Anandaraja v Icahn Sch. of Medicine at Mount Sinai
2023 NY Slip Op 32259(U)
July 5, 2023
Supreme Court, New York County
Docket Number: Index No. 159045/2022
Judge: Dakota D. Ramseur

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAKOTA D. RAMSEUR **PART** 34M

Justice

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DR. NATASHA ANUSHRI ANANDARAJA, DR. HOLLY ATKINSON, MARY CALIENDO, HUMALE KHAN,

Plaintiff,

- v -

ICAHN SCHOOL OF MEDICINE AT MOUNT SINAI, DR. PRABHJOT SINGH, DR. DENNIS S. CHARNEY, BRUNO SILVA, DAVID BERMAN

Defendant.

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INDEX NO. 159045/2022

MOTION DATE 01/12/2023, 01/12/2023

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 33, 34, 35

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 12, 13, 14, 15, 16, 17, 32, 36, 37, 38, 39, 40

were read on this motion to/for DISMISS.

In October 2021, doctors Natasha Anandaraja, Holly Atkinson, Mary Caliendo, and Humale Khan commenced this employment discrimination action against defendants Icahn School of Medicine at Mount Sinai, Prabhjot Singh, Dennis Charney, Bruno Silva (hereinafter, collectively "Mount Sinai Defendants"), and David Berman. Plaintiffs assert causes of action against defendants for sex-, age-, and race-based discrimination, creating a hostile work environment, and retaliation, all in violation of the New York State and New York City Human Rights Law (respectively, "NYSHRL" and "NYSCHRL"). Atkinson also asserts a cause of action solely against Mount Sinai for breach of contract. In motion sequence 001, the Mount Sinai Defendants move to dismiss each cause of action pursuant to CPLR 3211 (a) (1), (a) (5), and (a) (7). Separately, in motion sequence 002, defendant Berman moves to dismiss those causes of action specifically brought against him pursuant to those same sections. Plaintiffs oppose both motions. The two motions are consolidated for resolution herein.

FACTUAL BACKGROUND

Plaintiffs are former employees of Mount Sinai who worked at its Arnhold Institute for Global Health ("AIGH" or "health center"). They allege that Mount Sinai and members of its staff, from 2015 onward, discriminated against them as women over the age of 40, subjected them to a hostile work environment, and retaliated against them for objecting to such a work culture.

In April 2019, they, along with four others, commenced a federal action, asserting causes of action under Title IX of the Education Amendments (20 U.S.C. §§ 1681-1688), Title VII of the Civil Rights Act of 1964 (42 U.S.C. §§2000e—2000e-17), the Age Discrimination in Employment Act ("ADEA") (29 U.S.C. §§621-634), and the NYSHRL and NYCHRL, the same ones asserted herein. Described more extensively *infra*, U.S District Court Judge for the Southern District of New York Vernon Broderick partially granted defendants' motion to dismiss plaintiffs' federal causes of action with prejudice but did not exercise supplemental jurisdiction over any other claims. (NYSCEF doc. no 23 at 1-3, SDNY January 2022 Order.)[1]

Thereafter, plaintiffs commenced the instant action, alleging the State and City law violations along essentially the same facts as pled in the federal action. In their complaint, they allege that after Mount Sinai received a substantial donation in 2013 allowing it to expand its "global health center"—AIGH—and that Mount Sinai's Dean and President of Academic Affairs, Dennis Charney, hired Prabhjot Singh to be the health center's Director in February 2015. (NYSCEF doc. no. 1 at ¶ 4, complaint.) According to plaintiffs, Singh, who himself was only a 32-year-old resident at Mount Sinai at the time of his appointment, immediately began to shift the demographics of AIGH's staff by hiring young men and driving out "legacy staff" who were predominately older females. (*Id*. at ¶¶ 100, 114, 128, 131.) Singh did this, they allege, by demoralizing the legacy staff so thoroughly that they would leave voluntarily or else be set up to fail. (*Id*. at ¶ 6.) Singh allegedly cut Atkinson's pay (*id*. at 148), demoted her, demeaned her abilities and work at AIGH (*id*. at ¶ 170), and ultimately forced her to resign in April 2016 (*id*. at ¶180). Nearly the same is alleged with Anandaraja, the center's Director of Global Health Education. Singh assigned her to work under one of his new male hires who had previously voiced a displeasure at working with older women (*id*. at ¶ 210), on several occasions Singh berated her, he cut program initiatives that she had developed, and eventually forced her to resign in late April or early May 2016.

As the health center's Director, Singh initiated a project he called ATLAS that would direct resources to rural health care workers and help identify at-risk patients in those communities. (*Id*. at ¶ 279). In 2017, Humale Khan joined AIGH to help develop ATLAS. Khan alleges that Singh, in securing funding for the project, made misrepresentations to potential donors (*id*. at ¶¶ 283, 291-293) and that, after securing a grant from USAID, fabricated data on the project's efficacy (*id*. at ¶286-287). Khan reported the misconduct to Mount Sinai and to USAID and was later retaliated against for doing so. (*Id*. at ¶ 305.)

In 2017, Caliendo joined AIGH, working in the President's Office for the Senior Vice President of Cardiology and then as Singh's Executive Assistant. In that position, Caliendo alleges that Singh and Berman, AIGH's Chief of Staff, made various sexually discriminatory and/or hostile remarks against Caliendo, including accusing her of "talking too much" and ordering that she not speak to anyone else while at work. (*Id*. at ¶313, 325.) They terminated her employment in August 2017 (*id*. at ¶¶ 333-334).

[1] Plaintiffs' complaint is 151 pages. As in the federal action, large portions of the 151 pages are not relevant to the alleged discrimination and hostile work environment claims. (*See* NYSCEF doc. no. 1, complaint; NYSCEF doc. no. 23 at 1, SDNY opinion.)

In the federal action, defendants moved to dismiss the twenty-five causes of action that plaintiffs collectively asserted against the same defendants herein. Since the District Court partially granted defendants' motion, and since both the Mount Sinai Defendants and Berman now argue in part that collateral estoppel precludes plaintiffs from bringing their employment discrimination claims in state court, the Court briefly describes the relevant holdings of that opinion.

The District Court dismissed Atkinson and Anandaraja's federal claims under Title IX, Title VII, and the ADEA, finding that these plaintiffs brought their discrimination claims after the three-year limitations period for Title IX and failed to file a complaint with the EEOC within the statutory 300-days limitation period for their Title VII and ADEA claims.[2] (NYSCEF doc. no. 23 at 10.) In so finding, he rejected Atkinson and Anandaraja's argument that the allegations were sufficient to establish a discriminatory policy necessary for the continuing violation doctrine[3] to apply and found that plaintiffs could not point to any non-time-barred discriminatory acts against either Atkinson or Anandaraja. (*Id*. at 10-12, 14-15.) As to plaintiff Khan, the Court dismissed his hostile work environment claim on grounds he had not "pled facts tending to show that Khan was made to suffer 'sufficiently continuous' discriminatory acts or any 'single incident that worked to transform" Khan's workplace in a hostile work environment. (*Id*. at 19-20.) He also dismissed Khan's retaliation claim under Title IX and VII for being insufficiently pled since Khan did not, and could not, plead an adverse employment action. (*Id*. at 21-22.) Lastly, as to Caliendo, the District Court held that she failed to plead a disparate-impact discrimination claim since she did not identify anyone who was similarly situated and treated differently on account of gender and Singh's behavior, though deplorable, did not target Caliendo's gender. (*Id*. at 23-24.) Having dismissed plaintiffs' federal claims, the court declined to exercise supplemental jurisdiction over their related State and City employment-discrimination claims and dismissed them without prejudice.

Plaintiffs thereafter moved pursuant to rule 54 (b) of the Federal Rule of Civil Procedure for entry of a final judgment to allow them to immediately appeal their dismissed claims, which the District Court granted. (NYSCEF doc. no. 24, SDNY Rule 54 (b) Order.) After filing a notice of appeal (NYSCEF doc. no. 26, notice of appeal), the parties stipulated that plaintiff was withdrawing the appeal pursuant to rule 42 of the Federal Rules of Appellate Procedure. (NYSCEF doc. no. 27, stipulation.) Pursuant to CPLR 205 (a)[4], plaintiffs then commenced the instant action asserting the State and City HRL claims within the rule's six-month time requirement.

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[2] The Court recognizes that Judge Broderick's findings under Title VII and the ADEA are immaterial to defendants' collateral estoppel arguments here since neither the NYSHRL nor NYCHRL requires plaintiff to file an administrative complaint before bringing litigation.

[3] The continuing violation doctrine renders claims timely even where certain allegations that contribute to the claim occur outside the statute of limitations period. For the doctrine to save a claim, plaintiff must still allege acts or omissions constituting part of the "continuing violation" that are not time barred.

[4] Discussed further *infra*, CPLR 205 (a) gives a plaintiff the opportunity to commence a state court action within six months of the dismissal of their federal action provided the federal action was timely commenced and not terminated by final judgment on the merits.

DISCUSSION

Atkinson's and Anandaraja's Discrimination and Hostile Work Environment Causes of Action (Causes of Action 1-3)

In *Sanders v Genadier Realty, Inc*., the First Department held that the plaintiff's state-law claims were properly dismissed as barred by the doctrine of collateral estoppel. (102 AD3d 460, 461 [1st Dept 2013].) The court explained that in dismissing plaintiff's federal claims, the District Court addressed issues identical to those raised by plaintiff's state-law claims, this "despite [the court] having declined to exercise jurisdiction over the state claims." (*Id*.) Applying that holding to the District Court's dismissal of Atkinson and Anandaraja's federal claims on statute of limitations grounds, the Mount Sinai Defendants contend that the timeliness issue raised by plaintiffs in the first action is identical to the one now before this Court since Title IX, the NYSHRL, and NYCHRL all have three-year statute of limitations. Accordingly, defendants contend that the District Court's findings collaterally estop these two plaintiffs from litigating State and City law claims. The Court agrees.

Plaintiffs' opposition is based on *Jordan v Bates Adver. Holdings, Inc.* (292 AD2d 205 [1st Dept. 2002].) There, after the federal district court dismissed the plaintiff's federal sex and disability discrimination claims as untimely and her federal age discrimination claim for being insufficiently pled, she commenced an action within CPLR 205 (a)'s six-month period in state Supreme Court asserting the State and City HRL discrimination claims over which the federal court refused to exercise supplemental jurisdiction. (*Id*. at 206.) The state court then granted the defendant's motion to dismiss each of her claims. As to plaintiffs' sex and disability claims, the First Department held that to be in error. (*Id*.) In the court's view, CPLR 205 (a) was properly invoked as her state-law claims were clearly timely brought in the federal action (even though the federal claims were not) and collateral estoppel did not apply because the federal court "made no analysis of the evidence of sex and disability discrimination" and did not decide her claims on the merits. (*Id*. at 206-207.)

In so holding, the First Department resolved what should happen to a plaintiff's timely state-law claims when the federal court previously determined that the federal claims to which they are attached, and which are governed under a different, shorter statute of limitations, are not timely. In those instances, CPLR 205 (a) may be invoked and collateral estoppel does not bar the court from hearing their merits. In contrast, here, Atkinson and Anandaraja's race-, sex-, and age-based discrimination claims under Title IX have the same three-year statute of limitations that the NYSHRL and NYCHRL have. Accordingly, Atkinson and Anandaraja's claims under State and City law raise the same issue that the District Court's already determined when considering their Title IX claims. Since there is no suggestion that Atkinson and Anandaraja did not receive a full and fair opportunity to contest the issue in the previous action, collateral estoppel precludes Atkinson and Anandaraja from bringing these claims. (*See Parker v Blauvelt Volunteer Fire Co.*, 93 NY2d 343, 349 [1999] [Collateral estoppel applies only if "the issue in the second action is identical to an issue which was raised, necessarily decided, and material in the first action" and "if the plaintiff had a full and fair opportunity to litigate the issue in the earlier action"].)

Even were the Court to conduct its own assessment of the timeliness of these claims, as plaintiffs' urge, it would find that plaintiffs' claims are time-barred. To be within the statute of limitations, plaintiffs concede that they must cite to acts defendants committed after April 26, 2016. In their opposition papers, Atkinson and Anandaraja cite to a litany of acts upon which their claims are allegedly based. (NYSCEF doc. no. 36 at 8-11, plaintiffs' opp. memo of law.) The Court describes these acts below and includes the date of when they occurred:

(1) Singh's denigration of the Advisory Board that had shown some skepticism of his hiring, describing those who compose it as "ladies who lunch," "old and outdated," and "out-of-touch"—spring, 2015 (NYSCEF doc. no. 1 at ¶ 110);
(2) Singh's hiring of predominantly early-30s men to senior positions, including Abdulrahman El-Sayed, Sandeep Kishore, Bruno Silva, and James Faghmous—spring and summer, 2015 (*id* at ¶ 114-124);
(3) Presentation in which Singh described the need to manage "legacy staff"—June, 2015 ¶ 130-131);
(4) Singh and/or El-Sayed denigrate Anandaraja's age, race, and abilities—July, 2015 (¶ 210-214);
(5) Singh describing to Amanda Misiti that he was going to "get rid of these women"—sometime 2015 (¶ 135);
(6) Singh cut Atkinson's salary and demoted her—June, 2015 (¶¶ 161-163, 172);
(7) Singh threatens to terminate Anandaraja's field projects—August, 2015;
(8) Singh stated "who did she [Atkinson] think she was, doing sex exams?"—early April, 2016 (¶ 177);
(9) Singh's denigration of Atkinson's work and her subsequent resignation—April 18, 2016 (¶ 180).

According to their opposition, the only acts which occurred after April 26, 2016 were when: (1) Singh "gave [Atkinson] the silent treatment" after resigning on April 18, 2016 through her last day on April 28, 2016 (¶ 183), (2) non-party Dr. Stella Safo refused to work with Atkinson to transition a project (¶ 186), (3) Singh continued to spread lies about "sex exams" through May 2016 (though this was after Atkinson's employment had ended) (¶ 178), and (4) Singh excluded Anandaraja from meetings in May and June of 2016, then told other workers that her resignation was a "necessary step" for AIGH's future success. (¶¶ 261-265). It is readily apparent, then, that the significant acts of alleged discrimination all occurred prior to the limitation period. And even under the more permissive NYCHRL, the acts which did occur after April 26, 2016, do not demonstrate that Atkinson and Anandaraja were treated "less well" specifically because of their gender or age. (*See Williams v New York City Housing Authority*, 61 AD3d 62, 62 [1st Dept 2009] [Recognizing that the NYCHRL surpasses the protections provided to employees by Federal and State employment discrimination laws such that the test for employment discrimination under the NYCHRL is not whether it is "severe and persuasive" but whether the plaintiff is treated "less well"]; *Chaplin v Permission Data, LLC*, 2022 NY Slip Op 32475 [U] at *12 [Sup. Ct. NY County 2022] [Edmead, J.]) Accordingly, the Court grants defendants' motion to dismiss these claims.

Atkinson's Breach of Contract Cause of Action (Count 8)

The Mount Sinai Defendants' motion to dismiss this cause of action is pursuant to CPLR 3211 (a) (1). They argue that Atkinson's employment contract—the documentary evidence upon which the motion is based—definitively disposes of her claim for a breach since: (1) the agreement sets a base salary for her Associate Professor position at $150,000 for the first year only (from April 2013 to April 2014), (2) thereafter, "[Atkinsons's] compensation [would] be determined in accordance with the Faculty Compensation Policy in effect from time to time" (NYSCEF doc. no. 19, Atkinson Employment contract); (3) "nothing in the employment agreement limited [defendants] right to change her compensation in 2015" (NYSCEF doc. no 19 at 29); and (4) Singh threatened to reduce Atkinson's compensation from $150,000 per year full time to $90,000 per year after being named director of AIGH in 2015. These arguments are unpersuasive.

To grant relief under CPLR 3211 (a) (1), the documentary evidence must be of such nature and quality—"unambiguous, authentic, and undeniable"—that it utterly refutes plaintiff's factual allegations, thereby establishing a defense as a matter of law. (*See Phillips v Taco Bell Corp.*, 152 Ad3d 806, 806-807 [2d Dept 2017].) The evidence put forth on this motion has not met this standard because the referenced Faculty Compensation Policy does not allow Mount Sinai to reduce its employees' compensation to whatever degree it likes and at its sole discretion, as it claims. Instead, the compensation policy requires that "total compensation must be fair market value for the services rendered and must be commercially reasonable" (*see* NYSCEF doc. no. 38 at ¶ 2, Faculty Compensation Policy) and Atkinson alleged that reducing her salary to $90,000 per year full time was not market value for her service. (NYSCEF doc. no. 1 at 144.) Further, the compensation policy limits who can authorize changes to faculty members' compensation: "Department chairs, Institute Directors [including Singh], and other individuals in leadership are not authorized to adjust the compensation of current faculty members without the prior approval of the Dean's Office." (NYSCEF doc. no. 38 at ¶ 5.) The employment contract that Mount Sinai Defendants submit in support of their motion neither demonstrates that Atkinson's new salary was market value nor that Charney, as Dean, approved the change.

Lastly, in their reply papers, defendants appear to argue (1) the employment agreement "was no longer in effect", and (2) that Atkinson cannot incorporate by reference the Faculty Compensation Policy because she did not rely upon it. (NYSCEF doc. no. 40 at 17.) Both arguments, however, are misplaced. As to (1), defendants specifically base their motion on the terms of the agreement as if it were in effect when Singh reduced her salary. As to (2), CPLR 3211 (a) (1) requires the documentary evidence on its face to be unambiguous and undeniable, neither of which describe the employment contract precisely because it incorporates rules from another document.

Anandaraja's Retaliation Cause of Action under NYSHRL and NYCHRL (Cause of Action 9)

To plead a cause of action for retaliation under the NYSHRL, a plaintiff must allege that (1) they engaged in a protected activity by opposing prohibited conduct; (2) the defendant was aware of plaintiff's protected activity; (3) plaintiff was subject to an adverse employment action; and (4) there was a causal connection between the protected activity and the adverse action. (*See Fletcher v Dakota, Inc.*, 99 AD3d 43, 51 [1st Dept 2012]; Executive Law § 296 [7].) Here, Anandaraja has not pled an adverse action that defendants took against her. After she brought the

federal claims in April 2019, Anandaraja asserts that Mount Sinai and Singh retaliated by failing to invite her to numerous meetings regarding gender data from a faculty survey and the inaugural Lactation Room Taskforce meeting (a project in which she was instrumental in starting). (NYSCEF doc. no. 1 at ¶ 447.) They also changed the office seating arrangement.[5] (*Id.*) She then alleges that she resigned when it became clear her career could not advance at Mount Sinai due to the alleged retaliation and discrimination. (*Id.*) As to not being invited to meetings and shifting office seating arrangements, neither are adverse employment actions and Anandaraja does not suggest that they are. (*See* NYSCEF doc. no. 36 at 16 [Plaintiff's opposition based on the timing of defendants acts and whether they support an "inference of causation"].) And her assertion that she left because of the "retaliatory reaction to the SDNY complaint, her experience at AIGH, and the fact that her career could not advance" is (1) entirely conclusory and not based on specific facts, and (2) indicates that defendants did not take an adverse employment action since she choose to resign and at no point suggests that she was constructively discharged.

For the NYCHRL retaliation claim, NYC Administrative Code § 8-107 [7] provides, "retaliation or discrimination under this subdivision need not result in an ultimate action…or materially adverse change in the terms and conditions of employment…provided the retaliatory…acts complained of must be reasonably likely to deter a person from engaging in protected activity" (*See also Williams*, 61 AD3d at 70.) Even under NYCHRL's more lenient standard, and considering the full context of defendants' actions, the failure to invite Anandaraja to meetings cannot be read as "reasonably likely" to deter a person from engaging in protect activity. While the Court is cognizant of the "constellation of surrounding circumstances, expectations, and relationships" that affects the social impact of workplace conduct, and that what might appear trivial and nonactionable in one light, may actually be reasonably likely to deter someone from complaining (*see Burlington Northern & Santa Fe Ry. v White*, 548 US 53, 69 [2006]), here, the pleadings do not allow for interpretation of events that is anything more than trivial and nonactionable.

Anandaraja describes a single taskforce meeting in which she was not invited to or included in emails. Yet she acknowledges that her supervisor Dr. Jonathan Ripp allowed her to attend that meeting anyway. (NYSCEF doc. no. 1 at ¶449.) She also describes an emergency meeting concerning gender-related data that took place between Drs. Ripp and Carol Horowitz, but neither are alleged to have participated in any of the discrimination and, in fact, come across throughout the complaint as sympathetic to plaintiff. (*Id.* at ¶¶ 258, 402, 432, 441, 446-449.) There are no allegations that any named defendant interfered with Anandaraja's invitation to this meeting. Further, there are no allegations suggesting that these meeting were of particular significance to her career advancement or how these meeting concerning gender data from faculty surveys impacted her position as the Program Director for the Office of Wellbeing and Resilience. (*See Scott-Robinson v City of New York*, 2016 US Dist. LEXIS 177789 *12-13 [SDNY 2016] [finding that conduct would not be reasonably likely to deter protected activity where plaintiff failed to show how being at an event was connected to their career training or advancement].) Because of this failure to sufficiently plead a retaliation cause of action under either the NYSHRL or the NYCHRL, the Mount Sinai Defendants' motion to dismiss these causes of action is granted.

[5] This was because, as she acknowledges in the complaint, she had previously been seated near Mount Sinai's legal team, even after the SDNY litigation had been filed. (*Id.*)

Caliendo's Discrimination and Hostile Work Environment Claims (Counts 4 and 5)

Caliendo concedes that her NYSHRL claims are barred by collateral estoppel and that she does not have a cause of action against Cherney. Therefore, these claims are dismissed. As to her gender discrimination and hostile work environment causes of action under the NYCHRL, they are also subject to collateral estoppel.

For collateral estoppel to apply, as the Court described *supra*, the issue in the second action must be identical to the one raised in the first. (*Parker*, 93 AD NY2d at 349.) As plaintiffs' note, where federal claims are judged under a different, more demanding standard than NYCHRL claims, the issues presented in the first and second are generally not considered identical and collateral estoppel does not apply. (*See Pustilnik v Battery Park City Auth.*, 71 Misc. 3d 1058, 1069 [Sup. Ct. NY County 2021] [holding that collateral estoppel does not apply because the federal ADEA requires plaintiff's age and/or disability be the but-for cause of plaintiff's termination while the NYCHRL requires only that her age or disability was a motivating factor in the termination decision].) In *Simmons-Grant v Quinn Emanuel Urquhart & Sullivan, LLP* (116 AD3d 134, 140 [1st Dept 2014]), the First Department emphasized that, where estoppel *is* warranted to bar NYCHRL claims, it applies only where the federal court decided strictly factual questions that do not involve the application of law to facts or the expression of an ultimate legal conclusion. According to the court, strictly factual questions do not implicate the several ways in which the City HRL is not identical to federal and state counterparts, whether the differences be found in the elements that make up certain claims, the scope of conduct proscribed, and/or methods and standards of proof. (*Id.*)

In addition to this guidance, the factual pattern in *Simmons-Grant* is instructive. The First Department found that the federal district court made a purely factual determination in finding that plaintiff "had not introduced *any* evidence to contradict [the supervising discovery attorney's statement] (emphasis original)" and therefore plaintiff had not demonstrated that her employer subjected her to an intolerable work environment. (*Id.* at 139.) To the First Department, the district court's fact-finding was (1) based on undisputed evidentiary materials, (2) involved no judicial interpretation, and (3) involved an explicit finding that plaintiff produced no evidence on the relevant specific factual issue.

Caliendo's claims present a similar dynamic: the differences between Title VII and the NYCHRL are not implicated, and the District Court found that Caliendo pled her claim, not only without evidence, but without pleading the factual basis for an essential element of the claim. In the District Court's words, "[p]laintiffs do not plead specific facts demonstrating how anyone similarly situated to Caliendo was treated better or differently on account of gender" (NYSCEF doc. no. 23 at 24) and there were no allegations "that Defendants treated any male employees similarly situated to Caliendo any better than they treated Caliendo." (*Id.*) That the pleadings were deficient in this way, in failing to identify a similarly situated employee with whom to compare defendants' conduct, this would have been deficient regardless of which law the court applied, including the NYCHRL. (*See* NYCHRL § 8-107 [17] [a]; *Shah v Wilco Sys. Inc.*, 27 AD3d 169, 177-178 [1st Dept 2005].) As these findings demonstrate, the District Court's holding neither analyzed an element of a claim unique to Title VII nor applied a standard of proof

applicable only to Title VII. And it did not address the NYCHRL's requirement that a plaintiff merely be treated less well rather than suffer "severe and pervasive" discrimination in federal claims. Put differently, the District Court's findings were based on (1) undisputed evidentiary materials, (2) involved no judicial interpretation, and (3) involved an explicit finding that Caliendo produced no evidence on the relevant factual issue. For these reasons, Caliendo's discrimination and hostile work environment claims are precluded by collateral estoppel.

The Court notes that collateral estoppel precludes Caliendo from bringing her claims against Berman as well. Even if the doctrine did not apply, however, Caliendo's causes of action against him would be subject to dismissal under CPLR 3211 (a) (7). Corporate employees are not subject to individual liability with respect to age or sex discrimination under NYSHRL unless he is shown to have an ownership interest or the power to do more than carry out personnel decisions made by other. (*Patrowich v Chemical Bank*, 63 NY2d 541, 542 [1984]; *Doe v Bloomberg, L.P.*, 178 AD3d 44, n. 3 [1st Dept 2019]) Caliendo does not allege Berman meets either of these two requirements. Under the NYCHRL, individual liability extends to "an employer or an employee or agent thereof" (*see* NYC Admin. Code § 8-107[1] [a]), but only where they act with or on behalf of the employer in hiring, firing, paying, or in administering the terms, conditions or privileges of employment. (*Priore v N.Y. Yankees*, 307 AD2d 67, 74 [1st Dept 2003], *Kwong v City of New York,* 204 AD3d 442, 446 [1st Dept 2022].) Again, there are no allegations that Berman held the authority to act on behalf of Mount Sinai or AIGH in this manner. To the extent Caliendo's complaint alleges an aidor-and-abettor theory of liability against Berman, both HRLs preclude actions where the conduct that the defendant is alleged to have aided and abetted is his own. (*See Hardwick v Auriemma*, 116 AD3d 465, 468 [1st Dept 2014] ["An individual cannot aid or abet his or her own violation of the Human Rights Law"].) Since it is Berman's own actions that give rise to Caliendo's discrimination claim (*see* NYSCEF doc. no. 1 at ¶¶ 320-325), he cannot be held liable for aiding and abetting.

Khan's Hostile Work Environment and Retaliation Causes of Action (Counts 6-7)

Khan concedes his NYSHRL claims are precluded by collateral estoppel and, accordingly, they are dismissed.

Hostile Work Environment

The above-described analysis of Caliendo's City HRL claims—specifically, how collateral estoppel applies—usefully demonstrates why Khan's cause of action for a hostile work environment is *not* precluded. In contrast to the District Court's holding on Caliendo's claims, with Khan, it specifically required Khan to plead facts "showing the workplace is permeated with discriminatory intimidation, ridicule [or insults]"—a standard above the NYCHRL's mixed-motive/ "less-well" standard. Accordingly, Khan's hostile work environment claim is not precluded by collateral estoppel. Further, he properly pleads such a cause of action by alleging the various statements that Silva made towards or about him, i.e. that Khan "was probably interviewing" instead of praying according to his religious beliefs as a Muslim (NYSCEF doc. no. 1 at ¶ 351), that Khan's office smelled "like shit" or "it smells like curry" (*id.*), that the criticism that Khan would not drink alcohol, that Khan is "backwards" and "weird" (in conjunction with the Eid tradition of slaughtering goats) (*id.* at ¶ 352), and how Silva would

allegedly ask AIGH colleagues their opinion on such religious practices. Khan's claims NYCHRL claims are, therefore, properly plead. Defendants' citation to *Thomas v Mintz* (182 AD3d 490) does not affect this outcome since it has been superseded by *Bennet v Health Mgt. Sys. Inc.* (92 AD3d 29 [1st Dept 2011]) and the passage of the City's Restoration Act of 2005. (*See Williams*, 61 AD3d at 67.)

Retaliation

The District Court required Khan to demonstrate that Mount Sinai and Singh took an adverse employment action against him for opposing an unlawful employment practice. (NYSCEF doc. no. 23 at 21). This standard, as discussed in relation to Anandaraja's retaliation claim, is in contrast to the more lenient NYCHRL standard, whereby claims are judged against whether defendant engaged in conduct "reasonably likely" to deter a person from engaging in protect activity. The District Court's holding that Khan did not suffer an adverse action clearly has no collateral estoppel effects. As to defendants CPLR 3211 (a) (7) motion and whether Khan's has stated a claim for retaliation, the claim is based upon "a supervisor [Singh] breaking his promise of confidentiality [and reporting Khan's complaint to Silva]" and "knowingly allowing discriminatory harassment [on Silva's part] to escalate," which allegedly did occur. (NYSCEF doc. no. 36 at 20.) Under these circumstances, Khan has sufficiently plead a retaliation cause of action. A supervisor who informs the subject of a discrimination complaint as to the existence and content of said complaint undoubtedly makes future reporting of discrimination—whether by the employee themselves or other employees—less likely. Accordingly, Khan has sufficiently pled this cause of action.

Accordingly, for the foregoing reasons, it is hereby

ORDERED that the branch of defendants Icahn School of Medicine at Mount Sinai, Prabhjot Singh, Dennis Charney, Bruno Silva (the "Mount Sinai Defendants") motion to dismiss plaintiffs Natasha Anandaraja and Holly Atkinson's discrimination and hostile work environment causes of action is granted and these causes of action (one, two, and three) are dismissed; and it is further

ORDERED that the branch of the Mount Sinai Defendants' motion to dismiss Atkinson's breach of contract cause of action (eight) is denied; and it is further

ORDERED that the branch of Mount Sinai Defendants' motion to dismiss plaintiff Mary Caliendo's retaliation cause of action (nine) is granted and it is dismissed; and it is further

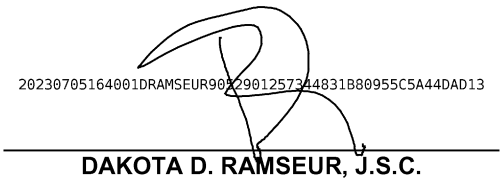
ORDERED that defendant David Berman's motion to dismiss and the branch of Mount Sinai Defendants' motion to dismiss Caliendo's hostile work environment and retaliation causes of action (four and five) are granted and these causes of action are dismissed; and it is further

ORDERED that the branch of Mount Sinai Defendants' motion to dismiss Humale Khan's hostile work environment and retaliation causes of action (six and seven) are denied; and it is further

ORDERED that the parties appear at 60 Centre Street, Courtroom 341 on July 18, 2023, at 10 a.m. for a status conference with the Court; and it is further

ORDERED that counsel for the Mount Sinai Defendants shall serve a copy of this order, along with notice of entry, within ten (10) days of entry.

This constitutes the Decision and Order of the Court.



7/5/2023
DATE

DAKOTA D. RAMSEUR, 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