APPENDIX

APPENDIX CONTENTS

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUMMARY ORDER

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

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 27th day of March, two thousand twenty-four.

PRESENT:

DEBRA ANN LIVINGSTON,
Chief Judge,
RICHARD J. SULLIVAN,
STEVEN J. MENASHI,
Circuit Judges.

Ivan To Man Pang,

Plaintiff-Appellant,

v.

Anthony Ye, Citi Realty Services - Financial Manager, William Carley, Citi Realty Services - Finance Director, Renae Stokke, Employee Relations Senior Manager, Cushman & Wakefield U.S., Inc., 1290 Ave. of the Americas, New York, NY 10104,

Defendants-Appellees,

Cushman & Wakefield, Scott Snow, Citi Account - Human Resources Manager,

Defendants.

FOR PLAINTIFF-APPELLANT:

Ivan To Man Pang, pro se,
Briarwood, NY.

FOR DEFENDANTS-APPELLEES:

Mary Augusta Smith,
Jackson Lewis P.C.,
New York, NY.

Appeal from a judgment of the United States District Court for the Southern District of New York (Valerie Caproni, Judge; Sarah Netburn, Magistrate Judge).

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

* * *

Appellant Ivan To-Man Pang, proceeding pro se, brought this lawsuit alleging that his former employer, Cushman & Wakefield ("C&W"), discriminated against him on account of his race, national origin, sex, and age in violation of Title VII and the Age Discrimination in Employment Act ("ADEA"). Pang claimed that C&W underpaid him and disregarded his work contributions, systematically favoring other employees who were younger, female, and white. Pang was suspended after he refused to sign a Memorandum of Expectations ("MOE") that detailed his alleged performance issues and required him to improve or face potential termination. After this suspension, Pang voiced concerns about discrimination on protected grounds; in response, a C&W HR employee discussed severance packages with him, but Pang declined to resign.

Following the suspension, while out on sick leave, Pang used his work email address to forward emails to his personal email address that contained material that he intended to use to pursue his claims of discrimination. According to C&W, these emails contained confidential client information, including Social

Security numbers; therefore, forwarding the emails outside of the company violated company policy. The emails were flagged by an internal monitoring system, and Pang was fired a few days later following an investigation. Pang commenced this action after receiving a "Notice of Right to Sue" from

the Equal Employment Opportunity Commission ("EEOC").

During the discovery phase of the litigation, the magistrate judge (Netburn, M.J.) denied two of Pang's motions to compel discovery by C&W, as well as his subsequent motion for reconsideration. The parties eventually cross-moved for summary judgment. Adopting the magistrate judge's report and recommendation, the district court granted summary judgment to the defendants. Pang v. Cushman & Wakefield U.S., Inc., No. 20-CV-10019 (VEC)(SN), 2023 WL 2644267 (S.D.N.Y. Mar. 27, 2023).

Pang appealed. We assume the parties' familiarity with the remainder of the underlying facts, the procedural history, and the issues on appeal.

I. Discovery Orders

Pang first challenges the magistrate judge's denials of his motions to compel. While Pang filed a motion for reconsideration addressed to the magistrate judge, he did not object to these discovery rulings before the district judge. A litigant, including a pro se litigant, who fails to object to a magistrate judge's non-dispositive discovery orders forfeits the right to appellate review of those rulings. See Caidor v. Onondaga Cnty., 517 F.3d 601, 605 (2d Cir. 2008). Thus, by failing to object, Pang forfeited appellate review of those orders.

In any case, the district court did not abuse its discretion in denying the requests for further discovery. Pang fails to demonstrate that the discovery granted to him was "so limited as to affect [his] substantial rights." Clark v. Hanley, 89 F.4th 78, 91 (2d Cir. 2023) (internal quotation marks omitted). In fact, the record below demonstrates that discovery

was extensive and that Pang's requests for his former colleagues' work product and medical records were duplicative or concerned private medical information. As the magistrate judge reasonably concluded, "absent a showing of 'specific need for the information,'" Pang's "attempt to compel production of 'intimately personal information' about non-parties [was] not warranted." Special App'x at 3 (quoting Sidari v. Orleans Cnty., 180 F.R.D. 226, 232 (W.D.N.Y. 1997)); In re Agent Orange Prod. Liab. Litig., 517 F.3d 76, 103 (2d Cir. 2008) ("A district court has wide latitude to determine the scope of discovery[.]").

II. Summary Judgment

Pang also challenges the district court's grant of summary judgment for the defendants. We review de novo cross-motions for summary judgment when "the district court granted one motion but denied the other," taking care "in each instance to draw all reasonable inferences against the party whose motion is under consideration." Zhang Jingrong v. Chinese Anti-Cult World All. Inc., 16 F.4th 47, 56 (2d Cir. 2021) (internal quotation marks and citation omitted). "Summary judgment is proper only when, construing the evidence in the light most favorable to the non-movant, 'there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" Doninger v. Niehoff, 642 F.3d 334, 344 (2d Cir. 2011) (quoting Fed. R. Civ. P. 56(a)). While we "liberally construe pleadings and briefs submitted by pro se litigants" to "raise the strongest arguments they suggest," McLeod v. Jewish Guild for the Blind, 864 F.3d 154, 156 (2d Cir. 2017) (per curiam) (internal quotation marks omitted), a party

cannot defeat a motion for summary judgment with "conclusory allegations or unsubstantiated speculation," Fujitsu Ltd. v. Fed. Express Corp., 247 F.3d 423, 428 (2d Cir. 2001) (internal quotation marks omitted).

A. Claims Abandoned on Appeal

Pang fails to develop his ADEA claim on appeal; he suggests only in passing that his age "could [have been] a partial reason" for defendants' adverse actions against him. Appellant Br. at 51. Because this claim has not been meaningfully developed on appeal, Pang has abandoned it. See Gerstenbluth v. Credit Suisse Sec. (USA) LLC, 728 F.3d 139, 142 n.4 (2d Cir. 2013) (concluding that pro se litigant abandoned argument by mentioning the "substance of the District Court's ruling . . . obliquely and in passing").

B. Discrimination

We evaluate Title VII and New York State Human Rights Law ("NYSHRL") claims under the McDonnell Douglas burden-shifting framework. See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802–04 (1973); Vega v. Hempstead Union Free Sch. Dist., 801 F.3d 72, 82–83 (2d Cir. 2015) (Title VII); Vasquez v. Empress Ambulance Serv., Inc., 835 F.3d 267, 271 n.3 (2d Cir. 2016) (NYSHRL).

Pang failed to establish a prima facie case of discrimination under Title VII or the NYSHRL. None of the adverse employment actions that Pang identifies— including his compensation, C&W's decision not to promote him in 2018, his 2018 performance evaluation, and his termination—gives rise to an inference of discrimination. "Even in the discrimination context, . . . a plaintiff must provide more than conclusory allegations to resist a motion for

summary judgment." Gorzynski v. JetBlue Airways Corp., 596 F.3d 93, 101 (2d Cir. 2010). But even assuming arguendo that Pang established a prima facie case of discrimination, C&W articulated legitimate, non-discriminatory reasons for its actions. For example, C&W provided evidence that Pang's failure to obtain promotion was attributable to Pang's poor performance and unprofessional behavior toward his colleagues and supervisors, and that his compensation, compared to that of his colleagues, was commensurate with his experience and performance ratings and within the salary range for his position. As for Pang's firing, the record establishes that C&W's decision to fire him is attributable to his violation of company policy by forwarding emails containing confidential client information to his personal email account. See Fletcher v. ABM Bldg. Value, 775 F. App'x 8, 14 (2d Cir. 2019) (confirming that violation of employer's computer use policy is a "legitimate, non-discriminatory reason for terminating [the plaintiff]").

Because C&W met its burden at McDonnell Douglas step two, the burden shifted to Pang to provide evidence from which a reasonable factfinder could conclude that C&W's stated non-discriminatory reasons were pretextual. He did not satisfy that burden. Pang's own assertions that his work performance was exemplary do not create genuine issues of material fact, given the record evidence of his declining performance and poor attitude. Similarly, while Pang attacks the credibility of his supervisors and the validity of their assessments of his work, these "[c]onclusory allegations . . . are not evidence and cannot by themselves create a genuine issue of material fact where none would otherwise exist." FTC v. Moses, 913 F.3d 297, 305 (2d Cir. 2019) (quoting

Fletcher v. Atex, Inc., 68 F.3d 1451, 1456 (2d Cir. 1995)); see also Tubo v. Orange Reg'l Med. Ctr., 690 F. App'x 736, 740 (2d Cir. 2017) (summary order) (disagreement with defendant's assessment of performance did not satisfy burden to show pretext). And with respect to his termination, although Pang argues that he was unaware of the policy against sending confidential information, the record shows that he signed an acknowledgment of the policy when he was hired, his offer letter explained that the policy was subject to change, and the policy in place when he was fired prohibited sending private client information. As the policy itself noted, and a C&W employee testified at a deposition, violation of this policy could result in termination. Similarly, Pang has not created a genuine dispute of fact regarding his supervisor's testimony that the emails did, in fact, contain confidential client information, including Social Security numbers. Pang's Title VII and NYSHRL claims therefore fail.

Finally, while New York City Human Rights Law ("NYCHRL") claims are subject to a more forgiving standard than Title VII or NYSHRL claims, see Mihalik v. Credit Agricole Cheuvreux N. Am., Inc., 715 F.3d 102, 110 (2d Cir. 2013), summary judgment is still appropriate "if no reasonable jury could conclude . . . that discrimination or retaliation played [a] role in the defendant's actions," Ya-Chen Chen v. City Univ. of N.Y., 805 F.3d 59, 76 (2d Cir. 2015) (internal quotation marks, citation, and brackets omitted). C&W offered legitimate, non-discriminatory reasons for its employment decisions regarding Pang, including terminating him for violating company policy, and Pang offered no evidence from which a

reasonable jury could conclude that C&W's stated reasons were pretextual.

Accordingly, summary judgment was appropriate for Pang's discrimination claims.

C. Hostile Work Environment

While hostile work environment claims under Title VII and the NYSHRL are again assessed differently from those under the NYCHRL, compare Banks v. Gen. Motors, LLC, 81 F.4th 242, 261–62 (2d Cir. 2023), with Williams v. N.Y.C. Hous. Auth., 61 F.4th 55, 69 (2d Cir. 2023), each requires that a plaintiff demonstrate that the hostile work environment was created due in part to discrimination based on a protected characteristic. See Brown v. Henderson, 257 F.3d 246, 252 (2d Cir. 2001) (Title VII/NYSHRL); Williams, 61 F.4th at 69 (NYCHRL).

We need not evaluate whether C&W's actions subjected Pang to a hostile work environment because even assuming that they did, Pang has not shown any "linkage or correlation" between any such differential treatment and a protected characteristic. See Alfano v. Costello, 294 F.3d 365, 377 (2d Cir. 2002); Mihalik, 715 F.3d at 110 (observing that, even under the NYCHRL, "[t]he plaintiff still bears the burden of showing that the conduct is caused by a discriminatory motive"). Thus, the district court properly granted summary judgment on Pang's hostile work environment claims.

D. Retaliation

Under both Title VII and the NYSHRL, it is unlawful to discriminate against an employee "because he has opposed [a] practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or

participated in any manner in an investigation, proceeding, or hearing under this subchapter." 42 U.S.C. § 2000e–3(a) (Title VII); Banks, 81 F.4th at 275. The same burden-shifting framework that applies to discrimination claims applies to retaliation claims. Ya-Chen Chen, 805 F.3d at 70.

Pang does not meaningfully dispute that the only instance of protected activity was his communication with HR in May 2019, when he alleged that he had been subject to discrimination. See Estevez v. Berkeley Coll., 2022 WL 16843460, at *2 (2d Cir. Nov. 10, 2022) (noting that communications with HR are "instances of protected activit[y]"). His theory is that the defendants fired him in retaliation for raising his discrimination claims with HR. But as discussed above, Pang has again not created a genuine issue regarding C&W's non-discriminatory reason for his ultimate termination: emailing confidential information to his personal email accounts. Nor has he raised a genuine dispute that this reason was pretextual.

While the NYCHRL has a broader reach than Title VII and the NYSHRL, including by "protecting plaintiffs who oppose any practice forbidden under the law from conduct reasonably likely to deter a person engaging in such action," Ya- Chen Chen, 805 F.3d at 76 (internal quotation marks omitted), the same reasoning applies. C&W's firing of Pang does not qualify as conduct reasonably likely to deter a person from engaging in protected activity because it was predicated on his violation of company policy.

* * *

We have considered Pang's remaining arguments and find them to be without merit.

Accordingly, we AFFIRM the judgment of the district court.

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

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

20-CV-10019 (VEC)(SN)
REPORT AND RECOMMENDATION

IVAN TO MAN PANG, Plaintiff,

-against-

CUSHMAN & WAKEFIELD, et al.,

Defendants.

SARAH NETBURN, United States Magistrate Judge.

TO THE HONORABLE VALERIE E. CAPRONI:

Ivan To Man Pang ("Plaintiff") sues Cushman & Wakefield U.S., Inc. ("C&W"), Anthony Ye ("Ye"), William Carley ("Carley), and Renae Stokke ("Stokke"), alleging violations of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000e et seq., the Age Discrimination in Employment Act of 1967 ("ADEA"), 29 U.S.C. §§ 621 et seq., the New York State Human Rights Law ("NYSHRL"), New York Executive Law §§ 290 et seq., and the New York City Human Rights Law, New York City Administrative Code §§ 8-101 et seq. Defendants move for summary judgment, and Plaintiff cross-moves. ECF Nos. 87 & 97. I recommend that the Court GRANT Defendants' motion for summary judgment and DENY Plaintiff's cross- motion for summary judgment.

BACKGROUND

I. Factual Background

Plaintiff identifies his national origin as Asian, of Chinese heritage. ECF No. 105, Defendants' Rule 56.1 Statement ("Def. 56.1") ¶ 35.[1] He was 56 years old at the time of his deposition. Id. Plaintiff applied for the Senior Accountant position at C&W in 2013 and was interviewed by Ye and Patricia Laverty in January or February of 2014. Id. at ¶ 4. Ye had input in the decision to hire Plaintiff and served as his supervisor. Id. at ¶¶ 5, 12. Ye identifies his national origin as Asian, of Chinese heritage, and he was 38 years old as of the time of his deposition. Id. at ¶ 36. Ye reported to Carley, the Director of Finance for C&W's Citigroup Account, who was 67 years old at the time of his deposition.[2] Id. at ¶¶ 18, 37.

Plaintiff began his employment in March 2014, initially earning an annual salary of $75,000. Id. at ¶¶ 6–7. In his role as Senior Accountant, Plaintiff was responsible for managing expenses and invoices related to Citigroup's locations. Id. at ¶ 13. He also was responsible for ensuring that books and financial accounts were in accordance with accounting standards, preparing and assisting with cash management, accounts payable and receivable,

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1 Citations to "Def. 56.1" refer to ECF No. 105, which collates Defendants' counterstatement of facts and Plaintiff's responses to each statement. Citations to "Pl. 56.1" refer to ECF No. 103, which collates Plaintiff's initial Rule 56.1 Statement in support of his motion for summary judgment and Defendants' responses to each statement.

2 Plaintiff alleges in his briefing that Carley is white, but his racial identity is not explicitly discussed in either parties' Rule 56.1 statements.

entering payroll, monthly charges, and allocation vendor discounts. Id. at ¶ 14.

Plaintiff first objected to his salary 2014, when he complained to Ye that fellow Senior Accountant Winnie Huynh earned $5,000 more. Id. at ¶ 72. Ye responded that he did not have the ability to raise Plaintiff's salary. Id. at ¶ 73.

Ye issued Plaintiff's performance evaluations from 2014-2017. Id. at ¶ 55. In 2014, Plaintiff received a rating of "Good Performer" with a four to five percent salary increase and bonus, but Ye made some comments regarding the accuracy of Plaintiff's work. Id. at ¶ 56. In 2015 and 2016, Ye rated Plaintiff's performance as "Good Performer Plus," and Plaintiff received a salary increase and bonus accordingly. Id. at ¶ ¶ 59, 61. In 2017, Plaintiff received a rating of "Very Good Performance." Id. at ¶ 66.

On March 16, 2015, Defendants issued Plaintiff a warning letter related to inappropriate communications by email with coworker Jeffrey Bygonaise. Id. at ¶ 58. Bygonaise and Plaintiff had engaged in an extended email correspondence about an assignment that Bygonaise was struggling with. In a final email to Plaintiff explaining that he had identified a work-around for the problem, Bygonaise wrote: "I hope this is what you are asking for. I am more than happy to take on these responsibilities and I will do them with the highest accuracy, but I need to be trained when I am given something for the first time. Trial by fire does not seem to be working for anyone." See ECF No. 90, Ex. 36. Plaintiff responded: "I gave you the brief instruction to follow. If you don't

understand anything, you should ask someone who can help or pick up the phone to call me. I'm not your babysitter and I have work to do." Id.

In June 2018, Ye forwarded to Plaintiff and Huynh an email about an opening for a managerial position. Def. 56.1 ¶ 67. Plaintiff expressed interest, and so Ye emailed Laverty to recommend him and forwarded his resume. Id. at ¶ 68.

In November 2018, Christine Baynes, who previously worked for C&W as a Field Coordinator (a non-exempt position) on the facilities/operations side of the Citigroup Account, was transferred to an exempt Junior Accountant position on the Financial Department team. Id. at ¶ 75. Carley and Ye concluded that her salary of $47,739 was below market level for her position and requested a $10,000 increase in her base salary. Id. at ¶¶ 76, 80. Plaintiff learned this information because he was responsible for uploading his team's payroll data into C&W's accounting software. Id. at ¶ 77. He then used the payroll data to prepare a chart of the salaries of all Financial Department members and met with Ye and Carley to request an additional raise. Id. at ¶¶ 78, 82. Ye and Carley responded that Baynes's raise was necessary to bring her to a market appropriate salary, but that Plaintiff, who earned $84,820 in 2018, was already paid at market. Id. at ¶¶ 81, 83. Plaintiff's request for a raise was denied. Id.

On November 28, 2018, Plaintiff contacted Donna Lanciers, a Human Resources Manager, asking for a meeting and a transfer. Id. at ¶ 86. Plaintiff told Lanciers that he wanted to transfer because he felt his work was not appreciated but did not express his feeling that he had been unfairly compensated because of his national origin, race,

gender, or age. Id. at ¶ 88. Lanciers suggested that Plaintiff apply for other positions via C&W's intranet, send her his resume, and follow up to discuss other positions within the company. Id.

The parties dispute what exactly happened next. Defendants contend that after the meeting, Plaintiff refused to perform certain tasks, started making errors, and told Ye to assign tasks to Baynes instead of him. Id. at ¶¶ 91–93. Plaintiff denies this. Id.

On March 14, 2019, Ye and Carley met with Plaintiff to review his 2018 performance evaluation. Id. at ¶ 94. Plaintiff was rated as "Needs Improvement." Id. at ¶ 95; see also ECF No.90, Ex. 22. As a result, he did not receive an annual salary increase and received only 50% of his projected bonus. Def. 56.1 ¶ 100.

Plaintiff then contacted Lanciers to dispute the evaluation. Id. at ¶ 101. Lanciers stated that the information Plaintiff provided did not indicate that Ye and Carley had behaved unfairly, but that he could escalate the matter to Laura Sheehan, Director of Human Resources. Id. at ¶ 102.

On April 4, 2019, Plaintiff sent an email to Sheehan, copying more than 40 other recipients, objecting to his performance evaluation, claiming that Ye and Carley's accusations of poor job performance were untrue, and complaining about additional work assignments. Id. at ¶¶ 103–04; see also ECF No. 90, Ex. 20. Plaintiff did not state that he felt he was discriminated against because of his race, national origin, gender or age. Def. 56.1 ¶ 105. As a result of his email, Stokke, the Employee Relations Senior Manager, conducted a formal investigation. Id. At ¶ 106. After interviewing Plaintiff, Ye, Carley, and

Lanciers, Stokke concluded that Plaintiff had not been treated unfairly and recommended that Defendants provide him with a Memorandum of Expectations ("MOE") to outline expectations for his performance. Id. at ¶ 117.

On April 29, 2019, Plaintiff met with HR Business Partner Scott Snow, Ye, and Carley to review the MOE. Id. at ¶ 119. When Plaintiff objected to the MOE, he was told that if he did not sign it, he would not be permitted to return to work. Id. at ¶ 125. Plaintiff refused to sign and was briefly suspended, although the parties contest the length of the suspension. Id.

On May 1, 2019, Plaintiff emailed Snow and Sheehan, stating:

> I feel I am treated unfairly for last 5 years. I may think this would be related to my gender or race. I am the only Male Asian on the team I felt that some people (especially they're white and female) delay on the tasks has no issues but I was given to finish them in few days for someone's two months works while I have to finish my jobs I'm sure you can find those people are white and female get increase faster and bonus more but workload wasn't that much.

ECF No. 90, Ex. 27. Plaintiff also claimed that Carley had once, in reference to a young, white, female coworker, asked him: "Don't you enjoy working with a beautiful young lady?" Id.

Plaintiff's complaint was immediately escalated to Kifi Haque, the Head of North America Employee Relations, for investigation. Def. 56.1 ¶ 128. Haque met with Plaintiff, discussed his complaints, and offered him severance if he chose to resign. Id. at ¶¶ 129–30.

Haque also informed Plaintiff that a new MOE would be created. Id. at ¶ 131. The MOE was provided

to Plaintiff on May 17, 2019, but he was not satisfied with the revisions. Id. at ¶¶ 135,137.

On May 28, 2019, Plaintiff sent two emails to his personal email address, attaching assignments completed for the Citigroup account in November 2018 and December 2018 to "fight his case." Id. at ¶¶ 145–47. Citigroup's Content Monitoring Program immediately flagged the emails for Plaintiff and Ye as containing "Confidential Personally Identifiable Information" (PII). Id. at ¶ 149. In a subsequent meeting with Snow, Carley, and Ye, Plaintiff admitted sending the emails, but denied that they contained any PII. Id. at ¶¶ 154–55. He was placed on paid administrative leave and, after Defendants had confirmed that the email attachments contained PII, was terminated on May 31, 2019. Id. at ¶¶ 156–58.

II. Procedural Background

Plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission (EEOC) on June 4, 2019. Def. 56.1 ¶ 162. On September 3, 2020, the EEOC sent Plaintiff a Notice of Dismissal and Right to Sue letter. Id. at ¶ 163. Plaintiff commenced this action on November 27, 2020. ECF No. 1. After extensive discovery, Defendants moved for summary judgment. ECF No. 87. Plaintiff cross-moved for summary judgment. ECF No. 97. Judge Nathan, then presiding, referred the motions to me for a report and recommendation. ECF No. 93.

DISCUSSION

I. Summary Judgment Standard

Under Federal Rule of Civil Procedure 56, the Court "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The moving party bears the initial burden of establishing that no genuine issue of fact exists. Id. at 256–57; see Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). "In moving for summary judgment against a party who will bear the ultimate burden of proof at trial, the movant's burden will be satisfied if he can point to an absence of evidence to support an essential element of the nonmoving party's claim." Goenaga v. March of Dimes Birth Defects Found., 51 F.3d 14, 18 (2d Cir. 1995) (citing Celotex, 477 U.S. at 322–23).

Then, "the nonmoving party must come forward with admissible evidence sufficient to raise a genuine issue of fact for trial in order to avoid summary judgment." Simsbury-Avon Pres. Club, Inc. v. Metacon Gun Club, Inc., 575 F.3d 199, 204 (2d Cir. 2009). The non-moving party must cite to "particular parts of materials in the record" or demonstrate "that the materials cited [by the movant] do not establish the absence . . . of a genuine dispute" as to a material fact. Fed. R. Civ. P. 56(c)(1); see also Wright v. Goord, 554 F.3d 255, 266 (2d Cir. 2009) ("When a motion for summary judgment is properly supported by documents or other evidentiary materials, the party opposing summary judgment may not merely rest on the allegations or denials of his pleadings . . . "). The non-moving party must produce more than a "scintilla of evidence," Anderson, 477 U.S. at 252, and "may not

rely simply on conclusory statements or on contentions that the affidavits supporting the motion are not credible . . ." Ying Jan Gan v. City of New York, 996 F.2d 522, 532 (2d Cir. 1993). See also Flores v. United States, 885 F.3d 119, 122 (2d Cir. 2018) ("[C]onclusory statements, conjecture, or speculation by the party resisting the motion will not defeat summary judgment." (quoting Kulak v. City of New York, 88 F.3d 63, 71 (2d Cir. 1996))).

In ruling on a motion for summary judgment, the Court must "resolve all ambiguities and draw all permissible factual inferences in favor of the party against whom summary judgment is sought." Sec. Ins. Co. of Hartford v. Old Dominion Freight Line, Inc., 391 F.3d 77, 83 (2d Cir. 2004). When both sides have moved for summary judgment, the district court is "required to assess each motion on its own merits and to view the evidence in the light most favorable to the party opposing the motion, drawing all reasonable inferences in favor of that party." Wachovia Bank, Nat'l Ass'n v. VCG Special Opportunities Master Fund, Ltd., 661 F.3d 164, 171 (2d Cir. 2011).

II. Race, National Origin, and Sex Discrimination Claims

A. Legal Standard

Title VII provides that it is "an unlawful employment practice for an employer to . . . discharge any individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of [his] race, . . . sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). "At the summary judgment stage, Title

VII discrimination claims are governed by the burden-shifting analysis established in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802–04 (1973)." Philpott v. State Univ. of N.Y., 805 F. App'x 32, 34 (2d Cir. 2020). To establish a prima facie case of discrimination under both Title VII and the NYSHRL, plaintiff must show: "(1) he belonged to a protected class; (2) he was qualified for the position he held; (3) he suffered an adverse employment action; and (4) that the adverse employment action occurred under circumstances giving rise to an inference of discriminatory intent." Brown v. City of Syracuse, 673 F.3d 141, 150 (2d Cir. 2012) (internal quotation marks omitted). "An inference of discrimination can arise from a variety of circumstances, 'including, but not limited to, the employer's criticism of the plaintiff's performance in . . . degrading terms [based on her protected characteristic]; or its invidious comments about others in the employee's protected group; or the more favorable treatment of employees not in the protected group; or the sequence of events leading to the plaintiff's discharge.'" Pustilnik v. Battery Park City Auth., No. 18-cv-9446 (RA), 2019 WL 6498711, at *4 (S.D.N.Y. Dec. 3, 2019) (quoting Littlejohn v. City of New York, 795 F.3d 297, 312 (2d Cir. 2015)).

If plaintiff establishes a prima facie case, then "the burden shifts to the defendant to articulate 'some legitimate, non-discriminatory reason'" for its action. Holcomb v. Iona Coll., 521 F.3d 130, 138 (2d Cir. 2008) (quoting McDonnell Douglas, 411 U.S. at 802). If defendant provides a "legitimate, nondiscriminatory business rationale for its conduct," then "'to defeat summary judgment . . . the plaintiff's admissible evidence must show circumstances that would be sufficient to permit a rational finder of fact to infer

that the defendant's employment decision was more likely than not based in whole or in part on discrimination.'" Feingold v. New York, 366 F.3d 138, 152 (2d Cir. 2004) (quoting Stern v. Trustees of Columbia Univ., 131 F.3d 305, 312 (2d Cir. 1997)).

"Because NYSHRL claims are subject to the same standard as Title VII claims, [the Court] will consider them together, except [if] otherwise noted." Salazar v. Ferrera Bros. Bldg. Materials Corp., No. 13-cv-3038 (JG)(VMS), 2015 WL 1535698, at *5 (E.D.N.Y. Apr. 6, 2015). "NYCHRL claims, on the other hand, are reviewed 'independently from and more liberally than their federal and state counterparts.'" LaSalle v. City of N.Y., No. 13-cv-5109 (PAC), 2015 WL 1442376, at *3 (S.D.N.Y. Mar. 30, 2015) (quoting Loeffler v. Staten Island Univ. Hosp., 582 F.3d 268, 278 (2d Cir. 2009)).

The Second Circuit has instructed that, in accordance with the directive of the New York City Council, NYCHRL claims should be "construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof." Mihalik v. Credit Agricole Cheuvreux N. Am., Inc., 715 F.3d 102, 109 (2d Cir. 2013). Courts assess NYCHRL discrimination claims under the McDonnell Douglas framework. Ya-Chen Chen v. City Univ. of N.Y., 805 F.3d 59, 75–76 (2d Cir. 2015). If plaintiff establishes a prima facie case and defendant proffers legitimate reasons for its actions, "summary judgment is appropriate if 'the record establishes as a matter of law' that discrimination or retaliation 'play[ed] no role' in the defendant's actions." Id. at 76 (quoting Mihalik, 715 F.3d at 110 n.8).

B. Analysis

1. Title VII and NYSHRL Claims

a. **Prima Facie Case**

Arguably, Plaintiff has failed to establish a prima facie case of discrimination under Title VII and the NYSHRL. It is uncontested that Plaintiff is a member of a protected class and he was qualified for his position. Defendants also do not contest that Plaintiff's compensation, 2018 Performance Evaluation, and termination could constitute adverse employment actions. See ECF No. 88 Defendants' Memorandum of Law ("Def. Mem.") 3–4; see also Chung v. City Univ. of N.Y., 605 F. App'x 20, 22 (2d Cir. 2015) (defining an adverse employment action as a "materially adverse change in the terms and conditions of employment" and citing examples including "termination of employment, a demotion evidenced by a decrease in wage or salary,. . . [or] a material loss of benefits").

Plaintiff also claims that the following events constitute adverse employment actions: (1) "discriminatory wording" in his year-end performance reviews, (2) the 2015 warning letter, (3) his coverage of additional work responsibilities, (4) C&W's failure to support his transfer to another job, (5) inappropriate handling of the investigations of his HR complaints, (6) failure to consider for a promotion, (7) his placement on a MOE, and (8) his suspension when he did not sign the MOE. See ECF No. 99 Plaintiff's Memorandum of Law ("Pl. Mem.") 8–9.

While the failure to promote is an adverse employment action for purposes of an employment discrimination claim, Barella v. Vill. of Freeport, 16 F. Supp. 3d 144, 162 (E.D.N.Y. 2014), the remaining events cannot be considered adverse employment

actions. First, Plaintiff, contends that remarks in his 2014 and 2015 evaluations were "discriminatory." Pl. Mem. 8. However, these comments describe his job performance and do not make reference to any protected characteristic. For example, Defendant Ye wrote in the 2014 evaluation that "accuracy was an issue at times" and "reconciling the data can be an issue," but also noted that Plaintiff was "[o]verall . . . a good performer." ECF No. 103, Plaintiff's Rule 56.1 Statement ("Pl. 56.1") ¶ 205. Regardless of the content of the evaluations, these reviews did not affect his compensation, benefits, or job title, and so cannot constitute an adverse employment action. Kunik v. N.Y.C. Dep't of Educ., 842 F. App'x 668, 672 (2d Cir. 2021). Second, for similar reasons, the 2015 warning letter is not an adverse employment action. Blake v. Potter, No. 03-cv- 7733 (LAP), 2007 WL 2815637, at *6 (S.D.N.Y. Sept. 25, 2007) ("[C]ourts in this District and elsewhere have held that a single letter of warning from an employer, without any subsequent adverse consequence, is not 'an adverse employment action.'") (collecting cases).

Third, Plaintiff alleges that being asked to cover the work responsibilities of a coworker on medical leave represents an adverse employment action. Pl. 56.1 ¶¶ 239–244. But "[b]eing asked occasionally to perform work outside one's stated responsibilities is not an adverse employment action." Mitchell v. Metro. Transit Auth. Cap. Constr. Corp., No. 16-cv-3534 (KPF), 2018 WL 3442895, at *14 (S.D.N.Y. July 17, 2018).

Fourth, the Court of Appeals has held that the denial of a transfer does not constitute an adverse employment action unless it creates "a materially significant disadvantage in [the Plaintiff's] working

conditions." Williams v. R.H. Donnelley Corp., 368 F.3d 123, 128 (2d Cir. 2004). Furthermore, following a meeting with Lanciers, Plaintiff did not follow through on instructions on how to pursue an internal transfer, and so there is no evidence that C&W actively prevented Plaintiff from transferring. Pl. 56.1 ¶¶ 80–90; Def. 56.1 ¶¶ 86–90. See Loth v. City of New York, No. 20-cv-9345 (GBD), 2021 WL 4311569, at *8 (S.D.N.Y. Sept. 21, 2021) ("Plaintiff fails to allege that she had any interest in, or made any attempt to pursue the subject position, which the employer prevented.").

Fifth, although Plaintiff argues that C&W's investigations into his complaints were inadequate, courts in this District have held that the failure to investigate a discrimination claim is not an adverse employment action. Price v. Cushman & Wakefield Inc., 808 F. Supp. 2d 670, 690 (S.D.N.Y. 2011); Daniel v. ABM Indus., No. 16-cv-1300 (RA), 2017 WL 1216594, at *9 (S.D.N.Y. Mar. 31, 2017)

Sixth, the MOE was designed to improve his performance, and "placement on a [performance improvement plan], without more, does not constitute an adverse employment action." Kalola v. Int'l Bus. Mach. Corp., No. 13-cv-7339 (VB)(LMS), 2017 WL 3394115, at *9 (Feb. 28, 2017) (collecting cases), rep. & rec. adopted 2017 WL 3381896 (S.D.N.Y. Aug. 4, 2017). Although Plaintiff claims that the intention of the MOE was to terminate his employment, he does not cite to any admissible evidence in support of that contention. See Def. 56.1 ¶ 124.

Seventh, although Snow initially told Plaintiff he would be suspended if he failed to sign the MOE, he later clarified that he was permitted to return to work if he agreed to comply with the terms of the

agreement. Pl. 56.1 ¶ 176; see also Pang Decl. Ex. 87. Regardless, Plaintiff admits he was paid during his brief suspension. ECF No. 90, Ex. 1 Deposition of Ivan To Man Pang ("Pl. Dep.") 227:14–18. See Kalola, 2017 WL 3394115, at *9 (no adverse employment action following placement on a performance improvement plan where plaintiff's salary, benefits, and seniority level remained the same and he could not identify "a single, objective, concrete harm" as result of his placement on the plan); see also Joseph v. Leavitt, 465 F.3d 87, 91 (2d Cir. 2006) (placement on paid administrative leave not an adverse employment action).

Therefore, Plaintiff has alleged only four possible adverse employment actions: (1) his compensation, (2) Defendants' failure to promote him in June 2018, (3) his 2018 performance evaluation, and (4) his termination. None of these adverse employment actions, however, occurred under circumstances giving rise to an inference of discrimination.

First, as Defendants correctly argue, Defendant Ye, who was directly involved in the four alleged adverse employment actions, also identifies as Asian, undermining any inference of discrimination. See Walder v. White Plains Bd. of Educ., 738 F. Supp. 2d 483, 501 (S.D.N.Y. 2010) (collecting cases); see also Eder v. City of New York, No. 06-cv-13013 (RWS), 2009 WL 362706, at *8 (S.D.N.Y. Feb. 12, 2009) (reasoning that because plaintiff's immediate supervisor "who assessed Plaintiff's performance and determined that it was lacking, are members of the same protected class . . . any inference of discrimination, without additional evidence, is not warranted). Furthermore, as Plaintiff acknowledges,

there is no evidence that anyone at C&W – let alone a decisionmaker involved in the alleged adverse employment actions – made any invidious or derogatory comment about anyone's race, national origin, or sex. Def. 56.1 ¶ 47–51. See Alexidor v. Donahoe, No. 11-cv-9113 (KMK), 2017 WL 880879, at *7 (S.D.N.Y. Mar. 2, 2017) (no evidence of discriminatory intent where plaintiff provided "no evidence of any discriminatory comments by any . . . supervisors or co-workers directed at Plaintiff or others in her protected groups"); Deluca v. Bank of Tokyo-Mitsubishi UFJ, Ltd., No. 06-cv-5474 (JGK), 2008 WL 857492, at *6 (S.D.N.Y. Mar. 31, 2008) (granting defendant's motion for summary judgment on Title VII and ADEA claim where "[t]here were no comments made in the course of the termination process that reflected any ageist or national origin bias in the termination"); Gilmore v. Lancer Ins. Co., No. 08-cv-0628 (JFB)(WDW), 2010 WL 87587, at *10 (E.D.N.Y. 2010) (granting defendant's motion for summary judgment where plaintiff cited to "no comments by any decision-makers that would provide a basis to infer discriminatory intent").

Second, Plaintiff has failed to make "[a] showing of disparate treatment – that is, a showing that an employer treated plaintiff 'less favorably than a similarly situated employee outside his protected group.'" Mandell v. Cnty. of Suffolk, 316 F.3d 368, 379 (2d Cir. 2003) (quoting Graham v. Long Island R.R., 230 F.3d 34, 38 (2d Cir. 2000)). To make such a showing, Plaintiff would have to show that his comparators were (1) "subject to the same performance evaluation and discipline standards" and (2) "engaged in comparable conduct." Graham, 230 F.3d at 494. Plaintiff claims that Huynh had less

experience but a higher salary. Pl. Mem. 10. These facts do not support Plaintiff's claims of race and national origin discrimination, because – like Plaintiff – Huynh identifies as Asian and of Chinese heritage. Def. 56.1 ¶ 38. See Henny v. New York State, 842 F. Supp. 2d 530, 555 n.24 (S.D.N.Y. 2012) (rejecting racial discrimination claim where comparators were also African-American); Adeniji v. Admin. for Child. Servs., NYC, 43 F. Supp. 2d 407, 426 n.7 (S.D.N.Y. 1999) (collecting cases holding that plaintiff failed to prove disparate treatment where comparators were members of the same protected class). And, although Huynh was also a Senior Accountant and reported to Ye, she had previously served as a consultant for C&W and had higher ratings on her performance evaluations than Plaintiff. Def. 56.1 ¶¶ 20, 29–30. See Assue v. UPS, Inc., No. 16-cv-7629 (CS), 2018 WL 3849843, at *13 (S.D.N.Y. Aug. 13, 2018) (rejecting proposed comparator who consistently received higher scores on performance evaluation than plaintiff); DeJesus v. Starr Tech. Risks Agency, Inc., No. 03-cv-1298 (RJH), 2004 WL 2181403, at *9 (S.D.N.Y. Sept. 27, 2004) (same). Furthermore, in regards to his negative performance evaluation and termination, Plaintiff has not produced any evidence that Huynh engaged in similar conduct and was disciplined differently. See Stinnett v. Delta Air Lines, Inc., 803 F. App'x 505, 509 (2d. Cir. 2020); Risco v. McHugh, 868 F. Supp. 2d 75, 100 (S.D.N.Y. 2012) ("A proposed comparator is not similarly situated 'in all material respects' unless she engaged in all of the same misconduct as plaintiff, or at least committed the most serious of the infractions for which the plaintiff was subjected to an adverse employment action.") The mere fact that Huynh, a woman, was paid more is

insufficient to give rise to an inference that Defendants acted with discriminatory intent. Tomka v. Seiler Corp., 66 F.3d 1295, 1313 (2d Cir. 1995) (no inference of discriminatory intent where "plaintiff failed to produce any evidence" that she was paid less because of her gender and instead relied on fact that three "employees were paid more than she was and that they are men"). Plaintiff also argues that white, female employees, including Baynes, had better performance ratings and salary increases. Pl. Mem. 9. Baynes, however, was not similarly situated because she held a different job title – Junior Accountant – and had different work responsibilities, in addition to earning significantly less than Plaintiff. Def. 56.1 ¶¶ 54, 80. See Potash v. Florida Union Free Sch. Dist., 972 F. Supp. 2d 557, 580 (S.D.N.Y. 2013) ("Employment characteristics which can support a finding that two employees are 'similarly situated' include 'similarities in education, seniority, performance, and specific work duties.'") (quoting DeJesus, 2004 WL 2181403, at *9). In further support of his claim, Plaintiff cites to lists of the salary increases and bonuses received by all members of his team in 2014 and 2015. Pl. 56.1 ¶¶ 190–91. "[U]nanalyzed lists of salaries . . . without accounting for differences in education, seniority, performance, or specific work duties" are insufficient to give rise to an inference of discrimination in relation to compensation. Quarless v. Bronx Lebanon Hosp. Ctr., 228 F. Supp. 2d 377, 284 (S.D.N.Y. 2002).

Third, the facts surrounding Plaintiff's unsuccessful application for a promotion, his 2018 performance evaluation, and his termination do not give rise to an inference of discrimination. Although Plaintiff claims that C&W did not treat him "properly

for a promotion" in June 2018, the uncontested facts show that Defendant Ye shared the job posting for a managerial position with him and, after he expressed interest, recommended him and forwarded his resume. Def. 56.1 ¶¶ 67–68. Plaintiff does not point to any evidence that he was qualified for the position in question, nor does the record reveal that a candidate not in Plaintiff's protected class was more favorably treated. Chavis v. Wal-Mart Stores, Inc., 265 F. Supp. 3d 391, 404 (S.D.N.Y. 2017) (rejecting failure to promote claim where plaintiff "did not know who interviewed for the positions or who the successful candidates were" and "offered no evidence regarding possible animus on the part of . . . the hiring manager for those positions"). The fact that Plaintiff received a negative performance evaluation in 2018 after several years of overall positive evaluations, standing alone, does not support an inference of discrimination. Viola v. Philips Med. Sys. of N. Am., 42 F.3d 712, 717–18 (2d Cir. 1994). And Plaintiff does not cite to examples of other employees who committed similar acts of misconduct and were treated more leniently. Ruiz v. Cnty. of Rockland, 609 F.3d 486, 495 (2d Cir. 2010) (holding that plaintiff failed to raise an inference of discrimination where he had "not identified a similarly-situated employee who faced equally serious allegations and whom . . . [was] allowed to remain on the job"). Furthermore, "[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 [him] an invidious motivation that would be inconsistent with the decision to hire." Carlton v. Mystic Transp., Inc., 202 F.3d 129, 138 (2d Cir. 2000) (internal quotation marks omitted). Ye participated in both the decision to hire Plaintiff and later to

terminate his employment; as such, without further evidence of discriminatory intent (which Plaintiff has not identified), a fact finder could not impute a discriminatory motivation to him.

Accordingly, I conclude that Plaintiff has failed to meet his burden of establishing a prima facie case of discrimination based on race, national origin, or sex.

b. Defendants' Legitimate, Non-Discriminatory Reasons for Conduct

Even if Plaintiff had established a prima facie case, Defendants have articulated legitimate, non-discriminatory reasons for their conduct.

First, Defendants contend that Plaintiff's compensation, as well as that of his alleged comparators Huynh and Baynes, were based on legitimate, non-discriminatory factors. Def. Mem. 7–8. Plaintiff's request for a salary increase was denied on the grounds that he was already compensated at market level. Def. 56.1 ¶ 83. It is uncontested that the salary range in 2021 for Plaintiff's position as Senior Accountant was $75,400 to $113,100. Pl. 56.1 ¶ 13. At the time of his termination in 2019, Plaintiff was earning $84,820, comfortably within this range. Def. 56.1 ¶ 81. See Wood v. Sophie Davis Sch., No. 02-cv-7781 (HB), 2003 WL 22966288, at *3 (S.D.N.Y. Dec. 15, 2003) (reasoning that a "racially neutral fixed salary schedule serves as a legitimate non-discriminatory ground to support a defendant's assertion that plaintiff's salary was, at no point during the period in question, discriminatorily low"). Baynes was awarded a salary increase only after Ye and

Carley concluded that her non-exempt salary was below market level for an exempt Junior Accountant position. Def. 56.1 ¶ 76. Indeed, although Baynes received larger raises than Plaintiff, her salary reflected her prior position as Field Coordinator, and so was necessary to bring her within the established pay range for her position as Junior Accountant. Staff v. Pall Corp., 233 F. Supp. 2d 516, 536–37 (S.D.N.Y. 2002). Finally, Huynh's salary was slightly higher than Plaintiff's because of her prior experience as a consultant for C&W and her strong performance evaluations. Def. 56.1 ¶¶ 20, 31, 72. See Taffe v. N.Y.C. Sch. Const. Auth, No. 16-cv-2975 (BMC)(LB), 2017 WL 3841854, at *3 (E.D.N.Y. Sept. 1, 2017) (granting summary judgment for defendants where plaintiff's comparator "had more complex work" and "received much better evaluations").

Second, Defendants argue that Plaintiff's 2018 "Needs Improvement" performance evaluation was the result of his work errors, refusal to follow management directives, and argumentative attitude. According to Ye, after Plaintiff's request for a raise was denied, he refused to perform tasks assigned to him, suggesting instead that Ye assign the tasks to Baynes, and made frequent mistakes in his work. Def. 56.1 ¶¶ 91–93; see also ECF No. 90, Ex. 34 Deposition of Anthony Ye ("Ye Dep.") 74:6–21. Plaintiff became argumentative and aggressive in response to constructive criticism from his supervisors. Def. 56.1 ¶¶ 112, 114; see also ECF No. 90, Exs. 22 & 23. His 2018 performance evaluation reflects these concerns. See ECF No. 90, Ex. 18. Poor job performance and insubordination constitute legitimate, non-discriminatory reasons for low ratings on performance evaluations, disciplinary warnings, and other adverse

employment actions. Lawless v. TWC Media Sols., Inc., 487 F. App'x 613, 616 (2d Cir. 2012) (poor job performance and "lack of judgment in interactions with clients" is a non-discriminatory reason for adverse employment action); Jenkins v. N.Y. State Banking Dep't, No. 07-cv-6322 (JGK) & No. 07-cv-11317 (JGK), 2010 WL 2382417, at * (S.D.N.Y. June 14, 2010), as amended (Sept. 30, 2010), aff'd sub nom. Jenkins v. NYS Banking Dep't, 458 F. App'x 36 (2d Cir. 2012) (negative performance evaluation given "after the plaintiff had engaged in insubordination and misconduct by refusing to follow directives from her superior officers"); Varughese v. Mount Sinai Med. Ctr., No. 12-cv-8812, 2015 WL 1499618 (CM)(JCF), at *47 (S.D.N.Y. Mar. 27, 2015) aff'd 693 F. App'x 41, 42 (2d Cir. 2017) ("gross insubordination" is a legitimate nondiscriminatory reason for adverse employment actions); Vitale v. Equinox Holdings, Inc., No. 17-cv-1810 (JGK), 2019 WL 2024504, at *9 (S.D.N.Y. May 7, 2019) (granting summary judgment where there was record support for Plaintiff's poor performance).

Third, Defendants explain that Plaintiff's termination was the result of his violation of company policy by sending assignments containing PII to his personal email addresses for the purpose of "fight[ing] his case." Def. 56.1 ¶¶ 145–147. Ye testified at his deposition that the emails contained confidential information, Ye Dep. 267:4–268:13, and in support of their motion for summary judgment Defendants submitted an additional affidavit from Ye explaining that he reviewed the contents and attachments of the email and determined that they contained federal identification numbers, social security numbers, and payroll information, ECF No. 91 Affidavit of Anthony Ye ("Ye Aff.") ¶ 16. C&W's Global Code of Business

Conduct provides that "[e]mployees are expected to treat all knowledge and information related to all aspects of the Company's business as strictly confidential" and forbids the disclosure of "client information outside of the Company without proper authorization to do so." Def. 56.1 ¶¶ 10–11. C&W's Global Code of Business Corrective Policy further provides that violations of the Code of Business Conduct can result in termination. Id. at ¶ 3; see also ECF No. 90, Ex. 8 at 3. As such, Defendants have established a legitimate, non-discriminatory reason for his termination. See Shider v. Comm'n Workers, Local 1105, No. 95-cv-4908 (RCC), 2004 WL 613093, at *6 (S.D.N.Y. Mar. 29, 2004) (plaintiff's improper disclosure of confidential customer information, a violation of the company's written policy, constituted legitimate, nondiscriminatory reason for termination); Lioi v. N.Y.C. Dep't of Health & Mental Hygiene, 914 F. Supp. 2d 567, 587 (S.D.N.Y. 2012) (same).

c. **Pretext**

Because the Defendants have provided legitimate, nondiscriminatory reasons for the adverse employment actions at issue, the burden shifts back to Plaintiff to prove that these proffered explanations are pretextual. To do so, the Plaintiff must produce "'sufficient evidence to support a rational finding that the legitimate, nondiscriminatory reasons proffered by the [defendants] were false, and that more likely than not [discriminatory animus] was the real reason for the [employment action].'" Weinstock v. Columbia Univ., 224 F.3d 33, 42 (2d Cir. 2000) (quoting Woroski v. Nashua Corp., 31 F.3d 105, 110 (2d Cir. 1994))

(third alteration in original); see also Grady v. Affiliated Cent., Inc., 130 F.3d 553, 560 (2d Cir. 1997) ("[T]he plaintiff, in order to defeat summary judgment, must present evidence sufficient to allow a rational factfinder to infer that the employer was actually motivated in whole or in part by . . . discrimination."). To do this, Plaintiff "must 'establish a genuine issue of material fact either through direct, statistical, or circumstantial evidence as to whether the employer's reason for [the relevant adverse action] is false and as to whether it is more likely that a discriminatory reason motivated the employer' to undertake it." Varughese, 2015 WL 1499618, at *48 (quoting Dhar v. N.Y.C. Dep't of Transp., No. 10-cv-5681 (ENV)(VVP), 2014 WL 4773965, at *10 (E.D.N.Y. Sept. 24, 2014)).

Plaintiff has failed to point to any admissible evidence that raises a genuine issue of material fact for trial on the issue of pretext. Plaintiff's unsupported claims that Defendants lied in their depositions regarding his compensation, evaluation, and termination, are insufficient to raise a triable issue of material fact. Ying Jan Gan, 996 F.2d at 532 (plaintiff "may not rely simply on conclusory statements or on contentions that the affidavits supporting the motion are not credible"; Flores, 885 F.3d at 122 (reasoning that "conjecture, or speculation by the party resisting the motion will not defeat summary judgment"). The fact that Plaintiff disagrees with Ye and Carley's assessment of his work performance and offers his own analysis of the accuracy of his work is also insufficient to make a showing of pretext. Ricks v. Conde Nast Publ'n, 92 F. Supp. 2d 338, 347 (S.D.N.Y. 2000) ("The mere fact that an employee disagrees with [his] employer's assessments of [his] work, however,

cannot standing on its own show that her employer's asserted reason for termination was pretextual."); Kalra v. HSVC Bank USA, N.A., 567 F. Supp. 2d 385, 397 (E.D.N.Y. 2008) ("[I]t is well settled that the mere fact that an employee disagrees with an employer's evaluation of that employee's misconduct or deficient performance, or even has evidence that the decision was objectively incorrect, does not necessarily demonstrate, by itself, that the employer's proffered reasons are a pretext for termination."). Finally, Plaintiff does not deny that he forwarded the assignments, although he claims that C&W did not provide the PII in question and that he never received copies of the policies he violated. Def. 56.1 ¶¶ 3, 151. Defendants, however, submitted evidence that PII was included in the attachments to Plaintiff's email, as well as copies of the policies in question. Plaintiff's unsupported claims do not, then, rebut Defendants' proffered legitimate, nondiscriminatory reasons for their actions.

I therefore conclude that Plaintiff has failed to raise a triable issue of material fact regarding his race, national origin, and sex discrimination claims, and accordingly recommend that the Court grant Defendant's motion for summary judgment on Plaintiff's Title VII and NYSHRL claims.

2. NYCHRL Claim

NYCHRL discrimination claims differ from Title VII and NYSHRL claims in two ways. First, a plaintiff need not show that the employment action was materially adverse. Instead, he must "simply show that [he] was treated differently from others in a way that was more than trivial, insubstantial, or

petty." Williams v. Regus Mgmt. Grp., 836 F. Supp. 2d 159, 173 (S.D.N.Y. 2011). Second, while Title VII places the burden on plaintiffs seeking to prevail under a "'mixed-motive' theory that discriminatory animus was 'a motivating factor' in the adverse action," Varughese, 2015 WL 1499618, at *39, under the NYCHRL "defendants . . . must show that the proof precludes mixed motive liability," and summary judgment is appropriate "'only if the defendant demonstrates that it is entitled to summary judgment under both' the McDonnell Douglas analysis and also the 'mixed motive' analysis," id. at *40 (quoting Melman v. Montefiore Med. Ctr., 98 A.D.3d 107, 113 (1st Dep't 2012)). But "the NYCHRL does not alter the kind, quality or nature of evidence that is necessary to support or defeat a motion for summary judgment under Rule 56." Ballard v. Children's Aid Soc'y, 781 F. Supp. 2d 198, 211 (S.D.N.Y. 2011) (internal quotation marks omitted).

As a threshold matter, Defendants argue that if the Court grants its motion for summary judgment on Plaintiff's Title VII and ADEA claims, it should decline to exercise jurisdiction over his NYSHRL and NYCHRL claims. Def. Mem. 16. "Once a district court's discretion is triggered under [28 U.S.C.] § 1367(c)(3), it balances the traditional 'values of [i] judicial economy, [ii] convenience, [iii] fairness, and [iv] comity,' in deciding whether to exercise jurisdiction." Kolari v. N.Y. Presbyterian Hosp., 455 F.3d 118, 122 (2d Cir. 2006) (quoting Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 (1988)). These factors support the exercise of supplemental jurisdiction because "(1) discovery has been completed, (2) the state claims [are] far from novel, and (3) the state and federal claims [are] substantially

identical." Winter v. Northrup, 334 F. App'x 344, 345–46 (2d Cir. 2009); see also Valencia ex rel. Franco v. Lee, 316 F.3d 299, 305–06 (2d Cir. 2002) (collecting cases where exercise of supplemental jurisdiction was appropriate).

It is possible that some of the additional adverse employment actions alleged by Plaintiff in his opposition to Defendants' motion for summary judgment—namely, his performance evaluations in 2014 and 2015, his 2015 warning letter, the failure to promote him in June 2018 or help him secure a transfer in December 2018, and his placement on the MOE in 2019—might qualify as adverse employment actions under the NYCHRL See Sotomayor v. City of New York, 862 F. Supp. 2d 226, 258 (E.D.N.Y. 2012) (reasoning that discriminatory observations, evaluations and letters to file did "not rise to the level of a materially adverse employment action" but "are more than trivial, insubstantial or petty"); Varughese, 2015 WL 1499618, at *46, *53 (assuming without deciding that placement on academic advisement and refusal to switch plaintiff's medical residency rotation could constitute an adverse employment action under the NYCHRL).

But Plaintiff has not pointed to evidence that raises an inference of discrimination even under the more lenient local law standard. As previously noted, Plaintiff's 2014 and 2015 evaluations were performed by Ye, an Asian-identifying man of Chinese descent, undermining any claim of discriminatory animus. And, constructive criticisms in an otherwise positive evaluation that makes no mention of Plaintiff's race, national origin, or gender can hardly be considered discriminatory. Although Plaintiff attempts to argue that the failure to issue a warning to his white

coworker for the 2015 incident constitutes discrimination, his allegation that the coworker "started it" is insufficient to demonstrate that the coworker behaved comparably. Def. 56.1 ¶ 58. Moreover, the correspondence immediately preceding Plaintiff's email indicates that the coworker was attempting to follow Plaintiff's instructions and requested additional guidance to complete the assignment. ECF No. 90, Ex. 36. Describing his efforts as "trial by fire" is not comparable to Plaintiff's condescending remark that he was not the coworker's "babysitter." Similarly, Plaintiff has not produced any evidence indicating that the failure to promote him in June 2018 was motivated by discriminatory intent. It is not even clear from this record who was responsible for hiring for the position and who was ultimately hired. Similarly, Plaintiff has not identified another member of his team who engaged in similar conduct and was not placed on a MOE or otherwise disciplined. Stepheny v. Brooklyn Hebrew Sch. for Special Child., 356 F. Supp. 2d 248, 260 (E.D.N.Y. 2005) (holding plaintiff had failed to establish a prima facie case of discrimination where she "offered no evidence whatsoever that someone outside her protected group . . . was treated more favorably . . . under similar circumstances). Even if he had, Defendants have provided a legitimate, non-discriminatory reason for placing him on the MOE—namely, poor job performance and insubordination—and Plaintiff has failed to raise a triable issue of material fact as to whether this explanation was pretextual. Lawless, 487 F. App'x at 616; see also Varughese, 2015 WL 1499618, at *47 (recognizing insubordination as legitimate and nondiscriminatory reason for adverse employment action on a NYCHRL claim).

Therefore, I conclude that Plaintiff has failed to meet his burden of raising a triable issue of material fact on his NYCHRL discrimination claim.

3. Conclusion

In conclusion, I recommend that Defendants' motion for summary judgment on Plaintiff's Title VII, NYSHRL, and NYCHRL claims of race, national origin, and sex discrimination be granted.

III. Age Discrimination

The McDonnell Douglas burden shifting framework also applies to ADEA cases. Gorzynski v. Jetblue Airways Corp., 596 F.3d 93, 106 (2d Cir. 2010). To establish a prima facie case of age discrimination, Plaintiff "must show (1) that [he] was within the protected age group, (2) that [he] was qualified for the position, (3) that [he] experienced adverse employment action, and (4) that such action occurred under circumstances giving rise to an inference of discrimination." Id. at 107. Furthermore, Plaintiff "'must prove, by a preponderance of the evidence, that age was the 'but-for' cause of the challenged adverse employment action' and not just a contributing or motivating factor." Id. at 106 (quoting Gross v. FBL Fin. Servs., Inc., 557 U.S. 167, 180 (2009)). "The condition that a plaintiff's age must be the 'but for' cause of the adverse employment action is not equivalent to a requirement that age was the employers only consideration, but rather that the adverse employment actions would not have occurred without it." Fagan v. U.S. Carpet Installation, Inc., 770 F. Supp. 2d 490, 496 (E.D.N.Y. 2011). The elements of a discrimination claim under the

NYSHRL and the ADEA "are essentially the same," and courts "apply the same standards for analyzing age discrimination claims under both statutes." Brannigan v. Bd. of Educ. of Levittown Union Free Sch. Dist., 18 A.D.3d 787, 789 (2d Dep't 2005); see also Abrahamson v. Bd. of Educ. of Wappingers Falls Cent. Sch. Dist., 374 F.3d 66, 71 n.2 (2d Cir. 2004).

In contrast, under the NYCHRL, the Plaintiff need only show that age discrimination "was one of the motivating factors, even if it was not the sole motivating factor for an adverse employment decision." Melman, 98 A.D.3d at 127.

Plaintiff admits that he does not have any "obvious evidence" of age discrimination, instead speculating that because he "was the oldest in the team and over 50 years old" his age "could be a partial reason that contributed to their discrimination." Pl. Mem. 12. Such "conclusory and speculative statements are insufficient to withstand a motion for summary judgment." Isaac v. City of New York, 701 F. Supp. 2d 477, 489 (S.D.N.Y. 2010) (dismissing ADEA claim where Plaintiff failed to come forward with any evidence "that could reasonably support an inference of pretext for [age] discrimination"); see also Melman, 98 A.D.3d at 127 (granting summary judgment to employer on NYCHRL age discrimination claim where plaintiff "failed to come forward with any evidence—either direct or circumstantial—from which it could rationally be inferred that age discrimination was a motivating factor, even in part" for his treatment).

Accordingly, I recommend that Defendants' motion for summary judgment on Plaintiff's claims of age discrimination under the ADEA, NYSHRL, and NYCHRL be granted.

IV. Hostile Work Environment

A. Legal Standard

"In order to prevail on a hostile work environment claim, a plaintiff must first show that 'the harassment was sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive work environment.'" Feingold, 366 F.3d at 149 (quoting Alfano v. Costello, 294 F.3d 365, 373 (2d Cir. 2002)). "Second, the plaintiff must demonstrate a specific basis for imputing the conduct creating the hostile work environment to the employer." Id. at 150; see also Walsh v. Scarsdale Union Free Sch. Dist., 375 F. Supp. 3d 467, 488 (S.D.N.Y. 2019) (applying the same standard to claims under the ADEA and NYSHRL); Preuss v. Kolmar Lab'ys, Inc., 970 F. Supp. 2d 171, 184 (S.D.N.Y. 2013) (same). A hostile work environment claim is evaluated based on "all the circumstances, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." Nat'l R.R. Passenger Corp. v. Morgan, 536 U.S. 101, 116 (2002). "A plaintiff must also demonstrate that [he] was subjected to the hostility because of [his] membership in a protected class." Brennan v. Metro. Opera Ass'n, Inc., 192 F.3d 310, 318 (2d Cir. 1999).

To prove a claim for hostile work environment under the NYCIIRL, "a plaintiff must show that he was treated 'less well than other employees' on the basis of a protected characteristic." Alvarado v. Nordstrom, Inc., 685 F. App'x 4, 8 (2d Cir. 2017)

(quoting Mihalik, 715 F.3d at 110). As a result, "[t]he NYCHRL imposes liability for harassing conduct that results in any unequal treatment, and 'severity' and 'pervasiveness' of the conduct is germane to the issue of damages, not liability." Schaper v. Bronx Lebanon Hosp. Ctr., 408 F. Supp. 3d 379, 398 (S.D.N.Y. 2019) (quoting Mihalik, 715 F.3d at 110). "The plaintiff still bears the burden, " however, "of showing that the conduct is caused by a discriminatory motive" and must make a showing that he has been treated less well at least in part because of his membership in a protected class. Mihalik, 715 F.3d at 110. Furthermore, if an employer can show that the "conduct complained of consists of nothing more than what a reasonable victim of discrimination would consider 'petty slights and trivial inconveniences'" then the employer may prevail on summary judgment. Mihalik, 715 F.3d at 111 (quoting Williams v. N.Y.C. Hous. Auth., 61 A.D.3d 62, 80 (1st Dep't 2009)).

B. Analysis

The scope of Plaintiff's hostile work environment claim is not entirely clear from his briefs. Defendants argue that his supervisors' criticisms of his work performance do not rise to the level of a hostile work environment, and even if they did, the HR department's prompt investigation of his complaints is a complete defense against the claim. Def. Mem. 14.

Furthermore, Defendants contend that Plaintiff fails to demonstrate that any harassment was connected to his membership in a protected class. Id. at 15. Plaintiff responds that: (1) the HR department failed to adequately investigate his

complaints and concluded that his supervisors' decisions were justified; (2) HR staff who were cc-ed on his emails with Ye complaining about the additional work he had been assigned asked to be removed from the communication, Pl. 56.1 ¶ 239–46; and (3) he was allegedly not allowed to use his PTO in June 2019. Pl. Mem. 12–13. Plaintiff did not directly respond to Defendants' argument that he had failed to show a causal connection between his race, national origin, age, or gender and his treatment in the workplace.

First, it is well-established that absent a showing of discriminatory animus, "[a]llegations of even constant reprimands and work criticism . . . are not sufficient to establish a hostile work environment claim." Lucenti v. Potter, 432 F. Supp. 2d 347, 362–63 (S.D.N.Y. 2006). Negative job evaluations and disciplinary warnings are also insufficient to support a hostile work environment claim without accompanying evidence of discriminatory intent. St. Louis v. N.Y.C. Health & Hosp. Corp., 682 F. Supp. 2d 216, 234 (E.D.N.Y. 2010). As explained above, Plaintiff has failed to produce any direct or circumstantial evidence that Defendants were motivated by animus, and so summary judgment on Plaintiff's hostile work environment claims is appropriate under federal, state, and local law. Pouncy v. Advanced Focus, LLC, 763 F. App'x 134, 136 (2d Cir. 2019).[3]

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3 To the extent that Plaintiff argues that Shelly Paul, a white woman, was treated more favorably than him because she was permitted to take medical leave in the spring of 2019 while his request for PTO was denied, Defendants contest his claim that he was not allowed to take PTO. Def. Mem. 15 n.11. Indeed,

Plaintiff himself cites to an email sent to him by an HR staff person informing him that in place of applying for short-term disability, he could "exhaust [his] 56.9 hours of PTO and 40 hours of sick [time]." Pl. 56.1 ¶ 260. Plaintiff's claim is therefore unsubstantiated by the record evidence and does not raise a triable issue of material fact.

I conclude that Plaintiff has failed to carry his burden of raising a triable issue of material fact and recommend that Defendants' motion for summary judgment on Plaintiff's hostile work environment claims under Title VII, the ADEA, NYSHRL, and NYCHRL be granted.

V. Retaliation

A. Legal Standard

The McDonnell Douglas burden-shifting analysis applies to retaliation claims under Title VII, the ADEA, and the NYSHRL. See Cifra v. G.E. Co., 252 F.3d 205, 216 (2d Cir. 2001); Gorzynski, 596 F.3d at 110; Chavis v. Wal-Mart Stores, Inc., 265 F. Supp. 3d 391, 398 (S.D.N.Y. 2017). To establish a prima facie case of retaliation, "the plaintiff must show that he engaged in protected participation or opposition under [the statute], that the employer was aware of this activity, that the employer took adverse action against the plaintiff, and that a causal connection exists between the protected activity and the adverse action, i.e., that a retaliatory motive played a part in the adverse employment action." Sumner v. U.S. Postal Serv., 899 F.2d 203, 208–09 (2d Cir. 1990). "Title VII defines protected activities as (1) an employee's opposition to any activity which is prohibited by Title VII, or (2) an employee's participation in any Title VII

investigation or proceeding." Robinson v. Time Warner Inc., 92 F. Supp. 2d 318, 330 (S.D.N.Y. 2000) (applying the same standard to Title VII and NYSHRL claims). Because "implicit in the requirement that the employer [be] aware of the protected activity is the requirement that it understood, or could reasonably have understood, that the plaintiff's opposition was directed at conduct prohibited by Title VII . . . Mere complaints of unfair treatment . . . are not protected." Brantman v. Fortistar Cap., Inc., No. 15-cv-4774 (NSR), 2017 WL 3172864, at *7 (S.D.N.Y. July 21, 2017) (citations and internal quotations omitted) (alterations in original). Therefore, "the onus is on the speaker to clarify to the employer that he is complaining of unfair treatment due to his membership in a protected class and that he is not complaining merely of unfair treatment generally." Id.

The NYCHRL provides that "[it] shall be an unlawful discriminatory practice for any person engaged in any activity to which this chapter applies to retaliate or discriminate in any manner against any person because such person has (i) opposed any practice forbidden under this chapter." N.Y.C. Admin. Code § 8-107(7). Consequently, "[t]he [NY]CHRL is slightly more solicitous of retaliation claims than federal and state law because, rather than requiring a plaintiff to show an 'adverse employment action,' it only requires him to show that something happened that was 'reasonably likely to deter a person from engaging in protected activity.'" Malena v. Victoria's Secret Direct, LLC, 886 F. Supp. 2d 349, 362 (S.D.N.Y. 2012) (quoting Rozenfeld v. Dep't of Design & Constr., 875 F. Supp. 2d 189, 208 (E.D.N.Y. 2012)). "Otherwise, a prima facie claim of retaliation faces the same

requirements under the NYCHRL as under the NYSHRL." Id.

B. Analysis

Plaintiff has not met his burden of raising a triable issue of material fact on his Title VII or NYSHRL claims. First, his request for a raise in November 2018 does not constitute protected activity. Despite his claims that he was concerned that Asians on his team were not adequately compensated, he did not make any such allegation to Ye and Carley or in his subsequent meeting with Lanciers, where he reported that was interested in a transfer because he felt his work was not appreciated. Def. 56.1 ¶¶ 72–89. There is no evidence that he articulated his concern that women on this team were better paid because of their gender. As such, Ye, Carley, and Lanciers could not have been "actually aware or could have reasonably understood" his request for a raise to be directed at prohibited conduct. Benzinger v. Lukoil Pan Americas, LLC, 447 F. Supp. 3d 99, 126 (S.D.N.Y. 2020) (holding that plaintiff's complaints about her overtime and her statement that it was unfair that a coworker was paid more were insufficient to put employer on notice that she believed her lower compensation was motivated by her national origin). Similarly, Plaintiff's March 18, 2019 email to HR complaining that his 2018 performance evaluation was unfair does not make any mention of discrimination, and so was also insufficient to put Defendants on notice that Plaintiff had engaged in protected activity. Def. 56.1 ¶¶ 105, 108.

Second, Plaintiff has not demonstrated that his May 1, 2019 email to Snow and Sheehan stating that

he believed he was discriminated against as an Asian male resulted in any retaliatory action. This complaint constitutes protected activity, and the fact that it occurred less than a month before his termination is sufficient to raise an inference of retaliation. Lovejoy-Wilson v. NOCO Motor Fuel, Inc., 263 F.3d 208, 224 (2d Cir. 2001) (holding that one-month time span between protected activity and adverse employment action was "short enough to permit a jury to infer a causal connection"). However, Defendants have provided a legitimate, nondiscriminatory explanation for his termination: his violation of company policy in sending confidential data to his personal email. As explained above, Plaintiff has failed to raise a triable issue of material fact that this explanation is pretextual. El Sayed v. Hilton Hotels Corp., 627 F.3d 931, 933 (2d Cir. 2010) ("The temporal proximity of events may give rise to an inference of retaliation for the purposes of establishing a prima facie case of retaliation under Title VII, but without more, such temporal proximity is insufficient to satisfy appellant's burden to bring forward some evidence of pretext."). Therefore, I conclude that Defendants are entitled to summary judgment on Plaintiff's retaliation claims under Title VII and the NYSHRL.

Even under the more solicitous standard of the NYCHRL, Plaintiff has failed to carry his burden. Neither Plaintiff's November 2018 request for a raise nor his March 2019 complaints about his 2018 performance evaluation constitute protected activity. While local law does not require that Plaintiff "say in so many words" that an employer's action represented discrimination, a jury must be able to infer that the employer understood that plaintiff was opposing what

he believed to be a discriminatory practice. Albunio v. City of New York, 16 N.Y.3d 472, 479 (2011) (holding that plaintiff did not explicitly state that a job candidate was a victim of discrimination but "a jury could find that both [plaintiff and her supervisor] knew that he was, and that [plaintiff] made clear her disapproval of that discrimination"). No reasonable jury could conclude, based on context alone, that an employer would have understood Plaintiff's request for a raise and his objections to his performance evaluation as opposing a discriminatory practice. And while Plaintiff's May 1, 2019 email constitutes protected activity, Defendants have, once again, established a legitimate, nondiscriminatory reason for Plaintiff's termination less than a month later—an explanation Plaintiff has been unable to prove was pretextual—and Plaintiff has not produced evidence that Defendants engaged in any other conduct in May 2019 that was reasonably likely to deter him from engaging in protected activity. Therefore, I conclude that Plaintiff has failed to raise a triable issue of material fact on his NYCHRL retaliation claim.

In conclusion, I recommend that the Court grant Defendants' motion for summary judgment on Plaintiff's retaliation claims under Title VII, the NYSHRL, and the NYCHRL.

CONCLUSION

I recommend that Defendants' motion for summary judgment be GRANTED on all claims, and that Plaintiff's motion for summary judgment be DENIED.

/S/ SARAH NETBURN
United States Magisture Judge

DATED: August 23, 2022
New York, New York

* * *

NOTICE OF PROCEDURE FOR FILING OBJECTIONS TO THIS REPORT AND RECOMMENDATION

The parties shall have fourteen days from the service of this Report and Recommendation to file written objections pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure. A party may respond to another party's objections within fourteen days after being served with a copy. Fed. R. Civ. P. 72(b)(2). Such objections shall be filed with the Clerk of the Court, with courtesy copies delivered to the chambers of the Honorable Valerie E. Caproni at the United States Courthouse, 40 Foley Square, New York, New York 10007, and to any opposing parties. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(d), 72(b). Any requests for an extension of time for filing objections must be addressed to Judge Caproni. The failure to file these timely objections will result in a waiver of those objections for purposes of appeal. See 28

U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(d), 72(b); Thomas v. Arn, 474 U.S. 140 (1985).

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

IVAN TO MAN PANG, Plaintiff,

-against-

CUSHMAN & WAKEFIELD U.S., INC., ANTHONY YE, WILLIAM CARLEY and RENAE STOKKE,

Defendants.

20-CV-10019 (VEC) (SN)

ORDER ADOPTING REPORT & RECOMMENDATION

VALERIE CAPRONI, United States District Judge:

On November 27, 2020, pro se Plaintiff Ivan To Man Pang ("Plaintiff") commenced this action against Cushman & Wakefield., Inc ("C&W"), Anthony Ye ("Ye"), and Renae Stokke ("Stokke") alleging: race, national origin, and sex discrimination in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000e et seq., the New York State Human Rights Law ("NYSHRL"), New York Executive Law §§ 290 et seq., and the New York City Human Rights Law ("NYCHRL"), New York City Administrative Code §§ 8-101 et seq.; age discrimination in violation of the Age Discrimination in Employment Act of 1967 (the "ADEA"), 29 U.S.C. §§ 621 et seq., NYSHRL, and NYCHRL; hostile work environment in violation of Title VII, the ADEA, NYSHRL, and NYCHRL; and retaliation in violation of Title VII, NYSHRL, and NYCHRL. After discovery, the parties cross-moved for summary judgment. See Def. Mot., Dkt. 87; Pl. Mot.,

Dkt. 97. Judge Nathan, then presiding, referred the motions to Magistrate Judge Netburn for a Report and Recommendation ("R&R"). See Order, Dkt. 93.

Magistrate Judge Netburn recommended that the Court grant Defendant's motion for summary judgment and deny Plaintiff's cross-motion for summary judgment. See R&R, Dkt. 108. Plaintiff objected to the R&R. See generally Pl. Obj., Dkt. 115. For the following reasons, the Court ADOPTS the R&R in its entirety.

BACKGROUND

The Court refers the reader to the R&R's detailed recitation of the factual background in this case. For the purposes of this Order, the Court summarizes only the most pertinent facts.

Plaintiff began working as a Senior Accountant for C&W in March 2014, initially earning an annual salary of $75,000. R&R at 2. Plaintiff, who was 56 years old at the time of his deposition, identifies as Asian of Chinese heritage. Id. As a Senior Accountant, Plaintiff was responsible for managing expenses and invoices related to the locations of Citigroup, a client of C&W. Id. Plaintiff's direct supervisor, Ye, was a 38-year-old male at the time of his deposition and, like Plaintiff, identifies as Asian of Chinese heritage. Id. Ye reported to Carley, the Director of Finance for C&W's Citigroup Account, who was 67 at the time of his deposition. Id.[1]

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1 Carley's racial identity and national origin are not reflected in the record, although Plaintiff asserts that Carley is white. See R&R at 2 n.2.

As Plaintiff's supervisor, Ye evaluated Plaintiff's performance, which was a factor in determining annual bonus and salary increases. Id. at 3. In 2014, Plaintiff was rated a "Good Performer," but Ye noted some performance deficiencies. Id. From 2014 to 2017, Ye's performance ratings of Plaintiff steadily improved. Id.[2] In 2018, however, Plaintiff was rated "Needs Improvement." Id. at 4. As a result, Plaintiff did not receive an annual salary increase and received only 50% of his projected bonus. Id.

Because of Plaintiff's position, he had access to his team's salary and payroll information. See id. at 3–4. In 2014, Plaintiff complained to Ye that fellow Senior Accountant, Winnie Huynh, a female, earned $5,000 more per year than Plaintiff. Id. at 2. Ye told Plaintiff that he was unable to increase Plaintiff's salary. Id.

On March 16, 2015, Defendants issued Plaintiff a warning letter related to an email exchange with a subordinate. The subordinate had complained to Plaintiff that he had not been provided sufficient training to complete a particular assignment. Id. at 3. Plaintiff responded that he had given the employee "the brief instruction to follow," and that Plaintiff was not the subordinate's "babysitter." Id.

In November 2018, Plaintiff learned that Christine Baynes received an increase of $10,000 to

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2 In 2015 and 2016, Plaintiff was rated "Good Performance Plus." R&R at 3. In 2017, Plaintiff was rated "Very Good Performance." Id. Each of these ratings was sufficient for Plaintiff to receive his then-projected bonus and scheduled salary increase. See id.

her salary when she was transferred from a non-exempt role to an exempt position in the Financial Department. Id. at 3–4. Plaintiff prepared a chart of the salaries of all department members and met with Ye and Carley to request a raise. Id. at 4. Plaintiff's request was denied because he was already being paid at market level; Baynes had been given an increase to bring her salary to market level. Id.

On November 28, 2018, Plaintiff contacted a Human Resources ("HR") Manager and requested a job transfer. Id. at 4. Plaintiff told HR that his work was not appreciated; he did not, however, indicate that he had been unfairly compensated because of his national origin, race, gender, or age. Id. HR explained to Plaintiff how to pursue an internal transfer; Plaintiff failed to follow through on those instructions. Id. at 4, 12.

In early 2019, Ye and Carley met with Plaintiff to discuss his 2018 performance evaluation in which he was rated "Needs Improvement." Id. at 4. On April 4, 2019, Plaintiff sent an email to the Director of Human Resources and more than 40 other recipients objecting to his 2018 performance evaluation. Id. at 5. Plaintiff disputed that his job performance was poor and complained about being assigned work outside of his role; he did not assert that he was being discriminated against because of his race, national origin, gender, or age. Id. Stokke, the Employee Relations Senior Manager, conducted a formal investigation of the allegations in Plaintiff's email. Stokke concluded that Plaintiff had not been treated unfairly and recommended that Defendants provide him with a Memorandum of Expectations ("MOE") to outline their expectations for his job performance. Id.

On April 29, 2019, Plaintiff met with HR, Ye, and Carley to review the MOE. Id. Plaintiff objected to the MOE and was told that he could not return to work unless he signed it. Id. Plaintiff refused to sign the MOE and was suspended. Id.

On May 1, 2019, Plaintiff complained to HR that he had been "treated unfairly for [the] last 5 years," which he attributed to his "gender or race." Id. Plaintiff stated that he was "the only Male Asian on the team" and complained that his "white and female" coworkers were treated better in terms of work and were paid more. Id. Plaintiff's complaint was escalated to Kifi Haque, the Head of North America Employee Relations, for investigation. Id. Haque discussed Plaintiff's complaint with Plaintiff and offered him severance if he chose to resign. Id. at 5–6. A revised MOE was issued on May 17, 2019, but Plaintiff remained dissatisfied with the MOE. Id. at 6.

On May 28, 2019, Plaintiff forwarded to his personal email account two emails that, according to Defendants, contained confidential personally identifiable information ("PII") belonging to Citigroup, C&W's client. Id. Plaintiff admitted that he sent the emails, but he denied that the emails contained any PII. Id. Plaintiff was placed on paid administrative leave pending further investigation, and, on May 31, 2019, C&W terminated his employment for violating the Global Code of Business conduct by sending PII outside of C&W. Id. at 6, 19–20.

In a well-reasoned, thorough R&R, Magistrate Judge Netburn recommends granting Defendants' motion for summary judgment and denying Plaintiff's cross-motion for summary judgment on the grounds that Plaintiff failed to establish a prima facie case of discrimination based on race, national origin, or sex,

and even if he had, that he failed to raise a triable issue of material fact that Defendants did not have a legitimate, non-discriminatory motive for their complained-of actions. See id. at 17, 32. The R&R further recommends granting Defendants summary judgment because Plaintiff failed to establish a prima facie case of age discrimination, hostile work environment, or retaliation. Id. at 26, 29, 32. For the following reasons, the Court ADOPTS the R&R in its entirety.

DISCUSSION

I. Legal Standard

In reviewing a report and recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). When no timely objections are made to a magistrate judge's R&R, a district court may adopt the R&R unless there is a "clear error on the face of the record." Phillips v. Reed Grp., Ltd., 955 F. Supp. 2d 201, 211 (S.D.N.Y. 2013) (quoting Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)). When a party makes specific, written objections to the R&R, "[t]he district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3); see also United States v. Male Juvenile, 121 F.3d 34, 38 (2d Cir. 1997) (citing 28 U.S.C. § 636(b)(1)). To warrant de novo review, the objections must be "specific" and "address only those portions of the proposed findings to which the party objects." Pineda v. Masonry Constr., Inc., 831 F. Supp. 2d 666, 671 (S.D.N.Y. 2011) (citation omitted). If "a party's objections are conclusory or general, or simply

reiterate original arguments, the district court reviews the [R&R] for clear error." Id. A magistrate judge's decision is clearly erroneous only if the district court is "left with the definite and firm conviction that a mistake has been committed." Cameron v. Cunningham, 2014 WL 4449794, at *2 (S.D.N.Y. Sept. 9, 2014) (quoting Easley v. Cromartie, 532 U.S. 234, 235, 242 (2001)).

Submissions by pro se litigants are construed more leniently than submissions by lawyers and are interpreted to raise the strongest arguments they suggest. See Pabon v. Wright, 459 F.3d 241, 248 (2d Cir. 2006) (citation omitted); see also Goldstein v. Hulihan, 2011 WL 4954038, at *1 (S.D.N.Y. Oct. 18, 2011). Nevertheless, a pro se litigant's objections to a magistrate judge's R&R "must be specific and clearly aimed at particular findings in the magistrate's proposal, such that no party be allowed a second bite at the apple by simply relitigating a prior argument." Goldstein, 2011 WL 4954038, at *1 (quoting Pinkney v. Progressive Home Health Servs., 2008 WL 2811816, at *1 (S.D.N.Y. July 21, 2008)).

Here, Plaintiff argues that Magistrate Judge Netburn mischaracterized facts in the record, ignored critical facts, or broadly erred in her legal conclusions. Plaintiff's objections either (1) regurgitate the same arguments he made before Magistrate Judge Netburn; (2) mischaracterize the R&R; or (3) misrepresent the record. Accordingly, the Court reviews the R&R for clear error as to each of Plaintiff's claims.

II. Race, National Origin, and Sex Discrimination Claims

Plaintiff fails to raise any valid objections to the R&R's findings on his race, national origin, and sex discrimination claims. Many of Plaintiff's objections are mere perfunctory responses that largely rehash the arguments made in Plaintiff's original motion. Compare Pl. Mem. at 8, Dkt. 99 (arguing that Defendants' failure to appropriately investigate Plaintiff's complaint constitutes an adverse employment action), with Pl. Obj. at 7, 13–14 (arguing that Magistrate Judge Netburn did not provide a "fair recommendation" when she found that Defendants' failure to take Plaintiff's complaint "seriously" did not constitute an adverse employment action). The R&R was not clearly erroneous when it found that Defendants' alleged failure to investigate Plaintiff's salary complaint did not constitute an adverse employment action.

Plaintiff also "did not agree" with the R&R's finding that Plaintiff's inability to secure an internal transfer was due, in part, to his own failure to pursue it. Pl. Obj. at 7. Magistrate Judge Netburn, however, correctly applied the law in this circuit: whether Plaintiff "follow[ed] through on instructions on how to pursue an internal transfer" is irrelevant because the denial of a transfer does not constitute an adverse employment action unless it creates "a materially significant disadvantage in [the Plaintiff's] working conditions." R&R at 12 (citing Williams v. R.H. Donnelley Corp., 368 F.3d 123, 128 (2d Cir. 2004)). The R&R correctly found that Plaintiff failed to demonstrate that C&W actively prevented him from transferring, a fact that Plaintiff simply has not refuted.[3]

Plaintiff also objects to what he perceives as instances in which the R&R ignored critical facts favorable to his claim. For example, Plaintiff objects to the R&R's alleged failure to address the adverse impact of his 2018 year-end evaluation on his bonus and projected salary increase. Pl. Obj. at 8. The R&R, however, clearly addressed and considered the consequences of his 2018 performance evaluation and correctly determined that it, among other actions, constituted an "adverse employment action." R&R at 13.[4] Plaintiff failed to show, however, any evidence that those adverse employment actions occurred under circumstances that would give rise to an inference of discrimination. Id. Even if he had, the R&R found that Plaintiff failed to adduce any evidence to rebut Defendants' showing that there were legitimate, non- discriminatory reasons for each of the adverse employment actions.Id.at18.

Plaintiff's broad objection to the R&R's determination that he had failed to show disparate treatment fares no better. Plaintiff argues that he was assigned a disproportionate workload and that his salary "increase[s] were less favorable than the white

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3 Plaintiff claims that he "did what [he] needed to do and HR did not follow the normal process to connect [him] with the recruiter." Pl. Obj. at 7. Exhibits documenting the email exchange between Plaintiff and HR indicate that HR instructed him to "apply directly and then provide [HR]with the requisition number and then [he and HR] can discuss further." See Ex. 47 to Pl. Decl., Dkt. 98-3. Plaintiff has presented no evidence that he complied with those instructions

4 Other adverse employment actions included his compensation, Defendants' failure to promote him in June 2018, and his discharge. R&R at 13

female colleagues" on his team, thus demonstrating disparate treatment. Pl. Obj. at 8. This objection merely regurgitates the same facts that Plaintiff argued to the Magistrate Judge and disparate treatment fares no better. Plaintiff argues that he wasassigned a disproportionate workload and that his salary "increase[s] were less favorable that she rejected. See Pl. Mem. at 8–9 (arguing that the assignment of additional work to cover for white, female colleagues and receipt of salary increases less favorable than those given to his female colleagues constituted adverse employment actions). The R&R was not clearly erroneous when it rejected those arguments. Magistrate Judge Netburn found that the colleagues that Plaintiff chose as points of comparison were not suitable comparators, and that Defendants nonetheless established legitimate non-discriminatory reasons that justified differential treatment — particularly as it related to salary.[5] R&R at 14–16.

In short, the Court does not find any clear error in the R&R's findings and adopts the recommendation that Defendants' motion for summary judgment on Plaintiff's race, national origin, and sex discrimination claims be granted.

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5 Huynh, the only comparator who shared Plaintiff's job title, was also Asian; that fact undermines Plaintiff's claim of racial discrimination. R&R at 14. Nor did Plaintiff provide substantive evidence that gender played any role in the slight pay gap between him and Huynh. The R&R pointed to Huynh's superior performance reviews and previous

III. Age Discrimination Claims

Plaintiff purports to object to the R&R's findings regarding his age discrimination claims, but states that he "will let the Court decide" whether the mere fact that he "was the oldest on the team and was over 50 years old" is sufficient by itself to establish a prima facie age discrimination claim. Pl. Obj. at 14. Because

Plaintiff acknowledges that he does not have any "obvious evidence" of age discrimination, id., the R&R was not clearly erroneous in determining that summary judgment for Defendants was appropriate. Therefore, the Court adopts the R&R's recommendation that Defendants' motion for summary judgment on Plaintiff's age discrimination claims be granted.

IV. Hostile Work Environment Claims

Plaintiff objects to the R&R's findings regarding his hostile work environment claims, but he does nothing beyond regurgitating a series of facts from the parties' 56.1 Statement and Counterstatement that he argues would lead any reasonable person to find that Defendants did not act "appropriately." Pl. Obj. at 15–17. Whether Defendants acted "appropriately" is not the legal standard for establishing a prima facie hostile work environment claim. Feingold v. New York, 366 F.3d 138, 149–50 (2d Cir. 2004) (to establish a hostile work environment claim, the harassment must be "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment") (cleaned up).

Plaintiff's overly broad, conclusory objection to the R&R's recommendation that Defendants' motion for summary judgment on Plaintiff's hostile work environment claim be granted fails to explain how any particular portion of the record would alter the legal conclusion that he failed to establish sufficiently severe or pervasive harassment to prove a hostile work environment claim.[6] Accordingly, the Court finds that the R&R is not clearly erroneous and adopts the R&R's recommendation that Defendants be granted summary judgment on Plaintiff's hostile work environment claim.

V. Retaliation Claims

Finally, Plaintiff's objections to the R&R's recommendation regarding his retaliation claims fail. Pl. Obj. at 17–19. Rather than explain how the R&R erred, Plaintiff makes a generalized argument that Defendants' actions fit within a lay person's understanding of retaliation. See id. at 19 (arguing that Defendants had no reason to terminate his

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6 Plaintiff's support for his hostile work environment claims is that he was assigned work outside of his formal role and that HR failed adequately to investigate his complaints against management. Pl. Obj. at 15–17. The Second Circuit has found that failures to investigate complaints and assignment of additional work are insufficient to establish a hostile work environment. Lax v. City Univ. of New York, 2022 WL 103315, at *2 (2d Cir. Jan. 11, 2022) (citing Fincher v. Depository Tr. & Clearing Corp., 604 F.3d 712, 724 (2d Cir. 2010)). Plaintiff's argument that Defendants' alleged denial of his PTO request "would be a piece of good evidence" in support of his hostile work environment claim, Pl. Obj. at 17, fails for the separate reason that, as indicated in the R&R, it is "unsubstantiated by the record evidence and does not raise a triable issue of material fact," R&R at 29 n.3.

employment other than to retaliate for his various complaints). As the R&R correctly points out, Defendants demonstrated a "legitimate, nondiscriminatory" reason for Plaintiff's termination. R&R at 31– 32. Magistrate Judge Netburn's finding that the Plaintiff failed to establish that his termination was in retaliation for the only protected activity in which Plaintiff engaged — his May 1, 2009 email to management alleging discrimination — was not clearly erroneous. See id.

The R&R thoroughly considered each of the incidents that Plaintiff alleged constituted protected activity and their connection to his termination. In that analysis, Magistrate Judge Netburn did not make a clear error. Therefore, the Court adopts this portion of the R&R.

CONCLUSION

For the foregoing reasons, the Court ADOPTS the R&R in its entirety. Accordingly, Defendants' motion for summary judgment is GRANTED; Plaintiff's cross-motion for summary judgment or a default judgment is DENIED; and the case is DISMISSED with PREJUDICE. The Clerk of Court is respectfully directed to enter judgment in favor of Defendants, to mail a copy of this Order to the pro se Plaintiff, and to close this case.

SO ORDERED.

Date: March 27, 2023 /S/ VALERIE CAPRONI
New York, New York United States

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

20 CIVIL 10019 (VEC)(SN)

JUDGMENT

IVAN TO MAN PANG, Plaintiff,

-against-

CUSHMAN & WAKEFIELD U.S., INC., ANTHONY YE, WILLIAM CARLEY and RENAE STOKKE,

Defendants.

It is hereby ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Order dated March 27, 2023, the R&R is ADOPTED in its entirety. Defendants' motion for summary judgment is GRANTED; Plaintiff's cross-motion for summary judgment or a default judgment is DENIED; and the case is DISMISSED with PREJUDICE. Judgment is entered in favor of Defendants; accordingly, the case is closed.

Dated: New York, New York March 28, 2023

RUBY J. KRAJICK

Clerk of Court

BY: /S/ K. Mango

Deputy Clerk

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 26th day of April, two thousand twenty-four.

ORDER

Docket No: 23-713

Ivan To Man Pang,

Plaintiff - Appellant,

v.

Anthony Ye, Citi Realty Services - Financial Manager, William Carley, Citi Realty Services - Finance Director, Renae Stokke, Employee Relations Senior Manager, Cushman & Wakefield U.S., Inc., 1290 Ave. of the Americas, New York, NY 10104,

Defendants - Appellees,

Cushman & Wakefield, Scott Snow, Citi Account - Human Resources Manager,

Defendants.

Appellant, Ivan To Man Pang, filed a petition for panel rehearing, or, in the alternative, for rehearing en banc. The panel that determined the

appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing en banc.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:
/S/ Catherine O'Hagan Wolfe, Clerk

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

IVAN TO MAN PANG,

Plaintiff,

-vs-

CUSHMAN & WAKEFIELD U.S., INC., ANTHONY YE, WILLIAM CARLEY and RENAE STOKKE,

Defendants.

No. 1:20-cv-10019 (AJN)(SN)

DEFENDANTS' LOCAL RULE 56.1 COUNTER-STATEMENT OF MATERIAL FACTS

Defendants Cushman & Wakefield U.S. Inc. ("C&W"), Anthony Ye ("Mr. Ye"), William Carley ("Mr. Carley"), and Renae Stokke ("Ms. Stokke") (or collectively "Defendants"), submit this Local 56.1 Counter-Statement of Material Facts as to which there is no genuine issue to be tried in opposition to Plaintiff's Cross-Motion for Summary Judgment.[1]

1 The bolded portions of Plaintiff's Local Rule 56.1 Statement were not included in Defendants' Local Rule 56.1 Counter-Statement of Material Facts.

I. Background Information

1. I am Ivan To Man Pang, 57 years old, Chinese-American man with more than 15 years in real estate, five years working as a consultant, and two years in an insurance company for accounting experience. (AY Dep. at 15)

A. Deny and admit in part. Defendants admit Mr. Pang stated in a question he posed to Mr. Ye that Mr. Pang had "more than 15 years in – more than 20 years in accounting and 15 years in real estate experience." Defendants deny that this question references testimony in the action regarding Mr. Pang's experience as a consultant or in insurance. Mr. Pang was questioned about his prior experience during his deposition and his resume was introduced as an exhibit, but Mr. Pang did not mention consulting experience or insurance experience. (Pl. Dep. at 21).

2. I graduated from Baruch College in 2002 and received a Bachelor of Science in Accounting. (IP Dep. at 10)

A. **Admit**.

II. Joined C&W as Senior Accountant

3. I joined Cushman & Wakefield U.S., Inc. ("C&W") in March 2014 as a Senior Accountant. One of the four initial members in the NY financial team of Citigroup ("Citi") assignment. Team members included Anthony Ye ("Anthony")– Financial Manager, Winnie Huynh

("Winnie") – Senior Accountant, Lina Ramirez ("Lina")– Accountant and myself. (AY Dep. at 10)

A. Admit, but the cited deposition testimony does not support Mr. Pang's statement. Defendants admit that Mr. Pang began his employment with C&W as a Senior Accountant in the Corporate Occupier & Investor Services in the Financial Department for C&W's Citigroup Account on or about March 1, 2014. (Pl. Dep. at 24; Mary Smith Aff., Ex. 3).

4. I was interviewed by Anthony, as well as Winnie, and Lina was transferred from another assignment. (AY Dep. at 11)

A. Deny and admit in part. Defendants admit that Mr. Pang was interviewed by Mr. Ye. However, Ms. Huynh did not interview Mr. Pang. Defendants also admit that Mr. Ye interviewed Ms. Huynh, and that Ms. Ramirez was an internal transfer. (Ye Dep. at 11, 13).

5. Anthony as my direct manager with the transition team decided to hire two Chinese out of 4 or 5 candidates they interviewed. The other candidates were not Asian. (AY Dep. at 11,16&17)

A. Admit.

6. Anthony testified that The Citigroup assignment was short-staffed in the 1st year. (AY Dep. at 15)

A. Admit.

7. Laura Bove ("Laura"), Financial Analyst, and Christine Baynes ("Christine"), Junior Accountant, joined the team after. (IP Dep. at 48)

A. Admit, but the cited deposition testimony does not fully support the statement. (Pl. Dep. at 47-52).

8. Anthony was hired by C&W in 2012 as a Senior Accountant and was promoted to a manager position in 2013. He worked with a manager and one coworker total of three people, on an assignment. His salary started at around $80,000 increasing to $100,000 before the Citigroup assignment. (AY Dep. at 8&9)

A. Admit.

9. The Financial Director William Carley ("Bill") was joined a month or two later. (AY Dep. at 8&9)

A. Admit, but the cited deposition testimony does not support the statement. (Pl. Dep. at 44-45).

10. Bill testified he monitored NY Financial Team very close. He and Anthony confer very, very frequently. (WC Dep. at 12-13)

A. Admit.

11. The Citigroup assignment also had an Accounts Payable ("A/P") Team in Tempe, Arizona. The manager was Shelly Paul, with two senior accountants, two accountants, and 2 A/P clerks at that time. (AY Dep. at 20,22)

A. Admit.

12. A/P Team in Tempe doesn't have to do analyze or input data into the accounting system. (AY Dep. at 29)

A. Admit.

13. My starting salary was $75,000. The pay range of the same position is from $75,400 to $113,100 for

2021, according to information provided by the defendants. Lina made $70,040, and Winnie made $81,003 in April 2015. (IP Dep. at 24; IP Decl. Exs. 34, 35,73 p.5)

A. Admit.

14. Winnie has an accounting degree with ten or more years of experience and worked as a consultant in C&W corporate finances before this assignment. (AY Dep. at 12)

A. Admit.

15. Anthony stated that Lina has an accounting degree and worked at C&W for more than five years. (AY Dep. at 13)

A. Admit.

16. The defendant's counsel provided no information on Lina's educational background when I requested the document. (IP Decl. Ex. 74)

A. Deny. In a good faith attempt to respond to Mr. Pang's Request, Defendants searched for Ms. Ramirez's resume but do not possess one. Defendants produced a copy of Ms. Ramirez's Workday profile contained on C&W's Human Resources Management Information Software. Ms. Ramirez's Workday profile does not include any educational history. (Mr. Pang Declaration, Ex. 74).

17. Anthony testified Lina's responsibility was to process all emergency invoices, process all union benefit invoices, process all expense requests, help out on month-end close which including might be entering cash receipts, journal entries, and payables. (AY Dep. at 24)

A. Admit.

18. Anthony stated that accountants, should have the responsibility to enter manual Journal Entries. (AY Dep. at 24-25)

A. Admit.

19. Accountants and senior accountants in the Accounts Payable Team do not enter the data into the accounting system. This means they do not enter any Journal Entries. (No. 12)

A. Deny. Mr. Pang provided no evidentiary support for this statement.

20. Anthony testifies Lina cannot reconcile the whole bank rec because there is a segregation of duty. She cannot do the next step if she doesn't have access rights. (AY Dep. at 95)

A. Admit.

21. Anthony testified she was only to prepare bank rec would not have any conflicts. (AY Dep. at 96)

A. Deny. Mr. Ye stated that there was a segregation of duty between the person who prepared the bank reconciliation, the person who reviewed the bank reconciliation, and the person who posted the bank reconciliation as defined in C&W's policy and procedures. (Ye Dep. at 96).

22. Lina cannot prepare bank reconciliation by herself, (AY Dep. at 96)

A. Admit.

23. Anthony testified that Lina prepared payroll entries when Winnie was out. He was very confident

she submitted the entry for him to post more than one time. (AY Dep. at 188-190)

A. Deny. Mr. Ye testified that when Ms. Huynh was out, Ms. Ramirez helped prepare payroll. However, Mr. Ye did not state he was "very confident she submitted the entry for him to post more than one time." Mr. Ye instead testified that "I have to double check to confirm, but Winnie is, when she's out, when she's given that task, I will have to check my emails, but with hundreds of emails I'm getting a day, I really have to go back and dig in and see if I can find any." (Ye Dep. at 190-191).

24. Anthony testified that Lina helped out to do cash receipts when Christine was out. (AY Dep. 194¬195)

A. Admit.

25. Defendant's counsel refused to provide and stated that the judge denied my request for Lina helped out with records of both payroll entries and cash receipts. (IP Decl. Ex. 76 no. 1&2)

A. Admit. Mr. Pang filed a Motion to Compel on January 24, 2022, in which he requested Defendants "[p]roduce Lina Ramirez's work for preparing payroll journal entries when Winnie Huynh was out from January 2016 to December 2018." (ECF No. 75). Magistrate Judge Sarah Netburn denied Mr. Pang's Motion to Compel on February 17, 2022 because Mr. Pang had "not met his burden of showing that the documents are relevant to his claims, and the burden or expense of complying with these requests clearly outweighs their likely benefit." (ECF No. 84).

26. My responsibilities included setting up budgets, cash receipts, creating invoices, purchasing orders accrued, and assisting in preparing financial statements and vendor allocation. Winnie would share some duties with me and focus on payroll and bank reconciliation. Lina handled all the union payments and reimbursed personal business expenses. (AY Dep. at 24-26)

A. Deny. With respect to Ms. Ramirez, Mr. Ye testified that her responsibilities in 2014 were "to process all emergency invoices, process all union benefit invoices, process all expense requests, help out on month end close which including might be entering cash receipts, journal entries and payables." (Ye Dep. at 24). With respect to Ms. Huynh, Mr. Ye testified that her responsibilities in 2014 included "help out on reviewing all the payroll which including [sic] time sheets, head counts and all of the codings to each individual employees, help out on month end close which reviews AP aging, AR aging, trial balance review, financial reports preparations and also record entry." (Ye Dep. at 25). Mr. Ye testified that everyone helped out with budgets. (Ye Dep. at 25). With respect to Mr. Pang, his responsibilities in 2014 included "prepar[ing] and uploads all of the allocations, entering cash receipts, entering journal entries, prepare and open TO reports and check daily cash activities." (Ye Dep. at 26). Mr. Pang., like Ms. Huynh, also did annual budgets and prepared and uploading month end financial reviews. (Ye Dep. at 26).

27. Anthony testified that Winnie helped out to upload allocation invoices when Shelly was out. (AY Dep. at 197)

A. Admit.

28. Defendant's counsel refused to provide and stated that the judge denied my request for Winnie's helped-out records of upload allocation invoices. (IP Decl. Ex. 76 no. 3)

A. Admit. Mr. Pang filed a Motion to Compel on January 24, 2022, in which he requested Defendants "[p]roduce Lina Ramirez's work for preparing payroll journal entries when Winnie Huynh was out from January 2016 to December 2018." (ECF No. 75). Magistrate Judge Sarah Netburn denied Mr. Pang's Motion to Compel on February 17, 2022 because Mr. Pang had "not met his burden of showing that the documents are relevant to his claims, and the burden or expense of complying with these requests clearly outweighs their likely benefit." (ECF No. 84).

III. Give Training And Cover Colleagues When They Were Out

29. I trained and reviewed Christine Baynes's work on the Above Baseline Purchase Order ("PO") processes while she was working part-time in our team. (IP Dep. at 48-51; IP Decl. Ex. 13 p. 3,5&8; IP Decl. Ex. 42 p. 4)

A. Admit.

30. In 2014, I taught Facility Managers to use the Yardi system. (IP Decl. Ex. 13 p.2)

A. Deny. Mr. Pang cites to his Employee Comment on his 2014 Performance Evaluation, in which he wrote that "I was able to teach the FMs in 11/F to use Yardi system and they're all happy. However, I think I need to work on my communication skills in order to be more effective." (Mary Smith Aff., Ex. 10). **Defendants cannot confirm the meaning of "FM" or "11/F."**

31. In 2015, I was always willing to help when Laura asked me questions and with a great attitude. (IP Decl. Ex. 13; IP Decl. Ex. 42 p. 4)

A. Admit.

32. In 2016, I trained Christine on how to review the REMS PO and created charges in Yardi. (IP Decl. Ex. 13 p.4)

A. Deny. Mr. Pang's citation does not provide evidentiary support for this statement.

33. I trained and turned over cash receipts to Christine Baynes. (IP Decl. Ex. 13 p. 9)

A. Admit.

34. I trained Shelly Paul and A/P Team for the allocation vendor upload process. (AY Dep. at 116; IP Decl. Exs. 13 & 30)

A. Deny. On Mr. Pang's 2014 Performance Evaluation, Mr. Pang's employee comment states "I'm working with the AP team and helping them to understand the procedure of the upload." Mr. Ye's manager comment stated "Ivan does communicate with the Tempe team

but in more of a sharing capacity than a training capacity." (Mary Smith Aff., Ex. 10). Additionally, the deposition testimony cited by Mr. Pang does not provide evidentiary support for this statement.

35. I prepared the allocation upload invoices when Shelly was out. (AY Dep. at 77)

A. Admit, but the cited deposition testimony does not support Mr. Pang's statement. (Mary Smith Aff., Ex. 13).

36. I reviewed the allocation upload invoices and sent Anthony to approve. (AY Dep. at 77-78; IP Decl. Ex. 13 p. 8)

A. Admit.

37. I reviewed OOGMP charges from Christine. (IP Decl. Ex. 30 p. 4)

A. Admit.

38. I prepared payroll upload when Winnie is on vacation. (IP Decl. Ex. 30p. 4)

A. Admit.

39. I reviewed the allocation vendor monthly invoice upload when Anthony is on vacation. (IP Decl. Ex. 30 p. 4)

A. Admit.

40. I entered the daily deposit when Christine is out. (IP Decl. Ex. 30 p. 4)

A. Admit.

41. I entered manual check when Lina is out. (IP Decl. Ex. 30 p. 4)

A. Admit.

42. Bill emailed me asking me to help James Brucato (IP Decl. Ex. 77)

A. Admit.

IV. My Contribution To The Job

43. In the 2014 Performance Appraisal, Anthony stated that "Ivan has a good knowledge of the system and process needed to provide entries and schedules." "A large portion of the volume is entered via the allocations upload, and Ivan plays a major role in that process." "Ivan is aware of deadlines and will stay late when necessary to completer an assignment." "Can assume large-size projects e.g., Allocation upload." (IP Decl. Ex. 13 p. 1-2)

A. Admit.

44. In the 2015 Performance Appraisal, Anthony stated that "Due to huge amount of invoices that we have to prepare for REMS Pos, Ivan put in great efforts to prepare these invoices and reach out to the field for the completion date of the works and 3rd party vendor." "Ivan spent a decent amount of time reaching out the field in order to get most of the over 5 months above baseline 3rd party vendor invoices to invoice Citi. This requires great detail and patience to follow up with FMs and FCs." (IP Decl. Ex. 13 p. 3-4)

A. Admit.

45. In the 2016 Performance Appraisal, Anthony stated that "Ivan came up few ways to help smooth the Above Baseline process. We used his Above Baseline

numbering description so that all the fully billed REMS PO will have 0 at the end and others with numbering sequences." (IP Decl. Ex. 13 p. 5-6)

A. Admit.

46. In the 2017 Year-End Review, Anthony stated that "Ivan created and maintained this ABM and C&W Service cleaning costs schedule for 2017. It was a little messy at the beginning with mismatch sites. The schedule is now current and up to date. Bill and I use it to review and analysis our contract cleaning costs. We can also review the monthly billing variance as well. Good job." (IP Decl. Ex. 13 p. 9)

A. Admit.

47. In the 2018 Mid-Year Review, Anthony stated that "Ivan is able to create the payroll hours report and month-end payroll report all by himself. This is a new objective and report that we will distribute to the operation team. Great job." (IP Decl. Ex. 13 p. 10)

A. Admit.

48. Shelly sent me a fruit basket to thank me for helping her. (IP Decl. Ex. 96)

A. Admit.

V. 1st Special Project

49. I worked with Anthony to create a process to upload all the national vendors' invoices in the first year. He stated that this saved a lot of time to enter all the invoices into the system. (AY Dep. at 31-34)

A. Admit.

50. Anthony stated that this process was Accounts Payable function, and they did not come up with a correct uploading process. We (NY Team) have to make sure everything is set up correctly, and Tempe (AP team) is able to process their invoices. (AY Dep. at 40,43&49)

A. Admit.

51. Anthony stated that I am the better choice who works on this process over others because he wanted to make sure to set it up properly. I was doing a good job. (AY Dep. at 44,46,49)

A. Deny and admit in part. In response to Mr. Pang's question if he did a good job creating a process in 2014, Mr. Ye stated "[b]asing on my memory, there are some hiccup to creating this process but, like I said, this is basing on seven years ago so I cannot say its perfect." (Ye Dep. at 46). Defendants admit that Mr. Ye testified that Mr. Pang was the better choice to pick for the assignment in 2014. (Ye Dep. at 49).

52. I created the allocation invoices upload process and trained Shelly Paul to take over the process. (CW Dep. at 37)

A. Admit.

53. The allocation invoices upload process was assigned to the Accounts Payable Team in 2015. I helped to train them as well. (AY Dep. at 40,43)

A. Deny. The cited deposition testimony does not support Mr. Pang's statement.

VI. <u>1st incident William Carley go against me</u>

54. In March 2015, I was given a warning letter because the company received a complaint that I confronted an employee on my team using unprofessional and condescending language, including "I am not your babysitter". (AY Dep. At 63; IP Decl. Ex. 60)

A. Admit.

55. Anthony stated that he did not see an actual complaint from Jeffery Bygonaise (A/P Senior Accountant) or anyone brought up to him. (AY Dep at 69,70)

A. Admit. Mr. Ye testified that he did not see a formal complaint from Jeffrey Bygonaise. (Ye Dep. at 70).

56. Bill stated that the complaint was in writing and it was referencing Mary O'Connor ("Mary")'s name, who was our human resource manager back at that time. (WC Dep. at23)

A. Admit. Mr. Carley stated in reference to the Written Warning, introduced by Mr. Pang as Exhibit 3 to Mr. Carely's deposition: "[i]t's in writing and it's referencing Mary O'Connor's name, who is our human resources manager back at that time, so I'm thinking this is formal, yes." (Carley Dep. at 23; Mr. Pang Declaration, Ex. 60).

57. Bill stated that he had seen the complaint and was copied on it in the email between him and the Human Resource ("HR") manager (Mary O'Connor). (WC Dep. at 23-24)

A. Admit. Mr. Carley saw a copy of the Written Warning and reviewed the Written Warning. (Carley Dep. at 24; Mary Smith Aff., Exs. 36, 37).

58. Bill replied to Mary in the email, saying, "Looks good, paints the picture well," after drafting the warning letter. (WC Dep. at 23-24; IP Decl. Ex. 61)

A. Admit.

59. I requested the defendants' counsel for the complaint letter and they could not provide it. (IP Decl. Exs. 72 no. 7, 98)

A. Deny. Mr. Pang has misinterpreted Mr. Carley's deposition testimony. The complaint referenced by Mr. Carley in his deposition testimony was the Written Warning issued by Mr. Carley and Mary O'Connor. (Carley Dep. at 24). In response to Mr. Pang's Document Request, Defendants referred Mr. Pang to the March 16, 2015 Written Warning. (Mr. Pang Declaration, Ex. 72).

60. Anthony testified that "the employee that was working with you complained to his manager, Shelly Paul, his manager complained to me and Bill Carley and then that's when HR brought in to evaluate the situation.". (AY Dep. at 64)

A. Admit.

61. Bill testified that Jeffrey, in the email, wrote, "Trial by fire does not seem to be working for anyone," did not receive a warning letter. He did not feel his wording was inappropriate and offensive. (WC Dep. at 26-29; IP Decl. Ex. 62)

A. Admit.

62. Before the incident, I had consulted Anthony and Bill that Jeffrey was always made mistakes. They did nothing but ask me to call him directly. (AY Dep. at 66,67)

A. Deny and admit in part. Defendants admit that Mr. Ye testified that he and Mr. Carley suggested that Mr. Pang should call Mr. Bygonaise to resolve the issue. (Ye Dep. at 66-67). Mr. Ye did not testify that he suggested Mr. Pang call Mr. Bygonaise before the incident. (Ye Dep. at 66-67).

63. I signed the warning letter because I felt that I had no choice at that time. If I didn't sign the letter, I was kind of against my manager and director's will. I wanted to keep the job, and I just took the blame. (IP Dep. at 82-83)

A. Admit.

64. At that time, I would not say it was discrimination, but I do when I think back now. (IP Dep. at 83)

A. Admit.

65. I do not think the warning letter I received in 2015 was fair. From that time, I knew that I could not show any disagreement with Bill and Anthony. (IP Dep. at 69)

A. Admit.

VII. 2nd Special Project

66. Between 2015 and 2017, I had a task to create and prepare the REMS (AKA OOGMP – Out of Gross Maximum Price, Out of Scope or Above Baseline) PO invoicing process. (No. 44 & 45; IP Decl. Ex. 13 p. 1-9)

A. Deny. Mr. Pang's citation does not provide evidentiary support for this statement.

67. The company hired a temporary employee to assist my project. (AY Dep. at 87)

A. Admit. Mr. Ye testified to hiring a temporary employee to assist Mr. Pang, but Defendants note that Mr. Ye testified that he did not exactly remember the hiring detail. (Ye Dep. at 87).

68. I monitored and followed up with Christine, Citi's representative, Facilities Managers, and Facilities Coordinators with all the open Above Baseline PO issues. (IP Decl. Ex. 13 at 5)

A. Admit.

69. I trained Christine to take over Above Baseline invoicing. (Decl. 13 p. 8)

A. Admit.

VIII. 3rd Special project

70. I created both the Allocation Vendor Trending report and the Payroll Variance Report in 2018. Anthony remarked the Payroll Variance Report "Great job" on my 2018 Mid Year Review. (AY Dep. at 60 IP Decl. Ex. 13 p. 10)

A. Admit.

71. Payroll was Winnie's responsibility, but Payroll Variance Report was assigned to me. (AY Dep. at 60)

A. Admit. However, Defendants add that Mr. Ye testified that Ms. Huynh was not given this task because she was working on a different task. (Ye Dep. at 60-61). Defendants also note that Mr. Pang admitted that because he and Ms. Huynh were the only Senior Accountants on the C&W Financial Team for the Citigroup Account, Mr. Ye was limited as to which employees could be assigned certain tasks. (Pl. Dep. at 61-62).

IX. Emailed me Manager Position Job

72. On June 5, 2018, Anthony forwarded Winnie and me an email regarding an opening for a manager position. He believed I qualified at that time. I expressed my interest to Anthony and forwarded my resume to him on June 6. (IP Decl. Ex. 12, AY Dep. at 61-62)

A. Admit.

X. Request for A Salary Increase

73. I requested a salary increase because of a colleague who received a $10,000 increase in November 2018. Anthony told me that the company limited the percentage to increase for employees, and I had asked him to close the gap between Winnie and myself in previous years. Therefore, I created a list of salary comparisons of all the team members and tried

to show them I was being mistreated in my salary. (IP Dep. at 107-108,111, 126)

A. Admit. Defendants admit that in or about November 2018, Christine Baynes transferred from Field Coordinator, a non-exempt position on the facilities/operation side of the Citigroup Account, to an exempt Junior Accountant position on the Financial Department team. (Pl. Dep. at 48-49, 124-126; Ye Dep. at 243). Mr. Ye and Mr. Carley concluded that Ms. Baynes' non-exempt salary was below market level for an exempt Junior Accountant position and requested C&W to increase Ms. Baynes' base salary by $10,000.00 in her current position. (Ye Dep. at 241-245). Defendants further admit that in 2014, Mr. Pang spoke to Mr. Ye about the fact that Ms. Huynh's salary was $5,000.00 more than his salary and that Mr. Ye stated in response that he did not have the ability to raise Mr. Pang's salary. (Pl. Dep. at 111- 113). Defendants further admit that Mr. Pang inappropriately used C&W's confidential payroll information to create a chart outlining the pay of all the Financial Department team members. (Pl. Dep. at 135-137, 141-142; Stokke Dep. at 43; Mary Smith Aff., Ex. 16).

74. I did not ask for a specific dollar amount. (IP Dep. at 128)

A. Admit.

75. Bill stated that Christine had a degree in Finance. (CW Dep. at 46)

A. Admit.

76. Christine has a Degree in General Business and no accounting experience on her resume. (IP Decl. Ex. 75)

A. Admit.

77. Anthony and Bill rejected my request and never mentioned I had violated company policy by using the payroll information I had accessed. (IP Dep. at 127)

A. Deny and admit in part. Mr. Ye and Mr. Carley informed Mr. Pang that he should not have used confidential employee payroll information for his own benefit. (Pl. Dep. at 127). Defendants do admit that Mr. Ye and Mr. Carley explained that Ms. Baynes' salary increase was warranted to bring her to a market-appropriate salary and denied Mr. Pang's request for a raise because he was already paid at market. (Pl. Dep. at 126-128; Carley Dep. at 47-48; Mary Smith Aff., Ex. 23).

78. Anthony and Bill did not discuss my performance during the meeting, and no other meeting was set up until March 2019 Year-End Review meeting. (IP Dep. at 129-130)

A. Admit. Mr. Ye and Mr. Carley did not discuss Mr. Pang's performance at the meeting. (Pl. Dep. at 129).

79. After the meeting, Anthony asked all team members to submit a to-do list to him regarding the responsibilities of each person. (IP Dep. at 129; IP Decl. Ex. 30)

A. Admit.

XI. Looking for Internal Transfer

80. On 28 November 2018, I emailed Donna Lanciers ("Donna" HR manager of our assignment) to look for other opportunities in C&W because I did not feel that my work was appreciated. (IP Dep. at 133-134)

A. Admit. Defendants also note that Mr. Pang did not tell Ms. Lanciers that he felt he had been unfairly compensated because of his national origin, age, or gender. (Pl. Dep. at 129, 133-134, 137-138; Mary Smith Aff., Ex. 15).

81. I showed Donna my salary comparison and told her that my job responsibilities were more than those in my team. My salary increase was almost the lowest in my team except for Lina. (IP Dep. at 135)

A. Deny and admit in part. Defendants admit that Mr. Pang showed Ms. Lanciers his salary comparison chart. (Pl. Dep. at 135). However, Defendants cannot confirm the accuracy of the data contained with Mr. Pang's chart. (Ye Dep. at 237).

82. Donna did not mention to me that it was not proper for me to use my peers' personal data at that time. (IP Dep. at 137).

A. Admit.

83. Donna told me to go through the company's intranet to look for openings and submit my application. (IP Dep. at 138)

A. Admit.

84. Renae Stokke ("Renae" Employee Relationship Senior Manager) stated that "It is our role in HR to

facilitate and try to resolve employee issues. It is not our job to find employee's different roles. And from what I see here from my interview with Donna, she did offer to you if there were other opportunities, she would help you by connecting you were our recruiter, which is our normal process.", "our process would be, if an employee has applied for an internal role, the employee sends the job requisition number to HR, and we will connect them with the recruiter so that they can get a phone screen for that role." (RS Dep. at 38)

A. Admit.

85. I sent Donna the positions that I was interested in. (IP Decl. Ex. 47)

A. Admit. However, Defendants note that as Ms. Stokke testified, Mr. Pang was to apply to the positions he was interested in, then forward the requisition number to Human Resources, then Human Resources would connect the applicant with the recruiter for a phone screen. (Stokke Dep. at 38). Mr. Pang's email to Ms. Lanciers shows that he did not yet apply to the roles he sent to her. (Mr. Pang Declaration, Ex. 47). Ms. Lanciers responded by telling Mr. Pang to apply to the roles. (Mr. Pang Declaration, Ex. 47).

86. I forwarded my resume on December 05, 2018, after meeting with her regarding job issues. (IP Decl. Ex. 78)

A. Admit. However, Mr. Pang had not applied to any roles as of March 18, 2019. (Mr. Pang Declaration, Ex. 47).

87. Email from C&W Talent Acquisition suggested that "If you are interested in pursuing any of these opportunities for your own career development, please

discuss with your current manager and HR Business Partner further before applying internally through Workday. (IP Decl. Ex. 79)

A. Admit. However, the document referenced by Mr. Pang is from October 19, 2018 and refers to certain opportunities contained therein and the Employee Referral Program. (Mr. Pang Declaration, Ex. 79).

88. Email confirmed I applied for the job on March 20, 2019. (IP Decl. Ex. 80)

A. Admit.

89. Donna stated in her interview with Renae that "I told him to send me the Req numbers of the jobs he was interested in. He never followed up with me. So I closed it out, moved on." (IP Decl. Ex. 41 p. 48)

A. Admit.

90. Donna asked me if I agreed to share the information with my manager and director that I contacted her for looking internal transfer. I did agree. (IP Dep. at 138)

A. Admit.

XII. 2018 Year-End Review Meeting

91. In March 2019, Anthony and Bill called me for a meeting without any advance notice. They presented me with my 2018 Year-End Review at the meeting and discussed my performance. (IP Dep. at 148-149; IP Decl. Ex. 13 p.11-12)

A. Admit.

92. I commented on my 2018 year-end review, stating that "I had been giving additional new tasks plus many ad hoc projects during the past year. I believe we need to review my workload again." Anthony commented, "With our new contract with Citi this year, there have been a lot more requests from the client and C&W Corp. Everyone is working very hard and helping others. Ivan helped out with some of the requests. However, he needed some interpretation on a few requests. He also asked to defer one request to Christine. In the coming year, we will hire one more accountant to ease some of our workloads. We will also create a finance calendar for everyone individually so everyone will know what to do daily and monthly." I received a "Need Improvement" rating on my 2018 year-end review. (IP Decl. Ex. 13 p. 11).

A. Admit.

93. I did not leave in the middle of the meeting, and I did not refuse to listen to them during the meeting. I disagreed with them on my year-end review, and they took that as refusing to take their feedback. (IP Dep. at 164-165)

A. Deny and admit in part. Mr. Pang's citation does not provide evidentiary support for this statement. Additionally, in Mr. Stokke's interview with Mr. Ye, Mr. Ye stated that Mr. Pang was "not willing to talk" and "just argue[d]." However, Defendants admit that Mr. Pang disagreed with the feedback. (Pl. Dep. at 156).

XIII. 1st complaint to HR

94. On March 18, 2019, I sent Donna an email to complain that Anthony gave me an unfair overall "Needs Improvement" rating on my 2018 Year-End Review. (IP Decl. Ex. 42 p. 6)

A. Admit.

95. On March 21, 2019, I emailed Donna to show her examples of how I was being treated unfairly. (IP Decl. Ex. 81)

A. Admit. Mr. Pang emailed Ms. Lanciers on March 21, 2019. (Mr. Pang Declaration, Ex. 81).

96. I sent an email to Donna on March 29, 2019, stating that I just found out that Anthony added this into my 2018 review "Inconsistent or not full competent performance. Partially met some aspects of the position, including goals and objectives. Improvement is needed. It is expected that the employee shows a desire to meet all job expectations in a reasonable period of time - not exceed one year." in his comment. Please advise what is the next step I should do. Should I submit the acknowledgment even though, I did not agree to the review. (IP Decl. Ex. 82)

A. Admit.

97. Donna replied to me in the email, "The language was not added but rather it is the definition of a needs improvement rating. This definition was created by corporate Talent Management team and is generated when a rating is out into workday. I am certain it was just overlooked by you initially. You are able to add your comments about the review in workday and then acknowledge it. (IP Decl. Ex. 82)

A. Admit.

98. I replied to Donna that Workday wouldn't let me comment on my review. It says, "No feedback is available." (IP Decl. Ex. 82)

A. Admit. However, Mr. Pang was able to add one overall employee comment on his 2018 Performance Self-Evaluation, then contacted Human Resources in an attempt to add more comments following his meeting with Mr. Ye and Mr. Carley. (Pl. Dep, at 149, 152-155).

99. Donna replied, "if you have a ready acknowledged, then you might not be able to make comments. You can contact the service center and see if they can assist further as I believe you are able to make comments before acknowledging the process." (IP Decl. Ex. 82)

A. Admit.

100. I replied to Donna "I did not submit my acknowledgment. Do you know what number I can contact the service center?" and she forwarded the phone number and link to me later. (IP Decl. Ex. 82)

A. Admit.

101. Bill testified that "Once you get past the self-review cut-off date, that's it. At that point, it's time for manager comments, and only managers have access to the system for their direct reports at that time." (WC Dep. at 60)

A. Admit. Defendants also note that Mr. Carley also testified that he did not deliberately prevent Mr. Pang from getting back into the system and did not know Mr. Pang wanted to get back in. (Carley Dep. at 60).

102. I emailed Donna on March 31, 2019, telling her they (Bill and Anthony) were doing so many things

to give me hard time. I won't be able to do this longer." (IP Decl. Ex. 41 p. 13)

A. Admit.

103. Donna emailed me back on April 1, 2019, stating "I've explained to you that without your self-evaluation outlining your achievements for the year, it is difficult to evaluate the situation." "While you may not agree with the perspectives and observations your manager may have about your performance, you do have an obligation to listen and perform to the expectations." "The information you have provided to me thus far does not demonstrate unfairness. I am not aware of any historical matter that may have indicated unfairness either." "If this is not what you are looking for from me, you are certainly welcome to escalate this matter to my boss, Laura Sheehan ("Ms. Sheehan"), Director of Human Resource for Global Occupier Services ("GOS") Tri-State and or you can call the ethics hotline as listed below." (RS Dep. at 11-12; IP Decl. Ex. 42 p.4-5)

A. Admit.

XIV. Escalated to HR director

104. After I received the email from Donna stating that it does not demonstrate unfairness in my 2018 YE review. I decided to write an email to the people I worked with within the assignment and the executives in C&W. Everyone who worked with me would know how I worked, and I wanted them to know what happened to me. (IP Dep. at 165-166 IP Decl. Ex. 42 p.3-4)

A. Admit. On April 4, 2019, Mr. Pang sent an email titled "Complaint letter concerning management issues" and copied over forty-six recipients, including C&W, Citigroup senior level executives, human resources employees, colleagues, and employees. (Pl. Dep. at 165-170; Mary Smith Aff., Ex. 20).

105. In my email sent to my colleagues and executives on April 4, 2019, I also mentioned that "I never received any verbal or written letter regarding my poor performance in 2018. I was very shocked received a rating "need improvement". "They are not able to provide any example of missed deadline or inconsistent performance.", "If I were an incapable or irresponsible person, I would not have been chosen to cover people in absent and trained all new employees.", "There is no way I can respond to the annual review.", "If someone did not do their job has no problem but I had to force to finish them in two days?". (IP Decl. Ex. 41 p. 9-10)

A. Admit.

106. Donna sent an email to everyone who received my complaint email stating that "On behalf of GOS HR Department, we request that you do not respond or forward this email. We are addressing this matter directly with Ivan and appreciate your cooperation and adherence to this request." (IP Decl. Ex. 42)

A. Admit.

107. Ms. Sheehan emailed me back she will schedule a time to speak with me one-on- one but changed her mind to ask Employee Relations to contact me. (IP Decl. Ex. 41 p. 7&16)

A. Admit. Ms. Sheehan emailed Mr. Pang to inform him that Employee Relations would be contacting him. (Mr. Pang Declaration, Ex. 41 at p. 16).

XV. 1st Investigation of My Complaint

108. Renae (Senior Manager of Employee Relationship) interviewed me on April 11, 2018. (IP Decl. Ex. 41 p. 7&16)

A. Deny. Ms. Stokke interviewed Mr. Pang on April 11, 2019 in connection with her formal investigation. (Pl. Dep. at 170-172; Stokke Dep. at 60; Mary Smith Aff., Ex. 21).

109. Renae emailed Donna on April 11, 2019, wrote that "Anthony told me Ivan came into the office, even though he was instructed to work from home this week. I asked Anthony to ask him why he was in the office (why he didn't follow his directive — seems to be an example of Ivan being defiant and frankly, insubordinate). Anthony was going to send ask him through an email — I told him he should go walk over and just ask him. So he did. Start at the bottom and work up from here." (IP Decl. Ex. 50)

A. Admit.

110. In an email on April 12, 2019, Renae asked me to remove her from the email. I wrote her back, "As my previous email mentioned, I included them because I felt I am being treated unreasonably for all those extra works. I should focus on my own work if I need to improve my performance. My work was delayed because I am working on all these extras. I

would like you to give me some advice on how should I handle them." (IP Decl. Ex. 51)

A. Admit.

111. Invoices upload is Accounts Payable Team in Tempe handle it. (No. 53)

A. Deny. Mr. Pang's citation does not provide evidentiary support for this statement.

112. Renae would ask the management, who gave me extra work, to determine if the work was overloaded. (RS Dep. at 64)

A. Admit.

113. Donna stated in her interview with Renae that "She (Christine Baynes) threatened to look for other opportunities... We did a salary analysis (for her)" "I don't believe we did a salary analysis on him. Ivan never came to me". (IP Decl. Ex. 41 p. 48)

A. Admit.

114. The defendant's counsel answered my sixth document request and stated that Defendant did not conduct a formal salary analysis related to Christine. (IP Decl. Ex. 72 p.11)

A. Admit. Defendants adjusted Ms. Baynes' annual salary at the time of her transfer to a new position on a new team; Defendants did not conduct a formal salary analysis related to Ms. Baynes. (Mr. Pang Declaration, Ex. 72).

115. Anthony testified that C&W did an analysis across the board that the title of the employees was aligned with the research. He was only provided with Christine as the person that proposed but not senior accountant and manager grade. (AY Dep. at 243-244)

A. Deny. Mr. Ye's testimony concerned C&W's analysis of the title of employees, and testified that C&W converted certain employees from nonexempt to exempt. (Ye Dep. at 243-244).

116. Bill testified that he selectively asked HR to do a salary analysis for Christine. (CW Dep. at 76)

A. Admit. Defendants admit that Mr. Carley asked Human Resources for a salary analysis for Ms. Baynes as a corrective measure because he felt she was paid below market level. (Carley Dep. at 75).

117. Bill stated in the interview with Renae that he had the dates of conversations about my issues in his office. There was an invite through email for my review. (IP Decl. Ex. 41 p. 58)

A. Admit.

118. In Renae's email on April 17, 2019, she wrote to Bill, "I really need to wrap up my review of Ivan's concerns, however, your documentation of previous issues is key to my review. "and forwarded it to Donna told her "If he (Bill) has any documentation of previous meetings, it does change some of the outcomes of my review.". (IP Decl. Ex. 43)

A. Admit.

119. Referencing the above email, Renae stated, "What I was looking for in this e-mail was the documentation of previous conversations between management and yourself to demonstrate that they had had conversations with you about the performance and conduct issues. If we didn't have documentation of those meetings, then my recommendation would be different than it would be

if there had been conversations -- documented conversations to that point. It doesn't change the fact that management believed that there were performance and conduct issues, it just changed by recommendation as to how to move forward," (RS Dep. at 15)

A. Admit.

120. I asked Renae on April 18, 2019, if she can send me the result by email. (IP Decl. Ex. 99)

A. Deny. Mr. Pang's citation does not provide evidentiary support for this statement.

121. Renae wrote on the deposition with me on April 23, 2019, in her report that "When I discussed your Year-end rating with management, they provided me specific examples of how your performance and unprofessional behaviors in the last several months contributed to the rating given to you by management of "needs improvement." I was provided with evidence of mistakes that you made and emails that were unprofessional from you." (IP Decl. Ex. 41 p. 44)

A. Admit.

122. Renae stated in her report that "During Bill Carley's interview, he indicated he might have notes on his calendar from previous performance conversation with Anthony to Ivan. However, I have asked Bill for this documentation all week, and he has not provided it. Instead, he has sent me, along with Anthony, multiple emails regarding work Ivan has been working on with mistakes and/or Ivan pushing back on the request." (IP Decl. Ex. 41; p. 17,38)

A. Admit.

123. Renae confirmed that she did not receive the dates of conversations that Bill and Anthony had had regarding concerns of my performance from management. (RS Dep. at 13)

A. Admit.

124. Renae testified that her investigation without those documents would depend on her having conversations and interviews with two levels of management and HR regarding performance concerns. She also had evidence that a confidential payroll report had been used to request a pay increase, which was inappropriate. And she had e-mails that I sent to her directly where I was asked to do something by my management; I asked that someone else be assigned the task. (RS Dep. at 15)

A. Deny. Mr. Pang's description is not an accurate representation of Ms. Stokke's testimony. Ms. Stokke testified that part of the evidence in her investigation was her interviews with Mr. Carley and Mr. Ye, but also stated that she had "evidence of emails where [Mr. Pang] [was] not willing to complete a task that had been asked of [him]" and had "evidence that [he] had used confidential payroll information to request a pay increase for [himself]." (Stokke Dep. at 16).

125. My complaint was mainly about the unfairness of my 2018 review rating and management's issues. (IP Decl. Ex. 41 p. 8-10)

A. Admit. Defendants admit that on April 4, 2019, Mr. Pang sent an email titled "Complaint letter concerning management issues." (Pl. Dep. at 165-170; Mary Smith Aff., Ex. 20).

126. I did not mention any discrimination in my email. I felt it was not a wise decision. I do not criticize the company discriminated against me if I wanted to stay in my job. I only focus on my 2018 unfair rating. (IP Dep. at 168, 174-175).

A. Admit.

127. Renae stated that her investigation relied on the words of the management, which are Bill and Anthony. (RS Dep. at 16)

A. Deny. Mr. Pang's description is not an accurate representation of Ms. Stokke's testimony. Ms. Stokke testified that part of the evidence in her investigation was her interviews with Mr. Carley and Mr. Ye, but also stated that she had "evidence of emails where [Mr. Pang] [was] not willing to complete a task that had been asked of [him]" and had "evidence that [he] had used confidential payroll information to request a pay increase for [himself]." (Stokke Dep. at 16).

128. Renae sent me an email on April 24, 2019, mentioning that "when I discussed your year-end rating with your management, they provided me specific examples of how your performance and unprofessional behaviors contributed to the rating given to you by management of "needs improvement." I was provided with evidence of mistakes that you made and emails that you sent that were unprofessional." (IP Decl. Ex. 72)

A. Deny and admit in part. Mr. Pang's citation is incorrect. Defendants admit that Ms. Stokke sent an email to Mr. Pang on April 24, 2019 which stated "when I discussed your year-end

rating with your management, they provided me specific examples of how your performance and unprofessional behaviors contributed to the rating given to you by management of needs improvement. I was provided with evidence of mistakes that you made and emails that you sent that were unprofessional." (Mr. Pang Declaration, Ex. 41 at p. 23).

129. Donna stated in her interview with Renae that "In February, we had conversations with performance reviews, ratings. The guidance was not to have a bell curve, so we will operate that way. There were people that were on the borderline, needs improvement ratings. We had calibration meetings. Bill and Brad met; Bill rating everyone very good, outstanding, except Ivan, just "good". I let Brad take lead, and he said we can't support such a curve of very good, outstanding. So we went through each one. Bill said that Ivan continues to be a problem; his behavior has tanked. He is still bent on the Christina thing. I asked him, "Have you had conversations with him about it?" "Well, he makes it difficult". Later, he tells us Ivan is "needs improvement". I told him at the time he had to be really solid on the feedback to Ivan.". (RS Dep. at 40-41 IP Decl. Ex. 41 p. 48)

A. Admit.

130. Bill stated in Renae's interview that "That was not the first time, far from the case. Anthony and I can cooperate, can establish some dates. Anthony tried to put comments in the review. Ivan and Anthony are both Asian. Anthony is very nonaggressive, doesn't like confrontation. He is polite, respectful, not get into someone's face; he holds back from that. He may not word something in writing, give

the effect that another reader might. He is soft-mannered in speech and writing. Me, I'm more blunt. I did write down manager comments, but it is tough for him to comment, when Ivan left it blank.". (IP Decl. Ex. 41 p. 57)

A. Admit.

131. Donna stated in her interview with Renae that "Bill doesn't like to address the issues; doesn't want to deal with things directly. Brad is coaching him, not getting the information he needs. I told Bill to be more direct, concise, assertive, should not look for consensus. Anthony would have handled differently if Bill wasn't involved.". (IP Decl. Ex. 41 p. 49)

A. Admit.

132. On the disposition meeting with me in her report, Renae stated that [this was a very difficult conversation with Ivan, talk over me, did not let me talk, interrupted me constantly throughout the call, told me I was wrong, I was ignoring the facts and making up the story, did not hear him, only listened to management, I was lying and I did not do my job, and would not hear the feedback I tried to give him. In the end, I told him that management has specific examples of the performance and behavioral concerns and they will provide this to him in a Memo of Expectations. I provided him additional resources to escalate his issues – Laura Sheehan and the Ethics Point hotline. My notes from the conversation are not fully inclusive of his responses and interruptions.] (IP Decl. Ex. 41 p. 44)

A. Admit.

133. Renae could not identify and did not remember any inappropriate conversation during the disposition meeting with me when we went over her report. (RS Dep. at 33-36; IP Decl. Ex. 41 p. 44-47)

A. Deny. Ms. Stokke testified that although she would not be able to remember instances where Mr. Pang raised his voice because the incident occurred over two years ago, she stated that her "notes at the beginning of this document demonstrate, in [her] opinion, [Mr. Pang's] overall response to the disposition." (Stokke Dep. at 34).

134. In Renae's "Investigation Executive Summary", she wrote down. "2018 Year-End Performance review was poorly written by management; lacked examples or details of why the rating of "needs improvement" was given and was not direct in feedback about concerns, did not address attitude concerns.", "During the investigation, Bill indicated he and Anthony had previous conversations with Ivan regarding concerns with performance and conduct. Bill was unable to provide the dates of the conversations on the day of the interview, ..., the investigator had not received the dates of conversations, ... Investigator informed Bill that this would hold up the investigation. Donna also indicated that she had difficulty with Anthony and Bill making the performance feedback and Performance Improvement Plan a priority for management. The investigator did not find strong evidence that management had candid conversations with Ivan about performance and behavioral concerns between November 2018 and March 2019, as demonstrated in management's inability to provide documentation of

the dates or conversations and that the "needs improvement" rating was a surprise to Ivan... Direct supervisor and second level manager indicted they have compiled a list of mistakes that Ivan has made since November, which was not provided to the investigator. Management states Ivan's work with errors was sent back to him to correct; however, no evidence that management directly addressed concerns of errors with Ivan." (IP Decl. Ex. 41 p. 38&39)

A. Admit.

135. Renae indicated on her report: Closed. Resolution: No action taken – Unfounded.

Did not confirm Ivan's allegations. A second review of the complaint was conducted by Kifi Haque ("Kifi" Head of Employee Relations – North America) who confirmed my findings of unsubstantiated. (IP Decl. Ex. 41 p.37)

A. Admit.

136. Renae never gives me her investigation report in writing. (IP Dep. at 177)

A. Admit.

XVI. Memo Of Expectation (MOE)

137. Anthony testified, "Bill and I consulted with Human Resource to suggest the next step which is an improvement plan to be put in place." (AY Dep. at 116)

A. Admit.

138. On March 19, 2019, Donna sent an email to Anthony to coach him on drafting a Performance Improvement Plan (PIP). She wrote: My recommendation is as follows: Begin to draft a comprehensive PIP within the template provided. Be sure to identify no more than 3-4 "buckets" of areas that require improvement; ideally, this should align with the overall goals and objectives of his role as Sr. Accountant. You should also identify each time you met with him to discuss or identify where he was not meeting expectations (dates and examples) are important. Lastly, the plan at the end of the attached doc is very important, this allows you to outline the actions he needs to take to improve/meet expectations. Details are going to be critical. This means if he is required to provide or update monthly reports, the deadlines must be clearly outlined. If there is an initiative and or project he is responsible for, you must be specific on when and what you expect. (IP Decl. Ex. 45)

A. Admit.

139. Anthony stated that he did not write up the MOE; he just gave HR examples to write it up. (Ay Dep. at 121)

A. Admit.

140. Renae testified that it was her recommendation that the Performance Improvement Plan not be delivered based on the findings of her review, because management was not able to provide specific dates of conversations that they had had with me in regards to the performance and the behavioral issues. So her recommendation was for the business, for leadership to take a step back and provide that

Memo Of Expectations to clearly outline the specific concerns to provide me every opportunity to be successful in the role. (RS Dep. at 18)

A. Admit.

141. Renae stated that "MOE, we typically will call that into play when we don't have good documentation from managers that they have had documented conversations with an employee to address the performance and behavioral issues. Oftentimes, managers have had conversations with employees, but they have not documented it." (RS Dep. at 24)

A. Admit.

142. Renae denied helping write my MOE. (RS Dep. at 19)

A. Admit.

143. Renae wrote to Kifi in an email indicating she did help to draft the MOE. (IP Decl. Ex. 44)

A. Admit. However. Ms. Stokke elaborated that she provided the standard template for the MOE. (Stokke Dep. at 18-19.44-47). The MOE was drafted by Mr. Snow, with input provided by Mr. Ye and Mr. Carley. (Ye Dep. at 121; Stokke Dep. at 18-19).

144. Scott wrote a note on Renae's report stating that he and Ms. Sheehan met with Anthony and Bill at 1290 on Tuesday, April 23. 2019 to prepare to issue the MOE that was drafted by Renae. (IP Decl. Ex. 41 p. 34)

A. Admit.

145. Renae stated that her role has no conflict to write my MOE. (RS Dep. at 20)

A. Admit.

146. Ms. Sheehan was also involved in drafting my MOE. (IP Decl. Ex. 46)

A. Admit.

147. Renae stated that "It would not be normal for her (Ms. Sheehan) to be involved at her level. (RS Dep. at 29)

A. Admit.

148. Renae stated that "the purpose of a memo of expectations is to document the expectations of a role, the performance and behavioral expectations of a role of an employee, to outline the concerns of performance and conduct of the employee, provide specific examples, and then to reset expectations with the employee of what is expected moving forward. And, in addition, consequences if the employee does not meet the minimum expectations of the role." (RS Dep. at 26)

A. Admit, but Mr. Pang's citation is incorrect. (Stokke Dep. at 20).

149. Scott's note on Renae's report stated that he explained to Anthony and Bill that the MOE was still subject to discipline, up to and including termination, but would give me the ability to transfer to another position. (IP Decl. Ex. 41 p. 34)

A. Admit.

150. I replied to an email to Anthony on April 24, 2019, to let him know that I request Renae for clarification on her finding and asked them to reschedule the MOE meeting. (IP Decl. Ex. 101)

A. Admit.

151. Bill forwarded the email to Renae and Scott telling them "Please tell Ivan that there is nothing more to be sent to him from you (assuming that that is the case) and that he must attend the meeting as is." (IP Decl. Ex. 101)

A. Deny. Mr. Pang's citation does not provide evidentiary support for this statement.

152. Then, Renae replied to Bill that "I am planning to respond to Ivan today regarding his follow-up questions. However, my review of his concerns should not hold up your meeting with him about his performance. My recommendation to you is to inform him that you, Anthony and Scott are trying to help him by providing him clarification of expectations, and his attendance and cooperation in the meeting is required. Not reporting to the meeting would be considered insubordination and would need to be addressed." (IP Decl. Ex. 101)

A. Deny. Mr. Pang's citation does not provide evidentiary support for this statement.

153. Scott's note on Renae's report stated that "On the morning of Monday, April 29th, I spoke with Ms. Sheehan about steps to ensure success during the meeting and we decided to alert security at 1290 that their assistance might be needed in case an employee needed to be escorted. Ivan, Anthony and Bill attended the meeting and we spent 2.5 hours attempting to read through the MOE with very little success. I stated several times that the purpose of the meeting was to provide feedback and that the examples were illustrative of the feedback, but not necessarily meant to exhaust every interaction that has taken place." (IP Decl. Ex. 41 p.35)

A. Admit.

154. In an email on May 1, 2019, I requested to bring a legal representative with me to the MOE meeting. (IP Decl. Ex. 100)

A. Admit.

155. Renae wrote in an email to suggest to Scott Snow (HR Manager) that "I do think you should respond to his question about the attorney, such as: Ivan, to address your question regarding legal representative, we do not allow for 3rd parties to participate in conversations with our employees. The conversation that management will have with you is regarding job expectations, and HR will be present to support the conversation. We also do not allow recording of conversations, per company policy." (IP Decl. Ex. 54)

A. Admit.

156. I was not allowed to have a legal representative with me in the MOE meeting. (IP Dep. at 69)

A. The citation does not support Mr. Pang's statement. However, Defendants admit that Mr. Pang was not permitted to have a legal representative at the meeting.

157. Renae testified that "It is our business practice that we have performance and behavioral conversations with our employees, and we do not allow recording of conversations." (RS Dep. at 70)

A. Admit.

158. My MOE stated this in the 3rd paragraph "I need to be very clear on this point; In the event that

the below expectations and performance issues are not improved immediately, your employment relationship with Cushman & Wakefield may be terminated." (IP Decl. Ex. 41 p. 41)

A. Admit.

159. Renae indicated that the consequence of the MOE depends on the evaluation by the management, which is the direct manager, or second-level manager. (RS Dep. at 27)

A. Admit.

160. In the MOE, it indicated that I changed drastically after November salary increase request. From a valued member of the team to became very negative and had a high number of errors. (IP Decl. Ex. 83)

A. Deny. Mr. Pang's statement is not an accurate representation of the MOE. The April 29th, 2019 MOE states that "[h]owever, since the incident in November of last year, where you used confidential pay information about another employee to ask for a compensation increase for yourself, your overall attitude drastically changed; you have become very negative, your work product has a high number of errors, and you have pushed back on every request made of you." (Mr. Pang Declaration, Ex. 83).

161. Anthony testified that "your work efforts had completely changed starting November and December toward the end of the year where you are refusing to do work when I request it which I mention it there that I need to defer to Christine which is something I want you to do but you said to give it to someone else.

Also, mistakes that you have during the last two months of the year and has been consistent making multiple mistakes and making it something that I always have to double-check. So basing off those evaluations, I need to create improvements so you get back on track working in good working standard for your position." (AY Dep. at 74)

A. Admit.

162. Bill stated that "you had, towards the end of the year, started to refuse assignments, you were acting in a belligerent manner, insubordinate to Anthony. We had conversations and discussions about that behavior, and it was determined to grant you a needs-improvement ranking. It is company policy that, when the ranking is needs-improvement, that there is no salary increase and only a 50 percent bonus. That is formulaic. That is standardized across the portfolio." (WC Dep. at 57)

A. Admit.

163. Anthony confirmed the two emails I sent out to myself triggered my termination. (AY Dep. at 130-137; IP Decl. Ex. 28)

A. Admit.

164. I did an analysis of the work submitted to Anthony from those two emails. I had 28 emails replied within one hour, 12 emails replied the same day and 12 emails replied more than a day in November 2019. I had 6 emails replied to within an hour, 9 emails on the same day, 11 more than a day and 4 emails have no reply time in December 2019. (IP Decl. Ex. 28)

A. Deny. Mr. Pang's citation does not provide evidentiary support for this statement.

165. I also did an analysis of the works Christine sent to me for review between March 2018 to March 2019. I calculated the incorrection rate as 37.93%. (IP Decl. Ex. 103)

A. Deny. Defendants cannot confirm the truth of Mr. Pang's statement based on Mr. Pang's citation.

166. I requested the defendants' counsel for the work Christine, Lina and Winnie submitted to Anthony from November 2018 thru February 2019. They would not provide proper materials. (IP Decl. Ex. 72 p.8)

A. Admit. Mr. Pang filed a Motion to Compel on January 24, 2022, in which he requested Defendants "[p]roduce all the email copies of Christine Baynes, Lina Ramirez and Winnie Huynh for the work they submitted to Anthony Ye from November 2018 thru [sic] February 2019." (ECF No. 75). Magistrate Judge Sarah Netburn denied Mr. Pang's Motion to Compel on February 17, 2022 because Mr. Pang had "not met his burden of showing that the documents are relevant to his claims, and the burden or expense of complying with these requests clearly outweighs their likely benefit." (ECF No. 84).

167. I wrote a letter to the court to request the defendants to provide work submitted to Anthony by his subordinates and got denied. (ECF No. 86 & 94)

A. Admit. Mr. Pang filed a Motion to Compel on January 24, 2022, in which he requested

Defendants "[p]roduce all the email copies of Christine Baynes, Lina Ramirez and Winnie Huynh for the work they submitted to Anthony Ye from November 2018 thru [sic] February 2019." (ECF No. 75). Magistrate Judge Sarah Netburn denied Mr. Pang's Motion to Compel on February 17, 2022 because Mr. Pang had "not met his burden of showing that the documents are relevant to his claims, and the burden or expense of complying with these requests clearly outweighs their likely benefit." (ECF No. 84).

168. Anthony could not identify any insubordinate, disrespectful, and push back the work I submitted to him in November and December 2019. (AY Dep. at 156-181)

A. Admit. Defendants admit that Mr. Ye did not characterize any of the emails contained in Exhibit 4-A at his deposition as disrespectful. (Ye Dep. at 56-181).

169. The MOE has 3 examples with the date in 2018 out of 6 on the "Work Related Errors & Attention to Detail" section, no example shown in the "Meeting Deadline" section, 1 example was in 2018 out of 3 shown on the "Following Directives" section, no example shown on the "Professional Behavior" section. (IP Decl. Ex. 41 p. 41-43)

A. Admit.

170. Anthony sent me emails on April 16, 2019, indicating "Ivan – Arguing" and two emails on April 17, 2019, indicating "Ivan-Not understanding request." And "Missed Deadline". (IP Decl. Exs. 16,17,18)

A. Mr. Pang's citation does not provide evidentiary support for this statement.

However, Defendants admit that Mr. Ye sent himself a series of emails exhibiting Mr. Pang's work errors.

171. Anthony denied "Ivan-Not understanding request" email was one of the examples on the MOE. He agreed "Ivan – Arguing" and "Missed Deadline" emails were examples on MOE. (IP Dep. At 122-128)

A. Admit.

172. I responded to Anthony on April 17, 2019, to show Christine and Laura hadn't finished journal entries on March 19, 2019, regarding "Missed Deadline" email. (IP Decl. Ex. 18)

A. Deny. Mr. Pang's citation does not provide evidentiary support for this statement.

173. I wrote down some notes on my MOE during the meeting. I crossed two items wrote "All drop, need documents"; One item wrote "No support documents"; the other items I wrote "Not enough email/evidence" "Nothing to do with deadline". (IP Decl. Ex. 83)

A. Admit.

174. The section Summary of Expectations Going Forward to Continue Employment in MOE, 1.) Thorough review and attention to detail on all job tasks to eliminate errors. 2.) All deadlines are met; work is submitted on time, all the time. 3.) All job-related directions from supervisor are followed without pushback. 4.) Professional behavior is maintained at all times. (IP Decl. Ex. 41 p. 43)

A. Admit.

175. Renae testified that "if the MOE is unfulfillable, that this is our standard template when we deliver memo of expectations to employees. If they have questions of expectations, we would direct them back to their manager to get specifics.". (RS Dep. at 44-45)

A. Admit. Ms. Stokke testified that the MOE was the "standard template when we deliver memo of expectations to employees. If they have questions of expectations, we would direct them back to their manager to get specifics." (Stokke Dep. at 44-45).

176. I was suspended from work after the MOE meeting. Scott told me that if I don't sign the MOE, I'm not allowed to work. (IP Dep. at 227 IP Decl. Ex. 85)

A. Admit. Mr. Snow stated that Mr. Pang would be suspended if he did not sign the MOE, however Mr. Snow later clarified to Mr. Pang that Mr. Pang did not need to sign the document in order for it to be effective and that Mr. Pang was permitted to return to work under the assumption he would comply with the expectations. (Pl. Dep. at 227; Mr. Pang Declaration, Ex. 87).

177. In an email on May 01, 2019, I wrote to Scott after the 1st MOE meeting, "I apologize took so long and I have too many questions. However, I believe we both have been convinced the memo needs more evidence (e.g. email) to continue moving forward. I would like to also take a chance to list few questions you hadn't addressed them yesterday and add more details in it. I feel I am treated unfairly for last 5

years. I may think this would be related to my gender or race. I am the only Male Asian in the team..." (IP Decl. Ex. 84)

A. Admit. However, Defendants note that Mr. Pang was not the only Male Asian on the team. Mr. Ye's national origin is Asian, and of Chinese heritage. (Pl. Dep. at 59-60).

178. The "Performance Discussion" on May 1, 2019 was escalated to employee relations. (IP Decl. Ex. 41 p. 36)

A. Admit.

XVII. 2nd Investigation of my complaint

179. Kifi sent an email to ask Scott questions on May 6, 2019, 1.) I will loop back with Renae tomorrow to see if I need to schedule time with Anthony/Bill as he denies all of the performance issues listed in the performance review except for 2.) Is it true this is the first year he received a NI versus very good every year? 3.) What is the salary raise comparison for white females at the account versus Ivan? 4.) He wants to remain with the company — alleges he was told if he did not sign the doc, he would have to leave work- is this true? I asked him when he was coming back. 5.) Wants to transfer. Said he has spoken to Donna about this. (IP Decl. Ex. 87)

A. Admit.

180. Scott replied back to Kifi stating that "After over 2 hours, since we were not able to review the full memo of expectations, I told Ivan that we would need

him to understand and accept the contents of the document before we could move forward and we scheduled a follow-up meeting. This team has since has clarified that Ivan does not need to sign the document in order for it to be effective, so the next step was to fully review the document and then allow Ivan to return to work under the assumption he would comply with the expectations (with or without his written acknowledgement). (IP Decl. Ex. 87)

A. Admit.

181. Donna sent an email to Kifi on May 6, 2019, stating that "will add to the expense. I also connected with Scott to get a better understanding of the Memo of Expectations and the need to edit. Scott explained during the conversation it was discovered a few bullet points where left in the initial draft, and was not deleted by Anthony or Bill when Scott asked them to verify the document. Scott further explained he thought they may have been included in the initial draft he received from Renae, and he did not think of asking if they were valid but rather presumed they were since Bill and Anthony did not raise them as issues." (IP Decl. Ex. 88)

A. Admit.

182. Kifi's note on Renae's report stated that "As a result, I met with him on April 22nd and reviewed allegation and also spoke to his supervisor, Anthony. We agree to revise certain portions of the memo and re-present it to Ivan. I also could not substantiate that Renae Stokke's assessment of us denying to change his performance review was accurate, and his salary was commensurate with his performance review and

his peers that received more pay also got better performance reviews." (IP Decl. Ex. 41 p.36)

A. Admit.

183. Anthony denied the 2nd version of MOE was because of my 2nd investigation from HR. It was after their first initial meetings on the MOE they had follow-up to-do list. HR at the time was Scott. He advised them to revise the second draft. (AY Dep. at 120)

A. Admit.

184. I sent an email on May 13, 2019, to Kifi and Ms. Sheehan to recap the whole incident. (Recap email)

A. Deny. Mr. Pang's citation does not provide evidentiary support for this statement.

185. Defendant counsel exercised Attorney-Client Privilege to protect emails communications between Deputy General Counsel, Kifi Haque, Laura Sheehan, Renae Stokke, Donna Lanciers and Scott Snow HR Personnel. Dates from May 14 to May 16, 2019. (IP Decl. Ex. 90)

A. Admit. Defendants produced a Privilege Log to Mr. Pang on September 24, 2021.

186. I went back to work on May 16, 2019. (IP Decl. Ex. 86)

A. Deny. Mr. Pang's citation does not provide evidentiary support for this statement and instead suggests instead that Mr. Pang returned to work on May 17, 2019, on which date he was provided with a revised MOE by Mr. Ye, Mr.

Carley, and Mr. Snow. (Pl. Dep. at 238-241; Mary Smith Aff., Ex. 29).

XVIII. Discrimination of my race and gender

187. In the first year of the assignment, the NY Financial Team was awarded "Best Team of The Year" and Anthony was awarded "Best Manager of the year" for 2013-2014. (AY Dep. at 55, IP Decl. Ex. 32)

A. Defendants admit that the New York Financial Team was awarded "Best Team of The Year" for 2013-2014. (Mr. Pang Declaration, Ex. 32). However, Mr. Ye testified that he did not remember the name of his award. (Ye Dep. at 55).

188. Winnie received "Very Good Performer", Lina and I only received "Good Performer" for the 2014 performance rating. (IP Decl. Exs. 13, 14, 16)

A. Admit.

189. Anthony did not remember we were going out separately to celebrate other than the event when we received the award. (AY Dep. at 56)

A. Admit.

190. In 2015, the salary increase for Lina was 2.94%, myself was 3%, Winnie was 4.52%, Shelly Paul was 5.88%, Anthony was 13.04%, and Bill was 16.67%. (IP Decl. Ex. 31)

A. Deny. Defendants cannot confirm the truth of the statement based on Mr. Pang's citation. Defendants do acknowledge that Mr. Pang

inappropriately used C&W's confidential payroll information to create a chart outlining the pay of all the Financial Department team members. (Pl. Dep. at 135-137, 141- 142; Stokke Dep. at 43; Mary Smith Aff., Ex. 16).

191. Bonus regarding 2014 for Lina was $2,000, myself was $3,750, Winnie was $5,000, Shelly Paul was $9,000, Anthony was $30,000, and Bill was $50,000. (IP Decl. Ex. 31)

A. Deny. Defendants cannot confirm the truth of the statement based on Mr. Pang's citation. Defendants do acknowledge that Mr. Pang inappropriately used C&W's confidential payroll information to create a chart outlining the pay of all the Financial Department team members. (Pl. Dep. at 135-137, 141- 142; Stokke Dep. at 43; Mary Smith Aff., Ex. 16).

192. I felt that everyone (NY Financial Team) who took the job in this new assignment (Citigroup) was underpaid compared to the other assignment within C&W except Lina (accountant). Her salary was continued from the previous assignment. It was because this new assignment was not guaranteed profit from Citigroup. The company likes to see how the first year goes to determine our salary returns to average. (IP Dep. at 108-109)

A. Admit.

193. Anthony agreed that I have much more responsibility than Lina as a senior accountant and our salary difference was $7,000 back in 2014. (AY Dep. at 239-240)

A. Deny and admit in part. Defendants admit that Mr. Ye testified that Mr. Pang had more

responsibility than Ms. Ramirez because Mr. Pang was a senior accountant, but Mr. Ye did not confirm the salary differential between Ms. Ramirez and Mr. Pang. (Ye Dep. at 239-240).

194. When I asked him, "does it make sense the company will adjust my salary to reflect the responsibility on the job?", Anthony stated that "the company policy is the increase is basing of the employee's performances. That's how we are operating our increases, is basing on the year- end performances." (AY Dep. at 241)

A. Admit.

195. Defendant counsel provided Christine's 2018 Year-End Process Template with no manager's comments and rating for performance review instead of the 2018 Year-End Performance review. (IP Decl. Ex. 15)

A. Admit. Defendants they produced Ms. Baynes' Performance Reviews from 2017 to 2019.

196. On Christine's 2018 Year-End Process Template Goal #4, she wrote down "Take over Anthony's role as approver". (IP Decl. Ex. 15)

A. Admit.

197. Bill testified that the financial position would have paid a lot more than entry-level in operation, part of the $10,000 increase for Christine in 2016 was a merit increase and part of it was a market adjustment. (CW Dep. at 46)

A. Admit.

198. Bill gave her another $10,000 increase in 2018 because she was still well below market value for the work that she did. (CW Dep. at 47)

A. Deny and admit in part. Mr. Carley consulted with Human Resources at the end of 2018 to bring Ms. Baynes' salary closer to fair market value. (Carley Dep. at 47).

199. Christine Baynes received another $20,000 increase between January 2019 to April 2021. (IP Decl. Ex. 33)

A. Admit. Ms. Baynes' salary rose incrementally from $58,500.00 in January 2019 to $78,494.13 in April 2021.

200. Bill testified my salary of $75,000 in 2014 was fairly priced according to my responsibility. (WC Dep. at 48)

A. Admit.

201. Bill testified salary increases, not just an annual performance increase or a merit increase, but also a market-level increase. (WC Dep. at 64)

A. Admit. Mr. Carley testified that salary increases "depends on what year specifically and what increase specifically you're referring to, but in general, some of the years included, not just an annual performance review increase or a merit increase, but also a market-level increase." (Carley Dep. at 63).

202. Anthony testified that he could not have control of the dollar amount and the percentage, C&W level in providing the percentage per rating. (AY Dep. at 257)

A. Admit. Mr. Ye testified that he did not have control of the dollar amount or percentage of salary increases, and that as a manager he had to "provide right ratings for each individual employees." (Ye. Dep. at 257).

203. Bill testified that Anthony would have proposed dollar amount and percentage for salary increase. (WC Dep. at 35)

A. Deny. Mr. Carley stated that Mr. Ye could have made an initial recommendation as to an employees' bonus, not salary increase, and that initial bonus recommendation could have been changed above Mr. Ye's level. (Carley Dep. at 35).

204. Bill said the processes changed in 2018. (WC Dep. at 35)

A. Admit.

205. In my 2014 Performance Appraisal, Anthony wrote "Would like him to be better self-proofing his work as accuracy has been an issue at times.", "but accuracy was an issue at times.", "However, reconciling the data can be an issue." , "He is still learning but showing progress in this new role." "Overall is a good performer, with specific areas targeted for improvement in year 2.". (IP Decl. Ex. 13 p. 1-2)

A. Admit.

206. In my 2015 Performance Appraisal, Anthony wrote "Proficient with his responsibilities and great improvement with his accuracy.", "Overall, he is paying more attention to details and reviews his work for accuracy.", "Ivan improved a lot on attention to detail and proof accuracy of his works" "Ivan had some

improvements on this work ethic.", "However, there are still room for improvements on his communication skill, written and verbal.", "Big improvement on accuracy and attention to detail." (IP Decl. Ex. 13 p. 2-4)

A. Admit.

207. I was displeased with the comments on the 2014 Performance Appraisal at that time. For each comment at the end Anthony would put some negative words. It's totally uncommon. I felt he was demeaning me at that time. (IP Dep. at 72-73 IP Exb 10)

A. Admit. Although Mr. Pang received a rating of "Good Performer" with a four to five percent salary increase and bonus, Mr. Pang disagreed with Mr. Ye's comments regarding the accuracy of his work. (Pl. Dep. at 70, 73-78; Mary Smith Aff., Ex. 10).

208. Lina's 2014-2019 Year-End Performance Review (IP Decl. Ex. 14)

A. Defendants admit that Ms. Ramirez's Year-End Reviews from 2014 through 2019 are attached to Mr. Pang's Declaration as Exhibit 14. (Mr. Pang Declaration, Ex. 14).

209. Winnie's 2014-2019 Year-End Performance Review (IP Decl. Ex. 16)

A. Defendants admit that Ms. Huynh's Year-End Reviews from 2014 through 2019 are attached to Mr. Pang's Declaration as Exhibit 16.

210. I don't feel I had a chance to discuss his comments unless I initiate a meeting with him. (IP Dep. at 76)

A. Admit.

211. In my 2015 Performance Appraisal, I felt discriminated against because Anthony added red plus next to Good Performer instead of giving me Very Good Performer? He did not give me any reason and examples for why he gave me his assessment in 2015. He told me my performance was better than good but not up to very good at that time. (IP Dep. at 85-86 IP Decl. Ex. 13)

A. Admit. Mr. Pang believed the 2015 Performance Appraisal was discriminatory. (Pl Dep. at 85). Defendants also note that Mr. Pang received a rating of "Good Performer Plus" with a salary and increase bonus and that Mr. Pang conceded the review was fair as compared to other employees. (Pl. Dep. at 88-89; Mary Smith Aff., Ex. 11).

212. In 2015, I had a lot of workloads and extra work, but he won't give me "Very Good Performer" at an overall rating. (IP Dep. at 87 IP Decl. Ex. 13)

A. Admit. Mr. Pang testified that in 2015, he had a lot of extra work and received a rating of "Good Performer Plus." (Pl. Dep. at 87; Mary Smith Aff., Ex. 11).

213. I felt Anthony treat Asians more harshly than non-Asians. (IP Dep. at 59)

A. Admit.

214. I received some new tasks other than my regular responsibilities during my employment with C&W. (No. 49-53, 66-71; IP Decl. Ex. 13)

A. Deny. Mr. Pang's citation does not provide evidentiary support for this statement.

215. Anthony testified Lina received a new task in 2014, she reviewed Travel and Expenses ("T&E") policy process had changed and updated what she had to do on daily responsibility. She also reviewed internal audits to help her reconcile the union payments she was working on. (IP Dep. At 89-93)

A. Deny. Mr. Pang's citation does not provide evidentiary support for this statement. In response to Mr. Pang's question about what task Ms. Ramirez was busy with in 2016, Mr. Ye testified Ms. Ramirez was reviewing the T&E policy, which "changed every year and also update what she has to do on daily responsibility." (Ye Dep. at 89). Mr. Ye also testified that Ms. Ramirez worked on reconciling the year-end or union audits. (Ye. Dep. at 90-91).

216. On Lina's To-Do-List, T&E report, Union benefits and payments are her responsibilities. (IP Decl. Ex. 30 p. 6)

A. Admit.

217. Anthony testified Winnie received new tasks in 2015, she took on the bank reconciliations which was not in 2014 but he seems it as new task. In 2016, she had annual budgeting process on her review and he considered as new tasks. She also had Change Control Notice baseline changes as new tasks in 2016. (IP Dep. At 194-209)

A. Deny. Mr. Pang's citation does not provide evidentiary support for this statement. Mr. Ye testified on Ms. Huynh's 2015 Performance Appraisal, one new goal and objective listed was bank reconciliations. (Ye Dep. at 201-202). With

regard to Ms. Huynh's new tasks for 2016, Mr. Ye testified that Ms. Huynh "had goal number one with the annual budgeting process, so – and also meeting all of the clients' projects requests, so they are all various projects that we have done during the year, so those were additional tasks." (Ye Dep. at 203).

218. On Winnie's To-Do-List, she reviews and finalize monthly reconciliation of all bank accounts and enter approved change control baseline changes are her responsibilities. (IP Decl. Ex. 30 p. 8)

A. Admit.

219. I received lower-paid and more responsibility than a female colleague with the same title. (IP Dep. at 57)

A. Deny. Mr. Pang testified that he believed Mr. Ye treated him differently based on his gender because he "[got] more responsibility, but I was lower paid than female, the same title" in reference to Ms. Huynh. (Pl. Dep. at 57). Ms. Huynh's pay differential was due to her positive performance and was consistent with C&W Policy. (Ye Dep. at 249, 253-254, 261). Ms. Huynh had different responsibilities than Mr. Pang. Mr. Ye testified that he assigned work based on each employee's responsibilities and abilities. For example, Mr. Ye assigned the payroll responsibilities to Ms. Huynh because based on his experience of working with Ms. Huynh, Mr. Ye did not worry about "errors or discrepancies." (Ye Dep. at 51-52).

220. An error on my 2016 Performance Appraisal was made by the company. The title should be 2016 instead of 2015. (IP Dep. at 92-93 IP Decl. Ex. 13)

A. Admit. The date of review was in February 2017, indicating that the review was meant for the year 2016. (Pl. Dep. at 92-93; Mary Smith Aff., Ex. 12).

221. In my 2016 Performance Appraisal, they changed red plus next to my overall Rating "Good Performer" in 2015 to "+" in 2016. (IP Dep. at 96-97 IP Decl. Ex. 13)

A. Admit.

222. Anthony used to complain to me that Shelly Paul always made mistakes in her upload and missed work. (AY Dep. at 104 IP Decl. Ex. 22)

A. Admit. Mr. Ye testified that he complained to Mr. Pang about Ms. Paul making mistakes and missing work. (Ye. Dep. at 104). However, Exhibit 22 to Mr. Pang's Declaration does not show Mr. Ye complaining about Ms. Paul and instead only indicated that Mr. Ye informed Mr. Pang and Mr. Carley that Ms. Paul would be out sick for four days. (Mr. Pang Declaration, Ex. 22).

223. When Shelly was absent and would not be able to upload invoices, I have to accrue the invoices and it was extra work for me. (AY Dep. at 109)

A. Deny. Mr. Ye denied that helping Ms. Paul was an extra task. Mr. Ye instead testified that as a team, they would share responsibility when people were out. (Ye Dep. at 110).

224. Shelly received the following year-end performance ratings: 2017: Very Good; 2018: Outstanding; 2019: Good. (IP Decl. Ex. 19)

A. Admit.

225. Anthony testified my 2018 "Need Improvement" rating stated that "The reason for the rating is when things happened in November and throughout a couple of times in the year, your work efforts had completely changed starting November and December toward the end of the year where you are refusing to do work when I request it which I mention it there that I need to defer to Christine which is something I want you to do but you said to give it to someone else. Also, mistakes that you have during the last two months of the year and has been consistent making multiple mistakes and making it something that I always have to double-check. So basing off those evaluations, I need to create improvements so you get back on track working in good working standard for your position." (AY Dep. at 74)

A. Admit.

226. I did not and would not ask Anthony to give work to Christine. (IP Dep. at 217- 218)

A. Deny. Mr. Pang testified that although he did not suggest to reassign the work to Christine, instead stated that "maybe I tried to clarify if this is my responsibility." (Pl. Dep. at 217).

227. Anthony's rating on my 2018 year-end review was based on the time of the review and at the time of

the performance. He did not put the wording to reflect my "Need Improvement" rating. (AY Dep. at 74-75)

A. Deny. Mr. Ye testified that his review of Mr. Pang in 2018 was based "off the time of the review and at the time of the performance." (Ye Dep. at 75). Mr. Ye did not testify that his review did not reflect a rating of "Needs Improvement." (Ye Dep. at 75).

228. Anthony testified that the Accounts Payable Team in Tempe got terminated after I left the company. (AY Dep. at 21-22)

A. Admit.

229. Anthony testifies that "We work as a team, and as a manager I will assign tasks to whoever is present, and whoever is on PTO, so when Lina is out Christine might be able to help and also Winnie, so we share responsibility whenever anyone is on PTO." (AY Dep. at 182)

A. Admit.

230. Everyone in the NY Team received or had their company laptop when they came to the assignment except Winnie and myself received it 4 years later in 2018. (AY Dep. at 100; IP Decl. Ex. 17)

A. Deny. Mr. Pang's citation does not provide evidentiary support for this statement.

231. In the NY Team, Lina, Winnie and I never have the company cell phone. Laura and Christine, had it when they came into NY Team. They are white and female. (AY Dep. at 100)

A. Deny and admit in part. Defendants admit that Mr. Pang, Ms. Ramirez, and Ms. Huynh did

not have a company cell phone. (Ye Dep. at 100). However, Mr. Pang's citation does not reference any person's gender or race.

232. Anthony testified that he received the company phone very late. (AY Dep. at 100)

A. Admit.

233. Anthony allowed Lina to help other issues with other operation teams (not our financial team) but not help me in my Above Baseline PO project. He evaluated based on the task and abilities at that time which might not be a good fit for her. (AY Dep. at 88, 92-93)

A. Admit.

234. Prior to 2018, I did not tell anybody at C&W about my 2014 review being discriminated. I don't think it helps if they are outside my team. Inside my team, I won't share personal things with colleagues and be more professional in the work environment. (IP Dep. at 80- 81)

A. Admit.

235. Prior to 2018, I did not tell Anthony and Bill I was treated differently because of my age, gender, or national origin since I think I would get fired if I did. (IP Dep. at 68-69)

A. Admit.

236. I did not have any chance to go back to add my comments on "Employee Evaluation Comment." No one told me that I should put my comment on that portion. (IP Dep. at 152)

A. Admit. However, Defendants also note that Mr. Pang testified that employees were sent

email reminders to complete the employee comment portion of the year-end review. (Pl. Dcp. at 102).

237. I will rely on my manager to remind me to fill out my reviews' comments. (IP Dep. at 102)

A. Admit. Mr. Pang testified that most of the time he relied on his manager to remind him to add employee comments to his reviews, but that sometimes he did not fill out or submit comments at all. (Pl. Dep. at 102).

238. Anthony did not provide me with an explanation for why Winnie was being compensated at a higher rate than me. (IP Dep. at 113)

A. Deny. Mr. Pang testified that Mr. Ye's explained that the reason for the $5,000 salary differential between Mr. Pang and Ms. Huynh during Mr. Pang's first year of employment was because Ms. Huynh took a pay cut from her previous job. (Pl. Dep. at 111-112).

XIX. Hostile Work Environment

239. On March 12, 2019, Anthony asked me to cover Shelly's work and accused me of missing the deadline. (IP Decl. Ex. 27)

A. Deny and admit in part. Defendants admit that Mr. Ye sent Mr. Pang an email with the statement "[m]issed deadline." (Mr. Pang Declaration, Ex. 27).

240. Anthony testified that "At the time I'm asking you to do a task as a manager. I think you are capable

and able to finish it within the time frame which we are closing on that specific date and you received the calendar from us in events or Laura in events showing or specifying the deadlines we have to do. With the years we are working together as manager and staff, you have been staying late to help out and also able to complete tasks that are assigned except this instance you said you will finish it tomorrow; you specifically know it's due today." (AY Dep. at 112- 113)

A. Admit.

241. When I asked him if he regularly sent out the deadline schedule to us, Bill testified that "For a time, we did that, and everybody came to know what was due and when it was due." (WC Dep. at 14)

A. Admit.

242. Anthony stated that he and Bill sent out the timeline of the month-end close calendar. (AY Dep. at 129)

A. Admit.

243. I requested emails or notice specific to the Deadline regarding the timelines of the month-end close calendar on the deposition and sent out SIXTH document request to the defendants' counsel. They cannot provide any. (AY Dep. at 129-130; IP Decl. Ex. 72 no 4, IP Decl. Ex. 89)

A. Deny. Defendants stated that emails regarding Mr. Pang's missed deadline were produced on September 24, 2021 and provided specific bates numbers. (Mr. Pang Declaration, Ex. 72).

244. In an email on April 9, 2019, Anthony told me to hold off my report and work on Shelly's invoice

upload. I told him if he can find anyone to work on the upload and remind him to sit down with me to go over the improvement plan that he told me about last week. I mentioned that I wanted to know what are my responsibilities because I continuously receive last-minute assignments which were not within my scope of work. He responded that he didn't have time to sit down with me. That is why he sent me work. I told him that the reason I asked him to sit down with me to clarify my responsibilities was that I kept receiving extra work which was not my duty and wished he can plan ahead or share the work with my other colleagues. He insisted he is my manager and I only do the works that he gave me every day. This email was copied to Bill, Donna and Laura (Ms. Sheehan) all the time. Renae was copied later but still with all the email history. Renae responded to my email that "Please remove HR from your distribution on emails where your manager is directing your work or providing feedback. If you have a situation you need to share where you believe your manager is unfair, please forward me the full email chain (not individually) with an explanation of how your manager is treating you unfairly. Otherwise, it is inefficient for HR to be included in normal, day-to-day operations of your work." I replied back "Sure, I'll do that going forward. As my previous email mentioned, I included them because I felt I am being treated unreasonable for all those extra works. I should focus on my own work if I need to improve my performance. My works was delay because am working on all these extras. I would like you to give me some advice how should I handle them." (IP Decl. Exs. 91,51)

A. Admit. Defendants note that while Mr. Ye told Mr. Pang to work on the Academy March invoices upload, the cited evidence does not indicate that this was Ms. Paul's work. (Mr. Pang Declaration, Ex. 91).

245. Renae also replied to Anthony stating that "Donna, Laura (Ms. Sheehan) and I have all emailed Ivan separately and asked him to not copy us (HR) in the normal, day-to-day work activity emails. Please loop me in on any emails where he is pushing back or if you think I have a specific reason to know. Otherwise, no reason to copy us in on these." (IP Decl. Ex. 91)

A. Admit.

246. In an email on April 16, 2019, he was rushing me to cover Shelly's invoices upload while I was covering Christine's cash receipt. Those were not my responsibilities. (IP Decl. Exs. 30,36)

A. Deny. Mr. Pang's citation does not provide evidentiary support for the statement that Ms. Paul was responsible for the invoices upload or that Mr. Ye was "rushing" Mr. Pang.

247. Renae also replied to the email that "please remove me from the distribution of your normal, daily work correspondence emails where Anthony is directing Ivan's work, which is appropriate." (IP Decl. Ex. 95)

A. Admit.

248. On March 21, 2019, Anthony sent me an email to cover Shelly's works. It contained few vendors' January and February invoices while I was trying to finish my work. (IP Decl. Ex. 81)

A. Admit. On March 21, 2019, Mr. Ye advised Mr. Pang that Ms. Paul is on leave of absence and asked Mr. Pang to process the allocation invoices in March. (Mr. Pang Declaration, Ex. 81).

249. Anthony replied to the email stated "Only Shelly knows how to do the allocations. If you are available to train someone, you can let me know and I can schedule a training with someone in Tempe. I don't need all these done today. But I will need them upload to Yardi." (IP Decl. Ex. 81)

A. Admit.

250. In the email on March 12, 2019, he mentioned that he would ask Karen (A/P Accountant in Tempe) to upload invoices because I could not finish. (AY Dep. at 111-112; IP Decl. Ex. 22)

A. Admit. Mr. Ye told Mr. Pang "[n]o need to upload Academy tomorrow. I will ask Karen to upload it." (Mr. Pang Declaration, Ex. 22). Mr. Ye testified that he had originally assigned that task to Mr. Pang because he thought it was the best fit for Mr. Pang at that time and believed that Mr. Pang was capable of completing the task within the closing time frame. (Ye Dep. at. 111-112).

251. Anthony sent an email on April 24, 2019 to ask me doing allocation invoices upload which was Shelly Paul's responsibility. It contains 11 invoices including few months invoices. (IP Decl. Ex. 20)

A. Admit. On April 24, 2019, Mr. Ye emailed Mr. Pang and asked him to process the attached invoices that week. (Mr. Pang Declaration, Ex. 20). However, Mr. Pang's citation does not

provide evidentiary support for the statement that the allocation invoices upload was Ms. Paul's responsibility.

252. In an email on May 20, 2019, Anthony was rushing me again stated that it should take 2 hours not 5 hours to finish covering Shelly's work. (IP Decl. Ex. 23)

A. Admit. Mr. Ye told Mr. Pang that it should only take two hours to process an invoice, not five hours. (Mr. Pang Declaration, Ex. 23).

253. In an email on May 20, 2019, Anthony wrote: "I mentioned last Friday that your regular work hours are 8:30am to 5:30pm with 1 hour lunch break. If you come in late or leave early, you will need to let me know in advance. You left before 5pm today 5/20/2019 without letting me know." (IP Decl. Ex. 37)

A. Admit.

254. I replied, "FYI, I work on my desk for lunch time all the time. By subtracting my eating time, half hour would go to my work time and I leave by 5pm as 8 full hours every day." (IP Decl. Ex. 37)

A. Admit.

255. Anthony replied to me "New York law requires employers to provide meal break for their employees. If you want to leave early and skip your meal break, you need to request it beforehand." (IP Decl. Ex. 37)

A. Admit.

256. Anthony testified that "I need to know if you're working or not working, so I need to know your timelines, and I cannot be actually going back and forth and keep on asking, so this should be something

that you need to let me know in advance." Regarding "Ivan Pang Skye Offline before 5pm" email. (AY Dep. at 265)

A. Admit.

XX. Sick Leave

257. I submitted my PTO request with doctor's note next day(May 23, 2019). (IP Decl.

Ex. 6, 48)

A. Admit.

258. In an email Donna sent to me on May 24, 2019, she told me "you are required to notify our leave management team and UNUM with this information. The note from your physician and the information you provide them with will be evaluated accordingly." (IP Decl. Ex. 48)

A. Admit.

259. Jaclyn Hunt ("Jaclyn" Benefits Compliance Manager) wrote email to Donna "while he is require to file for medical leave he isn't required to take STD (Short Term Disability), but it's generally suspicious when an employee refuses free money. This could be a simple case of him not understanding the process, or more specifically that he won't be fully compensated if he doesn't file. (IP Decl. Ex. 101)

A. Admit.

260. Jaclyn emailed to me on May 28, 2019, stated that "you do have the option to exhaust your 56.9

hours of PTO and 40 hours of sick during a protected leave if you choose". (IP Decl. Ex. 102)

A. Admit.

261. Renae emailed Donna on May 24, 2019 stated that "please ensure Ivan understands he is required to provide a release to return to work note from his medical provider BEFORE he will be allowed to return to work, since he has missed more than 3 days. Our sick, PTO policy covers this. If he does, he would not be required to apply for leave, but I agree with placing him on LOA status in the meantime.". (IP Decl. Ex. 48)

A. Admit.

262. Renae testified that "The policy states that PTO must be pre-approved. So based on the departmental requirements, I would say that a one-day notice is not something that would be considered pre-approved for any department that I've worked with. So the minimum I've seen is a three-day approval. Typically, it's about a two-week approval. But it is completely up to management and the business needs.". (RS Dep. at 49)

A. Admit.

263. I do not know Anthony is required by C&W's policies that an employee who reports to him submits a doctor's note asking for a period of time off. (IP Dep. at 249)

A. Admit.

264. I never acknowledge the above requirements before this incidence. (IP Dep. at 250- 251)

A. Defendants admit that Mr. Pang testified that he was unaware of C&W's disability leave policy prior to his request for two weeks off. (Pl. Dep. at 250- 251).

265. In my past experience, I just e-mail my manager the day before, I will get the PTO. (RS Dep. at 49)

A. Defendants admit that at Ms. Stokke's deposition, Mr. Pang stated that he would email his manager a day before to get PTO. (Stokke Dep. at 49).

266. I got approved PTO on July 24, 2017 for July 25, 2017 day off. (IP Decl. Ex. 93)

A. Admit.

267. I got approved PTO on September 12, 2018 for September 10, 2018 day off. (IP Decl. Ex. 94)

A. Admit.

268. Renae testified that "It is our company policy, if an employee misses more than three days due to an illness, they are required to provide a release to return to work note. The policy also states that if they miss more than five days due to illness, they are required to apply for a medical leave of absence through our third-party administrator.". (RS Dep. at 48)

A. Admit.

269. Shelly had some medical reasons for being out for couple of months in 2019. (AY Dep. at 106)

A. Admit, but notes that Mr. Pang's citation is incorrect. (Ye Dep. at 107).

270. In an email on March 12, 2019, Anthony indicated Shelly was out sick for 4 days. (IP Decl. Ex. 22)

A. Admit.

271. Defendant counsel refused to provide and the judge denied my request for Shelly's attendance for the year 2018 and 2019 and the date(s) she applied for UNUM of her Leave of Absence. (IP Decl. Ex. 72 no. 5)

A. Admit. Mr. Pang filed a Motion to Compel on January 24, 2022, in which he requested Defendants "[p]roduce the employee's record regarding Shelly Paul's attendance for the year 2018 and 2019 and the date(s) she applied for UNUM of her Leave of Absence." (ECF No. 75). Magistrate Judge Sarah Netburn denied Mr. Pang's Motion to Compel on February 17, 2022 because Mr. Pang had "not met his burden of showing that the documents are relevant to his claims, and the burden or expense of complying with these requests clearly outweighs their likely benefit." (ECF No. 84).

XXI. Sent Emails to myself trying to write emails to C&W

272. I sent two months of email communication with Anthony to my personal email in order to write to the company to prove the rating on my 2018 year-end review was wrong. (RS Dep. at 78).

A. Admit. Mr. Pang sent two emails to his personal email address containing attachments of Citigroup assignments submitted to Mr. Ye in

November 2018 and December 2018 on May 28, 2019. (Pl. Dep. at 255-256, 262-263; Ye Dep. at 267-268; Mary Smith Aff., Ex. 32). Citigroup flagged the emails and Citigroup's Content Monitoring Program emailed Mr. Pang and Mr. Carley about the potential violation of Citi Information Security Standards. (Pl. Dep. at 262-263; Mary Smith Aff., Ex. 33). This was the only time Mr. Carley or Mr. Ye were ever notified by Citigroup that restricted emails were sent by a member of the Financial Department team to an email address outside of the Citigroup network. (Ye Aff. ¶ 10). C&W verified that Mr. Pang forwarded two emails, with over sixty attachments combined, from his Citigroup email address account to his C&W email address account and two personal email addresses. The emails and attachments contained confidential PII (Personal Identifiable Information) related to Citigroup, such as federal tax ID numbers and payroll information for C&W and Citigroup employees. (Pl Dep. at 257; Ye Aff. ¶ 4, 6-7, 16; Mary Smith Aff., Ex. 32).

XXII. Termination

273. In an email on April 4, 2019, Bill wrote, "I want to discuss immediate dismissal for him. I don't want him (myself) back." (IP Decl. Ex. 67)

A. Admit.

274. In an email on May 23, 2019, Ms. Sheehan wrote, "I'm inclined to part ways with him." (IP Decl. Ex. 69)

A. Admit.

275. In an email on May 23, 2019, Bill wrote, "He obviously wants us to fire him so can we just get on with it?". (IP Decl. Ex. 68)

A. Admit.

276. I emailed Anthony and Scott copied to my personal address. (IP Decl. Ex. 92)

A. Admit. Defendants note that the email copied to Mr. Pang's personal account did not contain any confidential PII relating to Citigroup. (Mr. Pang Declaration, Ex. 92).

277. Winnie had had sent an email from her Citigroup's email to my personal email. (IP Decl. Ex. 97)

A. Admit. Defendants note that the email from Ms. Huynh concerned remote access through GoToMyPC and did not contain any confidential PII relating to Citigroup. (Mr. Pang Declaration, Ex. 97).

278. In an email on May 29, 2019, Scott sent an email to the HR team to report the interview with me about the confidential email I sent. He wrote "He (Plaintiff) stated that he only sent emails related to the Memo of Expectations and his Task List. He also stated that he sent emails of all his communications with Anthony from November and December of last year. When asked if any of those emails contained protected information, Ivan denied it," (IP Decl. Ex. 55)

A. Admit.

279. Renae testified that "I was told that Citi flagged e-mails that were within their system, that you were sending e-mails to your personal e-mail that had confidential information in the e-mails. So I think it was Social Security numbers and, perhaps, some other information that violated their policy. I saw e-mails that you sent to your personal e-mail, and I opened them. I believe it was an Excel spreadsheet, but I did not understand what I was looking at. Accounting is not my area of expertise, that's why I sent it to Scott Snow and your manager to review." "I don't know what I saw. I saw Excel spreadsheets with a lot of information in them. I could not tell, but I did not look at it in detail. I did not understand what I was looking at, so I sent it to those that would understand what they were looking at." (RS Dep. at 74-76)

A. Admit.

XXIII. Additional Information

280. On April 25, 2019, I emailed Renae stated that, "I expected you would act professionally answering my questions or concerns during a call. Unfortunately, I was stopped a few times when I asked questions. It looks like I should not raise any questions and you tried to be hurried and finished a call without answering my questions. In our conversation, I asked you to provide the example of my mistakes or any kinds of evidences about my poor performance. You mentioned that management already provided to you but you did not provide me any. You could not just say it without provide any emails or files. It is called "Words of mouth" not

"Evidence ". I believe good management will distribute the jobs fairly and evenly to their staffs and not just one person who they think "Needs Improvement ". If you made a judgment based on what management told you and never look into the matter, I don't think you can find the truth. I would suggest you asking all staffs for their tasks in my department and compare with my list. I believe you will find out how unfairly I treated by the management. It seems to be you agreed with everything to what they said and would not look deeper into finding the truth. I actually am disappointed on the way you handled this matter. You keep saying you will help but then only believed one side of the story and were not willing to listen when I tried to bring up the questions. Finally, I am requesting if you can provide any evidences that showed my poor performance last year. Please send me the support documents and not just by saying it. Without any support documents, I don't think you have the ground to close this case. If you don't have anything to offer and insist to close the case, I have no comments but have to escalate again back to HR Director." (IP Decl. Ex. 5)

A. Admit.

281. Renae did not tell me that she had made recommendations to the company with respect to how they had managed my performance in their specific roles as mangers. (IP Dep. At 188)

A. Admit.

XXIV. Procedural History

282. On June 4, 2019, I filed a Charge of Discrimination with the Equal Employment Opportunity Commission (EEOC).

A. Admit.

283. On September 3, 2020, the EEOC Investigator emailed me a Notice of Dismissal and Right to Sue stating that the charge was dismissed due to no reasonable cause.

A. Admit.

284. On November 27, 2020, I commenced this action.

A. Admit.

285. On July 7, 2021, the court held a Mediation Conference.

A. Admit.

286. On August 23, 2021, I filed Third Amended Complaint.

A. Admit.

287. On September 7, 2021, I filed Motion To Compel to the court.

A. Admit.

288. On September 8, 2021, Defendants filed their Answer to my Third Amended Complaint.

A. Admit.

289. On September 17, 2021, the court held a Discovery Hearing.

A. Admit.

290. On November 3, 2021, I filed a letter to the court that I haven't received the answers which the court approved in the Recovery Hearing Conference.

A. Admit.

291. On December 15,2021, the Court held a conference to discuss Plaintiff's motion to amend the complaint and outstanding discovery disputes.

A. Admit.

292. On December 17, 2021, Magistrate Judge Sarah Netburn denied both request and ordered a settlement conference.

A. Admit.

293. On January 24, 2022, I filed another Motion To Compel.

A. Admit.

294. On February 11. 2022, a settlement conference held by Magistrate Judge Sarah Netburn.

A. Admit.

295. On February 17, 2022, order denying Letter to Compel.

A. Admit.

Respectfully submitted,

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Mary A. Smith, Esq.
Caterina Catalano, Esq.

Dated: May 5, 2022
White Plains, New York

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

IVAN TO MAN PANG,

Plaintiff,

-vs-

CUSHMAN & WAKEFIELD U.S., INC., ANTHONY YE, WILLIAM CARLEY and RENAE STOKKE,

Defendants.

No. 1:20-cv-10019 (AJN)(SN)

PLAINTIFF'S LOCAL RULE 56.1 COUNTER-STATEMENT OF UNDISPUTED MATERIAL FACTS

Plaintiff Ivan To Man Pang submit this Local Rule 56.1 Counter-Statement of Material Undisputed Facts on Defendants' Motion for Summary Judgment. [1]

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1 The bolded portions of Defendants' Local Rule 56.1 Statement were not included in Plaintiff's Local Rule 56.1 Counter-Statement of Material Facts.

I. Background Information.

A. C&W.

1. C&W is a global real-estate services firm that provides services in property facilities and project management, leasing, capital markets and valuation. (Ye Aff., ¶ 3).

A: Agree.

2. C&W maintains an Equal Employment Opportunity Policy, Global Policy of Inclusion and Diversity, Global Anti-Harassment and Anti-Discrimination Policy, and a detailed reporting procedure by which employees can report inappropriate behavior. (Pl. Dep. at 37-40; Mary Smith Aff., Ex. 6, 7).

A: Disagree. C&W had never provided any new updates on these policies to me. The date of exhibits was issued after 2014 which was not the version I received when I signed my employment letter.

3. C&W also maintains a Global Corrective Action Policy which provides examples of unacceptable workplace behavior and outlines the corrective action process. (Pl. Dep. at 39-40; Mary Smith Aff., Ex. 8).

A: Disagree. I never received this policy and it was not part of the package when I was hired in 2014. C&W had never provided to me during my employment.

II. Mr. Pang's Employment With C&W.

4. Mr. Pang first applied for the Senior Accountant position at C&W in 2013 and was interviewed by Mr. Ye and Patricia Laverty in around January or February of 2014. (Pl. Dep. at 11-14, 144).

A: Agree.

5. Mr. Ye had input in the decision to hire Mr. Pang. (Ye Dep. at 11, 17).

A: Agree.

6. Mr. Pang began his employment with C&W as a Senior Accountant in the Corporate Occupier & Investor Services in the Financial Department for C&W's Citigroup Account on or about March 1, 2014. (Pl. Dep. at 24; Mary Smith Aff., Ex. 3).

A: Agree

7. Mr. Pang's annual salary at the time he began his employment was $75,000.00. (Pl. Dep. at 24; Mary Smith Aff., Ex. 3).

A: Agree

8. At the start of his employment with C&W, Mr. Pang received copies of C&W's Global Code of Business Conduct, CIS Integrity Policy and Procedures, Confidentiality and Non-Solicitation Policy, Drug and Alcohol Policy, Dispute Resolution Policy, EEO/Affirmative Action and Anti-Harassment Policies, IT Policies, and Social Media Policy. (Pl. Dep. at 26, 28, 40; Mary Smith Aff., Ex. 3, 4, 5, 6, 7).

A: Disagree. C&W had never provided any new updates on these policies to me. The date of

exhibits was issued after 2014 which was not the version I received when I signed my employment letter.

9. On February 19, 2014, Mr. Pang acknowledged his receipt of and agreed to comply with the Global Code of Business Conduct. Mr. Pang also testified that he received a copy of the Global Code of Business Conduct during his employment at C&W. (Pl. Dep. at 34; Mary Smith Aff., Ex. 4).

A: Disagree. C&W had never provided any new updates on these policies to me. The date of exhibits was issued after 2014 which was not the version I received when I signed my employment letter.

10. C&W's Global Code of Business Conduct provided that "[e]mployees are expected to treat all knowledge and information related to all aspects of the Company's business as strictly confidential." (Pl. Dep. at 33-37; Mary Smith Aff., Ex. 5).

A: Disagree. C&W had never provided any new updates on these policies to me. The date of exhibits was issued after 2014 which was not the version I received when I signed my employment letter.

11. C&W's Global Code of Business Conduct also provided that employees would not "disclose client information outside of the Company without proper authorization to do so." (Pl. Dep. at 33-37; Mary Smith Aff., Ex. 5).

A: Disagree. C&W had never provided any new updates on these policies to me. The date of exhibits was issued after 2014 which was not the

version I received when I signed my employment letter.

12. During his employment, Mr. Pang reported to Mr. Ye, who was the Financial Manager of the Financial Department in which Mr. Pang worked within C&W's Citigroup Account. (Pl. Dep. at 16, 41-43; Mary Smith Aff., Ex. 3).

A: Agree.

13. Initially in his role as Senior Accountant, Mr. Pang was responsible for managing expenses and invoices related to Citigroup's 1,300 locations. (Pl. Dep. at 43).

A: Disagree and agree in part. I was responsible for all accounting functions in the assignment but focused on vendor invoices and expenses functions.

14. Mr. Pang's job description also included responsibilities such as ensuring books and financial accounts were in accordance with the GAAP or other required accounting standards, preparing and assisting with cash management, accounts payable and receivable, fixed assets, accruals, and reconciliations, and performing special projects as assigned. Mr. Pang was also responsible for entering payroll, monthly charges, and allocation vendor discounts. (Pl. Dep. at 52- 53, 114-115; Mary Smith Aff., Exs. 9, 14).

A: Agree.

A. The Financial Team In C&W's Citigroup Account.

15. Employees in the Financial Department for C&W's Citigroup Account had two emails: one for C&W, and one for Citigroup. A different email was required for Citigroup matters to protect Citigroup's proprietary and confidential information. (Ye Aff. ¶ 4).

A: Disagree. We don't have access to any Citigroup accounting or data information system. The reason to use Citigroup email is that we worked within the Citigroup properties and it does not allow us to use another email system.

16. Citigroup information was permitted to be exchanged internally via the Citigroup email. (Ye Aff. ¶ 5).

A: Disagree. We don't have access to any Citigroup accounting or data information system. We used our own accounting system - Yardi. C&W will not share all the accounting information with Citigroup and Citi had no control over how C&W handles the accounting information.

17. The Financial Department for C&W's Citigroup Account also has an accounts payable team located in Arizona. This team reported to Mr. Ye originally, but later reported to William Carley. (Pl. Dep. at 43-44, Ye Dep. at 21).

A: Agree.

18. Mr. Ye reports to Mr. Carley, the Director of Finance for C&W's Citigroup Account. (Pl. Dep. at 44-45; Carley Dep. at 8).

A: Agree.

19. When Mr. Pang first started working for C&W in 2014, the Finance Department consisted of four employees, Mr. Ye, Winnie Huynh, Senior Accountant, and Lina Ramirez, Staff Accountant. (Pl. Dep. at 42).

A: Agree.

20. Before starting as a Senior Accountant, Ms. Huynh had experience in corporate finances and around ten or more years of accounting experience. Ms. Huynh also previously served as a consultant for C&W. (Ye Dep. at 12).

A: Disagree and agree in part. Winnie served as a consultant at C&W and does not indicate her length of service and position.

21. Ms. Ramirez was employed by C&W for more than five years prior to her position in the Financial Department in C&W's Citigroup Account. (Ye Dep. at 13).

A: Agree.

22. Both Ms. Huynh and Ms. Ramirez were still employed by C&W at the time of Mr. Pang's termination. (Pl. Dep. at 47-48).

A: Agree.

23. Mr. Ye assigned work in the Financial Department based on each employee's responsibilities and abilities. For example, Mr. Ye assigned the payroll responsibilities to Ms. Huynh because based on his experience of working with Ms. Huynh, Mr. Ye did not worry about "errors or discrepancies." (Ye Dep. at 51-52).

A: Disagree. Anthony did not work with Winnie prior to this assignment and he would not know how she perform. Anthony also agreed that my work in vendor service needs to be detailed same as payroll responsibilities. (Ye Dep. at 51-52)

24. As a team, employees shared responsibilities and covered their co-workers when any employee was out on paid-time off. (Ye Dep. at 182, 187).

A: Agree.

25. C&W's performance evaluation process consisted of a manager's evaluation of the employee with explanations and goals for the following year, and a self- evaluation portion completed by the employee, agreeing or disagreeing with the manager's evaluation. (Pl. Dep. at 70- 73; Ye Dep. 51, 76; Mary Smith Aff., Exs. 10, 11, 12, 13).

A: Disagree. Performance evaluation is processed at the end of the year to review overall performance in that particular year, not the following year. The employee entered the employee portion and sent it to the manager to comment. I do not believe it was intended to let employees to agree or disagree of the manager's comments.

26. C&W determined an employee's eligibility for a yearly raise and bonus based on the rating provided in the employee's performance evaluation by that employee's supervisor(s). (Ye Dep. at 234, 237, 253-254).

A: Agree.

27. Mr. Ye did not control the percentage of an employee's salary increase, he only provided assessment of the performance reflected in the employee's rating. (Ye Dep. at 257).

A: Agree.

28. As a manager, Mr. Ye recognized good performance for each employee and included recommendations for areas in which each employee could improve. Mr. Ye did not place negative comments on reviews. (Ye Dep. at 83).

A: Disagree. In my 2014 Performance Appraisal, Anthony wrote "Would like him to be better self-proofing his work as accuracy has been an issue at times.", "but accuracy was an issue at times.", "However, reconciling the data can be an issue." I was displeased with the comments on the 2014 Performance Appraisal at that time. For each comment at the end Anthony would put some negative words. It's totally uncommon. I felt he was demeaning me at that time. (IP Decl. Ex. 13 p. 1-2)

29. From 2014 to 2016, Ms. Huynh received Year-End Performance Evaluation ratings of "Very Good Performance." (Ye Dep. at 85-86, 98, 200-206; Mary Smith Aff., Ex. 38).

A: Agree.

30. In 2017 and 2018, Ms. Huynh received a Year-End Performance Evaluation rating of "Outstanding Performance." (Ye Dep. at 98, 207-211, 216-218; Mary Smith Aff., Ex. 38).

A: Agree.

31. As a result of Ms. Huynh's consistently high performance ratings, she received consistent salary increases pursuant to C&W policy. (Ye Dep. at 249, 261).

A: Disagree. If you look at her 2019 Year-End Performance Evaluation rating, she only received "Very Good Performance". I left the company in May 2019. She was the only senior accountant on the NY team as Anthony mentioned in the Evaluation. I could not think of any reason her performance went down. I did not see consistency in Anthony's rating.

32. As a Senior Accountant, Mr. Pang had access to salary data for all members of the C&W Financial Team for the Citigroup Account. While Ms. Huynh was responsible for payroll entry, Mr. Pang was responsible for uploading the payroll data onto Yardi, the accounting system used by C&W to manage accounting functions. (Pl. Dep. at 89-91; Ye Dep. at 25).

A: Disagree and agree in part. I'm also responsible for payroll entry when Winnie was out.

33. Mr. Pang did not manager or supervise anyone. (Pl. Dep. at 52; Mary Smith Aff., Ex. 9).

A: Agree.

34. Mr. Pang testified that during his first year of employment, he felt that Mr. Ye treated him differently than Ms. Huynh because he was paid less that Ms. Huynh but had more responsibilities. Mr. Pang also testified he was not one hundred percent

sure why Mr. Ye treated him differently. (Pl. Dep. at 58).

A: Disagree. The question defendant's counsel asked was "I think you have asserted in this case that Anthony Ye treated you differently because of your gender, right? In this case, that's one of your allegations? I answered, "I'm not hundred percent sure, you know, what's the reason, but that's the reason I only can think about.".

35. Mr. Pang's national origin is Asian, and of Chinese heritage and he is fifty- six years old. (Pl. Dep. at 59-60).

A: Agree.

36. Mr. Ye's national origin is Asian, and of Chinese heritage and he is thirty- eight years old. (Pl. Dep. at 59-60; Ye Dep. at 4).

A: Agree.

37. Mr. Carley is sixty-seven years old. (Carley Dep. at 8).

A: Agree.

38. Ms. Huynh's national origin is Asian, and of Chinese heritage, and she is in her early to mid-40s. (Pl. Dep. at 60).

A: Agree.

39. Mr. Pang testified that Mr. Ye treated Asians – himself and Ms. Huynh – more harshly than other employees by giving them more work and expecting tasks to be completed within a day or two. (Pl. Dep. at 58, 61-63).

A: Agree.

40. However, Mr. Pang admitted that because he and Ms. Huynh were the only Senior Accountants on the C&W Financial Team for the Citigroup Account, Mr. Ye was limited as to which employees could be assigned certain tasks. (Pl. Dep. at 61-62).

A: Disagree. There were two more accountants under Anthony's supervision. He treated other race colleagues with more respect and tolerate their mistakes.

41. Additionally, Mr. Pang could not remember any instances where Mr. Ye spoke to other employees in a manner which was different than the way in which he spoke to Mr. Pang. (Pl. Dep. at 64-65).

A: Agree. I won't able to remember exactly the wordings of other people's conversations a few years ago.

42. Ms. Huynh never told Mr. Pang that she thought Mr. Ye treated her differently because of her national origin, gender, or age. (Pl. Dep. at 67).

A: Agree. We were not closed enough to share our personal feeling.

43. Mr. Pang never told Ms. Huynh that he thought Mr. Ye treated him differently because of his national origin, gender, or age. (Pl. Dep. at 67).

A: Agree. We were not closed enough to share our personal feeling.

44. Prior to November 2018, Mr. Pang never told Mr. Ye that he felt Mr. Ye was treating him unfairly or differently because of his national origin, gender, or age. (Pl. Dep. at 67-68).

A: Agree.

45. Prior to November 2018, Mr. Pang never told Mr. Carley that he felt Mr. Carley was treating him unfairly or differently because of his national origin, gender, or age. (Pl. Dep. at 68-69).

A: Agree.

46. Prior to November 2018, Mr. Pang never communicated to anyone in Human Resources at C&W that he felt he was being treated unfairly or differently at C&W. (Pl. Dep. at 69).

A: Agree.

47. During the course of Mr. Pang's employment, he never heard Mr. Ye make any derogatory comments about or any comments related to Mr. Pang or his national origin of Asian. (Pl. Dep. at 281).

A: Agree.

48. Mr. Pang never heard Mr. Ye make a discriminatory or derogatory comment about any person's age or gender. (Pl. Dep. at 281-282).

A: Agree.

49. Mr. Pang never heard Mr. Carley make any discriminatory or derogatory comment about any person in relation to their national origin of Asian. (Pl. Dep. at 282).

A: Agree.

50. Mr. Pang never heard Mr. Carley make any derogatory comments about any person in relation to their age. (Pl. Dep. at 282).

A: Agree.

51. Mr. Pang never heard Ms. Stokke make any derogatory comments about any person in relation to

their national origin. Mr. Pang's claims against Ms. Stokke concern her investigation into his complaints. (Pl. Dep. at 284).

A: Agree.

52. Between 2014 and Mr. Pang's termination in June 2019, Laura Bove, Financial Analyst, and Christine Baynes, Junior Accountant, were added to the Financial Department. (Pl. Dep. at 47-52).

A: Agree.

53. As a Financial Analyst, Ms. Bove was responsible for coordinating purchase orders with the Field Manager and analyzing and forecasting expenses for each vendor. Ms. Bove was also the contact person for the Site Manager at Citigroup. Ms. Bove reported to Mr. Carley. (Pl. Dep. at 50-51, 56-57).

A: Agree.

54. As a Junior Accountant, Ms. Baynes performed basic accounting functions and was trained by Mr. Ye. (Pl. Dep. at 56-57).

A: Disagree and agree in part. I trained Ms. Baynes on cash receipts, reviewed the REMS PO, created charges in Yardi and processed the Above Baseline Purchase Order. (IP Dep. at 48-51;IP Decl. Ex. 13 p. 3-5, 8-9;IP Decl. Ex.42 p. 4)

B. Mr. Pang's Performance Evaluations From 2014 To November 2018.

55. For the years 2014, 2015, 2016, and 2017, Mr. Ye issued Mr. Pang his annual performance evaluations. (Pl. Dep. at 70, 84-85, 95, 103, 105; Mary Smith Aff., Exs. 10, 11, 12, 13).

A: Agree.

56. In February 2015, Mr. Pang and Mr. Ye met to discuss Mr. Pang's 2014 Performance Evaluation. Although Mr. Pang received a rating of "Good Performer" with a four to five percent salary increase and bonus, Mr. Pang disagreed with Mr. Ye's comments regarding the accuracy of his work. (Pl. Dep. at 70, 73-78; Mary Smith. Aff., Ex. 10).

A: Agree.

57. Mr. Pang never told anyone at C&W that he believed his 2014 Performance Evaluation or associated compensation adjustments were discriminatory. (Pl. Dep. at 80).

A: Agree. It is common that you do not share the Performance Evaluation with your colleagues in the workplace.

58. On March 16, 2015, C&W issued to Mr. Pang a warning letter related to inappropriate communications by email with a co-worker. In the email, Mr. Pang told a co-worker "I am not your baby-sitter." (Pl. Dep. 81-82; Ye Dep. at 63; Mary Smith Aff., Ex. 36, 37).

A: Disagree and agree in part. I do not believe a company would give a warning letter because someone wrote "I am not your baby-sitter." In addition, the colleague started it first. (IP Decl. Ex. 62)

59. In February 2016, Mr. Pang and Mr. Ye met to discuss Mr. Pang's 2015 Performance Evaluation. Mr. Pang again received a rating of "Good Performer Plus", with a salary increase and bonus. Mr. Pang concedes the review was fair as compared to other employees, but he believed the 2015 Performance Appraisal was discriminatory. (Pl. Dep. at 85, 88-89; Mary Aff., Ex. 11).

A: Agree.

60. Mr. Pang admits his 2016 salary increase and bonus were fair following his review of the payroll information of other employees in his Financial Department. (Pl. Dep. at 89- 90).

A: Agree.

61. Mr. Pang was also rated as a "Good Performer Plus" by Mr. Ye in his 2016 Performance Evaluation, which he testified was fair as compared to other employees and was not discriminatory. (Pl. Dep. at 95, 98; Mary Smith Aff., Ex. 12).

A: Disagree. I felt they added "+" to Good Performer" instead of giving "Very Good Performance" which is discriminatory. The question was "Do you remember whether or not you believed that the increase you received in 2017 was discriminatory against you?

62. C&W's performance evaluation process was changed in 2017 and mid-year reviews were added to the evaluation process. (Pl. Dep. at 98-99, 150).

A: Agree.

63. Employees were sent email reminders to complete the employee comment portion of the mid-year review. (Pl. Dep. at 101).

A: Disagree and agree in part. I received reminder emails but I did not pay attention to those emails because too many of them. I relied on the manager to let me know when was due. (Pl. Dep. at 102)

64. Employees were also sent email reminders to complete the employee comment portion of the year-end review. (Pl. Dep. at 102).

A: Disagree and agree in part. I received reminder emails but I did not pay attention to those emails because too many of them. I relied on the manager to let me know when was due. (Pl. Dep. at 102)

65. Mr. Pang testified that he always completed the employee comment portion for the year-end review. (Pl. Dep. at 102).

A: Disagree and agree in part. I received reminder emails but I did not pay attention to those emails because too many of them. I relied on the manager to let me know when was due. (Pl. Dep. at 102)

66. Although Mr. Pang received a rating of "Very Good Performance" in his 2017 Performance Evaluation, he does not believe his corresponding salary increase and compensation were fair. (Pl. Dep. at 105, 108; Mary Smith Aff., Ex. 13).

A: Agree.

67. On June 5, 2018, Mr. Ye forwarded to both Ms. Huynh and Mr. Pang an email about an opening for a managerial position. (Pl. Dep. at 145-146; Ye Dep. at 61; Mary Smith Aff., Ex. 17).

A: Agree.

68. After Mr. Pang expressed interest in the role, Mr. Ye emailed Patricia Laverty to recommend Mr. Pang for the position and forwarded his resume. (Pl. Dep. at 143-145; Ye Dep. at 61-63; Mary Smith Aff., Ex. 17).

A: Agree.

C. Mr. Pang's Request For A Salary Increase.

69. Mr. Pang concluded that he was underpaid in his first year of employment at C&W. (Pl. Dep.at 108-109).

A: Agree.

70. Mr. Pang believed everyone on the Citigroup Account, except Ms. Ramirez, was underpaid due to the budget associated with the assignment. Mr. Pang believes that Ms. Ramirez was not underpaid because her salary continued from a previous assignment she had within C&W. (Pl. Dep. at 109-110).

A: Agree.

71. Mr. Pang had multiple conversations with Mr. Ye that he was unpaid, but Mr. Pang never told Mr. Ye he felt he was underpaid because of his national origin, gender, or age. (Pl. Dep. at 110).

A: Disagree. I never told Anthony I was "unpaid".

72. Mr. Pang also testified he spoke to Mr. Ye in 2014 about the fact that Ms. Huynh's salary was $5,000.00 more than his salary, which he learned from reviewing the C&W payroll data as part of his job duties. (Pl. Dep. at 111-113).

A: Agree.

73. In response to Mr. Pang's concerns, Mr. Ye responded that Mr. Pang accepted the $75,000.00 salary, and Mr. Ye did not have the ability to raise his salary. (Pl. Dep. at 111-112).

A: Agree.

74. Mr. Pang recognized that while Mr. Ye had input into Mr. Pang's performance, he did not have input as to the percentage increase of the salary. (Pl. Dep. at 112).

A: Agree.

75. In or about November 2018, Christine Baynes, an existing C&W employee, transferred from Field Coordinator, a non-exempt position, on the facilities/operation side of the Citigroup Account to an exempt Junior Accountant position on the Financial Department team. (Pl. Dep. at 48-49, 124-125, Ye Dep. at 243).

A: Agree.

76. Mr. Ye and Mr. Carley concluded that Ms. Baynes' non-exempt salary was below market level for an exempt Junior Accountant position, and requested C&W to increase Ms. Baynes's base salary by $10,000.00 in her current position. (Ye Dep. at 241-245).

A: Disagree. She received a $10,000 increase in 2016 and another $10,000 increase in 2018.

77. As part of Mr. Pang's payroll responsibilities, he uploaded the Financial Department team's payroll data into the Yardi system. (Pl. Dep. at 89-91; Ye Dep. at 25).

A: Agree.

78. In doing so, Mr. Pang created a chart outlining the pay of all of the Financial Department team members. (Pl. Dep. at 135-137, 141-142; Mary Smith Aff., Ex. 16).

A: Agree.

79. Mr. Pang inappropriately used C&W's confidential payroll information to create the chart in violation of C&W's policy. (Stokke Dep. at 43).

A: Disagree. The company told me that I inappropriately used payroll information only when I made the complaint to HR. I never heard Anthony, Bill and Donna mentioned this to me before March 2019.

80. According to Mr. Pang's salary comparison chart, Ms. Baynes' salary went from $35,000 to $45,000 from 2015 to 2016. Ms. Baynes' salary was $47,739.00 in 2018. (Pl. Dep. at 126; Mary Smith Aff., Ex. 16).

A: Agree. Christine received another $10,000 at the end of 2018.

81. According to Mr. Pang's salary comparison chart, his salary went from $77,250 to $79,954.00 from 2015 to 2016. Mr. Pang's salary was $84,820.00 in 2018. (Pl. Dep. at 135-137, 141-142; Mary Smith Aff., Ex. 16).

A: Agree.

82. In November 2018, Mr. Pang met with Mr. Ye and Mr. Carley to request a salary increase because he learned of Ms. Baynes' $10,000.00 salary increase. (Pl. Dep. at 125- 127).

A: Agree.

83. Mr. Ye and Mr. Carley responded that Ms. Baynes' salary increase was warranted to bring her to a market appropriate salary. Mr. Pang's request for a raise was denied because he was already paid at market. (Pl. Dep. at 126-128; Carley Dep. at 47-48; Mary Smith Aff., Ex. 23).

A: Disagree. The company never provided a market range for my position.

84. During this meeting, Mr. Pang presented his salary comparison chart which compared the annual salary increases and bonuses for all employees on the New York Financial Team, including Mr. Pang, his supervisor, Mr. Ye, and Mr. Carley, the Director. (Pl. Dep. at 135- 136, 140-142; Mary Smith Aff., Ex. 16).

A: Agree.

85. Mr. Ye and Mr. Carley advised Mr. Pang that he should not have used confidential employee payroll information for his own benefit. (Pl. Dep. at 127).

A: Disagree. I would like to make a correction here. I mixed up my memory with the Memo Of Expectation meeting. They told me that at that meeting in 2019.

86. On November 28, 2018, following Mr. Pang's meeting with Mr. Ye and Mr. Carley, Mr. Pang contacted Donna Lanciers, Human Resources Manager, asking for a meeting and a transfer. (Pl. Dep. at 129, 133-134; Mary Smith Aff., Ex. 15).

A: Agree.

87. Mr. Pang met with Ms. Lanciers on November 29, 2018. (Pl. Dep. at 131- 132; Mary Smith Aff., Ex. 15).

A: Agree.

88. Ms. Lanciers' notes of the meeting reflect that Mr. Pang stated that he wanted to transfer because he felt his work was not appreciated, but Mr. Pang did not give examples of situations where he believed he was not appreciated. Ms. Lanciers suggested several options to Mr. Pang, including applying for other positions via C&W's intranet, sending to her his resume and following up to discuss other positions within the company. (Pl. Dep. at 134-138; Mary Smith Aff., Ex. 15).

A: Disagree. I did a salary comparison to show her why my work was not appreciated. (Pl. Dep. at 135)

89. Mr. Pang did not tell Ms. Lanciers that he felt he had been unfairly compensated because of his national origin, age, or gender. (Pl. Dep. at 137-138).

A: Agree. I didn't want to risk losing my job at that time. In this case, I proved I was right.

90. Between Mr. Pang's November 29, 2018 meeting with Ms. Lanciers up to March 2019, Mr. Pang did not mention his compensation or desire to transfer to either Mr. Ye or Mr. Carley. (Pl. Dep. at 147).

A: Agree. I did not believe Anthony and Bill would help me to transfer.

D. Mr. Pang's Performance As Senior Accountant And 2018 Year-End Performance Evaluation.

91. After the meeting in November and into December of 2018, Mr. Pang refused to perform certain tasks assigned to him by Mr. Ye. (Ye Dep. at 74).

A: Disagree. My work submission to Anthony in November and December of 2018 proved that I had never refused to perform any tasks and the defendants could not provide any evidence.

92. Mr. Pang also started to make small errors which resulted in Mr. Ye double checking Mr. Pang's work. (Ye Dep. at 74).

A: Disagree. My work submission to Anthony in November and December of 2018 proved that this is not an accurate statement and the defendants could not provide any evidence.

93. Mr. Ye also asked to assign a task to Ms. Baynes in response to Mr. Ye's assignment to him, advising Mr. Ye to give the task to someone else (Pl. Dep. at 216-218; Ye Dep. at 73-74; Mary Smith Aff., Ex. 26).

A: Disagree. My answer to the question in deposition was "I'm not Christine's supervisor. I don't think I will have any authority to tell my boss to give her the job... booking transaction is a very simple thing. I don't think I will tell him she should do the job. This is not my personality.". Anthony stated a false statement at the deposition.

94. On March 14, 2019, Mr. Ye and Mr. Carley met with Mr. Pang to issue to him his 2018 Performance Evaluation. (Pl. Dep. at 148, 155-156; Mary Smith Aff., Ex. 22).

A: Agree.

95. Mr. Pang was rated "Needs Improvement" due to his performance mainly in late 2018. (Ye Dep. at 75; Mary Smith Aff., Ex. 22).

A: Disagree. My 2018 Performance Evaluation did not indicate that.

96. At this meeting, Mr. Ye and Mr. Carley specifically noted that Mr. Pang's salary comparison chart was inappropriate, and after they denied his request for a salary increase, Mr. Pang's attitude and job performance had deteriorated. (Pl. Dep. at 157).

A: Disagree. They did not mention anything about salary comparison and my attitude and job performance changed was a false statement.

97. Mr. Pang added only one overall employee comment on his 2018 Performance Self-Evaluation, then contacted Human Resources in an attempt to add more comments following his meeting with Mr. Ye and Mr. Carley. (Pl. Dep. at 149, 152-155).

A: Disagree. We normally submitted our comments before the manager put theirs. I did not know I can respond to the Evaluation after the manager put their comments until Donna told me. I tried to go back to add my comment but was not allowed. I asked Donna for help but she could not help.

98. Mr. Pang expressed that he did not agree with his 2018 Performance Evaluation. (Pl. Dep. at 156).

A: Agree.

99. About a week or two after the first meeting, Mr. Pang met with Mr. Ye and Mr.

Carley again to discuss his salary adjustment and bonus based on his 2018 Performance Evaluation. (Pl. Dep. at 159).

A: Disagree. Only Anthony met and showed me my salary adjustment and bonus after the first meeting.

100. Mr. Ye and Mr. Carley explained to Mr. Pang that as a result of his"Needs Improvement" rating, Mr. Pang was not eligible for an annual salary increase and received 50% of the bonus. (Pl. Dep. at 159).

A: Disagree and agree in part. Only Anthony presented me at the meeting and the result is correct.

101. On March 18, 2019, Mr. Pang emailed Ms. Lanciers to dispute his 2018 Performance Evaluation. (Pl. Dep. at 162-163).

A: Agree.

102. On April 1, 2019, Ms. Lanciers responded to Mr. Pang's e-mail about the 2018 Performance Evaluation. Ms. Lanciers stated that she understood that Mr. Carley and Mr. Ye were unable to provide Plaintiff with constructive feedback in the March 14, 2019 meeting dueto his overall reaction and voiced disagreement with the rating. Ms. Lanciers also stated that Mr. Pang expressed to her that he understood he would have to go through a Performance Improvement Plan. Ms. Lanciers also explained that while Mr. Pang "may not agree with the perspectives and observations your manager may have about your performance, you do have an obligation to listen and perform to the expectations."

Ms. Lanciers concluded the email by stating that the information provided by Mr. Pang did not support unfairness, and if Mr. Pang did not agree with this conclusion, he could escalate the matter to Laura Sheehan, Director of Human Resources or contact the ethics hotline. (Pl. Dep. at 161-165; Mary Smith Aff., Ex. 19).

A: Disagree. I did not overreact and used a loud voice at the meeting. I just disagreed with the rating and their comments regarding my 2018 Evaluation at the meeting. I did my work professionally during that period.

103. On April 4, 2019, Mr. Pang send an email titled "Complaint letter concerning management issues" and copied over forty-six recipients, including C&W, Citigroup senior level executives, human resources employees, colleagues, and employees. (Pl. Dep. at 165- 168; Mary Smith Aff., Ex. 20).

A: Agree.

104. In his April 4, 2019 email, Mr. Pang stated that he was shocked by the "Needs Improvement" rating in his 2018 Performance Evaluation because he was very confident in his work and had good time management. Mr. Pang also complained that he was given work outside of his scope. Mr. Pang stated he was "still thankful that C&W gave me a great opportunity working in a good assignment and I learned a lot from it." (Pl. Dep. at 169-170; Mary Smith Aff., Ex. 20).

A: Agree.

105. In his April 4, 2019 email, Mr. Pang did not state that he felt he was discriminated against

because of his race, national origin, gender or age. (Pl. Dep. at 168).

A: Agree.

106. Because of Mr. Pang's April 4, 2019 complaint, Renae Stokke, Employee Relations Senior Manager, conducted a formal investigation. (Pl. Dep. at 170-172).

A: Agree.

107. As part of Ms. Stokke's investigation, Ms. Stokke interviewed Mr. Pang on April 11, 2019. In this meeting, Mr. Pang stated was not paid fairly. He did not state he felt discriminated against by Mr. Ye. (Pl. Dep. at 172; Stokke Dep. at 60; Mary Smith Aff., Ex. 21).

A: Disagree. I did not mention anything about unfair pay to Renae. I only focused on my rating on the 2018 evaluation.

108. During his interview with Ms. Stokke, Mr. Pang did not express that he thought Mr. Ye had treated him differently due to his national origin, gender, or age. (Pl. Dep. at 173-174).

A: Agree.

109. Mr. Pang agreed that Ms. Stokke's notes of their conversation were fairly accurate. (Stokke Dep. at 32).

A: Agree. I would like to add this. I meant she wrote the content of our conversation was fairly accurate to the actual conversation but not necessary a true statement.

110. In connection with her investigation, Ms. Stokke also interviewed Mr. Ye, Mr. Carley, and Ms.

Lanciers. (Pl. Dep. at 172-173; Stokke Dep. at 5-6, 37, 39; Mary Smith Aff., Exs. 22, 23).

A: Agree.

111. Ms. Stokke interviewed Mr. Ye on April 11, 2019. (Stokke Dep. at 5-6, 14- 15; Mary Smith Aff., Ex. 22).

A: Agree.

112. During his interview with Ms. Stokke, Mr. Ye stated that after the meeting with Mr. Pang wherein his request for a salary increase was denied, Mr. Pang became argumentative and would not respond positively when Mr. Ye pointed out small errors. Ms. Stokke also reminded Mr. Ye about C&W's non-retaliation policy. (Stokke Dep. at 5-6, 14-15; Mary Smith Aff., Ex. 22).

A: Disagree. Anthony stated a false statement and there was no evidence Renae reminded Anthony about C&W's non-retaliation policy.

113. Ms. Stokke interviewed Mr. Carley on April 12, 2019. (Stokke Dep. at 5- 6, 14-15, 41-42; Mary Smith Aff., Ex. 23).

A: Agree.

114. During his interview with Ms. Stokke, Mr. Carley stated that he explained to Mr. Pang that Ms. Baynes' salary was well-below market, while Mr. Pang's was right where it should be. Mr. Carley stated that the meeting with Mr. Pang wherein his request for a salary increase was denied, his "work tanked." Mr. Carley provided specific examples of how Mr. Pang responded to constructive feedback with aggression. (Stokke Dep. at 5-6, 14-15, 41-42; Mary Smith Aff., Ex. 23).

A: Disagree. Bill gave false statements during the interview.

115. In addition to the interviews, Ms. Stokke also reviewed documentary evidence such as Mr. Pang's salary chart containing C&W confidential and proprietary employee payroll information and emails Mr. Pang forwarded to her. (Stokke Dep. at 14-15).

A: Disagree. Renae did not say that in the deposition and I did not forward payroll information to her.

116. After Ms. Stokke concluded her investigation, she met with Mr. Pang on April 23, 2019 to discuss the results of the investigation as is her normal business practice. (Pl. Dep. at 177-178; Stokke Dep. at 31-32, 72; Mary Smith Aff., Exs. 24, 25).

A: Disagree and agree in part. She called me on April 23, 2019, to end the investigation and refused to answer my further questions.

117. During her April 23, 2019 meeting with Mr. Pang, Ms. Stokke explained that she interviewed Mr. Pang's management, who provided specific examples of Mr. Pang's unprofessional behavior and evidence of mistakes Mr. Pang made in his work. Ms. Stokke did not find that Mr. Pang's management lied or treated him unfairly. Ms. Stokke informed Mr. Pang that she recommended that management provide Mr. Pang with a Memorandum of Expectations ("MOE") to clearly outline the expectations for his performance. (Pl. Dep. at 186-187; Stokke Dep. at 13-16, 41; Mary Smith Aff., Ex. 25).

A: Disagree. The management did not provide any specific examples of my unprofessional

behavior or evidence of mistakes. Renae agreed to it. (Stokke Dep. at 13)

118. Ms. Stokke also noted that the meeting with Mr. Pang was very difficult because Mr. Pang raised his voice, talked over her, did not let her speak, and interrupted her constantly. (Stokke Dep. at 34; Mary Smith Aff., Ex. 25).

A: Disagree. It is a false statement.

E. The Issuance Of The Memorandum Of Expectations To Mr. Pang.

119. On April 29, 2019, Human Resources Business Partner Scott Snow, Mr. Ye, and Mr. Carley met with Mr. Pang to issue to him the MOE. (Pl. Dep. at 190; Mary Smith Aff., Ex. 26).

A: Agree.

120. The MOE was drafted by Mr. Snow, but with input provided by Mr. Ye and Mr. Carley. (Ye Dep. at 121; Stokke Dep. at 18-19).

A: Disagree. Renae wrote to Kifi in an email indicating she did help to draft the MOE (IP Decl. Ex. 44). Laura Sheehan was also involved in drafting my MOE. (IP Decl. Ex. 46)

121. Ms. Stokke provided the standard template for the MOE. (Stokke Dep. at 18-19, 44-47).

A: Agree.

122. The purpose of a MOE is to provide the employee, in writing, documentation of the performance and behavioral deficiencies, provide

them specific examples of the performance and/or behavioral deficiencies, and expectations moving forward. (Stokke Dep. at 24- 25).

A: Disagree. The MOE I received were lack of specific examples and expectations moving forward. Donna sent them the recommendation as follows: Begin to draft a comprehensive PIP within the template provided. Be sure to identify no more than 3-4 "buckets" of areas that require improvement; ideally, this should align with the overall goals and objectives of his role as Sr. Accountant. You should also identify each time you met with him to discuss or identify where he was not meeting expectations (dates and examples) are important. Lastly, the plan at the end of the attached doc is very important, this allows you to outline the actions he needs to take to improve/meet expectations. Details are going to be critical. This means if he is required to provide or update monthly reports, the deadlines must be clearly outlined. If there is an initiative and or project he is responsible for, you must be specific on when and what you expect. (IP Decl. Ex. 45)

123. The MOE included specific examples and dates when Mr. Pang's performance did not meet expectations, such as: (1) errors in invoice coding, billing spread sheets and other reports; (2) submitting weekly invoices and monthly financial reports late; (3) taking excessive time to complete basic tasks; (4) refusing to take on new work or cover teammates' work when a team member is out; and (5) acting in a hostile manner when given performance feedback. The MOE also set clear goals and expectations for

improvement including: (1) paying more attention to detail to eliminate errors; (2) submitting work on time; (3) accepting job-related directives from supervisors without feedback; and (4) acting professionally. Mr. Pang admitted that factually, some of the events listed in the MOE, including making errors and missing deadlines, occurred, but disagreed with other portions. (Pl. Dep. at 190, 193, 196, 200-201, 210- 211; Stokke Dep. at 43-44; Mary Smith Aff., Ex. 26).

A: Disagree. Most of the examples on the MEO were no dates and evidence to support and they made them up. Anthony agreed "Ivan – Arguing" and "Missed Deadline" emails were examples on MOE. I responded to Anthony on April 17, 2019, to show Christine and Laura hadn't finished journal entries on March 19, 2019, regarding "Missed Deadline" email. (IP Dep. At 122-128; IP Decl. Exs. 26&27)

124. Ms. Stokke testified that the MOE had nothing to do with "liking or disliking someone" and instead concerned an employees performance and conduct in the workplace. (Stokke Dep. at 45).

A: Disagree. The purpose of the MOE was intended to terminate me instead of helping me to improve my performance.

125. Mr. Pang was informed that if he did not sign the MOE, he would not be permitted to return to work. Mr. Pang elected not to sign the MOE because he felt it was inaccurate and a false statement. As a result of his refusal to sign, Mr. Pang was suspended from work for the remainder of the day of the meeting. (Pl. Dep. at 224-225, 227-228).

A: Disagree and agree in part. I was suspended from April 29, 2019 to May 16, 2019. Kifi Haque called me at May 15, 2019 and gave me the option to leave the company or came back to work. I chose to go back to work. (IP Decl. Exs. 86)

126. On May 1, 2019, Mr. Pang emailed Mr. Snow and Ms. Sheehan and stated that he felt discriminated against for being an Asian male because his "hard work never got recognized or compensated." (Pl. Dep. at 226, 229-230; Mary Smith Aff., Ex. 27).

A: Agree.

127. In his May 1, 2019 email, Mr. Pang also alleged that Mr. Carley asked him if he "enjoyed working with this beautiful lady" in reference to Ms. Baynes. (Pl. Dep. at 283; Mary Smith Aff., Ex. 27).

A: Agree.

128. On May 1, 2019, Mr. Snow escalated Mr. Pang's complaint to the Head of North America Employee Relations, Kifi Haque, for investigation. (Pl. Dep. at 230, Mary Smith Aff., Ex. 27).

A: Agree.

129. After the complaint was escalated to Ms. Haque, Ms. Haque set up an interview with Mr. Pang to discuss his complaints. (Pl. Dep. at 230-232).

A: Agree.

130. During this interview, Ms. Haque discussed Mr. Pang's concerns, discontent with C&W, and options if Mr. Pang chose to resign from C&W, including severance. (Pl. Dep. at 232; Mary Smith Aff., Ex. 28).

A: Agree.

131. Ms. Haque also informed Mr. Pang that management would issue a revised Memorandum of Expectation based on the factual information provided at their meeting. (Pl. Dep. at 237; Mary Smith Aff., Ex. 28).

A: Agree.

132. Mr. Pang requested ten weeks of severance. (Pl. Dep. at 233-234; Mary Smith Aff., Ex. 28).

A: Disagree. The company offered me ten weeks, not what I requested.

133. Shortly after, Mr. Pang decided that he would not resign. (Pl. Dep. at 236).

A: Agree.

134. On May 14, 2019, Mr. Pang emailed Ms. Haque and Ms. Sheehan to provide a timeline of all the events since his November 2018 meeting with Mr. Ye and Mr. Carley where he requested a salary increase. (Pl. Dep. at 238-241; Mary Smith Aff., Ex. 29).

A: Agree.

135. On May 17, 2019, Mr. Pang was provided with a revised MOE by Mr. Ye, Mr. Carley, and Mr. Snow. (Pl. Dep. at 241-242; Mary Smith Aff., Ex. 30).

A: Agree.

136. Mr. Pang was unable to have a physical meeting regarding the revised MOE due to an issue with his tooth. (Pl. Dep. at 242-243).

A: Disagree and agree in part. I also did not feel well.

137. Mr. Pang was not satisfied with the revisions to the MOE. (Pl. Dep. at 243).

A: Agree. They did not remove any untrue statements.

138. On May 23, 2019, Mr. Pang provided a doctor's note to Mr. Ye and requested two weeks of sick time. (Pl. Dep. at 244-245, 247-248; Mary Smith Aff., Ex. 31).

A: Agree.

139. A representative from C&W explained to Mr. Pang that if he was going to be out of work for more than three days, it would be treated as leave under the Family Medical Leave Act, and that Mr. Pang would be eligible for short-term disability benefits during that period of time. (Pl. Dep. at 245; Mary Smith Aff., Ex. 31).

A: Disagree. They did not allow me to take my Personal Time Off and insisted I had to apply for short-term disability.

140. Mr. Pang believed that C&W was treating him differently than other employees who submitted a doctor's note asking for two weeks off, and felt he should have been allowed to use paid-time off. (Pl. Dep. at 250-251).

A: Agree.

141. However, C&W's leave policy provided if an employee is out of work for more than five days, he/she must apply for a leave of absence. (Pl. Dep. at 251; Stokke Dep. at 47- 48, 51; Mary Smith Aff., Ex. 31).

A: Disagree. It should be a choice for an employee under C&W policy. Jaclyn Hunt

("Jaclyn" Benefits Compliance Manager) wrote email to Donna "while he is require to file for medical leave he isn't required to take STD (Short Term Disability), but it's generally suspicious when an employee refuses free money. This could be a simple case of him not understanding the process, or more specifically that he won't be fully compensated if he doesn't file. (IP Decl. Ex. 101)

142. C&W further explained to Mr. Pang that because he provided a doctor's note stating he would be out for two weeks, the medical leave process started immediately and that he should contact UNUM. (Pl. Dep. at 252; Mary Smith Aff., Ex. 31).

A: Disagree. I did not know the company had such a policy.

143. Mr. Pang was provided with and reviewed C&W's leave policy. (Pl. Dep. at 253; Mary Smith Aff., Ex. 31).

A: Disagree. The policy they provided did not indicate "Employee provided a doctor's note stating he would be out for two weeks, the medical leave process started immediately and that he should contact UNUM.".

144. Mr. Pang ultimately did not take two weeks of sick time. (Pl. Dep. at 254).

A: Agree.

F. Mr. Pang's Termination.

145. On May 28, 2019, while Mr. Pang was technically out of work due to illness, Mr. Pang sent two emails to his personal email address containing attachments of Citigroup assignments submitted to Mr. Ye in November 2018 and December 2018. (Pl. Dep. at 255-257, 262- 263; Ye Dep. at 267-268; Mary Smith Aff., Ex. 32).

A: Agree.

146. Mr. Pang forwarded these emails from his Citigroup email account to his C&W email address, as well as two personal email addresses. (Pl. Dep. at 257; Mary Smith Aff., Ex. 32).

A: Agree.

147. Mr. Pang emailed these documents to himself to "fight his case." (Pl. Dep. at 255).

A: Agree. It also protected me from being penalized for something I did not do.

148. When Mr. Pang attempted to email those documents to his personal email address, he repeatedly received an error message. Eventually, his emails went through to his personal email addresses. (Pl. Dep. at 262-263).

A: Agree.

149. Immediately following Mr. Pang's emails to his personal e-mail address, he received an email from Citigroup's Content Monitoring Program, which also copied Melissa Mercado at Citigroup, explaining that the emails contained "Confidential Personally Identifiable Information" (PII). The email was sent to Mr. Pang to alert him of a possible violation of the Citi Information Security Standards and informed him

that a copy of the alert was sent to his manager. (Pl. Dep. at 262-263; Mary Smith Aff., Ex. 33).

A: Disagree. I did not receive the alert email from Citigroup because I had already log off the email and got suspended to access the email the next day. The alert email from Citigroup did not indicate they had found any Confidential Personally Identifiable Information" (PII). The alert email only to alert the person who sent the email possible contain PII. Moreover, C&W could not provide any PII I sent out.

150. The May 28, 2019 email from Citigroup's Content Monitoring Program also listed the email addresses to which Mr. Pang sent the Confidential Personal Identifiable Information (PII). These emails included: (1) ivan.pang@cis.cushwake.com; (2) tomanpang@gmail.com; and (3) toman33@hotmail.com. (Pl. Dep. at 263; Mary Smith Aff., Ex. 33).

A: Disagree. C&W could not provide any PII I sent out.

151. Citigroup PII includes confidential and proprietary Citigroup information such as federal tax ID numbers and payroll information for C&W and Citigroup employees, all of which is confidential information. (Ye Aff. ¶ 4, 6-7).

A: Disagree. C&W could not provide any PII I sent out.

152. This was the only time Mr. Carley or Mr. Ye were ever notified by Citigroup that restricted emails were sent by a member of the Financial Department

team to e-mail addresses outside of the Citigroup network. (Ye Aff. ¶ 10).

A: Disagree. I could not verify if Anthony and Bill telling the truth.

153. On May 29, 2019, Mr. Pang returned to work. (Pl. Dep. at 268).

A: Agree.

154. On May 29, 2019, Mr. Snow, Mr. Carley, and Mr. Ye met with Mr. Pang to discuss the confidential emails he forwarded to himself. (Pl. Dep. at 266-267; Mary Smith Aff., Ex. 41).

A: Agree.

155. Mr. Pang admitted to emailing Citigroup information to his personal email addresses, but denied that the emails he sent contained any restricted or confidential information. (Pl. Dep. at 261-266; Mary Smith Aff., Ex. 41). Mr. Pang also produced these confidential emails in his Initial Disclosures to Defendants in this action. (Pl. Dep. at 261).

A: Agree.

156. Mr. Pang was informed that he was placed on a paid administrative leave pending further investigation. (Pl. Dep. at 266; Mary Smith Aff., Ex. 41).

A: Agree.

157. C&W verified that Mr. Pang forwarded two emails, with over sixty attachments combined, from his Citigroup email address account to his C&W email address account and two personal email addresses. The emails and attachments contained confidential PII related to Citigroup's government contractors and

business partners (e.g., employee payroll information and federal identification numbers). (Pl. Dep. at 257; Ye Aff. ¶ 16; Mary Smith Aff., Ex. 32).

A: Disagree. C&W could not provide any of those information I sent out.

158. On May 31, 2019, Mr. Snow called Mr. Pang to inform him that C&W terminated his employment for violating the Global Code of Business Conduct by sending the May 28, 2019 emails to his personal email addresses. (Pl. Dep. at 267).

A: Agree.

159. Ms. Stokke testified that unless an investigation revealed emails were sent in error, or C&W confirmed a third party accessed and sent the emails, the act by Mr. Pang of sending confidential client information to his personal email address was a terminable event. (Stokke Dep. at 77-79).

A: Disagree. I don't have access to client information or system. It was only C&W accounting information working on the client. C&W will not share all the accounting information to Citigroup. Moreover, we always sent emails out from Citigroup email to C&W email.

160. After Mr. Pang's termination, he obtained consulting work with a company called IT Trailblazers as a Senior Accountant. (Pl. Dep. at 275-276).

A: Disagree. I worked for IT Trailblazers as a consultant not senior accountant.

161. Mr. Pang worked with IT Trailblazers for approximately three months, and claims he was not

offered any other consulting positions through IT Trailblazers thereafter. (Pl. Dep. at 275-276).

A: Agree.

III. Procedural History.

162. On June 4, 2019, Mr. Pang filed a Charge of Discrimination with the Equal Employment Opportunity Commission (EEOC).

A: Agree.

163. On September 3, 2020, the EEOC Investigator emailed Mr. Pang a Notice of Dismissal and Right to Sue stating that the charge was dismissed due to no reasonable cause.

A: Agree.

164. On November 27, 2020, Mr. Pang commenced this action.

A: Agree.

165. Mr. Pang's Third Amended Complaint was filed on August 23, 2021.

A: Agree.

166. Defendants filed their Answer to Mr. Pang's Third Amended Complaint on September 8, 2021. The parties engaged in discovery and conducted depositions.

A: Agree.

Dated: May 20, 2022 Respectfully submitted,

/S/ Ivan To Man Pang

Ivan To Man Pang

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