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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

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

**PLAINTIFF’S MOTION FOR A TELEPHONIC CONFERENCE
ON PLAINTIFF’S MOTION FOR SANCTIONS (DOC NO 59)**

Plaintiff, ELIAS MAKERE, on this 1st day of July 2021, respectfully moves this Honorable Court to conduct a 5-10 minute telephonic conference with both parties to finalize “*Plaintiff’s Motion for Sanctions*” (hereinafter “That Motion”) (Doc No 59; 6/11/21).

Key Points:

- | | | |
|-----|---------|-----------------------------------|
| A.) | Points | demonstrable lie of material fact |
| B.) | Grounds | due process |

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Background: Plaintiff moved for sanctions on Defendant's perjury/fraud
Problem: Defendant has continued its poisonous conduct
Request: This Court affords Defendant due process - with a hearing

Rule 1 | Fed. R. Civ. P. | Scope and Purpose (highlights added)

"[These rules] be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding."

Rule 78 | Fed. R. Civ. P. | Hearing Motions

"(a) PROVIDING A REGULAR SCHEDULE FOR ORAL HEARINGS. A court may establish regular times and places for oral hearings on motions."

Local Rule 3.01(h) | USFLMD | Oral Argument

"A party must request oral argument or an evidentiary hearing in a separate document accompanying the party's motion or response and stating the time necessary."

§57.105(1) FS | Sanctions¹⁷ (highlights added)

"(1) Upon the court's initiative or motion of any party, the court shall [impose a sanction]...[if the] party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial: (a) Was not supported by the material facts necessary to establish the claim or defense; "

Precedence

- 8:18-cv-00550-WFJ-AEP - USFLMD (2/11/21)
- 2:18-cv-00715-JES-MRM - USFLMD (3/12/21)
- 2:20-cv-00500-SPC-NPM - USFLMD (4/2/21)
- 3:21-cr-00022-MMH-MCR - USFLMD (7/8/21)

USFLMD regularly holds motion hearings

Abbreviations

- 1DCA - Florida's First District Court of Appeal
- FS - Florida Statute
- USFLMD - US District Court, Florida, Middle District

MOTION

I. Procedural Recap

1. On June 11, 2021, Plaintiff filed That Motion (under Rule 11(b) Fed. R. Civ. P.).
2. Fourteen days later – on June 25, 2021 – Defendant filed “*Defendant's Response in Opposition to Plaintiff's Motion for Sanctions*” (“That Response”) (Doc No 61).

II. Analysis

3. The matter involving sanctions against Defendant is fully briefed.

III. Argument in Support of a Motion Hearing

4. Rule 78 Fed. R. Civ. P. grants this Court the power to hold **motion hearings**.
5. Rule 1 Fed. R. Civ. P. states that this Court can deploy Rule 78 with the aim of securing the “*just, speedy, and inexpensive determination*” of every action.
6. The 11th Circuit confirmed that sanctioning misconduct accomplishes this goal (highlights added):

“The major goals of Rule 11 are to rid the courts of meritless litigation and to reduce the growing cost and burdensomeness of civil litigation.”

– Donaldson v. Clark, 819 F.2d 1551 (11th Cir. 1987)

7. Persuasive authority^{1/} for a motion hearing on sanctions comes in the form of §57.105(1) FS which states that a Court “shall” impose a sanction when a litigant bases a defense on a lie. Waves of appellate decisions have emphasized this point.^{2/} Pursuant to That Motion, a demonstrable lie of material fact is what is at stake here.

8. As defined by 1DCA, “shall” means mandatory (highlights added):

“The word “shall” in section 57.105 has been found to evidence the legislative intent to impose a mandatory penalty in the form of reasonable attorney’s fees to discourage baseless claims, by placing a price tag on losing parties who engage in these activities.”

– Albritton v. Ferrera, 913 So.2d 5 (Fla. 1st DCA 2005)

9. Given this mandatory nature, a **due process** hearing follows suit (highlights added):

“Attorneys and clients facing possible discipline under Rule 11 have interests qualifying for protection under the Due Process Clause of the Fifth Amendment. Procedural due process requires notice and an opportunity to be heard before any governmental deprivation of a property interest.”

– Donaldson v. Clark, 819 F.2d 1551 (11th Cir. 1987)

Plus, a hearing on sanctions will help protect against Defendant’s potential cries of fairness:

“Providing due process will ensure that Rule 11 will not be applied arbitrarily, that erroneous application of the rule will be minimized, and that creative legal arguments and vigorous advocacy will not be stifled.”

– Donaldson v. Clark, 819 F.2d 1551 (11th Cir. 1987)

10. This is particularly important in the instant case, because a telephonic hearing will provide **conclusory evidence of Defendant's misconduct**. The hearing will achieve this via **direct inquiry**. Specifically, Plaintiff asks this Honorable Court to ask Defendant three questions:

Question Number 1:

“Did Elias Makere’s 6/30/17 administrative complaint charge you with sex discrimination?”

Question Number 2:

“On September 8, 2017, did you acknowledge that Elias Makere’s discrimination complaint was on the basis of race and sex”

Question Number 3:

“On May 21, 2021, did you lie about whether Elias Makere charged you with sex discrimination?”

The true answer to each question, of course, is public record. Yet, as highlighted in ‘*Transcript A*’ of That Motion, Defendant has avoided direct inquiry (also see That Response’s failure to address the last two questions). So, a hearing will yield crucial judgment which prior motions/conferrals have failed to unearth.

11. Plaintiff reckons that if the shoe were on the other foot (and Plaintiff was the one being accused of perpetrating a fraud upon the Court), this judiciary would hold this hearing without delay (see **Affidavit**).
12. Thus, Plaintiff pleads with this Court to hold this telephonic motion hearing; especially since it will be quick.

Expected Duration

13. Plaintiff expects the hearing will take 5-10 minutes to complete (Local Rule 3.01(h) USFLMD).
14. For convenience, he has appended the pertinent parts of the three public records that hold the truth behind the requested questions for hearing (§10) (**Appendix A-C**).

CONFERRAL

Dating back to May 27, 2021, Plaintiff has tried to get Defendant to answer all three questions (via phone/email). Defendant, however, refused to answer them.

On June 28, 2021, Defendant told Plaintiff that it would oppose this motion. It added, though, that it would neither forfeit its due process right to a hearing nor miss attending a hearing.

With all relevant matters now considered, Plaintiff believes the foregoing presents a compelling (ie, *due process*) and important (ie, *direct inquiry*) reason for obtaining the requested relief.

CONCLUSION

WHEREFORE, Plaintiff respectfully asks this Honorable Court to hold a 5-10 minute telephonic hearing to finalize *Plaintiff's Motion for Sanctions*.

Dated this 1st day of July 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 Century Schoolbook 13-point Font (contents); thus complying with the font requirements of Local Rule 1.08.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of July 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/} Plaintiff proffers §57.105 FS for persuasive authority only.

^{1/} for instance: Brahmbhatt v. Allstate, 655 So.2d 1264; Procacci v. State, 690 So.2d 603; Wells v. Vallier, 25 Fla. L. Weekly D1280 (Fla. 2d DCA May 26, 2000); TIE Communications v. Toyota, 391 So.2d 697; New England v. Robertson, 506 So.2d 1161 (Fla. 3d DCA 1987); Freixas v Buena Vista Lakes, 559 So.2d 1184 (Fla. 3d DCA 1990); Galbraith v. Inglese, 402 So.2d 574 (Fla. 4th DCA 1981); Morrone v. State Farm, 664 So.2d 972 (Fla. 4th DCA 1995); Branch v. Charlotte County, 627 So.2d 577 (Fla. 2d DCA 1993).

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)

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APPENDIX A

Charge of Discrimination

From: Plaintiff
To: State Agency (FCHR)

Date Signed: 6/30/2017

[marked]

201701432

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

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APPENDIX B

Defendant's Official Position Statement

From: Defendant
To: State Agency (FCHR)

Date Signed: 9/8/2017

[marked]



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

Allstate Insurance Company is the nation's largest publicly held personal lines insurer and is licensed to sell and service personal lines insurance and financial products. Mr. Makere began his career with Allstate Benefits, a subsidiary of Allstate Insurance Company on November 18, 2013. He was an Actuary Associate from the time he was hired until he was involuntary termination on September 13, 2016. As an Actuary Associate, Mr. Makere

¹ This position statement, including all attachments, is submitted solely in the interests of cooperating with the EEOC in an effort to achieve informal administrative resolution of this charge. In submitting this position statement, Allstate does not intend to waive any defenses it may have to the charge, or in any way prejudice itself with respect to any issue, whether of a procedural or substantive nature. In addition, the information contained herein is submitted on the basis of the undersigned's current understanding of the facts, which may change as more information is gathered.

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APPENDIX C

Defendant's Statement

From: Defendant
To: Court (USFLMD)

Date Signed: 5/21/2021

[marked]

I. BACKGROUND AND PROCEDURAL HISTORY¹

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. 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 an unlawful employment practice occurred. *See* Exhibit B.

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. Many of the allegations involved incidents occurring well prior to June 30, 2016 (365 days before the filing of the First Charge). The parties engaged in vigorous motion practice, and a four-day final evidentiary hearing was conducted including Plaintiff’s own testimony and testimony of 15 Allstate witnesses, who Plaintiff cross-examined. On April 18, 2019, the Administrative Law Judge (“ALJ”) issued a 111-page Recommended Order finding Allstate committed no unlawful employment practice and recommending the FCHR dismiss the First Petition in its entirety. *See* Exhibit D. Notably, the ALJ addressed each allegation of

¹ Defendant previously set forth this history in its Dispositive Motion to Dismiss Plaintiff’s Complaint with Prejudice (ECF 4) and Dispositive Motion to Dismiss Plaintiff’s Amended Complaint and Second Amended Complaint with Prejudice (ECF 49).

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 FOR A TELEPHONIC MOTION HEARING TO
FINALIZE PLAINTIFF'S MOTION FOR SANCTIONS (DOC NO 59)**

The affiant, Elias Makere, swears or affirms as follows:

Background

1. I am over the age of eighteen (18).
2. I am a plaintiff in the above-captioned case.
3. This affidavit is made in good faith.

Familiarity

4. I have read the Local Rules of Court, the Federal Rules of Civil Procedure, the Federal Rules of Evidence, and the Middle District's Discovery Handbook.
5. The information in this affidavit is based on my own personal knowledge.

Facts

6. Allstate told this Court a demonstrable lie of material fact.
7. The false statements it made are contradicted by public record.
8. Importantly, Allstate knew it was making false statements.
9. It lied.
10. Allstate told a massive lie. It told you I didn't charge it with sex discrimination despite knowing all along that I did.
11. Allstate has a sickness.
12. It's spread its sickness to many others. Some of whom are facing legal action for their perjury (eg, Hon. E. Gary Early (ALJ)).
13. Now, Allstate's trying to infect this Court with that same virus.
14. I believe that if you hold a quick 5-10 minute telephonic conference you will see Allstate's disease with perfect clarity. Or – at the least – its disease will be recorded for any reviewer.
15. The only mystery will be whether this Court will choose to vaccinate itself from the company's virus.
16. I strongly believe, that if I were the one telling these stone-cold lies you would've already grabbed the needle. You would've already handed out sanctions.

Request

17. So, may you please hold this meeting to see whether Allstate's viral lies will be combatted or whether they will be given a more infectious strain.

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 1st day of July 2021.

UNITED STATES OF AMERICA



7/1/2021

Elias Makere, Plaintiff/Affiant

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