

Karantzoulis v NYU Langone Med. Ctr.

2023 NY Slip Op 30477(U)

February 14, 2023

Supreme Court, New York County

Docket Number: Index No. 160154/2016

Judge: Shlomo S. Hagler

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

PRESENT: HON. SHLOMO S. HAGLER PART 17

Justice

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STELLA KARANTZOULIS	INDEX NO. <u>160154/2016</u>
Plaintiff,	MOTION DATE <u>N/A</u>
- v -	MOTION SEQ. NO. <u>001</u>

NYU LANGONE MEDICAL CENTER,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 80, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 132, 133, 134, 135, 136, 137, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 161

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

In motion sequence 001, defendant NYU Langone Medical Center (NYULMC) moves, pursuant to CPLR 3212, for an order granting summary judgment and dismissing plaintiff Stella Karantzoulis' (plaintiff) complaint which alleges gender and pregnancy discrimination.

FACTUAL ALLEGATIONS

Plaintiff's affidavit

Plaintiff is a board-certified clinical neuropsychologist who specializes in the diagnosis and treatment planning of patients with neurological disorders. In September of 2007, plaintiff commenced working at NYULMC in the Comprehensive Epilepsy Center (CEC) in the Department of Neurology (Department), on a two-year clinical post-doctoral fellowship supervised by Dr. William Barr (Dr. Barr), Chief of Neuropsychology at the CEC. In August of 2009, plaintiff received a post-doctoral grant for one year to continue conducting research. In

order to supplement her income while performing research, Dr. Barr hired plaintiff to serve as a clinical neuropsychologist to evaluate patients at the Pearl I. Barlow Center for Memory Evaluation and Treatment (the Center).

In August 2010, plaintiff met with Dr. James Galvin, (Dr. Galvin), a neurologist serving as the Director of the Center, who offered plaintiff a position to become a member of the Center. Plaintiff accepted and was given a salary of \$100,000, 70% of which was for clinical services and 30% for research activities. The research portion of her duties was based on a grant award she received for 2010 through 2011, which paid \$30,000. Plaintiff collaborated with Dr. Galvin, who brought grants with him from his prior position, and other faculty, on grants to satisfy her obligations for research. Dr. Galvin's referrals became her main source of referrals. Prior to Dr. Galvin's work at the Center, plaintiff had a referral network based on her fellowship, and patients at the Center under Dr. Barr's supervision. Along with Dr. Galvin, plaintiff reported to Dr. Karyn Marsh (Dr. Marsh), who oversaw all the administrative aspects of the Center.

At the Center, plaintiff spoke at outside conferences, received positive feedback from colleagues and the community, and was featured in brochures. Plaintiff states that at the Center she provided patient evaluations and recommendations, and that her interpretations and recommendations were detailed in comprehensive neuropsychological reports. Her findings were made after a clinical interview with the patient, testing was completed, the scoring was finished, and the background clinical materials were reviewed. Reports could take several weeks to prepare, which was customary for the practice. Plaintiff was never provided with a deadline.

During plaintiff's first year working under Dr. Galvin, they had discussions regarding plaintiff's compensation which they believed was low. She maintains that Dr. Galvin repeatedly promised to remedy it. In 2011, Dr. Galvin again acknowledged that plaintiff was being

underpaid, telling her that in lieu of a salary increase, he would promote her to Associate Director of the Center. Although plaintiff hoped that her salary would be similar to the clinical neuropsychologists working for Dr. Barr, she accepted the position. Dr. Barr told plaintiff that her salary was lower than Dr. William MacAllister (Dr. MacAllister), a clinical neuropsychologist in the Department of Neurology.

In early 2012, plaintiff became pregnant. In the month before her maternity leave, she noticed a slow-down in referrals from Dr. Galvin. Plaintiff gave birth on October 3, 2012, and began a maternity leave for twelve weeks. Plaintiff had several conversations with colleagues and was told this was a “standard” maternity leave for faculty members. Plaintiff states she believed it would be beneficial to the Center and to patients to have one streamlined network of doctors managing their care by having patients wait until she returned. Patients who could reasonably expect a wait to see a neuropsychologist for a non-life-threatening referral could wait until she returned as they were non-emergencies.

Although plaintiff returned to work in January 2013, she noticed that referrals from Dr. Galvin were lacking. Plaintiff spoke with Jamika Pannell (Pannell) the front desk manager of the Center, who reminded Dr. Galvin to send her referrals. When plaintiff returned, she spoke with Dr. Galvin who allegedly said “Stella, you’ve been out of sight, out of mind” and that “you’ve been gone for so long, I forgot you were here.” When plaintiff told Dr. Marsh about this conversation, Dr. Marsh stated “Well, Stella, you were out for so long.” Plaintiff states that she reminded Dr. Marsh that she had taken the standard twelve-week maternity leave. Plaintiff states that Dr. Marsh referenced her leave as being overly long on many occasions thereafter.

When she returned, plaintiff learned that Dr. Galvin was having students complete neuropsychological testing under his supervision and billing for their time so she was not

provided with those referrals. Plaintiff states that despite Dr. Galvin's referrals presented at a lower rate than prior to plaintiff's maternity leave, Dr. Galvin stated, "If I'm not anxious about your schedule, why are you?" Plaintiff reported this to Dr. Marsh and Dr. Thomas Wisniewski (Dr. Wisniewski), a neurologist in the Department.

Plaintiff states that upon returning from maternity leave in July 2013, Dr. Galvin presented her with a Profit and Loss statement which indicated that she had a deficit and that defendant was deducting expenses that she had no control over, such as rent and other office expenses from the revenue she brought in. Plaintiff could not understand why she was receiving the Profit and Loss statement or the reason for the deficit, as she was an employee at NYU, contractually obligated to see a certain number of patients.

After receiving the Profit and Loss statement, plaintiff spoke to Dr. Marsh who did not understand the calculations on the statement, told her that the deficit was due to her maternity leave, that it could not be eliminated, and that she was not being penalized for the deficit, but had to lower it before discussions could take place regarding an increase in compensation.

Plaintiff and Dr. Marsh spoke often about the deficit and plaintiff expressed concern that she was being discriminated against because of her maternity leave. Plaintiff maintains that because she was not producing revenue during her leave, the expenses defendant decided to attribute to her during this same period created a deficit. Plaintiff had several meetings with members of the finance department to discuss the Profit and Loss statement, but no answers were provided.

In 2014, a new Center on Brain Aging was created within the Department of Neurology. Dr. Wisniewski was named as head, while plaintiff would remain reporting to Dr. Galvin at the Center. Dr. Steven Galetta (Dr. Galetta) was the head of the Department of Neurology. Plaintiff had a meeting with Dr. Galetta during the summer of 2014 in which she stated that she believed

she was being treated differently since her return from maternity leave, specifically regarding Dr. Galvin's referrals and a deficit being tied to her leave. Plaintiff maintains that Dr. Galetta was disturbed to hear this. Plaintiff was to have a follow-up meeting with Patricia Gaeta (Gaeta), an administrator in the Neurology Department, and Dr. Katherine Henry (Henry), a senior neurologist, who was plaintiff's mentor.

Plaintiff had a follow-up meeting with Gaeta and presented her with a 2010 salary survey conducted by a publication, confirming the ranges of salaries for clinical neuropsychologists in New York City. She also told Gaeta that Dr. MacAllister, a male doctor, was earning a higher salary. She maintains that although Gaeta and Henry agreed that a further discussion about a salary increase should take place, no such discussion occurred.

Plaintiff continued to complain about the Profit and Loss deficit to Dr. Marsh, explaining that she was willing to see more patients than discussed in her contract, but that she was being punished for taking maternity leave. Plaintiff also wanted to be compensated for all of her work as she was supervising students, working on clinical trials, publishing and making presentations.

Plaintiff maintains that in September 2014, she learned she was pregnant with her second child. Plaintiff was required to take an early maternity leave in April 2015 due to illness. While on plaintiff's maternity leave, Dr. Galvin left NYU. In late 2015, plaintiff discussed with Dr. Marsh the gap left by Dr. Galvin's grants. She expressed ideas to Dr. Marsh about the structure of work at the Center. Although Dr. Galvin left, plaintiff was able to satisfy all her research obligations.

Plaintiff continued to speak with Dr. Marsh regarding the deficit due to her maternity leave. Plaintiff maintains that Dr. Marsh was dismissive, and told plaintiff that she was not being penalized and to work on reducing the deficit. On December 18, 2015, plaintiff sent an

email to Dr. Wisniewski, copying Dr. Marsh and Gaeta, which questioned if her deficit was in part due to her maternity leave. After not receiving a response, plaintiff contacted Employee Relations and spoke to Derek Forte (Forte). On January 7, 2016, plaintiff received an email response from Dr. Marsh which suggested setting up a meeting and included plaintiff's recent Profit & Loss statement that reflected the deficit because of the second maternity leave. Plaintiff states that in early 2016 after she spoke to Employee Relations, Dr. Marsh lost patience with her complaints about pregnancy discrimination and began to micro-manage her work.

On March 18, 2016, Dr. Marsh imposed a 7-day turn-around time for her reports. Plaintiff maintains that Dr. Marsh was aware that providing reports in seven days after seeing a patient was not feasible due to the amount of patients and complexity. Plaintiff maintains that although she responded to Dr. Marsh's deadline by email, she believed as if the deadline was established due to her complaints about the deficit and after she alleged pregnancy discrimination.

On March 28, 2016, plaintiff, Dr. Marsh, and Dr. Wisniewski met at which time plaintiff asked why she was being punished for taking maternity leave and urged that the deficit be removed. Dr. Wisniewski did not deny that the deficit was connected to plaintiff's leave and stated that she was charged against the time that she was off, apologized, and stated that the department mishandled the pregnancy leave, but that there was nothing which could be done. Plaintiff continued to ask that the deficit be removed alleging that it was discriminatory. She was in contact with the finance team, including Marie Anne Maignan (Maignan), who told plaintiff that if the proper persons were aware of the deficit, that it could indeed be removed.

On May 6, 2016, plaintiff met with Maignan who suggested that plaintiff send an email stating her concerns related to her clinical practice. Plaintiff sent an email to Maignan, Dr.

Marsh, and Dr. Wisniewski dated May 6, 2016, in which she expressed that she was being penalized for having taken medical leave related to the birth of her children. On May 16, 2016, Dr. Marsh responded and, with regard to the deficit, wrote that plaintiff was not being penalized because of the deficit. Plaintiff responded to Marsh's email by stating that it was "unfortunate to hear this information and I will act accordingly."

Plaintiff was terminated by Dr. Wisniewski on July 29, 2016. Dr. Wisniewski stated that the patients loved plaintiff and everyone enjoyed working with her, but that they could not afford to keep her. Plaintiff maintains that Dr. Wisniewski presented plaintiff with a termination letter signed by him and Dr. Galetta dated July 25, 2016. Plaintiff maintains that at the same time, NYU was taking steps to hire a neuropsychologist to replace her named Dr. Julia Rao, who was hired at a starting salary in the amount of what plaintiff was earning at the time of her termination.

Dr. Galetta's affidavit

Dr. Galetta is the Phillip K. Moskowitz, MD Professor, and Chair of the Department of Neurology of the NYU Grossman School of Medicine. The clinicians in the Center reported to him. Dr. Galetta states that in 2016, Dr. Wisniewski was the Director of the Center for Cognitive Neurology and Director of the Center, as well as a professor in the Department of Neurology of the NYU School of Medicine (NYUSOM), and that Dr. Marsh was the Administrative Director of the ADC and a Research Assistant Professor.

Dr. Galetta states that Dr. Wisniewski and Dr. Marsh were plaintiff's immediate supervisors at the time of her termination, and that as Chair of Neurology, he was the final decision-maker regarding the termination of plaintiff. In 2016, Dr. Wisniewski and Dr. Marsh contacted Dr. Galetta to discuss patient care issues regarding plaintiff. Dr. Galetta maintains that

during these telephone conversations, he was advised that plaintiff was not completing reports in a timely manner. Dr. Galetta states that lateness in the submission of neuropsychologist reports impacts patient care. Dr. Galetta was also advised that plaintiff was not showing up for work, resulting in cancellations.

Dr. Wisniewski and Dr. Marsh believed that the termination of plaintiff was warranted, and based upon the discussion, Dr. Galetta agreed that it was necessary. Dr. Galetta states that during his conversation with Dr. Wisniewski and Dr. Marsh, the topic of money was not discussed, nor was there a discussion of plaintiff having a deficit regarding a Profit and Loss statement. Dr. Galetta was not aware that plaintiff complained about discrimination in her compensation, or expressed concern regarding deficits that appeared on her Profit and Loss statement.

Dr. Wisniewski's affidavit

Dr. Wisniewski is a professor of New York University's Alzheimer's Disease Center, Department of Neurology; Professor, Department of Pathology; Professor, Department of Psychiatry; Director of the Alzheimer's Disease Center and Director of the Center. Plaintiff directly reported to him for clinical issues and reported to Dr. Marsh for administrative issues.

Dr. Wisniewski states that while plaintiff was employed in the Center, she performed clinical duties in NYUSOM's Faculty Group Practice as a neuropsychologist. Plaintiff administered neuropsychological tests to patients in the Center. He states that it was important that the neurologist diagnosing and treating the patients have information to make a diagnosis which was contained in written reports prepared by the neuropsychologist after completing testing. The neurologists who referred their patients to plaintiff for testing could not provide a

complete and accurate diagnosis of their patients without having the results of the tests that plaintiff administered.

Dr. Wisniewski states that plaintiff was generally late in submitting reports following patient testing, and that plaintiff's lateness had a negative impact on patient care.

Dr. Wisniewski states that when he was Director of the Center, he was aware of delays in plaintiff's reports. Wisniewski states that in a phone call with Dr. Galetta, they discussed plaintiff's failures to timely submit reports and her failures to come to work which led to the cancellation of patient's tests. As a result, the decision to terminate plaintiff's employment was approved by Dr. Galetta.

Andrew Rubin's affidavit

Andrew Rubin (Rubin) is the Senior Vice President for Medical Center Clinical Affairs and Affiliates for NYUSOM and is responsible for overseeing a Faculty Group Practice, comprised of over 900 physicians and other clinicians employed by NYUSOM. As part of the accounting procedures for clinicians in the Faculty Practice Group, Profit and Loss statements were maintained. The Profit and Loss Statements were prepared for clinicians in the Center, in which plaintiff worked beginning in June 2013.

Plaintiff became a member of the Faculty Group Practice pursuant to an academic appointment letter dated July 29, 2010, and remained a member of the Faculty Group Practice until she left in 2016. Rubin states that plaintiff is alleging a deficit on her Profit and Loss statement, and that this deficit, in part, was attributable to her two maternity leaves. Rubin states that the deficit is the historical summary of plaintiff's profit and loss from the beginning of her participation in the Faculty Group Practice, that it is shown on the bottom of the Profit and Loss

statement as the "Fund Balance to Date," and that the "Fund Balance to Date" is not considered when determining a clinicians' productivity, performance, compensation, or termination.

Rubin reviewed correspondence in which plaintiff requested that the deficit be eliminated. He states that a member of his department properly advised that this was not possible, as eliminating the deficit would have violated accounting principles. Rubin maintains that plaintiff was not treated differently than other similarly situated clinicians.

Rubin states that plaintiff was advised that she would not be penalized due to the deficit as deficits arising from leaves of absence were not considered when evaluating productivity, compensation, or termination. Rubin states that because of the nature of its structure and funding, the Center was not profitable while plaintiff worked there.

Rubin states that to reach plaintiff's monthly goal, expenses attributable to her practice were considered including management staff, clerical staff, operating expenses, and rent. The amount of revenue plaintiff generated from performing clinical services minus the expenses equaled the monthly amount of plaintiff's net operation profit and loss.

Rubin states that the nationally accepted American Association of Medical Centers benchmarks were utilized in setting compensation for clinicians. As a member of the Faculty Group Practice and an Assistant Professor, plaintiff's salary was within the target range of 75% of the benchmark set forth by the American Association of Medical Centers. This salary range is the standard for NYUSOM clinicians except in exceptional circumstances.

Rubin states that although plaintiff is alleging that she was paid in a discriminatory manner when compared with Dr. McAllister, a male neuropsychologist, Dr. McAlister was not a proper comparator with regard to plaintiff, and that there was no discrimination with regard to her compensation. Dr. McAlister came to the medical center as part of a highly profitable

private practice group which would not affiliate with NYUSOM if their compensation was not commensurate with what they earned in private practice.

Rubin states that Dr. McAlister was paid utilizing a "Relative Value Unit" compensation system which based compensation on productivity of a clinician, while plaintiff worked under a cash Profit and Loss compensation system, in which plaintiff received fixed compensation throughout the year that did not vary based on her productivity.

Dr. Marsh's affidavit

Dr. Marsh is the Administrative Director of the Alzheimer's Disease Research Center, Managing Associate Director of the Center for Cognitive Neurology f/k/a the Center of Excellence on Alzheimer's Disease, and Co-Director of the Center for Excellence on Alzheimer's Disease and Division Administrator for the Division of Cognitive Neurology, within the Department of Neurology of the NYUSOM. She is also a Research Assistant Professor in the Department of Neurology.

In 2009, Dr. Marsh was one of the primary individuals who hired plaintiff for a position as a neuropsychologist in the Center. Around the same time of plaintiff's hiring, Dr. Galvin was hired as the Director of the Center. On July 29, 2010, plaintiff was appointed to a non-tenure eligible position as a clinical Assistant Professor in NYUSOM's Department of Neurology and employed in a Faculty Group Practice as a member of the Center. Plaintiff's initial salary was \$100,000, with \$70,000 of her compensation to be earned by clinical duties performed, and \$30,000 to be earned by her research duties.

Dr. Galvin had brought with him a number of grants, which provided a large portion of the funding for plaintiff's compensation. Dr. Galvin's referrals ended before plaintiff was pregnant with her first child. Plaintiff was on maternity leave from September 28, 2012 through

January 2, 2013. While plaintiff was on maternity leave, and when she returned, Dr. Galvin was using students to complete testing under his supervision, for which he billed.

In 2013, Profit and Loss statements were distributed to clinicians in the Center and were distributed for each fiscal year thereafter during plaintiff's employment. As of 2013, the "Fund Balance to Date" on plaintiff's Profit and Loss statement showed a negative balance. Plaintiff also had negative balances on her "Operating Profit and Loss" and the "Net Operating Profit and Loss" sections on most of her statements.

In 2014, plaintiff negotiated a change in her agreement with NYUSOM. Under the new agreement, plaintiff's compensation increased to \$105,181, with 60% of plaintiff's efforts and compensation devoted to clinical work at the Center, and 40% of her effort and compensation devoted to research.

Plaintiff took her second maternity leave from April 2015 through July 27, 2015. While plaintiff was on her leave, Dr. Galvin left NYUSOM, taking his research grants with him. Dr. Marsh became directly responsible for administration of the day-to-day operations of the Center, and Dr. Wisniewski became responsible for clinical issues which arose.

In the last three years of plaintiff's employment with NYUSOM, plaintiff did not apply for or receive any grants. Plaintiff met her research expectations for the academic year 2014 through 2015, as reflected in her 2015 Research Faculty Annual Review letter signed by Dr. Galetta. For the Academic Year 2015-2016, it was expected that 100% of plaintiff's total research salary would be supported by extramural funding or 90% of external funding. Dr. Marsh states that when Dr. Galvin left, because plaintiff had not brought in any grants, the research component of plaintiff's funds had to be covered by discretionary accounts, other grants, and clinical trials.

Dr. Marsh maintains that on several occasions, she discussed with plaintiff how she could cover the research portion of her salary and discussed how plaintiff could increase her revenue. On July 31, 2015, Dr. Marsh raised the issue of plaintiff's instituting a cognitive remediation program. Also discussed was having plaintiff obtain assistance from students, which would increase her testing and billing.

Dr. Marsh maintains that from July 2015 through her notice of termination in 2016, plaintiff was out of the office for large amounts of time. Dr. Marsh states that plaintiff delayed submitting her neuropsychological reports for patients. Until November of 2014, plaintiff blamed the Center's staff for late submissions. In 2014, Dr. Marsh was alerted that it was sometimes taking plaintiff months to submit her reports.

In March 2016, Dr. Marsh and plaintiff emailed regarding the lateness of her reports and plaintiff indicated steps that she would take and her understanding that a maximum of two weeks was a good turnaround time. Dr. Marsh responded that the Faculty Practice Group office expected a seven-day turnaround. Plaintiff continued to submit reports later than seven days. Dr. Wisniewski and Dr. Marsh discussed the lateness of plaintiff's reports, her failure to appear at work, and plaintiff's failure to meet her monthly goals having nothing to do with the deficit on her Profit and Loss statement. Following the conversation, Dr. Marsh contacted Kirk Lawson (Lawson), Associate Dean for Academic Planning within the Office of Faculty and Academic Affairs at NYUSOM for guidance. In May 2016, plaintiff sought a salary raise and requested to meet with the finance department. A meeting was held with plaintiff on or about May 6, 2016, regarding, among other things, the issue of the timing of her reports.

Plaintiff continued to insist that the deficit from her maternity leaves was preventing her from receiving a raise and requested that the deficit be eliminated. Pursuant to a meeting held

with plaintiff and Marie-Anne Boyard Maignan (Boyard Maignan), Manager, Professional Billing Operations in NYUSOM's Department of Neurology, Transplant Institute and Surgery, plaintiff submitted an email dated May 16, 2016, which stated that she was being penalized for taking maternity leaves.

By email dated May 16, 2016, Dr. Marsh responded in part, that it was not possible to "write-off" the deficit, that a significant portion of the deficit was incurred while plaintiff was on maternity leave, and that she has not been penalized in any manner because this deficit appears on Profit and Loss statements. In addition, in an email dated May 16, 2016, Dr. Marsh set forth why she and Dr. Wisniewski did not consider a salary raise for plaintiff, and discussed plaintiff's lack of grant funding.

By an email dated May 16, 2016, plaintiff responded, "[i]t is unfortunate to hear this information and I will act accordingly." Dr. Marsh states that the fact that plaintiff took maternity leaves or that she had raised the issue of the deficit had nothing to do with the refusal to grant her a raise.

On or about June 8, 2016, Dr. Marsh's staff emailed plaintiff to ask about scheduling to which plaintiff failed to respond. Plaintiff's cancelation of patients and late submissions of her reports continued. On June 21, 2016, a decision had been made to terminate plaintiff's employment, and Dr. Marsh provided Lawson with details.

At the request of Dr. Marsh, by an email dated June 28, 2016, Lawson sent her a template for a termination letter for plaintiff notifying plaintiff that she would be terminated 90 days from the date of the letter. On July 14, 2016, Dr. Marsh wrote to Dr. Joan Cangiarella (Dr. Cangiarella), Associate Professor of Pathology, Vice Chair of Clinical Operations, Associate Dean for Faculty Affairs, and Lawson to advise that plaintiff was to be presented with a non-

renewal letter before the end of the month along with a draft termination letter for editing and approval. On July 29, 2016, Dr. Wisniewski and Dr. Marsh gave plaintiff a termination letter dated July 25, 2016 which provided her notice that as of December 1, 2016, her services would no longer be needed.

Despite the fact that she remained on NYUSOM's payroll and was required to perform duties, plaintiff's refusal to report to work on a regular basis without notifying Dr. Wisniewski or Dr. Marsh, as well as her cancelations of appointments continued. Dr. Marsh drafted an email to Lawson which stated that while December 1, 2016 was scheduled to be plaintiff's last day, a recent interaction with a patient, last minute cancellations of scheduled patients, and absenteeism were impacting patient care. On or about August 29, 2016, Plaintiff had told Pannell that she would be leaving NYU. Plaintiff's resignation became effective on or about August 30, 2016.

Dr. Barr's affidavit

Dr. Barr states that he is a board-certified clinical neuropsychologist employed by NYU Langone Medical Center as Director of the Neuropsychology Division in the Department of Neurology. Dr. Barr also served as an Associate Professor of Neurology and Psychiatry at the NYUSOM and heads the clinical service and post-doctoral and training program through the Comprehensive Epilepsy Center at NYULMC.

Dr. Barr states that he met plaintiff in the Comprehensive Epilepsy Center in the Department of Neurology in a post-doctoral fellowship in September 2007. Dr. Barr maintains that near the end of her fellowship in 2009, plaintiff received a one-year post-doctoral grant which commenced in September 2009. To supplement plaintiff's income for that one-year grant period, Dr. Barr hired her as a Department of Neurology Research Scientist to evaluate patients at the Center. When the one-year position ended, plaintiff was hired by Dr. Galvin as an

Assistant Clinical Professor in the Department of Neurology and was assigned to start a neuropsychology service at the Center.

Dr. Barr observed plaintiff's work for many years and states that she is a dedicated and competent practitioner with a high quality of work in conducting and reporting neuropsychological evaluations. At no point during the time at which plaintiff was employed, was there a time-based requirement for turn-around of neuropsychological reports, and that while neuropsychologists do their best to complete reports expeditiously, this can sometimes take weeks. He maintains that the time in which it takes to complete neuropsychological reports can be impacted by the complexity of cases and fluctuations in workload and that it was not uncommon for members of the finance team to email a list of open encounters to the neuropsychologists.

In comparing plaintiff's work with Dr. MacAllister, Dr. Barr states that the only difference in their work was the nature of the population which they served and that there is no difference in the nature of the evaluations they conducted or the reporting. He states that Dr. MacAllister worked as a pediatric neuropsychologist evaluating children and adolescents while plaintiff worked with adults.

Rabia Widzowski's affidavit

Rabia Widzowski (Widzowski) is the Revenue Cycle Manager for NYUSOM. She worked as a Billing Coordinator for NYUSOM's Faculty Practice Group and a Senior Billing Coordinator. In September 2014, Widzowski was responsible for billing for the Center and attended monthly meetings with the outside billing service and Dr. Marsh. Widzowski states that in the monthly billing meetings, nothing was said about plaintiff having a deficit, plaintiff's maternity leave, or plaintiff's complaints about discrimination or her compensation.

Widzowski maintains that during meetings, the subject of plaintiff's late reports arose. At a meeting in September 2014, it was requested of Widzowski that a list of missing reports be sent directly to plaintiff. In November 2014, Widzowski generated reports called "open encounter reports" which showed the names of patients, dates of patients' appointments for testing, and whether testing was completed for reports that were still open. The reports were emailed to plaintiff.

Before electronic billing commenced, Widzowski was told that plaintiff sometimes blamed the Center's administrative staff for late reports. After the Center transitioned to electronic billings in 2014, plaintiff inputted her own reports directly into the computer system for billing. However, reports of plaintiff continued to remain open and late. Widzowski maintains that from August of 2015 until she left NYUSOM, plaintiff continued to have numerous open reports.

Boyard Maignan's affidavit

Boyard Maignan (Maignan) maintains that she is the Senior Revenue Cycle Manager Billing Operations for the Faculty Group Practice of NYUSOM. As a Manager involved in billing operations, her duties included to help ensure that clinicians submitted billing for patients in a timely manner. During May 2015 through August 2015, Maignan became responsible for forwarding open reports to plaintiff.

Maignan states that plaintiff was constantly late in submitting reports and that in May 2016, she met with plaintiff. At the meeting, the financial issues raised by plaintiff were discussed. Following the meeting, she spoke with plaintiff several times to solve the issue of plaintiff's late reports, and to reiterate the importance of plaintiff's timely completing her reports so that NYUSOM could get reimbursed.

Janika Joy Pannell's affidavit

Janika Joy Pannell (Pannell) is the Office Manager in NYU's Center for Cognitive Neurology, and Patient Care Coordinator in the Center. Pannell states that plaintiff often failed to appear at work without advising the front desk in advance. At various times, plaintiff advised the front desk that she would not be coming to work despite having appointments for patient testing. Plaintiff was often late in submitting her testing reports.

When a new electronic system was utilized which incorporated patient records, plaintiff was often late in submitting her reports. On several occasions, Dr. Marsh told Pannell that she was concerned about plaintiff's delays in submitting reports, which Dr. Marsh stated had a negative impact on patient care.

DISCUSSION

Plaintiff filed a complaint alleging a cause of action against defendant for gender discrimination in violation of Chapter 1, Title 8 of the Administrative Code of the City of New York, § 8-107 (1) (a) referred herein as The New York City Human Rights Law. Plaintiff also alleges that defendant committed retaliation in violation of Chapter 1, Title 8, § 8-107 (7) of the Administrative Code of the City of New York.

Administrative Code § 8-107 (1) (a) provides:

- “1. Employment. It shall be an unlawful discriminatory practice:
- (a) For an employer or an employee or agent thereof, because of the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, caregiver status, sexual and reproductive health decisions, sexual orientation, uniformed service or immigration or citizenship status of any person:
 - (1) To represent that any employment or position is not available when in fact it is available;
 - (2) To refuse to hire or employ or to bar or to discharge from employment such person; or
 - (3) To discriminate against such person in compensation or in terms, conditions or privileges of employment.”

Administrative Code § 8-107 (7) provides in part:

“[i]t shall be an unlawful discriminatory practice for any person engaged in any activity to which this chapter applies to retaliate or discriminate in any manner against any person because such person has (i) opposed any practice forbidden under this chapter, (ii) filed a complaint, testified or assisted in any proceeding under this chapter, (iii) commenced a civil action alleging the commission of an act which would be an unlawful discriminatory practice under this chapter, (iv) assisted the commission or the corporation counsel in an investigation commenced pursuant to this title, (v) requested a reasonable accommodation under this chapter, or (vi) provided any information to the commission pursuant to the terms of a conciliation agreement made pursuant to section 8-115 of this chapter.”

Defendant’s argument

Defendant contends that to withstand a motion for summary judgment, a plaintiff who brings a claim of pay disparity under the New York City Human Rights Law must set forth a prima facie case of discrimination, specifically demonstrating that the plaintiff is a member of a protected class and was paid less than a similarly situated individual.

Defendant argues that plaintiff bases her pay discrimination claim upon the comparison of her salary with that of Dr. MacAllister, a male neuropsychologist at NYU. Defendant contends that plaintiff joined NYUSOM as a resident, not a member of faculty, while Dr. MacAllister joined as a member of its faculty based upon his prior work experience. Defendant maintains that the practice of which Dr. MacAllister was formerly a member, refused to affiliate with defendant unless the compensation earned by its neuro psychologists was comparable as to what they earned in private practice. Therefore, Dr. MacAllister’s compensation was set at a higher amount.

Defendant also contends that Dr. MacAllister was employed within a different department than plaintiff, served a different population, and was paid according to a “Relative Unit System” which based his compensation on his productivity. Defendant contends that if his

productivity was high, Dr. McAllister may have received a bonus, while if it was low, it could be decreased.

Defendant argues that its refusal to increase plaintiff's salary was not discriminatory. Defendant maintains that at no time during her employment did plaintiff apply for a grant sufficient to fund the portion of her salary dedicated to scientific research. Defendant contends that it was the grants of Dr. Galvin which he brought to the Center that provided the bulk of plaintiff's research funding of her compensation.

Defendant contends that the fact that plaintiff took maternity leaves, or that she raised the issue regarding a deficit, had nothing to do with defendant's decision not to increase her salary. Defendant argues that "the Fund Balance to Date" entry on the Profit and Loss statement is a historical summary of plaintiff's profit and loss, from the date which she participated in the Faculty Practice Group. Defendant contends that while plaintiff alleges that the deficit, as well as the complaints she made about it to various members of the Center management, formed the basis of her termination, record evidence demonstrates that the deficit was not considered in defendant's evaluation of her productivity, performance, or compensation while she was employed. Instead, the "Operating Profit and Loss" line on defendant's evaluation of plaintiff's performance reflected the degree to which plaintiff was not meeting her goals while she was present and working.

Defendant argues that its reasoning for terminating plaintiff's employment is legitimate, non-discriminatory, and cannot be shown to be a pretext for discrimination. Defendant maintains that issues with plaintiff's patient care, her refusal to conduct work necessary to fund her research salary, and her providing an ultimatum led to plaintiff's termination.

Plaintiff's argument

Plaintiff contends that she was treated “less well” by defendant because of her gender when it refused to grant her a raise because of a deficit which she incurred during her 12-week maternity leave ending in January of 2013. Plaintiff maintains that when she asked Dr. Marsh about the deficit in her Profit and Loss statement, Dr. Marsh confirmed that it was due to her maternity leave and that it could not be eliminated, and that defendant cited the deficit when responding to plaintiff’s request for a raise. Plaintiff also alleges that when she returned from her first maternity leave, statements were made by Dr. Galvin which referenced her absence.

Plaintiff also contends that she was underpaid in comparison to Dr. McAllister, a male clinical neuropsychologist. Plaintiff argues that her lower salary, when compared to the salary given to a similarly situated male employee, demonstrates that she was treated “less well” because of her gender. Plaintiff contends that Dr. Barr, who is currently employed by NYU, confirms in his affidavit that plaintiff and Dr. MacAllister were similarly situated.

Plaintiff contends that she was retaliated against due to her protests regarding discrimination. She argues that she engaged in protected activity and that she often discussed pregnancy discrimination when she returned from maternity leave. She continued to complain about the deficit to Dr. Marsh; expressed her concerns to Dr. Galetta, the head of the Department of Neurology; complained in writing to Dr. Marsh, Dr. Wisniewski, and other officials inquiring if her deficit was due to charges against her for maternity leave; complained to Derek Forte of Employee Relations in December of 2015; asked Dr. Marsh and Dr. Wisniewski during a meeting on March 28, 2016 why she was being punished for taking maternity leave; spoke to members of the finance team which led to plaintiff sending Dr. Marsh and Dr. Wisniewski an email on May 6, 2016; and wrote to Dr. Marsh and Dr. Wisniewski on May 16, 2016 that it was

unfortunate to receive confirmation that a significant portion of the deficit was incurred while she was on maternity leave and that she would “act accordingly.”

Plaintiff contends that the while defendant may argue that her statement that she would “act accordingly” was an ultimatum, plaintiff maintains that it was another protest of her alleged discrimination. Plaintiff contends that once she indicated that she would “act accordingly,” Marsh decided to terminate plaintiff, creating a pretext for her termination which plaintiff argues is demonstrated in Dr. Marsh’s email’s to Lawson and others.

Plaintiff maintains that defendant’s argument that it could no longer afford to pay plaintiff was not true as steps were being taken to hire a junior neuropsychologist at the same salary. Plaintiff also contends that until she protested discrimination, defendant recognized her as a competent professional.

Summary Judgment

It is well established that a party moving for summary judgment must demonstrate its defense or cause of action sufficiently to eliminate any material issues of fact. *Ryan v Trustees of Columbia Univ. in the City of N.Y, Inc.*, 96 AD3d 551, 553 (1st Dept 2012); *see also Dallas-Stephenson v Waisman*, 39 AD3d 303, 306 (1st Dept 2007). Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form which is sufficient to establish the existence of a material issue of fact. *Ostrov v Rozbruch*, 91 AD3d 147, 152 (1st Dept 2012). “A motion for summary judgment should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility.” *Ruiz v Griffin*, 71 AD3d 1112, 1115 (2nd Dept 2010) (internal quotation marks and citation omitted).

New York City Human Rights Law

"A motion for summary judgment dismissing a New York City Human Rights Law claim can be granted 'only if the defendant demonstrates that it is entitled to summary judgment under both [the McDonnell Douglas burden-shifting framework and the 'mixed-motive' framework].'" *Hudson v Merrill Lynch & Co., Inc.*, 138 AD3d 511, 514 (1st Dept 2016), lv denied 28 NY3d 902 (2016) quoting *Melman v Montefiore Med. Ctr.*, 98 AD3d 107, 113 (1st Dept 2012).

The Appellate Division, First Department, has held that:

"[u]nder the McDonnell Douglas framework, a plaintiff asserting a claim of employment discrimination bears the initial burden of establishing a prima facie case, by showing that she is a member of a protected class, she was qualified to hold the position, and that she suffered adverse employment action under circumstances giving rise to an inference of discrimination. If the plaintiff makes such a showing, the burden shifts to the employer to show a legitimate, nondiscriminatory reason for the employment decision. If the employer succeeds in doing so, the burden then shifts back to the plaintiff to prove that the reason proffered by the employer was merely a pretext for discrimination"

Hudson v Merrill Lynch & Co., Inc., 138 AD3d at 514 (1st Dept 2016 [internal quotation marks and citations omitted]).

"[The defendant's] explanatory second set of facts . . . should not be relied on to negate the plaintiff's prima facie case in the first instance, but rather, seen as either: (a) the defendant's articulation through competent evidence of nondiscriminatory reasons for its action (stage two in the McDonnell Douglas framework); or (b) part of the defendant's ultimate effort to undercut the weight assigned to the plaintiff's evidence and thus disprove the plaintiff's claim that it was more likely than not that discrimination played a role in defendant's actions." *Bennett v Health Mgt. Sys., Inc.*, 92 AD3d 29, 37 (1st Dept 2011).

"Under the mixed-motive framework, the question on summary judgment is whether there exist triable issues of fact that discrimination was one of the motivating factors for the defendant's conduct. Thus, under this analysis the employer's production of evidence of a

legitimate reason for the challenged action shifts to the plaintiff the lesser burden of raising an issue as to whether the (adverse employment) action was motivated at least in part by . . . discrimination.” *Hudson v Merrill Lynch & Co., Inc.*, 138 AD3d at 514-515) (internal quotation marks and citations omitted).

Furthermore, the Appellate Division, First Department, has held that “to establish a gender discrimination claim under the City Human Rights Law, a plaintiff need only demonstrate by a preponderance of the evidence that she has been treated less well than other employees because of her gender.” *Suri v Grey Global Group, Inc.*, 164 AD3d 108, 114 (1st Dept 2018) (internal quotation marks and citations omitted).

Here, plaintiff has alleged that she is a member of a protected class, was qualified to hold the position, and that she suffered an adverse employment action under circumstances giving rise to an inference of discrimination. Specifically, that her contract was not renewed due to her complaints regarding a deficit resulting from a maternity leave. Plaintiff has demonstrated that she repeatedly complained to administration regarding a deficit during her maternity leave and salary differences compared to a male co-worker, and was terminated following her complaints that she would “act accordingly.” Plaintiff supports her arguments by referencing her own testimony, e-mail correspondence, and an affidavit from Dr. Barr who states that the only difference between plaintiff’s work and a male co-worker who was paid higher was the nature of the population which they served and that there is no difference in the nature of the evaluations they conducted or the reporting.

As the plaintiff makes such a showing that she is a member of a protected class, she was qualified to hold the position, and that she suffered adverse employment action under

circumstances giving rise to an inference of discrimination, the burden shifts to defendant to show a legitimate, nondiscriminatory reason for the subject employment decision.

Defendant points to the testimony of the various witnesses and documents to demonstrate a nondiscriminatory reason for the nonrenewal of plaintiff's contract. Specifically, defendant contends that there was continuous lateness of plaintiff's medical reports, that she was failing to appear at work, that she was not meeting her monthly goals, and that she independently failed to obtain grants which was part of a percentage of her salary.

Furthermore, with regards to plaintiff's argument that a male employee received a higher salary based solely upon a difference of gender, defendant submits an affidavit that states that Dr. MacAllister's salary was set at a higher rate based upon his work in a private practice and not due to his gender.

As defendant has met its burden and provides a legitimate, nondiscriminatory reason for its employment decision, pursuant to the McDonnell Douglas framework, applicable to discrimination actions brought under the NYCHRL, the burden now shifts back to plaintiff to demonstrate that the reason proffered by the defendant for terminating her employment was a pretext for discrimination. Furthermore, under the mixed-motive framework, applicable to discrimination actions brought under the NYCHRL, the court will also consider whether there exists triable issues of fact that discrimination was one of the motivating factors for the termination of plaintiff.

A review of the record, reflects that there are triable issues of fact exist regarding plaintiff's termination and whether the deficit due to her maternity leave, which plaintiff repeatedly complained of to multiple staff members, was a motivating factor for her termination.

“A plaintiff may prove that retaliation was a but-for cause of an adverse employment action by demonstrating weaknesses, implausibilities, inconsistencies, or contradictions in the employer’s proffered legitimate, nonretaliatory reasons for its action. From such discrepancies, a reasonable juror could conclude that the explanations were a pretext for a prohibited reason.” *Zann Kwan v Andalex Group LLC*, 737 F3d 834, 846 (2d Cir 2013).

Here, there are somewhat inconsistent explanations for the termination of plaintiff. Plaintiff alleges that she was told that she was being terminated due to defendant not being able to “afford” her. Plaintiff testified at her deposition that on July 29, 2016, Dr. Wisniewski and Dr. Marsh met with her and Dr. Wisniewski stated that “everybody enjoyed working with” plaintiff “and that they tried really hard to come up with a way to keep me but that they simply just cannot afford to keep me.” Plaintiff’s EBT, at 258. Plaintiff does not testify that she was told any other reasons, other than this explanation, for her non-renewal of her contract at the meeting or in the letter which she was presented.

Conversely, Dr. Wisniewski testified that he did not tell plaintiff that she was being let go because defendant could not afford her. Wisniewski EBT, at 170. He further testified that he didn’t recall giving plaintiff a reason for her termination because he didn’t “recall what that reason was.” *Id.* Dr. Marsh also testified that she did not recall Dr. Wisniewski telling plaintiff that the reason for her termination was due to NYU not being able to afford her. Dr. Marsh EBT, at 265.

Along with the inconsistency in the reasons provided to plaintiff as to why her contract was not renewed, the testimony of Lawson, Associate Dean for Academic Planning within the Office of Faculty and Academic Affairs at NYUSOM, further raises questions reading what role

the deficit created as a result of her maternity leave (which plaintiff repeatedly complained about and alleged was a form of gender discrimination), played in her termination.

Lawson testified:

“Q. Did you know as of June 21, 2016 that Dr. Karantzoulis had concerns that she was being treated differently because of the maternity leave that she had taken?

A. No.”

Lawson’s EBT, at 39.

Lawson’s testimony is contradicted by his June 21, 2016 e-mail to Dr. Cangriella, Associate Dean of Education, Faculty and Academic Affairs. This e-mail discusses a conversation which Lawson had with Dr. Marsh regarding how the Neurology Department wanted to terminate plaintiff and references plaintiff’s belief that she was being treated unfairly.

Lawson’s June 21, 2016 email to Dr. Cangriella specifically states, in part:

“Per Karyn, here are the reasons the Department would like to terminate [plaintiff’s] employment:

1. The PI she worked with left and Stella has no research activity at this time.
2. Stella has not been timely with charting her patients. (Mind you, recently Karyn told Stella that they may not renew her appointment and she allegedly stated that she would have no incentive to finish her charts or chart in a timely manner.)
3. Her P & L is in deficit. (Stella has had 2 maternity leaves and is under the impression she is being penalized because of lack of any revenue during those leaves, but expenses per the P & L. She believes she is being treated unfairly. Karyn has reassured her that while they can’t make the deficit go away, she isn’t being singled out nor pay reduced as a result.)
4. She has not shown any drive with clinical care (asked to start up group sessions and took a few months to do so; she has left work early on occasion.)
5. Regarding her charting and clinical revenue, it was suggested she may want a medical student to help manage patients/documentation, but she stalled on that too. (After the discussion about not renewing her appointment, Stella mentioned to Karyn that she wasn’t sure if she wanted a medical student and wasn’t sure she wanted to stay at NYU.)

I asked Karyn to send me any written documentation on any conversations with Stella and she sent me 10 emails (some redundant). I have attached them here in reverse chronological order to the extent possible. No where [sic] in the emails is any mention of the fact that the department may not renew her appointment; nor is there any evidence of

Stella's comments about not wanting a medical student since she may not want to stay, nor mention of not having incentive to compensate her notes if she is terminated."

NYCEF Doc. No. 102.

As the testimony and e-mail demonstrate, there is a conflict within Lawson's testimony as he testified that he was unaware of plaintiff's concerns that she was being treated differently because of the maternity leave, while his email demonstrates otherwise.

Furthermore, while Dr. Marsh and Dr. Galetta testified that the deficit was not discussed when deciding to terminate plaintiff's employment, the email reflects that Lawson specifically referenced the deficit in a list of the reasons provided by Dr. Marsh as to why the department would like to terminate plaintiff.

Lawson's testimony regarding the June 21, 2016 email further questions whether the deficit of which plaintiff complained was considered during termination discussions. Lawson testified:

"Q. At the end of the first page, and moving on to the next page, there are five bullet points. Do you see that?

A. I do.

Q. Those are the reasons that you received from Dr. Marsh as to why the department of neurology wanted to terminate Dr. Karantzoulis's contract; is that correct?

A. That is what it says, but I don't actually believe this is correct.

Q. What is not correct?

A. I believe the reasons that I discussed with Dr. Marsh were item No. 1. 'The PI she worked with left and Stella had no research activity at this time,' and No. 2, as we discussed, 'Stella has not been timely and charting her patients.' I don't recall, even though my e-mail states, that the reason to terminate had anything to do with her P & L and deficit, but that she has - - I do recall that No. 4 would be a reason that they were thinking of terminating her, she has not shown any drive with clinical care, and No. 5 - - no, No. 5 again, would not be a reason to terminate her. I think that I did not word this e-mail very well because Nos. 3 and 5 would not be reasons they would want to terminate her. That was just sort of their information, but not relevant to termination.

Q. But at the time you wrote all five of them as the reasons you received from Dr. Marsh as to why the department of neurology wanted to terminate her, correct?

A. I did, it's clear here, but I am telling you, looking at this now, that I would not have written it this way."

Lawson's EBT, at 43-44.

Therefore, the discrepancy between Lawson's e-mail and his deposition testimony questions whether the deficit which plaintiff protested was considered, and raises a credibility issue which should be reserved for the trier of fact. *See A.L. v New York City Hous. Auth.*, 169 AD3d 40, 50 (1st Dept 2019) (holding that any inconsistencies in testimony present a credibility issue for the trier of fact); *Ferrante v American Lung Assn.*, 90 NY2d 623, 631 (1997) (“[i]t is not the court’s function on a motion for summary judgment to assess credibility”).

Furthermore, while defendant argues that there may have in fact been two deficits calculated and reflected by the Profit and Loss statement, it remains unclear which deficit plaintiff as well as the various witnesses are referring to throughout their testimony and affidavits. For example, plaintiff testified that Dr. Marsh told her to work on reducing the deficit so that plaintiff was in a better position to go to Dr. Galetta to receive a salary increase. However, it remains unclear from the testimony which deficit Dr. Marsh was referring to. Plaintiff's EBT, at 86-87.

Along with the questions which Lawson's email and the various witness testimony raise, plaintiff also presents the affidavit from Dr. Barr which further questions the lateness of reports and whether this was a valid reason for a termination of an employee at the subject work location.

In his affidavit, Dr. Barr states that at no point during the time at which plaintiff was employed and to date, has there been a time-based requirement for turn-around of neuropsychological reports at NYU Langone, and that while neuropsychologists do their best to complete reports expeditiously, this can sometimes take weeks. Dr. Barr states that the time in which it takes to complete neuropsychological reports can be impacted by the complexity of

cases and fluctuations in workload, and that in the Faculty Group Practice which plaintiff worked, it was not uncommon for members of the finance team to email a list of open encounters to the neuropsychologists. He states that receiving a list did not mean your reports were late, as there was no established deadline but served as a reminder of patients that were seen by each provider. *See* NYSCEF Doc. No. 161.

Therefore, Dr. Barr's statements raise a question as to whether the late reports were a valid reason for an employee's termination at defendant's location.

Furthermore, the testimony of Dr. Wisniewski, who signed off on plaintiff's termination and personally told plaintiff that her contract was not being renewed, raises an issue of fact as to whether plaintiff's termination was supported by legitimate, nonretaliatory reasons.

Dr. Wisniewski states in his affidavit that plaintiff was generally late in submitting her reports and that while neuropsychologists were expected to submit their reports within two weeks of the testing, plaintiff's lateness had a negative impact on patient care. Wisniewski testified that Dr. Marsh told him that the reasons for terminating plaintiff were lack of issuing timely reports and not seeing the optimal numbers of patients. Dr. Wisniewski's EBT, at 109.

However, Dr. Wisniewski also testified that Dr. Marsh did not provide him with any confirming documentation or detail, that he did not check the number of patients whom plaintiff was contractually obligated to see, did not ask Dr. Marsh how plaintiff was falling short in relation to the number of patients which she was to see, and never spoke to plaintiff directly about the timeliness of her reports. *Id.*, at 110, 115-116.

Dr. Wisniewski testified at his deposition:

"Q. Did you ever write anything -- text message, e-mail, letter, memo, I am not limiting it in any way, a document that you prepared -- to Dr. Karantzoulis identifying your concern that there was a delay in her reports?

A. Not that I recall."

Id., at 80.

Furthermore, Dr. Wisniewski also testified that he never checked for the reason for the delay and was not certain regarding the time period of the delayed reports. *Id.* Dr. Wisniewski testified:

“Q. But you don't know firsthand why the reports were not available, whether it was because of a failure on the part of the support staff or some delay on Dr. Karantzoulis's part, correct?

MR. STEER: Objection as to form.

A. That's correct.”

Id. at 112.

With regards to Dr. Marsh's testimony, several of Dr. Marsh's responses are inconclusive as to how the termination of plaintiff was handled. Dr. Marsh testified that she did not recall if Dr. Wisniewski, Dr. Galetta or Gaetta directed her to reach out to Lawson to start the termination process of plaintiff. Dr. Marsh EBT, at 229. Dr. Marsh also testified that she did not speak directly to Dr. Galetta and did not know if he had an opinion regarding not renewing plaintiff's contract. *Id.* at 230.

In conclusion, based upon the testimony of Lawson, plaintiff, Dr. Marsh, and Dr. Wisniewski, plaintiff has demonstrated several inconsistencies and raises issues of fact, as discussed above, which question the employer's alleged nonretaliatory reasons for its action to terminate plaintiff's employment. Therefore, because several issues of fact remain, plaintiff has met her burden and defendant's motion for summary judgment must be denied.

CONCLUSION and ORDER

Accordingly, it is

ORDERED that defendant NYU Langone Medical Center's motion for summary judgment is denied.

2/14/2023

DATE



SHLOMO S. HAGLER, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE