complaint. Thus, the Second Proposed Amended Complaint sought to add all eight of the Individual Defendants.

[3] The Sept. 15 Order is discussed further below.

The Amended Complaint asserts seven claims against defendants pursuant to Title VII, the New York State Human Rights Law ("NYSHRL"), the New York City Human Rights Law ("NYCHRL"), the Family Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq., ("FMLA"), and state tort law. *See* Am. Compl., at V. Claim One is a Title VII claim against USC only. *Id.*, at 22-23. Claims Two and Three allege that all defendants violated the NYSHRL and the NYCHRL, respectively, by aiding and abetting, and/or subjecting Plaintiff to sexual harassment, and by retaliating against her for complaining about the sexual harassment. *Id.*, at 23-24. Claim Four is a claim under the FMLA, alleging that UCS, Christmas, Dopico, Gonzalez, Reardon, McConnell, and Goldstein retaliated against Plaintiff for exercising her rights under the FMLA. *Id.*, at 25. Claim Five alleges that Christmas, Dopico, Gonzalez, Reardon, McConnell, and Goldstein violated the NYCHRL by retaliating against Plaintiff for exercising her rights under the FMLA. *Id.* Claim Six is a negligent supervision claim against all defendants and, finally, Claim Seven is an intentional infliction of emotional distress ("IIED") claim against all defendants. *Id.*

The Individual Defendants filed two separate motions to dismiss the Amended Complaint for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6). Gonzalez, McConnell, Rearden, Dopico, Christmas, Friedberg, and Goldstein filed their motion to dismiss through counsel on February 27, 2015. *See* First MTD. Reardon also moved to dismiss under Rule 12(b)(2) and (5).[4] First MTD, at 2-3. Raniere filed a separate motion to dismiss through different counsel on March 27, 2015 (the "Raniere MTD," Dkt. Entry No. 134). Plaintiff opposes both motions.

[4] Reardon is the only Individual Defendant who moves for dismissal under Rule 12(b)(2) and (5).

DISCUSSION

I. Reardon's Motion to Dismiss Pursuant to Rule 12(b)(2) and (5)

Reardon moves to dismiss the amended complaint against him for lack of personal jurisdiction based on insufficient service of process under Rule 12(b)(2) and (5), and for failure to state a claim under Rule 12(b)(6). First MTD, at 2-3. In this situation, "the Court must first address the preliminary questions of service and personal jurisdiction" before considering the legal sufficiency of the allegations in the amended complaint. *Hertzner v. U.S. Postal Serv.*, 2007 WL 869585, at *3 (E.D.N.Y. Mar. 20, 2007) (quoting *Mende v. Milestone Tech., Inc.,* 269 F. Supp.2d 246, 251 (S.D.N.Y. 2003); *Arrowsmith v. United Press Int'l,* 320 F.2d 219, 221 (2d Cir.1963) ("[L]ogic compel[s] initial consideration of the issue of jurisdiction over the defendant—a court without such jurisdiction lacks power to dismiss a complaint for failure to state a claim.").

Plaintiff's First Attempt to Serve Reardon in December 2014

Plaintiff filed the Amended Complaint on November 5, 2014. On January 6, 2015, Plaintiff filed an affidavit of service (the "Jan. 6 Affidavit of Service") bearing the name and signature of the process server, Raymond Hollingsworth of Lawson Legal Services (Dkt. Entry No. 99). Jan. 6 Affidavit of Service, at 1. The notary's signature, which appears next to Hollingsworth's signature, is dated December 24, 2015. *Id.* The Jan. 6 Affidavit of Service further states in relevant part as follows:

- On December 22, 2014, at 2:19 p.m., Hollingsworth served a copy of the amended summons and amended complaint on a person named "Jacqueline C." *Id.*
- Jacqueline C is a "paralegal" employed at Simpson Thacher, located at "425 Lexington Avenue, New York, NY, 10017." *Id.* Hollingsworth served Jacqueline C at this address. *Id.*

- Jacqueline C is a person authorized to accept service for Roy Reardon. *Id.*
- A copy of the amended summons and amended complaint "was also mailed via USPS First Class mail within 20 days upon service." *Id.*

The Individual Defendants Give Notice of Service Issues

By letter filed January 8, 2015, counsel for the Individual Defendants, the Office of the Attorney General for the State of New York (the "OAG"),[5] advised the Court that it was evaluating whether service of process was proper. (Dkt. Entry No. 102). By letter filed January 20, 2015, the OAG advised the Court that improper service of process was still "under review." (Dkt. Entry No. 107). On February, 24, 2015, counsel for UCS, Lisa Evans, filed a status report letter addressed to the magistrate judge advising that, on January 6, 2015, Evans informed Plaintiff's counsel, Ambrose Wotorson, that service was deficient regarding several of the Individual Defendants, including Reardon. (Dkt. Entry. No. 111).

By letter dated February 24, 2015, the OAG advised the Court that the Jan. 6 Affidavit of Service was inaccurate. (the "OAG Feb. 24 Letter," Dkt. Entry. No. 112, at 2). According to the OAG Feb. 24 Letter, although the process server visited the Simpson Thacher office on December 22, 2014, he did not leave copies of the amended summons and amended complaint, and copies of these documents were not mailed to Reardon. *Id.* Wotorson promptly responded to the allegations in these two letters by filing his own letter, also dated February 24, 2015 (the "Wotorson Feb. 24 Letter," Dkt. Entry. No. 113). Wotorson claimed that, although he spoke to Evans on January 6, 2015, she did not inform him at that time that service on Reardon was defective; in fact, according to Wotorson, at no time prior to February 24, 2015 had Evans or OAG ever informed him of any service issues with respect to Reardon. *Id.*, at 2.

[5] The OAG represents all of the Individual Defendants except Raniere, who is represented by his own counsel.

Reardon Disputes the First Service Attempt

On February 27, 2015, the Individual Defendants filed the First MTD, in which Reardon raised his Rule 12(b)(2) and (5) argument. (Dkt. Entry No. 119). In support of the motion, Jacqueline Williams submitted a sworn declaration (the "Williams Declaration" Dkt. Entry No. 122) attesting to the following:

- Williams was the Managing Clerk at Simpson Thacher on December 24, 2014, on which date Reardon was on vacation. *Id.*, at ¶ 1.
- Service was never attempted on December 22, 2014 as stated in the Jan. 6 Affidavit of Service; service was attempted on the afternoon of December 24, 2014. *Id.*, at ¶ 2.
- On December 24, 2014, Williams informed the process server that she was not authorized to accept service for Reardon, and she told the process server that she would contact Reardon to ask him if he authorized Williams to accept service on his behalf. *Id.*, at ¶ 3. Williams suggested that the process server return on Monday, December 29, 2014, by which time she expected to have an answer from Reardon. *Id.*
- The process server told Williams that he would return the following week. *Id.*, at ¶ 4. The process server did not leave any papers with Williams on December 24, 2014, nor did Williams or the Managing Clerk's office ever receive any papers at any time thereafter. *Id.*
- The process server did not return the following week. *Id.*, at ¶ 5.

Williams attached to her declaration an email from her to Reardon dated December 24, 2014, wherein she asked if she was authorized to accept service. Reardon also submitted a sworn declaration on February 27, 2015 (the "Reardon Declaration," Dkt. Entry No. 121) in support of the First Motion to Dismiss. The only relevant additional information in the Reardon Declaration is that, during the period in question, Reardon's actual place of business was 425 Lexington

Avenue, New York, NY, 10017. Reardon Decl., at ¶ 7. This is the same address at which Hollingsworth claims he attempted service on December 22, 2014. Jan. 6 Affidavit of Service.

Plaintiff's Second Attempt to Serve Reardon

On March 14, 2015, Plaintiff filed her opposition to the First MTD, which not only was untimely, but also failed to address Reardon's insufficient service argument. *See* Local Civil Rule 6.1(b) (requiring service of opposing papers within 14 days after service of moving papers); *see generally*, Pl. Opp. to First MTD (no discussion of Rule 12(b)(2) and (5) issues)).[6] On March 19, 2015, without leave of the Court, Plaintiff filed an amended opposition to the First MTD (Dkt. Entry No. 125), which did address the service issue. Pl. Am. Opp. to First MTD, at 4. Plaintiff improperly sought "leave" to amend her opposition *after* she had already filed it (Dkt. Entry No. 127). Accordingly, by Order dated March 20, 2015, the Court struck both the motion to amend the opposition and the amended opposition itself.

Also on March 19, 2015, Plaintiff filed a second affidavit of service (the "Mar. 19 Affidavit of Service," Dkt. Entry No. 126). The Mar. 19 Affidavit of Service bears the name and signature of the process server, Robert Lawson of Lawson Legal Services. *Id.*, at 1. The Mar. 19 Affidavit of Service further states as follows:

- On March 6, 2015, at 2:40 p.m., Lawson served a copy of the amended summons and amended complaint on "John Doe." *Id.*

[6] Despite its untimeliness, the Court will not strike Plaintiff's opposition to the First MTD. Because it fails to address the service issue, it offers Plaintiff no help here. Indeed, the Court may deem waived any opposition to dismissal on this ground. *See Gorfinkel v. Ralf Vayntrub, Invar Consulting Ltd.*, 2014 WL 4175914, at *5 (E.D.N.Y. Aug. 20, 2014) ("Plaintiff has not responded to Defendants' arguments regarding service of process upon [one of the defendants] and accordingly has waived any argument with respect to service of process."); *LBF Travel, Inc. v. Fareportal, Inc.*, 2014 WL 5671853, at *16 (S.D.N.Y. Nov. 5, 2014) (collecting cases) ([B]ecause [plaintiff] has not disputed defendants' arguments on this issue, we deem its claims on this point to be abandoned. . . ."). However, Plaintiff does argue against dismissal on 12(b)(6) grounds, which is discussed below.

- John Doe is a "building concierge/Simpson Thacher employee." Lawson served John Doe at the address of "425 Lexington Avenue, Building Lobby, New York, NY, 10017." *Id.*
- John Doe is a person authorized to accept service for Roy Reardon. *Id.*
- A copy of the amended summons and amended complaint "was also mailed via USPS First Class mail within 20 days upon service." *Id.*

In the "Additional Information" section of the Mar. 19 Affidavit of Service, Lawson represents that:

- On the morning of March 6, 2015, Lawson contacted Reardon via telephone to ask if Reardon would come to the lobby to accept service that afternoon. *Id.* Reardon responded "no." *Id.*
- When Lawson attempted service that afternoon, the building concierge refused to accept service. *Id.* Lawson left the documents on the counter, and the concierge attempted to return the documents to Lawson. *Id.* When Lawson refused, the concierge threw the documents at Lawson, who let them fall to the ground, where he left them. *Id.*

On March 20, 2015, the Individual Defendants filed their reply (the "Reply," Dkt. Entry. No. 129) to Plaintiff's opposition to the First MTD. The Reply concedes that Reardon was served at his office on March 6, 2015, and that he received a copy of the amended summons and amended complaint by mail on March 10, 2015. Reply, at 9. However, Reardon maintains that under Rule 4(m), the March 6 service was untimely as it occurred 121 days after Plaintiff filed the amended complaint on November 5, 2014. Reply, at 10 (citing Fed.R.Civ.P 4(m) requiring service within 120 days after the complaint is filed).[7] Reardon's challenge to Plaintiff's service of process is in

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[7] Rule 4(m) and its application in this case is discussed in greater detail below.

two parts. First, he claims that the December service[8] was timely, but improper. First MTD, at 24. He then attacks the March 6 service as proper, but untimely. Reply, at 9-10. Reardon contends the Amended Complaint should be dismissed as to him, because he has never been properly *and* timely served.

Reardon's Affidavits Raise an Issue of Fact Regarding the December Service

When a defendant challenges service of process, the plaintiff bears the burden of proving, through admissible evidence, the adequacy of service. *See Khan v. Khan*, 360 F. App'x 202, 203 (2d Cir. 2010); *see generally Burda Media, Inc. v. Viertel*, 417 F.3d 292 (2d Cir. 2005); *Hertzner*, 2007 WL 869585, at *3 (citations omitted). A plaintiff may carry this burden by submitting a process server's affidavit that establishes a rebuttable presumption of proper service. *Old Republic Ins. Co. v. Pacific Fin. Servs. of Am., Inc.*, 301 F.3d 54, 57 (2d Cir. 2001) (citing *NYCTL 1997-1 Trust v. Nillas*, 288 A.D.2d 279, 7332 (2d Dep't 2001)). A defendant may rebut this presumption through a sworn affidavit in which the defendant denies receipt of service. *Id.*, at 57-58 (citing *Skyline Agency, Inc. v. Ambrose Coppotelli, Inc.*, 117 A.D. 2d 135. (2d Dep't 1986)); *Id.*, at 58 (quoting *Simonds V. Grobman*, 277 A.D.2d 369 (2d Dep't 2000) (defendant must swear to "specific facts" to rebut presumption)). Where a defendant's affidavit successfully rebuts the presumption of proper service, the Court must hold an evidentiary hearing. *Id.* (citing *Skyline*, 117 A.D.2d at 135). A district court's failure to hold an evidentiary hearing in this situation is reversible error. *Davis v. Musler*, 713 F.2d 907 (2d Cir. 1983).

In this case, Plaintiff elected to serve Reardon in accordance with Rule 4(e)(1), which states in relevant part that an individual may be served in the United States by following the law of the

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[8] Because the parties dispute whether the first attempt at service occurred on December 22, 2014 or December 24, 2014, the Court refers to this event as the December service, as it was within the requisite 120-day period required by Rule 4(m) in either event.

state where service is made. Fed. R. Civ. P. 4(e)(1).[9] In New York, one of the methods by which a party may complete service is through the two-step process set forth in New York's Civil Practice Law and Rules ("C.P.L.R.") § 308(2). First, a plaintiff must deliver the summons to "a person of suitable age and discretion" at the defendant's "actual place of business." C.P.L.R. § 308(2) (McKinney 2015). Second, the plaintiff must mail the summons by first class mail to the defendant at his or her "actual place of business." *Id.*

The parties dispute three factual issues with respect to the December service: (i) whether the process server actually left a copy of the amended summons and amended complaint with Williams; (ii) whether the process server mailed copies of these documents to Reardon; and (iii) whether the process server attempted service on December 22 or December 24. At the outset, the Court can dispense with the third issue as irrelevant. It makes no difference whether these events took place on December 22nd or December 24th, because service would have been timely either way. The issue with the December service is whether it was *proper*, not whether it was *timely*.

Regarding the second issue (mailing), New York state courts have held that, as long as the plaintiff can show that she used the proper address, the defendant need not actually receive the summons through the mail in order for service to be effective. *See Melton v. Brotman Foot Care Grp.*, 198 A.D.2d 162 (1st Dep't 1993) (discussing the requirements of C.P.L.R § 308 (2)). The court's jurisdiction attaches at the time of mailing. *Id.* Hollingsworth's affidavit of service states that he mailed the summons to Reardon's actual place of business. Thus, Reardon's assertion that he never *received* the summons via mail will not defeat Hollingsworth's sworn declaration that he mailed it.

[9] Plaintiff attempted this method of service for both the December service and the March 6 service.

However, the first issue, whether Hollingsworth actually left copies of the amended summons and amended complaint with Williams, cannot be resolved on the basis of the conflicting affidavits. Hollingsworth's affidavit states that he left these documents with Williams and Williams' affidavit states that he did not. While the Court normally would need to conduct an evidentiary hearing to resolve this dispute, for the reasons discussed below, the Court holds that no such hearing is necessary.

While the March 6 Service was Untimely, the Deadline is Extended for Good Cause

Timeliness of service is governed by Rule 4(m), which states that, if a plaintiff fails to serve a defendant within 120 days after the complaint is filed, a court "must dismiss the action without prejudice against that defendant or order that service be made within a specified time." Fed. R. Civ. P. 4(m). A court must extend the 120-day deadline if a plaintiff can demonstrate "good cause" as to why she failed to timely serve process. *Id.* Courts consider two factors in determining whether good cause is shown: "(1) the reasonableness and diligence of plaintiff's efforts to serve; and (2) the prejudice to the moving defendants from the delay." *Lab Crafters, Inc. v Flow Safe, Inc.*, 233 F.R.D. 282, 284 (E.D.N.Y. 2005) (quoting *Blessinger v. U.S.*, 174 F.R.D. 29, 31 (E.D.N.Y. 1997)). The "inadvertence, neglect, or mistake" of an attorney will not satisfy the good cause standard. *Id.* at 284 (quoting *Myers v. Sec'y of the Dep't of the Treasury*, 173 F.R.D. 44, 46 (E.D.N.Y. 1997)). "Additionally, a mistaken belief that service was proper does not establish good cause." *Tieman v. City of Newburgh*, 2015 WL 1379652, at *9 (S.D.N.Y. Mar. 26, 2015) (quoting *Bernstein v. Vill. of Piermont*, 2012 WL 6625231, at *3 (S.D.N.Y. Dec. 20, 2012)). However, "[t]he determination of good cause under Rule 4 is to be construed liberally to further the purpose of finding personal jurisdiction in cases in which the party has received actual notice."

Am. Intern. Tel., Inc. v. Mony Travel Servs., Inc., 203 F.R.D. 95, 97 (2001) (quoting *Snall v. City of New York*, 1999 WL 1129054, *3 (E.D.N.Y. Oct. 19, 1999)).

Courts within this circuit generally have found good cause when a defendant has been evasive or uncooperative with respect to a plaintiff's diligent attempts at service. *See Gerena v. Korb*, 617 F.3d 197, 200 (2d Cir. 2010) (multiple attempts at service resulted in district court finding that defendant was "playing cat-and-mouse game with plaintiffs regarding service"); *Am. Intern.*, 203 F.R.D., at 96 (process server denied access to defendant's residence by building security guard); *Blessinger*, 38 F.R.D., at 31. ("The Court has every reason to believe that the [defendant]. . . did evade the service . . . with the hope of having the entire matter disposed of without having to address the merits of [p]laintiff's claims."); *id.* (citing Fed. R. Civ. P. 4(m) advisory committee's note to 1993 amendment).

Here, Reardon concedes that, in late December, Hollingsworth came to Reardon's "actual place of business" and attempted to effectuate service. C.P.L.R § 308 (2). He acknowledges that Williams refused to accept service on Reardon's behalf, apparently based on William's belief that she was not authorized to do so. This refusal was improper under New York law. *See Charnin v. Cogan*, 250 A.D.2d 513, 517-18 (1st Dep't 1998) (holding that service attempted on a defendant's receptionist cannot be "undermined or defeated by an employer policy discouraging or even prohibiting service of process"). Reardon further does not dispute any of the statements in Lawson's affidavit regarding the March 6 service. Thus, the Court accepts as true that Reardon told Lawson that he would not come to the lobby to accept service, and that the building concierge refused service on Reardon's behalf. These facts are sufficient to establish that Plaintiff's efforts to serve Reardon were both reasonable and diligent, and Reardon's efforts to avoid service were unreasonable.

This conclusion is in no way affected by the letters of OAG or Evans that purport to have put Plaintiff on notice that her service on Reardon was ineffective. The OAG letters merely assert generalities such as "[OAG] continue[s] to evaluate whether, in several instances, the purported service of process was insufficient." Such vague allusions to the *possibility* of defective service could not have put Plaintiff on notice that Reardon had not been served properly. While Evans claims to have told Wotorson on January 6 that Reardon had not been served properly, Wotorson disputes that Evans said this. Even accepting Evans' version of events, the Court nonetheless finds that Plaintiff's efforts were reasonable and diligent.

As to the prejudice prong of the good cause test, Reardon appears to have suffered no prejudice as a result of the allegedly defective and untimely service. As an initial matter, the second service of process was outside the 120 day deadline by only one day. Moreover, Reardon already was aware that Plaintiff was attempting to serve him with a summons and complaint. Importantly, if the Court were to dismiss the case against him on untimely service grounds, it necessarily would be without prejudice. *See* Rule 4(m). Therefore, because many of Plaintiff's claims would not be time barred if she refiled, Reardon would end up in exactly same position he is in now. Moreover, OAG has vigorously and competently represented Reardon's interests in this matter, particularly through the First MTD. Indeed, as will be discussed in further detail below, several of Plaintiff's claims against the Individual Defendants, including Reardon, are dismissed. Significantly, Reardon cannot evade service in the manner he has, and then complain that he was prejudiced by not receiving service.

For the foregoing reasons, the Court holds that Plaintiff has shown good cause pursuant to Rule 4(m), and her time to serve Reardon is extended, *nunc pro tunc*, to March 11, 2015.

Accordingly, because the March 6 service was proper and timely, Reardon's motion to dismiss on 12(b)(2) and (5) grounds is denied.

II. The Law of the Case Doctrine

Plaintiff contends that the Sept. 15 Order granting Plaintiff leave to amend her complaint should bar all of Raniere's 12(b)(6) arguments under the law of the case doctrine. Pl. Opp. to Raniere MTD., at 7. Plaintiff did not assert this argument in opposition to the First MTD. *See generally*, Pl. Opp. to First MTD.

The law of the case doctrine provides that "when a court has ruled on an issue, that decision should generally be adhered to by that court in subsequent stages in the same case." *U.S. v. Carr*, 557 F.3d 93, 102 (2d Cir. 2009) (quoting *U.S. v. Quintieri,* 306 F.3d 1217, 1225 (2d Cir. 2002) (citations and internal quotation marks omitted). "Application of the law of the case doctrine is discretionary and does not limit a court's power to reconsider its own decisions prior to final judgment." *Sagendorf–Teal v. Cty. of Rensselaer,* 100 F.3d 270, 277 (2d Cir.1996); *Aramony v. United Way of Am.*, 254 F.3d 403, 410 (2d Cir. 2001); *Crysen/Montenay Energy Co. v. Shell Oil Co. and Scallop Petroleum Co.* (*In re Crysen/Montenay Energy Co.*), 226 F.3d 160, 165 n.5 (2d Cir. 2000). However, this discretion is limited, as the doctrine "may be properly invoked only if the parties had a full and fair opportunity to litigate the initial determination." *Westerbeke Corp. v. Daihatsu Motor Co.,* 304 F.3d 200, 219 (2d Cir.2002).

The Sept. 15 Order addressed the question of whether it would be futile to permit Plaintiff to amend her complaint pursuant to Rule 15(a). Sept. 15 Order, at 13-14. As the magistrate judge correctly noted, a court must analyze a futility argument under Rule 15(a) in the same way it would address a 12(b)(6) motion to dismiss. *Id.*, at 14 (citing *Majad ex rel. Nokia Ret. Sav. And Inv. Plan v. Nokia, Inc.*, 528 F. App'x 52, 53 (2d Cir. 2013); *Nettis v. Levitt*, 241 F.3d 186, 194 n. 4 (2d Cir.

2001) ("Determinations of futility are made under the same standards that govern Rule 12(b)(6) motions to dismiss."). Applying the 12(b)(6) analytical framework, the magistrate judge issued a thorough, well-reasoned decision in which she held that it would not be futile for Plaintiff to re-plead some of her proposed causes of action and to add the Individual Defendants to the lawsuit. *See generally,* Sept. 15 Order. Plaintiff now argues that, because the Sept. 15 Order held that the Amended Complaint would not be futile on 12(b)(6) grounds, the law of the case doctrine should preclude Raniere from asserting his 12(b)(6) arguments here. Pl. Opp. to Raniere Mot. Dis., at 7.

One of the few cases from this circuit that substantively has addressed the law of the case doctrine in the context of a motion to dismiss made after a futility determination is *Firestone v. Berrios*, 42 F. Supp.3d 403 (E.D.N.Y. 2013).[10] In *Firestone*, a New York state court plaintiff sought leave to amend her complaint to re-plead some of her causes of action, but she did not seek to add or drop any of the defendants. *Id.*, at 409. The defendants objected to the proposed amended complaint on the grounds that it failed to state a claim. *Id.*, at 411. In a lengthy opinion discussing the relevant motion to dismiss standard, the court granted plaintiff's motion to amend. *Id.* The defendants then removed the action to federal court and promptly filed a motion to dismiss the amended complaint. *Id.*

The federal district court judge held that the state court decision in favor of the plaintiff was law of the case. *Id.*, at 412. The court relied on the fact that the state court had thoroughly analyzed the proposed amended complaint under the motion to dismiss standard. *Id.*, at 413. Accordingly, the federal court concluded that "[i]t would not serve the jurisprudential desire to

[10] While the Raniere MTD cites two cases from this district in support of its position, neither of these cases is particularly illuminating. Each case only tangentially touches upon the issue at hand, without offering any substantive analysis. *See Care Envtl. Corp. v. M2 Techs., Inc.*, 2006 WL 148913, at *8 n.9 (E.D.N.Y. Jan. 18, 2006) *and Mathie v. Fries*, 935 F. Supp. 1284, 1301 (E.D.N.Y. 1996).

maintain consistency and avoid reconsideration of matters once decided during the course of a single lawsuit if this Court were to revisit identical issues that were previously raised by the [d]efendants in the [s]tate [c]ourt." *Id.*

The Court finds this rationale persuasive, but inapplicable to the instant case, despite the procedural similarities. Whereas in *Firestone*, all of the defendants were parties to the case *before* the plaintiff sought to amend her complaint, in this case, none of the Individual Defendants were parties to the action at the time Plaintiff moved to amend her complaint. Indeed, one of the main purposes of amending the complaint was to add the Individual Defendants. This distinction is critical, because as noted above, a court may apply the law of the case doctrine "only if the parties had a full and fair opportunity to litigate the initial determination." *Westerbeke* 304 F.3d, at 219. Here, while the magistrate judge's "initial determination" thoroughly addressed the 12(b)(6) standard, it did so only with respect to the sole defendant at the time, UCS. At that point, the Individual Defendants had no opportunity, much less a full and fair one, to advance their own arguments in support of dismissal, because they were non-parties. *See* 18 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 4478.5 (2d ed. 2015) ("[A] party joined in an action after a ruling has been made should be free to reargue the matter without the constraints of law-of-the-case analysis."). Accordingly, the Court declines to apply the law of the case doctrine to the Raniere MTD.[11]

III. Rule 12(b)(6)

Under Rule 8(a) of the Federal Rules of Civil Procedure, pleadings must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Pleadings are to give

[11] Plaintiff did not raise the law of the case doctrine in opposition to the other Individual Defendants' motion to dismiss the Amended Complaint and, thus, has waived this argument as to them. In any event, the argument is meritless as to the other Individual Defendants for the same reasons it is not successful as to Raniere.

the defendant "fair notice of what the claim is and the grounds upon which it rests." *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 346 (2005) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957), overruled in part on other grounds by *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)). "[T]he pleading standard Rule 8 announces does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555). "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Id.* (quoting *Twombly*, 550 U.S. at 555).

Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a defendant may move, in lieu of an answer, for dismissal of a complaint for "failure to state a claim upon which relief can be granted." To resolve such a motion, courts "must accept as true all [factual] allegations contained in a complaint," but need not accept "legal conclusions." *Iqbal*, 556 U.S. at 678. For this reason, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice" to insulate a claim against dismissal. *Id.* "[A] complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id.* (quoting *Twombly*, 550 U.S. at 570). Notably, courts may only consider the complaint itself, documents that are attached to or referenced in the complaint, documents that the plaintiff relied on in bringing suit and that are either in the plaintiff's possession or that the plaintiff knew of when bringing suit, and matters of which judicial notice may be taken. *See, e.g.*, *Roth v. Jennings*, 489 F.3d 499, 509 (2d Cir. 2007).

A defendant properly may move under Rule 12(b)(6) to dismiss a claim as time barred by the statute of limitations. *Ghartey v. St. John's Queens Hosp.,* 869 F.2d 160, 162 (2d Cir.1989) (citing *Gordon v. Nat'l Youth Work Alliance*, 675 F.2d 356, 360 (D.C.Cir. 1982) ("Where the dates

in a complaint show that an action is barred by a statute of limitations, a defendant may raise the affirmative defense in a pre-answer motion to dismiss. Such a motion is properly treated as a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted rather than a Rule 12(b)(1) motion to dismiss for lack of jurisdiction over the subject matter.”)); *Francis v. Blaikie Grp.*, 372 F. Supp. 2d 741, 743 (S.D.N.Y. 2005) (quoting *Ghartey*, 869 F.2d, at 162).

(A) Raniere and Friedberg

The amended complaint asserts four causes of action against Raniere and Friedberg: (i) sexual harassment and retaliation under NYSHRL; (ii) sexual harassment and retaliation under NYCHRL; (iii) negligent supervision; and (iv) intentional infliction of emotional distress. *See* Am. Compl., at V. Raniere and Friedberg move to dismiss all claims on the grounds that they are time barred by the statute of limitations, or in the alternative, that they fail to state a claim. *See generally*, First MTD and Raniere MTD. As the Court concludes that each claim is time barred, it need not reach the question of whether these causes of action fail to state a claim.

Plaintiff’s claims under the NYSHRL and NYCHRL are governed by a three-year statute of limitations. C.P.L.R. § 214(2) (McKinney 2015) and New York City Administrative Code (“Admin Code”) § 8-502(d); *Kassner v. 2nd Ave. Delicatessen Inc.*, 496 F.3d 229, 238 (2d Cir. 2007) (“[C]laims under the NYSHRL and the NYCHRL are time-barred unless filed within three years of the alleged discriminatory acts. . . .”). Similarly, in New York, negligent supervision claims also have a three-year statute of limitations. C.P.L.R. § 214; *Walker v. Lorch*, 2013 WL 3358013, at *4 (S.D.N.Y. July 2, 2013) (citing *Green v. Emmanuel African Methodist Episcopal Church*, 278 A.D.2d 132 (1st Dep’t 2000)); *Weil v. Long Island Sav. Bank, FSB*, 77 F. Supp. 2d 313, 324 (E.D.N.Y. 1999) (citing C.P.L.R. § 214 (McKinney 1990)). A cause of action alleging intentional infliction of emotional distress must be filed within one year of the events giving rise

to the claim. C.P.L.R § 215(3); *Patterson v. Balsamico*, 440 F.3d 104, 112, n.4 (2d Cir. 2006) (citing *Jemison v. Crichlow*, 139 A.D.2d 332, 337 (2nd Dep't 1988)).

In the Second Circuit, "[w]hen a plaintiff seeks to add a new defendant in an existing action, the date of the filing of the motion to amend constitutes the date the action was commenced for statute of limitations purposes." *Bensinger v. Denbury Res. Inc.*, 31 F. Supp. 3d 503, 508 (E.D.N.Y. 2014) (quoting *Rothman v. Gregor,* 220 F.3d 81, 96 (2d Cir.2000) (citations and internal quotation marks omitted)). For the purposes of calculating the statute of limitations period, Plaintiff commenced her action against Raniere and Friedberg on November 14, 2013, the date on which she filed her motion to amend the complaint to add these defendants. Therefore, as to the NYSHRL, NYCHRL, and negligent supervision claims, the amended complaint must allege that the relevant events occurred on or after November 15, 2010. Plaintiff's cause of action for intentional infliction of emotional distress must be based on events alleged to have occurred on or after November 15, 2012.

Here, Plaintiff alleges that Raniere sexually harassed her between 2004 and 2008. Am. Compl., at ¶ 40. Therefore, none of Raniere's alleged sexual harassment will support any of Plaintiff's claims, a point Plaintiff concedes in her opposition. *See* Pl. Opp. to Raniere MTD, at 14, n.1. Rather, Plaintiff argues that her NYSHRL, NYCHRL, and negligent supervision claims are not time barred, because Raniere's retaliation continued into the statutory period. *Id.*, at 14. As to Friedberg, the amended complaint alleges that he retaliated against Plaintiff, in the form of increased scrutiny, draconian workloads, pretextual counseling sessions, and denied transfer requests, between June 2008 and July 2009. *See generally*, Am. Compl., at ¶¶ 34, 37-38, 46, 50-51, 53, 55-56, 58-61, 63-64. These allegations also fall outside the statute of limitations periods.

The latest occurring allegation against both Raniere and Friedberg pertains to the ethics investigation involving Plaintiff's state court attorney in August 2009. Am. Compl., at ¶ 74. UCS dismissed the ethics charges in May of 2010, but the Amended Complaint does not state which of the Individual Defendants participated in this decision. *Id.*, at ¶ 75. Rather, the Amended Complaint simply alleges that, in May 2010, "the ethical charges against Plaintiff's attorney . . . were dismissed as unfounded." *Id.* Nevertheless, for the purposes of this statute of limitations analysis, the Court construes the Amended Complaint in the light most favorable to Plaintiff to allege: (i) that Raniere and Friedberg participated in the decision to dismiss the ethics charges, and (ii) that the dismissal of the ethics charges was a retaliatory act. Therefore, even under the most generous construction of the Amended Complaint, the latest act of retaliation Plaintiff alleges against Raniere and Friedberg occurred in May 2010, six months outside the applicable limitations period.

In an attempt to circumvent this problem, Plaintiff argues for the first time in her opposition to the Raniere MTD that her retaliation claims against Raniere are timely under the continuing violation doctrine. Pl. Opp. to Raniere MTD, at 14-16.[12] The continuing violation doctrine provides that, "if a plaintiff has experienced a continuous practice and policy of discrimination, . . . the commencement of the statute of limitations period may be delayed until the last discriminatory act in furtherance of it." *Washington v. Cty. of Rockland*, 373 F.3d 310, 317 (2d Cir. 2004) (quoting *Fitzgerald v. Henderson,* 251 F.3d 345, 359 (2d Cir.2001)). "It is well-established that the 'continuing violation' doctrine cannot save untimely claims for discrete discriminatory acts, even where those discrete acts are related to acts within the limitations period . . . ." *Bright v. Coca Cola*

[12] Plaintiff's opposition to the First MTD did not raise the continuing violation doctrine; indeed it only tangentially addressed the statute of limitations issue at all. *See id.*, at 10. However, even if Plaintiff had raised the continuing violation doctrine against Friedberg, the argument would fail for the same reasons it fails as to Raniere.

Refreshments USA, Inc., 2014 WL 5587349, at *4 (E.D.N.Y. Nov. 3, 2014) (citing *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 114 (2002) (emphasis added)). Similarly, a plaintiff cannot establish a continuing violation "merely because the claimant continues to feel the effects of a time-barred discriminatory act." *McFadden v. Kralik*, 2007 WL 924464, at *7 (S.D.N.Y. Mar. 28, 2007) (citing *Harris v. City of New York*, 186 F.3d 243, 250 (2d Cir.1999)). Finally, "the continuing violation doctrine is heavily disfavored in the Second Circuit and courts have been loath to apply it absent a showing of compelling circumstances." *Bright*, 2014 WL 5587349, at *4 (quoting *Trinidad v. New York City Dept. of Corr.*, 423 F. Supp.2d 151, 165 n. 11 (S.D.N.Y. 2006) (quotations omitted)).

Plaintiff contends that her claims are timely under the continuing violation doctrine, because Raniere's actions, which clearly occurred outside the limitations period, affected events that occurred later, within the limitations period. *See e.g.*, *Id.*, at 14 ("Raniere encouraged . . . other defendants' relentless micromanagement, thereby *causing* [P]laintiff's unpaid leave of absence. . . .") (emphasis added); *Id.* ("Raniere's . . . decision to pursue a[] . . . retaliatory ethics investigation . . . *directly influenced* [P]laintiff's attorney to withdraw from her civil matter in the spring of 2010. . . .") (emphasis added); *Id.*, at 15 ("Raniere . . . set off a deliberate, retaliatory, unbroken chain of events, [*sic*] which ultimately *culminated* in [P]laintiff's constructive discharge.") (emphasis added).

These arguments amount to nothing more than an attempt to apply the continuing violation doctrine "because [Plaintiff] continue[d] to feel the effects of a time-barred discriminatory act." *McFadden*, 2007 WL 924464, at *7. Furthermore, the decisions to initiate and dismiss the ethics investigation clearly were discrete acts, as opposed to acts taken "in furtherance of" "a continuous practice and policy of discrimination." *Washington*, 373 F.3d, at 317. Plaintiff's *post hoc* attempts

to "save [her] untimely claims" under the guise of the continuing violation doctrine, therefore, must fail. *Bright*, 2014 WL 5587349, at *4.

All four causes of action against Raniere and Friedberg are time-barred, and these defendants are dismissed from this action, with prejudice.

(B) The Remaining Individual Defendants

The Amended Complaint asserts the following six causes of action against all six of the remaining Individual Defendants: (i) aiding and abetting sexual harassment, subjecting Plaintiff to sexual harassment, and retaliation under the NYSHRL (Claim Two); (ii) aiding and abetting sexual harassment, subjecting Plaintiff to sexual harassment, and retaliation under the NYCHRL (Claim Three); (iii) retaliation for the Plaintiff's March 2013 FMLA Leave under the FMLA (Claim Four); (iv) retaliation for the FMLA Leave under the NYCHRL (Claim Five); (v) negligent supervision (Claim Six); and (vi) intentional infliction of emotional distress (Claim Seven).

The Individual Defendants move to dismiss all of these claims under a variety of legal theories; however, as a threshold matter, those portions of Claims Two and Three that allege that the Individual Defendants aided and abetted sexual harassment, or subjected Plaintiff to sexual harassment, are time barred.

(i) Aiding and Abetting Sexual Harassment and Sexual Harassment – Claims Two and Three

The Amended Complaint alleges that the sexual harassment of Plaintiff by Raniere and Bratton ended in 2008. Am. Compl., at ¶¶ 23 and 40. To the extent the Amended Complaint alleges that the remaining Individual Defendants aided and abetted or subjected Plaintiff to sexual harassment, these claims are time barred, because such conduct necessarily would have occurred at the time of the harassment. The only remaining allegations that logically could fall within the statutory period are those based on retaliation. Indeed, Plaintiff herself concedes that the remaining

Individual Defendants "cannot be held individually liable for sexual harassment at this late stage," and that the Amended Complaint "primarily sounds in retaliation. . . ." Pl. Opp. to First MTD., at 10.

(ii) Retaliation Under the NYSHRL and the NYCHRL – Claims Two and Three

The Individual Defendants assert a statute of limitations defense as to the NYSHRL and the NYCHRL claims (Claims Two and Three, respectively).[13] First Mot. Dis., at 7-11. The First MTD does not argue for dismissal of these claims on implausibility grounds. *See generally, Id.* As noted above, the relevant limitations periods for each of these claims is three years. Plaintiff moved to amend her complaint against these six Individual Defendants on October 26, 2013, which means that the amended complaint must allege that the events giving rise to claims two and three occurred on or after October 27, 2010.

Many of Plaintiff's allegations against Reardon, Gonzalez, and McConnell with respect to these claims occur outside the limitations period. *See e.g.*, Am. Compl., at ¶ 50 (Reardon, Gonzalez, and McConnel "direct[ed]" and "approv[ed]" Friedberg's strict monitoring of Plaintiff in November 2008); *id.*, at ¶ 61 (Reardon, Gonzalez, and McConnell imposed draconian workloads on Plaintiff from January 2009 through July 2009). However, Plaintiff does allege that all six of the remaining Individual Defendants participated in the negative performance evaluation she received in March 2013 after returning from her FMLA Leave. *Id.*, at ¶¶ 85-89. The Individual Defendants argue that this negative performance evaluation can only support Plaintiff's retaliation claim under the FMLA (Claim Four). First MTD., at 10-11. In essence, they argue that Plaintiff has alleged that the negative performance evaluation from March 2013 was issued in retaliation for the FMLA Leave only, but not in retaliation for any of Plaintiff's prior protected activity in

[13] The Individual Defendants concede that Claim Four, Plaintiff's claim of retaliation under the FMLA for the March 2013 leave of absence, is not time barred. *See* First Mot. Dis., at 10, n.1.

2008-2009 (the "Protected Activity"), such as the filing of the EEOC complaint. *Id.*, at 11 ("[T]he FMLA retaliation claims are separate and distinct from any claims arising out of . . . retaliation for complaints of sexual harassment. . . ."). Under this theory, because the negative performance review is strictly confined to the FMLA Leave, then there are no allegations that support retaliation under Claims Two and Three. The Court disagrees.

First, the Individual Defendants contradict themselves on this point. In the First MTD, the Individual Defendants claim that Plaintiff *failed* to allege that the "negative performance evaluation was retaliation for her taking FMLA leave." *Id.*, at 19. So in one portion of their brief, the Individual Defendants claim the negative performance review was *only* in retaliation for the FMLA Leave, and in another portion of the same brief, they argue that the negative evaluation was *not* retaliation for the FMLA Leave. The Individual Defendants cannot have it both ways. If the negative performance evaluation was *not* retaliation for the FMLA Leave, then by default, it would have been in retaliation for the Protected Activity. Thus, Plaintiff has alleged that she suffered retaliation in 2013 for the Protected Activity of 2008-2009.

Second, the amended complaint itself alleges that the negative performance review was retaliation for the FMLA Leave *and* retaliation for the Protected Activity. *See* Am. Compl., at ¶ 90 ("[I]n 2008, once Plaintiff reported her complaints of sexual harassment and retaliation, Plaintiff immediately began to receive and was given negative/adverse yearly performance evaluations, *which continued through to 2013*.") (emphasis added). Moreover, aside from the negative performance review, Plaintiff alleges that, in 2013 she was ordered to attend pretextual counseling sessions. *Id.*, at ¶¶ 91 and 93. While the Amended Complaint does not specifically state that these counseling sessions were in retaliation for the Protected Activity, this conclusion reasonably may be inferred from the context of the amended complaint as a whole. *Iqbal*, 556

U.S., at 678 (holding the court should find "facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged"). Common sense also dictates that it is at least plausible that the counseling sessions were in retaliation for *both* the Protected Activity *and* the 2013 FMLA Leave, just as the negative evaluation in 2013 may have been in retaliation for the Protected Activity *and* the FMLA Leave. *Id.* (finding that a plausibility determination is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.").

None of these conclusions should be interpreted to suggest that the Court does not have serious reservations about the underlying merits of these claims. *Twombly*, 550 U.S., at 556 (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974) ("[A] well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and 'that a recovery is very remote and unlikely.'")). Rather, the Court merely finds that Plaintiff has "nudged [her] claims across the line from conceivable to plausible," albeit, not by much. *Id.*, at 557. Accordingly, Plaintiff's claims for retaliation under Claims Two and Three are not time barred, because they allege that the Individual Defendants retaliated against her in 2013 for complaining about the sexual harassment she suffered in 2004-2008.

(iii) Retaliation for the FMLA Leave Under the FMLA – Claim Four

The Individual Defendants move to dismiss the FMLA claim for failure to allege plausibly a claim against the Individual Defendants under the FMLA. "A prima facie case of retaliation [under the FMLA] is established when a plaintiff demonstrates that: (1) she exercised rights protected under the FMLA; (2) she was qualified for her position; (3) she suffered an adverse employment action; and (4) the adverse employment action occurred under circumstances giving rise to an inference of retaliatory intent." *Potenza v. City of New York*, 365 F.3d 165, 167 (2d Cir.

2004). The Individual Defendants to not dispute that Plaintiff has satisfied the first two factors. *See* First MTD, at 18-22. Rather, they argue that she has failed to satisfy factors three and four. *Id.*, at 19.

According to the Individual Defendants, the Court should find that, as a matter of law, neither the counseling sessions nor the negative performance reviews give rise to an inference of retaliatory intent. *Id*. In support of these arguments, the Individual Defendants contend that no retaliatory intent may be inferred for the 2013 negative performance review, because Plaintiff received negative performance reviews *before* she took the FMLA Leave. *Id.*, at 19-20. They make the same argument with respect to the counseling sessions, *i.e.*, because Plaintiff was ordered to attend counseling sessions in 2009, the post-FMLA Leave counseling sessions cannot be viewed as retaliatory. *Id.*, at 20.

The same inconsistency that was fatal to the Individual Defendant's statute of limitations argument is also present here. In short, the Individual Defendants argue that the 2013 counseling sessions and performance evaluation were not retaliation for the FMLA Leave. But this argument appears just after the Individual Defendants acknowledge that the Amended Complaint "asserts that these defendants retaliated against Plaintiff *for taking family leave* by giving her a negative performance review in March 2013." *Id.*, at 10-11 (emphasis added). Having conceded that Plaintiff alleged retaliation for the FMLA Leave, the Individual Defendants cannot turn around and claim that she failed to make this allegation. As noted above, Plaintiff has plausibly alleged that the 2013 counseling sessions and performance review were retaliation for the Protected Activity and the FMLA Leave.

McConnell and Reardon further claim that they are not covered by the FMLA, because neither is an "employer" within the definition of the statute. *Id.*, at 20. Under the Second Circuit's

"economic reality" test for determining whether a person is an employer, a court must consider whether the person: "(1) had the power to hire and fire the employees, (2) supervised and controlled employee work schedules or conditions of employment, (3) determined the rate and method of payment, and (4) maintained employment records." *Malena v. Victoria's Secret Direct, LLC*, 886 F. Supp. 2d 349, 365 (S.D.N.Y. 2012) (citing *Herman v. RSR Sec. Servs. Ltd.*, 172 F.3d 132, 139 (2d Cir. 1999)); *see Zheng v. Liberty Apparel Co. Inc.*, 355 F.3d 61, 67 (2d Cir. 2003) (quoting *Carter v. Dutchess Cmty. Coll.,* 735 F.2d 8 (2d Cir.1984)).[14] "No one of the four factors standing alone is dispositive." *Herman*, 172 F.3d, at 139 (citing *See Brock v. Superior Care, Inc.*, 840 F.2d 1054, 1059 (2d Cir.1988)). Instead, because the "economic reality" test is "determined based upon *all* the circumstances, any relevant evidence may be examined so as to avoid having the test confined to a narrow legalistic definition." *Id.* (citing *Rutherford Food Corp. v. McComb,* 331 U.S. 722, 730 (1947) (emphasis in original)). Furthermore, the Supreme Court has emphasized a broad definition of "employer." *Falk v. Brennan*, 414 U.S. 190, 195 (1973) (noting the "expansiveness" of the definition of employer); *Zheng*, 355 F.3d, at 67 (citing *United States v. Rosenwasser*, 323 U.S. 360, 363 n.3 (1945) and *Walling v. Portland Terminal Co.*, 330 U.S. 148, 150 (1947) (observing that the Supreme Court has interpreted the term "employ" broadly).

Plaintiff alleges that McConnell and Reardon had "supervisor control and disciplinary purview over" her. Am. Compl., at ¶ 16. In isolation, this allegation would come close to the type of "conclusory statement" against which *Iqbal* warns. *Iqbal*, 556 U.S., at 678. However, the amended complaint also is replete with factual allegations that, if accepted as true, plausibly allege

[14] *Herman*, *Zheng*, and other Second Circuit cases cited herein discuss the "economic reality" test in the context of the Fair Labor Standards Act ("FLSA"). However, as *Zheng* noted, "[t]he definition of 'employ' in the FMLA is the same as the definition of 'employ' in the FLSA." *Id.*, at 75, n.15 (citing 29 U.S.C. § 2611(3)). *Zheng* also cited with approval a Ninth Circuit case that borrowed directly from FLSA case law to adjudicate a FMLA case. *Id.* (citing *Moreau v. Air France*, 343 F.3d 1179, 1183 (9th Cir. 2003)).

that McConnell and Reardon were "employers" under the FMLA. *See e.g.*, Am. Compl., at ¶ 55 (Reardon and McConnell directed Friedberg to create a pretextual paper trail of performance issues regarding Plaintiff's performance); *id.*, at ¶ 60 (McConnell e-mailed Plaintiff *directly* threatening termination if she did not attend counseling sessions); *id.*, at ¶ 64 (Reardon convened DCC policy meetings for the purpose of discussing Plaintiff's sexual harassment and retaliation complaints). Although these allegations concern events that occurred before the FMLA Leave, they are still relevant as to the issue of whether McConnell and Reardon were Plaintiff's employers. Moreover, even if the Court confined its analysis to the post-FMLA allegations, Plaintiff still claims that in May 2013, McConnell and Reardon participated in the efforts to make Plaintiff attend counseling sessions, under threat of termination if she did not. *Id.*, at ¶ 91. Plaintiff also alleges that, at least to some degree, McConnell and Reardon had control over the content of her performance evaluation. *Id.*, at 87. This obviously suggests they had the "power . . . to fire" Plaintiff under the first factor of the "economic reality" test. Given the Supreme Court's expansive interpretation of the definition of employer, the Court cannot find that, as a matter of law, Plaintiff has insufficiently pleaded that McConnell and Reardon were her employers under the FMLA.

The evidence put forth by Reardon and McConnell concerning the scope of their employment activities does not alter this conclusion. McConnell asserts that in 2009 he became Counsel to the UCS, and that, in this new position, he had no involvement "with DDC personnel matters." First MTD, at 21. Similarly, Reardon states that he was only a UCS volunteer, not an employee, and thus had "no involvement in personnel matters" either. *Id.*, at 22.

First, contrary to the assertions of McConnell and Reardon, it is not at all clear that the Court may consider these submissions without converting the First MTD into a motion for summary judgment. *See Chambers v. Time Warner, Inc.*, 282 F.3d 147, 152-53 (2d Cir. 2002).

Chambers noted that a "plaintiff's *reliance* on the terms and effect of a document in drafting the complaint is a necessary prerequisite to the court's consideration of the document on a dismissal motion." *Id.* (emphasis in original). There is no indication that, in drafting the amended complaint, Plaintiff relied on anything submitted by McConnell and Reardon in this regard.

Second, even if the Court were to consider the facts adduced by McConnell and Reardon, the outcome would be the same. The assertion that neither McConnell nor Reardon were "involved in personnel" matters is insufficient, at this stage, to defeat Plaintiff's contentions that they (i) supervised her, (ii) threatened to fire her if she did not attend counseling sessions, and (iii) directed others to create negative performance reviews for her.

Again, while Court maintains significant doubts regarding Plaintiff's ability to actually prove this claim, the only issue currently before the Court is whether the claim is plausible. *Twombly*, 550 U.S., at 556-57. By a narrow margin, the Court finds that it is, and for this reason the motion to dismiss Claim Four is denied.

(iv) Retaliation for the FMLA Leave Under the NYCHRL – Claim Five

Plaintiff's fifth cause of action asserts that the Individual Defendants violated the NYCHRL "by altering the terms, conditions and privileges of Plaintiff's employment as a result of Plaintiff's taking a leave of absence to attend to the disabling and serious medical condition of her daughter." Am. Compl., at ¶ 113. In other words, Plaintiff claims that the Individual Defendants violated the NYCHRL by retaliating against her for taking the FMLA Leave. This argument is erroneous, because the FMLA Leave is not a protected activity under the NYCHRL, although it is a protected activity under the FMLA.

"To establish a *prima facie* case of retaliation under the NYCHRL, a plaintiff must show that: (1) he participated in a protected activity; (2) the defendant knew about his participation; (3)

the defendant took an employment action that disadvantaged the plaintiff *in any manner;* and (4) a causal connection existed between the protected activity and the negative employment action." *Sletten v. LiquidHub, Inc.*, 2014 WL 3388866, at *1 (S.D.N.Y. July 11, 2014) (citing *Mayers v. Emigrant Bancorp, Inc.,* 796 F. Supp.2d 434, 446 (S.D.N.Y. 2011) (emphasis in original)). To satisfy the first element, a plaintiff must show that she engaged in "an activity taken in good faith to protest or oppose statutorily prohibited discrimination." *Sletten*, 2014 WL 3388866, at *1 (quoting *Morgan v. N.Y. State Att'y Gen.'s Office*, 2013 WL 491525, at *9 (S.D.N.Y. Feb. 8, 2013)); *Fattoruso*, 525 F. App'x, at 27 (2d Cir. 2013) (quoting *Kessler v. Westchester Cty. Dep't of Soc. Servs.,* 461 F.3d 199, 210 (2d Cir.2006) ("[A] plaintiff who makes a complaint to his employer 'need only have had a good faith, reasonable belief that he was opposing an [unlawful] employment practice.'")).

The fifth cause of action states that Plaintiff took a leave of absence to care for her sick daughter. Am. Compl., at ¶ 113. This FMLA-protected leave is the only "activity" alleged with respect to this claim. As taking FMLA leave does not constitute "opposition" to an unlawful employment practice, Claim Five fails to allege that she engaged in a protected activity under the NYCHRL. To be sure, Claim *Three* alleges that she engaged in a protected activity under the NYCHRL by complaining about the sexual harassment. Am. Compl., at ¶ 109. But because she has failed to allege a protected activity under Claim Five, it must be dismissed for failure to state a claim.

(v) Negligent Supervision – Claim Six

The Individual Defendants move to dismiss the negligent supervision claim on the ground that it is precluded by the New York Workers' Compensation Law. First MTD, at 13-15. The law provides that, "[t]he right to compensation or benefits under this chapter, shall be the exclusive

remedy to an employee . . . when such employee is injured or killed by the negligence or wrong of another in the same employ." N.Y. Workers' Comp. Law § 29(6) (McKinney 2011). It is well settled within the Second Circuit that "common law negligence claims are barred by the New York[] Workers' Compensation Law." *D'Annunzio v. Ayken, Inc.*, 25 F. Supp. 3d 281, 294 (E.D.N.Y. 2014) (collecting cases); *Ferris v. Delta Air Lines, Inc.*, 277 F.3d 128, 138 (2d Cir. 2001) (citations omitted) (barring negligent supervision and retention claims arising out of sexual assault by a co-worker); *Torres v. Pisano,* 116 F.3d 625, 640 (2d Cir.1997) (barring negligent supervision claim based on harassment by co-worker). Accordingly, because Plaintiff's negligent supervision claim clearly is preempted by the New York Workers' Compensation Law, it is hereby dismissed with respect to all Individual Defendants.

(vi) Intentional Infliction of Emotional Distress – Claim Seven

In New York, "the standard for stating a valid claim of intentional infliction of emotional distress is 'rigorous, and difficult to satisfy.'" *Conboy v. AT & T Corp.*, 241 F.3d 242, 258 (2d Cir. 2001) (quoting *Howell v. New York Post Co.*, 81 N.Y.2d 115, 122 (1993)). In order to sustain a claim, the alleged conduct must be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society." *Stuto v. Fleishman*, 164 F.3d 820, 827 (2d Cir.1999) (quoting *Howell*, 81 N.Y.2d, at 121). Plaintiff contends that the Individual Defendants are liable under this standard because they retaliated against Plaintiff, caused her constructive discharge, damaged her reputation, and caused her "extreme professional embarrassment." Am. Compl., at ¶ 120. As a matter of law, these allegations are woefully inadequate to maintain a claim for intentional infliction of emotional distress. *Compare Conboy*, 241 F.3d at 258 (harassing telephone calls from debt collectors insufficiently "outrageous" to satisfy New York's IIED standard), *and Chimarev*

v. TD Waterhouse Inv'r Servs., Inc., 280 F. Supp. 2d 208, 215 (S.D.N.Y. 2003) *aff'd*, 99 F. App'x 259 (2d Cir. 2004) (no IIED where employer "prevented [employee] from attending meetings and social events, denied him his chosen workplace for the benefit of a younger co-worker, destroyed and scattered his books and documentation, deprived him of his work tools, and subjected him to insults and slurs based on his nationality"), *with Turley v. ISG Lackawanna, Inc.*, 774 F.3d 140, 148-150 (2d Cir. 2014) (upholding IIED liability where defendants tormented an African-American employee for three years with degrading and abusive racial harassment, including: referring to the employee as "boy," "fucking nigger," "dancing gorilla," "King Kong, "fucking black bitch," and "fucking black piece of shit"; threatening to kill the employee over the company loudspeaker; spray painting "KKK" on the employee's work station; covering the employee's belongings and workstation with thick motor grease on a daily basis; repeatedly vandalizing the employee's car; and hanging a stuffed toy monkey by a noose from the side-view mirror of the employee's car). Accordingly, Claim Seven is dismissed as to all Individual Defendants.

CONCLUSION

For the foregoing reasons, the Individual Defendants' motions to dismiss are granted as follows: (i) all claims against Raniere and Friedberg are dismissed, with prejudice; (ii) Claims Five, Six, and Seven are dismissed as to each Individual Defendant, with prejudice; and (iii) those portions of Claims Two and Three alleging sexual harassment and aiding and abetting sexual harassment are dismissed as to each Individual Defendant, with prejudice. As to the six remaining Individual Defendants, the only claims that survive are: (i) Claim Four; and (ii) those portions of Claims Two and Three alleging retaliation.

SO ORDERED.

Dated: Brooklyn, New York
February 17, 2016

/s/
DORA L. IRIZARRY
United States District Judge

1 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
2
3 ----------------------------------X
4 CORRADO, : 12-CV-01748 (DLI)
5 Plaintiff, :
6 v. :
: 225 Cadman Plaza East
7 NEW YORK STATE UNIFIED COURT : Brooklyn, New York
SYSTEM, :
8 :
Defendant. : February 25, 2016
9 ----------------------------------X
10
11 TRANSCRIPT OF CIVIL CAUSE FOR CONFERENCE
BEFORE THE HONORABLE MARILYN D. GO
12 UNITED STATES MAGISTRATE JUDGE
13
APPEARANCES:
14
For the Plaintiff: NICOLE CORRADO
15 *(via telephone)* Pro Se
16
For Defendant Luis MICHAEL A. BERG, ESQ.
17 Gonzalez: Office of the NYS Attorney General
Litigation Bureau
18 120 Broadway, 24th Floor
New York, New York 10271
19
20 For Defendant New York LISA M. EVANS, ESQ.
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New York, New York 10004
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23
Court Transcriber: MARY GRECO
24 TypeWrite Word Processing Service
211 N. Milton Road
25 Saratoga Springs, New York 12866

Proceedings recorded by electronic sound recording,
transcript produced by transcription service

1 (Proceedings began at 10:53 a.m.)
2 THE COURT: Good morning.
3 MS. CORRADO: Yes. Good morning.
4 THE COURT: Ms. Corrado?
5 MS. CORRADO: Yes.
6 THE COURT: Okay. Who's reached by telephone. And
7 present are two attorneys for the defendants. I'll ask them
8 to introduce themselves.
9 MR. BERG: Michael Berg, Assistant Attorney General
10 for the remaining individual defendants.
11 MS. EVANS: Lisa Evans, Assistant Deputy Counsel for
12 the Unified Court System.
13 THE COURT: Ms. Corrado, we had scheduled this
14 conference and although I had granted the request of Mr.
15 Griffith to extend the time for you to retain counsel, I had
16 not adjourned this conference and I had expected the
17 conference to proceed. And it was my expectation based on
18 the tenor of Mr. Griffith's letter that he might perhaps
19 appear. But I hope our order granting Mr. Griffith's request
20 for an extension of time for you to retain counsel makes clear
21 that you are more than welcome at any time to retain counsel
22 and we will happily have counsel appear on your behalf. But
23 if you do not retain counsel, I expect this case to proceed
24 and it's time for this case to move forward. Ms. Corrado?
25 MS. CORRADO: Yeah.

1 THE COURT: Okay. Do you understand?
2 MS. CORRADO: Yes, I understand.
3 THE COURT: I think you may be in a difficult
4 position at this point because both attorneys may not want to
5 follow behind several other attorneys to represent a client.
6 I have no idea what is happening. But since you are certainly
7 much more capable than our typical pro se litigant, I expect
8 this case to proceed.
9 MS. CORRADO: I think I've made it clear, Your
10 Honor, I am not representing myself in this case.
11 THE COURT: You can't unilaterally decide that, Ms.
12 Corrado and --
13 MS. CORRADO: No, that is my position. I can
14 unilaterally decide that. I'm the plaintiff and I have called
15 many attorneys and you're correct, there is definitely a lack
16 of interest in light of the history of this case with the
17 various lawyers. I have called thousands. I have continued
18 to, I have been. I thought that Mr. Griffith may have been
19 the attorney to take it over. Unfortunately, he's not. And
20 that is where it stands.
21 THE COURT: You cannot unilaterally decide not to
22 proceed. This case is ready to proceed. And I will set
23 another conference. I did set deadlines for you to respond
24 and explained why we slightly extended it, but that was in
25 anticipation of Mr. Griffith appearing and to give him time to

1 assist you. But since he has not chosen to appear in this
2 case, the discovery needs to be provided. It's been
3 outstanding for quite some time.
4 MS. CORRADO: Well, I think, Your Honor, I've made
5 it clear that they have -- defendants have not provided
6 voluminous amounts of discovery. And Mr. Berg's motion was
7 responded by Mr. Housh as well as Mr. Ambrose Wotorson in
8 regard to prior discovery demands made by the various parties.
9 I think there's a lengthy record in regards to that.
10 THE COURT: The lengthy record deals with -- shows
11 that the last order was an order of the court requiring you to
12 respond. We will put this matter over for a conference. I
13 think what I will do, against my better judgment, is I would
14 be inclined to grant the state defendants' application for an
15 extension of time to answer because it is a voluminous
16 complaint and I'll grant the two week extension sought and not
17 a day more.
18 MR. BERG: Thank you.
19 THE COURT: And I will correspondingly but I do not
20 believe in tit for tat discovery. There's discovery
21 obligations. I will extend your time to respond to that date
22 and the outstanding requests. And I invite you to take a look
23 at the prior orders. I think it makes clear what is required
24 and --
25 MS. CORRADO: I think I also have explained, and

1 again --

2 THE COURT: Ms. Corrado?

3 MS. CORRADO: Yes.

4 THE COURT: You can explain whatever you want but

5 there is an order for you to comply. And so I am --

6 MS. CORRADO: Well let me tell you one more --

7 THE COURT: Wait, wait, no --

8 MS. CORRADO: Very important --

9 THE COURT: Let me finish, let me finish. I'm going

10 to just set a date now. Mr. Berg could ask for an extension

11 of time to answer from today, right?

12 MR. BERG: From -- well the due date I calculated as

13 the 2nd which was 14 days after this decision of the 17th.

14 THE COURT: Right.

15 MR. BERG: So I was requesting until the 16th.

16 THE COURT: The 16th. March 16th. So I will grant

17 Mr. Berg's application for an extension of time to answer to

18 March 16th. And given your difficulty in retaining counsel, I

19 will also extend your time to respond to the last order as I

20 explained, even though I did say I was giving only a final

21 extension only to the 29th. I will extend your time to the

22 16th, but I'm telling you now that is so that you will have

23 time to prepare a response. And you can go over the record,

24 you can make whatever statements you want, but this Court will

25 follow the prior history of this case. And as I have

1 explained, some of the prior responses were inadequate and you
2 are required to produce further responses. So your time --
3 MS. CORRADO: And this is on the record. I'd like
4 the Court to note that Mr. Housh was not returning my phone
5 calls or communications. He has not provided my file to me.
6 I have no idea what type of correspondence, other than what I
7 was told, was submitted and based on the various ECF
8 notifications. But in regard to the responses that he
9 explained to me were given to Mr. Berg, I have no reason to
10 doubt that. But I still do not have my case file, but he has
11 told me it would be sent. That was yesterday.
12 THE COURT: Okay. Well, if he's sending it to you
13 you'll have ample time, but in any event, your prior responses
14 I believe, as I recall, consisting of wide amounts were
15 attached to the defendant's motion to compel and are part of
16 the court record.
17 MS. CORRADO: Right. And my lawyer objected to that
18 motion.
19 THE COURT: Yes.
20 MS. CORRADO: He responded to counsel's motion. And
21 I don't have anything else to add on that.
22 THE COURT: And I made a ruling and the extent of
23 your responses were part of the defendant's motion and I found
24 those responses inadequate and I made rulings and you have to
25 respond. And in the interest of trying to decide this case on

1 the merits and the fact that it appears that Mr. -- my
2 assumption that Mr. Griffith would appear on your behalf was
3 wrong, I will grant one final extension to March 16th for you
4 to respond to my last order. And I'm warning you that there
5 will be no further extension.
6 MS. CORRADO: You're warning me?
7 THE COURT: Yes.
8 MS. CORRADO: You're warning me.
9 THE COURT: Yes. And sanctions will be imposed if
10 you do not comply.
11 MS. CORRADO: Okay. Well, I'm asking basically --
12 I'm making a motion to the Circuit Court of Appeals at this
13 point for this Court's refusal because there's a very lengthy
14 history of lack of impartiality, lack of unfairness [sic],
15 being biased, extreme hostility, and you've just done it
16 again. You're threatening me again.
17 THE COURT: It is a standard sort of warning I give
18 litigants when --
19 MS. CORRADO: You -- I don't --
20 THE COURT: -- they don't comply with the discovery
21 order.
22 MS. CORRADO: I don't need this Court to continually
23 threaten me. My case is filed in court because I have been
24 threatened by these people over and over again. And all I'm
25 getting is continued threats. That is not the nature of what

1 a courtroom meeting is supposed to be.
2 THE COURT: Ms. Corrado, there may be merit to your
3 claim and --
4 MS. CORRADO: There may be merit to my claim? Why
5 would I ever or anybody ever be put in this position?
6 THE COURT: But in conducting litigation we have
7 certain rules of procedure --
8 MS. CORRADO: Right. And I have been behind the
9 eight ball repeatedly. My lawyers have been threatened, I
10 have been threatened. You have now threatened me again. I
11 will not be threatened by anybody again.
12 THE COURT: All I can tell you is that there are
13 obligations to comply with discovery --
14 MS. CORRADO: All right. You --
15 THE COURT: -- and discovery orders.
16 MS. CORRADO: -- want to discuss the case, do not
17 threaten me.
18 THE COURT: That is in fact what the Second Circuit
19 requires that I have to give warnings. I'm not threatening
20 you.
21 MS. CORRADO: No, don't threaten me.
22 THE COURT: I'm giving you warnings --
23 MS. CORRADO: Do not threaten me again. Okay?
24 THE COURT: Ms. Corrado, there are consequences for
25 not providing discovery and there are consequences --

1 MS. CORRADO: [Inaudible] conversation.
2 THE COURT: And there are --
3 MS. CORRADO: I do not want to continue with this
4 conversation [inaudible] --
5 THE COURT: Ms. Corrado, one last word. There are
6 consequences for not complying with orders and I'm sorry you
7 feel that I'm threatening you but --
8 MS. CORRADO: I have no consequence.
9 THE COURT: -- that is --
10 MS. CORRADO: You have put this -- you have created
11 this problem. Okay? Because you haven't entertained a single
12 motion fairly, effectively and neutrally.
13 THE COURT: I'm sorry you feel that.
14 MS. CORRADO: Every single motion that my lawyers
15 have put in you have threatened me, you have threatened my
16 lawyers repeatedly. You have done that.
17 THE COURT: You have the record --
18 MS. CORRADO: And you should not have granted that
19 motion to compel because there's no basis to it, especially
20 because they did not respond to our discovery demand. And
21 Frank Housh did respond to Mr. Berg's motion. Just because
22 you think that this is a position you want to put me in
23 because I should not have brought a sexual harassment claim --
24 THE COURT: Absolutely not.
25 MS. CORRADO: In the last conference --

1 THE COURT: Absolutely not. That's not what I --
2 MS. CORRADO: But you said that. I have the
3 transcript. And you are not going to continually threaten me.
4 THE COURT: I did not say that. I was trying to --
5 MS. CORRADO: You did threaten me and I will not be
6 threatened anymore. You want to dismiss the case? Dismiss
7 the case. Thank you very much.
8 THE COURT: All right. Well, I'm going to set
9 another date for a conference, a week or two after the due
10 date for the answers. As I said before, at any time you are
11 able to retain counsel, counsel is more than welcome to file a
12 notice of appearance. But if you do not have counsel, you
13 will have to appear at the next conference. And I will set
14 March 29th. Ms. Corrado? Oh, she's gone. We will put that in
15 an order. Is March 29th good for the attorneys here?
16 MS. EVANS: Yes.
17 MR. BERG: I believe so. [Inaudible]. It should be
18 fine.
19 THE COURT: I will set it for 10 o'clock and --
20 MS. EVANS: In person, Your Honor?
21 THE COURT: Yes.
22 MR. BERG: Your Honor, I've got one other question
23 just to --
24 THE COURT: I'm not going to have an ex parte
25 conversation.

1 MR. BERG: Okay. All right. We'll discuss it at
2 the conference.
3 THE COURT: Or you can put it in writing. Okay.
4 (Proceedings concluded at 11:08 a.m.)
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -X

NICOLE CORRADO,

Plaintiff,

- against -

NEW YORK STATE UNIFIED COURT SYSTEM, et al.,

Defendants.

- - - - - - - - - - - - - - - - - - - -X

ORDER

CV 2012-1748 (DLI)(MDG)

GO, United States Magistrate Judge:

Plaintiff pro se Nicole Corrado failed to appear for a conference scheduled for February 25, 2016. When this Court reached her by telephone, Ms. Corrado advised that she is having difficulty obtaining new counsel and refuses to proceed in this action pro se. The plaintiff is advised that she is required to appear, in person or through counsel, at any scheduled conferences set by the Court. Plaintiff is further advised that if she fails to obtain new counsel, she will be expected to proceed in this action by herself as "a litigant has no legal right to counsel in a civil case," except when faced with imprisonment. Guggenheim Capital, LLC v. Birnbaum, 722 F.3d 444, 453 (2d Cir. 2013).

Moreover, "'[a]ll litigants, including pro ses, have an obligation to comply with court orders.'" Agiwal v. Mid Island Mortgage Corp., 555 F.3d 298 (2d Cir. 2009) (quoting Minotti v.

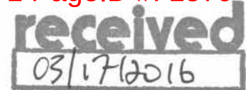
Lensink, 895 F.2d 100, 103 (2d Cir. 1990)). When this Court schedules a conference, all parties are expected to appear in person or through counsel. Ms. Corrado is warned that failure to appear at a conference or to comply with court orders could result in sanctions, including a fine. Continued failure to comply could ultimately result in dismissal for failure to prosecute. See Agiwal, 555 F.3d at 302-03; Valentine v. Museum of Modern Art, 29 F.3d 47, 50 (2d Cir. 1994).

The next conference will be held on March 29, 2016 at 10:00 a.m. All parties must appear.

SO ORDERED.

Dated: Brooklyn, New York
February 26, 2016

/s/
MARILYN DOLAN GO
UNITED STATES MAGISTRATE JUDGE



Nicole Corrado
242-18 Van Zandt Avenue
Douglaston, New York 11362
(917) 337-6153

March 16, 2016

Magistrate Judge Marilyn D. Go
United States District Court for the
Eastern District of New York
225 Cadman Plaza East
Room 1214-S
Brooklyn, New York 11201

Re: Corrado v. New York State Unified Court System, et al., 12-cv-01748-DLI-MDG.

Dear Judge Go,

Thank you for extending my deadline to respond to defendants' discovery requests until today. Unfortunately, I am unable to respond because I still have not received my case files from my former lawyer, Frank Housh, who is located in Buffalo.

As you may recall, Mr. Housh previously represented to me that he had sent the files via UPS. They never arrived, however, and he subsequently acknowledged that he had not yet sent them. Despite my repeated requests, he was not sent them.

Accordingly, I respectfully request that you issue an Order directing Mr. Housh to send the files to me by overnight courier no later than this Friday, March 18, 2016, and that you extend today's deadline by two weeks, *i.e.*, to Wednesday, March 30, 2016. Mr. Berg, counsel to most of the defendants, takes no position on this request.

Finally, I have been diligently trying to retain counsel to represent me in this case, but I have been so far unsuccessful. I ask that you stay further discovery proceedings for two weeks, to March 30, 2016, to allow additional time for me to retain counsel.

Sincerely,

N Corrado

Nicole Corrado

cc: Lisa M. Evans, Esq. (via email)
Michael A. Berg, Esq. (via email)

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

KENT T. STAUFFER
EXECUTIVE DEPUTY ATTORNEY GENERAL
DIVISION OF STATE COUNSEL

LISA R. DELL
ASSISTANT ATTORNEY GENERAL IN CHARGE
LITIGATION BUREAU

WRITER'S DIRECT DIAL
(212) 416-8651

March 17, 2016

By ECF

The Honorable Marilyn Dolan Go
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Corrado v. New York State Unified Court System,*
12 Civ. 1748 (DLI) (MDG)

Dear Magistrate Judge Go:

I write on behalf of the individual New York State defendants ("State Defendants")[1] in response to Plaintiff Nicole Corrado's letter to the Court dated March 16, 2016. Plaintiff's letter requests a further extension of time, from March 16 to March 30, 2016, to comply with Your Honor's order directing Plaintiff to supplement her discovery responses. Plaintiff's letter does not accurately reflect State Defendants' position. State Defendants oppose Plaintiff's request.

I called Plaintiff, who is currently unrepresented, at about 4:30 p.m. yesterday, March 16, 2016. During our conversation, Plaintiff said she could not comply with the Court-ordered March 16 deadline to supplement her discovery responses, ostensibly because her files are in the possession of her former attorney, Frank Housh, Esq. Her letter to the Court echoes this claim.

We respectfully request that before granting Plaintiff any further extension, the Court should require Plaintiff and her former counsel to submit statements to the Court detailing the status of the production, so that the Court and the parties will know who has possession of the

[1] This Office represents defendants the Hon. Luis A. Gonzalez, John W. McConnell, Roy L. Reardon, Jorge Dopico, Angela Christmas, and Naomi F. Goldstein.

responsive documents and a definitive date when Plaintiff will produce the documents and supplement her discovery responses.

During my conversation with Plaintiff yesterday, I emphasized that the March 16 deadline was set by the Court and could not be extended by this Office. I also advised Plaintiff that the State Defendants would consider any specific proposal she might advance for supplementing her discovery by a date certain, but could not agree to defer the matter without assurances that Plaintiff will comply in full with the Court's discovery orders by the proposed adjourned date. Plaintiff has made no specific proposal and given no such assurances. Plaintiff was not authorized to represent that State Defendants "take no position" on her request.

State Defendants take no position on Plaintiff's request for additional time to retain counsel.

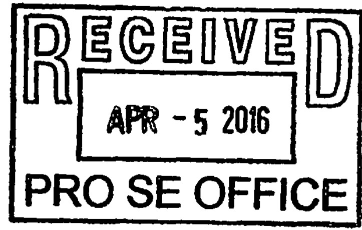
We appreciate the Court's continued attention to this matter.

Respectfully submitted,

Michael A. Berg
Assistant Attorney General

cc: Lisa M. Evans, Esq.
Nicole Corrado, Esq.

ORIGINAL



Nicole Corrado
242-18 Van Zandt Ave.
Douglaston, New York 11362
(917)337-6153

April 4, 2016

FILED
IN CLERK'S OFFICE
US DISTRICT COURT E.D.N.Y.
★ APR 0 5 2016 ★
BROOKLYN OFFICE

USDJ Dora L. Irizarry and
US Magistrate Judge Marilyn D. Go
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Corrado v. New York State Unified Court System et al.*
12-cv-1748 (DLI)(MDG)

Dear Judge Irizarry and Magistrate Judge Go:

I am plaintiff in the above-referenced action involving claims of pervasive sexual harassment, retaliation, discrimination, corruption and other related claims. Since discharging Mr. Housh, I have contacted numerous lawyers and have diligently tried to retain attorneys to represent my case, without success. I write to inform this court that I am not able to proceed in this case without competent legal representation, nor am I able to represent myself *pro se* for a variety of reasons. I have repeatedly and unequivocally asserted that I would not and could not proceed *pro se*.

Most importantly, this case has had dire consequences and effects on the emotional, personal and well-being of my daughter, and I cannot continue to allow this devastating situation to further adversely affect her life. Unfortunately, as a woman, a mother and victim/plaintiff of these claims and after many years of living this perpetual nightmare, I wish to discontinue this litigation. While this action was commenced in April 2012, the history of this case extends back many years. I filed this lawsuit to seek redress of extreme wrongs that I and my family have sustained, but have only encountered greater injustice by a legal system which has demonstrated an abject failure to protect women from their abusers, especially when those abusers are in positions of power.

Further, irrespective of my profession as a lawyer, I am not able to pursue this serious case *pro se* in the same manner that a medical doctor would not or could not capably treat herself/himself for serious medical conditions. In my professional career, I have never handled this type of legal matter, I do not have a legal background in such cases, I have not practiced in federal court, and I am not able to disengage my emotions and fears from the overall

circumstances surrounding this case.

Additionally, while I agreed to speak with Mr. Berg for limited purposes relative to requests for extensions from this court and to non-substantive issues, I object to Mr. Berg's efforts to engage me directly on substantive or procedural legal issues pertaining to my case without the benefit or representation of counsel.

Also, per Judge Irizarry's Opinion and Order of February 17, 2016 dismissing Mr. Raniere from my case, I request this court to direct Mr. Raniere's lawyers, Nicole Bergstrom and Wendy Stryker, be removed from all correspondence and communications in my case via the court's ECF system. To my knowledge, they remain and continue to receive notifications and entries applicable to my case. A clerk of the court advised that an application to remove Ms. Bergstrom and Ms. Stryker from this case's ECF system should be directed to the court's attention.

Accordingly, I respectfully request that my case be discontinued, and for any and other relief deemed just and proper.

Thank you.

Respectfully,

Nicole Corrado

cc: Lisa M. Evans, Esq. (via USPS mail and email)
Michael A. Berg, Esq. (via USPS mail and email)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
---X

NICOLE CORRADO,

Plaintiff,

-against-

NEW YORK STATE UNIFIED COURT SYSTEM,
LUIS GONZALEZ, in his individual capacity,
JOHN McCONNELL, in his individual capacity,
ROY REARDON, in his individual capacity,
JORGE DOPICO, in his individual capacity,
ANGELA CHRISTMAS, in her individual capacity,
ALAN FRIEDBERG, in his individual capacity,
VINCENT RANIERE, in his individual capacity,
NAOMI GOLDSTEIN, in her individual capacity,

Defendants.
--X

JUDGMENT
12-CV- 1748 (DLI)

An Order of Honorable Dora L. Irizarry, United States District Judge, having been filed on April 8, 2016, dismissing the case with prejudice; it is

ORDERED and ADJUDGED that the case is dismissed with prejudice.

Dated: Brooklyn, New York
April 08, 2016

Douglas C. Palmer
Clerk of Court

by: *<u>/s/ Janet Hamilton</u>*
Deputy Clerk

FORM 1

FILED
CLERK
2016 MAY 10 PM 3: 18
U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

NOTICE OF APPEAL

* * * * * * * * * * * *

ORIGINAL

UNITED STATES DISTRICT COURT
FOR THE
Eastern DISTRICT OF New York

Nicole Corrado

NY State Unified Court System et al.

NOTICE OF APPEAL
12-cv-1748
Docket No.

Notice is hereby given that Nicole Corrado
(party)

hereby appeals to the United States Court of Appeals for the Second Circuit from the decision

(describe it) APRIL 11, 2016 ORDER AND JUDGMENT BY USDJ DORA L. IRIZARRY DISMISSING CASE WITH PREJUDICE; AND ENTRY OF JUDGMENT IN FAVOR OF DEFENDANTS.
entered in this action on the 11 day of April, 2016.

Nicole Corrado
Signature

Nicole Corrado
Printed Name

242-18 Van Zandt Avenue
Address

Douglaston, New York

(917) 337-6153
Telephone No. (with area code)

Date: APRIL 10, 2016