



Gonzalez v. American Federation of State, County and Municipal Employees, AFL-CIO et al

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

PATRIA GONZALEZ, Plaintiff, v. AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES, AFL-CIO, JOSEPH S. ARESIMOWICZ, Defendants.

No. 3:20-cv-505 (VAB)

RULING AND ORDER ON MOTIONS TO DISMISS Patria Gonzalez has sued the American Federation of State, County and Municipal Employees, AFL-CIO and Joseph S. Aresimowicz (together with AFSCME, the in his capacity as an AFSCME employee and in his individual capacity, under 42 U.S.C. § 1983, alleging violations of her First Amendment and Fourteenth Amendment rights, as well as retaliation and intentional infliction of emotional distress.

For the following reasons, Mr. and motions to dismiss are GRANTED. I. FACTUAL AND PROCEDURAL BACKGROUND A. Factual Allegations From 1996 to March 2006, Ms. Gonzalez allegedly worked for the State of Connecticut Department of Correction and during that time, became a union steward for AFSCME. Am. Compl. ¶¶ 21, 23, ECF No. 13 (June 15, 2020). During her time with the Department of Correction, Ms. Gonzalez allegedly experienced . . . discriminatory including one instance of assault [that] caused her to go into premature Id. ¶ 31.

In 2004, Ms. Gonzalez allegedly gave public testimony before AFSCME and Department of Correction staff, during which she discussed her sexual assault. Id. ¶¶ 33-40. Ms. Gonzalez alleges that after testifying, she was against by both the Department of Correction and AFSCME on a regular basis, and subject to pattern of Id. ¶ 40; see id. ¶¶ 41- 51. Allegedly due to this harassment, Ms. Gonzalez began to with the abuse at work by drinking, leading to being arrested for a in November 2005. Id. ¶ 51. On April 7, 2006, Ms. Gonzalez allegedly lost her job due Id. ¶ 52. Ms. Gonzalez alleges that Mr. Aresimowicz participated in subsequent investigation into her termination and the arbitration process that followed, but in doing so, committed and offered false that caused s of pain and suffering. Id. ¶ 54. Specifically, Ms. Gonzalez alleges that at the arbitration, Mr. Aresimowicz did not prevent Department of Correction officers from recording the hearing, id. ¶ 59, nothing to protect the AFSCME union contract to secure [Ms. employment id. ¶ 60, and the Department of Correction, the Labor Department, and the Arbitrator violate the union and other internal policies, but did not act, id. In May 2008, Ms. Gonzalez, through counsel, allegedly filed a



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motion for injunctive relief to the in the arbitration proceedings. Id. ¶ 63. Ms. Gonzalez alleges that the Department of Correction and Labor Department worked with AFSCME to the court and Ms. motions, causing her to the for filing. Id. ¶¶ 63- 66. In late 2011, Ms. case allegedly Id. ¶ 68. In January 2012, Ms. Gonzalez allegedly began to speak with then-State Senator Eric Coleman about her case. Id. ¶ 70. Ms. Gonzalez also allegedly met with other officials, including Senator Cathy Osten, on several occasions to discuss her alleged sexual assault. Id. ¶¶ 71-75. Ms.

Gonzalez alleges that she began to release videos sharing gender and sexual harassment discrimination by AFSCME and [Mr.] which AFSCME to file a frivolous lawsuit against [Ms. Gonzalez] on August 28, Id. ¶ 76. In the fall of 2017, by the and Up Ms. Gonzalez allegedly decided to contact the Up organization. Id. ¶ 77. On April 16, 2018, Ms. Gonzalez allegedly testified at the Legislative Office Building for the Up Bill. Id. ¶ 78. Mr. Aresimowicz allegedly sat on the panel during Ms. testimony. Id. Ms. Gonzalez alleges that same week[,] the AFSCME civil suit against [Ms. Gonzalez] was dropped and [] mysteriously disappeared off the . . . and also that Mr. Aresimowicz that there will no longer be any written transcription of public Id. Ms. Gonzalez alleges that her April 16, 2018 testimony Id. ¶ 79. Ms. Gonzalez alleges that Mr. Aresimowicz his political position (malfeasance) to put an end to the written transcription of public testimony at the Legislative office and the videos of her Id. Ms. Gonzalez alleges further that Mr. Aresimowicz AFSCME drop the frivolous lawsuit against the plaintiff the same Id. On April 23, 2018, Ms. Gonzalez allegedly testified then-Senator Eric nomination for a Superior Judge for ignoring her sexual assault Id. ¶ 80. On March 5, 2020, Ms. Gonzalez allegedly testified at the Connecticut Legislative Office Building as to wrongful termination and sexual assault at the Department of Id. ¶ 104. On January 5, 2019, Ms. Gonzalez allegedly applied to again serve as a corrections officer. Id. ¶ 81. On January 9, 2019, she allegedly asked to schedule a meeting with Mr. Aresimowicz to

a Forced Arbitration proposal and to help get her old job Id. at 82. Mr. Aresimowicz allegedly agreed and told Ms. Gonzalez to speak with an appointment scheduler to calendar a time. Id. On January 25, 2019, Ms. Gonzalez allegedly informed the Department of Correction that Mr. Aresimowicz would serve as her professional reference. Id. ¶ 83. On February 5, 2019, Ms. Gonzalez allegedly met with Mr. Aresimowicz. Id. ¶ 84. Mr. Aresimowicz allegedly told Ms, Gonzalez that he would help her get her old job back and commented, deserves a second Id. On May 15, 2019, Ms. Gonzalez allegedly attended an interview at the Enfield Correctional Institution in Enfield, Connecticut. Id. ¶ 85. Ms. Gonzalez alleges that upon her arrival, she was told for the first time that the interview would consist of a physical ability test. Id. Ms. Gonzalez alleges that during the test, she was than a male candidate, who was given multiple oppor Id. at 88. She was allegedly informed after the test that she had failed by itty, bitty second. Id. at 89.

A human resources officer also allegedly told Ms. Gonzalez after the test that the instructors had [her] because they concerned with her age and figured, [she] make and that hire people your age and if we do an extreme Id. ¶¶ 89-90. Ms. Gonzalez alleges that after the interview, she left Mr. Aresimowicz a note and a copy of her test results. Id. ¶ 91. B. Procedural History On April 15, 2020,



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Ms. Gonzalez filed a Complaint against the Defendants. Compl., ECF No. 1 (April 15, 2020). On June 15, 2020, Ms. Gonzalez filed an Amended Complaint. Am. Compl.

On July 13, 2020, the Clerk of Court entered on the docket a summons returned executed by Ms. Gonzalez, noting that Mr. Aresimowicz had been served on July 9, 2020, at his usual place of abode, and representatives for AFSCME had been served at both their residential and professional addresses. Proof of Serv., ECF No. 14 (July 13, 2020). On July 24, 2020, Ms. Gonzalez filed another Amended Complaint to correct the cause of action to 42 U.S.C. § 1983. 1

Am. Compl., ECF No. 20 (July 24, 2020). On July 27, 2020, the Clerk of Court entered on the docket a certificate of service containing certified mail receipts from the professional addresses. Cert. of Serv., ECF No. 21 (July 27, 2020). On July 30, 2020, Mr. Aresimowicz moved to dismiss for lack of subject-matter jurisdiction and failure to state a claim. Def. Mot. to Dismiss, ECF No. 23 (July 30, 2020) Mot. to Def. Mem. of L. in Support of Mot. to Dismiss, ECF No. 23-1 (July 30, 2020) On the same day, AFSCME moved to dismiss for lack of subject-matter jurisdiction and failure to state a claim. Def. Mot. to Dismiss, ECF No. 25 (July 30, 2020) Mot. to Def. Mem. of L. in Support of Mot. to Dismiss, ECF No. 25-1 (July 30, 2020) On August 3, 2020, Mr. Aresimowicz moved to stay discovery. Mot. to Stay, ECF No. 27 (Aug. 3, 2020). On August 4, 2020, this Court denied the motion. Order, ECF No. 28 (Aug. 4, 2020).

1 Though Ms. Gonzalez called this it only sought to amend the civil cover sheet of the previously-filed Amended Complaint, ECF No. 13. Accordingly, the Court views ECF No. 13 as the operative Complaint.

On August 20, 2020, Ms. Gonzalez filed an opposition to the motions to dismiss. to Mot. to Dismiss, ECF No. 29 (Aug. 20, 2020) On the same day, Ms. Gonzalez opposed the motion to stay, although she acknowledged the Court already denied the motion. to Mot. to Stay Discovery (Although Denied), Request to Disqualify Counsel, Matthew Larock, Declaratory Relief, ECF No. 30 (Aug. 20, 2020) and Requests for The filing also included a request to remove counsel Matthew Larock from the case. See id. On August 31, 2020, Ms. Gonzalez filed a supplemental opposition to the motions to dismiss. Supp. to Mot. to Dismiss, ECF No. 34 (Aug. 31, 2020) Supp.

On September 3, 2020, Mr. Aresimowicz filed an objection to Ms. request to disqualify counsel and request declaratory relief. Obj. to Request to Disqualify Counsel and Request Declaratory Relief, ECF No. 35 (Sept. 3, 2020). That same day, Mr. Aresimowicz filed a reply to Ms. opposition to his motion to dismiss. Reply to to Mot. to Dismiss, ECF No. 36 (Sept. 3, 2020)

On September 9, 2020, Ms. Gonzalez filed a sur-reply to Mr. reply. Reply to Response to to Mot to Dismiss, ECF No. 37 (Sept. 9, 2020) Sur- That same day, Ms. Gonzalez filed a reply to Mr. objection to Ms. request to disqualify counsel and request declaratory relief. Reply to Obj. to Disqualify Counsel and Request for Declaratory Relief, ECF No. 38 (Sept. 9, 2020) to Obj. to Requests for



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On October 8, 2020, the Court held a hearing on both motions to dismiss. Minute Entry, ECF No. 42 (Oct. 8, 2020). II. STANDARD OF REVIEW

A. Rule 12(b)(2) On a motion to dismiss for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2), the bears the burden of showing that the court has jurisdiction over the In re Magnetic Audiotape Antitrust Litig., 334 F.3d 204, 206 (2d Cir. 2003). The plaintiff therefore must make a prima facie showing that jurisdiction exists. Licci ex rel. Licci v. Lebanese Canadian Bank, SAL, 673 F.3d 50, 59 (2d Cir. 2012).

prima facie showing must include an averment of facts that, if credited by the ultimate trier of fact, would suffice to establish jurisdiction over the Id.; see also Glenwood Sys., LLC v. Med-Pro Ideal Sols., Inc., No. 3:09-cv-956 (WWE), 2010 WL 11527383, at *2 (D. Conn. May 4, 2010) this stage of the proceedings, if the court relies upon pleadings and affidavits, the plaintiff must make out only a prima facie showing of personal jurisdiction, and the affidavits and pleadings should be construed most favorably to the , 438 F. 27 (2d Cir. 2011) (citing CutCo Indus., Inc. v. Naughton, 806 F.2d 361, 365 (2d Cir. 1986)). A court considers the facts as they existed when the plaintiff filed the complaint. See id. (citing Klinghoffer v. S.N.C. Achille Lauro Ed Altri-Gestione Motonave Achille Lauro in Amministrazione Straordinaria, 937 F.2d 44, 52 (2d Cir. 1991)).

B. Rule 12(b)(6) A complaint must contain a and plain statement of the claim showing that the pleader is entitled to Fed. R. Civ. P. 8(a). Any claim that fails state a claim upon which relief can be will be dismissed. Fed. R. Civ. P. 12(b)(6). In reviewing a complaint under Rule

12(b)(6), a court applies a guided by working Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

First, recitals of the elements of a cause of action, supported by mere conclusory statements, do not Id.; see also Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations . . . a obligation to provide the of his to requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not (internal citations omitted)). Second, a complaint that states a plausible claim for relief survives a motion to Iqbal, 556 U.S. at 679. Thus, the complaint must contain amplification . . . to render a claim Arista Records LLC v. Doe 3, 604 F.3d 110, 120 (2d Cir. 2010) (quoting Turkmen v. Ashcroft, 589 F.3d 542, 546 (2d Cir. 2009)).

When reviewing a complaint under Federal Rule of Civil Procedure 12(b)(6), a court takes all factual allegations in the complaint as true. Iqbal, 556 U.S. at 678. A court also views the favor. Cohen v. S.A.C. Trading Corp., 711 F.3d 353, 359 (2d Cir. 2013); the Bar of the City of N.Y., 286 F.3d 122, 125 (2d Cir. 2002 to state a claim, we construe the complaint in the light most favorable to the plaintiff, accepting

Because this case has been filed pro se, any findings must See Triestman v. Fed. Bureau of Prisons,



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470 F.3d 471, 474 (2d Cir. 2006); see also *Ruotolo v. I.R.S.*, 28 F.3d 6, 8 (2d Cir. 1994) (explaining that pro se because they are not represented by counsel). Despite this special solicitude, any pleading still in order for the case to proceed. , No. 11-civ-5050 (LAP), 2012 WL 4571030, at *3 (S.D.N.Y. Sept. 29, 2012) (internal quotation marks omitted).

to the facts as asserted within the four corners of the complaint, the documents attached to the *McCarthy v. Dun & Bradstreet Corp.**Brass v. Am. Film Techs., Inc.*, 987 F.2d

142, 150 (2d Cir. 1993); *Patrowicz v. Transamerica HomeFirst, Inc.*, 359 F. Supp. 2d 140, 144 (D. Conn. 2005). III. DISCUSSION

See Am. Compl. ¶¶ 112-17. Count One alleges that Mr. Aresimowicz Id. ¶ 113. Count Two alleges that Mr. Aresimowicz retaliated

against Ms. Gonzal Id. ¶ 114. Count Three

alleges intentional infliction of emotional distress . Id. ¶ 115. Count Four alleges that the by interfering with her job interview on May 15, 2019 and by depriving her of the future pension she could have earned had she been hired for the job. Id. ¶ 117.

There are two motions before the Court: (1) a motion to dismiss for lack of subject-matter and personal jurisdiction and failure to state a claim submitted by Mr. Aresimowicz, see

Aresimowicz Mot. to Dismiss; Aresimowicz Mem.; and (2) a motion to dismiss for lack of subject-matter and personal jurisdiction and failure to state a claim and, in the alternative, for improper service submitted by AFSCME, see AFSCME Mot. to Dismiss; AFSCME Mem. Because ially all of the arguments set forth cite of law.

irst Amendment (Count One), Retaliation (Count Two) and Fourteenth Amendment (Count Four) claims should be dismissed for failure to state a claim, as well as under qualified and absolute immunity doctrines. Aresimowicz Mem. at 8-20. Defendants argue that M be dismissed for failure to state a claim, as well as under the statutory immunity doctrine. Id. at

20-24.

Defendants further argue that the court lacks personal jurisdiction over Defendants due to improper service, id. at 27- time-barred, id. at 29. AFSCME adopts and incorporates by reference each of these arguments.

See AFSCME Mem.



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arguments as to jurisdiction, because a federal court first resolves any doubts about its jurisdiction over the subject matter of a case

before reaching *Cantor Fitzgerald, L.P. v. Peaslee*, 88 F.3d 152, 155 (2d Cir. 1996); 896 F.2d 674, 678 (2d Cir. 1993) (first since if it must dismiss the complaint for lack of subject matter jurisdiction, the accompanying defenses and

objections *Wright & Miller*, Fed. Prac. & Proc. § 1350, 548 (1969)).

A. Service of Process and Personal Jurisdiction Under Rules 12(b)(2) and (b)(5) plaintiff fails to serve a copy of the summons and complaint on the defendants pursuant to Rule 4

Hubert v. State of , No. 3:14-cv-476 (VAB), 2016 WL 706166, at *3 (D. Conn. Feb. 22, 2016) (internal quotation marks omitted). On a Rule 12(b)(5) motion to dismiss, the plaintiff bears the burden of proving adequate service. *Khan v. Khan Burda Media, Inc. v. Viertel*, 417 F.3d 292, 298 (2d Cir. 2005). proper service upon a defendant and the defendant does not waive service of process pursuant to

pursuant to Rule 12(b)(5). , No. 3:16-cv-2100 (JCH), 2017 WL 5892193, at *3 (D. Conn. Nov. 28, 2017).

Defendants argue that the Amended Complaint should be dismissed as to Mr. Aresimowicz and AFSCME for insufficient service of process. Aresimowicz Mem. at 27-28; AFSCME Mem. at 3. Defendants argue that Ms. Gonzalez filed her original Complaint with the Court on April 15, 2020, but did not serve Defendants until July 9, 2020, at which time Ms. Gonzalez served a copy not of the Amended Complaint but of the original Complaint. Aresimowicz Mem. at 28. s

Id.

Ms. Gonzalez responds that Defendants were properly served, as service was tendered within the 90-day rule set forth by Rule 4(m) Ms. Gonzalez alleges she served both Complaints. Id.

TCS Capital Mgmt., LLC v. Apax Partners, L.P., No. 06-cv-13447 (CM), 2008 WL 650385, at *10 (S.D.N.Y. Mar. 7, 2008) (citing Fed. R. Civ. P. 4(c)). d complaint ordinarily , 556 F.2d 665, 668-69 (2d Cir. 1977).

because Ms. Gonzalez filed the Amended Complaint before serving the Original Complaint,

28. In *Phillips v. Murchison*, 194 F. Supp. 620, 622 (S.D.N.Y. 1961), a pro se plaintiff attempted to serve the defendant by serving him a copy of the summons and the original complaint, but had filed an amended complaint before effecting service. Id. at 621-22. The court concluded that the amended complaint, which to or adopt the counts of the prior



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Id. at 622. Courts in subsequent cases have relied on Phillips 2

TCS Capital Mgmt. LLC, 2008 WL 650385, at *10 (collecting cases).

2 Though the Second Circuit has stated that an original complaint is only superseded when the amended complaint is properly served, not when it is filed, see Vesco, 556 F.2d at 669, this Court agrees that, where service of the original complaint was tendered before the amended pleading was filed, it is distinguishable from Phillips and its progeny as in this one[[[,] the original complaint was served after TCS Capital Mgmt., LLC, 2008 WL 650385, at *11 (emphasis in original).

seems to be filed as a replacement of, rather than a supplement to, her original Complaint, as it is approximately ten pages longer and encompasses the same four counts. Compare Compl. with Am. Compl. Ms. Gonzalez has offered proof that service of some kind was tendered upon Defendants. See Proof of Serv., Cert. of Serv. Though Ms. Gonzalez alleges see at 4, none of the documents pertaining to service on the docket show whether only one of the original or Amended Complaints, or both, were served. See Proof of Serv., Cert. of Serv. also was filed without consent of the parties or leave of the court, as required by Federal Rule of Civil Procedure 15(a). 3

Federal Rule of Civil Procedure 4(m) states, in relevant part:

If a defendant is not served within 90 days after the complaint is filed, the court on motion or on its own after notice to the plaintiff must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. Fed. R. Civ. P. 4(m). To the extent the Amended Complaint was not served on Defendants, as they contend, Ms. Gonzalez has not shown good cause for this failure. A district court, however, may grant an extension in the absence of good cause. Hubert whether to grant this relief, the Court must consider the following factors:

(1) whether the applicable statute of limitations would bar the

refiled action; (2) whether the defendant had actual notice of the claims asserted in the complaint; (3) whether the defendant had attempted to conceal the defect in service; and (4) whether the request for relief from the provision.

3 and . R. Civ. P. 15(a)(1)-(2).

Id. (citing Britton v. Connecticut, No. 3:14-cv-00133 (MPS), 2016 WL 308774, at *5 (D. Conn. Jan. 25, 2016). Here, the factors weigh in favor of allowing an extension, particularly as [Defendants] filed [their] appearance . . . [Defendants] ha[ve] received electronic notices of filings



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Id. motions to dismiss are responsive to and cite throughout to the Amended Complaint. See generally

Aresinowicz Mem.; AFSCME Mem.

The Court also recognizes that requesting that Ms. Gonzalez serve Defendants an Amended Complaint that Defendants have already responded to on the merits would result in unnecessary delay to the proceedings and circumvent *Dietz v. Bouldin*, 136 S. Ct. 1885, 1892 (2016).

Accordingly, the Court declines to resolve

the service of process issue, missed.

B. Failure to State a Claim Under Rule 12(b)(6) Defendants also argue that Ms. claims under Counts One through Four must be dismissed under Rule 12(b)(6) for failure to state a claim and on qualified, absolute and statutory immunity grounds. Aresimowicz Mem.

Specifically, Defendants argue that Ms. Gonzalez has not sufficiently alleged any constitutional violation to support a claim under § 1983 and has failed to state a First Amendment claim under Count One, a retaliation claim under Count Two, a claim for intentional infliction of emotional distress under Count Three, and a Fourteenth Amendment claim under Count Four. Aresimowicz Mem. 8-14, 20-24. Defendants allege further that Mr. Aresimowicz is entitled to

qualified immunity with respect to all counts; absolute immunity as to the claims relating to legislative hearings or in his capacity as Connecticut House Speaker; and statutory immunity with respect to Count Three. Id. at 14-20, 24-27.

dismissed, then the Court will consider whether supplemental jurisdiction should be exercised

See 28 U.S.C. § 1367 courts may decline to exercise supplemental jurisdiction over a claim . . . if the district court has

United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1996) (supplemental

1. The First Amendment Retaliation Claim 1983 provides a federal remedy for deprivation of any rights, privileges, or immunities secured by the Constitution and by a person acting under the color of state law. *Golden State Transit Corp. v. City of Los Angeles*, 493 U.S. 103, 105 (1989) (quoting 42 U.S.C. § 1983); see also *Cornejo v. Bell*, 592 F.3d 121, 127 (2d Cir. 2010) (stating that Section 1983 method for vindicating federal rights elsewhere including under the (quoting *Baker McCollan*, 443 U.S. 137, 144 n.3 (1979)). 1983 does not itself grant substantive rights; rather, it provides method for vindicating federal rights elsewhere conferred *Williams v. City of New York*, 2006 WL 2668211, at *26



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(E.D.N.Y. Sept. 11, 2006) (quoting *Patterson v. City. of Oneida*, N.Y., 375 F.3d 206, 225 (2d Cir. 2004)).

first inquiry in any § 1983 suit . . . is whether the plaintiff has been deprived of a right by the Constitution and *Baker*, 443 U.S. at 140 (quoting 42 U.S.C. § 1983)). The second inquiry is whether the plaintiff has shown that conduct at issue committed by a person acting under color of state *Cornejo*, 592 F.3d at 127 (quoting *Pitchell v. Callan*,

13 F.3d 545, 547 (2d Cir. 1994)). Related to the second inquiry, the Complaint must indicate that the challenged action was attributable to the *Lugar v. Edmonson Oil Co.*, 457 U.S. 922, 937 (1982).

plead a First Amendment retaliation claim[,] a plaintiff must show: (1) he has a right protected by the First Amendment; (2) the actions were motivated or substantially caused by the exercise of that right; and (3) the actions caused the plaintiff some *Dorsett v. City. of Nassau*, 732 F.3d 157, 160 (2d Cir. 2013).

Ms. Gonzalez alleges that Defendants [her] First Amendment [r]ights by censoring her Free Speech at the Legislative Office Building . . . on April 16, 2018, April 23, 2018, and March 5, Am. Compl. ¶ 113. She alleges that Mr. Aresimowicz AFSCME drop the frivolous lawsuit against [her] the same week, and his political position . . . to put an end to the written transcription of public testimony at the Legislative office building, coupled with censoring the videos of her in an to erase all traces of [her] free speech to avoid another corruption investigation against Id. ¶ 79.

Defendants argue that Ms. claim fails on numerous grounds, including that Ms. Gonzalez fails to allege she had a constitutional right to have her testimony . . . recorded or preserve [Mr.] Aresimowicz was acting under the color of state [Mr.] Aresimowicz was acting in his official capacity as state and that her did not in fact disappear and is still Aresimowicz Mem. 8-10. Defendants also argue that Ms. Gonzalez fails to state a claim under the First Amendment because she not plausibly alleged that she has a right protected by the First Amendment or that she has suffered any Id. at 10-11.

The Court agrees.

Ms. Gonzalez does not allege that Mr. Aresimowicz or Defendants interfered in her testimony or prevented her from testifying at any of the hearings cited in her Amended Complaint. Rather, she claims that the First Amendment violation arises because Mr. Aresimowicz allegedly of all of the public testimony, abusing his power, protecting AFSCME, Am. Compl. ¶ 8, and that affiliates . . . wanted to shield AFSCME from public scrutiny, so they censored [Ms. speech] at the Legislative office building abusing their id. ¶ 11. Ms. claim fails on several grounds.

First, she has failed to allege that she has a First Amendment or other constitutional right to have her testimony preserved or recorded. Though the Second Circuit has held that there is qualified right



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of to criminal and civil trials to their related proceedings and *N.Y. Civ. Libs. Union v. N.Y.C. Transit Auth.*, 684 F.3d 286, 298 (2d Cir. 2012), as well as limited First Amendment right of access to certain aspects of the executive and legislative id. at 299-300 (quoting *Detroit Free Press v. Ashcroft*, 303 F.3d 681, 695 (6th Cir. 2002)), and presumptive right of access to [some] administrative for[a] id. at 300-01, Ms. Gonzalez has not asserted that any right exists with respect to access to recorded testimony of any of the relevant proceedings, either for Ms. Gonzalez herself or for the general public.

Ms. Gonzalez also fails to allege that she has suffered any plausible injury. Though she alleges that the transcript and video recordings from the April 16, 2018, April 23, 2018, and March 5, 2020, hearings were removed from the public record by Mr. Aresimowicz and AFSCME, see Am. Compl. ¶¶ 79, 113, Sur-Reply ¶ 107, public video records of the April 2018 proceedings and a transcript of the March 2020 proceeding are available, including Ms. testimony. 4

4 The Court may take judicial notice of documents expressly incorporated into the complaint by reference or, for a See *Goel v. Bunge, Ltd.*, 820 F. 3d 554, 559 (2d Cir. 2016) (quoting *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 153 See Joint Comm. on Legis. Mgmt. Sexual Harassment Policy Informational Hearing, 2018 Reg. Sess. (Conn. 2018), available at <https://ct-n.com/ctnplayer.asp?odID=15202> (2:38:00 2:45:08); Judiciary Comm. Public Hearing on Judicial Nominations Followed by Comm. Mtg. 2018 Reg. Sess. (Conn. 2018), available at <https://ct-n.com/ctnplayer.asp?odID=15225> (12:15:00 12:21:00); Labor and Pub. Empls. Comm. Public Hearing Tr. 2020 Reg. Sess. (Conn. 2020), ECF No. 23-4, Ex. C. 5

Even if she had proven that these records had been expunged, 6

which she has not, she has not alleged how any such destruction of these records constitutes a cognizable under the law.

Moreover, even if Ms. Gonzalez could demonstrate an injury, she also has failed to allege that Mr. Aresimowicz and AFSCME affiliates took any actions that were motivated or substantially caused by Ms. testimony. Her allegations that Mr. Aresimowicz a capricious, arbitrary to expunge public records, without more, amounts to precisely the conclusory statements insufficient under Rule 12(b)(6). *Ashcroft v. Iqbal*, 556 U.S. at 678.

obligations upon wh usually because the was not attached to the Id. (quoting *s, Inc. v. City of N.Y.*, 458 F.3d 150, 157 (2d Cir. 2006)). Moreover, *James v. Bradley*, 808 F. id., but rather only for the fact that they are available in the public record. 5 While Defendants in their briefing included links to the April 16, 2018 and April 23, 2018 testimony, see Aresimowicz Mem. at 3-4, and attached a copy of the transcript from the March 5, 2020, hearing, see id., Ex. C, the Court also has verified that these are publicly accessible online. 6 see she provides nothing more than conclusory allegations, nor asserts how any such alteration would amount to a § 1983 violation.



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Accordingly, the Court need not, and does not, address whether Mr. Aresimowicz is entitled to absolute or qualified immunity as to Count One, and Ms. First Amendment claims under Count One will be dismissed. 7

2. The Second Retaliation Claim Ms. Gonzalez also alleges that Defendants [against her] by interfering with her employment opportunity on May 15, Am. Compl. ¶ 114. She alleges that Mr. Aresimowicz by lying to the plaintiff, [as] he had absolutely no intention[] in calling Commissioner Rollin Rock to get her back to and he had no intention of helping [her] get her job Id. 114. She alleges that retaliated by suing [her] for sharing corruption by . . . AFSCME and her sexual assault . . . , then AFSCME retracted the[ir] after Ms. Gonzalez testified in April 2018.

Defendants argue that Ms. retaliation claim fails on several grounds, including that Ms. Gonzalez has not alleged (1) violation of [a] constitutional right or that [Mr.] Aresimowicz was acting under the color of state law when he allegedly failed to call the Department of Correction[] in 2019 to help her get a Aresimowicz Mem. at 12; (2) that Mr. Aresimowicz was involved in the [DOC decision not to hire id.; and (3) between her various hearing testimony and the decision not to hire her, id. at 13. AFSCME also argues that Ms. claim with respect to AFSCME is time-barred by

7 In any event, Ms. Gonzalez has not identified any clearly established law allowing for her novel First Amendment retaliation claim. See *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) ([Q]ualified immunity protects government *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)); see also *Mullenix v. Luna* officials from civil liability so long as their conduct does not violate clearly established statutory or constitutional rnal citations omitted); *Bacon v. Phelps*, 961 F.3d 533, 545 (2d Cir. 2020) (finding that because no Second Circuit or Supreme Court precedent had put defendants on notice that their conduct was unlawful, defendants were entitled to qualified immunity).

the three-year statute of limitations and that Ms. Gonzalez fails to allege any adverse action resulting from the lawsuit or its conclusion. AFSCME Mem. at 3.

The Court agrees. finding of involvement of [the individual] in an alleged constitutional deprivation is a prerequisite to an award of damages under Section Feingold v. N.Y., 366 F.3d 138, 159 (2d Cir. 2004) (quoting *Provost v. City of Newburgh*, 262 F.3d 146, 154 (2d Cir. 2001)). Ms. Gonzalez alleges only that Mr. Aresimowicz failed to fulfill his alleged promise to call the DOC, not that he affirmatively took part in or played any role in the decision not to hire her. Am. Compl. ¶¶ 81-84, 114. Rather, Ms. Gonzalez admits that it was instructors [who] failed Ms. allegedly they decided she was too old for the 8

¶ 91. Even if true, Ms. assertion that Aresimowicz knew [she] was taking the [physical] but failed to inform her or otherwise act in accordance with that knowledge, id., does not give rise to liability under a theory of retaliation for Mr. Aresimowicz where he was not personally involved. See *Feingold*, 366 F.3d at 159; *Craig v. Baker*, No. 3:16-cv-2100 (JCH), 2018 WL 705001, at *6 (D. Conn.



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Feb. 2, 2018) (dismissing case where the plaintiff had not alleged that [the defendant] was personally involved in any action taken against A plaintiff pleading personal involvement must allege at least one of the following five courses of conduct:

(1) the defendant participated directly in the alleged constitutional violation; (2) the defendant, after being informed of the violation . . . failed to remedy the wrong; (3) the defendant created a policy or custom under which unconstitutional practices occurred, or allowed the continuance of such a policy or custom, (4) the defendant was grossly negligent in supervising subordinates who committed the 8 To the extent that Ms. Gonzalez alleges that she was denied employment at the Department of Correction because Department of Correction pending before the Court. See Compl., , No. 3:20-cv-736 (VAB) (D. Conn. Sept. 11, 2020), ECF No. 1.

wrongful acts; or (5) the defendant exhibited deliberate indifference . . . by failing to act on information indicating that unconstitutional acts were occurring. *Kregler v. City of N.Y.*, 770 F. Supp 2d 602, 606-07 (S.D.N.Y. 2011) (alterations in original) (citing *Colon v. Coughlin*, 58 F.3d 865, 873 (2d Cir. 1995)). Beyond the fact that Ms. Gonzalez has set forth no facts showing that Mr. Aresimowicz or AFSCME had any contact with the Department of Correction regarding the outcome of the May 15, 2019, job interview, or that either Defendant could have played or did play any role in Ms. hiring decision, Ms. Gonzalez does not allege facts showing that either Mr. Aresimowicz or AFSCME participated directly in the decision not to hire her; was aware that she was not being hired and were in a position to remedy the wrong; created any policy or allowed any potentially unconstitutional policy to continue; or was grossly negligent in or indeed supervised any DOC employees deciding not to hire Ms. Gonzalez. See *id.*

Even if Mr. Aresimowicz or AFSCME had been personally involved in the failure to hire Ms. Gonzalez, which she has not sufficiently alleged, Ms. claim also fails because, to the extent her failure-to-hire claim has any viability, she does not allege that Mr. Aresimowicz or AFSCME were the parties who took any adverse employment action against the plaintiff. See *Colon v. Mark-Viverito*, No. 16-cv-4540 (VSB), 2018 WL 1565635, at *7 (S.D.N.Y. Mar. 26, 2018) (dismissing case where the plaintiff could not establish any adverse action taken by a legislator who was not her employer). Ms. Gonzalez therefore has not alleged that Mr. Aresimowicz or AFSCME are persons acting under color of state *Vega v. Hempstead Union Free Sch. Dist.*, 801 F.3d 72, 87 (2d Cir. 2015), such that any failure to hire may be attributed to them.

As to Ms. retaliation claims against AFSCME, the Court finds that these are time-barred. Ms. Gonzalez alleges that AFSCME retaliation for [her] public testimony responded with a civil on August 28, 2015 in state court. 9

Am. Compl. ¶ 105. 1983 actions arising in Connecticut, like this one, are governed by the three-year limitations period set forth in Conn. Gen. Stat. § 52-577. 10



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Harnage v. Torres, 665 F. 82, 83 (2d Cir. 2016) (citing Lounsbury v. Jeffries, 25 F.3d 131, 132-34 (2d Cir. 1994)). And though statute of limitations defense is most often pleaded as an affirmative defense and requires a factual inquiry beyond the face of the Johnson v. Conn., No. 3:19-cv-01054 (SRU), 2020 WL 5594120, at *2 (D. Conn. Sept. 18, 2020) (quoting OBG Tech. Servs., Inc. v. Northrop Grumman Space & Mission Sys. Corp., 503 F. Supp. 2d 490, 503 (D. Conn. 2007)), defendant may, however, raise the statute of limitations in a Rule 12(b)(6) motion [w]here the dates in a complaint show that an action is barred by a statute of id. (quoting Ghartey v. St. Queens Hosp., 869 F.2d 160, 162 (2d Cir. 1989)) (internal quotation marks omitted) (second alteration in original).

To the extent Ms. Gonzalez alleges that any lawsuit AFSCME brought against her in 2015 was done so in retaliation for any actions attributable to Ms. Gonzalez, see Am. Compl. ¶¶ 76,

9 Ms. Gonzalez alleges that the relevant docket number is HHD-cv-15-6062029-S, and that the case was filed on August 28, 2015, Am. Compl. ¶¶ 76, 105, 114, but does not attach a copy of any such suit to the Amended Complaint. While the Court may take judicial notice of state court proceedings, of N.Y., 458 F.3d for the truth of the matters asserted in the other litigation, but rather to establish the fact of such litigation and related a search of the Hartford Judicial Court database identifies no such docket entry, see State of Conn. Judicial Branch, Case Look-Up, <https://jud.ct.gov/jud2.htm> (last accessed October 21, 2020). A party search for Ms. Gonzalez reveals only two proceedings, both seemingly unrelated to the present litigation. See id. However, AFSCME does not dispute the fact that a lawsuit against Ms. Gonzalez was filed; rather, it argues only that claims arising out of any such suit would be time-barred. AFSCME Mem. at 3. Accordingly, the Court construes the facts in the light most favorable to Ms. Gonzalez and presumes for sake of resolving the pending motions to dismiss that such a lawsuit was filed. 10 from the dat § 52-577.

105, 114, she may not rely upon that suit as a basis for relief under § 1983, as more than three years have passed since the lawsuit was allegedly filed. See Harnage v. Torres, 665 F. App x 82, 84 (2d Cir. 2016) [the plaintiff] did not file his complaint until . . . more than three years after the statute of limitations had run, his claims are time-

Accordingly, the Court need not, and does not, address whether Mr. Aresimowicz is entitled to absolute or qualified immunity as to Count Two, and Ms. retaliation claims under Count Two will be dismissed. 11

3. The Fourteenth Amendment Due Process Claim The Due Process Clause of the Fourteenth Amendment provides: shall any state deprive any person of life, liberty, or property, without due process of U.S. Const. Amend. XIV, § 1. due process imposes constraints on governmental decisions which deprive individuals of or interests within the meaning of the Due Process Clause of the . . . Fourteenth Mathews v. Eldridge, 424 U.S. 319, 332 (1976). award damages under 42 U.S.C. § 1983 for an alleged violation of procedural due process, a court must find that, as a result of conduct performed under color of state law, the plaintiff was deprived of life, liberty or property without due



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process of *Bedoya v. Coughlin*, 91 F.3d 349, 351 (2d Cir. 1996).

To determine whether a procedural due process violation has occurred, courts first whether there exists a liberty or property interest of which a person has been deprived, and if so . . . whether the procedures followed by the State were constitutionally Victory v. Pataki, 814 F.3d 47, 67 (2d Cir. 2016). The threshold issue is always whether the plaintiff has property or liberty interest protected by the *Michaelidis v. Berry*, 502 F. 94, 97 (2d Cir. 2012) (quoting *Narumanchi v. Bd. of Trs.*, 850 F.2d 70, 72 (2d Cir. 1988)).

11 Again, as with her other retaliation claim, Ms. Gonzalez has not provided nor has the Court identified any clearly established law saving this claim from the application of qualified immunity.

Ms. Gonzalez in Count Four alleges that the Defendants violated her Fourteenth Amendment rights violating procedural law at [the Connecticut Commission on Human Rights and Opportunities [her] of her life, liberty, specifically [the] she could have earned from the employment position she sought, and with her May 15, 2019 job application retaliation for exposing their Am. Compl. ¶ 117.

Defendants argue that the claim regarding the CHRO to allege any violation of federal law or constitutional *Aresimowicz* Mem. at 14 n.3, and that Ms. Gonzalez fails to plausibly allege a constitutionally protected property or liberty interest in the prospective job with the Department of Correction, id. at 14-15.

The Court agrees. To the extent that Ms. Fourteenth Amendment argument may be construed as a violation of due process claim, she has not alleged that she was deprived of a liberty or property interest within the meaning of the Due Process Clause. have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972). A plaintiff instead, have a legitimate claim of entitlement to *Finley v. Giaccobe*, 79 F.3d 1285, 1296 (2d Cir. 1996). And a general rule, is no constitutionally protected property interest in prospective government *Leon v. Rockland Psychiatric Ctr.*, 232 F. Supp. 3d 420, 434 (S.D.N.Y. 2017) (quoting *Abramson v. Pataki*, 278 F.3d 93, 100 (2d Cir. 2002)); see also *Coogan v. Smyers*, 134 F.3d 479, 487 (2d Cir. 1998) (prospective employee no property right or entitlement to the he sought); *Almontaser v. N.Y.C. of Educ.*, No. 07-cv-10444 (SHS), 2009 WL 2762699, at *4 (S.D.N.Y. Sept. 1, 2009) (finding that job applicant . . . has no property interest in the position for which

she As courts in this District have held, one can develop a property right in employment, one must at a minimum be *Crenshaw v. City of New Haven*, No. 3:14-cv-01249 (VLB), 2015 WL 5797018, at *3 (D. Conn. Sept. 30, 2015), , 652 F. 58 (2d Cir. 2016) (quoting *Kosinski v. Conn. State of Educ.*, No. 3:10-cv-0805 (CSH), 2011 WL 1134236, at *5 (D. Conn. Mar. 24, 2011)). The Due Process Clause also does not a liberty interest in any particular employment *Kosinski*, 2011 WL 1134236, at *5. Instead, decision not to hire does not implicate [a] liberty interest unless that decision prohibits [him] from



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engaging in a profession, or pursuing any job in a given Id. (quoting *Cityspec, Inc. v. Smith*, 617 F. Supp. 2d 161, 169 (E.D.N.Y. 2009)). stretches the concept too far to suggest that a person is deprived of when he simply is not rehired in one job but remains as free as before to seek Roth, 408 U.S. at 575; see also *Jones v. City Sch. Dist. of New Rochelle*, 695 F. Supp. 2d 136, 146 (S.D.N.Y. 2010) employment does not confer a liberty interest because [the plaintiff] is not entitled to . . . employment with the [defendant]; indeed, [the plaintiff] is not entitled to employment with any particular *Shkilnyj v. Erie Cmty. Coll.*, No. 15-cv- 905-FPG, 2018 WL 1471403, at *4 (W.D.N.Y. Mar. 26, 2018) (finding prospective employee failed to plausibly allege a constitutionally protected liberty interest in the Accordingly, even assuming that Ms. Gonzalez has demonstrated, or could plausibly demonstrate, that Mr. Aresimowicz or AFSCME were responsible for her failure to gain employment after her May 15, 2019, interview with the Department of Correction, this prospective employment is not a protected property or liberty interest sufficient to give rise to a due process claim. 12

The Court therefore need not, and does not, address whether Mr. Aresimowicz is entitled

12 that, to the extent Ms. Gonzalez attempts to raise a CHRO- Case 3:20-cv-00505-VAB Document 43 Filed 10/23/20 Page 25 of 30 to absolute or qualified immunity as to Count Four, and Ms. Fourteenth Amendment claims under Count Four will be dismissed. 13

4. Supplemental Jurisdiction Having determined that Ms. federal claims should be dismissed, the Court must then determine whether it should exercise supplemental jurisdiction over her remaining state law claims.

Under 28 U.S.C. § 1367(a),

In any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. courts may decline to exercise supplemental jurisdiction over a however, if district court has dismissed all claims over which it has original juri Id. § 1367(c)(3).

Supplemental or pendent jurisdiction is a matter of discretion, not of right. See *Gibbs*, 383 U.S. at 726. Where all federal claims have been dismissed before a trial, state claims generally should be dismissed without prejudice and left for resolution by the state courts. See 28 U.S.C. § 1367(c)(3); *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988) the federal- law claims have dropped out of the lawsuit in its early stages and only state-law claims remain, the federal court should decline the exercise of jurisdiction by dismissing the case without *Kolari v. N.Y.-Presbyterian Hosp.*, 455 F.3d 118, 122 (2d Cir. 2006) the usual

violation of fed *City of Shelton v. Collins*, No. 3:12-cv-1176 (JBA), 2014 WL 1032765, at *5 (D. Conn. Mar. 14, 2014), , *City of Shelton v. Hughes* 13 Once again, neither Ms. Gonzalez nor the Court has



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identified any clearly established law saving this claim from the application of qualified immunity.

case in which all federal-law claims are eliminated before trial, the balance of factors . . . will point toward declining to exercise supplemental jurisdiction over the remaining state-law .

a district discretion is triggered under § 1367(c)(3), it balances the traditional values of judicial economy, convenience, fairness, and Kolari, 455 F.3d at 122; see also Catzin v. Thank You & Good Luck Corp., 899 F.3d 77, 83 (2d Cir. 2018) one of the § 1367(c) categories applies, the district court may then undertake the discretionary inquiry of whether to exercise supplemental jurisdiction district court should not decline to exercise supplemental jurisdiction unless it also determines that doing so would not promote the values articulated in Gibbs: economy, convenience, fairness, and (quoting Jones v. Ford Motor Credit Co., 385 F.3d 205, 214 (2d Cir. 2004)).

weighing these factors, the district court is aided by the Supreme additional guidance in Cohill that the usual case in which all federal claims are eliminated before trial, the balance of factors . . . will point toward declining to exercise jurisdiction over the remaining state- law Kolari, 455 F.3d at 122 (quoting Cohill, 484 U.S. at 350); see also Catzin, 899 F.3d at 83 this prong, in a great many cases, the evaluation will usually result in the dismissal of the state-law

But as the Second Circuit recently emphasized, principle that the elimination of federal-law claims prior to trial generally points to declining to exercise supplemental jurisdiction the usual clearly does not mean that the balance of factors always points that Catzin, 899 F.3d at 86. Thus, §1367(c)(3) applies, the district court must still meaningfully balance the supplemental jurisdiction factors of judicial economy, convenience, fairness, and comity before declining to exercise supplemental jurisdiction. Id.

The balance of factors here weighs in favor of declining to exercise supplemental jurisdiction. The Court finds that principles of comity suggest that Connecticut courts are more suited to determine the viability of Ms. intentional infliction of emotional distress claim, which involves Connecticut law. Her may be vindicated, if at all, in state court under traditional state law Giammatteo v. Newton, 452 F. 24, 30 (2d Cir. 2011) (citing Baker v. McCollan, 443 U.S. 137, 146 (1979)).

Accordingly, the Court declines to exercise supplemental jurisdiction and will dismiss Ms. intentional infliction of emotional distress claim without prejudice as a result.

C. Leave to Amend While Ms. Gonzalez has not moved for leave to amend the Complaint, for the reasons discussed below, granting such leave to amend would be futile.

is often appropriate for a district court, when granting a motion to dismiss for failure to state a claim, to give the plaintiff leave to file an amended Van Buskirk v. N.Y. Times Co., 325 F.3d 87, 91 (2d Cir. 2003) (referencing Branum v. Clark, 927 F.2d 698, 705 (2d Cir. 1991)). to amend should be freely



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granted, but the district court has the discretion to deny leave if there is a good reason for it, such as futility, bad faith, undue delay, or undue prejudice to the opposing Jin v. Metro. Life. Ins. Co., 310 F.3d 84, 101 (2d Cir. 2002) (citing Foman v. Davis, 371 U.S. 178, 182 (1962)).

The Court acknowledges that Ms. Gonzalez is currently proceeding pro se and notes that as a general matter, the Second Circuit has recognized that the solicitude afforded to pro se litigants includes a of the limitations on the amendment of Tracy v. Freshwater, 623 F.3d 90, 101 (2d Cir. 2010) (citing Holmes v. Goldin, 615 F.2d 83, 85 (2d Cir. 1980)); see also Grullon v. City of New Haven, 720 F.3d 133, 139 (2d Cir. 2013) pro se complaint should

not be dismissed without the granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim may be (quoting Chavis v. Chappius, 618 F.3d 162, 170 (2d Cir. 2010)) (internal quotation marks and alterations omitted).

But where there is no indication that pleading additional facts would resuscitate a claim that has been dismissed, the Court need not grant leave to amend. See Grullon, 720 F.3d at 140 to amend may properly be denied if the amendment would be (quoting Foman, 371 U.S. at 182)); Ruffalo v. Oppenheimer & Co., 987 F.2d 129, 131 (2d Cir. 1993) it appears that granting leave to amend is unlikely to be productive . . . it is not an abuse of discretion to deny leave to Cuoco v. Moritsugu, 222 F.3d 99, 112 (2d Cir. 2000) (denying leave to replead where the court not find that the complaint suggest[ed] that the plaintiff has a claim that she has inadequately or inartfully pleaded and that she should therefore be given a chance to and concluding that problem with [the pro se causes of action is substantive; better pleading will not cure (citations, internal quotation marks, and alterations omitted).

Leave to amend here would be futile because, for the reasons outlined above, the legal theories behind Ms. claims are fundamentally flawed, and an opportunity to amend will not cure them. Accordingly, the Court declines to provide leave to amend the Complaint. See Wright v. Albany City Police Ct., 1:18-CV-649 (GTS/DJS), 2018 WL 4347793, at *3 (N.D.N.Y. Sept. 12, 2018) (finding that Plaintiff leave to amend would be, to say the least, unlikely to be productive and indeed would be Brownville v. Indian Mtn. Sch., No. 3:14-cv-1472 (JBA), 2017 WL 3726467, at *8 (D. Conn. Aug. 29, 2017) (denying plaintiff's motion to amend the complaint because [n]othing in [his] documents . . . support[ed] his central claim, meaning that amendment to the Complaint would be futile . Leave would be particularly futile as Ms.

Gonzalez has already amended her Complaint. See Galloway v. Caputo, No. 3:17-cv-2156 (JCH), 2018 WL 5044244, at *2 (D. Conn. Feb. 9, 2018) to amend need not be granted, particularly where a plaintiff has already had an opportunity to amend the complaint, when amendment would be IV.

CONCLUSION For the foregoing reasons, Mr. and motions to dismiss are GRANTED. Because the Court also finds that leave to amend the Complaint would be futile, this case is DISMISSED with prejudice, with the exception of Ms. intentional infliction of emotional distress claim, which is



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DISMISSED for lack of jurisdiction without prejudice.

The Clerk of Court is respectfully directed to enter judgment in favor of Defendants and close this case. SO ORDERED at Bridgeport, Connecticut, this 23rd day of October, 2020.

/s/ Victor A. Bolden VICTOR A. BOLDEN UNITED STATES DISTRICT JUDGE

