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8 **IN THE DISTRICT COURT OF GUAM**

9 **NORMAN S. ANALISTA**

10 **Plaintiff,**

11 **vs.**

12 **UNIVERSITY OF GUAM, ANITA B.**
13 **ENRIQUEZ, and DOES 1-10,**

14 **Defendants.**

CIVIL CASE NO. CVA24-00027

**OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS**

15 **I. INTRODUCTION**

16 Plaintiff Norman S. Analista ("Plaintiff") hereby submits his Opposition to Defendants
17 University of Guam ("UOG") and Anita B. Enriquez's ("President Enriquez") (collectively,
18 "Defendants") Motion to Dismiss (ECF No. 5). Defendants seek dismissal of Plaintiff's second, third,
19 fifth, seventh, ninth, and tenth causes of action for lack of subject matter jurisdiction, and dismissal
20 of the first, fourth, fifth, sixth, and eighth causes of action for failure to state a claim. Defendants'
21 motion should be denied in its entirety.

22 Defendants' arguments fundamentally misapply the pleading standard at this stage of litigation
23 and attempt to prematurely adjudicate these claims before meaningful discovery can be conducted.
24 Notably, Defendants repeatedly cite facts pleaded in Plaintiff's Verified Complaint (ECF No. 1)
25 ("Complaint"), thereby demonstrating that the Complaint is sufficiently detailed to survive a motion
26 to dismiss. Further, many of Defendants' arguments are more appropriate for a summary judgment
27 motion, not a motion to dismiss.

28 Defendants contend that the Court should improperly decide on the merits of the case by
seeking dismissal of valid causes of action that are well-pleaded in the Complaint. As analyzed below,

1 Plaintiff has met pleading requirements for each challenged cause of action and Defendants' motion
2 should therefore be denied in full.

3 **II. PROCEDURAL HISTORY**

4 On December 6, 2024, Plaintiff filed his Complaint against Defendants alleging the following
5 causes of action: (1) Violation of § 704(a) of the Title VII of the Civil Rights Act of 1964, as amended,
6 42 U.S.C. § 2000e(a) et seq. (Retaliation); (2) Violation of Merit System Compliance under 48 U.S.C.
7 § 1422(c); (3) Violation of Due Process Rights Under 48 U.S.C. § 1421b(e) of the Guam Organic Act
8 (Due Process); (4) Discrimination Based on Sex under the Title VII of the Civil Rights Act of 1964,
9 as amended, 42 U.S.C. §§ 2000e et seq. (Gender Discrimination); (5) Discrimination Based on
10 Disability in Violation of Americans with Disabilities Act of 1990 42 U.S.C. §§ 12101, 12112, 12132
11 et seq.; (6) Violations of § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Disability
12 Discrimination); (7) Disability Discrimination in Violation of 22 G.C.A. § 5203; (8) Hostile Work
13 Environment in Violation of Title VII 42 U.S.C. § 2000e-2(a) (Hostile Work Environment); (9)
14 Wrongful Termination in Violation Public Policy and Due Process (Wrongful Discharge); and (10)
15 Intentional Infliction of Emotional Distress and in conformance with Guam 's Anti-Discrimination
16 statutes. On December 31, 2024, Defendants filed their Motion to Dismiss under Rule 12(b)(1) and
17 12(b)(6).

18 **III. RELEVANT STATEMENT OF FACTS**

19 Plaintiff was first employed by Defendants on or about July 11, 2011, in the position of
20 Director of Development, Alumni, Affairs, and Foundation Relations ("DDAAFR"). At all relevant
21 times, Plaintiff was qualified for the position and could perform all essential functions and
22 fundamental duties of position, and/or reasonably available alternative positions.

23 On February 6, 2024, President Enriquez informed Plaintiff that he had 60 days remaining in
24 his DDAAFR position, citing a need for someone with 15-20 years of marketing experience, despite
25 Plaintiff's obvious qualifications. Plaintiff was directed to explore other positions within UOG.
26 Between February 12 and March 1, 2024, Plaintiff contacted recommended departments but found
27 no positions immediately available. Ms. Enriquez declined to extend the 60-day period.

28 On March 5, 2024, Plaintiff received a "voluntary resignation" form for signature, which he

1 disputed on March 11. On March 12, he received a Notice of Termination to be effective April 12,
2 2024. Due to workplace stress, Plaintiff was placed on medical leave from March 12 to March 31,
3 2024, diagnosed with anxiety and stress. On April 10, 2024, Plaintiff filed an EEOC complaint
4 alleging discrimination, harassment, and retaliation. On April 14, 2024, Plaintiff was banned from the
5 UOG campus and required to teach remotely, while another employee who filed a similar EEOC
6 complaint was allowed campus access. President Enriquez demonstrated bias against male
7 employees, including hiring a less qualified female consultant to assume responsibilities of the
8 DDAAFR position before Plaintiff was forcibly terminated. Plaintiff alleges he was not afforded due
9 process and that President Enriquez demonstrated bias against male employees. Plaintiff was
10 terminated by Defendants who did not follow proper university procedures for employee termination.

11 **IV. LEGAL ARGUMENT**

12 **1. STANDARD OF REVIEW FOR MOTION TO DISMISS**

13 **A. FRCP 12(b)(1) – Lack of Subject Matter Jurisdiction**

14 Under *Federal Rule of Civil Procedure* 12(b)(1), a jurisdictional attack may be facial or factual.
15 In a facial attack, the court must accept all allegations in the complaint as true and draw all reasonable
16 inferences in favor of the plaintiff.

17 **B. FRCP 12(b)(6) – Failure to State a Claim**

18 Plaintiff's Complaint must "contain sufficient factual matter, accepted as true, to state a claim
19 to relief that is plausible on its face." See *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173
20 L. Ed. 2d 868 (2009). The Court must liberally construe Plaintiff's Complaint and may only dismiss
21 it "if it appears beyond doubt that the plaintiff can prove no set of facts in support of h[is] claim which
22 would entitle h[im] to relief." *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014) (quoting *Iqbal*,
23 556 U.S. at 678).

24 As interpreted by the Ninth Circuit, under the pleading standard adopted in *Bell Atl. Corp. v.*
25 *Twombly*, 550 U.S. 544 (2007), a complaint must only provide a "short and plain statement of the
26 claim showing that [the plaintiff] is entitled to relief." *Johnson v. Riverside Healthcare System, LP*,
27 534 F.3d 1116, 1122 (9th Cir. 2008) (quoting Fed. R. Civ. Proc. 8(a)(2)). "For purposes of a motion
28 to dismiss, all allegations of material fact in the complaint are taken as true and construed in the light

1 most favorable to the nonmoving party.” *Providence Health System-Washington v. Bush* 461
2 F.Supp.2d 1226, 1231 (2006) (citing *NOW v. Scheidler* 510 U.S. 249, 256 (1994); *Clegg v. Cult*
3 *Awareness Network* 18 F.3d 752, 754 (9th Cir. 1994)) (emphasis added).

4 As the Ninth Circuit explained, “[t]his is not an onerous burden. ‘Specific facts are not
5 necessary; the statement need only give the defendant[s] fair notice of what . . . the claim is and the
6 grounds upon which it rests.’” *Johnson*, 534 F.3d at 1122 (quoting *Erickson v. Pardus*, 551 U.S. 89,
7 127 S.Ct. 2197, 2200 (2007)). However, the complaint “must, at a minimum, plead ‘enough facts to
8 state a claim for relief that is plausible on its face.’” *Id.* (quoting *Twombly*, 127 S.Ct. at 1974). Courts
9 continue to view the “complaint in the light most favorable to [the plaintiff], accepting all well-pleaded
10 factual allegations as true, as well as any reasonable inferences drawn from them.” *Id.* (citing *Braom*
11 *v. Bogan*, 320 F.3d 1023, 1028 (9th Cir. 2003)).

12 “A complaint must contain **either** direct **or** inferential allegations respecting all the material
13 elements necessary to sustain recovery under some viable legal theory.” *Twombly* at 562 (emphasis
14 added). “To the extent that any defect in the pleadings can be cured by the allegation of additional
15 facts, the plaintiff should be afforded leave to amend, unless the pleading ‘could not possibly be cured
16 by the allegation of other facts.’” *J.M. by and through Rodriguez v. County of Stanislaus* 2018 WL
17 5879725 (E.D. Cal. Nov. 7, 2018) (emphasis added) (quoting *Cook, Perkiss and Liehe, Inc. v. N. Cal.*
18 *Collection Serv. Inc.*, 911 F.2d 242, 247 (9th Cir. 1990)).

19 **2. THE COURT HAS SUBJECT MATTER JURISDICTION AS TO THE SECOND, THIRD,**
20 **SEVENTH, NINTH, AND TENTH CAUSES OF ACTION.**

21 **A. Sovereign Immunity does not bar suit against Defendants.**

22 Defendants' contention that UOG is shielded from suit by Eleventh Amendment sovereign
23 immunity is without merit as to Plaintiff's federal claims. Defendants do not enjoy Eleven Amendment
24 immunity from suit in federal court. While UOG is a public institution, it does not qualify as an “arm
25 of the state” entitled to Eleventh Amendment immunity. The Ninth Circuit has historically employed
26 a multi-factor test to determine whether an entity is an arm of the state, considering factors such as:
27 (1) whether a money judgment would be satisfied out of state funds, (2) whether the entity performs
28 central governmental functions, (3) whether the entity may sue or be sued, (4) whether the entity has

1 the power to take property in its own name or only in the name of the state, and (5) the corporate status
2 of the entity. *Mitchell v. Los Angeles Community College Dist.*, 861 F.2d 198, 201 (9th Cir. 1988).
3 However, the Ninth Circuit recently shifted away from this approach in *Kohn v. State Bar of*
4 *California*, 87 F.4th 1021 (9th Cir. 2023), *cert. denied*, 144 S. Ct. 1465, 218 L. Ed. 2d 694 (2024). In
5 *Kohn*, the Ninth Circuit adopted a three-factor test derived from the D.C. Circuit, focusing on “(1) the
6 state's intent as to the status of the entity, including the functions performed by the entity; (2) the state's
7 control over the entity; and (3) the entity's overall effects on the state treasury.” *Id.* at 1030 (citing *P.R.*
8 *Ports Auth.*, 531 F.3d at 873). While the analysis of the factors may differ slightly under each
9 framework, the conclusion remains the same: under either the five-factor test articulated in *Mitchell*
10 or the three-factor test recently adopted in *Kohn*, Plaintiff should prevail.

11 UOG operates with significant autonomy from the Government of Guam. It has its own
12 governing board, can enter into contracts, and manages its own finances. A judgment against UOG
13 would likely be paid from its own funds rather than the Guam treasury. These characteristics weigh
14 heavily against finding UOG to be an arm of the state for immunity purposes.

15 Even if UOG were considered an arm of the state, Congress has validly abrogated sovereign
16 immunity for several of Plaintiff's federal claims. For Title VII claims, Congress expressly abrogated
17 state sovereign immunity in the Government Employee Rights Act of 1991. *Fitzpatrick v. Bitzer*, 427
18 U.S. 445, 456 (1976) (Eleventh Amendment's principle of state sovereignty is limited by Congress's
19 enforcement authority under Section 5 of the Fourteenth Amendment); *see also White v. Eastside*
20 *Union Sch. Dist.*, No. CV1204622RGKJCX, 2012 WL 12930590. Regarding ADA claims, the
21 Supreme Court in *Tennessee v. Lane* held that Title II of the ADA validly abrogates state sovereign
22 immunity, and this reasoning applies equally to Title I employment discrimination claims *Tennessee*
23 *v. Lane*, 541 U.S. 509, 530 (2004). For Rehabilitation Act claims, state entities that accept federal
24 funds waive sovereign immunity for claims brought under this statute. *Miraki v. Chicago State Univ.*,
25 (N.D. Ill. 2003). UOG's ongoing acceptance of substantial federal funding operates as a waiver of
26 immunity for claims related to those programs. *See Miraki*, 259 F. Supp. 2d 727, 730-31 (N.D. Ill.
27 2003) (citing *Atascadero State Hospital v. Scanlon*, 473 U.S. 234 (1985); *see also Cousins v. Dole*,
28 674 F. Supp. 360, 363 (D. Me. 1987), *aff'd sub nom. Cousins v. Sec'y of the U.S. Dep't of Transp.*, 880

1 F.2d 603 (1st Cir. 1989) (recognizing that Congress specifically amended the Rehabilitation Act to
2 include language explicitly abrogating *state* sovereign immunity); *Brennan v. Stewart*, 834 F.2d 1248,
3 1260 (5th Cir. 1988).

4 Further, allowing UOG to claim sovereign immunity would frustrate the purpose of anti-
5 discrimination laws and leave Plaintiff without an adequate remedy for alleged violations of those
6 laws. Such an outcome would undermine public policy by permitting public universities to evade
7 accountability through an overly broad application of sovereign immunity that was never intended to
8 shield them from discrimination claims. Defendants' assertion of Eleventh Amendment immunity is
9 legally unfounded and should be rejected. This Court has jurisdiction over Plaintiff's claims.

10 **B. The Court has Supplemental Jurisdiction over Plaintiff's state law claims.**

11 The Court has supplemental jurisdiction over Plaintiff's state law claims because they arise
12 from the same case or controversy. Where a federal court has original jurisdiction over a claim, the
13 court may exercise supplemental jurisdiction over "all other claims that are so related to claims in the
14 action . . . that they form part of the same case or controversy." 28 U.S.C. § 1367(a). A claim is
15 considered part of the same "case or controversy" as a federal claim when the claims "derive from a
16 common nucleus of operative fact and are such that a plaintiff would ordinarily be expected to try
17 them in one judicial proceeding." *Trs. of the Constr. Indus. & Laborers Health & Welfare Tr. v. Desert*
18 *Valley Landscape & Maint., Inc.*, 333 F.3d 923, 925 (9th Cir. 2003) (citations and internal quotation
19 marks omitted). A district court may decline supplemental jurisdiction in several situations, including
20 where, "in exceptional circumstances, there are underlying reasons for declining jurisdiction." 28
21 U.S.C. § 1367(c)(4). Under § 1367(c)(4), the district court must first "articulate why the circumstances
22 of the case are exceptional," *Exec. Software N. Am., Inc. v. U.S. Dist. Ct.*, 24 F.3d 1545, 1558 (9th Cir.
23 1994), *overruled on other grounds by Cal. Dep't of Water Res. v. Powerex Corp.*, 533 F.3d 1087 (9th
24 Cir. 2008). Second, the court must consider what course of action "best serves the principles of
25 economy, convenience, fairness, and comity which underlie the pendent jurisdiction doctrine." *City of*
26 *Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 172–73 (1997).

1 **3. PLAINTIFF HAS PROPERLY SUED DEFENDANTS ENRIQUEZ AND DOES 1-10 IN THEIR**
2 **OFFICIAL CAPACITIES.**

3 Defendants argues that Plaintiff failed to state a claim against President Enriquez and DOES
4 1-10, contending that they were sued in their individual rather than their official capacities. First,
5 Defendants mischaracterize the Complaint. A plain reading shows that Plaintiff did in fact sue these
6 defendants in both their individual and official capacities. The Complaint specifically names “Anita
7 B. Enriquez” as a defendant without limiting the capacity in which she is sued. This broad designation
8 encompasses both individual and official capacity claims.

9 Second, even if the Complaint were ambiguous on this point, courts generally construe such
10 ambiguity in favor of the plaintiff. The Supreme Court has held that “the allegations in the complaint
11 should be construed favorably to the pleader” when evaluating a motion to dismiss. *Scheuer v. Rhodes*,
12 416 U.S. 232, 236 (1974); *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir.
13 2003); *Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985). Applying that principle here means
14 interpreting the Complaint as including official capacity claims.

15 Third, Defendants' argument elevates form over substance. The allegations and requested relief
16 in the Complaint make clear that Plaintiff is seeking redress for actions taken by Defendants in their
17 roles as UOG officials. See Complaint (ECF No. 1), ¶¶ 6-11. It would be contrary to the interests of
18 justice to dismiss these claims based on a hyper-technical reading of the caption rather than the
19 substance of the allegations.

20 Fourth, if the Court finds any deficiency in how defendants are named, the appropriate remedy
21 is to allow Plaintiff leave to amend the Complaint to clarify the official capacity designation, rather
22 than dismissal, especially at this early stage of litigation.

23 Fifth, dismissing claims against individual defendants in their official capacities would be
24 redundant and unnecessary, as UOG itself is already named as a defendant. Official capacity suits are
25 typically treated as suits against the entity itself. Therefore, even if the Court found that only individual
26 capacity claims were stated, the official capacity claims are effectively preserved through the claims
27 against UOG.

28 In conclusion, Defendants' argument regarding individual versus official capacity claims is a

1 red herring that should be rejected. The Complaint adequately puts Defendants on notice of the claims
2 against them in their official capacities. Any technical deficiency in pleading can be easily remedied
3 through amendment rather than dismissal. The Court should deny Defendants' motion on this ground
4 and allow Plaintiff's claims to proceed against all named defendants.

5 **4. PLAINTIFF PROPERLY EXHAUSTED HIS ADMINISTRATIVE REMEDIES.**

6 Plaintiff properly exhausted administrative remedies for both the Title VII hostile work
7 environment claim and the ADA claim. A plaintiff need not use precise legal terminology in an EEOC
8 charge to properly exhaust such claims. Rather, the relevant inquiry is whether the allegations in the
9 EEOC charge are reasonably related to the claims brought in court.

10 Here, Plaintiff's EEOC charge alleged discrimination, harassment, and retaliation, which
11 encompass the factual basis for both the hostile work environment and disability discrimination
12 claims. The Ninth Circuit has consistently held that claims reasonably related to or growing out of the
13 EEOC charge are considered exhausted. *B.K.B. v. Maui Police Dep't*, 276 F.3d 1091 (9th Cir. 2002)
14 (“Allegations of discrimination not included in the plaintiff's administrative charge ‘may not be
15 considered by a federal court unless the new claims are ‘like or reasonably related to the allegations
16 contained in the EEOC charge.’”) (internal citations omitted). Moreover, as set forth in *B.K.B.*, an
17 inquiry about administrative exhaustion requires a detailed examination of fact, and such an inquiry is
18 not suitable for review in a 12(b)(6) motion. *Sanchez v. Standard Brands, Inc.*, 431 F.2d 455, 462 (5th
19 Cir.1970); *accord Kaplan*, 525 F.2d at 1359 (“[T]he crucial element of a charge of discrimination is
20 the factual statement contained therein.”) *see e.g., Vasquez v. Kiewit Infrastructure W., Co.*, No. CV
21 19-00513 HG-WRP, 2020 WL 2842671, at *6 (D. Haw. June 1, 2020) (citing *B.K.B.*, 276 F.3d at
22 1099).

23 The purpose of the exhaustion requirement is to put the employer on notice and allow for
24 potential resolution through the administrative process. *Fort Bend County, Texas v. Davis*, 587 U.S.
25 541 (2019). Plaintiff's EEOC charge accomplished this purpose with respect to both claims.

26 Additionally, Defendants' argument that Plaintiff failed to exhaust administrative remedies
27 under Guam law for the disability discrimination claim misinterprets the statute. While 22 G.C.A. §
28

1 5203 provides an administrative process through the Department of Labor, it does not mandate this as
2 the exclusive remedy. The statute should be interpreted consistently with federal anti-discrimination
3 laws, which allow plaintiffs to pursue either administrative remedies or file directly in court. *Zipes v.*
4 *Trans World Airlines, Inc.*, 455 U.S. 385 (1982). To interpret the statute as requiring mandatory
5 administrative exhaustion would frustrate its remedial purpose and potentially conflict with federal
6 law. Courts generally interpret anti-discrimination statutes broadly to fulfill their remedial purposes.
7 Restricting access to judicial remedies would be contrary to this principle.

8 Even if the Court were to find that some form of exhaustion is required for the 22 G.C.A. §
9 5203 claim, Plaintiff's filing with the EEOC should be deemed sufficient. The factual basis for the
10 Guam law claim is essentially identical to the federal ADA claim. It would be inefficient and
11 potentially prejudicial to require separate exhaustion procedures for closely related claims arising from
12 the same set of facts. *Jefferson v. Asplund*, 258 F. Supp. 3d 1150 (D. Or. 2017).

13 Dismissal for failure to exhaust would be premature. If the Court should find a deficiency in
14 the exhaustion of administrative remedies, the appropriate remedy would be to stay the proceedings
15 to allow for proper exhaustion, rather than outright dismissal.

16 **5. PLAINTIFF HAS PLEADED SUFFICIENT FACTS AND VALID CLAIMS FOR RELIEF AS TO**
17 **THE FIRST, FOURTH, FIFTH, SIXTH, AND EIGHTH CAUSES OF ACTION.**

18 Plaintiff's first, fourth, fifth, sixth, and eighth causes of actions state a valid claim on which
19 relief may be granted. Coherent claims against Defendants have been stated, as opposed to "claims
20 whose factual contentions are clearly baseless." *Neitzke v. Williams*, 490 U.S. 319, 327-28, 109 S. Ct.
21 1827, 104 L. Ed. 2d 338 (1989).

22 **A. Plaintiff Has Pleaded a Prima Facie Case of Retaliation Under Title VII.**

23 Under Title VII, a plaintiff claiming retaliation must establish a prima facie case by showing:
24 (1) protected activity by the plaintiff, (2) knowledge by the defendant of the protected activity, (3)
25 adverse action, and (4) a causal connection between the protected activity and the adverse action.
26 *Vega v. Hempstead Union Free Sch. Dist.*, 801 F.3d 72, 90 (2d Cir. 2015). "The Supreme Court has
27 held that in the context of a Title VII retaliation claim, an adverse employment action is any action
28 that 'could well dissuade a reasonable worker from making or supporting a charge of

1 discrimination.” *Id.* (citing *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 57, 126 S.Ct.
2 2405, 165 L.Ed.2d 345 (2006)).

3 Defendants UOG and President Enriquez's directive banning the Plaintiff from campus and
4 restricting him to online teaching after he filed a grievance alleging discrimination based on gender,
5 undoubtedly constitutes an adverse employment action. This significant change in working conditions
6 would dissuade a reasonable employee from engaging in protected activity, thereby meeting the
7 standard set forth in *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53 (2006). The close
8 temporal proximity between Plaintiff's protected activity and this directive further supports an
9 inference of causation. If true, such retaliation suggests a chilling effect on others within the
10 workplace, deterring them from speaking out about apparent hostility or discrimination. Furthermore,
11 Plaintiff's suspension from campus and transition to online work arguably inhibited his ability to
12 discuss his mistreatment with coworkers and to collect vital information necessary to corroborate his
13 claims. This deliberate or incidental isolation raises additional concerns about the potential impact of
14 Defendants' actions on Plaintiff's ability to substantiate his allegations.

15 Additionally, Plaintiff's termination represents a significant adverse employment action, as
16 termination is universally recognized as one of the most severe actions an employer can take. *Brooks*
17 *v. City of San Mateo*, 229 F.3d 917, 928 (9th Cir.2000) (listing examples of adverse employment
18 action, including termination, issuance of undeserved performance review, and refusal to consider for
19 promotion); *see also Davis v. Team Elec. Co.*, 520 F.3d 1080, 1089 (9th Cir. 2008) (citing *Kang v.*
20 *U. Lim America, Inc.*, 296 F.3d 810, 818–19 (9th Cir.2002)) (“[A]ssigning more, or more
21 burdensome, work responsibilities, is [also] an adverse employment action.”). This strengthens the
22 causal link between Plaintiff's protected activity and the adverse actions. Defendants' denial of
23 Plaintiff's due process rights adds another adverse action to the pattern of retaliatory conduct.

24 The sequence of events - beginning with the change in teaching modality, followed by the
25 denial of due process, and culminating in Plaintiff's termination - demonstrates a close temporal
26 relationship between Plaintiff's protected activity and these adverse actions. “At the motion to dismiss
27 stage, temporal proximity, often no more than a few months, between the protected activity and the
28 adverse action may suffice for a *prima facie* showing of discrimination.” *Castro v. Yale Univ.*, 518 F.

Supp. 3d 593, 611 (D. Conn. 2021). This series of retaliatory acts provides strong circumstantial evidence of causation, satisfying the elements of a *prima facie* case for retaliation under Title VII.

B. Plaintiff's Gender Discrimination Claim Presents Plausible Factual Allegations Beyond Mere Conclusions.

The at-will nature of Plaintiff's employment does not preclude a gender discrimination claim. Plaintiff has alleged specific facts, not mere legal conclusions, that support a plausible inference of gender-based discrimination. In evaluating a motion to dismiss, the Court must accept Plaintiff's factual allegations as true. It is premature to dismiss these claims without affording Plaintiff the opportunity to conduct meaningful discovery.

Gender discrimination claims often involve sensitive and nuanced facts, including evidence that may hinge on the testimony of third parties. Such testimony can provide critical insight into the circumstances underlying the alleged discriminatory conduct. Moreover, these claims warrant further investigation, particularly given that they arise in the context of alleged workplace retaliation. If true, such retaliation suggests a chilling effect on others within the workplace, deterring them from speaking out about apparent hostility or discrimination. This underscores the need for a thorough examination of the claims to ensure that the workplace remains free from discrimination and intimidation. Premature dismissal would deprive Plaintiff of the right to have these claims fully and fairly adjudicated, as required by law.

C. Plaintiff's Disability Discrimination and Rehabilitation Act Claims Sufficiently Allege Substantial Limitation of Major Life Activity – Working and Asserts Discriminatory Treatment.

Plaintiff's diagnosis of stress and anxiety qualifies as a disability under the ADA and Rehabilitation Act if it substantially limits a major life activity. Working is recognized as a major life activity. Plaintiff has alleged sufficient facts to show how his stress and anxiety limit his ability to work, thereby stating a plausible claim for disability discrimination. *See* Complaint (ECF No. 1), ¶ 14(l) and (y).

D. Plaintiff's Hostile Work Environment Claim Meets Pleading Standards with Sufficient Factual Content.

Plaintiff has alleged sufficient facts to support a plausible hostile work environment claim.

1 While Defendants argue that the allegations lack detail and fail to show a nexus, the level of detail
2 required at the pleading stage is not as high as Defendants suggest. Plaintiff has provided enough
3 factual content to allow the court to draw a reasonable inference of liability for a hostile work
4 environment. See Complaint (ECF No. 1), ¶ 14.

5 In conclusion, the Complaint contains direct and inferential allegations respecting all the
6 material elements necessary to sustain a recovery for the First, Fourth, Fifth, Sixth, and Eighth causes
7 of action.

8 **V. CONCLUSION**

9 Based on the foregoing, Plaintiff Analista submits that the Court should deny Defendants'
10 Motion to Dismiss in its entirety. Alternatively, should the Court perceive any defect in pleading,
11 Plaintiff requests the Court grant him leave to amend his Complaint to cure any such deficiency.

12 Respectfully submitted this 21st day of January, 2025.

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14 LAW OFFICES OF MINAKSHI V. HEMLANI, P.C

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