# SUPREME COURT OF THE STATE OF NEW YORK
# NEW YORK COUNTY

**PRESENT:** **HON. LOUIS L. NOCK** **PART** **IAS MOTION 38EFM**

*Justice*

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CHRISTOPHER LESLIE,

Plaintiff,

- v -

NEW YORK UNIVERSITY and JONATHAN SOFFER,

Defendants.

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**INDEX NO.** 156583/2018

**MOTION DATE** 03/13/2019

**MOTION SEQ. NO.** 003

**DECISION + ORDER ON MOTION**

LOUIS L. NOCK, J.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41

were read on this motion to/for DISMISS.

Upon the foregoing documents, the motion of defendants New York University and Jonathan Soffer (together, "Defendants") to dismiss the complaint (the "Complaint") is granted, in accord with the following memorandum decision.

## Background

Plaintiff Christopher Leslie ("Plaintiff") brings this action against his former employer, defendant New York University, and defendant Jonathan Soffer ("Soffer"), seeking damages on the ground that he experienced employment discrimination and retaliation on the basis of his marital status. Plaintiff was employed by NYU from September 2001 until August 31, 2017, as a non-tenured professor in the Department of Technology, Culture and Society (the "Department"), at the Tandon School of Engineering ("Tandon") (complaint ¶¶ 11-13).[1] Soffer was the Chair of the Department of Technology, Culture and Society, during the relevant time

[1] Unless otherwise indicated, the facts are recited here as pled in the complaint and are accepted as true for the purposes of this motion, as required on a motion to dismiss.

period. During his employment with NYU, Plaintiff was a full-time, non-tenure track faculty member who worked under a contract that was renewed periodically (*id.* ¶ 15). Plaintiff began working full time for NYU under a one-year contract in 2006, which was subsequently renewed with four two-year contracts, and ultimately a three-year contract (*id.* ¶ 16). During the course of his employment, Plaintiff was generally successful, receiving, among other things, positive student evaluations and numerous honors and grants (*id.* ¶ 18). In spring 2012 and 2013, Plaintiff requested information from Professor Kristen Day ("Day"), the department chair at the time, about how he could be considered for a promotion (*id.* ¶ 19). In May 2013, Day advised Plaintiff that his request to be considered for a promotion was denied by the department's executive committee, of which Day was chair *ex officio* (*id.* ¶ 20). As the reason for the denial, Day stated that there were complaints about Plaintiff's interpersonal relationships with other staff (*id.*).

Plaintiff alleges in the Complaint that he then "filed a complaint of discrimination against Day on May 19, 2013" (*id.* ¶ 21). The parties' motion submissions clarify that the "complaint of discrimination" referred to in the Complaint was an email that Plaintiff sent to Day in which he requested that she "substantiate the claim that my interaction with the staff is inappropriate," and stated, with respect to discrimination, the following:

> I will also remind you that a common theme in discrimination cases is that the wronged party is withheld from promotion for issues that were not made a part of any formal complaint. I think I would be hard pressed to accuse you, Kris [Day], of such unethical behavior, and I would prefer to never burn a bridge between us by making such a complaint.

(Volpe aff, exhibit B.)

Thereafter, Day, in collaboration with Tandon's human resources department ("Human Resources"), issued Plaintiff a performance warning and improvement plan dated May 29, 2013, which states that failure to satisfy the improvement plan or any further violation of department or

institute policies "may result in further disciplinary action, which includes, but is not limited to, termination of employment" (Volpe aff, exhibit A). Plaintiff alleges that this warning was issued in retaliation for his complaint of discrimination and that it was issued without the required sequence of verbal and written warnings that must be issued prior to the issuance of a performance warning, as stated in the departmental instructional manual (*id.* ¶ 22).

On or about June 3, 2013, Plaintiff requested documentation from Human Resources of the allegations contained in the performance warning (*id.* ¶ 23). Plaintiff never received the requested information, but his employment contract was renewed in May 2014 for a three-year period, so Plaintiff considered the matter closed (*id.* ¶ 24). Day then asked Plaintiff to assemble a dossier for consideration of promotion from Instructor to Lecturer in Spring 2014 (*id.*). After Plaintiff applied for this promotion, but before a decision had been rendered regarding Plaintiff's application, the department created new guidelines for promotion (*id.* ¶ 25). As a result, Plaintiff's initial application was not considered (*id.* ¶ 25). Plaintiff submitted a revised dossier in or around September 2014 in compliance with the new guidelines for promotion (*id.* ¶ 26). Plaintiff alleges that the last individual promoted in the Department was a married individual who was promoted in 2009 without being required to submit a dossier (*id.* ¶ 24).

A sub-committee tasked with making recommendations regarding promotions recommended Plaintiff for promotion in or around May 2015 (*id.* ¶ 27). However, Plaintiff was denied a promotion after Day said there were serious concerns about Plaintiff's employment, without specifically enumerating them (*id.*). Day was still a voting member of the department and also worked in the dean's office along with Soffer who was the new department chair (*id.*). On or about April 21, 2015, Soffer told Plaintiff during his annual review that Plaintiff would have trouble being reappointed because of his failed relationships with the tenured faculty in the

Department (*id.* ¶ 28). The Department's tenured faculty met twice at the end of spring 2015 in a closed session to consider Plaintiff s promotion to the non-tenure track position of Senior Lecturer (*id.* ¶ 29). Three other contract faculty, who had not previously sought promotion, were also considered for promotion at that time (*id.*). On or about July 15, 2015, Soffer notified Plaintiff that the tenured faculty had voted not to promote him to Senior Lecturer (*id.* ¶ 30).

On or about August 31, 2015, after learning of this decision, Plaintiff wrote an email to Human Resources stating that he was unjustly biased by Soffer during the aforementioned voting process due to Soffer informing the tenured faculty that Plaintiff had interpersonal problems with faculty as well as a student (*id.* ¶ 31). Plaintiff denies that he had any such problems and represents that he had never been formally reprimanded for any of these alleged issues (*id.*). Plaintiff alleges that two less-qualified married faculty members received the promotions for which he had applied (*id.* ¶ 32). Plaintiff also alleges that NYU has engaged in a broader pattern of promoting less-qualified married individuals, and that married faculty members have been afforded certain accommodations and assistance that were not afforded to unmarried individuals (*id.* ¶¶ 34-35).

In or around March 2016, Soffer requested that Plaintiff submit a new dossier for review by the department as it considered whether to renew Plaintiff's contract (*id.* ¶ 36). During departmental deliberations regarding Plaintiff's contract renewal, Soffer said there were confidential reasons why Plaintiff could not be reappointed, and Soffer stated that if the department voted in favor of Plaintiff's contract renewal, he would ignore its recommendations (*id.* ¶ 37). Plaintiff represents that he subsequently learned that these "confidential reasons" referred to a Title IX complaint filed by a student in which Plaintiff was tangentially mentioned

and which was never investigated by Defendant, and that, to date, he has not been told what charges were alleged against him, nor has he been given an opportunity to rebut them (*id.* ¶ 38).

On or about May 5, 2016, Soffer informed Plaintiff during a meeting with Human Resources that his contract would not be renewed (*id.* ¶ 39). During this meeting, Soffer refused to inform Plaintiff of the specific nature of the complaints and allegations that had been made against him (*id.*). When Plaintiff stated that he wished to respond to any allegations that had been made against him, Soffer informed him that the meeting was not an adjudication and that his response was irrelevant (*id.*). On or about November 22, 2016, Plaintiff lodged a grievance to Dean Katepalli Sreenivasan regarding Defendant's decision not to renew his contract (*id.* ¶ 40). On or about December 21, 2016, Dean Sreenivasan informed Plaintiff that his grievance was not granted (*id.* ¶ 41). Plaintiff appealed the decision to Katherine Fleming ("Fleming"), the university provost, on or about January 9, 2017 (*id.* ¶ 42). Fleming informed Plaintiff on March 17, 2017 that his appeal was denied (*id.* ¶ 43).

Plaintiff commenced this action on July 16, 2018, alleging causes of action for marital status discrimination and retaliation under New York State Human Rights Law ("NYSHRL") and under the New York City Human Rights Law ("NYCHRL"), on the basis of his allegations that he was denied promotion and contract renewal because of his marital status. Defendants moved to dismiss the Complaint on September 14, 2018, but the motion was denied, by order dated December 11, 2018, after both parties failed to appear for oral argument (Order, Hon. Arlene Bluth, J.S.C., NYSCEF Doc. No. 17). Defendant then moved to renew the motion, which application was granted, by order dated March 11, 2019, to the extent that Defendant was permitted to file his motion anew (Order, Hon. Arlene Bluth, J.S.C., NYSCEF Doc. No. 30). The instant motion was then filed and seeks dismissal on the basis of CPLR 3211 (a)(5) on the

grounds of expiration of the statute of limitations and under CPLR 3211 (a)(7) for failure to state a cause of action upon which relief may be granted.

Defendant advances two primary arguments in support of its motion, first that Plaintiff's claims should have been brought in an Article 78 proceeding and are, thus, untimely, and second, that the complaint fails to set forth a prima facie case of marital status discrimination or retaliation under either the New York State Human Rights Law or the New York City Human Rights Law because it does not allege that Defendant was aware of Plaintiff's marital status or allege that there was a causal connection between his marital status and the Defendant's conduct. Defendant also contends that Plaintiff fails to state a legal basis for asserting individual liability against Soffer. Plaintiff opposes the motion and alleges that Defendant was aware of his marital status, and that the facts alleged in the Complaint set forth prima facie causes of action.

**Standard of Review**

"On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction" (*Leon v Martinez*, 84 NY2d 83, 87 [1994]). When reviewing such a motion, the court must "accept the facts as alleged as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*id.*). Ambiguous allegations must be resolved in the plaintiff's favor, and the court's review is limited to the legal sufficiency of the plaintiff's claims (*JF Capital Advisors, LLC v Lightstone Group, LLC*, 25 NY3d 759, 764 [2015]). "Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss" (*Cortlandt Street Recovery Corp. v Bonderman*, 31 NY3d 30, 38 [2018]), but a pleading consisting of "bare legal conclusions" is insufficient (*Leder v Spiegel*, 31 AD3d 266, 267 [1st Dept 2006]) and "the court is not required to accept factual allegations that are plainly contradicted by the

documentary evidence or legal conclusions that are unsupportable based upon the undisputed facts" (*Robinson v Robinson*, 303 AD2d 234, 235 [1st Dept 2003]).

On a motion to dismiss a cause of action as barred by the applicable statute of limitations, the moving defendant bears the initial burden to demonstrate that the time in which to sue has expired (*Girozentrale v Tilton*, 149 AD3d 152, 159 [1st Dept 2017]. In order to make a prima facie showing, the defendant must establish, inter alia, when the cause of action accrued (*see Lebedev v Blavatnik*, 144 AD3d 24, 28 [1st Dept 2016]). Once the defendant has satisfied its burden to demonstrate that the action is untimely, the burden then shifts to the plaintiff to set forth evidentiary facts sufficient to establish or raise a question of fact as to whether the cause of action is timely by demonstrating, e.g., that the statute of limitations was tolled, or was otherwise inapplicable, or that the action was commenced within the applicable limitations period (*see Kitty Jie Yuan v 2368 W. 12th St., LLC*, 119 AD3d 674, 674 [2d Dept 2014].

**Discussion**

It is the longstanding policy of the New York courts that "the administrative decisions of educational institutions involve the exercise of highly specialized professional judgment and these institutions are, for the most part, better suited to make relatively final decisions concerning wholly internal matters" (*Maas v Cornell Univ.*, 94 NY2d 87, 92 [1999]). "This jurisprudential guidepost stems from the belief that these institutions are 'peculiarly capable of making the decisions which are appropriate and necessary to their continued existence'" (*id.*, *citing Gertler v Goodgold*, 107 AD2d 481, 485 [1st Dept 1985], *affd* 66 NY2d 946 [1985]). Courts, therefore, "retain a 'restricted role' in dealing with and reviewing controversies involving colleges and universities" (*id.*). Thus, "since the academic and administrative decisions of educational institutions involve the exercise of subjective professional judgment, public policy compels a

restraint which removes such determinations from judicial scrutiny" (*Gertier*, 107 AD2d at 485). This policy includes determinations regarding the promotion and retention of university faculty (*Fruehwald v Hofstra University*, 82 AD3d 1233, 1234 [2d Dept 2011] ["One of the most sensitive functions of the university administration is the appointment, promotion and retention of the faculty"], *citing New York Inst. of Tech. v. State Div. of Human Rights*, 40 NY2d 316, 322 [1976]). "Courts will 'only rarely assume academic oversight, except with the greatest caution and restraint, in such sensitive areas as faculty appointment, promotion, and tenure, especially in institutions of higher learning'" (*id.*, *citing Pace College v Commission on Human Rights of City of New York*, 38 NY2d 28, 38 [1975]).

This is not to say that determinations regarding the promotion and retention of faculty are entirely exempt from judicial review. Rather, such matters are limited to review in an article 78 proceeding (*Maas*, 94 NY2d at 92 ["In these so-called 'university' cases, CPLR article 78 proceedings are the appropriate vehicle because they ensure that the over-all integrity of the educational institution is maintained and, therefore, protect more than just the individual's right to employment"]). Such review is limited to determination "whether they abided by their own rules, and whether they have acted in good faith or their action was arbitrary or irrational" (*Gertler*, 107 AD2d at 486). Nevertheless, to the extent that a plaintiff states a cause of action that arises from a university determination that is "nonacademic" and does not involve "the exercise of subjective personal judgment," the plaintiff may seek relief in a plenary action (*see Miyahara v Majsak*, 117 AD3d 812, 813 [2d Dept 2014] [plaintiff's contractual claim to recover monies paid to attend a course relates to nonacademic matters and may be brought in a plenary action]; *Fils-Aime v Ryder TRS, Inc.*, 40 AD3d 914, 916 [2nd Dept 2007] [university's decision not to indemnify plaintiff was appropriate for plenary action]. Nonacademic claims must

adequately state a cause of action in order for plaintiff to maintain a plenary action (*see Gertler*, 107 AD2d at 487). Thus, where a plaintiff adequately states viable causes of action against a college or university alleging violations of the New York State Human Rights Law and/or the New York City Human Rights Law, those allegations relate to nonacademic matters. Thus, they are not restricted to article 78 review (*Kickertz v New York Univ.*, 110 AD3d 268, 278 [1st Dept 2013], *citing Wander v St John's Univ.*, 99 AD3d 891, 893 [2d Dept 2012]).

Under both the NYSHRL and the NYCHRL, it is an unlawful discriminatory practice for an employer to refuse to hire or employ or to fire or to discriminate against an individual in the terms, conditions or privileges of employment because of, *inter alia*, marital status (See N.Y. Exec. Law § 296[1][a], [7]; N.Y.C. Admin. Code § 8-107[1][a], [7]). The statutes also prohibit employers from retaliating against an employee for opposing discrimination (*id.*). A plaintiff alleging employment discrimination pursuant to the NYSHRL or the NYCHRL bears the initial burden to establish a prima facie case of discrimination. To meet this burden, Plaintiff must show that (1) he is a member of a protected class, (2) he was qualified to hold the position, (3) he was terminated from employment or suffered another adverse employment action, and (4) the discharge or other adverse action occurred under circumstances giving rise to an inference of discrimination (*Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 305 [2004]).

A plaintiff's initial burden of establishing a prima facie case of discrimination "is not a significant hurdle" (*Hardy v General Elec. Co.*, 270 AD2d 700, 701 [3d Dept 2000] [internal quotation marks and citation omitted]), and has often been described as minimal (*see St. Mary's Honor Ctr. v Hicks*, 509 US 502, 506 (1993); *Melman v Montefiore Med. Ctr.*, AD3d, 946 NYS2d 27, 32 (1st Dept 2012). In determining employment discrimination claims, New York courts historically applied the same standards as federal courts (*see Forrest v Jewish Guild for*

*the Blind*, 3 NY3d 295, 305 [2004]). However, following the 2005 enactment of the Local Civil Rights Restoration Act of 2005 by the New York City Council, under the NYCHRL (N.Y.C. Admin. Code §§ 8-101, *et seq.*), all the provisions of the NYCHRL must be construed "broadly in favor of discrimination plaintiffs, to the extent that such a construction is reasonably possible" *Albunio v City of New York*, 16 NY3d 472, 477-478 [2011]). Furthermore, employment discrimination cases are generally reviewed under notice pleading standards where allegations need only be sufficient to give defendants "fair notice" of the nature of the plaintiff's claims and their grounds (*Petit v. Department of Education of City of New York*, 177 AD3d 402, 403 [1st Dept 2019], *citing Vig v New York Hairspray Co., L.P.*, 67 AD3d 140, 145 [1st Dept 2009] [court reinstated discrimination claims dismissed on a motion to dismiss for failure to state a cause of action because "employment discrimination cases are . . . generally reviewed under notice pleading standards"]). "Fair notice is all that is required to survive at the pleading stage" (*Petit, supra*).

Here, Plaintiff easily states the first three elements of the claim, but the parties dispute whether Plaintiff has pled facts sufficient to give rise to an inference of discrimination. An inference of discrimination "may be drawn from direct evidence, from statistical evidence, or merely from the fact that the position was filled or held open for a person not in the same protected class" (*Sogg v American Airlines, Inc.*, 193 AD2d 153, 156 [1st Dept 1993]); *see Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 326 (2004) (plaintiff does not need to prove discrimination by direct evidence; circumstantial evidence is sufficient); *James v New York Racing Assn.*, 233 F3d 149, 153-54 (2d Cir 2000) (minimal showing for prima facie case requires no evidence of discrimination; preference for person not in protected class is enough). For example, in an age discrimination case, an inference of discrimination may be supported by

showing that a plaintiff's "position was subsequently filled by a younger person or held open for a younger person" (*Bailey v New York Westchester Sq. Med. Ctr.*, 38 AD3d 119, 123 [1st Dept 2007]).

The gravamen of Plaintiff's Complaint is that he was denied promotion and retention as a faculty member at NYU, and this was done in a manner that was not consistent with NYU's own internal policies (*see* complaint, ¶ 22 ["Notably, such a performance warning bypassed the required sequence of verbal and written warnings that must be issued prior to the issuance for a performance warning, as stated in the departmental instructional manual"; ¶ 31 ["he had never been formally reprimanded for any of these supposed issues, even though standard practice at NYU is to issue a written warning or so-called dean's letter for serious conduct matters"]; ¶¶ 51, 60 ["Plaintiff has never been provided with an opportunity to formally respond to any alleged complaints made against him."]; ¶¶ 52, 61 ["To the extent that any alleged complaints serve as Defendant's purported justification for denying Plaintiff promotions and not renewing his contracts, Defendant failed to adequately investigate said complaints and provide Plaintiff with any opportunity to respond to said complaints."]). This type of administrative review is the exclusive purview of an article 78 proceeding (*Gertler,* 107 AD2d at 486 ["Thus, the judgment of professional educators is subject to judicial scrutiny to the extent that appropriate inquiry may be made to determine whether they abided by their own rules, and whether they have acted in good faith or their action was arbitrary or irrational"]). Thus, to the extent that Plaintiff seeks judicial review of the university's policies and procedures with respect to his promotion and retention, such a challenge should have been brought in an article 78 proceeding within the applicable statute of limitations (*Quintas v. Pace University*, 23 AD3d 246 [1st Dept 2005] [Complaint challenging university's determination to deny plaintiff's application for promotion

should have been brought in the context of a proceeding pursuant to CPLR article 78 and are accordingly governed by a four-month limitations period]; *Padiyar v Albert Einstein Coll. of Medicine of Yeshiva Univ.*, 73 AD3d 634, 634 [1st Dept 2010] ["The instant plenary complaint, while couched in terms of unlawful discrimination and breach of contract, is in fact a challenge to a university's academic and administrative decisions and thus is barred by the four-month statute of limitations for a CPLR article 78 proceeding, the appropriate vehicle for such a challenge"]).

Although discrimination and retaliation claims that are distinct from the academic and administrative decisions of an educational institution may be brought in a plenary action, Plaintiff fails to state a claim for such claims. Plaintiff's discrimination claim fails because the Complaint does not make a factual allegation that Soffer or other individuals responsible for the decision of whether to retain or promote him knew that Plaintiff was unmarried (*Samuels v William Morris Agency*, 123 AD3d 472, 472 [1st Dept 2014] ["Plaintiff failed to establish a prima facie case of discrimination under the State or City Human Rights Laws because he failed to allege that defendants . . . were actually aware of his race"]. Defendants cited this omission in their moving papers, but Plaintiff neither submitted an affidavit to remedy the pleading deficiency, nor moved to amend the Complaint (*see Leon v Martinez*, 84 NY2d 83 at 88 ["In assessing a motion under CPLR 3211 (a) (7), however, a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint"]). Rather, Plaintiff's opposition directs the court to Paragraph 47 of the Complaint, which states that "Defendant denied Plaintiff promotions and ultimately declined to renew his contract due to his marital status (unmarried)" (complaint ¶ 47). This, however, is a bare conclusion that is insufficient to state a claim (*see Leder v Spiegel*, 31 AD3d at 267). In short, Plaintiff offers no allegation that Soffer or

any NYU employee inquired about, referenced, or acknowledged his marital status during the review of his applications for promotion, in the performance warning issued by NYU, during the grievance and appeal process, or *at any time* during the course of his employment.[2] Absent a factual allegation that Defendants knew Plaintiff was unmarried, there cannot be an inference of discrimination and Plaintiff has not stated a claim for employment discrimination (*Matter of Fuentes v NYC Commn. on Human Rights*, 26 AD3d 198, 198 [1st Dept 2006] ["Petitioner, however, failed to establish a prima facie case of discrimination because she could not demonstrate that the Board of Education or the UFT knew of her ethnic origin, much less that her ethnicity was the motive for the complained-of conduct"]). The first cause of action for discrimination is, therefore, dismissed.

To make a prima facie showing of retaliation, Plaintiff must plead facts that show (1) participation in a protected activity known to Defendant, (2) an adverse employment action, and (3) a causal connection between the protected activity and the adverse employment action (*id.* at 327). Plaintiff's cause of action for retaliation fails as a matter of law because Plaintiff does not allege that he participated in a "protected activity." "Under the New York State and City Human Rights Laws . . . retaliation is actionable only when it is done because the employee has, for example, filed a complaint, testified, or assisted in any proceeding, or opposed any practices forbidden 'under this article' (Executive Law § 296[7] ) or 'under this chapter'" (Administrative Code of City of N.Y. § 8–107[7] ) (*Forrest*, 3NY3d 295, n 11 [2004]). Generalized grievances regarding mistreatment are not "protected activity" for the purposes of either statute (*id.*).

To satisfy the first element of the claim, Plaintiff relies on his allegation that, after NYU denied his request to be considered for a promotion in May 2013, he "filed a complaint of

[2] It is also noteworthy, although not dispositive, that Plaintiff's contract with NYU was renewed on six separate occasions over a period of sixteen years, with no indication that his martial status changed during this time.

discrimination against Day on May 19, 2013" (complaint ¶ 21). Nevertheless, it is revealed in the motion submissions that the purported "complaint of discrimination" refers not to a complaint actually filed with NYU, but to Plaintiff's email to Day, dated May 19, 2013 (mem in opp at 14; Volpe aff, exhibit 2).[3] Plaintiff argues that sending the May 19, 2013, email to Day was a "protected activity" because the email makes a passing reference to "discrimination." However, the email plainly states that Plaintiff is neither accusing Day of discrimination, nor making a complaint of discrimination (Volpe aff, exhibit B ["I think I would be hard pressed to accuse you . . . of such unethical behavior, and I would prefer to never burn a bridge between us by making such a complaint."]). Plaintiff's passing reference to "discrimination" without reference to his marital status or alleging that he was being discriminated against because of his marital status is insufficient to constitute a "protected activity" (*see Forrest*, 3 NY3d 295, 313 [Plaintiff failed to state a claim for retaliation where she "filed numerous grievances claiming generalized 'harassment,' [but] she never alleged that she was discriminated against because of race, or invoked the article of the Collective Bargaining Agreement prohibiting such practices."]; *Fletcher v Dakota, Inc.*, 99 AD3d 43, 53 [1st Dept 2012] ["Although the [plaintiff] was African-American, the complaint does not allege that [defendant] made any reference to her race."]; *see also Brunache v MV Transp., Inc.*, 151 AD3d 1011, 1013 [2nd Dept 2017] ["Here, the plaintiff failed to allege that he complained about statutorily prohibited discrimination, as opposed to general complaints about MVT's treatment of its employees"] [internal quotation and citation omitted]). Additionally, Plaintiff's assertion that "the email references [to] other interactions

[3] Because Plaintiff's allegation that he "filed a complaint of discrimination" is plainly contradicted by the documentary evidence of the May 19, 2013, email and his own submissions on the motion, the court is not required to accept this allegation as true (*see Robinson v Robinson*, 303 AD2d 234, 235 [1st Dept 2003] ["the court is not required to accept factual allegations that are plainly contradicted by the documentary evidence or legal conclusions that are unsupportable based upon the undisputed facts"]).

between Dr. Leslie and Dr. Day" warrant discovery "to determine the extent of any oral conversations that took place regarding this email and the substance therein" is unpersuasive because Plaintiff has neither pled nor identified any additional interactions that he alleges constitute protected activity, despite his participation in the referenced interactions. Because Plaintiff has failed to satisfy the first element of the retaliation claim, his cause of action for retaliation is dismissed.

Finally, with respect to Soffer, Plaintiff has stated no basis for personal liability against the individual defendant, nor does Plaintiff's opposition address that portion of the motion that seeks to dismiss the Complaint as against Soffer. On a motion to dismiss the complaint, a plaintiff abandons a claim by failing to address in its opposition papers the defendant's arguments in support of its motion seeking dismissal of that claim (*Saidin v Negron*, 136 AD3d 458, 459 [1st Dept 2016] ["Plaintiff abandoned his claim against the individual police officer by failing to oppose that part of the motion to dismiss the claim as against him"]; *see also Ng v NYU Langone Medical Ctr.*, 157 AD3d 549, 550 [1st Dept 2018] ["Plaintiff's failure to oppose so much of the motion as sought dismissal of the lack of informed consent claim, constituted an abandonment of the claim"]). Plaintiff's claims against Soffer are, therefore, dismissed.

Accordingly, it is

ORDERED that the motion to dismiss is granted, and the Complaint is dismissed in its entirety; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the court.

ENTER:

9/29/2020
DATE

LOUIS L. NOCK, J.S.C.

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| CHECK ONE: | X | CASE DISPOSED | | | NON-FINAL DISPOSITION | | |
| | | GRANTED | | DENIED | GRANTED IN PART | X | OTHER |
| APPLICATION: | | SETTLE ORDER | | | SUBMIT ORDER | | |
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