

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

RASHEEN McGRIER,

Plaintiff,

- v -

Civ. No. 1:20-CV-1044
(MAD/DJS)

CAPITAL CARDIOLOGY,

Defendant.

APPEARANCES:

OF COUNSEL:

RASHEEN McGRIER
Plaintiff, *Pro Se*

DANIEL J. STEWART
United States Magistrate Judge

DECISION and ORDER

After Plaintiff filed the initial Complaint, this Court granted Plaintiff leave to proceed *in forma pauperis*. Dkt. No. 4. In accordance with 28 U.S.C. § 1915(e) the Court conducted a *sua sponte* review of the sufficiency of the Complaint. Following that review, the Court recommended that the Complaint against Capital Cardiology be dismissed without prejudice based on Plaintiff's failure to demonstrate that the claim had been administratively exhausted. Dkt. No. 5 at p. 4. The Complaint also named one individual Defendant, Kelly Kschinka, who this Court recommended be dismissed as individuals are not proper parties to a Title VII case. *Id.* at p. 5. While the Report-Recommendation was pending Plaintiff filed an Amended Complaint. Dkt. No. 6. The

District Court then referred the Amended Complaint to the undersigned for review. Dkt. No. 8.

Plaintiff is proceeding *pro se* and “[w]e afford a *pro se* litigant ‘special solicitude’ by interpreting a complaint filed *pro se* ‘to raise the strongest claims that it suggests.’”

Warren v. Sawyer, 691 Fed. Appx. 52 (2d Cir. 2017) (quoting *Hill v. Curcione*, 657 F.3d 116, 122 (2d Cir. 2011)). “It is also the well-established law of this circuit that *sua sponte* dismissal of a *pro se* complaint prior to service of process on defendant is strongly disfavored.” *Robles v. Coughlin*, 725 F.2d 12, 15 (2d Cir. 1983). The Amended Complaint is not a model of clarity and fails to comply with rules set forth in the Federal Rules of Civil Procedure for the proper format of pleadings. It does, however, provide a copy of the Plaintiff’s Right to Sue letter from the Equal Employment Opportunity Commission. Dkt. No. 6 at p. 3. It also now does not include any individual defendants. *Id.* at p. 1 (identifying Capital Cardiology as the only Defendant). The Complaint, liberally construed, alleges that Plaintiff was discriminated against based on race when a person of another race was hired for a position that Plaintiff also sought. *Id.* It also alleges that Plaintiff was subsequently retaliated against for complaining about workplace conditions. *Id.*

The scope of review here is limited to whether Plaintiff has alleged an arguable claim, not whether Plaintiff can ultimately prevail. Nor does this Order address whether Plaintiff’s Amended Complaint would be sufficient to avoid dismissal upon the filing of

a proper motion. At this early stage of the proceedings, the Amended Complaint makes sufficient allegations to warrant a responsive pleading from Defendant.

ACCORDINGLY, it is hereby

ORDERED, that Plaintiff's Amended Complaint (Dkt. No. 6) be accepted for filing¹ and that this case be allowed to proceed; and it is further

ORDERED, that the Clerk shall issue a Summons and forward it along with a packet containing General Order 25, which sets forth the Civil Case Management Plan used by the Northern District of New York, along with a copy of the Amended Complaint and this Order to the United States Marshal for service upon the Defendant; and it is further

ORDERED, that a response to the Amended Complaint be filed by Defendant or Defendant's counsel as provided for in the Federal Rules of Civil Procedure subsequent to service of process on Defendant; and it is further

ORDERED, that the Clerk is directed to schedule a Rule 16 Conference before the assigned Magistrate Judge; and it is further

ORDERED, that all motions shall comply with the Local Rules of Practice of the Northern District. In accordance with the Local Rules, **Plaintiff must promptly notify**

¹ The Amended Complaint names only one Defendant - Capital Cardiology. Because the Amended Complaint supersedes the original Complaint in all respects the Clerk of the Court is directed to terminate Kelly Kschinka as a party to this action.

the Clerk's Office and all parties or their counsel of any change in Plaintiff's address; her failure to do so will result in the dismissal of this action; and it is further

ORDERED, that the Clerk serve a copy of this Order upon Plaintiff in accordance with the Local Rules.

Date: November 13, 2020
Albany, New York



Daniel J. Stewart
U.S. Magistrate Judge