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 **John Vega** in Support re: 89 Motion for Summary Judgment – (Docket # 98)"

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

Response to Declaration Statement # 3

"Baruch Horowitz Performed 'the Tasks'"

As articulated in my "Affidavit in Opposition/Response to 'Declaration of Baruch Horowitz' - Docket # 99", my "Response/Opposition to "Defendants Undisputed Material Fact # 18" – "Affidavit in Response/Opposition to Defendants' Statement of Undisputed Material Facts under Local Civil Rule 56.1" 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:

Defendants, JPMorgan Chase & Co., et al cannot make factual evidence consistent with their claim that 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*" 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 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 such claim as it relates to John Vega's "investigation".

"Job Description Encompassed the Tasks"

Pursuant to my "Affidavit in Response/Opposition to "Defendants Undisputed Material Fact # 16" - "Response/Opposition to Defendants' Statement of Undisputed Material Facts under Local

Civil Rule 56.1" and as per my job description (Exhibit H), the task that John Vega is referring to is "responsibility iv" of the Credit Reporting Risk Analyst job description which states: "*Contributing to team-wide efforts such as* ***risk assessment methodology enhancements, portfolio-wide reviews and preparing management presentations***".

The Defendants Undisputed Material Fact # 16 – "Defendants' Statement of Undisputed Material Facts under Local Civil Rule 56.1" states: "*As a Reporting Analyst, Plaintiff's job description states that "Specific responsibilities will include.... Contributing to team-wide efforts such as.....preparing management presentation....*" With that said, I have provided word for word, for the Court's convenience, what my said "Response/Opposition to 'Defendants Undisputed Material Fact # 16'" states:

"*First off, this responsibility was on ALL of the analysts and associates in the Counterparty Risk Group's job descriptions (Exhibit H). With that said, anyone of reasonable mind perusing the job descriptions for the said analysts and associates in the Counterparty Risk Group would observe that based on the responsibilities listed and the qualifications and the skills required to execute those responsibilities, "preparing management presentation" does not correlate with the tasks of printing, collating, and stapling 13 copies of each of the non-Black team members of the Counterparty Risk Group's presentation materials (one copy for each member of the team), and the emailing and lugging of the said presentation materials to the monthly team meeting, etc., the employment racially discriminatory tasks that I was solely assigned during my tenure in the Counterparty Risk Group.*

Without the "....." in the "Defendants Undisputed Material Fact # 16", this is exactly what responsibility "iv" of the Credit Reporting Risk Analyst job description states: "Contributing to team-wide efforts such as ***risk assessment methodology enhancements, portfolio-wide reviews and preparing management presentations****". And, each month, without fail, I prepared and presented*

my up to three management presentations at the Counterparty Risk Group's Monthly Governance Meeting.

Linking the printing, etc. to "preparing management presentations" was a ploy concocted by Defendant John Vega[1] and Defendant JPMorgan Chase's HR department to use as cover for the employment racial discrimination that I had reported being perpetrated against me (Am. Compl. ¶ 116).

The true interpretation of and what correlates with "preparing management presentations" is the caliber of presentations the candidate sought for the Credit Reporting Risk Analyst position should be able to produce and present. Based on the fact that these presentations are viewed by senior level managers, the said candidate would need to have the ability to produce and present high quality and intellectually stimulating presentations to the senior management audience. That is why, one of the questions that Tatevik Avetyan asked me when she was interviewing me was "how do you feel about doing presentations in front of senior management?" ("Letter Response to Defendants' Responses and Objections to Plaintiff's Second Set of Document Requests [pg 4]" - Docket entry # 60).

With that said, senior management is the ultimate audience for many of the presentations that the Counterparty Risk Group, including myself, prepares. This audience encompasses as high as, not only Defendant Philippe Quix, the Global Investment Management Chief Risk Officer but also the Asset Management Chief Risk Officer who reports to the firm-wide Chief Risk Officer who in turn reports to JPMorgan Chase's Chairman and CEO, Jamie Dimon. I was also advised that the Asset Management CEO views these presentations. Case in point, in a December 2015 global townhall meeting held by the Global Investment Management Chief Risk Officer, Defendant Philippe Quix, he asked my then manager, Defendant Shillingford a question from the firm-wide Chief Risk Officer about the calculation logic of the Exposure Report. As the Credit Reporting Risk

[1] John Vega was in charge of investigating my employment racial discrimination claim.

Analyst, one of my main responsibilities was working on the said Exposure Report and presenting the analysis at the Counterparty Risk Group's Monthly Governance Meetings.

In light of the foregoing, how can "preparing management presentation" be interpreted as printing, etc. presentation materials for the entire team given the high credential requirements sought for the Credit Risk Reporting Analyst position and the caliber and level of the ultimate audience for these presentations? Again, linking the printing, etc. to "preparing management presentation" was a ploy concocted by Defendant John Vega[2] and JPMorgan Chase's HR department to use as cover for the employment racial discrimination that I had reported being perpetrated against me."

"John Vega's 'Investigation'"

With all due respect, excerpts of the drunken "investigation report" done by Defendant John Vega that were provided to me by Defendants, JPMorgan Chase & Co., et al's attorneys during Discovery and the full said report attached to "Declaration of Helen Dubowy – Docket # 96" as "JPMorgan Chase 000101 – 000108 & 002095 - Exhibit B" in conjunction with Defendant John Vega's display of impropriety as evidenced in Exhibit CC-1, explain why JPMorgan Chase & Co. ("JPMorgan Chase") fired him (at least, I think Vega was fired).

Vega's "investigation" of my Claim of Employment Racial Discrimination that I had brought against Khavin and Shillingford, which anyone of reasonable mind would assume was supposed to be neutral and fair, was not only "drunken" but as evidenced in Exhibit CC-1 and from my own first hand knowledge was biased, retaliatory and a total farce.

Among the thousands of duplicated copies of emails (just a mere fraction has been sent to the Court as "Exhibits") I received from the Defendants, JPMorgan Chase & Co., et al attorneys' office on March 21, 2017 were the following emails between Vega and the alleged perpetrators, Khavin and Shillingford during the time that Vega should have been "neutrally investigating" my

[2] John Vega was in charge of investigating my employment racial discrimination claim

claim of Employment Racial Discrimination against me, by the said alleged perpetrators, Khavin and Shillingford (Exhibit CC-1):

- An email showing that from my first correspondence with Defendant/"neutral investigator", Vega in which he informed me that "*your matter has been raised to me for investigation*" (JPMorgan Chase 002285 – Exhibit CC-1), unbeknownst to me, he had been **blind copying** the alleged perpetrators, Khavin and Shillingford and continued to blind copy them on such subsequent emails. However, as the complaining party, I was never copied and/or blind copied on any email Vega sent to Khavin and/or Shillingford.
- Email trail dated July 8, 2015 – Unbeknownst to me, everything that Defendant/"neutral investigator", Vega and I discussed was relayed to alleged perpetrator/Defendant Shillingford. However, as the complaining party, Vega had never relayed to me what he discussed with alleged perpetrator/Defendant, Shillingford about the matter.
- Pursuant to email dated July 8, 2015, email from Shillingford dated July 17, 2015 and time stamped 7:03 AM confirms that Defendant/"neutral investigator", Vega had been keeping alleged perpetrator/Defendant, Shillingford "*updated*" as per Shillingford's request (email dated June 30, 2015 – JPMorgan Chase 001242).
- Email dated July 27, 2015 – Unbeknownst to me, Defendant/"neutral investigator", Vega who is an attorney by profession along with other HR representatives, who are quite likely attorneys as well, were liaising with alleged perpetrator/Defendant Shillingford in concocting the fallacious, pretextual and retaliatory Performance Improvement Plan ("PIP") that was issued to me on July 30, 2017. I respectfully refer the Court to the additional emails showing this "PIP concoction"[3] provided in Exhibits CC and CC-1.

[3] Among HR representatives whom I had never met and/or as much as had an email communication with, never even knew they existed (the only other HR personnel besides Vega whom I had email communication with was Terri Vernon).

- Email dated July 28, 2015 - Unbeknownst to me, alleged perpetrator/Defendant Shillingford was among the people informed by Defendant/"neutral investigator", Vega that he would be discussing the "*results of [his] investigation*" with me on July 29, 2015[4] saying: "*I will keep everyone apprised of this*"[5]. Shillingford then forwarded this email to her acting manager at the time, Defendant Thomas Poz. However, as the complaining party, the only thing that Vega told me with regards to the "*results of [his] investigation*" with Shillingford and/or Khavin was, he had "*found* "*nothing discriminatory*" and with the same intensity as alleged perpetrator/Defendant Khavin and in reminiscence of the 1800s plantation style living when slaves were ordered by force, he vehemently ordered me saying, "*when it comes time to get everything ready for the monthly meeting,* [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] *get it ready so as not to derail your career here* [JPMorgan Chase]". In my words, "turn a blind eye to the Employment Racial Discrimination against you and your financial career here at JPMorgan Chase, will be just fine".
- Email dated July 31, 2015 (two pages) – Unbeknownst to me, when I sent an email the day after my 2015 mid-year performance review, where I was issued the fallacious, pretextual and retaliatory performance improvement plan (PIP), to alleged perpetrator/Defendant Shillingford informing her of my illness, which I later found out is due to Somatisation/Somatoform and Psychosomatic Disorders (Exhibit ZZ), Shillingford forwarded my said email, in ridicule, to Defendant/"neutral investigator" Vega with the statement: "*As expected....*" Defendant/"neutral investigator" Vega then responded: "*I am not surprised....*" alleged perpetrator/Defendant Shillingford's response: "*I won't be surprise[d] if she takes disability*" (because this was what I

[4] The day before my "impromptu" 2015 mid-year performance review.
[5] The July 29, 2015 "*results of [Vega's] investigation*" consisted of all the fallacious and pretextual information, according to Vega, that Khavin and Shillingford gave him. These were the said fallacious and pretextual information that appeared on the "performance improvement plan" I was issued the very next day

was voluntarily informed and believe, and on that basis allege that Baruch Horowitz, my first predecessor, did due to overwork, stress and the unrealistic expectation for one person to do a job that realistically requires two people to do) [6].

- On or about August 13, 2015 when I was standing at alleged perpetrator/Defendant Shillingford's desk and her Outlook Inbox was opened on her computer, I was surprised to see a "Thank You and Farewell" email from Defendant/"neutral investigator", Vega to alleged perpetrator/Defendant Shillingford considering that when I first met with Vega, he appeared to have never known of or about Khavin and Shillingford prior to me raising the claim of Employment Racial Discrimination against them. Yet, in no time, he, Vega was "friendlily" sending Shillingford, and possibly Khavin, his "Thank You and Farewell" email. However, it has now been revealed in the thousands of duplicated copies of emails that I received from the Defendants, JPMorgan Chase & Co., et al attorneys' office on March 21, 2017 that this "comfortable back and forth" between Defendant/"neutral investigator", Vega and the alleged perpetrators/Defendants, Khavin and Shillingford had been going on from the time my Claim of Employment Racial Discrimination against me to JPMorgan Chase's HR Department was "escalated" to Vega for him to "investigate".

My Claim of Employment Racial Discrimination for which Vega was "investigating" was based on the fact that undesirable tasks that were assigned solely to me, the only Black analyst in the Counterparty Risk Group led by Khavin, that had never been assigned to any of the non-Black analysts and/or associates (including my non-Black predecessors) in the said group prior to me joining the group and/or after I joined the group, were racially discriminatory.

However, anyone of reasonable mind will notice in the emails I have provided in Exhibits CC and CC-1 that there is nothing about rectifying the issue pertaining to this unlawful act or the mention of even the possible violation of Title VII of the Civil Rights Act of 1964 - EEOC

[6]Am. Compl. ¶ 107; Khavin Dec., ¶ 12, 16; Dauber Dec., ¶ 5; Shillingford Dec., ¶ 11

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.*"

It was all about concocting ways to unlawfully retaliate against me in their quest to protect the company from "litigation" - as Vega described himself in his LinkedIn profile summary: "*Trusted advisor and consultant to HR and business managers on diverse workplace issues with* ***a proven track record of analyzing and resolving complex employment issues minimizing litigation risks***".

Also, I respectfully ask that the Court take note of Exhibits CC and CC-1 whereby the ONLY tasks that Vega, et al are accusing me of refusing to do are the racially discriminatory tasks[7] that were off limits for the non-Black analysts and associates to do but were solely assigned to me, the only Black Analyst in the Counterparty Risk Group, to do – Bearing in mind that before I joined the said Counterparty Risk Group, the task of the taking of the minutes for the Monthly Governance Meetings, for example, was rotated among all the non-Black analysts and associates in the said group[8] and the tasks of the printing, etc. of all the team members presentation materials for the Monthly Governance Meeting never existed. There was also a White administrative assistant on the team to whom these tasks were never assigned even though those tasks would more likely fall into the administrative assistant job category. (I respectfully refer the Court to see more on the unfairness of these tasks being solely assigned to me in my "Affidavit in Opposition/Response to Declaration of Alex Khavin - docket # 92 – "Response to Statement #s 12, 13 & 14".)

[7] The task of the taking of the minutes for the Monthly Governance Meetings 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 non-Black team members including the ones on my job level would be sitting around the conference room table waiting to "be served".

[8] Khavin was cognizant of not making any of the non-Black analysts and/or associates feel demeaned by solely assigning any one of them the undesirable task of taking the minutes for the Monthly Governance Meeting.

Anyone of reasonable mind will also notice that alleged perpetrator/Defendant Shillingford, who is Black and a servile employee, was coached into lying – "the Baruch Horowitz lie" (email dated July 24, 2015 – "Follow ups from our meeting")[9] and was given step by step directives by the HR representatives in their quest to unlawfully retaliate against me for raising the issue of Employment Racial Discrimination. These step by step directives included Defendant Dubowy sending Shillingford the performance improvement plan (PIP) template on July 6, 2015 with the message: "*As discussed. Thanks*" (JPMorgan Chase 002992 - Exhibit CC-1) and the HR representatives trying to make it seem that Shillingford, who again is Black and not Khavin who is White was the main perpetrator of the claim of Employment Racial Discrimination that I reported to JPMorgan Chase's HR department (Exhibit CC - JPMorgan Chase 001392 & 003342, ¶ 114 - Am. Compl., Exhibit F and Declaration of Fidelia Shillingford - Docket # 93).

In light of the foregoing and as is obvious in the above-referenced emails and other emails in Exhibit CC and Exhibit CC-1, Vega's "investigation" was not only biased and a total farce but it was retaliatory[10] which is in violation of Title VII of the Civil Rights Act of 1964 - EEOC Compliance Manual Section 15 – Race and Color Discrimination – VII - C. RETALIATION which states: "*Employees have a right to be free from retaliation for their opposition to discrimination or their participation in an EEOC proceeding by filing a charge, testifying, assisting, or otherwise participating in any manner in an investigation, proceeding, or hearing under Title VII.(156)*".

Also, drawing from Canon 3(A)(4) which states: "*A judge should accord to every person who has a legal interest in a proceeding, and that person's lawyer, the full right to be heard according to law. Except as set out below, a judge should not initiate, permit, or consider ex parte communications or consider other communications concerning a pending or impending matter that*

[9] I respectfully refer the Court to see my Response to "the Baruch Horowitz lie" in my "Affidavit in Opposition/Response to Declaration of Baruch Horowitz – Docket # 99" and my "Affidavit in Response/Opposition to Defendants' Statement of Undisputed Material Facts - Docket # 90 - Defendants' Undisputed Material Fact # 18".

[10] The ONLY tasks that I refused to do were the racially discriminatory tasks that were solely assigned to me, the only Black analyst in the Counterparty Risk Group – Tasks which were not even assigned to the White administrative assistant in the said group to do even though they would more likely fall into the administrative assistant job category.

are made outside the presence of the parties or their lawyers. If a judge receives an unauthorized ex parte communication bearing on the substance of a matter, the judge should promptly notify the parties of the subject matter of the communication and allow the parties an opportunity to respond, if requested" Defendant Vega's conduct, as is evidenced in his email correspondence with the alleged perpetrators, Khavin and Shillingford reflects impropriety and his investigation, a lack of integrity.

Response to Declaration Statement # 4

"Delay of 2015 Mid-Year Performance Review"

In statement # 4 of Vega's Declaration, Vega states that: "*Ms. Lue's 2015 mid-year review was postponed due to my ongoing investigation, which was delayed as a result of Ms. Lue's vacation in June 2015*". However, considering that my vacation was from June 19 through June 26, 2015 and my mid-year performance review was done on July 30, 2015, anyone of reasonable mind would see that Vega's statement # 4 is a stretch – bearing in mind that my 2015 mid-year performance review and the investigation of my Claim of Employment Racial Discrimination are two separate and independent matters which legally should have no bearing on each other. That is why the performance improvement plan on which I was placed on July 30, 2015 is not only fallacious, pretextual and retaliatory but it is an obstruction of justice.

With that said, contrary to Vega's statement # 4 and as Exhibit CC, Exhibit CC-1 and Exhibit CC-3 show, my 2015 mid-year performance review which was originally slated to be done on June 18, 2015 (¶¶ 62 – 66 - Am. Compl.) was obviously delayed to July 30, 2015 to give Vega and other JPMorgan Chase legal representatives enough time to concoct the aforesaid fallacious, pretextual and retaliatory performance improvement plan that I was put on as a result of me raising the Claim of Employment Racial Discrimination against me to HR.

CONCLUSION

I respectfully ask that the Court, with prejudice, reject Defendant Vega's "investigation", as, as is evidenced in Exhibit CC and Exhibit CC-1, Vega's investigation does not only reflect impropriety, bias and a total farce but it was unlawfully retaliatory - making Vega worthy of the charges of Unlawful Retaliation and Harassment, Aiding and Abetting in Employment Racial Discrimination and Failure to Take Steps to Prevent Employment Racial Discrimination – my Second, Third and Fifth Causes of Action, respectively – "*Unlawful Retaliation on the Basis of Race in Violation of Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981*", "*Aiding and Abetting Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981 Violations*" and "*Failure to Take Steps to Prevent Discrimination, Retaliation and Harassment in Violation of Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981*".

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
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 9/26/2017
License # 2292270

Notary Public