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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 RESPONSE IN OPPOSITION TO
DEFENDANT’S MOTION TO DISMISS
PLAINTIFF’S AMENDED COMPLAINT**

Plaintiff, ELIAS MAKERE, on this 29th day of March 2021, respectfully asks this Honorable Court to deny “*Defendant’s Dispositive Motion to Dismiss Plaintiff’s Amended Complaint and Second Amended Complaint with Prejudice and Memorandum of Law in Support Thereof*” (hereinafter “That Motion”).

Key Points:

- A.) Grounds Sufficient Facts. Plausible Culpability.
- B.) Precedence USFLMD regularly denies similar motions

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Background: Plaintiff amended his complaint against Defendant
Problem: Defendant moved to dismiss the case on a customary ground
Request: This Court denies Defendant's motion

Rule 8 | Fed. R. Civ. P. | General Rules of Pleadings | (highlights added)

"(a) CLAIM FOR RELIEF. A pleading that states a claim for relief must contain: (1) a short and plain statement... (2) a short and plain statement... and (3) a demand for the relief sought..."

Rule 12 | Fed. R. Civ. P. | Defenses and Objections...

"(b) HOW TO PRESENT DEFENSES. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion: ... (6) failure to state a claim upon which relief can be granted;"

Precedence

- 3:20-cv-00156-HES-JBT - USFLMD (12/8/20)
- 2:20-cv-00468-SPC-MRM - USFLMD (12/22/20)
- 2:20-cv-00497-SPC-NPM - USFLMD (1/27/21)
- 8:20-cv-00104-CEH-CPT - USFLMD (2/26/21)
- 3:19-cv-00384-BJD-MCR - USFLMD (3/2/21)
- 3:20-cv-00065-MMH-JRK - USFLMD (3/5/21)
- 8:18-cv-02941-CEH-CPT - USFLMD (3/8/21)
- 8:20-cv-02951-VMC-TGW - USFLMD (3/23/21)

USFLMD recently denied similar motions to dismiss

Abbreviations

- [C###] - Paragraph ### from The Complaint^{2/}
- [M###] - Page ### from That Motion
- EEOC - Equal Employment Opportunity Commission
- FCHR - Florida Commission on Human Relations
- FS - Florida Statute
- USFLMD - US District Court, Florida, Middle District
- USFLND - US District Court, Florida, Northern District

RESPONSE

1. Defendant attached an exhibit to That Motion. The exhibit was a recommended order from an administrative law judge at Florida's Division of Administrative Hearings. It presently operates as the burning cross in Defendant's discriminatory campaign.
2. This is so because the first two statements in that document are stone-cold lies; perjurous lies. And the author is currently being adjudicated in a sister court (USFLND; 4:21-cv-00096-MW-MAF) under the "Ku Klux Klan Act of 1871" (ie, 42 USC §1983).

a. To put it briefly, Plaintiff charged Defendant with race and sex discrimination in a state administrative agency. All government records confirmed this. That embroiled constitutional officer officially recognized these records, yet turned around and lied; by saying Plaintiff never charged Defendant with sex discrimination. The details of this klan-like act can be found in Exhibit A.

3. So, while the flames of Defendant's terroristic cross still flicker, the extinguishing facts are dousing it with each passing day.

I. Background

A. Immediate Procedural History

4. 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 (Exhibit B, Exhibit C).

5. 180 days passed, however, and the FCHR failed to make its determination. So - by operation of law (§760.11(3) FS) - Plaintiff filed charges in state court (Florida, Duval County: 16-2020-CA-3770-XXXX-MA) on June 30, 2020.
6. With much diligence (calls, emails, formal motions, administrative relinquishment, writs, etc.), Plaintiff initiated this lawsuit (under 42 USC §1981 and §760 FS) on the 12th of August 2020.
7. On February 8, 2021, this Court entered a dismissal of Plaintiff's three (3) state counts on the premise that the FCHR did not fail to meet its 180-day statutory obligation. The Court also ordered Plaintiff to amend his complaint.
8. Although Plaintiff appealed this Honorable Court's decision (see ¶2 *supra*)^{1/}, **he obliged**; filing his amended complaint ("The Complaint") on time.^{2/} Plus, he moved for judicial notice of his full administrative complaint (thereby showing that 180 days had indeed elapsed).^{3/}
9. Soon thereafter, Defendant moved to dismiss.

B. Ultimate Facts

10. Plaintiff worked for Defendant as an actuary from November 18, 2013 to August 12, 2016 ([C008], [C043]).
11. During his employment, Defendant subjected Plaintiff to a host of harassment, hostility, and disparate treatment. Acts which included:
 - a. Unwanted date requests [C012] [C013] [C014] [C041];
 - b. Racist Dolls [C025c], Racist Characterizations [C024] [C025d];
 - c. Cursing at Plaintiff for buying a condolence card [C025e];
 - d. Death threats [C029];

e. Disparate pay **[C025a]**;

(paying Plaintiff a salary significantly lower than his similarly-situated comparators)

f. Disparate privileges **[C027] [C071] [C072]**;

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

g. Disparate treatment **[C037]**

(charging plaintiff \$1,025 for an exam while never doing the same to his similarly-situated comparators)

12. Ultimately, Defendant fired Plaintiff "solely" because he failed his 8th actuarial exam **[C043] [C054]** (Exhibit D). Defendant, however, never fired any of its non-black-male employees who also failed actuarial exams **[C044]**.

13. In fact, Defendant immediately replaced Plaintiff with two non-black-male employees; neither of whom had ever passed an exam **[C046]**.

14. In due time, Plaintiff filed charges with the FCHR **[C053-C055]**.

15. Faced with these clear-cut facts of employment discrimination, Defendant went on the attack. Ramping up efforts to eliminate culpability once Plaintiff's charges went public **[C056]**.

16. Defendant started by enlisting a former employee to harass, embarrass, dissuade, and obstruct Plaintiff's case against Defendant **[C053-C085]**.

17. Defendant escalated matters by using its own employees to surveil/threaten/interfere with Plaintiff **[C086-C090] [C096-C104]**. Retaliatory attention that led to the employer deploying a man to strike Plaintiff with a car (traveling at 45 mph) **[C092-C095]**.

18. A near-fatal attack that had a pivotal impact on Plaintiff's ability to pursue his statutorily-protected action against Defendant **[C094]**.
19. Unfinished, Defendant also attacked Plaintiff financially; by convincing his former employer, Genworth Financial, to substantially reduce Plaintiff's retirement account **[C105-C112]**.
20. Still fuming with vitriol inflamed by its burning cross, Defendant sent its top actuary on a 3,000-mile trip across the country. A trip designed to relay the discriminatory propaganda that was boiling within **[C113-C115]**. And - importantly - a trip aimed at preventing Plaintiff from attaining his final actuarial credential (**Exhibit E**).
21. In short, Defendant harassed & discriminated against Plaintiff throughout his 3-year tenure, fired him discriminatorily, then tried to kill him physically - and maim him otherwise (financially, professionally) - because he complained.

C. Expounded Facts

22. In That Motion, Defendant stated that Defendant's disdain for the former employee (Mr. Higgins) - who overtly attacked Plaintiff at the behest of Defendant - rendered its involvement "inconceivable":

"Plaintiff alleges Higgins had an employment relationship with [Defendant] but [Defendant] "had disdain for Mr. Higgins" and its employees spoke negatively about Higgins - never saying a positive thing about him. See Sec. Am. Compl. (ECF 45) at ¶¶ 65-72. Based on these allegations, it is inconceivable (and certainly not plausible) Allstate played any role in Higgins' actions"

- That Motion | Page 7 Footnote

23. Defendant's involvement in Mr. Higgins' retaliatory conduct was more than conceivable; it was concrete.
24. The disdain that Defendant had for Mr. Higgins pointed to the illegitimacy of Defendant enlisting Mr. Higgins to "network" with Plaintiff. An unsolicited offer that was meant to dissuade Plaintiff from pursuing his complaint against Defendant.
25. Quick summary: Defendant spent three years dogging Mr. Higgins, then all-of-a-sudden commended him. Commendations it used to encourage Mr. Higgins to dissuade/attack Plaintiff. Commendations which came - illegitimately - 4.5 years after Mr. Higgins departed Defendant's employ (and at the outset of Plaintiff's case going public).
26. Obviously, Plaintiff knew Mr. Higgins' forays lacked legitimacy. So, when the man spent five months barking out stereotypical defamation, Plaintiff suspected Defendant was behind it. He was right **[C078-C085]**.
27. Defendant's newly hired attorney, Ms. Christine Manzo, was instructing Mr. Higgins on what to say. Even telling him how to write frivolous motions which he had no authority to file.^{4/}
28. All-in-all, it was not inconceivable that Defendant was involved in Mr. Higgins' conduct (because it demonstrably was). It was inconceivable that any reasonable person could find Defendant's actions legitimate.
- a. In fact, Defendant spent the next pages of That Motion quoting its own communications with Mr. Higgins. Communications which were 100% centered around Plaintiff's discrimination complaint against Defendant.
29. Please see the attached **Affidavit** for more.

II. Legal Standard

30. Defendant's motion to dismiss was filed under Rule 12(b)(6) Fed. R. Civ. P. [M002].

31. History show that this Court has a well-established method for resolving 12(b)(6) motions to dismiss.

32. To start out, the Court's review is limited to the "four corners" of the complaint (highlights added):

"The scope of review must be limited to the four corners of the complaint" and attached exhibits. St. George v. Pinellas County, 285 F.3d 1334, 1337 (11th Cir. 2002)."

- Braun v TD Bank | 8:20-cv-02951 | 3/23/21

"In considering the motion, courts should limit their consideration to the well-pleaded factual allegations, documents central to or referenced in the complaint, and matters judicially noticed." La Grasta v. First Union Sec., Inc., 358 F.3d 840, 845 (11th Cir. 2004) (citation omitted)."

- Parkhurst v Hiring 4 U, Inc. | 2:19-cv-00863 | 9/29/20

33. Then, the Court looks to see if a complaint satisfies the requirements set out in Rule 8(a)(2) Fed. R. Civ. P. (highlights added):

"The Federal Rules of Civil Procedure require a complaint to contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The rules also require plaintiffs to set out their claims in separate, numbered paragraphs, "each limited as far as practicable to a single set of circumstances." Fed. R. Civ. P. 10(b)."

- Parkhurst v Hiring 4 U, Inc. | 2:19-cv-00863 | 9/29/20

34. Third, USFLMD judges look to see if a complaint contains sufficient facts (highlights added):

"To survive a Rule 12(b)(6) motion to dismiss, a plaintiff must plead sufficient facts to state a claim that is "plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A plaintiff need not recite "detailed factual allegations," but must provide "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." Id. A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." Id. (quoting Twombly, 550 U.S. at 555).

- CRM Suite Corp v GM Company | 8:20-cv-00762 | 3/10/21

35. In performing this examination, the judges lend all deference to the non-movant (highlights added):

"Likewise, the Court must accept all factual allegations in the complaint as true and construe them in the light most favorable to the plaintiff. Pielage v. McConnell, 516 F.3d 1282, 1284 (11th Cir. 2008) (citation omitted). But the Court "need not accept factual claims that are internally inconsistent; facts which run counter to facts of which the court can take judicial notice;"

- Parkhurst v Hiring 4 U, Inc. | 2:19-cv-00863 | 9/29/20

36. Importantly, the factual allegations must be "plausible"; which is defined as follows:

"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." Id."

- CRM Suite Corp v GM Company | 8:20-cv-00762 | 3/10/21

37.Plus, the Court must afford leeway to layperson litigants:

"The pleadings of pro se litigants are "liberally construed" and held to a less exacting standard as those complaints drafted by attorneys. Tannenbaum v Untied States, 148 F. 3d 1262, 1263 (11th Cir. 1998). "However, a pro se litigant must still meet minimal pleading standards." Pugh v Farmers Home Admin., 846 F. Supp. 60, 61 (MD Fla. 1994) (citation omitted). And the courts are not tasked with drafting or rewriting a complaint to locate a claim. Peterson v Atlanta Hous. Auth., 998 F. 2d 904 (11th Cir. 1993)"

- Daley v Florida Blue | 2:20-cv-00156 | 12/8/20

38.Similarly, this Court stresses that motions to dismiss must be confined to the legal sufficiency of the complaint (highlights added):

*"[A] motion to dismiss should concern only the complaint's legal sufficiency, and is not a procedure for resolving factual questions or addressing the merits of the case." Am. Int'l Specialty Lines Ins. Co. v. Mosaic Fertilizer, LLC, 8:09-cv-1264-T-26TGW, 2009 WL 10671157, at *2 (M.D. Fla. Oct. 9, 2009) (Lazzara, J.)."*

- Johnson v Nocco, et al | 8:20-cv-01370 | 2/18/21

III. Analysis

39.Altogether, a methodical review of a 12(b)(6) motion to dismiss encompasses:

- a. Looking only at the "four corners of the complaint";
- b. Checking the complaint against Rule 8(a) Fed. R. Civ. P.;
- c. Determining whether it has sufficient facts;
- d. Construing all facts as true;
- e. Concluding that the claims are plausible; and
- f. Double-checking for propriety.

a. Four Corners of the Complaint

40. In the instant matter, the 'four corners of the complaint' include (i) The Complaint (with all 3 exhibits); (ii) That Motion (with 1 exhibit); (iii) Plaintiff's request for judicial notice of his "full administrative complaint" (Doc No 41); and (iv) this filing (with all 6 exhibits, and 1 affidavit).

b. Short & Plain Statements

41. The Complaint - although detailed - still contained short & plain statements describing Defendant's culpability:

"Defendant only fired the black man who failed an actuarial exam"

- [C125]

"Defendant knew that Plaintiff exercised his civil rights"

- [C126]

"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"

- [C103]

"Defendant (via Genworth) retaliated to further damage Plaintiff's employment, compensation, and employment benefits."

- [C111]

"Defendant enlisted people (eg, Mr. Myrick) to maim, injure, and/or kill Plaintiff in retaliation for filing suit"

- [C095]

As such, Plaintiff has satisfied element "b" for denial of That Motion.

c. Sufficient Facts

42. Notably, The Complaint had 153 numbered paragraphs. Many of which had subparts. None of which were redundant.

a. This assertion of non-redundancy is buoyed by two things:

i. Plaintiff's active statement that The Complaint was neither "redundant, immaterial, impertinent, or scandalous" in any respects (see Rule 12(f) Fed. R. Civ. P.).

ii. The fact that Defendant has never claimed otherwise.

43. Moreover, Plaintiff's "Full Administrative Complaint" "meticulously detailed"^{5/} over 50 events of Defendant's employment discrimination.

a. In Fall 2018, Plaintiff performed a statistical analysis on the size of administrative complaints. It revealed that his complaint (ie, his *Petition for Relief*) was 30 times larger than the average complaint (231 pages vs 7 pages) (see **Exhibit F**).

44. Put together, the four corners of Plaintiff's complaint had details that were significantly more in-depth than typical complaints.

45. Thus, Plaintiff has objectively satisfied element "c" in the multi-step analysis for denying That Motion.

d. Construing All Facts as True

46. For the purposes of evaluating That Motion's attempt to dismiss Plaintiff's retaliation Counts, this Court must accept The Complaint's 122 factual allegations as true ([C008-C129]).

47. Pertinently, the following facts operate:

- a. Defendant knew that Plaintiff charged it with discrimination;
- b. Defendant immediately responded by trying to dissuade Plaintiff;
 - i. At first, Defendant did so with guile - then with threats
- c. Unsatisfied, Defendant tried to kill Plaintiff; doing so by driving a car 45 mph into him as he rode his bicycle home;
- d. Without success, Defendant continued by getting Plaintiff's retirement benefits severely reduced (thereby encroaching on Plaintiff's gainful business relationships);
- e. Defendant also launched a smear campaign to blackball Plaintiff and influence the embroiled hearing officer;

e. Plausibility

48. Now, this analysis turns to the plausibility of these facts.

49. Generally, "A claim is facially plausible when a court can draw a reasonable inference, based on facts pled, that the opposing party is liable for the alleged misconduct. See Iqbal, 556 U.S. at 678."

50. This Court, in Strange-Gaines v Jacksonville, 3:20-cv-00056, further set out the method for determining plausibility (highlights added):

"When applying the plausibility standard, a court should undertake a "two-pronged approach." [Iqbal]. First, the court should identify and disregard legal conclusions not entitled to the assumption of truth. *Id.* Second, the court should identify and assume the truth of well-pleaded factual allegations and "determine whether they plausibly give rise to an entitlement to relief." *Id.* An example of a legal conclusion is, "the defendant was negligent." An example of a factual allegation is, "the defendant was driving 90 m.p.h. on a road with a speed limit of 45 m.p.h.""

51. First, this Court must discard any legal conclusions masquerading as facts. Plaintiff hereby states that none of the operating facts are anything other than stone-cold facts (§41, §47).

52. Thus, Plaintiff has satisfied the first prong in the two-pronged plausibility test.

53. Next, this Court should determine whether Plaintiff's well-pleaded facts rise to an entitlement of relief. The very example that this Court gave actually suits Plaintiff's circumstances to near-perfection.

*"An example of a [plausible fact entitled to relief],
"the defendant was driving 90 m.p.h. on a road with a
speed limit of 45 m.p.h.""*

- Strange-Gaines v Jacksonville | 3:20-cv-00056 | 1/26/21

54. As previously detailed, Defendant drove a car 45 mph into Plaintiff to maim/kill him in retaliation for his lawsuit on race/sex/retaliation (§41, §47); doing so amid many death threats it was levying against the former employee (§11, §17, §47).

55. Thus, with this near-perfect match in tow, Plaintiff has passed the second prong in the plausibility test. And as such, he has satisfied element "e" in the overarching analysis for denying That Motion.

f. Double-Check for Propriety

56. Lastly, the analysis must safeguard against injecting impropriety into the review (highlights added):

"The pleading standard should not be confused with the evidentiary standard; detailing all evidence in a pleading or attaching evidence to a pleading could run afoul of the "short and plain statement" requirement. Presenting arguments and all evidence in a complaint generally is improper."

- Strange-Gaines v Jacksonville | 3:20-cv-00056 | 1/26/21

57. This Court has deemed it improper for a motion to dismiss to apply an evidentiary standard. Which, unfortunately, is what That Motion tried to do:

"To establish a claim for race-based retaliation under Section 1981, a plaintiff must show: "(1) she engaged in statutorily protected activity; (2) she suffered a materially adverse action; and (3) there was a causal connection between the protected activity and the adverse action." Chapter 7 Trustee v. Gate Gourmet, Inc., 683 F.3d 1249, 1259 (11th Cir. 2012) (internal quotation marks omitted)."

- [M007]

58. This quote from That Motion came from an appellate court decision on a motion for **summary judgment**. Summary judgment, of course, is governed by Rule 56 Fed. R. Civ. P. (not Rule 12(b)(6)). Such requests are based on unconquerable fact. And - importantly - they occur *after* discovery.

59. Thus, Defendant is wrong: Plaintiff does not need to meet an evidentiary burden at the motion-to-dismiss stage. Evidentiary determinations are the exclusive province of the fact finder (ie, the jury - in this case).

60. Instead, as the controlling law in Twombly holds, the four corners of Plaintiff's complaint need only raise the inference that discovery will reveal evidence:

"While the facts need not be detailed, they must "raise a reasonable expectation that discovery will reveal evidence" for the plaintiff's claim. Twombly, 550 US at 556"

- Cooper v Murphy, et al | 2:18-cv-00675 | 11/6/20

61. Thus, upon double-checking for impropriety, Plaintiff has placed the final piece of the 12(b)(6) review standard squarely onto the pile for motion denials.

CONCLUSION

WHEREFORE, Plaintiff respectfully asks this Honorable Court to deny *"Defendant's Dispositive Motion to Dismiss... Amended Complaint..."*, because Plaintiff has submitted a well-pled set of factual elements pointing to Defendant's unlawful employment conduct; worthy of a jury's deliberations.

Dated this 29th day of March 2021.

Respectfully submitted,

/s/ Elias Makere

ELIAS MAKERE, FSA, MAAA, Plaintiff

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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 29th day of March 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/} please see "*Plaintiff's Objections to this Honorable Court's Partial Dismissal Order*" (filed on 2/22/21) for more details.

^{2/} The amended complaint was not proofread (filed at 11:59pm 2/26/21). So, Plaintiff filed a corrected version the next business day (~ 8:08 am 3/1/21). The proofread version is the operative complaint (ie, 'The Complaint').

^{3/} please see "*Plaintiff's Motion for Judicial Notice of Plaintiff's Full Administrative Complaint (Dated 4/10/19)*" (filed on 2/9/21)

^{4/} At all pertinent times, Mr. Higgins was a non-party. On 6/21/18, Defendant instructed Mr. Higgins on filing a discovery motion for a different non-party. He obviously had no standing to do so. Plus, Defendant was well-aware of Mr. Higgins prior malevolence & obstruction (sanctions, etc.). Defendant's conduct was part-&-parcel to its unlawful campaign of retaliation against Plaintiff.

^{5/} "meticulously detailed" is how Defendant's attorney described it (~ Spring 2018).

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EXHIBIT A

Verified Complaint
Ku Klux Klan Act of 1871
(42 USC §1983)

Makere v Early

US District Court, Florida, Northern District
4:21-cv-00096-MW-MAF

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

ELIAS MAKERE, FSA, MAAA
(Plaintiff)

- against-

HON. E. GARY EARLY, ALJ
(Defendant)

VERIFIED CIVIL COMPLAINT

42 USC §1983
January 31, 2021

JURY TRIAL DEMANDED

♪

Deep in the chambers of a state agency, a man cried foul of a corporation's conduct. With due speed, the agency transmitted both of his fundamental sounds to a nearby hearing officer.

An officer, however, with corrupted hearing. An officer, however, who insisted that only one sound was made; eschewing the second for the echoed, stereotyped tales of his fathers.

*His perjurous actions were not sound. For they ran afoul of **the man** - and **the grounds** that constituted **the land** which his **forefathers found**.*

♪

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ABBREVIATIONS

ALJ Administrative Law Judge

DOAH Division of Administrative Hearings (Florida)

FCHR Florida Commission on Human Relations

FS Florida Statute (2020)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA, TALLAHASSEE DIVISION

ELIAS MAKERE, FSA, MAAA

)

Plaintiff,

)

)

vs.

)

Case No (LT):

)

Division: (4) Tallahassee

HON. E. GARY EARLY, ALJ

)

Jury Trial Demanded

Defendant,

)

Yes | No

VERIFIED COMPLAINT

COMES NOW, Plaintiff, Elias Makere on this 31st day of January 2021 and hereby sues Defendant, the Honorable E. Gary Early, and states the following:

I. NATURE OF THE CLAIM

1. This action is brought under 42 USC §1983 - the Ku Klux Klan Act of 1871 ("§1983") - to redress Defendant's unlawful conduct towards Plaintiff (also see 28 USC §1331, §1343, and §1367). Unlawful conduct that infringed on Plaintiff's constitutional rights (including but not limited to the 1st, 5th, and 14th amendments).

II. JURISDICTION: AMOUNT

2. Pursuant to 28 USC §2201 and §2202, Plaintiff seeks declaratory relief, injunctive relief, and damages in excess of thirty thousand dollars (\$30,000) - exclusive of interest, costs, and attorney fees (also see 42 USC §1985, 42 USC §1988, Rule 54 Fed. R. Civ. P.).

III. JURISDICTION: PARTIES

3. At all times material hereto, Plaintiff was a resident of Jacksonville, FL (Duval County).

4. Upon information and belief, Defendant - at all times material hereto - worked and lived in-or-around Tallahassee, FL (Leon County). Furthermore, Defendant was an administrative law judge (see §120.65 FS) for Florida's Division of Administrative Hearings. A state agency for the territory's executive branch of government (see §20.22(2)(f) FS).

IV. JURISDICTION: VENUE

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

V. STATUTORY PREREQUISITES

6. It appears that no administrative remedies need to be exhausted before initiating this lawsuit. Indeed, DOAH does not have a formal grievance procedure for addressing unlawful conduct of its officers. Thus, the matter before this Honorable Court is ripe for adjudication.

VI. STATEMENT OF THE FACTS

7. Plaintiff fell into Defendant's grasp by virtue of a lawsuit that he filed against a private corporation. A brief review of that case is important for contextualizing Defendant's conduct.

Originating Lawsuit (Stage Agency, *Makere v Allstate*)

8. On June 30, 2017, Plaintiff filed an employment discrimination complaint with the FCHR. Pursuant to §760.11(1), he alleged that his former employer (Allstate Insurance Company) had violated his civil rights on the basis of race **and** sex (see **Exhibit A**).

9. On September 8, 2017, Allstate denied **both** allegations (see **Exhibit B**). Stating that it fired Plaintiff for a legitimate reason. Specifically, because he had failed an actuarial exam (see **Exhibit C**):

"Complainant was terminated solely because he failed his [FSA] exam."

- Allstate Insurance Company, 9/8/17

10. On December 15, 2017, the FCHR concluded its investigation. Notably affirming that race **and** sex were the basis of Plaintiff's complaint (see **Exhibit D**).

11. On January 19, 2018, Plaintiff filed his Petition for Relief with the FCHR. Just as in his original charge, he listed only race and sex as the protected characteristics for his complaint (see **Exhibit E**). Thus, pursuant to §760.11(7) FS and §120.569 FS, the FCHR transmitted it to DOAH.

12. After a series of irregularities (authority breaches, deposition sit-ins, recusals, etc.), Defendant became the administrative hearing officer over Plaintiff's case (circa November 13, 2018).

13. Despite the procedural incongruities, the facts continued to develop in Plaintiff's favor; heavily.

14. Allstate made it known that many of its *other* employees had also failed exams. Yet, Allstate never fired any of them. This was the '*smoking gun*' for proving that Allstate's reason for terminating Plaintiff's employment was a pretext.

15. Moreover, at the hearing, three other revelations were cementing:

a. Allstate granted the work-from-home privilege to its *other* employees. An accommodation it denied to Plaintiff on countless occasions.

b. Allstate made Plaintiff pay \$1,025 for an actuarial exam fee; a payment it never required any of its *other* employees to make.

c. Allstate paid Plaintiff an annual salary that was significantly lower than his similarly situated comparators.

16. These core facts rendered Plaintiff's lawsuit (against Allstate) a textbook case of employment discrimination. One which - unfortunately - ran counter to widespread propaganda (as foretold by the Ku Klux Klan itself; and its progenies).

17. Faced with these probative facts, Defendant went on the attack.

Defendant's Unlawful Conduct: (A) Evidence Suppression

18. On November 30, 2018, during the moments in which the payment disparity was being revealed (see ¶15b, *supra*), Defendant ordered Plaintiff to cease questioning.

19. After the hearing - around January 9, 2019 - Plaintiff asked Defendant for a redress of the cessation order (citing due process). He further detailed the importance of the requested testimony/revelation.

20. Two days later (January 11, 2019), Plaintiff received a copy of the hearing transcript. It was missing one page (and one page only). That crucial page was the one that contained testimony on the payment disparity (\$15b) - and Defendant's cessation order.

a. It is important to note that prior to this date, Plaintiff had never requested a hearing transcript on his case.

i. Plaintiff suspects that Defendant knew this, and was preying on Plaintiff's novice (Plaintiff was *pro se*).

21. Given these circumstances - and upon Plaintiff's information/belief - Defendant willfully and knowingly hid evidence.

Defendant's Unlawful Conduct: (B) Perjury

22. Defendant took it one step further, though, by making a wholesale removal of Plaintiff's sex discrimination charge.

23. On April 19, 2019, Defendant entered its Recommended Order ("RO").

24. The first page of the document had a section titled "*Statement of the Issue*". Where Defendant excluded Plaintiff's sex discrimination charge (see **Exhibit F**).

25. The second page had a section titled "*Preliminary Statement*". Where Defendant continued to exclude Plaintiff's sex discrimination charge. This time, however, Defendant made the fateful declaration that Defendant never complained of sex discrimination prior to the DOAH proceedings (see ¶11, *supra*) (see **Exhibit G**).

"[Plaintiff], also **for the first identifiable time**, alleged that Allstate, and in particular [Plaintiff's manager], engaged in sexually provocative and inappropriate behaviors, which [Plaintiff] alleged to be "sexual harassment and discrimination""

- The Honorable E. Gary Early, ALJ | 4/18/19 | Florida

26. Defendant repeated that highlighted line (ie, "for the first identifiable time") several more times throughout his authored RO.

27. The statement, of course, was false.

28. Plaintiff did charge Allstate with sex discrimination.

a. He did so in his original charge (6/30/17, see ¶8);

b. Allstate acknowledged the sex basis (9/8/17, ¶9); and

c. The FCHR explicitly ruled on the basis of sex (12/15/17, ¶10)

29. Nevertheless, the force and effect of Defendant's statement made the FCHR change its tune.

30. On June 27, 2019, the FCHR issued its Final Order ("FO"). In which it listed race as the only protected characteristic in Plaintiff's complaint (see **Exhibit H**); and adopted Defendant's ruling.

31. Defendant's lie had its intended effect.

32. Now, it is important to recognize that Defendant knew he was lying.

Defendant's Knowledge of the Truth

33. Prior to authoring his RO, Defendant deliberately acknowledged that the sex discrimination charge was in Plaintiff's originating complaint.

34. On February 6, 2019, Allstate moved Defendant to take official recognition of the FCHR's Determination (under §90.201 FS).^{1/}

35. That state-issued Determination letter read, in pertinent part, as follows (highlights added):

"Complainant worked for Respondent as an Actuary. Complainant alleged that Respondent discriminated against him based on his race and sex."

- The FCHR | 12/15/17 | Florida

36. On February 18, 2019, Defendant granted the motion. Thereby cementing - unequivocally - that he **knew** that Plaintiff charged Allstate with sex discrimination. He said the following (highlights added).

"[Allstate's] Motion for Official Recognition requests that official recognition be taken of the Notice of Determination: No Reasonable Cause, and of the Determination: No Reasonable Cause, both of which were issued by the Florida Commission on Human Relations on December 15, 2017. Those documents provided the point of entry to [Plaintiff] for this proceeding."

- The Honorable E. Gary Early, ALJ | February 18, 2019 | Florida

37. Thus, Defendant's repeated "statements" to the contrary were a known lie (a big lie - in fact).

38. A big lie that impacted the outcome of Plaintiff's lawsuit against Allstate. A case which sought monetary damages (among other things).

VII. ULTIMATE FACTS

39. Defendant broke the law in his quest to deny Plaintiff relief.

Defendant:

- a. hid evidence (see ¶18-21); and
- b. committed perjury (see ¶22-38).

VIII. LEGAL APPLICATION

COUNT I: FIRST AMENDMENT RIGHT TO LEGAL PROTECTION | 42 USC §1983

40. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VI (Paragraphs 7 through 38).
41. Defendant's unlawful actions (individually and in total) abridged Plaintiff's right to petition the State of Florida for a redress of his grievances against Allstate Insurance Company.
42. While acting under the color of state law (§120.569 FS, §120.65 FS), Defendant denied Plaintiff access to the state's court system (see §760.11(7) FS). An act that violated Plaintiff's First Amendment right (1st Amendment US Constitution).
43. Defendant did so via evidence suppression and perjury (§92.525 FS).

COUNT II: FIFTH AMENDMENT RIGHT TO DUE PROCESS | 42 USC §1983

44. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VI (Paragraphs 7 through 38).
45. Defendant's unlawful actions (individually and in total) abridged Plaintiff's right to due process. It is well settled that a violation of due process occurs when an agency excludes/removes a legal basis from a claimant's discrimination charge.
46. Thus, while acting as a state hearing officer (§120.569 FS, §120.65), Defendant violated Plaintiff's constitutional rights (5th Amendment US Constitution) by criminally removing the sex discrimination basis from his complaint.

COUNT III: FOURTEENTH AMENDMENT RIGHT TO EQUAL PROTECTION | 42 USC §1983

47. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VI (Paragraphs 7 through 38).
48. Defendant's unlawful actions (individually and in total) abridged Plaintiff's right to a fair trial on the matters litigated.
49. While acting as the administrative law judge on Plaintiff's case (ie, under the '*color of state law*' - §120.569 FS, §120.65 FS) - Defendant discriminatorily prevented Plaintiff from attaining the legal protections that Florida afforded other similarly-situated people.
50. Defendant did so when he (a) suppressed crucial evidence (¶18-21); and (b) perjured himself (¶22-38).
51. As such, Defendant violated Plaintiff's constitutional rights to the "equal protection of [§760.11 FS]" (14th Amendment US Constitution).

COUNT IV: SUPREMACY CLAUSE | 42 USC §1983

52. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VI (Paragraphs 7 through 38).
53. Defendant's unlawful actions (individually and in total) breached Article VI Section 2 of the US Constitution (ie, the "Supremacy Clause"). He did so when he usurped the federal government's power to protect Plaintiff from 1st, 5th, and 14th amendment violations.

COUNT V: PERJURY

54. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VI (Paragraphs 7 through 38).

55. Defendant - infused with the power bestowed upon him by statute - broke the law (§92.525 FS) by making a false statement of material fact. He sold his falsehood to another state agency - which was acting in its official capacity (§22-30).

56. That agency (the FCHR) bought his lie; and thereby cemented Defendant's violation of Plaintiff's constitutional rights (1st Amendment - access to the court; 5th Amendment - due process; 14th Amendment - equal protection; Art. VI §2 - supremacy clause).

JUDICIAL IMMUNITY

57. The Doctrine of Judicial Immunity does not attach to this case for two fundamental reasons.

58. First, Defendant is not a judicial officer. Although he is a judge *per se*, he is an administrative judge. A designation that does not afford him the immunities reserved for judicial officers.

59. Secondly, and perhaps more importantly, Defendant broke the law (§92.525 FS - perjury). Judicial Immunity does not cover legal violations.

DAMAGES

60. As a direct and proximate result of said acts, Plaintiff has suffered - and continues to suffer - financial loss and loss of earning capacity. Plus, he has suffered (and continues to suffer) mental anguish, distress, pain, great expense, inconvenience, professional damage and other pecuniary and nonpecuniary losses.

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

RESERVATION OF RIGHTS

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

63. Plaintiff may retain an attorney to represent him in prosecuting this action and if so will be obligated to pay them a reasonable fee for their services.

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

REQUEST FOR JURY TRIAL

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

REQUEST FOR RELIEF

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

- b. Declaring that Defendant violated §1983;
- c. Enjoining Defendant from committing further violations of §1983;
- d. Awarding Plaintiff compensatory damages (back pay, front pay, including interest, lost fringe benefits, etc.) which Defendant's unlawful acts precluded him from obtaining.
- e. Awarding Plaintiff the cost of this action, together with reasonable attorney's fees (if any).
- f. Awarding Plaintiff pre-judgment interest.
- g. Awarding Plaintiff punitive damages; and
- h. Awarding such other and further relief as is just, equitable, and proper.



Dated this 31st day of January 2021.

Respectfully submitted,

/s/ Elias Makere

ELIAS MAKERE, FSA, MAAA, Plaintiff

3709 San Pablo Rd. S # 701

Jacksonville, FL 32224

P: (904) 294-0026

E: justice.actuarial@gmail.com

W: TextBookDiscrimination.com

Get **Booked Up** on Justice!

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of January 2021, I filed the foregoing with the Clerk of Courts by mailing it to United States Courthouse; 111 N. Adams St, Ste 322; Tallahassee, FL; 32301.

CERTIFICATE OF GOOD FAITH

I HEREBY CERTIFY that pursuant to Rule 11 Fed. R. Civ. P. the foregoing (1) has been submitted in good faith; (2) is supported by existing law; (3) is supported by indisputable evidence (and will likely be compounded with further evidence); and (4) the complaint otherwise complies with the requirements of Rule 11.


/s/ Elias Makere

Verification Under Oath Pursuant to 28 USC §1746

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

Executed on this 31st day of January 2021.

UNITED STATES OF AMERICA



1/31/2021

Elias Makere, Plaintiff/Affiant

Endnotes:

^{1/} in the administrative realm, "official recognition" = "judicial notice"

Note: an electronic copy of this document can be downloaded from:
www.TextBookDiscrimination.com/Pages/Misc/ALJPerjury/

EXHIBIT A

Charge of Discrimination

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

[marked]

(first page only)

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

201701432

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

Phone 904.294.0026
Fax
Email inquiry.allstate@gmail.com



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
ALLSTATE CORPORATION
2017 JUN 30 PM 12:32

EXHIBIT B

Position Statement

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

(note: Allstate = Plaintiff's former employer)

[marked]

(first page only)



Charmaine Neal
Lead Consultant
Workforce Relations Team
Human Resources

September 8, 2017

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

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

Investigator Maxwell,

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

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

FACTS

EXHIBIT C

Allstate's Termination Rationale
(ie, Allstate fired Plaintiff "solely" for failing an exam)

From: Defendant
To: State Agency (FCHR)
9/8/17

[marked]

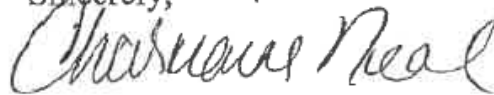
Complainant was terminated solely because he failed to pass his ASA exam and as a result, he became ineligible to maintain his status in the Allstate Financial Actuarial Career Program (ACP).

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

CONCLUSION

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

Sincerely,



Charmaine Neal
Human Resources Lead Consultant

Attachments

Page 4 of 4

EXHIBIT D

Notice of Determination

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

[marked]



Rick Scott
Governor

State of Florida

Florida Commission on Human Relations

An Equal Opportunity Employer • Affirmative Action Employer

4075 Esplanade Way • Room 110 • Tallahassee, Florida 32399-7020
(850) 488-7082 / FAX: (850) 487-1007
<http://fchr.state.fl.us>

United in One Goal: Equal Opportunity and Mutual Respect



Rebecca Steele
Chair
Michelle Wilson
Executive Director

FCHR No. 201701432

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

COMPLAINANT

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

RESPONDENT

DETERMINATION: NO REASONABLE CAUSE

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

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

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

Michelle Wilson

Dated: Dec. 15, 2017

EXHIBIT E

Petition for Relief

From: Plaintiff
To: State Agencies (FCHR/DOAH)
1/19/2018

[marked]

(first page only)

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

Phone 904.294.0026
Fax
Email inquiry.allstate@gmail.com

Allstate

PETITION SUPPLEMENT

Employment Discrimination (Race, Sex)

Here is the supplement to the Petition for Relief form. This document will begin with a description of the items in dispute. From there, the remaining pages exist to familiarize you with the case (legal elements, timeline, events, people, secured evidence, and requested evidence).

Petitioner: Elias Makere, Former Allstate Employee
Dates: April 2014 – October 2016
Race: Black
Sex: Male
Existence of Retaliation? Yes

000032

EXHIBIT F

Recommended Order

From: Defendant
To: State Agency (FCHR)
4/19/2019

[marked]

(Pages 1 and 2 only)

{Defendant's removal of sex discrimination charge}

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ELIAS MAKERE,

Petitioner,

vs.

Case No. 18-0373

ALLSTATE INSURANCE COMPANY,

Respondent.

RECOMMENDED ORDER

Pursuant to notice, this case was heard in Jacksonville, Florida, on July 31, 2018, before Lawrence P. Stevenson, and on November 28 through 30, 2018, and January 29, 2019, before E. Gary Early, designated Administrative Law Judges of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Elias Makere, pro se
No. 701
3709 San Pablo Road South
Jacksonville, Florida 32224

For Respondent: Carmen Rodriguez, Esquire
Law Offices of Carmen Rodriguez, P.A.
Suite 411
15715 South Dixie Highway
Miami, Florida 33157

STATEMENT OF THE ISSUE



Whether Petitioner, Elias Makere, was subject to an unlawful employment practice by Respondent, Allstate Insurance

Company ("Respondent" or "Allstate"), on account of his race or due to retaliation for his opposition to an unlawful employment practice in violation of section 760.10, Florida Statutes.

PRELIMINARY STATEMENT

On June 30, 2017, Petitioner filed an eight-page complaint of discrimination ("Complaint of Discrimination") with the Florida Commission on Human Relations ("FCHR") which alleged that Respondent violated section 760.10 of the Florida Civil Rights Act of 1992 ("FCRA"), by discriminating against him on the basis of his race or as retaliation.

On December 15, 2017, the FCHR issued a Determination: No Cause, and a Notice of Determination: No Cause, by which the FCHR determined that reasonable cause did not exist to believe that an unlawful employment practice occurred.

On January 19, 2018, Petitioner filed a 231-page Petition for Relief (the "Petition") with the FCHR. The Petition included allegations of racial discrimination for which there is no evidence of their having been presented to FCHR or having been part of the FCHR investigation. The Petition also, for the first identifiable time, alleged that Allstate, and in particular Lisa Henry, engaged in sexually provocative and inappropriate behaviors, which Petitioner alleged to be "sexual harassment and discrimination." He alleged that "[t]he FCHR ignored these events."

EXHIBIT G

Recommended Order

From: Defendant
To: State Agency (FCHR)
4/19/2019

[marked]

(2nd page only)

{defendant's perjury}

Company ("Respondent" or "Allstate"), on account of his race or due to retaliation for his opposition to an unlawful employment practice in violation of section 760.10, Florida Statutes.

PRELIMINARY STATEMENT

On June 30, 2017, Petitioner filed an eight-page complaint of discrimination ("Complaint of Discrimination") with the Florida Commission on Human Relations ("FCHR") which alleged that Respondent violated section 760.10 of the Florida Civil Rights Act of 1992 ("FCRA"), by discriminating against him on the basis of his race or as retaliation.

On December 15, 2017, the FCHR issued a Determination: No Cause, and a Notice of Determination: No Cause, by which the FCHR determined that reasonable cause did not exist to believe that an unlawful employment practice occurred.

On January 19, 2018, Petitioner filed a 231-page Petition for Relief (the "Petition") with the FCHR. The Petition included allegations of racial discrimination for which there is no evidence of their having been presented to FCHR or having

been part of the FCHR investigation. The Petition also, for the first identifiable time, alleged that Allstate, and in particular Lisa Henry, engaged in sexually provocative and inappropriate behaviors, which Petitioner alleged to be "sexual harassment and discrimination." He alleged that "[t]he FCHR ignored these events."

EXHIBIT H

FCHR Final Order
Exclusion of Sex Discrimination Complaint

From: State Agency (FCHR)
To: Defendant/Plaintiff/Allstate
6/27/2019

[marked]

(first page only)

{end result of Defendant's 'big lie'}

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

ELIAS MAKERE,

Petitioner,

v.

ALLSTATE INSURANCE COMPANY

Respondent.

EEOC Case No. None

FCHR Case No. 2017-01432

DOAH Case No. 18-0373

FCHR Order No. 19-044

**FINAL ORDER DISMISSING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE**

Preliminary Matters

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

EXHIBIT B

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 C

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 D

Defendant's Termination Rationale
(ie, Defendant fired Plaintiff "solely" for failing an exam)

From: Defendant
To: State Agency (FCHR)
9/8/17

[marked]

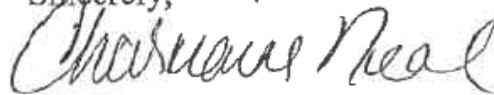
Complainant was terminated solely because he failed to pass his ASA exam and as a result, he became ineligible to maintain his status in the Allstate Financial Actuarial Career Program (ACP).

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

CONCLUSION

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

Sincerely,



Charmaine Neal
Human Resources Lead Consultant

Attachments

Page 4 of 4

EXHIBIT E

Photo

Plaintiff Receiving his FSA (final actuarial credential)



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

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

EXHIBIT F

Plaintiff's Analysis of Administrative Complaint Size

DOAH

"Petitioner's Motion for Official Recognition of FCHR Petitions for Relief"
10/30/2018

[pages 1, 34-36 only!]

[↓file full here↓]

https://www.doah.state.fl.us/DocDoc/2018/000373/18000373_237_10302018_16090776_e.pdf

[↑download here↑]

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

ELIAS MAKERE,)	
Petitioner,)	
)	Case No. 18-0373
vs.)	2017-01432
)	
ALLSTATE CORPORATION,)	
Respondent)	

**PETITIONER’S MOTION FOR OFFICIAL RECOGNITION OF
FCHR PETITIONS FOR RELIEF**

Petitioner, ELIAS MAKERE, on this 30th day of October 2018, respectfully moves this Court to recognize the historical Petitions for Relief that the Florida Commission on Human Relations (FCHR) has filed with the DOAH.

Key Points:

- | | |
|----------------|---|
| A.) Precedence | The DOAH has previously granted similar Motions for Official Recognition |
| B.) Relation | This Motion coincides with Petitioner’s forthcoming “ <i>Motion to Relinquish...(C)</i> ” |

Table of Contents:

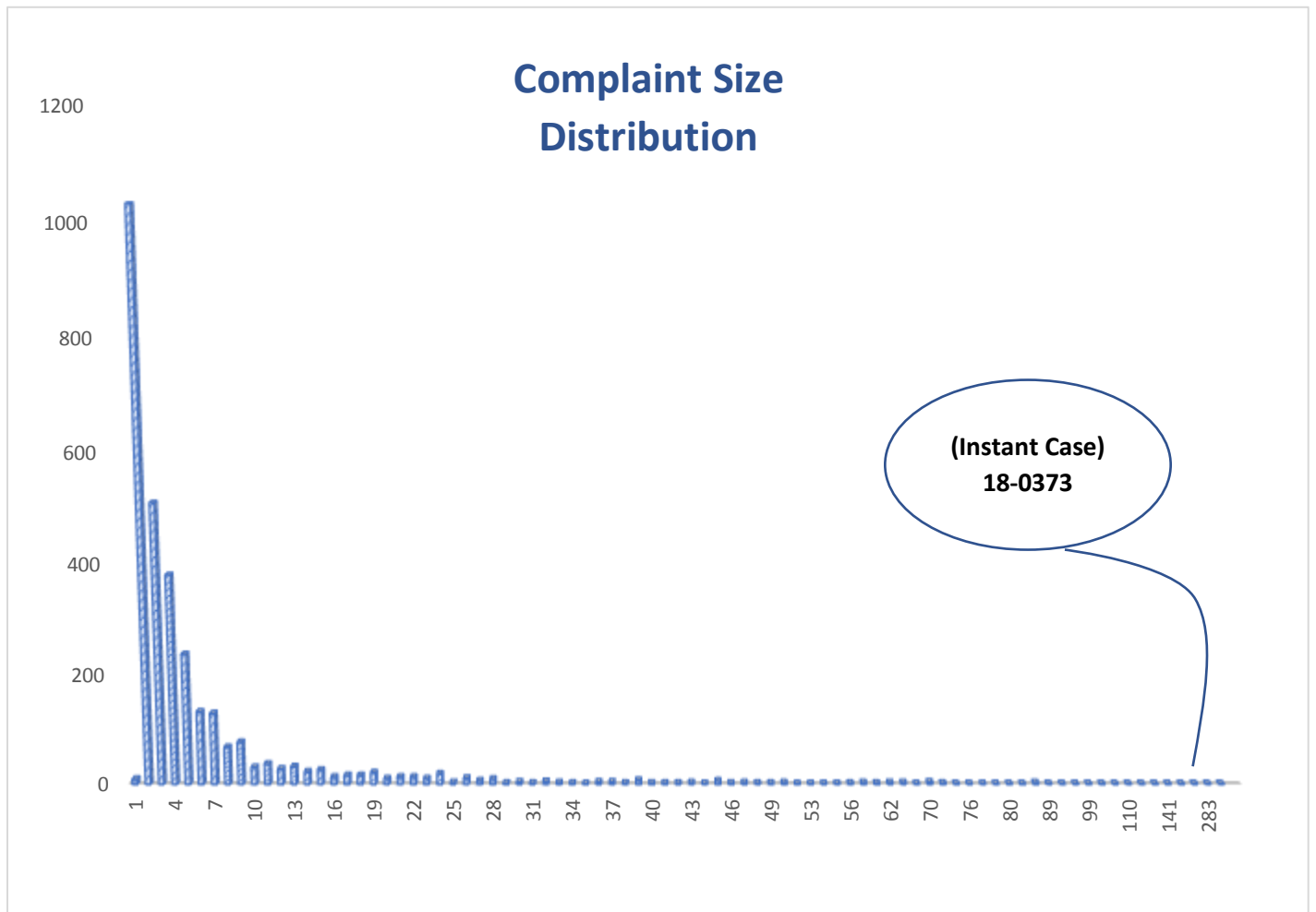
Context	Page 2
Motion	Page 3
Certificate	Page 36

Petitioner’s Analysis

Quick Analysis shows that the average complaint size is 7 pages. With the largest being 365 and the smallest being 1. As summarized below:

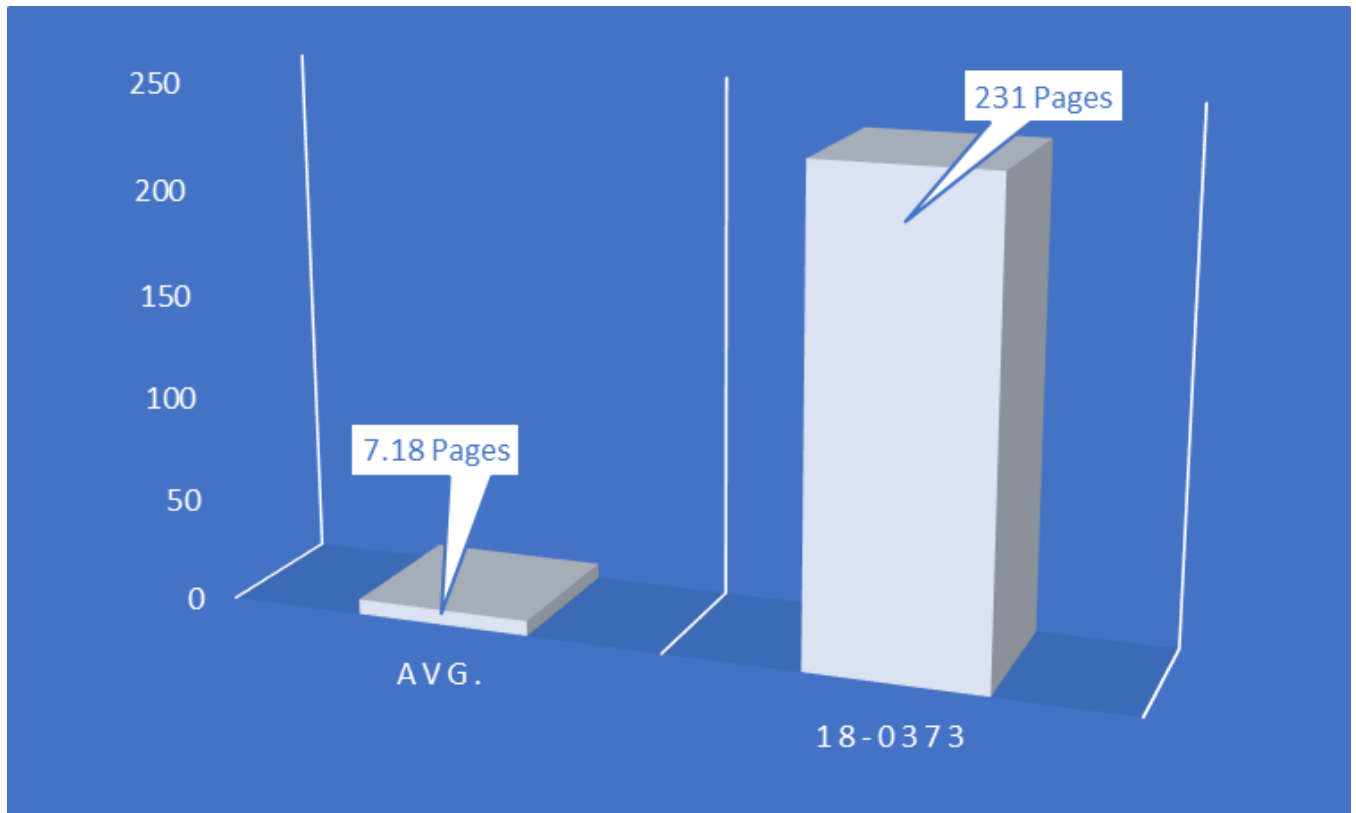
Count	Average	Standard Deviation	Minimum	Maximum
3,027	7.18	12.35	1	365

The following graph shows the *frequency* distribution of complaint sizes:



For instance, there are 1,033 *Petitions for Relief* that are two pages long (a 2-page long complaint appears the most *frequently*).

Perhaps, most pertinent, is the comparison between the Petitioner's complaint size (231 pages) and the average complaint size (7 pages):



Law

These facts come from publicly available cases on the DOAH website (ie *capable of accurate and ready determination from verifiable sources*; §90.202).

CONFERRAL

On October 30, 2018, Petitioner asked the Respondent to recognize the historical *Petitions for Relief*. Afterwards, he followed up with a phone call. After receiving no answer he asked the Respondent if it opposed this Motion. The Respondent did not respond.

Nevertheless, the Petitioner believes the foregoing presents a sufficient (ie *records of the court* – §90.202) and important reason (ie, *memorandum of facts in support of a motion*– 28-106.204(1)) for official recognition.

CONCLUSION

WHEREFORE, Petitioner respectfully requests that this Court grant *Petitioner's Motion for Official Recognition of Historical Petitions for Relief*.

Dated this 30th day of October 2018.

Respectfully submitted,

ELIAS MAKERE

s/ Elias Makere

Pro Se

3709 San Pablo Rd. S # 701

Jacksonville, FL 32224

Tel: (904) 294-0026

E-mail: justice.actuarial@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of October 2018, I electronically filed the foregoing with the Clerk of Courts by using the Florida Courts E-filing Portal which will send a notice of electronic filing to the following:

Liebler, Gonzalez & Portuondo
44 West Flagler Street
Courthouse Tower 25th Floor
Miami, FL 33130
(respondent's lawyer)

on behalf of:

Allstate Corporation
2775 Sanders Road F5
Northbrook, IL 60062
(respondent)

Tammy S. Barton, Agency Clerk
Florida Commission on Human Relations
Room 110
4075 Esplanade Way
Tallahassee, Florida 32399-7020
(agency)

Elias Makere
3709 San Pablo Rd. S #701
Jacksonville, FL 32224
(petitioner)

s/ Elias Makere

^{1/} The DOAH records listed herein come from a full search of every publicly available, FCHR-Induced *Petition for Relief* on the DOAH website.

^{2/} Cover Pages were omitted in the tabulation.

PLAINTIFF'S AFFIDAVIT

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

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

**PLAINTIFF’S AFFIDAVIT IN SUPPORT OF
PLAINTIFF’S RESPONSE IN OPPOSITION TO
DEFENDANT’S MOTION TO DISMISS**

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. In its motion to dismiss, Allstate highlighted its tag-team smear campaign with former employee Mr. Kirk W. Higgins (Lutz, FL).

7. It stated that its disdain for Mr. Higgins rendered its involvement in cooperative retaliation "inconceivable". Allstate was unwittingly making my evidentiary point for me.
8. The only thing inconceivable was the notion that a reasonable person could find Allstate's conduct legitimate.
9. It is a fact that Mr. Higgins worked for Allstate before I did.
10. It is a fact that none of Allstate's employees ever said a positive thing about him. Instead, they lamented several aspects of his alleged habits.
11. Importantly - as described in my accompanying response (ie, this filing) - Allstate did a 'one-eighty' with Mr. Higgins. Once my suit entered the public domain, Allstate curried favor with him (giving him outdated professional commendations). Doing so - as the evidence shows - in an effort to obstruct my complaint against Allstate.
12. Mr. Higgins took it and ran with it. He did so with fervor. He did so with the delight of another prospective pat on the back.
13. He did so - crucially - with the explicit motivations of race & sex. Public record shows that Mr. Higgins believed that my demographics granted him the license to retaliate with impunity.

14. All of Defendant's culpably-named employees believed the same. Their actions said so (discriminatory proclamations, brazen date requests, employment threats, discriminatory terminations, death threats, etc.). They just lacked the assertiveness to say it outright; thereby wasting everyone's time.

15. Something that was right on time was the foreword in my amended complaint (3/1/21; Doc No 45). It was a metaphor for how Allstate viewed and treated its black male employees.

a. *"Master sent the dog to bark at the wolf."* Allstate, as the employer, was the master in the master-and-servant relationship. Allstate viewed black people - and black men in particular - as being subhuman; like dogs (or monkeys). The facts prove it (disparate pay, demeaning declarations, racist dolls, racist characterizations, brazen screamfests, denied privileges, etc.).

b. *"Master's pet obliged; panting back for master to toss him another bone."* The panting and self-defeating obedience is what Allstate rewarded; and what it tendered primarily to its black male employees. Its 'one-eighty' commendation to Mr. Higgins was a prime example of Allstate's predatory scorn for employees - and black men specifically - who complain about discrimination.

16. So, please, *make no bones about it*: Allstate is squarely responsible for all of the spiteful, malevolent, harmful, and unlawful acts that its employees carried out against me.

17. This truth becomes evermore clear upon realizing that none of Allstate's employees - individually & personally - have a bone to pick with me.

a. If you ask each employee 'was I nice to them'; they'll say yes. If ask each of them 'did I have compassion for them'; they'll say yes. If you ask them 'did I work diligently, quietly and did I mind-my-business'; they'll say yes. If you ask them whether I ever did anything malicious, selfish, or unpleasant to them (or anyone they knew); they'll say no.

18. If, on the other hand, you put two-or-more of them together (and placed them within Allstate's embrace); they'll tell you why they taunted me/harassed me/sent me death threats. They'll tell you why they wanted me dead.

19. Allstate sowed the seeds of this anti-black-male scorn, and rewarded the employees who poured it on.

Bottom Line

20. Allstate was responsible for the adverse acts that impacted me due to filing suit. Its retaliatory acts were based on my demographics; and those acts played a major role in obstructing a full recovery of the damages inflicted.

Verification Under Oath Pursuant to 28 USC §1746

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 29th day of March 2021.

UNITED STATES OF AMERICA



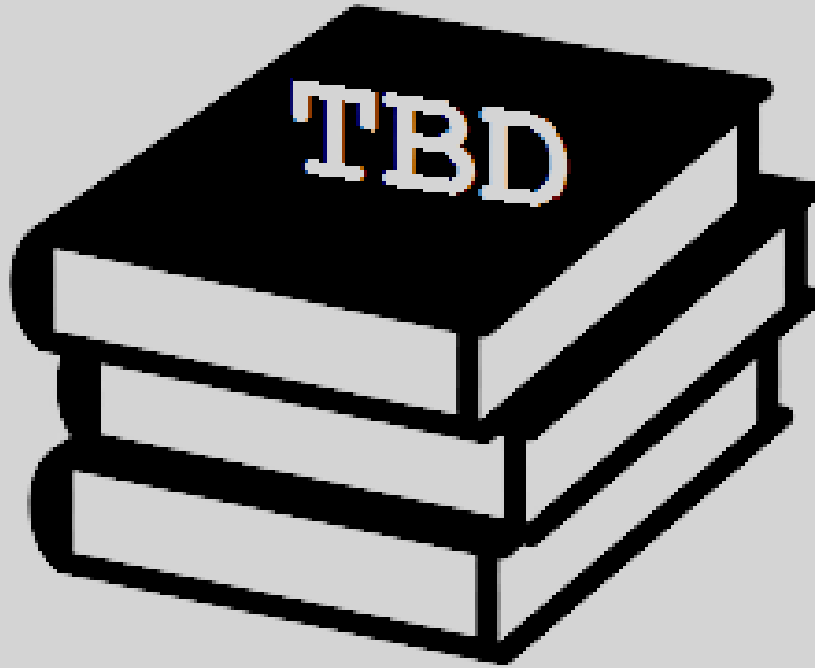
3/29/2021

Elias Makere, Plaintiff/Affiant

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