Thior v Jetblue Airways Corp.
2021 NY Slip Op 31818(U)
May 27, 2021
Supreme Court, New York County
Docket Number: 161506/2017
Judge: Alexander M. Tisch

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ALEXANDER M. TISCH **PART** IAS MOTION 18EFM

Justice

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ABDOU THIOR,

Plaintiff,

- v -

JETBLUE AIRWAYS CORPORATION, EDWARD JACKSON,

Defendant(s).

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INDEX NO. 161506/2017

MOTION DATE 11/30/2020

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 59, 60, 61, 62, 63, 64, 65, 66, 67, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 83

were read on this motion to/for DISMISS.

This is an employment discrimination action brought under the New York City Human Rights Law (Administrative Code of the City of New York, § 8, ch 7) (NYCHRL). Defendants move to dismiss the amended complaint in its entirety as against defendant Edward Kent Jackson (Jackson), and to dismiss the retaliation claim as against defendant JetBlue Airways Corporation (JetBlue, together with Jackson, defendants), based on failure to state a cause of action (CPLR 3211 [a] [7]). For the reasons set forth below, defendants' motion is granted in part and otherwise denied.

Procedural History

Plaintiff Abdou Thior (plaintiff) is an experienced pilot, a black man of Senegalese origin employed by JetBlue (*see* New York Supreme Court Electronic Filing [NYSCEF] Doc No. 66, amended complaint, ¶ 2). Defendant Jackson is the Base Chief Pilot for JetBlue at JFK Airport, and plaintiff's supervising captain (*see* NYSCEF Doc No. 66, ¶¶ 18, 28). Plaintiff first filed charges of discrimination against JetBlue in March 2012 with the United States Equal Employment Opportunity Commission (EEOC). He claimed discrimination based on race and national origin in violation of Title VII of the

Civil Rights Law of 1964 (42 USC § 2000e et seq.), the New York State Human Rights Law (Executive Law, art 15, § 290 et seq.) (NYSHRL) and the NYCHRL. The EEOC dismissed the claim in August 2013, finding it was "unable to conclude that the information obtained establishes violations of the statutes" (NYSCEF Doc No. 61, EEOC dismissal and notice of rights).

In November 2013, plaintiff commenced an action against JetBlue in the United States District Court, Eastern District of New York, again alleging discrimination under the federal, state, and local provisions. In July 2017, the district court granted defendants' summary judgment motion, dismissing the Title VII claims with prejudice, based on the statute of limitations, and dismissing the other claims without prejudice, declining to exercise supplemental jurisdiction (*see* NYSCEF Doc No 67, brief for defendants at 2).

Plaintiff commenced the instant action on December 29, 2017 against JetBlue and Jackson (*see* NYSCEF Doc No. 66, amended complaint, ¶ 87; *see also* Doc No. 63, complaint). As to both defendants, he alleged race discrimination, national origin discrimination, and retaliation; as against Jackson, he also alleged a claim of aiding and abetting, all pursuant to the NYCHRL. Defendants moved pre-answer to dismiss the claims of retaliation and aiding and abetting, which this court granted in April 2019, pursuant to CPLR 3211 (a) (7) (*see* NYSCEF Doc No. 65, decision and order, April 30, 2019).

Defendants filed their answer on September 13, 2019 (*see* NYSCEF Doc No. 54).[1] Plaintiff then timely filed an amended complaint on October 2, 2019 to include allegations of events that occurred subsequent to the filing of his original complaint and to re-plead and clarify certain other allegations.[2]

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[1] Defendants' answer was timely filed, following the September 5, 2019 filing of the notice of entry of the Court's decision and order of April 30, 2018.

[2] A party may amend its pleading without leave within 20 days after service of a pleading responding to it (*see* CPLR 3025 [a]; *see also STS Management Dev. v New York State Dept of Taxation and Finance,* 254 AD2d 409 [2d Dept 1998] [where the defendant's pre-answer motion to dismiss was denied, after which the defendant served its answer, the plaintiff properly served an amended complaint within 20 days]; *Badger v Lehigh*

He again brings his claims under the NYCHRL, asserting different claims of discrimination based on race and national origin, and retaliation, as against both defendants, and a claim against Jackson of aiding and abetting. Defendants move to dismiss the claims against Jackson, and the claim of retaliation against JetBlue.

Amended Complaint Allegations

According to the amended complaint, plaintiff was hired by JetBlue in 2007 as a first officer (*see* NYSCEF Doc No. 66, amended complaint, ¶¶ 2, 15). In December 2010, based on his seniority, he put in a bid for an upgrade to one of two then-open positions for captain (*see* NYSCEF Doc No. 66, ¶ 39). In early January, undertaking a mandatory flight recurrent training exercise, he experienced the white instructor treating him in a "starkly different" manner from how he treated the other pilot, a white man, also undertaking the training (*see* NYSCEF Doc No. 66, ¶¶ 15, 42-44). The disparate treatment included the instructor failing to refer to plaintiff by his name; plaintiff not being included with the instructor and the other pilot in interactions during breaks; plaintiff's accent being laughed at by the instructor and the other pilot; plaintiff receiving only a 45-minute oral examination instead of a 90-minute substantial briefing concerning the flight simulator; the instructor yelling at plaintiff "all day long," including for plaintiff's response during one simulation while the other pilot was allowed to redo the same simulation, and plaintiff ultimately receiving a failing mark while the other pilot passed the training, despite having made mistakes during the first maneuver (*see* NYSCEF Doc No. 66, ¶¶ 49-56, 60, 62). Upon information and belief, no pilot "fails" the training; should an instructor conclude that the pilot needs more training in the particular exercise, the pilot can perform the

Valley RR Co., 45 AD2d 601 [4th Dept 1974] [motion addressed to the sufficiency of the complaint does not eliminate the plaintiff's right to amend, because the effect of that motion is to extend the plaintiff's time to amend, and amendment is timely when served within 20 days of defendant's motion to dismiss the complaint]).

exercises until the instructor is satisfied that the pilot is proficient in the maneuvers that were the focus of the training (*see* NYSCEF Doc No. 66, ¶¶ 46, 61).

Plaintiff retook the training on January 16, 2011, and passed, but was nevertheless required to undergo remedial training until December 2011 (*see* NYSCEF Doc No. 66, ¶¶ 64, 66). JetBlue's director of technical training subsequently denied the request by the senior-most instructor in the remedial training program that plaintiff be removed from the program because he did not need to be there (*see* NYSCEF Doc No. 66, ¶¶ 71, 73).

Following receipt of his unsatisfactory mark, plaintiff used "all channels available" to lodge an internal complaint, contending that he had been discriminated against during the remedial training on the basis of race and national origin (*see* NYSCEF Doc No. 66, ¶ 68). However, the follow-up investigation was allegedly perfunctory, and no remedial action was taken (*see* NYSCEF Doc No. 66, ¶¶ 69, 70). The presence in his record of the unsatisfactory mark and his required participation in the remedial program have affected plaintiff's seniority and benefits (*see* NYSCEF Doc No. 66, ¶ 74). In particular, whereas plaintiff would have received an upgrade to captain based on seniority in 2011, he was made captain only in March 2014 (*see* NYSCEF Doc No. 66, ¶¶ 8, 67, 75). In the years 2011-2014, plaintiff "continued to be subjected to differential treatment, because he remained a [f]irst [o]fficer when he should have been working as a [c]aptain based on his seniority" (NYSCEF Doc No. 66, ¶ 70).

On July 24, 2017, while piloting a flight from Santo Domingo, a squadron of heavy military jets and tankers flew in close formation directly into plaintiff's flight path; he successfully maneuvered his plane to avoid several possible fatal midair collisions, using skills that were not taught in flight school (*see* NYSCEF Doc No. 66, ¶¶ 99-100). Neither Jackson nor JetBlue scheduled a follow-up meeting or a debriefing between plaintiff and the Chief Pilot's office (*see* NYSCEF Doc No. 66, ¶¶ 95-97). Plaintiff was also not given any recognition through a JetBlue "email blast" commending him for saving

lives under dangerous conditions, even though other pilots received recognition for less dangerous incidents during their flights (*see* NYSCEF Doc No. 66, ¶¶ 97-98, 101, 104).

On September 12, 2017, Jackson suspended plaintiff without pay for two weeks and issued a "Final Guidance Form Warning" (final warning), pertaining to events that occurred while plaintiff was on a flight assignment from July 29 to July 30, 2017 *(see* NYSCEF Doc No. 66, ¶¶ 76-77, 79). According to JetBlue, plaintiff failed to respond to crew services after landing his plane in Fort Lauderdale, and then failed to follow the instructions to fly to Las Vegas instead of San Francisco, the original destination, causing the Las Vegas flight to be canceled (*see* NYSCEF Doc No. 66, ¶¶ 79-83). Jackson also disciplined the first officer on the flight, Jorge Enderic (Enderic), a "light-skinned Hispanic," who was issued an initial warning (*see* NYSCEF Doc No. 66, ¶ 84).[3]

Plaintiff maintains that the charges were "fabricated," and that "no positive contact had taken place, nobody had requested that [plaintiff] fly to Las Vegas, and the Las Vegas flight was not canceled" (NYSCEF Doc No. 66, ¶ 82). He wrote a letter to Jackson and filed an EEO complaint with JetBlue on September 18, 2017, complaining in relevant part that defendants' actions in suspending him without pay and with a final warning, were "motivated by prejudice on account of race and national origin" (NYSCEF Doc No. 66, ¶ 85). His EEO complaint included "documents and information" intended to show that the allegations were false, among them a full written explanation of what he understood to have occurred, including that the Las Vegas flight was not canceled; the JetBlue Employment Agreement (employment agreement); and documents created in connection with his prior complaints and proceedings (*see* NYSCEF Doc No. 66, ¶ 85; *see also* Doc Nos. 71-78). Although he filed an EEO complaint, he has never been notified of the findings, if any, of the internal investigation (*see* NYSCEF Doc No. 66, ¶ 86).

[3] Defendants' brief indicates that Enderic was also suspended, but points to nothing in the record to substantiate their claim (*see* NYSCEF Doc No. 80, brief for defendants in further support at 6 n 4).

One month after plaintiff commenced this action in December 2017, he was informed by JetBlue personnel, following his completion of a red-eye flight, that he had been scheduled for a required "line check," a required test flight that pilots must undergo about every two years, on January 29, 2018 (*see* NYSCEF Doc No. 66, ¶¶ 87-89). He initially protested because January 29, 2018 was his scheduled day off, and the rules preclude scheduling line checks on a pilot's day off, but he was threatened with "dequalification," meaning that he would be not paid for the time, if he did not appear (*see* NYSCEF Doc No. 66, ¶¶ 90-93). Plaintiff agreed to and did participate in the line check on January 29, 2018, however even before the test, he noted that he had already been dequalified for February 2 and 3, 2018 (*see* NYSCEF Doc No. 66, ¶¶ 92-93). His counsel filed an "internal complaint," but he has never recovered "all outstanding monies owed" due to the dequalification incident (*see* NYSCEF Doc No. 66, ¶ 94).[4]

As noted above, defendants' motion for partial dismissal was granted in April 2019. On September 22, 2019, shortly after taking off, plaintiff was required to perform an emergency landing of his plane, and successfully saved the lives of the passengers and crew (*see* NYSCEF Doc No. 66, ¶ 95). As with his earlier lifesaving actions in 2017, plaintiff was not invited for a follow-up meeting with the Chief Pilot's office, neither Jackson nor anyone else scheduled a debriefing, and Jackson did not take any steps to ensure plaintiff was recognized by a JetBlue email blast (*see* NYSCEF Doc No. 66, ¶¶ 96-97).

[4] Plaintiff was reimbursed for the two days' pay but has never received the agreed-upon "premium pay" (*see* NYSCEF Doc No. 78, letter, Bonnaig to Steinberg, dated Feb. 27, 2018, unnumbered p. 2).

Defendants' motion for partial dismissal

Defendants move pursuant to CPLR 3211 (a) (7) to dismiss the complaint in its entirety as against Jackson, and the retaliation claim as against JetBlue (*see* NYSCEF Doc No. 67, brief for defendants at 1). Defendants make the following arguments.

Discrimination

Defendants contend that the claims of discrimination by Jackson are "patently meritless" and fail to assert factual allegations that "even remotely suggest" discrimination based on race and national origin (*see* NYSCEF Doc No. 67, brief for defendants at 1, 3, 11, citing *Askin v Department of Educ. of City of New York*, 110 AD3d 621, 622 [1st Dept 2013]).[5] Although plaintiff claims disparate treatment by Jackson in the discipline given him as compared to that given to Enderic, in fact, captains and first officers are not similarly situated, and plaintiff therefore cannot claim that he received different treatment from Enderic based on race or national origin (*see* NYSCEF Doc No. 67 at 12).

Plaintiff's attempt to claim differential treatment based on the alleged failure by JetBlue to inform him of the investigation results following his September 18, 2017 discrimination complaint, and defendants' alleged failure to officially recognize or commend plaintiff for saving lives in July 2017 and September 2019, do not constitute actionable adverse employment actions (*see* NYSCEF Doc No. 67 at 14, citing *Alexander v Possible Prods., Inc.*, 336 F Supp 3d 187, 196 [SD NY 2018]). Plaintiff has not alleged that there was an obligation to "praise" him, and he has not identified who should have arranged an acknowledgment of his commendable actions (*see* NYSCEF Doc No. 67 at 16). Neither event, or omission, is sufficiently close in time to plaintiff's commencement of either his federal action or this

[5] Because an amended pleading supersedes the earlier pleading (*see Felder v Wank*, 227 AD2d 442, 442 [2d Dept 1996])), the Court will disregard defendants' argument that it not consider plaintiff's claim that his suspension by Jackson was based on racial animus, given that the Court previously held that the complaint's original claim that the suspension was retaliatory, failed to state a cause of action (*see* NYSCEF Doc No. 67 at 11-13, citing Doc No. 65, decision of April 30, 2019 at 4-5).

state court action, to be actionable (*see* NYSCEF Doc No. 67 at 16, citing *Garrett v Garden City Hotel, Inc.*, 2007 WL 1174891, *21; 2007 US Dist LEXIS 31106, *69-71 [ED NY 2007]). Nor has he shown how defendants' alleged inactions had any negative impact on his employment or reduced his likelihood of engaging in protected activity (*see* NYSCEF Doc No. 67 at 14). Plaintiff's claims are, in sum, conclusory, speculative and insufficient to state a claim of retaliation under the NYCHRL (*see* NYSCEF Doc No. 67 at 17, citing *Davis v Phoenix Ancient Art, S.A.*, 2013 Misc 3d 1214 [A], 2013 NY Slip Op 50613[U] [Sup Ct, NY County 2013]).

Retaliation

Defendants contend that the amended complaint fails to sufficiently allege facts that show plaintiff participated in a protected activity known to defendants, that they took an employment action disadvantageous to him and that there was a "causal connection between the protected activity and the adverse action" (*see* NYSCEF Doc No. 67 at 12-13 quoting *Kasraie v Jumeirah Hosp. & Leisure (USA), Inc.*, 2013 WL 5597121, *5; 2013 US Dist LEXIS 147805, *13 [SD NY 2013] [internal quotation marks omitted]). It does not adequately plead that plaintiff's protected activities of bringing an administrative complaint of discrimination in September 2017 following his suspension, and commencing this action in December 2017, have a causal connection to the employment actions he claims were retaliatory and violative of his rights (*see* NYSCEF Doc No. 67 at 15).

The only employer actions that can be understood as being "adverse," are that plaintiff was required to report for a line check on his day off and defendants' failure to pay him for two days in February despite his successful completion of the line check (*see* NYSCEF Doc No. 67, at 14). There is nothing to show that these alleged acts were motivated in any way by retaliatory animus on the part of JetBlue or Jackson (*see* NYSCEF Doc No. 67, at 15). Plaintiff has not alleged that the employee who directed him to report for a mandatory line check on his day off had any knowledge of plaintiff's federal

or state lawsuits, or that such knowledge had any influence on the employee's instructions (*see* NYSCEF Doc No. 67 at 15-16). Nor has plaintiff alleged which JetBlue employees purportedly interfered with the dequalification system, causing him to lose two days of pay (*see* NYSCEF Doc No. 67 at 15). He has not addressed the fact that he remains in good standing at JetBlue and has been promoted to captain, or that there has been no further retaliatory action on the part of defendants in the two years between his commencing this litigation and defendants' motion (*see* NYSCEF Doc No, 67 at 16). Plaintiff's allegations are "legal conclusions and sheer speculation" (NYSCEF Doc No. 67 at 17).

Aiding and abetting

Defendants contend that the aiding and abetting claim asserted against Jackson fails as a matter of law because plaintiff cannot identify any unlawful discriminatory or retaliatory conduct, nor anyone whom Jackson aided and abetted in the commission of such unlawful discriminatory or retaliatory conduct (*see* NYSCEF Doc No. 67 at 17, citing *Boonmalert v City of New York*, 721 Fed Appx 29, 34 [2d Cir 2018]; *Hardwick v Auriemma*, 116 AD3d 465 [1st Dept 2014]). As this Court noted in its April 2019 decision and order, there can be no claim of aiding and abetting where there is no underlying claim of discrimination or retaliation and, furthermore, "an individual cannot aid and abet his or her own alleged unlawful conduct" (NYSCEF Doc No. 67 at 5; quoting Doc No. 65, decision and order of April 29, 2019 at 5, and citing *Hardwick v Auriemma*, 116 AD3d at 468 ["an individual cannot aid and abet his or her own violation of the Human Rights Law"]).

Plaintiff's opposition

Discrimination

Plaintiff contends that, contrary to defendants' claim, plaintiff as pilot, and Enderic as first officer, were similarly situated in July 2017 when they co-piloted the plane to Fort Lauderdale, performing "nearly identical duties and responsibilities," and disciplined by their supervisor, Jackson,

for reportedly failing to respond to positive contact from the ground upon landing, yet they were disciplined in sharply different manners (*see* NYSCEF Doc No. 79, brief for plaintiff at 3, 6, 12). In alleging that he, a black man of Senegalese origin, was treated differently and adversely from Enderic, a similarly situated employee of "Hispanic" origin, plaintiff has demonstrated circumstances that give rise to an inference of discrimination based on race and national origin (*see* NYSCEF Doc No. 79 at 9, citing *Graham v Long Is. R.R.*, 230 F 3d 34, 39 [2d Cir 2000] ["A plaintiff may raise such an inference by showing that the employer subjected him to disparate treatment, that is, treated him less favorably than a similarly situated employee outside his protected group"]). Defendants' reliance on *Askin v Dept of Educ. of City of New York*, is misplaced. In *Askin*, the plaintiff, a 54-year-old school principal terminated from her position, was found under the NYCHRL to have established a prima facie claim to the first three elements of her claim for age discrimination, namely that she was a member of a protected class, was qualified for her position, and was subjected to adverse employment action, but failed to provide "concrete factual allegation[s]" to make out the fourth element, that she was treated differently under the circumstances, other than her age and that she was treated "less well" (*see* NYSCEF Doc No. 79 at 12, citing *Askin,* 110 AD3d at 622). Here, plaintiff has established that he was qualified for his position, that he and the similarly situated first officer conducted themselves in the same manner on the dates in question, and that as a black man of Senegalese origin, he was disciplined with a two-week suspension without pay and a final warning, a much more severe penalty than given to the light-skinned Hispanic co-pilot, thus showing an inference of discrimination and adequately pleading the fourth element of a prima facie case of discrimination (*see* NYSCEF Doc No. 79, brief for plaintiff at 12).

That captains and first officers are similarly situated is seen in the JetBlue employment agreement, signed by plaintiff as "Pilot," on February 28, 2007, which makes few distinctions between captains and first officers other than in salary (*see* NYSCEF Doc No. 79, brief for plaintiff at 10, citing

Doc No. 73, employment agreement at Bates-stamp JB000042-JB000045). Under "Duties," the agreement states that, "*[t]he Pilot is employed and will be performing the duties of a Captain or First Officer*" (NYSCEF Doc No. 79 at 10, quoting Doc No. 73, employment agreement at Bates-stamp JB000029, emphasis added). Further, while serving as a captain or a first officer, a pilot "*may be required to perform the duties normally associated with each role*" (NYSCEF Doc No. 79 at 10, quoting Doc No. 73, employment agreement at Bates-stamp JB000029, emphasis added). Captains and first officers are subject to the same performance and discipline standards (*see* NYSCEF Doc No. 79 at 11). There is no differentiation between captains and first officers in terms of their adherence to performance standards, or the grounds for their discharge; the agreement simply provides that "a pilot" can be discharged for a specific list of reasons (NYSCEF Doc No. 79 at 12, citing Doc No. 73, employment agreement, ¶ 73, Bates-stamp JB000039-JB000040). The main differences, plaintiff contends, are that captains "are in command of the aircraft, have more seniority and receive higher compensation" (NYSCEF Doc No. 79, brief for plaintiff at 4, 11-12, citing *Brown v Daikin Am., Inc.*, 756 F 3d 219, 222-223, 230 [2d Cir 2014] [white American plaintiff employed both by the Japanese corporate parent and the American subsidiary, sufficiently alleged under Title VII and the NYSHRL, that he had been the subject of race or national origin discrimination by both entities, by showing that he and other American employees were fired through a work reduction, but no Japanese employees were fired, and that he and the Japanese employees were similarly situated because they had a common employer and were subject to the same supervisor and the same performance evaluation and disciplinary standards; the court found no need for him to also plead facts about the Japanese employees' job functions, experience, qualifications or rates of pay]).

Even before the suspension without pay, plaintiff had felt "set up," because Jackson had not arranged for a debriefing or meeting with the Chief Pilot's office nor issued an "email blast" to publicly

recognize his life-saving actions taken during the July 2017 Santo Domingo flight, even though other pilots had received praise "for their handling of less dangerous incidents" (NYSCEF Doc No. 79 at 5-6). When Jackson then singled plaintiff out for differential treatment with the suspension and threat to his job on September 17, 2017, he was clearly acting with discriminatory animus based on race and national origin in violation of the NYCHRL, which holds employers, employees and agents liable for engaging in differential and discriminatory employment practices (*see* NYSCEF Doc No. 79 at 6, 13, citing Administrative Code § 8-107 [a]). Plaintiff has properly sued Jackson in his individual capacity for his differential treatment of plaintiff commencing on July 24, 2017, and thereafter (*see* NYSCEF Doc No. 79 at 7, 13, citing *Matter of Maloff v City Commn. on Human Rights*, 46 NY2d 902 [1979], *affirming* 58 AD2d 791 [1st Dept 1974] [finding liability on the part of both the board of education and the school principal individually who had admitted he had given the complainant teacher an unsatisfactory rating after she had filed a complaint with the Commission on Human Rights alleging sex discrimination]). For example, in *Schaper v Bronx Lebanon Hosp. Ctr.* (408 F Supp 3d 379 [SD NY 2019]), the motion for summary judgment by the hospital and the individually named defendant, plaintiff's direct supervisor, was denied because the court found that the plaintiff, having alleged discrimination, retaliation and hostile work environment, had sufficiently alleged that the direct supervisor had herself violated the NYCHRL by her acts of racial or national origin animus, in addition to the hospital (*see* NYSCEF Doc No. 79 at 13, citing *Schaper,* 408 F Supp 3d at 396).

Retaliation

Under the NYCHRL, it is unlawful "to retaliate or discriminate in any manner against any person" who has filed a complaint or commenced an action claiming a violation under the NYCHRL (NYSCEF Doc No. 79 at 15, quoting Administrative Law § 8-107 [7] [ii - iii]). Unlike the NYSHRL or Title VII, retaliation or discrimination under the NYCHRL "need not result in an ultimate action with

respect to employment...or a materially adverse change in the terms and conditions of employment"; it is only required that the retaliatory or discriminatory act "would be reasonably likely to deter a person from engaging in protected activity" (NYSCEF Doc No. 79 at 15, quoting Administrative Law § 8-107 [7]; *see Brightman v Prison Health Serv., Inc.,* 108 AD3d 739, 740 [2d Dept 2013]; *Fletcher v Dakota, Inc.*, 99 AD3d 43, 51-52 [1st Dept 2012]).

Plaintiff contends that one month after plaintiff commenced his state court action in late December 2017, he was the subject of retaliation when not only was he scheduled for a mandatory line check on his day off, in violation of the rules, but was issued a two-day dequalification despite his attendance (*see* NYSCEF Doc No. 79, brief for plaintiff at 6-7). Contrary to defendants' argument, to establish their knowledge of his protected activity, he need only show general corporate knowledge of his lawsuit against JetBlue, not that every single employee, in particular the ones who scheduled his line check, and dequalified him, were aware of the lawsuit (*see* NYSCEF Doc No. 79 at 16, 17, citing *Cosgrove v Sears Roebuck & Co.*, 9 F3d 1033, 1039 [2d Cir 1993] [prima facie case of knowledge shown by the corporation being aware of the plaintiff's EEOC complaint]; *Reed v A.W. Lawrence & Co., Inc.*, 95 F3d 1170, 1178 [2d Cir 1996] [where the corporate entity was aware of the plaintiff's complaints, the knowledge requirement was "easily proved"]). He has clearly shown that JetBlue was aware of the lawsuit and has satisfactorily alleged a claim of retaliation by showing the close temporal proximity between his filing his lawsuit in December 2017 and the retaliatory scheduling of a line check and baseless dequalification on January 31, 2018 (*see* NYSCEF Doc No. 79, at 17, citing *Cook v EmblemHealth Servs. Co., LLC*, 167 AD3d 459 [1st Dept 2018]).

Defendants' reliance on *Davis v Phoenix Ancient Art, S.A.* (2013 Misc 3d 1214 [A], 2013 NY Slip Op 50613 [U]) should be disregarded because there the retaliation claim was dismissed based on the

plaintiff's failure to allege that she engaged in any protected activity. Here, plaintiff has provided documentary evidence to show that he was engaged in protected activity and suffered retaliation (*see* NYSCEF Doc No. 79 at 18, citing Docs. 66, 75, 76, 78). Further, he shows that he reported and complained about the discriminatory acts "through all channels available to him," including the protected activities of filing an internal complaint regarding his September 2017 suspension without pay, the commencement of this action in December 2017, and his attorney's internal complaint regarding the dequalification in February 2018 (*see* NYSCEF Doc No. 79 at 15). Further, neither Jackson nor any administrative official took remedial action, and an individual in a supervisory role may be held liable for a failure to take appropriate investigative or remedial measures upon being informed of offensive conduct (*see* NYSCEF Doc No. 79 at 18, citing *Schaper v Bronx Lebanon Hosp. Ctr.,* 408 F Supp 3d 379). For these reasons, defendants' motion to dismiss the retaliation claim should be denied.

Aiding and Abetting

The NYCHRL provides that it is unlawful discrimination for "any person to aid, abet, incite, compel or coerce the doing of any of the acts prohibited" by the statute, "or to attempt to do so" (NYSCEF Doc No. 79 at 20, quoting Administrative Code § 8-107 [6]). Plaintiff contends that he has pleaded facts sufficient to allege that from July 24, 2017, onward, he suffered disparate impact through Jackson's actions and inactions (*see* NYSCEF Doc No. 79 at 20, contrasting *Boonmalert v City of New York,* 721 Fed Appx 29, cited by defendants, which did not find a claim of aiding and abetting under the Human Rights Law, in relevant part because the plaintiff had not pleaded facts sufficient to allege that he had suffered disparate impact treatment and hostile work environment due to his age). Jackson's act in suspending plaintiff without pay, and issuing a final warning, different from the discipline he meted out to Enderic, is an act of race and national origin discrimination (*see* NYSCEF Doc No. 79 at 20-21, citing *Schaper v Bronx Lebanon Hosp. Ctr.,* 408 F Supp 3d 379 [summary judgment and dismissal of

the discrimination claims brought under the NYCHRL was denied as to the individual defendant, the plaintiff's supervisor, as was the claim that the defendant aided and abetted in the violations of the NYCHRL]).

Defendants' Reply

Discrimination

Defendants contend that plaintiff improperly attempts to revive his dismissed retaliation claim against Jackson by refashioning it as a discrimination claim (*see* NYSCEF Doc No. 80, brief for defendants in reply at 5). However, he has not provided new allegations or evidence that Jackson treated him differently because of his race or national origin, and only argues that such treatment can be inferred by Jackson's alleged differential treatment of Enderic in comparison with plaintiff (*see* NYSCEF Doc No. 80 at 6). Although he claims that Jackson had previously treated him in a differential manner by not debriefing him after he returned from a dangerous situation in the air, and not publicly recognizing his actions in saving the lives of his passengers, plaintiff has not alleged that Jackson was obligated to have him debriefed or to broadcast his accomplishments, nor that Jackson debriefed or recognized other pilots, and he has not identified the race and national origin of those pilots (*see* NYSCEF Doc No. 80 at 6 n 3, citing *Askin v Department of Educ. of City of New York*, 110 AD3d at 622 [dismissal was appropriate where the plaintiff had not "adequately pled...that she was either terminated or treated differently under circumstances giving rise to an inference of discrimination"]).

Notably, plaintiff disputes the truthfulness of Jackson's version of the events of July 29, 2017, that were claimed to have occurred in Fort Lauderdale and which resulted in Jackson's discipline of plaintiff and Enderic in September 2017 (*see* NYSCEF Doc No. 80, brief for defendants in reply at 6 n 3). By challenging its accuracy, plaintiff is essentially claiming that defendants were so determined to

target him based on his race and national origin that they were willing to take an adverse employment action against Enderic, by disciplining him with an initial warning, even though there is no allegation or evidence to show they harbored any animus toward Enderic (*see* NYSCEF Doc No. 80 at 6 n 4).

Plaintiff was simply disciplined more severely than Enderic because plaintiff was the captain, "a more seasoned pilot," and in command of the flight (*see* NYSCEF Doc No. 80 at 7-8). This is a legitimate, non-discriminatory reason for this alleged differential treatment (*see* NYSCEF Doc No. 80 at 7). The Federal Aviation Administration "explicitly distinguishes between these positions [captains and first officers] in a variety of ways," as seen in 14 CFR § 61.55 ("Second-in-command qualifications"); § 61.57 ("Recent fight experience: Pilot in command"), and § 61.58 ("Pilot-in-command proficiency check: Operation of an aircraft that requires more than one pilot flight crewmember or is turbojet powered") (NYSCEF Doc No. 80 at 7). Courts that have directly addressed the issue have concluded that captains and first officers are not similarly situated with respect to claims of discrimination by their employer (*see* NYSCEF Doc No. 80 at 7-8, citing *Younis v Pinnacle Airlines, Inc.*, 610 F 3d 359, 364 [6th Cir 2010]; *Williams v United/Continental*, 2019 WL 4954643, *8, 2019 US Dist LEXIS 174085, *24 [D Colo 2019]). The claims against Jackson based on his alleged discrimination should be dismissed (*see* NYSCEF Doc No. 80 at 8).

Retaliation

Defendants contend that the retaliation claims against both defendants fail as a matter of law. Plaintiff has not alleged that Jackson or anyone else at JetBlue ever said or did anything which evinces any retaliatory animus, and his claim of retaliation strains credulity given that he remains employed in good standing at JetBlue even though "he has been consistently litigating against and complaining to JetBlue for nearly the past eight years" (NYSCEF Doc No. 80 at 8-9). If defendants "genuinely harbored retaliatory animus against [p]laintiff," they would have been unlikely to

promote him to captain after he filed his federal lawsuit (NYSCEF Doc No. 80 at 11). Plaintiff does not explain why defendants would wait nearly five years after he first began to challenge the legality of JetBlue's employment decisions to take retaliatory action, or why defendants have not taken further retaliatory action since the January 2018 dequalification incident and why at that time they only docked plaintiff two-days' pay and nothing more (*see* NYSCEF Doc No. 80 at 11).

Plaintiff's retaliation argument is based on the "close temporal proximity" between the filing of this action and the dequalification incident that occurred a month later (*see* NYSCEF Doc No. 80 at 9). Close temporal proximity is not always sufficient, by itself, to survive a motion to dismiss a retaliation claim (*see* NYSCEF Doc No. 80 at 9-10, citing *Harrington v City of New York*, 157 AD3d 582, 586 [1st Dept 2018] [noting that temporal proximity between a protected activity and an adverse employment action "may, under some circumstances, be sufficient in itself to permit the inference of a causal connection necessary for a retaliation claim"]; *Koester v New York Blood Ctr.*, 55 AD3d 447, 449 [1st Dept 2008] [holding that in the circumstances at bar, the temporal proximity between the plaintiff's hotline complaint and the defendant's adverse action was "alone insufficient to support a claim of retaliatory discharge"]).

Plaintiff has repeatedly engaged in protected activity over the last eight years, from filing his initial EEOC complaint, commencing federal and state actions, and making internal complaints when he believed he had been the target of discrimination. The only retaliatory act plaintiff alleges that occurred over the past eight years was requiring him to complete a line check on his day off, after which he lost two days' days because he was dequalified (*see* NYSCEF Doc No. 80 at 10). In sum, plaintiff simply has not stated a cause of action sounding in retaliation under the NYCHRL.

Aiding and Abetting

Defendants contend that where, as here, a plaintiff does not plausibly allege discriminatory or retaliatory conduct by defendants, a claim of aiding and abetting in such conduct by Jackson does not lie (*see* NYSCEF Doc No. 80, at 11-12). Not only has plaintiff not identified anyone other than Jackson who engaged in unlawful discriminatory or retaliatory conduct, but he has failed to allege that Jackson himself engaged in such conduct, and it is well-established that "an individual cannot aid and abet his or her own violation of the Human Rights Law" (NYSCEF Doc No. 80 at 11-12, citing *Hardwick v Auriemma*, 116 AD3d at 468 [citation omitted]). Although plaintiff has cited the Southern District Court decision, *Schaper v Bronx Lebanon Hosp. Ctr.* (408 F Supp 3d 379), which held, "without any explanation whatsoever, and without citation to any relevant authority," that an individual defendant "could be held both liable individually and as an aider and abettor under the [NYCHRL] so long as the individual defendant participated in the allegedly unlawful behavior," this has been rejected by all four Departments, which have found that an individual cannot aid and abet his or her own violation of the Human Rights Law (NYSCEF Doc No. 80 at 13, citing *Hardwick*, 116 AD3d at 468; *Matter of Medical Express, Ambulance Corp. v Kirkland*, 79 AD3d 886, 888 [2d Dept 2010]; *Strauss v New York State Dept. of Educ.*, 26 AD3d 67, 73 [3d Dept 2005]; *Barbato v Bowden*, 63 AD3d 1580, 1582 [4th Dept 2009]).

Discussion

In deciding a motion to dismiss the complaint pursuant to CPLR 3211 (a) (7), the court construes the complaint liberally, assumes the factual allegations are true and accords the plaintiff every favorable inference from those facts in order to determine whether the pleadings state a cause of action (*see Goldman v Metropolitan Life Ins. Co.*, 5 NY3d 561, 570-571 [2005]). If from the four corners of the pleadings, factual allegations cannot be discerned which, taken together, manifest any cause of action

cognizable at law, the motion will be dismissed (*see 511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 154 [2002]). Factual allegations that fail to state a viable cause of action or consist of bare legal conclusions "are not entitled" to the assumptions of truthfulness and the giving of all favorable inferences to the plaintiff (*see Doe v Bloomberg L.P.*, 178 AD3d 44, 47 [1st Dept 2019]).

A claim for employment discrimination brought under the NYSHRL or NYCHRL is generally reviewed under notice pleading standards, a liberal standard requiring only that a plaintiff plead "fair notice of the nature of the claim and its grounds," and need not plead "specific facts establishing" a prima facie claim of discrimination (*Vig v New York Hairspray Co., L.P.*, 67 AD3d 140, 145 [1st Dept 2009] [quoting *Swierkiewicz v Sorema N.A.*, 534 US 506, 514-515 [2002]). The provisions of the NYCHRL are to be construed "liberally," in order to effectuate the "uniquely broad and remedial purposes" of the law as intended by the City Council and may be broader than federal or New York State civil and human rights law containing "comparably worded provisions" (Administrative Code § 8-130). The statute is to 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 at 477-478). Notably, "questions of severity or pervasiveness of the discriminatory conduct apply only to damages, not liability" (*Davis v Phoenix Ancient Art, S.A.*, 2013 Misc 3d 1214[A], 2013 NY Slip Op 50613[U], *7, citing *Hernandez v Kaisman*, 103 AD3d 106, 113 [1st Dept 2012]; *see Williams v New York City Hous. Auth.*, 61 AD3d 62, 76 [1st Dept 2009]).

Discrimination

Section 8-107 (13) (b) (1) of the Administrative Code holds corporate employers strictly liable for the unlawful discriminatory acts of their managers and supervisors, as well as discriminatory acts of nonsupervisory employees where the employer should have known of the employee's acts or knew and did nothing to correct the situation (*see Zakrzewska v New School*, 14 NY3d 469, 480-481 [2010], citing

Administrative Code § 8-107 [13] [b] [1-3]). There is no need to demonstrate animus: "intentional discrimination simply involves treating one person less well than another because of protected class status; it does not require evidence of animus" (*Melman v Montefiore Med. Ctr.*, 98 AD3d 107, 140 and n 9 [dissent] [1st Dept 2012]).

To sufficiently allege discrimination in employment, plaintiff must show that he is a member of a protected class, was qualified to hold the position, and was treated in a less favorable manner than the comparator, an employee similarly situated but not a member of the protected class (*see Diaz v Minhas Constr. Corp.*, 188 AD3d 812, 814 [2d Dept 2020]). Plaintiff must be seen to be "similarly situated in all material respects to the employee or employees to whom [he] compare[s] [him]sel[f]," and while the circumstances need not be identical, they must be reasonably close (*see Diaz* at 814, citing *Lizardo v Denny's, Inc.*, 270 F3d 94, 101 [2d Cir 2001]; *Graham v Long Is. R.R.*, 230 F3d at 40). Employees are "similarly situated" when they "have dealt with the same supervisor, have been subject to the same standards and have engaged in the same conduct without differentiating or mitigating circumstances that would distinguish their conduct or the employer's treatment of them for it" (*Wagner v Matsushita Elec. Components Corp. of Am.*, 93 Fed Appx 714, 716 [6th Cir 2004]). These factors, and that the plaintiff was treated less favorably than an employee who had engaged in comparative conduct but was not a member of the protected class, gives rise to an inference of discrimination (*see Diaz,* 188 AD3d at 814; *Graham,* 230 F3d at 40).

The parties dispute whether plaintiff and Enderic can be considered similarly situated in July 2017. Plaintiff points to the provisions in the JetBlue employment agreement which show that pilots holding the positions of captain and first officer can and do perform the functions of both positions. Notably, the employment agreement seems to make few distinctions between the two positions, commencing its description of "duties" by stating that "the [p]ilot will be performing the duties of a

[c]aptain or a [f]irst [o]fficer" (NYSCEF Doc No. 73, employment agreement, ¶ 2 at Bates-stamp JB000029).

> "Captain is defined as a pilot who is in command of the aircraft and is responsible for the manipulation of...the flight controls of an aircraft while underway, including takeoff and landing of such aircraft, and who is properly qualified to serve, and holds a current certification and rating required by the Federal Aviation Administration ('FAA') for service as a captain. First Officer is defined as a pilot who is second in command of the aircraft and whose duty is to assist or relieve the Captain in the manipulation of the flight controls of the aircraft while underway including takeoff and landing of such aircraft, and who is properly qualified to serve as, and holds a current certification and rating required by the FAA for service as a First Officer. As Captain or First Officer the Pilot may serve as the additional roles of Check Airman Flight Instructor or Supervisory Pilot" (NYSCEF Doc No. 73, employment agreement, ¶ 2 at Bates-stamp JB000029).

The employment agreement provides that any pilot serving in either capacity "may be required to perform the duties normally associated with each role," and, if requested, will "perform additional duties such as ferry flights, charity flights, promotional flights training and other duties as assigned by the Airline" (NYSCEF Doc No. 73, ¶ 2 at Bates-stamp JB000029). A pilot's seniority is based on the length of service with JetBlue, and seniority governs "all assignments or reassignments due to expansion or reduction in schedules" (*see* NYSCEF Doc No. 73, ¶ 4 at JB000037). All pilots are required to maintain the necessary certifications and other requirements mandated by the FAA for the positions of captain or first officer and for the type of aircraft they are assigned to fly (*see* NYSCEF Doc No. 73, ¶ 10 at Bates-stamp JB000038-039). Finally, the list of offenses which may result in discharge of a pilot makes no distinction between the acts of captains and first officers (*see* NYSCEF Doc No. 73, ¶ 14 at Bates-stamp JB000039-040).

Defendants contend that plaintiff was disciplined more severely because he was the captain and had more experience than Enderic, and that captains and first officers are not similarly situated. They point to FAA provisions found in 14 CFR §§ 61.57 and 61.58, pertaining to qualifications and requirements of the pilot in command, and 14 CFR § 61.55, pertaining to pilots who function as second-

in-command. The FAA definition of "pilot in command" is of the person who "(1) [h]as final authority and responsibility for the operation and safety of the flight; (2) [h]as been designated as pilot in command before or during the flight, and (3) [h]olds the appropriate category, class, and type rating, if appropriate, for the conduct of the flight" (14 CFR § 1.1). A pilot in command is required to have certain "general experience" including having made three or more takeoffs and landings of the same category of airplane within the last 90 days, acting as the "sole manipulator" of the flight controls (*see* 14 CFR § 61.57 [a]). Other required qualifications, as well as exceptions to certain requirements under certain conditions are also set forth in the same section (*see* 14 CFR § 61.57 [a]-[g]). There are additional requirements for a pilot in command to be authorized to fly a plane requiring more than one pilot flight crew member, or to fly a turbojet (*see* 14 CFR § 61.58).

The FAA defines a "second-in-command" as a "pilot [who is] designated to be second in command of an aircraft during flight" (14 CFR § 1.1). The second-in-command serves when the aircraft is "certificated for more than one required pilot flight crewmember," and must hold the appropriate pilot certificate and ratings, as well as instrument rating applicable to the aircraft being flown (*see* 14 CFR § 61.55 [a]). The person is required to have become familiar over the previous 12 months with particular information pertaining to the types of aircraft for which the person seeks "second-in-command privileges" (*see* 14 CFR § 61.55 [b]). The description of the role and rules for the second-in-command are distinctly shorter than for a pilot in command.

In a motion to dismiss, where the court gives every benefit to the nonmoving plaintiff, the analysis is whether the plaintiff has alleged a viable cause of action, not whether he can establish his claim. By this criterion, the Court finds plaintiff has sufficiently alleged that he and Enderic were similarly situated: they had a common employer, the same supervisor, and appear to have the same performance evaluation and disciplinary standards, and were engaged in the same work activity of

piloting the plane. As the federal court stated in *Brown v Daikin v Am. Inc.*, in a motion to dismiss, the significant factors for determining whether two employees are similarly situated in terms of their employment circumstances do not include "job functions, experience, qualifications or rate of pay" (*Brown,* 756 F 3d at 230). Therefore, the FAA's distinctions between pilots in command and second-in-commands, are not factors in determining employment status. Whether being a captain rather than a first officer is a mitigating factor is not one for the Court to decide at this juncture. The fact that captains and first officers have separate licensing requirements or job functions is also not an issue. To the extent that defendants rely on caselaw from the 6th Circuit, it is in no way binding on this Court. Defendants' motion to dismiss the discrimination claim brought under the NYCHRL based on plaintiff's unpaid suspension and threat of dismissal is denied.

Plaintiff also claims discrimination because neither Jackson nor anyone else at JetBlue scheduled debriefings and/or meetings with the Chief Pilot, following plaintiff's life-saving actions on July 24, 2017 and September 22, 2019 in the operation of his plane, and no one arranged for his actions to be commended via company-wide communications, although other pilots had debriefings or meetings with the Chief Pilot and were publicly commended for their job performance. The complaint does not identify other pilots or their race or national origin, who met with the Chief Pilot or were recognized in "email blasts," nor has it alleged that JetBlue or Jackson were required or in any way obligated to arrange such meetings, briefings and commendations. Additionally, plaintiff has not alleged that his employment and opportunities have been impacted in any manner despite the absence of the meetings or commendations. As the claims are conclusory and fail to allege a cause of action, the Court grants defendants' motion to dismiss the claims of discriminatory conduct based on Jackson's allegedly insufficient commendation actions toward plaintiff on July 24, 2017 and September 22, 2019.

So too, the claim of discrimination based on Jackson's failure to conduct an investigation of plaintiff's September 2017 complaint or on his failure and that of JetBlue to report the investigation results, fails to allege a cause of action in discrimination and will be dismissed. Assuming that it is JetBlue's responsibility to investigate all EEO claims, it is not clear that it was Jackson's responsibility to conduct an investigation, particularly where he was the subject of the complaint, nor that he or anyone was obligated to report the results. There are no allegations of any impact on plaintiff's employment or his professional future resulting from defendants' alleged failures.

Retaliation

Under the NYCHRL, it is "an unlawful discriminatory practice for any person engaged in any activity ... to retaliate or discriminate in any manner against any person because such person has ... opposed any practice forbidden under this chapter" (Administrative Law § 8-107 [7]; *see Alexander v Possible Prods., Inc.*, 336 F Supp 3d at 196 [it is "illegal" to retaliate against an employee "in any manner" after they have engaged in protected conduct]).

To assert a claim of retaliation, the complaint must allege that the plaintiff participated in a protected activity known to the defendants, who then took an action that "disadvantaged him," and show the existence of a causal connection between the protected activity and the adverse action (*see Fletcher v Dakota, Inc.*, 99 AD3d at 51-52 [citing *Albunio v City of New York*, 67 AD3d at 413]). Under the NYCHRL, an employer's unlawful act of retaliation "need not result in an ultimate action with respect to employment, ... or [even] in a materially adverse change in the terms and conditions of employment" (Administrative Law § 8-107 [7]). The aggrieved plaintiff must only show that the alleged retaliatory or discriminatory act would "be reasonably likely to deter a person from engaging in protected activity" (Administrative Code § 8-107 [7]).

Plaintiff argues that within a month of commencing this action in late December 2017, having previously brought claims before the EEOC and the federal district court, and within about four and a half months after he filed his September EEO complaint concerning his suspension and pay loss—all protected activities under the statute—defendants retaliated by improperly requiring him to attend a line check on his day off and then issuing a two-day dequalification in advance of his participation in the line check. Plaintiff contends that defendants were aware of the commencement of this action, and persuasively argues that at this stage, he need only allege that the corporate defendant was generally aware of his protected activities and need not show actual awareness by the specific employees who scheduled his line check or who dequalified him (*see Cosgrove v Sears Roebuck & Co.*, 9 F3d at 1039). In *Williams v New York City Hous. Auth.* (61 AD3d 62 [1st Dept 2009]), on a motion for summary judgment, the First Department cautioned that:

> "it is important that the assessment [of a retaliation claim] be made with a keen sense of workplace realities, of the fact that the 'chilling effect' of particular conduct is context-dependent, and of the fact that a jury is generally best suited to evaluate the impact of retaliatory conduct in light of those realities. Accordingly, the language of the [NYCHRL] does not permit any type of challenged conduct to be categorially rejected as nonactionable. On the contrary, no challenged conduct may be deemed nonretaliatory before a determination that a jury could not reasonably conclude from the evidence that such conduct was, in the words of the statute, reasonably likely to deter a person from engaging in protected activity" (*Williams*, 61 AD3d at 71 [quotation marks and citation omitted]).

Although defendants contend that the improper scheduling of the line check on plaintiff's day off, and the two-day dequalification issued without justification, at worst caused an inconvenience for plaintiff, and were in no way retaliatory, it cannot be said that a jury could not conclude under the circumstances, namely defendants' docking two days' pay within a month of plaintiff's commencing this action, after having previously suspended him for two weeks without pay, that these actions were reasonably likely to deter him from engaging in further protected activity (*see Williams v City of*

New York, 61 AD3d at 71; *Fletcher v Dakota, Inc.*, 99 AD3d at 51-52).[6] Plaintiff has sufficiently alleged a causal connection between the protected activity of commencing this action, and the alleged retaliatory action (*see* Administrative Code § 8-107 [7]). Accordingly, defendants' motion to dismiss the claim of retaliation is denied.

Aiding and Abetting

The NYCHRL prohibits "any person" from aiding, abetting, inciting, compelling or coercing the doing "of any of the acts prohibited" under the statute (*see* Administrative Code § 8-107 [6]; *see also Poolt v Brooks*, 38 Misc 3d 1216[A], 2013 NY Slip Op 50116[U], *15 [Sup Ct, NY County 2013] [holding that individuals may be held liable for their acts of employment discrimination]). To assert a claim against an individual for aiding and abetting, there must first be a finding of either discrimination or retaliation by the employer (*see Poolt v Brooks*, 38 Misc 2d 1216[A], 2013 NY Slip Op 50116[U], *14]). Indeed, "[i]t is the employer's participation in the discriminatory practice which serves as the predicate for the imposition of liability on others for aiding and abetting" (*Murphy v ERA United Realty,* 251 AD2d 469, 472 [2d Dept 1998]).

The claim that Jackson aided and abetted JetBlue in its discrimination is sufficiently alleged. The Court denied dismissal of plaintiff's claim of discrimination pertaining to the September 2017 suspension without pay and issuance of a final warning, and his claim of retaliation based on the improper scheduling of the line check and the subsequent unjustified loss of two days' pay. The complaint clearly identifies Jackson as aiding and abetting in the commission of the unlawful discriminatory and retaliatory conduct. Defendants' argument that Jackson cannot aid and abet his own

[6] Although the NYCHRL is interpreted broadly, a defendant may avoid liability if it is able to prove that the retaliation or other conduct complained of "consists of nothing more than what a reasonable victim of discrimination would consider petty slights and trivial inconvenience" (*Williams v City of New York*, 61 AD3d at 80).

violation of the Human Rights law has no applicability. The amended complaint successfully alleges Jackson aided and abetted Jet Blue in its discriminatory conduct.

Conclusion

It is hereby ORDERED that the motion to dismiss the claims of discrimination is granted to the extent that the claims that defendants failed to meet with plaintiff or give recognition to his professional actions on July 24, 2017 and September 22, 2019, and did report the findings of the EEO complaint lodged on September 18, 2017, are dismissed, and is otherwise denied; and it is further

ORDERED that the motion to dismiss the retaliation claim is denied; and it is further

ORDERED that the motion to dismiss the claim against Jackson of aiding and abetting is denied; and it is further

ORDERED that defendants shall file and serve their amended answer within 20 days; and it is further

ORDERED that the parties are directed to appear for a remote compliance conference before this court on June 9, 2021.

This constitutes the decision and order of the Court.

5/27/2021
DATE

ALEXANDER M. TISCH, J.S.C.

CHECK ONE:	[ ]	CASE DISPOSED		[X]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[ ] DENIED	[X]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE