APPENDIX

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-5250 **September Term, 2020**

1:19-cv-00693-CJN

Filed On: December 22, 2020

Daniel Fling, USPS
Mail Carrier,

Appellant

v.

Andrew Martin, in his official capacity as Customer Service Supervisor at the West McLean Branch for USPS, et al.,

Appellees

BEFORE: Henderson, Rogers, and Katsas, Circuit Judges

ORDER

Upon consideration of the motion for summary affirmance, the response thereto, and the reply, it is

ORDERED that the motion for summary affirmance be granted. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam). Under the doctrine of claim preclusion, a final judgment on the merits of an

action by a court of competent jurisdiction precludes the parties or their privies from relitigating issues that were or could have been raised in that action. Smalls v. United States, 471 F.3d 186, 192 (D.C. Cir. 2006); Nat. Res. Def. Council, Inc. v. Thomas, 838 F.2d 1224, 1252 (D.C. Cir. 1988). The district court properly determined that appellant's argument that his prior case in the Eastern District of Virginia was not a final judgment on the merits was forfeited because he raised the issue only in his reply brief, Bd. of Regents of Univ. of Washington v. EPA, 86 F.3d 1214, 1221 (D.C. Cir. 1996), and did not adequately develop the argument, Davis Broad. Inc. v. F.C.C., 63 F. App'x 526, 527 (D.C. Cir. 2003). Additionally, appellant does not dispute that the prior case was adjudicated by a court of competent jurisdiction and the parties or their privies are the same. Finally, appellant's claims could have been raised in the prior case because they arise from the same "transaction or occurrence" as appellant's claims in the prior action. Page v. United States, 729 F.2d 818, 820 (D.C. Cir. 1984). Accordingly, the district court properly concluded claim preclusion bars appellant's claims in this case.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or

petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Manuel J. Castro
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DANIEL FLING,

Plaintiff,

v.

ANDREW MARTIN, et al.,

Defendants.

Civil Action No.
1:19-cv-00693 (CJN)

MEMORANDUM OPINION

(Filed Aug. 7, 2020)

Daniel Fling alleges that the U. S. Postal Service and its agents (collectively, "USPS"), violated his First Amendment right to freedom of speech and freedom of association and his Fifth Amendment due process rights when they terminated him. *See generally* Am. Compl., ECF No. 3. USPS moved to dismiss on several grounds, including that the resolution of a prior action filed by Fling in the Eastern District of Virginia precludes this suit. *See generally* Defs.' Mem. of P. & A. in Supp. of Defs.' Mot. to Dismiss ("Defs.' Mem.") at 11, ECF No. 8-1. For the reasons below, the Court grants USPS's Motion.

I. Background

Fling is a former senior mail carrier for the USPS. In 2014, he successfully challenged USPS's attempt to terminate him for complaints about inappropriate

conduct by filing a grievance contesting the bases for his removal. Am. Compl. ¶¶ 46-47,52. Four years later, USPS again terminated him for similar conduct. *Id.* ¶ 62. In particular, in mid-January 2017, a USPS customer had complained that certain encounters she had with Fling made her feel "uneasy," *id.* ¶ 66, and in March 2017, Fling was provided with a Notice of Removal based on both the conduct underlying the 2014 grievance and the 2017 customer complaint. *Id.* ¶¶ 76-78.

In November 2017, Fling filed suit in the U.S. District Court for the Eastern District of Virginia alleging that his termination constituted a breach of the collective bargaining agreement between USPS and the National Association of Letter Carriers ("NALC"), as well as a breach of NALC's duty of fair representation under 29 U.S.C. § 185 and 39 U.S.C. § 1208(b). *Id.* ¶ 98. That court dismissed Fling's complaint with prejudice on statute of limitation grounds. *Id.* ¶¶ 100-01.[1]

Almost a year later, Fling filed the current lawsuit.[2] He asserts three claims under *Bivens v. Six*

---

[1] The court dismissed all claims as time-barred under the six-month statute of limitations period under Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 160(b). Pl.'s Cross-Mot. at 2.

[2] Fling's suit names USPS; Megan J. Brennan, in her official capacity as Postmaster General; Daniel Grant, in his official capacity as Postmaster of the West McLean USPS Branch; Frederico Bynoe, in his official capacity as Carrier Supervisor at the West McLean USPS Branch; and Andrew Martin, in his official capacity as Customer Service Supervisor at the West McLean USPS Branch. *See generally* Am. Compl.

Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), alleging that his termination violated his First Amendment right to freedom of speech and freedom of association and his Fifth Amendment due process rights. Am. Compl. ¶¶ 131-51.[3] USPS moved to dismiss on several grounds,[4] including that res judicata precludes Fling's claims. *See generally* Defs.' Mem. at 11. Fling opposes USPS's Motion and partially moved for summary judgment on certain claims. *See generally* Pl.'s Mem. of P. & A. in Opp'n to Def.'s Mot and In Supp. of Pl.'s Cross-Mot. for Summ. J. ("Pl.'s Cross-Mot."), ECF No. 10-1.

II. Legal Standard

To survive a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), Fling must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "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." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The Court

---

[3] Fling originally brought claims allegedly arising under 42 U.S.C. § 1983 and the Fourteenth Amendment; however, he has since dropped them. Pl.'s Mot. at 5 n.8.

[4] USPS also argues that sovereign immunity bars Fling's constitutional claims, that Fling fails to state a claim under the First and Fifth Amendments, that Fling's Fourteenth Amendment and § 1983 claims cannot be maintained, and that *Bivens* does not apply to Fling's constitutional claims. Defs.' Mem. at 1.

must accept all well-pleaded facts alleged in the Complaint as true and draw all reasonable inferences from those facts in the plaintiff's favor. *W. Org. of Res. Councils v. Zinke*, 892 F.3d 1234, 1240-41 (D.C. Cir. 2018).

III. Analysis

The doctrine of res judicata—or claim preclusion—prevents "repetitious litigation involving the same cause of action or the same issues." *I.A.M. Nat'l Pension Fund v. Indus. Gear Mfg. Co.*, 723 F.2d 944, 946 (D.C. Cir. 1983). A subsequent lawsuit will be precluded "if there has been a prior litigation (1) involving the same claims or cause of action (2) between the same parties or their privies (3) there has been a final, valid judgment on the merits, and (4) by a court of competent jurisdiction." *Smalls v. United States*, 471 F.3d 186, 192 (D.C. Cir. 2006).

Fling concedes that three of those four elements are met here, and challenges only whether this case and the prior action "involv[e] the same claims or cause of action," *id.* Fling argues that, because he asserts different claims here than he asserted in his prior suit, and because his constitutional claims were never adjudicated in that prior suit, res judicata does not apply. *See* Pl.'s Cross-Mot. at 31. USPS counters that Fling's current and previous action do involve the same claims or cause of action because they are based on the same nucleus of facts—Fling's termination and the events leading to it. Defs.' Reply in Supp. of Mot. to Dismiss at 5, ECF No. 15. In USPS's view, the current Complaint

merely contains new legal theories that could have been asserted in the previous action. Defs.' Mem. at 7.

The Court agrees. It is well established that the doctrine of res judicata "precludes the parties or their privies from relitigating issues that were or *could have been* raised in [a previous action]." *Allen v. McCurry*, 449 U.S. 90, 94 (1980) (emphasis added) (citing *Cromwell v. Cnty. of Sac*, 94 U.S. 351, 352 (1876)). It is the "facts surrounding the transaction or occurrence which operate to constitute the cause of action, not the legal theory upon which the litigant relies." *Page v. United States*, 729 F.2d 818, 820 (D.C. Cir. 1984) (citation omitted). As a result, whether two cases implicate the same causes of action turns on whether they share the same "nucleus of facts." *Drake v. FAA*, 291 F.3d 59, 66 (D.C. Cir. 2002) (quoting *id.*). And to determine whether two cases share the nucleus of facts, the Court looks to see if cases are "related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage." *Apotex, Inc. v. FDA*, 393 F.3d 210, 217 (D.C. Cir. 2004) (quoting *I.A.M. Nat'l*, 723 F.2d at 949 n.5).

Fling points to no new material allegations in this suit, nor does he identify any change in circumstances since the prior action. In fact, the present action appears to be based on precisely the same conduct underlying the prior lawsuit. The relief Fling seeks now is also the same as the relief he sought in his prior suit—reinstatement and restitution for lost pay and benefits, *see, e.g.*, Am. Compl. ¶ 1. To be sure, Fling has

repackaged his allegations with new legal theories, but that is not enough to avoid the preclusive effect of the prior dismissal. *See Smalls*, 471 F.3d at 192 ("Although Smalls omitted any reference to the Tucker Act and any request for damages in his D.C. complaint, the factors relevant to the transactional analysis point against Smalls in light of his single goal of having his military record corrected. . . .").[5]

Fling's reliance on *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016), does not require a different result. In *Hellerstedt*, the Court merely held that a *facial, pre-enforcement* constitutional challenge to a Texas law requiring admitting privileges for doctors did not preclude a second *as-applied* challenge after

---

[5] Fling also tries to distinguish his new constitutional claims from his previous contractual claims by noting the claims have different limitation periods; however, this argument ignores that "it is the facts surrounding the transaction or occurrence which operate to constitute the cause of action, not the legal theory upon which a litigant relies." *Sorenson Commc'ns, LLC v. FCC*, 897 F.3d 214, 226 (D.C. Cir. 2018) (quoting *Page*, 729 F.3d at 820). And Fling's one-sentence argument that "[h]is EDVA claim was never adjudicated on the merits," Pl.'s Reply in Supp. of Pl.'s Cross-Mot. at 10, ECF No. 17, is waived because it is perfunctory and undeveloped, *see Johnson v. Panetta*, 953 F. Supp. 2d 244, 250 (D.D.C. 2013) ("[P]erfunctory and undeveloped arguments, and arguments that are unsupported by pertinent authority, are deemed waived." (citation omitted)); *accord Sherrod v. McHugh*, 334 F. Supp. 3d 219, 265 (D.D.C. 2018) (holding the same), and because he raises it for the first time in his reply brief, *see Lindsey v. District of Columbia*, 879 F. Supp. 2d 87, 95-96 (D.D.C. 2012) (holding that "because the District raised [an] argument for the first time in its reply brief, it is waived" (citations omitted)); *accord Latson v. Holder*, 82 F. Supp. 3d 377, 388 n.4 (D.D.C. 2015) (same).

the law had been enforced. *See id.* at 2306. In the Supreme Court's view, the cases presented different facts based on different circumstances: "Changed circumstances . . . are why the claim presented in [the previous action] is not the same claim as the petitioners' claim here. . . . Petitioners' claim in this case rests in significant part upon later, concrete factual developments." *Id.*[6] Nothing in Fling's Complaint or briefs here suggests that he is relying on new facts or changed circumstances.

IV. Conclusion

Because Fling's claims are barred by the doctrine of res judicata, USPS's Motion to Dismiss is **GRANTED** and Fling's Partial Motion for Summary Judgment is **DENIED**. An order will be entered contemporaneously with this Memorandum Opinion.

DATE: August 7, 2020 /s/ Carl J. Nichols
CARL J. NICHOLS
United States
District Judge

[6] Fling also argues that the Court should not apply res judicata because its application here "would deny [him] any due process from beginning to end." Pl.'s Cross-Mot. at 35. This argument completely ignores the fact that Fling could have brought his constitutional claims in the EDVA litigation.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DANIEL FLING, *Plaintiff,* v. ANDREW MARTIN, et al., *Defendants.*	Civil Action No. 1:19-cv-00693 (CJN)

ORDER

(Filed Aug. 7, 2020)

For the reasons stated in the accompanying Memorandum Opinion, ECF No. 18, it is hereby

ORDERED that Defendants' Motion to Dismiss, ECF No. 8, is **GRANTED** and that Plaintiff's Cross-Motion for Summary Judgment, ECF No. 10, is **DENIED**. It is further

ORDERED that the Complaint is **DISMISSED**.

DATE: August 7, 2020 /s/ Carl J. Nichols
CARL J. NICHOLS
United States
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

DANIEL P. FLING, *Plaintiff*, v. MEGAN J. BRENNAN, POSTMASTER GENERAL, ET AL., *Defendants*.	)	Civil Action No. 1:17-cv-1266 Hon. Liam O'Grady

MEMORANDUM OPINION AND ORDER

(Filed Apr. 26, 2018)

This matter comes before the Court on the Postal Service's Motion to Dismiss (Dkt. 29) and the National Association of Letter Carriers' (NALC) Motion for Judgment on the Pleadings (Dkt. 43). The motions are fully briefed and the Court dispensed with oral argument on the motions scheduled for April 6, 2018. For the following reasons and for good cause shown, both motions are **GRANTED**.

I. Background

Plaintiff initiated this lawsuit on November 7, 2017. In his amended complaint. Plaintiff. a former Postal Service city letter carrier, alleges he was improperly dismissed from his position by the Postal Service and was harmed when NALC, his union, failed to

grieve his dismissal. In count one of the amended complaint, Plaintiff pleads a hybrid claim of breach of collective bargaining agreement by the Postal Service and breach of the duty of fair representation by NALC. Dkt. 9, p. 19.

The Postal Service investigated Plaintiff for improper conduct toward a woman on his delivery route. Am. Compl. Plaintiff received the Notice of Removal from his position on March 29, 2017. Dkt. 44, Ex. 2. The Notice advised him that he would be terminated within thirty days. *Id.* The Notice also explicitly advised him, "You have the right to file a grievance under the grievance/arbitration procedure set forth in Article 15 of the National Agreement within fourteen (14) calendar days of your receipt of this notice." *Id.* Plaintiff did not bring the Notice of Removal to the attention of NALC until May 12, 2017 at the earliest. Dkt. 57, p. 1. The only contact Plaintiff had with anyone associated with NALC or the Postal Service during the fourteen days following Plaintiff's receipt of the Notice of Removal, as pleaded in the amended complaint, was "[a] few days after receiving the Notice . . . " Dkt. 9, p. 11. On that day, Plaintiff spoke with Andrew Martin, a Postal Service Customer Service Supervisor, and discussed evidence Plaintiff had on his cell phone relevant to the grounds for his termination. *Id.* Ultimately, NALC did file a grievance on Plaintiff's behalf, but it was denied as untimely. Dkt. 58, Ex. 1.

In the instant motions, the Postal Service and NALC contend that Plaintiff has failed to state a claim and that his claim is time-barred.

II. Legal Standard

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a complaint must contain sufficient factual information to "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 550 (2007). A motion to dismiss pursuant to Rule 12(6)(6) must be considered in combination with Rule 8(a)(2), which requires "a short and plain statement of the claim showing that the pleader is entitled to relief" so as to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." FED. R. CIV. P. 8(a)(2); *Twombly*, 550 U.S. at 555. While "detailed factual allegations" are not required. Rule 8 does demand that a plaintiff provide more than mere labels and conclusions stating that the plaintiff is entitled to relief. *Id.* Because a Rule 12(b)(6) motion tests the sufficiency of a complaint without resolving factual disputes, a district court "'must accept as true all of the factual allegations contained in the complaint' and 'draw all reasonable inferences in favor of the plaintiff.'" *Kensington Volunteer Fire Dep't v. Montgomery County*, 684 F.3d 462, 467 (4th Cir. 2012) (quoting *E.I. du Pont de Nemours & Co. v. Kolon Indus., Inc.*, 637 F.3d 435, 440 (4th Cir. 2011)). Accordingly, a complaint may survive a motion to dismiss "even if it appears that a recovery is very remote and unlikely.'" *Id.* (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)). A motion for judgment on the pleadings is analyzed under the same motion to dismiss standard. *People for the Ethical Treatment of Animals v. U.S. Dep't of Agric.*, 861 F.3d 502. 506 (4th Cir. 2017).

III. Analysis

As a preliminary matter, both defendants have appended to their instant motions a copy of the National Agreement and a copy of Plaintiffs Notice of Removal. In general, Courts may not look to documents outside of the complaint when considering a Rule 12 motion. FED. R. CIV. P. 12(d): *Sec'y of State For Defence v. Trimble Navigation Ltd.*, 484 F.3d 700, 705 (4th Cir. 2007). However, the Court may take judicial notice of matters of public record and it may also consider documents attached to the complaint, "as well as those attached to the motion to dismiss, so long as they are integral to the complaint and authentic." *Id.* For these purposes, documents can be deemed authentic when the opposing party does not challenge their authenticity in its filings. *Blankenship v. Manchin*, 471 F.3d 523, 526 n.1 (4th Cir. 2006).

> What the rule seeks to prevent is the situation in which a plaintiff is able to maintain a claim of fraud by extracting an isolated statement from a document and placing it in the complaint, even though if the statement were examined in the full context of the document, it would be clear that the statement was not fraudulent.

Am. Chiropractic Ass'n v. Trigon Healthcare, Inc., 367 F.3d 212, 234 (4th Cir. 2004) (quoting *In re Burlington Coat Factory Securities Litigation*, 114 F.3d 1410, 1426 (3d Cir. 1997) (quotation marks omitted)). Plaintiff does not contest the authenticity of these documents – rather, they are integral to the complaint in that they

serve as the foundation for his claim against NALC and the Postal Service.

Claim against NALC

Taking the facts of the amended complaint in a light most favorable to Plaintiff. as well as considering the complementary facts contained in the National Agreement and the Notice of Removal, Plaintiff has failed to state a claim that NALC breached its duty of fair representation.

A breach of duty of representation occurs when a union's actions are arbitrary, discriminatory, or taken in bad faith. *Air Line Pilots Ass'n v. O'Neill*, 499 U.S. 65, 67 (1991). While Plaintiff contends in his complaint that this duty was breached when NALC failed to grieve Plaintiff's Notice of Removal by the deadline of April 12, 2017, Plaintiff has not pleaded facts to plausibly conclude that NALC had been timely notified of the Notice of Removal. The Notice of Removal advised Plaintiff that he had 14 days to file a grievance and he did not. Plaintiff does not contend that NALC somehow prevented him from grieving the Notice of Removal, and there are no facts to support such an allegation. *See Groves v. Commc'ns Workers of Am.*, 815 F.3d 177, 181 (4th Cir. 2016).

Instead, Plaintiff contends that the NALC was properly notified on February 18, 2017 at the time Plaintiff was under investigation and contends that he discussed the issue with his supervisor, Andrew Martin, "a few days" after receiving the Notice of Removal.

Neither fact can save his claim. Providing notice that you are under investigation, subsequent to a "Pre-Disciplinary Interview," is not the same as providing notice that you have actually been subjected to an adverse employment action. There is nothing in the procedures or in the pleadings that rationally supports Plaintiff's contention that this February 18, 2017 notice, more than a month *before* he received his Notice of Removal, was sufficient to trigger NALC's obligation to grieve his termination under the National Agreement. While Plaintiff discussing the Notice of Removal with a supervisor may meet the requirements of Informal Step A of the grievance procedure under the National Agreement, Plaintiff would still have been required to notify the Union to move the grievance into a Formal Step A within seven days of that discussion with Martin. *See* Dkt. 44, Ex. 1, p. 3. The record is clear at this stage that that notification did not occur.

Plaintiff also contends he assumed NALC would grieve automatically on his behalf and that the Postal Service should have sent a copy of the Notice of Removal to NALC. Plaintiff has not put forth a scintilla of evidence that could support either contention. Plaintiff was made aware in the Notice of Removal that the ball was in his court to take steps to ensure a grievance was timely filed and he is assumed to have knowledge of the requirements of the National Agreement. He and he alone failed to meet those requirements to properly grieve his dismissal.

Finally, Plaintiff contends that the NALC breached its duty of fair representation when it failed to file a

plainly time-barred grievance within fourteen days after it first learned of the Notice of Removal on May 12, 2017. This contention is neither supported by law,[1] nor the plain terms of the National Agreement, nor common sense. Any such grievance would have been inexcusably time-barred and frivolous, as is demonstrated by the fact NALC ultimately did grieve Plaintiff's termination and it was rejected as time-barred. While Plaintiff contends that it was rejected as time-barred based on the 14-day grievance window beginning on May 12, 2017, this assertion is plainly contradicted by the Step B decision, rejecting that grievance, which found that the 14-day grievance window closed on April 12, 2017. *See* Dkt. 58, Ex. 1.[2]

Claim against the Postal Service

Because Plaintiffs claim against the Postal Service is a hybrid claim encompassing both a breach of duty of representation claim against NALC and a breach of collective bargaining agreement claim against the Postal Service, NALC's entitlement to judgment on the pleadings is necessarily fatal to Plaintiffs claims against the Postal Service. *See DelCostello*

[1] Plaintiffs legal support for his contention comes from two arbitration opinions from 1989 in which the underlying facts bear few similarities to the instant case. Both cases involved employees who provided notice within fourteen days of first learning of the adverse employment action in their cases.

[2] The Court considers the Step B decision both integral to the complaint and authentic. Accordingly, it is proper for the Court to consider it at this juncture. *See Blankenship v. Manchin*, 471 F.3d 523, 526 n.1 (4th Cir. 2006).

v. Int'l Bhd. of Teamsters, 462 U.S. 151, 164-65 (1983); *Thompson v. Aluminum Co. of Am.*, 276 F.3d 651, 656-57 (4th Cir. 2002) (holding that a plaintiff "must prevail upon his unfair representation claim before he may even litigate the merits of his [hybrid] claim against the employer.").

Statute of Limitations

Plaintiff's claims are time-barred under a six-month statute of limitations, running from the latter of the date of the breach by the employer or the date of the breach by the union. *Del Costello*, 462 U.S. at 169; *Harmon v. Am. Elec. Power Serv. Corp.*, 371 F. Supp. 2d 804, 812 (W.D. Va. 2005). Viewing Plaintiffs complaint in a light most favorable to him, the November 7, 2017 filing date for this lawsuit was untimely. The Postal Service terminated Plaintiff on March 29, 2017. NALC allegedly failed to grieve that termination on April 13, 2017, the day the 14 day window to grieve closed following the Notice of Removal. Accordingly, this lawsuit could only have been timely if filed on or before October 13, 2017. *See Harmon*, 371 F. Supp. 2d at 812-13. It was not.

Plaintiff argues that he is entitled to equitable tolling of the statute of limitations. However, equitable tolling is an extraordinary remedy, reserved for rare instances where circumstances beyond a plaintiff's control have resulted in the expiration of the statute of limitations and manifested a gross injustice. *CVLR Performance Horses, Inc. v. Wynne*, 792 F.3d 469, 476

(4th Cir. 2015). Plaintiff cannot meet this heavy burden because the record is clear that he did not diligently exercise his rights under the National Agreement to grieve his Notice of Removal or that either Defendant caused Plaintiff to miss the deadline for that Notice. Accordingly, Plaintiff has failed to demonstrate that he is entitled to equitable tolling of the statute of limitations and the Court holds his claim to be time-barred.

IV. Conclusion

For these reasons and for good cause shown, the Postal Service's motion to dismiss is **GRANTED**. The case against the Postal Service is **DISMISSED**. Plaintiff has requested leave to file a second amended complaint. Dkt. 50. p. 14. He has not formally moved for such leave under FED. R. CIV. P. 15 and has not included for the Court's review proposed new factual allegations. Consequently, the Court is unable to test the sufficiency of a proposed amendment. Because the Court sees no conceivable way for these claims to be adequately pleaded, particularly given the expiration of the statute of limitations. permitting a second amended complaint at this stage would be futile. Accordingly, this dismissal is **WITH PREJUDICE**.

For these reasons and for good cause shown. NALC's motion for judgment on the pleadings is **GRANTED**. The Clerk of Court is instructed to enter judgment pursuant to FED. R. CIV. P. 58 in favor of

the National Association of Letter Carriers and against the Plaintiff.

It is so **ORDERED**.

/s/ log
Liam O'Grady
United States
District Judge

April 26, 2018
Alexandria, Virginia