State of Connecticut
Office of Public Hearings – 450 Columbus Ave., Suite 2, Hartford, CT 06103
Main (860) 418-8770 officeofpublichearings@ct.gov Fax (860) 418-8780

MEMORANDUM

To: All Counsel

From: Kimberly D. Morris, Secretary II, OPH

Re: CHRO ex rel. Bhagmattie Perreira v. Yale New Haven Hospital
CHRO No. 1430048

Date: September 7, 2016

Enclosed is the Presiding Human Rights Referee's Ruling on Summary Judgement.

cc.

Margaret Nurse-Goodison, Esq.
Margaret.goodison@ct.gov

W. Martyn Philpot, Jr., Esq.
lawoffice@philpotlaw.net

Brock T. Dubin, Esq.
bdubin@ddnctlaw.com

State of Connecticut
Office of the Public Hearings

Commission on Human Rights & Opportunities
Ex rel. Bhagmattie Perreira,
Complainant

CHRO No. 1430048

v.

Yale New Haven Hospital,
Respondent

September 7, 2016

Ruling on Summary Judgement

I
PRELIMINARY STATEMENT

On May 25, 2017, the respondent, Yale New Haven Hospital ("YNHH"), filed a Motion for Summary Judgment in the above captioned case on the grounds that complainant's action is barred by the doctrine of res judicata; additionally they argued that any new award of damages is barred by the single recovery principle.[1] Two years before she initiated the present case against YNHH, the complainant, Bhagmattie Perreira ("Perreira"), filed a complaint against the Hospital of Saint Raphael ("HSR") (n/k/a as YNHH). The claims in the earlier case against HSR are nearly identical to the ones she now asserts against YNHH and involve the same incidents and proffered evidence. In October 2014, Perreira executed a settlement agreement in the case against HSR. That HSR case was withdrawn and dismissed with prejudice after the settlement agreement was reviewed by the undersigned. This agreement represents full compensation for the complainant's employment related claims. Additionally, the settlement agreement order of dismissal with prejudice operates as a final judgment on the merits for purposes of res judicata.

[1] The argument of single recovery theory in this action is more appropriately discussed under the theories of issue preclusion also known as collateral estoppels.

On July 8, 2016, the Commission on Human Rights and Opportunities, (CHRO) and the complainant filed oppositions to the respondent's motion for summary judgment. CHRO argues that neither the statutes nor the Regulations of Connecticut State Agencies provide for motions of summary judgment by an agency. Further, they argue that the CHRO is not bound by the Connecticut Practice Book, which does provide for summary judgments. The complainant argues that the settlement and release did waive her claims against YNHH; therefore, she has the right to pursue them. All parties agree that settlement agreement included all aspects of complainant's employment with HSR. When YNHH purchased the assets of HSR, on September 11, 2013, YNHH became HSR's successors in interest. YNHH, after its acquisition of HSR's assets, was complainant's technical employer for approximately 6 months, including at the time of her termination. Her supervisors and circumstances remained the same before and after the acquisition. After her termination complainant amended her action against HSR to include allegations of discriminatory termination. The HRS action and the YNHH action were both filed prior to the date of the settlement agreement and release. The settlement agreement and corresponding dismissal with prejudice operates to bar complainant's current claim based on the principals of collateral estoppels, and res judicata. The following ruling was based on the record, the briefs filed by the parties and its supporting documentation.

II
FACTS

The parties agree on the relevant facts for a determination of res judicata on summary judgment. The following paragraph is from the complainant's opposition to summary judgment: "Perreira began her suit against HSR on July 29, 2011, by way of a complaint affidavit, which asserted claims of discrimination in violation of Connecticut General Statutes §46a-60(a)(l), §46a-60(a)(4) and Title VII of the Civil Rights Act of 1964. Some examples that were mentioned in the 2011 complaint included the following: Complainant received a write-up for the way she cared for her patients with a Maxi Life, when

other similarly- situated co-workers would do the same exact thing and not be written up for it; Complainant was suspended in March 2011 for not following the assignment sheet even though the patient refused to cooperate and was resistant to using his cane and oxygen tank; Complainant did not receive opportunities that were given instead to other employees with less seniority and/or experience than Complainant; Complainant received blame from the Director, Donna Wade, even though a patient was complaining about someone else; Complainant was denied vacation time to pursue an adoption even though she had been told it would be approved; and Complainant was accused of 'intimidating' people and patients."

Perreira amended her 2011 HSR complaint on September 6, 2011 in order to bring in additional supporting facts, such as HSR's alleged retaliation towards her after she filed the original complaint. Moreover, on February 20, 2013, Perreira amended her complaint for a second time to include her termination, which occurred after she refused to work an extended shift during a blizzard on February 8, 2013. However, by that time YNHH had purchased the assets of HSR, YHNN was technically her employer.

On July 29, 2013, Perreira then filed another complaint ("2013 complaint") with the Commission on Human Rights and Opportunities alleging that she was discriminated against in her termination by YNHH in violation of §46a-58(a), §46a-60(a)(l), §46a-60(a)(4), and Title VII of the Civil Rights Act of 1964. The YNHH complaint was nearly identical to her previous complainant against HSR, involving the same issues and circumstances.

The complaints in the HSR 2011 and YNHH 2013 actions are almost identical; there was several occurrences where the language is exactly the same. In fact, when the two amendments to the 2011 HSR complaint are considered, the only substantive difference between the claims against YNHH and

HSR with specific regard to termination and harassment is that complainant alleged a violation of § 46a-58(a) against YNHH, which was not asserted against HSR. YNHH filed an answer to Perreira's 2013 complaint on September 18, 2013.

On October 3, 2014, after both complaints were filed, the complainant executed a Settlement Agreement, Covenant Not to Sue, and General Release of all claims against HSR ("Settlement Agreement"). The Settlement Agreement released HSR from all claims that Perreira may assert against it, including claims for wrongful discharge and for violations of Title VII of the Civil Rights Act of 1964 and Connecticut Fair Employment Practices Act § 46a-51 et seq, (which includes General Statute §46a-58[2].) The Settlement Agreement, however, does contain a paragraph of claims not released and included the statement that Perreira did not waive or release pending claims against YNHH. Nevertheless, the settlement agreement also provides that: "For and in consideration of the settlement payment and other consideration set forth in Paragraph 1 above, Ms. Perreira knowingly and voluntarily releases and

[2]Conn. Gen. Stat. Ann. § 46a-58 (a) It shall be a discriminatory practice in violation of this section for any person to subject, or cause to be subjected, any other person to the deprivation of any rights, privileges or immunities, secured or protected by the Constitution or laws of this state or of the United States, on account of religion, national origin, alienage, color, race, sex, gender identity or expression, sexual orientation, blindness, mental disability or physical disability.(b) Any person who intentionally desecrates any public property, monument or structure, or any religious object, symbol or house of religious worship, or any cemetery, or any private structure not owned by such person, shall be in violation of subsection (a) of this section. For the purposes of this subsection, "desecrate" means to mar, deface or damage as a demonstration of irreverence or contempt.(c) Any person who places a burning cross or a simulation thereof on any public property, or on any private property without the written consent of the owner, shall be in violation of subsection (a) of this section.(d) Any person who places a noose or a simulation thereof on any public property, or on any private property without the written consent of the owner, and with intent to intimidate or harass any other person on account of religion, national origin, alienage, color, race, sex, sexual orientation, blindness or physical disability, shall be in violation of subsection (a) of this section.(e) Any person who violates any provision of this section shall be guilty of a class A misdemeanor, except that if property is damaged as a consequence of such violation in an amount in excess of one thousand dollars, such person shall be guilty of a class D felony.

forever discharges the Hospital of Saint Raphael, its parent corporation, affiliates, subsidiaries, divisions, predecessors, insurers, receivers, successors and assigns and their current and former employees, attorneys, officers, directors, trustees, parents, members and agents thereof, both individually and in their business capacities, and their employee benefit plans and programs and their administrators and fiduciaries (collectively referred to throughout the remainder of this Agreement and General Release as "Releases"), of any and all claims, known and unknown, asserted or unasserted, which Ms. Perreira has or may have against Releases as of the date of execution of this Agreement and General Release."

III
STANDARD

A. Authority of Human Rights Referees to Rule on a Motion For Summary Judgment

The Commission and the complainant make several arguments against summary judgment. I will first address the commission's argument that the filing of a Motion for Summary Judgment is not an allowable motion under the commission's regulations or under the General Statutes including the Uniform Administrative Procedures Act ("UAPA"). "As set forth in *Carretero v. Hartford Public Schools*, 2005 WL 5746419 (2005) at page 5, Motions for Summary Judgment have been recognized as appropriate means of resolving employment cases. A motion for summary judgment is designed to eliminate the delay and expense of litigating an issue where there is no issue to be tried." *Id.* at 5. citing *Dingle v. Fleet Bank*, 2002 Conn. Super Lexis 1837, quoting *Wilson v. New Haven,* 213 Conn. 277, 279 (1989)." In deciding the Carretero case, Human Rights Referee David S. Knishkowy held that referees have the authority to rule on such motions in administrative adjudications. *Carretero*, Supra at p. 5.

In his ruling, Referee Knishkowy cites to an earlier decision, *Commission on Human Rights and Opportunities ex rel. Blake v. Beverly Enterprises*, 1999 WL 34765982 (1999). "The *Blake* case is particularly appropriate and instructive as it sets forth the full authority of the presiding referee to

control the proceedings including the authority to dismiss. In the Blake case, the presiding referee notes that, 'Notwithstanding the Commission's claims in this case that there is never authority to dismiss a certified complaint prior to a hearing, the commission has not only recognized such authority, but has either requested this action itself or not opposed pre-hearing dismissal on a number of prior occasions. .... It is not a viable position for the commission to contend in some instances that hearing officers have the power to enter pre-hearing dismissals, but not in others. The authority to do so exists or it doesn't'". *Id* at p. 4-5. Also see *Commission on Human Rights & Opportunities, ex rel. Meredith Payton v. State of Connecticut Department of Mental Health and Addiction Services*, 2004 WL 5380916 ruling characterizing Respondent's Motion To Dismiss as more properly a motion for summary judgment. *Id.* at 2." (Some internal quotation marks omitted.) *Commission on Human Rights & Opportunities ex rel. Arnell Barnes, Complainant v. Alan S. Goodman, Inc., Respondent,* 2009 WL 1941468, at 1.

B. Summary Judgment

"Practice Book § 17–49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." (Internal quotation marks omitted.) *Brooks v. Sweeney,* 299 Conn. 196, 210, 9 A.3d 347 (2010). *Santorso v. Bristol Hosp., 127 Conn. App.* 606, 614, 15 A.3d 1131, 1137 (2011), aff'd, 308 Conn. 338, 63 A.3d 940 (2013) "A motion for summary judgment is properly granted if it raises at least one legally sufficient defense that would bar the plaintiff's claim and involves no triable issue of fact." (Internal quotation marks omitted.) *Tirozzi v. Shelby Ins. Co.*, 50 Conn.App. 680, 684, 719 A.2d 62, cert. denied, 247 Conn. 945, 723 A.2d 323 (1998). Summary judgment is appropriate to determine whether a claim is barred by the doctrine of res judicata. See *Singhaviroj v. Board of Education*, supra, 124 Conn.App. at 236." Id. "Because res judicata or collateral estoppel, if raised, may be dispositive of a claim, summary judgment [is] the appropriate

method for resolving a claim of res judicata." *Jackson v. R.G. Whipple, Inc.*, 225 Conn. 705, 712, 627 A.2d 374 (1993).

IV
LAW AND ANALYSIS

A. Res Judicata

The Court has explained that "[t]he doctrine of res judicata holds that an existing final judgment rendered Connecticut Supreme upon the merits without fraud or collusion, by a court of competent jurisdiction, is conclusive of causes of action and of facts or issues thereby litigated as to the parties and their privies in all other actions in the same or any other judicial tribunal of concurrent jurisdiction ... If the same cause of action is again sued on, the judgment is a bar with respect to any claims relating to the cause of action which were actually made or which might have been made." (Internal quotation marks omitted.) *Efthimiou v. Smith,* 268 Conn. 499, 506, 846 A.2d 222 (2004). The court has also acknowledged that, "[a] settlement prior to the completion of trial operates as res judicata to the same extent as a judgment or decree rendered after answer and contest." (Internal quotation marks omitted.) *Gagne v. Norton,* 189 Conn. 29, 31, 453 A.2d 1162 (1983). The respondent's argument of res judicata, is predicated on a settlement agreement and consent order of dismissal by the undersigned in *Perriera v Hospital of Saint Raphael's*, CHRO No. 1430048 (2014). "The general rule is that a final consent decree is entitled to res judicata effect. This is so because the entry of a consent judgment is an exercise of judicial power that is entitled to appropriate respect and because of the policy favoring finality of judgments." (Internal citations omitted) *Amalgamated Sugar Co. v. NL Indus.,* Inc., 825 F.2d 634, 639 (2d Cir. 1987)

"Res judicata may also preclude claims by parties who were not involved in the earlier lawsuit. When an asserted claim is identical to one that has been previously litigated, relitigation may be barred to conserve judicial resources and to allow the prevailing party to enjoy the benefits of its victory and

avoid further costs. However, claim preclusion may be asserted only when the precluded party's interests have been represented in a previous lawsuit. See *Expert Elec., Inc. v. Levine*, 554 F.2d 1227, 1233 (2d Cir.) (Generally speaking, one whose interests were adequately represented by another vested with the authority of representation is bound by the judgment, although not formally a party to the litigation.), cert. denied, 434 U.S. 903, 98 S.Ct. 300, 54 L.Ed.2d 190 (1977)." (Internal quotations omitted) *Chase Manhattan Bank, N.A. v. Celotex Corp.,* 56 F.3d 343, 345 (2d Cir. 1995). "Claim preclusion, sometimes referred to as res judicata, and issue preclusion, sometimes referred to as collateral estoppels, are first cousins. Both legal doctrines promote judicial economy by preventing relitigation of issues or claims previously resolved. *State v. Ellis,* 197 Conn. 436, 466, 497 A.2d 974 (1985). The concepts of issue preclusion and claim preclusion are simply related ideas on a continuum, differentiated, perhaps by their breadth, and express no more than the fundamental principle that once a matter has been fully and fairly litigated, and finally decided, it comes to rest.... *Id.*, at 464-65, 497 A.2d 974.9101112. "The subtle difference between claim preclusion and issue preclusion has been so described: [C]laim preclusion prevents a litigant from reasserting a claim that has already been decided on the merits.... [I]ssue preclusion, prevents a party from relitigating an issue that has been determined in a prior suit. *Virgo v. Lyons,* 209 Conn. 497, 501, 551 A.2d 1243 (1988), quoting *Gionfriddo v. Gartenhaus Cafe*, 15 Conn.App. 392, 401-402, 546 A.2d 284 (1988), aff'd, 211 Conn. 67, 557 A.2d 540 (1989). Under claim preclusion analysis, a claim-that is, a cause of action-includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose.... *Duhaime v. American Reserve Life Ins. Co.*, 200 Conn. 360, 364-65, 511 A.2d 333 (1986), quoting 1 Restatement (Second), Judgments § 24(1) (1982). Moreover, claim preclusion prevents the pursuit of any claims relating to the cause of action which were actually made or might have been made. *Corey v. Avco-Lycoming Division*, 163 Conn. 309, 317, 307 A.2d 155 (1972), cert. denied, 409 U.S. 1116, 93 S.Ct. 903, 34 L.Ed.2d 699 (1973)." (Emphasis added; internal

quotation marks omitted.) *Scalzo v. Danbury*, 224 Conn. 124, 127-28, 617 A.2d 440 (1992)." *LaSalla v. Doctor's Associates, Inc.*, 278 Conn. 578, 589–90, 898 A.2d 803, 811–12 (2006)

Parties who are in privity "include those who are successors to a property interest, those who control an action although not formal parties to it, those whose interests are represented by a party to the action, and possibly coparties [sic]to a prior action." *Supra Virgo v. Lyons*, 209 Conn. 497, 501, 551 A.2d 1243 (1988). "Collateral estoppels [issue preclusion] is that aspect of the doctrine of res judicata which serves to estop the relitigation by parties and their privies of any right, fact or legal matter which is put in issue and has been once determined by a valid and final judgment of a court of competent jurisdiction." *Barry v. New Britain Bd. of Educ.*, No. HHBCV075004365, 2010 WL 1888962, at *14 (Conn. Super. Ct. Apr. 13, 2010), aff'd sub nom. *Barry v. Bd. of Educ. of City of New Britain*, 132 Conn. App. 668, 33 A.3d 291 (2011).

B. Privity

Privity is a difficult concept to define precisely. *Commissioner of Environmental Protection v. Connecticut Building Wrecking Co., 227 Conn.* 175, 193, 629 A.2d 1116 (1993). "There is no prevailing definition of privity to be followed automatically in every case. It is not a matter of form or rigid labels; rather it is a matter of substance. In determining whether privity exists, we employ an analysis that focuses on the functional relationships of the parties." *Id.*

In the underlying action, YNHH Hospital became the successor in interest when it acquired HSR's assets. "Persons acquiring an interest in property that is a subject of litigation are bound by, or entitled to the benefit of, a subsequent judgment, despite a lack of knowledge. Restatement of Judgments s 89, and comment c (1942); see 1 J. Story, Equity Jurisprudence s 536 (14th ed. 1918). This principle has not been limited to in rem or quasi in rem proceedings. Restatement of Judgments, supra, s 89, comment d; *see ICC v. Western N.Y. & P.R. Co.*, 82 F. 192, 194 (W.D.Pa.1897). "Courts of equity may, and do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to

go when only private interests are involved." *Virginia R. Co. v. System Federation*, 300 U.S. 515, 552, 57 S.Ct. 592, 601, 81 L.Ed. 789 (1937); see *Walling v. James V. Reuter, Inc.*, 321 U.S., at 674—675, 64 S.Ct. at 827." *Golden State Bottling Co. v. N.L.R.B.*, 414 U.S. 168, 179–80, 94 S. Ct. 414, 423, 38 L. Ed. 2d 388 (1973). The determination of whether the underlying action is allowed to go forward implicates public policy and private interest.

The instant case is analogous to an arbitration award where the parties expressly stipulated to the final award. In *Fink v. Golenbock*, 238 Conn. 183, 195–96, 680 A.2d 1243, 1251 (1996) the court concluded that, "the doctrine of res judicata applies to the decisions of an arbitration panel, especially in a case in which the decisions are made for a purpose similar to those of a court and in proceedings similar to judicial proceedings. No satisfactory reason can be assigned why an award, which the parties have expressly stipulated should be final as to the subject submitted, should not be as conclusive as a court-rendered judgment. 2 Freeman, Judgments (5th Ed.) § 636.... 'The award ... valid on its face ... has the force of a judgment, and therefore becomes res judicata as to all matters embraced in the submission ... '"(internal citations omitted.) *Id.* In the underlying matter at hand we have both parties agreeing on the terms of settlement in court of competent jurisdiction, which approved the settlement agreement and issued an order of dismissal with prejudice based on that agreement.

The facts and circumstance of the instant case are a tailored fit to the purposes of res judicata. Judicial economy at the Office of Public Hearings is a paramount concern, as this office has been understaffed and missing one referee for several years. Further, the OPH's docket contains more cases than it has had in its history. The undersigned was also the presiding referee in the complainant's case against HSR and is well versed with allegations of the present and past HSR litigations. The undersigned granted a dismissal with prejudice based on settlement agreement of the previous claims asserted against HSR. The settlement encompassed allegations of harassment and discriminatory termination and the consideration for that settlement specifically included emotional distress damages, as well as

for back pay. Therefore, the instant case falls squarely within the public policy purposes of res judicata. The parties whose respondents, if they desired, had the opportunity to fully and fairly litigate their claim, the freely choose to settle, they had complete representation in the HSR case, the YNHH case is in same forum as the previous claim and the claims were settled after the YNHH was filed. Res Judicata applies to any claims relating to the cause of action, which were actually made, or which might have been made.

"Claim preclusion (res judicata) and issue preclusion (collateral estoppel) have been described as related ideas on a continuum. [C]laim preclusion prevents a litigant from reasserting a claim that has already been decided on the merits.... [I]ssue preclusion ... *721 prevents a party from relitigating an issue that has been determined in a prior suit." (Internal quotation marks omitted.) Rocco v. Garrison, 268 Conn. 541, 554, 848 A.2d 352 (2004). "The doctrines of res judicata and collateral estoppels protect the finality of judicial determinations, conserve the time of the court, and prevent wasteful relitigation." (Internal quotation marks omitted.) *Daoust v. McWilliams*, 49 Conn.App. 715, 723, 716 A.2d 922 (1998). "[T]he doctrine of ... claim preclusion ... [provides that] a former judgment on a claim, if rendered on the merits, is an absolute bar to a subsequent action [between the same parties or those in privity with them] on the same claim. A judgment is final not only as to every matter which was offered to sustain the claim, but also as to any other admissible matter which might have been offered for that purpose.... The rule of claim preclusion prevents reassertion of the same claim regardless of what additional or different evidence or legal theories might be advanced in support of it." (Citations omitted; internal quotation marks omitted.) Bruno v. Geller, 136 Conn. App. 707, 720–21, 46 A.3d 974, 985 (2012).

C. Preclusion and Collateral estoppels

"Collateral estoppels [issue preclusion] may be invoked against a party to a prior adverse proceeding or against those in privity with that party." *Aetna Casualty & Surety Co. v. Jones*, 220 Conn. 285, 303, 596 A.2d 414 (1991). "[A] successor in interest is one who follows another in ownership or

control of property ... and does not exclude those who take by deed, grant, gift, purchase or contract." (Internal quotation marks omitted.) *Bobhic Associates Ltd. Partnership v. Carrabba Ob–Gyn Associates, Inc.*, 44 Conn.App. 719, 722, 692 A.2d 826 (1997). *Waterbury Equity Hotel, LLC v. City of Waterbury, 85 Conn. App.* 480, 493, 858 A.2d 259, 267 (2004).

"The Restatement (Second), Judgments provides, in § 24, that 'the claim [that is] extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose. ... In amplification of this definition of 'original claim,' § 25 of the Restatement (Second) states that '[t]he rule of § 24 applies to extinguish a claim by the plaintiff against the defendant even though the plaintiff is prepared in the second action (1) [t]o present evidence or grounds or theories of the case not presented in the first action, or (2) [t]o seek remedies or forms of relief not demanded in the first action.' "*Orselet v. DeMatteo,* 206 Conn. 542, 545–46, 539 A.2d 95, 97 (1988)

In the underlying case, the undersigned referee granted a consent agreement and order of dismissal. "[A] decision whether to apply the doctrine of res judicata to claims that have not actually been litigated should be made based upon a consideration of the doctrines' underlying policies, namely, the interest of the defendant and of the courts in bringing litigation to a close ... and the competing interest of the plaintiff in the vindication of a just claim. We have stated that res judicata should be applied as necessary to promote its underlying purposes. These purposes are generally identified as being (1) to promote judicial economy by minimizing repetitive litigation; (2) to prevent inconsistent judgments which undermine the integrity of the judicial system; and (3) to provide repose by preventing a person from being harassed by vexatious litigation ... The judicial [doctrine] of res judicata ... [is] based on the public policy that a party should not be able to relitigate a matter which it already has had an opportunity to litigate ... Stability in judgments grants to parties and others the certainty in the management of their affairs which results when a controversy is finally laid to rest ... We review the

doctrine of res judicata to emphasize that its purposes must inform the decision to foreclose future litigation. The conservation of judicial resources is of paramount importance as our trial dockets are deluged with new cases daily. We further emphasize that where a party has fully and fairly litigated his claims, he may be barred from future actions on matters not raised in the prior proceeding." *New England Estates,* supra, 294 Conn. at 843–44 quoting *Fink v. Golenbock*, 238 Conn. 183, 192–93 (1996) *Rubino v. Brucker,* No. FSTCV126015326S, 2013 WL 6912911, at *3 (Conn. Super. Ct. Dec. 4, 2013), adhered to on denial of reh'g, No. FSTCV126015326S, 2014 WL 486792 (Conn. Super. Ct. Jan. 13, 2014) *Civie v. Lewis Labs. Int'l Ltd.*, No. CV030070471, 2005 WL 1273998, at *3 (Conn. Super. Ct. May 4, 2005)

The facts and circumstance of the instant case are a tailored fit to the purposes of res judicata. Judicial economy at the Office of Public Hearings is a paramount concern, as this office has been understaffed and missing one referee for several years. Further, the OPH's docket contains the greatest number cases in its history with the fewest number of referees. Moreover, the undersigned was also the presiding referee in the complainant's case against HSR and is well versed with allegations of the present and past HSR litigations. In the HSR the undersigned granted a dismissal with prejudice based on settlement agreement of the previous claims asserted against HSR. The settlement encompassed allegations of harassment and discriminatory termination. The consideration for that settlement agreement specifically included emotional distress damages, which are only available through the operation of General Statute §46a-58. As well as for back pay based on complaint's employment up to termination. Therefore, the instant case falls squarely within the public policy purposes of res judicata. The parties, if they desired, had the opportunity to fully and fairly litigate their claim, the freely choose to settle. The complainant was adequately represented in the HSR case; the commission was a represented party and filed a separate settlement agreement with regard to the complainant's employment allegations. Now, those same claims are being asserted against YNHH are in same forum as the previous claim, which were settled with HSR, after the YNHH action was filed. Res Judicata applies

to any claims relating to the cause of action, which were actually made, or which might have been made.

D. Wavier and Release

[A] settlement of the controversy by the parties thereto it is usually presumed that the parties intent to settle all aspects of the controversy, including all issues raised by the papers comprising the record." (Internal citations omitted) *Gangne v. Norton,* supra at 34, 35 (1983). In the complainant's settlement agreement she was compensated for all claims arising out of her employment including termination, albeit she mistakenly identified HSR as the terminator. The complainant filed the instant action against YNHH with the CHRO after she filed her amended complaint against HSR, alleging the identical claim of discriminatory termination. The complainant could have amended her HSR complainant to include YNNH as an additional respondent; however, she chose not to do so. The complainant was well aware that her settlement with HSR included any alleged termination injury; evidenced by the filing a second amendment to her action against HSR to include termination. The fact that the complainant was compensated for all alleged injuries arising out of her employment prevents her from recovering a second time for the same injuries. This would be an impermissible "a second bite at the apple," and would result in a windfall to the complainant defying the principals of equity.

Complainant argues that in her settlement agreement that she specifically did not release any claims pending against YNHH, therefore, she can still pursue her claim. Regardless of what the complainant did or not release, complainant cannot waive the operation or application of the law. The policies of res judicata/claim preclusion and collateral estoppel/ issue preclusion or any operation of law must be where the analysis starts. Ms. Perierra was not forced to withdraw her action against YNHH and agreed to a dismissal with prejudice. She voluntary signed a settlement agreement that this tribunal approved and issued a dismissal order. That settlement encompassed the issues of harassment and termination, which was unambiguously spelled out in the agreement notwithstanding the fact that

she did not release her claims against YNHH.

In *Bruno v. Geller,* 136 Conn. App. 707, 724–25, 46 A.3d 974, 987 (2012) there was a similar situation of two cases being filed against two different parties involving the same circumstances. (A New York action was brought against Stephen Bruno, Dalton, Boston Financial and Mintz Levin, and the other action in different jurisdiction was brought against Geller, Dalton and Boston Financial, both actions are based on the same underlying allegations of fraud in Dalton's termination of, and settlement agreement with, Stephen Bruno. Furthermore, although Geller was not named as a party in the New York action, he is named in the present action in his official capacity as the co-president and chief executive officer of Dalton. Because both actions are based on the plaintiff's allegations of fraud in Dalton's termination of and settlement agreement with Stephen Bruno, and the New York court determined that such allegations, because of the decision of the settlement in the other court, were barred by the doctrine of collateral estoppel and rendered judgment thereon against the plaintiff. See *Lighthouse Landings, Inc. v. Connecticut Light & Power Co.,* 300 Conn. 325, 352–53, 15 A.3d 601 (2011) (civil suit alleging misrepresentation and unfair trade practices claims barred by res judicata because determination of these claims would involve relitigating subject matter of earlier declaratory judgment action involving defendant's alleged improper termination of lease). *Bruno v. Geller,* 136 Conn. App. 707, 724–25, 46 A.3d 974, 987 (2012). The Bruno case involved parties who were not in privity with each other and suits filed in two different jurisdictions. The argument for res judicata in the instant case is greatly enhanced here as the respondents in both actions are in privity by virtue of the current respondent being a successor in interest.

Complaint's preservation of her claims against YNNH does not override the principles of res judicata and collateral estoppels. To do so would allow through the backdoor that which is foreclosed by the front door, a principle which the law disfavors. It is telling that the complaints in both the HSR and the YNHH actions with regard to her alleged discriminatory termination were identical, except that she

changed with the word "regrettably" to "shockingly." Further, she alleged retaliation and a campaign of harassment by HSR in her complaint against YNHH. Both complainants alleged incidents of harassment and discriminatory termination against the same supervisors involving the same circumstances. Many of the allegations in the YNHH complainant describe alleged incidents that occurred well before YNHH's acquisition of HSR. It is telling that the complaints in both the HSR and the YNHH actions regading her alleged discriminatory termination were identical; except that she changed with the word "regrettably" terminated to "shockingly" terminated. Further, she alleged continued retaliation and a campaign of harassment by **HSR** in her complaint against YNHH. The complainant interchangeably makes cut and paste allegations against both respondents.

IV
CONCLUSION

Based on the foregoing the principles of judicata and collateral estoppels preclude the instant action from going forward. If the complainant were to go forward and be successful on her claims against YNHH she would be recovering for an alleged injury for which she has already been compensated, an impermissible second bite. The undersigned was the presiding referee in the prior action against HSR and recognizes that the allegations in the HSR complaint are nearly identical. The settlement agreement in the HSR suit was reviewed and approved by the undersigned as full compensation for any employment discrimination action. The complainant's choice to continue her claim against YNHH has already unnecessarily expended judicial resources and to go further would violate public policy as well as be prevented by the doctrine of res judicata.

V
ORDER

The respondent's Motion for Summary Judgment is granted. The complaint is hereby dismissed.

It is so ordered this 7th day of September 2016.

Michele C. Mount,
Presiding Human Rights Referee

cc.
Margaret Nurse-Goodison, Esq.
W. Martyn Philpot, Jr., Esq.
Brock T. Dubin, Esq.