UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VALERIE RUSSELL, Plaintiff, -against- COUNTY OF ROCKLAND, *et al.* Defendants.	15cv4296 OPINION & ORDER

WILLIAM H. PAULEY III, District Judge:

Plaintiff Valerie Russell brings this employment discrimination action against the County of Rockland, Ed Day (in his official capacity as Rockland County Executive), Louis Falco III (individually and in his official capacity as Sheriff), and Anthony Volpe (individually and in his official capacity as Chief of Rockland County Correctional facility). She asserts claims for hostile work environment, disparate treatment, and retaliation in violation of Title VII and the NYSHRL. Defendants move for summary judgment dismissing this action. For the reasons that follow, Defendants' motion is granted in part and denied in part.

BACKGROUND

Russell worked as a corrections officer at Rockland County Correctional Facility from December 2011 to October 2014. (Rule 56.1 Statement of Material Facts ("56.1"), ECF No. 62, ¶ 1.)

1. EEO Policy

Throughout Russell's employment, Rockland County maintained an Anti-Discrimination and Equal Opportunity ("EEO") Policy (the "Policy"), which was set forth in two executive orders. (56.1, ¶¶ 9, 98; Jan. 21, 2017 Decl. of Jill King ("King Decl."), Exs. A and B.)

The Policy prohibits sexual harassment, gender-based discrimination, and retaliation. (56.1, ¶ 10.) Individuals in violation of the Policy were subject to disciplinary action. (56.1, ¶ 11.) The Policy also provides a procedure for complaints of sexual harassment, discrimination, and retaliation. (56.1, ¶ 14; King Decl., Ex. A at 7–11.) Under that procedure, an employee has the right to meet with a representative of the Office of Employee Rights to discuss any potential claim. (King Decl., Ex. A at 7.) An individual with a claim may file a written complaint with any department head, supervisor, manager, or the Office of Employee Rights. (King Decl., Ex. A, at 8.) "Where an individual choose[s] not to file a complaint, the Office of Employee Rights reserves the right to determine" whether it "should be handled as a formal complaint." (King Decl., Ex A at 8.) In addition, the Policy also directs all employees to report known EEO violations. (King Decl., Ex. A, at 6.)

On her first day of employment, Russell acknowledged receiving a copy of the Policy. (56.1, ¶ 54.) Thereafter, she received training on the Policy as part of the New Staff Orientation Training Program. (56.1, ¶ 55.) In October and November 2012, she attended the "Corrections Academy," where she also received equal opportunity employment training. (56.1, ¶¶ 56, 58.) In December 2013, she attended the County's sexual harassment training and once again acknowledged understanding the Policy and the procedure for filing a complaint. (56.1, ¶¶ 59–60.)

2. Hostile Work Environment

a. *Unreported or Non-Gender-Based Harassment*

Russell contends that throughout her tenure as a corrections officer, a hostile work environment pervaded the Rockland County Correctional Facility. Notwithstanding multiple purported instances of harassment, Russell rarely reported them to a "department head,

supervisor, manager, or the Office of Employee Rights." (King Decl., Ex. A, at 8.) Instead, she complained to her union, which was comprised entirely of other corrections officers. (See, e.g., 56.1, ¶¶ 90, 119, 121, 127–28, 138, 141, 156–57, 164–65, 190, 196–97.)

In October 2012, Russell and Corrections Officer Hickey engaged in a personal feud that spilled over into the workplace. In brief, Hickey fathered a child with one of Russell's friends and, in a series of texts and Facebook messages, Russell was critical of Hickey's parenting skills. (56.1 ¶¶ 199–200.) In response, Hickey's mother filed a complaint with the Piermont Police Department against Russell and Hickey filed a memorandum with Chief Volpe, complaining of harassment by Russell. (56.1 ¶¶ 205–06.) In November 2012, Chief Volpe reprimanded Russell for making multiple disparaging comments toward Hickey. (56.1 ¶ 216.)

Two months later, the feud erupted again. In January 2013, Hickey told an inmate where Russell lived. Russell reported that rules violation to a sergeant, who forwarded the issue to Chief Volpe. (56.1 ¶¶ 223–24.) When Hickey found out, he disparaged Russell and claimed that she was seeking to jeopardize his job because of his earlier complaint against her. (56.1 ¶ 225.) Over the next several weeks, Chief Volpe investigated Russell's allegations, including a comment by someone who purportedly overheard Hickey calling Russell a "coke whore." (56.1 ¶¶ 226–27.) Because Chief Volpe could not verify Russell's claims, he closed the investigation. (56.1 ¶ 236.)

In February 2013, Chief Volpe met with Hickey and Russell and told them to end the feud. (56.1 ¶ 237.) Despite the personal animus, Russell admits that Hickey did not sexually harass her, he "just harassed [her] generally." (June 2, 2016 Deposition of Russell, Weissman Decl. (ECF No. 52), Ex. E., at 220.)

b. *Reported Gender-Based Harassment*

When Russell reported sexual harassment, the County dealt with it promptly. For instance, during training in 2011, Russell notified a sergeant that a fellow corrections officer said other corrections officers were betting on who would have sex with Russell first. (56.1 ¶ 100.) That sergeant spoke to the corrections officer who in turn apologized to Russell. (February 15, 2015 Deposition of Valerie Russell ("Russell Dep."), Ranni Decl., Ex 17, at 151.) No further complaints on this topic were raised. (Weissman Decl., Ex. F, June 4, 2016 Deposition of Russell Dep., at 282.)

In September 2013, at a golf outing, Corrections Officer Esposito announced to other corrections officers that Russell had slept with nine corrections officers. Russell did not learn of that comment until August 2014. (56.1 ¶ 253.) She promptly raised the issue with Lieutenant Mueller via email, who in turn forwarded it to Chief Volpe. (56.1, ¶ 258.) Chief Volpe forwarded Russell's email complaint to the EEO Office. (56.1, ¶¶ 265–66.) Days later, she visited the EEO Office and discussed the complaint with an EEO investigator. (56.1 ¶¶ 274–77.) Thereafter, Russell filed her first written complaint. (56.1 ¶ 278.)

The EEO Office promptly initiated an investigation, found that Esposito had engaged in sexual harassment, and recommended discipline. (56.1 ¶¶ 276–78, 284–85, 289.) Disciplinary charges were lodged against Esposito, who ultimately agreed to a suspension without pay, loss of ability to volunteer for overtime for a month and the right to bid on posts for a year, probation, and mandatory sexual harassment training. (56.1 ¶ 296.)

3. Retaliation

Russell filed her complaint against Corrections Officer Esposito with the EEO Office on August 28, 2014. (56.1 ¶ 585.) Russell contends that Corrections Officer Farrison

told her that Sergeant Falco told him about her complaint. (56.1 ¶ 586.) However, Sergeant Falco denies making such a disclosure and Farrison does not remember any such interaction. (56.1 ¶¶ 588–90.) When Russell learned of the purported disclosure, she reported it to her union representative, Chief Volpe, and the EEO Office. (56.1 ¶ 592.) As a result of this disclosure, Russell claims confidentiality was lost and she had to relive her humiliation from the golf outing comments when those comments were re-circulated through the Corrections Facility. (56.1 ¶ 591.)

4. Disparate Treatment

a. *Shift Switching*

On August 6, 2014 and August 13, 2014, Russell submitted requests to switch shifts with Corrections Officer Heller, a male. (56.1 ¶¶ 530, 539.) In both instances, Russell was scheduled to work the 3:00 p.m. to 11:00 p.m. shift, during which time she would be the only female officer on duty. (56.1 ¶¶ 532, 541.) Because a law required at least one female to be on duty, her requests were denied. (56.1 ¶ 534.) The second time her request was denied, the lieutenant handling the request noted that if Russell could find a female with whom to switch shifts, her request would be granted. (56.1 ¶ 544.) Because of that denial, Russell was forced to use a vacation day. (56.1 ¶ 548.) Later, Russell submitted a grievance claim to the Union. Eventually, Russell's vacation day was restored. (56.1 ¶¶ 551–54.)

b. *Patrol Division Interview*

In the summer of 2014, the Sheriff's Department interviewed candidates for the Patrol Division. (56.1 ¶ 559.) Interviewees were selected from a list of candidates certified by a civil service test. (56.1 ¶ 562.) Russell and four male Corrections Officers—Culianos, Perrone,

Hendrickson, and McKiernan—each scored a 90 on the test and were listed as eligible. (56.1 ¶¶ 563, 565.)

Local police chiefs in Rockland County had an understanding with Sheriff Falco that they would notify him if they were planning to hire a Sheriff's Department employee. (56.1 ¶ 573.) Sheriff Falco heard that Russell and Culianos were under serious consideration for higher-paying positions in the Clarkstown Police Department. (56.1 ¶¶ 574, 577.) Sheriff Falco excluded Russell and Culianos from interviews for the Patrol Division because he believed they were seeking other employment. (56.1 ¶ 566; Falco Decl., ¶¶ 8, 11.) Apparently, McKiernan was also under consideration for a position with the Clarkstown Police Department, but Sheriff Falco was not aware of that. (Falco Decl., ¶ 9; Ranni Aff., ECF No. 60, Ex. 17 (February 10, 2015 50-h Deposition Transcript of Russell ("Russell 50-h"), at 180).)

5. Russell's Resignation

Throughout her time at the Rockland County Correctional Facility, Russell constantly sought other employment opportunities and applied to seven other law enforcement agencies. (56.1 ¶¶ 309, 311.) In August 2014, Russell received an offer of employment from the New York Department of Health. (56.1 ¶¶ 329, 331.) With the offer in hand, Russell waited to resign from Rockland County Correctional Facility until New York State Department of Health notified her of her start date. (56.1 ¶ 335.) After giving Rockland County two weeks' notice, Russell made several requests to work overtime. (56.1 ¶¶ 340, 348–51.)

On November 3, 2014, Russell served a Notice of Claim on Rockland County concerning her various allegations of discrimination. (Weissman Decl., Ex. B.) On December 22, 2014, Russell filed charges with the EEOC. (Weissman Decl., Ex. SS.)

STANDARD

Summary judgment is appropriate only where all of the submissions taken together "show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the burden of demonstrating "the absence of a genuine issue of material fact." Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). In making that determination, a court must "construe all evidence in the light most favorable to the nonmoving party, drawing all inferences and resolving all ambiguities in its favor." Dickerson v. Napolitano, 604 F.3d 732, 740 (2d Cir. 2010).

Once a defendant advances facts showing that the non-movant's claims cannot be sustained, a plaintiff must "set out specific facts showing a genuine issue for trial," and cannot "rely merely on allegations or denials" contained in the pleadings. Fed. R. Civ. P. 56(e); see also Wright v. Goord, 554 F.3d 255, 266 (2d Cir. 2009). "A party may not rely on mere speculation or conjecture as to the true nature of the facts to overcome a motion for summary judgment," as "[m]ere conclusory allegations or denials cannot by themselves create a genuine issue of material fact where none would otherwise exist." Hicks v. Baines, 593 F.3d 159, 166 (2d Cir.2010) (citations omitted). In addition, self-serving, conclusory affidavits, standing alone, are insufficient to create a triable issue of fact and defeat a motion for summary judgment. See BellSouth Telecommunications, Inc. v. W.R. Grace & Co.-Conn., 77 F.3d 603, 615 (2d Cir. 1996).

DISCUSSION

I. Hostile Work Environment

"In order to establish a hostile work environment claim under Title VII [and the NYSHRL], a plaintiff must produce enough evidence to show that the workplace is permeated

with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." Rivera v. Rochester Genesee Reg'l Transp. Auth., 743 F.3d 11, 20 (2d Cir. 2014) (internal quotation marks omitted). Although the issue of whether the alleged sexual harassment constitutes a Title VII violation is determined from the totality of the circumstances, "the incidents [of sexual harassment] must be more than episodic; they must be sufficiently continuous and concerted in order to be deemed pervasive." Carrero v. New York City Housing Auth., 890 F.2d 569, 577–78 (2d Cir. 1989).

When the harassment is perpetrated by a co-worker rather than a supervisor, "the employer will be held liable only for its own negligence." Distasio v. Perkin Elmer Corp., 157 F.3d 55, 63 (2d Cir. 1998). With co-worker harassment, "an employer will be liable if the plaintiff demonstrates that the employer either provided no reasonable avenue for complaint or knew of the harassment but did nothing about it." Rojas v. Roman Catholic Diocese of Rochester, 660 F.3d 98, 106–07 (2d Cir. 2011) (internal quotation marks omitted) (emphasis added).

Here, Rockland County had an anti-discrimination and equal opportunity policy in place. (56.1, ¶ 98.) Under that Policy, an individual could file a written complaint with any department head, supervisor, manager, or the Office of Employee Rights. (King Decl., Ex. A, at 8.) Russell received a copy of the Policy "during day one of the New Staff Orientation Program." (56.1, ¶ 54.) She also attended various courses where she received equal opportunity training. (56.1, ¶¶ 56, 58–60.)

The effectiveness of that Policy was demonstrated when Russell actually invoked it. After Russell filed a complaint regarding Esposito's remarks at a golf-outing a year earlier,

the EEO Office initiated an investigation, found Esposito engaged in sexual harassment, and recommended disciplinary charges. Esposito settled those charges by accepting a substantial punishment. (56.1 ¶¶ 253, 258, 265–66, 276–78, 284–85, 289.) And much earlier, when Russell complained of sexual harassment to a sergeant during training, the matter was quickly addressed and the offending officer apologized to Russell. (56.1 ¶ 100.) Thus, no reasonable juror could find that Rockland failed to provide a reasonable avenue of complaint.

"Despite offering a reasonable avenue of complaint to plaintiff, employer defendants can still be held liable if plaintiff can show that they knew, or in the exercise of reasonable care should have known, about the harassment yet failed to take appropriate remedial action." Duch v. Jakubek, 588 F.3d 757, 763 (2d Cir. 2009). Knowledge will be imputed to an employer when: "(A) the official is at a sufficiently high level in the company's management hierarchy to qualify as a proxy for the company; or (B) the official is charged with a duty to act on the knowledge and stop the harassment; or (C) the official is charged with a duty to inform the company of the harassment." Distasio, 157 F.3d at 64 (citations omitted).

Aside from her one formal complaint and her single verbal complaint to a sergeant, Russell never raised any alleged sexual harassment with a supervisor or the EEO Office. "For non-supervisory co-workers who lack authority to counsel, investigate, suspend, or fire the accused harasser . . . the co-worker's inaction does not spark employer liability unless that co-worker has an official or strong de facto duty to act as a conduit to management for complaints about work conditions." Duch, 588 F.3d at 763 (internal quotation marks omitted). While Russell contends that she made multiple complaints of sexual harassment to her union representatives, the union and its leadership were comprised solely of other corrections

officers—not supervisors—which is insufficient to impute knowledge to Rockland County. (56.1, ¶ 90.)

The fact that the Policy directs all employees to report any observed harassment does not mean that the purported failure by low-level corrections officers in their capacities as union shop stewards allows knowledge of the harassment to be imputed to Rockland County. As Judge Preska noted, "it would be anomalous if under Ellerth a plaintiff's failure to take advantage of multiple complaint procedures relieved the employer of liability, but her co-worker's failure to follow such procedures on her behalf imposed liability on the employer." Mack v. Otis Elevator Co., No. 00-CIV-7778 (LAP), 2001 WL 1636886, at *9 (S.D.N.Y. Dec. 18, 2001), rev'd on other grounds, 326 F.3d 116 (2d Cir. 2003). Moreover, even if co-workers are tasked with a duty to report, the failure to report is not necessarily unreasonable, particularly where a plaintiff asks that her complaints be kept confidential. See Torres, 116 F.3d at 638–39. Here, Russell made several requests that her complaints not be forwarded up the chain of command. (E.g., 56.1, ¶ 165.)

Accordingly, because Russell failed to report her claims of sexual harassment, knowledge cannot be imputed to Rockland County and the claims must be dismissed.

II. Constructive Discharge

In the Second Circuit, an employee is constructively discharged when her employer intentionally creates a work atmosphere so intolerable that she is forced to resign. Petrosino v. Bell Atlantic, 385 F.3d 210, 229 (2d Cir.2004). A plaintiff who begins "searching for another job while remaining employed with the defendant militates against a constructive discharge claim." Tepperwien v. Entergy Nuclear Operations, Inc., 606 F. Supp. 2d 427, 447 (S.D.N.Y. 2009). Similarly, giving two weeks' notice undermines a claim of constructive discharge. See Baptiste v. Cushman & Wakefield, 2007 WL 747769, *12 (S.D.N.Y. 2007)

(finding no constructive discharge where employee began looking for work months before resigning and then waited nearly two weeks after accepting new employment to formally tender her resignation.").

Russell acknowledged that she was "constantly exploring other opportunities" while working at the Rockland County Correctional Facility. (Weissman Decl., ECF No. 52, Ex. D ("Transcript of May 17, 2016 deposition of Russell"), at 108.) And after receiving a job offer from the New York State Department of Health, she waited over a month to resign. Moreover, even after she provided two weeks' notice to Rockland County, she made multiple requests to work overtime. (56.1 ¶¶ 329–38.) Under such circumstances, no reasonable jury could conclude that Russell's working conditions were so intolerable that she was forced to resign.

III. Disparate Treatment Claims

Claims arising under Title VII and the NYSHRL are analyzed under the McDonnell Douglas framework. See Littlejohn v. City of New York, 795 F.3d 297, 312 (2d Cir. 2015) (applying McDonnell Douglas framework to Title VII and § 1981); Dawson v. Bumble & Bumble, 398 F.3d 211, 217 (2d Cir. 2005) (applying McDonnell Douglas framework to NYSHRL). Under that framework, the plaintiff bears the initial burden of establishing a prima facie case of discrimination. Delaney v. Bank of Am. Corp., 766 F.3d 163, 168 (2d Cir. 2014). In order to state a prima facie case of discrimination, a plaintiff must show that: (1) she is a member of a protected class; (2) she was qualified for the position in question; (3) she suffered an adverse employment action; and (4) the adverse action took place under circumstances giving rise to an inference of discrimination. Ruiz v. Cty. of Rockland, 609 F.3d 486, 491 (2d Cir. 2010).

A plaintiff may raise an inference of discrimination by relying on the theory of disparate treatment; that is, by showing that her employer treated her less favorably than a similarly situated employee outside her protected group. Mandell v. Cty. of Suffolk, 316 F.3d 368, 379 (2d Cir. 2003). For claims of disparate treatment, a plaintiff must demonstrate that she is "similarly situated in all material respects" to the individuals with whom she seeks to compare herself. Graham v. Long Island R.R., 230 F.3d 34, 39 (2d Cir. 2000). What constitutes "all material respects" varies from case to case, but "must be judged based on [ ] whether the plaintiff and those [s]he maintains were similarly situated were subject to the same workplace standards." Graham, 230 F.3d at 40. The standard requires "a reasonably close resemblance of facts and circumstances" and there must be an objectively identifiable basis for comparability. Graham, 230 F.3d at 40; see also McGuinness v. Lincoln Hall, 263 F.3d 49, 54 (2d Cir. 2001) ("[W]here a plaintiff seeks to establish the minimal prima facie case by making reference to the disparate treatment of other employees, those employees must have a situation sufficiently similar to plaintiff's to support at least a minimal inference that the difference of treatment may be attributable to discrimination.").

If a plaintiff makes that initial showing, the burden shifts to the employer to demonstrate a legitimate, non-discriminatory reason for the adverse employment action. Abdu-Brisson v. Delta Air Lines, Inc., 239 F.3d 456, 467 (2d Cir. 2001). "The defendant's burden . . . is light. The employer need not persuade the court that it was motivated by the reason it provides; rather, it must simply articulate an explanation that, if true, would connote lawful behavior." Greenway v. Buffalo Hilton Hotel, 143 F.3d 47, 52 (2d Cir. 1998). If a defendant meets its burden, "the plaintiff must then produce evidence and carry the burden of persuasion that the proffered reason is a pretext." McBride, 583 F.3d at 96. A plaintiff must prove

intentional discrimination by a preponderance of the evidence. Fields v. N.Y. State Office of Mental Retardation & Developmental Disabilities, 115 F.3d 116, 121 (2d Cir. 1997).

Russell alleges disparate treatment arising out of (1) the denial of two requests to shift-switch with a male officer and (2) a denial of an interview for the Sheriff's Department patrol division.[1]

a. Shift-Switching

Russell claims it is more difficult for women than men to switch shifts because Rockland County only permits women to switch shifts if another woman is working the same shift. That requirement is a consequence of New York County Law § 652, which provides that "[a] female correction officer or female deputy sheriff who is authorized to perform correctional duties and has completed training . . . shall be in attendance in a correctional facility when females are confined in the correctional facility." N.Y. County Law § 652. Facilities that fail to comply are penalized by the New York State Commission of Corrections. See Correction Officers Benev. Ass'n of Rockland Cty. v. Kralik, No. 04-CV-2199 (PGG), 2011 WL 1236135, at *4 (S.D.N.Y. Mar. 30, 2011) ("The same-sex observation policy has been enforced by the Commission.").

Here, Russell's disparate treatment claims relating to shift-switching arise out of two requests that were denied. In both instances, Russell was the only female corrections officer working that shift. Permitting her to switch with a male would have violated County Law § 652. Compliance with law is a legitimate, non-discriminatory reason for denying Russell's request. See Dunbar v. Cty. of Saratoga, 358 F. Supp. 2d 115, 133 (N.D.N.Y. 2005) (finding compliance with County Law § 652 to be a "legitimate motive" for staffing difference in all-male "A-pod"

[1] Russell withdrew her disparate treatment claims relating to the FBI hostage negotiation training and a denial of intake training. (56.1 ¶ 392.)

units versus "B-pod," containing male and female units). Accordingly, the disparate treatment claim relating to shift switching is dismissed.

b. Patrol Division Interview

Russell claims she was not interviewed for a position with the Sheriff's Patrol Division because of her gender. Of the five corrections officers who applied and scored a 90 on the civil service exam—Russell, Culianos, Perrone, Hendrickson, and McKiernan—Russell was the only female. (56.1 ¶¶ 563, 565.) However, Russell was not the only corrections officer to be passed over: Culianos was also denied an interview. Both Russell and Culianos were in contention for a higher-paying position at the Clarkstown Police Department. (56.1 ¶¶ 574, 577.) Sheriff Falco testified that he sought to avoid wasting his time and resources on candidates unlikely to accept the position. (Falco Decl., ¶ 8.) Russell and Culianos were both eliminated from consideration for that reason. (56.1 ¶ 566; Falco Decl., ¶ 11.)

Although Russell neglects to address Defendants' arguments, this Court notes that McKiernan appears to also have been under consideration for a position with the Clarkstown Police Department. (Russell 50-h, at 180.) However, the record reflects that Sheriff Falco was unaware of McKiernan's application. (Falco Decl., ¶ 9.) In any event, what is clear, is that Russell was treated identically Culianos who was similarly situated. Accordingly, the disparate treatment claims relating to the patrol division interview are dismissed.

IV. Retaliation

Like claims for disparate treatment, claims for retaliation follow the burden-shifting approach of McDonnell Douglas. Kaytor v. Elec. Boat Corp., 609 F.3d 537, 552–53 (2d Cir. 2010). "In order to establish a prima facie case of retaliation, [a plaintiff] must show (1) that she participated in an activity protected by Title VII, (2) that her participation was known to her employer, (3) that her employer thereafter subjected her to a materially adverse employment

action, and (4) that there was a causal connection between the protected activity and the adverse employment action." Kaytor, 609 F.3d at 552.

Russell claims that Defendants retaliated against her because she filed a complaint with the EEO Office. Specifically, Russell asserts that Sergeant Falco told Corrections Officer Farrison about the complaint. "Even in the absence of any non-disclosure obligation, Title VII prohibits an employer from responding to protected activity by taking an action that would 'dissuade[ ] a reasonable worker from making or supporting a charge of discrimination.'" Ray v. Ropes & Gray LLP, 961 F. Supp. 2d 344, 360 (D. Mass. 2013), aff'd, 799 F.3d 99 (1st Cir. 2015) (quoting *Burlington N. & Santa Fe Ry. v. White*, 548 U.S. 53, 68 (2006). Courts routinely "h[o]ld that, when an employer disseminates an employee's administrative charge of discrimination to the employee's colleagues, a reasonable factfinder could determine that such conduct constitutes an adverse employment action." Equal Employment Opportunity Comm'n v. Day & Zimmerman NPS, Inc., No. 15-CV-01416 (VAB), 2016 WL 1449543, at *3 (D. Conn. Apr. 12, 2016) (collecting cases). While Sergeant Falco denies making any such disclosure and Farrison does not remember any such conversation with Sergeant Falco (56.1 ¶¶ 588–89), Russell's testimony combined with the fact that she reported this incident to multiple individuals, including Chief Volpe and the EEO Office, places this issue in dispute. (56.1 ¶ 592.) Accordingly, Defendants' motion to dismiss this particular retaliation claim is denied.

In her opposition papers, Russell urges this Court to find additional instances of retaliation. For example, Russell argues that Chief Volpe retaliated against her for complaining about Corrections Officer Hickey. But, even assuming an adverse employment action, Russell engaged in no protected conduct because she was not complaining about sexual harassment, just "harass[ment] . . . generally." (June 2, 2016 Deposition of Russell, at 220.) Moreover, any such

claim arising out of that incident is time-barred. A plaintiff in a Title VII action must file a charge of retaliation with the Equal Employment Opportunity Commission ("EEOC") within 300 days of the alleged conduct and serve a notice of claim on the county within ninety days after a claim arises. See 42 U.S.C. § 2000e–5(e)(1); Costabile v. Cty. of Westchester, N.Y., 485 F. Supp. 2d 424, 430 (S.D.N.Y. 2007) (citing N.Y. County Law, Art. 2, § 52). Here, Russell filed her EEOC charge on December 22, 2014 and her Notice of Claim on November 3, 2014. Thus, Title VII claims accruing before February 25, 2014 and NYSHRL claims accruing before August 5, 2014 are time-barred. Because the retaliation Russell complains of occurred in early 2013, it is time barred.

Similarly, Russell argues that Sergeant Hickey retaliated against her by confronting Corrections Officer Farrison after learning that Farrison told Russell what Hickey said. But that interaction in December 2013 is also time-barred. (56.1 ¶ 163.) Finally, Russell's unsupported assertion that Chief Volpe "buried" Esposito's complaint in her personnel file, is the type of speculative and conclusory allegation that is insufficient to overcome a motion for summary judgment.

V. Individual Defendants

The claims against individual defendants under Title VII are dismissed because "the remedial provisions of Title VII, including § 2000e–5, do not provide for individual liability." Spiegel v. Schulmann, 604 F.3d 72, 79 (2d Cir. 2010).

VI. Failure to Produce Corrections Officer Hickey

Corrections Officer Hickey was served with a deposition notice in September 2016. While Hickey continues to be employed as a Rockland County corrections officer, he did not appear for deposition. Russell asks this Court to draw adverse inferences against Defendants because of his non-appearance. Defendants contend they made good faith efforts to produce

Hickey but that he refused to appear. Importantly, Russell never sought judicial intervention to compel Hickey to appear.

In any event, Hickey's testimony would not change the outcome of this motion. As is clear from the record, Hickey and Russell were engaged in a personal feud, resulting in harassment that Russell did not consider to be sexual. (June 2, 2016 Deposition of Russel, Weissman Decl. (ECF No. 52), Ex. E., at 220.) And this Court has interpreted the evidence in the light most favorable to Russell, drawing all reasonable inferences against Defendants.

CONCLUSION

Defendants' motion for summary judgment is granted in part and denied in part. Defendants' motion is denied with respect to the retaliation claim stemming from Sergeant Falco's alleged disclosure of Russell's complaint. Defendants' motion for summary judgment dismissing Plaintiff's claims is granted in all other respects.

The Clerk of Court is directed to terminate the motion pending at ECF No. 41. The parties are directed to submit a joint pretrial order by August 31, 2017 and appear for a final pretrial conference on September 8, 2017 at 10:00 a.m.

Dated: July 26, 2017
New York, New York

SO ORDERED:

WILLIAM H. PAULEY III
U.S.D.J.