IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Christine C. Anderson

Plaintiff,

– against –

Doc. No. 07-cv- 09599 (SAS)

THOMAS J. CAHILL, SHERRY K. COHEN, and DAVID SPOKONY

Affirmation in Support of Motion To Reopen

Defendants.

I, Christine C. Anderson, make the following affirmation under penalties of perjury:

I, Christine C. Anderson, am the plaintiff in the above entitled action, and respectfully move this court to issue an order granting a new trial pursuant to F.R.C.P. 60 (b) and (d)(3), *inter alia*. The reasons why I am entitled to the relief I seek are the following:

1. This Court should be brought to the realization, in its full entirety, of the knowing cruelty meted out to myself, when the state court consented to terminate my employment of six and one-half years. This Court should be cognizant of the fact of my employment record lauded with glowing evaluations over that time.

2. This injustice has left me blacklisted by the legal profession. Unable to obtain employment in my field, I, a two-time cancer survivor, am essentially destitute.

3. I was unjustly deprived of health and other benefits and forward pension and social security sums, since my termination in June of 2007, thus further aggravating the state of penury to which I have been reduced.

4. Plaintiff moves for the herein relief on the extraordinary and newly discovered basis of the fact that a witness in plaintiff's herein district court case, a defendant-employed attorney Nicole Corrado, has filed a federal lawsuit in the Eastern District of New York, *Corrado v. The New York State Unified Court System* ***(EXHIBIT "A" - EDNY 12cv1748)*** now corroborating the fact that she was threatened as a witness in plaintiff's trial. (See attached *Corrado* complaint at paragraphs 27-31) Ms. Corrado was so chilled by the deliberate witness tampering that she did not testify in plaintiff's district court trial. In the interest of justice, this illegal atrocity must be corrected.

5. The confirmation of witness tampering by defendants in this matter, and as supported by the recent Corrado filing, is such a miscarriage of justice so to require this Honorable Court to reopen the case and schedule a new trial, *inter alia.*

6. This Court must insure that any plaintiff such as myself can have a fair trial without witness tampering or such threats upon witnesses so as to prevent their testimony for the court or jury. Corrado's recent filing in the Eastern District fully supports the fact that the defendants acted improperly so to defraud the Honorable Court and plaintiff.

7. The "interests of justice" clearly requires a new trial. See e.g., *Fort Howard Paper Co. v. Standard Havens, Inc.*, 901 F.2d 1373, 1379 (7th Cir. 1990) (affirming grant of new trial after a three-week jury trial).

8. This newly-discovered evidence from the *Corrado case*, only filed April 10, 2012, clearly shows that plaintiff's witness, attorney Nicole Corrado, was threatened and chilled into ***not*** testifying at plaintiff's trial- a manifest attack on our system of law and a clear denial of plaintiff's right to a fair trial.

The Clear Need For a New Trial

9. Witness tampering cannot be condoned or left uncorrected. The *Corrado* filing now shows plaintiff's denial of due process and equal protection guarantees, and right to a fair and impartial trial. See *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934) ("if a practice or rule offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental") and *Eldridge v. Williams*, 424 U.S. 319 335 (1974).

10. In fact, federal law again mandates that a special prosecutor be substituted into this case over defendants' "ethics" entities.

11. Plaintiff's allegations of systemic discrimination and retaliation, now supported by the newly filed *Corrado case*, have substantial impact on the public, the bench and bar, and can no longer be ignored, or left unaddressed by this District Court.

12. Plaintiff's trial, it is now revealed by the *Corrado* filing, left plaintiff with a lawless burden that could never be overcome- that a witness had been threatened, and to an extent to insure that no trial testimony would be given. This, at a minimum, warrants the reopening of the herein case and the scheduling of a new trial.

13. The unfair burden of witness tampering and threats on witnesses in plaintiff's federal proceeding is made even more outrageous by the fact that the threat was made by an attorney-supervisor of the defendant-state's "ethics" committee.

14. A court is under a continuing obligation to supervise the members of its Bar. E.g., *In re Taylor,* 567 F.2d at 1191; see *Musicus v. Westinghouse Electric Corp.*, 621 F.2d 742, 744 (5th Cir.1980) (*per curiam*) (district court obligated to take measures against unethical conduct occurring in proceedings before it). Trial courts have a duty "to exercise that degree of control required by the facts and circumstances of each case to assure the litigants of a fair trial." *Koufakis v. Carvel*, 425 F.2d 892, 900-01 (2d Cir.1970); see ABA Code of Judicial Conduct, Canon 3(A)(4).

15. Attorneys are officers of the court, *Clark v. United States*, 289 U.S. 1, 12, 53 S.Ct. 465, 468, 77 L.Ed. 993 (1933), and are obligated to adhere to all applicable disciplinary rules, ABA Code of Professional Responsibility, DR 1-102(A), 1-103(A); see *In re Walker*, 87 A.D.2d 555, 560, 448 N.Y.S.2d 474, 479 (1st Dep't 1982).

16. Importantly, Courts have an obligation to report and order investigation into official and at times criminal misconduct. This is a duty of a Court.

17. This Honorable Court is now obligated to report allegations in plaintiff's case involving threats on a witness in a federal proceeding, and as now supported by Corrado, to federal law enforcement.

18. The new *Corrado* evidence further established that in the view of the District Court, Defendant Cahill, the head officer of the DDC and the supervisor of the other defendants, had full knowledge of the practice of whitewashing as alleged by plaintiff, and that led to the parallel conclusion that whitewashing was accepted as a common practice by the defendants, and presumably other staff members of the DDC. It is now fully revealed by *Corrado* that the unlawful acts also include physical threats on witnesses in federal proceedings.

19. A further source of concern to this Court should be that Corrado supported plaintiff's charges of harassment and retaliation. The plaintiff charged that she was singled out for disparate treatment and ultimately illegally terminated after internally reporting the practice of whitewashing of cases to defendants Cahill and Cohen. Plaintiff was physically assaulted in her office by defendant Cohen, a fact admitted by Cohen. That physical abuse by Cohen never resulted in her demotion or transfer. However she was ordered by the New York State Office of Court Administration ("OCA") to attend an anger management course. That failure to discipline served only to embolden Cohen's daily harassment of plaintiff.

20. By preempting Corrado's testimony at trial, she was effectively silenced in attesting to the harassment and retaliation meted out to myself, a fate that she also later was subjected to.

The Witness Tampering – Threat on Witness - in a Plaintiff's Federal Proceeding

MUST BE ADDRESSED

21. It is now established that in August of 2008, one of the plaintiff's witnesses, DDC staff attorney Nicole Corrado, was threatened. Two days prior to her deposition testimony, state employee, and DDC Deputy Chief Counsel, Andral N. Bratton, and who had been her immediate supervisor for approximately 5 years, confronted Corrado. Bratton advised Corrado that in 2007 he had admitted himself into a psychiatric hospital for serious emotional problems, that he had "suicidal tendencies," and that he was "warning" her accordingly. When Corrado asked Bratton why he was warning her, Bratton simply repeated several times in a very serious and stern tone by saying, "I'm just warning you."

22. Following Corrado's deposition testimony on August 21, 2008, Bratton's behavior toward Corrado became more harassing, troubling, frightening and threatening as he began to follow her inside and outside of the state office where they both worked. Corrado subsequently reported these serious issues to DDC chief counsel Allan Friedberg, Deputy chief Counsel Sherry Cohen, a defendant in plaintiff's proceeding, and DDC Chief Investigator Vincent Raniere- all of whom who took no requisite action.

23. Plaintiff's former counsel, John Beranbaum, was also chilled by intimidation. He advised the court, and by copy, the Attorney General, of this incident in a letter to the court dated October 24, 2008. In the Beranbaum submission, it was made clear to the court and the Attorney General that Ms. Corrado was given a '"warning' about the testimony she was to give at the deposition[,]" and further advised that "Ms. Corrado is very upset about the entire experience." But Ms. Corrado was so chilled by the threat upon her as a witness in this proceeding that she did not personally come forward until recently by her Eastern District filing.

24. As a result of the threat made upon her in plaintiff's case, Nicole Corrado could only come forward, and the full facts were to be known to plaintiff by her federal filing on April 10, 2012. Corrado could only come forward after the three defendants had left the DDC and thus no longer a daily source of harm to Corrado.

25. Plaintiff's former attorney was also chilled by the threat upon Corrado but could not rely on Corrado's testimony of the threat upon her as a witness because she was so frightened. Mr. Beranbaum was barely able to again raise the issue on the record four days later on October 30, 2008. (See **Exhibit, "B"** – Transcript of October 30, 2008 hearing, Page 26 (lines 17-25), and page 27 (lines 1-8). The court, in responding to the letter advising of the alleged

threat on plaintiff's witness, commented, "You [Mr. Beranbaum] seem to want to tell me something or report it to me. Okay. You report it to me." Mr. Beranbaum was so chilled that he was left speechless, unable to demand ~~the~~ that Ms. Corrado be summoned before the court for a hearing on the matter.

26. It is plaintiff's belief that the court had an obligation to report the matter to federal agents and, further, to interview Ms. Corrado concerning the incident. In addition, the Attorney General also had such an obligation as the state's top enforcer of the law.

27. Plaintiff believes she has been severely prejudiced by the threat upon her witness, Ms. Corrado, and, as the court and Attorney General were aware, Ms. Corrado did not appear as a witness in this proceeding. Only now, through Corrado's EDNY filing on April 10, 2012, are the full details known.

Physical Threats on a Witness, Then Offers of Reimbursement to Involved Counsel

28. Plaintiff is aware that counsel within the Office of the New York Attorney General's office offered to "fully" compensate Mr. Beranbaum for ALL of his legal fees, expenses, etc., if plaintiff settled her case. While plaintiff is unaware of the exact timing of when the compensation offer, believed to be between $120,000.00 and $150,000.00, was actually made, there was no offer of any compensation to plaintiff.

29. Plaintiff is, and always has been, deserving of a constitutionally protected right to a fair and impartial trial. This denial of basic rights must now meet correction, in the interest of justice.

CONCLUSION

WHEREFORE, plaintiff respectfully requests that this Honorable Court **reopen the herein case**, appoint a federal monitor, schedule further proceedings including a new trial, and for a fair and impartial jury trial as the law may deem just and proper- **Justice demands no less.**

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that she is the plaintiff in the above action, that she has read the above and that the information contained herein is true and correct, 28 U.S.C. § 1746; 18 U.S.C § 1621.

Dated: New York, New York
June 21, 2012

Respectfully submitted,

Christine C. Anderson, *plaintiff, pro se*
227 Riverside Drive
New York, New York 10025
917-817-7170 tel

TO: The Office of the NYS Attorney General
120 Broadway, 24th floor
New York, New York 10271.

AFFIRMATION OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished to defendants this 21st day of June, 2012, by U.S. Priority Mail ***#0300600000215189667*** to: The Office of the NYS Attorney General, 120 Broadway, 24th floor, New York, New York 10271.

Christine C. Anderson, *plaintiff, pro se*

ORIGINAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

NICOLE CORRADO,

Plaintiff,

-against-

NEW YORK STATE UNIFIED COURT SYSTEM,

Defendants.

----------X

COMPLAINT

Docket No.:

SUMMONS ISSUED

CV 12 1748

IRIZARRY, J.
GO, M.J.

NICOLE CORRADO ("Plaintiff"), by and through her attorneys, The Law Office of BORRELLI & ASSOCIATES, P.L.L.C., alleges upon knowledge as to herself and her own actions and upon information and belief as to all other matters as follows:

NATURE OF CASE

This is a civil action based upon violations committed by Defendant, NEW YORK STATE UNIFIED COURT SYSTEM ("Defendant"), of Plaintiff's rights guaranteed by: (i) Title VII of the Civil Rights Act of 1964, as amended ("Title VII") and (ii) any other cause(s) of action that can be inferred from the facts set forth herein.

PRELIMINARY STATEMENT

Plaintiff is an attorney and an employee of the State of New York Unified Court System, since November 2001. Between the years of 2003 through 2009, Defendant subjected Plaintiff to discrimination and harassment on the basis of her gender. Specifically, Defendant repeatedly made unwanted sexual advances, inappropriate sexual comments and sexual overtures to Plaintiff, as well as subject Plaintiff to an unwelcome and toxic work environment by exposing her to continued unlawful behavior of a sexual nature from two males in positions of authority

Ex. "A"

and supervision over the Plaintiff. When Plaintiff complained to Defendant, her claims were referred to the Office of the Inspector General for the Unified Court System ("OIG"). Once the investigation was completed, Defendant engaged in a pattern of retaliation against the Plaintiff by assigning her an unrealistic work load, unfair evaluations and subjecting Plaintiff to constant scrutiny, criticism and ridicule, forcing Plaintiff to take an unplanned and unwanted two year leave of absence at the height of her professional career, foregoing opportunities for career advancement.

JURISDICTION AND VENUE

1. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331. The supplemental jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1367 over all state and local law causes of action.
2. Venue is appropriate in this court pursuant to 28 U.S.C. § 1391(b) (1), as one or more of the defendants resides within this judicial district.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

3. Plaintiff filed a "Charge of Discrimination" against Defendant with the Equal Employment Commission ("EEOC), EEOC Charge No. 520-2009-03816, on May 29, 2009, based on sexual harassment discrimination, religious discrimination and retaliation. On January 11, 2012, EEOC issued Plaintiff a "Dismissal and Notice of Suit Rights." Plaintiff timely filed the instant matter within 90 days of receiving that letter.

PARTIES

4. At all relevant times herein, Plaintiff is a resident of the State of New York, County of Queens.
5. At all relevant times herein, Plaintiff is female.

6. At all relevant times herein, Plaintiff is an attorney, employee and a qualified person to work under the definition of Title VII.

7. At all relevant times herein Unified Court System ("Defendant") is the official name of the judicial system of New York in the United States, with offices and Court houses all over the state of New York in each and every county. Defendant functions under the Chief Judge of the New York Court of Appeals and Defendant oversees all legal actions brought in the state of New York.

8. At all times relevant herein, Defendant appointed an independent Committee, known as the Departmental Disciplinary Committee ("DDC") comprised of lawyers and non-lawyers to handle complaints of a disciplinary nature against lawyers whose offices are in Manhattan or the Bronx. DDC's office and place of business is located at First Judicial Department 61 Broadway, 2nd Floor New York, New York.

9. At all times relevant herein, Plaintiff worked at the Defendant's office within the DDC located at 61 Broadway, 2nd Floor New York, New York 10006.

10. At all relevant times herein, Defendant was an "employer" that "employs" at least 15 "employees" within the meaning of Title VII.

BACKROUND FACTS

11. Plaintiff commenced her employment with Defendant on November 8, 2001.

12. Plaintiff was initially hired as an Associate Attorney and then as a result of her hard work and dedication to her cases was promoted to the Role of Principal Attorney in 2006.

13. As Principal Attorney, Plaintiff's responsibilities remained the same as those of an Associate attorney in that she investigated and litigated disciplinary matters involving attorneys with offices in Manhattan and the Bronx.

14. In or around 2002, Andral Bratton became Plaintiff's immediate Supervisor.

15. From 2003 until 2008, while supervising Plaintiff, Bratton admitted to developing a strong sexual attraction for Plaintiff resulting in frequent comments about his desire to have an intimate relationship with her, and later admitted during a subsequent investigation conducted by the OIG that he wanted to be in a relationship with Plaintiff and that he was "foolish as hell for crossing an emotional boundary with Plaintiff."

16. From 2003 until 2008, Bratton continuously subjected Plaintiff to a hostile work environment by engaging in the activity including but not limited to: making numerous inappropriate and unwelcomed comments filled with sexual innuendos to Plaintiff; frequently calling her at home in the evening and on week-ends subtly expressing his sexual desire for her and threatening her job if she did not return his affections.

17. Each comment Bratton made as stated above was sexual in nature and uttered for the purpose of either requesting sexual favors or for personal sexual gratification.

18. Specifically, during the course of his supervision of Plaintiff, Bratton would make statements such as "I feel like someone had ripped into my chest and ripped my heart out and stomped it to the floor" because he was married and wanted to have an extra-marital affair with Plaintiff.

19. On numerous occasions Bratton would scan Plaintiff up and down with lust in his eyes. On one occasion Plaintiff was wearing a loose sweater that slightly exposed her shoulder, Bratton remarked, "With you Nicole a little skin showing goes a long way."

20. On another occasion, in response to Plaintiff objecting to Bratton's conduct and asking him to conduct himself in an appropriate manner, because Plaintiff was uncomfortable with his numerous advances, Bratton responded in sum and substance that he felt like a "loaded pistol" in describing his compelling attraction to the Plaintiff.

21. On numerous occasions when Plaintiff discouraged him from making sexually charged remarks, Bratton, aware of the power he held as her supervisor would state, "You *need* to be nice to me."

22. Bratton would also repeatedly call Plaintiff on the phone on random nights expressing his desire for her, in that he wanted her attention and needed to be close to her. In distressed tones he would often state, "I have no one else to turn to" further demonstrating his constant need to be in contact with Plaintiff.

23. At no time did Plaintiff ever share or return any of Bratton's feelings and frequently expressed to him that his comments, sexual innuendos and lustful gazes were inappropriate and made her exceedingly uncomfortable.

24. In or about June of 2007 as a result of Bratton's, at times daily comments, continued demand for attention from Plaintiff and numerous phone calls during and after work hours and on week-ends, Plaintiff requested to be transferred to another supervisor.

25. Shortly after Plaintiff's transfer request, Bratton took a leave of absence from Defendant's employ for several months, returning in August 2007.

26. Upon Bratton's return to the office Plaintiff kept her distance and avoided contact with him.

27. In or around June of 2008, Defendant learned Plaintiff would be testifying as a non-party witness in a civil action against Defendant which alleged racial discrimination and other improper conduct on the part of Defendant and its supervisors.

28. In or around June of 2008, in retaliation for Plaintiff agreeing to provide corroborating testimony in the aforementioned discrimination suit, Alan Friedberg, the Division Chief, began closely monitoring Plaintiff's conduct and writing memos reflecting negative comments concerning Plaintiff's productivity and work practices in her file, while not disclosing said memos to Plaintiff.

29. In or around August 2008, approximately two days prior to Plaintiff testifying in the discrimination case against Defendant, Bratton approached Plaintiff in her office and informed her that in 2007, as a result of her rejecting him, he admitted himself into the psychiatric ward at St. Vincent's hospital for "severe depression and suicidal tendencies" and that he was warning her accordingly. When Plaintiff asked Bratton what he meant, Bratton stated in response, "I am just warning you" while staring intensely at the Plaintiff.

30. On or around August 21, 2008, Plaintiff gave testimony against Defendant in the discrimination lawsuit.

31. On or about September 17, 2008, in response to Bratton's warning, and in fear for her safety, Plaintiff reported Bratton's long pattern of sexual harassment and now threatening behavior to Friedberg. Plaintiff also reported Vincent Raniere's pattern of sexual harassment against her that she had experienced from 2003 to 2008.

32. During 2003-2008, Defendant employed Raniere as the Chief Investigator at DDC, having supervisory authority over cases being investigated by Defendant and the internal office operations.

33. From 2004 through 2008, Raniere would repeatedly make statements to Plaintiff such as "I can force you to be with me if I want to" and "I can take care of you in other ways, even if I can't take care of you sexually."

34. Raniere also made statements like you don't need anyone but me, as well as commenting on Plaintiff's clothes and appearance and would often state how good she looked in her clothes and how well she wore them.

35. Raniere would also state that he dreamed of Plaintiff at night, and that he would awake at night thinking of Plaintiff.

36. Raniere repeatedly called Plaintiff to say "I love you" and "I miss you."

37. Each comment Raniere made was sexual in nature and uttered for the purpose of either requesting sexual favors or for personal sexual gratification.

38. Raniere also forcibly and repeatedly kissed Plaintiff on several occasions on the mouth without her consent. Raniere also frequently touched Plaintiff's hair and face, while expressing a desire to be in an intimate relationship with Plaintiff.

39. At no time did Plaintiff ever share or return any of Raniere's feelings and frequently expressed to him that his sexual comments, inappropriate touching and kissing made her extremely uncomfortable.

40. In spite of Plaintiff reporting both Bratton and Raniere's sexual harassment of her, Friedberg only selectively documented Plaintiff's allegations of sexual harassment involving Mr. Bratton to the OIG.

41. From September 2008 thru October 2008, the OIG conducted an investigation into Plaintiff's allegations solely in relation to Bratton.

42. During the investigation Bratton admitted to making comments where he expressed his desire and attraction to the Plaintiff and described himself as "crossing an emotional boundary with Plaintiff," and that he had become "smitten" with Plaintiff.

43. Coincidentally, during the OIG investigation, Friedberg, made few if any notations and/or wrote any adverse memos to Plaintiff's personnel file.

44. Once the OIG investigation ended, in or about October of 2008, Friedberg in retaliation to Plaintiff's complaint significantly intensified his monitoring of Plaintiff, at times making daily adverse notations about the Plaintiff in her personnel file.

45. Although a seven year veteran of Defendant's office, and a former prosecutor and criminal defense attorney, Friedberg began ridiculing Plaintiff, criticizing Plaintiff's investigative and litigation skills and techniques.

46. Upon the conclusion of OIG's investigation and in spite of Bratton's admissions, and Defendant's conclusion that Bratton "engaged in inappropriate conduct as Plaintiff's Supervisor" with the Plaintiff, they decided to merely transfer him to another unit with the same salary and benefits.

47. On or about that same time, Friedberg also informed Plaintiff that Bratton would still be permitted unrestricted access to her department and that she should just "avoid" him.

48. Subsequent to the OIG's finding of impropriety, Bratton appeared, without reprimand, at Plaintiff's office on several occasions without prior notice to the Plaintiff, not withstanding her request for such notice.

49. From October of 2008 thru August of 2009, Plaintiff became increasingly anxious and distressed and feared for her safety and the safety of her child, as a result of the contact she was subjected to from Bratton, Raniere and the relentless, scrutiny and ridicule she received from Friedberg.

50. In May of 2009, Plaintiff filed EEOC charges against Defendant and included years of sexual harassment that she also experienced from Raniere.

51. In or around October of 2008, during the OIG investigation, Friedberg admitted to being aware of Raniere's inappropriate comments to other females in the office; however Defendant never did anything to reprimand Raniere or take any type of disciplinary action against him.

52. In or around July of 2009, in spite of Plaintiff's pending allegations against Raniere, Defendant instructed Plaintiff that all investigations must go through Raniere and thus mandated that Plaintiff have continued contact with Raniere.

53. In or around July 2009, Friedberg further increased his monitoring of Plaintiff's activities and repeatedly ordered her to attend a work related counseling session threatening her with job termination if she failed to comply.

54. From January of 2009 through July 2009, Defendant also assigned Plaintiff unreasonable workloads and constantly criticized the manner in which she handled her cases.

55. From January 2008 thru July of 2009, Plaintiff became increasingly anxious, distressed and suffered extreme emotional pain, loss of appetite and numerous bouts of insomnia as a result of Defendant's acts of sexual harassment and then subsequent retaliation.

56. On August 24, of 2009, as a result of the anxiety and emotional distress Plaintiff experienced as a result of Defendant's conduct, Plaintiff took an unpaid leave of absence during the height of her career, which lasted two years and resulted in Plaintiff losing the opportunities to apply for administrative positions commensurate with her experience.

57. In or around August 2011, Plaintiff, returned to work for the Defendant, once all of the above named individuals had either resigned or retired.

58. In 2008, Plaintiff retained the services of an attorney with offices in New York City to represent her in a Supreme Court civil action involving a property issue (Corrado v. East End Pool & Hot tub, James King et al Index # 22430/2005).

59. While Plaintiff's civil matter was pending and subsequent to Plaintiff's EEOC charge of sexual harassment and retaliation, in August 2009, Defendant initiated an investigation unrelated to her underlying civil action against her attorney involving serious ethical charges of bribery and forgery.

60. In May of 2010, Plaintiff's attorney in the underlying civil action abruptly withdrew as Plaintiff's counsel and her case of five years was subsequently dismissed and she was ultimately forced to settle her case for a fraction of its value.

61. In May 2010, all of the serious ethical charges against Plaintiff's attorney initiated by Defendant that would normally result in formal disciplinary action were also dismissed.

62. At no time during the disciplinary action against Plaintiff's attorney or any time thereafter did Plaintiff's attorney disclose to plaintiff that he was the subject of a disciplinary investigation by Defendant.

63. At no time during the disciplinary action against Plaintiff's attorney or any time thereafter did Defendant disclose to Plaintiff any of Defendant's investigation of her attorney's disciplinary action, violating the rules of professional conduct.

FIRST CLAIM AGAINST DEFENDANT
(Sexual Harassment Discrimination and Retaliation under Title VII)

64. Plaintiff repeats, reiterates and re-alleges each and every allegation set forth above with the same force and effect as if more fully set forth herein.

65. Title VII prohibits discrimination in the terms, conditions, and privileges of employment on the basis of an individual's gender and sex also prohibits retaliation against individuals who in good faith complain about discriminatory practices to which they have been subjected.

66. Defendant, as described above, discriminated against Plaintiff in violation of Title VII by taking adverse employment actions against Plaintiff because of her gender.

67. Defendant retaliated against Plaintiff in violation of Title VII for Plaintiff having in good faith opposed Defendant's discriminatory practices by taking the various adverse employment actions described above against her.

68. As a result of Defendant's discriminatory acts, Plaintiff has suffered and will continue to suffer substantial losses, including loss of past and future earnings and other employment benefits, and has suffered other monetary damages and compensatory damages for, inter alia, mental anguish, emotional distress, humiliation, and loss of reputation.

69. Defendant acted intentionally and with malice and reckless indifference to Plaintiff's rights under Title VII and is thereby liable to Plaintiff for compensatory damages under Title VII.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, demands judgment against Defendant is as follows:

65. Enter a judgment declaring that Defendant's patterns, practices and omissions, as described above, violate the law;

66. Enter a judgment and award in favor of Plaintiff and against Defendant for reasonable monetary damages, including back pay (plus interest or an appropriate inflation factor and enhancement to offset adverse tax consequences associated with lump sum receipt of back pay), front pay, benefits and all other damages owed to Plaintiff in an amount proven at trial, resulting from Defendant's unlawful and discriminatory acts or omissions;

67. Enter a judgment and award in favor of Plaintiff for the compensatory, punitive, exemplary and liquidated damages available under all applicable Federal, State, and Local laws;

68. Enter a judgment and award in favor of the Plaintiff for costs, including, but not limited to, reasonable attorneys' fees, experts' fees, and other costs and expenses of this litigation;

69. Enter a judgment and award in favor of Plaintiff for pre-judgment and post-judgment interest;

70. Award such other and further legal and equitable relief as may be found appropriate and as this Court may deem just and proper; and

71. Retain jurisdiction over this action until such time as it is satisfied that Defendant has remedied the practices complained of and is determined to be in full compliance with the law.

DEMAND FOR A JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury in this action.

Dated: Great Neck, NY
April 9, 2012

Respectfully submitted,
The Law Office of
BORRELLI & ASSOCIATES, P.L.L.C.
Attorneys for Plaintiff
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By: 
BENNITTA L. JOSEPH (BLJ1064)
MICHAEL J. BORRELLI (MB8533)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

CHRISTINE ANDERSON,

Plaintiff,

v. 07 Civ. 9599 (SAS)

THE STATE OF NEW YORK, et al.,

Defendants.

----------x

October 30, 2008

Before:

HON. SHIRA A. SCHEINDLIN,

District Judge

APPEARANCES

JOHN BERANBAUM
Attorney for Plaintiff

ANDREW M. CUOMO
Attorney General of the State of New York
BY: LEE ADLERSTEIN
WESLEY BAUMAN
Assistant Attorney General

Ex. "B"

(Case called)

THE COURT: Good morning, Mr. Beranbaum.

MR. BERANBAUM: Yes, your Honor.

THE COURT: That's you.

And Mr. Adlerstein?

MR. ADLERSTEIN: Yes, your Honor.

THE COURT: And Mr. Bauman.

MR. BAUMAN: Yes, your Honor.

THE COURT: Okay. Is there also -- no, there is no person named Sherry Cohen -- those are the clients. Okay. That's who is here.

I received four letters in preparation for today's conference; an October 3rd letter from defendant's counsel in response to this Court's requirement that a letter be submitted on, for every pre-motion conference saying that the defendant would like to move for summary judgment and explaining why the defendants think they could prevail, and then on October 23rd plaintiff's response with respect to the potential defendant's summary judgment motion, and then the letter dated October 24th from plaintiff's counsel expressing a concern about a deponent's testimony, and then a response dated 10/27 -- October 27th from the defendants responding to the plaintiff's October 24th letter regarding that deponent's testimony.

I would like to, of course, start with the discussion about summary judgment. And while -- oh. I'm sorry to

interrupt myself but I want to thank you for coming early. You were on for 1:30 and managed to change to 10:30 and the Court appreciates that.

So, without asking you to repeat your entire letter since I don't usually take oral argument on a motion, I do it up front, so to speak, by having the pre-motion process this becomes the equivalent of the oral argument. So, it is a good chance for me to hear a little bit more about this proposed motion even though it might, to some extent, repeat the letter.

So, with that, Mr. Adlerstein or your colleague, do you wish to be heard?

MR. ADLERSTEIN: Yes, your Honor. I can speak to and I want to just mention again if my voice defects me to some extent, I know that the Court will understand.

THE COURT: Yes.

MR. ADLERSTEIN: We think that we have a strong motion on various grounds and, essentially, there are three claims here. There is a discrimination claim based on racial discrimination, there is a whistle-blowing claim that's based on things that the plaintiff said that she was telling people during the course of events that led to her dismissal, and then finally there is a retaliation claim which kind of, I guess, blends into the whistle-blowing claim in very large measure.

The reason we think we have a strong motion for summary judgment is that when the record is examined as a

whole -- and we would expect in a motion, your Honor, to of course delve into the record and show your Honor the specific deposition testimony and documentation which pertains here and there is a fair amount of deposition testimony and also a substantial amount of documentation which relates to the case because there was intraoffice communications of various kinds that went on -- we think that the discrimination claim just will not hold up to scrutiny on a summary judgment basis.

We think that Mr. Beranbaum, in his own letter I think, in effect, acknowledges that he has some heavy lifting because he relies on precedent to the effect that the person who allegedly was the source of the racial animus, Sherry Cohen or such is the allegation, through communications that she made, infected other people who were decision makers in having Ms. Anderson discharged from her position. And on the basis of that infection, as it were, the decision as a whole to dismiss Ms. Anderson should be regarded as resulting from racial discrimination.

So, you have kind of a double thing that is a result from the racial discrimination. There is kind of a proximate cause relationship there. And I think we're going to be able to show that the decision on the part of the Office of Court Administration Personnel as well as the Court personnel who made the decision to discharge Ms. Anderson, was not affected by any kind of racial discrimination.

THE COURT: But what I am worried about is whether that's a fact issue. I can't comb the record and then decide facts.

MR. ADLERSTEIN: Well, your Honor, I think again that gets me to my next point, that there is simply no evidence by which a fact finder could infer that there was racial discrimination.

THE COURT: What if Ms. Cohen's behavior shows it?

MR. ADLERSTEIN: Ms. Cohen's behavior or alleged behavior --

THE COURT: Yes.

MR. ADLERSTEIN: -- we think is based solely on unsubstantiated conjecture --

THE COURT: Wait. Wait.

MR. ADLERSTEIN: -- and speculation.

THE COURT: What does that mean? A plaintiff can create an issue of fact.

If a plaintiff says -- not taking this case now and making up a hypothetical case, a typical case of sex discrimination, let's say -- he touched me, he said, he did. Whatever that plaintiff says is evidence. It is not conjecture or speculation. If the plaintiff says that the defendant -- and I said I'm making up a difference case so you won't think it is this one -- but you know, he did something inappropriate. That's her version. And in that case that would be enough to

get to a jury.

MR. ADLERSTEIN: Except the plaintiff's own language doesn't link it to race and the only evidence that the plaintiff even attempted to link that allegation to race is based on conjectural testimony from other employees which will not hold up both on a matter of fact that it would not be admissible evidence and also that it is unsubstantiated and speculative.

THE COURT: Well, wait. Ms. Anderson testified that she heard Ms. Cohen making racially derogatory remarks about Black people and Hispanics?

MR. ADLERSTEIN: I don't believe that that is actually an accurate portrayal of what's in the record.

THE COURT: Oh. Well, I don't -- I didn't study the deposition but that's what was represented to me in the letter.

MR. ADLERSTEIN: Right.

THE COURT: Did Mr. Beranbaum lie in the letter? Did you lie in the letter or did she say in her deposition that she personally heard Ms. Cohen making racially derogatory remarks about Black people and Hispanics?

MR. BERANBAUM: That's correct. She has told me that.

THE COURT: I didn't ask you what she told you, I said what did she say in her deposition under oath? Is it there or not there in the transcript?

MR. BERANBAUM: There is -- some of it is there and

some of it was not asked and so it was not -- and so, she didn't need to answer it but she will provide an affidavit that's not inconsistent with a deposition.

THE COURT: Right. An affidavit can't be inconsistent. It will be completely discounted.

MR. BERANBAUM: It won't be.

THE COURT: That means it will open up another deposition. I mean, if she's going to say things that are new that are in an affidavit here, we haven't gotten very far.

MR. BERANBAUM: Well, these are remarks that Ms. Cohen said about Black people and about Hispanics.

THE COURT: I know, but Mr. Adlerstein doesn't know about this. This is not in the record. I thought the record was closed. Now she wants to submit an affidavit in support of defending defendant's summary judgment motion.

MR. BERANBAUM: Some of it isn't in the deposition and, as I said, it is not going to be inconsistent.

THE COURT: I heard him saying that but it is new and if Mr. Adlerstein did know about it he wouldn't have made the motion. So, I'm wondering if you shouldn't just do the affidavit right now and find out what it is that she's going to say that's not in the deposition and Mr. Adlerstein can look at the deposition and he can analyze for himself whether he thinks it is inconsistent and write a letter to the Court saying you can't accept the affidavit, it is only inconsistent, or you can

say, well, I agree that wasn't asked, it is not inconsistent. If that's what she's going to say in opposition to the motion I can't move on that one claim.

Anyway, you were starting to say?

MR. BERANBAUM: I would be happy to do that.

THE COURT: Then do it. When can you get the affidavit out?

MR. BERANBAUM: Next week.

THE COURT: What day? Close of business Wednesday?

MR. BERANBAUM: Sure.

THE COURT: Okay. So, in any event, let's say she did say what he put in his letter that she heard Ms. Cohen making racially derogatory remarks about Black people and Hispanics, and then another witness would say -- and maybe this isn't good enough -- but Black investigators of the DDC, you would say Ms. Cohen discriminates against employees of color by routinely harassing, demeaning and micro-managing them until they eventually are forced out of their jobs.

Do you know about that testimony, this DDC investigator or, again, this is new and not in the record right now?

MR. ADLERSTEIN: Well, there is testimony from co-workers where they make blanket statements to that effect. However --

THE COURT: Do you know who this actual person is, a

former Black investigator at the DDC that he quotes in the letter? Do you know who that is?

MR. ADLERSTEIN: Yeah. The person was -- there were two people.

THE COURT: As long as you know who it is.

MR. ADLERSTEIN: There were two people who were deposed.

THE COURT: Okay.

MR. ADLERSTEIN: And what we have done is we have taken a look at that deposition testimony which the plaintiff took and that deposition testimony is wholly conclusory. There is no specifics where the individual says that they were able to see how the conduct toward individuals they claimed who were treated differently was related to race. It was a totally conclusory fact.

I would ask the Court to consider the fact that we will be able to cite case law. We just received a decision from Judge Sifton in a case that we didn't cite in our letter, a case called Moore v. New York State Division of Parole, 2008 U.S. District Lexis 72260, where a similar testimony was offered in opposition to a motion for summary judgment. And Judge Sifton cited case law rejecting the import of that testimony to the effect that this was wholly conclusory statements, that the impression of the person who was being asked was that there was discrimination going on saying that I

don't like how this particular person was treated and because I didn't like how this person was treated it must have been because of race.

That kind of testimony has been rejected under case law and I think that irrespective of what Mr. Beranbaum is going to be coming up with, I doubt very much that it is going to be able to be linked to specific conduct on Ms. Cohen's part or anyone else's part which demonstrates in any way, shape, or form that race was in any way linked to the decision that was made with respect to Ms. Anderson.

THE COURT: As for this recent decision, there are hundreds and hundreds of District Court opinions on employment discrimination cases. It is really best to cite controlling law which is Circuit or Supreme Court. One can get lost in the thicket of District Courts so I think the most persuasive authorities for me usually are of course starting with the United States Court; second, the Second Circuit Court of Appeals; and third, if I have said it in a prior opinion I guess I should be reminded. But, other than that, you know, the plethora of District Court cases are not too fascinating.

MR. ADLERSTEIN: Judge Sifton does cite a District Court case.

THE COURT: Then you should too.

MR. ADLERSTEIN: A case called Schwab v. Toufayon.

THE COURT: Yes. I remember that case.

MR. ADLERSTEIN: He cites that case.
THE COURT: That's fine.
MR. ADLERSTEIN: And I think the prevailing law is along those lines.
So, I would submit to the Court that there is at least a very serious issue here about a link to racial discrimination which your Honor ought to take a look at on summary judgment as to whether you have more than speculative and conclusory testimony as well as whether or not there is a real link between anything Ms. Cohen would have thought or said or done and the actual decision to have dismissed --
THE COURT: Okay. Let's go to retaliation.
MR. ADLERSTEIN: So that's on that.
THE COURT: Can we go to retaliation?
MR. ADLERSTEIN: Absolutely. Opinion on the whistle-blowing or retaliation claim, there I know your Honor has recently written on it in the Fiero case. We took a look at Fiero as well as other cases. We cited the Routolo case.
THE COURT: Oh yeah, Fiero. They're appealing that. Somebody is appealing Fiero. They don't like what I did.
MR. ADLERSTEIN: Okay.
THE COURT: You didn't like it.
MR. ADLERSTEIN: Routolo.
THE COURT: No, no. Fiero.
MR. BERANBAUM: In Fiero your Honor decided that the

speech involved was, in effect, citizen speech, it wasn't because the person was actually saying that the employee was saying that they had been asked to do specifically dishonest acts.

THE COURT: It was a teacher dispute.

MR. ADLERSTEIN: Right. Right. And what the Routolo case instructs, as well as other cases, is that essentially which side of the fence the speech is on that was allegedly linked to the firing --

THE COURT: Right.

MR. ADLERSTEIN: -- is to be determined by a Court as a matter of law.

THE COURT: Okay.

MR. ADLERSTEIN: And so, we think that the motion for summary judgment will provide an opportunity. It will be our position, your Honor, that the record shows that the alleged speech was essentially linked to the plaintiff's job and her job duties. What she claims to have done was to have said to some superiors, I think that you are going too easy on some people in some cases and as a result of that we are not fulfilling our mission. However, at the same time she doesn't go beyond the small circle of people that she's talking to. There is allegations in the complaint that somehow this was an allegation relating to corruption that was going on. When the plaintiff was asked about corruption inside the agency in her

deposition, the plaintiff was unable to point to any specific instance of corruption or any real patterns of corruption. It just didn't hold up.

And so, we think that we are going to be able to show in this motion, through a combination of all the circumstances which the Courts have said contribute to a decision on what kind of speech it is, whether it is in effect citizen speech or whether it is job-related speech, we think we are going to be able to show, your Honor, that clearly here what happened was that it was job-related speech and that it was not speech as a citizen.

We understand that the plaintiff is --

THE COURT: Therefore it doesn't have the same First Amendment protection.

MR. ADLERSTEIN: That's right. That's right.

THE COURT: How does that help us with the retaliation claim itself?

MR. ADLERSTEIN: Well, because the retaliation claim is essentially that the plaintiff was dismissed as a result of having told Katherine Wolf, who was the chief clerk, as well as some other vague claims that the plaintiff has made about perhaps telling others as Mr. Beranbaum said in his letter, about such things. However, we have not seen substantiation of that in the record. And even though Ms. Wolf denies that the plaintiff made any of those kinds of comments to her, we think

that even if she had said what she claims to have said to Ms. Wolf, it wouldn't have comprised the kind of speech which is protected. And also --

THE COURT: Once the speech isn't protected, let's say it is in the course of her job, it is not a citizen job, then they can fire her for the speech.

MR. ADLERSTEIN: That even if they had fired her for the speech that it would have been permissible. However, we, at the same time we are going to be able to show that the firing itself was not linked to that speech and so that the causation hasn't been shown. That's essentially the first step is to show that.

THE COURT: You have a two-prong attack.

MR. ADLERSTEIN: Yes. And basically it is a two-prong attack and that under Routolo, because it is an issue of law, it provides the Court the opportunity to weigh into that particular issue.

THE COURT: Well, except you are saying even if it was protected speech it doesn't matter.

MR. ADLERSTEIN: Right.

THE COURT: She wasn't fired based on the speech now as a matter of law, not issue of fact.

MR. ADLERSTEIN: Right. And we also think we are going to be able to show that there was a lack of temporal proximity because the conversation with Ms. Wolf took place in

August of '06, the firing took place in June of '07; that this would not have been linked to the -- so, there is various instances that we would like to be able to present to the Court on that particular issue.

THE COURT: Okay.

MR. ADLERSTEIN: And I would submit, on that basis, the motion for summary judgment will be of at least substantial assistance to the Court.

THE COURT: There is no such thing as substantial assistance. Either you win it or you lose it. You think you can win it.

MR. ADLERSTEIN: We think we can.

THE COURT: Because I don't need any assistance.

MR. ADLERSTEIN: No, but I mean in terms of the parties involved in shaping the case and we think we will win.

THE COURT: Mr. Beranbaum, do you want to respond?

MR. BERANBAUM: Yes.

In terms of the race discrimination case, as the Court well knows race discrimination, the determination is one of intent and that's a province usually reserved for the jury to make that decision in summary judgment.

THE COURT: There has to be some evidence on which they can make it. What the summary judgment motion is saying on the discrimination case is the record has no evidence; not only little evidence but no evidence.

MR. BERANBAUM: Yes. And I think that that's just an incredible position to take.

THE COURT: Why?

MR. BERANBAUM: I will explain.

THE COURT: Okay, but yes, but here is my question. Because a supervisor can harass an employee for all kinds of other reasons, they just don't like the way they dress or they don't like I don't know what else, they don't like the way they speak or something or other. And while it is not a nice thing, it is not actionable. This has to be linked to race.

MR. BERANBAUM: That's right.

THE COURT: Okay.

MR. BERANBAUM: And here a jury could make a reasonable inference linking the adverse action, the hostility, the hostile environment and the recommendation for firing --

THE COURT: Based on what.

MR. BERANBAUM: -- with race.

THE COURT: Because the plaintiff is a minority? That's not enough.

MR. BERANBAUM: It is certainly not my position.

THE COURT: Okay. So what is the evidence?

MR. BERANBAUM: The evidence is that she has been heard by co-workers, including my client, of making racially insensitive maybe racist remarks, that she has an animus towards minorities and Black people in particular as reflected

by those remarks.

The remarks, it is contrary to counsel's characterization that these remarks are simply conclusory. The individual I quoted, and his name is Mr. Van Loo, and the defendant took his deposition, not the plaintiff, he, in his affidavit spoke specifically about disparate treatment that he received --

THE COURT: That he himself received?

MR. BERANBAUM: Correct.

THE COURT: Not reporting about what he thinks she said to others.

MR. BERANBAUM: That's correct, your Honor. And, candidly, that's an issue. If we can show, which I think we can, a generalized racial animus reflected in both her treatment and disparate treatment to my client and others and racially insensitive remarks, if we can show that she had that animus and we can show that she was the prime mover in the termination of my client, I think that's enough to get to a jury and that's our case.

THE COURT: Funny, you don't really disagree much with Mr. Adlerstein, you just think the law is broader in accepting that kind of generalized proof than he does.

MR. BERANBAUM: No, I --

THE COURT: I mean, she can't say that this supervisor said to me or wrote to me or did anything to me that was

explicitly race discrimination so it is more of a generalized allegation: She didn't treat me very well and, by the way, she is a racist.

MR. BERANBAUM: She didn't treat me very well and, in fact, she treated me differently than White people.

THE COURT: Right.

MR. BERANBAUM: She made ably insensitive remarks in my presence.

THE COURT: We don't have that here. That's going to be this affidavit.

MR. BERANBAUM: We do have that. I'm being perfectly on the safe side. I didn't review the deposition. They might all be in there but I want to be on the safe side and if there is anything that is not in there I will have an affidavit but, trust me, there is remarks in the deposition. And thirdly, what she said to other people and how she -- minorities and how she acted towards other people. That's our evidence.

THE COURT: Okay. It sounds like a difficult case.

MR. BERANBAUM: Can I just make one other point?

THE COURT: Yes.

MR. BERANBAUM: On top of that, there was extraordinary efforts made against this woman and some of which I referred to, these biased evaluations, not letting her respond to them, keeping her in the supervision of a woman who she feared because she had been assaulted. And there is case

law, as I'm sure your Honor recognizes, that this kind of irregular treatment one can infer in combination with other evidence was caused by discriminatory animus.

THE COURT: All right. This may be one of the rare cases where the discrimination claim may survive and the retaliation won't. We often have the opposite outcome at the end of the day. Do you want to address the retaliation claim briefly?

MR. BERANBAUM: Sure.

The retaliation claim, and you know I think Mr. Adlerstein and I agree that the issue here is under Garcetti. She was speaking as a disgruntled employee.

THE COURT: He goes one step farther and says even if the speech was protected, there is no proof she was fired.

MR. BERANBAUM: Yes, and that's a fact question.

THE COURT: Not necessarily. There, again, has to be some facts in the record from which a reasonable juror could find that she was fired because of her speech. There has to be something to support it. A jury can't just pluck it out of the air.

MR. BERANBAUM: Well, I can show temporally --

THE COURT: He said the opposite. He said temporally, no, no, no, but he gave me some dates, for his part of the record and I will have the transcript to look at. What do you have to say? Surely the date of termination is the same. What

did you tell me it was?
MR. ADLERSTEIN: June of '07, your Honor.
THE COURT: That must be agreed upon.
MR. BERANBAUM: Right. And the assault that I mentioned that grew out of her complaint was in June of '06. And thereafter there was a series of adverse -- of negative and hostile actions on the part of this woman.
THE COURT: I know, but her speech, the complaining speech. What was the complaining speech? By the way, because you don't pause so there is no use talking to you.
MR. BERANBAUM: I'm sorry.
THE COURT: Mr. Adlerstein, when is the complaining speech.
MR. ADLERSTEIN: When I was alleging to this alleged whistle-blower speech, in August of '06.
MR. BERANBAUM: Right.
THE COURT: So a year.
MR. BERANBAUM: In September of '06.
THE COURT: Still close to a year earlier.
MR. BERANBAUM: But I think the record will make it clear that she continued to make complaints. Then she spoke to Mr. Cahill and there are --
THE COURT: What is the most recent speech to the termination that you have in the record?
MR. BERANBAUM: In the record, she submitted a

grievance in which she referred to the retaliation for her complaints about the soft treatment that the DDC was according attorneys and that was in the spring.

THE COURT: She was fired when again? June? June.

MR. BERANBAUM: Yes. Truly, the Garcetti issue I think is really what's key.

THE COURT: I don't know about that. It may mean there is not enough of a link no matter what.

Okay. I think I get the argument. If there is nothing you wish to add I thank you both for coming in early.

We need to go over the schedule, or do we?

MR. ADLERSTEIN: Well, I think it would be helpful to have a schedule.

THE COURT: But I'm saying we don't have one yet.

MR. ADLERSTEIN: No, we do not.

THE COURT: That's the next step, to set the schedule.

I have one other question. Have you tried to mediate this employment dispute in the building? I send the case to a magistrate judge or the Court Annexed Mediation Program. Did I do either here?

MR. BERANBAUM: I suggested it. We had suggested it.

THE COURT: I don't wait for your consent other than which one do you want, magistrate judge or Court Annexed Mediation Program which of course is free, but you have to go to one or the other.

MR. BERANBAUM: I see.

THE COURT: Maybe you didn't do that because at one time Ms. Anderson had a different lawyer, I think it was a different setting. In any event, I didn't send you. Is that it?

MR. BERANBAUM: Correct.

THE COURT: Do you want to go to magistrate judge or the Court Annexed Mediator?

MR. ADLERSTEIN: I think the magistrate judge.

THE COURT: Fine. What month would you like to?

MR. BERANBAUM: Your Honor, may I say something?

THE COURT: No. Not really. It is going to go to the magistrate judge.

MR. ADLERSTEIN: Would that be the same magistrate judge because my --

THE COURT: As what?

MR. ADLERSTEIN: As has been handling the discovery.

THE COURT: In the Anderson case?

MR. ADLERSTEIN: Yes.

THE COURT: Who is that?

MR. ADLERSTEIN: Judge Peck. And the only reason I say so, Judge Peck is in my eyes is great but we've had some sort of discovery run ins. My client feels a little weary and I don't think it would be productive in that case.

THE COURT: I don't know. I have to speak to the, I

guess, the chief magistrate judge whether they can assign it to a different one for settlement purposes only. So, I will fill out the form and then I will look into that but I do want to make sure it gets done. So, I will put down November. If you are going to talk settlement you might as well talk. Discovery is pretty well known so I will put down November and we will see who it will be.

MR. ADLERSTEIN: Your Honor, perhaps if -- no, that's okay.

THE COURT: I want to get you a schedule for the summary judgment so I can move on to the remaining cases and get out on time.

MR. ADLERSTEIN: Your Honor, may I make a suggestion about the schedule?

THE COURT: All right.

MR. ADLERSTEIN: We were going to ask your Honor for a January date for submission of the motion. There is a couple of things going on. First, my hours have been curtailed because of the fact that I haven't been feeling well, I'm under some medication with what I have been dealing with; and secondly, both Mr. Bauman and I have a trial in front of Judge Sifton scheduled for December the 8th, and so we think that we would be able to get a motion in by the early part of January.

THE COURT: Today is October 30th. I thought you meant that that would be fully submitted by then. Moving

papers would be before and the response papers and reply papers.

MR. ADLERSTEIN: I respectfully request that for those factors, my hours have been curtailed and also we do have that trial that we need to concentrate on. In that case there is a fair amount of pretrial activity that judge Sifton has ordered, and it just happens that Mr. Bauman and I are both involved in that trial. And so, I would respectfully request that the Court allow us to see clear to --

THE COURT: But you have a big, big, big office. In other words, are you not the only two people there. To ask basically that the case go on hold for two and a half months is what you are saying. You know, once the papers are filed in summary judgment from the moment the first person files and then the next response and then reply and then waiting for the Court, it almost always takes half a year. That's my experience from beginning to end and that's a long time so I just wanted to start the process. I'm not saying it has to be filed in a week or 10 days, but to ask for two and a half months to file papers, I understand the reasons that you two are but you have a big, big office.

MR. ADLERSTEIN: Well, the fact is, your Honor that --

THE COURT: And your case before Judge Sifton may settle. That happens all the time.

MR. ADLERSTEIN: I don't expect that case is going to

settle. That hasn't been successful before and also there is a fair amount of ground to cover here and I'm just looking to try to be realistic and not have the kind of pressure which I think would be very difficult to deal with under the circumstances.

THE COURT: What is your view?

MR. ADLERSTEIN: I had mentioned that to Mr. Beranbaum.

THE COURT: Mr. Beranbaum, what is your view?

MR. BERANBAUM: I'm certainly going to accommodate Mr. Adlerstein's not feeling well and he's always extended me courtesies and so I don't feel like I'm going to object to his needs and trust what he has to say.

THE COURT: But, Mr. Adlerstein, since I'm not a great fan of this proposal in the first place I'm not going to give any adjournment. I don't see how you are better off putting it the day after your trial.

MR. ADLERSTEIN: No, the trial is December 8.

THE COURT: I know.

MR. ADLERSTEIN: So if your Honor gave us --

THE COURT: How long is it supposed to last?

MR. ADLERSTEIN: Probably a week or a little bit more. If your Honor gave us an early January date it would be my expectation -- I'm not going away in the holiday period.

THE COURT: Okay. But, I'm telling you now I'm not going to adjourn it, it is a no adjournment schedule. January

7th for the moving papers.

MR. ADLERSTEIN: Thank you.

THE COURT: No adjournments.

Mr. Beranbaum, how long do you need to respond to it?

MR. BERANBAUM: I would like four weeks, please.

THE COURT: February 4th.

How long do you need to reply, Mr. Adlerstein?

MR. ADLERSTEIN: Three weeks, your Honor.

THE COURT: See my point? February 25th.

MR. BERANBAUM: I think two weeks is the ordinary.

THE COURT: There is no ordinary. February 25th is it. This is a no adjournment schedule: January 7th, February 4th, February 25th, all page limits apply. Exhibit limits, don't tinker with them they're out there in the rules. They're out there in the internet. That's it. Or you can get them off the court website. Thank you.

MR. BERANBAUM: Your Honor, would you want to address my second letter?

THE COURT: Oh, right. Your second letter.

You know, I don't think there is much to address. I read the letter. I'm not sure that you are asking me anything. You just seem to want to tell me something or report it to me. Okay. You reported it to me. You are not really asking me to do anything, are you? If so, your letter didn't make that clear. Do you want me to do anything? We don't need names, I

know you are concerned about privacy. What do you want me to do?

MR. BERANBAUM: As an officer of the court I wanted to apprise the Court of it and, if the Court felt necessary, to refer it to anybody.

THE COURT: I don't.

MR. BERANBAUM: Thank you.

THE COURT: Thank you.

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