UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARKLAND HAMILTON, Plaintiff, - against - SIEMENS HEALTHCARE DIAGNOSTICS, INC. d/b/a SIEMENS HEALTHINEERS AG, SABINE VON SENGBUSCH and RENEE HOWELL, Defendants.	)	Case No. 23-cv-07408-KMK

MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT

Horatio G. Mihet, Esq.
Kristina S. Heuser, Esq.
LIBERTY COUNSEL
P.O. Box 540774
Orlando, FL 32854
(407) 875-1776
hmihet@lc.org
kheuser@lc.org
court@lc.org

TABLE OF CONTENTS

I. PRELIMINARY STATEMENT

With one round of motion practice completed, Defendants now again move to dismiss Plaintiff's First, Third, Fourth, Seventh, Eighth, and Ninth Causes of Action in the Second Amended Complaint. The targeted causes of action encompass Plaintiff's federal and state law claims for religious discrimination, hostile work environment, and retaliation, and his New York State Human Rights Law aiding and abetting claim against his former supervisors. For the reasons detailed below, Defendants' motion should be denied in its entirety, and Plaintiff's well pleaded claims should be allowed to proceed to discovery.

Plaintiff's amended pleading thoughtfully addresses each pleading deficiency identified by the Court in its Order and Opinion on Defendants' first motion to dismiss (ECF No. 41, hereinafter referred to as "Order on MTD"), either by omitting a dismissed claim from the amended pleading or supplementing the factual and legal allegations to "nudge his claim of purposeful discrimination across the line from conceivable to plausible." *Ashcroft v. Iqbal*, 556 US 662, 683 (2009) (quoting *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 570 (2007)) (cleaned up). Each re-asserted claim is now supported by sufficient factual allegations such that Defendants' rote request of the Court to dismiss these claims is wholly lacking in merit.

Defendants' motion rests largely upon their misapprehension of Plaintiff's burden of proof at the pleading stage to establish the requisite inference of discrimination. Plaintiff alleges in the Second Amended Complaint that all of the hostile, abusive, harassing, retaliatory, and other adverse employment actions detailed therein were motivated by his employer's discriminatory animus against him on the basis of his "faith tradition and its incompatibility with the Siemens's so-called 'diversity, equity, and inclusion' initiatives'" and, relatedly, because he "does not fit the mold of what Siemens is looking for when deciding which employees [] it will grant favored status

[to[…because [he] is a traditional male and a committed Christian…" (Second Amended Complaint, ECF No. 54, hereinafter "SAC", ¶ 1). Notwithstanding that no Defendant explicitly stated to Plaintiff that the disdain and hostility exhibited towards him was due to his being a member of any protected class, this is rarely, if ever, the case in discrimination claims. Nevertheless, such claims are permitted to proceed "even though [allegations proffered in support] may be extremely 'thin,' [so long as] such allegations constitute 'bits and pieces of evidence' that together create a 'mosaic' sufficient to clear the low pleading threshold and constitute an inference of discrimination." *Cherner v. CF Bankshares Inc.*, 24-CV-02812 (PMH), 2025 WL 1745864, at *8 (S.D.N.Y. June 23, 2025) (quoting *Hamilton v. Siemens, et al.*, 2025 WL 8693572, at *12). Plaintiff's Second Amended Complaint, drafted with the benefit of this Court's guidance provided by its prior Order, undoubtedly meets this low pleading threshold.

II. ARGUMENT

A. Standard of Review

This Court has concisely and accurately stated the standard of review in, for example, *O'Hara v. Bd. of Coop. Educ. Services, S. Westchester*, 18-CV-8502 (KMK), 2020 WL 1244474 (S.D.N.Y., Mar. 16, 2020):

> In considering Defendants' Motion, the Court is required to "accept as true all of the factual allegations contained in the [C]omplaint." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam); *see also Nielsen v. Rabin*, 746 F.3d 58, 62 (2d Cir. 2014) (same). And, the Court must "draw[ ] all reasonable inferences in favor of the plaintiff." *Daniel v. T & M Prot. Res., Inc.*, 992 F. Supp. 2d 302, 304 n.1 (S.D.N.Y. 2014) (citing *Koch v. Christie's Int'l PLC*, 699 F.3d 141, 145 (2d Cir. 2012)). Further, generally, "[i]n adjudicating a Rule 12(b)(6) motion, a district court must confine its consideration to facts stated on the face of the complaint, in documents appended to the complaint or incorporated in the complaint by reference, and to matters of which judicial notice may be taken." *Leonard F. v. Isr. Disc. Bank of N.Y.*, 199 F.3d 99, 107 (2d Cir. 1999) (citation and quotation marks omitted).

Id. at *6-7. Although it is generally understood that a plaintiff's claims must be plausible to survive a motion to dismiss, "[w]hen, as here, a plaintiff brings claims of employment discrimination or retaliation, however, the facts 'alleged in the complaint need not give plausible support to the ultimate question of whether the adverse employment action was attributable to discrimination [or retaliation]. They need only give plausible support to a minimal inference of discriminatory [or retaliatory] motivation.'" *Whitfield v. City of New York,* 760 F. Supp. 3d 126, 136 (S.D.N.Y. 2024), *reconsideration denied,* 20-CV-4674 (JMF), 2025 WL 327312 (S.D.N.Y. Jan. 29, 2025)*, appeal dismissed,* 25-245, 2025 WL 2238018 (2d Cir. June 2, 2025), and *appeal dismissed,* 25-245, 2025 WL 2238018 (2d Cir. June 2, 2025) (quoting *Littlejohn v. City of New York*, 795 F.3d 297, 311 (2d Cir. 2015)). Ultimately, the question in a Rule 12 motion "is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." *Sikhs for Just. v. Nath*, 893 F. Supp. 2d 598, 615 (S.D.N.Y. 2012) (quoting *Villager Pond, Inc. v. Town of Darien*, 56 F.3d 375, 378 (2d Cir. 1995)).

B. All of Plaintiff's New Allegations Are Timely.

Defendants contend that all of the allegations included in the Second Amended Complaint regarding events that occurred prior to October 8, 2021 are untimely per the Court's prior Order and, therefore, cannot serve to support any of Plaintiff's claims. Defendants' contention does not reflect the entirety of the Court's holding. Although the Court previously determined that only events occurring on or after October 8, 2021 are actionable under Title VII, the Court also held that, with respect to Mr. Hamilton's claims arising under the New York State Human Rights Law, "any allegations occurring after August 4, 2019, are timely." (Order on MTD, p. 17). All new allegations in the Second Amended Complaint occurred after August 4, 2019.

C. Plaintiff Has Plausibly and Sufficiently Pled a Violation of Title VII on the Basis of Religion.

Bearing in mind that "a Title VII plaintiff need not plead a *prima facie* case of discrimination to survive a motion to dismiss," Plaintiff's allegation of a Title VII violation on the basis of his religion is sufficient to survive Defendants' motion to dismiss. *Vega v. Hempstead Union Free School Dist.*, 801 F.3d 72, 76 (2d Cir. 2015). Defendants' challenge to Plaintiff's re-pled first cause of action[1] is unfounded because Plaintiff meets the low pleading threshold by alleging that: 1) he is a Christian; and, 2) when his employer became aware of his commitment to his Christian faith over and above the preferred mores of the company, Defendants subjected him to disparate treatment in the manner detailed in the Second Amended Complaint.

Specifically, it is alleged that Plaintiff is a devout and principled Catholic Christian. (SAC ¶¶ 1, 7, 64). Plaintiff alleges that it was evident to his coworkers that he was a Christian based upon the distinctly religious displays in his workspace and other things from which such an inference could be drawn, including not participating in company-wide gay pride celebrations. (SAC ¶¶ 64-65, 68-69). On account of his faith, Plaintiff has been subjected to disparate treatment by his employer for a long time, most notably by being passed over for promotion and denied equitable pay. (SAC ¶¶ 1, 26-28, 70-71). In addition to this, Plaintiff has been mercilessly harassed by his supervisor, Renee Howell, including being made the subject of a baseless HR investigation at Defendant Howell's behest and being yelled at, humiliated, insulted, disparaged, and ostracized by her in the presence of his coworkers. (SAC ¶¶ 17, 19-21, 25). If not evident to Defendants before, Plaintiff's fidelity to his Christian beliefs and the seriousness with which Plaintiff regards

[1] Defendants did not challenge this claim in their pre-motion letter and should not be permitted to raise these arguments for the first time in their motion. *See* Judge Karas' Individual Rules of Practice Rule II. A. ("The letter shall include each specific argument and relevant case law supporting the movant's position as to why the complaint may fail or partially fail as a matter of law…").

scriptural teaching was made clear to the upper echelons of the company when Plaintiff sought a religious accommodation to his employer's vaccine mandate and the very strongly worded correspondence by which he conveyed his need for such accommodation. (SAC ¶¶ 30, 66-67). Following this, Defendants' conduct against Plaintiff was ratcheted up, including increased hostility and harassment in the workplace and denial of an annual review resulting in denial of a pay increase. (SAC ¶¶ 32-33). Plaintiff was also singled out for disparate treatment by being forced to discontinue remote work and to work in the office alone, performing menial tasks not within his job description (SAC ¶¶ 44-50, 52-53, 55-56), while his actual job duties were removed from him and given to his former assistant, who was then promoted to a position higher than his with the appurtenant salary. (SAC ¶¶ 51, 59-60). Plaintiff was permitted to resume remote work after Human Resources got involved and confirmed there was no legitimate reason for Plaintiff to work in the office alone doing busy work when all the functions of his job could be – and for over a year had been – successfully performed from his home. (SAC ¶ 57).

To begin with, the Supreme Court has "said that the [McDonnell-Douglas] framework is inapplicable at the pleading stage." *Ames v. Ohio Dept. of Youth Services*, 605 U.S. 303, 321 (2025) (Thomas, J., concurring) (quoting *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 508 (2002)). Rather, "to defeat a motion to dismiss or a motion for judgment on the pleadings in a Title VII discrimination case, a plaintiff must plausibly allege that (1) the employer took adverse action against him, and (2) his race, color, religion, sex, or national origin was a motivating factor in the employment decision." *Vega v. Hempstead Union Free School Dist.*, 801 F.3d 72, 87 (2d Cir. 2015). Put differently, a plaintiff need only "plausibly establish minimal support for the inference that the [adverse employment decision] was motivated by discriminatory intent…" *Casarella v.*

New York State Dept. of Transportation, 16-CV-9531(NSR), 2018 WL 4372674, at *5 (S.D.N.Y., Sept. 13, 2018).

The Court has already found that "the assignment of duties outside the scope of his job title and his demotion in relation to his former assistant" constitute adverse employment action against Plaintiff by his employer. (Order on MTD., p. 23). However, the Court held that Plaintiff did not provide sufficient support in the First Amended Complaint that the harassment he was subjected to by this immediate superior, Defendant Renee Howell, constituted adverse employment action. In reaching this conclusion, the Court only considered the lone instance that fell within the timeframe it deemed actionable, which was a meeting that occurred in December 2021. (Order on MTD, p. 20). With respect to this allegation in the First Amended Complaint, the Court noted that the hostility alleged had "not resulted in any materially adverse change in the terms and condition of [his] employment," (Order on MTD, p. 20 quoting *Kirkland-Hudson*, 665 F. Supp. 3d at 453). However, in the Second Amended Complaint, Plaintiff explains that on the same date when the December 2021 meeting occurred, Defendant Howell also denied Plaintiff his annual review which, in turn, deprived him of a pay increase to which he was entitled. (SAC ¶ 33). In addition, allegations in the Second Amended Complaint now demonstrate multiple other adverse employment actions undertaken by Defendants against Plaintiff, including the denial of the pay raise and being singled out for in-office work, and these allegations are now supplemented by new allegations regarding the related HR investigation, finding and remedial action, and Defendant Howell's contemporaneous threat. (SAC ¶ 49, 53-58).

"As to the second element, an action is 'because of' a plaintiff's race, color, religion, sex, or national origin where it was a 'substantial' or 'motivating' factor contributing to the employer's decision to take the action." *Vega* at 85 (citing *Price Waterhouse v. Hopkins,* 490 U.S. 228, 249

(1989)). "Hence, a plaintiff in a Title VII case need not allege 'but-for' causation." *Id.* at 86. "Title VII…does authorize a 'mixed motive' discrimination claim." *Id.* (quoting *Leibowitz v. Cornell Univ.,* 584 F.3d 487, 498 n. 2 (2d Cir. 2009)). Here, Plaintiff unequivocally alleges that Defendants' discriminatory animus towards Plaintiff was on account of him being a Christian male who holds traditional, faith-based values and, therefore, was unwilling to bend to the company's orthodoxy including forced vaccination and gay pride celebrations. Plaintiff's allegations in the Second Amended Complaint and summarized above are sufficient for this Court to draw an inference of religious discrimination, which is all that is required for this claim to withstand Defendants' motion to dismiss. *See*, *Vega* at 77 ("A plaintiff can meet that burden …by indirectly showing circumstances giving rise to an inference of discrimination.") (internal citation omitted). *See also Ames v. Ohio Dept. of Youth Services*, 605 U.S. 303, 325 (2025) (Thomas, J., concurring) ("That conventional rule of civil litigation—that a plaintiff can proceed with direct or circumstantial evidence—applies with full force to Title VII cases.") (quoting *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 99 (2003)) (cleaned up).

The Second Circuit has "cautioned courts to 'be mindful of the elusive nature of intentional discrimination' when making a 'plausibility determination' at the motion-to-dismiss phase '[b]ecause discrimination claims implicate an employer's usually unstated intent and state of mind' and therefore 'rarely is there direct, smoking gun, evidence of discrimination'" *Buon v. Spindler*, 65 F.4th 64, 83 (2d Cir. 2023). The Second Circuit has further "conclude[d] that the inference should not be used to foreclose Title VII and Section 1983 claims at the motion-to-dismiss stage if the plaintiff has otherwise set forth allegations that support a plausible inference of discrimination." *Id.* at 85. Plaintiff's Title VII and NYSHRL religious discrimination claims must be allowed to proceed. Should this Court hold otherwise, though, the dismissal of these claims

should be without prejudice because Defendants did not raise this argument in their letter requesting a pre-motion conference nor during the conference itself. *See* Judge Karas' Individual Rules of Practice Rule II. A. ("If a complaint is ultimately dismissed on the grounds set forth in the movant's initial letter, it may be dismissed with prejudice as the nonmovant already had a chance to research the movant's arguments and amend as needed.").

D. Plaintiff Has Sufficiently and Plausibly Alleged a Claim of Retaliation in Violation of Title VII and the New York State Human Rights Law.

The Court previously dismissed Plaintiff's Title VII and NYSHRL retaliation claims because "[t]here are no other clarifying allegations with respect to the HR complaint…[and] without more information, the Court cannot determine whether the discrimination complained of was related to Plaintiff's religion or sex" (Order on MTD, p. 28), and "the Amended Complaint is not clear on the timeline of the alleged adverse employment actions and the EEOC Charge." (Order on MTD, p. 29). Plaintiff's Second Amended Complaint addresses and fully resolves these concerns. Accordingly, Plaintiff's claims sounding in retaliation must be allowed to proceed.

The Second Amended Complaint clarifies that Plaintiff made two separate complaints to Siemens' HR department. (SAC ¶¶ 34 and 54). The first complaint was regarding all of Defendant Howell's conduct towards Plaintiff from April through December 2021, which can be summarized as harassment amounting to a hostile work environment and denial of his right to a performance review and pay increase. While Plaintiff does not currently recall – and therefore has not specifically alleged – whether he explicitly attributed Defendant Howell's maltreatment of him to discrimination on the basis of his religion or sex in his complaint to Human Resources, this level of specificity in an internal complaint will be resolved in discovery and is not required to sustain a retaliation claim. *See, e.g.*, *Moore v. Hadestown Broadway Ltd. Liab. Co.*, 722 F. Supp. 3d 229, 254-55 (S.D.N.Y. 2024) ("[A]n employee is not required to mention discrimination or use

particular language for her complaint to constitute a protected activity.") (cleaned up). In view of the facts and circumstances surrounding the complaints, which HR was well aware of (*i.e.*, Plaintiff being a Christian and not fitting into the corporate culture as a result, and being a man with female superiors that repeatedly passed him over for promotion and pay raise, as alleged in the SAC at ¶ 1, 64-71, 73-77), HR "should have reasonably understood that Plaintiff was complaining about unlawful [] discrimination." *Moore* at 254. "Accordingly, [the Court should find that] Plaintiff has plausibly alleged that []he engaged in a protected activity." *Id.* at 255. The allegations set forth in the Second Amended Complaint regarding Plaintiff's second complaint to HR are that he recounted "incidents of discrimination, retaliation, and hostility in the workplace he was being subjected to" since returning from the leave he was granted in response to his request for religious accommodation. (SAC ¶¶ 43-54). The Second Amended Complaint also makes clear that Plaintiff's Charge of Discrimination was filed with the EEOC on May 4, 2022, which preceded Plaintiff being stripped of his financial duties and Defendants' promoting Plaintiff's former assistant to a job title and salary higher than his. (SAC ¶ 59).

The Second Amended Complaint also includes a previously overlooked circumstance that broadens the temporal scope of incidents that should be deemed retaliatory. In January 2021, Defendant Howell initiated an HR investigation into Plaintiff, which was found to be wholly without merit. (SAC ¶ 17-18). Upon conclusion of the investigation in April 2021, HR advised Plaintiff that he should not suffer retaliation as a result of his participation in their investigation and its outcome in his favor. (SAC ¶ 18). And yet, this is precisely what Plaintiff suffered, and therefore, everything that occurred after Plaintiff's participation in the HR investigation beginning in or around January 2021 should be construed as retaliatory. *See Deravin v. Kerik*, 335 F.3d 195, 203-4 (2d Cir. 2003) ("Title VII's anti-retaliation provision is broadly drawn. Section 704(a) of

Title VII makes it unlawful to retaliate against an employee, '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.' 42 U.S.C. § 2000e–3(a) (emphasis added). As courts have consistently recognized, the explicit language of § 704(a)'s participation clause is expansive and seemingly contains no limitations.").

E. Plaintiff Has Sufficiently and Plausibly Alleged a Claim of Hostile Work Environment in Violation of Title VII and the New York State Human Rights Law.

Plaintiff's Second Amended Complaint also cures the pleading concerns the Court identified in Plaintiff's First Amended Complaint with respect to his hostile work environment claims. In assessing the viability of Plaintiff's hostile work environment claims, the Court must bear in mind that "[a]t the pleading stage of the case…plaintiffs need not plead a *prima facie* case of discrimination based on hostile work environment, so long as they provide in the complaint a short and plain statement of the claim that shows that plaintiffs are entitled to relief and that gives the defendant fair notice of plaintiffs' claim for hostile work environment and the grounds upon which that claim rests." *Kassner v. 2nd Ave. Delicatessen Inc.*, 496 F.3d 229, 241 (2d Cir. 2007). The Second Amended Complaint does this.

The Court found that the allegations in the First Amended Complaint were not sufficiently severe or pervasive to alter the conditions of Plaintiff's employment. (Order on MTD, p. 34). But, the Court only considered the lone incident of verbal harassment Defendant Howell launched at Plaintiff in December 2021, and the forced return to work to perform menial tasks alone following the expiration of Plaintiff's FMLA leave and the lifting of the COVID vaccine mandate.[2] As

[2] Although the Court previously held that only incidents occurring after October 8, 2021 are timely for purposes of supporting Plaintiff's Title VII hostile work environment claim, Plaintiff maintains that the earlier incidents alleged in the SAC should be considered pursuant to the continuing violation doctrine. *See, e.g.*, *Isbell v. City of New York*,

discussed above, the Second Amended Complaint contains additional allegations regarding what occurred in December 2021, including Defendant Howell denying Plaintiff his annual review and pay increase that would routinely follow, and clarifies that Plaintiff was singled out for return to in-office work, which was confirmed by HR to be improper and resulted in a directive that Plaintiff be permitted to resume remote work along with the entirety of the workforce. (SAC ¶¶ 32-36, 45-58). The Second Amended Complaint also includes a litany of instances of harassment, insults, and intimidation tactics perpetrated by Defendants against Plaintiff beginning in January 2021, which is within the timeframe (beginning August 4, 2019) this Court already deemed actionable under the New York State Human Rights Law. (*See* Order on MTD, p. 17 and SAC ¶¶ 16-28.)

"[I]n this Circuit, Plaintiff 'need not show that [his] hostile working environment was both severe *and* pervasive; only that it was sufficiently severe *or* sufficiently pervasive, or a sufficient combination of these elements, to have altered [his] working conditions.'" *Harding v. Dorilton Capital Advisors LLC*, 635 F. Supp. 3d 286, 300-01 (S.D.N.Y. 2022) (quoting *Pucino v. Verizon Commc'n, Inc.*, 618 F.3d 112, 119 (2d Cir. 2010)) (emphases in original). Plaintiff's experience of Defendants' conduct described in the Second Amended Complaint was that it was both severe and pervasive, but even if reasonable minds can arguably disagree as to the severity of the conduct alleged, the pervasiveness of the hostility and harassment cannot be reasonably disputed given the number of instances that occurred within a condensed timeframe. In any event, "[d]etermining

316 F. Supp. 3d 571, 586 (S.D.N.Y. 2018); *see also Bermudez v. City of N.Y.*, 783 F. Supp. 2d 560, 574 (S.D.N.Y. 2011) (*quoting Fitzgerald v. Henderson*, 251 F.3d 345, 359 (2d Cir. 2001)) ("Under the continuing-violation doctrine, "'if a plaintiff has experienced a continuous practice and policy of discrimination, . . . the commencement of the statute of limitations period may be delayed until the last discriminatory act in furtherance of it."). Likewise, "[a] claim of hostile work environment is timely so long as one act contributing to the claim occurred within the statutory period; if it did, 'the entire time period of the hostile environment may be considered by a court for the purposes of determining liability.'" *Gunning v. New York State Just. Ctr. for Prot. of People With Special Needs*, No. 119CV1446GLSCFH, 2020 WL 5203673, at *4 (N.D.N.Y. Sept. 1, 2020) (*quoting Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 117 (2002)).

whether conduct is severe or pervasive enough to create a hostile work environment involves a question of fact and is generally inappropriate to determine at the pleadings stage of a litigation." *Id.* at 301 (quoting *Patane v. Clark*, 508 F.3d 106, 114 (2d Cir. 2007)). Because Plaintiff has alleged harassment in the context of his employment that caused him severe emotional distress, was recognized by others – including the company's HR department – as outrageous and damaging to Plaintiff, and meaningfully altered his experience and opportunity for advancement at work as compared with his peers (SAC ¶¶ 81-88, 94-95), he has met the pleading threshold and his Title VII hostile work environment claim must be allowed to proceed to discovery. *See, e.g.*, *Kassner, supra* at 241.

The pleading threshold is even lower for Plaintiff's New York State Human Rights Law hostile work environment claim. "Where a plaintiff files a claim under section 296(1)(h) on or after October 11, 2019, the plaintiff need not establish that the alleged harassment would be considered severe or pervasive under precedent applied to harassment claims." *Elco v. Aguiar*, 226 A.D.3d 649, 650 (2d Dep't 2024) (cleaned up). Accordingly, this claim must remain intact.

F. Plaintiff Has Sufficiently and Plausibly Alleged an Aiding and Abetting Claim against Defendants Howell and von Sengbusch in Violation of the New York State Human Rights Law.

The Court previously determined that "Plaintiff has plausibly stated a claim for discrimination in relation to his demotion" and therefore established the requisite predicate to support his NYSHRL aiding and abetting claim. (Order on MTD, p. 40). The shortcoming the Court identified with respect to this claim was insufficient allegations regarding the personal involvement of the individually named Defendants. Insofar as this insufficiency has been cured in the Second Amended Complaint by the addition of more detailed allegations regarding the direct involvement of Defendants Howell and von Sengbusch in the discriminatory acts undertaken

against Plaintiff, Plaintiff has met his pleading burden and the NYSHRL aiding and abetting claim should be allowed to proceed to discovery.

Among the added allegations in the Second Amended Complaint are the false accusations Defendant Howell made to Human Resources against Plaintiff, which launched a harassing investigation into him (SAC ¶ 17-18); multiple, almost back-to-back unprovoked instances of Defendant Howell publicly denigrating, harassing, and ostracizing Plaintiff or otherwise altering or attempting to alter the conditions of his employment (SAC ¶¶ 19-28, 32-33); and the baseless denial of FMLA leave (SAC ¶ 38) and subsequent insistence upon his return to the office, only to assign him unnecessary busy work to the exclusion of all other duties, which was confirmed by HR to be an improper, seemingly retaliatory act (SAC ¶¶ 43-53, 55-58). These actions, coupled with the knowledge Plaintiff already had based upon the crying confession of his former supervisor that Defendant von Sengbusch was personally directing the attacks on Plaintiff and his employment (SAC ¶ 15-16), create a reasonable inference that Defendant von Sengbusch was directing Defendant Howell's actions, too. Though the allegations of von Sengbusch's personal involvement in the discriminatory and retaliatory acts Plaintiff suffered are fewer than those pertaining to Defendant Howell, because von Sengbusch was the head of the company and naturally further removed from Plaintiff than his immediate supervisor, the allegations regarding Defendant von Sengbusch are sufficient to maintain the aiding and abetting claim against her at this juncture. Besides directing Defendant Howell's actions, these allegations include von Sengbusch rebuffing Plaintiff's request for a meeting, which he made at the suggestion of HR, and doing nothing to address his complaints of discrimination and retaliation, but rather alerting the chief perpetrator – Defendant Howell – thereto, which served to further energize her campaign of retaliation and harassment against Plaintiff (SAC ¶ 34-36). Additionally, Plaintiff now also brings

allegations concerning Defendant von Sengbusch's involvement in the denial of religious accommodation and FMLA leave to Plaintiff, the combination of which would have resulted in his termination were it not for the fortuitous timing of the lifting of the company-wide COVID-19 vaccination mandate (SAC ¶¶ 43-48). Plaintiff's effective demotion, too, could not have occurred without the approval – if not at the behest – of both Defendants Howell and von Sengbusch. (SAC ¶ 59). All of the foregoing allegations occurred after the August 4, 2019 cutoff date determined by this Court for occurrences to be actionable under the New York State Human Rights Law.

"Where a plaintiff files a claim under the NYSHRL on or after August 12, 2019, the NYSHRL 'shall be construed liberally for the accomplishment of the remedial purposes thereof, regardless of whether federal civil rights laws, including those laws with provisions worded comparably to the provisions of [the NYSHRL], have been so construed'" *Elco v. Aguiar*, 226 AD3d 649, 651 (2d Dep't 2024) (quoting Executive Law § 300; *see* L 2019, ch 160, §§ 6, 16). Because there is no indication that "without [Howell and von Sengbusch]'s conduct,…[Plaintiff's] superiors would have subjected h[im] to inferior terms of employment[,]" he has "sufficiently alleged that [Howell and von Sengbusch] aided, abetted, and incited this alleged harassment" and other discriminatory acts. *Elco at* 651.

III. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that Defendants' motion to dismiss Plaintiff's Second Amended Complaint, together with ancillary relief sought therein, be denied in its entirety. Plaintiff also requests leave to further amend should the Court find that any pleading deficiencies remain.

Dated: Orlando, Florida
September 8, 2025

Respectfully Submitted,

/s/ Kristina S. Heuser
Kristina S. Heuser (KH3612)
Horatio G. Mihet (admitted *pro hac vice*)
LIBERTY COUNSEL
P.O. Box 540774
Orlando, FL 32854
(407) 875-1776
kheuser@lc.org
hmihet@lc.org
court@lc.org

ATTORNEY CERTIFICATION

I hereby certify, pursuant to Rule II(B) of the Individual Rules and Practices of the Honorable Kenneth M. Karas, that the foregoing Memorandum of Law in Opposition to Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint was prepared on a computer using Microsoft Word, contains print no smaller than 12-point, footnotes no smaller than 10 point, and bears margins no smaller than one inch.

Type. A proportionally spaced typeface was used, as follows:
Name of typeface: Times New Roman
Point size: 12
Margins: 1 inch
Line spacing: Double

Name of footnote typeface: Times New Roman
Point size: 10
Margins: 1 inch
Line spacing: Single

Word Count. The total number of words in this brief, inclusive of point headings and footnotes and exclusive of the title page, the table of contents, table of authorities, signature, and this Certification is 4,660 In preparing this Certification, I have relied on the word count of the word processing system used to prepare this memorandum of law.

Date: Naples, Florida
September 8, 2025

/s/ Kristina S. Heuser
Kristina S. Heuser