

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



----- X	
CANDICE LUE,	:
	:
Plaintiff,	:
	:
- against -	:
	:
JPMORGAN CHASE & CO., ALEX KHAVIN,	:
FIDELIA SHILLINGFORD, JOHN VEGA,	:
HELEN DUBOWY, PHILIPPE QUIX, THOMAS	:
POZ, CHRIS LIASIS, MICHELLE SULLIVAN,	:
and DOES 1 - 10, inclusive,	:
	:
Defendants.	:
----- X	

No. 16 Civ. 03207 (AJN)(GWG)

**DEFENDANTS' STATEMENT OF UNDISPUTED  
MATERIAL FACTS UNDER LOCAL CIVIL RULE 56.1**

Pursuant to Rule 56.1 of the Local Civil Rules of this Court, Defendants JPMorgan Chase & Co. ("Chase"), Alex Khavin ("Khavin"), Fidelia Shillingford ("Shillingford"), John Vega ("Vega"), Helen DuBowy ("DuBowy"), Phillippe Quix ("Quix"), Thomas Poz ("Poz"), Chris Liasis ("Liasis"), and Michelle Sullivan ("Sullivan") (collectively, "Individual Defendants" and together with Chase, "Defendants") respectfully submit this statement of undisputed material facts in support of their motion for summary judgment.<sup>1</sup>

**I. BACKGROUND**

1. Candice Lue ("Plaintiff") is a Black woman. (Amended Complaint ("Am. Compl.") (ECF No. 33), ¶ 4.)

---

<sup>1</sup> The undisputed facts set forth herein are followed by citations to their support in the record. Copies of exhibits cited herein are annexed to the accompanying Declaration of Alex Khavin, dated May 9, 2017 ("Khavin Dec."), Declaration of Fidelia Shillingford, dated May 8, 2017 ("Shillingford Dec."), Declaration of Chris Liasis dated May 8, 2017 ("Liasis Dec."), Declaration of Michelle Sullivan dated May 9, 2017 ("Sullivan Dec."), Declaration of Helen DuBowy, dated May 9, 2017 ("DuBowy Dec."), Declaration of Kimberly Dauber, dated May 9, 2017 ("Dauber Dec."), Declaration of John Vega, dated May 9, 2017 ("Vega Dec."), and the Declaration of Baruch Horowitz, dated March 28, 2017 ("Horowitz Dec.")

2. Plaintiff began her employment with Chase on August 20, 2012 as an Energy Confirmations Drafting Analyst (“Drafting Analyst”) in the Commodities Operations Department of the Commercial Investment Bank, a business unit of Chase. (Am. Compl., ¶ 49.)

3. Except for the first few months of her employment, Plaintiff reported to Sullivan while she was in the Commodities Operations Department. (Am. Compl., ¶¶ 49, 83.) Sullivan, in turn, reported to Liasis. (Am. Compl., ¶ 83.)

4. In or about July 2013, while Sullivan was on leave, Liasis conducted Plaintiff’s 2013 mid-year performance review (or “PMC”) (Am. Compl., ¶ 154; Liasis Dec., ¶ 8.) Plaintiff received an “M” for “Meets Expectations.” (Liasis Dec., Ex. A, at JPMORGAN CHASE (“JPMC”) 377.) Liasis noted in the PMC that Plaintiff’s “communication style needs continued refinement and . . . managing the perception and expectation others have of [Plaintiff] is paramount to her success, this is an ongoing focus area.” (*Id.*)

5. In or about January 2014, Sullivan conducted Plaintiff’s 2013 year-end PMC; Plaintiff received another “M.” (Sullivan Dec., Ex. A, at JPMC 378.) Sullivan noted in the PMC that “[r]eaction to constructive feedback [] should be focused [on] as a key area of improvement.” (*Id.* at JPMC 377.)

6. In or about July 2014, Sullivan conducted Plaintiff’s 2014 mid-year PMC. Plaintiff received an “M.” (Sullivan Dec., Ex. C, at JPMC 428.)

## **II. PLAINTIFF JOINS THE COUNTERPARTY RISK GROUP**

7. On or about November 10, 2014, following the sale of Chase’s commodities business and the closing of her department, Plaintiff transferred to the role of Credit Reporting Risk Analyst (“Reporting Analyst”) in the Counterparty Risk Group (“CRG”) of JPMorgan Asset Management, a business unit of Chase. (Am. Compl., ¶ 50.)



8. In her position in CRG, Plaintiff reported to Shillingford, a Black female. (Am. Compl., ¶ 18; Shillingford Dec., ¶ 2.) Shillingford, in turn, reported to Khavin. (Khavin Dec., ¶¶ 2-3.)

9. In or about December 2014, Sullivan, in conjunction with Shillingford, conducted Plaintiff's year-end 2014 PMC, with each manager providing feedback. (Sullivan Dec., Ex. C, at JPMC 428-429.) Plaintiff received an "M-" for "Low Meets Expectations" from Sullivan for her time as a Drafting Analyst. (*Id.* at JPMC 429.)

10. On or about January 5, 2015, Plaintiff sent Human Resources a five-page "response" to Sullivan's portion of the year-end 2014 PMC, calling her feedback "malicious," "mendacious," and "defamatory," and demanding that HR "do its job." (*Id.* at JPMC 429, 379-383.)

11. On January 12, 2015, Plaintiff filed an official HR complaint against Sullivan. (Am. Compl., Ex. D.)

12. Between January 12 and February 12, 2015, Nancy Sebastian, a member of the Chase HR Advice Direct team, conducted an investigation into Plaintiff's claims. Sebastian reviewed Plaintiff's 2013 and 2014 PMCs and interviewed Sullivan, Ana Cabrera-Vargas (the HR Business Partner for the Commercial Investment Bank, Plaintiff's former group), Shillingford, Brooke Miller (the HRBP to Plaintiff's then-current group, Asset Management), and Plaintiff. (DuBowey Dec., Ex. A.)

13. Sebastian concluded that Plaintiff's allegations were unfounded. (*Id.* at JPMC 110-114.) With respect to Plaintiff's allegations that Sullivan had fought "tooth and nail" to leave feedback on Plaintiff's 2014 year-end PMC, Sebastian determined that Sullivan had in fact sought guidance from Cabrera-Vargas whether she was the appropriate person to provide feedback on Plaintiff given that she no longer supervised Plaintiff. (*Id.*) After consulting with Miller, Cabrera-

Vargas informed Sullivan and Shillingford that, under company practice, the primary feedback and rating should be furnished by Sullivan, the supervisor under whom Plaintiff spent the majority of 2014. (*Id.*)

14. Sebastian further concluded that Sullivan was able to substantiate the feedback that was left on Plaintiff PMCs, noting that while Plaintiff had some accomplishments during the year, there were shortcomings that could not be ignored. Sebastian informed Plaintiff of these findings and the investigation was closed. (*Id.*)

15. After Plaintiff communicated her disappointment with the determination, Chase informed Plaintiff of the appeals process. Plaintiff declined to pursue an appeal. (Am. Compl., Ex. D.)

### **III. PLAINTIFF'S UNSATISFACTORY PERFORMANCE**

#### **A. Plaintiff's Objections to Performing Certain Tasks**

16. As a Reporting Analyst, Plaintiff's job description states that "Specific responsibilities will include: . . . Contributing to team-wide efforts such as . . . preparing management presentations . . . ." (Am. Compl., Ex. H.)

17. On or about January 26, 2015, Plaintiff met with Shillingford to complain that Khavin was treating Plaintiff "as if she was the help, as if this is 1910" because Khavin had assigned her the task of collecting and distributing the materials, as well as taking minutes, for the monthly governance meetings (collectively, the "Tasks"). (Shillingford Dec., ¶ 15.)

18. However, prior to Plaintiff's arrival in the CRG, Baruch Horowitz, a Caucasian male and a senior Associate (a higher rank than Plaintiff's role of Analyst), performed the Tasks exclusively. (Horowitz Dec., ¶¶ 2-6, ; Khavin Dec., ¶¶ 10-11, 16; Dauber., ¶¶ 4-5; Shillingford Dec., ¶¶ 10.) In June 2014, Horowitz began a disability leave. (Khavin Dec., ¶ 12, 16; Dauber., ¶ 5; Shillingford Dec., ¶ 11.) Due to Horowitz's absence, each member of the CRG brought and



distributed their own materials at the governance meetings, and Khavin temporarily rotated the task of taking minutes among the CRG analysts and associates. (Khavin Dec., ¶ 11-14, 17-19; Dauber., ¶ 5; Shillingford Dec., ¶¶ 11-12.)

19. In February 2015, because Plaintiff was still new in her role as Reporting Analyst, Shillingford was concerned with Plaintiff's ability to juggle the Tasks with her other reporting responsibilities. (Shillingford Dec., ¶ 16.) Shillingford conferred with Khavin, and, in an effort to accommodate Plaintiff and give her time to get up to speed, they agreed to temporarily rotate the Tasks among the CRG analysts and associates, as had been done when Horowitz was, first, on a disability leave and, then, after he left Chase. (*Id.*)

20. Shillingford e-mailed Kimberly Dauber, a Vice President and the person to whom the Credit Analysts reported, asking her to select two Credit Analysts to assist Plaintiff with the Tasks. (Dauber Dec., Ex. A, at JPMC 2367.) Plaintiff (who had been copied on the e-mail) responded that she never considered the Tasks to be her responsibility. (*Id.* at JPMC 2366.)

21. At the April 2015 Governance Meeting, Khavin asked that the group send all materials for the May 2015 Governance Meeting to Plaintiff, who had been assigned the Tasks for the May meeting. (Khavin Dec., ¶ 21.) That way, Plaintiff could send the materials to all participants in advance of the May 2015 Governance Meeting in order to save time at the meeting itself. (*Id.*) In response, Plaintiff got up and walked out of the meeting. (*Id.*)

22. Thereafter, Khavin met with Plaintiff to find out why she walked out of the April 2015 Governance Meeting. (*Id.* at ¶ 22.) Plaintiff stated that it was because she had been assigned the Tasks, which she found to be demeaning. (*Id.*) Khavin explained that the Tasks were an important part of the Reporting Analyst role, and suggested that Plaintiff enlist the help of the group's administrative assistant with printing the materials if needed. (*Id.*)

23. On April 24, 2015, Plaintiff sent an e-mail to Shillingford in which she complained that Khavin was demeaning her by assigning her the Tasks. She concluded the e-mail asking, “Am I the help? Is this 1910?” (Shillingford Dec., Ex. B.)

24. On May 26, 2015, Plaintiff sent a meeting invite to Shillingford to discuss Plaintiff’s “lack of trust and confidence I have in your management.” (Am. Compl., Ex. Q.) Shillingford forwarded the e-mail to HR, asking for assistance. (Shillingford Dec., Ex. D.)

25. On May 27, 2015, prior to the May Governance Meeting, one of the members of the CRG sent Plaintiff his materials per Khavin’s directive at the April 2015 Governance Meeting. (Khavin Dec., Ex. A.) In response, Plaintiff e-mailed the entire CRG, stating: “In the interest of team spirit, can you please print, sort, organize and staple as well as send your own presentation materials to the team? I find it unfair and demeaning that the task of printing, sorting, organizing, stapling, sending out and lugging YOUR presentation materials to the meetings is placed on me.” (*Id.*)

26. As head of the CRG, Khavin responded to Plaintiff’s May 27 e-mail, copying Shillingford, her manager. The e-mail stated:

[Shillingford] and I have specifically asked you to take on this task, repeatedly. My expectation has not changed, and I expect that there will be one package for the monthly meeting which will be put together by you, and sent out ahead of the meeting. Again, if you need help printing, you can give Eileen [the administrative assistant] the prepared package and Eileen can make the copies, however, you should be putting the full presentation together, and storing the pdf in our shared folder for the month . . . . This should be done today ahead of our meeting, as our colleagues in other regions need to print for themselves as well.”

(*Id.*)

27. Plaintiff responded to Khavin’s May 27 e-mail that she felt it was demeaning to be assigned the Tasks and concluded by again asking “Am I the help? Is this 1910?” (*Id.*)



**B. HR Investigation Into Plaintiff's Concerns**

28. Based on the e-mail Shillingford had forwarded to HR on May 26, Terri Vernon, a Vice President on the HR Advice Direct team, contacted Plaintiff to schedule a time to discuss her concerns regarding Shillingford and her job responsibilities. (Am. Compl., Ex. Q.)

29. On May 29, 2015, Plaintiff responded to Vernon's May 26 e-mail stating that she considered herself to be a victim of racial discrimination. (Am. Compl., Ex. E.)

30. Vernon referred Plaintiff's e-mail to John Vega, an Executive Director in Chase's Employee Relations department, requesting that he conduct an investigation into Plaintiff's concerns regarding Khavin, Shillingford, and her job responsibilities. (Vega Dec., ¶ 2.) Between June 2 and July 29, 2015, Vega reviewed Plaintiff's job responsibilities and interviewed Khavin, Shillingford (twice), Dauber, and Plaintiff (twice). (DuBowey Dec., Ex. B.)

31. Plaintiff's scheduled mid-year PMC for 2015 was postponed due to the ongoing investigation as well as Plaintiff's vacation in June. (Vega Dec., ¶ 4.)

32. In or about mid-July, at a meeting between Shillingford and Plaintiff to discuss her workload, Plaintiff accused Shillingford of "bullying her" when Shillingford asked when Plaintiff would complete a report she was preparing. (Shillingford Dec., Ex. E.) Shillingford explained that, as Plaintiff's manager, she was entitled to know when Plaintiff would finish her assigned task. (*Id.*) Shillingford conveyed the substance of this conversation to HR, which was still investigating Plaintiff's claims. (*Id.*)

33. Vega concluded that Plaintiff's allegations were unfounded and that there was no evidence of discriminatory animus. (Vega Dec., ¶ 4; DuBowey Dec., Ex. B, at JPMC 102.) Specifically, among other things, Vega found that (i) everyone who occupied this role was responsible for the Tasks, *regardless of race*; and (ii) it was within management's purview to decide who Plaintiff's manager was going to be, the role did not change, and Plaintiff decided to

accept the job as offered. (DuBowy Dec., Ex. B, at JPMC 102.) Vega informed Plaintiff of his findings on July 29, 2015, and the investigation was closed. (*Id.*)

**C. Plaintiff's Performance Improvement Plan**

34. On July 30, 2015, Shillingford and DuBowy, HR Business Partner to Asset Management Risk, conducted Plaintiff's mid-year PMC. (Shillingford Dec., ¶ 22.) Shillingford asked DuBowy to sit in on the review because Shillingford knew she had been monitoring Vega's investigation and because she thought it was important to have an HR representative present at the review meeting. (*Id.*) By the time of this meeting, Plaintiff had also been advised that the responsibility of the Tasks would no longer be rotated, since she had been given sufficient time to acclimate to her role. (*Id.* at ¶ 17.)

35. At the PMC, Plaintiff was placed on a performance improvement plan ("PIP"). (*Id.* at ¶ 22.) Among other things, Plaintiff was informed that she was expected to perform all projects and tasks assigned to her and to improve her communication style, the tone of which had been hostile and unprofessional. (*Id.*, at Ex. F.)

36. On August 3, 2015, Plaintiff e-mailed Shillingford (copying DuBowy, Khavin, Vega, Vernon, and John Donnelly (Chase's global head of HR) regarding the PIP:

Since I was raised in a household where TRUTH matters, I will not compromise my dignity to fully respond to or to sign off on the malicious and mendacious comments you have made about me and my work . . . . Having a manager who will fabricate things to make me seem incompetent . . . is a blight on any career success I could or would have had at JP Morgan. I consider you to be the enabler, the facilitator and the coordinator of the second class treatment from Alex Khavin that has been meted out to me . . . . It's amazing how bad managers can turn good employees into bad employees. (Shake my head).

(Shillingford Dec., Ex. H.)

37. On August 25, 2015, Shillingford asked Plaintiff to remind all CRG members to save their materials in the shared folder on the Chase computer system so that Plaintiff could print



them in advance of the August 2015 Governance Meeting. (Shillingford Dec., Ex. I.) Plaintiff did not do so. (Shillingford Dec., ¶ 26.)

38. On August 26, 2015, Shillingford informed Plaintiff that she had saved her documents in the shared folder and again asked Plaintiff to remind all CRG members to do so in advance of the August 2015 Governance Meeting, which was to take place the next day. (Shillingford Dec., Ex. I.) Plaintiff's response was a blank stare. (*Id.*) Shillingford then advised Plaintiff that refusing to perform her assigned duties was both unacceptable and one of the areas highlighted for improvement during her mid-year PMC and in her PIP. (*Id.*) Plaintiff responded, "I have no further comments." (*Id.*)

39. Plaintiff did not print the documents for the August 2015 Governance Meeting, failing to print both Shillingford's and the rest of the team's materials. (*Id.*) Another member of the group had to step in and print the materials in Plaintiff's stead. (Shillingford Dec., ¶ 26.)

40. On September 23, 2015, Shillingford asked Plaintiff to bring copies of three items to the September 2015 Governance Meeting. (Shillingford Dec., Ex. J.) In response, Plaintiff stated that she would print only one of the requested documents. (*Id.*) Shillingford replied:

You were brought in to assist with my roles and responsibilities. At the time of hire, specific functions were outline[d] but as with any other job, overtime, more will be assigned. It is rather disrespectful and insubordinate for you to refuse to perform a responsibility assigned by your immediate manager. This is one of my responsibilities which I am off boarding to you given my increasing workload and it's my expectation[] that you fully pick this responsibility [up] going forward.

(*Id.*)

41. In response, Plaintiff stated, "You can continue to be disingenuous and willful as much as you want to but this is stemming from the racial discrimination charge I raised with HR. As I said in our impromptu meeting earlier today, I have no further comments on this matter." (*Id.*)

**D. Plaintiff's Written Warning**

42. Following the incidents of August 25, 26, and 27 and September 23, Plaintiff was issued a Written Warning on September 24, 2015. (Shillingford Dec., Ex. K.) Plaintiff was informed that she was expected to “perform the job responsibilities for which she was hired; she is expected to print all materials for our monthly governance team meeting and provide copies for each team member.” (*Id.*)

43. On September 25, 2015, Plaintiff e-mailed Shillingford:

As is evidenced in the attached “Written Warning” dated 9/24/15 that you presented to me in a meeting yesterday, you continue to be the enabler, the facilitator, the coordinator and the enforcer of the second class treatment which originated from Alex Khavin and has been meted out to me. This is why, I have repeatedly asked HR to remove you as my manager to prevent you from carrying out these unlawful acts against me. However, it is including HR's failure to prevent these unlawful acts against me that has caused you to continue to harass me on a monthly basis since Alex Khavin and/or cohorts subtly made it solely your job to enforce the second class treatment against me whereby I am ordered to print, collate, staple and lug the presentation materials of each of the team members to the monthly meetings.

(Shillingford Dec., Ex. L.)

44. In an e-mail exchange on October 14 and 15, 2015, Plaintiff reacted unprofessionally and negatively in response to constructive feedback provided by Shillingford.

(Shillingford Dec., Ex. M.) Exasperated, Shillingford reached out to HR, saying:

These are the patronizing and accusatory emails that I receive from Candice on a frequent basis. The environment has become toxic and inoperable. Instead of directing my time and effort into my work; my efforts are channeled on internalizing how to approach Candice on a task and/or how to respond appropriately to these emails. In effect, my primary focus has shifted to managing my interactions and the work has become secondary. I cannot continue to be productive in this environment. Can we please have a conversation this afternoon; if your schedules permit?

(*Id.*)

45. On October 21, 2015, Shillingford sent an e-mail to Plaintiff reminding her to ensure that all of the group's materials are ready for the following day's October 2015 Governance



Meeting. (Shillingford Dec., Ex. N.) Instead of collecting all team members' documents to print and distribute, Plaintiff only e-mailed her personal documents to the group and once again failed to collect, print, and distribute the documents as directed for the October 2015 Governance Meeting. (*Id.*)

46. Also on October 21, 2015, Shillingford reminded Plaintiff that she had transitioned the responsibility of the "Dashboard" to Plaintiff and that she was expected to present it at the Governance Meeting. (Shillingford Dec., Ex. O.) In response, Plaintiff was again disrespectful and unprofessional, responding "that it takes very little intellect for anyone to see that the full trail of the email attachment you referenced gave no directive of the transitioning to me of PRESENTING the Dashboard . . . only ordering me to print same." (*Id.*) Shillingford replied that they had discussed it in person. (*Id.*) Plaintiff's responded, "[w]ith ALL due respect, your statement is untrue." (*Id.*)

47. On December 1, 2015, Shillingford met with Plaintiff and advised her that another analyst was going to be responsible for organizing the materials for the December Governance Meeting, but that he would be working from home the next day. (Shillingford Dec., Ex. P.) She asked Plaintiff to coordinate with this analyst to make sure the task is completed. (*Id.*) Plaintiff did not respond but instead turned her head and continued working on her computer. (*Id.*) Shillingford asked Plaintiff for a response, but Plaintiff replied, "I have no comments." (*Id.*)

48. Following this encounter, Shillingford sent Plaintiff a confirmatory e-mail, noting that she had refused to coordinate with the other analyst in preparing the documents for the Governance Meeting. (Shillingford Dec., Ex. Q.) Plaintiff replied:

For the record, your PLOYS which are cover ups for the unlawful behavior being meted out to me will not stand. There is no 'other analyst' who is being ordered to have everyone in the department send their documents to them to print, collate, staple and lug to the monthly meetings. Your ploys ONLY consist of 'other analysts' asking team members to give their printed, collated and stapled

documents to them for them to put the documents in order as per the agenda and take them into the meeting. Again, that's all your ploys consist of. Furthermore, please be advised that this racial discrimination against me has been escalated to the point where these ploy compromises will not be effective.

(*Id.*)

**E. Plaintiff's Termination**

49. Following this incident, as well as those from the preceding months, and in view of the fact that Plaintiff had been placed on a PIP and Written Warning, Shillingford decided that Plaintiff's employment should be terminated. (Shillingford Dec., ¶ 35.)

50. Vernon prepared a Recommendation for Termination ("RFT"), stating in part:

Both [her PIP and Written Warning] included issues on refusing to perform assigned tasks [] as well as a lack of professionalism including inappropriate tone of emails and verbal communications. Despite numerous conversations that Candice has had with Employee Relations and managements, she still has had sustained improvement in these areas . . . . Because of the lack of professionalism and refusal to perform the work asked of her, it is the recommendation to move forward with termination of employment.

(DuBowey Dec., Ex. C.)

51. DuBowey signed the RFT on January 6, 2016. (*Id.*) Plaintiff was terminated that day. (Am. Compl., ¶51.)

Dated: New York, New York  
May 9, 2017

Respectfully submitted,

SEYFARTH SHAW LLP

By: /s/ Anshel Joel Kaplan

Robert S. Whitman  
rwhitman@seyfarth.com  
Anshel Joel Kaplan  
akaplan@seyfarth.com  
620 Eighth Avenue  
New York, New York 10018  
Telephone: (212) 218-5500  
Facsimile: (212) 218-5526

*Attorneys for Defendants*