SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. DAKOTA D. RAMSEUR** **PART** **34M**

Justice

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CARMEN LAZARINE,

Plaintiff,

- v -

ALLIED UNIVERSAL EVENT SERVICES, COLUMBIA UNIVERSITY SCHOOL OF NURSING

Defendant.

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INDEX NO. 153143/2023

MOTION DATE 06/30/2023

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 28, 29, 30, 31, 32 were read on this motion to/for DISMISS.

It is hereby,

ORDERED that motion sequence 004 is granted in accordance with the annexed order dated July 14, 2023.

This constitutes the decision and order of the Court.

7/14/2023
DATE

DAKOTA D. RAMSEUR, J.S.C.

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
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CARMEN LAZARINE,

Plaintiff,

-against-

ALLIED UNIVERSAL EVENT SERVICES and COLUMBIA UNIVERSITY SCHOOL OF NURSING,

Defendants.
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Index No.: 153143/2023

Motion Date: 06/20/2023

Motion Seq. No.: 002

~~[PROPOSED]~~ ORDER

Defendant Allied Universal Event Services and Universal Protection Service, LLC d/b/a Allied Universal Security Services, incorrectly named in the Amended Complaint as Allied Universal Event Services[1] ("Allied Universal" or "Defendant") has filed a partial to dismiss Plaintiff's Complaint. Plaintiff has not filed an opposition to the Motion.

Plaintiff's Amended Complaint asserts the following causes of action: gender discrimination under the New York State Human Rights Law ("NYSHRL") ("Count I"); race discrimination under the NYSHRL ("Count II"); hostile work environment based on race and gender under the NYSHRL ("Count III"); retaliation for opposing gender discrimination under the NYSHRL ("Count IV"); retaliation for opposing race discrimination under the NYSHRL ("Count V"); gender discrimination under the New York City Human Rights Law ("NYCHRL") ("Count VI"); race discrimination under the NYCHRL ("Count VII"); retaliation for opposing race and gender discrimination under the NYCHRL ("Count VIII"); retaliation by employees under the NYCHRL ("Count IX"); violation of the New York Labor Law ("NYLL") ("Count X"); retaliation

[1] Allied Universal Event Services is an existing company that is related to the correct entity, but it is not the entity that employed Plaintiff.

under the NYLL ("Count XI"); and intentional infliction of emotional distress ("Count XII"). Allied Universal has moved to dismiss all but Count X, brought under the New York Labor Law.

On a motion filed pursuant to CPLR 3211(a)(7), dismissal is appropriate where, accepting the facts as alleged in the complaint as true, and giving plaintiff the benefit of every favorable inference, the alleged facts do not fit within any cognizable legal theory. *See Leon v. Martinez*, 84 N.Y.2d 83, 87-88 (1994). The Court is not required, however, to accept as true "legal conclusions that are unsupportable based upon the undisputed facts." *Robinson v. Robinson*, 303 A.D.2d 234, 235 (1st Dep't 2003).

Counts I, II, VI, and VII of the Amended Complaint allege race and gender discrimination under the NYSHRL and the NYCHRL. Upon review of the Complaint, Plaintiff fails to assert any factual allegations that would support her claim that she was discriminated against on the basis of her race or gender. Plaintiff's bare allegations that she was a member of the protected classes and that she was subjected to an adverse employment action does not make out a cognizable claim that she was treated differently because of her membership in a protected class. *See Thomas v. Mintz*, 182 A.D.3d 490 (1st Dep't 2020) (dismissing the plaintiff's race discrimination claim because it did not allege that the defendants' actions occurred under circumstances that give rise to an inference of discrimination when the plaintiff merely asserted legal conclusions that defendants' adverse employment actions were due to the plaintiff's race); *Askin v. Dept. of Educ. of the City of N.Y.*, 110 A.D.3d 621, 622 (1st Dep't 2013) (concluding that an allegation that a plaintiff was a member of a protected class (age) along with a conclusion that she was treated less favorably because of her age were insufficient to state a discrimination claim without any "concrete factual allegation" that would show that defendant's conduct occurred "under circumstances giving rise to an inference of discrimination"). Accordingly, these Counts are due to be dismissed.

Count III of the Amended Complaint alleges a hostile work environment based on race and gender discrimination. As with the discrimination claims, nothing in the Amended Complaint alleges that Plaintiff was "subjected to inferior terms, conditions, or privileges of employment because of [] her protected status." *Black v. ESPN, Inc.*, 70 Misc.3d 1217(A), *6 (Sup. Ct. N.Y. Cty. 2021). Accordingly, Count III is also due to be dismissed. *See Whitfield-Ortiz v. Dep't of Educ. of City of N.Y.*, 116 A.D.3d 580, 581 (1st Dep't 2014) (finding that the plaintiff's failure to adequately plead discriminatory animus was fatal to her hostile work environment claims).

Counts IV, V, and VIII of the Amended Complaint allege retaliation under the NYSHRL and the NYCHRL. In order to state a claim for retaliation a Plaintiff must allege that she (a) complained of conduct that would violate the applicable law; and (b) that the protected activity bore a causal relationship with an adverse employment action. *See Lum v. Consolidated Edison Co. of N.Y.*, 209 A.D.3d 434, 434 (1st Dep't 2022) (upholding the dismissal of a complaint that lacked any details or factual context that would support an inference that protected activity was causally related to an adverse employment action); *Sims v. Trustees of Columbia Univ.*, 168 A.D.3d 622, 622 (1st Dep't 2019) (upholding the dismissal of a retaliation claim where there were no allegations that the Plaintiff complained to defendant that he was discriminated against because of a protected characteristic). While Plaintiff alleges that she made several complaints to her employer, she fails to allege that any of those complaints were about disparate treatment on the basis of a protected class. In one instance, Plaintiff alleges that she complained of unspecified discrimination, but that complaint occurred after she alleges she had already been fired. Accordingly, Plaintiff has failed to allege that she engaged in a protected activity, and her retaliation claims are due to be dismissed.

Count XI of the Amended Complaint alleges retaliation under the NYLL. An employer

may not take an adverse action against an employee because she engaged in protected activity under the New York Labor Law. N.Y. Labor Law § 215(1)(a); *see also Day v. Summit Security Services Inc.*, 159 A.D.3d 549, 550 (1st Dep't 2018) (upholding a dismissal of a Section 215 retaliation claim where there was no allegation that Defendant was aware of a complaint having been made when an adverse employment action occurred). Plaintiff alleges that she complained about not being paid for hours worked and accrued sick time in June or July 2021, at least one month after she alleges that she was fired. Plaintiff's May 2021 firing cannot have been because of a complaint that she made at least a month later. Accordingly, Plaintiff's NYLL retaliation claim is due to be dismissed.

Count XII of the Amended Complaint alleges intentional infliction of emotional distress. A plaintiff who files an IIED claim must file the claim within one year of the alleged incident. *See Gallagher v. Directors Guild of America, Inc.*, 144 A.D.2d 261 (1st Dep't 1988) (collecting cases); CPLR § 215(3). To maintain an IIED claim under New York law, Plaintiff must establish: "(i) extreme and outrageous conduct, (ii) intent to cause, or disregard of substantial probability of causing, severe emotional distress; (iii) a causal connection between the conduct and injury; and (iv) severe emotional distress." *Howell v. New York Post Co.*, 81 N.Y.2d 115, 121 (1993). Plaintiff's claim is untimely. The latest allegations in the Complaint occurred in July 2021. This litigation, however, was not initiated until April 2023. Even if timely, the Amended Complaint is devoid of factual allegations that are extreme or outrageous. Accordingly, the IIED claim will be dismissed as well.

Based upon the foregoing, and in light of the fact that the motion was unopposed, it is now therefore:

ORDERED that Allied Universal's partial motion to dismiss is granted, and each Cause of

Action in Plaintiff's Complaint, with the exception of Count X, is dismissed with prejudice.

Judgement entered this 14 day of July, 2023.

Judge Dakota D. Ramseur