



THE CITY OF NEW YORK
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Via ECF

Honorable Eric Komitee
United States District Court, EDNY
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Women of Color for Equal Justice et. al. v. City of New York, et. al.
Civil Action No.: 22-CV-02234
LM No.: 2022-021670

Dear Judge Komitee:

I am the Assistant Corporation Counsel in the Office of Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, attorney for Municipal Defendants City of New York, Mayor Eric Adams, Department of Health and Mental Hygiene (“DOHMH”), Department of Education (“DOE”), and Commissioner Ashwin Vasana (collectively, “City Defendants”), in the above-referenced matter. City Defendants respectfully submit this letter motion for leave to file a sur-reply in response to points raised for the first time in Plaintiffs’ September 30, 2022 reply memorandum in support of their motion for a preliminary injunction. Dkt. No. 27.

Plaintiffs now claim, for the first time in their reply, that their preliminary injunction motion states viable claims under 42 U.S.C. § 1983 (“Section 1983”) and New York City Human Rights Law (“CHRL”) despite these claims not appearing once in Plaintiffs’ six hundred ten (610) page motion for a temporary restraining order and preliminary injunction. Plaintiffs’ motion for a preliminary injunction only addresses OSHA and First Amendment claims. City Defendants were therefore significantly prejudiced, as they were unable to address the plaintiffs’ arguments concerning their Section 1983 and CHRL claims in their September 23, 2022 opposition.

Accordingly, City Defendants respectfully request leave to file a short sur-reply of nine (9) pages addressing these issues. Defendants intend to argue in more detail that Plaintiffs are unlikely to succeed on their Section 1983 and CHRL claims. Plaintiffs failed to file timely or sufficient notices of claim for their CHRL claims against the DOE and it is well settled law that

the City and DOE are separate legal entities and so notices of claim against one cannot be imputed against the other.

Defendants also intend to argue in their sur-reply that Plaintiffs also failed to allege a *prima facie* claim of discrimination under Section 1983 and even under the CHRL's more lenient standard because Plaintiffs fail to allege that they are members of a protected class. Plaintiffs allege religious discrimination in a conclusory fashion but fail to allege what religious beliefs Plaintiffs held or how they were discriminated against based on the unnamed beliefs. To the extent that Plaintiffs are alleging a failure to accommodate claim arising out of the vaccine mandates, Plaintiffs fail to identify the type of request made, the date the request was made, the date they were notified of any alleged denial, date they filed appeals of alleged denial, and the outcomes of those appeals. Finally, Plaintiffs fail to allege any complained of behavior that was severe or pervasive to create a hostile work environment. Generalized allegations of harassment, without specificity tying alleged conduct to a protected class, are insufficient. There is no evidence Plaintiffs were subjected to any discriminatory or harassing conduct, let alone for unidentified characteristics. As such, the hostile work environment and constructive discharge claims fail

Thank you for your consideration of this matter.

Respectfully submitted,

/s/ Elisheva L. Rosen
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Honorable Lois Bloom (by ECF)
United States Magistrate Judge