STATE OF CONNECTICUT

OFFICE OF PUBLIC HEARINGS

Daniel Schwartz, Complainant	:	OPH/WBR 2008-095
v.	:	
Attorney Michael Eagan, Respondent	:	March 17, 2009

RULING ON MOTION TO DISMISS
AND DIRECTIVES RE COMPLETION OF
DISCOVERY AND OTHER SCHEDULE CHANGES

1. Background

On November 19, 2008, Daniel Schwartz (the complainant), a former employee of the University of Connecticut (UConn), filed a whistleblower retaliation complaint against Michael Eagen, an attorney employed in the UConn Human Resources (HR) unit.[1] The complainant alleges that after disclosing information pursuant to General Statutes § 4-61dd (a), the respondent retaliated against him by placing him on administrative leave, denying him access to his office and to the campus during that leave, subsequently terminating him, and then continuing to deny him access to the campus,[2] to his office and to his telephone voice mail and computer account, effectively preventing him from retrieving personal belongings and certain professional materials.

[1] Although the correct spelling of the respondent's surname is "Eagen," the case caption remains the same as when filed. The complainant explained that he identified Eagen as the respondent because Eagen "played a central role in advising retaliatory action against [me,] including restricting access to University personnel and facilities and not returning all personal belongings." (Complaint, ¶ 9.B)

[2] The complainant was not barred from areas available to the general public, such as the library, the UConn Co-op and Jorgensen Auditorium.

On December 11, 2008, the complainant filed an amended complaint, correcting the spelling of the respondent's name; adding as a second respondent the HR unit in which Eagen worked; and otherwise streamlining the complaint by deleting extraneous or repetitive text and removing documents (potential exhibits for the evidentiary hearing) unnecessarily appended to his original complaint.[3] The complainant also claims that denial of access to university personnel contributed to his loss of health care coverage for almost two months. (Except where required for contextual accuracy, I will refer to the original and amended complaints jointly as "the complaint.")

On December 24, 2008, the respondents filed a motion to dismiss the complaint, arguing that (1) the complaint was not timely filed with regard to his administrative leave, his September 18, 2008 termination and his pretermination attempts to gain access to his office; (2) none of the timely-filed actions constituted an "adverse personnel action" under the statute; and (3) no causal connection existed between the actions and the alleged retaliatory treatment. The complainant filed a written objection on December 29, 2008, the respondents filed a written reply to the objection on January 9, 2009, and the complainant filed a written response to the reply on January 14, 2009.

Amendments to the whistleblower protection regulations, §§ 4-61dd-1 through 4-61dd-30 of the Regulations of Connecticut State Agencies (the regulations), became effective on December 30, 2008 and, although they were implemented after the motion to dismiss and the complainant's objection were filed, they assume a critical role in this ruling. According to § 4-61dd-2 (d), the amended regulations "shall apply on and after their effective date to every hearing held pursuant to section 4-61dd (b) (2) of the Connecticut General Statutes, whether

[3] The complainant amended his complaint at my direction; in his good faith attempt to cooperate and winnow out excess information, he may have eliminated more material than he or I intended. I therefore give him the benefit of the doubt and, for the purposes of this motion, review all of his pertinent claims, whether stated in the original complaint, the amended complaint, or both.

such hearing commenced before or on or after such effective date, except where application to a hearing that commenced before such effective date would unavoidably result in unfairness to any party."

2. Pertinent allegations

On four occasions in May and June 2008, the complainant, a board-certified laboratory veterinarian, disclosed information concerning lab animal mismanagement and violations of animal welfare federal regulations to five managerial level UConn employees. (Complaint, ¶¶ 8.A, 8.B)

On or about July 29, 2008, UConn sent the complainant a "dismissal packet," the initial step in its dismissal process. UConn placed the complainant on administrative leave and instructed him not to appear on campus or contact any UConn personnel without prior permission from his supervisor. On July 30, 2008, the complainant found that he no longer had access from home to his office telephone answering service, computer files and email. (Original Complaint, ¶ 8.C)

On September 18, 2008, the UConn provost sent the complainant a written notice of termination, effective the following day. The complainant's union appealed this decision, with arbitration scheduled for March 2009. (Id.) The complainant is not contesting his termination in this proceeding because it occurred more than thirty days before he filed this complaint, and instead is the subject of a pending grievance. (Complaint, ¶¶ 9.B, 9.C; response to motion to dismiss, p. 2) Because the issue of retaliatory termination is not before me, I need not address the respondents' argument that such claim is untimely. The complainant also concedes that any challenge to the respondents' pre-termination actions would be untimely as well.

On September 27, 2008, the complainant received a letter from one of the UConn Human Resources (HR) attorneys, Keith Hood, advising him to cease all visits to the UConn campus without prior appointment and approval from an

appropriate administrator. On September 29, 2008, Eagen and Hood told the complainant in person not to visit HR "unannounced and with no appointment." On October 3, 2008, Hood informed the complainant that he could not attend a professional seminar series on campus. (Complaint, ¶ 8.C)

After several requests for the return of his personal belongings from his former office, the complainant eventually received most of the materials on October 27, 2008. Eagen, however, allegedly retained two boxes and other miscellaneous items and continued to deny the complainant access to his office, voice mail, computer files and email. (Id.) Among the items not returned to the complainant were: materials from vendors, information about certain animal species, notes from and/or about seminars, various forms, a microscope, and professional journals and other publications. (Id.)

The boilerplate complaint form requires a complainant to identify the date he learned about the personnel actions taken in response to his whistleblowing. The complainant responded, "On October 27, 2008, [I] became keenly aware of the extent of the retaliation as that day not all of [my] belongings were returned." (Complaint, ¶ 9.A)

Paragraph 9.B of the amended complaint added, with no explanation or claim for monetary damage, the following: "Denial of normal access to university personnel was contributory to the lost health care coverage for most of October and November 2008."

The complainant identifies the relief he seeks as "the return of all of his personal belongings and normal public access to University personnel and facilities and damages to his professional career including loss of professional materials and contacts." (Amended complaint, ¶ 11) This response constitutes the only reference in the complainant proper to any alleged harm to his professional career.

3. Discussion

A. Section 4-61dd-15 (c) of the regulations, as amended, authorizes the presiding referee to dismiss a complaint for, among other reasons, lack of subject matter or personal jurisdiction. *Stutts v. Frost*, 2008 WL 4809605 (CT. Civ. Rts.) (OPH/WBR 2008-089, October 27, 2008). A motion to dismiss admits all facts well-pleaded and invokes any record that accompanies the motion, including supporting affidavits that contain undisputed facts. *Malasky v. Metal Products Corp*., 44 Conn. App. 446, 451-52, cert. denied, 241 Conn. 906 (1997). In evaluating the motion, the complainant's allegations and evidence must be accepted as true and interpreted in a light most favorable to the complainant; every reasonable inference is to be drawn in his favor. *New England Savings Bank v. Bedford Realty Corp*., 246 Conn. 594, 608 (1998); *Banks v. Civil Service Commission*, 2006 WL 2965501 (CT. Civ. Rts.) (OPH/WBR 2006-017, March 21, 2006). Although untimely filing is actually not a jurisdictional issue; *Williams v. Commission on Human Rights & Opportunities*, 257 Conn. 258 (2001); I need not address the claim of untimeliness, as the subjects of that claim (i.e., the administrative leave, the pre-termination ban from the campus and the termination itself) are not being adjudicated in this forum but, instead, are the subjects of a union grievance.

B. More problematic is the respondents' claim that this matter should be dismissed because the complainant has failed to state a claim for which relief can be granted. Under the prior whistleblower retaliation regulations, such deficiency was indeed a basis for dismissal. See § 4-61dd-15 (c) (2) of the regulations effective April 23, 2003. Under the recent amendments (effective December 30, 2008 and, according to § 4-61dd-2 (d), applicable to cases pending at that time), such failure is no longer a basis for dismissal. Instead, the respondent must file a motion to strike those claims it deems legally insufficient in this manner. Regulations § 4-61dd-15 (d). Rather than require the respondents to file a new motion and the complainant a new response, I shall treat the motion

to dismiss as a motion to strike—a unilateral determination on my part that is consistent with the new regulations and, moreover, is supported by ample case law. See, e.g., *McCutcheon & Burr, Inc. v. Berman*, 218 Conn. 512, 527 (1991); *Commissioner of Environmental Protection v. Lake Phipps Land Owners Corp*., 3 Conn. App. 100, 102 n.2 (1985); *Tedford v. Buck,* 2008 WL 2502529, *5-6 (Conn. Super.); *Asante v. University of Connecticut*, 2007 WL 1052596 (CT. Civ. Rts.) (OPH/WBR 2006-031, March 2, 2007).

A motion to strike challenges the "legal sufficiency of the allegations of any complaint . . . to state a claim upon which relief can be granted." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC v. Alves*, 262 Conn. 480, 498 (2003); *Poach v. Doctor's Associates, Inc*., 2008 WL 4634559,*1-2 (Conn. Super.) (Practice Book § 10-39 motion to strike is proper means to attack legal sufficiency of pleading); *Commission on Human Rights & Opportunities ex rel. Perri v. Peluso,* 2008 WL 323662 (CT. Civ. Rts.) (CHRO 0750113, January 11, 2008). For purposes of the motion to strike, all well-pleaded facts in the complaint are deemed to be admitted and they must be construed most favorably to the complainant. *Murillo v. Seymour Ambulance Assn., Inc*., 264 Conn. 474, 476 (2003); *Faulkner v. United Technologies Corp*., 240 Conn. 576, 580 (1997). If the facts alleged in the complaint would support a cause of action, the tribunal should deny the motion. *Sullivan v. Lake Compounce Theme Park, Inc.*, 277 Conn. 113, 117-18 (2006). What is necessarily implied in an allegation need not be expressly alleged. *Violano v. Fernandez,* 280 Conn. 310, 318 (2006).

Conversely, a motion to strike is properly granted if the complainant alleges mere conclusory statements without supporting facts. *Fort Trumbull v. Alves*, supra, 262 Conn. 498; *Melfi v. Danbury*, 70 Conn. App. 679, 686, cert. denied, 261 Conn. 922 (2002). This appears to be the case here.

The complainant must adequately plead all elements of his prima facie case in order to survive a motion to strike. *Verderosa v. Hunt*, 2008 WL 544460, *3 (Conn. Super.); *Yankee Gas v. City of Meriden*, 1005607, *4 (Conn. Super.).

The complainant's prima facie case of retaliation requires a showing that (1) he engaged in a protected activity as defined by the statute; (2) the respondents were aware of his protected activity; (3) he suffered (or was threatened with) an adverse personnel action;[4] and (4) a causal nexus existed between his exercise of a protected activity and the respondents' imposition of an adverse personnel action. *Gordon v. New York City Board of Education*, 232 F.3d 111, 116 (2nd Cir. 2000); *Hebrew Home & Hospital, Inc. v. Brewer,* 92 Conn. App. 762, 770 (2005); *Stacy v. State of Connecticut, Department of Correction*, 2003 WL 25592795 (CT. Civ. Rts.) (OPH/WBR 2003-002, September 15, 2003).[5] The thrust of the respondents' challenge is that the complainant has not alleged a cognizable adverse personnel action and, therefore, the complaint must be dismissed—or, under the new regulations, stricken.

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[4] The term "adverse personnel action" is not defined in § 4-61dd or its implementing regulations. The phrase "adverse employment action," however, as used in the state and federal antidiscrimination statutes, bears essentially the same meaning as "adverse personnel action" in the whistleblower protection act. That courts have used the terms interchangeably, notwithstanding the different statutory language, is evident in many cases, including, for example, *Allen v. Administrative Review Board*, 514 F.3d 468, 475-76 and n.2 (5th Cir. 2008) ("unfavorable personnel action" and "adverse employment action" are interchangeable terms for purposes of a federal Sarbanes-Oxley retaliation claim, 18 U.S.C. § 1514A); *Mills v. George R. Funaro & Co*., 2001 WL 50893, *12 (S.D.N.Y.) (plaintiff must prove that that she suffered an "adverse personnel action" and that a causal connection existed between the protected activity and the "adverse employment action"); *Stacy v. State of Connecticut, Department of Correction*, 2004 WL 5380919 (CT Civ. Rts.) (OPH/WBR 2003-002, March 1, 2004) (explaining adverse personnel action pursuant to a Title VII case); see also a case from a sister state, *Higgs v. County of Essex*, 648 N.Y.S.2d 787 (App. Div. 1996) (under labor law statute, "retaliatory personnel action" is defined as the "discharge, suspension or demotion . . . or other 'adverse employment action' taken against an employee in the terms and conditions of employment"). The human rights referees, relying upon Title VII cases for guidance in § 4-61dd cases, have consistently treated the two phrases as meaning the same.

[5] Discrimination and retaliation cases under Title VII of the Civil Rights Act of 1964, as amended, and cases under the comparable sections of the Connecticut Fair Employment Practices Act (CFEPA) provide guidance for the interpretation and application of General Statutes § 4-61dd. *O'Sullivan v. Vartelas*, 2008 WL 5122194 (CT Civ. Rts.) (OPH/WBR 2008-086, November 20, 2008); see *McDonnell Douglas Corp. v. Green*, 411 U.S. 729, 802-03 (1973) (establishing shifting burdens in Title VII cases). The requirements of proof under *McDonnell Douglas* "must be tailored to the particular facts of each case." *Miko v. Commission on Human Rights & Opportunities*, 220 Conn. 192, 204 (1991).

Not all undesirable personnel decisions are actionable. An adverse personnel action, like an adverse employment action, is a "materially adverse change in the terms and conditions of employment." (Emphasis added.) *Martin v. Town of Westport*, 108 Conn. App. 710, 718 (2008). To be materially adverse, the action must be more disruptive than a mere inconvenience; examples include, but are not limited to, termination, demotion, imposition of a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other incidents unique to a particular situation. *Martin v. Westport*, supra, 718-19, quoting *Sanderson v. New York City Human Resources Administration*, 361 F.3d 749, 755 (2nd Cir. 2004); *Poach v. Doctor's Associates,* supra, 2008 WL 4634559, *6; *Commission on Human Rights & Opportunities ex rel. Peterson v. Hartford Police Department*, 2008 WL 5455392 (CT. .Civ. Rts.)(CHRO No. 0410049, November 14, 2008). Materially adverse acts do not include trivial harms such as "petty slights or minor annoyances." *Burlington Northern & Santa Fe Railway Co. v. White*, 548 U.S. 53, 68 (2006). Because no clear line separates adverse and non-adverse acts, determining whether an action rises to the level of "materially adverse" requires a fact-specific and contextual analysis. *Zelnik v. Fashion Institute of Technology*, 464 F.3d 217, 226 (2nd Cir. 2006).

Extensive decisional law reveals that materially adverse actions may include post-employment acts adversely affecting—or likely to affect—an employee's reputation or ability to secure future employment opportunities. *Robinson v. Shell Oil Co*., 519 U.S. 337, 346 (1997) (poor references given post-employment may be deemed retaliatory); *Jute v. Hamilton Sundstrand Corp.*, 420 F.3d 166, 178-79 (2nd Cir. 2005) (same); *Wanamaker v. Columbian Rope*, 108 F.3d 462, 466 (2nd Cir. 1997) (a retaliation claim can be maintained when former employer sullies plaintiff's reputation, thereby affecting "tangible future employment objectives"); *Kelley v. Sun Microsystems, Inc*., 520 F.Sup.2d 388, 405 (D.Conn. 2007) (following *Wanamaker*); *Frontline Communications International, Inc., v. Sprint Communications Company, L.P*., 374 F.Sup. 2d 368, 371 (S.D.N.Y. 2005) (an adverse action must have some impact on employee's employment or

prospective employment). Merely speculative or hypothetical possibilities, however, are not materially adverse. *Frontline Communications v. Sprint*, supra, 371-72; see also *Tse v. UBS Financial Systems, Inc*., 568 F.Sup.2d 274, 288 n.3 (S.D.N.Y. 2008).

In a recent Title VII retaliation case—applicable to § 4-61dd cases as well—the United State Supreme Court construed the statute's anti-retaliation provisions more broadly than its substantive anti-discrimination provisions: materially adverse retaliatory actions include not only those actions specifically related to the workplace, but also those that occur outside of work. A claimant need show only that "a reasonable employee would have found the challenged action materially adverse, which in this [retaliation] context means it well might have dissuaded a reasonable worker from making or supporting a charge of discrimination." *Burlington Northern v. White*, supra, 548 U.S. 68; see also *Lomotey v. State of Connecticut, Department of Transportation*, 2009 WL 82501,*9 (D.Conn.); *Kulish v. Arroyo*, 2006 WL 4753470 (CT. Civ. Rts.) (OPH/WBR 2006-021, -022, -023, October 10, 2006). Thus, materially adverse actions would include those actions that would dissuade a reasonable employee from engaging in a protective activity (such as whistleblowing).

The complainant's exclusion from the campus, his inability to access his computer, phone and certain files, and his inability to obtain the few possessions remaining in his former office—possessions which, by now, may have been returned—do not, by themselves, rise to the level of materially adverse. Rather, the devil lies in the details—in this case, the consequences of his exclusion—but the complainant has failed to identify any adverse consequences of the respondents' actions with anything but superficial and conclusory allusions to those actions' adverse affect on his professional career. (Amended complaint, ¶ 11). Absent specificity, I cannot conclude that these speculative consequences rise to the level adverse personnel actions. Nor can I determine that, as described, they are sufficiently offensive as to dissuade a reasonable employee

from exercising his protected right to disclose information pursuant to § 4-61dd (a).

Since I am not authorized to dismiss the claims under the revised whistleblower regulations, granting the motion to strike is appropriate under the particular circumstances. Like Practice Book § 10-44, § 4-61dd-15 (d) of the regulations permits the complainant to file a revised pleading after a motion to strike has been granted.[6] See *Larobina v. McDonald*, 274 Conn. 394, 401 (2005). Accordingly, the complainant shall file a revised complaint on or before March 27, 2009 and serve a copy of same upon the respondents' attorney. In particular, the complainant shall revise ¶ 9.B to include factual allegations of how the respondents' actions have injured or could likely injure his reputation and/or his professional aspirations, with specific examples as appropriate. Speculative and conclusory assertions shall be deleted. The complainant shall also revise any other portions of his complaint necessary to render them consistent with this ruling and with the changes to ¶ 9.B. The respondents shall file an answer to the revised complainant within seven (7) days of their receipt of the revised complaint.

C. The respondent also argues that the complaint is deficient because the complainant did not adequately plead a causal connection between his whistleblowing and the alleged adverse actions he thereafter endured. A complainant may establish such causality "indirectly by showing that the protected activity was followed closely by discriminatory treatment, or through other evidence such as disparate treatment of fellow employees who engaged in similar conduct, or directly through evidence of retaliatory animus directed

[6] According to § 4-61dd-15 (d), "If the motion is granted by the presiding officer, the complainant shall, within the time ordered by the presiding officer, file a revised complaint complying with the ruling. Failure to file a revised complaint may result in the dismissal of the case." See also § 4-61dd-4 (d) of the regulations: "The complaint shall not be deemed defective solely because of the absence of one or more of the items contained in subsection (a) of this section, provided that the complaint shall be amended as directed by the presiding officer."

against a plaintiff by the defendant." (Emphasis and citations omitted.) *DeCintio v. Westchester County Medical Center,* 821 F.2d 111, 115 (2nd Cir.), cert. denied, 484 U.S. 965 (1987); see also *Gordon v. New York City,* supra, 232 F.3d 117; *Asante v. University of Connecticut* (OPH/WBR 2006-032, p. 16; June 4, 2007).

The complainant alleges that he made four disclosures under § 4-61dd (a) (i.e., he blew the whistle) in May and June, 2008, with his final disclosure on June 25. He further claims that on October 27, 2008, he became "keenly aware of the extent of the retaliation as that day not all of [his] belongings were returned." Complaint, ¶ 9.A. Whether this four month hiatus vitiates any temporal nexus is an issue that should be adjudicated, not one that should be summarily stricken. Neither the applicable statutes and regulations nor the interpretive case law provides a bright line demarcation between acceptable and unacceptable waiting periods, and other evidence may impact the tribunal's assessment of the alleged temporal proximity (or ostensible lack thereof). See, e.g., A*nderson v. Coors Brewing Co*., 181 F.3d 1171, 1179 (10th Cir. 1999) (three month period alone is insufficient); *Keller v. Orix Credit Alliance, Inc.,* 130 F.3d 1101, 1112 (3rd Cir.1997) (en banc) (suggesting that four or five months between discriminatory acts and firing may suggest relationship); *Hollander v. American Cyanamid Co*., 895 F.2d 80, 84-85 (2nd Cir. 1990) (three and a half month interval is insufficient, without other evidence); *Grant v. Bethlehem Steel Corp.,* 622 F.2d 43, 45-46 (2d Cir.1980) (eight-month gap between EEOC complaint and retaliatory action suggested a causal relationship); *Ward v. State of Connecticut, Department of Public Safety*, 2009 WL 179786 (D.Conn.).

Crucial to the complainant's position is that October 27 was the final time—but not the first or only time—that the respondent failed to provide the complainant with access to the campus or to his former office. (See Complaint, ¶¶ 8, 9.A, 9.B) The first time, for example, occurred less than six weeks after the complainant's fourth disclosure. As noted above, additional evidence—such as the respondents' ongoing admonitions to stay away from the university—may strengthen the causal nexus, but that is an issue that should be assessed during

the hearing. Accordingly, the claim should not be stricken at this juncture for what the respondent believes is a failure to plead a connection between his whistleblowing and the adverse actions.

D. The final issue, briefly mentioned for the first time in the amended complaint, is whether the complainant's post-employment health benefits were adversely affected by the respondent's actions. According to the complainant, "Denial of normal access to university personnel was contributory to the lost health care coverage for most of October and November 2008." (Amended complaint, ¶ 9B) Elaborating in his objection to the motion to dismiss, the complainant explained that comments from the UConn "leave administrator" caused him to believe that in October 2008 his health insurance was covered by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). The complainant did not complete the requisite COBRA election forms until the end of October and consequently had difficulty filling a prescription on October 30. Upon sending an email to the leave administrator, he was appropriately instructed to contact the provider instead. The complainant ultimately paid for his October and November coverage with his own funds, as required by COBRA. See *Tamborino v. Velocity Express, Inc*., 2008 WL 2582529, *17 (Conn. Super.)

The complainant's reliance on the human rights referee's decision in *Miller v. University of Connecticut Health Center*, 2008 WL 4111820 (CT. Civ. Rts.) (OPH/WBR 2008-073, July 25, 2008) is misplaced. In *Miller*, the referee denied the employee's motion to dismiss, finding that the complainant suffered an adverse personnel action when her health benefits were cancelled <u>during the course of her employment</u>. In the present case, the complainant was no longer employed at the time of the alleged miscommunications about COBRA benefits, and his employer, therefore, had no obligation to pay the complainant's health insurance premiums. Moreover, the complainant did not <u>lose</u> benefits, since he was entitled to elect—and, in fact, did elect—continuing health benefits at his

former group rate, albeit at his own expense, under COBRA. See *Tamborino v. Velocity Express,* supra, 2008 WL 2582529, *17.

By letter dated October 24, 2008, the Office of the State Comptroller notified the complainant of his right to elect continuing health insurance under COBRA and provided the requisite election form. (Respondent's reply to complainant's objection, Attachment 1) The complainant completed the form on Tuesday, October 28, 2008 and mailed it to the provider. (Id., Attachment 2).

At most, stifled communications between the complainant and Human Resources may have confused the complainant and delayed (a) his ability to obtain information from HR's "leave administrator" regarding COBRA coverage; (b) his ability to obtain information from the provider regarding COBRA coverage; (c) his election of COBRA coverage for October 2008; or (d) his ability to fill a prescription on October 30, 3008. Nothing in the pleadings reveals any monetary loss due to these delays, and the complainant incurred no unreimbursed medical expenses in October 2008. Thus, any delays in implementing the COBRA benefits and any inconvenience that the complainant endured because of the relatively minor administrative miscues and miscommunications that occurred are not cognizable as adverse employment actions. *Galabya v. New York City, supra,* 202 F.3d 640-41. In this instance, however, where the complainant has already described the final outcome of this series of miscommunications, I believe—and so conclude—that no repleading could cure the legal deficiencies inherent in this charge. See *Larobina v. McDonald,* supra, 274 Conn. 401. Therefore, I dismiss this particular aspect of the complaint.

4. Conclusions

Treating that portion of the motion to dismiss concerning the respondent's exclusion of the complainant from the campus and from his former office (and belongings contained therein) as a motion to strike, I hereby grant the motion, strike the complaint, and order the complainant to file a revised complaint on or

before March 27, 2009 in accordance with this ruling and with § 4-61dd-15 (d) of the regulations. The respondents shall file their answer to the revised complaint within seven (7) days of their receipt of the revised complaint.

The remaining claims concerning termination, pre-termination matters, and the COBRA miscommunications are hereby dismissed.

5. Directives re discovery and other schedule changes

By ruling dated February 18, 2009, I granted the respondents' motion and stayed the discovery process. That stay is hereby vacated.

The new deadline for complying with and/or objecting to the requests for production is April 16, 2009. The parties may file motions to compel on or before April 30, 2009 in accordance with the protocol set forth in Part III of my December 9, 2008 "Hearing Conference Summary and Directives."

The deadline for the exchange and filing of witness lists, exhibit lists, and copies of exhibits is hereby extended from May 6 to May 20, 2009. The dates for the prehearing conference and public hearing remain unchanged.

/s/_____
David S. Knishkowy
Human Rights Referee

Copies sent via certified mail on
this date to: D. Schwartz
M. Eagen

Copies sent via e-mail on
this date to: J. Graff
D. Schwartz
A. Howard