Pease v City of New York
2022 NY Slip Op 32728(U)
August 12, 2022
Supreme Court, New York County
Docket Number: Index No. 161501/2021
Judge: Lori Sattler

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 02TR

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RAINE PEASE,

Plaintiff,

- v -

THE CITY OF NEW YORK, THE NEW YORK CITY POLICE DEPARTMENT, DEODAT URPRASAD, JOHN DOES

Defendant.

INDEX NO. 161501/2021

MOTION DATE 05/12/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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HON. LORI SATTLER:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23

were read on this motion to/for DISMISSAL.

In this action brought by Plaintiff Raine Pease ("Plaintiff") alleging employment discrimination in violation of the New York State Human Rights Law, Executive Law § 296, *et seq.* ("NYSHRL") and the New York City Human Rights Law, New York City Administrative Code § 8-107, *et seq.* ("NYCHRL"), defendants the City of New York ("City"), New York City Police Department ("NYPD"), and Deodat Urprasad ("Urprasad") (collectively "Defendants") move, pursuant to CPLR 3211, for dismissal of Plaintiff's complaint in its entirety with prejudice. Plaintiff opposes the motion.

BACKGROUND

This action arises out of alleged discrimination experienced by Plaintiff during his employment with the NYPD. Plaintiff, an African American male, has been employed as a police officer with the NYPD since 2007. At the start of his career, Plaintiff was assigned to the 102nd Precinct in Queens and worked there until August 2017. Plaintiff maintains that he had a "good working relationship" with his Commanding Officer at the 102nd Precinct from 2012

through January 2015 (NYSCEF Doc. No. 1, Complaint ¶ 62). In January 2015, Urprasad became the Commanding Officer at the 102nd Precinct. Plaintiff claims that Urprasad, who is Indo-Guyanese, subsequently subjected him to discrimination based on his race, color, and/or national origin.

As set forth in his Verified Complaint, Plaintiff's specific allegations, which the Court must accept as true when considering a motion to dismiss, are as follows:

2015-2016 Allegations

From January 2015 through April 2016, Plaintiff alleges that Urprasad assigned "undesirable midnight shifts continuously" to him, beginning a pattern of him treating Plaintiff "less-than" non-African American police officers at the 102nd Precinct (Complaint ¶ 74). He had previously been assigned the desirable morning shifts through May 2014, with a temporary assignment of night shifts in December 2014 due to a medical condition. Despite his relative seniority, Plaintiff was consistently assigned to "midnight foot post shifts without a patrol vehicle" beginning in February 2015 (*id*. ¶¶ 79, 81). He claims that non-African American officers were not assigned these patrols as consistently (*id*.).

Plaintiff alleges that he was further mistreated by Urprasad in February 2015 on at least two separate occasions. In the first incident, Plaintiff alleges that Urprasad ignored him while both were responding to a call when he attempted to initiate conversation. In another interaction, Urprasad yelled at Plaintiff for not moving fast enough to relieve him while detaining a civilian and remarked to Plaintiff "you and your damn feet," a comment that Plaintiff interpreted as directed towards his medical condition and accommodation (*id.* ¶¶ 75-76).

In or around 2015, Plaintiff applied for a promotion to an Over Time position in the 102nd Precinct's Summons Unit (*id*. ¶ 65). This position required "extensive training in speed

estimation" (*id.*). Plaintiff, who at the time had eight years of experience, did not receive the promotion; instead, a non-African American with three years of experience was awarded the position.

2017-2018 Allegations

Plaintiff applied for a promotion to Radio Motor Patrol Coordinator in or around 2017 (Complaint ¶ 66). At that time, Plaintiff states that he had 11 years of experience, in addition to prior experience working on automobiles and as a naval and aviation mechanic (*id.*). Plaintiff was not promoted to this position; instead, a non-African American with "far less experience" received the promotion (*id.*).

In or around May 2017, Plaintiff received a written assignment to patrol a Guyanese festival taking place in the 102nd Precinct (*id.* ¶ 84). However, Urprasad removed Plaintiff from this assignment and instead instructed him to guard a hospitalized prisoner on his own (*id.* ¶ 86). Plaintiff maintains that "[i]t was common knowledge among POs that such an assignment was deemed unfavorable and not typically relegated to senior officers" with Plaintiff's level of experience (*id.*).

Plaintiff alleges that he was burdened with further unfavorable assignments in 2017. Beginning around September 12, 2017, he was separated from his then-partner, Officer Bachhal, and reassigned to a "graveyard shift" from 11:15 P.M. to 7:50 A.M. (*id.* ¶¶ 106-108). He alleges that this reassignment was a targeted punishment initiated by Urprasad in response to a charge of improper report classification arising out of a complaint from a civilian who had placed a 911 call (*id.* ¶¶ 101-105). Plaintiff asserts that the Integrity Control Officer at the 102nd Precinct believed his and Bachhal's account of the call, but that Urprasad overruled that determination in favor of the civilian complainant, who was Indo-Guyanese (*id.*)

Urprasad then reassigned Plaintiff to work a solo foot post for his overnight shifts beginning September 16, 2017 (*id*. ¶ 110). The locations at which Plaintiff was posted during these assignments allegedly had no accommodation for restrooms (*id*.). At one point in October 2017, Plaintiff was assigned to work an entire shift standing in the rain without a patrol vehicle, while his then-partner, who is not African American, was assigned a patrol vehicle at the specific direction of Urprasad (*id*. ¶ 131)

Plaintiff was also assigned to "Cabaret duty" during this period, which involved patrolling locations such as bars and nightclubs for illegal conduct (*id*.). According to Plaintiff, this was "an unusual practice for NYPD senior officers" such as himself (*id*.).

In another incident, on November 2, 2017, Urprasad subjected Plaintiff to discipline for a delayed response to a radio transmission while on standing post with another, Officer Rojas, who is not African American (*id*. ¶ 132). A sergeant in the 102nd Precinct purportedly told Plaintiff that Urprasad was "angry" about the delay in responding and that "discipline would be issued under Urprasad's authority" (*id*. ¶ 133). On November 9 and 11, Urprasad assigned Plaintiff to solo foot post duty with no patrol vehicle as "discipline for the radio incident," while Rojas received no discipline or adverse assignment and was assigned a patrol vehicle (*id*. ¶ 135). Later in November 2017, Plaintiff received further solo foot duty assignments with no vehicle and was also assigned the supposedly unfavorable task of guarding hospital prisoners (*id*. ¶¶ 137-140).

Plaintiff asserts that he was subjected to harsher discipline than non-African American officers at the 102nd Precinct. He states that, while he received discipline and undesirable patrol assignments for relatively minor infractions, non-African Americans at times received no discipline for graver offenses. Specifically, Plaintiff points to the "Jamaica Auto Unit" to which several junior officers selected by Urprasad were assigned in 2017 (*id*. ¶ 146). He claims that the

officers only had approximately two years of experience and none were African American. Plaintiff learned towards the end of 2017 that this unit had been disbanded after its members initiated an unauthorized vehicle pursuit, caused an accident, injured a civilian motorist, and falsely reported the incident as an accident that did not involve any officers (*id*. ¶ 147). Although the unit was disbanded, Plaintiff alleges that none of the officers involved were disciplined and that these officers were subsequently transferred to "more prestigious" units in the 102nd Precinct (*id*. ¶ 150). Plaintiff further claims that Urprasad did not report this incident to the Integrity Control Office and that the incident is illustrative of disparate treatment of African American officers (*id*. ¶ 152; NYSCEF Doc. No. 21, Plaintiff's Opp. Memo, at 10).

Plaintiff states that he first complained about his perceived mistreatment to Integrity Control Officer Lieutenant Alberano on November 1, 2017, and that subsequent discussions on the topic were held with other superiors, union representatives, and volunteers in the following days (*id*. ¶¶ 116-129). According to Plaintiff, he continued to receive unfavorable assignments for the remainder of November after he complained to his direct superiors (*id*. ¶¶ 130-140).

On November 21, 2017, Plaintiff attempted to file a formal departmental complaint with the NYPD Equal Employment Opportunity Office ("EEO Office") (Complaint ¶ 141-144). However, EEO Office employees allegedly discouraged him from filing a complaint when they learned that Urprasad was the subject (*id*. ¶ 143). Plaintiff then filed a complaint with the Equal Employment Opportunity Commission ("EEOC") district office in Manhattan (*id*. ¶ 144). Plaintiff does not allege that he received a right to sue notice upon filing his first EEOC complaint or that a copy of this complaint was sent to Defendants or that they were otherwise notified of his complaint.

On or about November 21, 2017, Urprasad was promoted to "Full Inspector of Queens" (Complaint ¶ 145). Nevertheless, Plaintiff contends that Urprasad retained oversight of the 102nd Precinct in his new position despite no longer serving as Commanding Officer there (*id*.). Plaintiff claims that Urprasad used his influence to direct the reassignment of him and his then-partner, Bachhal, to separate day tours in December 2017 (*id*. ¶ 153).

2018-2021 Allegations

Plaintiff was subject to two integrity tests administered by the NYPD Internal Affairs Bureau ("IAB") in 2018. The first test occurred on or about January 10, 2018, when Plaintiff and other officers failed to charge a woman with possession of marijuana while investigating a possible crime scene in violation of NYPD policy (*id*. ¶¶ 155-158). The IAB investigated the officers involved in the call, and they were subsequently disciplined (*id*. ¶¶ 159-161). One officer, Officer Blake, was discharged from employment with the NYPD. Plaintiff was served with formal Charges and Specifications accusing him of violating NYPD procedures on April 17, 2018. According to the Verified Complaint, Blake was the "subject (target) of the IAB test" (*id*. ¶ 160). The Verified Complaint does not mention Blake's race, color, or national origin.

The second integrity test occurred on May 3, 2018. Plaintiff was accused of failing to file a domestic incident police report in violation of NYPD procedures after being approached by a man and a woman seeking advice with respect to a custodial dispute while he was responding to an unrelated call (*id*. ¶ 169-172). Charges and Specifications related to this incident were served upon Plaintiff on January 15, 2019 (*id*. ¶ 173, 181). Plaintiff alleges that Urprasad targeted him with the two IAB tests, citing the "known practice" within the NYPD that a Commanding Officer can target disfavored officers with such tests (Plaintiff Opp at 11; Complaint ¶ 154).

The charges from the integrity tests were subsequently upheld against Plaintiff in a departmental trial in July 2019, which resulted in a penalty of 30 forfeited vacation days and one year of probation for Plaintiff (Complaint ¶ 186). Plaintiff was informed during his probation in February 2020 that the Commissioner of the NYPD had approved a penalty of dismissal against him (*id*. ¶ 189). Plaintiff was further informed that his dismissal would be held in abeyance and that he would instead be placed on Dismissal Probation (*id*.).

On April 15, 2018, Plaintiff was patrolling a Sikh festival in the 102nd Precinct when he purportedly had another encounter with Urprasad (Complaint ¶¶ 162-167). This incident allegedly involved Urprasad speeding away in his vehicle as Plaintiff approached to greet him and subsequent aggressive questioning and shouting directed at Plaintiff by a sergeant (*id*.)

Plaintiff was transferred to the 70th Precinct in Brooklyn in August 2018 (*id*. ¶ 174). He maintains that "Urprasad approved and/or directed" the transfer, which doubled his commute (*id*. 175-176). Plaintiff perceived this transfer to be a punitive act. According to Plaintiff, "the 70th Precinct has a well-known reputation within the NYPD and the City of New York as the precinct COs banish POs they deem 'problem' Officers" (*id*.). While assigned to the 70th Precinct, Plaintiff claims that he and other African American officers "were denied the favorable assignment of driving his or her superior Officer which was typically reserved for non-African American POs only" (*id*. ¶ 180).

In 2019, Plaintiff applied to and was rejected from a position with the Police Division of the Maryland National Capital Park and Planning Commission (*id*. ¶ 67-68). The application obligated Plaintiff to disclose the IAB investigations against him and documents related thereto. He was informed that open IAB investigations could negatively impact the consideration of his application (*id*.).

Plaintiff was also purportedly deterred from applying to a Neighborhood Community Officer ("NCO") position that opened at the 70th Precinct in 2021 (*id*. ¶ 193). Plaintiff maintains that he was qualified for this position and that it was desirable because of its prestige, pay, and opportunities for promotion (*id.* ¶¶ 193-194). However, a sergeant at the 70th Precinct informed Plaintiff that he was ineligible to apply for the position because he had been placed on probation following his discipline for the IAB tests (*id*. ¶ 194).

Procedural History

Plaintiff filed a Charge of Discrimination with the EEOC on February 8, 2019, alleging race and/or national origin discrimination, hostile work environment, retaliation, and failure to promote. He states that the EEOC sent a copy of his Charge to the City and Urpasad, and that Defendants were consequently aware of his complaint (Complaint ¶ 184). A Right to Sue Notice was issued on May 17, 2019 in connection with Plaintiff's EEOC complaint (*id*. ¶ 185). Plaintiff then filed a lawsuit pro se in the Southern District of New York on August 16, 2019 ("SDNY action") (*id*. ¶ 187; NYSCEF Doc. No. 11).

In his Second Amended Complaint in the SDNY action, Plaintiff asserted, *inter alia*, claims of race and national origin discrimination, hostile work environment, and retaliation under Title VII, the NYSHRL, and the NYCHRL. The defendants subsequently moved for dismissal of the SDNY action under Federal Rule 12(b)(6). The federal court granted the motion and dismissed Plaintiff's federal law claims with prejudice, finding that he failed to state a claim under Title VII for discrimination, hostile work environment, and retaliation. The federal court declined to exercise supplemental jurisdiction over Plaintiff's NYSHRL and NYCHRL claims and dismissed these claims without prejudice.

Plaintiff commenced the present action on December 23, 2021. His Verified Complaint alleges that Defendants engaged in unlawful discrimination, hostile work environment, and retaliation in violation of both the NYSHRL and NYCHRL in the first, second, and third causes of action, respectively, and that Urprasad aided and abetted violations of the NYCHRL in the fourth cause of action.

DISCUSSION

Plaintiff's Claims Against the NYPD

The Court grants the branch of the motion seeking dismissal of Plaintiff's claims against the NYPD. It is well established that the NYPD is not a suable entity and that, per New York City Charter § 396, "[a]ll actions and proceedings for the recovery of penalties for the violation of any law shall be brought in the name of the City of New York and not in that of any agency, except where otherwise provided by law" (*see Troy v City of New York*, 160 AD3d 410, 411 [1st Dept 2018]; *Matter of Carpenter v New York City Hous. Auth.*, 146 AD3d 674 [1st Dept 2017]).

Plaintiff's Claims Against Urprasad

Defendants argue that Plaintiff failed to properly serve Urprasad with the Summons in this action and that all claims against Urprasad should therefore be dismissed for lack of personal jurisdiction. Specifically, Defendants maintain that Plaintiff failed to "mail the summons to Urprasad at his actual place of business or last known residence in an envelope, stating 'personal and confidential,' within 20 days" of delivering the summons (NYSCEF Doc. No. 9, Defendants' Memorandum in Support at 27-28). Plaintiff does not address this argument in his opposition papers.

CPLR 308(2), in relevant part, provides for service upon a natural person by way of "delivering the summons within the state to a person of suitable age and discretion at the actual

place of business . . . of the person to be served and *by either mailing the summons to the person to be served at his or her last known residence or by mailing the summons by first class mail to the person to be served at his or her actual place of business . . . .*" (emphasis added). The CPLR further provides that "proof of service shall identify such person of suitable age and discretion and state the date, time and place of service . . . ." (CPLR 308[2]). "Strict compliance with all the technical service dictates of CPLR 308(2) is required in order to obtain jurisdiction" over a defendant (*Olsen v Haddad*, 187 AD2d 375, 376 [1st Dept 1992]; *see also Samuel v Brooklyn Hosp. Ctr.*, 88 A3d 979, 980 [2d Dept 2011] ["CPLR 308(2) requires strict compliance and the plaintiff has the burden of proving, by a preponderance of the credible evidence, that service was properly made"]).

The Court finds that Plaintiff failed to obtain personal jurisdiction over Urprasad. Although Plaintiff provides an affidavit of service indicating that substituted service was made upon Urprasad by delivering the summons and complaint to an officer at the 107th Precinct on December 27, 2021, it does not indicate whether Plaintiff mailed a copy to Urprasad at his last known residence or at his place of business (NYSCEF Doc. No. 4). Plaintiff provides no further documentation of whether he complied with CPLR 308(2) in his opposition papers. Accordingly, Plaintiff's claims against Urprasad are dismissed in their entirety.

Statute of Limitations

Defendants argue that Plaintiff's NYSHRL and NYCHRL claims arising out of alleged acts that occurred prior to August 16, 2016 – three years prior to the commencement of the SDNY action on August 16, 2019 – are time barred by the statute of limitations.[1] Defendants

[1] Defendants concede that, since this action was commenced within six months of the dismissal of the SDNY action, Plaintiff's claims in the present case relate back to those raised in the SDNY action and that the statute of limitations on Plaintiff's claims began to run three years prior to August 16, 2019.

argue that Plaintiff's allegations that he was assigned "undesirable midnight shifts" from January 2015 through April 2016 and suffered discrimination in mid-February 2015 are time barred (Complaint ¶¶ 74-81). Plaintiff argues in opposition that his claims arising out of these occurrences are not time barred due to the continuing violation doctrine.

NYSHRL

An action under the NYSHRL must be brought within three years of the occurrence of a discriminatory act or practice (CPLR 214[2]; *Center for Independence of the Disabled v Metropolitan Transp. Auth.*, 184 AD3d 197, 200 [1st Dept 2020]). The statute of limitations for NYSHRL claims for discrete acts of discrimination and retaliation begins to run on the day such actions occur (*Alameda v New York City Health & Hosps. Corp*, 2018 NY Slip Op 32936(U) [Sup Ct, NY County 2018], quoting *National R.R. Passenger Corp. v Morgan*, 536 US 101, 110 [2002]).

The continuing violation doctrine is an exception to the three-year statute of limitations on NYSHRL claims. "To bring a claim within the continuing violation exception, a plaintiff must at the very least allege that one act of discrimination in furtherance of the policy occurred within the limitations period" *Patterson v County of Oneida*, 375 F3d 206, 220 [2d Cir 2004]). The continuing violation doctrine allows a plaintiff to seek recovery for NYSHRL hostile work environment claims relating to occurrences outside of the three-year window "as long as the acts were part of the same hostile work environment and at least one occurred within the statute of limitations period" (*Hughes v United Parcel Serv., Inc.*, 4 Misc 3d 1023(A) at *15-16 [Sup Ct, NY County 2004], citing *Morgan*, 536 US at 117).

The Court grants the branch of Defendants' motion seeking dismissal of NYSHRL discrimination and retaliation claims based on acts alleged to have occurred prior to August 16,

2016 as outside the limitations period. These acts, namely the assignment of Plaintiff to midnight shifts, Urprasad's comments and actions towards Plaintiff in February 2015 (Complaint ¶¶ 74-81), and Plaintiff's alleged non-promotion in 2015 (*id*. ¶ 65) constitute discrete acts that triggered the running of the NYSHRL three-year statute of limitations on the day that each occurred (*see Morgan*, 536 US at 110).

The Court denies Defendants' motion to dismiss Plaintiff's NYSHRL hostile work environment claims to the extent that these claims are based on acts alleged to have occurred prior to August 16, 2016. In his Verified Complaint, Plaintiff alleges multiple acts before and after August 16, 2016 that are purported to have created a hostile work environment, namely the unfavorable patrol assignments that he claims targeted him beginning in 2015 (*Morgan*, 536 US at 117). Plaintiff sufficiently alleges a continuing violation of the NYSHRL with respect to his hostile work environment claims and therefore these claims are not barred by the statute of limitations.

NYCHRL

As with the NYSHRL, the statute of limitations for an action under the NYCHRL is three years (Administrative Code of City of NY § 8-502[d]; *Center for Independence of the Disabled*, 184 AD3d at 200). The continuing violation doctrine applies to NYCHRL claims and has a broader application than under federal or state law; consequently, "continuing acts of discrimination within the statutory period will toll the running of the statute of limitations until such time as the discrimination ends" (*Center for Independence of the Disabled*, 184 AD3d at 200-201). A plaintiff "must show proof that the time-barred allegations constituted a pattern or practice of ongoing discriminatory or retaliatory conduct or a continuing hostile work environment" (*Mira v Harder*, 177 AD3d 426 [1st Dept 2019]).

The Court declines to dismiss Plaintiff's NYCHRL discrimination and retaliation claims based on the statute of limitations with respect to certain actions alleged to have occurred prior to August 16, 2016. Under the more generous standard for finding a continuing violation under the NYCHRL, Plaintiff's assignment of midnight patrols from February 2015 through May 2016 and Urprasad's alleged mistreatment of Plaintiff constitute "discrete acts that were part of a discriminatory policy or practice that reached into the limitations period" (*Munjal v Emirates*, 2022 WL 204775 *8, 2022 US Dist LEXIS 12643 *19 [SD NY, Jan. 24, 2022, No. 21-CV-8401 (PAE)]). Plaintiff specifically alleges that all three practices recurred after August 16, 2016: he was repeatedly assigned to late night or otherwise unfavorable patrols in 2016 and 2017 and alleges incidents within the limitations period when Urprasad mistreated him (Complaint ¶¶ 66, 84-129). The Court further declines to dismiss Plaintiff's NYCHRL hostile work environment claims insofar as they are subject to the continuing violation doctrine.

Collateral Estoppel

Defendants argue that collateral estoppel bars Plaintiff's NYSHRL and NYCHRL hostile work environment claims in their entirety and his NYSHRL and NYCHRL discrimination and retaliation claims with respect to acts alleged to have occurred on or after April 14, 2018. The court in the SDNY action limited its review of Plaintiff's Title VII allegations of discrimination and retaliation to those that were timely under federal law, i.e., those alleged to have occurred no more than 300 days before Plaintiff's February 8, 2019 EEOC charge (NYSCEF Doc. No. 13, *Pease v City of New York*, 2021 US Dist LEXIS 120030, *22, 2021 WL 2651400, *7 [SD NY, June 28, 2021, No. 19-CV-7693 (KPF)]). The court further applied the continuing violation doctrine to Plaintiff's hostile work environment claims and therefore considered allegations prior to April 14, 2018 in that portion of its decision.

Collateral estoppel precludes a party from "relitigating in a subsequent action an issue clearly raised and decided against that party in a prior action" (*Ji Sun Jennifer Kim v Goldberg, Weprin, Finkel, Goldstein, LLP*, 120 AD3d 18, 23 [1st Dept 2014]; *see also Ryan v New York Tel. Co.*, 62 NY2d 494, 500 [1984]). Where, as here, "the judgment to be given preclusive effect is made in a federal forum the scope of that judgment, including the applicability of principles of res judicata and collateral estoppel, are governed by federal law" (*Carroll v McKinnell*, 19 Misc 3d 1106[A] [Sup Ct, NY County 2008] [Fried, J.], quoting *Jerome J. Steiker Co., Inc. v Eccelston Props., Ltd.*, 156 Misc 2d 308, 313 [Sup Ct, NY County 1992] [Tom, J.] [internal quotation marks omitted]). Collateral estoppel will apply under federal law when: "(1) the identical issue was raised in a previous proceeding; (2) the issue was actually litigated and decided in the previous proceeding; (3) the party had a full and fair opportunity to litigate the issue; and (4) the resolution of the issue was necessary to support a valid and final judgment on the merits" *Marvel Characters v Simon*, 310 F3d 280, 288-289 [2d Cir 2002] [internal citations and quotation marks omitted]). "The party seeking the benefit of collateral estoppel has the burden of demonstrating the identity of the issues" in the prior and subsequent actions, "whereas the party attempting to defeat its application has the burden of establishing the absence of a full and fair opportunity to litigate the issue in the prior action" (*Kaufman v Eli Lilly & Co.*, 65 NY2d 449, 456 [1985]).

The Court finds that the prior decision in the SDNY action estops Plaintiff from relitigating his NYSHRL claims of discrimination and retaliation based upon acts alleged to have occurred on or after April 14, 2018 and prior to the commencement of the SDNY action (Complaint ¶¶ 161-192), along with the entirety of his NYSHRL hostile work environment claim. The facts upon which Plaintiff bases his claims in the present action are identical to those

alleged in the SDNY action except to the extent he alleges incidents that occurred after that action was filed. As asserted in the present action, Plaintiff's NYSHRL claims raise the same issues as his previously litigated Title VII claims of discrimination, hostile work environment, and retaliation – namely, whether the facts alleged were sufficient to state a claim under the standard that applies to both Title VII and NYSHRL claims.[2] These issues were actually litigated and decided, and Plaintiff had the opportunity to fully and fairly litigate them, when the federal court decided Defendants' motion to dismiss. Finally, these issues were necessary for the determination of that. Plaintiff's NYSHRL claims of discrimination and harassment for events alleged after April 14, 2018 are accordingly dismissed, as is the entirety of his NYSHRL hostile work environment claim.

Collateral estoppel does not apply to Plaintiff's claims insofar as they are predicated on the 2021 incident in which he claims that he was deterred from applying to an open position in the 70th Precinct. This allegation was not included in his Second Amended Complaint in the SDNY action and the federal court accordingly did consider this incident in its decision.

The branch of Defendants' motion seeking to dismiss Plaintiff's NYCHRL claims based on collateral estoppel is denied. "Federal and City Human Rights Law discrimination issues are not necessarily identical for collateral estoppel purposes, because the purposes of the City Human Rights Law go beyond those of counterpart federal civil rights laws" (*Russell v New York Univ.*, 204 AD3d 577, 579 [1st Dept 2022]). Collateral estoppel will not preclude NYCHRL claims that "raise issues not identical to their federal and state counterparts" including "a lack of identity with federal and state counterparts of elements of claims, the scope of conduct

[2] The NYSHRL was amended in 2019 to liberalize its pleading standards to match the NYCHRL (*see* Executive Law § 300; L 2019, ch 160, § 6, eff Aug. 12, 2019). Because Plaintiff's claims accrued before the amendments took effect, the Court analyzes his NYSHRL claims under the prior, stricter standard followed by federal courts applying Title VII (*see Alshami v City Univ. of N.Y.*, 203 AD3d 592 fn 1 [1st Dept 2022]).

proscribed, methods and standards of proof, as well as the distinct demand made by the NYCHRL – and applicable across all issues – that evidence be assessed with maximum sensitivity to the impact that workplace realities can have on employees" (*Simmons-Grant v Quinn Emanuel Urquhart & Sullivan, LLP*, 116 AD3d 134, 140 [1st Dept 2014]).

Although Plaintiff asserts facts identical to those in the SDNY action as the basis for his NYCHRL claims, the Court finds that the issues raised by these claims are not identical to those determined in the SDNY action because of the more liberal pleading standards that apply to NYCHRL discrimination claims than to Title VII (*Russell*, 204 AD3d at 579; *see also Pustilnik v Battery Park City Auth.*, 71 Misc 3d 1058, 1068 [Sup Ct, NY County 2021] [identity of issues not found where "two sets of claims are subject to different pleading requirements"]).

NYSHRL and NYCHRL Causes of Action

Defendants move, pursuant to CPLR 3211(a)(7), to dismiss Plaintiff's remaining NYSHRL and NYCHRL claims for failure to state a cause of action. "In considering a motion to dismiss for failure to state a cause of action, the court is required to accept as true the facts as alleged in the complaint, afford the plaintiff the benefit of every favorable inference and strive to determine only whether the facts alleged fit within any cognizable legal theory" (*Vig v New York Hairspray Co., L.P.*, 67 AD3d 140, 144-145 [1st Dept 2009]).

Having dismissed Plaintiff's NYSHRL discrimination and retaliation stemming from acts occurring prior to August 16, 2016 as time-barred; Plaintiff's NYSHRL discrimination and retaliation claims stemming from acts occurring after April 14, 2018 and before the date of the SDNY decision and all of Plaintiff's NYSHRL hostile work environment claims on the basis of collateral estoppel; all claims against Urprasad due to lack of service; and all claims against the NYPD as it is not a suable entity, the Court now turns to Plaintiff's remaining claims, i.e.

Plaintiff's NYSHRL discrimination and retaliation claims based on acts occurring between August 16, 2016 and April 14, 2018, and after August 16, 2019, as well as the entirety of Plaintiff's NYCHRL discrimination, retaliation, and hostile work environment claims.

First Cause of Action: Discrimination

To state a claim for discrimination under the NYSHRL and NYCHRL, sufficient facts must be pled to support a prima facie case by showing that the plaintiff (1) is a member of a protected class, (2) was qualified to hold the position, (3) suffered an adverse employment consequence (NYSHRL) or was treated differently than other employees (NYCHRL), and (4) the employer's adverse action or differential treatment occurred in circumstances giving rise to an inference of discrimination (*Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 305 [2004]; *Harrington v City of New York*, 157 AD3d 582, 584 [1st Dept 2018]). It is undisputed that Plaintiff is a member of a protected class. Plaintiff further demonstrates that he is qualified for his position, considering his length of service in the NYPD, prior career experience, and generally positive performance reviews prior to 2015.

Plaintiff alleges facts demonstrating adverse employment action for the purposes of the NYSHRL. "An adverse employment action requires a materially adverse change in the terms and conditions of employment" and "must be more disruptive than a mere inconvenience or an alteration of job responsibilities" (*Forrest*, 3 NY3d at 306, quoting *Galabya v New York City Bd. of Educ.*, 202 F3d 636, 640 [2d Cir 2000] [internal quotation marks omitted]). Denial of a promotion can constitute an adverse employment action under the NYSHRL (*Santiago-Mendez v City of New York*, 136 AD3d 428, 429 [1st Dept 2016]). The facts alleged in the Verified Complaint regarding Plaintiff's 2017 non-promotion to Radio Motor Patrol Coordinator are therefore sufficient to show adverse employment action under the NYSHRL (Complaint ¶ 66).

The Court also finds that the facts stated in the Verified Complaint are sufficient to support an inference of discrimination under the NYSHRL. An inference of discrimination can be drawn where a plaintiff can show that they were treated less favorably than similarly situated individuals not in their protected class, including where "[a] position was filled or held open for a person not in the same protected class" (*Sogg v American Airlines*, 193 AD2d 153, 156 [1st Dept 1993]; *see also Melman v Montefiore Med. Ctr.*, 98 AD3d 107, 114 fn 2 [1st Dept 2012]). A plaintiff must plead concrete factual allegations to support an inference of discrimination in the context of an adverse employment action (*see Askin v Department of Educ. of the City of N.Y.*, 110 AD3d 621, 622 [1st Dept 2013]). Here, Plaintiff's Verified Complaint asserts that a non-African American individual received the 2017 promotion to Radio Motor Patrol Coordinator. Based on the concrete facts pled with respect to his 2017 non-promotion, Plaintiff has demonstrated facts sufficient to make a prima facie case of discrimination and the Court accordingly declines to dismiss his NYSHRL discrimination claim with respect to this allegation (*Sogg*, 193 AD2d at 156).

In accordance with the statute's "uniquely broad and remedial purposes," the pleading standard for NYCHRL discrimination claims is more permissive than that of the pre-2019 NYSHRL (*Williams v New York City Hous. Auth.*, 61 AD3d 62, 66 [1st Dept 2009]). "To state a claim for discrimination under the NYCHRL, a plaintiff must only show differential treatment of any degree based on a discriminatory motive" (*Gorokhovsky v New York City Hous. Auth.*, 552 Fed Appx 100, 102 [2d Cir 2014]; *see also Harrington*, 157 AD3d at 584). The NYCHRL must be construed "broadly in favor of discrimination plaintiffs, to the extent that such a construction is reasonably possible" to include differential treatment of a much broader degree than required under the NYSHRL (*Albunio v City of New York*, 16 NY3d 472, 477-478 [1st Dept 2011])

The Court finds that Plaintiff has stated a claim for discrimination under the NYCHRL with respect to his 2017 non-promotion (*see Williams*, 61 AD3d at 66 ["interpretations of state or federal provisions worded similarly to City HRL provisions may be used as aids in interpretation only to the extent that the counterpart provisions are viewed as a floor below which the City's Human Rights law cannot fall"] [internal quotation marks omitted]). Plaintiff further states a claim for discrimination in violation of the NYCHRL with respect to the unfavorable work assignments he received in 2015-2016 and in 2017, discipline for minor infractions not faced by non-African American officers, and his reassignment to the 70th Precinct. Plaintiff pleads facts showing that he was assigned unfavorable tasks such as solo foot patrol, "cabaret duty," and guarding hospitalized prisoners, assignments that he alleges were known to be below his seniority and that were not as readily given to non-African American officers (Complaint ¶¶ 74, 79, 81, 84-86, 106-108, 110-112, 131-140). Taken together and assumed to be true as alleged by Plaintiff, these facts show differential treatment and raise an inference of discrimination.

Plaintiff further states a claim for discrimination under the NYCHRL with respect to his alleged discipline and reprimands he faced for minor infractions, namely the report misclassification and radio incidents (*id*. ¶¶ 103-108, 132-135). He alleges that he was subject to disparate treatment because he asserts that he faced greater discipline than non-African American officers for similar or worse in fractions. The facts asserted in the Verified Complaint, assumed to be true on a motion to dismiss, further support an inference of discrimination considering the apparent lack of discipline faced by non-African American officers from the 102nd Precinct involved in the alleged misconduct of the "Jamaica Auto Unit" (*id*. ¶¶ 146-150). Plaintiff's allegation that he was transferred to the 70th Precinct also states a claim for NYCHRL discrimination. The transfer was an unfavorable change in his work environment that led him to

be treated less well than officers not of his protected class (*id*. 174-176; *cf. Golston-Green v City of New York*, 184 AD3d 24, 38-39 [2d Dept 2020] [finding that geographical reassignment of plaintiff was actionable under NYCHRL]).

The Court accordingly denies the branch of Defendants' motion to dismiss Plaintiff's first cause of action for discrimination in violation of the NYSHRL and NYCHRL.

Second Cause of Action: Hostile Work Environment (NYCHRL)

The Court now considers whether Plaintiff has stated a claim in his second cause of action for hostile work environment in violation of the NYCHRL.[3] A NYCHRL plaintiff must show that they were "treated less well than similarly situated persons who were not members" of the plaintiff's protected class (*Russell*, 204 AD3d at 593; *see also Thomas v Mintz*, 182 AD3d 490 [1st Dept 2020]). Furthermore, a plaintiff must plead discriminatory animus to state a hostile work environment claim (*see Llanos v City of New York*, 129 AD3d 620 [1st Dept 2015] ["plaintiff's failure to adequately plead discriminatory animus is fatal to her claim of hostile work environment"]). A plaintiff fails to state a claim for hostile work environment under the NYCHRL where they do not demonstrate "that the conduct complained of consists of nothing more than what a reasonable victim of discrimination would consider 'petty slights and trivial inconveniences'" (*Williams*, 61 AD3d at 80).

Here, Plaintiff fails to state a claim under the NYCHRL for hostile work environment. Plaintiff's assertions about his direct interactions with Urprasad are bereft of any factual allegations that would show harassing conduct beyond "petty slights and trivial inconveniences" such as being ignored or yelled at (*id*.). With respect to Plaintiff's claims of differential treatment in the form of undesirable work assignments and excessive discipline for minor

[3] Having dismissed Plaintiff's NYSHRL hostile work environment claim in its entirety as collaterally estopped, the Court does not consider whether Plaintiff has stated a cause of action for this claim.

infractions, the Verified Complaint does not allege any facts suggesting that his protected status was a motivating factor for Defendants' alleged conduct (*Chin v New York City Hous. Auth.*, 106 AD3d 443, 445 [1st Dept 2013]). Although these actions amount to more than petty slights and trivial inconveniences, Plaintiff fails to allege discriminatory animus sufficient to support a hostile work environment claim. Accordingly, the Court grants this branch of Defendants' motion in its entirety and dismisses Plaintiff's NYCHRL hostile work environment claim.

Third Cause of Action: Retaliation

Plaintiff alleges that Defendants retaliated against him for engaging in protected activity in violation of both the NYSHRL and the NYCHRL. A plaintiff makes a prima facie case for retaliation under the NYSHRL and NYCHRL by showing that (1) the plaintiff engaged in a protected activity, (2) the employer was aware of the protected activity, (3) the plaintiff suffered an adverse employment action (NYSHRL) or the employer took an action that disadvantaged the plaintiff (NYCHRL), and (4) there was a causal connection between the protected activity and the adverse or disadvantageous action (*Harrington v City of New York*, 157 AD3d 582, 585 [1st Dept 2018]; *Forrest*, 3 NY3d at 312-313). Complaints to an employer about disparate treatment based on a protected characteristic is protected activity (*Forrest*, 308 AD2d at 558). However, complaints to supervisors that do not mention a plaintiff's protected characteristic are not a protected activity (*see id*. ["The various complaints [plaintiff] made through her union about her supervisors and their conduct toward her never mentioned the issue of race or racial harassment"]).

Plaintiff's NYSHRL retaliation claims are dismissed. Although Plaintiff engaged in protected activity when he complained to his superiors about Urprasad's alleged disparate treatment of him based on his race in November 2017, his Verified Complaint does not allege

any facts showing that Urprasad or other superiors were apprised of these conversations. Plaintiff therefore fails to plead facts showing that his employer was aware of his protected activity.

The Court also grants the branch of Defendants' motion seeking dismissal of Plaintiff's NYCHRL retaliation claims. Plaintiff engaged in protected activity by filing his 2019 EEOC complaint and alleges that Defendants received copies and were therefore aware of this complaint; however, he fails to show a causal connection between the actions that allegedly disadvantaged him and his protected activity.

Plaintiff further alleges that the disciplinary actions taken against him following the IAB investigations and departmental trial disadvantaged him and were done in retaliation for his EEOC complaint. A causal connection between a plaintiff's protected activity and an employer's disadvantageous action can by shown by the temporal proximity these actions or other facts (*Harrington*, 157 AD3d at 586; *see also Noho Star Inc. v New York State Div. of Human Rights*, 72 AD3d 448, 449 [1st Dept 2010]). Here, Plaintiff was subjected to the second IAB integrity test on May 3, 2018 and served with Charges and Specifications on January 15, 2019, before he filed his EEOC complaint on February 8, 2019. Plaintiff therefore fails to demonstrate temporal proximity between the filing of his complaint and the IAB tests. He further fails to plead any facts suggesting that the outcome of the proceedings initiated by the IAB tests – the July 2019 Departmental trial and the February 2020 approval of dismissal – were causally connected to Plaintiff's EEOC complaint. The alleged penalties resulted from proceedings that commenced prior to Plaintiff's protected activity and as such Plaintiff cannot point to them to show temporal proximity between them and his protected activity. He further fails to allege any facts in his Verified Complaint to support a claim that Urprasad or others in

his chain of command influenced the outcome of the departmental trial or the Commissioner's approval of dismissal.

Accordingly, it is hereby:

ORDERED that Defendants' motion is granted in part and denied in part; and it is further

ORDERED that the Verified Complaint is dismissed in its entirety as against Defendants New York City Police Department and Deodat Urprasad, and the Clerk is directed to enter judgment accordingly in favor of said Defendants; and it is further

ORDERED that the action is severed and continued against the remaining Defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the Court bear the amended caption; and it is further

ORDERED that Defendants' motion to dismiss the first cause of action as to NYSHRL claims occurring on or between August 16, 2016 and April 13, 2018, and after August 16, 2019, is denied; and it is further

ORDERED that the first cause of action as to NYSHRL claims based on events alleged to have occurred before August 16, 2016, and between April 13, 2018 and August 16, 2019 is dismissed with prejudice; and it is further

ORDERED that Defendants' motion to dismiss the first cause of action as to NYCHRL claims is denied; and it is further

ORDERED that the second, third, and fourth causes of action of the Verified Complaint are dismissed in their entirety with prejudice; and it is further

ORDERED that Defendants are directed to serve an Answer to the Verified Complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a Preliminary Conference via Microsoft Teams, on October 11, 2022, at 9:30 AM.

8/12/2022
DATE

LORI SATTLER, 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