

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK, COUNTY OF NEW YORK**

CANDICE LUE, an individual,

Plaintiff

V.

JPMORGAN CHASE & CO. a Delaware Corporation; ALEX KHAVIN, an individual; FIDELIA SHILLINGFORD, an individual; JOHN VEGA, an individual; HELEN DUBOWY, an individual; PHILIPPE QUIX, an individual; THOMAS POZ, an individual; CHRIS LIASIS, an individual; MICHELLE SULLIVAN, an individual; and DOES 1 - 10, inclusive,

Defendants

Civil Action No.: 16 CV 3207 (AJN) (GWG)

Affidavit in Opposition/Response to
“Declaration of **Alex Khavin**
in Support re: 89 Motion for Summary
Judgment – (Docket # 92)”

I, pro se Plaintiff, Candice Lue hereby oppose/respond in good faith and under sworn oath to Defendant, Alex Khavin’s (“Khavin”) Declaration in support of the Defendants’ Motion for Summary Judgment as follows:

STATEMENT

Alex Khavin is a racist. My experience of Employment Racial Discrimination at the hands of Khavin was so blatant that even in my worst state of naïveté, her bigotry was impossible for me to overlook or to ignore.

As the only Black analyst in the Counterparty Risk Group (“CRG”), the group headed by Khavin, Khavin treated me as a second class citizen and/or the help/house slave for the non-Black members of the group reminiscent of the 1800s plantation style living, in the era of slavery when Blacks had to serve their masters and their masters’ families.

“The help/house slave”

To make work “easier” (Khavin’s own word - ¶ 6 – Am. Compl.) for the non-Black members of the Counterparty Risk Group, Khavin solely assigned me the task of taking the minutes for the Monthly Governance Meetings (a task which was so undesirable that Khavin made it rotational among all the said non-Black analysts and associates before I joined the team as I was told in my interview and per Kimberly Dauber’s email dated February 4, 2015¹ – Exhibit B) and the tasks of printing 13 copies of each of the non-Black team member’s presentation materials (one copy for each member of the team), collating, stapling and lugging of the said presentation materials to the monthly team meetings where the said non-Black team members, including the ones on my job level, will be waiting to “be served” (tasks which never existed before I joined the team). These were tasks that were not only off limits for the non-Black analysts and associates to do but they were even off limits for the White administrative assistant on staff to be asked to do even though they would more fall into the administrative assistant job category.

Khavin solely assigning me these undesirable tasks that were only a benefit/perk for the non-Black members of the team, including non-Black members at my job level, at the expense of me, the only Black analyst on the team was not only in violation of Title VII of the Civil Rights Act of 1964 - EEOC Compliance Manual Section 15 – Race and Color Discrimination – VII(B)(1) – WORK ASSIGNMENTS which states: “*Work assignments must be distributed in a nondiscriminatory manner. This means that race cannot be a factor in determining the amount of work a person receives, or in determining who gets the more, or less, desirable assignments*” but it was also in violation of 42 U.S.C. § 1981 because like a plantation slave, I would have never gotten the opportunity to enjoy such “benefit/perk” as, as an analyst in the Counterparty Risk Group as well, it was not reciprocated to me.

¹ “Every analyst and/or associate on this team has been the minute taker of our Extended meetings at some time during the last 2 years. I don’t think this is a function that is specifically written out in job duties because it’s an adhoc function. However, Alex would pick a different person each time during our meetings...”

In a meeting with Khavin on April 24, 2015, I tried my best to articulate to her how I felt about her treating me *“as if I am the help and as if this is 1910”* and Khavin’s “how dare you” response to me, *“it is your job and I expect you to do it. If you need help go and ask the [White] administrative assistant to help you”* was condescending, unapologetic and unrepentant.

“Second Class Citizen – Khavin Switched My Manager to a Servile/Subpar Manager”

Khavin’s first act of disparate treatment against me is consistent with unlawful segregation (Eighth Cause of Action - “Unlawful Segregation on the Basis of Race in Violation of Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981” – Am. Compl.). After it was decided that I, the Black candidate, was the one chosen for the Credit Reporting Risk Analyst position in Khavin’s group, Khavin switched my manager (Exhibit O - JPMorgan Chase 000221) from being the White manager, Kimberly Dauber who all the non-Black analysts and associates (including my three non-Black predecessors) reported to, to her, Khavin’s servile Black employee, Defendant Fidelia Shillingford (“Shillingford”) who no one had ever reported to and who was willing to engage in horizontal racism against me to secure her, Shillingford’s own career at JPMorgan Chase² by allowing herself to be used by Khavin as a conduit to extend her, Khavin’s racial bigotry against Blacks against me (§ 30 – Am. Compl. and Exhibit QQ - Corporate Careerist Blacks).

Khavin switching my manager from being Kimberly Dauber, who she, Khavin did not need to put on a Development Plan and as of 2014 year end was not on JPMorgan Chase’s list of “low performers”, to her, Khavin’s servile employee, Shillingford who, based on Khavin’s own 2014 year end performance review and performance rating was a “low performer” who needed to be placed on a Development Plan as a “Course of Action” (Exhibit FF), was an act of disparate

² Having gotten a “Low Meets Expectation (M-)” rating from Khavin on her 2014 year end performance review (Exhibit FF), Shillingford’s career at JPMorgan was at the mercy of Khavin and HR so in her quest to secure her career/future at JPMC, Shillingford who is Black was willing to relegate herself to horizontal racist status (Exhibit QQ – “Corporate Careerist Blacks”).

treatment against me³ considering that the education, experience and skills requirements for me to have landed the job as the Credit Reporting Risk Analyst, as per the job description (Exhibit H), were identical to those of the non-Black Analysts.

“Second Class Citizen – Khavin Treated Me at a Double Standard”

Reminiscent of the devious ways in which Black voters were treated to frustrate them and to prevent them from using their voting privilege before the 1965 Voting Rights Act was passed, unlike the non-Black analysts in the Counterparty Risk Group who could use their work from home privilege by just sending an email to the team saying, “I am not feeling too well today so I will be working from home” or something of that nature (Exhibit L), Khavin’s directive through Shillingford for me was that I had to send an email to Shillingford detailing my situation and ask for permission to work from home (permission which would have to come from Khavin herself) and she, Shillingford would communicate accordingly to the team (Exhibit L-1 - JPMorgan Chase 000665). In other words, unlike the non-Black analysts on my job level who could just send the email to the team as Exhibit L shows, I, Black Plaintiff, Candice Lue, would be passing my place.

Khavin’s Attempts to Cover up Her Racial Bigotry

Alex Khavin is a master at subtly covering up her bigotry. Khavin used Shillingford, a servile Black employee who, for her, Shillingford’s own job security relegated herself to being a horizontal racist, as cover and a conduit to carry out her, Khavin’s bigotry against Blacks against me⁴.

³ Assigning me to a subpar manager was Khavin’s first act of disparate treatment against me - similar to “back in the days” when Black children were relegated to schools that were in poor structural/financial condition and the “colored” water fountains needed upkeep/repair, etc. while respectively, the segregated White schools were in good condition and the water fountains for “Whites” had better upkeep.

⁴ Title VII of the Civil Rights Act of 1964 - EEOC Compliance Manual Section 15 – Race and Color Discrimination - V(A)(2) - THE DECISIONMAKER’S RACE). *“The race of the decisionmaker may be relevant, but is not controlling.(55) In other words, it should not be presumed that a person would not discriminate against members of his own race. As the Supreme Court has noted, “[b]ecause of the many facets of human motivation, it would be unwise to presume as a matter of law that human beings of one definable group will not discriminate against other members of their group.”(56)*

To further execute her mastery, as is evidenced in the Defendants' "Motion for Summary Judgment - Docket #s 90 - 99", Khavin is now using Baruch Horowitz who, pursuant to my "Affidavit in Opposition/Response to Declaration of Baruch Horowitz in Support re: 89 Motion for Summary Judgment - (Docket # 99)" and my Response/Opposition to the "Defendants' Undisputed Material Fact # 18" - "Affidavit in Response/Opposition to Defendants' Statement of Undisputed Material Facts under Local Civil Rule 56.1", I will respectfully say is not of sound mind, as cover for her said racial bigotry.

In addition, after I called out Khavin for being a racist for solely assigning me tasks which are employment racially discriminatory based on the Counterparty Risk Group's racial make-up which she, Khavin headed, and the fact that Khavin had never assigned such tasks to any of my fellow non-Black analysts and/or associates in the said group and/or the White administrative assistant on staff prior to me joining the Counterparty Risk Group and after I joined the said group, Khavin even went as far as to try to redo the job description that was posted for the Credit Reporting Risk Analyst position and which I applied for in October 2014 to let it seem that the employment racially discriminatory tasks that she exclusively assigned to me, the only Black analyst in the Counterparty Risk Group, was a part of my job description (Exhibit CC and Exhibit H-4).

Response to Declaration Statement # 2

Up until my retaliatory termination date of January 6, 2016, Khavin was still a member of the CRG (Exhibit DD-1). As I articulated in my "Response [under sworn oath] to Request # 10" - "Response to Defendants First Request for Production of Documents" (page 19) - docket # 45": *"It should be interesting to note that on January 6, 2016, within half an hour of receiving an email from Quix addressed to all the employees in Asset Management - Risk Management naming a replacement for Khavin as Head of the Counterparty Risk Group for Global Investment Management, I was called away from doing my work and told that I was terminated. Then, under*

careful supervision, I went back to my desk, logged out of the applications and closed out of the files in which I was working, gathered my belongings then I was escorted out of JPMorgan Chase.”

“Manager Switch”

Response to Declaration Statement # 5

This statement by Khavin is categorically false. First off, during *“the months before Plaintiff’s hiring into the CRG in November 2014”*, I had three non-Black predecessors who worked in the Credit Reporting Risk Analyst position, Baruch Horowitz, Kenneth Ng (Exhibit L-1) and Thomas Monaco, who all reported to the White manager, Kimberly Dauber. Meaning that, Khavin did not have to wait for me to be hired in November 2014, to get a Credit Reporting Risk Analyst to report to Shillingford (Am. Compl. - Eighth and Ninth Causes of Action – *“Unlawful Segregation on the Basis of Race and Unwillingness/Failure to Promote to a Managerial Position on the Basis of Race in Violation of Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981”*). Furthermore, I would not have been hired in the Counterparty Risk Group if Thomas Monaco had not resigned from the said Credit Reporting Risk Analyst position.

Also, why would Khavin be having *“conversations about growing [Shillingford’s] managerial skills”* when according to Exhibit FF, *“in the months before Plaintiff’s hiring in the CRG in November 2014”*, Shillingford was trending a performance rating of *“Low Meets Expectation (M-)”* which Khavin subsequently gave Shillingford on her 2014 year end performance review along with putting Shillingford on a Development Plan? Wouldn’t this be more disparate treatment of a Black employee for Khavin to assign a low performer, who she, Khavin had to put on a development plan, to be the manager of that said Black employee when she, Khavin had never made any of the non-Black analysts and/or associates report to this low performer?

Response to Declaration Statement # 6

I am a bit baffled by Khavin's claim that "*I made this decision based on discussions with Shillingford and my immediate manager, Philippe Quix, a Managing Director*" because, my first day as a member of the Counterparty Risk Group was November 10, 2014 and the first time that I saw Defendant Philippe Quix was in early 2015 because he was spending a lot of time in the London office.

In or about February of 2015 Philippe Quix's administrative assistant, Eileen Kulda was setting up one on one Meet and Greets with members of the Counterparty Risk Group to meet with Philippe Quix. My one on one Meet and Greet with Philippe Quix was originally set up for early March 2015 but because I had to attend an Asset Management Analyst Training Program from February 23 to March 6, 2015, it was postponed to March 16, 2015. However, as my email dated March 16, 2015 (Exhibit P/Exhibit L) shows, I had to reschedule that meeting because I was not feeling well and would not be in the office. When I finally did my one on one Meet and Greet with Philippe Quix, he told me that just like me, Plaintiff, Candice Lue, he too was new to the group, that he had joined the group in September of 2014, just two months before I did.

So, if Philippe Quix had only joined the group in September of 2014, my first day in the group was November 10, 2014, between September 2014 and February 2015 Philippe Quix was spending most of his time in the London office to the point where he, Philippe Quix, was only able to "Meet and Greet" with each member of the Counterparty Risk Group, including Shillingford, in February/March of 2015 to get acclimated with everyone, how could he have been having discussions with Khavin about "growing Shillingford's managerial skills in the months leading up to my hire"? Philippe Quix was also from Goldman Sachs. He was not an internal transfer who might have worked with Shillingford in any capacity.

When the Credit Reporting Risk Analyst position was advertised in August 2014 (before Philippe Quix joined the Counterparty Risk Group/JPMorgan Chase), the hiring manager listed was

the White manager, Kimberly Dauber (Exhibit O – Excel Spreadsheet), who my three non-Black predecessors reported to. In October 2014 when I saw that the position was still open and I applied for it, as the email correspondence dated October 27, 2014 (Exhibit O) between myself and Kimberly Dauber shows, Kimberly Dauber was still listed as the hiring manager.

During my interview process, all set up by Kimberly Dauber (Exhibit O), Kimberly Dauber spoke with me as if, like all the other analysts and associates who were currently on the team, she expected to be my manager and never once mentioned even the possibility of Shillingford being my manager. When I interviewed with Shillingford on October 30, 2014, she spoke with me as if I would be working with her like my three non-Black predecessors did and in no way, shape or form as if she would be my manager. And, in my interview with Khavin on November 3, 2014, Khavin made no mention of any possible manager change because I was not yet confirmed by the team as the chosen candidate. During all that time, there was no utterance from anyone including Kimberly Dauber, Khavin and/or Shillingford herself of Shillingford being my manager (Exhibit O).

I found out on November 6, 2014, the day the job was offered to me that within two days of meeting with Khavin (November 5, 2014 to be precise - Exhibit O - JPMorgan Chase 000221), Khavin switched my manager from being Kimberly Dauber, the White manager who all the non-Black analysts and associates (including my three non-Black predecessors) reported to, to Shillingford, a servile Black employee, who no one had ever reported to and who Khavin would use as cover and as a conduit to carry out her bigotry against Blacks against me.

Khavin's statement that "*I did not know Plaintiff at that time and was not aware of her candidacy*" is again, categorically false as Khavin interviewed me on November 3, 2014, two days before she switched my manager from Kimberly Dauber to Shillingford (Exhibit O).

Response to Declaration Statement # 7

Khavin's Statement # 7 is an insult to anyone of reasonable mind's intellect. As, it would make sense to me that if Shillingford was going to be the hiring manager for the Credit Reporting

Risk Analyst position then Shillingford would be the one communicating with the HR hiring manager⁵. So, how could the HR hiring manager make the mistake of putting Kimberly Dauber's name as the hiring manager for more than three months (with emphasis) without Shillingford noticing it? Further, the HR hiring manager would have to communicate at least once with the Counterparty Risk Group hiring manager before the position was posted and several times after the said position was posted to send résumés of prospective candidates for consideration to the CRG hiring manager and if the said HR hiring manager had mistakenly put Kimberly Dauber as the CRG hiring manager, wouldn't that mistake be corrected right then and there in those communications, not on November 5, 2014 - Exhibit O - JPMorgan Chase 000221?

And, how come Kimberly Dauber did not catch that "mistake" when I sent her the email dated October 27, 2017 (Exhibit O) which stated: "*....I have interest in the captioned position [AM - Credit Reporting Risk Analyst] that is being advertised on Job Connect and for which **you are named as the hiring manager***"? But instead, Kimberly Dauber's response to me was: "*Thank you for your interest in the Credit Reporting Risk Analyst position. I would like to meet with you to discuss the position and your skills in more detail....*"

And, just to reiterate what I said in my response to Statement # 6: "*During my interview process, all set up by Kimberly Dauber (Exhibit O), Kimberly Dauber spoke with me as if, like all the other analysts and associates who were currently on the team, she expected to be my manager and never once mentioned even the possibility of Shillingford being my manager. When I interviewed with Shillingford on October 30, 2014, she spoke with me as if I would be working with her like the three previous non-Black analysts did and in no way, shape or form as if she would be my manager. And, in my interview with Khavin on November 3, 2014, Khavin made no mention of any possible manager change because I was not yet confirmed by the team as the chosen candidate.*

⁵ I respectfully refer the Court to see the HR hiring manager's "fyi" on the IM conversation I had with him on November 6, 2014 (Exhibit O) where he said, "*fyi I work with Alex and Kim etcv*" but no mention of working with Fidelia (not quite sure if "etcv" was meant to be "etc." or "and curriculum vitae").

During all that time, there was no utterance from anyone including Kimberly Dauber, Khavin and/or Shillingford herself of Shillingford being my manager (Exhibit O)."

In light of the aforesaid and pursuant to Rule 56(d) of Federal Rules of Civil Procedure – “When Facts Are Unavailable To The Nonmovant”, if Khavin cannot make factual evidence consistent with her claim that *“This was a mistake by the HR hiring manager, as it was previously decided that Shillingford was going to be the one to whom the Reporting Analyst would report”* available, such as providing emails showing résumés of prospective candidates for the Reporting Analyst position sent from HR to “hiring manager”, Shillingford for her consideration and/or cannot provide proof that contradicts Exhibit O - JPMorgan Chase 000221 that shows that it was only after I, the Black candidate, was confirmed by the team as the chosen candidate for the Reporting Analyst position, did Khavin on November 5, 2014 switch my manager from being Kimberly Dauber who is White to her servile Black employee, Shillingford, who she, Khavin would use as her conduit to extend her racial discrimination against Blacks to me, then I respectfully ask that the Court, with prejudice, reject this mendacious statement # 7 of Alex Khavin’s Declaration.

The action by Khavin to switch my manager from being Kimberly Dauber who is White to her servile Black employee, Shillingford does not only speak unlawful racial segregation but it shows that I being Black was the only way that Khavin would have given Shillingford the opportunity to be a manager (Ninth Cause of Action - *“Unwillingness/Failure to Promote to a Managerial Position on the Basis of Race”*).

“Documentation Collection and Distribution”

Response to Declaration Statement # 9

During my tenure, the only individuals who attended the Monthly Governance Meetings were the regular members of the Counterparty Risk Group in New York and two members who are based in Hong Kong.

Response to Declaration Statement # 10

Khavin's statement # 10 is an insult to anyone of reasonable mind's intellect. With that said, pursuant to my "Affidavit in Opposition/Response to Declaration of Baruch Horowitz in Support re: 89 Motion for Summary Judgment – (Docket # 99)", my Response/Opposition to the "Defendants' Undisputed Material Fact # 18" – "Affidavit in Response/Opposition to Defendants' Statement of Undisputed Material Facts under Local Civil Rule 56.1" and Rule 56(d) of Federal Rules of Civil Procedure – "When Facts Are Unavailable To The Nonmovant" which states: "*If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order*" **and** St. Mary's Honor Center v. Hicks, 509 U.S. at 511 which states "*In order to rebut the inference of discrimination, the employer must articulate, through admissible evidence, a legitimate, nondiscriminatory reason for its actions. The employer's burden is one of production, not persuasion; the ultimate burden of persuasion always remains with the plaintiff*" if:

Defendant Khavin cannot make factual evidence consistent with her claim that "*I tasked Plaintiff's predecessor, Baruch Horowitz ("Horowitz"), a Caucasian male and a senior Associate, with preparing the materials for the Governance Meetings, including collecting meeting materials from individuals in various offices, and printing and bringing hard-copies into the meeting. These tasks were assigned to Horowitz alone*" available, such as producing any email correspondence such as the ones I have provided in Exhibit K or emails sent directly to Baruch Horowitz with "*meeting materials from individuals in various offices*" to prove that, just like me, Plaintiff, Candice Lue, who is Black, the first of my three predecessors, Baruch Horowitz, was exclusively assigned and/or performed the tasks of the printing, organizing, sorting, collating, stapling, emailing of presentation materials of each of the team members of the said Counterparty Risk Group and the lugging of copies of the said presentation materials to the group's monthly meetings to distribute to

each person in attendance, then I respectfully ask that the Court, with prejudice, reject this mendacious statement # 10 of Alex Khavin's Declaration.

Response to Declaration Statement # 11

I respectfully refer the Court to my "Response/Opposition to the "Defendants' Undisputed Material Fact # 18" – "Affidavit in Response/Opposition to Defendants' Statement of Undisputed Material Facts under Local Civil Rule 56.1 – pages 17 & 18" where I stated: *"First off, as "a senior Associate (a higher rank than Plaintiff's role of Analyst)", Baruch Horowitz would have been in a position with more seniority than all the other analysts and/or analysts turned associates of the Counterparty Risk group as they all joined the group after he, Baruch Horowitz did. In 2014, Baruch Horowitz had been with JPMorgan Chase for almost nine (9) years since he said that he had been with the company from November 2005 (Horowitz Dec., ¶ 3). In 2005, I was a sophomore in college and at age twenty eight (28) when I joined the Counterparty Risk Group, I was the second oldest of the analysts and associates on the team. With that said, it would make more sense to someone of reasonable mind that it would be more likely for the recent college graduates, with not that many years of work experience whether from working at JPMorgan Chase or elsewhere, who joined the Counterparty Risk Group as analysts after Baruch Horowitz did to be the ones doing the printing, collating, stapling, etc. of Baruch Horowitz's Governance Meeting presentation materials and not the other way around."*

Response to Declaration Statement #s 12, 13 & 14

The latter portion of Statement # 12 that states: *"the first 10-20 minutes of each Governance Meeting were spent collecting, exchanging and distributing the materials and we lost valuable meeting time"* is correct.

In my "Response to "Defendants' Responses to Plaintiff's First Set of Document Requests" Dated November 16, 2016" when the said Defendants were trying to concoct a ploy that "because I

refused to do the printing, etc., former co-worker, Ryan Vroom, who is White, had to jump in and do it", I stated: *"Ryan was the worst of the bunch to be organized and ready for the meeting as it relates to preparing and handing out copies of his presentation materials. As a matter of fact, I witnessed that Ryan was unprepared with his presentation materials for at least 3 monthly meetings, including my first two monthly meetings in the department where Khavin had to frustratingly stop the meeting and wait on Ryan to go and make copies of his presentation materials to hand out to the team"* (Exhibit PP - ¶ 2 of page 11).

Initially, when I joined the Counterparty Risk Group in November of 2014, the Monthly Governance Meeting was starting at 8:00 AM and then that time subsequently changed to 8:30 AM. As Khavin explained in Statement # 8: *"The CRG monthly governance meeting ("Governance Meeting") is a meeting during which the CRG reviews trends and controls (e.g. limits, breaches and exposures), notes any issues, and discusses follow-up from previous meetings."* These purposes are executed by way of the members of the Counterparty Risk Group making presentations to the team. As the Credit Reporting Risk Analyst, I had up to three (3) presentations, including the Exposure Report⁶, to present and speak to.

Because of the amount of material my presentations entailed and the early start time of the said Governance Meeting, being responsible as well as professional, I was aware that in order to be ready for the said early morning meeting, I would either have to have whatever material is required to be sent by email and/or distributed in the meeting, sent out by email and/or prepared/printed on the day prior to the Governance Meeting or to come in at least one hour earlier than 8:00/8:30 AM on the day of the said meeting to do the emailing and printing of the said materials.

Since I respect time but I did not want to come in at least one hour earlier than 8:00/8:30 AM on the day of the Governance Meeting, I opted to have my presentation materials emailed and prepared/printed on the day prior to the said meeting. Meaning that, if I had to work extremely late

⁶ Referred to as the "monster" by a former co-worker.

on the day prior to the Governance Meeting, like I had to do for the December 2014 Governance Meeting (Exhibit NN-1) and/or other Governance Meetings, work late was what I did.

When Defendant Shillingford informed me, via BlackBerry on my way home from work, that I was to do the presentation for the Asset Management Dashboard for the October 2015 Governance Meeting, in order to make sure that the presentation materials for the said Dashboard were distributed before the 8:30 AM Governance Meeting the next day, when I reached home, I signed on remotely from my home computer to prepare the presentation materials and emailed the said materials to the team after 9:00 PM that night. Then, the next day, I was in the office before 8:00 AM to print, collate and staple thirteen (13) hard copies of the said materials so that I would have them ready for distribution when the meeting started at 8:30 AM⁷.

With that said, obviously when Khavin said in the latter portion of Statement # 12 that: *“the first 10-20 minutes of each Governance Meeting were spent collecting, exchanging and distributing the materials and we lost valuable meeting time”*, she was not talking about my materials. She was however, talking about the likes of Ryan Vroom who is White, and who, during my tenure, she promoted from an analyst to an associate (¶ 69 - Am. Compl.) - Bearing in mind that for Ryan to have gotten a promotion, per JPMorgan Chase’s “promotion criteria”, he would have to have received a performance rating of Meets Expectation Plus (M+) or Exceeds Expectation (E) in the year of the promotion (Exhibit H-3 & Exhibit QQ – “Why Black Workers Really Need to be Twice as Good”).

Besides Ryan Vroom’s situation as I described above, I remembered other members of the Counterparty Risk Group who again, are all non-Black, coming in just minutes before 8:00/8:30 AM on the day of the Governance Meetings and at that time emailing their presentation materials to the team and/or printing the hard copies to be handed out in the meeting. I also remember myself and Defendant Shillingford sitting in the conference room, where the Governance Meeting was to

⁷ My remote access did not allow me to print from home

take place, waiting as others hustle and bustle to print materials for their presentations (§ 55 - Am. Compl.).

In light of the aforesaid, how could anyone of reasonable mind think of it as being fair for Khavin, who is White, to use me, the only Black analyst in the group, as a benefit/perk, the help/house slave for the spoiled, entitled, non-Black team members by assigning me the tasks of printing, etc. **their** presentation materials for the Monthly Governance Meetings so that the said meetings can start on time? Then, when I tried my best to articulate to her, Khavin how I felt about her treating me *“as if I am the help and as if this is 1910”* her *“how dare you”*, condescending, unapologetic and unrepentant response to me was, *“it is your job and I expect you to do it. If you need help go and ask the [White] administrative assistant to help you”*. Bearing in mind that, just for my own presentation materials, in order for me to respect the start time of the said meeting, I either had to work late the evening of the day prior to the meeting or come in much earlier the morning of the meeting to ensure that my materials are ready for the 8:00/8:30 AM start time.

The humiliation from this disparate treatment being perpetrated against me by Khavin caused me so much mental anguish as, when I did all the printing, etc. of the presentation materials for the non-Black team members in January of 2015, some of them, including the ones on my job level, were looking at me as if, *“what a relief. We now have her to do that”*.

The said printing, etc. are tasks that Khavin had never even assigned to the White administrative assistant on the team to do even though those tasks would more likely fall into the administrative assistant job category. It is also worth noting that for the June 2015 Governance Meeting when I was on vacation, as per the email from Shillingford dated June 23, 2015 (Exhibit K), Shillingford who is not only the only other Black employee in the Counterparty Risk Group but a **vice president** was the one who had to take on the tasks of the printing, etc. of the non-Black team members in the said group including the printing, etc. of the non-Black analysts and associates who are at a lower level than she, Shillingford is.

Anyone of reasonable mind will surmise that the employment racially discriminatory tasks of printing 13 copies of each of the non-Black team member's presentation materials (one copy for each member of the team), collating, stapling and lugging of the said presentation materials to the monthly team meeting, etc. that Khavin assigned solely to me, the only Black analyst on the team to do, was not directly beneficial to the department or to JPMorgan Chase as a whole. But rather, was only a benefit/perk for the non-Black members of the Counterparty Risk Group, who would be sitting around the conference room table waiting to "be served", at the expense of me, the only Black analyst on the team. A benefit/perk, that like a Black plantation house slave, I would never have had the opportunity to enjoy. Then, to add insult to injury, Khavin made the change to make the taking of the Monthly Governance Meeting minutes, which was rotational among all the associates and analysts in the group for the two years prior to me joining the Counterparty Risk Group, no longer rotational, but to be solely my job.

Khavin's statement in Statement # 14: "*as Horowitz had done*" is categorically false ("Defendants' Undisputed Material Fact # 18" – "Response/Opposition to Defendants' Statement of Undisputed Material Facts under Local Civil Rule 56.1" and my "Affidavit in Opposition/Response to Declaration of Baruch Horowitz - docket # 99").

"The Pursuit of Happyness"

Khavin assigning me, the only Black analyst in the Counterparty Risk Group, the group she headed, the employment racially discriminatory tasks of printing 13 copies of each of the non-Black team member's presentation materials (one copy for each member of the team), collating, stapling and lugging of the said presentation materials to the monthly team meeting, etc. is reminiscent of how the protagonist, Chris Gardner, played by Will Smith, was disparately treated as the only Black intern in the authorized Chris Gardner biopic, "The Pursuit of Happyness".

As the only Black intern of twenty (20) interns at the prestigious brokerage and securities firm, Dean Witter, Chris Gardner ("Chris"), who was older than the other White interns, was

constantly picked on as the one to fetch the coffee, donuts and/or to run errands for the White manager who was in charge of the Internship.

In front of the training class, if the manager felt like having donuts and/or coffee, he would just rhetorically ask “*who wants to get me coffee and/or donuts?*” then immediately volunteered Chris to get him the coffee and/or donuts (§ 172 – Am. Compl.). When the White interns were given all the opportune time to solely concentrate on their internship roles, Chris Gardner, the Black intern, had to be out fetching donuts, coffee, etc. and/or doing the White manager’s errands (§ 57 – Am. Compl.). While, just like the White interns who were expected to be working hard to bring in as much prospective business as possible to satisfy or surpass their objectives, which included going off site to meet with prospective clients, at times when Chris would be on his way out to meet with a prospective client, the White manager would stop him and ask him to run errands. The said White manager never did this to any of the White interns (Exhibit QQ - Black Workers Really Do Need to Be Twice as Good & § 90 – Am. Compl.).

Chris being turned into the “help” while doing his internship was something the White interns did not have to contend with. However, because of Chris’ dire financial situation, he had to succumb to the disparate treatment that was being perpetrated against him, on the basis of his race, by working twice as hard as the White interns just to keep up with the pace in his quest to be the “chosen” intern (Exhibit QQ - Black Workers Really Do Need to Be Twice as Good & §§ 72 & 90 – Am. Compl.).

Chris Gardner described the situation as “*feeling underrated and unappreciated*”.

“The Color Purple”

Khavin assigning me, the only Black analyst in the Counterparty Risk Group, the group she headed, the employment racially discriminatory tasks of printing 13 copies of each of the non-Black team member’s presentation materials (one copy for each member of the team), collating, stapling and lugging of the said presentation materials to the monthly team meeting, etc. and the retaliation

that was perpetrated against me for taking a stance against her, Khavin's, racially discriminatory act against me, are reminiscent of what the character, Sofia, played by Oprah Winfrey in the movie, "The Color Purple" went through.

Just like any other decently dressed woman in the early 1900's, Sofia went to town with her children. Like everyone else in the majority White town, Sofia and her children were going about their business of shopping when because of their race, they were eyed on by the mayor's wife, Miss Millie. Miss Millie came up to the Black family and brazenly started touching and physically examining Sofia's children without her, Sofia's permission. Seeing that Sofia's children were well taken care of by her, Miss Millie shamelessly accosted Sofia and based solely on her, Sofia's race, asked her, "*how would you like to be my maid?*"

A confident and assertive Black woman, Sofia's response to the overt racism perpetrated against her was "*Hell no*". Miss Millie, obviously not used to such assertiveness towards her from a Black woman was utterly shocked by Sofia's response so she immediately asked, "*what did you say?*" as if "how dare you, Sofia" (§§ 79, 24, 117, & 172a – Am. Compl.). However, Sofia stuck to her stance and once again responded "*Hell no*".

As a Black person, Sofia, although living in a post-slavery era and having constitutional rights that prohibit being treated inferior, was not allowed to refuse such a racist request which shows that Miss Millie's "question" of "how would you like to be my maid?" was not really a question but a racist command. Upon seeing what transpired, the mayor himself became aggressively involved, up in face, harassing Sofia who repeated her response of "Hell no" and even slapped Sofia in the face for her continued refusal to be his wife's maid.

Because Sofia defended herself against the continued racism and harassment, she was severely physically abused by the sheriff, who ferociously used the thick handle of his gun to knock Sofia in the eye and down to the ground which left permanent damage then hauled her off to jail. The severe punishment for refusing to be the target of racism was unnerving (Exhibit C – Fallacious

Performance Improvement Plan, Exhibit F – Written Warning, January 6, 2016 – Retaliatory Termination). Sofia had two choices: 1) submit to the overt racism and lose her dignity and freedom to be with her own kids or 2) refuse to submit to the overt racism, be jailed and lose her dignity and freedom to be with her own kids⁸.

After spending years in jail, a further severely degraded and depressed Sofia eventually agreed to be Miss Millie's maid as the only option for being released from jail. However, the scars from the mental, physical and emotional anguish remained and were augmented during the course of Sofia's tenure as Miss Millie's maid due to being treated as less than human, three-fifths of a person. Miss Millie was well aware of the horrid ordeal and pain that Sofia was enduring but unapologetically and unconscionably felt accomplished that Sofia was forced into submission as her maid.

The foregoing is akin to why I coined the question that I have asked Defendants JPMorgan Chase & Co., et al directly and rhetorically: "*Am I the help? Is this 1910?*"

With that said, in a meeting with Khavin on April 24, 2015, I tried my best to articulate to her how I felt about her treating me "*as if I am the help and as if this is 1910*" and her "how dare you" response to me "*it's your job and I expect you to do it*".... "***You are going to do it and I expect it to be done well!***" (with great emphasis) was condescending, unapologetic and unrepentant (¶ 172a – Am. Compl.). Bearing in mind that as an appointed "culture ambassador" (Exhibit DD-2) for JPMorgan Chase's Culture and Conduct Program which covers diversity and inclusion within the company, Khavin should have been more sensitive in dealing with the issue I had brought before her.

⁸ Similar to the said 2 choices I, Plaintiff, Candice Lue got from JPMorgan Chase: 1) submit to the overt racism that is being perpetrated against you and keep your job or 2) refuse to submit to the overt racism that is being perpetrated against you and be put on a performance improvement plan, given a written warning and ultimately be terminated.

“Taking Minutes”

Response to Declaration Statement # 15

I had never had a problem with taking minutes on a rotational basis (Exhibit A – EEOC Intake Questionnaire – Question # 6 – Pages 2 ¶ 4). However, during my tenure in the Counterparty Risk Group, I have never been and/or have known of any of the analysts and/or associates from the Counterparty Risk Group being assigned on a rotational basis to do minutes for the “*Technology Initiatives Meetings*”, *AM Risk People Council Meetings and others*”. Khavin’s statement # 15 is categorically false. I respectfully refer the Court to my “Affidavit in Opposition/Response to Declaration of Kimberly Dauber – Docket # 97” - Statements #s 3, 4 & 5”.

Response to Declaration Statement # 16

In my joint interview which took place on October 31, 2014 (Exhibit O – IM conversation with HR) with former co-workers Mohammad (Zeeshan) Haider and Tatevik Avetyan, when Tatevik Avetyan asked me “*how do you feel about taking minutes at meetings?*” and I in turn asked her “*if the taking of the minutes would solely be my duty*” her answer to me was “*no, the taking of the meeting minutes is rotated among all the analysts and associates in the group*” (Am. Compl. ¶ 128). Neither Tatevik Avetyan nor Mohammad (Zeeshan) Haider, who both were members of the Counterparty Risk Group during Baruch Horowitz’s tenure, told me that the first of my three predecessors, Baruch Horowitz was solely assigned “*the task of taking minutes at the governance meeting*” (¶ 128 – Am. Compl.).

Also, in an email from Kimberly Dauber dated February 4, 2015 (Exhibit B), she stated: “*Every analyst and/or associate on this team has been the minute taker of our Extended meetings at some time during the last 2 years. I don’t think this is a function that is specifically written out in*

⁹ I have personally attended the Technology Initiatives Meeting which was hosted by the Newton Tech Team and was also attended by Defendants Philippe Quix, Alex Khavin, Thomas Poz, Fidelia Shillingford and sometimes one or two other Counterparty Risk Group analysts/associates throughout the course of my tenure in the Counterparty Risk Group and the minutes were **never** assigned to and/or rotated among any of the analysts and/or associates.

job duties because it's an adhoc function. However, Alex would pick a different person each time during our meetings. Most recently, it was understood that the reporting analyst would handle it..."

Kimberly Dauber, who was Baruch Horowitz's manager during "*the last 2 years*" did not say that Baruch Horowitz, the first of my three predecessors or any of my other two predecessors, Kenneth Ng and/or Thomas Monaco, who also reported to her, Kimberly Dauber was solely assigned "*the task of taking minutes at the governance meeting*". She also clearly stated that "*Alex would pick a different person each time during our meetings*" which is totally consistent with what I wrote in my Complaint to the Equal Employment Opportunity Commission (EEOC) and in my Amended Complaint (EXHIBIT A – EEOC Intake Questionnaire – Question # 6 – Last ¶ on page 2, 1st ¶ on page 3 and ¶ 172 - Am. Compl., respectively).

In addition, as my predecessor, Baruch Horowitz's manager for "*the last 2 years*", instead of writing that "***Most recently***, *it was understood that the reporting analyst would handle it*" shouldn't Kimberly Dauber have known unequivocally that the task of taking minutes at the Governance Meeting was that of the "*reporting analyst*"? Also, I respectfully ask that the Court take note that in Kimberly Dauber's February 4, 2015 email (Exhibit B) there is no mention of the printing, etc. of all the team members' presentation materials for the Governance Meeting because prior to me, the only Black analyst to have joined the Counterparty Risk Group, those tasks never existed.

And one last thing, "*it was understood*" - meaning that, the Reporting Analysts, who previously reported to her, Kimberly Dauber, were never exclusively assigned to taking the monthly meeting minutes prior to my hire because it was only "*Most recently, it was understood. "It was understood"*" is also consistent with what I articulated in Paragraph 172 of my Amended Complaint which states: "*In front of everyone, Khavin would just look at me as if to ask, "Why are you not taking the minutes?" before addressing me saying, "Are you taking notes?" (the minutes). Or, if I was sitting paying attention like everyone else was, she would just look at me and condescendingly instruct, "that's a follow up" – meaning that as the only Black analyst on the team, I have been*

solely assigned to take the monthly meeting minutes and thus should be putting what was said (the "follow up") in the meeting minutes."

In light of the forgoing and pursuant to Rule 56(d) of Federal Rules of Civil Procedure – “When Facts Are Unavailable To The Nonmovant” which states: *“If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order”* and *St. Mary's Honor Center v. Hicks*, 509 U.S. at 511 which states *“In order to rebut the inference of discrimination, the employer must articulate, through admissible evidence, a legitimate, nondiscriminatory reason for its actions. The employer's burden is one of production, not persuasion; the ultimate burden of persuasion always remains with the plaintiff”* if:

Defendant Khavin cannot make factual evidence consistent with her claim that *“I assigned Horowitz alone the task of taking minutes at the Governance Meeting. He carried out this responsibility until he went out on disability leave in or about June 2014”* available, such as providing at least one (1) year of consecutive emails showing Baruch Horowitz sending out the minutes for the Counterparty Risk Group’s monthly meetings to all the members of the said group to prove that, just like me, Plaintiff, Candice Lue, who is Black, the first of my three predecessors, Baruch Horowitz, was exclusively assigned and/or performed the task of the taking of the Counterparty Risk Group’s Monthly Governance Meeting minutes, then I respectfully ask that the Court, with prejudice, reject this mendacious statement # 16 of Alex Khavin’s Declaration.

Response to Declaration Statement # 17

As I articulated in Paragraph 14 of my Amended Complaint: *“It was not like I had more time on my hands than the non-Black analysts because, because of the overwhelming amount of work that my job entailed, for more than half of the month my average time to leave work was 8:00 to 8:30 pm (a few times after 9:00 pm) and for the rest of the time, there was a possibility, not a*

guarantee, that I would get to leave between 6:00 and 6:30 pm (extremely rare for 6:00 pm) when the average time for the whole month for the non-Black analysts and associates to leave work was between 5:00 and 5:30 pm with a 6:00 pm late evening.”

In light of the aforesaid, what Khavin must be saying in Statement # 17 is that, as a Black person, I should be made to work twice, or more, as hard as a White Person (Exhibit QQ - Black Workers Really Do Need to Be Twice as Good).

Response to Declaration Statement # 18

I had two other non-Black predecessors after Baruch Horowitz left, Kenneth Ng and Thomas Monaco¹⁰. I took over from Kenneth Ng as, as I was voluntarily informed by Kimberly Dauber and team members who interviewed me for the Reporting Analyst position and believe, and on that basis allege, Thomas Monaco resigned after just two months on the job due to being overwhelmed with work and not having a work/life balance.

However, like the plague, the Defendants, including Khavin, are avoiding to mention these two predecessors because just like Baruch Horowitz, who I do not think is of sound mind (“Affidavit in Opposition/Response to ‘Declaration of Baruch Horowitz in Support re: 89 Motion for Summary Judgment – Docket # 99’”) and who I think is being disgracefully exploited by Defendants, JPMorgan Chase & Co., et al., neither of them was ever exclusively assigned the task of taking the minutes for the Monthly Governance Meetings and/or the tasks of printing 13 copies of each of the team member’s presentation materials (one copy for each member of the team), collating, stapling and lugging of the said presentation materials to the monthly team meeting, etc.

¹⁰ This statement can be verified by way of the fallacious, pretextual and retaliatory “performance improvement plan” (PIP) Shillingford put me on (Exhibit C) where she stated: “*previous analysts who performed the job were able to solely perform the tasks within the time period at a point when it was much less streamlined (very manual)*”.

Response to Declaration Statement # 19

Well, if *“throughout this six month period, it remained [Khavin’s] view that document collection and taking minutes ultimately remained the responsibility of the Reporting Analyst, the position for which Plaintiff was hired”* then she, Khavin, should have assigned those said tasks to my two predecessors, Kenneth Ng and Thomas Monaco who worked in the Reporting Analyst position during those said six months.

“Plaintiff’s Unsatisfactory Performance”

Response to Declaration Statement # 20

The first half of statement # 20 is correct. However, from my **first** Governance Meeting, November 2014 Governance Meeting, Khavin assigned the taking of the minutes to me.

As it relates to the latter part, with all due respect, based on Baruch Horowitz’s seeming mental instability as explicitly detailed in my “Affidavit in Opposition/Response to Declaration of Baruch Horowitz in Support re: 89 Motion for Summary Judgment – (Docket # 99)”, he would/should have been the last person for anyone of reasonable mind to exclusively assign “the Tasks”.

Response to Declaration Statement # 21

As I articulated in Paragraph 6 of my Amended Complaint: *“In addition to the printing, collating, stapling, etc., Khavin also decided that it was too much work for the non-Black employees to be going through their emails searching for attached presentation materials sent by each team member. So, to make it “easier” (Khavin’s own word) for them, as if I were the house slave, she ordered that I, yes, solely me, must open each email sent, pull the attachments, put all the attachments together in one email then send this email to the team. So, it was too hard or too much work for everyone (including the non-Black analysts on my level) to search through their emails for the sent documents and print them for themselves but for me, along with the printing, etc. of*

everyone's documents times 13 (a copy for each team member), I must not only search through my emails for the sent documents, I must open each email sent, pull the attachments, put all those attachments together in one email and send to the team to make it "easier" for the non-Black members of the team. So what would become easier for the non-Black members of the team would become three times harder for me. I was made to feel as if I shared the same sentiment as a house slave working on a plantation¹¹. And, as someone of slave ancestry, I found this unessential (as it related to benefiting the department or the company as a whole) assignment demeaning and degrading."

Because of Khavin's frustration as articulated in "Response to Declaration Statement #s 12, 13 & 14", in getting the non-Black analysts and associates to be prepared for the 8:00/8:30 AM Monthly Governance Meeting, just like "Miss Millie" in the movie, "The Color Purple", Khavin wanted me, the only Black analyst on the team to be the help/ house slave who would make sure that the non-Black team members' meeting materials were organized and ready for the said meeting.

I respectfully ask that the Court punish Defendant Khavin to the full extent of the law for lying under penalty of perjury based on the amount of times she repeated "The Baruch Horowitz Lie" in her Declaration.

Response to Declaration Statement # 22

As I articulated in paragraph 9 of my Amended Complaint: *"In a meeting with Khavin on April 24, 2015, I tried my best to articulate to her how I felt about her treating me "as if I am the help and as if this is 1910" and her "how dare you" response to me, "it is your job and I expect you to do it. If you need help go and ask the [White] administrative assistant to help you" was condescending, unapologetic and unrepentant. Khavin's response was also evidence of the disparity in how she treated me versus how she treated the other six non-Black analysts and*

¹¹ I was so humiliated that I had to walk out of the room.

associates in the group. Khavin refused or failed to instruct me to ask any help of the non-Black analysts in my own job category or on my same job level. However, she, in her act of lack of respect and disparate treatment against Blacks instructed me to go and ask the White administrative assistant to help me, an analyst, to do a task that would more likely fall into the administrative assistant job category.”

Also, I respectfully ask that the Court notes that Khavin herself had never given the White administrative assistant the directive to provide me with this “help”. And, to further note that in Khavin’s May 27, 2015 email time stamped 9:15 AM that she provided in Exhibit A attached to her Declaration, she did not as much as copy the said “Caucasian” administrative assistant. She only sent the email to myself and Shillingford (the Black ones).

CONCLUSION

In light of the foregoing and pursuant to Rule 56(d) of Federal Rules of Civil Procedure – “When Facts Are Unavailable To The Nonmovant” which states: *“If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order”* and *St. Mary's Honor Center v. Hicks*, 509 U.S. at 511 which states *“In order to rebut the inference of discrimination, the employer must articulate, through admissible evidence, a legitimate, nondiscriminatory reason for its actions. The employer's burden is one of production, not persuasion; the ultimate burden of persuasion always remains with the plaintiff”*, if Khavin cannot make concrete and factual evidence available to prove that she had discussions with her immediate manager, Philippe Quix and Shillingford to make Shillingford a manager, to prove that Baruch Horowitz was exclusively assigned the task of taking the minutes for the Monthly Governance Meetings and the tasks of printing x copies of each of the team member’s presentation materials (one copy for each member of the team), collating, stapling and lugging of the said presentation

materials to the monthly team meeting, etc. and/or cannot successfully dispute any of the facts/arguments I have brought forth in my Affidavit in Opposition/Response to her Declaration, then I respectfully ask that the Court, with prejudice, reject Khavin's said Declaration.

Alex Khavin's Declaration was submitted in bad faith and pursuant to 18 USC § 1621 and 56(h) of the Federal Rules of Civil Procedure – "Affidavit or Declaration Submitted in Bad Faith" which states: *"If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court — after notice and a reasonable time to respond — may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions"*, Alex Khavin and Defendants, JPMorgan Chase & Co., et al's attorneys should be punished to the full extent of the law for lying under penalty of perjury.

DATED: July 28, 2017

CANDICE LUE

Candice S.M. Lue
Signature

[REDACTED]
Address

[REDACTED]
City, State, Zip Code

Sworn to before me this 28th day of July, 2017

Frank D. Rotelli

FRANK D. ROTELLI
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 9/26/2017
License # 2292270

Notary Public

