17-967
Rasko v. N.Y.C. Admin. for Children's Servs.

UNITED STATES CORT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 17th day of May, two thousand eighteen.

PRESENT: Pierre N. Leval,
Gerard E. Lynch,
Christopher F, Droney,
Circuit Judges.

Jinae Rasko,

Plaintiff-Appellant,

v. 17-967

New York City Administration for Children's Services,

Defendant-Appellee.

FOR PLAINTIFF-APPELLANT:
Jinae Rasko, *pro se,* New York, NY.

FOR DEFENDANT-APPELLEE:
Ellen Ravitch, Assistant Corporation Counsel (Deborah A. Brenner, Assistant Corporation Counsel, *on the brief*), *for* Zachary W. Carter, Corporation Counsel of the City of New York, New York, NY.

Appeal from a March 13, 2017, judgment of the United States District Court for the Southern District of New York (Forrest, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED.**

Appellant Jinae Rasko, *pro se,* sued her employer, the New York City Administration for Children's Services ("ACS"), under Title VII of the Civil Rights Act of 1964 for discrimination based on her race (Asian), color ("non-Black"), and national origin (Korean), and for retaliation. The district court dismissed her complaint for failure to state a claim. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

"We review *de novo* a district court's dismissal of a complaint pursuant to Rule 12(b)(6), construing the complaint liberally, accepting all factual allegations in the complaint as true, and drawing all reasonable inferences in the plaintiff's favor." *Chambers v. Time Warner, Inc.,* 282 F.3d 147, 152 (2d Cir. 2002). The complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 570 (2007). Although a court must accept as true all the factual allegations in the complaint, that requirement is "inapplicable to legal conclusions." *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009).

I. Disparate Treatment

A. Time Barred Claims

The district court held that Rasko's claims relating to the allegedly discriminatory actions that took place before March 14, 2015, were time-barred by the applicable 300-day statute of limitations. *See* 42 U.S.C. section 2000e-5(e)(1); *Pikulin v. City Univ. of*

New York, 176 F.3d 598, 599 (2d Cir.1999) ("An employment discrimination claim must be filed with the [Equal Employment Opportunity Commission ("EEOC")] within 300 days of the alleged discrimination in a state, like New York, with a fair employment agency."). Rasko has abandoned her argument that the district court erred with respect to this holding by failing to raise it until her reply brief. *See JP Morgan Chase Bank v. Altos Hornos de Mexico, S.A. de C.V.,* 412 F.3d 418, 428 (2d Cir. 2005) ("[A]rguments not made in an appellant's opening brief are waived even if the appellant pursued those arguments in the district court or raised them in a reply."); *LoSacco v. City of Middletown,* 71 F.3d 88, 92-93 (2d Cir. 1995) (applying rule of abandonment to *pro se* appellants).

Even if there were no abandonment, we would hold that the district court properly dismissed as untimely Rasko's claims relating to denials of her requests for leave in 2010 and 2012. Under Title VII, a plaintiff in New York must file a complaint with the EEOC within 300 days of a discriminatory act. 42 U.S.C. section 2000e-5(e)(1); *Pikulin,* 176 F.3d at 599. Claims concerning discrete acts outside this window will be time-barred. *Nat'l R.R. Passenger Corp. v. Morgan,* 536 U.S. 101, 110 (2002). Here, Rasko filed a discrimination complaint with the EEOC on January 8, 2016. Therefore, any discrete acts of discrimination that occurred prior to March 14, 2015, 300 days before Rasko filed her complaint, are barred. Rasko argues that the three denials of leave that occurred in 2010 and 2012 were part of a continuing pattern with other

discriminatory acts committed by her supervisor, Sharon Corse, in 2015 and 2016. We find no error in the district court's determination that the instances of denial of leave in 2010 and 2012 were time-barred. These were discrete acts and not part of a continuing pattern with the acts occurring three to five years later. Because Rasko failed to file an EEOC complaint within 300 days of those occurrences, they are no longer actionable. Accordingly, the district court properly dismissed those claims.

B. Merits

Rasko's remaining disparate treatment claim alleged that Corse, an African-American, disciplined her in October 2015 after Rasko reported her African-American coworker, Fatimata Fonah, for violating office policy, and that Corse failed to discipline Fonah. To make out a prima facie case of discrimination under Title VII, a plaintiff has the burden of establishing that (1) she is a member of a protected class; (2) she performed the job satisfactorily or was qualified for the position; (3) an adverse employment action took place; and (4) the action occurred under circumstances giving rise to an inference of discrimination. *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 767 (2d Cir. 2002). "A plaintiff sustains an adverse employment action if he or she endures a materially adverse change in the terms and conditions of employment." *Vega v. Hempstead Union Free Sch. Dist.*, 801 F.3d 72, 85 (2d Cir. 2015) (citation omitted). Informal discipline, criticism, or counseling does not

constitute an adverse act if no change in working conditions accompanies it. *See Weeks v. New York State (Div. of Parole),* 273 f.3d 76, 86 (2d Cir. 2001) (holding that a notice of discipline that had no material effect was not adverse in the context of disparate treatment and retaliation claims), *abrogated on other grounds by Morgan,* 536 U.S. at 108-14.

Rasko failed to allege any adverse employment actions. Although she described Corse's action in October 2015 as putting her on probation, the actual notice, attached as an exhibit to the amended complaint, does not reflect any disciplinary action. Rather, the notice explicitly states that Rasko would be expected to show that she understood a need for better office behavior and that further violations "may result in disciplinary action." Rasko does not allege any facts suggesting that her work conditions changed as a result of the notice. It therefore does not constitute an adverse action. *See Weeks,* 273 F.3d at 86. Accordingly, the district court properly dismissed Rasko's disparate treatment claim.

II. Hostile Work Environment

Rasko asserts that she raised a hostile work environment claim based on Fonah's harassment and Corse's failure to correct it. To establish a hostile work environment claim, a plaintiff must show, *inter alia,* that "the workplace was permeated with discriminatory intimidation that was sufficiently

severe or pervasive to alter the conditions of his or her work environment." *Petrosino v Bell Atl.,* 385 F.3d 210, 221 (2d Cir. 2004) (citation and brackets omitted). A "[p]laintiff must show not only that she subjectively perceived the environment to be abusive, but also that the environment was objectively hostile and abusive." *Demoret v. Zegarelli,* 451 F.3d 140, 149 (2d Cir. 2006). Minor workplace conflicts do not rise to the level of an objectively hostile workplace. *See Faragher v. City of Boca Raton,* 524 U.S. 775, 788 (1998) (stating that "the ordinary tribulations of the workplace, such as the sporadic use of abusive language," do not rise to a level constituting a hostile work environment (citation omitted)); *Brennan v. Metro. Opera Ass'n, Inc.,* 192 F.3d 310, 318 (2d Cir. 1999) ("Isolated, minor acts or occasional episodes do not warrant relief."). Rasko asserted only that Fonah was rude, threw documents on top of documents that Rasko was working on, and made noise (e.g., snoring, talking on the phone, etc.). This type of irritation does not rise to the level of an objectively hostile workplace. Accordingly, the district court properly dismissed the claim.

III. Retaliation

Finally, the district court properly dismissed Rasko's retaliation claim. To plead a retaliation claim under Title VII, a plaintiff must allege: "(1) participation in a protected activity; (2) that [the employer] knew of [her] participation in that protected activity; (3) that [she] suffered an adverse employment action; and (4) that

there exists a causal relationship between the protected activity and the adverse employment action." *Hicks v. Baines,* 593 F.3d 159, 166 (2d Cir. 2010). To show an adverse employment action in the retaliation context, "a plaintiff must show that a reasonable employee would have found the challenged action materially adverse, which in [the retaliation] context means it well might have dissuaded a reasonable worker from making or supporting a charge of discrimination." *Burlington N. &Santa Fe Ry. Co. v. White,* 548 U.S. 53, 68 (2006) (internal quotation marks omitted). "Trivial hams" or "petty slights or minor annoyances" do not constitute materially adverse employment action. *Tepperwien v. Entergy Nuclear Operations, Inc.,* 663 F.3d 556, 568 (2d Cir. 2011) (citation omitted).

Rasko's complaints that Corse sent her a holiday email, was rude to her in meeting, and "oddly" spoke to her about software changes and Corse's own vacation are nothing more than petty slights, if they are slights at all. Rasko also complains that she was denied leave twice in January 2016, once for sick time and the other for a partial day off for a doctor's appointment. However, the sick time request was ultimately approved and the denial of a partial day off does not constitute an adverse act. *See Rivera v. Rochester Genesee Reg'l Transp. Auth.,* 743 F.3d 11, 25-26 (2d Cir. 2014) (holding that an employer's failure to give an employee a half day off for a doctor's appointment – even when combined with other actions – was insufficient to constitute an adverse employment action in the retaliation context).

We have considered all of Rasko's remaining arguments and find them to be without merit. For the foregoing reasons, the judgment of the district court is **AFFIRMED**.

FOR THE COURT:
Catherine O'Hagan Wolfe,
Clerk of Court

Court Seal &
Clerk's signature

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JINAE RASKO,

Plaintiff,

-v-

NYC ACS,

Defendant.

16-cv-5289 (KBF)

MEMORANDUM DECISION & ORDER

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KATHERINE B. FORREST, District Judge:

Pro se plaintiff Jinae Rasko commenced this action against defendant New York City Administration for Children's Services ("NYC ACS") pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. section 200e, et seq. Upon a liberal reading of her amended complaint (ECF Nos 8, 8-1), plaintiff appears to assert a claim for unlawful discrimination based on her race (Asian), national origin (Korea), and color (non-black), as well as a claim for unlawful retaliation.

Now before the Court is defendant's motion to dismiss the amended complaint in its entirety. (ECF No. 10.) Defendant argues, inter alia, that plaintiff has failed to state a cause of action under Title VII for either unlawful discrimination or retaliation. As discussed below, the Court agrees.

As is required to sustain a Title VII discrimination claim, plaintiff has not alleged sufficient facts to plausibly support that she was subjected to an adverse employment action or that any of the matters about which she complains occurred under circumstances giving rise to a reasonable inference of discrimination. In addition, as required to sustain a Title VII retaliation claim, plaintiff has not alleged sufficient facts to plausibly support that – subsequent to engaging in protected activity – she suffered a materially adverse action or that the matters about which she complains were causally linked to her protected activity.

Accordingly, defendant's motion to dismiss is GRANTED and plaintiff's amended complaint is dismissed.

I. BACKGROUND

A. Factual Background[1]

Plaintiff Jinae Rasko was hired by defendant New York City Administration for Children's Services ("NYC ACS") as a staff analyst in December 2007. (First Amended Complaint, ECF Nos. 8, 8-1) In the instant action, plaintiff alleges that she was discriminated against at work based on her race (Asian), national origin (Korea), and color (non-black). Plaintiff alleges that this discrimination occurred on eight dates: September 13, 2010; April 2012; September 2012; September 28, 2015; October 23, 2015; November 2, 2015; January 5, 2016; and January 21, 2016. (ECF No. 8 at 5.) Plaintiff's complaint, read liberally, also alleges that she was retaliated against for filing a charge of discrimination.

On September 13, 2010, plaintiff emailed her supervisor, Sharon Corse, asking for leave to attend a job interview. (Id. at 8.) In response, Ms. Corse responded: "Are you attempting to get out of the scanning unit?" (Id.)

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[1] The following facts are taken from plaintiff's amended complaint (ECF Nos. 8, 8-1). In addition, plaintiff attached numerous exhibits to her amended complaint (see ECF Nos. 8-2 to 8-11). The Court also considers these exhibits in deciding defendant's motion to dismiss. (see DiFolco v. MSNBC Cable L.L.C., 622 F.3d 104, 111 (2d Cir. 2010) (explaining that a district court may consider documents attached to, incorporated by reference in, or integral to the complaint on a Rule 12(b)(6) motion).

In April 2012, plaintiff requested a leave of absence to take a floating holiday, plaintiff's first request of the year. (Id.) According to plaintiff, Ms. Corse "got so upset, making [plaintiff] uncomfortable. (Id.) Plaintiff does not explain how Ms. Corse "got so upset." (See id.)

In September 2012, plaintiff requested a leave of absence to take two days off, plaintiff's second request of the year. (Id.) In response, plaintiff alleges that Ms. Corse "lashed out" at plaintiff when Ms. Corse stated, in front of another staff member, that "I just cannot let you leave the work undone." (See id.) Plaintiff states that this made her feel ashamed. (Id.)

On September 24, 2015, plaintiff emailed Ms. Corse to report an alleged verbal altercation that occurred between plaintiff and her coworker, Fatimata Fonah, on September 18, 2015.[2] (ECF No. 8-3 at 1-2; see EFC No. 8 at 6.) In the email, plaintiff also told Ms. Corse that Ms. Fonah was not distributing work properly[3] and that plaintiff had confronted Ms. Fonah about it and requested that Ms. Fonah give plaintiff her portion of the work. (ECF No. 8-3 at 1-2; see EFC No. 8 at 9.) Plaintiff claims that in response, Ms. Fonah told plaintiff: "Let go, okay? Let it go okay?" and stated: "What you gonna do, what you gonna do?" (EFC No. 8-3 at 1-2; see EFC No. 8 at 9.)

On September 25, 2015, Ms. Corse held a meeting with plaintiff. (ECF No. 8 at 6,) At the

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[2] Plaintiff copied Ms. Fonah on the email. (EFC No. 8-3 at 1-2.)

[3] Plaintiff alleges that her work performance is measured by the volume of documents she processes. (See EFC No. 8 at 9.)

meeting, Ms. Corse acknowledged plaintiff's complaints regarding Ms. Fonah. (Id.) Thereafter, on September 28, 2015, Ms. Corse held a meeting with Ms. Fonah. (Id. at 10) Plaintiff characterized the meeting as 'gangster talk," which is also how she described Ms. Fonah's behavior on other occasions. (Id.) On September 28, Ms. Corse also held a joint meeting with both plaintiff and Ms.Fonah. (Id.) At this meeting, plaintiff raised additional complaints that she had with Ms. Fonah, including that Ms. Fonah often talks loudly on the phone all day. (Id. at 11.) Plaintiff alleges that her complaints were not addressed at the meeting; rather, plaintiff states that she was reprimanded at the meeting. (Id. at 6, 9). Plaintiff does not provide any additional detail to describe how she was reprimanded.

On October 21, 2015, Ms. Fonah emailed Ms. Corse a rebuttal to plaintiff's September 24 email. (ECF No. 8-3 at 3-4.) In her email, Ms. Fonah stated that she only intended to help plaintiff by redistributing work, since Ms. Fonah noticed that plaintiff was overwhelmed with stacks of papers. (Id.) Plaintiff replied to Ms. Fonah's email on October 23, 2015. (Id. at 5-6.) Plaintiff stated that she did not need or welcome Ms. Fonah's alleged "help"; but plaintiff also admitted that a few months prior to the September 18, 2015, verbal altercation, plaintiff brought documents to Ms. Fonah and said, "I have many documents backed up, you have little, I need you to help me." (Id. at 5.)

On October 23, 2015, Ms. Corse provided plaintiff a summary of the meetings held with plaintiff

on September 25 and 28. (Id. at 8-9.) In that summary, Ms. Corse advised plaintiff that she would have thirty days to prove that she understood the need for verbal restraint and better office decorum and that "[a]ny further incidents of this nature may result in disciplinary action." (Id.) Thereafter, on November 2, 2015, Ms. Corse advised plaintiff that, in an effort to resolve the altercation between plaintiff and Ms. Fonah, plaintiff should send Ms. Fonah a written apology for the words that she used in her complaint. (Id. at 10-11.)

On November 4, 2015, Ms. Corse sent plaintiff an email again asking her to apologize to Ms. Fonah. (Id. at 12.) Thereafter, plaintiff apologized to Ms. Fonah by email on November 4, and Ms. Fonah accepted plaintiff's apology on November 5. (ECF No. 8-4 at 1-2.)

On December 8, 2015, plaintiff submitted a "Complaint of Discrimination Form" to defendant alleging that Ms. Corse discriminated against her on September 28, October 23, and November 2, 2015 when she met with plaintiff regarding the language plaintiff used in her complaint against Ms. Fonah and urged plaintiff to apologize to Ms. Fonah. (ECF No. 8-5 at 8-12, ECF No. 8-6 at 1-8.) Plaintiff originally asked that Ms. Corse be terminated, but revised her complaint on January 4, 2016, to request that Ms. Corse be "dealt with substantially." (ECF No. 8-7 at 11-12.)

On December 22, 2015, Ms. Corse sent the entire office a "Season's Greeting" email that stated,

inter alia, "I hope to see you in the coming year!!!!!!!!!!!!!!!" (ECF No. 8-6 at 9-10.) Plaintiff claims that she interpreted this email to mean that "[Ms. Corse] hopes to be forgiven, to see [plaintiff] in 2016." (ECF No. 8-1 at 2.)

On December 29, 2015, Ms. Corse allegedly exhibited "odd and inappropriate" behavior when she spoke about deficiencies in the office's software near plaintiff's work space and then also informed the staff in that area that she would be taking some time off in March. (ECF No. 8-1 at 2.)

On January 4, 2016, plaintiff told Ms. Corse that she had to leave early the next day to attend a doctor's appointment. (Id. at 4.) Plaintiff states that on January 5 Ms. Corse reminded plaintiff that leave is to be requested seven days in advance.[4] (Id.) Plaintiff admits that she was familiar with the advance leave request policy to which Ms. Corse was referring. (Id.)

On January 15, 2016, plaintiff came into work late due to sickness and entered a request for leave of absence on her timesheet. (Id. at 4.) Plaintiff states that her request was first approved by Ms. Corse on January 20, then disapproved on January 21. (Id.) Plaintiff further explains that when she resubmitted her timesheet, it was ultimately approved. (Id.)

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[4] Plaintiff does not make clear whether Ms. Corse ultimately approved or denied her leave request. Because the Court grants all inferences in plaintiff's favor, the Court assumes that plaintiff's leave request was denied.

B Procedural Background

On January 8, 2016, plaintiff submitted a completed Intake Questionnaire to the Equal Opportunity Commission ("EEOC"). (ECF No. 8-2 at 3-7.) In that Intake Questionnaire, plaintiff alleged the following: "When I reported my co-worker [Ms. Fonah's] (black) wrong doing, at work to my director Ms. Corse (black), the director took the side of Ms. Fonah because Ms. Fonah is black, and I am not." (Id. at 4.)

Plaintiff specifically alleged that discriminatory actions were taken against her on September 28, 2015 (when Ms. Corse held a meeting with plaintiff regarding the language that plaintiff used in her complaint against Ms. Fonah); October 23, 2015 (when Ms. Corse allegedly placed plaintiff on "probation" for the language that plaintiff used); and November 2, 2015 (when Ms. Corse led plaintiff to apologize to Ms. Fonah). (Id.)

On April 14, 2016, the EEOC issued plaintiff a notice of dismissal and right to sue. (Id. at 1-2.) Plaintiff commenced this action on July 5, 2016 (ECF No. 1) and submitted an amended complaint on July 25, 2016 (ECF Nos. 8, 8-1.) Now before the Court is defendant's motion to dismiss the amended complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). (ECF No. 10.)

II. LEGALS STANDARDS

A. Federal Rule of Civil Procedure 12(b)(6)

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a plaintiff must provide grounds upon which his claim rests through "factual allegations sufficient 'to raise a right to relief above the speculative level.'" ATSI Commc'ns, Inc. v. Shaar Fund, Ltd., 493 F.3d 87, 98 (2d Cir. 2007) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). In other words, the complaint must allege "enough facts to state a claim to relief that is plausible on its face." Starr v. Sony BMG Music Entm't, 592 F.3d 314, 321 (2d Cir, 2010) (quoting Twombly, 550 U.S. at 570). "A claim has 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." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

In applying this standard, the Court accepts as true all well-pled factual allegations but does not credit "mere conclusory statements" or [t]hreadbare recitals of the elements of a cause of action." Id. The Court will give "no effect to legal conclusions couched as factual allegations." Port Dock & Stone Corp. v. Oldcastle Ne., Inc., 507 F.3d 117, 121 (2d Cir. 2007) (citing Twombly, 550 U.S. at 555). A plaintiff may plead facts alleged upon information and belief "where the facts are peculiarly within the possession and control of the defendant." Arista Records, LLC v. Doe 3, 604 F.3d 110, 120 (2d Cir. 2010). But, if the Court can infer no more than the mere possibility of

misconduct from the factual averments – in other words, if the well-pled allegations of the complaint have not "nudged [plaintiff's] claims across the line from conceivable to plausible" – dismissal is appropriate. Twombly, 550 U.S. at 570; Starr, 592 F.3d at 321 (quoting Iqbal, 556 U.S. at 679).

In deciding a motion to dismiss under Rule 12(b)(6), the Court may supplement the allegations in the complaint with facts from documents either referenced in the complaint or relied upon in framing the complaint. See DiFolco, 622 F.3d at 111 (2d Cir. 2010) ("In considering a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6), a district court may consider the facts alleged in the complaint, documents attached to the complaint as exhibits, and documents incorporated by reference in the complaint.").

In this case, because plaintiff is proceeding pro se, her submissions "must be construed liberally and interpreted 'to raise the strongest arguments that they suggest.'" Triestman v. Fed. Bureau of Prisons, 470 F.3d 471, 474 (2d Cir. 2006) (quoting Pabon v. Wright, 459 F.3d 241, 248 (2d Cir. 2006)) (emphasis in original). Additionally, "[p]ro se submissions are generally reviewed with 'special solicitude,' and we interpret them to raise the strongest claims possible." Kalican v. Dzurenda, 583 Fed. App'x. 21, 22 (2d Cir. 2014) (quoting Triestman, 470 F.3d at 475). However, a pro se complaint still must state a plausible claim for relief or it will be dismissed. Harris v. Mills, 572 F.3d 66, 72 (2d Cir. 2009).

B. Title VII

1. Employment Discrimination

Under Title VII of the Civil rights Act of 1964, it is unlawful for an employer to "fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. section 2000e-2(a)(1).

McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), and subsequent Supreme Court precedent "established the nature of prima facie case of discrimination under Title VII." Littlejohn v. City of N.Y., 795 F.3d 297, 307 (2d Cir. 2015). To establish a prima facie case, a plaintiff must "make a showing (1) that she is a member of a protected alas, (2) that she was qualified for the position she sought, (3) that she suffered an adverse employment action, and (4) can sustain a minimal burden of showing facts suggesting an inference of discriminatory motivation." (Id. at 311)

If a plaintiff has satisfied these prima facie requirements, "a presumption of discriminatory intent arises in her favor, at which point the burden of production shifts to the employer, requiring that the employer furnish evidence of reasons for the adverse action."[5] Id.

The Second Circuit recently clarified the interplay between the McDonnell Douglas framework and the pleading requirements set forth in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), and Ashcroft v. Iqbal, 556 U.S. 662 (2009). The Second Circuit explained that, at the motion to dismiss stage, "what must be plausibly supported by facts alleged in the complaint is that the plaintiff is a member of a protected class, was qualified, suffered an adverse employment action, and has at least minimal support for the proposition that the employer was motivated by discriminatory intent." Littlejohn, 795 F.3d at 311. "The facts required . . . to be alleged in the complaint need not give plausible support to the ultimate question of whether the adverse employment action was attributable to discrimination. They need only give plausible support to a minimal inference of

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[5] "[O]nce the employer presents evidence of its justification for the adverse action, joining issue on plaintiff's claim of discriminatory motivation, the presumption 'drops out of the picture' and the McDonnell Douglas framework 'is no longer relevant.' At this point, in the second phase of the case, the plaintiff must demonstrate that the proffered reason was not the true reason (or in any event not the sole reason) for the employment decision, which merges with the plaintiff's ultimate burden of showing that the defendant intentionally discriminated against her." Littlejohn, 795 F.3d at 307-08 (citations omitted).

discriminatory motivation." Id.; see also Vega v. Hempstead Union Free Sch. Dist., 801 F.3d 72, 87 (2d Cir. 2015). "Nevertheless, 'a discrimination complaint . . . must [still] at a minimum assert nonconclusory factual matter sufficient to nudge its claims across the line from conceivable to plausible to proceed.'" Dooley v. JetBlue Airways Corp., 636 F. App'x 16, 20 (2d Cir. 2015) (quoting EEOC v. Port Auth. of N.Y. & N.J., 768 F.3d 247, 254 (2d Cir. 2014)) (ellipsis and alterations in original).

2. Retaliation

Title VII of the Civil rights Act of 1964 also includes an anti- retaliation provision, which makes it unlawful "for an employer to discriminate against any . . . employee[ ] . . . because [that individual] opposed any practice" made unlawful by Title VII or "made a charge, testified, assisted, or participated in" a Title VII investigation or proceeding. 42 U.S.C. section 2000e-3(a). To state a prima facie case of retaliation under Title VII, "a plaintiff must present evidence that shows '(1) participation in a protected activity; (2) that the defendant knew of the protected activity; (3) an adverse employment action; and (4) a causal connection between the protected activity and the adverse employment action.'" Littlejohn, 795 F.3d at 315-16 (quoting Hicks v. Baines, 593 F.3d 159, 164 (2d Cir. 2010)). As with a Title VII discrimination claim, "the allegations in the complaint need only give plausible support to the reduced prima facie requirements that arise under McDonnell Douglas in the initial phase of a Title VII litigation." Id. at 316; see also Dooley, 636 F. App'x at 19.

III. DISCUSSION

A. Plaintiff's Discrimination Claim

For the purpose of this motion, defendant concedes "that plaintiff is a member of a protected class and that her job performance was satisfaction." (Memorandum of Law in Support of Defendant's Motion to Dismiss the Fist Amended Complaint ("Mem. in Supp."), (ECF No. 10-1, at 14.) Nevertheless, defendant argues that "[p]laintiff cannot, nor has she even attempted to, allege facts supporting that she was subjected to an adverse employment action or that any of the matters about which she complains occurred under circumstances giving rise to a reasonable inference of discrimination." (Id.) As discussed below, the Court agrees.

First, plaintiff has failed to sufficiently plead that she was the subject of an adverse employment action. "A plaintiff sustains an adverse employment action if he or she endures a materially adverse change in the terms and conditions of employment." Vega, 801 F.3d at 85 (internal quotation marks omitted). The action must be "more disruptive than a mere inconvenience or an alteration of job responsibilities." Id. (internal quotation marks omitted). Examples of adverse employment actions include "termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities or other indices unique to a particular

situation." Id. (quoting Terry v. Ashcroft, 336 F.3d 128, 138 (2d Cir. 2003)).

Accepting as true the allegations in plaintiff's complaint, none of the conduct taken by defendant (including on the eight dates identified by plaintiff) rises to the level of an adverse employment action.[6] The majority of the alleged conduct amounts to "excessive scrutiny, criticism, and negative evaluations" of plaintiff's work, which "are not materially adverse employment actions unless such conduct is 'accompanied by negative consequences, such as demotion, diminution of wages, or other tangible loss.'" Opoku v. Brega, No. 15-CV-2213, 2016 WL 5720807, at *7 (S.D.N.Y. 2016) (citations omitted). Plaintiff has not alleged any such negative consequences.[7] Plaintiff's wholly conclusory allegations (for example, that she was "reprimanded" – without providing any further detail – at meeting on September 28, 2015) are insufficient. See Dooley, 636 F. App'x at 20 (2d Cir. 2015).

Second – and alternatively – even if plaintiff's complaint can be read to sufficiently allege that she

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[6] The Court does not consider allegations that plaintiff improperly raised for the first time in her opposition to defendant's motion to dismiss (for example, that Ms. Corse would not designate plaintiff as the staff in charge of the scanning unit).

[7] Plaintiff claims that she was placed on "probation" on October 23, 2015. However, plaintiff's complaint and the actual letter sent to plaintiff from Ms. Corse (attached to plaintiff's complaint) make clear that plaintiff did not suffer any negative consequences. Rather, plaintiff was simply told that "[a]ny further incidents of this nature may result in disciplinary action." (ECF No. 8-3 at 8-9 (emphasis added).)

suffered an adverse employment action, the complaint utterly fails to "give plausible support to a minimal inference of discriminatory motivation" behind such action. Littlejohn, 795 F.3d at 311. This too requires dismissal.

"An inference of discrimination can arise from circumstances including, but not limited to, '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 . . . .'" Id. at 312 (quoting Leibowitz v. Cornell Univ., 584 F.3d 487, 502 (2d Cir. 2009)). Despite her conclusory allegations, nothing in plaintiff's complaint alludes to any direct racial or national origin component to any of defendant's actions. For example, while plaintiff takes issue with various things said by Ms. Corse, she "does not allege the use of any ethnically degrading language or invidious comments about other employees in [p]laintiff's classification." Opoku, 2016 WL 5720807 at *8; Cf. O'Diah v. Yogo Oasis, 954 F. Supp. 2d 261, 272 (S.D.N.Y. 2013) (finding sufficient facts to support an inference of discrimination where there was evidence that a supervisor "made numerous discriminatory remarks concerning [the plaintiff's] race and national origin throughout his employment" including "that 'You Nigerians cant's be trusted'"). Nor does plaintiff supply any allegations that would justify an inference that certain facially neutral

comments made by Ms. Corse were actually related to plaintiff's protected characteristics.[8] See id.

In short, plaintiff's conclusory allegations fail to state a claim for discrimination under Title VII. See Gertskis v. EEOC, No. 11-CV-5830, 2013 WL 1148924, at *8 (S.D.N.Y. Mar. 20, 2013), aff'd sub nom. Gertskis v. EEOC, 594 F. App'x 719 (2d Cir. 2014) (collecting cases finding that the plaintiff's Title VII claims failed because they were conclusory and devoid of factual content creating a plausible inference of any discriminatory conduct").[9]

B. Plaintiff's Retaliation Claim

For the purpose of this motion, defendant also assumes "that plaintiff's internal EEO complaint filed on December 8, 2015 constituted 'protected activity' under Title VII." (Mem. in Supp. at 22.) Nevertheless, defendant argues that "plaintiff fails to plead that, subsequent to filing that internal EEO complaint she suffered a 'materially adverse' action or that the matters about which she complains were causally linked to her internal EEO complaint." (Id.) Again, the Court agrees.

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[8] Plaintiff also does not allege any facts supporting discrimination based on disparate disciplinary treatment.

[9] In addition, plaintiff's claims relating to any alleged discriminatory actions that took place before March 14, 2015, are barred by the applicable three hundred day statute of limitations. See 42 U.S.C. section 200e-5; Littlejohn, 795 F.3d at 322 ("The complainant must file the complaint with the relevant agency 'within 300 days of the alleged discriminatory conduct . . . .'" (citation omitted)).

As discussed in the Factual Background above, the following events are the only matters about which plaintiff arguably complains that occurred after December 8, 2015:

> ** On December 22, 2015, Ms. Corse sent the entire office a "Seasons Greeting" email that stated, inter alia, "I hope to see you in the coming year!!!!!!!!!!!!" (ECF No. 8-6 at 9-10.);
> ** On December 29, 2015, Ms. Corse allegedly exhibited "odd and inappropriate" behavior when she spoke about deficiencies in the office's software near plaintiff's work space and then also informed the staff in that area that she would be taking some time off in March (see ECF No. 8-1 at 2);
> ** On January 5, 2016, Ms. Corse denied plaintiff's leave request made on January 4 and reminded plaintiff that leave is to be requested seven days in advance (see ECF No. 8-1 at 4); and
> ** On January 21, 2016, Ms. Corse denied plaintiff's leave request (corresponding to the time plaintiff was absent on January 15 when she came into work late due to sickness) (see ECF No. 8-1 at 4). Plaintiff's request was then subsequently approved. (Id.)

In the context of a Title VII retaliation claim, an adverse employment action is one that is "materially adverse to a reasonable employee or job applicant," and must be "harmful to the point that [it]

could well dissuade a reasonable worker from making or supporting a chard of discrimination." Hicks, 593 F.3d at 165 (quoting Burlington Northern & Santa Fe Ry. v. White, 548 U.S. 53, 57 (2006)). "This definition covers a broader range of conduct than does the adverse-action standard for claims of discrimination under Title VII: '[T]he antiretaliation provision, unlike the substantive [discrimination] provision, is not limited to discriminatory actions that affect the terms and conditions of employment." Vega, 801 F.3d at 90 (quoting Burlington, 548 U.S. at 64) (alterations in original).

The Court finds that the matters that plaintiff has complained of, as described above, do not meet even this more relaxed definition of an adverse action.[10] At its core, plaintiff's complaint centers on disagreements and personality conflicts with her co-workers. But as the Second Circuit has explained, "[p]ersonality conflicts at work that generate antipathy and snubbing by supervisors and co-workers are not actionable." Tepperwien v. Entergy Nuclear Operations, Inc., 663 F.3d 556, 571 (2d Cir. 2011) (quoting Burlington, 548 U.S. AT 68). As the Supreme Court explained in Burlington, Title VII does not set forth "a general civility code for the American workplace." 548 U.S. at 68.

Even if plaintiff's allegations regarding, inter alia, the denial of her leave requests on January 5 and January 21, 216, could arguably represent adverse

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[10] The Court notes that plaintiff's January 21, 2016 request for leave was ultimately approved.

actions, plaintiff has failed to plausibly plead a connection between these acts (as well as the other acts of which she complains) and the filing of her December 8, 2015, internal EEO complaint (i.e. plaintiff's protected activity). See Vega, 801 F.3d at 90. "Unlike Title VII discrimination claims . . . for an adverse retaliatory action to be 'because' a plaintiff made a charge, the plaintiff must plausibly allege that the retaliation was a 'but-for' cause of the employer's adverse action." Id. "It is not enough that retaliation was a 'substantial' or 'motivating' factor in the employer's decision." Id. at 90-91. Plaintiff has not plausibly supported the required causal connection.[11]

IV. CONCLUSION

For the aforementioned reasons, defendant's motion to dismiss is GRANTED and plaintiff's amended complaint is dismissed. Pursuant to 28 U.S.C. section 1915(a)(3), any appeal from this Order would not be taken in good faith and therefore in

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[11] Plaintiff's complaint does not appear to allege a hostile work environment claim under Title VII. Even if plaintiff's complaint could be read to allege such a claim, plaintiff has not plausibley supported a hostile work environment claim. Specifically, the allegations in plaintiff's complaint, accepted as true, do not contain facts that would tend to show that the complained of conduct was "objectively severe or pervasive – that is . . . creates an environment that a reasonable person would find hostile or abusive." Patane v. Clark, 508 F.3d 106, 113 (2d Cir.2007) (per curiam) (quoting Gregory v. Daly, 243 F.3d 687, 691-92 (2d Cir. 2001); see also Littlejohn, 795 F.3d at 321. Nor has plaintiff plead that any possible hostile work environment was caused by animus towards her as a result of her membership in a protected class. See Gregory, 243 F.3d at 692.

forma pauperis status is denied for the purpose of any appeal. Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

The clerk of Court is directed to terminate the motions at ECF Nos. 10 and 23 and is directed to terminate this action.

SO ORDERED.

Dated: New York, New York
March 13, 2017

Signature
KATHERINE B. FORREST
United States District Judge

CC:
Jinae Rasko
342 West 71st St., #2A3
New York, NY 10023

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 3rd day of July, two thousand eighteen.

Jinae Rasko,

Plaintiff – Appellant,

ORDER
Docket No:
17-967

v.

New York City Administration
for Children's Services,

Defendant – Appellee.

Appellant, Jinae Rasko, filed a petition for panel rehearing, or in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

Rasko's report to Corse **via email on 9/24/2015**

From: Rasko, Jinae (ACS)
Sent: Thursday, September 24, 2015 2;20 PM
To: Corse, Sharon (ACS)
Cc: Fonah, Fatimata (ACS)
Subject: work distribution and unprofessional behavior

Good afternoon Sharon,

[1] I am reporting an incident that occurred on Friday, 9/18/2015.

In the morning Fatimata brought me documents, said to me "I give you twelve (12), okay?" I asked, "How many do we have?" She said 38. J: "Why 12? Give me my portion."

I observed she was looking at documents piled up on my desk; I said, "Everybody is working differently." Those were documents already researched. I scanned them, but came out blank; I could not index, so they were on my desk. And sometimes, I just do research, research; later I scan and index. Consequently,. on those occasions, my desk is full of documents. Documents piled up or not on my desk, that is my concern (none of Fatimata's business).

Fatimata went back to her cubicle with documents. J: "Why are you doing this?" This is not the first time Fatimata doing this; but, this is the first time I said, "Why are you doing this?" (Previously, I said, "Give me my portion." No other words – we continued to work.)

Fatimata violently reacted. She shouted angrily: "Let go, let it go, okay? Let go, okay?" She was standing, shouting, enraged.

I responded in a consciously normal (neither loud nor angry) tone: "You raised the issue, not I. Don't do it again." Now she shouted in a more enraged tone: "What you gonna do, what you gonna do?" (I could not believe what I was hearing – an immature teenage street gangster talk.) I calmly responded: "Nothing. I'll say Give me my portion."

Fatimata brought the documents back to my desk – VPA and Notice of Entry. I finished researching VPA. While straightening VPA documents for scanning, I happened to look at the documents; the volume looked almost the same, not any more than when Fatimata brought them first time. I counted; they were 12 (not 19). Fatimata did not give me my portion of work.

While scanning the VPA, I said to her; "Fatimata, I thought you gave me my portion; they are still 12." She asked; "Are they the documents for today?" J: "Yes." It cannot be mistaken; the other documents (piled up on my desk) were already researched. She took the Notice of Entry documents on my desk back again The VPA scanning was finished; I got back to my desk, counted the documents. This time Fatimata gave me my portion.

Now I am not sure Fatimata gave me my portion previously; I never looked or counted. I just assumed she gave me my portion after I said, "give me my portion." This was the first time I looked and counted.

After lunch, Fatimata brought some documents. She threw them over the documents on my desk, demonstrating her anger. I ignored, just continued to work. I did not utter a word. But in my mind, I talked to her: "Fatimata, your behavior is too low. You should not be working in an office. I pity you."

[2] Another previous noticeable commotion took place before UCMS Court Order work. When many hospitalization cases coming in, court documents were piled up on my desk. Commotion occurred in one of those days; there were more documents on my desk than on her desk. In the morning, Fatimata came to my desk and said: "Give me your documents." I said: "No."

She was all fired up and shouted: "Give it to me." I said: "No, when you have little or no work and I have much, then, I will give you. Now you have much enough work on your desk. Why you want my work? I will not give you." She was just angry, angry, yelling, "Give it to me." What got into her? I have no clue.

Not even once I consented to Fatimata's uneven distribution. All the time when it happened, I was annoyed; but I didn't say a word other than "Give me my portion." I expected that she will stop uneven distribution because every time I made my point clear – work distribution should be even. A couple of times I reiterated: "The rule is simple and clear; work is to be divided evenly." When I have two cases, I give "one" to Fatimata, saying that "we have two – one for you, one for me." I do this, expecting Fatimata doing the same. When there are a few cases, Fatimata wants to

keep them to herself, saying "We have 3 (or 5), I'll do it."

It does not make any sense that she keeps doing it; even now, when we have UCMS court order processing work. We have plenty of work all the time. Should anyone get angry over the matter, it is supposed to be "I," not "she." Yet she is the one getting angry and yelling. Office was quiet; everybody could hear her shouting in anger; I've been working here for a year and three months. I have not seen or observed any commotion in other than our unit. In other units, loud talking or laughing once in a while, yes; but no commotion. I feel so shamed – ridiculous commotion taking place where I work. Never in my whole life, I encountered such shockingly low behavior at work – cheating in work distribution, throwing documents, street gangster talk, and yelling in the office where all other staff are working quietly.

The whole thing is so silly and ridiculous – commotion over a simple and clear matter: divide work evenly. Should it happen again, I will report.

Jinae Rasko

Probation Note given to Rasko on **10/23/2015**

AKMINISTRATION FOR CHILDREN'S SERVICES
SUPERVISORY CONFERENCE MEMORANDUM

October 23, 2015

Employee's Name: Jinae Rasko
Title: Staff Analyst I Reference#: 0491020
Work Location: 150 William Street, 5th fl.
New York, NY 10038

On October 23, 2015 I met with you to discuss the email that I received from you on Thursday, September 24, 2015 regarding interactions between you and your co-worker Fatimata Fonah. This conference is also to follow-up the meetings that I had with both of you on Monday, September 28, 2015 with regards to the referenced email.

Specifically, (See attached document)

Your behavior clearly indicates incompetence and/or misconduct and severely undermines the effectiveness of the Agency.

I served a copy of this document on October 23, 2015.

Sharon Corse, Director	*Signature*
Print supervisor's Name and Title	Supervisor's signature

I have read this statement and received a copy. I understand that my acceptance of this copy does not indicate that I agree with the statement herein, and that I have the right to submit a reply in writing for my files, if I so choose.

Signature — Employee's Signature
10/23/2015 — Date

Although I gave the employee a copy of this memorandum on (date), (s)he refused to sign the above statement.

left BLANK — Supervisor's Signature
left BLANK — Date

Informal Conference
October 23, 2015
Employee: Jinae Rasko

On Thursday, September 24, 2015 I received an email from you alerting me to two incidents that you stated occurred on Friday, September 18, 2015 and on another day in which the date is unspecified. You were documenting tension between you and your co-worker Fatimata Fonah. I also noted that you included Ms. Fonah as a cc on that email.

On Monday, September 28, 2015, Ms. Fonah returned from her vacation and I met with you and Ms. Fonah

separately and then I met with both of you together to further discuss the issues and attempt to arrive at a mutual understanding and resolution. Additionally, during our meeting with the three of us, I pointed out to you that your choice of words was inflammatory and unacceptable. I further indicated that such language amounted to name calling and that such harsh words could not be tolerated.

This conference is with regard to the language that you chose to use in your email. Specifically, you referred to her as demonstrating "Immature teenage street gangster talk" and that her "behavior is too low." "You should not be working in an office" and "I pity you."

As of today, you will have 30 days to illustrate that you understand the need for verbal restraint and better office decorum. Any further incidents of this nature may result in disciplinary action.

Apology Directive given to Rasko on **11/2/2015**

AKMINISTRATION FOR CHILDREN'S SERVICES
SUPERVISORY CONFERENCE MEMORANDUM

November 2, 2015

Employee's Name: Jinae Rasko
Title: Staff Analyst I Reference#: 0491020
Work Location: 150 William Street, 5th fl.
New York, NY 10038

On October 23, 2015 I met with you to discuss the email that I received from you on Thursday, September 24, 2015 regarding interactions between you and your co-worker Fatimata Fonah. This conference is also to follow-up the meetings that I had with both of you on Monday, September 28, 2015 with regards to the referenced email.

This conference is a follow-up whereby a remedy is being sought to resolve the matter.

Specifically, (See attached document)

Your behavior clearly indicates incompetence and/or misconduct and severely undermines the effectiveness of the Agency.

I served a copy of this document on November 2, 2015.

Sharon Corse, Director — *Signature*
Print supervisor's Name and Title — Supervisor's signature

I have read this statement and received a copy. I understand that a copy is being placed in my personnel files. I further understand that my acceptance of this copy does not indicate that I agree with the statement herein, and that I have the right to submit a reply in writing for my files, if I so choose.

Signature	*11/2/2015*
Employee's Signature	Date

Although I gave the employee a copy of this memorandum on (date), (s)he refused to sign the above statement.

left BLANK	*left BLANK*
Supervisor's Signature	Date

Informal Conference
November 2, 2015
Employee: Jinae Rasko

On Thursday, September 24, 2015 I received an email from you alerting me to two incidents that you stated occurred on Friday, September 18, 2015 and on another day in which the date is unspecified. You were documenting tension between you and your co-worker Fatimata Fonah. I also noted that you included Ms. Fonah as a cc on that email.

On Monday, September 28, 2015, Ms. Fonah returned from her vacation and I met with you and Ms. Fonah

separately so that I could get a better understanding of each of your perspectives and then I met with both of you together to further discuss the issues and attempt to arrive at a mutual understanding and resolution. Additionally, during our meeting with the three of us, I pointed out to you that your choice of words was inflammatory and unacceptable. I further indicated that such language amounted to name calling and that such harsh words could not be tolerated.

This conference is with regard to the language that you chose to use in your email. Specifically, you referred to her as demonstrating "Immature teenage street gangster talk" and that her "behavior is too low." "You should not be working in an office" and "I pity you."

As of today, you will have 30 days to illustrate that you understand the need for verbal restraint and better office decorum. Any further incidents of this nature may result in disciplinary action.

November 2, 2015

- In efforts to resolve this matter, you will send a written apology to Fatimata Fonah specifically referring to the memo dated September 24, 2015. You do not need to repeat the contents of the email, merely refer to the date and language used in breach of the ACS Code of Conduct.

- You will refamiliarize yourself with the ACS Code of Conduct provided to you when you joined ACS/FCLS.

Corse's email urging Rasko *to follow up the* ***Apology Directive*** on **11/4/2015**

From: Corse, Sharon (ACS)
Sent: Wednesday, November 04, 2015 12;16 PM
To: Rasko, Jinae (ACS)
Subject: Follow up to Informal Conference - October 23, 2015 on November 2, 2015
Attachments: Jinae Rasko – Informal Conference Follow up 11.2.2015.pdf

Jinae,

Kindly follow the directive given on Monday. See attachment.

Corse's email stating Rasko's Leave Request is ***not*** in line with Policy on **1/5/2016**

From: Corse, Sharon (ACS)
Sent: Tuesday, January 05, 2016 12:37PM
To: Rasko, Jinae (ACS)
Subject: RE: Request for Leave of Absence on 1/5/2016
Attachments: Jinae Rasko – Informal Conference Follow up 11.2.2015.pdf

Hello Jinae,

Is this a planned appointment? Please realize that *planned leave* is to be requested 7 days via CityTime in advance of taking the leave. An email should be sent requesting the time when the request is less than 7 days in advance. One day before or same day email about leaving is not in line with the ACS time and leave policies and procedures.

Signature (of Sharon Corse)
Computer Systems Manager
Director, Court Document Imaging System
LTS Trainer and System Administrator
150 William Street
New York, NY 10038
Office: (212) 341-0739
Cell: (347) 415-7885
Fax: (212) 676-8678

From: Rasko, Jinae (ACS)
Sent: Monday, January 04, 2016 2:24 PM
To: Corse, Sharon(ACS)
Subject: Request for Leave of Absence on 1/5/2016

Good afternoon Sharon,

Tomorrow (1/5/2016) I need to leave early for doctor's appointment.
I can work until 1:30 pm.

Jinae

Timesheet approved on **1/20/2016**

Timesheet Entry

My Timesheet **1/10/2016 - 1/16/2016**

Request id: 185304397 – Status **submitted**

Enter Time Labor Allocation Timesheet History

Time

	Thu 1/14	Fri 1/15	
Time In	*blank*	12:51	
Time Out	*blank*	17:00	
Meal Start	*blank*	***11:51***	
Meal End	*blank*	***12:51***	
			Totals
Regular Hrs	09:00-17:00		35:00
Meal Duration	01:00		05:00
Flex Time	*08:00-09:00*		
Approved Leave	***09:00-17:00***	***09:00-11:30*** ***11:30-11:51***	*** 09:45**

Timesheet disapproved on **1/21/2016**

CityTime

Disapproved Items

Includes all items disapproved within the last month.
M – Indicates Item was modified by someoneelse.

Records 1-2 of 2

Request Type	Request ID	Start Date	End Date	Total Hours
Leave Request	165193950	1/15/16	1/15/16	**02:30**
Leave Request	165193951	1/15/16	1/15/16	**00:15**

Date Submitted	Date Disapproved	Type
01/19/2016	**01/21/2016**	**SICK LEAVE**
01/19/2016	**01/21/2016**	**ANNUAL LEAVE**

Validation Status	Agency Specific Code 1	Details
Valid		Details
Valid		Details

Timesheet revised and approved on **1/21/2016**

Timesheet Entry

My Timesheet **1/10/2016 - 1/16/2016**

Request id: 185304397 – Status **Approved Final**

Enter Time Labor Allocation Timesheet History

Time

	Thu 1/14	Fri 1/15	
Time In	*blank*	12:51	
Time Out	*blank*	17:00	
Meal Start	*blank*	***12:00***	
Meal End	*blank*	***13:00***	
			Totals
Regular Hrs	09:00-17:00		35:00
Meal Duration	01:00		05:00
Flex Time	*08:00-09:00*		
Approved Leave	***09:00-17:00***	***09:00-12:00***	*** 10:00**

Fonah's "***snoring loud***" reported to ACS EEO Investigator Myra Garcia on **3/31/2016** (First Amended Complaint Page 14-15)

3/31/2016

Ms. Garcia asked me, "How do you get along with Ms. Fonah?" I shrugged. I complained that Ms. Fonah is snoring too loud, sleeping a lot at work. Ms. Garcia responded, "snoring?" in a raised voice. I said, "Yes."

. . . . Ms. Fonah continues to snore, sleeping a lot at work. It was 10:10 am on 7/12/2016. I heard Ms. Fonah snoring loud. I said to myself: Oh, no. It cannot be. I just saw her drinking tea.

I turned around to see Ms. Fonah leaning back on chair, eyes closed, mouth open, snoring. I could not believe. Around 10:00 am on my way back to my seat from I do not remember "where," I saw her drinking tea. Within a few minutes she fell asleep so deep, snoring so loud; it is hard to believe. I made some noise; she continues to snore. I turned radio really loud which made her wake up. She said in a loud voice: *It's too loud.* I responded: *You are snoring so loud and so often.*

A couple of days later, I finished eating lunch around 1:30 pm. I tried to rest. I could not; Ms. Fonah had been snoring for about 40 minutes or so. She fell asleep before 1:00 pm. I hoped the noise I was making, eating lunch, wake her up. Loud snoring continued; it was impossible for me to rest. I turned the radio really loud; it woke her up. This time she did not say

anything; she just left her seat. I never had this kind of problem at work.

Fonah's "***excessive phone talk***" on November 16-18 in 2016 ***Documented*** (Plaintiff's Reply to Defendant's Motion to Dismiss Page 45-46)

For the purpose of telling how ***severely*** Plaintiff is suffering ***co-worker's harassment*** every day at work, Plaintiff documented Ms. Fonah's daily activities for three days: November 16, 2016; November 17, 2016; November 18, 2016.

On November 16, 2016 Ms. Fonah was on her cell phone for a bit more than an hour, **11:50 am - 12:54 pm**. Office phone rang; Ms. Fonah was again on the phone for about 24 minutes, **12:55 pm - 1: 19 pm**. Now it was lunch time. A routine noise started – eating, tearing paper, squashing paper or plastic bag, rummaging, opening and closing the drawer again and again, flipping magazine or newspaper, etc. It is unbelievable how there can be so much hustle bustle constantly. Office phone rang at 2:21 pm; Ms. Fonah's phone talk continued until 3:11 pm. That was a fifty-minute talk (**2:21 pm - 3: 11 pm**). Office phone rang again at 3:37 pm; Ms. Fonah's phone talk continued until around 3:50 pm – relatively a short phone talk (**3:37 pm - 3:50 pm**). Ms. Fonah voiced loudly "woo, woo," "aah, aah," "wooo, wooo." Plaintiff turned around and saw Ms. Fonah was standing and stretching out her hands up and down while voicing "woo, woo," "aah, aah," "wooo, wooo." It was obvious that Ms. Fonah was very upset, likely because of what

she heard from the person who called her. Ms. Fonah was **dialing the office phone** when Plaintiff was leaving the office at **4:00 pm.**

On November 17, 2016, Ms. Fonah got on the phone **around 9:30 am**; until **around 1:20 am** she was on the phone (*almost four hours on the phone* – a very long talk). As Plaintiff turned the radio volume up, Ms. Fonah talked louder. Around 12:20 pm, Plaintiff heard Ms. Fonah laughing; Plaintiff turned around and said "*loudly*," "Are you done?" Ms. Fonah said, "Are you talking to me?" Plaintiff said loudly "*yeah*." Plaintiff was hoping Ms. Fonah ends the phone talk; nevertheless, for another one hour Ms. Fonah's talking continued.

Another phone talk was relatively short, only 28 minutes (**2:47 pm – 3:15 pm**). Ms. Fonah was on the phone again at around 4:00 pm; she was still on the phone when Plaintiff was leaving the office at **4:26 pm**. (*Five hours or more Ms. Fonah was on the phone in one day*; incredible!! It is like "being at work is being on the phone.")

On November 18, 2016, since clocking in, Ms. Fonah was on the phone all morning. For about an hour it was quiet; it seemed Ms. Fonah worked from11:30 am to 12:30 pm. At about 12:35 pm Ms. Fonah said loudly "I am on lunch." Plaintiff turned around, saw Ms. Fonah leaving the office. Ms. Fonah came back from lunch at 2:24 pm – almost two-hour lunch break. As usual she started eating lunch and got on the phone while her monitor was on. Ms. Fonah was on the phone when Plaintiff was leaving the office

at 4:00 pm. Plaintiff is suffering much at work. Imagine you are at work; some is talking, talking, talking and making noise *all day long* and *you cannot avoid hearing it.*

Fonah's "***LOUD phone talk***" documented on **11/17/2015** (Plaintiff's Reply to Defendant's Motion to Dismiss Page 12-13)

Even after Plaintiff complained in the presence of Ms. Corse, Ms. Fonah continues her excessive loud phone talk. This behavior shouts: *Yeah, I talk loud. So what you gonna do, Sharon will not punish me.* On November 17, 2015, Plaintiff was on the phone, talking with a union representative, Mr. John Mazzarella. It was not long after 3:00 pm Ms. Fonah had been on the phone. Plaintiff said to Mr. Mazzarella: Do you hear her? She is always like that. He said, "No, I can't." So, Plaintiff took the phone receiver away from her ear, positioned it in the direction to Ms. Fonah's cubicle. He said, "Yes, I hear now." Plaintiff let him hear for a minute or so. When a person on the other side of Plaintiff's phone can hear Ms. Fonah talking on the phone, her voice is too loud – loud enough to disturb the work, to annoy Plaintiff. The phone receiver Plaintiff did not position into Ms. Fonah's cubicle, just took it away from her ear; Plaintiff was sitting on her chair. When Plaintiff was leaving the office at 4:00 pm, Ms. Fonah was still on the phone.

COVERT discrimination: *Corse* ***not*** *designating Rasko as s staff in charge* (Oct. **2016**) (Plaintiff's Reply to Defendant's Motion to Dismiss Page 5-6)

Ongoing: ***Covert/Hidden discriminations against Plaintiff***

In the First Amended Complaint, Plaintiff pleaded both ***overt/obvious discriminations*** and ***covert/hidden discriminations***. Only *overt/obvious discriminations* Defendant discussed in the motion to dismiss; *covert/hidden discriminations Defendant did not even answer. Covert/hidden discriminations* are the discriminations which manifest Ms. Corse's ***ongoing*** *deeply-rooted* ***"discriminatory animus"*** *against Plaintiff.* Plaintiff is constantly suffering Defendant's discrimination against her.

One example is that Ms. Corse would not designate Plaintiff as a staff in charge. Ms. Gwyn Wilson was the staff in Manhattan scanning unit. She left scanning unit to take a promotion position in June 2014. Plaintiff was put in Manhattan scanning unit to do the work Ms. Wilson was doing. Ms. Wilson is "Black"; Ms. Corse had no problem designating Ms. Wilson as a staff in charge.

Either Ms. Fonah or Plaintiff is supposed to be designated as the staff in charge in Manhattan scanning unit. Had Ms. Fonah been working in scanning unit longer than Plaintiff and possessing a higher title than Plaintiff's, Ms. Corse would designate Ms. Fonah as a staff in charge. Plaintiff had

been working in scanning unit longer than Ms. Fonah and possessing a higher title than Ms. Fonah's. Ms. Fonah's civil service title is *Child Welfare Specialist,* Plaintiff's *Staff Analyst.* Ms. Corse *would not designate Plaintiff as a staff in charge,* because Plaintiff is "*not Black.*" Manhattan is the only scanning unit which has no designated staff in charge. This fact alone ***testifies*** clearly and loudly to *Ms. Corse's ongoing deeply-rooted discriminatory animus against Plaintiff.*

Designating a staff in charge helps the efficiency (and convenience) at work more for supervisor than for workers. Ms. Corse would rather tolerate the inefficiency (and inconvenience) than designate Plaintiff as a staff in charge. For instance, during Manhattan scanning unit staff meeting on October 12, 2016, Ms. Corse wanted an email regarding the stamp machine problem to be sent to her. She said, looking at both Ms. Fonah and Plaintiff, "either of you send me an email." Had a staff in charge been designated, Ms. Corse would not need to say, "either of you send me an email," because usually it is done by the staff in charge. Since Plaintiff started working with Ms. Fonah in July 2014, whenever issues arise, Ms. Corse says "either of you" toward both Ms. Fonah and Plaintiff, while directing what to be done. These occasions are numerous and continuous, because things are happening at work all the time.

In the notice of the October 12, 2016 staff meeting, there is Ms. Corse's directive "prepare a written agenda." A written agenda was not prepared;

neither Ms. Fonah nor Plaintiff did prepare. In the beginning of meeting, Ms. Corse asked for a written agenda. Seeing that it was not prepared, she said, "a written agenda must be prepared for a meeting." Had a staff in charge been designated, it is likely that a written agenda was prepared. How inefficient or inconvenient "not designating a staff in charge" may be, Ms. Corse would not designate Plaintiff as a staff in charge, because Plaintiff is not Black. ***But for*** Ms. Corse's ***discriminatory animus*** against Plaintiff because Plaintiff is not Black, Ms. Corse would have designated Plaintiff as the staff in charge in Manhattan scanning unit.

COVERT discrimination: *Corse* ***lashing out*** at Rasko on 3/3/2016 (Plaintiff's Reply to Defendant's Motion to Dismiss Page 31)

On March 3, 2016, **Ms. Corse lashed out at Rasko during meeting.** Ms. Corse held All Borough scanning unit staff meeting. Plaintiff addressed the issue that some UCMS court orders the ACS received electronically, cannot be scanned electronically. Not right away, but a few minutes later, Ms. Corse *lashed out in an icy cold, full of hatred tone*: "It has nothing to do with spreadsheet." Ms. Corse was not toward Plaintiff, but Plaintiff knew the lashing out was at her; no one else raised any issue then. ***That lashing out*** manifests Ms. Corse's ***discriminatory animus*** against plaintiff, which only Plaintiff knows and feels – ***cover/hidden discrimination***. ***But for*** Ms. Corse's ***discriminatory animus*** against Plaintiff because Plaintiff is not Black and Ms. Corse's ***desire to***

retaliate Plaintiff's EEO complaint, Ms. Corse would not have lashed out at Plaintiff.

Upon returning from the meeting, Plaintiff said to Ms. Fonah: I did not mention a word about spreadsheet. Sharon lashed out "It has nothing to do with spreadsheet." What was that? Ms. Fonah responded: Oh, she's just showing off, she is showing off she is the boss.

Corse's email: ***cold*** and ***unkind*** *words on* 9/13/**2010** upon *Rasko's upcoming interview*

From: Corse, Sharon (ACS)
Sent: Monday, September 13, 2010 4:00 PM
To: Rasko, Jinae (ACS)
Subject: RE: Interview

Okay, let me rephrase the question. Are you attempting to get out of the scanning unit?

Sharon L. Corse, CSM
Director, FCLS Court Document Imaging System
LTS Trainer
150 William Street, 15th floor
New York, NY 10038
Phone: (212) 341-0739
Cell: (347) 415-7885
Fax: (212) 341-2679

From: Rasko, Jinae (ACS)
Sent: Monday, September 13, 2010 3:38 PM
To: Corse, Sharon (ACS)
Subject: RE: Interview

Sure, I have an interview at 150 William Street.

From: Corse, Sharon (ACS)
Sent: Monday, September 13, 2010 3:37PM
To: Rasko, Jinae (ACS)
Subject: RE: Interview

May I inquire? Are you interviewing for a different employment option?

Sharon L. Corse, CSM
Director, FCLS Court Document Imaging System
LTS Trainer
150 William Street, 15th floor
New York, NY 10038
Phone: (212) 341-0739
Cell: (347) 415-7885
Fax: (212) 341-2679

From: Rasko, Jinae (ACS)
Sent: Monday, September 13, 2010 3:30 PM
To: Corse, Sharon (ACS)
Subject: Interview

Good afternoon Sharon,

I have an interview at 10:30 AM Wednesday, September 15, 2010. I will come to the office after the interview and work for the rest of the day.

Jinae