UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN COCUZZA, JACQUELIN MILLIEN, GREG ESPOSITO, STEFAN TCHOR, LARRY LANS, and MELISSA SEMINARA, Plaintiffs,	**OPINION AND ORDER** 16 CV 9868 (VB)
v.	
SHERIFF LOU FALCO and COUNTY OF ROCKLAND, Defendants.	

Briccetti, J.:

Plaintiffs John Cocuzza, Jacquelin Millien, Greg Esposito, Stefan Tchor, Larry Lans, and Melissa Seminara, bring this action against defendants Sheriff Lou Falco and the County of Rockland under 42 U.S.C. § 1983, alleging political retaliation in violation of plaintiff's First Amendment rights.

Before the Court is defendants' partial motion to dismiss the complaint as to plaintiffs Cocuzza, Esposito, Tchor, and Seminara pursuant to Rule 12(b)(6). (Doc. #17).

For the reasons set forth below, the motion is DENIED.

The Court has subject matter jurisdiction under 28 U.S.C. § 1331.

BACKGROUND

The following factual background is drawn from "the facts alleged in the complaint, documents attached to the complaint as exhibits, and documents incorporated by reference in the complaint." See DiFolco v. MSNBC Cable L.L.C., 622 F.3d 104, 111 (2d Cir. 2010). For purposes of deciding the pending motion, the Court accepts as true all well-pleaded allegations in the complaint and draws all reasonable inferences in plaintiff's favor.

With the support of plaintiffs' union, the Correction Officers Benevolent Association of Rockland County ("COBARC"), defendant Falco was elected Sheriff of Rockland County in November 2011.

By 2015, many COBARC members no longer supported Sheriff Falco due to Falco's efforts to modify the collective bargaining agreement between COBARC and Rockland County. Indeed, several COBARC members, including plaintiffs Cocuzza, Millien, Tchor, Lans, and Seminara, publicly endorsed Falco's opponent, Richard Vazquez, in the 2015 election for Rockland County Sheriff.

Nonetheless, Falco was re-elected in November 2015.

Plaintiffs claim that following his re-election, Falco and his subordinates selectively enforced departmental policies against those who supported Vazquez. Plaintiffs allege they were disciplined for common practices long deemed acceptable, and even encouraged, by Falco and other supervisors. According to plaintiffs, supporters of Falco engaged in the same practices but were not disciplined. These practices included failing to provide supervision to inmates on suicide and precautionary watch, sleeping while on duty, and falsifying log book entries.

Specifically, plaintiffs claim Falco selectively enforced long-ignored departmental policies against Cocuzza to pressure him to resign from his employment and to retaliate against him for his support for Vazquez. The charges brought against Cocuzza were based on conduct that took place between April 2015 and November 2015. However, at no point during this six-month period did Falco or any of his ranking subordinates advise Cocuzza of any job-related performance issue or deficiency. During his nearly thirteen years as a Rockland County corrections officer, Cocuzza had received satisfactory performance evaluations, which changed

only after he became the president of COBARC and opposed Falco and his candidacy for re-election.

In addition to bringing disciplinary charges against Cocuzza, Falco "importuned" the Rockland County District Attorney's Office to bring criminal charges against Cocuzza for the same conduct. (Compl. ¶ 26).

On May 6, 2016, Cocuzza entered into a stipulation of settlement to resolve his disciplinary charges with the Office of the Rockland County Sheriff. The stipulation provided that Cocuzza resigned his position as a corrections officer and that he would simultaneously execute a general release, releasing defendants from all claims Cocuzza had or may have had against them. In consideration of Cocuzza's resignation and general release, the County agreed to drop the disciplinary charges against him, provide a neutral letter of reference, and pay him the terminal leave accruals to which he was entitled under the corrections officers' collective bargaining agreement.

Section 7 of the stipulation provides:

> Cocuzza acknowledges that he has had the opportunity to consult with legal counsel and/or his union representative prior to the execution of [the stipulation], and in reaching this agreement, he has, in fact, consulted with counsel and his union representative regarding its terms and conditions and enters into this agreement voluntarily, with the advice and consent of his legal counsel.

(Weissman Decl. Ex. E §7). A member of the union's executive board, Daniel Dworkin, co-signed Cocuzza's stipulation.

As agreed to in the stipulation, Cocuzza signed a general release of claims, releasing the Rockland County Sheriff, the County of Rockland, and Sheriff Falco in his official and individual capacities:

> from all actions, causes of action, suits, . . . damages, claims and demands whatsoever, in law . . . or equity, which . . . the Releasee . . . ever had, now have

> or hereafter can, shall or may, have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the date of th[e] release.

(Weissman Decl. Ex. E).

On May 9, 2016, in reliance on Cocuzza's resignation, the Rockland County District Attorney reduced the criminal charges against Cocuzza from seventeen felonies and fifty-one misdemeanors to a charge of disorderly conduct, resulting in a $250 fine. In his guilty plea allocution, Cocuzza admitted to making five entries in the Jail's logbook stating he had checked on inmates when he had not.

Cocuzza claims he agreed to the stipulation of settlement due to the pressure of criminal charges, the inability to afford a "proper" criminal defense, and public humiliation. (Id. ¶ 28).

In June 2016, Falco similarly accused plaintiff Esposito of gross misconduct for failing to supervise an inmate on precautionary watch. Plaintiffs claim the charges brought against Esposito related to conduct officers engaged in on a regular basis because it was not possible to actively supervise inmates located in different cells, sometimes located on different floors or at opposite ends of a particular cell block.

Unlike the other plaintiffs, Esposito had not been publicly associated with support for Falco's opponent, Vasquez. Rather, plaintiffs claim Falco brought administrative charges against Esposito in order to "blunt" any claim he was engaging in selective retaliatory prosecution. (Compl. ¶ 33). Esposito claims a supervisor explicitly told him he was being charged so that Falco could deny he was retaliating against Vasquez supporters.

On July 7, 2016, Esposito signed a stipulation of settlement, signed a general release in favor of defendants, and resigned from his employment. The terms of Esposito's stipulation and release are identical to those entered into by Cocuzza. Esposito claims he agreed to the terms of

the stipulation of settlement because of the expense and humiliation of defending himself against "selectively-initiated administrative and potential criminal charges." (Compl. ¶ 39).

On June 9, 2016, Falco also suspended without pay and initiated disciplinary charges against plaintiff Seminara. Seminara had publicly supported Vasquez in the 2015 election. Falco accused Seminara of failing to supervise inmates on suicide precaution watch persistently, sleeping on duty, and falsifying log book entries.

Seminara claims she hired counsel who advised her that if she did not resign, she would be arrested and charged with eighty-one misdemeanors and twenty-seven felonies for conduct that, according to plaintiffs, had long been condoned at the Rockland County Jail and had never been the basis for criminal charges. Seminara commenced her employment with Rockland County in December 20, 2004. She had never been written up for any conduct while she was assigned suicide or precautionary watch, and had regularly received excellent performance evaluations. The disciplinary charges against Seminara were related to events that allegedly occurred between early September 2015 and mid-January 2016. Before her suspension on June 9, 2016, Seminara received no progressive discipline, verbal or written warnings, or any other form of counseling or instruction relating to the conduct for which she was disciplined, nor did any supervisor advise Seminara she was violating any departmental rules or practices.

Rather than face criminal prosecution, Seminara resigned on July 12, 2016, signed a stipulation of settlement, and signed a general release of claims against defendants. The terms of Seminara's stipulation of settlement and release were the same as those in the Cocuzza stipulation and general release.

On July 7, 2016, the same day Esposito resigned, at Falco's direction, Chief Anthony Volpe suspended plaintiff Tchor without pay, claiming Tchor had also violated departmental policies relating to precautionary watch, sleeping on the job, and falsifying log book entries.

Tchor claims after he was charged administratively, he spoke with a union attorney who told him, "You're the last one." (Compl. ¶ 45). Tchor interpreted this statement as an insinuation that the disciplinary charges had been brought in retribution for supporting Vazquez, rather than correct violations of policy by corrections officers.

The charges against Tchor related to events that allegedly occurred on November 11, 2015, when Tchor worked a precautionary watch overnight shift. Between that date and July 7, 2016, no supervisor spoke with Tchor about the events alleged to have occurred on November 11. By July 2016, Tchor had completed eleven years of service at the Rockland County Jail, was highly trained, and had an excellent performance record and reputation.

Because he was being targeted for opposing Falco's re-election, and due to significant personal responsibilities, including the approaching birth of a child, Tchor resigned effective July 22, 2016, signed a stipulation of settlement, and signed a general release of claims against defendants. The terms of Tchor's stipulation of settlement and release were the same as those in the Cocuzza stipulation and general release.

Plaintiffs claim other corrections officers who supported Falco had, with the knowledge of their supervisors, fallen asleep during their shifts and failed to log-in checks while on precautionary and suicide watch, yet no disciplinary action was taken against them.

On December 22, 2016, plaintiffs filed a complaint alleging defendants violated their First Amendment rights to political expression and political association by retaliating against employees who opposed Falco's re-election. Defendants moved to dismiss the complaint as to

plaintiffs Cocuzza, Esposito, Tchor, and Seminara,[1] arguing those plaintiffs knowingly and voluntarily entered into unambiguous stipulations of settlement and general releases, releasing defendants from any and all claims that plaintiffs had, or may have had, against defendants.

DISCUSSION

I. Legal Standard

In deciding a Rule 12(b)(6) motion, the Court evaluates the sufficiency of the operative complaint under the "two-pronged approach" articulated by the Supreme Court in Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009). First, plaintiff's legal conclusions and "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements," are not entitled to the assumption of truth and are thus not sufficient to withstand a motion to dismiss. Id. at 678; Hayden v. Paterson, 594 F.3d 150, 161 (2d Cir. 2010). Second, "[w]hen there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Ashcroft v. Iqbal, 556 U.S. at 679.

To survive a Rule 12(b)(6) motion, the allegations in the complaint must meet a standard of "plausibility." Id. at 678; Bell Atl. Corp. v. Twombly, 550 U.S. 544, 564 (2007). 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." Ashcroft v. Iqbal, 556 U.S. at 678. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." Id.

In considering a motion to dismiss, "a district court may consider the facts alleged in the complaint, documents attached to the complaint as exhibits, and documents incorporated by reference in the complaint." DiFolco v. MSNBC Cable L.L.C., 622 F.3d at 111. The court may

[1] Defendants have not moved to dismiss the complaint as to plaintiffs Millien and Lans.

nevertheless consider documents not incorporated by reference if the complaint "'relies heavily upon its terms and effect,' thereby rendering the document 'integral' to the complaint." Id. (quoting Mangiafico v. Blumenthal, 471 F.3d 391, 398 (2d Cir. 2006)). However, "it must be clear on the record that no dispute exists regarding the authenticity or accuracy of the document." DiFolco v. MSNBC Cable L.L.C., 622 F.3d at 111 (quoting Faulkner v. Beer, 463 F.3d 130, 134 (2d Cir. 2006)). "It must also be clear that there exist no material disputed issues of fact regarding the relevance of the document." DiFolco v. MSNBC Cable L.L.C., 622 F.3d at 111 (quoting Faulkner v. Beer, 463 F.3d at 134).

II. Releases

Defendants argue Cocuzza, Esposito, Tchor, and Seminara knowingly and voluntarily entered into unambiguous general releases, releasing defendants from any and all claims that plaintiffs had, or may have had, against defendants. Defendants contend that because plaintiffs' claims that they were subject to political retaliation as a result of their support for Vasquez fall within the scope of the general releases, such claims should be dismissed as a matter of law. Moreover, defendants argue plaintiffs have waited too long to repudiate the agreements and have retained their benefits, and thus have ratified them as a matter of law.

Under New York law, a contract or release is voidable if its execution is induced by duress. VKK Corp. v. Nat'l Football League, 244 F.3d 114, 122 (2d Cir. 2001). "In general, repudiation of an agreement on the ground that it was procured by duress requires a showing of both a wrongful threat and the effect of precluding the exercise of free will." United States v. Twenty Miljam-350 IED Jammers, 669 F.3d 78, 88 (2d Cir. 2011) (quoting In re Guttenplan, 634 N.Y.S.2d 702, 703 (1st Dep't 1995)).

Moreover, "the person claiming duress must act promptly to repudiate the contract or release or he will be deemed to have waived his right to do so." VKK Corp. v. Nat'l Football League, 244 F.3d at 122 (quoting DiRose v. PK Mgmt. Corp., 691 F.2d 628, 633 (2d Cir. 1982)). However, New York courts have not established a bright line regarding what constitutes timely repudiation. Courts within the Second Circuit have found that periods of time ranging from four to twenty-four months exceeded the "prompt" repudiation requirement. See, e.g., United States v. Twenty Miljam–350 IED Jammers, 669 F.3d at 91; VKK Corp. v. Nat'l Football League, 244 F.3d at 123.

Finally, repudiation is generally an issue of fact. DiFolco v. MSNBC Cable L.L.C., 622 F.3d 104, 112 (2d Cir. 2010) (citing Bercow v. Damus, 776 N.Y.S.2d 289, 290 (2004)); see also Livingston v. Adirondack Beverage Co., 141 F.3d 434, 437–38 (2d Cir. 1998) ("[T]he validity of a release is a peculiarly fact-sensitive inquiry.").

Plaintiffs contend they did not enter into the releases voluntarily because defendants' threats to pursue criminal and administrative charges against them constituted duress. Defendants counter that plaintiffs' collective bargaining agreement establishes they had alternatives to signing the releases, but plaintiffs entered into them anyway; plaintiffs ratified the releases by accepting the payment of vacation pay, which they would not have received if they were terminated for cause; and plaintiffs ratified the releases by delaying their repudiation.

At this early stage in the litigation and on this record, the Court rejects defendants' argument that, as a matter of law, plaintiffs knowingly and voluntarily entered into the releases. The Court is aware that "stipulations of settlement are judicially favored and may not lightly be set aside." In re Guttenplan, 634 N.Y.S.2d at 703. However, questions of whether the threat of disciplinary and—in the case of Cocuzza and Seminara—criminal prosecution was unlawful,

whether practical alternatives were available under the circumstances, and whether the releases were timely repudiated, are questions of fact that cannot be resolved on a motion to dismiss on this record.

Accordingly, the Court is constrained to deny defendants' motion.

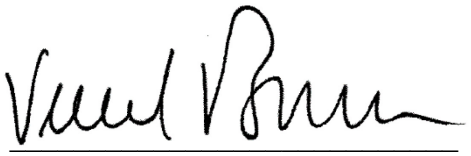
CONCLUSION

Defendants' motion to dismiss is DENIED.

The Clerk is instructed to terminate the motion. (Doc. #17).

Dated: July 27, 2017
White Plains, NY

SO ORDERED:



Vincent L. Briccetti
United States District Judge