

Defendants Undisputed Material Fact # 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.)”

Plaintiff, Candice Lue Response/Opposition

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.

In the fourteen (14) months that I worked as a Credit Reporting Risk Analyst in the Counterparty Risk Group, no one in the said Counterparty Risk Group including Khavin, Dauber,

Shillingford and Poz had ever told me verbally or in any form of writing that Baruch Horowitz, the first of my three predecessors had ever “*performed the Tasks exclusively*”.

In my joint interview which took place on October 31, 2014 (Exhibit O – IM conversation with HR) with former co-workers Mohammad (Zeeshan) Haider¹⁹ 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 told me that the first of my three predecessors, Baruch Horowitz “*performed [those] Tasks exclusively*”. And, neither at that opportune time did either of them tell me that I would be solely assigned the tasks of printing 13 copies of each of my non-Black team members’ presentation materials (one copy for each member of the team), collating, stapling and lugging of the said presentation materials to the monthly team meeting because Baruch Horowitz, the first of my three predecessors or any of my other two predecessors, Kenneth Ng and/or Thomas Monaco, “*performed [those] Tasks exclusively*”. As a matter of fact, there was no mention by Mohammad (Zeeshan) Haider or Tatevik Avetyan, who were both working in the Counterparty Risk Group during Baruch Horowitz’s tenure, of the printing, etc. of everyone on the team’s presentation materials by the Credit Reporting Risk Analyst because prior to me, the only Black analyst to have ever joined Khavin’s team, no such tasks existed. And, Kenneth Ng who also interviewed me in a one on one interview whereby the reason for him interviewing me was not only to see how viable I was as a candidate for the Credit Reporting Risk Analyst position but as the person who was currently in the said position, to also discuss the demands the position entails and the tasks required and he did not mention anything about the taking of the monthly meeting minutes and the printing, etc. being solely the responsibility of the Credit Reporting Risk Analyst.

¹⁹Mohammad (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.

On January 26, 2015, the first time that I officially raised this issue to my then direct manager, Shillingford, of Khavin racially discriminating against me by treating me “*as if I am the help and as if this is 1910*”, by Khavin solely assigning me the task of taking the minutes for the Monthly Governance Meetings and 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 (Am. Compl. ¶¶ 2 & 138), Shillingford did not tell me that the first of my three predecessors, Baruch Horowitz or any of my other two predecessors, Kenneth Ng and/or Thomas Monaco, “*performed [those] Tasks exclusively*” because those tasks were never done exclusively by any one analyst and in the case of the printing, etc., never existed.

In an email from Kimberly Dauber dated February 4, 2015 (Exhibit B – Am. Compl.), Kimberly Dauber 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 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, “*performed [those] Tasks exclusively*”. 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). Now, in their quest to deceive the Court and to obstruct justice, as the “Defendants Undisputed Material Fact # 18” shows, Defendants Khavin and Shillingford along with Declarant, Kimberly Dauber is now claiming that Baruch Horowitz “*performed the Tasks exclusively*”.

However, if that was so, as Baruch Horowitz's manager for "*the last 2 years*", instead of writing that "***Most recently, it was understood that the reporting analyst*** [Plaintiff, Candice Lue] *would handle it*" wouldn't February 4, 2015, when she wrote the said referenced email, have been the most opportune time for Kimberly Dauber to have written that my predecessor, Baruch Horowitz "*performed the Tasks exclusively*"? It is not only obvious in Kimberly Dauber's email that having the taking of the minutes assigned solely to one person was a recent understanding of hers but it was also a recent understanding of hers that the "*reporting analyst would handle it*". And, that was obviously based on what transpired in the November and December 2014 and the January 2015 Monthly Governance Meetings pursuant to Paragraph 172 of my Amended Complaint.

In a meeting I had with Shillingford on April 23, 2015 (email dated May 24, 2015 - Exhibit B – Am. Compl.) about the said issue of Khavin racially discriminating against me by treating me "*as if I am the help and as if this is 1910*", Shillingford did not tell me that the first of my three predecessors, Baruch Horowitz or any of my other two predecessors, Kenneth Ng and/or Thomas Monaco, "*performed [those] Tasks exclusively*" because those tasks were never done exclusively by any one analyst and in the case of the printing, etc., never existed.

In the meeting I had with Alex Khavin on April 24, 2015 where I articulated to her how I felt about her treating me "*as if I am the help and as if this is 1910*" and she looked at me as if I was crazy to have had the nerve to be telling her what I was telling her then condescendingly, unapologetically and unrepentantly yelled at me saying: "***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!***" (Am. Compl. ¶ 172a), at no time in Khavin's yelling did she yell that the first of my three predecessors, Baruch Horowitz or any of my other two predecessors, Thomas Monaco and Kenneth Ng, "*performed [those] Tasks exclusively*". And, at no time during the conversation did she say that Baruch Horowitz, the first of my three predecessors or any of my other two predecessors, Kenneth Ng and/or Thomas Monaco, "*performed*

[those] *Tasks exclusively*” because those tasks were never done exclusively by any one analyst and in the case of the printing, etc., never existed.

In Khavin’s email response dated May 27, 2015 (Exhibit B - RE: Monthly CRG Governance Meeting), where she doubled down that the racially discriminatory tasks of printing 13 copies of each of my 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 was solely mine to do, Khavin did not mention anything about these tasks being previously “*performed exclusively*” by the first of my three predecessors, Baruch Horowitz or any of my other two predecessors, Kenneth Ng and/or Thomas Monaco because those tasks were never done exclusively by any one analyst and in the case of the printing, etc., never existed.

At 8:20 AM on May 28, 2015²⁰ when Khavin went to pick up something from the printer and Ryan Vroom who was Baruch Horowitz’s teammate during the time of Horowitz’s tenure asked Khavin, “*So now when we have documents to print, we send it to an analyst (laughs)?*” and Khavin’s sarcastic response to Ryan Vroom was “*I have to print it for myself*”, there was no where in the conversation between Ryan Vroom and Khavin where Ryan Vroom, who again, was a teammate of Baruch Horowitz during Baruch Horowitz’s tenure in the Counterparty Risk Group made mention that the first of my three predecessors, Baruch Horowitz or any of my other two predecessors, Kenneth Ng and/or Thomas Monaco “*performed [those] Tasks exclusively*” (Exhibit KK - ¶ 5 of email dated July 23, 2015).

The first time that I heard anything about Baruch Horowitz “*performed the Tasks exclusively*” was in a meeting on July 23, 2015 with Defendant John Vega who was not and had never been a member of the Counterparty Risk Group but he was an attorney from JPMorgan Chase’s HR department who was “investigating” my claim of racial discrimination against Khavin

²⁰ May 28, 2015 was the day after I sent an email to the team saying: “*In the interest of team spirit, can you please print, sort, organize and staple as well as send out 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.*” (Exhibit B - RE: Monthly CRG Governance Meeting)

and her conduit and servile employee, Shillingford whereby he told me in that said meeting that he was told by Khavin and Shillingford that Baruch Horowitz, the first of my three predecessors, was responsible for doing the meeting minutes and the printing, etc. of every one in the said Counterparty Risk Group Monthly Governance Meeting presentation materials (Exhibit KK - ¶¶ 2 and 6 of email dated July 23, 2015). I respectfully ask the Court to note that I ended this July 23, 2015 email with: *“Funny, it seems as if only Fidelia and Alex have any knowledge of Baruch Horowitz having the responsibility of the taking of the minutes and the printing, etc. of everyone’s Governance Meeting presentation materials during his more than 1 year tenure.”*

As paragraph 3 of my said email dated July 23, 2015 (Exhibit KK) to Vega shows, I asked Vega the following question to which he did not provide an answer: *“If this was a regular task for the job that was done by my first predecessor [Baruch Horowitz] during the 2 years before me joining the team and up to 5 months before my arrival, why wasn’t it a part of my job description? Why was it “suddenly scrubbed” from the job description of my second and third predecessors during the 5 months they preceded me?”*

In my 2015 mid-year performance review with Shillingford, my then manager and Dubowy, an Executive Director/HR Business Partner, when they both were emphasizing that the tasks of printing 13 copies of each of my 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 had disparately assigned to me, the only Black analyst on the team, the said demeaning and discriminatory tasks that I complained about to HR in my racial discrimination claim against Khavin, were my job to do, there was no mention that the first of my three predecessors, Baruch Horowitz or any of my other two predecessors, Kenneth Ng and/or Thomas Monaco, *“performed [those] Tasks exclusively”* (¶ 65 - Am. Compl.) because those tasks were never done exclusively by any one analyst and in the case of the printing, etc., never existed.

In the “performance improvement plan” dated July 30, 2015 (Exhibit C) that I was placed on by Shillingford in section 1 where she stated: *“she [Plaintiff, Candice Lue] has not taken on all*

tasks assigned to her” there was nothing mentioned that Baruch Horowitz or any of my other two predecessors *“performed [those] Tasks exclusively”*. And, nothing that she wrote about *“previous analysts who performed the job”* included a statement that Baruch Horowitz or any of my other two predecessors, Kenneth Ng and/or Thomas Monaco *“performed [those] Tasks exclusively”* because those tasks were never done exclusively by any one analyst and in the case of the printing, etc., never existed.

In the Written Warning dated September 24, 2015 (Exhibit F) that was presented to me on September 24, 2015 with the ONLY expectation being: *“It is my expectation that Candice perform the job responsibilities for which she was hired; she is expected to print all materials for our monthly team meeting and provide copies for each member”*, Shillingford claimed that *“this responsibility had to be picked up by an associate with the team²¹”* but no where in the said written warning did Shillingford state that the first of my three predecessors, Baruch Horowitz or any of my other two predecessors, Kenneth Ng and/or Thomas Monaco *“performed [those] Tasks exclusively”* because those tasks were never done exclusively by any one analyst and in the case of the printing, etc., never existed.

According to “Defendants Undisputed Material Fact # 18”, *“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.”*

In Exhibit K attached, there are two emails dated February 23, 2015 and June 23, 2015 respectively that were sent out recognizing my two absences²² on the day the CRG Governance Meeting took place and the need for a temporary directive as it relates to the taking of the minutes and the tasks of printing, collating, and stapling 13 copies of each of the non-Black team members

²¹ I respectfully refer the Court to my response to Shillingford’s claim in my email dated September 25, 2015 (Exhibit F)

²² As the employee who is solely assigned the taking of the Governance Meeting minutes and the printing, etc.

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.

In addition, during my fourteen (14) months working in the Counterparty Risk Group, as Exhibit K also shows, I received several other emails regarding the task of the taking of the monthly meeting minutes and 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. being solely assigned to me. With that said, if Defendants JPMorgan Chase & Co., et al cannot make factual evidence consistent with their claim that these said tasks were exclusively assigned to/performed by Baruch Horowitz 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 Governance Meetings to all the members of the said group and/or cannot at least produce any email correspondence such as those said emails in Exhibit K to prove that, just like me, Plaintiff, Candice Lue, who is Black, the first of my three predecessors, Baruch Horowitz, was assigned/*"performed [those] Tasks exclusively"*, then I respectfully ask that the Court, with prejudice, accept my opposition to the "Defendants Undisputed Material Fact # 18" pursuant to Rule 56(d) of Federal Rules of Civil Procedure.

Also, per my "Affidavit in Opposition/Response to 'Declaration of Baruch Horowitz - Docket # 99'", in all the "jokes" that were told about Baruch Horowitz by different members of the Counterparty Risk Group, there was never one "joke", whereby based on what is reported in the said "Affidavit in Opposition/Response to 'Declaration of Baruch Horowitz - Docket # 99'", 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 *"performed [those] Tasks exclusively"* because those tasks were never done exclusively by any one analyst and in the case of the printing, etc., never existed.

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*” again, if Defendants JPMorgan Chase & Co., et al cannot make factual evidence consistent with their claim that “the Tasks” were exclusively assigned to/performed by Baruch Horowitz 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 that I have referenced and/or produced in Exhibit K to prove that, just like me, Plaintiff, Candice Lue, who is Black, the first of my three predecessors, Baruch Horowitz, was assigned/performed those “*Tasks exclusively*”, then I respectfully ask that the Court, with prejudice, accept my opposition to the “Defendants Undisputed Material Fact # 18”. As, just like the “Declaration of Baruch Horowitz – docket # 99”, the “Defendants Undisputed Material Fact # 18” is totally false.

Baruch Horowitz was the “*team’s running joke*” I wrote about in Paragraph 4 of my email dated August 3, 2015 (Exhibit C - Am. Compl.). Sadly, and with all due respect and based on the behavioral practices that have been so often reiterated and laughed at among different team members of the Counterparty Risk Group (Response to Request # 35 - “Response to Defendants First Request for Production of Documents” - docket # 45, “Affidavit in Opposition/Response to ‘Declaration of Baruch Horowitz - Docket # 99’”) and pursuant to Paragraph 107 of my Amended Complaint where I stated that, “*I was voluntarily informed by another team member and believe,*

and on that basis allege, that the first of my three predecessors 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”, it is my contention that Baruch Horowitz who I do not think is of sound mind was disgracefully, whether by their wealth and/or otherwise, exploited by Defendants JPMorgan Chase & Co., et al.