UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDGARDO DIAZ DIAZ,	:	
	:	
Plaintiff,	:	REPORT AND RECOMMENDATION
-v.-	:	13 Civ. 2038 (PAC) (GWG)
THE CITY UNIVERSITY OF NEW YORK, et al.,	:	
Defendants.	:	

GABRIEL W. GORENSTEIN, UNITED STATES MAGISTRATE JUDGE

Pro se plaintiff Edgardo Diaz Diaz, a former adjunct lecturer and employee at the City University of New York ("CUNY"), filed this suit against CUNY and a number of its professors and employees alleging claims of discrimination. A prior opinion in this matter, see Opinion Partially Adopting Report & Recommendation, filed Sept. 22, 2015 (Docket # 67) ("Sept. 22 Op."), dismissed all claims originally pled except for: (1) a claim against John Jay College of Criminal Justice President Jeremy Travis and CUNY for retaliation premised on the non-renewal of Diaz's adjunct faculty teaching positions in April 2011; and (2) a claim against Dr. Edwin Melendez, the director of the CUNY Center of Puerto Rican Studies ("CENTRO") at Hunter College, and CUNY for retaliation premised on Melendez pressuring Diaz to leave his editorial position at CENTRO and CENTRO's decision not to offer Diaz a teaching position. See Sept. 22 Op. at 24.

Defendants have now moved for summary judgment on these remaining claims.[1] For the reasons stated below, their motion should be granted.

I. BACKGROUND

Both parties have substantially complied with Local Civil Rule 56.1, which requires them to submit short and concise statements of the facts on which there is no genuine issue to be tried. Where Diaz has restated the defendants' 56.1 statement without objection, the Court accepts these facts as undisputed. Otherwise, the following reflects Diaz's version of the facts where relevant and where supported by admissible evidence as well as evidence submitted by the defendants that has not been controverted by plaintiff.

A. Diaz's Employment Relationship with CUNY

Diaz served as an adjunct lecturer in two departments at CUNY's John Jay College of Criminal Justice ("John Jay"): the Department of Foreign Languages and Literatures ("FLL") beginning in the Fall of 2004, and the Department of Latin American and Latino/Latina Studies ("LALS") beginning in the Fall of 2010. Defs. 56.1 ¶ 1; Pl. 56.1 ¶ 1. He was also employed

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[1] See Defendants' Notice of Motion for Summary Judgment, filed Sept. 30, 2016 (Docket # 82); Declaration of Clement J. Colucci, filed Sept. 30, 2016 (Docket # 83) ("Colucci Decl."); Memorandum of Law in Support of Defendants' Motion for Summary Judgment, filed Sept. 30, 2016 (Docket # 84); Declaration of Jeremy Travis, dated Sept. 27, 2016 (Docket # 85) ("Travis Decl."); Declaration of Jane Bowers, dated Sept. 27, 2016 (Docket # 86) ("Bowers Decl."); Declaration of Silvia Dapia, dated Sept. 28, 2016 (Docket # 87) ("Dapia Decl."); Declaration of Lisandro Perez, dated Sept. 28, 2016 (Docket # 88) ("Perez Decl."); Declaration of Edwin Melendez, dated Sept. 28, 2016 (Docket # 89) ("Melendez Decl."); Declaration of Xavier Totti, dated Sept. 26, 2016 (Docket # 90) ("Totti Decl."); Declaration of Alberto Hernandez, dated Sept. 26, 2016 (Docket # 91) ("Hernandez Decl."); Rule 56.1 Statement, filed Sept. 30, 2016 (Docket # 92) ("Defs. 56.1"); Declaration of Edgardo Diaz Diaz, filed Dec. 16, 2016 (Docket # 109); Rule 56.1 Statement, filed Dec. 16, 2016 (Docket # 110) ("Pl. 56.1"); Memorandum of Law in Opposition to Defendants Motion for Summary Judgment, filed Dec. 16, 2016 (Docket # 112) ("Pl. Mem."); Reply Memorandum of Law in Further Support of Defendants' Motion for Summary Judgment, filed Jan. 6, 2017 (Docket # 113).

under contract at CENTRO at Hunter College, CUNY, as CENTRO's "editor in music" for its online journal Voices. Defs. 56.1 ¶ 2; Pl. 56.1 ¶ 2.

Adjunct faculty are non-tenure-track faculty hired by CUNY's President or the President's designee (who, at John Jay, is the college's Provost) for specific teaching assignments. Defs. 56.1 ¶ 3; Pl. 56.1 ¶ 3. They are appointed or reappointed on a semester-to-semester basis with no contractual expectation that they will be rehired, although for an adjunct who is hired for six consecutive semesters (exclusive of summer terms) within the same department a reappointment is normally made for a full academic year. Defs. 56.1 ¶ 5; Pl. 56.1 ¶ 5; Bowers Decl. ¶ 4. Adjuncts who teach during the spring semester are notified of their reappointment for the following fall in late April of the same year. Bowers Decl. ¶ 4. In most circumstances, the decision whether to appoint or reappoint an adjunct faculty member rests with the Chair of the relevant department. Defs. 56.1 ¶ 4; Pl. 56.1 ¶ 4; Bowers Decl. ¶ 3.

B. Complaints to the CUNY Graduate School in 2009-2010

Diaz was also a student in ethnomusicology at the CUNY Graduate School. Pl. Mem. at 7-8.[2] Frustrated with various failed attempts to gain approval of his dissertation proposal, he believed officials at the CUNY Graduate School "to be abusive of their respective positions, delaying his career development and stealing material from original research not related to his work as a student." Id. at 8. On April 6, 2009, Diaz sent an email to the CUNY Graduate

[2] Plaintiff attached to his memorandum of law a declaration that cites 28 U.S.C. § 1746 and states: "[t]he statements contained in the Memorandum of Law opposing defendants' motion for summary judgment . . . are true and correct to the best of his knowledge." Declaration of Edgardo Diaz Diaz, filed Dec. 16, 2016 (Docket # 109). We thus accept that any factual statements in Diaz's memorandum of law are under oath. Plaintiff also attaches exhibits to his memorandum of law. In light of Diaz's pro se status and the fact that defendants have not contested the authenticity of the exhibits, we will accept that Diaz's statement is intended to convey that the exhibits he attaches to his memorandum of law are authentic.

School's Provost, Dr. Chase F. Robinson, to complain about perceived misconduct and unfair treatment at the school. Id.; Email from Edgardo Diaz Diaz, dated Apr. 6, 2009 (attached as Ex. 4 to Pl. Mem.). On January 19, 2010, and April 21, 2010, Diaz sent communications to officials at the CUNY Graduate School making a slew of complaints, including a complaint asserting that he had suffered discrimination at the school "on the basis of his Puerto Rican background." Pl. Mem. at 9-10; Email from Edgardo Diaz Diaz, dated Jan. 19, 2010 (attached as Ex. 7 to Pl. Mem.); Letter from Edgardo Diaz Diaz to Dr. William P. Kelly, dated Apr. 21, 2010 (attached as Ex. 8 to Pl. Mem.) ("April 2010 Letter"). Diaz does not provide evidence that he sent these communications to anyone at John Jay.

C. The Montalban Report and Aftermath

In the Fall 2009 semester, a student in one of Diaz's Spanish 101 classes at John Jay brought a formal complaint against him, stating that the student perceived some comments made by Diaz in class as either sexual innuendo or comments on the student's sexual orientation. Bowers Decl. ¶ 5; Travis Decl. ¶ 5; Charge of Discrimination Form, JJ_000021 (attached as Ex. 5 to Pl. Mem.). The complaint was referred to Silvia Montalban, Chair of the Sexual Harassment and Intake Committee and John Jay's Director of Compliance and Diversity and Assistant Counsel for Investigation, who is charged with investigating student complaints of sexual harassment and reporting her findings to the University's President for appropriate action. Defs. 56.1 ¶ 7, Pl. 56.1 ¶ 7. Montalban, after interviewing both the student and Diaz, presented a report to Travis on April 29, 2010, sustaining some of the student's complaints. Defs. 56.1 ¶ 8, Pl. 56.1 ¶ 8; Memorandum from Sylvia Montalban, Esq., dated Apr. 29, 2010 (attached as Ex. B.

to Colucci Decl.) ("Montalban Report").[3] Montalban found that the student credibly stated that Diaz's behavior in class made the student feel uncomfortable, that Diaz admitted to making some of the statements and engaging in some of the behavior the student described (although he did not intend to offend the student), and that Diaz was willing to apologize and to alter his teaching methods to address the concerns. Montalban Report at 2-3. Travis accepted the report's findings, Defs. 56.1 ¶ 8; Pl. 56.1 ¶ 8, but by the time Montalban submitted her report Diaz had already been reappointed to teach in the next academic year, Defs. 56.1 ¶ 9, Pl. 56.1 ¶ 9.

Travis discussed the report with Provost Jane Bowers on or about May 20, 2010. See Pl. Mem. at 10-11; Email from Jane Bowers, dated May 20, 2010 (attached as Ex. 9 to Pl. Mem.). Bowers found the report against Diaz disturbing, and after reviewing his teaching records and finding mixed reviews and three comments about inappropriate sexual references and vulgarities, concluded that she "did not see any reason to retain Mr. Diaz Diaz as an adjunct in the future." Bowers Decl. ¶ 8; see Student Evaluations and Comments Concerning Plaintiff, (attached as Ex. F to Colucci Decl.) ("Student Evaluations I"). The student evaluations included the following comments: "I felt he spoke about sex way too much and made me uncomfortable."; "Very sexual!"; "[He] is often rude and vulgar. From nude scenes in movies to

[3] Diaz claims that, at the conclusion of his interview with Montalban, he asked her "how would it be possible for John Jay College to steadfastly investigate" the sexual harassment charges against him "whereas still as of that day, he had not received word from Graduate School officials concerning any investigation about a complaint he had since March 2009" against faculty members at the CUNY Graduate School. Pl. Mem. at 9. The Court notes that any claim that Montalban's report was written in retaliation for Diaz's complaints about conduct at the CUNY Graduate School was previously dismissed. Sept. 22 Op. at 21-22.

him telling us that he lost his virginity at 26. All is unacceptable." Student Evaluations I.[4]

Travis requested further consultation from Montalban and CUNY's General Counsel's office, who offered two options: rescind Diaz's reappointment letter for cause, then pay him for the courses he was scheduled to teach should he file a grievance; or "explicitly state that the report will go in the personnel file, that it can serve as a basis for further action," then refuse to reappoint Diaz after the Fall 2010 semester. Email from Sylvia Montalban, dated June 4, 2010 (attached as Ex. 17 to Pl. Mem.) ("Montalban June 4 Email"); see also Travis Decl. ¶ 9; Bowers Decl. ¶ 9; Pl. Mem. at 11-14. Travis chose the latter option, placing the report in Diaz's personnel file — along with a written response Diaz submitted — and also requiring that Diaz take CUNY's online sexual harassment training course. Travis Decl. ¶ 7; Bowers Decl. ¶ 9; Memorandum from President Jeremy Travis, dated June 30, 2010 (attached as Ex. D to Colucci Decl.) ("Travis June 30 Mem."). Travis told Diaz that the report would "be taken into account in connection with any future personnel action," but did not tell Diaz there was a plan to not reappoint him after the Fall 2010 semester. See Pl. Mem. at 15; Travis June 30 Mem. Diaz submitted a written statement and took the online sexual harassment course, as required. Defs. 56.1 ¶ 13; Pl. 56.1 ¶ 13(1).

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[4] In an attempt to counter Bowers' personal opinion that his teaching record was mixed, Diaz provides almost 200 pages of student evaluations from throughout his career. See Student Evaluations by Students at John Jay College (attached as Ex. 29 to Pl. Mem.) ("Student Evaluations II"). Diaz argues that this shows the "few negative evaluations, mostly by students" that defendants present were merely "a pretext to terminate his employment." Pl. Mem. at 29. A review of these evaluations reveals a mixed record. Compare Student Evaluations II at 233 ("El Profesor es una persona muy buena"), id. at 282 ("outstanding"), id. at 305 ("teacher is fun"), and id. at 385 ("He really cares about us learning spanish, but isn't the best communicator."), with id. at 269 ("I wish I could get a refund because this professor honestly does not teach"), id. at 311 ("BAD"), id. at 344 ("I'm sorry I took this class"), and id. at 412 ("he is a nice guy, horrible professor").

As a representative of the school's adjunct faculty, Diaz attended an October 28, 2010, meeting of the John Jay Faculty Senate, where Travis and Montalban discussed John Jay's sexual harassment policy. See Defs. 56.1 ¶ 14; Pl. 56.1 ¶ 14; Pl. Mem. at 23-24; Draft Faculty Senate Minutes # 363, dated Oct. 28, 2010 (attached as Ex. 22 to Pl. Mem.). By that time, Diaz had filed a grievance concerning Montalban's sexual harassment report and Travis' decision to accept it. Defs. 56.1 ¶ 15; Pl. 56.1 ¶ 15; Travis Decl. ¶ 12. During the meeting, Diaz wanted to discuss ways in which the school's focus on sexual harassment cases allowed other areas of the school's anti-discrimination policy, including those focused on national origin, to lag behind. See Pl. 56.1 ¶ 14; Pl. Mem. at 24. Because time constraints did not allow him to develop his thoughts and the meeting's minutes did not include his comments, Diaz sent an email to Travis elaborating on the issue on November 23, 2010. See Email from Jeremy Travis to Edgardo Diaz Diaz, dated Nov. 23, 2010 (attached as Ex. A to Colucci Decl.) ("November 2010 Email"). The email discussed a number of areas, but included a complaint that a "high-ranking officer" in the Music Department had made "inappropriate remarks against Puerto Ricans" and that no action had been taken. Id. at 000124. The email concluded by referring to Diaz's own experience following the student complaint against him, which Diaz characterized as resulting in a "lack of due process." Id. at 000125. Diaz copied a number of administrators and faculty members on the email, including the Chairs of the FLL and LALS Departments, Dr. Silvia Dapia and Dr. Lisandro Perez. Id. at 000122. Travis responded: "I appreciate your interest in sensitivity training on the topic of sexual harassment. Because you have filed a grievance in a specific matter, however, I will not be in a position to respond to any of the specific scenarios you have presented." Id.

D. Diaz's Non-Reappointment to John Jay

On April 25, 2011, Bowers sent Diaz two letters informing him that John Jay would "not be extending [his] appointment as an Adjunct Lecturer" in the FLL and LALS Departments "beyond the Spring, 2011 semester." See Letters from Provost Bowers, dated Apr. 25, 2011 (attached as Exs. G & H to Colucci Decl.). The decision not to reappoint him at FLL and LALS was made initially by Department Chairs Dapia and Perez, and was then approved by Bowers. We describe the evidence regarding how each department reached this decision next.

1. Non-Reappointment to the FLL Department

Dapia became Chair of FLL beginning in the Fall 2010 semester, after Diaz had already been reappointed for the Fall 2010-Spring 2011 academic year. Defs. 56.1 ¶¶ 18-19; Pl. 56.1 ¶¶ 18-19. Dapia and Diaz had no prior acquaintance before Dapia became Chair. Defs. 56.1 ¶ 19; Pl. 56.1 ¶ 19. In December 2010, at Dapia's suggestion, the FLL Department changed their policy to require that adjuncts have at least a Master's degree in the language they teach or a closely related discipline. Dapia Decl. ¶ 10; see Minutes — Department of Foreign Languages and Literatures, dated Dec. 3, 2010 (attached as Ex. I to Colucci Decl.), at ¶ 10. The parties dispute why Dapia suggested this change. Defendants rely on Dapia's declaration that she was surprised that "anyone of any background who was fluent in the relevant language could be hired to teach it," as "[t]his had not been the policy at any institution where [she] had trained or taught in the past." Dapia Decl. ¶¶ 9-10. Diaz claims this was a pretext, specifically intended to justify his non-reappointment, as he did not possess a Master's degree in Spanish. Pl. 56.1 ¶¶ 20(2)-21(3); Pl. Mem. at 32 ("Retaliation irrefutably played a role in [FLL's] decision to change the Department's academic standards (only for adjunct recruitment, not full-time faculty)."). He suggests that this policy emanated from Bowers. See Pl. Mem. at 30-32. The weekend after Diaz sent the November 2010 Email, Bowers emailed Dapia to ask how many sections Diaz

would teach that spring, and stated that "[a]s you begin to schedule for summer and fall, I would be surprised if you had sufficient sections to offer him one." Emails from Jane Bowers and Silvia Dapia, dated Nov. 27-28, 2010 (attached as Ex. 31 to Pl. Mem.); see also Pl. Mem. at 30 (citing Bowers' Nov. 28 email). As already noted, Bowers has stated that she decided in May 2010 that she did not want Diaz reappointed based on her inquiry into his teaching record following the Montalban Report. Bowers Decl. ¶ 8.

In April 2011, Dapia recommended that Diaz not be reappointed, along with adjuncts Olga Sanson, Jean Alexandre, and Evelyn Maldonado. Defs. 56.1 ¶ 22; Pl. 56.1 ¶ 21(1).[5] Dapia asserts that the only reason she recommended these adjunct faculty not be reappointed was that they did not meet the new standard requiring that all professors possess relevant Master's degrees. See Dapia Decl. ¶ 12. Bowers approved Diaz's non-reappointment on these grounds, although she also states that she did not believe Diaz should be reappointed on the basis of the Montalban Report and Diaz's classroom performance. Bowers Decl. ¶¶ 9-10, 12.

2. Non-Reappointment to the LALS Department

Starting in the Fall 2010 semester, Diaz also taught as an adjunct in LALS. Defs. 56.1 ¶ 26; Pl. 56.1 ¶ 26. Diaz joined LALS the same semester as the Department's new Chair, Perez. Defs. 56.1 ¶ 27; Pl. 56.1 ¶ 27. Diaz had known Perez prior to Perez's appointment as Chair, and regarded their relations as good. Defs. 56.1 ¶ 28; Pl. 56.1 ¶ 28. At the time Perez was hired, the LALS Department also hired three full-time Assistant Professors, "doubling the size of the Department." Perez Decl. ¶ 4.

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[5] Diaz points out, Pl. Mem. at 31, that Olga Sanson was listed as a reappointment in one of the exhibits submitted by defendant, see Email from Sylvia Dapia, dated Mar. 31, 2011 (attached as Ex. J to Colucci Decl.), even though she had not earned a Master's degree or higher in any foreign language, see CV of Olga Sanson, attached to Pl. Mem. as Ex. 34.

Perez was copied on the November 2010 Email that Diaz sent to Travis. Id. ¶ 14. Perez "skimmed it" but states he "paid no attention to it . . . ." Id. On November 27, 2010, Bowers wrote Perez regarding Diaz, noting that Perez had "no obligation to offer [Diaz] a class this spring." Emails from Lisandro Perez and Jane Bowers, dated Nov. 27-28, 2010 (attached as Ex. 39 to Pl. Mem.). In a responsive email sent on November 28, 2010, Perez said he had "no interest in assigning Edgardo Diaz a class for Spring 2011," but was not comfortable refusing to do so while reappointing the other adjuncts, as Diaz would "conclude that I am acting on the matter that he is currently grieving (of which I am not supposed to have full knowledge) or that I am acting vindictively after the tiff he and I had recently over a grade appeal (something I should not and would not do)." Id. Bowers acquiesced to his concerns, stating, "Okay — you can give him a course for spring then (or maybe it will not run and as you say that would settle the matter another way). But that's it." Id.; see also Pl. Mem. at 35-36.

At a point in time not specified in his declaration, Perez reviewed the student evaluations of LALS' faculty — and its adjuncts in particular — as part of a plan to improve the quality of instruction in the Department. Perez Decl. ¶ 5. The average student rating for LALS faculty on a 1.0 to 5.0-point scale was 4.54, which Perez considered excellent. Id. ¶ 10; Student Evaluation Scores for "LAS" for Fall 2010, dated Mar. 25, 2011 (attached as Ex. L to Colucci Decl.). By contrast, Diaz's scores for a course he taught in Fall 2010 ranged from the high 2s to the high 3s, with an average rating of 3.103, which Perez considered "not very good." Perez Decl. ¶ 10; Student Evaluation Scores for Edgardo M Diaz Diaz, Fall 2010, Course ETH 125, dated Mar. 25, 2011 (attached as Ex. L to Colucci Decl.).[6]

[6] Diaz's Rule 56.1 statement states that he he "caught five students cheating during an exam in the class where such evaluations were made, a factor which may have affected his

Diaz, like all adjuncts at John Jay, was subject to periodic classroom observations by a full-time faculty member. Defs. 56.1 ¶ 33; Pl. 56.1 ¶ 33. Diaz's Spring 2011 observation was conducted on April 4, 2011, by Isabel Martinez, a new hire and full-time faculty member whom Diaz did not previously know. Defs. 56.1 ¶ 34-35; Pl. 56.1 ¶ 34-35. Martinez submitted an unfavorable report on May 4, 2011 — after Diaz had already received the letters informing him he was not being reappointed. Defs. 56.1 ¶ 35; Pl. 56.1 ¶ 35; Observation of Teaching, dated May 4, 2011 (attached as Ex. M to Colucci Decl.); Letters from Provost Bowers, dated Apr. 25, 2011 (attached as Exs. G & H to Colucci Decl.). Diaz disagreed with the report, met with Perez and Martinez to discuss it on May 23, 2011, and submitted a written rebuttal. Defs. 56.1 ¶ 36; Pl. 56.1 ¶ 36; "Written response to Dr. Isabel Martinez's April 4, 2011 observation of my ETH 125.14 class, with comments about related May 23rd 2011 post-observation conference" (attached as Ex. N to Colucci Decl.). Perez had not used in-class observations in his previous academic positions and did not generally give them much weight in evaluating teachers. Perez Decl. ¶ 11. He had already decided not to reappoint Diaz before receiving Martinez's report. Defs. 56.1 ¶ 38; Pl. 56.1 ¶ 38.

There is contemporaneous evidence that Perez's decision not to reappoint Diaz was made prior to April 22, 2011, because on that date Perez sent an email to Bowers stating that he anticipated that Diaz would "come to my office for an explanation of why he has not been reappointed." See Emails from Lisandro Perez and Jane Bowers, dated Apr. 22-23, 2011 (attached as Ex. 32 to Pl. Mem.). Perez's email notes that Diaz's tenure of only one year with

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student evaluation." Pl. 56.1 ¶ 31(1). Because Diaz does not cite to admissible evidence that supports this statement, we do not consider it. See Fed. R. Civ. P. 56(c)(2); Local Civ. R. 56.1(d).

LALS was not "really the explanation for why he is not being re-appointed," and that "this is not just my decision (although I concur with it) . . . ." Id. Perez wrote: "If, therefore, I should give him a meaningful and truthful reason [for his non-reappointment], then I need some guidance because I don't want to say what would get us into trouble with the union." Id. In response, Bowers suggested that Perez could give any number of reasons to Diaz, including that Perez did not yet have sufficient knowledge of Diaz's teaching effectiveness; that the department's course needs were changing, and that Diaz's "particular expertise is no longer in great demand and will be in even less demand going forward"; and that Perez's need for adjunct faculty had diminished as the size of his department's full-time faculty had grown. Id.

On April 26, 2011, Perez sent the four LALS adjunct faculty who were hired for the first time in the Fall 2010 semester letters stating that he had made a "provisional decision not to reappoint them, but that [he] would revisit the decision later, when [he] had more of a basis for it." Perez Decl. ¶ 7; see also Email from Lisandro Perez, dated Apr. 26, 2011 (attached as Ex. K to Colucci Decl.). Perez acknowledged that he knew Bowers did not want Diaz reappointed as a result of the Montalban Report, but states that her view had no influence on him, and that "[i]f, based on [his] review, [he] decided to reappoint Mr. Diaz Diaz, [he] was prepared to resist any action by the Provost to overrule [his] decision." Perez Decl. ¶ 8. Nevertheless, Perez ultimately decided that he would not reappoint Diaz based on Diaz's "poor evaluation scores and the reduced need for adjuncts in the Department owing to the new full-time hires." Id. ¶ 13. In an internal email sent to Bowers and others at John Jay on April 19, 2011, Perez stated that some of the adjuncts he decided not to reappoint "may be hired in the Fall depending on student evaluations, availability of courses, and the Spring 2011 observations, not all of which are [available] at this time," but "[a]s the Provost has indicated, [Diaz] is in any case a non-

reappointment." Email from Lisandro Perez, dated Apr. 19, 2011 (attached as Ex. 42 to Pl. Mem.). Bowers accepted the decision not to rehire Diaz. Bowers Decl. ¶ 12. Travis did not speak to Perez about Diaz's reappointment or non-reappointment. Travis Decl. ¶ 13; Bowers Decl. ¶ 12; Perez Decl. ¶ 9. Travis had, however, discussed Diaz's non-reappointment with Bowers in June 2010 as a potential way to address the concerns the Montalban Report raised. See Email from Jeremy Travis, dated June 5, 2010 (attached as Ex. 17 to Pl. Mem.); Pl. Mem. at 12-14.

E. The Equal Employment Opportunity Commission ("EEOC") Complaint

On May 10, 2011, Diaz filed a complaint against CUNY with the EEOC. See Letter from Edgardo Diaz Diaz to EEOC, dated May 10, 2011 (attached as Document 2-1, *7, to Complaint for Employment Discrimination, filed Mar. 26, 2013 (Docket # 2) ("Compl.")); Letter from EEOC to Edgardo M. Diaz, dated June 9, 2011 (attached as Document 2-1, *8-9, to Compl.).[7] He emailed a copy of this complaint to Arlene Torres, the director of CUNY's Latino Initiative Program under CENTRO. See Email from Edgardo Diaz Diaz, dated June 7, 2011 (attached as Ex. 70 to Pl. Mem.) (translated from Spanish); Transcript, Deposition of Edgardo Diaz Diaz, dated Aug. 17, 2016 (attached as "Pltf's Dep. Extracts" to Colucci Decl.) ("Diaz Dep."), at 92-93.

F. Diaz's Work at CENTRO and his Application for a Position at CENTRO

Diaz was also employed by CENTRO as a contract worker for the Fall 2010 and Spring 2011 semesters to provide content about Latin-American music for CENTRO's online journal

[7] Neither party submitted a copy of Diaz's May 2011 EEOC complaint as part of their summary judgment briefing. We thus cite to the version that was attached to Diaz's complaint in this action, indicating the ECF pagination as "*__".

Voices. Defs. 56.1 ¶¶ 43-44; Pl. 56.1 ¶¶ 43-44. Diaz was hired, with the approval of Melendez, by Dr. Xavier Totti, editor of Voices and Diaz's friend for over 20 years. Defs. 56.1 ¶¶ 43-44; Pl. 56.1 ¶¶ 43-44. Diaz's primary responsibility was the production of articles on six different genres of Puerto Rican music. Totti Decl. ¶ 2; Diaz Dep. at 20-22. In his first semester, Diaz submitted a series of articles on one genre: "plena." Totti Decl ¶ 3; Diaz Dep. at 34. Diaz said that he submitted at least 10 articles for editing between September and December 2010, but that the editing process took such a long time that they could not be finalized in a one-month period. See Pl. Mem. at 45-46. Totti was pleased with the quality of the final "plena" article, and advocated for Diaz's reappointment in the spring, although he hoped for more productivity from him. Totti Decl. ¶ 3.

Diaz claims that his work conditions became much less ideal during the Spring 2011 semester because CENTRO's library closed from January until October 2011 and Diaz "was removed from his desk and no longer . . . [had] a computer available at CENTRO to do his job" as of April 2011. See Pl. Mem. at 47-48. Apparently Totti helped arrange a shared office and computer workstation for Diaz to use during the summer of 2011. See id. at 48. With the library closed and his access to office facilities limited "[o]nce his employment with John Jay was factually terminated," Diaz found it difficult to complete his work with CENTRO. See id. at 49.

Nevertheless, in the spring of 2011, Diaz submitted an unfinished draft of his article on the genre "bomba." Id.; Totti Decl. ¶ 4; Diaz Dep. at 36-37. Although this second article was also "good," Totti did not believe Diaz produced enough articles to justify paying him a full-time salary, and did not recommend the renewal of Diaz's contract past the Spring 2011 semester. Totti Decl. ¶ 4. Melendez concurred with this recommendation. Melendez Decl. ¶ 5. While Totti does not disclose the date of his recommendation, he states that it was before May 2011.

Totti Decl. ¶ 8. Indeed, Diaz confirms that Totti told him in April 2011 that he was "concerned that . . . [the] articles are not coming . . . ." Diaz Dep. at 42. Totti states that he was unaware that Diaz had complained of discrimination at other CUNY campuses. Totti Decl. ¶ 8, Diaz Dep. at 42-43.[8] Diaz's contract with CENTRO officially expired on May 30, 2011. Pl. Mem. at 49.

Notwithstanding his decision to not renew Diaz's contract, Totti "hoped to get, belatedly, the work for which" Diaz had been paid. Totti Decl. ¶ 5. Diaz continued to work on the remaining articles over the summer of 2011, including a final version of the "bomba" article. See, e.g., Email from Edgardo Diaz Diaz, dated June 1, 2011 (attached as Ex. 51 to Pl. Mem.) (submitting advanced version of bomba article); Email from Xavier F. Totti, dated July 5, 2011 (attached as Ex. 54 to Pl. Mem.) ("Totti July 5 Email") (discussing a reduction of Diaz's responsibilities so that he can "concentrate [on] producing the genres we agreed on").[9] Totti arranged for Diaz's use of CENTRO facilities to continue this work, including his shared office on CENTRO premises. Totti Decl. ¶ 5; see Pl. Mem. at 50-51. At Diaz's request, Totti also arranged for an extra key and told Diaz that his old office would supposedly be fixed and available for use, "[b]ut the conclusion of [renovations] is something out of control of Centro." Email from Edgardo Diaz Diaz, dated July 1, 2011 (attached as Ex. 53 to Pl. Mem.); Totti July 5 Email. As a result, Diaz still had a key to the CENTRO facility to work during weekends. Pl.

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[8] Diaz states he told Totti in April 2011 that he had "complaints" against John Jay College. Diaz Dep. at 43.

[9] We cite the English translations of these emails as provided by Diaz. Although Diaz has not submitted an interpreter's affidavit, as required by Federal Rule of Evidence 604, defendants have not objected to the translated versions of these documents. We have not considered any document in the record that is not translated into English. See Sicom S.P.A. v. TRS Inc., 168 F. Supp. 3d 698, 709 & n.9 (S.D.N.Y. 2016) (foreign-language documents, even if authenticated, "cannot be reviewed or relied on by the Court . . . unless they are accompanied by certified translations into English") (collecting cases).

Mem. at 50-51; Diaz Dep. at 30. Diaz never finished articles on the other genres he promised Voices. See Totti Decl. ¶ 6; Diaz Dep. at 37-43.

In the meantime, during the Spring 2011 semester, CUNY advertised on the University's job posting system a position as "Distinguished Lecturer" at CENTRO. Defs. 56.1 ¶ 52; Pl. 56.1 ¶ 52. The original posting listed the minimum requirements for the position as at least a Bachelor's degree in a relevant subject, but stated: "Applicants are expected to have a PhD or a terminal degree when appropriate." Defs. 56.1 ¶ 53; Pl. 56.1 ¶ 53; Job Title: Distinguished Lecturer - Center for Puerto Rican Studies (attached as Ex. O to Colucci Decl.). A search committee of CENTRO professors and staff members was formed to review applicants and recommend candidates for in-person interviews with Melendez. See Hernandez Decl. ¶¶ 3, 9. Diaz applied for the Distinguished Lecturer position in June 2011. Defs. 56.1 ¶ 55; Pl. 56.1 ¶ 55.

The search committee screened 36 applicants, and conducted telephone interviews with twelve applicants, including Diaz, on August 4, 2011, and September 7, 2011. Hernandez Decl. ¶¶ 6, 7; Memorandum from Alberto Hernandez, dated Aug. 19, 2011 (attached as Ex. Q to Colucci Decl.); Diaz Dep. at 86.[10] The search committee forwarded three candidates for in-person interviews to Melendez on September 15, 2011. Hernandez Decl. ¶ 8; Report and Short List of Recommended Candidates, dated Sept. 15, 2011 (attached as Ex. R to Colucci Decl.) ("Search Comm. Report"). Diaz was not selected as a finalist. Hernandez Decl. ¶ 9; Search Comm. Report. The chair of the search committee, Alberto Hernandez, was not aware of Diaz's EEOC charge and reports that "no other committee members said anything suggesting that they

[10] Diaz claims that he learned from an "officer" or "source" at CENTRO that Melendez had opposed the search committee interviewing him, but later relented. See Pl. 56.1 ¶ 60(1). We do not consider this assertion because it is hearsay and there are insufficient facts to allow a finding that it is admissible under Federal Rule of Evidence 801(d)(2).

knew about it either." Hernandez Decl. ¶ 12.

Melendez did not communicate with the search committee about candidates until he received their final report recommending candidates for in-person interviews, and did not know that Diaz had applied until he saw their report. Melendez Decl. ¶¶ 7, 13; Hernandez Decl. ¶ 10. Reviewing the finalists, Melendez decided that none of them matched what he wanted for the position, and ultimately decided to cancel the program in favor of hiring a research associate and research assistant. Melendez Decl. ¶ 14; Memorandum from Edwin Melendez, dated Dec. 28, 2011 (attached as Ex. S to Colucci Decl.). Consistent with this conclusion, Diaz recounts that a "a member of the Search Committee" — apparently a person he identifies as "Mita, the Colombian" — told him "that he had made an excellent interview, but that she could not understand the abrupt interruption of the [search] process." Pl. 56.1 ¶ 62(1); Pl. Mem. at 59, 74; Diaz Dep. at 86.

Melendez did happen to speak with Diaz on September 18, 2011, in the CENTRO offices. Diaz Dep. at 90-93; Melendez Decl. ¶ 6-7. Melendez asserts he was surprised to see Diaz, because he believed that Diaz's contract with CENTRO had expired, Melendez Decl. ¶ 6, though Diaz states that "Melendez often went to CENTRO during the weekends and saw [Diaz] working at his office after receiving the keys of the office [in July 2011]," Pl. Mem. at 60. In any event, Melendez told Diaz: "You must turn in the keys over here, or something like that. You must not be here. You are not anymore under contract with CUNY. You better go and do your doctoral degree." Diaz Dep. at 93. They did not discuss CENTRO's Distinguished Lecturer position, although they did discuss CENTRO office space that was reserved for that position. Melendez Decl. ¶ 7; Diaz Dep. at 96-98.

G. Second EEOC Charge

After CENTRO declined to hire him as a Distinguished Lecturer, Diaz filed an amended charge with the EEOC on October 6, 2011. See Charge of Discrimination, dated Oct. 6, 2011 (attached as Ex. 77 to Pl. Mem.). The EEOC issued Diaz a Notice of Dismissal and Right to Sue letter on December 20, 2012. See Letter from Kevin J. Berry, dated Dec. 20, 2012 (included in Compl. at *6).

H. The Instant Lawsuit

On March 26, 2013, Diaz filed his complaint in this action. After the defendants moved to dismiss, the court ruled that all claims in the complaint would be dismissed with the exception of (1) claims against Travis under the New York State Human Rights Law ("NYSHRL"), N.Y. Exec. Law § 290, and the New York City Human Rights Law ("NYCHRL"), N.Y.C. Admin. Code § 8-101, and against CUNY under Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e, for allegedly retaliating against Diaz by not renewing his John Jay teaching positions in April 2011; and (2) against Melendez under the NYSHRL and NYCHRL and against CUNY under Title VII for allegedly retaliating against Diaz by pressuring him to relinquish his editorial position at CENTRO's Voices magazine and for CENTRO's decision not to hire Diaz in Fall 2011. See Sept. 22 Op. at 24. Following a period of discovery, defendants filed their motion for summary judgment. Thereafter, plaintiff repeatedly moved to reopen discovery. See Letter from Edgardo Diaz Diaz, filed Oct. 26, 2016 (Docket # 97); Letter from Edgardo Diaz Diaz, filed Oct. 28, 2016 (Docket # 99); Plaintiff's Motion to Compel Defendants to Produce Documents Inadequately Withheld on the Grounds of Privilege, filed Nov. 10, 2016 (Docket # 101); Declaration of Edgardo Diaz Diaz, filed Nov. 10, 2016 (Docket # 102); Rule 56(d)(2) Declaration, filed Nov. 28, 2016 (Docket # 104); Letter from Edgardo Diaz Diaz, filed

Nov. 29, 2016 (Docket # 105); Rule 56(d)(2) Declaration (Amended), filed Nov. 29, 2016 (Docket # 106). The Court denied these applications. See Order, filed Nov. 1, 2016 (Docket # 100); Order, filed Nov. 14, 2016 (Docket # 103); Order, filed Dec. 2, 2016 (Docket # 108) ("[P]laintiff had ample opportunity to conduct discovery and to raise any of the numerous discovery issues he now raises before the summary judgment motion was filed. The Court will not reopen discovery now.").

II. LAW GOVERNING MOTIONS FOR SUMMARY JUDGMENT

Federal Rule of Civil Procedure 56(a) states that summary judgment is appropriate when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." See also Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). A genuine issue of material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). "[O]nly admissible evidence need be considered by the trial court in ruling on a motion for summary judgment." Raskin v. Wyatt Co., 125 F.3d 55, 66 (2d Cir. 1997); see also Fed. R. Civ. P. 56(c)(4) (parties shall "set out facts that would be admissible in evidence").

In determining whether a genuine issue of material fact exists, "[t]he evidence of the non-movant is to be believed," and the court must draw "all justifiable inferences" in favor of the non-moving party. Anderson, 477 U.S. at 255 (citing Adickes v. S.H. Kress & Co., 398 U.S. 144, 158-59 (1970)). Nevertheless, once the moving party has shown that there is no genuine issue as to any material fact and that it is entitled to a judgment as a matter of law, the non-moving party must offer "concrete evidence from which a reasonable juror could return a verdict in his favor," id. at 256, and "may not rely on conclusory allegations or unsubstantiated speculation," Scotto v. Almenas, 143 F.3d 105, 114 (2d Cir. 1998). Where "the nonmoving

party bears the burden of proof at trial, summary judgment is warranted if the nonmovant fails to 'make a showing sufficient to establish the existence of an element essential to [its] case.'" Nebraska v. Wyoming, 507 U.S. 584, 590 (1993) (alteration in original) (quoting Celotex, 477 U.S. at 322). Thus, "[a] defendant moving for summary judgment must prevail if the plaintiff fails to come forward with enough evidence to create a genuine factual issue to be tried with respect to an element essential to its case." Allen v. Cuomo, 100 F.3d 253, 258 (2d Cir. 1996) (citing Anderson, 477 U.S. at 247-48).

Because Diaz appears pro se, we construe his papers "liberally and interpret them to raise the strongest arguments that they suggest." Kirkland v. Cablevision Sys., 760 F.3d 223, 224 (2d Cir. 2014) (per curiam) (internal quotation marks omitted) (quoting Burgos v. Hopkins, 14 F.3d 787, 790 (2d Cir. 1994)). Nonetheless, "our application of this different standard does not relieve plaintiff of his duty to meet the requirements necessary to defeat a motion for summary judgment." Jorgensen v. Epic/Sony Records, 351 F.3d 46, 50 (2d Cir. 2003) (citation and internal quotation marks omitted); see also Bennett v. James, 737 F. Supp. 2d 219, 226 (S.D.N.Y. 2010) ("Notwithstanding the deference to which a pro se litigant is entitled, as well as the deference accorded to a non-movant on a summary judgment motion, [the non-movant] must produce specific facts to rebut the movant's showing and to establish that there are material issues of fact requiring a trial.") (citations, brackets, and internal quotation marks omitted), aff'd, 441 F. App'x 816 (2d Cir. 2011).

III. LAW GOVERNING TITLE VII, NYSHRL, AND NYCHRL RETALIATION CLAIMS

"Title VII prohibits employers from retaliating against any employee because that individual has opposed [a] practice made unlawful by Title VII." Ya-Chen Chen v. City Univ. of N.Y., 805 F.3d 59, 70 (2d Cir. 2015) (brackets, ellipses, and internal quotation marks omitted)

(citing 42 U.S.C. § 2000e-3(a)). Claims of retaliation are analyzed according to the three-step burden-shifting analysis set out in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-04 (1973). See Littlejohn v. City of New York, 795 F.3d 297, 307 (2d Cir. 2015); Coffey v. Dobbs Int'l Servs., Inc., 170 F.3d 323, 326 (2d Cir. 1999).

To make out a prima facie case of retaliation under Title VII, "a plaintiff must present evidence that shows (1) participation in a protected activity; (2) that [his employer] knew of the protected activity; (3) an adverse employment action; and (4) a causal connection exists between the protected activity and the adverse employment action." Littlejohn, 795 F.3d at 315-16 (internal quotation marks omitted) (quoting Hicks v. Baines, 593 F.3d 159, 164 (2d Cir. 2010)). Generally, this last element may be shown either "(1) indirectly, by showing that the protected activity was followed closely by discriminatory treatment, or through other circumstantial evidence such as disparate treatment of fellow employees who engaged in similar conduct; or (2) directly, through evidence of retaliatory animus directed against the plaintiff by the defendant." Gordon v. N.Y.C. Bd. of Educ., 232 F.3d 111, 117 (2d Cir. 2000); accord Littlejohn, 795 F.3d at 319.

If the plaintiff establishes a prima facie case, a presumption of discrimination or retaliation is created and the burden shifts to the employer to articulate a "legitimate, nondiscriminatory reason" for the adverse employment action. McDonnell Douglas, 411 U.S. at 802; accord St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 506-07 (1993); Ya-Chen Chen, 805 F.3d at 70. If the employer articulates a non-retaliatory explanation for its conduct, the presumption of retaliation is eliminated, and the plaintiff must meet his ultimate burden of proving "that the desire to retaliate was the but-for cause of the challenged employment action." Univ. of Tex. Sw. Med. Ctr. v. Nassar, 133 S. Ct. 2517, 2528 (2013); accord Vasquez v.

Empress Ambulance Serv., 835 F.3d 267, 272 n.4 (2d Cir. 2016); Ya-Chen Chen, 805 F.3d at 70. "This requires proof that the unlawful retaliation would not have occurred in the absence of the alleged wrongful action or actions of the employer." Nassar, 133 S. Ct. at 2533; accord Vega v. Hempstead Union Free Sch. Dist., 801 F.3d 72, 90-91 (2d Cir. 2015); Bowen-Hooks v. City of New York, 13 F. Supp. 3d 179, 231 (E.D.N.Y. 2014). This proof can include "weaknesses, implausibilities, inconsistencies, or contradictions in the employer's proffered legitimate, nonretaliatory reasons for its actions," such that "a reasonable juror could conclude that the explanations were a pretext for a prohibited reason." Zann Kwan v. Andalex Grp. LLC, 737 F.3d 834, 846 (2d Cir. 2013).

Importantly, "[t]he ultimate burden of persuading the trier of fact that the defendant intentionally [retaliated] against the plaintiff remains at all times with the plaintiff." St. Mary's, 509 U.S. at 507 (first alteration in original) (internal quotation marks omitted) (quoting Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981)); accord Giscombe v. N.Y.C. Dep't. of Educ., 39 F. Supp. 3d 396, 400 (S.D.N.Y. 2014). Thus, it is not sufficient for the fact-finder to disbelieve the employer's explanation; rather, "the factfinder must believe the plaintiff's explanation of intentional [retaliation]." Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 147 (2000) (emphasis omitted) (quoting St. Mary's, 509 U.S. at 519). In other words, the plaintiff "must always prove that the conduct at issue . . . actually constituted" retaliation. Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 81 (1998). Nonetheless, "[i]n appropriate circumstances," the evidence of pretext alone will be sufficient to "infer . . . that the employer is dissembling to cover up a [retaliatory] purpose." Reeves, 530 U.S. at 147; see also Schnabel v. Abramson, 232 F.3d 83, 90 (2d Cir. 2000) (citation omitted) (quoting Reeves, 530 U.S. at 143) ("Reeves clearly mandates a case-by-case approach, with a court

examining the entire record to determine whether the plaintiff could satisfy his 'ultimate burden of persuading the trier of fact that the defendant intentionally [retaliated] against the plaintiff.'").

Despite the framework set up in McDonnell Douglas, Second Circuit case law makes clear that the court may simply assume that the plaintiff has established a prima facie case and skip to the final step in the McDonnell Douglas analysis, as long as the employer has articulated a legitimate, nonretaliatory reason for the adverse employment action. See, e.g., Graves v. Finch Pruyn & Co., 457 F.3d 181, 187-88 (2d Cir. 2006) (declining to resolve a dispute regarding the establishment of a prima facie case of age discrimination on the ground that plaintiff had "not pointed to any record evidence to dispute [defendant's] legitimate reason . . . for the alleged adverse employment action"); Roge v. NYP Holdings, Inc., 257 F.3d 164, 168 (2d Cir. 2001) (declining to decide whether a prima facie case was made out because defendant "met its burden to put forth legitimate, nondiscriminatory reasons for [plaintiff's] termination, and [plaintiff] has failed as a matter of law to proffer evidence of pretext sufficient to go to a trier of fact"); see also Abdu-Brisson v. Delta Air Lines, Inc., 239 F.3d 456, 470 (2d Cir. 2001); Sattar v. Johnson, 129 F. Supp. 3d 123, 138 (S.D.N.Y. 2015), aff'd, 669 F. App'x 1 (2d Cir. 2016); Morris v. Ales Grp. USA, Inc., 2007 WL 1893729, at *7 (S.D.N.Y. June 29, 2007); Mathews v. Huntington, 499 F. Supp. 2d 258, 264 (E.D.N.Y. 2007); Tomney v. Int'l Ctr. for the Disabled, 357 F. Supp. 2d 721, 742 (S.D.N.Y. 2005).

Because "[t]he standards for evaluating . . . retaliation claims are identical under Title VII and the NYSHRL," we apply the same analysis to Diaz's claims under these statutes. See Vasquez, 835 F.3d at 271 n.3 (alteration and omission in original) (internal quotation marks omitted) (quoting Kelly v. Howard I. Shapiro & Assocs. Consulting Eng'rs, 716 F.3d 10, 14 (2d Cir. 2013)); see also Margerum v. City of Buffalo, 24 N.Y.3d 721, 731 (2015) ("[T]he standards

for recovery under the New York Human Rights Law are in nearly all instances identical to title VII and other federal law.") (citations omitted).

Claims under the NYCHRL, however, are governed by a different standard. While a plaintiff must establish a prima facie case, and a defendant will then have an opportunity to offer legitimate reasons for its actions, the analysis that follows varies. If the defendant meets its burden,

> summary judgment is appropriate if no reasonable jury could conclude either that the defendant's "reasons were pretextual," Melman v. Montefiore Med. Ctr., 98 A.D.3d 107, 946 N.Y.S.2d 27, 35 (1st Dep't 2012), or that the defendant's stated reasons were not its sole basis for taking action, and that its conduct was based at least "in part on discrimination," id. at 41 (quoting Aulicino v. New York City Dep't of Homeless Servs., 580 F.3d 73, 80 (2d Cir. 2009)). In other words, summary judgment is appropriate if "the record establishes as a matter of law" that discrimination or retaliation "play[ed] no role" in the defendant's actions. Mihalik, 715 F.3d at 110 n.8 (quoting Garcia v. Hartford Police Dep't, 706 F.3d 120, 127 (2d Cir. 2013)); see also Williams v. N.Y.C. Hous. Auth., 61 A.D.3d 62, 872 N.Y.S.2d 27, 38, 40 n.27 (1st Dep't 2009).

Ya-Chen Chen, 805 F.3d at 76 (alteration and emphasis in original).

IV. DISCUSSION

As already noted, two claims remain in this case: (1) a claim against CUNY and Travis alleging that the non-renewal of Diaz's adjunct faculty teaching positions at John Jay in April 2011 was retaliatory; and (2) a claim against CUNY and Melendez alleging that Melendez pressured Diaz to leave his editorial position at CENTRO and decided not to hire Diaz in retaliation for Diaz's filing complaints with the EEOC. We analyze each claim separately.

A. Claims Concerning John Jay

Diaz alleges that he was not reappointed as an adjunct lecturer after the Spring 2011 semester in retaliation for his sending the November 2010 Email. His memorandum of law also raises a theory he claims was "implied in his original complaint for this case": namely, that a

plan was created in 2010 to retaliate against Diaz for his April 2010 Letter complaining about national origin discrimination at CUNY's Graduate School. See Pl. Mem. at 3, 68, 70-71. The previous iteration of this claim — that Montalban filed her sexual harassment report in retaliation for Diaz's April 2010 Letter — was dismissed because the Complaint "provide[d] no grounds to plausibly conclude that Montalban, an employee at John Jay, had any knowledge of the" April 2010 Letter. See Sept. 22 Op. at 22. To the extent Diaz's new theory survived defendants' motion to dismiss, we discuss it below.

We will forgo determining whether Diaz stated a prima facie case of retaliation and instead turn to the question of whether the defendants have articulated a legitimate non-retaliatory reason for the failure to renew Diaz's contract. The process by which FLL and LALS appoint adjunct lecturers is undisputed: although the President or the Provost of John Jay have the final say on whether to reappoint an adjunct faculty member, the decision rests first and foremost with the relevant department's Chair. See Defs. 56.1 ¶ 4; Pl. 56.1 ¶ 4; Bowers Decl. ¶ 3; Travis Decl. ¶¶ 3-4. The Chairs of FLL and LALS in Spring 2011 — that is, Dapia and Perez — each offered reasons for not reappointing Diaz. Dapia did not reappoint Diaz because, after FLL made a policy change in December 2010 requiring that adjuncts have "appropriate professional credentials in the languages they were to teach," Diaz no longer had the credentials necessary to hold his previous position. Dapia Decl. ¶¶ 9-12; Minutes — Department of Foreign Languages and Literatures, dated Dec. 3, 2010 (attached as Ex. I to Colucci Decl.), at ¶ 10. This policy change also disqualified at least two other adjuncts from reappointment. Dapia Decl. ¶¶ 11. Perez decided not to rehire Diaz at LALS because the department had a reduced need for adjunct faculty after it hired more full-time teachers and Perez did not believe that Diaz's student evaluation scores merited reappointment. Perez Decl. ¶ 13. If true, these are obviously

legitimate and non-retaliatory reasons for the decision not to renew Diaz's appointment.

We next turn to whether Diaz has shown "that the desire to retaliate was the but-for cause of" his non-reappointment. Nassar, 133 S. Ct. at 2528. In fact, Diaz has provided essentially no admissible evidence that would allow a reasonable jury to reach this conclusion. Nor has he provided argument as to how a jury could make the required finding. While Diaz argues that the policy change at FLL was pretextual because Dapia suggested it shortly after Diaz sent the November 2010 Email, see Pl. 56.1 ¶¶ 21(2)-21(3), this is simply speculation. It would require finding as a premise that Dapia dismissed at least two other adjunct faculty to specifically target Diaz. Thus, the proposed inference is not strong enough to support a finding that the November 2010 email played any part in Dapia's decision. Dapia's testimony controverts such a finding inasmuch as she states that while she was copied on the November 2010 email, she did not give it further thought once she saw that it did not refer to her or anything within her responsibilities. Dapia Decl. ¶ 6. As for Perez, Diaz's admissible evidence does not cast any doubt on Perez's statements that LALS had a reduced need for adjunct faculty as a whole. See Perez Decl. ¶ 13.

Diaz seems to focus on Bowers' (rather than Travis') alleged involvement in these decisions. See, e.g., Pl. 56.1 ¶¶ 21(3), 24, 30, 38-41(1). Based on the evidence Diaz has submitted, as well as Bowers' statements, a reasonable juror could conclude that Bowers did not want Diaz reappointed regardless of what anyone recommended to her. But Bowers expressed this view before the November 2010 Email. See Email from Jane Bowers, dated Oct. 14, 2010 (attached as Ex. 23 to Pl. Mem.) (in which Bowers states "I will not approve any further reappointments of Edgardo Diaz as an adjunct in the FLL department"); Emails from Jane Bowers and Rosemarie Maldonado, dated Nov. 17, 2010 (attached as Ex. 27 to Pl. Mem.) (discussing whether Perez had to reappoint Diaz as an adjunct in the spring). While Bowers'

views regarding Diaz were apparently formed several months after the April 2010 Letter, Bowers provides powerful non-retaliatory explanations for her view: the Montalban Report regarding the student complaints against Diaz, an "unimpressive" teaching record, and "comments by other students citing a tendency toward inappropriate sexual references and vulgarity in class." Bowers Decl. ¶ 8. Diaz has supplied no evidence that there is a connection between the April 2010 Letter and Bowers' views.

Diaz's theory connecting Travis to his nonreappointment posits that Travis formed a plan in June 2010 to not reappoint Diaz after Spring 2011. Specifically, Diaz asserts that his April 2010 Letter "should have reached the top levels of the CUNY system, as it may have been leaked through formal and informal channels, thus reaching the eyes and ears of various decision makers at John Jay, including President Travis." Pl. Mem. at 3. He calls attention to email conversations between Travis, Bowers, Montalban, and John Jay legal counsel Rosemarie Maldonado in May and June 2010 about whether to rescind Diaz's reappointment. See id. at 12-14; Montalban June 4 Email. He assumes that Montalban and Maldonado must have known of his April 2010 Letter because he had at one time discussed the substance of the matter with CUNY's Vice-Chancellor for Legal Affairs Frederick Schaffer. See Email from Edgardo Diaz to Frederick P. Schaffer (attached as Ex. 16 to Pl. Mem.). Because Montalban consulted with CUNY Legal about "affirmative action complaint cases" in June 2010, see Montalban June 4 Email, Diaz suggests that his April 2010 Letter formed the true background of the June 2010 discussions between Travis, Montalban, and others. Diaz claims that Travis helped put a plan in place to not reappoint Diaz after the Spring 2011 semester, "undeniably in retribution to nothing else but plaintiff's April 21st letter" to the CUNY Graduate School, Pl. Mem. at 71, and that having done this, there was no need for Travis to further involve himself with the decision after

June 2010, Pl. 56.1 ¶ 42(2).

As stated above, in order to prevail under Title VII and the NYSHRL Diaz must prove that he would not have been subjected to non-reappointment but for the desire to retaliate against him. Nassar, 133 S. Ct. at 2528. The strength of the Montalban Report and the performance and sexual harassment concerns reflected in Diaz's student evaluations provide such a strong justification on their own to not reappoint Diaz that the speculation marshaled by him does little to show inconsistency, contradiction, or weaknesses in the explanations proffered for his non-reappointment. See Zann Kwan, 737 F.3d at 846. There is no evidence whatsoever that the Montalban Report had any connection to the April 2010 Letter. Instead, there is overwhelming evidence that it arose from a student complaint. Diaz further provides no evidence that investigations of similar complaints were handled differently or that other adjunct faculty who may have been engaged in similar behavior were treated any differently.

As to Travis specifically, Diaz presents no evidence from which a juror could derive retaliatory intent in the face of the strong reasons that existed to not rehire him beyond what his contract required. Diaz's argument that Travis had knowledge of the April 2010 Letter is based on Diaz's reading of the email from Montalban to Travis of June 4, 2010, in which she discussed the sexual harassment allegations against Diaz. In that email, Montalban notes:

> CUNY Legal does not think we would succeed in defending against [a] grievance for rescinding [Diaz's reappointment] and firing him for cause because: (a) he admitted it, said he was sorry and would improve and he will appear clueless as opposed to malicious; (b) in addition, the complainant didn't express a desire that he be terminated only counseled and trained.

Montalban June 4 Email. This email, however, cannot support an inference that the April 2010 Letter had any bearing on the decision not to renew Diaz's contract. In the email, Montalban is explaining the impediments to firing Diaz at that time (as opposed to not renewing his contract).

Diaz suggests that something other than the Montalban Report must have impacted the decision not to reappoint him if it was reached in June 2010. See Pl. Mem. at 11-14. But there is absolutely no non-speculative basis on which to reach this conclusion — let alone to reach the conclusion that the real motivation for his non-renewal must have been the April 2010 Letter. It is Diaz's burden to present sufficient evidence to create a genuine issue of material fact on this issue. Allen, 100 F.3d at 258. It is a burden he has not met.

Finally, because no evidence postdating Diaz's November 2011 email connects Travis to the decision to not reappoint Diaz, a reasonable juror could not conclude that an intent by Travis to retaliate against Diaz for sending that email played a role in his nonreappointment. Thus, summary judgment on Diaz's Title VII and NYSHRL claims premised on Diaz's nonreappointment at John Jay should be granted to defendants.

The same result obtains under the more lenient standards of the NYCHRL. In light of the speculative arguments offered by Diaz, no reasonable juror could conclude that the reasons given by defendants for not reappointing Diaz were pretextual, that the stated reasons were not the sole basis for taking action, or that the decisions not to reappoint Diaz were based at least in part of discrimination. See Ya-Chen Chen, 805 F.3d at 76. Accordingly, summary judgment in defendants' favor is also warranted on the NYCHRL claim premised on Diaz's nonreappointment at John Jay.

B. Claims Concerning CENTRO

Diaz's claims in the complaint connected to CENTRO are that Melendez and CUNY pressured him to leave his editorial position at CENTRO and decided not to hire him as a Distinguished Lecturer there in the fall of 2011 in retaliation for Diaz filing his May 2011 EEOC complaint. See Sept. 22 Op. at 24.

Regarding Diaz's editorial position at CENTRO, Diaz was hired on a per-semester basis in Fall 2010 and Spring 2011. See Defs. 56.1 ¶¶ 43-44; Pl. 56.1 ¶¶ 43-44. Although Melendez approved Diaz's appointment at CENTRO, the driving force behind his position was his friend Xavier Totti, who advocated for his appointment in Fall 2010 and his one-semester reappointment in Spring 2011. See Totti Decl. ¶¶ 2-3; Pl. 56.1 ¶¶ 43-44. Nonetheless, it was Totti himself who recommended that Diaz not be rehired after Spring 2011 because "[a]lthough the articles Mr. Diaz Diaz produced were good, there simply had not been enough of them to justify paying a person a full-time salary." Totti Decl. ¶ 4. Melendez accepted Totti's recommendation and considered Diaz already "out" of CENTRO when his employment contract expired. See Melendez Decl. ¶¶ 2, 5, 8. Totti — the decision maker — stated that he was unaware of Diaz's EEOC complaint when he recommended against renewing Diaz's contract, and that as of May 2011 he "had already decided that [Diaz's] contract would not be renewed. In any event, [Diaz's] discrimination complaints played no role in [Totti's] decision." Totti Decl. ¶ 8.

In his memorandum of law, Diaz makes clear that he is no longer arguing that he was promised further reappointment to his editorial position at CENTRO. He states:

> [P]laintiff now disregards any claim concerning further reappointments as part-time editor of electronic magazine Voices. In other words, no documentation exists to demonstrate that CENTRO officials discussed about further reappointments under a part-time agreement. Evidence shows instead that they intended to hire plaintiff in a position requiring much more responsibilities than those normally imposed to part-timers. CENTRO was considering plaintiff to work as a full-time faculty member with the title of Distinguished Lecturer.

Pl. Mem. at 42. In other words, Diaz appears to recognize that there is insufficient evidence to show that he was required to leave his editorial position at CENTRO because of retaliation — a conclusion with which we agree. Accordingly, we turn to the evidence regarding his non-

selection for the Distinguished Lecturer position.

Diaz argues that Melendez prevented him from obtaining a full-time position as Distinguished Lecturer in retaliation for Diaz's May 2010 EEOC complaint. See id. at 42. Once again, we will assume, arguendo, that Diaz has stated a prima facie case of retaliation. Defendants offer a legitimate, nondiscriminatory reason for his non-hiring: that a search committee did not recommend Diaz and that in any event Melendez decided not to fill the position based on the quality of the candidates who were recommended. Melendez Decl. ¶¶ 13-14.

On the issue of whether the decision was motivated by retaliation, Diaz claims Melendez distanced himself from Diaz after Diaz asked him "for help concerning his complaint" in May 2011. See Pl. Mem. at 42. He further claims that the real reason Melendez changed the Distinguished Lecturer position's job qualifications was in order to exclude him, and notes that Melendez barred him from working at CENTRO days after his interview for the full-time position. Id. at 42, 59-60. But, once again, Diaz does not offer evidence that would allow a reasonable juror to conclude that retaliation played a part in the decision.

Melendez has stated that he was unaware that Diaz had applied for the position until September 15, 2011, when the search committee sent him their shortlist of candidates, which did not include Diaz. See Defs. 56.1 ¶ 63; Pl. 56.1 ¶ 63. As Melendez stated in his declaration:

> I had nothing whatever to do with Mr. Diaz Diaz's application for a Distinguished Lecturer position and his failure to obtain it. I did not know he had applied for it until I learned that the search committee had considered and rejected his application. I did not communicate with any members of the search committee to try to influence their deliberations in any way. I did not hire anyone else for the position in preference to Mr. Diaz Diaz, and eventually cancelled the program [altogether].

Melendez Decl. ¶ 15; see also Memorandum from Edwin Melendez, dated Dec. 28, 2011

(attached as Ex. S to Colucci Decl.) (noting that the pool of potential candidates for the Distinguished Lecturer position, "including those identified by the committee as finalists, do not meet our expectations for" the position, and recommending the search be closed). The search committee's report reflects that they had recommended that Diaz not be considered further, observing that "[a]lthough Diaz Diaz possesses an enviable research and publication record he failed to convey to the committee that he possesses other comparable skills and knowledge to the favorably recommended candidates." Search Comm. Report at 4.

Melendez made a decision not to hire for the position after receiving the search committee report. See Melendez Decl. ¶¶ 13-14. While Diaz states that Melendez was aware of his May 2011 EEOC complaint, Pl. Mem. at 60 — a fact that Melendez does not dispute, see Melendez Decl. ¶ 16 — Melendez's decision cannot reasonably be attributed to retaliation because Diaz was not even among the three finalists forwarded to Melendez by the search committee. See Search Comm. Report. In other words, Diaz was already out of contention by the time Melendez made any decisions about the position. And Diaz presents no admissible evidence that anyone on the search committee knew of his May 2011 complaint or that Melendez had any effect on the search committee's decision. Although Diaz suggests that Melendez's request for Diaz "not to use the assigned office [at CENTRO] anymore, since he was no longer an employee with CENTRO" shows retaliatory intent, Pl. Mem. at 60, this is speculative and cannot overcome the lack of evidence that Melendez had any involvement in the search committee's decision. Similarly, although Diaz argues that Melendez "attempted to sabotage, and actually change[d] the job qualifications to exclude" Diaz from the Distinguished Lecturer position, id. at 42, this contention again relies on speculation and does not overcome the fact that the search committee had not recommended Diaz anyway. As noted, the chair of the

search committee was not aware of Diaz's EEOC charge and reports that "no other committee members said anything suggesting that they knew about it either." Hernandez Decl. ¶ 12. Melendez did not communicate with the search committee about candidates until he received their final report recommending candidates for in-person interviews, and did not know that Diaz had applied until he saw their report. Melendez Decl. ¶¶ 7, 13; Hernandez Decl. ¶ 10. Further, Diaz identifies the date where CENTRO changed the advertisement for the position to require a terminal degree as October 15, 2011, Pl. Mem. at 63, a month after the committee identified its first set of finalists and did not recommend Diaz for further consideration, see Search Comm. Report.

Diaz claims that "on behalf of himself and CENTRO, Totti signaled [Diaz] that he would be hired for the position of distinguished lecturer as soon as [he] finished" articles he worked on as a contract employee. Pl. Mem. at 58. The "signal" apparently comes from the fact that Totti had used phrases such as "[o]ur offer stands" and "you will be included in everything" in his emails. See id. at 58-59. The full emails, however, place the "offer" in a context entirely different from that suggested by Diaz. Totti had written: "Our offer stands, if you wish you may include it in your resume" — making it clear that he was referring to the title "editor" discussed in Diaz's previous message. See Totti July 5 Email (emphasis added). In any event, there is no evidence that Totti had the power to offer Diaz the Distinguished Lecturer position or that he could interfere with the selection committee process.

In sum, no reasonable juror could conclude that retaliation was the but-for cause of the decision not to offer Diaz the Distinguished Lecturer position at CENTRO. Accordingly, summary judgment should be granted to defendants on Diaz's Title VII and NYSHRL claims tied to CENTRO.

As was true for Diaz's claim regarding the non-renewal of his adjunct position, no reasonable juror could conclude that the reasons given by Melendez for Diaz not being hired as a Distinguished Lecturer — namely, that an independent search committee did not recommend Diaz for further consideration, and that in any event Melendez wanted to change the qualifications for the position after he disapproved of the finalists — were pretextual, were not the sole basis for taking this action, or were based at least in part on retaliation. See Ya-Chen Chen, 805 F.3d at 76. Summary judgment in defendants' favor is therefore warranted on the NYCHRL aspect of these claims as well.

V. CONCLUSION

For the foregoing reasons, defendants' motion for summary judgment (Docket # 82) should be granted.

PROCEDURE FOR FILING OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties have fourteen (14) days (including weekends and holidays) from service of this Report and Recommendation to file any objections. See also Fed. R. Civ. P. 6(a), (b), (d). A party may respond to any objections within 14 days after being served. Any objections and responses shall be filed with the Clerk of the Court, with copies sent to the Hon. Paul A. Crotty at 500 Pearl Street, New York, New York 10007. Any request for an extension of time to file objections or responses must be directed to Judge Crotty. If a party fails to file timely objections, that party will not be permitted to raise any objections to this Report and Recommendation on appeal. See Thomas v. Arn, 474 U.S. 140 (1985); Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C., 596 F.3d 84, 92 (2d Cir.

2010).

Dated: July 20, 2017
New York, New York

GABRIEL W. GORENSTEIN
United States Magistrate Judge