

In the case of Lue v. JPMorgan Chase & Co.
et al (1:16-CV-03207)

**JUDGE ALISON J. NATHAN'S ORDER
OF AUGUST 11, 2017**

(See page 3 of the Defendants' Letter Motion as the August 31, 2017 Order has no
business being there)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Candice Lue,

Plaintiff,

—v—

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

Defendants.

USDC SDNY
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DOC #:
DATE FILED: AUG 31 2017

16-CV-3207 (AJN)

ORDER



ALISON J. NATHAN, District Judge:

On August 24, 2017, the Court received a letter from Plaintiff Lue indicating that she has not received a copy of the Court's August 11, 2017 Order, and asking the Court to clarify its page limits described therein. Dkt. No. 126.

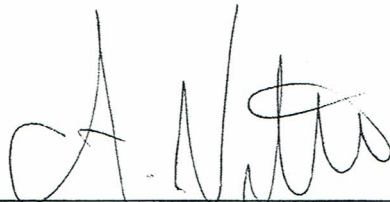
To clarify, Plaintiff's memorandum of law shall be limited to 25 pages, which is the same length as the Defendants' memorandum of law. *See* Dkt. No. 91. Plaintiff's response to the moving party's Rule 56.1 statement, which is 12 pages long, *see* Dkt. No. 90, shall be no longer than 50 pages. These limits do not include affidavits or declarations submitted in support. However, Plaintiff is additionally advised that she should only submit those exhibits necessary to decide the motion and that the Court may still strike documents deemed overly burdensome.

As Plaintiff represents that she did not receive the Court's previous Order, the Court hereby extends the briefing deadline previously set. *See* Dkt. No. 125. Plaintiff shall submit opposition in accordance with these limits by **September 22, 2017** or the Court will consider the motion unopposed and fully submitted. Defendants' reply, if any, shall be due September 29, 2017.

The Court will mail a copy of the August 11, 2017 Order and a copy of this Order to the Plaintiff.

SO ORDERED.

Dated: August 31, 2017
New York, New York



ALISON J. NATHAN
United States District Judge



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August 1, 2017

VIA ECF

The Honorable Alison J. Nathan
United States District Court for the
Southern District of New York
40 Foley Square, Room 2102
New York, NY 10007

Re: *Lue v. JPMorgan Chase & Co., et al.*, No. 16 CV 3207 (AJN) (GWG)

Dear Judge Nathan:

This firm is counsel for the Defendants in the above-referenced action. 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.

Plaintiff's opposition papers consist of the following:

- An 80-page "Affidavit in Response/Opposition" to Defendants' 56.1 Statement;
- A 198-page Memorandum of Law in Opposition to the Motion;
- Eight affidavits, ranging from nine to 40 pages each, totaling 169 pages in length, in response to the Declarations submitted with the Motion;
- 493 pages of exhibits, dozens of which contain hand-written, purportedly explanatory, addenda; and
- A subpoena issued to Defendant JPMorgan Chase & Co. to compel production of certain files regarding one of Defendants' summary judgment declarants, a former company employee.

**SEYFARTH
SHAW**

The Honorable Alison J. Nathan
August 1, 2017
Page 2

With respect to Plaintiff's response to the 56.1 statement, section 3(G)(iv) of the Practices provides: "An opposing party's response to the moving party's Rule 56.1 statement shall be no longer than 50 pages" As noted above, Plaintiff's response is 80 pages.

Additionally, Local Civil Rule 56.1(b) provides:

The papers opposing a motion for summary judgment shall include . . . if necessary, additional paragraphs containing a separate, short and concise statement of additional material facts as to which it is contended that there exists a genuine issue to be tried.

Plaintiff's response is neither short nor concise. As just one example, ¶ 16 of Defendants' 56.1 Statement states:

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

Plaintiff's response to that single paragraph is *two-and-a-half pages*. She does not dispute that the job description says what Defendants say it does, but instead engages in a merits-based argument that the job description *should not mean* what she believes Defendants assert it to mean. See Response to ¶ 16 ("The true interpretation of and what correlates with "*preparing management presentations*" is the caliber of presentations the candidate sought for the Credit Reporting Risk Analyst position should be able to produce and present."). This is improper. See *Rodriguez v. Schneider*, No. 95 CIV. 4083 (RPP), 1999 WL 459813, at *1 n.3 (S.D.N.Y. June 29, 1999) ("*Rule 56.1 statements are not argument*. They should contain factual assertions, with citation to the record. They should not contain conclusions, and they should be neither the source nor the result of 'cut-and-paste' efforts with the memorandum of law") (emphasis in original), *aff'd*, 56 F. App'x 27 (2d Cir. 2003).

Plaintiff's memorandum of law is also non-compliant. Section 3(B) of the Practices provides: "The Court encourages and appreciates brevity. Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages" Plaintiff's memorandum of law is 198 pages, nearly eight times the allowed limit.

Finally, Plaintiff's opposition papers include a subpoena on Defendant JPMorgan Chase & Co. seeking (i) a copy of the personnel file of Baruch Horowitz, a former employee who provided a declaration in support of the Motion, and (ii) a copy of Mr. Horowitz's performance reviews.¹ Discovery in this matter has been closed for more than four months. (See ECF No. 71.) Plaintiff has not proffered any reason why discovery should be reopened to permit these document requests, especially where Mr. Horowitz's identity was known to Plaintiff during discovery and he was included (albeit not by name) in her Initial Disclosures as a potential witness. Moreover, on or

¹ JPMorgan Chase & Co. is a named Defendant, not a third party, so the vehicle to request documents would be Rule 34, not a subpoena.

**SEYFARTH
SHAW**

The Honorable Alison J. Nathan
August 1, 2017
Page 3

about March 15, 2017, Defendants served a subpoena on Mr. Horowitz to testify at a deposition on March 28. Plaintiff was duly served with a copy of the subpoena, but advised the undersigned that she would not participate in the deposition, asking instead to be sent a copy of the transcript. Ultimately, by agreement with Mr. Horowitz, the deposition did not occur, and he instead provided the declaration, a copy of which was served on Plaintiff in advance of Defendants' summary judgment papers. If Plaintiff had wished to conduct discovery concerning Mr. Horowitz, including questioning him about his job duties or performance, the time to do so was during the discovery period, not now.

Defendants and this Court should not be burdened with reviewing and responding to these excessive and non-compliant filings. Defendants respectfully request that the Court strike Plaintiff's responsive papers to and direct her to re-file papers in accordance with Your Honor's Practices and the Local Civil Rules. Defendants further request that Plaintiff's subpoena be struck for the reasons stated above.²

On behalf of Defendants, we thank the Court for its time and attention.

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Very truly yours,

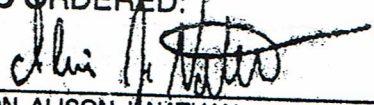
SEYFARTH SHAW LLP

/s/ Anshel Joel Kaplan

Anshel Joel Kaplan

cc: Candice Lue (via first-class mail)
Robert S. Whitman, Esq. (by ECF)

SO ORDERED: **8/11/17**


HON. ALISON J. NATHAN
UNITED STATES DISTRICT JUDGE

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.

Defendants' reply deadline is extended *sua sponte* until September 8, 2017.

This resolves Dkt. Nos. 113, 119.

SO ORDERED.

² Plaintiff's opposition memorandum refers at various points to Fed.R.Civ.P. 56(d). If and when Plaintiff files revised papers, Defendants and the Court will be in a better position to evaluate whether there is a need for additional discovery pursuant to that rule in connection with Plaintiff's opposition.

In the case of Lue v. JPMorgan Chase & Co.
et al (1:16-CV-03207)

**JUDGE ALISON J. NATHAN'S ORDER
OF AUGUST 31, 2017**

(Erroneously attached to her Order of August 11, 2017/Defendants' Letter Motion)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Plaintiff,

—v—

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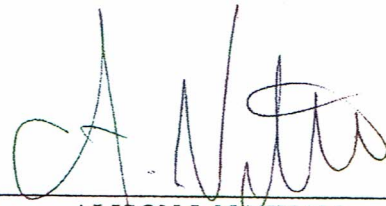
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SO ORDERED.

Dated: August 21, 2017
New York, New York

A handwritten signature in blue ink, appearing to read 'A. Nathan', is written over a horizontal line.

ALISON J. NATHAN
United States District Judge



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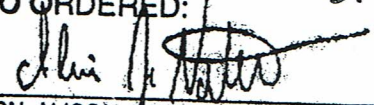
SEYFARTH SHAW LLP

/s/ Anshel Joel Kaplan

Anshel Joel Kaplan

cc: Candice Lue (via first-class mail)
Robert S. Whitman, Esq. (by ECF)

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