Index No. 151246/2021

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

RAFAELA ESPINAL-PACHEO,

Plaintiff,

-against-

NEW YORK CITY DEPARTMENT OF EDUCATION, ET AL.,

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS THE COMPLAINT

JAMES E. JOHNSON
Corporation Counsel of the City of New York
Attorney for Defendants
100 Church Street
New York, N.Y. 10007

Of Counsel: Nicholas Collins
Tel: (646) 939-7622
Matter No. 2021-005352

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PRELIMINARY STATEMENT

Plaintiff Rafaela Espinal-Pacheo ("Plaintiff"), currently employed by the New York City Department of Education ("DOE") as a school-based investigator, brings this action alleging gender, race, and age-based discrimination in violation of the New York City Human Rights Law ("NYCHRL"). Plaintiff also asserts a claim for aiding and abetting in violation of the NYCHRL against defendants Richard Carranza and Cheryl Watson-Harris. Lastly, Plaintiff asserts claims of gender and race discrimination pursuant to the New York State Human Rights Law ("SHRL").

Defendants New York City Department of Education, Richard Carranza, Cheryl Watson-Harris, David Hay, and Ursulina Ramirez now move, pursuant to Rules 3211(a)(5) and 3211(a)(7) of the New York Civil Practice Law and Rules ("CPLR"), to dismiss the Complaint in its entirety. First, all of plaintiff's claims are barred by the applicable statute of limitations. Specifically, Education Law § 3813 (2-b) fixes a one

year statute of limitations on all claims asserted against the DOE and school officials such as the individually-named defendants. Here, plaintiff allegedly accepted a demotion in lieu of termination in September 2018, but this lawsuit not commenced until February 2021, more than two years too late.

Second, even if plaintiff's claims were timely, they should still be dismissed because plaintiff has failed to file a timely notice of claim as required by Education Law § 3813(1), and it is too late to do so now, as the limitations period on plaintiff's claims has expired.

Third, the Complaint fails to establish a basis for personal liability against defendant Ursulina Ramirez because it is bereft of any allegations of conduct that would violate any applicable laws.

Fourth, plaintiff's claims of gender, race, and age discrimination under the NYCHRL and SHRL fail as a matter of law because plaintiff cannot establish that her removal as superintendent occurred under circumstances giving rise to an inference of race, gender, or age discrimination.

Fifth, plaintiff's claims of aiding and abetting against defendants Richard Carranza and Cheryl Watson-Harris fail as a matter of law because an individual cannot aid and abet in his or her own alleged discriminatory conduct.

Accordingly, for all of these reasons the Complaint should be dismissed in its entirety.

STATEMENT OF FACTS[1]

Plaintiff is currently employed by the DOE as a school-based investigator. Complaint, Dated February 3, 2021 ("Compl") at ¶ 78.[2] Plaintiff identifies as a Black, Afro-Latina woman over the age of 40. Id. at ¶ 2. Plaintiff has been employed by the DOE since 1993. Id. at ¶ 21. During her tenure, plaintiff has served in various capacities, including teacher, principal and superintendant. Id. at ¶¶ 21, 23 25, 26. Plaintiff served as community superintendant for School District 12 from 2014 until 2018. Id. at ¶ 26.

Starting in 2017, plaintiff alleges that members of the DOE subjected her to discrimination. Specifically, plaintiff claims that there were monthly formal superintendents' meetings, and she was excluded from informal meetings that black superintendants held after the formal monthly meetings. Id. at ¶ 46. Further, plaintiff alleges that she was asked to pose for group photographs and cross her hands in a sign of "black power"; conduct she refused to participate in. Id. at ¶¶ 49-53.

In March of 2018, defendant Richard Carranza became the Chancellor of DOE. Compl at ¶ 45. On June 27, 2018, defendant Carranza announced a reorganization plan for DOE based on an "equity platform." Id. at ¶¶ 7, 40-42. Plaintiff alleges that this reorganization plan targeted women over the age of 40, specifically those of Caucasian and Dominican descent, by diminishing their roles in policy-making positions. Id. at ¶ 43. Plaintiff further alleges that the plan's objective was to benefit less qualified non-Latina and Caucasian employees. Id.

[1] On a motion to dismiss, the allegations set forth in the complaint are deemed to be true. Marlow v. Tully, 79 A.D.2d 546 (1st Dep't 1980). Nevertheless, allegations that are conclusory, inherently incredible, or unequivocally contradicted by documentary evidence are not entitled to the presumption of truth. Leder v. Spiegel, 31 A.D.3d 266, 267 (1st Dep't 2006), aff'd. 9 N.Y.3d 836 (2007).

[2] A copy of the Complaint is annexed to the Affirmation of Nicholas L. Collins, dated April 30, 2020, as Exhibit "A."

On August 31, 2018, plaintiff was informed that she was being terminated from her role as superintendant at a meeting with defendant Cheryl Watson-Harris and non-party DOE employee Thomas Hannah. Compl at ¶ 61. Plaintiff alleges that she was never sufficiently informed regarding the reason for her termination. Id. at ¶ 63. Plaintiff claims that she was "denied an appeal" of her termination, but does not specify to whom she appealed, or what steps she took to appeal her termination as superintendent. Id. at ¶ 72.

At a 2018 meeting with defendant Carranza, plaintiff signed a stipulation, voluntarily resigning from her role as superintendant, and accepting a demotion instead of termination. Compl. at ¶¶ 74-75, 77. Plaintiff alleges that she was coerced into signing said stipulation. Id. at ¶¶ 75, 81. Plaintiff was offered the role of School-Based Investigator; a role that required a "significant" pay cut, a demotion in title and role, and other perks. Id. at ¶¶ 78, 81, 86, 88. Plaintiff alleges that she is overqualified for the position. Id. at ¶ 82. Plaintiff alleged that she has since applied for numerous jobs within the DOE, many of which she is over-qualified for. Id. at ¶ 93. However, she has not been selected for any of these positions. Id. at ¶ 94.

Plaintiff filed the complaint in this action on February 3, 2021. At the time of her filing, plaintiff alleged that the discriminatory conduct was ongoing. Id. at ¶ 99.

ARGUMENT

POINT I

THE CLAIMS BROUGHT IN THIS ACTION ARE TIME-BARRED AND MUST BE DISMISSED

All claims brought against a school district, such as DOE, and school officers, such as the individually-named defendants, must be commenced within one year of the accrual of the cause of action. See N.Y. Educ. Law § 3813 (2-b); General Municipal Law § 50-i(1); see also CPLR § 3211(a)(5). This shortened statute of limitations applies to SHRL and NYCHRL claims against a school board, and its school officers. See Amorosi v. South Colonie Ind. Cent. Sch. Dist., 9 N.Y.3d 367 (2007) ("the clear and unambiguous language of Education Law § 3813 (2-b) provides that the statute of limitations on such a claim is one year"); N.Y. Educ. Law §§ 2(13), 3813 (2-b). Accordingly, any action against DOE, or its school officers commenced after the time prescribed in Education Law § 3813 must be dismissed as time-barred.

Here, plaintiff's claims, at the latest, stem from her alleged demotion in lieu of termination in September 2018. Compl. at ¶¶ 61, 74-75. Therefore, plaintiff had until September 2019 to commence an action against DOE and its school officers. See N.Y. Educ. Law §§ 2(13), 3813(2-b). Here, plaintiff waited until February 3, 2021, approximately 2 ½ years after her alleged demotion to commence he instant action. Accordingly, plaintiff's claims—and indeed, this entire action—are time-barred and must be dismissed.

POINT II

PLAINTIFF'S CLAIMS ARE BARRED BY PLAINTIFF'S FAILURE TO FILE A NOTICE OF CLAIM

Even if plaintiff's claims were not time-barred, they must still be dismissed for failure to file a notice of claim. Pursuant to New York Education Law § 3813(1), filing a notice of claim within ninety (90) days, or three months, of accrual of any claim is a condition precedent to suit against DOE or its school officers. See Parochial Bus Systems, Inc. v. Board of Education, 60 N.Y.2d 539, 547 (1983); Warmin v. New York City Dep't of Educ., No. 16 Civ. 8044 (KPF), 2018 U.S. Dist. LEXIS 47518, at *18 (S.D.N.Y. Mar. 22, 2018) (chancellor of a board of education is an officer on whom a notice of claim must be filed); Collins v. City of N.Y., 156 F.Supp. 3d 448, 460 (S.D.N.Y. Jan. 11, 2016) (superintendent and deputy superintendant are officers on whom a notice of claim must be filed). This statutory notice of claim requirement is designed to afford the school district the opportunity to investigate he full merits of, and if appropriate, settle claims without the expense and risk of litigation. See Salesian Society, Inc., v. Village of Ellenville, 41 N.Y. 2d 521, 524 (1977). It is the plaintiff's burden to ensure that a sufficient notice of claim is filed within ninety (90) days of accrual of the cause of action . See N.Y. Educ. Law § 3813(1); C.S.A. Contr. Corp. v. N.Y. City Sch. Constr. Auth., 5 N.Y.3d 189, 192 (2005). Failure to comply with this condition precedent requires dismissal of a suit. See Parochial Bus Systems, Inc., 60 N.Y.2d at 548. Finally, the notice of claim requirement extends to discrimination claims brought under the SHRL and NYCHRL against DOE and its school officials. N.Y. Educ. Law § 3813 (2-b); see Amorosi, 9 N.Y.3d at 373-74; Petit v. Department of Educ. of the City of N.Y., 2017 Misc. LEXIS 4683 at *14 (N.Y. Cty Sup. Dec. 1, 2017) ("a claimant

seeking to commence an action against the DOE for violations of the NYSHRL and the NYCHRL must serve a notice of claim on the DOE within three months of the claim arising".) reversed on other ground, 177 A.D.3d 402 (1st Dep't. 2019).

If a plaintiff fails to file a timely notice of claim, Education Law § 3813(2-a) provides that, "[u]pon application, the court, in its discretion, may extend the time to serve a notice of claim. **The extension shall not exceed the time limited for the commencement of an action**…" (emphasis added). See Pierson v. City of New York, 56 N.Y.2d 950, 954-55 (1982) (Application to file a late notice of claim must be made before the expiration of the statute of limitations.). Any motion to file a late notice of claim made after the expiration of the statute of limitations must be denied. See Id.

Here, plaintiff has brought claims under the SHRL and NYCHRL against DOE and its school officers. However, plaintiff has failed to serve required statutory notice of claim on any of the defendants. See Williams Affirmation, Dated April 30, 2021. This failure to satisfy a condition precedent is fatal and thus, this action should be dismissed.

Moreover, as the statute of limitations has long since lapsed (see Point I, supra), it is now too late seek leave to file a late notice of claim under Education Law § 3813. If such a motion were made it should be summarily denied. See Amorosi, 9 N.Y.3d at 373-74. All of the plaintiff's claims accrued, at the latest, on the date that plaintiff was allegedly demoted in September 2018. Consequently, it is too late to seek leave to file a late notice of claim and thus, the complaint is both time-barred and barred for failure to satisfy condition precedent. Therefore, plaintiff's complaint should be dismissed in its entirety.

POINT III

PLAINTIFF'S CLAIMS AGAINST DEFENDANT URSULINA RAMIREZ FAIL AS PLAINTIFF FAILS TO ESTABLISH A BASIS FOR INDIVIDUAL LIABILITY

The SHRL and NYCHRL authorize individual liability in discrimination cases in certain instances. The SHRL allows for individual liability for a supervisor who participates in the conduct giving rise to the discrimination. Tomka v. Seiler Corp., 66 F.3d 1925, 1317 (2d Cir. 1995). By contrast, the NYCHRL creates direct liability for discrimination against "an employee or agent" of the employer. N.Y.C. Admin. Code § 8-107(1)(a). Liability only exists under either law if the individual defendant either "actually participates in the conduct giving rise to the discrimination" Feingold v. New York, 366 F.3d 138, 158 (2d Cir. 2004) or "aids and abets" the alleged discrimination. Pryor v. Jaffe & Asher, LLP, 992 F. Supp. 2d 252, 257 (S.D.N.Y. 2014).

Here, plaintiff has named defendant Ursulina Ramirez as a defendant in this suit. Plaintiff alleges that starting in 2016, defendant Ramirez served the Chief Operating Officer of the DOE. Compl. at ¶ 17. However, the complaint is bereft of *any* alleged conduct that would support a finding of personal liability under either of the aforementioned theories. In fact, defendant Ramirez is mentioned in merely three paragraphs, none of which, allege any discriminatory conduct. See Compl. at ¶¶ 17-19. Thus, all claims against defendant Ramirez should be dismissed as a matter of law.

POINT IV

THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION FOR DISCRIMINATION

A. Standard of Review

It is well settled that on a motion to dismiss pursuant to CPLR § 3211, a complaint must be construed in favor of the plaintiff, and courts must "accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory." Leon v. Martinez, 84 N.Y.2d 83, 87-88 (1994). However, in employment discrimination cases, "bare legal conclusions as well as factual claims flatly contradicted by the record are not entitled to any such consideration." Silverman v. Nicholson, 110 A.D.3d 1054, 1055 (2d Dep't. 2013). Indeed, where a complaint only asserts conclusory allegations, it has failed to support any causes of action for discrimination. See DuBois v. Brookdale Univ. Hosp., 29 A.D.3d 731 (2d Dep't. 2006) (granting motion to dismiss discrimination claims because the "allegations were merely conclusory"). As such, courts have readily dismissed employment discrimination claims premised on bare, conclusory allegations. See, e.g., Hudson v. Related Mgmt. Co. LP, 2013 N.Y. Misc. LEXIS 4288, *5; 2013 N.Y. Slip Op 32270(U), **5 (N.Y. Cty Sup. Sept. 23, 2013) (dismissing the plaintiff's employment discrimination claims as conclusory in nature).

B. SHRL Discrimination Claims

Claims of discrimination under the SHRL proceed under the same McDonnell-Douglas burden-shifting test framework as Title VII claims. See Stephenson v. Hotel Emples. & Rest. Emples. Union Local 100 of AFL-CIO, 6 N.Y.3d 265, 270-71 (2006). See also McDonnell Douglass Corp. v. Green, 411 U.S. 792, 802 (1973);

Melman v. Montefiore Medical Center, 98 A.D.3d 107, 113 (1st Dep't. 2012) ("The McDonnell Douglas framework has been adopted for use in discrimination actions brought under the respective Human Rights Laws of the State and City of New York") (citations omitted); Bailey v. New York Westchester Sq. Med. Ctr., 38 A.D.3d 119, 122-123 (1st Dep't. 2007).

To establish a prima facie case of discrimination under the SHRL, a plaintiff must demonstrate that: (1) she is a member of a protected class; (2) she was qualified to hold the position; (3) she suffered an adverse employment action; and (4) the adverse employment action occurred under circumstances giving rise to an inference of discrimination. See Forrest v. Jewish Guild for the Blind, 3 N.Y.3d 295, 305 (2004); Melman v. Montefiore Med. Ctr., 98 A.D.3d 107, 112-13 (1st Dep't. 2012). Here, plaintiff's race and gender discrimination claims fail because she has not plausibly alleged that her removal as superintendent occurred under circumstances giving rise to an inference of race or gender discrimination.

Circumstances giving rise to such an inference of discrimination may include, "the employer's criticism of the plaintiff's performance in ethnically degrading terms; or its invidious comments about others in the employee's protected group; or the more favorable treatment of employees not in the protected group; or the sequence of events leading to the [adverse action]." Littlejohn v. City of New York, 795 F.3d 297, 312 (2d Cir. 2015). In determining whether a comment is a probative statement that evidences an intent to discriminate or whether it is a non-probative 'stray remark,' a court should consider the following four factors: "(1) who made the remark, i.e., a decision-maker, a supervisor, or a low-level co-worker; (2) when the remark was made in relation

to the employment decision at issue; (3) the content of the remark, i.e., whether a reasonable juror could view the remark as discriminatory; and (4) the context in which the remark was made, i.e., whether it was related to the decision making process." Henry v. Wyeth Pharms., Inc., 616 F.3d 134, 149 (2d Cir. 2010); See Chiara v. Town of New Castle, 126 A.D.3d 111, 124 (2d Dep't. 2015) (applying four-factor test to SHRL employment discrimination analysis).

Here, plaintiff has failed to plead any allegations that would give rise to an inference of race-based discrimination. The complaint is laden with conclusory allegations; however, it fails to allege any specific conduct that may give rise to such an inference. Indeed, the only remark that appears to invoke race—plaintiff was allegedly told after a meeting in 2017 that she was not "black enough"—is alleged to have been made by an unknown employee *a year prior* to plaintiff's termination. Compl. at ¶ 54. However, this type of comment is not enough to support the notion that plaintiff's removal as superintendent occurred under circumstances giving rise to an inference of race discrimination. See e.g. Forrest, 3 N.Y.3d at 308 (statements by non-decision makers, or statements by decision makers unrelated to the decisional process itself, are insufficient to establish discriminatory intent); see also Campbell v. Alliance Nat'l Inc., 107 F. Supp. 2d 234, 247 (S.D.N.Y. 2000) ("[s]tray remarks by non-decision-makers or by decision-makers unrelated to the decision process are rarely given great weight, particularly if they were made temporally remote from the date of the decision"). Given that the comment appears to have been made by a non-decision-maker a year before the adverse action—and even before defendant Carranza became the Chancellor—it is not enough to give rise to an inference of discrimination. See Chiara, 126 A.D.3d at 124

(quoting Schreiber v. Worldco, LLC, 324 F.Supp. 2d 512, 518 (S.D.N.Y. 2004) ("Verbal comments constitute evidence of discriminatory motivation when a plaintiff demonstrates that a nexus exists between the allegedly discriminatory statements and a defendant's decision to discharge the plaintiff."); See also Joseph v. Verizon, 2009 N.Y. Misc. LEXIS 5949, at *24 (N.Y. Cty Sup. Jun. 23, 2009) ("The more remote and oblique the remarks are in relation to the employer's adverse action, the less they prove that the action was motivated by discrimination.") (quoting Tomassi v. Insignia Fin. Grp. Inc., 478 F.3d 111,115 (2d Cir. 2007)). As such, plaintiff's race discrimination claims under the SHRL fail as a matter of law.

Plaintiff's gender discrimination claim fails for similar reasons as her claim of race discrimination. Namely, plaintiff cannot connect her removal as superintendent to her gender. Here, plaintiff alleges that during a post-termination meeting with defendant Carranza, she was offered a stipulation that would allow plaintiff to receive a demotion instead of termination. Compl. at ¶ 75. Plaintiff further alleges that during this meeting Carranza stated, "[t]he clock is ticking. You are divorced mother of two children. The ball is in your court." Id. at ¶ 76. However, plaintiff fails to establish that the aforementioned comment was related to the decision to terminate her made in August 2018. The statement was allegedly made in the context of discussing an alternative resolution to plaintiff's termination. Id. at ¶¶ 73-76. In a similar situation, the court in Godbolt v. Verizon New York, Inc., held that a post-termination statement made in the context of a discussion about possible settlement of plaintiff's grievance proceedings, alone, is not evidence to support discriminatory intent at the time the decision to terminate the employee was made. Godbolt, 2013 N.Y. Misc. LEXIS 219, at

*13-14 (N.Y. Ct. Sup. Jan. 23, 2013) aff'd. 115 A.D.3d 493 (1st Dep't. 2014). Here, plaintiff has not alleged any facts establishing an inference of gender-based discrimination *before* the decision to terminate her employment in August 2018. To the extent that plaintiff counters that a comment made by non-party Jose Ruiz in 2017 is evidence of discriminatory intent, that argument fails. Compl. at ¶ 55. The comment, made by a non-decision-maker one year before plaintiff's termination, does not establish an inference of gender-based discrimination. See Campbell, 107 F. Supp. 2d at 247; Forrest, 3 N.Y.3d 295 at 308. As such, plaintiff's claim of gender-based discrimination under the SHRL fails as a matter of law.

C. NYCHRL Discrimination Claims

To establish a prima facie case of race, gender, or age discrimination under the NYCHRL, plaintiff must demonstrate: (1) That she is a member of a protected class, (2) that she was qualified for the position held, (3) that she was treated differently or worse than other employees, and (4) that the different treatment occurred under circumstances giving rise to an inference of discrimination. Harrington v. City of N.Y., 157 A.D.3d 582, 584 (1st Dep't. 2018). Although discrimination claims under the NYCHRL must be analyzed "independently from and more liberally than their federal… counterparts," a plaintiff must still allege facts giving rise to an inference of discrimination. Williams v. N.Y.C. Hous. Auth., 61 A.D.3d 62, 66-69 (1st Dep't. 2009); Moore v. Verizon, No. 13-CV-6467, 2016 U.S. Dist. LEXIS 16201, at *22 (S.D.N.Y. Feb. 5, 2016) (internal citations omitted). Although NYCHRL claims are subject to the same burden-shifting analysis as SDHR claims, courts must analyze NYCHRL claims broadly in favor of discrimination plaintiffs with state and federal civil rights statutes serving only "as a floor below which the City's Human Rights law cannot fall." Mihalik

v. Credit Agricole Cheuvreux N. Am., Inc., 715 F.3d 102, 109 (2d Cir. 2013) (internal citations omitted); Bennett v. Health Mgmt. Sys., Inc., 92 A.D.3d 29 (1st Dep't. 2011). As a result of this overlap, federal case law is frequently cited in cases involving claims under the SHRL and NYCHRL. See, e.g. Forrest, 3 N.Y.3d 295 at 306-07; Bennett, 92 A.D.3d at 35-45.

As argued above in Point IV.B, plaintiff fails to allege facts that give rise to an inference of race discrimination. Indeed, the only non-conclusory allegation of discriminatory conduct concerns an alleged race-based comment made by an unidentified employee a year prior to the decision to terminate plaintiff. Compl. at ¶ 54. However, stray comments, without more, do not constitute evidence of discrimination. See Godbolt v. Verizon N.Y. Inc., 115 A.D.3d 493, 494-95 (1st Dep't. 2014) ("Under the CHRL, stray remarks, even if made by the decision maker, do not, without more, constitute evidence of discrimination"). Further, the fact that the comment was made a year prior to the decision to terminate does not support a causal nexus to plaintiff's termination. See e.g. Mete v. N.Y. State Office of Mental Retardation & Developmental Disabilities, 21 A.D.3d 288, 294 (1st Dep't. 2005). Accordingly, plaintiff's race discrimination under the NYCHRL should be dismissed for the same reason as her SHRL claim.

Similarly, plaintiff has failed to plead facts that her termination occurred under circumstances giving rise to an inference of gender discrimination. As noted in Point IV.B, supra, the only comment alleged by plaintiff that targeted her gender was made by a non-decision maker (Jose Ruiz), and one year before her termination. Thus, this single comment is patently insufficient to support plaintiff's gender discrimination claim under the NYCHRL. See Forrest, 3 N.Y.3d 295 at 308; see also Edwards v.

Jamaica Hospital Med. Center, 2006 N.Y. Misc. LEXIS 9403, at *14 (N.Y. Cty Sup. Jun. 28, 2006) aff'd. 47 A.D.3d 514 (1st Dep't. 2008).

As with her race and gender discrimination claims, plaintiff has failed to allege any facts giving rise to an inference that her termination was motivated by age discrimination. Here, plaintiff's claim is merely conclusory and unsupported by any facts. Compl. at ¶¶ 11, 126-131. At no point does plaintiff alleges how she was treated differently or worse by defendants, or anyone, based on her age. See Mihalik, 715 F.3d at 110 (Under the NYCHRL, a plaintiff "must show that []he has been treated less well at least in part *because of* h[is] age."); Spires v. Metlife Grp., Inc., No. 18-CV-4464 (RA), 2019 U.S. Dist. LEXIS 160181, at *20-21 (S.D.N.Y. Sept. 18, 2019) (NYCHRL claim failed where plaintiff failed to plead facts giving rise to inference that adverse employment action was motivate by age). As such, plaintiff's age discrimination claim under the NYCHRL should be dismissed.

POINT V

PLAINTIFF HAS FAILED TO STATE A CAUSE OF ACTION AGAINST CARRANZA AND WATSON-HARRIS FOR AIDING AND ABETTING DISCRIMINATION

While an individual defendant can be held liable for aiding and abetting discriminatory conduct under NYCHRL § 107(6), an individual cannot aid and abet his own alleged discriminatory conduct. Krause v. Lancer & Loader Group, LLC, 40 Misc. 3d 385, 399 (N.Y. Cty Sup. May 1, 2013). Here, Plaintiff is claiming that defendants Carranza and Watson-Harris, "aided and abetted the City of New York in the conduct complained of…" See Compl. at ¶¶ 140, 147. However, plaintiff also alleges that these defendants were direct participants in discriminatory conduct leading up to her

termination and subsequent demotion. Id. at ¶¶ 61-63, 73-75. As an individual cannot aid and abet his or her own alleged discriminatory conduct, the claims against defendants Carranza and Watson-Harris for aiding and abetting a discriminatory practice must be dismissed for failure to state a claim.

CONCLUSION

For the foregoing reasons, Defendants respectfully requests that the Court dismiss Plaintiff's Complaint and deny the relief sought therein in all respects, and grant such other and further relief as the Court deems just and proper.

Dated: Brooklyn, New York
April 30, 2021

JAMES E. JOHNSON
Corporation Counsel of the City of New York
Attorney for Defendants
100 Church Street
New York, New York 10007
(646) 939-7622
nicollin@law.nyc.gov

By: *Nicholas L. Collins*
Nicholas L. Collins
Assistant Corporation Counsel

CERTIFICATION

In accordance with Rule 17 of the Rules of the Commercial Division, 22 NYCRR §202.70, the undersigned certifies that the word count in this memorandum of law (excluding the caption, table of contents, table of authorities, signature block, and this certification), as established using the word count on the word-processing system used to prepare it, is 4,157 words.

Dated: New York, New York
April 30, 2021

JAMES E. JOHNSON
Corporation Counsel of the City of New York
Attorney for Municipal Defendants
100 Church Street
New York, New York 10007
(646) 939-7622
nicollin@law.nyc.gov

By: *Nicholas L. Collins*
Nicholas L. Collins
Assistant Corporation Counsel