UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-- X
                                          :
ANDREA ROSSBACH,   :
                                          :   19cv5758 (DLC)
                            Plaintiff,   :
                                          :
              -v-   :   OPINION AND ORDER
                                          :
MONTEFIORE MEDICAL CENTER, NORMAN   :
MORALES, and PATRICIA VEINTIMILLA,   :
                                          :
                            Defendants.   :
                                          :
-- X

APPEARANCES:

For plaintiff Andrea Rossbach:
Daniel Altaras
Derek Smith Law Group, PLLC
One Penn Plaza
Suite 4905
New York, NY 10119

For defendants Montefiore Medical Center, Norman Morales, and
Patricia Veintimilla:
Jean L. Schmidt
Nina Massen
Littler Mendelson, P.C.
900 Third Avenue
New York, NY 10022

DENISE COTE, District Judge:

    The defendants in this employment discrimination case have

moved to dismiss this action, as well as for the imposition of

monetary sanctions against plaintiff Andrea Rossbach, her

counsel Daniel Altaras, and the Derek Smith Law Group ("DSLG"),

her counsel's law firm. Their motion is based on this Court's

finding, following an evidentiary hearing, that Rossbach had

fabricated documentary evidence she produced during discovery in
this action. For the following reasons, the motion to dismiss
is granted, and monetary sanctions are imposed on Rossbach,
Altaras, and the DSLG.

Background

The facts set forth in this Opinion are derived from this
Court's March 11, 2021 Opinion and Order granting partial
summary judgment to the defendants, see Rossbach v. Montefiore
Medical Center, No. 19cv5758 (DLC), 2021 WL 930710 (S.D.N.Y.
Mar. 11, 2021) (the "2021 Opinion"), the Court's findings of
fact at the April 22, 2021 evidentiary hearing in this case, and
the parties' submissions made in conjunction with the April 22
evidentiary hearing. Familiarity with the 2021 Opinion is
presumed.

I.   Rossbach's Claims and the Events Leading to the Evidentiary
     Hearing

Rossbach filed this lawsuit on June 16, 2019. Her
complaint alleges federal, state, and New York City
discrimination and tort claims arising from two related sets of
events. Rossbach alleged that she was subjected to a campaign
of sexual harassment by defendant Norman Morales, her
supervisor. The complaint also alleges that, after she objected
to Morales' sexual harassment, Morales and defendant Patricia

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Veintimilla retaliated against her, which culminated in her firing by Montefiore. The defendants moved on November 20, 2020 for summary judgment on some of Rossbach's claims -- primarily those related to Rossbach's discharge -- and the 2021 Opinion largely granted that motion. Most of the claims stemming from Morales' alleged sexual harassment remained for trial.

On March 15, 2021, the defendants sought leave to move to dismiss Rossbach's remaining claims with prejudice and for sanctions against Rossbach and her counsel. As a basis for this relief, the defendants alleged that certain documentary evidence produced during discovery had been fabricated, citing a forensic analysis of that evidence. The defendants further alleged that Rossbach had spoliated evidence and committed perjury at her deposition in this case. Later that day, Rossbach was ordered to notify the Court if she intended to engage a forensic expert to analyze the disputed evidence. On March 19, Rossbach informed the Court that she intended to engage an expert, and the Court ordered the parties to submit their respective expert reports in anticipation of an evidentiary hearing. Those reports were submitted on April 16.

II.   The Evidentiary Hearing and the Court's Findings of Fact
      Regarding to the Disputed Evidence

On April 22, the Court held an evidentiary hearing regarding the allegations of fabrication of evidence.[1] Daniel L. Regard II and Joseph Caruso testified as forensic experts for the defendants and Rossbach, respectively, and Rossbach also testified. The Court received the expert reports of Regard and Caruso as their direct testimony, and they were subject to cross examination regarding that testimony at the hearing. Rossbach was subject to both direct and cross examination at the hearing. At the conclusion of the hearing, the Court found by clear and convincing evidence that Rossbach had fabricated the disputed text message evidence and had given false testimony about how the evidence had been produced. As a result, the defendants' request to move to dismiss and for sanctions was granted. The Court's findings of fact are outlined below.

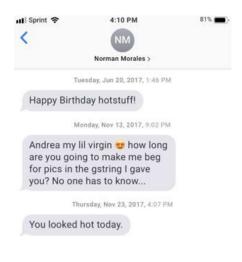   A.   The Allegations Against Morales and the Disputed
        Evidence

In her complaint, Rossbach alleged that Morales, who was one of her supervisors, subjected her to, among other things, a series of unwanted sexual comments and to unwanted sexual touching. Rossbach never made a formal complaint regarding this
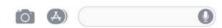
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[1] Due to the ongoing COVID-19 pandemic, the evidentiary hearing was, with the consent of the parties, conducted via videoconference.

alleged conduct,[2] however, and there is very little documentary
evidence that supports her claims. The primary piece of
documentary evidence supporting Rossbach's allegation that she
was sexually harassed by Morales is the following image that
purports to depict a series of text messages sent by Morales to
Rossbach.

This image is a fabrication.

The image was produced to the defendants twice. The image
was first produced to the defendants during discovery on May 20,

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[2] Rossbach claims that she orally complained about Morales'
sexual harassment to Patricia Veintimilla, a supervisor, and to
her union representative, but there is no written documentation
of these complaints.

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