

No. 23.7273

In The
Supreme Court of the United States

Lidia M. Orrego - Petitioner,
vs.
Kevin Knipfing, Employer
AKA Kevin James et al. - Respondents,

Petitioner's Motion for Reconsideration of Leave to
Proceed in Forma Pauperis

The Petitioner asks to reconsider leave to file the Petition for a Writ of Certiorari without prepayment of cost and to proceed in forma pauperis filed on April 16, 2024, under Supreme Court Rules 12, 33.2 & 39 due to Petitioner Pro Se non-attorney condition.

Petitioner's affidavit in support and appendices of this motion is attached hereto.

Respectfully submitted,

Lidia M. Orrego
Petitioner Pro Se
95-08 Queens Blvd. 3E
Rego Park, NY 11374
Phone: (347) 453-2234
Email: liorrego@gmail.com

July 11, 2024

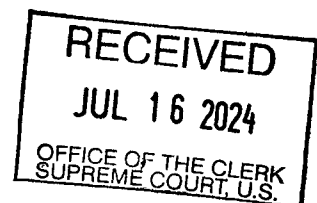


Table of Content

| | | |
|-----|--|----|
| I. | Petitioners' Affidavit Motion Reconsideration for Leave to Proceed in Forma Pauperis | 1 |
| | a) Background of the Case | 1 |
| | b) Petitioner faces significant economic challenges in fulfilling the Supreme Court's order | 3 |
| | c) Related cases and pending file a Writ Certiorari, Mandamus and Prohibition Due to the lower Courts' Impropriety | 4 |
| | d) Reasons to Grant the Motion | 8 |
| | e) Conclusion | 11 |
| II. | Table of Exhibits..... | 12 |

Table of Authorities

| Cases | Page |
|---|----------------------|
| Buck v. Colbath, 70 U.S. 334 (1865)..... | 8 |
| Covell v. Heyman, 111 U.S.176 (1884) | 8 |
| Gumbel v. Pitkin, 124 U.S. 1310, (1888)..... | 8 |
| Krippendorf v. Hyde, 110 U.S. 276, 283 | 8 |
| Lewis v. Casey, 518 U.S. 343, 370 (1996) | 8 |
| Robinson v. De Niro SDNY 19cv09156 (LJL)(KHP) | 1 |
| U.S. Supreme Court Rules | |
| Supreme Rule 12 | 1, 4, 7, 9 |
| Supreme Rule 33.1 | 1, 3, 7, 9, 10 |
| Supreme Rule 33.2 | 1, 4, 7, 9 |
| Supreme Rule 38 (a) | 9 |
| Supreme Rule 39 | 1, 4, 7, 9 |
| Constitution | |
| Constitutional Rights Due Process of Law Clause | |
| The Fifth Amendment..... | 1, 2, 3, 5, 7, 8, 10 |
| Constitutional Rights Equal Protection Clause | |
| The Fourteenth Amendment | 2, 3, 7, 10 |
| New York State Human Rights Law (“NYSHRL”)..... | 1, 2 |
| Statutes | |
| 28 U.S.C. § 1291..... | 6 |
| 28 U.S.C. § 1292 (a) (“§ 1292”)..... | 4, 5, 6, 10 |
| 42 U.S.C. § 1981 (“§ 1981”)..... | 1, 2 |

**Petitioner's Motion for Reconsideration of Leave to
Proceed in Forma Pauperis**

The Petitioner/Appellant/ Plaintiff Pro Se non-attorney, Lidia M. Orrego, asks to Reconsider for Leave to file the Petition for a Writ of Certiorari ("Petition") without prepayment of cost and to proceed in forma pauperis filed on April 16, 2024, under Supreme Court Rule the Motion for Leave to Proceed in Forma Pauperis, annexed the Original Petition and 10 copies under Supreme Court Rules 12, 33.2 & 39.

Petitioner is filing simultaneously a Motion for an Extension of Time.

a) Background of the case

Procedural due process guarantees a fair process in connection with any deprivation of life, liberty, or property by the Government. Procedural due process also ensures that individuals have notice and an opportunity to be heard. See Robinson v. De Niro SDNY 19cv09156 (LJL)(KHP).

The U.S. District Court for the Eastern District of New York had subject matter jurisdiction over this lawsuit because Petitioner-Plaintiff Lidia M. Orrego ("Orrego", "Petitioner") asserts claims for Retaliation, Hostile Work Environment under the 42 U.S.C. § 1981 ("§ 1981") and New York State Human Rights Law ("NYSHRL") against Kevin Knipfing, Employer, AKA, Kevin James, Stephanieanna James-Knipfing, Employer, AKA Steffiana de la Cruz ("Knipfings"), Old Westbury EDDIE LLC, Company/Payroll owner Kevin Knipfing, Old Westbury LLC Unknown Entity under registration in NY State ("Corporations"), Steve Savitsky, Teresa A. Zantua ("Zantua"), (collectively "Respondents", "Defendants").

District Court ("DC") Judge H. Gary R. Brown, on September 30, 2021, filed the Memorandum & Order DC 20CV3361 (GRB) (AKT)¹ ECF doc. [30] on Appellees' Motion to Dismiss the AC ECF doc. [8] affirmed in Orrego's favor based on facts and documentary evidence: "Accordingly, plaintiff has pleaded plausible claims for hostile work environment under § 1981 and the NYSHRL against Zantua, the Knipfings, and the corporate defendants."

DC instead to act according to the Code of Conduct for United States Judges Canons 1, 2, and 3, and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Act of 1980), the DC issued an order abetting and aiding Respondents' fraud, perjury, and obstruction of justice, this order shows the impropriety of the DC and abuse of power and/or abuse of an official position to benefit the Respondents.

Respondent Kevin Knipfing, AKA Kevin James, is protected because of his status as a well-known celebrity on TV shows like "The King of Queens" and "Kevin Can Wait" and in movies. It seems that this qualifies to be above the Law.

Consequently, the petitioner filed motions to rectify the unlawful rulings, violating Due Process of Law and Equal Protection of Law.

It is clear that the DC is attempting to prevent the Petitioner from pursuing her case or submitting all of the evidence because a Jury of reasonable individuals with strong moral values would likely find the Respondents guilty based on the weight of the evidence presented.

¹Notice: DC 20CV3361 (GRB) (AKT) currently DC 20CV3361 (JMA)(AYS)

The Petitioner filed motions to protect her Constitutional Right to Due Process and Equal Protection of the Law. Still, the DC constantly embarrassed her and issued *oppressive and improper orders with threats in violation of the U.S. Constitution.*

b) Petitioner faces significant economic challenges in fulfilling the Supreme Court's order.

This Court denied the Petitioner's Motion for Leave to file the Petition for a Writ of Certiorari without prepayment of cost and to proceed in forma pauperis with the order dated June 24, 2024. See *annexed Appendix A and B.*

Additionally, Respondents failed to file any response to the Notice from the US Supreme Court served on April 26, 2024. See Appendix C.

The Petitioner is asking the Court to consider that her only source of income is insufficient to cover her weekly expenses, medical treatment, and debts, among others, *even when combined with her spouse's income.* Also, please consider that any money Petitioner's household savings is for medical emergencies due to the illness of a family member. Petitioner's total debts reach + \$27,000.00. - See Appendix A.

Petitioner requests that this Court modify the order and consider relief for her from paying the fees and complying with the presentation of the Petition Writ Certiorari under Supreme Court Rule 28(a) and Rule 33.1. See Appendix A.

The Petitioner states that it would be impossible for her to spend between \$3,600.00 to \$4,000.00 **without any guarantee** that her petition will be GRANTED in her favor for the review of all the unfair orders issued in the lower courts.

The Court's decision to deny the petitioner's request to proceed without paying fees and to require compliance with Supreme Court Rule 33.1 puts the petitioner, a

middle-class worker in New York, in the position of having to choose between paying her rent or providing food for her family for at least three months to fight the violation of Constitutional Rights.

This Court has the inherent power to allow the Petitioner to struggle economically to proceed under Supreme Court Rules 12, 33.2, and 39 because this is the first time she has requested this after paying all the fees in the lower court. In return, she is being abused and gaslighted in the lower Courts with outrageous orders that are morally repugnant, as H. Chief Justice John Roberts would call it. See annexed Appendix D, G, and F.

c- Related cases and pending file a Writ Certiorari, Mandamus, and Prohibition Due to the lower Courts' Impropriety

Petitioner made the payments of \$ 2,817.00.- only for fees since 2020 to the lower Courts including the Interlocutory Appeals under 28 U.S.C. § 1292 (a) (1), jurisdiction of the Court of Appeals for the Second Circuit, without seeking a District Court's leave to file appeal plus expenses including but not limited to Process Server Fees, mailing via U.S. Postal Office, copies, office supplies, etc. since 2020 in the present and related cases in the lower Courts as follows:

Eastern District of New York ("EDNY") 20cv3361 (JMA) (AYS), Orrego v Knipfing et al. ECF doc. [1] Receipt payment of \$ 400.00.- Dated July 23, 2020.

EDNY 23cv6507 (JMA) (AYS), Orrego v Pasternack Tilker Ziegler Walsh Stanton & Romano LLP et al. ECF doc. [3] Receipt Payment of \$ 402.00.- Dated August 3, 2023.

EDNY 23cv6507 (JMA) (AYS), Orrego v Pasternack Tilker Ziegler Walsh Stanton & Romano LLP et al. ECF doc. [3] Receipt payment of \$ 402.00.- Dated August 3, 2023.

EDNY 20cv3361 (JMA) (AYS), Orrego v Knipfing et al. ECF doc. [167] Receipt payment of \$ 505.00.- Dated August 4, 2023.

EDNY 20cv3361 (JMA) (AYS), Orrego v Knipfing et al. ECF doc. [179] Receipt payment of \$ 505.00.- Dated November 29, 2023.

EDNY 23cv6507 (JMA) (AYS), Orrego v Pasternack Tilker Ziegler Walsh Stanton & Romano LLP et al. ECF doc. [31] Receipt payment of \$ 505.00.- Dated November 29, 2023.

Petitioner filed on October 31, 2023, a Writ Mandamus Certiorari and Prohibition to District Joan M. Azrack and Magistrate Judge Anne Y. Shields under Title V. Extraordinary Writs Rule 21 – Dkt No. 23-7643 Court of Appeals for the Second Circ. – In RE: Lidia M. Orrego – in support the Interlocutory Appeal case No. 23-1114 Orrego v. Knipfing et al. – ACMS Dkt [2] Receipt Payment \$ 500,00.-

Additionally, the District Court's order regarding the Interlocutory Appeal jurisdiction filed on July 28, 2023, confirmed that the Petitioner has the right to *file an appeal under 28 U.S.C. § 1292 (a) (1)*.

However, the Court of Appeals for the Second Circuit dismisses the Interlocutory Appeals under 28 U.S.C. § 1292 (a) (1) egregiously and unreasonably violating the Law, Constitutional Rights to Due Process, and Equal Clause Protection in Petitioner's prejudice.

US Court of Appeals for the Second Circuit shows impropriety by ruling without any explanation the Dismissal for Interlocutory Appeals, even their *automatic jurisdiction pursuant to 28 U.S.C. § 1292 (a) (1)* through a fraudulent misrepresentation by unlawfully dismissing the appeals by invoking intentionally a “not” jurisdiction under 28 U.S.C. 1291 the cases:

Appendix D: No. 23-1114 – Orrego v Knipfing et al.
US Court of Appeals for the Second Circ.
Order dated December 1, 2023
See Annexed Page: 13a

Appendix F: No. 23-7643 – In RE: Lidia M. Orrego
US Court of Appeals for the Second Circ.
Order dated March 14, 2024
See Annexed Page: 15a

Appendix G: No. 23-7928 – Orrego v Pasternack Tilker
Ziegler Walsh Stanton & Romano LLP et al.
US Court of Appeals for the Second Circ.
Order dated March 14, 2024
See Annexed Page: 16a

Petitioner not only must file this Petition Writ Certiorari regarding the case No. 23-1114, but she also must file the petitions for cases in the Court of Appeals for the Second Circuit No. 23-7928 and No. 23-7643 unlawfully dismissed based on misrepresentation to abet and aid the Respondents’ perjured affidavits, obstruction of justice, and falsification of business and insurance records, among others.

At this point, the Petitioner must additionally file a writ of mandamus and prohibition for an order from the US Supreme Court to the lower Courts, ordering “to properly fulfill their official duties and correct the abuse of discretion and power.

If the Petitioner's additional petitions are denied again to proceed in forma pauperis, she must expend more than \$ 16,000.00. - only to provide the costly "booklets" instead to relieve the Petitioner of filing the petition under the Supreme Rules Supreme Court Rules 12, 33.2, and 39, who expend a lot of money to provide the Original and 10 copies with her Motion for Leave to Proceed in Forma Pauperis.

In a surprising turn of events, one of the Petitioner's Interlocutory Appeals proceeded as usual, and the Scheduling Order was issued to ensure compliance with the Due Process of Law and Equal Protection Clause under the U.S. Constitution:

Appendix E: No. 23-7941 – Orrego v Knipfing et al.
US Court of Appeals for the Second Circ.
Order dated February 7, 2024
See Annexed Page: 14a

Appendix H: No. 23-7941 – Orrego v Knipfing et al.
US Court of Appeals for the Second Circ.
Corrected Brief Filed March 18, 2024
See Annexed Page: 17a

Appendix I: No. 23-7941 – Orrego v Knipfing et al.
US Court of Appeals for the Second Circ.
Order to Respondents dated April 2, 2024,
to file the Brief on or before June 17, 2024
See Annexed Page: 67a

Petitioner acknowledges that it is reasonable to expect a law firm or lawyer charging at least \$1,000.00 per hour to adhere to Supreme Court Rule 33.1. Given the circumstances, the Respondents will compensate at a higher rate by hiring a well-connected law firm like Gordon Rees Scully Manshukani LLP ("GRSM"), which involves significant costs to file perjured statements and commit fraud.

GRMS' criminal actions are not "cheap", including filing perjured affidavits, committing fraud, falsifying business records, and gross conflict of interest with Petitioner's legal representation, justify that GRSM needs higher compensation to avoid the responsibility of holding the Respondents accountable for their civil wrongs and criminal actions in the lower Courts.

It seems that for the lower Courts, the case is based on the power of money and influence in the Court from GRSM rather than the evidence held by the Petitioner. It's horrifying that despite the Law and evidence, the case is "rigged" to be dismissed in a Motion for Summary Judgment in the DC, violating the Due Process of Law and the Equal Protection Clause.

d) Reasons to Grant the Motion

1) The Supreme Court noted, "There can be no equal justice where the kind of trial a man gets depends on the amount of money he has." *Lewis v. Casey*, 518 U.S. 343, 370 (1996); (internal citations omitted).

2) This Court has inherent equitable powers over their process to prevent abuse, oppression, and injustice. *Gumbel v. Pitkin*, 124 U.S. 131 (1888); *Covell v. Heyman*, 111 U.S.176 (1884); *Buck v. Colbath*, 70 U.S. 334 (1865); *Krippendorf v. Hyde*, 110 U.S. 276, 283.

3) "EQUAL JUSTICE UNDER LAW" - These words, written above the main entrance to the Supreme Court Building, express the ultimate responsibility of the Supreme Court of the United States. The Court is the highest tribunal in the Nation for all cases and controversies arising under the Constitution or the laws of the United

States. As the final arbiter of the Law, the Court is charged with ensuring the American people the promise of equal justice under the Law and, thereby, functions as *guardian and interpreter of the Constitution*.

4) The Supreme Court should review the reconsideration of the Motion to Proceed in Forma Pauperis to prevent the Petitioner from suffering further economic, emotional, and physical harm. Without this review, this Court would fail to uphold the "Equal Justice under the Law for all Citizens " principle.

5) Petitioner *expends much money in the presentation* under Rules by filing Original Petition Writ Certiorari and 10 copies under Supreme Court Rules 12, 33.2 & 39 on April 16, 2024. See Supreme Court Docket 23-7273.

6) The content of filing the petition is the same for Supreme Rules 33.1 and 33.2; the outcome would be identical. It would be grossly unjust to compel the Petitioner to resort to a *high-interest loan to cover the fees and unnecessary costs* under her Pro Se status, particularly when there is no guarantee of the petition being granted.

7) It's unclear why the Supreme Court has ordered the Plaintiff, who is the head of her household, to bear the financial burden to file under Supreme Rule 38 (a) and the costly Rule 33.1 when is national news that New York City families "life costs have increased 131% and the latest findings show 50% of working-age New Yorkers are struggling to cover costs. And roughly 3 million New Yorkers struggle to afford healthy food." Source ABC 7 - Eyewitness News <https://abc7ny.com/nyc-cost-of-living-rent-income/14545036/> - Published April 3, 2024. If the People cannot access healthy food with their income, they will be less able to access justice.

8) This financial burden is due to the court fees and the expensive "booklet" required by Supreme Court Rule 28(a) and Rule 33.1. middle-class family, to choose between paying her rent or providing food for her family for at least three months in order to cover the court fees and the costly "booklet" required under Supreme Rule 28(a) and Rule 33.1. Additionally, the Petitioner must type all the Petition's appendices.

9) The Petitioner is dedicated to seeking justice in her case. It is unfair for the lower Courts to deplete her resources and deny her the right to pursue interlocutory appeals. This is especially true considering the lower Court has automatic jurisdiction over injunctions under 28 U.S.C. § 1292(a)(1). There is also concern that the lower court may mistreat the petitioner because she is a Hispanic woman representing herself without an attorney and has disabilities.

10) This Court has the inherent power to grant permission to file in forma pauperis in order to protect Petitioner's Constitutional Rights to due process and equal protection of the Law, as well as her right to access the courts. This is necessary to prevent unfair deprivation of her rights before they are decided upon by the lower Courts in violation of Due Process. This Court will consider that the Petitioner has paid only in Court fees more than \$ 2,817.00. - since July 2020.

11) Alternatively, the Petitioner requests relief from the costly compliance of U.S. Supreme Court Rule 33.1 and time to organize a fundraiser up to 60 days to cover the court fees. Even former President Donald Trump, a billionaire, is seeking donations to address the "lawfare", the same situation Petitioner faces in the lower Courts due to the lawfare and abuse of power and discretion.

e) Conclusion

Wherefore, Petitioner respectfully requests to review this reconsideration and Grant to proceed in *forma pauperis* and granted the relief to avoid a miscarriage of justice and continuing the abuse of power in her case from the lower Courts for the Second Circuit.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: July 11, 2024



(Signature)

III. Table of Exhibits

| | |
|--|-----|
| Appendix A: No. 23-7273 – Orrego v Knipfing et al. Supreme Court of United States Order dated June 24, 2024..... | 1a |
| Appendix B: No. 23-7273 – Orrego v Knipfing et al. Supreme Court of United States Motion for Leave to Proceed in Forma Pauperis filed April 16, 2024..... | 2a |
| Appendix C: No. 23-7273 – Orrego v Knipfing et al. Supreme Court of United States Notice and Waiver server to Respondents on April 26, 2024 | 8a |
| Appendix D: No. 23-1114 – Orrego v Knipfing et al. US Court of Appeals for the Second Cir. Order dated December 1, 2023 | 13a |
| Appendix E: No. 23-7941 – Orrego v Knipfing et al. US Court of Appeals for the Second Cir. Order dated February 7, 2024 | 14a |
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**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

Scott S. Harris
Clerk of the Court
(202) 479-3011

June 24, 2024

Mr. Lidia M. Orrego
95-08 Queens Blvd. 3E
Rego Park, NY 11374

Re: Lidia M. Orrego
v. Kevin Knipfing, aka Kevin James, et al.
No. 23-7273

Dear Mr. Orrego:

The Court today entered the following order in the above-entitled case:

The motion of petitioner for leave to proceed *in forma pauperis* is denied. Petitioner is allowed until July 15, 2024, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

Sincerely,



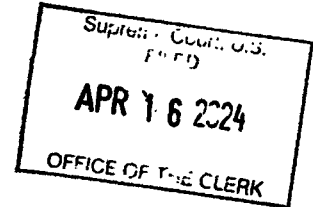
Scott S. Harris, Clerk

No. **23-7273**

IN THE
SUPREME COURT OF THE UNITED STATES

Lidia M. Orrego — PETITIONER
(Your Name)

VS.
Kevin Knipfing, Employer,
AKA Kevin James et al. — RESPONDENT(S)



MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

☐ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

☒ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

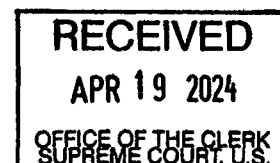
☒ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: _____, or

☐ a copy of the order of appointment is appended.

(Signature)



**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS**

I, Lidia M. Orrego, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor, and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

| Income source | Average monthly amount during the past 12 months | | Amount expected next month | |
|--|--|----------------------|----------------------------|----------------------|
| | You | Spouse | You | Spouse |
| Employment | \$ 4,000.05.- | \$ 4,159.00.- | \$ 4,000.05.- | \$ 4,159.00.- |
| Self-employment | \$ 0 | \$ 0 | \$ 0 | \$ 0 |
| Income from real property (such as rental income) | \$ 0 | \$ 0 | \$ 0 | \$ 0 |
| Interest and dividends | \$ 0 | \$ 0 | \$ 0 | \$ 0 |
| Gifts | \$ 0 | \$ 0 | \$ 0 | \$ 0 |
| Alimony | \$ 0 | \$ 0 | \$ 0 | \$ 0 |
| Child Support | \$ 0 | \$ 0 | \$ 0 | \$ 0 |
| Retirement (such as social security, pensions, annuities, insurance) | \$ 0 | \$ 0 | \$ 0 | \$ 0 |
| Disability (such as social security, insurance payments) | \$ 0 | \$ 0 | \$ 0 | \$ 0 |
| Unemployment payments | \$ 0 | \$ 0 | \$ 0 | \$ 0 |
| Public-assistance (such as welfare) | \$ 0 | \$ 0 | \$ 0 | \$ 0 |
| Other (specify): _____ | \$ 0 | \$ 0 | \$ 0 | \$ 0 |
| Total monthly income: | \$ 4,000.05.- | \$ 4,159.00.- | \$ 4,000.05.- | \$ 4,159.00.- |

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

| Employer | Address | Dates of Employment | Gross monthly pay |
|----------|-----------------------------------|-----------------------|-------------------|
| LHH | 100 E 77th St, New York, NY 10075 | Nov.2021 to present | \$ 3,748.00.- |
| HFA | 938 Sheridan Ave, Bronx, NY 10451 | Set.2021 to Jul. 2023 | \$ 2,318.00.- |
| | | | \$ |

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

| Employer | Address | Dates of Employment | Gross monthly pay |
|----------|-----------------------------|------------------------|-------------------|
| DOTC | 3537 36th, Astoria NY 11106 | August 2021 to present | \$ 4,159.00.- |
| | | | \$ |
| | | | \$ |

4. How much cash do you and your spouse have? \$ 2,704.00.-

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

| Type of account (e.g., checking or savings) | Amount you have | Amount your spouse has |
|---|-----------------|------------------------|
| Saving | \$ 442.00.- | \$ 1,500.00.- |
| Checking | \$ 762.00.- | \$ |
| | \$ | \$ |

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings. N/A

☐ Home
Value 0

☐ Other real estate
Value 0

☐ Motor Vehicle #1
Year, make & model
Value 0

☐ Motor Vehicle #2
Year, make & model
Value 0

☐ Other assets
Description
Value 0

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

| Person owing you or your spouse money | Amount owed to you | Amount owed to your spouse |
|---------------------------------------|--------------------|----------------------------|
| N/A | \$ 0 | \$ 0 |
| | \$ 0 | \$ 0 |
| | \$ 0 | \$ 0 |

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

| Name | Relationship | Age |
|------|--------------|-----|
| T.J. | Child | 11 |
| | | |
| | | |

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

| | You | Your spouse |
|---|-------------|-------------|
| Rent or home-mortgage payment (include lot rented for mobile home) | \$ 750 | \$ 750 |
| Are real estate taxes included? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | | |
| Is property insurance included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | |
| Utilities (electricity, heating fuel, water, sewer, and telephone) | \$ 180,00.- | \$ 180,00.- |
| Home maintenance (repairs and upkeep) | \$ 0 | \$ 0 |
| Food | \$ 300,00.- | \$ 300,00.- |
| Clothing | \$ 200,00.- | \$ 200,00.- |
| Laundry and dry-cleaning | \$ 60,00.- | \$ 60,00.- |
| Medical and dental expenses | \$ 60,00.- | \$ 0 |

| | You | Your spouse |
|--|----------------------|----------------------|
| Transportation (not including motor vehicle payments) | \$ <u>200,00.-</u> | \$ <u>200,00.-</u> |
| Recreation, entertainment, newspapers, magazines, etc. | \$ <u>0</u> | \$ <u>0</u> |
| Insurance (not deducted from wages or included in mortgage payments) | | |
| Homeowner's or renter's | \$ <u>0</u> | \$ <u>0</u> |
| Life | \$ <u>65,00.-</u> | \$ <u>0</u> |
| Health | \$ <u>120,00.-</u> | \$ <u>0</u> |
| Motor Vehicle | \$ <u>0</u> | \$ <u>261,00.-</u> |
| Other: _____ | \$ <u>0</u> | \$ <u>0</u> |
| Taxes (not deducted from wages or included in mortgage payments) | | |
| (specify): _____ | \$ <u>0</u> | \$ <u>0</u> |
| Installment payments | | |
| Motor Vehicle | \$ <u>392,00.-</u> | \$ <u>0</u> |
| Credit card(s) | \$ <u>1,200,00.-</u> | \$ <u>1,100,00.-</u> |
| Department store(s) | \$ <u>0</u> | \$ <u>0</u> |
| Other: <u>Loan</u> | \$ <u>615,00.-</u> | \$ <u>0</u> |
| Alimony, maintenance, and support paid to others | \$ <u>0</u> | \$ <u>0</u> |
| Regular expenses for operation of business, profession, or farm (attach detailed statement) | \$ <u>0</u> | \$ <u>0</u> |
| Other (specify): _____ | \$ <u>0</u> | \$ <u>0</u> |
| Total monthly expenses: | \$ <u>4,142,00.-</u> | \$ <u>3,051,00.-</u> |

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☒ Yes ☐ No If yes, describe on an attached sheet.

Petitioner's and Spouse Debts Credit Cards Total \$ 17,577,00.-

Petitioner's debts are part of accrued expenses for legal expenses (non-attorney)

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☒ No

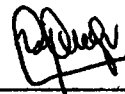
If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case. Please find attached the annexed The Court of Appeals for the Second Circuit's Order CMECF doc. [77] has denied the reimbursement of the fee of \$505.00 paid by the Petitioner for the Interlocutory Appeal under 28 U.S.C. § 1292 CMECF [70-1], which was improperly dismissed under 28 U.S.C. § 1291. The Petitioner would have paid the fee if the Court had fulfilled its duties or returned the money. The lower Court's failure to do so amounts to undue enrichment. It is a gross Miscarriage of Justice. See annexed Exhibit 1.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: April 13, 2024



(Signature)

No. 23-7273

IN THE
SUPREME COURT OF THE UNITED STATES

Lidia M. Orrego — PETITIONER
(Your Name)

VS.

Kevin Knipping, Employer,
AKA Kevin James et al. — RESPONDENT(S)

PROOF OF SERVICE

I, Lidia M. Orrego, do swear or declare that on this date,
April 26, 2024, NOTICE U.S. SUPREME CASE 23-7273 and Waiver on
each party to the above proceeding or that party's counsel, and on every other person
required to be served, by depositing an envelope containing the above documents in the
United States mail properly addressed to each of them and with first-class postage
prepaid, or by delivery to a third-party commercial carrier for delivery within 3
calendar days and via email. See attached proof of service.

The names and addresses of those served are as follows:

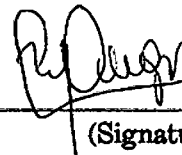
Law Firm Gordon Rees Scully Mansukhani, LLP - Kuuku Minnah-Donkoh

One Battery Park Plaza, 28th Floor, New York, NY 10004

Phone: (212) 453-070

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 26, 2024


(Signature)

Lidia M. Orrego
(Petitioner)

v.

No. 23-7273

Kevin Knipfing, aka Kevin James, et al.
(Respondent)

To Gordon Rees Scully Mansukhani, LLP - K. Minnah-Donkoh Counsel for Respondent:

0

NOTICE IS HEREBY GIVEN pursuant to Rule 12.3 that a petition for a writ of certiorari in the above-entitled case was filed in the Supreme Court of the United States on April 16, 2024, and placed on the docket April 19, 2024. Pursuant to Rule 15.3, the due date for a brief in opposition is Monday, May 20, 2024. If the due date is a Saturday, Sunday, or federal legal holiday, the brief is due on the next day that is not a Saturday, Sunday or federal legal holiday.

Beginning November 13, 2017, parties represented by counsel must submit filings through the Supreme Court's electronic filing system. Paper remains the official form of filing, and electronic filing is in addition to the existing paper submission requirement. Attorneys must register for the system in advance, and the registration process may take several days. Further information about the system can be found at <https://www.supremecourt.gov/filingandrules/electronicfiling.aspx>.

Unless the Solicitor General of the United States represents the respondent, a waiver form is enclosed and should be sent to the Clerk only in the event you do not intend to file a response to the petition.

Only counsel of record will receive notification of the Court's action in this case. Counsel of record must be a member of the Bar of this Court.

Mr. Lidia M. Orrego
95-08 Queens Blvd. 3E
Rego Park, NY 11374
347-453-2234

NOTE: This notice is for notification purposes only, and neither the original nor a copy should be filed in the Supreme Court.

WAIVER

Supreme Court of the United States

No. 23-7273

Lidia M. Orrego
(Petitioner)

v. Kevin Knipfing, aka Kevin James, et al.
(Respondent)

I DO NOT INTEND TO FILE A RESPONSE to the petition for a writ of certiorari unless one is requested by the Court.

Please check the appropriate box:

- ☐ I am filing this waiver on behalf of all respondents.
- ☐ I only represent some respondents. I am filing this waiver on behalf of the following respondent(s):

Please check the appropriate box:

- ☐ I am a member of the Bar of the Supreme Court of the United States. (Filing Instructions: File a signed Waiver in the Supreme Court Electronic Filing System. The system will prompt you to enter your appearance first.)
- ☐ I am not presently a member of the Bar of this Court. Should a response be requested, the response will be filed by a Bar member. (Filing Instructions: Mail the original signed form to: Supreme Court, Attn: Clerk's Office, 1 First Street, NE, Washington, D.C. 20543).

Signature _____

Date: _____

(Type or print) Name _____
☐ Mr. ☐ Ms. ☐ Mrs. ☐ Miss

Firm _____

Address _____

City & State _____ Zip _____

Phone _____ Email _____

A COPY OF THIS FORM MUST BE SENT TO PETITIONER'S COUNSEL OR TO PETITIONER IF PRO SE. PLEASE INDICATE BELOW THE NAME(S) OF THE RECIPIENT(S) OF A COPY OF THIS FORM. NO ADDITIONAL CERTIFICATE OF SERVICE OR COVER LETTER IS REQUIRED.

cc:



Lidia Orrego <liorrego@gmail.com>

U.S. Supreme Court of the United States No. 23-7273 - NOTICE CASE DOCKETED

Lidia Orrego <liorrego@gmail.com>

Fri, Apr 26, 2024 at 3:12 PM

To: Kuuku Minnah-Donkoh <kminnahdonkoh@grsm.com>, kminnahdonkoh@gordonrees.com, Peter Cella

<pcella@grsm.com>, Dallas Rivera <drievera@grsm.com>

Cc: dcominos@grsm.com, mstephens@grsm.com, snahal@grsm.com, floyd2016@grsm.com, hshearer@grsm.com,

bbleichner@grsm.com, abarton@grsm.com, amontgomery@grsm.com, tquinn@grsm.com, jmourgos@grsm.com,

chill@grsm.com, fhardy@grsm.com, ldesantos@grsm.com, sbitter@grsm.com, asugarman@grsm.com,

dmeppen@grsm.com, jsalvo@grsm.com, blevine@grsm.com, bmiddlebrook@grsm.com, mcolwin@grsm.com,

bprimavera@grsm.com, Lidia Orrego <liorrego@gmail.com>

Law Firm GRSM

Attached courtesy copy served via U.S. Postal Services.

Regards,

Lidia Orrego

Pronouns She/Her/Ella

Plaintiff Pro Se

95-08 Queens Blvd. 3E

Rego Park, NY 11374

Community Health Worker (CHW)

Phone: (347)4532234

"If you are neutral in situations of Injustice, you have chosen the side of the Oppressor." Desmond Tutu**EMAIL SERVED 04-26-2024 DOCKETED LETTER SERVICE DEF. NO. 23-7273.pdf**

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Lidia Orrego <liorrego@gmail.com>

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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.

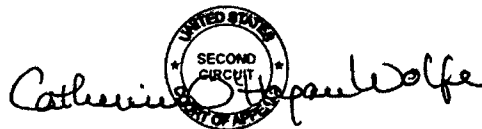
23-1114

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

The block contains a handwritten signature of Catherine O'Hagan Wolfe in cursive script. To the left of the signature is the official seal of the United States Court of Appeals for the Second Circuit. The seal is circular with "UNITED STATES" at the top, "SECOND CIRCUIT" in the center, and "CITY OF NEW YORK" at the bottom.

**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 7th day of February, two thousand twenty-four,

Lidia M. Orrego,

Plaintiff - Appellant,

v.

Kevin Knipfing, AKA Kevin James,
Employer, Stephanieanna James-Knipfing, AKA
Steffiana de la Cruz, Employer, 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. 23-7941

APPELLANT has filed a scheduling notification, *pro se*, pursuant to the Court's Local Rule 31.2, setting March 19, 2024 as the brief and joint appendix filing date.

The scheduling notification hereby is so ordered.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court

The signature of Catherine O'Hagan Wolfe is written in cursive over a circular seal. The seal contains the text "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS" around a central emblem.

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 14th day of March, two thousand twenty-four.

Present:

José A. Cabranes,
Richard C. Wesley,
Alison J. Nathan,
Circuit Judges.

In re Lidia M. Orrego,


23-7643

Petitioner.

Petitioner, pro se, has filed a petition for writs of mandamus, prohibition, and certiorari. Upon due consideration, it is hereby ORDERED that the petition is DENIED because Petitioner has not demonstrated that her right to the writ of mandamus is clear and indisputable, and that granting the writ is appropriate under the circumstances, and because the writ of prohibition may only be used “for the purpose of keeping [an] inferior court within the limits of its jurisdiction.” *Pan Am. Petrol. Corp. v. Superior Ct. of Del. In & For New Castle Cnty.*, 366 U.S. 656, 657 n.1 (1961); see *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380–81 (2004).

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

Catherine O'Hagan Wolfe

The seal of the United States Court of Appeals for the Second Circuit is circular. It features the words "UNITED STATES" at the top and "SECOND CIRCUIT" at the bottom, separated by two stars. The seal is positioned over the signature of Catherine O'Hagan Wolfe.

E.D.N.Y. – C. Islip
23-cv-6507
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 14th day of March, two thousand twenty-four.

Present:

José A. Cabranes,
Richard C. Wesley,
Alison J. Nathan,
Circuit Judges.

Lidia M. Orrego,

Plaintiff-Appellant,

v.

23-7928

Pasternack Tilker Ziegler Walsh Stanton & Romano LLP,
Pasternack Tilker Weitz & Luxenberg LLP, First Choice
Evaluations LLC, Jason Hochfelder, MD,


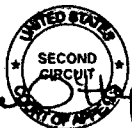
Defendants-Appellees,

John Doe, Jane Doe,

Defendants.

This Court has sua sponte determined 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

23-7941-cv

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

LIDIA M. ORREGO
Plaintiff/Appellant

v.

**KEVIN KNIPFING, A/K/A KEVIN JAMES, STEPHANIEANNA JAMES-KNIPFING
A/K/A STEFFIANA DE LA CRUZ, OLD WESTBURY EDDIE LLC, OLD
WESTBURY LLC, STEVE SAVITSKY, TERESA A. ZANTUA**
Defendants/Appellees

**ON APPEAL FROM THE UNITED STATES EASTERN DISTRICT OF NEW YORK
("EDNY") UNDER 28 U.S.C. § 1292
DC 20CV3361 (JMA) (AYS)**

BRIEF AND SPECIAL APPENDIX FOR PLAINTIFF/APPELLANT

Appeal Based on Published Decisions

**Lidia M. Orrego
Plaintiff-Appellant Pro Se
95-08 Queens Blvd. 3E
Rego Park, NY 11374
Phone (347) 453-2234
Email: liorrego@gmail.com**

STATEMENT REGARDING ORAL ARGUMENT

Pro Se Plaintiff -Appellant Lidia M. Orrego (“Orrego”) respectfully requests oral argument. The orders below prohibit Orrego from filing her drawing motions, letters-motions, or letters with supporting papers, documentary evidence, and a full evidentiary record.

The spoliation and/or alteration of evidence by the District Court, which "cut," manipulated, improperly sealed, or prevented Orrego from filing her documentary evidence under false statements or misrepresentation to cover the Court's impropriety based on false grounds, represents a direct attack on Orrego's Constitutional Rights, Due Process of Law, and Freedom of Speech to secure and pursue justice in her case.

Orrego has the right to file all the documentary evidence to support her pleadings, letter and motions under the Federal Rules of Civil Procedure ("FRCP"), which govern civil proceedings in the United States District Courts and Local Civil Rules disregard the length of the documents because, as Pro Se, she cannot file the documents electronically in the Court System and the rules' purpose is "to secure the just, speedy, and inexpensive determination of every action and proceeding." to secure the natural justice.

Oral argument can help the Court address the significant constitutional issues raised in this appeal.

TABLE OF CONTENTS

| | |
|--|-----|
| Table of Contents | ii |
| Table of Authorities | iii |
| Statutes and Rules..... | iv |
| Statement of the Subject Matter and Appellate Jurisdiction | 1 |
| Statement of the Issues Presented for Review..... | 4 |
| Statement of the Case | 5 |
| Statement of the Facts | 8 |
| I. District Court’s Orders and Appellant’s Filings October-November 2023..... | 8 |
| II. Appellant’s filings unlawfully retained and returned..... | 14 |
| III. District Court Order November 14, 2024, unlawful and discriminatory..... | 17 |
| Summary of the Argument..... | 18 |
| Argument | 19 |
| I. Standard of Review..... | 19 |
| II. District Court’s prohibition to file “Exhibits” in Violation of the Law..... | 19 |
| III. District Court’s threats to apply sanctions..... | 22 |
| Conclusion..... | 23 |
| Certificate of Compliance..... | 24 |
| Certificate of Service..... | 25 |
| Special Appendix..... | 26 |
| Special Appendix Table of Contents..... | 27 |

TABLE OF AUTHORITIES

FEDERAL CASES

| | |
|---|--------|
| <i>11A C. Wright, A. Miller M. Kane</i> | 19 |
| Federal Practice Procedure § 2948.1, at 144-49 (2d ed. 1995) | |
| <i>Carson v. American Brands, Inc.</i> , | 3 |
| 450 U.S. at 85, 101 S.Ct. at 997. | |
| <i>Faiveley Transp. v. Wabtec Corp.</i> , | 19 |
| 559 F.3d 110, 116 (2d. Circ. 2009) | |
| <i>In RE: Lidia M. Orrego</i> | 7 |
| Case 23-7643 Court of Appeals Second Circuit | |
| <i>JLM Couture, Inc. v. Gutman</i> , | 1 |
| Cases Nos. 21-2535; 22-1694 Court of Appeals Second Circuit | |
| <i>Mancheski v Gabelli Group Capital Partners</i> , | 3 |
| 39 AD3d 499, 501 [2d Dept 2007] | |
| <i>Robinson v. De Niro SDNY 19cv09156 (LJL)(KHP)</i> | 15, 20 |
| <i>The Resource Group International Limited et al. v. Chishti</i> | 1 |
| Case No. 23-286 Court of Appeals Second Circuit | |

STATE CASES

| | |
|--|------------|
| Docket No. 535740 Appellate Division Third Department – NYSCEF..... | 15 |
| New York County Supreme Court Index 150188/2018..... | 21 |
| New York County Supreme Court Index 651243/2020..... | 21 |
| New York State Court Kings County Supreme Court Index 502640/2012..... | 21 |
| Workers Compensation Board (“WCB”) case G2584330..... | 13, 15, 22 |

STATUTES, CONSTITUTIONAL PROVISIONS

| | |
|--|------------------------------|
| 18 U.S. Code § 241 - Conspiracy against rights..... | 20 |
| 18 U.S. Code § 242 - Deprivation of rights under color of law..... | 20 |
| 28 U.S.C. 1292 (a)..... | 1, 2, 8, 19 |
| 28 U.S.C. § 1927..... | 23 |
| 28 U.S.C. § 332 (d) (3)..... | 7, 20 |
| 28 U.S.C. § 351..... | 7, 20 |
| 28 U.S.C. § 364..... | 7, 20 |
| 28 U.S.C. § 455 (a)..... | 20 |
| 42 U.S.C. § 1981 (“§ 1981”)..... | 1, 6, 28 |
| Civil Rights of 1962..... | 22 |
| Civil Rights Acts of 1964..... | 20 |
| Code of Conduct for United States Judges Canons 1, 2, and 3..... | 7, 20 |
| Rules for Judicial-Conduct and Judicial-Disability Proceedings | |
| Constitutional Rights Due Process of Law | |
| The Fifth Amendment – The Fourteenth Amendment..... | 2, 4, 11, 16, 18, 19, 20, 21 |
| First Amendment Freedom of Speech..... | 4, 16, 18, 20 |
| Judicial Conduct and Disability Act of 1980..... | 20 |
| Equal Protection of Law..... | 4, 20, 21 |
| New York State Human Rights Law (“NYSHRL”)..... | 1, 6, 28 |

RULES

| | |
|--|----------------|
| Federal Rules Civil Procedure (“FRCP”) Rule 11..... | 8, 16, 20, 22 |
| Fed. Rule C. P. FRCP 5.2 (b) (4)..... | 13, 14, 16, 20 |
| Fed. Rule C. P. FRCP 26..... | 6, 11, 15, 20 |
| Fed. Rule C. P. FRCP 30 (b) (6)..... | 11 |
| Fed. Rule C. P. FRCP 31 | 11 |
| Fed. Rule C. P. FRCP Rule 31 (4)..... | 11 |
| Fed. Rule C. P. FRCP Rule 37..... | 15, 20 |
| Local Civil Rule 12.1..... | 12 |
| Local Civil Rule 56.1..... | 12 |
| Local Civil Rule 56.2 | 4 |
| Model Rules of Professional Conduct Rule 1.7: Conflict of Interest..... | 13, 14 |
| NYS Rules Professional Conduct Rules 3.5..... | 7, 20 |
| NYS Rules Professional Conduct Rules 4.1..... | 7, 20 |

STATEMENT OF SUBJECT OF THE MATTER
AND APPELLATE JURISDICTION

The District Court had subject matter jurisdiction over this lawsuit because Plaintiff-Appellant Lidia M. Orrego (“Orrego”) asserts claims for Retaliation, Hostile Work Environment under 42 U.S.C. § 1981 (“§ 1981”) and New York State Human Rights Law (“NYSHRL”).

This Court has appellate jurisdiction over this appeal under 28 U.S.C. § 1292 (a) (1) because this is an appeal of an order or decision of the United States District Court for the Eastern District of New York to apply for an unfair injunction. See this Court Decisions Case No. 23-286 The Resource Group International Limited et al. v. Chishti; and Cases Nos. 21-2535; 22-1694 JLM Couture, Inc. v. Gutman "orders “granting, continuing, modifying, refusing or dissolving injunctions” are immediately appealable under 28 U.S.C. § 1292(a)(1).

Orrego timely filed a notice of appeal on November 29, 2023, within 30 days of the District Court’s entry by District Judge Joan M. Azrack on November 14, 2023, of an unfair injunction against her based on false statements and grounds, to prevent the entry at ECF System of District Court on November 13, 2023, her Motion to Disqualify Opposite Counsel of the Appellees-Defendants Kevin Knipfing, a/k/a Kevin James, Stephanieanna James-Knipfing a/k/a Steffiana De La Cruz (“Knipfings”), Old Westbury Eddie LLC, Old Westbury LLC (“Corporations”), Steve Savitsky, Teresa A. Zantua (“Zantua”) (Collectively “Appellees or Defendants”) for multiple crimes.

Orrego submitted several documents and papers to the District Court between October 9, 2023, and November 13, 2023. Orrego's filings were concealed in the District Court Chambers until the illegal rejection under false statements with the order dated November 14, 2023.

The order prohibited Orrego from filing "EXHIBITS" along with her documents or motions. Orrego is appealing this injunction order in this Court.

Additionally, the Orrego's "EXHIBITS" in certain documents were "altered" to being filed in the ECF system based on false statements from the District Court to prevent natural Justice in violation of the Fifth and Fourteenth Amendments of Due Process, as these motions and certifications related to the Discovery would end the case in favor of the Appellant.

The unfair injunction order to prevent Orrego from filing "Exhibits" based on false grounds is "inextricably intertwined" with the orders filed on October 30, 2023, the denial of Orrego's Motions Court's ECF, Motion for Leave to Allow Pro Se for Electronic File ECF No. [174], and Motion to Unseal Documents ECF No. [173].

If the orders entered on November 14, 2023, and October 30, 2023, "inextricably intertwined," are not reviewed by this intermediate appeal under 28 U.S.C. 1292(a)(1), it will result in irreparable harm and a miscarriage of justice because not allowing Orrego to file "Exhibits" or documents, Electronically Stored Information ("ESI"), tangible things, or other papers with her pleadings, letters, or motions, including her

Summary Judgment Motion, will cause a miscarriage of natural justice that sustain the basic fundamental principles of fair treatment.

Under New York Law, there is a presumption that the public is entitled to access to judicial proceedings and court records (*Mancheski v Gabelli Group Capital Partners*, 39 AD3d 499, 501 [2d Dept 2007]).

The further teaching of the Supreme Court has limited that section to appeals from interlocutory orders that the appealing parties can show "might cause them irreparable consequences if not immediately reviewed." *Carson v. American Brands, Inc.*, 450 U.S. at 85, 101 S.Ct. at 997.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1) Did the District Court make any changes or destroy evidence or “Exhibits” related to the Appellant Pro Se Orrego's documents?

2) Did the District Court unlawfully alter Orrego's "Exhibits" on motions, letters, or pleadings by cutting or sealing them on the ECF System, in violation of Federal Rules of Civil Procedures, Local Civil Rules, and Document Filing Guidelines for Pro Se Litigants, based on false grounds to avoid public scrutiny?

3) Does the District Court plan to continue violating Due Process Law and the Equal Protection of the Law by ruling and upholding unlawful orders to prevent future "Exhibits" filings from Orrego based on false grounds, despite the Laws and Federal Rules of Civil Procedures?

4) Did the District Court unfairly criticize the length of Orrego's filings, considering that filings attaching “Exhibits” to the documents are allowed by the Federal Rules of Civil Procedures, Local Civil Rules, and Document Filing Guidelines for Pro Se Litigants?

STATEMENT OF THE CASE¹

On July 23, 2020, Orrego, proceeding *pro se*, filed her Complaint in this matter, which was 145 pages long (Brief 45 Pages + 33 Exhibits and other papers 100 Pages).

On August 17, 2020, Appellant Orrego filed her “AC” total 145-Page (including 33 Exhibits) See A-4. Vol. I, allege the following relevant factual background:

Orrego was subjected to pervasive and severe physical and emotional assaults, verbal abuse, harassment, retaliation, victimization, violence, etc., according to plenty documentary evidence such as text messages, emails, recordings, transcriptions, medical records, etc., during her employment between January and December 2018 with Appellees as evidence based on her race by Zantua, Appellees Knipfings and the Corporations (one ghost-corporation unregistered in New York State “Old Westbury LLC” under the Appellees Knipfings). See AC ECF doc. [8] A-4. Vol. I.

The Knipfings and Corporations failed to address and/ or take action against Zantua for creating a dangerous work environment that affected the Appellant's physical and emotional well-being, resulting in irreversible damages. In retaliation, Plaintiff was terminated on November 27, 2018, within 25 days of filing her complaint via email to the Knipfings on November 2, 2018. See AC ECF doc. [8] A-4. Vol. I.

¹Citations of Appellant’s Amended Complaint ECF No. [8] in the form “AC”. Citations of Exhibits in the form “Ex.###”.

Citations to the Appendix and Special Appendix are in the form “A-###” and “SPA-###.” Citations to the Volume of the Appendix are in the form “Vol. #”. Citations are in the form “ECF doc. No.[##]” is the Electronic Index of the Record on Appeal. Citations to the District Court are in the form “DC.”

DC Judge H. Gary R. Brown, on September 30, 2021, filed the Memorandum & Order DC 20CV3361 (GRB) (AKT)² ECF doc. [30] on Appellees' Motion to Dismiss the AC ECF doc. [8] affirmed in Orrego's favor based on facts and "EXHIBIT" or documentary evidence: "Accordingly, plaintiff has pleaded plausible claims for hostile work environment under § 1981 and the NYSHRL against Zantua, the Knipfings, and the corporate defendants." See annexed as SPA-1 to SPA-17.

On December 2, 2021, the District Court filed the Initial Conference Order; attached to the Order was a "Discovery Plan Worksheet" to file on February 14, 2022, to review the parties' suggested deadlines upon considering the rules and practices of the assigned District Judge and enter an appropriate scheduling order. See ECF doc. [41] A-9. Vol. I.

From this order, the Appellees were engaged in frivolous litigation and bad faith with their counsel, Gordon Rees Scully Mansukhani LLC ("GRSM"), committing abuse of the legal process, ethical violations, conflict of interest, fraud, perjury, and organized crime, among other things.

Appellees' abuse, fraud, perjury, obstruction of justice, and failure to cooperate in Discovery, violating the FRCP Rule 26, led Orrego to file multiple motions well-supported by documentary evidence to prevent the Appellees' heinous actions. For example, ECF doc. [110] [113] [114] [117] [129] [131] [137] [138] [147] from the

² Notice: DC 20CV3361 (GRB) (AKT) currently DC 20CV3361 (JMA)(AYS)

beginning, the Appellees committed perjury, fraud, obstruction of justice, and organized crime, among other things, without any restriction until October 4, 2023. See A-18 to A-22. Vol. I.

Orrego filed 3 to 480 pages in her filings to the District Court from July 23, 2020, to October 26, 2023. These filings typically include a Letter or Notice of Motion, Affirmation, Exhibits, Supporting Papers, and Affirmation of Service, including but not limited to ECF doc. [1] [22] [24] [27] [69] [98] [100] [100] [110] [129] [178]. See A-4 to A-26. Vol. I.

Suddenly, in October 2023, the District Court began destroying Orrego's filings by illegally sealing or “cutting” the “Exhibits” of 72 pages constructed as follows: Order to Show Cause Form A & B of 5 pages, 7 Exhibits of 65 pages, and Affirmation of Service under false statements about the “length” of the documents when Orrego filed from July 2020 documents for example ECF doc. [1] of 145 pages in the DC.

DC Judge Joan M. Azrack issued orders against the Appellant on October 30 and November 14, 2023, based on misrepresentations to prevent Orrego from filing all the documentary evidence or “Exhibits” with her filings that prove her claims have merit.

Orrego filed a Writ of Mandamus, Certiorari, and Prohibition against the heinous actions from the DC under 28 U.S.C. § 332 (d) (3), Code of Conduct for the US Judges Canons 1, 2, 3, 28 U.S.C. §§ 351-364, NYS Rules Professional Conduct Rules 3.5; 4.1, among others. Case 23-7643, IN RE: Lidia M Orrego. See A-175 to A-326. Vol. II.

STATEMENT OF THE FACTS

The evidence in this case is as follows:

I. District Court's Orders and Appellant's Filings October-November 2023

Despite all the documentary evidence that supports Orrego's motions, ECF doc.[57] The default judgment was filed on July 7, 2022, ECF doc. [69] Motion for Sanctions Obstruction of Justice – Fraudulent Concealment Filed November 21, 2022, Pursuant FRCP Rule 65. Injunctions and Restraining Orders ECF doc. [70] - Amended ECF doc. [74] Injunctive Relief filed on February 13, 2023, according to FRCP Rule 11 (c) (2) ECF doc. [80] Sanctions of new misconduct were filed on March 1, 2023, Challenging the Confidentiality of Defendants' Initial Production ECF doc. (65] & Unconscionable "Confidentiality Agreement" [66-1]"; Vacate orders on ECF docs.[37] [69] [74] [80] Under FRCP, Local Civil Rules, and Individuals Rules and consequent motions to vacate, the DC denied the motions based on misrepresentations or false grounds to abet and aid Appellees' fraud and perjury. See ECF doc. [129] A-20. Vol I.

July 20, 2023, DC issued the Orders denying Orrego's motions for Reconsiderations ECF doc. [142] [143] [144] [145]. A-21 to A-22. Vol. I.

On August 3, 2023, Orrego submitted a Notice of Interlocutory Appeal under 28 U.S.C. 1292 (a) (1) to appeal from the orders issued on July 11, 2023, and July 20, 2023, which were based on the original orders dated March 9, 2023, March 10, 2023, and March 28, 2023. See ECF [166] A-31 to A-175. Vol. I.

Orrego, after filing the Notice of Interlocutory Appeal on August 3, 2023, the case at the District Court continues with the standard Discovery procedures. See A-25 to A-26. Vol. I.

July 26, 2023, Orrego filed her letter "Plaintiff's Confirmation of Closing Discovery and Request Move For Summary Judgment on November 1, 2023" reporting the Appellees' abuse and fraud:

"According to the order dated July 25, 2023, and the fact the Defendants failed to cooperate with the Discovery since they did not call witnesses, failed to respond to the Plaintiff's requests, concealed employment documents, failed to appoint the representatives of the Defendants Corporations to depose, committed perjury and Obstruction of Justice when Defendants prevented Ms. Rebeca Uzcategui's deposition which has confirmed in the investigation of November 2018, the 70 facts of the Amended Complain ("AC") ECF doc. [8] among others. See annexed Exhibits 1, 2, 3 & 4, P. 4-11." See ECF doc. [157] A-24. Vol. I.

Orrego requested to close Discovery, in addition to the instructions to file "Plaintiff's Evidentiary Record" for Summary Judgment of the following documents and other things see ECF doc. [157] A-24. Vol. I:

"Plaintiff's request # 1: Plaintiff is ready to move for Summary Judgment on November 1, 2023, according to Magistrate Judge Shields' order dated July 25, 2023.

Plaintiff's request # 2: Instructions with specificity on how and when she will deliver the entire Discovery documents as follows:

Total Exhibits: 234.-

Total Pages: PLA000001 to PLA004687.-

Total Recordings: 26.- Total Pictures: 821.- Total Videos: 172.-"

August 2, 2023, the District Court ordered: "The parties are reminded that all discovery in this case must be completed by November 1, 2023, and any party seeking

to make a dispositive motion shall initiate that process, consistent with the undersigned's individual rules, on or before December 1, 2023"., after the Appellees refuse to participate in the Mandatory Settlement Conference in plain words committed Contempt of Court. See A-25. Vol. I.

On August 2, 2023, Orrego wrote and filed her Letter of Clarification on the Defendants' Failure to Comply with the Settlement Conferences and Rules, which showed clear contempt of court. See ECF doc. [168], A-25. Vol. I.

On August 8, 2023, Orrego filed her second request for instructions to file "Plaintiff's Evidentiary Record" for Summary Judgment on November 1, 2023, because the District Court never sent her the instructions.

Orrego's second request ECF doc. [165] A-25. Vol. I:

"Plaintiff Lidia M. Orrego, in connection with the above-referenced action, confirmed on July 27, 2023, that she called Summary Judgment ECF doc.[157] and will move on November 1, 2023, under District Judge Azrack's Individuals "Rules IV. E Summary Judgment Motions, Page 6.". See the Order dated August 2, 2023.

Yesterday, August 3, 2023, Plaintiff tried to submit to this Court the evidentiary "Plaintiff's Records" to proceed with the Summary Judgment Rule 56, but the Clerk's office and Plaintiff are looking for further instructions for Summary Judgment proceeding and submit the evidentiary record to this Court's custody.

Please advise the specifications to submit the following evidence:

- 1) Electronic Storage Information ("ESI")
 - Digital Plaintiff's Record
 - Total Recordings: 26.- Notarized & Certificate Transcriptions.
 - Total Pictures: 821.- Plaintiff's employment with the Defendants.
 - Total Videos: 172.- Plaintiff's employment with the Defendants.
 - Social media: Defendants' employees, witnesses, and Defendants.

2) Total Exhibits: 249.- (two boxes)

Vol. 1 – PLA000001 – PLA000412
Vol. 2 – PLA000413 – PLA000827
Vol. 3 – PLA000828 – PLA001248
Vol. 4 – PLA001249 – PLA001669
Vol. 5 – PLA001670 – PLA002092
Vol. 6 – PLA002093 – PLA002517
Vol. 7 – PLA002518 – PLA002917
Vol. 8 – PLA002918 – PLA003338
Vol. 9 – PLA003339 – PLA003764
Vol. 10 – PLA003765 – PLA004189
Vol. 11 – PLA004190 – PLA004615
Vol. 12 – PLA004616 – PLA004989”

October 4, 2023, Orrego filed her Motion of a total of 72 pages constructed as follows: Order to Show Cause Form A & B of 5 pages, 7 Exhibits of 65 pages, and Affirmation of Service “under Rule 65 FRCP enjoining the defendant(s) during the pendency of this action from frivolous conduct of litigation, use of legal processes with apparent disregard for the Plaintiff’s merit and her Constitutional Rights to Due Process of Law, by filing arguments or pleadings without documentary evidence or failure to the Duty to Disclose under FRCP, Local Civil Rules and Individuals Rules including but not limited to under FRCP Rule 26; Rule 31; Rule 31 (4); Rule 30(b)(6); Defendants Failure to Comply with the DC Individuals Rules VIII. Settlement Conferences A, B, C, among others.” See ECF [170] A-25. Vol. I.

This was the first motion or document that the District Court unlawfully sealed, for no reason, 7 Exhibits of 65 pages. See ECF doc. [173] A-25. Vol. I.

October 23, 2023, Orrego filed a Letter Motion to request to Unseal the 7 Exhibits of the Order to Show Cause ECF doc. [170]. Orrego discovered the “Sealing Cover Sheet” of ECF Id. [170] which lacks information or specificity of the reasons why the ECF Id. [170] Exhibits 1 – 7 should be sealed. Another Irregularity is that the “Sealing Cover Sheet” was never served to ALL the parties according to “Mandatory Certification of Service” and incorrectly pointed and named to only “1-2” Exhibits instead of “1–7”. See ECF [173] A-25. Vol. I.

The sealing of the 7 exhibits is incomprehensible because the documents belong to prior filings public view in the ECF doc. [108] [135] [156] [160] [161] [162] [168]. DC sealed unlawfully the 7 Exhibits to deny Orrego's Motion Order to Show Cause ECF doc. [170] based on false statements and grounds. See A-18 to A-25. Vol. I.

From October 13, 2023, Orrego filed motions, letters, and certifications to proceed with her Summary Judgment and all the Evidentiary Records mentioned in the ECF doc. [157] [165]. See A-24 to A-25. Vol. I.

October 26, 2023, since Orrego, never received the instructions requested by DC to file her voluminous “Evidentiary Record” ECF doc. [157] [165], the litigants must receive instructions. As the deadline for filing the Summary Judgment was nearing, Orrego submitted a Motion requesting permission to electronically file the documents as a Pro Se litigant to prevent any delay in the filings. See ECF doc. [174] A-25. Vol. I.

October 28, 2023: Orrego discovered the gross fraud and conflicts of interest from Appellees' counsel GRSM, and she filed the letter to DC reference: "Plaintiff's Report NEWLY Discovery the Client-Lawyer Relationship between Pasternack Tilker Ziegler Walsh Stanton & Romano LLP, Pasternack Tilker Weitz & Luxenberg LLP and Kevin James' aka Knipfing's counsel Gordon Rees Scully Mansukhani LLP since 2012, GROSS violation of Model Rules of Professional Conduct Rule 1.7: Conflict of Interest.- Total Pages filed 12.- UNSEAL under Federal Rule Civil Procedure ("FRCP") Rule 5.2.- Total pages filed 12." See A-50 to A-174. Vol. I.

This letter was filed with a copy of documents filed in The New York State Courts Electronic Filing System (NYSCEF) as "Exhibits" that prove the client-lawyer relationship between Orrego's Workers Compensation Counsel and Appellees' Counsel GRSM since 2012. Due to this relationship, Orrego's counsel, as a "trojan horse," destroyed Orrego's case in the administrative case at Workers Compensation Board Case G2584330 from September 2019 to July 2021. See A-50 to A-174. Vol. I.

The letter filed on October 28, 2023, was retained in the District Court's Chambers without docketing and unlawfully returned to Orrego on November 14, 2023.

Any reasonable person would conclude that the concealment of this letter and evidence was an attempt to avoid imminent disqualification by the opposing counsel, GRSM, who represents the Appellees; between them is the actor Kevin James (also known as Kevin Knipfing) due to his celebrity status and powerful connections. It can

be inferred that GRSM is a well-connected counsel, and their client's "privilege status" may have played a role in concealing this evidence. See A-109 to A-110.Vol. I.

II. Appellant's filings unlawfully retained and returned

Orrego repeatedly objected to the District Court, claiming that her Exhibits were unlawfully "cut and sealed." She also expressed her concerns with the retention of the letters and motions pending in the Chambers from October 9, 2023, to November 14, 2023, which were returned without docketing in the ECF system according to the FRCP please see below the documents list:

1) October 9, 2023: "Plaintiff's Objection and Motion To Reconsideration Of The Order Dated October 7, 2023, On Order to Show Cause (OSC) For Preliminary Injunction and Temporary Restraining Order ECF Doc. [170] and 7 Exhibits Sealed Incorrectly". Total pages filed: 77.

2) October 28, 2023: Re: Plaintiff's Report NEWLY Discovery the Client-Lawyer Relationship between Pasternack Tilker Ziegler Walsh Stanton & Romano LLP, Pasternack Tilker Weitz & Luxenberg LLP and Kevin James' aka Knipfing's counsel Gordon Rees Scully Mansukhani LLP since 2012, GROSS violation of Model Rules of Professional Conduct Rule 1.7: Conflict of Interest.- Total Pages filed 12.- UNSEAL under Federal Rule Civil Procedure ("FRCP") Rule 5.2.- Total pages filed 12.-

3) November 10, 2023: "Plaintiff's Motion Requests Permission For Electronic Filing to File Dispositive Motions Under Fed. Rules Civil Prod., Local Civil Rules 56.1

& 56.2 Supported By Case Law Robinson v. De Niro SDNY 19cv09156 (LJL)(KHP).”
For Summary Judgment on November 1, 2023.

4) November 13, 2023: Plaintiff filed THREE Certificates Good Faith No. 1, 2, and 3 Incomplete Discovery Responses due to the Discovery stage closed on November 1, 2023, to proceed to file Dispositive Motions. Appellees’ failure to Discovery responses under FRCP Rules 26, 37, Local, and Individual Rules. Email dated November 1, 2023, at 9:08 pm, proves the Appellees' bad faith, fraud, and perjury, among other crimes, in this case.

5) November 13, 2023: Docket No. 535740 Appellate Division Third Department – Workers Compensation Board (“WCB”) case G2584330 NYSCEF Id. [136]. Total Pages 215.

6) November 13, 2023: Petitioner’s Supporting Papers to Caption In Re: Lidia M. Orrego Petition for a Writ of Mandamus, Certiorari, and Prohibition to District Judge Joan M. Azrack and Magistrate Judge Anne Y. Shields – Total Pages 79.-

7) November 13, 2023: Motion to Disqualify Opposite Counsel Gordon Rees Scully Mansukhani LLC (“GRSM”) a) Disqualify Opposite Counsel for Gross Ethical Violation, Conflict of Interest, Fraud, Perjury, Organized Crime; b) Preliminary Injunction; c) Protective or Restraining Order against Gordon Rees Scully Mansukhani LLC; d) Strike ALL Fraudulent Pleadings and Motions filed by Defendants due Gross Ethical Violations. Constructed 13 Exhibits and 73 pages.

8) November 14, 2023: Plaintiff's Letter Motion Clarification on Motions, Pleadings, or other papers filed on November 13, 2023. Total Pages 13.- under FRCP Rule 5.2 (b) (4), Due Process of Law and Freedom of Speech.

9) November 14, 2023: Plaintiff's Letter Motion Clarification on Submissions via Box. com. (Total Pages present document 39.- under Federal Rule Civil Procedure ("FRCP") Rule 5.2 (b) (4); Rule 11, Due Process of Law and Freedom of Speech

10) November 14, 2023: Plaintiff's Letter Motion Clarification on Individual Rules I Electronic Filing (ECF) & III. Communications with Chambers. Total Pages 13.- under Federal Rule Civil Procedure ("FRCP") Rule 5.2 (b) (4), Due Process of Law and Freedom of Speech and under FRCP Rule 11.-

District Court retained and unlawfully returned 10 documents to Orrego between October 9, 2023, and November 14, 2023, because all these documents and Exhibits destroyed the Appellees' defense and their plan to dismiss the case in Summary Judgment based on fraud, perjury, and obstruction of justice, among other. See ECF doc. [177] "Letter from Pro Se Office to pro se plaintiff Lidia M. Orrego: Pursuant to Judge Azrack's Electronic Order dated November 14, 2023, the enclosed documents are being returned to you without docketing or consideration." See A-26. Vol. I.

District Court's impartiality and transparency have been compromised, revealing impropriety in assisting the Appellees and counsel GRSM's ongoing fraud, perjury, and obstruction of justice in Orrego's prejudice. See A-175 to A-326. Vol. II.

III. District Court Order November 14, 2024, unlawful and discriminatory

District Court reaction after Orrego filed on November 13, 2023 her motion to Disqualify Opposite Counsel GRSM: a) Disqualify Opposite Counsel for Gross Ethical Violation, Conflict of Interest, Fraud, Perjury, Organized Crime; b) Preliminary Injunction; c) Protective or Restraining Order against Gordon Rees Scully Mansukhani LLC; d) Strike ALL Fraudulent Pleadings and Motions filed by Defendants due Gross Ethical Violations. Constructed with 13 Exhibits and 73 pages. See A-50 to A-175. Vol I.

It appears that the District Court made a hasty decision when the Motion to Disqualify the Opposing Counsel was submitted. The DC unlawfully returned the motion and nine other documents that should not have been retained and then issued an improper "Stay Order" to justify the return of the papers to Orrego. This happened despite the DC accepting, docketing, and issuing orders for other letters, motions, and papers without interruption. See A-26 to A-30 and See A-50 to A-175. Vol I.

DC order dated November 14, 2023, is intelligible, unlawfully "retroactive," and shows disturbing behavior by making false statements, fraudulent misrepresentations, and gross violations of the United States Constitution, FRCP, and Ethics Rules. See annexed A-26 to, A-30; A-50 to A-175. Vol I.

The most disturbing false statement calling as "baseless" the gross conflict of interest of Appellees' counsel GRSM in their relationship with Orrego's counsel, well-supported by documents filed in NYSCEF. See A-50 to A-175. Vol I.

SUMMARY OF THE ARGUMENT

District Court's order dated November 14, 2023, "inextricably intertwined" with the orders dated October 30, 2023, must be reversed for several Constitutional and legal reasons:

First, the District Court cannot prevent any Party from filing papers if Constitutional Rights are in danger, in this case, due to the Appellees' fraud, perjury, obstruction of justice, and frivolous litigation, among other things. See A-26.Vol. I.

Second, the District Court cannot threaten Orrego with sanctions that do not apply to Pro Se Non-attorneys only because she objects to and opposes gross violations of the US Constitution, FRCP, Local Civil Rules, and Regulations. See A-26. Vol. I.

Third, Federal Rules of Civil Procedures, Local Civil Rules, and Document Filing Guidelines for Pro Se Litigants allow Orrego to file all her "Exhibits," disregarding the "length" of the document, as she filed between 2 to 480 pages without restrictions, as all the litigants in US Courts did from July 2020 to October 2023.

Fourth, DC authoritarian orders are a "lawfare" against Orrego's Constitutional Freedom of Speech and Due Process, which will result in a Miscarriage of Justice.

Fifth, this Court has jurisdiction over this Appeal because the Supreme Court has limited that section to appeals from interlocutory orders. In this case, Orrego, appealing, proves that the order would cause irreparable consequences if she cannot file her evidence before the Summary Judgement and Jury Trial. See A-50 to A-175. Vol I.

ARGUMENT

I. Standard of Review

Under 28 U.S.C. § 1292 (a) (1), the Appellant must demonstrate that the injunction against her is an abuse of discretion and will cause irreparable harm to her case. See *Faiveley Transp. v. Wabtec Corp.*, 559 F.3d 110, 116 (2d. Circ. 2009). The District Court abuses its discretion when its decision rests on an error of law, when factual findings are clearly erroneous, or when it acts outside the range of permissible decisions within its discretion. See A-26 to A-30; A-50 to A-175. Vol I.

For purposes of preliminary injunctions, the irreparability of harm may not be casually suspended pending appeal: the harm must be so imminent as to be irreparable if a court waits until the end of the trial to resolve the harm. See 11A C. Wright, A. Miller M. Kane, *Federal Practice Procedure* § 2948.1, at 144-49 (2d ed. 1995).

In this case, Appellant Orrego cannot wait until the end of the trial to introduce his evidence. Exhibits must be entered with each paper or motion that Orrego files.

II. District Court's prohibition to file "Exhibits" in Violation of the Law

The order dated November 14, 2023, contains false statements and fraudulent misrepresentations, gross violations of the US Constitution, Federal Laws, Rules of Procedures, and Ethics Rules to prevent Orrego's filings, including but not limited to:

a) Constitutional Rights to Due Process -The Fifth Amendment says to the federal government that no one shall be "deprived of life, liberty or property without due

process of law." and the Fourteenth Amendment ratified "nor deny to any person within its jurisdiction the equal protection of the laws."

- b) Freedom of Speech without oppression by the Government
- c) Civil Rights Acts of 1964: Duty to guarantee all citizens equal protection against discrimination based on race or national origin.
- d) 18 U.S. Code § 242 - Deprivation of rights under color of law;
- e) 18 U.S. Code § 241 - Conspiracy against rights
- f) FRCP Rules 11, 26, 37, 5.2;
- g) Local Civil Rules 12.1 & 56.2;
- h) Pursuant to 28 U.S.C. § 332 (d) (3); 28 U.S.C. § 455 (a)
- i) Code of Conduct for United States Judges Canons 1, 2, 3
- j) The Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351-364
- k) NYS Rules Professional Conduct Rules 3.5; 4.1

Orrego submitted documents and papers to the DC between October 9, 2023, and November 13, 2023. These papers were correctly stamped at the Clerk's Office or filed via Box.com. However, some motions and papers were not recorded in the ECF system. This violates "FRCP, Local Civil Rules, and Document Filing Guidelines for Pro Se Litigants." As a Pro Se Non-attorney, Orrego has the right to file any paper to support her claims, attaching "EXHIBITS." See Robinson v. De Niro, 19-CV-9156 (LJL) (KHP) Southern Districts of New York ("SDNY").

Orrego sought assistance from the DC court to file her "Evidentiary Record." However, she was instructed not to contact the court for instructions on how to file the evidence, even though the rules published on the court's website indicated otherwise. Orrego believes that the court discriminated and retaliated against her, as she was treated differently from other litigants, which violated her Constitutional Rights of Due Process and Equal Protection of the Law. See A-26 to A-30; A-50 to A-175. Vol I.

The unlawful and outrageous District Court's order dated November 14, 2023, stated that Orrego's Motion to Disqualify GRSM counsel of Appellees that relies on documentary evidence or Exhibits is "baseless," but the evidence comes from an irrefutable source: the NYSCEF system. See A-26 to A-30; A-50 to A-175. Vol I.

On October 28, 2023, Orrego filed the letter to the District Court with the report and evidence of Defendants' fraud and perjury on or upon the Court with their counsel, GRSM. See A-26 to A-30; A-50 to A-175. Vol I.

District Court allowed letters, motions, and motions since August 3, 2023, until Appellant Orrego filed evidence from the New York State Court Kings County Supreme Court Index 502640/2012; New York County Supreme Court 150188/2018 and 651243/2020 that proves the Defendants' fraud, obstruction of justice, and perjury, among others since their counsel GRSM are also Orrego's counsel from 2012 to the present and share the same lead counsel Mercedes Corwin-GRSM. See A-26. Vol. I.

This Gross Conflict the Interest Disqualify GRSM because the Orrego's counsel was abetting and aiding their counsel GRSM by losing the Workers Compensation Board ("WCB") case G2584330 by using the "fraudulent" outcome at WCB for the Summary Judgement at DC 20CV3361(JMA) (AYS), for that reason the District Court make fraudulent misrepresentations that the Appellant's "motion to disqualify and strikes all the fraudulent pleadings as "baseless," this is not true because all the cases between lawyers are public at The New York State Courts Electronic Filing System (NYSCEF); therefore, this evidence is self - authenticate. See A-50 to A-175. Vol I.

For these reasons, the DC unlawfully returned Orrego's Motion to Disqualify because GRSM should have been removed from the case otherwise. See A-50 Vol. I.

DC issue disturbing, egregious, unlawful, discriminatory, and retaliatory orders in Violation of Civil Rights of 1962 encouraged the Court's Employees to mistreat Orrego at the Courthouses and refuse to give instructions to file my overwhelming evidence for dispositive motions of Exhibits Total: +249; Documentary Evidence +5,000 pages; Recordings total 26; Pictures total: 821; Videos Total: 172 to prevent the Justice in my favor in violation for the FRCP 11, Local Civil Rules 12.1, 56.2 among others. See A-50 to A-175. Vol I.

III. District Court's threats to apply sanctions

The "morally repugnant" order stated that the District Court would apply sanctions (lawfare) if Orrego continued filing motions or documents to prevent miscarriage of

justice that support her AC doc. [8] under 28 U.S.C. § 1927; this is a HOAX to oppress and illegally restrain the Appellant from filing evidence or “Exhibits” that prove the intention to assist and support all the fraud and obstruction of justice from Appellees and their counsel GRSM. See A-50 to A-175. Vol I.

This Court of Appeals Second Circuit must reverse the perverse threat because this Court “DISALLOWS” 28 U.S.C. § 1927 sanctions to Pro Se Litigants because it only applies to Attorneys or Pro Se Attorney. See Kelsey Whitt that 28 U.S.C. § 1927 “applies only to attorneys.” See A-50 to A-175. Vol I.

CONCLUSION

For the foregoing reasons, I therefore respectfully ask that this Court reverse the intermediate orders filed on November 14, 2023, and October 30, 2023, of the district court with the findings of fact in favor of the Appellant. This Court should remand the case for a fair and impartial treatment to allow the file of all the exhibits or documentary evidence before an unprejudiced Judge to support motions and other papers, including but not limited to the Summary Judgment, prior to the Jury Trial on proper evidence and under correct instructions as is just and proper.

/s/ Lidia M. Orrego
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Email: liorrego@gmail.com

CERTIFICATE OF COMPLIANCE

I, Lidia M. Orrego, certify that this brief is in Times New Roman 14-point font, contains 14,000 words or less, and complies with the font requirements of the Rules of Appellate Procedure.

/s/ Lidia M. Orrego
Lidia M. Orrego
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CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2024, an electronic copy of the foregoing was filed in the Clerk of the Court for the United States Court of Appeals for the Second Circuit using the appellate ACMS system.

I further certify that all participants in the case are registered ACMS users and that service will be accomplished on them via the appellate ACMS system.

/s/ Lidia M. Orrego
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SPECIAL APPENDIX

TABLE OF CONTENTS

1. District Court Judge Gary R. Brown's Memorandum & Order
Dated September 30, 2021, Docket EDNY 20CV3361 (JMA) (AYS).....SPA-1

"DC Judge H. Gary R. Brown, on September 30, 2021, filed the Memorandum & Order DC CV20-3361 (GRB) (AKT) ECF doc. [30] on Appellees' Motion to Dismiss the AC ECF doc. [8] affirmed in Orrego's favor based on facts and "EXHIBIT" or documentary evidence: "Accordingly, plaintiff has pleaded plausible claims for hostile work environment under § 1981 and the NYSHRL against Zantua, the Knipfings, and the corporate defendants."

Please Notice: DC CV20-3361 (GRB) (AKT) currently DC CV20-3361 (JMA)(AYS)

SPA-1

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X

LIDIA M. ORREGO,

Plaintiff,

-against-

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.

**MEMORANDUM &
ORDER**
CV 20-3361 (GRB)(AKT)

-----X

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.

SPA-2

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, under 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. *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

SPA-3

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

SPA-4

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 Parade” on November 1, 2018 – restrictions 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

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.

SPA-5

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 that Mr. Knipfing additionally “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

SPA-6

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

SPA-7

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 notified plaintiff that 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

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.

SPA-8

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.

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.

SPA-9

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 (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 that the defendant discriminated against her ‘within the boundaries of New 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 (N.Y. App. Div. 1st Dep’t 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 62. 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

SPA-10

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 hires a person already within the protected class, and then later fires that same person, ‘it is difficult to impute to her an invidious motivation that

SPA-11

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

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 Uzategui, who is also Hispanic and remains employed.” DE 22-3 at 17. However, “an employer may not escape liability for discriminating against a given

SPA-12

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 underlying challenged actions of the employer violated the law.'" *Id.* at 261-62. Defendants only contest the fourth element 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 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).

SPA-13

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*

SPA-14

Sys., Inc., 510 U.S. 17, 23 (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).

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

SPA-15

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 (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).

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 been having with Zantua.” DE 22-3 at 23-24; DE 8 at 46. Defendants conveniently omit the sentence immediately preceding this one, however, in which plaintiff states that “I am

SPA-16

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.

SPA-17

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.

Dated: Central Islip, New York
September 30, 2021

/s/ Gary R. Brown
Gary R. Brown
United States District Judge

**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 2nd day of April, two thousand twenty-four,

Lidia M. Orrego,

Plaintiff - Appellant,

v.

Kevin Knipfing, Kevin James,
Employer, Stephanieanna James-Knipfing, Steffiana de
la Cruz, Employer, 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. 23-7941

Counsel for Appellee Kevin Knipfing, Appellee Stephanieanna James-Knipfing, Appellee Old Westbury Eddie LLC, Appellee Old Westbury LLC, Appellee Steve Savitsky, Appellee Teresa A. Zantua has filed a scheduling notification pursuant to the Court's Local Rule 31.2, setting June 17, 2024, as the brief filing date.

It is HEREBY ORDERED that Appellee's brief must be filed on or before June 17, 2024. If the brief is not filed by that date, the appeal will proceed to a merits panel for determination forthwith, and Appellee will be required to file a motion for permission to file a brief and appear at oral argument.

A motion to extend the time to file the brief or to seek other relief will not toll the filing date. See Local Rule 27.1(f)(1); cf. RLI Insurance Co. v. JDJ Marine, Inc., 716 F.3d 41, 43-45 (2d Cir. 2013).]

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court

