OPINION OF THE UNITED STATES COURT OF APPEAL FOR THE SEVENTH CIRCUIT (JANUARY 11, 2023)

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

JACQUELINE A. WATKINS,

Plaintiff-Appellant,

v.

CITY OF CHICAGO,

Defendant-Appellee,

No. 20-1750

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division
[Hon. Edmond E. Chang, U.S. District Judge]

Before: Hamilton, St. Eve, and Kirsch II, Circuit Judges.

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*We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

Chicago police officer Jacqueline Watkins was accused of ignoring a call to report to the scene of a burglary, which led to a one-day suspension after a after a years-long investigation. The suspension was eventually reversed. Watkins has sued the City of Chicago under Title VII of the Civil Rights Act of 1964 for discrimination based on her race and sex and for retaliation based on her complaints that her supervisor reported her because she is Black and a woman. See 42 U.S.C. §§ 2000e-2 & 3. The district court entered summary judgment for the City, concluding that Watkins had not offered evidence that would allow a reasonable jury to find discriminatory or retaliatory motives on the part of the relevant decision-makers. We affirm.

We present the factual record at summary judgment in the light most favorable to Watkins, the non-moving party. *Eaton v. J.H. Findorff & Son, Inc.*, 1 F.4th 508, 511 (7th Cir. 2021). One night in September 2008, the police department's radio dispatcher reported a "priority one" burglary and assigned a unit—not Watkins and her partner—to respond. All available units are required to respond to priority-one calls. Watkins and her partner had reported to dispatch ten minutes earlier that their previous call was "clear," meaning finished. Their shift was ending, and they were driving away from the site of the burglary; they did not immediately answer dispatch or make a U-turn. When Sergeant Francis Higgins passed their car, he ordered them (by unit number) to the scene. They hesitated in responding by radio but turned around immediately and arrived as little as ninety seconds after the sergeant.

That night, without discussing the situation with Watkins and her partner, Higgins filed an interdepartmental complaint against them for driving "AWAY from an all-call assignment." (The departmental jargon for such a report is "complaint register" or "CR," but we use "complaint" for simplicity.) When Watkins received notice of this complaint, which charged "inattention to duty," she wrote to the assistant superintendent of police that she and her partner (also a Black woman) responded properly to the burglary call, that Higgins falsely accused her, and that Higgins discriminated against her and her partner because of their race and sex. The investigation into these accusations was folded into the one opened by Higgins' complaint, and because of its subject, it had to be conducted outside the precinct by the Internal Affairs Division.

The complaints took six years to resolve. Sergeant Jamie Kane conducted the initial investigation and did not make a recommendation for almost two years, by which time Higgins had retired. After reviewing the dispatch recordings and interviewing witnesses, Kane recommended suspending Watkins for two days and her partner (the driver) for one day for "failure to properly respond" to the burglary call. Kane did not find cause to pursue Watkins' complaint of discrimination. Watkins attests that during her interview, Kane had told her that her allegations against Higgins defamed his reputation. (This remark is not in the transcript, but because we are reviewing a grant of summary judgment, we assume that Kane said it off the record.)

At the next stage, a committee of senior officers (two deputy chiefs and a chief) rejected the recommendation to suspend Watkins. They cited a lack of objective evidence of her delayed arrival at the burglary once summoned. Chief of Internal Affairs Juan Rivera, the next reviewer, disagreed; he concluded that the officers failed to respond immediately over the radio to the priority-one call. Rivera recommended a one-day suspension for Watkins for being "inattentive to duty." Garry McCarthy, the police superintendent at that time, received the file next. He approved Watkins' suspension and imposed the same on her partner (whom Rivera had recommended reprimanding).

Watkins filed a complaint through her union about the suspension, which she alleged was discriminatory. An arbitrator ultimately found that there was no clear evidence that Watkins had broken any rule in how she responded to the burglary. Her suspension was reversed and she received backpay for that day. Her record now reflects that a complaint was filed but "not sustained." Still, the complaint was on her record for years. Watkins believes that it damaged her chances of promotion, but she has not provided evidence about any promotion decision.

Watkins also filed a charge with the Illinois Department of Human Rights (the local counterpart to the federal Equal Employment Opportunity Commission). In the end, the agency made no findings and issued a right-to-sue notice. That brings us to this lawsuit against the City of Chicago under Title VII.

Watkins alleged that Higgins' complaint and her suspension by the City were discriminatory acts based on her race and sex and that the suspension was retaliation for her complaints about Higgins. (Watkins does not try to revive other claims that were dismissed on the pleadings.) The City moved for summary judgment. In granting the motion, the district court explained that Watkins did not offer evidence that would support a finding that the City acted with discriminatory or retaliatory motives.

On appeal, Watkins challenges these conclusions, and we review the decision de novo. Eaton, 1 F.4th at 511. Watkins first presses her claim that Higgins filed the complaint, and that Superintendent McCarthy ultimately suspended her, because of her race and sex. For a discrimination claim to survive summary judgment, a plaintiff must offer evidence that would permit a reasonable jury to conclude that the plaintiff's race or sex caused an adverse employment action. *Purtue v. Wisconsin Dep't of Corrections*, 963 F.3d 598, 601 (7th Cir. 2020). The plaintiff can use the burden-shifting framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), or simply show that the totality of her evidence could convince a reasonable jury that illegal discrimination occurred. *Purtue*, 963 F.3d at 602. Watkins argues that she prevails under any approach.

[1] The City also presented the (non-jurisdictional) affirmative defense that Watkins did not properly exhaust her administrative remedies because her charge with the Illinois Department of Human Rights was untimely. See *Delgado v. Merit Sys. Protec. Bd.*, 880 F.3d 913, 925 (7th Cir. 2018), citing *Zipes v. Trans World Airlines, Inc.*, 455 U.S.

To show that racial animus motivated Higgins' complaint, Watkins submitted evidence that Higgins had a history of making racist comments, affording preferential treatment to white and male officers, and regarding Black women as lazy. We accept her account of the facts at summary judgment. In reviewing this grant of summary judgment, we need not try to determine, at least as a matter of law, whether the evidence amounts to so-called "stray remarks" or permits reasonable inferences of race and/or sex-based animus. Remarks reflecting a supervisor's unlawful animus may be evidence of his or her attitudes generally and in ways that may have affected the challenged decision. See *Joll v. Valparaiso Community Schools*, 953 F.3d 923, 935 (7th Cir. 2020) (reversing summary judgment for employer); cf. *Blasdel v. Northwestern University*, 687 F.3d 813, 820 (7th Cir. 2012) ("same actor" inference permits but does not require inference that attitudes of person who hired plaintiff, for example, would not have changed by the time the same person fired plaintiff).

For purposes of this appeal, we will assume that Higgins filed the complaint with discriminatory intent. This part of Watkins' claim still comes up short because filing the complaint was not an adverse employment action. Adverse actions that can sustain an employment-discrimination claim under Title VII are limited to those that "affect employment or alter

*Watkins argued for equitable tolling because an agency lawyer told her she could not file her charge until the internal investigation ended. The district court did not decide the issue of tolling, and the City does not argue about exhaustion on appeal.

the conditions of the workplace." *Burlington Northern & Santa Fe Railway Co. v. White*, 548 U.S. 53, 62 (2006). The complaint alone did not affect Watkins's pay, benefits, or working conditions. She suspects that it diminished her promotion prospects, but without some additional evidence of a link between the open complaint and a decision not to promote her, the required "material consequences" are lacking. See *Porter v. City of Chicago*, 700 F.3d 944, 955 (7th Cir. 2012) (explaining that reprimands and progressive discipline do not qualify as adverse actions).

The suspension itself, however, cost Watkins a day's pay and qualifies as an adverse employment action. The City is responsible for the suspension because the superintendent—the final decision-maker—imposed it. See *Brooks v. Avancez*, 39 F.4th 424, 439 (7th Cir. 2022). Still, more is required before the City can be held liable. Watkins' primary evidence of a discriminatory suspension is Higgins' history of racist and sexist remarks. But Higgins was not the decision-maker. The City can be liable for the conduct of a biased employee only if that person's bias proximately caused the adverse employment action. *Staub v. Proctor Hospital*, 562 U.S. 411, 420 (2011). If the adverse action resulted from an untainted investigation and rests on grounds independent of the biased complaint, the City will not be liable. Id. at 421; *Woods v. City of Berwyn*, 803 F.3d 865, 870 (7th Cir. 2015).

Because Higgins did no more than initiate an independent investigation, and Watkins does not show that he influenced the outcome, the evidence

about him is insufficient to raise a jury question about whether discrimination caused her suspension. See *Staub*, 562 U.S. at 421. Several layers of review by different officials, senior to Higgins and outside his district, occurred before the suspension was imposed, and Watkins does not show they all relied on Higgins' report. See *Brooks*, 39 F.4th at 440; *Woods*, 803 F.3d at 871. Indeed, evidence from other sources was collected at the first stage, and three senior Department officials later recommended against Kane's recommendation to suspend Watkins. The investigation was not an exercise in rubberstamping. Further, Rivera's recommendation to suspend Watkins related to the failure to use the radio in response to the priority one call. That decision was based on audio recordings and Rivera's interpretation of policy in addition to the accounts of Higgins and other witnesses. The Superintendent then agreed with Rivera about Watkins (though not about her partner). Accordingly, this is not a case like *Vega v. Chicago Park District*, in which we said that a jury could conclude that the investigation was "too superficial" to insulate the City from liability for a complaint based on a supervisor's animus. 954 F.3d 996, 1007 (7th Cir. 2020); see also *Woods*, 803 F.3d at 871 (affirming summary judgment for employer where independent investigation broke chain of causation relied upon by plaintiff). The evidence here shows an investigation that similarly broke any chain of causation between Higgins' (presumed) bias and plaintiff's suspension.

Watkins also sought to prove that her suspension was discriminatory with statistical

evidence that "neglect of duty" complaints are sustained against Black women officers more often than against white men. The problem with this evidence is that Watkins asserts a claim of discriminatory treatment against her as an individual— not a pattern-or-practice claim. See *Matthews v. Waukesha County*, 759 F.3d 821, 829 (7th Cir. 2014).[2] Proving disparate treatment requires plaintiff-specific evidence of discriminatory intent. Id.; see *Ricci v. DeStefano*, 557 U.S. 557, 577 (2009). Of course, that evidence may be circumstantial, and it may include "evidence, statistical or otherwise, that similarly situated employees outside of the protected group systematically receive better treatment." *Downing v. Abbott Labs.*, 48 F.4th 793, 804 (7th Cir. 2022). But Watkins' evidence falls short of raising a genuine dispute of material fact.

Statistical (like individual) comparators need not be identical to the plaintiff in every way, but they must be similar in material ways. *Purtue*, 963 F.3d at 603. Watkins' evidence, however, spans decades, which at a minimum implicates different decisionmakers. And the nature of the underlying conduct, such as whether "priority one" situations were involved, is unclear. This makes it "impossible to determine" whether the statistical comparators are like Watkins in the respects that matter most. See id. Further, even if there were probative value in this collection of district-wide statistics, it cannot carry the day alone. *Matthews*, 759 F.3d at 829 (explaining that "evidence of a pattern or practice can only be collateral to evidence of specific discrimination against the plaintiff herself"). Watkins has no other evidence—

excluding her account of Higgins' conduct, which we have already discussed—of the decision-makers' discriminatory motives, for which the City could be responsible.

Watkins's final claim is that she was suspended as retaliation for submitting her internal complaint against Higgins and filing charges with her union and the Illinois Department of Human Rights. As relevant here, Watkins needed evidence sufficient to raise a genuine issue of material fact about whether retaliatory intent was a but-for cause of her suspension. *University of Texas Southwestern Medical Center v. Nassar*, 570 U.S. 338, 352 (2013). In other words, Watkins must show she would not have been suspended if she had not accused Higgins of discrimination in various protected contexts.

[2] Originally, Watkins also asserted a claim under 42 U.S.C. § 1983, which can provide a remedy for a constitutional violation caused by a municipality's policy, practice, or custom. See *Monell v. Department of Social Services*, 436 U.S. 658, 690 (1978). On appeal, Watkins does not challenge the dismissal of this claim, but regardless, we generally treat employment-related constitutional claims the same as those under Title VII. *Dunlevy v. Langfelder*, 52 F.4th 349, 353 (7th Cir. 2022). Watkins also has no claim of disparate impact. She is not challenging the lopsided effects of a neutral employment practice. See *Ricci v. DeStefano*, 557 U.S. 557, 578 (2009), citing 42 U.S.C. § 2000e–2(k)(1)(A)(i).

She falls short of doing so. She primarily cites her evidence that Sergeant Kane, who first investigated the dueling complaints, told her that she was defaming Higgins' reputation by accusing him of racism and sexism. But Kane's report went on to five reviewers, and only the final two supported the suspension.[3] Even if we assume that Kane intended for Watkins to incur discipline because she accused Higgins, there is no evidence that Rivera or McCarthy had the same motive, nor that Kane influenced their decisions. See *Vesey v. Envoy Air, Inc.*, 999 F.3d 456, 462 (7th Cir. 2021).

Watkins also asserts that the six years it took to investigate the complaint against her shows retaliatory motive. "Suspicious" timing can be evidence of retaliation when the adverse action follows closely on the heels of the plaintiff's protected action. See *Igasaki v. Illinois Dep't of Financial and Professional Regulation*, 988 F.3d 948, 959 (7th Cir. 2021). Watkins does not explain how the slow decision-making here shows retaliatory motive. We agree that this investigation was hardly the prompt action that can signify an employer's reasonable response to a discrimination charge. See *Milligan v. Bd. of Trustees of Southern Illinois University*, 686 F.3d 378, 385 (7th Cir. 2012). And being under a cloud

[3] In the district court, Watkins did not submit evidence that Rivera was biased against Black people, and we cannot consider the new evidence she submits on appeal. *Carmody v. Bd. of Trustees of Univ. of Ill.*, 893 F.3d 397, 402 (7th Cir. 2018).

obviously caused strain on Watkins. But she has no evidence that the department slow-walked the investigation to punish her and not, for example, because of bureaucratic delay or, as Watkins suspects, to wait out Higgins' retirement (a fishy but non-retaliatory motive). More importantly, she did not show that the length of the investigation caused harm that would prevent a reasonable worker from reporting discrimination, and so it was not a materially adverse action for purposes of a retaliation claim. *Burlington Northern*, 548 U.S. at 68; see *Poullard v. McDonald*, 829 F.3d 844, 857 (7th Cir. 2016) (explaining that "threats of future discipline can cause stress or worry" but are not themselves materially adverse).

A final point: in her appellate brief, Watkins maintains that the Chicago Police Department perpetrates systemic racism and sexism against Black women. We emphasize that we neither accept nor reject these assertions about the institution. Our decision resolves only the individual claims that Watkins pursued in the district court and argues on appeal. For the reasons we have explained, she did not raise a genuine dispute of material fact about whether her one-day suspension was discriminatory or retaliatory.

AFFIRMED.

January 11, 2023

MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION (MARCH 26, 2020)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT COURT OF ILLINOIS
EASTERN DIVISION
CASE No. 17-cv-02028

JACQUELINE WATKINS,

Plaintiff,

v.

CITY OF CHICAGO

Defendant.

Before: Hon. Edmond E. Chang, U.S. District Judge

MEMORANDUM OPINION AND ORDER

Jacqueline Watkins is a Chicago Police Officer who brings this Title VII employment discrimination case, 42 U.S.C. § 2000e et seq., against the City of Chicago.[1] R. 18, Am. Compl.2 According to Watkins, the Chicago Police Department discriminated against her on the basis of race and gender and then retaliated against her when she complained about the discrimination. The City has moved for summary judgment. R. 89. For the reasons explained below, the motion is granted.

I. BACKGROUND

The facts narrated below are undisputed unless otherwise noted (and if disputed, the evidence is viewed in Watkins's favor).[3] Jacqueline Watkins has

[1]The Court has federal question jurisdiction over this case under 28 U.S.C. § 1331.

[2]Citation to the docket is "R." followed by the entry number and, when necessary, the relevant page or paragraph number.

[3]Citations to the parties' Local Rule 56.1 Statements of Fact are identified as follows: "DSOF" for the City's Statement of Facts [R. 90] and "Pl.'s Resp. DSOF" for Watkins's response to the City's Statement of Facts [R. 103]. As the City points out, though, Watkins did not file a separate Statement of Additional Facts with her response to the motion for summary judgment. Instead, Watkins appears to have interspersed her new facts into her response to the City's Statement of Facts. In addition, Watkins's response to the DSOF contains numerous facts not supported by any record citation.

been employed by the Chicago Police Department as a Police Officer since 1999. DSOF ¶ 1. Officer Watkins is an African-American woman. Id.

A. Complaint Registers

In September 2008, Watkins was on patrol with her partner, Officer Harriet White, who is also an African-American woman. DSOF ¶ 5. Watkins and White were part of the third-watch shift in the CPD's 22nd District. Id. The third watch was staffed by around ten officers, including Watkins and White, and was supervised by Sergeant Francis Higgins. Id. ¶ 6.

Federal courts may enforce their local rules, such as Local Rule 56.1, even as to pro se litigants like Watkins. See e.g., *Cady v. Sheahan*, 467 F.3d 1057, 1061 (7th Cir. 2006); *Greer v. Board of Educ. of City of Chicago*, 267 F.3d 723, 727 (7th Cir. 2001). To be sure, the Court still views Watkins's pro se filings as expansively as reasonably possible, and she still gets the benefit of viewing the evidence in the light favorable to her. But to the extent that Watkins has alleged facts without any evidentiary support (whether explicitly cited or readily located in the record by the Court), the Court cannot credit them for purposes of this motion.

As for Watkins's additional facts, even though Defendants are correct in that she failed to file a separate statement of additional facts, the Court will nonetheless construe any supported facts that she includes in her response to the DSOF as one of her additional facts. The City helpfully picked out Watkins's new facts and placed them in a separate document (along with the City's responses), so the Court will go ahead and construe that document as "Def.'s Resp. PSOF," for the City's response to Watkins's Statement of Additional Facts [R. 109].

The third-watch patrol ran from 4 p.m. to midnight. DSOF ¶ 5. At around 11:25 p.m. on September 9, 2008, Watkins and White had just finished up a suspicious person call and reported to dispatch that they were "clear." Id. ¶ 7. A report of "clear" means that the officers are available to respond to new calls. Id. ¶ 8. If an officer is not available to respond to calls for whatever reason, then the officer is supposed to report that they are unavailable. Id.

That night, White was driving; Watkins was in the passenger seat. DSOF ¶ 5. At 11:35, ten minutes after Watkins and White had reported themselves "clear," dispatch sent out a priority one call for a burglary in progress. Id. ¶ 10.

What happened next is disputed. According to the City, "priority one" means that the call is urgent, and all available officers must respond immediately. DSOF ¶ 11. As Sergeant Higgins was en route to respond to the burglary-in-progress call, he saw Watkins and White driving in the opposite direction from the burglary scene. Id. ¶ 12. At that point, Higgins called dispatch to report Watkins and White. Id. ¶ 13. Specifically, at 11:36 p.m. (one minute after the burglary call was made), Higgins placed a call to dispatch in which he asked dispatch to order Watkins and White to "turn around and head with me to that burglary in progress." Id. Accordingly, the dispatcher called Watkins and White; there was a pause with no response; and the dispatcher asked them if they copied. Id. Higgins eventually arrived at the scene of

the burglary. Id. ¶ 14. Four minutes later, Watkins and White showed up. Id.

Watkins tells a different story. According to Watkins, the 11:35 p.m. burglary in-progress call did not require all available officers to respond immediately. R. 100, Pl.'s Resp. DSOF ¶ 10. Rather, dispatch specifically assigned the call to a different beat car, not to Watkins and White. Id. As a result, Watkins disputes that she was required to immediately respond to the call. Id. Nonetheless, Watkins does not dispute that Higgins placed a call to dispatch to ask dispatch to instruct Watkins and White to respond to the burglary call. Id. ¶ 11. According to Watkins, Higgins was merely singling them out "in a hostile tone." Id. Even so, when dispatch relayed Higgins's orders to Watkins and White, Watkins asserts that they immediately responded to the assignment at that point. Id. ¶¶ 11-12. Watkins does not dispute that when she and White arrived at the scene of the burglary, Higgins was already there. Id. ¶ 14. But Watkins asserts that it only took them "a few seconds, a minute or less," to show up, not four minutes. Id. In short, Watkins maintains that they did not immediately respond to the burglary-in-progress call because it had been assigned to a different beat car, but when dispatch later assigned the call to Watkins and White, they immediately responded. The bottom line, according to Watkins, is that she and White did not break any rules that night.

In any event, it is undisputed that a few hours after this incident, Sergeant Higgins filed what is

called a "complaint register" (CR) against Watkins and White. DSOF ¶ 15; R. 90, DSOF, Exh. 10, Rivera Decl., Exh. C, Investigation Records at DEF-WAT 000493.4 To provide some background, a CR is the first step in initiating potential discipline against a police officer. DSOF ¶ 30. A member of the public can file a CR against a CPD employee, or, as in this case, a CPD employee can file a CR against a fellow employee. Id. ¶ 31. When a CR is filed, as pertinent here, it is handled by the Internal Affairs Department (IAD); IAD assigns each CR a log number and then assigns a staff member to investigate the allegations in the CR, create a summary of findings, and recommend discipline (if appropriate). Id. ¶ 32. IAD can issue one of four possible findings for a CR: (1) sustained, which means there was sufficient evidence to support the allegation of misconduct; (2) not-sustained, which means there was not sufficient evidence to support the allegation; (3) unfounded, which means the alleged misconduct did not occur; and (4) exonerated, which means the alleged conduct did occur but was actually not a rule violation. Id. ¶ 33.

[4]The investigation records for both Higgins's CR against Watkins and Watkins's discrimination allegations against Higgins are provided as Exhibit C to Sergeant Juan Rivera's Declaration, which is in turn attached as Exhibit 10 to the DSOF. The investigation records encompass the original complaints written by Higgins and Watkins; the dispatch phone records from September 9, 2008; Sergeant Kane's interview transcripts with Higgins, Watkins, and White; Sergeant Kane's summary report; and other relevant letters and documents. The individual documents are not broken down into their own exhibits. So, for the sake of simplicity, from here on out, the Opinion will simply cite all of these documents as "Investigation Records" and will identify the specific page or pages by the "DEF-WAT" Bates number provided by the parties.

Here, Higgins initiated the CR process by filing an internal memorandum in which he detailed how Watkins and White, "in spite of ample time and space to make a U-turn," drove "AWAY from an all call assignment." DSOF ¶ 15; Investigation Records at DEF-WAT 000493 (capitalization in original). Higgins did not dispute Watkins's assertion that the burglary call was initially assigned to a different beat. See Investigation Records at DEF-WAT 000493. But Higgins maintained that Watkins and White were still supposed to respond, because the call was an "all call assignment," which presumably means that even though it had been specifically assigned to a beat car, all other available units were still expected to respond. Id. At the top of the memorandum, Higgins characterized his allegations as "inattention to duty" and "failure to provide police service." Id. It is undisputed that other than this CR against Watkins and White, Higgins never issued any other CRs over the course of his 29-year career. DSOF ¶ 18.

On September 25, 2008, Sergeant Derrick Shinn (also of the 22nd District) notified Watkins that a CR had been opened against her. Pl.'s Resp. DSOF ¶ 17; Investigation Records at DEF-WAT 000511-12. As mentioned above, Watkins sharply disagreed with the factual basis for the CR (namely, that she failed to respond to a burglary call). So, a week later, on October 2, 2008, Watkins wrote her own internal memorandum alleging that Higgins made a false report against her simply because she was a Black woman. DSOF ¶ 21; Investigation Records at DEF-WAT 000489-90. In her memorandum, Watkins alleged that Higgins was motivated by "his own

inward racial hatred and prejudice" to "make a false allegation without fact or justification." Investigation Records at DEF-WAT 000490. She called his filing of the CR as an "outward act of discrimination" against herself and White. Id.

B. First IDHR Charge

Around the same time that she filed the memorandum internally with the department, Watkins also attempted to file a charge of discrimination with the Illinois Department of Human Rights (commonly referred to as "IDHR"). DSOF ¶ 68. She filled out an IDHR Employment Complainant Information Sheet, on which she stated that the CPD discriminated against her on the basis of race and gender when Higgins initiated the allegedly false CR against her. See R. 90, DSOF, Exh. 15. But according to Watkins, before she could officially file the charge, an IDHR representative named Maryann Pettway told her that "unless there was some punishment or other employment detriment that ensued as a result of this action, the complaint could not be filed and investigated." DSOF ¶ 69; Pl.'s Resp. DSOF ¶ 69. As a result, Watkins did not file the IDHR charge. DSOF ¶ 69.

C. Internal Review of Complaints

Meanwhile, the CPD's internal review process for the two complaints—the inattention to duty CR that Higgins filed against Watkins, and the discrimination CR that Watkins filed against Higgins—was just getting started. This process would

ultimately go through multiple layers of review and would last six years.

The first person to review the complaints was Sergeant Derrick Shinn. (Shinn was just another member of the 22nd District and was not a member of IAD.) The record shows that Sergeant Shinn was first assigned the case on September 16, 2008. See Investigation Records at DEF-WAT-000487. (This was before Watkins accused Higgins of discrimination.) On that date, a "complaint log number" of 1019842 was assigned to Higgins's CR against Watkins. Id. at DEF-WAT 000494. Then, on October 2, Shinn received Watkins's complaint of discrimination against Higgins. Id. As far as the record shows, Watkins's complaint was not assigned a separate log number. Rather, it appears to have been consolidated with Higgins's existing log number, although Watkins maintains that this shows the City never bothered to assign her CR its own number. Pl.'s Resp. DSOF ¶ 34. A week later, on October 10, Sergeant Shinn noted that he ultimately "found no evidence during [his] investigation to support this allegation against Sgt. Higgins." Investigation Records at DEF-WAT 000487. On that same day, Shinn transferred the entire case number (encompassing both the allegations against Watkins and the allegations against Higgins) to IAD, because IAD was responsible for investigating all discrimination allegations. Id.

When CR No. 1019842 reached IAD in November 2008, it was assigned to Sergeant Jamie Kane for review. DSOF ¶ 34; Investigation Records at

DEF-WAT 000485. This meant that Kane would be responsible for investigating both the inattention to duty allegations as well as the discrimination allegations. DSOF ¶ 34. It is undisputed that as part of this investigation, Kane interviewed Higgins, Watkins, and White and also reviewed the dispatch audio recordings from September 9, 2008 (the night of the burglary call) and other documents from that night. Id.

Specifically, Kane conducted two interviews with Watkins on April 28, 2010. Investigation Records at DEF-WAT 000528-31, DEF-WAT 000534-37. It is unclear why these interviews took place nearly a year and a half after the complaints were assigned to Sergeant Kane. During the first interview, Kane asked Watkins about the September 9, 2008 burglary-in-progress call. Id. at DEF-WAT 000528-31. Watkins explained that when she and White heard the original dispatch for the burglary call, they made a U-turn to drive toward the job. Id. at DEF-WAT 000530. But apparently they did not turn fast enough for Sergeant Higgins, who "went over the air in a nasty tone, to tell [Watkins and White] to turn around." Id.

The second interview that afternoon focused more on Watkins's discrimination allegations against Higgins. According to Watkins, Higgins could have easily addressed any issues he had with her on the scene of the burglary. Investigation Records at DEF-WAT 000535. Instead, he went "to the extreme level of obtaining the slanderous CR number and automatically going into the [stereotype] of black female officer, of assuming lazy, inefficient, and trying

to avoid work." Id. Watkins also mentioned that she observed that when a white officer had an issue, Higgins would simply discuss it with them as opposed to filing a CR. Id. She could not point to any specific white officers, but remarked that Higgins was generally "friends with all of the white officers." Id. at DEF-WAT 000536. Watkins also mentioned that she heard from two other Black female officers, one named Sheila Fulks and the other named Linda (the last name was not identified), that Sergeant Higgins had also disciplined them in more extreme ways: for Fulks, Higgins had allegedly put his hand on her back, pushed her, and told her to get to roll call once when she was late, and for Linda, he spoke to her supervisor when she was late to an assignment. Id. Watkins also accused Higgins of making racist remarks generally. For instance, according to Watkins, when they were dealing with Black suspects, Higgins would tell the Black officers to "get your cousins." Id. Higgins would also apparently say "wake up" whenever he tried to communicate to officers (though it is not clear if this was to all officers or just Black officers). Id.

[5]Watkins describes this encounter in much stronger language in her response brief. Specifically, Watkins asserts that Kane actually "yelled" at her and stated "how dare you ruin this man reputation with this discrimination allegation." Pl.'s Resp. Br. at 3. But that statement in the response brief is not accompanied by any record cite. The only place in the record that seems to support this fact is Watkins's deposition transcript cited above. See R. 90, Exh. 3, Watkins Dep. Tr. at 92:14-18. But because the deposition transcript does not support either the allegation that Kane "yelled" at Watkins, or the allegation that Kane said the words "how dare you ruin this man['s] reputation," the Court cannot accept those allegations just from the response brief.

Watkins later asserted that the transcripts do not capture the entire interview exchange. Most notably, Watkins claims that during one of her interviews with Kane, she accused Sergeant Higgins of being a racist, and in response, Kane "was like you're defaming his reputation." R. 90, DSOF, Exh. 3, Watkins Dep. Tr. at 92:14-18.5

After the two interviews with Watkins on April 28, 2010, Kane then interviewed Sergeant Higgins that same afternoon. Investigation Records at DEFWAT 000519-21. Higgins largely reiterated the allegations in his original complaint register, and further noted that he did not remember if he spoke to Watkins and White at the scene of the burglary because he "was busy." Id. at DEF-WAT 000521. The next month, in May 2010, Kane also interviewed White. Id. at DEF-WAT 000538- 41, DEF-WAT 000545-46. White mostly corroborated Watkins's version of events from the night of the burglary call. White remembered hearing the dispatcher issuing the burglary call, then calling out their beat, and then Watkins and White made a U-turn and drove toward the assignment. Id. at DEF-WAT 000540. According to White, it took them less than 30 seconds to arrive at the call. Id. at DEF-WAT 000541.

In November 2010, Sergeant Higgins retired from the Department. DSOF ¶ 6. According to Watkins, he was "allowed to retire in good standing" despite her pending discrimination claims against him. Pl.'s Resp. DSOF ¶ 17.

Finally, in October 2011, Sergeant Kane produced an eight-page summary report of her findings. Investigation Records at DEF-WAT 000471-79. In the summary report, Kane laid out the arguments made by Higgins, Watkins, and White and then Kane described what she heard on the audio recording of the pertinent dispatch calls. Specifically, Kane determined that, based on her impression of the audio recording, the sequence of events happened like this: (1) at 11:35 p.m., the dispatcher announced the burglary-in-progress call and assigned it to a different beat car, and that beat responded with "10-4"; (2) at 11:36:20, Higgins came on air and told the dispatcher to "tell [Watkins and White] to turn around and head with me to the burglary in progress"; (3) the dispatcher called Watkins and White; (4) there was a pause with no response; (5) the dispatcher asked "do you copy"; (6) Watkins and White responded. Id. at DEF-WAT 000474-75. Based on those findings, Kane ultimately "sustained" the allegations against both Watkins and White (which means she found sufficient evidentiary support for them), and then recommended a two-day suspension for Watkins and a one-day suspension for White. Id. at DEF-WAT 000479. Kane was not persuaded by the discrimination allegations against Higgins. Id. at DEF-WAT 000477.

The next step in the review process was to send Kane's summary report up the chain of command. Under this "Command Channel Review" process, Kane's findings would be reviewed by various CPD supervisors, who would each issue their own recommendations. R. 90, DSOF, Exh. 10, Rivera Decl. ¶¶ 13-14. Afterwards, the case would then make its

way up to the IAD Chief, who at the time was Sergeant Juan Rivera, and finally the CPD Superintendent, Garry McCarthy. DSOF ¶¶ 37-38. Superintendent McCarthy would ultimately have the authority to decide whether or not to adopt the investigatory findings and to issue discipline if applicable. Rivera Decl. ¶ 15.

In this instance, the Command Review process began with Dana Alexander, Eugene Williams, and Al Wysinger. Pl.'s Resp. DSOF ¶ 13. It is undisputed that the three Command Reviewers disagreed with Kane's findings on the burglary call and opined instead that they believed Watkins and White were not officially assigned to the initial call (at 11:35 p.m.) until the dispatcher specifically called out their beat number (at 11:36 p.m.). Rivera Decl. ¶ 21. At the first Command Review step, in February 2012, Alexander recommended changing the finding from "sustained" to "not sustained." Investigation Records at DEF-WAT 000462-63. Alexander noted that there was no evidence showing when Watkins and White actually arrived on the burglary scene, but contrary to Kane's findings, Alexander never heard a "delay in response" by Watkins and White. Id. Then, in June 2012, at the next review step, Eugene Williams simply adopted Alexander's findings and also recommended changing the CR to "not sustained." Id. at DEF-WAT 000461. And finally, in June 2012, Wysinger also recommended a "not sustained" finding. Wysinger also noted that there was no actual evidence of what time Watkins and White arrived on the scene and pointed out that "the officers are in error by stating that the dispatcher assigned them to respond to the

burglary in progress." Id. Ultimately, however, because Wysinger concluded that they did eventually respond, he recommended not sustaining the CR. Id.

In June 2012, the case reached IAD Chief Juan Rivera. (Rivera would be the final layer of review before the case went up to Superintendent McCarthy.) According to Rivera, he looked at the original CRs, the printout of the dispatch audio records, Kane's summary report, and the Command Review findings. Rivera Decl. ¶ 22. It is unclear if Rivera himself listened to the actual audio recording of the dispatch call. Rivera acknowledged that three of the Command Reviewers had disagreed with the initial "sustained" recommendation, but based on his own review, he ultimately agreed with Kane's findings. Id. ¶¶ 21-22. Specifically, Rivera noted that whereas the Command Reviewers did not believe Watkins and White had been assigned the call until the dispatcher specifically called out their beat, Rivera himself believed that they should have responded immediately when the call went out at 11:35 p.m. Id. ¶ 22. Rivera ultimately recommended that Watkins be suspended for one day. DSOF ¶ 40; Rivera Decl. ¶ 25.

Finally, the case file went up to Superintendent Garry McCarthy for review. In February 2014, McCarthy accepted Rivera's recommendations, Rivera Decl. ¶ 30, and in March 2014, Watkins was officially suspended for one day, R. 103-2, Pl.'s Resp. DSOF, Exh. 1 at 13.

D. Second IDHR Charge

After receiving the one-day suspension, Watkins again tried to file a charge of discrimination with the IDHR. This time she was successful. DSOF ¶ 70. In the 2014 IDHR charge, Watkins alleged that the one-day suspension was both discriminatory and retaliatory. See R. 18-1, Am. Compl., Exh. 1. The IDHR ultimately found in favor of the City, and the EEOC adopted the IDHR's finding. DSOF ¶ 71. Watkins received a notice of right to sue from the EEOC in December 2016 and filed this lawsuit on time. Id.

E. Aftermath of Suspension

In addition to filing the charge of discrimination with the IDHR, Watkins also continued to fight the suspension through her union. DSOF ¶ 48. Finally, December 2015, an arbitrator ordered the City to change the CR finding against Watkins from "sustained" to "not sustained." Id. (Recall that "not sustained" means there was not sufficient evidence to support the allegation, but it does not go so far as to deem the conduct "unfounded" or "exonerated." Id. ¶ 33.) The arbitrator also ordered the City to compensate Watkins for the one-day suspension. Id. ¶ 48. The City complied with both orders. Id.

Despite the reversal of the suspension, Watkins asserts that the damage was done. For one, she alleges that both the CR and the suspension severely hampered her chances at promotion within the

Department. DSOF ¶ 49. It is undisputed that out of the two methods for advancement—test scores and merit promotion—merit promotion was the only available avenue for Watkins. Id. ¶ 62. What that means is Watkins would have needed to secure a nomination from a commander as well as letters of recommendation from supervisors in order to be promoted. Pl.'s Resp. DSOF ¶¶ 63-64. According to Watkins, she submitted multiple applications for detective positions (as well as maybe sergeant positions), and she also reached out to several supervisors to ask for a recommendation and did not hear back. See Pl.'s Resp. Br. at 11, 18; Pl.'s Resp. DSOF ¶¶ 58, 67. Some of these instances definitely occurred in 2016 or later, while the timing of the others is unspecified. Pl.'s Resp. DSOF ¶¶ 58, 67. In addition, Watkins asserts that the process of dealing with the allegedly false CR and suspension caused her immense emotional distress. Watkins Dep. Tr. at 133:24, 134:1-2.

II. Standard of Review

Summary judgment must be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A genuine issue of material fact exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In evaluating summary judgment motions, courts must "view the facts and draw reasonable inferences in the light most favorable to the" non-moving party. Scott v. Harris, 550 U.S.

372, 378 (2007) (cleaned up).[6] The Court "may not weigh conflicting evidence or make credibility determinations," Omnicare, Inc. v. UnitedHealth Grp., Inc., 629 F.3d 697, 704 (7th Cir. 2011) (cleaned up), and must consider only evidence that can "be presented in a form that would be admissible in evidence." Fed. R. Civ. P. 56(c)(2). The party seeking summary judgment has the initial burden of showing that there is no genuine dispute and that they are entitled to judgment as a matter of law. Carmichael v. Village of Palatine, 605 F.3d 451, 460 (7th Cir. 2010); see also Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). If this burden is met, the adverse party must then "set forth specific facts showing that there is a genuine issue for trial." Anderson, 477 U.S. at 256.

III. Analysis

Title VII prohibits employers from discriminating against employees on the basis of "race, color, religion, sex or national origin." 42 U.S.C. § 2000e-2(a). Title VII also bars employers from retaliating against employees who engage in protected activity under Title VII. See Poullard v. McDonald, 829 F.3d 844, 855-56 (7th Cir. 2016). Watkins claims that the City did both. Specifically, Watkins argues that the Chicago Police Department discriminated against her on the basis of her race and sex when Sergeant Higgins filed a false complaint register against her in 2008, and again when she received a suspension in 2014. Watkins also brings a retaliation claim based on that 2014 suspension. At the summary judgment stage, the Court views the evidence in the light most favorable to Watkins and

gives her the benefit of all reasonable inferences. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). For the reasons explained below, Watkins has failed to establish either a disparate-treatment claim or a retaliation claim.

A. Disparate Treatment

To survive summary judgment on the disparate-treatment claim, Watkins must produce evidence that would allow a reasonable jury to find that the City's adverse employment actions against her were motivated by her race or sex. Ortiz v. Werner Enters. Inc., 834 F.3d 760, 765 (7th Cir. 2016) ("The legal standard ... is simply whether the evidence would permit a reasonable factfinder to conclude that the plaintiff's race, ethnicity, sex, religion, or other proscribed factor caused the discharge or other adverse employment action."). The Seventh Circuit has made clear that all relevant evidence must simply be considered "as a whole." Id. at 763. As a practical matter, though, in this particular case there are two main avenues to establishing a disparate treatment claim.

The first option is for Watkins to try to establish a prima facie case for discrimination, which requires her to show that (1) she is a member of a protected class; (2) her job performance met the City's legitimate expectations; (3) she suffered an adverse employment action; and (4) the City treated another similarly situated employee who was not a member of the protected class more favorably. See McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973);

LaRiviere v. Bd. of Trs. of Southern Ill. Univ., 926 F.3d 356, 360 (7th Cir. 2019). If Watkins is able to establish a prima facie case, then the burden will shift to the City to provide a legitimate, nondiscriminatory reason for the adverse action. Coleman v. Donahue, 667 F.3d 835, 845 (7th Cir. 2012). If the City successfully rebuts Watkins's prima facie case, then the burden will shift back to Watkins, "who must present evidence that the stated reason is a pretext, which in turn permits an inference of unlawful discrimination." Id. (cleaned up). Alternatively, even if Watkins cannot establish a prima facie case, she can still succeed on this claim as long as she points to enough circumstantial evidence that would allow a reasonable jury to infer that a decision was attributable to discriminatory motivations. David v. Bd. of Trs. of Cmty. Coll. Dist. No. 508, 846 F.3d 216, 224 (7th Cir. 2017).

Here, Watkins points to two actions by the City that she alleges were discriminatory—the filing of the 2008 complaint register and the 2014 one-day suspension. The City has moved for summary judgment on both those decisions.

1. 2008 Complaint Register

Turning first to the 2008 complaint register (CR), the argument here is that Sergeant Higgins filed the CR against Watkins not because she did anything wrong, but rather because of her race and gender. In response, the City claims that the 2008 CR cannot be the basis of any Title VII claim because Watkins failed to file a timely charge of discrimination with the

EEOC or IDHR, and even if the claim were timely, she has also failed to establish as a substantive matter that Higgins discriminated against her when he filed the CR.

a. Timing of the Claim

As a threshold matter, the City argues that any claims stemming out of the 2008 CR should be barred because Watkins failed to file a timely charge with either the Equal Employment Opportunity Commission (EEOC) or the Illinois Department of Human Rights (IDHR). R. 91, Def.'s Br. at 6. Filing a timely charge of discrimination with either the EEOC or the state equivalent (in this case, the IDHR) is a prerequisite to bringing a Title VII claim. 42 U.S.C. § 2000e–5(e)(1); Moore v. Vital Prods., Inc., 641 F.3d 253, 256 (7th Cir. 2011).

Here, it is undisputed that Watkins did not file a charge of discrimination on time. DSOF ¶ 69. Watkins explains that she tried to file an IDHR report right after the CR was initiated back in 2008, but an IDHR representative told her that she was not allowed to because "unless there was some punishment or other employment detriment that ensued as a result of this action, the complaint could not be filed and investigated."7 Id. ¶ 69; Pl.'s Resp. DSOF ¶ 69. As a result, Watkins waited until 2014, which is when the CR was finally resolved (as a suspension), to try again to file a charge of discrimination. DSOF ¶ 70. Unfortunately, the original IDHR representative's advice was incorrect. There is no rule requiring Watkins to wait for the CR

against her to be formally resolved before she is allowed to file a charge alleging that the CR was discriminatorily lodged in the first place. (It is true that an adverse employment action is needed to ultimately win a substantive claim, but it does not appear that an IDHR representative has the authority to refuse to accept a charge.) So, the question is whether some sort of equitable tolling principle might apply to excuse Watson's six-year delay in filing her charge of discrimination due to the faulty advice of the IDHR representative.

Equitable tolling "is reserved for situations in which the claimant has made a good faith error (such as bringing suit in the wrong court) or has been prevented in some extraordinary way from filing his complaint in time." Threadgill v. Moore U.S.A., Inc., 269 F.3d 848, 850 (7th Cir. 2001). As it turns out, however, it is not necessary to resolve the factual issue of whether equitable tolling should apply to a scenario where an IDHR employee communicates an incorrect rule to a plaintiff, thereby preventing the plaintiff from filing a charge on time.8 As the Court will explain in more detail below, Watkins has failed to establish a substantive claim for disparate treatment on the 2008 CR. In other words, the Court takes no position on whether the fact pattern alleged here would have been enough to warrant equitable tolling because the claim must be dismissed either way.

[6]This Opinion uses (cleaned up) to indicate that internal quotation marks, alterations, and citations have been omitted from quotations. See Jack Metzler, Cleaning Up Quotations, 18 Journal of Appellate Practice and Process 143 (2017).

b. Merits of the Claim on the 2008 CR

As mentioned above, in order to establish a disparate-treatment claim based on the 2008 CR, Watkins must provide enough evidence that would allow a reasonable jury to infer that Higgins only initiated the CR because of Watkins's race or sex. Ortiz, 834 F.3d at 765. Here, looking at all of the evidence as a whole, there is simply not enough factual support for a reasonable jury to infer that Higgins filed the CR against Watkins because of her race or sex.

For one, Watkins has failed to satisfy the elements of a prima facie case of discrimination, to the extent that she relies on that method of proof. There is a dispute over whether the initiation of a CR counts as a material adverse employment action, as well as whether Watkins's actions on the night of September 9, 2008 satisfied the City's legitimate expectations. But even if the Court were to resolve those disputes in Watkins's favor, the prima facie case must fail because Watkins has failed to identify. any similarly situated individuals outside of the protected classes who were treated better than her.

[7]The City argues that this evidence should not be considered because it is hearsay. Def.'s Br. at 7. That is incorrect. The statement by the IDHR representative is not being offered for the truth of the matter asserted, but rather for its effect on Watkins. [8]Another issue would have been whether the equitable tolling inquiry should be a bench or a jury question. If Watkins had successfully established a disparate-treatment claim based on the 2008 CR, the Court would have solicited position papers from both parties on the bench or jury question. But again, because the disparate treatment-claim will not survive, there is no need to resolve that issue at this point.

The Seventh Circuit has defined "similarly situated" to mean an individual who is directly comparable to the plaintiff in all important ways. Patterson v. Avery Dennison Corp., 281 F.3d 676, 680 (7th Cir. 2002). To be sure, the other employee need not be identical to Watkins, nor is there a "mechanical magic formula"—rather, the inquiry is "flexible, common-sense, and factual. It asks essentially, are there enough common features between the individuals to allow a meaningful comparison?" *Johnson v. Advocate Health and Hosps. Corp.*, 892 F.3d 887, 895 (7th Cir. 2018) (cleaned up). Some common features are "whether the employees being compared (1) were supervised by the same person, (2) were subject to the same standards, and (3) engaged in similar conduct without such differentiating or mitigating circumstances as would distinguish their conduct or the employer's treatment of them." Id. (cleaned up).

In this case, the best evidence Watkins could have pointed to would have been a white male officer who similarly exhibited a one-minute (or longer) delay in responding to a burglary call (or even a crime of similar urgency). But Watkins does not identify any officer like that, nor does she really identify any comparable officers in general, even when the parameters for what counts as "similar" are loosened. Watkins did mention during her 2010 interview with Kane that she observed white men receiving more lenient treatment from Higgins. Investigation Records at DEFWAT 000536. But Watkins could not identify who those men were, what they had done wrong to receive more lenient discipline, or when her

observations had happened. Id. Instead, Watkins's only conclusion was that there was no specific incident she was thinking of; Higgins just tended to be friends with all the white officers. Id. That alone is not enough to satisfy the similarly situated employee requirement for a prima facie case.

Nor is the data Watkins cites in her response brief enough to raise an inference of discriminatory intent on Higgins's part. Specifically, Watkins points to CR statistics she pulled from the Citizens Police Data Project website. Pl.'s Resp. Br. at 21-22. But even assuming these statistics are usable in her case, they do not appear to support her claim. Specifically, the statistics purport to illustrate the rate at which CRs were found to be "sustained" or "unsustained" for different racial and gender categories. Watkins argues that a greater percentage of CRs initiated against white men are ultimately "unsustained" compared to the CRs initiated against Black women, which suggests that Black women are disciplined more harshly than white men. Id. at 22. But this part of Watkins's disparate-treatment claim is really about the initiation of allegedly false CRs in the first place, not their resolution. And here, Watkins has not explained how the rate of sustained versus unsustained CRs speaks to whether those CRs were legitimately initiated in the first place. Nor does the data demonstrate that a greater absolute number of CRs were lodged against Black women compared to white men.[9] Id.

Looking beyond the prima facie framework, Watkins's main argument in support of the 2008 CR

being discriminatory is that Higgins harbored implicit biases toward Black women. Pl.'s Resp. Br. at 6. Specifically, Watkins asserts that the only reason Higgins filed the CR was because he believed the stereotype that Black women officers were "lazy, inefficient, and trying to avoid work." Investigation Records at DEF-WAT 000535. The problem is that Watkins does not point to any evidence that Higgins actually held this particular stereotype, or, more importantly, that he acted on that stereotype when he filed the CR. For instance, Watkins attributes words like "lazy" and "negligent" to Higgins throughout her filings, see Pl.'s Resp. DSOF ¶ 19, but there do not appear to be any actual citations to the record of Higgins saying those types of things, so the Court cannot credit these assertions.

[9]For these reasons, Watkins's motion to file a sur-reply, R. 115, is also denied. Specifically, Watkins seeks to introduce two new exhibits9For these reasons, Watkins's motion to file a sur-reply, R. 115, is also denied. Specifically, Watkins seeks to introduce two new exhibits: (1) another Citizens Police Data Project excerpt and (2) a 2015 letter from the Illinois Attorney General. But even under the more lenient guidelines applied to a pro se plaintiff, it would be too much to allow a sur-reply: (1) another Citizens Police Data Project excerpt and (9For these reasons, Watkins's motion to file a sur-reply, R. 115, is also denied. Specifically, Watkins seeks to introduce two new exhibits: (1) another Citizens Police Data Project excerpt and (2) a 2015 letter from the Illinois Attorney General. But even under the more lenient guidelines applied to a pro se plaintiff, it would be too much to allow a sur-reply 2) a 2015 letter from the Illinois Attorney General. But even under the more lenient guidelines applied to a pro se plaintiff, it would be too much to allow a sur-reply based on data that was not identified during discovery and, in any event, is not relevant to the similarly situated individual point, as described above.

Similarly, Watkins does offer evidence of other racially related remarks that Higgins made during his career, but there is no indication of when those remarks were made, nor is there any indication that those types of remarks were connected to Higgins's decision to initiate the CR for failure to respond to the burglary call. For instance, during the 2010 interview with Kane, Watkins claimed that when the officers were dealing with Black suspects Higgins would tell the Black officers to "get your cousins." Investigation Records at DEF-WAT 000536. Higgins also apparently said "wake up" on several occasions when he tried to communicate to officers over the radio, though, as mentioned above, it is not clear if this comment was directed only at Black officers. Id. The "cousins" comment is especially troubling, but there does not really seem to be a direct connection between Higgins implying that all Black officers are related to Black criminal defendants, on the one hand, and Higgins's alleged perception that Watkins and White were slow to respond to a burglary call, on the other. See *Gorence v. Eagle Food Ctrs., Inc.*, 242 F.3d 759, 762 (7th Cir. 2001) (stray remark might provide inference of discrimination when made in reference to the adverse employment action). Similarly, without knowing when the "wake up" comments were made or who they were directed to, it is difficult to link those words with Higgin's 2008 decision to file a CR. See Perry v. Dep't of Human Servs., 793 F. App'x 440, 442 (7th Cir. 2020) (non-precedential disposition) (stray remark might provide inference of discrimination when made around the same time as the adverse action).

Moreover, even accepting as true Watkins's allegations about the night of the burglary call, it is still undisputed that for at least a short while, Watkins and White were driving in the opposite direction of the assignment; the disagreement is about how long it took for them to turn around. So it was not completely baseless for Higgins to interpret the situation as Watkins and White driving away from the scene of the call and to then place the call to dispatch. Perhaps Higgins was impatient (maybe even unreasonably so), but there is no evidence that he would have been more patient had Watkins not been a Black woman. In other words, the fact that he angrily called in to dispatch does not on its own suggest discriminatory animus.

As for the decision to file the CR itself, the record shows that Higgins sent in his memorandum one day (at the most) after the incident. Investigation Records at DEF-WAT 000493. Watkins asserts that he should have talked to them at the scene of the burglary or conducted an investigation first instead of jumping straight to the drastic measure of filing a CR; the fact that he did take such a drastic measure, argues Watkins, is evidence of discrimination. Pl.'s Resp. Br. at 12. But again, this decision standing alone does not give rise to a reasonable inference of race or sex discrimination. After all, it is undisputed that Higgins never filed any other CRs before or after this incident, and it is also undisputed that Higgins supervised at least five other Black officers on the night in question. DSOF ¶ 18. The fact that Higgins did not subject other Black officers to negative treatment of course does not insulate Higgins from

liability if he discriminated against Watkins. But in this particular case, it does not help support Watkins's case.

All in all, the Court is sympathetic to Watkins's perception of implicit bias on the part of Higgins, and the Court recognizes the difficulty of proving that a particular action was motivated by racism or sexism, where the decision-maker might not have even been actively thinking about race or sex, yet was still unconsciously driven by racist or sexist stereotypes. This is not to say that implicit bias can never be the basis for a Title VII claim. But in this particular case, Watkins has failed to offer enough concrete evidence to establish a causal connection between Higgins's alleged discriminatory attitudes toward Black women and his 2008 decision to initiate a CR against Watkins. Thus, the disparate-treatment claim based on the 2008 CR must be dismissed.

2. 2014 Suspension

Similarly, Watkins has failed to produce enough evidence to establish that the one-day suspension she received in 2014 was motivated by her race or sex. Just like above, she has failed to make out a prima facie case of discrimination, in large part because she has failed to identify any similarly situated individuals who were treated better than her (for instance, someone who did not receive a suspension despite being accused of similar conduct).

The City has also offered evidence that the 2014 suspension, which was reversed by the arbitrator in 2015, did not materially affect Watkins's chances at

being promoted to detective. (To be clear, the issue here is whether the suspension, not the presence of the pending CR, affected Watkins's chances at promotion.) So, the question is whether Watkins has pointed to any evidence that, in the time span between when she received the suspension in 2014 and when it was removed from her record in 2015, she applied for a position and was denied because of the meritless suspension. And unfortunately, the record does not show that Watkins applied to any jobs between 2014 and 2015 that would have been affected by the suspension. Some of the applications she points to were definitively after the suspension had been removed, while she does not specify the timing of the other applications. See Pl.'s Resp. Br. at 11, 18; Pl.'s Resp. DSOF ¶¶ 58, 67.

But the even bigger problem with the 2014 suspension is that any potential discriminatory motive on the part of Higgins was insulated by multiple layers of independent review by other CPD supervisors—including the superintendent. Also, unlike with the decision to file a CR itself, there is no evidence that Sergeant Higgins had anything to do with the decision to suspend Watkins, especially considering the undisputed fact that he retired from the department in 2010. In fact, the recommendation to suspend Watkins originated with Sergeant Kane, the IAD reviewer. And while, as discussed below, Watkins has provided ample evidence that Kane may have been motivated by retaliatory feelings, Watkins has not provided any evidence that Kane, Rivera, and McCarthy harbored discriminatory feelings toward Black women. For instance, Watkins does not point to

any statements made by any of those decision-makers that would support an inference of race or sex discrimination.

Nor does Watkins try to argue that McCarthy, Rivera, and Kane were somehow influenced by Higgins's alleged biases. This is also known as the cat's paw theory of liability and will be discussed in more depth in the next section. But for now, suffice to say that "the cat's paw theory requires both evidence that the biased subordinate actually harbored discriminatory animus against the victim of the subject employment action, and evidence that the biased subordinate's scheme was the proximate cause of the adverse employment action." Johnson v. Koppers, Inc., 726 F.3d 910, 914 (7th Cir. 2013). Here, even if Watkins had raised that argument, it would have been unsuccessful, because there is no evidence that Higgins was so influential throughout the multiple layers of review (especially after he retired in 2010), including all the way up to the superintendent, that a reasonable jury could infer that he was the proximate cause of McCarthy's decision to suspend Watkins. For these reasons, the disparate-treatment claim based on the 2014 suspension must also be dismissed.

B. Retaliation

Watkins also brings a retaliation claim premised on the one-day suspension she received in 2014. According to Watkins, she was only suspended because she had accused Sergeant Higgins of filing a

false CR against her based on discriminatory motives. Pl.'s Resp. Br. at 21.

In order to establish retaliation, Watkins must prove that (1) she engaged in protected activity; (2) she suffered an adverse employment action; and (3) the adverse action was motivated by the protected activity. Skiba v. Illinois Cent. R.R. Co., 884 F.3d 708, 718 (7th Cir. 2018). Ultimately, the plaintiff must show that her protected activity was the but-for cause of the adverse action. See Univ. of Tex. Sw. Med. Ctr. v. Nassar, 570 U.S. 338, 360 (2013). Here, there is no real dispute that Watkins's October 2008 memorandum complaining of discrimination counts as protected activity for purposes of her retaliation claim. But the City argues that the 2014 oneday suspension was not an "adverse employment action," and even if it were, that there was no causal connection with Watkins's 2008 complaint. Def.'s Br. at 12-13. The materially adverse action argument is unconvincing. But the Court ultimately agrees with the City on the causation point.

1. Materially Adverse Action

For what it is worth, Watkins has sufficiently shown that the suspension, even though it was only for one day, constituted a materially adverse action for purposes of her retaliation claim. The City maintains that the suspension was not a materially adverse action and cites the same reasons mentioned above—that is, that the suspension did not affect Watkins's promotion chances. But this time, the City's argument fails because the standard for what

constitutes an adverse action for purposes of a retaliation claim is different from the standard for a disparate treatment claim. Specifically, a materially adverse action for retaliation purposes "need not be one that affects the terms and conditions of employment." Lewis v. Wilkie, 909 F.3d 858, 867 (7th Cir. 2018). Rather, it just has to dissuade a reasonable employee from "engaging in the protected activity." Id. See also Robertson v. Wis. Dep't. of Health Servs., 949 F.3d 371, 382 (7th Cir. 2020). Here, the City has provided no argument on how a one-day suspension (handed down by an employee's superiors) would not dissuade a reasonable employee from complaining about racial discrimination to those same superiors.

2. Causation

But Watkins cannot overcome the defense's causation argument. To be clear, Watkins has put forth enough evidence for a reasonable jury to infer that Sergeant Kane recommended the suspension due to retaliatory motives. But the problem is that Watkins has not offered similar evidence to explain why Rivera and McCarthy also recommended and implemented the suspension. With regard to Kane, Watkins has provided just enough circumstantial evidence to permit a reasonable jury to infer a causal link between her 2008 memorandum and Kane's 2011 recommendation for suspension. It is true that there was a three-year gap between the complaint and the recommendation. But the long passage of time between the protected activity and the adverse action is not dispositive, and "there are cases in which a plaintiff can demonstrate causation despite a

substantial time lag." Baines v. Walgreen Co., 863 F.3d 656, 666 (7th Cir. 2017) (cleaned up). See also Malin v. Hospira, Inc., 762 F.3d 552, 560 (7th Cir. 2014) (retaliation charges may proceed in the face of long intervals when additional circumstances demonstrate that employer's acts may not be legitimate). And here, the length of the investigation actually cuts in favor of Watkins, because the City does not offer a good reason for Kane's year-and-a-half delay in conducting interviews of Watkins, White, and Higgins, or the year-and-a-half delay in putting together a summary report. To be clear, the length of the investigation itself is not an actionable basis for Watkins's retaliation claim. See R. 44, Order at 15-16. In other words, Watkins is not allowed to argue that the City retaliated against her by purposely prolonging the investigation (and therefore prolonging the stress of undergoing an investigation). But the length of the investigation by Kane can still serve as evidence that the ultimate suspension may have been driven by retaliatory motives.

In addition to the length of the investigation, Watkins has also provided evidence showing that Sergeant Kane harbored a retaliatory animus against her. According to Watkins, during one of her 2010 interviews with Kane, she accused Sergeant Higgins of being a racist. Watkins Dep. Tr. at 92:14-18. In response, Kane "was like you're defaming his reputation." Id. It is true that this exchange is not captured in the interview transcripts themselves, but given that those transcripts were prepared by Kane herself, the Court concludes that Watkins has at least created a genuine dispute in material fact for

purposes of the summary judgment stage. So, accepting as true Watkins's testimony that Kane was angry at her for "defaming" Higgins, then a reasonable jury could infer that Kane might have recommended suspension based on a desire to punish Watkins for making the discrimination allegation against Higgins. This inference of retaliatory motive is further strengthened by the fact that in Kane's October 2011 summary report of the investigation, she ultimately recommended a two-day suspension for Watkins, versus a one-day suspension for White, even though White was the one driving the patrol car on September 9, 2008, while Watkins was merely a passenger. See Investigation Records at DEF-WAT 000479. The only difference, according to Watkins, was that White "didn't speak up," whereas Watkins "had the audacity" to continue accusing Sergeant Higgins of racism. Watkins Dep. Tr. at 106:9-13. In that context, even though Watkins's suspension was eventually reduced from two days to one day, the fact that Kane initially recommended a disparate punishment supports an inference of retaliatory motive against Watkins.

But even if Kane acted with a retaliatory motive, Kane did not have the ultimate authority to unilaterally impose a suspension on Watkins. So, Watkins must also explain why Rivera and McCarthy decided to suspend her (or successfully invoke the cat's paw theory, as explained below). Here, the record shows that Sergeant's Kane's recommendations were reviewed by three other officers as part of the Command Review process, before going to IAD Chief Rivera and finally Superintendent McCarthy, who

was the ultimate decision-maker responsible for the suspension. DSOF ¶¶ 37-38. But unfortunately for Watkins, there is not enough evidence in the record to suggest that Rivera or McCarthy intended to retaliate against her.

Addressing McCarthy first, there is no dispute that he personally did not have a retaliatory motive against Watkins. Pl.'s Resp. DSOF ¶ 77. Rather, Watkins asserts a sort-of cat's-paw theory of liability against McCarthy. Cat's paw liability can "be imposed on an employer where the plaintiff can show that an employee with discriminatory animus provided factual information or other input that may have affected the adverse employment action." Smith v. Bray, 681 F.3d 888, 897 (7th Cir. 2012) (cleaned up). Under this theory, "if a supervisor performs an act motivated by a discriminatory or retaliatory animus that is intended by the supervisor to cause an adverse employment action, and if that act is a proximate cause of the ultimate employment action, then the employer is liable." Hicks v. Forest Preserve Dist., 677 F.3d 781, 790 (7th Cir. 2012) (cleaned up). A supervisor's discrimination may be the proximate cause of an employment decision "where the party nominally responsible for a decision is, by virtue of [his] role in the [department], totally dependent on another employee to supply the information on which to base that decision." Brewer v. Bd. of Trs. of Univ. of Ill., 479 F.3d 908, 918 (7th Cir. 2007).

So, even if McCarthy himself did not have retaliatory motives, Watkins could still prevail if she shows that a biased supervisor (so, either Kane or

Rivera or both) exerted influence over McCarthy's decision. Rozskowiak v. Vill. of Arlington Heights, 415 F.3d 608, 613 (7th Cir. 2005). In other words, there are two possible ways for cat's paw liability to work here. First, Watkins can try to show that Kane managed to exert influence over both Rivera and McCarthy, such that Kane's retaliatory motives were the proximate cause of both Rivera's recommendation to suspend Watkins as well as McCarthy's implementation of that suspension. Alternatively, Watkins can try to show that Rivera was also retaliatory, and that Rivera's retaliatory motives were the proximate cause of McCarthy's implementation of the suspension. Under either theory, the evidence does not hold up.

First, addressing the argument that Rivera himself harbored a retaliatory motive, Watkins does not offer any evidence that Rivera intended to retaliate against her based on her 2008 discrimination complaint against Higgins. Unlike with Kane, for example, Watkins does not identify any statements by Rivera showing that he was angry at her for "defaming" Higgins, or that he was offended by the fact that she complained about discrimination. Rather, Watkins's argument is that Rivera "didn't do nothing. He just looked at it, I'm going to protect Sergeant Higgins so he won't be disciplined and we're not going to defame his reputation. The nerve of this young girl to get a CR number against him. That's all he did." Watkins Dep. Tr. at 100:18-24. But Watkins did not personally observe Rivera's review process, nor is there any indication that he simply rubber-stamped Kane's recommendations without looking at

anything else (other than Watkins's unsubstantiated belief). Watkins's only real piece of evidence in support of a retaliatory motive is the outcome, that is, the fact that Rivera chose to sustain the CR against her even after three other Command Reviewers chose not to sustain the CR. According to Watkins, the outcome demonstrates that Rivera did not conduct his own investigation, because if he had conducted his own investigation, he would have chosen to not sustain the CR.

But that fact standing alone is not enough for a reasonable jury to infer retaliation on the part of Rivera. For one, there is no indication that Rivera's review was deficient; Watkins does not allege that he was required to conduct his own firstlevel review of the allegations in the CR (for instance, by conducting his own interviews). And here, Rivera averred that he reviewed the existing investigative file materials, including the CRs themselves, Kane's interview transcripts, the printout of the dispatch audio transcript, and the recommendations of Kane and the other CCR reviewers. Rivera Decl. ¶ 22. Although Watkins disputes that Rivera looked at anything in the investigative file, she does not offer any factual support for her position (other than the fact that he came to a conclusion she disagreed with), so the Court must accept as true that Rivera at least looked at the files in the investigative record. And for what it is worth, the "not sustained" findings of the three CCR reviewers are not so clear-cut in themselves—one of them is based on the reviewer's impression that the pause before the dispatcher asked Watkins and White to copy was not as long as Kane thought it was; the

other was based on the reviewer's conclusion that as long as Watkins and White eventually showed up at the scene, they should not be found to have failed to respond in general; and the third was simply an adoption of the first finding without further explanation. So it was not entirely unreasonable for Rivera to come to a different conclusion.

Even if Rivera was careless in going through the file, or was too harsh in judging the events of the burglary call, or was even flat-out incorrect in concluding that Watkins should have responded at 11:35 p.m. instead of 11:36 p.m., all of those things standing alone do not permit a reasonable jury to infer a retaliatory motive. If Watkins could have pointed to some evidence that Rivera was personally angry about the fact that she complained about discrimination, or that he believed discrimination complaints were a waste of time or unmeritorious or something like that, for instance, then she might have a claim. But there is no such evidence to move the scale in the direction of retaliation. Instead, it is undisputed that Rivera "recommended sustaining hundreds of CR's based on inattention to duty against PO's of both genders and different races." DSOF ¶ 44.

There are two other facts that Watkins asserts against Rivera, but neither is convincing. First, Watkins argues that Rivera "submitted fictitious documents" to McCarthy. Watkins Dep. Tr. at 101:9-20. But when asked what those fictitious documents were, Watkins just responded documents alleging that she "didn't go to the job." Id. Without more evidence, this sounds like Rivera just submitted

documents describing Higgins's allegations against Watkins that she failed to respond to the burglary call on time. Even though the facts of that night are intensely disputed, it would not have been "fictitious" for Rivera to submit either the original allegations or his findings sustaining the allegations to McCarthy. Watkins's argument might be actionable, for instance, if Rivera had falsified the findings of the other CCR reviewers by changing them from "not sustained" to "sustained," for instance, to trick McCarthy into thinking that this was a clear-cut case when in fact different reviewers had come to different conclusions. But Watkins does not provide any such evidence. The other piece of evidence Watkins cites against Rivera is the fact that he sent a "thank you letter" to Higgins after the resolution of the CR against Watkins. Pl.'s Resp. Br. at 6. But it is undisputed that Rivera did not personally know Higgins (or Watkins), DSOF ¶ 43, and nothing in the letter suggests otherwise. R. 103-2, Pl.'s Resp. DSOF, Exh. 1 at 16. This does not look like a personal thank-you letter; rather, it appears to be a typical IAD form letter meant to document the close of a complaint. So, absent evidence showing that Rivera had a retaliatory motive when he sustained the CR and recommended suspension, that just leaves the question of whether Sergeant Kane somehow managed to influence both Rivera's decision and McCarthy's decision. Unfortunately, even though Watkins has provided sufficient evidence that Kane might very well have harbored retaliatory feelings toward Watkins, she has failed to provide any evidence showing that Kane's motives actually worked their way up the chain of command to also

influence Rivera and McCarthy. Thus, the retaliation claim must also be dismissed.

If it is any consolation to Watkins, her potential damages on the retaliation claim would have likely been very limited. To the extent that she is arguing that the 2014 one-day suspension hampered her chances at being promoted to detective, the Court agrees with the City that, based on the existing record, no reasonable jury could find a connection between the suspension and her applications for detective. Thus, her damages would have been limited to any emotional-distress damages that came with receiving the suspension as well as the costs of challenging that suspension in arbitration.

IV. Conclusion

For the reasons explained above, the City's motion for summary judgment is granted. Watkins's motion to file a sur-reply, R. 115, is denied. The status hearing of April 1, 2020 is vacated, and the Court will enter final judgment.

ENTERED:

/s/Edmond E. Chang
Honorable Edmond E. Chang
United States District Judge

DATE: March 26, 2020

MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION (JUNE 5, 2018)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT COURT OF ILLINOIS
EASTERN DIVISION
CASE No. 17-cv-2028

JACQUELINE WATKINS,

Plaintiff,

v.

CITY OF CHICAGO

Defendant.

Before: Hon. Edmond E. Chang, U.S. District Judge

MEMORANDUM OPINION AND ORDER

Jacqueline Watkins, a Chicago police officer, alleges that her employer discriminated against her on the basis of her race (African American) and gender (female).1 R. 18, Am. Compl.[2] In her Amended

Complaint, Watkins advances a number of legal theories, all more or less based on the allegation that, in 2008, her supervisor filed a false complaint register against her and that the City did not properly handle Watkins's grievances against the complaint register. Id. The City moves to dismiss the complaint, arguing that most of the conduct Watkins complains of is outside the scope of the EEOC charge filed pre-suit, and that her complaint fails to state a claim upon which relief could be granted. R. 24, Def. Br. For the reasons discussed below, the City's motion is granted in part and denied in part. Some of the claims are indeed outside the scope of the EEOC charge, though some fit comfortably within the charge (or it is not yet possible to tell whether dismissal is required). And some of Watkins's theories plausibly state a claim to relief, so her legal claims based on those theories survive.

I. Background

For the purposes of this motion, the Court accepts as true the allegations in the Amended Complaint. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Watkins is a female African-American police officer who has been working as a patrol officer for the Chicago Police Department since 1999. Am. Compl. ¶ 4. The events giving rise to this case began in September 2008, when Watkins's then-supervisor,[3] Sergeant Francis Higgins, filed a complaint register (CR) against Watkins. Id. ¶ 11. Among other things, a CR is a way of initiating discipline within the Chicago Police Department. See id. ¶¶ 9, 13. If sustained, a CR can lead to serious disciplinary action, including

suspension, denial of promotion, denial of transfer, and possible termination. Id. ¶ 13. Watkins asserts that the CR filed against her by Higgins was intentionally false and motivated by her race and gender. See id. ¶ 11; Am. Compl. Exh. A.

Watkins immediately filed a complaint of race and gender discrimination with the Illinois Department of Human Rights. Am. Compl. ¶ 14. The IDHR allegedly refused to accept Watkins's complaint, and told her that a complaint could not be filed or investigated unless some punishment or employment detriment occurred as a result of the CR. Id.

At some point (the complaint is unclear on when),4 Watkins complained to the CPD's Internal Affairs Division that Higgins had filed a false CR against her due to her race and gender.5 Am. Compl. ¶ 16. Watkins alleges that Internal Affairs took an "uncharacteristically" long time—two years—to begin investigating her complaints, and then took a total of six years to complete its investigation. Id ¶ 17. This investigation took much longer than investigations of other complaints filed by Watkins. Id. Watkins believes that the long delays were an attempt to prevent her from filing timely discrimination charges, and to protect Higgins from reprisal. Id. ¶¶ 17-18. At some point, an Internal Affairs investigator, Sergeant Kane, "excoriated" Watkins for bringing allegations of race and gender bias against Higgins. Id. ¶ 21. In October 2011, Kane found the CR filed by Higgins to be "sustained," and recommended that Watkins be suspended for two days. Am. Compl. Exh. C at 1.

Sometime later (the complaint does not say when), the Chief of Internal Affairs, Juan Rivera, documented the CR as sustained and submitted it to then-Police Superintendent Garry McCarthy for approval.6 Am. Compl. ¶ 24.

In March 2014, Watkins was suspended by Sergeant Ronald Wilkerson, who told her that the suspension was based on the CR filed by Higgins in 2008. Am. Compl. Exh. A. (It is unclear what happened between 2011 and 2014; perhaps the CR was undergoing further review, but the complaint does not say.) Watkins filed another charge of discrimination with IDHR, alleging again that Higgins issued the CR because of Watkins's race and sex, and adding the allegation that the March 2014 suspension was motivated by race, sex, and a desire to retaliate against Watkins for engaging in protected activity. Am. Compl. ¶ 15; Am. Compl. Exh. A.

In December 2015 (again, the complaint does not say what happened in the intervening time, though perhaps nothing happened), an arbitrator found that the CR should not have been sustained. Am. Compl. ¶ 25; Am. Compl. Exh. C. The arbitrator ordered that Watkins's suspension should be set aside, that Watkins's record should reflect that the CR was not sustained, and that the suspension should not be part of her record. Am. Compl. Exh. C at 4.

Despite the arbitrator's finding, the CR has remained on Watkins's record. Am. Compl. ¶ 25. Watkins has made numerous attempts to have the CR "expunged," but these attempts have been

unsuccessful. Id. ¶¶ 54, 27. Watkins states that having the CR on her record has prevented her from advancing in her career. She alleges that she was denied a promotion to detective in December 2016, and was denied the same promotion again in February 2017.7 Id. ¶¶ 8-9. Watkins also attributes the lost promotion opportunities to retaliation for her prior complaints of race and gender discrimination. Id. ¶ 8. In addition to the failed promotion attempts, Watkins says that her performance review rating has been lowered recently. Id. ¶ 29. She attributes this to retaliation and discriminatory animus. Id.

Apart from these factual allegations, Watkins makes a number of accusations of racial and gender bias, but the allegations are conclusions without factual content. For example, she assets that during her employment, she was "[s]ubjected to harassment by employees and managers due to race and gender, which was condoned by the Defendant" and "[s]ubjected to a racially harassing, hostile and intimidating employment environment." Am. Compl. ¶36. Watkins also claims that the police department is biased against all non-white employees, but these allegations are not backed up by any concrete facts or examples. See, e.g., id. ¶ 45 ("[Plaintiff] and other minority employees are routinely ... subjected to harsher discipline for similar behaviors than their white counterparts"), ¶ 5 (noting the existence of a Department of Justice report finding a "pattern and practice of racist behavior" at the police department).

II. Legal Standard

Under Federal Rule of Civil Procedure 8(a)(2), a complaint generally need only include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). This short and plain statement must "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (cleaned up).8 The Seventh Circuit has explained that this rule "reflects a liberal notice pleading regime, which is intended to 'focus litigation on the merits of a claim' rather than on technicalities that might keep plaintiffs out of court." *Brooks v. Ross*, 578 F.3d 574, 580 (7th Cir. 2009) (quoting *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002)).

"A motion under Rule 12(b)(6) challenges the sufficiency of the complaint to state a claim upon which relief may be granted." *Hallinan v. Fraternal Order of Police of Chi. Lodge* No. 7, 570 F.3d 811, 820 (7th Cir. 2009). "[A] complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). These allegations "must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. The allegations that are entitled to the assumption of truth are those that are factual, rather than mere legal conclusions. *Iqbal*, 556 U.S. at 678-79.

III. Analysis

A. Title VII

1. IDHR/EEOC Charges

The first of many problems with the Amended Complaint is that Watkins failed to file a charge with the Equal Employment Opportunity Commission for at least some of her Title VII claims. Filing a charge with the EEOC is a necessary precondition to filing civil claims under Title VII. *Huri v. Office of the Chief Judge of the Circuit Court of Cook Cty.*, 804 F.3d 826, 831 (7th Cir. 2015). If the aggrieved individual first files with a state or local agency, then the EEOC charge must be filed within 300 days of the alleged unlawful employment practice, or within thirty days of the state or local agency's termination, whichever is earlier. 42 U.S.C. § 2000e-5(e)(1). Failure to file a timely EEOC charge is an affirmative defense, and a plaintiff need not plead around an affirmative defense. See *Salas v. Wis. Dept. of Corrections*, 493 F.3d 913, 921 (7th Cir. 2007); *Kawcynski v. F.E. Moran, Inc., Fire Protection*, 2015 WL 3484268, at *2 (N.D. Ill. June 1, 2015). But a plaintiff can plead herself out of court by "alleging (and thus admitting) the ingredients of a defense." *U.S. Gypsum Co. v. Ind. Gas Co., Inc.*, 350 F.3d 623, 626 (7th Cir. 2003); see also *Indep. Trust Corp. v. Stewart Info. Serv. Corp.*, 665 F.3d 930, 935 (7th Cir. 2012) ("[W]hen a plaintiff's complaint nonetheless sets out all of the elements of an affirmative defense, dismissal under Rule 12(b)(6) is appropriate.").

In this case, Watkins alleged that she filed or attempted to file two charges with the Illinois

Department of Human Rights (which would be cross-filed with the EEOC as a matter of course, *Collier v. City of Chi.*, 2010 WL 476649, at *3 (N.D. Ill. Feb. 4, 2010); *Marlowe v. Bottarelli*, 938 F.2d 807, 809 (7th Cir. 1991)). The first attempt was in 2008,9 when Watkins complained of Higgins's alleged race and gender discrimination to the IDHR. The second charge was filed in 2014 (this time successfully). The Court will consider each in turn.

a. The 2008 Charge

Watkins alleges that she attempted to file a charge of race and gender discrimination in 2008 immediately after Higgins filed a false CR against her. Am. Compl. ¶ 14. She asserts that the IDHR told her that "unless there was some punishment or other employment detriment that ensued as a result of this action, the complaint could not be filed and investigated." Id. Taking this allegation as true (as the Court is required to), the IDHR prevented Watkins from filing a timely administrative charge by mistakenly telling her it could not accept the charge unless some more tangible employment detriment occurred. Misleading conduct by an administrative official which prevents a plaintiff from filing a timely EEOC charge can be the basis for equitable tolling of the administrative statute of limitations. *Early v. Bankers Life and Cas. Co.*, 959 F.2d 75, 81 (7th Cir. 1992) (EEOC's erroneous representation that plaintiff's completion of intake questionnaire fulfilled his administrative responsibilities tolled the 300-day time limit for filing a charge); see also *Anderson v. Unisys Corp.*, 47 F.3d 302, 306-07 (8th Cir. 1995);

Wilson v. Dep't of Veterans Affairs, 65 F.3d 402, 404 (5th Cir. 1995); *Martinez v. Orr*, 738 F.2d 1107, 1111-12 (10th Cir. 1984). The question then becomes whether the plaintiff asserted her rights "as early as [she] realistically could given [the] misinformation." Early, 959 F.2d at 81.

At this stage, it is not clear whether Watkins's charge of discrimination based on the 2008 CR was untimely. Equitable tolling is a fact-intensive inquiry, more appropriate for summary judgment or an evidentiary hearing than a motion to dismiss. See *Socha v. Boughton*, 763 F.3d 674, 684 (7th Cir. 2014) ("The realm of equitable tolling is a highly fact-dependent area in which courts are expected to employ flexible standards on a case-by-case basis.") (cleaned up). Watkins alleges that an IDHR representative told her that she could not file a charge until she was punished for the CR. Consistent with that representation, Watkins waited until she was suspended and filed again, alleging that the CR was false and discriminatory. Watkins thus alleges that she followed the instruction of the IDHR, and if she did, then perhaps waiting to file was a reasonable thing to do (though the Court cannot be sure without more facts). See *Sarsha v. Sears Roebuck and Co.*, 747 F. Supp. 454, 456 (N.D. Ill. 1990) ("The IDHR investigator was someone whom [the plaintiff] could objectively reasonably rely upon to be knowledgeable on the proper filing procedures. It was therefore reasonable for [the plaintiff], as he did, to rely upon the IDHR investigator's instructions and follow them."). It is not clear precisely why six years passed between the alleged discrimination and the filing of

the IDHR charge. But that delay might have been due more to the very slow Internal Affairs investigation than to any dilatoriness on Watkins's part. See Am. Compl. ¶ 17. The point is that, without some additional factual development—and, eventually, an evidentiary hearing—the Court cannot hold that as a matter of law equitable tolling does not save Watkins's Title VII claims based on the filing of the 2008 CR.

b. The 2014 Charge

Watkins's next attempt to file a charge of discrimination went more smoothly. The IDHR accepted her 2014 charge and conducted an investigation. Am. Compl. ¶ 15. The outcome of this investigation was not favorable to Watkins, id., and the EEOC (which adopted the IDHR's finding), issued a right to sue letter on December 16, 2016. Am. Compl. Exh. A. Watkins filed this lawsuit on March 15, 2017, within the statutory ninety day window. See 42 U.S.C. § 2000e-5(f)(1). This means that any claims related to the 2014 charge are timely and have been properly exhausted. But some of Watkins's claims are not within the scope of the 2014 charge, as will be discussed below.

2. Disparate Treatment

Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment on the basis of race, sex, and other protected characteristics. See 42 U.S.C. § 2000e-2. To succeed on a Title VII disparate-treatment claim, a plaintiff must allege

that an employer took a materially adverse job-related action against her, and that the action was motivated by intentional discrimination. Alamo v. Bliss, 864 F.3d 541, 552 (7th Cir. 2017). In Title VII cases, the connection between the plaintiff's membership in a protected class and the adverse action—that is, the discriminatory intent—can be alleged in general terms. *Tamayo v. Blagojevich*, 526 F.3d 1074, 1081 (7th Cir. 2008); *Leuvano v. Wal-Mart Stores, Inc.*, 722 F.3d 1014, 1028 (7th Cir. 2013).

a. The 2008 CR

Watkins alleges that the 2008 CR initiated by Sergeant Higgins was motivated by Watkins's race and gender. Watkins has alleged enough well-pleaded facts to state this claim, especially considering the supporting materials she attached to her complaint. The amended complaint states that on September 9, 2008, Watkins's then-supervisor, Sergeant Higgins, initiated a CR against her. Am. Compl. ¶ 11. The CR charged that Watkins failed to respond to a burglary-in progress call in a timely manner. Id. ¶ 20. Watkins says that this charge was completely false, and alleges that the subsequent arbitration decision (which held that the CR should not be sustained) confirms that the charge was without merit. See id.¶¶ 11, 43. She claims that Higgins intentionally filed a false report because of racial and gender animus. Id. ¶¶ 11, 16; Am. Compl. Exh. C at 2. All this is enough to state a claim of intentional racial discrimination. The City argues that the opening of the CR was not an adverse employment action that could support a claim of employment discrimination. Def. Reply at 5-6. It is

true that "mere inconvenience[s]" do not qualify as materially adverse employment actions. *Stockett v. Muncie Ind. Transit Sys.*, 221 F.3d 997, 1001 (7th Cir. 2000) (quoting *Crady v. Liberty Nat'l Bank and Trust Co.*, 993 F.2d 132, 136 (7th Cir. 1993)). But, taking Watkins's allegations as true, the issuance of a CR is not a mere inconvenience. Watkins alleges that a CR is considered "a serious disciplinary action," especially when brought by the officer's supervisor. Am. Compl. ¶ 10. The complaint makes clear that a CR can have serious negative employment consequences, including suspension, denial of promotion or transfer, and possibly termination. Id. ¶ 13. Indeed, Watkins alleges that the CR in this case resulted in a suspension and prevented her from being promoted. Id. ¶¶ 9-10; Am. Compl. Exh. A. Based on these allegations, it is clear that a CR can be the kind of employment action "which visits upon a plaintiff a significant change in employment status." *Boss v. Castro*, 816 F.3d 910, 917 (7th Cir. 2016) (cleaned up); see also *Whittaker v. N. Ill. Univ.*, 424 F.3d 640, 648 (7th Cir. 2005) (quoting *Oest v. Ill. Dep't of Corr.*, 240 F.3d 605, 613 (7th Cir. 2001)) (explaining that reprimands that lead to consequences like "ineligibility for job benefits like promotion, transfer to a favorable location, or an advantageous increase in responsibilities" could be adverse actions).

The City argues that "one reversed CR cannot affect the merit promotion process," Def. Br. at 4, but this argument contradicts the factual allegations in the complaint, and must be disregarded for now. Watkins alleges that it is "a customary practice for meritorious promotions to be denied when a CR

appears on an officer's personnel record." Am. Compl. ¶ 10. Taking that allegation as true and reading it in the light most favorable to Watkins, one CR can prevent a merit-based promotion, and therefore has immediate, tangible employment consequences.10 On the facts as alleged by Watkins, the filing of the allegedly false CR could support a claim of intentional employment discrimination.11 To be sure, she ultimately will bear the burden to prove the facts underlying this claim, but it survives for now.

b. 2014 Suspension

The next plausible disparate-treatment claim is based on Watkins's 2014 suspension. In the IDHR charge attached to Watkins's complaint, Watkins alleges that she was suspended in March 2014 based on the false 2008 CR. She says that Sergeant Ronald Wilkerson suspended her based on the CR, and that white or male employees accused of similar misconduct were not disciplined in this manner.[12] Am. Compl. Exh A. Although threadbare, these allegations are enough to state a claim of discrimination under Title VII. Watkins's charge states that she was subjected to an adverse employment action—suspension—because of her race and gender. See, e.g., *Hopkins v. Bd. of Ed. of City of Chi.* 73 F. Supp. 3d 974, 987 (7th Cir. 2014) (suspension "plainly" qualified as adverse action). That is all that is required.

3. Retaliation

To state a claim for retaliation under Title VII, a plaintiff must allege that she engaged in protected activity and was subjected to adverse employment action as a result of that activity. *Luevano*, 722 F.3d at 1029. Filing a complaint of race or gender discrimination is a protected activity. See id; *Tomanovich v. City of Indianapolis*, 457 F.3d 656, 663 (7th Cir. 2006). In the retaliation context, "adverse employment action" means an action that would dissuade a reasonable worker from engaging in protected activity. *Chaib v. Indiana*, 744 F.3d 974, 986-87 (7th Cir. 2014), overruled on other grounds, *Ortiz v. Werner Enters., Inc.*, 834 F.3d 760 (7th Cir. 2016). Watkins alleges that her employer retaliated against her for complaining about race and gender discrimination in a number of ways, but not all are viable claims.

a. The Police Department's Handling of the CR

Watkins argues that the police department's handling of the CR—spanning from 2008 until the present—was intended to retaliate against her for complaining of race and gender discrimination. Specifically, she alleges that Internal Affairs took an inordinately long time to investigate her claim that the CR was false and discriminatory, Am. Compl. ¶ 17; that the Internal Affairs investigation was not "thorough, full and impartial," id. ¶ 19; that one of the investigators, Sergeant Kane, "excoriated" her for accusing Higgins of bias, id. ¶ 21; that the CR should not have been recorded as sustained because three of the four officers who investigated determined that it was not sustained, id. ¶¶ 23-24; and that the CR has

inexplicably remained on her record to the present day despite the arbitrator's determination that the CR should not appear as sustained on her record, id. ¶¶ 9, 25. Watkins attributes all this to retaliatory motive. See Am. Compl. ¶¶ 53-54.

Watkins might have had a valid retaliation claim based on some or all of these events, but she has pleaded herself out of court by attaching her 2014 IDHR/EEOC charge, which shows that she did not present these claims to the EEOC. Although "a Title VII plaintiff need not allege in an EEOC charge each and every fact that combines to form the basis of each claim in her complaint," her civil claims must at least be "like or reasonably related to the allegations of the charge." *Cheek v. W. & So. Life Ins. Co.*, 31 F.3d 497, 500 (7th Cir. 1994) (quoting *Jenkins v. Blue Cross Mut. Hosp. Ins., Inc.*, 538 F.2d 164, 167 (7th Cir. 1976) (en banc)). "This means that the EEOC charge and the complaint must, at minimum, describe the same conduct and implicate the same individuals." *Cheek*, 31 F.3d at 501 (emphasis in original).

Unfortunately for Watkins, the 2014 IDHR charge does not even hint at the series of events described above. Instead, it points to only two discrete events: Sergeant Higgins's filing of the false CR in 2008, and Sergeant Wilkerson's March 2014 suspension of Watkins. The IDHR charge does not allege that Internal Affairs improperly delayed its investigation of the controversy over the CR, or complain that the investigation was unfair. Nor does it identify Sergeant Kane as a perpetrator of retaliation or argue that the CR was recorded

improperly. The allegations about the handling of the CR are simply too far afield of the EEOC charge to qualify as "reasonably related." See Cheek, 31 F.3d at 500. The point of requiring employees to file charges with the EEOC is to give the EEOC and the defendant a chance to settle the dispute without litigation, and to put the employer on notice of the conduct about which the employee is aggrieved. Id.. The charge in this case would not have been enough to put the City or the EEOC on notice that Watkins was complaining about the fairness of the investigation into the CR, or the conduct of Sergeant Kane.

What's more, some of the events Watkins points to as retaliatory happened after the filing of the 2014 charge. The arbitrator's decision that the CR should not be sustained happened in December 2015, for example; and the refusal to remove the CR from Watkins's record (as required by the arbitrator's opinion) obviously happened after that. See Am. Compl. ¶ 25; Am. Compl. Exh. C. These are discrete events that did not take place until over a year after the 2014 charge was filed, so they are clearly not within the scope of the charge. So, to the extent that Watkins's retaliation claim is based on the alleged mishandling of her Internal Affairs complaint or the police department's failure to comply with the arbitrator's decision, that claim has not been presented to the EEOC, and cannot be brought in a civil suit.

c. 2014 Suspension

Watkins's 2014 suspension by Sergeant Wilkerson, on the other hand, was clearly raised in Watkins's 2014 IDHR charge. See Am. Compl. Exh. A. The IDHR charge provides enough factual detail about the suspension to state a claim: Watkins was suspended by Wilkerson in 2014, the suspension was a harsher punishment than white male officers received in similar circumstances, and the suspension followed Watkins's participation in a protected activity (presumably, her complaint that the CR was discriminatory)[13] "within such a period of time as to raise an inference of retaliatory motivation." Am. Compl. Exh. A. It is true that the allegation about timing is conclusory, but when read along with the other allegations in the amended complaint (which suggest that the investigation into Watkins's allegations of gender bias would have been ongoing in 2014), there are enough well-pleaded facts to state a plausible claim that the 2014 suspension was retaliatory.

d. Failure to Promote; Lowered Performance Review

Watkins also alleges that she was denied a promotion to detective twice, and that her performance evaluation was recently lowered. Am. Compl. ¶¶ 8-9, 29. She sees these events as "further evidence of harassing and retaliatory behavior" by her employer. The problem is that the lost promotions and the lowered performance rating occurred well after the 2014 IDHR charge was filed, so they are not included in the charge. What's more, Watkins does not even allege that the same individuals were involved

in the performance review, the promotion decisions, and the suspension, so it is difficult to see how the events would be reasonably related to the conduct described in the IDHR charge. These allegations are not properly before the Court because they have not yet been presented to the EEOC.

4. Hostile Environment/Harassment

Watkins's next Title VII theory is that the Chicago Police Department allowed or condoned racial or gender-based harassment, which created a hostile work environment for Watkins. See Am. Compl. ¶¶ 36-41. To state a Title VII hostile work environment claim, a plaintiff must allege that (1) she was subject to unwelcome harassment; (2) the harassment was based on a protected characteristic, such as race or gender; (3) the harassment was severe or pervasive so as to alter the conditions of employment and create a hostile or abusive working environment; and (4) there is basis for employer liability. *Cooper-Schut v. Visteon Auto. Sys.*, 361 F.3d 421, 426 (7th Cir. 2004) (quoting *Mason v. Southern Ill. Univ. at Carbondale*, 233 F.3d 1036, 1043 (7th Cir. 2000)). But Watkins's allegations of a hostile environment are completely conclusory. She has alleged the legal elements of a hostile work environment claim—that she was harassed based on race and gender, that a hostile environment was created, and that her employer condoned it—but these legal conclusions are not entitled to the presumption of truth. *Iqbal*, 556 U.S. at 678-79.

The closest Watkins comes to stating actual facts in support of her hostile environment claim is

her allegation that she was teased by her colleagues for failing to respond to a dispatch (the offense charged by the false CR). Am. Compl. ¶ 55. But that is not race- or gender-based harassment; it is harassment based on Watkins's perceived disciplinary record. And even if Watson had plausibly alleged that the teasing was related to her race or gender, none of her allegations suggest that it was severe or pervasive enough to create a hostile work environment. Title VII is not a "general civility code;" only harassment severe enough to render the work environment abusive is actionable. *Oncale v. Sundower Offshore Servs.. Inc.*, 523 U.S. 75, 80 (1998); *Alexander v. Casino Queen*, Inc., 739 F.3d 972, 982 (7th Cir. 2014). There are no facts whatsoever in the complaint to support a claim that Watkins was subjected to that level of severe and pervasive racial or gender-based harassment. This is not to suggest that the law requires fact pleading. See *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 513-14 (2002). But Watkins must allege some facts in order to render her claims plausible and give the City notice of the conduct she is complaining about. See id. at 514. For the harassment claim, she has not done so.

Even if Watkins had stated a claim, however, she would still be out of luck: the harassment claim also was not presented to the IDHR, so it must be dismissed for that reason as well.

5. General Allegations of CPD Discrimination

Watkins also argues that all minority employees of the CPD are discriminated against in a variety of ways. It is unclear whether she is alleging systematic

intentional discrimination or that CPD employment practices have disparate impact on nonwhite employees. To make out a claim of an intentional pattern or practice of discrimination, a plaintiff must allege that "an employer regularly and purposefully discriminates against a protected group" such that "discrimination was the company's standard operating procedure." See *Puffer v. Allstate Ins. Co.* 675 F.3d 709, 716 (7th Cir. 2012) (cleaned up). For a disparate impact claim, on the other hand, a plaintiff must "isolat[e] and identify the specific employment practices that are allegedly responsible for any observed statistical disparities." *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 994 (1988). "[I]t is not enough to simply allege that there is a disparate impact on workers, or point to a generalized policy that leads to such an impact." *Smith v. City of Jackson*, 544 U.S. 228, 241 (2005).

Whatever theory Watkins is advancing, her complaint fails to state a claim upon which relief can be granted. Like Watkins's hostile-environment claim, Watkins's claims about the CPD's general discriminatory practices are supported entirely by vague legal conclusions rather than well-pleaded facts. For example, she alleges that minority employees "are routinely, disproportionately and improperly subjected to harsher discipline ... than their white counterparts"; that minority officers "are placed on performance improvement plans without any clear articulation of performance deficiencies"; and that African-American officers "are frequently placed in lower level paid positions than white, less educated and less experienced officers." Am. Compl. ¶

45. But these allegations merely state the conclusion that discrimination exists, without alleging even the basics of the who, the what, and the how. Watkins does not say which officials or what policies cause the discrimination, how the discrimination operates in practice, or even give anecdotal examples of the alleged disparities (apart from Watkins's own experience). This is not enough, especially to support complex claims of institution wide intentional discrimination or disparate impact. See *McReynolds v. Merrill Lynch & Co., Inc.*, 694 F.3d 873, 887 (7th Cir. 2012) ("[U]nder *Iqbal and Twombly*, the required level of factual specificity rises with the complexity of the claim") (quoting *McCauley v. City of Chi.*, 671 F.3d 611, 616-17 (7th Cir. 2011)) (cleaned up).

Finally, even if Watkins had pled enough facts to state a claim of CPD-wide discrimination, those claims too would be improper because they were not included in the 2014 IDHR charge. The City's motion to dismiss these claims is granted.

B. 42 U.S.C. § 1983

Next, Watkins asserts a claim under 42 U.S.C. § 1983. To start with, it is not clear what Watkins's theory of liability under Section 1983 is. On one hand, it looks like she might be alleging a different version of her various race and gender disparate-treatment claims; but it is also possible that Watkins is trying to bring some kind of due process claim based on the

handling of her complaints about the CR. See Am. Compl. ¶ 48 ("Defendant ... has intentionally and maliciously discriminated against Plaintiff under color of law"); id. ¶ 56 ("Defendant also violated Plaintiff's due process rights in handling her complaints of discriminatory treatment."). But here again, it does not matter what particular theory or theories Watkins is pursuing, because her claim fails either way. The only defendant in this case is the City of Chicago, and a city can only be liable under Section 1983 "if the unconstitutional act complained of is caused by: (1) an official policy adopted and promulgated by its officers; (2) a governmental practice or custom that, although not officially authorized, is widespread and well settled; or (3) an official with final policy-making authority." *Thomas v. Cook Cty. Sheriff's Dep't*, 604 F.3d 293, 303 (7th Cir. 2009); *Monell v. N.Y. City Dept. of Social Servs.*, 436 U.S. 658, 690 (1978).

Watkins has alleged no facts that would support any of the three theories of municipal liability. There is no allegation in the complaint that any official policy caused the problems she complains of. There are also no facts sufficient to state a claim of a widespread and well-settled custom that led to the alleged violations of Watkins's rights. As discussed above, Watkins's allegations of poor treatment of African-American officers are too vague and conclusory to count as well-pleaded facts. Finally, there is no allegation that any of the alleged rights violations were caused by an individual with final policymaking authority. The complaint does state that the Chief of Internal Affairs, Juan Rivera,

documented Watkins's CR as sustained. Am. Compl. ¶ 24. But no fact allegations suggest that Rivera was a final policymaker (or, for that matter, suggest that Rivera knew that the CR was false and discriminatory). Watkins also alleges that Rivera submitted the CR to Police Superintendent Garry McCarthy for final approval. Id. McCarthy might well have been a final policymaker, but the Amended Complaint does not allege that he actually did anything—only that Rivera submitted the CR to him. Id. The Amended Complaint does not even allege that McCarthy approved the sustained CR.15 Id. With McCarthy the only possible final policymaker in sight, the last basis for Monell liability against the City of Chicago fails too. Watkins has therefore fallen short of stating a plausible claim for relief under 42 U.S.C. § 1983.

C. Breach of Contract

Watkins's final claim is a claim of breach of contract under Illinois common law. This claim consists of a single paragraph of vague assertions about the alleged contract between Watkins and her employer. Am. Compl. ¶ 56. Watkins states that the City breached its contractual "duty" to "subject Plaintiff to equitable and reasonable terms and conditions of employment relative to non-minority and nonfemale employees."16 Id. This claim too fails for want of any factual support. Watkins does not say how her employment contract was formed, who the parties were, or what contractual provisions gave rise to the duty Watkins identifies. She just says that the contract existed, that the contract was valid and

enforceable, and that the City breached a contractual duty not to discriminate. Those allegations merely restate the elements of breach of contract under Illinois law. See *Van Der Molen v. Wash. Mut. Finance, Inc.*, 835 N.E.2d 61, 69 (Ill. App. Ct. 2005) (reciting the elements of breach of contract). If Watkins wants to rely on Illinois common law for relief, then she needs to allege the facts that would enable her to plausibly make that claim rather than simply stating the conclusion. The breach of contract claim is dismissed.

D. The City's Motion to Strike

Watkins's response to the City's motion to dismiss mostly repeated the factual allegations in her complaint, with some minor added facts. For example, Watkins expanded on her allegation that the IDHR refused to accept her 2008 charge by providing the name of the IDHR investigator who allegedly refused the charge and giving the control number of the charge. Pl. Resp. ¶¶ 5-6. The response also alleged some completely new facts—for instance, that the Chicago Police Department has a policy of utilizing progressive discipline. Id. ¶ 15. Watkins also attached a few new exhibits to the response brief, including a letter granting a FOIA request for complaint registers naming Watkins. See Pl. Resp. Exh. H. The City moves to strike these new facts and exhibits.

The City's motion is denied as unnecessary. To the extent that the new allegations attempted to explain Watkins's administrative exhaustion efforts, those allegations are not necessarily improper,

because Watkins is not required to plead those facts in the first place. To the extent that Watkins tried to add other new facts, those were disregarded in the Court's consideration of the motion to dismiss. It is true that a plaintiff cannot amend her complaint in her response brief, and that is arguably what Watkins has tried to do by using her brief to allege new facts and provide new exhibits. But in any event, the new allegations and exhibits would not have helped Watkins's arguments. They were mostly irrelevant or, at best, minor expansions of the allegations already made in the complaint. The fact that Watkins's disciplinary record is available to public via FOIA requests, for example, does not add anything to her claims. Similarly, the job posting for merit promotion to lieutenant, which is one of the new exhibits attached to the response brief, appears to have nothing at all to do with Watkins's claims. See Pl. Resp. Exh. J. There is no need to strike these exhibits and allegations, because the Court did not rely on them.

IV. Conclusion

For the reasons discussed, the City's motion to dismiss is granted in part and denied in part. Watkins's disparate treatment claims based on the issuance of the 2008 CR and the 2014 suspension survive, as does her retaliation claim based on the 2014 suspension. The rest of her claims are dismissed. The City's motion to strike is denied.

The status hearing of June 6, 2018 is reset to June 19, 2018, at 9:15 a.m. The parties shall confer about the discovery plan going forward, and file a joint status report on June 15, 2018. At the status hearing, the Court will discuss the litigation plan with the parties.

ENTERED:

/s/Edmond E. Chang
Honorable Edmond E. Chang
United States District Judge

June 5, 2018