UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

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

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S AMENDED MOTION FOR ENTITLEMENT OF ATTORNEY FEES

Plaintiff, ELIAS MAKERE, on this 26th day of April 2024, respectfully asks this Court to deny "*Defendant's Amended Motion for Determination of Entitlement to Attorneys' Fees*" (hereinafter "That Motion") {#110}. Defendant filed That Motion on April 11, 2024; and did so on the bases of two demonstrable lies of material fact.

Key Points:
A.) Points meritorious suit; Defendant's lies of material fact;
B.) Grounds Defendant's guilt; state-sponsored cover-up; estoppel

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Background:	Clear-cut evidence proves Defendant's guilt
Problem:	Defendant wants to punish Plaintiff for presenting facts
Request:	Court rejects Defendant's request

Local Rule 7.01(b) | USFLMD | Motion… Entitlement | (highlights added)

"Within fourteen days after entry of judgment, the party claiming fees and expenses must request a determination of entitlement in a motion"

42 USC §1988(b) | Attorney's Fees

"In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985… the court, in its discretion, may allow the prevailing party… a reasonable attorney's fee as part of the costs,"

Precedent

- 8:22-cv-01750-CPT - USFLMD (3/26/24)
- 6:21-cv-00915-LHP - USFLMD (10/12/23)
- 3:21-cv-00514-MMH-LLL - USFLMD (9/21/23)
- 6:21-cv-00258-LHP - USFLMD (8/7/23)
- 6:22-cv-01685-PGB-EJK - USFLMD (5/30/23)
- 8:21-cv-01516-WFJ-AEP - USFLMD (2/27/23)
- 3:17-cv-01409-MMH-PDB - USFLMD (8/16/19)

USFLMD has recently granted denied similar fee requests

Abbreviations:

{#NN}	-	Docket Entry NN [of this case]
[M##]	-	Page ## of 'That Motion'
[O##]	-	Page ## of 'That Order'
DOAH	-	Division of Administrative Hearings (Florida)
FCHR	-	Florida Commission on Human Relations
FCHR SA	-	FCHR Staff Attorney
FS	-	Florida Statutes
USFLMD	-	US District Court, Florida, Middle District

MOTION

Preliminary Matters

1. That Motion is/was untimely.
    a) On March 26, 2024, this Court entered summary judgment (hereinafter "That Order") in favor of Defendant.
        i. Local Rule 7.01(b) gives litigants fourteen (14) days to seek entitlement to attorney fees.
        ii. Thus – according to Rule 6 Fed. R. Civ. P. – Defendant had until April 10, 2024 to file That Motion.
    b) On April 11, 2024, however, Defendant filed That Motion.
        i. Thereby using That Order to establish its status as a "*prevailing party*" **[M19]**.
        ii. Moreover – prior to filing That Motion – Defendant never sought to confer with Plaintiff. Nor did Defendant even indicate that it was contemplating such a filing.
    c) On that same day (ie, 4/11/24), Plaintiff notified Defendant that Plaintiff would seek sanctions against Defendant. For – among other things (ie, Defendant's *fraud upon the Court*) – Defendant's rule-breaking.
2. Although Defendant's failure to meet its filing deadline is dispositive to its request, Plaintiff will – for the sake of logic – still brief this Court.

I. Substantive Facts: Defendant's Unlawful Discrimination

3. On November 18, 2013, Plaintiff began working for Defendant.
4. Defendant admitted Plaintiff 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).
5. 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.
6. Throughout Plaintiff's 3-year tenure, Defendant subjected him to a hostile work environment. With harassment that included – but was not limited to:
    a) Unwanted date requests from his direct manager;
    b) Racist dolls, racist characterizations; and
    c) Cursing at Plaintiff for buying a condolence card.
7. Defendant also conditioned Plaintiff's employment on racial inferiority. Highlights included – but were not limited to:
    a) Paying Plaintiff a lower ASA salary than it paid other similarly-situated employees;
    b) Proclaiming that Plaintiff's newly-acquired credential (ie, ASA) "*devalue[d] the profession*".

8. Recognizing Defendant's animus, Plaintiff begged management to let him work from home; doing so on a routine basis. A request that Defendant always denied.
    a) A work privilege, however, that Defendant granted to everyone else in its actuarial department. Everyone else, of course, was of a different race & gender (as well as color).
9. Yet every time Defendant tried to avoid the hostilities, Defendant target him for more.
    a) In Fall 2015, an IT manager phoned Plaintiff; told Plaintiff a series of lies; then explained how he would get Plaintiff fired. That same manager carried out his plan.
        i. That IT manager, importantly, had been charged with employment discrimination before (ditto for Defendant).[1/]
    b) Also, in Fall 2015, Plaintiff's direct manager relayed a message from a different IT manager. A different IT manager who wanted Defendant to fire Plaintiff. Plaintiff's direct manager also relayed that the 'different IT manager' never gave a reason for the adverse desires.
10. Given these facts & circumstances, Plaintiff filed an internal discrimination complaint. The primary subject of the complaint (¶9a *supra*) acknowledged that it was based on "*racism*".

11. Thereafter, Defendant worsened the work environment for Plaintiff. With acts which included – but were not limited to:
    a) job replacement;
    b) denied raises;
    c) sabotaged work; and
    d) Defendant forcing Plaintiff to pay for a $1,025 actuarial exam fee – while never forcing any of its other employees to do the same.
12. Defendant met Plaintiff's additional internal complaints with indignation. Telling Plaintiff to "*figure out if this [was] the place for [him] to work*".
13. Soon thereafter – on Friday, August 12, 2016 – Defendant told Plaintiff that it was terminating his employment; effective immediately.
    a) Notably, Defendant's direct manager made the decision just hours after Plaintiff declined her last date request (doing so on 8/10/16).
14. Defendant's reason for firing Plaintiff was that Plaintiff had failed an actuarial exam (specifically, actuarial exam number 9). It gave no other reason.
15. Yet, Defendant had many other employees who also failed actuarial exams. Some who failed multiple exams; all who failed easier exams. Discriminatorily, though, Defendant never fired any of them.

16. Plus, immediately after firing Plaintiff, Defendant replaced him with two employees who had never even passed one exam. The disparity in qualifications is/was drastic (0 exams passed vs 8 exams passed).
17. Right after termination, Plaintiff passed the exam-in-question; and continued to avoid Defendant (and Defendant's employees).
    a) From 8/12/16 until now, Plaintiff has never done any work for Defendant; never tried; and never inquired.
18. Plaintiff did, however, attempt to seek justice and repair from the harassment/discrimination/retaliation that Defendant subjected him to. As well as punishment for the unlawful conduct Defendant has subjected [and will subject] to others.[2/]

External Discrimination Complaint #1 (*Makere v Allstate – 2017*)

19. On June 30, 2017, Plaintiff filed an employment discrimination charge with the FCHR ("First Charge"). Pursuant to §760.11(1) FS, he alleged that Defendant had violated his civil rights on the bases of race ***and*** sex.
20. On September 8, 2017, Defendant responded to the First Charge by denying ***both*** allegations. Importantly, the former employer explicitly acknowledged that Plaintiff's First Charge contained "*allegations of discrimination based upon race and sex discrimination*".
21. On December 15, 2017 the FCHR concluded its investigation. Notably affirming that race ***and*** sex were the bases of Plaintiff's First Charge.

22. On January 19, 2018, Plaintiff filed his Petition for Relief (§760.11(6)-(7) FS; §120.569(2)(a) FS). Just as in his original charge, he listed only race and sex as the protected characteristics for his complaint.

23. As Plaintiff's First Charge coursed through the State of Florida's administrative circuit; Defendant amplified its retaliation against Plaintiff. Thereby enlisting its employees (and others) to dissuade Plaintiff from pursing his lawsuit by:

    a) sending death threats to Plaintiff;

    b) smearing Plaintiff;

    c) lethally attacking Plaintiff; and

    d) more.

24. The evidence (which pointed to Defendant's guilt), however, was too strong. Thus, Plaintiff continued. Reason: Defendant's unlawful conduct presented a textbook case of employment discrimination.

25. A textbook case which – unfortunately – ran counter to widespread anti-black-male propaganda (as foretold by the Ku Klux Klan – and its progenies). Faced with these probative facts, several state officials went on the attack (¶28 *infra*).

External Discrimination Complaint #2 (*Makere v Allstate – 2019*)

26. With the attacks abounding, Plaintiff sought to amend his First Charge. Thwarted by those state officials, though, Plaintiff had to file anew.

27. So, on April 10, 2019, Plaintiff filed his second discrimination charge against Defendant ("Second Charge"). Emailing it to the FCHR; who blessed it with a same-day timestamp (2:25 PM on 4/10/19).

28. Those state officials, though, used the *color of law* to unleash more state-sponsored treachery [upon Plaintiff]. Treachery that included – but was not limited to:

    a) ALJ Edward Gary Early committing perjury;

        i. He did so by [falsely] claiming that Plaintiff's First Charge did not include a sex discrimination charge.

    b) ALJ Edward Gary Early destroying evidence;

        i. He did so by removing a crucial transcript page (which proved Defendant's prima facie guilt – in *clear & convincing* fashion).

    c) FCHR Staff Attorney Stanley George Gorsica ratifying perjury;

    d) FCHR-SA Gorsica filing a null & void determination;

    e) FCHR-SA Gorsica mailing that null & void determination to an erroneous person; and

    f) FCHR-SA Gorsica refusing to relinquish jurisdiction;

        i. Thereby forcing Plaintiff to seek a *Writ of Prohibition* (among other things).

29. Despite this additional state-sponsored treachery (¶23-25, ¶28) Plaintiff was able to enter the court system.

30. On August 12, 2020, Plaintiff initiated this lawsuit.

31. On February 8, 2021, this Court entered a partial dismissal {#40}. Thereby dismissing Plaintiff's state charges (ie, §760 FS). Doing so, importantly, because of administrative timeliness.

32. On February 9, 2021, Plaintiff asked this Court to take judicial notice of Plaintiff's [officially] time-stamped charge of discrimination (¶5 *supra*).

    a) His motion {#41} was aimed at providing the public records that would debunk the timeliness issue (¶13 *infra*).

33. On October 13, 2021, this Court ordered Plaintiff to amend his complaint {#70}. Thereby instructing him to "*include all claims and factual allegations*". Plaintiff obliged.

34. On November 4, 2021, Plaintiff filed his fully amended complaint ("The Complaint"). It included – but was not limited to – charges under: (a) the FCRA; and (b) Title VII. Plaintiff, importantly, invoked both statutes to redress all of Defendant's misconduct (ie, from 2013 onward).

35. Months later – on June 21, 2023 {#96} – this Court dismissed several counts from The Complaint (¶11, *supra*). Thereby keeping Plaintiff's Title VII charges – for the limited purpose of examining timeliness (ie,

"*statute of limitations*"). The Court also directed Plaintiff (as well as Defendant) to engage in [limited] discovery.

36. Nine months after that – on March 26, 2024 {#108} – this Court granted Plaintiff's motion for judicial notice [of the correct filing date] (¶32, *supra*). However, That Order simultaneously entered summary judgment in favor of Defendant (on the basis of administrative timeliness). A decision which claimed that the [correct] filing date no longer mattered (contrast with ¶8 *supra*). A decision which also prepped this matter for appeal **[O15]**.
37. On April 11, 2024, Defendant filed That Motion; using That Order as its impetus.
38. Importantly, Defendant propped up That Motion on the bases of two demonstrable lies of material fact.
    a) The first was Defendant's [false] claim that Plaintiff's First Charge (¶19 supra) was on the basis of race only **[M04]**. Thereby infused with the same state-sponsored perjury (¶25, ¶28) that has obstructed Plaintiff's cause of action.
    b) The second was Defendant's [false] claim that Plaintiff filed his Second Charge on April 26, 2019 **[M07]**. A material lie (see ¶31 *supra*) that Defendant has uttered many times. A material lie

about a recorded fact which this Court had previously conceded (¶36 *supra*).

II. Analysis

39. Defendant is guilty.
    a) Plus, Defendant is a long-time civil rights violator (¶9-10, ¶18).
40. Defendant has discriminated against Plaintiff on the bases of color, race, sex, and retaliation.
41. The ultimate facts show – indisputably – that Defendant fired Plaintiff for failing an actuarial exam, yet never fired any of its non-black-male employees for failing actuarial exams. In fact, all of Defendant's non-black-male employees who failed exams actually failed easier exams (and more frequently). Moreover, Defendant launched a campaign of retaliation (lethal, etc.) to dissuade Plaintiff from continuing with this legal cause of action.
    a) Plaintiff continued, though, and did so diligently.
42. Plaintiff filed all of his administrative charges on time (¶19, ¶26-27).
43. Plaintiff filed all of his judicial complaints on time (¶30, ¶33). Doing so, importantly, to abide by the Court's directions (¶33, ¶35).
44. Plus, Plaintiff's complaint was corroborated by indisputable evidence.

a) It had 3 exhibits proving Defendant's guilt (via publicly-available information);

b) It had 3 exhibits proving timeliness (via government records);

c) It had 2 exhibits showcasing the State-of-Florida's "*klan-destined*" violations; and

d) It had 2 exhibits proving Defendant's frauds upon the court (via government records).

45. Defendant – propelled by the State of Florida's lawlessness & obstructions – has defrauded this Court. It has done so multiple times; and most recently with That Motion.

46. Thus – in addition to being untimely (¶1) – That Motion is inoperable.

III. Standard for Review

47. Rule 1 Fed. R. Civ. P. gives this Court the power to deny inoperable motions:

> *"These rules… should 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 1 Fed. R. Civ. P.

48. Moreover, Local Rule 7.01(b) provides the framework for rendering decisions on *motions for entitlement of fees* (ie, That Motion):

> *"Within fourteen days after entry of judgment, the party claiming fees and expenses must request a determination*

of entitlement in a motion that: (1) specifies the judgment and the statute, rule, or other ground entitling the movant to the award"

– Local Rule 7.01(b) USFLMD

49. The US Supreme Court has long held that it is wrong to award attorney fees to civil rights violators (highlights added):

> *"That § 706(k) allows fee awards only to prevailing private plaintiffs should assure that this statutory provision will not, in itself, operate as an incentive to the bringing of claims that have little chance of success. [Footnote 19] To take the further step of assessing attorney's fees against plaintiffs simply because they do not finally prevail would substantially add to the risks inhering in most litigation and would undercut the efforts of Congress to promote the vigorous enforcement of the provisions of Title VII. Hence, a plaintiff should not be assessed his opponent's attorney's fees…"*
>
> – *Christianburg v. EEOC, 434 US 412 (1978)*

50. This Court has synthesized the US Supreme Court's holding (along with 11th Circuit decisions) to formulate a standard of review:

> *""The Eleventh Circuit has identified four factors for district courts to consider when assessing a defendant's motion for attorneys' fees under §1988:*
>
> *(1) whether the plaintiff established a prima facie case;*
> *(2) whether the defendant offered to settle;*
> *(3) whether the trial court dismissed the case prior to trial; and*
> *(4) whether there was enough support for the plaintiff's claim to warrant the court's close attention.*
>
> *Beach Blitz Co. v. City of Miami Beach, 13 F.4th 1289, 1301–02 (11th Cir. 2021) (quoting Sullivan v. Sch. Bd. of Pinellas Cnty., 773 F.2d 1182, 1189 (11th Cir. 1985)). Even if the first three factors favor the prevailing defendant, a court will not award attorneys' fees if the "particularly important" fourth factor is in the plaintiff's favor. Id. at 1302;*

> *Cordoba v. Dillard's Inc., 419 F.3d 1169, 1181–82 (11th Cir. 2005)."*
>
> – *Poulin v. Bush, 8:21-cv-1516 (USFLMD 2/27/23)*

51. Put briefly, this Court can use the following four-factor analysis when reviewing That Motion:

    a) Factor One: a prima facie showing;

    b) Factor Two: Defendant's offers to settle;

    c) Factor Three: case dismissal; and

    d) Factor Four: support for close attention.

52. Importantly – as the *Poulin* case explained – the fourth factor trumps all preceding factors.

IV. Application

53. In the instant case, the first factor is in Plaintiff's favor (heavily). The middle two factors are as well (albeit, less heavily). Plus, the fourth factor is [heavily] in Plaintiff's favor.

54. First – and according to the *McDonnell-Douglas Framework* – Plaintiff has presented a prima facie case of employment discrimination.

    a) His discrimination suit was proffered on protected characteristics (ie, color, race, sex; and retaliation);

    b) He proved that he was qualified for the position (and/or eligible for rehire);

c) He proved that he was subjected to adverse employment acts (eg, termination); and

d) He proved that other employees – who were outside of his demographic group – were not subjected to those adverse acts.

Please accord *Green v. McDonnell-Douglas, 318 F. Supp. 846 (1970)*; *Green v. McDonnell-Douglas, 463 F.2D 337 (8th Cir. 1972)*; and *McDonnell-Douglas v. Green, 411 US 792 (1973)*.

55. Secondly, Defendant suggested settlement. Albeit, faintly; and in an underhanded/dishonest/round-about fashion. Defendant did so via email communication on April 12, 2024 (please see {#116} at 20-21).

a) Plaintiff hereby concedes that this factor is not heavily in his favor.

56. Thirdly, That Order was not a dismissal (found under Rule 12 Fed. R. Civ. P.). Instead, it was an order of summary judgment (under Rule 56 Fed. R. Civ. P.).

57. Fourthly – and most importantly – Plaintiff has supported this lawsuit with *clear & convincing* evidence. He has produced undisputed documentary evidence to prove the ultimate facts of Defendant's discrimination (eg, Plaintiff's FSA status compared to Defendant's similarly-situated employees who never got close to FSA status).

a) Thereby proving that Defendant's prima facie rebuttal was unworthy of credence.

b) Instead, it was just a pretext for its true discrimination (*Texas Department of Community Affairs v. Burdine*, 450 US 248 (1981).

58. As the Poulin case held, this fourth prong renders That Motion worthy of rejection (highlights added):

> *"Here, the Court need not consider the first three factors identified by the Eleventh Circuit, as the fourth factor is dispositive… Though ultimately unsuccessful, Plaintiff's §1983 claim warranted the close attention of the Court. To be sure, this was not a claim of obvious frivolity at the time of this action's initiation…. Rather, Plaintiff supported his claim with multiple forms of evidence, thereby requiring ample briefing by the parties… This is reflected in the Court's summary judgment order, in which the Court thoroughly assessed the parties' arguments and the adequacy of Plaintiff's evidence.... A claim warranting such close review cannot be said to be frivolous, unreasonable, or without foundation… Given Plaintiff's §1983 claim was supported to the extent it required the Court's close attention, [Defendant's] Motion for Attorneys' Fees is due to be denied."*
>
> – *Poulin v. Bush, 8:21-cv-1516 (USFLMD 2/27/23)*

59. Thus – equipped with *Poulin*, *McDonnell-Douglas*, and several other authorities – this Court is well-positioned to reject That Motion. And Plaintiff hereby asks that it does.

V. Nature of Relief Sought

60. Plaintiff seeks rejection of That Motion, because:

a) it was untimely;

b) it was based on material lies; and

c) Defendant – despite benefiting from the State of Florida's obstructions/unconstitutionalities – is guilty.

61. Additionally, Plaintiff also seeks a full opportunity to file his [forthcoming] motion for sanctions. A motion based on Defendant's demonstrable lies of material facts. A motion, pertinently, which he cannot file before May 3, 2024 (please see Rule 11 Fed. R. Civ. P.).

CONFERRAL

Plaintiff hereby states that Defendant's attempt-to-confer was vain, minimal, dishonest, and made in bad faith. As soon as Plaintiff [vocally] debunked Defendant's falsehoods the former employer ended the call. Whereby it continued to dodge direct questions regarding its guilt/fraud.

CONCLUSION

WHEREFORE, Plaintiff respectfully asks this Court to reject *Defendant's Amended Motion for Determination for Entitlement of Attorney's* Fees (ie, 'That Motion'). Because Defendant's motion was based on material lies; and it was untimely (among other things).

Dated this 26th day of April 2024.

Respectfully submitted,

/s/ Elias Makere
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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 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 26th day of April 2024, 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 (4/26/24)

Endnotes:

[1/] in-or-around 2011 (ie, five years prior), a [former] Allstate employee filed a sex discrimination complaint against Allstate; thereby naming that IT manager as the primary transgressor.

[2/] In the federal system, Allstate Insurance Company has been sued [for employment discrimination] more than 900 times (source: PACER.gov). At USFLMD alone, Defendant has been sued over 20 times (since 1992).

Electronic Copy: (text-searchable)

TextBookDiscrimination.com/Files/USFLMD/20000905_GMOT_20240426_104908.pdf

Allstate's Penchant for Employment Discrimination (500+ Cases)

How-To Guide: How to Write a Motion for Relief

Link to Complaint (HTML, PDF, Video)

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