IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

U.S. Equal Employment Opportunity Commission, Plaintiff, v. The George Washington University, Defendant.	Civil Action No. 1:17-cv-01978-CKK

MOTION OF DEFENDANT THE GEORGE WASHINGTON UNIVERSITY TO DISMISS THE COMPLAINT OR, ALTERNATIVELY, STAY PROCEEDINGS

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant the George Washington University ("the University") respectfully moves this Court to dismiss the Complaint with prejudice because it fails to state a claim upon which this Court may grant relief. In the alternative, if this action is not dismissed, the University moves this Court pursuant to 42 U.S.C. § 2000e-5(f)(1) and Federal Rule of Civil Procedure 7(b) to stay this action and order Plaintiff the U.S. Equal Employment Opportunity Commission (the "Commission") to meet its statutory obligation under 42 U.S.C. § 2000e-5(b) to engage in conciliation with the University after disclosing the full charges against the University, including any "record evidence" referenced in the Commission's letter of determination dated April 21, 2017.

This motion is supported by the Memorandum of Law filed concurrently herewith.

Dated: November 7, 2017

Respectfully submitted,

/s/ Jason C. Schwartz
Jason C. Schwartz, D.C. Bar No. 465837
jschwartz@gibsondunn.com
Matthew S. Rozen, D.C. Bar No. 1023209
(admission pending)
mrozen@gibsondunn.com
Wendy Miller, D.C. Bar No. 1035161
wmiller@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
Telephone: 202.955.8500
Facsimile: 202.467.0539

Attorneys for Defendant
The George Washington University

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

U.S. Equal Employment Opportunity Commission, Plaintiff, v. The George Washington University, Defendant.	Civil Action No. 1:17-cv-01978-CKK

MEMORANDUM OF LAW IN SUPPORT OF
MOTION OF DEFENDANT THE GEORGE WASHINGTON UNIVERSITY
TO DISMISS THE COMPLAINT OR, ALTERNATIVELY, STAY PROCEEDINGS

TABLE OF CONTENTS

TABLE OF AUTHORITIES*

Page(s)

Cases

* Authorities upon which we chiefly rely are marked with asterisks.

INTRODUCTION

The United States Equal Employment Opportunity Commission (the "Commission" or "EEOC") rushed to file this deeply flawed action against the George Washington University ("the University") to much fanfare as part of its fiscal year-end flurry of filings. The action, however, is facially deficient: At its core, it is a failure to promote case in which the employee who was purportedly discriminated against did not even apply for the position. It further alleges pay discrimination but fails even to allege facts sufficient to conclude that the two jobs at issue were equal. Further compounding its errors, the Commission's rush to judgment led it to forego its statutory duty to put the University on notice of the allegations against it so that it could meaningfully engage in the conciliation process.

The Commission's principal allegation is that the University unlawfully discriminated on the basis of sex against a University administrative support employee, Sara Williams (formerly Sara Mutalib), in violation of Title VII, 42 U.S.C. § 2000-e2(a)(1), when it selected another University employee, Assistant Athletic Director Michael Aresco, for a higher-paying position—Special Assistant (later renamed "Assistant Athletics Director – Administration")—for which Williams did not even apply. The Commission further alleges that as an administrative support employee, Williams performed duties equivalent to those of the Special Assistant, and that both Title VII and the Equal Pay Act, 29 U.S.C. § 206(d)(1), therefore required the University to pay Williams the same as it paid Aresco as Special Assistant. To be clear from the outset, the University denies any form of discrimination against Williams. Accepting the Commission's allegations as true, however, as this Court must at the motion-to-dismiss stage, they are simply insufficient for the Commission to proceed.

The Commission rushed these charges out based on supposed "record evidence" of discrimination that it has never shown to the University. Although the University made clear to

the Commission that it would take seriously any evidence of unlawful discrimination, to date the Commission has not produced any evidence plausibly suggesting that any unlawful discrimination took place. Without access to the Commission's secret evidence, the University has been deprived of any opportunity to engage in the conciliation process through which the Commission is required to attempt to informally remediate any suspected discrimination. Instead, the Commission cut the conciliation process short so that it could file its Complaint just before the end of the fiscal year and announce this litigation to the press.

In the Complaint, there is still no trace of the Commission's purported "record evidence," or of any factual allegations identifying what that evidence might be. Indeed, there is *nothing* in the Complaint—other than conclusory allegations that this Court must disregard at the motion-to-dismiss stage—that remotely suggests that any of the University's conduct towards Williams had anything to do with discrimination based on sex. Instead, the Commission's central claim—challenging the University's hiring of Aresco as Special Assistant—involves conduct that *cannot* be unlawful discrimination because Williams never applied for the position.

The Commission's pay discrimination claims also fail because the Complaint is too short on details to permit any inference about whether Aresco's responsibilities were similar to the work performed by Williams. The Commission merely quotes a single line from the University's description of the Special Assistant position that characterizes the position at a level of generality so broad as to be meaningless—that it provides "high-level administrative support." Further, while the Complaint identifies several categories of work that Williams allegedly performed at some point during her employment, the Complaint fails to allege that she performed those duties regularly or that they constituted as significant a part of the job for

Williams as they did for Aresco. Without these details, the Court cannot find that Williams' work was equal to Aresco's, and thus cannot find that she was denied equal pay for equal work.

For these reasons and others, the Complaint fails to state a claim for relief and should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6). In the alternative, this Court should stay this action pursuant to 42 U.S.C. § 2000e-5(f)(1) and Federal Rule of Civil Procedure 7(b), and order the Commission to meet its statutory obligation to engage in conciliation with the University after disclosing the full charges against the University—including the Commission's secret evidence.

BACKGROUND

Williams worked as the Executive Assistant to Patrick Nero, the University's Director of Athletics, from August 2014, Compl. ¶ 14, to December 2016, Ex. 1, Letter of Determination, at 1.[1] In that role, Williams provided "administrative support" to Nero. Compl. ¶ 15(a). According to the Commission, Williams also performed additional work that involved "leading the administrative function" of the office, "coordinating administrative staff members," "maintaining the external face" of the office, acting as a "liaison" to other departments, and managing "special projects." *Id*. ¶ 15(b)-(g).

[1] In deciding a motion to dismiss, this Court "may consider" documents "incorporated in the complaint," *EEOC v. St. Francis Xavier Parochial Sch.*, 117 F.3d 621, 624 (D.C. Cir. 1997), "even if the document is produced not by the plaintiff in the complaint but by the defendant in a motion to dismiss." *Gebretsadike v. Travelers Home & Marine Ins. Co.*, 103 F. Supp. 3d 78, 82 (D.D.C. 2015) (citation omitted). This Court may also take "judicial notice" of materials in the "public record." *Kaempe v. Myers*, 367 F.3d 958, 965 (D.C. Cir. 2004). The Commission's letter of determination (Ex. 1) and charge of discrimination (Ex. 2) are each directly referenced in the Complaint. *See* Compl. ¶¶ 8, 9. In addition, the "charge and the agency's determination are both public records of which this Court may take judicial notice." *Muhammad v. N.Y.C. Transit Auth.*, 450 F. Supp. 2d 198, 204–05 (E.D.N.Y. 2006). Both of these documents are thus properly before this Court for purposes of this motion to dismiss. *See*, *e.g.*, *Fennell v. AARP,* 770 F. Supp. 2d 118, 124 n.3 (D.D.C. 2011) (Kollar-Kotelly, J.) (considering charge of discrimination); *Buie v. Berrien*, 85 F. Supp. 3d 161, 166 n.2 (D.D.C. 2015) (considering determination letter).

In January 2016, the University posted an opening for a job titled "Special Assistant, Athletics," stating that the Department of Athletics was seeking an individual "to provide high-level administrative support to the Director of Athletics." Compl. ¶ 23 (citation omitted). The Complaint does not describe in any detail the responsibilities associated with that position. Williams did not apply for the position, *id*. ¶ 26, and it was ultimately awarded to another Department of Athletics employee, Michael Aresco, who was already serving as an Assistant Athletics Director, *id.* ¶¶ 18, 28.

Approximately ten months later, the University received notice that Williams had filed a charge of discrimination with the Commission alleging that the University had discriminated against Williams on the basis of sex in violation of Title VII and the Equal Pay Act. *See* Ex. 2, Charge of Discrimination. Although Williams had not applied for the position of Special Assistant, she alleged that the University had discriminated against her in violation of Title VII by selecting Aresco for that position. Ex. 1, Letter of Determination, at 1. She further alleged that the University had violated both statutes by paying Aresco a higher salary as Special Assistant than it paid Williams as Executive Assistant. *Id.*

On April 21, 2017, the Commission issued a letter of determination, notifying the University that it had found reasonable cause to believe that both statutes had been violated. Compl. ¶ 9. In the letter, the Commission claimed to have identified "record evidence" that Williams "was deterred from submitting an application in response to the Special Assistant posting, and that it would have been futile for her to do so." Ex. 1, Letter of Determination, at 2. The letter did not specify *who* or *what* had deterred her from applying, and it never identified the supposed "record evidence." The letter also asserted that Williams' and Aresco's positions were sufficiently similar to support a pay discrimination claim because, according to the Commission,

the University's official descriptions listed both positions as providing, at the broadest level of generality, "high-level administrative support to the Director of Athletics." *Id.* In fact, however, even this broad comparison was inaccurate: The University's description of Williams' job listed her main duty as providing *ordinary* "administrative support" such as "[o]versee[ing] [Nero's] calendar" and planning his travel, Ex. 3, Job Posting, Executive Assistant to the Director of Athletics and Recreation—not "*high-level* administrative support," Ex. 1, Letter of Determination, at 2 (emphasis added).[2]

On May 5, 2017, the University submitted a request that the Commission reconsider its determination. Ex. 4, Request for Reconsideration.[3] In addition to disputing the Commission's legal conclusions, the University requested an opportunity to see and respond to the purported "record evidence" referenced in the letter of determination, which the Commission relied on to support its finding that the University had engaged in discriminatory treatment of Williams. *Id.* at 2-3. On May 16, 2017, the Commission denied the request, Ex. 5, Denial of Request for Reconsideration, and on July 19, 2017—just two months later—the Commission issued a notice stating that conciliation had failed, Compl. ¶ 12.

---

[2] This Court can consider the University's official description of Williams' position because it is incorporated by reference in the Commission's letter of determination, Ex. 1, Letter of Determination, at 2, which, in turn, is incorporated by reference in the Complaint, Compl. ¶ 9. *See Int'l Union, United Auto. Aerospace & Agric. Implement Workers of Am. v. Goodrich Pump & Engine Control Sys., Inc.*, 2017 WL 4330160, at *3-4 (D. Conn. Sept. 29, 2017) (considering, pension plan incorporated into collective bargaining agreement, which was incorporated into complaint). The University relies on the description of Williams' position here only to dispel any inference that the letter accurately characterizes that description.

[3] The University relies on this document and the Commission's response, Ex. 5, Denial of Request for Reconsideration, only in connection with its request in the alternative to stay this action. Correspondence related to a request for reconsideration is part of the public record and this Court may therefore take judicial notice of it. *Williams v. Chu*, 641 F. Supp. 2d 31, 34-35 (D.D.C. 2009).

The Commission then rushed to file this action before the end of the fiscal year, so it could proclaim in a press release that it had filed "three lawsuits" in the Washington D.C. area "charging sex-based pay discrimination" as part of the Commission's "ongoing effort to combat sex discrimination in pay." Ex. 6, Commission Press Release, *available at* https://tinyurl.com/y7cmo563 (capitalization altered). The Complaint—filed September 26, 2017—alleges violations of Title VII and the Equal Pay Act based on Williams' charge of discrimination.

Count I alleges that the University violated the Equal Pay Act by paying Williams less as an Executive Assistant than it paid Aresco for "substantially equal … work" as a Special Assistant. Compl. ¶¶ 17, 24, 29, 31-34. Unlike in its Letter of Determination, the Commission no longer purports to rely on its inaccurate characterization of the University's official description of Williams' job. Instead, the crux of its claim is simply that both positions—according to the University's description of the Special Assistant position and the Commission's own characterization of Williams' job duties—involve "high-level administrative support." *Id.* ¶¶ 15(a), 23.

Count II alleges that the University discriminated against Williams based on sex. The Commission's principal allegation is that the University "depriv[ed] [Williams] of employment opportunities"—or equivalently, "promotional opportunities" and "advancement"—by hiring Aresco instead of Williams for the Special Assistant position. Compl. ¶ 38. The Commission concedes that Williams did not apply for the position, claiming that she was "dissuaded" from doing so, *id.* ¶ 26, after an unnamed member of "Defendant's personnel" allegedly told her that the University had "already … decided to hire [Aresco]," *id.* ¶ 25. The Commission also alleges that the University "subject[ed] [Williams] to disparate terms and conditions of employment," *id.* ¶ 38, including by requiring Williams to "train" Aresco, "ru[n] personal errands," and perform

unspecified job duties that Aresco did not perform, *id.* ¶ 20. Finally, echoing its Equal Pay Act claim, the Commission alleges that the University "engag[ed] in disparate pay practices" that violated Title VII, *id.* ¶ 37.[4]

LEGAL STANDARD

A complaint must be dismissed under Federal Rule of Civil Procedure 12(b)(6) unless it "contain[s] sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.*; *see also Twombly*, 550 U.S. at 555 (holding that a complaint must include more than just a "formulaic recitation of the elements of a cause of action"). Rather, a plaintiff must plead facts that "allo[w] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678.

The Court's first task on a motion to dismiss is to separate the complaint's legal conclusions—including conclusory assertions and recitation of the elements of the cause of action—from genuine factual allegations. *Iqbal*, 556 U.S. at 678-79. The legal conclusions, unlike factual allegations, are not presumed true. *Id.* Once the legal conclusions are set aside, the Court determines whether the facts permit a plausible inference that the defendant is liable for the violation alleged. *Id.* at 678. For a claim to be "plausible," it is insufficient that the facts alleged are "'*consistent with*' a defendant's liability," or that a violation is "'*conceivable*.'" *Id.* at 678, 680 (emphases added; quoting *Twombly*, 550 U.S. at 557, 570). The mere "'*possibility*'" of a violation is not enough. *Id.* at 678 (emphasis added; quoting *Twombly,* 550 U.S. at 557).

[4] On October 13, 2017, prior to the expiration of the deadline to file a responsive pleading, the University filed a Consent Motion to Extend Defendant's Time to Respond to the Complaint. *See* Dkt. 8. On October 16, 2017, the Court granted the motion, extending the filing deadline to November 7, 2017. *See* Minute Order (Oct. 16, 2017).

ARGUMENT

I. The Commission's Title VII Claims Should Be Dismissed For Failure To State A Claim.

The Commission's Title VII claims must be dismissed because the Commission fails to state a plausible claim that the University discriminated against Williams based on sex. To establish sex-based discrimination under Title VII, the Commission must prove "two essential elements": that Williams (1) "suffered an adverse employment action" (2) "because of" her "sex." *Baloch v. Kempthorne*, 550 F.3d 1191, 1196 (D.C. Cir. 2008). None of the "employment actions" alleged in the Complaint satisfies these elements.

A. The University's Hiring Of Aresco As Special Assistant Cannot Be Discrimination Against Williams Because Williams Never Applied For The Position.

The Commission's central allegation of discrimination is based on the University's decision to hire Aresco as the Special Assistant to the Director of Athletics. Compl. ¶¶ 22-26, 38. But that decision cannot possibly be discrimination *against Williams*, because the Commission concedes that *she never applied for the position*. *Id.* ¶ 26.

"It is well settled that a timely application for employment for a particular vacancy or line or work is a *sine qua non* requirement for a claim of employment discrimination." *Melendez v. SAP Andina y del Caribe, C.A.*, 518 F. Supp. 2d 344, 357 (D.P.R. 2007). "Title VII provides no remedy to those who presume they will be discriminated against and therefore do not even bother to apply for a position." *Fleischhaker v. Adams*, 481 F. Supp. 285, 293 (D.D.C. 1979). In the D.C. Circuit, therefore, an employee's failure-to-hire or failure-to-promote claim is "defeated by her failure to apply" for the position. *Lathram v. Snow*, 336 F.3d 1085, 1089 (D.C. Cir. 2003); *see also Mason v. Davita Inc.*, 542 F. Supp. 2d 21, 33 (D.D.C. 2008). Other circuits agree: "[I]n the absence of a job application, there cannot be a failure-to-hire." *Velez v. Janssen*

Ortho, LLC, 467 F.3d 802, 807-08 (1st Cir. 2006); *see also*, *e.g.*, *Jaburek v. Foxx*, 813 F.3d 626, 631-32 (7th Cir. 2016) (employee could not show that employer "rejected her from the position … because she never applied for the position"); *McClaine v. Boeing Co.*, 544 F. App'x 474, 477 (5th Cir. 2013) ("The fact remains that McClaine did not apply to work as an FSW"); *Brown v. Coach Stores, Inc.*, 163 F.3d 706, 710 (2d Cir. 1998) (employee must "allege that she or he applied for a specific position or positions and was rejected therefrom"). This Court has faithfully applied that requirement, holding for example that an employee's "failure to apply" for a "properly advertised" position "'doom[ed] the sustainability' of her non-promotion claim." *Evans v. Sebelius*, 674 F. Supp. 2d 228, 246 (D.D.C. 2009); *see also Stoyanov v. Winter*, 643 F. Supp. 2d 4, 12-13 (D.D.C. 2009) ("[T]here is no dispute that plaintiff did not apply for the DON0871 position. This alone is fatal to his case, since a plaintiff cannot even establish a *prima facie* case of discriminatory or retaliatory failure to promote if he did not apply for the position.").

The requirement that the employee must have applied for the position applies with equal force at the motion-to-dismiss stage. To "plea[d] a plausible failure to promote claim," an employee alleging discrimination is "required to allege that he or she applied specifically for the position in question." *Romaine v. N.Y.C. Coll. of Tech. of the City Univ. of N.Y.*, 2012 WL 1980371, at *3 (E.D.N.Y. June 1, 2012). Courts thus regularly dismiss failure-to-promote or failure-to-hire claims brought by employees seeking positions for which they did not apply. *E.g.*, *McClaine*, 544 F. App'x at 477; *Brown*, 163 F.3d at 710; *Gupta v. City of Bridgeport*, 2015 WL 1275835, at *8 (D. Conn. Mar. 19, 2015); *Anderson v. Davis Polk & Wardwell LLP*, 850 F. Supp. 2d 392, 414 (S.D.N.Y. 2012); *Romaine*, 2012 WL 1980371, at *3. This Court is no exception: In *Guerrero v. Vilsack*, for example, this Court dismissed an employee's "claims that

younger, white persons were selected to fill jobs for which [she] did not apply." 134 F. Supp. 3d 411, 435-36 (D.D.C. 2015). And in *Magowan v. Lowery*, this Court dismissed an employee's failure-to-promote claims because the employee did not "alleg[e] what positions she applied for." 166 F. Supp. 3d 39, 69 (D.D.C. 2016).

Williams' admission that she did not apply for the Special Assistant position, Compl. ¶ 26, defeats the Commission's claim that the University unlawfully "depriv[ed] her of employment opportunities," *id.* ¶ 38, for at least two independent reasons.

First, the University's decision to hire Aresco as Special Assistant was not an adverse employment action against Williams. "Not being selected for a position for which [Williams] did not apply cannot be considered an adverse employment action." *Moore v. Hagel*, 2013 WL 2289940, at *2 (D.D.C. May 24, 2013); *see also Sethi v. Narod*, 12 F. Supp. 3d 505, 527 (E.D.N.Y. 2014) ("Plaintiff has not established that he applied for and was denied the CTO position and as a result Plaintiff cannot show that he suffered a material adverse employment action when he was not promoted to the position."). A showing that the employee applied for a specific position "ensures that, at the very least, the plaintiff employee alleges a particular adverse employment action." *Brown*, 163 F.3d at 710. Simply put, an employee who "never applied" has not been "rejected," *Jaburek*, 813 F.3d at 631, so there "cannot be a failure-to-hire," *Velez*, 467 F.3d at 807.

Second, Williams was not denied the position "because of" her "sex." *Baloch*, 550 F.3d at 1196. She could not even have been considered for the position because she did not apply. Under the "burden-shifting framework" established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), "to establish a prima facie case for a discrimination claim, the plaintiff must show that (1) she 'belongs to a' protected class; (2) she '*applied* and was qualified *for a job* for

which the employer was seeking applicants'; (3) 'despite [her] qualifications, [she] was rejected'; and (4) 'after [her] rejection, the position remained open and the employer continued to seek applicants from persons of [her] qualifications.'" *Carter v. George Wash. Univ.*, 387 F.3d 872, 878 (D.C. Cir. 2004) (quoting *McDonnell Douglas*, 411 U.S. at 802) (emphases added). An employee who "did not apply for the position" at issue fails the second element, and thus "cannot … establish a *prima facie* case of discriminatory … failure to promote," *Stoyanov,* 643 F. Supp. 2d at 13.

While a plaintiff need not always plead all four elements of a *prima facie* case to survive a motion to dismiss because discrimination can also be established through "direct evidence," *Gordon v. U.S. Capitol Police*, 778 F.3d 158, 162 (D.C. Cir. 2015), "the complaint must nevertheless allege sufficient 'factual content' from which a court could 'draw the reasonable inference' of racial discrimination," *James v. Hampton*, 592 F. App'x 449, 461 (6th Cir. 2015); *see also Vega v. Hempstead Union Free Sch. Dist.*, 801 F.3d 72, 84 (2d Cir. 2015) ("[A] plaintiff is not required to plead a *prima facie* case under *McDonnell Douglas* ... to defeat a motion to dismiss," but must still "'give plausible support to a minimal inference of discriminatory motivation.'"); *Coleman v. Md. Ct. App.*, 626 F.3d 187, 190-91 (4th Cir. 2010) ("[W]hile a plaintiff is not required to plead facts that constitute a prima facie case in order to survive a motion to dismiss," dismissal is warranted if "the complaint fails to establish a plausible basis for believing ... that race was the true basis for [the adverse employment action]."). Consistent with these decisions, the D.C. Circuit in *Gordon* reversed dismissal only after finding that the plaintiff *both* "adequately pleaded each element of the prima facie case" and "plead[ed] facts that if true would tend to directly show retaliatory purpose." 778 F.3d at 162. Because a complaint cannot make the necessary, plausible showing of discriminatory intent "if it fails to demonstrate that the

plaintiff applied for a specific position," the Commission's failure-to-hire or failure-to-promote claim "must therefore be dismissed." *Anderson*, 850 F. Supp. 2d at 414 (alternations and citation omitted).

Here, moreover, the need to establish a *prima facie* case is even more pronounced because the Complaint is devoid of any facts plausibly suggesting that the Commission has or will be able to produce direct evidence of discrimination. Despite the Commission's statutory obligation to "investigat[e]" charges before commencing litigation, 42 U.S.C. § 2000e-5(b), and despite purporting to have amassed secret "record evidence" as a result of its investigation, Ex. 1, Letter of Determination, at 1-3, the Commission omits from the Complaint *any* statement or action by the University that plausibly suggests Aresco's hiring had anything to do with Williams' sex. Instead, the Commission offers only the conclusory (and remarkable) allegation that Nero's treatment of Williams was part of a "pattern of using power … to gain access … to males." Compl. ¶ 21. Yet the Complaint offers not one example of this purported "pattern." If anything is "discriminatory" in the Complaint, it is not the University's conduct, but this baseless and unseemly suggestion that a desire to "gain access" to males drove Nero's hiring decisions.

The Commission tries to excuse Williams' failure to apply for the position by alleging that an unnamed member of "Defendant's personnel" told her that the University had "already … decided to hire [Aresco]," Compl. ¶ 25, and that Williams was "dissuaded" and "deterred" from applying by an unidentified source, in an unspecified manner, *id*. ¶ 26. Although the identity of the unnamed individual(s)—which could include anyone from the janitor to the Provost to Aresco himself—must have been known to either Williams or the Commission, the Complaint conveniently omits that information. Without it, there is no way to attribute the statement to the University or to determine whether it came from a source with authority over hiring for the

Special Assistant position. Indeed, while the Commission's letter of determination claimed that the Commission had secret "record evidence" that it would have been "futile" for Williams to apply, *see* Ex. 1, Letter of Determination, at 2, the Commission now drops even that vague allegation: It now states only what an unnamed source of undeterminable credibility purportedly *told* Williams, without even alleging that what Williams was told was true.

Even if it were true that the position had already been filled before it was posted—a possibility that would be inconsistent with the University's decision to post the job for all applicants, Compl. ¶ 22—that would not be enough to state a Title VII claim. An allegation that the person ultimately hired was preselected for the position "is relevant only insofar as it logically supports an inference of discriminatory intent." *Kolstad v. Am. Dental Ass'n*, 139 F.3d 958, 970 (D.C. Cir. 1998), *vacated on other grounds*, 527 U.S. 526 (1999). "[P]re-selection by itself is neither unusual nor illegal, much less egregiously wrongful. Indeed, where the selection is to be made from among a narrow band of current employees well known to the selectors, it is hard to see how there could not be a substantial degree of pre-selection—unless the decision-makers were asleep at the switch." *Id.* at 969-70. Williams must therefore "demonstrate that the pre-selection itself was discriminatorily motivated." *Perry v. Shinseki*, 783 F. Supp. 2d 125, 143 (D.D.C. 2011) (citation omitted), *aff'd*, 466 F. App'x 11 (D.C. Cir. 2012). Yet there are no factual allegations in the Complaint that plausibly suggest that Aresco, even if preselected, was preselected *based on sex*. In any event, neither *Kolstad* nor *Perry* suggests that preselection opens the door to suits by individuals like Williams who did not apply for the position at issue.

Similarly, vague allegations that Williams was "dissuaded" and "deterred" from applying, Compl. ¶ 26, do not state a claim for relief. The requirement that the employee claiming discrimination must apply for the job is not excused "simply because an employee

asserts that an 'aura of discrimination' in the workplace somehow discouraged her from filing a formal application." *Petrosino v. Bell Atl.*, 385 F.3d 210, 227 (2d Cir. 2004). A "nonapplicant" claiming failure-to-hire still "must show that he was a *potential victim* of unlawful discrimination," *i.e.*, "that he was deterred from applying for the job *by the employer's discriminatory practices*," and "that he would have applied for the job had it not been for those practices." *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 367-68 (1977) (emphases added). Because Williams fails to adequately plead *any* unlawful discrimination towards *anyone* prior to the University's posting of the Special Assistant position, *see infra* at 14-16, she cannot claim that the University unlawfully deterred her from applying.

Simply put, the Commission has alleged that Williams did not receive a position she did not apply for. Stripping away the conclusory language in the Complaint, *Iqbal,* 556 U.S. at 678, the facts alleged by the Commission do not permit a plausible inference that the University is liable for workplace discrimination.

B. The University's Alleged Assignment Of Less Favorable Job Duties To Williams Is Not An Adverse Employment Action And Was Not Based On Williams' Sex.

The Commission also alleges that the University "subject[ed] [Williams] to disparate terms and conditions of employment," Compl. ¶ 38, including by requiring Williams to "train" Aresco, "ru[n] personal errands," and perform unspecified job duties that Aresco did not perform, *id*. ¶ 20. Those allegations also fail to state an "adverse employment action," *Baloch*, 550 F.3d at 1196, and "fai[l] to establish a plausible basis for believing ... that [sex] was the true basis for [that action]," *Coleman*, 626 F.3d at 191.

An "adverse employment action" is a "significant change in employment status" which results in "objectively tangible harm." *Douglas v. Donovan*, 559 F.3d 549, 552 (D.C. Cir. 2009) (citations omitted). The requirement to demonstrate "objectively tangible harm" "guards against

both judicial micromanagement of business practices and frivolous suits over insignificant slights." *Russell v. Principi*, 257 F.3d 815, 818 (D.C. Cir. 2001) (citations omitted). "[N]ot everything that makes an employee unhappy is an actionable adverse action." *Johnson v. District of Columbia*, 947 F. Supp. 2d 123, 134 (D.D.C. 2013) (quoting *Russell*, 257 F.3d at 818). "'Purely subjective injuries, such as dissatisfaction with a reassignment, or public humiliation or loss of reputation,' will not suffice." *Ortiz-Diaz v. U.S. Dep't of Hous. & Urban Dev., Office of Inspector Gen.*, 867 F.3d 70, 73 (D.C. Cir. 2017) (quoting *Forkkio v. Powell*, 306 F.3d 1127, 1130 (D.C. Cir. 2002)). Moreover, "the Court must analyze each alleged adverse action, individually, to determine whether it constitutes an action that may be the basis for a discrimination claim." *Jones v. Castro*, 168 F. Supp. 3d 169, 179 (D.D.C. 2016).

The Commission's allegation that Williams was required to perform training, personal errands, and other unspecified duties does not meet this standard because "[u]ndesirable assignments are generally not adverse employment actions." *Moore v. Castro*, 192 F. Supp. 3d 18, 43 (D.D.C. 2016) (dismissing plaintiff's claim that he did not receive assignments "commensurate with his [individual development plan] or qualifications"); *see also Lester v. Natsios*, 290 F. Supp. 2d 11, 29 (D.D.C. 2003) ("[U]ndesirable work assignments … do not rise to the level of adverse employment actions."). In fact, similar allegations casting training and running errands as adverse actions have been rejected by courts throughout the country. *See, e.g.*, *Blozis v. Mellon Tr. of Del. Nat'l Ass'n*, 494 F. Supp. 2d 258, 268 n.12 (D. Del. 2007) (requirement that employee train co-worker "do[es] not constitute [an] adverse employment actio[n]"); *Scott v. Pace Suburban Bus*, 2003 WL 1579166, at *4 (N.D. Ill. Mar. 23, 2003) (requests from supervisors to run personal errands, such as purchasing money orders, cigarettes and pet accessories, "do not constitute adverse employment action"). "Performing a few tasks

for a supervisor is a 'mere inconvenience' rather than an adverse action." *Johnson-Carter v. B.D.O. Seidman, LLP,* 169 F. Supp. 2d 924, 943 (N.D. Ill. 2001).

Even if there could be circumstances where such allegations could constitute adverse action, the Commission's failure to allege "objectively tangible harm" dooms any claims based on the duties assigned to Williams. *Russell*, 257 F.3d at 818; *see*, *e.g.*, *Bruder v. Chu*, 953 F. Supp. 2d 234, 241 (D.D.C. 2013) (dismissing plaintiff's claim where he did not allege that "he suffered any monetary loss or material change in the terms of his employment as a result of the types of work assignments that he received"); *Stewart v. FCC*, 177 F. Supp. 3d 158, 171 (D.D.C. 2016) (supervisor's assignment of plaintiff to administrative duties not adverse "if unaccompanied by a decrease in salary or work hour changes") (citation omitted). Here, the Commission casts Williams' assignments as "minimizing" her, *see* Compl. ¶ 20, but does not identify specific harm. This Court has regularly rejected such conclusory allegations. *See*, *e.g.*, *Jones*, 168 F. Supp. 3d at 182-83 (Kollar-Kotelly, J.) (allegation that defendant "stigmatized plaintiff and caused great harm in his personal life and to his professional reputation and ended any chance for career advancement" were conclusory and did not sufficiently allege "tangible harm") (citation omitted). Generalized allegations regarding a "diminution in duties" must be dismissed when they do not result in "objectively tangible harm." *Johnson*, 947 F. Supp. 2d at 134 n.11 (D.D.C. 2013) (citation omitted).

In any event, for the reasons stated above, the Commission's utter failure to allege any facts plausibly suggesting that Williams was assigned tasks *based on sex* independently requires dismissal of any claim based on those alleged assignments. *See supra* at 10-14.

C. The Commission's Title VII Pay Discrimination Claim Is Dependent On Its Equal Pay Act Claims And Fails For The Same Reason.

The Commission also alleges that the University "engag[ed] in disparate pay practices" that violated Title VII. Compl. ¶ 37. Although pleaded under Title VII, the basis for this claim is identical to the basis for the Commission's Equal Pay Act claim: The only pay-discrimination theory alleged in the Complaint is that Williams performed "substantially equal … work" to Aresco yet earned a lower salary. *Id*. ¶¶ 17, 24, 29. "[W]hen a Title VII claimant contends that she has been denied equal pay for substantially equal work, as here, Equal Pay Act standards apply." *Foster v. Arcata Assocs.*, 772 F.2d 1453, 1465 (9th Cir. 1985), *overruled on other grounds*, *Kennedy v. Allied Mut. Ins. Co.,* 952 F.2d 262 (9th Cir. 1991); *see also Lewis v. D.R. Horton, Inc.*, 375 F. App'x 818, 825 n.5 (10th Cir. 2010) (applying Equal Pay Act standard where plaintiff argued "that she performed work similar to" a "'higher paid male'"). While there may be circumstances in which a Title VII pay discrimination claim can be stated without alleging substantially equal work—such as where an employer "use[s] a transparently sex-biased system for wage determination," *Cnty. of Wash. v. Gunther*, 452 U.S. 161, 178-79 (1981)—the Commission "has not made such a claim," so its "Title VII claim and the EPA claim are subject to review under the same standard." *Clark v. Johnson & Higgins*, 181 F.3d 100 (6th Cir. 1999).

Accordingly, because the Commission fails to state a claim of disparate pay for equal work under the Equal Pay Act, *see infra* at 17-20, its Title VII pay discrimination claim fails for the same reason.

II. The Commission's Equal Pay Act Claims Should Be Dismissed Because The Commission Fails To Adequately Allege That Williams And Aresco Performed Equivalent Work.

This Court should also dismiss the Commission's Equal Pay Act claims because the Commission has failed to adequately allege that Williams performed equivalent work to Aresco.

The Equal Pay Act bars discrimination "between employees on the basis of sex" where the employer pays wages to one sex "at a rate less than the rate at which [the employer] pays wages to the employees of the opposite sex" for "equal work … requir[ing] equal skill, effort, and responsibility … performed under similar working conditions." 29 U.S.C. § 206(d)(1). To survive a motion to dismiss, a plaintiff must "allege facts supporting the inference that: 1) she was 'doing substantially equal work on the job, the performance of which required substantially equal skill, effort, and responsibility as the jobs held by members of the opposite sex;' 2) 'the job was performed under similar working conditions;' and 3) she was 'paid at a lower wage than members of the opposite sex.'" *Clay v. Howard Univ.*, 128 F. Supp. 3d 22, 31 (D.D.C. 2015) (quoting *Cornish v. District of Columbia*, 67 F. Supp. 3d 345, 359-60 (D.D.C. 2014)). The three terms listed in the statute—skill, effort and responsibility—"constitute separate tests, each of which must be met in order for the equal pay standard to apply." 29 C.F.R. § 1620.14(a).

Here, the Commission has failed to "allege facts supporting the inference that … [Williams] was 'doing substantially equal work'" to Aresco because it has not alleged sufficient details about her comparator's job for the Court to infer that the position of Executive Assistant and Special Assistant are positions of "'equal skill, effort and responsibility.'" *Clay*, 128 F. Supp. 3d at 31. The sole allegation regarding the Special Assistant's job duties is a single line plucked from the University's official description of that position, which describes the position at the broadest level of generality possible as providing "high-level administrative support to the Director of Athletics." Compl. ¶ 23. The Commission pairs that with its own unsupported and conclusory characterization of Williams' duties as also providing "high-level administrative support." *Id.* ¶ 15(a). But the Commission's conclusory characterization of Williams' administrative support responsibilities as "high-level" is entitled to no weight, *Iqbal*, 556 U.S. at

678 ("[M]ere conclusory statements … do not suffice."), and what is left—"administrative support"—says nothing about the skill, effort and responsibility required by the job. Moreover, while the Complaint claims that Williams performed work in seven different categories, Compl. ¶ 15, it fails to allege any details regarding her tasks or how often she performed each task—be it on a daily, weekly or monthly basis—nor does it allege which responsibilities constituted a significant portion of her job. Combined with the lack of detail regarding Aresco's responsibilities, it impossible for the Court to compare the two positions.

Vague comparisons of two jobs based on the field of work or job title—stating, for example, that two employees both "performed accounting functions," *Johnson*, 947 F. Supp. 2d at 131-32—do not establish equal work. It is not enough to simply allege, for example, that "an attorney is an attorney"—or here, that all administrative support is alike. *EEOC. v. Port Auth. of N.Y. & N.J.*, 768 F.3d 247, 257 (2d Cir. 2014). The jobs must share "duties or content, … not simply overlap in titles or classifications" at the broadest level of generality, *id.*, because "[e]ven individuals with similar job titles will not necessarily be similarly situated if," for example, "one exercises greater decision-making authority than another," *Alexander v. Marriott Int'l, Inc.*, 2011 WL 1231029, at *4 (D. Md. Mar. 29, 2011) (citing *Gustin v. W. Va. Univ.,* 63 F. App'x 695, 699 (4th Cir. 2003)). "[W]ithout evidence regarding the skills and effort required for the plaintiff's and her comparators' jobs, or the attendant responsibilities associated with each of their positions," there cannot be an Equal Pay Act violation. *Musgrove v. Gov't of D.C.*, 775 F. Supp. 2d 158, 166 n.6 (D.D.C. 2011) (granting defendant's motion for summary judgment), *aff'd*, 458 F. App'x 1 (D.C. Cir. 2012).

Here, the failure to even allege such facts means that the claim cannot rise to the level of plausibility necessary to survive a motion to dismiss. Although "the EEOC had ready access to

[Defendant's] documents and employees" in conducting its investigation—"including to [Williams,] the claiman[t] asserting [an Equal Pay Act] violatio[n]"—it nonetheless "fail[s] … to allege any factual basis for inferring that the [employees] at issue performed 'substantially equal' work," as required to avoid dismissal. *Port Auth. of N.Y. & N.J.*, 768 F.3d at 258. Indeed, because the "nature of the [Special Assistant] position is not disclosed" in the Complaint beyond vague generalities—with "[a]ny additional responsibilities … left open for speculation"—the Commission has "fail[ed] to properly allege that the … positions are equal or substantially equal," and the claim must be "dismissed." *Forsberg v. Pac. Nw. Bell Tel. Co.*, 623 F. Supp. 117, 123, 125 (D. Or. 1985). Courts regularly dismiss Equal Pay Act claims in these circumstances—*i.e.*, where the plaintiff "ma[kes] no reference to the skills, effort, and responsibility required" in the relevant positions, *Noel-Batiste v. Va. State Univ.*, 2013 WL 499342, at *6 (E.D. Va. Feb. 7, 2013); "draws no parallels between the [employees'] daily tasks," *Alexander*, 2011 WL 1231029, at *5; fails to "describe the duties and responsibilities" of the position at issue, *Gumbs v. Del. Dep't of Labor*, 2015 WL 3793539, at *3 (D. Del. June 17, 2015); or "does not describe her job responsibilities in comparison to the job responsibilities of the [comparator]," *Adams v. Northstar Location Servs., LLC*, 2010 WL 3911415, at *6 (W.D.N.Y. Oct. 5, 2010).

The Commission's threadbare allegations regarding the Special Assistant position warrant the same outcome here. Stripped of the Commission's conclusory allegations, the Complaint fails to state a claim that Williams performed "substantially equal work" to that of a higher paid male colleague. The Commission's Equal Pay Act claims should therefore be dismissed.

III. This Action Should Be Stayed Because The Commission Utterly Failed to Satisfy Its Statutory Obligation To Engage In Conciliation.

In the alternative, if the Complaint is not dismissed, this action should be stayed because the Commission has not satisfied its statutory obligation to conciliate the claim. As the Supreme Court explained in *Mach Mining, LLC v. EEOC*, the Commission is required to "afford the employer a chance to discuss and rectify a specified discriminatory practice." 135 S. Ct. 1645, 1653 (2015). But here, the Commission never disclosed the secret "record evidence" underlying its claims—thereby depriving the University of the chance to fully assess whether any misconduct has occurred and, if so, how to remedy it.

Title VII requires the Commission, before initiating litigation, to "endeavor to eliminate" unlawful employment practices by "informal methods of conference, conciliation, and persuasion." 42 U.S.C. § 2000e-5(b). This requirement "serves a substantive mission" in that it helps to "'eliminate' unlawful discrimination from the workplace." *Mach Mining*, 135 S. Ct. at 1654 (quoting 42 U.S.C. § 2000e-5(b)). It reflects Congress's "clear … prefer[ence] for the EEOC to resolve Title VII disputes by informal methods of dispute resolution and to only resort to litigation when those methods fail." *EEOC v. CVS Pharmacy, Inc.*, 809 F.3d 335, 342-43 (7th Cir. 2015) (citing *Mach Mining,* 135 S. Ct. at 1651).

Congress accordingly has made conciliation a "'reviewable prerequisite to suit'": "Only if the Commission is 'unable to secure' an acceptable conciliation agreement—that is, only if its attempt to conciliate has failed—may a claim against the employer go forward," and it is up to "[c]ourts" to "enforce" that "compulsory prerequisit[e]." *Mach Mining*, 135 S. Ct. at 1651-52 (quoting 42 U.S.C. § 2000e-5(f)(1)). To satisfy its conciliation obligation, the Commission must at a minimum: (1) "inform the employer about the specific allegation" against it; and (2)

"engage the employer in … discussion … so as to give the employer an opportunity to remedy the allegedly discriminatory practice." *Id*. at 1655-56.

Subjecting the Commission's satisfaction of these requirements to judicial review is necessary lest "compliance with the law … rest in the Commission's hands alone" and the Commission's "legal lapses and violations … have no consequence," *Mach Mining*, 135 S. Ct. at 1652-53. A reviewing court must therefore do more than merely examine the "bookend" letters the Commission sends at the beginning and end of the conciliation process. *Id.* at 1653. It must also "*verify* … that the EEOC actually, and not just purportedly, tried to conciliate a discrimination charge." *Id*. When the material before the court indicates that "the EEOC did not provide requisite information about the charge or attempt to engage in a discussion about conciliating the claim," the court should "stay" the action and "order the EEOC to undertake the mandated efforts to obtain voluntary compliance." *Id.* at 1656; *see also* 42 U.S.C.§ 2000e-5(f)(1) ("Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days….[to] further efforts of the Commission to obtain voluntary compliance.").

A stay is warranted here because the Commission has failed to adequately "inform the [University] about the specific allegation" against it, and has thus deprived the University of a meaningful "opportunity to remedy the allegedly discriminatory practice." *Mach Mining*, 135 S. Ct. at 1655-56. Instead, the Commission's letter of determination repeatedly refers to secret "record evidence" allegedly supporting a finding that the University engaged in unlawful discrimination. Ex. 1, Letter of Determination, at 1-3. The Commission claims, for example, to have identified "record evidence" that Williams "was deterred from submitting an application in response to the Special Assistant posting, and that it would have been futile for her to do so." *Id.* at 2. Yet the letter of determination is silent as to the nature of this evidence or why it would

have been futile for Williams to apply. The University requested this information, including in seeking reconsideration of the Commission's determination, "not just so that [it] c[ould] respond," but also so that it could "fully and fairly assess this matter for purposes of conciliation." Ex. 4, Request for Reconsideration, at 3, 5. Indeed, the University specifically stated that if the Commission's information "does contradict what the University, in good faith, believes to be the facts, the University would of course take that very seriously." *Id.* at 5. Yet the Commission denied the University's request without comment. *See* Ex. 5, Denial of Request for Reconsideration.[5]

Without access to the critical "record evidence" on which the Commission purports to rely, the University is left with nothing but the Commission's conclusory statements that the employment actions alleged by Williams were motivated by discrimination based on sex. There is simply no way, on the basis of the Commission's bare allegations alone, for the University to fully assess whether unlawful discrimination has occurred and determine whether and how to take corrective action. By depriving the University of this critical evidence, therefore, the Commission has effectively stripped the University of any meaningful opportunity to engage in conciliation, in violation of the Commission's statutory obligations and the Supreme Court's decision in *Mach Mining*. To remedy that violation, this Court should order the Commission to disclose its record evidence to the University and return to conciliation in light of that evidence.[6]

---

[5] Indeed, the University repeatedly requested to see the Commission's "record evidence" throughout the conciliation process, but the Commission still failed to produce that evidence. The University stands ready to submit these communications to this Court for *in camera* review upon request, should this Court wish to review them.

[6] Although Title VII limits the use of evidence based on what was "said or done" during the conciliation process, *see* 42 U.S.C. § 2000e-5(b), that limitation is not an issue here because the Commission's failure to adequately "inform the [University] about the specific allegation" against it, *Mach Mining*, 135 S. Ct. at 1655-56, is apparent from documents related to an earlier

CONCLUSION

For the foregoing reasons, this Court should grant the University's motion to dismiss the Complaint, or, in the alternative, should stay the action and order the Commission to satisfy its statutory obligation to engage in conciliation with the University.

Dated: November 7, 2017

Respectfully submitted,

/s/ Jason C. Schwartz
Jason C. Schwartz, D.C. Bar No. 465837
jschwartz@gibsondunn.com
Matthew S. Rozen, D.C. Bar No. 1023209
(admission pending)
mrozen@gibsondunn.com
Wendy Miller, D.C. Bar No. 1035161
wmiller@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
Telephone: 202.955.8500
Facsimile: 202.467.0539

Attorneys for Defendant
The George Washington University

stage of the Commission's proceedings. The University relies only on the Commission's letter of determination, the University's request for reconsideration of that determination, and the Commission's response to that request. Each of these documents relates to the requirement that the Commission must "determin[e] after [an] investigation that there is reasonable cause to believe that the charge is true" *before* engaging in conciliation. 42 U.S.C. § 2000e-5(b). The Commission's failure to adequately advise the University of that determination made conciliation impossible, so there is no need for the University to rely on additional evidence of what was "said or done" during conciliation. *Id.*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

U.S. Equal Employment Opportunity Commission, Plaintiff, v. The George Washington University, Defendant.	Civil Action No. 1:17-cv-01978-CKK

DECLARATION OF MATTHEW S. ROZEN

I, Matthew S. Rozen, declare as follows:

1. I am over 18 years of age and am competent to testify regarding the following:

2. My full name is Matthew Scott Rozen.

3. I am an associate attorney at the law firm of Gibson, Dunn & Crutcher LLP, counsel of record for Defendant the George Washington University ("the University") in the current action. I am admitted to practice law in the District of Columbia. I have personal knowledge of the following facts and I submit this declaration in support of Defendant's Motion to Dismiss Plaintiff's Complaint.

4. Attached hereto as Exhibit 1 is a true and correct copy of the Determination issued by the U.S. Equal Employment Opportunity Commission on April 21, 2017, with respect to Charge No. 570-2017-000064.

5. Attached hereto as Exhibit 2 is a true and correct copy of the Charge of Discrimination, Charge No. 570-2017-00064, filed by Sara L. Mutalib with the U.S. Equal Employment Opportunity Commission on October 19, 2016.

6. Attached hereto as Exhibit 3 is a true and correct copy of the University's job posting of the "Executive Assistant to the Director of Athletics and Recreation" position, as submitted to the U.S. Equal Employment Opportunity Commission on January 23, 2017 in connection with the investigation of Charge No. 570-2017-00064.

7. Attached hereto as Exhibit 4 is a true and correct copy of a letter from Katrina J. Dennis, Saul Ewing LLP, to Mindy E. Weinstein, Acting Director, U.S. Equal Employment Opportunity Commission, *et al.*, regarding Sara Mutalib – Charge No. 570-2017-00064 REQUEST FOR RECONSIDERATION, dated May 5, 2017. The letter has been redacted pursuant to 42 U.S.C. § 2000e-5(b) to remove statements made as part of the conciliation process required by that statute.

8. Attached hereto as Exhibit 5 is a true and correct copy of a letter from Mindy E. Weinstein, Acting Director, U.S. Equal Employment Opportunity Commission, to Katrina J. Dennis, Saul Ewing LLP, dated May 16, 2017.

9. Attached hereto as Exhibit 6 is a true and correct copy of a press release from the U.S. Equal Employment Opportunity Commission, titled "EEOC Files Three Lawsuits in D.C. Metro Area Charging Sex-Based Pay Discrimination," dated Sept. 27, 2017. I accessed this press release on November 1, 2017 at the web address https://www.eeoc.gov/eeoc/newsroom/release/9-27-17j.cfm.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: November 7, 2017

/s/ Matthew S. Rozen
Matthew S. Rozen

EXHIBIT 1

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington Field Office

131 M Street, N. E., Suite 4NW02F
Washington, D. C. 20507
Intake Information Group: (800) 669-4000
Intake Information Group TTY: (800) 669-6820
Washington Status Line: (866) 408-8075
Washington Direct Dial: (202) 419-0713
TTY (202) 419-0702
FAX (202) 419-0740
Website: www.eeoc.gov

Charge No. 570-2017-00064

Sara Mutalib
250 Woodward Road
Arnold, MD 21012

Charging Party

George Washington University
2121 Eye Street, NW
Suite 101
Washington, DC 20052

Respondent

DETERMINATION

Under the authority vested in me by the Commission's Procedural Regulations, I issue the following determination on the merits of the subject charge filed under Title VII of the Civil Rights Act of 1964, as amended ("Title VII") and the Equal Pay Act of 1963 ("EPA"). All requirements for coverage have been met.

Charging Party, who was employed by Respondent as the Executive Assistant to the Director of Athletics and Recreation, alleges that Respondent paid her lower wages than a similarly situated male employee based on her sex (female), in violation of Title VII and the EPA. She further contends that Respondent discriminated against her because of sex in violation of Title VII when Respondent selected a male employee for a Special Assistant position in the Department of Athletics and otherwise subjected Charging Party to disparate treatment.

Respondent denies that it discriminated against Charging Party because of her sex. Regarding the Special Assistant position, Respondent admits that it selected Michael Aresco (male) for the position but Respondent contends that Charging Party was less qualified than Aresco for the job. Respondent also contends that Charging Party did not apply for the position. Regarding the alleged disparate pay, while Respondent admits that it paid Charging Party a lower salary than Aresco, Respondent contends that it did not violate the EPA or Title VII in doing so because the Executive Assistant and Special Assistant positions constituted different jobs.

The record evidence shows that Respondent paid Charging Party approximately $39,000/year while she held the position of Executive Assistant the Director of Athletics from August 2014 to December 2016. In that position, Charging Party performed a variety of tasks including providing high-level administrative support to Respondent's Director of Athletics, Patrick Nero.

In approximately September 2015, Respondent moved Aresco into an office near the Director of Athletics, and in the suite of offices where Charging Party worked as the Athletic Director's Executive Assistant. Thereafter, Respondent subjected Charging Party to less favorable treatment than Aresco, including maximizing Aresco's training, role, and opportunities to Charging Party's detriment. For example, some of Charging Party's job duties were taken away from her and given to Aresco. Charging Party was required to train Aresco how to perform various aspects of her job, but she remained responsible for completing duties that Aresco could not or would not complete. During this period, the Athletic Director, Aresco, and others behaved as if Aresco had been pre-selected for a job in Administration. Continuing through Charging Party's departure from the Athletics Department in December 2016, Respondent continued to subject Charging Party to less favorable terms and conditions of employment than Aresco, and to further minimize her employment opportunities to Aresco's benefit.

In January 2016, Respondent issued a formal posting for a job it called "Special Assistant, Athletics." The job posting Respondent provided to the Commission describes the Special Assistant job as one providing "high-level administrative support to the Director of Athletics." The pay range Respondent set for the Special Assistant position was $63,900 – $92,700, substantially higher than the wages that Respondent had been paying Charging Party, since at least August 2014, to work as the Executive Assistant to the Director of Athletics. According to Respondent, it selected Aresco for the Special Assistant position and paid him $77,500/year to perform that job.

The record evidence indicates that Charging Party did complain to Respondent that she had been subjected to gender discrimination, including disparate pay and other disparate treatment, but Respondent did not stop, correct, or remedy the discriminatory conduct.

Regarding Aresco's selection for the Special Assistant job, Respondent's contention that Aresco was better qualified than Charging Party is not supported by the record evidence. While Respondent contends that Charging Party did not apply for the position, record evidence indicates that Charging Party was deterred from submitting an application in response to the Special Assistant posting, and that it would have been futile for her to do so.

Regarding the lower wages paid to Charging Party to work as the Executive Assistant to the Athletic Director, as compared to the wages paid to Aresco to work as Special Assistant to the Athletic Director, Respondent contends that the two jobs were different. The record evidence does not support Respondent's position. For example, Respondent's position is contradicted by the Executive Assistant description and the Special Assistant job posting that Respondent submitted to the Commission, which describe both jobs as providing high-level administrative support to the Director of Athletics, and otherwise indicate that the two jobs were so similar as to support a finding of unequal and discriminatory pay in violation of the EPA and Title VII.

Based on the record evidence obtained by the Commission, there is reasonable cause to believe that Respondent violated the Equal Pay Act when Respondent paid Charging Party lower wages than those paid to Michael Aresco, beginning in at least August 2014 and continuing thereafter to the date Charging Party left the Athletic Department. Further, I find that Respondent has

engaged in violations of Title VII of the Civil Rights Act of 1964, as amended, by: engaging in disparate and discriminatory pay practices because of gender beginning in at least August 2014 and continuing thereafter; discriminating against Charging Party because of gender when Respondent failed to select Charging Party for, or otherwise grant to her, the Special Assistant position and/or the pay, benefits, and opportunities associated with that position; and discriminating against Charging Party because of gender by subjecting her to disparate terms and conditions of employment, including the deprivation of employment opportunities, advancement, and other employment related benefits.

Upon finding that violations have occurred, the Commission will attempt to eliminate the alleged unlawful practices by informal methods of conciliation. Therefore, the Commission now invites the parties to join with it in reaching a just resolution of the matter. The confidentiality provisions of Sections 706 and 709 of Title VII apply to information obtained during conciliation discussions.

If Respondent declines to discuss settlement or when, for any other reason, a settlement acceptable to the Director is not obtained, the Director will inform the parties and advise them of the court enforcement alternatives available to the aggrieved persons and the Commission. A Commission representative will contact each party in the near future to begin conciliation discussion.

You are reminded that Federal law prohibits retaliation against persons who have exercised their right to inquire or complain about matters they believe may violate the law. Discrimination against persons who have cooperated in Commission investigations is also prohibited. These protections apply regardless of the Commission's determination on the merits of the Charge.

On Behalf of the Commission:

4/21/17
Date

Mindy E. Weinstein
Acting Director

EXHIBIT 2

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: [ ] FEPA [X] EEOC

Agency(ies) Charge No(s): 570-2017-00064

D.C. Office Of Human Rights and EEOC

State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.)	Home Phone (Incl. Area Code)	Date of Birth
Ms. Sara L. Mutalib	(484) 432-0111	[redacted]

Street Address: 250 Woodard Road, Arnold, MD 21012 — City, State and ZIP Code

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (*If more than two, list under PARTICULARS below.*)

Name	No. Employees, Members	Phone No. (Include Area Code)
GEORGE WASHINGTON UNIVERSITY	500 or More	(202) 994-1000

Street Address: 600 22nd Street, N.W., Washington, DC 20052 — City, State and ZIP Code

DISCRIMINATION BASED ON (*Check appropriate box(es).*)

[ ] RACE [ ] COLOR [X] SEX [ ] RELIGION [ ] NATIONAL ORIGIN
[ ] RETALIATION [ ] AGE [ ] DISABILITY [ ] GENETIC INFORMATION
[X] OTHER (*Specify*) Equal Pay

DATE(S) DISCRIMINATION TOOK PLACE — Earliest: 03-07-2016 — Latest: 03-07-2016

[X] CONTINUING ACTION

THE PARTICULARS ARE (*If additional paper is needed, attach extra sheet(s)*):

I was hired at George Washington University in the Department of Athletics on September 14, 2014 as the Executive Assistant to the Director of Athletics and Recreation.

On or about January 15, 2016, I became aware of the Department of Athletics Special Assistant job posting. The job description and functions were identical to mine and the position was intended for a male coworker who was being promoted to the position. The starting salary for the position was $37,000 more than my salary. To my knowledge, I am as qualified, if not more qualified than my male counterpart and have since performed the same job functions.

I believe I have been discriminated against on the basis of sex (female), in violation of Title VII of the Civil Rights Act of 1964, as amended. I also believe that I am being paid less than a similarly-situated male employee, in violation of the Equal Pay Act of 1963, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

Oct 19, 2016 — Date

Sara Mutalib — Charging Party Signature

NOTARY – *When necessary for State and Local Agency Requirements*

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (*month, day, year*)

EXHIBIT 3

Executive Assistant to the Director of Athletics and Recreation

Minimum Qualifications:
Associate's degree in an appropriate area of specialization plus 2-4 years of relevant professional experience. Degree requirements may be substituted with an equivalent combination of education, training and experience.

Desired Qualifications:

- Experience supporting a senior executive preferred.
- Strong written and verbal communication skills.
  Ability to perform in fast-paced environment.
- Exceptional attention to detail and organizational skills.
- Proficient with Microsoft Office.
- Ability to maintain confidentiality and demonstrate a commitment to integrity.

JOB DUTIES

- Provide administrative support to the Director of Athletics and Recreation. Oversee daily calendar, scheduling of meetings, and management of task list systems. Coordinate communication and workflow between Director of Athletics and Recreation and Department staff members and campus colleagues.
- Plans and manages Director of Athletics and Recreation travel and donor meetings, scheduling appointments and preparing travel itineraries. Coordinates with appropriate staff on briefings, documenting of donor contact, and processing out of follow up.
- Assist in management of Athletic Director budget by processing and filing financial receipts and tracking expenses in coordination with Department of Athletics and Recreation Business Office.
- Drafts and sends correspondence on behalf of the Director of Athletics and Recreation to both internal and external constituents. Serve as administrative interface between Director of Athletics and University and Conference colleagues, among others.
- Maintains comprehensive files (electronic and paper) and data for office.
- Assist with the hiring and management of student employees and interns.
- Performs other work related duties as assigned. The omission of specific duties does not preclude the supervisor from assigning duties that are logically related to the position.

APPLICANT DOCUMENTS:

Required Documents

1. Resume
2. Cover Letter

EXHIBIT 4

Saul Ewing LLP

Katrina J. Dennis
Phone: (410) 332-8721
Fax: (410) 332-8151
kdennis@saul.com
www.saul.com

May 5, 2017

VIA FACSIMILE: (202) 419 0740
EMAIL: carolyn.allen@eeoc.gov
AND FIRST CLASS MAIL
Mindy E. Weinstein, Acting Director
Alan W. Anderson, Deputy Director
U.S. Equal Employment Opportunity Commission
Washington Field Office
131 M Street, N.E., Suite 4NW02F
Washington, D.C. 20507

Re: Sara Mutalib Charge No: 570 2017 00064
REQUEST FOR RECONSIDERATION

Dear Ms. Weinstein and Mr. Anderson:

This Firm represents respondent the George Washington University in the above captioned matter, and we are responding to your correspondence dated April 21, 2017.

The University respectfully disagrees with the EEOC's finding that there exists reasonable cause to conclude that it has violated Title VII or the Equal Pay Act ("EPA") in any manner. As explained in the University's Position Statement, the Charging Party and her comparator worked two entirely different jobs, with different tasks and required skills. Accordingly, pursuant to Section 1601.21 of the Code of Federal Regulations, the University respectfully requests the EEOC reconsider its finding of reasonable cause. We further ask that conciliation be held in abeyance until the disposition of this reconsideration request.

As discussed in the University's Position Statement, to establish a prima facie claim of wage discrimination under the EPA, a claimant must show that an employer has paid different wages to employees of the opposite sex for equal work in jobs that require equal skill, effort and responsibility and are performed under similar working conditions. *Johnson v. District of Columbia, et al.*, 947 F. Supp. 2d 123, 130 31 (D.D.C. 2013). Similarly, to establish a prima facie claim for failure to promote under Title VII, "the complainant must prove four elements: (1) that [she] was a member of a protected class; (2) that ***[she] applied for a job*** for which [she]

was qualified; (3) that [she] was rejected in favor of another applicant; and (4) that a substantial factor in the employment decision was [her] membership in the protected class." *Mason v. DeVita, Inc.*, 542 F.Supp.2d 21, 33 (D.C. 2008) (citing to cases) (emphasis added).

The Letter of Determination summarily states that "Respondent subjected Charging Party to less favorable treatment than Aresco" after Mr. Aresco was moved to a new position in September 2015. There is no allegation that Mr. Aresco and Charging Party were in similar roles, or that Charging Party performed the same duties as Mr. Aresco, from August 2014-August 2015. As an initial matter, then, the EEOC's apparent conclusion that Charging Party suffered discrimination back to August 2014 cannot be correct.

Nor did Charging Party suffer discrimination starting in September 2015. As demonstrated in the Position Statement, Charging Party and Mr. Aresco performed two totally different jobs. Charging Party[1] functioned in a support role as an Executive Assistant. The position required little independent discretion and no positions reported to it. As Special Assistant, in contrast, Mr. Aresco had wide-ranging business and leadership responsibilities that required that he work closely with individuals throughout the University and with Athletics Department administrators. Mr. Aresco's typical day involved substantively working on a variety of employment, finance and legal issues that impacted the Athletics Department with representatives from HR, Finance and the Office of General Counsel, among others; creating the agenda for Athletics Department leadership team meetings; working with senior staff to stay on task; working with the finance director on financial documentation; and working with hiring manager/coaches. The position required the use of independent discretion.

While there may have be some minimal overlap between Charging Party's job and Mr. Aresco's job particularly with regard to scheduling meetings they were substantively and distinctly different positions. And, in any case, the University is not aware of any evidence that any such overlap in duties was based on gender, let alone an intention to discriminate.

In light of the additional and different duties and responsibilities assigned to Mr. Aresco as Special Assistant, Mr. Aresco's position and Charging Party's position are not appropriate comparators. This evidence refutes Charging Party's allegations of unlawful wage discrimination, and any disparity in compensation between these two distinguishable positions cannot serve as a basis for EPA or Title VII liability.

The Letter of Determination also concludes that Charging Party was discriminated against when she did not receive a "promotion" in January 2016, while acknowledging that Charging Party **did not apply for the job**. The Letter of Determination suggests that the EEOC has "record evidence" indicating that it would have been futile for Charging Party to apply for the job, and that gender was a motivating factor in her not getting the job (for which she never applied) – but does not specify what this record evidence is. Indeed, in multiple passages, the Letter of Determination refers to "record evidence" that purportedly supports the EEOC's finding of probable cause of gender discrimination and unequal pay in this case, without identifying the "record evidence" relied on.

[1] As a minor point of correction to the Letter of Determination, Charging Party's salary while she was the Executive Assistant to the Director of Athletics was $40,000/year, not $39,000/year.

The University, in several phone calls with Investigator Kim *before* the Letter of Determination was issued, repeatedly requested copies of any such record evidence, or at least for a general description of that evidence, so that the University could have a fair opportunity to review and respond to any such evidence. Each request was refused. Instead, the University was offered an opportunity to submit additional documents, but without knowing what specific issues the EEOC wished the University to address. See April 5, 2017 letter from Vickie Fair to Investigator Kim and Supervisor Colunga (copy enclosed).

In sum, the University laid out in detail in its Position Statement why there could be no Equal Pay Act issue here (because Charging Party and Mr. Aresco are not comparators), and why there was no gender discrimination regarding Charging Party – no discrimination related to the position she held, and no discrimination related to her "non-promotion" to a new job in January 2016. The EEOC does not seem to dispute the evidence the University has supplied, but instead indicates that it has other, undisclosed "record evidence" that counters the University's position. Respectfully, the University should have been given an opportunity to see and respond to this "record evidence" before the EEOC made a finding of probable cause. For this additional reason, the EEOC should reconsider its Letter of Determination.

If the EEOC denies the University's request for reconsideration, or grants the request but decides not to hold conciliation in abeyance, then, notwithstanding its disagreement with the EEOC findings, the University is willing to start the process of conciliation with the EEOC. [redacted] Even if conciliation is the path forward, the University again respectfully requests that the EEOC provide the University with the "record evidence" it relied on to support the conclusions identified in the Letter of Determination, so that the University can fully and fairly assess this matter for purposes of conciliation.

Thank you for your consideration of this matter.

Sincerely,

Katrina J. Dennis

Katrina J. Dennis

cc: Sung Ho Kim, JD/LLM, Federal Investigator (Via Email)
Vickie Fair, George Washington University (Via Email)
James A. Keller, Esq., Saul Ewing LLP (Via Email)

ENCLOSURE

VIA ELECTRONIC

April 5, 2017

Re: Mutalib v. The George Washington University
Charge No. 570-2017-00064

Dear Investigator Kim and Supervisor Colunga:

I am writing to follow up on a telephone conversation we had on March 23, 2017 and a telephone conversation you had with the University's outside counsel, Katrina Dennis, on March 29, 2017 about the above-referenced charge. As you know, Ms. Mutalib makes two claims in her charge: 1) she was discriminated against on the basis of gender because she was more qualified than a male counterpart for a certain position; and 2) she was paid less than a similarly situated male counterpart in the University's athletics department, in violation of the Equal Pay Act. The University provided a 16-page position statement, with 8 Exhibits, in response to these two claims. The University noted, for example, that Ms. Mutalib did not apply for the position at issue; that her education and experience was less than the individual hired for the position; that she was responsible for different functions than her alleged comparator; and that she is currently making a higher salary than her alleged comparator.

In calls with me and Ms. Dennis, however, you indicated that based on your investigation, the EEOC was leaning toward a finding of probable cause to believe that discrimination had occurred. You indicated that you have read the University's position statement, but that Ms. Mutalib has provided "other, contradictory documentation" to the EEOC. We asked for copies or at least a description of that documentation. But, you declined to describe the information during either phone conversation, and said that the EEOC will not provide the University with copies of the documentation you say contradicts that provided by the University. You also indicated that the University could respond by April 5, 2017 with any additional responsive information it wished to provide.

At this point, the University is a bit hamstrung in providing additional information as we do not know what "other, contradictory documentation" Ms. Mutalib has provided, and how that documentation specifically relates to the University's position statement or Ms. Mutalib's charge. We again respectfully request receiving or at least the opportunity to review that documentation or a description of it, and not just so that the University can respond. If Ms. Mutalib has information that actually does contradict what the University, in good faith, believes to be the facts, the University would of course take that very seriously and we may be able to resolve this matter quickly and amicably.

Thank you for your courtesies and your consideration of this request.

Vickie V. Fair
Asst. Vice President, EEO & Affirmative Action

Cc: Alan W. Anderson, Deputy Director, EEOC

EXHIBIT 5

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington Field Office

131 M Street, N. E., Suite 4NW02F
Washington, D. C. 20507
Intake Information Group: (800) 669-4000
Intake Information Group TTY: (800) 669-6820
Washington Direct Dial: (202) 419-0713
FAX (202) 419-0740
Website: www.eeoc.gov

May 16, 2017

Katrina J. Dennis
Saul Ewing LLP
500 E. Pratt Street, Suite 900
Baltimore, MD 21202-3133

Sent by email to: kdennis@saul.com

Dear Ms. Dennis:

I am writing in response to your letter dated May 5, 2017, requesting reconsideration of the Letter of Determination issued in the above-referenced charge. We regret your dissatisfaction with the results of the processing of this charge.

The EEOC will reconsider an EEOC determination where substantial new relevant evidence is presented that would warrant a change in the determination, or if the EEOC's decision was contrary to the law or facts. We have given thoughtful consideration to the issues you raised in your letter. Our review of the evidence indicates that Charging Party began working in the Executive Assistant position in August 2014; while Mr. Aresco did not move into Athletics Administration until September 2015, we found that the work he performed was substantially equal to the work performed by Charging Party. In our view, his higher rate of pay determines the appropriate rate for the job, from the time that she began working in the position. As to your assertions that Charging Party and Mr. Aresco performed different jobs, the evidence we reviewed, including position descriptions and other documents, indicated that Charging Party performed the types of duties that you indicated that Mr. Aresco performed. Further, the evidence we obtained indicated that Charging Party did not apply for the Special Assistant posting because she was deterred from doing so and/or because it would have been futile for her to apply. Based on our analysis, we have decided that a change in the determination is not warranted, nor is the EEOC's decision contrary to the law or facts.

We appreciate your willingness to engage in the conciliation process, and ask that you submit a written response to our conciliation proposal by May 26, 2017.

Sincerely,

Mindy E. Weinstein
Acting Director

EXHIBIT 6

PRESS RELEASE

9-27-17

EEOC Files Three Lawsuits in D.C. Metro Area Charging Sex-Based Pay Discrimination

Unrelated Suits Name George Washington University, National Association for the Education of Young Children, and Total Quality Building Services for Equal Pay Violations

WASHINGTON -- The U.S. Equal Employment Opportunity Commission (EEOC) filed three lawsuits yesterday and today alleging wage discrimination against female workers. The lawsuits are part of the EEOC's ongoing effort to combat sex discrimination in pay.

In a lawsuit filed against George Washington University in U.S. District Court for the District of Washington, D.C., Civil Action No. 1:17-cv-01978, the EEOC charged that GWU unlawfully paid Sara Williams less than a male employee to work as the executive assistant to the university's athletics director, Patrick Nero. The suit also alleged that the university failed to promote Williams and subjected her to disparate terms and conditions of employment because of her sex.

In a second lawsuit filed in the same federal district court in Washington, Civil Action No. 17-cv-01989, the EEOC charged that the National Association for the Education of Young Children (NAEYC), a professional membership organization, violated paid Denni Johnson, a female associate editor, at a lower rate than her male counterpart.

Finally, in a suit filed in U.S. District Court for the Eastern District of Virginia (Alexandria Division), Civil Action No. 17-cv-01083-TSE-IDD_, the EEOC contended that Vador Ventures Inc., dba Total Quality Building Services, which provides janitorial services to commercial buildings, paid Sonia Rivera, a day porter, less than her male co-worker in the same job, and fired her in retaliation for complaining about the unequal wages.

All this alleged conduct violates the Equal Pay Act of 1963 and Title VII of the Civil Rights Act of 1964, which prohibit sex-based compensation discrimination and retaliation for opposing or complaining about it.

The EEOC filed these suits after first attempting to reach pre-litigation settlements through its conciliation process. The agency is seeking back pay, compensatory, punitive, and liquidated damages, as well as injunctive relief to remedy the employers' discriminatory compensation practices and to ensure that no further discrimination takes place.

"As these lawsuits demonstrate, the problem of sex discrimination in pay can affect a wide range of industries and job types," said Mindy E. Weinstein, acting director of the EEOC's Washington Field

Office. "But the law is clear -- women must be paid the same as men for equal work, unless the employer can justify the difference in pay."

Philadelphia District Office Regional Attorney Debra Lawrence said, "The EEOC is committed to addressing pay discrimination in the workplace through education, enforcement, and, when necessary, litigation."

Enforcement of equal pay laws, including targeting compensation systems and practices that discriminate based on gender, is of one of six national priorities identified by the Commission's Strategic Enforcement Plan.

The Washington Field Office has jurisdiction over the District of Columbia; the Virginia counties of Arlington, Clarke, Fairfax, Fauquier, Frederick, Loudoun, Prince William, Stafford and Warren; and the independent Virginia cities of Alexandria, Fairfax City, Falls Church, Manassas, Manassas Park and Winchester.

The EEOC advances opportunity in the workplace by enforcing federal laws prohibiting employment discrimination. More information is available at www.eeoc.gov. Stay connected with the latest EEOC news by subscribing to our email updates.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

U.S. Equal Employment Opportunity Commission, Plaintiff, v. The George Washington University, Defendant.	Civil Action No. 1:17-cv-01978-CKK

[PROPOSED] ORDER GRANTING MOTION OF DEFENDANT THE GEORGE WASHINGTON UNIVERSITY TO DISMISS THE COMPLAINT

Upon consideration of Defendant's Motion to Dismiss the Complaint, Plaintiff's Opposition to the Motion, and Defendant's Reply,

IT IS HERBY ORDERED that Defendant's Motion to Dismiss the Complaint is GRANTED and Plaintiff's Complaint is DISMISSED WITH PREJUDICE.

SO ORDERED this _____ day of December, 2017

_____
Hon. Colleen Kollar-Kotelly
United States District Judge

Copies to be sent to:

Jason C. Schwartz, D.C. Bar No. 465837
Matthew S. Rozen, D.C. Bar No. 1023209
Wendy Miller, D.C. Bar No. 1035161
GIBSON DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036

Attorneys for Defendant
The George Washington University

Kate Northrup
Supervisory Trial Attorney
U.S. Equal Employment Opportunity Commission
Baltimore Field Office
City Crescent Building
10 South Howard Street
Third Floor
Baltimore, MD 21201

Attorney for Plaintiff
U.S. Equal Employment Opportunity Commission