SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. J. MACHELLE SWEETING** **PART** **62**

Justice

----------X

RONALD MYERS,

Plaintiff,

- v -

INSPECTOR MARY CHRISTINE DOHERTY, LIEUTENANT SEAN CONRY, DEPUTY INSPECTOR JAMES, FRANCIS KOBEL, SERGEANT RICHARD BEARY AND THE CITY OF NEW YORK

Defendants.

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INDEX NO. 158858/2022

MOTION DATE 02/09/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29

were read on this motion to/for DISMISSAL.

HON. J. MACHELLE SWEETING, J.S.C.:

In this employment discrimination matter, Defendants INSPECTOR MARY CHRISTINE DOHERTY, LIEUTENANT SEAN CONRY, DEPUTY INSPECTOR JAMES FRANCIS KOBEL, SERGEANT RICHARD BEARY AND THE CITY OF NEW YORK (collectively "DEFENDANTS") move, pursuant to CPLR 3211(a)(1), (5) and (7), to dismiss the complaint. Plaintiff, RONALD MYERS, opposes the motion.

BACKGROUND

Plaintiff Ronald Myers, "a [b]lack man, was a highly accomplished and decorated police officer and sergeant at the New York City Police Department ("NYPD")." (*See* NYSCEF Doc. No. 1 at ¶3). In 2005, while plaintiff was working in the Public Information unit of the NYPD, he "objected to racist comments concerning the prevalence of crime in the Black community

made in the workplace by a white NYPD sergeant, "defendant Mary Christine Doherty (hereinafter "Doherty"). (*id.* at ¶4). Plaintiff alleges that Doherty retaliated by arranging for his transfer out of the prestigious assignment. (*id.*).

In 2012, plaintiff was transferred to the Counterterrorism Bureau, where Doherty was a supervisor and thereafter became plaintiff's commanding officer. (*id.*). Plaintiff alleges that Doherty's retaliatory harassment resumed. Specifically, "over the next seven years, [d]efendant Doherty retaliated and discriminated against [plaintiff] by imposing unmerited discipline on him." (*id.* at ¶5). Plaintiff further alleges that Lieutenant Sean Conroy (hereinafter "Conroy") unfairly downgraded plaintiff's evaluation and barred plaintiff "from using a bathroom used by Doherty and other white personnel." (*id.*).

Plaintiff alleges that on October 15, 2019, Doherty informed plaintiff that he would be transferred to a precinct assignment "which would end his hopes of advancement at the NYPD and impair his ability to find employment after his NYPD career." (*id.* at ¶ 6). Plaintiff maintains that the transfer was "wholly pretextual" whereas "white personnel in the Counterterrorism Bureau under Doherty's command engaged in serious acts of misconduct without being transferred or otherwise disciplined." (*id.*). Plaintiff subsequently filed a complaint of discrimination with the NYPD's Equal Employment Opportunity Division ("EEOD")." (*id.*).

Plaintiff further alleges that defendant Sergeant Beary (hereinafter "Beary"), who was the EEOD Supervisor, met with plaintiff and advised him that he would assign an investigator to investigate the complaint. (*id.* at ¶7). Plaintiff claims no investigator was assigned, nor was plaintiff interviewed and thus no investigation was conducted. (*id.*).

On November 20, 2019, plaintiff alleges that the investigation was closed by Defendant Captain James Kobel (hereinafter "Kobel"), the commanding officer of the EEOD, "based on an

alleged finding that there was no evidence of employment discrimination." (*id.*). Plaintiff adds that Kobel "was relieved of his command for making racist, sexist and other offensive remarks on a social media site under a pseudonym." (*id.* at ¶8).[1]

Plaintiff alleges that in order to avoid the "career-killing transfer" and to escape defendant Doherty's harassment, plaintiff "was forced to retire from the NYPD on June 30, 2020" five years prior to his intended retirement date. (*id.* at ¶9).

PROCEDURAL HISTORY

Plaintiff's federal claims were dismissed in federal court *(see Myers v Doherty,* 2021 WL 5599503, at *15 [SD NY, Nov. 30, 2021, No. 21-Cv-219 [PAE]).

Plaintiff appealed to the Second Circuit, which upheld the District Court's decision with respect to plaintiff's federal claims. (*see Myers v Doherty*, 2022 WL 4477050, at *4, [2d Cir Sept. 27, 2022]). The Second Circuit stated that

> "After dismissing Myers's federal claims, the district court declined to exercise supplemental jurisdiction over Myers's NYCHRL claims and dismissed them without prejudice. We conclude that, having properly dismissed all federal claims, the district court did not abuse its discretion in also dismissing the state-law claims. *See Kolari v. New York-Presbyterian Hosp.*, 455 F.3d 118, 122 (2d Cir. 2006). The district court reasonably concluded that the values of economy, convenience, fairness, and comity did not militate in favor of exercising supplemental jurisdiction. *See United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966); *Catzin v. Thank You & Good Luck Corp.*, 899 F.3d 77, 85 (2d Cir. 2018)." (*id.*).

Thereafter on October 18, 2022, plaintiff commenced this instant proceeding against the defendants, pursuant to the NYSHRL and NYCHRL. (*See* NYSCEF Doc. No. 1).

[1] Plaintiff has annexed a link to his complaint dated December 9, 2020 (NYPD Deputy Inspector James Kobel accused of prejudice, sexist comments online - ABC7 New York (abc7ny.com)

ARGUMENTS

Defendants move to dismiss the complaint in its entirety. First, movants contend that plaintiff's discrimination and retaliation claims are partially time-barred. (*See* NYSCEF Doc. No. 23 at pg. 10). Second, defendants argue that plaintiff's claims arising under the New York State Constitution must be dismissed for plaintiff's failure to file a notice of claim. (*id.* at pg. 11). Third, defendants contend that collateral estoppel precludes plaintiff from relitigating several allegations that form the basis of many of his current claims. (*id.* at pg. 12-14). Fourth, defendants argue that plaintiff cannot assert a private right of action under the New York State Constitution. (*id.* at pg. 14-15). Fifth, defendants contend that plaintiff's complaint fails to state a claim of relief for discrimination, retaliation and aiding and abetting. (*id.* at pg. 15-20). Lastly, defendants argue that plaintiff is not entitled to punitive damages. (*id.* at pg. 20).

In opposition, plaintiff argues first that plaintiff's discrimination and retaliation claims are not time-barred because plaintiff alleges a continuing violation under the NYCHRL. (*See* NYSCEF Doc. N0. 26 at pg. 19-20). Plaintiff also argues that none of his claims are barred by collateral estoppel as "the issues decided in the prior action are not 'decisive of the present action because the federal court never decided issues related to state law claims, never decided whether the pleadings satisfied the standard under New York Law, and never considered many facts in the present complaint." (*id*. at pg. 20). Plaintiff further contends that he pleads both an adverse employment action and constructive discharge. (*id*. at pg. 23-26). Plaintiff also claims to allege a claim for hostile work environment (*id*. at pg. 26-27), an inference of discrimination (*id*. at 27-29) and retaliation (*id*. at 29-30). Lastly, plaintiff argues that he is entitled to punitive damages because "whether the City of New York has indemnified the individual [d]efendants for the harm alleged

and therefore would be required to pay any punitive damages awarded is a matter between the [d]efendants." (*id*. at pg. 24).

DISCUSSION

I. Defendants' Motion to Dismiss

In considering a motion to dismiss for failing to state cause of action under CPLR 3211 (a) (7), the pleading is to be afforded a liberal construction (*see* CPLR § 3026), and the court should accept as true the facts alleged in the complaint, accord plaintiff the benefit of every possible inference, and only determine whether the facts, as alleged, fit within any cognizable legal theory (*Hurrell-Harring v State of New York*, 15 NY3d 8, 20 [2010]; *see also Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). However, "bare legal conclusions, as well as factual claims flatly contradicted by the record, are not entitled to any such consideration" (*Silverman v Nicholson*, 110 AD3d 1054, 1055 [2nd Dept 2013] [internal quotation marks and citation omitted]). "[A] motion to dismiss a pleading will fail, if, from its four corners, factual allegations are discerned which taken together manifest any cause of action cognizable at law" (*Tenzer, Greenblatt, Fallon & Kaplan v Ellenberg*, 199 AD2d 45, 45 [1st Dept 1993]). In the context of a motion to dismiss, employment discrimination cases are generally reviewed under notice pleading standards and therefore "a plaintiff alleging employment discrimination 'need not plead [specific facts establishing] a prima facie case of discrimination' but need only give 'fair notice' of the nature of the claim and its grounds" (*Vig v New York Hairspray Co., L.P.*, 67 AD3d 140, 145 [1st Dept 2009], *citing Swierkiewicz v Sorema N.A.*, 534 US 506, 514-515 [2002]).

a. Statute of Limitations

Pursuant to CPLR 3211 (a) (5), the Court may dismiss a cause of action as time-barred under the applicable statute of limitations. The initial burden is on the defendant to show that the claims are time-barred by the applicable statute of limitation (*Jalayer v Stigliano*, 94 AD3d 702, 703 [2d Dept 2012]). "The burden then shifts to the plaintiff to raise an issue of fact as to whether the statute of limitations was tolled or was otherwise inapplicable, or whether they actually commenced the action within the applicable limitations period" (*id.*). An action to recover damages for discriminatory practices under NYSHRL and NYCHRL is governed by a three-year statute of limitation (*see* CPLR 214 [2]; Administrative Code § 8-502 [d]); *Koerner v State of N.Y., Pilgrim Psychiatric Ctr.*, 62 NY2d 442, 446 [1984]).

As defendants rightfully argue, plaintiff commenced a federal action on January 11, 2021. (*See* NYSCEF Doc. No. 23 at pg. 9). Therefore, any actions prior to January 11, 2018 would be time-barred and dismissed.

Plaintiff's argument that the "continuous violation doctrine under the NYCHRL is broader than either the federal or state law" while arguing that "this logic applies equally to the NYSHRL after the 2019 amendments" is unavailing. (*See* NYSCEF DOC. NO. 26 at pg. 19).

Under the NYCHRL, a continuing violation may be found "where specific and related instances of discrimination are permitted by the employer to continue unremedied for so long as to amount to a discriminatory policy or practice" (*Morgan v NYS Atty. Gen.'s Off.*, 2013 WL 491525, at *12, 2013 US Dist LEXIS 17458, *37 [SD NY, Feb. 8, 2013, No. 11 CIV 9389 PKC JLC] [internal quotation marks and citations omitted]). Under the continuing violation doctrine, "the commencement of the statute of limitations period may be delayed until the last discriminatory act in furtherance of it" (*Cornwell v Robinson*, 23 F3d 694, 703-704 [2d Cir

1994][internal quotation marks and citation omitted]; *Center for Independence of the Disabled v Metropolitan Transp. Auth.*, 184 AD3d 197, 200-201 [1st Dept 2020] ["Under the NYCHRL...continuing acts of discrimination within the statutory period will toll the running of the statute of limitations until such time as the discrimination ends"]).

Here, plaintiff fails to plead any instances where a continuing violation theory could be applied. Plaintiff first alleges that in 2005, plaintiff was "objected to racist comments concerning the prevalence of crime in the Black community made in the workplace by a white NYPD sergeant, [Doherty]." (*See* NYSCEF Doc. No. 1 at ¶4). Plaintiff then alleges that Doherty "immediately retaliated against [plaintiff] by arranging for his transfer out of the prestigious assignment." (*id.*). Plaintiff then alleges that in 2012, he was transferred to the Counterterrorism Bureau, where he was supervised by Doherty. (*id.* at ¶5). Plaintiff adds, without any specific information, "over the next seven years, [d]efendant Doherty retaliated and discriminated against [plaintiff] by imposing unmerited discipline on him." (*id.* at ¶5). Plaintiff further alleges that Lieutenant Sean Conroy (hereinafter "Conroy") unfairly downgraded plaintiff's evaluation and barred plaintiff "from using a bathroom used by Doherty and other white personnel." (*id.*).

The incidents in 2005 and 2012 are too far removed, and lack the specificity required to establish that a discriminatory policy or practice existed.

Accordingly, that branch of defendants' motion seeking an order dismissing the complaint, pursuant to CPLR 3211 (a) (5), as time-barred, is granted solely to the extent that plaintiff is barred from asserting any claims accruing prior to January 11, 2018.

b. Discrimination (Count III - Discrimination Under NYSHRL; Count V – Discrimination Under NYCHRL)[2]

Under the NYSHR, plaintiffs must state a *prima facie* cause of action for employment discrimination by pleading that: (1) they are members of a protected class; (2) they are qualified to hold the position; (3) they suffered an adverse employment action; and (4) the adverse action occurred under circumstances giving rise to an inference of discrimination (*Stephenson v Hotel Empls. & Rest. Empls. Union Local 100 of AFL-CIO*, 6 NY3d 265, 270 [2006]; *see also Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 305 [2004]).

While the analysis for pleading a discrimination claim under the NYCHRL follows the same four rubrics as the NYSHRL, the more liberal intent of the NYCHRL must be considered in evaluating the adequacy of a plaintiff's claim (*Romanello v Intesa Sanpaolo, S.p.A.*, 22 NY3d 881, 884-885, [2013]; *Bennett v. Health Mgt. Sys., Inc.*, 92 AD3d 29, 36-37 [1st Dept 2011], *lv denied* 18 NY3d 811 [2012]; Local Law No. 85 [2005] of City of NY § 7, *amending* Administrative Code § 8-130 [declaring that the provisions of the NYCHRL "shall be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York State civil and human rights laws ... have been so construed"]).

Under NYCHRL, plaintiffs need not demonstrate an adverse employment action, "but only that they were treated less than others because of their membership in a protected class" (*Dimitracopoulos v City of New York*, 26 F Supp 3d 200, 216 [ED NY 2014]). Nonetheless, the plaintiff still bears the burden of showing that the conduct is caused by a discriminatory motive (*Juillet v City of New York*, 77 Misc 3d 1002, 1006 [Sup Ct, NY County 2022], *citing Mihalik v*

[2] In his "Memorandum of Law in Opposition to Defendants' Motion to Dismiss the Complaint," plaintiff argues that he does, in fact, allege a hostile work environment. However, no such claim exists in plaintiff's underlying complaint and plaintiff appears to be raising this issue for the first time in his opposition. Accordingly, any claims of a hostile work environment are not considered.

Credit Agricole Cheuvreux N. Am., Inc., 715 F3d 102, 110 [2d Cir 2013]). When determining claims under the NYSHRL and NYCHRL, New York Courts may look to how federal law has analyzed those laws (*McIntyre v Manhattan Ford, Lincoln-Mercury*, 175 Misc 23 795, 802 [Sup Ct, New York County 1997]).

Here, plaintiff states that as a black man, he is a member of a protected class. (*See* NYSCEF DOC. NO. 1 at ¶ 3). Plaintiff, who was a sergeant of the NYPD, was qualified for employment as a law enforcement officer. (*id*).

An inference of discrimination can be shown by facts alleging that a decision maker made a remark reflecting discriminatory intent or by any allegation that persons similarly situated to plaintiff, who were not members of the same protected class, were treated more favorably than plaintiff (*Brown v City of NY*, 188 AD3d 518, 519 [1st Dept 2020]). Moreover, to allege disparate treatment, a plaintiff must allege facts tending to show that plaintiff and the comparator are similarly situated in "all material respects" (*Graham v Long Island R.R.*, 230 F3d 34, 40 [2d Cir 2000]). This standard can be satisfied by allegations that plaintiff and the other persons have the same title, experience, salary and job responsibilities (*Uwoghiren v City of New York*, 148 AD3d 457, 456 [1st Dept 2017]). Additionally, NYCHRL applies a more lenient standard wherein the plaintiff need "only show that [he] was treated differently from others in a way that was more than trivial, insubstantial, or petty" (*Dimitracopoulos v City of New York*, 26 F Supp 3d 200 at 216).

Plaintiff alleges that on September 5, 2018, defendant Doherty called plaintiff into her office "and told him that he could no longer use the bathroom that [d]efendant Doherty and the supervisors used." (*See* NYSCEF Doc. No. 1 at p. 36). Plaintiff further alleges that he was permitted to "and did, use this bathroom, along with other personnel in the unit holding a rank of sergeant or higher." (*id*.). Plaintiff further alleges that defendant Doherty gave all other sergeants,

"all of whom were white, keys to the bathroom and explicit permission to use it." (*id.*). Plaintiff identified three specific sergeants who were given keys to the aforementioned bathroom. (*id.*).

Plaintiff then alleges that he was informed "that he was being transferred from his prestigious assignment at the Counterterrorism Bureau to a far less prestigious precinct assignment allegedly because a single email [plaintiff] had written to the Counterterrorism Chief was insufficiently detailed." (*See* NYSCEF Doc. No. 1 at ¶41). Plaintiff maintains "[t]he email in question, however, contained all the information the Chief had requested." (*id.* at ¶42). Plaintiff goes on to allege that other "white members of the NYPD under [d]efendant Doherty's command…had engaged in serious misconduct including losing weapons, abuse of authority and official misconduct, being intoxicated on duty, and sexual harassment, all without being transferred or otherwise disciplined." (*id* at ¶43). Plaintiff names two specific officers as comparators; an officer who allegedly lost his NYPD-issued gun and a detective accused of "directing racist language towards a taxi driver and mocking the driver's accent during a traffic stop." (*id*). He also adds instances of "several Counterterrorism officers becoming intoxicated on a training mission to Afghanistan; and another white detective directing sexual comments and gestures towards a female sergeant." (*id.*). None of the Counterterrorism officers were specifically named. Moreover, the latter detective was allegedly transferred to a more prestigious position after a complaint. (*id.*).

Plaintiff ultimately did not transfer but instead retired on June 30, 2020 "five years prior to [plaintiff's] planned retirement." (*id.* at ¶56). Plaintiff also added that "had [plaintiff] worked until June 30, 2025, his pension benefits would have been significantly greater." (*id.*)

Defendants contend, that plaintiff fails to plead an adverse employment action. (*See* NYSCEF Doc. No. 23 at p. 16).

Here, plaintiff's allegations of racial discrimination under the NYSHRL fail, first, because plaintiff does not adequately plead disparate treatment. A plaintiff must demonstrate a connection between the incidents he complains of and a relevant protected characteristic. Instead, plaintiff merely asserts bare legal conclusions without factual specificity (*Shah v Wilco Sys., Inc.*, 27 AD3d 169, 177 [1st Dept 2005] [disparate treatment claim dismissed where plaintiff failed to establish comparators were similarly situated in all material respects]; *see also Pappas v Moody's Inv. Serv.*, 202 AD3d 630, 630 [1st Dept 2022]). Second, assuming, *arguendo*, that a notice of transfer to another unit constitutes an adverse employment action, plaintiff fails to plead facts sufficient to establish that the adverse action occurred under circumstances that gave rise to an inference of discrimination. Even under the more lenient standard of the NYCHRL, dismissal is appropriate if a plaintiff fails to allege that discrimination played a role in the defendant's actions (*See Montgomery v New York City Trans. Auth.*, 806 Fed Appx 27, 31 [2d Cir 2020] [despite less stringent standard for NYCHRL claim, no proof plaintiff was treated less well or that discrimination played any role].

Here, plaintiff has failed to demonstrate how discrimination played any role in an adverse employment action, namely that he was being transferred to "a far less prestigious precinct." (*id.* at ¶41). Plaintiff's claims that the transfer was precipitated "because a single email [plaintiff] had written to the Counterterrorism Chief was insufficiently detailed" and that [d]efendant Doherty's decision to transfer [plaintiff], for essentially no reason, was discriminatory and retaliatory" is merely conclusory and is unsupported by any of the facts alleged. (*id.* at 43).

Lastly, as plaintiff has failed to state a claim for discrimination under NYSHRL and NYCHRL, his claims that defendants Kobel and Beary aided and abetted in any retaliation cannot survive and must be dismissed. (*See* Executive Law § 296[6]; Administrative Code of City of N.Y. § 8-107[6]).

Accordingly, the branches of defendants' motion dismissing counts three and five are granted.

c. Retaliation (Count IV – Retaliation Under NYSHRL; Count VI Under NYCHRL)

It is unlawful for an employer to retaliate against an employee for having opposed a discriminatory practice (Executive Law § 296 [7]; see also Administrative Code § 8-107[7]). To state a retaliation claim under NYSHRL and NYCHRL, plaintiff must allege (1) that he engaged in a protected activity, (2) that the employer knew of the activity, (3) that the employer retaliated, and (4) that there is a causal connection between the complaint and the retaliatory conduct (*Torre v Charter Communications, Inc.*, 493 F Supp 3d 276, 288-289 [SD NY 2020]).

Under the NYSHRL, the employer must have subjected plaintiff to a materially adverse action, whereas under the NYCHRL, the retaliation need only consist of an action that would be reasonably likely to deter a person from engaging in protected activity (*Nieblas-Love v New York City Hous. Auth.*, 165 F Supp 3d 51, 70 [SD NY 2016].

Here, plaintiff argues that "[d]efendants retaliated against [p]laintiff for his objection to race discrimination and, with respect to [d]efendants Kobel and Beary, aided and abetted and failed to intervene in the retaliation of the other [d]efendants." (*See* NYSCEF Doc. No. 1 at ¶¶ 68, 74). Plaintiff's complaint alleges retaliation for objecting to racist remarks made by defendant Doherty going as far back as 2005. As discussed previously (*supra*), any actions accruing prior to January

11, 2018 are time barred and, thus, are not considered. Plaintiff has not alleged any racist remarks were made to him after January 11, 2018.

Moreover, to the extent plaintiff is alleging that he endured retaliation in the form of a transfer for filing an EEOD complaint, plaintiff was notified of the transfer on September 5, 2018. (*id*. at ¶36). However, plaintiff filed his EEOD complaint on or about October 16, 2019, nearly a full year after he was informed of his transfer. (*id*. at ¶ 49). Thus, plaintiff has not sufficiently pled a claim for retaliation.

Lastly, as plaintiff has failed to state a claim for retaliation, his claims that defendants Kobel and Beary aided and abetted in any retaliation cannot survive and must be dismissed. (*See* Executive Law § 296[6]; Administrative Code of City of N.Y. § 8-107[6]).

Accordingly, the branches of defendants' motion dismissing counts four and six are granted.

d. **Count I – Discrimination in Violation of the Equal Protection Clause of the New York State Constitution against Defendants Doherty, Conry, Kobel and Beary; Count II – in Violation of the Equal Protection Clause of the New York State Constitution against Defendants Doherty, Conry, Kobel and Beary;**

Defendants' argue that plaintiff's first and second counts, alleging discrimination and retaliation in violation of the Equal Protection Clause of the New York State Constitution, respectively, must be dismissed for plaintiff's failure to file a notice of claim. (*See* NYSCF DOC. NO. 23 at p. 11). Defendants further argue that all "New York State Constitutional claims must be dismissed against [d]efendants Doherty, Conry, Kobel, and Beary" because "[t]he provisions of General Municipal Law 50-e apply to claims against individual defendants when the City is obligated to indemnify them." (*id*. at ¶12). Defendants argue that since plaintiff "pleads that the

named [d]efendants were acting in their official capacities" the claims brought under the New York State constitution "must be dismissed for failing to file a notice of claim." (*id.*).

Defendants also argue that plaintiff "cannot assert a private right of action under the New York State Constitution because alternative remedies exist to challenge his purported claims of discrimination and retaliation." (*id.* at pg. 14-15). Defendants argue that "here, 'the proper method to assert an equal protection claim is through the [NYSHRL] and the [NYCHRL], which plaintiff has done'" (*Akande v N.Y. City Dept. of Corr.*, 2022 N.Y. Slip. Op. 20651pU[, *5 (Sup. Ct. N.Y. Cnty. [2022]).

In opposition, plaintiff fails to address the branch of defendants' motion seeking dismissal of counts one and two.

In reply, defendants argue that plaintiff's failure to respond to the aforementioned arguments constitutes abandonment and, thus, should be dismissed by the court. (*See* NYSCEF DOC. NO. 29 at pg. 7).

A party's failure to address a branch of a motion, seeking dismissal, constitutes an abandonment of that claim. (*Kronick v L.P. Thebault Co., Inc.*, 70 AD3d 648, 649 (2d Dept 2010]; *see also Perez v Folio House, Inc.*, 123 AD3d 519, 520 [1st Dept 2014]). Here, plaintiff's failure to oppose the branch of defendants' motion seeking dismissal of counts one and two likewise constitutes abandonment of those claims.

Accordingly, counts one and two of plaintiff's complaint are dismissed.

CONCLUSION

Accordingly, it is

ORDERED that the motion of defendants INSPECTOR MARY CHRISTINE DOHERTY, LIEUTENANT SEAN CONRY, DEPUTY INSPECTOR JAMES FRANCIS KOBEL, SERGEANT RICHARD BEARY AND THE CITY OF NEW YORK to dismiss the complaint as against them is **GRANTED** in its entirety; and it is further

ORDERED, that the Clerk of the Court shall enter judgment in favor of defendant the City of New York, dismissing the claims and cross-claims made against it in this action, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for defendants must serve a copy of this decision and order, with notice of entry, on the defendant, as well as, the Clerk of the Court, who shall enter judgment accordingly; and it is further

ORDERED that service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

11/14/2024
DATE

J. MACHELLE SWEETING, J.S.C.

CHECK ONE:	[X]	**CASE DISPOSED**		[ ]	**NON-FINAL DISPOSITION**		
	[X]	**GRANTED**	[ ] **DENIED**	[ ]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**