

**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 **Baruch Horowitz**  
in Support re: 89 Motion for Summary  
Judgment – (Docket # 99)"

I, pro se Plaintiff, Candice Lue hereby oppose/respond in good faith and under sworn oath to Declarant, Baruch Horowitz's ("Horowitz") Declaration in support of the Defendants' Motion for Summary Judgment as follows:

**I. ARGUMENT**

In conjunction with my Response/Opposition to the "Defendants' Undisputed Material Fact # 18" – "Response/Opposition to Defendants' Statement of Undisputed Material Facts under Local Civil Rule 56.1", I actually find this Declaration by Baruch Horowitz to be disturbing. With all due respect, Baruch Horowitz might not be of sound mind based on the evidence I will provide further in this Opposition/Response.

Baruch Horowitz's claim that he exclusively did the task of the taking of the minutes for the monthly team meetings and the tasks of the printing, organizing, sorting, collating, stapling,

emailing of the presentation materials of each of the team members of the 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 is bogus as articulated in my "Response/Opposition to Defendants Undisputed Material Fact # 18" – "Response/Opposition to Defendants' Statement of Undisputed Material Facts under Local Civil Rule 56.1". And, pursuant to the said Response/Opposition and in conjunction with 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 Declarant, Baruch Horowitz and/or Defendants, JPMorgan Chase & Co., et al cannot make factual evidence available which is consistent with Baruch Horowitz's claim, 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 and/or cannot at least produce any email correspondence such as the ones I have provided in Exhibit K 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 minutes for the Counterparty Risk Group's monthly team meetings and 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 statement # 6 of Baruch Horowitz's Declaration.

### **Baruch Horowitz's Official End Date at JPMorgan Chase & Co.**

Pursuant to Statement # 3 of Baruch Horowitz's Declaration, I respectfully ask that the Court Order or grant me permission by way of a Subpoena (submitted to the Court) to order a copy of Baruch Horowitz's personnel file to verify his official end date at JPMorgan Chase & Co.

### **Work from Home**

In his quest to deceive the Court that as a Caucasian male (Horowitz Dec., # 2) his treatment by Defendant, Alex Khavin ("Khavin") was no different from mine, the only Black analyst in Khavin's group, Baruch Horowitz further stated that: *"During my employment with Chase, I periodically worked from home. Prior to doing so, however, I contacted my group supervisor at the time for permission"* (Horowitz Dec., # 7).

However, as emails dated March 30, 2015 and March 31, 2015 in Exhibit L show, as the only Black analyst in the Counterparty Risk Group even when I asked permission one week in advance to work from home, I was denied that privilege. I had to take the day as a vacation day.

So, unlike Baruch Horowitz, who according to him, he asked for permission to work from home for whatever reason and obviously without hesitation that permission was granted to him, for me, the Black analyst, that work from home privilege was solidly denied.

Exhibit L also clearly shows that in consistence with treating me at a double standard to my non-Black counterparts, unlike the other non-Black analysts who could just send an email to the team saying, "I am not feeling well today so I will be working from home", Khavin's directive for me was to send my then manager, Defendant, Shillingford ("Shillingford") an email letting her

know my situation and asking for permission<sup>1</sup> to work from home and then Shillingford should be the one communicating accordingly to the team (JPMorgan Chase 000665 - Exhibit L-1).

Further, as my email dated May 7, 2015<sup>2</sup> and time stamped 5:58 AM (Exhibit L) shows, my need to work from home on that day was due to a family emergency<sup>3</sup>, for which I had no prior knowledge or could have had prior knowledge of until the morning of May 7, 2015. And, to be frank, one of my main concerns was how to balance my family emergency and the overwhelming amount of work I had on the job to do. So, the most logical thing to do was to work from home.

With that said, the worst part of Khavin, through Shillingford, denying me the company's work from home privilege was, when I returned to work after having to take off three (3) business days due to the said family emergency, the three days work of my regular Business as Usual (BAU) was sitting there waiting for me to do and I was pressured and expected to meet all the hard deadlines that were required for my job (Exhibit L-2 – JPMorgan Chase 000613). This had never happened to any of the non-Black analysts and/or associates (Exhibit QQ – “Why Black Workers Really Need to be Twice as Good”, “Black Troops More Likely to Face Military Punishment” & Am. Compl. ¶ 71).

If I was given the opportunity to work from home, I would have been caught up with my duties because the main reason for wanting to work from home was just to stay close to my mother who became incapacitated by pain due to a fall she had on May 6, 2015. So, in between the time I would be working, if she needed help with removing the cover of a pain reliever bottle, a water bottle or help turning over in bed due to pain, I'd be close and could just spare a few minutes to help her. But again, unlike “Caucasian male” Baruch Horowitz and the other non-Black analysts and/or

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<sup>1</sup> Permission which would have to come from Khavin herself, Khavin made Shillingford my manager so that she, Khavin could use her to surreptitiously extend her racial bigotry to me.

<sup>2</sup> This was the email that caused me to raise the issue of being treated at a double standard.

<sup>3</sup> As my email dated May 7, 2015 and time stamped 5:58 AM (Exhibit L) shows, I only said “family emergency”. I did not divulge anything further than that until later in the evening when Shillingford passed on the double standard directive from Khavin to me.



associates in the Counterparty Risk Group, I was not granted permission to work from home (Exhibit L-2 – JPMorgan Chase 000613).

### **Baruch Horowitz Might Not Be of Sound Mind**

In Paragraph 4 of my email dated August 3, 2015 (Exhibit C), in reference to my predecessor, Baruch Horowitz, I stated: *“Would the previous analysts you [Shillingford] talked about being more favorable than I am in terms of executing their work on time, etc, include the one who is the team’s running joke [Baruch Horowitz]? The said one you [Shillingford] imitated on Tuesday, July 28, 2015 where you put your hands in the air and said as he [Baruch Horowitz] complained, yes complained, “I [Baruch Horowitz] can only do one thing at a time”?”*

From the day I started in the Counterparty Risk Group to my January 6, 2016 retaliatory termination date, Baruch Horowitz, my first predecessor in the said group, has been the team’s running joke. For every team gathering or a gathering of two or more (outside of team meetings), in order to initiate laughter, a story about Baruch Horowitz, like the one contributed by Shillingford in the paragraph above, was told.

With that said, based on the following statements and behavioral practices of Baruch Horowitz that were voluntarily disclosed, directly to me and/or in my presence, by members of the Counterparty Risk Group, it is my conviction that Baruch Horowitz might not be of sound mind:

- I was voluntarily informed by former co-worker, Mohammad (“Zeeshan”) Haider<sup>4</sup> and believe, and on that basis allege that Baruch Horowitz had to go out on long term disability<sup>5</sup> due to overwork, stress and the unrealistic expectation for one person to do a job that realistically requires two people to do (¶ 107 - Am. Compl., & “Response (under Sworn Oath) to Request No. 35” of my “Response to Defendants First Request for Production of Documents” - Docket

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<sup>4</sup> Mohammad (Zeeshan) Haider told me that he shared a cubicle with Baruch Horowitz and he also told me a lot of what I know about Baruch Horowitz.

<sup>5</sup> Confirmed by Khavin Dec., ¶ 12, 16; Dauber., ¶ 5; Shillingford Dec., ¶ 11.) Even though Shillingford had denied it on more than one occasion during my tenure in the Counterparty Risk Group deceptively asking me “Who are you talking to? Who is telling you these things?”

entry # 45). Zeeshan further informed me that upon Baruch Horowitz's return, he, Baruch Horowitz, submitted his resignation with immediate effect.

- In reference to the previous point, pointing to Khavin's office and then to Kimberly Dauber's (Baruch Horowitz's then manager), cubicle, respectively, Zeeshan told me that Baruch Horowitz "*had stress from her and from her*" (with emphasis).
- On Tuesday, July 28, 2015, in a jovial send-off gathering for Zeeshan, when Baruch Horowitz's name was brought up, to add humor to the conversations, Shillingford's contribution to this humor was to put her hands in the air and imitating, complained like Baruch Horowitz used to do saying: "*I can only do one thing at a time*" (Exhibit C - email dated August 3, 2015 ¶ 4, & "Response (under Sworn Oath) to Request No. 35" of my "Response to Defendants First Request for Production of Documents" - Docket # 45).
- I was directly and voluntarily informed by Zeeshan as well as in group chats by other members of the Counterparty Risk Group that Baruch Horowitz had a waffle iron on his desk which he used to make waffles at his said desk (no employee of sound mind carries a waffle iron to work).
- Zeeshan who shared a cubicle with Baruch Horowitz told me that he, Baruch Horowitz, had a garlic/onion chopper or some kind of chopper at his desk which he used to chop garlic/onion and ate the raw, chopped garlic/onion at his said desk ("Response (under Sworn Oath) to Request No. 35" of my "Response to Defendants First Request for Production of Documents" - Docket # 45).
- In the latter part of 2015, Ryan Vroom came over to the area in which I was sitting to announce (give a Baruch Horowitz joke) that he, Ryan Vroom had found a daily "work schedule" that Baruch Horowitz created on the shared drive. And, on that said schedule was the 6:00 PM entry which stated, "*look for jobs*". In other words, my predecessor, Baruch Horowitz was **always** talked about in an unflattering, satirized manner.



- To add to Ryan's "joke", Maria "Sol" Zambon who also sat close by chimed in, "*he had a Panini maker*" (since more people said it was a waffle iron, I'll go with the waffle iron unless he had both and/or the waffle iron had dual use. I never questioned it, I just listened and observed).
- Zeeshan told me that multiple times meetings were held by Alex Khavin and Kimberly Dauber with Baruch Horowitz to complain that he, Baruch Horowitz had time management issues in meeting deadlines for the reporting. **(I respectfully ask that the Court Order or grant me permission by way of a Subpoena (submitted to the Court) to order a copy of the performance reviews Baruch Horowitz received while in the employ of JPMorgan Chase with Dauber/Khavin as his manager/skip level manager to assist in verifying this statement.)**<sup>6</sup>
- Zeeshan who again, shared a cubicle with Baruch Horowitz told me that he, Baruch Horowitz, had a coffee mug that the inside was black (with emphasis) because Baruch Horowitz never washed the mug and kept drinking coffee from the same mug.
- On the subject of coffee, Zeeshan told me on more than one occasion that Defendant Fidelia Shillingford said that on her way to get coffee in the building [270 Park Avenue], she saw Baruch Horowitz sitting in the lobby [relaxingly] reading a novel.
- While standing at the end table at the corner of Hubert Gorniak's cubicle, laughing and imitating Baruch Horowitz, Ryan Vroom was giving the joke about how Baruch Horowitz was working on a task whereby he needed to obtain research in the form of documentation. The source for the said research he needed was Alex Khavin with whom he was liaising. When at a point Baruch Horowitz did not receive the documentation from Alex Khavin, he, Baruch Horowitz became antsy/anxious (consistent with not being of sound mind), stood outside of Khavin's office and started shouting at Khavin, "*I need my documentation, I need my*

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<sup>6</sup> This PMC verification is also necessary for the statement: "*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)*" that Shillingford put on the fallacious, pretextual and retaliatory performance improvement plan (PIP) that she put me on for my 2015 mid-year performance review (Am. Compl. 101c).

*documentation!”* And, according to Ryan Vroom, Baruch Horowitz repeated the same action of standing outside of Khavin’s office and shouting at her, *“I need my documentation, I need my documentation!”* at more times throughout the day.

- As would be obvious, jokes about Baruch Horowitz always drew a “gathering”. So, upon hearing the name “Baruch” and the *“I need my documentation!”* joke, Tatevik Avetyan, who was also nearby, immediately walked over to join in the conversation and to laugh.
- Hubert Gorniak, who joined the team about six months after I did and had heard quite a bit of the “Baruch” jokes even repeated the chopping and eating of raw onion/garlic joke a couple of times to me.
- Zeeshan told me on more than one occasion that Baruch Horowitz, while on the job, would disappear for hours then come back to work around 7 PM.
- To sum up all of Baruch Horowitz’s less than normal behavioral practices, I will quote Zeeshan: *“Now, that guy was weird!”*

### **First Bullet**

With regards to the first bullet, based on the overwhelming amount of work that the Credit Reporting Risk Analyst Position entails, when I brought up the fact that Baruch Horowitz had to go out on long term disability due to overwork, stress and the unrealistic expectation for one person to do a job that realistically requires two people to do, Shillingford, who used to deny that Baruch Horowitz went out on disability leave saying: *“nobody went out on disability, who have you been talking to?”* is now confirming in her Declaration that he, Baruch Horowitz, did go out on disability leave (Shillingford Dec., ¶ 11).

Also, please bear in mind that in all the “jokes” that were told about Baruch Horowitz by different members of the Counterparty Risk Group, there was **never** one “joke”, whereby, there should have been many - at least one joke per analyst/associate/vice-president (Shillingford), by any of those said members relating to the myth that Baruch Horowitz exclusively performed the task of



taking the monthly meeting minutes and the tasks of printing, organizing, sorting, collating, stapling, emailing of presentation materials to each of the members of the Counterparty Risk Group and lugging of copies of the said presentation materials to the group's monthly meeting to distribute to each person in attendance - because those tasks were never done exclusively by any one analyst and in the case of the printing, etc., never existed.

**"If You See Something, Say Something™" campaign**

I respectfully ask that the Court take seriously, the aforesaid statements and behavioral practices that were voluntarily disclosed, directly to me or in my presence, by Baruch Horowitz's former co-workers about Baruch Horowitz. Further, as a concerned citizen and pursuant to the "If You See Something, Say Something™" campaign<sup>7</sup>, I implore the Court to conduct a full investigation of the Defendants, JPMorgan Chase & Co., et al to see whether the said Defendants violated the Americans with Disabilities Act (ADA) by taking advantage of Baruch Horowitz.

To be clear, I am not accusing JPMorgan Chase & Co., et al of any crime but again, based on the statements that were voluntarily made directly to me and/or in my presence by Baruch Horowitz's former co-workers about Baruch Horowitz's unconventional behavioral practices and pursuant to the "If You See Something, Say Something™" campaign, I am imploring the Court to conduct a full investigation of JPMorgan Chase & Co., et al to see if they might have violated any of Baruch Horowitz's civil and constitutional rights under the Americans with Disabilities Act (ADA) - Bearing in mind the fact that Baruch Horowitz had previously been out on disability leave due to stress which is/can be consistent with mental illness. And, the fact that there are legal ramifications for lying under penalty of perjury as Baruch Horowitz did.

In light of the foregoing and pursuant to 56(c)(4) of the Federal Rules of Civil Procedure which states: "*An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or*

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<sup>7</sup> And/or possibly 18 U.S. Code § 4

*declarant is competent to testify on the matters stated*", Baruch Horowitz's mental competency should be called into question as it relates to the consideration of this non-factual Declaration he has submitted to the Court.

## II. CONCLUSION

Baruch Horowitz'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*", Baruch Horowitz 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

Address

City, State, Zip Code

Sworn to before me this 28<sup>th</sup> day of July, 2017

*Frank D. Rotelli*

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

Notary Public