UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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CRAIG ROTH,

Plaintiff,

v.

COUNTY OF NASSAU, et al.,

Defendants.
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MEMORANDUM AND ORDER
22-CV-5948-SJB-AYS

BULSARA, United States District Judge:

Plaintiff Craig Roth filed this lawsuit alleging that Nassau County, the Nassau County Police Department ("NCPD"), Deputy Bureau Chief Christopher Todd, Lieutenant Carsten, Sergeant DiBlaso, Sergeant Wildeman, and several John Doe officers, (collectively, "Defendants"), violated the Americans with Disabilities Act ("ADA") in denying his request to lower the running standards for police academy cadets after he was diagnosed with a bone deformity. Defendants have moved for summary judgment on all of Roth's claims. (Defs.' Mot. for Summ. J. dated Aug. 11, 2025 ("Defs.' Mot."), Dkt. No. 46-1). For the reasons explained, the motion is granted.

STANDARD FOR SUMMARY JUDGMENT

A "court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986). "A genuine issue of material fact exists if 'the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *Nick's Garage, Inc. v. Progressive Cas. Ins. Co.*, 875 F.3d 107, 113 (2d Cir. 2017) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S.

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242, 248 (1986)). "In determining whether summary judgment is appropriate, [the Court] must resolve all ambiguities and draw all reasonable inferences against the moving party." *Tolbert v. Smith*, 790 F.3d 427, 434 (2d Cir. 2015) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)).

The movant bears the burden of "demonstrat[ing] the absence of a genuine issue of material fact." *Celotex*, 477 U.S. at 323. "A party asserting that a fact cannot be or is genuinely disputed must support the assertion" in one of two ways. Fed. R. Civ. P. 56(c)(1). It may cite to portions of the record "including depositions, documents, electronically stored information, affidavits or declarations, . . . admissions, interrogatory answers, or other materials." *Id.* R. 56(c)(1)(A). Alternatively, it may show that "the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." *Id.* R. 56(c)(1)(B); *cf. Farid v. Smith*, 850 F.2d 917, 924 (2d Cir. 1988).

In moving for summary judgment or answering such a motion, litigants are required by the Local Rules to provide a statement (a Rule 56.1 statement) setting forth purported undisputed facts or, if controverting any fact, responding to each assertion. *See* Loc. Civ. R. 56.1(a)–(b). In both instances, the party must support its position by citing to admissible evidence from the record. *Id.* R. 56.1(d); *see also* Fed. R. Civ. P. 56(c) (requiring reliance on admissible evidence in the record in supporting or controverting a purported material fact). "The purpose of Local Rule 56.1 is to streamline the consideration of summary judgment motions by freeing district courts from the need to

hunt through voluminous records without guidance from the parties." *Holtz v. Rockefeller & Co.*, 258 F.3d 62, 74 (2d Cir. 2001).

Where claims in opposing Rule 56.1 statements are "genuinely disputed," the Court will consider the evidentiary sources of the claims. *Halberg v. United Behav. Health*, 408 F. Supp. 3d 118, 146 (E.D.N.Y. 2019) (adopting report and recommendation). In evaluating the sources of claims made in dueling Rule 56.1 statements, the Court cannot—as is true for the summary judgment motion as a whole—weigh evidence or assess the credibility of witnesses. *See United States v. Rem*, 38 F.3d 634, 644 (2d Cir. 1994). Furthermore, "[l]egal arguments are impermissible in any Rule 56.1 Statement and are to be disregarded." *Taveras v. HRV Mgmt., Inc.*, No. 17-CV-5211, 2020 WL 1501777, at *2 (E.D.N.Y. Mar. 24, 2020); *Lawrence v. Cont'l Cas. Co.*, No. 12-CV-412, 2013 WL 4458755, at *1 n.1 (E.D.N.Y. Aug. 16, 2013) ("Both parties have submitted Local Rule 56.1 statements and responses to each other's statements that mix factual assertions with legal argument and therefore fail to meet the requirements of Local Rule 56.1. The facts . . . are taken from those assertions contained in the Local Rule 56.1 statements that comply with Local Rule 56.1[.]" (citations omitted)). The court may not grant summary judgment based on a fact in a Rule 56.1 statement—even if undisputed—not supported by admissible evidence. *E.g.*, *Giannullo v. City of New York*, 322 F.3d 139, 142–43 (2d Cir. 2003) (vacating grant of summary judgment to defendants based on facts enumerated in Rule 56.1 statement supported only by arguments in briefs rather than admissible evidence). The Court must also disregard conclusory denials that lack citations to admissible evidence. *Rodriguez v. Schneider*, No. 95-CV-4083, 1999 WL 459813, at *1 n.3

(S.D.N.Y. June 29, 1999) ("*Rule 56.1 statements are not argument.* They should contain factual assertions, with citation to the record. They should not contain conclusions[.]"), *aff'd*, 56 F. App'x 27, 29 (2d Cir. 2003). Also, where the opposing party fails to specifically controvert a numbered paragraph in the Rule 56.1 statement, the statement by the moving party "will be deemed to be admitted." Loc. Civ. R. 56.1(c). The Court also does not give any consideration to hearsay, speculation, or inadmissible evidence in evaluating declarations or affidavits. *Pacenza v. IBM Corp.*, 363 F. App'x 128, 130 (2d Cir. 2010) ("[A] court is obliged not to consider inadmissible evidence at the summary judgment stage[.]"); *Crawford v. Dep't of Investigation*, No. 05-CV-5368, 2007 WL 2850512, at *2 (S.D.N.Y. Oct. 1, 2007) ("[A] non-moving party 'must set forth specific facts showing that there is a genuine issue for trial;' he or she 'may not rely on mere conclusory allegations nor speculation, but instead must offer some hard evidence showing that its version of the events is not wholly fanciful.'" (quoting *Woodman v. WWOR-TV, Inc.*, 411 F.3d 69, 75 (2d Cir. 2005))), *aff'd*, 324 F. App'x 139, 143 (2d Cir. 2009).

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The Court finds the following facts—drawn from the pleadings, the parties' respective Rule 56.1 statements, and supporting affidavits and exhibits attached thereto—are undisputed unless otherwise noted. Where a relevant genuine dispute exists, the Court highlights both parties' versions of the facts. But the Court does not consider portions of the parties' Rule 56.1 statements that are legal conclusions,

irrelevant, or merely objections to inferences drawn from the opposing party's statements.

Plaintiff Craig Roth applied to be a probationary police officer with the Nassau County Civil Service Commission on November 30, 2017. (Defs.' Rule 56.1 Statement dated Aug. 11, 2025 ("Defs.' 56.1 Stmt."), Dkt. No. 46-2 ¶ 57; Pl.'s Resp. to Defs.' 56.1 Stmt. dated Oct. 20, 2025 ("Pl.'s 56.1. Resp."), Dkt. No. 47-2 ¶ 57). Roth previously held several law enforcement positions including as a Public Safety Officer for the Nassau Community College, a seasonal Forest Ranger with the New York State Park Police, and a New York City Police Officer. (Pl.'s Rule 56.1 Statement dated Oct. 20, 2025 ("Pl.'s 56.1 Stmt."), Dkt. No. 47-1 ¶¶ 3–4); Defs.' Resp. to Pl.'s 56.1 Stmt. dated Nov. 13, 2025 ("Defs.' 56.1 Resp."), Dkt. No. 48-1 ¶¶ 3–4). Roth passed the written portion of the Nassau County Police Officer's examination in January 2018 and was cleared by a physician on August 5, 2019 as having "no medical conditions" that "pos[ed] a risk" to him participating in the Physical Fitness Screening. (Defs.' 56.1 Stmt. ¶¶ 60–61; Pl.'s 56.1 Resp. ¶¶ 60–61). Roth then passed the Physical Fitness Screening on October 27, 2019 by completing 29 push-ups, 38 sit-ups, and a timed 1.5-mile run in 12 minutes and 38 seconds. (Pl.'s 56.1 Stmt. ¶ 17; Defs.' 56.1 Resp. ¶ 17; Defs.' 56.1 Stmt. ¶ 64).

Roth began training at the Nassau County Police Academy as a probationary police officer on December 14, 2020. (*Id.* ¶ 66; Pl.'s 56.1 Resp. ¶ 66). Completion of the six-month Academy program is necessary to become a Nassau County police officer. (*Id.* ¶¶ 6, 9; Defs.' 56.1 Stmt. ¶¶ 6, 9). The program involves daily physical fitness training, including distance running up to four times a week, and recruits must

complete 65 hours of physical training to graduate. (*Id.* ¶¶ 10–14; Pl.'s 56.1 Resp. ¶¶ 10–14). Lieutenant Eileen Carsten, a physical fitness instructor, described the Academy as a "paramilitary organization," preparing recruits "both mentally and physically for what they're going to endure on patrol." (*Id.* ¶¶ 43, 131; Defs.' 56.1 Stmt. ¶¶ 43, 131). On December 15, 2020, Roth took the Academy's Preliminary Physical Assessment Test, failing to pass two of the three components of the assessment.[1] (*Id.* ¶¶ 72–73; Pl.'s 56.1 Resp. ¶¶ 72–73). For a 29-year-old man, like Roth, the Academy's standards required a 1.5-mile run in under 11 minutes and 27 seconds, but Roth completed the 1.5-mile run in 13 minutes and 57 seconds. (*Id.* ¶¶ 66, 73–74; Defs.' 56.1 Stmt. ¶¶ 66, 73–74).[2]

On December 24, 2020, Roth began experiencing significant pain in his shins and tightness in his hips. (*Id.* ¶¶ 80–81; Pl.'s 56.1 Resp. ¶¶ 80–81). He was later diagnosed with metaphyseal dysplasia, specifically Schmid metaphyseal chondrodysplasia, "a

[1] The Academy follows the Municipal Police Training Council ("MPTC") Basic Course for Police Officers ("Basic Course"), published by the New York State Division of Criminal Justice Services. (Defs.' 56.1 Stmt. ¶ 7; Pl.'s 56.1 Resp. ¶ 7). The MPTC states that physical fitness training standards are based upon a three-segment physical training test: sit-ups, push-ups, and a 1.5-mile run. (MPTC Basic Course, attached to Defs.' Mot. as Ex. B, Dkt. No. 46-9 at 288–89). It requires, at a minimum, administration of a pretest at the beginning of the course, a mid-term test, and a final test, with a requirement that the recruit pass "with a minimum score that meets or exceeds the 50th percentile according to the age and sex based norms developed by the Cooper Institute for Aerobics Research." (*Id.* at 288). The Academy's physical fitness testing is based on the Basic Course's three segment physical fitness test and is administered three times, with a test at the beginning of the Academy's program as a baseline for the recruit's current level of physical fitness. (Defs.' 56.1 Stmt. ¶¶ 17–19; Pl.'s 56.1 Resp. ¶¶ 17–19). However, only the third test, administered at the end of the Academy's program, is scored and required to pass to graduate. (*Id.* ¶ 21; Defs.' 56.1 Stmt. ¶ 21).

[2] The Academy's final physical fitness test for recruits is based on the 60th percentile Cooper standard. (Defs.' 56.1 Stmt. ¶¶ 24–25; Pl.'s 56.1 Resp. ¶¶ 24–25).

very rare condition resulting in abnormal bone growth and skeleton structure." (*Id.* ¶¶ 83–84; Defs.' 56.1 Stmt. ¶¶ 83–84). On January 12, 2021, Roth's doctor, Dr. Taylor Reif, issued a letter to the Academy explaining Roth's diagnosis and stating that Roth would "need reasonable accommodations in order to tolerate physical activity exercises" including "restricting distance running to less than 3 miles, allowing a day of rest between heavy/long distance running exercises, and allowing additional time for timed running trials." (*Id.* ¶ 84; Pl.'s 56.1 Resp. ¶ 84; *see also* Reif Letter, attached to Defs.' Mot. as Ex. N, Dkt. No. 46-21).

Three days later, Roth was taken off full duty and placed on restricted assignment by the Police Department Surgeon, based on the restrictions articulated by Dr. Reif. (Defs.' 56.1 Stmt. ¶ 85; Pl.'s 56.1 Resp. ¶ 85; *see also* Medical Related Duty Status, attached to Defs.' Mot. as Ex. P, Dkt. No. 46-23). Carsten testified that when recruits are injured or sick they may be placed on restricted duty, preventing them from participating in physical fitness training. (Defs.' 56.1 Stmt. ¶¶ 30–31; Pl.'s 56.1 Resp. ¶¶ 30–31).

On January 19, 2021, Roth submitted a formal request for the accommodations articulated in Dr. Reif's letter, and as an alternative, that he be placed back on the Village Police Civil Service List to be considered for a Village position. (*Id.* ¶ 86; Defs.' 56.1 Stmt. ¶ 86; Accommodation Request, attached to Defs.' Mot. as Ex. O, Dkt. No. 46-22). A week later, Deputy Bureau Chief of the NCPD Legal Bureau, Christopher Todd, who was the assigned Equal Employment Opportunity representative for the NCPD, contacted Roth and requested further documentation from his physician to substantiate

his impairment. (Defs.' 56.1 Stmt. ¶¶ 47, 88–89; Pl.'s 56.1 Resp. ¶¶ 47, 88–89). Roth provided a second letter from Dr. Reif, confirming Roth's diagnosis as a "permanent condition due to bone deformity." (*Id.* ¶¶ 92–93; Defs.' 56.1 Stmt. ¶¶ 92–93). Dr. Reif stated that he had "no concerns regarding [Roth's] performance of most activities including walking, standing, biking and short burst running or elliptical training" but that he "d[id] think long distance running [was] not reasonable for him." (*Id.* ¶ 94; Pl.'s 56.1 Resp. ¶ 94). Dr. Reif also reduced the maximum distance he recommended Roth could run at a time from three miles to two, confirmed that a day of rest was required after one mile of running, and increased the amount of time Roth needed for the 1.5-mile run to 13 minutes and 29 seconds. (*Id.* ¶ 95; Defs.' 56.1 Stmt. ¶ 95). He opined that Roth could "safely perform the Physical Training standards of the NCPD" as he understood them, "except as listed." (*Id.* ¶ 96; Pl.'s 56.1 Resp. ¶ 96).

After submitting his request, Roth was scheduled for a medical appointment with the Police Surgeon on February 17, 2021. (*Id.* ¶ 99; Defs.' 56.1 Stmt. ¶ 99). Roth missed the appointment[3] and Carsten required him to write a letter explaining why he had violated a Police Department Rule. (*Id.* ¶¶ 102, 106; Pl.'s 56.1 Resp. ¶¶ 102, 106). Roth alleges that Carsten "accused him of missing the appointment and disciplined him." (Pl.'s 56.1 Stmt. ¶ 53). He testified that she screamed at him and held him and his class over late because he "refus[ed] to lie on a Police Department form." (Dep. of Craig Roth ("Roth Dep."), attached to Pl.'s Opp'n as Ex. 1, Dkt. No. 47-4 at 81:11–82:3).

[3] Roth testified that he appeared for the scheduled Microsoft Teams medical appointment and the doctor did not, but he later realized there was a scheduling glitch. (Pl.'s 56.1 Stmt. ¶ 53).

On February 11, 2021, Todd emailed Roth the Police Commissioner's written determination denying Roth's request for an accommodation. (Defs.' 56.1 Stmt. ¶ 109; Pl.'s 56.1 Resp. ¶ 109). The denial explained that "[t]he requested accommodation, if granted, would prevent [Roth] from obtaining a Basic Course for Police Officers certification of completion, which would make him ineligible to become a Police Officer in Nassau County." (*Id.* ¶ 110; Defs.' 56.1 Stmt. ¶ 110).

Then on February 19, 2021, Roth signed and submitted a Police Department Resignation Form to his commanding officer stating as the reason for his resignation "COVID-19,[4] denial of [his] reasonable accommodation request, and mistreatment and harassment due to [his] reasonable accommodation request." (*Id*. ¶¶ 70, 119; Pl.'s 56.1 Resp. ¶¶ 70, 119; *see also* Resignation Form, attached to Defs.' Mot. as Ex. K, Dkt. No. 46-18). In the form, he attested: "This act is voluntary upon my part and of my own free will and accord. It has not been caused by any threat of punishment or act of coercion on the part of my superior officers[.]" (Resignation Form). Roth then met with Deputy Commanding Officer of the Academy, Arnold Rothenberg, for a counseling session and exit interview. (Defs.' 56.1 Stmt. ¶¶ 115–16; Pl.'s 56.1 Resp. ¶¶ 115–16). Rothenberg memorialized in a letter dated that same day that Roth "voluntarily came to advise [him] that [Roth was] contemplating resignation from [his] position as a Probationary Police Officer Recruit" and that he advised Roth to "delay submission of formal resignation until the next business day" so that Roth could "carefully weigh [his]

[4] Roth had been out on sick leave twice in the first few weeks of his time at the Academy, from December 17, 2020 to December 20, 2020 and then again from December 28, 2020 to January 12, 2021. (Defs.' 56.1 Stmt. ¶¶ 77–78; Pl.'s 56.1 Resp. ¶¶ 77–78).

options." (*Id.* ¶ 117; Defs.' 56.1 Stmt. ¶ 117). The letter notes that despite Rothenberg's suggestion, Roth "informed [him] of [his] decision to resign effective immediately." (Rothenberg Letter, attached to Defs.' Mot. as Ex. U, Dkt. No. 46-28). Roth also submitted a resignation correspondence, raising the same bases for his decision as in his Resignation Form, and attesting that he "arrived at this decision voluntarily." (Resignation Correspondence, attached to Pl.'s Opp'n as Ex. 24, Dkt. No. 47-26 at 413).

Roth commenced this action on October 4, 2022. (Compl., Dkt. No. 1). The Complaint asserts four causes of action: (1) discrimination in violation of the ADA, (*id.* ¶¶ 38–41); (2) retaliation in violation of the ADA, (*id.* ¶¶ 42–45); (3) an Equal Protection claim pursuant to 42 U.S.C. § 1983, (*id.* ¶¶ 46–54); and (4) a *Monell* claim, (*id.* ¶¶ 55–62).[5] The parties completed briefing on Defendants' motion for summary judgment on November 13, 2025. (Defs.' Mot.; Pl.'s Opp'n to Defs.' Mot. dated Oct. 20, 2025 ("Pl.'s Opp'n"), Dkt. No. 47); Defs.' Reply in Further Supp. of Defs.' Mot. dated Nov. 13, 2025 ("Defs.' Reply"), Dkt. No. 48).

DISCUSSION

I. ADA Claims

The ADA prohibits employers from discriminating against "a qualified individual on the basis of disability in regard to . . . terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a). ADA discrimination claims are analyzed under the familiar three-part burden-shifting framework established in *McDonnell Douglas Corp. v.*

[5] The case was transferred to the undersigned from the Honorable Margo K. Brodie on January 10, 2025.

Green, 411 U.S. 792 (1973). *See Fox v. Costco Wholesale Corp.*, 918 F.3d 65, 71 (2d Cir. 2019). Under this framework, "a plaintiff must first establish a *prima facie* case of discrimination under the ADA, after which the burden of proof shifts to the defendant to articulate some legitimate, nondiscriminatory reason for the employer's conduct." *Id.* (quotation omitted). If the defendant meets its burden, "the plaintiff must then demonstrate that the employer's assigned reason was a pretext or discriminatory in its application." *Id.* (quotation omitted). Defendants move for summary judgment on Roth's claims for both discrimination and retaliation in violation of the ADA. The claims are addressed in turn.

A. Discrimination

To establish a prima facie case of discrimination under the ADA, a plaintiff must show that:

> (1) the employer is subject to the ADA, (2) the employee is disabled or is perceived to be disabled as defined by the ADA, (3) the employee is qualified to perform the essential functions of the job, with or without reasonable accommodations, and (4) the employee suffer[ed] an adverse employment action because of his disability.

Sharikov v. Philips Med. Sys. MR, Inc., 103 F.4th 159, 166 (2d Cir. 2024). Under the fourth element, a plaintiff must also show that "the adverse employment action took place under circumstances giving rise to an inference of discrimination." *Davis v. N.Y.C. Dep't of Educ.*, 804 F.3d 231, 235 (2d Cir. 2015) (quotation omitted). To establish a prima facie case for failure to provide a reasonable accommodation under the ADA, a plaintiff also must satisfy the first three elements, but for the fourth element, "[he] must show by a preponderance of the evidence that [his] employer refused to make a reasonable

accommodation." *Jones v. N.Y.C. Transit Auth.*, 838 F. App'x 642, 643 (2d Cir. 2021) (quotation omitted).

Defendants do not dispute that the County is subject to the ADA, but they challenge Roth's ability to satisfy every other element of a prima facie case of discrimination. (Defs.' Mot. at 3). Based on the record presented, the Court finds that no reasonable jury could conclude that Roth has satisfied the second element of a claim for ADA discrimination (or failure to provide a reasonable accommodation).[6]

Roth cannot establish that he was disabled as defined by the ADA. A person has a "disability" under the ADA if he has a "physical or mental impairment that substantially limits one or more major life activities," has a "record of such an impairment," or is "regarded as having such an impairment." 42 U.S.C. § 12102(1)(A)–(C). "Major life activities" include, but are not limited to, "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working," as well as "the operation of a major bodily function." *Id.* § 12102(2)(A)–(B).

Courts generally require a plaintiff to make three showings to determine whether he has a disability under the ADA: (1) "that [he] suffers from a physical or mental impairment;" (2) that he "identify the activity claimed to be impaired and establish that it constitutes a major life activity;" and (3) that he "show that [his] impairment

[6] Defendants also challenge Roth's ability to establish the third and fourth elements. (Defs.' Mot. at 9). Because the Court finds that Roth's claims fail on other grounds, it does not address these elements.

substantially limits the major life activity previously identified." *Norman v. NYU Langone Health Sys.*, 492 F. Supp. 3d 154, 163 (S.D.N.Y. 2020) (quoting *Weixel v. Bd. of Educ. of N.Y.C.*, 287 F.3d 138, 147 (2d Cir. 2002), *superseded in part on other grounds by* 42 U.S.C. § 12012(3)(A)), *aff'd*, 2021 WL 5986999 (2d Cir. Dec. 17, 2021). "If a plaintiff fails to satisfy each of these three prongs, [his] discrimination claim must be dismissed." *Id.* (quotation omitted).

There is no dispute that Roth was diagnosed with a "rare condition resulting in abnormal bone growth and skeleton structure." (Defs.' 56.1 Stmt. ¶ 83; Pl.'s 56.1 Resp. ¶ 83). However, "not every impairment will constitute a disability within the meaning of [the ADA]." 29 C.F.R. § 1630.2(j)(1)(ii). The condition must impair or limit a "major life activity." *Ibela v. Allied Universal*, No. 21-1995, 2022 WL 1418886, at *1 (2d Cir. May 5, 2022). Defendants contend that Roth has failed to identify any "major life activity" impaired by his condition, (Defs.' Mot. at 5), and Roth provides no further information or argument in his opposition. Instead, he focuses on the specifics of his diagnosis, treating it as a per se disability. (Pl.'s Opp'n at 9). But his diagnosis alone is not enough

to satisfy the ADA. *See Ibela*, 2022 WL 1418886, at *2. To the extent Roth identifies working or running as major life activities,[7] he has failed to meet his burden.

Turning first to his ability to work, the ADA specifically identifies "working" as a major life activity. 42 U.S.C. § 12102(2)(A). However, "where a plaintiff's condition leaves him unable to perform only a single, specific job, he has failed to establish a substantial impairment to his major life activity of working." *Woolf v. Strada*, 949 F.3d 89, 94 (2d Cir. 2020) (quotation omitted) (noting that the 2008 amendments to the ADA did not alter this "well-established understanding"). "Rather, an employee alleging a substantial limitation in the major life activity of working must show that the limitation affects the ability to 'perform a *class . . . or broad range of jobs*.'" *Id.* (quoting 29 C.F.R. § 1630, App. (2016)); *see also Greenbaum v. N.Y.C. Transit Auth.*, No. 21-1777, 2022 WL 3347893, at *2 (2d Cir. Aug. 15, 2022) ("With respect to 'a class of jobs,' a court must consider the job from which the individual has been disqualified because of an impairment, and the number and types of jobs utilizing similar training, knowledge, skills or abilities." (quotation omitted)). An impairment does not constitute a disability

[7] Roth further misconstrues the proper inquiry for establishing a disability. Citing to Dr. Reif's declaration, he argues that to the extent "'running' is considered an essential function of [his] job functions as a police officer recruit with the Nassau County Police Academy, then [his] condition significantly limits his ability to perform such work." (Pl.'s Opp'n at 9). But then he argues that if "performing physical activity in the manner expected of police officers" constitutes work, then he is not impaired in doing so. (*Id.*). Roth conflates the separate inquiry of whether he is disabled under the ADA with whether he is qualified for the position and could perform the job with accommodations. But whether he satisfies the second element of a prima facie claim does not turn on the specific requirements of a job, but on whether an impairment impacts a major life activity—a showing Roth fails to make. *See Woolf v. Strada*, 949 F.3d 89, 93–94 (2d Cir. 2020).

"if it only impairs the employee's ability to perform his or her current job." *Woolf*, 949 F.3d at 95.

Roth alleges that his diagnosis limits his ability to run distances of over two miles, to run on consecutive days, and to run 1.5 miles in the time required by the Academy's standards. (Defs.' 56.1 Stmt. ¶ 95; Pl.'s 56.1 Resp. ¶ 95). But Roth has not shown that this limitation on running impairs his ability to work a "class or broad range of jobs," as opposed to his ability to "work" as an Academy recruit. He even testified that the impairment has not limited his ability to work in law enforcement generally, or even required an accommodation, either before or since his time at the Academy. (*Id.* ¶¶ 53, 125; Defs.' 56.1 Stmt. ¶¶ 53, 125). As such, on this record, Roth cannot establish that his ability to work is impaired or limited. *See, e.g.*, *Anderson v. Nat'l Grid, PLC*, 93 F. Supp. 3d 120, 138–39 (E.D.N.Y. 2015) (finding no impairment to plaintiff's ability to work where he submitted no evidence that his condition rendered him incapable of performing a class of jobs "as compared to the average person having comparable training, skills, and abilities"); *Thomas v. N.Y. State Off. For People with Developmental Disabilities*, No. 21-CV-6577, 2024 WL 641266, at *5 (W.D.N.Y. Feb. 15, 2024) (finding that plaintiff's PTSD did not substantially limit her ability to work because her PTSD limited her ability to work at only one specific group home).

As to his inability to run, courts in this circuit have declined to treat running as a major life activity. *See Telemaque v. Marriot Int'l, Inc.*, No. 14-CV-6336, 2016 WL 406384, at *7 (S.D.N.Y. Feb. 2, 2016) (collecting cases). And Roth provides nothing other than his own particular circumstances to argue for a contrary result.

Even if running were treated as a major life activity, there is no evidence that Roth's impairment would "substantially limit" his ability to run. *See B.C. v. Mount Vernon Sch. Dist.*, 837 F.3d 152, 160 (2d Cir. 2016) ("[I]n assessing whether a plaintiff has a disability, we have been careful to distinguish impairments which merely *affect* major life activities from those that *substantially limit* those activities." (quotation omitted)). An impairment must "substantially limit[] the ability of an individual to perform a major life activity as compared to most people in the general population." 29 C.F.R. § 1630.2(j)(1)(ii). To determine whether a major life activity is substantially limited, courts consider "the nature and severity of the impairment; its duration or expected duration; and the existence of any actual or expected permanent or long term impact." *Jones*, 838 F. App'x at 644 (quotation omitted).

Roth testified that his impairment did not prevent him from running altogether, just the particular forms of running mandated by the Academy. (*See* Roth Dep., attached to Defs.' Mot. as Ex. I, Dkt. No. 46-16 at 41:12-16 ("If it was short distance running, minimal running on a treadmill or . . . sprints, I don't have any limitations with that."); Roth Dep., attached to Pl.'s Opp'n, at 45:9-20 (testifying that he has not experienced the same level of leg pain since the Academy because he has not "done the kind of running that [he] was doing in the Academy," namely "[l]ong distance running on a hard surface . . . several days in a row at a significant pace"); *see also* Medical Records, attached to Defs.' Mot. as Ex. R, Dkt. No. 46-25 at 6 (noting "no concerns regarding [Roth]'s performance of most activities including walking, standing, biking and short burst running or elliptical training")). As such, Roth cannot establish that his

ability to run is substantially limited. *See, e.g.*, *McDonald v. City of New York*, 786 F. Supp. 2d 588, 608 (E.D.N.Y. 2011) (finding plaintiff could not establish that his ability to walk and stand was substantially limited where his doctor had cleared him to walk up to three miles per day and he testified that his injury prevented him only from doing so "for long periods of time" or "in a quick manner").

Given that no reasonable factfinder could conclude that Roth has a disability within the meaning of the ADA,[8] his claim for discrimination and failure to accommodate must be dismissed. *See Woolf*, 949 F.3d at 95.

B. Retaliation

It is a violation of the ADA for an employer "to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of . . . any right granted or protected by [the ADA]." *Lovejoy-Wilson v. NOCO Motor Fuel, Inc.*, 263 F.3d 208, 222 (2d Cir. 2001) (quoting 42 U.S.C. § 12203(b)). To establish a retaliation claim a plaintiff must show that: (1) he "was engaged in protected activity;" (2) "the alleged retaliator knew that plaintiff was involved in protected activity;" (3) "an adverse decision or course of action was taken against plaintiff," and (4) "a causal connection exists between the protected activity and the adverse action." *Natofsky v. City of New York*, 921 F.3d 337,

[8] Alternatively, Roth argues that even if he is not deemed disabled under the ADA, his claim survives because he was perceived to be disabled. (Pl.'s Opp'n at 6). But Roth makes this argument for the first time in his opposition papers. A "party may not use his or her opposition to a dispositive motion as a means to amend the complaint." *Shah v. Helen Hayes Hosp.*, 252 F. App'x 364, 366 (2d Cir. 2007); *see also Rojo v. Deutsche Bank*, 487 F. App'x 586, 588–89 (2d Cir. 2012). Because Roth raises this claim for the first time in his opposition brief—instead of in his Complaint, which Defendants answered—the Court does not address the merits of the new claim, on which Defendants had no ability to take discovery.

353 (2d Cir. 2019) (quotation omitted). Defendants contend that Roth cannot establish the third element.[9] (Defs.' Mot. at 27).

A plaintiff alleging a retaliation claim under the ADA need not allege that he was actually disabled under the ADA. *See Ibela*, 2022 WL 1418886, at *2 ("As long as a plaintiff has a good faith belief that he was disabled and requested a reasonable accommodation, he can state a claim for ADA retaliation."). Additionally, "[u]nlike claims of discrimination, which limit what qualifies as an 'adverse employment action' to changes in the terms and conditions of employment, adverse employment actions in the context of a claim of retaliation are much broader." *Vale v. Great Neck Water Pollution Control Dist.*, 80 F. Supp. 3d 426, 439 (E.D.N.Y. 2015) (quotation omitted). An adverse action in this context is conduct that "could well dissuade a reasonable worker from making or supporting a charge of discrimination." *Tafolla v. Heilig*, 80 F.4th 111, 127 (2d Cir. 2023) (quotation omitted).

Even considering this broader definition, Roth has failed to establish an adverse employment action for his ADA retaliation claim. Here, Roth was not terminated; he resigned voluntarily. (Defs.' 56.1 Stmt. ¶¶ 115–19; Pl.'s 56.1 Resp. ¶¶ 115–19). And he did so despite being counseled not to by the Academy's Deputy Commanding Officer. (*See* Rothenberg Letter). Roth's resignation letter also noted that his resignation was

[9] Defendants do not dispute that requesting an accommodation constitutes protected activity under the ADA, nor could they. *See Witcher v. N.Y.C. Dep't of Educ.*, No. 23-0465, 2024 WL 3220264, at *3 n.1 (2d Cir. June 28, 2024) ("Requesting or seeking a reasonable accommodation constitutes protected activity under the ADA." (quotation omitted)).

"voluntary" and of his "own free will and accord." (Resignation Form; *see also* Resignation Correspondence at 413 (stating the same)).

Roth nonetheless contends that he was placed on restricted duty and experienced mistreatment and harassment as retaliation for his reasonable accommodation request. (Pl.'s Opp'n at 23). But being placed on restricted duty while awaiting an evaluation from the Police Surgeon, even if not what he wanted, does not constitute an adverse action—there is no evidence the restricted duty was harmful to his employment in a way that would dissuade others from similarly seeking an accommodation. Roth testified that he received no written warnings, was not demoted, his pay was not reduced, and his hours were not changed at the Academy. (Defs.' 56.1 Stmt. ¶ 105; Pl.'s 56.1 Resp. ¶ 105). Carsten, in turn, testified that injured and sick recruits were regularly prohibited from participating in physical fitness training and while they would have their graduation delayed, they would be given an extension of time of up to two years to complete the program. (*Id.* ¶¶ 31–32; Defs.' 56.1 Stmt. ¶¶ 31–32; *see also* Dep. of Eileen Carsten ("Carsten Dep."), attached to Pl.'s Opp'n as Ex. 6, Dkt. No. 47-9 at 90:23–91:6 (testifying that they would have "multiple people in restricted status" and they would either sit outside the classroom or stand at attention during physical training classes)). Roth himself acknowledged a similar practice in the New York City Police Academy where injured recruits were sequestered during physical workouts. (Defs.' 56.1 Stmt. ¶ 56; Pl.'s 56.1 Resp. ¶ 56). Roth fails to show that being placed in restricted duty adversely affected his employment. *See, e.g.*, *Flieger v. E. Suffolk BOCES*, 693 F. App'x 14, 17, 19 (2d Cir. 2017) (finding no adverse action for an ADA retaliation claim

where plaintiff adduced no evidence that her change in position was harmful to her employment).

Nor does the alleged harassment Roth endured constitute an adverse action. To resume training, Roth was required to see the Police Surgeon to be medically examined and reassessed. (Pl.'s 56.1 Stmt. ¶ 51; Defs.' 56.1 Resp. ¶ 51). Roth testified that Carsten accused him of intentionally missing the appointment and disciplined him, requiring him to fill out a form in connection with the incident, and holding him and his class over until he wrote what she demanded. (Pl.'s 56.1 Stmt. ¶ 53). But even if the incident occurred as Roth tells it, such reprimands do not constitute an adverse employment action, even in the context of a retaliation claim. *See Fox*, 918 F.3d at 72–73; *e.g.*, *Tepperwien v. Entergy Nuclear Operations, Inc.*, 663 F.3d 556, 568–72 (2d Cir. 2011) (holding that threats of termination and hostile behavior were not materially adverse actions for retaliation claim, especially given the context of a security unit, which was akin to a law enforcement unit, and "there was little tolerance for mistakes and rule violations").

Therefore, Roth's claim for ADA retaliation is dismissed.

II. Abandoned Claims

Roth further asserts claims for violation of the Equal Protection Clause and *Monell* liability. (Compl. ¶¶ 46–62). Defendants moved for summary judgment on both claims. (Defs.' Mot. at 28–32). Roth failed to make any arguments in opposition.

"It is at the time of the motion for summary judgment that a party can decide which claim to pursue and which not." *Ruradan Corp. v. City of New York*, No. 22-CV-

3074, 2024 WL 1555230, at *5 (S.D.N.Y. Apr. 10, 2024) (citing *Jackson v. Fed. Express*, 766 F.3d 189, 196 (2d Cir. 2014)). "Where a partial response to a motion [for summary judgment] is made—*i.e.*, referencing some claims or defenses but not others . . . in the case of a counseled party, a court may, when appropriate, infer from a party's partial opposition that relevant claims or defenses that are not defended have been abandoned." *Dynamic Concepts, Inc. v. Tri-State Surgical Supply & Equip. Ltd*, 716 F. App'x 5, 14 (2d Cir. 2017) (quoting *Jackson*, 766 F.3d at 197–98); *see also Kovaco v. Rockbestos-Surprenant Cable Corp.*, 834 F.3d 128, 143 (2d Cir. 2016) (deeming claims abandoned where plaintiff "fail[ed] to argue that they should survive [defendant's] motion for summary judgment" while addressing other claims).

Here, given Roth's failure to address these claims, the Court deems them abandoned and grants Defendants summary judgment. *See Ziming Shen v. City of New York*, 725 F. App'x 7, 17 (2d Cir. 2018) (affirming the district court's dismissal of two claims "on the basis that [plaintiff's] opposition to summary judgment did not address those claims"); *Ostroski v. Town of Southold*, 443 F. Supp. 2d 325, 340 (E.D.N.Y. 2006) ("Because plaintiff's opposition papers did not address defendants' motion for summary judgment on [a] claim, [that] claim is deemed abandoned and summary judgment could be granted on that basis alone.") (collecting cases). The Equal Protection and *Monell* claims are dismissed with prejudice.

CONCLUSION

The Defendants' motion for summary judgment is granted and the Complaint is dismissed. The Clerk of Court is directed to close this case.

SO ORDERED.

/s/ Sanket J. Bulsara
SANKET J. BULSARA
United States District Judge

Date: August 27, 2026
Central Islip, New York