UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ELIZABETH F. STABLER,

Plaintiff,

16 Civ. 9601 (RWS)

- against -

OPINION

CONGREGATION EMANU-EL OF THE CITY OF NEW YORK, JOSHUA DAVIDSON, individually and in his official capacity, GADY LEVY, individually and in his official capacity, CARA GLICKMAN, individually and in her official capacity, JOHN HARRISON STREICKER, individually and in his official capacity, LAWRENCE HOFFMAN, individually and in his official capacity, JOHN AND JANE DOES 1-10, individually and in their official capacities, and XYZ CORP. 1-10,

Defendants.

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Sweet, D.J.

Defendants Congregation Emanu-El of the City of New York (the "Congregation"), Rabbi Joshua Davidson ("Rabbi Davidson"), Gady Levy ("Levy"), Cara Glickman ("Glickman"), and John Harrison Streicker ("Streicker") (collectively, the "Defendants") have moved pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure to dismiss the First Amended Complaint ("FAC") of the plaintiff Elizabeth Stabler ("Stabler" or the "Plaintiff"). Defendant Rabbi Lawrence Hoffman ("Rabbi Hoffman") has separately moved to dismiss Plaintiff's FAC pursuant to Rule 12(b)(6). As set forth below, the motions to dismiss are denied and the parties are directed to engage in limited discovery with regard to the ministerial exception issue.

I. Prior Proceedings

Plaintiff initiated this action on December 13, 2016 and filed her FAC on December 20, 2016. The FAC alleges intentional creation of a hostile work environment, unlawful discrimination, harassment, retaliation, and unlawful adverse actions towards the Plaintiff based on: her gender in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e *et seq.* ("Title VII"), her age in violation of the Age Discrimination in Employment Act, as amended, 29 U.S.C. § 621 *et seq.* ("ADEA"), and her disability and failure to accommodate in violation of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.* ("ADA"). Plaintiff alleges that the Defendants are also in violation of the Executive Law of the State of New York, New York State Human Rights Law, § 296 *et seq.* ("Executive Law"), and the Administrative Code of the City of New York, New York City Human Rights Law, § 8-101 *et seq.* ("Administrative Code").

The Defendants' motion to dismiss was filed on February 3, 2017, and Rabbi Hoffman's motion to dismiss was filed on February 17, 2017. Both motions were heard and marked fully submitted on April 12, 2017.

II. The Facts

The facts as set forth below are drawn from the Plaintiff's FAC. They are taken as true for purposes of the motion to dismiss.

Plaintiff is the former Librarian at the Congregation, serving from September 29, 1999 until her termination on May 12, 2015. *Id.* ¶ 33. Throughout this period, she was over the age of 40. *Id.* ¶¶ 2-3. By the time she was terminated, Plaintiff was in her late 60s. *Id.* ¶ 33.

In or about 2012, Streicker became the Congregation's President of the Board. Compl. ¶ 16, 44. Streicker hired Rabbi Davidson in or about 2013 to take over as Senior Rabbi at the Congregation. *Id.* ¶¶ 7, 44. Rabbi Davidson hired Levy, who began to work as Director of the Skirball Center for Adult Jewish Learning in June 2014, and Glickman, who began to work as Executive Vice President in mid-July 2014. *Id.* ¶¶ 10, 13, 38, 45. Rabbi Hoffman was a consultant to the Congregation. *Id.* ¶ 19.

Defendants John and Jane Does 1-10 are natural persons whose true identities are not yet known to Plaintiff and are partners, shareholders, principals, employees, agents, or persons otherwise associated with one or more of the other Defendants, or were otherwise in positions which enabled them to commit, or to aid and abet in the commission of, the wrongful acts against Plaintiff as alleged. *Id.* ¶ 22. Defendants XYZ Corp. 1-10 are additional entities whose true identities are not yet known to Plaintiff, which are owned or operated by, affiliated with, owned and/or managed by or for the benefit of one or more other Defendants, or any combination of any or all of them. *Id.* ¶ 23.

Plaintiff's duties and responsibilities included, but were not limited to:

> Assembling an automated 14,000-item library from books stored for many years into a new library; expanding the library collection, including periodicals, books, children's materials, realia, audio-visual material and education enhancement tools; facilitating and organizing reading groups and a congregation-wide read-along with relevant lectures; developed and ran the Meet the Author and Library and Museum Lecture Series; conceived the "Who Are We" program series; worked with the Board of Trustees Cultural and Programming Committee; researched and implemented an upgrade to the library's automated system to allow offsite access to the library database; supported and developed resource material for adult education and

> other groups; maintained subscriptions to numerous periodicals; regularly attended and taught workshops, seminars and national library conventions; researched and facilitated continuing education class about iPad applications for teaching Hebrew; authored several articles for "How to Run a Jewish Library" published by the Association of Jewish Libraries; wrote articles for New York Metropolitan Area chapter of the Association of Jewish Libraries' NYMA News; Chaired the Association of Jewish Libraries 2004 National Convention held in Brooklyn, New York; appointed to represent the Association of Jewish Libraries as a member of an advisory committee for the American Theological Library Association's planning grant. In addition, Plaintiff created a functioning Judaica library in the newly renovated Stettenheim Library whose shelves were empty, culled and selected appropriate material from 25,000 items in storage for four years, and purchased all additional volumes and items necessary for a congregational library.

Compl. ¶¶ 34-35. Plaintiff was a highly praised employee of the Congregation with no issues of work-related performance. *Id.* ¶ 37. No negative performance was reported from Plaintiff's start date at the Congregation until mid-2014, which coincides with when Levy and Glickman started working at the Congregation. *Id.* ¶ 38.

As part of her employment and involvement with the Congregation Plaintiff also served on the Board's Programming and Culture Committee from 2012 until Defendant Levy removed her without prior notice in August 2014. *Id.* ¶¶ 50, 52. Defendants also published the list of the Programming and Culture Committee

without Plaintiff's name, despite Plaintiff's contribution to the committee. *Id.* ¶ 53. No other employee who was a male, under the age of forty and not suffering from a disability was removed from the Board's Programming and Culture Committee in the manner that Plaintiff was removed. *Id.* ¶ 55.

Plaintiff suffers from severe osteoarthritis and had a knee replacement surgery in October 2008, which was well-known to Defendants. *Id.* ¶¶ 39-40. She started wearing an ankle brace and using a cane to walk in 2014. *Id.* ¶ 40. It was also known that Plaintiff needed another knee replacement surgery, which she anticipated having in the summer of 2015. *Id.* ¶ 41.

Until mid-2014, prior to the hiring of Levy and Glickman, Plaintiff was allowed to work from home in times of inclement weather since she had a physical disability that made it difficult to commute to work when the weather conditions were not favorable. *Id.* ¶¶ 42, 46. While working from home, Plaintiff was able to read materials in preparation for the two book groups she facilitated, read review journals and professional literature, send and receive emails, work on the Congregation's community cookbook, and place orders for library acquisitions,

all of which were part of her duties and responsibilities. *Id.* ¶ 43.

After Defendants Levy and Glickman were hired by the Congregation, Plaintiff's requests for accommodations to work from home during inclement weather conditions were denied by Defendants. *Id.* ¶ 47. No other employee who was a male, under the age of forty, and/or not suffering from a disability was suddenly denied reasonable accommodations due to a disability after being granted such an accommodation in the past. *Id.* ¶ 49.

On April 13, 2014, Plaintiff complained to Rabbi Davidson about Levy's behavior towards her. *Id.* ¶ 59. Rabbi Davidson did not take any remedial action. *Id.* ¶ 60. No other employee who was a male, under the age of forty and not suffering from a disability was treated in any manner similar to how Plaintiff was treated by Levy. *Id.* ¶ 61.

At a meeting on April 27, 2014 for the committee of Emanu-El Eats, a Congregational Cookbook, Levy berated, yelled at, and insulted Plaintiff. *Id.* ¶ 57. Plaintiff had created and worked on the book. *Id.* At a meeting on September 8, 2014, Levy scolded Plaintiff for allegedly sending him too many work-

related emails. *Id.* She had sent about seven emails over the course of three months. *Id.* In or about September 2014, Levy threatened to reduce Plaintiff's job responsibilities if she worked from home and stated that her employment and welfare are in his hands and under his control. *Id.*

On September 23, 2014, Levy began a meeting by yelling at Plaintiff, and became very angry and hostile towards her for sending an email regarding her successful resolution of a pre-existing problem with the book group. *Id.* He also mimicked her gestures and mocked her while other staff members were of hearing distance from him, and told her that she had no right to resolve the problem. *Id.* During that same meeting, Plaintiff asked Levy why her name was excluded from the list published for the Programming and Culture Committee. *Id.* In response, Levy yelled at Plaintiff. *Id.*

Also in September 2014, Hoffman, who acted as management consultant for the Congregation's "Visioning Committee," addressed the Religious School Faculty meeting and stated that the Congregation will thrive and survive into a new era as a result of the "new hires" and "young people" who have been hired since Saul Kaiserman ("Kaiserman"), the Director of

Lifelong Learning for the Congregation, and new Religious School staff were hired. *Id.* ¶¶ 62-63. Immediately following Hoffman's comments at the meeting, Plaintiff complained to Hoffman about his statements. *Id.* ¶ 64. Plaintiff reminded Rabbi Hoffman that, despite not being a "new hire" or "young," she initiated and played a major role in planning significant lecture series for the 2012-2013 transition years, and in advancements within the Congregation over the 17 years of employment. *Id.* ¶ 65. Hoffman later reiterated the same message, that the Congregation will thrive and survive into a new era as a result of the "new hires" and "young people" who have been hired since Kaiserman and the Religious School staff were hired, while addressing congregants at a Sunday breakfast session in the fall of 2014. *Id.* ¶ 69.

In or around September 2014, Plaintiff requested a copy of the Congregation's sick leave policy in order to request a leave of absence due to her osteoarthritis. *Id.* ¶ 70. Defendants refused to provide Plaintiff with the policies. *Id.* ¶ 71. During the fall of 2014, Glickman allowed tampering of Plaintiff's time sheets, accused Plaintiff of falsifying her time, and threatened to take away her vacation days. *Id.* ¶ 67. Once Plaintiff started recording the times she arrived at and

left the Congregation, Defendants stopped their accusations. *Id.* ¶ 68.

During the winter of 2015, Plaintiff made several requests to work from home during inclement weather conditions because of her osteoarthritis. *Id.* ¶ 71. Despite Plaintiff being granted such requests prior to Levy and Glickman's hiring at the Congregation, Defendants denied Plaintiff's request, compelling her to use vacation days. *Id.* ¶ 73.

On May 12, 2015, Plaintiff was called into a meeting and told by Levy and Glickman that her position was purportedly eliminated. *Id.* ¶ 74. Plaintiff was offered a part-time, clerical, non-professional position. *Id.* In August 2015, the Congregation published a job posting seeking to fill the position of Librarian, which had similar professional requirements for the position that Plaintiff held prior to her termination on May 12, 2015. *Id.* ¶ 79.

Other employees who either did not suffer from a disability, who were younger than Plaintiff, or who were male employees, were not treated in the same disparate manner as Plaintiff. *Id.* ¶ 80. Warren Klein, a 29-year old male employee,

who does not suffer from a disability, was promoted in May 2015 and was offered partial responsibility to run the library. *Id.* ¶ 81. Christine Manomat, who did not suffer from a disability, was allowed to work from home. *Id.* ¶ 82. Beginning around September 2016, Glickman himself was allowed to work from home. *Id.* ¶ 83.

Defendants' treatment of the Plaintiff mirrored their treatment of other female employees who were over the age of 40, and some of whom suffered from a disability. *Id.* ¶ 84. Roberta Greenberg, a 68-year old female employee, had her salary cut by one third despite working for Defendants for 48 years. *Id.* ¶ 85. Hadassah Mushinsky, an 87-year old female employee, had her salary cut in half and lost her benefits. *Id.* Cantor Lori Corrsin, a 60-year old female employee with a disability, was refused leave to recover from a foot surgery and was subsequently terminated. *Id.* Indira Tawari, a 42-year old female employee, who worked for the Congregation for 25 years, was terminated without proper notice or cause. *Id.* Norma Balass, a female employee over the age of 70, was terminated and replaced by two female employees in their 20s. *Id.* Marion Hedger, a 49-year old female, and Phyllis Treichel, a 52-year old female, were terminated. *Id.*

Plaintiff filed a Charge of Discrimination with the United States Equal Employment Opportunity Commission ("EEOC") on February 29, 2016. *Id.* ¶ 32. On September 14, 2016, the EEOC issued Plaintiff a Notice of Right to Sue upon her request. *Id.* at Ex. A.

III. The Applicable Standards

The Rule 12(b)(6) standard requires that a complaint plead sufficient facts to state a claim upon which relief can be granted. *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). On a motion to dismiss under Fed. R. Civ. P 12(b)(6), all factual allegations in the complaint are accepted as true, and all reasonable inferences are drawn in the plaintiff's favor. *Littlejohn v. City of N.Y.*, 795 F.3d 297, 306 (2d Cir. 2015); *Mills v. Polar Molecular Corp.*, 12 F.3d 1170, 1174 (2d Cir. 1993). However, "a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions." *Twombly*, 550 U.S. at 555 (quotation marks omitted). A complaint must contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 663 (quoting *Twombly*, 550 U.S. at 570).

A claim is facially plausible when "the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (quoting *Twombly*, 550 U.S. at 556). In other words, the factual allegations must "possess enough heft to show that the pleader is entitled to relief." *Twombly*, 550 U.S. at 557 (internal quotation marks omitted).

Additionally, while "a plaintiff may plead facts alleged upon information and belief 'where the belief is based on factual information that makes the inference of culpability plausible,' such allegations must be 'accompanied by a statement of the facts upon which the belief is founded.'" *Munoz-Nagel v. Guess, Inc.*, No. 12-1312, 2013 WL 1809772, at *3 (S.D.N.Y. Apr. 30, 2013) (quoting *Arista Records, LLC v. Doe 3*, 604 F.3d 110, 120 (2d Cir. 2010)) and *Prince v. Madison Square Garden*, 427 F. Supp. 2d 372, 384 (S.D.N.Y. 2006); *see also Williams v. Calderoni*, No. 11-3020, 2012 WL 691832, *7 (S.D.N.Y. Mar. 1, 2012). The pleadings, however, "must contain something more than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action." *Twombly*, 550 U.S. at 555

(quoting 5 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1216 (3d ed. 2004)).

IV. The Motions to Dismiss are Denied

Since Defendants, including Rabbi Hoffman, have raised the "ministerial exception" as an affirmative defense to Plaintiff's employment discrimination claims, Defs.' Mem. at 1 and Hoffman Mem. at 6, the Court must determine "whether the exception applies as an absolute bar to Plaintiff's statutory claims." *Moreno v. Episcopal Diocese of Long Island*, No. CV147231JSAKT, 2016 WL 8711448, at *7 (E.D.N.Y. Jan. 20, 2016), *report and recommendation adopted*, No. 14-CV-7231(JS)(AKT), 2016 WL 8711394 (E.D.N.Y. Mar. 4, 2016). The Defendants bear the burden of establishing the applicability of the ministerial exception. *See Fratello v. Roman Catholic Archdiocese of New York*, 175 F. Supp. 3d 152, 161 (S.D.N.Y. 2016), *aff'd sub nom. Fratello v. Archdiocese of New York*, No. 16-1271, 2017 WL 2989706, at *1 (2d Cir. July 14, 2017).

In *Hosanna-Tabor Evangelical Lutheran Church and Sch. v. EEOC*, 565 U.S. 171 (2012), the Supreme Court recognized the existence of a "'ministerial exception,' grounded in the First Amendment, that precludes application of [Title VII and other

employment discrimination laws] to claims concerning the employment relationship between a religious institution and its ministers." *Id.* at 188; *see Rweyemamu v. Cote*, 520 F.3d 198, 207 (2d Cir. 2008) (formally adopting the ministerial exception and affirming "the vitality of that doctrine in the Second Circuit."). The exception "protects more than just 'ministers' . . . and [ ] is not confined to the Christian faith[.]" *Id.* at 206 (internal citations omitted).[1]

To invoke the exception, a religious institution need not show it acted for a religious reason. "The exception instead ensures that the authority to select and control who will minister to the faithful — a matter 'strictly ecclesiastical,' — is the church's alone." *Hosanna-Tabor*, 565 U.S. at 194-95 (internal citation omitted). This is because, "[a]rmed only with the law as written and the tools of judicial reasoning, courts are ill-equipped to assess whether, and to what extent, an employment dispute between a minister and his or her religious group is premised on religious grounds." *Fratello*, 2017 WL 2989706, at *10 (citing Paul Horwitz, Act III of the Ministerial Exception, 106 Nw. U. L. Rev. 973, 979 (2012) (asserting that Hosanna-Tabor "confirmed" the principle that "judges cannot

[1] In the same vein, references to "church" in various quotations from other cases apply more broadly to any "religious institution."

evaluate the kinds of religious questions that come up in employment discrimination cases involving ministerial employees" because they "are simply incompetent to address them")).

"The 'ministerial exception' therefore operates to ensure that, in accordance with the First Amendment, the government is not permitted to interfere or otherwise entangle itself 'with an internal church decision that affects the faith and mission of the church itself.'" *Moreno*, 2016 WL 8711448, at *7 (quoting *Hosanna-Tabor*, 565 U.S. at 190). The exception also guarantees that the government cannot "[r]equir[e] a church to accept or retain an unwanted minister, or punish[] a church for failing to do so." *Hosanna-Tabor*, 565 U.S. at 188. Such action would "infringe[ ] the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission through its appointments" while also violating the "Establishment Clause, which prohibits government involvement in ecclesiastical decisions." *Id.* at 188-89; *see Rweyemamu*, 520 F.3d at 208 (recognizing that the Free Exercise Clause "protects a church's right to decide matters of governance and internal organization" while the Establishment Clause "forbids excessive entanglement with religion") (internal quotations and citations omitted).

As the Second Circuit recently held, "in determining whether the ministerial exception bars an employment-discrimination claim against a religious organization,[2] the only question is whether the employee qualifies as a 'minister' within the meaning of the exception." *Fratello*, 2017 WL 2989706, at *1. Neither the Supreme Court in *Hosanna-Tabor* nor the Second Circuit in *Rweyemamu* set forth a bright-line test to determine whether an employee qualifies as a minister. *See Hosanna-Tabor*, 565 U.S. at 190 ("We are reluctant, however, to adopt a rigid formula for deciding when an employee qualifies as a minister."); *Rweyemamu*, 520 F.3d at 208 ("While we agree that courts should consider the function of an employee, rather than his title or the fact of his ordination . . . we still find this approach too rigid as it fails to consider the nature of the dispute."). Instead, "*Hosanna-Tabor* instructs us to assess a broad array of relevant 'considerations,' including but not limited to (1) the employee's 'formal title,' (2) 'the substance reflected in that title,' (3) the employee's 'use of th[e]

[2] The Congregation is a Jewish synagogue, *see* Compl. ¶¶ 5, 34-35, and because it is a traditional religious organization, it is presumptively a religious organization. *See Moreno*, ("[A]n in-depth analysis with respect to whether the Diocese is a 'religious organization' is unnecessary since it is admittedly a traditional religious organization within the meaning of the ministerial exception."); *see also Rweyemamu*, 520 F.3d at 209 (finding without discussion that Roman Catholic Diocese was a religious organization); *Friedlander v. Port Jewish Ctr.*, 347 Fed. App'x 654, 655 (2d Cir. 2009) (same with respect to Jewish temple). Plaintiff has also acknowledged that "[t]here is no disputing the fact that [the] Congregation is a religious institution." Opp'n to Defs.' Mot. at 9.

title,' and (4) 'the important religious functions she performed.'" *Fratello*, 2017 WL 2989706, at *1 (quoting *Hosanna-Tabor*, 565 U.S. at 192).

Because the analysis is fact-intensive, whether the ministerial exception applies is often addressed at the motion for summary judgment stage. *See, e.g.*, *Fratello*, 175 F. Supp. 3d at 161 (deciding whether the ministerial exception applied on a motion for summary judgment); *Richardson v. Nw. Christian Univ.*, No. 6:15-CV-01886-AA, 2017 WL 1042465, at *1 (D. Or. Mar. 16, 2017) (same); *Rodarte v. Apostolic Assembly of the Faith in Christ Jesus*, No. CV H-10-4181, 2012 WL 12893656, at *5 (S.D. Tex. Feb. 29, 2012) (same); *see also Cannata v. Catholic Diocese of Austin*, 700 F.3d 169, 172 (5th Cir. 2012) (noting that because the lower court considered material outside the pleadings in deciding a motion to dismiss, it was considered a motion for summary judgment); *Collette v. Archdiocese of Chicago*, 200 F. Supp. 3d 730, 734 (N.D. Ill. 2016) (denying motion to dismiss based on ministerial exception where the complaint contained insufficient information about the plaintiff's role and directing the parties to engage in limited discovery on the issue); *Herzog v. St. Peter Lutheran Church*, 884 F. Supp. 2d 668, 669 (N.D. Ill. 2012) (converting the motion

to dismiss into a motion for summary judgment before deciding it). Only where the facts as alleged in the complaint definitively resolve the question should courts decide the issue at the motion to dismiss stage. *See, e.g.*, *Moreno*, 2016 WL 8711448, at *8 (granting a Rule 12(c) motion for judgment on the pleadings, analyzed as a motion to dismiss, because the "plain text of the Complaint consistently refers to Plaintiff as 'Reverend,'" the plaintiff conceded he was "employed as a Priest," the plaintiff "graduat[ed] from the Episcopal Seminary"); *Penn v. New York Methodist Hosp.*, No. 11-CV-9137 NSR, 2013 WL 5477600, at *6 (S.D.N.Y. Sept. 30, 2013) (granting a motion to dismiss where plaintiff alleged in the complaint that he was "*primarily* responsible for ministry") (emphasis in original).

Here, the Plaintiff's allegations in the FAC do not provide a clear-cut answer to whether the ministerial exception applies. Plaintiff's title of "Librarian," for instance, was secular, which weighs against the application of the ministerial exception. Likewise, the substance reflected in that title, at first glance, appears secular. However, "a title," though "surely relevant," is not "by itself" dispositive. *Hosanna-Tabor*, 565 U.S. at 193; *see also id.* at 202 (Alito, J.,

concurring) (noting that "a [religious] title is neither necessary nor sufficient"); *Rweyemamu*, 520 F.3d at 206-07 (noting that the ministerial exception has been applied to a press secretary, Jewish nursing-home staff, and a music director). Indeed, many of the facts alleged by the Plaintiff could indicate that she did act as a minister of the Congregation by furthering its mission. Plaintiff notes that her duties included "facilitating and organizing reading groups and a congregation-wide read-along with relevant lectures," that she "Chaired the Association of Jewish Libraries 2004 National Convention held in Brooklyn, New York," and that she was "appointed to represent the Association of Jewish Libraries as a member of an advisory committee for the American Theological Library Association's planning grant." Compl. ¶¶ 34-35. In addition, Plaintiff "created a functioning Judaica library in the newly renovated Stettenheim Library," *id.*, and "initiated and played a major role in planning significant lecture series . . . within the Congregation over the 17 years of employment," *id.* at ¶ 65.

While these facts are not necessarily strong evidence that Plaintiff qualifies as a minister by performing important religious functions on behalf of the Congregation, they may be

sufficient in light of this Court's approach to applying the ministerial exception based on the logic that "the more religious the employer institution is, the less religious the employee's functions must be to qualify." *Penn v. New York Methodist Hosp.*, 158 F. Supp. 3d 177, 182 (S.D.N.Y. 2016) (agreeing with *Musante v. Notre Dame of Easton Church*, No. CIV.A. 301CV2352MRK, 2004 WL 721774, at *6 (D.Conn. Mar. 30, 2004) that "[t]he ministerial exception should be viewed as a sliding scale, where the nature of the employer and the duties of the employee are both considered in determining whether the exception applies"). However, without additional facts as to Plaintiff's role and the Congregation's "mission," the Court cannot definitively conclude that the ministerial exception does or does not apply in this case.

In sum, development of the record is necessary on whether Plaintiff performed "many religious functions to advance the [religious organization's] mission." *Fratello*, 2017 WL 2989706, at *6, 13 ("After finding that it could not determine whether the ministerial exception applied to Fratello's claims on a motion to dismiss, the district court appropriately ordered discovery limited to whether Fratello was a minister within the meaning of the exception."); *see also Cannata*, 700 F.3d at 172

n.3 (affirming summary judgment that Music Director's position was ministerial but observing: "Given the nature of the ministerial exception, we suspect that only in the rarest of circumstances would dismissal under rule 12(b)(6) — in other words, based solely on the pleadings — be warranted.").

Accordingly, Defendants' and Rabbi Hoffman's motions to dismiss are denied. The parties will meet and confer with respect to discovery and motion schedule limited to the ministerial exception defense. Because the ministerial exception, if applicable, acts as an "absolute bar" to Plaintiff's claims, *Moreno*, 2016 WL 8711448, at *7, the remaining arguments made on the motion to dismiss will not be addressed at this time.

V. Conclusion

Based upon the conclusions set forth above, the motions to dismiss the FAC of the Plaintiff are denied.

It is so ordered.

New York, NY
July 26, 2017

ROBERT W. SWEET
U.S.D.J.