SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. NICHOLAS W. MOYNE** **PART** **52-DCM COURTROOM**

Justice

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RANDY POTTER

Plaintiff,

- v -

CITY OF NEW YORK,

Defendant.

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INDEX NO. 155953/2022

MOTION DATE 01/20/2023

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 10, 11, 12, 13, 14, 15, 17, 18, 19, 20

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, it is

Plaintiff, Randy Potter ("Potter"), commenced this action against defendant, The City of New York ("the City"), to recover compensatory and punitive damages, along with awarding of equitable and/or injunctive relief, allegedly sustained in the course of his employment with the New York City Department of Corrections as a result of unlawful discrimination on the basis of race. Based on the entirety of the allegations set forth in the complaint, plaintiff is asserting the following claims: (1) disparate impact and intentional discrimination based on race, in violation of Section 296 of the New York State Human Rights Law and Section 8-107 of the New York City Human Rights Law; (2) Administrative Code § 8-120 (a)(8); (3) Administrative Code § 8-502 (a); (4) Article I, § 11 of the New York State Constitution; and/or (5) Civil Service Law Section 71.

Now, in Motion Sequence 002, the City moves for an order, pursuant to CPLR § 3211 (a)(7), dismissing the complaint in its entirety for the failure to state a cause of action.[1] Plaintiff opposes the motion. For the reasons set forth below, the City's motion is granted in its entirety.

Factual/Procedural Background:

The facts, as alleged in the complaint, are as follows.[2] Potter, who identifies as being of Black/African American descent, alleges that nearly ten years ago he was appointed by the New York City Department of Corrections (DOC) as a uniform staff member, holding the rank of Correction Officer (complaint ¶¶ 4; 49; 55; 56). Potter contends that at the relevant time, he was assigned to the North Infirmary Command (complaint ¶ 8). On or about June 7, 2021, plaintiff allegedly sustained serious injuries in an inmate use of force, which ultimately forced him to take a leave of absence from work to recover (complaint ¶ 12). Plaintiff asserts that he was entitled to two years' leave of absence to recover from these injuries (complaint ¶ 13). According to the complaint, on or around June 23, 2022, plaintiff was "medically separated" from the DOC (complaint ¶ 14). Plaintiff also contends that he was wrongfully terminated pursuant to the DOC's "*Nunez* Action Plan", which allegedly required the City and DOC to terminate the employment of all those on the Sick List (complaint ¶ 10).

Subsequently, on or around July 2022, plaintiff commenced this action against the City by filing a copy of the summons and complaint.[3] The complaint, under the section labeled "Causes of Action", includes that the first cause of action is a claim under Administrative Code §

[1] Motion Sequence 001, the City's motion for an extension of time to respond to the complaint, was resolved pursuant to a stipulation between the parties (NYSCEF Doc. No. 9).
[2] The complaint includes numerous factual allegations which have no apparent connection to the plaintiff's claims and/or the plaintiff's professional or personal background or experiences. Accordingly, the factual background portion of this decision and order only includes those factual allegations which directly apply to the plaintiff.
[3] Both the summons and complaint in this action are dated July 18, 2022 (NYSCEF Doc. No. 1; 2). However, absent from the record is an affidavit of service.

8-120 (a)(8) and the second cause of action is a claim under Administrative Code § 8-502 (a). However, other portions of the complaint include that this is an action "for relief for *Disparate Impact* and *Intentional* racial discrimination", brought pursuant to Section 296 of the New York State Human Rights Laws ("NYSHRL"), and Section 8-107 of the New York City Human Rights Law ("NYCHRL") (complaint at 1). Finally, the complaint includes references to the Equal Protection Clause of the New York State Constitution and Civil Service Law Section 71 (*Id.*; ¶ 13)

CPLR § 3211 Standard:

On a CPLR § 3211(a)(7) motion to dismiss for the failure to state a cause of action, the complaint is given a liberal construction, the allegations are accepted as true, and the plaintiff is afforded the benefit of every favorable inference (*Cortlandt St. Recovery Corp. v Bonderman*, 31 NY3d 30, 38 [2018]). Whether a plaintiff may ultimately establish its allegations are not part of the calculus in determining a motion to dismiss, rather, the court merely examines the adequacy of the pleadings (*Id.*). In cases where the claims are those based on employment discrimination, the more lenient notice pleading standard is afforded (*Petit v Dept. of Educ. of City of New York*, 177 AD3d 402, 403 [1st Dept 2019]; citing *Vig v New York Hairspray Co., L.P.*, 67 AD3d 140, 145 [1st Dept 2009]). Therefore, the ultimate question is whether, accepting the allegations and affording these inferences, the plaintiff can succeed upon any reasonable view of the facts stated (*Doe v Bloomberg, L.P.*, 36 NY3d 450, 454 [2021]).

Discussion:

Standard of Review for New York City and State Human Rights Law Claims:

Plaintiff alleges that he brings this action pursuant to Section 296 of the New York State Human Rights Law and Section 8-107 of the New York City Human Rights Law, seeking "relief

for *Disparate Impact* and *Intentional* racial discrimination for purposes of preserving institutional and structural discrimination against [] persons of Black/African American, thereby wrongfully depriving the plaintiff[] of the terms, conditions, and privileges of employment" (complaint at 1).

In 2019, the New York State Human Rights Law was amended, rendering the standard for these claims closer to that under the New York City Human Rights Law (Executive Law § 300; *Wellner v Montefiore Med. Ctr.*, 2019 AD Cases 325592, at *5 n 4 [SDNY Aug. 29, 2019]). As the amended NYSHRL seems to adopt the same standard as the NYCHRL, now with this amendment the plaintiff's "NYSHRL claims rise and fall with [the] NYCHRL claims" (*Syeed v Bloomberg L.P.*, 568 F Supp 3d 314, 321 [SDNY 2021], *vacated and remanded on other grounds,* 22-1251, 2024 WL 2813563 [2d Cir June 3, 2024]; *Hatzimihalis v SMBC Nikko Sec. Am., Inc.*, 20 CIV. 8037 [JPC], 2023 WL 3764823, at *11 [SDNY June 1, 2023]). Therefore, as plaintiff's NYSHRL claims accrued after the effective date of the 2019-amendment, the plaintiff's NYSHRL and NYCHRL claims may be analyzed together.

Disparate Impact:

Plaintiff is allegedly asserting a claim of racial discrimination based on a theory of disparate impact. A plaintiff bringing a claim for disparate impact must establish that a policy or practice of a covered entity, or a group of policies or practices of a covered entity, results in a disparate impact to the detriment of any group protected by the provisions (Admin Code § 8-107 [17] [a] [1]). To state a claim for disparate impact, a plaintiff must plausibly, (1) identify a specific employment practice or policy; (2) demonstrate that a disparity exists; and (3) establish a causal relationship between the two (*Richardson v City of New York*, 17-CV-9447 [JPO], 2018 WL 4682224, at *9 [SDNY Sept. 28, 2018]; *Chin v Port Auth. of New York & New Jersey*, 685

F3d 135, 151 [2d Cir 2012]). The City contends that this claim should be dismissed as the plaintiff has failed to allege a facially neutral employment policy or practice which has a disproportionate effect on a protected class- in this case, African American DOC employees. In opposition, plaintiff contends he has adequately stated a disparate impact claim, alleging that the City's "disproportionately reducing members of protected classes, using claims of misconduct, states a claim for racial discrimination, disproportionately impacting uniform staff who are minorities" (NYSCEF Doc. No. 17 at 12).

Here, plaintiff's disparate impact claim fails as the complaint lacks allegations identifying that the City has a specific, facially neutral employment practice or policy that is applicable to him. A plaintiff bears the burden of identifying a facially neutral policy which yields a disparate impact or outcome greater for members of the protected group than on other groups (*Mete v New York State Off. of Mental Retardation and Dev. Disabilities*, 21 AD3d 288, 296 [1st Dept 2005]; *see also Richardson v City of New York*, 17-CV-9447 [JPO], 2018 WL 4682224, at *9 [SDNY Sept. 28, 2018] [A disparate impact claim under the NYCHRL requires a showing of one or more identifiable employment practices or policies]). The complaint includes multiple vague allegations referencing supposed policies or practices of the City. These allegations include the City's, "underlying widespread institutional and structural discrimination", "reduction in uniform staff", and the "overhaul and reorganization" of the DOC (complaint at 4-5; 24-33).[4] Plaintiff claims that this reduction in staff and/or overhaul disproportionately hurts DOC employees who are largely Black/African American and Hispanic (complaint ¶¶ 24-33). However, general, speculative, or conclusory allegations which amount to mere legal conclusions are insufficient to

[4] The complaint also includes a citation to *Floyd et al., v City of New York, et al.*, 959 FSupp2d 540 (SDNY 2013), references *"Vulcan Society v City of New York"*, and states that the City settled the *"Central Park Joggers"* case (complaint ¶¶ 20-22). However, plaintiff does not indicate the relevance of including these references nor how they would be connected to his allegations or claims.

make out a claim to withstand a motion to dismiss (*Thomas v Mintz*, 182 AD3d 490, 490 [1st Dept 2020]; *Whitfield-Ortiz v Dept. of Educ. of City of New York*, 116 AD3d 580, 581 [1st Dept 2014]; *Askin v Dept. of Educ. of City of New York*, 110 AD3d 621, 622 [1st Dept 2013]; *Barnes v Hodge*, 118 AD3d 633, 633 [1st Dept 2014]). Accordingly, without additional concrete factual allegations in support of these claims, these allegations are insufficient to identify that the City has a facially neutral policy or practice.

The complaint also mentions the June 10, 2022- *Nunez* Action Plan and the *Nunez* Federal Monitor Reports (complaint at 5-7). [5] Affording the pleadings a liberal construction, while the *Nunez* Action Plan could potentially constitute a policy, the plaintiff has failed to demonstrate a disproportionate impact or disparity in outcome. Specifically, the plaintiff has not adequately shown a causal connection between the policy and a disproportionate effect on minority uniform staff.

The complaint offers overarching lists with demographics for the DOC's total uniform workforce from 2018; while the majority of the provided demographics have no relation to the plaintiff, the relevant statistics show that 58% of the total DOC Correction Officer staff identify as Black, and slightly more than 60% of the entire DOC workforce identify as Black (complaint ¶¶ 40-41; 47 [iii]). While a plaintiff may use statistical evidence to support a claim of disparate impact (*Abbott v Mem. Sloan-Kettering Cancer Ctr.*, 276 AD2d 432, 433 [1st Dept 2000]), a *prima facie* case is not established by a simple showing of statistical disparities in a workforce

[5] The *Nunez* Action Plan was a plan developed to address recommendations outlined in Special Reports, to undertake efforts and identify specific immediate steps the City and the Department of Corrections must take to reduce the risk of harm/violence in the City's jails, as set forth/outlined by the federal monitor and approved on June 14, 2022, by the Southern District of New York in the *Nunez* use-of-force class action, first filed in 2011: *Nunez, et al. v. City of New York, et al.*, 11-cv-5845 (LTS) (JCF) (Nunez Monitor Reports, DOC News- City of New York Department of Corrections, *Updated Action Plan- June 14, 2022*, available at Updated Action Plan.pdf (nyc.gov) [last accessed September 9, 2024]).

(*Matter of New York State Off. of Mental Health v New York State Div. of Human Rights*, 223 AD2d 88, 91 [3d Dept 1996]). Additionally, while the standards for statistical evidence are relaxed at the motion to dismiss stage, even then the statistics must plausibly suggest that the challenged practice *actually has* a disparate impact (*Mandala v NTT Data, Inc.*, 975 F3d 202, 210 [2d Cir 2020] [*emphasis added*]).

Notably, aside from listing out these demographics, the complaint fails to include any factual allegations to establish that the numerical data being offered is comprised of the relevant workforce or employees who were similarly situated, or to show how these statistics may have changed over time, if at all (*see Ellison v Chartis Claims, Inc.*, 178 AD3d 665, 669 [2d Dept 2019]; *Samuels v William Morris Agency*, 123 AD3d 472, 473 [1st Dept 2014]; *Green v The City of New York*, 2023 NY Slip Op. 32245[U], 4 [Sup Ct, NY County 2023]). The complaint fails to include any facts indicating that Black/African American Correction Officers were disproportionately reduced as a result of any alleged City practice (*Burgis v City of New York Dept. of Sanitation*, 2018 NY Slip Op. 33322[U], 9 [Sup Ct, NY County 2018] [A plaintiff must plausibly allege a causal connection between the policy at issue and the disproportionate effect]). Accordingly, the complaint fails to sufficiently allege claim of discrimination under a disparate impact theory.

Intentional Discrimination:

Plaintiff is also allegedly asserting a claim of intentional employment discrimination on the basis of race. The City contends that the plaintiff's intentional discrimination claim must be dismissed as the complaint fails to include allegations which give rise to an inference of discrimination. [6]

[6] Claims of intentional discrimination are those that are known as disparate treatment discrimination (*Richardson v City of New York*, 17-CV-9447 [JPO], 2018 WL 4682224, at *9 [SDNY Sept. 28, 2018]).

To sufficiently state a claim of invidious discrimination under both the NYSHRL and NYCHRL, a plaintiff must adequately plead: (1) they are a member of a protected class; (2) that they were qualified for the position; (3) that they were treated differently or worse than other employees; and (4) that the adverse or different treatment occurred under circumstances giving rise to an inference of discrimination (*Harrington v City of New York*, 157 AD3d 582, 584 [1st Dept 2018]). In this case, plaintiff has sufficiently alleged the first two elements of a *prima facie* claim but has failed to allege differential treatment that occurred under circumstances which give rise to an inference of discrimination.

Plaintiff's intentional discrimination claim is premised on being "medically separated" from the DOC and/or terminated from his position as a Corrections Officer. This allegation, without more, is insufficient to establish a claim of discrimination based on race. To adequately allege a discrimination claim, plaintiff must allege that he was treated differently or less well than other employees because of his protected characteristic (*Brown v City of New York*, 188 AD3d 518, 519 [1st Dept 2020]; *Golston-Green v City of New York*, 184 AD3d 24, 38 [2d Dept 2020]). A plaintiff must do more than just include allegations that he is a member of a protected class and was treated less well, he must include allegations that suggest a discriminatory animus (*Massaro v Dept. of Educ. of City of New York*, 121 AD3d 569, 570 [1st Dept 2014]; *Askin v Dept. of Educ. of City of New York*, 110 AD3d 621, 622 [1st Dept 2013]).

An inference of discrimination may arise where a plaintiff can demonstrate a similarly situated employee outside the plaintiff's protected group benefitted from terms and conditions of employment that were denied to plaintiff (*Sims v The Trustees of Columbia Univ. in the City of New York*, 2017 NY Slip Op. 32331[U], 14 [Sup Ct, NY County 2017], *affd as mod sub nom. Sims v Trustees of Columbia Univ.*, 2019 NY Slip Op. 00672 [1st Dept 2019]; *see also*

Harrington v City of New York, 157 AD3d 582, 585 [1st Dept 2018] [Inference of discrimination may be derived from preferential treatment to similarly-situated employees who are not members of the plaintiff's protected group]). The complaint fails to include allegations of any disparity in treatment, *i.e.* that similarly-situated DOC employees who are not African American were treated more favorably than plaintiff under similar circumstances (*Kwong v City of New York*, 204 AD3d 442, 444 [1st Dept 2022], *lv to appeal dismissed,* 38 NY3d 1174 [2022]).

An inference of discrimination may also be shown by including allegations which could be indicative of discriminatory intent, such as a decisionmaker's comments, remarks, or references to the plaintiff's protected group (*Brown v City of New York*, 188 AD3d 518, 519 [1st Dept 2020]; *Whitfield-Ortiz v Dept. of Educ. of City of New York*, 116 AD3d 580, 581 [1st Dept 2014]). The complaint lacks any allegations of remarks or conduct surrounding his termination which could be indictive of animus or otherwise show that racial discrimination was a motivating factor (*Hribovsek v United Cerebral Palsy of New York City*, 223 AD3d 618, 620 [1st Dept 2024]; *Kwong v City of New York*, 204 AD3d 442, 444 [1st Dept 2022], *lv to appeal dismissed,* 38 NY3d 1174 [2022]). In fact, the complaint does not include any direct or indirect allegations that suggest that plaintiff's termination from the DOC was on account of racial animus (*see Hribovsek v United Cerebral Palsy of New York City,* 223 AD3d 618, 620 [1st Dept 2024]]). Instead, the complaint continuously alleges that plaintiff was wrongfully terminated pursuant to the *Nunez* Action Plan and/or in violation of his Civil Service right to two years' time to recover from an injury (complaint ¶¶ 9; 13-14). Therefore, as the complaint does little more than allege the conclusion that plaintiff is a member of a protected class and was terminated due to this characteristic, the claims for disparate treatment under the NYCHRL and NYSHRL must be dismissed (*Thomas v Mintz*, 182 AD3d 490, 490 [1st Dept 2020]).

Administrative Code § 8-120(a)(8):

Offered in the complaint as the first cause of action, is a claim brought "against the [d]efendant pursuant to Administrative Code § 8-120(a)(8) for compensatory damages for emotional distress (i.e., mental anguish) as a proximate cause of the [d]efendant's discrimination on the basis of race" (complaint at 11). However, this section of the Administrative Code, which includes Sections 8-109 through 8-127, refers to the procedure and process of making and/or the adjudication of verified complaints filed directly with the Commission on Human Rights. Specifically, Administrative Code § 8-120 (a)(8), which governs decisions and orders, provides in pertinent part, "[i]f, upon all the evidence at the hearing, and upon the findings of fact, conclusions of law and relief recommended by an administrative law judge, the commission shall find that a respondent has engaged in any unlawful discriminatory practice…the commission shall state its findings of fact and conclusions of law and shall issue… an order requiring such respondent to cease and desist from such unlawful discriminatory practice… [s]uch order shall require the respondent to take such affirmative action… including…[p]ayment of compensatory damages to the person aggrieved by such practice or act."

Plaintiff has not alleged that he filed a verified complaint with the Commission, that an investigation or proceeding commenced, and/or that a final decision or determination awarding compensatory damages was ever rendered by the Commission. Additionally, judicial review of any such final decisions and orders by the Commission, pursuant to Section 8-120, must be sought in a special proceeding initiated by the filing of a petition (*see* Admin Code § 8-123). Considering, plaintiff cannot assert nor sustain a claim under Administrative Code § 8-120 (a)(8).

Administrative Code § 8-502 (a):

Offered in the complaint as the plaintiff's second cause of action, is a claim under Administrative Code § 8-502 (a), seeking punitive damages for emotional distress caused by the defendant's discrimination on the basis of race (complaint at 12). The NYCHRL provides for compensatory and punitive damages and other remedies against employers and employees found directly or vicariously liable for discrimination, a provision the City Council included in the NYCHRL in 1991 *(Chauca v Abraham,* 30 NY3d 325, 330 [2017]). However, punitive damages are allowed only where the wrongdoer's actions amount to willful or wanton negligence, or recklessness, or where there is a conscious disregard of the rights of others or conduct so reckless as to amount to such disregard (*id.* at 329). This claim is dismissed considering that, in addition to having failed to adequately allege a viable NYCHRL claim of discrimination, plaintiff is not entitled to recover punitive damages as the complaint lacks allegations of discriminatory conduct that amounts to willful or wanton negligence, recklessness, or a conscious disregard of the rights of others.[7]

Equal Protection Clause:

Plaintiff also attempts to bring a discrimination claim under Article I, § 11 of the New York State Constitution, alleging that such discrimination wrongfully deprived the plaintiff of the terms, conditions, and privileges of employment in violation of the Equal Protection Clause (complaint at 1). The City asserts that the plaintiff's Equal Protection claim must be dismissed,

[7] Plaintiff has included an allegation which reads, "[r]equiring the [p]laintiff to work excessive hours with breaks, forcing the [p]laintiffs to work in areas where inmates cannot be controlled by securing them in their cells so that they are free to gang up on female uniform staff members for sexual assault and abuses, forcing the [p]laintiff to work with reckless disregard for his health and wellbeing as well as that of the supervisors" (complaint ¶ 58). However, this allegation has no connection to the plaintiff, any of the other allegations of conduct, or claims in the complaint; nor is it accompanied by any other allegations which provide clarification or support for this inclusion.

claiming that there is no private right to action when the State and City Human Rights Laws provide avenues for redress for employment discrimination claims.

Article I, § 11 of the New York State Constitution provides that, "[n]o person shall be denied the equal protection of the law of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by a firm, corporation or institution, or by the state or any agency or subdivision of this state". The Court of Appeals has recognized the existence of a constitutional-tort claim, *i.e.* a cause of action for damages based on official conduct which violates the State Constitution, but has held that the cause of action is a narrow remedy that is only available where the plaintiff has no alternative remedy (*Sullivan v City of New York*, 17 CIV. 3779 [KPF], 2018 WL 3368706, at *20 [SDNY July 10, 2018]). Accordingly, the plaintiff is unable to bring a constitutional-tort claim based on acts of employment discrimination as alternative remedies are available under both State and City statues.

Additionally, plaintiff's New York State Constitution claim must be dismissed because although not required for NYCHRL and NYSHRL claims, claims under the New York State Constitution require serving a notice of claim on the City, which is a condition precedent to advancing this claim (*E. End Resources, LLC v Town of Southold Planning Bd.*, 135 AD3d 899, 902 [2d Dept 2016]; *compare Margerum v City of Buffalo*, 24 NY3d 721, 730 [2015]; General Municipal Law § 50-I).

Civil Service Law § 71:

Plaintiff claims that the City's termination of his employment was in violation of his Civil Service right to two years' time to recover from an injury, pursuant to Civil Service Law Section 71 (complaint ¶ 53). The City contends that the claim under Civil Service Law § 71, if

any, should be dismissed as it must be brought as an Article 78 special proceeding. The City further argues that the plaintiff has failed to allege a cause of action which would warrant converting this claim to a plenary action.

The Court of Appeals has held that a challenge to a determination under Civil Service Law § 71 must take the form of a CPLR Article 78 special proceeding (*Matter of Lazzari v Town of Eastchester*, 20 NY3d 214, 219 [2012]). Although the court, under CPLR § 103 (c), is authorized to convert this claim to a special proceeding, the plaintiff has failed to adequately allege a claim under the statute to warrant such conversion.

Civil Service Law Section 71 provides that where an employee has been separated from the service by reason of a disability resulting from an assault sustained in the course of his employment, he shall be entitled to a leave of absence for at least two years, unless the disability is of such a nature to permanently incapacitate him from the performance of his duties. Section 71 was adopted to address the difficult situation created by the prolonged absence of a civil service employee due to injury by allowing the governmental employer to terminate an employee without resorting to disciplinary proceedings and providing the injured employee with a mechanism for later reinstatement (*Jordan v New York City Hous. Auth.*, 33 NY3d 408, 413 [2019]). Due process requires the City to provide "notice and a minimal opportunity to be heard" prior to terminating an employee covered by Section 71, regardless of the section's provisions for seeking reinstatement after termination (*City of Long Beach v New York State Pub. Empl. Relations Bd.*, 39 NY3d 17, 24 [2022]). Notably, the complaint is devoid of factual allegations that would support a claim that the plaintiff's termination was made in violation of lawful procedure or in violation of his rights as afforded under the Civil Service Law § 71 statute. Plaintiff has not included factual allegations indicating that the City failed to comply with the

procedural or process requirements for termination under Section 71, but instead merely asserts in conclusory terms that his termination was in violation of his civil service right to two years' time to recover.

Additionally, Civil Service Law § 71 provides the opportunity for the terminated employee, within one year after the termination of such disability and after medical examination and certification, to make an application for reinstatement to their former position, to a similar position, or be placed upon a preferred list if such positions are unavailable (*Town of Hempstead v New York State Div. of Human Rights*, 215 AD3d 973, 977 [2d Dept 2023]). The complaint does not contain allegations that after his termination, the plaintiff commenced an application seeking reinstatement that was the subject of an improper or adverse determination (*see Matter of Still v City of Middletown*, 133 AD3d 864, 865 [2d Dept 2015]). Accordingly, converting this claim to a special proceeding is not warranted as the plaintiff has not alleged nor established that his termination or a determination by the City was arbitrary and capricious, an abuse of discretion, in violation of lawful procedure, or affected by an error of law (*Tyson v Town of Ramapo*, 165 AD3d 805, 806 [2d Dept 2018]). Accordingly, the plaintiff has failed to state a cause of action with respect to a claim involving Civil Service Law § 71.

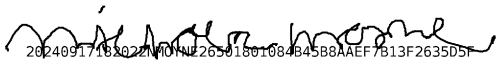
Conclusion:

Accordingly, it is hereby

ORDERED that the motion by The City of New York to dismiss the complaint is GRANTED and the complaint is hereby dismissed; and it is further

ORDERED that the City of New York is directed to serve upon plaintiff a copy of this decision and order, with notice of entry, within 20 days of entry.

This constitutes the decision and order of the court.



9/11/2024
DATE

NICHOLAS W. MOYNE, J.S.C.

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