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| Santiago v City of New York |
| 2023 NY Slip Op 30109(U) |
| January 12, 2023 |
| Supreme Court, New York County |
| Docket Number: Index No. 159551/2021 |
| Judge: Judy H. Kim |
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JUDY H. KIM PART 05RCP

Justice

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CHRISTOPHER SANTIAGO, URENA UBALDO, RAHSAAN WILLIAMS, DAVID GONZALEZ, CHRISTOPHER KINLOCH, EBONY COTTMAN, KAREN SEGUR, STANLEY SAINT PHARD, ALBERTO GONZALEZ, ERIKA BRADBY, DIANE PRADE, ANGELA DICHIRO, ARMAND PRETLOW, JOSEPH VANTERPOOL, ROBERTO FERNANDEZ, VERONICA HOWELL, LISA SIMMONS, JASMINE JONAS, RUTHSANA LEE, JOEL CORREA, CARLOS DIAZ, ELLIOTT PAGAN, LUIS PAGAN, SARITA CHAPPLE, KENNETH MCFARLANE, KEISHA PEREZ, REGINA WILLIAMS, VICTOR GASKIN, LORENZO PHILLIPS, NIEVES MERCADO, ARIEL MARTINEZ, CHERRELLE DAVIS, BRYANT AHYOUNG, NICOLE JARVIS, NATALIE KWAYKE, ASHLEY MERRERO, MADEL CASTILLO, LATANYA WORLEY, TERRY GREEN, JAMES THOMAS, GREGORY JOHNSON, DEENA BRONSON, ANGELA WARD-CUNNINGHAM, TAYLOR ROGERS, SHAQUELLA ASHBY, MARVENA HEWITT, CHRISTINA WHITIKER, YOLANDA BRYANT, ANTONIO RIVERA, MICHAEL NELSON, MAKEISHA WEEKS, LONISE SMALLS-DAVIS, MAKEDA BRANNON, MARCHELLE FRANKLIN, ALTHEA KNIGHT, CARLTON WALCOTT, QUINN SMITH, WILLIAM PHILLIPS, JEAN SOUFRANTE, DAVID GASKIN, T. RAY JOHNSON, CHARLES WILLIAMS, ALBERTO PORRIAS, KHAMWATIE BUDHAI, EFRAIN PUENTE, MARC TATE, JESSICA SIMMONS, SABREEN TAYLOR, OFC. MONK, COURTNEY JOSEPH, JENNIFER PRICE, TARA BALLARD, CRAIG HOUSTON, OFFICER PORTER, BRITNIE BRUNO, EUGENE LEWIS, JENNIFER MCCABE, OFFICER MOON, MAGGIE TORRES, OFFICER GUZMAN, GARY WILLIAMS, LEO PREVILLION, JULIO SURIEL, DILBAG SINGH, MARCUS R. ISAAC, DAVID MEDINA, DEIGHTON GRAY, LEONDRA ROSE, JEFFERSON MILLER, TRACY TOMARS, LUIS A. NIEVES, KEVIN HOLDER, BERESFORD HARRISON, HECTOR NAZARIO, LIZETTE MALDONADO, TAMISHA SUTTON, ADRIAN MILLS, CAMILLE STEPHENSON, ELJEN GREEN, GREGORY HILL, ALEXIS GONZALEZ, CHRISTIAN COSSETTE, LOIS KONG, LEE MITCHELL, ROSETTA WASHINGTON, LAVERQUISTA STEELE, DAVID JIMENEZ, JOHN CRUZ, C. D'AUGUSTINE MAR, EMILE HENRY, JEAN NELSON, NICOLE JOHNSON, SIERRA CUNNINGHAM, TONIA A. JOHNSON, RETISHA MYATT, NATHANIEL LEE, ANTOINETTE EDWARDS, LAKINA WALLACE, ANDRE BROWN, ERIC SAVAGE, PAUL SAVAGE, PAUL S. DAVIS, REGINALD FORDE, SHENIQUA BURTON, KATTIA HYMAN, DALE MOORE,

INDEX NO. 159551/2021
MOTION DATE 08/01/2022
MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

SAUDE HARRIS, HARCOURT V. BULLARD, GRANKS MARLON, LYDIA CUMBERBATCH, GEORGE R. SANTIAGO, RAHMAN TELFEIR, LATISHA BOONE, WILLIAM NAVARRO, TYNESHA GRAY, KAMARI LIVINGSTON, KIMBERLI DAVIS, TAYANNA GRANT, SELVIN STULTZ, SHAQUANA THOMAS, EDWARD KELLY, TRACY MADKINS, EVELYN IRBY, CHRIS ALLEN, JOSSETTA MORGAN, DARRELL RAMOS, JEAN GERMAINE, KOBIE MCCOY, WILLIAM R. WILLIAMS

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY COUNCIL, VINCENT SCHIRALDI, MARIO JULIEN, COREY JOHNSON, I DANEK MILLER, HELEN ROSENTHAL, ERIC DINOWITZ, FRANCISCO MOYA, ADRIENNE E. ADAMS, ERIC A. ULRICH, FARAH N. LOUIS, COMMITTEE ON CIVIL SERVICE AND LABOR, MATHIEU EUGENE, BILL PERKINS, DANIEL DROMM, BRAD LANDER, INEZ BARRON, COMMITTEE ON CIVIL AND HUMAN RIGHTS, DARMA V. DIAZ, BEN KALLOS, JAMES F. GENNARO, LAURIE A. CUMBO, COMMITTEE ON WOMEN AND GENDER EQUITY,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 50, 70, 71, 72, 73, 74

were read on this motion for INJUNCTION/RESTRAINING ORDER.

On October 20, 2021, plaintiffs—former and current employees of the New York City Department of Correction (“DOC”)—commenced this action against the City of New York (the “City”), the New York City Council, and various New York City Council members, asserting claims for, inter alia, discrimination, hostile work environment, and retaliation in violation of New York City Human Rights Law and New York State Human Rights Law, as well as violations of Equal Protection under the New York State Constitution. Plaintiffs allege that defendants perpetuated widespread racial, gender and disability-based discrimination within the DOC by: (i) failing to protect female DOC employees from pervasive sexual abuse by male inmates; (ii)

fabricating claims of misconduct as a pretext for terminating DOC staff in lieu of instituting mass layoffs; (iii) creating a hostile work environment to encourage voluntary resignations; and (iv) denying DOC employees reasonable accommodations despite adequate showings of disabilities (NYSCEF Doc. No. 1 [Complaint]).

Plaintiffs subsequently filed a “First Amended Complaint” without leave of the Court, after their time to do so as of right had expired (See NYSCEF Doc. No. 7). This First Amended Complaint was deemed a nullity by the Court (Hon. Adam Silvera) (NYSCEF Doc. No. 82 [July 27, 2022 Decision and Order at p. 3]).

On July 11, 2022, plaintiffs moved, by order to show cause, for an order: (1) extending their time to serve the summons and complaint on Vincent Schiraldi, Mario Julien, Adrenne Adams, Eric Dinowitz, Francisco Moya, and James F. Gennaro (the “Individual Defendants”); (2) granting plaintiffs leave to amend the complaint to add additional plaintiffs—i.e., Nadja Green, Jane Walrond, Melissa Morris, Diane Brown, David Moscoso, Evelyn Onofre-Sanchez, Verna Liburd, Mariely Vidal, Denise Contreas, Brandon Lockamy, Christopher West, Anjuili Osborne, Taasha Lundy, Richard Hill, Shaun Dixon, Hilario Hernandez, Chameka Mitchell, and Willy Espanol—and add certain members of the New York City Council—i.e., Sarena Townsend, Nantasha Williams, Gale Brewer, Rita Joseph, Kristin Richardson Jospeh, Shekar Krishnan, Shahana Hanif, Sandy Nurse, Crystal Hudson, and Tiffany Caban—as defendants; (3) consolidating four actions pending in the Supreme Court of New York, New York County—i.e., Maldonado v City of New York, Index No. 161205/2021, Bryant v City of New York, Index No. 161047/2021 (which action was dismissed on December 7, 2022), Green v City of New York,

Index No. 153915/2022, and Williams v City of New York, Index No. 154563/2022—with the instant action; and (4) permitting plaintiffs to move for “Class relief” and affirming the proposed Notice of Pendency of Sexual Abuse Class Action filed on July 11, 2022.

Plaintiffs also seek injunctive relief: (1) directing defendants to, within forty-five days, submit proposed plans to address the alleged pervasive sexual abuse by male inmates; (2) directing defendants to, within forty-five days, submit proposed plans to allow plaintiffs at risk of termination (or who were already terminated in an OATH proceeding) to transfer to a “comparable municipal agency” within forty-five days; (3) directing DOC to adjudicate all requests for reasonable accommodations from plaintiffs and other DOC employees; and (4) requiring the DOC to designate plaintiff Alexis Gonzalez’s separation from DOC as a resignation rather than termination.

Finally, plaintiffs argue that the Court should direct a “hearing on whether it is appropriate for the City to proceed in motion to dismiss proceedings” [sic] (NYSCEF Doc. No. 45 [Order to Show Cause at p. 4]).

Plaintiffs’ motion is denied in its entirety, for the reasons set forth below.

DISCUSSION

That branch of plaintiffs’ motion seeking an extension of time to serve the Individual Defendants is denied. Plaintiffs have not shown good cause for their failure to serve the Individual Defendants such that an extension is warranted under CPLR §306-b. Instead, they baldly assert that attempts at service were made without providing any details, let alone affidavits of service, as to the nature of these attempts (Khedouri v Equinox, 73 AD3d 532, 532 [1st Dept 2010]; Zegelstein v Faust, 179 AD3d 541, 542 [1st Dept 2020]). To the extent that plaintiffs attribute their inability to effect service to the COVID-19 pandemic—claiming, specifically, that many of the Individual

Defendants' offices remained closed due to COVID-19—"citing the pandemic does not explain the lengthy delay in making the instant application" (Furnished Habitat Management LLC v Scheller, 2022 WL 17733060, at *1 [Sup Ct, NY County 2022]), particularly when this action was commenced nearly a year after the expiration of the tolling period put in place by Executive Order 202.8. The Court further observes that, to the extent the plaintiffs were stymied by office closures, methods of service other than personal service are available under the CPLR. Neither is an extension of time "in the interest of justice" warranted under CPLR §306-b in light of plaintiffs' failure to demonstrate diligence in attempting to effect service, together with their seven-month delay in seeking the instant relief (Id.; see also Holland v Thiam, 201 AD3d 546, 547 [1st Dept 2022], lv to appeal dismissed, 37 NY3d 1228 [2022]).

That branch of plaintiffs' motion seeking to amend the complaint is denied without prejudice. "Leave to amend the pleadings under CPLR §3025(b) should be freely given and denied only if there is prejudice or surprise resulting directly from the delay or if the proposed amendment is palpably improper or insufficient as a matter of law" (McGhee v Odell, 96 AD3d 449, 450 [1st Dept 2012] [internal citations and quotations omitted]). CPLR §3025(b) requires, however, that "[a]ny motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading" (CPLR §3025[b]) and plaintiffs have failed to either submit a proposed supplemental summons or clearly show the changes or additions made between their eighty-three-page complaint and ninety-six-page proposed amended complaint. Given the voluminous complaint and proposed amended complaint, which involve a multitude of parties and allegations, plaintiffs' failure to comply with this requirement of CPLR §3025(b) renders an assessment of the proposed amended complaint—

particularly in comparison with the original complaint—needlessly complicated. As such, the Court declines to grant the proposed amendment at this juncture.

Plaintiffs motion to consolidate Maldonado v City of New York, Index No. 161205/2021, Bryant v City of New York, Index No. 161047/2021, Green v City of New York, Index No. 153915/2022, and Williams v City of New York, Index No. 154563/2022, with this action is denied. While “[c]onsolidation is generally favored in the interest of judicial economy ... where cases present common questions of law and fact, unless the party opposing the motion demonstrates that a consolidation will prejudice a substantial right” (Raboy v McCrory Corp, 210 AD2d 145 [1st Dept 1994] quoting Amtorg Trading Corp v Broadway & 56th St Assoc., 191 AD2d 212, 213 [1st Dept 1993]), plaintiffs have not established that these aforementioned actions share facts and law with the present proceeding or, indeed, made any arguments in connection with this branch of its motion.

That branch of plaintiffs’ motion for class action certification is also denied. CPLR §902 provides that “a class action can only be maintained if the prerequisites promulgated by CPLR §901(a) are met” (Pludeman v N. Leasing Sys., Inc., 74 AD3d 420, 421 [1st Dept 2010]). Plaintiffs bear the burden to establish through the submission of evidence in admissible form: “(1) that the class is so numerous that joinder of all members is impracticable (numerosity); (2) questions of law or fact common to the class predominate over questions of law or fact affecting individual class members (commonality); (3) the claims or defenses of the class representatives are typical of those in the class (typicality); (4) the class representatives will fairly and adequately protect the interests of the class; and (5) a class action represents the superior method of adjudicating the controversy (superiority) ...” (Id. at 421-422). “[C]onclusory assertions are insufficient to satisfy the statutory criteria” (Id.), however, and plaintiffs provide no evidentiary

support of their request for class action certification. Instead, they rely upon the conclusory allegations of their unverified complaint and the affirmation of plaintiffs' counsel, neither of which are sufficient to sustain plaintiffs' burden (See Rallis v City of New York, 3 AD3d 525, 526 [2nd Dept 2006]; Rebibo v Axton Owners, Inc., 2012 NY Slip Op 30109[U], *6-7 [Sup Ct, NY County 2012]). In light of the foregoing, the Court declines to approve plaintiffs' Notice of Pendency of Class Action (See CPLR §904).

Plaintiffs' request for injunctive relief is also denied. "The function of a preliminary injunction is to provide a provisional remedy by maintaining the status quo pending a full hearing on the merits, rather than to determine the ultimate rights of the parties and mandate corrective action" (Jamie B. v Hernandez, 274 AD2d 335, 336 [1st Dept 2000]). Granting the injunctive relief sought here would be tantamount to improperly "declaring defendants to be in violation of statute and regulation on a motion for preliminary injunctive relief, without an evidentiary hearing" (Id.).

Finally, the Court rejects plaintiffs' unusual request to hold a hearing to consider the propriety of the City engaging in motion practice in the ordinary course of litigation.

Accordingly, it is

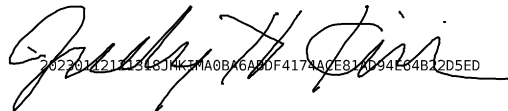
ORDERED that plaintiffs' motion is denied in its entirety; and it is further

ORDERED that within twenty days of the date of this decision and order counsel for the City of New York shall serve a copy of this decision and order, with notice of entry, upon plaintiffs as well as the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk of this Court shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for

Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the Court.



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1/12/2023

DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE