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24-11336-J

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

ELIAS MAKERE, FSA, MAAA
(Appellant/Plaintiff)

v.

ALLSTATE INSURANCE COMPANY
(Appellee/Defendant)

On Appeal From The
United States District Court, Florida, Middle District
3:20-cv-00905-MMH-LLL

APPENDIX TO APPELLANT'S OPENING BRIEF

Elias Makere, FSA, MAAA
Appellant ("Civilian X")
PO Box 324
Hobart, IN 46342
P: 904.294.0026
E: Justice.Actuarial@gmail.com
W: TextBookDiscrimination.com
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ORAL ARGUMENT REQUESTED

October 14, 2024

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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)...
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...
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...
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)
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...

Date Filed	#	Docket Text
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...
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...
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...
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)
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)

Date Filed	#	Docket Text
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...
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...
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)
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...
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...
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)...
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...

Date Filed	#	Docket Text
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)...
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)
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)...
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)...
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...
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...

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...
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)...
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...
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)
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...

Date Filed	#	Docket Text
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...
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...
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)
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)

Date Filed	#	Docket Text
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...
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)
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...
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...

Date Filed	#	Docket Text
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...
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...
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...
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)
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...
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)...

Date Filed	#	Docket Text
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...
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...
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)
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...
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...
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...
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)

Date Filed	#	Docket Text
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) ...
10/19/2022	92	NOTICE Regarding a Change of Mailing Address by Elias Makere (BGR) (Entered: 10/20/2022)
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...
12/9/2022		Pursuant to F.R.A.P. 11(c), the Clerk of the District Court for the Middle District of Florida certifies that the record is complete for the purposes of this appeal re: [93] Notice of Interlocutory Appeal. All documents...
12/14/2022	95	ORDER of USCA Dismissed as to [93] Notice of Interlocutory Appeal filed by Elias Makere. EOD: 12/14/22 and issued as mandate; USCA number: 22-13588. (SJW) (Entered: 12/16/2022)
6/21/2023	96	ORDER granting, in part, and denying, in part, [78] Defendant's Dispositive Motion to Dismiss Plaintiff's Full Verified Civil Complaint with Prejudice. The stay is lifted and the Clerk of the Court is directed to reopen...
6/21/2023		Case Stay Lifted. (BGR) (Entered: 6/22/2023)
7/7/2023	97	MOTION for Clarification re [96] Order on [78] Defendant's Dispositive Motion to Dismiss Plaintiff's Full Verified Complaint with Prejudice and Memorandum of Law in Support Thereof by Elias Makere...
7/24/2023	98	RESPONSE in Opposition re [97] MOTION for Clarification re [96] Order on Motion to Dismiss, filed by Allstate Insurance Company. (Robertson, Lauren) (Entered: 7/24/2023)

Date Filed	#	Docket Text
10/30/2023	99	MOTION for Summary Judgment ON COUNTS X-XIII OF PLAINTIFF'S THIRD AMENDED COMPLAINT AND INCORPORATED MEMORANDUM OF LAW by Allstate Insurance Company. (Attachments: # (1) Exhibit A - FCHR Charge, # (2) Exhibit B - NOD...
10/31/2023	100	SUMMARY JUDGMENT NOTICE AND COURTESY COPIES regarding [99] Defendant's Motion for Summary Judgment on Counts X-XII of Plaintiff's Third Amended Complaint. Signed by Deputy Clerk on 10/31/2023. (JW) (Entered: 10/31/2023)
11/14/2023	101	RESPONSE in Opposition re [99] MOTION for Summary Judgment On Counts X-XIII of Plaintiff's Third Amended Complaint and Incorporated Memorandum of Law filed by Elias Makere. (Attachments: # (1) Exhibit)(ELM)...
11/18/2023	102	MEMORANDUM of Law in Support of Plaintiff's Motion for Judicial Notice Dated 4/10/19 by Elias Makere (BGR) (Entered: 11/20/2023)
11/28/2023	103	REPLY to Response to Motion re [99] MOTION for Summary Judgment ON COUNTS X-XIII OF PLAINTIFF'S THIRD AMENDED COMPLAINT AND INCORPORATED MEMORANDUM OF LAW filed by Allstate Insurance Company. (Attachments: # (1)...
12/4/2023	104	RESPONSE re [102] Notice (Other) In Opposition to Plaintiff's Memorandum of Law In Support of Motion for Judicial Notice Dated 4/10/2019 filed by Allstate Insurance Company. (Robertson, Lauren) (Entered: 12/4/2023)
1/9/2024	105	MEMORANDUM of Law in Support of [59] Motion for Sanctions filed by Elias Makere. (e-portal) (ELM) (Entered: 1/10/2024)
1/23/2024	106	MEMORANDUM in opposition re [105] Memorandum in support, [59] Motion for Sanctions filed by Allstate Insurance Company. (Robertson, Lauren) (Entered: 1/23/2024)
1/31/2024	107	LETTER to the Judge by Caroline Makere (Attachments: # (1) Mailing Envelope)(BD) (Entered: 2/1/2024)
3/26/2024	108	ORDER granting [99] Defendant's Motion for Summary Judgment; denying [59] Plaintiff's Motion for Sanctions as supplemented by [105] Plaintiff's Memorandum; granting, in part, and denying, in part, [41] Plaintiff's...

Date Filed	#	Docket Text
3/27/2024	109	JUDGMENT in favor of Allstate Insurance Company against Elias Makere. (Signed by Deputy Clerk) (ARL) (Entered: 3/27/2024)
4/10/2024	110	MOTION for Attorney Fees by Allstate Insurance Company. (Robertson, Lauren) Motions referred to Magistrate Judge Laura Lothman Lambert. (Entered: 4/10/2024)
4/10/2024	111	PROPOSED BILL OF COSTS by Allstate Insurance Company. (Robertson, Lauren) (Entered: 4/10/2024)
4/11/2024	112	NOTICE of his Forthcoming Motion for Sanctions by Elias Makere (Attachments: # (1) Exhibit A) (JDR) (Entered: 4/11/2024)
4/11/2024	113	ENDORSED ORDER denying without prejudice doc. [110] Defendant's Motion for Determination of Entitlement to Attorneys' Fees. Defendant may refile its motion in compliance with Rule 3.01(g). Local Rules of the United...
4/11/2024	114	MOTION for Attorney Fees by Allstate Insurance Company. (Robertson, Lauren) Motions referred to Magistrate Judge Laura Lothman Lambert. (Entered: 4/11/2024)
4/11/2024	115	RENEWED NOTICE of His Forthcoming Motion for Sanctions by Elias Makere. (Attachments: # (1) Attachment A) (e-portal) (BGR) (Entered: 4/12/0224)
4/18/2024	116	TIME-SENSITIVE MOTION to Waive the 21-Day Safe Harbor Provision (From Rule 11 - Motions for Sanctions) by Elias Makere. (Attachments: # (1) Exhibit A, # (2) Exhibit B) (e-portal) (JDR) (Entered: 4/22/2024)
4/25/2024	117	ORDER denying [116] Plaintiff's Motion to Waive the 21-Day Safe Harbor Provision. Signed by Judge Marcia Morales Howard on 4/24/2024. (MHM) (Entered: 4/25/2024)
4/26/2024	118	MOTION for Relief from Judgment by Elias Makere. (e-portal) (JDR) (Entered: 4/30/2024)

Date Filed	#	Docket Text
4/26/2024	119	NOTICE OF APPEAL as to [108] Order on Motion for Reconsideration / Clarification, Order on Motion for Summary Judgment [109] Judgment by Elias Makere. Filing fee not paid. (Attachments: # (1) Attachment) (JDR)...
4/26/2024	120	RESPONSE in Opposition to Motion re [114] Amended MOTION for Attorney Fees filed by Elias Makere. (e-portal) (JDR) (Entered: 4/30/2024)
4/30/2024	121	TRANSMITTAL of initial appeal package to USCA consisting of copies of notice of appeal, docket sheet, order/judgment being appealed, and motion, if applicable to USCA re [119] Notice of Appeal. (Attachments: # (1)...
5/6/2024	122	RENEWED MOTION for Sanctions by Elias Makere. (e-portal) (Attachments: # (1) Exhibit A, # (2) Exhibit B, # (3) Exhibit C, # (4) Exhibit D, # (5) Exhibit E, # (6) Exhibit F, # (7) Transcript A, # (8) Affidavit) (JDR)
5/14/2024	123	RESPONSE in Opposition re [118] MOTION for Miscellaneous Relief, specifically Relief From Judgment filed by Allstate Insurance Company. (Robertson, Lauren)
5/21/2024	124	NOTICE of Non-Party's Letter to the Judge by Lisset Fargar (e-portal) (JDR)
5/22/2024	125	RESPONSE in Opposition re [122] MOTION for Sanctions filed by Allstate Insurance Company. (Robertson, Lauren)
5/30/2024	126	ORDER striking [107] Non-Party's Letter to the Judge from Caroline Makere and [124] Non-Party's Letter to the Judge from Lisset Farfan. Signed by Judge Marcia Morales Howard on 5/30/2024. (JW)
5/30/2024	127	NOTICE of Plaintiff's Constitutional Challenge (of Two State Statues) by Elias Makere (e-portal) (Attachments: # (1) Exhibit A, # (2) Exhibit B, # (3) Exhibit C, # (4) Exhibit D, # (5) Exhibit E) (JDR)
6/7/2024	128	NON-PARTY'S AFFIDAVIT in Support of Plaintiff's Constitutional Challenge by Non-Party Lisset Farfan (e-portal). (JDR)

Date Filed	#	Docket Text
6/12/2024	129	ORDER striking [128] Non-Party's Affidavit in Support of Plaintiff's Constitutional Challenge. Signed by Judge Marcia Morales Howard on 6/12/2024. (JW)
7/5/2024	130	ORDER of USCA Dismissed as to [119] Notice of Appeal filed by Elias Makere. EOD: 07/05/2024 and issued as mandate; USCA number: 24-11336. (SJW)
7/11/2024	131	NOTICE of a related action per Local Rule 1.07(c) by Elias Makere. (Attachments: # (1) Attachment A) (JDR)
7/22/2024	132	ORDER of USCA reinstating appeal as to [119] Notice of Appeal filed by Elias Makere. EOD: 07/18/2024; USCA number: 24-11336. (SJW)
8/9/2024	133	ORDER deferring ruling on [114] Defendant's Amended Motion for Determination of Entitlement to Attorneys' Fees; [118] Plaintiff's Motion for Relief from Judgment; and [122] Plaintiff's Renewed Motion for Sanctions...

Date Filed	#	Docket Text
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APPENDIX

11TH CIRCUIT COURT OF APPEALS

24-11336-J

Appeal From

US District Court, Florida, Middle District

3:20-cv-00905-MMH-LLL

Makere v Allstate

VOLUME 01

ITEM 01*

PAGES 0018 - 0019

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

* NOT ENTIRE DOCUMENT (SEE "ITEM 01" [Page 0020])
(1st page only)

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.

APPENDIX

11TH CIRCUIT COURT OF APPEALS

24-11336-J

Appeal From

US District Court, Florida, Middle District

3:20-cv-00905-MMH-LLL

Makere v Allstate

VOLUME 01

ITEM 02

PAGES 0020 - 0111

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)

ELECTRONIC COPY OF THIS DOCUMENT

HTML TextBookDiscrimination.com/Allstate/Complaint-Full

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.

ALLSTATE INSURANCE COMPANY

Defendant,

)

)

)

)

)

)

)

Case No (LT): 3:20-cv-00905-MMH-JRK

Division: (3) Jacksonville

Jury Trial Demanded

☒ 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).

Continued Harassment and Plaintiff's Initial Mitigating Efforts

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 (9th) 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 (9th) 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 perjurious 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 ($\approx$ 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/} $10\% \text{ Capacity} = 0.0588 / 0.5820$

Where:

$0.0588 = \text{documents per day (before)}$
 $= 3 \text{ documents} \div 51 \text{ days}$

$0.5820 = \text{documents per day (after)}$
 $= 170 \text{ documents} \div 292 \text{ days}$

^{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 ($\approx$ \$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

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



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

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, appoint a lawyer to represent you. You must make to the U.S. District Court in the efforts to retain an attorney). Request for appointment of a lawyer must be made in detail your efforts to retain an attorney, as mentioned above, because such requests do not relieve you of the obligation to obtain a lawyer.

ATTORNEY REFERRAL AND EEOC

You may contact the EEOC representative for questions about your legal rights, including how to inspect or obtain a copy of information about your charge number (as shown on your charge). Information is kept for at least 6 months after you file, **please make your review request** made within the next 90 days.)

IF YOU FILE SUIT, PLEASE

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee \$ 150-2019-00685	01-23-20
Extra Services & Fees (check box, add fee as appropriate)	
☐ Return Receipt (hardcopy)	\$
☐ Return Receipt (electronic)	\$
☐ Certified Mail Restricted Delivery	\$
☐ Adult Signature Required	\$
☐ Adult Signature Restricted Delivery	\$
Postage	\$
Total Postage and Fees	\$
Sent To <u>Elias Makere</u>	
Street and Apt. No., or PO Box No. <u>D & N of R.</u>	
City, State, ZIP+4®	

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

er or if you have any
e. If you need to
writing and provide
n time, all charge files
t to review the charge
request should be

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)

Case 3:20-cv-00905-MMH-JRK Document 53-1 Filed 05/21/21 Page 8 of 16 PageID 1653

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
RECEIVED
U.S. DISTRICT COURT
NORTH DISTRICT OF CALIFORNIA
SAN FRANCISCO

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)



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, 20 17

Jennifer M. Duchon
(Notary Public)

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, 20 17

Jennifer M. Duchon
(Notary Public)

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
Human Resources Lead Consultant

Attachments

Page 4 of 4

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, 20 17

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.

FCHR Order No. 19-065

Page 2

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.

FCHR Order No. 19-065

Page 3

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

24-11336-J

Appeal From

US District Court, Florida, Middle District

3:20-cv-00905-MMH-LLL

Makere v Allstate

VOLUME 01

ITEM 03

PAGES 0112 - 0130

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

Plaintiff

v.

ALLSTATE INSURANCE COMPANY,

Defendant

)
)
)
)
)
)
)

Case No (LT)
3:20-cv-00905-MMH-JRK

****{Duplicate Filing}**

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

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

24-11336-J

Appeal From

US District Court, Florida, Middle District

3:20-cv-00905-MMH-LLL

Makere v Allstate

VOLUME 01

ITEM 04

PAGES 0131 - 0168

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.

ORDER¹

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.

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

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 Ferguson v. MBank Houston, N.A., 808 F.2d 358, 359 (5th Cir. 1986))).

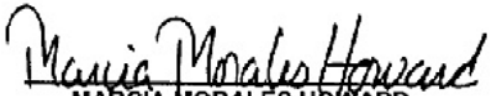
A. The Motion is **DENIED** to the extent Makere's claim of post-termination retaliation pursuant to 42 U.S.C. § 1981 is **dismissed without prejudice**.

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
United States District Judge

lc11

Copies to:

Counsel of Record
Pro Se Party

APPENDIX

11TH CIRCUIT COURT OF APPEALS

24-11336-J

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

VOLUME 01
ITEM 05*
PAGES 0169 - 0183

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

* NOT ENTIRE DOCUMENT | PERTINENT PARTS ONLY
(Pages 1-14 only)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

ELIAS MAKERE, FSA, MAAA

Plaintiff

v.

ALLSTATE INSURANCE COMPANY,

Defendant

)
)
)
)
)
)
)

Case No (LT)
3:20-cv-00905-MMH-JRK

**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 (<i>McDonnell Douglas v Green</i>) |
| C.) Compliance | Plaintiff will still comply with That Order ^{1/} |
| D.) Prerequisite | Plaintiff believes objection is a prerequisite to appeal |

Table of Contents:

Context	2 nd Page
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Certificates	9 th Page
Exhibits	12 th Page

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 McDonnell 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

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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

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

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

APPENDIX

11TH CIRCUIT COURT OF APPEALS

24-11336-J

Appeal From

US District Court, Florida, Middle District

3:20-cv-00905-MMH-LLL

Makere v Allstate

VOLUME 01
ITEM 06*
PAGES 0184 - 0195

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

* NOT ENTIRE DOCUMENT | PERTINENT PAGES ONLY
(Pages 1-11 only)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

ELIAS MAKERE, FSA, MAAA

Plaintiff

v.

ALLSTATE INSURANCE COMPANY,

Defendant

)

)

)

)

)

)

)

Case No (LT)

3:20-cv-00905-MMH-JRK

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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Transcripts	40 th Page
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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

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 McDonnell-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

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 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*)

APPENDIX

11TH CIRCUIT COURT OF APPEALS

24-11336-J

Appeal From

US District Court, Florida, Middle District

3:20-cv-00905-MMH-LLL

Makere v Allstate

VOLUME 01
ITEM 07*
PAGES 0196 - 0225

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

* NOT ENTIRE DOCUMENT | PERTINENT PAGES ONLY
(Pages 1-15, 22-35 only)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

ELIAS MAKERE, FSA, MAAA

Plaintiff

V.

ALLSTATE INSURANCE COMPANY,

Defendant

Case No (LT)

3:20-cv-00905-MMH-JRK

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

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Affidavits	31 st 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 McDonnell-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 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)

201701432
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

EMPLOYMENT 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.

RECEIVED
JUN 30 2017
2017 JUN 30 PM 12:32

EXHIBIT E

Notice of Determination

From: State Agency (FCHR)
To: Plaintiff/Defendant/'That Officer'
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

PLAINTIFF'S AFFIDAVIT

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 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

24-11336-J

Appeal From

US District Court, Florida, Middle District

3:20-cv-00905-MMH-LLL

Makere v Allstate

VOLUME 01

ITEM 08

PAGES 0226 - 0230

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.

ORDER

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:

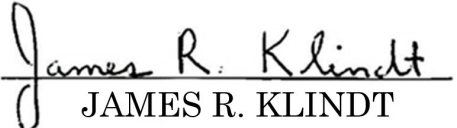
1. Plaintiff's Motion for Leave to Amend Complaint (Doc. No. 51) is **GRANTED**.

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
United States Magistrate Judge

keh
Copies to:
Counsel of Record
Pro se Party

APPENDIX

11TH CIRCUIT COURT OF APPEALS

24-11336-J

Appeal From

US District Court, Florida, Middle District

3:20-cv-00905-MMH-LLL

Makere v Allstate

VOLUME 01

ITEM 09

PAGES 0231 - 0268

SHORT TITLE: Order of Partial Dismissal

DATE ENTERED: 6/21/23

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: 96

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

ELIAS MAKERE, FSA, MAA,

Plaintiff,

v.

Case No. 3:20-cv-905-MMH-LLL

ALLSTATE INSURANCE
COMPANY,

Defendant.

ELIAS MAKERE, FSA,

Plaintiff,

v.

Case No. 3:20-cv-921-MMH-LLL

ALLSTATE INSURANCE
COMPANY,

Defendant.

ELIAS MAKERE,

Plaintiff,

v.

Case No. 3:20-cv-922-MMH-LLL

ALLSTATE INSURANCE
COMPANY,

Defendant.

ORDER¹

THIS CAUSE is before the Court on Defendant's Dispositive Motion to Dismiss Plaintiff's Full Verified Civil Complaint with Prejudice and Memorandum of Law in Support Thereof (Doc. 78; Motion) filed on November 23, 2021.² In the Motion, Defendant Allstate Insurance Company moves to dismiss the claims set forth in Plaintiff Elias Makere's Full Verified Civil Complaint (Doc. 73; Third Amended Complaint or TAC) pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure (Rule(s)). Makere filed a response in opposition to the Motion on December 27, 2021. See Plaintiff's Response in Opposition to Defendant's Motion to Dismiss Plaintiff's Full Verified Complaint (Doc. 87; Response). Significantly, this is Allstate's second motion to dismiss in this action. The Court previously granted, in part, and denied, in part, a motion to dismiss Makere's initial Complaint for Employment Discrimination (Doc. 1; Initial Complaint). See Order (Doc. 40; 2021 Order), entered February 8, 2021.³ The background and findings in the 2021 Order

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.

² Allstate separately filed an exhibit in support of the Motion at Docket Entry 80. See Defendant's Notice of Filing Exhibit Supporting its Dispositive Motion to Dismiss.

³ Makere v. Allstate Ins. Co., No. 3:20-cv-905-MMH-JRK, 2021 WL 424349, at *1 (M.D. Fla. Feb. 8, 2021).

are significant to the analysis below and the Court will presume the reader's familiarity with the 2021 Order and adopt its defined terms.

I. Factual Background

This case arises out of Makere's approximately three-year period of employment with Allstate and its aftermath. As alleged in the Third Amended Complaint, Makere worked for Allstate from November 18, 2013, until he was terminated on August 12, 2016. See TAC ¶¶ 8, 43. Makere, a Black male, alleges that he endured race and sex-based discrimination and harassment from numerous co-workers and supervisors throughout his employment with Allstate. See id. ¶¶ 8, 12-46. He contends that he filed internal complaints of discrimination with Allstate and suffered retaliation as a result. Id. ¶¶ 32-39. Ultimately, Allstate terminated Makere after he failed to pass his ninth actuarial exam, a condition of his continued employment in Allstate's Actuarial Career Program (ACP). Id. ¶¶ 9-10, 38-43. Makere maintains that his termination was discriminatory and alleges that other non-Black employees also failed to satisfy the requirements of the ACP and were not terminated. Id. ¶¶ 44-46.

A. 2017 FCHR Charge

Following his termination, on June 30, 2017, Makere filed a charge of discrimination and retaliation against Allstate with the FCHR. The parties participated in extensive administrative proceedings on the 2017 FCHR

Charge which the Court described in detail in the 2021 Order. See 2021 Order at 8-11. In brief, the FCHR issued a “No Reasonable Cause” determination on December 15, 2017, at which time Makere promptly petitioned the DOAH for review. Id. at 8. After substantial motion practice and a lengthy evidentiary hearing, the ALJ ruled against Makere on all claims in a 111-page Recommended Order issued on April 18, 2019. Id. The FCHR adopted the ALJ’s factual and legal findings and dismissed Makere’s claims with prejudice in a Final Order dated June 27, 2019. Id. at 11. Makere appealed this decision to Florida’s First District Court of Appeal, which found no basis to set aside the FCHR’s Final Order and issued a decision affirming it on July 13, 2020. Id.

B. Post-Termination Retaliation

Significantly, Makere alleges that Allstate engaged in several acts of retaliation against him while the administrative matter was pending. See, e.g., TAC ¶ 132; see also Response at 14-15. The first incident of alleged post-termination retaliation concerns a former Allstate employee, Kirk Higgins. See TAC ¶¶ 57-85. Makere’s allegations reflect that Higgins, a Black male actuary like Makere, worked at Allstate prior to Makere. Id. ¶¶ 65-67. Although their employment at Allstate did not overlap, Makere appears to believe that Higgins also suffered discrimination during his time there. See id. ¶¶ 65-72. The details are unclear, but it appears that during the discovery

phase of the DOAH proceedings, Makere contacted Higgins. See id. ¶¶ 56-57. Makere alleges that Higgins “went on attack in response” by filing “documents aimed at embarrassing [Makere]” and calling the “local police departments to try to dig up dirt on [Makere].” See id. ¶ 57. Makere includes what appear to be excerpts from Higgins’ filings in which Higgins states that he had used public information to perform a background check on Makere, discovered that Makere had previously been arrested, and then contacted the police department to confirm that information. Id. ¶ 77. According to the excerpts in the Third Amended Complaint, Higgins acknowledged that he had found no evidence that Makere was prosecuted or convicted based on the prior arrests and stated that he filed the information for the benefit of other potential witnesses seeking protective orders against subpoenas from Makere. Id. Makere characterizes these statements as a “smear campaign.” Id.

Makere alleges that he “believe[s]” Higgins acted at Allstate’s behest. Id. ¶¶ 58, 75-77, 85. In support, Makere asserts that Higgins called him on March 26, 2018, and told him that he had recently spoken to Allstate employees, including the employee responsible for terminating Makere, Lisa Henry. Id. ¶¶ 59-60. According to Makere, Higgins told him that Henry had recently made favorable comments about Higgins on a professional networking site. Id. ¶ 61. Makere interpreted Higgins’ statement as an attempt to “dissuade [Makere] from litigating his claim against [Allstate].” Id. During this call,

Higgins also allegedly told Makere that “he was afraid that [Allstate] would retaliate against him” if he complied with Makere’s discovery requests. Id. ¶ 63.

In addition, Makere points to a June 21, 2018 email from Allstate’s counsel to Higgins, on which Makere was copied, concerning the DOAH proceedings. See TAC ¶¶ 81-83, Ex. F. According to Makere, Allstate “encouraged” Higgins to file “unlawful” and unauthorized documents on Allstate’s behalf and “instructed” Higgins “to avoid writing anything that could negatively impact [Allstate’s] accompanying pleading.” Id. ¶¶ 82-83. However, the email itself, which Makere attaches to the Third Amended Complaint, includes nothing more than a statement of Allstate’s position on motions that Higgins had filed or intended to file in the DOAH proceedings opposing Makere’s discovery requests. Id., Ex. F.⁴ Specifically, Allstate’s counsel stated that Allstate did not oppose some of the motions and would not object to another so long as it did not interfere with Allstate’s discovery efforts. Ex. F.

The next incident of post-termination retaliation is alleged to have occurred when Makere was hit by a car while riding his bicycle in the Spring

⁴ On a motion to dismiss, the Court’s consideration is limited to those facts contained in the complaint and the attached exhibits. Griffin Indus., Inc. v. Irvin, 496 F.3d 1189, 1199 (11th Cir. 2007). Under Rule 10(c), “attachments are considered part of the pleadings for all purposes, including a Rule 12(b)(6) motion.” Solis-Ramirez v. U.S. Dep’t of Justice, 758 F.2d 1426, 1430 (11th Cir. 1985); see also Fed. R. Civ. P. 10(c). As significant here, “when the exhibits contradict the general and conclusory allegations of the pleading, the exhibits govern.” Griffin, 496 F.3d at 1206.

of 2018. TAC ¶ 92. According to Makere, when he “awoke on the grassy median” after the impact, “he immediately thought [Allstate] was behind it.” Id. ¶ 92. In the Third Amended Complaint, Makere attempts to connect Allstate to this incident in three ways. First, Makere alleges that “[f]rom the outset of the DOAH proceedings, [he] received death threats on the phone; and supplemental taunts through the mail.” See id. ¶ 87. According to Makere, the threats had a “common theme centered around ‘praying to God,’” including a phone call asking, “Do you need someone to pray for your life?” and postcards with similar phrasing. Id. ¶ 88. Makere alleges that Higgins used the same “praying to God” phrase when he attempted to dissuade Makere from continuing his lawsuit. Id. Second, Makere asserts that in November of 2015, an Allstate employee saw Makere on his bicycle after dark in the Allstate parking lot and allegedly cautioned him, “in an ominous tone,” to “be careful on [his] bike.” Id. ¶¶ 29a, 92. 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. And third, Makere connects the driver of the car to Allstate because the driver’s home was “within 10 minutes” of the Allstate office, “down the street” from the home of an Allstate manager with whom Makere had interacted, and “12 minutes away” from the home of Allstate’s former chief executive officer. Id. ¶ 93.

The third incident of purported post-termination retaliation occurred in July of 2018, when Makere’s former employer, Genworth Financial, reduced Makere’s retirement benefits. Id. ¶¶ 105, 132b. According to Makere, Allstate was behind this reduction. Id. ¶ 112. Makere connects this event to Allstate because Allstate’s attorney made “statements” about Genworth during Makere’s depositions and at a hearing. Id. ¶ 108. Although Makere does not describe the statements, he appears to maintain that the information had not come from discovery, such that “[i]t was clear that [Allstate] was communicating with Genworth surreptitiously.” Id. ¶ 110. In addition, Makere alleges that he spoke to a benefits coordinator at Genworth who told him that his “dissolved retirement benefits were not part of a company-wide policy,” and that Makere “was the only person she knew who suffered dissolution.” Id. ¶ 111.⁵

⁵ The Third Amended Complaint also includes sections titled “Post-Termination Retaliation: Surveillance” and “Plaintiff’s Professional Progress and Defendant’s Professional Retaliation.” See TAC at 31, 34. In the Surveillance section, Makere alleges that Allstate “enlisted people to surveil/investigate” Makere. Id. ¶ 103. Makere identifies a man with “an Allstate T-Shirt” who spoke to Makere at his neighborhood gym and “presented himself as an in-house lawyer.” Id. ¶¶ 96-97. According to Makere, another man from the gym “chatted up” Makere and regularly invited him to play basketball. Id. ¶ 100. This man “bumped into [Makere] at the beach” and “revealed that he worked for” Allstate. Id. ¶ 101. Similarly, in the Professional Retaliation section, Makere asserts that an Allstate employee attended the ceremony where Makere received his designation as a Fellow of the Society of Actuaries (FSA). Id. ¶ 114. Although Makere alleges that the employee attended this event at Allstate’s behest to harass Makere and interfere with his professional advancement, see id. ¶ 115, he does not allege that any specific acts of purported harassment or interference actually occurred and Makere appears to have successfully obtained his FSA credential. See id. ¶¶ 113-114, Ex. G.

It is unclear whether Makere contends that these incidents, individually, also constitute actionable retaliatory conduct. See Response at 14-15. Notably, unlike the three

C. 2019 FCHR Charge

Following these purported acts of retaliation, and while the 2017 FCHR Charge was working its way through the administrative process, Makere filed a second charge with the FCHR in 2019. See TAC ¶ 7a. Because it is particularly relevant to the analysis below, the Court sets out in full its account of the 2019 FCHR Charge from the 2021 Order:

In the 2019 FCHR Charge, Makere checked the boxes for discrimination based on race, color, sex, and retaliation. 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.” In addition, he stated that Allstate retaliated against him for complaining, and that “[t]he most recent act of retaliation occurred in July 2018.” 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.” On June 1, 2020, the FCHR issued an 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.” The FCHR further stated that “[n]o other changes were made” to its October

incidents detailed above, Makere does not specifically refer to “surveillance” or “professional retaliation” in summarizing the “ultimate facts” of his claims. See id. ¶ 132; see also id. ¶¶ 161, 182. Regardless, as alleged, these innocuous encounters with other Allstate employees do not constitute the type of “materially adverse” conduct that might dissuade “a reasonable worker from making or supporting a charge of discrimination.” See Burlington N. & Santa Fe Ry. Co. v. White, 548 U.S. 53, 67-68 (2006) (citation omitted). And Makere’s contention that these encounters reflect Allstate’s attempt to surveil or sabotage him is not a reasonable inference from the facts alleged. See infra Part III (explaining the standard of review).

18, 2019 determination. 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.

Makere filed his petition with the DOAH on July 6, 2020. 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.

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. 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]. 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.

See 2021 Order at 11-13 (internal citations omitted). In July and August of 2020, Makere initiated three lawsuits against Allstate which, as noted above, are consolidated in this case. The Court turns next to the procedural history of the instant matter.

II. Procedural History

In his Initial Complaint, Makere asserted claims against Allstate under the Florida Civil Rights Act (FCRA), section 760.01-760.11 of the Florida Statutes, for race and sex-based employment discrimination, as well as unlawful retaliation. See Initial Complaint at 14. He also brought a claim for race discrimination pursuant to 42 U.S.C. § 1981. Id. at 15. Given his pro se status, the Court broadly construed Makere's § 1981 claim to include retaliation as well. Significantly, the alleged acts of retaliation occurred both before and after his termination. In the 2021 Order, the Court determined that all of Makere's FCRA claims were procedurally barred. See 2021 Order at 14-18. In addition, the Court found that collateral estoppel barred Makere's § 1981 claim to the extent it was premised "on his termination, or alleged acts of discrimination, harassment, or retaliation that occurred while he was employed at Allstate" Id. at 18-27. Based on these findings, the Court dismissed those § 1981 claims and the FCRA claims with prejudice. Id. at 37.

However, to the extent Makere asserted a § 1981 retaliation claim premised on alleged acts of post-termination retaliation, the Court determined that collateral estoppel did not bar that claim. Id. at 28 n.10. Nevertheless, the Court found that Makere's allegations were too vague and conclusory to state a claim for relief. Id. at 32-36. Consistent with Eleventh Circuit precedent, in light of his pro se status, the Court dismissed that claim without

prejudice and provided Makere with an opportunity to file an amended complaint “setting forth his post-termination retaliation claim under 42 U.S.C. § 1981.” See id. at 37. Accordingly, on February 26, 2021, Makere filed an amended complaint (Doc. 44) and then, purportedly after proofreading, he filed a second amended complaint a few days later. See Amended Complaint (Verified) (Doc. 45; Second Amended Complaint), filed March 1, 2021. In the Second Amended Complaint, Makere asserted a § 1981 claim for retaliation and a § 1981 “pattern & practice of retaliation” claim. See Second Amended Complaint at 37-38.

On March 9, 2021, Makere initiated a new federal lawsuit against Allstate. See Makere v. Allstate Insurance Co., No. 3:21-cv-242-MMH-JBT (M.D. Fla. Mar. 9, 2021) (Makere IV). In Makere IV, Makere filed a five-count Verified Complaint (Makere IV, Doc. 1) in which he raised claims of race, sex, and color discrimination, as well as retaliation and a “pattern & practice of retaliation” against Allstate pursuant to Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. § 2000e et seq. Upon review of Makere’s request to proceed in forma pauperis, the assigned Magistrate Judge observed that Makere IV “involve[d] identical factual allegations against the same Defendant” as this matter. See Makere IV, ECF No. 6 at 3 (M.D. Fla. entered Apr. 12, 2021) (order deferring ruling on application to proceed in forma pauperis). The Magistrate Judge cited the rule against claim splitting and

explained to Makere that if he wished to assert his Title VII claims, he must do so by seeking leave to amend the pleadings in his already pending lawsuit against Allstate. See Makere IV, ECF No. 6 at 3-6. Makere then filed a motion for leave to amend in the instant action, which the Magistrate Judge assigned to this case granted on October 13, 2021. See Order (Doc. 70).⁶ Accordingly, on November 6, 2021, Makere filed the Third Amended Complaint, which is the operative pleading at this time.

In the first four counts of the Third Amended Complaint, Makere reasserts his FCRA discrimination and retaliation claims. See TAC at 46-48.⁷ In Count V, Makere brings a claim for pay discrimination in violation of the Equal Pay Act (EPA), 29 U.S.C. § 206. Id. at 48-49. Next, in Counts VI and VII, Makere reasserts claims of race discrimination and retaliation under §

⁶ Notably, the Magistrate Judge granted leave to amend solely because he found that Allstate's arguments in opposition to amendment would be "better addressed in a procedural posture of a dispositive motion and response." See Order (Doc. 70) at 3.

⁷ As to Counts I (race), II (sex), and IV (retaliation), the Court previously dismissed these FCRA claims with prejudice in the 2021 Order. See 2021 Order at 14-18; see also Rule 41(b). As such, Makere may not reassert them in this or any other action. See Daker v. Comm'r, Ga. Dep't of Corr., 694 F. App'x 765, 767 (11th Cir. 2017) ("A dismissal with prejudice bars the litigant from refiling the same complaint . . ."); see also Griham v. United States, 389 F. Supp. 3d 986, 992 (N.D. Ala. 2019) ("It has long been recognized that a dismissal 'with prejudice' denotes the adjudication of a claim 'in a way that finally disposes of a party's claim and bars any future action on that claim.' (quoting With Prejudice, Black's Law Dictionary (11th ed. 2019))). Likewise, as to Count III (color), Makere cannot circumvent the Court's prior order merely by repackaging his FCRA race discrimination claim as one premised on "color." Regardless, even to the extent Makere asserts a distinct FCRA "color discrimination" claim, it is procedurally barred for the same reasons discussed in the 2021 Order. Accordingly, Counts I-IV are due to be dismissed without further discussion.

1981, and in Count VIII, he asserts a claim pursuant to 42 U.S.C. § 1981a titled “Intentional Discrimination.”⁸ *Id.* at 49-51. The claim in Count IX is for “Deprivation of Rights” under 42 U.S.C. § 1985. *Id.* at 51-52. In Counts X-XIII, Makere raises Title VII claims based on race, sex, and color discrimination, as well as retaliation. *Id.* at 52-54. And last, in Count XIV, Makere asserts a Title VII claim premised on a “Pattern & Practice of Retaliation.” *Id.* at 54-55. Allstate moves to dismiss all of these claims.

III. Standard of Review

In ruling on a motion to dismiss brought pursuant to Rule 12(b)(6), 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 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

⁸ Makere’s § 1981 race discrimination claim (Count VI) is due to be dismissed as it, too, was dismissed with prejudice in the 2021 Order. *See* 2021 Order at 18-27. With regard to the retaliation claim set forth Count VII, the Court will consider only whether Makere has stated a claim for retaliation premised on post-termination acts of retaliation. To the extent Makere attempts to reassert a § 1981 retaliation claim premised on acts that occurred during his employment with Allstate, this claim was dismissed with prejudice in the 2021 Order. *Id.* at 27, 37.

As to Count VIII, Makere’s separate claim under 42 U.S.C. § 1981a, this claim is due to be dismissed because § 1981a concerns the damages available under Title VII and “does not provide an independent cause of action.” *See Riles v. Augusta-Richmond Cnty. Comm’n*, No. CV 116-214, 2017 WL 3597488, at *2 (S.D. Ga. Aug. 21, 2017); *see also King v. Fulton Cnty., Ga.*, No. 1:08-cv-3729-TWT, 2009 WL 1322341, at *1-2 (N.D. Ga. May 11, 2009) (explaining the difference between 42 U.S.C. § 1981 and 42 U.S.C. § 1981a).

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 Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Further, the plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.” Twombly, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that 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 (citations 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” (citations 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.” Iqbal, 556 U.S. at 678-

79. 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. (citation omitted). 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)⁹ (quoting GJR Invs., Inc. v. Cnty. of Escambia, Fla., 132 F.3d 1359, 1369 (11th Cir. 1998) (internal citation omitted), overruled in part on other grounds as recognized in Randall,

⁹ The Court does not rely on unpublished opinions as binding precedent; however, they may be cited in this Order when the Court finds them persuasive on a particular point. See McNamara v. GEICO, 30 F.4th 1055, 1060–61 (11th Cir. 2022); 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.”).

610 F.3d at 706); see also Campbell v. Air Jamaica Ltd., 760 F.3d 1165, 1168-69 (11th Cir. 2014).

IV. Discussion

A. Count V: Equal Pay Act

In the Motion, Allstate argues that Makere's claim under the EPA is barred by the applicable two- or at most three-year statute of limitations. See Motion at 8-9. Allstate contends that Makere did not raise an EPA claim until filing the Third Amended Complaint on November 6, 2021, more than five years after his termination from Allstate in 2016. Id. In Response, Makere contends that he first raised the pay disparity issue in 2017, well within the two- or three-year statute of limitations. See Response at 5. Makere's argument appears to rely on allegations he made about unequal pay in his petition for relief to the DOAH. Id., Ex. I. According to Makere, his reliance specifically on the EPA in the Third Amended Complaint was a "formality" and the "substantive facts neither changed nor ran anew." Id. Thus, Makere contends that his EPA claim "relates back" to his "originating complaint," by which he apparently means his DOAH petition. Id. at 6.

The applicable statute of limitations for an EPA claim is set forth in 29 U.S.C. § 255(a). See Glenn v. Gen. Motors Corp., 841 F.2d 1567, 1572 (11th Cir. 1988). Pursuant to this statutory provision, "every [cause of] action shall be forever barred unless commenced within two years after the cause of action

accrued, except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued.” See 29 U.S.C. § 255(a). The Court will assume, without deciding, that Makere brings a claim for a willful violation and the three-year statute of limitations applies.

It is undisputed that Allstate terminated Makere’s employment in 2016. Thus, the statutory time limits for filing a claim under the EPA had long expired by November 6, 2021, when Makere first raised this cause of action in the Third Amended Complaint. Recognizing this, Makere cites Rule 15(c) and argues that his claim is not untimely based on the relation back doctrine. However, even assuming Makere’s EPA claim relates back to the outset of this lawsuit, it is still untimely. Makere initiated this case on August 12, 2020,¹⁰ four years from the date of his termination from Allstate.

To the extent Makere argues that he timely asserted his EPA claim based on allegations he made during the administrative proceedings, this argument is unavailing. Notably, Makere provides no authority for the proposition that the relation back doctrine encompasses administrative complaints, and the language of the Rule refutes that contention. Rule 15(c) allows relation back only to the date of the “original pleading,” which in this context refers to “the complaint in an ordinary civil case” See Mayle v.

¹⁰ Even if the Court considers the consolidated cases, Makere initiated those actions in state court in the summer of 2020, still well over three years after his termination.

Felix, 545 U.S. 644, 655 (2005).¹¹ Indeed, the statute itself requires the action to be commenced within two, or at most three, years. See 29 U.S.C. § 255(a). Pursuant to Rule 3, “[a] civil action is commenced by filing a complaint with the court.” See Rule 3 (emphasis added). Makere did not file a complaint with any state or federal court until 2020, and thus, his EPA claim will be dismissed as time-barred.¹²

B. Count VII: § 1981 Retaliation

To establish a retaliation claim under § 1981, “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.” See Goldsmith v. Bagby Elevator Co., Inc., 513 F.3d 1261, 1277 (11th Cir. 2008).¹³

¹¹ Indeed, the Federal Rules of Civil Procedure define the word “pleading” in Rule 7, which identifies the seven types of “pleadings” allowed in federal court, one of which is a complaint. See Rule 7(a)(1).

¹² To the extent Makere’s argument can be interpreted as suggesting that the pending administrative proceedings tolled the EPA statute of limitations, the Court notes that administrative exhaustion is not required for EPA claims and as such, the filing of those charges did not toll the statute of limitations for his EPA claim. See Matthews v. Clayton Cnty. Pub. Schs., No. 1:18-CV-04227-ELR-CMS, 2019 WL 13273267, at *6 n.4 (N.D. Ga. Feb. 20, 2019) adopted by 2019 WL 13273268, at *1 (N.D. Ga. Mar. 26, 2019); see also Atkins v. Coca Cola Enters., Inc., No. 07 C 1038, 2007 WL 4219196, at *4 (N.D. Ill. Nov. 28, 2007); Manko v. Deutsche Bank, No. 02 Civ 10180(TPG), 2004 WL 574659, at *7 (S.D.N.Y. Mar. 22, 2004); cf. Johnson v. Ry. Express Agency, Inc., 421 U.S. 454, 465 (1975) (finding that pending EEOC proceedings did not toll the statute of limitations for the petitioner’s § 1981 claim because the § 1981 remedy is “separate from and independent of” Title VII procedures, and thus the petitioner could have filed his § 1981 claim at any time and “in a very real sense” had “slept on his § 1981 rights”).

¹³ “The same substantive analysis applies to claims of retaliation brought under Title VII and § 1981.” See Stinson v. Public Serv. Tel. Co., 486 F. App’x 8, 10 n.2 (11th Cir. 2012); Goldsmith, 513 F.3d at 1277. As such, the Court relies on cases arising under either statute.

Significantly, actionable retaliation is not limited to “ultimate employment decisions” and “extends beyond workplace-related or employment-related retaliatory acts and harm” See Burlington N. & Santa Fe Ry. Co. v. White, 548 U.S. 53, 67 (2006). Nevertheless, to state a claim for retaliation, a plaintiff must still allege acts of retaliation that are “material and significant and not trivial.” See Ekokotu v. Fed. Exp. Corp., 408 F. App’x 331, 337 (11th Cir. 2011) (citing Burlington, 548 U.S. at 68). “To constitute a materially adverse action, the employer’s action must be materially adverse from the standpoint of a reasonable employee, such that it would dissuade a reasonable worker from making or supporting a discrimination charge.” See Jiles v. United Parcel Serv., Inc., 360 F. App’x 61, 66 (11th Cir. 2010) (citing Burlington, 548 U.S. at 68); see also Entrekin v. City of Panama City, Fla., 376 F. App’x 987, 995-96 (11th Cir. 2010). 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.

In both the Initial Complaint and the Third Amended Complaint, Makere identifies the same three primary acts of purported post-termination retaliation: 1) the Higgins filings, 2) the car-bicycle collision, and 3) his former employer’s reduction of his retirement benefits. See 2021 Order at 5-6; see also TAC ¶¶ 132, 161, 182. Significantly, all of these incidents stem from the actions of third parties with no readily apparent connection to Allstate. Thus,

while the causal-relationship element in a retaliation claim is construed broadly, all of these incidents, on their face, appear “completely unrelated” to Allstate and Makere’s protected conduct. See Ekokotu, 408 F. App’x at 338. Nevertheless, Makere asserts that these third parties were acting at Allstate’s behest. Upon review of the Initial Complaint, the Court found that Makere’s allegations were insufficient to connect Allstate to any of the alleged retaliatory actions. 2021 Order at 33-35. Having now reviewed the Third Amended Complaint as well, the Court finds that Makere fails to correct this deficiency.

As to the car collision, the Court previously found that Makere’s allegations in the Initial Complaint were insufficient to plausibly connect Allstate to the incident, particularly given the absence of any allegations about who was driving the car and whether there was reason to believe that the person was acting on Allstate’s behalf. See 2021 Order at 33-34. In the Third Amended Complaint, Makere attempts to fill this gap by providing the name of the driver and alleging that he lives in proximity to the Allstate office (“10 minutes”), an Allstate manager (“down the street”), and Allstate’s CEO at the time (“12 minutes”). See TAC ¶ 93. But this exceedingly tenuous connection does not provide a factual basis from which to infer that Allstate was in any way connected to the car collision, especially given the lack of any allegations about where the accident itself took place. Makere’s other allegations—

regarding phone calls and postcards from unidentified individuals offering to pray for him, and an occasion over two years earlier when an Allstate employee warned Makere to “be careful on [his] bike”—also fall far short of closing the gap between the conceivable and the plausible. See Iqbal, 556 U.S. at 680. Indeed, even aside from the question of Allstate’s involvement, there is nothing in the Third Amended Complaint that lends support to Makere’s contention that the collision was intentional. For example, relevant factual allegations about the circumstances of the collision itself—how it occurred or who was at fault—are noticeably absent.

While the Court must draw reasonable inferences in Makere’s favor, the Court is not required to draw Makere’s inferences. See Aldana v. Del Monte Fresh Produce, N.A. Inc., 416 F.3d 1242, 1248 (11th Cir. 2005). And the Court is allowed to draw on its “judicial experience and common sense” in determining whether a complaint states a plausible claim for relief. Iqbal, 556 at 679. Absent any factual allegations from which to infer that the driver of the car intentionally collided with Makere, and with only highly speculative allegations that Allstate was in any way connected to the accident or the driver, Makere’s contention that Allstate enlisted the driver of the car to “maim, injure, and/or kill” Makere is nothing more than a bald assertion insufficient to overcome a Rule 12(b)(6) motion. See TAC ¶ 95; Aldana, 416 F.3d at 1248 (“Bald assertions’ will not overcome a Rule 12(b)(6) motion.” (citation

omitted)); see also Twombly, 550 U.S. at 555 (“Factual allegations must be enough to raise a right to relief about the speculative level . . .”).

Makere also alleges, as he did in the Initial Complaint, that his former employer, Genworth Financial, reduced his retirement benefits during the pendency of the DOAH proceedings. See TAC ¶ 105. Makere points out that Genworth mailed him the notice despite the fact that he “had never given Genworth his Florida address.” Id. ¶¶ 105-06. In the 2021 Order, the Court explained that “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.” See 2021 Order at 34. In the Third Amended Complaint, Makere attempts to buttress this purported link between Genworth and Allstate with new allegations that Allstate’s legal counsel “made several statements” about Genworth during Makere’s depositions in the administrative proceedings. See TAC ¶ 108. Broadly construing his allegations, Makere appears to contend that counsel’s “statements” about Genworth had not come from Makere, or from information disclosed in discovery, such that Allstate must have been communicating with Genworth directly. Id. ¶¶ 107-10. But significantly, Makere does not describe the nature or content of the statements. As such, Makere’s inference that Allstate not only must have been communicating with Genworth, but also, that

it did so in order to induce Genworth to retaliate against Makere is entirely speculative.

Makere also asserts that he “reached out to Genworth to understand their actions,” and was told by the benefits coordinator that the action was not part of a “company-wide policy” and that “he was the only person she knew” whose benefits were reduced. Id. ¶ 111. But notably, Makere does not allege whether Genworth provided him with a reason for the reduction in benefits and if so, what the reason was and why Makere rejects it. As such, Makere’s allegations leave open any number of innocent alternative explanations for his former employer’s actions. On the facts alleged, it is simply not plausible to infer that Allstate was in some way involved. See Iqbal, 556 U.S. at 682 (“As between that ‘obvious alternative explanation’ for the arrests, and the purposeful, invidious discrimination respondent asks us to infer, discrimination is not a plausible conclusion.” (internal citation omitted)). In sum, the Court finds that Makere’s allegations remain entirely too vague and conclusory to give rise to a plausible inference that Allstate is in any way connected to, or responsible for, Genworth’s decision to reduce Makere’s retirement benefits.

As to Higgins, Makere alleges that Allstate “enlisted its former employee to attack [Makere] for filing his discrimination lawsuit.” See TAC ¶ 85. In the 2021 Order, the Court found that Makere’s allegations might render it

conceivable that Allstate played some role in Higgins' actions, but that more was needed to establish plausibility. See 2021 Order at 34. For example, the Court noted the absence of any allegations "suggesting who Higgins is, the nature of his 'relationship' with Allstate, or what Allstate's purported 'encourage[ment]' or 'instruct[ion]' entailed." Id. The Court also determined that Makere's vague allegations of wrongdoing were insufficient to demonstrate the type of "material and significant" harm required to state a claim for retaliation. Id. at 34-35.

In the Third Amended Complaint, Makere elaborates on Higgins' background, relationship with Allstate, and the challenged conduct. But upon review, Makere's allegations that Higgins acted at Allstate's direction remain exceedingly weak. Notably, Higgins filed the challenged statements in the administrative proceedings only after Makere contacted Higgins for discovery purposes. See TAC ¶¶ 56-57. And the email purportedly demonstrating Allstate's instruction and encouragement includes nothing more than a routine statement of Allstate's position on the motions Higgins filed or intended to file in opposition to Makere's discovery requests. Id. ¶ 83, Ex. F. In their entirety, the Court finds that there is nothing about the facts alleged in the Third Amended Complaint that gives rise to the inference that Higgins acted at Allstate's behest as opposed to the far more likely explanation that he did so out of his own desire not to be involved in Makere's lawsuit.

Moreover, Higgins' purported "attack" on Makere is entirely trivial. Although Makere characterizes Higgins' statements about his prior arrests as a "smear campaign," id. ¶ 77, Makere does not allege that anything Higgins wrote was false or misleading, nor does he allege that Higgins made any threats against him. Indeed, Makere does not allege that he was injured or harmed in any way by Higgins' actions. See Burlington, 548 U.S. at 67 ("The antiretaliation provision protects an individual not from all retaliation, but from retaliation that produces an injury or harm."). While the Court recognizes that "it is for a jury to decide whether anything more than the most petty and trivial actions against an employee should be considered 'materially adverse,'" see Crawford v. Carroll, 529 F.3d 961, 973 n.13 (11th Cir. 2008), the statements attributed to Higgins in the Third Amended Complaint fall well under that threshold.

In reaching this determination, the Court finds the context in which Higgins' statements were made to be particularly significant. See Burlington, 548 U.S. at 69 ("[T]he significance of any given act of retaliation will often depend upon the particular circumstances. Context matters."). The purported retaliation occurred on the record in the course of administrative proceedings and subject to the oversight of the ALJ. Notably, other courts have rejected retaliation claims premised on litigation conduct in similar contexts, recognizing that such matters are more appropriately addressed pursuant to

court rules by the presiding judge. See Baird v. Gotbaum, 888 F. Supp. 2d 63, 74 (D.D.C. 2012) (“Perhaps recognizing the unseemly situation that would be created if the Title VII judge had to evaluate the conduct of litigators before a different judge, courts have wisely found it is ‘a matter to be resolved pursuant to court rules, not by Title VII.’” (quoting McKenzie v. Ill Dep’t of Transp., 92 F.3d 473, 486 (7th Cir. 1996))); see also Steffes v. Stepan Co., 144 F.3d 1070, 1075-76 (7th Cir. 1998) (“[I]t will be the rare case in which conduct occurring within the scope of litigation constitutes retaliation prohibited by [Title VII or the ADA].”); Salanoa v. Hawaiian Elec. Co., No. 21-00300 JMS-RT, 2022 WL 280936, at *14 (D. Haw. Jan. 31, 2022) (rejecting retaliation claim premised on employer’s actions in worker’s compensation proceedings, noting that the court “found little authority holding that litigation tactics can themselves constitute a violation of the ADA or of other federal anti-discrimination statutes”); Franken v. McCarthy, No. 2:19-CV-2172 AWI PEG, 2020 WL 2615021, at *4 (E.D. Cal. May 22, 2020) (finding false or perjured testimony during administrative proceedings does not constitute actionable retaliation under Title VII). The Court finds the analysis in these cases persuasive and applicable here. Thus, even assuming Allstate was somehow responsible, given the trivial nature of Higgins’ statements and the context in which they were made, the Court is convinced that the Higgins’ filings do not constitute actionable retaliation.

In sum, Makere fails to state a claim for post-termination retaliation because he attempts to hold Allstate responsible for the independent actions of third parties based on nothing more than unwarranted deductions from innocuous facts, conclusory assertions of wrongdoing, and rank speculation. Notably, Makere is proceeding on his Third Amended Complaint and as such has had more than ample opportunity to present any and all factual allegations that might have supported these claims. As to Higgins, the claim fails for the additional reason that the conduct alleged is trivial and non-actionable. In light of the foregoing, the Court finds that the post-termination retaliation claims in Count VII are due to be dismissed for failure to state a claim.

C. Count IX: § 1985

Next, the Court turns to Makere's § 1985 claim for "Deprivation of Rights." See TAC ¶¶ 165-168. Although the exact contours are difficult to discern, Makere's claim appears to be that Allstate conspired with numerous others, including current and former employees, its lawyers, "state officers," and "state agencies" to deprive Makere "of a full and fair opportunity to litigate his case." See TAC ¶¶ 166-67. In the Motion, Allstate argues that this claim is due to be dismissed because the alleged conspiracy does not fall within the scope of § 1985. See Motion at 17-20. Specifically, Allstate argues that the conspiracy does not involve a federal officer for purposes of § 1985(1), federal court for purposes of § 1985(2), or constitutional rights protected against

private impairment for purposes of § 1985(3). Id. However, Allstate fails to address the second part of § 1985(2) which “applies to conspiracies to obstruct the course of justice in state courts” See Kush v. Rutledge, 460 U.S. 719, 725 (1983). Nevertheless, the Court need not determine whether Makere’s conspiracy claim could theoretically fall within the scope of § 1985 because the claim fails for a more fundamental reason—the Third Amended Complaint is devoid of any facts that plausibly demonstrate the existence of an agreement.

To state a claim under § 1985, Makere must allege the existence of a conspiracy. See Kush, 460 U.S. at 724 (discussing the types of conspiracies proscribed by this statute). The “linchpin” of any conspiracy is the existence of an agreement. See Bailey v. Bd. of Cnty. Com’rs of Alachua Cnty., Fla., 956 F.2d 1112, 1122 (11th Cir. 1992); Mickens v. Tenth Judicial Circuit, 181 F. App’x 865, 876 (11th Cir. 2006) (“The core of a conspiracy claim is an agreement between the parties”). Thus, regardless of which subsection applies, “the plaintiff must provide sufficient allegations to make plausible that there was a ‘meeting of the minds between two or more persons to accomplish [the] common and unlawful plan.’” See Jimenez v. Wizel, 644 F. App’x 868, 873 (11th Cir. 2016) (quoting McAndrew v. Lockheed Martin Corp., 206 F.3d 1031, 1036 (11th Cir. 2000)). “[W]here the plaintiff fails to allege an agreement, the pleading is deficient and subject to dismissal.” Mickens, 181 F. App’x at 876 (citing Bailey, 956 F.2d at 1122). And significantly, “[i]n civil rights and

conspiracy actions, conclusory, vague, and general allegations of conspiracy may justify dismissal of a complaint.” Kearson v. S. Bell Tel. & Telegraph Co., 763 F.2d 405, 407 (11th Cir. 1985).

Here, to the extent Makere’s conspiracy claim is discernible at all, his allegations are plainly too vague and conclusory to support the existence of an agreement between Allstate and the purported co-conspirators, whoever they may be. For example, in addition to the insufficient allegations of purported retaliation, Makere alleges that Allstate “pressure[ed]” the FCHR, see TAC ¶ 128a., “gave the FCHR something of value in exchange for its acts & omissions,” id. ¶ 128c., and otherwise somehow “unlawfully got the FCHR to deprive Plaintiff of his constitutional rights” Id. ¶ 134. Makere also appears to contend that both Allstate and the ALJ made “perjured” statements about whether Makere’s administrative claims included sex discrimination. Id. ¶¶ 94b.iii., 123b., 166. Such “naked assertions devoid of further factual enhancement” are entirely inadequate to state a claim for conspiracy. See Iqbal, 556 U.S. at 678; Jimenez, 644 F. App’x at 874; see also Williams v. Brooks Trucking Co., Inc. of Memphis, 757 F. App’x 790, 795 (11th Cir. 2018) (“The private Defendants’s [sic] defense of Plaintiff’s personal injury action before Judge Rumer represents neither reaching an understanding nor willful participation with Judge Rumer in a conspiracy to subvert Plaintiff’s rights.”). As such, Count IX is due to be dismissed as well.

D. Counts X-XIII: Title VII¹⁴

In Counts X-XIII, Makere asserts race, sex, and color discrimination claims, as well as retaliation claims, pursuant to Title VII. Makere's Title VII claims are premised on entirely the same conduct as his FCRA and § 1981 claims. In the Motion, Allstate moves to dismiss these claims as time-barred based on its contention that Makere failed to file his Title VII claims within ninety days of receiving the EEOC's right-to-sue notice. See Motion at 20.¹⁵ Specifically, Allstate points to the EEOC Right-to-Sue Notice dated January 23, 2020, which is attached to the Third Amended Complaint, see TAC, Ex. A, and argues that Makere did not raise any Title VII claims until more than a year later, on March 9, 2021, when he initiated Makere IV. See Motion at 21-22; see also Makere IV, ECF No. 1. Allstate argues that although Makere maintains he did not receive the Right-to-Sue Notice, it was his burden to

¹⁴ In Count XIV, Makere asserts a "Pattern & Practice" claim of retaliation under Title VII. Allstate argues that this claim is due to be dismissed because Makere cannot pursue a private pattern and practice claim as an individual. See Motion at 23-24. Makere does not respond to this argument in his Response. As such, and because the Court finds Allstate's argument to be well-taken, the Court will dismiss Count XIV. See Davis v. Coca-Cola Bottling Co. Consol., 516 F.3d 955, 967-69 (11th Cir. 2008) abrogated on other grounds by Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007); see also E.E.O.C. v. Joe's Stone Crab, Inc., 220 F.3d 1263, 1286 (11th Cir. 2000).

¹⁵ To the extent Makere asserts post-termination retaliation claims under Title VII, Allstate also moves to dismiss those claims for failure to state a claim. See Motion at 11-16. The Court determined above that Makere's § 1981 post-termination retaliation claims are due to be dismissed for failure to state a claim. Because § 1981 and Title VII are governed by the same legal standards, the Court's analysis as to the § 1981 claims is equally applicable to Makere's Title VII claims. As such, the Court will dismiss Makere's Title VII post-termination retaliation claims as well.

advise the EEOC of any changes in his address. See Motion at 22. Regardless, Allstate contends that Makere was aware of the Right-to-Sue Notice by at least August 21, 2020, when Allstate referred to the Notice in its first motion to dismiss. See id. at 22-23. In Response, Makere argues that the EEOC mailed the Right-to-Sue Notice to the wrong person, as the FCHR had previously done with its No Reasonable Cause determination on the 2019 FCHR Charge. See Response at 6-7; see also 2021 Order at 12. Makere maintains that he is not responsible for the “botched mailing” because his address never changed. See Response at 7.

“A Rule 12(b)(6) dismissal on statute of limitations grounds is appropriate ‘if it is apparent from the face of the complaint that the claim is time-barred.’” See Gonsalvez v. Celebrity Cruises Inc., 750 F.3d 1195, 1197 (11th Cir. 2013). Here, Makere alleges that he “filed suit within ninety (90) days of receiving his right-to-sue letter from the EEOC” See TAC ¶ 7. Although the Right-to-Sue Notice attached to the Third Amended Complaint is stamped with a mailing date of January 23, 2020, it also reflects that it was sent to Makere via a law firm in Orlando with which Makere has no apparent connection. See TAC ¶ 7, Ex. A. Indeed, Makere attaches to the Third Amended Complaint the emails he allegedly sent to the FCHR in an attempt to initiate the 2019 investigation which provide an address for Makere in Jacksonville, Florida. See TAC ¶ 7, Ex. B. Thus, on the current record, the

mailing date on the Right-to-Sue Notice alone does not undermine Makere's assertion that he filed his Title VII claims within ninety-days of receiving the Notice. To the extent Allstate argues that it was Makere's responsibility to notify the EEOC of any change in his address, or that Makere otherwise received notice that the EEOC had terminated its administrative processing of the charge sufficient to trigger the limitations period, the Court finds that these arguments raise issues that cannot be resolved on a motion to dismiss. See King v. United Parcel Serv., Inc., No. 22-CV-61140-RAR, 2023 WL 2837071, at *2 (S.D. Fla. Apr. 7, 2023) (holding that factual disputes regarding when the Right to Sue letter was received were inappropriate to resolve at the motion to dismiss stage); see Vinson v. Fla. Dep't of Corr., No. 1:19-cv-333-AW-GRJ, 2020 WL 12309502, at *2 (N.D. Fla. May 15, 2020) (finding that the court cannot resolve factual disputes as to when the ninety day window began on a 12(b)(6) motion); see Jones v. Spherion Atl. Enter., LLC, No. 6:10-cv-833-Orl-31GJK, 2010 WL 11626722, at *3 (M.D. Fla. Sept. 29, 2010) (explaining that the court cannot address whether reasonable grounds exist for equitable tolling of the ninety day filing period because it would involve considering evidence outside the four corners of the complaint). Indeed, the cases on which Allstate relies to support this argument were resolved on summary judgment or following an evidentiary hearing. See Motion at 22 (citing Harbuck v. Kelley Foods of Ala., Civ.A. 1:98CV490-MHT, 2006 WL 827109, at *1 (M.D. Ala. Mar.

29, 2006) and Lewis v. Conners Steel Co., 673 F.2d 1240, 1243 (11th Cir. 1982)). As such, except as noted above, see supra note 14, the Court will deny Allstate's request for dismissal of Makere's Title VII claims at this time. Allstate may renew this challenge in a motion for summary judgment, as appropriate.¹⁶

Although the case will move forward on Counts X-XIII at this time, the Court notes that these claims face significant headwinds. On a more developed record, it may well be that Allstate is able to establish that Makere had "unambiguous notice that the EEOC ha[d] terminated its administrative processing of the charge," long before the email he received from the EEOC on March 9, 2021. See Jones v. Wynne, 266 F. App'x 903, 905 (11th Cir. 2008) (quoting Gonzalez v. Firestone Tire & Rubber Co., 610 F.2d 241, 245 (5th Cir. 1980)). Regardless, even if this lawsuit is timely filed, it appears that the underlying claims may not have been timely exhausted. Significantly, Makere's allegations in the Third Amended Complaint concerning the statutory prerequisites to suit concern the 2019 FCHR Charge and the Right-to-Sue Notice on which he relies pertains to that Charge. See TAC ¶ 7.a.; Ex.

¹⁶ The Court notes that two of the exhibits Makere attaches to his Response, Exhibits J and K, are additional legal memoranda raising arguments relevant to the statute of limitations issue. See Response, Ex. J: Plaintiff's Memorandum of Law Regarding Equitable Tolling on Plaintiff's Full Verified Complaint; id., Ex. K: Plaintiff's Motion for Judicial Notice of Plaintiff's Unchanged Mailing Address. Makere is cautioned that he may not circumvent the page limit requirements set forth in Local Rule 3.01(b) by recharacterizing a legal brief as an exhibit and attaching it to his Response. For the same reason, it is also improper to reincorporate arguments raised in other briefs by reference. See, e.g., Response at 14. Although the Court declined to strike these improper exhibits in this instance, going forward, the Court will not consider arguments that are not set forth in the brief itself.

A (identifying EEOC Charge No. 15D-2019-00685). Thus, it appears unlikely that claims arising during Makere's employment with Allstate, which ended in 2016, would be timely raised in an EEOC Charge filed in 2019. See Wen Liu v. Univ. of Miami Sch. of Medicine, 693 F. App'x 793, 796 (11th Cir. 2017) ("An EEOC charge is timely in a deferral state, like Florida, if filed within 300 days of the last discriminatory act."). And, even to the extent those claims were properly exhausted, it appears likely that collateral estoppel would bar them for the same reasons as previously stated in the 2021 Order with respect to Makere's § 1981 claims. See 2021 Order at 20-27; see also Cataldo v. St. James Epsicopal [sic] Sch., 213 F. App'x 966, 967-69 (11th Cir. 2007) (affirming dismissal of the Title VII retaliation claim under collateral estoppel because the issue of retaliation was already litigated). However, because Allstate did not raise those arguments in its Motion, the Court will not consider them at this time.

Nevertheless, in light of the foregoing and given the particular circumstances of this case, the Court finds it appropriate to bifurcate the proceedings. The Court will allow the parties to proceed with limited discovery only as relevant to the statute of limitations, exhaustion, and collateral estoppel issues, and will set a deadline for the filing of a dispositive motion, if appropriate, on those issues. All other discovery in this action will remain stayed pending further order of the Court.

Accordingly, it is

ORDERED:

1. Defendant's Dispositive Motion to Dismiss Plaintiff's Full Verified Civil Complaint with Prejudice and Memorandum of Law in Support Thereof (Doc. 78) is **GRANTED, in part, and DENIED, in part.**

A. The Motion is **GRANTED** to the extent Counts I, II, III, IV, V, VI, VII, VIII, IX, and XIV are **DISMISSED**. The Motion is further **GRANTED** to the extent any claims in Count XIII premised on acts of post-termination retaliation are **DISMISSED**.

B. Otherwise, the Motion is **DENIED**.

2. The stay of this case entered on January 4, 2022, see Order (Doc. 88), is **LIFTED** and the Clerk of the Court is **directed** to reopen the case.
3. The stay of discovery in this matter, see Orders (Doc. 39, 40), is **PARTIALLY LIFTED**. Between June 21, 2023 and September 29, 2023, the parties may proceed with limited discovery as relevant to the statute of limitations, exhaustion, and collateral estoppel issues. All other discovery **REMAINS STAYED** until further order of the Court.

4. The dispositive motion deadline with respect to the issues identified in paragraph three is **October 30, 2023**. After that date, the Court will set an appropriate deadline for the filing of a case management report.

DONE AND ORDERED in Jacksonville, Florida, this 21st day of June, 2023.


MARCIA MORALES HOWARD
United States District Judge

lc11
Copies to:

Counsel of Record
Pro Se Party

APPENDIX

11TH CIRCUIT COURT OF APPEALS

24-11336-J

Appeal From

US District Court, Florida, Middle District

3:20-cv-00905-MMH-LLL

Makere v Allstate

VOLUME 01

ITEM 10

PAGES 0269 - 0290

SHORT TITLE: Order Granting Summary Judgment

DATE ENTERED: 3/26/24

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: 108

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

ELIAS MAKERE, FSA, MAA,

Plaintiff,

v.

Case No. 3:20-cv-905-MMH-LLL

ALLSTATE INSURANCE
COMPANY,

Defendant.

ELIAS MAKERE, FSA,

Plaintiff,

v.

Case No. 3:20-cv-921-MMH-LLL

ALLSTATE INSURANCE
COMPANY,

Defendant.

ELIAS MAKERE,

Plaintiff,

v.

Case No. 3:20-cv-922-MMH-LLL

ALLSTATE INSURANCE
COMPANY,

Defendant.

ORDER¹

THIS CAUSE is before the Court on Defendant's Motion for Summary Judgment on Counts X-XIII of Plaintiff's Third Amended Complaint and Incorporated Memorandum of Law (Doc. 99; Motion), filed on October 30, 2023. On November 14, 2023, Plaintiff Elias Makere, proceeding pro se, filed a response in opposition to the Motion. See Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment (Doc. 101; Response). Defendant Allstate Insurance Company filed a reply in support of its Motion on November 28, 2023. See Defendant's Reply Brief in Support of its Motion for Summary Judgment (Doc. 103). Accordingly, this matter is ripe for review.²

I. Background

This Order marks the third time the Court has had occasion to rule on a dispositive motion in this case. On February 8, 2021, the Court granted, in part, and denied, in part, a motion to dismiss Makere's initial Complaint for Employment Discrimination (Doc. 1; Initial Complaint). See Order (Doc. 40;

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.

² The Court has considered Makere's request for oral argument and finds that a hearing is unnecessary to the resolution of the remaining issues in this case.

2021 Order).³ Following the 2021 Order, Makere twice amended his complaint such that the operative pleading at this time is Makere's third amended complaint. See Full Verified Civil Complaint (Doc. 73; Third Amended Complaint or TAC). Allstate moved to dismiss the Third Amended Complaint and on June 21, 2023, the Court entered an Order granting, in part, and denying, in part, Allstate's request. See Order (Doc. 96; 2023 Order).⁴ In the prior Orders, the Court set forth at length the factual allegations giving rise to this lawsuit as well as the convoluted procedural history of this case and the prior administrative proceedings. See 2021 Order at 5-14; 2023 Order at 3-14. The Court provides a brief overview below but will otherwise presume the reader's familiarity with those Orders and adopt their defined terms.

In this lawsuit, Makere contends that he was subjected to race, sex, and color discrimination during his approximately three-year period of employment with Allstate. See TAC at 52-54. He maintains that the harassment he received concerning his race and sex was so severe that it created a hostile work environment. Id. at 52-53. He also asserts that Allstate's ultimate decision to terminate his employment was motivated by his

³ Makere v. Allstate Ins. Co., No. 3:20-cv-905-MMH-JRK, 2021 WL 424349, at *13 (M.D. Fla. Feb. 8, 2021).

⁴ Makere v. Allstate Ins. Co., No. 3:20-cv-905-MMH-LLL, 2023 WL 4107107, at *13 (M.D. Fla. June 21, 2023).

race, sex, and color. Id. at 52-53. In addition, Makere alleges that Allstate retaliated against him for complaining about its discriminatory practices, most notably by terminating his employment. Id. at 53-54. Makere contends that Allstate engaged in additional acts of retaliation against him after his termination as well. Id. at 54. At present, the only claims remaining in this action are Makere's race, sex, and color discrimination claims premised on Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. § 2000e et seq., which are set forth in Counts X-XII of the Third Amended Complaint. See TAC at 52-53; see also 2023 Order at 31-34. The Title VII retaliation claim in Count XIII also remains at issue but solely to the extent it is based on Makere's termination or any pre-termination acts of alleged retaliation. See TAC at 53-54.⁵

II. Summary of the Arguments

In the instant Motion, Allstate moves for summary judgment in its favor on all remaining claims pursuant to Rule 56, Federal Rules of Civil Procedure (Rule(s)). See Motion at 1-3. Allstate asserts that Makere's Title VII claims are time-barred because he failed to timely exhaust his claims by filing a

⁵ The Court previously dismissed the discrimination and retaliation claims under the Florida Civil Rights Act (FCRA), Fla. Stat. §§ 760.01-760.1, that Makere raised in the original Complaint and reasserted in the Third Amended Complaint. See 2021 Order at 18, 37; 2023 Order at 13 n.7. The Court also dismissed Makere's 42 U.S.C. § 1981 race discrimination and retaliation claims in their entirety. See 2021 Order at 27, 37; 2023 Order at 14 n.8, 28, 36. And the Court dismissed Makere's Title VII retaliation claim to the extent it is premised on alleged acts of post-termination retaliation. See 2023 Order at 31 n.15, and 36.

charge with the EEOC within 300 days of the alleged discriminatory acts. See Motion at 12-14. In addition, Allstate contends that these claims are barred due to Makere's failure to initiate a lawsuit raising his Title VII claims within ninety days of receiving the EEOC's Right-to-Sue Notice. Id. at 14-18. According to Allstate, the EEOC issued the Right-to-Sue Notice on January 23, 2020, but Makere did not file a lawsuit raising his Title VII claims until March 9, 2021. Id. at 15-16. Allstate acknowledges that the EEOC did not send the Right-to-Sue Notice to Makere directly but maintains that Makere had "constructive receipt" of the Notice because the EEOC sent it to an attorney who had appeared on Makere's behalf in the administrative proceedings. See id. at 16. Last, Allstate argues that the doctrine of collateral estoppel bars Makere's Title VII claims because the same parties and issues were litigated and resolved in state administrative proceedings and ultimately affirmed in Florida's First District Court of Appeals. Id. at 18-25.

In the Response, Makere identifies two purported factual disputes that he contends require denial of the Motion. Makere argues that he dual-filed his charge of discrimination with the FCHR and EEOC on April 10, 2019, and not on April 26, 2019, as Allstate maintains. Compare Response at 4, Exs. 101-102 with Motion at 7, Ex. H.⁶ Notably, Makere does not explain how this

⁶ In the 2021 Order and 2023 Order, the Court identified this charge as the "2019 FCHR Charge." See 2021 Order at 11; see also 2023 Order at 9. It is undisputed that this

dispute concerning the correct filing date for the 2019 Charge is material to the arguments asserted in the Motion. In addition, Makere maintains that he did not receive the Right-to-Sue Notice until March 9, 2021, such that his Title VII claims, which he filed that same day, are timely. See Response at 13. According to Makere, the Notice sent to the attorney was ineffective because that attorney did not represent him in the administrative proceedings concerning the 2019 Charge. See id. at 4-5. Makere presents evidence which he contends shows that the FCHR knew that his former attorney was not representing him for purposes of the 2019 Charge. See id., Ex. 306. Significantly, Makere does not respond to Allstate's arguments that his claims are barred because he did not file the 2019 Charge within 300 days of his termination. Nor does Makere respond to Allstate's contention that his claims are barred by collateral estoppel.

In the Reply, Allstate contends that Makere's failure to respond to its collateral estoppel arguments warrants the entry of summary judgment in its favor on that basis. See Reply at 1. Allstate further argues that the issues of fact which Makere identifies in his Response are immaterial to the issues raised in the Motion. See Reply at 2. According to Allstate, Makere fails to offer any basis why collateral estoppel does not bar his Title VII claims. Id. at

Charge was dual-filed with the EEOC. As such, and because this Order concerns the Title VII claims, the Court will refer to this Charge going forward as the 2019 Charge.

2-4. Allstate also disputes Makere's reliance on the April 10, 2019 filing date but maintains that regardless, Makere failed to timely exhaust his Title VII claims. Id. at 4-5. Last, Allstate argues that even assuming the notice sent to Makere's former counsel was insufficient to trigger the limitations period, Makere still had reason to know of the Right-to-Sue Notice and did not act with due diligence to obtain a copy. Id. at 5-7.

III. Standard of Review

Under Rule 56 of the Federal Rules of Civil Procedure (Rule(s)), "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Rule 56(a). The record to be considered on a motion for summary judgment may include "depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials." Rule 56(c)(1)(A).⁷ An issue is genuine when the evidence is such

⁷ Rule 56 was revised in 2010 "to improve the procedures for presenting and deciding summary-judgment motions." Rule 56 Advisory Committee's Note 2010 Amends.

The standard for granting summary judgment remains unchanged. The language of subdivision (a) continues to require that there be no genuine dispute as to any material fact and that the movant be entitled to judgment as a matter of law. The amendments will not affect continuing development of the decisional law construing and applying these phrases.

Id. "[A]lthough the interpretations in the advisory committee[s] notes are not binding; they are highly persuasive." Campbell v. Shinseki, 546 F. App'x 874, 879 n.3 (11th Cir. 2013).

that a reasonable jury could return a verdict in favor of the nonmovant. See Mize v. Jefferson City Bd. of Educ., 93 F.3d 739, 742 (11th Cir. 1996) (quoting Hairston v. Gainesville Sun Publ'g Co., 9 F.3d 913, 919 (11th Cir. 1993)). “[A] mere scintilla of evidence in support of the non-moving party’s position is insufficient to defeat a motion for summary judgment.” Kesinger ex rel. Est. of Kesinger v. Herrington, 381 F.3d 1243, 1247 (11th Cir. 2004) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986)).

The party seeking summary judgment bears the initial burden of demonstrating to the court, by reference to the record, that there are no genuine issues of material fact to be determined at trial. See Clark v. Coats & Clark, Inc., 929 F.2d 604, 608 (11th Cir. 1991). “When a moving party has discharged its burden, the non-moving party must then go beyond the pleadings, and by its own affidavits, or by depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial.” Jeffery v. Sarasota White Sox, Inc., 64 F.3d 590, 593–94 (11th Cir. 1995) (internal citations and quotation marks omitted). Substantive law determines the materiality of facts, and “[o]nly disputes over

Thus, case law construing the former Rule 56 standard of review remains viable and is applicable here.

In citing to Campbell, the Court notes that it does not rely on unpublished opinions as binding precedent; however, they may be cited in this Order when the Court finds them persuasive on a particular point. See McNamara v. GEICO, 30 F.4th 1055, 1060–61 (11th Cir. 2022); 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.”).

facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” Anderson, 477 U.S. at 248; see also McCormick v. City of Fort Lauderdale, 333 F.3d 1234, 1243 (11th Cir. 2003) (“The mere existence of some factual dispute will not defeat summary judgment unless the factual dispute is material to an issue affecting the outcome of the case.”). In determining whether summary judgment is appropriate, a court “must view all evidence and make all reasonable inferences in favor of the party opposing summary judgment.” Haves v. City of Miami, 52 F.3d 918, 921 (11th Cir. 1995) (citing Dibrell Bros. Int’l. S.A. v. Banca Nazionale Del Lavoro, 38 F.3d 1571, 1578 (11th Cir. 1994)).

IV. Discussion

Prior to commencing a Title VII action in court, “a complainant must first file a charge with the Equal Employment Opportunity Commission” See Fort Bend Cnty., Tex. v. Davis, 139 S. Ct. 1843, 1846 (June 3, 2019) (citing 42 U.S.C. § 2000e-5(e)(1), (f)(1)); see also Bennett v. Chatham Cnty. Sheriff Dep’t, 315 F. App’x 152, 161 (11th Cir. 2008); Kelly v. Dun & Bradstreet, Inc., 557 F. App’x 896, 898 (11th Cir. 2014). “An EEOC charge is timely in a deferral state, like Florida, if filed within 300 days of the last discriminatory act.” See Wen Liu v. Univ. of Miami School of Medicine, 693 F. App’x 793, 796 (11th Cir. 2017); see also E.E.O.C. v. Joe’s Stone Crabs, Inc., 296 F.3d 1265, 1271 (11th Cir. 2002); Nat’l R.R. Passenger Corp. v. Morgan, 536 U.S. 101, 113 (2002).

Once the EEOC terminates its investigation and issues a right-to-sue notice, a claimant may then bring a civil action against the named respondent by filing a complaint within ninety days. See Gant v. Jefferson Energy Co-op., 348 F. App'x 433, 434 (11th Cir. 2009) (citing 42 U.S.C. § 2000e-5(f)(1)); Wilkerson v. H&S, Inc., 366 F. App'x 49, 51 (11th Cir. 2010) (“In order to sue for violations of Title VII, a plaintiff must first exhaust administrative remedies, which means she must receive a right-to-sue letter from the EEOC.”).

It is undisputed that Allstate informed Makere of his termination on August 12, 2016, “effective immediately.” See Response at 8. Thus, all adverse acts or harassment underlying Makere’s race, color, or sex discrimination claims, as well as any acts of retaliation up to and including his termination, necessarily occurred on or before August 12, 2016.⁸ From that date, Makere had 300 days—until June 8, 2017—at the latest, to file a charge challenging Allstate’s employment practices. However, under Makere’s version of the facts, he filed the 2019 Charge on April 10, 2019. See TAC ¶ 7.a.; see also Response at 4, Exs. 101, 102.⁹ Thus, even if Makere’s position is correct, he filed the 2019

⁸ Makere’s 2019 Charge also included acts of post-termination retaliation. However, as noted above, the Court previously dismissed Makere’s Title VII claims premised on those acts. See 2023 Order at 19-28, 31 n.15. Thus, the Court need not determine whether Makere’s 2019 Charge was timely filed as to those discrete acts.

⁹ As discussed in the 2021 Order, Makere previously filed a charge with the FCHR in 2017. See 2021 Order at 8. However, Makere does not argue that this 2017 FCHR Charge was dual filed with the EEOC, nor does he otherwise contend that it satisfies the conditions precedent for his Title VII claims. See Response at 4, 9, 10. Indeed, in the Third Amended Complaint, Makere relies solely on the 2019 Charge and the Right-to-Sue Notice resulting

Charge more than two and a half years after his employment with Allstate ended—well beyond the 300-day period for Title VII claims. Notably, Makere does not raise any argument disputing this timeframe. Accordingly, viewing the evidence in the light most favorable to Makere, the record establishes that he failed to timely exhaust his administrative remedies and the Title VII claims remaining in this case are not actionable. See Morgan, 536 U.S. at 114; Wen Liu, 693 F. App'x at 797. Because the Court finds that Allstate is entitled to summary judgment on this basis as to all remaining claims, the Court need not address Allstate's other arguments.

V. Miscellaneous Motions

On June 11, 2021, Makere filed a motion for sanctions pursuant to Rule 11.¹⁰ See Plaintiff's Motion for Sanctions (Doc. 59) at 2, 5. Allstate filed a response in opposition to the Motion for Sanctions on June 25, 2021. See Defendant's Response in Opposition to Plaintiff's Motion for Sanctions (Doc.

from that Charge to assert that he has met the conditions precedent to filing this lawsuit. See TAC ¶¶ 6-7, Exs. A-B. As such, the Court does not consider the 2017 FCHR Charge in this analysis. Regardless, Makere filed the 2017 FCHR Charge on June 30, 2017, see TAC ¶ 53, more than 300 days after he received unequivocal notice of his termination. See Response at 8 (stating that he was terminated on August 12, 2016, "effective immediately").

¹⁰ Although Makere also invokes Rule 37(b)(2)(A), he does so only for the purpose of discussing the types of sanctions that a court may impose. See Motion for Sanctions at 8-9. But, Makere's Motion for Sanctions is not premised on discovery violations such that any reliance on Rule 37 as a basis for sanctions is unavailing. See Rule 37(b)(2)(A) (permitting sanctions where a party "fails to obey an order to provide or permit discovery . . ."); see also Malautea v. Suzuki Motor Co., Ltd., 987 F.2d 1536, 1542 (11th Cir. 1993) (explaining that Rule 37 "gives district judges broad discretion to fashion appropriate sanctions for violation of discovery orders").

61). On October 22, 2021, the Court entered an Endorsed Order (Doc. 71) deferring consideration of the Motion for Sanctions until after resolution of the merits. As such, the Court takes up the Motion for Sanctions at this time.

Makere moves for sanctions based on a dispute between the parties concerning whether Makere's 2017 FCHR Charge raised both race and sex discrimination claims. See Motion for Sanctions at 3-5. Makere maintains that the 2017 FCHR Charge included both types of claims because he titled the Charge "Racial Discrimination, Sex Discrimination." See Motion for Sanctions at 4, Ex. A. Allstate has taken the position that the initial 2017 FCHR Charge was based only on race discrimination because, despite the title, the substantive allegations solely pertained to race discrimination. See Sanctions Response at 7-8; see also 2017 FCHR Charge (Doc. 4-1). Regardless of the merits of either parties' position, this dispute plainly does not warrant the imposition of sanctions as Allstate's position is not unreasonable, in bad faith, or for an improper purpose. See Kaplan v. DaimlerChrysler, A.G., 331 F.3d 1251, 1255 (11th Cir. 2003) (discussing when Rule 11 sanctions are appropriate).¹¹

¹¹ Notably, whether or not Makere's initial 2017 FCHR Charge sufficiently included a sex discrimination claim had absolutely no bearing on the outcome of this lawsuit.

Moreover, the Motion is due to be denied for the additional reason that Makere failed to comply with Rule 11's "safe harbor" requirement. See Rule 11(c)(2). Pursuant to Rule 11(c)(2),

A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets.

See Rule 11(c)(2) (emphasis added). This provision is known as the Rule 11 "safe harbor." In the Motion for Sanctions, Makere asserts that he satisfied this requirement via emails and phone calls he exchanged with opposing counsel. See Motion for Sanctions at 9 n.2, Ex. D; see also id., Attach. 5. However, the Rule specifically requires service of the motion. See Rule 11(c)(2). Indeed, "an informal warning, in the form of a letter or other document, without service of a separate Rule 11 motion is almost universally regarded as insufficient to trigger the 21-day safe harbor period." See Herederos de Roberto Gomez Cabrera, LLC v. Teck Res. Ltd., No. 20-21630-Civ-SCOLA/TORRES, 2022 WL 1203562, at *5 (S.D. Fla. Mar. 29, 2022) (collecting cases); see also Wright & Miller, Federal Practice and Procedure § 1337.2 (4th ed. 2023) ("Note that informal notice—rather than formal service—of a potential violation is insufficient to trigger the beginning of the twenty-one day safe harbor period."). Pursuant to his Certificate of Service, Makere served the

Motion for Sanctions on Allstate the same day he filed it with the Court. See Motion for Sanctions at 11. Makere’s “failure to give [Allstate] the twenty-one day safe harbor period forecloses Rule 11 sanctions” for the challenged statements. See Macort v. Prem, Inc., 208 F. App’x 781, 786 (11th Cir. 2006). Accordingly, the Motion for Sanctions is due to be denied.¹²

Last, the Court turns to Makere’s request for judicial notice and related request for clarification concerning the dismissal of his FCRA claims. See Plaintiff’s Motion for Judicial Notice of Plaintiff’s Full Administrative Complaint (Dated 4/10/19) (Doc. 41; Request for Judicial Notice), filed February 9, 2021; Plaintiff’s Motion for Clarification (Doc. 97; Clarification Motion), filed on July 7, 2023. Allstate filed responses in opposition to these Motions on February 22, 2021, and July 24, 2023, respectively. See Defendant’s Response in Opposition to Plaintiff’s Motion for Judicial Notice of Plaintiff’s Full Administrative Complaint (Dated 4/10/19) (Doc. 42; Judicial

¹² The Court notes that on January 9, 2024, Makere filed Plaintiff’s Memorandum of Law in Support of ‘Plaintiff’s Motion for Sanctions’ (Doc. 105; Sanctions Memo). Allstate filed a response in opposition to this Sanctions Memo on January 23, 2024. See Defendant’s Response in Opposition to Plaintiff’s Memorandum of Law in Support of Plaintiff’s Motion for Sanctions [D.E. 59] (Doc. 106). In the Sanctions Memo, Makere attempts to supplement his Sanctions Motion with additional acts purportedly warranting sanctions. See Sanctions Memo at 1. Specifically, Makere asserts that sanctions are warranted based on Allstate’s contention in its Motion for Summary Judgment that the 2019 Charge was filed on April 26, 2019. See Sanctions Memo at 3-4. However, as discussed below, whether the operative filing date for the 2019 administrative proceedings is April 10, 2019, or April 26, 2019, is subject to reasonable dispute. Thus, Allstate’s position on this matter does not warrant sanctions. Regardless, Makere failed to comply with the Rule 11(c)(2) safe harbor requirement before raising this additional basis for sanctions. See Sanctions Memo at 10 (certifying service on January 9, 2024, the same day Makere filed the document with the Court).

Notice Response); Defendant's Response in Opposition to Plaintiff's Motion for Clarification (Doc. 98; Clarification Response). Makere also filed a supplement to his Request for Judicial Notice on November 18, 2023. See Plaintiff's Memorandum of Law in Support of 'Plaintiff's Motion for Judicial Notice . . . Dated 4/10/19)' [sic] (Doc. 102; Judicial Notice Suppl.). And Allstate filed a response in opposition to that filing as well. See Defendant's Response in Opposition to Plaintiff's Memorandum of Law in Support of Plaintiff's Motion for Judicial Notice Dated 4/10/19 (Doc. 104; Response to Judicial Notice Suppl.), filed December 4, 2023.

These filings all concern Makere's ongoing contention that he filed the 2019 FCHR Charge on April 10, 2019, and not on April 26, 2019, as the Court stated in the 2021 Order. This issue is relevant solely to the Court's finding in the 2021 Order that Makere's FCRA claims are administratively barred. See 2021 Order at 14-18. The Court's ruling was premised on the finding that the FCHR issued timely "No Cause" determinations regarding both the 2017 FCHR Charge and the 2019 Charge. Id. Although the Court previously denied Makere's motion for reconsideration of this finding, see Order (Doc. 91), to ensure an adequate record on appeal, the Court finds it appropriate to address Makere's argument on the merits and put the matter to rest.

The verified 2019 Charge bears an FCHR time stamp showing receipt on April 26, 2019, see 2019 EEOC Charge Form (Doc. 6-1), and it is this 2019

Charge on which the Court relied in the 2021 Order. See 2021 Order at 11. Nevertheless, as stated above, Makere contends that he actually initiated this second round of administrative proceedings on April 10, 2019. In support, Makere submits an email he sent to the FCHR on that date requesting an investigation into his “employment discrimination complaint against Allstate Insurance Company.” See Motion for Judicial Notice at 3, Ex. A. Makere contends that he included with that email an EEOC Charge Form and a “Complaint Attachment.” See id. at 3. He submits a copy of the “Complaint Attachment,” which bears an FCHR time stamp of April 10, 2019. Id., Ex. B, part 1 at 1. Notably, the Complaint Attachment, although signed, is not verified. Id., Ex. B, part 3 at 52. Makere does not provide a copy of the “EEOC Form 5” which he maintains was also attached to that email. See id. at 3, Ex. B, part 3 at 53.¹³ On this record, it is unclear whether the operative filing date for purposes of the 2019 administrative proceedings is April 10 or April 26.

¹³ Significantly, although Makere attached numerous documents to his response to Allstate’s initial motion to dismiss, he did not submit this email or the time-stamped attachment until after the Court entered the 2021 Order. See generally Plaintiff’s Response in Opposition to Defendant’s Motion to Dismiss (Doc. 12). Notably, Allstate attached the EEOC Charge Form with the April 26, 2019 time-stamp to its initial motion to dismiss and, relying on the April 26, 2019 date, argued that the FCRA claims in the 2019 Charge were barred by the FCHR’s October 18, 2019 “No Cause” determination. See Defendant’s Dispositive Motion to Dismiss Plaintiff’s Complaint with Prejudice, and Memorandum of Law in Support Thereof (Doc. 4) at 3-4, 10 n.4; id., Ex. F (Doc. 6-1). Thus, Makere had notice of this issue and the opportunity to contest it prior to the Court’s 2021 Order. See Order (Doc. 91) (denying reconsideration based on this issue). Nevertheless, in the interest of completeness and given Makere’s pro se status, the Court takes this opportunity to address the import of the alleged April 10, 2019 filing date.

However, as Allstate argues in its Judicial Notice Response, this dispute has no impact on the resolution of Makere's claims because regardless of which date governs, Makere's FCRA claims are due to be dismissed. See Judicial Notice Response at 3.

"Before a plaintiff may bring an FCRA civil action, he must exhaust his administrative remedies, as set forth in Fla. Stat. § 760.11." See McCullough v. Nesco Res. LLC, 760 F. App'x 642, 646 (11th Cir. 2019). This statute requires a plaintiff to file "formal charges with the EEOC or a state commission within 365 days of the alleged FCRA violation." Wen Liu, 693 F. App'x at 796 (citing Fla. Stat. § 760.11(1)). As with the Title VII claims discussed above, given that Makere received unequivocal notice of his termination on August 12, 2016, even if he filed the charge as he contends on April 10, 2019, it remains far beyond the 365-day statutory period for exhausting any FCRA claims arising during his employment. Thus, Makere's FCRA claims premised on acts of discrimination, harassment or retaliation that occurred during his employment with Allstate are not actionable.

The only claim which may not have been time-barred as of April 10, 2019, is Makere's retaliation claim premised on acts of post-termination retaliation. However, to the extent Makere raised such an FCRA claim in this action, it was premised on the same allegations that formed the basis of Makere's § 1981 and Title VII post-termination retaliation claims. See TAC at 47-48. In the

2023 Order, the Court dismissed those claims pursuant to Rule 12(b)(6) because Makere failed to allege a plausible claim for relief on that basis. See 2023 Order at 19-28, 31 n.15. Significantly, “the FCRA is modeled after Title VII, and claims brought under it are analyzed under the same framework” See Alvarez v. Royal Atl. Developers, Inc., 610 F.3d 1253, 1271 (11th Cir. 2010). As such, even if Makere’s FCRA post-termination retaliation claim is not procedurally barred, it is due to be dismissed for the same reasons Makere’s Title VII and § 1981 post-termination retaliation claims were dismissed—Makere fails to allege a plausible claim of post-termination retaliation. See 2023 Order at 19-28, 31 n.15.

In light of the foregoing, the Court will grant Makere’s Request for Judicial Notice and Motion for Clarification to the extent he asks the Court to consider his evidence of an April 10, 2019 filing date. However, having considered this evidence, the Court finds that the FCRA claims are due to be dismissed regardless of which filing date controls and will supplement the 2023 Order with these alternative bases for dismissal of those claims. See Reynolds v. Calhoun, 650 F. Supp. 3d 1272, 1275 (M.D. Ala. 2023) (“[A] district court has broad and ‘plenary power’ over its interlocutory orders, and ‘may therefore reconsider, revise, alter or amend that order at any time prior to final judgment.’” (quoting Hardin v. Hayes, 52 F.3d 934, 938 (11th Cir. 1995))). At this time, the Court has resolved all of the claims raised in this action and will

therefore direct the Clerk of the Court to enter judgment in Allstate's favor and close the file. Accordingly, it is

ORDERED:

1. Defendant's Motion for Summary Judgment on Counts X-XIII of Plaintiff's Third Amended Complaint and Incorporated Memorandum of Law (Doc. 99) is **GRANTED**.
2. Plaintiff's Motion for Sanctions (Doc. 59) as supplemented by Plaintiff's Memorandum of Law in Support of 'Plaintiff's Motion for Sanctions' (Doc. 105) is **DENIED**.
3. Plaintiff's Motion for Judicial Notice (Doc. 41) and Plaintiff's Motion for Clarification (Doc. 97) are **GRANTED** to the extent set forth above and otherwise **DENIED**.
4. The Court's June 21, 2023 Order (Doc. 96) is supplemented as set forth in this Order.
5. Pursuant to the Court's determinations in this Order, the June 21, 2023 Order (Doc. 96), and the February 8, 2021 Order (Doc. 40), the Clerk of the Court is directed to enter **judgment** in favor of Defendant Allstate Insurance Company and against Plaintiff Elias Makere on all claims raised in these consolidated actions.

6. The Clerk of the Court is further directed to terminate all pending motions and deadlines as moot and close the file.

DONE AND ORDERED in Jacksonville, Florida, this 26th day of March, 2024.


MARCIA MORALES HOWARD
United States District Judge

lc11
Copies to:

Counsel of Record
Pro Se Party

SPECIFIC PUBLIC RECORDS

APPENDIX

11TH CIRCUIT COURT OF APPEALS

24-11336-J

Appeal From

US District Court, Florida, Middle District

3:20-cv-00905-MMH-LLL

Makere v Allstate

VOLUME PR
ITEM 01*
PAGES 0291-0305

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:

* NOT ENTIRE DOCUMENT | PERTINENT PARTS ONLY
 Pages 1-11, 14-15, 133

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

ELIAS MAKERE, FSA, MAAA	)	<u>CASE NUMBER</u>
Appellant/Plaintiff	)	22-13588-AA
	)	
v.	)	
	)	<u>(LT)</u>
ALLSTATE INSURANCE COMPANY	)	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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Certificates	10 th Page
Exhibits	14 th 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

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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/e3mgBP HesXg

Electronic Copy: (text-searchable)

TextBookDiscrimination.com/Files/CA11/22013588_GMOT_20221123_125318.pdf

SERVICE LIST

Kimberly J. Doud, Esquire (0523771)
Heather A. Johnson, Esquire (*pro hac vice*)
Lauren C. Robertson, Esquire (1024845)

E: kdoud@littler.com
E: hajohnson@littler.com
E: lcrobertson@littler.com
P: 407.393.2900
F: 407.393.2929

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

(appellee's trial lawyers)

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

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

24-11336-J

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

VOLUME PR
ITEM 02*
PAGES 0306-0323

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:

* NOT ENTIRE DOCUMENT | PERTINENT PARTS ONLY
 Pages 1-12, 15-19

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

ELIAS MAKERE, FSA, MAAA	)	<u>CASE NUMBER</u>
Appellant/Plaintiff	)	22-13588-AA
	)	
v.	)	
	)	<u>(LT)</u>
ALLSTATE INSURANCE COMPANY	)	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 (<i>clear error</i>)

Table of Contents:

Context	2 nd Page
Motion	3 rd Page
Certificates	11 th Page
Exhibits	15 th 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
Hobart, IN 46342
P: (904) 294-0026
E: justice.actuarial@gmail.com
W: TextBookDiscrimination.com
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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).

^{3/} Proffered on the grounds of *clear error*; and preserved by Appellant’s objections (filed on 2/22/21 in the LT).

^{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

^{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](https://www.TextBookDiscrimination.com/Files/CA11/22013588_GMOT_20221123_194716.pdf)

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

SERVICE LIST

Kimberly J. Doud, Esquire (0523771)
Heather A. Johnson, Esquire (*pro hac vice*)
Lauren C. Robertson, Esquire (1024845)

E: kdoud@littler.com
E: hajohnson@littler.com
E: lcrobertson@littler.com
P: 407.393.2900
F: 407.393.2929

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

(appellee’s trial lawyers)

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. See § 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
www.doah.state.fl.us

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.

COPIES FURNISHED:

Tammy S. Barton, Agency Clerk
(eServed)

Stephanie C. Generotti, Esquire
(eServed)

Joe Murray
(Address of Record)

Lisa Cosby
(Address of Record)

Karen E. Smeda, Esquire
(eServed)

CIP

United States Court of Appeals
Eleventh Circuit

24-11336-J
Makere v Allstate

{unchanged}

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

Makere v Allstate, 24-11336

**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

Lower Tribunal:

Lambert, Laura

Magistrate

Howard, Marcia

District Judge

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 14th day of October 2024, 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

Electronic Copy: (text-searchable)

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[TextBookDiscrimination.com/Allstate/OpeningBrief02](https://www.textbookdiscrimination.com/Allstate/OpeningBrief02)

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HTML	TextBookDiscrimination.com/Allstate/Complaint-Full.html
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Video	https://youtu.be/e3mgBPHeSxg

Link to State-Born Cover-Up ([HTML](#), [PDF](#), [Video](#)) | *Makere v Early* ('*Ku Klux Klan Act of 1871*')

HTML	TextBookDiscrimination.com/Info/Misc/ALJPerjury/Complaint-Amended
PDF	TextBookDiscrimination.com/Files/USFLND/21000096_AAC_20211231_123954.pdf
Video	https://youtu.be/ RaJXFfXOCE

SERVICE LIST

Kimberly J. Doud, Esquire (0523771)
Heather A. Johnson, Esquire (*pro hac vice*)
Lauren C. Robertson, Esquire (1024845)

E: kdoud@littler.com
E: hajohnson@littler.com
E: lcrobertson@littler.com
P: 407.393.2900
F: 407.393.2929

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

(appellee's trial lawyers)

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