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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AUDRA McCOWAN *and* JENNIFER ALLEN, Plaintiffs, v. CITY OF PHILADELPHIA, *et al.*, Defendants.	Civil Action No. 19-cv-3326-KSM **Plaintiffs' Response to Defendants' "Statement of Undisputed Facts"**

Plaintiffs Audra McCowan and Jennifer Allen submit this response in opposition to the numbered paragraphs set forth in the "Statement of Undisputed Facts" in support of the motions for summary judgment by Defendants City of Philadelphia, Richard Ross, Christine Coulter, Daniel MacDonald, Michael McCarrick, Timothy McHugh, Kevin O'Brien, Eric Williford, Tamika Allen, Brent Conway and Herbert Gibbons. Following Plaintiffs' responses to each of Defendants' numbered paragraphs set forth in their statement of facts, Plaintiffs submit their own Statement of Additional Facts that Preclude Summary Judgment, which are incorporated here by reference.

1. Audra McCowan joined the Philadelphia Police Department ("PPD") as a recruit in March 2004 and graduated from the Police Academy in August 2004, at which point she was assigned to the 23rd Police District. Ex. 12, McCowan Employee History Record (CITY 0083).

Response: Plaintiff McCowan admits she joined the Philadelphia Police Department ("PPD") as a recruit in March 2004. The remainder of this paragraph is denied. Plaintiff McCowan graduated from the Police Academy in October 2004, at which time she was assigned to the 23rd Police District.

2. In November 2008, McCowan transferred to the Police Board of Inquiry ("PBI"), transferred to the Police Academy in March 2015, briefly worked for the Internal Affairs Division from 2015 through July 2016, before returning to PBI, where she worked until transferring to the Realtime Crime Center in the Intelligence Bureau as a captain's aide in March 2018. Id.

Response: Plaintiff McCowan admits she transferred to PBI in November 2008; transferred to the Police Academy in March 2015; transferred to the Internal Affairs Division in December 2015; transferred to back to PBI in July 2016; and transferred to the Real Time Crime Center ("RTCC") in March 2018.

3. McCowan worked a steady daywork schedule at PBI, the Academy, Internal Affairs, and as a captain's aide in the Realtime Crime Center, meaning McCowan worked steady daywork with weekends off for more than ten years. Id.; Ex. 13, McCowan Dep., 292:16-24; Ex. 14, McCowan Hardship Memo, 5/6/19 ("I have been in 5 Squad [steady daywork] for 11 years[.]").

Response: Plaintiff McCowan admits that she worked a steady daywork schedule at PBI, the Police Academy, Internal Affairs, and the RTCC for 11 years.

4. The PPD promoted McCowan to the rank of Police Corporal on November 30, 2018.

Response: Plaintiff McCowan admits that she was promoted to Corporal on November 30, 2018.

5. McCowan, who has been assigned to the Intelligence Bureau in the Realtime Crime Center as a captain's aide, was assigned to return to the Intelligence Bureau as a corporal on December 3, 2018. Id.

Response: This paragraph is denied. Upon Plaintiff McCowan's promotion to corporal she was transferred from the RTCC to the High Intensity Drug Trafficking Area ("HIDTA") unit, effective December 3, 2018. (Defendants' Exhibit 12, City 0083.)

6. The Intelligence Bureau is composed of multiple units: the Criminal Intelligence Unit ("CIU"), Realtime Crime Center ("RTCC"), High-Intensity Drug Trafficking Area ("HIDTA") Watch Center, Analysis and Investigations ("A&I"), and the Statistical Unit. Ex. 4, McCarrick Aff., ¶ 2.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs object to this "fact" because it is not a "material" fact; rather it is simply background information. As such, there is no material fact to dispute.

7. DVIC is a "fusion center" operating as an information and intelligence sharing operation coordinated between the Philadelphia Police Department and state/federal law enforcement agencies. Ex. 4, McCarrick Aff., ¶ 3.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs object to this "fact" because it is not a "material" fact; rather it is simply background information. As such, there is no material fact to dispute.

8. Chief Inspector Daniel MacDonald commanded the Intelligence Bureau, while Inspector Michael McCarrick commanded the Criminal Intelligence Division of the Intelligence Bureau and reported to Chief MacDonald. Ex. 6, MacDonald Dep., 11:2-5, 13:16-24.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs object to this "fact" because it is not a "material" fact; rather it is simply background information. As such, there is no material fact to dispute.

9. Although McCowan was initially listed by central personnel clerks as transferring to HIDTA, this listing was erroneous, as HIDTA did not have any open budgeted corporal positions. Ex. 12, McCowan Employee History Record (CITY 0083); See Ex. 13, McCowan Dep. 26:10-31:11; Ex. 6, MacDonald Dep. 22:22-23:12, 25:4-18; Ex. 5,

McCarrick Dep., 86:9-17 (a Black male corporal, Neal Wilson, had been working at HIDTA for approximately six months as of December 3, 2018).

Response: Plaintiff McCowan denies this paragraph. On November 30, 2018, Ms. McCowan was promoted to corporal. (Defendants' Exhibit 12, CITY 0083.) On December 3, 2018, Ms. McCowan was ***transferred*** to the HIDTA Unit. (Id.) On December 17, 2018, Ms. McCowan was ***transferred*** out of the HIDTA Unit. (Id.) Defendants MacDonald and McCarrick did not have authority to transfer Ms. McCowan out of the HIDTA Unit: PPD Directive 12.4, titled "Policy for All Transfers" provides that the Police Commissioner must approve all transfers and details of personnel. (CITY 1991.) "A transfer is a formal and permanent change of assignment that requires the approval of the appointing authority, here the Police Commissioner, as described in Police Directive 12.4." (Defs' Ex. 4, McCarrick Aff., ¶ 15.)

At Defendant Ross's deposition, he testified as follows:

> A. I want you to remember something: Under me as police commissioner, [Ms. McCowan] was both promoted to corporal and given one of the most coveted assignments in the entire city.
> …
> Q. When you said that Ms. McCowan had a coveted position within the department, what position were you referencing?
> A. When she first made corporal and went to HIDTA . . .

(Plaintiffs' Ex. HH, Ross Transcript, at 95:21-24; 99:22 – 100:03.)

Additionally, the City did not follow the policy for transfers upon a commanding officer's request. (See Plaintiff's Exhibit PPP, Excerpt from Transfer Policy, Policy for Transfer Request b Commanding Officer, at CITY 2000.)

10. Additionally, Intelligence Bureau onboarding procedures specified that all new additions to the Bureau be assigned a Daily Attendance Report code of "9853," indicating a general assignment to the Intelligence Bureau and not to a specific unit. Ex. 5, McCarrick Dep., 178:1-15.

Response: This paragraph is denied. Directive 12.4 provides the procedures for the personnel transfer process. (Plaintiff's Ex. QQQ, Dir. 12.4, at CITY 1991-2002.) Plaintiff McCowan was transferred to HIDTA, not the Intelligence Bureau. (Defs' Ex. 12, CITY 0083; Plaintiffs' Ex. HH, Ross Transcript, at 95:21-24; 99:22 – 100:03.)

11. When determining where to place McCowan, Chief MacDonald gave her a choice between working nightwork in HIDTA or steady daywork in A&I; McCowan chose to be assigned to A&I. Ex. 13, McCowan Dep., 31:7-32:21.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiff admits only that Defendant MacDonald told Plaintiff that if "[she] wanted to stay in HIDTA [she] would have to work night work." (Defs' Ex. 13, McCowan Dep., 31:07 – 32:08).

12. PPD corrected its error on December 17, 2018 and assigned Corporal McCowan generally to the Intelligence Bureau and placed her initially in the A&I unit. Ex. 6, MacDonald Dep. 22:19-23:12, 25:4-18.

Response: Plaintiff McCowan denies this paragraph. Plaintiff was transferred to HIDTA, not the Intelligence Bureau. (Defendants' Exhibit 12CITY 0083; Plaintiffs' Ex. HH, Ross Transcript, at 95:21-24; 99:22 – 100:03.) Directive 12.4 provides the procedures for the personnel transfer process—Defendants failed to follow the procedures specified in Directive 12.4. (Plaintiffs' Ex. QQQ, CITY 1991-2002.)

13. McCowan's time as a corporal in the Intelligence Bureau lasted from December 3, 2018, until March 9, 2019, when she was detailed to Police Radio. Ex. 16, Coulter Dep., Dep. 51:11-15.

Response: Denied. Plaintiff McCowan was assigned to the HIDTA unit from December 3, 2018 until Defendants transferred Plaintiff to the Intelligence Bureau on December 17, 2018 in violation of the procedures set forth in Directive 12.4. (Defs' Ex. 12, City 0083; Plaintiffs' Ex. QQQ, CITY 1991-2002, Directive 12.4.) It is denied that Plaintiff McCowan was detailed to police radio on March 9, 2019—Plaintiff was detailed to police radio on March 12, 2019. (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶ 189.)[1]

[1] When the Complaint is verified, the Court treats specific, factual allegations in the Complaint that are based on personal knowledge as if they were made in an affidavit or declaration. See Parkell v. Danberg, 833 F.3d 313, 320 n.2 (3d Cir. 2016) ("Because [statements in verified complaint] were signed under penalty of perjury in accordance with 28 U.S.C. § 1746, we consider them as equivalent to statements in an affidavit."); Reese v. Sparks, 760 F.2d 64, 67 (3d Cir. 1985) (treating verified complaint as an affidavit in opposition to a motion for summary judgment); Boomer v. Lewis, 2009 WL 2900778, at *14 (M.D. Pa. Sept. 9, 2009) ("A verified complaint may be treated as an affidavit in support of or in opposition to a motion for summary judgment if the allegations are specific and based on personal knowledge."), aff'd 541 F.App'x 186, 193 (3d Cir. 2013).

14. McCowan remained detailed to Police Radio and remained assigned to the Intelligence Bureau until she resigned on November 1, 2019. Ex. 12, McCowan Emp. Hist. Rec.

Response: Admitted in part, denied as stated. Plaintiff admits that she remained detailed to Police Radio until her resignation. Plaintiff denies that she resigned on November 1, 2019—Plaintiff resigned on October 2, 2019. (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶ 292.)

15. The PPD hired Plaintiff Allen in 2004. Ex. 23, J. Allen Dep., 17:7-10.

Response: Plaintiff Allen admits she began her employment with the PPD in 2004.

16. The PPD assigned Allen to the 12th Police District from October 2004 to December 2010. Ex. 23, J. Allen Dep., 18:17-19.

Response: Plaintiff Allen admits from October 2004 to December 2010 she was assigned to the 12th Police District. By way of further response, from December 2010 until December 2011, Plaintiff Allen was detailed to the JET unit. (Defs' Ex. 55, City 0158.)

17. While assigned to the 12th District, Allen worked rotating shifts of two weeks' daywork followed by two weeks' nightwork with rotating days off. Ex. 23, J. Allen Dep., 18:20-24.

Response: Plaintiff Allen admits she worked rotating shifts of two weeks' daywork followed by two weeks' nightwork with rotating days off while assigned to the 12th District.

18. In 2011, Allen put in a formal transfer request in conformance with Directive 12.4 and was transferred to JET, a subsection of the Criminal Intelligence Unit. Ex. 23, J. Allen Dep., 19:1-6; Ex. 55, Allen Career Development Transfer Request, 10/19/11.

Response: Plaintiff Allen admits that on October 19, 2011, she submitted a career development transfer request to be transferred to JET, where she had been detailed for the previous 11 months actively serving warrants.

19. Allen's 2011 Career Development Transfer Request specifically requested a transfer to the Criminal Intelligence Unit, where Allen stated she "ha[d] been detailed to the Juvenile Enforcement Team [JET] for the past 10 months." Ex. 55, Allen Career Development Transfer Request, 10/19/11.

Response: Plaintiff Allen admits that she requested a transfer to the Criminal Intelligence Unit where she had been detailed to JET for the past 10 months.

20. Any officer requesting a transfer to a special unit (meaning any unit that is not a patrol unit in a Police District) must complete a Career Development Transfer Request (in triplicate), a copy of Police Form 75-350, and submit the completed forms to their lieutenant. See Ex. 9, Dir. 12.4 at p. 4.

Response: It is admitted that Directive 12.4 states as Defendants have asserted in this paragraph.

21. Those seeking transfer to a special unit then must proceed through the process laid out in Directive 12.4, which includes, inter alia, an interview by a Transfer Review Board and an exhaustive accounting of an employee's work history. Id. at pp. 5-8.

Response: It is admitted that Directive 12.4 provides the process for applying for a transfer to a special unit.

22. The Criminal Intelligence Unit, and its subsections, including JET, is a "special unit." Ex. 23, J. Allen Dep., 19:1-6.

Response: It is admitted that the Criminal Intelligence Unit is a special unit.

23. Allen's schedule with JET was two weeks' daywork followed by one week nightwork with weekends off except for one Saturday worked per month. Ex. 23, J. Allen Dep., 10-18.

Response: Admitted in part, denied as stated. It is admitted that Plaintiff Allen's schedule in the JET unit was a rotating schedule, comprised of two weeks' day work, one week night work, with one Saturday worked per month. When JET was on daywork, Ms. Allen's days off were Saturday and Sunday. When JET was on nightwork, Ms. Allen's days off were Saturday, Sunday and Monday. (Defs' Ex. 23, Jennifer Allen Dep., 19:10-22.)

24. Allen remained assigned to the Criminal Intelligence Unit from 2010 through her resignation on July 7, 2020, although she was detailed to the Neighborhood Services Unit and the Police Tow Squad prior to that date. Ex. 56, J. Allen Emp. Hist. Rec.

Response: This paragraph is denied. Plaintiff Allen was assigned to the 12th District from 2004 until December 14, 2011, although she was detailed to the JET unit from December 2010 to December 14, 2011. (Defs' Ex. 55, City 0158.) Defendant's Exhibit 56 erroneously states Plaintiff Allen was transferred to the Criminal Intelligence unit on December 14, 2012—Plaintiff was in fact transferred to the Criminal Intelligence Unit on December 14, 2011. (Defs' Ex. 55, City 0158.) By way of further response, before going out on maternity leave in Spring 2018 Plaintiff Allen put in a request to transfer from her assignment in JET (where she worked rotating day and night shifts for eight years) to the A&I unit—a daytime position that would be more suitable for caring for her newborn child. (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶ 47.) From October 2018 to November 2018, continued working rotating day and night shifts in JET. (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶¶ 47-50.) From November 2018 to February 20, 2019, Plaintiff Allen rotated between JET and A&I. (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶¶ 50-152.) In February 2019, Plaintiff Allen's doctor took her out of work until March 26, 2019. (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶¶ 228-232.) On March 26, 2019, the City of Philadelphia Employee Medical Services placed Ms. Allen on Restricted Duty and as a result she was assigned to a plainclothes daywork shift in the Criminal Intelligence Unit. (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶¶ 234-236.) On March 27, 2019, Defendant Allen detailed Ms. Allen to the Neighborhood Services Unit. (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶¶ 237-247.) On July 30, 2019, immediately after Plaintiffs filed this lawsuit on July 29, 2019, the PPD reassigned Plaintiff Allen from NSU to Police Tow Squad, and her hours of work were changed from steady Monday-Friday daywork with weekends off to rotating daywork and nightwork shifts with rotating days off. (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶¶ 276-281.) On August 20, 2019, the Court granted Plaintiffs' motion for preliminary injunction and ordered the PPD to return Plaintiff Allen back to her assignment in NSU (see ECF Doc. 13.) Plaintiff Allen resigned on July 7, 2020. (Allen Resignation Letter, Bates No. McCowan-Allen 0284.)

25. McCowan alleges that Officer Curtis Younger called her cell phone on January 3, 2019 and said, "I have a crush on you." Ex. 49, McCowan Sexual Harassment Complaint, 01/30/19.

Response: Defendants' use of the term "alleges" is inappropriate, as, on summary judgment all inferences are to be drawn in the light most favorable to Plaintiffs. It is admitted that on January 3, 2019, Defendant Younger called Plaintiff McCowan and said, "You know I have a crush on you." (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶ 64.) Defendant Younger testified:

Q. Did you tell [Plaintiff McCowan] at any time that you had a crush on her?
A. I told her—yes, I did.

(Plaintiffs' Ex. T, Younger Dep., 13:04-05.)

26. McCowan had known Younger and worked in the same building with Younger for approximately ten months on January 3, 2019. Ex. 48, Younger Dep., 8:6-9.

Response: Plaintiffs note that Defendants have failed to attached the material cited in support of their assertions in this paragraph (Ex. 48, Younger Dep.) to their motion. Notwithstanding, Defendants' assertions in this paragraph are denied. The deposition testimony that Defendants cited in support of their assertions in this paragraph does not state that McCowan had known Younger and worked in the same building with him for approximately ten months on January 3, 2019. Defendant Younger testified that he had "known her since she came to the DVIC" on December 3, 2018. (Plaintiffs' Ex. T, Younger Dep., 8:6-9.)

27. McCowan had supervised Younger in A&I since December 17, 2018. Ex. 48, Younger Dep., 9:2-22; Ex. 12, McCowan Emp. Hist. Rec.

Response: Plaintiffs note that Defendants have failed to attached the material cited in support of their assertions in this paragraph (Ex. 48, Younger Dep.) to their motion. Notwithstanding, this paragraph is admitted in part, denied as stated. It is admitted that Plaintiff McCowan outranked Defendant Younger. Although Plaintiff McCowan outranked Defendant Younger, it was not within her power to give him work assignments—she merely entered his time in the payroll system. (Plaintiffs' Ex. T, Younger Dep., 9:8-10; Defs' Ex. 12, McCowan Dep., 120:14-19.)

To the extent Defendants are claiming that Plaintiff McCowan did not have a right to a harassment free workplace by virtue of her status as Defendant's supervisor, Defendant's assertion is denied. By way of further response: Defendant Conway admitted to Ms. McCowan that "some officers (such as Officer Younger) could use favoritism to wield power over their

supervisors." (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶ 187.) Defendant Conway testified:

> A. And I think we were in the ilk of her asking me about—or discussing with me him having his Highway authority, being officer Younger.
>
> Q. Was that in the context of a conversation about implied power in the department?
>
> A. Yeah. The conversation about implied power, I've had that conversation with Corporal McCowan on multiple occasions and other people on multiple occasions. And in this case, there are individuals within the department who are not supervisory rank or not high-ranking supervisors that do have a significant amount of power because of who they work for, who they know, which could cause supervisors to be afraid to take action against them. And that's where we were discussing that issue.

(Plaintiffs' Ex. C, Conway Dep., 263:20-264:15.)

Defendant Younger ignored Ms. McCowan's authority when he subjected her sexual harassment. (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶ 96.) For example, on January 21, 2019, Officer Younger said, "Hey, babe" to Ms. McCowan who responded, "You mean Corporal?" This exchange was witnessed by Lieutenant McHugh and Plaintiff Allen. Ms. McCowan looked at Plaintiff Allen and Defendant McHugh and said, "You heard me, right?" Ms. Allen responded, "Yes" and shook her head in disbelief. (Id.)

Moreover, Defendant Ross admitted that a supervisor is entitled to the same rights to a harassment-free workplace as a police officer, stating "I believe you can still be harassed as a supervisor, yes." (Plaintiffs' Ex. HH, Ross Dep., 110:03-08).

Plaintiffs further note that in Defendants' Paragraph 39 below, Defendants state that "McCowan had no legitimate work reason to interact with Younger because their respective duties did not overlap." This Defendants' statements in paragraphs 27 and 39 are contradictory.

28. McCowan alleges that, on six occasions in January 2019, Officer Younger made sexually harassing comments to her and, on one, occasion, "proceed[ed] to assault [her] by trying to pull [her] wedding rings off [her] finger." Ex. 49, McCowan Sexual Harassment Complaint, 01/30/19.

Response: Defendants' use of the term "alleges" is inappropriate because on summary judgment all inferences are to be drawn in the light most favorable to Plaintiffs. Plaintiff McCowan denies that Defendant Younger's comments were limited to "six occasions." It is admitted that on a number of occasions in January 2019, Officer Younger made sexually harassing comments to Ms. McCowan including, but not limited to:

- "You know I have a crush on you"
- "Damn, you sexy"
- "You gonna have to stay away from me"
- "Mmm, mmm, mmm"
- "Are you sure there's no room for me to slide in?"
- "Well, if you ever change your mind, just break the glass."
- "Remember, just break the glass"
- "Hey babe"
- Comments about Ms. McCowan's "smile" and "big forehead"
- "Are you pregnant in that picture?"
- "You have pictures of this motherfucker all over your desk"
- "My wife doesn't have pictures like this on her desk"
- "Oh I forgot ya'll are still wet. It's still new."
- "You don't take your rings off when you sleep?"
- "Are you sure there is zero chance for me?"

(Defs' Ex. 49, McCowan Sexual Harassment Complaint, 01/30/19; Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶¶ 65, 67, 69, 96, 97, 98, 99, 100.) Plaintiff further admits that on January 28, 2019, Defendant Younger assaulted her by gripping Plaintiff's left hand and forcibly pulling her wedding band. (Defs' Ex. 49, McCowan Sexual Harassment Complaint, 01/30/19; (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶ 99.)

29. Allen claims Younger called her in early 2016 and told her "he likes [her] and was interested in [her]." Ex. 42, Allen Sexual Harassment Complaint, 01/30/19.

Response: Defendants' use of the term "claims" is inappropriate because on summary judgment all inferences are to be drawn in the light most favorable to Plaintiffs. It is admitted that in early 2016 Defendant Younger called Ms. Allen and told her he "likes [her] and was interested in [her]." (Defs' Ex. 42, Allen Sexual Harassment Complaint, 01/30/19.)

30. Allen alleges that on three occasions in January 2019, Officer Younger made sexually harassing comments to her and on one occasion "attempted to lift [her] in the air . . . ." Ex. 42, Allen Sexual Harassment Complaint, 01/30/19.

Response: Defendants' use of the term "alleges" is inappropriate because on summary judgment, all inferences are to be drawn in the light most favorable to Plaintiffs. It is admitted that on a number of occasions, Defendant Younger made sexually harassing comments to Ms. Allen, including but not limited to:

- "I like you"
- "I'm interested in you"
- I was going to go to your house and handle your husband because no one talks to me that way" in reference to Ms. Allen's husband telling Defendant Younger not to contact Ms. Allen for anything unrelated to work
- "It looks like you need to go pump because they are looking big" while pointing to Ms. Allen's breasts
- "That sexual harassment MPO class was bullshit."
- "Babe"
- "You are one sexy motherfucker"
- "You lost your ass after having the baby"
- "You're so small"
- "If you gained 15 more pounds you would be on point."

(Defs' Ex. 42, Allen Sexual Harassment Complaint, 01/30/19; Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶¶ 46, 61, 63, 87, 92, 93, 94, 95.) It is further admitted that in January 2019 Defendant Younger sexually assaulted Plaintiff Allen when he placed his hands around her waist and said, "You're so small!" And picked her up off the ground in an embrace. (Defs' Ex. 42, Allen Sexual Harassment Complaint, 01/30/19; Plaintiff's Verified Second Amended Complaint, ¶ 87.)

31. Allen admits that after emailing her complaint to Chief MacDonald, no additional instances of alleged sexual harassment occurred. Ex. 23, J. Allen Dep., 205:15-206:23.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Moreover, Defendants' use of the term "alleged sexual harassment" is inappropriate because on summary judgment, all inferences are to be drawn in the light most favorable to Plaintiffs. This paragraph is admitted in part but denied as stated. It is admitted that after Plaintiff Allen emailed her complaint to Defendant MacDonald, Defendant Younger did not continue sexually harassing her because she was moved out of the A&I unit and back to the JET unit on rotating shifts. (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶ 152.)

32. McCowan admits that after emailing her complaint to Chief MacDonald, no additional instances of alleged sexual harassment occurred. Ex. 13, McCowan Dep., 120:20-121:3.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Moreover, Defendants' use of the term "alleged sexual harassment" is inappropriate because on summary judgment, all inferences are to be drawn in the light most favorable to Plaintiffs. This paragraph is denied. On February 13, 2019, Ms. McCowan was standing in the conference room next to Inspector McCarrick's office when Defendant Younger walked by and stared at her with a look of disgust. (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶ 146.; Defs' Ex. 13, McCowan Dep., 125:09-

22.) On February 22, 2019, Defendant Younger said to Ms. McCowan, "I have some meatballs for you" in reference to his genitals. (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶ 154.)

Moreover, in early January 2019, Plaintiff McCowan reported Defendant Younger's inappropriate sexual advances to Defendant McHugh, who failed to stop the harassment. (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶ 66.)

33. Allen and McCown filed internal EEO complaints regarding Younger's actions on January 31, 2019. Ex. 42, Allen Sexual Harassment Complaint, 01/30/19; Ex. 49, McCowan Sexual Harassment Complaint, 01/30/19.

Response: Plaintiffs deny this paragraph as stated. Plaintiffs filed internal harassment complaints regarding Defendant Younger's actions on January 30, 2019 when they reported the conduct to Defendant Allen and attempted to report the conduct to Defendant MacDonald. (Defs' Ex. 42, Allen Sexual Harassment Complaint, 01/30/19; Defs' Ex. 49, McCowan Sexual Harassment Complaint, 01/30/19; Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶¶ 106-119.) Plaintiffs also emailed their complaints to Defendant MacDonald on January 31, 2019. (Id.)

34. After Allen and McCowan filed EEO complaints against Younger on January 31, 2019, Inspector McCarrick immediately instructed Younger to avoid all interactions with Allen and McCowan and to make sure another employee was present if the need arose to interact with either one. Ex. 48, Younger Dep., 44:18-45:24.

Response: Plaintiffs note that Defendants have failed to attached the material cited in support of their assertions in this paragraph (Ex. 48, Younger Dep.) to their motion. Plaintiffs dispute Defendant Younger's testimony, as his credibility is in issue in this case. Plaintiffs deny this paragraph. After Ms. Allen and Ms. McCowan complained to Sergeant Allen on January 30, 2019, Defendant O'Brien called Ms. McCowan and asked, "Is there something going on with Jen? Inspector McCarrick had a meeting and said Jen filed an EEO complaint and told all of us to be careful. Am I a part of it?" (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 116.) Defendant O'Brien admitted to same. (Plaintiffs' Ex. JJJ, O'Brien Dep., 34:03-06.)

35. Younger complied. Ex. 48, Younger Dep., 45:23-24.

Response: Plaintiffs note that Defendants have failed to attached the material cited in support of their assertions in this paragraph (Ex. 48, Younger Dep.) to their motion. Plaintiffs dispute Defendant Younger's testimony, as his credibility is in issue in this case. Denied. On February 13, 2019, Ms. McCowan was standing in the conference room next to Inspector McCarrick's office when Defendant Younger walked by and stared at her with a look of disgust. (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶ 146.) On February 22, 2019, Defendant Younger said to Ms. McCowan, "I have some meatballs for you" in reference to his genitals. (Id. at ¶ 154.)

36. Younger remained unaware of the substance of the complaints against him until Internal Affairs interviewed him in March 2019. Ex. 48, Younger Dep., 46:1-21.

Response: Plaintiffs note that Defendants have failed to attached the material cited in support of their assertions in this paragraph (Ex. 48, Younger Dep.) to their motion. Plaintiffs dispute Defendant Younger's testimony, as his credibility is in issue in this case. Plaintiffs deny Defendants' assertions in this paragraph. After Ms. Allen and Ms. McCowan complained to Sergeant Allen on January 30, 2019, Defendant O'Brien called Ms. McCowan and asked, "Is there something going on with Jen? Inspector McCarrick had a meeting and said Jen filed an EEO complaint and told all of us (including Younger) to be careful. Am I a part of it?" (Plaintiffs' Ex. D, Verified Second Amended Complaint, at ¶ 116; Plaintiffs' Ex. JJJ, O'Brien Dep., 34:03-06.) On February 13, 2019, Ms. McCowan was standing in the conference room next to Inspector McCarrick's office when Defendant Younger walked by and stared at her with a look of disgust. (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶ 146.) On February 22, 2019, Defendant Younger said to Ms. McCowan, "I have some meatballs for you" in reference to his genitals. (Id. at ¶ 154.)

37. McCowan did not inform former Police Commissioner Richard Ross of her EEO complaint until early March 2019. Ex. 13, McCowan Dep., 96:1-11.

Response: Denied. The deposition testimony that Defendants cited in support of their assertions in this paragraph does not state that McCowan informed Defendant Ross of her EEO complaint in March 2019. In fact, Plaintiff McCowan texted and called Defendant Ross on his personal cell phone in early February 2019 to inform him that she had been experiencing sexual harassment and a hostile work environment in the DVIC, and that she had been punished for reporting same. Commissioner Ross asked, "Who is it against?" Ms. McCowan responded, "P/O Curtis Younger." Defendant Ross declined to act on her report and instead suggested, "So why don't you just order his dumb ass to go sit down and get out of your face 'Officer.'" Ms. McCowan responded, "Think about how you would feel if it was your daughter. Would it matter if it was someone that works for her or not? If she told the person to repeatedly stop, that doesn't matter?" Commissioner Ross stated, "I know you don't like for me to be straight with you, largely because 'two rams always seem to butt heads' . . . but I want to offer you some sage advice as a friend." Ms. McCowan asked Commissioner Ross to share his advice and he responded, "No, not

the time based on your frame of mind." During these conversations, Commissioner Ross also stated he was going to "school" Ms. McCowan on sexual harassment and indicated that he continues to be upset with her and was getting in the way of redressing her complaints in retribution for her breaking off their two-year affair, which lasted from 2009 to 2011. (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶¶ 126-128.). Defendant Ross testified as follows:

Q. Do you admit that . . . you said, "So why don't you just order his dumb ass to go sit down and get out of your face, officer"?
A. . . . I may have in some way made some statement in paraphrasing that sentiment. She was the corporal. She was the person in charge. She had filed previous complaints, so I knew she knew how to do that. In addition to which, she had an obligation to ensure that she told this individual and order him to, basically, cease and desist his inappropriate conduct.
. . .
Q. Do you believe that if she didn't, that would have constituted failure to supervise?
A. It could possibly. . .
Q. Do you admit that after Ms. McCowan informed you that she had been experiencing sexual harassment in the DVIC, you said, "I know you don't like for me to be straight with you, largely because two rams always seem to butt heads, but I want to offer you some sage advice as a friend"?
A. I don't remember the exact verbiage. But, again, right listed in that question was that answer, "as a friend," which to me suggests that's exactly what I thought how we were discussing the matter, as friends.
Q. Do you remember what Ms. McCowan said in response?
A. I don't. I remember she got upset and angry, and that's all I recall after that.
Q. Do you recall saying, "No, not at this time based on your frame of mind," regarding offering advice?
A. It's possible. . .
. . .
Q. How did you form the belief that she was upset?
. . .
A. Well, you can tell by text tone—or texts whether the tone is abrasive or whether it's cordial. Generally, I think most of us, by this stage, can discern that.
Q. Did you form any belief as to why she was upset?
A. I don't recall. She got upset. That's all I know.
Q. As we sit here today, do you have any belief as to why she was upset?
A. I don't know. Again, perhaps you should ask her.
Q. Do you admit after Ms. McCowan informed you she had been experiencing sexual harassment in the DVIC you said you're going to "school her" on sexual harassment?
A. I don't remember that. But again, I remember because we're having a conversation as friends trying to, one, share with her, as a friend, as I thought we were, as we had been cordial for years, what I thought she should do for herself. Two, I don't think she should have even set up the perception of being a perpetual victim. Because I think she's stronger than that and better than that.
. . .

Q. Do you believe that her complaint may have affected her career trajectory?
A. I don't know why it would have.
Q. What did you mean when you said "perpetual victim."
A. Well, it has nothing to do with her trajectory through the ranks. It has to do with just not allowing people to think you're a victim. Because she's a strong enough woman to convey to people that I'm not a victim.

. . .

And it's disenchanting to think that this is the mindset of people. If your client would have just stayed in focus and dealt with one person, instead of fishing for answers all over the place and assuming people had some ill will against her, all of this would have probably been resolved in a way that was acceptable to everyone.

. . .

Q. When you were commissioner, was it your understanding that a supervisor has the same rights as an officer under the City's EEO policy in terms of a harassment-free workplace?
A. I believe you can still be harassed as a supervisor, yes. But I also believe that, you know, you have to make sure that people don't think they can victimize you . . .

. . .

Q. [P]ull up the document titled Verified Second Amended Complaint. I'll mark it Exhibit H (Exhibit Ross-H was marked for identification.)
Q. Have you ever seen this document before?
A . . . I believe so.

. . .

Q. Go to page 29. I want to direct the witness's attention to Paragraph 126:

ii. Report to Defendant Ross

126. In early- to mid-February 2019, Ms. McCowan texted and called Commissioner Ross on his personal cell phone to inform him that she had been experiencing sexual harassment and a hostile work environment in the DVIC, and that she had been punished for reporting same.

Q. Do you admit or deny the allegations in Paragraph 126?
A. I remember the texts that were very similar to this saying that she was being harassed.
Q. Take a look at Paragraph 127.

127. Commissioner Ross asked, "Who is it against?" Ms. McCowan responded, "P/O Curtis Younger." Commissioner Ross declined to act on her report, and instead suggested, "So why don't you just order his dumb ass to go sit down and get out of your face 'Officer.'" Ms. McCowan responded, "Think about how you would feel if it was your daughter. Would it matter if it was someone that works for her or not? If she told the person to repeatedly stop, that doesn't matter?" Commissioner Ross stated, "I know you don't like for me to be straight with you, largely because 'two rams always seem to butt heads' . . . but I want to offer you some sage advice as a friend." Ms. McCowan asked Commissioner Ross to share his advice and he responded, "No, not the time based on your frame of mind."

Q. Do you admit or deny the allegations in paragraph 127?

. . .

A. I believe we touched on this in your previous questions about texts over this particular issue. And I believe I responded to you. I was trying to give her friendly advice on how she should proceed.

. . .

Q. Do you admit or deny that you suggested, "So why don't you just order his dumb ass to sit down and get out of your face, officer"?

A. Well, to the best of my recollection, I paraphrased something to the effect, in that she should assert herself, as I've said to you probably three or four times now, and not be a perpetual victim; and that she does what she needs to do to get him to cease and desist, particularly since she was the supervisor and had the authority to do so.

Q. Do you admit or deny that Ms. McCowan responded saying, "Think about how you would feel if it was your daughter. Would it matter if it was someone that works for her or not? She told the person repeatedly to stop. That doesn't matter?"?

A. I remember something to that effect. But I remember she was upset. But since she brought my daughter into it, my daughter doesn't take crap off of people. She would have told him to get out of her face, and she probably would have written him up herself without any additional intervention required.

Q. Go to paragraph 128, please read it. Let me know when you're finished.

128. During these conversations, Commissioner Ross also stated he was going to "school" Ms. McCowan on sexual harassment and indicated that he continues to be upset with her and was getting in the way of redressing her complaints in retribution for her breaking off their two-year affair, which lasted from 2009 to 2011.

Q. Do you admit or deny these allegations?

A. Every adjective I can—absolutely did not say anything about her in retribution and still harboring feelings. That is so incredibly narcissistic, I can't even begin to understand that. I never said that whatsoever.

. . .

Q. [H]ave you ever been notified at any time prior to today that you needed to retain text messages with Ms. McCowan?

A. I was told I needed to retain any and all documents related to the case.

Q. And what did you do in response?

A. I didn't do anything . . .

(Plaintiffs' Ex. HH, Ross Dep., 97:5-13; 110:03-12; 115:13 – 120:24; 115:24 – 116:07.)

38. Immediately after being made aware that McCowan's and Allen's EEO complaints involved Officer Younger, Inspector McCarrick spoke to the sergeant and lieutenant in A&I and instructed them to pay close attention to the situation, and to eliminate any interactions between Younger and McCowan and Allen. Ex. 6, McCarrick Dep., 107:24-109:22.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs dispute Defendant McCarrick's testimony, as his credibility is in issue in this case. Plaintiffs deny Defendants' assertions in this paragraph. After Ms. Allen and Ms. McCowan complained to Sergeant Allen on January 30, 2019, Defendant O'Brien called Ms. McCowan and asked, "Is there something going on with Jen? Inspector McCarrick had a meeting and said Jen filed an EEO complaint and told all of us (including Younger) to be careful. Am I a part of it?" (Plaintiffs' Ex. D, Verified Second Amended Complaint, at ¶ 116.) After Defendant Younger became aware that Plaintiffs had complained, he continued harassing Plaintiff McCowan: on February 13, 2019, Ms. McCowan was standing in the conference room next to Inspector McCarrick's office when Defendant Younger walked by and stared at her with a look of disgust. (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶ 146.) On February 22, 2019, Defendant Younger said to Ms. McCowan, "I have some meatballs for you" in reference to his genitals. (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶ 154.)

39. McCowan had no legitimate work reason to interact with Younger because their respective duties did not overlap. Ex. 6, McCarrick Dep., 107:24-109:22.

Response: Plaintiffs note that Defendants' assertions in this paragraph are in direct conflict with Defendants' assertions in Paragraph 27 above, in which Defendants stated "27. McCowan had supervised Younger in A&I since December 17, 2018." Defendants' assertions in this paragraph are denied. Ms. McCowan testified, "I was still expected to supervise [Defendant Younger]. What I mean by that is, you know, enter his time, enter his overtime, tell him if he had training. That's not a situation that I wanted to be in." (Defs' Ex. 13, McCowan Dep., 120:07-19.)

40. Further, McCowan had the supervisory authority to take immediate corrective action against Younger if McCowan observed any type of inappropriate behavior. Ex. 6, McCarrick Dep., 107:24-109:22.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs dispute Defendant McCarrick's testimony, as his credibility is in issue in this case. Plaintiff McCowan denies this paragraph. Defendant Conway admitted to Ms. McCowan that "some officers (such as Officer Younger) could use favoritism to wield power over their supervisors." (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶ 187.) Defendant Conway testified:

A. And I think we were in the ilk of her asking me about—or discussing with me him having his Highway authority, being officer Younger.

Q. Was that in the context of a conversation about implied power in the department?

A. Yeah. The conversation about implied power, I've had that conversation with Corporal McCowan on multiple occasions and other people on multiple occasions. And in this case, there are individuals within the department who are not supervisory rank or not high-ranking supervisors that do have a significant amount of power because of who they work for, who they know, which could cause supervisors to be afraid to take action against them. And that's where we were discussing that issue.

(Plaintiffs' Ex. C, Conway Dep., 263:20-264:15.)

Defendant Younger ignored Ms. McCowan's authority when he subjected her sexual harassment. (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶ 96.) For example, on January 21, 2019, Officer Younger said, "Hey, babe" to Ms. McCowan who responded, "You mean Corporal?" This exchange was witnessed by Lieutenant McHugh and Plaintiff Allen. Ms. McCowan looked at Plaintiff Allen and Defendant McHugh and said, "You heard me, right?" Ms. Allen responded, "Yes" and shook her head in disbelief. (Id.)

Moreover, Defendant Ross admitted that a supervisor is entitled to the same rights to a harassment-free workplace as a police officer, stating "I believe you can still be harassed as a supervisor, yes." (Plaintiffs' Ex. HH, Ross Dep., 110:03-08).

41. McCowan claims to have attempted to notify Chief MacDonald of hers and Allen's complaints but was "very aware" that Chief MacDonald was attending an offsite CompStat meeting at Police Headquarters at the time she claims to have attempted to notify Chief MacDonald. Ex. 13, McCowan Dep., 185:14-186:17.

Response: Defendants' use of the term "claims" is inappropriate because on summary judgment, all inferences are to be drawn in the light most favorable to Plaintiffs. To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiff McCowan disputes Defendants' mischaracterization of her deposition testimony. Plaintiff McCowan admits to having attempted to notify Defendant MacDonald of Plaintiffs' sexual harassment complaints against Defendant Younger and that Defendant Williford tried to stop Plaintiff from reporting Defendant Younger's sexual harassment to Defendant MacDonald. (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶¶ 106-118.)

By way of further response: On January 29, 2019, Ms. Allen called Ms. McCowan (who was out of the office) and reported that she had been harassed by Officer Younger. (Id. at ¶ 106.) Ms. Allen and Ms. McCowan typed separate EEO complaints against Officer Younger and printed them for hand delivery to Chief Inspector MacDonald. (Id. at ¶ 107.) On January 30, 2019, Sergeant Allen (Ms. Allen's direct supervisor) walked in on Ms. Allen crying in the locker room and asked why she was crying. Ms. Allen said, "I'm requesting a meeting with Chief Inspector MacDonald regarding an EEO matter." (Id. at ¶ 108.) At 8:00 am the same day, immediately

upon Ms. McCowan's arrival to work, she told Officer Dawson (Chief Inspector MacDonald's aide) that she needed to personally speak to Chief Inspector MacDonald about two harassment complaints involving employees under his command. Officer Dawson said, "I'll tell you when the Chief arrives." (Id. at ¶ 109.) A few minutes later, Ms. McCowan received a text message from Sergeant Williford encouraging her not to deliver Plaintiffs' complaints of unlawful sexual harassment to Chief Inspector MacDonald: "Please see me before you submit those memos . . . let me handle it." (Id. at ¶ 110.) Ms. McCowan texted back saying, "What I have to talk about should go directly to the boss. It's bigger than what you may think. It also involves Jen." (Id. at ¶ 111.) Sergeant Williford arrived at Ms. McCowan's desk and told her to follow him to the conference room where she repeated her request to speak directly to Chief Inspector MacDonald, who had previously told her that he "wanted to know about situations like this before they left the building." Sergeant Williford said, "As a supervisor you have to learn that there are other supervisors you can go to—you have to go to Inspector McCarrick before MacDonald." (Id. at ¶ 112.) Ms. McCowan responded, "It's my understanding that the chain of command doesn't apply when reporting an EEO complaint or misconduct within the Department. I need to speak with Chief Inspector MacDonald about an EEO complaint." (Id. at ¶ 113.) Sergeant Williford said, "Although the Chief has an 'open-door policy,' he kind of doesn't; and you're on probation—you don't want to be labeled a troublemaker." (Id. at ¶ 114.) After her unsuccessful attempt at meeting with Chief Inspector MacDonald, Ms. McCowan met Ms. Allen and Sergeant Allen in the women's locker room, where Plaintiffs reported their EEO complaints to Sergeant Allen. (Id. at ¶ 115.) Despite Plaintiffs' multiple requests through various channels to speak with Chief Inspector MacDonald, he did not meet with them. (Id. at ¶ 118.)

42. McCowan and Allen left for the day on sick leave before Chief MacDonald returned to his office: When I arrived back from COMPSTAT, I became aware that they had wanted to meet with me. I sent someone from my staff to bring them to my office to meet with them, and I was informed that they had left for the day. Ex. 6, MacDonald Dep., 48:19-23.

Response: Plaintiffs dispute Defendant MacDonald's testimony, as his credibility is in issue in this case. Plaintiffs deny this paragraph. Additionally, Defendants mischaracterize Defendant MacDonald's testimony, which does not support Defendants' assertions in this paragraph. Defendant MacDonald testified:

Q. Did you personally meet with Audra McCowan?

A. When I arrived back from COMPSTAT, I became aware that they had wanted to meet with me. I sent someone from my staff to bring them to my office to meet with them, and I was informed that they had left for the day.

Q. Who did you have on your staff to let McCowan and Allen know that you wanted to meet with them?

A. **I don't recall.**

Q. Would that have been on the 31st of January?

A. . . . **I don't remember which day it was.**

(Defs' Ex. 6, MacDonald Dep., 48:07 – 49:08.)

43. Chief MacDonald wanted to meet with McCowan and Allen because: They requested to meet with me. So I wanted to hear what they had to say, ensure that they were advised of their rights under the EEO policy, ensure that they knew they didn't have to put it through the Police Department, they could use a number of other outlets if they felt that their problems weren't being addressed, and to ensure them that, you know, this type of action would not be tolerated and that they didn't have anything to worry about, that we would protect them and ensure it was properly investigated. That's, generally, why I would meet with anyone in regards to any form of complaint. Ex. 6, MacDonald Dep., 49:17-50:7.

Response: Plaintiffs dispute Defendant MacDonald's testimony, as his credibility is in issue in this case. Plaintiffs deny this paragraph. Defendant MacDonald did not want to meet with Plaintiffs as demonstrated by his utter **failure** to meet with them:

Q. When did you meet with Ms. McCowan and Officer Allen to inform them of that?

A. **I don't believe that I did** at this point. Once the investigation was started, that was then **pushed down to my subordinate supervisors** to let them manage that aspect of it.

Q. Which of your subordinates met with Corporal McCowan and Officer Allen regarding these complaints?

A. **I don't know**.

(Defs' Ex. 6, MacDonald Dep., 50:08-17.)

44. McCowan emailed hers and Allen's complaints to Chief MacDonald, declining to include a request to speak with Chief MacDonald in the body of the email: Good Morning Sir,

> Myself and Officer Jennifer Allen have a situation that we would like for you to be made aware of. We tried to meet with you yesterday, but our attempt was unsuccessful. I have attached two memorandums, one that Officer Allen wrote and another that I wrote. Thank you for taking the time to read this email and our memos. Ex. 50, Email Thread, 1/31/19.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs deny this paragraph, as Defendants have grossly mischaracterized Ms. McCowan's email to Defendant MacDonald in which she did in fact request to speak with Defendant MacDonald in the body of the email: "Good morning Sir, Myself and Officer Jennifer Allen have a situation **that we would like for you to be made aware of. We tried to meet with you yesterday, but our attempt was unsuccessful."** (Defs' Ex. 50, Email Thread.)

45. McCowan made no efforts to follow up with Chief MacDonald. Ex. 13, McCowan Dep., 153:20-157:18.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs deny this paragraph as Defendants have mischaracterized Ms. McCowan's deposition testimony. Ms. McCowan testified that on January 30th she went to Defendant MacDonald's office and notified Officer Dawson (Defendant MacDonald's aide) that she needed to personally speak to Chief Inspector MacDonald about two harassment complaints involving employees under his command. (Defs' Ex. 13, McCowan Dep., 149:03-19; see also Plaintiff's Verified Second Amended Complaint, ¶ 109.) A few minutes later, Ms. McCowan received a text message from Sergeant Williford encouraging her not to deliver Plaintiffs' complaints of unlawful sexual harassment to Chief Inspector MacDonald: "Please see me before you submit those memos . . . let me handle it." (Defs' Ex. 13, McCowan Dep., 149:20-23; see also Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶ 110.) Ms. McCowan further testified:

> At that time I didn't want to speak with anyone because I didn't feel like anyone in that building was working, you know, for me with these issues. And then I knew the added piece with the sexual harassment. I didn't feel comfortable going to Williford for after almost two months of inactivity on his behalf when he said he was helping us. So I think I might have said like okay or something like that. He comes over to me and begins to have a conversation at my desk. At some point he asked if we can speak in the conference room and I said yes. So we go in the conference room, and, you know, he's like, before you submit those memos I wanted to see them. And I'm like, no. What I have needs to go to the Chief. I don't want to involve you, you know. I want to go see the Chief. That's the only person I want to talk to in this building. And he said, you have to learn that there are other supervisors you can go to outside of the Chief. And then he referenced Inspector McCarrick specifically. And I said there is no way I am going to Inspector

McCarrick. He doesn't speak to me. He doesn't see me. I don't matter to him. No, I'm not going to Inspector McCarrick with what I have to say to the Chief. . . . And I explained to him that what I have should go directly to the Chief. I don't believe chain command applies. And he said, you know, you are a new supervisor. And he kept harping on the fact that I'm a new supervisor and I don't want to be labeled as a troublemaker. I got really upset with that. Again, it's the second time that he said I don't want to be labeled as a troublemaker. So I'm thinking, okay, me speaking up is being labeled a troublemaker. Like where is that okay. So he asked me if Officer Allen would come join us. I said I knew that she was upset, and I don't think that she would want to speak to him. She would rather speak with the Chief. He asked me if I would, you know, ask her to speak with him. That's basically how the meeting ended. I, you know, walked out.

(Defs' Ex. 13, McCowan Dep., 149:23 – 152:07.)

Q. At any point, did Sergeant Williford tell you, hey, you can't submit that memo to Chief Inspector MacDonald?

A. It was implied.

. . .

Q. Are you alleging that you were blocked from speaking with Chief Inspector MacDonald face-to-face?

A. Absolutely

Q. Did you make any effort after this conversation with Sergeant Williford to speak with Chief MacDonald face-to-face?

A. I sent this e-mail to the Chief. I [didn't] think that anyone was going to tell him I wanted to speak with him, so I felt this was the only way I could speak with him.

Q. Did you send him a follow-up e-mail or stop by his office or leave him a voicemail that you wanted to see and speak with him face-to-face about this alleged harassing comment by Officer Younger?

A. I would think that would be his place to follow up with me. Yeah.

. . .

Q. There would have been nothing, though, assuming that you were out sick, there would have been nothing from preventing you from picking up the phone and calling Chief Inspector MacDonald, or leaving him an e-mail asking him to set up a time to speak with him over the phone, correct?

A. I did e-mail him. He never responded to this. I don't have his phone number, so I couldn't just leave a voicemail. If I were to call the office, I had no confidence that the message would get to him.

(Defs' Ex. 13, McCowan Dep., 152:15-18; 153:20 – 154:17; 155:03-16.)

After Defendant Williford blocked Ms. McCowan from speaking to Defendant MacDonald, she and Plaintiff Allen notified Defendant Allen of same. (Defs' Ex. 54 at CITY 2643) ("At approximately 11:00am . . . P/O Allen . . . informed me she and the Cpl were not able to talk to anyone.")

Sergeant Williford admitted to threatening Plaintiff McCowan. (Defs' Ex. 54, at CITY 2644.) ("I did remind Cpl. McCowan that she has only been a supervisor for about 6 to 8 week [sic] and that she really should give me something to work with, so that she does not violate any directives during her probation. Cpl. McCowan assured me that she was well versed with the procedures of EEO and how to proceed or assist an officer if needed.")

46. Inspector McCarrick compiled memos explaining what little Allen and McCowan's chain-of-command knew about Allen's and McCowan's complaints immediately after becoming aware of those potential EEO complaints on January 30, 2019. Ex. 5, McCarrick Dep., 48:20- 49:19.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs dispute Defendant McCarrick's testimony as his credibility is at issue in this case. Plaintiffs admit only that Inspector McCarrick "compiled memos" and deny Defendants' characterization of same. Defs' Ex. 51, at CITY 2521 states "On 01-30-19, Inspector Michael McCarrick, PR #197485, Intelligence Bureau, forwarded a memorandum that detailed allegations that were made by Police Officer Jennifer Allen #1487, PR #250988, Criminal Intelligence and Corporal Audra McCowan #8194, PR #250998, Intelligence Bureau. In the memorandums, produced by Officer Allen and Corporal McCowan, they both alleged that Police Officer Curtis Younger #5211, PR #217229, DVIC, sexually harassed them by making multiple inappropriate comments to them."

47. At the time Inspector McCarrick submitted an EEO complaint on behalf of McCowan and Allen, Inspector McCarrick, Sergeant Allen, and Sergeant Williford knew no specifics about McCowan's and Allen's allegations. See Ex. 54, Memo from McCarrick to Chief Inspector, Office of Professional Responsibilities [sic], and attached memos, 1/30/19.

Response: Plaintiffs deny Defendants' assertions in this paragraph. Defendant Allen knew the specifics of Plaintiffs' allegations. (Plaintiffs' Ex. FF, at McCowan-Allen 0167, Allen's January 30, 2019 EEO Complaint, ¶ 9) ("On January 30, 2019 I notified Sgt. Allen about the harassment.") Moreover, Defs' Ex. 51, at CITY 2521 states "On 01-30-19, Inspector Michael

McCarrick, PR #197485, Intelligence Bureau, forwarded a memorandum that detailed allegations that were made by Police Officer Jennifer Allen #1487, PR #250988, Criminal Intelligence and Corporal Audra McCowan #8194, PR #250998, Intelligence Bureau. In the memorandums, produced by Officer Allen and Corporal McCowan, they both alleged that Police Officer Curtis Younger #5211, PR #217229, DVIC, sexually harassed them by making multiple inappropriate comments to them."

48. Despite having no specific details, Inspector McCarrick placed Sergeant Williford's and Sergeant Allen's memos, along with a cover sheet requesting the opening of an EEO investigation, in a sealed envelope and ordered a sergeant to immediately hand-deliver the envelope directly to Chief Inspector Chris Flacco, the commanding officer of the Internal Affairs Bureau, which includes EEO. Ex. 5, McCarrick Dep., 48:20-49:19.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs dispute Defendant McCarrick's testimony as his credibility is at issue in this case. Plaintiffs deny that Defendant McCarrick had "no specific details" as Plaintiffs reported the harassment to Defendant Allen who gave her "memo" to Defendant McCarrick. (Plaintiffs' Ex. FF, at McCowan-Allen 0167, Allen's January 30, 2019 EEO Complaint, ¶ 9) ("On January 30, 2019 I notified Sgt. Allen about the harassment.") Moreover, Defs' Ex. 51, at CITY 2521 states "On 01-30-19, Inspector Michael McCarrick, PR #197485, Intelligence Bureau, forwarded a memorandum that detailed allegations that were made by Police Officer Jennifer Allen #1487, PR #250988, Criminal Intelligence and Corporal Audra McCowan #8194, PR #250998, Intelligence Bureau. In the memorandums, produced by Officer Allen and Corporal McCowan, they both alleged that Police Officer Curtis Younger #5211, PR #217229, DVIC, sexually harassed them by making multiple inappropriate comments to them."

49. At 9:59 a.m. on Thursday, January 31, 2019, McCowan emailed copies of her and Allen's complaints against Younger to Chief MacDonald at his work email address. Ex. 50, Email from McCowan to MacDonald, 1/31/19.

Response: Plaintiff McCowan admits that at 9:58 a.m. on Thursday, January 31, 2019, she emailed copies of Plaintiffs' sexual harassment complaints against Defendant Younger to Defendant MacDonald at his work email address.

50. Within an hour, at 10:53 a.m. on Thursday, January 31, 2019, Chief MacDonald forwarded the complaints directly to the attention of Chief Inspector Chris Flacco, the commanding officer of the Internal Affairs Bureau, which includes EEO. Ex. 50, Email from McCowan to MacDonald, 1/31/19.

Response: Denied. Plaintiffs object to these "facts" pursuant to Fed. R. Civ. O. 56(c)(2) because Defendants cannot produce admissible evidence to support the purported facts. The material cited by Defendants in support of these contentions—the email from Defendant MacDonald to Chris Flacco dated January 31, 2019 contained in Exhibit 50—was not produced in discovery even though Plaintiffs requested it more than once. (See Discovery Deficiency Letter to Defendants Dated July 27, 2020, at p. 7; Plaintiffs' First Set of Requests for Admissions Directed to Defendant City of Philadelphia Dated August 18, 2020, at Request No. 7.) Defendants never responded to Plaintiffs' discovery deficiency letter dated July 27, 2020. Defendants responses to Plaintiffs' First Set of Requests for Admissions Dated August 18, 2020 were due within 30 days, on **September 17, 2020**—and Defendants failed to timely respond and their responses are deemed admitted. (See Defendants' **September 18, 2020** Responses to Plaintiffs' Requests for Admissions.) Even if Defendants had timely responded to Plaintiffs' Requests for Admissions, Defendants response that "the email from Chief MacDonald to Chief Flacco was provided to plaintiffs in document production Bates numbered CITY 3223 – City 4935" is false—no such document was ever produced. The document cited by Defendants in support of these contentions—the email from Defendant MacDonald to Chris Flacco dated January 31, 2019 contained in Defs' Exhibit 50—is **not bates stamped** and Plaintiffs never received it until Defendants filed their motion for summary judgment. Pursuant to Rule 37(c)(1), "[i]f a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial . . ." Moreover, Defendant cannot satisfy the requirements under Federal Rule of Evidence 901 of authenticating the documents because there has been no testimony from a witness with knowledge that these items are what they are claimed to be.

Moreover, Defendant Conway testified as follows:

Q. How was this investigation initiated?

A. My understanding of it was that Inspector McCarrick contacted Chief Inspector Flacco, and that is where this investigation began.

Q. Is there a record of that?

A. The memorandum that Inspector McCarrick sent up is what he would have sent up to Chief Inspector Flacco.

…

Q. Why is the memorandum from Inspector McCarrick to Chief Inspector Flacco included in this investigative file?

A. Because all the EEO investigations, every one of them and every step that we have in the investigative process, myself and my partner have pushed and made sure that we can explain why we did the next step that we did.

…

Q. Is there an email from Inspector MacDonald to Inspector Flacco in this case?

A. I don't believe there is.

…

Q. Have you seen Corporal McCowan's email to Daniel MacDonald?

A. Not that I recall.

Q. Why didn't you request a copy of that email?

A. I didn't know it existed.

…

Q. [C]an you please pull up the document email to Daniel MacDonald? I'd like to mark it as Exhibit B.

Q. Have you ever seen this document before?
A. No.

(Conway Dep., 65:11 – 66:07; 71:02-04; 71:19-24; 72:03-14.)

51. On January 31, 2019, Internal Affairs initiated an investigation consolidating Inspector McCarrick's memo with the complaints Chief MacDonald forwarded to Internal Affairs.

Ex. 51 at CITY 2521, EEO Informational White Paper.

Response: Denied as stated. The material cited by Defendants in support of these contentions—Defs' Ex. 51 at CITY 2521—is silent as to any action taken by Defendant MacDonald and there is nothing in this exhibit to suggest that Defendant MacDonald took any action in response to Plaintiffs' complaints. Plaintiffs admit only that Defs' Ex. 51 at CITY 2521 states "On 01-30-19, Inspector Michael McCarrick, PR #197485, Intelligence Bureau, forwarded a memorandum that detailed allegations that were made by Police Officer Jennifer Allen #1487, PR #250988, Criminal Intelligence and Corporal Audra McCowan #8194, PR #250998, Intelligence Bureau. In the memorandums, produced by Officer Allen and Corporal McCowan, they both alleged that Police Officer Curtis Younger #5211, PR #217229, DVIC, sexually harassed them by making multiple inappropriate comments to them." CITY 2521 fails to mention that, in addition to making sexually harassing comments to Plaintiffs, Defendant Younger also physically touched both Plaintiffs. (Plaintiffs' Ex. FF, Plaintiffs' EEO Complaints.)

52. Sergeant Brent Conway was assigned to investigate Allen's and McCowan's complaints. See Ex. 51 at CITY 2493.

Response: It is admitted that Defendant Conway was assigned to investigate Plaintiffs' complaints.

53. Sergeant Conway ultimately conducted eighteen interviews of fifteen Intelligence Bureau employees as part of his investigation. Ex 51 at CITY 2495.

Response: It is admitted that Defendant conducted eighteen interviews.

54. Sergeant Conway ultimately concluded and forwarded his investigation to the Deputy Commissioner in charge of Internal Affairs on July 5, 2019. Ex. 51 at CITY 2492.

Response: Plaintiffs deny Defendants' assertions in this paragraph as the material cited in support of this contention—Defs' Ex. 51—does not contain any document bates numbered CITY 2492, and therefore Defendants have failed to cite a source that supports same as required by this Court's Policies and Procedures. Although Plaintiffs tried to locate the source in the document, they was unable to do so. As such, Defendants' assertions in this paragraph are denied.

It should be noted that on April 10, 2019, Plaintiffs filed charges of discrimination with the U.S. Equal Employment Opportunity Commission ("EEOC") and the Pennsylvania Human relations Commission ("PHRC") naming Defendant Conway as a respondent. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶¶ 23-34; Plaintiffs' Ex. K, Allen EEOC Charge; Plaintiffs' Ex. K, McCowan EEOC Charge.) Having been named as a Respondent in Plaintiffs' EEOC charges, Defendant Conway ignored this blatant conflict of interest and continued to "investigate" Plaintiffs' EEO Complaints.

55. Internal Affairs reached a number of conclusions after completing the investigation into McCowan's and Allen's complaints. See Ex. 51 at CITY 2516 – CITY 2520.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. It is admitted that Internal Affairs reached a number of conclusions after completing the "investigation" into Plaintiffs' complaints.

56. McCowan's complaint that Officer Younger sexually harassed her was "unfounded." Ex. 51 at CITY 2516.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. This paragraph is admitted in part, denied as stated. It is admitted that Internal Affairs concluded that Plaintiff McCowan's complaint against Defendant Younger was "unfounded." It is denied that this conclusion was correct. Defs' Ex. 51 at CITY 2516 states that the basis for this conclusion was

> This investigation revealed that Corporal McCowan filing an EEO complaint against Officer Younger in relation to the allegations set forth during her interview was not the appropriate course of action for her to take. As a supervisor, Corporal McCowan had the authority and the responsibility to request disciplinary action against Officer Younger if she believed he violated a departmental policy. Corporal McCowan did not provide any indication that she was prohibited from taking action against Officer Younger, nor did she provide any information that would suggest a reasonable reason for her failing to take appropriate actions to address Officer Younger's conduct.

(Defs' Ex. 51, CITY 2516.) Defendant Conway testified:

> Q. Why is [Plaintiff McCowan's] status as a supervisor relevant to your disposition of her sexual harassment claim against Younger?
>
> …
>
> A. In my opinion, she was in a position of authority and should have taken action to address the inappropriate comments he was making and/or if he touched her in a manner that she believed was inappropriate.
>
> Q. Is it your contention that because Ms. McCowan was a supervisor, she could not have been sexually harassed by her subordinate, Curtis Younger?
>
> A. No.
>
> Q. "No" what?
>
> A. No, it is not my contention.
>
> Q. What is your opinion in that regard?
>
> A. With regards to a supervisor being sexually harassed by a subordinate?
>
> Q. Yes.
>
> A. I believe it's all circumstances-based and relative to the individual complaint at the time. It's very case specific.
>
> Q. All right. But in general, is the fact that it's a supervisor accusing a subordinate of sexual harassment, is it your opinion that a supervisor can't be sexually harassed by their subordinate.

A. Absolutely not.

. . .

Q. Because it seems from the conclusions here that your conclusion not to sustain these allegations was based on her status as a supervisor.

A. Again, the conclusion is that of the inspector's. He would be the one that—inspector Kevin Hall would be the one you would have to ask as to what he believed—or what he believed and signed off on as the status and her rank status at the time and how that related to her complaint.

Q. Got it. Go to page 24. What am I looking at?

A. This would be the conclusion page that the inspector approves.

Q. Who wrote this?

A. **I write it** on behalf of the inspector.

Q. [T]he fifth paragraph down, where it says: "This investigation revealed," who wrote that paragraph?

A. I did.

Q. You say: This investigation revealed that Corporal McCowan filing an EEO complaint against Officer Younger in relation to the allegations she set forth during her interview was not the appropriate course of action for her to take. Who made the determination that filing an EEO complaint against Curtis Younger was not the appropriate action for her to take?

A. The inspector is the person who approved this.

Q. But who wrote it?

A. I do, based on the information that I'm used to them wanting written in that conclusion there. So we are -- we write these conclusions on a daily basis based on the information of how we know the inspector would like it worded.

Q. Got it. So you wrote that her filing an EEO complaint was not proper because you thought the inspector wanted you to reach that conclusion?

A. That's what he found, yes

…

Q Is it your belief, as we sit here today, that Corporal McCowan filing an EEO complaint against Officer Younger in relation to the allegations set forth in her interview was not the appropriate course of action for her to take?

A. As far as I am concerned, based on the information that I obtained during the course of this investigation, the appropriate action on behalf of -- in this situation, based on the facts that we had available to us, that the appropriate action would have been to take immediate corrective action as far as disciplinary action against Officer Younger.

Q. Why was it inappropriate for her to file an EEO complaint?

A. In my opinion, and based on what I understand the inspector wanting there, is that the appropriate action would have been to take disciplinary, progressive disciplinary action against Officer Younger.

…

Q. Under the policy, did Ms. McCowan not have an avenue for complaint about sexual harassment in this case?

A. I'm not sure of the answer to that question. I believe that the answer to the question, in my opinion, if you're asking my opinion, given what we know about what was -- what we were able to prove and disapprove, those allegations were allegations that, in my opinion, should have been addressed straight-on with disciplinary action against Officer Younger.

Q. Is it your contention that Ms. McCowan should not have filed an EEO complaint?

A. No.

Q. But you're also saying that that was not the appropriate action for her to take. So I'm trying to understand the discrepancy here . . . Explain the discrepancy.

. . .

A. Because, unfortunately, in our department, there are situations where lower-ranking employees do have a measure of authority that a supervisor doesn't have, based on their connections or people that they have associations with within the department. So in some cases, there are instances where a subordinate or a supervisor doesn't have the -- even though they have the official authority, may not have the unofficial authority to take action, based on that person's connections.

…

Q. How would Ms. McCowan have known in this case that the appropriate action for her to take was to discipline Younger rather than file an EEO complaint; is that in a policy somewhere? A Not that I'm aware of, no.

(Plaintiffs' Ex. C, Conway Dep. 101:06 – 103:03; -113:07.)

Q. What does the policy say about when the supervisor is being harassed by a subordinate? What does it say?

A. There is no—there is no—as a supervisor its not in the policy to take any action as far as disciplinary action. It tells you how to take disciplinary action. There's no

written statement that says, if somebody is insubordinate to you, here's what you do. There's nothing written statement about how you are supposed to react as a supervisor.

…

Q. What if the complainant—the supervisor complainant feels powerless to discipline the harasser?

A. Then that supervisor needs to articulate that and articulate why they feel that way.

Q. Did Ms. McCowan articulate that to you?

A. I believe she said that he was a part of Highway. However, my previous response was in reference to the very first time he said something inappropriate. At that stage, it should have been addressed appropriately. So if you're saying -- going deeper down the road, where he's now several comments and several days into this alleged conduct, obviously that's a different conversation. But initially, here's a supervisor who has an inappropriate comment said to her, and there's no official action taken against this employee. That is her responsibility, to take action.

…

Q. Does the fact that she complained on January 30th as a supervisor absolve Curtis Younger of anything he said to her before January 30th?

A. Absolutely not.

(Plaintiffs' Ex. C, Conway Dep., 159:19 – 162:01.)

The investigative conclusions state: "it should be noted that this investigation revealed Officer Younger made inappropriate comments to Corporal McCowan. Were he to have made the same comments to an officer of equal rank or to a civilian employee, those comments **could have been deemed a form of sexual harassment.** The policy Officer Younger stated that he referred to as "bullshit" directly addresses the type of comments that this investigation revealed were made by Officer Younger to another employee." (CITY 3242). Regarding the investigative conclusions, Defendant Conway testified:

Q. Do you agree with that statement as worded?

A. **That they could have been deemed sexual harassment? Yes.**

(Plaintiffs' Ex. C, Conway Dep., 188:22 – 189:01.)

57. Internal Affairs uses the term "unfounded" in reference to allegations that have no factual basis supporting the allegations. Ex. 39, Conway Dep., 55:12-16, 113:19-23.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Defendants' use of the term "allegations" is inappropriate, as, on summary judgment all inferences are to be drawn in the light most favorable to Plaintiffs. This paragraph is admitted in part, denied as stated. It is admitted that

Internal Affairs uses the term "unfounded" in reference to complaints that it claims have no factual basis, however it is denied that Internal Affairs uncovered no facts supporting Plaintiffs' allegations. For example, the investigative notes state that "Officer Allen stated that she heard Officer Younger state, 'Hey babe' to Corporal McCowan on 01-21-19." (Defs' Ex. 51, CITY 2517.) The investigative notes further state that " Civilian Collier stated that she has heard Officer Younger state to Corporal McCowan 'Hey Babe.'" (Id.) The investigative notes further state that "Officer Younger admitted that he told Corporal McCowan that he had a 'crush' on her years ago, when she was working in the 22nd District Operations Room." (Id.) The investigative notes further state that "Officer Younger stated that he did state to Corporal McCowan, you have this man everywhere, while referring to pictures of her husband that she had on her desk." (Id.) The investigative notes further state that "Officer Younger . . . did not recall making the other comments alleged by Corporal McCowan in her complaint." (Id.) The investigative notes further state that "This investigation revealed that Officer Younger did make inappropriate comments to and/or about Corporal McCowan." (Id.) The investigative notes further state that "Civilian Collier stated that on 01-28-19, she believed Officer Younger reached for Corporal McCowan's hand. Civilian Collier stated that she did not know why Officer Younger reached for Corporal McCowan's hand . . ." (Id.) The investigative notes further state that "Officer Younger stated that he was at Corporal McCowan's desk, when he observed pictures of her husband everywhere . . . Officer Younger then asked Corporal McCowan if there was any 'wiggle room' for someone else to get into the relationship and she said, 'No.' Officer Younger stated that he then said something to the effect of, he (Corporal McCowan's husband) was in glass, while referring to their relationship. Officer Younger stated to Corporal McCowan that her husband had better be careful about breaking the glass." (Id. at CITY 3233-3234.) The investigative notes further state that "[i]t should be noted that were Officer Younger to have made all of the comments Corporal McCowan alleged in her complaint in the manner that she alleged, he would have been in violation of Directive #8.7, Employment Discrimination/Equal Employment Opportunity (EEO) – Responsibilities and How to File a Complaint." (Defs' Ex. 51, CITY 2518.) However, the only reason Internal Affairs found that Plaintiff's complaint was unfounded was because "As a supervisor, Corporal McCowan was responsible for ensuring Officer Younger's conduct was such that it was in accordance with the guidelines set forth in Directive #8.7. Corporal McCowan was also responsible for taking appropriate actions against Officer Younger each time she believed that he violated any section of the directive." (Defs' Ex. 51, CITY 2518.).

Defendant Conway testified:

Q. What does "unfounded" mean?

A. That the complaint, based on the information that was provided by the complainant, was not founded in relation to the charge that the inspector stamped on the white paper.

Q. But what would you have needed to hear from Ms. McCowan or the witnesses in order to -- for this to be sustained?

A. As far as the sexual harassment portion of that?

Q. Yes.

A. That we were able to find all of those allegations were witnessed, including the touching was witnessed, all of it together.

…

Q. Did any of the witnesses that you interviewed confirm that Officer Younger tried to touch Corporal McCowan's hand?

A. I believe the only witness that was asked that was the civilian, and I don't believe she confirmed that she saw that. I think she said that she did not see that.

…

Q. If she said that she did see it, would that have changed your conclusion?

A. Absolutely. As it relates to whether or not that incident occurred, absolutely.

(Plaintiffs' Ex. C, Conway Dep., 113:19 – 115:03.)

Civilian Collier testified that she informed Defendant Conway she saw Younger touch McCowan's hand:

Q. On 01-28-19, did you observe Officer Younger grab Corporal McCowan's wedding rings and attempt to pull them off her finger?

A. Yes.

(Plaintiffs' Ex. CC, Collier Interview, at CITY 2560.)

58. McCowan's complaint that Officer Younger made inappropriate comments to her was "sustained." Ex. 51 at CITY 2516.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. This paragraph is admitted in part, denied as stated. It is denied that Plaintiff McCowan complained that Defendant Younger made "inappropriate comments"—in fact Plaintiff complained that Officer Younger sexually harassed her by making sexually explicit comments and touching her in a sexually offensive manner, which Defendants' downplayed as "inappropriate comments" to make Younger's conduct appear less important than it really is. Defendant Conway testified:

Q. Did Ms. McCowan, in her EEO complaint, say that she was complaining about inappropriate comments, or is that your characterization?

A. That's the characterization that the inspector would have wanted us to have in there.

(Plaintiffs' Ex. C, Conway Dep. 162:05-17.)

Q. Is there a difference in severity between making a sexually harassing comment and an inappropriate comment?

A. I'm sure there would be.
(165:13-16.)

It is admitted that Internal Affairs characterized Defendant Younger's conduct as inappropriate comments and that this finding was "sustained."

This paragraph is denied to the extent Defendants are claiming that Defendant Younger's comments and conduct were not sexually harassing. The investigative notes state that "[i]t should be noted that were Officer Younger to have made all of the comments Corporal McCowan alleged in her complaint in the manner that she alleged, he would have been in violation of Directive #8.7, Employment Discrimination/Equal Employment Opportunity (EEO) – Responsibilities and How to File a Complaint." Internal Affairs did not conclude that Defendant Younger's conduct was sexually harassing because the PPD claims that "[a]s a supervisor, Corporal McCowan was responsible for ensuring Officer Younger's conduct was such that it was in accordance with the guidelines set forth in Directive #8.7. Corporal McCowan was also responsible for taking appropriate actions against Officer Younger each time she believed that he violated any section of the directive." (Defs' Ex. 51, CITY 2518.)

59. Sergeant Conway's investigation revealed that a witness overheard Officer Younger say to McCowan, "You've got this motherfucker [in reference to McCowan's husband] all over your desk[,]" overheard Officer Younger say to McCowan that McCowan looked "fat" in one of the pictures on McCowan's desk, and overheard Officer Younger say to McCowan, "Hey babe." Ex. 51 at CITY 2516-17.

Response: It is admitted that Defendant Conway's "investigation" revealed that Civilian Collier overheard Defendant Younger say to Ms. McCowan, "You've got this motherfucker [in reference to McCowan's husband] all over your desk[,]" overheard Officer Younger say to McCowan that she looked "fat" in one of the pictures on her desk, and overheard Officer Younger say to McCowan, "Hey babe." (Ex. 51 at CITY 2516-17.)

By way of further response, Civilian Collier told Defendant Conway in an interview:

Q. Have you ever heard Officer Younger make an inappropriate comment to or about Corporal McCowan?

A. I think what he said he could have kept to himself. I believe he was looking at her wedding photo and I think he made a comment that she was fat.
(Plaintiffs' Ex. CC, Collier Interview, at CITY 2559.)

Q. Have you ever heard Officer Younger state to Corporal McCowan, "Hey babe?"

A. Yes . . .

Q. When did you hear Officer Younger state to Corporal McCowan, "Hey babe?"

A. A lot of times when he is speaking to some of the ladies in the office he says "hey baby."

. . .

Q. On 01-28-19, did you observe Officer Younger pick up a picture that was on Corporal McCowan's desk and state, "You have this motherfucker all over the desk?"

A. Yes.

. . .

Q. On 01-28-19, did you observe Officer Younger point at a picture that was on Corporal McCowan's desk and ask her if she was pregnant in the picture?

A. Yes.

Q. On 01-28-19, did you observe Officer Younger grab Corporal McCowan's wedding rings and attempt to pull them off her finger?

A. Yes. I think he reached for her hand. I didn't know what he was doing, but I do remember seeing him reach for her hand.

(Plaintiffs' Ex. CC, Collier Interview, at CITY 2560.)

60. None of the eleven other employees interviewed heard Officer Younger make any of the comments alleged by McCowan. Ex. 51 at CITY 2517.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiff admits only that Ex. 51 at CITY 2517 states as Defendants asserted in this paragraph. This paragraph is denied to the extent Defendants are claiming that Defendant Younger did not sexually harass Plaintiff McCowan because "none of the eleven other employees interviewed heard Officer Younger make any of the comments alleged by McCowan." In fact, the sexual harassment was so open and obvious that several of Ms. McCowan's coworkers (who were not interviewed) left notes and cards on her desk expressing sympathy. (Plaintiffs' Ex. DD, Sympathy Cards, McCowan-Allen 0266-0267.)

61. McCowan's complaint that Officer Younger touched her inappropriately, attempting to forcibly remove her wedding rings, was "not sustained." Ex. 51 at CITY 2517.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs admit that Internal Affairs refused to "sustain" McCowan's complaint that Officer Younger sexually assaulted her by attempting to forcibly remove her wedding rings. Plaintiffs deny that there was no evidence to support a finding of "sustained." A third party witness, Civilian Collier, stated "that on 01-28-19, she believed Officer Younger reached for Corporal McCowan's hand."

62. Internal Affairs uses the term "not sustained" in reference to allegations that can neither be proved or disproved. Ex. 39, Conway Dep., 55:7-11.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs admit only that Defendant Conway's deposition testimony states as Defendants asserted in this paragraph.

63. Sergeant Conway's investigation did not reveal evidence that could definitively prove or definitively disprove McCowan's allegations that Officer Younger attempted to remove her wedding rings. Ex. 51 at CITY 2517-18.

Response: Denied. Civilian Collier told Defendant Conway in an interview:

Q. Have you ever heard Officer Younger make an inappropriate comment to or about Corporal McCowan?
A. I think what he said he could have kept to himself. I believe he was looking at her wedding photo and I think he made a comment that she was fat.

(Plaintiffs' Ex. CC, Collier Interview, at CITY 2559.)

Q. Have you ever heard Officer Younger state to Corporal McCowan, "Hey babe?"

A. Yes . . .

Q. When did you hear Officer Younger state to Corporal McCowan, "Hey babe?"

A. A lot of times when he is speaking to some of the ladies in the office he says "hey baby."

. . .

Q. On 01-28-19, did you observe Officer Younger pick up a picture that was on Corporal McCowan's desk and state, "You have this motherfucker all over the desk?"

A. Yes.

. . .

Q. On 01-28-19, did you observe Officer Younger point at a picture that was on Corporal McCowan's desk and ask her if she was pregnant in the picture?

A. Yes.

Q. On 01-28-19, did you observe Officer Younger grab Corporal McCowan's wedding rings and attempt to pull them off her finger?

A. Yes. I think he reached for her hand. I didn't know what he was doing, but I do remember seeing him reach for her hand.

(Plaintiffs' Ex. CC, Collier Interview, at CITY 2560.)

64. Allen's complaint that Officer Younger had sexually harassed her was "not sustained."

Ex. 51 at CITY 2519.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs admit that Internal Affairs refused to "sustain" Allen's complaint that Officer Younger sexually harassed her. Plaintiffs deny that there was no evidence to support a finding of "sustained."

65. None of the eleven employees interviewed by Sergeant Conway could corroborate any of

Allen's accusations that Officer Younger sexually harassed her. Ex. 51 at CITY 2519.

Response: Denied. The investigative notes state that "Officer Burnett stated that he did hear Officer Younger state that the sexual harassment MPO class was "bullshit." Officer Burnett heard Officer Younger make this statement as he and other employees were leaving class. (Defs' Ex. 51, at CITY 2506.)

66. Sergeant Conway's investigation sustained departmental violations against Officer

Younger for his use of the word "bullshit" to describe a Municipal Police Officer training

class covering sexual harassment. Ex. 51 at CITY 2519-20.

Response: It is admitted that Sergeant Conway's investigation sustained departmental violations against Officer Younger for his use of the word "bullshit" to describe a MPO training class covering sexual harassment.

67. Finally, the conclusions section of EEO#19-0010 stated: It should be noted that this investigation revealed Officer Younger made inappropriate comments to Corporal McCowan. Were he to have made the same comments to an officer of equal rank or to a civilian employee, those comments could have been deemed a form of sexual harassment. The policy Officer Younger stated that he referred to as "bullshit", directly addresses the type of comments that this investigation revealed were made by Officer Younger to another employee. Ex. 51 at CITY 2520.

Response: It is admitted that the conclusions section of EEO #19-0010 states as Defendants have asserted in this paragraph. It is denied that Defendant Younger's statements were not sexually harassing by virtue of her status as his supervisor. Defendant Conway testified:

Q. [I]s the fact that it's a supervisor accusing a subordinate of sexual harassment, is it your opinion that a supervisor can't be sexually harassed by their subordinate?

A. Absolutely not. That is not my contention.

(Plaintiffs' Ex. C, Conway Dep., 104:06-15.)

68. Officer Younger received a disciplinary suspension as a result of the departmental violations identified in EEO 19-0010. Ex. 52, PBI Documents.

Response: Denied. (Plaintiffs' Ex. S, MMWR 013427-28.) (stating Defendant Younger has not been disciplined because "the case against P/O Younger is still open at the PBI.") Defendant Younger testified he was not disciplined:

Q. As a result of this investigation, were you disciplined in any way?

A. No.

(Plaintiffs' Ex. T, Younger Dep., 75:11-13.)

69. McCowan received disciplinary charges, issued July 31, 2019, for her failure to meet her duties and responsibilities as a supervisor under Directive 8.7. The charges were not addressed prior to McCowan's resignation. Ex. 33, McCowan PBI Hist. and 75-18s.

Response: It is admitted that Plaintiff McCowan was received a retaliatory disciplinary action for "failure to supervise" her harasser, Defendant Younger.

70. When asked what evidence, facts, or information she had to support her claims that issuance of disciplinary charges was discriminatory or retaliatory, McCowan could provide nothing more than speculation. Ex. 13, McCowan Dep., 252:24-257:10.

Response: Denied. Defendants have mischaracterized Plaintiff's testimony.

71. On March 6, 2019, McCowan sent a memorandum to Deputy Commissioner Christine Coulter's attention. Ex. 16, Coulter Dep., 73:18-77:21.

Response: It is admitted that on March 6, 2019, Plaintiff McCowan sent a memorandum to Deputy Commissioner Christine Coulter's attention.

72. In her memorandum, McCowan requested "to be detailed out of the [DVIC] building, to a unit in my current chain of command under Deputy Commissioner Christine Coulter[.]" Ex. 17, Memo from McCowan to Coulter, 03/06/19.

Response: It is admitted that in her memorandum, Plaintiff stated as follows:

1. On January 30, 2019, I submitted a memorandum detailing some of the on-going sexual harassment and hostile work environment practices within the Delaware Valley Intelligence Center. As a result the accused officer has not been moved, creating for me, more of a hostile work environment.
2. I respectfully request to be detailed out of the building, to a unit in my current chain of command under Deputy Commissioner Christine Coulter; pending the adjudication of my complaint.
3. Any consideration in this matter will be greatly appreciated.

(Defs' Ex. 17, CITY 2647.)

73. "Deputy Coulter's command," as understood by McCowan, encompassed PBI, in which McCowan had previously worked. Ex. 13, McCowan Dep. 264:3-265:18.

Response: Plaintiffs deny this paragraph as Defendants have mischaracterized Ms. McCowan's deposition testimony. Plaintiff did not testify that she understood "Deputy Coulter's command" encompassed PBI. (Defs' Ex. 13, McCowan Dep., 264:03-265:18.)

74. McCowan believed that Corporal Mary Carpino, the then-current PBI corporal, was on the verge of retirement, but does not know when, or if, Corporal Carpino retired. Ex. 13, McCowan Dep. 264:3-265:18.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. This paragraph is admitted in part, denied as stated. Defendants have mischaracterized Ms. McCowan's deposition testimony. Plaintiff testified as follows:

Q. Have you ever spoken to Mary Carpino before?

A. Yes, I would consider her a friend.

Q. Did Corporal Corpino have any discussion with you about her intention to perhaps resign as a corporal in PBI?

A. Well, not resign. She is retiring. I don't know when, what's her date. I'm not too sure of that, but she is retiring, yes.

(Defs' Ex. 13, McCowan Dep., 265:01-09.)

75. On approximately March 8 or 9, 2019, Coulter received a memorandum from McCowan submitted through the chain of command. Ex. 16, Coulter Dep., 43:18-20; 44:8-13.

Response: It is admitted that Defendant Coulter testified:

Q. When did you receive this memo?

A. Not sure. Probably the 8th or 9th of March.

(Defs' Ex. 16, Counter Dep., 43:18-20.)

76. Coulter took McCowan's memorandum to that morning's meeting of the Executive Team, comprised of all available Deputy Commissioners and the Police Commissioner, if available. Ex. 16, Coulter Dep., 51:5-11;51:22-52:2.

Response: Admitted in part, denied as stated. It is admitted that Defendant Coulter took Plaintiff's memorandum to the morning meeting of the Executive Team—comprised of "[Defendant Coulter], Dennis Wilson, Deputy Wimberly, Deputy Sullivan, Deputy Patterson, and Police Commissioner Ross"—which is "where the decision came to move her to Police Radio." (Defs' Ex. 16, Coulter Dep., 51:03 – 52:02.) By way of further response, Defendant Coulter testified:

> Q. Have you had any conversations with former Police Commissioner Richard Ross about Audra McCowan?
>
> A. Just a conversation when I got her memo. I brought it up at the morning meeting . . . which is our executive team meeting . . . I believe Commissioner Ross was at the table that day.

(Defs' Ex. 16, Coulter Dep., 27:02-21.)

77. Because McCowan's memorandum alleged that she continued to be the victim of ongoing sexual harassment, Coulter wanted to ensure that a complaint had been filed with departmental EEO. Ex. 16, Coulter Dep., 51:1-11.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs dispute Defendant Coulter's testimony, as her credibility is in issue in this case. Plaintiffs further dispute Defendants' mischaracterization of Defendant Coulter's testimony. Plaintiffs admit that Defendant Coulter stated she brought Plaintiff's memo to the executive team meeting "to make sure that there was a complaint filed." (Defs' Ex. 16, Coulter Dep., 51:1-11.)

78. Coulter was concerned that the allegations may be against one of McCowan's superiors, but learned from the Deputy Commissioner in charge of Internal Affairs and EEO that McCowan had filed a complaint and that McCowan's allegations involved a subordinate: Curtis Younger. Ex. 16, Coulter Dep., 42:2-9; 54:9-12.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs dispute Defendant Coulter's testimony, as her credibility is in issue in this case. By way of further response, Plaintiffs admit that Defendant Coulter testified as stated in this paragraph.

79. At some point later that same day, Coulter approved McCowan's request and began the process of detailing McCowan. Ex. 16, Coulter Dep., Dep. 51:11-15.

Response: It is denied that Plaintiff McCowan requested to be detailed to Police Radio. (Defs' Ex. 16, Coulter Dep. 58:10-12.) By way of further response, Defendant Coulter testified:

Q. What was Ms. McCowan's schedule when she was sent to Police Radio?

A. I think she went to either one or two platoons. So it would have been two weeks of daywork and two weeks of nightwork. . . .

Q. What about days off?

A. They rotate the same as police officers do.

Q. Rotating days off?

A. Yes.

. . .

Q. Did [Plaintiff McCowan] specifically request to go to Police Radio?

A. No. . . .

. . .

Q. Did you know she was moved to either 1 or 2 Squad?

A. I believed she would go to 1 or 2 Squad.

Q. Did you know that her schedule would be rotating two weeks daywork, one week nightwork . . . rotating days off schedule?

A. . . . [Y]es, I knew that's the schedules that they worked there.

(Defs' Ex. 16, Coulter Dep., 57:09 – 59:11.)

80. Coulter acted immediately to move McCowan because of McCowan's allegations in her memorandum of "ongoing sexual harassment" and "creati[on] [of] more of a hostile work environment." Ex. 16, Coulter Dep., 55:4-17.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs dispute Defendant Coulter's testimony, as her credibility is in issue in this case. Plaintiffs admit that the quoted testimony states as Defendants assert in this paragraph. However, Defendant Coulter also admitted,

"Normally, you would go into the complaint and remove the possible offender" (Defendant Younger), not the complainant (Plaintiff McCowan). (Defs' Ex. 16, Coulter Dep., 55:07-08.)

81. Because McCowan had specifically requested to be placed in Coulter's chain of command, Coulter placed McCowan in the only unit under the Organizational Services umbrella that had an immediate opening for a corporal: Police Radio. Ex. 16, Coulter Dep., 51:13-21, 58:7-9.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs dispute Defendant Coulter's testimony, as her credibility is in issue in this case. It is denied that Police Radio was the only unit under the Organizational Services umbrella that had an immediate opening for a corporal. Defendant Coulter testified she "believes" that Police Radio "was the only place that made sense." (Defs' Ex. 16, Coulter Dep., 60:05-07.) Defendant Coulter testified that she did not actually do anything to determine that there was a corporal's opening in Police Radio (or in any other unit under her command):

Q. So when you received this memo, you already knew that there were corporal openings in Police Radio; you didn't have to check, correct?
A. I knew they existed, yes.

(Defs' Ex. 16, Coulter Dep., 61:13-17.)

Moreover, there could not have been any particular need for Ms. McCowan in Police Radio, because when she arrived in the unit her desk was moved to the "tape room," an unheated room among the building's computer servers in which the temperature frequently drops below 50 degrees, requiring a winter coat to stay warm. (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶ 192.) On March 13, 2019, at 7:00 a.m., Ms. McCowan reported to work at Police Radio, and spoke with Lieutenant Watkins, who said, "each squad in this unit has all the supervisors they need, so whatever squad you go to, you will be an extra supervisor, and you won't count on their manpower projection." (Id. at ¶ 193.) Lieutenant Watkins also said that Plaintiff McCowan could not "work on the dispatch floor without proper training by the state." (Id.) After Lieutenant Watkins spoke with Captain Deacon at Police Radio, he informed Ms. McCowan that she would "basically be a rotating administrative corporal handling any extra work that the Captain or Lieutenant or Inspector have." (Id.) Lieutenant Watkins also confirmed that she would be "working rotating shifts in Squad 1, Platoon D." (Id.) Lieutenant Watkins also said, "The Captain is being told where to put you." (Id.) At 10:00 am, Ms. McCowan spoke again with Captain Deacon, who said he "still doesn't have any assignments for her." (Id. at ¶ 196.) He also said, "Inspector Gillespie asked if he could have you in 5 Squad (steady day work) but was told 'no' by Deputy Coulter's Office." (Id.) He said he asked Deputy Coulter's office if Ms. McCowan "could get Pennsylvania Emergency Management Agency (PEMA) training so she could at least help out on the radio floor, and they said no." (Id.) Ms. McCowan asked if she could at least be placed on the overnight "last out" shift (working steady hours from 10:00 pm to 6:00 am every night), which would ensure that either she or her husband, Keith (who is also a

police officer), would be at home at night with their children before they went to bed. (Id. at ¶ 197.) At 1:47 pm, Lieutenant Watkins called Ms. McCowan into his office. When she arrived, Lieutenant Ezekiel Williams was present. Lieutenant Williams told her: "They said you can't work overnight either." (Id.) For the entirety of Ms. McCowan's detail to Police Radio, she was not given any work assignments—she was forced to sit, without work, for 8 hours every day for over 800 hours (approximately 100 days). (Id. at ¶¶ 199, 221.)

Defendant Coulter testified:

> Q. Are you aware when Ms. McCowan was assigned to Police Radio, she sat out in that hallway on the second floor for 800 hours?
>
> A. No. I'm certainly not aware of that.
>
> Q. Are you aware that when she was assigned to Police Radio, she didn't perform any job functions?
>
> A. No. I'm certainly not aware of that either.
>
> . . .
>
> Q. If there was a need for Ms. McCowan in Police Radio, why was she sitting in the hallway for one hundred days for 800 hours before she went out on FMLA?
>
> A. **That's a really good question.**

(Defs' Ex. 16, Coulter Dep., 67:14-23; 68:08-12.)

82. Deputy Coulter honored McCowan's unusual request but still had to meet operational needs by detailing McCowan somewhere a corporal was actually needed. Ex. 19, Ross Dep., 89:7-21.

Request: This paragraph is denied. Plaintiffs admit that it was unusual that Defendants moved Plaintiff, the complainant, instead of Defendant Younger, the harasser. Defendant Coulter admitted this was unusual, stating: "Normally, you would go into the complaint and remove the possible offender" (Defendant Younger), not the complainant (Plaintiff McCowan). (Coulter Dep., 55:07-08.). It is denied that a corporal was needed in Police Radio. When Ms. McCowan arrived in the unit her desk was moved to the "tape room," an unheated room among the building's computer servers in which the temperature frequently drops below 50 degrees, requiring a winter coat to stay warm. (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶ 192.) On March 13, 2019, at 7:00 a.m., Ms. McCowan reported to work at Police Radio, and spoke with Lieutenant Watkins, who said, "each squad in this unit has all the supervisors they need, so whatever squad you go to, you will be an extra supervisor, and you won't count on their manpower projection." (Id. at ¶ 193.) Lieutenant Watkins also said that Plaintiff McCowan could not "work on the dispatch floor without proper training by the state."

(Id.) After Lieutenant Watkins spoke with Captain Deacon at Police Radio, he informed Ms. McCowan that she would "basically be a rotating administrative corporal handling any extra work that the Captain or Lieutenant or Inspector have." (Id.) Lieutenant Watkins also confirmed that she would be "working rotating shifts in Squad 1, Platoon D." (Id.) Lieutenant Watkins also said, "The Captain is being told where to put you." (Id.) At 10:00 am, Ms. McCowan spoke again with Captain Deacon, who said he "still doesn't have any assignments for her." (Id. at ¶ 196.) He also said, "Inspector Gillespie asked if he could have you in 5 Squad (steady day work) but was told 'no' by Deputy Coulter's Office." (Id.) He said he asked Deputy Coulter's office if Ms. McCowan "could get Pennsylvania Emergency Management Agency (PEMA) training so she could at least help out on the radio floor, and they said no." (Id.) Ms. McCowan asked if she could at least be placed on the overnight "last out" shift (working steady hours from 10:00 pm to 6:00 am every night), which would ensure that either she or her husband, Keith (who is also a police officer), would be at home at night with their children before they went to bed. (Id. at ¶ 197.) At 1:47 pm, Lieutenant Watkins called Ms. McCowan into his office. When she arrived, Lieutenant Ezekiel Williams was present. Lieutenant Williams told her: "They said you can't work overnight either." (Id.) For the entirety of Ms. McCowan's detail to Police Radio, she was not given any work assignments—she was forced to sit, without work, for 8 hours every day for over 800 hours (approximately 100 days). (Id. at ¶¶ 199, 221.) Defendant Coulter testified:

> Q. Are you aware when Ms. McCowan was assigned to Police Radio, she sat out in that hallway on the second floor for 800 hours?
>
> A. No. I'm certainly not aware of that.
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> Q. Are you aware that when she was assigned to Police Radio, she didn't perform any job functions?
>
> A. No. I'm certainly not aware of that either.
>
> . . .
>
> Q. If there was a need for Ms. McCowan in Police Radio, why was she sitting in the hallway for one hundred days for 800 hours before she went out on FMLA?
>
> A. **That's a really good question.**

(Defs' Ex. 16, Coulter Dep., 67:14-23; 68:08-12.)

83. Deputy Coulter made the decision to detail McCowan to Police Radio alone, without the input, guidance, or involvement of Ross, MacDonald, McCarrick, McHugh, O'Brien, Williford, Tamika Allen, Conway, or Younger. Ex. 16, Coulter Dep., 58:18-20.

Response: Admitted in part, denied in part. It is admitted that Deputy Coulter made the decision to detail Plaintiff McCowan to Police Radio without the involvement of Defendant MacDonald, Defendant McCarrick, Defendant McHugh, Defendant O'Brien, Defendant Williford, Defendant Allen, Defendant Conway, or Defendant Younger. It is denied that Defendant Coulter made the decision "alone." It is further denied that Defendant Coulter made the decision to detail Plaintiff

McCowan to Police Radio without the input, guidance, or involvement of Defendant Ross. Defendant Coulter testified that when she received Plaintiff's memo, she took the memo to the morning meeting of the Executive Team—comprised of "[Defendant Coulter], Dennis Wilson, Deputy Wimberly, Deputy Sullivan, Deputy Patterson, and **Police Commissioner Ross**"—which is "where the decision came to move her to Police Radio."
(Defs' Ex. 16, Coulter Dep., 51:03 – 52:02.) Defendant Coulter further testified:

> Q. Have you had any conversations with former Police Commissioner Richard Ross about Audra McCowan?
>
> A. **Just a conversation when I got her memo. I brought it up at the morning meeting . . . which is our executive team meeting . . . I believe Commissioner Ross was at the table that day.**

(Defs' Ex. 16, Coulter Dep., 27:02-21.)

> Q. Did former Police Commissioner Richard Ross tell you whether it was his opinion the memo should be approved or disapproved?
> A. . . . **I think if he was at the table, he would have offered whether he thought it was or not.**

(Defs' Ex. 16, Coulter Dep., 99:15-21.)

84. Coulter had no knowledge of McCowan's work schedule, or that McCowan had somehow managed to work steady day work with weekends off for eleven years in a twenty-four hour-per-day law enforcement operation. Ex. 16, Coulter Dep., 56:17-57:8.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs dispute Defendants' mischaracterization of Defendant Coulter's testimony. Defendant Coulter testified she "knew for quite some time when [Plaintiff] was Captain McIlhenny's aide that she had that schedule . . . I knew that once she became Captain McIlhenny's aide, she would have had steady daywork there." (Defs' Ex. 16, Coulter Dep., 56:21-23; 57:04-06.) Plaintiffs further dispute Defendant's statement that "McCowan had somehow managed to work steady day work with weekends off for eleven years in a twenty-four hour-per-day law enforcement operation" as that was not Defendant Coulter's testimony. (Defs' Ex. 16, Coulter Dep., 56:17-57:8.)

85. Coulter defers to unit-level supervisors to assign employees to specific shifts and platoons because those lower-level supervisors know where granular operational needs exist. Ex. 16, Coulter Dep., 63:16-64:2.

Response: Denied. Plaintiff McCowan spoke with Captain Deacon, who said "Inspector Gillespie asked if he could have you in 5 Squad (steady day work) but was told 'no' by Deputy Coulter's Office." (Plaintiff's Verified Second Amended Complaint, ¶ 196.) Defendant Coulter was unable to deny the fact that she received a request from Inspector Gillespie to have Plaintiff work 5 Squad in Police Radio:

Q. Did you receive a request from Inspector Mike Gillespie to have Ms. McCowan work 5 Squad in Police Radio?

A. I don't recall receiving one. I may have, but I don't recall seeing it.
(Defs' Ex. 16, Coulter Dep., 66:01-05.)

Ms. McCowan also asked if she could at least be placed on the overnight "last out" shift (working steady hours from 10:00 pm to 6:00 am every night), which would ensure that either she or her husband, Keith (who is also a police officer), would be at home at night with their children before they went to bed. (Plaintiff's Verified Second Amended Complaint at ¶ 197.) Lieutenant Watkins called Ms. McCowan into his office and said, Defendant Coulter's office "said you can't work overnight either." (Id.) Defendant Coulter admitted that if Ms. McCowan's supervisors informed her that she couldn't work the last-out shift, that information would have came from Defendant Coulter:

Q. If Captain Deacon informed Ms. McCowan that the deputy's office said she couldn't work the last-out shift, would that have come from you?

A. Yeah, if the question was asked . . .
(Defs' Ex. 16, Coulter Dep., 66:09-13.)

Defendant Coulter confirmed that she did in fact receive a request from Plaintiff McCowan in April 2019 requesting a schedule change. (Defs' Ex. 16, Coulter Dep., 73:18-22.)

86. Coulter's only subsequent interaction with McCowan was reviewing McCowan's May 6, 2019 Hardship Memorandum requesting a schedule alteration. Ex. 16, Coulter Dep., 73:18-77:21.

Response: This paragraph is denied. On April 30, 2019, around 9:00 am, Ms. McCowan spoke with a civilian worker in Police Headquarters named Maria who works in Deputy Commissioner Coulter's office. Maria said, "They talk openly about your situation in Deputy Coulter's office, it's so unprofessional." (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint at ¶ 209.) Plaintiff admits that Defendant Coulter received Plaintiff's May 6, 2019 Hardship Memorandum, in which Plaintiff stated:

"On March 13, 2019 I was detailed to Police Radio. Upon reporting to work I was told that my schedule would be changing effective immediately from 5 Squad to 1 Squad. D Platoon. I have

been in 5 Squad for 11 years, but was given less than 24 hours' notice that my shift would be changing; which is unreasonable amount of time for anyone. This order left me little to no time to make alternate preparations in the day to day schedules of my 2 sons (ex. Getting my youngest on the bus, pick up and drop offs from practices and a host of other obligations). Not only did this immediate change drastically affect my home life, it has greatly contributed to health problems that I am currently being treated for. Taking all of this into consideration, I respectfully request to be returned to the day work schedule that I was working before my detail to Police Radio."

(Plaintiffs' Ex. TT, Hardship Memo, at McCowan-Allen 2120.)

87. McCowan has alleged that the City Defendants discriminated against her on the basis of race/gender by reassigning her from HIDTA to A&I. 2nd Am. Compl. ¶ 54-56.

Response: Defendants' use of the term "alleged" is inappropriate, as, on summary judgment all inferences are to be drawn in the light most favorable to Plaintiffs. It is admitted that City Defendants discriminated against Plaintiff McCowan on the basis of race and gender by reassigning her from HIDTA to A&I.

88. McCowan complained about the change to the FOP – her labor union – who advised her that a Chief Inspector can move employees within their bureau under the collective bargaining agreement. The FOP did not file a grievance claiming a contract violation on McCowan's behalf. Ex. 13, McCowan Dep., 37:10-24.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. It is admitted that the FOP did not file a grievance claiming a contract violation for this particular issue. It is denied that Ms. McCowan testified that her labor union advised her that a Chief Inspector can move employees within their bureau under the collective bargaining agreement. (Defs' Ex. 13, McCowan Dep., 37:10-24.) To the contrary, in the testimony quoted by Defendants, Plaintiff stated that the FOP said Defendant MacDonald "did not have authority to ask for me to be transferred, that that would be a breach of the contract. So that's what I went by, because that's what the FOP told me." (Id. at 37:10-21.)

89. McCowan told Chief MacDonald she wanted steady daywork and Chief MacDonald gave her steady daywork in A&I. Ex. 13, McCowan Dep., 31:7-32:21.

Response: Denied. Defendants mischaracterize Ms. McCowan's testimony. Ms. McCowan testified: "He (Defendant MacDonald) was basically telling me that if I wanted to stay in HIDTA I would have to work night work, and I was explaining to him that that wouldn't work for me, so I don't really see it as a request. . . . I never requested to remain on day work. I explained that that would work best for me." (Defs' Ex. 13, McCowan Dep., 31:23 – 32:08.)

90. McCowan cannot identify any white, male, or white male supervisors who were offered their choice of shift or assignment by Chief MacDonald. Ex. 13, McCowan Dep., 32:22-33:13.

Response: Denied. Defendants mischaracterize Plaintiff's testimony—that was not the question Plaintiff was asked. Plaintiff testified:

Q. Are you aware of any other white corporals or higher white supervisors that had their—that had Chief MacDonald keep them on day work after a conversation that was similar to the one that you had with Chief Inspector MacDonald?

Mr. Bryson: Objection.

A. Well, I don't know of any conversations that he had with anyone. That is not something I would be privy to.

(Defs' Ex. 13, McCowan Dep., 32:22 – 33:08.)

91. In fact, Sergeant Kevin O'Brien, a white male employee of the PPD, arrived at the Intelligence Bureau believing he had been assigned to a specific unit – in his case, the Statistics Unit, only to be reassigned shortly thereafter to A&I. 2d Am. Compl. at ¶ 79 (ECF No. 49); Ex. 21, O'Brien Dep., 37:20.

Response: The material that Defendants cite in support of their assertion in this paragraph—¶ 79 of Plaintiff's Verified Second Amended Complaint and Defs' Ex. 21, O'Brien Dep. at 37:20—does not state what Defendants have asserted in this paragraph. Moreover, nowhere in Defendant O'Brien's deposition does it state that he was ever officially assigned to the Statistics Unit before being assigned to A&I. Moreover, Plaintiffs dispute Defendant O'Brien's testimony, as his credibility is in issue in this case.

92. McCowan cannot identify any white, male, or white male corporals who were offered a coveted steady daywork shift by Chief MacDonald. Ex. 13, McCowan Dep., 32:22-33:13.

Response: Denied. Defendants mischaracterize Plaintiff's testimony—that was not the question Plaintiff was asked. Plaintiff testified:

> Q. Are you aware of any other white corporals or higher white supervisors that had their—that had Chief MacDonald keep them on day work after a conversation that was similar to the one that you had with Chief Inspector MacDonald?
>
> Mr. Bryson: Objection.
>
> A. Well, I don't know of any conversations that he had with anyone. That is not something I would be privy to.

(Defs' Ex. 13, McCowan Dep., 32:22 – 33:08.)

93. Beyond her own subjective feelings, McCowan cannot articulate a discriminatory reason for being given a choice between daywork in A&I or nightwork in HIDTA, nor can she identify any evidence whatsoever that being given a choice between daywork in A&I or nightwork in HIDTA was motivated by her race or gender. Ex. 13, McCowan Dep., 33:15-34:37:2.

Response: Denied. Defendant Ross testified that when Ms. McCowan was "given one of the most coveted assignments in the entire City . . . when she first made corporal and went to HIDTA." (Plaintiffs' Ex. HH, Ross Transcript, at 95:21-24; 99:22 – 100:03.) Plaintiff testified that her transfer from HIDTA to A&I was motivated by her race and gender. (Defs' Ex. 13, McCowan Dep., 33:15-21.) Plaintiff testified that that on December 10, 2019, Defendant MacDonald told Ms. McCowan that her transfer to HIDTA "was a mistake," and that she was being moved so the PPD could give her job to Corporal Neal Wilson, a less-qualified male counterpart. (Defs' Ex. 13, McCowan Dep., 29:03-22.) When Plaintiff complained to Defendant Williford, he said "to leave it alone because you don't want to be labeled a troublemaker." (Defs' Ex. 13, McCowan Dep., 38:05-09.)

94. When asked whether she had any information or evidence that Chief MacDonald was motivated by her race and gender to give McCowan her choice between daywork in A&I or nightwork in HIDTA, McCowan responded: "Outside of how I felt, I don't have anything tangible, but I know how I felt." Ex. 13, McCowan Dep., 36:21-37:2.

Response: Denied. Plaintiff testified that that on December 10, 2019, Defendant MacDonald told Ms. McCowan that her transfer to HIDTA "was a mistake," and that she was being moved

so the PPD could give her job to Corporal Neal Wilson, a less-qualified male counterpart. (Defs' Ex. 13, McCowan Dep., 29:03-22.)

95. In her Complaint, McCowan alleges that, "[u]pon transfer to A&I, Ms. McCowan was the only black female supervisor in the unit. Despite her status as a supervisor, her male counterparts excluded her from all unit-specific supervisory meetings. A white male subordinate, Officer Shawn Hagan, was invited to attend the meetings in her place." 2d Am. Compl., ¶ 73.

Response: Defendants' use of the term "alleged" is inappropriate, as, on summary judgment all inferences are to be drawn in the light most favorable to Plaintiffs. Plaintiff admits that upon transfer to A&I, she was the only black female supervisor in the unit. Plaintiff further admits that despite her status as a supervisor, her male counterparts excluded her from all unit-specific supervisory meetings. Plaintiff further admits that a white male subordinate, Officer Shawn Hagan, was invited to attend the meetings in her place.

96. In deposition testimony, McCowan complained of being excluded when Inspector McCarrick "would come over to Sergeant O'Brien or Lieutenant [Timothy] McHugh and pull them aside to talk to them like I was not there." Ex. 13, McCowan Dep., 143:2-5.

Response: Plaintiff admits that she was excluded by Defendants McCarrick, O'Brien and McHugh. By way of further response, Plaintiff testified that "[Defendant McCarrick] wouldn't speak to me. It was like I wasn't there. And going into me being left out of meetings, there are plenty of times where he would come over to Sergeant O'Brien or Lieutenant McHugh and pull them aside to talk to them like I was not there. Before that, I mean, he really just didn't speak to me." Moreover, Plaintiff testified that, unlike her male counterparts, Defendant McCarrick "told me to wear my uniform all week. He told me that he would meet with me that next day to give me an assignment and let me know where I was going. And he never did that. . . . Like I said before, all my other counterparts knew what unit they were going to." (Defs' Ex. 13, McCowan Dep., 142:22 – 144:09.)

97. McCowan worked in an administrative role and had no operational/tactical responsibilities. Ex. 5, McCarrick Dep., 22:17-18, 23:14-15, 29:19-20, 30:5-7, 30:8-24, 32:15-20, 108:12-13, 111:8-13.

Response: Plaintiffs dispute Defendant McCarrick's testimony, as his credibility is in issue in this case. This paragraph is denied. Plaintiff testified:

Q. Do you understand the difference between administrative responsibilities and operational responsibilities?

A. Yes.

Q. Can you tell me what the difference is?

A. Administrative is basically housekeeping; checking time, making sure time is in, making sure everyone has the proper training, keeping files. I would think that is more of administrative. Operational, hands-on. In this particular instance at A&I it would be hands on with the analysts.

Q. Were your responsibilities as a corporal administrative or operational?

A. They weren't supposed to be administrative alone. As a corporal, yes. I think it's most corporal or whoever is operations supervisor to enter time. However, as Chief MacDonald said to me, that he wanted me to learn the function of A&I. So I don't know how I would learn the function if all I did was enter time and I wasn't trained.

Q. Is it fair to say, as you understood it, your primary responsibilities were administrative in nature versus operational in nature.

A. No, that's not how I saw it.

Q. Did anyone define for you, any other supervisors define for you, what your operational responsibilities were to date at A&I?

A. Like I said, Chief MacDonald told me that he wanted me to learn how to write product, learn how to be an analyst, even though obviously I was going to be a supervisor. And I think it was Lieutenant McHugh who told me he also wanted me to be responsible for entering our subordinate's times.

(Defs' Ex. 13, McCowan Dep., 172:09 – 174:01.)

98. McCowan attended a daily analyst call meeting each morning. Ex. 13, McCowan Dep., 124:1-5.

Response: Denied. The testimony cited by Defendants in support of their assertions in this paragraph—Defs' Ex. 13, McCowan Dep., 124:1-5--does not state that McCowan attended a daily analyst call each morning. Plaintiff denies that she was always included in the daily analyst meetings; Plaintiff testified that she was excluded from such meetings:

Q. There were analyst calls that happened in the mornings, correct?

A. yes.

Q. And you were included in those analyst calls, correct?

A. Again, I walked in on it. It was not something that I was made aware of. I asked why they were meeting every morning. I didn't know. And I can't recall who it was that told me, you know, it was a morning analyst call and you should sit in on it some time. I said okay. Before that, no, I didn't know what it was.

Q. Is it your testimony that you weren't aware of the analyst calls until someone told you about them.

A. Absolutely.

(Defs' Ex. 13, McCowan Dep., 202:13 – 203:06.)

99. Lt. McHugh and Sergeant O'Brien, both white males, attended supervisor meetings with McCowan, including production meetings called by Lieutenant McHugh. Ex. 15, O'Brien Dep., 20:2-9; Ex. 36, McHugh Dep., 24:10-13.

Response: Plaintiffs dispute Defendant McHugh's and Defendant O'Brien's testimony, as their credibility is in issue in this case. This paragraph is denied. Plaintiff testified:

Q. One time in particular I remember Inspector McCarrick told Tim McHugh and Sergeant O'Brien that he needed one of us supervisors . . . in a meeting . . . So this is what happened. I'm sitting at my desk. The inspector walks up, pulls Lieutenant McHugh and Sergeant O'Brien aside, away from my desk. And that's another time I'm like, okay. This is weird here. Here I go again being excluded. They come back to the desk, the Lieutenant and the Sergeant, and say, oh, there is apparently some meeting that . . . needs a supervisor. So why would Inspector McCarrick pull them aside and not me, also, if I'm considered a supervisor that could sit in on that meeting. In that way, I was always excluded. The Inspector and the Chief would give the Lieutenant and the Sergeant information and not myself. If I was supposed to be able to function as an analyst supervisor, these are things that I would need to know.

. . .

Q. Can you tell me how your being excluded from meetings, as you described, impacted your ability to do you job as a corporal in A&I?

A. I couldn't do anything. I mean, I didn't have any knowledge of what to do, outside of entering time. Me being left out, there was no direction. Like I said, the

> Sergeant and the Lieutenant, they knew what their jobs were day in and day out. They knew what meetings they were going to be in.

(Defs' Ex. 13, McCowan Dep., 206:13 – 209:19.)

100. Sergeant O'Brien, a white male, did not attend every meeting held in the DVIC building, or even every meeting held with A&I personnel. Ex. 15, O'Brien Dep., 20:14-16, 21:10-14.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs dispute Defendant O'Brien's testimony, as his credibility is in issue in this case. This paragraph is denied as stated. Plaintiff is not claiming that she should have "attended every meeting held in the DVIC building" considering the DVIC building houses several other law enforcement agencies in addition to the PPD. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 37.) Defendant O'Brien confirmed that Defendant O'Brien and Defendant McHugh were invited to meetings that Plaintiff McCowan was not invited to. (Defs' Ex. 15, O'Brien Dep., 20:17-21:02.)

101. McCowan, in her administrative role, did not need to attend every meeting that Lt. McHugh – two ranks her superior and the highest-ranking officer in A&I – attended. Ex. 36, McHugh Dep., 24:14-25:15; Ex. 15, O'Brien Dep., 21:21-22:2 (Some meetings only included McHugh because he was A&I's highest-ranking officer).

Response: Denied. Plaintiff's role was both administrative and operational and she should have been included in such meetings. (Defs' Ex. 13, McCowan Dep., 172:09 – 174:01.)

102. According to Lt. McHugh, McCowan's absence from certain meetings was a practical matter, not a discriminatory practice, as certain meetings were meant for tactical, rather than administrative personnel. Ex. 36, McHugh Dep., 24:18-25:15.

Response: Plaintiffs dispute Defendant McHugh's testimony, as his credibility is in issue in this case. Plaintiff denies that she was included in any meetings. Despite her status as a supervisor, Plaintiff's male counterparts excluded her from all unit-specific supervisory meetings. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 73; Defs' Ex. 13, McCowan Dep., 206:13 – 209:19.)

103. Officer Sean Hagan, attended tactical meetings regarding PPD operations to which he was assigned. Ex. 36, McHugh Dep., 25:17-26:4.

Response: It is admitted that Officer Sean Hagan attended tactical meetings regarding PPD operations to which he was assigned. To the extent Defendants are asserting that Officer Sean Hagan was not invited to meetings in the place of Plaintiff McCowan (meetings which Plaintiff should have been invited to as a supervisor), Defendants' assertion is denied. By way of further response, Sean Hagan was Plaintiff's white male subordinate, who Defendants invited to attend meetings in place of Plaintiff. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 74.) In fact, on January 9, 2019, Defendant Williford texted Plaintiff saying he "had to keep reminding [Defendants] supervisors includes Cpl [McCowan] and not Sean [Hagan]!" (Plaintiffs' Ex. BB, Williford Text Re: Hagan, McCowan-Allen 0264.) Plaintiff McCowan responded "Thank you. It's getting a little old." (Id.) Defendant Williford replied, "Yes." (Id.)

104. McCowan would not attend those tactical meetings because McCowan was an administrative supervisor who did not work on the operations in question. Ex. 36, McHugh Dep., 25:17-26:4.

Response: It is admitted that Officer Sean Hagan attended tactical meetings regarding PPD operations to which he was assigned. To the extent Defendants are asserting that Officer Sean Hagan was not invited to meetings in the place of Plaintiff McCowan (meetings which Plaintiff should have been invited to as a supervisor), Defendants' assertion is denied. By way of further response, Sean Hagan was Plaintiff's white male subordinate, who Defendants invited to attend meetings in place of Plaintiff. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 74.) In fact, on January 9, 2019, Defendant Williford texted Plaintiff saying he "had to keep reminding [Defendants] supervisors includes Cpl [McCowan] and not Sean [Hagan]!" (Plaintiffs' Ex. BB, Williford Text Re: Hagan, McCowan-Allen 0264.) Plaintiff McCowan responded "Thank you. It's getting a little old." (Id.) Defendant Williford replied, "Yes." (Id.)

105. In her Complaint, McCowan alleges that the City Defendants discriminated against her on the basis for her race/gender by failing to provide her with training after they assigned her to the Intelligence Bureau as a corporal. 2d Am. Compl., ¶ 54-57.

Response: Defendants' use of the term "alleges" is inappropriate, as, on summary judgment all inferences are to be drawn in the light most favorable to Plaintiffs. Plaintiff admits that the City Defendants discriminated against her on the basis of her race and gender by failing to provide her with training after they assigned her to the A&I unit.

106. McCowan and Sergeant O'Brien received identical introductory training after arriving at the Intelligence Bureau—a weeklong classroom session providing information about the PPD units housed at DVIC and those units' duties. Ex. 21, O'Brien Dep., 38:24-39:11; Ex. 13, McCowan Dep., 183:3-21.

Response: Admitted in part, denied in part. It is admitted that Plaintiff McCowan and Sergeant O'Brien attended "onboarding" during the first week of December 2018 upon arrival at the DVIC. It is denied that this onboarding session was "training." (Defs' Ex. 13, McCowan Dep., 183:3-21.) Plaintiff testified "It wasn't training at all. It was basically informational purposes about what each unit in the DVIC does as far as, I guess, their duties. It wasn't actually training on how to do your job function." (Id.)

107. McCowan was not "singled out" by the City; like McCowan, Sergeant O'Brien received no Intelligence Bureau-specific supervisor training, or any formal training beyond the weeklong introductory session. Q. Did anybody come up and sit you down and say, Here's what you do? Here's what you need to do if this happens? You know, did anybody approach you about showing you how to do your job there? A. No, but I wish they did. It would have made things a lot easier. Ex. 21, O'Brien Dep., 37:20-24, 40:13-19.

Response: Denied. Defendant O'Brien received peer-to-peer training, for example, which McCowan did not. (Defs' Ex. 21, O'Brien Dep., 39:23-40:19; Defs' Ex. 13, McCowan Dep., 165:10-17; 168:14 – 169:15; 170:02-20; 184:07 – 185:13; 188:02 – 189:20.)

108. O'Brien learned his new job through peer-to-peer observation and interaction. Ex. 21, O'Brien Dep., 39:23-40:19.

Response: It is admitted that Defendant O'Brien was afforded peer-to-peer training and interaction that Plaintiff was not. (Defs' Ex. 21, O'Brien Dep., 39:23-40:19; McCowan Dep., 165:10-17; 168:14 – 169:15; 170:02-20; 184:07 – 185:13; 188:02 – 189:20.)

109. McCowan agrees that peer-to-peer observation and interaction are training. Ex. 13, McCowan Dep., 184:19-21 ("[Y]ou know, training isn't just formal. Obviously, asking questions could be considered training, also.")

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiff admits that she stated "You know, training isn't just formal. Obviously asking questions could be considered training also."

110. McCowan never asked any questions or made any effort to learn her job through these training methods. Ex. 13, McCowan Dep., 185:14-187:2.

Response: Denied. Defendants mischaracterize Plaintiff's testimony—Plaintiff did not testify that she never asked any questions or made any effort to learn her job through these training methods. (Defs' Ex. 13, McCowan Dep., 185:14-187:2.) Plaintiff testified about the numerous ways in which she tried to learn the job, such as making requests to Defendant Williford and asking others for help. (Defs' Ex. 13, McCowan Dep., 165:10-17; 168:14 – 169:15; 170:02-20; 184:07 – 185:13; 188:02 – 189:20.)

111. Lt. Timothy McHugh, a white male, arrived at the Intelligence Bureau on December 3, 2018 along with McCowan. Ex. 41, McHugh Emp. Hist. Rec; 2d Am. Compl. at ¶ 79 (ECF No. 49).

Response: It is admitted that Defendant McHugh arrived at the Intelligence Bureau on December 3, 2018—the date Plaintiff arrived at HIDTA.

112. Lt. McHugh was then assigned to the A&I Unit along with McCowan. Ex. 36, McHugh Dep., 7:24-8:3.

Response: Denied. On December 3, 2018, Plaintiff McCowan was assigned to the HIDTA unit. (Defs' Ex. 12, CITY 0083.) On December 17, 2018, Plaintiff was transferred to the Intelligence Bureau. (Id.) Defendant McHugh was assigned to the Intelligence Bureau on December 3, 2018. (Plaintiffs' Ex. RRR, McHugh Employment History, CITY 3651.)

113. Lt. McHugh and McCowan were not trained on how to complete intelligence assessments, called "products," or supervise A&I analysts because supervisors do not create products; rather, supervisors ensure that the analysts' work is completed. Ex. 36, McHugh Dep., 41:11-24.

Response: Admitted in part, denied as stated. It is admitted that Defendants excluded Plaintiff from training on how to complete intelligence products in A&I. It is denied that the quoted testimony supports Defendants' assertions in this paragraph. By way of further response, Defendant McHugh did not testify that he was not trained on how to complete intelligence assessments. (Defs' Ex. 36, McHugh Dep., 41:11-24.) Defendant McHugh testified that Plaintiff McCowan was not trained. (Id.) Defendant McHugh testified that he was, in fact, trained:

> Q. Did you receive any formal or informal training on intelligence products when you were in the A&I unit?
>
> A. Actually, I took a supervisor's class in Alabama last year for supervisors for analysts. . . . It was a week training.

(Defs' Ex. 36, McHugh Dep., 43:01-07.)

It is further denied that supervisors do not need training on writing intelligence products, as Defendant McHugh confirmed that "analysts ask their supervisors to review a product that they wrote." (Id. at 42:01-03.) He further confirmed that supervisors need to ensure that the work product is sufficient and adequate. (Id. at 42:04-14.)

114. As a corporal in A&I, McCowan's duties also included inputting employee attendance in the Daily Attendance Reports ("DARs"), typing memos, and performing other administrative functions within the unit. Ex. 36, McHugh Dep., 37:22-38:3.

Response: It is admitted that Plaintiff McCowan's duties included administrative functions. To the extent Defendants are asserting Plaintiff's job duties did not include operational functions, that assertion is denied. Plaintiff testified that her job duties included both administrative and operational functions. (Defs' Ex. 13, McCowan Dep., 172:09 – 174:01.)

115. Lt. McHugh, Sgt. O'Brien, and then-Corporal McCowan's duties with respect to products were limited to reading the products to ensure they were intelligible and had correct grammar and punctuation. Ex. 36, McHugh Dep., 42:21-24.

Response: It is admitted that Defendant McHugh stated that the supervisor's functions included, but were not limited to, reading the products to "make sure they make sense." (Defs' Ex. 36, McHugh Dep., 42:21-24.) By way of further response, Defendant McHugh received supervisor training in Alabama for overseeing the analysts, which Ms. McCowan was not afforded. (defs' Ex. 36, McHugh Dep., 43:01-07.)

116. In fact, Lt. McHugh did not receive any formal or informal training on intelligence products until he had been in A&I for over a year and has never been trained on how to write products. Ex. 36, McHugh Dep., 43:1-44:1, 45:23-24.

Response: It is denied that Defendant McHugh did not receive training "until he had been in A&I for over a year"—Defendant arrived to A&I on December 3, 2018 (see Plaintiffs' Ex. RRR, McHugh Employment History, at CITY 3651) and testified that he received the training in 2019 (therefore he could not have been in the unit for "over a year"). (Defs' Ex. 36, McHugh Dep., 43:01-13.)

117. Sergeant Williford is a Black male who tracks training opportunities distributed to personnel assigned to the Intelligence Bureau. Ex. 15, Williford Dep., 168:10-11.

Response: It is admitted that Sergeant Williford is a Black male. It is denied that the material cited by Defendants—Williford Dep., 168:10-11—supports the assertion that Defendant Williford "tracks training opportunities distributed to personnel assigned to the Intelligence Bureau. As such, the remaining allegations in this paragraph are denied.

118. Sergeant Williford reviewed his records of training opportunities provided during the timeframe relevant to this matter and concluded that, on average, more Black Intelligence Bureau employees received formal trainings than white employees. Ex. 15, Williford Dep., 168:6-22.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Moreover, Plaintiffs dispute Defendant Williford's testimony as his credibility in this case is in dispute. Defendant Williford's self-serving statement that he "reviewed training records" immediately prior to his deposition and determined that "everything was across the board equal" is denied. Defendant Williford was asked where he found said information, and responded "In my office." (Defs' Ex. 15, Williford Dep., 168:23 – 169:01.) Defendant Williford was then asked if it was his practice to track the gender and race of individuals approved for training, and he said "I did my own—this is my own

personal thing because I wanted to make sure I wasn't missing something for me. It's my personal notes." (Id. at 169:06-14.) Plaintiff objects to these "facts" pursuant to Fed. R. Civ. P. 56(c)(2) because Defendants cannot produce admissible evidence to support the purported facts. The material cited by Defendants in support of these contentions, Defendant Williford's "personal notes" are hearsay documents precluded by Federal Rule of Evidence 801. Moreover, the evidence must be excluded under Federal Rule of Evidence 403 because its probative value is substantially outweighed by the danger of unfair prejudice to the Plaintiffs for the following reasons: (1) there is no evidence of the identities of the alleged individuals who received the trainings; (2) Defendant Williford claimed he created the notes immediately prior to his deposition to avoid liability in this matter; (3) Defendant Williford decided what information to include and what evidence to consider in making these statements; (4) Defendant Williford's post-litigation notes are not a business record; (5) Plaintiff had no opportunity to cross examine Defendant Williford on this fabricated evidence.

119. McCowan could provide no facts, information, personal knowledge, or evidence that she was denied training opportunities because of her race and/or gender. Ex. 13, McCowan Dep., 183:22-185:13.

Response: Denied. In the material cited by Defendants—McCowan Dep., 183:22-185:13—Plaintiff testified that her counterparts had access to training and she did not: "My counterparts had no problem sliding into their positions. If they needed the ear of the inspector, the director, the chief, they absolutely could have had it. If they needed to ask questions in the training format—you know, training isn't just formal. Obviously asking questions could be considered training, also. They had the opportunity to go to those people. . . . But when you are not spoken to, you are dismissed, you're looked over when you speak and your supervisor doesn't speak back to you, and when you are sitting at your desk and an inspector at the police department throws a piece of candy at someone its like this place is not professional. I did not think I was going to receive—I knew I was not going to receive any training because I didn't." (Defs; Ex. 13, McCowan Dep., 183:22-185:13.)

120. McCowan's schedule changed upon her detail to Police Radio. Ex. 13, McCowan Dep., 273:24-274:10.

Response: Plaintiff admits that her schedule was changed with less than 24 hours' notice upon her detail to Police Radio.

121. McCowan claims that her schedule change violated the collective bargaining agreement (CBA) between her union (the FOP) and the City, despite being advised

otherwise by her union's top two officials: President John McNesby and Vice President John McGrody. Ex. 13, McCowan Dep., 281:16-284:24. See also Ex. 18, email from McNesby to McCowan, 5/10/19 ("Your contract is not being violated, even though you think it may be."); Ex. 19, Ross Dep., 96:15-97:13 (If employee requests changes no notice required under CBA).

Response: Defendants' use of the term "claims" is inappropriate, as, on summary judgment all inferences are to be drawn in the light most favorable to Plaintiffs. It is admitted that Plaintiff's schedule change violated the collective bargaining agreement between the FOP and the City. It is denied that Plaintiff's union advised her that her contract was not being violated. In fact, the FOP filed a grievance on Plaintiff's behalf on May 15, 2019. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 210). In the grievance, the FOP Vice President, John McGrody, wrote:

> **Statement of Grievance**
> The city is violating numerous provisions of the collective bargaining agreement by:
>
> **CORPORAL AUDRA McCOWAN Payroll Number 250998**
> Member Has Her Schedule And Hours of Work Changed in Violation Of The Collective Bargaining Agreement And Without Sufficient Notice.

(Id.; Plaintiffs' Ex. UU, Union Grievance.) After the FOP filed the grievance, Mr. McGrody emailed Plaintiff on May 19, 2019 stating that "John [McNesby] told me to file a grievance. A grievance is an allegation that the city violated the contract. The next step is a meeting with the Commissioner's representative, it's been D/C Coulter for the last several years." (Plaintiffs' Ex. WW, at McCowan-Allen 0067, May 19, 2019 Email from McGrody to McCowan.)

122. Additionally, McCowan believed assignment to Police Radio was a punishment because civilian employees have supposedly received a lot of discipline in Radio. Ex. 13, McCowan Dep., 278:14-279:5.

Response: Defendants' use of the terms "believes" and "supposedly" are inappropriate, as, on summary judgment all inferences are to be drawn in the light most favorable to Plaintiffs. It is admitted that Plaintiff's assignment to Police radio was a punishment. It is denied that the only reason Plaintiff believed this was a punishment was because civilian employees receive a lot of discipline in Police Radio. By way of further response, Police Radio is an extremely busy and hectic place to work and there is a perception within the PPD that assignment to Police Radio is a punishment. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 190). Moreover, Ms. McCowan's daywork/weekends-off schedule, which she held for the past 11

years, would change immediately to alternating day and night shifts with alternating days off. (Id. at ¶ 191.) Ms. McCowan's desk was moved to the tape room at Police Radio, an unheated room among the building's computer servers. The temperature in the room drops below 50 degrees, requiring a winter coat to stay warm. (Id. at ¶ 192.) On March 13, 2019, at 7:00 am, Ms. McCowan reported to work at Police Radio, and spoke with Lieutenant Watkins who said that he "didn't have any information" regarding her new assignment, and that she would "have to wait until I talk with the Captain at 8:00 am." (Id. at ¶ 193.) He further stated that "each squad in the unit has all the supervisors they need, so whatever squad you go to, you will be an extra supervisor, and you won't count on their manpower projection." (Id.) Lieutenant Watkins also said that Ms. McCowan "can't work on the dispatch floor without proper training by the state." (Id.) After Lieutenant Watkins spoke with Captain Deacon at Police Radio, he informed Ms. McCowan that she would "basically be a rotating administrative corporal handling any extra work that the Captain or Lieutenant or Inspector have." (Id. at ¶ 194.) Lieutenant Watkins also confirmed that she would be "working rotating shifts in Squad 1, Platoon D." (Id.) Lieutenant Watkins also said, "The Captain is being told where to put you." (Id.) At 8:00 am, Ms. McCowan was greeted by one dispatcher who said, "Welcome to hell." (Id. at ¶ 195.) At 10:00 am, Ms. McCowan spoke again with Captain Deacon, who said he "still doesn't have any assignments for her." (Id. at ¶ 196.) He also said, "Inspector Gillespie asked if he could have you in 5 Squad (steady day work) but was told 'no' by Deputy Coulter's Office." (Id.) He said he asked Deputy Coulter's office if Ms. McCowan "could get Pennsylvania Emergency Management Agency (PEMA) training so she could at least help out on the radio floor, and they said no." (Id.) Ms. McCowan asked if she could at least be placed on the overnight "last out" shift (working steady hours from 10:00 pm to 6:00 am every night), which would ensure that either she or her husband, Keith, would be at home at night with their children before they went to bed. (Id. at ¶ 197.) At 1:47 pm, Lieutenant Watkins called Ms. McCowan into his office. When she arrived, Lieutenant Ezekiel Williams was present. Lieutenant Williams told her: "They said you can't work overnight either." (Id.) Ms. McCowan's sudden shift change from steady day work to rotating day and night shifts was a violation of standard operating procedure. (Id. at ¶ 198.) Normally, when someone is detailed to a different unit—they keep their shift. (Id.) And if they must be moved to either a new unit or a new shift, they are given reasonable notice (30 days)—she was given less than 24 hours. (Id.) Since being detailed to Police Radio, Ms. McCowan was not been given any work assignments—she was forced to sit, without work, for 8 hours every day. (Id. at ¶ 199.) Officer Janean Brown sent Ms. McCowan a text message stating that Sergeant Conway asked, "Audra's down here right?" Officer Brown responded, "Yeah she's upstairs," and Sergeant Conway said, "That was the worst job position (working at Police Radio)." (Id. at ¶ 208.) Sergeant Conway testified that he did, in fact, have this conversation with Officer Brown. (Plaintiffs' Ex. C, Conway Dep., 272:20-272:16.)

Defendant Conway further testified that Police Radio "can be a little bit of a tough place to work." (Id. at 273:14-16.) Defendant Conway further testified that "the staffing at police radio consists of mostly civilian employees, who fall under a different contract than the sworn personnel. And there is often a little bit of difficulty in supervising the civilian personnel up there." (Id. at 273:19-24.) Defendant Conway further testified that he has handled complaints from Police Radio, and "typically those complaints revolve around management attempting to instruct people how to follow orders or to do their job and those complaints—those individuals fighting back or retaliating by phone and the EEO complaint against those two bodies." (Id. at

274:06-12.) When Defendant Conway was asked, "is it your belief that an assignment to police radio as a supervisor is a punishment," he stated, "it depends on who you ask." (Id. at 274:18-21.)

On May 13, 2019, Lieutenant Watkins informed Ms. McCowan that she would not be allowed to get PEMA training necessary to perform any work in the Radio unit; therefore, she would be sitting indefinitely at a dispatch console without the use of a computer. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 211). On May 14, 2019, Ms. McCowan received call from John McGrody at FOP stating, "Deputy Coulter said that there was a meeting on Friday, May 10, 2019, with Commissioner Ross, 1st Deputy Patterson, and Deputy Coulter, and they all decided to disapprove your hardship memo." (Id. at ¶ 213). On May 15, 2019, Plaintiff McCowan's union, the FOP, filed a grievance on her behalf as a result of her detail to Police Radio. (Id. at ¶ 210). On May 29, 2019, at approximately 1:00 pm, Civilian Maria from Deputy Commissioner Coulter's office said she saw Sergeant Jann from the Commissioner's office go into Deputy Coulter's office with a memo in her hand, mention Ms. McCowan's name, and say, "Well that's what happens when you have a reputation." (Id. at ¶ 215). On June 7, 2019, Ms. McCowan reported to her nightwork shift and dispatchers were using the console at her seat. Sergeant Laskowski told her to "sit out in the hallway." (Id. at ¶ 217). On June 8, 2019, Ms. McCowan was informed that she would be expected to sit in the hallway without work indefinitely. (Id. at ¶ 218). On June 21, 2019, John McGrody from FOP called Ms. McCowan to tell her that FOP and PPD had a First Step Meeting on June 19, 2019 and that the PPD denied her request for shift change. (Id. at ¶ 220). Mr. McGrody said, "You worked in the building long enough to know how it works. Once you're out of the clique they ostracize you. Between you and me, this is all coming from Commissioner Ross, who he said he was mad because he thinks you're making all this up." (Id.) Defendant Coulter confirmed that John McGrody was at the First Step Meeting regarding Plaintiff's grievance. (Plaintiffs' Ex. QQ, Coulter Dep., 92:03-14.)

Ms. McCowan spent over 800 hours (100 days since March 13, 2019) sitting around all day at Police Radio without having been given any work opportunities. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 221).

123. Despite McCowan's characterization of Police Radio as a punishment, Police corporals routinely request to transfer into Police Radio, and Deputy Commissioner Coulter unequivocally stated that Police Radio is not a punitive assignment. Ex. 20, Requests by Corporals to Transfer to Police Radio; Ex. 16, Coulter Dep., 116:4-11.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs admit only that Defendant has attached three (3) transfer requests for police corporals who requested to go to Police Radio in 2018. Plaintiffs deny that the material cited by Defendants supports their assertion that "corporals routinely request to transfer to Police Radio." Defendant Conway testified that Police Radio can be a "tough place to work":

Q. Did you have a conversation with Janine Brown about Audra McCowan being moved to Police Radio?

A. I did. I actually was scheduled for a PBI hearing. I didn't have a conversation with her about her "why" that she was moved, or why Corporal McCowan was moved. Me, Officer Brown and Officer Penally, who were working in that office, every time I got down there—much like I do every day up here, I go up front and just interact with folks that don't have as much interaction with the folks. I was aware that they knew Audra and that they knew—they were friends, for lack of a better term, with her. So I mentioned to them—**and they were apparently aware of her complaint. I just mentioned that I heard she was at Police Radio. They said it can be a little bit of a tough place to work.**

Q. What do you mean by "it can be a little bit of a tough place to work"?

A. The staffing at police radio consists of mostly civilian employees, who fall under a different contract than the sworn personnel. **And there is often a little bit of difficulty in supervising the civilian personnel up there.**

Q. Is there any other reasons why police radio is a difficult place to work?

A. . . . **I've handled many complaints from that unit. And typically those complaints revolve around management attempting to instruct people how to follow orders or to do their job and those complaints -- those individuals fighting back or retaliating by phone and the EEO complaint against those two bodies.**

…

Q. Is it your belief that an assignment to police radio as a supervisor can be construed as a punishment?

A. **It depends on who you ask. Some people would prefer that type of assignment because it is inside. Other folks, not so much.** If you ask the person who prefers to be on patrol, they would not like that assignment at all. It all depends on who you ask.

(Plaintiffs' Ex. C, Conway Dep., 272:20-275:03.)

The three transfer requests cited by Defendants in Defs' Ex. 20 were requests to be transferred from a police district—the 19th District, the 24th District, and the 35th District, respectively—assignments where those individuals were outside on patrol. (See Defs' Ex. 20.) Clearly these individuals cited by Defendants fall under the category of what Defendant Conway described as "people [who] would prefer that type of assignment (Police Radio) because it is inside." (Plaintiffs' Ex. C, Conway Dep., 274:21-275:03.) Plaintiff McCowan, on the other hand, was in a special unit (A&I) with steady day work; and would never have requested a transfer to police radio.

By way of further response, Police Radio is an extremely busy and hectic place to work and there is a perception within the PPD that assignment to Police Radio is a punishment. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 190). Moreover, Ms. McCowan's daywork/weekends-off schedule, which she held for the past 11 years, would change immediately to alternating day and night shifts with alternating days off. (Id. at ¶ 191.) Ms. McCowan's desk was moved to the tape room at Police Radio, an unheated room among the building's computer servers. The temperature in the room drops below 50 degrees, requiring a winter coat to stay warm. (Id. at ¶ 192.) On March 13, 2019, at 7:00 am, Ms. McCowan reported to work at Police Radio, and spoke with Lieutenant Watkins who said that he "didn't have any information" regarding her new assignment, and that she would "have to wait until I talk with the Captain at 8:00 am." (Id. at ¶ 193.) He further stated that "each squad in the unit has all the supervisors they need, so whatever squad you go to, you will be an extra supervisor, and you won't count on their manpower projection." (Id.) Lieutenant Watkins also said that Ms. McCowan "can't work on the dispatch floor without proper training by the state." (Id.) After Lieutenant Watkins spoke with Captain Deacon at Police Radio, he informed Ms. McCowan that she would "basically be a rotating administrative corporal handling any extra work that the Captain or Lieutenant or Inspector have." (Id. at ¶ 194.) Lieutenant Watkins also confirmed that she would be "working rotating shifts in Squad 1, Platoon D." (Id.) Lieutenant Watkins also said, "The Captain is being told where to put you." (Id.) At 8:00 am, Ms. McCowan was greeted by one dispatcher who said, "Welcome to hell." (Id. at ¶ 195.) At 10:00 am, Ms. McCowan spoke again with Captain Deacon, who said he "still doesn't have any assignments for her." (Id. at ¶ 196.) He also said, "Inspector Gillespie asked if he could have you in 5 Squad (steady day work) but was told 'no' by Deputy Coulter's Office." (Id.) He said he asked Deputy Coulter's office if Ms. McCowan "could get Pennsylvania Emergency Management Agency (PEMA) training so she could at least help out on the radio floor, and they said no." (Id.) Ms. McCowan asked if she could at least be placed on the overnight "last out" shift (working steady hours from 10:00 pm to 6:00 am every night), which would ensure that either she or her husband, Keith, would be at home at night with their children before they went to bed. (Id. at ¶ 197.) At 1:47 pm, Lieutenant Watkins called Ms. McCowan into his office. When she arrived, Lieutenant Ezekiel Williams was present. Lieutenant Williams told her: "They said you can't work overnight either." (Id.) Ms. McCowan's sudden shift change from steady day work to rotating day and night shifts was a violation of standard operating procedure. (Id. at ¶ 198.) Normally, when someone is detailed to a different unit—they keep their shift. (Id.) And if they must be moved to either a new unit or a new shift, they are given reasonable notice (30 days)—she was given less than 24 hours. (Id.) Since being detailed to Police Radio, Ms. McCowan was not been given any work assignments—she was forced to sit, without work, for 8 hours every day. (Id. at ¶ 199.) Officer Janean Brown sent Ms. McCowan a text message stating that Sergeant Conway asked, "Audra's down here right?" Officer Brown responded, "Yeah she's upstairs," and Sergeant Conway said, "That was the worst job position (working at Police Radio)." (Id. at ¶ 208.) Sergeant Conway testified that he did, in fact, have this conversation with Officer Brown. (Plaintiffs' Ex. C, Conway Dep., 272:20-272:16.)

On May 13, 2019, Lieutenant Watkins informed Ms. McCowan that she would not be allowed to get PEMA training necessary to perform any work in the Radio unit; therefore, she would be sitting indefinitely at a dispatch console without the use of a computer. (Plaintiffs' Ex. D,

Plaintiffs' Verified Second Amended Complaint, at ¶ 211). On May 14, 2019, Ms. McCowan received call from John McGrody at FOP stating, "Deputy Coulter said that there was a meeting on Friday, May 10, 2019, with Commissioner Ross, 1st Deputy Patterson, and Deputy Coulter, and they all decided to disapprove your hardship memo." (Id. at ¶ 213). On May 15, 2019, Plaintiff McCowan's union, the FOP, filed a grievance on her behalf as a result of her detail to Police Radio. (Id. at ¶ 210). On May 29, 2019, at approximately 1:00 pm, Civilian Maria from Deputy Commissioner Coulter's office said she saw Sergeant Jann from the Commissioner's office go into Deputy Coulter's office with a memo in her hand, mention Ms. McCowan's name, and say, "Well that's what happens when you have a reputation." (Id. at ¶ 215). On June 7, 2019, Ms. McCowan reported to her nightwork shift and dispatchers were using the console at her seat. Sergeant Laskowski told her to "sit out in the hallway." (Id. at ¶ 217). On June 8, 2019, Ms. McCowan was informed that she would be expected to sit in the hallway without work indefinitely. (Id. at ¶ 218). On June 21, 2019, John McGrody from FOP called Ms. McCowan to tell her that FOP and PPD had a First Step Meeting on June 19, 2019 and that the PPD denied her request for shift change. (Id. at ¶ 220). Mr. McGrody said, "You worked in the building long enough to know how it works. Once you're out of the clique they ostracize you. Between you and me, this is all coming from Commissioner Ross, who he said he was mad because he thinks you're making all this up." (Id.) Defendant Coulter confirmed that John McGrody was at the First Step Meeting regarding Plaintiff's grievance. (Plaintiffs' Ex. QQ, Coulter Dep., 92:03-14.)

Ms. McCowan spent over 800 hours (100 days since March 13, 2019) sitting around all day at Police Radio without having been given any work opportunities. (Id. at ¶ 221).

Clearly there was no operational need for Plaintiff to be placed in Police Radio considering she was forced to sit in the hallway at Police Headquarters and not given any work for over 800 hours. Defendant Coulter testified:

> Q. Are you aware when Ms. McCowan was assigned to Police Radio, she sat out in that hallway on the second floor for 800 hours?
>
> A. No. I'm certainly not aware of that.
>
> Q. Are you aware that when she was assigned to Police Radio, she didn't perform any job functions?
>
> A. No. I'm certainly not aware of that either.
>
> . . .
>
> **Q. If there was a need for Ms. McCowan in Police Radio, why was she sitting in the hallway for one hundred days for 800 hours before she went out on FMLA?**
>
> **A. That's a really good question.**

(Plaintiffs' Ex. QQ, Coulter Dep., 67:14-23; 68:08-12.)

124. McCowan has no knowledge, facts, information, or evidence to support her conclusory claims that discrimination and/or retaliation resulted in her detail to Police Radio. Ex. 13, McCowan Dep., 273:24-274:6.

Response: Denied. Defendants have mischaracterized Plaintiff McCowan's testimony. In the testimony quoted by Defendants in support of their erroneous assertions in this paragraph, Plaintiff in fact did provide knowledge, facts, information and evidence to support her claim that discrimination and retaliation resulted in her detail to Police Radio: "Well, it was in retaliation because there was no opening there. Even if there was an opening on paper, I didn't do anything there. They didn't utilize me as a worker. . . . And the fact that the FOP contract was being violated with respect to my hours being changed the way that they were without notice just tells me that that's retaliation." (Defs' Ex. 13, McCowan Dep. 273:17 – 274:10.)

On May 13, 2019, Lieutenant Watkins informed Ms. McCowan that she would not be allowed to get PEMA training necessary to perform any work in the Radio unit; therefore, she would be sitting indefinitely at a dispatch console without the use of a computer. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 211). On May 14, 2019, Ms. McCowan received call from John McGrody at FOP stating, "Deputy Coulter said that there was a meeting on Friday, May 10, 2019, with Commissioner Ross, 1st Deputy Patterson, and Deputy Coulter, and they all decided to disapprove your hardship memo." (Id. at ¶ 213). On May 15, 2019, Plaintiff McCowan's union, the FOP, filed a grievance on her behalf as a result of her detail to Police Radio. (Id. at ¶ 210). On May 29, 2019, at approximately 1:00 pm, Civilian Maria from Deputy Commissioner Coulter's office said she saw Sergeant Jann from the Commissioner's office go into Deputy Coulter's office with a memo in her hand, mention Ms. McCowan's name, and say, "Well that's what happens when you have a reputation." (Id. at ¶ 215). On June 7, 2019, Ms. McCowan reported to her nightwork shift and dispatchers were using the console at her seat. Sergeant Laskowski told her to "sit out in the hallway." (Id. at ¶ 217). On June 8, 2019, Ms. McCowan was informed that she would be expected to sit in the hallway without work indefinitely. (Id. at ¶ 218). On June 21, 2019, John McGrody from FOP called Ms. McCowan to tell her that FOP and PPD had a First Step Meeting on June 19, 2019 and that the PPD denied her request for shift change. (Id. at ¶ 220). Mr. McGrody said, "You worked in the building long enough to know how it works. Once you're out of the clique they ostracize you. Between you and me, this is all coming from Commissioner Ross, who he said he was mad because he thinks you're making all this up." (Id.) Defendant Coulter confirmed that John McGrody was at the First Step Meeting regarding Plaintiff's grievance. (Plaintiffs' Ex. QQ, Coulter Dep., 92:03-14.)

Ms. McCowan spent over 800 hours (100 days since March 13, 2019) sitting around all day at Police Radio without having been given any work opportunities. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 221).

Clearly there was no operational need for Plaintiff to be placed in Police Radio considering she was forced to sit in the hallway at Police Headquarters and not given any work for over 800 hours. Defendant Coulter testified:

Q. Are you aware when Ms. McCowan was assigned to Police Radio, she sat out in that hallway on the second floor for 800 hours?

A. No. I'm certainly not aware of that.

Q. Are you aware that when she was assigned to Police Radio, she didn't perform any job functions?

A. No. I'm certainly not aware of that either.

. . .

Q. If there was a need for Ms. McCowan in Police Radio, why was she sitting in the hallway for one hundred days for 800 hours before she went out on FMLA?

A. That's a really good question.

(Plaintiffs' Ex. QQ, Coulter Dep., 67:14-23; 68:08-12.)

The FOP filed a grievance on Plaintiff's behalf on May 15, 2019. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 210). In the grievance, the FOP Vice President, John McGrody, wrote:

> **Statement of Grievance**
> The city is violating numerous provisions of the collective bargaining agreement by:
>
> **CORPORAL AUDRA McCOWAN Payroll Number 250998**
> Member Has Her Schedule And Hours of Work Changed in Violation Of The Collective Bargaining Agreement And Without Sufficient Notice.

(Id.; Plaintiffs' Ex. UU, McCowan-Allen 0068, May 15, 2019 Union Grievance.) After the FOP filed the grievance, Mr. McGrody emailed Plaintiff on May 19, 2019 stating that "John [McNesby] told me to file a grievance. A grievance is an allegation that the city violated the contract. The next step is a meeting with the Commissioner's representative, it's been D/C Coulter for the last several years." (Plaintiffs' Ex. WW, McCowan-Allen 0067, May 19, 2019 Email from McGrody to McCowan.)

On June 21, 2019, Mr. McGrody called Ms. McCowan to tell her that FOP and PPD had a First Step Meeting on June 19, 2019 and that the PPD denied her request for shift change. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 220.) Mr. McGrody said, "You worked in the building long enough to know how it works. Once you're out of the clique they ostracize you. Between you and me, this is all coming from Commissioner Ross, who he said he was mad because he thinks you're making all this up." (Id.) Defendant Coulter confirmed that John McGrody was at the First Step Meeting regarding Plaintiff's grievance. (Plaintiffs' Ex. QQ, Coulter Dep., 92:03-14.)

125. When asked what knowledge, facts, or information caused her to conclude that her detail to Police Radio was based on her race, her gender, or retaliation, McCowan replied: "That's what I felt." Ex. 13, McCowan Dep., 273:24-274:6.

Response: Denied. Defendants have mischaracterized Plaintiff McCowan's testimony. In the testimony quoted by Defendants in support of their erroneous assertions in this paragraph, Plaintiff in fact did provide knowledge, facts, information and evidence to support her claim that discrimination and retaliation resulted in her detail to Police Radio: "Well, it was in retaliation because there was no opening there. Even if there was an opening on paper, I didn't do anything there. They didn't utilize me as a worker. . . . And the fact that the FOP contract was being violated with respect to my hours being changed the way that they were without notice just tells me that that's retaliation." (Defs' Ex. 13, McCowan Dep. 273:17 – 274:10.)

On May 13, 2019, Lieutenant Watkins informed Ms. McCowan that she would not be allowed to get PEMA training necessary to perform any work in the Radio unit; therefore, she would be sitting indefinitely at a dispatch console without the use of a computer. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 211). On May 14, 2019, Ms. McCowan received call from John McGrody at FOP stating, "Deputy Coulter said that there was a meeting on Friday, May 10, 2019, with Commissioner Ross, 1st Deputy Patterson, and Deputy Coulter, and they all decided to disapprove your hardship memo." (Id. at ¶ 213). On May 15, 2019, Plaintiff McCowan's union, the FOP, filed a grievance on her behalf as a result of her detail to Police Radio. (Id. at ¶ 210). On May 29, 2019, at approximately 1:00 pm, Civilian Maria from Deputy Commissioner Coulter's office said she saw Sergeant Jann from the Commissioner's office go into Deputy Coulter's office with a memo in her hand, mention Ms. McCowan's name, and say, "Well that's what happens when you have a reputation." (Id. at ¶ 215). On June 7, 2019, Ms. McCowan reported to her nightwork shift and dispatchers were using the console at her seat. Sergeant Laskowski told her to "sit out in the hallway." (Id. at ¶ 217). On June 8, 2019, Ms. McCowan was informed that she would be expected to sit in the hallway without work indefinitely. (Id. at ¶ 218). On June 21, 2019, John McGrody from FOP called Ms. McCowan to tell her that FOP and PPD had a First Step Meeting on June 19, 2019 and that the PPD denied her request for shift change. (Id. at ¶ 220). Mr. McGrody said, "You worked in the building long enough to know how it works. Once you're out of the clique they ostracize you. Between you and me, this is all coming from Commissioner Ross, who he said he was mad because he thinks you're making all this up." (Id.) Defendant Coulter confirmed that John McGrody was at the First Step Meeting regarding Plaintiff's grievance. (Plaintiffs' Ex. QQ, Coulter Dep., 92:03-14.)

Ms. McCowan spent over 800 hours (100 days since March 13, 2019) sitting around all day at Police Radio without having been given any work opportunities. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 221).

Clearly there was no operational need for Plaintiff to be placed in Police Radio considering she was forced to sit in the hallway at Police Headquarters and not given any work for over 800 hours. Defendant Coulter testified:

Q. Are you aware when Ms. McCowan was assigned to Police Radio, she sat out in that hallway on the second floor for 800 hours?

A. No. I'm certainly not aware of that.

Q. Are you aware that when she was assigned to Police Radio, she didn't perform any job functions?

A. No. I'm certainly not aware of that either.

. . .

Q. If there was a need for Ms. McCowan in Police Radio, why was she sitting in the hallway for one hundred days for 800 hours before she went out on FMLA?

A. That's a really good question.

(Plaintiffs' Ex. QQ, Coulter Dep., 67:14-23; 68:08-12.)

The FOP filed a grievance on Plaintiff's behalf on May 15, 2019. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 210). In the grievance, the FOP Vice President, John McGrody, wrote:

Statement of Grievance
The city is violating numerous provisions of the collective bargaining agreement by:

CORPORAL AUDRA McCOWAN Payroll Number 250998
Member Has Her Schedule And Hours of Work Changed in Violation Of The Collective Bargaining Agreement And Without Sufficient Notice.

(Id.; Plaintiffs' Ex. UU, McCowan-Allen 0068, May 15, 2019 Union Grievance.) After the FOP filed the grievance, Mr. McGrody emailed Plaintiff on May 19, 2019 stating that "John [McNesby] told me to file a grievance. A grievance is an allegation that the city violated the contract. The next step is a meeting with the Commissioner's representative, it's been D/C Coulter for the last several years." (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, McCowan-Allen 0067, May 19, 2019 Email from McGrody to McCowan.)

On June 21, 2019, Mr. McGrody called Ms. McCowan to tell her that FOP and PPD had a First Step Meeting on June 19, 2019 and that the PPD denied her request for shift change. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 220.) Mr. McGrody said, "You worked in the building long enough to know how it works. Once you're out of the clique they ostracize you. Between you and me, this is all coming from Commissioner Ross, who he said he was mad because he thinks you're making all this up." (Id.) Defendant Coulter confirmed that John McGrody was at the First Step Meeting regarding Plaintiff's grievance. (Plaintiffs' Ex. QQ, Coulter Dep., 92:03-14.)

126. On May 6, 2019, McCowan sent another memorandum to Deputy Commissioner Coulter's attention, this time requesting a steady day work schedule because of childcare issues, "ex. Getting my youngest son on the bus, pick up and drop offs from practices and a host of other obligations[]." Ex 14, Memorandum from McCowan to Deputy Commissioner, Org. Services, 5/6/19.

Response: Denied. On April 29, 2019, Plaintiff sent a memorandum to Capt. Matthew Deacon at Police Radio with the subject line "Hardship." (Defs' Ex. 14., at McCowan 0112.) In the memorandum, Plaintiff stated as follows:

> On March 13, 2019 I was detailed to Police Radio. Upon reporting to work I was told that my schedule would be changing effective immediately from 5 Squad to 1 Squad, D Platoon. I have been in 5 Squad for 11 years, but was given less than 24 hours' notice that my shift would be changing; which is an unreasonable amount of time for anyone. This order left me little to no time to make alternate preparations in the day to day schedules of my 2 sons (ex. Getting my youngest on the bus, pick up and drop offs from practices and a host of other obligations). Not only did this immediate change drastically affect my home life, **it has greatly contributed to health problems that I am currently being treated for.** Taking all of this into consideration, I respectfully request to be returned to the day work schedule that I was working before my detail to Police Radio.

(Id.) (emphasis added). Plaintiffs' Hardship memorandum clearly states that the reason for her request was that the sudden change of schedule "**has greatly contributed to health problems that I am currently being treated for**." (Id.)

Defendant Ross admitted that a health issue qualifies as a hardship:

> Q. You mentioned that childcare was not a hardship. What are the kinds of things that would qualify as a hardship?
>
> A. Well, you could have some type of health issue . . .
>
> . . .
>
> Q. What about like a mental health issue?
>
> A. Well, mental health issue should be a nonstarter. Because you shouldn't even be working. You shouldn't even have a gun and you should be decertified, at least temporarily, if you've got a mental health issue.

(Plaintiffs' Ex. HH, Ross Dep., 104:14-105:08.)

Sergeant Laskowski told Plaintiff to change the address on Plaintiff's Hardship memo from Captain Deacon to the Deputy Commissioner for Organizational Services: Defendant Coulter. (Plaintiffs' Ex. VV, McCowan-Allen 0071., Text Message from Sgt. Laskowski). On May 5,

2019, Plaintiff sent the same memorandum to Defendant Coulter. (Defs' Ex. 14., McCowan 0113.) Plaintiff then emailed FOP Vice President John McGrody confirming she had changed the address on the memorandum and resubmitted it to Defendant Coulter. (Plaintiffs' Ex. WW, at McCowan-Allen 0044, May 7, 2019 Email to John McGrody.) Mr. McGrody confirmed he would "make sure [Defendant Coulter] gets a copy of it." (Plaintiffs' Ex. WW, at McCowan-Allen 0045, May 7, 2019 Email from McGrody to McCowan.) On May 8, 2019, Mr. McGrody emailed Plaintiff stating "I'm not sure where your memo is but I provided a copy of Coulter and I spoke to her last night after working hours. She says the Hardship memo will be discussed at the morning meeting with the Deputies and the Commissioner [Defendant Ross]." (Plaintiffs' Ex. WW, at McCowan-Allen 0047, May 8, 2019 Email from McGrody to McCowan.) Plaintiff McCowan responded:

> Good afternoon John,
>
> Thank you for the update. Is this normal protocol? I submitted a hardship memo in the past and the Captain of the District had the authority to make the decision. When we spoke the other day you said that per the contract my hardship memo has to be honored. The Contract states, "Bargaining unit members will be excused from the work schedule change for hardship, provided that this is consistent with the Police Department's operational needs." Secondly, why were they allowed to switch my shift with less than 30 days notice? As you may be aware, there was a complaint made to the FOP on behalf of "TS" footbeats (that are DETAILED to Traffic) in reference to their schedules being changed during their detail assignment. Traffic is not allowed to change their shift without notice, so why am I being treated differently?
>
> I look forward to hearing from you,
> Audra

(Plaintiffs' Ex. WW, at McCowan-Allen 0048, May 8, 2019 Email from McCowan to McGrody.) Plaintiff then sent another email to FOP President John McNesby:

> I know McGrody is out of the office today, just wanted to keep you in the loop. McGrody is being told that the entire third floor basically has to make a decision on my Hardship Memo. Also, can we find out why my memo apparently did not make it from the Chief's Office to the Deputy's Office? An elevator or flight of stairs is the only separation between their offices. Thank you.

(Plaintiffs' Ex. WW, at McCowan-Allen 0049, May 8, 2019 Email from McCowan to McNesby.)

On May 9, 2019, Mr. McGrody emailed Plaintiff McCowan stating "The Dist/Unit captain can make the call, but if they don't approve it at their level the memo goes to the P/C [Police Commissioner]" (Defendant Ross). (Plaintiffs' Ex. WW, at McCowan-Allen 0053, May 9, 2019 Email from McGrody to McCowan.) Mr. McGrody further stated that "On the 30 day issue, their claim is that you asked to be moved and that relieves them of the requirement to give you

reasonable time to adjust to shift change. That is what they stated – we are trying to get them to reverse mainly though granting the hardship." (Id.) Plaintiff McCowan responded:

> Thanks John. I appreciate you and McNesby working on my behalf. I'm not trying to be difficult, I'm really trying to understand things more clearly. So, since I asked to be moved (because I am a complainant and was not separated from the accused) then they don't have to abide by the contract?
>
> Just so you are aware, Captain Deacon told me that "He's being told where to put me from the Deputy's Office," so essentially when it comes to me, he feels like he can't make his own decisions because he said if he could, he would. The bottom line is that I am the complainant and all along this process I am the one who has been treated unfairly. This is ludicrous.
>
> If my memo is denied from the Deputy's office and or Commissioner's office, can you please ensure that I get a copy of that? Thank you.
>
> Audra

(Plaintiffs' Ex. WW, at McCowan-Allen 0054, May 9, 2019 Email from McCowan to McGrody.) Plaintiff sent a follow up email to Mr. McGrody stating:

> Sorry John, I forgot to ask in my last email, if in the contract is says that when someone's asked to be moved (that their shift can be changed) or is that something they made up? If it's not made up, can you tell me where to look in the contract so I can read it for myself.
>
> Also, do you have an electronic version of the contract?
>
> Lastly, me asking to be moved was a forced move because I was still working with the accused Officer and for me being at the DVIC was an incredibly uncomfortable and hostile environment. It's not like everything was going fine and I just asked to be moved. That was not the case. I am being punished for speaking out in a culture that condones and perpetuates sexual harassment and activities of the like and this is not right no matter how you look at it.
>
> Thanks Again,
> Audra

(Plaintiffs' Ex. WW, at McCowan-Allen 0055, May 9, 2019 Email from McCowan to McGrody.) Mr. McGrody responded stating "Contract is silent as to being moved or asking to be moved." (Plaintiffs' Ex. WW, at McCowan-Allen 0056, May 9, 2019 Email from McGrody to McCowan.)

On May 10, 2019, Mr. McNesby emailed Plaintiff stating "Nothing from anyone on my end. I do not know if we will ever hear anything." (Plaintiffs' Ex. WW, at McCowan-Allen 0061, May 10, 2019 Email from McNesby to McCowan.)

On May 14, 2019, Mr. McGrody called Ms. McCowan and stated, "Deputy Commissioner Coulter said that there was a meeting on Friday, May 10, 2019, with Commissioner Ross, 1st Deputy Patterson, and Deputy Coulter, and they all decided to disapprove your hardship memo." (Plaintiff's Verified Second Amended Complaint, at ¶ 213; Plaintiffs' Ex. TT, Hardship Memo Stamped "Disapproved"). Defendants Ross and Coulter denied Plaintiff's Hardship Memo. (Plaintiffs' Ex. QQ, Coulter Dep., 99:15-21.) Defendant Ross acknowledged that Plaintiff had a legitimate hardship due to the deterioration of her physical and mental health as a result of her sudden schedule change. (Plaintiffs' Ex. HH, Ross Dep., 104:14-105:08.) Moreover, there was no basis to disapprove Plaintiff's Hardship Memo because there was no operational need for Plaintiff in Police Radio—Plaintiff sat in the hallway at Police Headquarters for over 800 hours. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 221; Defs' Ex. 13, McCowan Dep. 273:17 – 274:10.) Plaintiff was denied PEMA training necessary to supervise the radio floor. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 196.)

On May 15, 2019, the FOP filed a grievance on Plaintiff's behalf. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 210). In the grievance, the FOP Vice President, John McGrody, wrote:

> **Statement of Grievance**
> The city is violating numerous provisions of the collective bargaining agreement by:
>
> **CORPORAL AUDRA McCOWAN Payroll Number 250998**
> Member Has Her Schedule And Hours of Work Changed in Violation Of The Collective Bargaining Agreement And Without Sufficient Notice.

(Id.; Plaintiffs' Ex. UU, Union Grievance.) After the FOP filed the grievance, Mr. McGrody emailed Plaintiff on May 19, 2019 stating that "John [McNesby] told me to file a grievance. A grievance is an allegation that the city violated the contract. The next step is a meeting with the Commissioner's representative, it's been D/C Coulter for the last several years." (Plaintiffs' Ex. WW, at McCowan-Allen 0067, May 19, 2019 Email from McGrody to McCowan.)

On June 21, 2019, Mr. McGrody called Ms. McCowan to tell her that FOP and PPD had a First Step Meeting on June 19, 2019 and that the PPD denied her request for shift change. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 220.) Mr. McGrody said, "You worked in the building long enough to know how it works. Once you're out of the clique they ostracize you. Between you and me, this is all coming from Commissioner Ross, who he said he was mad because he thinks you're making all this up." (Id.) Defendant Coulter confirmed that John McGrody was at the First Step Meeting regarding Plaintiff's grievance. (Plaintiffs' Ex. QQ, Coulter Dep., 92:03-14.)

127. The Chief Inspector of Communications and Innovations disapproved McCowan's hardship request on May 7, 2019. Ex. 14, Memorandum from McCowan to Deputy Commissioner, Org. Services, 5/6/19.

Response: Denied as stated. On May 6, 2019, both Plaintiff's Captain—the commanding officer in Police Radio—approved Plaintiff's memo. (Plaintiffs' Ex. TT, May 6, 2019 Hardship Memo.) The same day, the Inspector of the Communications Division also approved Plaintiff's memo. (Id.) On May 9, 2019, Mr. McGrody emailed Plaintiff McCowan stating "The Dist/Unit captain can make the call, but if they don't approve it at their level the memo goes to the P/C [Police Commissioner]" (Defendant Ross). (Plaintiffs' Ex. WW, at McCowan-Allen 0053, May 9, 2019 Email from McGrody to McCowan.) Even though the District/Unit captain approved Plaintiff's memo, the PPD deviated from policy and Plaintiff's memorandum was forwarded to Defendants Ross and Coulter who disapproved the memorandum. (Plaintiffs' Ex. QQ, Coulter Dep., 99:15-21.)

On May 14, 2019, Mr. McGrody called Ms. McCowan and stated, "Deputy Commissioner Coulter said that there was a meeting on Friday, May 10, 2019, with Commissioner Ross, 1st Deputy Patterson, and Deputy Coulter, and they all decided to disapprove your hardship memo." (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, at ¶ 213; Plaintiffs' Ex. TT, Hardship Memo Stamped "Disapproved"). Defendants Ross and Coulter denied Plaintiff's Hardship Memo. (Plaintiffs' Ex. QQ, Coulter Dep., 99:15-21.) Defendant Ross acknowledged that Plaintiff had a legitimate hardship due to the deterioration of her physical and mental health as a result of her sudden schedule change. (Plaintiffs' Ex. HH, Ross Dep., 104:14-105:08.) Moreover, there was no basis to disapprove Plaintiff's Hardship Memo because there was no operational need for Plaintiff in Police Radio—Plaintiff sat in the hallway at Police Headquarters for over 800 hours. (Plaintiffs' Ex. DD, Plaintiffs' Verified Second Amended Complaint, at ¶ 221; McCowan Dep. 273:17 – 274:10.) Plaintiff was denied PEMA training necessary to supervise the radio floor. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 196.)

On May 15, 2019, the FOP filed a grievance on Plaintiff's behalf. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 210). In the grievance, the FOP Vice President, John McGrody, wrote:

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(Id.; Plaintiffs' Ex. UU, Union Grievance.)

After the FOP filed the grievance, Mr. McGrody emailed Plaintiff on May 19, 2019 stating that "John [McNesby] told me to file a grievance. A grievance is an allegation that the city violated the contract. The next step is a meeting with the Commissioner's representative, it's been D/C Coulter for the last several years." (Plaintiffs' Ex. WW, at McCowan-Allen 0067, May 19, 2019 Email from McGrody to McCowan.)

On June 21, 2019, Mr. McGrody called Ms. McCowan to tell her that FOP and PPD had a First Step Meeting on June 19, 2019 and that the PPD denied her request for shift change. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 220.) Mr. McGrody said, "You worked in the building long enough to know how it works. Once you're out of the clique they ostracize you. Between you and me, this is all coming from Commissioner Ross, who he said he was mad because he thinks you're making all this up." (Id.) Defendant Coulter confirmed that John McGrody was at the First Step Meeting regarding Plaintiff's grievance. (Plaintiffs' Ex. QQ, Coulter Dep., 92:03-14.)

128. The hardship request then came to Deputy Commissioner Coulter, who ratified the Chief Inspector of Communications and Innovations' disapproval of McCowan's hardship request. Ex. 14, Memorandum from McCowan to Deputy Commissioner, Org. Services, 5/6/19.

Response: Denied as stated. On May 6, 2019, both Plaintiff's Captain—the commanding officer in Police Radio—approved Plaintiff's memo. (Plaintiffs' Ex. TT, May 6, 2019 Hardship Memo.) The same day, the Inspector of the Communications Division also approved Plaintiff's memo. (Id.) On May 9, 2019, Mr. McGrody emailed Plaintiff McCowan stating "The Dist/Unit captain can make the call, but if they don't approve it at their level the memo goes to the P/C [Police Commissioner]" (Defendant Ross). (Plaintiffs' Ex. WW, at McCowan-Allen 0053, May 9, 2019 Email from McGrody to McCowan.) Even though the District/Unit captain approved Plaintiff's memo, the PPD deviated from policy and Plaintiff's memorandum was forwarded to Defendants Ross and Coulter who disapproved the memorandum. (Plaintiffs' Ex. QQ, Coulter Dep., 99:15-21.)

On May 14, 2019, Mr. McGrody called Ms. McCowan and stated, "Deputy Commissioner Coulter said that there was a meeting on Friday, May 10, 2019, with Commissioner Ross, 1st Deputy Patterson, and Deputy Coulter, and they all decided to disapprove your hardship memo." (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, at ¶ 213; Plaintiffs' Ex. TT, Hardship Memo Stamped "Disapproved"). Defendants Ross and Coulter denied Plaintiff's Hardship Memo. (Plaintiffs' Ex. QQ, Coulter Dep., 99:15-21.) Defendant Ross acknowledged that Plaintiff had a legitimate hardship due to the deterioration of her physical and mental health as a result of her sudden schedule change. (Plaintiffs' Ex. HH, Ross Dep., 104:14-105:08.) Moreover, there was no basis to disapprove Plaintiff's Hardship Memo because there was no operational need for Plaintiff in Police Radio—Plaintiff sat in the hallway at Police Headquarters for over 800 hours. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 221;

Defs' Ex. 13, McCowan Dep. 273:17 – 274:10.) Plaintiff was denied PEMA training necessary to supervise the radio floor. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 196.)

On May 15, 2019, the FOP filed a grievance on Plaintiff's behalf. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 210). In the grievance, the FOP Vice President, John McGrody, wrote:

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(Id.; Plaintiffs' Ex. UU, Union Grievance.)

After the FOP filed the grievance, Mr. McGrody emailed Plaintiff on May 19, 2019 stating that "John [McNesby] told me to file a grievance. A grievance is an allegation that the city violated the contract. The next step is a meeting with the Commissioner's representative, it's been D/C Coulter for the last several years." (Plaintiffs' Ex. WW, at McCowan-Allen 0067, May 19, 2019 Email from McGrody to McCowan.)

On June 21, 2019, Mr. McGrody called Ms. McCowan to tell her that FOP and PPD had a First Step Meeting on June 19, 2019 and that the PPD denied her request for shift change. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 220.) Mr. McGrody said, "You worked in the building long enough to know how it works. Once you're out of the clique they ostracize you. Between you and me, this is all coming from Commissioner Ross, who he said he was mad because he thinks you're making all this up." (Id.) Defendant Coulter confirmed that John McGrody was at the First Step Meeting regarding Plaintiff's grievance. (Plaintiffs' Ex. QQ, Coulter Dep., 92:03-14.)

129. Deputy Commissioner Coulter disapproved McCowan's request because the request was based on childcare concerns. Ex. 16, Coulter Dep., 80:17-81:8.

Response: Denied. Plaintiff's request stated:

> On March 13, 2019 I was detailed to Police Radio. Upon reporting to work I was told that my schedule would be changing effective immediately from 5 Squad to 1 Squad, D Platoon. I have been in 5 Squad for 11 years, but was given less than 24 hours' notice that my shift would be changing; which is an unreasonable amount of time for anyone. This order left me little to no time to make alternate preparations in the day to day schedules of my 2 sons (ex. Getting my youngest on the bus, pick up and drop offs from practices and a host of other obligations). Not only did this

> immediate change drastically affect my home life, **it has greatly contributed to health problems that I am currently being treated for.** Taking all of this into consideration, I respectfully request to be returned to the day work schedule that I was working before my detail to Police Radio.

(Plaintiffs' Ex. TT, Hardship Memo Stamped "Disapproved") (emphasis added). Plaintiffs' Hardship memorandum clearly states that the reason for her request was that the sudden change of schedule "**has greatly contributed to health problems that I am currently being treated for**." (Id.) Defendant Ross admitted that a health issue qualifies as a hardship. (Plaintiffs' Ex. HH, Ross Dep., 104:14-105:08.)

Defendant Coulter testified that she disregarded Plaintiff's statement that her sudden shift change "has greatly contributed to health problems that I am currently being treated for":

> Q. Do you see there about three-quarters of the way down the first paragraph where it says: Not only does this immediate change directly affect my home life, it has greatly contributed to health problems that I'm currently being treated for. Do you see that?
>
> A. Yes
>
> . . .
>
> Q. Did you do anything to obtain other details regarding Ms. McCowan's alleged health problems in this memo?
>
> A. I did not.

(Plaintiff' Ex. QQ, Coulter Dep., 89:12-90:05.)

130. According to Deputy Commissioner Coulter, if childcare issues were the criteria for granting hardships, the PPD would only have a Monday to Friday daywork police force. Ex. 16, Coulter Dep., 75:1-7. See also Ex. 19, Ross Dep., 104:14-22 ("If [childcare] were [a hardship], everybody would work Monday through Friday with weekends off in the Police Department.").

Response: Plaintiff admits only that Defendant Coulter ignored Plaintiff's statement that the sudden change of schedule "**has greatly contributed to health problems that I am currently being treated for**." (Plaintiffs' Ex. TT, Hardship Memo Stamped "Disapproved"; Coulter Dep., 89:12-90:05.) Plaintiff denies that childcare was the only basis for her request. (Plaintiffs' Ex. TT, Hardship Memo Stamped "Disapproved")

131. McCowan alleges that FOP Vice President John McGrody, though not present at the meeting, told McCowan that then-Commissioner Ross, First Deputy Commissioner Myron Patterson, and Deputy Commissioner Coulter "unanimously decided to disapprove [McCowan's] hardship memo." Ex. 13, McCowan Dep., 275:14-20, 326:20-327: [sic]

Response: Defendants' use of the term "alleges" is inappropriate, as, on summary judgment all inferences are to be drawn in the light most favorable to Plaintiffs. To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. It is denied that Mr. McGrody's "presence at the meeting" has any relevance, because when Defendant Coulter was asked at her deposition if she spoke to Mr. McGrody about the decision to deny Plaintiff's hardship memo, she said "I would have if he called." (Plaintiffs' Ex. QQ, Coulter Dep., 93:7-11.) It is admitted that on May 14, 2019, Mr. McGrody called Ms. McCowan and stated, "Deputy Commissioner Coulter said that there was a meeting on Friday, May 10, 2019, with Commissioner Ross, 1st Deputy Patterson, and Deputy Coulter, and they all decided to disapprove your hardship memo." (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, at ¶ 213). Plaintiff testified:

> Q. Do you know if [John McGrody] spoke with any of those three participants after the meeting, either Deputy Commissioner Coulter, Commissioner Ross, or Patterson?
>
> A. He stated to me that he spoke with Deputy Coulter.
>
> Q. What did he say to you that he discussed with Deputy Commissioner Coulter?
>
> A. That my hardship memo was going to be denied. And he said, between you and me, this is all coming from Commissioner Ross.

(Defs' Ex. 13, McCowan Dep., 275:21-276:07.)

132. Beyond McGrody's statement, McCowan has no knowledge, facts, or information that any Defendant besides DC Coulter, who simply ratified the Chief Inspector's disapproval, played any role in the decision to deny McCowan's hardship request. Ex. 13, McCowan Dep., 51:13-53:2.

Response: Denied. Defendant Ross also played a role in the decision to deny Plaintiff's hardship request: when Defendant Coulter was asked at her deposition whether Defendant Ross told her to disapprove Plaintiff's hardship memo, Defendant Coulter testified, "I think if he was at the table,

he would have offered whether he thought it was or not." (Plaintiffs' Ex. QQ, Coulter Dep., 99:15-21.) Moreover, the Collective Bargaining Agreement states that hardships have to be approved or disapproved by the Police Commissioner. (Defs' Ex. 13, McCowan Dep., 52:17-20; see also Plaintiffs' Ex. WW, at McCowan-Allen 0053, May 9, 2019 Email from McGrody to McCowan ("The Dist/Unit captain can make the call, but if they don't approve it at their level the memo goes to the P/C").

133. Further, McCowan has no knowledge, facts, information, or evidence that her hardship request was denied because of discrimination and/or retaliation. Ex. 13, McCowan Dep., 51:13-53:2. See also id. at 327:6-328:2 (When asked what facts or information she based her conclusion upon, McCowan responded: "That's an inference.").

Response: Denied. Plaintiff objects to Defendants' cherry picking of one line of deposition testimony during an 8-hour deposition in which Plaintiff provided ample knowledge, facts, information and evidence that her hardship request was denied because of discrimination and/or retaliation. (Defs' Ex. 13, McCowan Dep., 51:13-52:20; 274:20-275:03; 275:21-276:07.)

By way of further response: Plaintiffs' Hardship memorandum clearly states that the reason for her request was that the sudden change of schedule "**has greatly contributed to health problems that I am currently being treated for**." (McCowan 0121, May 6, 2019 Hardship Memo.) Plaintiff testified that the reasons she was seeking the hardship were: "Well, the entire situation was affecting me adversely. I was gaining weight rapidly because I was stress eating all the time. I was really depressed. I didn't want to go to work. I was very, very, very anxious and suffering from panic attacks before I would go to work almost daily." (Defs' Ex. 13, McCowan Dep., 320:07-16.) Defendant Ross admitted that a health issue qualifies as a hardship. (Plaintiffs' Ex. HH, Ross Dep., 104:14-105:08.)

On May 7, 2019 Plaintiff then emailed FOP Vice President John McGrody confirming she had changed the address on the memorandum and resubmitted it to Defendant Coulter. (Plaintiffs' Ex. WW, at McCowan-Allen 0044, May 7, 2019 Email to John McGrody.) Mr. McGrody confirmed he would "make sure [Defendant Coulter] gets a copy of it." (Plaintiffs' Ex. WW, at McCowan-Allen 0045, May 7, 2019 Email from McGrody to McCowan.) On May 8, 2019, Mr. McGrody emailed Plaintiff stating "I'm not sure where your memo is but I provided a copy of Coulter and I spoke to her last night after working hours. She says the Hardship memo will be discussed at the morning meeting with the Deputies and the Commissioner [Defendant Ross]." (Plaintiffs' Ex. WW, at McCowan-Allen 0047, May 8, 2019 Email from McGrody to McCowan.) Plaintiff McCowan responded:

> Good afternoon John,

> Thank you for the update. Is this normal protocol? I submitted a hardship memo in the past and the Captain of the District had the authority to make the decision. When we spoke the other day you said that per the contract my hardship memo has to be honored. The Contract states, "Bargaining unit members will be excused from the work schedule change for hardship, provided that this is consistent with the Police Department's operational needs." Secondly, why were they allowed to switch my shift with less than 30 days notice? As you may be aware, there was a complaint made to the FOP on behalf of "TS" footbeats (that are DETAILED to Traffic) in reference to their schedules being changed during their detail assignment. Traffic is not allowed to change their shift without notice, so why am I being treated differently?
>
> I look forward to hearing from you,
> Audra

(Plaintiffs' Ex. WW, at McCowan-Allen 0048, May 8, 2019 Email from McCowan to McGrody.) Plaintiff then sent another email to FOP President John McNesby:

> I know McGrody is out of the office today, just wanted to keep you in the loop. McGrody is being told that the entire third floor basically has to make a decision on my Hardship Memo. Also, can we find out why my memo apparently did not make it from the Chief's Office to the Deputy's Office? An elevator or flight of stairs is the only separation between their offices. Thank you.

(Plaintiffs' Ex. WW, at McCowan-Allen 0049, May 8, 2019 Email from McCowan to McNesby.)

On May 9, 2019, Mr. McGrody emailed Plaintiff McCowan stating "The Dist/Unit captain can make the call, but if they don't approve it at their level the memo goes to the P/C [Police Commissioner]" (Defendant Ross). (Plaintiffs' Ex. WW, at McCowan-Allen 0053, May 9, 2019 Email from McGrody to McCowan.) Both Plaintiff's Captain—the commanding officer in Police Radio—and the Inspector of the Communications Division, approved Plaintiff's memo. (Plaintiffs' Ex. TT, May 6, 2019 Hardship Memo.) Even though the District/Unit captain approved Plaintiff's memo, the PPD deviated from policy and Plaintiff's memorandum was forwarded to Defendants Ross and Coulter who disapproved the memorandum. (Plaintiffs' Ex. QQ, Coulter Dep., 99:15-21.)

Mr. McGrody further stated that "On the 30 day issue, their claim is that you asked to be moved and that relieves them of the requirement to give you reasonable time to adjust to shift change. That is what they stated – we are trying to get them to reverse mainly though granting the hardship." (Plaintiffs' Ex. WW, at McCowan-Allen 0053, May 9, 2019 Email from McGrody to McCowan.) Plaintiff McCowan responded:

> Thanks John. I appreciate you and McNesby working on my behalf. I'm not trying to be difficult, I'm really trying to understand things more clearly. So, since I asked

> to be moved (because I am a complainant and was not separated from the accused) then they don't have to abide by the contract?
>
> Just so you are aware, Captain Deacon told me that "He's being told where to put me from the Deputy's Office," so essentially when it comes to me, he feels like he can't make his own decisions because he said if he could, he would. The bottom line is that I am the complainant and all along this process I am the one who has been treated unfairly. This is ludicrous.
>
> If my memo is denied from the Deputy's office and or Commissioner's office, can you please ensure that I get a copy of that? Thank you.
>
> Audra

(Plaintiffs' Ex. WW, at McCowan-Allen 0054, May 9, 2019 Email from McCowan to McGrody.) Plaintiff sent a follow up email to Mr. McGrody stating:

> Sorry John, I forgot to ask in my last email, if in the contract is says that when someone's asked to be moved (that their shift can be changed) or is that something they made up? If it's not made up, can you tell me where to look in the contract so I can read it for myself.
>
> Also, do you have an electronic version of the contract?
>
> Lastly, me asking to be moved was a forced move because I was still working with the accused Officer and for me being at the DVIC was an incredibly uncomfortable and hostile environment. It's not like everything was going fine and I just asked to be moved. That was not the case. I am being punished for speaking out in a culture that condones and perpetuates sexual harassment and activities of the like and this is not right no matter how you look at it.
>
> Thanks Again,
> Audra

(Plaintiffs' Ex. WW, at McCowan-Allen 0055, May 9, 2019 Email from McCowan to McGrody.) Mr. McGrody responded stating "Contract is silent as to being moved or asking to be moved." (Plaintiffs' Ex. WW, at McCowan-Allen 0056, May 9, 2019 Email from McGrody to McCowan.)

On May 10, 2019, Mr. McNesby emailed Plaintiff stating "Nothing from anyone on my end. I do not know if we will ever hear anything." (Plaintiffs' Ex. WW, at McCowan-Allen 0061, May 10, 2019 Email from McNesby to McCowan.)

On May 14, 2019, Mr. McGrody called Ms. McCowan and stated, "Deputy Commissioner Coulter said that there was a meeting on Friday, May 10, 2019, with Commissioner Ross, 1st Deputy Patterson, and Deputy Coulter, and they all decided to disapprove your hardship memo."

(Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, at ¶ 213; Plaintiffs' Ex. TT, Hardship Memo Stamped "Disapproved"). Defendants Ross and Coulter denied Plaintiff's Hardship Memo. (Plaintiffs' Ex. QQ, Coulter Dep., 99:15-21.) Defendant Ross acknowledged that Plaintiff had a legitimate hardship due to the deterioration of her physical and mental health as a result of her sudden schedule change. (Plaintiffs' Ex. HH, Ross Dep., 104:14-105:08.) Moreover, there was no basis to disapprove Plaintiff's Hardship Memo because there was no operational need for Plaintiff in Police Radio—Plaintiff sat in the hallway at Police Headquarters for over 800 hours. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 221; Defs' Ex. 13, McCowan Dep. 273:17 – 274:10.) Plaintiff was denied PEMA training necessary to supervise the radio floor. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 196.)

On May 15, 2019, the FOP filed a grievance on Plaintiff's behalf. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 210). In the grievance, the FOP Vice President, John McGrody, wrote:

> **Statement of Grievance**
> The city is violating numerous provisions of the collective bargaining agreement by:
>
> **CORPORAL AUDRA McCOWAN Payroll Number 250998**
> Member Has Her Schedule And Hours of Work Changed in Violation Of The Collective Bargaining Agreement And Without Sufficient Notice.

(Id.; Plaintiffs' Ex. UU Union Grievance.) After the FOP filed the grievance, Mr. McGrody emailed Plaintiff on May 19, 2019 stating that "John [McNesby] told me to file a grievance. A grievance is an allegation that the city violated the contract. The next step is a meeting with the Commissioner's representative, it's been D/C Coulter for the last several years." (Plaintiffs' Ex. WW, at McCowan-Allen 0067, May 19, 2019 Email from McGrody to McCowan.)

On June 21, 2019, Mr. McGrody called Ms. McCowan to tell her that FOP and PPD had a First Step Meeting on June 19, 2019 and that the PPD denied her request for shift change. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 220.) Mr. McGrody said, "You worked in the building long enough to know how it works. Once you're out of the clique they ostracize you. Between you and me, this is all coming from Commissioner Ross, who he said he was mad because he thinks you're making all this up." (Id.) Defendant Coulter confirmed that John McGrody was at the First Step Meeting regarding Plaintiff's grievance. (Plaintiffs' Ex. QQ, Coulter Dep., 92:03-14.)

134. The City sustained Departmental violations against McCowan for failure to properly supervise by failing to take appropriate action to address Officer Younger's alleged conduct. Ex. 51 at CITY 2518.

Response: It is admitted that in retaliation for Plaintiff's sexual harassment complaint against Defendant Younger, the City sustained Departmental violations against Plaintiff for "failure to supervise" Defendant Younger who had been sexually harassing her.

135. Employees holding a rank of Police Corporal or above are supervisors. Ex. 1, Dir. 7.19 at 3.B.1.c.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. It is admitted that Defs' Ex. 1, Dir. 7.19 at 3.B.1.c. states as Defendants have alleged in this paragraph. By way of further response: under Directive 7.19, Subsection 3, titled, "Organizational Structure," Defendants—Commissioner Richard Ross Jr., Deputy Commissioner Christine Coulter, Chief Inspector Daniel MacDonald, Inspector Michael McCarrick, Lieutenant Timothy McHugh, Sergeant Brent Conway, Sergeant Eric Williford, Sergeant Kevin O'Brien, Sergeant Tamika Allen, and Sergeant Herbert Gibbons—were at all relevant times "supervisors." (See Defs' Ex. 1, Dir. 7.19, at subsection 3, CITY 1518-19.)

136. Supervisors have the authority to issue orders to subordinates, regardless of whether the subordinate is directly within the supervisor's chain of command. Ex. 1, Dir. 7.19 at 5.A.2.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. This paragraph is denied as stated. Plaintiff admits only that Defs' Ex. 1, Dir. 7.19 at 5.A.2. states "Personnel shall promptly obey and execute any and all lawful orders of a supervisor. This shall include orders relayed from a supervisor by a member of the same or lesser rank." It is denied that the material cited by Defendants says anything about supervisory authority "regardless of whether the subordinate is directly within the supervisor's chain of command."

137. Subordinate employees are required to follow all lawful orders from higher-ranking employees. Ex. 1, Dir. 7.19 at 5.A.2.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Denied as stated. Defs' Ex. 1, Dir. 7.19 at 5.A.2. states "Personnel shall promptly obey and execute any and all lawful orders of a supervisor. This shall include orders relayed from a supervisor by a member of the same or lesser rank."

138. Supervisors, managers, and commanders have the authority to initiate discipline, even when the individual being disciplined is not directly within the disciplinarian's chain of command. Ex. 1, Dir. 7.19 at 5.A.1.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. This paragraph is denied as stated. Defs' Ex. 1, Dir. 7.19 at 5.A.2. states, "Personnel shall promptly obey and execute any and all lawful orders of a supervisor. This shall include orders relayed from a supervisor by a member of the same or lesser rank." It is denied that the material cited by Defendants says anything about whether the "individual being disciplined is directly within the supervisor's chain of command." Defendant Ross, the former Police Commissioner, testified:

> Q. What about when you were a sergeant, did you have the ability to discipline your employees?
>
> A. Discipline in terms of request discipline, but not actually discipline. There's a difference between actually disciplining, the power to discipline, and a request for discipline.

(Ross Dep., 31:13-20.)

139. PPD supervisors, including corporals, are held to higher standards of conduct than non-supervisory Police Officers and Police Detectives. See Ex. 2, Dir. 8.7, ¶ 4.G. ("Supervisors will be held to a higher standard for violation of this directive and/or failure to take necessary and appropriate action.").

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Denied as stated. The material cited by Defendants—Defs' Ex. 2, Dir. 8.7, CITY 3138-3149—does not support Defendants' assertions as stated in this paragraph. Defendants' Exhibit 2 is an updated version of Directive 8.7, dated January 22, 2020, that was not in effect during the time period relevant to this case. (See Defs' Ex. 2, Dir. 8.7 Dated January 22, 2020, CITY 3138-3149.) In fact, Defendants produced a different "version" of Directive 8.7 in discovery, dated October 21, 2011, which contains different standards and procedures for reporting harassment and discrimination in the workplace. (See Plaintiffs' Ex. L, Directive 8.7 Dated October 21, 2011, CITY 1571-1582.) The October 21, 2011 version of Directive 8.7 is the one that was in effect during the time period relevant to this case. (See Plaintiffs' Ex. L, Directive 8.7 Dated October 21, 2011, CITY 1571-1582.) Defendant Chief Inspector Daniel MacDonald confirmed at his deposition that the Directive 8.7 Dated October 21, 2011 contained the policies and procedures in effect during the relevant time period:

> Q. Tech, pull up what we'll mark Exhibit E, Philadelphia Police Department Directive 8.7, effective October 2011. (Exhibit MacDonald-E was marked for

Identification.) . . .Is this the directive you pulled up as you were notified of Ms. McCowan and Ms. Allen's complaints?

A. Yes.

(Plaintiffs' Ex. B, MacDonald Dep., 58:05 – 59:07.)

Plaintiffs admit under Directive 8.7, effective October 21, 2011, supervisors are held to a higher standard. (Plaintiffs' Ex. L, Directive 8.7 Dated October 21, 2011, CITY 1571-1582.) By way of further response: under Directive 7.19, Subsection 3, titled, "Organizational Structure," Defendants—Commissioner Richard Ross Jr., Deputy Commissioner Christine Coulter, Chief Inspector Daniel MacDonald, Inspector Michael McCarrick, Lieutenant Timothy McHugh, Sergeant Brent Conway, Sergeant Eric Williford, Sergeant Kevin O'Brien, Sergeant Tamika Allen, and Sergeant Herbert Gibbons—were at all relevant times "supervisors." (See Defs' Ex. 1, Dir. 7.19, at subsection 3, CITY 1518-19.)

140. Police Directive 8.7 lays out PPD's Equal Employment Opportunity ("EEO") expectations, responsibilities, procedures, and protocols and "strictly prohibit[s] [employees] from engaging in any form of employment discrimination, harassment, sexual harassment, creating and/or maintaining any hostile workplace, or retaliation . . .". Ex. 2 at 3.A.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Denied as stated. The material cited by Defendants—Defs' Ex. 2, Dir. 8.7, CITY 3138-3149—does not support Defendants' assertions as stated in this paragraph. Defendants' Exhibit 2 is an updated version of Directive 8.7, dated January 22, 2020, that was not in effect during the time period relevant to this case. (See Defs' Ex. 2, Dir. 8.7 Dated January 22, 2020, CITY 3138-3149.) In fact, Defendants produced a different "version" of Directive 8.7 in discovery, dated October 21, 2011, which contains different standards and procedures for reporting harassment and discrimination in the workplace. (See Plaintiffs' Ex. L, Directive 8.7 Dated October 21, 2011, CITY 1571-1582.) The October 21, 2011 version of Directive 8.7 is the one that was in effect during the time period relevant to this case. (See Plaintiffs' Ex. L, Directive 8.7 Dated October 21, 2011, CITY 1571-1582.) Defendant Chief Inspector Daniel MacDonald confirmed at his deposition that the Directive 8.7 Dated October 21, 2011 contained the policies and procedures in effect during the relevant time period. (Plaintiffs' Ex. B, MacDonald Dep., 58:05 – 59:07.)

Plaintiffs admit Directive 8.7, effective October 21, 2011 sets forth the PPD's "Equal Employment Complaint Procedures." (Plaintiffs' Ex. L, Directive 8.7 Dated October 21, 2011, CITY 1571-1582.) Subsection 3.A of the October 21, 2011 Directive, contains different language than what Defendants have asserted in this paragraph. (Plaintiffs' Ex. L, Directive 8.7 Dated October 21, 2011, CITY 1571-1582.) Therefore, Defendants' assertions are denied as stated.

By way of further response, the material cired by Defendants provides: "All employees, **regardless of rank** or supervisory level, are strictly prohibited from engaging in any form of employment discrimination, harassment, sexual harassment, creating and/or maintaining any hostile workplace, or retaliation, as defined in this directive." (See Defs' Ex. 2, Dir. 8.7 Dated January 22, 2020, at CITY 3140) (emphasis added). Despite finding ample evidence that Defendant Younger sexually harassed Plaintiff McCowan, Internal Affairs deemed Plaintiff McCowan's sexual harassment complaint against Defendant Younger to be "unfounded." (See Defs' Ex. 51 at CITY 2516.) The Internal Affairs investigative notes state, **"It should be noted that were Officer Younger to have made all of the comments Corporal McCowan alleged in her complaint in the manner that she alleged, he would have been in violation of Directive #8.7, Employment Discrimination/Equal Employment Opportunity (EEO) – Responsibilities and How to File a Complaint."** (Defs' Ex. 51, CITY 2518) (emphasis added). The only reason Internal Affairs deemed Plaintiff's complaint "unfounded" was because **"as a supervisor, Corporal McCowan was responsible for ensuring Officer Younger's conduct was such that it was in accordance with the guidelines set forth in Directive #8.7. Corporal McCowan was also responsible for taking appropriate actions against Officer Younger each time she believed that he violated any section of the directive."** (Defs' Ex. 51, CITY 2518) (emphasis added). The Internal Affairs investigative notes further state: **"This investigation revealed that Corporal McCowan filing an EEO complaint against Officer Younger in relation to the allegations set forth during her interview was not the appropriate course of action for her to take.** As a supervisor, Corporal McCowan had the authority and the responsibility to request disciplinary action against Officer Younger if she believed he violated a departmental policy. Corporal McCowan did not provide any indication that she was prohibited from taking action against Officer Younger, nor did she provide any information that would suggest a reasonable reason for her failing to take appropriate actions to address Officer Younger's conduct." (Defs' Ex. 51, CITY 2516) (emphasis added).

The findings of Internal Affairs, quoted above, are in direct contradiction to the material cited by Defendants in support of their assertions in this paragraph—Defs' Ex. 2, Dir. 8.7 Dated January 22, 2020, at CITY 3140—which states: "All employees, **regardless of rank** or supervisory level, are strictly prohibited from engaging in any form of . . . harassment."

141. Directive 8.7 defines "protected class or group," "employment discrimination," "harassment," "sexual harassment," hostile work environment harassment," and "retaliation." Id. at 2.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs deny the assertions in this paragraph as stated because the cited material was not the applicable policy in place during the relevant time period. (Plaintiffs' Ex. L, Directive 8.7 Dated October 21, 2011, CITY 1571-1582; Plaintiffs' Ex. B, MacDonald Dep., 58:05 – 59:07.) Plaintiffs admit only that the material cited by Defendants states as Defendants asserted in this paragraph.

142. Directive 8.7 lays out employee responsibilities and details multiple avenues for submitting a complaint, including internally reporting to either a supervisor or Internal Affairs and externally reporting to local, state, and federal agencies. Id. at 4.C-D.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs deny the assertions in this paragraph as stated because the cited material was not the applicable policy in place during the relevant time. (Plaintiffs' Ex. L, Directive 8.7 Dated October 21, 2011, CITY 1571-1582; Plaintiffs' Ex. B, MacDonald Dep., 58:05 – 59:07.)

Subsection 4 of the October 21, 2011 Directive, titled "Employee Responsibility" contains procedures different from what Defendants have asserted in this paragraph. (Plaintiffs' Ex. L, Directive 8.7 Dated October 21, 2011, CITY 1571-1582.) Therefore, Defendants' assertions are denied as stated.

By way of further response: under Directive 7.19, Subsection 3, titled, "Organizational Structure," Defendants—Commissioner Richard Ross Jr., Deputy Commissioner Christine Coulter, Chief Inspector Daniel MacDonald, Inspector Michael McCarrick, Lieutenant Timothy McHugh, Sergeant Brent Conway, Sergeant Eric Williford, Sergeant Kevin O'Brien, Sergeant Tamika Allen, and Sergeant Herbert Gibbons—were at all relevant times "supervisors." (See Defs' Ex. 1, Dir. 7.19, at subsection 3, CITY 1518-19.)

By way of further response, the material cited by Defendants provides: "All employees, **regardless of rank** or supervisory level, are strictly prohibited from engaging in any form of employment discrimination, harassment, sexual harassment, creating and/or maintaining any hostile workplace, or retaliation, as defined in this directive." (See Defs' Ex. 2, Dir. 8.7 Dated January 22, 2020, at CITY 3140) (emphasis added). Despite finding ample evidence that Defendant Younger sexually harassed Plaintiff McCowan, Internal Affairs deemed Plaintiff McCowan's sexual harassment complaint against Defendant Younger to be "unfounded." (See Defs' Ex. 51 at CITY 2516.) The Internal Affairs investigative notes state, **"It should be noted that were Officer Younger to have made all of the comments Corporal McCowan alleged in her complaint in the manner that she alleged, he would have been in violation of Directive #8.7, Employment Discrimination/Equal Employment Opportunity (EEO) – Responsibilities and How to File a Complaint."** (Defs' Ex. 51, CITY 2518) (emphasis added). The only reason Internal Affairs deemed Plaintiff's complaint "unfounded" was because **"as a supervisor, Corporal McCowan was responsible for ensuring Officer Younger's conduct was such that it was in accordance with the guidelines set forth in Directive #8.7. Corporal McCowan was also responsible for taking appropriate actions against Officer Younger each time she believed that he violated any section of the directive."** (Defs' Ex. 51, CITY 2518) (emphasis added). The Internal Affairs investigative notes further state: **"This investigation revealed that Corporal McCowan filing an EEO complaint against Officer Younger in relation to the allegations set forth during her interview was not the**

appropriate course of action for her to take. As a supervisor, Corporal McCowan had the authority and the responsibility to request disciplinary action against Officer Younger if she believed he violated a departmental policy. Corporal McCowan did not provide any indication that she was prohibited from taking action against Officer Younger, nor did she provide any information that would suggest a reasonable reason for her failing to take appropriate actions to address Officer Younger's conduct." (Defs' Ex. 51, CITY 2516) (emphasis added).

The findings of Internal Affairs, quoted above, are in direct contradiction to the material cited by Defendants in support of their assertions in this paragraph—Defs' Ex. 2, Dir. 8.7 Dated January 22, 2020, at CITY 3140—which states: "All employees, **regardless of rank** or supervisory level, are strictly prohibited from engaging in any form of . . . harassment."

143. In recognition of their "legal responsibility to ensure that their areas of supervision are free from employment discrimination, harassment and retaliation and a to safeguard their subordinates from such prohibited conduct[,]" Directive 8.7 establishes additional, heightened standards for supervisors, including Police Corporals. Id. at 5.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs deny the assertions in this paragraph as stated because the cited material was not the applicable policy in place during the relevant time. (Plaintiffs' Ex. L, Directive 8.7 Dated October 21, 2011, CITY 1571-1582; Plaintiffs' Ex. B, MacDonald Dep., 58:05 – 59:07.)

Subsection 5 of the October 21, 2011 Directive, titled "Commanders' Responsibility" contains procedures different from what Defendants have asserted in this paragraph. (Plaintiffs' Ex. L, Directive 8.7 Dated October 21, 2011, CITY 1571-1582.) Therefore, Defendants' assertions are denied as stated.

By way of further response: under Directive 7.19, Subsection 3, titled, "Organizational Structure," Defendants—Commissioner Richard Ross Jr., Deputy Commissioner Christine Coulter, Chief Inspector Daniel MacDonald, Inspector Michael McCarrick, Lieutenant Timothy McHugh, Sergeant Brent Conway, Sergeant Eric Williford, Sergeant Kevin O'Brien, Sergeant Tamika Allen, and Sergeant Herbert Gibbons—were at all relevant times "supervisors." (See Defs' Ex. 1, Dir. 7.19, at subsection 3, CITY 1518-19.)

By way of further response, the material cited by Defendants provides: "All employees, **regardless of rank** or supervisory level, are strictly prohibited from engaging in any form of employment discrimination, harassment, sexual harassment, creating and/or maintaining any hostile workplace, or retaliation, as defined in this directive." (See Defs' Ex. 2, Dir. 8.7 Dated January 22, 2020, at CITY 3140) (emphasis added). Despite finding ample evidence that Defendant Younger sexually harassed Plaintiff McCowan, Internal Affairs deemed Plaintiff McCowan's sexual harassment complaint against Defendant Younger to be "unfounded." (See

Defs' Ex. 51 at CITY 2516.) The Internal Affairs investigative notes state, **"It should be noted that were Officer Younger to have made all of the comments Corporal McCowan alleged in her complaint in the manner that she alleged, he would have been in violation of Directive #8.7, Employment Discrimination/Equal Employment Opportunity (EEO) – Responsibilities and How to File a Complaint."** (Defs' Ex. 51, CITY 2518) (emphasis added). The only reason Internal Affairs deemed Plaintiff's complaint "unfounded" was because **"as a supervisor, Corporal McCowan was responsible for ensuring Officer Younger's conduct was such that it was in accordance with the guidelines set forth in Directive #8.7. Corporal McCowan was also responsible for taking appropriate actions against Officer Younger each time she believed that he violated any section of the directive."** (Defs' Ex. 51, CITY 2518) (emphasis added). The Internal Affairs investigative notes further state: **"This investigation revealed that Corporal McCowan filing an EEO complaint against Officer Younger in relation to the allegations set forth during her interview was not the appropriate course of action for her to take.** As a supervisor, Corporal McCowan had the authority and the responsibility to request disciplinary action against Officer Younger if she believed he violated a departmental policy. Corporal McCowan did not provide any indication that she was prohibited from taking action against Officer Younger, nor did she provide any information that would suggest a reasonable reason for her failing to take appropriate actions to address Officer Younger's conduct." (Defs' Ex. 51, CITY 2516) (emphasis added).

The findings of Internal Affairs, quoted above, are in direct contradiction to the material cited by Defendants in support of their assertions in this paragraph—Defs' Ex. 2, Dir. 8.7 Dated January 22, 2020, at CITY 3140—which states: "All employees, **regardless of rank** or supervisory level, are strictly prohibited from engaging in any form of . . . harassment."

144. "Supervisors are not only accountable for themselves with respect to this Directive, but also for the prohibited conduct of their subordinates, other supervisors and non- employees present in the workplace and during any work related party, gathering or other event where they know, or should have known, prohibited conduct was occurring." Id. at 5.B. (emphasis added).

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs deny the assertions in this paragraph as stated because the cited material was not the applicable policy in place during the relevant time. (Plaintiffs' Ex. L, Directive 8.7 Dated October 21, 2011, CITY 1571-1582; Plaintiffs' Ex. B, MacDonald Dep., 58:05 – 59:07.)

Subsection 5.B of the October 21, 2011 Directive contains procedures different from what Defendants have asserted in this paragraph. (Plaintiffs' Ex. L, Directive 8.7 Dated October 21, 2011, CITY 1571-1582.) Therefore, Defendants' assertions are denied as stated.

By way of further response: under Directive 7.19, Subsection 3, titled, "Organizational Structure," Defendants—Commissioner Richard Ross Jr., Deputy Commissioner Christine Coulter, Chief Inspector Daniel MacDonald, Inspector Michael McCarrick, Lieutenant Timothy McHugh, Sergeant Brent Conway, Sergeant Eric Williford, Sergeant Kevin O'Brien, Sergeant Tamika Allen, and Sergeant Herbert Gibbons—were at all relevant times "supervisors." (See Defs' Ex. 1, Dir. 7.19, at subsection 3, CITY 1518-19.)

By way of further response, the material cited by Defendants provides: "All employees, **regardless of rank** or supervisory level, are strictly prohibited from engaging in any form of employment discrimination, harassment, sexual harassment, creating and/or maintaining any hostile workplace, or retaliation, as defined in this directive." (See Defs' Ex. 2, Dir. 8.7 Dated January 22, 2020, at CITY 3140) (emphasis added). Despite finding ample evidence that Defendant Younger sexually harassed Plaintiff McCowan, Internal Affairs deemed Plaintiff McCowan's sexual harassment complaint against Defendant Younger to be "unfounded." (See Defs' Ex. 51 at CITY 2516.) The Internal Affairs investigative notes state, **"It should be noted that were Officer Younger to have made all of the comments Corporal McCowan alleged in her complaint in the manner that she alleged, he would have been in violation of Directive #8.7, Employment Discrimination/Equal Employment Opportunity (EEO) – Responsibilities and How to File a Complaint."** (Defs' Ex. 51, CITY 2518) (emphasis added). The only reason Internal Affairs deemed Plaintiff's complaint "unfounded" was because **"as a supervisor, Corporal McCowan was responsible for ensuring Officer Younger's conduct was such that it was in accordance with the guidelines set forth in Directive #8.7. Corporal McCowan was also responsible for taking appropriate actions against Officer Younger each time she believed that he violated any section of the directive."** (Defs' Ex. 51, CITY 2518) (emphasis added). The Internal Affairs investigative notes further state: **"This investigation revealed that Corporal McCowan filing an EEO complaint against Officer Younger in relation to the allegations set forth during her interview was not the appropriate course of action for her to take.** As a supervisor, Corporal McCowan had the authority and the responsibility to request disciplinary action against Officer Younger if she believed he violated a departmental policy. Corporal McCowan did not provide any indication that she was prohibited from taking action against Officer Younger, nor did she provide any information that would suggest a reasonable reason for her failing to take appropriate actions to address Officer Younger's conduct." (Defs' Ex. 51, CITY 2516) (emphasis added).

The findings of Internal Affairs, quoted above, are in direct contradiction to the material cited by Defendants in support of their assertions in this paragraph—Defs' Ex. 2, Dir. 8.7 Dated January 22, 2020, at CITY 3140—which states: "All employees, **regardless of rank** or supervisory level, are strictly prohibited from engaging in any form of . . . harassment."

145. "Supervisors are responsible for monitoring compliance with this policy and . . . to take immediate action to abate any prohibited conduct among subordinates while on duty or at any work related party, gathering or other event." Id. at 5.C. (emphasis added).

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs deny the assertions in this paragraph as stated because the cited material was not the applicable policy in place during the relevant time. (Plaintiffs' Ex. L, Directive 8.7 Dated October 21, 2011, CITY 1571-1582; Plaintiffs' Ex. B, MacDonald Dep., 58:05 – 59:07.)

Subsection 5.B of the October 21, 2011 Directive states: "**Commanders** will conduct weekly inspections of their command to ensure that any inappropriate visuals are removed and disciplinary action taken." (Plaintiffs' Ex. L, Directive 8.7 Dated October 21, 2011, CITY 1571-1582) (emphasis added).

By way of further response: under Directive 7.19, Subsection 3, titled, "Organizational Structure," Defendants—Commissioner Richard Ross Jr., Deputy Commissioner Christine Coulter, Chief Inspector Daniel MacDonald, Inspector Michael McCarrick—were at all relevant times "Commanders." (See Defs' Ex. 1, Dir. 7.19, at subsection 3, CITY 1518-19.)

By way of further response, the material cited by Defendants provides: "All employees, **regardless of rank** or supervisory level, are strictly prohibited from engaging in any form of employment discrimination, harassment, sexual harassment, creating and/or maintaining any hostile workplace, or retaliation, as defined in this directive." (See Defs' Ex. 2, Dir. 8.7 Dated January 22, 2020, at CITY 3140) (emphasis added). Despite finding ample evidence that Defendant Younger sexually harassed Plaintiff McCowan, Internal Affairs deemed Plaintiff McCowan's sexual harassment complaint against Defendant Younger to be "unfounded." (See Defs' Ex. 51 at CITY 2516.) The Internal Affairs investigative notes state, **"It should be noted that were Officer Younger to have made all of the comments Corporal McCowan alleged in her complaint in the manner that she alleged, he would have been in violation of Directive #8.7, Employment Discrimination/Equal Employment Opportunity (EEO) – Responsibilities and How to File a Complaint."** (Defs' Ex. 51, CITY 2518) (emphasis added). The only reason Internal Affairs deemed Plaintiff's complaint "unfounded" was because **"as a supervisor, Corporal McCowan was responsible for ensuring Officer Younger's conduct was such that it was in accordance with the guidelines set forth in Directive #8.7. Corporal McCowan was also responsible for taking appropriate actions against Officer Younger each time she believed that he violated any section of the directive."** (Defs' Ex. 51, CITY 2518) (emphasis added). The Internal Affairs investigative notes further state: **"This investigation revealed that Corporal McCowan filing an EEO complaint against Officer Younger in relation to the allegations set forth during her interview was not the appropriate course of action for her to take.** As a supervisor, Corporal McCowan had the authority and the responsibility to request disciplinary action against Officer Younger if she believed he violated a departmental policy. Corporal McCowan did not provide any indication that she was prohibited from taking action against Officer Younger, nor did she provide any information that would suggest a reasonable reason for her failing to take appropriate actions to address Officer Younger's conduct." (Defs' Ex. 51, CITY 2516) (emphasis added).

The findings of Internal Affairs, quoted above, are in direct contradiction to the material cited by Defendants in support of their assertions in this paragraph—Defs' Ex. 2, Dir. 8.7 Dated January

22, 2020, at CITY 3140—which states: "All employees, **regardless of rank** or supervisory level, are strictly prohibited from engaging in any form of . . . harassment."

146. In light of their heightened legal responsibility to take immediate action to prevent or correct prohibited conduct, "supervisors shall be held to a higher standard when facing discipline and/or demotion as a result of any . . . failure to take necessary actions to address such prohibited conduct." Id. at 5.A.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs deny the assertions in this paragraph as stated because the cited material was not the applicable policy in place during the relevant time. (Plaintiffs' Ex. L, Directive 8.7 Dated October 21, 2011, CITY 1571-1582; Plaintiffs' Ex. B, MacDonald Dep., 58:05 – 59:07.) Plaintiffs admit only that the material cited by Defendants states as quoted in this paragraph.

To the extent Defendants are asserting that Plaintiff McCowan was not subjected to sexual harassment by Defendant Younger because she outranked him, Defendants assertions are denied. By way of further response, the material cited by Defendants provides: "All employees, **regardless of rank** or supervisory level, are strictly prohibited from engaging in any form of employment discrimination, harassment, sexual harassment, creating and/or maintaining any hostile workplace, or retaliation, as defined in this directive." (See Defs' Ex. 2, Dir. 8.7 Dated January 22, 2020, at CITY 3140) (emphasis added). Despite finding ample evidence that Defendant Younger sexually harassed Plaintiff McCowan, Internal Affairs deemed Plaintiff McCowan's sexual harassment complaint against Defendant Younger to be "unfounded." (See Defs' Ex. 51 at CITY 2516.) The Internal Affairs investigative notes state, **"It should be noted that were Officer Younger to have made all of the comments Corporal McCowan alleged in her complaint in the manner that she alleged, he would have been in violation of Directive #8.7, Employment Discrimination/Equal Employment Opportunity (EEO) – Responsibilities and How to File a Complaint."** (Defs' Ex. 51, CITY 2518) (emphasis added). The only reason Internal Affairs deemed Plaintiff's complaint "unfounded" was because **"as a supervisor, Corporal McCowan was responsible for ensuring Officer Younger's conduct was such that it was in accordance with the guidelines set forth in Directive #8.7. Corporal McCowan was also responsible for taking appropriate actions against Officer Younger each time she believed that he violated any section of the directive."** (Defs' Ex. 51, CITY 2518) (emphasis added). The Internal Affairs investigative notes further state: **"This investigation revealed that Corporal McCowan filing an EEO complaint against Officer Younger in relation to the allegations set forth during her interview was not the appropriate course of action for her to take.** As a supervisor, Corporal McCowan had the authority and the responsibility to request disciplinary action against Officer Younger if she believed he violated a departmental policy. Corporal McCowan did not provide any indication that she was prohibited from taking action against Officer Younger, nor did she provide any

information that would suggest a reasonable reason for her failing to take appropriate actions to address Officer Younger's conduct." (Defs' Ex. 51, CITY 2516) (emphasis added).

The findings of Internal Affairs, quoted above, are in direct contradiction to the material cited by Defendants in support of their assertions in this paragraph—Defs' Ex. 2, Dir. 8.7 Dated January 22, 2020, at CITY 3140—which states: "All employees, **regardless of rank** or supervisory level, are strictly prohibited from engaging in any form of . . . harassment."

147. At all times relevant hereto, McCowan had the unquestioned authority to issue orders to Officer Younger. Ex. 1, Dir. 7.19 at 5.A.2.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. This paragraph is denied as stated. The material cited by Defendants—Defs' Ex. 1, Dir. 7.19 at 5.A.2.—does not state that McCowan had the "unquestioned authority" to issue orders to Officer Younger. Moreover, Defendant Conway admitted to Ms. McCowan that "some officers (such as Officer Younger) could use favoritism to wield power over their supervisors." (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶ 187.) Defendant Conway testified:

A. And I think we were in the ilk of her asking me about—or discussing with me him having his Highway authority, being officer Younger.

Q. Was that in the context of a conversation about implied power in the department?

A. Yeah. The conversation about implied power, I've had that conversation with Corporal McCowan on multiple occasions and other people on multiple occasions. And in this case, there are individuals within the department who are not supervisory rank or not high-ranking supervisors that do have a significant amount of power because of who they work for, who they know, which could cause supervisors to be afraid to take action against them. And that's where we were discussing that issue.

(Plaintiffs' Ex. C Conway Dep., 263:20-264:15.)

Defendant Younger ignored Ms. McCowan's authority when he subjected her sexual harassment. (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶ 96.) For example, on January 21, 2019, Officer Younger said, "Hey, babe" to Ms. McCowan who responded, "You mean Corporal?" This exchange was witnessed by Lieutenant McHugh and Plaintiff Allen. Ms. McCowan looked at Plaintiff Allen and Defendant McHugh and said, "You heard me, right?" Ms. Allen responded, "Yes" and shook her head in disbelief. (Id.) Moreover, Defendant Ross admitted that a supervisor is entitled to the same rights to a harassment-free workplace as a police officer, stating "I believe you can still be harassed as a supervisor, yes." (Plaintiffs' Ex. HH, Ross Dep., 110:03-08).

148. At all times relevant hereto, McCowan had the unquestioned authority to issue discipline to Officer Younger. Ex. 1, Dir. 7.19 at 5.A.1.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. This paragraph is denied as stated. The material cited by Defendants—Defs' Ex. 1, Dir. 7.19 at 5.A.2.—does not state that McCowan had the "unquestioned authority" to issue discipline to Officer Younger. Defendant Ross, the former Police Commissioner, testified:

> Q. What about when you were a sergeant, did you have the ability to discipline your employees?
>
> A. Discipline in terms of request discipline, but not actually discipline. There's a difference between actually disciplining, the power to discipline, and a request for discipline.

(Plaintiffs' Ex. HH, Ross Dep., 31:13-20.)

Moreover, Defendant Conway admitted to Ms. McCowan that "some officers (such as Officer Younger) could use favoritism to wield power over their supervisors." (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶ 187.) Defendant Conway testified:

> A. And I think we were in the ilk of her asking me about—or discussing with me him having his Highway authority, being officer Younger.
>
> Q. Was that in the context of a conversation about implied power in the department?
>
> A. Yeah. The conversation about implied power, I've had that conversation with Corporal McCowan on multiple occasions and other people on multiple occasions. And in this case, there are individuals within the department who are not supervisory rank or not high-ranking supervisors that do have a significant amount of power because of who they work for, who they know, which could cause supervisors to be afraid to take action against them. And that's where we were discussing that issue.

(Plaintiffs' Ex. C, Conway Dep., 263:20-264:15.)

Defendant Younger ignored Ms. McCowan's authority when he subjected her sexual harassment. (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶ 96.) For example, on January 21, 2019, Officer Younger said, "Hey, babe" to Ms. McCowan who responded, "You mean Corporal?" This exchange was witnessed by Lieutenant McHugh and Plaintiff Allen. Ms. McCowan looked at Plaintiff Allen and Defendant McHugh and said, "You heard me, right?" Ms. Allen responded, "Yes" and shook her head in disbelief. (Id.) Moreover, Defendant Ross admitted that a supervisor is entitled to the same rights to a harassment-free workplace as a police officer, stating "I believe you can still be harassed as a supervisor, yes." (Plaintiffs' Ex., HH, Ross Dep., 110:03-08).

149. As a supervisor, McCowan had "a legal responsibility to ensure that [her] areas of supervision are free from employment discrimination, harassment and retaliation and a to safeguard [her] subordinates from such prohibited conduct." Ex. 2 at 5.A.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs deny the assertions in this paragraph as stated because the cited material was not the applicable policy in place during the relevant time. (Plaintiffs' Ex. L, Directive 8.7 Dated October 21, 2011, CITY 1571-1582; Plaintiffs' Ex. B, MacDonald Dep., 58:05 – 59:07.) Moreover, Defendant Conway testified:

> Q. How would Ms. McCowan have known in this case that the appropriate action for her to take was to discipline Younger rather than file an EEO complaint; is that in a policy somewhere?
>
> A. Not that I'm aware of, no.

(Plaintiffs' Ex. C, Conway Dep. 101:06 – 103:03; -113:07.)

> Q. What does the policy say about when the supervisor is being harassed by a subordinate? What does it say?
>
> A. There is no—there is no—as a supervisor its not in the policy to take any action as far as disciplinary action. It tells you how to take disciplinary action. There's no written statement that says, if somebody is insubordinate to you, here's what you do. There's nothing written statement about how you are supposed to react as a supervisor.

(Plaintiffs' Ex. C, Conway Dep., 159:19-160:11.)

By way of further response, Plaintiffs contend that even if the Defendants' January 2020 version of Directive 8.7 did apply, under Directive 7.19, Subsection 3, titled, "Organizational Structure," Defendants—Commissioner Richard Ross Jr., Deputy Commissioner Christine Coulter, Chief Inspector Daniel MacDonald, Inspector Michael McCarrick, Lieutenant Timothy McHugh, Sergeant Brent Conway, Sergeant Eric Williford, Sergeant Kevin O'Brien, Sergeant Tamika Allen, and Sergeant Herbert Gibbons—were at all relevant times "supervisors." (See Defs' Ex. 1, Dir. 7.19, at subsection 3, CITY 1518-19.) Defendants had "a legal responsibility to ensure that their areas of supervision are free from employment discrimination, harassment and retaliation and to safeguard their subordinates from such prohibited conduct." (Id.) It was not Plaintiff McCowan's "duty" to prevent her own harassment by Defendant Younger merely by virtue of her status as a supervisor.

150. "Supervisors are not only accountable for themselves with respect to this Directive, but also for the prohibited conduct of their subordinates, other supervisors and non-employees present in the workplace and during any work related party, gathering or

other event where they know, or should have known, prohibited conduct was occurring."

Ex. 2 at 5.B.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs deny the assertions in this paragraph as stated because the cited material was not the applicable policy in place during the relevant time. (Plaintiffs' Ex. L, Directive 8.7 Dated October 21, 2011, CITY 1571-1582; Plaintiffs' Ex. B, MacDonald Dep., 58:05 – 59:07.) Plaintiffs admit only that the material cited by Defendants states as quoted in this paragraph.

151. As a supervisor, McCowan had a duty to correct Officer Younger's behavior if he had, in fact, engaged in prohibited conduct. Ex. 2 at 5.A.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs deny the assertions in this paragraph as stated because the cited material was not the applicable policy in place during the relevant time. (Plaintiffs' Ex. L, Directive 8.7 Dated October 21, 2011, CITY 1571-1582; Plaintiffs' Ex. B, MacDonald Dep., 58:05 – 59:07.) Plaintiffs deny Defendants' assertion that Plaintiff McCowan was not sexually harassed by Defendant Younger by virtue of her rank.

Defendant Conway testified:

Q. How would Ms. McCowan have known in this case that the appropriate action for her to take was to discipline Younger rather than file an EEO complaint; is that in a policy somewhere?
A. Not that I'm aware of, no.

(Plaintiffs' Ex. C, Conway Dep. 101:06 – 103:03; -113:07.)

Q. What does the policy say about when the supervisor is being harassed by a subordinate? What does it say?
A. There is no—there is no—as a supervisor its not in the policy to take any action as far as disciplinary action. It tells you how to take disciplinary action. There's no written statement that says, if somebody is insubordinate to you, here's what you do. There's nothing written statement about how you are supposed to react as a supervisor.

(Plaintiffs' Ex. C, Conway Dep., 159:19-160:11.)

Moreover, Defendant Conway admitted to Ms. McCowan that "some officers (such as Officer Younger) could use favoritism to wield power over their supervisors." (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶ 187.) Defendant Conway testified:

A. And I think we were in the ilk of her asking me about—or discussing with me him having his Highway authority, being officer Younger.

Q. Was that in the context of a conversation about implied power in the department?

A. Yeah. The conversation about implied power, I've had that conversation with Corporal McCowan on multiple occasions and other people on multiple occasions. And in this case, there are individuals within the department who are not supervisory rank or not high-ranking supervisors that do have a significant amount of power because of who they work for, who they know, which could cause supervisors to be afraid to take action against them. And that's where we were discussing that issue.

(Plaintiffs' Ex. C, Conway Dep., 263:20-264:15.)

Moreover, Defendant Ross admitted that a supervisor is entitled to the same rights to a harassment-free workplace as a police officer, stating "I believe you can still be harassed as a supervisor, yes." (Plaintiffs' Ex. HH, Ross Dep., 110:03-08).

152. Not only that, McCowan had a duty to her subordinates to safeguard them from prohibited conduct. Ex. 2 at 5.A.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs deny the assertions in this paragraph as stated because the cited material was not the applicable policy in place during the relevant time. (Plaintiffs' Ex. L, Directive 8.7 Dated October 21, 2011, CITY 1571-1582; Plaintiffs' Ex. B, MacDonald Dep., 58:05 – 59:07.) Plaintiffs admit only that the cited material states as Defendants have asserted in this paragraph.

To the extent Defendants are asserting that Plaintiff McCowan breached a duty to Plaintiff Allen, Defendants' assertion is denied. When Plaintiff Allen reported to Plaintiff McCowan that Defendant Younger was sexually harassing Plaintiff Allen, Plaintiff McCowan immediately reported the conduct pursuant to the applicable policies and procedures. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶¶ 106-128; Plaintiffs' Ex. FF, January 31, 2019 Email from McCowan to MacDonald.)

By way of further response, under Directive 7.19, Subsection 3, titled, "Organizational Structure," Defendants—Commissioner Richard Ross Jr., Deputy Commissioner Christine Coulter, Chief Inspector Daniel MacDonald, Inspector Michael McCarrick, Lieutenant Timothy McHugh, Sergeant Brent Conway, Sergeant Eric Williford, Sergeant Kevin O'Brien, Sergeant Tamika Allen, and Sergeant Herbert Gibbons—were at all relevant times "supervisors." (See Defs' Ex. 1, Dir. 7.19, at subsection 3, CITY 1518-19.) Defendants had a duty to Plaintiffs to safeguard them from prohibited conduct of Defendant Younger.

153. McCowan violated Directive 8.7 by not immediately taking action to correct Younger's behavior, of which she was aware as early as January 3, 2019, and Sgt. Conway is not permitted to ignore violations he uncovers, even if committed by the complainant. Ex. 51 at CITY 2518; Ex. 39, Conway Dep., 168:3-17, 201:18-202:18.

Response: It is denied that Plaintiff McCowan violated Directive 8.7. Defendant Conway testified:

> Q. How would Ms. McCowan have known in this case that the appropriate action for her to take was to discipline Younger rather than file an EEO complaint; is that in a policy somewhere?
> A. Not that I'm aware of, no.

(Plaintiffs' Ex. C, Conway Dep. 101:06 – 103:03; -113:07.)

> Q. What does the policy say about when the supervisor is being harassed by a subordinate? What does it say?
> A. There is no—there is no—as a supervisor its not in the policy to take any action as far as disciplinary action. It tells you how to take disciplinary action. There's no written statement that says, if somebody is insubordinate to you, here's what you do. There's nothing written statement about how you are supposed to react as a supervisor.

(Plaintiffs' Ex. C, Conway Dep., 159:19-160:11.)

Moreover, Defendant Conway admitted to Ms. McCowan that "some officers (such as Officer Younger) could use favoritism to wield power over their supervisors." (Plaintiffs' Ex. D, Plaintiff's Verified Second Amended Complaint, ¶ 187.) Defendant Conway testified:

> A. And I think we were in the ilk of her asking me about—or discussing with me him having his Highway authority, being officer Younger.
>
> Q. Was that in the context of a conversation about implied power in the department?
>
> A. Yeah. The conversation about implied power, I've had that conversation with Corporal McCowan on multiple occasions and other people on multiple occasions. And in this case, there are individuals within the department who are not supervisory rank or not high-ranking supervisors that do have a significant amount of power because of who they work for, who they know, which could cause supervisors to be afraid to take action against them. And that's where we were discussing that issue.

(Plaintiffs' Ex. C, Conway Dep., 263:20-264:15.)

Moreover, Defendant Ross admitted that a supervisor is entitled to the same rights to a harassment-free workplace as a police officer, stating "I believe you can still be harassed as a supervisor, yes." (Plaintiffs' Ex. HH, Ross Dep., 110:03-08).

Regarding Defendants' assertion that "Sgt. Conway is not permitted to ignore violations he uncovers," Defendants' assertion is denied. Defendant Conway testified that he concludes his investigations "exactly how [the inspectors] want things worded and how they would want the conclusion to read after they sign." (Plaintiffs' Ex. C, Conway Dep., 26:05-23.) Defendant Conway testified that he made the determination to find Plaintiff McCowan "failed to supervise" Defendant Younger based on what he thought the inspector wanted. (Plaintiffs' Ex. C, Conway Dep., 56:24-58:03.)

154. In Sergeant Conway's experience, McCowan would likely have received training and counseling for the directive violation. Ex. 39, Conway Dep., 166:18-168:17.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment.

This paragraph is denied. Defendant Conway testified:

> Q. So in this case, just as an example, Ms. McCowan was found by your office to have failed to supervise Curtis Younger. Is that different than what the PBI charging unit would assign her as a violation of policy?
>
> A. Yes. It would be based on our Disciplinary Code. They could charge her any sections of certain parts of the Disciplinary Code. **I have seen failure to supervise that I've – in my investigations, being charged with neglect of duty and/or directive violations.**

(Plaintiffs' Ex. C, Conway Dep., 31:21-32:09.)

The PPD's Disciplinary Code provides that the maximum penalty for the first offense of "neglect of duty" is a 15 day suspension. (See Philadelphia Police Department Disciplinary Code, at page 9, https://www.phillypolice.com/assets/accountability/PPD-Disciplinary-Code-July-2014.pdf#:~:text=The%20intent%20of%20this%20Disciplinary%20Code%20is%20to,core%20values%20of%20the%20Philadelphia%20Police%20Department%20are%3A)

The PPD's Disciplinary Code provides that the maximum penalty for the first offense of "failure to supervise is a demotion. (Id. at page 17.)

155. In her Complaint, Allen claims that "Defendants failed to notify [her] of her FMLA rights" in February 2019. 2d Am. Compl., ¶ 228.

Response: Defendants' use of the term "claims" is inappropriate because on summary judgment all inferences are to be drawn in the light most favorable to Plaintiffs. It is admitted that Defendants failed to notify Plaintiff Allen of her FMLA rights.

156. Allen took at least twelve weeks' Family and Medical Leave Act ("FMLA") maternity leave beginning May 29, 2018. Ex. 23, J. Allen Dep. 20:12- 15; Ex. 24, J. Allen DARs.

Response: Plaintiff Allen admits that she took FMLA leave beginning May 29, 2018.

157. Allen returned to work on October 22, 2018. Ex. 23, J. Allen Dep., 21:6-8; Ex. 24, J. Allen DARs.

Response: Plaintiff Allen admits that she returned from maternity leave in October 2018.

158. In late February, Allen stopped reporting for work, calling out sick on midway through her February 27, 2019 nightwork shift, then calling out sick each scheduled workday through March 26, 2019. See Ex. 24, J. Allen DARs.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. This paragraph is denied as stated. It is specifically denied that the cited material—Defendants' general citation to Ex. 24, J. Allen DARS—supports their assertion that Plaintiff "stopped reporting for work." See Perkins v. City of Elizabeth, 412 F. App'x 554, 555 (3d Cir. 2011) ("We emphasize, as did the District Court, that a court is not obliged to scour the record to find evidence that will support a party's claims."). It is admitted that as a result of the discrimination, harassment and retaliation that Plaintiff Allen suffered, she suffered physical and mental illness requiring her to take leave from work.

159. Having exhausted her FMLA leave less than one year ago, Allen was not eligible for additional family and medical leave in February/March 2019. See Ex. 24, J. Allen DARs.

Response: This paragraph is denied to the extent in contains conclusions of law, not statements of fact. There is no material fact to dispute. By way of further response, it is denied that the cited material—Defendants' general citation to Ex. 24, J. Allen DARS—supports their legal

conclusion that Plaintiff was ineligible for FMLA leave. See Perkins v. City of Elizabeth, 412 F. App'x 554, 555 (3d Cir. 2011) ("We emphasize, as did the District Court, that a court is not obliged to scour the record to find evidence that will support a party's claims."). Moreover, Defendants have failed to show which method the City uses to establish the 12-month period applied to employees taking FMLA leave. The employer may use any of the following methods to establish the 12-month period: (1) the calendar year; (2) any fixed 12 months; (3) the 12-month period measured forward; or (4) a "rolling" 12-month period measured backward. (See U.S. Department of Labor Fact Sheet #28H.) As such, Defendant's legal conclusion that Plaintiff exhausted her FMLA leave is denied.

160. Prior to December 2, 2018, Allen reported to Sergeant Bradford Williams. Ex. 23, J. Allen Dep., 20:16-20.

Response: It is admitted that prior to December 2018 Plaintiff Allen's supervisor was Sergeant Bradford Willaims.

161. Effective December 3, 2018, Sergeant Tamika Allen was transferred to the Criminal Intelligence Unit and became the first-level supervisor of JET and Plaintiff Allen. Ex. 25, T. Allen Emp. Hist. Rec.

Response: It is admitted that in December 2018 Defendant Allen became Plaintiff Allen's supervisor.

162. Allen worked under Sgt. Allen's supervision a total of seven days after Sgt. Allen became Allen's supervisor on December 3, 2018: January 29, 2019; January 31, 2019; February 18, 2019; February 19, 2019; February 20, 2019; February 21, 2019; and February 26, 2019 (Allen worked four hours then took four hours of sick leave on this date). Ex. 35, T. Allen Aff, ¶ 6. See also Ex. 24, J. Allen DARs.

Response: Plaintiffs dispute Defendant Allen's statements in her Affidavit, as her credibility is in issue in this case. Plaintiffs deny Defendants' assertions in this paragraph. It is further denied that the cited material—Defendants' general citation to Ex. 24, J. Allen DARS—supports their assertion that "Allen worked under Sgt. Allen's supervision a total of seven days." See Perkins v. City of Elizabeth, 412 F. App'x 554, 555 (3d Cir. 2011) ("We emphasize, as did the District Court, that a court is not obliged to scour the record to find evidence that will support a party's claims."). Defendant Allen testified: "So this whole time the officer only worked with me for approximately nine days." (Plaintiffs' Ex. MMM, T. Allen Dep., 214:16-17.) Moreover, between

December 3, 2018 and Plaintiff's resignation, Defendant Allen was Plaintiff's permanent district/unit supervisor. (Plaintiffs' Ex. MMM, T. Allen Dep., 119:03-05; Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶¶ 108, 115, 122, 123, 139, 140, 141, 142, 148, 149, 150, 151, 152, 153, 156, 158, 159, 160, 161, 162, 163, 164, 167, 233, 238, 239, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253.)

163. Allen only served warrants with JET under Sergeant Allen's supervision three or four times. Ex. 7, T. Allen Dep., 214:4-215:4.

Response: Plaintiffs dispute Defendant Allen's statements in her Affidavit, as her credibility is in issue in this case. Plaintiffs deny Defendants' assertions in this paragraph. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶¶ 71, 120, 122, 139, 141, 152.)

164. Allen remained assigned to the Criminal Intelligence Unit until her resignation on July 7, 2020. Ex. 56, J. Allen Emp. Hist. Rec.

Response: Denied. Defendants' assertions in this paragraph are misleading—Plaintiff was assigned to the JET unit, which has the same unit code as the Criminal Intelligence Unit. (Plaintiffs' Ex. MMM, T. Allen Dep., 138:16-21.) ("[W]e share the same unit code, which is 9829. But juvenile enforcement team is a different function than CIU.")

165. Allen claims she was discriminated against and retaliated against, yet Allen was given employment perks and benefits not available to other employees of any race or gender.

Response: Defendants' use of the term "claims" is inappropriate because on summary judgment all inferences are to be drawn in the light most favorable to Plaintiffs. It is admitted that Plaintiff was discriminated and retaliated against. Defendants have failed to cite any material in support of their assertion that "Allen was given employment perks and benefits not available to other employees of any race or gender." Because Defendants have failed to cite any material in support of their assertions in this paragraph, these assertions are denied.

166. After a prolonged absence beginning midway through her shift on February 27, 2019, Allen returned to work on March 27, 2019 in "restricted duty" status. Ex. 24, J. Allen DARs.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. It is admitted that on February 28, 2019, Ms. Allen went to a follow-up appointment with her primary care doctor. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 228.) She weighed 102 pounds—she had lost 7 pounds in 2 weeks since her last appointment on February 12, 2019. (Id.) Ms. Allen's doctor was concerned about her rapid weight loss, anxiety, headaches, inability to sleep, and low milk supply and took her out of work for four weeks. (Id.) Upon notifying Defendants about her need to go out of work regarding her aforementioned medical issues, Defendants failed to notify Ms. Allen of her FMLA rights and she was forced to use her remaining sick time. (Id.) On March 25, 2019, Ms. Allen had a follow-up appointment with her family doctor, and discussed returning to work in a few days pending examination and approval by the City doctor located at the City of Philadelphia Employee Medical Services building at 19th and Fairmount. (Id. at ¶ 230.) Having had time away from the negative work events described above, Ms. Allen had regained two pounds since her last doctor's visit. (Id. at ¶ 231.) On March 26, 2019, Ms. Allen had an appointment with City doctor's office. This was a prerequisite to her returning to work the next day. (Id. at ¶ 232.) At 8:04 am, Ms. Allen texted Sergeant Allen stating that she was at the City doctor. Sergeant Allen did not respond. (Id. at ¶ 233.) At the City doctor's office, Ms. Allen was seen by a certified nurse practitioner named Dinon, who asked Ms. Allen about her anxiety and whether she was on anti-anxiety medication. (Id.) Ms. Allen said, "No, because I'm breastfeeding." (Id.) The nurse practitioner then asked Ms. Allen, "is that something that was a problem at work?" and Ms. Allen said "yes." (Id.) The nurse practitioner was shocked by this and suggested Ms. Allen return to work on Restricted Duty status to address her anxiety and so she could successfully breast pump at work without interference. (Id.) She told Ms. Allen to call and advise her primary care doctor. (Id.) City of Philadelphia Employee Medical Services provided Ms. Allen with the Restricted Duty Certification dated March 26, 2019. (Id. at ¶ 234; Plaintiffs' Ex. YY, Restricted Duty Certification.) After her visit with the City doctor, Ms. Allen called her family doctor as instructed. (Plaintiffs' Verified Second Amended Complaint, at ¶ 235.) Her doctor's office agreed that it was in Ms. Allen's best interest to return to work on Restricted Duty and they wrote a note stating same. (Id.) Ms. Allen was also told to seek counseling from a therapist if she had not done so already. (Id.) Ms. Allen took the Restricted Duty note to the PPD's Safety Office, where she was given Restricted Duty Instructions and assigned a plainclothes daywork shift in the Criminal Intelligence Unit in the DVIC. (Id. at ¶ 236; Plaintiffs' Ex. ZZ, Restricted Duty Instructions.) On March 27, 2019, at 8:05 am, Ms. Allen reported to the supervisors at the Criminal Intelligence Unit in the DVIC and presented them with her Restricted Duty Instructions. (Plaintiffs' Verified Second Amended Complaint, at ¶ 237.)

167. "Restricted duty" status is available to PPD employees who suffer an injury off the job, while "limited duty" status is reserved for PPD employees who suffer an injury while on duty. Ex. 27, O'Neill Dep., 9:4-21.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. It is admitted that the cited testimony states as Defendants have asserted in this paragraph. To the extent Defendants are asserting that Plaintiff's

restricted duty status was unrelated to the discrimination, harassment and retaliation she had been suffering at work, Defendants' assertions are denied. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶¶ 228, 230, 231, 232, 233, 234, 235, 236, 237.)

168. An employee must have worked full duty for twelve months to become eligible for restricted duty status, and restricted duty status ordinarily expires after six months.

Ex. 27, O'Neill Dep., 39:17-21.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Admitted in part, denied as stated. Plaintiffs admit that the quoted testimony states as Defendants have asserted in this paragraph. To the extent Defendants are claiming Plaintiff was ineligible for restricted duty status, Defendants' assertions are denied. Police Directive 11.3 provides that "an officer incapacitated as a result of pregnancy . . . will be placed on restricted duty with sedentary activity. . . . The pregnant officer may continue to work in a restricted duty capacity unless her physician indicates in writing that her condition renders her indicates her incapable of performing such work. . . . Following delivery, return to work will not be approved until the officer reports to Employee Medical Services with a letter from her attending physician stating that she is physically able to return to duty. Employee Medical Services will determine the type of duty status (i.e. restricted or active) to which the officer will return." (Plaintiffs' Ex. SSS, Dir. 11.3, at CITY 1920-21.)

On February 28, 2019, Ms. Allen went to a follow-up appointment with her primary care doctor. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 228.) She weighed 102 pounds—she had lost 7 pounds in 2 weeks since her last appointment on February 12, 2019. (Id.) Ms. Allen's doctor was concerned about her rapid weight loss, anxiety, headaches, inability to sleep, and low milk supply and took her out of work for four weeks. (Id.) Upon notifying Defendants about her need to go out of work regarding her aforementioned medical issues, Defendants failed to notify Ms. Allen of her FMLA rights and she was forced to use her remaining sick time. (Id.) On March 25, 2019, Ms. Allen had a follow-up appointment with her family doctor, and discussed returning to work in a few days pending examination and approval by the City doctor located at the City of Philadelphia Employee Medical Services building at 19th and Fairmount. (Id. at ¶ 230.) Having had time away from the negative work events described above, Ms. Allen had regained two pounds since her last doctor's visit. (Id. at ¶ 231.) On March 26, 2019, Ms. Allen had an appointment with City doctor's office. This was a prerequisite to her returning to work the next day. (Id. at ¶ 232.) At 8:04 am, Ms. Allen texted Sergeant Allen stating that she was at the City doctor. Sergeant Allen did not respond. (Id. at ¶ 233.) At the City doctor's office, Ms. Allen was seen by a certified nurse practitioner named Dinon, who asked Ms. Allen about her anxiety and whether she was on anti-anxiety medication. (Id.) Ms. Allen said, "No, because I'm breastfeeding." (Id.) The nurse practitioner then asked Ms. Allen, "is that something that was a problem at work?" and Ms. Allen said "yes." (Id.) The nurse practitioner was shocked by this and suggested Ms. Allen return to work on Restricted Duty status to address her anxiety and so she could successfully breast pump at work without interference. (Id.) She told Ms. Allen to call and advise her primary care doctor. (Id.) City of

Philadelphia Employee Medical Services provided Ms. Allen with the Restricted Duty Certification dated March 26, 2019. (Id. at ¶ 234; Plaintiffs' Ex. YY, Restricted Duty Certification.) After her visit with the City doctor, Ms. Allen called her family doctor as instructed. (Plaintiffs' Ex. DD, Plaintiffs' Verified Second Amended Complaint, at ¶ 235.) Her doctor's office agreed that it was in Ms. Allen's best interest to return to work on Restricted Duty and they wrote a note stating same. (Id.) Ms. Allen was also told to seek counseling from a therapist if she had not done so already. (Id.) Ms. Allen took the Restricted Duty note to the PPD's Safety Office, where she was given Restricted Duty Instructions and assigned a plainclothes daywork shift in the Criminal Intelligence Unit in the DVIC. (Id. at ¶ 236; Plaintiffs' Ex. ZZ, Restricted Duty Instructions.) On March 27, 2019, at 8:05 am, Ms. Allen reported to the supervisors at the Criminal Intelligence Unit in the DVIC and presented them with her Restricted Duty Instructions. (Plaintiffs' Verified Second Amended Complaint, at ¶ 237.)

169. Allen had not worked in full-duty status for twelve months before again requesting to be placed in restricted duty status in March 2019. Ex. 27, O'Neill Dep., 39:16-42:2. See also Ex. 24, J. Allen DARs.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. It is denied that Plaintiff "requested to be placed on restricted duty status in March 2019." On February 28, 2019, Ms. Allen went to a follow-up appointment with her primary care doctor. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 228.) She weighed 102 pounds—she had lost 7 pounds in 2 weeks since her last appointment on February 12, 2019. (Id.) Ms. Allen's doctor was concerned about her rapid weight loss, anxiety, headaches, inability to sleep, and low milk supply and took her out of work for four weeks. (Id.) Upon notifying Defendants about her need to go out of work regarding her aforementioned medical issues, Defendants failed to notify Ms. Allen of her FMLA rights and she was forced to use her remaining sick time. (Id.) On March 25, 2019, Ms. Allen had a follow-up appointment with her family doctor, and discussed returning to work in a few days pending examination and approval by the City doctor located at the City of Philadelphia Employee Medical Services building at 19th and Fairmount. (Id. at ¶ 230.) Having had time away from the negative work events described above, Ms. Allen had regained two pounds since her last doctor's visit. (Id. at ¶ 231.) On March 26, 2019, Ms. Allen had an appointment with City doctor's office. This was a prerequisite to her returning to work the next day. (Id. at ¶ 232.) At 8:04 am, Ms. Allen texted Sergeant Allen stating that she was at the City doctor. Sergeant Allen did not respond. (Id. at ¶ 233.) At the City doctor's office, Ms. Allen was seen by a certified nurse practitioner named Dinon, who asked Ms. Allen about her anxiety and whether she was on anti-anxiety medication. (Id.) Ms. Allen said, "No, because I'm breastfeeding." (Id.) The nurse practitioner then asked Ms. Allen, "is that something that was a problem at work?" and Ms. Allen said "yes." (Id.) The nurse practitioner was shocked by this and suggested Ms. Allen return to work on Restricted Duty status to address her anxiety and so

she could successfully breast pump at work without interference. (Id.) She told Ms. Allen to call and advise her primary care doctor. (Id.) City of Philadelphia Employee Medical Services provided Ms. Allen with the Restricted Duty Certification dated March 26, 2019. (Id. at ¶ 234; Plaintiffs' Ex. YY, Restricted Duty Certification.) After her visit with the City doctor, Ms. Allen called her family doctor as instructed. (Plaintiffs' Verified Second Amended Complaint, at ¶ 235.) Her doctor's office agreed that it was in Ms. Allen's best interest to return to work on Restricted Duty and they wrote a note stating same. (Id.) Ms. Allen was also told to seek counseling from a therapist if she had not done so already. (Id.) Ms. Allen took the Restricted Duty note to the PPD's Safety Office, where she was given Restricted Duty Instructions and assigned a plainclothes daywork shift in the Criminal Intelligence Unit in the DVIC. (Id. at ¶ 236; Plaintiffs' Ex. ZZ, Restricted Duty Instructions.) On March 27, 2019, at 8:05 am, Ms. Allen reported to the supervisors at the Criminal Intelligence Unit in the DVIC and presented them with her Restricted Duty Instructions. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at
¶ 237.)

170. Despite Allen's ineligibility for restricted duty status, the PPD's Safety Office placed her on restricted duty status effective March 27, 2019. Ex. 29, Restricted Duty Instructions Memo to J. Allen, 3/27/19; Ex. 27, O'Neill Dep., 39:16-42:2.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Denied. Police Directive 11.3 provides that "an officer incapacitated as a result of pregnancy . . . will be placed on restricted duty with sedentary activity. . . . The pregnant officer may continue to work in a restricted duty capacity unless her physician indicates in writing that her condition renders her indicates her incapable of performing such work. . . . Following delivery, return to work will not be approved until the officer reports to Employee Medical Services with a letter from her attending physician stating that she is physically able to return to duty. Employee Medical Services will determine the type of duty status (i.e. restricted or active) to which the officer will return." (Plaintiffs' Ex. SSS, Dir. 11.3, CITY 1920-21.)

On February 28, 2019, Ms. Allen went to a follow-up appointment with her primary care doctor. (Plaintiffs' Verified Second Amended Complaint, at ¶ 228.) She weighed 102 pounds—she had lost 7 pounds in 2 weeks since her last appointment on February 12, 2019. (Id.) Ms. Allen's doctor was concerned about her rapid weight loss, anxiety, headaches, inability to sleep, and low milk supply and took her out of work for four weeks. (Id.) Upon notifying Defendants about her need to go out of work regarding her aforementioned medical issues, Defendants failed to notify Ms. Allen of her FMLA rights and she was forced to use her remaining sick time. (Id.) On March 25, 2019, Ms. Allen had a follow-up appointment with her family doctor, and discussed returning to work in a few days pending examination and approval by the City doctor located at the City of Philadelphia Employee Medical Services building at 19th and Fairmount. (Id. at ¶ 230.) Having had time away from the negative work events described above, Ms. Allen had regained two

pounds since her last doctor's visit. (Id. at ¶ 231.) On March 26, 2019, Ms. Allen had an appointment with City doctor's office. This was a prerequisite to her returning to work the next day. (Id. at ¶ 232.) At 8:04 am, Ms. Allen texted Sergeant Allen stating that she was at the City doctor. Sergeant Allen did not respond. (Id. at ¶ 233.) At the City doctor's office, Ms. Allen was seen by a certified nurse practitioner named Dinon, who asked Ms. Allen about her anxiety and whether she was on anti-anxiety medication. (Id.) Ms. Allen said, "No, because I'm breastfeeding." (Id.) The nurse practitioner then asked Ms. Allen, "is that something that was a problem at work?" and Ms. Allen said "yes." (Id.) The nurse practitioner was shocked by this and suggested Ms. Allen return to work on Restricted Duty status to address her anxiety and so she could successfully breast pump at work without interference. (Id.) She told Ms. Allen to call and advise her primary care doctor. (Id.) City of Philadelphia Employee Medical Services provided Ms. Allen with the Restricted Duty Certification dated March 26, 2019. (Id. at ¶ 234; Plaintiffs' Ex. YY, Restricted Duty Certification.) After her visit with the City doctor, Ms. Allen called her family doctor as instructed. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 235.) Her doctor's office agreed that it was in Ms. Allen's best interest to return to work on Restricted Duty and they wrote a note stating same. (Id.) Ms. Allen was also told to seek counseling from a therapist if she had not done so already. (Id.) Ms. Allen took the Restricted Duty note to the PPD's Safety Office, where she was given Restricted Duty Instructions and assigned a plainclothes daywork shift in the Criminal Intelligence Unit in the DVIC. (Id. at ¶ 236; Plaintiffs' Ex. ZZ, Restricted Duty Instructions.) On March 27, 2019, at 8:05 am, Ms. Allen reported to the supervisors at the Criminal Intelligence Unit in the DVIC and presented them with her Restricted Duty Instructions. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at
¶ 237.)

171. Allen requested the PPD extend her restricted duty on September 17, 2019, December 19, 2019, and March 5, 2020; each time, Deputy Police Commissioner Christine Coulter granted Allen's extension request. Ex. 30, Memo from Allen to Police Commissioner, 9/17/19; Ex. 31, Memo from Allen to Police Commissioner, 12/19/19; Ex. 32, Memo from Allen to Police Commissioner, 3/5/20.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Admitted in part, denied as stated. It is admitted only that after Plaintiff requested to extend her restricted duty status, her requests were eventually approved. By way of further response, after Plaintiff submitted requests to extend her restricted duty status, Plaintiff received a phone call from the PPD claiming it had not received the paperwork for her restricted duty status and that she would have to begin using her own time. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 295.) When Plaintiff submitted her request on September 17, 2019, her extension was not approved until 15 days later, after her restricted duty status had already expired. (Defs' Ex. 30, Memo from Allen to Police Commissioner, 09/17/19.) When Plaintiff submitted her request on December 19, 2019, her

extension was not approved until 18 days later, after her restricted duty status had already expired. (Defs' Ex. 31, Memo from Allen to Police Commissioner, 12/19/19.) When Plaintiff submitted her request on March 5, 2020, her extension was not approved until 28 days later, after her restricted duty status had already expired. (Defs' Ex. 32, Memo from Allen to Police Commissioner, 3/5/20.)

172. Allen resigned on July 7, 2020. Ex 56, J. Allen Emp. Hist. Rec.

Response: It is admitted that Plaintiff Allen was forced to resign from employment on July 7, 2020. (Plaintiffs' Ex. GGG, July 7, 2020 Resignation Letter.)

173. Allen claims the City denied her necessary job assignments upon her return from maternity leave because she was a black female. 2d Am. Compl., ¶ 47.

Response: Defendants' use of the term "claims" is inappropriate because on summary judgment all inferences are to be drawn in the light most favorable to Plaintiffs. It is admitted that the City denied Plaintiff Allen her necessary job assignments upon her return from maternity leave.

174. However, when Allen returned from maternity leave in late-October 2018, Chief Inspector MacDonald created an informal accommodation for Allen that would allow her to work a steady day shift by rotating between working daywork in her permanent assignment with JET and then working on a detail with the A&I unit, which Allen had previously informally expressed an interest in joining, during JET nightwork rotations. Ex. 6, MacDonald Dep. 36:14-38:21.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs dispute Defendant MacDonald's testimony, as his credibility is in issue in this case. Plaintiffs deny Defendants' assertions in this paragraph. Ms. Allen went out of work on maternity leave in Spring 2018 and was due to return to work on October 22, 2018. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 47.) Before going out on maternity leave, Ms. Allen put in a request to transfer from her assignment in JET (where she worked rotating day and night shifts for eight years) to the A&I unit in the DVIC—a plainclothes, daytime position that would be more suitable for caring for her newborn child, and would also provide her training necessary to pursue her goal of becoming a police detective. (Id.) On October 12, 2018, Officer Tonetta Dawson, Aide to Chief Inspector MacDonald—the Commander in the DVIC—told Ms. Allen her transfer request was granted. (Id. at ¶ 48.) On October 21, 2018, Ms. Allen texted Officer Dawson to confirm if she should report to JET or A&I the next day. (Id. at ¶ 49.) Officer Dawson said to call Sergeant

Williford, a supervisor in A&I, who told Ms. Allen she would need special training before she could transfer to the unit, and instructed her to continue following her current schedule of rotating day and night shifts in JET. (Id.) On November 15, 2018 Officer Dawson texted Ms. Allen saying she would be detailed to A&I on days when JET was on night work. (Id. at ¶ 50.) Rotating between two different units is an uncommon practice in the PPD (Id.) In late-November 2018, Ms. Allen continued to express interest in career advancement, work opportunities and training for a position in A&I to Sergeant Williford, who said he would send her information on the training she needed, but never did. (Id. at ¶ 51.) In December, when Ms. Allen followed up with Sergeant Williford about training opportunities, he said he was "working on it" but that Inspector McCarrick, did not want her to get the A&I position. (Id. at ¶ 52.) On December 7, 2018, Officer Julius Caesar texted Ms. Allen saying "Sergeant Williford said 'I hope Tonetta is not selling Jen a dream because she is never going to be an analyst.'" (Id. at ¶ 53.) In January 2019, Sergeant O'Brien, a supervisor in A&I, told Ms. Allen to "sit with Ta'Nea Jones," a civilian who worked in the unit. (Id. at ¶ 70.) Ms. Jones told Ms. Allen, "I'm limited in what I can show you because you need access to so many different programs that you haven't been trained on, such as Facial Recognition, the Police System, and the Leads System, and you'll need a desk and a computer if you're going to be producing any work product." (Id.) Ms. Allen asked Defendant McHugh about getting access to a computer and he said she was "still in JET and wouldn't need a desk." (Id. at ¶ 71.) Around the end of January, Chief Inspector MacDonald told Ms. Allen he was going to give her a certain training packet that had previously been given to all the other analysts in A&I but never gave it to her. (Id. at ¶ 104.) On January 29, 2019, Ms. Allen again asked Sergeant Williford about her continued lack of training and work opportunities in A&I. He said, "It seems race related," and promised to talk to Chief Inspector MacDonald. (Id. at ¶ 105.) On February 4, 2019 (immediately after Plaintiffs complained about Defendant Younger) at approximately 8:52 am, Sergeant Allen told Ms. Allen that her desk was being moved from the A&I section. (Id. at ¶ 122.) Ms. Allen asked where the order to move her desk was coming from, and Sergeant Allen responded that the order was coming from Chief Inspector MacDonald and Inspector McCarrick. (Id.) On February 20, 2019, Ms. Allen went to a meeting with Inspector McCarrick and Sergeant Allen. (Id. at ¶ 152.) Inspector McCarrick told Ms. Allen that he "got a call from Dungan Road," and said, "In your EEO complaint you asked not to work with Curtis Younger, correct?" (Id.) Ms. Allen attempted to clarify she didn't want to be moved but Inspector McCarrick interrupted: "Captain Abrams called and said to have you go back to working with JET. Don't go back to A&I." (Id.) On March 27, 2019, at 8:05 am, Ms. Allen reported to the supervisors at the Criminal Intelligence Unit in the DVIC and presented them with her Restricted Duty Instructions. (Id. at ¶ 237.) At 8:50 am, Sergeant Allen then said, "You are to remove all of your things from your desk over in A&I." (Id. at ¶ 242.)

175. While working with the A&I Unit, Allen was to assist JET by performing analytical work for JET's benefit while Allen's colleagues were on the street serving warrants on their nightwork rotation. Ex. 5, McCarrick Dep., 40:11-15.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs dispute Defendant McCarrick's

testimony, as his credibility is in issue in this case. Plaintiffs deny Defendants' assertions in this paragraph. Ms. Allen went out of work on maternity leave in Spring 2018 and was due to return to work on October 22, 2018. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 47.) Before going out on maternity leave, Ms. Allen put in a request to transfer from her assignment in JET (where she worked rotating day and night shifts for eight years) to the A&I unit in the DVIC—a plainclothes, daytime position that would be more suitable for caring for her newborn child, and would also provide her training necessary to pursue her goal of becoming a police detective. (Id.) On October 12, 2018, Officer Tonetta Dawson, Aide to Chief Inspector MacDonald—the Commander in the DVIC—told Ms. Allen her transfer request was granted. (Id. at ¶ 48.) On October 21, 2018, Ms. Allen texted Officer Dawson to confirm if she should report to JET or A&I the next day. (Id. at ¶ 49.) Officer Dawson said to call Sergeant Williford, a supervisor in A&I, who told Ms. Allen she would need special training before she could transfer to the unit, and instructed her to continue following her current schedule of rotating day and night shifts in JET. (Id.) On November 15, 2018 Officer Dawson texted Ms. Allen saying she would be detailed to A&I on days when JET was on night work. (Id. at ¶ 50.) Rotating between two different units is an uncommon practice in the PPD (Id.) In late-November 2018, Ms. Allen continued to express interest in career advancement, work opportunities and training for a position in A&I to Sergeant Williford, who said he would send her information on the training she needed, but never did. (Id. at ¶ 51.) In December, when Ms. Allen followed up with Sergeant Williford about training opportunities, he said he was "working on it" but that Inspector McCarrick, did not want her to get the A&I position. (Id. at ¶ 52.) On December 7, 2018, Officer Julius Caesar texted Ms. Allen saying "Sergeant Williford said 'I hope Tonetta is not selling Jen a dream because she is never going to be an analyst.'" (Id. at ¶ 53.) In January 2019, Sergeant O'Brien, a supervisor in A&I, told Ms. Allen to "sit with Ta'Nea Jones," a civilian who worked in the unit. (Id. at ¶ 70.) Ms. Jones told Ms. Allen, "I'm limited in what I can show you because you need access to so many different programs that you haven't been trained on, such as Facial Recognition, the Police System, and the Leads System, and you'll need a desk and a computer if you're going to be producing any work product." (Id.) Ms. Allen asked Defendant McHugh about getting access to a computer and he said she was "still in JET and wouldn't need a desk." (Id. at ¶ 71.) Around the end of January, Chief Inspector MacDonald told Ms. Allen he was going to give her a certain training packet that had previously been given to all the other analysts in A&I but never gave it to her. (Id. at ¶ 104.) On January 29, 2019, Ms. Allen again asked Sergeant Williford about her continued lack of training and work opportunities in A&I. He said, "It seems race related," and promised to talk to Chief Inspector MacDonald. (Id. at ¶ 105.) On February 4, 2019 (immediately after Plaintiffs complained about Defendant Younger) at approximately 8:52 am, Sergeant Allen told Ms. Allen that her desk was being moved from the A&I section. (Id. at ¶ 122.) Ms. Allen asked where the order to move her desk was coming from, and Sergeant Allen responded that the order was coming from Chief Inspector MacDonald and Inspector McCarrick. (Id.) On February 20, 2019, Ms. Allen went to a meeting with Inspector McCarrick and Sergeant Allen. (Id. at ¶ 152.) Inspector McCarrick told Ms. Allen that he "got a call from Dungan Road," and said, "In your EEO complaint you asked not to work with Curtis Younger, correct?" (Id.) Ms. Allen attempted to clarify she didn't want to be moved but Inspector McCarrick interrupted: "Captain Abrams called and said to have you go back to working with JET. Don't go back to A&I." (Id.) On March 27, 2019, at 8:05 am, Ms. Allen reported to the supervisors at the Criminal Intelligence Unit in the DVIC and presented them

with her Restricted Duty Instructions. (Id. at ¶ 237.) At 8:50 am, Sergeant Allen then said, "You are to remove all of your things from your desk over in A&I." (Id. at ¶ 242.)

176. Inspector McCarrick collaborated with Chief MacDonald to arrange this accommodation, which was intended to last for Allen's first few months back at work.

Ex. 5, McCarrick Dep., 28:12-17.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs dispute Defendant McCarrick's testimony, as his credibility is in issue in this case. Plaintiffs deny Defendants' assertions in this paragraph. Ms. Allen went out of work on maternity leave in Spring 2018 and was due to return to work on October 22, 2018. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 47.) Before going out on maternity leave, Ms. Allen put in a request to transfer from her assignment in JET (where she worked rotating day and night shifts for eight years) to the A&I unit in the DVIC—a plainclothes, daytime position that would be more suitable for caring for her newborn child, and would also provide her training necessary to pursue her goal of becoming a police detective. (Id.) On October 12, 2018, Officer Tonetta Dawson, Aide to Chief Inspector MacDonald—the Commander in the DVIC—told Ms. Allen her transfer request was granted. (Id. at ¶ 48.) On October 21, 2018, Ms. Allen texted Officer Dawson to confirm if she should report to JET or A&I the next day. (Id. at ¶ 49.) Officer Dawson said to call Sergeant Williford, a supervisor in A&I, who told Ms. Allen she would need special training before she could transfer to the unit, and instructed her to continue following her current schedule of rotating day and night shifts in JET. (Id.) On November 15, 2018 Officer Dawson texted Ms. Allen saying she would be detailed to A&I on days when JET was on night work. (Id. at ¶ 50.) Rotating between two different units is an uncommon practice in the PPD (Id.) In late-November 2018, Ms. Allen continued to express interest in career advancement, work opportunities and training for a position in A&I to Sergeant Williford, who said he would send her information on the training she needed, but never did. (Id. at ¶ 51.) In December, when Ms. Allen followed up with Sergeant Williford about training opportunities, he said he was "working on it" but that Inspector McCarrick, did not want her to get the A&I position. (Id. at ¶ 52.) On December 7, 2018, Officer Julius Caesar texted Ms. Allen saying "Sergeant Williford said 'I hope Tonetta is not selling Jen a dream because she is never going to be an analyst.'" (Id. at ¶ 53.) In January 2019, Sergeant O'Brien, a supervisor in A&I, told Ms. Allen to "sit with Ta'Nea Jones," a civilian who worked in the unit. (Id. at ¶ 70.) Ms. Jones told Ms. Allen, "I'm limited in what I can show you because you need access to so many different programs that you haven't been trained on, such as Facial Recognition, the Police System, and the Leads System, and you'll need a desk and a computer if you're going to be producing any work product." (Id.) Ms. Allen asked Defendant McHugh about getting access to a computer and he said she was "still in JET and wouldn't need a desk." (Id. at ¶ 71.) Around the end of January, Chief Inspector MacDonald told Ms. Allen he was going to give her a certain training packet that had previously been given to all the other analysts in A&I but never gave it to her. (Id. at ¶ 104.) On January 29, 2019, Ms. Allen again asked Sergeant Williford about her continued lack of training and work opportunities in A&I. He said, "It seems race related," and promised to talk to Chief Inspector MacDonald. (Id. at

¶ 105.) On February 4, 2019 (immediately after Plaintiffs complained about Defendant Younger) at approximately 8:52 am, Sergeant Allen told Ms. Allen that her desk was being moved from the A&I section. (Id. at ¶ 122.) Ms. Allen asked where the order to move her desk was coming from, and Sergeant Allen responded that the order was coming from Chief Inspector MacDonald and Inspector McCarrick. (Id.) On February 20, 2019, Ms. Allen went to a meeting with Inspector McCarrick and Sergeant Allen. (Id. at ¶ 152.) Inspector McCarrick told Ms. Allen that he "got a call from Dungan Road," and said, "In your EEO complaint you asked not to work with Curtis Younger, correct?" (Id.) Ms. Allen attempted to clarify she didn't want to be moved but Inspector McCarrick interrupted: "Captain Abrams called and said to have you go back to working with JET. Don't go back to A&I." (Id.) On March 27, 2019, at 8:05 am, Ms. Allen reported to the supervisors at the Criminal Intelligence Unit in the DVIC and presented them with her Restricted Duty Instructions. (Id. at ¶ 237.) At 8:50 am, Sergeant Allen then said, "You are to remove all of your things from your desk over in A&I." (Id. at ¶ 242.)

It is further denied that Defendants McCarrick and MacDonald "collaborated" to arrange an "accommodation" for Plaintiff. Defendant Williford testified that in December 2019, he was "working on the schedule so that Ms. Allen would not have to flip-flop between JET and A&I." (Plaintiffs' Ex. III, Williford Dep., 30:02-05.) Defendant Williford further testified:

Q. Why were you working on a schedule for Ms. Allen so she wouldn't need to flip-flop between JET and A&I?
A. I was trying to accommodate Officer Allen.
Q. Why?
A. To accommodate. She just had a baby. Her husband was on a flip-flop schedule. He's on rotating. And I was basically trying to make sure that she had some kind of normalcy . . ."

(Plaintiffs' Ex. III, Williford dep., 30:16-23.)

Q. Were you ever able to work out a schedule so that Ms. Allen would not need to flip-flop between JET and A&I?
A. Not completely.
Q. What do you mean by that?
A. She got detailed out.
Q. When?
A. . . . I think it was February of 2019.

(Plaintiffs' Ex. III, Williford Dep., 31:03-11.)

Defendant Williford further testified:

> I had a conversation with Jen of ten minutes and it was basically she told me -- I said, hey, I understand you're upset. She said, yeah, I'm in uniform today. What's going on? I said, why are you in uniform? She said, well, Sergeant Allen told me she needed me -- they're short and we had to serve warrants. I said, well, okay. Well, I don't understand why, because you're supposed to be in A&I. She said yeah. I said, but let me remind you, Monday, Martin Luther King Day, you did voluntarily work the street. And she's like, well, I didn't really -- I said, you volunteered. You're supposed to write a product and you didn't. I said, so you can't flip-flop back and

> forth. If you're going to be in A&I one day, you can't volunteer your service another day. I said, but all and all, this is a supervisor issue, let me talk to Sergeant Allen and I will have information for you tomorrow morning. But just to let you know, be in uniform tomorrow because I don't know what's going on. This is the first I'm hearing of this.

(Plaintiffs' Ex. III, Williford 86:02-22.)

Defendant Williford further testified:

> I had a conversation I had with Allen on the 29th, as far as if she's going to be in uniform for one day and plain clothes the other. And that, again, I agree, you know, we can't flip-flop. You're getting training or you're doing peer training, it makes no sense, one day you're here, one day you're not, you can never benefit from the training.
>
> Q. Did you tell McHugh, McCarrick and/or MacDonald that statement, that it didn't make sense for her to be flip-flopping back and forth?
>
> A. Yes.

(Plaintiffs' Ex. III, Williford Dep., 132:04-14.)

177. Allen's accommodation began on December 17, 2018. Ex. 24, J. Allen DARs.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs object to Defendants' use of the term "accommodation." Defendant Williford testified that in December 2019, he was "working on the schedule so that Ms. Allen would not have to flip-flop between JET and A&I." (Plaintiffs' Ex. III, Williford Dep., 30:02-05.) Defendant Williford further testified:

> Q. Why were you working on a schedule for Ms. Allen so she wouldn't need to flip-flop between JET and A&I?
>
> A. I was trying to accommodate Officer Allen.
>
> Q. Why?
>
> A. To accommodate. She just had a baby. Her husband was on a flip-flop schedule. He's on rotating. And I was basically trying to make sure that she had some kind of normalcy . . ."

(Plaintiffs' Ex. III, Williford dep., 30:16-23.)

> Q. Were you ever able to work out a schedule so that Ms. Allen would not need to flip-flop between JET and A&I?

A. Not completely.

Q. What do you mean by that?

A. She got detailed out.

Q. When?

A. . . . I think it was February of 2019.
(Plaintiffs' Ex. III, Williford Dep., 31:03-11.)

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Defendant Williford further testified:

> I had a conversation I had with Allen on the 29th, as far as if she's going to be in uniform for one day and plain clothes the other. And that, again, I agree, you know, we can't flip-flop. You're getting training or you're doing peer training, it makes no sense, one day you're here, one day you're not, you can never benefit from the training.
>
> Q Did you tell McHugh, McCarrick and/or MacDonald that statement, that it didn't make sense for her to be flip-flopping back and forth?
>
> A Yes.
(Plaintiffs' Ex. III, Williford Dep., 132:04-14.)

178. The accommodation would continue for Allen's first few months back at work as long as Allen's absence did not impact JET's ability to operate safely and efficiently. Ex. 5, McCarrick Dep., 28:12-17.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs dispute Defendant McCarrick's testimony, as his credibility is in issue in this case. Defendants' assertions in this paragraph are denied. Defendant Williford testified that in December 2019, he was "working on the schedule so that Ms. Allen would not have to flip-flop between JET and A&I." (Plaintiffs' Ex. III, Williford Dep., 30:02-05.) Defendant Williford further testified:

> Q. Why were you working on a schedule for Ms. Allen so she wouldn't need to flip-flop between JET and A&I?
>
> A. I was trying to accommodate Officer Allen.
>
> Q. Why?
>
> A. To accommodate. She just had a baby. Her husband was on a flip-flop schedule. He's on rotating. And I was basically trying to make sure that she had some kind of normalcy . . ."

(Plaintiffs' Ex. III, Williford dep., 30:16-23.)

> Q. Were you ever able to work out a schedule so that Ms. Allen would not need to flip-flop between JET and A&I?
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> A. Not completely.
> Q. What do you mean by that?
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> A. She got detailed out.
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> Q. When?
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(Plaintiffs' Ex. III, Williford Dep., 31:03-11.)

Defendant Williford further testified:

> I had a conversation with Jen of ten minutes and it was basically she told me -- I said, hey, I understand you're upset. She said, yeah, I'm in uniform today. What's going on? I said, why are you in uniform? She said, well, Sergeant Allen told me she needed me -- they're short and we had to serve warrants. I said, well, okay. Well, I don't understand why, because you're supposed to be in A&I. She said yeah. I said, but let me remind you, Monday, Martin Luther King Day, you did voluntarily work the street. And she's like, well, I didn't really -- I said, you volunteered. You're supposed to write a product and you didn't. I said, so you can't flip-flop back and forth. If you're going to be in A&I one day, you can't volunteer your service another day. I said, but all and all, this is a supervisor issue, let me talk to Sergeant Allen and I will have information for you tomorrow morning. But just to let you know, be

> in uniform tomorrow because I don't know what's going on. This is the first I'm hearing of this." (Plaintiffs' Ex. III, Williford 86:02-22.)

Defendant Williford further testified:

> I had a conversation I had with Allen on the 29th, as far as if she's going to be in uniform for one day and plain clothes the other. And that, again, I agree, you know, we can't flip-flop. You're getting training or you're doing peer training, it makes no sense, one day you're here, one day you're not, you can never benefit from the training.
>
> Q Did you tell McHugh, McCarrick and/or MacDonald that statement, that it didn't make sense for her to be flip-flopping back and forth?
>
> A Yes.

(Plaintiffs' Ex. III, Williford Dep., 132:04-14.)

On February 4, 2019 (immediately after Plaintiffs complained about Defendant Younger) at approximately 8:52 am, Sergeant Allen told Ms. Allen that her desk was being moved from the A&I section. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at at ¶ 122.) Ms. Allen asked where the order to move her desk was coming from, and Sergeant Allen responded that the order was coming from Chief Inspector MacDonald and Inspector McCarrick. (Id.) On February 20, 2019, Ms. Allen went to a meeting with Inspector McCarrick and Sergeant Allen. (Id. at ¶ 152.) Inspector McCarrick told Ms. Allen that he "got a call from Dungan Road," and said, "In your EEO complaint you asked not to work with Curtis Younger, correct?" (Id.) Ms. Allen attempted to clarify she didn't want to be moved but Inspector McCarrick interrupted: "Captain Abrams called and said to have you go back to working with JET. Don't go back to A&I." (Id.) On March 27, 2019, at 8:05 am, Ms. Allen reported to the supervisors at the Criminal Intelligence Unit in the DVIC and presented them with her Restricted Duty Instructions. (Id. at ¶ 237.) At 8:50 am, Sergeant Allen then said, "You are to remove all of your things from your desk over in A&I." (Id. at ¶ 242.)

179. Allen complains that the PPD's decision to end her part-time A&I detail was discriminatory and retaliatory. 2d Am. Compl., ¶¶ 148-152.

Response: Plaintiff admits that the PPD's decision to move her back to JET on a rotating day and night schedule was discriminatory and retaliatory. By way of further response: On February 4, 2019 (immediately after Plaintiffs complained about Defendant Younger) at approximately 8:52 am, Sergeant Allen told Ms. Allen that her desk was being moved from the A&I section. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at at ¶ 122.) Ms. Allen asked where the order to move her desk was coming from, and Sergeant Allen responded that the order was coming from Chief Inspector MacDonald and Inspector McCarrick. (Id.) On February 20, 2019, Ms. Allen went to a meeting with Inspector McCarrick and Sergeant Allen. (Id. at ¶

152.) Inspector McCarrick told Ms. Allen that he "got a call from Dungan Road," and said, "In your EEO complaint you asked not to work with Curtis Younger, correct?" (Id.) Ms. Allen attempted to clarify she didn't want to be moved but Inspector McCarrick interrupted: "Captain Abrams called and said to have you go back to working with JET. Don't go back to A&I." (Id.) On March 27, 2019, at 8:05 am, Ms. Allen reported to the supervisors at the Criminal Intelligence Unit in the DVIC and presented them with her Restricted Duty Instructions. (Id. at ¶ 237.) At 8:50 am, Sergeant Allen then said, "You are to remove all of your things from your desk over in A&I." (Id. at ¶ 242.)

Defendant Allen testified:

Q. Did you tell Ms. Allen on February 4, 2019 that her desk was being moved from the A&I section?

A. It wouldn't have been her desk, it would have been the location where she would sit.

Q. Did you tell her that the location where she was sitting was being moved from the A&I section?

A. Yes.

Q. Who told you to tell Ms. Allen that her seating station was being moved?

A. I received that information from upper management. Once I received it, I gave the information to the officer.

Q. Who told you from upper management that her seat was being moved?

A. I received the information from Inspector McCarrick.

Q. What did he say?

A. That her desk would have to be -- that she would have to be moved from the -- that she was going to be moved from the A&I side to the CIU side of the building. She was going to have to sit on that side.

Q. Why was the seating arrangement being moved?

A. Because the officer had to be kept separate from another officer.

Q. Who was that?

A. That would be Officer Younger.

Q. Was Officer Younger's seating station moved?

A. To my knowledge, no.
(Plaintiffs' Ex. MMM, T. Allen Dep., 59:16-60:19.)

On February 20, 2019, Ms. Allen went to a meeting with Inspector McCarrick and Sergeant Allen. Inspector McCarrick told Ms. Allen that he "got a call from Dungan Road," and said, "In your EEO complaint you asked not to work with Curtis Younger, correct(Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 152; T. Allen Dep., 82:02-11; 87:02-88:03.) Ms. Allen attempted to clarify she didn't want to be moved but Inspector McCarrick interrupted: "Captain Abrams called and said to have you go back to working with JET. Don't go back to A&I." (Id.)

180. At full manpower, JET has one sergeant and six police officers. Ex. 7, T. Allen Dep., 9:8-11:3.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. It is admitted that at full manpower, JET has one sergeant and six police officers.

181. In late February, JET had two officers who were temporarily unavailable for duty. Ex. 5, McCarrick Dep., 40:19-22.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs dispute Defendant McCarrick's testimony, as his credibility is in issue in this case. It is admitted that the quoted testimony states as Defendants have asserted in this paragraph.

By way of further response: On February 4, 2019 (immediately after Plaintiffs complained about Defendant Younger) at approximately 8:52 am, Sergeant Allen told Ms. Allen that her desk was being moved from the A&I section. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at at ¶ 122.) Ms. Allen asked where the order to move her desk was coming from, and Sergeant Allen responded that the order was coming from Chief Inspector MacDonald and Inspector McCarrick. (Id.) On February 20, 2019, Ms. Allen went to a meeting with Inspector McCarrick and Sergeant Allen. (Id. at ¶ 152.) Inspector McCarrick told Ms. Allen that he "got a call from Dungan Road," and said, "In your EEO complaint you asked not to work with Curtis Younger, correct?" (Id.) Ms. Allen attempted to clarify she didn't want to be moved but Inspector McCarrick interrupted: "Captain Abrams called and said to have you go back to working with JET. Don't go back to A&I." (Id.) On March 27, 2019, at 8:05 am, Ms. Allen reported to the supervisors at the Criminal Intelligence Unit in the DVIC and presented them with her Restricted Duty Instructions. (Id. at ¶ 237.) At 8:50 am, Sergeant Allen then said, "You are to remove all of your things from your desk over in A&I." (Id. at ¶ 242.)

182. Inadequate manpower – two officers indisposed and Allen working only days – left JET dangerously understaffed, creating an officer safety issue that needed to be addressed immediately. Ex. 5, McCarrick Dep., 40:22-24.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs dispute Defendant McCarrick's testimony, as his credibility is in issue in this case. It is specifically denied that Plaintiff Allen's absence from JET created an officer safety issue. (Defs' Ex. 5, McCarrick Dep., 27:21-28:8.)

By way of further response, Plaintiff was moved back to JET in retaliation for her complaints against Younger. On February 4, 2019 (immediately after Plaintiffs complained about Defendant Younger) at approximately 8:52 am, Sergeant Allen told Ms. Allen that her desk was being moved from the A&I section. (Id. at ¶ 122.) Ms. Allen asked where the order to move her desk was coming from, and Sergeant Allen responded that the order was coming from Chief Inspector MacDonald and Inspector McCarrick. (Id.) On February 20, 2019, Ms. Allen went to a meeting with Inspector McCarrick and Sergeant Allen. (Id. at ¶ 152.) Inspector McCarrick told Ms. Allen that he "got a call from Dungan Road," and said, "In your EEO complaint you asked not to work with Curtis Younger, correct?" (Id.) Ms. Allen attempted to clarify she didn't want to be moved but Inspector McCarrick interrupted: "Captain Abrams called and said to have you go back to working with JET. Don't go back to A&I." (Id.) On March 27, 2019, at 8:05 am, Ms. Allen reported to the supervisors at the Criminal Intelligence Unit in the DVIC and presented them with her Restricted Duty Instructions. (Id. at ¶ 237.) At 8:50 am, Sergeant Allen then said, "You are to remove all of your things from your desk over in A&I." (Id. at ¶ 242.)

183. Additionally, Allen had requested to be separated from Officer Younger about one week earlier. Ex. 5, McCarrick Dep., 42:3-45:9.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs dispute Defendant McCarrick's testimony, as his credibility is in issue in this case. It is denied that Plaintiff asked for her work location to be changed. It is denied that Plaintiff asked for her assignment to be changed. It is denied that Plaintiff asked for her schedule and hours of work to be changed. On February 20, 2019, Ms. Allen went to a meeting with Inspector McCarrick and Sergeant Allen. Inspector McCarrick told Ms. Allen that he "got a call from Dungan Road," and said, "In your EEO complaint you asked not to work with Curtis Younger, correct?" (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 152; T. Allen Dep., 82:02-11; 87:02-88:03.) Ms. Allen attempted to clarify she didn't want to be moved but Inspector McCarrick interrupted: "Captain Abrams called and said to have you go back to working with JET. Don't go back to A&I." (Id.)

Defendant Conway testified that Plaintiff Allen did not want to be moved:

Q. Do you recall having a conversation with Jen Allen in which she told you that she did not want to be moved from her position in the A&I unit?

A. I believe she mentioned it, yes.

Q. Did you tell Ms. Allen that if they moved her, that would be a lawsuit?

A. I told her that that would be considered – that could be considered a retaliatory act, yes.

Q. Are you aware that she was moved during the course of your investigation?

A. I was made aware of it probably a little after I was – completed the interviews and I submitted the investigation.

(Plaintiffs' Ex. C, Conway Dep., 272:05-19.)

Defendant Conway admitted that Defendant Younger, not Jennifer Allen, should have been moved: "I always believe that if we determine that someone is making those types of comments, that they should now be moved somewhere else, so that the complainants can go about their day in a more appropriate work environment." (Plaintiffs' Ex. C, Conway Dep., 169:09-13.)

184. Inspector McCarrick consulted with Captain Carol Abrams, Black female, commander of the EEO unit, who gave Inspector McCarrick clearance to return Allen to her assignment in the Criminal Intelligence Unit's JET team. Ex. 5, McCarrick Dep., 42:3-45:9.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs dispute Defendant McCarrick's testimony, as his credibility is in issue in this case. It is admitted that the quoted testimony states as Defendants have asserted in this paragraph.

185. By returning Allen to her assignment, Inspector McCarrick both alleviated the officer safety issue posed by inadequate manpower and honored Allen's request to be further separated from Officer Younger. Ex. 5, McCarrick Dep., 42:3-45:9.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs dispute Defendant McCarrick's testimony, as his credibility is in issue in this case. Defendants' assertions in this paragraph are denied.

On February 20, 2019, Ms. Allen went to a meeting with Inspector McCarrick and Sergeant Allen. Inspector McCarrick told Ms. Allen that he "got a call from Dungan Road," and said, "In your EEO complaint you asked not to work with Curtis Younger, correct?" (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 152; Plaintiffs' Ex. MMM, T. Allen Dep., 82:02-11; 87:02-88:03.) Ms. Allen attempted to clarify she didn't want to be moved but Inspector McCarrick interrupted: "Captain Abrams called and said to have you go back to working with JET. Don't go back to A&I." (Id.)

Defendant Conway testified that Plaintiff Allen did not want to be moved:

Q. Do you recall having a conversation with Jen Allen in which she told you that she did not want to be moved from her position in the A&I unit?

A. I believe she mentioned it, yes.

Q. Did you tell Ms. Allen that if they moved her, that would be a lawsuit?

A. I told her that that would be considered – that could be considered a retaliatory act, yes.

Q. Are you aware that she was moved during the course of your investigation?

A. I was made aware of it probably a little after I was – completed the interviews and I submitted the investigation.

(Plaintiffs' Ex. D, Conway Dep., 272:05-19.)

Defendant Conway admitted that Defendant Younger, not Jennifer Allen, should have been moved: "I always believe that if we determine that someone is making those types of comments, that they should now be moved somewhere else, so that the complainants can go about their day in a more appropriate work environment." (Conway Dep., 169:09-13.)

186. Allen gave birth on May 14, 2018. Ex. 23, J. Allen Dep., 16:8-16.

Response: It is admitted that Plaintiff Allen gave birth on May 14, 2018.

187. Allen nursed, pumped, and expressed at work and home until her child attained one year of age in May 2019. Ex. 23, J. Allen Dep., 21:9-22.

Response: Admitted in part, denied in part. In the testimony quoted by Defendants, Plaintiff did not state that she "nursed, pumped, and expressed at work . . . until her child attained one year of age in May 2019." (Defs' Ex. 23, J. Allen Dep., 21:9-22.) Plaintiff testified:

Q. Why you were on maternity leave, you were nursing your younger son, correct?

A. Right.

Q. And how long did you nurse your son for?

A. Until May 2019.

Q. So roughly one year, correct?

A. Correct.

Q. And during hat one year, were you expressing and pumping as well?

A. Yes.

(Id.)

Plaintiff did not state that she was able to "nurse, pump, and express at work" during the entire one year period. Plaintiff denies that she was able to "nurse, pump, and express at work" during the entire one year period—in fact, Plaintiff had to stop pumping at work due to Defendants' harassment and failure to accommodate her needs as a nursing mother. (Plaintiffs' Verified Second Amended Complaint, at ¶¶ 80-85, 155-169, 255-271.)

188. From October 23, 2018 to February 26, 2019, Allen expressed in the DVIC's women's locker room—an entirely separate room from the women's bathroom—of her own volition and without complaint. Ex. 23, J. Allen Dep., 166:11-16; Ex. 7, T. Allen Dep., 12:12-21.

Response: Denied. Defendants mischaracterize Plaintiff's testimony. Plaintiff testified that, when she was in JET she had been going home to pump pursuant to an arrangement with her previous supervisor. (Defs' Ex. 23, Allen Dep., 164:20.) Plaintiff testified that when she was in A&I, she used the DVIC bathroom/locker room. (Allen Dep., 164:21-22.) On February 26, 2019 Plaintiff informed Defendant Allen she was uncomfortable pumping in the bathroom/locker room at the DVIC, and Defendant Allen insisted Plaintiff continue using the bathroom/locker room to pump. (Defs' Ex. 23, J. Allen Dep., 166:11-16.)

It is denied that the DVIC's women's locker room is a separate room from the women's bathroom—the two are part of the same room. (Allen Dep., 163:21-164:12) ("I told her, you know, I said, I don't feel comfortable pumping in the locker room/bathroom. I told her there were times when she walked in on me. Several people walked in on me when I was pumping at work. She stated that it shouldn't be a problem because we're all women. She said that I can no longer express milk at home. If I did she would take time from me. I asked her is there a place that she can provide me at that time. She said we're about to get off. I'm not doing that right

now. I'm not doing that on my own time. Very just like aggressive type of behavior. Her demeanor towards me totally changed.")

189. On February 26, 2019, Allen had traveled to her residence, a 22-to-45-minute drive from her work location, using a police car, with her partner in tow, to express milk, without using any leave time to cover her absence. Ex. 7, T. Allen Dep., 95:1-98:14. See also Driving Directions from 5021 Westminster Avenue, 19131 to 1408 Alcott Street, 19149, GOOGLE MAPShttps://www.google.com/maps/dir/5021+Westminster+Ave,+Philadelphia,+PA+19131/140 8+Alcott+Street,+Philadelphia,+PA/@40.0004425,-75.1861428,13z/data=!3m1!4b1!4m14!4m13!1m5!1m1!1s0x89c6c71e5226d875:0x1c60b0e4707d82c6!2m2!1d-75.2212987!2d39.9687436!1m5!1m1!1s0x89c6b68a5579ef8b:0x55c40a8743c9282d!2m2!1d- 75.081513!2d40.031214!3e0; Ex. 24, J. Allen DARs; and Ex. 59, EEO 19-0027 at CITY 2763-66.

Response: It is admitted only that on February 26, 2019 Plaintiff went home to pump. By way of further response, this was an arrangement that was put in place by Plaintiff's supervisor, Sergeant Bradford Williams. (Plaintiffs' Ex. MMM, T. Allen Dep., 95:17-20; J. Allen Dep., 165:04-10.)

Q. It was Sergeant Williams who granted you the accommodation to be able to go home and pump?

A. Yes, during my lunch break.

(Defs' Ex. 23, Allen Dep., 166:03-06.)

The remaining allegations in this paragraph are denied. Plaintiff testified: "whenever we served warrants I would take my break. And wherever we were in the city from there, because I had my pumping bag and everything, my equipment with me, I would go home. So it could be that we could be anywhere in the city. . . . I never went home from the DVIC." (Defs' Ex. 23, Allen Dep., 165:19-166:02.)

190. Sergeant Allen informed Allen that if Allen desired to go home to express, Allen would need to take her own vehicle, hold herself out as unavailable on police radio, and use paid leave if she exceeded her break time, but did not discipline Allen for her actions. Ex. 7, T. Allen Dep., 96:2-22.

Response: Plaintiffs dispute Defendant Allen's testimony, as her credibility is in issue in this case. The allegations in this paragraph are denied as stated. Plaintiff testified: "I told her, you know, I said, I don't feel comfortable pumping in the locker room/bathroom. I told her there were times when she walked in on me. Several people walked in on me when I was pumping at work. She stated that it shouldn't be a problem because we're all women. She said that I can no longer express milk at home. If I did she would take time from me. I asked her is there a place that she can provide me at that time. She said we're about to get off. I'm not doing that right now. I'm not doing that on my own time. Very just like aggressive type of behavior. Her demeanor towards me totally changed." (Defs' Ex. 23, Allen Dep., 163:21-164:12) Defendant Allen took adverse employment action against Plaintiff Allen by taking away her accommodations. (Id.)

191. Allen first requested lactation accommodations approximately thirty minutes before the end of her shift on February 26, 2019, the same day she was informed that she was not permitted to drive her police vehicle, with her partner, to her residence, while on duty, to express milk. Ex. 23, J. Allen Dep., 166:12-16; Ex. 7, T. Allen Dep., 96:2-22, 109:13-17.

Response: It is denied that Plaintiff "first requested lactation accommodations approximately thirty minutes before the end of her shift on February 26, 2019." Plaintiff had previously requested accommodations from her supervisor, Sergeant Williams, which were still in place on February 26, 2019, until Defendant Allen took adverse action against Plaintiff by removing the accommodations. arrangement that was put in place by Plaintiff's supervisor, Sergeant Bradford Williams. (Defs' Ex. 7, T. Allen Dep., 95:17-20; Defs' Ex. 23, J. Allen Dep., 165:04-10.)

Q. It was Sergeant Williams who granted you the accommodation to be able to go home and pump?

A. Yes, during my lunch break.

(Defs' Ex. 23, Allen Dep., 166:03-06.)

Plaintiff testified: "whenever we served warrants I would take my break. And wherever we were in the city from there, because I had my pumping bag and everything, my equipment with me, I

would go home. So it could be that we could be anywhere in the city. . . . I never went home from the DVIC." (Defs' Ex. 23, Allen Dep., 165:19-166:02.)

Plaintiff testified:

> I told her, you know, I said, I don't feel comfortable pumping in the locker room/bathroom. I told her there were times when she walked in on me. Several people walked in on me when I was pumping at work. She stated that it shouldn't be a problem because we're all women. She said that I can no longer express milk at home. If I did she would take time from me. I asked her is there a place that she can provide me at that time. She said we're about to get off. I'm not doing that right now. I'm not doing that on my own time. Very just like aggressive type of behavior. Her demeanor towards me totally changed.

(Defs' Ex. 23, Allen Dep., 163:21-164:12)

Defendant Allen took adverse employment action against Plaintiff Allen by taking away her accommodations. (Id.)

192. The next morning, Sergeant Allen called Inspector McCarrick secure use of DVIC's interview room for Allen to express while at work. Ex. 7, T. Allen Dep., 26:22-31:7, 34:3-10.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs admit that on February 27, 2019, Sergeant Allen told Ms. Allen that if she didn't want to use the DVIC bathroom to pump then to "use the interview room" and sign the key out from the male officer working at the RTCC, who told Ms. Allen he "didn't know anything about it and wasn't familiar with the keys." (Plaintiffs' Verified Second Amended Complaint, at ¶ 164.) It took nearly 30 minutes to find help to get into the interview room, which is located on the exterior of the building near the entrance. (Id. at at ¶ 165.) In the middle of winter, the room was freezing inside because it is unheated. (Id.) It also had a large window, which meant that anyone who walked by would be able to see her pumping. (Id.)

193. On February 27, 2019, Allen complained to Sergeant Allen that the interview room was too cold when Sergeant Allen inquired as to how the room suited her needs. Ex. 7, T. Allen Dep., 102:10-13.

Response: Denied as stated. Ms. Allen was unable to pump that night. (Plaintiffs' Verified Second Amended Complaint, at ¶ 167.) She texted Sergeant Allen and asked her to carry her sick for the remainder of her tour and also said she had a doctor's appointment the following day at

3:00 pm. (Id.) Sergeant Allen told Ms. Allen to meet her at her desk Plaintiff informed Defendant Allen that she was unable to pump "because the room was too cold and has a window." (Id.)

194. Sergeant Allen went to check the temperature of the room later that night and did not find it noticeably cold. Ex. 7, T. Allen Dep., 102:14-105:2.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs dispute Defendant Allen's testimony, as her credibility is in issue in this case. The allegations in this paragraph are denied. Defendant Allen testified:

> Q. When she told you that the room was too cold, did you do anything to determine what the temperature was in the room?
>
> A. I'm sorry, I didn't have a thermometer or any way to check the physical temperature in the room.
>
> Q. Did you physically go in the room?
>
> A. That night I didn't have an opportunity. That day I didn't have an opportunity to go into the room.

(Defs' Ex. 7, T. Allen Dep., 102:19-103:02.)

Defendant Allen testified that when she eventually went down to the DVIC interview room she was unable to determine whether the room was cold because "when I went to the room, I had on a -- I had on my uniform and a jacket, so -- and I didn't have a thermometer to give you an exact temperature of the room." (Defs' Ex. 7, T. Allen Dep., 104:12-15.)

195. Allen claims to have had a difficult time locating the correct key and opening the interview room, yet Sergeant Allen had no difficulty finding the appropriate key and unlocking the door to the interview when she tried. Ex. 7, T. Allen Dep., 105:20-108:7.

Response: Defendants' use of the term "claims" is inappropriate because on summary judgment all inferences are to be drawn in the light most favorable to Plaintiffs. To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs dispute Defendant Allen's testimony, as her credibility is in issue in this case. Plaintiff Allen admits that she had difficulty locating the correct key and opening the door to the DVIC interview room. Plaintiffs admit that the parties dispute the difficulty of getting into the interview room.

196. The interview room has a small window in the door that can be – and typically is – covered with a single piece of black construction paper, giving the room absolute privacy. Ex. 7, T. Allen Dep., 111:22-23; Ex. 5, McCarrick Dep., 72:4-15.

Response: Denied. The DVIC interview room as a large, uncovered window through which anyone walking by could see Plaintiff's exposed breasts. (Plaintiffs' Verified Second Amended Complaint, at ¶ 165; Plaintiffs' Ex. TTT, CITY 4931-4935, Photographs of DVIC Interview Room.) Defendant Allen confirmed that the window was not covered when Plaintiff was assigned to the DVIC:

> Q. When it was covered, Ms. Allen wasn't using the room, right? It was covered sometime after she left the DVIC, wasn't it?
>
> A. To my knowledge, no, it wasn't covered when she was there.

(Defs' Ex. 7, T. Allen Dep., 182:03-07.)

197. The small window in the door was covered up when Sergeant Allen went to check the temperature. Ex. 7, T. Allen Dep., 110:17-24.

Response: Denied. Plaintiffs dispute Defendant Allen's testimony, as her credibility is in issue in this case. Defendant Allen confirmed that the window was not covered when Plaintiff was assigned to the DVIC:

> Q. When it was covered, Ms. Allen wasn't using the room, right? It was covered sometime after she left the DVIC, wasn't it?
>
> A. To my knowledge, no, it wasn't covered when she was there.

(Defs' Ex. 7, T. Allen Dep., 182:03-07; see also Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 165; Plaintiffs' Ex. TTT, CITY 4931-4935, Photographs of DVIC Interview Room.)

Defendant Conway testified that the window to the interview room was not covered until May 2019, after Plaintiff Allen had already been moved to NSU. (Plaintiffs' Ex. C, Conway Dep., 233:12-18.)

198. Allen did not complain to Sergeant Allen about a window in the door. Ex. 7, T. Allen Dep., 108:14-20.

Response: Plaintiffs dispute Defendant Allen's testimony, as her credibility is in issue in this case. The allegations in this paragraph are denied. Plaintiff informed Defendant Allen that she

was unable to pump "because the room was too cold and has a window." (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 167.)

199. After Allen was detailed to the Neighborhood Services Unit on March 28, 2019, she informed her supervisor, Sergeant Herbert Gibbons, that she needed a place to express; Sergeant Gibbons gave her unfettered access to a room with a lockable door, no windows, a refrigerator, and several electrical outlets. Ex. 57, Gibbons Dep., 9:12-10:6.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs dispute Defendant Gibbons' testimony as his credibility is at issue in this case. Plaintiff Allen testified:

Q. Can you describe what the conditions were like in Officer Whipple and Martin's office for you to pump?

A. It was cluttered. It was a lot of people. It was dirty. It did have an electrical outlet. It was a lot of interruptions because at the time that was the place where they had, like I said, the follow-up paperwork and a lot of paperwork that NSU officers needed. It was also a store where they had soda, chips. They called it like the office store where people from Neighborhood Services, and, also, detectives from another unit would come and buy certain things. It was a lot of interruptions as well.

(Defs' Ex. 23, Allen Dep., 229:17-230:09.)

200. Allen could use the room any time she needed to use the room. Ex. 57, Gibbons Dep., 13:3-6.

Response: Denied. Plaintiff Allen testified:

Q. Describe for me any obstructions or obstacles that you made trying to pump in Officer Whipple and Martin's office.

A. Everyday was an interruption. Everyday someone knocked on the door when I was pumping.

. . .

Q. What would you say when someone would knock on the door while you were pumping?

A. I would tell them I'm in there. They would say we need this paper, can you open up. They would interrupt me, the flow of my milk; things like that. Tamara Martin, she would apologize often for doing that, but she said she needed the paperwork.

Q. Any other obstacles, other than the interruptions that you described, pumping in Officer Whipple and Martin's office?

A. Like just the flow of the milk. Like if you are stopping, you got to stop. You got to open the door and try to get that flow of things going again. That's a big obstacle within itself.

(Defs' Ex. 23, Allen Dep., 231:01-232:10.)

Defendant Gibbons testified:

Q. Did Ms. Allen use the room after you provided it to her?
A. Yes, sir.
Q. How long did she use the room for?
A. Approximately a few days, sir.
Q. Why did she stop?
A. She stated to me that it was a very busy area, people knocked on the door and so forth, and asked me if I could find another location.

(Defs' Ex. 57, Gibbons Dep., 10:07-12.)

201. A few days later, Allen complained that people knocked on the door, that the area was noisy, and too many people were moving around. Ex. 57, Gibbons Dep., 10:7-12, 17:20-18:16.

Response: Admitted.

202. Allen did not express concerns about privacy. Ex. 57, Gibbons Dep., 18:14-16.

Response: Denied. Defendant Gibbons testified:

Q. Did Ms. Allen use the room after you provided it to her?
A. Yes, sir.
Q. How long did she use the room for?
A. Approximately a few days, sir.
Q. Why did she stop?
A. She stated to me that it was a very busy area, people knocked on the door and so forth, and asked me if I could find another location.

(Defs' Ex. 57, Gibbons Dep., 10:07-12.)

203. Sergeant Gibbons immediately informed NSU staff and the Inspector of the detective division located elsewhere in the building containing NSU. Ex. 57, Gibbons Dep., 10:13-15:10.

Response: Plaintiffs dispute Defendant Gibbons' testimony as his credibility is at issue in this case. Denied. Plaintiff testified:

Q. What is it that you asked Sergeant Gibbons to do with respect to the pumping issue?

A. In the beginning when I first got to NSU I told him that I was a nursing mother and I needed a place to pump, which he said he had another nursing mother there at NSU, an officer. And he said that I can use Officer Whipple and Officer John Martin, their office to pump, which was fine. Like it was okay until it wasn't okay. I had officers inside Neighborhood Services come to me saying that I couldn't pump in that office because of follow-up paperwork that people needed to get to, I guess, during the time that I was pumping. I had officers complaining to me about needing to get into the room where I pump. So I remember going to Sergeant Gibbons, because one officer actually said was I told that I was going to start -- that I had to start pumping from Mary Bibbo's office, and I told him no, no one told me that. Then I had went to Sergeant Gibbons and I had asked him, I said, Sarge, someone told me that I had to pump in Mary Bibbo's office and that Whipple and Martin's office is no longer a good place to pump. And that was a meeting -- that turned into like this big thing. It was myself, Officer Richardson, Officer Newsome. Officer Newsome was another breastfeeding mother at the time. And we're in the cafeteria at the time and we were both upset, because like for a couple of weeks people were like complaining about us pumping. So we were just trying to express to the Sergeant that something needed to be said to these officers and try and figure out what place was okay for us to pump. My place to pump was Whipple and Martin's office. Officer Newsome's place to pump was Mary Bibbo's office. We pumped at two different times. Officers thought that we should pump together because we were both women. We were bringing our concerns to Sergeant Gibbons. That's the meeting where he said that's the last time he tried to speak up he got. He's not going to say anything against or to Mary Bibbo because of the way that she is. We voiced our concerns that we weren't comfortable. They had had this handmade sign initially, or maybe it was a computer generated sign, that we had to get from this office with three males, including Gibbons, Dougherty and a male police officer. So we communicated to him that we weren't comfortable with like going to get the sign from him and then, you know, we were just communicating our concerns. Ultimately, I told him like I didn't know it was an issue with the place that he initially gave me to pump. I didn't know it was a concern or issue until like officers came up to me. But at that time, the first go around, he said he wouldn't address it. Officer Richardson, who is a police officer who has been in the Neighborhood Services for over 20 years was just like speaking on me and Officer Newsome's behalf and just saying that he has to do something. He's a supervisor; things of that nature.

(Defs' Ex. 23, Allen Dep., 218:15-221:20.)

204. Sergeant Gibbons also made a sign Allen could place on the door of the room, with "Do Not Disturb" written in ink on a piece of cardboard. Ex. 57, Gibbons Dep., 15:11-22.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Denied as stated. Plaintiff testified:

Q. When you were using Whipple and Martin's office to pump, was there a sign that was placed on the door?
A. No, not initially.

(Defs' Ex. 23, Allen Dep., 233:10-13.)

Defendant Gibbons testified:

Q. Tell me about the sign you put on the door. You said you made the sign?
A. The original sign I made it said, room in use, do not disturb.
Q. And was this written on a piece of paper or tell me about the – describe the sign that you made.
A. It was a – like a piece of cardboard material written in ink.
Q. And, I'm sorry, what did it say?
A. Do not disturb, sir.
Q. Did it say anything else?
A. Not the sign that I made, no sir.
Q. Okay. And did you give Ms. Allen the sign?
A. I held onto the sign so that it would not be misplaced, sir.
Q. How come you didn't give the sign to Ms. Allen to hold onto?
A. Because it was two separate people at the time and between two people, I did not want the sign misplaced, sir.
Q. How come you didn't make two signs, one for Ms. Newsome and one for Ms. Allen.

(Defs' Ex. 57, Gibbons Dep., 15:11-16:08.)

. . .

Q. After you made the sign for Ms. Allen, you said two days after than you went to Captain Vann because Ms. Allen and Ms. Newsome had complained again?
A. Well, they weren't happy with the accommodations, sir.
Q. What did they tell you about being unhappy?
A. They said that it was too noisy, there was too much movement in the back of the building near the detective bureau headquarters, in which case they asked me if I could move them to another location.
Q. Do you know if people were – did they complain that people were still knocking on the door?
A. There was not a direct complaint of people knocking on the door, sir. They just said it was too much commotion in that area.

Q. Do you know – do you know what she meant by that, or what do you mean by that, too much commotion?
A. My understanding is its just a lot of people moving back and forth, **people coming in.** There's a lot – there's noise at – time to time in that area sir.

(Defs' Ex. 57, Gibbons Dep., 17:17-18:13.)

205. Sergeant Gibbons kept the sign in his office so that Allen and another nursing officer could each have equal access to the sign. Ex. 57, Gibbons Dep., 15:23-16:13.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Denied as stated. Gibbons refused to make two cardboard signs for Ms. Allen and Ms. Newsome so each women would not have to retrieve the sign from three males each time they needed to pump. By way of further response: Gibbons testified:

Q. Do you share a room – an office with anybody else?
A. I share a room presently with Sergeant Dougherty, Sir.
Q. What about at the time?
A. At the time, I also shared a room with the captains aid, Vince LaSpina.

(Defs' Ex. 57, Gibbons Dep., 17:06-11.)

Q. Did [Plaintiff Allen and Ms. Newsome] ever complain about the cardboard sign or retrieving the cardboard sign?
A. Yes, sir.
Q. What did they say – what was their complaint?
A. Their complaint, sir, is that they did not want to come into the room where three males were to retrieve the sign, sir, off of my desk.
Q. Did you leave the sign just sitting on your desk, or did they have to ask for it?
A. The sign stayed on my desk, sir.
Q. Did they need to encounter you or the other males in the office when they retrieved the sign?
A. Yes, sir.

(Defs' Ex. 57, Gibbons Dep., 19:17-20:05.)

206. Sergeant Gibbons also alerted his Captain, who requisitioned a professional sign. Ex. 57, Gibbons Dep., 16:7-13.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Denied as stated. Gibbons went to Captain Vann "approximately two days after" the fact. (Gibbons Dep., 16:24-17:02; 17:17-21.) Plaintiff Allen testified:

Q. Ultimately a permanent sign was placed on a room at NSU that was designated as the lactation room, correct?

A. Yes. Just so we're clear, even though the sign was on there it doesn't mean they didn't knock

(Defs' Ex. 23, Allen Dep., 233:19-234:05.)

207. After Allen complained about the first room, Sergeant Gibbons made another room available for her use. Ex. 57, Gibbons Dep., 18:20-19:7.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Denied as stated.

Q. All right. So what did you do after she complained about the room a second time?
A. I moved her – well I realized that my civilian employee, Mary Bibbo was on vacation, and I felt I'll move her toward – next to the supervisor's office where Civilian Bibbo's office is, and I moved her in there.

(Defs' Ex. 57, Gibbons Dep., 18:20-19:01.)

Plaintiff Allen testified: "So Sergeant Gibbons told me that Mary Bibbo – that her office would now be the place to pump due to paperwork or something in Whipple and Martin's office. He said she would be made aware. We would have no problems until we had problems." (Allen Dep., 226:10-16.)

Plaintiff Allen testified:

Q. Let me talk to you about Mary Bibbo's office? You said that you pumped in there for about a week, correct?
A. Approximately, yes.
Q. And was her office clean and sanitary?
A. No.
Q. How would you describe the condition of her office the week that you were pumping in there?
A. Neighborhood Services is located in a garage. I don't know if that kind of speaks for itself.

(Defs' Ex. 23, Allen Dep., 235:05-16.)

Q. Did you have to do anything to sanitize Mary Bibbo's office before you pumped in there for that week?
A. I mean, I would wipe it down with like wipes and stuff, the area, both places. Anytime I pumped I would wipe it down.

(Defs' Ex. 23, Allen Dep., 235:23-236:03.)

Q. Were there any obstructions or obstacles that impacted your ability to pump in Mary Bibbo's office?
A. Well, in both of the offices just knowing that I would get interrupted it would like inhibit my flow of the milk. I don't know if you could understand it. So like knowing that I could never just kind of be in that moment and do what I have to

do because of interruptions and stuff like that. So it was like that for both offices. Actually, all of the places.

(Defs' Ex. 23, Allen Dep., 236:14-237:01.)

208. A civilian employee, Mary Bibbo, was on vacation for the next two weeks so Sergeant Gibbons offered to allow Allen use of Bibbo's office. Ex. 57, Gibbons Dep., 18:22-19:9.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. It is denied that Plaintiff was allowed to pump in Mary Bibbo's office "for the next two weeks." Plaintiff Allen testified:

Q. Were you in Mary Bibbo's office at any point?
A. I pumped in her office when she was on vacation either a couple of days, at the longest maybe a week.

(Defs' Ex. 23, Allen Dep., 229:07-11.)

Q. You testified when discussing NSU, one of the statements you made was that Officer Gibbons lied in his deposition. Do you remember saying that just a short while ago?
A. Yes.
Q. What is it that you claim Officer Gibbons lied about?
A. Sergeant Gibbons said that he offered me the cafeteria during his deposition. He lied and said that I pumped more than I actually did in Mary Bibbo's office. He lied and said that.

Defendant Gibbons testified:

Q. Why did she stop using Mary Bibbo's room?
A. Mary Bibbo had come back from vacation and was in her office, and they were – they wanted to use it and stop Mary Bibbo from her duties at hand. . . . And approximately shortly thereafter was the complaint that Civilian Bibbo would not leave her office when they wanted to use it.

(Defs' Ex. 57, Gibbons Dep., 19:10-13; 21:11-13)

209. Allen and the other officer continued to use the sign Sergeant Gibbons made for them. Ex. 57, Gibbons Dep., 19:17-21:6.

Response: Plaintiff admits she used the cardboard sign.

210. At this point, Allen began to complain about retrieving the sign from Sergeant Gibbons, so Sergeant Gibbons gave her the sign. Ex. 57, Gibbons Dep., 19:17-21:6.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Denied as stated. Plaintiff Allen testified:

> We voiced out concerns that we weren't comfortable. They had this handmake sign initially . . . that we had to get from this office with three males, including Gibbons, Dougherty and a male police officer. So we communicated to him that we weren't comfortable with like going to get the sign from him and then, you know, we were just communicating our concerns.

(Defs' Ex. 23, Allen Dep., 220:21-221:06.)

211. Allen also complained that Bibbo's office was cold. Ex. 57, Gibbons Dep., 21:7-11.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiff disputes Defendant Gibbons' testimony as his credibility is at issue in this case. Plaintiff did not complain that Ms. Bibbo's office was cold. Plaintiff testified:

> So the next day or the next time that I was to pump I went to Mary Bibbo's office and I told her that I was about to pump and she had no clue what I was talking about. She said like "per who? I'm working." I told her Sergeant Gibbons said that he would relay this information to you. She said she had no clue. She's not getting up. I went to Sergeant Gibbons. I told him what was going on. He's not a confrontational guy. He's very like – you know, if someone goes up to him, which she did, she was kind of in his face. He's like no, you don't have to get out of your office. You can stay in there with her and all of these things. I'm looking at him like we just had a whole conversation the day before where you talking to the Captain. You said it wouldn't be an issue. It was like this big thing. And I'm looking at him. Sergeant you said that you would handle this. He was like, no, no. We can't make her leave her office. The whole conversation yesterday I thought we came to a resolution. . . . I remember going home that day and Lieutenant Waters calling me and leaving me a voicemail and me calling him back. He's like I heard what happened today. It's unacceptable. He called Sergeant Gibbons incompetent. He called him a liar. He said he had no clue what was going on, other than what occurred the day before with her, Gibbons doing to Captain Vann. Other than that, they didn't know that there was an issue with the breastfeeding thing. He said that Sergeant Gibbons was out of line. Again, just calling him incompetent. Saying if I needed anything to call him directly.

(Defs' Ex. 23, Allen Dep., 226:17-228:12.)

212. Allen then began to complain that Bibbo would not let Allen commandeer Bibbo's office at Allen's whim. Ex. 57, Gibbons Dep., 21:11-13.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiff disputes Defendant Gibbons' testimony as his credibility is at issue in this case. Denied. Plaintiff testified:

> So the next day or the next time that I was to pump I went to Mary Bibbo's office and I told her that I was about to pump and she had no clue what I was talking about. She said like "per who? I'm working." I told her Sergeant Gibbons said that he would relay this information to you. She said she had no clue. She's not getting up. I went to Sergeant Gibbons. I told him what was going on. He's not a confrontational guy. He's very like – you know, if someone goes up to him, which she did, she was kind of in his face. He's like no, you don't have to get out of your office. You can stay in there with her and all of these things. I'm looking at him like we just had a whole conversation the day before where you talking to the Captain. You said it wouldn't be an issue. It was like this big thing. And I'm looking at him. Sergeant you said that you would handle this. He was like, no, no. We can't make her leave her office. The whole conversation yesterday I thought we came to a resolution. . . . I remember going home that day and Lieutenant Waters calling me and leaving me a voicemail and me calling him back. He's like I heard what happened today. It's unacceptable. He called Sergeant Gibbons incompetent. He called him a liar. He said he had no clue what was going on, other than what occurred the day before with her, Gibbons doing to Captain Vann. Other than that, they didn't know that there was an issue with the breastfeeding thing. He said that Sergeant Gibbons was out of line. Again, just calling him incompetent. Saying if I needed anything to call him directly.

(Defs' Ex. 23, Allen Dep., 226:17-228:12.)

213. Bibbo did not prohibit Allen from using Bibbo's office, but rather declined to leave every time Allen or the other officer wanted to use Bibbo's office, often multiple times per day. Ex. 57, Gibbons Dep., 22:21-23:5.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiff disputes Defendant Gibbons' testimony as his credibility is at issue in this case. Denied. Defendant Gibbons testified:

> Q. What did Ms. Bibbo say?
> A. She became a little boisterous saying that she had to do her work. She can't leave every moment because she handles delicate contracts for the City of Philadelphia. So I said, very well, let me move them into the kitchen area.

(Defs' Ex. 57, Gibbons Dep., 23:23-24-10.)

214. Sergeant Gibbons attempted to arrange for Bibbo to share her office space with Allen but Bibbo needed the space to perform her work. Ex. 57, Gibbons Dep., 23:16-24:10.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiff disputes Defendant Gibbons' testimony as his credibility is at issue in this case. Denied. Defendant Gibbons testified:

Q. What did Ms. Bibbo say?
A. She became a little boisterous saying that she had to do her work. She can't leave every moment because she handles delicate contracts for the City of Philadelphia. So I said, very well, let me move them into the kitchen area.

(Defs' Ex. 57, Gibbons Dep., 23:23-24-10.)

215. Sergeant Gibbons then scoured the building searching for a room Allen could use that was not too cold, had a lockable door, did not have windows, and was easy for Allen to access. Ex. 57, Gibbons Dep., 22:15.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiff disputes Defendant Gibbons' testimony as his credibility is at issue in this case. Denied. Defendant Gibbons testified:

Q. What did Ms. Bibbo say?
A. She became a little boisterous saying that she had to do her work. She can't leave every moment because she handles delicate contracts for the City of Philadelphia. So I said, very well, let me move them into the kitchen area.

(Defs' Ex. 57, Gibbons Dep., 23:23-24-10.)

216. Sergeant Gibbons identified the building's kitchen as the next in the line of suitable rooms. Ex. 57, Gibbons Dep., 24:9-17.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiff disputes Defendant Gibbons' testimony as his credibility is at issue in this case. Plaintiff admits only that Gibbons instructed Plaintiff and Ms. Newsome to pump in building's lunch room. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 270.)

217. Allen is given access to the kitchen – a windowless, lockable room – to express.

Ex. 57, Gibbons Dep., 24:9-25:6.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiff disputes Defendant Gibbons' testimony as his credibility is at issue in this case. Denied as stated. Plaintiff and Ms. Newsome were instructed to pump in the building's lunch room during lunch hour (between 12:00pm and 2:30pm). (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 271.) When Ms. Allen and Officer Newsome were pumping in the lunch room, people started gathering outside and knocking on the door asking, "what's going on inside." (Id.) One employee who was waiting outside said, "finally," and groaned before entering the lunch room. (Id.) The employee then asked Ms. Allen if she could "come in while you're pumping because I'm a woman." (Id.) Ms. Allen stopped pumping at work. (Id.)

218. The Captain's professionally-made sign arrived and was permanently affixed to the door of the first room about which Allen had complained. Ex. 57, Gibbons Dep., 24:15-25:24.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiff disputes Defendant Gibbons' testimony as his credibility is at issue in this case. Plaintiff testified:

> Q. And that permanent sign was placed on the door to where you were pumping for those six or seven weeks while you were at NSU, correct?
> A. Not for the entire seven weeks. It would have been – I believe that sign came maybe mid-April, maybe the last four weeks that I pumped.

(Defs' Ex. 23, Allen Dep., 223:24-224:07.)

219. The sign reads "Lactating Room." Ex. 57, Gibbons Dep., 25:22-24; Ex. 59, EEO 19-0027 at CITY 2728 (photograph depicting sign with Police insignia reading "Lactating Room, Private-Knock Before Entering.").

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiff admits that the sign reads as Defendants have stated in this paragraph.

220. This entire episode lasted approximately two weeks. Ex. 57, Gibbons Dep., 26:6-10.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiff disputes Defendant Gibbons' testimony as his credibility is at issue in this case. Denied. The entire "episode" lasted approximately seven weeks. (Defs' Ex. 23, Allen Dep., 222:24-223:03; 223:13-16.)

221. Allen claims she was "punished . . . for reporting and seeking medical treatment for unlawful workplace discrimination and harassment" when Sgt. Allen issued her a counseling memorandum. 2d Am. Compl., ¶¶ 237-243.

Response: Defendants' use of the term "claims" is inappropriate because on summary judgment all inferences are to be drawn in the light most favorable to Plaintiffs. Plaintiff Allen admits she was harassed and retaliated against for reporting and seeking medical treatment for unlawful workplace discrimination. Plaintiff admits that the counseling memorandum issued by Defendant Allen was harassing and retaliatory.

222. Allen went home sick four hours into her eight-hour shift on February 27, 2019. Ex. 24, J. Allen DARs.

Response: Plaintiff Allen admits she was forced to take sick leave on February 27, 2019 as a result of the hostile work environment.

223. Allen did not return to work until March 27, 2019. Ex. 24, J. Allen DARs.

Response: Plaintiff admits that her doctor took her out of work from February 28, 2019 to March 27, 2019. By way of further response, on February 28, 2019, at 3:00 pm, Ms. Allen went to a follow-up appointment with her primary care doctor. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 228.) She weighed 102 pounds—she had lost 7 pounds in 2 weeks since her last appointment on February 12, 2019. (Id.) Ms. Allen's doctor was concerned about her rapid weight loss, anxiety, headaches, inability to sleep, and low milk supply and took her out of work for four weeks. (Id.)

224. Allen returned on March 27, 2019 with restricted duty paperwork. Ex. 7, T. Allen Dep., 115:7-17.

Response: It is admitted that on February 28, 2019, Ms. Allen went to a follow-up appointment with her primary care doctor. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 228.) She weighed 102 pounds—she had lost 7 pounds in 2 weeks since her last appointment on February 12, 2019. (Id.) Ms. Allen's doctor was concerned about her rapid weight loss,

anxiety, headaches, inability to sleep, and low milk supply and took her out of work for four weeks. (Id.) Upon notifying Defendants about her need to go out of work regarding her aforementioned medical issues, Defendants failed to notify Ms. Allen of her FMLA rights and she was forced to use her remaining sick time. (Id.) On March 25, 2019, Ms. Allen had a follow-up appointment with her family doctor, and discussed returning to work in a few days pending examination and approval by the City doctor located at the City of Philadelphia Employee Medical Services building at 19th and Fairmount. (Id. at ¶ 230.) Having had time away from the negative work events described above, Ms. Allen had regained two pounds since her last doctor's visit. (Id. at ¶ 231.) On March 26, 2019, Ms. Allen had an appointment with City doctor's office. This was a prerequisite to her returning to work the next day. (Id. at ¶ 232.) At 8:04 am, Ms. Allen texted Sergeant Allen stating that she was at the City doctor. Sergeant Allen did not respond. (Id. at ¶ 233.) At the City doctor's office, Ms. Allen was seen by a certified nurse practitioner named Dinon, who asked Ms. Allen about her anxiety and whether she was on anti-anxiety medication. (Id.) Ms. Allen said, "No, because I'm breastfeeding." (Id.) The nurse practitioner then asked Ms. Allen, "is that something that was a problem at work?" and Ms. Allen said "yes." (Id.) The nurse practitioner was shocked by this and suggested Ms. Allen return to work on Restricted Duty status to address her anxiety and so she could successfully breast pump at work without interference. (Id.) She told Ms. Allen to call and advise her primary care doctor. (Id.) City of Philadelphia Employee Medical Services provided Ms. Allen with the Restricted Duty Certification dated March 26, 2019. (Id. at ¶ 234; Plaintiffs' Ex. YY, Restricted Duty Certification.) After her visit with the City doctor, Ms. Allen called her family doctor as instructed. (Plaintiffs' Verified Second Amended Complaint, at ¶ 235.) Her doctor's office agreed that it was in Ms. Allen's best interest to return to work on Restricted Duty and they wrote a note stating same. (Id.) Ms. Allen was also told to seek counseling from a therapist if she had not done so already. (Id.) Ms. Allen took the Restricted Duty note to the PPD's Safety Office, where she was given Restricted Duty Instructions and assigned a plainclothes daywork shift in the Criminal Intelligence Unit in the DVIC. (Id. at ¶ 236; Plaintiffs' Ex. ZZ, Restricted Duty Instructions.) On March 27, 2019, at 8:05 am, Ms. Allen reported to the supervisors at the Criminal Intelligence Unit in the DVIC and presented them with her Restricted Duty Instructions. (Plaintiffs' Verified Second Amended Complaint, at ¶ 237.)

225. The Police Safety Office returned Allen to work in restricted duty status on March 27, 2019 and did not change Allen's assignment or role. Ex. 7, T. Allen Dep., 137:10-17, 138:3-139:21, 139:22-140:8, 145:9-14, 145:15-21, 145:22-147:6, 147:9-22, 147:23-148:10, 150:11-152:8.

Response: Denied. Prior to March 27, 2019, Plaintiff was assigned to JET, which has the same unit code as the Criminal Intelligence Unit. (Defs' Ex. 7, T. Allen Dep., 138:16-21.) ("[W]e share the same unit code, which is 9829. But juvenile enforcement team is a different function than CIU."). On March 27, 2019, the PPD's Safety Office assigned Plaintiff to a plainclothes

daywork shift in the Criminal Intelligence Unit in the DVIC on restricted duty. (Plaintiffs' Ex. ZZ, Restricted Duty Instructions; Plaintiffs' Ex. KKK, O'Neill Dep., 39:07-11.)

226. Allen's district/unit code was "9828." Ex. 24, J. Allen DARs.

Response: Plaintiff admits that her permanent assignment was JET, which has the same unit code as the Criminal Intelligence Unit—her restricted duty assignment. (Defs' Ex. 7, T. Allen Dep., 138:16-21.) ("[W]e share the same unit code, which is 9829. But juvenile enforcement team is a different function than CIU.").

227. "9828" is the unit code for the Criminal Intelligence Unit, of which JET is a part.

Ex. 7, T. Allen Dep., 138:19-22.

Response: Plaintiff admits that her permanent assignment was JET, which has the same unit code as the Criminal Intelligence Unit—her restricted duty assignment. (Defs' Ex. 7, T. Allen Dep., 138:16-21.) ("[W]e share the same unit code, which is 9829. But juvenile enforcement team is a different function than CIU.").

228. Allen attempted to leverage the ambiguity created by her "9828" district/unit code into a favorable detail in the Criminal Intelligence Unit, rather than JET. Ex. 7, T. Allen Dep., 135:7-22.

Response: Denied. Molly O'Neill confirmed Plaintiff was assigned to the Criminal Intelligence Unit:

> Q. [D]o you recall personally Ms. Allen being assigned to the Criminal Intelligence Unit on restricted duty?
>
> A. Yes.

(Plaintiffs' Ex. KKK, O'Neill Dep., 39:07-11.)

229. However, officers assigned to the non-JET portion of the Criminal Intelligence Unit work on the street. Ex. 7, T. Allen Dep., 139:14-21, Ex. 5, McCarrick Dep., 123:24-124:7.

Response: Plaintiff denies that there was no work available in either the JET or Criminal Intelligence Units on March 27, 2019. Defendant Allen testified that, at the time, there was

another officer—Officer Cortez—working inside. Defs' Ex. 7, T Allen Dep., at 168:11-170:02 ("There was an officer that was currently working in restricted duty . . . That would have been Officer Cortez. . . . He was assigned to the JET unit, but he was working with – he was working in social media. . . . Social media is criminal intelligence. . . . He worked in another area in another workspace with approximately – a couple other officers that also worked back there.")

230. Personnel in restricted duty status cannot work the street. Ex. 27, O'Neill Dep., 55:13-18.

Response: Plaintiffs admit that personnel in restricted duty status cannot work the street.

231. Sergeant Allen spoke to Plaintiff Allen about her assignment in an attempt to resolve the inconsistencies between Allen's purported assignment and established PPD procedures; Sgt. Allen felt that Plaintiff Allen's conduct during that conversation was unprofessional and disrespectful. Ex. 40, Allen Counseling Form, 3/27/19.

Response: It is admitted that Defendant Allen retaliated against Plaintiff Allen by writing her up. The remaining allegations in this paragraph are denied. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶¶ 237-254.)

232. Sergeant Allen issued a counseling form to Allen for insubordination on March 27, 2019. Ex. 40, Allen Counseling Form, 3/27/19.

Response: It is admitted that Sergeant Allen issued Plaintiff Allen a counseling form. It is denied that Plaintiff was guilty of insubordination. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶¶ 237-254.)

233. Sergeant Allen did not discipline Allen. T. Allen Dep., 152:13-14, 156:18-19, 156:20-22, 156:23-157:4, 157:5-10, 157:15-22, 157:23-158:8, 157:9-11, 219:15-17. See also Ex. 10, Dir. 8.9 ("counseling forms are not disciplinary in nature"); Ex. 36, McHugh Dep., 82:7-11 ("[Counseling form is] for training purposes only."); Ex. 21, O'Brien Dep., 81:17-82:5; Ex. 5, McCarrick Dep., 125:4-8 ("[Counseling form is] to correct behavior

and/or acknowledge good work."); Ex 4, McCarrick Aff. at ¶ 31-33; Ex. 6, MacDonald Dep., 79-9-23 (Counseling form is a training tool that may be issued for praise or criticism of work performance); Ex. 19, Ross Dep., 33:5-9 (Counseling memo is "a step between discipline and nothing . . . designed to correct behavior.").

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs dispute the testimony of Defendants McHugh, McCarrick, Allen and MacDonald, as their credibility is in issue in this case. It is denied that Defendant Allen "did not discipline" Plaintiff Allen. Defendant McCarrick testified:

Q. What's a counseling memo?
A. Counseling memo is, serves as a positive or negative discipline tool . . ."
(Defs' Ex. 5, McCarrick Dep., 125:04-06.)

234. Sergeant Allen later confirmed with PPD's Safety Office that Allen had not been moved to another function within the Criminal Intelligence Unit. Ex. 7, T. Allen Dep., 140:2-8.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs dispute Defendant Allen's testimony as their credibility is in issue in this case. Plaintiff's restricted duty instructions clearly state she was assigned to the Criminal Intelligence Unit. (Plaintiffs' Ex. ZZ, Restricted Duty Instructions.) Molly O'Neill, who works in the Safety Office, does not recall Sergeant Allen going to the Safety Office to confirm Plaintiff's restricted duty assignment. (Plaintiffs' Ex. KKK, O'Neill Dep., 45:21-46:04.)

235. Allen claims she was denied equal employment opportunity through a lack of training, 2d Am. Compl., ¶¶ 70-71.

Response: Defendants' use of the term "claims" is inappropriate because on summary judgment all inferences are to be drawn in the light most favorable to Plaintiffs. Plaintiff Allen admits she was denied equal employment opportunity through a lack of training.

236. The Intelligence Bureau is transitioning away from using sworn PPD personnel as analysts in A&I and is instead employing civilians as Law Enforcement Analysts. Ex. 5,

McCarrick Dep., 26:6-18; Ex. 15, Williford Dep., 149:10-18; Ex. 6, MacDonald Dep., 28:21-29:4.The Law Enforcement Analyst position requires minimum acceptable training: Completion of a bachelor's degree program at an accredited college or university with major coursework in criminology, criminal justice, crime science, data science, geography, intelligence analysis, mathematics, statistics, or a closely related social science field[] [and] [t]wo years of experience performing crime information management and intelligence analysis work for a law enforcement agency. Ex. 43, Law Enforcement Analyst Civil Service Job Specification.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs dispute Defendants' testimony as their credibility is in issue in this case. Plaintiff denies the assertions in this paragraph—Plaintiff was told she would be trained for an analyst position, but was ultimately denied such training. Defendant Williford testified:

A. I had a conversation I had with Allen on the 29th, as far as if she's going to be in uniform for one day and plain clothes the other. And that, again, I agree, you know, we can't flip-flop. You're getting training or you're doing peer training, it makes no sense, one day you're here, one day you're not, you can never benefit from the training.
Q. Did you tell McHugh, McCarrick and/or MacDonald that statement, that it didn't make sense for her to be flip-flopping back and forth?
A. Yes.

(Plaintiffs' Ex. III, Williford Dep., 132:04-14.)

237. Alternatively, an individual could qualify for the Law Enforcement Analyst position through "[a]ny equivalent combination of education and experience determined to be acceptable by the Office of Human Resources which has included the completion of a bachelor's degree at an accredited college or university as an educational minimum." Id. (emphasis added).

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs dispute Defendants' testimony as their

credibility is in issue in this case. Plaintiff denies the assertions in this paragraph—Plaintiff was told she would be trained for an analyst position, but was ultimately denied such training. Defendant Williford testified:

> A. I had a conversation I had with Allen on the 29th, as far as if she's going to be in uniform for one day and plain clothes the other. And that, again, I agree, you know, we can't flip-flop. You're getting training or you're doing peer training, it makes no sense, one day you're here, one day you're not, you can never benefit from the training.
> Q. Did you tell McHugh, McCarrick and/or MacDonald that statement, that it didn't make sense for her to be flip-flopping back and forth?
> A. Yes.

(Plaintiffs' Ex. III, Williford Dep., 132:04-14.)

238. Allen does not have a bachelor's degree. Ex. 23, J. Allen Dep., 16:17-17:6.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiff Allen admits she does not have a bachelor's degree.

239. When she was on restricted duty prior to maternity leave in 2018, Allen expressed an interest in working in A&I. Ex. 5, McCarrick Dep., 26:2-18.

Response: Plaintiff admits that she expressed an interest in working in A&I.

240. Officer Tonetta Dawson informed Inspector McCarrick that Allen had experienced personal issues after her pregnancy and was seeking a steady shift. Ex. 5, McCarrick Dep., 26:19-22, 27:15-19.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs dispute Defendant McCarrick's testimony as his credibility is at issue in this case. Plaintiffs admit only that the cited testimony states as Defendants have asserted in this paragraph.

241. Inspector McCarrick saw a win-win opportunity: Allen could work steady daywork, a schedule that would help Allen transition back to work, and the Intelligence Bureau could evaluate Allen's potential as an analyst. Ex. 5, McCarrick Dep., 26:19-27:1.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs dispute Defendant McCarrick's testimony as his credibility is at issue in this case. Plaintiffs point out that in paragraphs 236-238 above, Defendants imply that Plaintiff Allen was unqualified for an analyst position. Conversely, in this paragraph, Defendants state that McCarrick wanted to "evaluate Allen's potential as an analyst." These two statements are contradictory. As such, Defendants' allegations in this paragraph are denied.

242. Inspector McCarrick collaborated with Chief MacDonald to arrange for Allen to work steady daywork. Ex. 5, McCarrick Dep., 28:12-17.

Response: Denied. Plaintiffs deny Defendants' assertions in this paragraph. Ms. Allen went out of work on maternity leave in Spring 2018 and was due to return to work on October 22, 2018. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 47.) Before going out on maternity leave, Ms. Allen put in a request to transfer from her assignment in JET (where she worked rotating day and night shifts for eight years) to the A&I unit in the DVIC—a plainclothes, daytime position that would be more suitable for caring for her newborn child, and would also provide her training necessary to pursue her goal of becoming a police detective. (Id.) On October 12, 2018, Officer Tonetta Dawson, Aide to Chief Inspector MacDonald—the Commander in the DVIC—told Ms. Allen her transfer request was granted. (Id. at ¶ 48.) On October 21, 2018, Ms. Allen texted Officer Dawson to confirm if she should report to JET or A&I the next day. (Id. at ¶ 49.) Officer Dawson said to call Sergeant Williford, a supervisor in A&I, who told Ms. Allen she would need special training before she could transfer to the unit, and instructed her to continue following her current schedule of rotating day and night shifts in JET. (Id.) On November 15, 2018 Officer Dawson texted Ms. Allen saying she would be detailed to A&I on days when JET was on night work. (Id. at ¶ 50.) Rotating between two different units is an uncommon practice in the PPD (Id.) In late-November 2018, Ms. Allen continued to express interest in career advancement, work opportunities and training for a position in A&I to Sergeant Williford, who said he would send her information on the training she needed, but never did. (Id. at ¶ 51.) In December, when Ms. Allen followed up with Sergeant Williford about training opportunities, he said he was "working on it" but that Inspector McCarrick, did not want her to get the A&I position. (Id. at ¶ 52.) On December 7, 2018, Officer Julius Caesar texted Ms. Allen saying "Sergeant Williford said 'I hope Tonetta is not selling Jen a dream because she is never going to be an analyst.'" (Id. at ¶ 53.) In January 2019, Sergeant O'Brien, a supervisor in A&I, told Ms. Allen to "sit with Ta'Nea Jones," a civilian who worked in the unit. (Id. at ¶ 70.) Ms. Jones told Ms. Allen, "I'm limited in what I can show you because you need access to so many different programs that you haven't been trained on, such as Facial Recognition, the Police System, and the Leads System, and you'll need a desk and a computer if you're going to be

producing any work product." (Id.) Ms. Allen asked Defendant McHugh about getting access to a computer and he said she was "still in JET and wouldn't need a desk." (Id. at ¶ 71.) Around the end of January, Chief Inspector MacDonald told Ms. Allen he was going to give her a certain training packet that had previously been given to all the other analysts in A&I but never gave it to her. (Id. at ¶ 104.) On January 29, 2019, Ms. Allen again asked Sergeant Williford about her continued lack of training and work opportunities in A&I. He said, "It seems race related," and promised to talk to Chief Inspector MacDonald. (Id. at ¶ 105.) On February 4, 2019 (immediately after Plaintiffs complained about Defendant Younger) at approximately 8:52 am, Sergeant Allen told Ms. Allen that her desk was being moved from the A&I section. (Id. at ¶ 122.) Ms. Allen asked where the order to move her desk was coming from, and Sergeant Allen responded that the order was coming from Chief Inspector MacDonald and Inspector McCarrick. (Id.) On February 20, 2019, Ms. Allen went to a meeting with Inspector McCarrick and Sergeant Allen. (Id. at ¶ 152.) Inspector McCarrick told Ms. Allen that he "got a call from Dungan Road," and said, "In your EEO complaint you asked not to work with Curtis Younger, correct?" (Id.) Ms. Allen attempted to clarify she didn't want to be moved but Inspector McCarrick interrupted: "Captain Abrams called and said to have you go back to working with JET. Don't go back to A&I." (Id.) On March 27, 2019, at 8:05 am, Ms. Allen reported to the supervisors at the Criminal Intelligence Unit in the DVIC and presented them with her Restricted Duty Instructions. (Id. at ¶ 237.) At 8:50 am, Sergeant Allen then said, "You are to remove all of your things from your desk over in A&I." (Id. at ¶ 242.)

It is further denied that Defendants McCarrick and MacDonald "collaborated" to arrange an "accommodation" for Plaintiff. Defendant Williford testified that in December 2019, he was "working on the schedule so that Ms. Allen would not have to flip-flop between JET and A&I." (Plaintiffs' Ex. III, Williford Dep., 30:02-05.) Defendant Williford further testified:

> Q. Why were you working on a schedule for Ms. Allen so she wouldn't need to flip-flop between JET and A&I?
>
> A. I was trying to accommodate Officer Allen.
>
> Q. Why?
>
> A. To accommodate. She just had a baby. Her husband was on a flip-flop schedule. He's on rotating. And I was basically trying to make sure that she had some kind of normalcy . . ."

(Plaintiffs' Ex. III, Williford dep., 30:16-23.)

> Q. Were you ever able to work out a schedule so that Ms. Allen would not need to flip-flop between JET and A&I?
>
> A. Not completely.
>
> Q. What do you mean by that?
>
> A. She got detailed out.

Q. When?

A. . . . I think it was February of 2019.
(Plaintiffs' Ex. III, Williford Dep., 31:03-11.)

Defendant Williford further testified:

> I had a conversation with Jen of ten minutes and it was basically she told me -- I said, hey, I understand you're upset. She said, yeah, I'm in uniform today. What's going on? I said, why are you in uniform? She said, well, Sergeant Allen told me she needed me -- they're short and we had to serve warrants. I said, well, okay. Well, I don't understand why, because you're supposed to be in A&I. She said yeah. I said, but let me remind you, Monday, Martin Luther King Day, you did voluntarily work the street. And she's like, well, I didn't really -- I said, you volunteered. You're supposed to write a product and you didn't. I said, so you can't flip-flop back and forth. If you're going to be in A&I one day, you can't volunteer your service another day. I said, but all and all, this is a supervisor issue, let me talk to Sergeant Allen and I will have information for you tomorrow morning. But just to let you know, be in uniform tomorrow because I don't know what's going on. This is the first I'm hearing of this." (Plaintiffs' Ex. III, Williford 86:02-22.)

Defendant Williford further testified:

> I had a conversation I had with Allen on the 29th, as far as if she's going to be in uniform for one day and plain clothes the other. And that, again, I agree, you know, we can't flip-flop. You're getting training or you're doing peer training, it makes no sense, one day you're here, one day you're not, you can never benefit from the training.
>
> Q. Did you tell McHugh, McCarrick and/or MacDonald that statement, that it didn't make sense for her to be flip-flopping back and forth?
>
> A. Yes.

(Plaintiffs' Ex. III, Williford Dep., 132:04-14.)

243. Inspector McCarrick spoke with Sergeant Allen to ensure Allen's absence on nightwork would not negatively impact officer safety. Ex. 5, McCarrick Dep., 27:21-28:8.

Response: It is admitted that Plaintiff Allen's absence from JET did not create an officer safety issue.

244. Allen trained with civilian analyst Ta'Nea Jones, a Black female employee. Ex. 23, J. Allen Dep., 62:18-63:5.

Response: Denied. Defendants mischaracterize Plaintiff's testimony. Plaintiff testified she "had the opportunity to ask her questions about how she performed her job." (Defs' Ex. 23, J. Allen Dep., 62:18-63:05.) In the testimony cited by Defendants, Plaintiff also stated "Ta'Nea Jones expressed that she was an overworked employee and it was because she was black. She said they always relied on her and never ever relied on Sharon. And I forget the other young lady's name. And she said she doesn't understand why they're telling her to sit with me, and it's because she's black. So, yes, we have had conversations as well." (J. Allen Dep., 63:05-14.) Ms. Jones also told Ms. Allen, "I'm limited in what I can show you because you need access to so many different programs that you haven't been trained on, such as Facial Recognition, the Police System, and the Leads System, and you'll need a desk and a computer if you're going to be producing any work product." (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 70.) She also said she didn't have time to train Ms. Allen because she was bombarded with work. (Id.) Ms. Allen asked Defendant McHugh about getting access to a computer and he said she was "still in JET and wouldn't need a desk." (Id. at ¶ 71.)

245. Ta'Nea Jones has since been promoted. Ex. 6, MacDonald Dep., 27:15-17.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs dispute Defendant McCarrick's testimony as his credibility is at issue in this case. Plaintiffs admit only that the quoted testimony states as Defendants have asserted in this paragraph. By way of further response, Ta'Nea Jones expressed that she was an overworked employee and it was because she was black. (Defs' Ex. 23, J. Allen Dep., 63:05-14.)

246. Allen went one month without access to several computer programs but received access when she asked for access. Ex. 23, J. Allen Dep., 64:14-65:17.

Response: It is admitted that, unlike everyone else in the unit, Plaintiff went at least one month without access to a computer. It is denied that Plaintiff "received access when she asked for access." Ms. Allen asked Defendant McHugh about getting access to a computer and he said she was "still in JET and wouldn't need a desk." (Plaintiffs' Verified Second Amended Complaint, at ¶ 71.) Moreover, Plaintiff testified:

Q. Who do you allege was responsible for that month period where you were denied access to the computer programs?

A. Sergeant Williford, McCarrick, MacDonald, Sergeant O'Brien, McHugh.

Q. Why is it that you believe Sergeant Williford was responsible for not granting you access to the computer programs?

A. He had knowledge of me not getting training. He was the one who came to me saying that I need training.

Q. Did you specifically ask him for access to the computer program?

A. I believe so.

Q. How did he respond to you?

A. Or how to get it. I don't remember. I was very vocal and very – I was reaching out for help several times.

(Defs' Ex. 23, J. Allen Dep., 64:19-65:17.)

Plaintiff admits that after she asked Defendants for access to a computer several times and was denied, she asked Sergeant Kyler for access to a computer and he assisted her with getting access. (J. Allen Dep., 64:14-18; 62:14-19.) However, Sergeant Kyler did not immediately give Plaintiff access to a computer:

Q. When did you have an assigned computer or workstation or a desk?

A. January. I had to ask for one several times . . . I had asked Lieutenant McHugh for a desk prior to that. I want to say the beginning of January when I initially asked him. . . . But Sergeant Kyler I asked him in the middle of January . . . He told me to ask Lieutenant McHugh so I had asked him again.

Q. Was Sergeant Kyler the first person you asked for a desk on the A&I side?

A. Lieutenant McHugh. I had initially asked Lieutenant McHugh and then I asked Sergeant Kyler. Sergeant Kyler told me to ask Lieutenant McHugh again so I asked him again.

(Defs' Ex. 23, J. Allen Dep. 54:01-24.)

247. Allen blames this on Williford, McHugh, O'Brien, McCarrick, and MacDonald.

Ex. 23, J. Allen Dep., 64:14-65:17.

Response: It is admitted that Plaintiff testified:

Q. Who do you allege was responsible for that month period where you were denied access to the computer programs?

A. Sergeant Williford, McCarrick, MacDonald, Sergeant O'Brien, McHugh.

(Defs' Ex. 23, J. Allen Dep. 64:23-65:04.)

248. Yet, Allen admits the she immediately received access to her desired computer programs upon asking Sergeant Kyler. Ex. 23, J. Allen Dep., 64:14-18.

Response: Plaintiff Allen denies that she "immediately received access to her desired computer." Ms. Allen asked Defendant McHugh about getting access to a computer and he said she was "still in JET and wouldn't need a desk." (Plaintiffs' Verified Second Amended Complaint, at ¶ 71.) Moreover, Plaintiff testified:

Q. Who do you allege was responsible for that month period where you were denied access to the computer programs?

A. Sergeant Williford, McCarrick, MacDonald, Sergeant O'Brien, McHugh.

Q. Why is it that you believe Sergeant Williford was responsible for not granting you access to the computer programs?

A. He had knowledge of me not getting training. He was the one who came to me saying that I need training.

Q. Did you specifically ask him for access to the computer program?

A. I believe so.

Q. How did he respond to you?

A. Or how to get it. I don't remember. I was very vocal and very – I was reaching out for help several times.

(Defs' Ex. 23, J. Allen Dep., 64:19-65:17.)

Plaintiff admits that after she asked Defendants for access to a computer several times and was denied, she asked Sergeant Kyler for access to a computer and he assisted her with getting access. (Defs' Ex. 23, J. Allen Dep., 64:14-18; 62:14-19.) However, Sergeant Kyler did not immediately give Plaintiff access to a computer:

Q. When did you have an assigned computer or workstation or a desk?

A. January. I had to ask for one several times . . . I had asked Lieutenant McHugh for a desk prior to that. I want to say the beginning of January when I initially asked him. . . . But Sergeant Kyler I asked him in the middle of January . . . He told me to ask Lieutenant McHugh so I had asked him again.

Q. Was Sergeant Kyler the first person you asked for a desk on the A&I side?

A. Lieutenant McHugh. I had initially asked Lieutenant McHugh and then I asked Sergeant Kyler. Sergeant Kyler told me to ask Lieutenant McHugh again so I asked him again.

(Defs' Ex. 23, J. Allen Dep. 54:01-24.)

249. Allen complains she was not immediately given a desk in A&I. 2d Am. Compl. at ¶¶ 70-72 (ECF No. 49).

Response: Defendants' use of the term "complains" is inappropriate because on summary judgment all inferences are to be drawn in the light most favorable to Plaintiffs. There is no dispute that Plaintiff was not immediately given a desk in A&I.

250. Lieutenant McHugh (white male) offered to share his desk with Allen. Ex. 23, J. Allen Dep., 59:11-60:24.

Response: Denied. Ms. Allen asked Defendant McHugh about getting access to a computer and he said she was "still in JET and wouldn't need a desk." (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 71.) Plaintiff Allen testified:

Q. Does this help refresh your recollection that Lieutenant McHugh the week of January 7th to 11th offered to have you share your desk with him?

A. Yes. And can you understand that a couple of minutes ago I also said cops and supervisors don't share desks. This is why I said I don't remember, but if he did, cops and supervisors don't share desks.

(Defs' Ex. 23, J. Allen Dep., 60:08-16.)

251. Allen refused the offer. Ex. 23, J. Allen Dep., 60:12-16.

Response: Denied. Defendants have mischaracterized Plaintiffs' testimony. Ms. Allen asked Defendant McHugh about getting access to a computer and he said she was "still in JET and wouldn't need a desk." (Plaintiffs' Verified Second Amended Complaint, at ¶ 71.) Plaintiff Allen testified:

Q. Does this help refresh your recollection that Lieutenant McHugh the week of January 7th to 11th offered to have you share your desk with him?

A. Yes. And can you understand that a couple of minutes ago I also said cops and supervisors don't share desks. This is why I said I don't remember, but if he did, cops and supervisors don't share desks.

(Defs' Ex. 23, J. Allen Dep., 60:08-16.)

252. Allen asked Lieutenant McHugh if she could join A&I, to which McHugh responded, "Yeah, we would love to have you . . . just put transfer papers in." McHugh Dep., 22:2-6.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs dispute Defendant McHugh's testimony as his credibility is at issue in this case. Plaintiffs point out that in paragraphs 236-238 above, Defendants imply that Plaintiff Allen was unqualified for an analyst position. Conversely, in this paragraph, Defendants state that Defendant McHugh told Plaintiff "we would love to have you." These two statements are contradictory. As such, Defendants' allegations in this paragraph are denied.

253. Allen never requested a transfer to A&I. Ex. 23, J. Allen Dep., 21:23-24:8.

Response: Denied. Plaintiff testified that she did request to go to A&I:

Q. Prior to leaving on your maternity leave in the spring of 2018, did you make a request to transfer to A&I?

A. Yes. I mean, I made the request when I was pregnant.

Q. So while you were pregnant before you went out on leave, you made a request for a transfer to A&I?

A. Yes.

Q. Was that a written request?

A. It was a memo.

Q. A memo. Who did you submit the memo to?

A. Sergeant Williams.

(Defs' Ex. 23, J. Allen Dep., 21:23-22:13.)

254. Allen did not need a desk because Allen was training with experienced analysts at their desks. Ex. 36, McHugh Dep., 23:6-11.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs dispute Defendant McHugh's testimony as his credibility is at issue in this case. Plaintiff denies Defendants' assertion that "Allen did not need a desk." Ta'Nea Jones told Plaintiff, "I'm limited in what I can show you because you need access to so many different programs that you haven't been trained on, such as Facial Recognition, the Police System, and the Leads System, and you'll need a desk and a computer if you're going to be producing any work product." (Plaintiffs' Verified Second Amended Complaint, at ¶ 70.)

255. Allen was given a desk and a computer in January 2019. Ex. 15, O'Brien Dep., 18:23-19:10.

Response: Denied as stated. Plaintiff admits that after she asked Defendants for access to a computer several times and was denied, she asked Sergeant Kyler for access to a computer and he assisted her with getting access. (J. Allen Dep., 64:14-18; 62:14-19.) However, Sergeant Kyler did not immediately give Plaintiff access to a computer:

> Q. When did you have an assigned computer or workstation or a desk?
>
> A. January. I had to ask for one several times . . . I had asked Lieutenant McHugh for a desk prior to that. I want to say the beginning of January when I initially asked him. . . . But Sergeant Kyler I asked him in the middle of January . . . He told me to ask Lieutenant McHugh so I had asked him again.
>
> Q. Was Sergeant Kyler the first person you asked for a desk on the A&I side?
>
> A. Lieutenant McHugh. I had initially asked Lieutenant McHugh and then I asked Sergeant Kyler. Sergeant Kyler told me to ask Lieutenant McHugh again so I asked him again.

(Defs' Ex. 23, J. Allen Dep. 54:01-24.)

256. Allen worked only two days in A&I prior to January 7, 2019. Ex. 24, J. Allen DARs.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs are unable to admit or deny this paragraph, as Defendants did not cite to the page(s) of the twenty-one (21) page document which is the source upon which they rely in support of their assertions in this paragraph as required under the Court's Policies and Procedures. See also Perkins v. City of Elizabeth, 412 F. App'x

554, 555 (3d Cir. 2011) ("We emphasize, as did the District Court, that a court is not obliged to scour the record to find evidence that will support a party's claims."). Although Plaintiff tried to locate the source in the document, she was unable to do so.

257. Allen claims she "was denied career-advancing training and job assignments because of her status as a black [sic] female." 2d Am. Compl., p. 11.

Response: Defendants' use of the term "claims" is inappropriate because on summary judgment all inferences are to be drawn in the light most favorable to Plaintiffs. It is admitted that Allen was denied career-advancing training and job assignments because of her status as a Black female.

258. Allen received peer training from officers throughout A&I and Realtime Crime Center. Ex. 15, Williford Dep., 13:3-9.

Response: Denied. Defendant Williford further testified:

A. I had a conversation I had with Allen on the 29th, as far as if she's going to be in uniform for one day and plain clothes the other. And that, again, I agree, you know, we can't flip-flop. You're getting training or you're doing peer training, it makes no sense, one day you're here, one day you're not, you can never benefit from the training.

Q. Did you tell McHugh, McCarrick and/or MacDonald that statement, that it didn't make sense for her to be flip-flopping back and forth?

A. Yes.

(Plaintiffs' Ex. III, Williford Dep., 132:04-14.)

259. Specialized training is not required to begin working in A&I, as the position offers on-the-job training opportunities. Ex. 15, Williford Dep., 146:6-10.

Response: Denied. This paragraph conflicts with Defendants' assertions in paragraph 273 below in which Defendants assert that "A&I analysists are expected to complete most of the following trainings: . . ." Additionally, Ta'Nea Jones told Plaintiff, "I'm limited in what I can show you because you need access to so many different programs that you haven't been trained on, such as Facial Recognition, the Police System, and the Leads System, and you'll need a desk and a computer if you're going to be producing any work product." (Plaintiffs' Verified Second Amended Complaint, at ¶ 70.) As such, Defendants' assertions in this paragraph are denied.

260. Chief MacDonald instructed Sergeant Williford to "make [Allen] comfortable, make sure we give her everything possible to accommodate her." Ex. 15, Williford Dep., 13:18-21.

Response: Plaintiffs dispute Defendant Williford's testimony since his credibility is in dispute in this matter. Elsewhere in his deposition, Defendant Williford testified:

A. I had a conversation I had with Allen on the 29th, as far as if she's going to be in uniform for one day and plain clothes the other. And that, again, I agree, you know, we can't flip-flop. You're getting training or you're doing peer training, it makes no sense, one day you're here, one day you're not, you can never benefit from the training.

Q. Did you tell McHugh, McCarrick and/or MacDonald that statement, that it didn't make sense for her to be flip-flopping back and forth?

A. Yes.

(Plaintiffs' Ex. III, Williford Dep., 132:04-14.)

As such, Defendants' assertions in this paragraph are denied.

261. Allen informed Sergeant Williford that her familial responsibilities required a steady daywork shift. Sergeant Williford spoke to Chief MacDonald, who told Sergeant Williford to "make it happen, make [Allen] comfortable." Ex. 15, Williford Dep., 20:11-22.

Response: Plaintiffs dispute Defendant Williford's testimony since his credibility is in dispute in this matter. Elsewhere in his deposition, Defendant Williford testified:

A. I had a conversation I had with Allen on the 29th, as far as if she's going to be in uniform for one day and plain clothes the other. And that, again, I agree, you know, we can't flip-flop. You're getting training or you're doing peer training, it makes no sense, one day you're here, one day you're not, you can never benefit from the training.

Q. Did you tell McHugh, McCarrick and/or MacDonald that statement, that it didn't make sense for her to be flip-flopping back and forth?

A. Yes.
(Plaintiffs' Ex. III, Williford Dep., 132:04-14.)

As such, Defendants' assertions in this paragraph are denied.

262. Allen's accommodation began effective December 17, 2018. Ex. 24, J. Allen DARs.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs are unable to admit or deny this paragraph, as Defendants did not cite to the page(s) of the twenty-one (21) page document which is the source upon which they rely in support of their assertions in this paragraph as required under the Court's Policies and Procedures. See also Perkins v. City of Elizabeth, 412 F. App'x 554, 555 (3d Cir. 2011) ("We emphasize, as did the District Court, that a court is not obliged to scour the record to find evidence that will support a party's claims."). Although Plaintiff tried to locate the source in the document, she was unable to do so.

263. Allen spent the two previous weeks in full-day trainings. Ex. 24, J. Allen DARs.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs are unable to admit or deny this paragraph, as Defendants did not cite to the page(s) of the twenty-one (21) page document which is the source upon which they rely in support of their assertions in this paragraph as required under the Court's Policies and Procedures. See also Perkins v. City of Elizabeth, 412 F. App'x 554, 555 (3d Cir. 2011) ("We emphasize, as did the District Court, that a court is not obliged to scour the record to find evidence that will support a party's claims."). Although Plaintiff tried to locate the source in the document, she was unable to do so.

264. Allen spent the next three weeks on vacation. Ex. 24, J. Allen DARs.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs are unable to admit or deny this paragraph, as Defendants did not cite to the page(s) of the twenty-one (21) page document which is the source upon which they rely in support of their assertions in this paragraph as required under the Court's Policies and Procedures. See also Perkins v. City of Elizabeth, 412 F. App'x 554, 555 (3d Cir. 2011) ("We emphasize, as did the District Court, that a court is not obliged to scour the record to find evidence that will support a party's claims."). Although Plaintiff tried to locate the source in the document, she was unable to do so.

265. Allen received eight hours of Facial Recognition training on February 15, 2019. Ex. 24, J. Allen DARs.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs are unable to admit or deny this paragraph, as Defendants did not cite to the page(s) of the twenty-one (21) page document which is the source upon which they rely in support of their assertions in this paragraph as required under the Court's Policies and Procedures. See also Perkins v. City of Elizabeth, 412 F. App'x 554, 555 (3d Cir. 2011) ("We emphasize, as did the District Court, that a court is not obliged to scour the record to find evidence that will support a party's claims."). Although Plaintiff tried to locate the source in the document, she was unable to do so. Notwithstanding, Plaintiff admits she received facial recognition training:

Q. Did you receive facial recognition training?

A. Yes. I also had a training that I was scheduled to receive, but it was taken away from me after my complaint was filed.

(Defs' Ex. 23, Allen Dep., 110:21-111:01.)

266. From December 17, 2018 through to February 27, 2019, a period of fifty-three workdays Allen: worked a total of eighteen days in A&I; spent fourteen days on vacation; called out sick six times; spent three days in training; spent one day in court; and worked seven and one-half shifts with JET under the supervision of Sergeant Allen. Ex. 24, J. Allen DARs.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs are unable to admit or deny this paragraph, as Defendants did not cite to the page(s) of the twenty-one (21) page document which is the source upon which they rely in support of their assertions in this paragraph as required under the Court's Policies and Procedures. See also Perkins v. City of Elizabeth, 412 F. App'x 554, 555 (3d Cir. 2011) ("We emphasize, as did the District Court, that a court is not obliged to scour the record to find evidence that will support a party's claims."). Although Plaintiff tried to locate the source in the document, she was unable to do so.

267. Allen worked off-and-on in A&I over a period of thirty-three workdays before filing an internal EEO complaint. See Ex. 24, J. Allen DARs.; Ex. 42, Allen EEO Complaint, 1/30/19.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs are unable to admit or deny this

paragraph, as Defendants did not cite to the page(s) of the twenty-one (21) page document which is the source upon which they rely in support of their assertions in this paragraph as required under the Court's Policies and Procedures. See also Perkins v. City of Elizabeth, 412 F. App'x 554, 555 (3d Cir. 2011) ("We emphasize, as did the District Court, that a court is not obliged to scour the record to find evidence that will support a party's claims."). Although Plaintiff tried to locate the source in the document, she was unable to do so.

268. Sergeant Williford is a Black male. Ex. 15, Williford Dep., 168:10-11.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. It is admitted that Defendant Williford is a Black male.

269. Sergeant Williford tracks the training opportunities distributed to personnel assigned to the Intelligence Bureau. Ex. 15, Williford Dep., 168:6-22.

Response: Plaintiffs dispute Defendant Williford's testimony since his credibility is in dispute in this matter. It is denied that the material cited by Defendants—Williford Dep., 168:10-11—supports the assertion that Defendant Williford "tracks training opportunities distributed to personnel assigned to the Intelligence Bureau.

270. According to Sergeant Williford, new employees cannot receive all necessary trainings in thirty-three workdays. Ex. 15, Williford Dep., 14:2-10.

Response: It is denied that the cited material supports Defendants' assertions in this paragraph. Elsewhere in his deposition, Defendant Williford testified:

A. I had a conversation I had with Allen on the 29th, as far as if she's going to be in uniform for one day and plain clothes the other. And that, again, I agree, you know, we can't flip-flop. You're getting training or you're doing peer training, it makes no sense, one day you're here, one day you're not, you can never benefit from the training.
Q. Did you tell McHugh, McCarrick and/or MacDonald that statement, that it didn't make sense for her to be flip-flopping back and forth?
A. Yes.

(Plaintiffs' Ex. III, Williford Dep., 132:04-14.)

271. This lawsuit caused Sergeant Williford to reflect on how he distributes training opportunities: As I kind of reflect from the last couple days before this deposition, I'm like did I do [McCowan and Allen] disservice by not -- well, also, Officer Allen – not giving her training, did I miss some training. I know as a black male I tried to look out for everybody, okay. I am black. I'm like, did I miss something. I mean, I always try to make sure everything is across the board equal. So I went and tried -- I took her file from as far as they reach back, I reached back from 2017 to present, and I'm a like am I missing something. And I found that, no, I'm not. Everything was fair. Everything was across the board equal. There wasn't a disproportional amount of white officers versus black officers going to training. In fact, it looks like more black officers get more training than white. So that was my little personal homework assignment I gave myself. Ex. 15, Williford Dep., 168:6-22.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Moreover, Plaintiffs dispute Defendant Williford's testimony as his credibility in this case is in dispute. Defendant Williford's self-serving statement that he "reviewed training records" immediately prior to his deposition and determined that "everything was across the board equal" is denied. Defendant Williford was asked where he found said information, and responded "In my office." (Williford Dep., 168:23 – 169:01.) Defendant Williford was then asked if it was his practice to track the gender and race of individuals approved for training, and he said "I did my own—this is my own personal thing because I wanted to make sure I wasn't missing something for me. It's my personal notes." (Id. at 169:06-14.) Plaintiff objects to these "facts" pursuant to Fed. R. Civ. P. 56(c)(2) because Defendants cannot produce admissible evidence to support the purported facts. The material cited by Defendants in support of these contentions, Defendant Williford's "personal notes" are hearsay documents precluded by Federal Rule of Evidence 801. Moreover, the evidence must be excluded under Federal Rule of Evidence 403 because its probative value is substantially outweighed by the danger of unfair prejudice to the Plaintiffs for the following reasons: (1) there is no evidence of the identities of the alleged individuals who received the trainings; (2) Defendant Williford claimed he created the notes immediately prior to his deposition to avoid liability in this matter; (3) Defendant Williford decided what information to include and what evidence to consider in making these statements; (4) Defendant Williford's post-litigation notes are not a business record; (5) Plaintiff had no opportunity to cross examine Defendant Williford on this fabricated evidence.

272. Specialized trainings offered by outside vendors occur sporadically and are not always available, let alone available on-demand. Ex. 15, Williford Dep., 14:14-15:4, 16:23-24.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Moreover, Plaintiffs dispute Defendant Williford's testimony as his credibility in this case is in dispute. Elsewhere in his deposition, Defendant Williford testified:

> A. I had a conversation I had with Allen on the 29th, as far as if she's going to be in uniform for one day and plain clothes the other. And that, again, I agree, you know, we can't flip-flop. You're getting training or you're doing peer training, it makes no sense, one day you're here, one day you're not, you can never benefit from the training.
>
> Q. Did you tell McHugh, McCarrick and/or MacDonald that statement, that it didn't make sense for her to be flip-flopping back and forth?
>
> A. Yes.

(Plaintiffs' Ex. III, Williford Dep., 132:04-14.)

273. A&I analysts would eventually be expected to complete most of the following trainings: Biotech; DHS Security Clearance; 28 CFR Part 23; Civil Rights & Civil Liberties (CRCL); DVIC Privacy Policy; Principle of Intelligence Writing & Briefing (PIWB); Vulnerability, threat and Risk Assessment (VTRA); Suspicious Activity Reporting (SAR)/Nationwide SAR Initiative (NSI); I-Tag G; Intelligence Led Decision Making; Dataveillance – OSINT & social Media Research / Investigation Training; Foundation of Analysis Training (FIAT); Intelligence Cycle; Basic Intelligence and Threat Analysis Course (BITAC); Homeland Security Information Network (HSIN); HSIN Exchange; HSDN (Homeland Secure Data Network); Open Source Practitioner Course (OSINT); Narrative Report Writing; Technology Threats & Trends Narcotics Investigation; Social Media 101; Analyst Notebook i2; SMART Policing Analysis

Training; Data-Driven Approaches to Crime and Traffic Safety (DDACTS); InfoShare; RTCC Portal; Police Symbology; Quarterly Analysts Workshop; Developing Strategic Intelligence Products; Intro to Gang Identification and Investigations; NCIS/PCIC Training; Outlaw Motorcycle Gangs; Biotech; Facial recognition; Federal privacy training; Human trafficking; Gathering intelligence; Vulnerability assessment; Social media; Digital evidence; Surveillance detection; Facial recognition; Federal privacy training; Human trafficking; Gathering intelligence; Vulnerability assessment; Social media; Digital evidence; Surveillance detection; and more. Ex. 4, McCarrick Aff., ¶ 34. See also Ex. 53, DVIC Analyst Training Plan 2017.

Response: It is admitted that Plaintiff was not provided any of the above-mentioned trainings.

274. Allen worked a total of eighteen shifts in A&I. Ex. 24, J. Allen DARs.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs are unable to admit or deny this paragraph, as Defendants did not cite to the page(s) of the twenty-one (21) page document which is the source upon which they rely in support of their assertions in this paragraph as required under the Court's Policies and Procedures. See also Perkins v. City of Elizabeth, 412 F. App'x 554, 555 (3d Cir. 2011) ("We emphasize, as did the District Court, that a court is not obliged to scour the record to find evidence that will support a party's claims."). Although Plaintiff tried to locate the source in the document, she was unable to do so.

275. Allen never requested a transfer to A&I. Ex. 23, J. Allen Dep., 21:23-24:8.

Response: Denied. Plaintiff testified that she did request to go to A&I:

Q. Prior to leaving on your maternity leave in the spring of 2018, did you make a request to transfer to A&I?

A. Yes. I mean, I made the request when I was pregnant.

Q. So while you were pregnant before you went out on leave, you made a request for a transfer to A&I?

A. Yes.

Q. Was that a written request?

A. It was a memo.

Q. A memo. Who did you submit the memo to?

A. Sergeant Williams.

(Defs' Ex. 23, J. Allen Dep., 21:23-22:13.)

Q. Did you ever submit a memo to the Transfer Review Board seeking a transfer to A&I?

A. I was told that I didn't have to because all of the units fell under the Intelligence Bureau so I didn't have to.

Q. Who told you you didn't have to submit a transfer request through the Transfer Review Board?

A. Sergeant Williams. He was the person that I gave my memo to. If I needed any further paperwork he would have let me know.

(Defs' Ex. 23, J. Allen Dep., 122:08-20.)

276. Allen was to work in A&I when JET rotated to nightwork for Allen's first few months back at work, not to remain in A&I permanently. Ex. 5, McCarrick Dep., 28:12-17.

Response: Denied. Plaintiff testified that she was being detailed to A&I in January 2019. (J. Allen Dep., 123:04-13.) Defendant Williford testified:

A. I had a conversation I had with Allen on the 29th, as far as if she's going to be in uniform for one day and plain clothes the other. And that, again, I agree, you know, we can't flip-flop. You're getting training or you're doing peer training, it makes no sense, one day you're here, one day you're not, you can never benefit from the training.

Q. Did you tell McHugh, McCarrick and/or MacDonald that statement, that it didn't make sense for her to be flip-flopping back and forth?

A. Yes.

(Plaintiffs' Ex. III, Williford Dep., 132:04-14.)

277. McCowan took authorized FMLA leave effective July 10, 2019. Ex. 60, McCowan DARs.

Response: Denied as stated. Plaintiff notes that Defendants cited to "Ex. 60, McCowan DARs" however no such exhibit is attached to Defendants' motion.

By way of further response, on June 26, 2019, Ms. McCowan notified Ms. Heather McCaffrey and Ms. Patricia Sullivan in the police personnel office, stating she was exercising her rights under the FMLA to take time off from work to treat a qualifying medical condition for which she was under the care of a physician. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 223.) On July 1, 2019, Ms. McCowan's physicians submitted the executed forms and certifications necessary to take Ms. McCowan out of work on FMLA leave. (Id. at ¶ 224.) On July 10, 2019, Sergeant Laskowski texted Ms. McCowan, "No one seems to know anything about your FMLA status. Checked with personnel and they don't have anything." (Id. at ¶ 225.) On July 11, 2019, Ms. Sullivan at police personnel left a voicemail for Ms. McCowan stating she received her FMLA paperwork but that her FMLA paperwork would not be processed "unless she submitted a formal memo requesting FMLA leave." (Id. at ¶ 226.)

Heather McCaffrey testified at her deposition that Plaintiff's FMLA paperwork was never processed:

> Q. Do you recall receiving Ms. McCowan's FMLA paperwork?
>
> A. If you give me one second, my employee, who handled it, just e-mailed me, because I asked him to research it. Because, again, I don't personally handle this, and with so many employees, I don't remember if she did or not. And he's telling me, no, we have no record of an FMLA being filed.
>
> Q. And how would he have figured that out?
>
> A. He said he searched his -- we have a leave database. We also keep copies of the paperwork, we have files, and so he checked everywhere that it would be, and he said there's no record that we received it.

(Plaintiffs' Ex. OOO, McCaffrey Dep., 39:19-40:10.)

278. On July 30, 2019, Allen was told to report to a new restricted duty assignment detail at the Tow Squad the following day. 2d Am. Compl., ¶ 278.

Response: It is admitted that on July 30, 2019, Plaintiff Allen was reassigned to "Police Tow Squad" and her hours of work were changed from:

> A. Ms. Allen's current schedule of steady Monday-Friday daytime work (8:30 am to 4:30pm) with weekends-off to

B. A completely different schedule rotating between daytime and nighttime shifts (7:00 am to 3:00 pm, 3:00 pm to 11:00 pm) with rotating days off.

(Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 278.)

279. A few days earlier, O'Neill had received a call from an administrative supervisor at NSU, possibly Lieutenant Waters, with a request to move Allen from NSU. Ex. 27, O'Neill Dep., 25:6-29:1.

Response: Denied. Ms. O'Neill never stated she received a call "a few days earlier." (Defs' Ex. 27, O'Neill Dep., 25:6-29:1.) Ms. O'Neill stated she could not recall whether she received the call on July 30, 2019. (O'Neill Dep., 28:17 – 29:01.) O'Neill testified that she could not recall who she received the call from. (O'Neill Dep., 25:6-29:1.) However, she stated that "I got a call from a supervisor at neighborhood services unit **who had an issue and said that there were some personality conflicts and could we find [Plaintiff Allen] a different assignment.** I don't recall anything further than that." (O'Neill Dep., 25:21-26:02.)

280. The NSU supervisor asked O'Neill about moving Allen to resolve personality conflicts within NSU. Ex. 27, O'Neill Dep., 25:21-26:1.

Response: It is admitted that O'Neill testified, "I got a call from a supervisor at neighborhood services unit **who had an issue and said that there were some personality conflicts and could we find [Plaintiff Allen] a different assignment.** I don't recall anything further than that." (Defs' Ex. 27, O'Neill Dep., 25:21-26:02.)

281. O'Neill instructed the supervisor to seek approval from the Deputy Commissioner to whom they reported, Deputy Commissioner Sullivan. Ex. 27, O'Neill Dep., 26:5-15.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. This paragraph is denied as stated. Ms. O'Neill testified that "Sullivan was on vacation." (Defs' Ex. 27, O'Neill Dep., 26:11-14.)

282. Deputy Commissioner Sullivan was on vacation so Deputy Commissioner Wilson approved moving Allen and then called O'Neill to inform her. Ex. 27, O'Neill Dep., 26:5-15, 30:3-12.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs deny Defendants' assertions in this paragraph as they are based on inadmissible hearsay. O'Neill testified that she had no firsthand knowledge that Deputy Commissioner Wilson approved moving Allen to Tow Squad:

Q. Would Deputy Commissioner Wilson's approval of the request be memorialized in writing?

A. No, it's a phone call.

Q. So the only way that you know that the deputy commissioner approved it is because the administrative person told you verbally?

A. Correct.

(Defs' Ex. 27, O'Neill Dep., 30:13-20.)

283. O'Neill again looked for the best possible detail, this time settling on Tow Squad because the job is low stress, the environment is nice and quiet, and all Allen would need to do is answer the phone. Ex. 27, O'Neill Dep., 26:16-20.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Plaintiffs object to Defendants' mischaracterization of O'Neill's testimony—she did not state she "looked for the best possible detail." (Defs' Ex. 27, O'Neill Dep., 26:16-20.) Plaintiffs admit that O'Neill otherwise testified as Defendants have stated in this paragraph. However, O'Neill admitted that Tow Squad is "shiftwork" and further admitted that Plaintiff Allen's schedule would change from:

A. Ms. Allen's current schedule of steady Monday-Friday daytime work (8:30 am to 4:30pm) with weekends-off to

B. A completely different schedule rotating between daytime and nighttime shifts (7:00 am to 3:00 pm, 3:00 pm to 11:00 pm) with rotating days off.

(Defs' Ex. 27, O'Neill Dep., 26:16-27:21.)

284. O'Neill knew Tow Squad worked shiftwork, so O'Neill made certain to have Allen assigned to the platoon and schedule Allen would have in her full-time assignment in the Criminal Intelligence Unit to make the assignment as easy on Allen as was possible. Ex. 27, O'Neill Dep., 26:20-28:2.

Response: Plaintiffs admit only that O'Neill knew Tow Squad worked shiftwork and that Plaintiff's schedule would change completely from Monday-Friday daytime work with weekends off to a rotating daytime and nighttime schedule with rotating days off. O'Neill claimed "I made sure, knowing that she was assigned to 1A regularly . . . I did go out of my way to make sure that it was in the same group that she was permanently assigned to in her regular full duty unit." (Defs' Ex. 27, O'Neill Dep., 26:20-27:02.) Notwithstanding O'Neill's claim she tried to assign Plaintiff to "1A or 1B," Plaintiff was assigned to the 2G schedule. (Plaintiffs' Verified Second Amended Complaint, at ¶ 279.)

285. O'Neill had no way of knowing that Allen had managed to informally cobble together a steady daywork shift through various means for nearly two years since October 26, 2017. See Ex. 27, O'Neill Dep., 26:20-28:2.

Response: Denied. The cited testimony—O'Neill Dep., 26:20-28:2—does not support Defendants' assertions in this paragraph. Moreover, Plaintiff objects to Defendants' characterization of Plaintiff's restricted duty assignment as something she "managed to informally cobble together." As discussed throughout Defendants' statement of facts, Plaintiff worked rotating day and night shifts in JET in 2019. Moreover, O'Neill did have a way of knowing that Allen was working a steady daywork restricted duty assignment, as she testified she "got a call from a supervisor in neighborhood services unit" where Plaintiff worked. (O'Neill Dep., 25:21-26:01.)

Additionally, Ms. O'Neill knew Plaintiff's schedule as she was the human resources professional who communicated Plaintiff's "restricted duty" status to Defendant Gibbons when Plaintiff was detailed to NSU:

Q. When Ms. Allen was . . . detailed to NSU, how were you notified that Ms. Allen was being detailed to your unit?

A. I received a phone call from the safety office, sir.

Q. How long before [Plaintiff Allen] was detailed to your unit did you receive that call from the safety office.

A. A day.

Q. Who called you from the safety office?

A. I can't get her name off my tongue at the moment, sir.

Q. Was it Molly O'Neill?

A. Molly, yes.

Q. Did Ms. O'Neill let you know that Ms. Allen was on restricted duty?

A. Yes, sir.

(Plaintiffs' Ex. DD, Gibbons Dep., 08:14-09:05.)

286. So far as O'Neill knew, Allen worked the schedule assigned to Allen's permanent assignment. See Ex. 27, O'Neill Dep., 26:20-28:2.

Response: Denied. The cited testimony—O'Neill Dep., 26:20-28:2—does not support Defendants' assertions in this paragraph. Moreover, O'Neill did have a way of knowing that Allen was working a steady daywork restricted duty assignment, as she testified she "got a call from a supervisor in neighborhood services unit" where Plaintiff worked. (O'Neill Dep., 25:21-26:01.)

287. O'Neill was not changing Allen's schedule and in fact took pains to ensure Allen's schedule matched the schedule of Allen's permanent assignment. See Ex. 27, O'Neill Dep., 26:20-28:2.

Response: Denied. O'Neill did change Plaintiff's schedule. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 278.)

288. Allen alleges that she filed this lawsuit at 4:00 p.m. the previous day and received notification of her detail to Tow Squad at 12:15 p.m. on July 30, 2019. 2d Am. Compl., ¶¶ 276-78.

Response: Defendants' use of the term "alleges" is inappropriate, as, on summary judgment all inferences are to be drawn in the light most favorable to Plaintiffs. It is admitted that on July 29, 2019, at approximately 4:00 p.m., Plaintiffs filed their Verified Complaint in the U.S. District Court for the Eastern District of Pennsylvania thus initiating this lawsuit. The same day, Plaintiffs emailed a copy of the complaint to Nicole Morris, Esq., counsel for Defendants. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 277.)

From: ian@dereksmithlaw.com <ian@dereksmithlaw.com>
Sent: Monday, July 29, 2019 4:42 PM
To: Nicole Morris <Nicole.Morris@phila.gov>

Subject: Audra McCowan and Jennifer Allen v. City of Philadelphia, Commissioner Richard Ross Jr., et al.

Dear Ms. Morris,

This firm has the privilege of representing the interests of Ms. Audra McCowan and Ms. Jennifer Allen in a legal action against the City of Philadelphia, Commissioner Richard Ross Jr., Deputy Commissioner Christine Coulter, and others, filed this afternoon in the Eastern District of Pennsylvania.

Please let me know if Defendants will waive service of process.

Have a great night.

Thanks,

Ian M. Bryson, Esquire
DEREK SMITH LAW GROUP, PLLC
1835 Market Street, Suite 2950, Philadelphia, PA 19103
Phone: 215-391-4790 ext. 110 | Fax: 215-501-5911
www.discriminationandsexualharassmentlawyers.com

On July 30, 2019, at 11:45 a.m., counsel for Defendants emailed Plaintiffs' counsel agreeing to accept service for Defendants.

From: Nicole Morris
Sent: Tuesday, July 30, 2019 11:45 AM
To: Ian .
Subject: RE: Audra McCowan and Jennifer Allen v. City of Philadelphia,Commissioner Richard Ross Jr., et al.

Ian, I will accept service for all of the defendants with the exception of "Chief Inspector Daniel MacDonald." I don't know who that is.

Nicole S. Morris
Chief Deputy City Solicitor
City of Philadelphia Law Department
1515 Arch Street, 16th floor
Philadelphia, PA 19102
215-683-5075

At approximately 12:15pm on July 30, 2019, shortly after Defendants were notified of this litigation, Defendants again changed Plaintiff Allen's job assignment, schedule and hours of

work in retaliation for participating in this case. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 278.)

289. Allen has adduced no evidence that anyone in the PPD had knowledge of her lawsuit at the time she was detailed to Tow Squad, instead claiming that Lieutenant Waters' "demeanor completely changed towards [her] once everything hit the news" and that Waters "behaved unprofessionally" while viewing a TV news segment discussing Allen's lawsuit. Ex. 23, J. Allen Dep., 238:6-240:1.

Response: Denied. On July 29, 2019, at approximately 4:00 p.m., Plaintiffs filed their Verified Complaint in the U.S. District Court for the Eastern District of Pennsylvania thus initiating this lawsuit. The same day, Plaintiffs emailed a copy of the complaint to Nicole Morris, Esq., counsel for Defendants. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 277.)

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At approximately 12:15pm on July 30, 2019, shortly after Defendants were notified of this litigation, Defendants again changed Plaintiff Allen's job assignment, schedule and hours of work in retaliation for participating in this case. (Plaintiffs' Ex. D, Plaintiffs' Verified Second Amended Complaint, at ¶ 278.)

290. Allen's lawsuit "hit the news" on or about August 20, 2019, creating a "media frenzy." Decl. of I. Bryson, 2/19/21 at ¶¶ 6-12 (ECF No. 131-1).

Response: Plaintiffs object to the material cited by Defendants in support of their contentions in this paragraph pursuant to Rule 56(c)(4), which provides that "An affidavit or declaration used to support . . . a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." Plaintiffs further object that the material cited by Defendants in support of their contentions in this paragraph does not state what Defendants have asserted in this paragraph. Plaintiffs specifically deny that the material cited by Defendants—Decl. of I. Bryson, 2/19/21 at ¶¶ 6-12—uses the phrase "hit the news."

291. In fact, O'Neill believes the process of detailing Allen away from NSU began several days prior to July 30, 2019. Ex. 27, O'Neill Dep., 28:17-29:1.

Response: Denied. Ms. O'Neill never stated she received a call "a few days earlier." (Defs' Ex. 27, O'Neill Dep., 25:6-29:1.) Ms. O'Neill stated she could not recall whether she received the call on July 30, 2019. (O'Neill Dep., 28:17 – 29:01.) O'Neill testified that she could not recall who she received the call from. (O'Neill Dep., 25:6-29:1.)

292. Soon after, O'Neill received a telephone call from Allen. Allen questioned O'Neill about the detail. O'Neill "felt confronted and odd." Ex. 27, O'Neill Dep., 31:14-24.

Response: To the extent that Defendants are asking the Court to draw any inference in their favor, it is inappropriate on summary judgment. Denied as stated. O'Neill testified as follows:

Q. [D]id Ms. Allen call you and ask about the assignment to Tow Squad?

A. Yes, I do. I remember that.

Q. Tell me what you remember about the conversation.

A. It was – I felt confronted and odd that she would call me and question me. But she asked me why she was getting moved to Tow Squad, and I said it was an order that came from the Deputy Commissioner's Office.

(Defs' Ex. 27, O'Neill Dep., 31:14-24.)

293. Allen filed a motion in the Eastern District of Pennsylvania seeking a temporary restraining order and preliminary injunction preventing any changes to her work location or schedule. See Pls.' Mot. for Temp. Restraining Ord. (ECF No. 2).

Response: Plaintiffs admit that on July 30, 2019, they filed a motion in the Eastern District of Pennsylvania seeking a temporary restraining order and preliminary injunction preventing any additional changes to their work location or schedule.

294. District Judge Joel H. Slomsky entered an order on August 20, 2019 ordering Allen "be returned to Neighborhood Services Unit where she will work a steady day shift with weekends off." Order, 8/20/19 (ECF No. 13).

Response: Plaintiffs admit that on August 20, 2019, Judge Slomsky entered an order granting the relief requested in Plaintiffs' motion.

295. Allen remained in restricted duty status at NSU until her resignation on July 7, 2020. Ex. 56, J. Allen Emp. Hist. Rec.

Response: Plaintiffs admit that Allen remained in restricted duty status at NSU until her resignation on July 7, 2020.

Respectfully submitted,

/s/ Ian M. Bryson, Esquire
Ian M. Bryson, Esquire
Derek Smith Law Group, PLLC
1835 Market Street, Suite 2950
Philadelphia, PA 19103

Dated: September 10, 2021