SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JUDY H. KIM **PART** 05RCP

Justice

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JULIA GRIFFIN,

Plaintiff,

- v -

CITY OF NEW YORK, BRUCE CEPARANO,

Defendants.

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INDEX NO. 157357/2022

MOTION DATE 03/21/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12

were read on this motion to/for DISMISS.

Upon the foregoing documents, defendants' motion to dismiss plaintiff's complaint is granted in part, to the extent set forth below.

Plaintiff commenced this action on August 29, 2022, asserting claims for employment discrimination, hostile work environment, and retaliation under Executive Law § 296 (also known as the New York State Human Rights Law or "NYSHRL") and Administrative Code § 8-107 (also known as the New York City Human Rights Law or "NYCHRL") as well as a claim for vicarious liability against the City under Administrative Code §8-107(13)(b). Plaintiff's complaint alleges the following:

Plaintiff joined the New York City Police Department ("NYPD") in 2007. In 2017 she was promoted to sergeant and assigned to the 121st Precinct. Defendant Bruce Ceparano became the Commanding Officer of that precinct in 2019. Upon his arrival, Ceparano began telling plaintiff that she was "too soft with cops, too friendly and a weak supervisor," criticisms he did not make of male sergeants.

On July 7, 2019, Ceparano asked plaintiff to assist in an eviction at a building owned by a NYPD Lieutenant. After plaintiff arrived at the scene, she consulted with NYPD's Legal Department and, upon learning that the requirements for an eviction were not satisfied, left. Ceparano called her and ordered her to return to the scene and "do what she [had] to do to show this guy some courtesy," i.e., complete the eviction. Plaintiff returned to the building to find the eviction was already underway.

Following this incident, plaintiff was transferred to the midnight tour and began being singled out for minor infractions for which male sergeants were not punished. Other female sergeants, Yasin and Anselmo, also regularly received command disciplines for infractions that male sergeants were not punished for, resulting in docked pay. Additionally, certain highly sought-after positions in specialized units, including Traffic Safety and Neighborhood Coordinator positions, were given to male sergeants Biagini, Bass, Padilla, and Montes. As a result, these sergeants were able to earn the maximum amount of overtime possible. This allowed the male sergeants in the command to earn approximately $25,000.00 more per year than the female sergeants.

At an unspecified date, plaintiff complained about this salary disparity to an unspecified individual. At some point after this complaint, she was transferred out of the 121st Precinct, in January 2020. After her transfer, Ceparano ordered a review of plaintiff's file for any impropriety and, as a result, plaintiff was served with additional charges and specifications in early 2021. These charges and specifications were adjudicated on November 1, 2021 and plaintiff was docked thirty days pay, suspended for an additional thirty days, and was placed on dismissal probation and performance monitoring. Plaintiff maintains that similarly situated male officers who committed

the same level of infractions that plaintiff was accused of did not receive comparable discipline to that which plaintiff received.

The City now moves to dismiss this action pursuant to CPLR §3211(a)(7), arguing that plaintiff has failed to allege facts supporting any of her claims[1]. Plaintiff opposes, arguing that under the notice pleading standard governs this motion, plaintiff has carried her burden at the pleading stage based on her identification of similarly situated male comparators who earn as much as $25,000.00 more a year than plaintiff due to their gender, along with allegations of "coded comments" towards women supervisors, and allegations of temporal proximity between plaintiff's complaint of discrimination and her transfer out of the 121st Precinct.

DISCUSSION

On a motion to dismiss under CPLR §3211(a)(7), the pleading is afforded a liberal construction and the court must accept as true the facts alleged in the complaint, accord the pleading the benefit of every reasonable inference, and only determine whether the facts, as alleged, fit within any cognizable legal theory (See Leon v Martinez, 84 NY2d 83 [1994]). Employment discrimination claims under the NYSHRL and NYCHRL, in particular, are reviewed under a notice pleading standards—"a plaintiff alleging employment discrimination need not plead specific facts establishing a prima facie case of discrimination but need only give fair notice of the nature of the claim and its grounds" (Juillet v City of New York, 77 Misc 3d 1002, 1005 [Sup Ct, NY County 2022] citing Vig v New York Hairspray Co., L.P., 67 AD3d 140 [1st Dept 2009]).

Employment Discrimination

In light of the foregoing, defendants' motion to dismiss plaintiff's employment discrimination claims is denied. To state a claim for employment dissemination under the

[1] Defendants initially argued that plaintiff's claims were time-barred to the extent they accrued prior to August 29, 2019, but has withdrawn this branch of its motion in reply (NYSCEF Doc. No. 11 [Reply Memo. of Law. at p. 2]).

NYSHRL, plaintiff must allege that: (2) she is a member of a protected class; (2) she was qualified to hold the position; (3) he suffered an adverse employment action; and (4) the adverse action occurred under circumstances giving rise to an inference of discrimination (Ayers v Bloomberg, LP., 203 AD3d 872, 874 [2d Dept 2022]). The elements of a discrimination claim under the NYCHRL largely mirror the foregoing, except that a plaintiff need not plead that he suffered an "adverse employment action," but only that she was "treated differently" because of her gender (Askin v Dept. of Educ. of the City of New York, 110 AD3d 621, 622 [1st Dept 2013]).

Here, the City argues that plaintiff has failed to allege an adverse employment action or that such action occurred under circumstances giving rise to an inference of discrimination. The Court disagrees. Plaintiff has satisfied these requirements through the complaint's allegations that disciplinary actions were taken against her and other female sergeants that were not taken against similarly situated male sergeants in the precinct and that positions allowing them to maximize their salary were denied to female sergeants in the precinct and assigned to male sergeants (See Demir v Sandoz Inc., 155 AD3d 464, 466 [1st Dept 2017]; Santiago-Mendez v City of New York, 136 AD3d 428, 429 [1st Dept 2016]; Miller v City Univ. of New York, 66 Misc 3d 1227(A) [Sup Ct, NY County 2019]).

Hostile Work Environment

Defendants' motion to dismiss plaintiff's hostile work environment claims is granted, in part. Under the NYSHRL, a "hostile work environment exists '[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" (Hunter v Barnes & Noble, Inc, 2023 NY Slip Op 30638[U], 8-9 [Sup Ct, NY County 2023] [internal citations and quotations omitted]). The conduct at issue must "alter the conditions of the victim's

employment by being subjectively perceived as abusive by the plaintiff such that a reasonable person to find that the environment was objectively hostile or abusive" (Id.). Plaintiff has failed to satisfy this standard—even crediting plaintiff's characterization of Ceparano's criticism of her as "soft," too "friendly," and "weak" as gender-based, these "remarks can be characterized at most as petty slights or trivial inconveniences" (Sedhom v SUNY Downstate Med. Ctr., 201 AD3d 536, 538 [1st Dept 2022]). Moreover, plaintiff's "allegations of non-promotion, and pretextual investigation do not constitute the severe or pervasive 'discriminatory intimidation, ridicule, and insult' required to state a hostile work environment cause of action under the NYSHRL (Hunter v Barnes & Noble, Inc., 2023 NY Slip Op 30638[U] [Sup Ct, NY County 2023] quoting Forrest v Jewish Guild for the Blind, 3 NY3d 295, 310-311 [2004]); see also Khalil v State, 17 Misc 3d 777, 784 [Sup Ct, NY County 2007]). Accordingly, plaintiff's hostile work environment claim under the NYSHRL is dismissed.

To state a hostile work environment claim under the NYCHRL, however, plaintiff need only allege facts showing that "she has been treated less well than other employees because of her protected status or that discrimination was one of the motivating factors for the defendant's conduct" (Chin v. New York City Hous. Auth., 106 AD3d 443, 445 [1st Dept 2013] citing Williams v NYCHA, 61 AD3d at 75-78 [2013]). Plaintiff has satisfied this first category through allegations that she was denied desirable positions that would have maximized her earnings that were instead given to male sergeants and faced discipline that male colleagues did not face (See e.g., Valcarcel v First Quality Maintenance, 41 Misc 3d 1222(A) [Sup Ct, Queens County 2013]). Accordingly, defendants' motion to dismiss plaintiff's hostile work environment claim under the NYCHRL is denied.

Retaliation

Defendants' motion to dismiss plaintiff's retaliation claims under the NYSHRL and NYCHRL is granted. To make out a prima facie claim of retaliation under the NYSHRL, plaintiff must allege that (1) she engaged in a protected activity, (2) her employer was aware of this protected activity, (3) she suffered an adverse employment action as a result of the protected activity, and (4) a causal connection exists between the protected activity and the adverse action (Harrington v City of New York, 157 AD3d 582, 585 [1st Dept 2018]) [internal citations and quotations omitted]). "In the context of a case of unlawful retaliation, an adverse employment action is one which might have dissuaded a reasonable worker from making or supporting a charge of discrimination" (Reichman v City of New York, 179 AD3d 1115, 1119 [2d Dept 2020] [internal citations and quotations omitted]). Under the NYCHRL, the test is similar, though rather than an adverse action, the plaintiff must allege only that the defendant took an action that disadvantaged him (Id.). In this context, "protected activity" refers to "actions taken to protest or oppose statutorily prohibited discrimination" (Thomas v Mintz, 60 Misc 3d 1218(A) [Sup Ct, NY County 2018] [internal citations omitted], affd as mod, 182 AD3d 490 [1st Dept 2020]).

Here, plaintiff's complaint fails to state the person or people to whom she complained about the salary disparity. Moreover, instead of alleging facts establishing that transfer occurred shortly after he complaint, she asserts only that "[w]hen [p]laintiff complained about the disparate treatment … [she] was transferred out of the 121st Precinct in January 2020" (NYSCEF Doc. No. 1 [Compl. at ¶¶64-65]). Finally, the complaint fails to allege any retaliatory animus sufficient to establish a causal link between plaintiff's complaint of discrimination and the disciplinary charges brought against her in early 2021, at least a year after her complaint (which necessarily occurred prior to January 2020) (See e.g., Herskowitz v The State of New York, 2023 NY Slip Op 30292[U]

[Sup Ct, NY County 2023] ["as plaintiff does not alleges facts aside from the alleged temporal proximity to support his allegation of a retaliatory animus, the four-month period from the protected activity to the adverse employment action is 'simply too attenuated' to establish a causal connection through temporal proximity alone"]). This paucity of detail mandates the dismissal of her retaliation claims (See e.g., Whitfield-Ortiz v Dept. of Educ. of City of New York, 116 AD3d 580, 581 [1st Dept 2014] [retaliation claims properly dismissed where plaintiff "did not state the substance of her alleged complaints, to whom she allegedly complained, or when such complaints were made" and "failed to plead any facts regarding when the alleged retaliatory incidents occurred or how those incidents were causally connected to any protected activity"]).

Vicarious Liability (Administrative Code §8-107[13][b])

Finally, defendants' motion to dismiss plaintiff's claim under NYCHRL § 8-107(13)(b) is denied. That statute provides for an employer's vicarious liability for unlawful discriminatory conduct of an employee or agent where: (1) that employee or agent "exercised managerial or supervisory authority" over the plaintiff, and (2) the employer either knew of such conduct and either acquiesced in or failed to take immediate and appropriate corrective action or should have known of the discriminatory conduct but "failed to exercise reasonable diligence" to prevent it (Hunter v Barnes & Noble, Inc., 2023 NY Slip Op 30638[U] [Sup Ct, NY County 2023]). The complaint sufficiently alleges that Ceparano holds a supervisory position through which he controlled "many tangible aspects of Plaintiff's job duties," and personally participate in discrimination, retaliation, and other unlawful workplace practices targeted (Id.). Defendants argue that this claim must be dismissed upon the dismissal of the other causes of action in the complaint. This argument is entirely undercut by the Court's denial of that branch of defendants' motion

which sought to dismiss plaintiff's employment discrimination claims under the NYSHRL and NYCHRL and her hostile work environment claim under the NYCHRL.

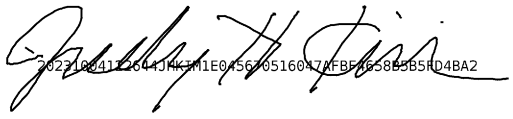
Accordingly, it is

ORDERED that defendants' motion is granted to the limited extent that plaintiff's hostile work environment under the New York State Human Rights Law and plaintiff's claims for retaliation under the New York State Human Rights Law and New York City Human Rights Law are hereby dismissed, and is otherwise denied; and it is further

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

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "EFiling" page on this Court's website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the Court.



10/4/2023
DATE

HON. JUDY H. KIM, 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