NO. 19-260

IN THE

SUPREME COURT OF THE UNITED STATES

CANDICE LUE,
Petitioner,
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,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

CANDICE LUE
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QUESTIONS PRESENTED

1

Title VII of the Civil Rights Act of 1964 prohibits employers from depriving employees of employment opportunities by limiting, segregating, or classifying them on the basis of race (See 42 U.S.C. § 2000e-2(a)) and gives an employee the right to be free from retaliation for the individual's opposition to discrimination or the individual's participation in an EEOC proceeding by filing a charge (See 42 U.S.C. § 2000e-3(a)).

Under 42 U.S.C. § 1981 - All persons within the jurisdiction of the United States shall have the same right in every State and Territory to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

The questions presented are:

Do Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981 protect a Black employee from retaliation for taking a stance against being stereotypically and disparately treated as the "help/house slave" for the non-Black team members of JPMorgan Chase & Co.'s Asset Management Counterparty Risk Group and for filing a charge reporting the said discrimination and retaliation to the EEOC?

Were my rights violated by JPMorgan Chase & Co., et al when as the only Black analyst in the Asset Management Counterparty Risk Group, I was switched to a low performing, subpar Black employee who had

never managed anyone before to be my manager, restricted of and/or denied privileges such as the company's work from home benefit, the enjoyment of being occasionally freed from doing "less desirable work" and the benefit of sponsorship and financial assistance with the Chartered Financial Analyst (CFA) exams that the non-Black analysts and/or associates of the group had access to/enjoyed?

2

The Fifth and Fourteenth Amendment Rights to Procedural Due Process provide that no person shall be deprived of life, liberty, or property without due process of law and that the judge must protect the [Party's] due-process rights by ensuring the [Party] understands every phase of the proceedings.

The question presented is:

Did the District Court abuse its discretion in granting Defendants' JPMorgan Chase & Co., et al's August 1, 2017 Letter Motion to arbitrarily strike my issued Subpoena and all my Oppositions/Responses (including my Affidavits and Exhibits) to their Motion for Summary Judgment to dismiss my Employment Racial Discrimination and Retaliation lawsuit against them with prejudice without a valid and/or legal explanation and without convening a hearing for me to argue against the said motion?

3

Under 18 U.S.C. § 1621 - Whoever in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any

material matter which he does not believe to be true is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both.

The question presented is:

Did six (6) of the eight (8) Defendants/Declarants for whom overwhelming proof was provided that they lied in their 28 U.S. Code §1746 Declarations commit the crime of perjury?

4

Under 18 U.S.C. § 1505 - Whoever, with intent to avoid, evade, prevent, or obstruct compliance, in whole or in part, with any civil investigative demand duly and properly made under the Antitrust Civil Process Act, willfully withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, answers to written interrogatories, or oral testimony, which is the subject of such demand; or attempts to do so or solicits another to do so shall be fined under this title/imprisoned not more than 5 years

The question presented is:

Did JPMorgan Chase obstruct justice by using three of its 28 U.S. Code §1746 Defendants/Declarants to lie on their behalf under penalty of perjury?

PARTIES TO THE PROCEEDING

I, Petitioner, Candice Lue, was the Plaintiff in the District Court and the Appellant in the Court of Appeals.

Respondents, 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, were the Defendants in the District Court and the Appellees in the Court of Appeals.

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I, pro se Petitioner, Candice Lue respectfully petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS/SUMMARY ORDERS BELOW

Second Circuit Court of Appeals April 24, 2019 Summary Order (Pet. App.A 1a – 15a). Second Circuit Court of Appeals' Order of May 28, 2019 denying Motion to Stay Mandate Pending Filing of a Petition for a Writ of Certiorari (Pet. App.B 16a – 17a). Second Circuit Court of Appeals' May 28, 2019 Judgment Mandate (Pet. App.C 18a – 32a).

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JURISDICTION

The Summary Order of the Second Circuit was entered on April 24, 2019. A timely motion to stay mandate pending my filing of a Petition for a Writ of Certiorari was denied on May 28, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY AND REGULATORY PROVISIONS

The pertinent parts of the relevant statutory and regulatory provisions appear in the appendix. App.D 33a.

STATEMENT

1. Title VII of the Civil Rights Act of 1964 prohibits employers from depriving employees of employment opportunities by limiting, segregating, or classifying them on the basis of race (See 42 U.S.C. § 2000e-2(a)) and gives an employee the right to be free from retaliation for the individual's opposition to discrimination or the individual's participation in an

EEOC proceeding by filing a charge (See 42 U.S.C. § 2000e-3(a)).

a. Under 42 U.S.C. § 1981 - All persons within the jurisdiction of the United States shall have the same right in every State and Territory to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

Alex Khavin's ("Khavin"), an Executive Director and Head of the Counterparty Risk Group for Global Investment Management at JPMorgan Chase & Co., who is White and who was my skip level manager, first act of disparate treatment against me is consistent with unlawful segregation (my 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" – Amended Complaint).

After five interviews with six members of JPMorgan Chase's Asset Management Counterparty Risk Group, on November 5, 2014, it was decided that I, the Black candidate, was the one chosen for the Credit Reporting Risk Analyst position. Executive Director, Khavin then switched my manager (evidence provided in 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 a Black, subpar employee (per Khavin's own performance assessment of her), 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 Chase[1] by allowing herself to be used by Khavin as a cover and a conduit to extend her, Khavin's racial bigotry against Blacks against me.

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 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" (evidence provided as Exhibit FF), was not only unlawful segregation but it was an act of disparate treatment against me 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, were identical to those of my three non-Black predecessors who Khavin obviously thought Shillingford was not good enough for them to report to.

As the only Black Analyst in the Counterparty Risk Group, in addition to always having to work late (as is the norm with the Credit Reporting Risk Analyst position), Khavin ordered me to work an additional minimum of two (2) hours later (could be up to 11:00 PM) to do 13 copies of the printing, collating, stapling, etc. of each of the other group members' (including members who were on my job level) presentation

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[1] Having gotten a "Low Meets Expectation (M-)" rating from Khavin on her 2014 year end performance review (Exhibit FF), Shillingford's career at JPMorgan Chase was at the mercy of Khavin and HR so in her quest to secure her career/future at JPMorgan Chase, Shillingford who is Black was willing to relegate herself to horizontal racist status in order to carry out Khavin's racial bigotry against me. Shillingford was also used by JPMorgan Chase to lie under penalty of perjury in her Declaration in Support of the Defendants' Motion for Summary Judgment.

materials for the group's 8:00 AM Monthly Governance Meeting.

As Khavin tried to rationalize in her perjurious Declaration in support of the Defendants' Motion for Summary Judgment, she solely assigned the aforesaid racially stereotypically and discriminatory tasks to me because the said members in the group, who were all non-Black (except for my direct manager, Shillingford), consistently failed to have their presentation materials ready for the said 8:00 AM meeting to start on time. The meeting starts at 8:00 AM and instead of having the printing, etc. of their presentation materials done the night before to distribute in the said meeting, they would wait until the morning of the meeting, sometimes coming in at 7:55 AM and rushing to put their materials together delaying the meeting for 20 minutes or more. This being so frustrating to Khavin, as the only Black analyst to have joined the group, as if I were the new "help/house slave", to "rectify this matter" Khavin unfairly assigned me to do the printing, etc. of all these non-Black, **lax** employees' presentation materials – Bearing in mind that another non-Black analyst had joined the group just one week before I did.

I myself had up to three (3) presentations to prepare for the said meeting (more than any of the other members) yet in addition to these three, I was ordered by Khavin to work a minimum of two (2) hours later than usual (when everyone else has left for the day[2]) to prepare everyone else's presentation materials which, their presentation materials had nothing to do

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[2] 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. Am. Compl. ¶ 14

with my position as a Credit Reporting Risk Analyst (my Black manager, Shillingford and I were on the Reporting side of the group and the other members who were all non-Black were on the Credit Analysis side of the said group).

Khavin ordering me to print, etc. 13 copies of each member of the group's presentation materials was only a benefit/perk for the non-Black members of the team who were lax in having their presentation materials ready for the monthly 8:00 AM meeting, at the expense of me, the only Black analyst on the team[3] - A benefit/perk, that like a help/house slave, I would have never gotten the opportunity to enjoy since as the only Black analyst on the team, these were solely my tasks to do.

In conjunction, Khavin solely assigned me the task of taking the minutes for the said monthly governance meetings, a task which was so undesirable that Khavin made it rotational among all the non-Black analysts and associates before I joined the team[4] as I was informed during my interview for the position and per Kimberly Dauber's email dated February 4, 2015[5].

The aforesaid tasks were not even assigned to the White administrative assistant on the team even though these are tasks that would more likely fall into the "administrative assistant" job category. As a

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[3] The equivalent of a White/non-Black family historically getting a Black Help to do their family's undesirable chores – Bearing in mind that I was an Exempt employee like the other non-Black employees.

[4] In contravention of EEOC Compliance Manual Section 15 – Race and Color Discrimination – VII(B)(1) – Work Assignments.

[5] Kimberly Dauber's email 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* [prior to me joining the team]. *I don't think this is a function that is specifically written out in job duties because it's an adhoc function. However, Alex* [Khavin] *would pick a different person each time during our meetings….*"

matter of fact, the said White administrative assistant was not even as much as assigned the task to print the meeting agenda **she** prepared and sent out via email to the team for the said monthly team meeting but, along with all the presentation materials Khavin discriminatively assigned me to print for the non-Black members of the team, the task of printing a copy of the governance meeting agenda for each of the said non-Black members of the team was also assigned to me, an analyst, to do. (EEOC Compliance Manual Section 15 – Race and Color Discrimination – VII(B)(1) – Work Assignments 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*".

In addition, 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 the company's work from home privilege by just sending an email to the team saying something like, "I am not feeling too well today so I will be working from home", 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. In other words, unlike the non-Black analysts on my job level who could just send the email to the team (as JPMorgan Chase internal emails I provided in my almost 500 pages of evidence show), I, Black analyst, Candice Lue, would be passing my place to do so.

There is an undisputed culture of Employment Racial Discrimination and Retaliation at JPMorgan

Chase as evidenced in my lawsuit and in the lawsuits: *United States of America v. JPMorgan Chase Bank, NA* (17-cv-00347), *Alfredo B Payares v. Chase Bank USA, NA., & J.P. Morgan Chase & Co et al* (2:07-cv-05540), *Senegal, et al. v. JPMorgan Chase Bank, N.A.* (18-cv-6006) and *Abanga v. JPMorgan Chase & Co., et al* (18-cv-04060) that JPMorgan Chase has been able to get away with because of their influence and wealth – taking note that the two latter lawsuits are for Employment Racial Discrimination and were filed after I filed my said lawsuit against the company.

This culture was also evidenced during my tenure in my capacity as an Energy Confirmations Drafting Analyst in JPMorgan Chase's Investment Banking Global Commodities Confirmations Department ("Confirmations Department") whereby my career was consistently and intentionally regressed and stagnated by my skip level manager, Defendant Chris Liasis ("Liasis") and my direct manager, Michelle Sullivan ("Sullivan") who are both White.

It never mattered what I did to exceed my work expectation as I explicitly outlined in my Sixth Cause of Action in my Amended Complaint and in my Responses to Sullivan's and Liasis' perjurious Declarations in support of the Defendants' Motion for Summary Judgment, my efforts and contributions to process improvements, etc. in the Confirmations Department were always quelled. In addition, towards the end of my tenure, my regular duties were taken away from me and I was assigned duties that were regressive to my career by both managers[6] in an effort to intentionally stagnate and regress my career at JPMorgan Chase[7].

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[6] *Vance v. Ball State University,* 133 S. Ct. 2434 (2013)

[7] The reassignment of my duties which pretty much left me "counting pencils" was not necessary as, within seven months, the Physical Commodities section in which I worked would have been sold by JPMorgan Chase and my position would have been

With all my efforts going above and beyond my call of duty, Liasis and Sullivan never gave me a performance rating above "Meets Expectation (M)". And, to even be considered for a promotion, a JPMorgan Chase employee needs to have at least a "Meets Expectation Plus (M+)" performance rating" – Bearing in mind that I was a high achiever during my high school and college matriculation[8] and my high quality of work as a consultant with JPMorgan Chase prior to becoming an employee was recognized by my then manager and JPMorgan Chase's clients and initially in my first four months as a JPMorgan Chase employee, by Sullivan herself.

With that said, there is comparative evidence to prove that while Liasis and Sullivan were intentionally regressing and stagnating my financial career at JPMorgan Chase, within the two years of Liasis being my skip level manager, I had seen where he promoted a White female employee who worked in the Marketing Middle Office Group[9] from an Analyst to a Senior Analyst to an Associate/Manager then to a Vice President/Manager. And, with all due respect, I have yet to hear about any process improvement or any other substantial or significant contribution, comparable to what I did, that this White employee had made to the Marketing Middle Office Group (Am. Compl. ¶ 162).

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eliminated. But, in an effort to put blight on my marketability by indirectly forcing me to update my resume with tasks that would be regressive to my financial career, Liasis and his co-conspirator, Sullivan reassigned my duties and I was relegated to spending most of my day calling clients to ask them if they had received issued trade confirmations and when can we expect a returned signed copy.

[8] I graduated 3rd from a high school that was more than 99.5% White (4.0 GPA, New Jersey Governor Scholar, Gates Millennium Scholar, etc.) and graduated Summa Cum Laude, etc. from college.

[9] This group for which Liasis was the direct manager worked very closely with the Confirmations Department.

In light of the aforesaid, as outlined in Paragraphs 2, 15, 137 and 138 of my Amended Complaint, I took all the measures necessary to openly mitigate the damages that the Defendants caused me, but to no avail. I continuously raised the issue of racial discrimination against me both verbally and via email to the Defendants and/or employees in positions to rectify this unlawful matter but it was never rectified but only ignored, aided, abetted, enforced, shooed away, dismissed and/or ridiculed by these said Defendants and/or employees. Instead, due to my continued peaceful opposition to being discriminatorily treated as the "help/house slave" for the non-Black members of the Counterparty Risk Group, I was retaliated against by way of a pretextual performance review and placed on a fallacious "performance improvement plan" followed by a written warning and ultimately my termination on January 6, 2016. The written warning and my termination occurred after I filed a Charge of Employment Racial Discrimination and Retaliation against JPMorgan Chase & Co. with the EEOC (JPMorgan Chase saw me as a "firmwide risk" – evidence provided in my motion to stay mandate which was denied on May 28, 2019).

2. The Fifth and Fourteenth Amendment Rights to procedural due process provide that no person shall be deprived of life, liberty, or property without due process of law and that the judge must protect the [Party's] due-process rights by ensuring the [Party] understands every phase of the proceedings.

The District Court abused its discretion in granting Defendants' JPMorgan Chase & Co., et al's August 1, 2017 Letter Motion to arbitrarily strike my issued Subpoena and all my Oppositions/Responses (**including eight (8) Affidavits and almost 500**

pages of evidence) to their Motion for Summary Judgment to dismiss my Employment Racial Discrimination and Retaliation lawsuit against them with prejudice without a valid and/or legal explanation and without convening a hearing for me to argue against the said motion. See *Jose Figueroa-Coello v. United States of America,* (5th Cir, 2019).

District judge, Judge Alison J. Nathan also completely ignored my reports (via Motions/Responses I filed with the Court), pursuant to 18 U.S.C. § 4, of the overwhelming evidence that six (6) out of the eight (8) Defendants/Declarants **lied** under Penalty of Perjury in their Declarations in Support of their Motion for Summary Judgment, a **crime** pursuant to 18 U.S.C. § 1621 and that JPMorgan Chase **obstructed justice** by using my Black manager, Defendant Fidelia Shillingford, one of my White predecessors, Declarant Baruch Horowitz and a White manager, Declarant Kimberly Dauber to **lie** on their behalf under Penalty of Perjury, a **crime** pursuant to 18 U.S.C. § 1505[10].

In addition, to uphold her August 11, 2017 Ruling granting the Defendants' August 1, 2017 Letter Motion in which they cited noncompliance of **non-existent** page limits rules and lied to the Court[11] to have my Subpoena stricken, when I provided evidence of her erroneous Ruling in my August 12, 2017 Motion

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[10] Proof that these Declarants lied under penalty of perjury is among the almost 500 pages of evidence that Judge Alison J. Nathan struck from the district court's docket when she granted the Defendants' August 1, 2017 Letter Motion. I resubmitted all the stricken documents to the Appeals Court pursuant to Rule 10(B)(2) of the Federal Rules of Appellate Procedure (docket #s 10 and 11). However, please note that as I pointed out in my Appellant Brief, the entry of my resubmission on the Appeals Court's docket, as it relates to the number of pages, is not consistent with the almost 1000 pages of all the documents I resubmitted.

[11] Proof which Judge Nathan ignored was provided to the Court.

(District Court Docket "DCD" # 121), instead of Judge Nathan mooting her Ruling granting the Defendants' August 1, 2017 Letter Motion to arbitrarily strike **all** my Oppositions/Responses from the District Court's docket, Judge Alison J. Nathan **ignored** my argument and proof with regards to my Subpoena, prejudicially updated her "Special Rules of Practice in Civil Pro Se Cases" to add "page limits" and nefariously **backdated** the "Revised" date of her said Individual Practices to August 10, 2017, which is **ten** (10) days **after** I submitted my said Oppositions/Responses and one day prior to her August 11, 2017 Ruling whereby she granted the Defendants' Letter Motion – Bearing in mind that no court ruling is decided on a "future Rule of Law". The Rule of Law would have to be in effect for a court ruling to be made based on it.

In conjunction, in the Second Circuit Court of Appeals' April 18, 2019 hearing, none of the three presiding judges, Judge Richard C. Wesley, Judge Denny Chin and Judge Lewis A. Kaplan asked me any questions about the arguments in my Appellant Brief or about any of the disputed and debunked lies in the Defendants' Appellees' Brief even though Judge Denny Chin "assured me" that they had read my "papers already" when I was only allowed to read less than two of my four and less than a quarter page, double-spaced prepared statement.

Yet, in the said judges' Summary Order of April 24, 2019[12] (Pet. App.A 1a – 15a), they referenced the said Defendants'/Declarants' disputed and debunked lies[13] – Meaning that if my documents were read liberally pursuant to *Burgos v. Hopkins,* 14 F.3d 787,

[12] Received on May 4, 2019. Ten (10) days after the Ruling.

[13] The majority of these lies were debunked via proof from the thousands of JPMorgan Chase's internal emails/documents voluntarily produced during discovery. I took the time to go through all of these emails/documents.

790 (2d Cir, 1994) - ("[A pro se plaintiff's] *pleadings must be read liberally and interpreted to "raise the strongest arguments that they suggest*"), the three judges could not have come up with the arguments they came up with in their said Summary Order of April 24, 2019.

Notably missing from the said Summary Order is any mention of my Subpoena that was stricken from the District Court's docket at the behest of the Defendants via their August 1, 2017 Letter Motion which, without addressing me or allowing me to argue against it, District Court judge, Judge Alison J. Nathan granted[14].

In addition, the said presiding judges refused to acknowledge the documents I resubmitted to the Appeals Court which are most relevant to my Appeal pursuant to Rule 10(B)(2) of the Federal Rules of Appellate Procedure which states: **"Unsupported Finding or Conclusion.** "*If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all evidence relevant to that finding or conclusion*" but chose instead to use the Defendants' argument - Summary Order – page 2, footnote # 1 (Pet. App.A 4a) stated as: "*Lue does not reference her state tort claims, hostile work environment claim, or her "aiding and abetting" claim and "failure to take steps to prevent" claim, except to the extent that she refers this Court to arguments in documents outside her appellant brief. Hence we deem these claims abandoned.*"

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[14] This omission in conjunction with refusing to acknowledge the documents I resubmitted pursuant to FRAP Rule 10(B)(2) "*display a deep-seated favoritism or antagonism that would make fair judgment impossible*" - *Liteky v. United States,* 510 U.S. 540, 555 (1994).

The documents I resubmitted to the Appeals Court pursuant to Rule 10(B)(2) of the Federal Rules of Appellate Procedure (Appeals Court docket "ACD" #s 10 and 11) are not "*documents outside her appellant brief*", they are the documents I need "*to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence*". In conjunction, Second Circuit Local Rules – The Appendix states: "*The omission of part of the record from the appendix will not preclude the parties or the Court from relying on such parts* ***since the record is available to the Court if needed***" and Federal Rules of Appellate Procedure 30(a)(2) – Excluded Material states*:* "*Parts of the record may be relied on by the court or the parties even though not included in the appendix.*"

Furthermore, my Appeal was based on the fact that in clear violation of the Fifth and Fourteenth Amendment Rights to Procedural Due Process afforded me under the U.S. Constitution, the District Court judge, Judge Alison J. Nathan prejudicially, nefariously and arbitrarily struck these said documents from the District Court's docket – "*Imposition of an "overbroad remedy" is also "an abuse of discretion*" - *United States v. Texas,* 457 F.3d at 481 (5th Cir. 2006) and, "*A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence* [including ignoring the evidence of the crimes of Perjury and Obstruction of Justice]" *Highmark Inc. v. All-care Health Mgmt. Sys., Inc.,* 134 S. Ct. 1744, 1748 n.2 (2014).

REASONS FOR GRANTING THE WRIT

I. Defendants JPMorgan Chase & Co., et al should not be allowed to get away with blatantly violating 42 U.S.C. § 2000e-2(a) and 42 U.S.C. § 2000e-3(a) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1981

and their crimes of Perjury and Obstruction of Justice.

a. In his August 1, 2017 Letter Motion to District Court judge, Judge Alison J. Nathan requesting that the Court strikes **all** of my Oppositions/Responses including my eight (8) Affidavits and my almost 500 pages of pertinent evidence to the Defendants' **criminal** and **perjurious** Motion for Summary Judgment from the District Court's docket, in contravention of *Graham v. Lewinski* [848 F. 2d 342, 344 (2d Cir. 1988)], *Haines v. Kerner* [404 U.S. 519, 520 (1971)] and *Burgos v. Hopkins* [14 F.3d 787, 790 (2d Cir, 1994), Defendants JPMorgan Chase & Co., et al's attorney, Anshel Kaplan stated, "*Defendants and this Court should not be burdened with reviewing and responding to these excessive and non-compliant filings*".

Even though he made this transgressive request, in his said Letter Motion to Judge Nathan, he provided solid references from my said Oppositions/Responses to support why his motion should be granted. In addition, in the Defendants' Appellees' Brief, Mr. Kaplan critiqued the style of the Arguments in my said Oppositions/Responses to JPMorgan Chase & Co., et al's Motion for Summary Judgment. This would mean to anyone of reasonable mind, that the Defendants' attorney had read, reviewed and possesses **full** knowledge of the Arguments and Evidence that I presented in my Oppositions/Responses to the said Defendants' Motion for Summary Judgment to dismiss my Employment Racial Discrimination and Retaliation lawsuit against them with prejudice.

With that said, seeing that the Arguments and accompanying Evidence are wholly stacked against his clients, to save them from their obvious and overwhelming state of **guilt**, Mr. Kaplan had to

come up with a **frivolous** technicality as in "Plaintiff, Candice Lue is not in compliance with Judge Alison J. Nathan's page limit rules" which, for a pro se litigant was **non-existent** in Judge Nathan's "Special Rules of Practice in Civil Pro Se Cases" prior to me submitting my said Oppositions/Responses to the Court and/or at the time Mr. Kaplan submitted his said Letter Motion.

My Oppositions/Responses to the **nine** (9) Defendants' Motion for Summary Judgment to dismiss my lawsuit against them with prejudice (less than 1000 pages which include eight (8) affidavits and almost 500 pages of evidence which Judge Alison J. Nathan arbitrarily struck from the District Court's docket) made it **as clear as day** that my Civil and Constitutional Rights under the afore-stated Sections of Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981 were violated by Defendants, JPMorgan Chase & Co., et al, that my Claims of Employment Racial Discrimination and Retaliation against the said Defendants are valid and that six (6) of the eight (8) Defendants/Declarants **lied** under penalty of perjury, crimes pursuant to 18 USC §§ 1621 and 1505. And as such, JPMorgan Chase & Co., et al should not be allowed to evade the justice system.

b. Due to JPMorgan Chase & Co.'s financial power (to write a check not enough for them to care) and influence, it is way too easy for the company to unlawfully retaliate against a poor, Black employee who has the gall to take a stance against Employment Racial Discrimination and Retaliation – This power and influence also include JPMorgan Chase & Co. using another Black employee to lie on their behalf. Granting the Writ would send a clear message to the company that it is not above the law.

II. The Second Circuit Court of Appeals is wrong in its Decision that the District Court did not abuse its discretion in granting Defendants' JPMorgan Chase & Co., et al's August 1, 2017 Letter Motion to arbitrarily strike my issued Subpoena and **all** my Oppositions/Responses (including eight (8) Affidavits and almost 500 pages of evidence) to their Motion for Summary Judgment to dismiss my Employment Racial Discrimination and Retaliation lawsuit against them with prejudice without a valid and/or legal explanation and without convening a hearing for me to argue against the said motion.

The Second Circuit Court of Appeals decision affirming the District Court's Memorandum and Opinion of March 27, 2018 as stated in their Summary Order of April 24, 2019 (Pet. App.A 1a – 15a) is wrong as outlined below:

The Summary Order page 3 (Pet. App.A 5a) states that: "*Lue argues that the district court abused its discretion in striking her opposition to summary judgment, imposing page limits on any new submission, and ultimately deeming defendants' summary judgment motion unopposed.*"

However, as articulated in "2" of "STATEMENT" above, this statement is a mere circumvention of my argument to cover Judge Nathan's unethical behavior.

The Summary Order page 3 (Pet. App.A 6a) states that: "*Lue submitted a lengthy opposition that was out of proportion to the defendants' motion including a 198-page memorandum of law in response to the defendants' 25 pages*".

However, what this statement fails to state is that 1) my "*198-page memorandum of law in response*" was a combined single-document in response to **nine**

(9) individual Defendants, 2) that Judge Nathan did not provide instructions in her May 11, 2017 Ruling (DCD # 101) and 3) that as a pro se plaintiff, per Judge Nathan's "Special Rules of Practice in Civil Pro Se Cases", I was **not** allowed oral argument unless she grants it which she did not.

Also, as in examples provided in my Appellant Appendix (Appellant Appendix Table of Contents "AATOC" # 20 – Examples of Other Judges' Instructions in Their Orders that Involve Multiple Parties), any learned judge would know that it cannot be reasonable and/or logical that the same 25-page limit allowed to respond to one (1) defendant would be adequate to respond to **nine (9)** individual Defendants each of whom has specific and different Causes of Action against them and each of whom is motioning that the said specific and different Causes of Action against them be dismissed with prejudice as that would be in clear violation of my Fifth and Fourteenth Amendment Rights to Procedural Due Process.

Furthermore, as the Plaintiff and as is customary in a Memorandum of Law in Opposition, it is incumbent upon me to provide a summary of argument as to why each of the nine (9) individual Defendants I named in my lawsuit is a proper defendant. As my said Memorandum of Law in Opposition shows, my nine (9) "Summary of Arguments" consisted of 31 pages – meaning that there is no way that 25 pages (especially without the allowance of oral argument) would be near adequate to respond to nine (9) individual Defendants each of whom has specific and different Causes of Action against them and each of whom is motioning that the said specific and different Causes of Action against them be dismissed with prejudice. In conjunction, as I stated in my Appellant Brief:

> "*unlike the multi-billion dollar, counseled Defendants who could write a statement such as*

the one they wrote on page 21 of their Memorandum of Law in Support of their Motion for Summary Judgment (DCD # 91) which states: "Plaintiff claims that Vega, Dubowy, and Poz "aided and abetted" violations of Title VII and 42 U.S.C. § 1981 ***because they disagreed with her assessment that she was the victim of discrimination****" without any further argument or evidence (because everything the Defendants say is* ***Gospel*** *for Judge Alison J. Nathan), there is no way in my disadvantaged position as a poor, Black, pro se Plaintiff that I could have written such a blanketed two-line opposition/response with regards to ALL three (3) Defendants.*

As articulated in pages 167-178 of my Opposition to the Defendants' Memorandum of Law in Support of their Motion for Summary Judgment [ACD #s 10 and 11]*, I had to* ***individually*** *prove that each of the three (3) Defendants, John Vega, Helen Dubowy and Thomas Poz aided and abetted the Employment Racial Discrimination and Retaliation that was perpetrated against me in violation of Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981….. Bearing in mind that the specifics of the "Aiding and Abetting" charge I have against Defendant John Vega is different from that of Defendant Helen Dubowy and different from that of Defendant Thomas Poz and vice versa.*"

The Summary Order page 4 (Pet. App.A 7a) states that: "*Although Lue argues that the court's page limits would have prevented her from presenting "ninety percent" of her arguments, she made no attempt to comply with the district court's instructions and has not shown that she could not adequately oppose summary judgment within the courts limit.*"

However, page 35 of my Appellant Brief clearly states:

> "*it is important to note that via my "Response to Judge Alison J. Nathan's Order of December 4, 2017" – (DCD # 136), I requested to redo my 198-page single-document Memorandum of Law in Opposition to all* ***nine (9)*** *Defendants' Memorandum of Law in Support of their Motion for Summary Judgment to dismiss my lawsuit with prejudice by* ***individually*** *resubmitting my said Opposition to each of the* ***nine (9)*** *Defendants' arguments in accordance with the "25-page limit" Judge Alison J. Nathan implemented* ***after*** *I submitted my said 198-page single-document Opposition to all* ***nine (9)*** *Defendants' Memorandum of Law in support of their Motion for Summary Judgment and* ***after*** *I submitted my Response to her August 11, 2017 Order. However, my Request was ignored by Judge Alison J. Nathan (see pages 4 - 6 of my "Response to Judge Alison J. Nathan's Order of December 4, 2017" - DCD # 136)*".

And, as it relates to "*and has not shown that she could not adequately oppose summary judgment within the courts limit*", no one of reasonable mind including a learned, honest or fair judge would think that it would be reasonable and/or logical that the same page limit allowed to respond to one (1) defendant would be adequate to respond to **nine (9)** individual Defendants each of whom has specific and different Causes of Action against them and each of whom is motioning that the said specific and different Causes of Action against them be dismissed with prejudice.

The Summary Order page 4 (Pet. App.A 7a) states that: "*the district court struck her filings as "overly burdensome" and not for failure to comply with these rules*" (such intellectual dishonesty).

However, this is contrary to the Defendants' August 1, 2017 Letter Motion (DCD #113) which Judge Alison J. Nathan granted on August 11, 2017 which clearly states the following:

1) "*We have received Plaintiff's papers in opposition to Defendants' motion for summary judgment ("Motion"), and write to respectfully request that the Court direct Plaintiff to revise and re-submit those papers, since* ***they are in violation of Your Honor's Individual Practices in Civil Cases ("Practices") and the Local Civil Rules of this Court***".

2) ***"****Plaintiff's memorandum of law is also* ***non-compliant***. ***Section 3(B) of the Practices*** [not for pro se/eligible for one defendant/plaintiff] ***provides****…. "*

3) "*With respect to Plaintiff's response to the 56.1 statement,* ***section 3(G)(iv) of the Practices*** [not for pro se/eligible for one defendant/plaintiff] ***provides….***"

4) "*Defendants and this Court should not be* ***burdened*** *with reviewing and responding to these excessive and* ***non-compliant filings***[15] ["*non-compliant filings*" as in "*failure to comply with* [Judge Alison J. Nathan's **non-existent** pro se litigants page limits] *rules*" and;

5) "*Defendants respectfully request that the Court strike Plaintiff's responsive papers to and direct her* ***to***

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[15] "[A pro se plaintiff's] *pleadings must be read* ***liberally*** *and interpreted to raise the strongest arguments that they suggest*" *Burgos v. Hopkins, 14 F.3d 787, 790* (2d Cir, 1994) - Bearing in mind that per Judge Alison J. Nathan's "Special Rules of Practice in Civil **Pro Se Cases**" (AATOC. #11), these rules were **non-existent** prior to me submitting my Oppositions/Responses to the District Court (July 31, 2017) and at the time the Defendants submitted their Letter Motion (August 1, 2017).

re-file papers in accordance with Your Honor's Practices and the Local Civil Rules".

Judge Alison J. Nathan's August 11, 2017 Ruling:

> "***ORDER granting 113 Letter Motion for Conference*** [obviously "*conference*" was just window dressing as no "*conference*" was requested in the Defendants' Letter Motion and Judge Nathan did not convene one]…. *The Court hereby strikes Plaintiff's submissions in opposition to summary judgment at Dkt. Nos. 106-112, 114-118 as overly burdensome. Plaintiff shall revise and resubmit her papers in opposition to Defendants' motion for summary judgment by August 25, 2017.* ***Plaintiff's revised submissions shall comport with the Court's Individual Practices in Civil Cases Rule 3.B. and 3.G.***"[16]

With that said, anyone of reasonable mind can see that the afore-stated Summary Order page 4 statement is intellectually dishonest.

The **truth** is, the only thing "*overly burdensome*" about my "*filings*" (Oppositions/Responses) to the Defendants' **criminal** and **perjurious** Motion for Summary Judgment is the arguments and corroborating evidence wholly stacked against them. In conjunction, if the Defendants can produce the documents/proofs of their arguments that I requested in my Affidavits via my Federal Rules of Civil Procedure 56(d) Requests and honor the Subpoena I duly served upon their attorneys on August 7, 2017, that would result in an automatic exoneration of the Employment

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[16] In **bold** at the top of the Court's said Individual Practices states: *"Unless otherwise ordered by Judge Nathan, these Individual Practices apply to all civil matters* ***EXCEPT FOR CIVIL PRO SE CASES*** *(see Rules for Pro Se Cases)".* In her May 11, 2017 Order (DCD # 101), Judge Nathan did not give such order.

Racial Discrimination, Retaliation and additional Perjury and Obstruction of Justice charges I brought against them, but they cannot.

It is ironic that both the District and Appeals Courts have no problem granting a major, international law firm (with possibly hundreds of support staff) Motion to arbitrarily strike my Subpoena and **all** my Oppositions/Responses to the **nine (9)** Defendants' they represent Motion for Summary Judgment as being "*overly burdensome*" for them to read and reply to (even though, as stated earlier, it is obvious that they have read, reviewed and possess **full** knowledge of the Arguments and Evidence that I presented in my said Oppositions/Responses) but the said Courts **denied** my Motion asking for leniency due to inhumane and financial burden ("*Addendum to Response to Judge Alison J. Nathan's Order of August 11, 2017*" - AATOC #15).

This is not about "*overly burdensome*" to read and reply to. It is because my arguments and corroborating evidence **make it as clear as day** that my Civil and Constitutional Rights under Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981 were violated by Defendants, JPMorgan Chase & Co., et al, that my Claims of Employment Racial Discrimination and Retaliation against the said Defendants are valid and that six (6) of the eight (8) Defendants/Declarants and their attorneys **lied** under Penalty of Perjury which are **crimes** pursuant to 18 U.S.C. §§ 1621 and 1622 and that JPMorgan Chase **obstructed justice** by using Defendant/Declarant Fidelia Shillingford, Declarant Baruch Horowitz and Declarant Kimberly Dauber to **lie** on their behalf under Penalty of Perjury, a **crime** pursuant to 18 U.S.C. § 1505.

The Summary Order page 4 (Pet. App.A 7a) states that: "*and the record reflects that Lue was served*

with defendants' motion to strike" which I was **not**[17]. With that said, I provided with my "Motion to Stay Mandate Pending Filing of a Petition for a Writ of Certiorari" which the Appeals Court denied on May 28, 2019 (Pet. App.B 16a – 17a), a compilation of email correspondence between myself and the Defendants' attorney, Anshel Kaplan showing a pattern of not being served/properly served with the Defendants' pleadings. In addition, I provided proof of a April 22, 2019 telephone conversation with the then case manager, J.W, in which my advisor questioned him as to why it is that I was charged with "*defective filing*" for not submitting a certificate of service for what I thought was a mere administrative issue (ACD #s 43 and 44) yet the Defendants were not treated the same way for not providing a certificate of service/serving me with a completed copy of their April 18, 2019 "Notice of Hearing Date" acknowledgement form in accordance with Local Rule 25.1(h)(4) which states: **Service: Paper Copies**: "*Service of a paper copy of a document is not required* ***unless the recipient is not a Filing User and has not consented to other service***". J.W's response was (and I paraphrase), "because it was not necessary for them to serve you with the said

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[17] In contravention of Judge Alison J. Nathan's "Special Rules of Practice in Civil Pro Se Cases - Filing of Papers # 3" which states: "*Counsel in pro se cases shall serve a pro se party with a paper copy of any document that is filed electronically and file with the Court a separate Affidavit of Service. Submissions filed without proof of service that the pro se party was served with a paper copy* ***will not be considered***", to date, July 2019, I have not received a paper copy of the Defendants' said August 1, 2017 Letter Motion and, the **false** Affidavit of Service the attorney filed, was filed with the Court on **August 15, 2017** which was after my first report to Judge Alison J. Nathan of not receiving a paper copy of the Letter Motion, two weeks after the said Letter Motion was filed and **after** Judge Nathan's August 11, 2017 Ruling.

document". In other words, Local Rule 25.1(h)(4) does not apply to the Defendants.

The Summary Order page 4 (Pet. App.A 8a) states that: "*Lue failed to file an opposition in compliance with the court's orders despite eight extensions of time to comply and five warnings of the consequence of continued noncompliance*".

However, there is no mention of the fact that **in response to** those said "*extensions and warnings*", I continued to ask Judge Alison J. Nathan, pursuant to my Fifth and Fourteenth Amendment Rights to Procedural Due Process, which states: "*the judge must protect the [Party's] due-process rights by ensuring the [Party] understands every phase of the proceedings*", that she provide me with a valid and/or legal explanation as to why she arbitrarily struck from the district court's docket my issued Subpoena, my eight (8) Affidavits in Opposition/Response to the Defendants'/Declarants' eight (8) Declarations, six (6) of which are criminal and perjurious, and my almost 500 pages of evidence when as per the Rule of Law, affidavits and evidence are **not** subjected to page limits and in some cases the Defendants' Declarations that I was responding to had more pages than my Affidavits[18].

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[18] See my Responses to Judge Alison J. Nathan's Orders of: August 21, 2017 (DCD #126), October 31, 2017 (AATOC. #16 / DCD #129), November 20, 2017 (AATOC. #17 / DCD #132) and December 4, 2017 (AATOC. #19 / DCD #136). Also, my argument was never that "*the district court [imposed] page limits on affidavits or other evidence*" (pg. 4 of Summary Order - (Pet. App.A 7a)), it was as I stated over and over, that I needed a valid and/or legal explanation (outside of page limits) as to why Judge Nathan arbitrarily struck my Affidavits and Evidence from the district court's docket when (because) Affidavits and Evidence are **not** subjected to page limits.

With that said, I could not have heeded Judge Nathan's "*warnings*" without her providing me with such explanation as doing so could have caused me additional inhumane, financial and irreparable harm/burden as striking my previous submissions from the District Court's docket did ("*Addendum to Response to Judge Alison J. Nathan's Order of August 11, 2017*" - AATOC #15).

In conjunction, **in response to** those said "*extensions and warnings*", as I did in my Affidavits, I repeatedly informed Judge Nathan, pursuant to 18 U.S.C. § 4 that the Defendants' said Declarations are criminal and perjurious so pursuant to 18 U.S.C. §§ 1621 and 1505 and the "*Clean Hands Doctrine Rule of Law*" a ruling should not have been made in this case until the charges of criminality were addressed as a **fair** Court Ruling cannot be based on criminal and perjurious documents as Judge Alison J. Nathan's Memorandum and Opinion of March 27, 2018 does.

The Summary Order page 4, footnote # 3 (Pet. App.A 8a) states that: "*Lue claims judicial bias because the district court struck her opposition, referred the case to mediation, and declined to enter default judgment in her favor. She also asserts, incorrectly, that the district court misquoted her in an order.*"

However, as pages 50 - 51 of my Appellant Brief and AATOC # 21 show, this statement is mere circumvention of my arguments in order to cover Judge Nathan's unethical, egregious and unbecoming behavior in her capacity as the presiding District Court judge. For example, as it relates to "*referred the case to mediation, and declined to enter default judgment in her favor*", this is what I stated on page 50 of my Appellant Brief:

> "*I was first alerted to the bias I became accustomed to from Judge Alison J. Nathan when in contravention of the Southern District of New*

York's Mediation/ADR Program – Counseled Employment Discrimination Cases – 2015 Second Amended Standing Admin Order – (M10-468), she pawned off my lawsuit to Mediation 23 days after the Summons and Complaint were served upon the Defendants WITHOUT the Defendants even filing a Notice of Appearance much less an Answer (DCD # 4) – Bearing in mind that after 21 days of no Answer from the Defendants, a default judgment in my favor should have been rendered."

The Summary Order page 6 (Pet. App.A 11a) states that: "*the district court afforded "additional care"* [how ironic is it that this is in quotations] *to Lue's position because of her status as a pro se litigant*".

However, "*additional care*" would be responding to my requests for clarity pursuant to my Fifth and Fourteenth Amendment Rights to Procedural Due Process, which states: "*the judge must protect the [Party's] due-process rights by ensuring the [Party] understands every phase of the proceedings*" as articulated in my Responses to Judge Nathan's Orders of: August 21, 2017 (DCD #126), October 31, 2017 (AATOC #16 / DCD #129), November 20, 2017 (AATOC #17 / DCD #132) and December 4, 2017 (AATOC #19 / DCD #136).

The Summary Order page 6 (Pet. App.A 11a) states that: "*the district court relied only on defendants' factual assertions that were independently supported by evidence in the record*".

However, **no** "*evidence in the record*" was presented to support, for example, "**The Baruch Horowitz Lie**" and to debunk my argument and overwhelming corroborating evidence that my manager was switched to a Black, sub-par employee – Defendant Fidelia Shillingford who none of my three non-Black predecessors reported to, after it was determined that I,

the Black candidate was chosen for the reporting analyst position (Amended Complaint - Eighth and Ninth Causes of Action, Exhibit O and Exhibit FF) besides the criminal and perjurious Declarations submitted by Defendants/Declarants Baruch Horowitz, Alex Khavin, Kimberly Dauber and Fidelia Shillingford.

The Summary Order page 6 (Pet. App.A 12a) states that: "*the district court did not, as Lue contends, improperly rely on her supervisor's race to conclude that Lue had not experienced discrimination*".

However and to the contrary, it was the Defendants' and Judge Nathan's contention that there was no discrimination because my supervisor who is Black is the one who "*hired and fired*" me, which is a **lie** to its core as proofs from Exhibits CC-1, CC-2 and O which are among the almost 500 pages of evidence that Judge Alison J. Nathan struck from the District Court's docket when she granted the Defendants' August 1, 2017 Letter Motion but was resubmitted to the Appeals Court pursuant to Rule 10(B)(2) of the Federal Rules of Appellate Procedure (ACD #s 10 and 11) show.

The Summary Order pages 6-7 (Pet. App.A 12a – 13a) states that: "*Indeed, the district court also considered that Lue's White predecessor* [who must be charged with perjury pursuant to 18 U.S.C. § 1621] *received the same assignments as Lue and was subjected to the same requirements to work from home....*"

It was these said **lies** ("The Baruch Horowitz Lie[s]")[19] that prompted me to subpoena JPMorgan Chase & Co. for Baruch Horowitz's personnel and

[19] I respectfully refer the Court to my Response to the Defendants' Undisputed Material Fact # 18 and my Affidavit in Opposition/Response to Baruch Horowitz's Declaration (ACD #s 10 and 11).

performance records and to make the following Federal Rules of Civil Procedure 56(d) Requests:

- Provide 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;
- Produce any email correspondence such as the ones I have provided in Exhibit K[20] to prove that, just like me, Plaintiff, Candice Lue, who is Black, the first of my three predecessors, Baruch Horowitz, who is White, 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 (when there is a White Administrative Assistant on the team who was never assigned these tasks) and the lugging of copies of the said presentation materials to the group's monthly meetings where the non-Black members of the team[21] would be, reminiscent of the days of slavery/"back in the day", waiting to "be served".

The Summary Order page 7 (Pet. App.A 14a) states that: "*Lue failed to show that a genuine issue of material fact existed with respect to her retaliation claim*".

However, as I noted in my Appellant Brief, such "*material fact*"/evidence as it relates to "retaliation" was a part of my almost 500 pages of evidence in the form of Exhibits which were arbitrarily stricken from the

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[20] Exhibit K is among the afore-referenced almost 500 pages of evidence.

[21] Including the ones on my job level.

District Court's docket by Judge Alison J. Nathan when she granted the Defendants' August 1, 2017 Letter Motion but was resubmitted to the Appeals Court pursuant to Rule 10(B)(2) of the Federal Rules of Appellate Procedure (ACD #s 10 and 11).

With that said, I provided with my "Motion to Stay Mandate Pending Filing of a Petition for a Writ of Certiorari" copies of three emails from Exhibits CC-1 and CC-2 from the 89 pages of "Proof of Retaliation" (Exhibits CC - CC-3) representing "*a genuine issue of material fact existed with respect to her [Lue's] retaliation claim*".

The Summary Order page 8 (Pet. App.A 15a) states that: "*We have considered all of Lue's remaining arguments and find them to be without merit.*"

Would that include my "*arguments*" of Perjury and Obstruction of Justice? If so, on April 18, 2019, why when the Defendants' attorney had more than two minutes of his allotted five minute oral argument left didn't Judge Richard C. Wesley, Judge Denny Chin and/or Judge Lewis A. Kaplan question him about my repetitious and emphasized criminal charges of Perjury and Obstruction of Justice against JPMorgan Chase & Co., et al? And, if these judges had acknowledged the documents I resubmitted to the Appeals Court which are most relevant to my Appeal pursuant to Rule 10(B)(2) of the Federal Rules of Appellate Procedure, would they have come up with this conclusion?

Contrary to the wholly erroneous Rulings of the District and Appeals Courts, "*a pro se complaint* ***should only be dismissed*** *if it appears "beyond a doubt that the plaintiff can prove no set of facts in support of [their] claim*." *Olaniyi v. Alex Cab Co.,* 239 Fed. Appx. 698, 699 (3d Cir. 2007) (citing McDowell v. Delaware State Police, 88 F.3d 188, 189 (3d Cir. 1996)). In conjunction, a Court Ruling cannot and should not be based on criminal and perjurious documents.

III. This lawsuit could set a long overdue precedent to eradicate Employment Racial Discrimination and unlawful Retaliation once and for all.

As a human being who had to endure the humiliation of being unapologetically, condescendingly and unrepentantly treated as a second class citizen/"the help/house slave" just for being Black, I have a vested interest in making sure that the illegal and despicable acts of Employment Racial Discrimination and unlawful Retaliation in corporate America is eradicated **once and for all**. I want to set a **long overdue** monetary precedent whereby the amount will not only raise concern but it will also be a **deterrent** for the said illegal and despicable acts.

Major corporations such as the multi-billion dollar Defendant, JPMorgan Chase & Co., and its managers that commit such illegal and despicable acts should be punished sufficiently enough by hitting them where it hurts most and that would be in their coffers[22].

After 55 years (since 1964), this monetary precedent will be integral in ensuring that no other employee endures being discriminated against simply because of his/her race or endures being retaliated against simply for having the gall to speak up against blatant Employment Racial Discrimination.

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[22] *City of Newport v. Fact Concerts, Inc.,* 453 U.S. 247, 270 (1981) ("evidence of a tortfeasor's wealth is traditionally admissible as a measure of the amount of punitive damages that should be awarded");
Rowlett v. Anheuser-Busch, 832 F.2d at 207 (1st Cir. 1987). ("a rich defendant may well be required to pay more than a poor one who committed the same wrong"). The award should be considered in the context of the respondent's monetary resources.

In conjunction, I want to make sure that Black employees no longer feel that they have to relegate themselves to being horizontal racists or to being a cover and/or a conduit for the employment racial discrimination perpetrated by the corporation they work for in order to secure their job and/or to grow their career with the company, as Defendant Fidelia Shillingford did. In other words, Title VII of the Civil Rights Act of 1964 in concurrence with 42 U.S.C. § 1981 **must** work.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted.

CANDICE LUE
Pro Se Petitioner
[redacted]
info@candicelue.com

July 2019

Appendix A

Summary Order and Judgment – United States Court of Appeals for the Second Circuit (April 24, 2019)

18 - 1248 - cv
Lue v. JPMorgan Chase & Co.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE RECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 24th day of April, two thousand nineteen.

PRESENT: RICHARD C. WESLEY,
DENNY CHIN,
Circuit Judges,
LEWIS A. KAPLAN,
*District Judge.**

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CANDICE LUE,

Plaintiff - Appellant,

v. 18 - 1248 - cv

JPMORGAN CHASE & CO., ALEX KHAVIN, FIDELIA SHILLINGFORD, JOHN VEGA, HELEN DUBOWY, PHILIPPE QUIX, THOMAS POZ, CHRIS LIASIS, MICHELLE SULLIVAN,

*Defendants - Appellees.***

- x

* Judge Lewis A. Kaplan, of the United States District Court for the Southern District of New York, sitting by designation.

** The Clerk of Court is instructed to amend the official caption to conform to the above.

FOR PLAINTIFF - APPELLANT:	CANDICE LUE, *pro se*, Lodi, New Jersey.
FOR DEFENDANTS - APPELLEES:	ANSHEL J. KAPLAN (Robert S. Whitman, *on the brief*), Seyfarth Shaw LLP, New York, New York.

Appeal from the United States District Court for the Southern District of New York (Nathan, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Plaintiff - appellant Candice Lue, proceeding *pro se*, appeals the district court's judgment entered March 28, 2018, in favor of defendants - appellees JPMorgan Chase & Co. and its employees (collectively, "defendants"), dismissing Lue's employment

discrimination and retaliation claims.[1] By memorandum and order entered March 27, 2018, the district court granted defendants' motion for summary judgment. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

[1] Lue does not reference her state tort claims, hostile work environment claim, or her "aiding and abetting" and "failure to take steps to prevent" claims, except to the extent that she refers this Court to arguments in documents outside her appellate brief. Hence, we deem these claims abandoned. *See Lederman v. N.Y.C. Dep't of Parks & Recreation*, 731 F.3d 199, 203 n.1 (2d Cir. 2013) ("Appellants do not preserve questions for appellate review by merely incorporating an argument made to the district court by reference in their brief." (internal quotation marks and alterations omitted)); *LoSacco v. City of Middletown*, 71 F.3d 88, 92 (2d Cir. 1995) (issues not raised in a *pro se* appellate brief are abandoned).

I. *Procedural Matters*

Lue argues that the district court abused its discretion in striking her opposition to summary judgment, imposing page limits on any new submission, and ultimately deeming defendants' summary judgment motion unopposed. We review the district court's grant of defendants' motion to strike and its imposition of page limits for abuse of discretion. *See Design Strategy, Inc. v. Davis*, 469 F.3d 284, 296 (2d Cir. 2006) (motion to strike)[2]; *Pa. Pub. Sch. Emps.' Ret. Sys. v. Morgan Stanley & Co.*, 772 F.3d 111, 121 - 22 (2d Cir. 2014) (imposition of page limits). We likewise consider the district court's deeming defendants' summary judgment motion unopposed - - as we would its grant of default judgment - - for abuse of discretion. *City of New York v. Mickalis Pawn Shop, LLC*, 645 F.3d 114, 131 (2d Cir. 2011); *see also Caban*

Hernandez v. Philip Morris USA, Inc., 486 F.3d 1, 7 - 8 (1st Cir. 2007).

Lue submitted a lengthy opposition that was out of proportion to the defendants' motion, including a 198 - page memorandum of law in response to defendants' 25 pages. The district court's decision to strike this submission and to instruct Lue to resubmit her opposition in compliance with a reasonable page limitation

[2] There is some confusion as to whether a district court's grant of a motion to strike is reviewed for manifest error or abuse of discretion. *Compare Hollander v. Am. Cyanamid Co.*, 172 F.3d 192, 198 (2d Cir. 1999) ("We will not disturb a district court's grant of a motion to strike unless manifestly erroneous."), *with Design Strategy, Inc.*, 469 F.3d at 296 (analyzing motion to strike under abuse of discretion standard). Because we conclude that the district court'sdecision to strike Lue's opposition survives the more lenient abuse of discretion standard, we need not resolve this inconsistency here.

was not an abuse of discretion. Although Lue argues that the court's page limits would have prevented her from presenting "ninety percent" of her arguments, she made no attempt to comply with the district court's instructions and has not shown that she could not adequately oppose summary judgment within the court's limits. Contrary to Lue's argument on appeal, the district court did not impose page limits on affidavits or other evidence. Lue's argument regarding retroactive application of individual rules of practice is similarly meritless; the district court struck her filings as "overly burdensome" and not for failure to comply with these rules, and the record reflects that Lue was served with defendants' motion to strike. Under these circumstances, the district court's decision to strike Lue's submission and impose page limits was well within the range of permissible decisions.[3]

The district court did not abuse its discretion in deeming defendants' summary judgment motion unopposed, given Lue's repeated failure to submit a compliant opposition. Lue failed to file an opposition in compliance with the court's orders, despite eight extensions of time to comply and five warnings of the consequence of continued noncompliance. *See* Fed. R. Civ. P. 83(b). "[A]ll litigants, including pro ses, have an obligation to comply with court orders. When they flout that obligation

[3] Lue claims judicial bias because the district court struck her opposition, referred the case to mediation, and declined to enter default judgment in her favor. She also asserts, incorrectly, that the district court misquoted her in an order. These arguments fail because the adverse rulings alleged here do not support a claim of judicial bias. *See Zuhua Chen v. Chen Qualified Settlement Fund*, 552 F.3d 218, 227 (2d Cir. 2009).

they, like all litigants, must suffer the consequences of their actions. Here, [Lue] was clearly warned about the consequences that would follow if [s]he disobeyed the court's order." *McDonald v. Head Criminal Court Supervisor Officer*, 850 F.2d 121, 124 (2d Cir. 1988); *see also LeSane v. Hall's Sec. Analyst, Inc.*, 239 F.3d 206, 211 (2d Cir. 2001) ("[I]n cases such as these, resolutions on summary judgment (with defendant's Rule 56.1 statements deemed admitted by plaintiff) are generally to be preferred to dismissals under Rule 41(b)."). Accordingly, the district court did not abuse its discretion in deeming the motion unopposed.

II. *Summary Judgment*

"We review *de novo* the award of summary judgment, construing the evidence in the light most favorable to the nonmoving party and drawing all reasonable inferences and resolving all ambiguities in

its favor." *Jaffer v. Hirji*, 887 F.3d 111, 114 (2d Cir. 2018) (internal quotation marks and alterations omitted). Nevertheless, the non - moving party may not rely upon "conclusory statements or mere allegations"; she must "go beyond the pleadings, and by . . . her own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." *Davis v. New York*, 316 F.3d 93, 100 (2d Cir. 2002) (internal quotation marks omitted). Where a motion for summary judgment is unopposed, summary judgment is proper only if the court is satisfied that the moving

party has met its burden with sufficient support in the record evidence. *Vt. Teddy Bear Co. v. 1 - 800 Beargram Co.*, 373 F.3d 241, 244 (2d Cir. 2004).

We note that although defendants' motion for summary judgment was deemed unopposed, the district court afforded "additional care" to Lue's position because of her status as a *pro se* litigant, and because extra caution should be exercised in "granting summary judgment to an employer when its intent is at issue." *See Lue v. JPMorgan Chase & Co.,* No. 16 - cv - 3207, 2018 WL 1583295, at *5 (S.D.N.Y. Mar. 27, 2018). In addition, the district court relied only on defendants' factual assertions that were independently supported by evidence in the record. *Id.* at *2.

A. *Disparate Treatment*

The district court properly granted summary judgment on Lue's disparate treatment claims because

the record does not contain evidence from which a reasonable jury could find that an adverse employment action took place under circumstances giving rise to an inference of discrimination. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973); *Littlejohn v. City of New York*, 795 F.3d 297, 307, 312 (2d Cir. 2015). The district court did not, as Lue contends, improperly rely on her supervisor's race to conclude that Lue had not experienced discrimination. *See Feingold v. New York*, 366 F.3d 138, 155 (2d Cir. 2004) (noting that courts may not apply a "conclusive presumption" that employers will not discriminate against members of their own race). Indeed, the district court also considered that Lue's white predecessor received the

same assignments as Lue and was subject to the same requirements to work from home; the same person made both the decision to hire Lue and the decision to fire her; and the lack of evidence of similarly situated employees who were treated more favorably or specific statements suggesting that defendants' actions were racially motivated. *Lue*, 2018 WL 1583295, at *6 - 7. Although the evidence shows that Lue repeatedly complained that defendants' actions were discriminatory, no other evidence in the record supports a racial motivation. The district court correctly concluded that such evidence was insufficient for Lue's disparate treatment claims to survive a motion for summary judgment. *See Davis*, 316 F.3d at 100.

B. *Retaliation*

Lue failed to show that a genuine issue of material fact existed with respect to her retaliation claim. A plaintiff alleging retaliation must show a causal connection between her complaints of discrimination and the defendant's actions. *See Van Zant v. KLM Royal Dutch Airlines*, 80 F.3d 708, 714 (2d Cir. 1996). Lue makes a conclusory allegation of retaliatory intent, but the only evidence she cites in support is the fact that some of the adverse actions followed her complaints of discrimination. "Where timing is the only basis for a claim of retaliation, and gradual adverse job actions began well before the plaintiff had ever engaged in any protected activity, an inference of retaliation does not arise." *Slattery v. Swiss Reinsurance Am. Corp.*, 248 F.3d 87, 95 (2d Cir. 2001). Here, the record shows that defendants' criticisms of Lue's

communication style and her response to feedback predated her complaints of discrimination. Therefore, in the absence of other evidence of an intent to retaliate, we conclude that the district court properly granted summary judgment on Lue's retaliation claim. *See id.* We have considered all of Lue's remaining arguments and find them to be without merit. For the foregoing reasons, the judgment of the district court is

AFFIRMED.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

Appendix B

Motion Order – Denying Motion to Stay Mandate Pending the Filing of a Petition for a Writ of Certiorari with the U. S. Supreme Court (May 28, 2019).

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 28th day of May, two thousand and nineteen.

Before: Richard C. Wesley,
Denny Chin,
Circuit Judges,

Lewis A. Kaplan,
District Judge.*

Candice Lue,

Plaintiff-Appellant,

v.

JPMorgan Chase & Co., Alex Khavin, Fidelia Shillingford, John Vega, Helen Dubowy, Philippe Quix, Thomas Poz, Chris Liasis, Michelle Sullivan,

Defendants-Appellees.

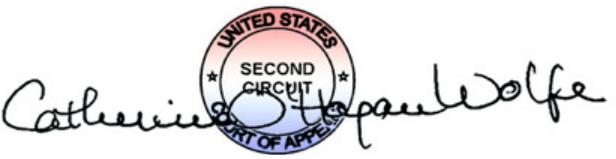
ORDER

Docket No. 18-1248

Appellant, pro se, moves for a stay of the mandate pending the filing of a petition for writ of certiorari.

IT IS HEREBY ORDERED that the motion is DENIED.

For the Court:
Catherine O'Hagan Wolfe,
Clerk of Court



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*Judge Lewis A. Kaplan, of the United States District Court for the Southern District of New York, sitting by designation.

Appendix C

Judgment Mandate

18 - 1248 - cv
Lue v. JPMorgan Chase & Co.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE RECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 24th day of April, two thousand nineteen.

PRESENT: RICHARD C. WESLEY,
DENNY CHIN,
Circuit Judges,
LEWIS A. KAPLAN,
*District Judge.**

- x

CANDICE LUE,

Plaintiff - Appellant,

v. 18 - 1248 - cv

JPMORGAN CHASE & CO., ALEX KHAVIN, FIDELIA SHILLINGFORD, JOHN VEGA, HELEN DUBOWY, PHILIPPE QUIX, THOMAS POZ, CHRIS LIASIS, MICHELLE SULLIVAN,

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Chase & Co. and its employees (collectively, defendants"), dismissing Lue's employment discrimination and retaliation claims.[1] By memorandum and order entered March 27, 2018, the district court granted defendants' motion for summary judgment. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

[1] Lue does not reference her state tort claims, hostile work environment claim, or her "aiding and abetting" and "failure to take steps to prevent" claims, except to the extent that she refers this Court to arguments in documents outside her appellate brief. Hence, we deem these claims abandoned. *See Lederman v. N.Y.C. Dep't of Parks & Recreation*, 731 F.3d 199, 203 n.1 (2d Cir. 2013) ("Appellants do not preserve questions for appellate review by merely incorporating an argument made to the district court by reference in their brief." (internal quotation marks and alterations omitted)); *LoSacco v. City of Middletown*, 71 F.3d 88, 92 (2d Cir. 1995) (issues not raised in a *pro se* appellate brief are abandoned).

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Lue submitted a lengthy opposition that was out of proportion to the defendants' motion, including a 198 - page memorandum of law in response to defendants' 25 pages. The district court's decision to strike this submission and to instruct Lue to resubmit her opposition in compliance with a reasonable page limitation

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they, like all litigants, must suffer the consequences of their actions. Here, [Lue] was clearly warned about the consequences that would follow if [s]he disobeyed the court's order." *McDonald v. Head Criminal Court Supervisor Officer*, 850 F.2d 121, 124 (2d Cir. 1988); *see also LeSane v. Hall's Sec. Analyst, Inc.*, 239 F.3d 206, 211 (2d Cir. 2001) ("[I]n cases such as these, resolutions on summary judgment (with defendant's Rule 56.1 statements deemed admitted by plaintiff) are generally to be preferred to dismissals under Rule 41(b)."). Accordingly, the district court did not abuse its discretion in deeming the motion unopposed.

II. *Summary Judgment*

"We review *de novo* the award of summary judgment, construing the evidence in the light most favorable to the nonmoving party and drawing all reasonable inferences and resolving all ambiguities in

its favor." *Jaffer v. Hirji*, 887 F.3d 111, 114 (2d Cir. 2018) (internal quotation marks and alterations omitted). Nevertheless, the non - moving party may not rely upon "conclusory statements or mere allegations"; she must "go beyond the pleadings, and by . . . her own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." *Davis v. New York*, 316 F.3d 93, 100 (2d Cir. 2002) (internal quotation marks omitted). Where a motion for summary judgment is unopposed, summary judgment is proper only if the court is satisfied that the moving

party has met its burden with sufficient support in the record evidence. *Vt. Teddy Bear Co. v. 1 - 800 Beargram Co.*, 373 F.3d 241, 244 (2d Cir. 2004).

We note that although defendants' motion for summary judgment was deemed unopposed, the district court afforded "additional care" to Lue's position because of her status as a *pro se* litigant, and because extra caution should be exercised in "granting summary judgment to an employer when its intent is at issue." *See Lue v. JPMorgan Chase & Co.,* No. 16 - cv - 3207, 2018 WL 1583295, at *5 (S.D.N.Y. Mar. 27, 2018). In addition, the district court relied only on defendants' factual assertions that were independently supported by evidence in the record. *Id.* at *2.

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The district court properly granted summary judgment on Lue's disparate treatment claims because

the record does not contain evidence from which a reasonable jury could find that an adverse employment action took place under circumstances giving rise to an inference of discrimination. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973); *Littlejohn v. City of New York*, 795 F.3d 297, 307, 312 (2d Cir. 2015). The district court did not, as Lue contends, improperly rely on her supervisor's race to conclude that Lue had not experienced discrimination. *See Feingold v. New York*, 366 F.3d 138, 155 (2d Cir. 2004) (noting that courts may not apply a "conclusive presumption" that employers will not discriminate against members of their own race). Indeed, the district court also considered that Lue's white predecessor received the

same assignments as Lue and was subject to the same requirements to work from home; the same person made both the decision to hire Lue and the decision to fire her; and the lack of evidence of similarly situated employees who were treated more favorably or specific statements suggesting that defendants' actions were racially motivated. *Lue*, 2018 WL 1583295, at *6 - 7. Although the evidence shows that Lue repeatedly complained that defendants' actions were discriminatory, no other evidence in the record supports a racial motivation. The district court correctly concluded that such evidence was insufficient for Lue's disparate treatment claims to survive a motion for summary judgment. *See Davis*, 316 F.3d at 100.

B. *Retaliation*

Lue failed to show that a genuine issue of material fact existed with respect to her retaliation

claim. A plaintiff alleging retaliation must show a causal connection between her complaints of discrimination and the defendant's actions. *See Van Zant v. KLM Royal Dutch Airlines*, 80 F.3d 708, 714 (2d Cir. 1996). Lue makes a conclusory allegation of retaliatory intent, but the only evidence she cites in support is the fact that some of the adverse actions followed her complaints of discrimination. "Where timing is the only basis for a claim of retaliation, and gradual adverse job actions began well before the plaintiff had ever engaged in any protected activity, an inference of retaliation does not arise." *Slattery v. Swiss Reinsurance Am. Corp.*, 248 F.3d 87, 95 (2d Cir. 2001). Here, the record shows that defendants' criticisms of Lue's

communication style and her response to feedback predated her complaints of discrimination. Therefore, in the absence of other evidence of an intent to retaliate, we conclude that the district court properly granted summary judgment on Lue's retaliation claim. *See id.* We have considered all of Lue's remaining arguments and find them to be without merit. For the foregoing reasons, the judgment of the district court is

AFFIRMED.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

Appendix D

Relevant Statutory and Regulatory Provisions

I

Title VII of the Civil Rights Act of 1964, Pub. L. 88-352 is codified at 42 U.S.C. §§ 2000e to 2000e-17:

Title VII prohibits employment discrimination based on race, color, religion, sex and national origin.

* * * * * *

SEC. 2000e-2. *[Section 703]* provides:

(a) Employer practices

It shall be an unlawful employment practice for an employer –

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

* * * * * *

SEC. 2000e-3. *[Section 704]* provides:

(a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on—the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

II

42 U.S.C. § 1981 ("Section 1981") - Equal Rights under the Law provides:

(a) Statement of Equal Rights:

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

III

Fifth and Fourteenth Amendment Rights provide:

No person shall be deprived of life, liberty, or property without due process of law. The judge must protect the [Party's] due-process rights by ensuring the [Party] understands every phase of the proceedings.

IV

18 U.S.C. § 1621 – Perjury Generally provides:

(2) Whoever in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both.

V

18 U.S.C. § 1505 – Obstruction of proceedings before departments, agencies, and committees provides:

Whoever, with intent to avoid, evade, prevent, or obstruct compliance, in whole or in part, with any civil investigative demand duly and properly made under the Antitrust Civil Process Act, willfully withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, answers to written interrogatories, or oral testimony, which is the subject of such demand; or attempts to do so or solicits another

to do so shall be fined under this title/imprisoned not more than 5 years.

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

CANDICE LUE,
Petitioner,

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,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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SUPPLEMENTAL APPENDIX

CANDICE LUE
Pro Se Petitioner
[redacted]
info@candicelue.com

SUPPLEMENTAL APPENDIX

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(March 28, 2018)……..……28a – 29a

Appendix E

Memorandum Opinion and Order – United States District Court for the Southern District of New York (March 27, 2018)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Candice Lue, Plaintiff, -v- JPMorgan Chase & Co., *et al.*, Defendants.	March 27, 2018. 16-CV-3207 (AJN) MEMORANDUM OPINION & ORDER

ALISON J. NATHAN, District Judge:

Plaintiff Candice Lue ("Plaintiff" or "Lue") alleges various forms of discrimination, harassment, and retaliation based on her race and stemming from her employment with Defendant JPMorgan Chase & Co. ("Chase"). Defendants move the Court for summary judgment. Upon the Court's evaluation of the evidence presented, Defendants' motion for summary judgment is GRANTED.

I. BACKGROUND

A. Procedural Background

On April 29, 2016, Plaintiff commenced the action. Dkt. No. 1. On August 1, 2016, Defendants

answered. Dkt. No. 35. Discovery closed on March 31, 2017. Dkt. No. 71. On May 9, 2017, Defendants moved for summary judgment. *See* Dkt. Nos. 89-100. After receiving the Court's approval of two requests for extensions of time to oppose Defendants' motion for summary judgment, *see* Dkt. Nos. 103, 105, Plaintiff ultimately submitted opposition papers totaling roughly 800 pages, including a 198-page Memorandum of Law. The Court struck the submissions as "overly burdensome," and ordered Plaintiff to resubmit revised submissions within certain page limits. *See* Dkt. No. 120. Plaintiff petitioned the Court to reconsider; the Court denied this request, but extended Plaintiff's deadline for her revised submissions. *See* Dkt. No. 125. The Court subsequently provided further clarity on the exact page limits to which Plaintiff's submissions must abide, and extended her filing deadline once more. *See* Dkt. No. 127. Instead, Plaintiff appealed to the Second Circuit, seeking a writ of mandamus and an emergency stay. *See* No. 17-2751, Dkt. No. 1 (2d Cir. Sept. 1, 2017). The Court of Appeals denied Plaintiff's motion on November 6, 2017. *See* No. 17-2751, Dkt. Nos. 22-23 (2d Cir.).

Subsequently, on November 20, 2017 the Court ordered Plaintiff "to submit her opposition to Defendants' motions for summary judgment within the Court's prescribed page limits by December 1, 2017 or the Court will consider the motions unopposed and fully submitted." Dkt. No. 131 (emphasis in original). Plaintiff responded on November 28, 2017, deeming the Court's November 20 Order a "farce" and the Second Circuit's November 6 Orders as having been issued "in collusion" with the District Court. Dkt. No. 132.

On December 4, 2017, the Court issued an order reciting the lengthy history of Plaintiff's unwillingness

to comply with the Court's orders and giving Plaintiff "until December 29, 2017 to submit her opposition within the prescribed page limits." *See* Dkt. No. 134 at 2. The Court warned that "[t]his constitutes Plaintiff's last chance, and the Court will deem the motion, unopposed and fully submitted if nothing is received on or before" that date. *Id.*[1]

Plaintiff submitted two responses, both of which lodge various procedural complaints or focus on Defendants' alleged perjury, but neither of which can be reasonably construed as an opposition to Defendants' motions for summary judgment. *See* Dkt. Nos. 135 & 136. Defendants then filed a letter asking the Court to deem the motion unopposed and fully submitted and Plaintiff filed a response that again asked for her original opposition to summary judgment to be restored to the docket, but which did not attempt to comply with the Court's repeated orders. Dkt. Nos. 137 & 138.

Accordingly, the Court now deems the motion unopposed and fully submitted.

B. Factual Summary

On April 29, 2016, Plaintiff filed a 234-page Amended Complaint naming as Defendants her former employer, JPMorgan Chase, as well as a number of JPMorgan Chase employees. *See generally* Amended Complaint ("Am. Compl."), Dkt. No. 33. While Plaintiff, a Black woman, *see* Am. Compl. ¶ 4, pleaded ten causes of action, the crux of Plaintiff's complaint stems from her supervisor's assignment to her of various tasks she

[1] While the order mistakenly listed both December 29 and December 15, 2017 as Plaintiff's deadline, this discrepancy is immaterial given that Plaintiff failed to meet either deadline.

found demeaning or humiliating, and which she believed reflected her status as the "only Black Analyst" in the Counterparty Risk Group, the team within Chase on which she served. *See* Am. Compl. ¶¶ 4-5.

Because this motion is deemed unopposed, *see supra* Part I.A., the Court does not have the benefit of Plaintiff's responses to Defendants' Statement of Undisputed Material Facts Under Local Civil Rule 56.1. *See* Dkt. No. 90 [hereafter, "Defs. 56.1"]. Even still, "the district court may not rely solely on the statement of undisputed facts contained in the moving party's Rule 56.1 statement." *Vt. Teddy Bear Co. v. 1-800 Beargram Co.*, 373 F.3d 241, 244 (2d Cir. 2004). "It must be satisfied that the citation to evidence in the record supports the assertion." *Id.* However, a *pro se* plaintiff may not rely solely on her complaint to defeat a summary judgment motion. *See Champion v. Artuz*, 76 F.3d 483, 485 (2d Cir. 1996) (per curiam). Given this, the Court adopts as undisputed the following material facts only because each statement is also supported by an appropriate citation to evidence in the record.

1. Plaintiff's Employment Background

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 at Chase. Defs. 56.1 ¶ 2. In this role, except for the first few months of her employment, Plaintiff reported to Defendant Michelle Sullivan, who in turn reported to Defendant Chris Liasis. Defs. 56.1 ¶ 3. While Plaintiff served in that role, she received three performance reviews from Sullivan or Liasis. Defs. 56.1

¶¶ 4-6. In each review, Plaintiff received an "M" for "Meets Expectations," although she was informed that her "communication style needs continued refinement," and that her "[r]eaction to constructive feedback [] should be focused [on] as a key area of improvement." *Id*.

On or about November 10, 2014, following the sale of Chase's commodities business and the closing of her department, Plaintiff was transferred to the role of Credit Reporting Risk Analyst ("Reporting Analyst") in the Counterparty Risk Group ("CRG") of JPMorgan Asset Management. Defs. 56.1 ¶ 7. In this position, Lue reported to Defendant Fidelia Shillingford, who, in turn, reported to Defendant Alex Khavin. Defs. 56.1 ¶ 8. Shillingford is a Black woman. *Id*.

In or about December 2014, Sullivan and Shillingford conducted Plaintiff's year-end performance review, with each manager providing feedback. Defs. 56.1 ¶ 9. Plaintiff received an "M-" for "Low Meets Expectations" from Sullivan for her time as a Drafting Analyst. *Id*. Plaintiff responded by sending Human Resources ("HR") a five-page response, calling Sullivan's feedback "malicious," "mendacious," and "defamatory," and proceeded to file an official complaint against Sullivan with HR. Defs. 56.1 ¶¶ 10-11. HR conducted an investigation into Plaintiff's claims and concluded that they were unfounded and that Sullivan was able to substantiate the feedback she gave Plaintiff on the performance review. Defs. 56.1 ¶¶ 12-14. Chase informed Plaintiff of the appeals process, but she declined to pursue an appeal. Defs. 56.1 ¶ 15.

2. Plaintiff's Objections to Performing Certain Tasks

As a Reporting Analyst, Plaintiff's job description included "[c]ontributing to team-wide efforts such as risk assessment methodology enhancements, portfolio-wide reviews and preparing management presentations." Am. Compl., Ex. H. Khavin assigned Plaintiff the task of collecting and distributing materials, as well as taking minutes, for the monthly governance meetings (collectively, the "Tasks"). Defs. 56.1 ¶ 17. As a result, Plaintiff met with Shillingford to complain that Khavin was treating her "as if she was the help, as if this is 1910." *Id.*

Prior to Plaintiff's arrival in the CRG, Baruch Horowitz, a White man and a senior Associate (a higher rank than Plaintiff's role of Analyst), had performed the Tasks exclusively. Defs. 56.1 ¶ 18. During Horowitz's absence for disability leave in 2014, Khavin had each CRG member bring and distribute their own materials, and temporarily rotated the task of taking minutes among the CRG analysts and associates. *Id.* However, when Plaintiff was hired, in an effort to make the Governance Meeting more efficient, Khavin asked her to collect, consolidate, and distribute the meeting materials as Horowitz had done. Declaration of Alex Khavin ("Khavin Decl.") ¶ 14.

After Plaintiff complained to Shillingford about the Tasks, Shillingford conferred with Khavin and they agreed to temporarily rotate the Tasks among analysts and associates in order to accommodate Plaintiff and give her time to get up to speed in her new role. Defs. 56.1 ¶ 19. At the April 2015 Governance Meeting, Khavin asked the group to send their materials for the May meeting to Plaintiff, who had been assigned the

Tasks that month. Defs. 56.1 ¶ 21. In response, Plaintiff got up and walked out of the meeting. *Id.* When Khavin spoke with Plaintiff to find out why she walked out, Plaintiff stated it was because she had been assigned the Tasks, which she found to be demeaning. Defs. 56.1 ¶ 22. Khavin responded that the Tasks were part of Plaintiff's role, were extremely important, added value to the group, and that Plaintiff could enlist the help of the group's administrative assistant. Khavin Decl. ¶ 22. On April 24, 2015, Plaintiff sent an email to Shillingford complaining that Khavin was demeaning her by assigning her the Tasks and asking, "Am I the help? Is this 1910?" Defs. 56.1 ¶ 23.

In May, the same pattern repeated. When one member of the CRG sent Plaintiff his materials prior to the May Governance Meeting, Plaintiff responded by emailing the entire group, asking them to handle their own materials and writing "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." Defs. 56.1 ¶ 25. In response, when Khavin reiterated her expectations of Plaintiff that "there will be one package for the monthly meeting which will be put together by you, and sent out ahead of the meeting," Plaintiff responded that she felt it was demeaning and asked "Am I the help? Is this 1910?" Defs. 56.1 ¶ 26-27.

3. HR's Investigation into Plaintiff's Objections

On May 26, 2015, Plaintiff sent a meeting invitation to Shillingford to discuss the "lack of trust and confidence I have in your management." Defs. 56.1

¶ 24. Shillingford forwarded the email to HR. *Id*. Based on the email Shillingford forwarded, HR contacted Plaintiff to schedule a time to discuss her concerns. Defs. 56.1 ¶ 28. When Plaintiff responded that she considered herself to be a victim of discrimination, HR requested that Defendant John Vega, an Executive Director in Chase's Employee Relations department, conduct an investigation into Plaintiff's concerns. Defs. 56.1 ¶¶ 29-30. Vega concluded that Plaintiff's allegations were unfounded and that there was no evidence of discriminatory animus. Defs. 56.1 ¶ 33. Among other things, Vega found that anyone in Plaintiff's role was responsible for the Tasks, and that by assigning Plaintiff the Tasks, her supervisors had not changed her role. *Id*. Vega informed Plaintiff of his findings on July 29, 2015, and the investigation was closed. *Id*.

4. Plaintiff's Performance Improvement Plan, Written Warning, and Termination

On July 30, 2015, Shillingford and Defendant Helen DuBowy, HR Business Partner to Asset Management Risk, conducted Plaintiff's mid-year performance review. Defs. 56.1 ¶ 34. Shillingford had asked DuBowy to sit in on the review because of Vega's investigation and because she thought it was important to have an HR representative present. *Id*. At the performance review, Plaintiff was placed on a performance improvement plan ("PIP") and informed that she was expected to perform all tasks assigned to her and to improve her communication style. Defs. 56.1 ¶ 35. Plaintiff refused to sign the PIP. Declaration of Fidelia Shillingford ("Shillingford Decl."), Dkt. No. 93, Ex. F.

On August 26, 2015, Shillingford asked Plaintiff to remind the group members to save their documents for the August Governance Meeting in a shared folder so that Plaintiff could perform the Tasks. Defs. 56.1 ¶ 38. Plaintiff simply responded "I have no further comments," and did not print the materials for the meeting. Defs. 56.1 ¶¶ 38-39.

Again, on September 23, 2015, Shillingford asked Plaintiff to bring copies of three items to the September Governance Meeting, but Plaintiff stated that she would print only one of the documents. Defs. 56.1 ¶ 40. Shillingford emailed Plaintiff in response that "[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.* (citing Shillingford Decl., Ex. J). Plaintiff responded that "this is stemming from the racial discrimination charge I raised with HR." Defs. 56.1 ¶ 41.

Following these incidents, Plaintiff was issued a written warning on September 24, 2015, in which Shillingford made clear that she expected Plaintiff to "perform the job responsibilities for which she was hired," including "to print all materials for our monthly team meeting and provide copies for each team member." Shillingford Decl., Ex. K. Plaintiff responded by emailing Shillingford, accusing her of being "the enabler, the facilitator, the coordinator and the enforcer of the second class treatment which originated from Alex Khavin." Shillingford Decl., Ex. L. After another exchange of tense emails between Plaintiff and Shillingford, Shillingford forwarded the emails to HR, along with a note indicating her impression that the

environment "has become toxic and inoperable" and that her "primary focus has shifted to managing my interactions and the work has become secondary." Shillingford Decl., Ex. M.

After Plaintiff again refused to perform the Tasks for the October 2015 Governance Meeting, Defs. 56.1 ¶ 45, and refused to coordinate with another analyst to complete the Tasks for the December Governance Meeting, Defs. 56.1 ¶ 47, Shillingford decided that Plaintiff's employment should be terminated. Defs. 56.1 ¶ 49.

On January 6, 2016, DuBowy signed off on a recommendation to terminate the Plaintiff, which cited both the PIP and written warning as including "issues on refusing to perform assigned tasks [as] well as a lack of professionalism including inappropriate tone of emails and verbal communication. Declaration of Helen DuBowy, Ex. C. The recommendation to terminate concluded that "[d]espite numerous conversations that Candice has had with Employee Relations and management, she still [] has not had sustained improvement in these areas." *Id*. Plaintiff was terminated that day. Defs. 56.1 ¶ 51.

II. LEGAL STANDARD

Summary judgment shall be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The court must "construe the facts in the light most favorable to the non-moving party and resolve all ambiguities and draw all reasonable inferences against the movant." *Delaney v. Bank of Am. Corp*., 766 F.3d

163, 167 (2d Cir. 2014) (internal quotation marks and alterations omitted). If the court determines that "the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial" and summary judgment should be granted to the moving party. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (internal quotation marks and citation omitted).

It is the initial burden of the movant to present evidence on each material element of its claim or defense and demonstrate that it is entitled to relief as a matter of law. *Vt. Teddy Bear Co.*, 373 F.3d at 244. When a motion for summary judgment is unopposed, as here, courts may not grant the motion "without first examining the moving party's submission to determine if it has met its burden of demonstrating that no material issue of fact remains for trial." *Id.* at 244, 246. Moreover, as stated above, in determining whether the movant has met this burden, the court may not rely solely on the movant's 56.1 statement; rather, the court must be satisfied that the citation to the record evidence supports the assertion. *Id.* at 244.

In this case, the Court affords additional care to Plaintiff's position for two reasons. First, as a *pro se* litigant, Plaintiff is afforded "special solicitude" under Second Circuit law. *See Graham v. Lewinski*, 848 F.2d 342, 344 (2d Cir. 1988). A *pro se* plaintiff is entitled to have her pleadings held to "less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 520 (1971). The pleadings must be read liberally and interpreted to "raise the strongest arguments that they suggest," *Burgos v. Hopkins*, 14 F.3d 787, 790 (2d Cir. 1994), however the plaintiff's *pro se* status does not relieve her of the usual requirements of summary judgment, specifically the obligation that

she come forward with evidence demonstrating a genuine dispute regarding material fact. *See Carey v. Crescenzi*, 923 F.2d 18, 21 (2d Cir. 1991). Plaintiff was served with the notice required by Local Rule 56.2, informing her of the nature of a summary judgment motion and the manner in which it could be opposed, and warning that failure to respond may lead the court to "accept defendants' factual assertions as true." Dkt. No. 100.

Second, the Second Circuit has instructed that trial courts must be cautious about granting summary judgment to an employer when its intent is at issue. *See Gallo v. Prudential Residential Servs., LP*, 22 F.3d 1219, 1224 (2d Cir. 1994). Because the employer rarely leaves direct evidence of its discriminatory or retaliatory intent, courts must carefully search for circumstantial proof. *Id.* However, it is "beyond cavil that summary judgment may be appropriate even in the fact-intensive context of discrimination cases." *Abdu-Brisson v. Delta Air Lines, Inc.*, 239 F.3d 456, 466 (2d Cir. 2001).

Ultimately, the district court may grant an unopposed motion for summary judgment against a *pro se* plaintiff if: (1) the *pro se* plaintiff has received adequate notice that failure to file a proper opposition may result in dismissal of the case; and (2) the Court is satisfied that "the facts as to which there is no genuine dispute 'show that the moving party is entitled to a judgment as a matter of law.'" *See Champion*, 76 F.3d at 485-86 (quoting Fed. R. Civ. P. 56(c)).

III. DISCUSSION

Plaintiff pleads ten causes of action in her complaint, all of which are styled as violations of Title

VII, 42 U.S.C. §§ 2000*e et seq*. and 42 U.S.C. § 1981, but some of which are more appropriately construed as raising other claims. *See Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 472 (2d Cir. 2006) (per curiam) (requiring courts to liberally construe a *pro se* party's pleadings to raise the strongest argument they suggest). The Court addresses Plaintiff's Title VII and § 1981 claims first.

A. Title VII and § 1981

As an initial matter, "[m]ost of the core substantive standards that apply to claims of discriminatory conduct in violation of Title VII are also applicable to claims of discrimination in employment in violation of § 1981." *Patterson v. Cty. of Oneida, NY*, 375 F.3d 206, 225 (2d Cir. 2004). The differences that do exist are inapplicable here, except insofar as Plaintiff attempts to hold the individual Defendants liable under Title VII, which is not cognizable. *Id*. at 225-227 (explaining the differences). As a result, as further explained below, for the same reasons that Defendant Chase is entitled to summary judgment in the face of Plaintiff's Title VII allegations, so too are all of the individual Defendants under § 1981.

The central problem with Plaintiff's allegations, in light of the undisputed evidence described above, is that she fails to offer sufficient proof of racial motive.

Under Title VII, to withstand a motion for summary judgment, a discrimination plaintiff must satisfy the burden-shifting analysis set forth in *McDonnell Douglas. McPherson v. N.Y. City Dep't of Educ.*, 457 F.3d 211, 215 (2d Cir. 2006) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)). A plaintiff first bears the minimal burden of

establishing a *prima facie* case of discrimination. If she is so able, she is then aided by a presumption of discrimination unless the defendant proffers a "legitimate, nondiscriminatory reason" for the adverse employment action, in which event the presumption disappears and the plaintiff bears the greater burden of proving that the employer's proffered reason was mere pretext for discrimination. *Id*.

As explained below, applying this framework to Plaintiff's Title VII claims shows that she cannot satisfy the minimal burden of establishing a *prima facie* case on the basis of the undisputed facts. But assuming *arguendo* she were able to meet that standard, Defendants also offer a legitimate, nondiscriminatory reason for terminating Plaintiff's employment that Plaintiff cannot show is pretextual.

1. Plaintiff Fails To Establish a *Prima Facie* Case of Discrimination

To establish a *prima facie* case of discrimination, Plaintiff must show that (1) she is a member of a protected class; (2) she was qualified for the position; (3) she suffered an adverse employment action; and (4) that action occurred under circumstances giving rise to an inference of discriminatory intent. *McDonnell Douglas*, 411 U.S. at 802. Plaintiff is able to satisfy the first three elements. On the fourth element, Plaintiff may satisfy this burden showing that she was "similarly situated in all material respects" to the individuals against whom she would have the court compare her. *Shumway v. United Parcel Serv., Inc.*, 118 F.3d 60, 64 (2d Cir. 1997).

Here, Plaintiff draws a comparison to her non-Black colleagues at the Associate or Analyst level in her

group at work. But "[i]n addition to identifying similarly situated employees who are subject to the same evaluation and discipline standards, a plaintiff must also show that those employees engaged in acts of comparable seriousness but were not punished as severely as plaintiff." *Risco v. McHugh*, 868 F.Supp.2d 75, 100-01 (S.D.N.Y. 2012). Plaintiff offers no evidence that similarly situated employees who also similarly refused to handle specific tasks, or who communicated with their supervisors in a similar manner, were treated more favorably. And while it is true that Plaintiff seems to have been specifically asked to handle the Tasks, a jury could not reasonably infer from this fact alone that the request was attributable to racial discrimination. As the undisputed facts show, Khavin had previously assigned this same task to Baruch Horowitz, a White man with a higher job title than Plaintiff, suggesting that the assignment of the Tasks to Plaintiff was unrelated to her race.

Similarly, Plaintiff claims that she was treated differently from non-Black analysts in being required to ask for permission before working from home and in having her requests to work from home to care for her mother denied. *See* Am. Compl. ¶ 19. However, the undisputed evidence showed that Horowitz and other analysts had to ask for permission to work from home, and that this was consistent with the group's policy. *See* Declaration of Baruch Horowitz, Dkt. No. 99, ¶ 7; Shillingford Decl. ¶¶ 13-14 & Ex. C. Plaintiff offers no specific counter-example that raises a genuine dispute.

Plaintiff offers no specific statements that any individuals made suggesting the assignment was racially motivated. Conclusory statements by Plaintiff that she was being treated as a "house slave" and given "demeaning" tasks because of her race are insufficient

without further proof. *See Risco,* 868 F. Supp. 2d at 99 ("A plaintiff's self-serving statement, without direct or circumstantial evidence to support the charge, is also insufficient."); *accord Olorde v. Streamingedge, Inc.*, No. 11-CV-6934 (GBD)(AJP), 2014 WL 1689039, at *14 (S.D.N.Y. Apr. 29, 2014), *report and recommendation adopted*, 2014 WL 3974581 (S.D.N.Y. Aug. 13, 2014) ("[Plaintiff] may have a legitimate complaint that he was overworked and required to perform personal tasks for [his boss], but there is no evidence that this was a form of discrimination."). "Statements that are devoid of any specifics, but replete with conclusions, are insufficient to defeat a properly supported motion for summary judgment." *Bickerstaff v. Vassar Coll.*, 196 F.3d 435, 452 (2d Cir. 1999).

Plaintiff's complaint suggests many disagreements with her supervisors' evaluation of her behavior and performance, both in her time as both a Drafting Analyst and as a Reporting Analyst, but as a matter of law this disagreement is not evidence of discriminatory intent. *Jimoh v. Ernst & Young*, 908 F. Supp. 220, 226 (S.D.N.Y. 1995) (citing *Dister v. Continental Grp., Inc.*, 859 F.2d 1108, 1116 (2d Cir. 1988)). "While plaintiff argues that her behavior during the incidents cited by defendants was appropriate and justified, a plaintiff's factual disagreement with the validity of an employer's nondiscriminatory reason for an adverse employment decision does not, by itself, create a triable issue of fact." *Fleming v. MaxMara USA*, 644 F. Supp. 2d 247, 266 (E.D.N.Y. 2009), *aff'd*, 371 F. App'x 115, 117-18 (2d Cir. 2010). Even accepting Plaintiff's view as correct, there is no evidence in the record to support a finding that Sullivan, Liasis, Shillingford, or Khavin were motivated by any racial animus in exaggerating or lying in evaluating Plaintiff's

performance. *See Grillo v. N.Y. City Transit Auth.*, 291 F.3d 231, 235 (2d Cir. 2002).

Finally, although the Supreme Court has soundly "rejected any conclusive presumption" that an employer will not discriminate against members of their own race, *see Feingold v. New York*, 366 F.3d 138, 155 (2d Cir. 2004) (quoting *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 78 (1998)), the fact that Shillingford is also a Black woman can be seen to undermine any inference of discriminatory animus. *See, e.g., Baguer v. Spanish Broad. Sys., Inc.*, 04-CV-8393, 2010 WL 2813632, at *11 (S.D.N.Y. July 12, 2010), *aff'd*, 423 F. App'x 102 (2d Cir. 2011); *Drummond v. IPC Intl, Inc.*, 400 F. Supp. 2d 521, 532 (E.D.N.Y. 2005); *Olorode*, 2014 WL 1689039, at *16. Shillingford is also the person who made both the decision to hire Plaintiff and the decision to fire her, further undermining any possible inference of discrimination. *See Grady v. Affiliated Cent., Inc.*, 130 F.3d 553, 560 (2d Cir. 1997).

In sum, none of Plaintiff's allegations raises an inference of discriminatory intent sufficient to establish a *prima facie* case under Title VII or § 1981. *Cf. Jeune v. City of N.Y.*, 11-CV-7424, 2014 WL 83851, at *5 (S.D.N.Y. Jan. 9, 2014) ("The only evidence [plaintiff] proffers in support of th[e] assertion [that he was treated differently], however, is his own conclusory testimony that [defendant] 'didn't . . . [treat] the white officers or the Latin officers' in a similar fashion, and that he '[didn't] think [defendant] would' extend the hours of someone whose child was sick if the person was 'of her own race.' But this testimony lacks the detail necessary to support an inference of discrimination." (record citations omitted)); *accord Moore v. Kingsbrook Jewish Med. Ctr.*, No. 11-CV-3625, 2013 WL 3968748, at *7 (E.D.N.Y. July 30, 2013);

KarimSeidou v. Hosp. of St. Raphael, No. 09-CV-51, 2012 WL 6628886, at *5 (D. Conn. Dec. 19, 2012). Plaintiff cannot prove discrimination by speculation and by reliance on her own subjective beliefs.

2. Even if Plaintiff Had Established a *Prima Facie* Case, Defendants Offer Non-Discriminatory Explanations Plaintiff Fails to Prove Are Pretextual

Even if Plaintiff were able to establish her *prima facie* case of discrimination, Defendants have proffered a "legitimate, nondiscriminatory reason" for the adverse employment action, and Plaintiff cannot meet her burden that these reasons were pretextual. *McPherson*, 457 F.3d at 215.

Plaintiff was terminated for unsatisfactory performance, continued failure to perform her assigned tasks, and for a lack of professionalism, including using an inappropriate tone in emails and verbal communication; each of these issues was identified in her PIP and in a written warning. Defs. 56.1 ¶ 50. As the Defendants note, these are all legitimate reasons for termination. Mot. at 6 (citing *Nieves v. Angelo, Gordon & Co.*, 341 F. App'x 676, 679 (2d Cir. 2009) (insubordination and failure to complete assigned tasks were legitimate reasons for termination) and *Gill v. Mt. Sinai Hosp.*, 160 F. App'x 43, 44 (2d Cir. 2005) (failure to complete job duties, inability to take directions, and confrontational and unprofessional behavior were legitimate business reasons for termination)). Given the many instances of Plaintiff's refusal to follow directions from her supervisor and hostile tone in communications highlighted above, the Court finds Defendants' proffered justifications are well-supported.

For the same reasons that Plaintiff is unable to establish an inference of discriminatory intent, she is also unable to carry her burden that Defendants' reasons were pretextual. The Court does not second-guess an employer's business decisions absent specific evidence of an improper motive, *see Scaria v. Rubin*, 117 F.3d 652, 654-55 (2d Cir. 1997) (per curiam), and Plaintiff fails to present such evidence. As discussed above, Plaintiff offers no valid comparator. Her White predecessor was exclusively responsible for the same Tasks and had to obtain the same permissions to work from home. Shillingford, who is Black, made the decision to both hire and fire Plaintiff. And Plaintiff presents no evidence — such as racist comments or other discriminatory behavior — that anyone involved in evaluating her performance, investigating her complaints, or making employment decisions about her harbored a racial animus.

A plaintiff must "produce not simply some evidence, but sufficient evidence to support a rational finding that the legitimate, nondiscriminatory reasons proffered by the employer were false, and that more likely than not [discrimination] was the real reason for the [adverse employment action]." *Van Zant v. KLM Royal Dutch Airlines*, 80 F.3d 708, 714 (2d Cir. 1996) (internal quotation marks and citation omitted). Plaintiff fails to meet this burden.

3. Plaintiff's Evidentiary Deficiencies Extend to All of Her Title VII Causes of Action

Plaintiff's first cause of action, for "Unlawful Discrimination on the Basis of Race" in violation of Title VII and § 1981, is what is principally analyzed

above, but the same deficiencies the Court previously identified — specifically the absence of evidence of racial motive — apply to many of her other causes of action as well.

Plaintiff's sixth cause of action, styled as "Intentional Infliction of Career Regression and Career Stagnation on the Basis of Race," is primarily based on her allegations that Defendants Liasis and Sullivan undermined her work, gave her negative feedback in her performance review, and failed to promote her. *See* Am. Compl. ¶¶ 142-67. Defendants present nondiscrimnatory explanations for each decision or action. *See* Mot. at 17 (citing *Scaria*, 117 F.3d at 654 (disclaiming reexamination of a business decision absent specific evidence of discriminatory motive)). Plaintiff presents no evidence of racial discrimination apart from her own speculation, and whatever disagreements she may have had with their decisions are not evidence of discriminatory intent. *Jimoh*, 908 F. Supp. at 226 (S.D.N.Y. 1995) (citing *Dister*, 859 F.2d at 1116).

Plaintiff's eighth and ninth causes of action focus on Plaintiff's claim that Khavin switched who her manager would be from a White woman to Shillingford, who is Black, after hiring Plaintiff, in an effort to segregate the Black members of the team and to use Shillingford as cover to enforce Khavin's bigotry. *See* Am. Compl. ¶¶ 4, 178-93. Defendants have presented undisputed evidence that Khavin made the decision that Shillingford would supervise the new hire before Plaintiff was hired, and Plaintiff was explicitly told this both verbally and in her offer letter. *See* Khavin Decl. ¶¶ 5-6; Shillingford Decl. ¶¶ 4-5 & Ex. A. Again, Plaintiff raises no genuine factual dispute.

a) Retaliation

Plaintiff's second cause of action alleges unlawful retaliation under Title VII and § 1981. Retaliation claims also receive the burden-shifting analysis from *McDonnell Douglas* set forth above, but a plaintiff establishes a *prima facie* case by showing that: (1) she was engaged in a protected activity of which her employer was aware; (2) she suffered some disadvantageous employment action; and (3) there was a causal connection between the protected activity and the adverse employment decision. *See Van Zant*, 80 F.3d at 714. "The causal connection can be established directly through evidence of retaliatory animus directed at plaintiff by defendant, or indirectly by showing either that other employees engaged in similar conduct were given more favorable treatment or that the adverse action closely followed the protected activity." *Dean v. Westchester Cty. Dist. Attorney's Office*, 119 F. Supp. 2d 424, 432 (S.D.N.Y. 2000) (citing *Johnson v. Palma*, 931 F.3d 203, 207 (2d Cir. 1991)).

Assuming *arguendo* that Plaintiff could establish her *prima facie* case, she cannot raise a triable issue of pretext in response to Defendants' contention that the adverse employment action was nonretaliatory. First, in line with the deficiencies described above, Plaintiff solely relies on her subjective beliefs and conclusory allegations, and not on specific facts, that Chase had a retaliatory motive. *See* Am. Compl. ¶¶ 99-109. This does not satisfy Plaintiff's burden. *See, e.g., Ennis v. Sonitrol Mgmt. Corp.*, No. 02-CV-9070 (TPG), 2006 WL 177173, at *18 (S.D.N.Y. Jan. 24, 2006) (granting defendants summary judgment because "[t]here is no evidence that the reasons defendants proffered for

plaintiff's discharge are untrue or are merely pretext for a retaliatory motive."). That Plaintiff has a different assessment of her work performance from Defendants is insufficient to establish pretext; she would need to offer evidence that Defendants' proffered justification was not actually the reason she was fired. *See Stevens v. New York*, No. 09-CV-5237 (CM), 2011 WL 3055370, at *7 (S.D.N.Y. July 20, 2011).

Second, to the extent that Plaintiff relies on the temporal proximity between when she filed her charge with the Equal Employment Opportunity Commission (EEOC) and when she was placed on a PIP, issued a written warning, and ultimately terminated, *see, e.g.*, Am. Compl. ¶ 98, this evidence is insufficient. Temporal proximity in and of itself is generally "insufficient to satisfy [a plaintiff's] burden to bring forward some evidence of pretext" for retaliation. *El Sayed v. Hilton Hotels Corp.*, 627 F.3d 931, 933 (2d Cir. 2010). Moreover, negative feedback for the exact behavior that led to Plaintiff's termination — namely, her refusal to complete the Tasks — preceded her August 13, 2015 filing with the EEOC. *See* Am. Compl. ¶ 86 (describing the filing of the EEOC charge); Defs. 56.1 ¶¶ 21-36 (discussing Plaintiff's actions between April and July 2015). "Where timing is the only basis for a claim of retaliation, and gradual adverse job actions began well before the plaintiff had ever engaged in any protected activity, an inference of retaliation does not arise." *Slattery v. Swiss Reins. Am. Corp.*, 248 F.3d 87, 95 (2d Cir. 2001).

In sum, based on the undisputed facts, Plaintiff's claim of retaliation fails as a matter of law.

b) Harassment / Hostile Work Environment

Plaintiff's fourth cause of action alleges that she was harassed based on her race, first by Sullivan, and later by Shillingford and Khavin. Am. Compl. ¶¶ 125-33. The Court construes this claim as one for hostile work environment. *See Triestman*, 470 F.3d at 472. To establish a hostile work environment claim, a plaintiff must first show that the harassment was "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." *Alfano v. Costello*, 294 F.3d 365, 373-74 (2d Cir. 2002) (citing *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993)).

Plaintiff alleges that Sullivan "fought tooth and nail" to have her comments be a part of Plaintiff's 2014 year-end performance review, even though Plaintiff had transferred teams. Am. Compl. ¶ 133. Even if this were "harassment" severe enough to create an abusive working environment, Defendants have presented undisputed facts that it was company practice that the primary feedback and rating be provided by the manager under whose supervision the employee had spent the majority of the year, and Sullivan was acting at the directions of HR. *See* Declaration of Michele Sullivan, ¶ 9, Ex. B. Plaintiff's allegations against Khavin and Shillingford on this cause of action simply repeat the previously dismissed claims she made about the Tasks. Plaintiff does not raise a triable issue of fact with respect to their alleged harassment of her either.

c) Aiding and Abetting

Plaintiff's third and fifth causes of action are two sides of the same coin as each alleges that various supervisors or HR representatives facilitated or failed to prevent the above-alleged violations. Her third cause of action — "Aiding and Abetting" Title VII violations — is not a viable claim under Title VII or § 1981. *See, e.g., Long v. Marubeni Am. Corp.*, No. 05-CV-0639 (GEL), 2006 WL 547555, at *4 (S.D.N.Y. Mar. 6, 2006). Even if it were, without an underlying violation of those statutes, abettor liability cannot be established.

Plaintiff's fifth cause of action — "Failure to Take Steps to Prevent Discrimination, Retaliation and Harassment" — primarily charges Chase's HR department with failing to prevent harassment and discrimination by conducting bogus investigations and otherwise covering up her treatment. Am. Compl. ¶¶ 136-41. Chase did conduct prompt investigations after she raised her concerns; Plaintiff is simply critical that their conclusions were that Plaintiff's complaints were unsubstantiated. Given that the Court concludes that Plaintiff has failed to raise an issue of material fact regarding her underlying harassment, retaliation, and discrimination claims, her allegations regarding Chase's failure to intervene must fall too.

B. Common Law Torts

Finally, Plaintiff's seventh and tenth causes of action are better construed as tort claims than as claims brought under Title VII or § 1981. Her seventh cause of action, for "Intentional and/or Negligent Infliction of Mental Physical and Emotional Distress," is best considered under the two separate torts of

"intentional infliction of emotion distress" ("IIED") and "negligent infliction of emotional distress" ("NIED"). The IIED tort "provides a remedy for the damages that arise out of a defendant engaging in 'extreme and outrageous conduct, which so transcends the bounds of decency as to be regarded as atrocious and intolerable in a civilized society." *See Turley v. ISG Lackawanna, Inc.*, 774 F.3d 140, 157 (2014) (quotation omitted). Based on the undisputed facts, a reasonable jury could not come to that conclusion here. *Cf id.* at 161 (collecting citations for the proposition that "the failure to respond appropriately to complaints of harassment... will not be sufficiently egregious").

Second, in New York, the NIED tort is governed by the Workers' Compensation Law and so Plaintiff is barred from bringing a negligence claim against Chase here. *See Johns v. The Home Depot U.S.A., Inc.*, No. 03-CV-4522 (DC), 2005 WL 545210, at *8 (S.D.N.Y. Mar. 8, 2005), *aff'd*, 180 F. App'x 190 (2d Cir. 2006).

Plaintiff's tenth cause of action — for "Defamation of Character on the Basis of Race" — is best construed as either a variation of the dismissed harassment claims addressed above, or as a defamation claim under New York state law, in which case the claim is time-barred. Plaintiff's allegations center on the actions of Sullivan and Liasis, all of which occurred more than one-year prior to her filing of the complaint. *See* Am. Compl. ¶¶ 196-216; *see also Wellesley v. Debevoise & Plimpton LLP*, 346 F. App'x 662, 663 (2d Cir. 2009) (citing N.Y. C.P.L.R. § 215(3)).

* * *

Overall, the evidence is "so overwhelmingly tilted in one direction that any contrary finding would

constitute clear error." *Danzer v. Norden Sys., Inc.*, 151 F.3d 50, 54 (2d Cir. 1998) (citations omitted). When an employer "provides convincing evidence to explain its conduct and the plaintiff's argument consists of purely conclusory allegations of discrimination, the Court may conclude that no material issue of fact exists and it may grant summary judgment to the employer." *Walder v. White Plains Bd. of Educ.*, 738 F. Supp. 2d 483, 493 (S.D.N.Y. 2010) (citations omitted). That is exactly the case here.

The undisputed facts, which are all supported by citations to evidence in the record, warrant a grant of summary judgment to Defendants on all counts, and the dismissal of Plaintiff's claims.

IV. CONCLUSION

For the foregoing reasons, Defendants' motion for summary judgment is GRANTED. This resolves Docket Number 89. The Clerk of Court is respectfully directed to close the case and enter judgment. A copy of this Order will be mailed to the *pro se* Plaintiff by Chambers.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 445 (1962).

SO ORDERED.

DATED: March 27, 2018
New York, New York

/s/
ALISON J. NATHAN
United States District Judge

Appendix F

Clerk's Judgment – United States District Court for the Southern District of New York (March 28, 2018)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Candice Lue,

March 28, 2018.

Plaintiff,

-against- 16 **CIVIL** 3207 (AJN)

JPMorgan Chase & Co., et al., **JUDGMENT**

Defendants.

----------X

It is hereby **ORDERED, ADJUDGED AND DECREED:** That for the reasons stated in the Court's Memorandum Opinion and Order dated March 27, 2018, Defendants' motion for summary judgment is granted and the case is closed. The Court certifies under 28 U.S.C. § 1915(a) (3) that any appeal from this Court's Order dated March 27, 2018 would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal.

Dated: New York, New York
March 28, 2018

RUBY J. KRAJICK

Clerk of Court

BY:

/s/

Deputy Clerk

THIS DOCUMENT WAS ENTERED
ON THE DOCKET ON 3/28/2018