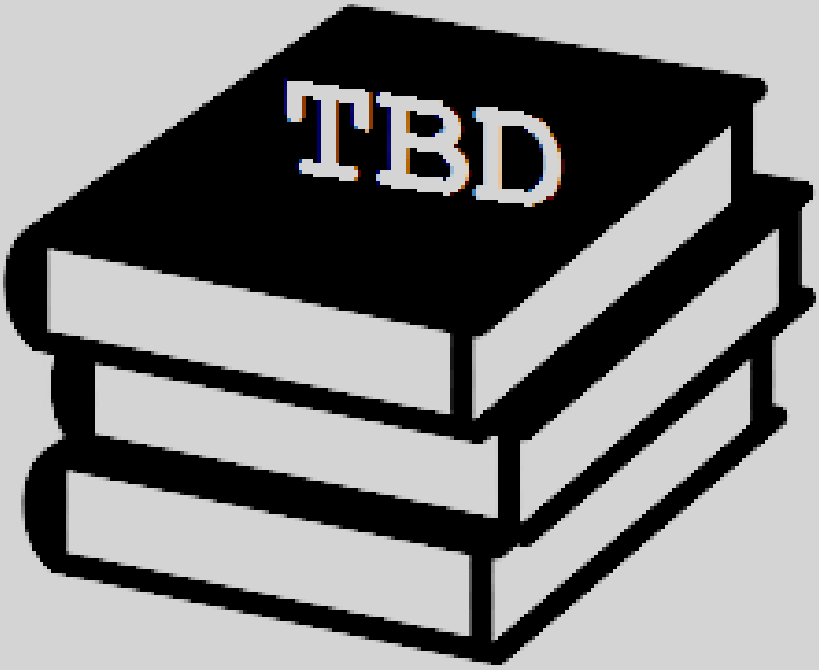
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UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

ELIAS MAKERE, FSA, MAAA	)	CASE NUMBER
Appellant/Plaintiff	)	**22-13588-AA**
	)	
v.	)	
	)	(LT)
ALLSTATE INSURANCE COMPANY	)	3:20-cv-00905-MMH-LLL
	)	US District Court, Florida, Middle District
Appellee/Defendant	)	

APPENDIX

On Appeal from the

United States District Court, Florida, Middle District

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#	Title	Page
-	Certificates (CIP, Service)	0495

Date Filed	#	Docket Text
8/12/2020	1	COMPLAINT against Allstate Insurance Company with Jury Demand filed by Elias Makere. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Civil Cover Sheet, # 4 Proposed Summons, # 5 Mailing Envelope)(KEM)(No service copies received.) (Entered: 08/13/2020)
8/12/2020	2	MOTION to Proceed In Forma Pauperis by Elias Makere. (KEM) Motions referred to Magistrate Judge James R. Klindt. (Entered: 08/13/2020)
8/19/2020	3	NOTICE of designation under Local Rule 3.05 - track 2. Signed by Deputy Clerk on 8/19/2020. (Attachments: # 1 Case Management Report Form, # 2 Consent Letter and Form)(JW) (Entered: 08/19/2020)
8/21/2020	4	MOTION to Dismiss Plaintiff's Complaint by Allstate Insurance Company. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K)(Doud, Kimberly) (Modified on 8/24/2020 Exhibit F & I removed due to personal identifiers; see document 6 for redacted exhibits) (BGR). (Entered: 08/21/2020)
8/21/2020	5	NOTICE by Allstate Insurance Company of Filing Motion to Transfer and Motion to Consolidate Cases (Attachments: # 1 Exhibit, # 2 Exhibit)(Doud, Kimberly) (Entered: 08/21/2020)
8/24/2020	6	NOTICE by Allstate Insurance Company re 4 MOTION to Dismiss Plaintiff's Complaint Filing Redacted Exhibits F and I In Support of Defendant's Dispositive Motion to Dismiss (Attachments: # 1 Exhibit F, # 2 Exhibit I)(Doud, Kimberly) (Entered: 08/24/2020)
8/31/2020	7	ORDER regarding consolidation of cases. See Order for details. Signed by Judge Marcia Morales Howard on 8/31/2020. (JW) (Entered: 08/31/2020)
9/2/2020	8	NOTICE of pendency of related cases re 3 Related case order and track 2 notice per Local Rule 1.04(d) by Allstate Insurance Company. Related case(s): y (Doud, Kimberly) (Entered: 09/02/2020)
9/2/2020	9	CERTIFICATE of interested persons and corporate disclosure statement re 3 Related case order and track 2 notice by Allstate Insurance Company. (Doud, Kimberly) (Entered: 09/02/2020)

Date Filed	#	Docket Text
9/14/2020	10	ORDER directing Plaintiff to file a response to 4 Defendant's Motion to Dismiss and to show cause why this case should not be dismissed for failure to prosecute. Show Cause Response due by 10/2/2020 Signed by Judge Marcia Morales Howard on 9/14/2020. (JW) (Entered: 09/14/2020)
9/30/2020	11	RESPONSE TO ORDER TO SHOW CAUSE re 10 Order to show cause filed by Elias Makere. (BGR) (Entered: 10/02/2020)
10/2/2020	12	RESPONSE in Opposition re 4 MOTION to Dismiss Plaintiff's Complaint filed by Elias Makere. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M, # 14 Exhibit N, # 15 Exhibit O)(BGR) (Entered: 10/07/2020)
10/2/2020	13	AFFIDAVIT in Support re: 12 Response in Opposition to Motion by Elias Makere. (BGR) (Entered: 10/07/2020)
10/8/2020	14	ENDORSED ORDER discharging 10 Order to Show Cause. Signed by Judge Marcia Morales Howard on 10/8/2020. (JW) (Entered: 10/08/2020)
10/9/2020	15	ORDER granting 2 Motion to Proceed In Forma Pauperis to the extent that Plaintiff may proceed in forma pauperis. SEE ORDER FOR DETAILS. Signed by Magistrate Judge James R. Klindt on 10/9/2020. (BHC) (Entered: 10/09/2020)
10/9/2020	16	ORDER reminding Plaintiff of some of his responsibilities as a pro se litigant; directing Plaintiff to review and comply with the provisions of this Order, as well as the Federal Rules of Civil Procedure, Local Rules of the Middle District of Florida, and any applicable statutes and regulations. Signed by Magistrate Judge James R. Klindt on 10/9/2020. (BHC) (Entered: 10/09/2020)
10/23/2020	17	NOTICE of Filing US Marshal 285 Forms for Service (Attachments: # 1 Process Service Memorandum)(BGR) (Entered: 10/26/2020)
10/26/2020	18	SUMMONS issued as to Allstate Insurance Company. (BGR) (Entered: 10/26/2020)

Date Filed	#	Docket Text
10/27/2020	19	CASE MANAGEMENT REPORT. (Doud, Kimberly) (Entered: 10/27/2020)
10/28/2020	20	Unopposed MOTION for an Exemption From Pacer's Access Fees by Elias Makere. (Attachments: # 1 Exhibit A, # 2 Affidavit)(BGR) (Entered: 10/29/2020)
10/29/2020	21	SUMMONS returned unexecuted as to Allstate Insurance Company, not open and no one at complex except security guards. (BGR) (Entered: 10/29/2020)
10/29/2020	22	CASE MANAGEMENT AND SCHEDULING ORDER AND REFERRAL TO MEDIATION: Plaintiff's Certificate of Interested Persons and Corporate Disclosure Statement due by 11/13/2020. Discovery due by 10/1/2021. Conduct mediation hearing by 10/15/2021. Dispositive motions due by 11/1/2021. Final Pretrial Conference set for 3/21/2022 at 10:00 AM in Jacksonville Courtroom 10 B before Judge Marcia Morales Howard. Jury Trial set for trial term commencing on 4/4/2022 at 09:00 AM in Jacksonville Courtroom 10 B before Judge Marcia Morales Howard. Signed by Judge Marcia Morales Howard on 10/28/2020. (Attachments: # 1 Mediation Report Form, # 2 Court Docket)(JW) (Entered: 10/29/2020)
11/6/2020	23	ORDER granting 20 Plaintiff's Unopposed Motion for an Exemption from PACER's Access Fees to the extent that Plaintiff will receive all case filings electronically; no later than 11/20/2020, Plaintiff shall file a Notice advising the Court of the email address to which he would like case filings sent. Signed by Magistrate Judge James R. Klindt on 11/6/2020. (BHC) (Entered: 11/06/2020)
11/12/2020	24	CERTIFICATE of interested persons and corporate disclosure statement by Elias Makere. (BGR) (Entered: 11/12/2020)
11/20/2020	25	NOTICE advising the Court of email address by Elias Makere re 23 Order on Motion for Miscellaneous Relief (BGR) (Entered: 11/23/2020)

Date Filed	#	Docket Text
12/15/2020	26	MOTION for Issuance of Subpoena Directed to the Society of Actuaries (a Non-Party) by Elias Makere. (Attachments: # 1 Attachment)(BGR) Motions referred to Magistrate Judge James R. Klindt. (Entered: 12/16/2020)
12/18/2020	27	MOTION for Protective Order or, In the Alternative, to Quash Subpoena to Non-Party Janice Bradley by Allstate Insurance Company. (Doud, Kimberly) Motions referred to Magistrate Judge James R. Klindt. (Entered: 12/18/2020)
12/18/2020	28	MOTION to Stay Discovery Pending Resolution of Its Motion to Dismiss and Memorandum of Law In Support Thereof by Allstate Insurance Company. (Doud, Kimberly) (Entered: 12/18/2020)
12/18/2020	29	NOTICE by Allstate Insurance Company re 27 MOTION for Protective Order or, In the Alternative, to Quash Subpoena to Non-Party Janice Bradley of Filing Exhibit A (Attachments: # 1 Exhibit A)(Doud, Kimberly) (Entered: 12/18/2020)
12/21/2020	30	Supplemental NOTICE of Conferral by Allstate Insurance Company re 28 MOTION to Stay Discovery Pending Resolution of Its Motion to Dismiss and Memorandum of Law In Support Thereof, 27 MOTION for Protective Order or, In the Alternative, to Quash Subpoena to Non-Party Janice Bradley Supplemental 3.01(g) Conferral (Doud, Kimberly) (Modified on 12/21/2020, to edit text) (BGR). (Entered: 12/21/2020)
12/21/2020	31	NOTICE to the Courts to take judicial notice by Elias Makere. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F)(BGR) (Entered: 12/22/2020)
12/23/2020	32	RESPONSE in Opposition re 26 MOTION for Issuance of Subpoena Directed to the Society of Actuaries (a Non Party) filed by Allstate Insurance Company. (Attachments: # 1 Exhibit Exhibit 1)(Doud, Kimberly) (Entered: 12/23/2020)
12/31/2020	33	RESPONSE in Opposition re 31 NOTICE to the Courts to Take Judicial Notice filed by Allstate Insurance Company. (Doud, Kimberly) Modified on 1/4/2021, to edit text) (BGR). (Entered: 12/31/2020)

Date Filed	#	Docket Text
1/4/2021	34	RESPONSE to Defendant's Motion re 27 MOTION to Quash Subpoena to Non-Party Janice Bradley filed by Elias Makere. (Attachments: # 1 Affidavit)(BGR) (Entered: 01/04/2021)
1/4/2021	35	RESPONSE in Opposition to Defendant's Motion re 27 MOTION for Protective Order on Non-Party Janice Bradley filed by Elias Makere. (Attachments: # 1 Appendix A, # 2 Affidavit)(BGR) (Entered: 01/04/2021)
1/4/2021	36	RESPONSE in Opposition re 28 MOTION to Stay Discovery Pending Resolution of Its Motion to Dismiss and Memorandum of Law In Support Thereof filed by Elias Makere. (Attachments: # 1 Affidavit)(BGR) (Modified on 1/6/2021, to edit filed date) (BGR). (Entered: 01/05/2021)
1/5/2021	37	MOTION for Leave to File a Reply by Elias Makere. (Attachments: # 1 Exhibit A)(BGR) (Entered: 01/06/2021)
1/12/2021	38	MOTION for Preliminary Pretrial Conference and Memorandum of Law in Support Thereof by Allstate Insurance Company. (Doud, Kimberly) (Modified on 1/12/2021, to edit text) (BGR). (Entered: 01/12/2021)
1/14/2021	39	ORDERED: Discovery in this matter is STAYED pending resolution of 4 Defendant's Motion to Dismiss. The Clerk of the Court is directed to terminate: 26 Motion for Subpoena, 27 Motion for Protective Order, 28 Motion to Stay Discovery, 37 Motion for Leave, and 38 Motion for Preliminary Pretrial Conference. The parties may re-file these motions, if appropriate, following resolution of the pending Motion to Dismiss. See Order for details. Signed by Judge Marcia Morales Howard on 1/14/2021. (MHM) (Entered: 01/14/2021)
2/8/2021	40	ORDER granting in part and denying in part 4 Defendant's Dispositive Motion to Dismiss Plaintiff's Complaint With Prejudice. Amended complaint due February 26, 2021. Discovery remains stayed. Signed by Judge Marcia Morales Howard on 2/8/2021. (JW) (Entered: 02/08/2021)

Date Filed	#	Docket Text
2/9/2021	41	NOTICE to the Courts to take judicial notice regarding plaintiff's full administrative complaint (dated 4/10/19) by Elias Makere. (Attachments: # 1 Exhibit A, # 2 Exhibit B (part 1), # 3 Exhibit B (part 2), # 4 Exhibit B (part 3))(BGR) (Entered: 02/10/2021)
2/22/2021	42	RESPONSE re 41 Notice to take judicial notice in opposition to Plaintiff's Motion for Judicial Notice of Plaintiff Full Administrative Complaint Dated 4/10/19 filed by Allstate Insurance Company. (Doud, Kimberly) (Modified on 2/23/2021, to edit text) (BGR). (Entered: 02/22/2021)
2/22/2021	43	OBJECTION re 40 Order on Motion to Dismiss by Elias Makere by Elias Makere. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(BGR) (Entered: 02/23/2021)
2/26/2021	44	AMENDED COMPLAINT against Allstate Insurance Company with Jury Demand. filed by Elias Makere. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(BGR) (Entered: 03/01/2021)
3/1/2021	45	SECOND AMENDED COMPLAINT against Allstate Insurance Company with Jury Demand. filed by Elias Makere. (Attachments: # 1 Exhibit B, # 2 Exhibit B, # 3 Exhibit C)(BGR) (Entered: 03/01/2021)
3/8/2021	46	RESPONSE in Opposition re 43 Objection filed by Allstate Insurance Company. (Doud, Kimberly) (Modified on 3/8/2021, to edit text) (BGR). (Entered: 03/08/2021)
3/11/2021	47	NOTICE OF INTERLOCUTORY APPEAL as to 40 Order on Motion to Dismiss by Elias Makere. (Attachments: # 1 Order, # 2 Addendum A)(LAB) (Entered: 03/12/2021)
3/12/2021	48	TRANSMITTAL of initial appeal package to USCA consisting of copies of notice of appeal, order/judgment being appealed, and motion, if applicable to USCA re 47 Notice of Interlocutory Appeal. (Attachments: # 1 Notice of Appeal, # 2 Order)(LAB) (Entered: 03/12/2021)
3/12/2021	49	MOTION to Dismiss Amended and Second Amended Complaint With Prejudice by Allstate Insurance Company. (Attachments: # 1 Exhibit Exhibit A)(Doud, Kimberly) (Entered: 03/12/2021)

Date Filed	#	Docket Text
3/29/2021	50	RESPONSE in Opposition re 49 MOTION to Dismiss Amended and Second Amended Complaint With Prejudice filed by Elias Makere. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Affidavit)(BGR) (Entered: 03/30/2021)
5/10/2021	51	MOTION to Amend 45 Amended Complaint by Elias Makere. (RH) Motions referred to Magistrate Judge James R. Klindt. (Entered: 05/10/2021)
5/10/2021	52	AFFIDAVIT re: 51 MOTION to Amend 45 Amended Complaint by Elias Makere. (RH) (Entered: 05/10/2021)
5/21/2021	53	RESPONSE in Opposition re 51 MOTION to Amend 45 Amended Complaint and Supporting Memorandum of Law filed by Allstate Insurance Company. (Attachments: # 1 EXHIBIT A, # 2 EXHIBIT B, # 3 EXHIBIT C, # 4 EXHIBIT D, # 5 EXHIBIT E, # 6 EXHIBIT F, # 7 EXHIBIT G, # 8 EXHIBIT H, # 9 EXHIBIT I, # 10 EXHIBIT J, # 11 EXHIBIT K)(Doud, Kimberly) (Entered: 05/21/2021)
5/27/2021	54	MOTION for judicial notice of defendant's official position statement to the Florida Commission on Human Relations by Elias Makere. (RH) (Entered: 05/28/2021)
5/28/2021	55	MOTION for Judicial Notice of Plaintiff's Unchanged Mailing Address by Elias Makere. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Affidavit)(BGR) (Entered: 06/01/2021)
6/2/2021	56	NOTICE of Filing Two Upcoming Motions by Elias Makere (KEM) (Entered: 06/02/2021)
6/9/2021	57	RESPONSE in Opposition re 54 MOTION for Miscellaneous Relief, specifically for judicial notice of defendant's official position statement to the Florida Commission on Human Relations filed by Allstate Insurance Company. (Doud, Kimberly) (Entered: 06/09/2021)
6/11/2021	58	RESPONSE in Opposition re 55 MOTION for Miscellaneous Relief, specifically Judicial Notice of Unchanged Mailing Address filed by Allstate Insurance Company. (Doud, Kimberly) (Entered: 06/11/2021)

Date Filed	#	Docket Text
6/11/2021	59	MOTION for Sanctions by Elias Makere. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Transcript A, # 6 Affidavit)(BGR) (Entered: 06/15/2021)
6/17/2021	60	MOTION In Limine by Elias Makere. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Affidavit)(BGR) (Entered: 06/21/2021)
6/25/2021	61	RESPONSE in Opposition re 59 MOTION for Sanctions filed by Allstate Insurance Company. (Doud, Kimberly) (Entered: 06/25/2021)
6/25/2021	62	ORDER directing parties to review the typography requirements set forth in Local Rule 1.08 and ensure that all future filings are in compliance. Signed by Judge Marcia Morales Howard on 6/28/2021. (JMF) (Entered: 06/28/2021)
6/28/2021	63	NOTICE to the Courts to take judicial notice regarding the default entered against the Hon. E. Gary Early (ALJ) by Elias Makere. (Attachments: # 1 Exhibit A)(BGR) (Entered: 07/01/2021)
7/1/2021	64	RESPONSE in Opposition re 60 MOTION In Limine filed by Allstate Insurance Company. (Doud, Kimberly) (Entered: 07/01/2021)
7/1/2021	65	MOTION for Telephonic Conference re 59 MOTION for Sanctions by Elias Makere. (Attachments: # 1 Appendix A, # 2 Appendix B, # 3 Appendix C, # 4 Affidavit)(BGR) (Entered: 07/02/2021)
7/8/2021	66	RESPONSE in Opposition re 63 Notice to take judicial notice filed by Allstate Insurance Company. (Doud, Kimberly) (Modified on 7/9/2021, to edit text) (BGR). (Entered: 07/08/2021)
7/14/2021	67	RESPONSE in Opposition re 65 MOTION for Hearing re 59 MOTION for Sanctions filed by Allstate Insurance Company. (Doud, Kimberly) (Entered: 07/14/2021)
7/22/2021	68	ORDER denying 65 Plaintiff's Motion for a Telephonic Conference on Plaintiff's Motion for Sanctions. Signed by Judge Marcia Morales Howard on 7/22/2021. (JW) (Entered: 07/22/2021)

Date Filed	#	Docket Text
10/13/2021	69	ORDER denying 54 Plaintiff's Motion for Judicial Notice of Defendant's Official Position Statement to the Florida Commission on Human Relations and 55 Plaintiff's Motion for Judicial Notice of Plaintiff's Unchanged Mailing Address. SEE ORDER FOR DETAILS. Signed by Magistrate Judge James R. Klindt on 10/13/2021. (KEH) (Entered: 10/13/2021)
10/13/2021	70	ORDER granting 51 Plaintiff's Motion for Leave to Amend Complaint; denying as moot 49 Defendant's Dispositive Motion to Dismiss Plaintiff's Amended Complaint and Second Amended Complaint with Prejudice, and Memorandum of Law in Support Thereof. Plaintiff shall have up to and including 11/5/2021 to file his Third Amended Complaint; Defendant to respond within time permitted by the Federal Rules of Civil Procedure. SEE ORDER FOR DETAILS. Signed by Magistrate Judge James R. Klindt on 10/13/2021. (KEH) (Entered: 10/13/2021)
10/22/2021	71	ENDORSED ORDER deferring consideration of 59 Plaintiff's Motion for Sanctions until the Court resolves the merits of the Plaintiff's claims. Signed by Judge Marcia Morales Howard on 10/22/2021. (JW) (Entered: 10/22/2021)
11/5/2021	72	ENDORSED ORDER vacating 22 Case Management and Scheduling Order and Referral to Mediation. The parties shall confer and file an Amended Case Management Report within twenty (20) days of the filing of a viable amended complaint. Signed by Judge Marcia Morales Howard on 11/5/2021. (JW) (Entered: 11/05/2021)
11/6/2021	73	THIRD AMENDED COMPLAINT against Allstate Insurance Company with Jury Demand. filed by Elias Makere. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J)(BGR) (Entered: 11/09/2021)
11/9/2021	74	MEMORANDUM of Law Regarding Equitable Tolling on Full Verified Complaint by Elias Makere (Attachments: # 1 Exhibit A, # 2 Exhibit B)(BGR) (Entered: 11/12/2021)

Date Filed	#	Docket Text
11/16/2021	75	CASE Reassigned to Magistrate Judge Laura Lothman Lambert. New case number: 3:20-CV-905-MMH-LLL. Magistrate Judge James R. Klindt no longer assigned to the case. (RH) (Entered: 11/16/2021)
11/17/2021	76	MOTION for Extension of Time to File Response/Reply as to 73 Amended Complaint by Allstate Insurance Company. (Doud, Kimberly) Motions referred to Magistrate Judge Laura Lothman Lambert. (Entered: 11/17/2021)
11/21/2021	77	RESPONSE in Opposition re 76 MOTION for Extension of Time to File Response/Reply as to 73 Amended Complaint filed by Elias Makere. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Affidavit in Support)(BGR) (Entered: 11/22/2021)
11/23/2021	78	MOTION to Dismiss Plaintiff's Full Verified Civil Complaint With Prejudice and Memorandum of Law by Allstate Insurance Company. (Doud, Kimberly) (Entered: 11/23/2021)
11/23/2021	79	ORDER denying as moot 76 Order Denying as Moot Defendant's Motion for Extension of Time. Signed by Magistrate Judge Laura Lothman Lambert on 11/23/2021. (KAS) (Entered: 11/23/2021)
11/23/2021	80	NOTICE of Filing Exhibit in Support of 78 MOTION to Dismiss Plaintiff's Full Verified Civil Complaint With Prejudice and Memorandum of Law by Allstate Insurance Company (Attachments: # 1 Exhibit A)(Doud, Kimberly) (Modified on 11/23/2021, to edit text) (BGR). (Entered: 11/23/2021)
11/29/2021	81	ORDER directing Defendant Allstate Insurance Company to file a supplement to its 78 Motion to Dismiss with the requisite Local Rule 3.01(g) Certification on or before December 9, 2021. See Order for details. Signed by Judge Marcia Morales Howard on 11/29/2021. (JCM) (Entered: 11/29/2021)
11/29/2021	82	ORDER denying 60 Plaintiff's Motion in Limine without prejudice to renewal at the appropriate time following resolution of any dispositive motions. See Order for details. Signed by Judge Marcia Morales Howard on 11/29/2021. (MHM) (Entered: 11/29/2021)
12/6/2021	83	SUPPLEMENT re 78 MOTION to Dismiss Plaintiff's Full Verified Civil Complaint With Prejudice and Memorandum of Law by Allstate Insurance Company. (Doud, Kimberly) (Entered: 12/06/2021)

Date Filed	#	Docket Text
12/17/2021	84	RESPONSE in Opposition re 78 MOTION to Dismiss Plaintiff's Full Verified Civil Complaint With Prejudice and Memorandum of Law filed by Elias Makere. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K)(BGR) (Modified on 12/21/2021, STRICKEN per 85 order) (BGR). (Entered: 12/17/2021)
12/21/2021	85	ORDER to strike re: 84 Response in Opposition to Motion filed by Elias Makere. Corrected response due 01/07/2022. See Order for details. Signed by Judge Marcia Morales Howard on 12/20/2021. (JCM) (Entered: 12/21/2021)
12/23/2021	86	UNILATERAL CASE MANAGEMENT REPORT by Elias Makere. (Attachments: # 1 Attachment A)(BGR) (Modified on 1/5/2022, STRICKEN per 88 order) (BGR). (Entered: 12/28/2021)
12/27/2021	87	RESPONSE in Opposition re 78 MOTION to Dismiss Plaintiff's Full Verified Civil Complaint With Prejudice and Memorandum of Law filed by Elias Makere. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K)(BGR) (Entered: 12/28/2021)
1/4/2022	88	ORDER striking 86 Plaintiff's Unilateral Case Management Report. This case is stayed until 78 Defendant's Motion to Dismiss is resolved. The Clerk of the Court is directed to administratively close this case. However, the Motion to Dismiss shall remain pending. Signed by Judge Marcia Morales Howard on 1/3/2022. (JW) (Entered: 01/04/2022)
4/22/2022	89	NOTICE of a related action per Local Rule 1.07(c) by Elias Makere. Related case(s): Yes (Attachments: # 1 Attachment A)(BGR) (Entered: 04/26/2022)
6/6/2022	90	ORDER of USCA dismisses appeal as to 47 Notice of Interlocutory Appeal filed by Elias Makere. EOD: 6/6/22 and issued as mandate; USCA number: 21-10847-BB. (SJW) (Entered: 06/06/2022)
10/14/2022	91	ORDER denying 43 Plaintiff's Objections to this Honorable Court's Partial Dismissal Order, which this Court construes as a motion for reconsideration. Signed by Judge Marcia Morales Howard on 10/14/2022. (JW) (Entered: 10/14/2022)
10/19/2022	92	NOTICE Regarding a Change of Mailing Address by Elias Makere (BGR) (Entered: 10/20/2022)

Date Filed	#	Docket Text
10/19/2022	93	NOTICE OF INTERLOCUTORY APPEAL as to 40 Order on Motion to Dismiss, by Elias Makere. (Attachments: # 1 Order)(SJW) (Entered: 10/21/2022)
10/24/2022	94	TRANSMITTAL of initial appeal package to USCA consisting of copies of notice of appeal, order/judgment being appealed, and motion, if applicable to USCA re 93 Notice of Interlocutory Appeal. (Attachments: # 1 Notice of appeal/Orders)(SJW) (Entered: 10/24/2022)

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13588-AA

Appeal From
US District Court, Florida, Middle District
3:20-cv-00905-MMH-LLL
Makere v Allstate

VOLUME 01
ITEM 01
PAGES 0016 – 0038

SHORT TITLE: Complaint

DATE ENTERED: 8/12/2020
DOC TYPE: Pleading
TRIBUNAL: USFLMD
CASE NO: 3:20-cv-00905-MMH-LLL
CASE CAPTION: *Makere v Allstate*
LINK: https://ecf.flmd.uscourts.gov/
DOC NO: 1

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

ELIAS MAKERE, FSA, MAAA	)	
Plaintiff,	)	
	)	
vs.	)	Case No (LT):
	)	Division: (3) Jacksonville
ALLSTATE INSURANCE COMPANY,	)	
Defendant,	)	

COMPLAINT

COMES NOW, Plaintiff, Elias Makere on this 10th day of August 2020 and hereby sues Defendant, Allstate Insurance Company and states the following:

I. NATURE OF THE CLAIM

1. This action is brought under 42 U.S.C. 1981 The Civil Rights Act of 1886 ("§1981") to redress Defendant's unlawful employment practices towards Plaintiff (also see 28 USC §1331, §1343, and §1367). Charges which include – but are not limited to – unlawful retaliation, unlawful interference, color discrimination, race discrimination, and sex discrimination.

II. JURISDICTION: AMOUNT

2. Plaintiff seeks declaratory relief, injunctive relief, and damages in excess of thirty thousand dollars ($30,000) - exclusive of interest, costs, and attorney fees.

III. JURISDICTION: PARTIES

3. At all times material hereto, Plaintiff was a resident of Jacksonville, FL (Duval County). Thus, he was a "Person", as described by §1981.
4. At all times material hereto, Defendant (a Florida corporation), had its principal place of business in Jacksonville, FL (Duval County). Employing fifteen (15) or more employees at all times pertinent. As such, Defendant satisfies the definition of an "employer" – as contemplated by §1981 (via state law).

IV. JURISDICTION: VENUE

5. Defendant's unlawful conduct was committed within the jurisdiction of this Court. Thus, pursuant to 28 USC §1331 FS (and §1391), this venue is correct.

V. STATUTORY PREREQUISITES

6. All conditions precedent to bringing this action have been satisfied.
7. Plaintiff has timely filed this complaint within four (4) years of the date that Defendant terminated his employment.

VI. STATEMENT OF THE FACTS

8. Plaintiff, a black male, began working for Defendant on November 18, 2013.
9. Defendant admitted him into its Actuarial Career Program ("ACP") alongside many of his newfound co-workers. The ACP's goal was to develop its members into FSAs (Fellows of the Society of Actuaries).
10. At the time of hiring, Plaintiff had passed six (6) actuarial exams, and had a little over one year of experience. This meant that he would have to pass four (4) more exams to attain the desired credential.
11. Defendant hired Plaintiff into its entry-level position named "Actuarial Technician" even though he was qualified for Defendant's higher "Actuarial Associate" position. He reported directly to Ms. Lisa Henry.
12. Right off the bat, Ms. Henry subjected Plaintiff to sexual harassment; severe enough to alter the terms & conditions of his employment.
    a. A few Saturdays into Plaintiff's employment, Ms. Henry asked him to join her for dinner-&-a-movie. She added – voluntarily – that her husband would not be there. Plaintiff was distressed:
        i. For one, he had just moved to Jacksonville; did not know anyone else in the city; and was reliant on work income.
        ii. Secondly, he did not want a personal relationship with Ms. Henry.
        iii. Moreover, he did not want a romantic/sexual relationship with Ms. Henry either.

Plaintiff declined Ms. Henry's first date request.

It would not be her last.

13. Throughout Plaintiff's 3-year tenure with Defendant, Ms. Henry asked him out on a near-weekly basis. Usually asking him to go bowling with her. In that 33-month span, Ms. Henry never asked any other employee to go bowling with her. Just Plaintiff.
14. As a result, Plaintiff tried to avoid contact with Ms. Henry. Most notably, by abstaining from lunch outings. For instance, he exchanged his night-time gym visits with lunch-time gym visits (the gym was on Defendant's property) to dodge further harassment.[1/]
15. In early December 2013, Plaintiff took and passed three minor exams.[2/] Ms. Henry sat in as his proctor. He took the exams on company property.
16. Later that month, Plaintiff took and passed his seventh (7th) actuarial exam (the "Final Assessment"). These tests qualified Plaintiff for his first actuarial credential: the ASA (Associate of the Society of Actuaries).
17. To receive it, he would have to attend the Society of Actuaries' ("SOA") in-person course. The course was held in Atlanta, GA (ie, 500 miles from Plaintiff/Defendant).
18. In the days leading up to his multi-day trip, Ms. Henry offered to join Plaintiff. The trip included a hotel stay. She asked him in front of her own manager, Mr. Richard Schaefer. Plaintiff found her request to be illegitimate and sexually-motivated.

19. As a result, Plaintiff ramped up his measures for avoiding Ms. Henry. For example, he minimized face-to-face meetings with her by putting more detail in his Monday-morning updates.
    a. Note: these face-to-face meetings featured Ms. Henry staring at Plaintiff's privates; excessively.
20. Around this same time, the racial harassment ramped up, too. In a Spring 2014 inter-departmental meeting, Ms. Henry characterized Plaintiff as being racially inferior.
    a. Doing so by saying a task was so easy she could get a "*monkey to do [it]*". She elaborated, "*[it] will sit down, look at a piece of paper, then look up to compare it to what's on the computer*". It seemed she was casting Plaintiff as this monkey.
        i. After all, he was Ms. Henry's only [in-house] direct report. Plus, likening black people to monkeys was a classic way of imputing racial inferiority onto them.
    b. Just minutes later, Ms. Henry's offensive remarks crystallized. Upon returning to the cubicles, she directed Plaintiff to sit down at his seat. Then, she printed out a spreadsheet, placed it on his desk, and instructed him to compare the printout to the computer screen to see if the numbers were the same.
    c. Plaintiff *was* the monkey.
21. As Defendant's only black actuary, Plaintiff's employment was conditioned on racial inferiority. Here are some highlights:
    a. When Plaintiff received his ASA credential – a major, equalizing milestone for Defendant's actuaries - Defendant paid him a lower salary than it paid his peers.

b. In June 2014, Mr. Louis Posick (an actuarial manager) proclaimed that Plaintiff's recent credentials "*devalue[d] the profession*". Despite the fact that:

   i. Plaintiff passed the same exams that everyone else did;

   ii. Plaintiff received his ASA faster than most of his peers/predecessors.

   As became the norm, Defendant eschewed facts for the fictions of Plaintiff's racial inferiority.

c. Mr. Posick's direct report, Mr. Kazuhiko Nagai, followed suit by issuing a nonstop array of harassment directed at Plaintiff. Harassment which involved mocking, ridicule, and incessant invasions of space. Harassment punctuated by a racist doll (a monkey that Mr. Nagai placed on Plaintiff's desk – in plain sight).

d. Mr. Posick's other direct report, Mr. Phil Kite, joined in by characterizing Plaintiff as a monkey, too. In Fall 2015, as Mr. Nagai's racist monkey doll sat on Plaintiff's desk, Mr. Kite yelled loudly, "*[Plaintiff] you look like a chimpanzee!!!*".

e. In Summer 2015, Ms. Marilou Halim (an actuarial manager) screamed profanities at Plaintiff as he sat studying in a small conference room. His '*crime*': buying a condolence card for a grieving co-worker.

f. In Spring 2016, on two separate occasions, Ms. Henry said that "*[Plaintiff was the] monkey we can't let grow into a gorilla*". Once again playing on the theme of black inferiority.

22. Three things were clear:
    a. Defendant held its actuarial department in high esteem; basing that prestige on the notion of high intelligence.
    b. Defendant viewed black people as being racially inferior; basing that disdain on the notion of low intelligence.
    c. Defendant believed that black actuaries – and Plaintiff in particular – defiled the sanctity of its actuarial department; just by virtue of their existence.
23. Recognizing Defendant's animus, Plaintiff begged management to let him work from home. He asked on a routine basis. Mainly in response to direct hostilities (eg, mocking & ridicule, racist dolls, racist characterizations, racial proclamations, etc.).
    a. Defendant denied his requests every time; giving the following excuse: '*Plaintiff could not work from home because sitting near his coworkers was a condition of his employment*'. Fateful.
    b. Defendant, however, allowed its non-black employees to work from home.
        i. Ms. Bridget Tennant – who also reported to Ms. Henry – had been working from home for over a decade (her home was in Maryland; 700 miles away).
        ii. Ms. Tetyana Dostie – who reported to Ms. Halim – was granted her contemporaneous work-from-home request.
        iii. Defendant has allowed many other non-black actuarial employees to work from home.
24. Yet every time Plaintiff attempted to avoid the harassment, Defendant targeted him for more. Graduating the harassment into discrimination.

25. In Fall 2015, Mr. David Dickson (an IT manager) initiated Defendant's systematic method for discrimination. He called Plaintiff at 5:17 pm, introduced himself, told Plaintiff a series of lies, then threatened to get Plaintiff fired. It was a severe, surprising, and unwarranted escalation.
    a. Additionally, in November 2015, prior to his call, Mr. Dickson approached Plaintiff in the parking lot after dark. Plaintiff was on his bicycle heading home. Mr. Dickson told Plaintiff in an ominous tone, "*be careful on your bike.*" Plaintiff saw it as a threat. One which later came to fruition (¶47, *infra*).
    b. Also, in Fall 2015, Ms. Marianne Poriecca (an IT manager) told Plaintiff's direct manager (Ms. Henry) that she wanted Plaintiff fired ("*I can't believe he still works here*"). A message that Ms. Henry relayed to Plaintiff in early 2016. A message - that Ms. Henry admitted - was made without reason.
26. There was no legitimate reason for someone to hunt for Plaintiff's termination.
    a. Note: at this point, Plaintiff had passed his eighth (8^{th}) actuarial exam and was working on number nine (9).
27. Plaintiff thereby filed an internal discrimination complaint against Mr. Dickson. Who acknowledged that it was based on "racism". As it turns out, Mr. Dickson has been charged with employment discrimination before.[3/]

28. Management responded by sending several staff members to replace Plaintiff's employment. The most explicit one was Mr. James Parks; who said that management (Mr. Schaefer, Mr. Dickson) sent him to take over for Plaintiff. Plaintiff obliged; sharing his knowledge and skills - as he had always done with all of his work (with everyone).
29. Also, in retaliation for Plaintiff's internal complaint, Ms. Henry denied Plaintiff a raise in 2016. Instead, she gave Plaintiff the standard actuarial salary increase for having passed an actuarial course (the DMAC)[4/]. Plaintiff subsequently filed an internal retaliation complaint against Ms. Henry.
30. Matters only got worse for Plaintiff. Perhaps, the most significant event was when a non-actuarial co-worker sabotaged his work. On June 30, 2016, Ms. Patricia Boland staged an actuarial miscalculation; and attempted to blame it on Plaintiff. Plaintiff caught her in the act, though.
31. Alarmed that anyone would do that (ie, deliberately attempt to get Plaintiff fired), Plaintiff reported it – among other things (see Racist Doll ¶22cd, see Mr. Dickson ¶28, see Ms. Henry ¶30) – to Mr. Schaefer. Who told Plaintiff, "*[Plaintiff] you're paranoid*", coupled with "*you should figure out if this is the place for you to work*".
32. The message was clear: discrimination was going to win out.
    a. A message which was further emphasized when Plaintiff learned that Defendant made him purchase his actuarial exam ($1,025) while not requiring the same of his non-black peers (Mr. Victor Ciurte, Mr. Kazuhiko Nagai, etc.).

33. Within a week-or-so Plaintiff received negative results from his ninth (9th) actuarial exam. He believed foul play was involved. Nevertheless, Plaintiff had thereby failed to satisfy Defendant's "1-in-3 rule".
    a. Note: Defendant's ACP had a "1-in-3 rule". The rule stated that an employee had to pass one exam in three attempts. Failure to satisfy that rule could lead to removal from the program.
34. Shortly thereafter, on-or-around August 10, 2016, Ms. Henry approached Plaintiff at his desk. It was at about 5:12 pm. She – once again – asked Plaintiff to go out with her (bowling). This request was different, though, because Defendant had severely compromised Plaintiff's employment. Nevertheless, Plaintiff - once again - declined to go out with Ms. Henry. Shocked; she stood at the corner of his desk; mouth open; for about 2-3 seconds.
35. Just hours later, Ms. Henry filed to have Plaintiff terminated.
36. That Friday (August 12, 2016), Ms. Henry escorted Plaintiff to the 1st floor for a meeting. It was not a regular staff meeting (as had been described). Instead, it was a termination meeting. The HR manager, Mr. Ellis Manucy, conducted it. He informed Plaintiff he was being fired because he failed his actuarial exam. He added that it was "*extremely rare*". No other reason was given.

37. The failure was not rare; the termination response was (and discriminatory). Here is a list of Defendant's employees who also failed to satisfy the "1-in-3" actuarial exam requirement:

    a. Mr. Victor Ciurte
    b. Ms. Tetyana Dostie
    c. Mr. Josh Garcia
    d. Mr. Phil Kite
    e. Ms. Anna Lunder
    f. Mr. Kazuhiko Nagai
    g. Ms. Bridget Tennant

    None of whom were black (let alone black men).

38. Moreover, Defendant had a number of employees who were never even required to satisfy the "1-in-3 rule". Including, but not limited to, Ms. Nasreen Ali. Likewise, Ms. Ali was neither black nor a man.

39. Immediately after terminating Plaintiff, Defendant hired two non-actuaries to assume his responsibilities. Neither of whom had even attempted an actuarial exam (let alone pass one). They were Ms. Boland and Mr. Christopher Mirisola. Again – neither were black (let alone black men).

40. Within a month, Ms. Henry approached Plaintiff in a restaurant near Plaintiff's home. She followed up with friendly emails to his personal account.

    Plaintiff never replied.

41. Additionally, Plaintiff never re-applied for employment with Defendant. Nor did he ever inquire about returning to Defendant's employ.

42. Plaintiff was still focused on attaining his FSA. That Fall, he passed his ninth (9^{th}) actuarial exam.

43. On June 30, 2017, Plaintiff filed a charge of discrimination with the FCHR ("Originating Charge"). It was on the basis of race and sex.
44. As the case progressed to the administrative hearing phase, Plaintiff contacted several non-parties to begin discovery.
45. One person, Mr. Kirk Higgins, went on attack in response. Filing documents aimed at embarrassing Plaintiff – in violation of §120.569(2)(e) FS; even calling local police departments to try to dig up dirt on Plaintiff. Importantly, Mr. Higgins explicitly stated that his actions were motivated by (i) his relationship with Defendant; and (ii) Plaintiff's demographics.
46. In April 2018, Plaintiff was hit by a car while riding his bicycle. The car was traveling 45 mph (reportedly). Mr. Dickson's 2015 threat had indeed played out (¶26 *supra*).
47. Plaintiff was also getting death threats on the phone; and supplemental taunts through the mail.
48. In July 2018 - during the administrative case - Defendant encouraged Mr. Higgins to file unauthorized documents against Plaintiff; instructing him on what to say. Defendant was behind these attacks.
49. That same month, Plaintiff's former employer (Genworth Financial) reduced his retirement benefits substantially. They mailed him the notice. Yet, Plaintiff had never given Genworth his Florida address. It was clear that Defendant (via Genworth) was taking retaliatory actions to further damage Plaintiff's employment and compensation.
50. Around this time, Plaintiff passed his tenth (10^{th}) actuarial exam; and achieved FSA status (see **Exhibit B**). Soon thereafter, Plaintiff notified the FCHR; eventually leading to these charges.

VII. ULTIMATE FACTS

51. Defendant only fired the black man who failed an actuarial exam.

a. It preceded this adverse employment action with years of harassment. Punctuated by:
   i. unwanted sexual attention;
   ii. date requests;
   iii. racist dolls;
   iv. racist characterizations;
   v. and more.
b. The harassment was coupled with disparate treatment. Highlighted by:
   i. paying Plaintiff a lower salary than his non-black-male peers;
   ii. forcing Plaintiff to pay $1,025 for an actuarial exam while not doing the same to Plaintiff's non-black-male counterparts; and
   iii. denying Plaintiff the work-from-home privilege that it granted Plaintiff's non-black-male coworkers.
c. Defendant followed up this adverse act with:
   i. financial retaliation;
   ii. professional retaliation;
   iii. and lethal retaliation.

COUNT I: RACIAL DISCRIMINATION | §760.11 FS, et. seq.

52. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VI (Paragraphs 9 through 51).
53. Defendant continuously treated Plaintiff less favorably and unfairly compared to his non-black coworkers. The offensive and derogatory remarks/actions were related to Plaintiff's race; and were so severe and pervasive they created a hostile work environment for Plaintiff.
54. Defendant's resulting decision to terminate Plaintiff was motivated by Plaintiff's race.

COUNT II: SEXUAL DISCRIMINATION | §760.11 FS, et. seq.

55. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VI (Paragraphs 9 through 51).
56. Defendant continuously treated Plaintiff less favorably and unfairly compared to his non-male coworkers. Ms. Henry's sexual harassment related to Plaintiff's gender; and was so severe and pervasive it created a hostile work environment for Plaintiff.
57. Defendant's resulting decision to terminate him was motivated by Plaintiff's sex.

COUNT III: RETALIATION | §760.11 FS, et. seq.

58. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VI (Paragraphs 9 through 51).
59. Defendant retaliated against Plaintiff because he complained about Defendant's discriminatory practices (both internally and externally).

COUNT IV: RACE DISCRIMINATION | 42 U.S.C. §1981 et. seq.

60. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VI (Paragraphs 9 through 51).
61. Defendant continuously treated Plaintiff less favorably and unfairly compared to his non-black coworkers. The offensive and derogatory remarks/actions were related to Plaintiff's race; and were so severe and pervasive they created a hostile work environment for Plaintiff.
62. Defendant's resulting decision to terminate Plaintiff was motivated by Plaintiff's race.

PRETEXT

63. Defendant claimed that it terminated Plaintiff for a legitimate business reason by asserting that it terminated Plaintiff "solely" because he failed an actuarial exam (see **Exhibit A**).
64. Yet, when Defendant's non-black-male employees also failed actuarial exams Defendant never fired them.
65. Notably, Defendant replaced Plaintiff with unqualified non-black-male employees. Neither of whom had passed even one actuarial exam.
    a. The disparity in qualifications (ie, 0 exams vs 8 exams) "*jumps off the page and smacks you in the face*".
66. As such, Defendant's reason for terminating Plaintiff was illegitimate, and merely a pretext for unlawful discrimination.

DAMAGES

67. As a direct and proximate result of said acts, Plaintiff has suffered – and continues to suffer – loss of employment, loss of income, loss of other employment benefits, loss of earning capacity and has suffered and continues to suffer mental anguish, distress, pain, great expense, inconvenience, professional damage and other pecuniary and nonpecuniary losses.
68. As a further result of Defendant's discrimination, Plaintiff has incurred legal fees and will continue to incur legal fees.

RESERVATION OF RIGHTS

69. Defendant's acts, discriminatory patterns, and unlawful practices demonstrate a callous disregard and reckless indifference to Plaintiff that justifies an award of punitive damages at trial. Upon an evidentiary showing and hearing, Plaintiff reserves the right to amend his pleadings to assert a claim for punitive damages against Defendant.
70. Plaintiff may retain an attorney to represent him in prosecuting this action and if so will be obligated to pay them a reasonable fee for their services.
    a. Pursuant to 42 USC §1988, Plaintiff is entitled to request that the Court allow him to recover his reasonable attorney's fees incurred in successfully prosecuting this cause, should he retain an attorney.

REQUEST FOR JURY TRIAL

71. Pursuant to Amendment 7 of the United States Constitution (and Rule 38(b) Fed. R. Civ. P., Rule 81(c) Fed. R. Civ. P.), Plaintiff respectfully requests that this honorable Court grant him a trial by jury on all issues so triable.

REQUEST FOR RELIEF

72. WHEREFORE Plaintiff respectfully requests that this Court enter judgment in favor of Plaintiff and against Defendant on all claims herein, and enter an Order providing the following relief:

a. Declaring that Defendant violated §1981;

b. Enjoining Defendant from committing further violations of the §1981;

c. Awarding Plaintiff back pay and front pay, including interest, in the form of lost wages, including lost fringe benefits, which resulted from the illegal discrimination, harassment and wrongful termination.

d. Awarding Plaintiff the cost of this action, together with reasonable attorney's fees (if any).

e. Awarding Plaintiff pre-judgment interest.

f. Awarding Plaintiff punitive damages; and

g. Awarding such other and further relief as is just, equitable, and proper.

Dated this 30th day of June 2020.

Respectfully submitted,

ELIAS MAKERE, FSA, MAAA
s/ Elias Makere, Pro Se
3709 San Pablo Rd. S # 701
Jacksonville, FL 32224
Tel: (904) 294-0026
E-mail: justice.actuarial@gmail.com

Endnotes:

[1/] evidenced by electronic badge records.

[2/] "minor" exams in the sense that they were not one of the 10 "actuarial" exams mentioned earlier. Specifically, these "minor" exams were the VEEs – necessary for obtaining actuarial credentials with the Society of Actuaries.

[3/] in-or-around 2011, a former employee named Clare Latham charged Mr. Dickson with sexual discrimination.

[4/] the DMAC is a course on decision-making and professionalism.

EXHIBIT A

Position Statement

From: Respondent
To: State Agency (FCHR)

[marked]

Complainant was terminated solely because he failed to pass his ASA exam and as a result, he became ineligible to maintain his status in the Allstate Financial Actuarial Career Program (ACP).

Lastly, Complainant's allegation that more African-American actuarial employees were involuntarily terminated is without merit. Complainant was the only employee that Respondent terminated in his department between 2014 and 2016.

CONCLUSION

Complainant's charge of discrimination based upon race without merit. Accordingly, Respondent requests that this Charge be dismissed in its entirety. Should you have any additional questions, please do not hesitate to contact me at (847) 402-7367.

Sincerely,

Charmaine Neal

Charmaine Neal
Human Resources Lead Consultant

Attachments

EXHIBIT B

Photo

Petitioner Receiving his FSA (final actuarial credential)



'A Picture Says a 1,000 Words'. This one says the following:

Allstate fired the black guy for slipping in front of his destination – which he later got to – but rewarded his non-black peers for not even coming close.

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13588-AA

Appeal From
US District Court, Florida, Middle District
3:20-cv-00905-MMH-LLL
Makere v Allstate

VOLUME 01
ITEM 02
PAGES 0039 – 0130

SHORT TITLE: Full Verified Civil Complaint

DATE ENTERED: 11/6/2021
DOC TYPE: Pleading
TRIBUNAL: USFLMD
CASE NO: 3:20-cv-00905-MMH-LLL
CASE CAPTION: *Makere v Allstate*
LINK: https://ecf.flmd.uscourts.gov/
DOC NO: 76

****

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

****

****

ELIAS MAKERE, FSA, MAAA
(Plaintiff)

- against -

ALLSTATE INSURANCE COMPANY
(Defendant)

****

****

FULL VERIFIED CIVIL COMPLAINT

****

Florida Civil Rights Act of 1992
Equal Pay Act of 1963
Title VII of the Civil Rights Act of 1964
42 USC §1981, 42 USC §1981a, 42 USC §1985

November 4, 2021

JURY TRIAL DEMANDED



Brimming with scorn and disdain, the GM performed the attack-on-black. Pushing past logic, doing away with fact.

Thereby buoyed by the beckoning crowd – and aided by the state – master acted illegally. Moving three pawns at once, retreating another at twice. Even occupying two squares with a single piece.

With GM's klan-destined contradictions & subterfuge hopping in the kangaroo court, black must hereby summon a jury-of-his-peers for redress.



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ABBREVIATIONS

ALJ	Administrative Law Judge
DOAH	Division of Administrative Hearings (Florida)
EEOC	Equal Employment Opportunity Commission
FAC	Florida Administrative Code
FCHR	Florida Commission on Human Relations
FS	Florida Statute (2020)

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PDF TextBookDiscrimination.com/Files/USFLMD/20000905_AAC_20211104_230439.pdf

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

ELIAS MAKERE, FSA, MAAA	)	
Plaintiff,	)	
	)	
vs.	)	Case No (LT): 3:20-cv-00905-MMH-JRK
	)	Division: (3) Jacksonville
ALLSTATE INSURANCE COMPANY	)	Jury Trial Demanded
Defendant,	)	☒ Yes | ☐ No

FULL VERIFIED CIVIL COMPLAINT[11/]

COMES NOW, Plaintiff, Elias Makere on this 4th day of November 2021 and hereby sues Defendant, Allstate Insurance Company and states the following:

I. NATURE OF THE CLAIM

1. This action is brought under §760 FS ("FCRA"), 29 USC §206 et seq ("EPA"), 42 USC §1981 ("1981"), 42 USC §1981a ("1981a"), 42 USC §1985 ("1985"), and 42 USC §2000e et seq ("Title VII") to redress Defendant's unlawful employment practices towards Plaintiff (also see 28 USC §1331, §1343, and §1367). Conduct that included – but was not limited to – race/sex/color discrimination, unlawful

retaliation, a pattern & practice of retaliation (financial, lethal, etc.), and a collaborative deprivation of Plaintiff's constitutional rights (due process, equal protection, trial-by-jury).

II. JURISDICTION: AMOUNT

2. Plaintiff seeks declaratory relief, injunctive relief, and damages in excess of thirty thousand dollars ($30,000) – exclusive of interest, costs, and attorney fees.

III. JURISDICTION: PARTIES

3. At all times material hereto, Plaintiff was a resident of Jacksonville, FL (Duval County). Thus, he was a "Person", as described by Title VII.

4. At all times material hereto, Defendant (a Florida corporation), had its principal place of business in Jacksonville, FL (Duval County). Employing fifteen (15) or more employees at all times pertinent. As such, Defendant has satisfied the definition of an "employer" – as contemplated by Title VII.

IV. JURISDICTION: VENUE

5. Defendant's unlawful conduct was committed within the jurisdiction of this Court. Thus, pursuant to 28 USC §1331 (and §1391), this venue is correct.

V. STATUTORY PREREQUISITES

6. All conditions precedent to bringing this action have been satisfied.

7. Plaintiff timely filed suit within ninety (90) days of receiving his right-to-sue letter from the EEOC (please see **Exhibit A**, **Exhibit B**).

    a. On April 10, 2019, Plaintiff dual-filed his discrimination charge with the FCHR (a state agency which had a workshare agreement with the EEOC). After much impropriety (delay, writ of prohibition, etc.) the federal agency sent Plaintiff the requisite document.[1/]

VI. STATEMENT OF THE FACTS

8. Plaintiff, a black male, began working for Defendant on November 18, 2013.

9. Defendant admitted him into its Actuarial Career Program ("ACP") alongside many of his newfound co-workers. The ACP's goal was to develop its members into FSAs (Fellows of the Society of Actuaries).

10. At the time of hiring, Plaintiff had passed six (6) actuarial exams, and had a little over one year of experience. This meant that he would have to pass four (4) more exams to attain the desired credential.

11. Defendant hired Plaintiff into its entry-level position named "Actuarial Technician" even though he was qualified for Defendant's higher "Actuarial Associate" position.

a. Based on information & belief, Plaintiff was the most qualified "actuarial technician" that Defendant had ever hired (judging by exam success + experience).

He reported directly to Ms. Lisa Henry.

12. Right off the bat, Ms. Henry subjected Plaintiff to sexual harassment; severe enough to alter the terms & conditions of his employment.

a. A few Saturdays into Plaintiff's employment, Ms. Henry asked him to join her for dinner-&-a-movie. She added – voluntarily – that her husband would not be there. Plaintiff was distressed:

i. For one, he had just moved to Jacksonville; did not know anyone else in the city; and was reliant on work income.

ii. Secondly, he did not want a personal relationship with Ms. Henry.

iii. Moreover, he did not want a romantic/sexual relationship with Ms. Henry either.

Plaintiff declined Ms. Henry's first date request.

It would not be her last.

13. Throughout Plaintiff's 3-year tenure with Defendant, Ms. Henry asked him out on a near-weekly basis. Usually asking him to go

bowling with her. In that 33-month span, Ms. Henry never asked any other employee to go bowling with her. Just Plaintiff.

14. As a result, Plaintiff tried to avoid contact with Ms. Henry. Most notably, by abstaining from lunch outings. For instance, he exchanged his night-time gym visits with lunch-time gym visits (the gym was on Defendant's property) to dodge further harassment.[2/]

15. The gym was of special importance to Plaintiff, because he had a heightened need for exercise. Plaintiff's legs were his only form of transportation[3/].

    a. Early into his tenure, Plaintiff's car died. He never replaced it.

    b. Thus, he commuted to work via bicycling or jogging.

    Defendant knew this (please see ¶96-104).

16. Defendant also knew that Plaintiff lost his cell phone shortly after hire. Similarly, he never replaced it. From January 2014 to February 2018, Defendant – and Defendant's managers - never had Plaintiff's personal cell phone number (¶50, ¶56, ¶86-91).

<u>Continued Harassment and Plaintiff's Initial Mitigating Efforts</u>

17. In early December 2013, Plaintiff took and passed three minor exams.[3/] Ms. Henry sat in as his proctor. He took the exams on company property.

18. Later that month, Plaintiff took and passed his seventh (7th) actuarial exam (the "Final Assessment"). These tests qualified Plaintiff for his first actuarial credential: the ASA (Associate of the Society of Actuaries).
19. To receive it, he would have to attend the Society of Actuaries' ("SOA") in-person course. The course was held in Atlanta, GA (ie, 500 miles from Plaintiff/Defendant).
20. In the days leading up to his multi-day trip, Ms. Henry offered to join Plaintiff. The trip included a hotel stay. She asked him in front of her own manager, Mr. Richard Schaefer. Plaintiff found her request to be illegitimate and sexually-motivated.
21. As a result, Plaintiff ramped up his measures for avoiding Ms. Henry. For example, he minimized face-to-face meetings with her by putting more detail in his Monday-morning updates.
    a. Note: these face-to-face meetings featured Ms. Henry staring at Plaintiff's privates; excessively.
22. Plaintiff developed a business-only relationship with Defendant's employees. Offering only the courtesy, friendliness, and compassion he offered to complete strangers.
23. In-or-around Winter 2013/2014, Mr. Paul Ramirez (Defendant's managerial employee) hosted a one-on-one meeting with Plaintiff.

The objective was to show Plaintiff a software program named Insight®.

a. In the meeting, Mr. Ramirez showed Plaintiff various computer functions. Functions that Plaintiff already had mastery of. In deference and respect, Plaintiff played dumb to allow Mr. Ramirez to finish his presentation in its most-natural form.
b. After the meeting, Plaintiff never asked Mr. Ramirez – or anyone – about Insight®. Any mild interest that he might have had beforehand evaporated (¶119-124).
c. He had to focus, instead, on the work that his manager, Ms. Henry, assigned to him. This is because she gave him explicit directions prior to the meeting. She said words to the effect of "*only do the work that I assign to you; other people might ask you to do work, but don't do it*".
d. It was an easy directive for Plaintiff to follow; and he never attended any of the subsequent Insight® sessions that anyone scheduled (¶119a, ¶121, ¶123).
    i. Moreover, there were many other actuarial employees who did not attend Insight® sessions. So, there was no subsequent need to single out Plaintiff (¶119-124).

Increasing Hostilities, Disparate Pay

24. Around this same time, racial harassment began ramping up, too. In a Spring 2014 inter-departmental meeting, Ms. Henry characterized Plaintiff as being racially inferior.

    a. Doing so by saying a task was so easy she could get a "*monkey to do [it]*". She elaborated, "*[it] will sit down, look at a piece of paper, then look up to compare it to what's on the computer*". It seemed she was casting Plaintiff as this monkey.

        i. After all, he was Ms. Henry's only [in-house] direct report. Plus, likening black people to monkeys was a classic way of imputing racial inferiority onto them.

    b. Just minutes later, Ms. Henry's offensive remarks crystallized. Upon returning to the cubicles, she directed Plaintiff to sit down at his seat. Then, she printed out a spreadsheet, placed it on his desk, and instructed him to compare the printout to the computer screen to see if the numbers were the same.

    c. Plaintiff *was* the monkey.

25. As Defendant's only black actuary, Plaintiff's employment was conditioned on racial inferiority. Here are some highlights:

    a. When Plaintiff received his ASA credential – a major, equalizing milestone for Defendant's actuaries (¶18) – Defendant paid him a lower salary than it paid his peers.

    b. In June 2014, Mr. Louis Posick (an actuarial manager) proclaimed that Plaintiff's recent credentials "*devalue[d] the profession*". Despite the fact that:

        i. Plaintiff passed the same exams that everyone else did;

        ii. Plaintiff received his ASA faster than most of his peers/predecessors (¶113a.ii).

    As became the norm, Defendant eschewed facts for the fictions of Plaintiff's racial inferiority.

    c. Mr. Posick's direct report, Mr. Kazuhiko Nagai, followed suit by issuing a nonstop array of harassment directed at Plaintiff. Harassment which involved mocking, ridicule, and incessant invasions of space. Harassment punctuated by a racist doll (a monkey that Mr. Nagai placed on Plaintiff's desk – in plain sight).

        i. The invasion of space was particularly extreme. Plaintiff spent every weekend, night, and morning at Defendant's

office (studying for his final three actuarial exams). Mr. Nagai got a whiff of that and began spending seven days a week at the office, too. Mornings and nights, too.

ii. Mr. Nagai's new behavior was a significant departure from his behavior prior to Plaintiff's employment. In addition to his ballooning office time was his new standing desk.

iii. In total, it meant that every step from every day of every week Mr. Nagai was observing Plaintiff. Watching him work; watching him study; watching him go to the bathroom/kitchen/elevator; watching him do everything.

iv. It caused Plaintiff extreme discomfort. Plaintiff was Defendant's only employee subjected to such invasions.

v. And it was when Plaintiff asked Mr. Nagai '*why the excessive attention*' that Mr. Nagai placed the racist doll on Plaintiff's desk.

d. Mr. Posick's other direct report, Mr. Phil Kite, joined in by characterizing Plaintiff as a monkey, too. In Fall 2015, as Mr. Nagai's racist monkey doll sat on Plaintiff's desk, Mr. Kite yelled loudly, "*[Plaintiff] you look like a chimpanzee!!!*".

e. In Summer 2015, Ms. Marilou Halim (an actuarial manager) screamed profanities at Plaintiff as he sat studying in a small conference room. His '*crime*': buying a condolence card for a grieving co-worker.

f. Likewise, in Spring 2016, on two separate occasions, Ms. Henry said that "*[Plaintiff was the] monkey we can't let grow into a gorilla*". Once again playing on the theme of black inferiority.

26. Three things were clear:

a. Defendant held its actuarial department in high esteem; basing that prestige on the notion of high intelligence.

b. Defendant viewed black people as being racially inferior; basing that disdain on the notion of low intelligence.

c. Defendant believed that black actuaries – and Plaintiff in particular – sullied its actuarial department; just by virtue of their existence.

Disparate Treatment, Discriminatory Animus

27. Recognizing Defendant's animus, Plaintiff begged management to let him **work from home**. He asked on a routine basis. Mainly in response to direct hostilities (eg, mocking & ridicule, racist dolls, racist characterizations, racial proclamations, etc.).

a. Defendant denied his requests every time; giving the following excuse: '*Plaintiff could not work from home because sitting near his coworkers was a condition of his employment'*. Fateful.

b. Defendant, however, allowed its non-black employees to work from home.

   i. Ms. Bridget Tennant – who also reported to Ms. Henry – had been working from home for over a decade (her home was in Maryland; 700 miles away).

   ii. Ms. Tetyana Dostie – who reported to Ms. Halim – was granted her contemporaneous work-from-home request.

   iii. Defendant has allowed many other non-black-male actuarial employees to work from home.

28. Yet every time Plaintiff attempted to avoid the harassment, Defendant targeted him for more. Graduating the harassment into discrimination.

29. In Fall 2015, Mr. David Dickson (an IT manager) initiated Defendant's systematic method for discrimination. He called Plaintiff at 5:17 pm, introduced himself, told Plaintiff a series of lies, then threatened to get Plaintiff fired. It was a severe, surprising, and unwarranted escalation.

a. Additionally, in November 2015, prior to his call, Mr. Dickson approached Plaintiff in the parking lot after dark. Plaintiff was on his bicycle heading home. Mr. Dickson told Plaintiff in an ominous tone, "*be careful on your bike.*" Plaintiff saw it as a threat. One which later came to fruition (¶92-95). One which was capped off with a spiteful gesture (¶118, ¶120-124).

30. Also, in Fall 2015, Ms. Marianne Poriecca (an IT manager) told Plaintiff's direct manager (Ms. Henry) that she wanted Plaintiff fired ("*I can't believe he still works here*"). A message that Ms. Henry relayed to Plaintiff in early 2016. A message – that Ms. Henry admitted – was made without reason.

31. There was no legitimate reason for someone to hunt for Plaintiff's termination.

a. Note: at this point, Plaintiff had passed his eighth (8th) actuarial exam and was working on number nine (9).

Internal Complaints, Retaliation

32. Plaintiff thereby filed an internal discrimination complaint against Mr. Dickson. Who acknowledged that it was based on "racism". As it turns out, Mr. Dickson had been charged with employment discrimination before.[5/]

33. Management responded by sending several staff members to replace Plaintiff's employment. The most explicit one was Mr. James Parks; who said that management (Mr. Schaefer, Mr. Dickson) sent him to take over for Plaintiff. Plaintiff obliged; sharing his knowledge and skills - as he had always done with all of his work (with everyone).
34. Also, in retaliation for Plaintiff's internal complaint, Ms. Henry denied Plaintiff a raise in 2016. Instead, she gave Plaintiff the standard actuarial salary increase for having passed an actuarial course (the DMAC)[6/]. Plaintiff subsequently filed an internal retaliation complaint against Ms. Henry.
35. Matters only got worse for Plaintiff. Perhaps, the most significant event was when a non-actuarial co-worker sabotaged his work. On June 30, 2016, Ms. Patricia Boland staged an actuarial miscalculation; and attempted to blame it on Plaintiff. Plaintiff caught her in the act, though.
36. Alarmed that anyone would do that (ie, deliberately attempt to get Plaintiff fired), Plaintiff reported it – among other things (see Racist Doll ¶25c, see Mr. Dickson ¶29, see Ms. Henry ¶34) – to Mr. Schaefer. Who told Plaintiff, "*[Plaintiff] you're paranoid*", coupled with "*you should figure out if this is the place for you to work*".

37. The message was clear: discrimination was going to win out.
    a. A message which was further emphasized when Plaintiff learned that Defendant made him purchase his actuarial exam ($1,025) while not requiring the same of his non-black-male peers (Mr. Victor Ciurte, Mr. Kazuhiko Nagai, etc.).

Termination Excuse

38. Within a week-or-so, Plaintiff received negative results from his ninth (9^{th}) actuarial exam. He believed foul play was involved.
    a. Specifically, he believed that Ms. Marilou Halim graded his exam, and failed him in order to produce an excuse to terminate Plaintiff's employment.
        i. For over 20 years, Ms. Halim presented to Defendant's actuarial department that she was an actuarial exam grader.
        ii. In November 2018, however, she told state administrative authorities the opposite (that she was never an exam grader). Statements that were contradicted by everyone else who testified that she was indeed an exam grader.

39. Based on information & belief, Ms. Marilou Halim graded Plaintiff's ninth (9th) actuarial exam. She did so with the intent to get him fired from Defendant's employ.

40. Nevertheless, as of July 2016, Plaintiff had thereby failed to satisfy Defendant's "1-in-3 rule".

    a. Note: Defendant's ACP had a "1-in-3 rule". The rule stated that an employee had to pass one exam in three attempts. Failure to satisfy that rule could lead to removal from the program.

41. Shortly thereafter, on-or-around August 10, 2016, Ms. Henry approached Plaintiff at his desk. It was at about 5:12 pm. She – once again – asked Plaintiff to go out with her (bowling). This request was different, though, because Defendant had severely compromised Plaintiff's employment. Nevertheless, Plaintiff – once again – declined to go out with Ms. Henry. Shocked; she stood at the corner of his desk; mouth open; for about 2-3 seconds.

42. A few hours later, Ms. Henry filed to have Plaintiff terminated.

43. That Friday (August 12, 2016), Ms. Henry escorted Plaintiff to the 1st floor for a meeting. It was not a regular staff meeting (as had been described). Instead, it was a termination meeting. The HR manager, Mr. Ellis Manucy, conducted it. He informed Plaintiff he was being

fired because he failed his actuarial exam. He added that it was "*extremely rare*". No other reason was given.

Discriminatory Termination Excuse

44. The failure was not rare; the termination response was (and discriminatory). Here is a list of Defendant's employees who also failed to satisfy the "1-in-3" actuarial exam requirement:

    a. Mr. Victor Ciurte
    b. Ms. Tetyana Dostie
    c. Mr. Josh Garcia
    d. Mr. Phil Kite
    e. Ms. Anna Lunder
    f. Mr. Kazuhiko Nagai
    g. Ms. Bridget Tennant

    None of whom were black (let alone black men).

45. Moreover, Defendant had a number of employees who were never even required to satisfy the "1-in-3 rule". Including, but not limited to, Ms. Nasreen Ali. Likewise, Ms. Ali was neither black nor a man.

46. Immediately after terminating Plaintiff, Defendant hired two non-actuaries to assume his responsibilities. Neither of whom had even attempted an actuarial exam (let alone pass one). They were Ms. Boland and Mr. Christopher Mirisola. Again – neither were black (let alone black men).

Subsequent Events

47. Within a month, Ms. Henry approached Plaintiff in a restaurant near Plaintiff's home. She followed up with friendly emails to his personal account.

    Plaintiff never replied.

48. Additionally, Plaintiff never re-applied for employment with Defendant. Nor did he ever inquire about returning to Defendant's employ.

49. Plaintiff was still focused on attaining his FSA. That Fall, he passed his ninth (9^{th}) actuarial exam.

50. Also, that Fall, Plaintiff got a new cell phone. None of Defendant's employees had the number (¶16, ¶56, ¶86-91). He was going to need it for his ultimate venture into small business ownership.

51. In early 2017, Plaintiff registered a company name with the Florida Department of State. He never advertised it. He never promoted it. He never mentioned it to Defendant (or any of Defendant's employees).

52. The subsequent legal action that he took against Defendant ended up consuming an unexpectedly large amount of Plaintiff's time.

First External Complaint

53. On June 30, 2017, Plaintiff filed a charge of discrimination with the FCHR. It was on the basis of race and sex (see **Exhibit C**).

54. On September 8, 2017, Defendant responded to **both** bases by denying any discriminatory conduct (see **Exhibit D**). Stating that it fired Plaintiff for a legitimate reason. Specifically, because he had failed an actuarial exam (see **Exhibit E**):

> *"Complainant was terminated solely because he failed his [FSA] exam."*
>
> - Allstate Insurance Company, 9/8/17

55. Notably, Defendant told the FCHR – under oath – that it investigated Plaintiff's allegation of a racist doll, interviewed employees (including Mr. Nagai), and said that no one could corroborate it.

    a. This statement was a bold lie.

        i. The person who put the racist doll on Plaintiff's desk (ie, Mr. Nagai - ¶25c) admitted that he did it.

            [1] He told the state investigator he did.

            [2] He testified the same one year later.

    b. This false statement exhibited Defendant's propensity to lie about its discriminatory conduct. A method of operation that it continues to this day (¶129).

56. As the case progressed to the administrative hearing phase (at DOAH), Plaintiff contacted several non-parties to begin discovery.

    a. It is important to note, that by virtue of DOAH's rules & procedures, Plaintiff's contact information became public record (eg, his previously unknown cell phone number).

Post-Termination Retaliation | Higgins (Part A)

57. One person, Mr. Kirk Higgins, went on attack in response. Filing documents aimed at embarrassing Plaintiff – in violation of §120.569(2)(e) FS; even calling local police departments to try to dig up dirt on Plaintiff.

> *"It seems clear that [this message] would be an embarrassment to [Plaintiff]..."*
>
> – Mr. Higgins | DOAH 18-0373 | FL | 2/27/18

58. Plaintiff believed that Defendant was putting him up to it. So, in early 2018, Plaintiff asked Defendant's trial counsel if Defendant was encouraging Mr. Higgins to retaliate. Defendant gave a minimal response. Plaintiff got a full answer, though, from Mr. Higgins himself.

59. At about 6:12pm EST on Monday, March 26, 2018, Mr. Higgins called Plaintiff's cell phone. Plaintiff picked up, and maintained that this

was strictly a legal action which he was going to see through to the end.

60. Mr. Higgins responded by saying he had been in recent communication with Defendant's employees. He emphasized that two of them were Ms. Henry and Mr. Schaefer.
    a. Ms. Henry, of course, was responsible for Plaintiff's termination. Mr. Schaefer was her manager.
61. During the call, Mr. Higgins added that Ms. Henry recently gave him good marks/recommendations on a professional networking site (LinkedIn.com). He posited it as if it would dissuade Plaintiff from litigating his claim against Defendant.
62. It did not. The facts surrounding Defendant's discrimination were too strong. Instead, Mr. Higgins' words only shed greater light on Defendant's pattern & practice of retaliation.
63. Fear played a major role. As Mr. Higgins continued, he explained that he was afraid that Defendant would retaliate against him if he were to comply with Plaintiff's discovery requests.
    a. Mr. Higgins' concerns were well-taken. At DOAH, Plaintiff made several attempts to conceal Mr. Higgins' identity (motions for confidentiality, aliases, etc.). As such, Defendant's intimidation factor was affecting Plaintiff's lawsuit.

64. The 10-minute phone call went on. Importantly, Mr. Higgins made unsolicited offers to network with Plaintiff. Plaintiff declined; on several grounds:

    a. Most importantly, Plaintiff was solely focused on litigating his case against Defendant;

    b. Secondly, Plaintiff did not want to network with anyone; and

    c. Thirdly, Plaintiff had particular disinterest in relating to anyone who had Allstate origins.

Defendant and Mr. Higgins

65. Mr. Higgins had an employment relationship with Defendant (ie, Allstate). One of the 'master-servant' type.[7/]

66. Immediately before Defendant hired Plaintiff, Defendant employed Mr. Higgins. Mr. Higgins also reported to Ms. Henry. Mr. Higgins was also black.

67. On information & belief, Defendant has never hired any other black-male actuary (just Mr. Higgins; just Plaintiff).

68. Defendant had disdain for Mr. Higgins. Its employees expressed as much to Plaintiff.

    a. Mr. Posick spoke negatively of him (eating habits, lack of socializing). Mr. Ramirez said the same. As did Mr. Schaefer.

Ms. Henry – his direct manager – took it a step further by lamenting the cleanliness of Mr. Higgins' keyboard.

69. Plaintiff never knew him (had no knowledge of his demographics). In Summer 2014, though, during a car ride back to the office, Mr. Ramirez showed Plaintiff a picture of Mr. Higgins. On Mr. Ramirez's phone was a LinkedIn page showing Mr. Higgins as a connection. Mr. Ramirez quipped [something to the order of] "*maybe that's why they keep comparing you to him*". Plaintiff thereby learned that Mr. Higgins was a black man.

    a. Important note: on information & belief, this car ride was the return trip from the farewell lunch in which Mr. Posick proclaimed Plaintiff's newly attained credentials *"devalue[d] the profession" (*¶25b*)*.

    b. Additional note: Plaintiff had already begun requesting to work-from-home on account of Defendant's ongoing harassment.

70. In Plaintiff's 3-year tenure, none of Defendant's employees ever said a positive thing about Mr. Higgins. Not a single word.

71. Ms. Henry did add, though, that she bemoaned Mr. Higgins' prior requests to work-from-home; requests she always denied.

72. As Defendant's disparate history shows, it **never** granted the work-from-home privilege to any of its black-male actuaries. Defendant **always**, however, granted it to everyone else in the actuarial department (also see ¶27).

Post-Termination Retaliation: Higgins (Part B)

73. Equipped with this knowledge, Plaintiff found Mr. Higgins' 2018 phone call to have been:

    (a) motivated by fear of Defendant;

    (b) cushioned by the aid & comfort Defendant plied him with; and

    (c) aimed at dissuading Plaintiff from continuing his lawsuit.

74. Mr. Higgins hung up dejected. His March 26, 2018 call marked the second-&-last time the two ever spoke.

75. Thus, what Mr. Higgins did next – in concert with Defendant – was purely in response to Plaintiff's lawsuit.

76. At first, the two paired up to relay Mr. Higgins' conversation points (networking solicitations, subpoena avoidance, etc.) to DOAH.

77. It progressed to a tag-team smear campaign. Mr. Higgins told the state agency that he called Plaintiff's local police department to try to find harmful information on Plaintiff.

> *"Upon doing further check on [Plaintiff] using public information, I am startled to find information that indicates [Plaintiff] has been arrested at least twice."*
>
> - Mr. Higgins | DOAH 18-0373 | FL | 4/4/18

Mr. Higgins added – explicitly – that his aim was to interfere with Plaintiff's case:

> *"The purpose of this document is to allow potential witnesses an opportunity to request protective orders against any potential subpoenas by [Plaintiff]..."*
>
> - Mr. Higgins | DOAH 18-0373 | FL | 4/4/18

He continued, however, by saying his court filings may be frivolous:

> *"There is **no** evidence of any convictions and **no** evidence any prosecutor attempted to pursue charges in court... This arrest may or may not have relevance to the case..."*
>
> - Mr. Higgins | DOAH 18-0373 | FL | 4/4/18

He also disclosed his zeal:

> *"I attempted to obtain confirmation from Jacksonville Police Department but was told inquiries for public records could take weeks or months."*
>
> - Mr. Higgins | DOAH 18-0373 | FL | 4/4/18

78. Around this same time, Defendant hired an attorney named Christine Manzo (52121). She filed her notice of appearance with DOAH.

79. Upon information & belief, Ms. Manzo was hired only in response to Plaintiff's lawsuit/complaint.
    a. She never worked for Defendant beforehand; and
    b. She never worked for Defendant afterwards
80. Ms. Manzo spoke for Defendant; and her actions spoke volumes.
81. On June 21, 2018, while Plaintiff was preparing his non-party subpoena to the Society of Actuaries ("SOA") Ms. Manzo emailed Mr. Higgins.
82. Her email encouraged Mr. Higgins to file documents on Defendant's behalf. Documents that Mr. Higgins was not authorized to file. Documents that were unlawful (see ¶57). Documents that were aimed at the most contentious piece of discovery (see ¶38a, ¶39).
83. Ms. Manzo further instructed Mr. Higgins to avoid writing anything that could negatively impact Defendant's accompanying pleading (**Exhibit F**).
84. Ms. Manzo was well-aware of Mr. Higgins' previous unlawful conduct.
    a. Such conduct was captured in the public forum; and
    b. Such conduct was the subject of Plaintiff's prior motion for sanctions.
85. In short, Defendant enlisted its former employee to attack Plaintiff for filing his discrimination lawsuit.

Post-Termination Retaliation: Lethal

86. Running contemporaneous to Defendant's tag-team smear campaign against Plaintiff was Defendant's near-fatal attacks.

87. From the outset of the DOAH proceedings, Plaintiff received death threats on the phone; and supplemental taunts through the mail. The calls numbered in the dozens-per-day; the mailings came in at about six pieces per month.

88. All of the threats had a common theme centered around '*praying to God*'.

    a. One recorded phone call had an intimidating woman's voice asking, *"Do you need someone to pray for your life?"*

    b. Mailed postcards contained similar phrasing.

    c. It must be noted that the religious theme of '*praying to God*' was the exact quote Mr. Higgins levied at Plaintiff to dissuade Plaintiff from continuing his lawsuit against Defendant.

        i. Thereby linking Defendant – via Ms. Manzo/Mr. Higgins – to the death threats.

89. Prior to his lawsuit, Plaintiff never received such phone calls. All of which came once his phone number entered the public domain (via DOAH).

90. Upon information & belief, Defendant was encouraging its employees (Ms. Henry, etc.) to attack Plaintiff for filing suit.

91. The verbal/mailed threats eventually turned into a physical assault.

92. In Spring 2018, Plaintiff was hit by a car while riding his bicycle. The car was traveling 45 mph (reportedly). Mr. Dickson's 2015 threat had indeed played out (¶29a).

    a. When Plaintiff awoke on the grassy median, he immediately thought Defendant was behind it. His first thought was that either Ms. Halim or Mr. Dickson was involved; and perhaps others.

93. The driver of the car was a man named Matthew Myrick. As revealed by the crash report, Mr. Myrick lived within 10 minutes of Defendant's office.

    a. As Plaintiff later learned, Mr. Myrick's home was down the street from Mr. Schaefer's home (ie, the manager who told Plaintiff he should '*figure out if [Defendant] was the place for [Plaintiff] to work*' when Plaintiff complained of harassment/discrimination.) (see ¶36)

    b. 12 minutes away from Mr. Myrick's home lay the home of Mr. Greg Guidos, Defendant's CEO. Whose subsequent resignation marked the end of the retaliatory threats + assaults described

herein - but not the taunts (see ¶117-124); and not the lies (¶129).

i. Upon information & belief, Mr. Guidos resigned only in response to the fact that Plaintiff videotaped his testimony (at the administrative hearing).

[1] Mr. Guidos' testimony was the only testimony that Plaintiff recorded by camera.

[2] Upon information & belief, Defendant's managers have direct evidence of the Company's discriminatory intent. Evidence in the form of emails and/or written/recorded correspondence.

ii. Upon information & belief, Defendant reacts primarily to the publicity of its misconduct rather than the misconduct itself.

94. If not for Plaintiff's safety gear, he likely would have fallen into a coma, become paralyzed, or died. Each result would have brought a near-certain end to his lawsuit against Defendant.

a. The injury was still severe, nonetheless. As it reduced Plaintiff's responsiveness to the administrative proceedings.

i. Evidenced by him filing only 3 documents in 51 days.

ii. Compared to the 170 he filed in the 292 days after recovery.

iii. The difference put Plaintiff at 10% capacity due to the hit.[8/]

b. A reduction in capacity that had a pivotal effect on Plaintiff's administrative case.

i. While injured, Defendant filed a motion to strike Plaintiff's sex discrimination charge, because it had too much detail. Details that Defendant claimed it was not ready to handle.

ii. The motion sat on DOAH's docket for 30 days before Plaintiff could file a response. By then it was too late, because DOAH entered its order already.

iii. An order that was improvident. An order that DOAH held onto in contravention of the 14th Amendment of the US Constitution (*Equal Protection Clause*). An order that DOAH's ALJ perjured himself to defend.

[1] Thereby exposing himself to a 42 USC §1983 action (ie, the *"Ku Klux Klan Act of 1871"*).

iv. An order that violated Plaintiff's due process rights.

v. The hit was severe.

95. Upon information & belief, Defendant enlisted people (eg, Mr. Myrick) to maim, injure, and/or kill Plaintiff in retaliation for filing suit.

Post-Termination Retaliation: Surveillance

96. Around this same time, complete strangers began befriending Plaintiff. Some did so at Plaintiff's neighborhood gym – the only place Defendant knew Plaintiff to frequent (see ¶14-15).

97. One was a 50-60 year old 5'9 man who always wore an Allstate T-Shirt. The man presented himself as an in-house lawyer. He spoke to Plaintiff as if the two knew each other.

    a. Asking about Plaintiff's time with Defendant;

    b. Asking about actuarial work;

    c. Asking about Plaintiff's direct manager.

98. Plaintiff did not know the man; and could not recall ever seeing him prior to his lawsuit against Defendant. He kept the conversations cordial, though, and brief.

99. Upon information & belief, Defendant sent that man to (a) keep tabs on Plaintiff; (b) startle plaintiff; and (c) interfere with Plaintiff's legal action.

100. Another man was a 50-60 year old 6'3 man named David. David always wore a hat. David always talked about bicycle riding. David

chatted up Plaintiff as well; regularly inviting him to play basketball. Plaintiff found him suspicious, but was friendly nonetheless.

101. One time, David bumped into Plaintiff at the beach. Where he revealed that he worked for Defendant.

    a. It must be noted, that no one else (from any other company) has (a) approached Plaintiff at this gym; **and** (b) befriended him with recurring conversation.

102. Upon information & belief, Defendant sent this man (David) to (a) investigate Plaintiff; (b) get legal intel from Plaintiff; and (c) dissuade Plaintiff from following through on his lawsuit.

103. Moreover, upon information & belief, Defendant enlisted people to surveil/investigate Plaintiff. Whereby the employer could obstruct Plaintiff's lawsuit; either by force, with guile, or through a combination of the two.

104. Of course, Defendant's involvement in such subterfuge was corroborated by the emailed instructions from Ms. Manzo (¶82-83).

Post-Termination Retaliation: Financial

105. One month after Ms. Manzo sent that incriminating email, Plaintiff's former employer (Genworth Financial) reduced his retirement benefits substantially. They mailed him the notice.

106. Yet, Plaintiff had never given Genworth his Florida address.

107. Nor did Plaintiff ever talk to Defendant about Genworth.

108. Notwithstanding, Defendant's other trial lawyer (Ms. Carmen Rodriguez (710385)) made several statements about Genworth. She did so at Plaintiff's first administrative deposition. She did so at his second. Then she sandwiched in some more statements during Plaintiff's hearing.

109. Statements, of course, which were not pulled from evidence, from discovery, or even from discovery requests.

110. It was clear that Defendant was communicating with Genworth surreptitiously.

111. Considering the circumstances, Plaintiff reached out to Genworth to understand their actions. Genworth's benefits coordinator explained that Plaintiff's dissolved retirement benefits were not part of a company-wide policy. She further explained that he was the only person she knew who suffered dissolution.

112. Thus, upon information & belief, Defendant (via Genworth) retaliated to further damage Plaintiff's employment, compensation, and employment benefits. He believes Defendant did so by complaining about Plaintiff's lawsuit during phone calls with Genworth.

Plaintiff's Professional Progress and Defendant's Professional Retaliation

113. In the days surrounding Defendant's acts of financial retaliation, Plaintiff received passing results for his tenth (10th) actuarial exam. He took it weeks after the vehicular assault (see ¶91-95). Therefore, as of Spring 2018, Plaintiff had passed every exam necessary to qualify for his FSA (see **Exhibit E**).

    a. Coming full circle: at the administrative hearing (November 2018), Defendant's employee – and Plaintiff's manager – Mr. Richard Schaefer testified that Plaintiff should find a different career because of his exam progress.

> *"I probably recommended to you that you might consider another profession because you couldn't pass the exams for this one. That would be general career advice"*
>
> - Mr. Schaefer | DOAH 18-0373; Tr. 647:20 | FL | 11/29/18

A classic display of Defendant's discriminatory animus. Mr. Schaefer was referring to the termination excuse that Defendant concocted to try to conceal its unlawful motives (see ¶54).

i. At the time that Defendant assembled the excuse (≈ 2016), it had many employees with far less exam success than Plaintiff (see ¶44-46).

[1] Some who failed every exam (passing none); some who never attempted any; and some who quit with fewer.

ii. Plus, at the time that Mr. Schaefer gave the "*general career advice*" Plaintiff had already passed all of the exams. Passing the first 5 faster than 98% of the population.[9/]

b. Also coming full circle: at the same hearing, Defendant's other managerial employee, Mr. Scott Randles, testified that he had never been an exam grader.

114. Yet, there he was. The next summer - at Plaintiff's graduation ceremony – 3,000 miles from home (in Seattle, Washington); grading the last course for the FSA designation (**Exhibit G**).[10/]

115. Upon information & belief, Mr. Randles – at Defendant's behest – went to Plaintiff's graduation ceremony in order to:

a. target Plaintiff for harassment;

b. obstruct Plaintiff's attainment of his FSA;

c. blackball Plaintiff from the profession; and

d. supply the SOA with a false, perjured, unconstitutionally propagandized narrative on Plaintiff's racial inferiority.

Spite and Malevolence

116. Plaintiff found Mr. Randles' about-face presence (and suspected written submissions) to be spiteful and malevolent.

117. Also spiteful were the two mailings that arrived at Plaintiff's home (around June 2019).

118. One was a brochure to attend a Sharepoint® conference.

a. Sharepoint® was part of the pretextual stream of lies that Mr. Dickson (Defendant's manager) targeted Plaintiff with back in Fall 2015 (see ¶29 *supra*). Plaintiff complained of Mr. Dickson's conduct, and wanted nothing to do with him.

b. Upon information & belief, Defendant (via Mr. Dickson) effectuated delivery of the brochure to Plaintiff's home as a harassing, retaliatory gesture.

119. The other mailing was a different brochure to attend a conference on Insight®.

a. Insight® was the software program that Mr. Ramirez (Defendant's manager) tried to get Plaintiff in on (¶23). Plaintiff was hamstrung by management; plus, he had no interest in Insight®.

b. Upon information & belief, Defendant (via Mr. Ramirez) effectuated delivery of the brochure to Plaintiff's home as a harassing, retaliatory gesture.

120. Both of these brochures, importantly, were addressed to the company that Plaintiff registered with the state (2017 – after termination).

a. The only time Plaintiff revealed this company name was when Defendant deposed him in the administrative phase.

121. These brochures indicated a collaborative effort to harass Plaintiff.

a. The harassment was based on the same perjured, stereotyped narrative that Mr. Randles flew across the country on (¶113b-116).

122. These brochures, individually and together, showed that Defendant's managers were (a) tracking Plaintiff's lawsuit, (b) responding with malice, and (c) tying themselves to all of the adverse acts Plaintiff suffered since the suit went public (as further spite/intimidation).

123. Plaintiff did not have any relationship with any of Defendant's employees. He did not want anything to do with them. The only thing that linked Plaintiff to Defendant's employees was Defendant itself.

a. Moreover, before-&-after June 2019, Plaintiff never received any material from either Sharepoint® or Insight®.

b. Plus, Defendant effectuated their delivery soon after DOAH's ALJ entered his perjurous Recommended Order. Doing so by typing Plaintiff's contact information onto online mailing lists.

124. As such, upon information & belief, Defendant has been spending years carrying out a campaign of spite, slander, surveillance, malice, and violence against Plaintiff. All in an effort to mute his lawsuit.

a. A lawsuit with indisputable facts which Defendant has only addressed with lies & corruption.

Lies & Corruption

125. Faced with these eternal facts of textbook discrimination, Defendant set out to deprive Plaintiff of his constitutional rights.

126. Back on December 15, 2017, the FCHR confirmed that race **and** sex formed the basis of Plaintiff's complaint against Defendant (**Exhibit H**).

127. Yet, 1.5 years later – and after grave impropriety – that same agency excluded Plaintiff's sex charge in its final order (**Exhibit I**). Doing so based on a massive lie (¶94b.iii, ¶123b).

128. Upon information & belief, Defendant commandeered the FCHR to remove Plaintiff's sex discrimination charge from his originating complaint. Accomplishing such a feat in a variety of ways:

a. By pressuring the state agency;

i. In all of the FCHR's publicly available annual reports (2010-2018), the agency tells its "*stakeholders*" how much money the commission has saved them. Boasting about its "*return on investment*" (highlights added):

> *"During the past fiscal year, the Commission has helped Florida stakeholders avoid over* ***$19 million*** *in litigation expenses. For FY 2017-18, the Return on Investment (ROI) is 104%"*
>
> - FCHR | Annual Report | Fall 2018

ii. One such stakeholder – as revealed in 2018 – is Florida Blue (a prominent insurer in Florida – a là Defendant).

iii. Upon information & belief, Defendant is also an FCHR stakeholder. And as a stakeholder, Defendant improperly influenced the FCHR's conduct towards Plaintiff.

and/or

b. By asking it directly;

i. Upon information & belief, Defendant asked the FCHR to violate Plaintiff's 14th amendment rights (due process, equal protection) and 7th amendment rights (jury trial).

ii. Doing so by email, fax, and/or phone.

and/or

c. By bribing the state agency;

i. §760.06(4) FS empowers the FCHR to accept gifts and bequests to "help finance its activities".

ii. In September 2019, Plaintiff asked the FCHR whether it could accept a respondent's gifts/bequests during the investigative phase of a complaint. The agency answered with "an emphatic yes" (highlights added) (**Exhibit J**):

> *"the [FCHR] has the power to accept gifts, bequests, grants, or other payments, public or private, to help finance its activities... There are no limitations in the text of the statute... There is no applicable case law suggesting that the Commission cannot accept bequests during the investigation of a claim ... Given that the answer to Petitioner's question of law on whether the Commission can accept gifts during the investigation phase of a claim is such an emphatic yes, there is no doubt to resolve"*
>
> - FCHR | Order 19-065 | 12/10/19

iii. Upon information & belief, Defendant gave the FCHR something of value in exchange for its acts & omissions. Acts & omissions which the FCHR carried out to violate Plaintiff's constitutional rights.

[1] Acts which included but were not limited to (a) removing Plaintiff's sex discrimination charge; (b) mailing Plaintiff's determination letter to someone else; and (c) inducing the EEOC to also mail Plaintiff's Right-to-Sue letter to the wrong person.

129. Also, in further perpetuating the lie, Defendant perpetrated a fraud upon this Court.

a. On May 21, 2021, Defendant filed a document in this case (Doc No 53 "*Defendant's Response... Memorandum of Law*"). It did so via Ms. Kimberly Doud (523771), Defendant's trial attorney.

i. In it, the employer wrote that Plaintiff's initiating employment discrimination complaint (¶53) was on the basis of race only (highlights added):

> *"On June 30, 2017, Plaintiff filed a Charge of Discrimination ("First Charge") with the FCHR, which alleged racial discrimination, as well as retaliation, in violation of the FCRA. See Exhibit A..."*

- Defendant | 5/21/2021 | Doc No 53 | 3:20-cv-00905-MMH-JRK

> *"On January 19, 2018, Plaintiff filed a 231-page Petition for Relief ("First Petition") with the FCHR. See Exhibit C. The First Petition included allegations of race discrimination not previously presented to the FCHR and therefore not part of the FCHR investigation. Plaintiff also, **for the first time**, alleged sex discrimination and/or sexual harassment"*
>
> - Defendant | 5/21/2021 | Doc No 53

ii. Of course, the underlying facts (and Defendant's own attached exhibit) established that Plaintiff's originating charge was on the basis of race ***and*** sex (¶53, ¶54, ¶126).

b. Thus, on May 21, 2021, Defendant told a demonstrable lie of material fact. A lie aimed at depriving Plaintiff of a full & fair opportunity to litigate his discrimination case.

VII. ULTIMATE FACTS

130. It is indisputable that Defendant only fired the black man who failed an actuarial exam.

a. Defendant preceded this adverse employment action with years of harassment. Punctuated by:

i. unwanted sexual attention;

ii. date requests;

iii. racist dolls;

iv. racist characterizations; and

v. more.

b. The harassment was coupled with disparate treatment. Highlighted by:

i. paying Plaintiff a lower salary than his non-black-male peers (indisputable);

ii. forcing Plaintiff to pay $1,025 for an actuarial exam while not doing the same to Plaintiff's non-black-male counterparts (indisputable); and

iii. denying Plaintiff the work-from-home privilege that it granted Plaintiff's non-black-male coworkers (indisputable).

131. It is also indisputable that Defendant knew that Plaintiff exercised his civil rights.

    a. It answered his first complaint in September 2017.

        i. Notarized by a state agent

    b. The complaint was investigated by a state agency.

    c. The complaint became public record in January 2018.

    d. Defendant hired at least 5 attorneys-of-record in response.

        i. One such attorney was Ms. Christine Manzo.

132. It is also indisputable that Plaintiff suffered more adverse acts while his legal action was still pending.

    a. It is indisputable that Plaintiff was hit by a car in Spring 2018 (within two months of the case going public).

    b. It is indisputable that Plaintiff's former employer reduced Plaintiff's retirement benefits in July 2018.

    c. It is indisputable that Defendant's former employee harassed Plaintiff to presumably embarrass Plaintiff.

    Upon information & belief, these adverse acts – individually and in total – would cause most reasonable employees to abandon their case.

133. It is also indisputable that Defendant was tied to these adverse acts.

    a. Via its legal representative (Ms. Manzo), Defendant encouraged its former employee to file unlawful, unauthorized documents to hinder Plaintiff's civil rights case.

        i. Defendant even instructed him on what to say.

134. It is also indisputable that Plaintiff's initiating complaint charged Defendant with race ***and*** sex discrimination.

    a. It is indisputable that – on September 8, 2017, Defendant acknowledged both bases (¶54).

    b. It is indisputable that – on December 15, 2017 – the FCHR affirmed that Plaintiff's initiating complaint was on both bases (¶126).

    c. It is indisputable that *that same* state agency excluded Plaintiff's sex discrimination charge from the Final Order.

    d. It is foundational that a sex discrimination charge is material to an employment discrimination complaint.

    e. It is indisputable that – on May 21, 2021 – Defendant claimed that Plaintiff's initiating complaint did not have a sex discrimination charge (¶129).

    f. It is indisputable that Defendant knew its claim was false. Thereby, extending its state-sponsored lie to this tribunal.

Upon information & belief, Defendant unlawfully got the FCHR to deprive Plaintiff of his constitutional rights (due process, etc.), and is trying to perpetrate that fraud upon this Court.

A manifest injustice.

135. Lastly, it is also indisputable that all throughout its unlawful campaign, Defendant replaced Plaintiff with employees with far less qualifications while keeping others who also failed actuarial exams.

    a. Objectively speaking: in terms of exam success (see ¶44)

    b. Objectively speaking: in terms of experience

COUNT I: RACIAL DISCRIMINATION | §760 FS

136. Plaintiff hereby restates and realleges each and every factual allegation contained in Sections VI-VII (Paragraphs 8 through 135).

137. Defendant continuously treated Plaintiff less favorably and unfairly compared to his non-black coworkers. The offensive and derogatory remarks/actions were related to Plaintiff's race; and were so severe and pervasive they created a hostile work environment for Plaintiff.

138. Defendant's resulting decision to terminate Plaintiff was motivated by Plaintiff's race.

COUNT II: SEXUAL DISCRIMINATION | §760 FS

139. Plaintiff hereby restates and realleges each and every factual allegation contained in Sections VI-VII (Paragraphs 8 through 135).

140. Defendant continuously treated Plaintiff less favorably and unfairly compared to his non-male coworkers. Ms. Henry's sexual harassment related to Plaintiff's gender; and was so severe and pervasive it created a hostile work environment for Plaintiff.

141. Defendant's resulting decision to terminate him was motivated by Plaintiff's sex.

COUNT III: COLOR DISCRIMINATION | §760 FS

142. Plaintiff hereby restates and realleges each and every factual allegation contained in Sections VI-VII (Paragraphs 8 through 135).

143. Defendant continuously treated Plaintiff less favorably and unfairly compared to coworkers of a different complexion.

144. Defendant's resulting decision to terminate him was motivated by Plaintiff's skin tone.

COUNT IV: RETALIATION | §760 FS

145. Plaintiff hereby restates and realleges each and every factual allegation contained in Sections VI-VII (Paragraphs 8 through 135).

146. Defendant continuously treated Plaintiff less favorably and unfairly compared to his non-black-male coworkers. The offensive and derogatory remarks/actions were related to Plaintiff's race/gender/color; and were so severe and pervasive they created a hostile work environment for Plaintiff.

147. Defendant thereafter retaliated against Plaintiff because he complained [internally] about Defendant's discriminatory practices.

148. Defendant's resulting decision to fire Plaintiff was motivated by Plaintiff's demographics; and in retaliation (Opposition Clause).

149. Defendant also retaliated against Plaintiff because he filed suit against Defendant (under the Participation Clause). It did so by interfering with his efforts to recover damages inflicted upon him by Defendant's discriminatory animus.

    a. Most directly by instructing its former employee to file unauthorized and unlawful documents to obstruct Plaintiff's pursuit of justice (¶73-85).

    b. Most severely by enlisting a man to follow and strike Plaintiff with his vehicle (¶86-95).

    The adverse acts that Plaintiff suffered were causally related to his lawsuit because (a) Defendant knew Plaintiff had engaged in a protected activity; (b) the events took place in close temporal proximity to the complaint going public; (c) the attacks came from the same motivating themes; and (d) the attacks were material/severe.

COUNT V: PAY DISCRIMINATION | 29 USC §206, et. seq.

150. Plaintiff hereby restates and realleges each and every factual allegation contained in Sections VI-VII (Paragraphs 8 through 135).

151. Defendant continually paid Plaintiff a salary that was lower than his opposite-sex peers. The pay disparity began when Plaintiff attained his ASA (¶18, ¶25), and continued until his unlawful termination.

152. Defendant conditioned Plaintiff's salary on Plaintiff's [un]willingness to engage in a personal/romantic/sexual relationship with his direct manager (¶12-13, ¶20-21).

153. As such, the compensation level that Defendant set for Plaintiff was motivated by his gender.

COUNT VI: RACIAL DISCRIMINATION | 42 USC §1981

154. Plaintiff hereby restates and realleges each and every factual allegation contained in Sections VI-VII (Paragraphs 8 through 135).

155. Defendant continuously treated Plaintiff less favorably and unfairly compared to his non-black coworkers. The offensive and derogatory remarks/actions were related to Plaintiff's race; and were so severe and pervasive they created a hostile work environment for Plaintiff.

156. Defendant's resulting decision to terminate Plaintiff was motivated by Plaintiff's race.

COUNT VII: RETALIATION | 42 USC §1981

157. Plaintiff hereby restates and realleges each and every factual allegation contained in Sections VI-VII (Paragraphs 8 through 135).

158. Defendant continuously treated Plaintiff less favorably and unfairly compared to his non-black-male coworkers. The offensive and derogatory remarks/actions were related to Plaintiff's race/gender/color; and were so severe and pervasive they created a hostile work environment for Plaintiff.

159. Defendant thereafter retaliated against Plaintiff because he complained [internally] about Defendant's discriminatory practices.

160. Defendant's resulting decision to fire Plaintiff was motivated by Plaintiff's demographics; and in retaliation (Opposition Clause).

161. Defendant also retaliated against Plaintiff because he filed suit against Defendant (under the Participation Clause). It did so by interfering with his efforts to recover damages inflicted upon him by Defendant's discriminatory animus.

    a. Most directly by instructing its former employee to file unauthorized and unlawful documents to obstruct Plaintiff's pursuit of justice (¶73-85).

    b. Most severely by enlisting a man to follow and strike Plaintiff with his vehicle (¶86-95).

    The adverse acts that Plaintiff suffered were causally related to his lawsuit because (a) Defendant knew Plaintiff had engaged in a protected activity; (b) the events took place in close temporal proximity to the complaint going public; (c) the attacks came from the same motivating themes; and (d) the attacks were material/severe.

COUNT VIII: INTENTIONAL DISCRIMINATION | 42 USC §1981a

162. Plaintiff hereby restates and realleges each and every factual allegation contained in Sections VI-VII (Paragraphs 8 through 135).

163. Defendant intended to discriminate against Plaintiff (¶93b.i[2]). It fielded unwarranted calls for his termination (¶30), it directed former employees to attack him (¶132), and it commandeered a state agency to deprive Plaintiff of his constitutional rights (¶134).

164. Thus, Plaintiff is entitled to a full recovery of all compensatory and punitive damages allowable (under both state & federal law).

COUNT IX: DEPRIVATION OF RIGHTS | 42 USC §1985

165. Plaintiff hereby restates and realleges each and every factual allegation contained in Sections VI-VII (Paragraphs 8 through 135).

166. Defendant has dipped into its reservoir of tactics to deprive Plaintiff of a full & fair opportunity to litigate his case. Conduct which has included – among other things – intimidation (¶63), death threats (¶87), lethal attacks (¶91-95), corruption (¶128a), bribery (¶128c), and perjury (¶94b, ¶115, ¶121, ¶123b).

167. In its unlawful trek, Defendant has enlisted former employees (¶73-85), current employees (¶86-95), in-house attorneys (¶96-99), administrative attorneys (¶78-85, ¶105-112), judicial attorneys (¶129), state officers (¶94b.iii), and state agencies (¶127-128) to do its bidding. Bidding which has (a) obstructed the legal process (¶128c.iii[1]); and (b) violated constitutional law (¶128).

a. Defendant – via the State of Florida – violated Plaintiff's 14th Amendment right to due process. Especially regarding Plaintiff's sex discrimination charge (¶126-128).
b. Defendant – via the State of Florida – violated Plaintiff's 14th Amendment right to equal protection.
c. Defendant – via the State of Florida – violated Plaintiff's 7th Amendment right to a trial-by-jury (please see §760.11(7) FS).

168. This statute (42 USC §1985) was designed to cure these actions. Thus, Plaintiff is entitled to relief & recovery from Defendant's unlawful interference with Plaintiff's civil rights.

COUNT X: RACIAL DISCRIMINATION | 42 USC §2000e, et. seq.

169. Plaintiff hereby restates and realleges each and every factual allegation contained in Sections VI-VII (Paragraphs 8 through 135).

170. Defendant continuously treated Plaintiff less favorably and unfairly compared to his non-black coworkers. The offensive and derogatory remarks/actions were related to Plaintiff's race; and were so severe and pervasive they created a hostile work environment for Plaintiff.

171. Defendant's resulting decision to terminate Plaintiff was motivated by Plaintiff's race.

COUNT XI: SEXUAL DISCRIMINATION | 42 USC §2000e, et. seq.

172. Plaintiff hereby restates and realleges each and every factual allegation contained in Sections VI-VII (Paragraphs 8 through 135).

173. Defendant continuously treated Plaintiff less favorably and unfairly compared to his non-male coworkers. Ms. Henry's sexual harassment related to Plaintiff's gender; and was so severe and pervasive it created a hostile work environment for Plaintiff.

174. Defendant's resulting decision to terminate him was motivated by Plaintiff's sex.

COUNT XII: COLOR DISCRIMINATION | 42 USC §2000e, et. seq.

175. Plaintiff hereby restates and realleges each and every factual allegation contained in Sections VI-VII (Paragraphs 8 through 135).

176. Defendant continuously treated Plaintiff less favorably and unfairly compared to coworkers of a different complexion.

177. Defendant's resulting decision to terminate him was motivated by Plaintiff's skin tone.

COUNT XIII: RETALIATION | 42 USC §2000e, et. seq.

178. Plaintiff hereby restates and realleges each and every factual allegation contained in Sections VI-VII (Paragraphs 8 through 135).

179. Defendant continuously treated Plaintiff less favorably and unfairly compared to his non-black-male coworkers. The offensive and derogatory remarks/actions were related to Plaintiff's race & gender; and were so severe and pervasive they created a hostile work environment for Plaintiff.

180. Defendant thereafter retaliated against Plaintiff because he complained [internally] about Defendant's discriminatory practices.

181. Defendant's resulting decision to fire Plaintiff was motivated by Plaintiff's demographics; and in retaliation (Opposition Clause).

182. Defendant also retaliated against Plaintiff because he filed suit against Defendant (under the Participation Clause). It did so by interfering with his efforts to recover damages inflicted upon him by Defendant's discriminatory animus.

    a. Most directly by instructing its former employee to file unauthorized and unlawful documents to obstruct Plaintiff's pursuit of justice.

    b. Most severely by enlisting a man to follow and strike Plaintiff with his vehicle.

The adverse acts that Plaintiff suffered were causally related to his lawsuit, because (a) Defendant knew Plaintiff had engaged in a protected activity; (b) the events took place in close temporal proximity to the complaint going public; (c) the attacks came from the same motivating themes; and (d) the attacks were material/severe.

COUNT XIV: PATTERN & PRACTICE OF RETALIATION | 42 USC §2000e, et. seq

183. Plaintiff hereby restates and realleges each and every factual allegation contained in Sections VI-VII (Paragraphs 8 through 135).

184. Defendant continuously treated Plaintiff less favorably and unfairly compared to his non-black-male coworkers. Defendant's actions were stereotyped and based on a false premise.

185. In order to propagate its illusion of fairness & legitimacy, Defendant carried out its tried & true methods of subjugation.

186. Tactics which included – but were not limited to – intimidation, coercion, bald-faced lies, falsified employment records, harassment, slander, financial retaliation, and violence.

187. Defendant honed this practice years before Plaintiff's employment. Notably doing so with Mr. David Dickson harassing & discriminating against his female direct reports (Latham, etc.). Ratifying his behavior so that select management could continue with impunity.

188. By the time Plaintiff arrived, Defendant's predatory might was taut and springing into action.

189. Defendant had a predetermined disdain for black people - viewing them as 'less than' - and treated them accordingly.

190. Disdain for which it pridefully defiled itself to normalize. First, Defendant defiled itself with its internal lies & cover-ups (¶29-¶36). Then, Defendant defiled the State of Florida with its heightened lies & cover-ups (¶55, ¶126-128). And, now, Defendant has defiled this federal Court with an even more depraved lie (¶129).

191. The bottom line is that Defendant discriminated against Plaintiff, and has infected everyone/everything its touched during its quest to cover up its initial cover-up.

PRETEXT

192. Defendant's initial cover-up was preordained.

193. It claimed that it terminated Plaintiff for a legitimate business reason by asserting that it terminated him "solely" because he failed an actuarial exam (see **Exhibit E**).

194. Yet, when Defendant's non-black-male employees also failed actuarial exams Defendant never fired them.

195. Notably, Defendant replaced Plaintiff with unqualified non-black-male employees. Neither of whom had passed even one actuarial exam.

    a. The disparity in qualifications (ie, 0 exams vs 8 exams) "*jumps off the page and smacks you in the face*".

196. As such, Defendant's reason for terminating Plaintiff was illegitimate, and merely a pretext for unlawful discrimination.

197. Gripped with this reality – as probably relayed to it by its trial attorneys (circa March 2018) – Defendant went on the attack. Enlisting people to harass Plaintiff, surveil Plaintiff, impair Plaintiff, deprive Plaintiff, and kill/maim Plaintiff.

198. None of the people that Defendant enlisted had any rational reason to engage with Plaintiff. They acted purely to rid Defendant of the towering set of indisputable facts pointing to its guilt.

DAMAGES

199. As a direct and proximate result of said acts, Plaintiff has suffered – and continues to suffer – loss of employment, loss of income, loss of other employment benefits, loss of earning capacity and has suffered and continues to suffer mental anguish, distress, pain, great expense, inconvenience, professional damage and other pecuniary and nonpecuniary losses.

200. As a further result of Defendant's discrimination, Plaintiff has incurred legal fees and will continue to incur legal fees.

RESERVATION OF RIGHTS

201. Defendant's acts, discriminatory patterns, and unlawful practices demonstrate a callous disregard and reckless indifference to Plaintiff that justifies an award of punitive damages at trial. Upon an evidentiary showing and hearing, Plaintiff reserves the right to amend his pleadings to assert a claim for punitive damages against Defendant.

202. Plaintiff may retain an attorney to represent him in prosecuting this action and if so will be obligated to pay him/her a reasonable fee for his/her services.

    a. Pursuant to 42 USC §1988, Plaintiff is entitled to request that the Court allow him to recover his reasonable attorney's fees incurred in successfully prosecuting this cause, should he retain an attorney.

REQUEST FOR JURY TRIAL

203. Pursuant to the 7th Amendment of the United States Constitution (and Art. I §22 FL Constitution, Rule 38(b) Fed. R. Civ. P., Rule 81(c) Fed. R. Civ. P.), Plaintiff respectfully requests that this Honorable Court grant him a trial by jury on all issues so triable.

REQUEST FOR RELIEF

204. WHEREFORE Plaintiff respectfully requests that this Honorable Court enter judgment in favor of Plaintiff and against Defendant on all claims herein, and enter an Order providing the following relief:

a. Declaring that Defendant violated the FCRA;

b. Declaring that Defendant violated the EPA;

c. Declaring that Defendant violated Title VII;

d. Declaring that Defendant violated §1981;

e. Declaring that Defendant violated §1985;

f. Enjoining Defendant from committing further civil rights violations (FCRA, EPA, Title VII, §1981, §1985);

g. Awarding Plaintiff back pay and front pay, including interest, in the form of lost wages, including lost fringe benefits, which resulted from the illegal discrimination, harassment, wrongful termination, and retaliation;

h. Awarding Plaintiff medical compensation for the vehicular assault Defendant carried out on Plaintiff;

i. Awarding Plaintiff the cost of this action, together with reasonable attorney's fees (if any);

j. Awarding Plaintiff pre-judgment interest;

k. Awarding Plaintiff punitive damages; and

l. Awarding such other & further relief as is just, equitable, and proper.

♜

Dated this 4th day of November 2021.

Respectfully submitted,

/s/ Elias Makere

ELIAS MAKERE, FSA, MAAA,
Plaintiff
3709 San Pablo Rd. S # 701
Jacksonville, FL 32224
P: (904) 294-0026
E: justice.actuarial@gmail.com
W: TextBookDiscrimination.com
Get ***Booked Up*** on Justice!

Endnotes:

[1/] please see *"Plaintiff's Memorandum of Law on Equitable Tolling*" (filed on-or-around 11/8/21)

[2/] evidenced by electronic badge records.

[3/] "only form of transportation" excludes the occasional flight/rental car (≈ 2-3 times/year)

[4/] "minor" exams in the sense that they were not one of the 10 "actuarial" exams mentioned earlier. Specifically, these "minor" exams were the VEEs – necessary for obtaining actuarial credentials with the Society of Actuaries.

[5/] in-or-around 2011, a former employee named Clare Latham charged Mr. Dickson with sexual discrimination.

[11/] fully amended with respects to Magistrate Klindt's order (Doc No 70, 10/13/21). These changes were made to Plaintiff's 3/9/21 Complaint. The primary differences were (a) joining state & federal charges; and (b) adding §1981a + §1985 (due to Defendant's post-complaint actions (on 5/21/21)).

[6/] the DMAC is a course on decision-making and professionalism.

[7/] see Spirides v Reinhardt, 613 F. 2d 826 (D.C. Cir. 1979).

see *Barron's Dictionary of Legal Terms, 5th Edition*, Page 348

[8/] 10% Capacity = $0.0588/0.5820$

Where:

0.0588 = documents per day (before)
= 3 documents ÷ 51 days

0.5820 = documents per day (after)
= 170 documents ÷ 292 days

[9/] Notably, the "first 5" are graded by computer. Leaving no room for interpretation. The last 5 are graded by human. And as this Complaint details, they are open to surreptitious conduct.

Additional note: the exams don't have an actual order; just a logical order that candidates typically follow.

[10/] the "last course" is a presentation. Those who fail have to try again (≈$2,600, 3-6 months later)

Verification Under Oath Pursuant to 28 USC §1746

I declare under penalty of perjury that the foregoing is true and correct. Moreover, the ultimate, material facts laid out above come from publicly available sources. Thus, they are not subject to dispute because *"they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned"*. Some of the other facts are based on information & belief. These two elements come from my own personal observation, knowledge, and experience – coupled with circumstantial evidence of the matter.

Executed on this 4th day of November 2021.

UNITED STATES OF AMERICA



11/4/2021

Elias Makere, Plaintiff/Affiant

EXHIBIT A

EEOC Form 161
Right-to-Sue Letter

Date Sent: Tuesday, March 9, 2021

[transmission email included]

***please see "*Plaintiff's Memorandum of Law Regarding Equitable Tolling*" (≈ 11/8/21)**

From: Ina Depaz <INA.DEPAZ@EEOC.GOV>
Sent: Tuesday, March 9, 2021 2:05 PM
To: justice.actuarial@gmail.com;
Subject: RTS

Good afternoon,

Per your request, enclosed please find RTS.

Thank you,

Ina

EEOC Form 161 (11/16) U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Mr. Elias Makere**
c/o Jerry Girley, Esquire
The Girley Law Firm
125 E Marks Street
Orlando, FL 32803

From: **Miami District Office**
Miami Tower, 100 S E 2nd Street
Suite 1500
Miami, FL 33131

☐ *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.	EEOC Representative	Telephone No.
15D-2019-00685	**Ina Depaz, State & Local Coordinator**	**(786) 648-5826**

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐ Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

☐ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☒ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐ Other *(briefly state)*

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

Nitza Santa Wright

Michael J. Farrell,
District Director

JAN 23 2020
(Date Mailed)

Enclosures(s)

cc:

Allstate Benefits
c/o Heather A. Johnson, Esquire
Littler Mendelson, P.C.
2301 McGee Street, 8th Floor
Kansas City, MO 64108

Enclosure with EEOC
Form 161 (11/16)

INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

*(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other provisions of State law may be shorter or more limited than those described below.)*

PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), or the Age Discrimination in Employment Act (ADEA):

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you *receive* this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was *mailed* to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Courts often require that a copy of your charge must be attached to the complaint you file in court. If so, you should remove your birth date from the charge. Some courts will not accept your complaint where the charge includes a date of birth. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit before 7/1/10 – *not* 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC

You may contact the EEOC representative named in this Notice, at the telephone number listed, for the purpose of questions about your legal rights, including advice on which U.S. District Court can hear your case, or assistance in inspecting or obtaining a copy of information in your file relevant to the charge. If you need to inspect or obtain a copy of information in your EEOC file, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, please make your review request within the next 90 days. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.



EXHIBIT B

Plaintiff's Submission of Administrative Complaint
(pursuant to 60Y-5.001 FAC)

Certified/Stamped by State Agency (the FCHR)

4/10/2019

[first and last pages only]
[first page = officially stamped page]
[last page = acknowledgement of receipt]

Elias Makere, Complainant
3709 San Pablo Rd. S #701
Jacksonville, FL 32224

Phone: 904.294.0026
Fax:
Email: justice.actuarial@gmail.com

MAKERE
V
ALLSTATE

COMPLAINT ATTACHMENT

Employment Discrimination (Race, Sex, Retaliation)

Here is the attachment to the employment discrimination complaint.

Petitioner:	Elias Makere
Dates:	November 2013 – July 2018
Race:	Black
Sex:	Male
Retaliation:	Yes

RECEIVED
FLORIDA COMMISSION ON
HUMAN RELATIONS
2019 APR 10 PM 2:35

Williams, DarLinda

From: justice.actuarial@gmail.com
Sent: Wednesday, April 10, 2019 8:00 AM
To: FCHR Website Email
Subject: Complaint | Employment Discrimination | Makere v Allstate
Attachments: EEOC-Form-5.pdf; 0a_Complaint_001_Employment.pdf

Good Morning FCHR,

May you please investigate my employment discrimination complaint against Allstate Insurance Company?

Thank you,

Elias Makere, Complainant
904.294.0026 | justice.actuarial@gmail.com
3709 San Pablo Rd. S. #701
Jacksonville, FL 32224

EXHIBIT C

Charge of Discrimination

From: Plaintiff
To: State Agency (FCHR)
6/30/2017

[marked]

(first page only)

20170143 2

RACIAL DISCRIMINATION | ALLSTATE CORPORATION | FLORIDA | 6/30/2017

Elias Makere, ASA
Phone
Fax
Email Inquiry.allstate@gmail.com

Allstate

EMPLOYEMENT DISCRIMINATION

Racial Discrimination, Sex Discrimination

This document introduces the racial discrimination of a former Allstate employee. The discrimination involved racist dolls, epithets, hostility, ostracism, discrimination of terms/conditions/compensation, and termination. I am looking for justice, an examination of the facts, and an eradication of Allstate's racial discrimination.

2017 JUN 30 PM 12:32

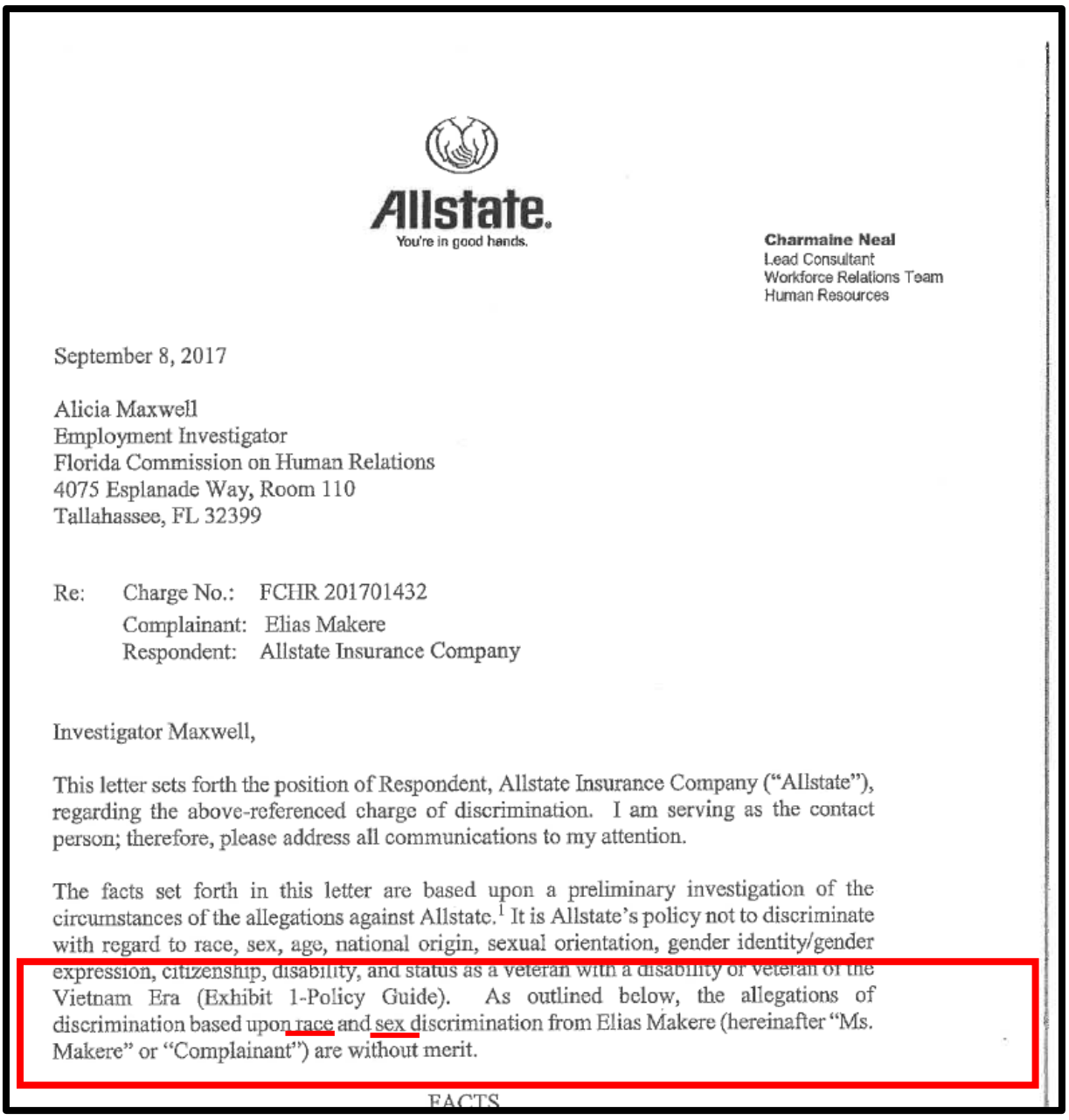
EXHIBIT D

Position Statement
Acknowledging Race & Sex Formed the Basis of Plaintiff's Initial Charge

From: Defendant
To: State Agency (FCHR)
9/8/2017

[marked]

(first & last page only)



Allstate.
You're in good hands.

Charmaine Neal
Lead Consultant
Workforce Relations Team
Human Resources

September 8, 2017

Alicia Maxwell
Employment Investigator
Florida Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, FL 32399

Re: Charge No.: FCHR 201701432
Complainant: Elias Makere
Respondent: Allstate Insurance Company

Investigator Maxwell,

This letter sets forth the position of Respondent, Allstate Insurance Company ("Allstate"), regarding the above-referenced charge of discrimination. I am serving as the contact person; therefore, please address all communications to my attention.

The facts set forth in this letter are based upon a preliminary investigation of the circumstances of the allegations against Allstate.[1] It is Allstate's policy not to discriminate with regard to race, sex, age, national origin, sexual orientation, gender identity/gender expression, citizenship, disability, and status as a veteran with a disability or veteran of the Vietnam Era (Exhibit 1-Policy Guide). As outlined below, the allegations of discrimination based upon race and sex discrimination from Elias Makere (hereinafter "Ms. Makere" or "Complainant") are without merit.

FACTS

State of Illinois
County of Cook

AFFIDAVIT TO AUTHENTICATE DOCUMENTS

1. **TRUE AND CORRECT COPIES**

I (We) Charmaine NEAL
(Names(s) of custodian(s) of record(s)

HR LEAD Consultant
(Title(s) of such person(s)

after being duly sworn, hereby attest that the attached documents are true and correct copies of the originals maintained by Allstate Insurance Company
(Name of Respondent or Entity Keeping Documents)

Human Resources
(Name of Sections(s) or Division(s) Maintaining Records(s)

Charmaine Neal
(Signature of Custodian(s)

Sworn to and subscribed before me this
8th day of August, 2017

(Notary Public)

JENNIFER M. DUCHON
OFFICIAL SEAL
Notary Public - State of Illinois
My Commission Expires
December 17, 2017

My Commission Expires: December 17, 2017

2. **ACCURACY OF ORIGINAL DOCUMENTS**

(I) We Charmaine NEAL
(Names(s) of persons generating documents or person(s) familiar with events reflected in documents)

HR LEAD Consultant
(Title(s) of such person(s)

after being duly sworn hereby attests that the originals of the attached documents accurately reflect the events recorded on them.

Charmaine Neal
(Signature of Originator(s)

Sworn to and subscribed before me this
8th day of August, 2017

(Notary Public)

JENNIFER M. DUCHON
OFFICIAL SEAL
Notary Public - State of Illinois
My Commission Expires
December 17, 2017

My Commission Expires: December 17, 2017

EXHIBIT E

Position Statement
Defendant's Termination Reason

From: Defendant
To: State Agency (FCHR)
9/8/2017

[marked]

(fourth page only)

Complainant was terminated solely because he failed to pass his ASA exam and as a result, he became ineligible to maintain his status in the Allstate Financial Actuarial Career Program (ACP).

Lastly, Complainant's allegation that more African-American actuarial employees were involuntarily terminated is without merit. Complainant was the only employee that Respondent terminated in his department between 2014 and 2016.

CONCLUSION

Complainant's charge of discrimination based upon race without merit. Accordingly, Respondent requests that this Charge be dismissed in its entirety. Should you have any additional questions, please do not hesitate to contact me at (847) 402-7367.

Sincerely,

Charmaine Neal

Charmaine Neal
Human Resources Lead Consultant

Attachments

EXHIBIT F

Email

From: Defendant
To: Malevolent Retaliator

6/21/18

From: Christine M. Manzo <CMM@lgplaw.com>
Sent: Thursday, June 21, 2018 6:14 PM
To: Kirk H. <kirkhiggins@gmail.com>
Cc: justice.actuarial@gmail.com; crpa@crlaborlawfirm.com; Zascha Blanco Abbott <zba@lgplaw.com>
Subject: RE: 18-0373 : Notice of Motion to Strike Subpoenas to Non-Parties and Strike Motion to Compel First,
Second, and Fifth Production

Mr. Higgins,

Respondent Allstate does not oppose the motions to strike Petitioner's motions to compel or the subpoena to ACE Manuals.

As to the subpoena to SOA, Respondent has not objected to that subpoena of Petitioner, and has served its own subpoena on SOA. Thus, Respondent will not object so long as it does not interfere with the subpoena Respondent has served and the information Respondent has requested from SOA.

Thank you,

EXHIBIT G

Photo

Plaintiff Receiving his FSA (final actuarial credential)



'A Picture Says a Thousand Words'. This one says the following:

Allstate fired the black guy for slipping in front of his destination – which he later got to – but rewarded his non-black peers for not even coming close.

EXHIBIT H

Notice of Determination

From: State Agency (FCHR)
To: Plaintiff/Defendant
12/15/2017

[marked]

Rick Scott
Governor

State of Florida
Florida Commission on Human Relations
An Equal Opportunity Employer • Affirmative Action Employer

4075 Esplanade Way • Room 110 • Tallahassee, Florida 32399-7020
(850) 488-7082 / FAX: (850) 487-1007
http://fchr.state.fl.us
United in One Goal: Equal Opportunity and Mutual Respect

Rebecca Steele
Chair
Michelle Wilson
Executive Director

FCHR No. 201701432

Mr. Elias Makere
3709 San Pable Road S., #701
Jacksonville, FL 32224

COMPLAINANT

Allstate Corporation
c/o Ms. Charmaine Neal, HR-Workforce Relations Lead Consultant
2775 Sanders Rd. F5
Northbrook, IL 60062

RESPONDENT

DETERMINATION: NO REASONABLE CAUSE

Complainant filed a complaint of discrimination alleging that Respondent violated the Florida Civil Rights Act of 1992. The Florida Commission on Human Relations has completed its investigation of this matter.

Complainant worked for Respondent as an Actuary. Complainant alleged that Respondent discriminated against him based on his race and sex. However, the investigation did not support Complainant's allegations. The investigation did not reveal enough evidence to establish that Complainant reported discriminatory harassment to Respondent. Complainant alleged that Respondent graded his required exams so that he would fail as an excuse to terminate him based on his race. However, the investigation revealed that the required exams were administered and graded anonymously by "The Society of Actuaries" and not Respondent. Therefore, the Respondent could not have been responsible for Complainant failing his exams. Complainant was terminated for failing his exam and not securing a non-actuarial position. The investigation did not reveal evidence of discrimination.

On the basis of the report from the Commission's Office of Employment Investigations and recommendation from the Commission's Office of General Counsel, pursuant to the authority delegated to me as Executive Director of the Florida Commission on Human Relations, I have determined that no reasonable cause exists to believe that an unlawful practice occurred.

Michelle Wilson

Dated: Dec. 15, 2017

EXHIBIT I

FCHR Final Order
19-044
Makere v Allstate
6/27/2019
Florida

State Agency's Unconstitutional Exclusion of Sex Discrimination Charge

[marked]

(first page only)

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

ELIAS MAKERE,	EEOC Case No. None
Petitioner,	FCHR Case No. 2017-01432
v.	DOAH Case No. 18-0373
ALLSTATE INSURANCE COMPANY	FCHR Order No. 19-044
Respondent.	

_____/

FINAL ORDER DISMISSING PETITION FOR RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE

Preliminary Matters

Petitioner Elias Makere filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2016), alleging that Respondent, Allstate Insurance Company, committed unlawful employment practices by harassing and terminating Petitioner on the basis of Petitioner's race (Black). Petitioner also alleged that Respondent unlawfully retaliated against Petitioner.

EXHIBIT J

FCHR Final Order
19-065
In Re: Makere
12/10/2019
Florida

Corrupt Allowance of Bequests During Active Investigations

[marked]

(pages 1 through 3 only)

Electronic Copies:
HTML: TextBookDiscrimination.com/Info/Misc/FCHRBribery/FirstDecision
PDF: TextBookDiscrimination.com/Files/FCHR/FO_19065.pdf

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

IN RE:

SEPTEMBER 11, 2019 PETITION FOR
DECLARATORY STATEMENT

ELIAS MAKERE, FCHR Order No. 19-065

Petitioner

_____/

FINAL ORDER DENYING PETITION FOR DECLARATORY STATEMENT

Preliminary Matters

On September 11, 2019, Petitioner Elias Makere filed a Petition for Declaratory Statement with the Florida Commission on Human Relations ("Commission"). Notice of the Petition was published in the *Florida Administrative Register*, Volume 45, Number 179, September 13, 2019. The Commission has not received a petition to intervene in this action from any other person. The Commission did not receive any comments on the matter. No hearing on the Petition was requested and none was held.

The Commission undertook action to resolve the Petition for Declaratory Statement at a duly noticed public hearing on December 10, 2019.

Petitioner states that he has "well-founded uncertainty" as to whether the Florida Commission on Human Relations can accept gifts/bequests during the investigative phase of his case under Florida Statutes 760.06(4). This scenario – where someone questions a statutory right – is precisely the scenario that the declaratory statement process is designed to cure. See Rosekrantz v. Feit, 81 So. 3d 526 (Fla. 3rd DCA 2012). "*The purpose of a declaratory statement is to resolve a controversy or answer questions concerning the applicability of statutes which an administrative agency enforces, adopts, or enters*". Citizens of the State ex rel. Office of Public Counsel v. Florida Public Service Commission, 164 So.3d 58, 59 (Fla. 1st DCA 2015).

Petitioner concludes his September 11, 2019 petition, stating,

> "Petitioner respectfully requests a declaration on whether the applicable section of Florida Statutes – 760.06(4) – allows Respondent in his case to give the Agency (FCHR) gifts/bequests/etc. during the investigative phase of Petitioner's (his) complaint."

Comments

The Commission has not received any comments subsequent to the filing of the Notice of Petition in the Florida Administrative Register.

Conclusions of Law

The Florida Administrative Procedure Act states, "any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances." Section 120.565(1), Florida Statutes (2019). It also states, "the petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances." Section 120.565(2), Florida Statutes (2019). When acting on the petition, the agency may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts. See Florida Administrative Code, R. 28-105.003.

A declaratory statement is a device for resolving controversies, questions, or doubts regarding the applicability of statutes, rules, and orders within the agency's authority to a petitioner's circumstances. See Florida Administrative Code, R. 28-105.001. Use of this device, however, is for a particular purpose and is to be used for that limited purpose.

To grant a declaratory statement petition, there need be a live case or controversy on the interpretation of a statute to meet the requirements for standing. There must be applicable law in doubt – doubt which is not present in this petition. Under the Florida Civil Rights Act of 1992, the Commission has the power to accept gifts, bequests, grants, or other payments, public or private, to help finance its activities. Section 760.06(4), Florida Statutes (2019). There are no limitations in the text of the statute, nor is there cabining language in other applicable areas of law suggesting alternative interpretations aside from the plain text. Acceptance of funding for the agency from public and private sources was not a driving force for the Florida legislature crafting this statute; therefore, there was not robust debate within the legislative history on the Commission's powers suggesting possible limitations on receiving gifts. Under standard theories of statutory interpretation, the Commission is to assume that the legislature intended to exclude language creating time-based exceptions.

Additionally, Petitioner claims uncertainty as to the motivations of the investigative branch of this agency. Petitioner questions the permissibility of bequest submissions, which could create the appearance of impropriety for receiving financial support from Petitioner or Respondent in his case. Assuming that such bequests were received at any point – although the Commission has no knowledge that any bequests were received during the investigation of this case – Petitioner would still lack the statutory support suggesting doubt over when the Commission can accept gifts. There is no applicable case law suggesting that the Commission cannot accept bequests during the investigation of a claim, nor is there any textual support that such a hypothetical scenario would be barred by the governing statute.

Declaratory statements are not to be issued addressing hypothetical questions lacking a fact-specific case or controversy. Federation of Mobile Home Owners v. Dep't of Business Regulation, et. al., 479 So. 2d 252, 253 (Fla. 2nd DCA 1985). There need be a showing beyond that of curiosity to suggest there be an actual present practical need for a declaratory statement. Id. at 254. Although the Administrative Procedure Act broadens public access to agency activities, there still need be a fact-specific inquiry addressing ambiguity over interpretation of an existing statute for Petitioner to meet the standing requirements to grant a declaratory statement petition. Fla. Home Builders Assoc. v. Dep't of Labor & Employment Sec., 412 So. 2d 351, 352 (1982). Given that the answer to Petitioner's question of law on whether the Commission can accept gifts during the investigation phase of a claim is such an emphatic yes, there is no doubt to resolve, no controversy to address. Absent such ambiguity, accordingly, the Commission must deny the petition for declaratory statement.

Denial of Petition

The Petition for Declaratory Statement is DENIED, because Petitioner does not meet the prerequisite requirements of standing. For the Commission to rule on a petition for declaratory statement, there must be a 'live case or controversy' in the specific question of law seeking relief. The statute in question and its accompanying relevant case law do not indicate more than one interpretation of the provision in question; therefore, Petitioner lacks standing to bring such declaratory statement given this lack of legal ambiguity to be resolved. Accordingly, the Petition for Declaratory Statement on the question of the Commission accepting gifts/bequests during an investigation is DENIED.

Petitioner has the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 10, day of December, 2019 FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS

Commissioner Tony Jenkins, Panel Chairperson;
Commissioner Mario Garza; and
Commissioner Rebecca Steele

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13588-AA

Appeal From
US District Court, Florida, Middle District
3:20-cv-00905-MMH-LLL
Makere v Allstate

VOLUME 01
ITEM 03
PAGES 0131 – 0149

SHORT TITLE: Memorandum of Law Regarding Equitable Tolling

DATE ENTERED: 11/9/2021
DOC TYPE: Party Motion (Appellant/Plaintiff)
TRIBUNAL: USFLMD
CASE NO: 3:20-cv-00905-MMH-LLL
CASE CAPTION: *Makere v Allstate*
LINK: https://ecf.flmd.uscourts.gov/
DOC NO: 74

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

ELIAS MAKERE, FSA, MAAA	)	Case No (LT)
Plaintiff	)	**3:20-cv-00905-MMH-JRK**
	)	
v.	)	
	)	
ALLSTATE INSURANCE COMPANY,	)	**{Duplicate Filing}
Defendant	)	

PLAINTIFF'S MEMORANDUM OF LAW REGARDING EQUITABLE TOLLING ON PLAINTIFF'S FULL VERIFIED COMPLAINT**

Plaintiff, ELIAS MAKERE, on this 9th day of March 2021, hereby files this memorandum of law in support of Plaintiff's *"Verified Complaint"* (hereinafter "This Complaint"). Pursuant to Local Rule 5.7 USFLND, a complaint may be filed together with any memorandum of law[1/].

Key Points:

A.) Grounds Equitable Tolling – Extraordinary Circumstances.
B.) Points Phantom Notice. Government Impropriety. COVID19.

Table of Contents:

Context	2nd Page
Memorandum	3rd Page
Certificates	12th Page
Exhibits	14th Page

** This is a duplicate of the *Memorandum of Law* that Plaintiff filed in 3:21-00242-MMH-JBT (Doc No 3; 3/11/21). Duplicated here only to keep the record intact. Plaintiff believes this memorandum discusses a **MOOT** point.

Note: ~~strikethroughs~~ were added to minimize confusion (due to mootness).

Background:	Plaintiff filed suit upon receipt of the EEOC's RTS Letter
Problem:	The RTS Letter had a confounding date
Request:	This Court recognizes that equity applies

5.7(b) | Local Rules USFLND | Pro Se Civil-Rights Cases...

"A party may, but need not, also file a memorandum with the petition, motion, or complaint."

29 CFR §1601.76 | Right of a Party to Request Review (highlights added)

"The [EEOC] shall notify the parties whose cases are to be processed by the designated, certified FEP agency of their right, if aggrieved by the agency's final action, to request review by the [EEOC] within 15 days of that action."

Precedence

- 2:17-cv-00400-SPC-MRM - USFLMD (9/28/20)
- 2:19-cv-00182-JES-PDB - USFLMD (11/18/20)
- 2:20-cv-00920-JLB-NPM - USFLMD (11/24/20)
- 6:20-cv-01757-RBD-DCI - USFLMD (1/26/21)
- 6:19-cv-00861-RBD-DCi - USFLMD (1/27/21)
- 8:18-cv-02244-TPB-AEP - USFLMD (2/12/21)
- 8:19-cv-02410-CEH-TGW - USFLMD (2/25/21)
- 8:20-cv-02215-TPB-AAS - USFLMD (2/18/21)

USFLMD recently accepted supporting memoranda

Abbreviations

1DCA	-	Florida's First District Court of Appeal
4DCA	-	Florida's Fourth District Court of Appeal
DOAH	-	Division of Administrative Hearings
FAC	-	Florida Administrative Code
FCHR	-	Florida Commission on Human Relations
FEPA	-	Fair Employment Practices Agency
FS	-	Florida Statute
USFLMD	-	US District Court, Florida, Middle District
USFLND	-	US District Court, Florida, Northern District

PROCEDURAL HISTORY

I. Administrative

1. On April 10, 2019, Plaintiff sent the FCHR his employment discrimination complaint via email (please see **Exhibit A**).
2. The first attachment was EEOC Form 5.
3. The second was a document detailing his complaint. Which the FCHR received immediately; blessing it with a 2:35PM timestamp (**Exhibit B**). Also, in accordance with the workshare agreement[2/], Plaintiff's charge was dual-filed with the EEOC (FCHR 2019-019238, EEOC 15D-2019-00685).
4. The FCHR failed to make a determination within the 180-day statutory window (see §760.11(3) FS). Despite that (as Plaintiff later discovered[3/]) the FCHR still issued a notice of determination (on the 191st day).
    a. The state agency mailed Plaintiff's notice ("Phantom Notice") to an attorney in Orlando, FL. Plaintiff has never had an attorney for the instant action. Plus, Plaintiff has never lived in Orlando.
5. After some diligence (calls, emails, formal motions), Plaintiff filed charges in state court (Florida, Duval County; 16-2020-CA-3770-XXXX-MA) on June 30, 2020.

6. Out of an abundance of caution (pertaining to the 35-day window prescribed by §760.11(6) FS), Plaintiff filed a *Petition for Relief* with DOAH on July 6, 2020. That state agency relinquished jurisdiction back to the FCHR the following day. Whereby Plaintiff renewed his efforts to cut administrative ties in exchange for:
    a. an FCHR **Election of Rights** form ("ER"); and
    b. an EEOC **Right to Sue** Letter ("RTS"; EEOC Form 161).
7. Given the FEPA's track record (lost federal funding, delay, phantom notices, reluctance to relinquish jurisdiction, etc.)[4/], Plaintiff filed a *Petition for Writ of Prohibition* at 1DCA on September 11, 2020 (1D20-2658).
8. On November 25, 2020 – while that extraordinary writ was still pending – the FCHR issued an administrative dismissal of Plaintiff's charge (ie, 2019-19238). This constituted the '*final agency action*' that Plaintiff was seeking (see ¶5 *supra*).
9. Thus, pursuant to 29 CFR §1601.76, Plaintiff mailed the EEOC his request for a **Substantial Weight Review** ("SWR") on December 7, 2020. He followed up the next month; in which he learned that the EEOC was being hampered by the ongoing global pandemic (COVID19).
    a. Specifically, the agency's employees could not pick up mail because they were not in the office. This meant further delay on the SWR.

b. A phone operator advised Plaintiff to request his charge file in the meantime.

10. ~~Last Tuesday,~~ March 2, 2021, Plaintiff received those documents. Whereby he contacted his designated representative and asked for his RTS Letter. It arrived ~~today~~ (March 9, 2021).

II. Judicial

11. Running parallel to this activity was Plaintiff's federal complaint at USFLMD ("Original Complaint"). On August 12, 2020, Plaintiff sued Defendant in this Honorable Court (3:20-cv-00905-MMH-JRK). His cause was under 42 USC §1981 and §760 FS. Soon thereafter, Defendant attached/consolidated Plaintiff's state complaint (¶5).

12. On February 8, 2021, this Court ordered Plaintiff to file an amended complaint ("That Complaint"). Plaintiff obliged (2/26/21)[5/].

~~13. On March 9, 2021, Plaintiff filed the instant lawsuit (ie, This Complaint). This Complaint and That Complaint are identical in both substantive fact and intent. The only difference is that This Complaint is filed under Title VII of the Civil Rights Act of 1964 ("Title VII"; 42 USC §2000e et seq.).~~

14. Plaintiff had not [previously] been able to attach Title VII because of the aforementioned episodes with the FCHR (¶4-7).[6/]

15. It must be emphasized that Defendant was involved in all of this activity. In fact, ~~just yesterday~~ (3/8/21) Defendant filed a document in the federal case (3:20-cv-00905-MMH-JRK).

III. Legal Application

16. The RTS Letter states that Plaintiff has ninety (90) days to file suit. Pursuant to 29 CFR §1603.106 (*Computation of Time*), Plaintiff would have until June 8, 2021 to commence action. With This Complaint already in tow, Plaintiff has thus filed a timely complaint.
17. First glance of the RTS Letter, however, may lead someone to think otherwise. The date affixed to it is January 23, 2020. It also has a certified mail receipt – linked to a delivery date of January 27, 2020.
18. Further analysis, though, will show that Plaintiff never received the letter. The EEOC mailed it to an attorney in Orlando, FL. The same person that the FCHR mailed Plaintiff's Phantom Notice to (¶4a).
19. So, equitable tolling must be applied to prevent Plaintiff from falling victim to the improprieties of the government (specifically, the FCHR).

Equitable Tolling

20. Of course, Equitable Tolling is the remedy that is based on the principles of essential justice:

> "The doctrine of equitable tolling abates the harsh operation of the statute of limitations under certain circumstances in which barring a plaintiff's potentially meritorious action would be unjust."
>
> – Justice v US, *6 F. 3d 1474, 1480 (11th Cir. 1993)*

21. Appellate decisions have instituted this doctrine on the pillars of extraordinary circumstances and lack of prejudice:

> "Generally, the tolling doctrine has been applied when the plaintiff has been misled or lulled into inaction, has in some extraordinary way been prevented from asserting his rights, or has timely asserted his rights mistakenly in the wrong forum."
>
> – Machules v. Dept of Admin, *523 So. 2d 1132 (Fla. 1988)*

22. Pursuant to the US Supreme Court, EEOC filing deadlines are not jurisdictional; and non-jurisdictional matters are open for Equitable Tolling:

> "Filing a timely charge of discrimination with the EEOC is not a jurisdictional prerequisite to suit in federal court, but a requirement that, like a statute of limitations, is subject to waiver, estoppel, and equitable tolling. The structure of Title VII, the congressional policy underlying it, and the reasoning of this Court's prior cases all lead to this conclusion."
>
> – Zipes v Trans World Airlines, *Inc., 455 US 385 (1982)*

23. Importantly, Equitable Tolling can be used to address the government's conduct:

> "For instance, equitable tolling may be appropriate where a plaintiff has been "lulled into inaction by her past employer, state or federal agencies, or the courts."
>
> – Martinez v Orr, *738 F.2d 1107, 1112 (10th Cir. 1984)*

24. As outlined in Machules – and repeated many times thereafter – there are three reasons to apply Equitable Tolling:

> "[it applies] when the plaintiff has:
>
> "(1) been misled or lulled into inaction;
>
> "(2) in some extraordinary way been prevented from asserting his rights; or
>
> "(3) timely asserted his rights mistakenly in the wrong forum."
>
> – Machules v. Dept of Admin, *523 So. 2d 1132 (Fla. 1988)*

Appellant proffers reason "(2)" to justify the application of Equitable Tolling to his circumstances.

25. The FCHR's conduct was extraordinary in three ways.

26. First, the Phantom Notice was null & void; Florida's Supreme Court says so:

> *"...whenever the FCHR fails to make its determination within 180 days, even if the untimely determination is made before the filing of the lawsuit, the claimant may proceed to file a lawsuit under [§760.11(4) FS]."*
>
> – Woodham v BCBSFL*, 829 So. 2d 891 (Fla. 2002)*

But-for the FCHR's impropriety, Plaintiff would have retrieved his ER, notified the EEOC, obtained his subsequent RTS (with a non-confounding date), and attached Title VII to the Original Complaint. Thereby foregoing this memorandum ~~and This Complaint~~ altogether.

27. Second, the FCHR's continued activity (¶8) was improper because it had already lost jurisdiction.

    a. §760.11(3) FS states that The FCHR's determination must occur within the 180-day window (ie, "shall determine"). According to 4DCA, no administrative agency (including the FCHR) can contravene a Florida statute:

    > *"An administrative agency may not enlarge, modify, or contravene the provisions of a statute."*
    >
    > – DeMario v Franklin*, 648 So. 2d 210, 213-214*

    Thus, the FCHR was not permitted to evade the legal operations of §760.11(3).

b. In fact, §760.11(5) FS is more direct:

> *"The commencement of [a civil suit] shall divest the [FCHR] of jurisdiction of the complaint"*

Thus, once Plaintiff filed his complaint in state court (¶5), the agency lost all authority to act. It was improper and extraordinary for the FCHR to have done anything besides send Plaintiff his ER.

28. Third, the global pandemic created exigent circumstances. The EEOC cited an order from the US President when it explained its inability to perform Plaintiff's SWR immediately upon receipt.

    a. But-for COVID19, the EEOC would have already performed an SWR by now. Thereby yielding actionable results that would have rendered the date on the attached RTS obsolete.

    b. In other words, the potential confusion regarding the inoperable date on the RTS would not exist.

Lack of Prejudice

29. Moreover, Defendant will not be prejudiced by This Complaint. The two parties are actively involved in litigating the same cause of action.

> "Finally, the Employer, as the party relying on the time limitation, clearly was not prejudiced by the delay since the Employer obviously was on notice that petitioner intended to appeal its determination of abandonment. We conclude that equity requires relief from the twenty-day appeal period in this case"
>
> – Machules v. Dept of Admin, *523 So. 2d 1132 (Fla. 1988).*

Likewise. In the instant case, equity requires relief from any potential confusion surrounding the RTS' date (1/23/20), because the EEOC did not send it to Plaintiff until ~~today~~ (3/9/21).

CONCLUSION

WHEREFORE, Plaintiff respectfully asks this Honorable Court to consider this memorandum of law while analyzing Plaintiff's Verified Complaint (specifically, the "*Statutory Prerequisites"* section).

Dated this 9th day of March 2021.

Respectfully submitted,

/s/ Elias Makere
ELIAS MAKERE, FSA, MAAA, Plaintiff
3709 San Pablo Rd. S # 701
Jacksonville, FL 32224
P: (904) 294-0026
E: justice.actuarial@gmail.com
W: TextBookDiscrimination.com
Get ***Booked Up*** on Justice!

CERTIFICATE OF COMPLIANCE

I certify that the size and style of type used in this document is Times New Roman 14-point Font (caption) and ~~Courier New 12-point Font (contents)~~; thus complying with the font requirements of Local Rule ~~1.05(a)~~.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of March 2021, I electronically filed the foregoing with the Clerk of Courts by using its online filing page.

/s/ Elias Makere

Endnotes:

[1/] Plaintiff acknowledges that the rule comes from a different district court (Northern vs Middle). Thus, in lieu of a direct rule, he offers it mainly as persuasive authority.

[2/] 29 CFR 1626.10 ("*Agreements with State or Local Fair Employment Practices Agencies*").

[3/] The FCHR "inexplicably" mailed the late notice to an attorney in Orlando, FL. Plaintiff has never lived in that city; nor has he ever had an attorney for this action. Plaintiff discovered this errant notification in May/June 2020.

[4/] In June 2019, HUD ceased funding the FCHR, and ordered it to repay $200,000.

[5/] The amended complaint was not proofread. So, Plaintiff submitted a corrected version the next business day (≈ 8:08am 3/1/21).

[6/] On February 9, 2021, though, Plaintiff did indicate that he was "*preparing to"* attach Title VII to 'That Complaint' (see *"Plaintiff's Motion for Judicial Notice..."*)

SERVICE LIST

Kimberly J. Doud, Esquire (523771)
Heather A. Johnson, Esquire (*pro hac vice*)
Michele A. Ramos, Esquire (1008119)

E: kdoud@littler.com
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Littler Mendleson, PC
111 North Orange Avenue, Suite 1750
Orlando, FL 32801-2366

(defendant's trial lawyers)

EXHIBIT A

Plaintiff's Submission of Administrative Complaint
(pursuant to 60Y-5.001 FAC)

Email

4/10/2019

From: justice.actuarial@gmail.com
Sent: Wednesday, April 10, 2019, 8:00 AM
To: fchrinfo@fchr.myflorida.com
Subject: Complaint | Employment Discrimination | Makere v Allstate

---

Good Morning FCHR,

May you please investigate my employment discrimination complaint against Allstate Insurance Company?

Thank you,

Elias Makere, Complainant
904.294.0026 | justice.actuarial@gmail.com
3709 San Pablo Rd. S. #701
Jacksonville, FL 32224

EXHIBIT B

Plaintiff's Submission of Administrative Complaint
(pursuant to 60Y-5.001 FAC)

Certified/Stamped by State Agency (the FCHR)

4/10/2019

[first and last pages only]
[first page = officially stamped page]
[last page = acknowledgement of receipt]

Elias Makere, Complainant
3709 San Pablo Rd. S #701
Jacksonville, FL 32224

Phone: 904.294.0026
Fax:
Email: justice.actuarial@gmail.com

MAKERE
V
ALLSTATE

COMPLAINT ATTACHMENT

Employment Discrimination (Race, Sex, Retaliation)

Here is the attachment to the employment discrimination complaint.

Petitioner:	Elias Makere
Dates:	November 2013 – July 2018
Race:	Black
Sex:	Male
Retaliation:	Yes

RECEIVED
FLORIDA COMMISSION ON
HUMAN RELATIONS
2019 APR 10 PM 2:35

Williams, DarLinda

From: justice.actuarial@gmail.com
Sent: Wednesday, April 10, 2019 8:00 AM
To: FCHR Website Email
Subject: Complaint | Employment Discrimination | Makere v Allstate
Attachments: EEOC-Form-5.pdf; 0a_Complaint_001_Employment.pdf

Good Morning FCHR,

May you please investigate my employment discrimination complaint against Allstate Insurance Company?

Thank you,

Elias Makere, Complainant
904.294.0026 | justice.actuarial@gmail.com
3709 San Pablo Rd. S. #701
Jacksonville, FL 32224

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13588-AA

Appeal From
US District Court, Florida, Middle District
3:20-cv-00905-MMH-LLL
Makere v Allstate

VOLUME 01
ITEM 04
PAGES 0150 – 0187

SHORT TITLE: Order of Partial Dismissal

DATE ENTERED: 2/8/2021
DOC TYPE: District Court Order
TRIBUNAL: US District Court, Florida, Middle District
CASE NO: 3:20-cv-00905-MMH-LLL
CASE CAPTION: *Makere v Allstate*
LINK: https://ecf.flmd.uscourts.gov/
DOC NO: 40

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ELIAS MAKERE, FSA, MAA,

Plaintiff,

v. Case No. 3:20-cv-905-MMH-JRK

ALLSTATE INSURANCE COMPANY,

Defendant.

ELIAS MAKERE, FSA,

Plaintiff,

v. Case No. 3:20-cv-921-MMH-JRK

ALLSTATE INSURANCE COMPANY,

Defendant.

ELIAS MAKERE,

Plaintiff,

v. Case No. 3:20-cv-922-MMH-JRK

ALLSTATE INSURANCE COMPANY,

Defendant.

ORDER[1]

THIS CAUSE is before the Court on Defendant's Dispositive Motion to Dismiss Plaintiff's Complaint With Prejudice, and Memorandum of Law in Support Thereof (Doc. 4; Motion) filed in each of the above captioned cases on August 21, 2020. In the Motion, Defendant Allstate Insurance Company moves to dismiss the Complaint for Employment Discrimination (Doc. 1; Complaint) in its entirety pursuant to Rules 12(b)(6) and 12(b)(1), Federal Rules of Civil Procedure (Rule(s)). See Motion at 1. On October 2, 2020, Plaintiff Elias Makere, who is proceeding pro se, filed a response in opposition to the Motion. See Plaintiff's Response in Opposition to Defendant's Motion to Dismiss (Doc. 12; Response). Accordingly, this matter is ripe for review.

I. Extrinsic Evidence

As an initial matter, the Court observes that both parties attached numerous exhibits to their briefs. See Motion, Exs. A-E, G,H, J, K; Defendant's Notice of Filing Redacted Exhibits F and I in Support of Defendant's Dispositive Motion to Dismiss (ECF 4) (Doc. 6), Exs. F, I; Response, Exs. A-O; Plaintiff's Affidavit in Support of Plaintiff's Response in Opposition to Defendant's Motion to Dismiss (Doc. 13; Makere Aff.). With the exception of the Makere Affidavit,

[1] On August 31, 2020, the Court entered an Order consolidating the above-captioned cases, directing the Clerk of the Court to terminate any pending motions in the later-filed cases, 3:20-cv-921 and 3:20-cv-922, and instructing the parties to make all future filings in the lead case only, 3:20-cv-905. See Order (Doc. 7) at 2-3. Accordingly, all citations to the docket in this Order refer to the lead case, 3:20-cv-905, unless otherwise stated.

these exhibits consist of filings, decisions and other records from prior administrative and state court proceedings between Makere and Allstate. Neither party appears to object to the Court's consideration of the opposing party's exhibits, nor do either Makere or Allstate dispute the authenticity of these documents.

In general, a district court "must convert a motion to dismiss into a motion for summary judgment if it considers materials outside the complaint." See Day v. Taylor, 400 F.3d 1272, 1275-76 (11th Cir. 2005) (citing Rule 12(b), Federal Rules of Civil Procedure (Rule(s))). However, the Eleventh Circuit recognizes certain exceptions to this rule. See Horne v. Potter, 392 F. App'x 800, 802 (11th Cir. 2010). As relevant here, courts may consider properly judicially noticed documents in resolving a motion to dismiss. See id. (holding that the district court "properly took judicial notice" of documents which were "public records that were 'not subject to reasonable dispute' because they were 'capable of accurate and ready determination by resort to sources whose accuracy could not reasonably be questioned'" (quoting Fed. R. Evid. 201(b)); Fed. R. Evid. 201(d) ("The court may take judicial notice at any stage of the proceeding."). Other than the Makere Affidavit, the exhibits attached to the Motion and Response are part of the administrative and state court record and not subject to reasonable dispute. As such, the Court will take judicial notice of these documents. See Fed. R. Evid. 201(b)(2); Horne, 392 F. App'x at 802;

Miller v .Fla. Hosp. Waterman, No. 5:13-cv-249-Oc-10PRL, 2013 WL 5566063, at *3 n.2 (M.D. Fla. Oct. 8, 2013) (taking judicial notice of FCHR and EEOC records); Hawthorne v. Baptist Hosp., Inc., No. 3:08cv154/MCR/MD, 2008 WL 5076991, at *3-4 (N.D. Fla. Nov. 24, 2008).

As to the Makere Affidavit, Makere appears to have prepared this Affidavit solely for the purpose of filing it in this case and not as a part of the administrative proceedings. Thus, the Court may not take judicial notice of this document, see Fed. R. Evid. 201(b), nor can the Court discern any other basis which would allow consideration of the Makere Affidavit at this stage in the proceedings. See Day, 400 F.3d 1272, 1276 (11th Cir. 2005) (explaining that courts may consider extrinsic evidence at the motion to dismiss stage when a document is "(1) central to the plaintiff's claim and (2) undisputed"). Regardless, the Affidavit merely presents Makere's view that the effective date of his termination is August 12, 2016, not September 12, 2016, as stated in the Motion. See Makere Aff. ¶ 6; Motion at 2. However, whether Makere's termination effectively occurred on August 12th, when Makere ceased working for Allstate, or on September 12th, when Allstate stopped paying Makere, is not relevant to the issues to be decided in this Order. See Makere Aff. ¶¶ 7, 8. Thus, even if the Court were to consider the Affidavit, it would have no impact on the resolution of the Motion.

II. Background

According to the allegations of his Complaint, Makere worked for Allstate from November 18, 2013, until he was terminated on August 12, 2016. See Complaint for Employment Discrimination (Doc. 1; Complaint) ¶¶ 8, 36. Makere asserts that throughout his employment with Allstate, he endured race and sex-based discrimination and harassment from numerous co-workers and supervisors. See Complaint ¶¶ 12-32. He contends that he filed internal complaints of discrimination with Allstate and suffered retaliation as a result. Id. ¶¶ 27-32. Ultimately, after Makere failed to pass his ninth actuarial exam, a condition of his continued employment in Allstate's Actuarial Career Program (ACP), Allstate terminated him. Id. ¶¶ 33-36. Makere alleges that his termination was discriminatory as other non-black employees also failed to satisfy the requirements of the ACP and were not terminated. Id. ¶¶ 37-39.

On June 30, 2017, Makere filed a charge of discrimination with the Florida Commission on Human Rights (FCHR). Id. ¶ 43. In April of 2018, while the administrative charge was pending, Makere was hit by a car while riding his bicycle. Id. ¶ 46. Makere connects this event to Allstate because in November of 2015, an Allstate employee saw Makere on his bicycle after dark in the parking lot and allegedly cautioned him, "in an ominous tone," to "'be careful on [his] bike.'" Id. ¶¶ 46, 25. Makere interpreted this statement as a threat, which he contends "came to fruition" when he was hit by a car nearly

two and a half years later. Id. ¶¶ 25, 46. In addition, according to Makere, a person by the name of Kirk Higgins, purportedly at Allstate's direction, filed "unauthorized documents" attacking Makere in the administrative proceedings. Id. ¶¶ 45, 48. Makere also alleges that in July of 2018, Allstate somehow induced his former employer, Genworth Financial, to substantially reduce Makere's retirement benefits. Id. ¶ 49. Based on the discrimination and retaliation he allegedly endured during and after his employment with Allstate, Makere filed the Complaint in which he asserts claims for race discrimination (Count I), sex discrimination (Count II), and retaliation (Count III) pursuant to the Florida Civil Rights Act (FCRA), sections 760.01 – 760.11 of the Florida Statutes, as well as a claim for race discrimination (Count IV) pursuant to 42 U.S.C. § 1981.[2]

In the instant Motion, Allstate moves to dismiss Makere's claims in their entirety. Allstate asserts that Makere's FCRA claims are procedurally barred pursuant to Florida Statutes section 760.11(7), because the administrative review process concluded with a "no reasonable cause" finding. See Motion at 8-11. Allstate further contends that Makere's state law claims are barred under the doctrines of res judicata and collateral estoppel. Id. at 11-17.

[2] As discussed further below, Makere also filed two lawsuits in state court which, upon removal, were consolidated with this lead case. The Amended Complaints in the removed cases are identical to the Complaint in the lead case in all material respects. See Amended Complaint (Case No. 3:20-cv-921, Doc. 3); Amended Complaint (Case No. 3:20-cv-922, Doc. 3).

Likewise, Allstate maintains that Makere's § 1981 race discrimination claim is collaterally estopped as well. Id. at 17-18. In addition, to the extent Makere asserts a claim based on the events allegedly taking place in 2018, Allstate argues that Makere cannot state a valid claim for relief based on these actions as they occurred subsequent to his termination and are therefore not "tangible employment actions" actionable under the FCRA or § 1981. Id. at 19. Allstate also contends that Makere fails to allege facts plausibly connecting Allstate to the 2018 events. Id. at 19-20.

In the Response, Makere asserts that he has adequately alleged a claim for relief and points to the allegation in the Complaint that "Defendant only fired the black man who failed an actuarial exam." See Response at 11 (quoting Complaint ¶ 51). He does not respond to Allstate's contention that his allegations regarding the events of 2018 do not form the basis of a valid claim. As to Allstate's res judicata arguments, Makere contends that this doctrine does not apply because his sex discrimination claims, and the events of 2018 were not considered during the administrative review process. Id. at 16-17. Likewise, Makere contends that collateral estoppel does not apply because the instant case involves "many different issues" than those which were addressed in the administrative proceedings, most notably his sex discrimination claims, certain aspects of his race discrimination claims, and the events of 2018. Id. at 20-21.

III. Administrative History

A. First Administrative Charge

As stated above, Makere filed his first charge with the FCHR on June 30, 2017. See Motion, Ex. A (Doc. 4-1; 2017 FCHR Charge). On December 15, 2017, the FCHR issued a "No Reasonable Cause" determination, id., Ex. B, in response to which Makere promptly filed a 232-page petition for relief with the Division of Administrative Hearings (DOAH), id., Ex. C (Doc. 4-3; 2018 Petition). After substantial motion practice and an evidentiary hearing spanning four days, the Administrative Law Judge (ALJ) issued a Recommended Order on April 18, 2019. See Motion, Ex. D (Doc. 4-4; Recommended Order). In the 111-page Recommended Order, the ALJ made numerous findings of fact and conclusions of law regarding Makere's claims. The ALJ determined that many of Makere's claims were time-barred, id. ¶¶ 266-67, but ultimately concluded that regardless, Makere had failed to meet his burden of establishing race discrimination, sex discrimination, sexual harassment, hostile work environment, or retaliation. See id. ¶¶ 275, 279, 296, 301, 302, 315.

In his Response, Makere cites to evidence that during the administrative proceedings, the ALJ entered an Order on Respondent's Motion to Strike, instructing that evidence as to certain of Makere's allegations would be excluded because the incidents were not properly raised in his underlying

FCHR Charge, or were otherwise time-barred. See Response, Ex. G. Nevertheless, at the evidentiary hearing, the ALJ permitted Makere to present evidence on any matters identified in the investigative memorandum. See Recommended Order ¶¶ 46-47. The ALJ also noted in the Recommended Order that Makere spent "considerable time" at the evidentiary hearing addressing matters "that he claimed were provided to FCHR, but which were not included in the [2017 FCHR Charge], or discussed in the [investigative memorandum.]" Id. ¶ 177. Notably, the ALJ stated in the Recommended Order that "to ensure as complete a record as possible for consideration by the FCHR, findings as to as many allegations as are identifiable will be made herein." See Recommended Order ¶ 47 (emphasis added). Indeed, the ALJ set forth at length the testimony presented at the evidentiary hearing regarding the various alleged incidents of race or sex discrimination or harassment, and ultimately found that Makere had failed to present sufficient evidence to sustain his charges.

Significantly, the ALJ made ultimate factual findings that:

> the decision to remove [Makere] from the ACP was one required by the ACP Guidelines and applied equally to each employee that failed to meet the one-in-three rule [concerning the passage of actuarial exams]. The decision to not offer continued employment in a different position . . . was based on his inability to become [a Fellow of the Society of Actuaries], thus, being able to succeed [his supervisor] upon her retirement, his unwillingness to work in a collaborative manner with Allstate's employees, managers, and business partners, and his inability to complete tasks assigned.

See Recommended Order ¶ 246. As to Makere's myriad other allegations of discriminatory and harassing treatment, the ALJ concluded:

> [Makere's] statements alone do not provide the support to sustain his charge of discrimination. A review of the entire record of this proceeding reveals no corroborative evidence that many of the alleged statements and comments even occurred, much less that they were the result of racial or sexual discrimination, harassment, animus or bias, or that they were retaliation for opposing or participating in a proceeding regarding such discrimination.

See id. ¶ 247. Likewise, the ALJ determined that "[d]uring the period of his employment, [Makere] never reported to anyone at Allstate that he believed he was being subjected to racial or sexual discrimination or harassment." Id. ¶ 209.

As for his conclusions of law, the ALJ found that discrete discriminatory acts occurring prior to June 30, 2016, were time-barred, id. ¶¶ 266-67, but that whether time-barred or not, Makere had failed to present any evidence of discriminatory intent, id. ¶ 294. The ALJ also evaluated the totality of the evidence, including acts which occurred outside the statutory limitations period, in order to resolve Makere's hostile work environment claims, see id. ¶¶ 268-70, and found that Makere had failed to establish that he was subjected to a hostile work environment based on race or sex, id. ¶¶ 295-96, 302. In addition, the ALJ determined that Makere had failed to prove that he was subjected to sex discrimination, id. ¶¶ 301, and that Makere "did not meet his

burden to establish a prima facie case of discrimination by retaliation," id. ¶ 315.

On June 27, 2019, the FCHR entered a Final Order Dismissing Petition for Relief from an Unlawful Employment Practice in which it adopted the ALJ's factual and legal findings and dismissed Makere's 2017 FCHR Charge and 2018 Petition with prejudice. See Motion, Ex. E (Doc. 4-5; Final Order). As permitted under Florida law, see Fla. Stat. § 120.68, Makere appealed the FCHR's Final Order to Florida's First District Court of Appeal. The First District Court of Appeal found no basis to set aside the Final Order and issued a decision affirming it on July 13, 2020. See Motion, Ex. K.

B. Second Administrative Charge

While the 2017 FCHR Charge was still working its way through the administrative process, Makere filed a second charge of discrimination with the FCHR, which was received on April 26, 2019. See Motion, Ex. F (Doc. 6-1; 2019 FCHR Charge). In the 2019 FCHR Charge, Makere checked the boxes for discrimination based on race, color, sex, and retaliation. Id. In the narrative portion of the Charge, Makere primarily addressed his termination, although he also noted "5 Years of racial/sexual harassment," to include "Racist Dolls, Racist Characterizations," "Date Requests (Dinner-&-a-Movie)," and "Targeted discrimination." Id. In addition, he stated that Allstate retaliated against him for complaining, and that "[t]he most recent act of retaliation occurred in

July 2018." Id. He did not identify or describe the alleged July 2018 act of retaliation in the Charge. On October 18, 2019, the FCHR issued a "No Reasonable Cause" determination, finding that the "facts and claims are identical" to the 2017 FCHR Charge, and further that the claims are untimely as they are "based on events that took place in 2016." See Motion, Ex. G. On June 1, 2020, the FCHR issued an amended notice. Id., Ex. H (Doc. 4-8; Amended Notice). In the Amended Notice, the FCHR explained that the previous notice was mailed to Makere's "legal representative in a former matter," and as a result, the FCHR issued the amended determination "addressed directly to [Makere] at his mailing address on record." Id. The FCHR further stated that "[n]o other changes were made" to its October 18, 2019 determination. Id. The Amended Notice informed Makere that he had thirty-five days from the date the amended notice was signed, June 1, 2020, to file a petition seeking an administrative hearing. Id.

Makere filed his petition with the DOAH on July 6, 2020. Id., Ex. I. On July 7, 2020, the ALJ entered an Order Relinquishing Jurisdiction and Closing File in which he found that:

> There are no disputed issues of material fact for disposition that lead to any conclusion but that, applying the doctrines of res judicata, collateral estoppel, and administrative finality, the [2019 FCHR Charge] should be dismissed with prejudice. It is clear from the face of the [2019 FCHR Charge] that there are no amendments that would overcome the fact that each of the allegations contained therein have been fully litigated, and that any proposed amendment would be futile.

See Motion, Ex. J at 3. With respect to the unspecified acts of retaliation in July 2018, the ALJ stated that "there can be no dispute that the last possible discriminatory and unlawful employment practice that could have been taken by Allstate would have been the act of terminating [Makere]," which occurred in 2016. Id., Ex. J at 1. The ALJ reasoned that "[s]ince [Makere] was terminated on September 12, 2016, there could be no significant change in [Makere's] circumstances that would be cognizable pursuant to [the FCRA]. Id., Ex J at 3. As such, the ALJ relinquished jurisdiction to the FCHR "for entry of a final order dismissing" Makere's petition. Neither party submits any evidence as to whether or when that order was entered.[3]

C. New Lawsuits

On July 2, 2020, while his appeal of the 2017 FCHR Charge was still pending before the First District Court of Appeal, and shortly before he filed a petition for review of his 2019 FCHR Charge, Makere filed a lawsuit against Allstate in Florida state court. See Notice of Removal, Ex. 1 (Case No. 3:20-cv-921, Doc. 1-1). In that lawsuit, Makere asserted claims under the FCRA for race and sex discrimination, as well as retaliation premised on the same allegations described above. On July 6, 2020, the same day that he filed his

[3] Pursuant to the section 760.11(7) of the Florida Statutes, the FCHR must issue a final order by adopting, rejecting, or modifying the recommended order within ninety days. Makere initiated the instant lawsuits and Allstate filed the Motions for dismissal prior to the expiration of the ninety-day period.

petition for review of the 2019 FCHR Charge, Makere also initiated a second lawsuit in Florida state court. See Notice of Removal, Ex. A (Case No. 3:20-cv-922, Doc. 1-1). The complaint in this second lawsuit is largely, if not entirely, identical to that filed in the first lawsuit. On July 15, 2020, Makere filed an amended complaint in both cases adding a claim for race discrimination under 42 U.S.C. § 1981. See Amended Complaint (Case No. 3:20-cv-921, Doc. 3); Amended Complaint (Case No. 3:20-cv-922, Doc. 3). On August 12, 2020, Makere filed a lawsuit against Allstate in this Court, alleging claims of discrimination and retaliation under the FCRA, as well as asserting a claim of race discrimination under 42 U.S.C. § 1981. See Complaint for Employment Discrimination (Doc. 1). The allegations and claims in this third lawsuit are also identical to those of the state court lawsuits in all material respects. On August 14, 2020, Allstate removed the two state court actions to this Court where they were consolidated with the lead case before the undersigned as noted above.

IV. Florida Civil Rights Act (Counts I – III)

A. Administrative Requirements

"As a prerequisite to bringing a civil action based upon an alleged violation of the FCRA, [a] claimant is required to file a complaint with the FCHR within 365 days of the alleged violation." See Woodham v. Blue Cross & Blue Shield of Fla., Inc., 829 So. 2d 891, 894 (Fla. 2002) (citing Fla. Stat. §

760.11(1)). Significantly, under the FCRA, an aggrieved party may seek redress in court, "only after the [Florida Commission on Human Relations (FCHR)] determines there is reasonable cause to believe that unlawful discrimination occurred, or the charge remains unresolved for 180 days . . . ." See Sheridan v. State of Fla., Dep't of Health, 182 So. 3d 787, 792 (Fla. 1st Dist. Ct. App. 2016). If, within the 180-day period, the FCHR makes a determination that there is no reasonable cause, then "the claimant is limited to review before an administrative law judge under Chapter 120, Florida Statutes, and cannot file a civil action unless that review is successful." Id. (emphasis added) (citing Fla. Stat. § 760.11(7)). Indeed, "'[o]nce a complainant pursues an administrative hearing, he or she may only file suit if (1) the hearing officer finds a violation of the FCRA; and (2) the commission adopts the hearing officer's recommendation.'" See Miller, 2013 WL 5566063, at *3 (quoting Santillana v. Fla. State Court Sys., No. 6:09–cv–2095–Orl–19KRS, 2010 WL 271433, at *5 (M.D. Fla. Jan. 15, 2010)). As such, unless overturned through the administrative process, "a 'no cause' determination precludes a civil suit under the FCRA . . . ." See Woodham, 829 So. 2d at 895.

B. Discussion

In Counts I-III of the Complaint, Makere asserts claims of race and sex discrimination, as well as retaliation, under the FCRA. As described at length above, Makere availed himself of the administrative process required under

Florida law but was ultimately unsuccessful. Thus, Makere cannot pursue his FCRA claims in this or any court. See Miller, 2013 WL 5566063, at *4; Hawthorne, 2008 WL 5076991, at *5; Santillana, 2010 WL 271433, at *5-6; see also Woodham, 829 So. 2d at 895. Makere raises two arguments in an attempt to avoid this result. First, Makere maintains that the FCHR failed to consider some of his claims based on a finding that Makere did not properly raise them in his 2017 FCHR Charge, or that they were time-barred. Notably, the record shows that contrary to Makere's argument, the ALJ made substantive findings on numerous allegations that were otherwise untimely or not raised in the underlying Charge. But regardless, to the extent the FCHR rejected some of Makere's claims as untimely or outside the scope of his Charge, such a determination does not entitle Makere to pursue his FCRA claims in court. As stated above, unless the FCHR fails to issue a determination in 180 days, a claimant must successfully complete the administrative review process before he can pursue a claim in court. See Woodham, 829 So. 2d at 895-96; Santillana, 2010 WL 271433, at *5-6. Makere presents no authority to suggest that a complainant is entitled to bring a civil suit on claims that the FCHR dismissed without reaching the merits and there is nothing in the statute that supports such an interpretation.[4] Indeed, such an outcome would contravene

[4] Rather, if the agency's decision was erroneous, Makere's remedy was to seek judicial review of the agency decision pursuant to Florida's Administrative Procedures Act. See Santillana, 2010 WL 271433, at *5-6. Indeed, Makere unsuccessfully pursued such relief in

the purposes of Florida's administrative exhaustion requirement by allowing a claimant to pursue claims in court that he had not properly and timely raised before the FCHR.

Makere also contends that he can proceed with a civil suit because the FCHR failed to render a decision on his 2019 FCHR Charge within the statutory 180-day period. This argument is also unavailing. As set forth above, the FCHR issued a "No Cause" determination regarding the 2019 FCHR Charge on October 18, 2019, within the 180-day period. See Motion, Exs. F-G. When the FCHR later determined that it had sent the notice of its determination to the wrong person, it issued the Amended Notice solely for the purpose of mailing the decision to Makere. See Motion, Ex. H. In the Amended Notice, the FCHR expressly stated that it made "no other changes" to the determination. See id. The FCHR's decision to issue the Amended Notice, without substantive changes and merely to correct the mailing address, does not nullify its initial, timely "No Cause" determination and does not permit Makere to proceed with his FCRA claims in court. See Davis v. Bob Evans Farms, LLC, 649 F. App'x 869, 872-74 (11th Cir. 2016). Thus, Makere's contention that he can pursue a civil suit based on the Amended Notice is without merit. Id.

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the First District Court of Appeal with respect to his 2017 FCHR Charge. See Motion, Ex. K. Makere is not entitled to bring his FCRA claims anew in state or federal court simply because he does not like the outcome of the administrative process.

In sum, the record establishes that the FCHR rendered timely "No Cause" determinations on Makere's Charges, and Makere did not succeed in his attempts to overturn those determinations through the administrative process. As such, Makere is administratively barred under section 760.11(7) of the Florida Statutes from pursuing his FCRA claims here. The Court will grant the Motion as to Counts I-III of the Complaint and dismiss the FCRA claims in their entirety.

V. 42 U.S.C. § 1981 (Count IV)

In Count IV, Makere brings a claim titled "Race Discrimination" pursuant to 42 U.S.C. § 1981. See Complaint at 15. "Section 1981 prohibits intentional race discrimination in the making and enforcement of public and private contracts, including employment contracts." Ferrill v. Parker Grp., Inc., 168 F.3d 468, 472 (11th Cir. 1999).[5] Notably, race discrimination and hostile work

[5] Section 1981 provides:

(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and no other.

(b) Make and enforce contracts' defined

For purposes of this section, the term 'make and enforce contracts' includes the making, performance, modification, and termination of contracts, and the

environment claims under the FCRA and § 1981 are governed by the same requirements of proof and analytical framework. See Edmond v. Univ. of Miami, 441 F. App'x 721, 723 (11th Cir. 2011); Mosley v. MeriStar Mgmt. Co., LLC, 137 F. App'x 248, 251-52 & n.1 (11th Cir. 2005). However, unlike the FCRA, § 1981 does not contain any administrative exhaustion requirements. See Mathis v. Leggett & Platt, 263 F. App'x 9, 12 (11th Cir. 2008) (stating that "§ 1981 actions are not subject to the administrative exhaustion requirement").

In support of his § 1981 claim, Makere alleges that Allstate treated Makere "less favorably and unfairly compared to his non-black coworkers," and that the race-based offensive conduct was "so severe and pervasive they created a hostile work environment" for Makere. See Complaint ¶ 61. Makere also contends that Allstate's "decision to terminate" Makere was racially motivated. Id. ¶ 62. Significantly, Makere's § 1981 race discrimination and hostile work environment claims are premised on the same factual allegations pled in support of the FCRA claims. Id. ¶ 60. Because Makere's claims of race discrimination and harassment during his employment with Allstate and

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> enjoyment of all benefits, privileges, terms and conditions of the contractual relationship.
>
> (c) Protection against impairment
> The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

42 U.S.C. § 1981 (2006).

through his termination were considered and addressed in the administrative proceedings, Allstate contends that Makere's § 1981 claim is subject to dismissal under the doctrine of collateral estoppel. See Motion at 17-18. In addition, to the extent Makere brings a § 1981 claim premised on post-termination acts of retaliation, Allstate contends that the Court should dismiss such a claim because: 1) the alleged acts of retaliation occurred after Makere was terminated and therefore do not constitute employment actions, and 2) Makere fails to state a claim in that his allegations do not plausibly link Allstate to the alleged wrongdoing. See Motion at 19-20. The Court will address each argument in turn.

A. Collateral Estoppel

Pursuant to 28 U.S.C. § 1738, federal courts must "give the same preclusive effect to state court judgments that those judgments would be given in the courts of the State from which the judgments emerged." See Kremer v. Chem Constr. Corp., 456 U.S. 461, 466 (1982). As such, "federal courts consistently have applied res judicata and collateral estoppel to causes of action and issues decided by state courts." Id. at 467 n.6. "Collateral estoppel, or issue preclusion, requires that once a court decides an issue necessary to its judgment, that decision precludes relitigation of the same issue on a different cause of action between the same parties." See Barrington v. Fla. Dep't of Health, 112 F. Supp. 2d 1299, 1303 (M.D. Fla. 2000). This doctrine serves a

critical purpose in the judicial system in that it "'relieve[s] parties of the cost and vexation of multiple lawsuits, conserve[s] judicial resources, and, by preventing inconsistent decisions, encourage[s] reliance on adjudication.'" Id. (quoting Allen v. McCurry, 449 U.S. 90, 94 (1980)).

Significantly, "[a] state court's decision upholding an administrative body's findings has preclusive effect in a subsequent federal court proceeding if: (1) the courts of that state would be bound by the decision; and (2) the state proceedings that produced the decision comported with the requirements of due process." See Maniccia v. Brown, 171 F.3d 1364, 1368 (11th Cir. 1999) abrogated on other grounds by Lewis v. City of Union City, Ga., 918 F.3d 1213, 1217-18 (11th Cir. 2019); see also Carlisle v. Phenix City Bd. of Educ., 849 F.2d 1376, 1378 (11th Cir. 1988). And indeed, "Florida courts recognize the preclusive effect of state court decisions upholding administrative determinations." See Maniccia, 171 F.3d at 1368.[6] Under Florida law, collateral estoppel applies where:

> "1) the identical issues were presented in a prior proceeding; 2) there was a full and fair opportunity to litigate the issues in the prior proceeding; 3) the issues in the prior litigation were a critical and necessary part of the prior determination; 4) the parties in the two

[6] Notably, "when a state agency acts in a judicial capacity and resolves issues of fact properly before it which the parties have had an adequate opportunity to litigate, [federal courts] give the agency's fact-finding the same preclusive effect to which it would be entitled in the state courts," even if the fact-finding was not reviewed by a state court. See Quinn v. Monroe Cnty., 330 F.3d 1320, 1328-29 (11th Cir. 2003) (citing Univ. of Tenn. v. Elliott, 478 U.S. 788, 799 (1986)).

> proceedings were identical; and 5) the issues were actually litigated in the prior proceeding."

Lozman v. City of Riviera Beach, Fla., 713 F.3d 1066, 1078–79 (11th Cir. 2013) (quoting Porter v. Saddlebrook Resorts, Inc., 679 So. 2d 1212, 1214-15 (Fla. 2d Dist. Ct. App. 1996)); see also Cataldo v. St. James Epsicopal Sch., 213 F. App'x 966, 968 (11th Cir. 2007) ("For collateral estoppel to apply, Florida law requires that an identical issue be fully litigated by the same parties or their privies and that a final decision be rendered by a court of competent jurisdiction.").

Here, there is no question the identical parties were involved in the state administrative proceedings which were reviewed and affirmed by Florida's First District Court of Appeal, a court of competent jurisdiction. In addition, whether Makere was subjected to race-based discrimination, harassment or retaliation during his employment with Allstate, as well as whether his termination was discriminatory or retaliatory, were critical and necessary issues, fully litigated and resolved in the administrative process. Moreover, discrimination claims under the FCRA and § 1981 are governed by the same analytical framework and requirements of proof, such that the issues resolved in the administrative proceedings and presented in the instant lawsuit are identical. See Beem v. Ferguson, 713 F. App'x 974, 983 (11th Cir. 2018) (explaining that "[i]ssues are 'sufficiently identical' when their elements and requirements 'closely mirror' each other" (citation omitted)). Stated another

way, Makere could not succeed on his § 1981 discrimination claims in this lawsuit in a manner consistent with the decision of the FCHR, which was affirmed by the First District Court of Appeal, that Makere was not subject to race discrimination, harassment or retaliation while he worked at Allstate or in connection with his termination. See Kremer, 456 U.S. at 479-80.

Moreover, the record establishes that Makere had a full and fair opportunity to litigate these issues in the administrative process. See id. at 482-95. Following an investigation of Makere's claims by the FCHR, Makere filed a petition challenging the FCHR's findings and was afforded an evidentiary hearing before an administrative law judge. The evidentiary hearing spanned four days, during which time Makere presented the testimony of fifteen witnesses, submitted exhibits, and testified on his own behalf. See Recommended Order at 5-7. The ALJ extensively considered and addressed the issue of whether Makere was the victim of race discrimination or harassment during his time working at Allstate, and specifically whether Makere's eventual termination was motivated by race discrimination. After making extensive factual findings, the ALJ determined that Makere had failed to meet his burden to show that he was the victim of race discrimination, harassment or retaliation while he was employed at Allstate. Likewise, the ALJ found that Makere was terminated for failing to meet the ACP requirements, and not due to any improper discriminatory or retaliatory

motive. Makere submitted exceptions to the ALJ's findings which the FCHR reviewed and rejected, entering a Final Order adopting the ALJ's findings of fact as well as his conclusions of law in full and dismissing Makere's Petition. See Response, Ex. E. Makere then appealed this dismissal to Florida's First District Court of Appeal where he obtained review of the Final Order by a Florida appellate court that ultimately affirmed the findings in the Final Order. Id., Ex. K. As the Supreme Court stated in Kremer, the Court has "no hesitation in concluding that this panoply of procedures, complemented by administrative as well as judicial review, is sufficient under the Due Process Clause." See Kremer, 456 U.S. at 484; see also Travers v. Jones, 323 F.3d 1294, 1296-97 (11th Cir. 2003); Maniccia, 171 F.3d at 1368; McCrimmon v. Daimler Chrysler Corp., No. 6:05-cv-10-Orl-19DAB, 2005 WL 8159946, at *5 (M.D. Fla. Nov. 9, 2005).

In his Response, Makere asserts that he was not able to fully and fairly litigate his claims because the ALJ preliminarily excluded "30+ issues detailed in [his] FCHR/DOAH charge," preventing Makere from conducting discovery on those issues. See Response at 20-21.[7] In support, Makere cites to a May 18,

[7] Makere also asserts that he was precluded from addressing the "sex discrimination issue" during the administrative proceedings. See Response at 20-21. However, the § 1981 claim set forth in the Complaint is premised solely on race discrimination. See Complaint ¶¶ 60-62. Indeed, sex discrimination claims are not cognizable under § 1981. See Runyon v. McCrary, 427 U.S. 160, 167 (1976) (explaining that § 1981 is "in no way addressed" to categories of selectivity such as gender or religion); see also Pate v. Chilton Cnty. Bd. of Educ., 853 F. Supp. 2d 1117, 1129 (M.D. Ala. 2012) (collecting cases).

2018 order where the ALJ found that some of Makere's allegations concerned untimely acts such that evidence concerning those incidents would be excluded from the evidentiary hearing. See Response at 5, 20, Ex. G.[8] Notably, despite this finding, the ALJ actually allowed Makere to present evidence on matters well beyond those timely set forth in the FCHR Charge, including some of those matters which the earlier order had determined would be excluded. See Recommended Order at 3, 22-23 (allowing evidence on any matters identified in the investigative memorandum, including allegations beyond those described in the Complaint of Discrimination); id. at 60-61 (stating that [Makere] "spent considerable time discussing matters that he claimed were provided to FCHR, but which were not included in the Complaint of Discrimination or discussed in the [investigative memorandum]"); compare Response, Ex. G at 3 with Recommended Order at 47, 55, 64. In addition, the ALJ made factual findings

[8] The administrative order on which Makere relies to argue that he was precluded from presenting all of his evidence does not exclude as much evidence as Makere tries to suggest. Although the ALJ determined that many of Makere's allegations concerned time-barred acts, the ALJ nevertheless reasoned that Makere could present evidence concerning many of those acts as they were relevant to prove his other, timely claims. See, e.g., Response, Ex. G at 2, 5. Notably, the time-barred acts in the administrative proceedings were those that occurred prior to June 30, 2016. See Recommended Order ¶ 266. Here, Makere's § 1981 claims are subject to a four-year statute of limitations, such that it appears discrete acts of discrimination prior to July 15, 2016, would likely be subject to a statute of limitations defense in this action as well. See Jones v. R.R. Donnelley & Sons Co., 541 U.S. 369, 382-83 (2004); McCray v. Wal-Mart Stores, Inc., 377 F. App'x 921, 924 (11th Cir. 2010); see also Amended Complaint (Case Nos. 3:20-cv-921 & 3:20-cv-922) (raising a § 1981 race discrimination case in state court as of July 15, 2020).

"as to as many allegations as are identifiable" so as "to ensure as complete a record as possible for consideration by the FCHR . . . ." See id. at 23.

Significantly, Makere does not identify any specific issue, relevant to this case, that he did not have an opportunity to present in the administrative proceedings, nor does he explain what discovery he was unable to obtain in those proceedings. Also, the state appellate court found that Makere failed to establish any "material error in procedure" that may have impaired the "fairness of the proceedings," and concluded that the administrative proceedings "comported with all due process set out" by the relevant Florida statutes. See Motion, Ex. K at 2. These determinations by the Florida appellate court are entitled to preclusive effect. See Barrington, 112 F. Supp. 2d at 1308. Thus, regardless of the preliminary adverse evidentiary ruling, the record as whole establishes that after a four-day evidentiary hearing, followed by additional administrative review, and then judicial review in the state appellate court, Makere had a full and fair opportunity to litigate his race discrimination claims against Allstate. See Andela v. Univ. of Miami, 692 F. Supp. 2d 1356, 1372-74 (S.D. Fla. 2010) ("[W]here a plaintiff has received an administrative hearing that was adversarial in nature, then receives additional layers of administrative review, and finally, is afforded an opportunity for judicial review, there is no basis to conclude that the state proceedings failed to comport with due process."); see also Sadler v. Franklin Cnty. Sch. Dist., No.

3:10-CV-26 CDL, 2011 WL 3347864, at *8 (M.D. Ga. Aug. 3, 2011); Barrington, 112 F. Supp. 2d at 1308.

Because Makere's § 1981 race discrimination claim in this case presents the same issues that were fully litigated between these parties, subject to a final decision by a Florida state court of competent jurisdiction, and necessary to that decision, the Court finds that this claim is barred by collateral estoppel. See Maniccia, 171 F.3d at 1368; Cataldo, 213 F. App'x at 968-69.[9] Accordingly, to the extent Makere's § 1981 claim is premised on his termination, or alleged acts of discrimination, harassment or retaliation that occurred while he was employed at Allstate, it is due to be dismissed.

[9] As noted below, Makere does not specifically raise a § 1981 retaliation claim in his Complaint. Regardless, to the extent Makere asserts a § 1981 retaliation claim premised on alleged acts of retaliation prior to and including his termination from Allstate, such claims are also collaterally estopped. The ALJ made numerous factual findings as to the issue of whether Makere was retaliated against during his employment and found that Makere failed to "meet his burden to establish a prima facie case of discrimination by retaliation." See Recommended Order ¶ 315. The FCHR adopted those findings in full, see Motion, Ex. E, and that decision was affirmed by Florida's First District Court of Appeal, id., Ex. K. Notably, the ALJ determined that "[t]he evidence firmly establishes that [Makere] never made any complaint to anyone at Allstate regarding the allegedly discriminatory and harassing conduct that he claims pervaded the workplace." See Recommended Order ¶ 271; see also id. ¶¶ 209-211 ("During the period of his employment, [Makere] never reported to anyone at Allstate that he believed he was being subjected to racial or sexual discrimination or harassment."). In the Complaint, Makere identifies three instances when he purportedly reported race discrimination or harassment. See Complaint ¶¶ 27, 29, 31. The ALJ heard evidence regarding all three of these instances and found as to each one that Makere had failed to establish that he actually reported or complained of race discrimination, bias or harassment on these occasions. See Recommended Order ¶¶ 53, 89, 190, 308. As to the alleged acts of post-termination retaliation in 2018, the Court will address those claims below.

B. Failure to State a Claim

The Court next considers Makere's allegations regarding purportedly retaliatory events that occurred in 2018, well after Allstate terminated Makere's employment, but while the administrative process was pending. See Complaint ¶¶ 43-49. Although Makere does not specifically allege a § 1981 claim premised on retaliation in the Complaint, see Complaint ¶¶ 60-62, the Court must broadly construe the pleadings of a pro se plaintiff such as Makere and therefore will consider whether Makere's allegations are sufficient to state a claim of post-termination retaliation under 42 U.S.C. § 1981. See Keeler v. Fla. Dep't of Health, 324 F. App'x 850, 858-59 (11th Cir. 2009).[10]

a. Standard of Review

In ruling on a motion to dismiss for failure to state a claim, the Court must accept the factual allegations set forth in the complaint as true. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Swierkiewicz v. Sorema N.A., 534

[10] Although unclear, Allstate does not appear to contend that Makere's retaliation claims arising out of the 2018 events are collaterally estopped. See Motion at 8 n.3, 17-20. Regardless, the administrative records before the Court reflect that the issue of whether Allstate engaged in retaliatory conduct against Makere in 2018 was not addressed in the administrative proceedings. Although Makere made a vague reference to these events in his 2019 FCHR Charge, the FCHR did not address the events of 2018 as part of its no reasonable cause determination. See Amended Notice. Following Makere's petition for review, the ALJ did note that Makere included allegations of unspecified acts in July 2018, but appears to have found that any claim based on those allegations was not cognizable under the FCRA because the acts occurred after Makere's termination. See id., Ex. J at 1-3. However, as discussed below, post-termination acts of retaliation can give rise to a claim under § 1981. Because the issue of whether Allstate retaliated against Makere in 2018 was not actually litigated in the administrative proceedings, collateral estoppel does not bar Makere's § 1981 retaliation claim based on this conduct.

U.S. 506, 508 n.1 (2002); see also Lotierzo v. Woman's World Med. Ctr., Inc., 278 F.3d 1180, 1182 (11th Cir. 2002). In addition, all reasonable inferences should be drawn in favor of the plaintiff. See Randall v. Scott, 610 F.3d 701, 705 (11th Cir. 2010). Nonetheless, the plaintiff must still meet some minimal pleading requirements. Jackson v. Bellsouth Telecomm., 372 F.3d 1250, 1262-63 (11th Cir. 2004) (citations omitted). Indeed, while "[s]pecific facts are not necessary[,]" the complaint should "'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Erickson v. Pardus, 551 U.S. 89, 93 (2007) (per curiam) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Further, the plaintiff must allege "enough facts to state a claim that is plausible on its face." Twombly, 550 U.S. at 570. "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678 (citing Twombly, 550 U.S. at 556).

A "plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do[.]" Twombly, 550 U.S. at 555 (internal quotations omitted); see also Jackson, 372 F.3d at 1262 (explaining that "conclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal") (internal citation and quotations omitted). Indeed, "the tenet that a court must accept as true all of

the allegations contained in a complaint is inapplicable to legal conclusions[,]" which simply "are not entitled to [an] assumption of truth." See Iqbal, 556 U.S. at 678, 680. Thus, in ruling on a motion to dismiss, the Court must determine whether the complaint contains "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face[.]'" Id. at 678 (quoting Twombly, 550 U.S. at 570).

Determining whether a complaint states a plausible claim for relief is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." Iqbal, 556 U.S. at 679. Moreover, when the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not "show[n]"—"that the pleader is entitled to relief." Id. And, while "[p]ro se pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed," Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998), "'this leniency does not give the court a license to serve as de facto counsel for a party or to rewrite an otherwise deficient pleading in order to sustain an action.'" Alford v. Consol. Gov't of Columbus, Ga., 438 F. App'x 837, 839 (11th Cir. 2011)[11] (quoting GJR Invs., Inc. v. Cnty. of Escambia,

[11] "Although an unpublished opinion is not binding. . ., it is persuasive authority." United States v. Futrell, 209 F.3d 1286, 1289 (11th Cir. 2000) (per curiam); see generally Fed. R. App. P. 32.1; 11th Cir. R. 36-2 ("Unpublished opinions are not considered binding precedent, but they may be cited as persuasive authority.").

Fla., 132 F.3d 1359, 1369 (11th Cir. 1998) (internal citation omitted), overruled in part on other grounds as recognized in Randall, 610 F.3d at 706); see also Campbell v. Air Jamaica Ltd., 760 F.3d 1165, 1168-69 (11th Cir. 2014).

b. Discussion

As with discrimination, retaliation claims under § 1981 are analyzed under the same framework as Title VII. See Edmond, 441 F. App'x at 723. To establish a retaliation claim under either statute, "a plaintiff must prove that he engaged in statutorily protected activity, he suffered a materially adverse action, and there was some causal relation between the two events." Goldsmith v. Bagby Elevator Co., 513 F.3d 1261, 1277 (11th Cir. 2008). Significantly, "[t]he scope of 'adverse employment actions' is broader in the anti-retaliation context than in the anti-discrimination context." Saunders v. Emory Healthcare, Inc., 360 F. App'x 110, 115 (11th Cir. 2010). In the retaliation context, a plaintiff is not required to show "an ultimate employment decision or substantial employment action to establish an adverse action," rather an adverse employment action is one that "might dissuade a reasonable worker from making or supporting a charge of discrimination." See id. Also of significance, in Burlington Northern & Santa Fe Railroad Company v. White, the Supreme Court recognized that "[a]n employer can effectively retaliate against an employee by taking actions not directly related to his employment or by causing him harm outside the workplace." 548 U.S. 53, 64 (2006). Thus,

a law limited to only employment-related actions "would not deter the many forms that effective retaliation can take . . . ." Id.; see also Robinson v. Shell Oil Co., 519 U.S. 337, 345-46 (1997) (finding that Title VII's antiretaliation provision applies to acts of retaliation against former employees and finding persuasive the EEOC's argument that to hold otherwise would "undermine the effectiveness of Title VII by allowing the threat of postemployment retaliation to deter victims of discrimination from complaining to the EEOC"). Based on this authority, to the extent Allstate argues that Makere's retaliation claims premised on the alleged 2018 events are due to be dismissed merely because those events allegedly occurred after he was terminated, this argument is unavailing. See Blair v. Morris Brown Coll., No. 1:04-CV-1156-WBH, 2006 WL 8431375, at *16 (N.D. Ga. July 28, 2006) ("[T]he fact that Plaintiff was no longer employed by Defendant when the actions at issue occurred does not preclude him from asserting a retaliation claim against Defendants. A former employee may bring an action for post-employment retaliation.") adopted by 2006 WL 8431446, at *1 (N.D. Ga. Sept. 25, 2006); see also Abdullahi v. Prada USA Corp., 520 F.3d 710, 713 (7th Cir. 2008).

The Court next considers whether Makere has alleged a plausible claim for relief based on the post-termination events. In the Complaint, Makere alleges three different post-termination purported acts of retaliation. First, Makere contends that Kirk Higgins, an individual he contacted during the

administrative process for purposes of discovery, "attack[ed]" Makere by filing "documents aimed at embarrassing" Makere, and "calling local police departments to try to dig up dirt" on Makere. See Complaint ¶ 45. Makere alleges that "Higgins explicitly stated that his actions were motivated by (i) his relationship with [Allstate]; and (ii) [Makere's] demographics." Id. According to Makere, Allstate "encouraged Mr. Higgins to file unauthorized documents against [Makere]" and "instruct[ed] him on what to say." Id. ¶ 48. Next, Makere alleges that in April of 2018, he was hit by a car while riding his bicycle. Id. ¶ 46. He connects this incident to Allstate because two years earlier an Allstate employee had warned Makere to "be careful" on his bicycle. Id. ¶¶ 46, 25. Last, Makere maintains that in July 2018, his former employer substantially reduced his retirement benefits. Id. ¶ 49. Makere contends that Allstate was behind this action because his former employer notified him at a Florida address that he had never provided to that employer. Id.

Upon careful consideration, the Court finds that these allegations fail to give rise to a plausible inference that Allstate engaged in post-termination retaliation. Even accepting as true that an Allstate employee had warned Makere to be careful riding his bicycle, this comment from November 2015, nearly two and a half years prior to the car accident and long before Makere had complained of discrimination, is simply insufficient to plausibly connect

Allstate to the April 2018 collision.[12] Significantly, Makere does not allege who was driving the car, much less any reason to believe that this person was acting at the behest of Allstate. See Springs v. U.S. Dep't of Treasury, 567 F. App'x 438, 445 (6th Cir. 2014) (finding bald allegation that plaintiff's former employer conspired with the FBI to harass her in retaliation for filing a civil rights claim was insufficient to plausibly state a claim for relief). Likewise, the mere fact that Makere's former employer was able to ascertain Makere's Florida address is insufficient to raise even the possibility that Allstate was responsible for that employer's decision to reduce Makere's retirement benefits, much less plausibly allege such a connection.

While Makere goes somewhat further in attempting to connect Allstate to the purported "attacks" from Kirk Higgins, he fails to allege facts suggesting who Higgins is, the nature of his "relationship" with Allstate, or what Allstate's purported "encourage[ment]" or "instruct[ion]" entailed. See Complaint ¶¶ 45, 48. While the allegations presented may render it conceivable that Allstate played some role in Higgins' actions, more factual content is necessary to "'nudg[e]" this claim "'across the line from conceivable to plausible.'" See Iqbal, 556 U.S. at 683 (quoting Twombly, 550 U.S. at 570). Moreover, to state a claim for retaliation, a plaintiff must allege acts of retaliation that are "material and

[12] Makere also asserts that he received death threats and "supplemental taunts," see Complaint ¶ 47, but does not actually allege that Allstate was behind these threats, much less present allegations of fact plausibly connecting Allstate to the threats and taunts.

significant and not trivial." See Burgos-Stefanelli v. Sec'y, U.S. Dep't of Homeland Sec., 410 F. App'x 243, 246 (11th Cir. 2011); see also Entrekin v. City of Panama City, Fla., 376 F. App'x 987, 995-96 (11th Cir. 2010) ("[T]o sustain a . . . retaliation claim, an employee must show that 'a reasonable employee would have found the challenged action materially adverse,' such that the action would 'dissuade[] a reasonable worker from making or supporting a charge of discrimination.'" (quoting Burlington, 548 U.S. at 68)). Indeed, the law protects an individual "not from all retaliation, but from retaliation that produces an injury or harm." See Burlington, 548 U.S. at 67. While it is possible that the filing of "embarrassing" or "unauthorized" documents and an attempt to "dig up dirt" could constitute materially adverse actions, Makere's allegations are simply too vague to support such an inference. Accordingly, the Court finds that even broadly construing Makere's § 1981 claim to include a theory of post-termination retaliation, Makere has failed to allege sufficient facts to plausibly state a claim for relief on this basis.

The Court emphasizes, as the Supreme Court stated in Iqbal, that it does "not reject these bald allegations on the ground that they are unrealistic or nonsensical." See Iqbal, 556 U.S. at 681. Rather, "[i]t is the conclusory nature of [Makere's] allegations, rather than their extravagantly fanciful nature, that disentitles them to the presumption of truth." Id. Thus, while the Court expresses some skepticism that Makere can in good faith allege facts plausibly

connecting these events to Allstate, because Makere is proceeding pro se and has not previously amended his Complaint, the Court will provide Makere with the opportunity to file an amended complaint solely as to his post-termination retaliation claims under 42 U.S.C. § 1981.[13] See Bank v. Pitt, 928 F.2d 1108, 1112 (11th Cir. 1991) ("Where a more carefully drafted complaint might state a claim, a plaintiff must be given at least one chance to amend the complaint before the district court dismisses the action with prejudice.") overruled in part by Wagner v. Daewoo Heavy Indus. Am. Corp., 314 F.3d 541, 542 & n.1 (11th Cir. 2002) (overruling Bank with regard to counseled plaintiffs, but expressly declining to address pro se parties). Accordingly, it is

ORDERED:

1. Defendant's Dispositive Motion to Dismiss Plaintiff's Complaint With Prejudice, and Memorandum of Law in Support Thereof is **GRANTED in part, and DENIED in part**.

---

[13] Makere is cautioned that the requirements of Rule 11, Federal Rules of Civil Procedure (Rule(s)) are applicable to pro se litigants as well as attorneys. See Rule 11(b); Patterson v. Aiken, 841 F.2d 386, 387 (11th Cir. 1988). Rule 11 authorizes the imposition of sanctions on a litigant if he files a pleading, written motion, or other paper for "any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation." See Rule 11(b)(1), (c)(1). In addition, any factual contentions Makere presents to the Court must, to the best of his knowledge, information, and belief, have or be likely to have, evidentiary support. See Rule 11(b)(3). Makere should carefully consider whether his allegations comply with the requirements of Rule 11 when preparing his amended complaint. See Patterson, 841 F.2d at 387 ("[P]ro se filings do not serve as an 'impenetrable shield, for one acting pro se has no license to harass others, clog the judicial machinery with meritless litigation, and abuse already overloaded court dockets.'" (quoting Farguson v. MBank Houston, N.A., 808 F.2d 358, 359 (5th Cir. 1986))).

A. The Motion is **DENIED** to the extent Makere's claim of post-termination retaliation pursuant to 42 U.S.C. § 1981 is **dismissed without prejudice**.

B. Otherwise, the Motion is **GRANTED** and Makere's claims are **DISMISSED**.

2. Makere shall have up to and including **February 26, 2021**, to file an amended complaint setting forth his post-termination retaliation claim under 42 U.S.C. § 1981. Failure to comply with this Order may result in dismissal of this case in its entirety without further notice.

3. Discovery in this case will remain **STAYED** until such time as Makere presents a viable amended complaint.

DONE AND ORDERED in Jacksonville, Florida this 8th day of February, 2021.

Marcia Morales Howard
MARCIA MORALES HOWARD
United States District Judge

lc11

Copies to:

Counsel of Record
Pro Se Party

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13588-AA

Appeal From
US District Court, Florida, Middle District
3:20-cv-00905-MMH-LLL
Makere v Allstate

VOLUME	01
ITEM	05
PAGES	0188 – 0212

SHORT TITLE:	[Appellant]'s Objections to Order of Partial Dismissal
DATE ENTERED:	2/22/2021
DOC TYPE:	Party Document
TRIBUNAL:	US District Court, Florida, Middle District
CASE NO:	3:20-cv-00905-MMH-LLL
CASE CAPTION:	*Makere v Allstate*
LINK:	https://ecf.flmd.uscourts.gov/
DOC NO:	44

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

ELIAS MAKERE, FSA, MAAA	)	Case No (LT)
Plaintiff	)	**3:20-cv-00905-MMH-JRK**
	)	
v.	)	
	)	
ALLSTATE INSURANCE COMPANY,	)	
Defendant	)	

PLAINTIFF'S OBJECTIONS TO THIS HONORABLE COURT'S PARTIAL DISMISSAL ORDER

Plaintiff, ELIAS MAKERE, on this 22nd day of February 2021, respectfully objects to fundamental parts of this Honorable Court's recent order titled "*Order Granting in Part and Denying in Part Defendant's Dispositive Motion to Dismiss...*" (hereinafter "That Order"). Plaintiff proffers the following in good faith, and only on the grounds permitted by Rule 46 Fed. R. Civ. P..

Key Points:

A.) Grounds — Mistake, Excusable Omission

B.) Points — Charge Date, Seminal Case (*McDonnel Douglas v Green*)

C.) Compliance — Plaintiff will still comply with That Order[1/]

D.) Prerequisite — Plaintiff believes objection is a prerequisite to appeal

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Background: This Court dismissed parts of Plaintiff's complaint
Problem: The dismissed parts were based on important errors
Request: This Court takes these errors into consideration

Rule 46 | Fed. R. Civ. P. | Objecting to a Ruling or Order
"When the ruling or order is requested or made, a party need only state the action that it wants the court to take or objects to, along with the grounds for the request or objection."

Rule 60 | Fed. R. civ. P. | Relief from a Judgment or Order
"(a) CORRECTIONS BASED ON CLERICAL MISTAKES; OVERSIGHTS AND OMISSIONS. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice."

Rule 72(b)(2) | Fed. R. Civ. P. | Magistrate Judges: Pretrial Order
"(2) Objections. Within 14 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations."

Rule 3-1 | 11th Cir. R. | Failure to Object...[2/]
"A party failing to object... waives the right to challenge on appeal the district court's order..."

Precedence

- 2:14-cv-00437-SPC-NPM - USFLMD (12/10/20)
- 2:18-cv-00781-SPC-MRM - USFLMD (9/18/20)
- 2:19-cv-00054-SPC-NPM - USFLMD (9/29/20)
- 8:16-cv-02899-CEH-AAS - USFLMD (11/25/20)
- 6:18-cv-01823-GAP-LRH - USFLMD (2/10/21)

USFLMD recently sustained written objections

Abbreviations

FAC - Florida Administrative Code

FCHR - Florida Commission on Human Relations

USFLMD - US District Court, Florida, Middle District

INTRODUCTION

I. Preface

1. Plaintiff will not re-argue prior points from *Plaintiff's Response in Opposition to Defendant's Motion to Dismiss* ("That Response").
2. Rather, Plaintiff's objections will merely point out (i) that That Order had a fundamental error; (ii) that That Order ran contrary to the law of the land; and (iii) the importance of consideration.

II. Immediate Procedural History

3. On August 12, 2020, Plaintiff initiated this lawsuit against Defendant.
4. Nine days later, Defendant moved for dismissal.
5. On October 2, 2020, Plaintiff filed a response thereto.
6. On February 8, 2021, this Honorable Court entered That Order.

III. Timing

7. Pursuant to Rule 46 Fed. R. Civ. P., Plaintiff was allowed fourteen (14) days to file objections (also see Rules 60(a) and 72(b)(2)).
8. Based on the time calculation from Rule 6 Fed. R. Civ. P., the fourteen-day window will close on Tuesday, February 23, 2021 (11:59:59 pm EST). Thus, these objections are timely.
9. Furthermore, pursuant to Rule 4(a)(1)(A) Fed. R. App. P., Plaintiff has 30 days (ie, until March 11, 2021) to file a notice of appeal.
    a. Please also see Rule 26(a)(1) Fed. R. App. P. (*computing time*).
10. Thus, as an added note, Plaintiff is objecting to preserve his right to a potential appeal (also see Rule 3-1 11th Cir. R.)[3/].

OBJECTIONS

IV. First Objection: Fundamental Error (Filing Date)

11. That Order dismissed three of Plaintiff's Counts because of administrative timeliness (highlights added):

> *"In sum, the record establishes that the [State Agency] rendered timely "No Cause" determinations on [Plaintiff]'s Charges... As such, [Plaintiff] is administratively barred under section 760.11(7) of the Florida Statutes from pursuing his [state] claims here. The Court will grant the Motion as to Counts I-III of the Complaint and dismiss the [state] claims in their entirety."*
>
> - Page 18, 'That Order'

12. This decision was based on That Order's prior determination that the state agency (ie, the FCHR) rendered a decision within the 180-day statutory window (highlights added):

> *"As set forth above, the FCHR issued a "No Cause" determination regarding the 2019 FCHR Charge on October 18, 2019, within the 180-day period."*
>
> - Page 17, 'That Order'

13. That 180-day calculation was based on a starting date of April 26, 2019:

> *"[Plaintiff] filed a second charge of discrimination with the [state agency], which was received on April 26, 2019"*
>
> - Page 11, 'That Order'

14. The problem here is that the starting date (ie, 4/26/19) was wrong.

15. Plaintiff filed his underlying charge on April 10, 2019. Importantly, the state agency received it that same day (April 10, 2019).
    a. Please see **Exhibit A**.
    b. Also, please see *Plaintiff's Motion for Judicial Notice of Plaintiff's Full Administrative Complaint* (Dated 4/10/19) ("That Request") (filed on February 9, 2021).

Omission/Excusable Oversight

16. Plaintiff contends that That Order's 'fundamental error' occurred because of excusable oversight/omission. The underlying government record (ie, the contents of That Request) was not on the docket prior to entry of That Order.
17. Plaintiff, moving *pro se*, had not placed it on the record beforehand because he was acting in accordance with Rule 8 Fed. R. Civ. P. Which pertinently states that complaints should contain "short and plain statement[s]". Plaintiff's Full Administrative Complaint – which carried an **official timestamp** of 2:35PM on **April 10, 2019** – was voluminous and "meticulously detailed"[4/].
18. Plaintiff was especially cautious given the tribulations that took place earlier. As described in That Response, the state agency attacked Plaintiff's cause of action because he went into great detail. Thereafter unlawfully overstepping its jurisdiction by striking Plaintiff's sex discrimination charge. Doing so – perplexingly enough – by castigating Plaintiff for going into too much detail.
19. This illogic and injustice has manifested itself into the instant case; and hereby segues this document into the next objection.

V. Second Objection: Due Process Precedent (Sex Discrimination Charge)

20. Plaintiff will keep this objection brief.

21. That Response maintained that the state agency violated Plaintiff's due process rights by excluding the sex discrimination charge from his suit.

22. That Order asserted that Plaintiff's due process rights were not violated because the hearing officer – despite deliberately removing Plaintiff's sex discrimination charge – still heard testimony on Plaintiff's sex discrimination charge (highlights added):

> *"Notably, the record shows that contrary to Makere's argument, the [state hearing officer] made substantive findings on numerous allegations that were otherwise untimely or not raised in the underlying Charge."*
>
> - Page 16, 'That Order'

23. The United States Supreme Court was faced with an identical assertion in The Seminal Case of McDonnel Douglas Corp. v Green, 411 US 792 (8th Cir. 1973) ("The Seminal Case").

24. It stated, in clear terms, that making findings of fact after excluding a discrimination charge constitutes a due process violation:

> *"[Employer] argues, as it did below, that [employee] sustained no prejudice from the trial court's erroneous ruling, because, in fact, the issue of racial discrimination in the refusal to reemploy "was tried thoroughly" in a trial lasting four days, with "at least 80%" of the questions relating to the issue of "race."*
>
> - *McDonnell Douglas Corp. v Green, 411 US 792 (1973)*
>
> *"We cannot agree that the dismissal of [employee's race] claim was harmless error "*
>
> *"..."*

> *"[Employee] should have been accorded the right to prepare his case and plan the strategy of trial with the knowledge that the [race] cause of action was properly before the [Lower Tribunal]. Accordingly, we remand the case for trial of [employee]'s claim of racial discrimination consistent with the views set forth below."*
>
> *- McDonnell Douglas Corp. v Green, 411 US 792 (1973)*

25. Plaintiff merely points out this crucial pillar of controlling case law for this Honorable Court's consideration (please see **Exhibit B**).

VI. Preserved Objection: Omission

26. Plus, for the sake of preserving appellate review, Plaintiff reasserts that it was clear error for That Order to claim that the state agency ruled on Plaintiff's sex discrimination charge when all pertinent orders explicitly excluded it (the Final Order, the Recommended Order).

VII. Importance

27. Plaintiff contends that a correction of the filing date (see Section IV, *supra*) is important because it will:

    a. Change the calculation of the state agency's 180-day window;

Incorrect Calculation[5/]:	175 days
Correct Calculation[5/]:	191 days

    b. Change this Honorable Court's conclusion regarding the timeliness of the state agency's determination; and

    c. Likely alter this Honorable Court's overall decision.

Please also accord Rule 60Y-5.001(5)&(6) FAC; which states that the state agency is deemed to be in **official receipt** of a discrimination complaint on the date the signed complaint is *actually received*.

28. Secondly, Plaintiff contends that the ruling from The Seminal Case is important because it will show that That Order ran *contrary to the law*.

VIII. Legal Standard of Review

29. Pursuant to Rule 72(a) Fed. R. Civ. P., a district court "*[must] modify or set aside any part of the order that is clearly erroneous or is contrary to law*".

30. In Holton v City of Thomasville, 425 F. 3d 1325 (11th Cir. 2005), the Eleventh Circuit Court of Appeals defined "clearly erroneous":

> "*[A] finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.*"

31. Moreover, this Court – in Malibu Media v Doe, 923 F. Supp. 2d (MD Fla. 2013) - defined the phrase "contrary to law":

> *An order "is contrary to the law when it fails to apply or misapplies relevant statutes, case law, or rules of procedure."*

32. Plaintiff contends that the 'fundamental error' in That Order's 180-day window calculation can be confirmed with *definite & firm conviction*. Thereby rendering it clearly erroneous.

33. Plaintiff also contends that the ruling from The Seminal Case renders That Order's assertions (about the unceremonious insertion of sex discrimination findings) as being *contrary to the law*. Especially since The Seminal Case came from the US Supreme Court itself (ie, the 'highest court of the land').

34. Thus, these two objections pin *"clear error"* and *"manifest injustice" to* That Order. Two elements which – according to this Honorable Court – justify "*reconsideration of [a court order]*" (Sussman v Salem, 153 FRD 689, 694 (MD Fla. 1994)).

CONCLUSION

WHEREFORE, Plaintiff kindly and respectfully asks this Honorable Court to take Plaintiff's objections into consideration. Plaintiff also asks this Honorable Court to permit oral argument on the topic.

Dated this 22nd day of February 2021.

Respectfully submitted,

/s/ Elias Makere
ELIAS MAKERE, FSA, MAAA, Plaintiff
3709 San Pablo Rd. S # 701
Jacksonville, FL 32224
P: (904) 294-0026
E: justice.actuarial@gmail.com
W: TextBookDiscrimination.com
Get ***Booked Up*** on Justice!

CERTIFICATE OF COMPLIANCE

I certify that the size and style of type used in this document is Times New Roman 14-point Font (caption) and Courier New 12-point Font (contents); thus complying with the font requirements of Local Rule 1.05(a).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of February 2021, I electronically filed the foregoing with the Clerk of Courts by using its online filing page. Which will send a notice of filing to the attached service list.

/s/ Elias Makere

Endnotes:

[1/] Plaintiff will submit his Amended Complaint on-or-before the due date (Fri. 2/26/21)

[2/] Plaintiff shortened the quote for relevance. He does recognize that it pertains to magistrate decisions. However, in lieu of federal appellate experience (Plaintiff is *pro se*), Plaintiff has included it.

[3/] please see endnote 2's second sentence. Plaintiff – moving pro se – has doubts about the need to file objections to a district judge's order. He does so, though, with respect and caution.

[4/] "meticulously detailed" is how Defendant's counsel described it during the administrative phase (≈ Spring 2018)

[5/]

Incorrect Calculation:
175 = 10/18/19 - 4/26/19

Correct Calculation:
191 = 10/18/19 – 4/10/19

Where:

- "10/18/19" is the state agency's notification date,
- "4/26/19" is the incorrect starting date,
- "4/10/19" is the correct starting date

SERVICE LIST

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Littler Mendleson, PC
111 North Orange Avenue, Suite 1750
Orlando, FL 32801-2366

(defendant's trial lawyers)

EXHIBIT A

Plaintiff's "Full Administrative Complaint"

Certified/Stamped by State Agency (the FCHR)

4/10/2019

[first and last pages only]
[first page = officially stamped page]
[last page = acknowledgement of receipt]

Elias Makere, Complainant
3709 San Pablo Rd. S #701
Jacksonville, FL 32224

Phone: 904.294.0026
Fax:
Email: justice.actuarial@gmail.com

MAKERE
V
ALLSTATE

COMPLAINT ATTACHMENT

Employment Discrimination (Race, Sex, Retaliation)

Here is the attachment to the employment discrimination complaint.

Petitioner:	Elias Makere
Dates:	November 2013 – July 2018
Race:	Black
Sex:	Male
Retaliation:	Yes

RECEIVED
FLORIDA COMMISSION ON
HUMAN RELATIONS
2019 APR 10 PM 2:35

Williams, DarLinda

From: justice.actuarial@gmail.com
Sent: Wednesday, April 10, 2019 8:00 AM
To: FCHR Website Email
Subject: Complaint | Employment Discrimination | Makere v Allstate
Attachments: EEOC-Form-5.pdf; 0a_Complaint_001_Employment.pdf

Good Morning FCHR,

May you please investigate my employment discrimination complaint against Allstate Insurance Company?

Thank you,

Elias Makere, Complainant
904.294.0026 | justice.actuarial@gmail.com
3709 San Pablo Rd. S. #701
Jacksonville, FL 32224

EXHIBIT B

'The Seminal Case'

McDonnell Douglas Corp. v Green, 411 US 792 (1973)

May 14, 1973

[downloaded from CaseText.com]

No. 72-490
U.S.

McDonnell Douglas Corp. v. Green

411 U.S. 792 (1973) · 93 S. Ct. 1817
Decided May 14, 1973

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 72-490.

Argued March 28, 1973 Decided May 14, 1973

Respondent, a black civil rights activist, engaged in disruptive and illegal activity against petitioner as part of his protest that his discharge as an employee of petitioner's and the firm's general hiring practices were racially motivated. When petitioner, who subsequently advertised for qualified personnel, rejected respondent's re-employment application on the ground of the illegal conduct, respondent filed a complaint with the Equal Employment Opportunity Commission (EEOC) charging violation of Title VII of the Civil Rights Act of 1964. The EEOC found that there was reasonable cause to believe that petitioner's rejection of respondent violated § 704(a) of the Act, which forbids discrimination against applicants or employees for attempting to protest or correct allegedly discriminatory employment conditions, but made no finding on respondent's allegation that petitioner had also violated § 703(a)(1), which prohibits discrimination in any employment decision. Following unsuccessful EEOC conciliation efforts, respondent brought suit in the District Court, which ruled that respondent's illegal activity was not protected by § 704(a) and dismissed the § 703(a)(1) claim because the EEOC had made no finding with respect thereto. The Court of Appeals affirmed the § 704(a) ruling, but reversed with respect to § 703(a)(1), holding that an EEOC determination of reasonable cause was not a jurisdictional prerequisite to claiming a violation of that provision in federal court. *Held:*

1. A complaint's right to bring suit under the Civil Rights Act of 1964 is not confined to charges as to which the EEOC has made a reasonable-cause finding, and the District Court's error in holding to the contrary was not harmless since the issues raised with respect to § 703(a)(1) were not identical to those with respect to § 704(a) and the dismissal of the former charge may have prejudiced respondent's efforts at trial. Pp. 798-800.

2. In a private, non-class-action complaint under Title VII charging racial employment discrimination, the complaint has the burden of establishing a prima facie case, which he can satisfy by showing that (i)
793 he belongs to a racial minority; (ii) he *793 applied and was qualified for a job the employer was trying to fill; (iii) though qualified, he was rejected; and (iv) thereafter the employer continued to seek applicants with complainant's qualifications. P. 802.

3. Here, the Court of Appeals, though correctly holding that respondent proved a prima facie case, erred in holding that petitioner had not discharged its burden of proof in rebuttal by showing that its stated reason for the rehiring refusal was based on respondent's illegal activity. But on remand respondent must be afforded a fair opportunity of proving that petitioner's stated reason was just a pretext for a racially discriminatory decision, such as by showing that whites engaging in similar illegal activity were retained or hired by petitioner. Other evidence that may be relevant, depending on the circumstances, could include facts that petitioner had discriminated against respondent when he was an employee or followed a discriminatory policy toward minority employees. Pp. 802-805.

463 F.2d 337, vacated and remanded.

POWELL, J., delivered the opinion for a unanimous Court.

Veryl L. Riddle argued the cause for petitioner. With him on the briefs were *R. H. McRoberts* and *Thomas C. Walsh*.

Louis Gilden argued the cause for respondent. With him on the brief were *Jack Greenberg, James M. Nabrit III, William L. Robinson*, and *Albert Rosenthal*.–

– *Milton A. Smith* and *Lawrence M. Cohen* filed a brief for the Chamber of Commerce of the United States as *amicus curiae* urging reversal.

Solicitor General Griswold, Assistant Attorney General Pottinger, Deputy Solicitor General Wallace, Keith A. Jones, David L. Rose, Julia P. Cooper, and *Beatrice Rosenberg* filed a brief for the United States as *amicus curiae* urging affirmance.

MR. JUSTICE POWELL delivered the opinion of the Court.

The case before us raises significant questions as to the proper order and nature of proof in actions under Title
794 *794 VII of the Civil Rights Act of 1964, 78 Stat. 253, 42 U.S.C. § 2000e *et seq*.

Petitioner, McDonnell Douglas Corp., is an aerospace and aircraft manufacturer headquartered in St. Louis, Missouri, where it employs over 30,000 people. Respondent, a black citizen of St. Louis, worked for petitioner as a mechanic and laboratory technician from 1956 until August 28, 1964[1] when he was laid off in the course of a general reduction in petitioner's work force.

[1] His employment during these years was continuous except for 21 months of service in the military.

Respondent, a long-time activist in the civil rights movement, protested vigorously that his discharge and the general hiring practices of petitioner were racially motivated.[2] As part of this protest, respondent and other members of the Congress on Racial Equality illegally stalled their cars on the main roads leading to petitioner's plant for the purpose of blocking access to it at the time of the morning shift change. The District Judge described the plan for, and respondent's participation in, the "stall-in" as follows:

[2] The Court of Appeals noted that respondent then "filed formal complaints of discrimination with the President's Commission on Civil Rights, the Justice Department, the Department of the Navy, the Defense Department, and the Missouri Commission on Human Rights." 463 F.2d 337, 339 (1972).

"[F]ive teams, each consisting of four cars would `tie up' five main access roads into McDonnell at the time of the morning rush hour. The drivers of the cars were instructed to line up next to each other completely blocking the intersections or roads. The drivers were also instructed to stop their cars, turn off the engines, pull the emergency brake, raise all windows, lock the doors, and remain in their cars until the police arrived. The plan was to have the cars remain in position for one hour.

795 *795

"Acting under the `stall in' plan, plaintiff [respondent in the present action] drove his car onto Brown Road, a McDonnell access road, at approximately 7:00 a. m., at the start of the morning rush hour. Plaintiff was aware of the traffic problems that would result. He stopped his car with the intent to block traffic. The police arrived shortly and requested plaintiff to move his car. He refused to move his car voluntarily. Plaintiff's car was towed away by the police, and he was arrested for obstructing traffic. Plaintiff pleaded guilty to the charge of obstructing traffic and was fined." 318 F. Supp. 846, 849.

On July 2, 1965, a "lock-in" took place wherein a chain and padlock were placed on the front door of a building to prevent the occupants, certain of petitioner's employees, from leaving. Though respondent apparently knew
796 beforehand of the "lock-in" the full extent of his involvement remains uncertain.[3] *796

[3] The "lock-in" occurred during a picketing demonstration by ACTION, a civil rights organization, at the entrance to a downtown office building which housed a part of petitioner's offices and in which certain of petitioner's employees were working at the time. A chain and padlock were placed on the front door of the building to prevent ingress and egress. Although respondent acknowledges that he was chairman of ACTION at the time, that the demonstration was planned and staged by his group, that he participated in and indeed was in charge of the picket line in front of the building, that he was told in advance by a member of ACTION "that he was planning to chain the front door," and that he "approved of" chaining the door, there is no evidence that respondent personally took part in the actual "lock-in," and he was not arrested. App. 132-133.

The Court of Appeals majority, however, found that the record did "not support the trial court's conclusion that Green `actively cooperated' in chaining the doors of the downtown St. Louis building during the `lock-in' demonstration." 463 F.2d, at 341. See also concurring opinion of Judge Lay. *Id.*, at 345. Judge Johnsen, in Page 796 dissent, agreed with the District Court that the "chaining and padlocking [were] carried out as planned, [and that] Green had in fact given it . . . approval and authorization." *Id.*, at 348.

In view of respondent's admitted participation in the unlawful "stall-in," we find it unnecessary to resolve the contradictory contentions surrounding this "lock-in."

Some three weeks following the "lock-in," on July 25, 1965, petitioner publicly advertised for qualified mechanics, respondent's trade, and respondent promptly applied for re-employment. Petitioner turned down respondent, basing its rejection on respondent's participation in the "stall-in" and "lock-in." Shortly thereafter, respondent filed a formal complaint with the Equal Employment Opportunity Commission, claiming that petitioner had refused to rehire him because of his race and persistent involvement in the civil rights movement, in violation of §§ 703(a)(1) and 704(a) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2 (a)(1) and 2000e-3 (a).[4] The former section generally prohibits racial discrimination in any employment decision while the latter forbids discrimination against applicants or employees for attempting to protest or correct allegedly
797 discriminatory conditions of employment. *797

[4] Section 703(a)(1) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2 (a)(1), in pertinent part provides:

"It shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of

> employment, because of such individual's race, color, religion, sex, or national origin . . . ."
>
> Section 704(a) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3 (a), in pertinent part provides:
>
> "It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment . . . because he has opposed any practice made an unlawful employment practice by this subchapter . . . ."

The Commission made no finding on respondent's allegation of racial bias under § 703(a)(1), but it did find reasonable cause to believe petitioner had violated § 704(a) by refusing to rehire respondent because of his civil rights activity. After the Commission unsuccessfully attempted to conciliate the dispute, it advised respondent in March 1968, of his right to institute a civil action in federal court within 30 days.

On April 15, 1968, respondent brought the present action, claiming initially a violation of § 704(a) and, in an amended complaint, a violation of § 703(a)(1) as well.[5] The District Court dismissed the latter claim of racial discrimination in petitioner's hiring procedures on the ground that the Commission had failed to make a determination of reasonable cause to believe that a violation of that section had been committed. The District Court also found that petitioner's refusal to rehire respondent was based solely on his participation in the illegal demonstrations and not on his legitimate civil rights activities. The court concluded that nothing in Title VII or § 704 protected "such activity as employed by the plaintiff in the `stall in' and `lock in' demonstrations." 318 F. Supp., at 850.

> 5 Respondent also contested the legality of his 1964 discharge by petitioner, but both courts held this claim barred by the statute of limitations. Respondent does not challenge those rulings here.

On appeal, the Eighth Circuit affirmed that unlawful protests were not protected activities under § 704(a),[6] but reversed the dismissal of respondent's § 703(a)(1) claim relating to racially discriminatory hiring practices, holding that a prior Commission determination of reasonable cause was not a jurisdictional prerequisite to
798 raising a claim under that section in federal court. The court *798 ordered the case remanded for trial of respondent's claim under § 703(a)(1).

> 6 Respondent has not sought review of this issue.

In remanding, the Court of Appeals attempted to set forth standards to govern the consideration of respondent's claim. The majority noted that respondent had established a prima facie case of racial discrimination; that petitioner's refusal to rehire respondent rested on "subjective" criteria which carried little weight in rebutting charges of discrimination; that, though respondent's participation in the unlawful demonstrations might indicate a lack of a responsible attitude toward performing work for that employer, respondent should be given the opportunity to demonstrate that petitioner's reasons for refusing to rehire him were mere pretext.[7] In order to clarify the standards governing the disposition of an action challenging employment discrimination, we granted certiorari, 409 U.S. 1036 (1972).

> 7 All references here are to Part V of the revised opinion of the Court of Appeals, 463 F.2d, at 352, which superseded Part V of the court's initial opinion with respect to the order and nature of proof.

I

We agree with the Court of Appeals that absence of a Commission finding of reasonable cause cannot bar suit under an appropriate section of Title VII and that the District Judge erred in dismissing respondent's claim of racial discrimination under § 703(a)(1). Respondent satisfied the jurisdictional prerequisites to a federal action (i) by filing timely charges of employment discrimination with the Commission and (ii) by receiving and acting

upon the Commission's statutory notice of the right to sue, 42 U.S.C. § 2000e-5 (a) and 2000e-5(e). The Act does not restrict a complainant's right to sue to those charges as to which the Commission has made findings of
799 reasonable cause, and we will not engraft on the statute a requirement which may inhibit the review of *799 claims of employment discrimination in the federal courts. The Commission itself does not consider the absence of a "reasonable cause" determination as providing employer immunity from similar charges in a federal court, 29 C.F.R. § 1601.30, and the courts of appeal have held that, in view of the large volume of complaints before the Commission and the nonadversary character of many of its proceedings, "court actions under Title VII are de novo proceedings and . . . a Commission `no reasonable cause' finding does not bar a lawsuit in the case." *Robinson* v. *Lorillard Corp.*, 444 F.2d 791, 800 (CA4 1971); *Beverly* v. *Lone Star Lead Construction Corp.*, 437 F.2d 1136 (CA5 1971); *Flowers* v. *Local 6, Laborers International Union of North America*, 431 F.2d 205 (CA7 1970); *Fekete* v. *U.S. Steel Corp.*, 424 F.2d 331 (CA3 1970).

Petitioner argues, as it did below, that respondent sustained no prejudice from the trial court's erroneous ruling because in fact the issue of racial discrimination in the refusal to re-employ "was tried thoroughly" in a trial lasting four days with "at least 80%" of the questions relating to the issue of "race."[8] Petitioner, therefore, requests that the judgment below be vacated and the cause remanded with instructions that the judgment of the District Court be affirmed.[9] We cannot agree that the dismissal of respondent's § 703(a)(1) claim was harmless error. It is not clear that the District Court's findings as to respondent's § 704(a) contentions involved the identical issues raised by his claim under § 703(a)(1). The former section relates solely to discrimination against an applicant or employee on account of his participation in legitimate civil rights activities or protests,
800 while the latter section deals with the broader and centrally *800 important question under the Act of whether, for any reason, a racially discriminatory employment decision has been made. Moreover, respondent should have been accorded the right to prepare his case and plan the strategy of trial with the knowledge that the § 703(a)(1) cause of action was properly before the District Court.[10] Accordingly, we remand the case for trial of respondent's claim of racial discrimination consistent with the views set forth below.

8 Tr. of Oral Arg. 11.

9 Brief for Petitioner 40.

10 The trial court did not discuss respondent's § 703(a)(1) claim in its opinion and denied requests for discovery of statistical materials which may have been relevant to that claim.

II

The critical issue before us concerns the order and allocation of proof in a private, non-class action challenging employment discrimination. The language of Title VII makes plain the purpose of Congress to assure equality of employment opportunities and to eliminate those discriminatory practices and devices which have fostered racially stratified job environments to the disadvantage of minority citizens. *Griggs* v. *Duke Power Co.*, 401 U.S. 424, 429 (1971); *Castro* v. *Beecher*, 459 F.2d 725 (CA1 1972); *Chance* v. *Board of Examiners*, 458 F.2d 1167 (CA2 1972); *Quarles* v. *Philip Morris, Inc.*, 279 F. Supp. 505 (ED Va. 1968). As noted in *Griggs, supra:*

"Congress did not intend by Title VII, however, to guarantee a job to every person regardless of qualifications. In short, the Act does not command that any person be hired simply because he was formerly the subject of discrimination, or because he is a member of a minority group. Discriminatory
801 preference for any group, minority or majority, is precisely and only what Congress has proscribed. *801 What is required by Congress is the removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification." *Id.*, at 430-431.

There are societal as well as personal interests on both sides of this equation. The broad, overriding interest, shared by employer, employee, and consumer, is efficient and trustworthy workmanship assured through fair and racially neutral employment and personnel decisions. In the implementation of such decisions, it is abundantly clear that Title VII tolerates no racial discrimination, subtle or otherwise.

In this case respondent, the complainant below, charges that he was denied employment "because of his involvement in civil rights activities" and "because of his race and color."[11] Petitioner denied discrimination of any kind, asserting that its failure to re-employ respondent was based upon and justified by his participation in the unlawful conduct against it. Thus, the issue at the trial on remand is framed by those opposing factual contentions. The two opinions of the Court of Appeals and the several opinions of the three judges of that court attempted, with a notable lack of harmony, to state the applicable rules as to burden of proof and how this shifts
802 upon the making of a prima facie case.[12] We now address this problem. *802

11 The respondent initially charged petitioner in his complaint filed April 15, 1968, with discrimination because of his "involvement in civil rights activities." App. 8. In his amended complaint, filed March 20, 1969, plaintiff broadened his charge to include denial of employment because of race in violation of § 703(a)(1). App. 27.

12 See original opinion of the majority of the panel which heard the case, 463 F.2d, at 338; the concurring opinion of Judge Lay, *id.*, at 344; the first opinion of Judge Johnsen, dissenting in part, *id.*, at 346; Page 802 the revised opinion of the majority, *id.*, at 352; and the supplemental dissent of Judge Johnsen, *id.*, at 353. A petition for rehearing en banc was denied by an evenly divided Court of Appeals.

The complainant in a Title VII trial must carry the initial burden under the statute of establishing a prima facie case of racial discrimination. This may be done by showing (i) that he belongs to a racial minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications.[13] In the instant case, we agree with the Court of Appeals that respondent proved a prima facie case. 463 F.2d 337, 353. Petitioner sought mechanics, respondent's trade, and continued to do so after respondent's rejection. Petitioner moreover, does not dispute respondent's qualifications[14] and acknowledges that his past work performance in petitioner's employ was "satisfactory."[15]

13 The facts necessarily will vary in Title VII cases, and the specification above of the prima facie proof required from respondent is not necessarily applicable in every respect to differing factual situations.

14 We note that the issue of what may properly be used to test qualifications for employment is not present in this case. Where employers have instituted employment tests and qualifications with an exclusionary effect on minority applicants, such requirements must be "shown to bear a demonstrable relationship to successful performance of the jobs" for which they were used, *Griggs* v. *Duke Power Co.*, 401 U.S. 424, 431 (1971). *Castro* v. *Beecher*, 459 F.2d 725 (CA1 1972); *Chance* v. *Board of Examiners*, 458 F.2d 1167 (CA2 1972).

15 Tr. of Oral Arg. 3: 463 F.2d, at 353.

The burden then must shift to the employer to articulate some legitimate, nondiscriminatory reason for the
803 employee's rejection. We need not attempt in the instant case to detail every matter which fairly could be *803
recognized as a reasonable basis for a refusal to hire. Here petitioner has assigned respondent's participation in unlawful conduct against it as the cause for his rejection. We think that this suffices to discharge petitioner's burden of proof at this stage and to meet respondent's prima facie case of discrimination.

The Court of Appeals intimated, however, that petitioner's stated reason for refusing to rehire respondent was a "subjective" rather than objective criterion which "carr[ies] little weight in rebutting charges of discrimination," 463 F.2d, at 352. This was among the statements which caused the dissenting judge to read the opinion as taking "the position that such unlawful acts as Green committed against McDonnell would not legally entitle McDonnell to refuse to hire him, even though no racial motivation was involved . . . ." *Id.*, at 355. Regardless of whether this was the intended import of the opinion, we think the court below seriously underestimated the rebuttal weight to which petitioner's reasons were entitled. Respondent admittedly had taken part in a carefully planned "stall-in," designed to tie up access to and egress from petitioner's plant at a peak traffic hour.[16] Nothing in Title VII compels an employer to absolve and rehire one who has engaged in such deliberate, unlawful activity against it.[17] In upholding, under the National Labor Relations Act, the discharge of employees
804 who had seized and forcibly retained *804 an employer's factory buildings in an illegal sit-down strike, the Court noted pertinently:

16 The trial judge noted that no personal injury or property damage resulted from the "stall-in" due "solely to the fact that law enforcement officials had obtained notice in advance of plaintiff's [here respondent's] demonstration and were at the scene to remove plaintiff's car from the highway." 318 F. Supp. 846, 851.

17 The unlawful activity in this case was directed specifically against petitioner. We need not consider or decide here whether, or under what circumstances, unlawful activity not directed against the particular employer may be a legitimate justification for refusing to hire.

> "We are unable to conclude that Congress intended to compel employers to retain persons in their employ regardless of their unlawful conduct, — to invest those who go on strike with an immunity from discharge for acts of trespass or violence against the employer's property . . . . Apart from the question of the constitutional validity of an enactment of that sort, it is enough to say that such a legislative intention should be found in some definite and unmistakable expression." *NLRB* v. *Fansteel Corp.*, 306 U.S. 240, 255 (1939).

Petitioner's reason for rejection thus suffices to meet the prima facie case, but the inquiry must not end here. While Title VII does not, without more, compel rehiring of respondent, neither does it permit petitioner to use respondent's conduct as a pretext for the sort of discrimination prohibited by § 703(a)(1). On remand, respondent must, as the Court of Appeals recognized, be afforded a fair opportunity to show that petitioner's stated reason for respondent's rejection was in fact pretext. Especially relevant to such a showing would be evidence that white employees involved in acts against petitioner of comparable seriousness to the "stall-in" were nevertheless retained or rehired. Petitioner may justifiably refuse to rehire one who was engaged in unlawful, disruptive acts against it, but only if this criterion is applied alike to members of all races.

Other evidence that may be relevant to any showing of pretext includes facts as to the petitioner's treatment of respondent during his prior term of employment; petitioner's reaction, if any, to respondent's legitimate civil
805 rights activities; and petitioner's general policy and *805 practice with respect to minority employment.[18] On the

latter point, statistics as to petitioner's employment policy and practice may be helpful to a determination of whether petitioner's refusal to rehire respondent in this case conformed to a general pattern of discrimination against blacks. *Jones* v. *Lee Way Motor Freight, Inc.*, 431 F.2d 245 (CA10 1970); Blumrosen, Strangers in Paradise: *Griggs* v. *Duke Power Co.*, and the Concept of Employment Discrimination, 71 Mich. L. Rev. 59, 91-94 (1972).[19] In short, on the retrial respondent must be given a full and fair opportunity to demonstrate by competent evidence that the presumptively valid reasons for his rejection were in fact a coverup for a racially discriminatory decision.

[18] We are aware that some of the above factors were, indeed, considered by the District Judge in finding under § 704(a), that "defendant's [here petitioner's] reasons for refusing to rehire the plaintiff were motivated solely and simply by the plaintiff's participation in the `stall in' and `lock in' demonstrations." 318 F. Supp., at 850. We do not intimate that this finding must be overturned after consideration on remand of respondent's § 703(a)(1) claim. We do, however, insist that respondent under § 703(a)(1) must be given a full and fair opportunity to demonstrate by competent evidence that whatever the stated reasons for his rejection, the decision was in reality racially premised.

[19] The District Court may, for example, determine, after reasonable discovery that "the [racial] composition of defendant's labor force is itself reflective of restrictive or exclusionary practices." See Blumrosen, *supra*, at 92. We caution that such general determinations, while helpful, may not be in and of themselves controlling as to an individualized hiring decision, particularly in the presence of an otherwise justifiable reason for refusing to rehire. See generally *United States* v. *Bethlehem Steel Corp.*, 312 F. Supp. 977, 992 (W.D.N.Y. 1970), order modified, 446 F.2d 652 (CA2 1971). Blumrosen, *supra*, n. 19, at 93.

The court below appeared to rely upon *Griggs* v. *Duke Power Co., supra*, in which the Court stated: "If an
806 employment practice which operates to exclude Negroes cannot *806 be shown to be related to job performance, the practice is prohibited." 401 U.S., at 431.[20] But *Griggs* differs from the instant case in important respects. It dealt with standardized testing devices which, however neutral on their face, operated to exclude many blacks who were capable of performing effectively in the desired positions. *Griggs* was rightly concerned that childhood deficiencies in the education and background of minority citizens, resulting from forces beyond their control, not be allowed to work a cumulative and invidious burden on such citizens for the remainder of their lives. *Id.*, at 430. Respondent, however, appears in different clothing. He had engaged in a seriously disruptive act against the very one from whom he now seeks employment. And petitioner does not seek his exclusion on the basis of a testing device which overstates what is necessary for competent performance, or through some sweeping disqualification of all those with any past record of unlawful behavior, however remote, insubstantial, or unrelated to applicant's personal qualifications as an employee. Petitioner assertedly rejected respondent for unlawful conduct against it and, in the absence of proof of pretext or discriminatory application of such a reason, this cannot be thought the kind of "artificial, arbitrary, and unnecessary barriers to employment" which the Court found to be the intention of Congress to remove. *Id.*, at
807 431.[21] *807

[20] See 463 F.2d, at 352.

[21] It is, of course, a predictive evaluation, resistant to empirical proof, whether "an applicant's past participation in unlawful conduct directed at his prospective employer might indicate the applicant's lack of a responsible attitude toward performing work for that employer." 463 F.2d, at 353. But in this case, given the seriousness and harmful potential of respondent's participation in the "stall-in" and the accompanying inconvenience to other employees, it cannot be said that petitioner's refusal to employ lacked a rational and neutral business justification. As the Court has

noted elsewhere:

"Past conduct may well relate to present fitness; past loyalty may Page 807 have a reasonable relationship to present and future trust." *Garner* v. *Los Angeles Board*, 341 U.S. 716, 720 (1951).

III

In sum, respondent should have been allowed to pursue his claim under § 703(a)(1). If the evidence on retrial is substantially in accord with that before us in this case, we think that respondent carried his burden of establishing a prima facie case of racial discrimination and that petitioner successfully rebutted that case. But this does not end the matter. On retrial, respondent must be afforded a fair opportunity to demonstrate that petitioner's assigned reason for refusing to re-employ was a pretext or discriminatory in its application. If the District Judge so finds, he must order a prompt and appropriate remedy. In the absence of such a finding, petitioner's refusal to rehire must stand.

The judgment is vacated and the cause is hereby remanded to the District Court for further proceedings consistent with this opinion.

So ordered.

921 *921

casetext

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13588-AA

Appeal From
US District Court, Florida, Middle District
3:20-cv-00905-MMH-LLL
Makere v Allstate

VOLUME 01
ITEM 06
PAGES 0213 – 0262

SHORT TITLE: [Appellant]'s Motion for Sanctions

DATE ENTERED: 6/11/2021
DOC TYPE: Party Motion (Appellant/Plaintiff)
TRIBUNAL: US District Court, Florida, Middle District
CASE NO: 3:20-cv-00905-MMH-LLL
CASE CAPTION: *Makere v Allstate*
LINK: https://ecf.flmd.uscourts.gov/
DOC NO: 59

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

ELIAS MAKERE, FSA, MAAA	)	Case No (LT)
Plaintiff	)	**3:20-cv-00905-MMH-JRK**
	)	
v.	)	
	)	
ALLSTATE INSURANCE COMPANY,	)	
Defendant	)	

PLAINTIFF'S MOTION FOR SANCTIONS

Plaintiff, ELIAS MAKERE, on this 11th day of June 2021, respectfully asks this Honorable Court to levy sanctions against Defendant, ALLSTATE INSURANCE COMPANY, pursuant to Rule 11 Fed. R. Civ. P..

Key Points:

A.) Points demonstrable lie of material fact

B.) Grounds extrinsic fraud, bad faith

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Background: Defendant knowingly made a false statement of material fact
Problem: Defendant's actions have ushered a fraud upon this Court
Request: Court sanctions Defendant for defiling the judiciary

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Rule 11(c)(1) | Fed. R. Civ. P. | Sanctions | (highlights added)

"If... the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule..."

Rule 37(b)(2)(A) | Fed. R. Civ. P. | Sanctions... | (highlights added)

"the court where the action is pending may issue further just orders [which may include]:

(ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;

(iii) striking pleadings in whole or in part;

(vi) rendering a default judgment against the disobedient party;"

Local Rule 2.01(e) | USFLMD | Conduct

"(e) CONDUCT. A lawyer appearing in the Middle District must remain familiar with, and is bound by, the rules governing the professional conduct of a member of The Florida Bar."

Rule 3-4.3 | Rules Regulating the Florida Bar | Misconduct

"The commission by a lawyer of any act that is unlawful or contrary to honesty and justice may constitute a cause for discipline"

Precedence

- 5:20-cv-00227-JSM-PRL - USFLMD (4/21/21)
- 2:19-cv-00248-JLB-MRM - USFLMD (1/19/21)
- 8:19-cv-01962-SDM-AEP - USFLMD (1/14/21)
- 8:20-cv-00309-CEH-AAS - USFLMD (12/17/20)
- 2:18-mc-00019-JES-NPM - USFLMD (12/4/20)
- 6:14-cv-01539-ACC-EJK - USFLMD (11/9/20)
- 6:19-cv-01252-GAP-DCI - USFLMD (10/29/20)
- 5:19-cv-00591-JSM-PRL - USFLMD (10/8/20)

USFLMD recently granted motions for sanctions

Abbreviations

FCHR - Florida Commission on Human Relations

USFLMD - US District Court, Florida, Middle District

USFLSD - US District Court, Florida, Southern District

MOTION

I. Immediate Pertinent History

1. On September 8, 2017, Defendant filed its official position statement with a state agency of Florida (the FCHR). Therein, the company acknowledged that Plaintiff charged it with race ***and*** sex discrimination.
2. On May 21, 2021, however, Defendant submitted a filing in this Honorable Court to the contrary. The document was titled "*Defendant's Response in Opposition to Plaintiff's Motion for Leave to Amend Complaint and Supporting Memorandum of Law*" (hereinafter "That Response", Doc No 53).
    a) That Response said that Plaintiff's employment discrimination complaint was on the basis of race only.
3. On May 27, 2021, Plaintiff moved this Honorable Court to take judicial notice of the facts underlying Defendant's unlawful change-of-tune. The paper was titled "*Plaintiff's Motion for Judicial Notice of Defendant's Official Position Statement to the Florida Commission on Human Relations*" (hereinafter "That Motion", Doc No 54).

II. Analysis

4. The acknowledgement which Defendant gave in 2017 read as follows (highlights added):

> *"As outlined below, the allegations of discrimination upon race and sex discrimination from [Plaintiff] (hereinafter "Ms. Makere" or "Complainant") are without merit."*
>
> - Allstate Insurance Company | 9/8/2017

5. The 180° false statement that Defendant proffered in 2021 was this (highlights added & underlines added):

> *"On June 30, 2017, Plaintiff filed a Charge of Discrimination ("First Charge") with the FCHR, which alleged racial discrimination, as well as retaliation, in violation of the FCRA. See Exhibit A."*
>
> - Allstate Insurance Company | 5/21/2021

> *"On January 19, 2018, Plaintiff filed a 231-page Petition for Relief ("First Petition") with the FCHR. See Exhibit C. The First Petition included allegations of race discrimination not previously presented to the FCHR and therefore not part of the FCHR investigation. Plaintiff also,* ***for the first time****, alleged sex discrimination and/or sexual harassment"*
>
> - Allstate Insurance Company | 5/21/2021

Please take note at how the first quoted passage omitted Plaintiff's sex charge, while the second **intentionally excluded it**.

6. Moreover, Defendant referenced an exhibit when making its false statement. That exhibit contradicted Defendant's claim.
   a) To be exact, the exhibit showed that Plaintiff charged Defendant with race and sex discrimination. Please see **Exhibit A**.
   b) Notwithstanding, government records establish that Plaintiff charged Defendant with race and sex discrimination (**Exhibit B**).
7. This simple review shows that Defendant was **conscious** of its falsehoods (also see **Exhibit C**). This is even more clear upon witnessing Defendant's (a) reaction to the prospects of That Motion; and (b) its response to That Motion.

a) Leading up to That Motion, Plaintiff asked Defendant to state whether or not Plaintiff's copy of Defendant's official position statement was a true and correct copy. Defendant, however, **dodged the question** (see **Exhibit D**). Thereby never giving an answer; and necessitating Plaintiff's motion to this Court (Doc No 54).

b) In responding to That Motion (see Doc No. 57 – 6/9/21), Defendant neither (a) professed to a mistake; (b) took responsibility for its falsehoods; nor (c) vowed to make corrections. Thereby requiring this Court to intervene on a matter of patent clarity.

8. Defendant's actions show bad faith, and – importantly – they perpetrate a fraud upon this Court. A transgression that this tribunal has the power to punish.

III. Argument in Support of Sanctions

9. Sanctions of this nature fall under Rule 11(b)-(c) Fed. R. Civ. P. which states that court filings must not:

a) be "*presented for any improper purpose [such as to unnecessarily expend resources]*";

b) erect defenses on "*frivolous argument*"; or

c) make factual contentions without "*evidentiary support*".

10. Rule 11(c) Fed. R. Civ. P. goes on to say that motions for sanctions "*must be made separately*" and must specify the opponent's violations. Plaintiff has hereby satisfied the first element by requesting this relief separate from That Motion. Thus, he will meet the second requirement via case law on Defendant's **bad faith extrinsic fraud**.

11. The 11th Circuit Court of Appeals established that fraud upon the court is sanctionable (highlights added):

> *"Courts have the inherent authority to control the proceedings before them, which includes the authority to impose "reasonable and appropriate" sanctions. See Malautea v. Suzuki Motor Co., Ltd., 987 F.2d 1536, 1545 (11th Cir. 1993). A court also has the power to conduct an independent investigation to determine whether it has been the victim of fraud."*
>
> - *Martin v. Automobili 307 F.3d 1332 (11th Cir. 2002).*

12. Extrinsic Fraud is defined as:

> *"fraud that prevents a party...from having a fair opportunity to present or litigate [his rights] at a trial."*
>
> - *Barron's Dictionary of Legal Terms, 5th Edition*

13. Defendant's lie about [not] being charged with sex discrimination is aimed at preventing Plaintiff from ever having a *full & fair opportunity* to litigate his case.

14. In McDonnel-Douglas v Green, 411 US 792 (1973) ("The Seminal Case"), the US Supreme Court held that excluding a charged basis of discrimination equates to a violation of due process:

> *"We cannot agree that the dismissal of [employee's race] claim was harmless error... [Employee] should have been accorded the right to prepare his case and plan the strategy of trial with the knowledge that the [race] cause of action was properly before the [Lower Tribunal]. Accordingly, we remand the case for trial of [employee]'s claim of racial discrimination consistent with the views set forth below."*
>
> - *McDonnell-Douglas v Green, 411 US 792 (1973)*

15. In Martin, USFLSD found the transgressor to have perpetrated a fraud upon the court because he lied about possessing the property which he claimed was a *lemon*[1/]. Here – in the instant case – Defendant is lying about [not] being charged with sex discrimination. In fact, its arguments of *res judicata* are based on this lie. Thus, case law dictates that **Defendant has perpetrated a fraud** upon this court.

16. Furthermore, In Re Mroz, 65 F.3d 1567 (11th Cir. 1995), the 11th Circuit held that a court must find that the transgressor's actions were made in **bad faith**:

> *"a court's inherent power [to sanction] requires a finding of bad faith."*
>
> – *In Re Mroz, 65 F.3d 1567, 1575 (11th Cir. 1995)*

The appellate court goes on to detail that the determination of bad faith is founded on **dishonesty** (highlights added):

> *"The text of Rule 11 permits sanctions only if the objectionable court paper is "signed in violation of this rule." Id. at 1507. Accordingly, the court's inquiry focuses only on the merits of the pleading gleaned from facts and law known or available to the attorney at the time of filing."*
>
> – *Jones v International, 49 F.3d 692, 694 (11th Cir. 1995)*

The 11th Circuit further directs district courts to focus sanction reviews on the transgressor's **dishonest** conscience:

> *"The court is expected to avoid using the wisdom of hindsight and should test the signer's conduct by inquiring what was reasonable to believe at the time the pleading, motion, or other paper was submitted."*
>
> – *Souran v Travelers, 982 F.2d 1497 (11th Cir. 1993)*

17. Plus, the textbook definition of **bad faith** continues to harp on **dishonesty** (highlights added):

> *"breach of faith; willful failure to respond to plain, well-understood statutory or contractual obligations; dishonesty in fact in the conduct or transaction concerned."*
>
> - *Barron's Dictionary of Legal Terms, 5th Edition*

18. Defendant was dishonest. It is indisputable that the underlying '*fact known/available*' to Defendant at the time it submitted That Response was the very first exhibit it attached. An exhibit which contradicted its "*factual contention*". Defendant lied. The Courts say so. The textbooks say so.

19. So, given Defendant's continued lack of self-correction, this tribunal should say so, too. And should punish Defendant with appropriate sanctions.

IV. Appropriate Sanctions | Nature of Relief Sought

20. Rule 37(b)(2)(A) Fed. R. Civ. P. outlines several types of sanctions that a district court can impose on a transgressor. Plaintiff proffers (ii) and (iii) to be the most appropriate; and believes that (vi) should be applied only if a hearing to show cause reveals Defendant's continued defiance/dishonesty.

21. Plaintiff hereby asks this Honorable Court to **prohibit** Defendant from arguing *res judicata/collateral estoppel*. Its own submitted documentation has proven the argument to be based on a massive lie.

    a) Rule 37(b)(2)(A)(ii) Fed. R. Civ. P. authorizes this remedy.

> *"sanctions are warranted when the [transgressor] exhibits a deliberate indifference to obvious facts"*
>
> - *Baker v. Alderman, 158 F.3d 516 (11th Cir. 1998)*

22. Plaintiff also asks this Honorable Court to **strike** Defendant's first motion to dismiss (Doc No 4; 8/21/20), Defendant's second motion to dismiss (Doc No 49; 3/12/21), and That Response (Doc No 53; 5/21/21).

    a) Rule 37(b)(2)(A)(iii) Fed. R. Civ. P. authorizes this remedy.

23. Lastly, Plaintiff asks this Honorable Court to **conduct a show-cause hearing** to allow Defendant to (a) answer for its lie; and (b) explain why default judgment should not be entered against it.

    a) Rule 37(b)(2)(A)(vi) Fed. R. Civ. P. authorizes this remedy.

> *"the decision to enter a default judgment ought to be the last resort — ordered only if non-compliance is due to willful or bad faith disregard of court orders."*
>
> - *Coors v. M.A.R. and the Klan, 777 F.2d 1538, (11th Cir. 1985)*

CONFERRAL

Given the nature of this request, Plaintiff has communicated with Defendant several times. The first communications were emails on May 27th, and the most recent were phone call[s] & emails on June 11th.[2/]

During that call, Defendant refused to (a) acknowledge its lie; or even (b) answer direct questions (please see **Transcript A**). Soon thereafter, Defendant decided to stand in opposition to this motion.

Pursuant to Local Rule 3.01(g)(3) (*Duty to Confer in Good Faith*) and Rule 11(c)(2) Fed. R. Civ. P. (*21 days to self-correct*), Plaintiff has no other option but to ask for relief from Defendant's lawlessness.

CONCLUSION

WHEREFORE, Plaintiff respectfully asks this Honorable Court to levy sanctions against Defendant for its violation of Rule 11(b) Fed. R. Civ. P..

Dated this 11th day of June 2021.

Respectfully submitted,

/s/ Elias Makere
ELIAS MAKERE, FSA, MAAA, Plaintiff
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Jacksonville, FL 32224
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W: TextBookDiscrimination.com
Get ***Booked Up*** on Justice!

CERTIFICATE OF COMPLIANCE

I certify that the size and style of type used in this document is Times New Roman 14-point Font (caption) and Courier New 12-point Font (contents); thus complying with the font requirements of Local Rule 1.05(a).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of June 2021, I electronically filed the foregoing with the Clerk of Courts by using its online filing page. I also emailed it to the attached service list.

/s/ Elias Makere

Endnotes:

[1/] *"Lemon"* in the sense of a substandard car

[2/] Pursuant to the 'Safe-Harbor' provision of Rule 11(c)(2), Defendant's 21-day window began on 5/27/21 (also see **Exhibit D, Transcript A** at 33).

SERVICE LIST

Kimberly J. Doud, Esquire (0523771)
Heather A. Johnson, Esquire (*pro hac vice*)
Michele A. Ramos, Esquire (1008119)

E: kdoud@littler.com
E: hajohnson@littler.com
E: mramos@littler.com
P: 407.393.2900
F: 407.393.2929

Littler Mendleson, PC
111 North Orange Avenue, Suite 1750
Orlando, FL 32801-2366

(defendant's trial lawyers)

EXHIBIT A

Charge of Discrimination

From: Plaintiff
To: State Agency (FCHR)
6/30/2017

[marked]

(first page only)

20170143 2

RACIAL DISCRIMINATION | ALLSTATE CORPORATION | FLORIDA | 6/30/2017

Elias Makere, ASA
Phone
Fax
Email Inquiry.allstate@gmail.com

Allstate

EMPLOYEMENT DISCRIMINATION

Racial Discrimination, Sex Discrimination

This document introduces the racial discrimination of a former Allstate employee. The discrimination involved racist dolls, epithets, hostility, ostracism, discrimination of terms/conditions/compensation, and termination. I am looking for justice, an examination of the facts, and an eradication of Allstate's racial discrimination.

2017 JUN 30 PM 12:32

EXHIBIT B

Notice of Determination

From: State Agency (FCHR)
To: Plaintiff/Defendant
12/15/2017

[marked]

State of Florida
Florida Commission on Human Relations

An Equal Opportunity Employer • Affirmative Action Employer

Rick Scott
Governor

4075 Esplanade Way • Room 110 • Tallahassee, Florida 32399-7020
(850) 488-7082 / FAX: (850) 487-1007
http://fchr.state.fl.us
United in One Goal: Equal Opportunity and Mutual Respect

Rebecca Steele
Chair
Michelle Wilson
Executive Director

FCHR No. 201701432

Mr. Elias Makere
3709 San Pable Road S., #701
Jacksonville, FL 32224

COMPLAINANT

Allstate Corporation
c/o Ms. Charmaine Neal, HR-Workforce Relations Lead Consultant
2775 Sanders Rd. F5
Northbrook, IL 60062

RESPONDENT

DETERMINATION: NO REASONABLE CAUSE

Complainant filed a complaint of discrimination alleging that Respondent violated the Florida Civil Rights Act of 1992. The Florida Commission on Human Relations has completed its investigation of this matter.

Complainant worked for Respondent as an Actuary. Complainant alleged that Respondent discriminated against him based on his race and sex. However, the investigation did not support Complainant's allegations. The investigation did not reveal enough evidence to establish that Complainant reported discriminatory harassment to Respondent. Complainant alleged that Respondent graded his required exams so that he would fail as an excuse to terminate him based on his race. However, the investigation revealed that the required exams were administered and graded anonymously by "The Society of Actuaries" and not Respondent. Therefore, the Respondent could not have been responsible for Complainant failing his exams. Complainant was terminated for failing his exam and not securing a non-actuarial position. The investigation did not reveal evidence of discrimination.

On the basis of the report from the Commission's Office of Employment Investigations and recommendation from the Commission's Office of General Counsel, pursuant to the authority delegated to me as Executive Director of the Florida Commission on Human Relations, I have determined that no reasonable cause exists to believe that an unlawful practice occurred.

Michelle Wilson

Dated: Dec. 15, 2017

EXHIBIT C

Position Statement

From: Defendant
To: State Agency (FCHR)
9/8/2017

[marked]

(first page only)

Allstate.
You're in good hands.

Charmaine Neal
Lead Consultant
Workforce Relations Team
Human Resources

September 8, 2017

Alicia Maxwell
Employment Investigator
Florida Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, FL 32399

Re: Charge No.: FCHR 201701432
Complainant: Elias Makere
Respondent: Allstate Insurance Company

Investigator Maxwell,

This letter sets forth the position of Respondent, Allstate Insurance Company ("Allstate"), regarding the above-referenced charge of discrimination. I am serving as the contact person; therefore, please address all communications to my attention.

The facts set forth in this letter are based upon a preliminary investigation of the circumstances of the allegations against Allstate.[1] It is Allstate's policy not to discriminate with regard to race, sex, age, national origin, sexual orientation, gender identity/gender expression, citizenship, disability, and status as a veteran with a disability or veteran of the Vietnam Era (Exhibit 1-Policy Guide). As outlined below, the allegations of discrimination based upon race and sex discrimination from Elias Makere (hereinafter "Ms. Makere" or "Complainant") are without merit.

FACTS

EXHIBIT D

Plaintiff's Good Faith Efforts to Allow Defendant to Correct Conduct

Emails

5/27/2021 – 6/11/2021

Between: Plaintiff, Defendant, Defendant's Attorney

From: justice.actuarial@gmail.com <justice.actuarial@gmail.com>
Sent: Thursday, May 27, 2021 8:37 AM
To: KDoud@littler.com;
Cc: MRamos@littler.com; HAJohnson@littler.com
Subject: Judicial Notice (?) | 3:20-cv-00905-MMH-JRK | Makere v Allstate | Employment Discrimination | Defendant's Official Position Statement

---

Hello Allstate,

Do you have any objection to my upcoming "Motion for Judicial Notice of Defendant's Official Position Statement"?

I plan on filing it between **4pm and 5pm today** (5/27/21), pursuant to Rule 1 Fed.R.Civ.P., Rule 10 Fed.R.App.P, and Rules 201/301/302 Fed.R.Evid.

Plaintiff:	Elias Makere, FSA, MAAA
Defendant:	Allstate Insurance Company
Case Number:	3:20-cv-00905-MMH-JRK
Court:	US Middle District – Jacksonville Division
Type:	Employment Discrimination (§1981 US, §760 FS)

Document:	*Plaintiff's Motion for Judicial Notice of Defendant's Official Position Statement*

Purpose = (1) judicial estoppel; (2) display Defendant's perjury; (3) supply factual framework surrounding discriminatory retaliation; (4) streamline federal appeal; (5) help supply the details for which the Court seeks; and more.

Please answer as soon as you can.

Note: Due to time constraints, I will follow-up with you by phone to get your answer.

Thank you,

Elias Makere, FSA, MAAA | Plaintiff
Federal Case No.: 3:20-cv-00905-MMH-JRK | (Allstate, USFLMD)
State Case No.: 2020-CA-003802-XXXX | (Allstate, Duval)
FCHR Case No.: 2019-19238
11th Cir. Case No.: 21-10847
904.294.0026 | justice.actuarial@gmail.com | www.TextBookDiscrimination.com
3709 San Pablo Rd. S. #701
Jacksonville, FL 32224

Ancient Proverb: For every wrong there is a right.

From: Doud, Kimberly <kdoud@littler.com>
Sent: Thursday, May 27, 2021 10:11 AM
To: justice.actuarial@gmail.com
Cc: mramos@littler.com; mfilmore@littler.com; lshelnut@littler.com
Subject: RE: Judicial Notice (?) | 3:20-cv-00905-MMH-JRK | Makere v Allstate | Employment Discrimination | Defendant's Official Position Statement

---

Mr. Makere:

Allstate also opposes this proposed motion to take judicial notice because there is no basis to file any such motion at this time. Thank you.

Kimberly Doud
Office Managing Shareholder
407.393.2951 direct, 407.864.1852 mobile, 407.641.9263 fax
KDoud@littler.com

From: justice.actuarial@gmail.com <justice.actuarial@gmail.com>
Sent: Thursday, May 27, 2021 11:13 AM
To: KDoud@littler.com;
Cc: MRamos@littler.com; mfilmore@littler.com; lshelnut@littler.com
Subject: RE: Judicial Notice (?) | 3:20-cv-00905-MMH-JRK | Makere v Allstate | Employment Discrimination | Defendant's Official Position Statement

---

Hello Allstate,

I mentioned the basis (**judicial estoppel**, your **perjury**, etc.). I even cited the authoritative rules (Rule 1 Fed.R.Civ.P., Rule 10 Fed.R.App.P, and Rules 201/301/302 Fed.R.Evid.).

May you please tell me if the attached file is a **true and correct copy** of your Position Statement (sent to the Florida Commission on Human Relations on-or-around September 8, 2017)?

Thank you,

Elias Makere, FSA, MAAA | Plaintiff
Federal Case No.: 3:20-cv-00905-MMH-JRK | (Allstate, USFLMD)
State Case No.: 2020-CA-003802-XXXX | (Allstate, Duval)
FCHR Case No.: 2019-19238
11th Cir. Case No.: 21-10847
904.294.0026 | justice.actuarial@gmail.com | www.TextBookDiscrimination.com
3709 San Pablo Rd. S. #701
Jacksonville, FL 32224

Ancient Proverb: For every wrong there is a right.

From: justice.actuarial@gmail.com <justice.actuarial@gmail.com>
Sent: Thursday, May 27, 2021 4:06 PM
To: KDoud@littler.com;
Cc: MRamos@littler.com; mfilmore@littler.com; lshelnut@littler.com
Subject: RE: Judicial Notice (?) | 3:20-cv-00905-MMH-JRK | Makere v Allstate | Employment Discrimination | Defendant's Official Position Statement

---

Hello Allstate,

May you please give me your answer?

Note: The first page of your **notarized position statement** is the key. Its second paragraph contains the following sentence (highlights added):

> *"As outlined below, the allegations of discrimination upon race and sex discrimination from Elias Makere (hereinafter "Ms. Makere" or "Complainant") are without merit."*

Point blank: you acknowledged that my FCHR complaint was on the basis of race ***and*** sex. I must add, this was the **first page** of the **first document** that you submitted on the matter. The **first**.

A few days ago, you filed a document in USFLMD[1] stating that my FCHR complaint did ***not*** include a sex discrimination charge. Here it is (third page):

> *"On June 30, 2017, Plaintiff filed a Charge of Discrimination ("First Charge") with the FCHR, which alleged racial discrimination, as well as retaliation, in violation of the FCRA. See Exhibit A."*

The above quote shows that you omitted my sex discrimination charge. The following quote – from the very next paragraph of that filing – reads as follows (highlights & emphasis added):

> *"On January 19, 2018, Plaintiff filed a 231-page Petition for Relief ("First Petition") with the FCHR. See Exhibit C. The First Petition included allegations of race discrimination not previously presented to the FCHR and therefore not part of the FCHR investigation. Plaintiff also, **for the first time**, alleged sex discrimination and/or sexual harassment."*

In short, you just submitted a patently false statement to the government. You did so with the intent to influence an official government function. I must add, the exhibit that you referenced shows that I charged you with race ***and*** sex discrimination. In other words, **you knew** you were supplying the government with a false statement. Altogether, you just committed **perjury**.

This is serious. Your perjury is harming me severely; and infringing upon my constitutional rights.

My first step is to allow you to acknowledge your wrongdoing. My next step is to provide USFLMD with the requisite facts. There are more steps.

For now, please tell me whether you recognize the aforementioned document as a **true and correct copy** of your notarized position statement to the FCHR[2].

[1] USFLMD = United States District Court, Florida, Middle District
[2] FCHR = Florida Commission on Human Relations

Thank you,

Elias Makere, FSA, MAAA | Plaintiff
Federal Case No.: 3:20-cv-00905-MMH-JRK | (Allstate, USFLMD)
State Case No.: 2020-CA-003802-XXXX | (Allstate, Duval)
FCHR Case No.: 2019-19238
11th Cir. Case No.: 21-10847
904.294.0026 | justice.actuarial@gmail.com | www.TextBookDiscrimination.com
3709 San Pablo Rd. S. #701
Jacksonville, FL 32224

Ancient Proverb: For every wrong there is a right.

From: justice.actuarial@gmail.com <justice.actuarial@gmail.com>
Sent: Thursday, May 27, 2021 5:36 PM
To: KDoud@littler.com;
Cc:
Subject: Perjury, Fraud | (¿?)

Hello Ms. Doud,

Question: Did Allstate Insurance Company instruct you to write *"[Elias Makere] also, for the first time, alleged sex discrimination and/or sexual harassment."*
Question: Did Allstate Insurance Company instruct you to omit *", sexual discrimination,"* from the following statement (which you authored)?

Statement in Question:

> *"On June 30, 2017, Plaintiff filed a Charge of Discrimination ("First Charge") with the FCHR, which alleged racial discrimination, as well as retaliation, in violation of the FCRA. See Exhibit A."*

Thank you,

Elias Makere, FSA, MAAA | Plaintiff
Federal Case No.: 3:20-cv-00905-MMH-JRK | (Allstate, USFLMD)
State Case No.: 2020-CA-003802-XXXX | (Allstate, Duval)
FCHR Case No.: 2019-19238
11th Cir. Case No.: 21-10847
904.294.0026 | justice.actuarial@gmail.com | www.TextBookDiscrimination.com
3709 San Pablo Rd. S. #701
Jacksonville, FL 32224

Ancient Proverb: For every wrong there is a right.

From: justice.actuarial@gmail.com <justice.actuarial@gmail.com>
Sent: Thursday, May 27, 2021 8:37 PM
To: KDoud@littler.com;
Cc:
Subject: RE: Perjury, Fraud | (¿?)

Hello Ms. Doud,

I have evidence that **you have committed perjury**. Please understand that your unlawful conduct has harmed me; and my constitutional rights are in jeopardy of suffering further injury.

What you did was wrong.

Notwithstanding, I believe you **deserve a chance** to (a) acknowledge your wrongs; and (b) amend your wrongs. Sans your recognition and contrition, however, I will have to seek external intervention.

So, first, do you realize that the two statements that you submitted to USFLMD were false (please see below)?

Statement #1
"On June 30, 2017, Plaintiff filed a Charge of Discrimination ("First Charge") with the FCHR, which alleged racial discrimination, as well as retaliation, in violation of the FCRA. See Exhibit A."

Statement #2
*"On January 19, 2018, Plaintiff filed a 231-page Petition for Relief ("First Petition") with the FCHR. See Exhibit C. The First Petition included allegations of race discrimination not previously presented to the FCHR and therefore not part of the FCHR investigation. Plaintiff also, **for the first time**, alleged sex discrimination and/or sexual harassment."*

If you answer 'yes' to this obvious question, then part (b) will be very easy. In fact, I reckon it will be fair & amenable to everyone involved (you, your client, etc.)

Thank you,

Elias Makere, FSA, MAAA | Plaintiff
Federal Case No.: 3:20-cv-00905-MMH-JRK | (Allstate, USFLMD)
State Case No.: 2020-CA-003802-XXXX | (Allstate, Duval)
FCHR Case No.: 2019-19238
11th Cir. Case No.: 21-10847
904.294.0026 | justice.actuarial@gmail.com | www.TextBookDiscrimination.com
3709 San Pablo Rd. S. #701
Jacksonville, FL 32224

Ancient Proverb: For every wrong there is a right.

From: justice.actuarial@gmail.com <justice.actuarial@gmail.com>
Sent: Friday, May 28, 2021 2:21 PM
To: KDoud@littler.com;
Cc:
Subject: RE: Perjury, Fraud | (¿?)

Good Afternoon Ms. Doud,

I haven't heard back from you. So, I'll have to move onto the next phase.

Thank you,

Elias Makere, FSA, MAAA | Plaintiff
Federal Case No.: 3:20-cv-00905-MMH-JRK | (Allstate, USFLMD)
State Case No.: 2020-CA-003802-XXXX | (Allstate, Duval)
FCHR Case No.: 2019-19238
11th Cir. Case No.: 21-10847
904.294.0026 | justice.actuarial@gmail.com | www.TextBookDiscrimination.com
3709 San Pablo Rd. S. #701
Jacksonville, FL 32224

Ancient Proverb: For every wrong there is a right.

From: justice.actuarial@gmail.com <justice.actuarial@gmail.com>
Sent: Wednesday, June 09, 2021 4:40 PM
To: KDoud@littler.com; HAJohnson@littler.com; MRamos@littler.com
Cc:
Subject: Conferral Phone Call | 3:20-cv-00905-MMH-JRK | Makere v Allstate | Employment Discrimination | Motion for Sanctions

---

Hello Allstate,

Would you have 5-15 minutes to discuss 'This Motion' (and this motion only)?
Where: **This Motion** ≈ "*Plaintiff's Motion for Sanctions*" (to be filed on-or-before June 16, 2021)

Local Rule 3.01(g) states that civil litigants have a duty to confer. Considering the nature of this motion (ie, sanctions), I think it's particularly important to do so (please see Davis v Apfel, 6:98-cv-00651-ORL, 2000 WL 1658575 at no. 1 (MD Fla. Aug. 14, 2000)).

May you please tell me what your availability is for the following windows:

	Date	Period
Window A	Thu., June 10, 2021	1:30 – 4:30
Window B	Fri., June 11, 2021	8:00 – 11:00

Thank you,

Elias Makere, FSA, MAAA | Civil Litigant
Federal Case No.: 3:20-cv-00905-MMH-JRK
Duval Case No.: 2020-CA-003802-XXXX
FCHR Case No.: 2019-19238
904.294.0026 | justice.actuarial@gmail.com | www.TextBookDiscrimination.com
3709 San Pablo Rd. S. #701
Jacksonville, FL 32224

Ancient Proverb: For every wrong there is a right.

From: Doud, Kimberly <kdoud@littler.com>
Sent: Wednesday, June 09, 2021 4:49 PM
To: justice.actuarial@gmail.com
Cc: mfilmore@littler.com; lshelnut@littler.com; mramos@littler.com
Subject: RE: Conferral Phone Call | 3:20-cv-00905-MMH-JRK | Makere v Allstate | Employment Discrimination | Motion for Sanctions

---

Mr. Makere:

Please be advised I am available at 10:30 a.m. Friday June 11, 2021 for a call to discuss your proposed Motion for Sanctions. What number should I call?

Also, please be advised it is not necessary to copy Heather Johnson on communications regarding the federal court matters. I have moved her to bcc so she will be dropped from this email thread. Thank you.

Kimberly Doud
Office Managing Shareholder
407.393.2951 direct, 407.864.1852 mobile, 407.641.9263 fax
KDoud@littler.com

From: justice.actuarial@gmail.com <justice.actuarial@gmail.com>
Sent: Wednesday, June 09, 2021 5:26 PM
To: KDoud@littler.com
Cc: mfilmore@littler.com; lshelnut@littler.com; MRamos@littler.com
Subject: RE: Conferral Phone Call | 3:20-cv-00905-MMH-JRK | Makere v Allstate | Employment Discrimination | Motion for Sanctions

---

Hello Allstate,

You can reach me at 904.294.0026. Please only dial in from one of your listed numbers.

Also, yes, I'll remove "HAJohnson@Littler.com" from my emails.

Talk to you at 10:30 Fri (6/11),

Thank you,

Elias Makere, FSA, MAAA | Civil Litigant
Federal Case No.: 3:20-cv-00905-MMH-JRK
Duval Case No.: 2020-CA-003802-XXXX
FCHR Case No.: 2019-19238
904.294.0026 | justice.actuarial@gmail.com | www.TextBookDiscrimination.com
3709 San Pablo Rd. S. #701
Jacksonville, FL 32224

Ancient Proverb: For every wrong there is a right.

From: justice.actuarial@gmail.com <justice.actuarial@gmail.com>
Sent: Friday, June 11, 2021 9:16 AM
To: KDoud@littler.com
Cc: mfilmore@littler.com; lshelnut@littler.com; MRamos@littler.com
Subject: RE: Conferral Phone Call | 3:20-cv-00905-MMH-JRK | Makere v Allstate | Employment Discrimination | Motion for Sanctions

---

Good Morning Allstate,

May you please reference these three documents during our upcoming phone call (10:30am today, 6/11/21)?

	Description	Signature Date	Docket Entry	Filename
First Attachment	Plaintiff's First Administrative Complaint	6/30/2017	53-1	Call_20210611_1030-001-20000905_GRSP_20210521_190224_ExhA.pdf
Second Attachment	Defendant's Official Position Statement	9/8/2017	54-1	Call_20210611_1030-002-4h_Motion_007_JudNote-PositionStatement.pdf
Third Attachment	Defendant's Response in Opposition to…Motion to Amend	5/21/2017	53	Call_20210611_1030-001-20000905_GRSP_20210521_190224_ExhA.pdf

This pertains to Sanctions (under Rule 11(b) Fed. R. Civ. P.).

Thank you,

Elias Makere, FSA, MAAA | Civil Litigant
Federal Case No.: 3:20-cv-00905-MMH-JRK
Duval Case No.: 2020-CA-003802-XXXX
FCHR Case No.: 2019-19238
904.294.0026 | justice.actuarial@gmail.com | www.TextBookDiscrimination.com
3709 San Pablo Rd. S. #701
Jacksonville, FL 32224

Ancient Proverb: For every wrong there is a right.

From: Doud, Kimberly <kdoud@littler.com>
Sent: Friday, June 11, 2021 10:47 AM
To: justice.actuarial@gmail.com
Cc: mfilmore@littler.com; lshelnut@littler.com; mramos@littler.com; njstorch@littler.com
Subject: RE: Conferral Phone Call | 3:20-cv-00905-MMH-JRK | Makere v Allstate | Employment Discrimination | Motion for Sanctions

---

Mr. Makere:

Please represent to the Court Allstate opposes your motion for sanctions. Thank you.

Kimberly Doud
Office Managing Shareholder
407.393.2951 direct, 407.864.1852 mobile, 407.641.9263 fax
KDoud@littler.com

From: justice.actuarial@gmail.com <justice.actuarial@gmail.com>
Sent: Friday, June 11, 2021 11:55 AM
To: KDoud@littler.com
Cc: mfilmore@littler.com; lshelnut@littler.com; MRamos@littler.com
Subject: RE: Conferral Phone Call | 3:20-cv-00905-MMH-JRK | Makere v Allstate | Employment Discrimination | Motion for Sanctions

---

Hello Allstate,

May you please answer either 'yes' or 'no' to the following question?

- *Did Elias Makere's 6/30/17 administrative complaint charge you with sex discrimination*?

During the call, you seemed to have said "yes", but your voice was **muffled**. Plus, you proffered a lot of personal interpretations. I followed up to clarify if you had indeed said "yes", but you refused to clarify.

I sincerely didn't hear whether it was a "yes". It sounded like a "yes", but I'm not sure.

Importance: the obvious facts show that the true answer is "yes". Yet – as you're well aware – I've got a prospective *motion for sanctions* against you for **perpetrating a fraud upon the court**. A fraud based on your lie about an "*obvious fact"* of material worth (see Baker v Alderman, 158 F. 3d 516 (11th Cir. 1998).

I'm organizing my notes from the call, and this is a crucial component. Please clarify. Did you say "yes"? Perhaps, it'll just be easier if I re-ask the question:

- *Did Elias Makere's 6/30/17 administrative complaint charge you with sex discrimination*?

Please answer as soon as possible.

Thank you,

Elias Makere, FSA, MAAA | Civil Litigant
Federal Case No.: 3:20-cv-00905-MMH-JRK
Duval Case No.: 2020-CA-003802-XXXX
FCHR Case No.: 2019-19238
904.294.0026 | justice.actuarial@gmail.com | www.TextBookDiscrimination.com
3709 San Pablo Rd. S. #701
Jacksonville, FL 32224

Ancient Proverb: For every wrong there is a right.

From: Doud, Kimberly <kdoud@littler.com>
Sent: Friday, June 11, 2021 12:09 PM
To: KDoud@littler.com
Cc: mfilmore@littler.com; lshelnut@littler.com; mramos@littler.com; njstorch@littler.com
Subject: RE: Conferral Phone Call | 3:20-cv-00905-MMH-JRK | Makere v Allstate | Employment Discrimination | Motion for Sanctions

---

Mr. Makere:

I did not say “yes” and disagree with the characterizations in your email below. I provided my response, which has been set forth in the pleadings. We have conferred regarding your proposed motion for sanctions. As set forth in my email from 10:47 a.m. this morning following our call, please represent to the Court Allstate opposes your motion for sanctions. Thank you.

Kimberly Doud
Office Managing Shareholder
407.393.2951 direct, 407.864.1852 mobile, 407.641.9263 fax
KDoud@littler.com

From: justice.actuarial@gmail.com <justice.actuarial@gmail.com>
Sent: Friday, June 11, 2021 12:35 PM
To: KDoud@littler.com;
Cc: mfilmore@littler.com; lshelnut@littler.com; MRamos@littler.com; njstorch@littler.com
Subject: RE: Conferral Phone Call | 3:20-cv-00905-MMH-JRK | Makere v Allstate | Employment Discrimination | Motion for Sanctions

---

Hello Allstate,

Your exact quote was *"Yes, that's the place where I'm saying that you did say "sex discrimination""*. Moreover, government records prove that "sex discrimination" was on the first page of my very first complaint.

Moving on. For **question number 2**, you answered "*I did not*".

> I need to be clear, my question was directed to Allstate (not its legal representative Kimberly Doud, Esq). Based on your voice inflection, you seemed to be stressing that *Kimberly Doud* didn't say it.
> That's not relevant here, and that's not who I was asking.

All of these questions are <u>directed toward Allstate Insurance Company</u> (the defendant in 3:20-cv-00905-MMH-JRK).

So, <u>Allstate</u>, may you please answer question number 2:

- *On September 8, 2017, did you acknowledge that Elias Makere's discrimination complaint was on the basis of race and sex?*

Thank you,

Elias Makere, FSA, MAAA | Civil Litigant
Federal Case No.: 3:20-cv-00905-MMH-JRK
Duval Case No.: 2020-CA-003802-XXXX
FCHR Case No.: 2019-19238
904.294.0026 | justice.actuarial@gmail.com | www.TextBookDiscrimination.com
3709 San Pablo Rd. S. #701
Jacksonville, FL 32224

Ancient Proverb: For every wrong there is a right.

From: justice.actuarial@gmail.com <justice.actuarial@gmail.com>
Sent: Friday, June 11, 2021 2:53 PM
To: KDoud@littler.com
Cc: mfilmore@littler.com; lshelnut@littler.com; MRamos@littler.com; njstorch@littler.com
Subject: RE: Conferral Phone Call | 3:20-cv-00905-MMH-JRK | Makere v Allstate | Employment Discrimination | Motion for Sanctions

---

Hello Allstate,

Your answer to my second question is still outstanding. May you please answer it before **3:15 PM EST**?

- Question #2: *On September 8, 2017, did you acknowledge that Elias Makere's discrimination complaint was on the basis of race and sex?*

Moreover, you've had ample time to answer the question (most pertinently – dating back to May 27, 2021); see Rule 11(c) Fed. R. Civ. P.).

Undue delay is a factor in handing down sanctions (see Hutto v Finney, 437 US 678).

Your delay is harming me. May you please answer *Question #2* **by 3:15 PM EST** today (6/11/21)?

Thank you,

Elias Makere, FSA, MAAA | Civil Litigant
Federal Case No.: 3:20-cv-00905-MMH-JRK
Duval Case No.: 2020-CA-003802-XXXX
FCHR Case No.: 2019-19238
904.294.0026 | justice.actuarial@gmail.com | www.TextBookDiscrimination.com
3709 San Pablo Rd. S. #701
Jacksonville, FL 32224

Ancient Proverb: For every wrong there is a right.

From: justice.actuarial@gmail.com <justice.actuarial@gmail.com>
Sent: Friday, June 11, 2021 3:21 PM
To: KDoud@littler.com;
Cc: mfilmore@littler.com; lshelnut@littler.com; MRamos@littler.com; njstorch@littler.com
Subject: RE: Conferral Phone Call | 3:20-cv-00905-MMH-JRK | Makere v Allstate | Employment Discrimination | Motion for Sanctions

---

Hello Allstate,

3:15 PM came & went, but I didn't get your answer. So, I'll have to move onto the **third** & final question of "*factual concern*".

- **Question #3**: *On May 21, 2021, did you lie about whether Elias Makere charged you with sex discrimination?*

May you please answer it before **3:45 PM EST**?

Thank you,

Elias Makere, FSA, MAAA | Civil Litigant
Federal Case No.: 3:20-cv-00905-MMH-JRK
Duval Case No.: 2020-CA-003802-XXXX
FCHR Case No.: 2019-19238
904.294.0026 | justice.actuarial@gmail.com | www.TextBookDiscrimination.com
3709 San Pablo Rd. S. #701
Jacksonville, FL 32224

Ancient Proverb: For every wrong there is a right.

From: Doud, Kimberly <kdoud@littler.com>
Sent: Friday, June 11, 2021 3:16 PM
To: KDoud@littler.com
Cc: mfilmore@littler.com; lshelnut@littler.com; MRamos@littler.com; njstorch@littler.com
Subject: RE: Conferral Phone Call | 3:20-cv-00905-MMH-JRK | Makere v Allstate | Employment Discrimination | Motion for Sanctions

---

Mr. Makere:

We have conferred regarding your proposed motion for sanctions. As set forth in my email from 10:47 a.m. this morning following our call, please represent to the Court Allstate opposes your motion for sanctions. You do not need anything further from me to file your motion. Thank you.

Kimberly Doud
Office Managing Shareholder
407.393.2951 direct, 407.864.1852 mobile, 407.641.9263 fax
KDoud@littler.com

From: Doud, Kimberly <kdoud@littler.com>
Sent: Friday, June 11, 2021 3:23 PM
To: KDoud@littler.com;
Cc: mfilmore@littler.com; lshelnut@littler.com; MRamos@littler.com; njstorch@littler.com
Subject: RE: Conferral Phone Call | 3:20-cv-00905-MMH-JRK | Makere v Allstate | Employment Discrimination | Motion for Sanctions

---

Mr. Makere:

As I responded to your last email, we have conferred regarding your proposed motion for sanctions. As set forth in my email from 10:47 a.m. this morning following our call, please represent to the Court Allstate opposes your motion for sanctions. You do not need anything further from me to file your motion. Thank you.

Kimberly Doud
Office Managing Shareholder
407.393.2951 direct, 407.864.1852 mobile, 407.641.9263 fax
KDoud@littler.com

From: justice.actuarial@gmail.com <justice.actuarial@gmail.com>
Sent: Friday, June 11, 2021 3:46 PM
To: KDoud@littler.com
Cc: mfilmore@littler.com; lshelnut@littler.com; MRamos@littler.com; njstorch@littler.com
Subject: RE: Conferral Phone Call | 3:20-cv-00905-MMH-JRK | Makere v Allstate | Employment Discrimination | Motion for Sanctions

---

Hello Allstate,

Please excuse the delay in transmission. When I checked at 3:15 – and didn't see any response – I began drafting my follow-up email. Your 3:16 email didn't land until after I hit send (≈ 3:22).

Well, there's just one matter remaining. So, with respect & caution, I'll just ask sending.

Would you like to **review** a copy of my **phone call recitation**? It's 5 pages. It's based on my contemporaneous notes + verbatim script.

Note: At the start of our call, I said I'd share this with you. So, this was a-*long*-time-coming.

If you say no then I'll just proceed with my motion for sanctions.

Thank you,

Elias Makere, FSA, MAAA | Civil Litigant
Federal Case No.: 3:20-cv-00905-MMH-JRK
Duval Case No.: 2020-CA-003802-XXXX
FCHR Case No.: 2019-19238
904.294.0026 | justice.actuarial@gmail.com | www.TextBookDiscrimination.com
3709 San Pablo Rd. S. #701
Jacksonville, FL 32224

Ancient Proverb: For every wrong there is a right.

TRANSCRIPT A

Plaintiff's Good Faith Efforts to Allow Defendant to Correct Conduct

Phone Call
Written Recitation

6/11/2021
10:30 AM EST

Between: Plaintiff, Defendant

Source: Plaintiff's contemporaneous notes during conversation

Caller: 407.393.2951 | Defendant's Attorney (Kimberly Doud)

Recipient: 904.294.0026 | Plaintiff (Elias Makere)

Date: 6/11/2021

Time: 10:30 AM EST

Subject: Conferral Phone Call | Plaintiff's Motion for Sanctions

Legend: "P:" = Plaintiff | "D:" = Defendant

Note: "***" means that the transcriber could not decipher for sure

---

{phone ringing}

#	Spkr	Speech
01	**P:**	Hello, this is Elias
02	**D:**	Hi, Mr. Makere?
03	**D:**	Hi, this is Kimberly Doud on the line. At the outset of this call, I just want to make sure that you understand that we don't agree that this call is being recorded. So, it should not be recorded.
04	**P:**	Oh, yeah. I understand. But I want to add in that I'm going to be taking notes, and I'm probably going to share the notes with you after the phone call.
05	**D:**	Okay. So, let me – I know you sent me an email – and I have the three documents. I just need to pull them up.
06	**P:**	Okay, so, we are gathered here today to discuss a prospective motion for sanctions. I, Elias Makere, will be the movant; and you, Allstate Insurance Company, will be the non-movant.
07	**P:**	As you know, this is a case of employment discrimination; in which you damaged me, and the facts are crystal clear.
08	**P:**	The facts are also crystal clear regarding this prospective motion for sanctions. Yet your conduct has perpetrated a fraud upon the court. And, therefore, are damaging the judiciary.
09	**P:**	So, I just have three questions to ask you.
10	**P:**	Question Number One: Did Elias Makere's June 30th, 2017 administrative complaint charge you with sex discrimination?
11	**D:**	So, Mr. – am I saying your last name correctly? Is it *Muh-care-ee*? Because I think I said it wrong before.
12	**P:**	Yes
13	**D:**	So, I just want to make sure I'm saying it right. I disagree and Allstate disagrees with the characterization that you just said.

...

#	Spkr	Speech
14	**D:**	Our position is set forth in the charge of discrimination. There's one use of the term "sex discrimination" on the first page. That's our position on the first charge. So, what's your second question.
15	**P:**	So, I just want to be clear: is it a 'yes' or is it a 'no'?
16	**P:**	Did Elias Makere's June 30th, 2017 administrative complaint charge you with sex discrimination? Yes or no, please.
17	**D:**	***, the only part that said sex discrimination was the first phrase.
18	**P:**	I didn't hear so good. Was that a yes, ma'am?

{...call disrupted | battery died...}

{...phone ringing...}

{...small talk, administrative considerations...}

#	Spkr	Speech
19	**D:**	I answered the question the way that I'm going to answer it. So, you said you have three questions. So, what were the other two questions?
20	**P:**	Okedoke. So, I'm going to move onto the next two questions.
21	**P:**	Let me just ask you – since you have those documents that I emailed to you. You have those in front of you, am I right?
22	**D:**	Yes
23	**P:**	Okedoke. So, for the first one (Docket 53-1, Exhibit A). May you go to the 8th page?
24	**D:**	Mr. Makere, I'm going to entertain these questions, but the purpose of the call is for you to tell me what the basis is for your motion for sanctions. And for us to let you know whether we're going to agree to it. So, I'm on page 8 of 16.
25	**P:**	Yeah, and I'm square on what this call is for. I was looking at Rule 11, and it says that you should have an opportunity to review what I am saying you have done wrong. And that's very specific for motions for sanctions under Rule 11c. I'm definitely giving you the full notice, as I've done throughout these last couple of weeks.

...

#	Spkr	Speech
26	**P:**	So, on there – you're looking at it – does it say "sex discrimination"?
27	**D:**	Yes, that's the place where I'm saying that you did say "sex discrimination". And I've answered the question, and it's in the paper what Allstate's position is on this. What's your next question?
28	**P:**	Question Number 2: on September 8th, 2017, did you acknowledge that Elias Makere's discrimination complaint was on the basis of race and sex?
29	**D:**	I did not. What's your next question?
30	**P:**	Okay, can you take a look at the second document that was in that attached email?
31	**D:**	Mr. Makere, this is not a deposition. So, what is the basis for your motion for sanctions? We're not going to agree. We're going to oppose a motion for sanctions. So, what are you going to put in your motion for a basis for your sanctions?
32	**P:**	So, no matter what the facts are, you're just going to disagree with it; is that what you're saying here?
33	**D:**	Well, you've submitted other documents that state your position that you believe that we've committed perjury and fraud upon the court. Is there some other basis for your allegation of perjury and fraud upon the court?
34	**P:**	Of course there is; and you know what it is, and it is bad faith. You are exhibiting bad faith by trying to continue and perpetuate this lie and now perpetrate this fraud upon the court.
35	**P:**	I asked you a simple question: did you acknowledge – on September 8th, 2017 – that Elias Makere's discrimination complaint was on the basis of race and sex?
36	**P:**	And it's right here on the paper. Right here on the paper that I sent you – which you notarized – and it says "race and sex". You acknowledged it in 2017, so I'm giving you a chance to acknowledge it now so that we can prevent a motion for sanctions. Rule 11 says you deserve an opportunity to correct yourself. So, I'm giving you this chance to correct yourself.
37	**P:**	Are you going to admit or are you going to continue showing bad faith?

...

#	Spkr	Speech
38	**P:**	So, let me just re-ask Question Number 2: did you acknowledge race and sex in 2017, ma'am?
39	**D:**	Mr. Makere, you can put in your motion that we had this conferral call, and that Allstate opposes the motion.
40	**D:**	Allstate's position is in its response to the judicial notice
41	**P:**	These are stone-cold facts, ma'am. 'Yes' or 'No' and we can move on.
42	**D:**	Mr. Makere, I'm ending this phone call. I don't like the way you're speaking to me.
43	**P:**	How am I speaking to you? I'm giving you this time to speak. Plus, there's a third question I need to ask.
44	**D:**	Goodbye, Mr. Makere, I'm ending this call.
45	**P:**	Question #3: Did you lie? On May 21, 2021, did you lie about whether Elias Makere charged you with sex discrimination?

{...call ended | ≈ 10:45 AM EST...}

Verification Under Oath Pursuant to 28 USC §1746

I am the plaintiff in this case, and I was present for the phone call in which these quotes came from. I drafted this recitation and asked the defendant if it wanted to review it (no answer). My recitation was based on my notes, and largely came from a script that I prepared beforehand. I would love an opportunity to have a quick hearing in which a full conversation can be recorded and/or transcribed.

Nevertheless, I declare under penalty of perjury that the foregoing is a true and correct recitation of the phone call I had with Allstate's attorney; and is based on my script and contemporaneous notes. Executed on this 11th day of June 2021.

UNITED STATES OF AMERICA



6/11/2021

Elias Makere, Plaintiff/Transcriber

PLAINTIFF'S AFFIDAVIT

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

ELIAS MAKERE, FSA, MAAA	)	
Plaintiff	)	Case No (LT) **3:20-cv-00905-MMH-JRK**
	)	
v.	)	
	)	
ALLSTATE INSURANCE COMPANY,	)	
Defendant	)	

PLAINTIFF'S AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION FOR SANCTIONS

The affiant, Elias Makere, swears or affirms as follows:

Background

1. I am over the age of eighteen (18).
2. I am a plaintiff in the above-captioned case.
3. This affidavit is made in good faith.

Familiarity

4. I have read the Local Rules of Court, the Federal Rules of Civil Procedure, the Federal Rules of Evidence, and the Middle District's Discovery Handbook.
5. The information in this affidavit is based on my own personal knowledge.

Facts

6. Allstate has been operating in bad faith throughout this entire legal action.

7. It's done so and (if unchecked) will continue to do so by hurling lie after lie. This pattern dates back many years:
    a. In 2015, when I worked for Allstate, **management knew** I didn't want to be around my harassers. Yet they forced me to be near them. They did so in the face of allowing everyone else to **work-from-home**.
        i. They fibbed by saying 'sitting near my coworkers was a condition of my employment'.
        ii. These same harassing coworkers responded by putting a racist doll on my desk, and accompanying it with racist characterizations.
    b. In 2018, during the administrative phase, **Allstate knew** I suspected they were retaliating against me. And in wanton form they explicitly instructed the most outward retaliator to harass me further.
8. The lie that Allstate told on May 21, 2021, is perhaps its biggest lie.
    a. As before (ie, ¶7a-7b), **Allstate knew** I would seek sanctions against it. Yet, the company continued its subterfuge (please see **Transcript A** at 29).
9. Allstate has continually lied about its unlawful discrimination, its enlisted others along the way (all of whom will get served; some already), and it's poised to do more lying in the future.

a. During my call with Allstate today, the employer dodged my simple 'yes-or-no' questions. Although I only had three, Allstate ended the call before I could get to the last one. Doing so by invoking the stereotyped retreat of '*dark-guy-is-discomforting-me*' (eg, "I don't like the way you're speaking to me"–**Transcript A** at 45). It has done this before.

b. So, I put the same questions in writing; and emailed them. Yet, Allstate refused to give direct answers to the last two (which were the most important to this request).

10. Allstate's fear was fake, its presentation of integrity was fake, and its contentions of material fact were fake. The records prove it, and a short hearing should force the company to either fess up or receive stronger discipline.

Request

11. May you please penalize Allstate's lies with prohibitions and strikes?

12. Also, may you please hold a short hearing/conference to ask Allstate the following questions:

a. "*Did Elias Makere's 6/30/17 administrative complaint charge you with sex discrimination?*"

b. "*On September 8, 2017, did you acknowledge that Elias Makere's discrimination complaint was on the basis of race and sex?*"

c. "*On May 21, 2021, did you lie about whether Elias Makere charged you with sex discrimination?*"

13. Lastly, may you please enter default judgment against Allstate if it lies about either 11a or 11b.

Thank you.

Verification Under Oath Pursuant to 28 USC §1746

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 11th day of June 2021.

UNITED STATES OF AMERICA



6/11/2021

Elias Makere, Plaintiff/Affiant

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13588-AA

Appeal From
US District Court, Florida, Middle District
3:20-cv-00905-MMH-LLL
Makere v Allstate

VOLUME 01
ITEM 07
PAGES 0263 – 0298

SHORT TITLE: [Appellant]'s Motion in Limine

DATE ENTERED: 6/17/2021
DOC TYPE: Party Motion (Appellant/Plaintiff)
TRIBUNAL: US District Court, Florida, Middle District
CASE NO: 3:20-cv-00905-MMH-LLL
CASE CAPTION: *Makere v Allstate*
LINK: https://ecf.flmd.uscourts.gov/
DOC NO: 60

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

ELIAS MAKERE, FSA, MAAA	)	
Plaintiff	)	Case No (LT) **3:20-cv-00905-MMH-JRK**
	)	
v.	)	
	)	
ALLSTATE INSURANCE COMPANY,	)	
Defendant	)	

PLAINTIFF'S MOTION IN LIMINE

Plaintiff, ELIAS MAKERE, on this 16th day of June 2021, respectfully asks this Honorable Court to exclude the Hon. E. Gary Early's Recommended Order ("RO") from this proceeding.

Key Points:

A.) Points imminent judgment, unconstitutional lie of material fact

B.) Grounds prejudicial, jury confusion, prevent mistrial/appeal

Table of Contents:

Context 2nd Page
Motion 3rd Page
Certificates 14th Page
Exhibits 16th Page
Affidavits 31st Page

Background: Defendant has injected materially false information
Problem: The false information is prejudicial and unconstitutional
Request: Court excludes the materially false information

Rule 402 | Fed. R. Evid. | General Admissibility... | (highlights added)

"Relevant evidence is admissible unless any of the following provides otherwise:

• the United States Constitution; ..."

Rule 403 | Fed. R. Evid. | Excluding... | (highlights added)

"The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence."

Rule 1.140(a)(1) | Fla. R. Civ. P. | Defenses | (highlights added)

"Unless a different time is prescribed in a statute of Florida, a defendant must serve an answer within 20 days after service of original process and the initial pleading on the defendant, or not later than the date fixed in a notice by publication."

Precedence

- 8:19-cv-01731-VMC-SPF - USFLMD (5/27/21)
- 3:19-cv-00351-MMH-JBT - USFLMD (5/26/21)
- 8:19-cv-01618-KKM-JSS - USFLMD (5/7/21)
- 2:19-cv-00442-JES-MRM - USFLMD (3/31/21)
- 2:19-cv-00229-JES-NPM - USFLMD (2/1/21)
- 2:18-cv-00784-SPC-MRM - USFLMD (12/10/20)
- 2:13-cv-00036-JES-NPM - USFLMD (12/4/20)
- 2:16-cv-00841-SPC-MRM - USFLMD (11/27/20)
- 8:19-cv-02750-VMC-CPT - USFLMD (11/23/20)
- 2:19-cv-00072-SPC-NPM - USFLMD (9/4/20)

USFLMD recently granted motions in limine

Abbreviations

DOAH - Florida's Division of Administrative Hearings

FCHR - Florida Commission on Human Relations

USFLMD - US District Court, Florida, Middle District

USGAMD - US District Court, Georgia, Middle District

MOTION

I. Relevant History

1. On April 10, 2019, Plaintiff dual-filed his Charge of Discrimination with the EEOC and the FCHR. In it, he charged Defendant with employment discrimination on the basis of color, race, retaliation, and sex. The FCHR received it the same day, and blessed it with a 2:35PM timestamp. Pursuant to the Workshare Agreement (29 CFR §1626.10), the FCHR took the lead.
2. On April 18, 2019, the Hon. E. Gary Early, ALJ (hereinafter "That Officer"), entered the RO in DOAH Case No. 18-0373 ("That Case"). That Case was an administrative law action between Plaintiff and Defendant.
   a) That Case was the progression of an FCHR complaint that Plaintiff filed against Defendant on the basis of race ***and*** sex.
   b) The RO ***excluded*** Plaintiff's sex discrimination charge.
3. On August 12, 2020, Plaintiff initiated this lawsuit; suing Defendant under both federal and state law (42 USC §1981, §760 FS). On March 1, 2021, Plaintiff fulfilled a Court order by amending his complaint.[1/] Eight days later, he added a duplicate complaint for the express purpose of attaching his Title VII charges (see ¶1).[2/]
4. At various times throughout this proceeding, Defendant has appended the RO to its motions and responses (see Doc No 4, 53).
5. Running separate to these actions was a lawsuit that Plaintiff filed against That Officer. The complaint detailed the harm that That Officer's perjury inflicted on Plaintiff's constitutional rights.
6. On June 1, 2021, a state process server served the referenced complaint (please see **Exhibit A**).

II. Analysis

7. Plaintiff's initiating complaint (Doc No 1) never mentioned the RO.

8. Defendant was the one who introduced it into these proceedings.

9. More importantly, the RO was based on **That Officer's perjury**.

Perjury from a State Officer (Hon. E. Gary Early, ALJ)

10. The first page of the document had a section titled "*Statement of the Issues*". Where That Officer excluded Plaintiff's original sex discrimination charge (¶2b *supra*, see **Exhibit B**).

11. The second page had a section titled "*Preliminary Statement*". Where That Officer continued to exclude Plaintiff's sex discrimination charge. This time, however, That Officer made the fateful declaration that Plaintiff never complained of sex discrimination prior to the DOAH proceedings (see **Exhibit C**) (highlights added).

> *"[Plaintiff], also for the first identifiable time, alleged that Allstate, and in particular [Plaintiff's manager], engaged in sexually provocative and inappropriate behaviors, which [Plaintiff] alleged to be "sexual harassment and discrimination"*
>
> - The Honorable E. Gary Early, ALJ | 4/18/19 | Florida

12. That Officer repeated that highlighted line (ie, "*for the first identifiable time*") several more times throughout the RO.

13. The problem, of course, is that those two *statements* were lies.

> *"Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083."*
>
> - §837.06 Florida Statutes | 2019

14. Plaintiff's originating employment discrimination complaint – from June 30, 2017 (¶2a *supra*) - was on the basis of race ***and*** sex (**Exhibit D**).

15. On December 15, 2017, the FCHR concluded its investigation. Notably affirming that race ***and*** sex were the basis of Plaintiff's complaint (see **Exhibit E**).

16. That Officer was uniquely aware of this. Prior to authoring his RO, he deliberately acknowledged that the sex discrimination charge was in Plaintiff's originating complaint.

17. On February 18, 2019, That Officer entered an order of official recognition of the FCHR's investigative determination (¶15, *supra*).[3/] He wrote the following (highlights added):

> *"[Allstate's] Motion for Official Recognition requests that official recognition be taken of the Notice of Determination: No Reasonable Cause, and of the Determination: No Reasonable Cause, both of which were issued by the Florida Commission on Human Relations on December 15, 2017. Those documents provided the point of entry to [Plaintiff] for this proceeding."*
>
> - The Honorable E. Gary Early, ALJ | 2/18/19 | Florida

18. Thus, it is indisputable government record that **That Officer knew** that Plaintiff charged Defendant with sex discrimination. In other words, **The Honorable E. Gary Early committed perjury on April 18, 2019.**

19. Despite being legally notified (¶7), he has yet to answer.

20. Now, here – in the instant case – Defendant is aiming to inject manifest injustice into the proceedings by proffering that RO. An RO based in perjury, filled with discriminatory slander, and prejudicial to a fair trial.

III. Argument in Support of Excluding That Officer's RO

21. Motions in Limine get marshalled in by a combination of case law and rules of evidence:

> *"Although the Federal Rules of Evidence do not explicitly authorize in limine rulings, the practice has developed pursuant to the district court's inherent authority to manage the course of trials."*
>
> – Luce v United States, 469 US 38 (1984)

22. The Second Circuit says that the goal is to streamline trial:

> *"The purpose of an in limine motion is "to aid the trial process by enabling the Court to rule in advance of trial on the relevance of certain forecasted evidence, as to issues that are definitely set for trial, without lengthy argument at, or interruption of, the trial." Banque Hypothecaire Du Canton De Geneve v. Union Mines, 652 F.Supp. 1400, 1401 (D.Md.1987)."*
>
> – Palmieri v. Defaria, 88 F.3d 136 (2d Cir. 1996)

23. This holding echoes the provisions of Rule 403 Fed. R. Evid. (highlights added):

> *"The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence."*
>
> – Rule 403 Fed. R. Evid.

24. Rule 402 identifies the "*relevant evidence*" that is inadmissible:

> *"Relevant evidence is admissible unless any of the following provides otherwise:*
>
> - *the United States Constitution;..."*
>
> - Rule 402 Fed. R. Evid.

25. Further guidance is provided by this Court's opinion in Burkhart v RJ Reynolds, 3:09-cv-10727-WGY-HTS (highlights added):

> *"Judges have broad discretion when ruling on motions in limine. See Jenkins v. Chrysler Motors Corp., 316 F.3d 663, 664 (7th Cir. 2002). However, a motion in limine should not be used to resolve factual disputes or weigh evidence."*
>
> - Burkhart v RJ Reynolds, 3:09-cv-10727-WGY-HTS (4/30/14)

26. In McGinnis v Am. Home Mortg., 5:11-cv-00284, USGAMD further warned against allowing *in limine* motions to replace cross-examination. This Honorable Court has applied the same; most recently on February 1st:

> *"Since an in limine motion is not intended to take the place of cross examination, the motion is DENIED."*
>
> - SFR v Lexington, 2:19-cv-00229-JES-NPM (2/1/14)

27. These last two points are wrapped up nicely in this more general principle from the 11th Circuit:

> *"As the ultimate fact-finder, it is the jury that must determine, finally, where the truth in any case lies, and the district judge as gatekeeper may not usurp this function."*
>
> - USA v Frazier, 387 F.3d 1244 (11th Cir. 2004)

28. Altogether, in showing that the RO is **unfairly prejudicial** and **unconstitutional**, Plaintiff must guard against stepping in the **jury booth**.

Unfairly Prejudicial

29. For starters, the RO would prejudice Plaintiff's case. This is so because it began with a **massive lie**, and it devolved into a stereotyped slander (please see **Affidavit**).

30. In USA v Nill, 518 F.2d 802, the US Supreme Court held that personal degradation is rife with bias and harmful error:

> *"Nevertheless, our reading of this record convinces us that the cross examination of Nill was allowed to degenerate into a personal attack, calculated to appeal to bias on the part of the jury."*
>
> - USA v Nill, 518 F. 2d 802

The Supreme Court went on to describe how such *unceremonious flogging* amounts to prejudice:

> *"Without any showing that Nill's acquisitions were criminal the plain impact of the above interrogation was to plant the idea in the minds of the jury that the defendant... needed to be given his comeuppance. If a defendant had been subjected to such an irrelevant, derogatory attack [to the contrary], no court would tolerate it. The rule works both ways, [everyone is] entitled to the same fair treatment."*
>
> - USA v Nill, 518 F. 2d 802

Likewise, had Defendant been attacked with *its* hands behind its back no Court would tolerate it. Yet, that is what That Officer's contradictory conduct did to Plaintiff. This slander amounted to unfair prejudice:

> *"We cannot regard this interrogation as either relevant or free of prejudice."*
>
> - USA v Nill, 518 F. 2d 802

31. Since That Officer's massive lie is concrete and undisputed, the jury should not be poisoned with his RO.

    a) The massive lie is concrete because the truth has long-been established by government record (see ¶15-18, *supra*).

    b) Plus, it is undisputed because – to this day – That Officer has neither filed an answer nor indicated he will (see **Affidavit**). Pursuant to Rule 1.140 Fla. R. Civ. P., That Officer's deadline to do so is Tuesday, June 22, 2021 (ie, next week).

32. Such poison would be grounds for a **mistrial**:

> *"government misconduct that deprives a defendant of a fair trial is grounds for a new trial."*
>
> – USA v Casas, 425 F.3d 23 (1st Cir. 2005)

Mistrial, of course, is an **avoidable outcome** (highlights added):

> *"[a Motion in Limine is] a motion used to exclude reference to anticipated evidence claimed to be objectionable until the admissibility of the questionable evidence can be determined either before or during the trial by presenting the court, out of the presence of the jury, offers and objections to the evidence. The motion seeks to avoid injection into trial of irrelevant, inadmissible, or prejudicial evidence at any point, including the voir dire examinations, opening statements, and direct and cross-examinations, and therefore prevents mistrials based on evidentiary irregularities."*
>
> – *Barron's Dictionary of Legal Terms, 5th Edition*

Unconstitutional

33. Secondly, this Honorable Court should exclude the RO because the item was unconstitutional.

34. In McDonnel-Douglas v Green, 411 US 792 (1973) ("The Seminal Case"), the US Supreme Court held that excluding a charged basis of discrimination equates to a violation of due process (**14th Amendment, US Constitution**).

35. Like Plaintiff in the instant case, Green charged his employer with multiple counts of employment discrimination (race, retaliation):

> "*On September 14, 1965, Green filed a formal complaint with the Equal Employment Opportunity Commission (EEOC), alleging that McDonnell had discriminated against him "because of [his] race and because of [his] persistent involvement in the Civil Rights Movement.*"
>
> - *McDonnell-Douglas v Green, 463 F.2d at 338 (8th Cir. 1970)*

Similarly, the hearing officers in Green excluded one of the charges:

> "*On May 8, 1967, the EEOC determined that reasonable cause existed to believe that McDonnell had [retaliated against Green] by refusing to employ Green "because of his involvement in civil rights activities." It made no determination on the allegation of racial bias.*"
>
> - *McDonnell-Douglas v Green, 463 F.2d at 338 (8th Cir. 1970)*

Upon seeing this, Green's appellate court established that removal of a discrimination charge amounts to a **violation of due process**:

> "*We cannot accept McDonnell's suggestion that it should prevail on an issue that Green was not privileged to present. We cannot say that the district court's action in striking the racial discrimination claim did not hamper the preparation and presentation of Green's case*"
>
> - *McDonnell-Douglas v Green, 463 F.2d at 338 (8th Cir. 1970)*

Later, the US Supreme Court affirmed that this was a constitutional violation even though the hearing officers in Green had unceremoniously listened to testimony on the removed charge:

> *"[Employer] argues, as it did below, that [employee] sustained no prejudice from the trial court's erroneous ruling, because, in fact, the issue of racial discrimination in the refusal to reemploy "was tried thoroughly" in a trial lasting four days, with "at least 80%" of the questions relating to the issue of "race."*
>
> *- McDonnell-Douglas v Green, 411 US 792 (1973)*

> *"We cannot agree that the dismissal of [Green's race] claim was harmless error"*
>
> *"..."*
>
> *"[Green] should have been accorded the right to prepare his case and plan the strategy of trial with the knowledge that the [race] cause of action was properly before the [Lower Tribunal]. Accordingly, we remand the case for trial of [Green]'s claim of racial discrimination consistent with the views set forth below."*
>
> *- McDonnell-Douglas v Green, 411 US 792 (1973)*

36. Thus, The Seminal Case provides **precise guidance** for the instant matter.

37. Notwithstanding, Plaintiff hereby offers more Supreme Court instruction (by way of the 1st Circuit) (highlights added).

> *"In Mooney v. Holohan, 294 U.S. 103, 55 S.Ct. 340, 79 L.Ed. 791 (1935) (per curiam), the Supreme Court explained that due process is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a State has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured."*
>
> *"..."*

> "*The following term, the Court reaffirmed that the Due Process Clause forbids convictions predicated on deliberate deceptions.*"
>
> - *Limone v. Condon, 372 F.3d 39 (1st Cir. 2004)*

Given the fact that That Officer perjured himself in order to violate Plaintiff's due process rights (14th Amendment), the foregoing compels this Honorable Court to grant Plaintiff the requested relief.

IV. Nature of Relief Sought

38. Plaintiff seeks the removal of That Officer's RO from (a) all *voir dire* examinations, (b) all oral/written motions, (c) all direct examinations, (d) all cross-examinations, (e) all re-direct examinations (etc.), (f) and all evidence submissions.

V. Additional Notes

39. As an added note, Rules 10(c) and 12(f) Fed. R. Civ. P. combine to strike wayward exhibits (¶7-8, *supra*):

> "*Written exhibits to pleadings are made a part thereof, Fed.R.Civ.P. 10(c); however, the record of Monroe's hearing was merely made an exhibit to the defendant's brief in opposition to the plaintiff's motion for partial summary judgment. It is not made part of a 'pleading' by rule 10(c).*"
>
> - *Monroe v. Board of Education, 65 FRD 641 (D. Conn. 1975)*

40. Plus, a jury will be confused by Defendant's pre-destined lie.

    a) A lie that will start off with Defendant saying "Plaintiff never charged us with sex discrimination. Disregard the fact that we acknowledged that he did."

b) A lie that will continue with "Please also disregard the fact that the FCHR confirmed that he did. Now, focus on the fact that the Hon. E. Gary Early [lied when he] said Plaintiff didn't charge us with sex discrimination."

c) A lie that will conclude with "Plaintiff previously got to *fully & fairly* litigate his sex discrimination charge against us. Just disregard the fact that the FCHR's final order excluded it. Therefore, you – the jury – must ignore it."

CONFERRAL

On June 16, 2021, Defendant told Plaintiff (via email) that it will oppose this motion. Plaintiff followed up (citing Local Rule 3.01(g) USFLMD); stating that he was willing to rescind this motion for good cause. Defendant replied that the RO was important for its motion to dismiss.

Thus, Plaintiff believes the foregoing presents a compelling (ie, Supreme Court mandates) and important reason (ie, unfair prejudice; unconstitutional) to exclude That Officer's perjured RO.

CONCLUSION

WHEREFORE, Plaintiff respectfully asks this Honorable Court to exclude the Recommended Order in DOAH Case No. 18-0373 from evidence.

Dated this 16th day of June 2021.

Respectfully submitted,
/s/ Elias Makere
ELIAS MAKERE, FSA, MAAA, Plaintiff
3709 San Pablo Rd. S # 701
Jacksonville, FL 32224
P: (904) 294-0026
E: justice.actuarial@gmail.com
W: TextBookDiscrimination.com
Get ***Booked Up*** on Justice!

CERTIFICATE OF COMPLIANCE

I certify that the size and style of type used in this document is Times New Roman 14-point Font (caption) and Courier New 12-point Font (contents); thus complying with the font requirements of Local Rule 1.05(a).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of June 2021, I electronically filed the foregoing with the Clerk of Courts by using its online filing page. A notice – via CM/ECF – will be sent to the attached service list.

/s/ Elias Makere

Endnotes:

[1/] the referenced complaint - filed at 8:08 am 3/1/21 - was the proofread version of the timely amended complaint (filed the preceding business day at 11:59pm). They were virtually identical (no substantive changes whatsoever).

[2/] please read the "*Plaintiff's Memorandum of Law Regarding Equitable Tolling on Plaintiff's Verified Complaint*" (3:21-cv-00242-MMH-JBT; ≈ 3/9/21) to see why the Title VII charges were delayed.

[3/] in the administrative realm, "official recognition" = "judicial notice" (§90.201 FS).

SERVICE LIST

Kimberly J. Doud, Esquire (0523771)
Heather A. Johnson, Esquire (*pro hac vice*)
Michele A. Ramos, Esquire (1008119)

E: kdoud@littler.com
E: hajohnson@littler.com
E: mramos@littler.com
P: 407.393.2900
F: 407.393.2929

Littler Mendleson, PC
111 North Orange Avenue, Suite 1750
Orlando, FL 32801-2366

(defendant's trial lawyers)

EXHIBIT A

Return of Service

Florida
In the Circuit Court, 4th Judicial Circuit, Duval County

MA-2021-CA-002763-XXXX-16
Makere v Early
§768 FS, 42 USC §1983

RETURN OF SERVICE

SHERIFF NUMBER: 21005020

PARTY TO BE SERVED
HON. E GARY EARLY
1230 APALACHEE PARKWAY
TALLAHASSEE, FL

ATTORNEY / PETITIONER

PLAINTIFF: ELIAS MAKERE
-VS-
DEFENDANT: HON. E GARY EARLY

TYPE OF WRIT: SUMMONS, COMPLAINT

COURT: CIRCUIT / DUVAL
CASE #: 2021-CA-002763-XXXX

COURT DATE:
COURT TIME:

Received the above-named writ on May 28, 2021, at 12:42 PM, and SERVED the same on the 1st day of June 2021, at 10:40 AM. Service was completed at 1230 APALACHEE PARKWAY TALLAHASSEE, FL in LEON County, Florida, as follows:

GOVERNMENTAL AGENCY / OFFICIAL / ASSOCIATION / CORPORATION

By delivering a true copy of this writ together with a copy of the initial pleadings, if any, with the date and hour of service endorsed thereon by me to Kaleed Abiola Security Guard as Registered Agent of the within named Defendant to-wit: HON. E GARY EARLY .

SERVICE COST: $0.00
Y.W., CIVIL CLERK

WALT MCNEIL, SHERIFF
LEON COUNTY, FLORIDA

COURT:

DUVAL COUNTY CLERK OF COURT
SUITE 2338
JACKSONVILLE, FL 32202

TB 1501

BY: _____
Process Server Tracie Baker, Badge # 1501

Filing # 127019293 E-Filed 05/18/2021 12:09:46 PM

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

ELIAS MAKERE, FSA, MAAA)

Plaintiff,)

vs.) Case No (LT): 2021-CA-002763-XXXX

) Division: CV-B

HON. E. GARY EARLY, ALJ)

Defendant,)

SUMMONS

TO:

Hon. E. Gary Early, ALJ
1230 Apalachee Pkwy
Tallahassee, FL 32399

SERVED THIS 1 DAY OF June
20 21 AT 10:40 A.M. P.M.
WALT McNEIL, SHERIFF OF LEON COUNTY, FL
BY: B.Tod DS

A **lawsuit** has been filed against you. You have **20 calendar days** after this summons is served on you to file a written response to the attached **Complaint** in this Court. A phone call will not protect you; your written response, including the above case number and named parties, must be filed if you want the Court to hear your case.

If you do not file your response on time, **you may lose the case**, and the Court may enter a default against you for the relief requested in the complaint. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

If you choose to file a written response yourself, at the same time you file your written response to the Court you **must** also mail (or take a photocopy/carbon copy of) your written response to the Plaintiff:

Elias Makere, FSA, MAAA
3709 San Pablo Rd. S #701
Jacksonville, FL 32224
P: 904.294.0026
E: justice.actuarial@gmail.com

28MAY2021 11:34 RCVD

ACCEPTED: DUVAL COUNTY, JODY PHILLIPS, CLERK, 05/20/2021 09:44:30 AM

THE STATE OF FLORIDA:

TO EACH SHERIFF OF THE STATE:

YOU ARE COMMANDED to serve this Summons and a copy of the Complaint in this lawsuit on the above-named Defendant.

DATED ON: May 20 2021 20 ____

Jody Phillips
Clerk of Court

Deputy Clerk

CLERK OF THE CIRCUIT COURT SUUM CUIQUE DUVAL COUNTY, FLORIDA

If the party serving summons has designated e-mail address(es) for service, or is represented by an attorney, you may designate email address(es) for service by or on you. Service must be in accordance with Florida Rules of Judicial Administration 2.516.

Copies of all court documents in this case, including orders, are available at the Clerk of the Circuit Court's office. You may review these documents, upon request.

WARNING: Rule 1.285, Florida Rules of Civil Procedure, requires certain automatic disclosure of documents and information. Failure to comply can result in sanctions, including dismissal or striking of pleadings.

NOTICES TO PERSONS WITH DISABILITIES

In accordance with the Americans with Disabilities Act, persons needing a special accommodation to participate in this Hearing should contact the ADA Coordinator no later than seven (7) days prior to the proceeding at **1-904-272-7040** or via Florida Relay Service at **1-800-955-8771 (TDD)**.

IMPORTANT

A lawsuit has been filed against you. You have 20 calendar days after this summons is served on you to file a written response to the attached Complaint in this Court. A phone call will not protect you; your written response, including the above case number and named parties, must be filed on time. If you do not file your response on time you may lose the case without further warning from the Court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book). If you choose to file a written response yourself, at the same time you file your written response to the Court you must also mail (or take a carbon copy/photocopy of) your written response to the Plaintiff.

IMPORTANTE

Usted ha sido demandado legalmente. Tiene veinte (20) dias, contados a partir del recibo de esta notificacion, para contester la demanda adjunta, por escrito, y presentarla ante este tribunal. Una llamada Telefonica no lo protegera; si usted desea que el tribunal considers su defense, debe presenter su respuesta por escrito, incluyendo el numer del caso y los nombres de las partes, interesadas en dicho caso. Si usted no contesta la demanda a tiempo, pudiese perder el caso y podria ser despojado de sus ingresos y propiedades, o privado de sus derechos, sin previo aviso del tribunal. Existen otros requisites legales. Si lo desea, puede usted consulter a un abogado immediatamente. Si no conoce a un abogado, puede llamar a una de las oficinas de asistencia legal que aparencen en laguia Telefonica. Si desea responder a la demanda por su cuenta, al mismo tiempo en que presenta su respuesta ante el tribunal, debera usted enviar por correo o entregar una copia de su respuesta a lapersona denominada abajo como "Plaintiff/Plaintiff's attorney" (demandate o abogado, del Demanadante).

IMPORTANT

Des poursuites judiaciaries ont ete entreprises contre vous. Vous avez 20 jours consecutifs a partir de la date de l'assignation de cet'te citation pour deposer une response estrite a la painte ci-jointe aupres de ce Tribunal. Un simple coup de telephone est insuffisant pour voius proteger; vous etes oblige de deposer votre reponse escrite, avec mention du numero de dossier ci-dessus et du nom des parties nommees iei, si vous souhaitez que le Tribunal entende votre cause. Si vousne deposez pas votre response escrite dans le relai requis, vous risquez de perdre la cause ainsi que votre salaire, votre argent, et vos biens peuvent etre saisis par la suite, sans aucum preavis ulterieur du tribunal. Il y a d'autres obligations juridiques et vous pouvez requerir les services immediats d'un avocat. Si vous ne connaissez pas d'avocat, vous pourriez telephone a un service de reference d'avocats ou a un bureau d'assitsance juridique (figurant a l'annuaire de telephones). Si vous choisissez de deposer vous-meme une reponse escrite, il vous faurdra egalement, en meme temps que cette formalite, faire parvenir ou expediere une copie de votre response escrite au "Plaintiff/Plaintiff's attorney" (Plaignant ou a son avocat) nome ci-dessous.

EXHIBIT B

Recommended Order

From: That Officer
To: State Agency (FCHR)
4/18/2019

[marked]

(Pages 1 and 2 only)

{That Officer's removal of Plaintiff's sex discrimination charge}

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ELIAS MAKERE,

Petitioner,

vs. Case No. 18-0373

ALLSTATE INSURANCE COMPANY,

Respondent.
_____/

RECOMMENDED ORDER

Pursuant to notice, this case was heard in Jacksonville, Florida, on July 31, 2018, before Lawrence P. Stevenson, and on November 28 through 30, 2018, and January 29, 2019, before E. Gary Early, designated Administrative Law Judges of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Elias Makere, pro se
No. 701
3709 San Pablo Road South
Jacksonville, Florida 32224

For Respondent: Carmen Rodriguez, Esquire
Law Offices of Carmen Rodriguez, P.A.
Suite 411
15715 South Dixie Highway
Miami, Florida 33157

STATEMENT OF THE ISSUE

Whether Petitioner, Elias Makere, was subject to an unlawful employment practice by Respondent, Allstate Insurance

Company ("Respondent" or "Allstate"), on account of his race or due to retaliation for his opposition to an unlawful employment practice in violation of section 760.10, Florida Statutes.

PRELIMINARY STATEMENT

On June 30, 2017, Petitioner filed an eight-page complaint of discrimination ("Complaint of Discrimination") with the Florida Commission on Human Relations ("FCHR") which alleged that Respondent violated section 760.10 of the Florida Civil Rights Act of 1992 ("FCRA"), by discriminating against him on the basis of his race or as retaliation.

On December 15, 2017, the FCHR issued a Determination: No Cause, and a Notice of Determination: No Cause, by which the FCHR determined that reasonable cause did not exist to believe that an unlawful employment practice occurred.

On January 19, 2018, Petitioner filed a 231-page Petition for Relief (the "Petition") with the FCHR. The Petition included allegations of racial discrimination for which there is no evidence of their having been presented to FCHR or having been part of the FCHR investigation. The Petition also, for the first identifiable time, alleged that Allstate, and in particular Lisa Henry, engaged in sexually provocative and inappropriate behaviors, which Petitioner alleged to be "sexual harassment and discrimination." He alleged that "[t]he FCHR ignored these events."

EXHIBIT C

Recommended Order

From: 'That Officer'
To: State Agency (FCHR)
4/18/2019

[marked]

(2nd page only)

{That Officer's perjury}

Company ("Respondent" or "Allstate"), on account of his race or due to retaliation for his opposition to an unlawful employment practice in violation of section 760.10, Florida Statutes.

PRELIMINARY STATEMENT

On June 30, 2017, Petitioner filed an eight-page complaint of discrimination ("Complaint of Discrimination") with the Florida Commission on Human Relations ("FCHR") which alleged that Respondent violated section 760.10 of the Florida Civil Rights Act of 1992 ("FCRA"), by discriminating against him on the basis of his race or as retaliation.

On December 15, 2017, the FCHR issued a Determination: No Cause, and a Notice of Determination: No Cause, by which the FCHR determined that reasonable cause did not exist to believe that an unlawful employment practice occurred.

On January 19, 2018, Petitioner filed a 231-page Petition for Relief (the "Petition") with the FCHR. The Petition included allegations of racial discrimination for which there is no evidence of their having been presented to FCHR or having been part of the FCHR investigation. The Petition also, for the first identifiable time, alleged that Allstate, and in particular Lisa Henry, engaged in sexually provocative and inappropriate behaviors, which Petitioner alleged to be "sexual harassment and discrimination." He alleged that "[t]he FCHR ignored these events."

EXHIBIT D

Charge of Discrimination

From: Plaintiff
To: State Agency (FCHR)
6/30/2017

[marked]

(first page only)

RACIAL DISCRIMINATION | ALLSTATE CORPORATION | FLORIDA | 6/30/2017

20170143 2

Elias Makere, ASA
3709 San Pablo Rd S, 701
Jacksonville, FL. 32224
Phone 904.294.0026
Fax
Email Inquiry.allstate@gmail.com

Allstate

EMPLOYEMENT DISCRIMINATION

Racial Discrimination, Sex Discrimination

This document introduces the racial discrimination of a former Allstate employee. The discrimination involved racist dolls, epithets, hostility, ostracism, discrimination of terms/conditions/compensation, and termination. I am looking for justice, an examination of the facts, and an eradication of Allstate's racial discrimination.

2017 JUN 30 PM 12:32

EXHIBIT E

Notice of Determination

From: State Agency (FCHR)
To: Plaintiff/Defendant/'That Officer'
12/15/2017

[marked]

State of Florida
Florida Commission on Human Relations

An Equal Opportunity Employer • Affirmative Action Employer

Rick Scott
Governor

4075 Esplanade Way • Room 110 • Tallahassee, Florida 32399-7020
(850) 488-7082 / FAX: (850) 487-1007
http://fchr.state.fl.us
United in One Goal: Equal Opportunity and Mutual Respect

Rebecca Steele
Chair
Michelle Wilson
Executive Director

FCHR No. 201701432

Mr. Elias Makere
3709 San Pable Road S., #701
Jacksonville, FL 32224

COMPLAINANT

Allstate Corporation
c/o Ms. Charmaine Neal, HR-Workforce Relations Lead Consultant
2775 Sanders Rd. F5
Northbrook, IL 60062

RESPONDENT

DETERMINATION: NO REASONABLE CAUSE

Complainant filed a complaint of discrimination alleging that Respondent violated the Florida Civil Rights Act of 1992. The Florida Commission on Human Relations has completed its investigation of this matter.

Complainant worked for Respondent as an Actuary. Complainant alleged that Respondent discriminated against him based on his race and sex. However, the investigation did not support Complainant's allegations. The investigation did not reveal enough evidence to establish that Complainant reported discriminatory harassment to Respondent. Complainant alleged that Respondent graded his required exams so that he would fail as an excuse to terminate him based on his race. However, the investigation revealed that the required exams were administered and graded anonymously by "The Society of Actuaries" and not Respondent. Therefore, the Respondent could not have been responsible for Complainant failing his exams. Complainant was terminated for failing his exam and not securing a non-actuarial position. The investigation did not reveal evidence of discrimination.

On the basis of the report from the Commission's Office of Employment Investigations and recommendation from the Commission's Office of General Counsel, pursuant to the authority delegated to me as Executive Director of the Florida Commission on Human Relations, I have determined that no reasonable cause exists to believe that an unlawful practice occurred.

Michelle Wilson

Dated: Dec. 15, 2017

PLAINTIFF'S AFFIDAVIT

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

ELIAS MAKERE, FSA, MAAA	)	
Plaintiff	)	Case No (LT) **3:20-cv-00905-MMH-JRK**
	)	
v.	)	
	)	
ALLSTATE INSURANCE COMPANY,	)	
Defendant	)	

PLAINTIFF'S AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION IN LIMINE

The affiant, Elias Makere, swears or affirms as follows:

Background

1. I am over the age of eighteen (18).
2. I am a plaintiff in the above-captioned case.
3. This affidavit is made in good faith.

Familiarity

4. I have read the Local Rules of Court, the Federal Rules of Civil Procedure, the Federal Rules of Evidence, and the Middle District's Discovery Handbook.
5. The information in this affidavit is based on my own personal knowledge.

Facts

6. The Honorable E. Gary Early is days away from default judgment.

7. In April 2019, that hearing officer wrote a recommended order in my administrative case against Allstate.
8. That order was based on a massive lie.
    a. In short, I charged Allstate with race and sex discrimination, but Mr. Edward Gary Early professed that I only charged Allstate with race discrimination.
    b. All government records proved my complaint was on both bases.
    c. He even acknowledged the most pertinent record prior to ushering his lie.
9. **Edward Gary Early perjured himself.**
10. So, I filed civil charges against him under federal and state law.
11. On June 1, 2021, a process server delivered the summons to him.
12. It appears that he is going to leave the charges uncontested.
    a. For one, Florida Rules of Civil Procedure grant him 20 days to do so (1.140(a)). With just 5 days remaining, E. Gary Early has not submitted an answer.
    b. Secondly, I've been able to track/gauge Mr. Early's diligence. My electronic records indicate that he is going to let the charges stand.
13. After all, there's little-to-nothing Mr. Early can say about the undisputable facts. He flat-out lied, and it's public record.

14. That lie was the bedrock for the remaining lies and slander that he planted against me.

    a. For example, in his recommended order, Mr. Early said that I would never pass the exams to become an FSA.

        i. Obviously, this is false (ie, please look at my name).

        ii. Importantly, Mr. Early was playing on the same racial stereotype (of black inferiority) that Allstate preyed on.

        iii. Most importantly, **he knew it was false**.

            1. In January 2019, I took the stand in the administrative case. Among other things, I disclosed that I had already passed all the exams, and the only thing left was for me to '*walk across the stage*'.

            2. At the end of all testimony, Edward Gary Early said something to the effect of "*If you hadn't told me that you passed all the actuarial exams I would've recommended the legal profession to you*". Note: he said this after instructing the court reporter that he was going off-the-record. Allstate, the Bailiff, and the Court Reporter were inside the courtroom at the time.

    b. In short, the rest of Edward G. Early's perjured RO was full of slander and stereotyped lies.

15. His lies and propaganda were conjured up from the centuries-long preachings of the Ku Klux Klan.
16. Which was befitting, because I sued him under the *Ku Klux Klan Act of 1871* (ie, 42 USC §1983).
17. An act that he is apparently set to leave uncontested.

Request

18. May you please strike Edward Gary Early's recommended order out of this proceeding. It is perjured, prejudicial, and unconstitutional.

Thank you.

Verification Under Oath Pursuant to 28 USC §1746

I declare under penalty of perjury that the foregoing is true and correct.
Executed on this 16th day of June 2021.

UNITED STATES OF AMERICA



6/16/2021

Elias Makere, Plaintiff/Affiant

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13588-AA

Appeal From
US District Court, Florida, Middle District
3:20-cv-00905-MMH-LLL
Makere v Allstate

VOLUME 01

ITEM 08

PAGES 0299 – 0303

SHORT TITLE:	Order Denying Motion to Dismiss and Granting Leave to Amend
DATE ENTERED:	10/13/2021
DOC TYPE:	District Court Order
TRIBUNAL:	US District Court, Florida, Middle District
CASE NO:	3:20-cv-00905-MMH-LLL
CASE CAPTION:	*Makere v Allstate*
LINK:	https://ecf.flmd.uscourts.gov/
DOC NO:	70

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ELIAS MAKERE, FSA, MAAA

Plaintiff,

v. Case No. 3:20-cv-905-MMH-JRK

ALLSTATE INSURANCE COMPANY,

Defendant.

ELIAS MAKERE, FSA,

Plaintiff,

v. Case No. 3:20-cv-921-MMH-JRK

ALLSTATE INSURANCE COMPANY,

Defendant.

ELIAS MAKERE,

Plaintiff,

v. Case No. 3:20-cv-922-MMH-JRK

ALLSTATE INSURANCE COMPANY,

Defendant.

O R D E R

This cause is before the Court on Plaintiff's Motion for Leave to Amend Complaint (Doc. No. 51), filed May 10, 2021. Plaintiff filed an Affidavit in

support of the Motion. See Plaintiff's Affidavit (Doc. No. 52), filed May 10, 2021. Defendant responded in opposition on May 21, 2021. See Defendant's Response in Opposition to Plaintiff's Motion for Leave to Amend Complaint and Supporting Memorandum of Law (Doc. No. 53). The Motion was prompted by an Order (Doc. No. 6) entered on April 12, 2021 by the Honorable Joel B. Toomey, United States Magistrate Judge, in Case No. 3:21-cv-242-MMH-JBT (M.D. Fla.), directing Plaintiff to request leave to amend in this case if he wished to pursue his Title VII claims.

Motions to amend pleadings before trial are generally governed by Rule 15(a)(2), Federal Rules of Civil Procedure, which states that "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). "Although leave to amend shall be freely given when justice so requires, a motion to amend may be denied on numerous grounds such as undue delay, undue prejudice to the defendants, and futility of the amendment." Haynes v. McCalla Raymer, LLC, 793 F.3d 1246, 1250 (11th Cir. 2015) (alteration omitted) (quoting Maynard v. Bd. of Regents of Div. of Univs. of Fla. Dep't of Educ. ex rel. Univ. of S. Fla., 342 F.3d 1281, 1287 (11th Cir. 2003)); see also Foman v. Davis, 371 U.S. 178, 182 (1962); Forbus v. Sears Roebuck & Co., 30 F.3d 1402, 1405 (11th Cir. 1994). "Leave to amend a complaint is futile when the complaint as amended would still be properly dismissed." Cockrell v.

Sparks, 510 F.3d 1307, 1310 (11th Cir. 2007) (citation omitted); see also Coventry First, LLC v. McCarty, 605 F.3d 865, 870 (11th Cir. 2010).

Upon review of the parties' filings, the undersigned finds that Defendant's arguments opposing amendment (regarding Plaintiff's claims being time-barred; res judicata and collateral estoppel; and failure to state a claim) are better addressed in a procedural posture of a dispositive motion and response. Accordingly, for this reason and given the previous direction in the April 12, 2021 Order, Plaintiff will be provided one final opportunity to amend his Complaint. Plaintiff is cautioned, however, that absent extraordinary circumstances, Plaintiff is unlikely to be granted future amendments. Plaintiff therefore should include all claims and factual allegations he wishes for the Court to consider in his Third Amended Complaint. Based on the foregoing, Defendant's Dispositive Motion to Dismiss Plaintiff's Amended Complaint and Second Amended Complaint with Prejudice, and Memorandum of Law in Support Thereof (Doc. No. 49), filed March 12, 2021, is due to be denied as moot. Accordingly, it is

ORDERED:

1. Plaintiff's Motion for Leave to Amend Complaint (Doc. No. 51) is **GRANTED**.

2. Plaintiff shall have up to and including **November 5, 2021** to file his Third Amended Complaint.

3. Defendant shall respond to the Third Amended Complaint within the time permitted by the Federal Rules of Civil Procedure.

4. Defendant's Dispositive Motion to Dismiss Plaintiff's Amended Complaint and Second Amended Complaint with Prejudice, and Memorandum of Law in Support Thereof (Doc. No. 49) is **DENIED as moot**.

DONE AND ORDERED in Jacksonville, Florida on October 13, 2021.

James R. Klindt

JAMES R. KLINDT
United States Magistrate Judge

keh
Copies to:
Counsel of Record
Pro se Party

SUPPLEMENTAL RECORDS

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13588-AA

Appeal From
US District Court, Florida, Middle District
3:20-cv-00905-MMH-LLL
Makere v Allstate

VOLUME SR
ITEM 01
PAGES 0305 – 0339

SHORT TITLE: Verified Civil Complaint

DATE ENTERED: 1/3/2022
DOC TYPE: Pleading
TRIBUNAL: US District Court, Florida, Northern District
CASE NO: 4:21-cv-00096
CASE CAPTION: *Makere v Early*
LINK: https://ecf.flnd.uscourts.gov/
DOC NO: 26

****

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

****

****

ELIAS MAKERE, FSA, MAAA
(Plaintiff)

- against-

HON. E. GARY EARLY, ALJ
(Defendant)

****

****

VERIFIED CIVIL COMPLAINT

****

42 USC §1983
January 31, 2021

JURY TRIAL DEMANDED

♪

Deep in the chambers of a state agency, a man cried foul of a corporation's conduct. With due speed, the agency transmitted both of his fundamental sounds to a nearby hearing officer.

An officer, however, with corrupted hearing. An officer, however, who insisted that only one sound was made; eschewing the second for the echoed, stereotyped tales of his fathers.

His perjurous actions were not sound. For they ran afoul of ***the man*** *- and* ***the grounds*** *that constituted* ***the land*** *which his* ***forefathers found.***

♪

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ABBREVIATIONS

ALJ Administrative Law Judge

DOAH Division of Administrative Hearings (Florida)

FCHR Florida Commission on Human Relations

FS Florida Statute (2020)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA, TALLAHASSEE DIVISION

ELIAS MAKERE, FSA, MAAA	)	
Plaintiff,	)	
	)	
vs.	)	Case No (LT):
	)	Division: (4) Tallahassee
HON. E. GARY EARLY, ALJ	)	Jury Trial Demanded
Defendant,	)	☒ Yes | ☐ No

VERIFIED COMPLAINT

COMES NOW, Plaintiff, Elias Makere on this 31st day of January 2021 and hereby sues Defendant, the Honorable E. Gary Early, and states the following:

I. NATURE OF THE CLAIM

1. This action is brought under 42 USC §1983 - the Ku Klux Klan Act of 1871 ("§1983") - to redress Defendant's unlawful conduct towards Plaintiff (also see 28 USC §1331, §1343, and §1367). Unlawful conduct that infringed on Plaintiff's constitutional rights (including but not limited to the 1st, 5th, and 14th amendments).

II. JURISDICTION: AMOUNT

2. Pursuant to 28 USC §2201 and §2202, Plaintiff seeks declaratory relief, injunctive relief, and damages in excess of thirty thousand dollars ($30,000) - exclusive of interest, costs, and attorney fees (also see 42 USC §1985, 42 USC §1988, Rule 54 Fed. R. Civ. P.).

III. JURISDICTION: PARTIES

3. At all times material hereto, Plaintiff was a resident of Jacksonville, FL (Duval County).
4. Upon information and belief, Defendant - at all times material hereto – worked and lived in-or-around Tallahassee, FL (Leon County). Furthermore, Defendant was an administrative law judge (see §120.65 FS) for Florida's Division of Administrative Hearings. A state agency for the territory's executive branch of government (see §20.22(2)(f) FS).

IV. JURISDICTION: VENUE

5. Defendant's unlawful conduct was committed within the jurisdiction of this Court. Thus, pursuant to 28 USC §1331 FS (and §1391), this venue is correct.

V. STATUTORY PREREQUISITES

6. It appears that no administrative remedies need to be exhausted before initiating this lawsuit. Indeed, DOAH does not have a formal grievance procedure for addressing unlawful conduct of its officers. Thus, the matter before this Honorable Court is ripe for adjudication.

VI. STATEMENT OF THE FACTS

7. Plaintiff fell into Defendant's grasp by virtue of a lawsuit that he filed against a private corporation. A brief review of that case is important for contextualizing Defendant's conduct.

Originating Lawsuit (Stage Agency, *Makere v Allstate*)

8. On June 30, 2017, Plaintiff filed an employment discrimination complaint with the FCHR. Pursuant to §760.11(1), he alleged that his former employer (Allstate Insurance Company) had violated his civil rights on the basis of race **and** sex (see **Exhibit A**).
9. On September 8, 2017, Allstate denied **both** allegations (see **Exhibit B**). Stating that it fired Plaintiff for a legitimate reason. Specifically, because he had failed an actuarial exam (see **Exhibit C**):

> *"Complainant was terminated solely because he failed his [FSA] exam."*
>
> - Allstate Insurance Company, 9/8/17

10. On December 15, 2017, the FCHR concluded its investigation. Notably affirming that race **and** sex were the basis of Plaintiff's complaint (see **Exhibit D**).
11. On January 19, 2018, Plaintiff filed his Petition for Relief with the FCHR. Just as in his original charge, he listed only race and sex as the protected characteristics for his complaint (see **Exhibit E**). Thus, pursuant to §760.11(7) FS and §120.569 FS, the FCHR transmitted it to DOAH.
12. After a series of irregularities (authority breaches, deposition sit-ins, recusals, etc.), Defendant became the administrative hearing officer over Plaintiff's case (circa November 13, 2018).

13. Despite the procedural incongruities, the facts continued to develop in Plaintiff's favor; heavily.
14. Allstate made it known that many of its *other* employees had also failed exams. Yet, Allstate never fired any of them. This was the '*smoking gun*' for proving that Allstate's reason for terminating Plaintiff's employment was a pretext.
15. Moreover, at the hearing, three other revelations were cementing:
    a. Allstate granted the work-from-home privilege to its *other* employees. An accommodation it denied to Plaintiff on countless occasions.
    b. Allstate made Plaintiff pay $1,025 for an actuarial exam fee; a payment it never required any of its *other* employees to make.
    c. Allstate paid Plaintiff an annual salary that was significantly lower than his similarly situated comparators.
16. These core facts rendered Plaintiff's lawsuit (against Allstate) a textbook case of employment discrimination. One which – unfortunately – ran counter to widespread propaganda (as foretold by the Ku Klux Klan itself; and its progenies).
17. Faced with these probative facts, Defendant went on the attack.

<u>Defendant's Unlawful Conduct: (A) Evidence Suppression</u>

18. On November 30, 2018, during the moments in which the payment disparity was being revealed (see ¶15b, *supra*), Defendant ordered Plaintiff to cease questioning.

19. After the hearing – around January 9, 2019 - Plaintiff asked Defendant for a redress of the cessation order (citing due process). He further detailed the importance of the requested testimony/revelation.
20. Two days later (January 11, 2019), Plaintiff received a copy of the hearing transcript. It was missing one page (and one page only). That crucial page was the one that contained testimony on the payment disparity (§15b) - and Defendant's cessation order.
    a. It is important to note that prior to this date, Plaintiff had never requested a hearing transcript on his case.
        i. Plaintiff suspects that Defendant knew this, and was preying on Plaintiff's novice (Plaintiff was *pro se*).
21. Given these circumstances – and upon Plaintiff's information/belief - Defendant willfully and knowingly hid evidence.

Defendant's Unlawful Conduct: (B) Perjury

22. Defendant took it one step further, though, by making a wholesale removal of Plaintiff's sex discrimination charge.
23. On April 19, 2019, Defendant entered its Recommended Order ("RO").
24. The first page of the document had a section titled "*Statement of the Issue*". Where Defendant excluded Plaintiff's sex discrimination charge (see **Exhibit F**).
25. The second page had a section titled "*Preliminary Statement*". Where Defendant continued to exclude Plaintiff's sex discrimination charge. This time, however, Defendant made the fateful declaration that Defendant never complained of sex discrimination prior to the DOAH proceedings (see ¶11, *supra*) (see **Exhibit G**).

> *"[Plaintiff], also for the first identifiable time, alleged that Allstate, and in particular [Plaintiff's manager], engaged in sexually provocative and inappropriate behaviors, which [Plaintiff] alleged to be "sexual harassment and discrimination""*
>
> - The Honorable E. Gary Early, ALJ | 4/18/19 | Florida

26. Defendant repeated that highlighted line (ie, "for the first identifiable time") several more times throughout his authored RO.
27. The statement, of course, was false.
28. Plaintiff *did* charge Allstate with sex discrimination.
    a. He did so in his original charge (6/30/17, see ¶8);
    b. Allstate acknowledged the sex basis (9/8/17, ¶9); and
    c. The FCHR explicitly ruled on the basis of sex (12/15/17, ¶10)
29. Nevertheless, the force and effect of Defendant's statement made the FCHR change its tune.
30. On June 27, 2019, the FCHR issued its Final Order ("FO"). In which it listed race as the only protected characteristic in Plaintiff's complaint (see **Exhibit H**); and adopted Defendant's ruling.
31. Defendant's lie had its intended effect.
32. Now, it is important to recognize that Defendant knew he was lying.

Defendant's Knowledge of the Truth

33. Prior to authoring his RO, Defendant deliberately acknowledged that the sex discrimination charge was in Plaintiff's originating complaint.
34. On February 6, 2019, Allstate moved Defendant to take official recognition of the FCHR's Determination (under §90.201 FS).[1/]

35. That state-issued Determination letter read, in pertinent part, as follows (highlights added):

> *"Complainant worked for Respondent as an Actuary. Complainant alleged that Respondent discriminated against him based on his race and sex."*
>
> - The FCHR | 12/15/17 | Florida

36. On February 18, 2019, Defendant granted the motion. Thereby cementing – unequivocally – that he **knew** that Plaintiff charged Allstate with sex discrimination. He said the following (highlights added).

> *"[Allstate's] Motion for Official Recognition requests that official recognition be taken of the Notice of Determination: No Reasonable Cause, and of the Determination: No Reasonable Cause, both of which were issued by the Florida Commission on Human Relations on December 15, 2017. Those documents provided the point of entry to [Plaintiff] for this proceeding."*
>
> - The Honorable E. Gary Early, ALJ | February 18, 2019 | Florida

37. Thus, Defendant's repeated "statements" to the contrary were a known lie (a big lie – in fact).

38. A big lie that impacted the outcome of Plaintiff's lawsuit against Allstate. A case which sought monetary damages (among other things).

VII. ULTIMATE FACTS

39. Defendant broke the law in his quest to deny Plaintiff relief. Defendant:

    a. hid evidence (see ¶18-21); and

    b. committed perjury (see ¶22-38).

VIII. LEGAL APPLICATION

COUNT I: FIRST AMENDMENT RIGHT TO LEGAL PROTECTION | 42 USC §1983

40. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VI (Paragraphs 7 through 38).
41. Defendant's unlawful actions (individually and in total) abridged Plaintiff's right to petition the State of Florida for a redress of his grievances against Allstate Insurance Company.
42. While acting under the color of state law (§120.569 FS, §120.65 FS), Defendant denied Plaintiff access to the state's court system (see §760.11(7) FS). An act that violated Plaintiff's First Amendment right (1st Amendment US Constitution).
43. Defendant did so via evidence suppression and perjury (§92.525 FS).

COUNT II: FIFTH AMENDMENT RIGHT TO DUE PROCESS | 42 USC §1983

44. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VI (Paragraphs 7 through 38).
45. Defendant's unlawful actions (individually and in total) abridged Plaintiff's right to due process. It is well settled that a violation of due process occurs when an agency excludes/removes a legal basis from a claimant's discrimination charge.
46. Thus, while acting as a state hearing officer (§120.569 FS, §120.65), Defendant violated Plaintiff's constitutional rights (5th Amendment US Constitution) by criminally removing the sex discrimination basis from his complaint.

COUNT III: FOURTEENTH AMENDMENT RIGHT TO EQUAL PROTECTION | 42 USC §1983

47. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VI (Paragraphs 7 through 38).
48. Defendant's unlawful actions (individually and in total) abridged Plaintiff's right to a fair trial on the matters litigated.
49. While acting as the administrative law judge on Plaintiff's case (ie, under the '*color of state law*' – §120.569 FS, §120.65 FS) – Defendant discriminatorily prevented Plaintiff from attaining the legal protections that Florida afforded other similarly-situated people.
50. Defendant did so when he (a) suppressed crucial evidence (¶18-21); and (b) perjured himself (¶22-38).
51. As such, Defendant violated Plaintiff's constitutional rights to the "equal protection of [§760.11 FS]" (14th Amendment US Constitution).

COUNT IV: SUPREMACY CLAUSE | 42 USC §1983

52. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VI (Paragraphs 7 through 38).
53. Defendant's unlawful actions (individually and in total) breached Article VI Section 2 of the US Constitution (ie, the "Supremacy Clause"). He did so when he usurped the federal government's power to protect Plaintiff from 1st, 5th, and 14th amendment violations.

COUNT V: PERJURY

54. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VI (Paragraphs 7 through 38).

55. Defendant – infused with the power bestowed upon him by statute – broke the law (§92.525 FS) by making a false statement of material fact. He sold his falsehood to another state agency – which was acting in its official capacity (¶22-30).

56. That agency (the FCHR) bought his lie; and thereby cemented Defendant's violation of Plaintiff's constitutional rights (1st Amendment – access to the court; 5th Amendment – due process; 14th Amendment – equal protection; Art. VI §2 – supremacy clause).

JUDICIAL IMMUNITY

57. The Doctrine of Judicial Immunity does not attach to this case for two fundamental reasons.

58. First, Defendant is not a judicial officer. Although he is a judge *per se*, he is an administrative judge. A designation that does not afford him the immunities reserved for judicial officers.

59. Secondly, and perhaps more importantly, Defendant broke the law (§92.525 FS – perjury). Judicial Immunity does not cover legal violations.

DAMAGES

60. As a direct and proximate result of said acts, Plaintiff has suffered – and continues to suffer – financial loss and loss of earning capacity. Plus, he has suffered (and continues to suffer) mental anguish, distress, pain, great expense, inconvenience, professional damage and other pecuniary and nonpecuniary losses.
61. As a further result of Defendant's constitutional breaches, Plaintiff has incurred legal fees and will continue to incur legal fees.

RESERVATION OF RIGHTS

62. Defendant's unlawful acts and discriminatory patterns demonstrate a callous disregard and reckless indifference to Plaintiff; that justifies an award of punitive damages at trial. Upon an evidentiary showing and hearing, Plaintiff reserves the right to amend his pleadings to assert a claim for punitive damages against Defendant.
63. Plaintiff may retain an attorney to represent him in prosecuting this action and if so will be obligated to pay them a reasonable fee for their services.
    a. Pursuant to 42 USC §1988, Plaintiff is entitled to request that the Court allow him to recover his reasonable attorney's fees incurred in successfully prosecuting this cause, should he retain an attorney.

REQUEST FOR JURY TRIAL

64. Pursuant to Amendment 7 of the United States Constitution (and Rule 38(b) Fed. R. Civ. P., Rule 81(c) Fed. R. Civ. P.), Plaintiff respectfully requests that this honorable Court grant him a trial by jury on all issues so triable.

REQUEST FOR RELIEF

65. WHEREFORE Plaintiff respectfully requests that this Court enter judgment in favor of Plaintiff and against Defendant on all claims herein, and enter an Order providing the following relief:

    b. Declaring that Defendant violated §1983;

    c. Enjoining Defendant from committing further violations of §1983;

    d. Awarding Plaintiff compensatory damages (back pay, front pay, including interest, lost fringe benefits, etc.) which Defendant's unlawful acts precluded him from obtaining.

    e. Awarding Plaintiff the cost of this action, together with reasonable attorney's fees (if any).

    f. Awarding Plaintiff pre-judgment interest.

    g. Awarding Plaintiff punitive damages; and

    h. Awarding such other and further relief as is just, equitable, and proper.



Dated this 31st day of January 2021.

Respectfully submitted,

/s/ Elias Makere
ELIAS MAKERE, FSA, MAAA, Plaintiff
3709 San Pablo Rd. S # 701
Jacksonville, FL 32224
P: (904) 294-0026
E: justice.actuarial@gmail.com
W: TextBookDiscrimination.com
Get ***Booked Up*** on Justice!

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of January 2021, I filed the foregoing with the Clerk of Courts by mailing it to United States Courthouse; 111 N. Adams St, Ste 322; Tallahassee, FL; 32301.

CERTIFICATE OF GOOD FAITH

I HEREBY CERTIFY that pursuant to Rule 11 Fed. R. Civ. P. the foregoing (1) has been submitted in good faith; (2) is supported by existing law; (3) is supported by indisputable evidence (and will likely be compounded with further evidence); and (4) the complaint otherwise complies with the requirements of Rule 11.

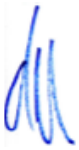
/s/ Elias Makere

Verification Under Oath Pursuant to 28 USC §1746

I declare under penalty of perjury that the foregoing is true and correct. Moreover, the ultimate, material facts laid out above come from publicly available sources. Thus, they are not subject to dispute because *"they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned"*. Some of the other facts are based on information and belief. These two elements come from my own personal observation, knowledge, and experience – coupled with circumstantial evidence of the matter.

Executed on this 31st day of January 2021.

UNITED STATES OF AMERICA



1/31/2021

Elias Makere, Plaintiff/Affiant

Endnotes:

[1/] in the administrative realm, "official recognition" = "judicial notice"

Note: an electronic copy of this document can be downloaded from:
www.TextBookDiscrimination.com/Pages/Misc/ALJPerjury/

EXHIBIT A

Charge of Discrimination

From: Plaintiff
To: State Agency (FCHR)
6/30/2017

[marked]

(first page only)

2017014432

RACIAL DISCRIMINATION | ALLSTATE CORPORATION | FLORIDA | 6/30/2017

Elias Makere, ASA
3709 San Pablo Rd S, 701
Jacksonville, FL. 32224

Phone 904.294.0026
Fax
Email Inquiry.allstate@gmail.com

Allstate

EMPLOYEMENT DISCRIMINATION

Racial Discrimination, Sex Discrimination

This document introduces the racial discrimination of a former Allstate employee. The discrimination involved racist dolls, epithets, hostility, ostracism, discrimination of terms/conditions/compensation, and termination. I am looking for justice, an examination of the facts, and an eradication of Allstate's racial discrimination.

2017 JUN 30 PM 12:32

EXHIBIT B

Position Statement

From: Allstate
To: State Agency (FCHR)
9/8/2017

(note: Allstate = Plaintiff's former employer)

[marked]

(first page only)

Allstate.
You're in good hands.

Charmaine Neal
Lead Consultant
Workforce Relations Team
Human Resources

September 8, 2017

Alicia Maxwell
Employment Investigator
Florida Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, FL 32399

Re: Charge No.: FCHR 201701432
Complainant: Elias Makere
Respondent: Allstate Insurance Company

Investigator Maxwell,

This letter sets forth the position of Respondent, Allstate Insurance Company ("Allstate"), regarding the above-referenced charge of discrimination. I am serving as the contact person; therefore, please address all communications to my attention.

The facts set forth in this letter are based upon a preliminary investigation of the circumstances of the allegations against Allstate.[1] It is Allstate's policy not to discriminate with regard to race, sex, age, national origin, sexual orientation, gender identity/gender expression, citizenship, disability, and status as a veteran with a disability or veteran of the Vietnam Era (Exhibit 1-Policy Guide). As outlined below, the allegations of discrimination based upon race and sex discrimination from Elias Makere (hereinafter "Ms. Makere" or "Complainant") are without merit.

FACTS

EXHIBIT C

Allstate's Termination Rationale
(ie, Allstate fired Plaintiff "solely" for failing an exam)

From: Defendant
To: State Agency (FCHR)
9/8/17

[marked]

Complainant was terminated solely because he failed to pass his ASA exam and as a result, he became ineligible to maintain his status in the Allstate Financial Actuarial Career Program (ACP).

Lastly, Complainant's allegation that more African-American actuarial employees were involuntarily terminated is without merit. Complainant was the only employee that Respondent terminated in his department between 2014 and 2016.

CONCLUSION

Complainant's charge of discrimination based upon race without merit. Accordingly, Respondent requests that this Charge be dismissed in its entirety. Should you have any additional questions, please do not hesitate to contact me at (847) 402-7367.

Sincerely,

Charmaine Neal

Charmaine Neal
Human Resources Lead Consultant

Attachments

EXHIBIT D

Notice of Determination

From: State Agency (FCHR)
To: Plaintiff/Allstate/Defendant's Agency
12/15/2017

[marked]

State of Florida
Florida Commission on Human Relations

An Equal Opportunity Employer • Affirmative Action Employer

Rick Scott
Governor

4075 Esplanade Way • Room 110 • Tallahassee, Florida 32399-7020
(850) 488-7082 / FAX: (850) 487-1007
http://fchr.state.fl.us
United in One Goal: Equal Opportunity and Mutual Respect

Rebecca Steele
Chair
Michelle Wilson
Executive Director

FCHR No. 201701432

Mr. Elias Makere
3709 San Pable Road S., #701
Jacksonville, FL 32224

COMPLAINANT

Allstate Corporation
c/o Ms. Charmaine Neal, HR-Workforce Relations Lead Consultant
2775 Sanders Rd. F5
Northbrook, IL 60062

RESPONDENT

DETERMINATION: NO REASONABLE CAUSE

Complainant filed a complaint of discrimination alleging that Respondent violated the Florida Civil Rights Act of 1992. The Florida Commission on Human Relations has completed its investigation of this matter.

Complainant worked for Respondent as an Actuary. Complainant alleged that Respondent discriminated against him based on his race and sex. However, the investigation did not support Complainant's allegations. The investigation did not reveal enough evidence to establish that Complainant reported discriminatory harassment to Respondent. Complainant alleged that Respondent graded his required exams so that he would fail as an excuse to terminate him based on his race. However, the investigation revealed that the required exams were administered and graded anonymously by "The Society of Actuaries" and not Respondent. Therefore, the Respondent could not have been responsible for Complainant failing his exams. Complainant was terminated for failing his exam and not securing a non-actuarial position. The investigation did not reveal evidence of discrimination.

On the basis of the report from the Commission's Office of Employment Investigations and recommendation from the Commission's Office of General Counsel, pursuant to the authority delegated to me as Executive Director of the Florida Commission on Human Relations, I have determined that no reasonable cause exists to believe that an unlawful practice occurred.

Michelle Wilson

Dated: Dec. 15, 2017

EXHIBIT E

Petition for Relief

From: Plaintiff
To: State Agencies (FCHR/DOAH)
1/19/2018

[marked]

(first page only)

Elias Makere, ASA
3709 San Pablo Rd S, 701
Jacksonville, FL. 32224

Phone 904.294.0026
Fax
Email Inquiry.allstate@gmail.com

Allstate

PETITION SUPPLEMENT

Employment Discrimination (Race, Sex)

Here is the supplement to the Petition for Relief form. This document will begin with a description of the items in dispute. From there, the remaining pages exist to familiarize you with the case (legal elements, timeline, events, people, secured evidence, and requested evidence).

Petitioner:	Elias Makere, Former Allstate Employee
Dates:	April 2014 – October 2016
Race:	Black
Sex:	Male
Existence of Retaliation?	Yes

000032

EXHIBIT F

Recommended Order

From: Defendant
To: State Agency (FCHR)
4/19/2019

[marked]

(Pages 1 and 2 only)

{Defendant's removal of sex discrimination charge}

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ELIAS MAKERE,

Petitioner,

vs. Case No. 18-0373

ALLSTATE INSURANCE COMPANY,

Respondent.
_____/

RECOMMENDED ORDER

Pursuant to notice, this case was heard in Jacksonville, Florida, on July 31, 2018, before Lawrence P. Stevenson, and on November 28 through 30, 2018, and January 29, 2019, before E. Gary Early, designated Administrative Law Judges of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Elias Makere, pro se
No. 701
3709 San Pablo Road South
Jacksonville, Florida 32224

For Respondent: Carmen Rodriguez, Esquire
Law Offices of Carmen Rodriguez, P.A.
Suite 411
15715 South Dixie Highway
Miami, Florida 33157

STATEMENT OF THE ISSUE

Whether Petitioner, Elias Makere, was subject to an unlawful employment practice by Respondent, Allstate Insurance

Company ("Respondent" or "Allstate"), on account of his race or due to retaliation for his opposition to an unlawful employment practice in violation of section 760.10, Florida Statutes.

PRELIMINARY STATEMENT

On June 30, 2017, Petitioner filed an eight-page complaint of discrimination ("Complaint of Discrimination") with the Florida Commission on Human Relations ("FCHR") which alleged that Respondent violated section 760.10 of the Florida Civil Rights Act of 1992 ("FCRA"), by discriminating against him on the basis of his race or as retaliation.

On December 15, 2017, the FCHR issued a Determination: No Cause, and a Notice of Determination: No Cause, by which the FCHR determined that reasonable cause did not exist to believe that an unlawful employment practice occurred.

On January 19, 2018, Petitioner filed a 231-page Petition for Relief (the "Petition") with the FCHR. The Petition included allegations of racial discrimination for which there is no evidence of their having been presented to FCHR or having been part of the FCHR investigation. The Petition also, for the first identifiable time, alleged that Allstate, and in particular Lisa Henry, engaged in sexually provocative and inappropriate behaviors, which Petitioner alleged to be "sexual harassment and discrimination." He alleged that "[t]he FCHR ignored these events."

EXHIBIT G

Recommended Order

From: Defendant
To: State Agency (FCHR)
4/19/2019

[marked]

(2nd page only)

{defendant's perjury}

Company ("Respondent" or "Allstate"), on account of his race or due to retaliation for his opposition to an unlawful employment practice in violation of section 760.10, Florida Statutes.

PRELIMINARY STATEMENT

On June 30, 2017, Petitioner filed an eight-page complaint of discrimination ("Complaint of Discrimination") with the Florida Commission on Human Relations ("FCHR") which alleged that Respondent violated section 760.10 of the Florida Civil Rights Act of 1992 ("FCRA"), by discriminating against him on the basis of his race or as retaliation.

On December 15, 2017, the FCHR issued a Determination: No Cause, and a Notice of Determination: No Cause, by which the FCHR determined that reasonable cause did not exist to believe that an unlawful employment practice occurred.

On January 19, 2018, Petitioner filed a 231-page Petition for Relief (the "Petition") with the FCHR. The Petition included allegations of racial discrimination for which there is no evidence of their having been presented to FCHR or having been part of the FCHR investigation. The Petition also, for the first identifiable time, alleged that Allstate, and in particular Lisa Henry, engaged in sexually provocative and inappropriate behaviors, which Petitioner alleged to be "sexual harassment and discrimination." He alleged that "[t]he FCHR ignored these events."

EXHIBIT H

FCHR Final Order
Exclusion of Sex Discrimination Complaint

From: State Agency (FCHR)
To: Defendant/Plaintiff/Allstate
6/27/2019

[marked]

(first page only)

{end result of Defendant's 'big lie'}

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

ELIAS MAKERE,

Petitioner,

v.

ALLSTATE INSURANCE COMPANY

Respondent.
_____/

EEOC Case No. None

FCHR Case No. 2017-01432

DOAH Case No. 18-0373

FCHR Order No. 19-044

FINAL ORDER DISMISSING PETITION FOR RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE

Preliminary Matters

Petitioner Elias Makere filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2016), alleging that Respondent, Allstate Insurance Company, committed unlawful employment practices by harassing and terminating Petitioner on the basis of Petitioner's race (Black). Petitioner also alleged that Respondent unlawfully retaliated against Petitioner.

SPECIFIC PUBLIC RECORDS

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13588-AA

Appeal From
US District Court, Florida, Middle District
3:20-cv-00905-MMH-LLL
Makere v Allstate

VOLUME	PR
ITEM	01
PAGES	0341-0474

SHORT TITLE:	Appellant's Motion for Judicial Notice of his Full Administrative Complaint (Dated 4/10/19)
DATE ENTERED:	11/23/2022
DOC TYPE:	Appellate Filing
TRIBUNAL:	US Court of Appeals, 11th Circuit
CASE NO:	22-13588-AA
CASE CAPTION:	*Makere v Allstate*
LINK:	http://ecf.ca11.uscourts.gov
DOC NO:	

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

ELIAS MAKERE, FSA, MAAA	)	CASE NUMBER
Appellant/Plaintiff	)	**22-13588-AA**
	)	
v.	)	
	)	
ALLSTATE INSURANCE COMPANY	)	(LT) 3:20-cv-00905-MMH-LLL US District Court, Florida, Middle District
Appellee/Defendant	)	

APPELLANT'S MOTION FOR JUDICIAL NOTICE OF APPELLANT'S FULL ADMINISTRATIVE COMPLAINT (DATED 4/10/19)

Appellant, ELIAS MAKERE, on this 23rd day of November 2022, respectfully moves this Honorable Court to take judicial notice of the full administrative complaint that he filed with the Florida Commission on Human Relations (FCHR) **on April 10, 2019.**

Key Points:

A.) Points filing date (4/10/19 vs 4/26/19)

B.) Grounds issue-on-appeal (*clear error*)

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Context 2nd Page
Motion 3rd Page
Certificates 10th Page
Exhibits 14th Page

Background:	Appellant's administrative complaint was dated 4/10/19
Problem:	That filing date has yet to be judicially noticed
Request:	This Court takes judicial notice of the dated complaint

Rule 201 | Fed. R. Evid. | Judicial Notice

"(b) KINDS OF FACTS THAT MAY BE JUDICIALLY NOTICED. The court may judicially notice a fact that...

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned."

Rule 402 | Fed. R. Evid. | General Admissibility of... Evidence

"Relevant evidence is admissible unless [prohibited by law]"

§90.202 FS | Matters Which May Be Judicially Noticed (emphasis added)

"A court may take judicial notice of the following matters, to the extent that they are not embraced within s. 90.201:

(5) Official actions of the legislative, executive, and judicial departments of the United States and of any state, territory, or jurisdiction of the United States."

Precedence

- 02-16215 - 11th Cir. (1/30/04)
- 07-12874 - 11th Cir. (2/4/09)

This Circuit usually grants motions for judicial notice

Abbreviations

FCHR	-	Florida Commission on Human Relations
FS	-	Florida Statute
LT	-	Lower Tribunal
USFLMD	-	US District Court, Florida, Middle District

MOTION

I. Background | Administrative History

1. On April 10, 2019, Appellant sent the FCHR his employment discrimination complaint via email (please see **Exhibit A**).
2. The state agency received it immediately; blessing it with a 2:35PM timestamp (**Exhibit B**).

II. Background | Judicial History

3. On August 12, 2020, Appellant sued Appellee in federal court. Doing so under both federal (42 USC §1981) and state law (§760 FS).
4. On February 8, 2021, USFLMD entered an order of partial dismissal ("That Order"). Therein, the lower court removed all three of Appellant's state charges.[1/] After objection, That Order became final/appealable on October 13, 2022.
5. This interlocutory appeal followed.

III. Analysis of Pertinent Dates

6. That Order dismissed Appellant's state charges because of administrative timeliness (highlights added):

> *"In sum, the record establishes that the [State Agency] rendered timely "No Cause" determinations on [Appellant]'s Charges... As such, [Appellant] is administratively barred under section 760.11(7) of the Florida Statutes from pursuing his [state] claims here.*

> *[USFLMD] will grant the Motion as to Counts I-III of the Complaint and dismiss the [state] claims in their entirety."*
>
> - Page 18, 'That Order'

7. That decision was based on That Order's prior determination that the state agency (ie, the FCHR) rendered a decision within the 180-day statutory window (highlights added):

> *"As set forth above, the FCHR issued a "No Cause" determination regarding the 2019 FCHR Charge on October 18, 2019, within the 180-day period."*
>
> - Page 17, 'That Order'

8. That 180-day calculation was based on a starting date of April 26, 2019:

> *"[Appellant] filed a second charge of discrimination with the [state agency], which was received on April 26, 2019"*
>
> - Page 17, 'That Order'

9. The problem here is that the **starting date (ie, 4/26/19) was wrong**.
    a. Appellant filed his administrative complaint on April 10, 2019. The difference between the correct date (4/10) and the incorrect date (4/26) is/was vital.[2/]
        i. The incorrect date falls within the 180-day window, while the correct date does not.
10. In short, That Order was based on an incorrect filing date. Therefore, Judicial notice of the correct date is in order.

IV. Purpose of Judicial Notice

11. Acceptance of this document will establish that Appellant filed his administrative complaint **on April 10, 2019.**

    a. According to §760.11(1) FS, the agency's timestamp confirmed this filing date (highlights added):

> *"On the same day the complaint is filed with the commission, the commission shall clearly stamp on the face of the complaint the date the complaint was filed with the commission... If the date the complaint is filed is clearly stamped on the face of the complaint, that date is the date of filing."*
>
> – §760.11(1) FS

    b. Plus, pursuant to Rule 60Y-5.001(3) FAC, the date of receipt was the date the agency *actually* received it (highlights added):

> *"(3) Place and Date of Filing. A complaint may be filed at the office of the Commission. The date of filing shall be the date of actual receipt of the complaint by the Clerk or other agent of the Commission."*

    Thus – by virtue of its timestamp (and Appellant's email) – the FCHR officially received Appellant's complaint on **April 10, 2019.**

    c. Moreover, Rule 60Y-5.001(5)&(6) rendered the document a complaint in-and-of-itself (emphasis added):

> *"(5) Form. The complaint must be in writing and shall be signed by the complainant."*
>
> *(6) Contents.*
> *(a) The complaint should contain the following information:*
> *1. The name, address and telephone number of the person filing the complaint;*
> *2. The name, address and telephone number of the respondent;"*

In the instant case, Appellant's charge was in writing, was signed (see Page 116 Exh. B), contained his contact information (Id. Page 1), had the contact information for Appellee (Id. 116), and was acknowledged by the agency (Id. 117).

12. Thus, the FCHR's own rules certified Appellant's complaint was **filed on April 10, 2019** (***not*** April 26). This *clear* certification will be a major issue of the instant appeal.[3/]

13. Appellant avers that the foregoing presents a compelling reason for judicial notice of his full administrative complaint, because:

    a. the document is public record (please see Menominee Indian Tribe v Thompson, 161 F.3d 449 (7th Cir. 1998).

    b. stamped, administrative complaints are "*official actions [of] an executive agency]*" (please accord §90.202(5) FS; please reference §760.04 FS + §20.22 FS); and

c. it is relevant (please see Rule 402 Fed. R. Evid.).

V. Nature of Relief Sought

14. Appellant hereby asks this Honorable Court to judicially notice Appellant's full administrative complaint only to the following extent:

    a. It is a fact that **April 10, 2019 was the filing date** of Plaintiff's FCHR complaint.

VI. Argument in Support of Taking Judicial Notice

15. Rule 201(b) Fed. R. Evid. bestows this Court with the power to take judicial notice of "*a fact that is not subject to reasonable dispute*".

    a. Here, in the instant case, no one can reasonably dispute the proffered item. Mainly because it is public record.

16. In Horne v. Potter, 392 F. App'x 800 (11th Cir. 2010), this Court stated that courts can take judicial notice of items that are **public record** (highlights added):

> *"The district court properly took judicial notice of the documents in [the plaintiff's] first case, which were public records that were "not subject to reasonable dispute" because they were "capable of accurate and ready determination by resort to sources whose accuracy could not reasonably be questioned.""*
>
> - *Horne v Potter, 392 F. App'x 800 (11th Cir. 2010)*

17. Plus, the US Supreme Court ruled that a court can take limited/pertinent judicial notice:

> *"Accordingly, a court may take notice of another court's order only for the limited purpose of recognizing the "judicial act" that the order represents or the subject matter of the litigation.""*

- *United States v Jones, 29 F.3d 1549 (11th Cir. 1994)*

18. In short, these appellate decisions fit Plaintiff's motion perfectly. As he is only asking for this Court to take recognition of material that is public record.

CONFERRAL

On November 11, 2022, Appellee responded that it opposes this motion. Appellant responded by asking the former employer whether it disputed the underlying fact (ie, that Appellant filed his FCHR Complaint on April 10, 2019). Appellee neglected to answer.

Thus, given all-of-the-above, Appellant finds a compelling (ie, correct date) and important (ie, issue-on-appeal) reason for this motion.

CONCLUSION

WHEREFORE, Appellant respectfully asks this Honorable Court to take judicial notice of Appellant's Full Administrative Complaint (dated 4/10/2019).

Dated this 23rd day of November 2022.

Respectfully submitted,

/s/ Elias Makere
ELIAS MAKERE, FSA, MAAA, Plaintiff
PO Box 324
Hobart, IN 46342
P: (904) 294-0026
E: justice.actuarial@gmail.com
W: TextBookDiscrimination.com
Get ***Booked Up*** on Justice!

Endnotes:

[1/] That Order also instructed Appellant to exclude his state charges from any amendments. After amendment (and after Appellant filed motions for sanctions/limine in the LT), USFLMD ordered Appellant to amend his complaint again – to include "all" charges. On November 5, 2021, Appellant obliged. The operative complaint currently has his original charges (ie, 42 USC §1981, §760 FS) as well as his matured federal charges (Title VII, EPA). Yet, given the rendering of That Order (on 10/13/22) – and the stayed proceedings from below – it appears that USFLMD has yet to reinstate Appellant's state charges. Therefore, this interlocutory appeal is set to resolve an unresolved error in the LT (ie, 4/10/19 vs 4/26/19).

[2/]
Incorrect Calculation
175 = 10/18/19 – 4/26/19

Correct Calculation:
191 = 10/18/19 – 4/10/19

where:
- "10/18/19" is the state agency's notification date;
- "4/26/19" is the incorrect starting date;
- "4/10/19" is the correct starting date

[3/] Proffered on the grounds of *clear error*; and preserved by Appellant's objections (filed on 2/22/21 in the LT).

CERTIFICATE OF COMPLIANCE

1. Type-Volume

☒ This document complies with the word limit of Rule 32(a)(7)(B)(i) Fed. R. App. P., because - excluding the parts of the document exempted by Rule 32(f) - this document contains 1,370 words.

or

☐ ~~This brief complies with the line limit prescribed by Rule 32(a)(7)(B)(i) Fed. R. App. P., because - excluding the parts of the document exempted by Rule 32(f) - this document contains [NNNN] lines of monospaced text.~~

2. Typeface and Type-Style

☒ This document uses Courier New (12-Pt) Font; thereby complying with the typeface requirements of Rule 32(a)(5)(B) Fed. R. App. P.. This document also satisfies the type-style requirements of Rule 32(a)(6).

11/23/2022 — Date

/s/ Elias Makere — Elias Makere, FSA, MAAA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of November 2022, I electronically filed the foregoing with the Clerk of Courts by using PACER; which will send a notice of electronic filing to the attached service list.

/s/ Elias Makere

Link to Underlying Complaint (HTML, PDF, Video)

HTML	TextBookDiscrimination.com/Allstate/Complaint-Full.html
PDF	TextBookDiscrimination.com/Files/USFLMD/20000905_AAC_20211104_230439.pdf
Video	https://youtu.be/e3mgBPHesXg

Electronic Copy: (text-searchable)

TextBookDiscrimination.com/Files/CA11/22013588_GMOT_20221123_125318.pdf

SERVICE LIST

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Heather A. Johnson, Esquire (*pro hac vice*)
Lauren C. Robertson, Esquire (1024845)

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E: hajohnson@littler.com
E: lcrobertson@littler.com
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F: 407.393.2929

Littler Mendleson, PC
111 North Orange Avenue, Suite 1750
Orlando, FL 32801-2366

(appellee's trial lawyers)

CIP

United States Court of Appeals
Eleventh Circuit

22-135881-G
Makere v Allstate

{unchanged}

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

Makere v Allstate, 22-13588

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Lower Tribunal:

Lambert, Laura	Magistrate
Howard, Marcia	District Judge

Non-Parties:

Division of Administrative Hearings (FL)

Early, Edward Gary (FL)

Florida Commission on Human Relations, The (FL)

Gorsica, Stanley G. (FL)

Parties:

Allstate Insurance Company	(NYSE: ALL)
Makere, Elias (FSA, MAAA)	Appellant

Appellant is not a subsidiary/affiliate of a publicly owned corporation. Pursuant to Rule 26.1-2 11th Cir. R., Appellant does not know of any other entities that have interest in this case. Appellant hereby certifies that this CIP is complete.

EXHIBIT A

SHORT TITLE: Submission of Administrative Complaint

DATE: 4/10/2019

DOC TYPE: Email

TRIBUNAL: Florida Commission on Human Relations

CASE NO: 2019-19238

CASE CAPTION: *Makere v Allstate*

SIZE: 1 Page

From: justice.actuarial@gmail.com
Sent: Wednesday, April 10, 2019, 8:00 AM
To: fchrinfo@fchr.myflorida.com
Subject: Complaint | Employment Discrimination | Makere v Allstate

---

Good Morning FCHR,

May you please investigate my employment discrimination complaint against Allstate Insurance Company?

Thank you,

Elias Makere, Complainant
904.294.0026 | justice.actuarial@gmail.com
3709 San Pablo Rd. S. #701
Jacksonville, FL 32224

EXHIBIT B

SHORT TITLE: Appellant's "Full Administrative Complaint"

DATE: 4/10/2019

DOC TYPE: Document

TRIBUNAL: Florida Commission on Human Relations

CASE NO: 2019-19238

CASE CAPTION: *Makere v Allstate*

SIZE: 117 Pages

Elias Makere, Complainant
3709 San Pablo Rd. S #701
Jacksonville, FL 32224

Phone: 904.294.0026
Fax:
Email: justice.actuarial@gmail.com

MAKERE
V
ALLSTATE

COMPLAINT ATTACHMENT

Employment Discrimination (Race, Sex, Retaliation)

Here is the attachment to the employment discrimination complaint.

Petitioner:	Elias Makere
Dates:	November 2013 – July 2018
Race:	Black
Sex:	Male
Retaliation:	Yes

RECEIVED
FLORIDA COMMISSION ON
HUMAN RELATIONS
2019 APR 10 PM 2:35

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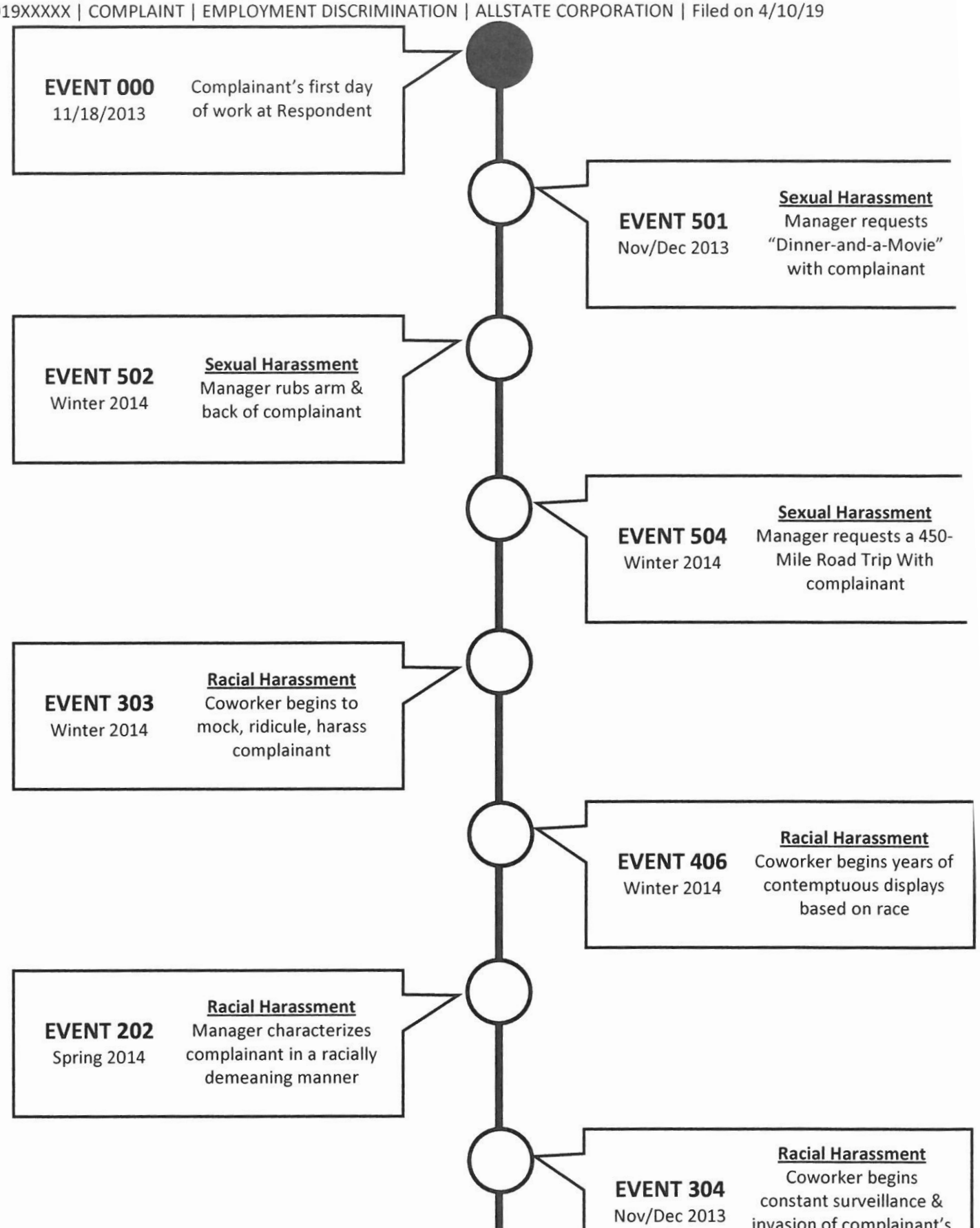
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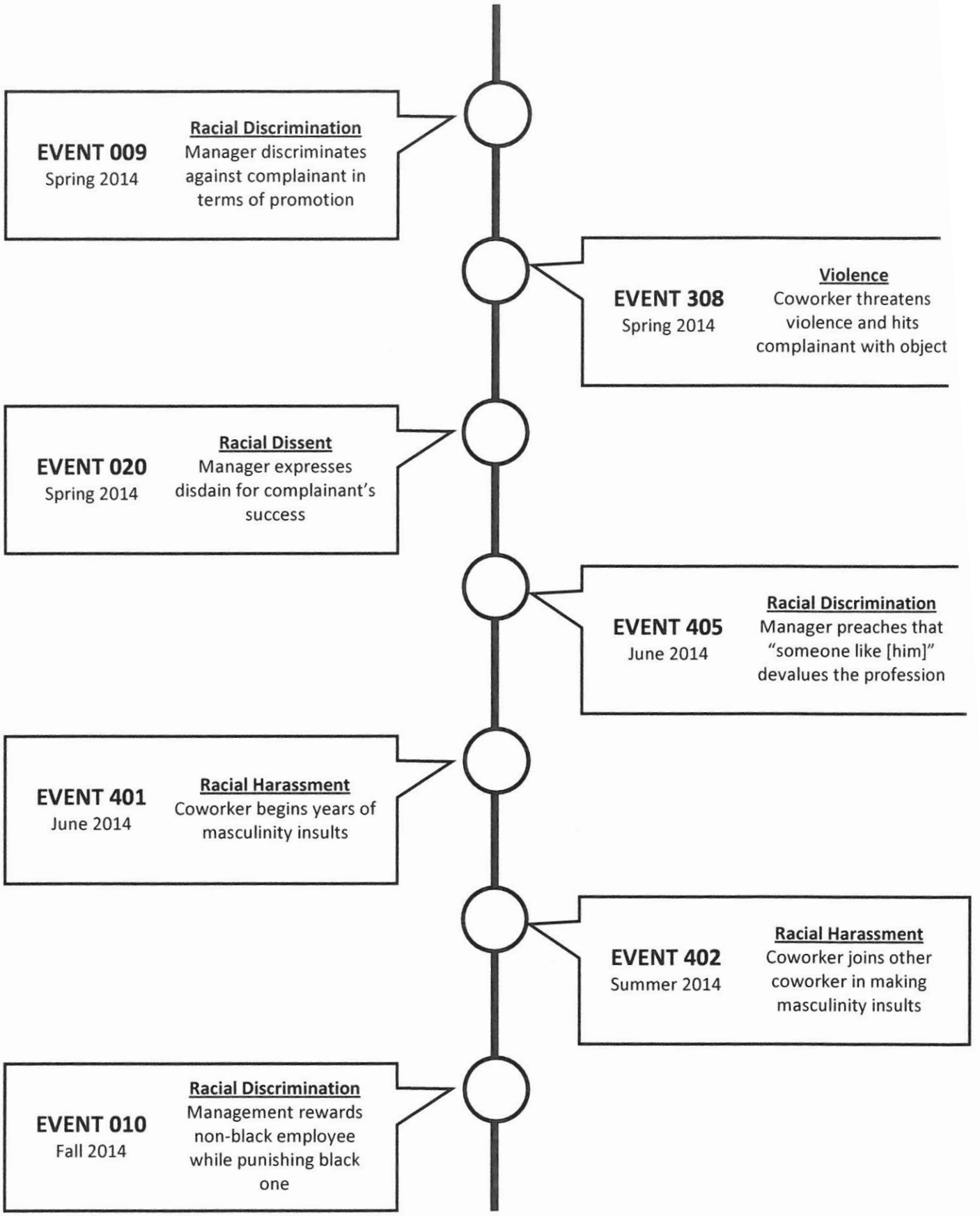
PART 1 SECTION I – TIMELINE OF EVENTS

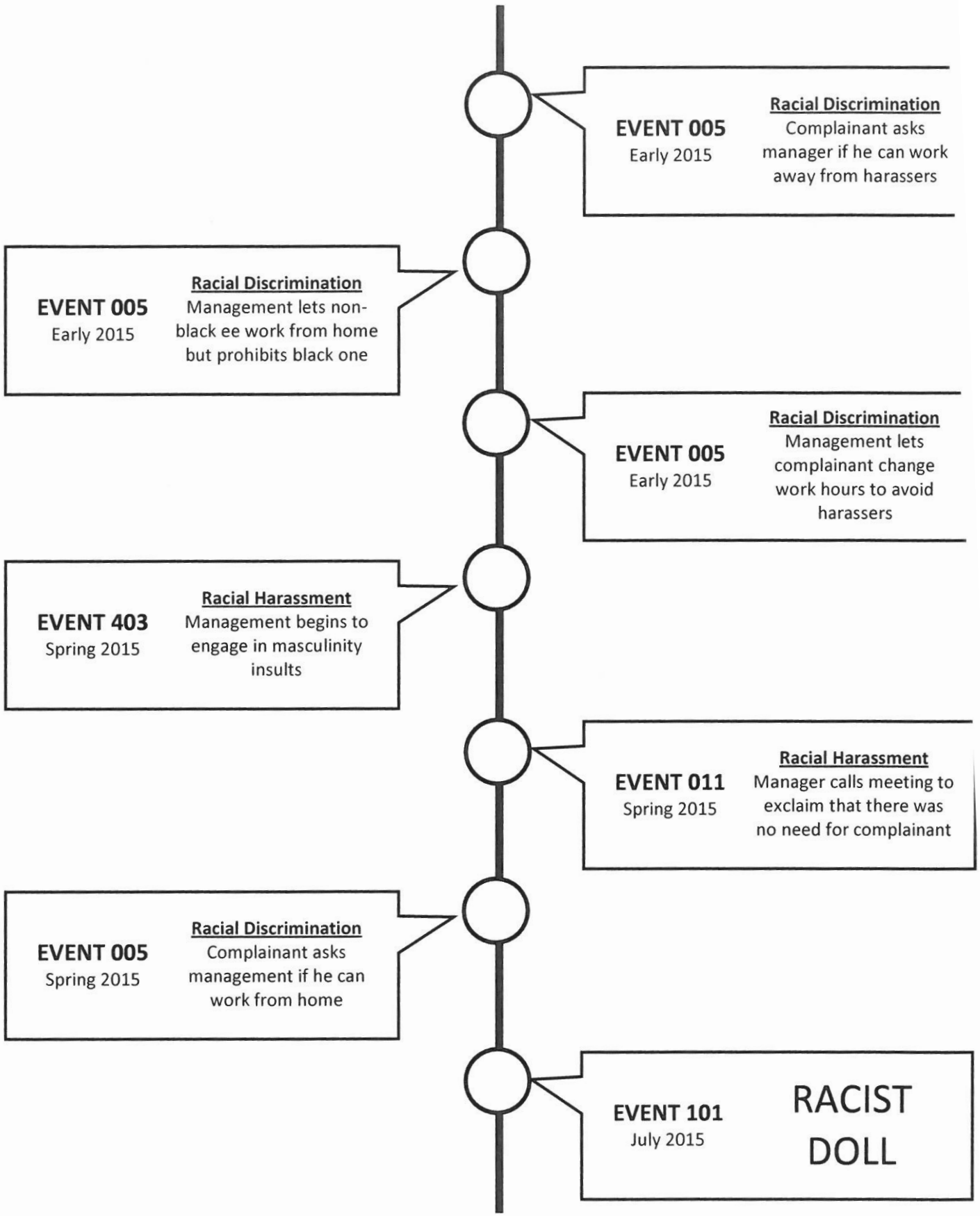
This section chronologically summarizes the events of Racial Discrimination, Racial Harassment, Sexual Discrimination, and Sexual Harassment that were carried out by Allstate. The purpose is to help familiarize you with the case

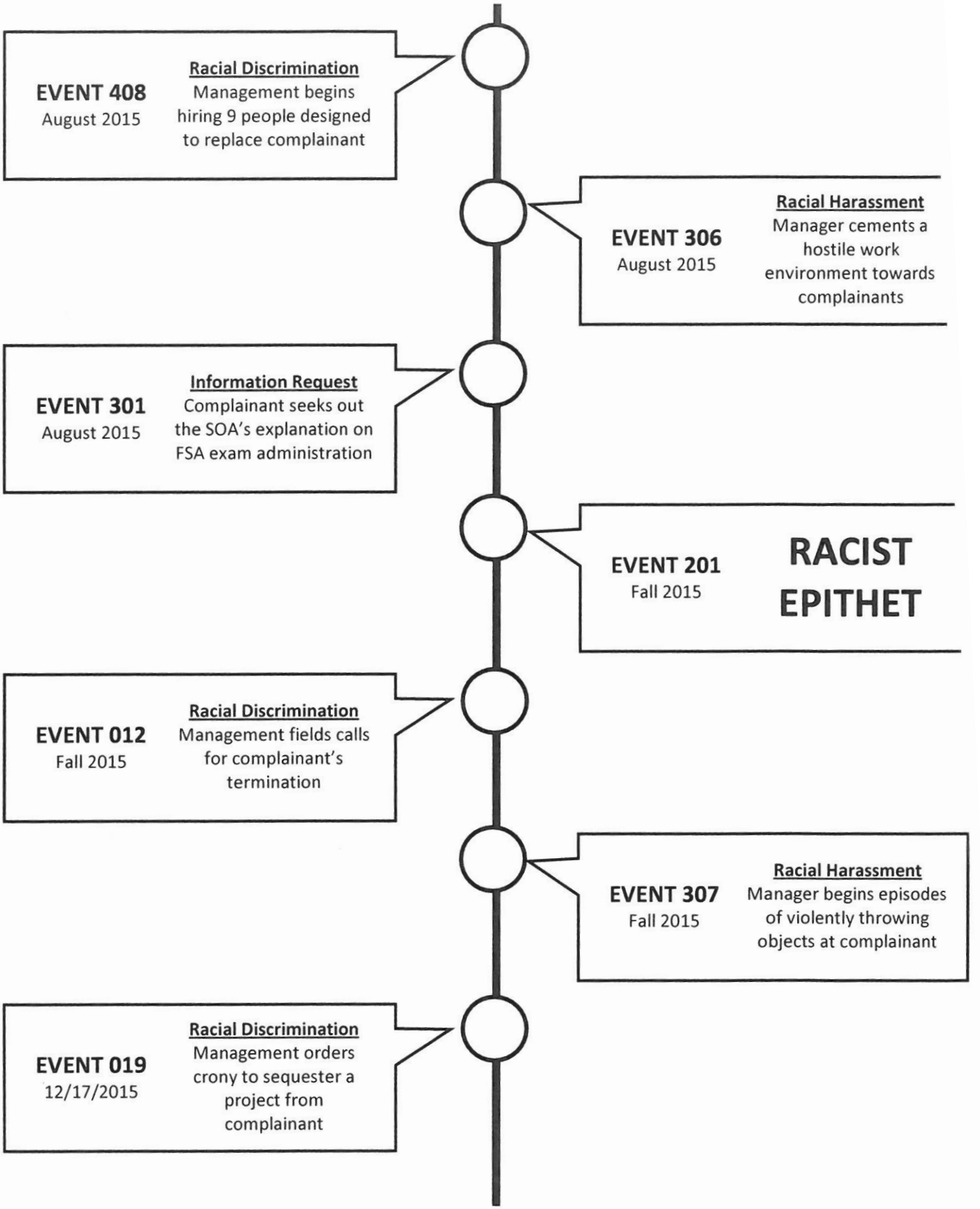
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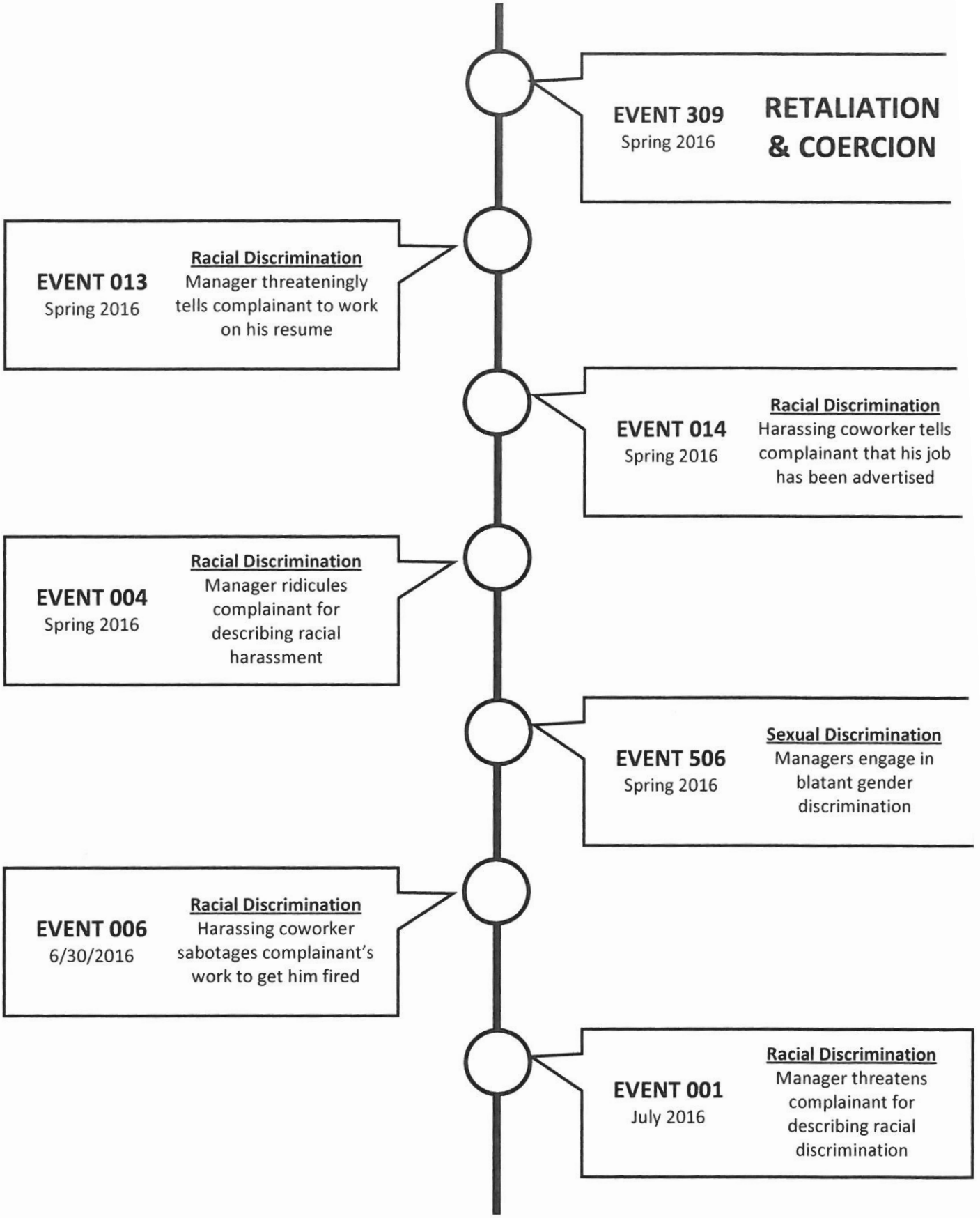
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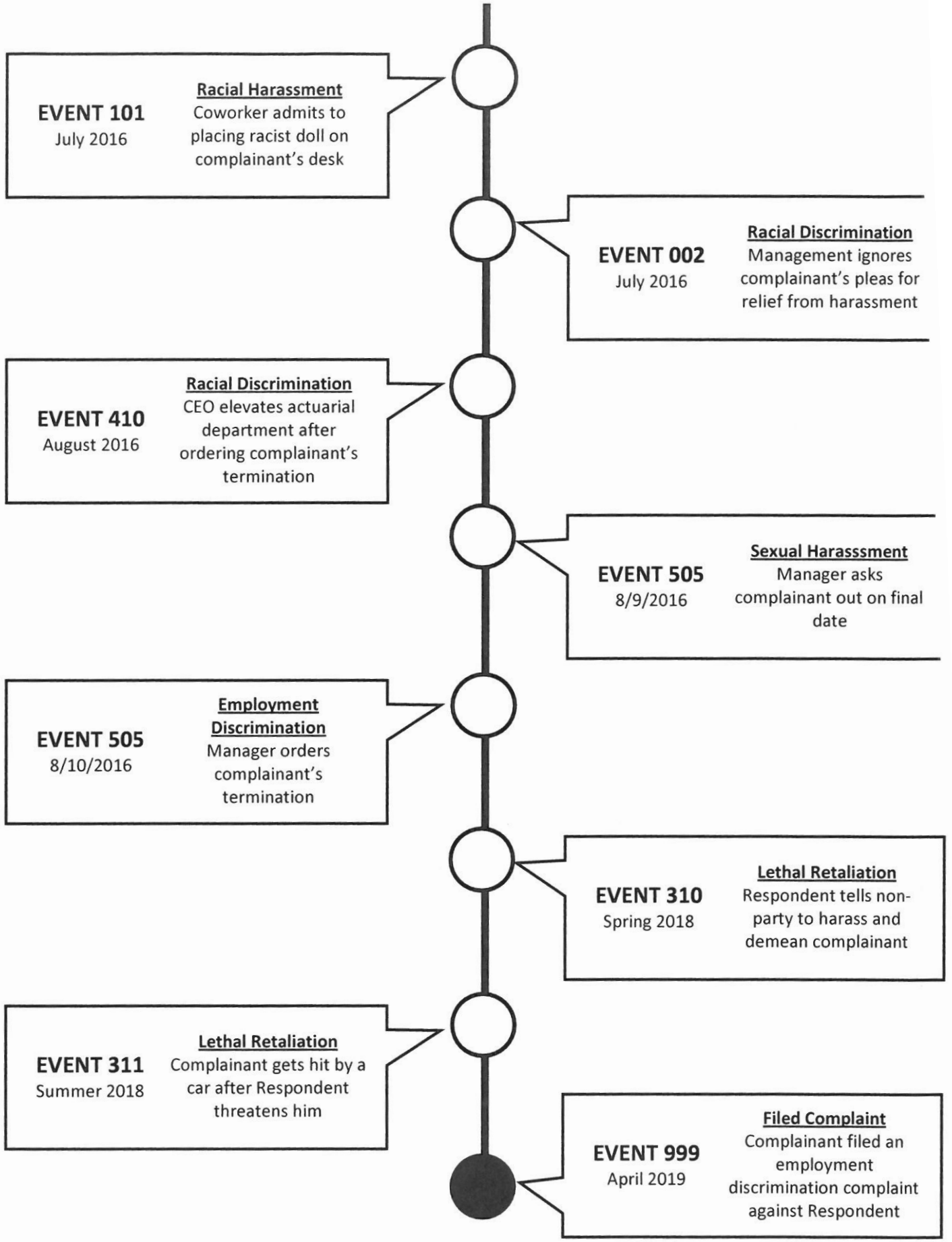

EVENT 000
11/18/2013
Complainant's first day of work at Respondent
EVENT 501
Nov/Dec 2013
Sexual Harassment
Manager requests "Dinner-and-a-Movie" with complainant
EVENT 502
Winter 2014
Sexual Harassment
Manager rubs arm & back of complainant
EVENT 504
Winter 2014
Sexual Harassment
Manager requests a 450-Mile Road Trip With complainant
EVENT 303
Winter 2014
Racial Harassment
Coworker begins to mock, ridicule, harass complainant
EVENT 406
Winter 2014
Racial Harassment
Coworker begins years of contemptuous displays based on race
EVENT 202
Spring 2014
Racial Harassment
Manager characterizes complainant in a racially demeaning manner
EVENT 304
Nov/Dec 2013
Racial Harassment
Coworker begins constant surveillance & invasion of complainant's privacy/space


EVENT 009
Spring 2014
Racial Discrimination
Manager discriminates against complainant in terms of promotion
EVENT 308
Spring 2014
Violence
Coworker threatens violence and hits complainant with object
EVENT 020
Spring 2014
Racial Dissent
Manager expresses disdain for complainant's success
EVENT 405
June 2014
Racial Discrimination
Manager preaches that "someone like [him]" devalues the profession
EVENT 401
June 2014
Racial Harassment
Coworker begins years of masculinity insults
EVENT 402
Summer 2014
Racial Harassment
Coworker joins other coworker in making masculinity insults
EVENT 010
Fall 2014
Racial Discrimination
Management rewards non-black employee while punishing black one


EVENT 005
Early 2015
Racial Discrimination
Complainant asks manager if he can work away from harassers
EVENT 005
Early 2015
Racial Discrimination
Management lets non-black ee work from home but prohibits black one
EVENT 005
Early 2015
Racial Discrimination
Management lets complainant change work hours to avoid harassers
EVENT 403
Spring 2015
Racial Harassment
Management begins to engage in masculinity insults
EVENT 011
Spring 2015
Racial Harassment
Manager calls meeting to exclaim that there was no need for complainant
EVENT 005
Spring 2015
Racial Discrimination
Complainant asks management if he can work from home
EVENT 101
July 2015
RACIST DOLL


EVENT 408
August 2015
Racial Discrimination
Management begins hiring 9 people designed to replace complainant
EVENT 306
August 2015
Racial Harassment
Manager cements a hostile work environment towards complainants
EVENT 301
August 2015
Information Request
Complainant seeks out the SOA's explanation on FSA exam administration
EVENT 201
Fall 2015
RACIST EPITHET
EVENT 012
Fall 2015
Racial Discrimination
Management fields calls for complainant's termination
EVENT 307
Fall 2015
Racial Harassment
Manager begins episodes of violently throwing objects at complainant
EVENT 019
12/17/2015
Racial Discrimination
Management orders crony to sequester a project from complainant


EVENT 309
Spring 2016
RETALIATION & COERCION
EVENT 013
Spring 2016
Racial Discrimination
Manager threateningly tells complainant to work on his resume
EVENT 014
Spring 2016
Racial Discrimination
Harassing coworker tells complainant that his job has been advertised
EVENT 004
Spring 2016
Racial Discrimination
Manager ridicules complainant for describing racial harassment
EVENT 506
Spring 2016
Sexual Discrimination
Managers engage in blatant gender discrimination
EVENT 006
6/30/2016
Racial Discrimination
Harassing coworker sabotages complainant's work to get him fired
EVENT 001
July 2016
Racial Discrimination
Manager threatens complainant for describing racial discrimination


EVENT 101
July 2016
Racial Harassment
Coworker admits to placing racist doll on complainant's desk
EVENT 002
July 2016
Racial Discrimination
Management ignores complainant's pleas for relief from harassment
EVENT 410
August 2016
Racial Discrimination
CEO elevates actuarial department after ordering complainant's termination
EVENT 505
8/9/2016
Sexual Harasssment
Manager asks complainant out on final date
EVENT 505
8/10/2016
Employment Discrimination
Manager orders complainant's termination
EVENT 310
Spring 2018
Lethal Retaliation
Respondent tells non-party to harass and demean complainant
EVENT 311
Summer 2018
Lethal Retaliation
Complainant gets hit by a car after Respondent threatens him
EVENT 999
April 2019
Filed Complaint
Complainant filed an employment discrimination complaint against Respondent

PART 2 SECTION I – EVENTS – DISCRIMINATION & RETALIATION

This section contains events that were discriminatory and/or retaliatory.

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EVENT 001	Management Threatened My Employment When I Reported Racial Discrimination

WHO:	Richard Schaefer | David Dickson | Kaz Nagai | Lisa Henry | Patricia Boland | Phil Kite
WHAT:	Richard Schaefer blankly replied, "You need to figure out if this is the place for you to work." after I told him about: (a) Patricia Boland's deliberate act of sabotage, (b) Kaz & Phil's constant racial harassment, (c) David Dickson's threats, lies, and subterfuge, (d) Lisa Henry's retaliation
WHERE:	Richard Schaefer's Office
WHEN:	7/1/2016 – 7/11/2016
HOW:	Sabotaged Work: 6/30/16, 4:50pm – Patricia Boland deliberately deformed her census data, and blamed me for the subsequent mismatched quote in an attempt to compromise my employment. She did not do this to any of the non-black actuaries. When I mentioned this to Richard Schaefer (in early July 2016) he said, "You're paranoid." Wanton disregard to my employment. Racial Harassment: 2014 – 2016, Kaz Nagai & Phil Kite constantly mocked me, antagonized me, and racially ostracized me. When I mentioned the racist dolls & epithets to Richard Schaefer (in early July 2016) he replied, "You need to figure out if this is the place for you to work." Rich was clearly condoning the racial discrimination; he knew how damaging it was to me, and he indicated his approval. David Dickson's Threats, Lies, and Subterfuge: November 2015 – March 2016, David Dickson called me (as directed by Richard Schaefer) and made false statements, dishonored commitments, and threats to my employment. He did not do this to any of the non-black actuaries. Consequently, I filed a report against him. In the report, I requested that he be prohibited from talking to the Actuarial department for at least 6 months. When I reminded Richard Schaefer of this ordeal (in early July 2016) he said, "People can't work with us because of you. You should have come to management first." I replied, "I did"; and I naturally segued into Lisa Henry's Retaliation. Lisa Henry's Retaliation: March 2016 – August 2016, Lisa Henry retaliated against me for filing that report on David Dickson. I asked her about it, and she responded by saying, "Someone like you cannot make an allegation against someone like him." The 'someone like [me]' was once again her code for a "monkey who we can't let grow into a gorilla". Subsequently, I filed a report against her. When I added this in my conversation with Rich (in early July 2016) he solemnly said, "that's enough."

RESPONSE:	I just continued to focus on doing high quality work, and putting our customer's first. No matter what, I was going to focus on the customers.

OUTCOME:	A history & pattern of racial discrimination. Adverse effect on employment

EVIDENCE:	Allstate – Interviews: • Richard Schaefer, Patricia Boland, Kaz Nagai, Phil Kite, David Dickson Lisa Henry Allstate – Evidence: • Audio recording & emails from David Dickson's interactions with the Actuarial Department

EVENT 002	Management Ignored My Pleas For Help Regarding Racial Discrimination & Harassment

WHO:	Lisa Henry
WHAT:	Lisa Henry denied my request to sit away from my harassers
WHERE:	Office
WHEN:	7/14/2016 – 7/22/2016
HOW:	I alerted my manager that I wanted to meet with her to discuss my desires to sit apart from my harassers. She told me to let her know when I was ready to talk. Within a few days, I met with my manager to ask if I could sit somewhere else (preferably at home). I explained the circumstances (racist dolls, racist epithets, mocking & ridicule, constant discomfort). Her response was, "You know the story of the boy who cried fire. The firefighters will just stop listening." This was Lisa's way of placing the blame on me for repeatedly asking for relief from the harassment. She subsequently denied my request, and I was forced to sit with my harassers. Important Note: This was not the first time I asked my manager if I could sit somewhere else because of the harassment.

RESPONSE:	I just continued to focus on doing high quality work, and putting our customer's first. No matter what, I was going to focus on the customers.

OUTCOME:	Racial Discrimination. Racial Harassment Violation of Allstate's Terms & Conditions

EVIDENCE:	Allstate – Interview: • Lisa Henry (the Allstate manager who permitted the harassment) Aggrieved Person: • Interview the aggrieved party

EVENT 003	Allstate Terminates My Employment For a Reason That They Generated Themselves

WHO:	Allstate
WHAT:	Allstate's actuarial department engaged in foul play by surreptitiously impacting my exam success, and Allstate's HR department used that as the excuse to terminate me
WHERE:	Jacksonville, FL
WHEN:	8/12/2016
HOW:	1.) I believe that the reason I was not given a passing grade on my last actuarial exam is because Allstate's managers conspired to be the exam graders (which would be a severe breach in actuarial ethics) They would have been able to identify my exam by my handwriting (they often commented on my handwriting). They would have been able to identify my exam via clandestine methods They would have been able to identify my exam with the help of the SOA Management was fully aware of the negative impact that this would have on my employment status 2.) In Addition, Allstate management harassed & screamed at me while I was studying; with the intent to negatively impact my exam success 3.) Thirdly, the severity of the constant harassment adversely affected my studies **Management did not do this to non-black employees**

RESPONSE:	This complaint

OUTCOME:	Racial Discrimination. Racially Motivated Termination.

EVIDENCE:	SOA (Society of Actuaries): • List of All Exam Graders for ILALP (Life Pricing Exam) • List of All Exam Graders for ILALFVU (Life Finance and Valuation Exam) • List of All Exam Graders for ILALRM (Life Risk Management Exam) • List of All Exam Graders for ILADP (Design & Pricing Exam) • List of All Exam Graders for ILACSP (Company Sponsored Programs Exam) Allstate – Evidence: • List of Exam Graders • List of employees who had 2 consecutive exam failures Aggrieved Person: • Ask aggrieved party about exams (while employed with Allstate vs as an external employee)

EVENT 004	Allstate Management Ridiculed Me When I Described The Racial Harassment That I Was Suffering

WHO:	Lisa Henry
WHAT:	My manager ridiculed me when I asked her if I could sit elsewhere because of the racial harassment that I was suffering
WHERE:	Conference Room
WHEN:	Spring 2016
HOW:	My manager and I were in a meeting (either the 3rd floor or the 5th floor). After people left, her and I stayed behind to have a conversation. It was a continuation of a longstanding plea for relief from the racial harassment. I wanted to work from home. I said to her, "I'm tired of the constant harassment; the constant belittling, the constant mocking." I continued, "If I sit like this [I reclined in my chair] then five minutes later there'll be somebody reclining in their chair making a mockery of it. 'Hey everybody, look at me! I'm [a caricature of] Elias, I'm reclining in my chair.' I continued, "Even my commute to work gets mocked (I rode my bicycle). Soon after it became known I rode my bike to work there was somebody there to ham it up. 'Hey guys, I ride my bike to work. I'm [a caricature of] Elias. Look at me; I'll make a bigger joke out of it by running up & down the stairs. Hey, I'll make an even bigger joke out of Elias by putting a monkey on his desk.'" Upon hearing how the mocking & racial harassment affected me, Lisa taunted, "**The greatest form of flattery is imitation**." After my manager taunted me on my plea for relief from the racial harassment I reiterated, "Please, I do not want to be around him anymore. I've tried to coexist, but this isn't right." Lisa only made it more difficult for me to avoid contact with my harassers.

RESPONSE:	I continued to produce excellent work, and focus on the customer

OUTCOME:	Racial Discrimination Racial Harassment

EVIDENCE:	Allstate – Interviews: • Lisa Henry (manager who ridiculed complainant upon hearing about racial harassment) Aggrieved Person: • Interview the aggrieved party

EVENT 005	Management Discriminated Against Me When I Asked To Work From Home

WHO:	Lisa Henry | Richard Schaefer | Marilou Halim
WHAT:	Management allowed a non-black employee to work from home but denied a black employee from the same opportunity
WHERE:	Jacksonville, FL
WHEN:	2015-2016
HOW:	In the years 2015 and 2016 a non-black actuary was permitted to work from home. She worked from home for several months In the years 2014, 2015, and 2016 a black actuary was denied the privilege of working from home He asked on several occasions if he'd be allowed. He was denied every single time He asked the chief actuary on multiple occasions if he'd be allowed. He was denied every single time

Name	Race	Allowed Privilege
Elias Makere	B	
Bridget Tennant		√
Tanya Dostie		√

What's even worse is that management knew that Elias was being racially harassed; they knew that he wanted to escape his harassers; and they spitefully denied his pleas to work from home.

RESPONSE:	I just continued to do excellent work to the best that conditions would allow. The customer always came first.

OUTCOME:	Racial discrimination Discrimination in employment privileges Unequal treatment on account of race

EVIDENCE:	Allstate – Interviews: • Richard Schaefer (he oversaw Tanya's approval and Elias' denial) • Lisa Henry (she was Elias' manager; she denied his requests) • Marilou Halim (she was Tanya's manager; she apparently approved Tanya's request) Allstate – Evidence: • Allstate's Human Resource department should show that Tanya was allowed to work from home, while complainant was not.

EVENT 006	Sabotaged Work

WHO:	Patricia Boland
WHAT:	Patricia changed the demographic data in the EGTL SnapQuote workbook with the intent to get me fired, but she never did this to non-black employees
WHERE:	Jacksonville, FL | 7th Floor | Cubicles
WHEN:	6/30/2016, 4:55 pm
HOW:	I was sitting at my desk doing work. Catrice Hathorn (a contract employee) rushed over to my desk to exclaim that the Group Term Life calculations weren't working. She brought me over to her desk to show me her quote. Then she explained to me how the quote didn't match her two coworkers' quotes, despite seemingly using the exact same data. We continued discussing the situation, while Patricia Boland eavesdropped in the background to add her barbs. Within about 8 minutes, I asked Catrice to show me the demographic data that she used. Immediately after I asked for that, Patricia loudly ordered the temp to go home; "It's 5 O'clock; she has to go home now. Go home, Catrice." Catrice left in a hurry, so I walked over to Patricia's desk to gather the remaining census data. When I got back to my desk, I discovered that the demographic data had been altered. Patricia had the original data; and she generated a quote with it Patricia gave the data to Alex Vlassov; and he generated a quote with it. Alex's quote matched Patricia's. Patricia gave the data to Catrice Hathorne; and she generated a quote with it. Catrice's quote didn't match Patricia's; neither did her data. Basically, the demographic data changed when it got passed to Catrice. That data was the sole reason for the mismatched quote. That mismatched quote was presented to me as if it was my fault. That calculation – which I was responsible for developing – would have severely jeopardized my employment at Allstate. Patricia knew this. Patricia was great friends with Richard Schaefer and his family. She was friendly with Lisa Henry, too. Patricia deliberately changed the data to make it seem like I had created a broken calculator. She never did this to non-black actuaries.

RESPONSE:	The next morning I responded to them with the results (that the data had been butchered). Upon visiting them to ensure they received & understood what happened, I got a chance to ask Patricia more direct questions. 1.) Did you intentionally change the census data? 2.) Did you attempt to sabotage the calculation? 3.) How did the mix go from 13 males to 5 males? She feigned ignorance to those first 3 questions 4.) Did anyone else handle the census? No A few days later, I asked Richard Schaefer about the incident. He tried to turn it around on me by saying, "Don't be paranoid."

OUTCOME:	Racial Discrimination. Racial Harassment. Attempts to get me fired.

EVIDENCE:	Allstate – Interview: • Patricia Boland, Catrice Hathorn, Alex Vlassov, Richard Schaefer. Allstate – Evidence • Get IT Records for Patricia's keystrokes on 6/30/16

EVENT 007	A Non-Black Employee Got Rewarded For His Poor Behavior While I Got Maligned, Ostracized, And Fired For Doing Excellent Work

WHO:	Lisa Henry | Louis Posick | Paul Ramirez | Richard Schaefer | Scott Randles
WHAT:	A Non-Black Employee Received Numerous Disciplinary Notices, Got Kicked Out Of The Program For Poor Work, Yet Was Promoted For Harassing Me; While I Got Maligned, Ostracized, And Fired
WHERE:	Jacksonville, FL
WHEN:	Spring 2014 – Summer 2016
HOW:	Allstate management ensured that promotion & advancement was based on race - not the quality of the work. Spring 2014, a non-black coworker continually submitted inaccurate work (especially during month end valuation). Soon thereafter, he got removed from the actuarial student program, but was allowed to keep his exact same job, title, and salary. For the next two years he continued to produce inaccurate work. To compound matters, his behavior became increasingly abhorrent; requiring intervention from management. In that same time period, he was promoted. In Spring 2016, my manager flat out lied by saying that she spent the 2015 calendar year conducting "coaching sessions" with me. When I strongly refuted her lie she was commissioned to produce proof. She failed to produce such proof. Within weeks, I was terminated. I was terminated despite logging more hours, innovating more actuarial work, elevating more coworkers, documenting more processes, and doing more detailed an analysis than all of my peers. Result: The black employee was punished for doing outstanding work while the non-black employee was promoted for poor work and poor behavior. Clear Inference: I would have been virtually crucified if I had committed one third of the infractions that my non-black coworker did.

RESPONSE:	I always maintained focus on doing high quality work. I reminded myself that there was a monkey sitting on my desk – after all – this unequal treatment was just par for the course

OUTCOME:	Racial Discrimination. Employment Impact. Compensation Impact. Terms & Conditions Violations. Adverse Effect On Employment.

EVIDENCE:	Allstate – Interviews: • Kaz Nagai (he was the non-black employee who was given superior treatment for a pattern of poor work and poor behavior) • Louis Posick (he was the manager of the non-black employee; Louis enforced the unequal treatment) • Scott Randles & Paul Ramirez (Scott oversaw the unequal treatment; Paul was Mr. Nagai's enabler) • Lisa Henry (she subjugated me on account of race; she fabricated tales of "coaching sessions" to compromise my employment status)

EVENT 008	Allstate Continually Pays The Black Actuaries Less Than The Non-Black Actuaries

WHO:	Lisa Henry | Richard Schaefer
WHAT:	Allstate Management Paid Me Much Less Than My Non-Black Peers
WHERE:	Jacksonville, FL
WHEN:	Spring 2014 – Summer 2016
HOW:	Allstate increases the salaries of Actuaries upon completion of exams, and attainment of credentials. Management also gets to decide how much money an individual will earn. Lisa Henry and Richard Schaefer implemented a plan to restrict the salaries of their Black actuaries. In 2012, Kirk Higgins received his ASA. His salary was lower than his non-black peers. In 2014, Elias Makere received his ASA. His salary was lower than his non-black peers. Additionally, both of these Black actuaries were maligned and harassed

RESPONSE:	I just continued to focus on producing high quality work. My number one priority was to provide excellent actuarial & general work to the company's customers, employees, and stakeholders.

OUTCOME:	Racial Discrimination impacting compensation

EVIDENCE: Allstate – Evidence:

- Compare the following salaries[1]:

Black	Non-Black
Kirk Higgins' 2012 Salary	Bill Bade's 2010 Salary
Elias Makere's 2014 Salary	Josh Garcia's 2016 Salary
	Kaz Nagai's 2016 Salary
	Michael Chang's 2011 Salary
	Michael Prendes' 2015 Salary
	Nasreen Ali's 2009 Salary
	Paul Ramirez' 2012 Salary
	Tanya Dostie's 2015 Salary
	Victor Ciurte's 2016 Salary

EVENT 009	Lisa Henry Refuses To Promote Me Equal To My Non-Black Peers

WHO:	Lisa Henry
WHAT:	Allstate Management promoted non-black actuaries differently than it promoted black actuaries (frequency, resistance)
WHERE:	Jacksonville, FL
WHEN:	Spring 2014 – August 2016
HOW:	Non-Black Actuaries were routinely given more promotions and elevated positions/titles when compared to black actuaries Levels (low-to-high): Actuarial Technician Actuarial Associate Senior Actuarial Associate Actuary AVP & Actuary VP & Actuary Chief Actuary Allstate HR: • Josh Garcia (a non-black actuary) was given a superior title to Elias Makere (a black actuary) despite fewer accomplishments and less experience • Kaz Nagai (a non-black actuary) was given a superior title to Elias Makere (a black actuary) despite fewer accomplishments, abhorrent behavior, and less experience • Michael Prendes (a non-black actuary) was given a superior title to Elias Makere (a black actuary) despite inferior work, fewer accomplishments, and nearly identical experience • Tanya Dostie (a non-black actuary) was given a superior title to Elias Makere (a black actuary) despite fewer responsibilities • Victor Ciurte (a non-black actuary) was given a superior title to Elias Makere (a black actuary) despite fewer accomplishments

RESPONSE:	I just continued to focus on doing excellent work.

OUTCOME:	Racial Discrimination Compensation Impact

EVIDENCE:	Allstate – Evidence: • Josh Garcia HR Record (a non-black actuary who was given a superior title to complainant) • Kaz Nagai HR Record (a non-black actuary who was given a superior title to complainant) • Michael Prendes HR Record (a non-black actuary who was given a superior title to complainant) • Victor Ciurte HR Record (a non-black actuary who was given a superior title to complainant) Aggrieved Person: • Elias Makere (black actuary who was given an inferior title from non-black peers)

EVENT 010	Allstate Awarded a Non-Black Colleague While Punishing Me For The Same Contribution

WHO:	Lisa Henry | Richard Schaefer | Marilou Halim
WHAT:	Despite performing similar work, Allstate awarded a non-black actuary while maligning a black actuary
WHERE:	Jacksonville, FL | 7th Floor
WHEN:	November 2014 – February 2015
HOW:	Allstate management gave Michael Prendes several awards (for doing what I had already done) while it ignored, maligned, and ultimately punished me. 1. From January 1st, 2014 through November 1st, 2014 I had not taken one personal day off (I'm the black actuary) 2. From January 1st, 2014 through November 1st, 2014 I was spending 13-15 hours per day in the office 3. From January 1st, 2014 through November 1st, 2014 I came into work every Saturday and every Sunday (except one) 4. In August/September 2014, I scheduled at least 3 consecutive Mondays off (November 3rd, 10th, 17th, etc.) 5. On Friday, October 31st my manager relayed the chief actuary's message that my only PTO days of the year were being canceled Instead, I was supposed to help a remote worker with her ESRs 6. So, I quietly canceled my only PTO days, and I helped this remote worker complete her job 7. I also came in every weekend to work on it. 8. I was never asked nicely; I was never thanked; I was never awarded; I was never even recognized 9. In the process of helping this remote worker, I developed a process that automatically completed the work It used a method that no Allstate actuary had ever composed; something that my manager said of which I was the only person she knew who could do it 10. Management ignored 11 consecutive follow-up emails which explained how the automation worked, how it could be replicated, and how it could be ran by others. These emails spanned over an 11 week period starting in January 2015. 11. Around November 24th, Michael Prendes (a non-black actuary) copied exactly what I did: He canceled 3 consecutive Monday PTOs 12. Instead of being ignored & maligned (as I was), Michael Prendes received 2+ awards ("*Encore*", etc) Message: Non-Black actuaries are celebrated for copying Black actuaries; while Black actuaries are ignored & maligned for their hard work, dedication, selflessness, and ingenuity

RESPONSE:	I continued to do excellent work. I continued to focus on the customer

OUTCOME:	Racial Discrimination. Adversely affecting an employee based on race

EVIDENCE:	Allstate – Interview: • Lisa Henry testimony (Elias' manager) , Richard Schaefer testimony (chief actuary) , Marilou Halim testimony (Michael Prendes' manager) Aggrieved Person: • Elias Makere

EVENT 011	Louis Posick Calls A Meeting To Say That He Sees No Need For Me In The Actuarial Department

WHO:	Louis Posick
WHAT:	Louis called an actuarial meeting in which he quickly decried my presence within the department. He did it to effectively ostracize me, and characterize me as an inferior employee
WHERE:	Conference Room 7A
WHEN:	June 2015
HOW:	Louis Posick scheduled an in-person meeting. The meeting attendees included me, Lisa Henry (my manager), Kaz Nagai (Louis' direct report), Paul Ramirez, and Victor Ciurte. It was an impromptu meeting; Louis and I rarely sat in the same meetings. Unprovoked – as always – Louis goes on a rant on how there is no need for me in the Actuarial Department. He says, "I don't see what Elias could do for us." No one mentioned my name or offered my assistance to him. He was on a mission of segregation (separating the non-blacks from the blacks). The meeting went on. At the end of the meeting he ridiculed me by saying something along the lines of, "*The pricing actuary is inferior.*" He was doing this with Paul Ramirez as his bullying partner.

RESPONSE:	Reaction to his first attack: I just sat there and listened to the meeting. The comment came out of nowhere. Reaction to his second attack: I said something along the lines of, "Well, not according to the rest of the profession." Louis & Paul gave a stale & serious leer at me and my manager. Within a few weeks of the meeting, Kaz Nagai (Louis Posick's direct report) placed a racist doll on my desk. By the end of the year, Phil Kite (Louis Posick's direct report) was calling me racist epithets.

OUTCOME:	Racial Segregation Racial Subjugation

EVIDENCE:	Allstate – Interview: • Louis Posick (manager who subjugated black employee) • Paul Ramirez (partner in racial subjugation) • Kaz Nagai (witness to racial subjugation) • Victor Ciurte (witness to racial subjugation) • Lisa Henry (witness to racial subjugation, enabler)

EVENT 012	Management Repeatedly Fields Calls For My Termination

WHO:	Marianne Poriecca | Lisa Henry | Richard Schaefer
WHAT:	She tells my manager that she wants me to be fired. Lisa stated that Marianne did not leave any reason for it
WHERE:	Office
WHEN:	Fall 2015 – Winter 2016
HOW:	In Winter 2016, Lisa informs me that she had received a call from Marianne about me. Marianne wanted me to be fired. Lisa quoted Marianne as saying, "I can't believe he still works here." back in the fall of 2015. I don't recall ever having any interaction with Marianne. Only until mid-January 2016, was I even able to recognize her. Marianne never did this to any of the non-black actuaries.

RESPONSE:	I was blown away. I asked Lisa what I did wrong. Lisa had no answer. Lisa brought this up to me several times over the next few months. One time, Lisa's response was, "My job is not to fire you; my job is to fix you."

OUTCOME:	Acrimony. Detest Desire to see a black man suffer. Modern day corporate lynching. Racial Discrimination. Ostracism. Attempts to adversely affect someone's employment status based on race.

EVIDENCE:	Allstate – Interview: • Marianne Poriecca (the person who allegedly wanted me fired) • Lisa Henry (the person fielding these phone calls) • Richard Schaefer (the manager orchestrating all of the attacks on Elias)

EVENT 013	Lisa Henry Tells Me to Work On My Resume While She Is Under Investigation

WHO:	Lisa Henry
WHAT:	Amid the 2016 investigation, my direct manager comes to me to tell me that I need to work on my resume and look for another position.
WHERE:	Jacksonville, FL | 7th Floor
WHEN:	Spring 2016
HOW:	First Time: I was sitting at my desk doing work Lisa came over to me The topic of discussion was employment She told me that I should work on my resume (as if to imply my job was in jeopardy) This was just weeks after I filed a retaliation claim against her Second Time: I was sitting at a desk in the adjacent aisle Lisa came over to me The topic of discussion was employment She told me that I should work on my resume (as if to imply my job was in jeopardy) This was while she was being investigated for retaliation She told me to think about another position, but she never actually offered me another position .

RESPONSE:	I continued to focus on performing excellent work

OUTCOME:	Intimidation. Hostile Environment

EVIDENCE:	Allstate – Interview: • Lisa Henry (the manager who kept telling me to look for another position) Aggrieved Person: • Elias Makere (the black actuary who just wanted to work in peace)

EVENT 014	Management Advertises My Job To Antagonize Me and Ostracize Me Because I'm The Only Black Actuary

WHO:	Scott Randles | Paul Ramirez
WHAT:	Management made my job available while I was still an employee
WHERE:	Office
WHEN:	Spring 2016
HOW:	Patricia Boland made me aware that there was a newly opened position in the actuarial department. The position was identical to mine. A couple days later I ran into Scott Randles in the men's room. I asked him about it, because I thought I knew someone who would be a good candidate. Scott, however, denied that it existed, "Oh, that's for Paul's team. It is a data analyst position. It must be a typo." They never fixed that supposed error; which indicated its true nature. Allstate was advertising my job as a way to intimidate and demean me.

RESPONSE:	I continued to perform excellent actuarial work I avoided contact with the majority of the team

OUTCOME:	Posturing. Intimidation. Sending the message that I wasn't wanted. Ostracism. A part of the ongoing racial discrimination. Group effort to marginalize me and my work. They wanted someone else to assume my responsibilities because of my race

EVIDENCE:	Allstate – Interview: • Scott Randles (he orchestrated the employment search) • Paul Ramirez (he spearheaded the antagonistic employment search; and had been pining for my removal for a long time) • Patricia Boland (informed complainant of the peculiar job opening)

EVENT 015	Calls For My Removal

WHO:	Patti Leister (Medina)
WHAT:	Pattie sends a group-wide email asking that I be removed from the development of the Group Term Life SnapQuote
WHERE:	Office, Email
WHEN:	Spring 2016
HOW:	Pattie addresses an email to me, one which included many other recipients, lauding the GTL SnapQuote that I developed. She complains that it works in a fashion dissimilar to other SnapQuotes. "Hand it over to James Park and his team" The irony of her statement was that James didn't do any of the programming; and his team was learning the ropes from me. Furthermore, she overlooked the fact that I was the one who developed a different, virtually identical SnapQuote that was widely revered. Richard Schaefer calls me into his office to tell me I'd be off of the project. Basically, Patti was attacking me because management brought in a non-black person to take over my job.

RESPONSE:	Disbelief that the social machinations that I feared were coming to fruition I just continued to produce excellent work.

OUTCOME:	Racial Persecution. Racial Discrimination.

EVIDENCE:	Allstate – Interview: • Patti Leister (Medina) – she was the person who called for my removal Ask her what prompted her email Ask her if she was aware of GVA6 Allstate – Evidence: • Email Records (they will show Patti Leister's request)

EVENT 016	Richard Schaefer's Dogmatic Ignorance

WHO:	Richard Schaefer | Lisa Henry
WHAT:	Requesting I perform work despite having done so 18 months prior
WHERE:	Jacksonville, FL | 7th Floor
WHEN:	Fall 2015
HOW:	Group Term Life | Source of Earnings Analysis | STAT Profits In fall 2015, Mr. Schaefer told my manager (Ms. Henry) to instruct me to complete a source of earnings analysis on the Group Term Life product. He also wanted me to do an itemized breakdown of the STAT profits. This task was simply for educational purposes (ie, he wanted to know if I was capable). 18 months prior (In Spring 2014), I had already performed & produced such analysis. I completed the very same itemized breakdown for several other life insurance products (Horizon 20-Year Term, UL20, UL21, Group UL, Term to 100). I did these things when I had a mere 1.5 years of experience. Yet, Mr. Schaefer & Ms. Henry chose to ignore it. They intentionally operated under the prejudiced notion that I was an inferior employee. They never ignored the work of their non-black employees prior to asking them to do such work for "educational purposes".

RESPONSE:	Managerial Ignorance Intentionally ignored the contributions of a specific employee Deterministic manner in which to evaluate, recognize, and reward good work; clouded by a racial prejudice.

OUTCOME:	Part of management's established dogmatic practice of enforcing a belief that contributions from a black actuary were less worthy. Part of the suspicion that management would give me less credit in the actuarial realm; which would be further emboldened by their unethical involvement in my FSA exam grading.

EVIDENCE:	Allstate – Evidence: • Electronic records of the RORC Workbooks (on Life)

EVENT 017	Abhorrent Double Standards That Distorted the Company's Financial Outlook; Subsequently Jeopardizing Investors

WHO:	Richard Schaefer | Lisa Henry
WHAT:	Lisa Henry botched quarterly profitability calculations, reported inaccurate numbers, and brazenly pillared Richard Schaefer as her enabler.
WHERE:	Jacksonville, FL | 7th Floor
WHEN:	Fall 2015 – 1st Quarter 2016
HOW:	Horizon 20 Year Term | RORC | STAT Profits | GAAP Profits In an attempt to placate Louis Posick's continual calls to ostracize & demean me, Lisa Henry dismissed me from participating in the 3Q2015 RORC reporting. In turn, she took over duties. Unbeknownst to her, Ms. Henry thoroughly botched the calculations and reported false numbers. For the 20 YT product, she somehow arrived at a profitability measure that was approximately 2,000 basis points below its true value. Please take note that the profitability measure usually moves less than 100 basis points each quarter; which means that Lisa Henry (VP & Actuary) calculated a number that was 20 times outside of the norm. Richard Schaefer took these faulty numbers and reported them to Allstate's Board of Directors. Subsequently, these inaccurate profitability metrics were disseminated to the investment public. A few months later, Ms. Henry relinquished her slanted maneuver and ordered me to resume RORC reporting for the 4Q2015 period. Shortly into my calculations, I discovered Ms. Henry's error from the prior period. She scoffed at the error when I showed it to her. A few days later - as is customary - Ms. Henry & I met with Mr. Schaefer to go over the analysis. Mr. Schaefer dismissed the huge error as being unimportant; "I've already met with the board. The numbers don't matter." As soon as he said that, Ms. Henry lambasted me. To summarize, Allstate was more focused on ostracizing & demeaning black employees than it was on performing its core, economic duty. Figuratively speaking, "*they poisoned their blood to spite their heart's muscle.*" The irony of Ms. Henry scolding me for finding her egregious error embodies the racial discrimination that occurs at Allstate. Background: RORC reporting is one of the biggest, most influential functions that the Actuarial department engages in. The outcome of such reporting gets reviewed by Allstate's Board of Directors. Important Note: In my entire career, I have never seen a reported calculation that was 2,000 basis points off the mark. It equates to over $10,000,000 in misrepresented profitability. At Allstate, an egregious miscalculation is acceptable if you are not black.

RESPONSE:	I just continued to produce excellent work.

OUTCOME:	Part of management's established dogmatic practice of enforcing a belief that my contributions were less worthy. Corruption. Racially prejudiced manner for accepting vital work contributions.

EVIDENCE:	Allstate – Interview: • Richard Schaefer (he enacted the racial double standard) • Lisa Henry (she created the racial double standard) Allstate – Evidence: • Electronic records of the RORC Workbooks (on Life)

EVENT 018	Racial Double Standards Within the Actuarial Department

WHO:	Richard Schaefer | Scott Randles | Lisa Henry | Louis Posick
WHAT:	Allstate management treated black employees different from non-black employees with regards to exams and credentials.
WHERE:	Jacksonville, FL | 7th Floor
WHEN:	1990 – 2019+
HOW:	Pre-2011, a non-black senior actuarial associate (Phil Kite) never passes any actuarial exam. Allstate promotes him. and treats him swimmingly. Pre-2011, a non-black actuarial technician (Bridget Tennant) never passes any actuarial exam. Allstate makes extensive concessions for her, and treats her swimmingly Pre-2012+, a credentialed, non-black actuary (Nasreen Ali, ASA) never passed an FSA exam. Allstate management promoted her and treated her swimmingly. 2015-, a credentialed, non-black actuary (Tanya Dostie, ASA) never passes an FSA exam, Allstate management promoted her and treated her swimmingly. 2013, upon failing an FSA exam Allstate management haggled & cajoled a credentialed, black actuary (Kirk Higgins, ASA). Within short order, he left the company. 2016, upon failing an FSA exam Allstate management harassed, discriminated against, and fired a credentialed, black actuary (Elias Makere, ASA). Summary:

Name	Race	Treatment
Higgins	B	Haggled, Fled Allstate
Makere	B	Harassed, Discriminated Against, Fired
Alli		Promoted, Treated Well
Dostie		Received Concessions, Treated Well
Kite		Promoted, Treated Well
Tennant		Promoted, Treated Well

RESPONSE:	I just continued to produce excellent work; because racial double standards were par for the course at Allstate.

OUTCOME:	Racial Discrimination. Unequal Treatment Governed By Racial Prejudice

EVIDENCE:	Allstate – Interview: • Phil Kite (non-black employee who was treated well despite failing every exam) • Bridget Tennant (non-black employee who was treated well despite failing every exam) • Nasreen Ali (non-black employee who was treated well despite not passing an FSA exam) • Tanya Dostie (non-black employee who was treated well despite not passing an FSA exam) Non-Allstate – Interview: • Kirk Higgins (black employee who was haggled & cajoled after failing an FSA exam) • Elias Makere (black employee who was discriminated against after failing an FSA exam)

EVENT 019	Hostility, Employment Threats, and Unethical Forays From the IT Department

WHO:	David Dickson | Matthew Miller
WHAT:	Two IT employees unethically harassed & harangued complainant in an attempt to compromise his employment.
WHERE:	Office. 7th Floor
WHEN:	December 2015
HOW:	12/10/2015, 3:30 PM EST Matthew Miller called me to sequester a project that I had been assigned. He proceeded to make a handful of blatantly false statements – hoping I would be fooled. I informed him of his false statements, and the conversation ended. Matthew Miller's call was unannounced; I had never met him before, and this was my first time talking to him. None of my managers told me he was going to call. 12/17/2015, 5:11 PM EST David Dickson called me to sequester the same project that Matthew Miller was attempting to sequester. He also proceeded to make several blatantly false statements. As I had done the prior week (with Matthew Miller), I informed the harassing caller that his statements were false. This time around, however, the harassing caller (Mr. Dickson) followed up his false statements with clear threats. He threatened to have me persecuted by my manager (Richard Schaefer). Due to the holiday luncheon (which I avoided – see EVENT 303), the office was nearly empty. Richard Schaefer & I were the only people in. I suspect that Mr. Schaefer he ordered Mr. Dickson to call, threaten, and bully me. As the year turned, Mr. Dickson contacted me a few more times; where he told me more lies and missed more deadlines. As a result of the hostility & unethical behavior, I filed an ethics report. David Dickson was named as the primary perpetrator in the report; and Matthew Miller was mentioned accordingly. One of my requests was for David Dickson to be prohibited from contacting the Actuarial Department for a period of 6 months – to give him a chance to re-establish his credibility. I didn't see/hear from David Dickson between February 2016 and August 2016. David Dickson's initial call was also unannounced; I had never met him before, and this was my first time talking to him. None of my managers told me he was going to call. However, upon filing the ethics complaint against Mr. Dickson, my managers (Lisa Henry & Richard Schaefer) retaliated against me.

RESPONSE:	I worked quietly and didn't mention her resentment to anyone.

OUTCOME:	Animosity & Resentment. Desire to prevent the advancement of a black man. Discrimination

EVIDENCE:	Allstate – Interview: • David Dickson (egregious transgressor – repeatedly bureaucratically accosted complainant), Matthew Miller (initial transgressor – called complainant), Richard Schaefer (manager who arranged for the harassment & discrimination), Lisa Henry (manager who subsequently retaliated against me for filing an ethics complaint) Allstate – Evidence: • Investigation Records & Reports (Allstate's I-Report Team)

EVENT 020	Lisa Henry Tells Me That She Resents My Success

WHO:	Lisa Henry
WHAT:	Lisa tells me, "I'll begrudgingly inform you of our term life product"
WHERE:	Office. Lisa's desk
WHEN:	Spring 2014
HOW:	Rich appointed me to be in charge of the newly revamped Term Life product. The person who could bring me up to speed on the product was my manager. For weeks Lisa had been dodging discussions about the product. Finally, one day - while I was at her desk - she says "I've got to begrudgingly show you how this product works."

RESPONSE:	I worked quietly and continued to focus on providing excellent service to Allstate's stakeholders.

OUTCOME:	Animosity & Resentment. Desire to prevent the advancement of a black man

EVIDENCE:	Allstate – Interview: • Lisa Henry (manager who resented & begrudged success of black employees) Allstate – Evidence: • Retrieve email communications between Rich & Lisa

EVENT 021	Allstate Terminates My Employment In a Racially Discriminatory Manner

WHO:	Allstate
WHAT:	Allstate only terminates black actuaries who fail an actuarial exam, they do not terminate non-black actuaries who fail an actuarial exam.
WHERE:	Jacksonville, FL
WHEN:	8/12/2016
HOW:	Pre-2013, Phil Kite failed his actuarial exam (he never passed any of the ten exams), he was allowed to stay in Allstate's actuarial department. Pre-2013, Bridget Tennant failed her actuarial exam (she never passed any of the ten exams), she was allowed to stay in Allstate's actuarial department. Summer 2013, a black actuary by the name of Kirk Higgins left Allstate in fear of being terminated for failing an actuarial exam. Spring 2016, Lisa Henry informed the complainant that he may get terminated if he fails his upcoming actuarial exam. Spring 2016, a non-black actuary, Victor Ciurte, was given a promotion before his upcoming exam. Both the complainant and Mr. Ciurte were in the same predicament. The complainant received worse treatment, though, because he was black. June-July 2016, Allstate management surreptitiously grades & fails the complainant's actuarial exam in order to provide a reason to terminate him (see EVENT 301). August 12, 2016, Allstate terminates complainant.

OUTCOME:	Racial Discrimination. Racially Motivated Termination. = Violation of Florida Statute 760.10(1)(a)

EVIDENCE:	Allstate – Evidence: • HR Records Allstate – Interviews: • Lisa Henry (manager of Kirk Higgins; manager of complainant; manager of Bridget Tennant) • Phil Kite (benefactor of racial discrimination) • Bridget Tennant (benefactor of racial discrimination) • Victor Ciurte (benefactor of racial discrimination) • Louis Posick (manager of Phil Kite;) Aggrieved Person: • Ask aggrieved party about exams (while employed with Allstate vs as an external employee)

PART 2 SECTION II – EVENTS – RACIST DOLLS

This section contains **events** that involved racist dolls.

RACIST DOLLS	"100" Series	PAGE 32
EVENT 101 | Racist Dolls		PAGE 33

EVENT 101	Allstate Placed a Monkey Doll On My Desk to Demean Me Based On My Race

WHO:	Kaz Nagai
WHAT:	A swinging monkey doll was placed on my desk; in full sight of any passerby
WHERE:	Office. Cubicles.
WHEN:	Mid-July 2015
HOW:	It was a typical day. I was sitting at my desk quietly doing my work. Our cubicles were full (Kaz Nagai was there, Phil Kite was there, Louis Posick was there). Before long, I looked to my right to see **a swinging monkey doll sitting on my desk**. Kaz Nagai was standing beside it. The doll was so prominent that it was more visible than me. The message was clear: my race made me the target for derision, hate, and unequal treatment.

RESPONSE:	I never touched the monkey. The monkey stayed there for months. Someone removed the monkey in the Fall of 2015. I felt totally isolated and violated. In **July 2016**, Kaz Nagai admitted to being the one who: A.) Purchased the racist doll B.) Placed the racist doll on my desk

OUTCOME:	Racial Discrimination Racial Ostracism (They felt the undying need to clearly depict me as sub-human) Racial Subjugation Mr. Nagai succeeded in his attempt to demean and harass me on account of my race. I lost interest in interacting with the department. It was clear that such a brazen display of hatred meant that my race prevented me from equal treatment.

EVIDENCE:	Allstate – Interview: • Kaz Nagai (primary harasser; placed a racist doll on complainant's desk) • Phil Kite (enabler; assisted in the harassment; Phil knew of the racist doll purchase) • Louis Posick (Kaz was his direct report; and Louis knew of the racist doll) • Anyone who worked in the Actuarial Department between July 2015 & December 2015 (they all saw the racist doll) • Anyone who worked at Allstate between July 2015 & December 2015 (especially those on the 7th floor)

PART 2 SECTION III – EVENTS – RACIST EPITHETS

This section contains **events** that involved racist epithets & characterizations.

RACIST EPITHETS "200" Series	PAGE 34
EVENT 201 | Racist Epithets	PAGE 35
EVENT 202 | Racist Characterizations	PAGE 36

EVENT 201	Phil Kite Yelled "You Look Like A Chimpanzee" To Humiliate, Harass, And Ostracize Me Because I Was Black.

WHO:	Phil Kite
WHAT:	Phil yells to me, "You look like a chimpanzee!"
WHERE:	Office, Cubicles.
WHEN:	Mid-October 2015
HOW:	It was a typical day. I was walking back to my desk silently. As I approached the outer corner of my cubicle (which was across from Phil's), he yells to me **"You look like a chimpanzee!"** Kaz Nagai stands, turns around, and leers at me as if to goad me into an argument. I ignored him (as usual). Louis Posick, an actuarial manager, was sitting adjacent to Phil. He heard what he said. Lisa Henry, an actuarial manager, was in earshot of Phil's statement. Neither Louis nor Lisa said anything to dissuade the racial discrimination. Management was negligent in their duty to maintain a non-hostile, unbigoted workplace.

RESPONSE:	I just sat down, and continued to focus on doing high quality work. I reminded myself that – after all - there was a monkey sitting on my desk; this new verbal form of racial discrimination was just **par for the course**.

OUTCOME:	Racial Persecution. Racial Discrimination. Racial Ostracism. Sadness. Withdrawal. The department clearly viewed me as sub-human, and they wanted me to know it beyond the shadow of a doubt. This was after the racist doll was placed on my desk. This was after my own manager referred to me as a monkey. This was after people screamed at me for buying a condolence card. This was after my manager began throwing hard items at me.

EVIDENCE:	Allstate – Interview: • Phil Kite (he was the one who shouted the racist epithet in order to ostracize me) • Kaz Nagai (he stood, turned, and leered at me in support of his friend's racist epithet) • Louis Posick (he heard the exclamation; he spearheaded his direct reports' bigotry) • Lisa Henry (she heard the exclamation) • Richard Schaefer (secondhand witness to epithets)

EVENT 202	My manager, Lisa Henry, characterized me in a racially demeaning manner inside a group meeting

WHO:	Lisa Henry
WHAT:	Lisa Henry characterized me as a monkey when discussing the work that I would need to complete
WHERE:	Conference Room
WHEN:	Spring 2014
HOW:	My manager & I were scheduled to attend a meeting with people from the administrative department. The discussion was AllApp® testing. As was customary for me, I spoke little and listened a lot. The thing I heard - and the sight I saw – has stuck with me to this day (3.5 years later so far). Within the context of delegating & describing work Lisa began speaking. She said, "Oh, that's easy. I can get a monkey to do that. I can tell the monkey to sit down, look at a piece of paper, then look up to compare it to what's on the computer screen." It seemed offensive that she would use such a reference; especially considering how I was her only employee – and I was black. Nevertheless, I continued to sit quietly; expressionless. Mr. Rodney ???, however, had a look of constrained disgust & disappointment on his face. Everyone in that meeting had to have known that I was Lisa's only employee. So, who else could she be referring to as a monkey? I suspect that's what Rodney was thinking. Well, the meeting ended, and Lisa & I returned to our cubicles on the 7th floor. That's when & where the suspected offense became a confirmed one. Lisa escorted me to my desk. She pointed directly to my seat and said, "sit down right there." I sat down. Moments later, Lisa came back with a piece of paper and told me, "look down at that paper, then look up and compare the numbers. It's as easy as that. Let me know if you need any help with that." **I was Lisa's monkey.**

RESPONSE:	sat there quietly & respectfully. After all, I had only been an employee for about 4 months. After she confirmed that I was the monkey she was referring to, I [still] completed the work. The customer was what I focused on. My manager's racially demeaning characterizations of me wouldn't interfere with putting the customer first. So, I completed the work; and I hoped [to myself] that she wouldn't characterize me as a monkey again. My hopes were not met.

OUTCOME:	Racial Discrimination. Racial Harassment. Racial Ostracism. Sadness. Withdrawal. Violation of Allstate's Terms & Conditions My manager clearly viewed me as sub-human, and she wanted everyone to know it. A few months later, Mr. Posick was echoing her sentiments. As time went on, more people committed racially demeaning acts against me.

EVIDENCE:	Allstate – Interview: • Lisa Henry (she made the racially derogatory comments) • Rodney ??? (witness; he had a disappointed look on his face during the meeting) • Melissa "Lesa" Rivers (witness) Allstate – Evidence: • Retrieve meeting information via MS Outlook (Lisa Henry's account, or Elias Makere's)

PART 2 SECTION IV – EVENTS – INTENTIONAL HARM & VIOLENCE

This section describes many violent & non-violent events that were (1) committed with the intent to harm, and (2) committed with a racial bias.

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EVENT 302 | Surreptitious Exam Grading	PAGE 39
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EVENT 309 | Coercion	PAGE 46
EVENT 310 | Continued Retaliation	PAGE 47
EVENT 311 | Lethal Retaliation	PAGE 48

EVENT 301	Management Surreptitiously Graded My Actuarial Exams In Order To Fail Me, And Compromise My Employment Because of My Race

WHO:	Allstate's Actuarial Department | SOA
WHAT:	Allstate's actuarial management engaged in foul play by improperly grading my last FSA exam, in an attempt to deny me my final actuarial credential; and henceforth fabricate an excuse for termination
WHERE:	USA
WHEN:	2015-2016
HOW:	Actuaries must pass actuarial exams in order to earn all of their credentials The SOA (Society of Actuaries) administers the exams For the final three exams, the SOA enlists the help of credentialed actuaries (volunteers) These volunteers grade the exams. Marilou Halim is an admitted FSA Exam Grader (she has been grading exams since Pre-2013) Ms. Halim ominously warned me that there was more to being an actuary than passing exams (ie, she could control who got their credentials). Moreover, every Allstate FSA can be an exam grader. The exams are graded in a subjective manner (the grader can grade it however they please) I took one of these exams (ILALFVU) Before the exam, Lisa Henry ordered me to submit a writing sample to Ms. Halim. The reason why I was not given a passing grade is because my managers conspired to be the graders on my exam. They would have been able to identify my exam by my name They would have been able to identify my exam by my ID They would have been able to identify my exam by my handwriting (they often commented on my handwriting). They would have been able to identify my exam via clandestine methods They would have been able to identify my exam with the help of the SOA Management was fully aware of the negative impact that this would have on my employment status **Management did not do this to non-black employees**

RESPONSE:	The exam determined my fate as an employee at Allstate. It was the stated reason for my termination

OUTCOME:	Racial Discrimination The exams significantly affect compensation, promotion, and employment status

EVIDENCE:	SOA (Society of Actuaries) - Evidence: • List of All FSA Exam Graders (ILALP, ILALFVU, ILALRM) Allstate – Evidence: • List of Exam Graders • List of employees who had 2 consecutive exam failures Complainant • Inquisition on exams (while employed with Allstate vs as an external employee)

EVENT 302	Management Surreptitiously Graded a Former Black Actuary's Exam In Order To Fail Him, and Compromise His Employment.

WHO:	Allstate's Actuarial Department | SOA
WHAT:	Allstate's actuarial management engaged in **foul play** by improperly grading **Kirk Higgins'** last FSA exam, to deny him his final actuarial credential; and henceforth produce a threat to his employment.
WHERE:	USA
WHEN:	2012-2013
HOW:	Actuaries must pass actuarial exams in order to earn all of their credential The SOA (Society of Actuaries) administers the exams For the final three exams, the SOA enlists the help of credentialed actuaries (volunteers) These volunteers grade the exams Marilou Halim is an admitted FSA Exam Grader (she has been grading exams since Pre-2013) Moreover, every Allstate FSA can be an exam grader. The exams are graded in a subjective manner (the grader can grade it however they please) Kirk Higgins took one of these exams (ILALP) Kirk Higgins is a black man I believe that the reason he was not given a passing grade is because Allstate management conspired to be the graders on his exam. They would have been able to identify my exam by my name They would have been able to identify my exam by my ID They would have been able to identify his exam by my handwriting. They would have been able to identify his exam via clandestine methods They would have been able to identify his exam with the help of the SOA Management was fully aware of the negative impact that this would have on Kirk Higgins' employment status. Management **did not do this to non-black** employees

RESPONSE:	The exams can determine the fate of an employee at Allstate (at management's discretion).

OUTCOME:	Racial Discrimination The exams significantly affect compensation, promotion, and employment status

EVIDENCE:	SOA (Society of Actuaries) - Evidence: • List of All FSA Exam Graders (ILADP, ILACSP) Allstate – Evidence: • List of Exam Graders • List of employees who had 2 consecutive exam failures Complainant Inquisition on exams (while employed with Allstate vs as an external employee)

EVENT 303	Kaz Nagai's Constant Mocking & Ridicule

WHO:	Kaz Nagai	
WHAT:	Constant Mocking & Ridicule	
WHERE:	Office. Lunches.	
WHEN:	2014 - ∞	
HOW:	Bicycle	Since my first week at Allstate, I rode my bike to work. Mr. Nagai had been working there for 6 months prior. He never rode his bike. All of a sudden, Mr. Nagai compelled himself to ride his bike. He began joking (to anybody within earshot) about his new cycling commute. He'd joke about how sweaty he'd get; how smelly it would make him; He'd joke about needing a shower He was mocking me.
	Gym	Since my first week at Allstate, I went to the gym. Mr. Nagai had been working here for 6 months prior. He never went to the gym. All of a sudden, Mr. Nagai compelled himself to go to the gym. Again, he began joking (to anybody within earshot) about his new regimen He'd joke about "working on his core" – a direct mock of my prior quote He'd joke about how sweaty he'd get; He'd ridicule my meal plan by displaying large fruits on his desk He'd do triceps extensions and workouts in the middle of meetings He was mocking me
	Christmas	Our department had an annual Christmas luncheon. It was held at a pasta house Christmas 2013, I bought a Christmas hat, but I didn't wear it Christmas 2014, I walked in with the Christmas hat. People made comments on it. Mr. Nagai witnessed the exchange. Within 2 weeks, Mr. Nagai compelled himself to arrive at work in a Christmas hat. While in the cubicles, he said something along the lines of "Look who's got a Christmas hat now." He then spends the next few weeks recruiting others to join in on the charade. Christmas 2015, Mr. Nagai shows up to work in a complete Santa Claus outfit. He was mocking me
	Verbal	I told someone they had nice shoes one day For the next two weeks Mr. Nagai would yell out "Nice shoes" "I like your shoes" to people passing by in the hallway He was mocking me

RESPONSE:	Asked my manager if I could work from home. Asked my manager if I go home early due to the harassment. Changed my seat. I continued to focus on work.

OUTCOME:	Harassment. Bullying. Marginalizing

EVIDENCE:	Allstate – Interview: • Kaz Nagai (harasser) • Anyone who worked in the Actuarial Department between Jan 2014 & Aug 2016 (witnesses)

EVENT 304	Kaz Nagai's Constant Surveillance And Invasion of Space & Privacy

WHO:	Kaz Nagai
WHAT:	Constant Surveillance and Invasion of Space
WHERE:	Office. Street.
WHEN:	July 2014 - ∞
HOW:	Around April 2014, Mr. Nagai (the primary harasser) had secured a standing desk from management His subsequent stance gave him a birds-eye view of every movement I made He would enact the following behaviors: 1. Watch me as I worked at my cubicle 2. Watch me as I went to the bathroom 3. Watch me as I went to the kitchen 4. Watch me as I went to a meeting 5. Watch me as I went to go study 6. Watch me as I walked down the hallway 7. Watch me as I had conversations with other people in different aisles 8. Eavesdrop on my telephone conversations The surveillance didn't stop at the office. He would do the following: 1. Drive by my home 2. Honk his horn at me while I rode my bicycle on the sidewalk 3. Walk right behind me at 6am as I entered the building 4. Shadow me as I arrived on the weekends (even at 6am!) There was virtually no where I could go without his gaze there to follow

RESPONSE:	I would try my best to ignore Mr. Nagai. I would try my best to avoid Mr. Nagai. I would avoid having telephone conversations when Mr. Nagai was around. I would take most of my bathroom breaks on a separate floor; beyond his leering gaze. I would avoid walking over to my manager's desk; so as to avoid the piercing gaze

OUTCOME:	Extreme discomfort. Disgust. Deprivation of privacy. An undying need to get out of his line of sight.

EVIDENCE:	Allstate – Interview: • Kaz Nagai (harasser) • Anyone who worked in the Actuarial Department between Jan 2014 & Aug 2016 (witnesses) • Anyone who ever ventured up to the 7th floor between Jan '14 & Aug '16 (witnesses) Allstate – Evidence: • Financial Records (shows the purchase that Allstate made to help Mr. Nagai invade space)

EVENT 305	Kaz Nagai's Threat Of "You're Next [to suffer]" While Putting His Finger In My Face

WHO:	Kaz Nagai
WHAT:	Kaz Said, "I just took this exam down. Yes!!" then he turns directly to me, puts his finger in my face, and shouts, "You're Next!!"
WHERE:	7th Floor, Cubicles
WHEN:	Fall 2014
HOW:	Kaz Nagai, Phil Kite, and I were in our cubicles. Kaz just learned that he passed his recent actuarial exam. Phil & I congratulated him on his success. Kaz stood up. Then he exulted, "I just took this exam down. Yes!!" Then he turned directly towards me, stepped forward, and threateningly said, "You're Next!!!" It was completely unprovoked; as just seconds earlier I was congratulating him for passing his exam. **He never made these threats to non-black actuaries.**

RESPONSE:	I said nothing. I just resumed work; no matter what, I was going to focus on doing excellent work.

OUTCOME:	Hostile Work Environment Ostracism

EVIDENCE:	Allstate – Interview: • Kaz Nagai (he was the transgressor) • Phil Kite (he was the witness) Aggrieved • Elias Makere (target of harassing threats)

EVENT 306	Marilou Halim's Profane Summer Screamfest

WHO:	Marilou Halim
WHAT:	A profanity-laced tirade
WHERE:	Office. Hallway/doorway.
WHEN:	Mid-August 2015
HOW:	The day before, we learned that the father of one of our staff members had passed away. That night, I went to the store to purchase a condolence card. It was typical for our department to circulate one in support of our colleagues. Earlier that morning, I brought the card in; I signed it; and I made a checklist of names for the pass-around. Since there were about 3-4 people who were out of the office, I put red x's next to their names. Then I placed the card + checklist on Mrs. Halim's desk so that she'd be the 1st recipient. Later that morning, I was sitting in a small room studying alone (Huddle Room 7A); my back was to the glass door. The office was full. Mrs. Halim knocked once then barged in before I could turn around to see who was there. She left the door ajar (so anyone could hear her). She began yelling at me, "Did you buy this? Don't do that! It pisses me off!! You've undermined me! I bought a card!! There are other signatures on here" – unless other people take items off of her desk then she was wrong (I was the only signature on there). So, either she intentionally ignored the facts or she angrily jumped to conclusions She repeats herself, "It ticks me off!! You're not the one to do that! It pisses me off!"

RESPONSE:	I surmised that her hostile outburst was retaliation for me having a closed door meeting with my manager a couple of weeks before. Prior to the outburst, she had made indirect quips at me for having "meetings with your manager; not good". Note: that meeting was to inform my manager of my strong desire to sit somewhere else. I was sure that many other employees heard her berating me. I stopped buying condolence cards. I stopped asking to have closed door meeting with my manager. I minimized contact with everyone in the department. I felt uncomfortable walking down the hallways. In fact, I would walk without my eyeglasses so that I couldn't make out people's faces; in fear of the contempt & ridicule stored within.

OUTCOME:	Verbal abuse. Hostility. Ostracism. Hostile Work Environment

EVIDENCE:	Allstate – Interview: • Marilou Halim (she hurled profanity at complainant) • Paul Ramirez (witness – his seat is within earshot) • Richard Schaefer (witness – sits adjacent to the room of hostility

EVENT 307	Lisa Henry's Repeated Physical Assaults

WHO:	Lisa Henry	
WHAT:	Acts of Violence & Intimidation: Dismissively thrown fruits; Disrespectfully thrown candy; Violently thrown paper	
WHERE:	Office. Cubicles. Conference Rooms	
WHEN:	Spring 2016	
HOW:	Fall 2015	Lisa dismissively throws a banana at me • I'm sitting at my desk working quietly • Lisa comes by to pick up paper from the printer • On her way out she dismissively throws a banana at me while murmuring something • They land on my desk
	Spring 2016	Lisa disrespectfully throws candy at me • I'm sitting at one of the front cubicles working quietly • Lisa comes over to request I attend another one of her phantom "coaching sessions" • I refuse by stating that it was retaliation for filing an ethics report • She disrespectfully throws a couple of starburst candies at me • They land on my desk
	Spring 2016	Lisa violently throws paper at me • I'm sitting in a small huddle room alone • Lisa enters • Lisa asks several times whether I want to have the phantom "coaching session" with her • I reply, "No, it is clearly retaliation for the ethics report I filed." • Lisa violently throws paper at me. I flinched. It landed inches away from me

RESPONSE:	Fall 2015	I continued working quietly I eventually put the banana in the kitchen for anyone else to take
	Spring 2016	I continued working quietly I tried to downplay the scene that she just made by nodding my head I eventually put the candy in the kitchen for anyone else to take
	Spring 2016	I stayed in the huddle room for an extra 30 minutes It seemed like others saw her do it; and possibly saw her angrily stammer away I downplayed the humiliation by not making eye contact with anyone for the rest of the day.

OUTCOME:	Hostile Work Environment. Brazen displays of animosity. Subjugation

EVIDENCE:	Allstate – Interview: • Lisa Henry (violent perpetrator) • Antwan Jenkins (witnessed Lisa admit to the violence & intimidation) • Kelly Bermudez (witnessed Lisa admit to the violence & intimidation) • Richard Schaefer (witnessed Lisa admit to the violence & intimidation)

EVENT 308	Phil Kite's Knife Threats & Rubber Band Shooting

WHO:	Phil Kite
WHAT:	Knife Threats
WHERE:	Office. Cubicles.
WHEN:	Spring 2014, Summer 2014.
HOW:	Spring 2014: During normal conversation, Mr. Kite told me to turn around. – BAM – rubber band straight into my right eye. The office was full. Summer 2014: During normal conversation Mr. Kite wielded a knife with the blade, out and ominously looks in my direction. We were less than 10 feet away from one another. He said something to the effect of, "I'll put one of these on you." The office was full.

RESPONSE:	He does it again a few weeks later. Whenever a discussion of violence or workplace violence comes up I mention Mr. Kite's knife threats.

OUTCOME:	Intimidation. Lawlessness. Brazen displays of intolerance. Subjugation and displays of power.

EVIDENCE:	Allstate – Interview: • Phil Kite (violent perpetrator) • Kaz Nagai (witness)

EVENT 309	Lisa Henry Repeatedly Tries To Force Me To Sign an Improper Document

WHO:	Lisa Henry
WHAT:	My manager, Lisa Henry, repeatedly tries to force me to sign an illegitimate document
WHERE:	7th Floor
WHEN:	Spring 2016 – Summer 2016
HOW:	Managers conduct annual performance reviews on their direct reports every year In 2016, Lisa Henry drafted an illogical, inaccurate, and immoral final review I disagreed with it I reported it And I made it clear that I would not sign the document I told her that her inaccurate review was an act of retaliation On numerous occasions, Lisa would come over to me to either coax me into signing it or force me to sign it ➢ Coaxing Efforts: On at least one occasion, Lisa said "You have to sign the final review. It's a condition of your employment." ➢ Forcing Efforts: While I was sitting in the front cubicle, Lisa threw an object at me after I refused to sign the document. Ms. Henry never tried to coerce non-black employees. Ms. Henry never acted violently towards non-black employees.

RESPONSE:	I just continued to focus on producing high quality actuarial work. Note: I never signed that illegitimate document

OUTCOME:	Terms & Conditions of Employment

EVIDENCE:	Allstate – Interview: • Lisa Henry Allstate – Evidence: ➢ Annual Performance reviews for Elias Makere (2014 Final Review, 2015 Final Review) Aggrieved Person: • Elias Makere (aggrieved person)

EVENT 310	Extended Retaliation

WHO:	Allstate Corporation, Respondent | PERSON 407, Non-Party
WHAT:	Allstate commissioned a non-party, PERSON 407, to harass and defame the Petitioner in retaliation (for filing suit).
WHERE:	Florida, Online
WHEN:	2017-2018
HOW:	**Veiled Threat** February 2018, PERSON 407 told the Petitioner to "pray to God about [having filed suit]". The Petitioner saw it as a veiled threat. 407 then filed a document with the DOAH; making inflammatory remarks. The Respondent soon followed up with compounding hearsay. The Petitioner told the Court that he believed that the Respondent commissioned 407 to attack the Petitioner. **Harassment in Violation of 120.569(2)(e)** March 2018, PERSON 407 filed an improper document [with the DOAH] to humiliate and defame the Petitioner. The Petitioner filed for sanctions (one against the Respondent, one against 407). Impunity PERSON 407 told the Court that he believed his non-party status granted him the liberty to attack the Petitioner (paraphrasing). Soon thereafter, he continued his fervent forays. Zealous Activity As of now, PERSON 407 has filed more pleadings than one of the Respondent's four attorneys of record (Koutsodendris). 5 vs 2. The Respondent – in effect – has turned 407 into its fifth lawyer: **Explicit Link to Respondent** June 21, 2018, the Respondent emailed PERSON 407 and **encouraged him** to file pleadings on its behalf. Pleadings that 407 was not authorized to file. The Respondent also asked 407 to avoid writing anything that could negatively impact the Respondent's pleadings. On June 25, 2018, 407 obliged by filing another improper document. Additional Suspicions The Petitioner believes that the Respondent has commissioned additional retaliatory acts. In short, a non-party individual threatened and zealously harassed the Petitioner. The Petitioner long believed that the Respondent was behind it. And now the Petitioner has proof (see **Exhibit B**).

RESPONSE:	Ask & Avoid: The Petitioner has been (1) asking for more evidence; and (2) avoiding unneeded contact

OUTCOME:	Retaliation (§760 Florida Statutes). Defamation (§836).

EVIDENCE:	Hard Evidence: • Email (6/21/18) [From: Allstate | To: PERSON 407] • Email (2/12/18) [From: PERSON 407 | To: Petitioner] • Allstate's March 2018 pleading (violation of hearsay rule) • PERSON 407's March 2018 pleading (defamatory, harassing, inaccurate) • Petitioner's Motions for Sanctions (against Allstate, against 407)

EVENT 311	Lethal Retaliation

WHO:	Allstate Corporation, Respondent | PERSON 105, Employee | PERSON 110, Non-Party
WHAT:	The Petitioner suspects that the Respondent commissioned a non-party, PERSON 110, to lethally attack the Petitioner in retaliation (for filing suit).
WHERE:	Jacksonville, FL; Jacksonville Beach, FL
WHEN:	March 10, 2018 | May 12, 2018
HOW:	November/December 2015, ≈ 7PM EST, Allstate Campus | **The Threat** After work, in the parking lot, the Petitioner gathered his bicycle to head home. His bicycle was about 80m from the office's door. As he entered the driveway, a tall, bearded man approached. The man said, "*be careful on your bike*", in an ominous tone. The Petitioner immediately took it as a veiled threat (as in '*watch your back*'). Within a few weeks, the Petitioner learned that the man was PERSON 105 (see EVENT 019). March 10, 2018, 12AM EST, Jacksonville, FL | **The Hit** The Petitioner was riding his bicycle home; following his typical route at his typical time. He was wearing his helmet, and his bicycle was fitted with working headlights and taillights. His route included a main roadway. The roadway had three lanes in each direction, a 10m median, and street lights within 50m of one another (ie, well-lit). The speed limit was 45 mph. The Petitioner crossed the main roadway at the intersection. As he neared the median, a car struck him head on. The car's windshield threw him into the air – and he [presumably] landed in the grassy median. Which was where the emergency crew found him - unconscious. He suffered the following injuries (1) left leg contusion (≈ 50mm wide, ≈ 15mm deep); (2) sprained shoulder; (3) embedded glass in his scalp; (4) concussion. The car was reportedly going 45 mph. The driver was PERSON 110 (Matthew Myrick). Considering the Petitioner's injuries and the circumstances, he believes [sans helmet that] he could have (a) died; (b) been paralyzed; and/or (c) fallen comatose. It was a near-fatal event. May 12, 2018, 12AM EST, Jacksonville Beach, FL | **The Miss** The Petitioner was once again riding his bicycle home; (same route, same time, more safety gear). The Petitioner spotted a car approaching him from behind. So, the Petitioner created more space. The car, however, continued its collision course with the Petitioner. It got so close that it forced the Petitioner to dive out of the way. The Petitioner landed in someone's driveway; and suffered some minor cuts to his knees and arms. He dodged another hit. Prior to this civil action, the Petitioner had never experienced anything like **The Threat**, **The Hit**, or **The Miss** in his dozens of years of bicycle riding. The Petitioner suspects that the Respondent commissioned **The Hit** to bring an end to this case. As such, he has asked the Respondent about PERSON 110. He will need to request more information.

RESPONSE:	Heightened suspicion. Request for Information. Physical recovery.

OUTCOME:	Retaliation (§ 760 Florida Statutes). Attempted Manslaughter (§782.07).

EVIDENCE:	Hard Evidence: • Crash Report Additional evidence will be sought in discovery.

PART 2 SECTION V – EVENTS – PATTERN OF DISCRIMINATION

This section describes Allstate's long pattern of discrimination.

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EVENT 401	Masculinity Insults (Part 1 of 3)

WHO:	Kaz Nagai	
WHAT:	Mr. Nagai would hurl direct & indirect insults at me by trying to imply that I wasn't straight	
WHERE:	Office. Cubicles.	
WHEN:	June 2014 - ∞	
HOW:	June 2014	I was sitting at my desk. Another employee comes over, and we start talking. Mr. Nagai was eavesdropping. Somehow she talks about how she was going to lunch with some other female staff. Mr. Nagai asks her, "It's an all girl lunch? Are you going to take Elias with you?" She had a look of confusion in her head. She walked away silently. I said nothing. The conversation ended
	Fall 2015	I was standing up in the aisle. I was briefly talking to Louis Posick about casual stuff Mr. Nagai was next to Mr. Posick Somehow we start talking about rooms Mr. Nagai says, "Like coming out of your closet?" Louis looks at him and orders him to stop. Then he begins whispering to Mr. Nagai The conversation was over

RESPONSE:	I just sat back down and continued to work

OUTCOME:	Constant Harassment & Attempted Humiliation They were grasping at anything to justify their need to distance themselves from a black man in the actuarial department

EVIDENCE:	Allstate – Interview: • Kaz Nagai (he was the one hurling the insults) • Louis Posick (he was Kaz's manager, he witnessed the insults)

EVENT 402	Masculinity Insults (Part 2 of 3)

WHO:	Catherine Wallace Bethea; close friend of Kaz Nagai's (primary harasser)
WHAT:	Implying that I wasn't straight and that I had an STD
WHERE:	Office. Cubicles.
WHEN:	2014
HOW:	A blood drive was recently held on our campus I donated blood; Ms. Bethea donated blood, too. I was walking back to my desk. Ms. Bethea made her way to our cubicles, and was standing in the aisle. The topic became the blood drive, and Ms. Bethea squared off on me. "You know they're going to test your blood, right? You might have something." She continued on (keep in mind that she's a very loud talker). "You might have something..." then she started to stutter; correcting herself ..."they might find out you're pregnant." She continued on with her monologue; quite boisterously. She was implying that I wasn't straight and that I had an STD. Both of which were false implications. She did this because I was black (she never made such implications towards non-black employees).

RESPONSE:	My manager comes over to the cubicles. She ushers Catherine away. She asks me if I'm okay. I reply nonchalantly as if it didn't matter. The stage was set, though.

OUTCOME:	Hostile work environment. Constant harassment; widespread harassment. Ms. Bethea was carrying out Mr. Nagai's harassing theme of masculinity insults.

EVIDENCE:	Allstate – Interview: • Catherine Wallace Bethea (aggressor) • Kaz Nagai (witness) • Phil Kite (witness) • Lisa Henry (witness) • Louis Posick (witness)

EVENT 403	Masculinity Insults (Part 3 of 3)

WHO:	Louis Posick | Richard Schaefer	
WHAT:	Insults of "Closet actuary" in an attempt to demean me and find ulterior justification for their racial discrimination	
WHERE:	Office. Electronic file. Rich's office	
WHEN:	Spring 2015 – Spring 2016	
HOW:	Louis Posick	I sent a file to Louis Posick. He sent it back, within it he wrote something along the lines of, "Don't be a closet actuary"
	Richard Schaefer	I was in a meeting with Mr. Schaefer & my manager, Lisa Henry We were talking about work. Somehow Mr. Schaefer begins a monologue on the office. He utters the following, "This is not the place for a closet actuary".

RESPONSE:	The term "closet actuary" has never existed in the profession. It was coined by Louis Posick as a way to demean & ostracize me in an attempt to find an ulterior justification for his racial discrimination I ignored their dissent and continued to focus on doing excellent actuarial work.

OUTCOME:	Widespread harassment

EVIDENCE:	Allstate – Interview: • Louis Posick (he was the first transgressor) • Richard Schaefer (he was the 2nd transgressor) • Lisa Henry (she was the witness to Rich's attack) Allstate – Evidence: • Impromptu Actuarial Survey (the file that Louis Posick wrote the insult

EVENT 404	In a 2-year timespan, Allstate Fired 6 People From My Area, 5 of Whom Were Black

WHO:	Allstate
WHAT:	On the 7th floor alone, I am aware of 6 people who were fired; 5 of them 6 were black. This is alarming because there were only about 10 black people in the entire staff (≈ 200 people).
WHERE:	Jacksonville, FL | 7th Floor
WHEN:	Spring 2014 – Spring 2016
HOW:	The following people were abruptly terminated

Black[1]	Non-Black
Pam Bernaba	Lidiya Olsen
Bryce ???	
Winston ???	
Ms. Bryant	
Sandy Spruill	

[1] African American/Black

There is less than a 10% chance for this to have happened at random (ie, **it's highly likely that race was a factor**)

RESPONSE:	I just continued to focus on doing high quality work, and putting our customer's first. No matter what, I was going to focus on servicing the customer.

OUTCOME:	A pattern of firing a grave disproportion of black people Racial discrimination

EVIDENCE:	Non-Allstate – Interview: • Bryce (black contract employee whose employment at Allstate abruptly ended) • Ms. Bryant (black contract employee whose employment at Allstate abruptly ended) • Sandy Spruill (black contract employee whose employment at Allstate abruptly ended) • Winston (black contract employee whose employment at Allstate abruptly ended) • Lidiya Olsen (non-black contract employee whose employment at Allstate abruptly ended) Allstate – Evidence: • HR Information (dates of employment for all named employees)

EVENT 405	Louis Posick Exclaims That "Someone Like Me" Devalues The Profession To Ostracize Me and Classify Me As An Inferior Employee

WHO:	Louis Posick
WHAT:	Louis angrily rants, "Your recent credentials water down the profession. 'Someone like you' devalues the profession. Your ASA makes mine worth less. That's the problem I have."
WHERE:	Copper Bar & Grill
WHEN:	June 2014 (Week of the 16th)
HOW:	We were having a going away lunch for a woman on the finance team About eight of us were sitting at the table. Louis was sitting on the opposite side of the bench, about three seats down. Roughly 10-15 minutes into our meal Louis goes on an unprovoked rant about how I make things worse for the profession: "Your recent credentials water down the profession. 'Someone like you' devalues the profession. Your ASA makes mine worth less. That's the problem I have." People start laughing. I was the only black person at the table; and the only black actuary in the department. I passed the actuarial exams like everyone else; I passed the VEEs like everyone else; I got my credentials like everyone else. The only difference was that I was black and everyone else was non-black. "Someone like me" was clearly a cover for "black people"; especially with his tone.

RESPONSE:	The finance woman turns to me incredulously and quips, "so, *what* do you do?" As if to say that Louis' comments have rendered me useless. That was the last time I voluntarily attended a lunch with Louis.

OUTCOME:	Professional indignation Subjugation Ostracism based on race

EVIDENCE:	Allstate – Interview: • Louis Posick (he made the unprovoked comment that effectively segregated me) • Kaz Nagai (witness, continued the racial harassment) • Paul Ramirez, Mike Prendes, Cassie Smith Victor Ciurte (they were all in attendance)

EVENT 406	Contemptuous Displays

WHO:	Nasreen Ali
WHAT:	Nasreen always feigned disgust towards me by demonstratively scooting her chair away, sliding away, or jerking herself away from me.
WHERE:	Jacksonville, FL
WHEN:	Spring 2014 – Summer 2016
HOW:	Every chance that Nasreen got she would demonstrate her contempt for my existence within the actuarial department. At department lunches, she would give me dirty looks while interrupting my contributions to the conversation. She would also rudely brush by me while I held the door for everyone. She never did these things to any of the non-black actuaries. Even worse, in staff meetings she would scoot her chair away from me in feigned disgust. Her intent was to depict me as an indignant being not worthy of the lowest forms of respect. This was her signal to management that she sided with their discriminatory stance. Nasreen never acted this way towards non-black actuaries. In the hallways, Nasreen would give me dirty looks, ignore my simple greetings, and rush past as if I were subhuman. She never acted this way towards non-black actuaries.

RESPONSE:	I just continued to focus on doing high quality work, and putting our customer's first. No matter what, I was going to focus on servicing the customer.

OUTCOME:	Racial Harassment – a violation of Allstate's **terms & conditions** Hostile Work Environment General Acrimony

EVIDENCE:	Allstate – Interview: • Nasreen Ali (she was the perpetrator) • Jennifer McKinsey (she witnessed a few of the acts at the department lunches) • Richard Schaefer (witness) • Lisa Henry (witness) • Marilou Halim (witness) • Virtually anybody from the actuarial department (life insurance side – especially)

EVENT 407	Allstate Paid Me Less Than The Lowest Actuarial Salary - On Account Of Race

WHO:	Allstate
WHAT:	My annual salary was below the lowest industry amount for actuaries with my experience & tenure; this was because of my race (black people comprise **less than 1% of the profession**, and are **widely discriminated against**)
WHERE:	Jacksonville, FL
WHEN:	July 2014 – July 2016
HOW:	My salary was roughly $72,000 in July 2014 I had 2 years of experience I had my ASA (actuarial credential) Salaries for ASAs with 1-3 years of experience range from $74,000 to $115,000[1] At my manager's discretion, my salary was constantly prohibited from growth. The reasons given were false, frivolous, and flagrantly bigoted: 1) 2014 Reason = "Email communications" – she failed to cite any examples; she never mentioned emails until my Annual Review. She was fleecing me. 2) 2015 Reason = "Coaching Session" – my manager fabricated coaching sessions in which she allegedly scolded me on behavior – coaching sessions that never existed. The company gave her ample opportunity to provide evidence to support her claims, she failed. 3) 2015 Quote = "If you're not perfect then you don't get a satisfactory rating. I'm not following any company guideline, this is how I choose to grade you. **I choose to shackle the monkey before it becomes a gorilla**." – The last sentence played on the long-held racist characterization of a black person as a monkey. She later repeated this exact quote in a 2016 meeting. Management was intentionally carrying out this act of racial discrimination; they did not want a black actuary to progress.

RESPONSE:	I just continued to focus on doing high quality work, and putting our customer's first. No matter what, I was going to focus on servicing the customer. I reminded myself that there was a monkey sitting on my desk – after all – this was just par for the course.

OUTCOME:	Racial discrimination affecting compensation

EVIDENCE:	Non-Allstate – Evidence (DW Simpson, LLC): [1] DW Simpson Actuarial Salary Survey (http://www.dwsimpson.com/salary) Allstate – Evidence: • Allstate's Actuarial Compensation History

EVENT 408	Management Hires 9 People To Replace Me (8 of which I was responsible for training)

WHO:	Richard Schaefer | Marilou Halim
WHAT:	Hiring of the SnapQuote Team
WHERE:	Office
WHEN:	August 2015 – April 2016
HOW:	Mrs. Halim and Mr. Schaefer ignited the search for new staff Staff that they were poising to have replace me They involved me in the interview & training process for 5 of them The employees were to sit right next to me. The excuse given was that there was no room for them anywhere else However, there was plenty of space in other parts of the building They were the only people in the actuarial department who didn't sit with their managers Mr. Schaefer was visibly choked up when he explained where they would be sitting. He was struggling to tell his lies. Ultimately, nine people were hired. A manager was promoted to the team as well. That manager was sent to sequester my work It was a bureaucratic maneuver He said his primary goal was to consolidate the SnapQuote programs. However, he never consolidated any of them In fact, it took me a mere 1.5 hours to produce the demo which showed two SnapQuotes being consolidated. Allstate management intentionally hired these nine people with the purpose of removing a black man from the actuarial department.

RESPONSE:	I continued to perform excellent actuarial work I engaged with the new staff members, and treated them great I taught the new staff members a myriad of technical things that were specific to their required skills I supplied the new staff members with anything I could I remained withdrawn from the actuarial department

OUTCOME:	Sending the message that they wanted someone else to be in my shoes (a non-black person). Ostracism. A part of the ongoing racial discrimination. They wanted a non-black person to assume my responsibilities, since a black man "devalues" the actuarial profession.

EVIDENCE:	Allstate – Interview: • Richard Schaefer (he orchestrated everything from the interviews to the work sequestration) • Marilou Halim (she ordered the search, lied to everyone about my employment, and goaded me for an argument)

EVENT 409	The Actuarial Department Colludes With My Prior Employer (of whom I filed an EEOC complaint) To Ostracize Me Because I'm Black

WHO:	Lisa Henry
WHAT:	Allstate's actuarial management reached out to my former employer (of whom I filed an EEOC complaint against) to discover how far they could compromise my career
WHERE:	Jacksonville, FL
WHEN:	Winter 2014 through August 2016
HOW:	In Spring 2016, amid the investigation she was under for retaliation, Lisa Henry made trips to my former employer – who was 600+ miles away. Genworth Harassment & Discrimination: Racial: • In May 2012, of the 6 people who passed an actuarial (MLC), I was the only one denied the company bonus. • Despite using the least amount of the company's money • Despite using the least amount of time (I had been an employee for only 90 days; while others had more than a year) • Richard Bosworth Worthington repeatedly used the "n-word" towards me • He often greeted me with stereotypical "hood" dialog • He engaged with other coworkers in racially charged commentary & jokes Richard, Seth, and Danish Iqbal regularly came by my desk to give their typical "...a black guy, a lawyer, and an accountant walk into a bar" jokes Sexual: • On Friday, February 10, Erica Flynt shouts to me, "That's why we hired you. To make me happy. We hired you to make me happy." She did this in front of our team; and in front of the Chief Actuary (David Armstrong). • Passive Aggressive behavior: After it became clear that I wasn't going to go along with it (≈ 1 month), the hostility rose. Erica Flynt & Allyson Beam would often say things like, "Oh yeah, [a man] is so great. He's way better than *him*." The *him* was designed to mean Elias (based on tone & context). The effect was to demean me by using another man as the lever. • Inappropriate Suggestions: Erica Flynt would suggest work-related tasks based on people's looks. In Spring 2012, when I was talking to Greg Franklin about a routine task, he indicated that I'd need assistance from people in finance. Out of nowhere, Erica Flynt yells, "Oh, Uma Chetty! You should talk to her. She's pretty. She's very pretty. You should talk to her." She had created an over-sexualized environment.

EVIDENCE:	Allstate – Evidence: • Lisa Henry's Work Calendar (MS Outlook)

EVENT 410	The Actuarial Department Gets Elevated To Upper Management Once My Termination Receives Approval

WHO:	Greg Guidos | Richard Schaefer
WHAT:	Allstate's resident CEO elevated the Actuarial department to upper management under the condition that Richard Schaefer terminated my employment
WHERE:	Jacksonville, FL | 7th Floor, 8th Floor
WHEN:	July/August 2016
HOW:	In 2016, the Actuarial department was being considered for a move up to the 8th floor (with senior management). If a move were to happen, it would not happen until the following year (at the earliest). After management failed my actuarial exam (thus permitting my termination) in July 2016, CEO Greg Guidos gave Chief Actuary Richard Schaefer the green light to move to the 8th floor. The migration would be complete by October 2016 (well ahead of the 2017+ anticipation date)

RESPONSE:	I continued to focus on work

OUTCOME:	Racial Discrimination The advancement of the actuarial department was contingent upon the eradication & ostracism of its black members

EVIDENCE:	Allstate – Interview: • Greg Guidos (directly question what factored into the Actuarial department's election; ask about the timing of the decision) • Richard Schaefer (directly question what factored into the election; ask about the timing of the decision)

PART 2 SECTION VI – EVENTS – SEXUAL HARASSMENT & DISCRIMINATION

This section contains several acts of sexual harassment and discrimination that Allstate committed.

PATTERN OF DISCRIMINATION "500" Series	PAGE 60
EVENT 501 | Managerial Requests for Dinner-&-a-Movie	PAGE 61
EVENT 502 | Unwanted Arm & Back Rubs from Management	PAGE 62
EVENT 503 | Management's Inappropriate Comments About my Pants	PAGE 63
EVENT 504 | Management's Requests for 450-mile road trips	PAGE 64
EVENT 505 | Management Requests a Deeply Compromised Outing	PAGE 65
EVENT 506 | Blatant Sexual Discrimination	PAGE 66

EVENT 501	Manager Requests for Dinner-and-a-Movie

WHO:	Lisa Henry
WHAT:	My manager requests that I join her for dinner & a movie on a Saturday night.
WHERE:	Office. Lisa's Desk. | 7th Floor
WHEN:	On a Saturday. Within the first month of my employment at Allstate
HOW:	It was at the end of the day; on a Saturday. Near nightfall. The office was mainly empty. I packed up my belongings and tried to tell Lisa goodbye. She asked me to join her and her husband David for dinner. Then she says we'll go to the movies. She had asked me this before (I had refused). The difference – this time – was that she also mentioned that David probably wouldn't be able to make it; and that it would be just the two of us. That's when I responded with, "Well, I can't make it because Laurel is coming to town today. She's made plans for us." I walked away and went home.

RESPONSE:	I was in near tears. I didn't want to believe that she just asked that. My whole body was in shock. This was exactly what I had gone through at Genworth

OUTCOME:	Subjugation. Solitude. I was at the bottom and I wouldn't be able to lean on my manager for support; without some moral compromise. As time went on, Lisa made fewer blatant requests.

EVIDENCE:	Allstate – Interview: • Lisa Henry (she made the date request) • David Henry (husband - the social fishing rod)

EVENT 502	Arm & Back Rubs From Management

WHO:	Lisa Henry
WHAT:	My manager would rub my back and shoulders while I sat & worked
WHERE:	Office Cubicles
WHEN:	Winter 2014
HOW:	was sitting at my desk. I was wearing a red shirt. Lisa enters my cubicle and stands behind me (this was a small, middle cubicle with limited space). She says something about my shirt. Then she leans in with her breasts perched against my back, and she rubs my arms (from the shoulder to the elbow). From there she rubs my back. It lasted about 5 seconds. A coworker was sitting across from me, and I believe he looked over and saw what she did.

RESPONSE:	Fear. I feared that I would get punished if I didn't go along with her behavior

OUTCOME:	Sexual harassment. Discomfort. Fear. Unease. The realization that I wouldn't be able to lean on her for any support

EVIDENCE:	Allstate – Interview: • Lisa Henry (she is the one who committed the act) • Kaz Nagai (witness)

EVENT 503	Inappropriate Comments About My Pants from Management

WHO:	Lisa Henry
WHAT:	My manager would routinely make inappropriate comments about how my pants looked
WHERE:	Office. Lisa's Desk. Cubicles
WHEN:	2014 - ∞
HOW:	Lisa would make inappropriate comments about how my pants looked. She would sometimes stare at my beltline, and below my beltline. The comments were usually along the lines of 'Nice pants'; 'Those look good on you'.

RESPONSE:	Silence

OUTCOME:	Sexual Harassment Discomfort. Unease

EVIDENCE:	Allstate – Interview: • Lisa Henry (she was the person making the comments) Aggrieved Person: • Get his testimony

EVENT 504	Requests for 450-Mile Road Trips From Management

WHO:	Lisa Henry
WHAT:	Lisa would ask me to drive to Atlanta with her for a business trip
WHERE:	Office
WHEN:	January 2014 – February 2014
HOW:	I was preparing to take a trip up to Atlanta for an actuarial course Part of the preparation involved getting a rental car. Lisa asked me a half-dozen times if we could make the trip together. It seemed really awkward; seeing how she didn't need to attend. She even called the rental car agency, and asked if I was there alone (ie, to see if my girlfriend was with me).

RESPONSE:	Richard Schaefer seemed disturbed when he witnessed the way that Lisa was carrying on I made the trip to Atlanta by myself

OUTCOME:	Sexual Harassment Discomfort. Realization that I wouldn't be able to lean on Lisa for support.

EVIDENCE:	Allstate – Interview: • Lisa Henry (she was the transgressor) • Richard Schaefer (witness) Allstate – Evidence: • Telephone records Aggrieved Person: • Get his testimony

EVENT 505	Manager Requests Another Social Outing

WHO:	Lisa Henry
WHAT:	My manager requests that I join her for a night of bowling
WHERE:	Jacksonville, FL | 7th Floor | Complainant's Desk
WHEN:	August 9th/10th 2016
HOW:	It was at the end of the day; on a Tuesday/Wednesday. The office was mainly empty. I was sitting at my desk Lisa came over to me, and asked me if I wanted to go bowling with her. I told her no. I had repeatedly refused her passes in the past. So, today was going to be no different. She stood there in disbelief – after all, we had a looming meeting on Friday. This was my apparent salvo to get in good graces with her. On Friday, August 12, 2016, Lisa informed me that I was being terminated. As the electronic records show, on Wednesday, August 10th, 2016 Ms. Henry ordered the HR department to approve my termination. This was the day following my very last refusal to go out with her.

RESPONSE:	Termination

OUTCOME:	Sexual Harassment. Intimidation. Deliberately compromised my terms & conditions of employment. Interfered with my work performance.

EVIDENCE:	Allstate – Interview: • Lisa Henry (transgressor) Aggrieved Person: • Get his testimony

EVENT 506	Blatant Sex Discrimination

WHO:	Lisa Henry | Marilou Halim
WHAT:	My manager tells me that I was prohibited from attending the department lunch because of my gender.
WHERE:	Jacksonville, FL | 7th Floor | Complainant's Desk
WHEN:	Spring 2016
HOW:	The actuarial department held lunches on a monthly basis. The department head, Richard Schaefer, maintains that it is important to have these sorts of team exercises. In Spring 2016, I replied to the meeting request to confirm my attendance. The following day, Lisa Henry (my manager), informed me that I wouldn't be allowed to attend because I was a man. She voluntarily explained that Marilou Halim ordered it that way.

RESPONSE:	I just continued performing excellent actuarial work, and putting the customer first. Nothing was going to interfere with that.

OUTCOME:	Sexual Discrimination

EVIDENCE:	Allstate –Interview: • Lisa Henry (she relayed the message of sex discrimination) • Marilou Halim (she ordered the sex discrimination) Aggrieved Person: • Elias Makere

PART 3 SECTION I – PEOPLE – DISCRIMINATORS

This section identifies & summarizes the discriminators involved in Allstate's unlawful employment practice.

Note: Some of the people categorized as "discriminators" may have played additional roles (eg, PERSON 005 was a discriminator, harasser, and witness).

DISCRIMINATORS "000" Series	PAGE 67
PERSON 001 | Mr. Richard Schaefer	PAGE 68
PERSON 002 | Mr. Greg Guidos	PAGE 69
PERSON 003 | Ms. Lisa Henry	PAGE 70
PERSON 004 | Ms. Marilou Halim	PAGE 71
PERSON 005 | Mr. Louis Posick	PAGE 72
PERSON 006 | Mr. Scott Randles	PAGE 73
PERSON 007 | Mr. Paul Ramirez	PAGE 74
PERSON 008 | Ms. Marianne Poriecca	PAGE 75

PERSON 001	Richard Schaefer, Chief Actuary
RELATION:	Executive Manager. Had regular, direct contact with complainant.

ROLE:	Major participant in employment discrimination

VIOLATIONS:	Complainant charges Mr. Schaefer with: (1) Orchestrating racial harassment (2) Orchestrating racial discrimination (3) Cultivating a hostile work environment (4) Retaliating against complainant for reporting racial harassment & discrimination (5) Spearheading the cover up (6) Facilitating racial discrimination in compensation (7) Facilitating termination of complainant (8) Violating Allstate's Terms & Conditions
ADD'L INFO:	Mr. Schaefer has access to: (A) Financial records (B) Compensation information (C) Complete contact information for almost every person named in this document Mr. Schaefer is: • Mr. Guidos' direct report • The manager of Ms. Henry and Ms. Halim

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 002	Greg Guidos, CEO
RELATION:	Executive. Had rare, direct contact with complainant.

ROLE:	Cultivated the discrimination

VIOLATIONS:	Complainant charges Mr. Guidos with: (1) Orchestrating racial harassment (2) Orchestrating racial discrimination (3) Cultivating a hostile work environment (4) Retaliating against complainant for reporting racial harassment & discrimination (5) Spearheading the cover up (6) Facilitating racial discrimination in compensation (7) Facilitating termination of complainant (8) Violating Allstate's Terms & Conditions
ADD'L INFO:	Mr. Guidos has access to: (A) Financial records (B) Compensation information (C) Complete contact information for almost every person named in this document Mr. Guidos is: • The manager of Mr. Schaefer • The top executive at Allstate Benefits (wholly owned subsidiary of Allstate)

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 003	Lisa Henry, AVP & Actuary
RELATION:	Actuarial Manager. Had frequent, direct contact with complainant.

ROLE:	Major Participant in employment discrimination.

VIOLATIONS:	Complainant charges Ms. Henry with: (1) Direct violence (2) Direct racial harassment (3) Direct racial discrimination (4) Direct sexual harassment (5) Igniting a hostile work environment (6) Trivializing racial harassment & discrimination (7) Spearheading the cover up (8) Facilitating racial discrimination in compensation (9) Facilitating termination of complainant (10) Violating Allstate's Terms & Conditions
ADD'L INFO:	Ms. Henry is: • Personal friends with Ms. Boland (active participant in employment discrimination) • Mr. Schaefer's direct report

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 004	Marilou Halim, AVP & Actuary
RELATION:	Actuarial Manager. Had regular, direct contact with complainant.

ROLE:	Active Participant in employment discrimination. Harasser

VIOLATIONS:	Complainant charges Ms. Halim with: (1) Direct Hostility (2) Igniting the termination of complainant (3) Direct Sex Discrimination
ADD'L INFO:	Ms. Halim has (A) Admitted to being an FSA Exam Grader (ie, a suspect in EVENT 301 and EVENT 302) (B) Granted non-black employees the permission to work from home (see EVENT 005) Ms. Halim is • Mr. Schaefer's direct report

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 005	Louis Posick, AVP & Actuary
RELATION:	Actuarial Manager. Had daily, direct contact with complainant.

ROLE:	Discrimination Commander. Harassment Commander.

VIOLATIONS:	Complainant charges Mr. Posick with: (1) Direct racial discrimination (2) Encouraging racial harassment (3) Encouraging racial discrimination (4) Direct hostility (5) Violating Allstate's Terms & Conditions
ADD'L INFO:	Mr. Posick is: • Mr. Randles' direct report • The manager of Mr. Nagai, Mr. Kite, and Mr. Ciurte • Close personal friends with Mr. Nagai

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 006	Scott Randles, VP & Actuary
RELATION:	Actuarial Manager. Had regular, direct contact with complainant.

ROLE:	Discrimination Supporter. Harassment Enabler.

VIOLATIONS:	Complainant charges Mr. Randles with: (1) Enabling racial harassment (2) Supporting racial discrimination (3) Direct hostility (4) Violating Allstate's Terms & Conditions
ADD'L INFO:	Mr. Randles is: • Mr. Schaefer's direct report • The manager of Mr. Posick and Mr. Ramirez

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 007	Paul Ramirez, AVP & Actuary
RELATION:	Actuarial Manager. Had regular, direct contact with complainant.

ROLE:	Discrimination Supporter. Harassment Enabler.

VIOLATIONS:	Complainant charges Mr. Ramirez with: (1) Enabling racial harassment (2) Supporting racial discrimination (3) Direct hostility (4) Violating Allstate's Terms & Conditions
ADD'L INFO:	Mr. Ramirez is: • Mr. Randles' direct report • The former manager of Mr. Ciurte • Close personal friends with Mr. Nagai • The president of the SOA's Technology Section

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 008	Marianne Poriecca, IT Manager
RELATION:	Manager. Did not have any direct contact with complainant.

ROLE:	Active participant in employment discrimination & harassment

VIOLATIONS:	Complainant charges Ms. Poriecca with: (1) Direct racial discrimination (2) Following management's orders to get complainant fired (3) Violating Allstate's Terms & Conditions
ADD'L INFO:	

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PART 3 SECTION II – PEOPLE – HARASSERS

This section identifies & summarizes the harassers involved in Allstate's unlawful employment practice.

Note: Some of the people categorized as "harassers" may have played additional roles (eg, PERSON 108 was a harasser and a witness).

HARASSERS "100" Series	PAGE 76
PERSON 101 | Ms. Patricia Boland	PAGE 77
PERSON 102 | Ms. Catherine Bethea	PAGE 78
PERSON 103 | Mr. Kaz Nagai	PAGE 79
PERSON 104 | Mr. Phil Kite	PAGE 80
PERSON 105 | Mr. David Dickson	PAGE 81
PERSON 106 | Mr. Matthew Miller	PAGE 82
PERSON 107 | Ms. Patti Leister (Medina)	PAGE 83
PERSON 108 | Ms. Nasreen Ali	PAGE 84
PERSON 109 | Mr. Michael Prendes	PAGE 85

PERSON 101	Patricia Boland, Underwriter
RELATION:	Non-manager. Had regular, direct contact with complainant.

ROLE:	Active participant in employment discrimination

VIOLATIONS:	Complainant charges Ms. Boland with: (1) Direct racial harassment (2) Direct racial discrimination (3) Direct hostility (4) Following management's orders to get complainant fired (5) Violating Allstate's Terms & Conditions
ADD'L INFO:	Ms. Boland is: • Personal friends with Mr. Schaefer (major participant in discrimination) • Personal friends with Ms. Henry (major participant in discrimination)

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 102	Catherine Bethea, Accountant
RELATION:	Non-Manager. Had regular, direct contact with complainant.

ROLE:	Harasser. Enabler.

VIOLATIONS:	Complainant charges Ms. Bethea with: (1) Hurling masculinity insults towards complainant (2) Placating Mr. Nagai's desires to harass & demean complainant
ADD'L INFO:	Ms. Bethea is: • Close personal friends with Mr. Nagai (primary participant in racial harassment)

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 103	Kaz Nagai, Actuarial Associate
RELATION:	Non-Manager. Had constant, direct contact with complainant.

ROLE:	Harasser. Primary Aggressor. Harassment Commander.

VIOLATIONS:	Complainant charges Mr. Nagai with: (1) Direct racial harassment (2) Direct racial discrimination (3) Direct Hostility (4) Retaliating against complainant for complaining about harassment (5) Facilitating indirect racial harassment [to be committed by his friends] (6) Violating Allstate's Terms & Conditions
ADD'L INFO:	Mr. Nagai is: • Close personal friends with Ms. Bethea (harassment enabler) • Close personal friends with Mr. Kite (major harasser) • Close personal friends with Mr. Ramirez (harassment enabler) • Mr. Posick's direct report

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 104	Phil Kite, Actuarial Associate
RELATION:	Non-Manager. Had constant, direct contact with complainant.

ROLE:	Harasser. Major Aggressor. Harassment Enabler.

VIOLATIONS:	Complainant charges Mr. Kite with: (1) Direct violence (2) Direct racial harassment (3) Direct racial discrimination (4) Direct Hostility (5) Receiving superior treatment due to race (6) Placating Mr. Nagai's desires to harass & demean complainant (7) Retaliating against complainant for complaining about harassment (8) Violating Allstate's Terms & Conditions
ADD'L INFO:	Mr. Kite is: • Close personal friends with Mr. Nagai • Mr. Posick's direct report

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 105	David Dickson, VP of Information Technology
RELATION:	Manager. Had direct contact with complainant.

ROLE:	Active participant in employment discrimination & harassment

VIOLATIONS:	Complainant charges Mr. Dickson with: (1) Direct racial discrimination (2) Direct hostility (3) Following management's orders to get complainant fired (4) Violating Allstate's Terms & Conditions
ADD'L INFO:	Mr. Dickson is: • Personal friends with Mr. Schaefer (major participant in discrimination) • The perpetrator named in a 2016 ethics report • The manager of Mr. Miller

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 106	Matthew Miller, IT Associate
RELATION:	Non-Manager. Had direct contact with complainant.

ROLE:	Active participant in employment discrimination & harassment

VIOLATIONS:	Complainant charges Mr. Miller with: (1) Direct racial discrimination (2) Following management's orders to get complainant fired (3) Violating Allstate's Terms & Conditions
ADD'L INFO:	Mr. Miller is: • The accomplice of the perpetrator who was named in a 2016 ethics report • Mr. Dickson's direct report

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 107	Patti Leister (Medina), Senior Marketing Associate
RELATION:	Non-Manager. Had regular, direct contact with complainant.

ROLE:	Active participant in employment discrimination & harassment

VIOLATIONS:	Complainant charges Ms. Leister with: (1) Direct racial discrimination (2) Following management's orders to damage complainant's employment status (3) Violating Allstate's Terms & Conditions
ADD'L INFO:	Ms. Leister has access to: (A) The full name for contract employee Bryce ??? (B) The full name for contract employee ??? Bryant (C) The full name for contract employee Winston ???

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 108	Nasreen Ali, Senior Actuarial Associate
RELATION:	Non-Manager. Had rare, direct contact with complainant.

ROLE:	Benefactor. Witness. Harasser.

VIOLATIONS:	Complainant explains that Ms. Ali: (1) Was the recipient of superior treatment because she was not black. (2) Witnessed various acts of hostility & harassment (3) Engaged in harassment of the complainant
ADD'L INFO:	

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 109	Michael Prendes, Senior Actuarial Associate
RELATION:	Non-Manager. Had direct contact with complainant.

ROLE:	Witness. Enabler

VIOLATIONS:	Complainant charges Mr. Prendes with: (1) Witnessing hostile & discriminatory acts committed against complainant (2) Direct hostility
ADD'L INFO:	Mr. Prendes is: • Personal friends with Mr. Nagai (primary participant in racial harassment) • Ms. Halim's direct report

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PART 3 SECTION III – PEOPLE – BENEFACTORS

This section identifies & summarizes the benefactors of Allstate's unlawful employment practice.

Note: Some of the people who were not categorized as "benefactors" may have played the role (eg, PERSON 301 was a witness and a benefactor).

BENEFACTORS "200" Series	PAGE 86
PERSON 201 | Ms. Patricia Boland	PAGE 87
PERSON 202 | Ms. Catherine Bethea	PAGE 88

PERSON 201	Bridget Tennant, Actuarial Consultant
RELATION:	Non-Manager. Had frequent, direct contact with complainant.

ROLE:	Bystander. Witness.

VIOLATIONS:	Complainant explains that Ms. Tennant: (1) Heard complainant confide in her workplace harassment
ADD'L INFO:	

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 202	Tanya Dostie (Larimer), Senior Actuarial Associate
RELATION:	Non-Manager. Had direct contact with complainant.

ROLE:	Bystander. Witness.

VIOLATIONS:	Complainant explains that Ms. Dostie: (1) Was the recipient of superior treatment because she was not black.
ADD'L INFO:	

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PART 3 SECTION IV – PEOPLE – WITNESSES

This section identifies & summarizes the witnesses to Allstate's unlawful employment practice.

Note: Some of the people categorized as "witnesses" may have played additional roles (eg, PERSON 301 was a witness and a benefactor).

WITNESSES "300" Series	PAGE 89
PERSON 301 | Mr. Victor Ciurte	PAGE 90
PERSON 302 | Mr. Michael Parsons	PAGE 91
PERSON 303 | Ms. Cassie Smith	PAGE 92
PERSON 304 | Ms. Catrice Hathorn	PAGE 93
PERSON 305 | Mr. Alex Vlassov	PAGE 94
PERSON 306 | Ms. Jennifer McKinsey	PAGE 95
PERSON 307 | Ms. Melisa "Lesa" Rivers	PAGE 96
PERSON 308 | Ms. Caroline Levy	PAGE 97
PERSON 309 | Mr. Rodney Ashford	PAGE 98
PERSON 310 | Ms. Janice Bradley	PAGE 99
PERSON 311 | Ms. Antwan Jenkins	PAGE 100
PERSON 312 | Ms. Kelly Bermudez	PAGE 101
PERSON 313 | Mr. Ellis Manucy	PAGE 102

PERSON 301	Victor Ciurte, Senior Actuarial Associate
RELATION:	Non-Manager. Had direct contact with complainant.

ROLE:	Bystander. Witness.

VIOLATIONS:	Complainant explains that Mr. Ciurte: (1) Witnessed several hostile & discriminatory acts
ADD'L INFO:	Mr. Ciurte is: • Mr. Posick's direct report • Mr. Ramirez's former direct report

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 302	Michael Parsons, Reports Developer
RELATION:	Contract Employee. Had daily, direct contact with complainant.

ROLE:	Knowledgeable Person.

VIOLATIONS:	Complainant believes that Mr. Parsons: (1) Witnessed slander, rumormongering, and propaganda being used to marginalize complainant
ADD'L INFO:	Additional Info: • Mr. Parsons was hired by Ms. Halim • In late 2015, Mr. Parsons unwittingly said this to the complainant: "I don't know why they say [all these negative things] about you"

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 303	Cassie Smith, Accountant
RELATION:	Non-Manager. Had direct contact with complainant.

ROLE:	Witness.

VIOLATIONS:	Complainant maintains that Ms. Smith: (1) Was a witness to Mr. Posick's racially subjugating tirade of 2014.
ADD'L INFO:	Additional Info: • Ms. Smith left Allstate in June/July 2014 • Ms. Smith's full name can probably be retrieved from Catherine Wallace Bethea • Ms. Smith's contact information can probably be retrieved from Ms. Bethea

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 304	Catrice Hathorn, Underwriter
RELATION:	Non-Manager. Had direct contact with complainant.

ROLE:	Witness.

VIOLATIONS:	Complainant maintains that Ms. Hathorn: (1) Was a witness to Ms. Boland's racial harassment & discrimination.
ADD'L INFO:	Additional Info: • Ms. Hathorn was a contract employee (probably via Kelly Services)

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 305	Alex Vlassov, Underwriter
RELATION:	Non-Manager. Had direct contact with complainant.

ROLE:	Witness.

VIOLATIONS:	Complainant maintains that Mr. Vlassov: (1) Was a witness to Ms. Boland's racial harassment & discrimination.
ADD'L INFO:	Additional Info: • Mr. Vlassov was a contract employee (probably via Kelly Services)

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 306	Jennifer McKinsey, Compliance Manager
RELATION:	Manager. Had infrequent contact with complainant.

ROLE:	Witness.

VIOLATIONS:	Complainant maintains that Ms. McKinsey: (1) Was a witness to Mr. Nagai's admission of placing a racist doll on complainant's desk. (2) Was a witness to Ms. Ali's harassing gestures at department lunches
ADD'L INFO:	Additional Info: • Ms. McKinsey transferred out of the Actuarial department in 2015. • Ms. McKinsey's last name may have changed. Mr. Schaefer has her contact information.

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 307	Melissa "Lesa" Rivers, Administrative
RELATION:	Manager. Had infrequent contact with complainant.

ROLE:	Witness.

VIOLATIONS:	Complainant maintains that Ms. Rivers: (1) Was a witness to Ms. Henry's racially offensive rhetoric in Spring 2016 (see EVENT 407)
ADD'L INFO:	Additional Info: • Ms. Rivers goes by "Lesa" (spelled with an "e" to signify that her full name is Melissa)

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 308	Caroline Levy, Administrative
RELATION:	Manager. Had rare contact with complainant.

ROLE:	Witness.

VIOLATIONS:	Complainant maintains that Ms. Levy: (1) Was a witness to Ms. Henry's racially offensive rhetoric in Spring 2016 (see EVENT 407)
ADD'L INFO:	Additional Info: • I might have Ms. Levy's name wrong. • Nevertheless, she was in the meeting with Ms. Rivers & Ms. Henry.

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 309	Rodney Ashford, Administrative
RELATION:	Manager. Had infrequent contact with complainant.

ROLE:	Witness.

VIOLATIONS:	Complainant maintains that Rodney: (1) Was a witness to Ms. Henry's racially offensive rhetoric in Spring 2014 (see EVENT 202)
ADD'L INFO:	Additional Info: • I cannot remember Rodney's last name. • Ms. Henry can identify him. • Ms. Halim can identify him. • He worked on the AllApp® implementation team.

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 310	Janice Bradley, Actuarial Support
RELATION:	Non-Manager. Had regular, direct contact with complainant.

ROLE:	Witness.

VIOLATIONS:	Complainant maintains that Ms. Bradley: (1) Grimaced when she saw the racist doll that Mr. Nagai had placed on my desk
ADD'L INFO:	Additional Info: • Ms. Bradley worked in the actuarial department

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 311	Antwan Jenkins, HR Consultant
RELATION:	Manager. Had direct contact with complainant.

ROLE:	Witness. Trivialized Managerial Violence & Subterfuge.

VIOLATIONS:	Complainant explains that Mr. Jenkins: (1) Witnessed Ms. Henry admit to subjecting complainant to violence & intimidation
ADD'L INFO:	Mr. Jenkins is: • A person who helped investigate the 2016 ethics complaint filed against Mr. Dickson • A person who helped investigate the 2016 ethics complaint filed against Ms. Henry • A person who helped investigate the 2016 ethics complaint filed against Mr. Schaefer

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 312	Kelly Bermudez, HR Consultant
RELATION:	Non-Manager. Had direct contact with complainant.

ROLE:	Witness. Trivialized Managerial Violence & Subterfuge.

VIOLATIONS:	Complainant explains that Ms. Bermudez: (1) Witnessed Ms. Henry admit to subjecting complainant to violence & intimidation
ADD'L INFO:	Ms. Bermudez is: • A person who helped investigate the 2016 ethics complaint filed against Mr. Dickson • A person who helped investigate the 2016 ethics complaint filed against Ms. Henry • A person who helped investigate the 2016 ethics complaint filed against Mr. Schaefer

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 313	ELLIC MANUCY, HR MANAGER
RELATION:	Manager. Had rare, direct contact with complainant.

ROLE:	Witness.

VIOLATIONS:	Complainant explains that Mr. Manucy: (1) Told Complainant that he was fired (2) Told Complainant that the reason behind his termination was "extremely rare"
ADD'L INFO:	

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PART 3 SECTION V – PEOPLE – PERSONS WITH KNOWLEDGE

This section identifies & summarizes the people with knowledge.

Note: Some of the people who were not categorized "people with knowledge" may have played the roles (eg, PERSON 312 was a witness, discriminator, and a person with knowledge).

PERSONS WITH KNOWLEDGE "400" Series	PAGE 103
PERSON 401 | Ms. Monica Wirtz	PAGE 104
PERSON 402 | Mr. Bryce ???	PAGE 105
PERSON 403 | Ms. ??? Bryant	PAGE 106
PERSON 404 | Ms. Sandy Spruill	PAGE 107
PERSON 405 | Mr. Winston ???	PAGE 108
PERSON 406 | Ms. Lidiya Olsen	PAGE 109
PERSON 407 | Mr. Kirk Higgins	PAGE 110
PERSON 408 | Ms. Pam Bernaba	PAGE 111

PERSON 401	Monica Wirtz, Actuarial Program Coordinator
RELATION:	Had routine, electronic contact with complainant.

ROLE:	Record Keeper. Overseer. Person of Knowledge

VIOLATIONS:	Complainant charges Ms. Wirtz with: (1) Knowledge of unequal treatment within Allstate's actuarial program
ADD'L INFO:	Ms. Wirtz has access to: (A) Actuarial Exam Data (of every Allstate employees)

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 402	Bryce ???, Contractor - Marketing
RELATION:	Contract Employee. Worked on 7th Floor. African-American

ROLE:	Employment with Allstate came to an abrupt end.

VIOLATIONS:	Complainant explains that Bryce's: (1) Abrupt end to employment was racially biased
ADD'L INFO:	Additional Info: • Bryce worked at Allstate in 2015 • Bryce's full name can probably be retrieved from Patti Leister (Medina) • Bryce's contact information can probably be retrieved from Patti Leister (Medina)

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 403	??? Bryant, Contractor - Marketing
RELATION:	Contract Employee. Worked on 7th Floor. African-American

ROLE:	Employment with Allstate came to an abrupt end.

VIOLATIONS:	Complainant explains that Ms Bryant's: (1) Abrupt end to employment was racially biased
ADD'L INFO:	Additional Info: • Ms. Bryant worked at Allstate in 2015 • Ms. Bryant's full name can probably be retrieved from Patti Leister (Medina) • Ms. Bryant's contact information can probably be retrieved from Patti Leister (Medina)

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224 Note: Ms. Bryant was no longer working at Allstate when complainant left the company

PERSON 404	Sandy Spruill, Accountant
RELATION:	Non-Manager. Worked on 7th Floor. African-American

ROLE:	Employment with Allstate came to an abrupt end.

VIOLATIONS:	Complainant explains that Ms. Spruill's: (1) Abrupt end to employment was racially biased
ADD'L INFO:	Additional Info: • Ms. Spruill first day of employment at Allstate prior to 2015 • Ms. Spruill's contact information can probably be retrieved from Catherine Wallace Bethea

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 405	Winston ???, Contractor – Legal
RELATION:	Contract Employee. Worked on 7th Floor. African-American

ROLE:	Employment with Allstate came to an abrupt end.

VIOLATIONS:	Complainant explains that Winston's: (1) Abrupt end to employment was racially biased
ADD'L INFO:	Additional Info: • Winston worked at Allstate in 2015 • Winston's full name can probably be retrieved from Patti Leister (Medina) • Winston's contact information can probably be retrieved from Patti Leister (Medina)

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 406	Lidiya Olsen, Accountant
RELATION:	Non-Manager. Worked on 7th Floor.

ROLE:	Employment with Allstate came to an abrupt end.

VIOLATIONS:	Complainant charges Allstate: (1) Racial discrimination[1] [1] Complainant believes that racial discrimination was at play due to the fact that Ms. Olsen was the only non-black employee whose employment came to an abrupt end during complainant's tenure. Five of the other six employees (whose employment came to an abrupt end) were black.
ADD'L INFO:	Additional Info: • Ms. Olsen worked at Allstate in 2015 • Ms. Olsen's full name can probably be retrieved from Catherine Wallace Bethea • Ms. Olsen's contact information can probably be retrieved from Ms. Bethea

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 407	Kirk Higgins, Actuarial Associate
RELATION:	Non-Manager. Has met complainant once. African-American

ROLE:	Knowledgeable Person.

VIOLATIONS:	Complainant believes that Mr. Higgins: (1) Received inferior treatment from the respondent. (2) Fled Allstate due in large part to the treatment he received
ADD'L INFO:	Additional Info: • Mr. Higgins left Allstate in July/August 2013 • Mr. Higgins was the black actuary who worked at Allstate prior to complainant • Mr. Higgins probably has a lot of information

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PERSON 408	Pam Bernaba, Accountant
RELATION:	Non-Manager. Worked on 7th Floor. African-American

ROLE:	Employment with Allstate came to an abrupt end.

VIOLATIONS:	Complainant explains that Ms. Bernaba's: (1) Abrupt end to employment was racially inspired
ADD'L INFO:	Additional Info: • Ms. Bernaba's first day of employment at Allstate was prior to 2015 • Ms. Bernaba's contact information can probably be retrieved from Catherine Wallace Bethea

WHERE:	Last Known Whereabouts: Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224

PART 3 SECTION VI – PEOPLE – COMPANIES

This section identifies & summarizes the companies involved in Allstate's unlawful employment practice.

COMPANIES "900" Series	PAGE 112
PERSON 901 | Allstate Insurance Company	PAGE 113
PERSON 902 | Genworth Financial	PAGE 114
PERSON 903 | ACE Manuals, LLC	PAGE 115

PERSON 901	Allstate Insurance Company, Respondent
RELATION:	Respondent. Former Employer.

ROLE:	Racial Discriminator. Racial Harasser. Sexual Discriminator. Sexual Harasser.

VIOLATIONS:	Complainant maintains that Allstate: (1) Emboldens racial harassment (2) Emboldens racial discrimination (3) Cultivates a hostile work environment (4) Cultivates retaliation against complainant for reporting racial harassment & discrimination (5) Spearheads the cover up (6) Facilitates racial discrimination in compensation (7) Facilitates termination of complainant (8) Dishonors its own Terms & Conditions
ADD'L INFO:	Additional Info: • Allstate employed complainant between November 2013 and August 2016

WHERE:	Last Known Whereabouts:

CORPORATE OFFICE	HEADQUARTERS
Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224 800.521.3535 www.allstatebenefits.com	Allstate Corporation 2700 Sanders Rd Northbrook, IL 60070 800.340.0475 | 877.810.2920 www.allstate.com

PERSON 902	Genworth Financial, Company
RELATION:	Former Employer.

ROLE:	Racial Discriminator. Racial Harasser. Sexual Discriminator. Sexual Harasser.

VIOLATIONS:	Complainant maintains that Genworth: (1) Emboldens racial harassment (2) Emboldens racial discrimination (3) Cultivates a hostile work environment (4) Cultivates retaliation against complainant for reporting racial harassment & discrimination (5) Spearheads the cover up (6) Facilitates racial discrimination in compensation (7) Facilitates termination of complainant (8) Dishonors its own Terms & Conditions
ADD'L INFO:	Additional Info: • Genworth employed complainant between February 2012 and April 2013

WHERE:	Last Known Whereabouts:

HEADQUARTERS
Genworth Financial 6620 W. Broad St. Richmond, VA 23230 904.448.8980 | 888.436.9678 www.genworth.com

PERSON 903	Society of Actuaries, Company
RELATION:	Governing body for actuaries.

ROLE:	Facilitator

VIOLATIONS:	Complainant maintains that the SOA: (1) Is complicit in Allstate's racial discrimination & harassment (2) Emboldens racial harassment (3) Facilitates racial discrimination (4) Supports the cover up (5) Facilitates racial discrimination in compensation (6) Facilitates termination of black actuaries (7) Dishonors its own Terms & Conditions
ADD'L INFO:	Additional Info: • Since 2015, the SOA has concealed information regarding unethical member conduct • Since 2016, the SOA has refused to supply requested evidence pertaining to this case • In July 2017, the SOA sent the complainant a race-based survey shortly after he filed FCHR complaint

WHERE:	Last Known Whereabouts: **HEADQUARTERS** Society of Actuaries 475 N. Martingale Rd, Suite 600 Schaumburg, IL 60173 847.706.3500

Appendix

Agency:

CORPORATE OFFICE
Florida Commission on Human Relations 4075 Esplanade Way. Room 110 Tallahassee, FL 32399-7020 850.488.7082

Respondent:

CORPORATE OFFICE	HEADQUARTERS
Allstate Corporation 1776 American Heritage Life Dr. Jacksonville, FL 32224 800.521.3535	Allstate Corporation 2700 Sanders Rd Northbrook, IL 60070 800.340.0475 | 877.810.2920

Petitioner:

Name	Elias Makere
Phone	904.294.0026
Email	justice.actuarial@gmail.com



Petitioner's Signature

4/10/2019
Date

Williams, DarLinda

From: justice.actuarial@gmail.com
Sent: Wednesday, April 10, 2019 8:00 AM
To: FCHR Website Email
Subject: Complaint | Employment Discrimination | Makere v Allstate
Attachments: EEOC-Form-5.pdf; 0a_Complaint_001_Employment.pdf

Good Morning FCHR,

May you please investigate my employment discrimination complaint against Allstate Insurance Company?

Thank you,

Elias Makere, Complainant
904.294.0026 | justice.actuarial@gmail.com
3709 San Pablo Rd. S. #701
Jacksonville, FL 32224

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13588-AA

Appeal From
US District Court, Florida, Middle District
3:20-cv-00905-MMH-LLL
Makere v Allstate

VOLUME	PR
ITEM	02
PAGES	0475-0494

SHORT TITLE:	Appellant's Motion for Judicial Notice of a Pertinent State Agency Order
DATE ENTERED:	11/23/2022
DOC TYPE:	Appellate Filing
TRIBUNAL:	US Court of Appeals, 11th Circuit
CASE NO:	22-13588-AA
CASE CAPTION:	*Makere v Allstate*
LINK:	http://ecf.ca11.uscourts.gov
DOC NO:	

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

ELIAS MAKERE, FSA, MAAA	)	CASE NUMBER
Appellant/Plaintiff	)	**22-13588-AA**
	)	
v.	)	
	)	
ALLSTATE INSURANCE COMPANY	)	(LT) 3:20-cv-00905-MMH-LLL US District Court, Florida, Middle District
Appellee/Defendant	)	

APPELLANT'S MOTION FOR JUDICIAL NOTICE OF A PERTINENT STATE AGENCY ORDER

Appellant, ELIAS MAKERE, on this 23rd day of November 2022, respectfully moves this Honorable Court to take judicial notice of the pertinent order that DOAH rendered in the Cosby v Circle K case (on September 26, 2022).

Key Points:

A.) Points filing date (4/10/19 vs 4/26/19)

B.) Grounds issue-on-appeal (*clear error*)

Table of Contents:

Context 2nd Page
Motion 3rd Page
Certificates 11th Page
Exhibits 15th Page

Background:	Appellant appealed LT's date-based calculation
Problem:	The State's calculation terms are not on the record
Request:	This Court takes judicial notice of the State's terms

Rule 201 | Fed. R. Evid. | Judicial Notice

"(b) KINDS OF FACTS THAT MAY BE JUDICIALLY NOTICED. The court may judicially notice a fact that...

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned."

Rule 402 | Fed. R. Evid. | General Admissibility of... Evidence

"Relevant evidence is admissible unless [prohibited by law]"

§90.202 FS | Matters Which May Be Judicially Noticed (emphasis added)

"A court may take judicial notice of the following matters, to the extent that they are not embraced within s. 90.201:

(5) Official actions of the legislative, executive, and judicial departments of the United States and of any state, territory, or jurisdiction of the United States."

Precedence

- 02-16215 - 11th Cir. (1/30/04)
- 07-12874 - 11th Cir. (2/4/09)

This Circuit usually grants motions for judicial notice

Abbreviations

DOAH	-	Division of Administrative Hearings (FL)
FCHR	-	Florida Commission on Human Relations, The
FS	-	Florida Statute
LT	-	Lower Tribunal
USFLMD	-	US District Court, Florida, Middle District

MOTION

I. Background | Administrative History

1. On April 10, 2019, Appellant sent the FCHR his employment discrimination complaint.
2. The state agency received it immediately; blessing it with a 2:35PM timestamp.

II. Background | Judicial History

3. On August 12, 2020, Appellant sued Appellee in federal court. Doing so under both federal (42 USC §1981) and state law (§760 FS). Laws that prohibit employment discrimination.
4. On February 8, 2021, USFLMD entered an order of partial dismissal ("That Order"). Therein, the lower court removed all three of Appellant's state charges.[1/] After objection, That Order became final/appealable on October 13, 2022.
5. This interlocutory appeal followed.

III. Analysis of Pertinent Dates

6. That Order dismissed Appellant's state charges because of administrative timeliness (highlights added):

> *"In sum, the record establishes that the [State Agency] rendered timely "No Cause" determinations on [Appellant]'s Charges... As such, [Appellant] is administratively barred under section 760.11(7) of the Florida Statutes from pursuing his [state] claims here.*

> *[USFLMD] will grant the Motion as to Counts I-III of the Complaint and dismiss the [state] claims in their entirety."*
>
> - Page 18, 'That Order'

7. That decision was based on That Order's prior determination that the state agency (ie, the FCHR) rendered a decision within the 180-day statutory window (highlights added):

> *"As set forth above, the FCHR issued a "No Cause" determination regarding the 2019 FCHR Charge on October 18, 2019, within the 180-day period."*
>
> - Page 17, 'That Order'

8. That 180-day calculation was based on a starting date of April 26, 2019:

> *"[Appellant] filed a second charge of discrimination with the [state agency], which was received on April 26, 2019"*
>
> - Page 17, 'That Order'

9. The problem, though, is that the **starting date (ie, 4/26/19) was wrong**.
    a. Appellant filed his administrative complaint on April 10, 2019. The difference between the correct date (4/10) and the incorrect date (4/26) is/was vital.[2/]
        i. The incorrect date falls within the 180-day window, while the correct date does not.
10. In short, That Order was based on an incorrect filing date. Therefore, Judicial notice of the correct date is in order.

11. So, contemporaneous to this motion, Appellant asked this Honorable Court to take judicial notice of his full administrative complaint. He did so for the express purpose of establishing – judicially – that he filed his FCHR complaint **on April 10, 2019.**

12. Now, in this motion, Appellant asks this Court to take judicial notice of **the precedent** that the State of Florida has set **for determining FCHR filing dates.**

IV. Purpose of Judicial Notice

13. Acceptance of this document will establish the fact that Florida holds that the filing date of a discrimination complaint is determined by the FCHR's timestamp.

    a. In Cosby v Circle K (22-002238), DOAH dismissed a discrimination complaint because of its filing date.

    b. A filing date, importantly, that DOAH determined was **set by the FCHR's timestamp.**

    c. Page 3 of that DOAH order reads as follows (highlights added):

> *"However, she filed her Complaint on December 27, 2021 — which, according to section 760.11(1), is the date of filing because of the clear file stamp from FCHR."*

- Cosby v Circle K, 22-002238; 9/26/22 | Florida | DOAH

d. DOAH, of course, is an arm of the state (§20.22(2)(f) FS). The FCHR, similarly, is an arm of the state (§760.04 FS; §20.22 FS). Two agencies which fall under Florida's Department of Management Services; an executive branch agency.

14. Florida's legislature has also held that the FCHR's timestamp is set by the filing date (highlights added):

> *"On the same day the complaint is filed with the commission, the commission shall clearly stamp on the face of the complaint the date the complaint was filed with the commission... If the date the complaint is filed is clearly stamped on the face of the complaint, that date is the date of filing."*
>
> - §760.11(1) FS

a. The state legislature, of course, is also an arm of the state; part of its legislative branch.

15. Thus, **the State of Florida** – via its executive and legislative branches – **holds that the FCHR's timestamp establishes the filing date of a discrimination complaint**.

16. This holding is important to the instant case, because the filing date is a major issue on appeal.

a. Public record shows that Appellant filed his administrative complaint on April 10, 2019.

b. Yet, the order-on-appeal is based on a filing date of April 26, 2019.

c. As mentioned earlier, the difference between the correct date (4/10) and the incorrect date (4/26) is/was vital (¶9).

d. Importantly, **the state agency order** (**Exhibit A**) **cements the fact that the correct date is the date that needs to be used**.

17. Appellant avers that the foregoing presents a compelling reason for judicial notice of the state agency order, because:

a. the document is public record (please see Menominee Indian Tribe v Thompson, 161 F.3d 449 (7th Cir. 1998).

b. DOAH orders are "*official actions [of] an executive agency]*" (please accord §90.202(5) FS; please reference §760.04 FS + §20.22 FS); and

c. it is relevant (please see Rule 402 Fed. R. Evid.).

V. Nature of Relief Sought

18. Appellant hereby asks this Honorable Court to take judicial notice of the attached DOAH order, only to the following extent:

a. It is a fact that Florida deems the filing date of an FCHR complaint to be set by its FCHR-issued timestamp.

VI. Argument in Support of Taking Judicial Notice

19. Rule 201(b) Fed. R. Evid. bestows this Court with the power to take judicial notice of "*a fact that is not subject to reasonable dispute*".

    a. Here, in the instant case, no one can reasonably dispute the proffered item. Mainly because it is public record.

20. In Horne v. Potter, 392 F. App'x 800 (11th Cir. 2010), this Court stated that courts can take judicial notice of items that are **public record** (highlights added):

> *"The district court properly took judicial notice of the documents in [the plaintiff's] first case, which were public records that were "not subject to reasonable dispute" because they were "capable of accurate and ready determination by resort to sources whose accuracy could not reasonably be questioned.""*
>
> - *Horne v Potter, 392 F. App'x 800 (11th Cir. 2010)*

21. Plus, the US Supreme Court ruled that a court can take limited/pertinent judicial notice:

> *"Accordingly, a court may take notice of another court's order only for the limited purpose of recognizing the "judicial act" that the order represents or the subject matter of the litigation.""*
>
> - *United States v Jones, 29 F.3d 1549 (11th Cir. 1994)*

22. In short, these appellate decisions fit Plaintiff's motion perfectly. As he is only asking for this Court to take recognition of material that is public record.

CONFERRAL

On November 11, 2022, Appellee responded that it opposes this motion. Appellant followed up by asking the former employer whether it disputed the fact that the attached document was a true & correct copy of the order in DOAH Case 22-002238 (9/26/22). Appellee did not give an answer.

Thus, given all-of-the-above, Appellant finds a compelling (ie, state's terms & precedent regarding the correct date) and important (ie, issue-on-appeal) reason for this motion.

CONCLUSION

WHEREFORE, Appellant respectfully asks this Honorable Court to take judicial notice of the attached state agency order from DOAH case 22-2238.

Dated this 23rd day of November 2022.

Respectfully submitted,

/s/ Elias Makere
ELIAS MAKERE, FSA, MAAA, Appellant
PO Box 324
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Get ***Booked Up*** on Justice!

Endnotes:

[1/] That Order also instructed Appellant to exclude his state charges from any amendments. After amendment (and after Appellant filed motions for sanctions/limine in the LT), USFLMD ordered Appellant to amend his complaint again – to include "all" charges. On November 5, 2021, Appellant obliged. The operative complaint currently has his original charges (ie, 42 USC §1981, §760 FS) as well as his matured federal charges (Title VII, EPA). Yet, given the rendering of That Order (on 10/13/22) – and the stayed proceedings from below – it appears that USFLMD has never reinstated Appellant's state charges. Therefore, this interlocutory appeal is set to resolve an unresolved error in the LT (ie, 4/10/19 vs 4/26/19).

[2/]
Incorrect Calculation
175 = 10/18/19 – 4/26/19

Correct Calculation:
191 = 10/18/19 – 4/10/19

where:
- "10/18/19" is the state agency's *notification*[4/] date;
- "4/26/19" is the incorrect starting date;
- "4/10/19" is the correct starting date

[3/] Proffered on the grounds of *clear error*; and preserved by Appellant's objections (filed on 2/22/21 in the LT).

[4/] a 'notification' that the FCHR sent to the wrong person.

Link to Underlying Complaint (HTML, PDF, Video)

HTML	TextBookDiscrimination.com/Allstate/Complaint-Full.html
PDF	TextBookDiscrimination.com/Files/USFLMD/20000905_AAC_20211104_230439.pdf
Video	https://youtu.be/e3mgBPHesXg

Electronic Copy: (text-searchable)

TextBookDiscrimination.com/Files/CA11/22013588_GMOT_20221123_194716.pdf

CERTIFICATE OF COMPLIANCE

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☒ This document complies with the word limit of Rule 32(a)(7)(B)(i) Fed. R. App. P., because - excluding the parts of the document exempted by Rule 32(f) - this document contains 1,370 words.

or

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11/23/2022 — Date

/s/ Elias Makere — Elias Makere, FSA, MAAA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of November 2022, I electronically filed the foregoing with the Clerk of Courts by using PACER; which will send a notice of electronic filing to the attached service list.

/s/ Elias Makere

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CIP

United States Court of Appeals
Eleventh Circuit

22-135881-AA
Makere v Allstate

{unchanged}

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

Makere v Allstate, 22-13588

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Lower Tribunal:

Lambert, Laura	Magistrate
Howard, Marcia	District Judge

Non-Parties:

Division of Administrative Hearings (FL)

Early, Edward Gary (FL)

Florida Commission on Human Relations, The (FL)

Gorsica, Stanley G. (FL)

Parties:

Allstate Insurance Company	(NYSE: ALL)
Makere, Elias (FSA, MAAA)	Appellant

Appellant is not a subsidiary/affiliate of a publicly owned corporation. Pursuant to Rule 26.1-2 11th Cir. R., Appellant does not know of any other entities that have interest in this case. Appellant hereby certifies that this CIP is complete.

EXHIBIT A

SHORT TITLE: Recommended Order of Dismissal

DATE: 9/26/2022

DOC TYPE: State Agency Order

TRIBUNAL: Division of Administrative Hearings (FL)

CASE NO: 22-002238

CASE CAPTION: *Cosby v Circle K*

SIZE: 4 Pages

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LISA COSBY,

Petitioner,

vs. Case No. 22-2238

CIRCLE K STORES, INC.,

Respondent.
_____/

RECOMMENDED ORDER OF DISMISSAL

On September 9, 2022, the undersigned, *sua sponte,* issued an Order to Show Cause, ordering Petitioner, Lisa Cosby, to show cause, in writing, within 10 days of the date of the Order, why the undersigned should not recommend that this matter be dismissed for lack of jurisdiction, and providing Respondent, Circle K Stores, Inc., an opportunity to respond within the same period of time. On September 19, 2022, Respondent filed a Response to Order to Show Cause; to date, Petitioner has not responded.

I. Background

Based on the record currently before the undersigned, Ms. Cosby filed an Employment Complaint of Discrimination (Complaint) with the Florida Commission on Human Relations (FCHR), alleging that Respondent, her employer, discriminated against her based on a disability or handicap, and that Respondent retaliated against her, in violation of the Florida Civil Rights Act (FCRA). *See* Ch. 760, Fla. Stat. (2020).

In the box titled "Discrimination Statement," Petitioner's Complaint states:

> The Complainant (CP) was terminated because of her perceived/regarded disability. CP was injured on the job on 11/17/2020. Respondent required her to complete an accident report and seek medical treatment. Based on the treatment, she was given work restrictions and could not return to work with these restrictions. The worker's compensation carrier then denied the claim and stopped paying for treatment on or about 12/01/2020. Within two weeks of that, on or around 12/14/2020, CP was

> terminated. Respondent did not provide a reason for her termination. However, her termination was during the period that she had work restrictions. CP was noted as non-rehire.

On the face of Petitioner's Complaint, in the box titled "Date Most Recent Discrimination Took Place," the Petitioner wrote "December 14, 2020." The Complaint reflects that Petitioner signed the Complaint on December 23, 2021, and further reflects a file stamp from FCHR indicating receipt on December 27, 2021.

On June 24, 2022, FCHR issued a No Reasonable Cause Determination, finding that there was no reasonable cause to believe that an unlawful practice occurred. On July 28, 2022, Ms. Cosby filed a Petition for Relief (Petition), contesting FCHR's determination of no reasonable cause. The Petition raises, for the first time, alleged violations of Florida's Workers Compensation Retaliation Statute. S*ee* § 440.205, Fla. Stat.

II. Analysis

Section 760.11(1), Florida Statutes (2020), provides, in pertinent part:

> (1) Any person aggrieved by a violation of ss. 760.01 – 760.10 may file a complaint with the commission within 365 days of the alleged violation, naming the employer, employment agency, labor organization, or joint-labor management committee, or, in the case of an alleged violation of s. 760.10(5), the person responsible for the violation and describing the violation … On the same day the complaint is filed with the commission, the commission shall clearly stamp on the face of the complaint the date the complaint was filed with the commission … If the date the complaint is filed is clearly stamped on the face of the complaint, that date is the date of filing.

"As a prerequisite to bringing a civil action based upon an alleged violation of the FCRA, the claimant is required to file a complaint with the FCHR within 365 days of the alleged violation." *Woodham v. Blue Cross & Blue Shield of Fla., Inc.,* 829 So. 2d 891, 894 (Fla. 2002).

Federal courts have similarly held that an employee who alleges that their employer violated the FCRA must file a complaint with FCHR within 365 days of the alleged violation. *See Weaver v. Fla. Power & Light,* 1996 WL 479117, at *8, 10 (S.D. Fla. July 16, 1996) (construing section 760.11(1) and holding that "Claims

based on acts which took place more than 365 days before the filing of the FCHR charge are time barred."); *Santandreu v. Miami-Dade Cnty.,* 2011 WL 13136161, at *13 (S.D. Fla. Aug. 1, 2011 (finding that the claims "occurred over 365 days before the administrative charge was filed making the claims untimely and barred by the statute of limitations").

According to her Complaint, Ms. Cosby alleges that Respondent's FCRA violations started on November 17, 2020 (the date she reported a workplace injury), and continued until Respondent terminated Ms. Cosby on December 14, 2020. However, she filed her Complaint on December 27, 2021—which, according to section 760.11(1), is the date of filing because of the clear file stamp from FCHR. Ms. Cosby filed her Complaint 378 days after the alleged violation, which is more than 365 days after any alleged violation in her Complaint. Even if Petitioner were to contend that she signed and filed the Complaint on December 23, 2021, her Complaint still falls more than 365 days (374 days, to be precise) after any alleged violation.[1] Thus, pursuant to section 760.11(1), Ms. Cosby's Complaint is time-barred and her Petition should be dismissed.

III. Conclusion

Based on the foregoing, the undersigned hereby RECOMMENDS that the Florida Commission on Human Relations issue an Order dismissing Ms. Cosby's Petition for Relief.

The final hearing in this matter, currently noticed for October 11, 2022, is hereby CANCELLED.

DONE AND ORDERED this 26th day of September, 2022, in Tallahassee, Leon County, Florida.



ROBERT J. TELFER III
Administrative Law Judge
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
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[1] To the extent Ms. Cosby may contend her Petition also contains allegations related to a workers' compensation claim under section 440.25 Florida Statutes, such claims were not raised in her Complaint and were outside of the purview of FCHR's investigation, and thus the undersigned lacks jurisdiction to consider them.

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CIP

United States Court of Appeals
Eleventh Circuit

22-13588-AA
Makere v Allstate

{unchanged}

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

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Gorsica, Stanley G. (FL)

Parties:

Allstate Insurance Company	(NYSE: ALL)
Makere, Elias (FSA, MAAA)	Appellant

Appellant is not a subsidiary/affiliate of a publicly owned corporation. Pursuant to Rule 26.1-2 11th Cir. R., Appellant does not know of any other entities that have interest in this case. Appellant hereby certifies that this CIP is complete.

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of December 2022, I electronically filed the foregoing with the Clerk of Courts by using PACER; which will send a notice of electronic filing to the attached service list.

/s/ Elias Makere

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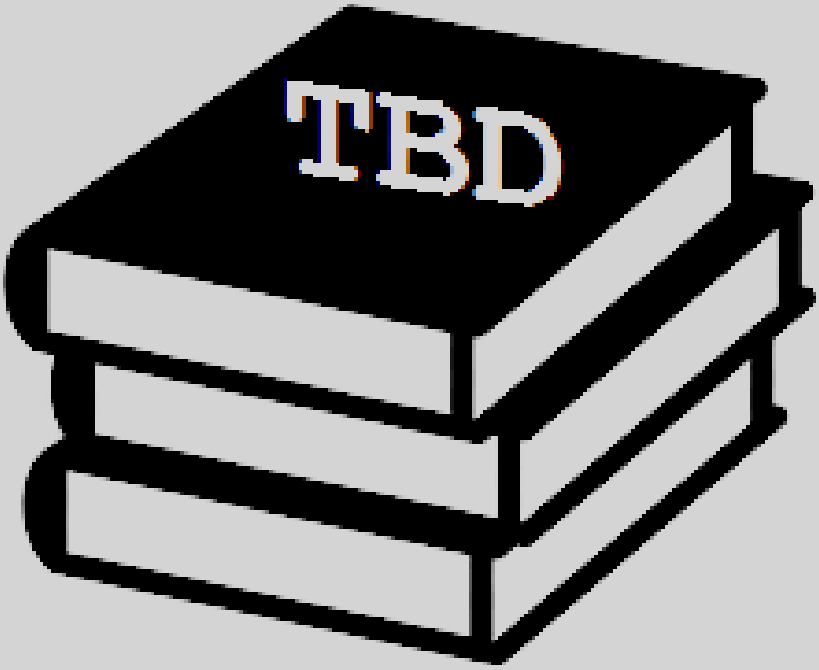
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