SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 02TR

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NATHAN ESTEP,

Plaintiff,

- v -

DANIEL BRENNER, UNITED NATIONS INTERNATIONAL SCHOOL

Defendant.

INDEX NO. 159639/2022

MOTION DATE 03/17/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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HON. LORI S. SATTLER:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24
were read on this motion to/for DISMISS.

In this action alleging violations of the New York State Human Rights Law ("NYSHRL"), New York City Human Rights Law ("NYCHRL"), and intentional infliction of emotional distress ("IIED"), Defendants Daniel Brenner and the United Nations International School ("UNIS") move to dismiss plaintiff Nathan Estep's Verified Complaint pursuant to CPLR 3211(a)(7). Plaintiff opposes the motion and cross moves to amend his Verified Complaint pursuant to CPLR 3025(b). Defendants oppose the cross motion.

Plaintiff was employed as a teacher by UNIS from September 2021 through June 2022. Brenner is the Executive Director of UNIS. Plaintiff alleges that he was initially hired as a "Permanent Substitute Teacher" and was promoted to "Junior School Homeroom Teacher" in January 2022.

Plaintiff states that he is "an openly homosexual African American male" and that he had never been subject to discipline or complaints by his previous employers, both in the finance industry and in early childhood education. However, he alleges that he was subject to "constant

harassment, discrimination, and disparate treatment" during his employment with Defendants based on his race, gender, and sexual orientation during his time at UNIS (NYSCEF Doc. No. 1, Verified Complaint ¶ 11). The following specific instances of alleged discrimination are set forth in his Verified Complaint:

Two weeks into employment in 2021, Plaintiff claims a "white, heterosexual Third-Grade Homeroom Teacher" yelled "don't touch" at Plaintiff when he tried to redirect a child by tapping the child's hand, despite that teacher's purported habit of routinely touching, hugging, or holding students. Plaintiff further alleges that this same teacher spread rumors about his sexuality, including "an unfounded claim that [he] was involved in an illicit and inappropriate affair with a student" (Verified Complaint ¶ 12).

In January of 2022, Plaintiff alleges that the Junior School Principal and UNIS's Vice Principal instructed him not to email the parents of the students in his class. He maintains that this policy did not apply to any other homeroom teachers, who were "overwhelmingly white, heterosexual, and/or female," at UNIS (Verified Complaint ¶ 13). Later, in early May 2022, Brenner allegedly placed a "white, heterosexual teaching assistant" in Plaintiff's classroom on a permanent basis (Verified Complaint ¶ 14). This placement allegedly ran contrary to Defendants' practices towards other teachers, as no other fourth grade teacher had a co-teacher in their classroom.

Plaintiff alleges that, on or about May 18, 2022, he was informed by the school's Academic Affairs Officer that he was under investigation; Brenner allegedly directed the officer to tell Plaintiff about the investigation. He contends that the Academic Affairs Officer then made a "racially disparaging comment" about him and told him to go home and not return to campus (Verified Complaint ¶ 15). Plaintiff states that he returned to campus the next day after

"not hearing back from" the Junior School Principal and UNIS's Vice Principal (*id.*). A security guard informed him that his employment had been terminated and then escorted him to Brenner's office. Brenner then purportedly said that he had heard that Plaintiff had been at the school "late with a student," which Plaintiff contends was "a false accusation that was based upon [the third grade teacher's] unfounded claim" (*id.*). Plaintiff claims that the falsity of this accusation was confirmed when Brenner had called the student's mother, who informed him that Plaintiff had been tutoring the student.

On or about June 15, 2022, Brenner allegedly brought Plaintiff in to speak with him and told Plaintiff that an email he had sent to the Vice Principal about "the bullying and abuse [Plaintiff] experienced at the hands of Defendants and their staff" had "caused a stir" amongst his coworkers (Verified Complaint ¶ 16). Plaintiff was then allegedly terminated from his employment. He contends that, after his termination, there was only one other Black head teacher still working at UNIS and no other openly homosexual teachers.

Plaintiff initially sued Defendants in the United States District Court, Southern District of New York in July 2022, alleging violations of Title VII, the NYSHRL, and the NYCHRL. He discontinued the federal action after a pre-motion conference.

Plaintiff then commenced this action on November 9, 2022. His Verified Complaint sets forth seven causes of action: harassment and hostile work environment under the NYCHRL; harassment and hostile work environment under the NYSHRL; discrimination based on race, color, gender, and sexual orientation under the NYCHRL; discrimination based on race, color, gender, sexual orientation under the NYSHRL; retaliation under the NYCHRL; retaliation under the NYSHRL; and IIED.

Defendants now move to dismiss the Verified Complaint in its entirety for failure to state a cause of action. They further argue that the claims against Brenner should be dismissed because Plaintiff fails to allege that Brenner aided and abetted any discriminatory conduct. Plaintiff opposes the motion, arguing that he sufficiently alleges facts to support all seven causes of action, and cross-moves to amend the Verified Complaint to add additional details about the alleged discrimination and adverse actions he faced.

In support of their motion, Defendants submit documentary evidence about Plaintiff's employment with UNIS for the 2021-2022 school year. These documents include an affidavit from UNIS's chief financial officer, copies of letters setting forth the terms of Plaintiff's employment, a copy of a performance improvement plan issued to Plaintiff, and copies of emails that Plaintiff sent to the Principal and Vice Principal in April and June 2022. They maintain that these documents demonstrate the term of Plaintiff's employment was slated to end on June 30, 2022 and that Plaintiff was placed on administrative leave on June 15, albeit with full salary and benefits through the end of his term. Defendants argue that Plaintiff was placed on administrative leave because of the content of his emails to school administrators. They characterize the emails as "hateful screeds" rather than legitimate complaints of discriminatory behavior. UNIS's CFO attests that the school's director of human resources is an "African American woman," that the school employs a Director of Diversity Equity and Inclusion, and that the school allows employees to submit anonymous reports of improper conduct through a third-party vendor (NYSCEF Doc. No. 6, Feeney aff ¶ 7). The CFO maintains that Plaintiff did not avail himself of any of these resources to report alleged discrimination or harassment (*id.*).

When considering a motion to dismiss for failure to state a cause of action under CPLR 3211(a)(7), "the allegations in the complaint are to be afforded liberal construction, and the facts

alleged therein are to be accepted as true, according a plaintiff the benefit of every possible favorable inference and determining only whether the facts alleged fit within any cognizable legal theory" (*M&E 73-75 LLC v 57 Fusion LLC*, 189 AD3d 1, 5 [1st Dept 2020]). "A motion to dismiss under CPLR 3211(a)(7) for failure to state a cause of action must be denied if the factual allegations contained within the four corners of the pleading manifest any cause of action cognizable at law" (*id.*). However, "factual allegations which fail to state a viable cause of action" or "that consist of bare legal conclusions . . . are not entitled to such consideration" (*Leder v Spiegel*, 31 AD3d 266, 267 [1st Dept 2006]).

A defendant may also "submit evidence in support of the motion attacking a well-pleaded cognizable claim" (*Basis Yield Alpha Fund (Master) v Goldman Sachs Group, Inc.*, 115 AD3d 128, 134 [1st Dept 2014]). "When documentary evidence is submitted by a defendant the standard morphs from whether the plaintiff has stated a cause of action to whether it has one" (*id.* at 135 [internal citation and quotation marks omitted]). Dismissal is warranted "if the defendant's evidence establishes that the plaintiff has no cause of action" (*id.*).

Defendants argue that the harassment and hostile work environment claims under the NYCHRL and NYSHRL should be dismissed as the Verified Complaint only alleges isolated derogatory comments directed towards Plaintiff that do not rise to the level of pervasive conduct proscribed by the NYCHRL or NYSHRL. To state a cause of action for hostile work environment under the NYCHRL, a plaintiff must allege that they were "treated less well than similarly situated persons who were not members" of the plaintiff's protected class (*Russell*, 204 AD3d at 593; *see also Thomas v Mintz*, 182 AD3d 490 [1st Dept 2020]). Furthermore, a plaintiff must plead discriminatory animus to state a hostile work environment claim (*see Llanos v City of New York*, 129 AD3d 620 [1st Dept 2015] ["plaintiff's failure to adequately plead discriminatory

animus is fatal to her claim of hostile work environment"]). A plaintiff fails to state a claim for hostile work environment under the NYCHRL when "the conduct complained of consists of nothing more than what a reasonable victim of discrimination would consider 'petty slights and trivial inconveniences'" (*Williams*, 61 AD3d at 80).

Here, the Court finds that Plaintiff states a cause of action for hostile work environment under the NYCHRL. The Verified Complaint alleges that Plaintiff was subject to derogatory remarks directed at his race or sexual orientation on more than one occasion, that a coworker spread unfounded rumors about his sexuality, and that he was subjected to workplace conditions not experienced by his fellow teachers such as not being allowed to email parents of students and having a teaching aide in class. Taken together in context and keeping with the broad remedial purposes of the NYCHRL (*Williams*, 61 AD3d at 76), these allegations amount to more than a "truly insubstantial case" of hostile work environment (*Hernandez v Kaisman*, 103 AD3d 106, 115 [1st Dept 2012]). Plaintiff also sufficiently sets forth that he was subject to disparate treatment from similarly situated employees by alleging that other teachers – the majority of whom were white, heterosexual, and female – did not face the same derogatory treatment or workplace restrictions as him. The branch of the motion seeking dismissal of the first cause of action is therefore denied.

However, the Court finds that Plaintiff fails to state a cause of action for hostile work environment under the NYSHRL. A plaintiff states a claim for hostile work environment under the more stringent NYSHRL "'[w]hen the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment'" (*Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 310-311 [2004], quoting *Harris v Forklift Sys., Inc.*, 510 U.S. 17, 21

[1993]). The alleged conduct must alter "the conditions of the victim's employment by being subjectively perceived as abusive by the plaintiff" such that a reasonable person would find that the work environment was "objectively hostile or abusive" (*id.* at 311; *see also Thomas*, 182 AD3d at 491). Although Plaintiff alleges two derogatory remarks directed towards his protected characteristics, in conjunction with a pattern of treatment by Defendants that subjected him to treatment that was purportedly different than that experienced by his fellow teachers, these cannot be said to have been so severe or pervasive as to have altered the conditions of Plaintiff's employment or create an objectively abusive environment (*see, e.g., Chin v New York City Hous. Auth.*, 106 AD3d 442, 444-445 [1st Dept 2013]). The second cause of action is accordingly dismissed.

Defendants next argue that Plaintiff fails to state a cause of action for discrimination under the NYCHRL and NYSHRL because he did not suffer an adverse employment action and does not plead any facts supporting an inference of discrimination. To state a claim for discrimination under the NYSHRL and NYCHRL, a plaintiff must plead sufficient facts to support a prima facie case of discrimination by alleging that the plaintiff (1) is a member of a protected class, (2) was qualified to hold the position, (3) suffered an adverse employment action (NYSHRL) or was treated differently than other employees (NYCHRL), and (4) the employer's adverse action or differential treatment occurred in circumstances giving rise to an inference of discrimination (*Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 305 [2004]; *Harrington v City of New York*, 157 AD3d 582, 584 [1st Dept 2018]). A plaintiff can plead circumstances that give rise to an inference of discrimination where they allege that they were treated less favorably than other similarly situated employees who did not share their protected characteristics (*see, e.g., Sogg v American Airlines*, 193 AD2d 153, 156 [1st Dept 1993] [finding prima facie case of

discrimination where plaintiff alleged she was not promoted to position that was filled by person not in her protected class]).

Here, Plaintiff meets his burden of pleading a prima facie case of discrimination under the NYCHRL. It is undisputed that he is a member of multiple protected classes; he also adequately alleges that he was qualified to hold his position. The Verified Complaint also sufficiently pleads that Plaintiff was treated differently than similarly situated employees in circumstances that give rise to an inference of discrimination by alleging that he was subjected to workplace restrictions not placed on colleagues who did not share his protected characteristics. The branch of the motion seeking to dismiss the third cause of action is therefore denied.

As to Plaintiff's NYSHRL discrimination claim, the Court finds that Plaintiff fails to state a cause of action. While the Verified Complaint does allege that Plaintiff suffered an adverse employment action when he was terminated on June 15, 2022, it does not plead any facts that indicate that this occurred in circumstances that could give rise to an inference of discrimination. Plaintiff maintains that he was terminated after meeting with Brenner; however, the only factual allegations about what Brenner said at this meeting is that an email Plaintiff sent to the Vice Principal had "caused a stir" amongst the staff (Verified Complaint 16). Defendants also present documentary evidence showing that Plaintiff was only placed on administrative leave on June 15, 2022, and that his employment with UNIS was set to end on June 30 in any event.

Although the alleged disparaging comments made to Plaintiff could give rise to an inference of discrimination in other circumstances, no fair reading of the Verified Complaint could establish a nexus between these comments and Plaintiff's termination. He does not allege that the individuals who made these statements months before his firing had any influence over

Defendants' decision to terminate him or that Brenner expressed any similar animus towards him at any time. Accordingly, the fourth cause of action is dismissed.

Next, Defendants move to dismiss Plaintiff's retaliation causes of action under the NYCHRL and NYSHRL. A plaintiff pleads a prima facie case for retaliation by setting forth sufficient facts alleging that (1) the plaintiff engaged in a protected activity, (2) the employer was aware of the protected activity, (3) the plaintiff suffered an adverse employment action (NYSHRL) or the employer took an action that disadvantaged the plaintiff (NYCHRL), and (4) there was a causal connection between the protected activity and the adverse or disadvantageous action (*Harrington*, 157 AD3d at 585; *Forrest*, 3 NY3d at 312-313). Complaints to an employer about disparate treatment based on a protected characteristic is protected activity (*Forrest*, 308 AD2d at 558). A causal connection between a plaintiff's protected activity and an employer's adverse or disadvantageous action can by shown by the temporal proximity between these actions (*Harrington*, 157 AD3d at 586; *see also Noho Star Inc. v New York State Div. of Human Rights*, 72 AD3d 448, 449 [1st Dept 2010]).

Here, the Court finds that Plaintiff has failed to state causes of action for retaliation under the NYCHRL and NYSHRL as the documentary evidence submitted by Defendants demonstrates that Plaintiff did not engage in any protected activity. Although Plaintiff contends that he was fired in retaliation for an email he sent the Vice Principal that "recanted [sic] and detailed the bullying and abuse he experienced" at the hands of Defendants and their employees, his Verified Complaint does not allege any further details about this email. Defendants submit copies of an email sent by Plaintiff to the Principal on April 15, 2022 and two emails sent to the Vice Principal on June 14, 2022 that contain numerous complaints about and vitriolic personal attacks against his former coworkers (NYSCEF Doc. Nos. 5, 21). However, the Court cannot

discern any language in these emails that can be construed as a complaint about discrimination. For instance, Plaintiff's June 14 email to the Vice Principal listing coworkers as "Perpetrators/Conspirators" and stating "[t]hese are the people you need to round up. They've behaved in unnatural ways" does not constitute a protected activity (NYSCEF Doc. No. 5). Plaintiff fails to offer any evidence to contradict Defendants' documentary evidence, furnish other documents that do indicate that he engaged in protected activity, or allege any other facts about his emails such that a complaint about disparate treatment could be inferred. He does not allege any other instances in which he purportedly complained about mistreatment based on his protected characteristics. Therefore, the fifth and sixth causes of action are dismissed.

Lastly, Defendants move to dismiss Plaintiff's seventh cause of action alleging IIED. A plaintiff must allege four elements to state a cause of action for IIED: "(i) extreme and outrageous conduct; (ii) intent to cause, or disregard of a substantial probability of causing, severe emotional distress; (iii) a causal connection between the conduct and injury; and (iv) severe emotional distress" (*Chanko v American Broadcasting Cos. Inc.*, 27 NY3d 46, 56 [2016], quoting *Howell v New York Post Co.*, 81 NY2d 115, 121 [1993]). A plaintiff may recover for IIED "only where severe mental pain or anguish is inflicted through a deliberate and malicious campaign of harassment or intimidation" (*Owen v Leventritt*, 172 AD2d 471 [1st Dept 1991] [internal citations and quotation marks omitted]). "Mere threats, annoyance or other petty oppressions, no matter how upsetting, are insufficient" to state a cause of action for IIED (*id.*).

Here, Plaintiff fails to allege that Defendants engaged in any conduct that could reasonably be construed as "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency" (*Chanko*, 27 NY3d at 56 [internal citations and quotation marks omitted]). Although he alleges that he was subjected to some derogatory

comments from coworkers and that at least one coworker spread a false rumor about him, these allegations of a few instances of offensive interactions cannot be said to have constituted a "deliberate and malicious campaign of harassment or intimidation" against Plaintiff (*Owen*, 172 AD2d 471). Accordingly, the seventh cause of action is dismissed.

Defendants further argue that the entire Verified Complaint should be dismissed as against Brenner because Plaintiff fails to allege that he aided and abetted any discriminatory conduct. This argument is unavailing with respect to Plaintiff's NYCHRL discrimination cause of action. The Verified Complaint alleges that Brenner directed some of the differential treatment experienced by Plaintiff, such as placing an aide in Plaintiff's classroom and overseeing his termination. However, this branch of the motion is granted with respect to Plaintiff's NYCHRL hostile work environment cause of action, as the Verified Complaint contains no allegations that Brenner directly participated in or otherwise condoned hostile behavior towards Plaintiff. The first cause of action is therefore dismissed as against Brenner only.

Plaintiff cross moves to amend his Verified Complaint pursuant to CPLR 3025(b). His Proposed Amended Verified Complaint includes additional factual allegations about the purported discrimination experienced by Plaintiff during his employment by Defendants. Specifically, the proposed amendments specify the homophobic and racist epithets allegedly directed towards Plaintiff by the third grade teacher and Academic Affairs Officer, respectively; recount another instance, on April 15, 2022, in which a fourth grade homeroom teacher called Plaintiff "an angry black man" in a meeting with other teachers; allege that the Principal and Vice Principal knew about Plaintiff's after-hours tutoring lessons with a student; and allegations that Plaintiff spoke with UNIS's human resources director about the behavior of certain teachers

and that he spoke with the Principal about the third grade teacher's behavior on multiple occasions. Defendants argue that these proposed amendments are without legal or factual merit. Specifically, they contend that the fourth-grade teacher never called Plaintiff an "angry black man," citing Plaintiff's April 15, 2022 email to the Principal stating that "[the teacher] said I'm 'angry'. *I guess she figured I'm an angry black man*" (NSYCEF Doc. No. 21 [emphasis added]).

Discretionary leave to amend pleadings under CPLR 3025(b) should be freely given unless doing so would result in surprise or prejudice to the nonmoving party (*Kocourek v Booz Allen Hamilton Inc.*, 85 AD3d 502, 504 [1st Dept 2011]). Leave to amend a complaint will be denied when the proposed pleading fails to state a cause of action, is palpably insufficient as a matter of law, or is devoid of merit (*Thompson v Cooper*, 24 AD3d 203, 205 [1st Dept 2005]; *Perrotti v Becker, Glynn, Melamed & Muffly LLP*, 82 AD3d 495, 498 [1st Dept 2011], quoting *MBIA Ins. Corp v Greystone & Co., Inc*, 74 AD3d 499, 500 [1st Dept 2010]). The party seeking leave to amend need not establish the merit of proposed allegations (*Perrotti* at 498).

The cross motion is granted to the extent that Plaintiff is granted leave to add factual allegations that amplify his remaining causes of action under the NYCHRL: discrimination against both Defendants and hostile work environment against UNIS only. Adding additional details about the factual basis for these claims would not result in surprise or prejudice to Defendants.

The cross motion is denied to the extent that it seeks to replead the causes of action dismissed herein. The additional facts pled in the Proposed Amended Verified Complaint are insufficient to meet the higher pleading standard to state any cause of action under the NYSHRL. They also fail to support a cause of action for retaliation under the NYCHRL. The amendments

do not indicate whether Plaintiff engaged in a protected activity when he spoke with the human resources director about other teachers' behavior; the nature of the behavior he purportedly discussed with the director is not specified. Furthermore, the allegation that Plaintiff spoke with the principal about the third-grade teacher's behavior does not support his retaliation claim as the timing of this conversation is not specified. The Court is therefore unable to determine whether any of these complaints were temporally proximate to Plaintiff's putative termination (*see Harrington*, 157 AD3d at 586). Finally, none of the facts in the proposed amendments are indicative of the level of outrageous behavior required to state a cause of action for IIED.

Accordingly, it is hereby:

ORDERED that the motion to dismiss is granted in part and the second cause of action for NYSHRL harassment and hostile work environment, fourth cause of action for NYSHRL discrimination, fifth cause of action for NYCHRL retaliation, sixth cause of action for NYSHRL retaliation, and seventh cause of action for intentional infliction of emotional distress action are dismissed as against all defendants; and it is further

ORDERED that the first cause of action for NYCHRL harassment and hostile work environment is dismissed as against defendant Daniel Brenner only; and it is further

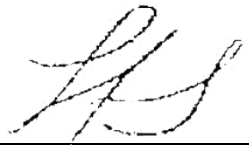
ORDERED that plaintiff's motion for leave to amend the verified complaint is granted, in part, as follows: leave is granted to amend the first cause of action for NYCHRL harassment and hostile work environment as against defendant United Nations International School only and the third cause of action for NYCHRL discrimination as against all defendants and to this extent the proposed amended verified complaint in the form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry; and it is further

ORDERED that leave to amend the verified complaint is denied with respect to the proposed first cause of action as against defendant Daniel Brenner only, and as to the second, fourth, fifth, sixth, and seventh causes of action as against all defendants and these causes of action are stricken; and it is further

ORDERED that the defendants shall answer the amended verified complaint or otherwise respond thereto within 20 days from the date of said service; and it is further

ORDERED that counsel are directed to appear for a preliminary conference in Room 212, 60 Centre Street, on August 1, 2023 at 9:30 a.m. Counsel may submit a proposed preliminary conference order by July 31, 2023 in lieu of an appearance.

This constitutes the Decision and Order of the Court.



6/8/2023
DATE

LORI S. SATTLER, J.S.C.

CHECK ONE:		**CASE DISPOSED**			X	**NON-FINAL DISPOSITION**	
		GRANTED		**DENIED**	X	**GRANTED IN PART**	**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**	**REFERENCE**