APPENDICES

E.D.N.Y. – C. Islip
20-cv-3361
Azrack, J.
Shields, M.J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 1st day of December, two thousand twenty-three.

Present:

Gerard E. Lynch,
Michael H. Park,
Steven J. Menashi,
Circuit Judges.

Lidia M. Orrego,

Plaintiff-Appellant,

v. 23-1114

Kevin Knipfing, Employer, AKA Kevin James, et al.,

Defendants-Appellees.

This Court has determined sua sponte that it lacks jurisdiction over this appeal because the district court has not issued a final order as contemplated by 28 U.S.C. § 1291. *See Petrello v. White*, 533 F.3d 110, 113 (2d Cir. 2008). Upon due consideration, it is hereby ORDERED that the appeal is DISMISSED.

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

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 19th day of January, two thousand twenty-four.

Lidia M. Orrego,

Plaintiff - Appellant,

v.

Kevin Knipfing, Employer, AKA Kevin James, Stephanieanna James-Knipfing, Employer, AKA Steffiana de la Cruz, Old Westbury EDDIE LLC, Company/Payroll owner Kevin Knipfing, Old Westbury LLC, Unknown Entity under registration in NY State, Steve Savitsky, Business Manager, Old Westbury LLC, Teresa A. Zantua,

Defendants - Appellees.

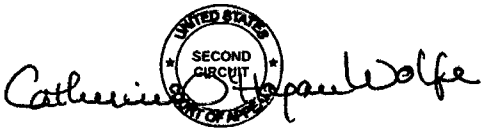
ORDER

Docket No: 23-1114

Appellant, Lidia M. Orrego, filed a motion for panel reconsideration, or, in the alternative, for reconsideration *en banc*. The panel that determined the appeal has considered the request for reconsideration, and the active members of the Court have considered the request for reconsideration *en banc*.

IT IS HEREBY ORDERED that the motion is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk



APPENDIX J

2:20-cv-03361-JMA-AYS Orrego v. Knipfing et al
Joan M. Azrack, presiding
Anne Y. Shields, referral
Date filed: 07/23/2020
Date of last filing: 03/18/2024

Docket Information and Related Docket Entries
Case 2:20-cv-03361-JMA-AYS Document 99999

Filed: 07/11/2023
Entered: 07/11/2023
Entered By: Samuel Burgess Patterson,
Event Name(s): Order on Motion for Reconsideration, Order on Motion for Reconsideration, Order on Motion for Reconsideration, Order on Motion for Reconsideration, Order on Motion to Set Aside, Order on Motion to Vacate, Order on Motion to Vacate

Full Docket Text:
ORDER denying 110 Motion for Reconsideration, 113 Notice of MOTION for Reconsideration, 114 Notice of MOTION for Reconsideration, 117 Notice of MOTION for Reconsideration, 129 MOTION to Set Aside MOTION to Vacate, 131 MOTION to Vacate.

Before the Court are several motions filed by Plaintiff for reconsideration of various orders issued by Judge Gary R. Brown and Magistrate Judge Anne Y. Shields. The standard for granting a motion for reconsideration is "strict," and "reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked--matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." Shrader v. CSX Transp., Inc., 70 F.3d 255, 257 (2d Cir. 1995) (citations omitted). "This strict standard is intended to ensure the finality of decisions and to prevent the practice of a losing party examining a decision and then plugging the gaps of a lost motion with additional matters." Great Am. Ins. Co. v. Zelik, 439 F. Supp. 3d 284, 286 (S.D.N.Y. 2020) (internal quotation marks and citations omitted). Accordingly, "a motion to reconsider should not be granted where the moving party seeks solely to relitigate an issue already decided." Shrader, 70 F.3d at 257.

The Court has reviewed Plaintiff's submissions and concludes that she has not satisfied the "strict" standard for reconsideration. Accordingly, the motions are DENIED in their entirety. Ordered by Judge Joan M. Azrack on 7/11/2023. (SP)

All Related Docket Entries

Filed: 04/11/2023
Entered: 04/11/2023
Entered By: Jazmin Cubano,
Event Name(s): Motion for Reconsideration
Full Docket Text for Document 110:
Notice of MOTION for Reconsideration *on Order entered March 28, 2023, at 4:45 pm, pursuant to Federal Rule Civil Procedure Rule (FRCP) Rule 7 (b)(1), Local Civil Rule 6.3, Title 18, U.S.C., Section 241* by Lidia M. Orrego. (Attachments: # 1 Exhibits 1, # 2 Exhibits 2) (JC)

Filed: 07/21/2023
Last Updated: 03/18/2024
Entered: 07/24/2023
Entered By: Grisel Ortiz,
Event Name(s): Motion to Vacate

APPENDIX B

Full Docket Text for Document 149:
MOTION to Vacate Order on Motion for Reconsideration,,,,,,,,,,,,,,,,,,,,,,,,,,, Order on Motion to Set Aside,,,,,,, Order on Motion to Vacate,,,,,,,,,,,,, *PLAINTIFFS MOTION RIGHT TO FILE AT ANY TIME FOR AN ORDER UNDER FED. R. CIV. P. 54 (b), TO SET ASIDE, VACATE OR CANCEL THE NOT FINAL ORDER DATED JULY 11, 2023 ON MOTIONS ECF doc. 117 , ACCORDING TO THE COURT OF APPEALS SECOND CIRCUIT DECISION DATED MAY 18, 2023* by Lidia M. Orrego. (GO) Modified on 3/18/2024 (LC).

Filed: 07/21/2023
Last Updated: 03/18/2024
Entered: 07/24/2023
Entered By: Grisel Ortiz,
Event Name(s): Motion to Vacate

Full Docket Text for Document 150:
MOTION to Vacate Order on Motion for Reconsideration,,,,,,,,,,,,,,,,,,,,,,,,,,, Order on Motion to Set Aside,,,,,,, Order on Motion to Vacate,,,,,,,,,,,,, *PLAINTIFFS MOTION RIGHT TO FILE AT ANY TIME FOR AN ORDER UNDER FED. R. CIV. P. 54 (b), TO SET ASIDE, VACATE OR CANCEL THE NOT FINAL ORDER DATED JULY 11, 2023 ON MOTIONS ECF doc. 129 , ACCORDING TO THE COURT OF APPEALS SECOND CIRCUIT DECISION DATED MAY 18, 2023* by Lidia M. Orrego. (GO) Modified on 3/18/2024 (LC).

Filed: 07/21/2023
Last Updated: 03/18/2024
Entered: 07/24/2023
Entered By: Grisel Ortiz,
Event Name(s): Motion to Vacate

Full Docket Text for Document 151:
MOTION to Vacate Order on Motion for Reconsideration,,,,,,,,,,,,,,,,,,,,,,,,,,, Order on Motion to Set Aside,,,,,,, Order on Motion to Vacate,,,,,,,,,,,,, *PLAINTIFFS MOTION RIGHT TO FILE AT ANY TIME FOR AN ORDER UNDER FED. R. CIV. P. 54 (b), TO SET ASIDE, VACATE OR CANCEL THE NOT FINAL ORDER DATED JULY 11, 2023 ON MOTIONS ECF doc. 131 , ACCORDING TO THE COURT OF APPEALS SECOND CIRCUIT DECISION DATED MAY 18, 2023* by Lidia M. Orrego. (GO) Modified on 3/18/2024 (LC).

PACER Service Center			
Transaction Receipt			
04/10/2024 08:13:06			
PACER Login:	lidiaorrego	**Client Code:**	
Description:	Related Transactions	**Search Criteria:**	2:20-cv-03361-JMA-AYS
Billable Pages:	2	**Cost:**	0.20

2:20-cv-03361-JMA-AYS Orrego v. Knipfing et al
Joan M. Azrack, presiding
Anne Y. Shields, referral
Date filed: 07/23/2020
Date of last filing: 03/18/2024

Docket Information and Related Docket Entries
Case 2:20-cv-03361-JMA-AYS Document 99999

Filed: 07/20/2023
Last Updated: 07/21/2023
Entered: 07/20/2023
Entered By: Samuel Burgess Patterson,
Event Name(s): Order on Motion for Reconsideration, Order on Motion for Reconsideration, Order on Motion for Reconsideration, Order on Motion to Vacate
Full Docket Text:
ORDER denying 142 Motion for Reconsideration, 143 Letter MOTION for Reconsideration, 144 MOTION for Reconsideration, 145 MOTION to Vacate Order on Motion for Recusal.

Before the Court are several objections filed by Plaintiff to various orders issued by Magistrate Judge Anne Y. Shields. Plaintiff styles these motions as seeking reconsideration -- apparently mistakenly -- under Fed. R. Civ. P. 54(b). However, she also states that she objects to Magistrate Judge Shields' orders. Accordingly, the Court construes Plaintiff's motions as presenting objections under Fed. R. Civ. P. 72(a), which provides that a district court may reverse a magistrate judge's decision on a non-dispositive matter only if that decision is "clearly erroneous or contrary to law." Upon consideration of Plaintiff's objections under this highly deferential standard of review, the Court finds that Magistrate Judge Shields' orders were not "clearly erroneous or contrary to law." Accordingly, Plaintiff's objections are OVERRULED.

For the avoidance of doubt, even if the Court were to construe Plaintiff's motions as seeking reconsideration under Fed. R. Civ. P. 54(b) or 60, the motions would be denied because Plaintiff has not satisfied the strict standard for reconsideration. Ordered by Judge Joan M. Azrack on 7/20/2023. (SP) Modified on 7/21/2023- to correct a typographical error. (GO).

All Related Docket Entries

Filed: 05/25/2023
Entered: 05/25/2023
Entered By: Brian P. McLaughlin,
Event Name(s): Motion to Quash
Full Docket Text for Document 121:
MOTION to Quash by County Attorney, Nassau County. (Attachments: # 1 Memorandum in Support DSS Response Letter/memo of law, # 2 Exhibit Subpoena) (McLaughlin, Brian)

Filed: 06/13/2023
Entered: 06/13/2023
Entered By: Dina Mucciaccio,
Event Name(s): Order on Motion to Quash
Full Docket Text:
ORDER granting 121 Motion to Quash. Non-party Nassau County Department of Social Services ("DSS") motion to quash pursuant to Rule 45(d)(3)(3) of the Federal Rules of Civil Procedure is GRANTED. Plaintiff's subpoena seeks information that cannot be disclosed pursuant to N.Y. SOC. SERV. LAW. § 422(5). As Plaintiff does not

APPENDIX C

qualify as one of the listed entities that the information may be disclosed to, her subpoena must be quashed. Whether Plaintiff is the "source" of the report is irrelevant. So Ordered by Magistrate Judge Anne Y. Shields on 6/13/2023. (DM)

Filed: 07/11/2023
Entered: 07/13/2023
Entered By: Laurie Coleman,
Event Name(s): Motion for Reconsideration
Full Docket Text for Document 142:
MOTION for Reconsideration re Order on Motion to Quash,, *"Notice of Motion for an Order to Set Aside, Vacate, or Cancel Order filed June 13, 2023 on Motion Quash Subpoena ECF doc. 121 "* by Lidia M. Orrego. (LC)

PACER Service Center			
Transaction Receipt			
04/10/2024 08:18:21			
PACER Login:	lidiaorrego	**Client Code:**	
Description:	Related Transactions	**Search Criteria:**	2:20-cv-03361-JMA-AYS
Billable Pages:	2	**Cost:**	0.20

2:20-cv-03361-JMA-AYS Orrego v. Knipfing et al
Joan M. Azrack, presiding
Anne Y. Shields, referral
Date filed: 07/23/2020
Date of last filing: 03/18/2024

Docket Information and Related Docket Entries
Case 2:20-cv-03361-JMA-AYS Document 99999

Filed: 07/28/2023
Entered: 07/28/2023
Entered By: Samuel Burgess Patterson,
Event Name(s): Order on Motion for Certificate of Appealability
Full Docket Text:
ORDER denying 152 Motion for Certificate of Appealability. Under 28 U.S.C. § 1292(b), a district judge may certify an interlocutory appeal if the party seeking certification demonstrates that the order to be appealed from "involves a controlling question of law as to which there is substantial ground for difference of opinion and... an immediate appeal from the order may materially advance the ultimate termination of the litigation."

The party seeking leave to appeal bears the burden of establishing all three substantive criteria. See Casey v. Long Island R.R., 406 F.3d 142, 146 (2d Cir. 2005). Moreover, that party must show "exceptional circumstances to overcome the general aversion to piecemeal litigation and justify a departure from the basic policy of postponing appellate review until after the entry of a final judgment." Robinson v. De Niro, No. 19-CV-09156, 2023 WL 4561590, at *2 (S.D.N.Y. July 17, 2023) (internal quotations marks and citation omitted). Even where the statutory criteria are met, a district court retains "broad discretion to deny certification[.]" Nat'l Asbestos Workers Med. Fund v. Philip Morris, Inc., 71 F. Supp. 2d 139, 166 (E.D.N.Y. 1999).

Here, Plaintiff asserts that the Court's July 11, 2023 and July 20, 2023 Orders satisfy the requirements of § 1292(b). However, because the Court disagrees that there is "substantial ground for difference of opinion" regarding any legal issues raised in the Orders -- including the underlying orders of Judge Brown and Magistrate Judge Shields -- the Court declines Plaintiff's request to certify these Orders for immediate interlocutory appeal.

In light of Plaintiff's pro se status, the Court notes that to the extent she appeals from an interlocutory order, see 28 U.S.C. § 1292(a)(1), she need not seek this Court's leave to file an appeal. Ordered by Judge Joan M. Azrack on 7/28/2023. (SP)

All Related Docket Entries

Filed: 07/21/2023
Last Updated: 07/27/2023
Entered: 07/27/2023
Entered By: Grisel Ortiz,
Event Name(s): Motion for Certificate of Appealability
Full Docket Text for Document 152:
MOTION for Certificate of Appealability */PLAINTIFF'S MOTION TO CERTIFY AN ORDER FOR INTERLOCUTORY APPEAL ON ORDERS DATED JULY 11, 2023, AND JULY 20, 2023 UNDER 28 U.S.C. 1292(b),* by Lidia M. Orrego. (GO) Modified on 7/27/2023- document was inadvertently filed as Notice of Interlocutory Appeal instead of a Motion for Certificate of Appealability- Corrections have been made to the docket and the CA2 has been notified. (GO).

APPENDIX D

PACER Service Center			
Transaction Receipt			
04/10/2024 08:32:40			
PACER Login:	lidiaorrego	**Client Code:**	
Description:	Related Transactions	**Search Criteria:**	2:20-cv-03361-JMA-AYS
Billable Pages:	1	**Cost:**	0.10

2:20-cv-03361-JMA-AYS Orrego v. Knipfing et al
Joan M. Azrack, presiding
Anne Y. Shields, referral
Date filed: 07/23/2020
Date of last filing: 03/18/2024

Docket Information and Related Docket Entries
Case 2:20-cv-03361-JMA-AYS Document 99999

Filed: 04/10/2023
Entered: 04/10/2023
Entered By: Martin Kevin Rowe,
Event Name(s): Order
Full Docket Text:
ORDER. Plaintiff's motion pursuant to Federal Rule of Evidence 201 (DE 108) is denied without prejudice to renewal at the time of trial. Ordered by Judge Gary R. Brown on 4/10/2023. (MR)

No Related Docket Entries

PACER Service Center			
Transaction Receipt			
04/10/2024 08:36:37			
PACER Login:	lidiaorrego	**Client Code:**	
Description:	Related Transactions	**Search Criteria:**	2:20-cv-03361-JMA-AYS
Billable Pages:	1	**Cost:**	0.10

APPENDIX E

2:20-cv-03361-JMA-AYS Orrego v. Knipfing et al
Joan M. Azrack, presiding
Anne Y. Shields, referral
Date filed: 07/23/2020
Date of last filing: 03/18/2024

Docket Information and Related Docket Entries
Case 2:20-cv-03361-JMA-AYS Document 99999

Filed: 03/28/2023
Entered: 03/28/2023
Entered By: Joseph Tahbaz,
Event Name(s): Order Adopting Report and Recommendations, Order on Motion for Declaratory Judgment, Order on Motion to Change Venue, Order on Report and Recommendations
Full Docket Text:
ORDER ADOPTING REPORT AND RECOMMENDATIONS for 73 Motion for Declaratory Judgment filed by Lidia M. Orrego, 77 Motion to Change Venue filed by Lidia M. Orrego, adopting 87 Report and Recommendations.

Presently before the Court is the Report and Recommendation dated March 9, 2023, DE 87, of United States Magistrate Judge Anne Y. Shields recommending that Plaintiff's motions for a declaratory judgment in her favor, and the motion to change venue to the Brooklyn Courthouse, be denied.

In reviewing a Report and Recommendation, the district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party makes specific and timely objections to a Magistrate Judge's findings or recommendations as to dispositive motions, the district court must apply a de novo standard of review to the portions of the Report and Recommendation to which the objection is made. Fed. R. Civ. P. 72(b); *see LLC v. Doe 3*, 604 F.3d 110, 116 (2d Cir. 2010); *see also* 28 U.S.C. § 636(b)(1). However, "general or conclusory objections, or objections which merely recite the same arguments presented to the magistrate judge, are reviewed for clear error." *Caldarola v. Town of Smithtown*, No. 09-cv-272, 2011 U.S. Dist. LEXIS 37280, at *1 (E.D.N.Y. Apr. 4, 2011).

On March 22, 2023, Plaintiff requested eight additional days to file her objections to the Report and Recommendation. DE 99. Whereas Plaintiff already filed objections to the Report and Recommendation on March 23 and March 24, 2023, *see* DEs 101, 105, the request for an extension of time is denied as moot. In her objections, Plaintiff argues that Magistrate Judge Anne Y. Shields "misapplied" the concept of the Plaintiff's motion for Declaratory Relief in order to protect the Defendant, *see* DE 101 at 5, and that transferring this case to Brooklyn would be a "win-win" because the Plaintiff will "try to seek justice in a forum that protects the working class" and "this Court will not have to deal with Plaintiff whom it has been rejecting after September 30, 2021," *see* DE 105 at 6. Although de novo review is not required, the Court has conducted a de novo review of the Report and Recommendation, and having reviewed the motion papers, the applicable law, and having conducted a careful review of the Report and Recommendation de novo, the Court has determined that Judge Shields correctly determined that the motion for declaratory judgment should be denied in light of this case's ongoing discovery and that this case was properly designated as a Long Island case. *See Orrego v. Knipfing*, 564 F. Supp. 3d 273, 278-82 (E.D.N.Y. 2021) (summarizing allegations of misconduct against defendants in Nassau County).

As such, the objections to the Report and Recommendation are OVERRULED and the Report and Recommendation dated March 9, 2023, DE 87, of United States Magistrate Judge Anne Y. Shields is ADOPTED in its entirety.

The Clerk of Court is respectfully directed to mail a copy of this Order to the pro se Plaintiff.

Ordered by Judge Gary R. Brown on 3/28/2023. (JT)

All Related Docket Entries

Filed: 02/13/2023
Entered: 02/13/2023
Entered By: Jazmin Cubano,
Event Name(s): Motion for Declaratory Judgment
Full Docket Text for Document 73:
Notice of MOTION for Declaratory Judgment *with affirmation and exhibits attached* by Lidia M. Orrego. (JC)

Filed: 02/27/2023
Entered: 02/27/2023
Entered By: Grisel Ortiz,
Event Name(s): Motion to Change Venue
Full Docket Text for Document 77:
Letter MOTION to Change Venue *Request that the court grant the change to the District and Magistrate Judge and the Venue to Brooklyn Courthouse,* by Lidia M. Orrego. (GO)

Filed: 03/09/2023
Entered: 03/09/2023
Entered By: Dina Mucciaccio,
Event Name(s): Report and Recommendations
Full Docket Text for Document 87:
REPORT AND RECOMMENDATIONS re 73 Notice of MOTION for Declaratory Judgment *with affirmation and exhibits attached* filed by Lidia M. Orrego, 77 Letter MOTION to Change Venue *Request that the court grant the change to the District and Magistrate Judge and the Venue to Brooklyn Courthouse,* filed by Lidia M. Orrego. For the reasons set forth in the Order and Report and Recommendation, it is respectfully recommended that Plaintiff's motions for a declaratory judgment in her favor, and the motion to change venue to the Brooklyn Courthouse, be denied. A copy of this Order and Report and Recommendation is being provided to all counsel and Plaintiff via ECF. Any written objections to this Report and Recommendation portion must be filed with the Clerk of the Court within fourteen (14) days of filing of this report. Entered by Magistrate Judge Anne Y. Shields on 3/9/2023. (DM)

PACER Service Center			
Transaction Receipt			
04/10/2024 08:38:35			
PACER Login:	lidiaorrego	**Client Code:**	
Description:	Related Transactions	**Search Criteria:**	2:20-cv-03361-JMA-AYS
Billable Pages:	2	**Cost:**	0.20

2:20-cv-03361-JMA-AYS Orrego v. Knipfing et al
Joan M. Azrack, presiding
Anne Y. Shields, referral
Date filed: 07/23/2020
Date of last filing: 03/18/2024

Docket Information and Related Docket Entries
Case 2:20-cv-03361-JMA-AYS Document 99999

Filed: 03/28/2023
Entered: 03/28/2023
Entered By: Joseph Tahbaz,
Event Name(s): Order on Motion to Vacate, Order on Motion to Vacate, Order on Motion to Vacate, Order on Motion to Vacate, Order on Motion to Vacate, Order on Motion to Vacate, Order on Motion to Vacate
Full Docket Text:
ORDER denying 94 Motion to Vacate, 96 Notice of MOTION to Vacate, 98 Letter MOTION to Vacate, 100 Notice of MOTION to Vacate, 102 Amended MOTION to Vacate, 103 Amended MOTION to Vacate, 104 Amended MOTION to Vacate.

Presently before the Court are a series of objections to the Orders of Magistrate Judge Anne Y. Shields dated March 9, 2023, DE 88. *See* DEs 94, 96, 98, 100, 102, 103, 104.

Discovery orders by a magistrate judge are generally considered "nondispositive" of the litigation. *See Thomas E. Hoar, Inc. v. Sara Lee Corp.*, 900 F.2d 522, 525 (2d Cir. 1990). Accordingly, a district court must affirm such orders unless they are "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a). This standard of review is "highly deferential," *see Thai Lao Lignite (Thai.) Co. v. Gov't of Lao People's Dem. Rep.*, 924 F. Supp. 2d 508, 511-12 (S.D.N.Y. 2013) (citations and internal quotation marks omitted), and "magistrates are afforded broad discretion in resolving discovery disputes," *see MASTR Adjustable Rate Mortgs. Tr. 2006-OA2 v. UBS Real Estate Secs. Inc.*, No. 12 Civ. 7322, 2013 WL 6840282, at *1 (S.D.N.Y. Dec. 27, 2013) (citation omitted).

In a series of repetitive and verbose objections, Plaintiff principally argues that Judge Shields lacked the authority to issue the Orders in DE 88 and calls into question Judge Shields' impartiality. Whereas all of the Orders issued by Judge Shields concerned discovery matters and the allegations of bias are unsubstantiated, Plaintiff's objections are OVERRULED. PLAINTIFF IS CAUTIONED ONCE AGAIN THAT THE CONTINUED FILING OF BLOATED AND WHOLLY UNSUPPORTED MOTIONS MAY SUBJECT HER TO THE IMPOSITION OF SANCTIONS FOR ENGAGING IN FRIVOLOUS LITIGATION CONDUCT UNDER 28 U.S.C. § 1927.

The Clerk of Court is respectfully directed to mail a copy of this Order to the pro se Plaintiff.

Ordered by Judge Gary R. Brown on 3/28/2023. (JT)

All Related Docket Entries

Filed: 08/12/2022
Last Updated: 08/18/2022
Entered: 08/18/2022
Entered By: Grisel Ortiz,
Event Name(s): Motion to Compel
Full Docket Text for Document 65:
Letter MOTION to Compel *Challenging the Confidentiality of Documents of the Defendants Initial Discovery*

APPENDIX G **11a**

dated August 1, 2022, by Lidia M. Orrego. (Ortiz, Grisel)

Filed: 11/21/2022
Entered: 11/23/2022
Entered By: Jazmin Cubano,
Event Name(s): Motion for Sanctions
Full Docket Text for Document 69:
Letter MOTION for Sanctions by Lidia M. Orrego. (Attachments: # 1 Documents in Support, # 2 Affirmation of Service) (JC)

Filed: 02/10/2023
Entered: 02/10/2023
Entered By: Grisel Ortiz,
Event Name(s): Motion for Preliminary Injunction
Full Docket Text for Document 70:
Letter MOTION for Preliminary Injunction by Lidia M. Orrego. (GO)

Filed: 02/13/2023
Entered: 02/13/2023
Entered By: Jazmin Cubano,
Event Name(s): Motion to Compel
Full Docket Text for Document 74:
Amended MOTION to Compel *for Injuncive Relief, Rulings on DE's 69 and 57 , and reschedule discovery process* by Lidia M. Orrego. (JC)

Filed: 02/28/2023
Entered: 02/28/2023
Entered By: Jennifer A Gundlach,
Event Name(s): Motion to Withdraw as Attorney
Full Docket Text for Document 79:
MOTION to Withdraw as Attorney *by Limited Scope Pro Bono Counsel* by Lidia M. Orrego. (Gundlach, Jennifer)

Filed: 03/01/2023
Entered: 03/01/2023
Entered By: Grisel Ortiz,
Event Name(s): Motion to Compel
Full Docket Text for Document 80:
Letter MOTION to Compel *to report new misconduct and fraudulent concealment or misrepresentation from Mr. Kuuku Minnah-Donkoh, Defendants' counsel,* by Lidia M. Orrego. (GO)

Filed: 03/10/2023
Entered: 03/10/2023
Entered By: Dina Mucciaccio,
Event Name(s): Order on Motion for Preliminary Injunction, Order on Motion for Sanctions, Order on Motion to Compel, Order on Motion to Compel, Order on Motion to Compel, Order on Motion to Withdraw as Attorney
Full Docket Text for Document 88:
ORDER denying 65 Motion to Compel; denying 69 Motion for Sanctions; denying 70 Motion for Preliminary Injunction; denying 74 Motion to Compel; denying 79 Motion to Withdraw as Attorney; denying 80 Motion to Compel. For the reasons set forth in the attached Order, Plaintiff's motions appearing at docket entries 57 , 65 , 69 , 70 , 74 and 80 are denied. The proposed confidentiality order appearing as docket entry No. [66-1] is So Ordered. Defendants' motion for additional time in which to depose Plaintiff, appearing as docket entry No. 81 , is denied without prejudice to renew upon providing the Court with the transcript of Plaintiff's deposition. Finally, Limited

Scope Counsel's motion appearing as docket entry No. 79 is denied without prejudice to renew in accord with this Order. *So Ordered by Magistrate Judge Anne Y. Shields on 3/9/2023. (DM)*

Filed: 03/15/2023
Entered: 03/17/2023
Entered By: Jazmin Cubano,
Event Name(s): Motion to Vacate
Full Docket Text for Document 94:
Letter MOTION to Vacate 88 Order on Motion to Compel,,,, Order on Motion for Sanctions,,,, Order on Motion for Preliminary Injunction,,,,,,,, Order on Motion to Withdraw as Attorney,,,,,,, by Lidia M. Orrego. (JC)

PACER Service Center			
Transaction Receipt			
04/10/2024 08:40:20			
PACER Login:	lidiaorrego	**Client Code:**	
Description:	Related Transactions	**Search Criteria:**	2:20-cv-03361-JMA-AYS
Billable Pages:	2	**Cost:**	0.20

LIDIA M. ORREGO, Plaintiff,

v.

KEVIN KNIPFING, et al., Defendants.

No. CV 20-3361 (GRB)(AYS)

United States District Court, E.D. New York.

March 9, 2023.

ORDER AND REPORT AND RECOMMENDATION

ANNE Y. SHIELDS, Magistrate Judge.

This is an employment discrimination action in which Plaintiff Lidia Orrego ("Plaintiff' or "Orrego") is proceeding with claims for retaliation and hostile work environment pursuant to 42 U.S.C. § 1981 and the NYSHRL on account of her race. After a motion to dismiss Plaintiff s claim of retaliation remains only against Defendants Kevin Knipfig, Stephanieanna James-Knipfing and the named LLC's (the "Corporate Defendants"). Orrego's claim of a hostile work environment remains only as to Defendants Zantua, Stephanieanna James-Knipfing, and the Corporate Defendants.[1] Defendants deny all of Plaintiff's claims and allege that they engaged in no wrongdoing.

Presently before this Court are several pretrial motions. Most of the motions allege a litany of improper and largely unspecified conduct during the course of discovery — mostly by defense counsel, but also on the part of Defendants and the Court. Plaintiff seeks sanctions that include entry of a judgment of default (as a discovery sanction), a declaratory judgment that she is entitled to prevail on the merits, and a transfer of the venue of this matter to Judges sitting in this district's Brooklyn courthouse. As to the last requested relief, Plaintiff first moved before the Chief Judge of the Eastern District of New York, who advised Plaintiff that she should address her requests to the District and Magistrate Judges assigned to her case.

While it is often impossible to keep up with Plaintiff's numerous and prolix filings — most recently, Plaintiff has made six separate filings between March 1 and March 6, 2023 — the Court here rules on Plaintiff's pending motions. As indicated below, where motions are addressed to non-dispositive matters, the Court rules in the form of an Order of this Court; where motions are dispositive in nature the Court rules, pursuant to the general referral order of the District Court, in the form of Report and Recommendation.

BACKGROUND

Proceedings Prior to the Motions

The District Court herein has previously ruled on Defendants' motion to dismiss. See Docket Entry herein ("DE") [30]. Therein, the Court outlined the allegations of Plaintiffs Amended Complaint (the "Complaint"), taken as true in the light of the procedural posture. The Court need not review all of the facts alleged in the Complaint and recited in the opinion of the District Court. Relevant to this decision, however, are the following facts.

Plaintiff was employed first as a nanny, and then as a housekeeper for the Knipfings. She began working on January 31, 2018 and was dismissed on November 27, 2018. Upon commencement of her employment Plaintiff was given an employment and non-disclosure agreement. The latter of these agreements is referred to in the District Court's opinion and herein as the "NDA." Pursuant to the terms of the NDA Plaintiff agreed not to "publish, disseminate, discuss, disclose ... or cause or induce to be disclosed" any confidential information, including "photographs, films, videotapes, sound recordings, [or] audio tracks" of anyone in the Knipfing family or any employees of the Knipfings." DE [30] at 2. Plaintiff underwent a background check and thereafter signed the NDA on February 15, 2018. Plaintiff was terminated from her employment less than a year after commencement, on November 27, 2018. The letter informing Plaintiff of her termination states that Orrego

was terminated for breach of the NDA, including recording a conversation and taking "recordings and photographs" of the Knipfing's home...." DE [30] at 7. Other grounds for termination were noted, but are not necessary to recite herein. See id. Plaintiff disputes that she violated the terms of the NDA. Id.

The District Court granted the motion to dismiss all of Plaintiffs claims of race discrimination. DE [30] at 11. In particular, the District Court noted the short period of Orrego's employment (less than one year), and the lack of any facts (even when alleged by a pro se plaintiff) tending to support a showing of any discriminatory intent. DE [30] at 11. However, given the solicitude granted pro se plaintiffs, the District Court declined to dismiss Orrego's retaliation claim against the Knipfings and the Corporate Defendants at the pleadings stage. Id. While all claims were dismissed with respect to Defendants Zantua and Savitsky, the District Court held that Plaintiffs claims of a hostile working environment were sufficient to survive at the pleadings stage as alleged again Zantua, Stephanieanna Knipfing and the Corporate Defendants. Like the claims of retaliation, the harassment claim as alleged against Savitsky was also dismissed. DE [30] at 17. Thus, the claims that survived the September 30, 2021 decision of the District Court and proceeded to discovery are Plaintiffs claim of retaliation only against Defendants Kevin Knipfing, Stephanieanna James-Knipfing and the Corporate Defendants. Her claim of a hostile work environment remains only as to Defendants Zantua, Stephanieanna James-Knipfing, and the Corporate Defendants.

Proceedings Following Decision on the Motion to Dismiss

On December 2, 2021, shortly after this matter was assigned to this Court, and following the District Court's appointment of pro bono counsel, this Court scheduled an initial conference. DE [41]. In accord with this Court's individual rules regarding employment cases, pro bono counsel properly submitted a joint case management statement and discovery plan worksheet. DE [42]. Upon review thereof, this Court entered a discovery schedule requiring, as the first phase of discovery, compliance with the Court's employment protocols. See Scheduling Order dated 02/11/2022. Two days later, Orrego submitted a motion seeking to have her appointed lawyer removed from the case. DE [43]. In particular, Orrego took issue with his agreement to participate in the discovery process which was required by the rules of this Court.

On February 18, 2022 this Court entered an order scheduling a telephone conference regarding Orrego's motion to have appointed counsel removed. A conference was held on March 8, 2022, during which the Court relieved Plaintiffs pro bono counsel from further representation of Orrego.[2] In accord with courtesies extended to parties whose counsel are relieved from representation, the Court stayed all proceedings herein for 60 days during which Plaintiff could consider whether to engage counsel on her own, or proceed pro se. See Order dated 03/08/2022. Plaintiff asked this Court to appoint new pro bono counsel; in particular she sought bilingual counsel. DE [50]. This Court reiterated that any request for the appointment of counsel must be made to the District Court. Plaintiff was reminded of the necessity of communicating with this Court as to her decision regarding whether she would go forward with this matter on a pro se basis. See Order dated 03/14/2022.

On April 19, 2022, Plaintiff informed the Court of her decision to proceed pro se. DE [51]. In her letter informing the Court of her decision, Orrego asked the Court to remove from the docket the previously entered (and stayed) scheduling order, appearing as DE [42], that was agreed to by her former counsel. The Court declined to remove a publicly filed document from the docket, but to accommodate what Plaintiff requested, the Court vacated that scheduling order. DE [52]. The Court repeated what it had communicated to Plaintiff in the past — that the Court cannot provide Court interpreters in civil cases. The Court reminded Plaintiff that she was free to engage her own interpreter. Plaintiff was also told, again, of the availability of the Hofstra Law School pro se clinic to assist her on a limited scope representation basis. Id. Additionally, the Court set forth a detailed discovery schedule to facilitate the progress of this matter in an orderly and expeditious manner. In particular, that order described with particularity the documents to be exchanged as part of the first phase of discovery. The parties were directed to submit a joint status letter on June 15, 2022 setting forth dates certain for the taking of depositions. Finally, that order stated that upon receipt of the joint status letter the Court would enter an order governing the remainder of discovery. DE [52].

Three days later, Orrego submitted a letter to this Court taking issue with the Court's Order appearing at DE [52]. See Letter dated April 26, 2022, appearing as DE [54]. In that letter Orrego began what would become a pattern of accusing opposing counsel of misconduct. Thus, in addition to taking issue with Defendants' failure to produce documents in accord with the scheduling order that she objected to (and specifically asked be removed from the docket) Orrego said that Defendants engaged in cynical and outrageous conduct and would continue to disobey and violate laws, orders, protocols and rules. DE

[54]. Finally Orrego requested that all future conferences be held in person and requested an agenda of matters to be discussed. DE [54].

Upon receipt of DE [54] it became clear that Plaintiff objected to this Court's scheduling order and wished to be advised of the schedule in person. While the Court has the discretion to decide the method of holding conferences, the Court entered an order on May 2, 2022, vacating its April 19, 2022 order to allow Plaintiff to attend a re-scheduled initial conference, in-person. Accordingly, the Court issued a scheduling order directing the parties to appear for an in-person conference to be held on July 5, 2022 at 10:30 A.M.

July 5, 2022, this Court held the scheduled in-person scheduling conference. Plaintiff appeared, along with a person who was serving as her interpreter for the day. At that conference, the Court explained the pretrial discovery process. In a scheduling order entered on the same day as the in-person conference, the Court noted that Plaintiff agreed that all service in this matter may proceed via email. This Court also entered a Phase I discovery schedule providing that by August 1, 2022, the parties were to exchange all documents/recordings/video relating to Plaintiffs employment. The production was required to include, but was not limited to, the non-disclosure agreement executed by Plaintiff, all documents referenced in Plaintiffs amended complaint such as the relevant portions of her diary, as well as Plaintiffs November complaint to Mr. Knipfing, and any emails and text messages, as well as any other documents relating to Plaintiffs employment. Documents were to be exchanged by all parties regardless of how that party came into possession of the document. The parties were directed to submit a joint status letter on August 15, 2022 setting forth whether the ordered paper discovery was complete. See Scheduling Order dated 07/05/2022.

On July 26, 2022, Defendant sought an extension of time to serve Defendant's document production. DE [58]. Plaintiff opposed that extension. DE [59]. In an order dated July 27, 2022 the Court agreed with Plaintiff and denied the requested extension. The Court noted that discovery deadlines were set during the July 5, 2022 in-person conference during which Defense counsel neither objected to nor indicated that meeting deadlines would be problematic. Accordingly, the request for the extension was held to lack the requisite good cause needed for an extension.

On August 15, 2022 the parties submitted the joint letter contemplated by the July 5, 2022 Order. DE [62]. That letter confirms the parties' compliance with this Court's Employment Protocols. The day after the parties docketed their August 15, 2022 letter the Court entered the next scheduling order in this case. That order, dated August 16, 2022 directed the parties to move forward with depositions. The parties were directed to confer regarding the scheduling of depositions, and it was ordered that Plaintiff be deposed first. All depositions were ordered to be complete by February 28, 2022. See Scheduling Order dated 08/16/2022.

In the meantime, on July 8, 2022, three days after the July 5, 2022 in-person conference and entry of the Court's discovery order, Plaintiff began to file a flurry of motions and letters. The Court rules on the motions below. The letters, which Orrego continues to submit on an almost daily basis, are discussed only where necessary.

Plaintiffs Motions

Before turning to the motions the Court notes that on October 3, 2022, the District Court issued an order referring all pretrial proceedings, including one of the motions decided below (DE [65]), to this Court. That order also referred all past and future dispositive pretrial motions to this Court for purposes of issuing any Report and Recommendation. See Order dated 10/03/2022.

Motion for Default Judgment (DE [57])

Plaintiff filed a motion on July 8, 2022, pursuant to Rules 26 and 37 of the Federal Rules of Civil Procedure, seeking entry of a judgment of default. DE [57]. Defendant responded thereto on August 11, 2022 (DE [61]) and Plaintiff replied on August 17, 2022 (DE [63]). In light of the fact that this motion seeks default as a discovery sanction, it is not dispositive. Therefore, the Court rules on this motion as an Order of this Court, and not as a Report and Recommendation.

Plaintiff seeks a judgment of default on the ground that Defendants failed to comply with the initial discovery scheduling order entered as DE [42]. Plaintiff refers to the scheduling order appearing as DE [41], however, DE [41] is simply a scheduling order that appears on the docket prior to the substantive — and later vacated — DE [42].

There is no basis for the relief Plaintiff seeks. This is because the motion is based upon alleged non-compliance with a scheduling order that, as clearly noted, was first stayed, and then later vacated by this Court. The stay was entered to afford Plaintiff the opportunity to obtain counsel. To be clear, the order upon which Plaintiff bases this motion for the sanction of default is one that was vacated *upon the request of Plaintiff* on the ground that her then-counsel failed to confer with her prior to submission of this Court's required initial letter. It is, to say the least, ironic that Orrego complains that Defendants failed to comply with an order that she sought to have removed from the docket. Moreover, Defendants have complied with the discovery obligations of this Court, including this Court's Employment Protocols, which supersede and exceed their Rule 26 obligations. Defendants were under no obligation to produce any discovery prior to the July 5, 2022 scheduling order, and have complied with the Order of the Court entered on that day. The motion for the sanction of default, or any other sanction, based upon alleged non-compliance with discovery is denied as without merit and frivolous.

Motion Regarding Confidentiality of Documents (DE [65])

On August 12, 2022, Plaintiff filed a motion challenging Defendants' designation of certain documents as confidential (DE [65]). Defendant responded thereto on August 22, 2022 (DE [66]). Defendants' response sets forth the reasons why the challenged documents should be designated as confidential, and also seeks to have this Court enter an order of confidentiality to govern discovery herein. Plaintiff replied on August 24, 2022 (DE [67]).

Plaintiffs motion challenging the designation of the challenged documents as confidential is denied. First, the Court rejects the argument that because documents were introduced during Plaintiff's workers compensation and state court proceedings they are public and therefore not confidential. Those documents are not available to the general public and their use by Plaintiff in an unrelated forum does not make them non-confidential. The Court also rejects the argument that pictures and recordings are not confidential because they are Plaintiff's property and not those of the Defendants. While pictures and recordings taken by Plaintiff are in her possession, they can only have come into her possession during the course of her now-terminated employment by Defendants. It may ultimately be determined that such pictures and recordings were taken by Plaintiff in general violation of her duties, and in specific violation of the NDA. As such, they may well be evidence of Plaintiff's breach of the NDA. While these documents are therefore within the scope of discovery herein (and may form the basis for an argument that Defendants properly terminated Plaintiff) they are properly designated as confidential at this stage of the proceedings. Indeed, it appears that the challenged documents may depict Defendants' infant children and their home. While the Court makes no finding at this stage as to whether documents consisting of pictures and recordings taken by Plaintiff during the course of her employment violated the NDA, the Court does hold that such documents have been properly designated as confidential during this phase of the litigation. To be clear, the Court is not holding that the documents at issue are outside of the scope of discovery. Indeed, they are certainly within that scope. However, the nature of the documents makes their designation as confidential appropriate.

Because additional private documents may be used during this litigation it is appropriate to enter a confidentiality order at this time. Accordingly, the Court grants defendants' request to enter an order of confidentiality to govern discovery herein. The Court has reviewed and hereby approves entry of the confidentiality order submitted by Defendants. Accordingly, the Court hereby orders the entry of that order, appearing as DE [66-1] herein. Defendant is directed to provide a copy of the order to Plaintiff. Plaintiff is directed to review that order and to abide by the terms therein.

Motion for Discovery Prior to Plaintiff's Deposition and Extension of Fact Discovery

As noted above, this Court entered a Scheduling Order on August 16, 2022 which, inter alia, directed that depositions be complete by February 28, 2023. Plaintiff has sought leave to conduct additional discovery prior to her deposition. In light of the fact that Plaintiff has now been deposed this request is denied as moot. As discussed below, the Court is presently considering Defendants' request that Plaintiff sit for a second day of deposition. Discovery will be extended, if necessary, to accommodate any further order on this issue.

Motions and Letters Appearing at DE [69], [70], [74] and [80]

In these motions Plaintiff seeks sanctions and injunctive relief. The injunctive relief motions appear as DE [70] and [74]. These motions seek to prevent the taking of Plaintiff's deposition until she receives additional documents.[3] They also seek a ruling on Plaintiffs now-denied motion for default. In light of the facts that Plaintiff has already been at least partially deposed and this Court is considering the request for a second day of testimony, the motion for injunctive relief asking that Plaintiff not appear for her deposition (DE [70]) is denied as moot. The motion appearing as DE [74] (which seeks a court ruling as to DE [57]decided above) is also denied as moot.

The motions appearing at DE [69], [74] and [80] ostensibly seek to report "additional" instances of misconduct on the part of Defendants and their counsel, and seek the imposition of sanctions for having engaged in such conduct. Among other things, Plaintiff makes unsupported accusations that Defendants are acting to deprive her of her Constitutional rights and are engaged in fraud, misconduct, tampering with evidence and racketeering activities. Plaintiff appears to argue that Defense Counsel is under some obligation to inform the Court of related actions (including her Workers Compensation case and what appears to be a civil case pending in Queens County) regarding counsel's engagement in acts of racketeering. DE [69]. Orrego makes repeated reference to allegations of fraud in her Workers Compensation case and the filing of complaints with state agencies. DE [69]. She states that these complaints support the "racketeering activities" of Defendants and their counsel. She requests that sanctions be imposed against counsel "whose intentional actions have obstructed the effective administration of the EDNY Court's business and justice since October 6, 2020." DE [69]; see also DE [74].

Plaintiffs accusations appearing in the motions docketed under DE [69], [74] and [80] and the allegations contained in Plaintiffs letters are unsupported and nonsensical. They have no place in this case. Plaintiff certainly has the right to properly litigate this case, but she may not use it as a vehicle to make personal and unsupported attacks of criminal behavior. To the extent these motions and Plaintiff's various letters seek any type of relief — and it is not clear that they do — they are denied. Plaintiff is cautioned that the continued filing of wholly unsupported motions may subject her to the imposition of sanctions for engaging in frivolous litigation conduct.

Motions for Declaratory Judgment (DE [73])

This is a motion for a declaratory judgment. It seeks entry of a final judgment on the merits in favor of Plaintiff. Because it is dispositive the Court rules on this motion in the form of a Report and Recommendation. Plaintiff seeks entry of final judgment on her causes of action. In light of the fact that discovery is ongoing, and Plaintiff cannot support her claims to prevail on the merits, it is respectfully recommended that Plaintiffs motion be denied.

Motion to Change Venue to Brooklyn Courthouse (DE [77])

Plaintiff addresses this motion to the Chief Judge of the Eastern District of New York. The assigned District Judge is, however, the Honorable Gary R. Brown and the assigned Magistrate Judge is the undersigned. Accordingly, as communicated to Plaintiff by the Chief Judge, Plaintiffs motions are appropriately made only to the assigned District and Magistrate Judges. DE [86] at 3. The Court construes the motion as made to the District Judge, and rules on it as a Report and Recommendation.

This motion seeks to transfer this case to a Judge in the Brooklyn Courthouse. The motion is recommended to be denied as untimely and without merit. This case was properly designated as a Long Island case. Not only has the time in which to seek to change that designation elapsed, Plaintiff sets forth no basis for the requested change of venue. It is respectfully recommended that the assigned District Judge deny the motion.

Motion and Response Regarding Plaintiffs Deposition (DE [80-81])

As noted above, Plaintiff makes numerous unsupported attacks regarding the alleged unlawful activities of Defendants and their counsel. The Court has already ruled on these. The motion appearing as DE [80] and Defendant's response thereto appearing as DE [81] refer more specifically to Plaintiffs deposition.

To the extent the motion seeks some sort of sanction for conduct that took place during her deposition, the Court denies the motion as unsupported. In response to the motion Defense counsel notes that Plaintiff was not actually deposed for the full

seven hours to which he was entitled. He relies on the time stated to have been recorded by the Court reporter, as well as the fact that the presence of an interpreter significantly cut down on the time of actual questioning.

In order to properly review this request the Court directs Defendants to provide a complete copy of Plaintiffs February 27, 2023 deposition transcript for the Court's review. The transcript must be emailed to shields_chambers@nyed.uscourts.gov by 5:00 PM on Friday, March 10, 2023. Upon review thereof the Court will decide whether and how much additional time should be afforded for additional questioning of Plaintiff. Accordingly, the motion for additional time in which to depose Plaintiff is denied at this time, without prejudice to renew upon providing the Court with the transcript of the first day of Plaintiff's deposition.

Plaintiff's Written Questions

On February 27, 2023 Plaintiff served Defendants with written deposition questions pursuant to Rule 31 of the Federal Rules of Civil Procedure. Although Defendants have preserved their right to object to those questions, they do not object to responding thereto. Discovery is extended at this time to require Defendants to respond to Plaintiffs written questions by April 7, 2023.

Motion by Limited Scope Counsel to Withdraw (DE 79)

There is pending a request from limited scope counsel to be relieved in this matter on the ground that counsel represented Plaintiff only for the purpose of representing her at deposition. In light of the fact that Plaintiffs deposition may not yet be complete, the Court denies the request to be relieved at this time, without prejudice to renewal. Limited scope counsel may chose to continue to represent Plaintiff at any continued deposition, or not. Counsel may renew this motion to be relieved upon review of this Order and any subsequent order entered with respect to Defendants' request for additional time in which to depose Plaintiff. It is certainly within their discretion to decide whether or not to consider to represent Plaintiff at any continued deposition.

CONCLUSION

Plaintiff's motions appearing at DE [57], [65], [69], [70], [74] and [80] are denied by Order of this Court. The proposed confidentiality order appearing as DE [66-1] is So Ordered.

It is respectfully recommended that Plaintiff's motions for a declaratory judgment in her favor, appearing as DE [73], and the motion to change venue to the Brooklyn Courthouse, appearing as DE [77], be denied.

Defendants' motion for additional time in which to depose Plaintiff, appearing as DE [81], is denied without prejudice to renew upon providing the Court with the transcript of Plaintiff's deposition.

Limited Scope Counsel's motion appearing as DE [79] is denied without prejudice to renew in accord with this Order.

OBJECTIONS

A copy of this Order and Report and Recommendation is being provided to all counsel and Plaintiff via ECF. Any written objections to the Report and Recommendation portion, namely this Court's recommendation that Plaintiff's motions for a declaratory judgment in her favor, appearing as DE [73], and the motion to change venue to the Brooklyn Courthouse, appearing as DE [77], be denied, must be filed with the Clerk of the Court within fourteen (14) days of filing of this report. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 72(b). Any requests for an extension of time for filing objections must be directed to the District Judge assigned to this action prior to the expiration of the fourteen (14) day period for filing objections. Failure to file objections within fourteen (14) days will preclude further review of this report and recommendation either by the District Court or Court of Appeals. Thomas v. Arn, 474 U.S. 140, 145 (1985) ("[A] party shall file objections with the district court or else waive right to appeal."); Caidor v. Onondaga Cnty., 517 F.3d 601, 604 (2d Cir. 2008) ("[F]ailure to object timely to a magistrate's report operates as a waiver of any further judicial review of the magistrate's decision").

SO ORDERED.

[1] Plaintiffs' claims pursuant to the NYCHRL, the New York Labor Law, the New York Penal Law and her claims for discrimination under 42 U.S.C. § 1981 and the NYSHRL have been dismissed by the District Court. Defendant Savitsky has been dismissed from this action entirely.

[2] Plaintiff continues to make completely unsupported attacks on her formerly appointed pro bono counsel, accusing him of being in "partnership" with Defense counsel. DE [85]. There is no support for any such allegation. Instead, the record reflects only former counsel's compliance with the Court's rules and willingness to assist Plaintiff in this matter.

[3] DE [74] also seeks the imposition of sanctions and is ruled upon separately herein.

564 F.Supp.3d 273 (2021)

Lidia M. ORREGO, Plaintiff,

v.

Kevin KNIPFING, Employer, also known as Kevin James; Stephanieanna James-Knipfing, Employer, also known as Steffiana de la Cruz; Old Westbury Eddie LLC, Company/Payroll owner Kevin Knipfing; Old Westbury LLC, Unknown Entity under registration in NY State; Steve Savitsky, Business Manager, Old Westbury LLC; and Teresa A. Zantua, Defendants.

CV 20-3361 (GRB)(AKT).

United States District Court, E.D. New York.

September 30, 2021.

278 *278 Lidia M. Orrego, Rego Park, NY, Pro Se.

Alex Dumas, Edward E. Warnke, Kuuku Angate Minnah-Donkoh, Gordon Rees Scully Mansukhani, LLP, New York, NY, for Defendants Kevin Knipfing, Stephanieanna James-Knipfing, Old Westbury EDDIE LLC, Old Westbury LLC, Steve Savitsky, Teresa A. Zantua.

MEMORANDUM & ORDER

GARY R. BROWN, United States District Judge:

Pro se plaintiff Lidia M. Orrego ("plaintiff") brings this case against her former employers, Kevin Knipfing, Stephanieanna James-Knipfing, and two LLCs operated by the Knipfings, Old Westbury Eddie LLC and Old Westbury LLC; the business manager of the Westbury LLCs, Steve Savitsky; and her former supervisor (and Ms. Knipfing's sister), Teresa Zantua (collectively, "defendants"). Before the Court is defendants' motion to dismiss. For the reasons set forth below, defendants' motion is GRANTED as to plaintiff's claims under the NYCHRL, the New York Labor Law, the New York Penal Law, and plaintiff's claims for discrimination under 42 U.S.C. § 1981 and the NYSHRL; additionally, defendants' motion is GRANTED as to plaintiff's retaliation claims against Savitsky and Zantua and plaintiff's hostile work environment claims against Savitsky. Otherwise, defendants' motion is DENIED.

I. Factual and Procedural History

As set forth in plaintiff's amended complaint (the "Complaint"), the allegations of which are accepted as true for the purposes of this motion, plaintiff began working for the Knipfings as a nanny (and, later on, as a housekeeper) on January 31, 2018. Complaint, Docket Entry ("DE") 8, at 19. Plaintiff worked in the Knipfings' home, allegedly located in Nassau County. *Id.* at 3, 19. During this time, Ms. Zantua supervised plaintiff and five other employees who worked in the Knipfings' home. *Id.* at 19. At the outset of her employment, plaintiff was given an employment agreement and nondisclosure agreement (NDA) — in English, despite Spanish being her primary language; according to plaintiff, the NDA was missing most of the constituent pages (plaintiff apparently signed these documents on February 15, 2018). *Id.* Critically for purposes of the present motion,
279 under the NDA, plaintiff agreed not to "publish, disseminate, discuss, disclose ... or cause or induce to be *279 disclosed" any confidential information, including "photographs, films, videotapes, sound recordings, [or] audio tracks" of anyone in the *Knipfing family or any employees of the Knipfings. Id. at 90-91. The various employment-related documents provided to* plaintiff identify different employers: plaintiff's employer is variously identified as the Knipfings, Old Westbury Eddie LLC or Old Westbury LLC. *See, e.g.,* Complaint, DE 8, at 19, 49, 80, 88, 98-102. In any case, plaintiff completed her background check and signed these documents on February 15, 2018. *Id.* at 19.

Plaintiff alleges that she was repeatedly harassed by Zantua for being Hispanic and/or of Paraguayan descent. For example, plaintiff alleges that Zantua often ordered plaintiff not to speak Spanish in front of the Knipfing children, complained about the Knipfings "hir[ing] nannies who only speak Spanish," and wondered aloud why "Mexicans work for

American families who speak only English." *Id.* at 20, 23, 24, 25, 27, 31. Zantua also made pejorative comments about plaintiff's race; for example, at a birthday party for a family friend's son, after Zantua "ordered [plaintiff] to take pictures and videos," a child stepped on plaintiff's hand and injured plaintiff; in response, Zantua commented that plaintiff's "bones [were] useless" because "[y]ou Mexicans eat a lot of corn." *Id.* at 21. On occasions where Zantua perceived that she had been slighted by plaintiff, or that plaintiff had fallen short in her responsibilities, Zantua defaulted to insulting plaintiff "because of her race," including by calling her a "stupid Paraguayan." *Id.* at 25-26, 27. Zantua informed plaintiff that she and Skylar Testa, the house manager, "always made fun of the Plaintiff" because of her accent — an activity the Knipfing children also participated in. *Id.* at 25. Even when not directed specifically at plaintiff, Zantua often made pejorative remarks about Latinos, on one occasion ordering plaintiff to pay the "Mexicans" who cleaned her car at a carwash because the "`Mexicans' were disgusting to her," and on another informing plaintiff that "she would never apologize to `a Mexican.'" *Id.* at 21, 24. Other employees were also subjected to Zantua's race-based harassment. *See id.* at 29. By April 4, 2020, plaintiff began to write a diary documenting these events. *Id.* at 20. Plaintiff alleges that, by August 15, she "had already reported on several occasions of the discriminatory treatment and abuse received from" Zantua. *Id.* at 22. On this date, she "was offered the permanent position of Housekeeper" — apparently a demotion, instigated both by plaintiff's reporting and "because she was Hispanic." *Id.*

Plaintiff also presents certain allegations about Ms. Knipfing's conduct, starting in August 2018. For example, plaintiff alleges that on August 10, she was ignored by Ms. Knipfing when she went to help for a concert; when the event coordinator arrived at some point later, Ms. Knipfing introduced her co-workers, but not plaintiff. *Id.* at 22. Similarly, on August 15, Ms. Knipfing accused plaintiff (via another nanny, a Ms. Uzcategui) of some misstep that apparently was not plaintiff's fault; when plaintiff went to ask about the issue a few days later, Ms. Knipfing asked plaintiff to leave the room even though "everyone else [was] walk[ing] in and out of" the room. *Id.* Later, toward the end of October, Ms. Knipfing confronted plaintiff when she was sitting down for lunch, asking her "why she was sitting" — a challenge Ms. Knipfing apparently never made to plaintiff's co-workers. *Id.* at 32. The next day, Ms. Knipfing issued an order prohibiting plaintiff "from texting her co-workers" and "withdrew [plaintiff's] access to money for expenses"; Ms. Knipfing also excluded plaintiff from attending the "All Saints
280 Parade" on November 1, 2018—restrictions *280 that applied only to plaintiff. *Id.* at 32. In sum, plaintiff alleges that she was subject to disparate treatment at the hands of Ms. Knipfing.

However, in contrast to the allegations against Ms. Zantua, plaintiff offers little to suggest this treatment emanated from animosity toward Latinos. But on October 2, Ms. Knipfing learned of an incident where Zantua harassed plaintiff, and "started blaming [plaintiff] and making malicious remarks with her co-workers in Plaintiff's absence" (*id.* at 26).[1] Plaintiff also alleges more generally that Ms. Knipfing "always encourag[ed] this discrimination" and "also harass[ed] the Plaintiff in front of the other workers." *Id.* at 26. Claims of discriminatory animus on the part of Ms. Knipfing are alleged only in the most general fashion.

Plaintiff also alleges that she was subject to physical assault, specifically by one of the Knipfings' children (and, on one occasion, their friends). For example, on June 4, 2018, at a birthday celebration held for the son of a family friend, a child "stepping on the Plaintiff's right hand several time[s] and stood on it injuring her wrist." *Id.* at 21. Another time, on October 23, plaintiff was assaulted in the kitchen, ostensibly by the Knipfings' son. *Id.* at 31. Plaintiff claims that she "was the victim of several physical assaults (kick or punch her back, hand, neck, shoulders)" by the child — acts that she claims were instigated by Zantua through "her hate speech against Mexicans." *Id.* at 31-32. Plaintiff also alleges that she developed pain in her back and neck "as a result of the work," for example, "work[ing] with the Chef ... carrying items that were heavy in weight" and "without taking a break," as well from as the aforementioned assaults. *Id.* at 21, 33. These events led plaintiff to seek medical help for her back and neck pain as well as for the stress "resulting from an environment of discrimination and abuse." *Id.* at 21. Plaintiff first went to a doctor on June 3, where the doctor referred her to physical therapy and prescribed pain killers. *Id.* She saw two other doctors on November 1 and 2, who took an X-ray and apparently diagnosed plaintiff with tachycardia. *Id.* at 34.

Plaintiff further alleges that on November 2, she submitted to Testa and Ms. Knipfing a complaint via email that she and Ms. Uzcategui had drafted, which set forth all of their allegations about "direct and indirect race discrimination, physical abuse/assault, verbal abuse, hostile work environment[, and] harassment ... for being Hispanic," including complaints about Zantua's behavior. *Id.* at 34, 46. When plaintiff returned from her days off visiting the doctors, she was greeted by Mr. Knipfing, who apparently "admit[ted] that he knew about all the problems between" Zantua and Uzcategui, and "thanked the Plaintiff for letting him know of all the problems" they had in the house; however, he apparently "was unaware that it involved the Plaintiff." *Id.* at 35. Mr. Knipfing then informed plaintiff that "an investigation would be opened" and promised to call her

about the results of the investigation, then asked her to "give him [her] evidence to do the Investigation." *Id.* Plaintiff alleges
281 *that Mr. Knipfing additionally* *281 *"intimidate[d]" her by saying that "nobody should know anything about her complaint"*; plaintiff interpreted this to suggest that he was "obviously concerned that it would become public." *Id.* At the conclusion of this conversation, Mr. Knipfing "suspended her from going to work until [the] investigation was completed"— apparently, plaintiff was the only employee subject to a suspension, "even though other co-workers were involved in the complaint." *Id.* Plaintiff further claims that Testa and Mr. Knipfing "mocked [her] for being Hispanic," but without any further detail. *Id.*

Two days later, on November 8, plaintiff sent Mr. Knipfing "all the evidence that support[ed] her complaint." *Id.* at 36. A few days later, Testa texted plaintiff directing her "to meet with Investigators in a Starbucks Coffee location in Rego Park." *Id.* The next day, plaintiff met with the two investigators, but claims that she "was not physically or emotionally well" at the time "especially for the way she was treated" by Ms. Knipfing "after receiving her complaint." *Id.* at 36-37. The investigators also asked if she ever saw the complaint that Uzcategui wrote, or her notes or videos; plaintiff answered that she "never saw any of that evidence," but that Uzcategui had "told her about it all the time." *Id.* at 37. The investigators then asked "if she would continue working with" Ms. Uzcategui, which ultimately led plaintiff to believe that the investigators "avoided talk about and discrimination and abuse [and] focused more on the issues between her and" Uzcategui. *Id.* Thus, plaintiff claims that the Knipfings used the investigators "to cover the complaint of discrimination and physical assault and other[ ] abuses in addition to intimidating the Plaintiff." *Id.*

On November 14, Testa messaged plaintiff requesting her diary; she emailed Mr. Knipfing over the next two days the evidence she had on hand "with Pictures, Videos, Voice Messages, Diary with dates and times [documenting] all acts of discrimination and abuses." *Id.* at 37. While the investigation was in progress, on November 24, Ms. Knipfing texted plaintiff a photo of a priest or minister overlaid with the message, "Inasmuch as you pray with all your soul for the one who has slandered you so much will God reveal the truth to them who have believed the slander." *Id.* at 38. Plaintiff took this to mean that Ms. Knipfing was accusing plaintiff of slander. *Id.* Plaintiff ultimately received a termination letter on November 27 from Old Westbury LLC; the letter was signed by Steve Savitsky,[2] who identified himself as the business manager of Old Westbury LLC.[3] *Id.* at 38, 49. The letter sets forth the following grounds for her termination: (a) "Breach of [plaintiff's] Non-Disclosure Agreement" including by recording a conversation with Uzcategui in public and taking "recordings and photographs" of the Knipfings' home; plaintiff's "statement that [she was] unwilling to continue working with" Uzcategui; and "[their] conclusion that [she] made statements in [her] complaint that [she] know[s] to be false." *Id.* at 49. The letter also
282 notified plaintiff that *282 she had health insurance through United Healthcare that would be terminated on November 30, and that she was eligible for COBRA benefits. *Id.*

Plaintiff contests the grounds set forth in the termination letter, claiming that she "never received ... any written warnings or performance reviews related to the content of the Termination Letter." *Id.* at 38. Plaintiff specifically contests that she violated the NDA, observing that (a) the recording she made of her and Uzcategui's conversation "was not shared with a third party or disclosed," and (b) Uzcategui did not seem subject to the same punishment, despite the fact that she "disclosed information... about the Knipfing[ ] Family in a public place and in the presence of a third party[.]" *Id.* Plaintiff also claims that the photographs referred to are "the photographs of the candies" sent to Mr. Knipfing on November 15 "that prove the abuse against" one of the children,[4] but reiterates (as noted above) that other employees also took photographs inside the house (and, apparently, occasionally published those photographs on social media). *Id.* at 39-40, 42. As for the claim that plaintiff was unwilling to work with Uzcategui, plaintiff asserts that the investigators criticized Uzcategui, such that it was unreasonable for them to ask if plaintiff would continue working with her. *Id.* at 40. Finally, plaintiff claims that "according to all the evidence" she had presented, everything in her complaint was true. *Id.*

Following her termination, plaintiff claims that that the Knipfings and Savitsky "discriminated and retaliated against" her by "immediately canceling her medical plan" and denying her COBRA benefits. *Id.* at 41. Plaintiff further alleges that on November 29, two days after her termination, her "Health Insurance [carrier] confirmed that [her former] employers didn't submit the application for COBRA," such that plaintiff could not "be covered by insurance." *Id.* Additionally, the Knipfings "refused to provide reference[s]" for plaintiff to get another job. *Id.* Plaintiff then raises allegations about certain post-termination events that are not relevant here.

Plaintiff filed this action on July 23, 2020, asserting claims for discrimination, retaliation, and hostile work environment under 42 U.S.C. § 1981, the New York State Human Rights Law ("NYSHRL"), and the New York City Human Rights Law ("NYCHRL"); plaintiff also brings claims under New York Labor Law § 195(6), and sections 170 and 210 of the New York Penal Law. Following the submission of a pre-motion letter in anticipation of a motion to dismiss filed by all defendants to

this action, the undersigned set forth a briefing schedule for the anticipated motion. *See* Electronic Order of September 22, 2020. The fully briefed motion was filed on December 11, 2020. This opinion follows.

II. Discussion

It has been well established that "[a] document filed *pro se* is `to be liberally construed,' and `a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.'" *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S.Ct. 2197, 167 L.Ed.2d 1081 (2007) (citations omitted). Nevertheless, many of plaintiff's claims may be dismissed in short order. First, as to plaintiff's NYCHRL claim, "[t]o state a claim under the NYCHRL, plaintiff must allege
283 that the defendant discriminated against her `within the boundaries of New *283 York City.'" *Robles v. Cox & Co.*, 841 F. Supp. 2d 615, 623 (E.D.N.Y. 2012) (quoting *Shah v. Wilco Sys., Inc.*, 27 A.D.3d 169, 175, 806 N.Y.S.2d 553 (2005)). Nearly all of the activities set forth above that are relevant to a NYCHRL claim are alleged to have occurred in the Knipfings' household, which, as asserted in the complaint, is located outside of New York City. While plaintiff does allege that Zantua harassed plaintiff during a trip to the NYC Children's Museum, DE 8 at 26, "[t]he fact that certain acts leading to discrimination may occur in New York City will not necessarily give rise to a claim under the City HRL. *Salvatore v. KLM Royal Dutch Airlines*, No. 98 CIV. 2450 (LAP), 1999 WL 796172, at *16 (S.D.N.Y. Sept. 30, 1999). It is undisputed that the "impact of the offensive conduct" — the lion's share (indeed, all but one incident) of the harassment, as well as the suspension of plaintiff's employment privileges, her alleged demotion, and her ultimate termination — all occurred outside of New York City. *See Robles*, 841 F. Supp. 2d at 621. Accordingly, the NYCHRL claim must be dismissed.

Second, as to plaintiff's New York Labor Law claim, § 195(6) holds that "[e]very employer shall ... notify any employee terminated from employment, in writing, of the exact date of such termination as well as the exact date of cancellation of employee benefits connected with such termination. In no case shall notice of such termination be provided more than five working days after the date of such termination." Plaintiff affirmatively alleges that she was provided such notice by defendants and attached her termination letter which clearly establishes that defendants met this requirement. Although plaintiff contests that this notice was insufficient as § 195(6) also requires the letter to include the "name of [the] employer" — which, as noted above, plaintiff contests — § 195(6) does not, in fact, contain such a requirement. Accordingly, plaintiff's New York Labor Law claim must also be dismissed.

Finally, plaintiff's claims under the New York Penal Law (for forgery and perjury) fail, as "forgery[ ] and perjury ... are crimes and therefore do not give rise to civil causes of action." *Luckett v. Bure*, 290 F.3d 493, 497 (2d Cir. 2002). Furthermore, plaintiff asserts in her opposition brief that the complaint "requested no relief in connection with" these claims. DE 22-5 at 26. For both reasons, then, plaintiff's claims under the New York Penal Law are dismissed.

Plaintiff's claims under 42 U.S.C. § 1981 and the NYSHRL merit closer examination. First, as to plaintiff's discrimination claims, "Section 1981[ ] and NYSHRL discrimination claims [are analyzed] under the same burden shifting framework as first set forth by the Supreme Court in *McDonnell Douglas Corp. v. Green*." *McGill v. Univ. of Rochester*, 600 F. App'x 789, 790 (2d Cir. 2015). As the Second Circuit noted in *McGill*:

> Under the *McDonnell Douglas* framework, a "plaintiff bears the initial burden of establishing a prima facie case of discrimination." To establish a prima facie case of discriminatory discharge, "a plaintiff must show that (1)[s]he is a member of a protected class; (2)[s]he was qualified for the position [s]he held; (3)[s]he suffered an adverse employment action; and (4) the adverse action took place under circumstances giving rise to the inference of discrimination."

Id. at 790-91 (citations omitted). Defendants limit their arguments to the fourth element, as there can be little dispute that plaintiff's allegations meet the first three. First, defendants cite the well-established principle that "[w]hen the same actor
284 hires a person already within the protected class, and then later fires that same person, *284 `it is difficult to impute to her an invidious motivation that would be inconsistent with the decision to hire.'" *Carlton v. Mystic Transp., Inc.*, 202 F.3d 129, 137 (2d Cir. 2000) (citation omitted). Likewise, "where the termination occurs within a relatively short time after the hiring there is a strong inference that discrimination was not a motivating factor in the employment decision." *Id.* at 137-38 (collecting cases finding that this inference applies where the time between hiring and firing was under two years). There can be little dispute that the Knipfings were the ones to both hire and fire plaintiff, and that they did both in a period of under a year. Second, defendants contend that plaintiff "has failed to offer *any* non-conclusory facts or evidence demonstrating that the Knipfings ... harbored any discriminatory animus against her because of her race or national origin." DE 22-3 at 18.

The allegations set forth in the complaint do not establish any overt acts of discrimination by the *Knipfings*. "[A]bsent direct evidence of discrimination," then, plaintiff must allege "at least minimal support for the proposition that the employer was motivated by discriminatory intent." *Littlejohn v. City of New York*, 795 F.3d 297, 311 (2d Cir. 2015). Plaintiff fails to meet even this lesser burden: though she alleges disparate treatment at the hands of Ms. Knipfing, any allegations that such treatment was "motivated by discriminatory intent" are, at best, conclusory. Any allegations about Mr. Knipfing's discriminatory motives, to the extent they even exist, are even sparser. Otherwise, the same conclusion appears to apply to the corporate defendants, and plaintiff fails to allege that any other defendant instituted an "adverse employment action" (e.g., demotion, suspension, or termination) against her.[5] Accordingly, plaintiff's discrimination claims must be dismissed.[6]

Plaintiff's retaliation claims are analyzed under the same burden-shifting framework. Thus, "to establish a *prima facie* case of retaliation, a plaintiff must demonstrate that (1) she engaged in protected activity; (2) the employer was aware of that activity; (3) the plaintiff suffered a materially adverse action; and (4) there was a causal connection between the protected activity and that adverse action." *Guzman v. City of New York*, 93 F. Supp. 3d 248, 261 (S.D.N.Y. 2015) (citation omitted). "As to the first element of the prima facie case, `[t]he term "protected activity" refers to action taken to protest or oppose statutorily prohibited discrimination,' and may take the form of either formal or informal complaints." *Id.* (citations omitted). However, such complaints "qualif[y] as protected activity only if `the employee has a good faith, reasonable belief that the
285 underlying challenged actions of the employer violated the law.'" *Id.* at 261-62. Defendants only contest the fourth element *285 of this test, claiming that plaintiff "has failed to allege sufficient facts to show that her termination was motivated by" the November 2 email, pointing instead to the rationales set out in the termination letter. DE 22-3 at 25. However, "[p]roof of causation can be shown ... indirectly, by showing that the protected activity was followed closely by discriminatory treatment." *Hicks v. Baines*, 593 F.3d 159, 170 (2d Cir. 2010). Less than a week elapsed between plaintiff's complaint and her suspension, while less than three weeks elapsed between her complaint and her termination. Moreover, the November 2 email is not the only protected activity alleged by plaintiff: as noted above, plaintiff also alleges that by August 15, she had already "reported on several occasions of the discriminatory treatment and abuse received from" Zantua. It is notable, then, that plaintiff *also* alleges that her disparate treatment at the hands of Ms. Knipfing — including her alleged demotion — began around this time. Given the solicitude granted *pro se* complaints, plaintiff appears to have alleged a sufficient causal connection between her protected activity and the adverse employment actions via temporal proximity. *See Littlejohn*, 795 F.3d at 319-20 (finding "allegations that the [adverse employment action] occurred within days after [plaintiff's] complaints of discrimination" to be "sufficient to plausibly support an indirect inference of causation"). Thus, plaintiff has pleaded plausible retaliation claims under § 1981 and the NYSHRL against the Knipfings and the corporate defendants. However, as noted above, plaintiff fails to allege that any other defendant instituted an "adverse employment action" against her, so plaintiff's retaliation claims against Zantua and Savitsky are dismissed.

Finally, "[t]o establish a hostile work environment" claim, "a plaintiff must show that `the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.'" *Littlejohn*, 795 F.3d at 320-21; *see also Westbrook v. City Univ. of New York*, 591 F. Supp. 2d 207, 232 (E.D.N.Y. 2008). "The incidents complained of must be more than episodic; they must be sufficiently continuous and concerted in order to be deemed pervasive." *Littlejohn*, 795 F.3d at 321 (citation omitted). A plaintiff "must show not only that she subjectively perceived the environment to be abusive, but also that the environment was objectively hostile and abusive." *Guzman*, 93 F. Supp. 3d at 263 (quoting *Demoret v. Zegarelli*, 451 F.3d 140, 149 (2d Cir. 2006)). Additionally, a plaintiff must establish that "'a specific basis exists for imputing' the objectionable conduct to the employer" and, of course, that "the hostile conduct occurred because of a protected characteristic." *Tolbert v. Smith*, 790 F.3d 427, 439 (2d Cir. 2015). In evaluating such claims, a court must consider "the totality of the circumstances,... including `the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.'" *Demoret*, 451 F.3d at 149 (quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23, 114 S.Ct. 367, 126 L.Ed.2d 295 (1993)). However, the Second Circuit "ha[s] repeatedly cautioned against setting the bar too high" in this context, holding that "a plaintiff need only plead facts sufficient to support the conclusion that she was faced with `harassment... of such quality or quantity that a reasonable employee would find the conditions of her employment altered for the worse.'" *Patane v. Clark*, 508 F.3d 106, 113 (2d Cir. 2007) (citation omitted).

286 *286 Defendants compare plaintiff's allegations to those in another case, in which the hostile work environment claim was dismissed because the conduct at issue entailed, "at most, isolated and sporadic incidents that occurred over the course of a year." DE 22-3 at 21 (quoting *Alvarado v. Mount Pleasant Cottage Sch. Dist.*, 404 F. Supp. 3d 763, 781 (S.D.N.Y. 2019)). Indeed, defendants acknowledge that, in *Alvarado*, exactly four incidents occurred. *Id.; see also Alvarado*, 404 F. Supp. 3d

at 781 (holding that the plaintiff in that case "ha[d] pointed to four incidents"). These cases are far from comparable. Plaintiff here sets forth a continuing pattern of race-based abuse and harassment at the hands of Zantua, a course of conduct that seems to have prevailed over the duration of plaintiff's tenure in the Knipfing household. Even more troubling, plaintiff alleges that Zantua encouraged other members of the household staff, and even the Knipfings' children, to participate in this harassment. Indeed, plaintiff alleges that Zantua's harassment was pervasive enough to drive her to seek assistance from her co-workers in presenting a complaint to the Knipfings — arguably an understandable concern, given that Zantua is Ms. Knipfing's sister — and to complain to the Knipfings on multiple occasions about Zantua's behavior. At this early juncture, plaintiff seems to have satisfied the pleading standard.

Much of the remainder of defendants' argument hinges on whether Zantua was actually plaintiff's supervisor (or even an employee of the Knipfings). "For the purpose of vicarious liability under § 1981, a supervisor is a person empowered by the employer to take tangible employment actions against the victim, *i.e.*, to effect a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits." *Lamarr-Arruz v. CVS Pharmacy, Inc.*, 271 F. Supp. 3d 646, 659 (S.D.N.Y. 2017) (quoting *Vance v. Ball State Univ.*, 570 U.S. 421, 431, 133 S.Ct. 2434, 186 L.Ed.2d 565 (2013)) (quotations omitted). To be sure, " [t]his is not a case where supervisory status is readily determinable." *Id.* Zantua engaged in none of these activities. However, this list is merely illustrative, not exhaustive; moreover, plaintiff alleges that Zantua "ordered" her to engage in, or cease, certain conduct — and suggests that Zantua had similar power over other employees. Thus, at this early stage, particularly in light of the liberal construction applied to *pro se* pleadings, the Court must accept plaintiff's allegation that Zantua was her supervisor for the purposes of evaluating plaintiff's hostile work environment claims. Given that Zantua herself did not impose any "tangible employment action," the Knipfings "may escape liability by establishing, as an affirmative defense, that (1) [they] exercised reasonable care to prevent and correct any harassing behavior and (2) that the plaintiff unreasonably failed to take advantage of the preventive or corrective opportunities that the employer provided." *Lamarr-Arruz*, 271 F. Supp. 3d at 659 (quoting *Vance*, 570 U.S. at 424, 133 S.Ct. 2434).

Defendants therefore contest whether the Knipfings should have known about this harassment, pointing out that, in her November 2 email, plaintiff stated the following: "I am writing to you this letter because I have not had the opportunity to speak or explain personally to you because of all the restrictions I have to communicate with you Mrs. Steffiana," arguing that this makes it "clear" that this was "the first time Plaintiff put the Knipfings on notice about any issues she may have
287 been having with Zantua." DE 22-3 at 23-24; DE 8 at 46. Defendants conveniently omit *287 the sentence immediately preceding this one, however, in which plaintiff states that "I am writing to you and to Skylar as house manager, *about matters as I previously did on several occasions for different reasons and which I will expose in this email.*" DE 8 at 46 (emphasis added). Thus, if anything, the November 2 email only further establishes the conclusion noted above, *i.e.*, that plaintiff had complained to the Knipfings about Zantua's abuse on multiple occasions prior to the email. Otherwise, defendants do not attempt to claim either that (a) the Knipfings exercise reasonable care to prevent or correct Zantua's harassment prior to November 2, or that (b) plaintiff failed to take advantage of corrective opportunities. Indeed, the allegations in the complaint clearly lead to the opposite conclusion on both counts. Accordingly, plaintiff has pleaded plausible claims for hostile work environment under § 1981 and the NYSHRL against Zantua, the Knipfings, and the corporate defendants. However, plaintiff fails to allege either that Savitsky either engaged in any harassment or that he functioned as plaintiff's employer; therefore, plaintiff's retaliation claims against Savitsky are dismissed.

III. Conclusion

Based on the foregoing, it is hereby Ordered that defendants' motion is GRANTED as to plaintiff's claims under the NYCHRL, the New York Labor Law, the New York Penal Law, and plaintiff's claims for discrimination under 42 U.S.C. § 1981 and the NYSHRL; additionally, defendants' motion is GRANTED as to plaintiff's retaliation claims against Savitsky and Zantua and plaintiff's hostile work environment claims against Savitsky. Otherwise, defendants' motion is DENIED.

[1] Plaintiff further alleges that, in response to plaintiff requesting a sick day to visit a doctor on November 2, Ms. Knipfing "attack[ed] the Plaintiff and sabotage[ed] her work or career with unfair treatment, unjustified negative evaluations, humiliating and degrading her, using insensitive terms, continuing with discrimination and harassment." Complaint, DE 8, at 34. However, the text messages that plaintiff refers to in support of this claim indicate that Ms. Knipfing's response was, in fact, fairly mundane, arguably even sympathetic. *See id.* at 129-30.

[2] Plaintiff claims that, by sending this letter, Savitsky "actively participated in retaliation and discrimination" against her. Complaint, DE 8, at 38.

[3] Plaintiff therefore claims that this letter was "illegal because it came from an unknown entity who was not the Plaintiff's employer." Complaint, DE 8, at 41. To be sure, as noted above, the Knipfings identified a number of different persons as plaintiff's employer. Nevertheless, plaintiff concedes that she was terminated by the Knipfings on this date, claiming that Mr. Knipfing "gave the order to Steve Savitsky ... to manufacture the Termination Letter dated November 27, 2018 under the name of the unknown Entity Westbury LLC." *Id.* at 38.

[4] In essence, plaintiff alleges that Uzcategui was over-feeding one of the children candy on a regular basis in order to placate the child.

[5] "Examples of materially adverse employment actions include termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices unique to a particular situation." *Bowen-Hooks v. City of New York*, 13 F. Supp. 3d 179, 211 (E.D.N.Y. 2014). To be sure, plaintiff alleges that Savitsky signed her termination letter, but once again, any allegations that his conduct was in any way "motivated by discriminatory intent" are merely conclusory.

[6] Defendants also argue that plaintiff's discrimination claim fails because, "at the time Plaintiff was employed, the Knipfings employed a very diverse group of people, including Uzcategui, who is also Hispanic and remains employed." DE 22-3 at 17. However, "an employer may not escape liability for discriminating against a given employee on the basis of race simply because it can prove it treated other members of the employee's group favorably." *Graham v. Long Island R.R.*, 230 F.3d 34, 43 (2d Cir. 2000).