SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. PAUL GOETZ** **PART** **47**

Justice

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ROBIN ROOT

Plaintiff,

- v -

CITY UNIVERSITY OF NEW YORK,

Defendant.

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INDEX NO. 157151/2020

MOTION DATE 01/29/2021

MOTION SEQ. NO. 001

AMENDED DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13

were read on this motion to/for DISMISSAL.

This action arises out of plaintiff Robin Root's claims that defendant the City University of New York (CUNY), discriminated and retaliated against her on account of her race, in violation the New York State Human Rights Law (NYSHRL). CUNY moves, pursuant PLR 3211 (a) (7), for an order dismissing the complaint. For the reasons set forth below, CUNY's motion is denied.

BACKGROUND AND FACTUAL ALLEGATIONS

Plaintiff is currently employed as a professor in Baruch College's Anthropology and Sociology Department and has been teaching there since 2004. Baruch College is a college in the CUNY system. She states that, as a "medical anthropologist, [she] has spent years investigating and publishing scholarship on issues of race, ethnicity, and other aspects of culture as these constructs affect individual and public health." NYSCEF Doc. No. 1, Complaint, ¶ 7. Plaintiff identifies as white/Caucasian (non-Hispanic). The complaint indicates that, in the autumn of 2017 plaintiff was a member of an executive search committee tasked with hiring new faculty for her department, that the committee ultimately hired two candidates from minority

backgrounds and that at the time, out of ten faculty members, "six were 'white' and four were people of any background not identifying as white." *Id.*, ¶ 10.

In August 2018, two minority faculty members "expressed concerns about racism in the classroom." *Id.*, ¶ 11. No faculty member accused plaintiff of committing any discriminatory acts. Throughout the fall of 2018, plaintiff "assumed a leadership role in gathering institutional best practices from other universities for retention of minority faculty." *Id.*, ¶ 12.

Plaintiff was on sabbatical for the Spring 2019 semester. While she was away, the minority faculty members created the "Faculty of Color Caucus ('FoCC'), which excluded any faculty whom they deemed 'white.'" *Id.*, ¶ 14. According to plaintiff, the FoCC "corrupted" the past work she had done on minority retention practices. *Id.*, ¶ 19. The complaint states that the FoCC presented the faculty members with a document called the Report of the Faculty of Color Caucus (the "Report"). The Report stated that the FoCC expressed concern "with department level recognition of [minority faculty's] research, teaching, and invisible labor." *Id.*, ¶ 15 (internal quotation marks omitted). Plaintiff states that neither she, nor any of the other faculty members involved "had any authority over the 'recognition' of co-faculty research with regards to issues of publication or recognition." *Id.*, ¶ 15. The Report also suggested that the white faculty have the "burden of learning about and undoing white normativity," and that these faculty should be required to read a book titled White Fragility. *Id.*, ¶ 16. The complaint also states the following, in relevant part:

> "The 'Report' further stated that a trained facilitator should be hired, and that 'white' faculty should learn to reflect on how 'white normativity' plays out in the department, and that the 'faculty of color' should not be expected to participate in the discussions in order to 'avoid burdening faculty of color with invisible labor.'"

Id., ¶ 16.

Plaintiff claims that she, among other things, "has spent the better part of her lengthy career studying and examining complex issues of race and culture . . . ." *Id.*, ¶ 20. She continues that she was "stunned, humiliated, and disheartened to see the 'Report' accuse over half of the Department faculty, including herself, of racism solely because they were white." *Id.*

According to plaintiff, no faculty members had ever been accused of committing any specific discriminatory actions or conduct. *Id.*, ¶ 18. However, in every interaction, the FoCC would allegedly accuse the white faculty members of "white privilege and a culture of racism in the Department." *Id.*, ¶ 23 (internal quotation marks committed). Plaintiff provides the example of an email exchange between herself and Carolle Charles (Charles), another professor, where Charles allegedly stated that "she was uninterested in discussing discrimination when all of you behave and practice at different levels of whiteness." *Id.*, ¶ 21 (internal quotation marks omitted). Charles also "wrote that one of the reasons Dr. Root had herself been promoted to professor is because she is white." *Id.*, ¶ 21.

On February 14, 2020, plaintiff advised Dr. Snyder (Snyder), the Department chair, that the "racially motivated bullying" had been intolerable. On February 20, 2020, Snyder held a faculty meeting where he allegedly stated, among other things, that the "white faculty had not addressed their privilege," and that they should "read and discuss the book White Fragility in order to try and become better people." *Id.*, ¶ 27 (internal quotation marks omitted). Without providing any specifics, Snyder stated that he had a "series of complaints by faculty in front of him and the Department needed to figure out how to proceed." *Id.*, ¶ 29. Snyder and another professor stated that they would establish a "White Caucus," focused on having the white faculty implement the FoCC's Report. *Id.*, ¶ 28 (internal quotation marks omitted). "Once again, no actual conduct, specifics, or details whatsoever were provided as to what were the culture issues

in the Department, nor how any such issues were the fault of the entirety of the white faculty." *Id*., ¶ 31.

After the meeting held on February 20, 2020, plaintiff met with "Mona Jha (Jha), Baruch's Chief Diversity Officer, to file formal complaints of harassment and discrimination." *Id*., ¶ 33. During the meeting, Jha suggested that plaintiff read White Fragility. Plaintiff also emailed Al Romero (Romero), Dean of the Weissman School of Arts and Sciences, but he allegedly refused to meet with her. Plaintiff subsequently filed a formal request with Romero, asking, among other things, "that the white normativity initiative be ceased as it was creating the conditions for a hostile work environment, namely, that she has been subjected to vague and illegitimate accusations about racism for no other reason than because she is presumed to be white . . . ." *Id*., ¶ 35 (internal quotation marks omitted).

On March 14, 2020, Snyder advised plaintiff that he had spoken with Romero about plaintiff's discrimination complaints. Pursuant to an email, Snyder instructed plaintiff to rescind her "white racism" complaint." *Id*., ¶ 36. He wrote that, "[w]hile I agree that you have been mis-treated [sic] I don't think a reverse racism grievance is going to hold much water." *Id.* (internal quotation marks omitted). He also informed plaintiff that her complaints filed with the Office of Diversity "are a problem because it may tarnish Baruch's reputation as a place for minority employment." *Id*., ¶ 37.

According to plaintiff, members of the FoCC filed unsubstantiated discrimination complaints against her and other white faculty "for no other reason than because they are white." *Id*., ¶ 49. For instance, on November 6, 2019, Charles initially filed a complaint against plaintiff with respect to an alleged argument between the parties. Although Charles' complaint had been labeled as one alleging discrimination, Jha purportedly advised plaintiff that her office did not

have jurisdiction to investigate the complaint, as the complaint did not fall under the equal employment and non-discrimination policy. Charles then purportedly re-filed her initial complaint as one alleging workplace violence. Although Charles was "aware that her complaint did not involve workplace violence," she filed it in "furtherance of her discriminatory animus" against plaintiff." *Id*., ¶ 44.

As another example, plaintiff was informed on July 16, 2020, that a discrimination complaint that had been lodged against her by another faculty member, was unsubstantiated. According to plaintiff, Baruch College "is aware of the discriminatory intent and harassing nature of these complaints but took adverse action only against Plaintiff due to the parties' respective races." *Id*., ¶ 49. The complaint states that, as a result of Baruch College's acts of discrimination and retaliation, plaintiff has suffered from, among other things, anxiety and depression.

Plaintiff commenced this action by alleging two causes of action against CUNY. The first cause of action sets forth that plaintiff was treated in a worse manner than her non-white similarly situated coworkers, due to her race, in violation of the NYSHRL. Plaintiff also alleges that she was subjected to a hostile work environment due to her race. In the second cause of action, plaintiff alleges that CUNY retaliated against her on the basis of her good faith complaints of discrimination, in violation of the NYSHRL. Plaintiff is seeking compensatory and punitive damages.

CUNY's Motion and Plaintiff's Opposition

CUNY argues that plaintiff's allegations do not rise to the level of a hostile work environment under the NYSHRL. It continues that plaintiff cannot establish that she was subjected to anything beyond mere personality conflicts or petty slights and trivial

inconveniences. According to CUNY, telling plaintiff that she needs to learn to reflect on her race, although referencing plaintiff's race, is not denigrating it. CUNY summarizes that plaintiff's subjective belief that she was discriminated against cannot be the basis of a discrimination claim.

CUNY continues that the confidential discrimination complaints made against plaintiff by the other faculty members, even if unsubstantiated, do not constitute harassment. CUNY also claims that these complaints were sporadic and cannot meet the threshold of pervasiveness under the NYSHRL.

CUNY further argues that plaintiff is unable to sustain a discrimination claim under the NYSHRL because she is unable to demonstrate that she was subjected to inferior terms, privileges, or conditions of her employment due to her race. For instance, according to CUNY, the book White Fragility "has entered the cultural zeitgeist as a literary tool to foster discussion of racism and white normativity." NYSCEF Doc. No. 7, CUNY's memorandum of law at 7. As a result, plaintiff cannot establish that she was subjected to inferior terms of employment by being asked to reflect on white privilege and read White Fragility. CUNY also argues that public policy should preclude plaintiff's complaint against her "colleagues' legitimate concerns about systemic racism, both in the Department and in society at large . . . ." *Id*. at 17.

With respect to the retaliation claim, identifying it as one for a retaliatory hostile work environment, CUNY argues that plaintiff fails to show a causal connection between the purported hostile work environment and her complaints.

In opposition, plaintiff argues that the instant action involves more than what CUNY is categorizing as being asked to reflect on her privilege. Instead, plaintiff argues that she was characterized and treated differently because of her race. For instance, "she was told that she

needed to be a better person based on nothing but her race, blamed for the issues and conflicts within the department solely because of her race, called a racist solely because of her race, called arrogant solely because of her race, and was required to read books and attend meetings about racial topics solely because of her race . . . ." NYSCEF Doc. No. 12, plaintiff's memorandum of law at 4. Minority faculty "expressly stated that they refused to participate in any such discussions." *Id*. at 13. Plaintiff continues that, it is irrelevant that White Fragility is a "popular" book, as not all employees were mandated to read it and it was not appropriate for the workplace. She reiterates that the "behavior directed at Plaintiff had absolutely nothing to do with Plaintiff's position as a college professor nor Defendant as a university." *Id*. at 11.

Plaintiff argues that statements made by CUNY employees indicate the racial animus behind their actions. For instance, she notes that, in direct response to her complaint of discrimination, her direct supervisor agreed that plaintiff had been mistreated but demanded that she withdraw her "white racism" complaint. She claims that, although CUNY was aware that plaintiff's colleagues had made complaints against her in bad faith, it did not take any action against them, due to plaintiff's race.

Regarding retaliation, plaintiff argues that CUNY allegedly engaged in retaliatory conduct by demanding that she rescind her discrimination complaints. She and the other white faculty were then blamed for the current situation in the Department and she was advised that her complaint could harm Baruch's reputation.

DISCUSSION

I. Dismissal

"[O]n a motion to dismiss pursuant to CPLR 3211 (a) (7), the pleading is afforded a liberal construction, facts as alleged in the complaint are accepted as true, plaintiffs are afforded

the benefit of every possible favorable inference, and the motion court must only determine whether the facts as alleged fit within any cognizable legal theory." *D.K. Prop., Inc. v National Union Fire Ins. Co. of Pittsburgh, Pa*., 168 AD3d 505, 506 (1st Dept 2019). However, "bare legal conclusions as well as factual claims flatly contradicted by the record are not entitled to any such consideration." *Silverman v Nicholson*, 110 AD3d 1054, 1055 (2d Dept 2013) (internal quotation marks and citation omitted).

In addition, on a motion to dismiss, employment discrimination cases are "generally reviewed under notice pleading standards . . . . [I]t has been held that 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." *Vig v New York Hairspray Co., L.P*., 67 AD3d 140, 145 (1st Dept 2009) (internal citation omitted). "Whether the complaint will later survive a motion for summary judgment, or whether the plaintiff will ultimately be able to prove its claims ... plays no part in the determination of a pre-discovery 3211[a][7] motion to dismiss." *Shaya B. Pac., LLC v Wilson, Elser, Moskowitz, Edelman & Dicker, LLP*, 38 AD3d 34, 38 (2d Dept 2006).

II. Discrimination

Pursuant to the NYSHRL, it is an unlawful discriminatory practice for an employer to refuse to hire or employ, or to fire or to discriminate against an individual in the terms, conditions or privileges of employment because of the individual's race. *See* Executive Law § 296 (1) (a).

Recent amendments to the NYSHRL are applicable to claims made after October 11, 2019, including plaintiff's claims. In relevant part, as amended, Executive Law § 300 sets forth that, "[t]he provisions of this article shall be construed liberally for the accomplishment of the

remedial purposes thereof, regardless of whether federal civil rights laws, including those laws with provisions worded comparably to the provisions of this article, have been so construed." *See e.g. McHenry v Fox News Network, LLC*, 510 F Supp 3d 51, 68 (SD NY 2019) ("In August 2019, the NYSHRL was amended to direct courts to construe the NYSHRL, like the NYCHRL [New York City Human Rights Law], 'liberally for the accomplishment of the remedial purposes thereof' . . . .").

In pertinent part, prior to the amendment, to establish a claim for hostile work environment under the NYSHRL, a plaintiff had to show that the workplace was "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." *La Marca-Pagano v Dr. Steven Phillips, P.C.,* 129 AD3d 918, 919 (2d Dept 2015) (internal quotation marks and citations omitted). Now, the amendments indicate that "harassment is actionable 'regardless of whether such harassment would be considered severe or pervasive under precedent applied to harassment claims,' and the plaintiff need demonstrate only that she or he was subjected to 'inferior terms, conditions or privileges of employment.'" *Golston-Green v City of New York*, 184 AD3d 24, 41 n 3 (2d Dept 2020), quoting Executive Law § 296 (h) (1). The statute further provides for "an affirmative defense to liability under this subdivision that the harassing conduct does not rise above the level of what a reasonable victim of discrimination with the same protected characteristic or characteristics would consider petty slights or trivial inconveniences." Executive Law 296 § (h) (1).

To plead an actionable hostile work environment under the NYSHRL, plaintiff must allege that she was subjected "to inferior terms, conditions or privileges of employment" because of the [her] membership in one or more . . . protected categories." Executive Law 296 § (h) (1).

Although as a result of the recent amendment the case law is limited, courts have held that the NYSHRL's "new standard [for establishing a hostile work environment claim] is similar to the standard for stating a hostile work environment claim under the NYCHRL . . . ." *Cano v Seiu Local 32BJ*, 2021 US Dist LEXIS 113240, *16 (SD NY 2021).

The provisions of the NYCHRL have been construed more liberally than its state or federal counterparts. *Bennett v Time Warner Cable, Inc.*, 138 AD3d 598, 599 (1st Dept 2016). "Under the NYCHRL, there are not separate standards for discrimination and harassment claims." *Johnson v Strive E. Harlem Empl. Group*, 990 F Supp 2d 435, 445 (SD NY 2014) (internal quotation marks and citation omitted). "Instead, a focus on unequal treatment based on [a protected characteristic] -- regardless of whether the conduct is 'tangible' (like hiring or firing) or not -- is in fact the approach that is most faithful to the uniquely broad and remedial purposes of the local statute." *Mihalik v Credit Agricole Cheuvreux N. Am., Inc.*, 715 F3d 102, 114 (2d Cir 2013) (internal question marks and citation omitted).

"To establish a [race] discrimination claim under the NYCHRL, the plaintiff need only demonstrate by a preponderance of the evidence that she has been treated less well than other employees because of her [race]." *Id.* at 110 (internal quotation marks and citations omitted). Similarly, a hostile work environment exists in violation of the NYCHRL where an employee "has been treated less well than other employees because of [his/her] protected status." *Chin v New York City Hous. Auth.*, 106 AD3d 443, 445 (1st Dept 2013); *see also Golston-Green v City of New York*, 184 AD3d at 40-41 (internal quotation marks and citation omitted) ("Another way in which a plaintiff may establish discrimination in the terms, conditions, and privileges or employment is by showing that she or he was subject to a hostile work environment"). Under the NYCHRL, "the conduct's severity and pervasiveness are relevant only to the issue of

damages." *Mihalik v Credit Agricole Cheuvreux N. Am., Inc*. (715 F3d at 110) (internal citation omitted).

Despite the broader application of the NYCHRL, conduct that consists of "petty slights or trivial inconveniences . . . do[es] not suffice to support a hostile work environment claim." *Buchwald v Silverman Shin & Byrne PLLC*, 149 AD3d 560, 560 (1st Dept 2017) (citation omitted). However, "the employer has the burden of proving the conduct's triviality . . . ." *Mihalik v Credit Agricole Cheuvreux N. Am., Inc.*, 715 F3d at 111. Nonetheless, "[c]ourts must be mindful that the NYCHRL is not a general civility code. The plaintiff still bears the burden of showing that the conduct is caused by a discriminatory motive." *Id.* at 110 (internal quotation marks and citation omitted).

Here, the Report, issued by minority faculty members, expressed a "concern with department level recognition of [minority faculty's] research, teaching, and invisible labor." Complaint, ¶ 15. Plaintiff states that neither she nor any other faculty member had any control over the recognition of research. The Report stated that the white faculty members had "the burden of learning about and undoing white normativity," and that they would be expected to read books and attend meetings. The "faculty of color" were allegedly exempt from participating in the discussions "in order to avoid burdening faculty of color with invisible labor." *Id.*, ¶ 16. In sum, according to plaintiff, although she herself had never been accused of participating in any discriminatory conduct, her employer asked her, solely on the basis of her race, to read extra books, attend extra meetings, and reflect and address her privilege to the satisfaction of her employer. Accordingly, in light of amended standards of the NYSHRL and guidance from the NYCHRL, plaintiff has sufficiently pled that she was subjected to "inferior terms, conditions or privileges of employment" because of her race. *Compare Whitfield-Ortiz v*

Department of Educ. of City of N.Y., 116 AD3d 580, 581 (1st Dept 2014) ("[p]laintiff also failed to adequately plead discriminatory animus, which is fatal to both her discrimination and hostile environment claims").

CUNY posits that encouraging the white faculty to read White Fragility, considering that millions of people have read it, cannot be considered an inferior term of employment. It argues that this request was not predicated on any discriminatory animus, nor was it more than a trivial inconvenience.

However, at this early stage of the litigation the complaint sufficiently pleads that CUNY subjected plaintiff to "inferior terms, conditions or privileges of employment" because of her race since it alleges that plaintiff was singled out based on her race, and that the additional requirements imposed on her had nothing to do with her job functions. It is well settled that "CPLR 3211 (a) (7) dismissals merely address the adequacy of the [pleading], and do not reach the substantive merits of a [party's] cause of action." *Lieberman v Green*, 139 AD3d 815, 816 (2d Dept 2016) (internal quotation marks and citations omitted). As the litigation progresses "defendants will have an opportunity to attempt to rebut the presumption of discrimination arising from [plaintiff's] prima facie case by setting forth, through the introduction of admissible evidence, legitimate, independent, and nondiscriminatory reasons to support [their] employment decision . . . ." *Brathwaite v Frankel*, 98 AD3d 444, 445 (1st Dept 2012) (internal quotation marks and citation omitted).

CUNY argues that plaintiff's subjective belief that she was discriminated against is insufficient to satisfy her pleading standard. While perceptions of being stereotyped are "insufficient to raise an inference of discrimination" on a motion to dismiss, *Williams v Time Warner, Inc.*, 2010 WL 846970, *4, 2010 US Dist LEXIS 20916, *11 (SD NY 2010), *affd* 440 F

Appx 7 (2d Cir 2011), here plaintiff has sufficiently pled more than just a perception of being stereotyped, since she alleges that CUNY directly asked her to reflect on her race and the privileges that come along with it and that this was asked of her solely because of her race NYSCEF Doc. No. 1 ¶¶ 27 - 31.

Moreover, the complaint alleges that, despite never being presented with allegations that plaintiff herself engaged in discriminatory acts, the faculty of color routinely accused plaintiff and other white faculty members of "white privilege" and fostering a "culture of racism" in the Department. For instance, another professor told plaintiff she was "behaving and practicing at different levels of whiteness" and allegedly told plaintiff that one of the reasons she had been promoted is because she is white. As another example, at a Department meeting, plaintiff's supervisor allegedly told the white faculty members that they were responsible for the problems within the Department and that they should read books and address their privilege "in order to try and become better people." Complaint, ¶ 27 (internal quotation marks omitted). These comments support plaintiff's hostile work environment claim as they not only reference her race but may be considered derogatory and stated to her solely based on her race. *See e.g. Bateman v Montefiore Med. Ctr*., 183 AD3d 489, 490 (1st Dept 2020) ("[E]vidence, if credited, supports a hostile work environment under the [NYSHRL and NYCHRL]" when plaintiff alleged that she had been "repeatedly subjected to remarks, thinly-veiled and on one occasion express, which slighted [white] people as a group"); *compare Matter of Tenenbein v New York City Dept. of Educ*., 178 AD3d 510, 511 (1st Dept 2019) (Petitioner failed to state a claim under the NYCHRL as he "fails to show that any conduct or comments by respondent's staff members were based on his alleged learning disability. The comments made by staff members did not reference his disability").

CUNY reiterates that plaintiff has not "alleged facts that rise beyond the level of petty slights and trivial inconveniences." NYSCEF Doc. No. 13, CUNY's reply memorandum of law at 1. However, "a contention that the behavior was a petty slight or trivial inconvenience constitutes an affirmative defense, which should be raised in the defendants' answer, and does not lend itself to a pre-answer motion to dismiss." *Kaplan v New York City Dept. of Health & Mental Hygiene*, 142 AD3d 1050, 1051 (2d Dept 2016) (internal citations omitted).

Accordingly, CUNY's motion to dismiss plaintiff's cause of action alleging discrimination will be denied.

III. Retaliation

Pursuant to the NYSHRL, it is unlawful to retaliate or discriminate against someone because he or she opposed discriminatory practices. Executive Law § 296 (7). Specifically, "[u]nder the [NYSHRL], a claim for retaliation requires that (1) the employee has engaged in a protected activity, (2) of which the employer was aware, (3) the employee suffered an adverse employment action, and (4) there is a causal connection between the protected activity and the adverse action." *Franco v Hyatt Corp.*, 189 AD3d 569, 571 (1st Dept 2020).

"Protected activity" refers to "actions taken to protest or oppose statutorily prohibited discrimination." *Aspilaire v Wyeth Pharmaceuticals, Inc.*, 612 F Supp 2d 289, 308 (SD NY 2009); *see also Pezhman v City of New York*, 47 AD3d 493, 494 (1st Dept 2008) ("[C]omplaining of conduct other than unlawful discrimination is not a protected activity subject to a retaliation claim under the State and City Human Rights Laws"). The "[f]iling [of] a formal complaint is not necessary" to be considered a protest of discriminatory practices. *Tulino v Ali*, 2019 WL 1447134, *2, 2019 US Dist Lexis 46264, *6 (SD NY 2019), *affd* 813 Fed Appx 725 (2d Cir 2020). Further, a "plaintiff need not prove that [his/]her underlying complaint of

discrimination had merit, but only that it was motivated by a good faith, reasonable belief that the underlying employment practice was unlawful." *Zann Kwan v Andalex Group, LLC,* 737 F3d 834, 843 (2d Cir 2013) (internal quotation marks and citations omitted).

Under the NYSHRL, "an adverse employment action is any action that could well dissuade a reasonable worker from making or supporting a charge of discrimination. . . . [and] covers a broader range of conduct than does the adverse-action standard for claims of discrimination . . . ." *Vega v Hempstead Union Free Sch. Dist*., 801 F 3d 72, 90 (2d Cir 2015) (internal quotation marks and citation omitted). The standards for evaluating retaliation claims are identical under Title VII and the NYSHRL. *See e.g. Kelly v Howard I. Shapiro & Assoc. Consulting Engrs., P.C.*, 716 F3d 10, 14 (2d Cir 2013) ("[t]he standards for evaluating hostile work environment and retaliation claims are identical under Title VII and NYSHRL")

As previously mentioned recent amendments to the NYSHRL require courts to interpret it liberally for the accomplishment of its remedial purposes, regardless of whether federal civil rights laws, including those laws with provisions worded comparably to the provisions of this article, have been so construed." Executive Law § 300. As a result, considering the broader interpretation of the NYCHRL, "[t]he retaliation . . . need not result in an ultimate action . . . or in a materially adverse change . . . [but] must be reasonably likely to deter a person from engaging in protected activity." Administrative Code § 8-107 (7).

The complaint alleges that plaintiff met with Jha, Baruch's Chief Diversity Officer, to file complaints of discrimination and harassment. During this meeting, Jha suggested that plaintiff read "White Fragility." Plaintiff then advised the Dean at Baruch College that she was being subjected to a hostile work environment as a result of the "white normative" initiative. She informed him, among other things, that she had been labeled and subjected to vague accusations

of racism due to her presumed race. It is undisputed that plaintiff engaged in protected activity by complaining about unfair treatment due to her race.

Accepting the facts in the complaint as true, plaintiff has sufficiently pled the remaining elements of a retaliation claim. In response to plaintiff's "white racism" complaint with the Dean, her supervisor purportedly acknowledged that plaintiff had been mistreated, yet instructed her to rescind her complaint. He also told her that the discrimination complaints filed with the Office of Diversity were problematic for Baruch College and needed to be rescinded. Furthermore, plaintiff alleges that, while she was instructed to rescind her complaint, her colleagues' complaints of discrimination were investigated.[1]

CUNY's purported responses to plaintiff's complaints of discrimination and harassment "well might [ ] dissuade[] a reasonable worker from making or supporting a charge or discrimination." *Burlington N. & Santa Fe Ry. Co. v White*, 548 US 53, 68 (2006) (internal quotation marks and citations omitted); *accord Brightman v Prison Health Servs., Inc.*, 62 AD3d 472, 472 (1st Dept 2009) (was the response "reasonably likely to deter a person from engaging in protected activity"). When "assessing retaliation claims that involve neither ultimate actions nor materially adverse changes in terms and conditions employment, it is important that the assessment be made with a keen sense of workplace realities, of the fact that the 'chilling effect' of particular conduct is context-dependent, and of the fact that a jury is generally best suited to evaluate the impact of retaliatory conduct in light of those realities." *Williams v NYCHA*, 61 AD3d 62, 71 (1st Dept 2009). Indeed, the language of the NYSHRL does not permit any type of challenged conduct to be categorically rejected as nonactionable. *Cf. Williams*, 61 AD3d at 71.

[1] While this suggests that CUNY treated plaintiff differently than her coworkers, plaintiff only speculates that her colleagues' complaints were not made in good faith or that CUNY was aware of the allegedly discriminatory nature of their complaints.

With these principles in mind, a jury might reasonably find that instructing plaintiff to rescind her discrimination complaint because it was problematic for CUNY would have a chilling effect on the filing of such complaints.

According to CUNY, plaintiff fails to state a claim for retaliation because the adverse action taken against her in the form of purported harassment, was just a continuation of conduct that began before she engaged in protected activity. *See e.g. Melman v Montefiore Med. Ctr*., 98 AD3d 107, 129 (1st Dept 2012) ("an employer's continuation of a course of conduct that had begun before the employee complained does not constitute retaliation because, in that situation, there is no causal connection between the employee's protected activity and the employer's challenged conduct"). However, as set forth above, by directing plaintiff to withdraw her discrimination complaint because it was problematic for CUNY, CUNY took an adverse action directly in response to her complaint. Accordingly, viewed in the light most favorable to plaintiff, her allegations state a claim for retaliation in violation of the NYSHRL, and CUNY's motion to dismiss this claim will be denied.

Finally, CUNY argues that public policy supports dismissing plaintiff's complaint. However, as shown above plaintiff has alleged sufficient facts in her complaint to make out claims under the NYSHRL. If the NYSHRL law is "to be tempered [so as not to apply to claims such as plaintiff's], it should be accomplished through a principled statutory scheme, adopted after opportunity for public ventilation, rather than in consequence of judicial resolution of the partisan arguments of individual adversarial litigants" *Horn v NY Times*, 100 NY2d 85, 92 (2003) (internal quotation marks omitted) *citing Murphy v Am. Home Prods. Corp.*, 58 NY2d 293, 302 (1983). Because any such change "is best left to the legislature, which is well-situated to discern the public will, to examine the variety of pertinent considerations, to elicit the views of

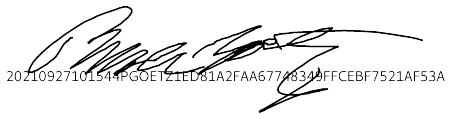
the various segments of the community that would be directly affected and, in any event critically interested, and to investigate and anticipate the impact of any major change in [the statute]." Accordingly, plaintiff's complaint will not be dismissed on public policy grounds.

CONCLUSION

Accordingly, it is

ORDERED that City University of New York's motion to dismiss the complaint is denied; and it is further

ORDERED that City University of New York serve and file its answer to the complaint within 20 days after service of a copy of this order with notice of entry.



9/24/2021
DATE

PAUL GOETZ, J.S.C.

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