APPENDIX

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Appendix A
[Filed: Sep. 15, 2025]

22-1715-cv
Tenemille v. Town of Ramapo

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 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 15th day of September, two thousand twenty-five.

PRESENT:
DEBRA ANN LIVINGSTON,
Chief Judge,
JOSÉ A. CABRANES,
BARRINGTON D. PARKER,
Circuit Judges.

Ernst Theodore Tenemille,
Plaintiff-Appellant,

v. 22-1715

Town of Ramapo, Christopher St. Lawrence, Ex-Town Supervisor, Patrick Withers, Councilman, Town of Ramapo Police Department, Bradley R. Weidel, Chief of Police, Thomas Cokeley, Chief of Staff, David Holmes, Police Lieutenant, William Gravina, Ex Administrative Lieutenant, Daniel Hyman, Squad Lieutenant, Brian Corbett, Detective Sergeant, Salomon Matos, Squad Sergeant, Christopher Franklin, Desk Sergeant, Al Gumbs, Police Sergeant,
Defendants-Appellees.

FOR PLAINTIFF-APPELLANT:	Ernst T. Tenemille, pro se, New City, NY.
FOR DEFENDANTS-APPELLEES:	Steven C. Stern, Sokoloff Stern LLP, Carle Place, NY.

Appeal from a judgment and order of the United States District Court for the Southern District of New York (Kenneth M. Karas, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment and June 7, 2022 order of the district court are **AFFIRMED**.

Ernst Theodore Tenemille, pro se, appeals from the district court's dismissal of his employment discrimination action and the denial of his Federal Rule of Civil Procedure 60(b) motion for reconsideration. Tenemille commenced this action against the Town of Ramapo (the "Town"), the Town of Ramapo Police Department (the "Department") (his former employer), and Town and Department officials, alleging discrimination, harassment, and retaliation, culminating in his December 2016 termination, allegedly in violation of Title VII, 42 U.S.C. § 1983, and several state law provisions.

Tenemille's pro se fourth amended complaint alleged that he was employed by the Department as a police officer from August 2002 until December 2016. In November 2015, Tenemille was investigated by the Police Department for submitting allegedly improper sick notes for absences due to a minor injury, culminating in his termination on December 16, 2016. Tenemille alleged that the investigation and his termination were due to discrimination based on his national origin and/or his race, and as retaliation for his protected activity of questioning the Defendants' access of his private medical information.

The defendants moved, under Federal Rule of Civil Procedure 12(b)(6), to dismiss the fourth amended complaint as time-barred and for failure to state a claim. In January 2022, the district court granted the defendants' motion to dismiss, reasoning that some of Tenemille's allegations were time-barred, and that his timely allegations failed to state a claim. The court granted Tenemille 30 days to file a fifth amended complaint.

In lieu of amending, Tenemille moved for reconsideration. The district court construed the motion under Rule 60(b) and denied it, concluding that relief was not warranted. Tenemille timely appealed the district court's judgment and the denial of his motion for reconsideration.

We assume the parties' familiarity with the remaining facts, the procedural history, and the issues on appeal.

I. Dismissal of the Fourth Amended Complaint

"We review a dismissal for failure to state a claim *de novo*." *Sharikov v. Philips Med. Sys. MR, Inc.*, 103 F.4th 159, 166 (2d Cir. 2024). "A complaint survives a Rule 12(b)(6) motion to dismiss if the facts, taken as true and with all reasonable inferences drawn in the plaintiff's favor, state a plausible claim to relief." *Id.* "While we are required to assume the truth of the 'well-pleaded factual allegations' in the complaint, that obligation is 'inapplicable to legal conclusions,' such as '[t]hreadbare recitals of the elements of a cause of action' that are 'supported by mere conclusory statements.'" *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009)).

"[T]o properly assert a claim of discrimination against an employer under Title VII, a plaintiff must allege two elements: (1) the employer discriminated against [him] (2) because of [his] race, color, religion, sex, or national origin." *Buon v. Spindler*, 65 F.4th 64, 78 (2d Cir. 2023) (internal quotation marks and citation omitted). "To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." *Id.* (citation omitted). "A state employee acting in his official capacity is acting under color of state law," and "[o]nce the color of law requirement is met, a plaintiff's equal protection claim parallels his Title VII claim, except that a § 1983 claim, unlike a Title VII claim, can be brought against an individual." *Id.* (citations omitted).

"[F]or a discrimination claim to survive a motion to dismiss, absent direct evidence of discrimination, what must be plausibly supported by facts alleged in the complaint is that the plaintiff (1) is a member of a protected class, (2) was qualified, (3) suffered an adverse employment action, and (4) has at least minimal support for the proposition that the employer was motivated by discriminatory intent." *Id.* (alterations, internal quotation marks, and citation omitted).

We agree with the district court that Tenemille's allegations related to his doctors' notes failed to plausibly allege discriminatory intent, as necessary to survive a motion to dismiss.

To establish an inference of discrimination through the use of comparators, Tenemille was required to show "a reasonably close resemblance of the facts and circumstances of [his] and [his] comparator's cases." *Radwan v. Manuel*, 55 F.4th 101, 132 (2d Cir. 2022) (internal quotation marks and citation omitted). Here, Tenemille asserted that there were numerous "similarly situated" white officers who "turned in doctor's notes identical to Plaintiff's without legal challenge or investigation based on wording." App'x 7 (Compl. ¶ 35). However, Tenemille failed to allege any further detail about these purportedly "identical" doctors' notes or about the other officers that would suffice to show that he was "similarly situated" to these other officers "in all material respects." *Radwan*, 55 F.4th at 132. Tenemille's conclusory assertion was not enough to "nudg[e] [his] claims across the line from conceivable to plausible." *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

II. Denial of the Motion for Reconsideration

"A denial of a motion to vacate a judgment under Rule 60(b) is reviewed for abuse of discretion." *Mandala v. NTT Data, Inc.*, 88 F.4th 353, 359 (2d Cir. 2023) (citation omitted). "Under this standard, we must affirm the denial of vacatur, unless the ruling is based on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Id.* (alteration and citation omitted).

The district court did not abuse its discretion by denying Tenemille's Rule 60(b) motion. On appeal, Tenemille primarily argues that his motion for reconsideration alleged fraud warranting relief under Rule 60(b)(3). "To prevail on a Rule 60(b)(3) motion, a movant must show that the conduct complained of prevented the moving party from fully and fairly presenting his case." *State St. Bank & Trust Co. v. Inversiones Errazuriz Limitada*, 374 F.3d 158, 176 (2d Cir. 2004) (internal quotation marks and citation omitted). Here, Tenemille's allegations of fraud related solely to the alleged events underlying his fourth amended complaint. Because Tenemille did not show that the defendants prevented him from fully and fairly presenting his case, and instead merely reiterated his previous allegations, the district court did not abuse its discretion by denying Rule 60(b) relief.

We have considered Tenemille's remaining arguments and conclude they are without merit. Accordingly, we **AFFIRM** the judgment and June 7, 2022 order of the district court.

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

Catherine O'Hagan Wolfe

Appendix B
[Filed: Nov. 4, 2025]

**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 4th day of November, two thousand twenty-five.

Ernst Theodore Tenemille,
Plaintiff - Appellant,

v.

Town of Ramapo, Christopher St. Lawrence, Ex-Town Supervisor, Patrick Withers, Councilman, Town of Ramapo Police Deparment, Bradley R. Weidel, Chief of Police, Thomas Cokeley, Chief of Staff, David Holmes, Police Lieutenant, William Gravina, Ex-Administrative Lieutenant, Daniel Hyman, Squad Lieutenant, Brian Corbett, Detective Sergeant, Salomon Matos, Squad Sergeant, Christopher Franklin, Desk

ORDER
Docket No:
22-1715

Sergeant, Al Gumbs, Police Sergeant,

Defendants - Appellees.

Appellant, Ernst Tenemille, 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:
Catherine O'Hagan Wolfe, Clerk

Catherine O'Hagan Wolfe

Appendix C

[Filed: Jan. 13, 2022]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ERNST THEODORE TENEMILLE, Plaintiff, v. TOWN OF RAMAPO, *et al.*, Defendants.	No. 18-CV-724 (KMK) OPINION & ORDER

Appearances:

Ernst Theodore Tenemille
New City, NY
Pro Se Plaintiff

Steven C. Stern, Esq.
Vernee Ciara Pelage, Esq.
Sokoloff Stern LLP
Carle Place, NY
Counsel for Defendants

KENNETH M. KARAS, United States District Judge:

Plaintiff Ernst Theodore Tenemille ("Plaintiff") brings this Action against former Town of Ramapo Supervisor Christopher St. Lawrence ("St. Lawrence"), former Councilman Patrick Withers ("Withers"), Chief of Police Bradley R. Weidel ("Weidel"), Chief of Staff Thomas Cokeley ("Cokeley"), Squad Lieutenant Daniel Hyman ("Hyman"), Squad Sergeant Salomon Matos ("Matos"), Desk Sergeant Christopher Franklin ("Franklin"; collectively, "Individual Defendants"), and the Town of Ramapo (the "Town" or "Ramapo"; collectively "Defendants"), alleging that Defendants discriminated against and subsequently retaliated against him on the basis of his race, color, national origin, and religion, in violation of Section 1983 of the Civil Rights Act of 1866, 42 U.S.C. § 1983 ("§ 1983"), Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e, *et seq.*; and New York State Human Rights Law ("NYSHRL"), N.Y. Exec. Law § 290, *et seq.* (*See generally* Fourth Am. Compl. ("Fourth AC") (Dkt. No. 88).) Before the Court is a Motion To Dismiss (the "Motion"), pursuant to Federal Rule of Civil Procedure 12(b)(6), filed by the Town, Weidel, Cokeley, Hyman, Matos, and Franklin (the "Moving Defendants"). [1] (Not. of Mot. (Dkt. No. 99).)[2]

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[1] Plaintiff names Cokeley in the case caption but omits him when listing the defendants in the Complaint's preliminary statement.

[2] Defendants St. Lawrence and Withers have not appeared in this Action, and, according to Moving Defendants, "[u]pon information and belief," they were never served. (Mov. Defs.' Mem. of Law in Supp. of Mot. ("Mov. Defs.' Mem.") 22 n.11 (Dkt. No. 101).) Plaintiff filed affidavits of service indicating that these Defendants were served at Ramapo's Town Hall, (Dkt. Nos. 6, 7, 11, 16), but Moving Defendants represent that these Defendants were

For the reasons discussed below, the Motion is granted.

I. Background

A. Factual Background

The following facts are drawn from Plaintiff's Fourth AC and are assumed to be true for the purpose of resolving the instant Motion.

1. Context Regarding Plaintiff's Experiences in the Ramapo Police Department

Plaintiff is a Haitian American who immigrated to the United States from Haiti in 1984. (Fourth AC ¶ 26.) After graduating from high school in 1988, Plaintiff joined the U.S. Navy, from which he was honorably discharged in 1991. (*Id.* ¶¶ 27–28.) Plaintiff then graduated from State University of New York ("SUNY") Rockland Community College in 1999 with an Associate's degree in criminal justice and from SUNY Purchase in May 2017 with a Bachelor's degree in liberal studies and a minor in psychology. (*Id.* ¶¶ 29, 32.) In 2000, Plaintiff joined the Rockland Sheriff's Department as a correction officer. (*Id.* ¶ 30.) In 2002, he was hired by the Town of Ramapo Police Department (the "Department") as a police officer. (*Id.* ¶ 31.) The following discrete events, which all occurred once

not associated with or employed by the Town when service occurred, (Mov. Defs.' Mem. 22 n.11).

he was an employee of the Department, provide context to Plaintiff's claims.

a. Background Check

In the same year Plaintiff was hired by the Department, he attended the Rockland County Police Academy. (*Id.* ¶ 95.) While there, he was "abruptly pulled out of his training" and asked questions about alleged "'inaccuracies' and concerns about his 'character and background.'" (*Id.*) According to Plaintiff, the detectives who conducted his background check for the Department could not confirm his service with the Navy and claimed that the copy of the "U.S. Navy service discharge form (DD-214)" provided by Plaintiff was fraudulent. (*Id.*) Weidel, who was serving as an Administrative Sergeant at the time, led this investigation, and questioned whether Plaintiff had instead served in the Republic of Haiti's Navy rather than the United States Navy as well as whether Plaintiff had falsified other information on his application, including his age. (*Id.*) Plaintiff was "in fear of losing his employment" due to this incident. (*Id.*) Despite this incident, the information on Plaintiff's application was later confirmed. (*Id.*)

b. Yelling Incident

In December 2004, Plaintiff heard Sergeant Brian Corbett ("Corbett"), a fellow officer, "rag[e] loudly" against him, during which Corbett "yelled [that Plaintiff] 'does not belong'" in the Department, and that "'[h]e should go back to corrections if they would have him[.]'" (*Id.* ¶ 99.)[3] According to Plaintiff, Corbett then stated that "[African Americans are] only [two-fifths] of a person anyway." (*Id.* (quotation marks omitted).) Plaintiff "immediately notified a supervisor," but Corbett "never apologized" for his statements "nor was he ever disciplined in any way for making them." (*Id.*)

c. Report Writing

Around this time, Plaintiff was "continually advised that he needed to improve his report writing skills," and was told that he had "illegible handwriting." (*Id.* ¶ 97 (quotation marks omitted).) Corbett was Plaintiff's immediate supervisor at the time. (*Id.*) Plaintiff turned in a report on a domestic violence incident to Corbett that contained several errors that had been covered with white-out, and Plaintiff asked Corbett if he could re-copy the report. (*Id.*) Corbett replied that the report was fine, and ultimately reviewed and approved it. (*Id.*) However, the same report was later flagged as "'messy and unprofessional' further up the chain of command," as Corbett then wrote up Plaintiff for "turning in a messy report" despite his earlier approval. (*Id.*) In response, Plaintiff was required to retake a "video-taped[] course on report writing," which

[3] Plaintiff does not provide Corbett's first name in the Fourth AC. (*See generally* Fourth AC.) However, Corbett is identified in prior pleadings. (*See generally* Compl. (Dkt. No. 1) (naming Sergeant Brian Corbett as a defendant).)

he had already taken and passed at the Rockland County Police Academy. (*Id.*) Plaintiff alleges that Corbett pushed the report "up the chain of command" specifically to tarnish Plaintiff and give rise to a "green sheet (supervisory contact report)," which would be brought to the attention of Plaintiff's supervisor and further harm Plaintiff's reputation. (*Id.*)

Due to the complaints he received about his handwriting, Plaintiff began typing his reports. (*Id.* ¶ 98.) Soon after the incident with the report given to Corbett, Squad Lieutenant David Holmes ("Holmes") summoned Plaintiff to speak to him and Sergeant Patrick Reynar ("Reynar"). (*Id.*) Reynar "expressed surprise" at the improved quality of Plaintiff's reports. (*Id.*) During this meeting, Holmes speculated that "'perhaps Plaintiff was having [his] wife complete the reports for [him].'" (*Id.* (alteration in original).) Plaintiff's annual evaluation did not include mention of his improved reports. (*Id.*)

d. <u>Prison Cell Incident</u>

In August 2005, Plaintiff supervised a prisoner in a holding cell at the police station. (*Id.* ¶ 100.) When the prisoner asked to make a phone call, Plaintiff handed the prisoner the receiver and dialed the number while remaining outside of the holding cell, per Department regulations. (*Id.*) Plaintiff's supervisor, Lieutenant Leslie Lampert ("Lampert"), who is white, submitted a report into Plaintiff's personnel record stating

Plaintiff had in fact gone into the cell. (*Id.*)[4] Lampert then refused to review camera footage at Plaintiff's behest, which Plaintiff asserts would have exonerated him. (*Id.*)

e. Being Demeaned by a Fellow Officer

In June 2006, Franklin, a white male officer, "demeaned" Plaintiff in front of other officers for issuing a traffic ticket to one of Franklin's friends. (*Id.* ¶ 101.) Although Plaintiff complained about this encounter, Franklin was not reprimanded; Franklin was instead promoted shortly after and has continued to thrive in the Department. (*Id.*)[5]

f. Sector Two

The following year, Plaintiff was assigned to cover Sector Two, an area of Ramapo large enough that patrolling it created a "workload [that] was too heavy for one officer to effectively handle." (*Id.* ¶ 104.) Plaintiff submits that he raised this to his supervisors but was ignored; he was instead "relentlessly reprimanded for not being fast enough." (*Id.*) When Plaintiff was later

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[4] Lampert's first name is not provided in the Fourth AC or any accompanying materials. However, Lampert is identified in prior pleadings. (*See* Compl. (Dkt. No. 1) ¶ 39 (identifying Lieutenant Leslie Lampert).)

[5] Franklin is alleged to be a sergeant rather than a lieutenant elsewhere in the Fourth AC. (*Compare id.* ¶ 15 (providing the title of "Sergeant" and "Desk Sergeant" to Franklin) *with id.* ¶ 101 (observing that Franklin was promoted to lieutenant); *id.* ¶ 109 (same).)

transferred to a different section of the Town, a white police officer took over Sector Two. (*Id.*). That white officer then raised the same complaints Plaintiff had. (*Id.*) Following the white officer's complaint, the Department subsequently deemed the sector to be too large of a workload for one officer and split it into two sectors, assigning a second officer to oversee what was once Sector Two. (*Id.*) Plaintiff raised "his concern over the difference in treatment and the handling these two identical complaints," but his overtures were ignored. (*Id.*)[6]

g. Shoveling Incident

Also in 2007, Plaintiff states that he and his wife had just endured a miscarriage. (*Id.* ¶ 102.) Plaintiff took a legitimate day of sick leave when feeling ill. (*Id.*) Despite having taken the day off due to his illness, Plaintiff shoveled his driveway because his wife was medically unable to do so following the miscarriage. (*Id.*) An officer witnessed him shoveling. (*Id.*) That officer then reported to others in the Department, who came to conclude that "Plaintiff had misled the [D]epartment regarding his reported sick day." (*Id.*) Plaintiff was not offered the opportunity to explain himself or get the report expunged. (*Id.*)

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[6] Plaintiff alleges that the letters of reprimand he received for his allegedly substandard patrolling of Sector Two were unearthed and then later used against him to "justify" his termination, (*id.*), but he does not articulate how these letters were used.

h. Scheduling Request

In or around June 2008, the Department accommodated a newly hired Jewish officer's request for a modified schedule pursuant to a religious accommodation request without question or pushback. (*Id.* ¶ 105.) Plaintiff subsequently requested a modified schedule to accommodate his religious beliefs as a Seventh Day Adventist. (*Id.*) Months after filing the request, it was only partially honored: Plaintiff would only be allowed to take off days for the Sabbath if he had already scheduled it and if he had personally identified an officer willing to work the scheduled shift. (*Id.*)

In fall of 2009, Plaintiff filed a complaint with the Equal Employment Opportunity Commission ("EEOC") regarding the religious observance disparities. (*Id.* ¶ 106). Following his complaint, the EEOC issued a right to sue letter. (*Id.*) Simultaneously, the instances of discriminatory conduct temporarily dissipated for fear of suit. (*Id.*) Notwithstanding the letter's issuance, Plaintiff forewent filing suit in order to avoid causing further discord within the Department. (*Id.*)

i. Euthanization Incident

In June 2010, Plaintiff was again written up in a report alleging that he "us[ed] too many rounds . . . to euthanize an injured animal." (*Id.* ¶ 107.) According to Plaintiff, the Department does not have a policy as to how many rounds constitute "too many." (*Id.*) Nonetheless, as a result of this incident, Plaintiff was forced to undertake "remedial firearms training[,] []which he passed with excellence[.]" (*Id.*)

j. Traffic Ticket Deletion

In December 2012, Plaintiff noticed that traffic tickets he had issued were deleted from the records of the Town and Department, and none of Plaintiff's supervisors knew what had happened to them. (*Id.* ¶ 108.) Plaintiff lodged a written complaint, for which he was "severely reprimanded, sanctioned[,] and . . . was subjected to a psychological evaluation and test." (*Id.*; Fourth AC Ex. 14.) It was later discovered that Franklin was responsible for deleting the tickets. (Fourth AC ¶ 109.) Franklin was "minimally reprimanded" for having done so and was not required to undergo a "psychological test." (*Id.* ¶ 109.) Moreover, despite his misconduct, Plaintiff alleges that the Department recently promoted Franklin. (*Id.*)

k. Political Solicitation

In September 2013, the "then [Police Benevolent Association] president (and now)[] Detective Dennis Procter" used the Department's email system to solicit the personal e-mail addresses of officers "for the political benefit of Councilman . . . Withers," who was campaigning for re-election as councilman. (*Id.* ¶ 110.) Plaintiff was the only officer solicited who declined to provide his email address, which "generated a wave of discriminatory and retaliatory backlash" until Plaintiff was later terminated in 2016. (*Id.*) Plaintiff alleges that Withers "played a decisive role" in this reaction. (*Id.*)

1. Insufficient Evaluation

During Plaintiff's annual evaluation in 2014, which was delivered by Hyman, it was not mentioned that Plaintiff had stopped an attempted suicide. (*Id.* ¶ 111.) This was remedied and the action was noted in his evaluation, but only after Plaintiff protested. (*Id.*) The evaluation also noted that Plaintiff had had the fourth most arrests by any officer in the Department in 2014, despite being injured and unable to work for a month, and that he was recommended for a "Lifesaving Award." (*Id.*) Further, "commendation letters" Plaintiff received as a result of his actions were omitted from his evaluation. (*Id.*) Despite these plaudits, Plaintiff received a rating of "Average" for the year. (*Id.*) Moreover, he never received the "Lifesaving Award." (*Id.*) Instead, his 2014 evaluation noted that Plaintiff was written up when he responded, "Great idea," to an e-mail sent by Weidel because Plaintiff "should have known that no response was necessary." (*Id.*) (quotation marks omitted).

2. The Events Giving Rise to Plaintiff's Termination

From November 2 through November 5, 2015, Plaintiff took sick days. (Fourth AC Ex. 16, at 1, 5.) Pursuant to the Department's policy, any officer taking more than three consecutive sick days "shall, no later than the fourth day of sick absence, provide to the Department a physician's or dentist's note reflecting the date(s) of visitation at the physician/dentist office, the illness or injury for which treatment was administered, a prognosis, a diagnosis, and the anticipated period of illness." (Fourth AC Ex. 5, at § C.2.f.) Additionally, the policy makes plain that "[n]on-compliance with this provision may result in loss of pay for the period of absence and disciplinary charges." (*Id.*)

Plaintiff submitted two notes from Dr. Stephen Klein dated November 5, 2015 and a third note dated November 9, 2015. (*See* Fourth AC Ex. 11, 15.)[7] The first note reads, in pertinent part, "Ernest Tenemille (11/15/1970) is currently under my medical care and was seen in the office on 11/03/2015. Please excuse his absence from work on 11/4/2015 and 11/5/2015." (Fourth AC Ex. 15, at 1.) The second note repeats these sentences in full, and then reads: "This patient was seen for musculoskeletal pain to the left distal arm which [*sic*] he was advised to wear a brace for 2 weeks. This patient can return to work at earliest convenience with no limitations." (*Id.* at 2.) The final note reads: "Ernest Tenemille (11/15/1970) is currently

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[7] It is not clear to the Court when the doctor's notes were submitted. Email records suggest the notes were submitted on November 5 and 9, respectively, though that is not certain. (*See* Fourth AC Ex. 11, at 1–2.) The date of submission is not of paramount importance, as neither Party relies upon it in any material way.

under my medical care and may return to [*sic*] on 11/08/2015. Was also seen on 11/3/2015. Dx [diagnosis]: left forearm/wrist pain. Activity is restricted as follows: none[.]" (*Id.* at 3.)

According to Hyman's testimony, the Department initiated an investigation upon the suspicion that Plaintiff was abusing his sick leave days, in part because the doctor's notes purportedly omitted details necessary to comply with the Department's policy. (*See generally* Fourth AC Ex. 3; *see also* Fourth AC ¶ 42.) On November 23, 2015, Plaintiff was ordered to sign a Health Insurance Portability and Accountability Act ("HIPAA") release pursuant to the Department's investigation, which narrowly sought medical records relating to Plaintiff's injury and corresponding sick days. (Fourth AC ¶¶ 42, 51.) Plaintiff demurred and ultimately declined to sign the release. (*Id.* ¶ 51.) Plaintiff wrote to a superior officer detailing his reasoning for declining to sign the release and signaling an openness to do so upon "proof" that the Department was entitled to the information sought. (*Id.*)

At 11:40 p.m. on November 30, 2015, Plaintiff received a second order to sign, approve, notarize, and return a HIPAA release form regarding "medical records in connection with the investigation of your absence from duty on November 2,3,4,5 [*sic*]." (Fourth AC Ex. 16, at 1.) Moreover, the release was to be returned within 24 hours. (*Id.*; Fourth AC ¶ 64.) In response, Plaintiff did not refuse to follow the order but instead questioned Department's authority to require such an action. (Fourth AC ¶ 64.) Notwithstanding Plaintiff's inquiry, Matos represented to Weidel that Plaintiff refused to sign the order. (*Id.* ¶ 54.) Following this refusal, Plaintiff "endure[d] two days of interrogation, without the benefit of effective counsel" regarding this episode. (*Id.* ¶ 104.)[8]

On March 10, 2016, "charges against Plaintiff were drawn" in relation to this episode. (*Id.* ¶ 48.) The following day, the charges were "issued to Plaintiff." (*Id.*) "Plaintiff asserts that [the issuance of charges] marked the official beginning of the process which ultimately led to Plaintiff's termination." (*Id.* ¶ 20.) Plaintiff litigated his charges before a hearing officer in the months that followed. (*Id.* ¶¶ 21, 47).

Ultimately, Plaintiff was terminated on November 16, 2016. (*Id.* ¶ 19.)

On or about October 4, 2017, Plaintiff filed a second complaint with the EEOC, alleging "unlawful discriminatory employment practices because of race/color, national origin, age, sex, and religion." (*Id.* ¶ 22.) On October 30, 2017, "the EEOC rendered a determination finding to support the allegations of the October 4[,] 2017 [c]omplaint" and issued to Plaintiff a right-to-sue letter. (*Id.* ¶¶ 22–23.)

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[8] Plaintiff does not state in the Fourth AC when this interrogation occurred. (*See generally* Fourth AC.) However, in Plaintiff's Third Amended Complaint ("TAC"), Plaintiff asserted that it took place on December 16 and 17, 2015. (*See* TAC ¶¶ 69, 70 (Dkt. No.67).)

Beyond the discrete events discussed above, Plaintiff alleges that during the course of his employment, he consistently "fe[lt] degraded, unappreciated and not welcomed," describing his experience as "isolating" and likening his status to one of "an escaped convict posing as a police officer." (*Id.* ¶ 98.) He was "continually singled out" by other officers "including his direct supervisor[,] [a]ll of whom, collectively or in part, subjected Plaintiff to a constant bombardment of discrimination and harassment." (*Id.* ¶ 96.)

B. Procedural Background

Plaintiff filed his original Complaint on January 26, 2018, at which point he was proceeding pro se. (Dkt. No. 1.) On March 19, 2018, Plaintiff filed an Amended Complaint. (Dkt. No. 20.) On April 3, 2018, Moving Defendants filed a pre-motion letter seeking to file a Motion To Dismiss the Amended Complaint, and the Court scheduled a pre-motion conference. (Dkt. Nos. 22–23.) Prior to the conference, Plaintiff filed two applications for pro bono counsel, which the Court denied without prejudice. (Dkt. Nos. 27–29.) On June 12, 2018, the Court held a pre-motion conference and set a briefing schedule for Moving Defendants' Motion To Dismiss the Amended Complaint. (Dkt. (minute entry for June 12, 2018).) After receiving leave to file excess pages and an extension from the Court, (Dkt. Nos. 31, 36), Moving Defendants filed their Motion To Dismiss the Amended Complaint on August 21, 2018, (Dkt. Nos. 33–35), after which Plaintiff obtained counsel, (Dkt. Nos. 41–42). Plaintiff filed a Response to the Motion To Dismiss the Amended Complaint on November 2, 2018, (Dkt. No. 46), after receiving an extension from the Court, (Dkt. No. 45). Also after receiving an extension, (Dkt. No. 48), Moving Defendants filed their Reply, (Dkt. No. 49).

On March 29, 2019, the Court issued an Order denying Moving Defendants' Motion To Dismiss the Amended Complaint without prejudice, given that Plaintiff asserted in his Response that he had challenged his termination in an Article 78 proceeding that was pending in New York state court. (Order 1–2 (Dkt. No. 50).) As such, the Court directed Plaintiff to clarify which claims had been raised in the Article 78 proceeding. (*Id.* at 2.) The Court also noted that some of Plaintiff's claims in the Amended Complaint had already been adjudicated and dismissed in a separate action before Judge Seibel on June 25, 2015, except for claims related to Plaintiff's termination. (*Id.* at 1.) Plaintiff filed his supplemental response to this Order on April 12, 2019, to which Moving Defendants replied on May 8, 2019. (Dkt. Nos. 51, 54.) The Court held another pre-motion conference on May 15, 2019, after which Plaintiff filed a Second Amended Complaint on June 17, 2019. (*See* Dkt. (minute entry for May 15, 2019); Second Am. Compl. (Dkt. No. 57).) On July 1, 2019, Moving Defendants sought to file another Motion To Dismiss, (Dkt. No. 58), which Plaintiff opposed, (Dkt. Nos. 60, 62). The Court scheduled a pre-motion conference for August 22, 2019, which was then rescheduled to September 10, 2019. (Dkt. Nos. 63, 65.) At the pre-motion conference, Plaintiff represented that he would file a Third Amended Complaint ("TAC"), which he did on October 9, 2019. (*See* Dkt. (minute entry for September 10, 2019); Dkt. No. 67.)

On October 23, 2019, Moving Defendants once again sought to file a Motion To Dismiss the TAC, and the Court set a briefing schedule on October 30, 2019. (Dkt. Nos. 68–69.) After receiving an extension from the Court, (Dkt. No. 71), Moving Defendants filed a Motion To Dismiss on December 19, 2019. (Dkt. No. 72.) After the Court granted his request for an extension, Plaintiff filed his Response on February 3, 2020. (Dkt. No. 77).) Moving Defendants filed a Reply on February 18, 2020. (Dkt. No. 78).)

On September 24, 2020, the Court granted Moving Defendants' Motion To Dismiss without prejudice, with the exception of Plaintiff's Title VII claims against the Individual Defendants, all claims against the Ramapo Police Department, and any claims for punitive damages against the Town or individual Defendants in their official capacities, which were dismissed with prejudice. (Op. & Order ("Op.") 42 (Dkt. No. 79).) The Court made clear in its opinion that Plaintiff had the right to file a fourth amended complaint within 30 days pursuant to its ruling.

Plaintiff availed himself of that right, filing the Fourth AC on December 1, 2020. (Dkt. No. 88.) Per the Fourth AC, Plaintiff seeks declaratory and injunctive relief as well as compensatory damages, punitive damages, and attorneys' fees and costs. (Fourth AC 36–37.)

On January 17, 2021, Moving Defendants submitted a Letter Motion requesting a pre-motion conference in anticipation of moving to dismiss the Fourth AC. (Dkt. No. 93.) On February 1, 2021, the Court set a briefing schedule. (Dkt. No. 95.) Moving Defendants filed the instant Motion on March 22, 2021. (Not. of Mot.; Decl. of Vernée Pelage, Esq. in Supp. of Mot. (Dkt. No. 100); Mov. Defs.' Mem. of Law in Supp. of Mov. Defs.' Mot. To Dismiss ("Mov. Defs.' Mem.") (Dkt. No. 101).) Plaintiff filed his Response in the form of a Letter Response on April 13, 2021.[9] (Pl.'s Mem. of Law in Opp'n to Mot. ("Pl.'s Mem.") (Dkt. No. 102).) Moving Defendants filed a Reply on May 13, 2021. (Mov. Defs.' Reply Mem. of Law in Further Supp. of Mot. ("Mov. Defs.' Reply Mem.") (Dkt. No. 104).)

II. Discussion

A. Standard of Review

A complaint "does not need detailed factual allegations" to survive a motion to dismiss. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). However, "a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* (alteration and

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[9] The Letter Response was dated April 12, 2021. (*See* Dkt. No. 102.)

quotation marks omitted). Said otherwise, compliance with Rule 8 of the Federal Rules of Civil Procedure "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In practice, a complaint's "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555.

"[O]nce a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint." *Id.* at 563. A plaintiff need show "only enough facts to state a claim to relief that is plausible on its face." *Id.* at 570. If a plaintiff has not "nudged [his or her] claims across the line from conceivable to plausible, the[] complaint must be dismissed." *Id.*; *see also Iqbal*, 556 U.S. at 679 ("Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" (citation omitted) (second alteration in original) (quoting Fed. R. Civ. P. 8(a)(2))); *id.* at 678–79 ("Rule 8 marks a notable and generous departure from the hypertechnical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions.").

In considering Moving Defendants' Motion, the Court is required to "accept as true all of the factual allegations contained in the [Fourth AC]." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *see also Nielsen v. Rabin*, 746 F.3d 58, 62 (2d Cir. 2014) (same). Additionally, the Court must "draw[] all reasonable inferences in favor of the plaintiff." *Daniel v. T & M Prot. Res., Inc.*, 992 F. Supp. 2d 302, 304 n.1 (S.D.N.Y. 2014) (citing *Koch v. Christie's Int'l PLC*, 699 F.3d 141, 145 (2d Cir. 2012)). Furthermore, "[i]n adjudicating a Rule 12(b)(6) motion, a district court must confine its consideration to facts stated on the face of the complaint, in documents appended to the complaint or incorporated in the complaint by reference, and to matters of which judicial notice may be taken." *Leonard F. v. Isr. Disc. Bank of N.Y.*, 199 F.3d 99, 107 (2d Cir. 1999) (quotation marks omitted).

The Court also undertakes its analysis in this case with a particular lens. As the Supreme Court has stated, "[a] document filed pro se is to be liberally construed and a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson*, 551 U.S. at 94 (quotation marks, citations, and italics omitted); *see also Darby v. Greenman*, 14 F.4th 124, 127–28 (2d Cir. 2021) (same) (citing *Walker v. Schult*, 717 F.3d 119, 124 (2d Cir. 2013)).[10] This means that

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[10] It could be argued that Plaintiff ought to be entitled to far less deference, having enjoyed the benefit of counsel's assistance in the filing of prior complaints in this action. *Cf. CIT Grp./Com.*

a court must "'interpret[] [a pro se complaint] to raise the strongest arguments that [it] suggest[s].'" *Sykes v. Bank of Am.*, 723 F.3d 399, 403 (2d Cir. 2013) (quoting *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006)). Moreover, when a plaintiff proceeds pro se, the Court may consider "materials outside the complaint to the extent that they are consistent with the allegations in the complaint," *Alsaifullah v. Furco*, No. 12-CV-2907, 2013 WL 3972514, at *4 n.3 (S.D.N.Y. Aug. 2, 2013) (quotation marks omitted), including "documents that a pro se litigant attaches to his opposition papers," *Agu v. Rhea*, No. 09-CV-4732, 2010 WL 5186839, at *4 n.6 (E.D.N.Y. Dec. 15, 2010) (italics omitted).

B. Analysis

Moving Defendants argue that: (1) many of Plaintiff's claims are time-barred, (Mov. Defs.' Mem. 8–11); (2) the Court has already made findings on Plaintiff's claims, which constitutes the law of the case, (*id.* at 8); (3) Plaintiff failed to include his state law claims in his notice of claim, (*id.* at 10–11); (4) Plaintiff fails to state a prima facie claim for discrimination or a hostile work environment, (*id.* at 11–19); (5) Plaintiff fails to state a prima facie claim of retaliation, (*id.* at 19–

Servs., Inc. v. Prisco, 640 F. Supp. 2d 401, 407 (S.D.N.Y. 2009) (holding that pro se pleadings are not entitled to relaxed standard when an attorney has assisted in the drafting in some material way). But for reasons set forth, even a relaxed standard does save Plaintiff's claims in the Fourth AC from dismissal.

21); and (5) Plaintiff fails to state a claim for negligent hiring, retention, and supervision, (*id.* at 21–22). Moving Defendants also argue that one of the individual Defendants, Cokeley, should be dismissed, that Plaintiff fails to allege that the remaining individual Defendants acted with retaliatory animus, and that, in any event, the individual Defendants are entitled to qualified immunity. (*Id.* at 19–25.)

1. Prior Dismissal of Two of Plaintiff's Causes of Action

The Court previously dismissed with prejudice Plaintiff's "Title VII claims against the individual Defendants, all claims against the Ramapo Police Department, and any claims for punitive damages against the Town or individual Defendants in their official capacities." (Op. 42.) As Moving Defendants observe, Plaintiff "removed Corbett and Holmes" from the case caption in the Fourth AC. (Mov. Defs.' Mem. 23.) So, too, did Plaintiff remove Officers William Gravina and Al Gumbs as well as the Town of Ramapo Police Department. (*Compare* TAC 1 (case caption) *with* Fourth AC 1 (case caption).) Notwithstanding these limited removals, the remaining Defendants subject to the Fourth AC include the majority of those previously named in the TAC, including many individual Defendants. With this in mind, the Court turns back to Plaintiff's claims.

Plaintiff's causes of action group all Defendants together for each claim. (*See, e.g.*, Fourth AC ¶ 69.) Thus, the Court interprets each of those claims to be made against each of the Defendants named in the caption, meaning the causes of action filed under Title VII pertain to the individual defendants. As stated above, the First Cause of Action (Retaliation in Violation of Title VII) against all Moving Defendants save for the Town of Ramapo have already been dismissed because "individual defendants cannot be held liable under Title VII." (Op. 22 (citing *Davis-Bell v. Columbia Univ.*, 851 F. Supp. 2d 650, 687 (S.D.N.Y. 2012)).) This reasoning applies to both the First Cause of Action as well as the Fourth Cause of Action (Discrimination and Harassment in Violation of Title VII). *See, e.g.*, *Rojas v. Roman Cath. Diocese of Rochester*, 660 F.3d 98, 107 n.10 (2d Cir. 2011) ("[A]n individual defendant with supervisory control may not be held personally liable under Title VII."); *Perry v. State of N.Y. Dep't of Lab.*, No. 02-CV-7566, 2003 WL 22327887, at *1 (S.D.N.Y. Oct. 10, 2003) (concluding that the "Second Circuit has unambiguously denied" holding individuals liable under Title VII). Because this precedent continues to govern Plaintiff's claims, the Court dismisses with prejudice Plaintiff's First and Fourth Causes of Action. *See Denny v. Barber*, 576 F.2d 465, 471 (2d Cir. 1978) (holding that the plaintiff was not entitled to "a third go-around); *Jackson v. NYS Dep't of Lab.*, No. 09-CV-6608, 2012 WL 843631, at *2 (S.D.N.Y. Mar. 12, 2012) ("Where, as here . . . the [c]ourt has explained in detail the defects in the original complaints, instructed plaintiff on how to rectify her claims and afforded her an opportunity to do so in a second amended complaint, dismissal with prejudice is justified.").

2. Statutes of Limitations

a. Title VII

To the extent Plaintiff's Title VII claims remain, i.e. solely against the Town, Moving Defendants argue that the Court has already made findings relating to their prior arguments that many of Plaintiff's claims are time-barred. (Mov. Defs.' Mem. 8–9.)

"The law of the case doctrine commands that 'when a court has ruled on an issue, that decision should generally be adhered to by that court in subsequent stages in the same case' unless 'cogent and compelling reasons militate otherwise.'" *Johnson v. Holder*, 564 F.3d 95, 99 (2d Cir. 2009) (quoting *United States v. Quintieri*, 306 F.3d 1217, 1225 (2d Cir. 2002)), *cert. denied*, 560 U.S. 919 (2010); *see also In re PCH Assocs.*, 949 F.2d 585, 592 (2d Cir. 1991) ("Under the law of the case doctrine, a decision on an issue of law made at one stage of a case becomes binding precedent to be followed in subsequent stages of the same litigation."). "The law of the case doctrine is admittedly discretionary and does not limit a court's power to reconsider its own decisions prior to final judgment." *Virgin Atl. Airways, Ltd. v. Nat'l Mediation Bd.*, 956 F.2d 1245, 1255 (2d Cir. 1992); *see also Arizona v. California*, 460 U.S. 605, 618 (1983) ("Law of the case directs a court's discretion, it does not limit the tribunal's power."); *First Nat'l Bank of Hollywood v. Am. Foam Rubber Corp.*, 530 F.2d 450, 453 n.3 (2d Cir. 1976) ("In this Circuit, the law of the case is a discretionary doctrine that need not be applied when no prejudice results from its omission."), *cert. denied*, 429 U.S. 858 (1976).

The Court sees no reason to reverse its prior rulings on this issue. As the Second Circuit has observed, "[t]he major grounds justifying reconsideration are an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." *Virgin Atl. Airways*, 956 F.2d at 1255 (quoting marks omitted). No such impetus is present.

Plaintiff fails to substantively respond to Moving Defendants' argument regarding the law of the case doctrine; Plaintiff instead responds in kind, accusing Defendants of initiating time-barred actions. (Pl.'s Mem. 4.) Plaintiff's argument is as follows: the Rockland County Police Act "governs the functions of all police departments in Rockland County, dictates that '. . . charges shall not be brought more than sixty days after the time when the facts upon which such charges are based are known to the town board,'" and the charges against Plaintiff were drawn on March 10, 2016, which is 130 days from the final date at which Defendants allege Plaintiff committed any professional misconduct worthy of firing. (*Id.*) Plaintiff essentially makes the point that the Department, including several defendants therein, acted improperly by firing him after they were permitted to do so. (*Id.*)

This response fails to grapple with either of the Moving Defendants' arguments with respect to whether Plaintiff's Title VII claims are time-barred. This issue—whether Defendants acted improperly pursuant to the laws governing Rockland County Policy activity—is not before the Court, and the Court therefore does not opine on it. Thus, in effect, Plaintiff's non-responsive answer is a de facto concession of Defendant's timeliness argument. "A plaintiff effectively concedes a defendant's arguments by his failure to respond to them." *Felske v. Hirschmann*, No. 10-CV-8899, 2012 WL 716632, at *3 (S.D.N.Y. Mar. 1, 2012) (collecting cases); *see also Lopez Canas v. Whitaker*, No. 19-CV-6031, 2019 WL 2287789, at *5 (W.D.N.Y. May 29, 2019) ("It is well settled in this Circuit that a plaintiff effectively concedes a defendant's arguments by his failure to respond to them" (alteration and quotation marks omitted)); *Miles v. Walawender*, No. 10-CV-973, 2013 WL 1908304, at *1 (W.D.N.Y. May 7, 2013) ("[The] [p]laintiff's opposing [m]emorandum of [l]aw does not respond to this argument, and effectively concedes these arguments by his failure to respond to them." (alteration, citation, and quotation marks omitted)). This alone favors granting Moving Defendants' Motion on this claim.

Nevertheless, turning to the merits of whether Plaintiff's Title VII claims are time-barred, the Court has reviewed its prior analysis, (*see* Op. 15–17), and sees no reason to upend it. The Court will therefore continue to consider Plaintiff's firing, which occurred on December 16, 2016, (Fourth AC ¶ 33) as a "timely allegation of an adverse employment action" and will "consider [his] other allegations as 'background evidence' to determine whether that adverse action was the result of a discriminatory motive." (Op. 17 (quoting *Hagan v. City of New York*, 39 F. Supp. 3d 481, 496 n.10 (S.D.N.Y. 2014))).

b. Section 1983

In Plaintiff's TAC, his First Cause of Action is titled "Retaliation in Violation of Section 1981," and the substance of the claim sounds in § 1981. (TAC 20.) The Court, following briefing on the matter, concluded that the claims are more appropriately considered under § 1983. (Op. 17–19.) Following the Court's Opinion, Plaintiff changed the title of the First Cause of Action of the Fourth AC to read "Retaliation in Violation of Section 1983," but the text of this cause of action nevertheless cites § 1981. (Fourth AC 16 & ¶¶ 66–69.) Whether Plaintiff's claims are brought under § 1981 or § 1983 therefore emerges once more.

Moving Defendants argue that Plaintiff's retaliation claims against a municipality and state actors are brought under § 1983, referencing the Court's prior decision on this point. (Mov. Defs.' Mem. 9–10.) Moving Defendants therefore argue that Plaintiff's claims pre-dating January 28, 2015, are time-barred per its prior ruling. (*Id.*)

As stated previously, Plaintiff fails to respond substantively to Moving Defendants' argument that the

Court has already decided this issue and that, notwithstanding this prior decision, the claims are time-barred. (*See* Pl.'s Mem. 4.)

Putting aside Plaintiff's apparent concession of this point, the Court concludes that its prior decision was correct and that these claims are properly brought under § 1983. (*See* Op. 17–19.) Moreover, the Court remains of the opinion that Plaintiff's "claims of discrete acts of retaliation and discrimination brought pursuant to § 1983 that occurred prior to January 28, 2015 are time-barred" and "to the extent these allegations provide 'context and support for the timely claims that Plaintiff asserts,' the Court will consider them." (Op. 19 (quoting *Allen*, 51 F. Supp. 3d at 510 n.2).)[11]

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[11] Moving Defendants also assert that Plaintiff's state law claims—which include the Third Cause of Action (retaliation in violation of the NYSHRL), Sixth Cause of Action (discrimination and harassment in violation of the NYSHRL), and Seventh Cause of Action (negligent hiring, retention, and supervision)—are similarly time-barred as a result of their notice mechanism. (Mov. Defs.' Mem. 10–11.) Because the Court has dismissed the Fourth AC, the Court declines to exercise supplemental jurisdiction over Plaintiff's state law claims and thus does not opine on the merits of this argument. *See Marcus v. AT&T Corp.*, 138 F.3d 46, 57 (2d Cir. 1998) ("In general, where the federal claims are dismissed before trial, the state claims should be dismissed as well."); *Thomas v. Grunberg 77 LLC*, No. 15-CV-1925, 2017 WL 3263141, at *1 (S.D.N.Y. July 28, 2017) (dismissing state claims where the federal claims had been dismissed as moot); *Torres v. City of New York*, 248 F. Supp. 2d 333, 334 (S.D.N.Y. 2003) ("Where the basis for pendent jurisdiction is dismissed, ordinarily so should the state law claims be dismissed.").

3. Failure to State a Claim for Discrimination Under Title VII and § 1983

Plaintiff brings claims for discrimination under Title VII, § 1983, and the NYSHRL. (Fourth AC ¶¶ 75–86.) These claims are all evaluated using the same framework. *See Brown v. City of Syracuse*, 673 F.3d 141, 150 (2d Cir. 2012) (deploying the *McDonnell Douglas* framework for race discrimination claims under Title VII and the NYSHRL); *Ruiz v. County of Rockland*, 609 F.3d 486, 491–92 (2d Cir. 2010) (same for § 1983 claims).

"To establish a claim of racial discrimination a claimant '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*, 673 F.3d at 150 (quoting *Holcomb v. Iona Coll.*, 521 F.3d 130, 138 (2d Cir. 2008)); *see also Salu v. Miranda*, 830 F. App'x 341, 345 (2d Cir. 2020) (summary order) (same); *Hill v. Rayboy-Brauestein*, 467 F. Supp. 2d 336, 350 (S.D.N.Y. 2006) (same) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973)). Once plaintiff establishes a prima facie case, the "burden then must shift to the employer to articulate some legitimate, nondiscriminatory reason for the employee's [adverse action]." *McDonnell Douglas*, 411 U.S. at 802. "If the employer puts forth a legitimate, non-discriminatory justification, the presumption drops out of the analysis and the plaintiff must establish, by a preponderance of the evidence, that the employer's justification is a pretext for discrimination." *Lenzi v. Systemax, Inc.*, 944 F.3d 97, 107–08 (2d Cir. 2019) (quoting *Legg v. Ulster County*, 820 F.3d 67, 73–74 (2d Cir. 2016)). For the reasons set forth, Plaintiff does not establish a prima facie case for discrimination.

Plaintiff has established that he belongs to a protected class. It is undisputed that Plaintiff "is an African–American . . . whose race places [him] in a protected class." *Hill*, 467 F. Supp. 2d at 350 (citing *Norville v. Staten Island Univ. Hosp.*, 196 F.3d 89, 95 (2d Cir. 1999)). (*See also* Fourth AC ¶ 26 (Plaintiff is an "African-American citizen, who immigrated from the Republic of Haiti").)

Plaintiff has also established that he was qualified for the position in question. The standard for one's qualification to hold a position in a discrimination claim is "minimal." *Slattery v. Swiss Reinsurance Am. Corp.*, 248 F.3d 87, 92 (2d Cir. 2001). This question "should focus on the plaintiff's competence and whether he possesses the basic skills necessary for performance of [the] job." *Ruiz*, 609 F.3d at 492 (quotation marks omitted) (alteration in original). In light of Plaintiff's military service, prior position as a correction officer, and law enforcement training, the Court finds Plaintiff has plausibly alleged that he was qualified for the job from which he was terminated.

Plaintiff's termination constitutes an adverse employment action. "An adverse employment action is a materially adverse change in the terms and conditions of employment," *Torre v. Charter Commc'ns, Inc.*, 493 F. Supp. 3d 276, 286 (S.D.N.Y. 2020) (citing *Mathirampuzha v. Potter*, 548 F.3d 70, 78 (2d Cir. 2008)), that rises above "'a mere inconvenience or an alteration of job responsibilities,'" *Brown*, 673 F.3d at 150 (quoting *Joseph v. Leavitt*, 465 F.3d 87, 90 (2d Cir. 2006)). Put another way, this standard is only met when an action is "of such quality or quantity that a reasonable employee would find the conditions of her employment altered for the worse." *Albuja v. Nat'l Broad. Co. Universal, Inc.*, 851 F. Supp. 2d 599, 606 (S.D.N.Y. 2012) (quoting *Torres v. Pisano*, 116 F.3d 625, 632 (2d Cir. 1997)). As determined above, given the application of the statute of limitations, the only potential adverse employment actions are the order for Plaintiff to release his medical records and his subsequent termination. Courts in the Second Circuit have explained that "[e]xamples of materially adverse changes include *termination of employment*, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices unique to a particular situation." *Karupaiyan v. CVS Health Corp.*, No. 19-CV-8814, 2021 WL 4341132, at *12 (S.D.N.Y. Sept. 23, 2021) (emphasis added) (quoting *Terry v. Ashcroft*, 336 F.3d 128, 138 (2d Cir. 2003)). Thus, Plaintiff's firing is an adverse employment action.

The demand that Plaintiff sign a HIPAA release, on the other hand, is not. As the aforementioned examples make clear, an adverse event must have a tangible impact on the employee's responsibilities, title, or compensation. An inquiry brought about by suspicion of a rule violation bears no such resemblance to these categories of harms. For that reason, the Second Circuit has held that being questioned by a supervisor—as well as a supervisor's attempt to access an employee's computer, an act arguably comparable to a request to review an employee's medical records, as here—does not constitute an adverse event. *See Chang v. Safe Horizons*, 254 F. App'x 838, 839 (2d Cir. 2007) (summary order) (holding, on a motion for summary judgment, that "oral and written warnings issued by [a plaintiff's supervisor], [the plaintiff's] being questioned by [her supervisor], and [the supervisor's] attempt to access [the plaintiff's] computer do not constitute materially adverse actions in the view of a reasonable employee" (quotation marks omitted)); *see also Lee v. Verizon Wireless, Inc.*, No. 07-CV-532, 2008 WL 4479410, at *7 (D. Conn. Sept. 26, 2008) (holding at the summary judgment stage that "questioning by supervisors, manipulation of an employee's workspace and oral or written warnings based on documented company policy violations are not materially adverse actions in the view of a reasonable employee and constitute, at best, trivial harms which are not actionable." (quotation marks omitted)); *cf. Hoffman v. Baltimore Police Dep't*, 379 F. Supp. 2d 778, 792 (D. Md.

2005) (concluding that "[t]he few courts that have considered whether an investigation, *by itself*, can constitute an adverse employment action have answered that question in the negative.").

In an analogous example—albeit one decided at the summary judgment stage—a court in this district found that "being asked to bring in a doctor's note to substantiate a request for sick leave in compliance with [a government organization's personnel] policy" was not an adverse event for purposes of discrimination.[12] *Blake v. Potter*, No. 03-CV-7733, 2007 WL 2815637, at *9 (S.D.N.Y. Sept. 25, 2007), *aff'd*, 330 F. App'x 232 (2d Cir. 2009), *cert. denied*, 558 U.S. 1138 (2010). Considering the applicable precedent in this Circuit as well as the tangible impact of the order itself, the Court finds that the order issued to Plaintiff to release narrowly tailored medical records in response to suspicion of a policy violation does not constitute an adverse employment action. Thus, the sole adverse employment action at issue under which Plaintiff may make a discrimination claim is his termination.

Plaintiff's claims in this arena thus turn on whether his firing, "the adverse employment action[,] occurred under circumstances giving rise to an inference of

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[12] "Claims of employment discrimination under [§] 1981 are analyzed under the same framework that applies to Title VII claims and claims under [§] 1983." *Bermudez v. City of New York*, 783 F. Supp. 2d 560, 576 (S.D.N.Y. 2011) (collecting cases).

discriminatory intent.'" *Brown*, 673 F.3d at 150. It is at this point that Plaintiff's claim falters.

"To establish an inference of discrimination, a plaintiff must allege that []he was similarly situated in all material respects to the individuals with whom []he seeks to compare [him]self." *Brown v. Daikin Am. Inc.*, 756 F.3d 219, 230 (2d Cir. 2014) (quotation marks omitted). Plaintiff notes that he was under the care of the same doctors as other officers. (Fourth AC ¶ 35.) Plaintiff also asserts that he "has submitted many doctor's notes previously which have all been acceptable." (*Id.* ¶ 41 (citing Fourth AC Ex. 4).) But what Plaintiff submitted was in fact testimony of Matos regarding prior notes. (*See* Fourth AC Ex. 4.) There is no apples-to-apples comparison to be made between otherwise analogous notes. Absent such comparative exemplars, Plaintiff's theory of discrimination is unsupported. *See Farooq v. N.Y.C. Health & Hosps. Corp.*, No. 19-CV-6294, 2020 WL 5018387, at *8 (S.D.N.Y. Aug. 25, 2020) (concluding that failure to "identify comparators, let alone to provide any specificity as to [his] alleged comparators' [similarities] is fatal to [his] claims" (quotation marks omitted) (collecting cases)).

Because Plaintiff has failed to sufficiently plead facts that give rise to an inference of discriminatory intent, Moving Defendants' Motion with respect to Plaintiff's Causes of Actions regarding an allegedly discriminatory workplace under Title VII and § 1983 is granted and Plaintiff's correspondent causes of action are dismissed with prejudice. *See Shcherb v. Angi Homeservices Inc.*, No. 19-CV-367, 2020 WL 2571041, at *2 (S.D.N.Y. May 21, 2020) ("When a plaintiff does not correct the defects in an initial pleading through the filing of a more detailed amended complaint, the amended complaint may be dismissed with prejudice." (quoting *Liner v. Goord*, 115 F. Supp. 2d 432, 434 (S.D.N.Y. 2000))).

4. Failure to State a Claim for a Hostile Work Environment Under Title VII and § 1983

"To prevail on a hostile work environment claim under Title VII, '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 working environment.'" *Lewis v. N. Gen. Hosp.*, 502 F. Supp. 2d 390, 402 (S.D.N.Y. 2007) (quoting *Feingold v. New York*, 366 F.3d 138, 149 (2d Cir. 2004)). "Second, a hostile work environment claim under Title VII requires a showing that the conduct occurred because of [the] plaintiff's membership in a protected class." *Id.* (citing *Brennan v. Metro. Opera Ass'n*, 192 F.3d 310, 318 (2d Cir. 1999)). "Finally, the plaintiff must demonstrate that a specific basis exists for imputing the conduct that created the hostile environment to the employer." *Id.* (citing *Van Zant v. KLM Royal Dutch Airlines*, 80 F.3d 708, 715 (2d Cir. 1996)).

When deciding if a plaintiff has established a prima facie case of a hostile work environment, a court must "look[] at all the circumstances. These may include 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." *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23 (1993). This inquiry has "both a subjective and an objective component." *Lewis*, 502 F. Supp. 2d at 402. Not only is the Court to evaluate objective metrics such as the "frequency" of such actions, but it must also take into consideration "the employee's psychological well-being," which bears on "whether the plaintiff actually found the environment abusive." *Harris*, 510 U.S. at 23.

Plaintiff's allegations convince the Court that the subjective prong of this inquiry has been satisfied. As highlighted previously, Plaintiff alleges that his treatment left him "feeling degraded, unappreciated and not welcomed." (Fourth AC ¶ 98.) Plaintiff has also described his experience on the police force, as a result of the allegedly hostile work environment, as "isolating" and likening his status to one of "an escaped convict posing as a police officer." (*Id.*) Plaintiff thus meets this subjective mark.

Unfortunately for Plaintiff, precedent in the Second Circuit neuters his claim with respect to the objective inquiry. To satisfy this standard, "[t]he incidents must be repeated and continuous; isolated acts or occasional episodes will not merit relief." *Kotcher v. Rosa & Sullivan Appliance Ctr., Inc.*, 957 F.2d 59, 62 (2d

Cir. 1992) (citing *Carrero v. N.Y.C. Hous. Auth.*, 890 F.2d 569, 577 (2d Cir. 1989)). Additionally, the events in question must evince a "racial overtone." *Gong v. City Univ. of N.Y.*, 846 F. App'x 6, 9 (2d Cir. 2021) (summary order). Acts of individualized punishment, however severe or disproportionate, do not give rise to a hostile work environment claim if they lack a connection to the characteristic on which Plaintiff alleges discrimination. *See Pease v. City of New York*, No. 19-CV-7693, 2021 WL 2651400, at *13 (S.D.N.Y. June 28, 2021) (discarding events put forward in a hostile work environment claim that fail to "support[] the inference that these actions were motivated by discriminatory animus rather than, e.g., dissatisfaction with [the] [p]laintiff's performance of his duties"). As the Second Circuit has explained:

> Everyone can be characterized by sex, race, ethnicity or (real or perceived) disability; and many bosses are harsh, unjust, and rude. It is therefore important in hostile work environment cases to exclude from consideration personnel decisions that lack a linkage or correlation to the claimed ground of discrimination. Otherwise, the federal courts will become a court of personnel appeals.

Alfano v. Costello, 294 F.3d 365, 377 (2d Cir. 2002).

Plaintiff directs the Court to 12 discrete episodes besides the events involving Plaintiff's doctors' notes: (1) Weidel's investigation into Plaintiff's military service while attending the police academy in 2002, (Fourth AC ¶ 95); (2) Corbett's 2004 tirade against Plaintiff, (*id.* ¶ 99); (3) Corbett's negative report regarding Plaintiff's handwriting, Plaintiff's subsequent improvement, the department's failure to recognize said improvements, and Reynar's speculation that Plaintiff no longer wrote his own reports, (*id.* ¶¶ 97, 98, 42); (4) Lampert's 2005 report as to Plaintiff's security infraction in the holding cell, (*id.* ¶ 100); (5) Franklin's diatribe the following year against Plaintiff for having written his friend a ticket, (*id.* ¶ 101); (6) the department's 2007 splitting of Sector Two only after a white officer complained that it was too large, (*id.* ¶ 104); (7) the report the same year by an unnamed officer regarding Plaintiff's shoveling his driveway on a sick day, (*id.* ¶ 102); (8) the department's scheduling accommodations for a newly hired Jewish officer's religious obligations the following year and its comparably poor accommodations for Plaintiff's request, (*id.* ¶ 105); (9), Plaintiff's use of "too many rounds . . . to euthanize an injured animal" in 2010, (*id.* ¶ 107); (10) Franklin's deleting of tickets Plaintiff previously issued as well as the department's reprimand of Plaintiff and its ordering Plaintiff to undergo a psychological test, (*id.* ¶ 108); (11) Plaintiff's refusal in 2013 to provide his personal email address for a political election, (*id.* ¶ 110); and (12) Plaintiff's 2014 evaluation failing to note particular achievements and excellent performance, (*id.* ¶ 111).

i. Events That Lack a Connection to Any Protected Class

Many of the events put forward by Plaintiff lack any connection to Plaintiff's national origin, political affiliations, race, or religion. Where a plaintiff fails to allege facts connecting actions to an animus related to one's national origin, political affiliations, race, or religion, such allegations are "too conclusory to permit an inference of discriminatory animus." *Trujillo v. City of New York*, No. 14-CV-8501, 2016 WL 10703308, at *14 (S.D.N.Y. Mar. 29, 2016) (collecting cases), *aff'd*, 696 F. App'x 560 (2d Cir. 2017). Specifically, Plaintiff does not allege any facts that connect his national origin, political affiliation, race, or religion to the following incidents: whether he stepped into the holding cell in violation of department policy, (Fourth AC ¶ 100); whether Plaintiff was correct in ticketing Franklin's friend and whether Franklin was wrong to berate Plaintiff for having done so, (*id.* ¶ 101); whether he was in violation of department policy for shoveling snow while taking a sick day, (*id.* ¶ 102); whether the Department incorrectly failed to appreciate his improvements and achievements in 2004 and 2014, respectively (*id.* ¶¶ 98, 111); whether he used an inappropriate method to euthanize an animal, (*id.* ¶ 107); and whether it was appropriate for him to undergo a psychological exam because he accurately saw tickets were deleted. *See Salerno v. Town of Bedford*, No. 05-CV-7293, 2008 WL 5101185, at *8 (S.D.N.Y. Dec. 3, 2008) (holding that, absent additional proof of racial animus, "[a]llegations of negative job evaluations or excessive reprimands are insufficient to establish a hostile environment claim"). Nothing Plaintiff avers suggests that these incidents were a result of anything other than a "personality conflict[] between employees," which is "not the business of the federal courts." *Vore v. Ind. Bell Tel. Co.*, 32 F.3d 1161, 1162 (7th Cir. 1994); *see also Pacheco v. N.Y. Presbyterian Hosp.*, 593 F. Supp. 2d 599, 624 (S.D.N.Y. 2009) ("Title VII does not create a 'general civility code.'" (quoting *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 81 (1998))). Therefore, these events do not factor into the Court's calculus for a hostile work environment claim on any protected basis.

ii. Isolated Events That Tangentially Connect to National Origin, Political Actions, Race, and Religion Are Insufficiently Severe and Infrequent to Have Created a Hostile Work Environment

The remaining events are too disparate or insufficiently severe to give rise to a hostile work environment claim on any potential grounds. One event offers, at best, a cursory connection to Plaintiff's national origin: the department's investigation into his background while in the police academy. (Fourth AC ¶ 95.) There, Plaintiff alleges only that the department was unable to verify his background, including his military service, and thus asked if he in fact served in the military of the country in which he was born. This fails to give rise to an inference that Plaintiff was discriminated against based on his national origin. Rather, the questions are "reasonably related" to Plaintiff's hiring, including whether he was honest or lied on his application following the department's good faith but unsuccessful effort to verify his military service. *Kho v. N.Y. & Presbyterian Hosp.*, 344 F. Supp. 3d 705, 722 (S.D.N.Y. 2018) (finding that comments or questions "reasonably related to [an employee's] ability to adequately perform her job" militates against an inference of discrimination). Moreover, even if the Court concluded that this questioning did give rise to harassment, this isolated incident does not meet the Second Circuit's standard of "pervasive or continuous" conduct. *Costello v. N.Y. State Nurses Ass'n*, 783 F. Supp. 2d 656, 680 (S.D.N.Y. 2011); *see Alfano*, 294 F.3d at 379–80 (holding that an employee could not establish a hostile work environment based on five relatively minor incidents of harassment over four years, including several that the employer could not remedy due to the perpetrator's anonymity). Therefore, the investigation as to Plaintiff's military service, even when read in concert with Plaintiff's firing, does not give rise to a hostile work environment claim on the basis of Plaintiff's national origin.

The same can be said about Plaintiff's claim for a hostile work environment due to his religion. The only event Plaintiff asserts regarding his religion is the allegedly inferior treatment of his religious accommodation request compared to that of a newly hired Jewish officer who received a religious accommodation. (Fourth AC ¶ 105.) Plaintiff concedes that his request was ultimately granted, albeit it after a slight delay and with one additional condition. (*Id.*) Thus, the Court does not find that this constitutes harassment. But, once again, even if the Court were to assume arguendo that it were, this lone episode "does not come close to the level of harassment courts in this circuit have found to be 'extraordinarily severe.'" *Yan v. Ziba Mode Inc.*, No. 15-CV-47, 2016 WL 1276456, at *6 (S.D.N.Y. Mar. 29, 2016) (quoting *Albert-Roberts v. GGG Constr., LLC*, 542 F. App'x 62, 64 (2d Cir. 2013)).

Another lone event speaks to Plaintiff's political participation.[13] Specifically, Plaintiff alleges that his refusal to engage in certain political activities

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[13] Plaintiff did not specifically name political affiliation or action as a ground for his hostile work environment claim. However, as noted, the Court must read pro se pleadings "'to raise the strongest arguments they suggest.'" *Hill v. City of New York*, 820 F. App'x 86, 87 (2d Cir. 2020) (summary order) (quoting *McLeod v. Jewish Guild for the Blind*, 864 F.3d 154, 156 (2d Cir. 2017)). Attacks or retaliation as a result of one's political affiliation is often evaluated on the basis of § 1983 claim for sake of a deprivation of one's First Amendment rights. *Kohutka v. Town of Hempstead*, 994 F. Supp. 2d 305, 317–22 (E.D.N.Y. 2014) (evaluating whether an employee was retaliated against for sake of her political affiliations). But because Plaintiff's claims for retaliation under § 1983 were already dismissed with prejudice, *see* II.B.2.b, the Court examines this potential theory on Plaintiff's behalf. *See Kohutka*, 994 F. Supp. 2d at 326–29 (adjudicating municipality defendant's motion for summary judgment and finding that a material fact existed regarding whether an employee faced a hostile work environment for sake of her political affiliations and actions).

"generated a wave of discriminatory and retaliatory backlash, up to and including Plaintiff's termination." (Fourth AC ¶ 110.) Again, this single episode of alleged hostility meets neither the severity nor frequency threshold this Circuit has established. *See Alfano*, 294 F.3d at 379–80 (holding that an employee could not establish a hostile work environment based on five relatively minor incidents of harassment over four years). Therefore, Plaintiff cannot plausibly plead a hostile work environment on the basis of his political actions or affiliation.

The two remaining incidents touch on Plaintiff's race: Corbett's 2004 outburst that implicated Plaintiff's race, (*see* Fourth AC ¶ 99), and the Department's actions in 2007 to reprimand Plaintiff for having raised objection to the size of Sector Two only to then break up Sector Two when a white officer raised analogous objections, (*id.* ¶ 104). These two incidents, when viewed together with Plaintiff's filing, are still "too few [and] too separate in time" to establish an abusive or hostile working environment. *Alfano*, 294 F.3d at 380; *see also Raspardo v. Carlone*, 770 F.3d 97, 114 (2d Cir. 2014) ("The incidents complained of must be more than episodic; they must be sufficiently continuous and concerted in order to be deemed pervasive." (quotation marks omitted)). Indeed, the Second Circuit has previously held that "five incidents over a four-year period" were not sufficient to establish a hostile workplace. *Alfano*, 294 F.3d at 380. Moreover, the incidents—totaling two over the course of a 15-

year career, and which were made three years apart from one another—were too temporally disconnected to sustain Plaintiff's claim. *See Kalola v. Int'l Bus. Machines Corp.*, No. 13-CV-7339, 2015 WL 861718, at *9 (S.D.N.Y. Feb. 3, 2015) ("Two discriminatory comments, made four years apart, over the course of a decade of employment, are insufficient to sustain a hostile work environment claim."). Thus, even construing the facts in the light most favorable to Plaintiff, these isolated events years apart do not evince a workplace "permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." *Anderson v. New York City Dep't of Fin.*, No. 19-CV-7971, 2020 WL 1922624, at *8 (S.D.N.Y. Apr. 21, 2020) (quoting *Gorzynski v. JetBlue Airways Corp.*, 596 F.3d 93, 102 (2d Cir. 2010)).

Because discriminatory conduct must be sufficiently pervasive and hostile for Plaintiff's hostile work environment claim to survive, Moving Defendants' Motion with respect to Plaintiff's claims of this kind is granted. Given that this is the first adjudication of Plaintiff's claim for a hostile work environment on the merits, this dismissal is without prejudice.

5. <u>Plaintiff Failed to State a Claim for Retaliation Under Title VII and Section 1983</u>

Plaintiff's claims for retaliation remain only against the Town of Ramapo. Moving Defendants are correct that "this claim is no different from that which this Court rejected when it dismissed the Third Amended Complaint." (Mov. Defs.' Mem. 21.) Plaintiff's Fourth AC has not cured its previous deficiencies regarding connecting the protected activities to his termination, be it directly or indirectly, (Op. 27–31), nor its deficiencies regarding the level of adversity the actions posed, (*id.* at 31–38). Because Plaintiff has raised these claims before and failed to rectify the inadequacies the Court previously identified, Plaintiff's claims for retaliation under Title VII and § 1983 are dismissed with prejudice. *See Haber v. EOS CCA*, No. 20-CV-6637, 2021 WL 4429501, at *3 (S.D.N.Y. Sept. 27, 2021) ("[B]ecause [the] [p]laintiff has had ample notice of the deficiencies in his complaint but has failed to rectify them, the [c]ourt will dismiss with prejudice and deny leave to amend.").

III. Conclusion

For the foregoing reasons, Moving Defendants' Motion To Dismiss is granted. Because this is the first adjudication of Plaintiff's claims of a hostile work environment on the merits, the dismissal of related claims is without prejudice. The remaining claims, having been previously adjudicated, are dismissed with prejudice. If Plaintiff wishes to file a fifth amended complaint addressing the deficiencies discussed in this Opinion & Order with respect to claims dismissed without prejudice Plaintiff must do so within 30 days of the date of this Opinion & Order.

Plaintiff is advised that the fifth amended complaint will replace, not supplement, all prior complaints. The fifth amended complaint must contain all of the claims, factual allegations, and exhibits that Plaintiff wishes the Court to consider. If Plaintiff fails to abide by the 30-day deadline, the remaining claims may be dismissed with prejudice.

The Clerk of Court is directed to terminate the pending Motion, (Dkt. No. 99), and mail a copy of this Opinion & Order to Plaintiff.

SO ORDERED.

DATED: January 13, 2022
White Plains, New York

/s/ Kenneth M. Karas
KENNETH M. KARAS
United States District Judge

Appendix D
[Filed: Jun. 7, 2022]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ERNST THEODORE TENEMILLE, Plaintiff, v. TOWN OF RAMAPO, *et al.*, Defendants.	No. 18-CV-724 (KMK) ORDER

Appearances:

Ernst Theodore Tenemille
New City, NY
Pro Se Plaintiff

Steven C. Stern, Esq.
Vernee Ciara Pelage, Esq.
Sokoloff Stern LLP
Carle Place, NY
Counsel for Defendants

KENNETH M. KARAS, District Judge:

I. Background

Pro se Plaintiff Ernst Theodore Tenemille ("Plaintiff") brought this Action against former Town of Ramapo Supervisor Christopher St. Lawrence ("St.

Lawrence"), former Councilman Patrick Withers ("Withers"), Chief of Police Bradley R. Weidel ("Weidel"), Chief of Staff Thomas Cokeley ("Cokeley"), Squad Lieutenant Daniel Hyman ("Hyman"), Squad Sergeant Salomon Matos ("Matos"), Desk Sergeant Christopher Franklin ("Franklin"; collectively, the "Individual Defendants"), and the Town of Ramapo (the "Town" or "Ramapo"; together with Individual Defendants, "Defendants"), alleging that Defendants discriminated against and subsequently retaliated against him on the basis of his race, color, national origin, and religion, in violation of Section 1983 of the Civil Rights Act of 1866, 42 U.S.C. § 1983 ("§ 1983"), Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000e, et seq.; and New York State Human Rights Law ("NYSHRL"), N.Y. Exec. Law §§ 290, et seq. (*See generally* Fourth Am. Compl. ("Fourth AC") (Dkt. No. 88).) On January 13, 2022, the Court issued an Opinion & Order granting Moving Defendants' Motion to Dismiss, which dismissed all claims with prejudice save for Plaintiff's hostile work environment claims, which the Court dismissed without prejudice, as it was Plaintiff's first adjudication of these claims on the merits. (Op. & Order 33 ("2022 Op.") (Dkt. No. 109).) In its Opinion & Order, Court also permitted

Plaintiff to file a fifth amended complaint within 30 days. (*Id.* at 33–34.)[1]

Thirty days after the Court issued its Opinion & Order, Plaintiff, in lieu of a fifth amended complaint, filed a motion for reconsideration of the Court's Opinion & Order pursuant to Federal Rule of Civil Procedure 59(e), (the "Motion"), as well as supporting papers. (*See* Dkt. Nos. 110–112.)[2] On March 25, 2022, Defendants filed a Memorandum of Law in Opposition to the Motion. (Defs.' Mem. of Law in Opp. to Pl.'s Mot. ("Defs.' Mem.") (Dkt. No. 115).) Finally, on April 26, 2022, Plaintiff filed a Reply. (Pl.'s Reply Mem. of Law in Supp. of Mot. ("Pl.'s Reply Mem.") (Dkt. No. 117).)

For the following reasons, Plaintiff's Motion is denied.

II. Discussion

A. Standard of Review

"Motions for reconsideration are governed by Federal Rule of Civil Procedure 59(e) and Local Civil Rule

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[1] The Court assumes the Parties' familiarity with the facts at issue as well as the Action's procedural history, up to and including the substance of that Opinion. (*See generally* 2022 Op.)

[2] Plaintiff first filed his Notice of Motion and his Memorandum of Law in Support of the Motion simultaneously but absent exhibits, (*see generally* Dkt. No. 110), then re-filed the same documents with exhibits, (*see generally* Dkt. No. 111). Subsequently, Plaintiff re-filed three exhibits. (*See generally* Dkt. No. 112.) For purposes of this Opinion, the Court refers to Dkt. No. 110 as the "Motion" and to Dkt. No. 111 as Plaintiff's Memorandum of Law ("Pl.'s Mem.").

6.3, which are meant to ensure the finality of decisions and to prevent the practice of a losing party examining a decision and then plugging the gaps of a lost motion with additional matters." *Arthur Glick Truck Sales, Inc. v. Stuphen E. Corp*, 965 F. Supp. 2d 402, 404 (S.D.N.Y. 2013) (citation omitted), *aff'd*, 577 F. App'x 11 (2d Cir. 2014). The standard for such motions is "strict" and "should not be granted where the moving party seeks solely to relitigate an issue already decided." *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995); *see also In re Gen. Motors LLC Ignition Switch Litig.*, No. 14-MD-2543, 2017 WL 3443623, at *1 (S.D.N.Y. Aug. 9, 2017) ("It is well established that the rules permitting motions for reconsideration must be narrowly construed and strictly applied so as to avoid repetitive arguments on issues that have been considered fully by the [c]ourt." (citation and omitted)). A movant may not "rely upon facts, issues, or arguments that were previously available but not presented to the court." *Indergit v. Rite Aid Corp.*, 52 F. Supp. 3d 522, 523 (S.D.N.Y. 2014). Therefore, "[a] motion for reconsideration is not the proper avenue for the submission of new material." *Sys. Mgmt. Arts Inc. v. Avesta Techs., Inc.*, 106 F. Supp. 2d 519, 521 (S.D.N.Y. 2000). "Rather, to be entitled to reconsideration, a movant must demonstrate that the [c]ourt overlooked controlling decisions or factual matters that were put before it on the underlying motion, which, had they been considered might reasonably have altered the result reached by the court." *Arthur*

Glick, 965 F. Supp. 2d at 405 (citation omitted); *Shrader*, 70 F.3d at 257 (same). In other words, "[a] motion for reconsideration should be granted only when the [movant] identifies an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." *Alvarez v. City of New York*, No. 11-CV-5464, 2017 WL 6033425, at *2 (S.D.N.Y. Dec. 5, 2017) (quoting *Kolel Beth Yechiel Mechil of Tartikov, Inc. v. YLL Irrevocable Tr.*, 729 F.3d 99, 104 (2d Cir. 2013)); *see also Indergit*, 52 F. Supp. 3d at 523.

B. Analysis

1. Rule 59(e)

"To invoke Rule 59(e) to alter or amend a judgment, the moving party must move 'no later than 28 days after entry of judgment.'" *Darcelin v. New York*, No. 09-CV-5611, 2010 WL 723455, at *1 (E.D.N.Y. Feb. 26, 2010) (quoting Fed. R. Civ. P. 59(e)). Plaintiff filed his motion 30 days after the entry of judgment. (*See* Dkt.) "[T]he liberal treatment afforded to pro se litigants does not exempt a pro se party from compliance with relevant rules of procedural and substantive law." *Bell v. Jendell*, 980 F. Supp. 2d 555, 559 (S.D.N.Y. 2013) (quotation marks omitted); *see also Caidor v. Onondaga County*, 517 F.3d 601, 605 (2d Cir. 2008) ("[P]ro se litigants generally are required to inform themselves regarding procedural rules and to comply with them." (italics and citation omitted)).

Accordingly, the Court cannot waive Congress' imposition of the 28-day time limit.[3]

The Court will nevertheless exercise its authority to "ignore the legal label that a pro se litigant attaches to a motion and recharacterize the motion in order to place it within a different legal category . . . to avoid an unnecessary dismissal." *Castro v. United States*, 540 U.S. 375, 381 (2003) (italics omitted); *see also Lora v. O'Heaney*, 602 F.3d 106, 111 (2d Cir. 2010) ("An untimely motion for reconsideration [under Rule 59(e)] is treated as a Rule 60(b) motion."); *Munn v. APF Mgmt. Co.*, No. 19-CV-10791, 2021 WL 2355308, at *2 (S.D.N.Y. June 9, 2021) ("[S]everal courts in this Circuit have construed untimely motions for reconsideration under Rule 59(e) or Local Civil Rule 6.3 as motions brought under Rule 60(b)." (quoting *McGraw-Hill Glob. Educ. Holdings, LLC v. Mathrani*, 293 F. Supp. 3d 394, 397 n.2 (S.D.N.Y. 2018))). Thus, the

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[3] Additionally, Local Civil Rule 6.3, entitled *Motions for Reconsideration or Reargument*, provides:

> [A] notice of motion for reconsideration . . . of a court order determining a motion shall be served within fourteen (14) days after the entry of the Court's determination of the original motion, or in the case of a court order resulting in a judgment, within fourteen (14) days after the entry of the judgment. There shall be served with the notice of motion a memorandum setting forth concisely the matters or controlling decisions which counsel believes the Court has overlooked.

Local Civ. R. 6.3. In other words, Plaintiff failed to comply with local rules regarding Motions for Reconsideration in addition to the Federal Rules.

Court will consider the instant Motion under Rule 60(b).

2. Rule 60(b)

Rule 60(b) of the Federal Rules of Civil Procedure governs relief from a final judgment or order. *See* Fed. R. Civ. P. 60(b).

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

Id.

"Properly applied[,] Rule 60(b) strikes a balance between serving the ends of justice and preserving the finality of judgments." *Nemaizer v. Baker*, 793 F.2d 58, 61 (2d Cir. 1986). "In other words[,] it should be broadly construed to do substantial justice, yet final judgments should not be lightly reopened." *Id.* (citation and quotation marks omitted). "Rule 60(b) provides a mechanism for extraordinary judicial relief available only if the moving party demonstrates exceptional circumstances, and relief under the rule is discretionary." *Motorola Credit Corp. v. Uzan*, 561 F.3d 123, 126 (2d Cir. 2009) (citation, quotation marks, and alteration omitted); *see also Mendell ex rel. Viacom, Inc. v. Gollust*, 909 F.2d 724, 731 (2d Cir. 1990) ("Motions under Rule 60(b) are addressed to the sound discretion of the district court and are generally granted only upon a showing of exceptional circumstances."). "Relief under Rule 60(b) is generally not favored and is properly granted only upon a showing of exceptional circumstances." *Ins. Co. of N. Am. v. Pub. Serv. Mut. Ins. Co.*, 609 F.3d 122, 131 (2d Cir. 2010) (quotation marks omitted). Thus, "[t]he movant must adduce 'highly convincing material' in support of the motion." *Leeber Realty LLC v. Trustco Bank*, No. 17-CV-2934, 2019 WL 498253, at *3 (S.D.N.Y. Feb. 8, 2019) (quoting *United States v. Cirami*, 563 F.2d 26, 33 (2d Cir. 1977)), *aff'd*, 798 F. App'x 682 (2d Cir. 2019). This is, in short, a "demanding standard." *Bell* *v. Deutsche Bank*, No. 18-CV-1593, 2021 WL 4480549, at *4 (E.D.N.Y. Sept. 30, 2021).

Plaintiff argues that the Court "mishandled facts" and "misevaluated" his arguments. (Pl.'s Mem. 1.) In support of this idea, Plaintiff not only reprises and reforms his arguments, (*see generally id.*), but he also brings forward "35 additional documents," (*id.* at 1). Defendants assert that Plaintiff's arguments "largely rehash the same arguments he presented" and that the Motion "must be denied because [Plaintiff] does not show an intervening change of controlling law, that new evidence has become available, or that there is a need to correct a clear error or prevent manifest injustice." (Defs.' Mem. 1.) Plaintiff, in reply, makes these same arguments and asserts new ones regarding Defendants' apparent concessions as well as brand new arguments for the underlying motion to dismiss. (*See generally* Pl.'s Reply Mem.)

In the first instance, the Court cannot consider any of Plaintiff's new exhibits. "Courts typically do not consider new evidence raised on reconsideration." *Piña v. United States*, No. 20-CV-1371, 2022 WL 782996, at *5 (S.D.N.Y. Mar. 15, 2022) (citing *Munn*, 2021 WL 2355308, at *3). Put simply, "[a] motion to reconsider is not [a party's] opportunity to put forward evidence that he could have, but failed, to provide the Court when the Court initially considered the motion." *Francis v. AccuBanc Mortg. Corp.*, No. 19-CV-902, 2021 WL 827123, at *3 (S.D.N.Y. Mar. 4, 2021) (first alteration in original) (quoting *United States v.*

Posada, 206 F. Supp. 3d 866, 868 (S.D.N.Y. 2016)). Plaintiff does not allege that any of these new exhibits was previously unavailable or unobtainable, so the Court will not consider them here.

With regard to the substance of Plaintiff's arguments, Plaintiff falls well short of the aforementioned high bar. Because Plaintiff filed the instant Motion pursuant to Rule 59(e), his Memorandum in Support of the Motion did not articulate the subsection of Rule 60(b) under which he would be entitled to relief. Nonetheless, the Court addresses the two possible prongs of Rule 60(b) into which the Motion could be classified.[4]

a. Rule 60(b)(1)

Under Rule 60(b)(1), the Court may vacate an Order on the basis of "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1). In light of Plaintiff's arguments, including his recitation of seven "Supporting Facts," (*see generally* Pl.'s Mem.), and his highlighting of purportedly wrong assumptions, Defendants' ostensible concessions, and his new arguments underlying the cause of action itself, (*see generally* Pl.'s Reply Mem.), the Court interprets Plaintiff's

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[4] Plaintiff does not assert in his Motion that there is *new* evidence in the case, foreclosing subsection 2. (*See generally* Pl.'s Mem.) Similarly, Plaintiff does not suggest that Defendants engaged in fraud to mislead the Court, foreclosing subsection 3. (*See generally id.*) Subsections 4 and 5 are also not viable, as Plaintiff does not suggest the judgment is void or that it has been satisfied or is no longer viable. (*See generally id.*)

motion as arising under a mistake rather than "inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1).

"Rule 60(b)(1) motions premised upon mistake are intended to provide relief to a party in only two instances: (1) when the party has made an excusable litigation mistake . . . or (2) when the judge has made a substantive mistake of law or fact in the final judgment or order." *Leeber Realty*, 2019 WL 498253, at *4 (alteration in original) (quoting *Bey v. Iaquinto*, No. 12-CV-5875, 2016 WL 462412, at *4 (S.D.N.Y. Feb. 4, 2016)). Plaintiff does not allege his own mistake, only the Court's, and "[u]nder this provision, a district court may correct its own mistakes that are 'of a substantive legal nature,' and 'its own mistake[s] of fact.'" *Castro v. Bank of N.Y. Mellon*, 825 F. App'x 25, 28 (2d Cir. 2021) (summary order) (alteration in original) (quoting *Int'l Controls Corp. v. Vesco*, 556 F.2d 665, 670 (2d Cir. 1977) and *Gey Assocs. Gen. P'ship v. 310 Assocs. (In re 310 Assocs.)*, 346 F.3d 31, 35 (2d Cir. 2003)).

Plaintiff's Supporting Facts 1 and 2—that Plaintiff ultimately signed a HIPAA release form and that the Court's description of the Ramapo Police Department's investigation was misleading—speak to the genesis of the Ramapo Police Department's investigation concerning Plaintiff's sick days. (*See* Pl.'s Mem. 3–6.) Plaintiff argues that the Court "misframed" the facts at issue. (*Id.* at 5.) Even if the Court "misframed" the facts at issue—and Plaintiff provides no objective basis to substantiate its belief that the Court committed such an error, only semantical arguments—adopting an alternate "framing" of the facts alleged, at most, creates frustration with the Court's interpretation thereof, not factual or legal error. "Dissatisfaction with a judgment does not sufficiently justify an allegation of mistake under Rule 60(b)(1)." *Hamilton v. Lee*, 188 F. Supp. 3d 221, 238 (E.D.N.Y. 2016). Thus, neither Supporting Fact 1 nor Supporting Fact 2 can support Plaintiff's Motion.

The Court agrees with Defendants' reading of Supporting Facts 3, 4, and 6, each of which concern the Court's recitation of past events, (Pl.'s Mem. 7–12), as Plaintiff seemingly "misunderst[oo]d that the Court actually considered the more recent events on their merits," (Defs.' Mem. 9). In each of these Supporting Facts, Plaintiff purports to argue that the Court's recitation of older facts skews its analysis and interpretation of the more recent events that culminated in Plaintiff's firing. (*See* Pl.'s Mem 7 (describing Supporting Fact 3); 8–9 (describing Supporting Fact 4); 10–12 (describing Supporting Fact 6).) But in its 2022 Opinion, the Court considered the more recent actions relating specifically to Plaintiff's firing at length. (*See* 2022 Op. 21–26.) The Court's consideration of events preceding Plaintiff's firing was, as the Court stated, solely for additional context and in no way took away from the Court's consideration of the immediate events giving rise to Plaintiff's firing. "Rule 60(b)(1) will not provide a movant an additional opportunity to make arguments or attempt to win a point already 'carefully analyzed and justifiably disposed.'" *Bousa Inc. v. United States (In re Bulk Oil (USA) Inc.)*, Nos. 89-B-13380, 93-CV-4492, 93-CV-4494, 2007 WL 1121739, at *10 (S.D.N.Y. Apr. 11, 2007) (quoting *Matura v. United States*, 189 F.R.D. 86, 90 (S.D.N.Y.1999)). Accordingly, these Facts similarly cannot support Plaintiff's Motion.

In his explanation for Supporting Fact 3, Plaintiff also accuses the Court of failing to countenance Plaintiff's allegations in his Complaint regarding discussions of seemingly similarly situated colleagues. (*See* Pl.'s Mem. 7 (arguing that the Court inappropriately held that Plaintiff conceded Defendants' argument that Plaintiff failed to establish an inference of discrimination vis-à-vis comparators "despite the verifiable fact that Plaintiff literally did").) At the motion to dismiss stage, Defendants pointed out that Plaintiff stated only that he shared the same doctor as "most"—not all—of a group of officers, that he failed to identify these other officers' underlying medical issues, that they were subject to similar decisionmakers, or that the officers had similar responsibilities, histories, or any several other material factors. (Defs.' Mem. of Law in Supp. of Mot. to Dismiss 15–17 (Dkt. No. 101).) Moreover, Plaintiff stated in his Complaint that his doctor's note was "identical" to those submitted by other officers, despite the fact that the majority of his Doctor's note is biographical information, and the remainder is specific treatment information, neither of which could have or would have been "identical" for any other officer. (*See* Fourth AC ¶ 35.)

As the Court remarked in its Opinion, Plaintiff failed to grapple with the specific points Defendants made, issuing only a naked, generalized response that he was, contrary to Defendants' assertion, "similarly situated" to these officers. (Pl.'s Mem. of Law in Opp. of Mot. to Dismiss § 7 (Dkt. No. 102).)[5] This does not actually address the substance of Defendants' arguments, thereby conceding it. *See DMAC LLC v. City of Peekskill*, No. 09-CV-5093, 2012 WL 4459290, at *2 (S.D.N.Y. Sept. 26, 2012) (holding that "[b]ecause [the nonmovant] ignores [the movants'] detailed, specific argument on the issue, it effectively concedes [it]").

Plaintiff aims to rehash the merits of this argument in his Reply, including citing one out-of-circuit case. (*See* Pl.'s Reply Mem. 8–9.) In the first instance, district courts are "bound by the decisions of the Supreme Court of the United States and those of the Circuit Court of Appeals in their own circuit, but are not bound by those of a federal court of co-ordinate jurisdiction, or even the decisions of a federal Circuit Court

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[5] Moreover, as Defendants point out, Plaintiff's concession in his Complaint that he has submitted "many doctor's notes" from "the same doctor" further undermines an inference of discrimination, meaning that even if arguendo the Court improperly misread Plaintiff's failure to specifically combat Defendants' arguments, this is not a "material mistake that changed the outcome of the [C]ourt's judgment." *Samuels v. United States*, No. 12-CV-7362, 2017 WL 6624849, at *1 (S.D.N.Y. Oct. 11, 2017) (alteration in original) (quoting *Matura*, 189 F.R.D. at 89).

of Appeals in another circuit." *Cont'l Sec. Co. v. Interborough Rapid Transit Co.*, 165 F. 945, 959–60 (S.D.N.Y. 1908); *see also Langsam v. Vallarta Gardens*, No. 08-CV-2222, 2009 WL 2252612, at *2 (S.D.N.Y. July 28, 2009) (noting that the District Court for the Southern District of New York is bound only by "[c]ontrolling decisions," which "include decisions from the United States Court of Appeals for the Second Circuit; they do not include decisions from other circuits or district courts, even courts in the Southern District of New York"). "The Court must therefore adhere to and follow precedent set by the Second Circuit, while jurisprudence from elsewhere—such as the case to which Plaintiff[] direct[s] the Court—may only be considered for its persuasive value when the Second Circuit has not issued such precedent." *Barton v. Ne. Transp., Inc.*, No. 21-CV-326, 2022 WL 203593, at *11 (S.D.N.Y. Jan. 24, 2022). Accordingly, Plaintiff's citation to one out-of-circuit case is unavailing at best.

More importantly, as the Court has already explained, Plaintiff's argument falls short on the merits. Plaintiff's allegations that several white officers have used sick notes without incident and that some unspecified portion thereof have the same doctor does not satisfy the Second Circuit's standard that an inference of discrimination is born of allegations that one is "similarly situation *in all material respects* to the individuals with whom []he seeks to compare [him]self." *Brown v. Daikin Am. Inc.*, 756 F.3d 219, 230 (2d Cir. 2014) (quotation marks omitted) (emphasis added). That Plaintiff offered a name to this group of people—the "Preferred Group"—and referenced that name throughout his FAC does not change that. (*See* Pl.'s Reply Mem. 8–9.)

The Court also agrees with Defendants' interpretation of Plaintiff's Supporting Fact 5 as misinterpreting the Court's 2020 Opinion, which permitted Plaintiff the opportunity to file a Fourth Amended Complaint. (*See* Sep. 2020 Op. & Order ("2020 Op.") 42 (Dkt. No. 79).) But "'[t]he mere filing of an [a]mended [c]omplaint does not entitle [a] [p]laintiff to relitigate his claims absent new factual allegations.'" *Kotler v. Boley*, No. 17-CV-239, 2020 WL 905752, at *3 (S.D.N.Y. Feb. 25, 2020) (quoting *Weslowksi v. Zugibe*, 96 F. Supp. 3d 308, 316 (S.D.N.Y. 2015)), *reconsideration denied*, 2020 WL 8665289 (S.D.N.Y. Nov. 9, 2020). "Because the [Fourth] Amended Complaint . . . is in large part identical to Plaintiff['s] [Third Amended] Complaint, the law of the case doctrine counsels against reconsideration of the Court's . . . dismissal of the [Third Amended] Complaint." *Weslowksi*, 96 F. Supp. 3d at 316; *see also Kotler*, 2020 WL 905752, at *3 (collecting cases applying the law-of-the-case doctrine to dismiss portions of a pro se complaint where the two pleadings at issue were "substantially identical"). Accordingly, that the Court applied the law of the case doctrine to dismiss identical claims is neither an error of law nor fact.

Finally, Plaintiff's argument regarding Support Fact 7 provides no refuge. The Rockland County Police Act was referenced only once in Plaintiff's Fourth Amended Complaint, wherein Plaintiff "allege[d] that in addition to being false, Defendant[s'] alleged violation is time barred per the Rockland County Police Act." (Fourth AC ¶ 48.)[6] This concern, as Defendants note, "is not at issue" in this Action and would have been appropriately raised "in the disciplinary hearing itself, and on the appeal to the Appellate Division." (Defs.' Mem. 13.) This Fact is therefore irrelevant here.

This remains true as Plaintiff rehashes such arguments in his Reply. Plaintiff asserts that "the hearing officer did not factor in that Plaintiff did sign a HIPAA release in his evaluation of the case before rendering a decision." (Pl.'s Reply Mem. 12.) Plaintiff also asserts that Defendants' actions "subverted their own written policy" and constituted a "violation[] of the Ramapo PBA's active labor contract." (*Id.* at 14.) The Court cannot stress enough that Plaintiff did not bring such claims in his Fourth Amended Complaint; these arguments are thus not properly before the

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[6] Additionally, Plaintiff asserts that "the Rockland County Police Act . . . is actual New York State Law." (Pl.'s Mem. 13.) The Court cannot find evidence of New York State law under that title; rather, the law governs only Rockland County, "authoriz[ing] town boards [therein] to hear and determine disciplinary charges against members of the police department in accordance with its own rules and regulations." *City of Schenectady v. New York State Pub. Emp. Rels. Bd.*, 86 N.E.3d 536, 540 n.2 (N.Y. 2017).

Court and the Court will not opine on their veracity, save to say they are immaterial to this proceeding.

The remaining arguments in Plaintiff's Reply similarly fail to persuade the Court that it made a mistake of fact or law. First, Plaintiff argues that Defendants apparently concede important points that demonstrate Plaintiff met his burden. Plaintiff begins by asserting that the Defendants made "two key assumptions" that led them to discriminate against Plaintiff, pointing to *Flowers v. Mississippi*, 139 S. Ct. 2228 (2019). (*See* Pl.'s Reply Mem. 3–4.)[7] In the first instance, *Flowers* concerns a *Batson* violation, which speaks to the striking of jurors on the sole basis of race in violation of a criminal defendant's Fourteenth Amendment rights. *See generally* 139 S. Ct. 2228. *Flowers* is wholly irrelevant to this case.

Nonetheless, to the extent the Court views Plaintiff's citation to *Flowers* as simply a rhetorical device by which to rehash his arguments concerning Defendants' actions (in the form of two "assumptions"), Plaintiff's arguments regarding Defendants' supposed concessions are erroneous. Plaintiff avers that Defendants "concede[] . . . that Plaintiff satisfied all [of] the legal elements of a [p]rima facie case of discrimination under Title VII." (Pl.'s Mem. 7.) This is false. Defendants simply agreed with the Court that the only event that qualifies as an adverse event, meaning the only

[7] When citing to Plaintiff's Reply, the Court refers to the ECF-stamped page numbers at the top right-hand corner of each page.

event that could *give rise* to a Title VII claim, is Plaintiff's firing; this is simply not the same as stating that Plaintiff met his burden in establishing a prima facie claim for discrimination. Defendants say as much two paragraphs after the language Plaintiff cited: "Because the Fourth Amended Complaint did not allege Plaintiff was 'similarly situated in all material respects' to any other officers, *the Court properly found that Plaintiff failed to state a discrimination claim regarding his termination*." (Def.'s Mem. 8.) Accordingly, it is inaccurate to say that Defendants conceded this point.

Lastly, Plaintiff makes yet another new argument in his Reply based on the continuing violation doctrine; it is both misguided and unavailing. At the outset, "'[a]rguments made for the first time in a reply brief need not be considered by a court,' of course." *Kowalski v. YellowPages.com, LLC*, No. 10-CV-7318, 2012 WL 1097350, at *10 (S.D.N.Y. Mar. 31, 2012) (quoting *Playboy Enters., Inc. v. Dumas*, 960 F. Supp. 710, 720 n.7 (S.D.N.Y. 1997)). Nevertheless, even if the Court were to consider it, Plaintiff would still fall short.

The Court's previous discounting of intermittent, non-continuous events speaks to whether events that occurred years ago—i.e., events for which the statute of limitations has run—can nonetheless give rise to a discrimination claim. *See Corrado v. N.Y. Unified Ct. Sys.*, 163 F. Supp. 3d 1, 20 (E.D.N.Y. 2016) ("The continuing violation doctrine provides that, 'if a plaintiff has experienced a continuous practice and policy of discrimination, . . . the commencement of the statute of limitations period may be delayed until the last discriminatory act in furtherance of it.'" (alteration in original) (quoting *Washington v. County of Rockland*, 373 F.3d 310, 317 (2d Cir. 2004))), *aff'd* 698 F. App'x 36 (2d Cir. 2017). In other words, the doctrine has no bearing on the connection between the investigation and the firing.

More importantly, though, all participants in this Action have been all fours insofar as Defendants' investigation and firing are related. The question was whether, in addition to Plaintiff's firing, the investigation itself that preceded—and precipitated—Plaintiff's firing was *also* a discrete action that could give rise to an inference of discrimination separate and apart from Plaintiff's firing. The Court held that it did not for the reasons stated, (*see* 2022 Op. 23–25), and the continuing violation doctrine does not change this.

In sum, Plaintiff has not carried the substantial burden of demonstrating that the Court has made a "substantive mistake of law or fact in the final judgment or order." *Leeber Realty*, 2019 WL 498253, at *4 (quotation marks omitted).

b. <u>Rule 60(b)(6)</u>

The Second Circuit long ago recognized that "it is settled that [Rules] 60(b)(1) and 60(b)(6) are not pari passu and are mutually exclusive, and that the latter section cannot be used to break out from the rigid time restriction of the former." *Rinieri v. News Syndicate*

Co., 385 F.2d 818, 822 (2d Cir. 1967). In other words, "any conduct which generally falls under the former cannot stand as a ground for relief under the latter." *United States v. Cirami*, 535 F.2d 736, 740 (2d Cir. 1976). "It is undeniable that [Plaintiff's Motion] is, at bottom, premised on [the Court's purported] mistake." *Stevens v. Miller*, 676 F.3d 62, 68 (2d Cir. 2012). Nonetheless, given Plaintiff's status as a pro se litigant and the Court's concomitant obligation to consider his submissions to raise the strongest possible arguments, *see Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006), the Court evaluates his motion under Rule 60(b)(6).

"Rule 60(b)(6) authorizes a district court to grant relief to a moving party for 'any other reason that justifies relief.' It is a 'grand reservoir of equitable power to do justice in a particular case.' But that reservoir is not bottomless. Recognizing Rule 60(b)(6)'s potentially sweeping reach, courts require the party seeking to avail itself of the Rule to demonstrate that 'extraordinary circumstances' warrant relief." *Stevens*, 676 F.3d at 67 (citation omitted) (quoting *Matarese v. LeFevre*, 801 F.2d 98, 106 (2d Cir. 1986)). Indeed, the Second Circuit has "described Rule 60(b)(6) as a catch-all provision that 'is properly invoked *only* when there are extraordinary circumstances justifying relief [and] when the judgment may work an extreme and undue hardship[.]'" *Metzler Inv. GmbH v. Chipotle Mexican Grill, Inc.*, 970 F.3d 133, 143 (2d Cir. 2020) (emphasis added) (quoting *Nemaizer*, 793 F.2d at 63).

"Given that the 'Rule does not particularize the factors that justify relief,' courts have refrained from applying a rigid test when deciding Rule 60(b)(6) motions." *Stanley v. CUNY, John Jay Coll.*, No. 18-CV-4844, 2020 WL 6823011, at *1 (S.D.N.Y. Nov. 19, 2020) (quoting *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863–64 (1988)); *cf. Mirlis v. Greer*, No. 16-CV-678, 2022 WL 959915, at *3 (D. Conn. Mar. 30, 2022) ("Relief under Rule 60(b)(6) is less well-defined."). Lacking discrete tests, the Court relies on high-water—or low-water—marks to guide its thinking.

For example, a sister court in this district has held that extraordinary circumstances were not found where an incarcerated, legally blind, pro se plaintiff was denied meaningful access to the prison law library and to legal assistance from the facility itself. *See Brown v. Nelson*, No. 05-CV-4498, 2008 WL 4104040, at *3 (S.D.N.Y. Aug. 29, 2008). Another court in this district denied a motion under Rule 60(b)(6), holding that no extraordinary circumstances existed to justify reopening a default judgment when the movant's failure to appear was due to his illness. *See generally New Card, Inc. v. Glenns*, No. 00-CV-4756, 2004 WL 540417 (S.D.N.Y. Mar. 18, 2004), *aff'd*, 137 F. App'x 384 (2d Cir. 2005). In contrast to illness, handicap, or obvious obstructions to pressing his case, "Plaintiff has not shown any 'extraordinary circumstances' entitling him to relief under Rule 60(b)(6)." *Kamdem-Ouaffo v. Balchem Corp.*, No. 17-CV-2810, 2022 WL 1000285, at *3 (S.D.N.Y. Apr. 4, 2022) (citing *Gonzalez v. Crosby*, 545 U.S. 524, 536 (2005)).

III. Conclusion

For the foregoing reasons, Plaintiff's Motion is denied. Because the underlying dismissal is the first adjudication of Plaintiff's claims of a hostile work environment on the merits, the dismissal of hostile work environment claims is without prejudice. Plaintiff is advised that the fifth amended complaint, should Plaintiff file one, will replace, not supplement, all prior complaints. Accordingly, the fifth amended complaint must contain all of the claims, factual allegations, and exhibits that Plaintiff wishes the Court to consider. Plaintiff is also advised that he may not bring any claims that have already been dismissed with prejudice, including his claims against the Individual Defendants, (2020 Op. 42), all claims against the Ramapo Police Demartment, (*id.*), any claims for punitive damages against the Town of Ramapo or individual Defendants in their official capacities, (*id.*), as well as a discriminatory workplace or retaliation under Title VII and § 1983, (2022 Op. 25–26, 33). Furthermore, if Plaintiff fails to abide by the 30-day deadline, the Action will be dismissed with prejudice.

The Clerk of Court is respectfully directed to terminate the pending Motions, (Dkt. Nos. 110–112), and mail a copy of this Opinion & Order to Plaintiff.

SO ORDERED.

DATED: June 7, 2022
White Plains, New York

/s/ Kenneth M. Karas
KENNETH M. KARAS
United States District Judge