

Safyan v Department of Educ. of the City of N.Y.

2023 NY Slip Op 33176(U)

September 8, 2023

Supreme Court, Kings County

Docket Number: Index No. 500312/2023

Judge: Gina Abadi

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, City Part 7 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof at 360 Adams St., Brooklyn, New York, on the 8th day of September, 2023.

PRESENT:

HON. GINA ABADI,
J.S.C.

DIANA SAFYAN,

Plaintiff,

Index No: 500312/2023

-against-

Motion Seq: 1 & 2

THE DEPARTMENT OF EDUCATION OF
THE CITY OF NEW YORK AND
THE BOARD OF EDUCATION OF THE CITY
SCHOOL DISTRICT OF THE CITY OF NEW YORK,

DECISION/ORDER

Defendants.

Recitation, as required by CPLR § 2219 (a), of the papers considered in the review of these motions:

<u>Papers</u>	<u>NYSCEF Numbered</u>
Notice of Motion/Cross Motion/Order to Show Cause and	
Affidavits (Affirmations) Annexed	<u>4-12; 20-22, 24-26</u>
Opposing Affidavits (Affirmations) Annexed	<u>17-18; 27</u>
Reply Affidavits (Affirmations)	<u>19; 28</u>
Other	_____

Upon the foregoing cited papers and after oral argument, the Decision/Order on these motions is as follows:

In Seq. No. 1, defendants The Department of Education of The City of New York and The Board of Education of The City School District of The City of New York (collectively, “defendant”) move, pre-answer, for an order, pursuant to CPLR § 3211 (a) (1), (a) (7), and, in effect, (a) (5), dismissing, with prejudice, the original complaint of

plaintiff Diana Safyan (“plaintiff”), dated January 4, 2023 (the “original complaint”) (NYSCEF Doc. No. 1).

In Seq. No. 2, plaintiff moves, by amended notice of motion, dated June 21, 2023 (NYSCEF Doc. No. 24), for leave, pursuant to CPLR § 3025(b), to file and serve her corrected proposed amended complaint, dated June 15, 2023 (the “proposed amended complaint” or “PAC”) (NYSCEF Doc. No. 26).

Facts and Allegations¹

Plaintiff is Caucasian of Ukrainian-Jewish heritage (PAC, ¶ 4). She has been a licensed mental health counselor since 2006,² with a Master of Business Administration degree from Touro College and a Master of Arts in Psychology degree from St John’s University (¶ 5). In November 2003, plaintiff started her employment with defendant as a school psychologist at the district level (¶ 6). From 2012 to present, plaintiff has been working for defendant either as an Administrator of Special Education or as an Educational Administrator (collectively, an “EA”) (¶¶ 6, 10). Since July 2015, plaintiff has been stationed at the Queens South Borough Office located at 82-01 Rockaway Boulevard in Ozone Park, New York (the “Queens South BO”) (¶¶ 6-7). Part of her job responsibilities were to visit schools covered by the Queens South BO to ensure that the Special Education Students in those schools were receiving their services (¶ 7). “Plaintiff’s work has been

¹ Unless otherwise noted, the following facts and allegations which are assumed to be true for purposes of these motions are taken from the proposed amended complaint.

² Plaintiff’s licensure as a Mental Health Counselor (Profession Category 018) is reflected at <https://www.op.nysed.gov/verification-search?licenseNumber=003242&professionCode=018> (last accessed August 30, 2023). “[M]aterial derived from official government websites may be the subject of judicial notice” (*Kingsbrook Jewish Med. Ctr. v Allstate Ins. Co.*, 61 AD3d 13, 20 [2d Dept 2009]).

exemplary and she had only satisfactory ratings until 2015” (¶ 8). Plaintiff is a union member of the Council of School Supervisors and Administrators (the “union”).

September 2015 – December 2016

Beginning in September 2015, plaintiff was the only Caucasian EA of Ukrainian-Jewish heritage of the total of seven-to-eight EAs assigned to the Queens South BO (¶ 10). Seven of the EAs assigned to the Queens South BO were African Americans (¶¶ 11, 46, 49, 53, 57, 67, 79, 96, 100). In October 2015, Michelle Singleton (“Singleton”) (an African American) became plaintiff’s supervisor at the Queens South BO (¶ 12). In addition to plaintiff, Singleton supervised other EAs at the Queens South BO, including the seven specifically named African American EAs (¶¶ 10-11, 46, 49).³ Singleton reported to Marlene Wilks (“Wilks”) (also an African American), an executive at the Queens South BO (¶¶ 12, 28). “Wilks supervised employees such as [p]laintiff[,] and the majority were African American employees (approximately 85 percent)” (¶ 28).

By November 2015, Wilks instructed Singleton “to call in an investigation against [p]laintiff and [Wilks] called in one as well. This was . . . done in retaliation for [p]laintiff’s [unspecified] complaints” (¶ 12). The investigation was “frivolous” (¶ 13). It appears that Singleton and Wilks’s alleged focus of investigation was on plaintiff’s time-keeping practices. “Beginning [at the] end of 2015 [and continuing] into [the] end of 2016, . . . Singleton continuously called other EA[s] . . . to find out plaintiff’s whereabouts and asked questions about when she arrived and left certain locations” (¶ 15). Next, plaintiff “was

³ Elsewhere in ¶ 22, however, the PAC lists eight (rather than seven) African American EAs who (together with plaintiff) were supervised by Singleton at the Queens South BO.

asked to show proof that she had consistently taken those days off in previous years . . . in order to take her traditional Jewish Holidays from work[,] such as the Sukkot” (¶ 16). Sometime between November 2015 and December 2016, plaintiff “received a letter to file for [her] alleged misconduct, [which was] the improper keeping of [her] time records” (¶ 17). “As a result, [p]laintiff was given a timecard that she had to always carry and punch in at every location” (¶ 17). In September 2016, she attended a disciplinary, time-keeping meeting with Singleton to discuss her September 2016 time sheet (¶ 19). In contrast to plaintiff, however, none of the seven African American EAs at the Queens South BO had “their attendance and arrival times . . . supervised” (¶ 22). What’s more, “Wilks improperly recorded [p]laintiff [s] time” (¶ 28). “Plaintiff was being spied on by other staff members and they were asked [albeit, unclear by whom] to record her time of arrival” (¶ 29). “Plaintiff’s file was papered [again, unclear by whom] with improper time sheets” (¶ 29).

Starting in September 2016, plaintiff lodged a number of complaints. On September 22, 2016, plaintiff complained of religious discrimination, apparently to the Office of Equal Opportunity & Diversity Management (“OEO”) (¶ 18). Three days later on September 25, 2016, she followed up her religious-discrimination complaint by letter to the Deputy Chancellor’s Office to the same effect (¶ 19). Sometime thereafter (but unclear when), she filed a complaint with the Special Commissioner of Investigation for the New York City School District (“SCI”)⁴ “challenging the bad faith investigation against

⁴ “The SCI was created in 1990 pursuant to Executive Order No. 11 of the Mayor of the City of New York and Chapter 34 of the New York City Charter. The SCI is independent from the [Department of Education] and is responsible for the investigation of corruption, conflicts of interest, unethical conduct and other (footnote continued)

her” (¶ 20). Although “the SCI ruled in [p]laintiff’s favor,” the SCI’s ruling had no practical effect (¶ 20) on the continuation of “a biased investigation against her” (¶ 29).

The work-related stress allegedly harmed plaintiff’s mental and physical health. By January 2016, she saw a medical provider (in an unspecified medical field) for work-related stress (¶ 14). At some time unspecified in the PAC, plaintiff started seeing separately a psychiatrist, a psychotherapist, and a neurologist (¶ 14). She was prescribed several medications, including a muscle relaxant and a medication for migraine/cervical headaches (¶ 14). Nothing in the PAC indicates that plaintiff communicated to defendant (or that defendant otherwise should have known) about her mental/physical problems and/or her treatment.

In December 2016, plaintiff was assigned to work in a “rubber room” (¶¶ 13, 21, 23).⁵ The reasons for the investigation and the underlying allegations are not disclosed in the PAC.

December 2016 – August 2018

While plaintiff’s work was confined to the rubber room, Singleton remained her outside supervisor (¶ 26). In the course of plaintiff’s work-confinement to the rubber room, Singleton placed a letter to plaintiff’s file as a discipline for apparently a single instance of

misconduct within the school district of the City of New York” (*Matter of Watkins v New York City Dept. of Educ.*, 2016 WL 8466655 [Sup Ct, NY County 2016]).

⁵ The “Rubber Room” is a group of offices “where teachers [and non-teaching staff] under investigation due to allegations of wrongdoing . . . must report [to] and [where they] simply sit and idle away the hours” (*Oliver v City of NY*, 2023 WL 2160062, *2 [SD NY 2023] [internal quotation marks omitted]).

plaintiff's arrival at the rubber room "at a time that could be perceived [as] a minute late" (¶ 26).

As the only EA assigned to the rubber room, plaintiff was required to scan in upon her arrival and departure (¶ 27). "Plaintiff received timekeeping information and approval from the Director of the Re-[A]ssignment office[,] which stated that she [was] allowed to flex her time [*i.e.*, to alter the starting and/or end time of her workday] throughout the week" (¶ 27). For reasons that are unexplained in the PAC, however, "[p]laintiff's time was not properly recorded, and her timekeeping [was] not . . . resolved" (¶ 27). "During 2017 and 2018 . . . [plaintiff] continued to be subjected to frivolous investigations [albeit unclear by whom] about her time[keeping][,] which was never properly recorded on purpose" (¶ 30).

At some point unspecified in the PAC, plaintiff asked her union to update her on the status of the then-pending investigation against her. She was informed (unclear by whom) that "the statute of limitations [underlying the investigation of her] had expired" (¶ 31). Defendant, thus, "had no choice [but] to assign [her] to a Central Borough Office" (¶ 31), which was located in the Bay Ridge section of Brooklyn, New York (the "Bay Ridge BO") (¶ 32).

August 2018 – September 2019

Upon her return to the active workforce, plaintiff was assigned to the Bay Ridge BO from August 2018 to January 2019 (¶ 32). During that period, she continued to report to Singleton (¶ 32). Although plaintiff had a different time schedule (and was working late)

at the Bay Ridge BO, Singleton held disciplinary meetings with plaintiff “about [the latter’s] improperly recorded time” (¶ 32) and “to discuss her time sheets” (¶ 33).

During plaintiff’s stay with the Bay Ridge BO, defendant’s Office of Special Investigations (“OSI”) commenced an investigation, the subject of which is not described in the PAC, but which apparently concerned plaintiff (¶ 34). Ultimately (but unclear when), the OSI investigation found the underlying allegations to have been “unsubstantiated” (¶ 34).

On January 14, 2019, plaintiff was reassigned to her original place of work – the Queens South BO (¶ 35). On plaintiff’s first workday at the Queens South BO, she “received an email from . . . Wilks on time and attendance[,] alleging that [p]laintiff had arrived late and took too much time to return to the [Queens South BO] office after a[n] [outside] meeting[,] which [allegation] was false” (¶ 36).

Starting in January 2019, plaintiff again lodged a series of complaints. Between January 14, 2019 and January 29, 2019, plaintiff “filed a special complaint of harassment (through the Deputy Chancellor’s [Office]) but nothing was resolved” (¶ 36). On January 29, 2019, plaintiff “filed a second [OEO] complaint based on race, religion and retaliation” (¶ 38). The outcome of plaintiff’s second OEO complaint is not disclosed in the PAC.

In February 2019, Singleton left the Queens South BO (¶ 38). “When . . . Singleton left, she admitted to [p]laintiff that it was . . . Wilks who made her [Singleton] call the frivolous investigation against [p]laintiff . . . in 2015” (¶ 41).

Effective May 2019, Singleton was replaced by Barbara Wedderburn-Simpson (“Wedderburn”) (an African American) (¶ 38). Wedderburn and Wilks, who were “both from Jamaica,” were “good friends” (¶ 40).

Starting with Wedderburn’s succession of Singleton as plaintiff’s supervisor in May 2019, “the retaliation against [plaintiff]” and “specifically target[ing] [her]” continued (¶¶ 38, 42). For example, plaintiff (unlike the African American EAs): (1) “was continuously called into frivolous meetings regarding [the fabricated issues with her] time sheets” (¶¶ 43-44, 47); (2) “was made to sign time sheets . . . reflect[ing] her arrival and departure time” (¶ 49); (3) was required to sign in and out of every office location [*i.e.*, at every school she visited]” (¶ 46), with Wedderburn telephoning “schools that [p]laintiff would visit to confirm her attendance and sign in time” (¶ 45); and (4) was required to “report[] back to the [Queens South BO] daily” to sign out at the conclusion of her work day, whereas African American EAs “were permitted to work out of a school building 2-3 times per week” (¶ 46).

September 2019 – February 2020

Plaintiff allegedly continued to be bombarded with complaints about her time sheets and her time-keeping practices in the pre-pandemic portion of the 2019/2020 school year. In September 2019, Wedderburn summoned plaintiff to a disciplinary meeting about her August 2019 time sheets, at which meeting she was “given a counseling memo for allegedly changing her time [schedule] without permission” (¶ 50). Plaintiff (unlike one specifically named African American EA) was instructed “to ask for permission” before changing her time schedule (¶ 52). More importantly, the African American EAs (unlike

plaintiff) “were allowed flexibility in their schedules and in their hours during the meetings. They worked their eight-hour shift as needed in the meetings and did not have to ask for permission to make any minor change[,] as [p]laintiff was required to [ask]” (§ 53). Further, with “[t]he change in the meeting hours occur[ing] approximately twice per month,” plaintiff (unlike the African American EAs) “was the only one required to [obtain],” and did “request[,] permission each time to change her hours according to the meeting needs” (§ 54). Additionally, plaintiff (unlike the African American EAs) was formally warned that although she “was allowed to start as early as 8:30 am” (even as to meetings which had started at 8:00 am), her start time would be rounded up to 9 am “if she arrived *after* 8:30AM” (§ 56 [emphasis added]). Even more frustrating to plaintiff was the requirement (as to which no African American EA was subjected) to “sign in and out at every work location[,] including her main office building [at the Queens South BO,] at all times” (§ 57). What’s more, “once a meeting finished early, all EAs [with the exception of plaintiff] could go home or to any other place to finish their workday[,] as well as flex their work hours[,] without prior approval,” whereas “[p]laintiff had to return to the [Queens South BO] office” (§ 59).

On September 24, 2019, plaintiff filed a third complaint (apparently with the OEO) for retaliation (§ 54). The outcome of plaintiff’s third complaint is not disclosed in the PAC.

After the passage of approximately two months, meetings with plaintiff relating to her time sheets resumed. On December 4 and 5, 2019, “[p]laintiff had retaliatory meetings concerning [her] attendance and time from November 2019 to Dec[ember] 3, 2019” (§ 60).

On January 14, 2020, “[p]laintiff was called to discuss [her] December 19, 2019, time sheets” (¶ 61). On February 12, 2020, “[p]laintiff had a retaliatory meeting” “to address her December [2019] and January [2020] time sheets and attendance,” as was outlined in Wedderburn’s February 11, 2020 email to her (¶¶ 60-63).

In the meanwhile, plaintiff experienced work-related stress. To that end, “[she] went back to the psychiatrist and had her medication adjusted. She also began marriage counseling due [to] the stress transferring into her overall personal and family life” (¶ 60). Again, nothing in the PAC indicates that plaintiff communicated to defendant (or that defendant otherwise should have known) about her mental/marital problems and/or her treatment/therapy. Although plaintiff orally asked for leave under the Family and Medical Leave Act (“FMLA”) sometime after February 12, 2020 (¶ 63), the PAC does not describe the reasons for the leave.

February 2020 – September 2021

“During the school year of 2020-2021, [p]laintiff was working remotely because of the pandemic” (¶ 64). Plaintiff concedes that she was not discriminated (or retaliated) against during this period (¶ 64).

September 2021 – May 2022

With the post-pandemic resumption of the in-office attendance, defendant escalated its scrutiny of plaintiff’s time sheets and of her time-keeping practices. Plaintiff was required “to return to the [Queens South BO], sign in and out, and would be timed if she took too long to return to the [Queens South BO]” (¶ 67). In contrast to plaintiff, however, the African American EAs “were allowed to finish their [eight-hour] workday [after field

assignments] wherever they wanted” (¶ 67). Further, plaintiff “had to complete a time sheet card at the beginning and at the end of [each] day,” whereas the African American EAs (as well as other EAs to the exclusion of plaintiff) “ha[d] to hand . . . in [their time sheets] on the 10th [day] of the following month” (¶ 68). Additionally, plaintiff “had to sign into her building [*i.e.*, the Queens South BO] and sign out,” whereas the African American EAs “did not have to sign in or out [of the building]” (¶ 68). What’s more, “[p]laintiff was expected to write arrival and dismissal time to the minute” and “got in trouble” if she did not, whereas “people in [p]laintiff’s team [*i.e.*, the other EAs] were writing in their time inaccurately” and “were not writing their hours to the minute,” but (unlike plaintiff) “they did not get any letter to file or any disciplinary meeting,” “nor were they required to follow the same directives [as plaintiff was required to]” (¶¶ 70-71).

To complicate matters for plaintiff further, “Wedderburn . . . created a shared excel sheet that plaintiff was directed to complete daily[,] [whereas] no one else had this directive” (¶ 68). In addition, Wedderburn “would ask for photocopies from schools and security desk at her work location, every month [to independently corroborate the veracity] of [p]laintiff’s timesheets [and] (only for [p]laintiff)” (¶ 69). Significantly, the time sheets of plaintiff (but not of any other EA) were marked “subject to review” (¶ 72).

On October 8, 2021, plaintiff informed Wedderburn by telephone that she would “be seeking to take a medical leave” (¶ 75). The grounds for the medical leave are not described in the PAC.

On October 21, 2021, Wedderburn “informed plaintiff that she would be taking on the role and responsibilities of her colleague, [an African American EA] who was going to

be out [of the office] indefinitely” (§ 77). Wedderburn rejected plaintiff’s “request to discuss the distribution of [the additional] work,” stating that “it was not up for review” (§ 77). Unlike plaintiff, “[n]o other African-American EA was given additional responsibilities [of the departing EA]” (§ 77).

On October 25, 2021, plaintiff attended a “disciplinary meeting” (apparently with Wedderburn) regarding her “time and attendance,” as Wedderburn had requested her by email of October 15, 2021 (§ 76).

The following day, October 26, 2021, plaintiff attended another disciplinary meeting with Wedderburn, with the focus on her “September [2021] time sheets” (§§ 78, 82). At the meeting, “Wedderburn informed [p]laintiff that she did not accurately record her time and attendance” (§ 83). “According to the disciplinary letter from October 2021, [Wedderburn] after three months . . . would review and reconsider the consequences and . . . directives [which were] put on [p]laintiff” (the “October 2021 disciplinary letter”) (§ 124). Unbeknownst to plaintiff, Wedderburn had used the allegations underlying the October 2021 disciplinary letter as the grounds for a professional misconduct complaint against her with the OSI (§ 135).

Plaintiff, in turn, resumed her practice of lodging complaints. On October 20 and 21, 2021, plaintiff filed a series of complaints with the OEO based on “race, ethnicity, religious and retaliation” (§ 80). On October 26, 2021, following her disciplinary meeting with Wedderburn regarding her September 2021 time sheets, plaintiff “complained to [her] union” (§ 83). Plaintiff’s complaint to her union appeared to have had some effect. Two days later, on October 28, 2021, plaintiff met with the Queens South BO Executive Director

Laura Kaiser (“Kaiser”) (a Caucasian) to inform her (among other matters) that she (plaintiff) would “be applying for [an] intermittent FMLA” (¶ 84). Some back-and-forth ensued between plaintiff and Kaiser (as well as an HR director) as to whether defendant’s Medical Review Unit (the “MRU”) needed to weigh in on plaintiff’s request for an intermittent FMLA (¶¶ 85-87). Ultimately, plaintiff agreed to have the MRU review her request for an intermittent FMLA, and forwarded her request to Wedderburn (who, in turn, forwarded it to an HR director) for submission to the MRU (¶ 88). By three separate emails, each dated November 12, November 18, and December 1, 2021, plaintiff asked for an update on the status of her FMLA request (¶ 90). On December 2, 2021, plaintiff’s union advised her that the MRU had not received the supporting documentation (¶ 91). On December 16, 2011, plaintiff, with the assistance of her union, provided the MRU with the supporting documentation (¶ 93). On January 17, 2022, the MRU informed plaintiff that, despite some errors on the part of Wedderburn and the HR director, it had ultimately received the supporting documentation (¶ 101). On January 31, 2022, Wedderburn (by email) requested from plaintiff a schedule of her intermittent FMLA (¶ 102).

With the intermittent FMLA request still under review, plaintiff informed Wedderburn that she would be undergoing a medical and/or surgical procedure (the date of which is not disclosed in the PAC), and that she would not be returning to work until April 4, 2022 (¶ 105). Three days later, on February 18, 2022, plaintiff submitted a request for reasonable accommodation via the Self-Service Online Leave Application System

(known as “SOLAS”) (¶ 107).⁶ In effect, plaintiff’s request for reasonable accommodation superseded her then-pending request for an intermittent FMLA leave. On March 14, 2022, plaintiff uploaded additional information to SOLAS (¶ 118). On April 4, 2022, plaintiff received (apparently through SOLAS) a denial of her request for reasonable accommodation on the grounds of it “not being medically necessary” (¶ 122).

Meanwhile, plaintiff’s time sheets and time-keeping practices remained under heavy scrutiny. On November 15, 2021, plaintiff received from Wedderburn “a letter to file . . . regarding [the] September 2021 time sheets” (¶ 95). The following day, November 16, 2021, plaintiff was reminded (apparently by Wedderburn) that she had “to sign in and out in all work locations and at the end [of] day travel back to [the Queens South BO]” (¶ 96). Once again, “[a]n excel share[d] document was created for [p]laintiff . . . to be updated daily” (¶ 96). Plaintiff’s time and attendance (unlike those of the African American EAs) were “monitored daily” (¶ 96). Further, “[n]one of the African American EAs [were] subjected to [such] . . . scrutiny . . . [, nor were] compelled to travel back to the [Queens South BO,] and [were] not required to sign in and out of any location” (¶ 97). Through her union, plaintiff’s request *not* to have her workday end at the Queens South BO was escalated to Kaiser (¶¶ 128-129). Kaiser, however, denied her request (¶¶ 128-129).

⁶ According to defendant’s Personnel Memorandum No. 5, 2020-2021 (issued in June 2021) titled “Accommodation Requests”: (1) “An employee who feels that they are in need of a reasonable accommodation is *strongly encouraged* to *first* discuss the request with their supervisor.”; and (2) “A supervisor need *not* provide the specific accommodation requested by the employee but must explore and propose any reasonable alternatives that would meet the employee’s needs and/or refer an employee to the SOLAS process for further review of their request.” (NYSCEF Doc. No. 12 [emphasis added]).

In preparation for plaintiff's upcoming fall 2021 Performance Review to be held in March 2022, Wedderburn verified plaintiff's attendance through outside sources. On February 1, 2022, plaintiff was informed by numerous school principals that Wedderburn had telephoned them with questions about her time and attendance (§ 103). On February 4, 2022, a safety agent at the Queens South BO told plaintiff that Wedderburn had requested copies of the sign-in sheets to corroborate her time and attendance (§ 104). Meanwhile, Wedderburn delayed approving plaintiff's time sheets. As noted, Wedderburn was required to approve (or reject) an EA's monthly timesheet within ten days after its submission to her, with such submission to be made by each EA (with the exclusion of plaintiff) by the tenth day of the following month (§ 100). Nonetheless, Wedderburn belatedly approved plaintiff's September and November 2021 timesheets on January 11, 2022, and her December 2021 timesheet on February 15, 2022 (§ 99).

On March 2, 2022, Wedderburn conducted plaintiff's fall 2021 Performance Review (§ 110). Although "[p]laintiff received [a] positive *feedback*" at the performance review (§ 110 [emphasis added]), the PAC fails to allege whether she received a satisfactory performance rating. "When [the Performance Review] came to [the category of] time and attendance, [Wedderburn] indicated that there were no concerns" (§ 110). Two days later, on March 3, 2022, however, Wedderburn informed plaintiff, by e-mail, that they would be having a time-and-attendance meeting, together with a three-month review in accordance with the October 2021 disciplinary letter (§ 111). Wedderburn's email about the upcoming meeting triggered plaintiff's "panic attack in the office" (§ 112). Later the same day, plaintiff "spoke with the Executive Superintendent" who "concurred

that [p]laintiff was being harassed” (¶ 112). The PAC fails to allege whether plaintiff informed the Executive Superintendent of her panic attack, or whether the latter should otherwise have been aware of its occurrence.

Next, “[p]laintiff filed another OEO complaint” on March 9, 2022, and had her union file “a Special Complaint of Harassment with the Chancellor’s Office for a hostile work environment” on April 14, 2023 (¶¶ 116, 123). Having reached no satisfactory resolution of her complaint with the Chancellor’s Office at the step 1 grievance level, plaintiff “asked the union to prepare for a step 2 grievance” (¶¶ 136-137).

By emails, dated March 3, 2022, March 31, 2022, and April 1, 2022 (with the latter email cc’d to plaintiff’s union and to defendant’s Executive Director), plaintiff asked Wedderburn why her time sheets (but not those of any other EA) had the phrase “subject to review” added to them (¶¶ 113, 120-121). In addition, by email, dated May 15, 2022, plaintiff directly asked her union to intervene on her behalf in the “subject to review” controversy (¶ 130). The union’s intervention in that regard elicited a prompt response from defendant’s Central Office, Chancellor’s Team (the “Central Office”). Later the same day (May 15, 2022), “[p]laintiff received [apparently from Kaiser] [her] updated and revised timesheets with the words ‘subject to review’ . . . removed” (¶ 131). Concurrently, Kaiser “certifie[d] [p]laintiff’s time to be accurate through April 14, 2022” (¶ 132). Kaiser’s certification of plaintiff’s time sheets through April 14, 2022 effectively squashed: (1) Wedderburn’s upcoming three-month review under the October 2021 disciplinary letter (¶ 125 [“No (three-month) meeting was held.”]); (2) Wedderburn’s October 2021 professional-misconduct complaint to the OSI under case #21-04383X against plaintiff (as

such case was apparently grounded on the October 2021 disciplinary letter); and (3) Wedderburn's 2022 complaint to the OSI under case #22-10380X (the basis of which was never disclosed to plaintiff) (§§ 134-135, 157-159).

May 2022 – October 2022

Although the Central Office put an end to Wedderburn's struggle with plaintiff over time sheets and time-keeping practices, it appears that Wedderburn had concealed "an ace up her sleeve" for use against plaintiff in the future. To explain: approximately one month prior in April 2022, plaintiff and all other EAs had been "asked to complete a survey and rank their preferred work locations effective summer 2022" (§ 139). Plaintiff, in responding to the survey, had "requested to work at 3 Brooklyn locations to ensure [that] she [was] far away from conflict and trauma . . . [as well as to have] a new beginning" (§ 139). By email, dated July 28, 2022, the Superintendent's office ignored plaintiff's school preferences by assigning her "desk space that was within 2 feet of [that of Wedderburn]" (§ 140). On August 9, 2022, plaintiff's office space, in response to her complaint, was relocated to the same floor as Wedderburn's office (§§ 141-143). On August 13, 2022, plaintiff had an emergency appointment with her psychiatrist who prescribed her an additional psychotropic medication (Abilify) for her mental-health symptoms (§ 144). The PAC fails to allege whether plaintiff informed defendant (or whether it otherwise should have been aware) of her ongoing psychiatric treatment.

Following plaintiff's August 22, 2022 complaint to the OEO alleging "retaliation and discrimination," plaintiff was offered another (by then, her third) assignment – a school in the Brownsville/Bushwick area of Brooklyn, New York – which, once again, was at

odds with her stated preferences (¶¶ 145-146, 150). Plaintiff responded by using her sick days *not* to report to work to the Brownsville/Bushwick school (¶¶ 147, 150). Fortunately, defendant's Central Office intervened by assigning plaintiff, on September 12, 2022, to one of her three preferred schools (¶¶ 147-148). It appears that plaintiff has been working at her preferred school since September 12, 2022 without issues. Nonetheless, on October 13, 2022, plaintiff filed three separate complaints with the OEO "on the grounds of retaliation, religion, race, and disability" (¶ 153).

For the sake of completeness, five additional allegations in the PAC are mentioned but, because of their legal insignificance to plaintiff's overall case, need not be discussed at length. First, Wedderburn's denial of plaintiff's same-day request to take a fractional day off on March 1, 2022, was objectively non-discriminatory (¶ 108). Coming to work at 12:30 pm because of a flight delay on the preceding day is not equivalent to a typically excused late arrival of short duration that is occasioned by a normal commuting delay (¶¶ 108-109).⁷ Second, Wedderburn's email to plaintiff, dated March 3, 2022, inquiring whether she was working that day, was objectively non-discriminatory, regardless of plaintiff's subjective characterization of it as "inappropriate" (¶ 111).⁸ Third,

⁷ See *Klass v City of NY*, 2021 WL 2688498, *2 (Sup Ct, Kings County 2021), *rearg denied* 2021 WL 4947010 (Sup Ct, Kings County 2021) (discussing the then-effective Chancellor's Regulation C-601). The current Chancellor's Regulation C-601 (effective November 18, 2021), ¶ 4 ("Lateness and Related Fractional Absence of Non-Teaching School Staff") generally provides (with certain exceptions) that "[a]ny non-teaching member of the staff of a school or equivalent organizational unit who reports within five minutes after the time set for reporting for duty at the beginning of the day . . . shall be considered late . . . [and] . . . absent for the whole period of time lost" (available at <https://www.schools.nyc.gov/docs/default-source/default-document-library/c-601> [last accessed August 30, 2023]).

⁸ The same reasoning refutes plaintiff's allegations (in ¶¶ 73-74) that: (1) "in the first week of October 2021, [she] received multiple emails harassing her with her schedule and constantly asking her if she will (footnote continued)

Wedderburn's denial of plaintiff's same-day request to "telework due to COVID like symptoms" was not per se unreasonable because nothing in the PAC indicates whether plaintiff's request was supported by medical documentation (§ 122). Plaintiff's barebones allegation (in § 122) that she had been previously requested – and had been granted – permission to telework in December 2021 is not probative (one way or the other) as to the propriety (or not) of Wedderburn's denial of her subsequent request for telework, made five months later on April 12, 2022. Fourth, defendant's one-month delay in approving the carry-over of plaintiff's 17 annual days was immaterial, inasmuch as her carry-over was ultimately approved (§§ 149, 152, 156). Fifth and finally, defendant's failure (solely for budgetary reasons) to reimburse plaintiff for her work-related expenses does not suggest discrimination or retaliation (§§ 154-155).

Procedural Background

Notices of Claim

Pre-litigation, plaintiff had served three notices of claim. Her first Notice of Claim (received on June 7, 2022) encompassed defendant's alleged misconduct from September 2015 to May 13, 2022 (NYSCEF Doc. No. 8). Her Second Notice of Claim (received on September 15, 2022) supplemented her first Notice of Claim by alleging additional misconduct from May 14, 2022 to August 29, 2022 (NYSCEF Doc. No. 9). Her Third (and final) Notice of Claim (received on October 25, 2022) supplemented her Second Notice of

be in at work"; (2) "[o]n October 8, 2021, [Wedderburn] sent an email indicating that she would be meeting [plaintiff] at the school she was visiting[;] however, nobody showed up"; and (3) "[p]laintiff was also called into a meeting on October 8, 2021, but nobody showed up."

Claim by alleging additional misconduct from September 17, 2022 to October 13, 2022 (NYSCEF Doc. No. 10).

Litigation

On January 4, 2023, plaintiff commenced this action to recover damages for: (1) employment discrimination and hostile work environment based on race, religion, and disability (actual and perceived), (2) prohibited retaliation, and (3) failure to accommodate, in each instance, in violation of the New York State Human Rights Law (the “State HRL”) and the New York City Human Rights Law (the “City HRL”) (Executive Law § 290 et seq. and Administrative Code of City of N.Y. § 8-101 et seq., respectively). In lieu of an answer, defendant moved to dismiss the complaint. In opposition to defendant’s motion and in support of her own motion, plaintiff moved for leave to serve the corrected proposed amended complaint, the salient points of which are summarized above. The Court heard oral argument on August 9, 2023, reserving decision on both motions.

Discussion

Where a defendant elects to apply its “motion to dismiss to the amended complaint which supersede[s] the original complaint, [the court may] consider the motion as directed against the amended complaint” (*Sobel v Ansanelli*, 98 AD3d 1020, 1022 [2d Dept 2012]). Here, inasmuch as defendant argues the merits of the original and the proposed amended complaint in its reply in support of its dismissal motion and in opposition to plaintiff’s amendment motion, the Court will deem defendant’s motion to dismiss as being directed against the proposed amended complaint (*see Sage Realty Corp. v Proskauer Rose LLP*, 251 AD2d 35, 38 [1st Dept 1998]; *see also Langley v Melville Fire Dist.*, 213 AD3d 748,

749-750 [2d Dept 2023]). Further, it would be inefficient to consider the sufficiency of the original complaint, and then consider the sufficiency of the proposed amended complaint (*see Hogue v Board of Educ. of City School Dist. of City of NY*, 2019 NY Slip Op 33530[U] [Sup Ct, NY County 2019]).

The Periods of Limitation Defense (CPLR § 3211 [a] [5])

On a CPLR § 3211 (a)(5) motion to dismiss a claim as time-barred, “a defendant bears the initial burden of establishing, prima facie, that the time in which to sue has expired. In considering the motion, a court must take the allegations in the complaint as true and resolve all inferences in favor of the plaintiff” (*Benn v Benn*, 82 AD3d 548, 548 [1st Dept 2011] [internal quotation marks omitted]). “Further, plaintiff’s submissions in response to the motion must be given their most favorable intendment” (*id.* [internal quotation marks omitted]). Upon such a showing, “the burden shift[s] to the plaintiff to raise a question of fact as to whether the statute of limitations was tolled or was otherwise inapplicable, or whether it actually commenced the action or interposed the subject cause of action within the applicable limitations period” (*Bailey v Peerstate Equity Fund, L.P.*, 126 AD3d 738, 740 [2d Dept 2015]).

Generally, the statute of limitations for claims brought under the State HRL and the City HRL is three years (*see* CPLR § 214 [2]; Administrative Code § 8-502 [d]). Where, as here, such claims are brought against the Department of Education, the applicable statute of limitations is only one year (*see* Education Law § 3813 [1], [2-b]; *Matter of Amorosi v South Colonie Ind. Cent. School Dist.*, 9 NY3d 367, 373 [2007]). One relevant exception to the one-year statute of limitations is the continuing violation doctrine which permits

consideration “of all actions relevant to [a] claim, including those that would otherwise be time-barred,” so long as such actions are part of “a single continuing pattern of unlawful conduct extending into the [limitations] period immediately preceding the filing of the complaint” (*James v City of NY*, 144 AD3d 466, 467 [1st Dept 2016] [internal quotation and citation omitted]). “The continuing violation doctrine may only be predicated on continuing unlawful acts and not on the continuing effects of earlier unlawful conduct” (*Peckham v Island Park Union Free School Dist.*, 167 AD3d 641, 642 [2d Dept 2018] [internal quotation marks omitted]). “The distinction is between a single wrong that has continuing effects and a series of independent, distinct wrongs” (*Henry v Bank of Am.*, 147 AD3d 599, 601 [1st Dept 2017] [internal quotation marks omitted]).

Here, to the extent plaintiff relies on defendant’s acts that occurred *in and after* September 2021 upon the post-pandemic resumption of her in-person work but more than one year before she commenced this action on January 3, 2023 (*see* Education Law § 3813 [2-b]), the Court cannot rule, at this stage of litigation, whether “those acts, if proven, were not part of a single continuing pattern of unlawful conduct extending into the one-year period immediately preceding the filing of the complaint” (*Petit v Department of Educ. of City of NY*, 177 AD3d 402, 403-404 [1st Dept 2019] [internal quotation marks omitted]; *Ferraro v New York City Dept of Educ.*, 115 AD3d 497, 497-498 [1st Dept 2014]; *cf. Peckham v Island Park Union Free School Dist.*, 167 AD3d 641, 641-642 [2d Dept 2018]).

In contrast, however, plaintiff’s remaining allegations relating to the *pre*-pandemic, pre-March 2020 events were sufficiently disconnected from the *post*-pandemic, post-

September 2021 events by an uninterrupted period of 18 months. Thus, the *pre*-pandemic, pre-March 2020 events do not qualify for tolling under the continuing violations doctrine (*see James*, 144 AD3d at 467; *see also Mira v Harder*, 177 AD3d 426 [1st Dept 2019]).⁹

Accordingly, to the extent the proposed amended complaint contains allegations concerning incidents that occurred *before* September 2021, plaintiff's claims, insofar as predicated on those incidents, are time-barred (*see* Education Law § 3813 [2-b]; *see also Whitfield-Ortiz v Department of Educ. of City of NY*, 116 AD3d 580, 581-582 [1st Dept 2014]).

Separately from the foregoing, "Education Law § 3813 (1) broadly requires the filing of a notice of claim as a condition precedent to an 'action . . . for any cause whatever,' which includes . . . causes of action pursuant to the New York State [and the New York City] Human Rights Law[s]" (*Seifullah v City of NY*, 161 AD3d 1206, 1206 [2d Dept 2018]). "The essential elements to be included in the notice are the nature of the claim, the time when, the place where and the manner in which the claim arose Satisfaction of these requirements is a condition precedent to bringing an action against a school district or a board of education and, moreover, failure to present a claim within the statutory time limitation . . . is a fatal defect" (*Parochial Bus Sys., Inc. v Board of Educ. of City of NY*, 60 NY2d 539, 547 [1983] [internal citations omitted]).

⁹ *Cf. Santiago v Bernard F. Dowd, Inc.*, 2017 NY Slip Op 30791(U) (Sup Ct, NY County 2017) ("Having described a constant, unrelenting, and daily barrage of offensive comments, so frequent as to be 'like breathing,' commencing from the beginning of his employment with defendant [in 1996] and lasting until his resignation in November 2012, plaintiff sufficiently alleges a single continuing pattern of conduct.").

Defendant's contention that all claims that accrued before March 9, 2022, or ninety days before the June 7, 2022 receipt of the initial Notice of Claim are time-barred under Education Law § 3813 (1), ignores the import of the continuous violation doctrine. Plaintiff's theory of recovery (as limited by the continuous violation doctrine) is predicated on defendant's uninterrupted course of post-pandemic retaliation and other post-pandemic events *from and after* September 2021. As such, plaintiff's initial Notice of Claim (as supplemented by the First Amended and Second Amended Notices of Claim) is timely for all causes of action alleged therein pursuant to the continuing violation doctrine, insofar as they encompass the period *from and after* September 2021 (*see Lane v City of NY*, 47 Misc 3d 1226[A], 2015 NY Slip Op 50855[U] [Sup Ct, NY County 2015]; *see also Bray v New York City Dept. of Educ.*, 59 Misc 3d 1222[A], 2018 NY Slip Op 50643[U] [Sup Ct, NY County 2018]; *accord Lebowitz v New York City Dept. of Educ.*, 2022 NY Slip Op 33166[U] [Sup Ct, Kings County 2022]).

The Documentary-Evidence Defense (CPLR § 3211 [a] [1])

“A motion to dismiss a complaint pursuant to CPLR § 3211 (a) (1) may be granted only if the documentary evidence submitted by the moving party utterly refutes the factual allegations of the complaint and conclusively establishes a defense to the claims as a matter of law” (*Marinelli v Sullivan Papain Block McGrath & Cannavo, P.C.*, 205 AD3d 714, 715 [2d Dept 2022]). “[F]or evidence to qualify as documentary, it must be unambiguous, authentic, and undeniable” (*Bianco v Law Offices of Yuri Prakhin*, 189 AD3d 1326, 1328 [2d Dept 2020]). “[J]udicial records, as well as documents reflecting out-of-court transactions such as mortgages, deeds, contracts, and any other papers, the contents of

which are essentially undeniable, would qualify as documentary evidence in the proper case” (*Fontanetta v John Doe 1*, 73 AD3d 78, 84-85 [2d Dept 2010] [internal quotation marks omitted]). More fundamentally, “to be considered ‘documentary,’ evidence must be unambiguous and of undisputed authenticity” (*id.* at 86).

Here, defendant’s proffered documents – a blank “Request for Leave under the FMLA” (Form FMLA 2005) and the “Personnel Memorandum No. 5, 2020-2021,” titled “Accommodation Requests” (NYSCEF Doc. Nos. 11 and 12, respectively) – are not “documentary” in nature under CPLR § 3211 (a) (1) and, in any event, are incapable (either individually or collectively) of establishing a defense to plaintiff’s claims as a matter of law (*see New York Mun. Power Agency v Town of Massena*, 188 AD3d 1517, 1519 [3d Dept 2020]; *Pasquaretto v Long Is. Univ.*, 106 AD3d 794, 795 [2d Dept 2013]).

The Defense of Failure to State a Claim (CPLR § 3211 [a] [7])

“On a motion to dismiss pursuant to CPLR § 3211 [a] [7], [the court] must accept as true the facts as alleged in the complaint and submissions in opposition to the motion, accord plaintiff[f] the benefit of every possible favorable inference and determine only whether the facts as alleged fit within any cognizable legal theory” (*Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 414 [2001]). “CPLR § 3211 (a) (7) dismissals merely address the adequacy of the complaint, and do not reach the substantive merits of a plaintiff’s cause of action or a defendant’s defenses” (*Hendrickson v Philbor Motors, Inc.*, 102 AD3d 251, 255 [2d Dept 2012]). “Therefore, whether the pleading will later survive a motion for summary judgment, or whether the party will ultimately prevail on the claims, is not relevant on a pre-discovery motion to dismiss” (*Lieberman v Green*,

139 AD3d 815, 816 [2d Dept 2016]). “However, bare legal conclusions and factual claims which are flatly contradicted by the record are not presumed to be true” (*Parola, Gross & Marino, P.C. v Susskind*, 43 AD3d 1020, 1021-1022 [2d Dept 2007]).

Crediting plaintiff’s allegations for the purpose of this pre-answer, pre-discovery motion to dismiss the proposed amended complaint pursuant to CPLR § 3211 (a) (7), the Court finds that the proposed amended complaint states causes of action for race-based discrimination, retaliation, and hostile work environment in violation of each of the State and the City HRLs for the period *from and after* September 2021 (*see Petit v Department of Educ. of City of NY*, 177 AD3d 402, 403 [1st Dept 2019]; *Matter of McIntosh v Department of Educ. of City of NY*, 115 AD3d 464 [1st Dept 2014]; *Perez v City of NY*, 2012 NY Slip Op 31838[U] [Sup Ct, NY County 2012]; *see also Cahill v State*, 139 AD3d 779, 781 [2d Dept 2016]). Plaintiff’s *non-time-barred* allegations are sufficient to give defendant “fair notice” of the nature of plaintiff’s claims and their grounds (*see Vig v New York Hairspray Co., L.P.*, 67 AD3d 140, 145 [1st Dept 2009]). “Fair notice is all that is required to survive [dismissal] at the pleading stage” (*Petit*, 177 AD3d at 403).

By way of illustration, plaintiff’s *non-time-barred* allegations that, following her post-pandemic complaints and for the period *from and after* September 2021: (1) she was required to sign in and out at the Queens South BO and at every school she visited; (2) she was subjected to an increased scrutiny of her time sheets; (3) she did not have her time sheets expeditiously approved by her supervisor; (4) she had her time sheets explicitly stamped “subject to approval”; (5) she was reprimanded and disciplined for minor time-keeping errors (both orally and by letters to file); and (6) she was burdened with an

increased workload – whereas all of her African American colleagues at Queens South BO were more favorably treated than her in each of the foregoing categories during the same time period *from and after* September 2021 – sufficiently pleaded a cause of action to recover damages for unlawful retaliation in violation of the State and City HRLs (*see Kassapian v City of NY*, 155 AD3d 851, 854 [2d Dept 2017]; *Brightman v Prison Health Services, Inc.*, 62 AD3d 472 [1st Dept 2009]; *see also Oluwo v Sutton*, 206 AD3d 750, 752-753 [2d Dept 2022]; *Kaplan v New York City Dept of Health & Mental Hygiene*, 142 AD3d 1050, 1051-1052 [2d Dept 2016]).

Further, plaintiff has adequately pleaded non-time-barred claims for disability discrimination under a theory of failure to accommodate under each of the State and the City HRLs for the period *from and after* September 2021 (*see Jacobsen v New York City Health & Hosps. Corp.*, 22 NY3d 824, 834 [2014]; *Hosking v Memorial Sloan-Kettering Cancer Ctr.*, 186 AD3d 58, 62-67 [1st Dept 2020]; *see also Brouillard v Sunrun, Inc.*, ___ AD3d ___, 2023 NY Slip Op 04184 [2d Dept 2023]). Significantly, following plaintiff's request to Wedderburn on February 16, 2022 for reasonable accommodation on account of her upcoming medical and/or surgical procedure, defendant allegedly failed to engage into an interactive dialogue with her in an attempt to reach some reasonable accommodation (*see D'Amico v City of NY*, 159 AD3d 558 [1st Dept 2018]; *see also Hosking*, 186 AD3d at 66).¹⁰

¹⁰ Contrary to defendant's contention, this case is distinguishable from *Askin v Department of Educ. of City of NY*, 110 AD3d 621 (1st Dept 2013), in which the complainant made no "concrete factual allegation in support of [her discrimination] claim, other than that she [possessed a protected characteristic] and was treated adversely under the State law or less well under the City HRL" (*id.* at 622). Here, however, plaintiff

(footnote continued)

On the other hand, the proposed amended complaint fails to plead that plaintiff was discriminated against because of her actual or perceived disability, her religious beliefs, or her national origin under each of the State and the City HRLs (*see Brouillard v Sunrun, Inc.*, ___ AD3d ___, 2023 NY Slip Op 04184 [2d Dept 2023]; *Pappas v Moody's Inv. Serv.*, 202 AD3d 630 [1st Dept 2022]; *Torge v New York Socy. for Deaf*, 270 AD2d 153, 153 [1st Dept 2000], *lv denied* 95 NY2d 768 [2000]).¹¹ By way of illustration, a single, isolated request for plaintiff's confirmation as to whether she had previously taken days off for Jewish holidays (PAC, ¶ 16) is insufficient to support a discrimination claim on the basis of religious beliefs (*see Cagino v Levine*, 199 AD3d 1103, 1105 [3d Dept 2021]; *Ullmann v Norma Kamali, Inc.*, 207 AD2d 691, 693 [1st Dept 1994]).

"allege[s] facts that would establish that similarly situated persons who were . . . of African American descent were treated more favorably than plaintiff was" (*Thomas v Mintz*, 182 AD3d 490, 490 [1st Dept 2020]). Further unavailing is defendant's attempt to pigeonhole plaintiff's allegations into the false syllogism that was justifiably rejected in *Williams v City of NY*, 2020 NY Misc LEXIS 12262 (Sup Ct, Bronx County 2020); namely: "(1) I [plaintiff] am (insert name of a protected class); (2) something bad happened to me at work; (3) therefore, it happened because I am (insert name of protected class)" (at *6). Unlike the complainant in *Williams*, plaintiff here alleged that the similarly situated individuals who did not share her protected characteristic(s) were treated more favorably than she was.

¹¹ *Cf. Lum v Consolidated Edison Co. of NY, Inc.*, 209 AD3d 434, 434-35 (1st Dept 2022) ("Plaintiff's allegations, that several times a week over a period of at least two years, plaintiff's coworker spoke to him in a mock Chinese accent, told plaintiff to 'open your eyes,' and tormented him about his mandatory drug testing in a sexually and racially charged manner, are sufficient to state a hostile work environment claim based on national origin discrimination under both the State and City HRLs.").

Conclusion

Accordingly, it is

ORDERED that in Seq. No. 2, leave to file and serve plaintiff's corrected proposed amended complaint is *granted to the extent* that her race-based discrimination, retaliation, hostile work environment, and disability discrimination under a theory of failure to accommodate, in each instance, for the period *from and after* September 2021, under the State and the City HRLs, are permitted to proceed; and the remainder of her motion is denied; and it is further

ORDERED that in Seq. No. 1, defendant's motion, as deemed directed to plaintiff's corrected proposed amended complaint, is *granted to the extent* that: (1) her race-based discrimination, retaliation, hostile work environment, and disability discrimination under a theory of failure to accommodate under the State and the City HRLs for the period *prior to* September 2021 are all dismissed as time-barred under CPLR § 3211 (a) (5); and (2) her claims of discrimination on the basis of her actual or perceived disability, her religious beliefs, and her national origin under the State and the City HRLs are all dismissed for failure to state a claim under CPLR § 3211 (a) (7); and the remainder of its motion is denied; and it is further

ORDERED that plaintiff shall file and serve her corrected proposed amended complaint (in the form of NYSCEF Doc. No. 26) on defendant within twenty days after service of this Decision/Order on plaintiff's counsel with notice of entry; *provided, however*, that such complaint shall be *verified by plaintiff personally* (rather than by her counsel); and it is further

ORDERED that within twenty days after the filing and service of the properly verified complaint as provided for in the preceding decretal paragraph, defendant shall answer such complaint; and it is further

ORDERED that any relief not expressly granted herein is denied; and it is further

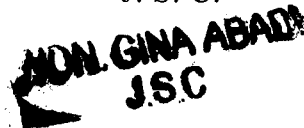
ORDERED that the Corporation Counsel is directed to electronically serve a copy of this Decision/Order with notice of entry on plaintiff's counsel and to electronically file an affidavit of said service with the Kings County Clerk.

The foregoing constitutes the Decision/Order of this Court.

ENTER:



HON. GINA ABADI
J. S. C.



2023 SEP 13 AM 9:20

KINGS COUNTY CLERK
FILED