APPENDIX

UNITED STATES COURT 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 4th day of November, two thousand nineteen.

PRESENT:

ROBERT A. KATZMANN,
Chief Judge,
CHRISTOPHER F. DRONEY,
Circuit Judge,
JEFFREY ALKER MEYER,
District Judge. *

Ren Yuan Deng,

Plaintiff-Appellant,

v. 18-2411

New York State Office of Mental Health, Molly Finnerty, Emily Leckman-Westin, Lynn Heath, Barbara Forte, Paul Connelly, and Michael Hogen,

Defendants-Appellees.

FOR PLAINTIFF-APPELLANT: Ren Yuan Deng, *pro se*, New York, N.Y.

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* Judge Jeffrey Alker Meyer, of the United States District Court for the District of Connecticut, sitting by designation.

FOR DEFENDANTS-APPELLEES: Mark S. Grube, New York State Office of the Attorney General, New York, N.Y.

Appeal from an order of the United States District Court for the Southern District of New York (Carter, *J.*).

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

Appellant Ren Yuan Deng, proceeding *pro se*, appeals the district court's order denying her Fed. R. Civ. P. 60(b) motion for reconsideration of its order granting summary judgment in favor of the defendants. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

I. Jurisdiction

Although Deng purports to appeal from both the district court's denial of her Rule 60(b) motion and its underlying order granting summary judgment, we do not have jurisdiction over the appeal of the underlying judgment. "[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement." *Bowles v. Russell*, 551 U.S. 205, 214 (2007). A notice of appeal "must be filed with the district clerk within 30 days after entry of the judgment or order appealed from." Fed. R. App. P. 4(a)(1)(A) (30-day deadline where neither party is the federal government); 28 U.S.C. § 2107(a). The time to file a notice of appeal is tolled during the pendency of a Rule 60 motion if that motion is filed no later than 28 days after the judgment is entered. Fed. R. App. P. 4(a)(4)(A)(vi). Deng's notice of appeal was timely only as to the Rule 60(b) denial. And her Rule 60(b) motion was not filed within 28 days of the district court's order granting the defendants' motion for summary judgment, so the time to appeal the judgment was not tolled. *See id.*; *Phillips v. Corbin*, 132 F.3d 867, 868–69 (2d Cir. 1998) (per curiam) (noting

that a Rule 60(b) motion will toll the time to appeal only if it is filed within the time specified in Rule 4(a)).

Deng's motions to extend the time to file her Rule 60(b) motion do not alter that outcome because those motions are not one of the specified motions in Fed. R. App. P. 4(a)(5) and (6). *See Cyrus v. City of New York*, 450 F. App'x 24, 25 (2d Cir. 2011) (summary order); *cf. Glinka v. Maytag Corp.*, 90 F.3d 72, 74 (2d Cir. 1996) ("Allowing subsequent motions to repeatedly toll the filing period for a notice of appeal would encourage frivolous motions and undermine a fundamental canon of our legal system, to promote the finality of judgments."). Deng's motions to extend the time to file a Rule 60(b) motion cannot be construed as notices of appeal (or requests to extend the time to appeal), because nothing in those motions demonstrated an intent to appeal. *See Haugen v. Nassau Cty. Dep't of Social Servs.*, 171 F.3d 136, 138 (2d Cir. 1999) (per curiam) (finding that a document "must specifically indicate the litigant's intent to seek appellate review" to be construed as an effective notice of appeal (internal quotation marks omitted)). Finally, the savings clause of Rule 60 has no bearing on this jurisdictional analysis, because it does not pertain to the timeliness of an appeal from the underlying judgment. *See* Fed. R. Civ. P. 60(d). We thus lack jurisdiction over the district court's grant of summary judgment in favor of the defendants and proceed to review only the order denying Deng's Rule 60(b) motion.

II. Denial of Rule 60(b) Motion

We review the denial of a Rule 60(b) motion for abuse of discretion. *Gomez v. City of New York*, 805 F.3d 419, 423 (2d Cir. 2015) (per curiam). "A district court is said to abuse its discretion if it bases its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence[.]" *Id.* (internal quotation marks omitted). Rule 60(b) is "a mechanism for

'extraordinary judicial relief' invoked only if the moving party demonstrates 'exceptional circumstances.'" *Ruotolo v. City of New York*, 514 F.3d 184, 191 (2d Cir. 2008) (quoting *Paddington Partners v. Bouchard*, 34 F.3d 1132, 1142 (2d Cir. 1994)). A Rule 60(b) motion "cannot serve as an attempt to relitigate the merits." *Fleming v. N.Y. Univ.*, 865 F.2d 478, 484 (2d Cir. 1989); *see Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995).

Specifically, Rule 60(b)(3) allows vacatur of a judgment based on "fraud . . ., misrepresentation, or misconduct by an opposing party." Fed. R. Civ. P. 60(b)(3). The movant must establish such fraud by clear and convincing evidence. *Fleming*, 865 F.2d at 484 (finding district court did not abuse its discretion in denying Rule 60(b)(3) motion where that motion was a "mixed bag, including some items of little probative value and others that might have given pause if submitted earlier in opposition to the summary judgment motion"). Further, the movant "must show that the conduct complained of prevented the moving party from fully and fairly presenting his case." *State St. Bank & Tr. Co. v. Inversiones Errazuriz Limitada*, 374 F.3d 158, 176 (2d Cir. 2004) (internal quotation marks omitted).

Here, Deng's Rule 60(b) motion mostly recharacterizes arguments made in her opposition to summary judgment as instances of "fraud." Even if the specific examples of omissions and contradictions cited by Deng in her motion constituted fraud, misrepresentation, or misconduct by the defendants, Deng failed to show that she was prevented from fully and fairly litigating her case. And her Rule 60(b) motion overall attempts to relitigate her summary judgment motion, which is improper. *See Schrader*, 70 F.3d at 257. Therefore, the district court did not abuse its discretion in denying Deng's Rule 60(b) motion.

We have considered all of Deng's remaining arguments and find them to be without merit.

Accordingly, we **AFFIRM** the order of the district court.

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

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

REN YUAN DENG,	:	
	:	
Plaintiff,	:	
	:	**13-CV-6801 (ALC)**
-against-	:	
	:	**MEMORANDUM AND ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**
NEW YORK STATE OFFICE OF MENTAL HEALTH, et al.,	:	
	:	
Defendants.	:	

ANDREW L. CARTER, JR., United States District Judge:

Ren Yuan Deng ("Plaintiff") commenced this action *pro se* against the New York State Office of Mental Health ("OMH") and several of its employees (collectively, the "Defendants") alleging various forms of mistreatment over the course of her employment as a research scientist for them. Plaintiff claims that discrimination and retaliation motivated a number of these decisions, violating various federal constitutional and civil rights provisions. Plaintiff further claims that Defendants deducted her wages in violation of state law. After this Court dismissed all but four of Plaintiff's claims for failure to state a claim, Defendants moved for summary judgment as to the remaining claims. For the reasons that follow, Defendants' motion for summary judgment is GRANTED.

BACKGROUND

I. Factual Background

The following material facts are principally derived from the parties' Rule 56.1 statements, read in conjunction with their responses. These facts are undisputed, unless otherwise indicated.[1] Additionally, the inclusion of facts that were challenged on admissibility grounds by either party reflect a ruling that the admissibility challenge is overruled.

Plaintiff is a board-certified scientist of Chinese ancestry. Plaintiff's Rule 56.1 Statement of Undisputed Facts ("Pl's 56.1") ¶¶ 115-16.[2] OMH is a New York State agency that, among other things, operates psychiatric centers and conducts research related to treatment for psychiatric illness. Defendants' Rule 56.1 Statement of Undisputed Facts ("Defs' 56.1") ¶ 6. In 2001, the Bureau Director of OMH, Molly Finnerty, recruited Plaintiff to join OMH to work on a project under Finnerty's supervision. Pl's 56.1 ¶ 117; Defs' 56.1 ¶¶ 14-15. Plaintiff was subject to a standard three-year probation period. *Id.* ¶ 16. Her probation was not extended and she

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[1] In her Rule 56.1 Response, Plaintiff frequently asserts that her "knowledge or information sufficient to dispute" Defendants' Rule 56.1 Statement. This, however, is an improper response, and each of those facts is deemed admitted. *E.g.*, *Stepheny v. Brooklyn Hebrew Sch. for Special Children*, 356 F. Supp. 2d 248, 255 n.4 (E.D.N.Y. 2005) (citing *Delphi–Electro Elecs. Sys. v. M/V Nedlloyd Europa*, 324 F. Supp. 2d 403, 425 & n.13 (S.D.N.Y. May 5, 2004)).

[2] Defendants maintain that Plaintiff's 56.1 Response should be rejected for failure to comply with the Local Rules, largely because Plaintiff's additional material facts merely quote the pleadings in this matter, and are wholly unsupported. Defendants' Response to Plaintiff's Local Rule 56.1 Statement at 1-2 (ECF No. 155-1). However, this Court has "broad discretion . . . to overlook a party's failure to comply with local court rules," including in the context of Rule 56.1, and may comb the entire record in order to properly analyze a party's summary judgment motion. *Holtz v. Rockefeller & Co.*, 258 F.3d 62, 73 (2d Cir. 2001); *see DeRienzo v. Metropolitan Trans. Auth.*, 237 F. App'x 642, 646-47 (2d Cir. 2007) (confirming the vitality of *Holtz* rule). The Court, mindful of its obligation to disregard unsupported, conclusory factual averments at this stage, proceeds with its analysis accordingly, treating denials or partial disputes of material fact without evidentiary support or other explanation as admissions. *See, e.g.*, *Zappia Middle East Const. Co. Ltd. v. Emirate of Abu Dhabi*, 215 F.3d 247, 253 (2d Cir. 2000) (suggesting that non-moving party's conclusory allegations in its own affidavit are not sufficient to create a material issue of fact). However, the reader should note that because Plaintiff's responses to Defendants' Rule 56.1 Statement does not restate the applicable portions of Defendants' Statement, citations to Defendants' Rule 56.1 Statement should be presumed to incorporate Plaintiff's responses, where necessary. By extension, all citations to Plaintiff's Rule 56.1 Statement refer to additional evidence that Plaintiff has proffered in her 56.1 Statement, and Defendants' responses, where necessary. In addition, while Plaintiff's evidentiary submissions are voluminous and disorganized, often containing dozens of documents within one "exhibit," without clear pagination or system of sequencing, the Court has endeavored to examine Plaintiff's complete submission, and reference it as necessary.

became a permanent employee following the expiration of the three-year term. *Id.* ¶ 17.[3] Plaintiff did not apply for a promotion during her tenure at OMH. *Id.* ¶ 18.

Finnerty assigned Plaintiff to work under the supervision of Emily Leckman-Westin in the Psychiatric Services and Clinical Knowledge Enhancement System ("PSYCKES") Data Analysis Work Group, a sub-group within Finnerty's unit, in July 2010. *Id.* ¶¶ 7-8, 19. From July 21, 2010 through September 24, 2010, Plaintiff refused to work under Leckman-Westin's supervision and refused to meet with Leckman-Westin to discuss her assignment. *Id.* ¶ 20. She complained that the assignment was racially discriminatory and that she had negative experiences working with Leckman-Westin in the past. *Id.*[4] On July 23, 2010, Finnerty informed Plaintiff that she was off of the Data Analysis Work Group assignment until she agreed to meet with Leckman-Westin. Defs' 56.1 ¶ 21. Plaintiff had no other active work assignments during this time period. *Id.* ¶ 22.

Because OMH maintains possession of a large quantity of extremely confidential patient data, employees are typically authorized to access only the data they need for assignments. *Id.* ¶¶ 27-28. On July 28, 2010, Finnerty was informed that an OMH staff member reported that Plaintiff had asked questions regarding certain data files that appeared unrelated to any of

[3] Although Plaintiff claims that her probation was initially extended six months on account of a negative performance evaluation, she acknowledges that the extension was ultimately rescinded, and thus that she only served a three-year probationary period. *Id.*

[4] The record is unclear as to why. Plaintiff cites two examples, from approximately 2007 to 2009, of Leckman-Westin not granting her sufficient access to certain project folders and creating a "decoy" folder for her, as well as Finnerty's stating to her in a meeting "I don't like your method" and Leckman-Westin ridiculing Plaintiff's work as "weird" in an email. *See* Declaration of Ren Yuan Deng ("Deng Decl.") ¶¶ 17-18 (ECF No. 151). However, the materials which Plaintiff cites do not suggest that Leckman-Westin created a "decoy" folder for Plaintiff, but rather that Plaintiff may have initially had incomplete access which was subsequently broadened upon request. *See* Plaintiff's Ex. 6 (ECF No. 152-5, 152-6). In addition, Plaintiff cites no evidence for Finnerty's statement (*e.g.*, deposition testimony of witnesses to the statement), and takes Leckman-Westin's "weird" comment completely out of context. *See* Plaintiff's Ex, 6. As the email reflects, Leckman-Westin was stating, in response to Plaintiff's observation that certain subjects had gone missing from a database, that this apparent technical glitch was "weird," rather than characterizing Plaintiff's work as "weird." *Id.* And, though Plaintiff claims that these "bad work experience[s]" were "due to race", none of these facts, or the evidence cited in support, support that conclusion. *See* Deng Decl. ¶¶ 17-18.

Plaintiff's assignments. *Id.* ¶ 29. As a result, Finnerty requested that the OMH IT Department disable Plaintiff's access to the OMH IT systems until further notice. *Id.* ¶ 30. On July 29, 2010, Scot Chamberlain, the OMH Director of the Bureau of Employee Relations, emailed various individuals indicating that "[b]ased on the limited information we have it doesn't appear [Finnerty] had a basis for taking this action and it could be construed as retaliatory" in light of Plaintiff's ongoing insubordination. Plaintiff's Ex. 2 (Deng Priv. 1) (ECF No. 152). On August 6, 2010, Lynn Heath, an OMH human resources supervisor, indicated that Finnerty's removal of Plaintiff's computer access "may have been an over-reaction . . . and may appear retalitatory to an arbitrator." *Id.* (Deng Priv. 3). On September 13, 2010, Heath wrote Finnerty an email emphasizing the importance of following protocol, noting that Plaintiff "perceives that there is a history of abuse and we think that she will exhaust all of her administrative and appeal options." Plaintiff's Ex. 11 (DENG 2801) (ECF No. 152-7).

On September 24, 2010, Plaintiff informed OMH that she had decided to accept her work assignment and would meet with Leckman-Westin. Defs' 56.1 ¶ 34. From September 30, 2010 and for most of October 2010, Plaintiff was on vacation. *Id.* ¶ 35. On October 1, 2010, Heath emailed Finnerty conveying the importance of documenting Plaintiff's ongoing insubordination. Plaintiff's Ex. 10 (DENG 1411) (ECF No. 152-7).

Once Plaintiff returned to work, she met with Leckman-Westin on October 27, 2010. Defs' 56.1 ¶ 36. Heath emailed others indicating her inclination to decline to issue a Notice of Discipline ("NOD") to Plaintiff "if things have turned around." Plaintiff's Ex. 2 (Deng Priv. 12). Plaintiff was assigned to a "medication adherence" project, and on November 4, 2010, Leckman-

Westin requested that the OMH IT Department grant Plaintiff access to all of the IT systems necessary for her assignment. Defs' 56.1 ¶¶ 37-38.[5]

On November 11, 2010, Plaintiff filed charges of discrimination and retaliation with the Equal Employment Opportunity Commission ("EEOC") alleging, among other things, that OMH discriminated against her on account of her race and national origin. *Id.* ¶ 1.

On November 19, 2010, the IT Department completed restoring Plaintiff's access to all the necessary systems. *Id.* ¶ 39. On December 8, 2010, Heath emailed Finnerty following up on her counseling of Plaintiff for insubordination, and reiterated the importance of "build[ing] an appropriate record" of it, especially considering that "the only thing in [Plaintiff's] file is a nine year old probation report which indicates she is excellent." Plaintiff's Ex. 11 (DENG 2773) (ECF No. 152-7).

On January 11, 2011, Plaintiff emailed IT requesting access to data not encompassed in Leckman-Westin's initial request, to which IT responded that additional approvals were necessary. Defs' 56.1 ¶¶ 41-42. Between January and June of 2011, Plaintiff continued her work assignment with Leckman-Westin. *Id.* ¶¶ 43-47. On June 23, 2011, Plaintiff sent Leckman-Westin a draft report that Plaintiff hoped to present at an upcoming meeting, and Leckman-Westin informed her that she had feedback on the draft to discuss with Plaintiff. *Id.* ¶¶ 46-47. On or around July 2011, Plaintiff stopped responding to emails and phone calls from Leckman-Westin, and began refusing to show Leckman-Westin her work product. *Id.* ¶ 48.

On August 9, 2011, Leckman-Westin met with Plaintiff for a counseling session. *Id.* ¶ 49. During that meeting, Leckman-Westin proposed to Plaintiff that they work together to edit

[5] Though Plaintiff claims that her decrease in system access rendered her "unfit[] as [an] employee at OMH," this is not only conclusory and unsupported by any evidence other than Plaintiff's own declaration, but contradicted by Plaintiff's deposition testimony, as corroborated by Leckman-Westin, that Plaintiff was never impeded from working on any of her assignments because of lack of access to OMH IT systems. *See id.* ¶¶ 38, 40.

the report to prepare for presentation, but Plaintiff declined that proposal. *Id.* ¶¶ 50-51. Plainitff told Leckman-Westin that she was going to "disassociate" from her and would not meet with her going forward because she thought Leckman-Westin had a conflict of interest, as Leckman-Westin was a respondent in Plaintiff's EEOC complaint. *Id.* ¶ 52.[6]

On August 23, 2011, Finnerty met with Plaintiff and gave her six directives, most to the effect that Plaintiff cooperate with Leckman-Westin. *Id.* ¶ 53. Plaintiff responded by saying "I protest[,]" or other variations of that statement, and did not comply. *Id.* ¶ 54. On October 6, 2011, Finnerty delivered a written directive to Plaintiff instructing her to open her emails, attend weekly meetings, and answer phone calls, among other things. *Id.* ¶ 55. Plaintiff reiterated to Finnerty that she was protesting and refused to comply. *Id.* ¶ 56. On October 28, 2011, OMH served Plaintiff with a NOD dated October 27, 2010, which indicated that OMH was charging her with insubordination for refusing to follow the August 23 and October 4 directives and failing to produce work product from July 1, 2011 through October 26, 2011. *Id.* ¶ 57.

On November 15, 2011, Leckman-Westin attempted to meet with Plaintiff but Plaintiff refused to meet with her. *Id.* ¶ 58. Leckman-Westin left Plaintiff a written memorandum directing her to reschedule their meeting, provide hard copies of her work product, and to submit leave requests to Leckman-Westin for approval. *Id.* ¶ 59. Plaintiff did not do any of these things. *Id.* ¶ 60.

In or around December 2011, Plaintiff injured her leg and was out of the office from approximately December 17, 2011 through March 23, 2012. *Id.* ¶¶ 74-75; *see* Plaintiff's Ex. 43

[6] Plaintiff does not provide support for her assertion that Leckman-Westin was a respondent, but it appears, based on the EEOC charge submitted in support of Defendants' motion, that only OMH was a respondent to the EEOC claim, and that Leckman-Westin was merely mentioned in the narrative annexed to it. *See* Declaration of Janet Lynn Heath ("Heath Decl."), Ex. 14 (ECF No. 140-14).

(medical records) (ECF No. 152-19).[7] OMH designated her absence as Family and Medical Leave, for which she received full pay. *Id.* ¶¶ 76-77.

On December 28, 2011, OMH served Plaintiff with a second NOD, which indicated that OMH was charging her with insubordination for failing to follow Leckman-Westin's November 15, 2011 directives. *Id.* ¶ 61. On April 2, 2012, Finnerty directed Plaintiff to meet with her and Leckman-Westin to receive a new work assignment, but Plaintiff refused to attend. *Id.* ¶ 62. On June 8, 2012, OMH served Plaintiff with a third NOD, which indicated that OMH was again charging her with insubordination for refusing to meet with Finnerty on April 2, 2012. *Id.* ¶ 63. OMH never imposed the penalties proposed in the three NODs because Plaintiff appealed the NODs and the proceedings never reached arbitration. *Id.* ¶ 64.

On or about July 23 and 24, 2012, Heath and others exchanged emails regarding negotiations with Plaintiff's union regarding a potential settlement, and the importance of strengthening their case of insubordination if Plaintiff's case proceeded to arbitration. *See* Plaintiff's Ex. 2 (Deng Priv. 14); *see also* Plaintiff's Ex. 31 (numerous email exchanges). Heath emphasized the importance of even application of the rules and the avoidance of "anything that could potentially be viewed as discriminatory[,]" adding that Plaintiff "deserves the same treatment . . . as everybody else." *Id.* On July 25, 2012, Leckman-Westin gave Plaintiff a new assignment to be completed by August 3, 2012, but Plaintiff did not complete it. *Id.* ¶¶ 65-66. On August 29, 2012, Leckman-Westin emailed Plaintiff directing her to attend a meeting on September 11, 2012 to discuss her work assignment. *Id.* ¶ 67. Plaintiff refused to attend the

[7] Plaintiff has referred the Court to voluminous medical records with confusing pagination issues. *See* Deng Decl. ¶¶ 109-10. However, from what the Court can discern, the records indicate that Plaintiff reported that her leg injury was caused by a fall on uneven pavement, and not as a result of the emotional distress that she alleges OMH inflicted upon her. *See* Plaintiff's Ex. 43 at 7 (ECF No. 152). The records also confirm that Plaintiff was diagnosed with "herpes zoster" in February of 2012, thus extending her disability to March 23, 2012. *See id.* at 9.

meeting and reiterated that she had "disassociate[d]" from Leckman-Westin and Finnerty. *Id.* ¶ 68. On September 14, 2012, Leckman-Westin emailed Plaintiff directing her to again attend a meeting on September 18, 2012 to discuss her work assignment. *Id.* ¶ 69. Plaintiff refused to attend that meeting. *Id.* ¶ 70.

On October 3, 2012, OMH served Plaintiff with a fourth NOD, which indicated that OMH was again charging her with insubordination for failing to follow Leckman-Westin's directives and proposing a penalty of termination. *Id.* ¶ 71. On May 17, 2013, an arbitrator issued a Decision and Award upholding Plaintiff's termination. *Id.* ¶ 72. The arbitrator indicated that he would not consider the merits of any counseling memoranda or the first three NODs, but would only consider those documents as evidence that Plaintiff was on notice of OMH's concerns regarding her conduct. *Id.* ¶ 73.

The OMH employee handbooks issued in May 2008, June 2011, and April 2012 articulated a specific time and attendance policy applicable to Plaintiff and other employees. *Id.* ¶¶ 78-84. That policy required, among other things, that Plaintiff work a five-day workweek, and that any use of personal leave or vacation time be approved in advance by a supervisor. *Id.* ¶¶ 79-80. Further, any employee unable to report to work due to unexpected circumstances was required to notify a supervisor. *Id.* ¶ 81. Failure to adhere to this policy constituted an unauthorized absence resulting in a payroll deduction and possible disciplinary action. *Id.* ¶ 82. In addition, the handbooks stated that employees "generally may not be compensated for working from home . . . ." *Id.* ¶ 83.

In 2011 and 2012, Plaintiff was absent on multiple occasions without notifying either Leckman-Westin or anyone designated by Leckman-Westin. *Id.* ¶ 85.[8] On April 5, 2012,

[8] Plaintiff contends that she informed other individuals – specifically Secretary Peterson or Martines – of unexpected absences or illness, as others did in the office. *See* Deng Decl. ¶ 111, Ex. 29. However, the materials to which

Finnerty advised Plaintiff of the time and attendance policy and warned Plaintiff about the policy that all OMH employees must notify their supervisor of absences. *Id.* ¶ 86. On April 20, 2012, Finnerty provided Plaintiff with a written summary of this policy, and Plaintiff was specifically advised that any absences without supervisor approval would constitute unauthorized leave for which she would not be paid. *Id.* ¶ 87. On April 23, 2012, Leckman-Westin sent Plaintiff an email reminding her of this policy. *Id.* ¶ 88. On 15 occasions from June 2012 to September 2012, Plaintiff was absent for all or part of a workday without notifying Leckman-Westin or anyone designated by Leckman-Westin. *Id.* ¶ 89. For each of these occasions, OMH did not pay Plaintiff. *Id.* ¶ 90.

During the time periods relevant to this litigation, researchers in the Data Analysis Work Group met periodically to discuss work assignments. *Id.* ¶ 91. After Plaintiff accepted her work assignment with the Data Analysis Group in October 2010, she was invited to those team meetings. *Id.* ¶ 92. Starting in July 2011, Plaintiff refused to attend these meetings. *Id.* ¶ 93. Also during the time periods relevant to this litigation, Leckman-Westin organized one-on-one meetings with researchers to discuss their assignments. *Id.* ¶ 94. Leckman-Westin repeatedly directed Plaintiff to attend these meetings. *Id.* ¶ 95. Starting in July 2011, Plaintiff refused to attend these meetings. *Id.* ¶ 96. Also during the time periods relevant to this litigation, Finnerty organized meetings known as "PSYCKES Team Meetings" to discuss ongoing work within their bureau. *Id.* ¶ 97. Plaintiff was not aware of what was discussed in these meetings. *Id.* ¶ 98. Any important information related to the Data Analysis Work Group projects was discussed at Data Analysis team meetings and Leckman-Westin's one-on-one meetings, and Data Analysis

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Plaintiff cites establish, at best, that other individuals reported to Peterson and Martines, which may have been fully proper for them to do under the policy. This certainly does not refute Defendants' proof of Plaintiff's absences without notifying her supervisors, and does not tend to suggest that others violated the policy.

Work Group researchers did not need to attend PSYCKES Team Meetings to gain information they needed to do their job. *Id.* ¶ 99.[9]

During Plaintiff's employment, no one at OMH said anything derogatory about Asians to her. *Id.* ¶ 100. Plaintiff was published as a co-author, along with Finnerty, Leckman-Westin, and others, of an article in the May 2013 issue of "Psychiatric Services." *Id.* ¶ 101. Multiple Asian researchers have published and given presentations, including Qingxian Chen, Riti Pritam, and Nitin Gupta, and have been credited as co-authors with Finnerty and Leckman-Westin. *Id.* ¶¶ 102-03.[10] Chen has held the title of Deputy Director of Data Analysis since approximately 2012, having also been promoted twice, once in 2009 and again in 2013. *Id.* ¶¶ 104-05.[11] Pritam, Gupta also hold leadership roles, but were not in those positions during Plaintiff's tenure. *Id.* ¶¶ 106-07. Balaji Nagubadi, who is South Asian, and April Ellis, who is African American, also now hold leadership roles, but did not during Plaintiff's tenure. *Id.* ¶¶ 108-09.

[9] Plaintiff disputes this point, claiming that it was her "right and privilege" to attend these meetings and was "necessary for employee[s] to do their job[,]" but the only evidence she offers to support that conclusion are printouts of digital calendar invitations which indicate she was not a participant in these meetings. Deng Decl. ¶ 68 & Ex. 15.

[10] Though Plaintiff contends that minority researchers had "no" publications before June 2013, she does not cite any evidence in support of that assertion, and the articles cited in Leckman-Westin and Finnerty's curricula vitae demonstrate otherwise. *See* Declaration of Emily Leckman-Westin ("Leckman-Westin Decl.") ¶ 61, Ex. 57 (ECF No. 139-57); Declaration of Molly Finnerty ("Finnerty Decl.") ¶ 55, Ex. 34 (ECF No. 138-34).

[11] Plaintiff contends that Chen was actually appointed in July of 2013, which she attempts to substantiate with a letter requesting to appoint Chen to "Research Scientist 4, Grade 27." Deng Decl. ¶ 173, Ex. 5. This is, however, not inconsistent with Chen already being Deputy Director, and is entirely consistent with Defendants' evidence, which suggests that Chen was promoted to Research Scientist IV in 2013, after having been appointed to Deputy Director in 2012. *See* Leckman-Westin Decl. ¶ 62.

II. Procedural Background

Plaintiff commenced this action *pro se* on September 24, 2013, bringing suit against OMH, primarily asserting discrimination arising out of Plaintiff's previous employment at OMH. Defs' 56.1 ¶¶ 2-3; *see* Complaint (ECF No. 2); *see also* Amended Complaint ("Am. Compl.") (ECF No. 9). Plaintiff alleged violations under 42 U.S.C. § 1983 ("Section 1983"), Title VII of the Civil Rights Act of 1964 ("Title VII"), the New York State Humans Rights Law ("NYSHRL"), the New York City Human Rights Law ("NYCHRL"), the Family and Medical Leave Act ("FMLA"), the New York Labor Law, and the Fair Labor Standards Act ("FLSA"). *Id.*

After Defendants moved to dismiss the amended complaint, the Court dismissed all of Plaintiff's claims with the exception of some of Plaintiff's disparate treatment claims, some of her First Amendment retaliation claims, her FMLA retaliation claim for wage deductions, and her New York Labor Law claim for wage deductions. Defs' 56.1 ¶ 4; *see* Memorandum and Order Granting Motion to Dismiss in Part ("MTD Op.") (ECF No. 41).

Specifically, the Court held that three of Defendants' alleged actions were sufficiently adverse to constitute a basis for a disparate treatment claim: the three NODs and a counseling memorandum placed in her personnel file that served as a basis for her termination; her denial of access to OMH servers between July 29, 2010 and November 19, 2010; and her exclusion from EBSIS staff meetings following the filing of her EEOC charge on November 11, 2010. MTD Op. 17-19. In addition, the Court concluded that the denial of access to certain Bureau meetings and to OMH servers, and the assignment to the Medication Adherence project were plausibly adverse employment actions made in retaliation for Plaintiff's filing an EEOC charge. *Id.* at 22-

24. The Court further held that Plaintiff plausibly alleged that she was not paid for sick leave in response to her attempting to take FMLA leave. *Id.* at 28-29.

Defendants now move for summary judgment pursuant to Federal Rule of Civil Procedure 56 as to the remaining claims.

DISCUSSION

A. Standard of Review Governing Motion for Summary Judgment

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *see* Fed. R. Civ. P. 56(c). "There is no issue of material fact where the facts are irrelevant to the disposition of the matter." *Chartis Seguros Mex., S.A. de C.V. v. HLI Rail & Rigging, LLC*, 967 F. Supp. 2d 756, 761 (S.D.N.Y. 2013). "Speculation, conclusory allegations and mere denials are not enough to raise genuine issues of fact." *Id.* (citing *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Walton Ins. Ltd.*, 696 F. Supp. 897, 900 (S.D.N.Y. 1988)).

The burden lies with the moving party to demonstrate the absence of any genuine issue of material fact and all inferences and ambiguities are to be resolved in favor of the nonmoving party. *See Celotex Corp.*, 477 U.S. at 323; *see also Hotel Emps. & Rest. Emps. Union, Local 100 v. N.Y.C. Dep't of Parks & Recreation*, 311 F.3d 534, 543 (2d Cir. 2002). If "no rational jury could find in favor of the nonmoving party because the evidence to support its case is so slight, there is no genuine issue of material fact and a grant of summary judgment is proper." *Gallo v. Prudential Residential Servs., Ltd. P'ship*, 22 F.3d 1219, 1224 (2d Cir. 1994).

Additionally, *pro se* litigants receive special solicitude in motions for summary judgment. *See Jackson v. Fed. Exp.*, 766 F.3d 189, 195 (2d Cir. 2014) (discussing how courts should be "less demanding of such [pro se] litigants generally, particularly where motions for summary judgment are concerned") (internal citations omitted). "[E]ven in a *pro se* case, however ... [the Court] cannot invent factual allegations that [the plaintiff] has not pled." *McNair v. Rivera*, No. 12-CV-6212 (ALC), 2013 WL 4779033, at *4 (S.D.N.Y. Sept. 6, 2013) (quoting *Chavis v. Chappius*, 618 F.3d 162, 170 (2d Cir. 2010)).

B. Application

1. Intentional Discrimination

Plaintiff claims that OMH violated Title VII by engaging in disparate treatment based on her race and national origin, and that Finnerty, Leckman-Westin, and Heath violated the Equal Protection Clause of the Fourteenth Amendment by engaging in disparate treatment and ratifying that conduct.

To establish a prima facie claim of disparate treatment under either Title VII or the Equal Protection Clause, Plaintiff must establish the following: (1) that she belonged to a protected class; (2) that she was qualified for the position she held; (3) that she suffered an adverse employment action; and (4) that the adverse employment action occurred under circumstances giving rise to an inference of discriminatory intent. *Feingold v. New York*, 366 F.3d 138, 152 (2d Cir. 2004) (citation omitted); *see Patterson v. Cty. of Oneida, N.Y.*, 375 F.3d 206 (2d Cir. 2004) ("Most of the core substantive standards that apply to claims of discriminatory conduct in violation of Title VII are also applicable to claims of discrimination in employment in violation of § 1981 or the Equal Protection Clause.").

Once plaintiff makes out her prima facie case, "the employer is required to offer a legitimate, nondiscriminatory business rationale for its conduct." *Feingold*, 366 F.3d at 152 (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973)). "If the defendant has stated a neutral reason for the adverse action, to defeat summary judgment ... the plaintiff's admissible evidence must show circumstances that would be sufficient to permit a rational finder of fact to infer that the defendant's employment decision was more likely than not based in whole or in part on discrimination." *Id.* (quoting *Stern v. Trustees of Columbia Univ.*, 131 F.3d 305, 312 (2d Cir. 1997)).

Here, there is no dispute that Plaintiff belonged to a protected class and was qualified for her position. Rather, Defendants argue that Plaintiff has failed to establish her claim in three ways: first, that Plaintiff did not suffer an adverse employment action; second, that any allegedly adverse actions did not occur under circumstances giving rise to an inference of discriminatory intent; and, third, that Defendants had non-discriminatory reasons for each adverse action, which Plaintiff cannot rebut. The Court substantially agrees with Defendants' arguments, and concludes that Plaintiff's discrimination claim fails to survive summary judgment.

a. Adverse Employment Action

Three categories of adverse employment actions remain following Defendants' motion to dismiss: the three NODs and counseling memoranda that were alleged to have resulted in Plaintiff's termination; Plaintiff's loss of access to OMH computer systems between July 29, 2010 and November 19, 2010; and Plaintiff's exclusion from certain staff meetings after filing her EEOC charge. Now, reviewing the evidence in the record before it, the Court concludes that Plaintiff should only be entitled to proceed on her claim relating to the three NODs and counseling memoranda.

"An adverse employment action is one which is more disruptive than a mere inconvenience or an alteration of job responsibilities." *Feingold*, 366 F.3d at 152 (citation omitted). "Examples of materially 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.* (citation omitted).

First, Defendants contend that the NODs and counseling memoranda do not constitute adverse employment actions because the arbitrator did not rely upon them in substance in upholding Plaintiff's termination. The arbitrator's award does state that he would "not consider the merits of the notices of discipline of October 27 and December 28, 2011, nor that of June 8, 2012" or "prior counseling memos[]" in reaching his decision. Declaration of Barbara Forte ("Forte Decl."), Ex. 13 ("Award") at 3 (ECF No. 141-13). The arbitrator further specified that he used those documents merely as evidence of "notice to [Plaintiff] of the State's concerns in her regard." *Id.*

Whether reprimands or negative evaluations are sufficiently adverse is "typically a question of fact for the jury[.]" *Lawrence v. Mehlman*, 389 F. App'x 54, 56 (2d Cir. 2010) (citing *Sanders v. N.Y.C. Human Res. Admin.*, 361 F.3d 749, 756 (2d Cir. 2004)). Defendants cite no case – and the Court is aware of none – suggesting that a disciplinary notice cannot on its own constitute an "adverse employment action" for the purposes of this analysis, irrespective of whether that notice resulted in termination. Rather, the case law suggests that the relevant factors in assessing whether a NOD was sufficiently adverse is whether it "created a materially adverse change in her working conditions" as measured by facts that demonstrate its "effect or ramifications," such as "whether [the NOD] went into any file" or "whether it was in writing."

Weeks v. New York State (Div. of Parole), 273 F.3d 76, 86 (2d Cir. 2001), *abrogated on other grounds by Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 108-14 (2002). Here, it reasonably appears that these disciplinary records were not only put in writing, but included in Plaintiff's personnel records, and then maintained there until her termination. *See* Award at 3; *cf. Sanders*, 361 F.3d at 756 (affirming jury verdict for employer where critical evaluation was removed from file and promotion to supervisor became permanent).

But even if the adversity of the alleged discriminatory act were entirely contingent upon its effect on Plaintiff's eventual termination, the award does, to some extent, rely on the three NODs and counseling memos in upholding the termination decision, insofar as it appears to cite to them, in its conclusion section, as evidence of "the voluminous notices of employer concerns regarding [Plaintiff's] conduct." *See* Award at 8. Again, Defendants cite no cases suggesting that the NODs or counseling memos that are the subject of Plaintiff's claim need be the "but for" cause of a Plaintiff's termination to be sufficiently adverse; rather, the caselaw suggests that at least some evidence of causal effect suffices. *See, e.g.*, *Solomon v. Southampton Union Free Sch. Dist.*, No. 08-CV-4822 (SJF) (ARL), 2011 WL 3877078, at *9 (E.D.N.Y. Sept. 1, 2011) (holding that a "negative evaluation" was not an adverse employment action where plaintiff "failed to provide any evidence that her negative evaluation affected her employment in any way") (emphasis in original).

Moreover, the fourth NOD, upon which the award is most substantially based, itself expressly relies on the prior NODs and counseling memos in "determining the proposed penalty" of termination. *Id.* at 3. Thus, it is clear that the arbitrator relied on these prior NODs and counseling memos for procedural purposes, and the degree to which the allegations in those documents were relied upon in a more substantive sense is, to some extent, ambiguous. In light

of these facts, and the Court's obligation to construe any ambiguities in favor of Plaintiff, *see Celotex Corp.*, 477 U.S. at 323, the Court cannot conclude, as a matter of law, that these three NODs and prior counseling memos were not sufficiently adverse.

Next, Defendants contend that Plaintiff's restrictions from certain meetings and the OMH network were not sufficiently adverse because they had no bearing on Plaintiff's ability to do her job. Denial of access to an IT system is only adverse where the employee needs that access to perform his job functions. *See, e.g., Gelin v. Geithner*, No. 06-CV-10176 (KMK), 2009 WL 804144, at *14 (S.D.N.Y. Mar. 26, 2009) (denying summary judgment where "it [was] at least arguable that suspension of [Plaintiff's computer] access materially affected his employment by making it more difficult for him to complete his work"), *aff'd*, 376 F. App'x 127 (2d Cir. 2010). Similarly, excluding an employee from meetings may constitute an adverse action only where the exclusion "affect[s] the terms and conditions of the Plaintiff's employment." *Cotterell v. Gilmore*, 64 F. Supp. 3d 406, 423 (E.D.N.Y. 2014).

Plaintiff does not refute that her access to IT systems was suspended on July 28, 2010, following a report of Plaintiff's potential misuse of confidential data, and that suspension continued until Plaintiff met with her supervisor on October 27, 2010, after which data access that was necessary for Plaintiff's work was restored. *See* Defs' 56.1 ¶¶ 27-39. Plaintiff conceded in her deposition, and her supervisor confirms, that, during the relevant time period, she had no assignments, much less one that was impeded by her lack of access to a computer. Defs' 56.1 ¶ 40. Plaintiff offers only the self-serving and conclusory response that these files "were used in connection with [her] daily work." Pl's 56.1 ¶ 40. While this may very well have been true at some point in Plaintiff's term with OMH, without more specificity (*e.g.*, what specific project Plaintiff could not undertake during this time), this statement fails to refute

Defendants' contrary evidence that Plaintiff had no active projects requiring IT access at that time. *See Hicks v. Barnes*, 593 F.3d 159, 166 (2d Cir. 2010) ("[M]ere conclusory allegations or denials ... cannot by themselves create a genuine issue of material fact where none would otherwise exist.") (citation omitted). Because there is no material disagreement regarding Plaintiff's lack of an assignment during this time period, the Court is satisfied that no reasonable juror could conclude that Defendants' revocation of IT access materially affected Plaintiff's working conditions.

Similarly, Plaintiff can only speculate as to whether her alleged exclusion from certain meetings had a bearing on her ability to perform her job. At Plaintiff's deposition, she unqualifiedly conceded that she did not know what went on during these meetings. Defs' 56.1 ¶ 98. Moreover, Defendants have proffered affirmative evidence that attendance at the meetings at issue was not necessary for Plaintiff to perform her job. *Id.* ¶ 99. The only evidence Plaintiff offers in support of her assertion that these meetings were "necessary for [her] to do [her] job" are printouts of calendar entries indicating she was not a participant in certain meetings, which, of course, do not in and of themselves establish the conclusion that Plaintiff seeks the Court to draw. Thus, Plaintiff's claim that her exclusion from meetings was an adverse employment action is grounded wholly in speculation, which cannot create a genuine issue of material fact. *Hicks*, 593 F.3d at 166 ("[A] party may not rely on mere speculation or conjecture as to the true nature of the facts to overcome a motion for summary judgment . . . .") (citations omitted).

For these reasons, only one of Plaintiff's three alleged adverse employment actions survives summary judgment.

b. Inference of Discrimination

But even if each action was sufficiently adverse to Plaintiff, now, following discovery, it is amply clear that none of them occurred under circumstances giving rise to an inference of discrimination.

"There is no unbending or rigid rule about what circumstances allow an inference of discrimination when there is an adverse employment decision." *Gelin*, 2009 WL 804144, at *15 (quoting *Chertkova v. Connect. Gen. Life Ins. Co.*, 92 F.3d 81, 91 (2d Cir. 1996)). However, as a general matter, there are three ways a Plaintiff may support an inference of race discrimination: (1) "demonstrating that similarly situated employees of a different race or national origin were treated more favorably"; (2) "showing that there were remarks made by decisionmakers that could be viewed as reflecting a discriminatory animus"; or (3) "proving that there were other circumstances giving rise to an inference of discrimination on the basis of plaintiff's race or national origin . . . ." *Id.* (citations omitted). "While courts are to be particularly cautious about granting summary judgment to employers in cases where the discriminatory intent of the employer is contested, it is now beyond cavil that summary judgment may be appropriate even in the fact-intensive context of discrimination cases[.]" *Pacheco v. N.Y. Presbyterian Hosp.*, 593 F. Supp. 2d 599, 608 (S.D.N.Y. 2009) (quoting *Schwapp v. Town of Avon*, 118 F.3d 106, 110 (2d Cir. 1997); *Abdu–Brisson v. Delta Air Lines, Inc.*, 239 F.3d 456, 466 (2d Cir. 2001)). To that end, conclusory and speculative allegations are insufficient at the summary judgment stage; rather, Plaintiff must come forward with specific factual circumstances that "suggest the adverse action was motivated, at least in part, by discriminatory animus." *Gelin*, 2009 WL 804144, at *15 (citations omitted).

Here, there is indisputably no direct evidence of racial animus, and Plaintiff has conceded that no one at OMH said anything derogatory about Asians to her. Defs' 56.1 ¶ 100. In the Court's decision on Defendants' motion to dismiss, it identified eleven possible circumstances from the Plaintiff's complaint as possibly providing for an inference of discrimination. MTD Op. at 14-15. However, there is now no material dispute that eight of eleven of these allegations are untrue.

Plaintiff alleged that Finnerty had a "pattern [or] practice of segregating staff by race," and that "the director, project manager, or team leader positions . . . [were] *exclusively* for Caucasian staff[.]" *Id.* at 14 (citing Am. Compl. ¶ 4). However, it is now uncontested that other non-Caucasian staff held leadership roles during Plaintiff's tenure. Similarly, Plaintiff had alleged that her probationary period was extended by six months under false pretenses. *Id.* However, Plaintiff's deposition, among other things, has proven that allegation false: while a negative performance evaluation did result in a recommended six-month extension, that recommendation was ultimately rescinded, and Plaintiff thus only served a standard three-year probationary period.

Plaintiff also alleged that she never received a promotion, while a colleague named Tom White did get promoted. *Id.* However, it is now undisputed that Plaintiff never applied for a promotion during her tenure at OMH, and that at least one non-white colleague received a promotion as early as 2009. Plaintiff similarly alleged that she was never given leadership responsibility or credit in a publication, unlike her white colleagues. *Id.* However, the record evidence conclusively demonstrates that Plaintiff was published as a co-author in a May 2013 article, and that other OMH researchers were given publishing credits during and after Plaintiff's employment.

Additionally, Plaintiff alleged that Finnerty reserved all opportunities to publish, attend conferences, and partake in other desirable activities for herself and her white subordinates. *Id.* at 14-15. The record is now clear, though, that Finnerty shared authorship credit and presentations with many non-white OMH researchers, including Plaintiff. As to Plaintiff's allegation that OMH's policy against employees working from home not applying to white employees (*id.* at 15), it is beyond dispute that this policy was in place during all times relevant to this litigation and at least facially applied to all employees, regardless of race or national origin. *See* Forte Decl. ¶¶ 11-12 & Exs 1-3. Moreover, Plaintiff has proffered no evidence that white employees were ever permitted to work from home without using leave, other than an unsupported assertion that a white employee named Tom White "often" worked from home, without addressing whether he had to use leave time to do so. *See* Pl's 56.1 ¶ 124.

Plaintiff further alleged that Leckman-Westin took credit for work done by minority employees and erected barriers to their successful job performance. MTD Op. at 15. However, the record is devoid of evidence of Leckman-Westin doing such; to the contrary, Leckman-Westin shared authorship credit and presentations with many non-white OMH researchers, including Plaintiff. And, Plaintiff's allegation that Heath had a pattern or practice that authorized or ratified racial harassment by others (*id.*) is similarly unsubstantiated, as well as wholly refuted by the communications in the record, both attached to Heath's declaration as well as the email correspondence that Plaintiff has herself included with her submissions. That Heath's emails demonstrate a degree of caution with regard to Plaintiff's allegations of discrimination does not suggest discriminatory animus; her emails merely reflect her heightened sensitivity to addressing Plaintiff's insubordination and her allegations of discrimination within the confines of OMH policy and the law. *Wado v. Xerox Corp.*, 991 F. Supp. 174, 206 (W.D.N.Y. 1998) (that

employer was trying to "build a case to let [employee] go" does not establish *discriminatory* intent), *aff'd sub nom. Smith v. Xerox Corp.*, 196 F.3d 358 (2d Cir. 1999); *cf. Dupree v. UHAB-Sterling St. Hous. Dev. Fund Corp.*, No. 10-CV-1894 (JG) (JO), 2012 WL 3288234, at *8 (E.D.N.Y. Aug. 10, 2012) (surveying cases and concluding that Defendant employer's manufacturing a paper trail could support inference that they decided to terminate Plaintiff employee based on race where Plaintiff had no negative performance history, and significant direct and circumstantial evidence of racial discrimination was present).

As for the remaining three allegations, they are, even when taken together, insufficient to establish an inference of racial discrimination. That Leckman-Westin was promoted in 2009 over potentially more qualified candidates, despite her having twice taken maternity leave and not having completed her probationary period, does not give rise to a material issue of fact. *See Byrnie v. Town of Cromwell, Bd. of Educ.*, 243 F.3d 93, 105 (2d Cir. 2001) (suggesting that "no inference of discrimination can be drawn" where employer's decision to promote "is reasonably attributable to an honest even though partially subjective evaluation of ... qualifications") (citation omitted); *see also Nguyen v. Dep't of Corr. & Cmty. Servs.*, 169 F. Supp. 3d 375, 390 (S.D.N.Y. 2016) ("Plaintiff may disagree with the determination that [the hired candidates] were best suited for the [ ] positions, but as a matter of law his subjective assessment cannot give rise ... to an inference of discrimination.").

Additionally, that Finnerty was alleged to have turned her face to the side to make apparent she would not support Plaintiff for a promotion has no apparent connection to race, and Plaintiff only speculates that it does. *See, e.g., Belton v. City of New York*, No. 12-CV-6346 (JPO), 2014 WL 4798919, at *6 (S.D.N.Y. Sept. 26, 2014) (granting summary judgment on this basis where Plaintiff "failed to substantiate her conclusory judgments about Defendants'

behavior with anything more than her feelings and perceptions of being discriminated against, which do not constitute evidence" and further noting that "a court is not improperly weighing evidence in concluding that statements that "are devoid of any specifics, but replete with conclusions, are insufficient to defeat a properly supported motion for summary judgment.") (quoting *Bickerstaff v. Vassar Coll.*, 196 F.3d 435, 456 (2d Cir. 1999)), *aff'd*, 629 F. App'x 50 (2d Cir. 2015).

And, that Finnerty was alleged to have explained in 2007 that Leckman-Westin was promoted over an Asian applicant named "Shao" because Leckman-Westin was "easier to communicate with" is similarly ambiguous, had nothing to do with Plaintiff, and, having occurred approximately three years prior to the first NOD, is too temporally removed to be actionable. *See, e.g.*, *In re United Cerebral Palsy Ass'ns of N.Y. State, Inc.*, 58 B.R. 492, 497 (Bankr. S.D.N.Y. 1986) ("Even if Razaghi's difficulties with telephone communication were at least in part linguistic, and thereby related to his national origin, discrimination on the grounds of actual performance is not prohibited if the required task is a bona fide job qualification."); *see also Tolbert v. Smith*, 790 F.3d 427, 437 (2d Cir. 2015) ("[T]he 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.") (citation omitted).[12]

For these reasons, Plaintiff has failed to proffer evidence suggesting that any of the alleged adverse actions were "motivated, at least in part, by discriminatory animus." *E.g.*, *Gelin*,

[12] In that regard, Plaintiff's citation to *Chin v. Port Auth. of N.Y. & N.J.*, 685 F.3d 135, 150 (2d Cir. 2012), for the proposition that a court may consider alleged discriminatory conduct outside the limitations' period for background purposes in support of a timely discrimination claim is unavailing. While the *Chin* Court did so hold, it quoted *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101 (2002) in support of that proposition. *Morgan* expressly limited the use of such time-barred evidence to circumstances where the timely-alleged acts "are independently discriminatory . . . ." *Id.* at 113; *see Consoli v. St. Mary Home/Mercy Cmty. Health*, No. 3:13CV1791 JBA, 2014 WL 3849978, at *4 (D. Conn. Aug. 5, 2014) (recognizing this limitation). Here, for the reasons discussed above, the NODs and counseling memo are not independently discriminatory, and therefore consideration of time-barred allegedly discriminatory acts is unnecessary.

2009 WL 804144, at *15 (citations omitted). As such, Plaintiff has failed to make out a prima facie case of discrimination.

c. Legitimate Reasons

But even if an inference of discriminatory intent were appropriately drawn here, there is no material dispute that the NODs and counseling memoranda were founded upon Plaintiff's insubordination for an extended period of time. Plaintiff conveyed her intention to "disassociate" from Leckman-Westin, among others, from July 2011 onward, and proceeded to do so. Under the circumstances, the NODs, counseling memoranda, and the charges therein were supported by a legitimate, nondiscriminatory rationale of insubordination, which wholly Plaintiff has failed to rebut. *See, e.g.*, *Williams v. McCausland*, No. 90-CV-7563 (RWS) (THK), 1995 WL 548862, at *13 (S.D.N.Y. Sept. 15, 1995) (holding that "refusal to obey superiors, inability to get along with co-workers, and failure to complete work in a timely manner are each, standing alone, sufficient to rebut a prima facie case under Title VII.").

As such, Plaintiff's intentional discrimination claims are dismissed, and it is unnecessary for the Court to reach Defendants' alternative arguments with respect to these claims.

2. First Amendment Retaliation

Plaintiff alleges that Defendants infringed upon her First Amendment right to free speech by retaliating against her for filing an EEOC charge against them on November 11, 2010. Am. Compl. ¶ 54.

To establish a prima facie case for retaliation based on the First Amendment, a plaintiff must show the following: (1) her speech addressed a matter of public concern, (2) she suffered an adverse employment action, and (3) a causal connection existed between the speech and the adverse employment action, so that it can be said that her speech was a motivating factor in the

determination. *Mandell v. Cty. of Suffolk*, 316 F.3d 368, 382 (2d Cir. 2003) (citations omitted). Even where a plaintiff makes out a prima facie case, liability may nonetheless be precluded if the defendants can demonstrate that (1) it would have taken the same adverse action in the absence of the protected speech, or (2) show that plaintiff's speech was likely to disrupt [defendants'] activities, and the likely disruption was sufficient to outweigh the First Amendment value of plaintiff's speech. *Id.* at 382-83 (citations omitted).

Defendants contend that Plaintiff has failed to make out a prima facie case as to all three elements, arguing that Plaintiff's EEOC complaint did not involve matters of public concern, that Plaintiff did not suffer an adverse employment action, and that there was no causation between Plaintiff's EEOC complaint and any purported adverse employment action.

The first argument is sufficient to dispose of Plaintiff's claim. Now that the basis of Plaintiff's First Amendment retaliation claim – her EEOC complaint – is in the record, it is clear that Plaintiff's speech did not implicate matters of public concern. A public employee's speech relates to a "matter of public concern" where it conveys a desire "to debate issues of . . . discrimination . . . [seek] relief against pervasive or systemic misconduct by a public agency or public officials, or . . . correct allegedly unlawful practices or bring them to public attention." *Huth v. Haslun*, 598 F.3d 70, 75 (2d Cir. 2010) (quoting *Saulpaugh v. Monroe Cmty. Hosp.*, 4 F.3d 134, 143 (2d Cir. 1993)). However, if the record reveals that Plaintiff's speech is "personal in nature and generally related to her own situation[,]" that speech is not "protected from retaliation by the First Amendment." *Id.* at 74-75 (quoting *Saulpaugh*, 4 F.3d at 143). This analysis depends upon a review of "the content, form, and context of [the alleged speech], as revealed by the whole record . . . ." *Id.* at 74 (quoting *Sousa v. Roque*, 578 F.3d 164, 175 (2d Cir. 2009)).

Plaintiff's EEOC charge focuses almost entirely on discriminatory acts against Plaintiff herself. *See* Heath Decl. Ex. 14 (EEOC charge). Aside from a single mention of a meeting that another "Chinese employee" attended, and who, like Plaintiff, was unable to give a presentation like other employees (*id.* ¶ 17), there are no allegations of racially discriminatory practices or conduct against other employees at OMH. Every other paragraph of the 45-paragraph charge relates to Plaintiff's personal grievances against OMH. *See Ruotolo v. City of New York*, 514 F.3d 184, 190 (2d Cir. 2008) ("[R]etaliation against the airing of generally personal grievances is not brought within the protection of the First Amendment by the mere fact that one or two of a public employee's comments could be construed broadly to implicate matters of public concern.") (citation omitted). Thus, upon careful review of Plaintiff's EEOC charge, it is apparent that Plaintiff's speech was "personal in nature" and thus cannot form a basis for a First Amendment retaliation claim. *Huth*, 598 F.3d at 85.

As such, Plaintiff's First Amendment retaliation is precluded as a matter of law, and must be dismissed. The Court need not address Defendants' alternative arguments.

3. FMLA Retaliation

FMLA retaliation claims are analyzed under the burden-shifting framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *See Graziadio v. Culinary Inst. of Am.*, 817 F.3d 415, 429 (2d Cir. 2016). To establish a prima facie case of FMLA retaliation, a plaintiff must establish that (1) she exercised rights protected under the FMLA, (2) she was qualified for her position, (3) she suffered an adverse employment action, and (4) the adverse employment action occurred under circumstances giving rise to an inference of retaliatory intent. *Id.* If plaintiff establishes her prima facie case, the burden shifts to the defendant to demonstrate

a "legitimate, non-discriminatory reason for its actions; if the defendant does so, the plaintiff must show that defendant's proffered explanation is pretextual." *Id.*

Here, there are two alleged adverse actions that comprise Plaintiff's FMLA claims. Plaintiff injured her knee in December 2011 and was out of the office on FMLA leave from approximately December 19, 2011 through approximately March 23, 2012. Plaintiff appeared to allege that Defendants refused to pay her for her FMLA leave time, and this was in retaliation for her decision to take FMLA leave. *See* Am. Compl. ¶ 90. The Court denied Defendants' motion to dismiss this claim on the basis that Plaintiff had plausibly alleged that the decision to not pay her for this leave period was made in retaliation for the decision to take leave. MTD Op. at 28. However, it is now undisputed that Plaintiff received full pay status during her FMLA leave. 56.1 Stmt. ¶ 77. As such, this plainly does not constitute an adverse employment action for the purposes of an FMLA retaliation claim.

Later, following Plaintiff's return to work, she was out of the office on additional days from June through September 2012, for which she was not paid, and she alleges that the nonpayment was intended to retaliate for her prior invocation of the FMLA. With regard to this adverse action, the primary dispute is whether this act had any causal connection to Plaintiff's FMLA leave. Defendants argue that because these instances of nonpayment are too temporally removed, and Plaintiff's refusal to comply with OMH's time and attendance policies justified nonpayment, "no reasonable jury could find the decision to not pay Plaintiff . . . occurred under circumstances giving rise to an inference of discriminatory intent." Defs' Mem. at 31-33 (citing *Graziadio*, 817 F.3d at 429).

An inference of retaliatory intent arises when "there is a basis for a jury to conclude that a causal connection exists between the plaintiff's protected activity and the adverse action taken by

the employer." *Donnelly v. Greenburgh Cent. Sch. Dist. No. 7*, 691 F.3d 134, 152 (2d Cir. 2012) (citation omitted). This may be established by "very close" temporal proximity between the adverse action and the protected activity. *Id.* (citing *Clark Cty. Sch. Dist. v. Breeden*, 532 U.S. 268, 273 (2001)). While the Second Circuit has "have not drawn a bright line to define the outer limits beyond which a temporal relationship is too attenuated to establish a causal relationship between a protected activity and an allegedly retaliatory action, courts in this circuit have typically measured that gap as a matter of months, not years." *Bucalo v. Shelter Island Union Free Sch. Dist.*, 691 F.3d 119, 131 (2d Cir. 2012); *see Fernandez v. Woodhull Med. & Mental Health Ctr.*, No. 14-CV-4191 (MKB), 2017 WL 3432037, at *8 (E.D.N.Y. Aug. 8, 2017) (surveying cases, noting that "[c]ourts frequently find a period of a few weeks sufficient to allow a jury to infer a causal connection between the protected act and the adverse employment action" but concluding that six-month gap was too temporally removed).

And, even where a plaintiff demonstrates temporal proximity, the Second Circuit has at the least implied that they may need to show something more. *Donnelly v. Greenburgh Cent. Sch. Dist. No. 7*, 691 F.3d 134, 152 (2d Cir. 2012) (concluding an inference of retaliatory animus existed where plaintiff showed "more evidence than mere temporal proximity," including sudden negative evaluations that "expressly penalize [the plaintiff] for his excessive absences"). This is especially so where, as here, other adverse actions occurred prior to exercising FMLA leave. *Slattery v. Swiss Reinsurance Am. Corp.*, 248 F.3d 87, 95 (2d Cir. 2001) ("Where timing is the only basis for a claim of retaliation, and gradual adverse job actions began well before the plaintiff had ever engaged in any protected activity, an inference of retaliation does not arise.").

Here, approximately three months passed between Plaintiff's FMLA leave and the alleged retaliatory acts. This teeters on the edge of being too attenuated to have a causal

connection. *Cf., e.g., Blackett v. Whole Foods Mkt. Grp., Inc.*, No. 3:14-CV-01896 (JAM), 2017 WL 1138126, at *9 (D. Conn. Mar. 27, 2017) (close temporal proximity where Plaintiff was terminated the same day as returning from FMLA leave).

But even if this temporal proximity alone could establish causation, Defendants have proffered legitimate non-discriminatory reasons for refusing to pay Plaintiff for these days. Specifically, the then-operative OMH employee handbooks provided a specific time and attendance policy that Plaintiff indisputably violated when she took days off work without notifying her supervisor. Defendants have presented unrefuted evidence that, contrary to Plaintiff's allegations, this was not a "new" policy designed to retaliate against her, but was a longstanding policy present in prior handbooks. While the record is unclear as to whether Plaintiff ever received copies of these handbooks, it is nonetheless undisputed that Plaintiff was given warnings regarding these policies, but nonetheless continued to violate them. Although she contends that she did notify other individuals at OMH of her absences, she concedes that she was expressly informed, well before the period of absences at issue, that she had to notify her supervisor, Leckman-Westin, of her absences in accordance with OMH policy. *Compare* Defs' 56.1 ¶ 85, *with id.* ¶¶ 86-87. As such, no reasonable juror could find that the decision not to pay Plaintiff for her absences occurred "under circumstances giving rise to an inference of retaliatory intent." *Graziadio*, 817 F.3d at 429.

For these reasons, Plaintiff's FMLA claim fails as a matter of law.

4. New York Labor Law

New York Labor Law § 193 prohibits employers from making "any deduction from the wages of an employee," and "limits the type of deductions an employee may authorize." *Quinones v. PRC Mgmt. Co. LLC*, No. 14-CV-9064 (VEC), 2015 WL 4095263, at *5 (S.D.N.Y. July 7, 2015) (quoting N.Y. Lab. Law § 193(1)(b) and *Angello v. Labor Ready, Inc.*, 859 N.E.2d 480, 482 (N.Y. 2006)). "[C]ompensation is not a 'wage' within the meaning of [the New York Labor Law] until it is earned or vested." *Id.* (quoting *Ryan v. Kellogg Partners Institutional Servs.*, 968 N.E.2d 947, 956 (N.Y. 2012)). Thus, once an employee's compensation "is earned or vested, an employer's 'neglect to pay' those 'wages' violates NYLL § 193." *Id.* (citing *Ryan*, 968 N.E.2d at 956). "Whether and when wages are "earned" depends on the terms of the agreement providing for the compensation." *Id.* (citing *Patcher v. Bernard Hodges Grp.*, 505 F.3d 129, 134 (2d Cir. 2007), in turn citing, *inter alia*, *Tuttle v. George McQuesten Co. Inc.*, 642 N.Y.S.2d 356, 357-58 (N.Y. App. Div. 3rd Dep't 1996)).

Here, Plaintiff bases her Labor Law claims on the same unpaid 15 workdays that are the subject of her FMLA retaliation claim. However, as discussed above, the undisputed facts demonstrate that Plaintiff never earned the unpaid compensation she alleges, but rather that she violated OMH attendance policies. As such, because Plaintiff never earned any compensation for these days, Defendants could not have illegally deducted any of her earned wages, and a New York Labor Law claim does not lie.

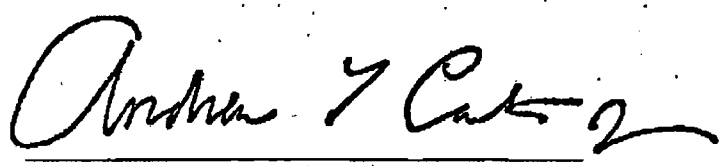
CONCLUSION

For the reasons discussed above, defendants' motion for summary judgment (ECF No. 135) is GRANTED. The Clerk of Court is respectfully directed to terminate all pending matters and to close the case.

In addition, the Court finds, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 445 (1962).

SO ORDERED.

Dated: **New York, New York**
February 28, 2018



ANDREW L. CARTER, JR.
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

REN YUAN DENG,	:	
Plaintiff,	:	
	:	
-against-	:	**1:13-cv-6801 (ALC) (SDA)**
	:	
NEW YORK STATE OFFICE OF MENTAL HEALTH, et al.,	:	**ORDER**
Defendant.	:	
	:	

ANDREW L. CARTER, JR., United States District Judge:

Ren Yuan Deng ("Plaintiff") commenced this action *pro se* against the New York State Office of Mental Health ("OMH") and several of its employees (collectively, the "Defendants") alleging various forms of mistreatment over the course of her employment as a research scientist for them. After the Court dismissed a number of claims pursuant to Defendants' Rule 12 motion, it granted summary judgment to Defendants as to Plaintiff's remaining claims. Plaintiff now argues that Defendants have misrepresented certain facts during this litigation, thus warranting relief from final judgment. For the reasons set forth below, Plaintiff's motion is **DENIED**.

Familiarity with the facts and procedural history of this case, as reflected in the Court's prior decisions, is presumed. Under the Federal Rules of Civil Procedure, a party can seek relief from a final judgment for any of the following reasons:

> (1) mistake, inadvertence, surprise, or excusable neglect;
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
> (4) the judgment is void;
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
> (6) any other reason that justifies relief.

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Fed. R. Civ. P. 60(b).

In addition to enumerating six grounds for relief, Rule 60(b) provides specific timeframes within which a motion must be submitted. "All Rule 60(b) motions must 'be made within a reasonable time,' and motions under Rule 60(b)(1), (2) and (3) must be made within one year after the judgment." *Katz v. Mogus*, No. 07 Civ. 8314 (PKC)(KNF), 2012 WL 263462, at *3 (S.D.N.Y. Jan. 25, 2012) (citing *Kotlicky v. U.S. Fid. & Guar. Co.*, 817 F.2d 6, 9 (2d Cir. 1987)). In this case, Plaintiff's motion was filed within four months of the February 28, 2018 judgment.

"Rule 60(b) provides 'a mechanism for extraordinary judicial relief [available] only if the moving party demonstrates exceptional circumstances,' and relief under the rule is discretionary." *Motorola Credit Corp. v. Uzan*, 561 F.3d 123, 126 (2d Cir. 2009) (internal citations omitted).[1] "To grant relief from a final order pursuant to Rule 60(b), a court must find that (1) the circumstances of the case present grounds justifying relief and (2) the movant possesses a meritorious claim in the first instance." *Cobos v. Adelphi Univ.*, 179 F.R.D. 381, 385 (E.D.N.Y. 1998). Such motions "should be broadly construed to do 'substantial justice,' yet final judgments should not 'be lightly reopened.'" *Nemaizer v. Baker*, 793 F.2d 58, 61 (2d Cir. 1986) (internal citation omitted). "Accordingly, a party seeking relief under [Rule 60(b)] must show 'highly convincing' evidence in support of its motion, good cause for its 'failure to act sooner,' and that the non-moving party would not suffer undue hardship." *Katz*, 2012 WL 263462, at *3 (citation omitted). A Rule 60(b) motion is not a vehicle to relitigate issues raised and adjudicated at summary judgment. *Merino*

[1] This rule is equally applicable to *pro se* litigants. *Hall v. N. Bellmore Sch. Dist.*, No. 08-CV-1999 (PKC), 2016 WL 4005792, at *2 (E.D.N.Y. July 25, 2016) (internal citation omitted).

v. Beverage Plus Am. Corp., No. 10-cv-0706 (ALC) (RLE), 2014 WL 1744728, at *3 (S.D.N.Y. Mar. 6, 2014).

Here, construing Plaintiff's submissions liberally,[2] the Court construes Plaintiff's motion as raised pursuant to subsection (b)(3) permitting relief from a verdict for fraud, misrepresentation or misconduct.[3] Thus, her motion is timely.

To prevail on a motion for a new trial pursuant to Fed. R. Civ. P. 60(b)(3), the movant must show that (1) the adverse party engaged in fraud, misrepresentation or misconduct by clear and convincing evidence and that (2) such misconduct substantially interfered with the movant's ability to fully and fairly present its case. *See Catskill Development, L.L.C. v. Park Place Entertainment Corp.*, 286 F. Supp. 2d 309, 312 (S.D.N.Y. 2003) (citations omitted). The final question is whether substantial justice outweighs the goal of preserving the finality of judgments. *Id.* (citing *Nemaizer v. Baker*, 793 F.2d 58, 63 (2d Cir. 1986)). More than "mere conclusory allegations" of fraudulent conduct are essential. *In re St. Stephen's 350 E. 116th St.*, 313 B.R. 161, 174 (Bankr. S.D.N.Y. 2004) ("This burden cannot be met by mere conclusory allegations of fraud without specificity as to time, dates, places and persons.") (citing, *inter alia*, *Jennings v. Hicklin*, 587 F.2d 946, 948 (8th Cir. 1978)).

Applying this standard, Plaintiff fails to demonstrate fraud, misrepresentation, or misconduct. Plaintiff's motion is simply a repackaging of the factual averments and legal

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[2] Because Plaintiff is proceeding *pro se*, her motion is construed liberally and is read to raise the strongest arguments it suggests. *Pabon v. Wright*, 459 F.3d 241, 248 (2d Cir. 2006).

[3] Plaintiff does not expressly invoke Local Rule 6.3, providing for reconsideration or reargument where a party asserts that the Court has overlooked matters or controlling decisions. Plaintiff's reply brief contains a passing mention of this standard, but she concedes that "[t]he court did not overlook anything" before proceeding to further discuss Defendants' alleged misconduct. Plaintiff's Reply Memorandum at 7 (ECF No. 183). And, though Plaintiff does reiterate a number of arguments and cites that she advanced at summary judgment, a motion for reconsideration is not a vehicle to "relitigate an issue already decided." *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995).

arguments she advanced at the summary judgment stage with passing, vague and conclusory references to fraud or misrepresentations peppered throughout. As noted above, Fed. R. Civ. P. 60(b) does not entitle Plaintiff to a second bite at the apple, which appears to be what Plaintiff seeks through her motion. And, even had Plaintiff more clearly alleged fraudulent conduct, she has further failed to demonstrate how that fraud has "substantially interfered" with her ability to present her case. *Catskill Development.*, 286 F. Supp. 2d at 312. This case has been pending for nearly five years. Plaintiff was provided a substantial amount of discovery, as well as ample time to oppose Defendants' summary judgment motion, as the extensive record appended to her opposition papers reflects. Plaintiff's motion thus does not support the extraordinary remedy of reconsideration.

CONCLUSION

For the reasons set forth above, Plaintiff's motion for reconsideration is **DENIED**. The Clerk of the Court is directed to terminate ECF No. 178.

In addition, the Court finds, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 445 (1962).

SO ORDERED.

Dated: **New York, New York**
July 18, 2018

HON. ANDREW L. CARTER, JR.
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

REN YUAN DENG,	:	1-15-15
Plaintiff,	:	
-against-	:	13 Civ. 6801 (ALC)
NEW YORK STATE OFFICE OF MENTAL HEALTH, et al.,	:	MEMORANDUM AND OPINION
Defendants.	:	

ANDREW L. CARTER, JR., District Judge:

Plaintiff Ren Yuan Deng ("Deng") brings this *pro se* action for monetary damages, as well as costs and reasonable attorney's fees, against defendants New York State Office of Mental Health ("OMH") and, in their individual capacities, Michael Hogan ("Hogan"), Molly Finnerty ("Finnerty"), Emily Leckman-Westin ("Leckman"), Lynn Heath ("Heath"), Barbara Forte ("Forte"), and Paul Connelly ("Connelly"). This is primarily a discrimination suit arising out of Deng's previous employment at OMH. Plaintiff's lengthy Amended Complaint sets forth a sundry list of claims, each falling under the umbrella of one of 11 self-styled themes that this Opinion substantially tracks for convenience. Deng alleges violations under 42 U.S.C. § 1983 ("Section 1983"), Title VII of the Civil Rights Act of 1964 ("Title VII"), the New York State Humans Rights Law ("NYSHRL"), the New York City Human Rights Law ("NYCHRL"), the Family and Medical Leave Act ("FMLA"), the New York Labor Law, and the Fair Labor Standards Act ("FLSA"). This Opinion resolves defendants' Motion to Dismiss.

Deng pleads facts sufficient to state some claims for disparate treatment (which she categorizes as "Intentional Racial Discrimination") under the Equal Protection Clause and Title VII against Finnerty, Leckman, and Heath. In addition, some of her First Amendment retaliation

causes of action against Finnerty, Leckman, Heath, Forte, Connelly, and Hogan survive. Further, Deng has met her burden with respect to making out a FMLA retaliation claim for wage deductions against Finnerty, Leckman, Forte, Connelly, and Heath. Similarly, the plaintiff's New York Labor Law Section 193 claim for wage deductions against Finnerty, Leckman, Forte, Connelly, and Heath passes muster. Deng's remaining claims are dismissed. For the reasons set forth in greater detail below, the Motion to Dismiss is GRANTED in part and DENIED in part.

BACKGROUND

The allegations in the Amended Complaint are assumed true only for purposes of the Motion to Dismiss. Deng is a woman of Chinese ancestry who began her employment as a biostatistician in OMH in November 2001. Am. Compl. ¶¶ 5-6. She was assigned to the Bureau of Evidence-Based Services and Implementation Science ("EBSIS"), led by Director Finnerty. *Id.* ¶ 10. Deng's title was Research Scientist IV. *Id.* ¶ 6. From the beginning of her employment through her termination by arbitration on May 17, 2013, *id.* ¶ 154, Deng never received a promotion, *id.* ¶ 11.

2004-2009 Allegations

At least by the end of 2004, Deng began to experience discriminatory treatment due to her race. The normal three-year probationary period for new hires was extended by six months for her on the concocted basis that her "performance was serious[ly] lacking." *Id.* ¶ 13. This occurred despite the fact that on October 5, 2004, she had received a Workforce Champion Award from the Governor's Office of Employee Relations for her work on a project creating a set of quality and safety pharmacy indicators. *Id.* ¶ 9. A white colleague of Deng's named Tom White received credit for her contributions on the team that won the award, and he was promoted from Research Scientist IV to Research Scientist V shortly afterward. *Id.* ¶ 13. But not before

being assigned to supervise Deng, with whom he shared the same rank. *Id.* In fact, in spite of Deng's excellent job performance, Finnerty marginalized her by placing Finnerty's name and the name of white employees on Deng's work and allowing the white employees to present the work instead of her. *Id.* ¶ 10.

Prior to Leckman's fateful arrival in 2006, there were approximately five Research Scientists in EBSIS. *Id.* ¶ 14. The other four employees were white. *Id.* Unlike her colleagues, Deng was never given leadership responsibility or the opportunity to publish. *Id.* Rather, Finnerty reserved desirable opportunities like publishing and attending conferences almost exclusively for white employees. *Id.* ¶ 15. In addition, Finnerty had a practice of promoting only white employees for reasons that were not job-related. *Id.*

In 2006, Deng was made to use her vacation or personal leave time with respect to the one-and-a-half days she worked from home due to illness. *Id.* ¶ 24. Finnerty told her that she would have to use her accrued time because of the OMH policy against working from home, even though Finnerty had not required white employees to do the same. *Id.* In mid-2007, Leckman, who is white and held the title of Research Scientist II at the time, was promoted over an Asian Research Scientist III named Shao, despite Leckman not having experience related to the job and Shao having a much longer tenure at OMH. *Id.* ¶ 26. Finnerty mentioned that communicating with Leckman was easier, although English as a first language was not a job-related skill. *Id.*

In September 2007, Finnerty assigned Deng to the PSYCKES Medicaid project, led by Leckman. *Id.* ¶ 35. Deng discovered that she was not being provided access to the project data that the team had been using, but rather had been working from a decoy folder created by Leckman for her. *Id.* Deng's access to the real project folder was blocked for approximately

eight months. *Id.* Finnerty did not take any remedial action upon being informed of Leckman's behavior. *Id.* After being removed from the PSYCKES Medicaid project, Deng was assigned to the FACT project. *Id.* ¶ 36. One year into her assignment, Finnerty appointed Leckman as a consultant to the team. *Id.* In that capacity, Leckman ordered Deng to rerun the yearlong statistical work that had been done for the purpose of allowing Leckman to receive credit for contributing to the group. *Id.* On one occasion, Leckman told Deng, "I don't like your method," but did not elaborate on how Deng could improve. *Id.*

In early 2008, Deng learned that a Research Scientist V position was open. *Id.* ¶ 27. She approached Finnerty and requested a promotion. *Id.* Finnerty turned her face to the side, making it apparent that Deng would not receive her support. *Id.* Finnerty's support was essential for a promotion. *Id.* In March 2009, Leckman was elevated to Research Scientist V, the most senior position in EBSIS. *Id.* ¶ 29. She ascended to the job prior to the end of her three-year probationary period, and in spite of the fact that she had been on maternity leave twice in three years. *Id.* Deng was more qualified than Leckman for the position. *Id.* ¶ 31.

2010-2013 Allegations

In June 2010, Finnerty informed Deng that if she wanted to work on the highly coveted Pool State Data project, she must accept Leckman as her supervisor. *Id.* ¶ 39. Deng explained that she had had a very negative experience working with Leckman. *Id.* Finnerty indicated that Deng could not refuse a supervisor and added that Deng would be subject to disciplinary action if she attended any project meetings without first submitting to Leckman. *Id.* Finnerty's intensive emails regarding this matter caused Deng emotional distress. *Id.*

On July 28, 2010, Deng complained to Assistant Director of Personnel Connelly and an individual named Prochera of being discriminated against for being Chinese American. *Id.* ¶ 42.

She requested a transfer. *Id.* The following day, Finnerty blocked Deng's access to the OMH email system and servers. *Id.* Her email access was restored on August 5, 2010. *Id.* Her server access was restored on November 19, 2010. *Id.* In the interim, she lost access "to OMH major Oracle databases, most system shared drives, Novell, and Deng's own personal folders. Deng's own personal folders contain the files that were used in connection with Deng's on-going work at OMH." *Id.* ¶ 56.

On September 24, 2010, Deng accepted Leckman as her supervisor. *Id.* ¶ 48. In October 2010, Deng received a Notice of Discipline ("NOD") suggesting a four-week suspension without pay for misconduct, including repeated insubordination towards Finnerty, failure to report to Leckman, and failure to follow HR Director Heath's order to meet with Leckman immediately. *Id.* ¶ 50. Deng denied all wrongdoing. *Id.* On October 25, 2010, Leckman informed Deng that she was being removed from the Pool State Data project, which caused Deng to cry. *Id.* ¶ 51. On November 11, 2010, Deng filed a charge of discrimination with the Equal Employment Opportunity Commission. *Id.* ¶ 53.

Since Deng filed her EEOC charge, she was "subjected to ... adverse employment actions in retaliation." *Id.* ¶ 54. Deng was added to the "Medication Adherence" project in November 2010 after the filing. *Id.* ¶ 59. Leckman repeatedly ridiculed Deng's performance while simultaneously declining to provide "any explanation or meaningful input on how to improve the product" and preventing Deng from presenting her work to an expert panel for constructive feedback. *Id.* She even cancelled a meeting with the panel on the false basis that Deng's work was not ready to be presented. *Id.* Leckman's stated expectation of one to two deliverables each week was objectively unreasonable in light of the demanding nature of the

project. *Id.* Leckman further alienated Deng by prohibiting her membership in the group email listserv for the first four months of her assignment. *Id.*

Deng was also excluded from EBSIS staff meetings shortly after her complaint to the EEOC, which meant that "she was not privy to any information required to do her job." *Id.* ¶ 55. And she appears to have been again denied access to OMH servers, such that she emailed Leckman and the IT manager, Phi, requesting the restoration of her access on January 11, 2011. *Id.* ¶ 56.

On April 28, 2011, Deng was relocated from a quiet office to a loud workstation. *Id.* ¶ 58. During the summer months, in part due to OMH's failure to repair a broken air conditioner, "the excessive heat and poor ventilation made it difficult to breathe." *Id.* Meanwhile, there were three vacant offices with functioning air conditioners. *Id.* Also, the door by Deng's workstation slammed each time it was opened and closed, breaking her concentration. *Id.* On July 7, 2011, Deng complained to the OMH Diversity Management Division, but there was no reply. *Id.*

On December 18, 2011, Deng broke her kneecap in an accident. *Id.* ¶ 84. On or around that date, she attempted to take FMLA leave. *See id.* ¶ 85. She returned to work on March 23, 2012. *Id.* ¶ 88. OMH refused to pay Deng for the sick leave she took, deeming it "unauthorized leave without pay." *Id.* ¶ 90. Deng became sick due to this determination. *Id.* On April 5, 2012, Finnerty informed Deng of a new Bureau attendance policy requiring Deng to obtain Leckman's approval prior to taking sick leave. *Id.* ¶ 93. This policy was designed to retaliate against Deng for taking sick leave and to force her to accept Leckman's supervision. *Id.* The new policy allowed OMH to deduct wages from Deng's paycheck, beginning with an ostensibly unauthorized doctor's appointment on June 1, 2012, for which Deng had attempted to use her paid sick leave. *Id.* ¶ 107.

Between the filing of Deng's EEOC charge and her suspension without pay on October 4, 2013, *id.* ¶¶ 147, 152, she received several notices of interrogation (one of which caused her to collapse), *id.* ¶¶ 45, 66; was subjected to multiple interrogations and counseling sessions, *id.* ¶¶ 64, 69, 79, 96, 145; and had three NODs and a counseling memorandum placed in her file, which were cited in the arbitration ending in her termination, *id.* ¶ 149. Finnerty and Leckman also made surprise visits from Albany to chastise and generally supervise her. *Id.* ¶¶ 64-65, 71, 78. In addition, Leckman frequently emailed and called Leckman with orders, which caused Deng distress. *See, e.g.*, ¶¶ 39, 63, 79.

Deng's arbitration on May 17, 2013 resulted in a finding that there had not been probable cause to suspend her without pay on October 3, 2012. *Id.* ¶ 155. OMH was ordered to compensate Deng for her lost salary and benefits. However, the arbitration also resulted in a finding that there was just cause to terminate Deng, which OMH did. *Id.*

Throughout this timeframe, Deng made periodic complaints to Commissioner Hogan. Beginning on April 21, 2011, Deng complained a total of five times, to no avail. Deng requested that he prevent her relocation to Finnerty's office because Finnerty played a role in the discriminatory acts that were the subject of Deng's then-recently filed complaint with the Equal Employment Opportunity Commission ("EEOC"). *Id.* ¶ 57. Hogan replied: "It is not wise or practical for me to intervene in employee complaints, particularly where formal grievance processes have already been invoked..." *Id.* On one of the four remaining occasions, Deng sent Hogan some work product and requested a small grant. *Id.* ¶ 67. In two other communications—emails sent two hours apart—Deng described being harassed in retaliation for complaining about the discrimination she faced. *Id.* ¶¶ 79-80. Heath replied to Deng's emails. *Id.* ¶ 81. Likewise, Heath replied to an email Deng sent the Commissioner requesting a transfer

so that she would no longer be under the supervision of Finnerty and Leckman. *Id.* ¶¶ 95, 98. Notwithstanding his silence, Hogan had actual knowledge of a "[m]istreatment plan" devised by Finnerty, Leckman, Heath, Forte, and Connelly in retaliation for Deng's complaints of discrimination, and through his indifference, tacitly authorized and condoned their behavior. *Id.* ¶ 63.

STANDARD OF REVIEW

To survive a motion to dismiss, a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The pleading "need not include detailed factual allegations, but must contain sufficient factual matter ... to state a claim to relief that is plausible on its face." *Corona Realty Holding, LLC v. Town of N. Hempstead*, 382 F. App'x 70, 71 (2d Cir. 2010) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)) (internal quotations omitted). Recital of the elements of a cause of action, "supported by mere conclusory statements," is insufficient to show plausibility. *Id.* at 72. And yet "[a] document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (citation omitted) (internal quotations omitted). Indeed, "the pleadings of a *pro se* plaintiff ... should be interpreted to raise the strongest arguments that they suggest." *Graham v. Henderson*, 89 F.3d 75, 79 (2d Cir. 1996) (internal quotations omitted).

DISCUSSION

I. *Section 1983 Claims against OMH*

Deng's Section 1983 claims against OMH, a state agency, are dismissed for lack of subject matter jurisdiction. *See Gross v. New York*, 428 F. App'x 52, 53 (2d Cir. 2011) ("The Eleventh Amendment bars § 1983 claims against states, absent their consent.... New York has waived its immunity from liability and consented to be sued only to the extent that claims are brought in the New York Court of Claims, as opposed to federal court ....") (citation omitted).

II. *New York State and New York City Human Rights Law Claims*

Deng's NYSHRL and NYCHRL claims against OMH also fail. *Rumain v. Baruch Coll. of the City Univ. of N.Y.*, No. 06 Civ. 8256, 2007 U.S. Dist. LEXIS 36964, at *6 (S.D.N.Y. May 17, 2007) ("Plaintiff's proposed claims under the State and City human rights laws are barred by the Eleventh Amendment since New York has not waived its immunity from suit in federal court under those laws.") (citing *Richardson v. N.Y. State Dep't of Corr. Servs.*, 180 F.3d 426, 432, 447-49 (2d Cir. 1999)). Presented with this argument by defendants, Deng abandons her claims against OMH and attempts instead to pin aider and abettor liability onto the individual defendants under NYSHRL § 296(6). Opp'n 24-25. That provision states: "It shall be an unlawful discriminatory practice for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this article, or to attempt to do so." N.Y. Exec. Law § 296(6) (McKinney). Aside from being barred for failure of the plaintiff to raise the claim in the Amended Complaint,[1] Deng's theory is unavailing because a predicate for aider and abettor liability under this provision is employer liability. *DeWitt v. Lieberman*, 48 F. Supp. 2d 280, 293 (S.D.N.Y. 1999).

III. *Title VII Claims Against the Individual Defendants*

[1] *See, e.g., Jacobson v. Peat, Marwick, Mitchell & Co.*, 445 F. Supp. 518, 526 (S.D.N.Y. 1977) ("[A] party is not entitled to amend his pleading through statements in his brief.").

Deng's claims under Title VII against the individual defendants are dismissed. *See Tomka v. Seiler Corp.*, 66 F.3d 1295, 1314 (2d Cir. 1995) ("the statutory scheme and remedial provisions of Title VII indicate that Congress intended to limit liability to employer-entities").[2]

IV. *Personal Involvement of Hogan*

"It is well settled in this Circuit that personal involvement of defendants in alleged constitutional deprivations is a prerequisite to an award of damages under § 1983." *Shomo v. City of N.Y.*, 579 F.3d 176, 184 (2d Cir. 2009). In this context, the common law doctrine of *respondeat superior* does not apply; that would be too easy. Instead, a defendant's actions must be the proximate cause of the injury described. *Walker v. Clemson*, No. 11 Civ. 9623, 2012 WL 2335865, at *7 (S.D.N.Y. June 20, 2012), *adopted*, 2012 WL 3714449 (S.D.N.Y. Aug. 28, 2012). Defendants posit that Hogan, who was OMH Commissioner at the time of the relevant events, lacks the requisite personal involvement in the harm Deng alleges was inflicted upon her. Mot. Dismiss 25-26.

The Second Circuit has stated the rules for establishing a supervisor's personal involvement in a Section 1983 action:

> The personal involvement of a supervisory defendant may be shown by evidence that: (1) the defendant participated directly in the alleged constitutional violation, (2) the defendant, after being informed of the violation through a report or appeal, failed to remedy the wrong,[3] (3) the defendant created a policy or custom under which unconstitutional practices occurred, or allowed the continuance of such a policy or custom, (4) the defendant was grossly negligent in supervising subordinates who committed the wrongful acts, or (5) the defendant exhibited deliberate indifference to the rights of [others] by failing to act on information indicating that unconstitutional acts were occurring.

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[2] Moreover, in her Opposition, Deng disavows any attempt to impose such liability. Opp'n 12.

[3] This second example is construed more narrowly than it reads. As Magistrate Judge Gorenstein notes in *Johnson v. Wright*, merely sending a letter to a supervisor does not create personal involvement. 234 F. Supp. 2d 352, 363 (S.D.N.Y. 2002). Moreover, the second example in *Coughlin* is taken from *United States ex rel. Larkins v. Oswald*, 510 F.2d 583, 589 (2d Cir. 1975), in which a supervisor was required by regulation to receive reports of prison conditions. *Wright*, 234 F. Supp. 2d at 363.

Colon v. Coughlin, 58 F.3d 865, 873 (2d Cir. 1995). Deng asserts that Hogan became personally involved in the constitutional torts she suffered by exhibiting "reckless indifference" towards her conditions. Am. Compl. ¶¶ 4, 81.

Defendants argue, correctly, that personal involvement on the part of Hogan does not arise from Deng's communications with the Commissioner. Mot. Dismiss 25-26. "Both the Court of Appeals and numerous district courts in this Circuit have held that receipt of letters or grievances is insufficient to impute personal involvement." *Gonzalez v. Sarreck*, No. 08 Civ. 3661, 2011 WL 5051341, at *14 (S.D.N.Y. Oct. 24, 2011). Of the five communications Deng alleges to have made to Hogan, she states that he only replied to the first. Specifically, the plaintiff claims to have requested of Hogan that he prevent her relocation to Finnerty's office because Finnerty played a role in the discriminatory acts that were the subject of Deng's then-recently filed complaint with the Equal Employment Opportunity Commission ("EEOC"). Hogan is said to have replied: "It is not wise or practical for me to intervene in employee complaints, particularly where formal grievance processes have already been invoked..." Although the mere receipt of Deng's complaint by a supervisor in Hogan's position cannot establish personal involvement, some responses by Hogan might have. *See, e.g.*, *Ramos v. Artuz*, No. 00 Civ. 0149, 2001 WL 840131, at *8 (S.D.N.Y. July 25, 2001) (official "sent plaintiff numerous letters containing some explanation or justification concerning the issues raised by plaintiff in his letters"); *Johnson v. Bendheim*, No. 00 Civ. 720, 2001 WL 799569, at *6 (S.D.N.Y. July 13, 2001) (official denied prisoners' grievances after receiving them); *James v. Artuz*, 93 Civ. 2056, 1994 U.S. Dist. LEXIS 5708, at *26 (S.D.N.Y. May 2, 1994) (official conducted *de novo* review of prisoner's disciplinary hearing).

Hogan's reaction is not on the level of these examples. The plaintiff has not pled facts suggesting that her communication provided actual or constructive knowledge of specific constitutional torts under Section 1983. *See McCann v. Coughlin*, 698 F.2d 112, 125 (2d Cir. 1983) (finding personal involvement when prison officials had actual or constructive notice of their internal disciplinary procedures, which clearly violated the procedural Due Process rights of inmates). Accordingly, the express reliance of this supervisor—multiple levels removed from the plaintiff in the chain of command—on a formal investigative process that the plaintiff herself invoked cannot create liability.

The other communications mentioned in the Amended Complaint also fail to establish personal involvement. On one of the four remaining occasions, Deng states that she sent Hogan some work product and requested a small grant. There is no indication that the Commissioner even received her communication, let alone replied to it. *See id.* Deng avers that in two other communications—emails sent two hours apart—she described being harassed in retaliation for complaining about the discrimination she faced. The Amended Complaint states that Heath, rather than Hogan, replied to Deng's emails. Likewise, Heath, in lieu of Hogan, replied to an email the plaintiff sent the Commissioner requesting a transfer so that she would no longer be under the supervision of Finnerty and Leckman. As to the communications to which Heath replied on behalf of Hogan, a supervisor's mere referral of a letter complaint to another official does not attach liability to the referring supervisor. *Sealey v. Giltner*, 116 F.3d 47, 51 (2d Cir. 1997).

Nevertheless, elsewhere in the Amended Complaint, Deng alleges enough facts to satisfy the personal involvement element as to claims involving retaliation. Although worded inartfully, the plaintiff alleges that Hogan's "actual knowledge" of, yet conscious decision to not protect her

from, the retaliatory "[m]istreatment plan" of his subordinates amounted to "reckless indifference." Deng's allegation of deliberate indifference, which proximately caused her harm, "is sufficient to give [Hogan] notice of the particular claim being made and thus must be accepted by the Court for purposes of a motion to dismiss." *Johnson v.* 234 F. Supp. 2d 352, 364 (S.D.N.Y. 2002).

V. *Intentional Racial Discrimination*

Under this theme, Deng invokes Section 1983 (grounded in the Equal Protection Clause of the 14th Amendment[4]) and Title VII,[5] respectively. Her claims are directed at Finnerty, Leckman, Heath for her role in authorizing and ratifying their conduct, and OMH. While there are some differences between Section 1983 and Title VII, such as the types of defendants that may be found liable, "[m]ost of the core substantive standards that apply to claims of discriminatory conduct in violation of Title VII are also applicable to claims of discrimination in employment in violation of ... the Equal Protection Clause." *Patterson v. Cnty. of Oneida*, 375 F.3d 206, 225 (2d Cir. 2004). *See also Jemmott v. Coughlin*, 85 F.3d 61, 67 (2d Cir. 1996) ("Title VII law ... is utilized by courts considering § 1983 Equal Protection claims").

To prevail in a claim of disparate treatment, which is what Deng's allegations, construed coherently, posit here, Deng must eventually "establish a *prima facie* case by demonstrating that: (1) she is a member of a protected class; (2) her job performance was satisfactory; (3) she suffered adverse employment action; and (4) the action occurred under conditions giving rise to

[4] The Equal Protection Clause of the 14th Amendment provides: "No State shall ... deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV.

[5] Title VII provides, in relevant part: "It shall be an unlawful employment practice for an employer (1) 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; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C.A. § 2000e-2(a) (West).

an inference of discrimination." *Demoret v. Zegarelli*, 451 F.3d 140, 151 (2d Cir. 2006) (citing *McDonnell Douglas*, 411 U.S. 792, 802 (1973)). However, this is an evidentiary standard. *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 510 (2002). At the pleading stage, a plaintiff merely needs to allege facts sufficient "to state a claim for relief that is plausible on its face." *Corona Realty Holding, LLC*, 382 F. App'x at 71.

Deng, a woman of Chinese descent, *see Hengjun Chao v. Mount Sinai Hosp.*, 476 F. App'x 892, 896 (2d Cir. 2012) (Asian a protected class), claiming to have excelled at her job, cites to various indicia of racial animus. The Court need not consider all of the indicia to conclude that, taken together, Deng's factual allegations could give rise to an inference of discrimination. She states that Finnerty, as Director of EBSIS, had a "pattern [or] practice of segregating staff by race," and that "the director, project manager, or team leader positions ... are *exclusively* for Caucasian staff," a phenomenon that is not job-related. Am. Compl. ¶ 4. Deng notes that despite being part of a project team that in 2004 received a Workforce Champion Award from the State of New York for her performance, the normal three-year probationary period for new hires was extended by six months in her case under the false pretense that there were concerns her performance was seriously deficient. Meanwhile, a white colleague of the same rank named Tom White received credit for Deng's work on the award-winning project team and was promoted shortly thereafter, whereas Deng never received a promotion from her initial rank of Research Assistant IV in the 12 years she worked at OMH.

Deng alleges that prior to Leckman's arrival in 2006, there were approximately five Research Assistants in EBSIS, of whom the remaining four were white, and that unlike her colleagues, Deng was never given leadership responsibility or credit in a publication. Indeed, Finnerty reserved nearly all opportunities to publish, attend conferences, and partake in other

desirable activities for herself and her white subordinates. Deng further avers discriminatory enforcement of OMH's policy against employees working from home, noting that in November 2006 she was made to use her vacation or personal leave time to cover the days on which she worked out of the office, whereas white employees had not been required to do the same. According to Deng, when a Research Scientist IV position became available in mid-2007, Leckman, who is white and held the title of Research Scientist II, was promoted over an Asian Research Scientist III named Shao, despite the fact that Leckman had no job-related experience and Shao had worked at OMH for many more years. Apparently by way of explanation, Finnerty indicated that Leckman was easier to communicate with, even though English as a first language was not a job-related skill. In March 2009, Leckman was promoted again to Research Scientist V, the most senior position in EBSIS, despite the fact that her three-year probationary period had not ended, she had been on maternity leave twice in three years, and she had started at OMH as a Research Scientist II. By contrast, in early 2008, Finnerty had made it apparent through her body language that she would not support Deng, who was more qualified than Leckman for the position.

Additionally, Leckman is described as having engaged in racially discriminatory treatment through taking credit for the work done by minority employees and erecting barriers to their successful job performance. *Id.* ¶ 4. Heath, in her capacity as a Personnel officer, is said to have had a "pattern [or] practice that authorized or ratified the racial harassment" practiced by the other defendants. *Id.*

Although most of Deng's allegations of mistreatment are not severe enough to be actionable under either statute, for the following reasons, the Court finds that the plaintiff has articulated a few claims under Section 1983 and Title VII.

A. Equal Protection Clause

When a 1983 suit is against defendants in their individual capacities, aside from personal involvement, a plaintiff must show that the discrimination was intentional. *Patterson*, 375 F.3d at 226. Here, the plaintiff has met her burden. *See Perry v. State of N.Y. Dep't of Labor*, No. 08 Civ. 4610, 2009 WL 2575713, at *2 (S.D.N.Y. Aug. 20, 2009) ("Allegations supporting motive may include preferential treatment given to similarly situated individuals or remarks that convey discriminatory animus.").

Moreover, state law supplies the statute of limitations for Section 1983 claims, and in New York State that period is three years. *Harrison v. Harlem Hosp.*, 364 Fed. App'x 686, 688 (2d Cir. 2010). Deng's original Complaint was filed on September 24, 2013, which means she can assert disparate treatment claims only for those adverse employment actions taken within the preceding three-year period.[6]

Most of the injuries Deng complains of are insufficiently adverse to rise to the level of constitutional torts. "A plaintiff sustains an adverse employment action if he or she endures a materially adverse change in the *terms and conditions of employment*.... An adverse employment action is one which is more disruptive than a mere inconvenience or an alteration of job responsibilities." *Brown v. City of Syracuse*, 673 F.3d 141, 150 (2d Cir. 2012) (internal quotations omitted) (emphasis added). For example, Deng directs the Court's attention to such inconveniences as her participation in the highly coveted Pool State Data project being conditioned on her acceptance of her duly appointed supervisor, Leckman; notices of interrogation; actual interrogations; counseling sessions; surprise visits from her superiors; being

[6] The Amended Complaint was filed on January 7, 2014. In their Motion to Dismiss, the defendants do not contest the relation-back of the Amended Complaint to the Complaint for purposes of New York's statute of limitations, and the Court finds that such relation-back is proper. *See* Fed. R. Civ. P. 15(c)(1)(B) ("An amendment to a pleading relates back to the date of the original pleading when: the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading.").

blocked from accessing her OMH email for eight days; and frequent emails and calls from Leckman with orders.

The aforementioned injuries have either been rejected in this Circuit or are on the level of those that have been rejected. *See, e.g.*, *Tepperwien v. Entergy Nuclear Operations, Inc.*, 663 F.3d 556, 570 (2d Cir. 2011) ("even assuming the counseling rose to the level of some form of criticism, we have held ... that criticism of an employee (which is part of training and necessary to allow employees to develop, improve and avoid discipline) is not an adverse employment action") (internal quotations omitted); *Costello v. N.Y. State Nurses Ass'n*, 783 F.Supp.2d 656, 677 (S.D.N.Y. 2011) (no adversity where plaintiff was "inundate[d] ... with emails and questions regarding her work performance").

Deng further alleges that after being relocated to a different office space on April 28, 2011, during the summer months "the excessive heat and poor ventilation made it difficult to breathe." This was in part due to OMH's failure to repair a broken air conditioner. Deng states that she complained to OMH about these conditions on July 7, 2011 but received no response. To impose liability, Deng would need to show that she made more of an effort to get OMH to improve these conditions. Instead, Deng indicates that she only complained once, and does not allege that her complaint was ever received.

Nevertheless, Deng articulates adverse employment actions that 1) fall within the three-year period[7] and 2) are not addressed later in this Opinion as part of her Equal Protection claims

[7] Deng submits that these adverse actions justify application of the "continuing violation" doctrine. Opp'n 1. Under this theory, defendants can be found liable for all of their adverse acts so long as at least one falls within the statutory period of three years. *Cornwell v. Robinson*, 23 F.3d 694, 703 (2d Cir. 1994). The Court rejects Deng's characterization. To be sure, courts within this Circuit have not always used clear language in describing the doctrine. Judge Posner offers the following helpful illustration:

> The office of the misnamed doctrine is to allow suit to be delayed until a series of wrongful acts blossoms into an injury on which suit can be brought. It is thus a doctrine not about a continuing, but about a

falling under captions like "Failure to Promote" and "FMLA Retaliation," *infra*. The plaintiff avers that three NODs and a counseling memorandum placed in her personal file were explicitly relied upon by OMH in the arbitration that ended in her termination. *See Bowles v. N.Y.C. Transit Auth.*, No. 03 Civ.3073, 2004 WL 548021, at *2-*3 (S.D.N.Y. Mar. 18, 2004) (finding adverse action where plaintiff's grievance was denied, resulting in "continued unemployment [and] loss of wages," based on a NOD or counseling memo); *compare Weeks v. N.Y. State Div. of Parole*, 273 F.3d 76, 86 (2d Cir. 2001) (NOD and counseling memo were not adverse where plaintiff failed to show how they materially impacted working conditions).

Deng also alleges being denied access to OMH servers from July 29, 2010 to November 19, 2010. During this period, "OMH made no attempt to resolve Deng's complaints and kept Deng ... from access[ing the] OMH system." Am. Compl. ¶ 44. The plaintiff explains that this meant losing access "to OMH major Oracle databases, most system shared drives, Novell, and Deng's own personal folders. Deng's own personal folders contain the files that were used in connection with Deng's on-going work at OMH." Finally, the plaintiff indicates that her exclusion from EBSIS staff meetings since filing her EEOC charge on November 11, 2010 meant that "she was not privy to any information required to do her job." Deng's descriptions of

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> cumulative, violation. A typical case is workplace harassment on grounds of sex. The first instance of a coworker's offensive words or actions may be too trivial to count as actionable harassment, but if they continue they may eventually reach that level and then the entire series is actionable.

Limestone Dev. Corp. v. Vill. of Lemont, 520 F.3d 797, 801 (7th Cir. 2008) (citations omitted). By contrast, "[d]iscrete acts such as termination, failure to promote, denial of transfer, or refusal to hire are easy to identify, and are not actionable if time barred, even when they are related to acts alleged in timely filed charges. Instead, [e]ach discrete discriminatory act starts a new clock for filing charges alleging that act, and even serial violations—a series of discrete but related acts of discrimination—do not warrant application of the continuing violations doctrine." *Bermudez v. City of N.Y.*, 783 F. Supp. 2d 560, 574 (S.D.N.Y. 2011) (internal quotations omitted). For Equal Protection and Title VII purposes, the Court finds that the actionable injuries Deng alleges are discrete acts. She otherwise does not allege non-discrete actions severe or pervasive enough to comprise one independent injury. *See Meckenberg v. N.Y.C. Off-Track Betting*, 42 F. Supp. 2d 359, 372-73 (S.D.N.Y. 1999).

the importance of OMH server access and attendance at EBSIS staff meetings are adequate to overcome the hurdle that she plead actions resulting in a materially adverse change in the conditions of her employment.

B. Title VII

The statute of limitations for Title VII claims is much shorter. "For a Title VII claim arising in New York to be timely, a plaintiff must file the charge with the Equal Employment Opportunity Commission ("EEOC") within 300 days of the allegedly unlawful employment practice." *Baroor v. N.Y.C. Dep't of Educ.*, 362 F. App'x 157, 159 (2d Cir. 2010). However, "[a] district court [also] has jurisdiction to hear Title VII claims that ... are based on conduct subsequent to the EEOC charge which is reasonably related to that alleged in the EEOC charge." *Butts v. City of N.Y. Dep't of Hous. Pres. & Dev.*, 990 F.2d 1397, 1401 (2d Cir. 1993) (internal quotations omitted). "The reasonably related rule has been broadly construed to allow judicial redress for most retaliatory acts arising subsequent to an EEOC filing; at the same time we have cautioned that this standard is not to be read as granting an open season for litigating any sort of discrimination claim against the employer." *Malarkey v. Texaco, Inc.*, 983 F.2d 1204, 1209 (2d Cir. 1993). The Court construes this *pro se* plaintiff's "continuing violation" argument with respect to Title VII to argue that the "reasonably related" rule should apply to her allegations of retaliation to the filing of her EEOC charge, and the Court agrees.

Accordingly, the window for Deng's Title VII claims stretches from 300 days prior to the filing of her EEOC charge, or January 15, 2010, to December 5, 2011, which is the last allegation of retaliation to her filing. Am. Compl. ¶ 83. The Amended Complaint indicates that only one NOD, dated October 4, 2010, was filed within this period. *Id.* ¶ 50. While it is unclear which counseling memo was cited by OMH during Deng's disciplinary arbitration, the Court allows this claim to proceed as well to the extent it is the same memo Finnerty presented to Deng

on August 23, 2011. *Id.* ¶ 65. Additionally, OMH may ultimately be found liable for denying Deng access to the OMH servers from July 29, 2010 to November 19, 2010 and for preventing Deng from attending Bureau staff meetings after November 11, 2010.

VI. ***Failure to Promote***

Plaintiff claims a violation of her Equal Protection and Title VII rights by Finnerty and Heath, and through them OMH, for failing to promote her to the position of Research Scientist V over Leckman, who was less qualified. Aside from the fact that Deng's 2008 oral request for the position falls outside the statute of limitations for Section 1983 and Title VII, Deng's failure to promote claims are dismissed because she never formally applied for the promotion. *See Brown v. Coach Stores, Inc.*, 163 F.3d 706, 710 (2d Cir. 1998) ("We read *McDonnell Douglas* and *Burdine* generally to require a plaintiff to allege that she or he applied for a specific position or positions and was rejected therefrom, rather than merely asserting that on several occasions she or he generally requested promotion.").

VII. ***Hostile Work Environment***

Deng alleges violations of her Equal Protection and Title VII rights by Finnerty, Leckman, Heath, and through them, OMH, on the theory that they created a racially hostile work environment. These claims are dismissed as well. As with disparate treatment claims, the analysis under Section 1983 and Title VII is similar. *Zegarelli*, 451 F.3d at 149. To prevail, a plaintiff must demonstrate that "the workplace is permeated with discriminatory intimidation, ridicule, and insult[] that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment ...." *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 116 (2002) (internal quotations omitted). A court must assess "all the

circumstances, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Id.* (internal quotations omitted). As Judge Scheindlin noted in *Costello*:

> The Supreme Court distinguishes discrete acts from acts contributing to a hostile work environment on the ground that creation of a hostile work environment involves repeated conduct such that the unlawful employment practice ... cannot be said to occur on any particular day. It occurs over a series of days or perhaps years and, in direct contrast to discrete acts, a single act of harassment may not be actionable on its own.

783 F. Supp. 2d at 674 (internal quotations omitted) (brackets omitted).

As mentioned briefly *supra* note 7, considering all of the circumstances, the constellation of non-discrete acts alleged in the amended complaint is not severe or pervasive enough to give rise to a claim of hostile work environment. In particular, frequent emails and telephone calls from Leckman instructing Deng to perform such basic tasks as meet with her, respond to her emails, answer her phone calls, and post her work are not severe, let alone facially inappropriate from a supervisor. Notably, the plaintiff fails to allege that Leckman had no basis for repeating these requests. Likewise, the handful of "surprise" visits made by Leckman and Finnerty were not out-of-bounds. As Leckman explained to Deng, she was not entitled to pre-notification of a visit from her superior. *Id.* ¶ 64.

VIII. *First Amendment Retaliation*

Deng posits that Finnerty, Leckman, Heath, Forte, Connelly, and Hogan have, either with malice or reckless indifference, infringed upon her First Amendment right to free speech through retaliating against her for filing the EEOC charge, including by terminating her. The Second Circuit has held that in the public employment context:

> [A] plaintiff making a First Amendment retaliation claim under § 1983 must initially demonstrate by a preponderance of the evidence that: (1) his speech was constitutionally

> protected, (2) he suffered an adverse employment decision, and (3) a causal connection exists between his speech and the adverse employment determination against him, so that it can be said that his speech was a motivating factor in the determination.

Morris v. Lindau, 196 F.3d 102, 110 (2d Cir. 1999). It is clear that Deng's complaint to the EEOC is constitutionally protected. *See Konits v. Valley Stream Cent. High Sch. Dist.*, 394 F.3d 121, 125 (2d Cir. 2005) ("[W]e have held repeatedly that when a public employee's speech regards the existence of discrimination in the workplace, such speech is a matter of public concern.").

Moreover, the threshold for what constitutes an adverse employment decision is lower in the First Amendment retaliation context than in the context of disparate treatment claims under Section 1983. *See Dillon v. Morano*, 497 F.3d 247, 254 (2d Cir. 2007) (clarifying that "the proper legal test in determining whether an employment action is adverse in First Amendment retaliation cases is whether the alleged acts would deter a similarly situated individual of ordinary firmness from exercising his or her constitutional rights") (internal quotations omitted). Deng states that several adverse employment actions were taken in response to her filing the EEOC charge on November 11, 2010. *See generally* Am. Compl. ¶¶ 54-84 (acts spanning from on or around November 11, 2010 to December 5, 2011); *see also id.* ¶ 154 (termination on May 17, 2013). But even if adverse, several of these allegations are not actionable due to their temporal distance from the EEOC charge and the absence of factual allegations to otherwise support an inference of retaliatory animus. *See Sumner v. U.S. Postal Serv.*, 899 F.2d 203, 209 (2d Cir. 1990) ("The causal connection between the protected activity and the adverse employment action can be established indirectly with circumstantial evidence ... or directly through evidence of retaliatory animus.").

Deng's termination on May 17, 2013 is one of several examples of an adverse action that occurred too long after Deng's complaint to the EEOC (two-and-a-half years) for there to be an inference based on proximity. Although the Second Circuit has not quantified the outer limit of the temporal proximity doctrine, a review of the case law and the factual context at bar establishes that two-and-a-half years is far too remote. *See, e.g.*, *Morris*, 196 F.3d at 113 (no causality where termination of plaintiff was two years after his letter of support for a fellow plaintiff); *Hollander v. Am. Cyanamid Co.*, 895 F.2d 80, 85-86 (three months too long to suggest a causal link between filing of age discrimination complaint and failure of defendant employer to provide good recommendation to prospective employer). One illustration of the difficulty in attempting to use a temporal connection to characterize the plaintiff's termination as a response to the EEOC charge is that Deng also purports to make a claim for FMLA retaliation in this action, and she attempted to take sick leave under that statute after the filing of her EEOC charge but prior to her termination. Deng's conclusory assertion that her termination was in response to the EEOC complaint does not rescue this claim.

What does survive defendants' Motion to Dismiss is the adverse action of being denied access to critical Bureau meetings immediately following Deng's filing with the EEOC. To the extent Deng alleges her access to the OMH servers was again denied after being restored on November 19, 2010, such that on January 11, 2011 she had to email Leckman and the IT manager to request restoration, this qualifies as adverse as well.

Moreover, because Deng was added to the "Medication Adherence" project in November 2010, shortly after the filing of the EEOC charge, the Court considers and concludes that certain actions taken by Leckman during the plaintiff's tenure on that project would deter a reasonable person from complaining about workplace discrimination. Specifically, Leckman is said to have

repeatedly ridiculed Deng's work performance while simultaneously declining to provide "any explanation or meaningful input on how to improve the product" and preventing Deng from presenting her work to an expert panel for constructive feedback. She even cancelled a meeting with the panel on the false basis that Deng's work was not ready to be presented. *Id.* Deng suggests that Leckman's stated expectation of one to two deliverables each week was objectively unreasonable in light of the demanding nature of the project. Leckman further alienated Deng by prohibiting her membership in the group email listserv for the first four months of her assignment. Although the deterrent effect of these project-related actions may not be independently cognizable, cumulatively, they comprise an injury. *See Phillips v. Bowen*, 278 F.3d 103, 109 (2d Cir. 2002) ("Our precedent allows a combination of seemingly minor incidents to form the basis of a constitutional retaliation claim once they reach a critical mass.").

IX. *Wrongful Discharge*

Under this heading, Deng sues OMH, Finnerty, Leckman, Heath, Forte, and Connelly for wrongful termination in response to her EEOC charge. Specifically, she alleges violation of Title VII's prohibition against retaliation[8] and infringement of her 14th Amendment right to Due Process.[9] As previously discussed in the context of her First Amendment retaliation claim, *supra*, Deng's Title VII retaliation claim fails because the period of time between Deng's filing of the charge and her termination forecloses any temporal inference of causality. *See Andersen v. Rochester City Sch. Dist.*, 481 F. App'x 628, 631 (2d Cir. 2012), *cert. denied*, 133 S. Ct. 836 (2013) (Title VII retaliation claims require "a causal connection between the protected activity

[8] "It shall be an unlawful employment practice for an employer to discriminate against any of his employees ... because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter." 42 U.S.C.A. § 2000e-3(a) (West).

[9] The Fifth Amendment to the federal Constitution states: "No state shall ... deprive any person of life, liberty, or property, without due process of law ...." U.S. Const. amend. XIV.

and the adverse action"). Without direct evidence of retaliatory intent in the alternative, her theory is untenable.

Deng also makes the procedural Due Process argument that she had a property interest in her continued employment, which she was "arbitrarily deprived of ... without the due process of law afford[ed] to her side." Am. Compl. ¶ 4. This Section 1983 claim is dismissed as well. "When a person has a property interest that is terminated, procedural due process is satisfied if the government provides notice and a limited opportunity to be heard prior to termination, so long as a full adversarial hearing is provided afterwards." *DeMasi v. Benefico*, 567 F. Supp. 2d 449, 454 (S.D.N.Y. 2008) (internal quotations omitted). Certainly, Deng had a property interest in her continued employment at OMH. *Ciambriello v. Cnty. of Nassau*, 292 F.3d 307, 313 (2d Cir. 2002) ("A public employee has a property interest in continued employment if the employee is guaranteed continued employment absent just cause for discharge.") (internal quotations omitted).

However, as the defendants note, here the pre-termination arbitration proceeding was adequate due to the notice of the charges given to Deng in the form of the NODs and counseling memoranda she received, as well as the opportunity to be heard at the hearing, Opp'n 22. *See Sweeney v. City of N.Y.*, 186 F. App'x 84, 86 (2d Cir. 2006) ("Procedural due process is satisfied if the government provides notice and a limited opportunity to be heard prior to termination, so long as a full adversarial hearing is provided afterwards.") (brackets omitted). And the state provided adequate post-deprivation recourse in the form of Article 75 and Article 78 proceedings. *Locurto v. Safir*, 264 F.3d 154, 175 (2d Cir. 2001) ("An Article 78 proceeding therefore constitutes a wholly adequate post-deprivation hearing for due process purposes.");

Williams v. City of N.Y., No. 12 Civ. 8518, 2014 WL 1383661, at *9 (S.D.N.Y. Mar. 26, 2014) (upholding the sufficiency of Article 75 and Article 78 proceedings).

X. *Malicious Prosecution*

Deng theorizes that Forte, Heath, and Finnerty are liable for malicious prosecution under the Due Process Clause for suspending her without probable cause and without pay for over seven months prior to the final, binding arbitration decision to terminate her. Deng fails to state a claim because the Second Circuit has held that malicious prosecution is cognizable only under the Fourth Amendment. *Washington v. Cnty. of Rockland*, 373 F.3d 310, 316 (2d Cir. 2004) ("to sustain a § 1983 malicious prosecution claim, there must be a seizure or other perversion of proper legal procedures implicating the claimant's personal liberty and privacy interests under the Fourth Amendment") (internal quotations omitted).

XI. *Retaliatory Refusal to Transfer*

Deng submits that Heath, Finnerty, Leckman, Forte, Connelly, and Hogan, either through malice or reckless indifference, violated Title VII, as well as deprived her of her substantive and procedural Due Process rights, when they refused—in retaliation to her filing the EEOC charge—to "remove her from an unbearable working environment." Am. Compl. ¶ 4. These claims are dismissed. The first time Deng asked for a transfer since filing her EEOC charge on November 11, 2010 occurred one-and-a-half years later, when Deng reached out to Hogan on April 20, 2012. With respect to the Title VII claim, for reasons already stated in the First Amendment retaliation context, *supra*, that length of time precludes any inference of causation, and the Amended Complaint pleads no direct evidence of retaliatory animus to otherwise salvage this claim.

Deng states that her substantive Due Process right of "freedom from torture" and her right to procedural Due Process were infringed. The Court generously construes Deng's Section 1983 claims as not hinging on the existence of retaliatory intent. That said, as a matter of common sense, plaintiff's work conditions do not approximate torture under the federal Constitution. She admits that she could have resigned at any point in time, but chose to remain at OMH. *See, e.g., id.* ¶¶ 21, 31, 39, 98. Deng does not elaborate on her vision of the procedural Due Process to which she was entitled based on her request to transfer departments within OMH. She does not allege any deficiencies in the administrative processes available to her, whether leading up to the denials of her requests or following those denials. Without more, Deng does not state a claim.

XII. *FMLA Retaliation*

Under this theme, Deng sues Finnerty, Leckman, Forte, Connelly, and Heath under the FMLA[10], Equal Protection Clause, and Due Process Clause for terminating her and reducing her wages in response to her invocation of the right to take sick leave under the statute.

A. FMLA

A *prima facie* case of FMLA retaliation requires a showing by the plaintiff that: "1) he exercised rights protected under the FMLA; 2) he was qualified for his position; 3) he suffered an adverse employment action; and 4) the adverse employment action occurred under circumstances giving rise to an inference of retaliatory intent." *Potenza v. City of N.Y.*, 365 F.3d 165, 168 (2d Cir. 2004). At the pleading stage, however, Deng is not required to make a *prima*

[10] Deng cites 29 U.S.C. § 2615(a)(2), which states: "It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this subchapter." 29 U.S.C.A. § 2615(a)(2) (West). In light of her factual allegations, the Court construes the Amended Complaint to refer to 29 U.S.C. § 2615(a)(1), which provides: "It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this subchapter." 29 U.S.C.A. § 2615(a)(1) (West).

facie showing. *Smith v. Westchester Cnty.*, 769 F. Supp. 2d 448, 469 (S.D.N.Y. 2011). Her burden is merely to plead enough facts to make her claim plausible. *Id.*

The plaintiff partially succeeds in this effort. It is well-established that termination and wage deduction are adverse employment actions. *Smith*, 769 F. Supp. 2d at 470-71 ("Traditional adverse employment actions include materially adverse change[s] in the terms and conditions of employment, such as termination of employment, a demotion evidenced by a decrease in wage or salary, ... a material loss of benefits, ... [and] reduction in pay ....") (internal quotations omitted). But Deng's theory with respect to her termination fails because the factual allegations do not give rise to the inference that she was discharged in response to attempting to take leave. *See Smith*, 769 F. Supp. 2d at 472 ("Plaintiff must demonstrate that his use of FMLA leave, or his protest of an unlawful FMLA practice, constituted a negative factor in [Defendants'] decision to take an adverse employment action against him.") (internal quotations omitted). Deng's termination on May 17, 2013 occurred approximately one-and-a-half years after she first took FMLA leave on or around December 18, 2011, and more than a year after she returned from leave on March 23, 2012. As discussed in the Court's analysis of Deng's First Amendment retaliation claim, *supra*, the temporal distance between the protected activity and the alleged adverse action is too remote to allow the necessary inference. *See Donnelly v. Greenburgh Cent. Sch. Dist. No. 7*, 691 F.3d 134, 152 (2d Cir. 2012) (applying the temporal proximity doctrine in the FMLA retaliation context). Deng provides no direct evidence of this otherwise missing link to maintain her claim.

By contrast, there is a basis to infer from the pleadings that Deng was not paid for the sick leave she took in retaliation for trying to take FMLA leave. The decision to not pay her for the leave she took was necessarily a response to her invocation of the FMLA. Accordingly, this

claim survives. In holding that this FMLA retaliation claim survives against Finnerty, Leckman, Forte, Connelly, and Heath, this Opinion joins the handful of courts within the Second Circuit that have decided the question of whether supervisors at public agencies may be held liable in their individual capacities for violating the FMLA. *See Santiago v. Conn. Dep't of Transp.*, No. 12 Civ. 132, 2012 WL 5398884, at *4 (D. Conn. Nov. 5, 2012) (citing the opinions of other circuit courts and joining the "at least two" district courts within the Second Circuit that have ruled on the question, deciding in the affirmative). One of those courts is in this District. *Smith*, 769 F. Supp. 2d at 473-74.

B. Equal Protection Clause

Deng's Equal Protection claim that she was singled out in retaliation for attempting to take sick leave fails because recovery under a class-of-one theory is impermissible. *Appel v. Spiridon*, 531 F.3d 138, 139 (2d Cir. 2008) ("The Supreme Court recently held that the Equal Protection Clause does not apply to a public employee asserting a violation of the Clause based on a class of one theory of liability.") (citing *Engquist v. Or. Dep't of Agric.*, 553 U.S. 591, 605 (2008)) (internal quotations omitted).

C. Due Process Clause

Deng argues that the defendants' decision to not compensate her for the leave she took effected a deprivation of her "property rights." The Court interprets this as a substantive Due Process claim. Deng does not allege that the defendants reduced the amount of sick leave available to her in any way. That would appear contrary to the allegation that the sick leave she attempted to take was subsequently deemed "unauthorized" for procedural reasons. Rather, the property interest to which Deng alludes is better defined as an interest in the payments she ultimately was denied.

And yet not all claims for deprivation of property are cognizable under the 14th Amendment. "Substantive due process protects those rights that are so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Irwin v. City of N.Y.*, 902 F. Supp. 442, 449 (S.D.N.Y. 1995) (internal quotations omitted). The FMLA does not even require employers to compensate employees for their leave. *See Ragsdale v. Wolverine World Wide, Inc.*, 535 U.S. 81, 84 (2002) ("Qualifying employees are guaranteed 12 weeks of *unpaid* leave each year by the Family and Medical Leave Act of 1993") (emphasis added). Moreover, the Court is not aware of any New York State law entitling Deng to such payments during the relevant period. Presumably, then, Deng's entitlement to compensation relies on a contractual relationship that does not create a property interest for the demanding standard set by the doctrine of substantive Due Process. *See Irwin*, 902 F. Supp. at 450 ("[T]he Second Circuit recently wrote that simple state-law contractual rights, without more, are [not] worthy of substantive due process protection.") (internal quotations omitted).

XIII. *Illegal Wage Deductions*

Deng also alleges that Finnerty, Leckman, Forte, Connelly, and Heath violated Section 193 of the New York Labor Law, the FLSA, and her substantive Due Process rights when they "impos[ed] a new personal attendance policy" that allowed them to deduct wages from Deng's paycheck. This apparently began with an ostensibly unauthorized doctor's appointment on June 1, 2012, for which Deng had attempted to use her sick leave. Section 193 of the New York Labor Law provides that "[n]o employer shall make any deduction from the wages of an employee," with exceptions. N.Y. Lab. Law § 193(1) (McKinney). It is unclear whether any of those exceptions apply, and defendants have not argued that they are relevant here. *See* Opp'n

28-29. Taking this *pro se* litigant's factual allegations that her wages were arbitrarily reduced as true, her claim lives to see another day.

However, the FLSA claim is dismissed because in the Amended Complaint, Deng neither cites the specific provision under which she sues nor refers to any of the statute's substantive elements. Furthermore, as mentioned in the discussion of Deng's FMLA retaliation claims, *supra*, Deng's Due Process claim for the wage deductions is dismissed on the basis that state-law contractual rights do not receive substantive Due Process protection.

XIV. *Stigma-Plus*

Deng sues Heath under the Due Process Clause on a theory of stigma-plus, which does not pass muster.

> In an action based on a termination from government employment, a plaintiff must satisfy three elements in order to demonstrate a deprivation of the stigma component of a stigma-plus claim. *First*, the plaintiff must ... show that the government made stigmatizing statements about her—statements that call into question the plaintiff's good name, reputation, honor, or integrity.... *Second*, a plaintiff must prove these stigmatizing statements were made public. *Third*, the plaintiff must show that the stigmatizing statements were made concurrently with, or in close temporal relationship to, the plaintiff's dismissal from government employment.

Segal v. City of N.Y., 459 F.3d 207, 212 (2d Cir. 2006) (citations omitted) (internal quotations omitted) (brackets omitted).

As defendants point out, Deng fails to satisfy the second prong of the test laid out in *Segal* because Heath did not make her so-called defamatory statements public. Opp'n 22-23. Rather, the plaintiff alleges that Heath, presumably in response to an email on August 30, 2012 from Deng to Leckman explaining why she would not meet with her, sent an email "to a group of people" that "contained a false fact ... to disgrace and contempt Deng in the public." Am. Compl. ¶¶ 137-38. Deng does not allege that the email was circulated outside of OMH. Internal, work-related communications like the one described are not considered published. *See Brevot v.*

N.Y.C. Dep't of Educ., 299 F. App'x 19, 21 (2d Cir. 2008) (publication requirement not met where "internal document circulated only within the Department"); *Nuttle v. Ponton*, 544 F. Supp. 2d 175, 177 (W.D.N.Y. 2008) (no publication where complaints made by professor about student were not "disseminated ... outside of Buffalo State College"). No other grounds for dismissal need be considered.

XV. *Intentional Infliction of Emotional Distress*

Deng posits that Finnerty, Leckman, Heath, Forte, Connelly, and Hogan, either through malice or reckless indifference, through all of their actions, caused the intentional infliction of emotional distress ("IIED") in violation of her right to substantive Due Process, which she defines as "freedom from torture," or in the alternative, her right to procedural Due Process. Deng clearly means to make a common law claim for the intentional infliction of emotional distress, and that is how the Court will construe her efforts.

Yet even that claim is dismissed because the conduct of the defendants does not meet the high bar of egregiousness set in such cases.

> Under New York law, a claim for intentional infliction of emotional distress requires a showing of (1) extreme and outrageous conduct; (2) intent to cause, or reckless disregard of a substantial probability of causing, severe emotional distress; (3) a causal connection between the conduct and the injury; and (4) severe emotional distress. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society.

Stuto v. Fleishman, 164 F.3d 820, 827 (2d Cir. 1999) (citations omitted) (internal quotations omitted). In New York, the statute of limitations for claims of IIED is one year. *Overall v. Estate of Klotz*, 52 F.3d 398, 403 (2d Cir. 1995). Between September 24, 2012 and the filing of the original complaint one year later, Deng alleges that: her computer access was disabled sometime in September 2012, Am. Compl. ¶ 142; she "received a third charge of

insubordination" in that same month, *id.* ¶ 144; she attended an interrogation that resulted in her seven-month suspension without pay beginning on October 3, 2012; and she participated in a three-day arbitration proceeding ending in a finding that her termination was appropriate, but that that there had not been probable cause to suspend her without pay, and ordering the disbursement of salary and benefits withheld from her during that seven-month period. However wrongful Deng may ultimately prove defendants' conduct to be, on the face of the Amended Complaint, there is nothing "extreme and outrageous" about this particular set of actions where Deng had ample notice that a case of insubordination was being built against her and she fails to plead facts suggesting that, contrary to the charges of insubordination, she actually followed the directives of her supervisors.

XVI. *Qualified Immunity*

The defendants submit that the Amended Complaint should be dismissed as against the individual defendants on grounds of qualified immunity. The Court declines. "The doctrine of qualified immunity protects state officials from civil liability for actions performed in the course of their duties if their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Luna v. Pico*, 356 F.3d 481, 490 (2d Cir. 2004) (internal quotations omitted). A right is considered "clearly established" when "(1) the law is defined with reasonable clarity, (2) the Supreme Court or the Second Circuit has recognized the right, and (3) a reasonable defendant would have understood from the existing law that his conduct was unlawful." *Id.* (internal quotations omitted) (brackets omitted). However, a federal appellate court does not need to hold that a specific action is unlawful in order for a state official to be put on notice of that fact. *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). Rather, "in the light of pre-existing law the unlawfulness must be apparent." *Id.*

A. FMLA

Defendants' argument with respect to Deng's FMLA retaliation claim fails. They argue that in the public employment context, individual supervisors should not be held liable for violating the statute, and that at the very least, qualified immunity should attach to the individual defendants because it was (and remains, by their logic) unclear whether they as supervisors at public agencies may be found liable in their individual capacities. Reply 9-10.

The fact that the Second Circuit has not ruled on whether supervisors at public agencies may be found individually liable under the FMLA, and that there is a split among the other circuits, *Smith*, 769 F. Supp. 2d at 473, does not make *Deng's right to not be retaliated against* for attempting to take FMLA leave any less clearly established. That is the only right that matters when determining the existence of qualified immunity. *See Darby v. Bratch*, 287 F.3d 673, 680-81 (8th Cir. 2002) (finding FMLA rights clearly established and rejecting the same qualified immunity argument made by defendants on this ground); *Santiago v. Dep't of Transp.*, No. 12 Civ. 132, 2014 WL 4823869, at *16 (D. Conn. Sept. 25, 2014) (joining the reasoning in *Darby* regarding qualified immunity); *Brunson v. Forest Pres. Dist. of Cook Cnty.*, No. 8 C. 2200, 2010 WL 780331, at *8 (N.D. Ill. Mar. 3, 2010) (rejecting the argument made by defendants in the instant matter for the same reason). It is irrelevant whether the defendants could have predicted that they would be found personally liable under the FMLA, so long as the anti-retaliation provision of the statute was clearly established, which cannot seriously be refuted.[11] *See* 29 U.S.C. § 2615(a)(1); *see also Darby*, 287 F.3d at 681 ("The Family and Medical Leave Act creates clearly established statutory rights, including the right to be free of discrimination or retaliation on account of one's exercise of leave rights granted by the statute.").

[11] Defendants, wisely, do not suggest that Deng's right to not be retaliated against under 29 U.S.C. § 2615(a)(1) is unclear.

B. Section 1983

The individual defendants also contend that they have qualified immunity with respect to the Section 1983 claims that would otherwise survive their Motion to Dismiss. Specifically, they claim that they could not have known that the actions they took were adverse. Opp'n 26. This is implausible. Of the few Section 1983 claims that survive, all of them correspond to allegations of adverse actions that are, if not specifically, then by analogy and common sense, clearly established based on the pre-existing law in this Circuit. Defendants will of course have another opportunity to refute Deng's allegations on summary judgment, once discovery is taken.

CONCLUSION

For the aforementioned reasons, the defendants' Motion to Dismiss is GRANTED in part and DENIED in part. Specifically, the aforementioned claims of disparate treatment ("Intentional Racial Discrimination") under the Equal Protection Clause and Title VII, First Amendment retaliation, FMLA retaliation, and illegal wage deduction under Section 193 of the New York Labor Law survive. All other claims are DISMISSED.

SO ORDERED.

Dated: **New York, New York**
January 15, 2015

ANDREW L. CARTER, JR.
United States District Judge

General Docket
Court of Appeals, 2nd Circuit

Court of Appeals Docket #: 18-2411 **Docketed:** 08/15/2018
Nature of Suit: 3442 CIVIL RIGHTS-Jobs **Termed:** 11/04/2019
Deng v. New York State Office of Menta
Appeal From: SDNY (NEW YORK CITY)
Fee Status: Paid

Case Type Information:
1) Civil
2) Private
3) -

Originating Court Information:
District: 0208-1 : 13-cv-6801
Trial Judge: Andrew L. Carter, U.S. District Judge
Trial Judge: Stewart D. Aaron, U.S. Magistrate Judge
Date Filed: 09/24/2013

Date Order/Judgment:	Date Order/Judgment EOD:	Date NOA Filed:	Date Rec'd COA:
07/18/2018	07/18/2018	08/15/2018	08/15/2018

Prior Cases:
None

Current Cases:
None

Panel Assignment: Not available

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New York State Office of Mental Health Defendant - Appellee	Mark Stephen Grube, Esq., - Direct: 212-416-8028 [COR LD NTC Government] New York State Office of the Attorney General 28 Liberty Street New York, NY 10005

Appendix E

	David Lawrence, III, Assistant Solicitor General **Terminated:** 12/03/2018 Direct: 212-416-8023 [COR LD NTC Government] New York State Office of the Attorney General 28 Liberty Street New York, NY 10005 Barbara D. Underwood, - **Terminated:** 08/20/2018 [COR NTC Government] New York State Office of the Attorney General 28 Liberty Street New York, NY 10005
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Emily Leckman-Westin Defendant - Appellee	Mark Stephen Grube, Esq., - Direct: 212-416-8028 [COR LD NTC Government] (see above) David Lawrence, III, Assistant Solicitor General **Terminated:** 12/03/2018 Direct: 212-416-8023 [COR LD NTC Government] (see above) Barbara D. Underwood, - **Terminated:** 08/20/2018 [COR NTC Government] (see above)
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	[COR LD NTC Government] (see above) David Lawrence, III, Assistant Solicitor General **Terminated:** 12/03/2018 Direct: 212-416-8023 [COR LD NTC Government] (see above) Barbara D. Underwood, - **Terminated:** 08/20/2018 [COR NTC Government] (see above)
Barbara Forte Defendant - Appellee	Mark Stephen Grube, Esq., - Direct: 212-416-8028 [COR LD NTC Government] (see above) David Lawrence, III, Assistant Solicitor General **Terminated:** 12/03/2018 Direct: 212-416-8023 [COR LD NTC Government] (see above) Barbara D. Underwood, - **Terminated:** 08/20/2018 [COR NTC Government] (see above)
Paul Connelly Defendant - Appellee	Mark Stephen Grube, Esq., - Direct: 212-416-8028 [COR LD NTC Government] (see above) David Lawrence, III, Assistant Solicitor General **Terminated:** 12/03/2018 Direct: 212-416-8023 [COR LD NTC Government] (see above) Barbara D. Underwood, - **Terminated:** 08/20/2018 [COR NTC Government] (see above)
Michael Hogen Defendant - Appellee	Mark Stephen Grube, Esq., - Direct: 212-416-8028 [COR LD NTC Government]

	(see above) David Lawrence, III, Assistant Solicitor General **Terminated:** 12/03/2018 Direct: 212-416-8023 [COR LD NTC Government] (see above) Barbara D. Underwood, - **Terminated:** 08/20/2018 [COR NTC Government] (see above)

Ren Yuan Deng,

Plaintiff - Appellant,

v.

New York State Office of Mental Health, Molly Finnerty, Emily Leckman-Westin, Lynn Heath, Barbara Forte, Paul Connelly, Michael Hogen,

Defendants-Appellees.

08/15/2018	☐ 1 34 pg, 2.51 MB	NOTICE OF CIVIL APPEAL, with district court docket, on behalf of Appellant Ren Yuan Deng, FILED. [2369786] [18-2411] [Entered: 08/16/2018 03:07 PM]
08/15/2018	☐ 2 4 pg, 91.25 KB	DISTRICT COURT ORDER, dated 07/18/2018, RECEIVED.[2369798] [18-2411] [Entered: 08/16/2018 03:13 PM]
08/15/2018	☐ 3 24 pg, 223.05 KB	ELECTRONIC INDEX, in lieu of record, FILED.[2369799] [18-2411] [Entered: 08/16/2018 03:14 PM]
08/16/2018	☐ 4	MOTION, to proceed in forma pauperis, on behalf of Appellant Ren Yuan Deng, FILED. Service date 08/15/2018 by hand delivery. [2369845] [18-2411] [Entered: 08/16/2018 03:35 PM]
08/16/2018	☐ 5 1 pg, 9.24 KB	INSTRUCTIONAL FORMS, to Pro Se litigant, SENT.[2369846] [18-2411] [Entered: 08/16/2018 03:36 PM]
08/16/2018	☐ 6 2 pg, 17.96 KB	DEFECTIVE DOCUMENT, Motion to proceed in forma pauperis , [4], on behalf of Appellant Ren Yuan Deng, FILED.[2369866] [18-2411] [Entered: 08/16/2018 03:47 PM]
08/16/2018	☐ 7 3 pg, 117.28 KB	NOTICE OF APPEARANCE AS SUBSTITUTE COUNSEL, on behalf of Appellee Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin and New York State Office of

			Mental Health, FILED. Service date 08/16/2018 by US mail. [2369984] [18-2411] [Entered: 08/16/2018 04:43 PM]
08/20/2018	☐	8	ATTORNEY, David Lawrence III, [7], in place of attorney Barbara D. Underwood, SUBSTITUTED.[2371949] [18-2411] [Entered: 08/20/2018 04:56 PM]
08/29/2018	☐	9 23 pg, 112.76 KB	PAYMENT OF DOCKETING FEE, on behalf of Appellant Ren Yuan Deng, district court receipt # 465401217099, FILED.[2378683] [18-2411] [Entered: 08/29/2018 04:48 PM]
08/29/2018	☐	10 2 pg, 493.28 KB	ACKNOWLEDGMENT AND NOTICE OF APPEARANCE FORM, on behalf of Party Ren Yuan Deng, FILED. Service date 08/29/2018 by US mail.[2380461] [18-2411] [Entered: 08/31/2018 02:56 PM]
08/29/2018	☐	11 2 pg, 431.74 KB	FORM D-P, on behalf of Appellant Ren Yuan Deng, FILED. Service date 08/29/2018 by hand delivery.[2380468] [18-2411] [Entered: 08/31/2018 02:58 PM]
08/29/2018	☐	12 2 pg, 447.95 KB	LR 31.2 SCHEDULING NOTIFICATION, on behalf of Appellant Ren Yuan Deng, informing Court of proposed due date 11/27/2018, RECEIVED. Service date 08/29/2018 by hand delivery.[2380470] [18-2411] [Entered: 08/31/2018 03:00 PM]
09/27/2018	☐	18 1 pg, 36.84 KB	STRIKE ORDER, striking Appellant Ren Yuan Deng , motion for in forma pauperis [4] from the docket, FILED.[2398806] [18-2411] [Entered: 09/27/2018 04:45 PM]
11/27/2018	☐	21 1 pg, 9.13 KB	NEW CASE MANAGER, Troy White, copy to Pro Se appellant, ASSIGNED.[2441821] [18-2411] [Entered: 11/27/2018 09:06 AM]
11/27/2018	☐	23	BRIEF, on behalf of Appellant Ren Yuan Deng, FILED. Service date 11/27/2018 by US mail. [2443267] [18-2411] [Entered: 11/28/2018 11:00 AM]
11/28/2018	☐	24 2 pg, 124.74 KB	LR 31.2 SCHEDULING NOTIFICATION, on behalf of Appellee Paul Connelly, Molly Finnerty, Barbara Forte, Michael Hogen, Lynn Heath, Emily Leckman-Westin and New York State Office of Mental Health, informing Court of proposed due date 02/27/2019, RECEIVED. Service date 11/28/2018 by US mail.[2443317] [18-2411] [Entered: 11/28/2018 11:34 AM]
11/28/2018	☐	25 2 pg, 17.93 KB	DEFECTIVE DOCUMENT, Brief, [23], on behalf of Appellant Ren Yuan Deng, copy to Pro Se Appellant, FILED.[2443320] [18-2411] [Entered: 11/28/2018 11:37 AM]
11/29/2018	☐	28 1 pg, 39.06 KB	SO-ORDERED SCHEDULING NOTIFICATION, setting Appellee Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin and New York State Office of Mental Health Brief due date as 02/27/2019, copy to Pro Se Appellant, FILED. [2444519] [18-2411] [Entered: 11/29/2018 11:13 AM]
12/03/2018	☐	29 2 pg, 101.72 KB	NOTICE OF APPEARANCE AS SUBSTITUTE COUNSEL, on behalf of Appellee Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath,

			Michael Hogen, Emily Leckman-Westin and New York State Office of Mental Health, FILED. Service date 12/03/2018 by US mail. [2446709] [18-2411] [Entered: 12/03/2018 10:45 AM]
12/03/2018	☐	30	ATTORNEY, Mark S. Grube, [29], in place of attorney David Lawrence, III, SUBSTITUTED.[2447473] [18-2411] [Entered: 12/03/2018 04:31 PM]
12/06/2018	☐	31 37 pg, 1.01 MB	MOTION, to supplement record on appeal, on behalf of Appellant Ren Yuan Deng, FILED. Service date 12/04/2018 by hand delivery. [2450629] [18-2411] [Entered: 12/07/2018 11:40 AM]
12/17/2018	☐	33 8 pg, 118.09 KB	OPPOSITION TO MOTION, [31], on behalf of Appellee Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin and New York State Office of Mental Health, FILED. Service date 12/17/2018 by US mail. [2456978] [18-2411] [Entered: 12/17/2018 04:39 PM]
12/19/2018	☐	36 129 pg, 4.83 MB	APPENDIX, volume 1 of 1, (pp. 1-127), on behalf of Appellant Ren Yuan Deng, FILED. Service date 12/19/2018 by US mail.[2462388] [18-2411] [Entered: 12/26/2018 10:41 AM]
12/19/2018	☐	37 67 pg, 953.44 KB	BRIEF, on behalf of Appellant Ren Yuan Deng, FILED. Service date 11/27/2018 by hand delivery. [2462469] [18-2411] [Entered: 12/26/2018 11:35 AM]
12/26/2018	☐	38	CURED DEFECTIVE Brief, Appendix [37], [36], on behalf of Appellant Ren Yuan Deng, FILED.[2462471] [18-2411] [Entered: 12/26/2018 11:36 AM]
12/27/2018	☐	44 1 pg, 58.97 KB	MOTION ORDER, denying the motion for leave to supplement the record on appeal [31] filed by Appellant Ren Yuan Deng, by RJL, copy to Pro Se, FILED. [2463226][44] [18-2411] [Entered: 12/27/2018 09:43 AM]
12/27/2018	☐	45 7 pg, 79.92 KB	REPLY TO OPPOSITION [33], on behalf of Appellant Ren Yuan Deng, FILED. [2464218][45] [18-2411] [Entered: 12/28/2018 10:57 AM]
02/27/2019	☐	49 4 pg, 241.44 KB	MOTION, to file appellee's appendix, on behalf of Appellee Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin and New York State Office of Mental Health, FILED. Service date 02/27/2019 by US mail. [2507113] [18-2411] [Entered: 02/27/2019 05:57 PM]
02/27/2019	☐	50 144 pg, 4.21 MB	BRIEF & SUPPLEMENTAL APPENDIX, on behalf of Appellee Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin and New York State Office of Mental Health, FILED. Service date 02/27/2019 by US mail. [2507114] [18-2411] [Entered: 02/27/2019 06:01 PM]
02/27/2019	☐	51 1 pg, 59.19 KB	CERTIFICATE OF SERVICE, for Brief, Supplemental Appendix, and Motion for Appellees, on behalf of Appellee Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin and New York State Office of Mental Health, FILED. Service

		date 02/27/2019 by US mail.[2507117] [18-2411] [Entered: 02/27/2019 06:04 PM]
02/28/2019	☐ 54 1 pg, 59.83 KB	MOTION ORDER, granting the motion for leave to file a supplemental appendix [49] filed by Appellee New York State Office of Mental Health, Molly Finnerty, Emily Leckman-Westin, Lynn Heath, Barbara Forte, Paul Connelly and Michael Hogen, copy to Pro Se, FILED. [2507350][54] [18-2411] [Entered: 02/28/2019 10:14 AM]
03/13/2019	☐ 57 2 pg, 120.65 KB	ORAL ARGUMENT STATEMENT LR 34.1 (a), on behalf of filer Attorney Mr. Mark Stephen Grube, Esq. for Appellee Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin and New York State Office of Mental Health, FILED. Service date 03/13/2019 by US mail. [2517140] [18-2411] [Entered: 03/13/2019 01:39 PM]
03/13/2019	☐ 59 39 pg, 939.18 KB	REPLY BRIEF, on behalf of Appellant Ren Yuan Deng, FILED. Service date 03/13/2019 by hand delivery. [2518203] [18-2411] [Entered: 03/14/2019 12:55 PM]
03/13/2019	☐ 60 2 pg, 94.12 KB	ORAL ARGUMENT STATEMENT LR 34.1 (a), on behalf of filer Appellant Ren Yuan Deng, FILED. Service date 03/13/2019 by hand delivery. [2518205] [18-2411] [Entered: 03/14/2019 12:56 PM]
06/05/2019	☐ 63	CASE CALENDARING, for the week of 10/21/2019, PANEL A, PROPOSED.[2580903] [18-2411] [Entered: 06/05/2019 04:31 PM]
06/18/2019	☐ 65 1 pg, 9.53 KB	NEW CASE MANAGER, Dana Ellwood, copy to pro se appellant, ASSIGNED.[2589541] [18-2411] [Entered: 06/18/2019 03:29 PM]
08/13/2019	☐ 66	CASE CALENDARING, for submission on 10/25/2019, A Panel, SET. [2631038] [18-2411]--[Edited 08/13/2019 by MR] [Entered: 08/13/2019 01:21 PM]
08/15/2019	☐ 68 1 pg, 9.76 KB	SUBMITTED NOTICE, to attorneys/parties, copy to pro se, TRANSMITTED.[2632746] [18-2411] [Entered: 08/15/2019 10:06 AM]
10/25/2019	☐ 72	CASE, to RAK, CFD, J. MEYER, SUBMITTED.[2689511] [18-2411] [Entered: 10/25/2019 01:07 PM]
11/04/2019	☐ 73 1 pg, 9.12 KB	NEW CASE MANAGER, Atasha Joseph, ASSIGNED.[2696585] [18-2411] [Entered: 11/04/2019 09:05 AM]
11/04/2019	☐ 75 7 pg, 98.14 KB	SUMMARY ORDER AND JUDGMENT, affirming the district court order, by RAK, CFD, J. MEYER, copy sent to pro se appellant, FILED. [2696608] [18-2411] [Entered: 11/04/2019 09:11 AM]
11/14/2019	☐ 77	PETITION FOR REHEARING, on behalf of Appellant Ren Yuan Deng, FILED. Service date 11/12/2019 by hand delivery.[2706139] [18-2411] [Entered: 11/14/2019 11:50 AM]
11/14/2019	☐ 78 2 pg, 17.42 KB	

		DEFECTIVE DOCUMENT, PETITION FOR REHEARING, [77],[77], on behalf of Appellant Ren Yuan Deng, copy sent to pro se appellant, FILED.[2706148] [18-2411] [Entered: 11/14/2019 11:53 AM]
12/05/2019	☐ 79 23 pg, 1.25 MB	PETITION FOR REHEARING, on behalf of Appellant Ren Yuan Deng, FILED. Service date 12/05/2019 by hand delivery.[2722596] [18-2411] [Entered: 12/05/2019 04:17 PM]
12/05/2019	☐ 80	CURED DEFECTIVE PETITION FOR REHEARING, [79],[79], on behalf of Appellant Ren Yuan Deng, FILED.[2722599] [18-2411] [Entered: 12/05/2019 04:18 PM]
12/18/2019	☐ 83 1 pg, 36.92 KB	ORDER, petition for rehearing denied, by RAK, CFD, J. MEYER, copy sent to pro se appellant, FILED.[2733098] [18-2411] [Entered: 12/18/2019 02:34 PM]
12/26/2019	☐ 84 5 pg, 526.17 KB	JUDGMENT MANDATE, copy sent to pro se appellant, ISSUED. [2738625] [18-2411] [Entered: 12/26/2019 05:11 PM]
01/02/2020	☐ 85 11 pg, 1.13 MB	PAPERS, judicial error on the summary order, on behalf of Appellant Ren Yuan Deng, RECEIVED.[2743313] [18-2411] [Entered: 01/03/2020 03:24 PM]
01/03/2020	☐ 86 1 pg, 9.66 KB	Judicial error on the summary order, on behalf of Appellant Ren Yuan Deng received in a closed case, RETURNED.[2743315] [18-2411] [Entered: 01/03/2020 03:24 PM]
01/10/2020	☐ 87 3 pg, 92.89 KB	LETTER, dated 01/10/2020, on behalf of Appellant Ren Yuan Deng, requesting to replace the 3rd page of a document submitted on 01/02/2020, RECEIVED. Service date 01/10/2020 by hand delivery. [2752111] [18-2411] [Entered: 01/14/2020 03:09 PM]
01/14/2020	☐ 88 1 pg, 9.64 KB	LETTER, dated 01/10/2020, on behalf of Appellant Ren Yuan Deng received in a closed case, RETURNED.[2752113] [18-2411] [Entered: 01/14/2020 03:10 PM]

CLOSED,APPEAL,CASREF,ECF,PRO-SE

U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:13-cv-06801-ALC-SDA

Deng v. New York State Office of Mental Health et al
Assigned to: Judge Andrew L. Carter, Jr
Referred to: Magistrate Judge Stewart D. Aaron
Cause: 42:2000e-2e Job Discrimination (Unlawful Employment Practices)

Date Filed: 09/24/2013
Date Terminated: 02/28/2018
Jury Demand: Plaintiff
Nature of Suit: 442 Civil Rights: Jobs
Jurisdiction: Federal Question

Plaintiff

Ren Yuan Deng

represented by **Ren Yuan Deng**
215 West 101st Street
Apt# 8E
New York, NY 10025
PRO SE

V.

Defendant

New York State Office of Mental Health

represented by **Abigail Everett Rosner**
Attorney General of the State of New York
120 Broadway
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Email: abigail.rosner@ag.ny.gov
TERMINATED: 01/23/2017

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Defendant

Molly Finnerty represented by **Barbara Kathryn Hathaway**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Abigail Everett Rosner
(See above for address)
TERMINATED: 01/23/2017

Mariana Claridad Pastore
(See above for address)
TERMINATED: 06/19/2014

Owen Thomas Conroy
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ATTORNEY TO BE NOTICED

Defendant

Emily Leckman-Westin represented by **Barbara Kathryn Hathaway**
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Mariana Claridad Pastore
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TERMINATED: 06/19/2014

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ATTORNEY TO BE NOTICED

Defendant

Lynn Heath

represented by **Barbara Kathryn Hathaway**
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ATTORNEY TO BE NOTICED

Abigail Everett Rosner
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TERMINATED: 01/23/2017

Mariana Claridad Pastore
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TERMINATED: 06/19/2014

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ATTORNEY TO BE NOTICED

Defendant

Barbara Forte

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Mariana Claridad Pastore
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TERMINATED: 06/19/2014

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ATTORNEY TO BE NOTICED

Defendant

Paul Connelly

represented by **Barbara Kathryn Hathaway**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Abigail Everett Rosner
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TERMINATED: 01/23/2017

Mariana Claridad Pastore
(See above for address)
TERMINATED: 06/19/2014

Owen Thomas Conroy
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ATTORNEY TO BE NOTICED

Defendant

Michael Hogen represented by **Barbara Kathryn Hathaway**
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ATTORNEY TO BE NOTICED

Abigail Everett Rosner
(See above for address)
TERMINATED: 01/23/2017

Mariana Claridad Pastore
(See above for address)
TERMINATED: 06/19/2014

Owen Thomas Conroy
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
09/24/2013		Case Designated ECF. (msa) (Entered: 09/30/2013)
09/24/2013	1	REQUEST TO PROCEED IN FORMA PAUPERIS. Document filed by Ren Yuan Deng.(msa) (Entered: 10/09/2013)
09/24/2013	2	COMPLAINT against Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Emily Leckman-Westin, New York State Office of Mental Health. Document filed by Ren Yuan Deng. (Attachments: # 1 Part 2)(msa) (Entered: 10/09/2013)
10/10/2013	3	ORDER GRANTING IFP APPLICATION: Leave to proceed in this Court without prepayment of fees is authorized. 28 U.S.C. § 1915. (Signed by Judge Loretta A. Preska on 10/10/2013) (vj) (Entered: 10/10/2013)
10/16/2013		NOTICE OF CASE ASSIGNMENT to Judge Andrew L. Carter, Jr. Judge Unassigned is no longer assigned to the case. (pgu) (Entered: 10/16/2013)
10/16/2013		Magistrate Judge Ronald L. Ellis is so designated. (pgu) (Entered: 10/16/2013)
10/17/2013		Mailed notice re: Notice of Case Assignment/Reassignment to the Plaintiff(s) of record. (sbr) (Entered: 10/17/2013)

10/23/2013	5	MEDIATION REFERRAL ORDER FOR PRO SE EMPLOYMENT DISCRIMINATION CASES...this pro se case is referred for mediation to the Court's Alternative Dispute Resolution program of mediation. Local Rule 83.12 shall govern the mediation, and the parties are directed to participate in the mediation in good faith. Unless otherwise ordered, the mediation will have no effect upon any scheduling Order issued by this Court, and all parties are obligated to continue to litigate the case....that the Clerk of Court shall locate pro bono counsel to represent the plaintiff at the mediation. The time to assign a mediator under Local Rule 83.12(f) shall be deferred until pro bono counsel has filed a Notice of Limited Appearance of Pro Bono Counsel. Pro bono counsel will represent the plaintiff solely for purposes of the mediation, and that representation will terminate at the conclusion of the mediation process....that any objection by the plaintiff to either the mediation or to the appointment of pro bono counsel to represent the plaintiff in the mediation must be filed within 14 days of this Order. In the event the plaintiff files such an objection, the referral to mediation is vacated, and this case will not proceed to mediation. (Signed by Judge Andrew L. Carter, Jr on 10/23/2013) Copies Mailed By Chambers. (tn) (Entered: 10/23/2013)
10/23/2013	6	ORDER OF SERVICE: To allow Plaintiff, who is proceeding in forma pauperis, to effect service on Defendants through the U.S. Marshals Service, the Clerk of Court is instructed to send Plaintiff one U.S. Marshals Service Process Receipt and Return form ("USM-285 form") for each Defendant. Within thirty days of the date of this order, Plaintiff must complete a USM-285 form for each Defendant and return those forms to the Court. If Plaintiff does not wish to use the Marshals Service to effect service, she must notify the Court in writing within thirty days of the date of this order and request that a summons be issued directly to her. If within thirty days, Plaintiff has not returned the USM-285 forms or requested a summons, under Rule 41(b) of the Federal Rules of Civil Procedure, the Court may dismiss this action for failure to prosecute. Upon receipt of each completed USM-285 form, the Clerk of Court shall issue a summons and deliver to the Marshals Service all of the paperwork necessary for the Marshals Service to effect service upon each Defendant. No matter what method of service Plaintiff chooses, she must effect service within 120 days of the date the summons is issued. It is Plaintiff's responsibility to inquire of the Marshals Service as to whether service has been made and if necessary, to request an extension of time for service. See Meilleur v. Strong, 682 F.3d 56, 63 (2d Cir. 2012). If within 120 days of issuance of the summons, Plaintiff has not made service or requested an extension of time in which to do so, under Rules 4(m) and 41(b) of the Federal Rules of Civil Procedure, the Court may dismiss this action for failure to prosecute. Finally, it is Plaintiff's obligation to promptly submit a written notification to the Court if Plaintiff's address changes, and the Court may dismiss the action if Plaintiff fails to do so. USM-285 Form due by 11/22/2013. Request for Issuance of Summons due by 11/22/2013. (Signed by Judge Andrew L. Carter, Jr on 10/23/2013) Copies Mailed By Chambers. (tn) (Entered: 10/23/2013)
10/24/2013		FRCP 4 (Information Package Mailed) to plaintiff at the address noted on the complaint/court's docket on 10/24/2013 via UPS # 1ZE22E533710006887. The information package included: Initial Case Memo Letter, a copy of the Order Granting In Forma Pauperis Application (IFP), United States Marshal (U.S.M.-285) forms (One For Each Defendant), change of address postcards,

		Judge's individual rules, instructions on how to file a motion and opposition, instructions on filing an amended complaint, application for counsel, a consent to proceed before a Magistrate Judge, and affirmation of service forms. (vj) (Entered: 10/24/2013)
10/24/2013		Mailed a copy of 6 Order of Service, to Ren Yuan Deng. (vj) (Entered: 10/24/2013)
11/13/2013		Received Form U.S.M.-285 for defendant(s): Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Emily Leckman-Westin, New York State Office of Mental Health on 11/13/2013. Summons to be issued listing these defendants for service of 2 Complaint. (sac) (Entered: 11/13/2013)
11/22/2013		SUMMONS ISSUED as to Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Emily Leckman-Westin, New York State Office of Mental Health. (vj) (Entered: 11/22/2013)
11/22/2013		FRCP 4 Service Package Hand Delivered to U.S.M.: Package hand delivered to U.S.M. on 11/22/2013. (vj) (Entered: 11/22/2013)
12/03/2013	7	NOTICE OF LIMITED APPEARANCE OF PRO BONO COUNSEL for Ren Yuan Deng. Mediator to be Assigned by 12/13/2013. (tro) (Entered: 12/03/2013)
12/06/2013		NOTICE OF MEDIATOR ASSIGNMENT - Notice of assignment of mediator. Mediator Schedule due by 1/6/2014.(cda) (Entered: 12/06/2013)
12/11/2013		Terminate Mediation Case Tracking Deadlines: Mediator Schedule Deadline. (rpr) (Entered: 12/11/2013)
12/30/2013	8	NOTICE OF APPEARANCE by Mariana Claridad Pastore on behalf of Paul Connelly, Barbara Forte, Lynn Heath, Emily Leckman-Westin, New York State Office of Mental Health. (Pastore, Mariana) (Entered: 12/30/2013)
01/07/2014	9	AMENDED COMPLAINT FOR EMPLOYMENT DISCRIMINATION; amending 2 Complaint against Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Emily Leckman-Westin, New York State Office of Mental Health, Michael Hogen with JURY DEMAND.Document filed by Ren Yuan Deng. Related document: 2 Complaint filed by Ren Yuan Deng. (Attachments: # 1 amended complaint, # 2 amended complaint)(sc) Modified on 1/8/2014 (sc). (Entered: 01/08/2014)
01/08/2014	10	MARSHAL'S PROCESS RECEIPT AND RETURN OF SERVICE EXECUTED. Summons and Complaint served. Lynn Heath served on 12/23/2013, answer due 2/21/2014. Service was made by Mail, signed and returned by Nancy Halleck,Deputy Counsel OMH. Document filed by Ren Yuan Deng. (sc) (Entered: 01/15/2014)
01/08/2014	11	MARSHAL'S PROCESS RECEIPT AND RETURN OF SERVICE EXECUTED. Summons and Complaint served. Barbara Forte served on 12/23/2013, answer due 2/21/2014. Service was made by Mail, signed and returned by Nancy Halleck, OMH Dep. Counsel. Document filed by Ren Yuan Deng. (sc) (Entered: 01/15/2014)

01/08/2014	12	MARSHAL'S PROCESS RECEIPT AND RETURN OF SERVICE EXECUTED. Summons and Complaint served. Paul Connelly served on 12/23/2013, answer due 2/21/2014. Service was made by mail, signed and returned by Nancy Halleck, Deputy Counsel. Document filed by Ren Yuan Deng. (sc) (Entered: 01/15/2014)
01/08/2014	13	MARSHAL'S PROCESS RECEIPT AND RETURN OF SERVICE EXECUTED. Summons and Complaint served. Emily Leckman-Westin served on 12/23/2013, answer due 2/21/2014. Service was made by MAIL, signed and returned by Nancy Halleck, Deputy Counsel OMH. Document filed by Ren Yuan Deng. (sc) (Entered: 01/15/2014)
01/08/2014	14	MARSHAL'S PROCESS RECEIPT AND RETURN OF SERVICE EXECUTED. Summons and Complaint served. New York State Office of Mental Health served on 12/23/2013, answer due 2/21/2014. Service was made by MAIL, signed and returned by Nancy Halleck, Deputy Counsel OMH. Document filed by Ren Yuan Deng. (sc) (Entered: 01/15/2014)
01/21/2014	17	MARSHAL'S PROCESS RECEIPT AND RETURN OF SERVICE EXECUTED. Summons and Complaint served. Molly Finnerty served on 12/30/2013, answer due 2/28/2014. Service was accepted by MAIL. Document filed by Ren Yuan Deng. (sc) (Entered: 01/24/2014)
01/22/2014	15	NOTICE OF APPEARANCE by Mariana Claridad Pastore on behalf of Molly Finnerty. (Pastore, Mariana) (Entered: 01/22/2014)
01/22/2014	16	LETTER addressed to Judge Andrew L. Carter, Jr. from Mariana C. Pastore dated January 22, 2014 re: Pre-Motion Conference. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Emily Leckman-Westin, New York State Office of Mental Health.(Pastore, Mariana) (Entered: 01/22/2014)
01/28/2014	18	AFFIRMATION OF DENG IN OPPOSITION TO DEFENDANTS' MOTION(letter) re: 16 Letter. Document filed by Ren Yuan Deng. (sc) (Entered: 01/29/2014)
02/03/2014	19	MEMO ENDORSEMENT on re: 16 Letter, filed by Molly Finnerty, Paul Connelly, Barbara Forte, Emily Leckman-Westin, Lynn Heath, New York State Office of Mental Health. ENDORSEMENT: A pre-motion conference is scheduled for 2-18-14 at 2:30 p.m. So ordered. (Pre-Motion Conference set for 2/18/2014 at 02:30 PM before Judge Andrew L. Carter Jr.) (Signed by Judge Andrew L. Carter, Jr on 2/3/2014) (mro) (Entered: 02/03/2014)
02/03/2014	20	LETTER addressed to Judge Andrew L. Carter, Jr. from Mariana C. Pastore dated February 3, 2014 re: Defendants' Request for an Adjournment of the Pre-Motion Conference. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Emily Leckman-Westin, New York State Office of Mental Health. (Pastore, Mariana) (Entered: 02/03/2014)
02/05/2014	21	MEMO ENDORSEMENT on re: 20 Letter, filed by Molly Finnerty, Paul Connelly, Barbara Forte, Emily Leckman-Westin, Lynn Heath, New York State Office of Mental Health. ENDORSEMENT: Application granted. Pre-Motion conference adjourned to 2-21-14 at 12:15 p.m. So Ordered. (Pre-Motion Conference set for 2/21/2014 at 12:15 PM before Judge Andrew L. Carter Jr.) (Signed by Judge Andrew L. Carter, Jr on 2/5/2014) Copies Mailed By Chambers.

		(mro) (Entered: 02/05/2014)
02/18/2014		Received Form U.S.M.-285 for defendant(s): Michael Hogan on 2/18/2014. Summons to be issued listing these defendants for service of 9 Amended Complaint. (sac) (Entered: 02/18/2014)
02/18/2014		SUMMONS ISSUED as to Michael Hogen. (vj) (Entered: 02/18/2014)
02/18/2014		FRCP 4 Service Package Hand Delivered to U.S.M.: Package hand delivered to U.S.M. on 2/18/2014. (vj) (Entered: 02/18/2014)
02/21/2014		Minute Entry for proceedings held before Judge Andrew L. Carter, Jr: Pre-Motion Conference held on 2/21/2014. Ren Yuan Deng, Pro Se Plaintiff. Mariana Pastore for Defendant(s). Defendant(s) Motion to dismiss due by 4/25/2014. Plaintiff's Reponse due by 6/24/2014. Defendant(s) reply, if any, due by 7/15/2014. (tdh) (Entered: 02/26/2014)
03/21/2014	22	MARSHAL'S PROCESS RECEIPT AND RETURN OF SERVICE EXECUTED. Summons and Amended Complaint served. Michael Hogen served on 3/6/2014, answer due 5/5/2014. Service was made by Mail, signed and returned by Nancy Halleck, OMH, Dep. Counsel. Document filed by Ren Yuan Deng. (sc) (Entered: 04/04/2014)
04/09/2014	23	ORDER: In light of Plaintiff's objection to participating in the Court's Alternative Dispute Resolution Program, the October 23, 2013 Mediation Order (Dkt. No.5) is hereby vacated, and this case will not proceed to mediation. SO ORDERED. (Signed by Judge Andrew L. Carter, Jr on 4/9/2014) Copies Mailed By Chambers. (kgo) (Entered: 04/10/2014)
04/09/2014	24	ORDER OF REFERENCE TO A MAGISTRATE JUDGE. Order that case be referred to the Clerk of Court for assignment to a Magistrate Judge for General Pretrial (includes scheduling, discovery, non-dispositive pretrial motions, and settlement). Referred to Magistrate Judge Ronald L. Ellis. (Signed by Judge Andrew L. Carter, Jr on 4/9/2014) (kgo) (Entered: 04/10/2014)
04/22/2014	25	LETTER MOTION for Leave to File Excess Pages addressed to Judge Andrew L. Carter, Jr. from Mariana C. Pastore dated April 22, 2014. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health.(Pastore, Mariana) (Entered: 04/22/2014)
04/24/2014	26	ORDER granting 25 Letter Motion for Leave to File Excess Pages. I write to request a five page extension on the twenty-five page limit for the memorandum of law in support of defendants' motion to dismiss the Amended Complaint, which defendants are scheduled to file and serve on Friday, April 25, 2014. SO ORDERED.(Signed by Judge Andrew L. Carter, Jr on 4/24/2014) Copies Mailed By Chambers. (ama) (Entered: 04/24/2014)
04/25/2014	27	MOTION to Dismiss *the Amended Complaint*. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health.(Pastore, Mariana) (Entered: 04/25/2014)

04/25/2014	28	DECLARATION of Mariana C. Pastore in Support re: 27 MOTION to Dismiss *the Amended Complaint.*. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Attachments: # 1 Exhibit Ex. 1 to Pastore Declaration, # 2 Exhibit Ex. 2 to Pastore Declaration, # 3 Exhibit Ex. 3 to Pastore Declaration, # 4 Exhibit Ex. 4 to Pastore Declaration, # 5 Exhibit Ex. 5 to Pastore Declaration, # 6 Exhibit Ex. 6 to Pastore Declaration, # 7 Exhibit Ex. 7 to Pastore Declaration, # 8 Exhibit Ex. 8 to Pastore Declaration, # 9 Exhibit Ex. 9 to Pastore Declaration)(Pastore, Mariana) (Entered: 04/25/2014)
04/25/2014	29	MEMORANDUM OF LAW in Support re: 27 MOTION to Dismiss *the Amended Complaint.*. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Pastore, Mariana) (Entered: 04/25/2014)
04/25/2014	30	CERTIFICATE OF SERVICE of Notice of Motion to Dismiss the Amended Complaint, Declaration of Mariana C. Pastore in Support of Motion, plus annexed exhibitis, Memo of Law in Support of Motion, Local Rule 12.1 Notice, plus copies of all unpublished cases cited in Memo of Law served on Ren Yuan Deng on April 25, 2014. Service was made by Mail. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Pastore, Mariana) (Entered: 04/25/2014)
04/25/2014	31	NOTICE of Rule 12. 1 Notice re: 27 MOTION to Dismiss *the Amended Complaint.*. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Pastore, Mariana) (Entered: 04/25/2014)
06/16/2014	32	NOTICE OF APPEARANCE by Barbara Kathryn Hathaway on behalf of Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Hathaway, Barbara) (Entered: 06/16/2014)
06/19/2014	33	MEMO ENDORSEMENT on NOTICE OF WITHDRAWAL from Barbara K. Hathaway dated 6/17/2014 re: Notice of Withdrawal. ENDORSEMENT: SO ORDERED. Attorney Mariana Claridad Pastore terminated. (Signed by Judge Andrew L. Carter, Jr on 6/19/2014) Copies Mailed by Chambers. (ajs) Modified on 6/19/2014 (ajs). Modified on 6/23/2014 (ajs). (Entered: 06/19/2014)
06/20/2014	34	MOTION FOR AN EXTENSION OF TIME; re: for an Order granting the plaintiff an extension of time of fourteen days, until 7/8/14, in which to respond to the defendants' motion to dismiss, which was scheduled to be filed on 6/24/14.. Document filed by Ren Yuan Deng.(sc) (Entered: 06/20/2014)
06/23/2014	35	LETTER RESPONSE to Motion addressed to Judge Andrew L. Carter, Jr. from Barbara K. Hathaway dated June 23, 2014 re: 34 MOTION for Extension of Time to File Response/Reply. . Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Hathaway, Barbara) (Entered: 06/23/2014)

07/08/2014	37	PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS re: 27 MOTION to Dismiss *the Amended Complaint*. Document filed by Ren Yuan Deng. (man) (Entered: 07/10/2014)
07/09/2014	36	MEMO ENDORSEMENT on re: 35 Response to Motion, filed by Molly Finnerty, Paul Connelly, Barbara Forte, Emily Leckman-Westin, Michael Hogen, Lynn Heath, New York State Office of Mental Health. ENDORSEMENT: SO ORDERED., (Replies due by 7/29/2014.), Motions terminated: 34 MOTION for Extension of Time to File Response/Reply filed by Ren Yuan Deng. (Signed by Judge Andrew L. Carter, Jr on 7/09/2014) (ama) (Entered: 07/09/2014)
07/29/2014	38	REPLY MEMORANDUM OF LAW in Support re: 27 MOTION to Dismiss *the Amended Complaint*. . Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Hathaway, Barbara) (Entered: 07/29/2014)
07/31/2014	39	LETTER addressed to Judge Andrew L. Carter, Jr. from Ren Yuan Deng, dated 7/31/14 re: REQUEST PERMISSION TO SUBMIT EVIDENCE IN SUPPORT OF PLAINTIFF DENG'S ALLEGATIONS IN HER OPPOSITION TO THE DEFENDANTS' MOTION TO DISMISS. Document filed by Ren Yuan Deng.(sc) (Entered: 07/31/2014)
12/05/2014	40	MEMO ENDORSEMENT on re: 39 Letter, filed by Ren Yuan Deng. ENDORSEMENT: Plaintiff's request is granted. Plaintiff shall file her aforementioned documentary evidence immediately, and no later than December 15, 2014. (Signed by Judge Andrew L. Carter, Jr on 12/5/2014) (djc) (Entered: 12/05/2014)
01/15/2015	41	MEMORANDUM AND OPINION. For the reasons in this Memorandum and Order, the defendants' Motion to Dismiss is GRANTED in part and DENIED in part. Specifically, the aforementioned claims of disparate treatment ("Intentional Racial Discrimination") under the Equal Protection Clause and Title VII, First Amendment retaliation, FMLA retaliation, and illegal wage deduction under Section 193 of the New York Labor Law survive. All other claims are DISMISSED. re: 27 MOTION to Dismiss *the Amended Complaint* filed by Molly Finnerty, Paul Connelly, Barbara Forte, Emily Leckman-Westin, Michael Hogen, Lynn Heath, New York State Office of Mental Health. (Signed by Judge Andrew L. Carter, Jr on 1/15/2015) Copies Mailed By Chambers. (rjm) (Entered: 01/15/2015)
01/16/2015	42	PRETRIAL CONFERENCE ORDER: This action has been referred to Magistrate Judge Ronald L. Ellis for GENERAL PRETRIAL. A CONFERENCE WILL BE HELD IN THIS CASE BY THE JUDGE ON JANUARY 30, 2015, AT 12:00 P.M. IN COURTROOM 11C, 500 PEARL STREET. All counsel must be present. The individuals present must have authority and be prepared to discuss all aspects of the case, including any legal and factual matters related to the claims or counterclaims. No request for adjournment will be considered unless made at least THREE BUSINESS DAYS before the scheduled conference and only after the parties have consulted with each other. Direct inquiries to Rupa Shah, 212-805-0242. (Initial Conference set for 1/30/2015 at 12:00 PM in Courtroom 11C, 500 Pearl Street, New York, NY 10007 before Magistrate Judge Ronald L.

		Ellis). (Signed by Magistrate Judge Ronald L. Ellis on 1/16/2015) (djc) (Entered: 01/16/2015)
01/16/2015	43	LETTER addressed to Judge Andrew L. Carter, Jr. from Ren Yuan Deng dated 1/16/2015 re: I found out today when I was in the Pro Se Office to check my case status. The Court granted my request on December 5, 2014 to file the aforementioned documentary evidence immediately and no later than December 15, 2014. However, I have never received the Court's response. I am in town and vigilantly check my mail everyday. I respectfully request that the court grant me extension of time to file the aforementioned documentary evidence until Tuesday, Jan. 20, 2015. Document filed by Ren Yuan Deng.(sac) (Entered: 01/16/2015)
01/22/2015	45	LETTER MOTION for Extension of Time to File Answer addressed to Judge Andrew L. Carter, Jr. from Barbara K. Hathaway dated January 22, 2015. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health.(Hathaway, Barbara) (Entered: 01/22/2015)
01/22/2015	46	AMENDED LETTER MOTION for Extension of Time to File Answer re: 45 LETTER MOTION for Extension of Time to File Answer addressed to Judge Andrew L. Carter, Jr. from Barbara K. Hathaway dated January 22, 2015. addressed to Judge Andrew L. Carter, Jr. from Barbara K. Hathaway dated January 22, 2015. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health.(Hathaway, Barbara) (Entered: 01/22/2015)
01/23/2015	47	ORDER terminating 45 Letter Motion for Extension of Time to Answer re 9 Amended Complaint; granting 46 Letter Motion for Extension of Time to Answer. The Defendants' request is granted. The Clerk of Court is respectfully directed to terminate ECF Nos. 45-46. So ordered. Barbara Forte answer due 2/20/2015; Molly Finnerty answer due 2/20/2015; Paul Connelly answer due 2/20/2015; Michael Hogen answer due 2/20/2015; New York State Office of Mental Health answer due 2/20/2015; Emily Leckman-Westin answer due 2/20/2015; Lynn Heath answer due 2/20/2015. (Signed by Judge Andrew L. Carter, Jr on 1/23/2015) (rjm) (Entered: 01/23/2015)
01/26/2015	48	ORDER: The above case, previously scheduled for an INITIAL CONFERENCE on Friday, January 30, 2015, at 12:00 p.m., has been ADJOURNED to Monday, February 23, 2015 at 12:00 p.m. in Courtroom 11C, in front of the Honorable Ronald L. Ellis. No request for adjournment will be considered unless made at least THREE BUSINESS DAYS before the scheduled conference and only after the parties have consulted with each other. Initial Conference set for 2/23/2015 at 12:00 PM in Courtroom 11C, 500 Pearl Street, New York, NY 10007 before Magistrate Judge Ronald L. Ellis. (Signed by Magistrate Judge Ronald L. Ellis on 1/26/2015) (kgo) (Entered: 01/26/2015)
01/26/2015	49	ORDER: Plaintiff Ren Yuan Deng ("Deng") brings this prose action for monetary damages, as well as costs and reasonable attorney's fees, against defendants New York State Office of Mental Health ("OMH") and, in their individual capacities, Michael Hogan ("Hogan"), Molly Finnerty("Finnerty"), Emily Leckman-Westin ("Leckman"), Lynn Heath ("Heath"), Barbara Forte ("Forte"), and Paul Connelly

		("Connelly"). This action is primarily a discrimination suit arising out of Deng's previous employment at OMH. On December 5, 2014, the Court granted Deng leave to submit "documentary evidence" by December 15, 2014 that "Deng was purposefully[kept] in the dark of the promotion entirely. (Pl's. Opp. 1,4)" and of "Finnerty's email on filed by Plaintiff on January 20, 2015, ECF No. 44, and concludes that they do not alter the Memorandum and Opinion issued by the Court on January 15, 2015 resolving the Defendants' Motion to Dismiss, ECF No. 41. (Signed by Judge Andrew L. Carter, Jr on 1/26/2015) (js) Modified on 1/26/2015 (js) (Entered: 01/26/2015)
01/28/2015	50	ORDER REFERRING CASE TO MAGISTRATE JUDGE. Order that case be referred to the Clerk of Court for assignment to a Magistrate Judge for General Pretrial (includes scheduling, discovery, non-dispositive pretrial motions, and settlement). Referred to Magistrate Judge Ronald L. Ellis. (Signed by Judge Andrew L. Carter, Jr on 1/28/2015). Copies Mailed by Chambers. (rjm). (Entered: 01/28/2015)
02/10/2015	51	NOTICE OF APPEARANCE by Abigail Everett Rosner on behalf of Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Rosner, Abigail) (Entered: 02/10/2015)
02/17/2015	52	LETTER MOTION for Extension of Time to File Answer addressed to Magistrate Judge Ronald L. Ellis from Barbara K. Hathaway dated February 17, 2015. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health.(Hathaway, Barbara) (Entered: 02/17/2015)
02/19/2015	53	ORDER granting 52 Letter Motion for Extension of Time to Answer to All Defendants. (HEREBY ORDERED by Magistrate Judge Ronald L. Ellis)(Text Only Order) (Ellis, Ronald) (Entered: 02/19/2015)
02/23/2015		Minute entry for proceedings held before Magistrate Judge Ronald L. Ellis: Initial Pretrial Conference held on 2/23/2015 at 12:00 p.m. Next Status Conference scheduled for May 26, 2015 at 11:30 a.m. (rsh) (Entered: 02/23/2015)
02/23/2015	54	NOTICE OF CONFERENCE: A STATUS CONFERENCE in the above referenced matter has been scheduled for MAY 26, 2015 at 11:30 A.M. before Magistrate Judge Ronald L. Ellis, in Courtroom 11C, 500 Pearl Street, New York 10007. No request for adjournment will be considered unless made at least THREE BUSINESS DAYS before the scheduled conference and only after the parties have consulted with each other. Direct inquiries to Rupa Shah, 212-805-0242. Status Conference set for 5/26/2015 at 11:30 AM in Courtroom 11C, 500 Pearl Street, New York, NY 10007 before Magistrate Judge Ronald L. Ellis. (kgo) (Entered: 02/23/2015)
02/27/2015	55	ANSWER to 9 Amended Complaint,. Document filed by Paul Connelly. (Hathaway, Barbara) (Entered: 02/27/2015)
02/27/2015	56	ANSWER to 9 Amended Complaint,. Document filed by Molly Finnerty. (Hathaway, Barbara) (Entered: 02/27/2015)

02/27/2015	57	ANSWER to 9 Amended Complaint,. Document filed by Barbara Forte. (Hathaway, Barbara) (Entered: 02/27/2015)
02/27/2015	58	ANSWER to 9 Amended Complaint,. Document filed by Lynn Heath.(Hathaway, Barbara) (Entered: 02/27/2015)
02/27/2015	59	ANSWER to 9 Amended Complaint,. Document filed by Michael Hogen. (Hathaway, Barbara) (Entered: 02/27/2015)
02/27/2015	60	ANSWER to 9 Amended Complaint,. Document filed by Emily Leckman-Westin. (Hathaway, Barbara) (Entered: 02/27/2015)
02/27/2015	61	ANSWER to 9 Amended Complaint,. Document filed by New York State Office of Mental Health.(Hathaway, Barbara) (Entered: 02/27/2015)
03/23/2015	64	LETTER addressed to Judge Andrew L. Carter, Jr. from Ren Yuan Deng dated 3/22/15 re: Plaintiff submits this letter with attached proposed Reply to Defendants' Answer & Defenses; and the plaintiff requests that the Court order the moving party to pay her a reasonable fee, costs for the filing of the affidavits in a bad faith caused caused her to incur. Document filed by Ren Yuan Deng. (Attachments: # 1 Proposed Reply to Defendants' Answer)(sc) (Entered: 03/26/2015)
03/25/2015	62	TRANSCRIPT of Proceedings re: Initial Pretrial Conference held on 2/23/2015 before Magistrate Judge Ronald L. Ellis. Court Reporter/Transcriber: Shari Riemer, (518) 581-8973. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 4/20/2015. Redacted Transcript Deadline set for 4/30/2015. Release of Transcript Restriction set for 6/26/2015.(ca) (Entered: 03/25/2015)
03/25/2015	63	NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a Initial Pretrial Conference proceeding held on 02/23/2015 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days...(ca) (Entered: 03/25/2015)
04/30/2015	66	PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS & INTERROGATORIES.Document filed by Ren Yuan Deng.(sc) (Entered: 05/11/2015)
04/30/2015	67	LETTER addressed to Magistrate Judge Ronald L. Ellis from Ren Yuan Deng, dated 4/30/15 re: Plaintiff writes to the Court to redact her dialogue that was redundant, irrelevant, or inaccurate on the "transcripts" because of inexperience, stress, less sleep; that her awareness was blurry when impromptu speaking; and that the plaintiff provides evidence to support her requests(as indicated). Document filed by Ren Yuan Deng. (Attachments: # 1 Exhibit)(sc) (Entered: 05/11/2015)

05/04/2015	65	LETTER addressed to Magistrate Judge Ronald L. Ellis from Ren Yuan Deng, dated 5/4/15 re: Plaintiff notifies the Court that she has submitted a transcripts redaction request on 4/30/15 at 9:30 p.m. along with supporting documents. Document filed by Ren Yuan Deng.(sc) Modified on 5/4/2015 (sc). (Entered: 05/04/2015)
05/13/2015		ENDORSED LETTER addressed to Magistrate Judge Ronald L. Ellis from Ren Yuan Deng dated 4/30/2015 re: redact her dialog. ENDORSEMENT: DENIED. (Signed by Magistrate Judge Ronald L. Ellis on 5/13/2015) (Ellis, Ronald) (Entered: 05/13/2015)
05/26/2015		Minute entry for proceedings held before Magistrate Judge Ronald L. Ellis: Status Conference held on 5/26/2015 at 11:25 a.m. (rsh) (Entered: 05/26/2015)
06/02/2015	68	CONFIDENTIALITY STIPULATION ORDER...regarding procedures to be followed that shall govern the handling of confidential material... (Signed by Magistrate Judge Ronald L. Ellis on 6/2/2015) (kko) (Entered: 06/02/2015)
06/11/2015	69	STATUS REPORT. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health.(Hathaway, Barbara) (Entered: 06/11/2015)
06/22/2015	71	LETTER addressed to Magistrate Judge Ronald L. Ellis from Ren Yuan Deng, dated 6/21/15 re: MOTION TO VACATE THE CONFIDENTIALITY STIPULATION ORDER. Document filed by Ren Yuan Deng.(sc) Modified on 6/24/2015 (sc). (Entered: 06/24/2015)
06/23/2015	70	LETTER addressed to Magistrate Judge Ronald L. Ellis from Ren Yuan Deng, dated 6/22/15 re: REQUEST PRE-MOTION CONFERENCE FOR VACATE CONFIDENTIALITY STIPULATION ORDER. Document filed by Ren Yuan Deng.(sc) (Entered: 06/24/2015)
06/24/2015	72	LETTER addressed to Magistrate Judge Ronald L. Ellis from Barbara K. Hathaway dated June 24, 2015 re: Opposition to plaintiff's request for a pre-motion conference. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health.(Hathaway, Barbara) (Entered: 06/24/2015)
06/25/2015		ENDORSED LETTER addressed to Magistrate Judge Ronald L. Ellis from Barbara Hathaway dated 6/24/2015 re: Opposition to plaintiff's request for a pre-motion conference. ENDORSEMENT: GRANTED. (Signed by Magistrate Judge Ronald L. Ellis on 6/25/2015) (Ellis, Ronald) (Entered: 06/25/2015)
06/30/2015	73	LETTER MOTION for Extension of Time to Complete Discovery addressed to Magistrate Judge Ronald L. Ellis from Barbara K. Hathaway dated June 30, 2015. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health.(Hathaway, Barbara) (Entered: 06/30/2015)
06/30/2015	74	ORDER granting 73 Letter Motion for Extension of Time to Complete Discovery. (HEREBY ORDERED by Magistrate Judge Ronald L. Ellis)(Text Only Order) (Ellis, Ronald) (Entered: 06/30/2015)

07/02/2015	75	LETTER addressed to Magistrate Judge Ronald L. Ellis from Barbara K. Hathaway dated July 2, 2015 re: Plaintiff's letter of June 21, 2015 (ECF 71). Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health.(Hathaway, Barbara) (Entered: 07/02/2015)
07/07/2015	76	LETTER addressed to Magistrate Judge Ronald L. Ellis from Ren Yuan Deng, dated 7/7/15 re: Plaintiff respectively requests that the following documents contain personal information to be sealed as court see only: 1) 44-14 filed 1/20/15, page 13 of 28; 2) 44-14 filed 1/20/15, page 15 of 28; and 3) 44-14 filed 1/20/15, page 16 of 28. Document filed by Ren Yuan Deng.(sc) (Entered: 07/08/2015)
07/08/2015	77	LETTER addressed to Judge Andrew L. Carter, Jr. from Barbara K. Hathaway dated July 8, 2015 re: response to plaintiff's letter of july 7, 2015. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health.(Hathaway, Barbara) (Entered: 07/08/2015)
07/13/2015	78	ORDER: On July 7, 2015,pro se Plaintiff Ren Yuan Deng requested a 30-day continuance in order to retain an attorney. (Doc. No. 76.) IT IS HEREBY ORDERED THAT Deng obtain new counsel or inform the Court that she will be proceeding pro se by August 7, 2015. If Deng retains an attorney, her attorney must file a Notice of Appearance on ECF by August 7, 2015. Discovery in this case is stayed until Deng's representation issues are resolved. (Signed by Magistrate Judge Ronald L. Ellis on 7/13/2015) (kko) Modified on 7/20/2015 (kko). (Entered: 07/13/2015)
08/07/2015	79	LETTER addressed to Magistrate Judge Ronald L. Ellis from Ren Yuan Deng, dated 8/7/15 re: Plaintiff informs the Court that she will continue proceeding as Pro Se on Friday, 8/7/15. Document filed by Ren Yuan Deng.(sc) (Entered: 08/07/2015)
08/10/2015	80	STATUS CONFERENCE ORDER: You are ORDERED to appear for a STATUS CONFERENCE, to be held on Thursday, September 3, 2015, at 10:30 a.m., in Courtroom 11C, in front of the Honorable Ronald L. Ellis. No request for adjournment will be considered unless made at least THREE BUSINESS DAYS before the scheduled conference and only after the parties have consulted with each other. Direct inquiries to Rupa Shah, 212-805-0242. (Status Conference set for 9/3/2015 at 10:30 AM in Courtroom 11C, 500 Pearl Street, New York, NY 10007 before Magistrate Judge Ronald L. Ellis.) (Signed by Magistrate Judge Ronald L. Ellis on 8/10/2015) Copies Mailed By Chambers. (kko) (Entered: 08/10/2015)
08/13/2015	81	LETTER addressed to Magistrate Judge Ronald L. Ellis from Ren Yuan Deng, dated 8/13/15 re: Plaintiff submits this letter in response to the defendants' letter dated 7/2/15; and he presents the first issue that the plaintiff's interrogatories were "essential" never answered by defendants; and the second issue that the defendants' privilege log did not meet the privilege requirement. Document filed by Ren Yuan Deng.(sc) (Entered: 08/13/2015)
08/18/2015	82	LETTER addressed to Magistrate Judge Ronald L. Ellis from Barbara K. Hathaway dated August 18, 2015 re: response to plaintiff's letter of Aug. 13, 2015.

		Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Hathaway, Barbara) (Entered: 08/18/2015)
09/03/2015		Minute entry for proceedings held before Magistrate Judge Ronald L. Ellis: Status Conference held on 9/3/2015 at 10:30 a.m. (rsh) (Entered: 09/03/2015)
09/04/2015	83	ORDER: At the conference, Plaintiff Deng orally withdrew her June 21, 2015 Motion to Vacate the Confidentiality Stipulation Order. IT IS HEREBY ORDERED THAT (1) Defendants shall supplement, if they have not done so already, interrogatory responses to Plaintiff's First Request for Production of Documents and Interrogatories with responses and document production beyond the scope of Local Civil Rule 33.3(a), by September 10, 2015. (2) Defendants shall submit a status letter to the Court by September 10, 2015, describing any remaining discovery. (3) Defendants are to submit to the Court for in camera review all documents for which they are asserting privilege, with an accompanying explanatory memorandum, by September 10, 2015. (4) Plaintiff Deng shall submit a letter to the Court by September 10, 2015, explaining with specificity which of Defendants' interrogatory responses are insufficient. (Signed by Magistrate Judge Ronald L. Ellis on 9/4/2015) Copies Mailed By Chambers. (kko) (Entered: 09/04/2015)
09/10/2015	84	STATUS REPORT. *on remaining discovery.* Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health.(Hathaway, Barbara) (Entered: 09/10/2015)
09/10/2015	85	MEMORANDUM OF LAW *In Support of Assertion of Privilege*. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Hathaway, Barbara) (Entered: 09/10/2015)
09/10/2015	86	CERTIFICATE OF SERVICE of Memorandum of Law served on Ren Yuan Deng on Sept. 10, 2015. Service was made by Mail. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Hathaway, Barbara) (Entered: 09/10/2015)
09/10/2015	87	LETTER addressed to Magistrate Judge Ronald L. Ellis from Ren Yuan Deng, dated 9/10/15 re: Plaintiff writes to the Court in response to the Honorable Court Order dated 9/4/15(ECF No. 83); and he informs the Court that he shall submit a letter to the Court by 9/10/15 explaining with specificity of defendants' interrogatory responses also insufficient. Document filed by Ren Yuan Deng. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit)(sc) (Entered: 09/11/2015)
09/15/2015	88	LETTER addressed to Magistrate Judge Ronald L. Ellis from Barbara K. Hathaway dated Sept. 15, 2015 re: response to plaintiff's letter of Sept. 10, 2015. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health.(Hathaway, Barbara) (Entered: 09/15/2015)

09/22/2015	89	LETTER addressed to Magistrate Judge Ronald L. Ellis from Ren Yuan Deng, dated 9/22/15 re: Plaintiff writes this letter to the Court in response to defendants' letter dated 9/15/15(ECF No.88); and he informs the Court that the defendants unwarrantly altering the interrogatories No. 9 and No. 10 from the "past 10 years" to the "past 5 years", and from "OMH" to "Central Office Employees" was improper. Document filed by Ren Yuan Deng.(sc) (Entered: 09/24/2015)
11/12/2015	90	LETTER addressed to Magistrate Judge Ronald L. Ellis from Barbara K. Hathaway dated Nov. 12, 2015 re: discovery. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health.(Hathaway, Barbara) (Entered: 11/12/2015)
11/18/2015	91	OPINION AND ORDER #106031: Following a September 3, 2015 conference, Defendants were ordered to submit to the Court for in camera review all documents for which they are asserting privilege. (Doc. No. 83.) Having reviewed Defendants' submissions, the Court finds that Defendants' assertion of privilege is DENIED in part and GRANTED in part. IT IS HEREBY ORDERED THAT (1) Defendants shall produce Documents 1 through 16 from their privilege log to Deng because the deliberative process privilege does not apply. (2) Documents 17 and 18 are protected by the attorney-client privilege and so Defendants may withhold their production. (As further set forth in this Order.) (Signed by Magistrate Judge Ronald L. Ellis on 11/18/2015) Copies Mailed By Chambers. (kko) Modified on 11/20/2015 (soh). (Entered: 11/18/2015)
11/19/2015	92	MOTION to Compel Discovery. Document filed by Ren Yuan Deng.(rdz) (Entered: 11/23/2015)
11/23/2015	93	LETTER addressed to Magistrate Judge Ronald L. Ellis from Ren Yuan Deng re: personal information. Document filed by Ren Yuan Deng. (spo) (Entered: 11/24/2015)
12/09/2015	94	LETTER RESPONSE in Opposition to Motion addressed to Magistrate Judge Ronald L. Ellis from Barbara K. Hathaway dated December 9, 2015 re: 92 MOTION to Compel. . Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Hathaway, Barbara) (Entered: 12/09/2015)
12/18/2015	95	LETTER addressed to Magistrate Judge Ronald L. Ellis from Ren Yuan Deng, dated 12/18/15 re: MOTION FOR SANCTION. Document filed by Ren Yuan Deng.(sc) (Entered: 12/21/2015)
12/22/2015	96	LETTER RESPONSE in Opposition to Motion addressed to Magistrate Judge Ronald L. Ellis from Barbara K. Hathaway dated December 22, 2015 re: 92 MOTION to Compel. *and Motion for Sanction*. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Hathaway, Barbara) (Entered: 12/22/2015)
12/23/2015	97	OPINION AND ORDER #106082 re: 92 MOTION to Compel filed by Ren Yuan Deng. Having reviewed the submissions of the Parties, Deng's Motion to Compel Discovery is GRANTED in part and DENIED in part. Deng's Motion for

		Sanctions against Defendants is DENIED. As set forth in the order and opinion above, IT IS HEREBY ORDERED THAT (1) Deng's motion to compel is GRANTED with respect to Request Nos. 33 and 43; (2) Deng's motion to compel is GRANTED IN PART with respect to Request Nos. 9 and 10; (3) Deng's motion to compel is DENIED with respect to Request Nos. 2, 3, 29, 34, 36, 37, 40, 41, 46, 49, 50, 51, 52, 53, 58, 62, 63, 66, and 67; (4) Defendants shall have their responses to Request No. 60 verified by an individual with personal knowledge of the facts by February 1, 2016. (5) Defendants shall supplement their responses to Request Nos. 9, 10, 33, 34, and 61 by February 1, 2016. (6) To the extent that they have not done so already, Defendants shall have all interrogatory responses verified under oath by February 1, 2016. (7) Deng's Motion for Sanctions against Defendants is DENIED. SO ORDERED. (As further set forth in this Order.) (Signed by Magistrate Judge Ronald L. Ellis on 12/23/2015) Copies Mailed By Chambers. (kko) Modified on 12/23/2015 (kko). Modified on 12/23/2015 (ca). (Entered: 12/23/2015)
12/30/2015	98	LETTER addressed to Magistrate Judge Ronald L. Ellis from Ren Yuan Deng. dated 12/30/15 re: Plaintiff informs the Court that the fact is that there is no diversity benefit in the defendant Finnerty's bureau; that Defendant Director Finnerty has a pattern or practice of segregating staff by race: the director, project manager or team leader positions or titles are exclusively for the Caucasian staff, disproportionately excludes minority staff, and that are not job related etc. Document filed by Ren Yuan Deng.(sc) (Entered: 12/31/2015)
01/04/2016	99	NOTICE OF CONFERENCE: Status Conference set for 2/2/2016 at 10:30 AM in Courtroom 11C, 500 Pearl Street, New York, NY 10007 before Magistrate Judge Ronald L. Ellis. No request for adjournment will be considered unless made at least THREE BUSINESS DAYS before the scheduled conference and only after the parties have consulted with each other. Direct inquiries to Rupa Shah, 212-805-0242. (kko) (Entered: 01/04/2016)
02/02/2016		Minute entry for proceedings held before Magistrate Judge Ronald L. Ellis: Status Conference held on 2/2/2016 at 10:30 a.m. (rsh) (Entered: 02/02/2016)
02/08/2016	100	LETTER addressed to Magistrate Judge Ronald L. Ellis from Ren Yuan Deng, dated 2/8/16 re: PLAINTIFF'S RESPONSES TO DEFENDANTS' COMPELLING DISCOVERY. Document filed by Ren Yuan Deng.(sc) (Entered: 02/10/2016)
02/18/2016	101	LETTER addressed to Magistrate Judge Ronald L. Ellis from Barbara K. Hathaway dated February 18, 2016 re: response to plaintiff's letter of Feb. 8, 2016. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health.(Hathaway, Barbara) (Entered: 02/18/2016)
02/23/2016	102	ORDER: For the following reasons, Deng's motion to compel is GRANTED IN PART AND DENIED IN PART. In summary, it is HEREBY ORDERED THAT (1) Defendants shall supplement their responses to Deng's Request Nos. 13, 30, and 55 by March 1, 2016. (2) All other parts of Deng's motion to compel are DENIED. (3) The discovery period for this case is closed. No new discovery requests may be filed. (As further set forth in this Order.) (Signed by Magistrate

		Judge Ronald L. Ellis on 2/23/2016) (cf) (Entered: 02/23/2016)
03/07/2016	107	LETTER addressed to Magistrate Judge Ronald L. Ellis from Ren Yuan Deng dated 3/7/2016 re: Compelling Discovery, or Implementing Sanction. Document filed by Ren Yuan Deng.(man) (Entered: 03/11/2016)
03/10/2016	104	LETTER addressed to Magistrate Judge Ronald L. Ellis from Ren Yuan Deng, dated 3/10/16 re: DEFENDANTS CONTEMPT THE COURT / DID NOT COMPLY WITH THE COMPELLING DISCOVERY ORDER ON REQUEST NO. 13. Document filed by Ren Yuan Deng.(sc) (Entered: 03/11/2016)
03/11/2016	105	LETTER addressed to Magistrate Judge Ronald L. Ellis from Assistant Attorney General Abigail Rosner dated March 11, 2016 re: Plaintiff's Letter Dated March 10, 2016. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health.(Rosner, Abigail) (Entered: 03/11/2016)
03/14/2016	108	ORDER. IT IS HEREBY ORDERED THAT (1) Deng's motion to compel supplemental discovery (Doc. No. 103) is DENIED. (2) The discovery period for this case is closed. The Parties shall refer to the individual rules of District Judge Andrew L. Carter, Jr., for trial preparation and/or dispositive motions. (Signed by Magistrate Judge Ronald L. Ellis on 3/14/2016) Copies Mailed By Chambers. (rjm) (Entered: 03/15/2016)
03/17/2016	109	LETTER MOTION for Conference *for Defendants' Motion for Summary Judgment* addressed to Judge Andrew L. Carter, Jr. from Assistant Attorney General Abigail Rosner dated March 17, 2016. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health.(Rosner, Abigail) (Entered: 03/17/2016)
03/24/2016	110	LETTER addressed to Judge Andrew L. Carter, Jr. from Ren Y. Deng, dated 3/24/16 re: Plaintiff writes to the Court that the defendants' proposeal of summary judgment should be denied; that there are genuine issues of material fact to be trialed; and that witness credibility issues and fatual disputes over material matters can only be resolved at trial etc. Document filed by Ren Yuan Deng.(sc) Modified on 3/25/2016 (sc). (Entered: 03/25/2016)
04/05/2016	111	LETTER addressed to Judge Andrew L. Carter, Jr. from Ren Yuan Deng, dated 4/5/16 re: Plaintiff notifies the Court that,on 2/1/16 under Rule 36, the Requests for Admission containing 51 requests was given to defendants answer under oath; that the defendants did not respond to the requests within thirty (30) calendar days; and that the facts are treated as proved. Document filed by Ren Yuan Deng.(sc) (Entered: 04/07/2016)
04/05/2016	112	LETTER addressed to Judge Andrew L. Carter, Jr. from Ren Yuan Deng, dated 4/5/16 re: Plaintiff submits to the Court the Second Amended Complaint after discovery, retaining the content of the First Amended Complaint and adding recovered evidence and new five claims for cause of action, in addition to the previous five claims. Document filed by Ren Yuan Deng. (Attachments: # 1 Proposed Second Amended Complaint, # 2 Proposed Second Amended Complaint)(sc) (Entered: 04/07/2016)

04/08/2016	113	NOTICE OF APPEARANCE by Owen Thomas Conroy on behalf of Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Conroy, Owen) (Entered: 04/08/2016)
04/08/2016	114	LETTER addressed to Judge Andrew L. Carter, Jr. from Owen T. Conroy dated April 8, 2016 re: Plaintiff's April 5, 2016 Letter Requesting Permission to File a Second Amended Complaint. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health.(Conroy, Owen) (Entered: 04/08/2016)
04/12/2016	115	ORDER SETTING STATUS CONFERENCE with respect to 109 Letter Motion for Conference: The Court will hold a status conference in this case on April 27, 2016, at 10:30 a., regarding defendants' request for a pre-motion conference and plaintiff's request to amend her complaint. The parties (and/or counsel) should appear in person in Courtroom 1306 at the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, NY, on the date and time specified above. (Signed by Judge Andrew L. Carter, Jr on 4/11/2016) Copies Mailed By Chambers. (tn) Modified on 4/12/2016 (tn). (Entered: 04/12/2016)
04/12/2016		Set/Reset Hearings: Status Conference set for 4/27/2016 at 10:30 AM before Judge Andrew L. Carter Jr. (tn) (Entered: 04/12/2016)
04/14/2016	116	LETTER addressed to Judge Andrew L. Carter, Jr. from Ren Yuan Deng, dated 4/14/16 re: Plaintiff writes that she submitted her Second Amended Complaint for the Court's approval(ECF 112) and the defendants raised opposition with three arguments (ECF 114)and Deng's reply(as indicated); and that Plaintiff Deng requests that the Court grant her leave for the proposed Amended Complaint. Document filed by Ren Yuan Deng.(sc) Modified on 4/14/2016 (sc). (Entered: 04/14/2016)
04/21/2016	117	TRANSCRIPT of Proceedings re: Status Conference held on 2/2/2016 before Magistrate Judge Ronald L. Ellis. Court Reporter/Transcriber: Carole Ludwig, (212) 420-0771. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 5/16/2016. Redacted Transcript Deadline set for 5/26/2016. Release of Transcript Restriction set for 7/25/2016.(ca) (Entered: 04/21/2016)
04/21/2016	118	NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a Status Conference proceeding held on 02/02/2016 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days...(ca) (Entered: 04/21/2016)
04/27/2016	119	ORDER: The Court held a pre-motion conference on April 27, 2016. Plaintiff shall move for permission to file an amended complaint by May 27, 2016. Defendant's opposition is due by June 17, 2016. Plaintiff's reply to this opposition is due by July 1, 2016. SO ORDERED. (Motions due by 5/27/2016., Responses

		due by 6/17/2016, Replies due by 7/1/2016.) (Signed by Judge Andrew L. Carter, Jr on 4/27/2016) Copies Mailed By Chambers. (ama) (Entered: 04/28/2016)
05/27/2016	120	MOTION for permission to File Second Amended Complaint. Document filed by Ren Yuan Deng.(sac) (Entered: 05/27/2016)
05/27/2016	121	MEMORANDUM OF LAW in Support re: 120 MOTION for permission to File Second Amended Complaint. Document filed by Ren Yuan Deng. (sac) (Entered: 05/27/2016)
06/17/2016	122	MEMORANDUM OF LAW in Opposition re: 120 MOTION for Leave to File Second Amended Complaint. . Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Attachments: # 1 Certificate of Service)(Conroy, Owen) (Entered: 06/17/2016)
07/01/2016	123	REPLY TO DEFENDANTS' OPPOSITION TO THE PLAINTIFF'S MOTION FOR PERMISSION TO FILE A SECOND AMENDED COMPLAINT, re: 122 Memorandum of Law in Opposition to Motion,. Document filed by Ren Yuan Deng. (sc) (Entered: 07/05/2016)
07/05/2016	124	LETTER addressed to Judge Andrew L. Carter, Jr. from Ren Yuan Deng dated 7/5/16 re: Plaintiff submits this letter with a new "Table of Contents" with the correct page to replace the one which was submitted on 7/1/16; and that the two "Table of Contents" are the same, but the only difference is on the page number. Document filed by Ren Yuan Deng.(sc) (Entered: 07/06/2016)
07/08/2016	125	MEMO ENDORSEMENT on re: 124 Letter, filed by Ren Yuan Deng. ENDORSEMENT: The updated Table of Contests is accepted. So Ordered. (Signed by Judge Andrew L. Carter, Jr on 7/8/2016) Copies Mailed by Chambers. (mro) Modified on 8/10/2016 (mro). (Entered: 07/11/2016)
01/10/2017	126	ORDER denying 120 Motion for Leave to File Document: For the reasons set forth above, Plaintiff's motion to amend the first amended complaint is denied. (Signed by Judge Andrew L. Carter, Jr on 1/10/2017) Copies Mailed By Chambers. (tn) (Entered: 01/10/2017)
01/10/2017	127	ORDER SETTING STATUS CONFERENCE granting 109 Letter Motion for Conference Status Conference, regarding counsel to Defendants' letter dated March 17, 2016 requesting a pre-motion conference on Defendants' anticipated motion for summary judgment, set for 1/30/2017 at 11:30 AM in Courtroom 1306, 40 Centre Street, New York, NY 10007 before Judge Andrew L. Carter Jr. (Signed by Judge Andrew L. Carter, Jr on 1/10/2017) Copies Mailed By Chambers. (tn) (Entered: 01/10/2017)
01/18/2017	128	LETTER addressed to Judge Andrew L. Carter, Jr. from Assistant Attorney General Abigail Rosner dated January 18, 2017 re: Withdrawing. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health.(Rosner, Abigail) (Entered: 01/18/2017)
01/23/2017	129	MEMO ENDORSEMENT on re: 128 LETTER addressed to Judge Andrew L. Carter, Jr. from Assistant Attorney General Abigail Rosner dated January 18, 2017

		re: Withdrawing. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. ENDORSEMENT: So ordered. Attorney Abigail Everett Rosner terminated. (Signed by Judge Andrew L. Carter, Jr on 1/23/2017) Copies Mailed By Chambers (rjm) (Entered: 01/23/2017)
01/30/2017		Minute Entry for proceedings held before Judge Andrew L. Carter, Jr: Status Conference held on 1/30/2017. Ren Yuan Deng, Pro Se Plaintiff. Owen Thomas Conroy for Defendant(s). Plaintiff's Letter Motion Due: 2/13/2017. Response Due: 2/23/2017. Plaintiff's reply due 3/6/2017. Defendant's Motion for4 /3/2017. Plaintiff's Response due 7/3/2017. Defendant's Reply due 7/14/2017. The 35-page limit for all submissions. (tdh) (Entered: 02/01/2017)
02/13/2017	130	LETTER addressed to Judge Andrew L. Carter, Jr. from Ren Yuan Deng. dated 1/13/17 re: Plaintiff informs the Court that, if she could take back the evidence which she submitted on 1/20/15, she could re-submit in the opposition to Defendants' summary judgment. Document filed by Ren Yuan Deng.(sc) (Entered: 02/13/2017)
02/13/2017	131	LETTER addressed to Judge Andrew L. Carter, Jr. from Ren Yuan Deng dated 2/13/17 re: Plaintiff submits to the Court that she withdraws to file the motion for a judgment as a matter of law on the request for admission. Document filed by Ren Yuan Deng.(sc) (Entered: 02/13/2017)
02/16/2017	132	LETTER addressed to Judge Andrew L. Carter, Jr. from Owen T. Conroy dated February 16, 2017 re: Plaintiff's February 13, 2017 Letters. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health.(Conroy, Owen) (Entered: 02/16/2017)
02/23/2017	133	LETTER addressed to Judge Andrew L. Carter, Jr. from Ren Yuan Deng, dated 2/23/17 re: Plaintiff writes this letter to the Court in response to the defendants' letter of 2/16/17(ECF #132) regarding Deng's requested copy of the evidence that she submitted to the Court, because the submission (ECF #44) has been off the Court's record. Document filed by Ren Yuan Deng.(sc) (Entered: 02/24/2017)
02/23/2017	134	LETTER addressed to Judge Andrew L. Carter, Jr. from Ren Yuan Deng, dated 2/23/17 re: Plaintiff responds to the defendants' letter of 2/16/17[ECF #132] regarding the defendants' statement, "Judge Ellis ruled that Defendants need not respond to the requests for admission. Conf. Tr. At 22-23[ECF #117]." Document filed by Ren Yuan Deng.(sc) (Entered: 02/24/2017)
04/03/2017	135	MOTION for Summary Judgment . Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. Responses due by 7/3/2017(Conroy, Owen) (Entered: 04/03/2017)
04/03/2017	136	MEMORANDUM OF LAW in Support re: 135 MOTION for Summary Judgment . . Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Conroy, Owen) (Entered: 04/03/2017)

04/03/2017	137	DECLARATION of Owen T. Conroy in Support re: 135 MOTION for Summary Judgment .. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Conroy, Owen) (Entered: 04/03/2017)
04/03/2017	138	DECLARATION of Molly Finnerty in Support re: 135 MOTION for Summary Judgment .. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16, # 17 Exhibit 17, # 18 Exhibit 18, # 19 Exhibit 19, # 20 Exhibit 20, # 21 Exhibit 21, # 22 Exhibit 22, # 23 Exhibit 23, # 24 Exhibit 24, # 25 Exhibit 25, # 26 Exhibit 26, # 27 Exhibit 27, # 28 Exhibit 28, # 29 Exhibit 29, # 30 Exhibit 30, # 31 Exhibit 31, # 32 Exhibit 32, # 33 Exhibit 33, # 34 Exhibit 34)(Conroy, Owen) (Entered: 04/03/2017)
04/03/2017	139	DECLARATION of Emily Leckman-Westin in Support re: 135 MOTION for Summary Judgment .. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16, # 17 Exhibit 17, # 18 Exhibit 18, # 19 Exhibit 19, # 20 Exhibit 20, # 21 Exhibit 21, # 22 Exhibit 22, # 23 Exhibit 23, # 24 Exhibit 24, # 25 Exhibit 25, # 26 Exhibit 26, # 27 Exhibit 27, # 28 Exhibit 28, # 29 Exhibit 29, # 30 Exhibit 30, # 31 Exhibit 31, # 32 Exhibit 32, # 33 Exhibit 33, # 34 Exhibit 34, # 35 Exhibit 35, # 36 Exhibit 36, # 37 Exhibit 37, # 38 Exhibit 38, # 39 Exhibit 39, # 40 Exhibit 40, # 41 Exhibit 41, # 42 Exhibit 42, # 43 Exhibit 43, # 44 Exhibit 44, # 45 Exhibit 45, # 46 Exhibit 46, # 47 Exhibit 47, # 48 Exhibit 48, # 49 Exhibit 49, # 50 Exhibit 50, # 51 Exhibit 51, # 52 Exhibit 52, # 53 Exhibit 53, # 54 Exhibit 54, # 55 Exhibit 55, # 56 Exhibit 56, # 57 Exhibit 57)(Conroy, Owen) (Entered: 04/03/2017)
04/03/2017	140	DECLARATION of J. Lynn Heath in Support re: 135 MOTION for Summary Judgment .. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14)(Conroy, Owen) (Entered: 04/03/2017)
04/03/2017	141	DECLARATION of Barbara Forte in Support re: 135 MOTION for Summary Judgment .. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13)(Conroy, Owen) (Entered: 04/03/2017)

04/03/2017	142	DECLARATION of Paul Connelly in Support re: 135 MOTION for Summary Judgment .. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3)(Conroy, Owen) (Entered: 04/03/2017)
04/03/2017	143	DECLARATION of Michael Hogan in Support re: 135 MOTION for Summary Judgment .. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9)(Conroy, Owen) (Entered: 04/03/2017)
04/03/2017	144	DECLARATION of Cheryl Prochera in Support re: 135 MOTION for Summary Judgment .. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3)(Conroy, Owen) (Entered: 04/03/2017)
04/03/2017	145	DECLARATION of David B. Harding in Support re: 135 MOTION for Summary Judgment .. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5)(Conroy, Owen) (Entered: 04/03/2017)
04/03/2017	146	DECLARATION of Ana Tochterman in Support re: 135 MOTION for Summary Judgment .. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Conroy, Owen) (Entered: 04/03/2017)
04/03/2017	147	NOTICE of of Local Civil Rule 56.1 Statement of Material Facts re: 135 MOTION for Summary Judgment .. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Conroy, Owen) (Entered: 04/03/2017)
04/03/2017	148	NOTICE of of Local Civil Rule 56.2 Notice to Pro Se Litigant Who Opposes a Motion For Summary Judgment re: 135 MOTION for Summary Judgment .. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Conroy, Owen) (Entered: 04/03/2017)
04/03/2017	149	CERTIFICATE OF SERVICE of Motion for Summary Judgment served on Ren Yuan Deng on April 3, 2017. Service was made by Mail. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Conroy, Owen) (Entered: 04/03/2017)
07/05/2017	150	RESPONSE TO DEFENDANTS' 56.1 STATEMENT; re: 147 Notice (Other). Document filed by Ren Yuan Deng. (sc) (Entered: 07/05/2017)

07/05/2017	151	DECLARATION of REN YUAN DENG; in Opposition re: 135 MOTION for Summary Judgment . Document filed by Ren Yuan Deng. (sc) (Entered: 07/05/2017)
07/05/2017	152	PLAINTIFF DENG'S BRIEF IN OPPOSITION TO THE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT; re: 135 MOTION for Summary Judgment . Document filed by Ren Yuan Deng. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit, # 7 Exhibit, # 8 Exhibit, # 9 Exhibit, # 10 Exhibit, # 11 Exhibit, # 12 Exhibit, # 13 Exhibit, # 14 Exhibit, # 15 Exhibit, # 16 Exhibit, # 17 Exhibit, # 18 Exhibit, # 19 Exhibit, # 20 Exhibit)(sc) (Main Document 152 replaced on 7/5/2017) (sc). (Entered: 07/05/2017)
07/05/2017	153	LETTER MOTION for Extension of Time to File Response/Reply as to 135 MOTION for Summary Judgment . addressed to Judge Andrew L. Carter, Jr. from Owen T. Conroy dated July 5, 2017. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health.(Conroy, Owen) (Entered: 07/05/2017)
07/06/2017	154	ORDER: granting 153 Letter Motion for Extension of Time to File Response/Reply re 153 LETTER MOTION for Extension of Time to File Response/Reply as to 135 MOTION for Summary Judgment addressed to Judge Andrew L. Carter, Jr. from Owen T. Conroy dated July 5, 2017. Defendants' request is GRANTED. SO ORDERED. Replies due by 7/25/2017. (Signed by Judge Andrew L. Carter, Jr on 7/06/2017) (ama) (Entered: 07/06/2017)
07/25/2017	155	REPLY MEMORANDUM OF LAW in Support re: 135 MOTION for Summary Judgment . . Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Attachments: # 1 Response to Plaintiff's Local Rule 56.1 Statement)(Conroy, Owen) (Entered: 07/25/2017)
07/25/2017	156	CERTIFICATE OF SERVICE of Reply Memorandum of Law served on Ren Yuan Deng on July 25, 2017. Service was made by Mail. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Conroy, Owen) (Entered: 07/25/2017)
07/27/2017	157	LETTER addressed to Judge Andrew L. Carter, Jr. from Ren Yuan Deng, dated 7/27/17 re: Plaintiff requests that the Court grant Deng an extension of ten days, until 8/7/17, in which to file his/her reply to the defendants' opposition papers. Document filed by Ren Yuan Deng.(sc) (Entered: 07/28/2017)
07/28/2017	158	LETTER addressed to Judge Andrew L. Carter, Jr. from Owen T. Conroy dated July 28, 2017 re: Plaintiff's Request to File a Sur-Reply. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health.(Conroy, Owen) (Entered: 07/28/2017)
07/31/2017	159	LETTER addressed to Judge Andrew L. Carter, Jr. from Owen T. Conroy dated July 31, 2017 re: Notice of Supplemental Authority. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily

		Leckman-Westin, New York State Office of Mental Health. (Attachments: # 1 Enclosure)(Conroy, Owen) (Entered: 07/31/2017)
07/31/2017	160	MEMO ENDORSEMENT on re: 157 Letter, filed by Ren Yuan Deng. ENDORSEMENT: PLAINTIFF'S REQUEST TO FILE A SUR-REPLY IS DENIED. SO ORDERED. (Signed by Judge Andrew L. Carter, Jr on 7/31/2017) (ras) (Entered: 07/31/2017)
08/04/2017	161	LETTER addressed to Judge Andrew L. Carter, Jr. from Ren Yuan Deng,dated 8/4/17 re: Plaintiff informs the Court that he timely reported his unforeseeable sick leave to the bureau design person, Secretary Peterson or Martinez; and that Peterson or Martinez immediately noticed his sick absence to Finnerty and Leckman by email etc. Document filed by Ren Yuan Deng.(sc) (Entered: 08/04/2017)
12/06/2017		NOTICE OF REDESIGNATION TO ANOTHER MAGISTRATE JUDGE. The above entitled action has been redesignated to Magistrate Judge Stewart D. Aaron. Please note that this is a reassignment of the designation only. (bcu) (Entered: 12/06/2017)
12/06/2017		NOTICE OF REASSIGNMENT OF A REFERRAL TO ANOTHER MAGISTRATE JUDGE. The referral in the above entitled action has been reassigned to Magistrate Judge Stewart D. Aaron, for General Pretrial (includes scheduling, discovery, non-dispositive pretrial motions, and settlement). Magistrate Judge Ronald L. Ellis no longer referred to the case. (bcu) (Entered: 12/06/2017)
02/28/2018	162	MEMORANDUM AND ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT granting 135 Motion for Summary Judgment. For the reasons discussed above, defendants' motion for summary judgment (ECF No. 135) is GRANTED. The Clerk of Court is respectfully directed to terminate all pending matters and to close the case. In addition, the Court finds, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for purpose of an appeal. Cf Coppedge v. United States, 369 U.S. 438, 445 (1962). SO ORDERED. (Signed by Judge Andrew L. Carter, Jr on 2/28/2018) Copies Mailed By Chambers (rj) (Entered: 02/28/2018)
02/28/2018		Transmission to Judgments and Orders Clerk. Transmitted re: 162 Order on Motion for Summary Judgment, to the Judgments and Orders Clerk. (rj) (Entered: 02/28/2018)
02/28/2018	163	CLERK'S JUDGMENT re: 162 Order on Motion for Summary Judgment, in favor of New York State Office of Mental Health, Barbara Forte, Emily Leckman-Westin, Lynn Heath, Michael Hogen, Molly Finnerty, Paul Connelly against Ren Yuan Deng. It is hereby ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Memorandum and Order dated February 28, 2018, defendants' motion for summary judgment is GRANTED. In addition, the Court finds, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from the Order would not be taken in good faith, and therefore in forma pauperis status is denied for purpose of an appeal. Cf. Coppedge v. United States, 369 U.S. 438, 445 (1962); accordingly, the case is closed. (Signed by Clerk of Court Ruby Krajick on

		02/28/2018) (Attachments: # 1 Right to Appeal)(km) (Entered: 02/28/2018)
02/28/2018		Terminate Transcript Deadlines (km) (Entered: 02/28/2018)
02/28/2018		Transmission to Docket Assistant Clerk. Transmitted re: 163 Clerk's Judgment to the Docket Assistant Clerk for case processing. (km) (Entered: 02/28/2018)
02/28/2018		Mailed a copy of 163 Clerk's Judgment to Ren Yuan Deng 215 West 101st Street Apt# 8E New York, NY 10025. (mhe) (Entered: 02/28/2018)
03/05/2018	164	LETTER addressed to Judge Andrew L. Carter, Jr. from Ren Yuan Deng, dated 3/5/18 re: REQUEST EXTENDING THE TIME FOR "MOTION FOR RECONSIDERATION". Document filed by Ren Yuan Deng.(sc) (Entered: 03/06/2018)
03/07/2018	165	LETTER addressed to Judge Andrew L. Carter, Jr. from Owen T. Conroy dated March 7, 2018 re: Plaintiff's March 5, 2018 Letter. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health.(Conroy, Owen) (Entered: 03/07/2018)
03/08/2018	166	ORDER. The Court denies Plaintiff's request to "re-do" her summary judgment motion, but grants her request for an extension of time for the purposes of filing a motion for reconsideration pursuant to Federal Rule of Civil Procedure 60(b) and Local Rule 6.3. Plaintiff's motion shall be due Monday, April 2, 2018. In briefing this motion, the parties are advised to adhere to the standards set forth in Federal Rule of Civil Procedure 60(b), the Local Rules, and the undersigned's Individual Rules of Practice. SO ORDERED. (Motions due by 4/2/2018.) (Signed by Judge Andrew L. Carter, Jr on 3/8/2018) Copies Mailed By Chambers. (rjm) (Entered: 03/08/2018)
03/29/2018	167	LETTER addressed to Judge Andrew L. Carter, Jr. from Ren Yuan Deng dated 3/29/2018 re: Request Extension of Time to Respond to Defendants' Motion for Summary Judgment Pursuant to Federal Rule of Civil Procedure 60(b) & Local Rule 6.3. Document filed by Ren Yuan Deng.(man) (Entered: 03/30/2018)
04/04/2018	168	ORDER re: 167 Letter regarding Request Extension of Time to Respond to Defendants' Motion for Summary Judgment Pursuant to Federal Rule of Civil Procedure 60(b) & Local Rule 6.3, filed by Ren Yuan Deng. Thus, the Court grants Plaintiff's request for an extension to May 2, 2018 for the filing of her motion for reconsideration. The Court again emphasizes that Plaintiff's motion is not a response to Defendant's Motion for Summary Judgment, but rather is a Motion for Reconsideration pursuant to Federal Rule of Civil Procedure 60(b). The Court has already considered the materials submitted with Plaintiff's opposition to Defendant's motion for summary judgment, and a motion for reconsideration is not the correct vehicle for re-submitting those materials or re-arguing those points. Rather, a motion for reconsideration may only be granted under one of the unique and limited circumstances set forth in Rule 60(b). SO ORDERED. Motions due by 5/2/2018. (Signed by Judge Andrew L. Carter, Jr on 4/4/2018) Copies Mailed By Chambers. (rj) (Entered: 04/04/2018)

04/20/2018	169	NOTICE OF CHANGE OF ADDRESS by Owen Thomas Conroy on behalf of All Defendants. New Address: Office of the Attorney General of the State of New York, 28 Liberty Street, New York, NY, 10005, 212-416-6382. (Conroy, Owen) (Entered: 04/20/2018)
04/20/2018	170	CERTIFICATE OF SERVICE of Notice of Change of Address served on Plaintiff on April 20, 2018. Service was made by Mail. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Conroy, Owen) (Entered: 04/20/2018)
04/27/2018	171	LETTER addressed to Judge Andrew L. Carter, Jr. from Ren Y. Deng, dated 4/27/18 re: REQUESTING EXTENSION OF TIME TO WRITE A BRIEF OF DISMISSAL OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT PURS. TO FEDERAL RULE OF CIVIL PROCEDURE 60(b) & Local Civil Rule 6.3. Document filed by Ren Yuan Deng.(sc) (Entered: 04/27/2018)
04/27/2018	172	LETTER addressed to Judge Andrew L. Carter, Jr. from Owen T. Conroy dated April 27, 2018 re: Plaintiff's April 27, 2018 Letter. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health.(Conroy, Owen) (Entered: 04/27/2018)
04/27/2018	173	MEMO ENDORSEMENT on re: 171 Letter, filed by Ren Yuan Deng. ENDORSEMENT: PLAINTIFF'S REQUEST IS GRANTED. HER BRIEF IS DUE 6/1/18. PLAINTIFF IS ADVISED THAT HER BRIEF MUST BE LIMITED TO 25 PAGES, AND THAT SHE MAY NOT SUBMIT EVIDENCE UNLESS IT IS "NEWLY DISCOVERED OR... COULD NOT HAVE BEEN FOUND BY DUE DILIGENCE." INDIVIDUAL RULES OF PRACTICE SECTION 2(A); WESTERLY ELECTRONICS CORP V. WALKER KIDDE & CO., 367 F.2D 269, 270 (2D CIR. 1996). (Motions due by 6/1/2018.) (Signed by Judge Andrew L. Carter, Jr on 4/27/2018) (jwh) (Entered: 04/27/2018)
05/02/2018	174	NOTICE OF CHANGE OF ADDRESS by Barbara Kathryn Hathaway on behalf of Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. New Address: Office of the New York State Attorney General, 28 Liberty Street, New York, New York, USA 10005, (212) 416-8560. (Hathaway, Barbara) (Entered: 05/02/2018)
05/29/2018	175	LETTER addressed to Judge Andrew L. Carter, Jr. from Ren Yuan Deng, dated 5/29/18 re: REQUESTING EXTENSION OF TIME TO WRITE BRIEF & MOTION OF DISMISSAL WITH PREJUDICE FOR FRAUD ON THE COURT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 60(b). Document filed by Ren Yuan Deng.(sc) (Entered: 05/29/2018)
05/30/2018	176	LETTER addressed to Judge Andrew L. Carter, Jr. from Owen T. Conroy dated May 30, 2018 re: Plaintiff's May 29, 2018 Letter. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health.(Conroy, Owen) (Entered: 05/30/2018)

05/31/2018	177	MEMO ENDORSEMENT on re: 175 Letter, filed by Ren Yuan Deng. ENDORSEMENT: PLAINTIFF'S REQUEST IS GRANTED. FINAL EXTENSION. (Motions due by 6/11/2018.) (Signed by Judge Andrew L. Carter, Jr on 5/30/2018) Copies Mailed By Chambers. (cf) (Entered: 05/31/2018)
06/11/2018	178	MOTION FOR GRAUNDS RELIEF FROM A FINAL JUDGMENT PURS. TO FEDERAL RULE OF CIVIL PROCEDURE 60(b)(3); for Reconsideration of re: 163 Clerk's Judgment. Document filed by Ren Yuan Deng.(sc) (Entered: 06/12/2018)
06/11/2018	179	DECLARATION OF REN YUAN DENG; in support of re: 178 MOTION for Reconsideration re: 163 Clerk's Judgment. Document filed by Ren Yuan Deng. (sc) (Entered: 06/12/2018)
06/13/2018	182	LETTER addressed to Judge Andrew L. Carter, Jr. from Ren Yuan Deng dated 6/13/18 re: Plaintiff informs the Court of some corrections and interpretation as follows: Replaced the new page 2nd, 3rd on the "Declaration of Ren Yuan Deng" etc.; on motion page 2 at line 3, remove "Satutory and" etc.; on motion page 10, the "law says" is "case law says" etc.. Document filed by Ren Yuan Deng. (Attachments: # 1 Exhibit, # 2 Exhibit)(sc) (Entered: 06/15/2018)
06/14/2018	180	MEMORANDUM OF LAW in Opposition re: 178 MOTION for Reconsideration re; 163 Clerk's Judgment,,,. . Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Conroy, Owen) (Entered: 06/14/2018)
06/14/2018	181	CERTIFICATE OF SERVICE of Opposition Memorandum served on Plaintiff on June 14, 2018. Service was made by Mail. Document filed by Paul Connelly, Molly Finnerty, Barbara Forte, Lynn Heath, Michael Hogen, Emily Leckman-Westin, New York State Office of Mental Health. (Conroy, Owen) (Entered: 06/14/2018)
06/27/2018	183	PLAINTIFF'S (Reply Affirmation)OPPOSITION TO DEFENDANT PARTY'S OPPOSITION TO PLAINTIFF'S MOTION FOR RELIEF FROM JUDGMENT; re: 180 Memorandum of Law in Opposition to Motion. Document filed by Ren Yuan Deng. (sc) (Entered: 06/28/2018)
06/27/2018	184	LETTER addressed to Judge Andrew L. Carter, Jr. from Ren Y. Deng dated 6/27/18 re: Plaintiff informs the Court that he makes a correction on "Declaration of Ren Yuan Deng, submitted on 6/11/18, on item 16, Lines 2-3 should be, "...in answering the question "Who ultimately completed the data runs that were needed?" etc. Document filed by Ren Yuan Deng.(sc) (Entered: 06/28/2018)
07/18/2018	185	ORDER: denying 178 Motion for Reconsideration. For the reasons set forth above, Plaintiff's motion for reconsideration is DENIED. The Clerk of the Court is directed to terminate ECF No. 178. In addition, the Court finds, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for purpose of an appeal. Cf Coppedge v. United States, 369 U.S. 438, 445 (1962).SO ORDERED. (Signed by Judge Andrew L. Carter, Jr on 7/18/2018) Copies Mailed By Chambers. (ama) (Entered: 07/18/2018)

08/15/2018	186	NOTICE OF APPEAL from 185 Order on Motion for Reconsideration. Document filed by Ren Yuan Deng. Form D-P is due within 14 days to the Court of Appeals, Second Circuit. (Attachments: # 1 Motion for IFP). (tp) (Entered: 08/15/2018)
08/15/2018		Appeal Fee Due: for 186 Notice of Appeal. Appeal fee due by 8/29/2018. (tp) (Entered: 08/15/2018)
08/15/2018		Appeal Remark as to 186 Notice of Appeal filed by Ren Yuan Deng. IFP DENIED 07/18/2018. (tp) (Entered: 08/15/2018)
08/15/2018		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: 186 Notice of Appeal. (tp) (Entered: 08/15/2018)
08/15/2018		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for 186 Notice of Appeal filed by Ren Yuan Deng were transmitted to the U.S. Court of Appeals. (tp) (Entered: 08/15/2018)
08/29/2018		USCA Appeal Fees received $ 505.00 receipt number 465401217099 on 8/29/2018 re: 186 Notice of Appeal filed by Ren Yuan Deng. (tp) (Entered: 08/29/2018)

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Transaction Receipt

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PACER Login:	us5070	**Client Code:**	
Description:	Docket Report	**Search Criteria:**	1:13-cv-06801-ALC-SDA
Billable Pages:	24	**Cost:**	2.40
Exempt flag:	Exempt	**Exempt reason:**	Always

EEOC Form 161 (11/09)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Ren Yuan Deng**
215 West 101st Street Apt. #8e
New York, NY 10025

From: **New York District Office**
33 Whitehall Street
5th Floor
New York, NY 10004

☐ *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.	EEOC Representative	Telephone No.
520-2011-00509	**Rodney Plummer, Investigator**	**(212) 336-3767**

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐ Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

☒ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐ Other *(briefly state)*

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

Kevin J. Berry

Kevin J. Berry,
District Director

6/26/13
(Date Mailed)

Enclosures(s)

cc: **Emy Murphy**
Director, Affirmative Action
NEW YORK STATE OFFICE OF MENTAL HEALTH
44 Holland Avenue, 2nd floor
Albany, NY 12229

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