

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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MARGARET BORRELLO,

Plaintiff,

v.

17-cv-919 (JLS) (JJM)

STATE OF NEW YORK,  
DEPARTMENT OF CORRECTIONS  
AND COMMUNITY SUPERVISION,

Defendant.

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### **DECISION AND ORDER**

Plaintiff Margaret Borrello commenced this action on September 14, 2017, alleging employment discrimination claims against Defendant the State of New York, Department of Corrections and Community Supervision (“DOCCS”) based on her employment as a dental assistant at Lakeview Shock Incarceration Correctional Facility (“Lakeview”). Dkt. 1. As relevant here, Borrello asserted gender and race discrimination claims, gender- and race-based hostile work environment claims, and a retaliation claim. Dkt. 1, at 18-23, 26; *see* Dkt. 32, at 14. Borrello’s claims stem from her experience working with Dr. Pattathan in Lakeview’s dental clinic between December 2014 and December 2015. *See* Dkt. 1, at 4-18.

DOCCS answered Borrello’s complaint, and the Court referred this case to United States Magistrate Judge Jeremiah J. McCarthy for all proceedings under 28

U.S.C. §§ 636(b)(1)(A), (B), and (C).<sup>1</sup> Dkts. 4, 5. DOCCS moved for summary judgment on August 29, 2019. Dkt. 19. Borrello responded in opposition on November 7, 2019, and DOCCS replied on December 16, 2019. Dkts. 25, 28. And on March 11, 2020, Judge McCarthy issued a Report and Recommendation (“R&R”), recommending that this Court grant DOCCS’s motion for summary judgment on Borrello’s remaining claims.<sup>2</sup> Dkt. 30.

Borrello objected to the R&R on March 25, 2020, noting that she accepted the R&R’s view of the facts but objected to its analysis of her discrimination, hostile work environment, and retaliation claims. *See* Dkt. 31, at 1. Borrello’s objections generally summarize the R&R, rather than articulate objections to discrete aspects of the R&R, but can be construed to argue that:

1. Her voluntary transfer to another DOCCS facility constituted constructive discharge, which, considered with the effect Dr. Pattathan’s conduct had on her physical and mental health, supports her gender and race discrimination claims;
2. Dr. Pattathan’s conduct over the course of approximately one year was sufficiently pervasive and severe, Dr. Pattathan’s use of “you people” was racially charged, and the physically unsafe nature of her work environment as result of Dr. Pattathan’s conduct support her gender- and race-based hostile work environment claims; and
3. DOCCS’s failure to stop Dr. Pattathan from continuing the offensive conduct supports her retaliation claim.

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<sup>1</sup> Hon. Lawrence J. Vilardo, who was previously assigned to this case, issued the dispositive referral order. Dkt. 5. On January 6, 2020, this case was reassigned to the undersigned. Dkt. 29.

<sup>2</sup> Borrello withdrew her two national origin-based claims. Dkt. 30, at 14 n.6.

See Dkt. 31, at 1-5. According to Borrello, the existence of material, disputed facts and faulty conclusions based on the totality of the facts require this Court to reject the R&R. *Id.* at 5. DOCCS responded in opposition to Borrello's objections on April 3, 2020. Dkt. 33.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which objection is made. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

This Court carefully reviewed the R&R and the relevant record. Based on that *de novo* review, the Court accepts and adopts Judge McCarthy's recommendation to grant DOCCS's motion for summary judgment.

For the reasons stated above and in the R&R, the Court GRANTS DOCCS's motion for summary judgment (Dkt. 19). Borrello's complaint (Dkt. 1) is DISMISSED, with prejudice. The Clerk of Court shall close this case.

SO ORDERED.

Dated: August 21, 2020  
Buffalo, New York

s/ John L. Sinatra, Jr.  
JOHN L. SINATRA, JR.  
UNITED STATES DISTRICT JUDGE