No._____

IN THE

SUPREME COURT OF THE UNITED STATES

Nancy D-Massenburg-Petitioner

VS.

INNOVATIVE TALENT SOLUTIONS, INC., et al-Respondent (s)

ON PETITION FOR A WRIT OF CERTIORARI TO

FOURTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

Nancy D-Massenburg

PO Box 224

Blairs, Va. 24527

919.400.2033

QUESTIONS PRESENTED

1) Whether the Fourth Circuit properly upheld the district court's dismissal of Title VII claim where the particular discriminatory practice had been identified and genuine issues of material fact that could change the outcome of the case were properly identified in Massenburg's Opposition? Fed. R. Civ. Pro. 56 (c) (1)(B), 42 U.S.C. § 2000e-7

2) Whether my Title VII, 1991 amendment claim and 42 USC 1981 (b) legal claims were treated as separate, independent, and distinct, as a matter of law and in the interest of adequate relief? Lytle v. Household Mfg., Inc., 494 U.S. 545 (1990)

3) Whether conflict exists within the Fourth Circuit where previous rulings have allowed claims "arising from" or "relating back" to the actionable EEOC intake questionnaire to serve as a "charge" for the purpose of establishing the limitations period. Fed R. of Civ. P. 15 (c) (1) (B), Federal Express Corp. v. Holowecki, 552 U.S. 389 (2008); 29 C.F.R. §§ 1601.9, 1601.12, 1626.3, 1626.6, 1626.8.

4) Whether pro se persons should be issued Notices of Deficiency and afforded the same opportunity to make corrections to filings as is offered in the lower courts to persons trained in applying the law.

LIST OF PARTIES

Pursuant to Rule 14.1(b), Petitioner states that the parties include:

- **Nancy D-Massenburg,**

  Petitioner

- **Innovative Talent Solutions, Inc. (ITS),**

  Respondent

3. **Lee Air Conditioners, Inc. (Lee),**

   Respondent

CORPORATE STATEMENT

I, Nancy Dickerson-Massenburg, am a private citizen with no corporate interests.

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OPINIONS BELOW

Petition for Rehearing was denied by the US Court of Appeals for the Fourth Circuit on February 25, 2020. Facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process. The opinion of the US Court of Appeals for the Fourth Circuit was issued on October 8, 2019 affirming the decision of the US District Court for the Eastern District of North Carolina which was issued on February 4, 2019 (Document # 176-5:16-cv-00957-D)

******

STATEMENT OF JURISDICTION

April 2020 order issued by this court extended deadline to file to 150 days from denied Rehearing en Banc. The US Court of Appeals for the Fourth Circuit denied Petition for Rehearing En Banc on February 25, 2020 after issuing its opinion on October 8, 2019 affirming the decision of the US District Court for the Eastern District of North Carolina which was issued on February 4, 2019. The jurisdiction of this Honorable Court is invoked pursuant to 15 USCA 1681p and Title 28 U.S. C. § 1254 (1)

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FEDERAL STATUTES

Title 28 U.S. C. § 1254 (1)

Title 28 U.S.C.S. § 1367(a)

Title 15 U.S.C.A. § 1681a (o)(5)(C)(i)(ii)

Title 15 USC 1681p

Title 42 U.S.C. § 1981a

Title 42 U.S.C. § 1981(b)

Title 42 U.S.C. § 2000e-2 (b), 2et seq

Title 42 USC 2000e–3a

Title 42 U.S.C. § 2000e-7

STATE STATUTES

N.C. Gen. Stat.§ 143-422.2

N.C. Gen. Stat.§ 95-243

N.C. Gen. Stat.§ 1D et seq

OTHER AUTHORITIES

EEOC Guidance 915.002-Discriminatory Assignment Practices @ Allocation of Remedies # 7

COURT RULES

Fed. R. Civ. Pro. 50 a

Fed. R. Civ. Pro. 56 (c) (1)(B)

Fed. R. Civ Pro. 12 (b)(6)

Fed. R. Civ. Pro. 10 (c)

Fed. R. Civ. P. 11(b)(4)

Fed R. of Civ. P. 15 (c) (1) (B)

Fed.R. Civ.P. 20 (a)(2)

Fed. R. Civ. Pro. 45

Fed. R. Civ. P. 26(a)(1)(A), Fed. R. Civ. P. 26 (b)(1)

STATEMENT OF THE CASE

On February 2, 2017, American black appellant, proceeding pro se, paid filing fee of $ 400.00, receipt number RAL05493 and filed a complaint against Ashley Hunt, d/b/a Innovative Talent Solutions, Inc. ("ITS") and an unnamed client of ITS for whom a discriminatory hiring policy was enforced ("Unnamed Client"), seeking relief under Title VII of the Civil Rights-Act of 1964 ("Title VII"), as amended, and 42 USC 1981 (b) et seq, [D.E. 7]. On March 7, 2017, I filed the first amended complaint adding 42 US CODE 1985, 1986, and 18 U.S.C. § 241 claims against Ashley Hunt ("Hunt") and Kimberly Korando ("Korando") [D.E. 33] applying the reasoning of the exception to intracorporate conspiracy doctrine. On August 2, 2017, the claims against Hunt and Korando were dismissed with prejudice [D.E. 64].

On March 8, 2018, pursuant to FRCP 15(c)(1),15 (d), and Scheduling Order, I filed a Motion for Leave to Amend Complaint (DE 97), Proposed 2nd Amended Complaint (DE 97-2), Memorandum in Support of Motion (DE 98), adding the Title VII retaliation, FCRA and State claims against ITS.(97-29 @ page 4). On April 20, 2018, while the Motion for Leave to Amend was still pending before the court, ITS moved for Summary Judgement (DE 112-115). On April 23, 2018, I filed Motion to compel Subpoenaed Responses to Request for Admissions (DE 117, 117-1). On May 14, 2018, I filed my Opposition to ITS Motion for Summary Judgement. Per the clerk's office, I

had to remove the Affidavit because it was not notarized, as opposed to filing the Affidavit, with knowledge that I would correct the oversight or issuing a Notice of Deficiency. (DE 122-124). On May 15, 2018, US Magistrate Judge Numbers II, granted permission to Amend Complaint to add Lee Air w/no new claims against ITS, (DE 125). I added Lee Air to the pending Proposed Amended Complaint (97-2), and corrected the FCRA statutes 15 USCA § 1681a (o)(5)(B), 15 USCA § 1681a (o)(5)(C)(i)(ii)- (DE 128). No ruling on Amended Complaints was entered until the United States District Court for the Eastern District of NC, Order, Feb. 4, 2019 was filed. Appellant issued timely Notice of Appeal, paid the $300 filing fee-receipt number RAL069917. Respondents and District Court notified of intent to file Petition for Writ of Certiorari on March 9, 2020. Respondent ITS rejected any reasonable Settlement, Lee Air not willing to negotiate.

I. FACTUAL BACKGROUND

Petitioner was not allowed by District Court clerk's office to submit "un-notarized" Affidavit with its Opposition to ITS' Motion for Summary Judgement with the promise of correcting the oversight and re-submit the Affidavit the next day. Summary Judgement was granted on February 4, 2019 on the basis that I did not identify the discriminatory practice, did not produce supporting evidence and did not address ITS' non-discriminatory reasons for its rejection. Discriminatory Practice and Genuine Issues of Material Fact were identified in

District Court DE 122. Love v. Pullman Co., 404 U.S. 522, 527 (1972). "A fact is material if it might affect the outcome of the suit under the governing law." (quoting Anderson v. Liberty v Lobbv. Inc., 477 U.S. 242. 248. 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)). Jackson v. FKI Logistex. 608 F. Supp. 2d 705, 706-707. 2009 U.S. Dist. LEXIS 32809. *4. 106 Fair Empl. Prac. Cas. (BNA) 139. Fed. R. Civ. Pro. 56 (c) (1)(B)-Summary Judgement-A party asserting that a fact is genuinely disputed must support the assertion by showing that the materials cited do not establish the absence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact. Texas Dept. of Commun. Affairs v. Burdine, 450 U.S. 248 (1981) held: The defendant need not persuade the court that it was actually motivated by the proffered reasons, but it is sufficient if the defendant's evidence raises a genuine issue of fact as to whether it discriminated against the plaintiff. **To accomplish this, the defendant must clearly set forth, through the "introduction of admissible evidence", the reasons for the plaintiff's rejection**. Pp. 450 U.S. 252-256.

II. The Fourth Circuit erroneously upheld dismissal of Title VII claim claiming I failed to identify a specific challenged employment practice.

My opposition Responses:
id DE 122 page 3 @ A (1)

A. Title VII prohibits not only intentional discrimination, but also practices that have the effect of discriminating against individuals because of their race, color, national origin, religion, or sex.

42 USC 2000e-2 et seq, FF2-Griggs v. Duke Power Co., Exhibit H3-Burnett v. Holder, 2010 U.S. Dist. LEXIS 135792, *11-13, 2010 WL 5396067

POLICY

1. Despite numerous requests as to whether or not it is "the defendant's policy to enforce the client criteria" where formerly incarcerated individuals are concerned, defendant could not/would not offer anything more than "the client sets the criteria". Exhibit El, E2, Exhibit Hl, H2, L, Ll, DE 114-3 page 7 Exhibit 1 and Exhibit 003 and 004

See: District Court DE 166-4 (Lee National Criminal Background Check criteria, no timeframe or line items specified)

PRACTICE:

id DE 122 page 4 @ # 4 a-

4. Defendant also says background checks are not run until after a conditional offer of employment has been made by the client and accepted by the applicant.

a. Genuine Issue: When applicants (plaintiff) are being disqualified from consideration on sight of prior convictions "because of" client "no prior misdemeanor or felony criteria (as in this case), with no questions asked to determine job related-client interviews never happen. Defendant states other people with prior convictions have been "registered" "referred" and "hired" through its staffing firm, why was I treated differently?

DE 122 page 6 @ # 7

7. Genuine Issue: Defendant practice: My resume, the telephone interview based on my resume and the progression to the next step of defendant's registration process "face to face interview" implies that I met the employability standards of defendant staffing agency, until my application was received the very next morning which revealed I had been convicted of a crime in 1997. There were no questions asked to determine "job related", request professional references or anything else for that matter. Year of conviction was noted on the application (1997) not 2001 as footnoted on DE 115@ page 7

*** District Court DE 124-6 Par, 3 lines 3-ITS EEOC Statement**

id. Representative articulates that at the time she did not know the criteria for the company with regards to what line items such as felonies would be relevant in criminal background check. She now knows that any misdemeanor or felony convictions that are job related would not qualify an applicant for the position, but the time she did not know. Client wanted a diverse pool of candidates for a job position. Therefore CP was considered for the position. A criminal background check occurs after a face to face interview has taken place, after the applicant meets the criteria of the client company, and when the offer for the position has been extended and accepted by applicant.

-A-

ITS Practice targets Black Applicants w/ prior convictions-

42 USC 1981 (b), 42 USC 2000e-2 et seq

DE 122 page 4 @ 4(b)-
b. Genuine Issue: In this case, defendant staffing agency's own registration process was terminated and has created a disparate impact on formerly incarcerated African American plaintiff's future employment opportunities with defendant staffing agency. Plaintiff now resides in Virginia and defendant has expressed access to job opportunities in Virginia as well as the RTP area. DE 114-2 page 3 @ answer 2 and 2(a), Exhibit Z8-Maritime v. EEOC- the record plausibly suggests that the employer has engaged in a practice or pattern of discrimination that adversely affects other employees (applicants) emphasis mine .....

DE 122 @ page 4 #4 c-
c. Genuine Issue: Although defendant states it had already submitted 3 more qualified candidates, it seems that if evidence of this existed it would have been provided to EEOC at some point in 2015-2016 and throughout the discovery process. It has not.

DE 114-3 pages 10-15- ITS Exhibit 4 presented with Motion for Summary Judgement:

Candidate 1 referred to Lee Air on Oct 8, 2014 7:13 pm
Resume for Candidate 2
Resume for Candidate 3

DE 114-3 page 3 @ 11-12, ITS states:
11. I believed the other three candidates, AngelaV., NatashaH., and ChristinaK, were more qualified than Ms. Massenburg for the client's open position. "Once ITS had

"identified three qualified candidates and referred them to the client", I did not intend to refer anyone else." On the following Monday, October 13, the client emailed ITS to arrange interviews of two candidates, which email is attached as Exhibit 8

12. When I saw Ms. Massenburg's application, I also noted that Ms. Massenburg had scheduled an appointment for the afternoon of October 10, 2014. **I called her to discourage her** from coming in for the interview, which I believed would be a waste of her time

DE 166-5 pages 1-8-ITS Exhibit G shows the previous statement to be false and the reason for the telephone call to also be false.

*My interview was scheduled for Oct. 10, 2014 @ 3pm, ITS (Hunt) called and cancelled the interview around 11:15 am Oct 10, 2014, after receiving my application revealing a 1997 conviction

Candidate 1 referred to Lee Air on Oct 8, 2014 7:13 pm
Candidate 2 referred to Lee Air on Oct. 10, 2014 3:03 pm
Candidate 3 referred to Lee Air on Oct 13, 2014 11:27 am

DE 114-3 page 9-ITS Exhibit 3-The closing date for the position was Close of Business, Oct 10, 2014 (5pm?)

DE 114-3 page 20-ITS Exhibit 8-Lee Air reached out to schedule interviews on Oct 13, 2014 9:39 am

DE 122 page 3 @ I (a) (4)-The employer continued to seek applicants with similar qualifications-DE90

* The 3rd candidate referral position remained open until Oct 13, 2014 11:27 am

*Telephone call was made to determine my race before cancelling the registration process. ITS cancelled the interview and began looking for a 3rd candidate. How does one "discourage" anyone from coming to an interview, with a staffing agency, without stating a reason? She never said the position was no longer available, never asked if I could bring a resume with me, never asked about character or employment references, never offered to reschedule registration for other opportunities (although we now know the 3rd candidate position was still available). ITS' referral practice weeds out "black/minority applicants with prior convictions" 42 USC 2000e-2(b), In CONNECTICUT v. TEAL, U.S., No. 80-2147, 452-456, This court held: The principal focus of 703(a)(2) is the protection of the individual employee; rather than the protection of the minority group as a whole. To suggest that the "bottom line" may be a defense to a claim of discrimination against an individual employee confuses unlawful discrimination with discriminatory intent.

The Fourth Circuit also upheld the district court finding that because one of the candidates was black, no discrimination took place. Business necessity is the touchstone, not racial balance. This reasoning is also flawed as a defense where the subject position is

concerned and flawed as a defense where registration for future employment opportunities with respondent staffing agency are concerned.

Adverse impact to minority employment opportunities from these types of discriminatory employment practices in minority communities tend to be significant because of the highly disproportionate rate of "convictions" between white and minority individuals, especially in the service areas of respondents: District Court DE 87-13-Statistics from NC Public Safety show:
*__In 1998__-Durham County Convicted 747 minorities and 99 Caucasians/ Wake County convicted 1,552 minorities and 443 Caucasians.
*__In 2014__-Durham County convicted 375 minorities and 60 Caucasians/Wake County convicted 1,381 minorities and 513 Caucasians.
*__From Nov. 1, 2016 thru Oct. 31, 2017__, Durham County convicted 416 minorities and 80 Caucasians/ Wake County convicted 1,442 minorities and 508 Caucasians

These statistics show, consistently in the regions both respondents operate in that minorities are convicted triple times or more than the rate of Caucasians (District Court DE 87-13-NC DPS Conviction Statistics).

B.ITS is a Staffing Agency-There is no justification for cancelling access to future opportunities with

no assessment to determine business necessity, as it does for other similarly situated applicants.
Disparate Treatment- A disparate-treatment case must establish that the defendant had a discriminatory intent or motive,' disparate treatment arose claim arose from initial **Disparate Impact**-disparate-impact claim challenges practices that have a 'disproportionately adverse effect on minorities' and are otherwise unjustified by a legitimate rationale." Inclusive Cmtys., 2015 WL 2473449, at *3, FRCP.15 (c)(1) (B), 42 USC 2000e-2 (a), (b), 42 USC 1981 (b), 42 USC 2000e-2 (k) et seq, N.C. Gen. Stat. Article 49A § 143-422.2,

id DE 122 **page 9 @ 6a** -Defendant also asserts that defendant has referred applicants to this client who had histories of criminal convictions, at least 1 (one) of whom was hired by the client.

a. **Genuine Issue:** Defendant has not presented any evidence to verify this statement. Even if this is true why was I not allowed to complete the registration process for future opportunities? Given the internal inconsistencies and falsity of many of the defendant's statements and failure to submit evidence to support its own position long before we entered the court (EEOC claim filed January 7, 2015 and Notice of Right to Sue issued November 16, 2016) and redacted documents to this effect during discovery, any trier of fact would find that without evidence what are we to believe?

DE 114-3 page 4 @ 14
As part of its defense, ITS also says: "I am aware that this

particular client hired at least one candidate with a criminal history. In my experience, this client does not disqualify candidates solely on the basis of a criminal history. I am not aware of any client of ITS that would disqualify candidates solely on the basis of their criminal history. I would never have told Ms. Massenburg that a criminal history would disqualify her from the position." Compare: District Court DE 114-3 page 4 @#14 v. DE 124-6), (Compare: DC/DE 114-3 page 4 @ 16 v. DE 124-16).

DE 122 page 6 @ # 7
7. Genuine Issue: Defendant practice: My resume, the telephone interview based on my resume and the progression to the next step of defendant's registration process "face to face interview" implies that I met the employability standards of defendant staffing agency, until my application was received the very next morning which revealed I had been convicted of a crime in 1997. There were no questions asked to determine "job related", request professional references or anything else for that matter. Year of conviction was noted on the application (1997) not 2001 as footnoted on DE 115@ page 7

ITS also states: ITS is committed to complying with the law. ITS cannot recall an instance where any applicant was disqualified from consideration after they fully disclose a criminal background. ITS is aware that many applicants with criminal backgrounds have been referred and hired by clients. (DE 114-2 page 3 answer to (c).

ITS states it never received my resume
*No need to cancel registration process, I could have brought a resume with me, if I knew I needed to. ITS' purpose for the call was to "determine my race" and consequently, "discourage me" from completing the registration process". They got my contact information from the resume they found online. The recruiter did the telephone interview line by line from my resume. (DE 124-24, 25-resume and references).

District Court DE 33 page 4 @ 11(1), (2), (3)

1. *KATHERINE W., RECRUITER FOR ITS, INC., CONTACTED ME TO KNOW IF I WOULD BE INTERESTED IN A DISPATCHER POSITION THEY WERE ATTEMPTING TO FILL. THE POSITION WAS FOR A CLIENT IN .DURHAM, NC. I ASKED HER TO CLARIFY WHO SHE WAS AND WHERE SHE GOT MY INFORMATION, AS I HAD NEVER HEARD OF "ITS" BEFORE THIS DAY. MS. WHITE EXPRESSED SOME DIFFICULTY IN FINDING CANDIDATES WITH AS MUCH DISPATCH EXPERIENCE AS I HAVE (4.5 YEARS POST-RELEASE) AND THAT SHE HAD GOTTEN MY RESUME FROM THE WORLDWIDE WEB. SHE STATED, I WOULD BE '"A PERFECT FIT" FOR THE POSITION.*

   *2. *ONE COULD ASSUME MS. WHITE HAD EXHAUSTED THEIR OWN DATABASE OF POSSIBILITIES SINCE THEY (ITS, INC.) ARE A STAFFING AGENCY AND HAD TO CONSULT THE WEB IN AN EFFORT TO FILL THIS POSITION.).*

   *3. *("PERFECT FIT") IS ALSO LANGUAGE USED BY ASHLEY H. AT OCTOBER 27, 2016 EEOC HEARING WHEN REFERRING TO THE CAUCASIAN CANDIDATE SHE DID SEND TO THE CLIENT from ITS's database.*

District Court DE 33 page 5 @ #6
id. 6. AROUND 8:15-8:30 THE NEXT MORNING (PRIOR TO THE START OF MY WORK DAY), I CALLED "ITS" TO MAKE SURE THEY HAD RECEIVED EVERYTHING THEY NEEDED FROM ME, THE RECEPTIONIST (MUCH OLDER SOUNDING WOMAN) ASKED ME TO HOLD, RETURNED AND INFORMED ME SHE HAD EVERYTHING THEY NEEDED AND REMINDED ME TO BRING THE 2 FORMS OF ID AND SHE WOULD SEE ME AT 3PM.

District Court DE 124-30-EEOC Document - Plaintiff's Summary of events @ par. 5
* The next morning, I called ITS around 8:30am to make sure they had received everything. The receptionist {much older sounding woman) asked my name and asked me to hold while she checked, she returned and informed me that she received the information and all I would need was to bring 2 forms of ID to my 3pm appointment.

DE 122 page 15 @ e
e. Genuine Issue: Defendant has not offered any "reason" for terminating its registration process for plaintiff's future job opportunities with defendant staffing agency when it cancelled the face to face interview. DE 114-3 page 8 Exhibit 2, DE114-2 page 11 @ #7(f)

4. Defendant testifies that it never got my resume and was never told about my dispatcher experience.
. **a. Genuine Issue:** This statement is highly unbelievable. Defendant's screening process (DE 114-3 page 8 Exhibit 2) states:

ITS performs the following screening process on each

candidate once an interview time is set at no additional charge:

• Face to face interview with two ITS staffing professionals

b. **Genuine Issue:** Defendant's screening process raises the question of whether my
resume had been submitted to the client after the telephone interview.

c. See also DE114-2 page 10 @ answer 3 and Exhibit Pl.

Defendant states that even if it had known of my dispatch experience she would not have considered it because:.

DE 122 page 16 @ 5a (1)
5. Defendant states that even if it had known of my dispatch experience she would not have considered it because:

a. It was in an unrelated industry

1. **Genuine Issue:** See Christina K's resume, 1 year dispatch experience from 2011-2012 in the food industry (DE 114-3 page 15)

DE 122 page 2 @ par. 3
My EEOC complaint and Amended Complaints questions the "non-discriminatory" reason and "business necessity" for ITS, Inc.'s decision to halt the "face to face interview" for the position at issue; which in turn halted the defendant's "registration process" for plaintiff to be

considered for future job opportunities within its staffing agency. (Exhibit K, DE33 @ par. 12 sub 2, DE 109 @ 7), (DE113 @ 3 and 4)

*My 4.5 years of dispatch experience was in the transportation industry where I managed 80 to 100 drivers at any given time, arranged on time scheduled pick-ups and timely unscheduled pick-ups in the Wake, Durham and Orange County regions. I also processed weekly franchise payments, maintained accurate records of incoming calls while dispatching drivers and maintaining an orderly rotation of the board and regularly arranged CSX passenger pick-ups from highway mile markers. The recruiter knew this, because we had a conversation. She scheduled me for the 3rd candidate slot because I was a quality candidate.

***Christmas v. N.C. Dep't of Admin.,** 2011 U.S. Dist. LEXIS 52300, *22-23, 2011WL1870236 held: Plaintiff need not prove that she was the superior candidate, but instead need only produce "evidence that the employer's proffered reason was not the actual reason relied on, but was rather a false description of its reasoning- albeit one based on a real difference in qualifications?) Manufactured after the fact." Dennis v. Columbia Collection Med. Ctr., Inc., 290 F.3d 639, 648 n.4 (4th Cir. 2002) (citing Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 147, 120 S. Ct. 2097, 147 L. Ed. 2d 105 (2000); Burdine, 450 U.S. at 255).

C.The Fourth Circuit upheld the district court finding that I did not respond to ITS' compliance

with NC Negligent Hiring Laws defense

NC Negligent Hiring Laws-North Carolina Equal Employment Practices Act ("NCEEPA"), N.C. Gen. Stat.§ 143-422.2. [l]t is the public policy of this State to protect and safeguard the right and opportunity of all persons to seek, obtain and hold employment without discrimination or abridgement on account of race, religion, color, national origin, age, sex or handicap by employers which regularly employ 15 or more employees. Cox v. Lowe's Home Ctrs., LLC, 2015 U.S. Dist. LEXIS 155296, *7, 2015 WL 7288689

Responses:
DE 122 page 13 @ 5a, b, c-
5. Defendant asserts that not all ITS's clients elect to conduct criminal background checks and **ITS is in the business of referring "quality candidates" for its clients to hire,** to meet the basic standards for a "reasonable investigation" and to determine whether additional investigation may be needed to avoid negligent hiring liability for the client.

a. Genuine Issue: The fact that "not all" of ITS's clients elect to conduct a criminal background check begs the question of why I was called "to be discouraged" from coming to complete the "registration process" whether for the Dispatcher position or some future opportunity. DE 114-2 page 11 @#7(f)

b.**Genuine Issue:** ITS, Inc. is in the business of referring "quality" candidates? I was deemed to be a "quality"

candidate before the application arrived on October 10, 2014 and revealed a "1997" conviction. This feels very much like a bias stereo typed opinion of formerly incarcerated individuals. Had any of defendant's "reasonable investigation" measures been applied beyond the broad application question and answer, and the telephone call to "discourage" me from completing the registration process not happened, and the face to face interview not been cancelled, we wouldn't be here. Proceeding with the face to face interview "registration process" would have afforded the defendant an opportunity to conduct the "reasonable investigation". Certainly a 1997 conviction would warrant further questions from defendant who has certified that it is compliant with Federal and State anti-discrimination employment laws. DC/DE 114-2 page 27 @#18 b

*Even if NC Negligent Hiring Laws condoned Blanket Discrimination of previously convicted applicants, which it doesn't, 42 USC 2000e-7 states that State and local laws or regulations are preempted by Title VII if they "purport to require or permit the doing of any act which would be an unlawful employment practice" under Title VII. Business Necessity is the touchstone and requires an individualized assessment of some sort.

*** Did my "quality" or "qualification" drop when Hunt saw a 1997 conviction? Biased Statement.**

I never asked Hunt about a criminal background check
id DE 114-3 page 3 @ 13
13. Ms. Massenburg had asked me whether a background

check was required. I told her that the client required a background check but I did not know the specifics of the client's criteria. However, no criminal background check of any candidate would take place unless he or she was given a conditional offer of employment by the client.

DE 122 page 5 @ 6a

6. Plaintiff was deemed qualified for the dispatcher position on the evening of October 9, 2014 when she was contacted by defendant based on information contained in my resume that was found on line and after the telephone interview, a face to face interview was set. Exhibit H2 @ paragraph 1, DE114-2, page 10 @ answer (3), Exhibit Pl-My resume, Exhibit K

a. Plaintiff testified that White had already informed plaintiff during the telephone interview that she thought this client would want a 7 year back ground check; this was not a problem for me. We proceeded. Exhibit RR-EEOC document: Summary of Events, paragraph 2

District Court DE 33 page 5 lines 2-17

> SHE NEXT INFORMED ME THE CLIENT WOULD RUN A BACKGROUND CHECK (TO WHICH I RESPONDED, HOW FAR BACK DOTHEY GO? SHE SAID SHE THOUGHT 7 YEARS-IS THAT A PROBLEM? I SAID NO). AT THIS TIME, I WAS STILL A "PERFECT FIT" FOR THE POSITION. MS. WHITE WANTED TO SET AN APPOINTMENT FOR ME TO COME INTO THEIR OFFICE THE NEXT MORNING TO FINISH UP AND GET ME READY TO INTERVIEW WITH THE

CLIENT THE FOLLOWING MONDAY (I RESIDED IN DURHAM, NC AND SHE WANTED ME TO BE ABLE TO GO STRAIGHT TO THE LOCATION).

District Court DE 124-30 EEOC Document (Summary of Events @ par. 2)

*We embarked into what was referred to as a telephone interview". I answered several questions which detailed a typical day for me when I was a Dispatcher regarding equipment used, #of people on roster at any time, my comfortability level working independently, scope of geographical region covered, had I been convicted of a felony in the last 7 years and reason for leaving the job. I was "still perfect for the position" at this time.

Even if I had asked, (I had no need to) Hunt's answer would have had to indicate the check would go back 17 years or longer. Had she not "cancelled" the interview, I would have showed up to register for other opportunities. I had already cleared my afternoon. Hunt called to hear my voice and determine my race before deciding whether or not to proceed. She cancelled the interview and began looking for a 3rd candidate. (DE 114-3 page 3 @ #11). District Court DE 124-6 v. DE 166-4 page 1-also provided to me on September 2, 2018 by ITS)

III. The Fourth Circuit Court of Appeals erroneously upheld the dismissal of my right to jury trial for the 42 USC 1981(b) legal issues under the premise that the Title VII claim provided the exclusive remedy. In Lytle v. Household Mfg., Inc., 494 U.S. 545 (1990), this court held: that the dismissal

of the § 1981 claims was "apparently erroneous" because the Title VII and § 1981 remedies were separate, independent, and distinct. See App. 4 (District Court Order- finding that Title VII and § 1981 are the same)

Based on the evidence presented: None of ITS' proffered after the fact reasons to justify its discriminatory decision made on October 10, 2014 when it made the call to "discourage me" (cancel) from completing ITS' registration process which was necessary to 1) be referred for the Dispatcher position and necessary to 2) be considered for any future employment opportunities. By way of process of elimination of ITS' many failed excuses at a non-discriminatory reason for the call that terminated the registration and referral process, we now know the call was made to determine my race before Hunt made the discriminatory decision to terminate its entire registration process on sight of a 1997 conviction on a 2014 application, no questions asked to determine business necessity, just my race. When this type of discrimination is at work there will be no referral and no conditional offer of employment. This terminated my right, pursuant to 42 USC 1981(b) to "Make and enforce contracts" defined for purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

It is plausible to infer, that "being black" with a criminal history is the cause for the disparate treatment I experienced. Since both respondents have hired similarly situated applicants. (DE 114-2 page 14 @ answer 4). It is clear that, with the falsely justified telephone call from Hunt, this discriminatory practice weeds out black applicants with prior convictions. 42 USC 2000e-2(a), (b). establishing discriminatory intent or motive.

* A "plaintiff can prove pretext in two ways: (1) indirectly, by showing that the employer's proffered explanation is 'unworthy of credence" because it is internally inconsistent or otherwise not believable, or (2) directly, by showing that unlawful discrimination more likely motivated the employer." Evidence shows that unlawful discrimination more likely motivated ITS' decision because the proffered explanations are 'unworthy of credence" because it is internally inconsistent or otherwise not believable. Nothing in the record suggest that a jury would not come to the same conclusion.

Employment Opportunities/ Contractual Employment-
42 USC 1981(b), 42 USC 2000e-2(b)-42 USC 2000e-2(a)(2), 42 USC 2000e-2k et seq.

DE 114-3 page 7, par. 3, 4 and 6- Lee Air and ITS **Service Agreement:**
Par. 3-ITS is the employer of record for all temp and temp-to-hire candidates during their assignment Should you decide to convert the candidate to your payroll prior

to 540 hours conversion fee equal to 1% per thousand up to maximum of20% of the candidates annual salary will be billed less gross margin credit for hours already worked If the candidate works 540 hours there will not be conversion fee

Par 4-ITS will invoice clients weekly and payment Is due upon receipt Clients who do not submit credit applications or are not deemed credit worthy will be billed COD until credit application is submitted and br credit worthiness is established ITS has the right to charge 14% service fee on any outstanding account balance over 30 days past due

Par. 6-All ITS candidates have an unconditional first day guarantee. If for any reason your expectations have not been met and exceeded on the first day. ITS will find a suitable replacement and the client will not be billed for the first day (up to 8 hours). All guarantees require payment according to invoice terms.

*ITS' discriminatory practice had an adverse and terminating impact on petitioner's opportunity to enjoy contractual employment opportunities and career growth. In the regions that respondents operate in, the conviction rate of minorities in 1988, 2014 and 2017 are consistently just below triple that of Caucasians. With no individualized assessments, this practice has a 'disproportionately adverse effect on minorities', as it did for Massenburg. A disparate-impact claim challenges practices that have a 'disproportionately adverse effect on minorities' and are otherwise unjustified by a legitimate rationale." 42 USC 2000e-2(a)(1)(2), 42 USC 1981 (b), 42

USC 1981a, 42 U .S.C. § 2000e-2(k)(l)(A)(i). A disparate treatment claim requires a showing of discriminatory motive or intent.

Lytle v. Household Mfg., Inc., 494 U.S. 545 (1990) held:

1. The Seventh Amendment precludes according collateral estoppel effect to a district court's determinations of issues common to equitable and legal claims where the court resolved the equitable claims first solely because it erroneously dismissed the legal claims. Pp. 494 U.S. 550-556.

(a) But for the dismissal of Lytle's § 1981 legal claims, he would have been entitled to a jury trial on all issues common to them and his Title VII equitable claims, *Curtis v. Loether,* 415 US 189, 415 U.S. 196, n. 11,

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and the jury would have been required to resolve the legal claims before the court considered the equitable claims, *Beacon Theatres, Inc. v. Westover,* 359 U.S. 500, 359 U.S. 510-511; *Dairy Queen, Inc. v. Wood,* 369 U.S. 469, 369 U.S. 473.

IV. The Fourth Circuit erroneously upheld the district court's dismissal of my retaliatory Fair Credit Reporting Act violation claim, falsely stating that I had not submitted evidence in support of the claim.

**Evidence was submitted for the third time, in response to ITS' Motion for Summary Judgement. See: DE 97-29 page 4 paragraph 3, DE 98-1 page 11-13, DE 124-16 Par. 3*

*District Court refers to information obtained in documents which violated FCRA, in a retaliatory manner.15 USC 1681a (o)(5)(C)(i)(ii), 42 USC 2000e-3a, 42 USC 1981

*DE 98-3 page 13 shows the unauthorized notice and release. I don't fill those out until I have had an opportunity to discuss the fact that I am not sure of what charges they might find. My reason is I don't want anyone to think I was intentionally, less than truthful. I am surviving my past and my focus demands that I move forward from it all-I have not checked to see what is there, I know there is nothing there beyond minor traffic violations since the 1997 convictions.

In McKennon v. Nashville Banner Publishing Co., 115 S.Ct. 879, 65 EPD Par. 43,368 (1995), This court held: that the ADEA, Title VII, the EPA and the ADA reflect "a societal condemnation of invidious bias" and that;[t]he private litigant who seeks redress for his or her injuries vindicates both the deterrence and the compensation objectives of the [statutes]," the Court concluded that an employer must be held liable when it is found to have engaged in unlawful discrimination, despite any later discovered evidence of any employee misdeeds. 115 S.Ct. at 884 .

15 USC 1681a (o)(5)(C)(i)(ii)

(C) the person who makes the communication-

(i)-discloses in writing to the consumer who is the subject of the communication, not later than 5 business days after receiving any request from the consumer for such disclosure, the nature and substance of all information in the consumer's file at the time of the request, except that the sources of any information that is acquired solely for use in making the communication and is actually used for no other purpose, need not be disclosed other than under appropriate discovery procedures in any court of competent jurisdiction in which an action is brought; **and**
(ii) notifies the consumer who is the subject of the communication, in writing, of the consumer's right to request the information described in clause (i)

15 USCA § 1681p-Claims have statutes of limitations and must be brought earlier of two years after the consumer learns of the violation or five years after the violation occurs, with no exception. The statute of limitations begins when the consumer becomes aware of the facts that give rise to the violation.

id-DE 122 page 13 @ 5 c
c. Genuine Issue: In November 2016, Defendant had no problem running and providing an uncertified, unverified copy of plaintiff's background report to the EEOC after the final fact finding conference and after refusing settlement discussions on October 26, 2016. Exhibit MMl-My Criminal background furnished by Respondent,

Despite ITS' continued denial. DE 114-3 page 4 @ 16- ITS Statement that it didn't run background. *App 8-MM1 is DE 97-29 page 4 paragraph 3

a. I filed a Motion for leave to Amend Complaint DE 97, Memorandum in support DE 98, and Proposed Amended Complaint DE 97-2 adding the retaliation and the FCRA claim against ITS. Pursuant to FRCP 15(c)(1)(b), 15 (d), and Scheduling Order, on March 8, 2018. Consent from ITS was denied. (Email attached). The Motion for Leave to Amend Complaint and accompanying documents remained pending until the order was issued granting ITS' Motion for Summary Judgement was granted, on February 4, 2019. On May 15, 2018, I was granted permission (App 6) to amend complaint adding Lee Air as defendant, no NEW claims against ITS. I added Lee Air to the pending Proposed Amended Complaint and corrected the FCRA Statutory Code-DE 128-12 -DE 128, May 30, 2018. It also remained pending until Motion for Summary Judgement was granted on February 4, 2019.

*See: DE 98-1 page 11 paragraph 3 (documents that reflect a criminal background check by a Respondent, notes from a fact finding conference, and memoranda regarding subpoena requests are not properly withheld pursuant to this exemption)

ITS Criminal Background Check Policy is to run a background check only after a conditional offer of employment has been made and accepted. Although ITS performed no individualized assessment to determine

business necessity or implement the reasonable investigation necessary to determine if further investigation would be necessary before barring an applicant from registering with its staffing agency and despite respondent ITS' continued denial, evidence show's ITS' owner had no issue with running my background, without my permission and with no notification to me that it had done so, as the requestor of consumer information is required to do pursuant to the Federal Consumer Reporting Act., (15 USC 1681a (o)(5)(C)(i)(ii)), it then disbursed this unverified and legally protected information to EEOC AFTER refusing, for almost 2 years, to provide the name of Lee Air who ITS stated, at the EEOC stage, set the requirement that no misdemeanor or felony would qualify a candidate for the position, AFTER refusing any settlement talk on October 26, 2016 at the request of EEOC but BEFORE the Notice of Right to Sue was issued on November 17, 2016. I became aware of this in October 2017 while reviewing documents to be used in sustaining my claim.

ITS ran the report on October 27, 2016 (15 USC 1681p), the day after refusing any settlement talk with myself and EEOC. They ran it again in early November going even further back in time. EEOC referred to this as an unwarranted invasion of privacy-DE 98-1 page 12, There was no litigation in progress requiring discovery (which also requires that I be notified by the requestor of the information) and ITS wasn't a prospective employer. ITS used information from my application to falsely obtain and disburse unverified information to the EEOC Public Portal in a retaliatory attempt at inflicting its own

biased, poisonous and stereotyped opinion to sway EEOC decision makers to overlook its discriminate, terminating referral decision made on October 10, 2014 with an illegally acquired report that shows no criminal activity since my conviction in 1997.

In: In re Horizon Healthcare Services Inc. Data Breach Litigation, 846 F.3d 625, 641 (C.A.3 (N.J.), 2017, This court held: So the Plaintiffs here do not allege a mere technical or procedural violation of FCRA. 21 They allege instead the unauthorized dissemination of their own private information 22-the very injury that FCRA is intended to prevent. 23 There is thus a de facto injury that satisfies the concreteness requirement for Article Ill standing. 24 See In re Nickelodeon, 827 F.3d at 274 (concluding that the "unlawful disclosure of legally protected information" in and of *641 itself constitutes a "de facto injury"). Accordingly, the District Court erred when it dismissed the Plaintiffs' claims for lack of standing. 25 Our precedent and congressional action lead us to conclude that the improper disclosure of one's personal data in violation of FCRA is a cognizable injury for Article Ill standing purposes.

The risk of harm is great. Who knows where else the report has been distributed. My most recent previous employer suddenly set out to create "a false pattern of behavior" which directly opposed, verbatim, the positive statements made in the reference letters I submitted with this case, despite the telephone recordings that don't line up with the documentations. My stress levels went off the charts as I pursued justice beyond EEOC. I was hospitalized, at the end of July 2017, as a

result of these manipulation tactics and the needless extension of this matter. After a bunch of tests to rule out a number of possibilities that would cause me to present the way I did. It was stress, dangerously high level of stress. I had never experienced anything like that in my entire life. It has monopolized my time, effected my job performance, my income, my ability to maintain my property, every area of my life. (See DE 97-38-Doctor's statement).

***Causal Link:** Plaintiff alleges that her filing of the charge and effort to sustain the charge of discrimination against defendant ITS, Inc. is the causal link and protected activity that provoked the willful and repeated acts of refusing to submit information proving or disproving "its own admissions" during EEOC investigation. from January 9, 2015-October 27, 2016. Knowing all that we know now about ITS' discriminatory hiring practices, this means the last 5 years of extensive damages to me have been motivated by ITS owner, Hunt's, personal spite and a desire for revenge and her actions towards me were conducted "in a manner which showed reckless and wanton disregard of the my rights. I am definitely feeling dissuaded and intimidated at the thought of ever doing this again.

In McKennon v. Nashville Banner Publishing Co., 115 S.Ct. 879, 65 EPD Par. 43,368 (1995), This court held: that the ADEA, Title VII, the EPA and the ADA reflect "a societal condemnation of invidious bias" and that;[t]he private litigant who seeks redress for his or her injuries vindicates both the deterrence and the compensation objectives of the [statutes]," the Court concluded that an employer must be held liable when it is found to have

engaged in unlawful discrimination, despite any later discovered evidence of any employee misdeeds. 115 S.Ct. at 884 .

* Since the interview was cancelled, I never signed ITS' release form, ITS' policy is to only run criminal background checks after a conditional offer of employment and there was no litigation in progress requiring discovery, I am not all together sure why the District Court felt it necessary to mention a charge from 1997, without also mentioning that I have had no more trouble since then, or the fact that I testified at deposition to the effect of : "I was told" something about it-I was apparently found guilty because I was there, sitting in my car-alone and found to be guilty by association for something I had no knowledge of as the Judge in the case stated he would show me what yall do with educated northerners around here. Nevertheless, I stood accountable for it then and still am today, apparently. This case is about my Civil and Constitutional Rights being violated 17 years after my conviction and exercising my right to pursue discrimination free employment opportunities, with evidence.
*The court also mentions that "I believe" I have not gotten jobs because of my record. I'm not sure of the relevance here but I know this to be true-its why we are all here.

V. This court must solve the conflict within the Fourth Circuit where previous rulings, have allowed claims "arising from" or "relating back" to the actionable EEOC intake questionnaire to serve as a "charge" for the purpose of establishing the

limitations period and the shared interest exception. Fed Rule of Civ. Pro. 15 (c) (1) (B)

1. The Fourth Circuit erroneously deemed claims against Lee Air to be time barred. In Federal Express Corp. v. Holowecki, 552 U.S. 389 (2008), this court **held:** an EEOC intake questionnaire will be deemed a charge if it contains "the information required by the [EEOC"s] regulations, i.e., an allegation [of discriminatory conduct] and the name of the charged party," and can be "reasonably construed as a request for the agency to take remedial action.". Several district courts in the Fourth Circuit have applied the "identity of interest" set forth by the Third Circuit in Glus to determine whether a defendant had notice of the EEOC charges and participated in the conciliation process. In Olvera-Morales, the Fourth Circuit acknowledged and found that identity of interest existed. The claim against the unnamed party was dismissed because Olvera-Morales had legal representation at the time of the EEOC filing. Olvera-Morales v. Int'I Labor Mgmt. Corp., No. 1:05CV00559, 2008 WL 939180, at *1-2 (M.D.N.C. Apr. 4, 2008), Fed Rule of Civ. Pro. 15 (c) (1) (B). Petitioner, Massenburg is and has been unrepresented by council since the beginning. 42 USC 2000e-2 (c)(3) et seq. 42 USC 1981(b), 42 USC 2000e-2 (k) et seq., N.C. Gen. Stat. Article 49A § 143-422.2, App. 3 page 33

2. Lee Air was added as Joint Employer respondent in this case on May 15, 2018, pursuant to FRCP 20(a)(2). DE 128 page 11-12 @ Claim 2

*District Court DE 125 Order and DE 86-Motion for Joinder which was construed as Motion for Leave to Amend Complaint was issued while March 8, 2018 Motion for Leave to Amend Complaint pursuant to Fed Rule of Civ. Pro. 15 (c) (1) (B) was pending before the court)

The service contract between Lee Air and ITS establish a joint employer relationship.
Lee Air was referred to on the face of the Charge as "client", DE 98-1 page 5-Intake Questionnaire-shows Employer and Employment Agency boxes checked,

EEOC found the Charge actionable-See District Court DE 97-12 page 2-3--EEOC Subpoena for the Name of Lee Air and other information. Lee Air referred to as Unnamed Client on each filing District Court from February 2, 2017- Initial Disclosures

* District Court DE 124-20: EEOC Guidance 915.002-Discriminatory Assignment Practices @ Allocation of Remedies # 7 establishes liability for both employers.
42 U.S.C. § 2000e-2(a),(c)-2(m)

When ITS thought the charge of discrimination would not be pursued beyond EEOC, her statement lined up with the evidence. District Court DE 124-6 par 3 lines 3-6, DE 166-4 page 1 shows Lee Air National Background Check criteria with no timeframe or other specifics. District Court DE: 35-1 EEOC Assessment Form

DE 114-3 page 5 @ 5a-Hunts EEOC Statement

5. **Genuine Issue:** Defendant answered with specifics as to the "2 candidates" who were submitted for the position, one was Caucasian and one was African American. Exhibit Hl @ last paragraph, Exhibit H3

a. **Exhibit H2 @ paragraph 3** @ lines 3-6-"defendant did not know Lee Air's background check criteria at the time but now knows that any misdemeanor or felony that is job related would not qualify an applicant for the position", but at the time she didn't know". DE 115 page 6 line 19-21

3. The 4 factors previously used by several district courts in the Fourth Circuit to determine subject matter jurisdiction were not applied.

In Olvera Morales v. Int'l Labor Mgmt. Corp., No. 1:05CV00559, 2008 WL 939180, at *1–2 (M.D.N.C. Apr. 4, 2008) and Butler v. Drive Automotive Industries of America, Inc., the US Court of Appeals for the Fourth Circuit held that a staffing agency and its c lient may be liable under Title VII of the Civil Rights Act of 1964 (Title VII), 42 USC 1981 (b) and 42 USC 2000e-2 (k) et seq as joint employers and that it will apply a combination of the control test from common law agency principles with an economic realities test when evaluating whether entities are joint employers under Title VII. The test to be applied is:

a) Whether the role of the unnamed party, could through reasonable effort by the complainant, be ascertained at the time of the filing of the EEOC complaint;

I checked both the employer and employment agency boxes on the Intake Questionnaire and referred to Lee Air as "ITS client" on the face of the Charge Form and on each document filed with the district court until its name was provided by ITS in Initial Disclosures, despite my many requests for its name in the district court before discovery began, starting with District Court DE 10, Fed. Rule of Civ. Pro. 26 (a)(1)(A)(i). EEOC found the claim to be actionable and sought the name of respondent Lee Air from ITS from January 2015-October 26, 2016, to no avail.

b) whether under the circumstances, the interests of a named are so similar as the unnamed party's that for the purpose of obtaining voluntary conciliation and compliance it would be
unnecessary to include the unnamed party in the EEOC proceedings;

DE 114-3 page 7 (Service agreement establishes joint employer relationship, @ par. 7- acknowledges "any and all claims which may arise out of or result from any breach by ITS candidates or the client of the provisions of this agreement", DE 114-3 @ page 21 @ EEO Statement acknowledges employees and applicants. This is a discrimination claim which arose from Joint Employer relationship where ITS is the employer of record and Lee Air provides the work location and day to day instruction. Lee Air's shared interest was represented and protected by ITS during the EEOC process. DE 166-4 @ page 1 (Lee Background check requirement). 42 USC 2000e-2(a)(2) et

seq, 42 USC 2000e-2 (c)(3), 42 USC 1981(b)

c) Whether its absence from the EEOC proceedings resulted in actual prejudice to the interests of the unnamed party;

DE 114-3 page 7 @ Paragraph 7 of the Service Agreement states: Client agrees to indemnify and hold harmless ITS and its officers directors and stockholders from "any and all claims which may arise out of" or result from any breach by ITS candidates or the client of the provisions of this agreement. "Such indemnification shall include but not be limited to attorney's fees litigation expenses and all other related expenses." This agreement supersedes any previous written agreement with client. Client accepts this agreement entirely when accepting candidate presentations and/or resumes. ITS had a duty to inform Lee Air of the claim against it. The fact that the people who handled the referrals allegedly no longer worked for Lee Air by the time contact information was provided to me in Initial Disclosures would suggest Lee Air was aware of the discrimination claim and was not prejudiced.

d) Whether the unnamed party has in some way represented to the complainant that its relationship with the complainant is to be through the named party. Consideration of these factors should be initially in the hands of the district court.

DE 114-3 @ pages 22-23 Individuals and Conduct Covered/ Complaint Process-Names ITS as the point of contact for complaints and prohibited conduct against

employees and applicants in work areas.

VI. Whether persons proceeding pro se should be issued Notices of Deficiency and afforded the same opportunity to make corrections to filings as is offered in the lower courts to persons trained in the law and instruction of how to arrange deposition?

Respondents, trained in law, were issued Notice of Deficiency regarding DE 150-Lee Air and regarding DE 106-ITS.

* Should I have been allowed to file my notarized Affidavit when I filed my Opposition to ITS' Motion for Summary Judgement. I asked if I could and bring the notarized copy the next day. I was told in the clerk's office, no, not for this. I removed the Affidavit and drew a line through its description. I don't think this was a fatal error that couldn't be corrected and re-filed, notarized the next day.

* Was it appropriate when Pro Se respondent was told to consult my attorney when seeking instructions on how to arrange depositions? Subsequent subpoenas and Motion to compel (DC/DE 117, 117-1) remained pending until the order granting summary judgement was entered.

CONCLUSION

Petitioner Massenburg and the millions of formerly convicted minorities across the country pray this Honorable court will correct the errors of the lower courts. Employment practices that intentionally target and

disqualify minorities who have stood accountable for their misdeeds not only adversely effects the person but everything attached to a human being: communities, social economies and often, next generations. Although I am unable to monetarily afford legal representation, I am entitled to have my rights vindicated at the EEOC Stage and in the lower courts, minus intentionally created technicalities. It is within this courts power to determine if Equal Justice for All includes the pro se, formerly convicted person seeking legal remedy to a very old problem that congress and this court recognized decades ago. This court continues to hold: We cannot conceive of any business necessity that would automatically place every individual convicted of any offense, except a minor traffic offense, in the permanent ranks of the unemployed. This is especially true for blacks who have suffered and still suffer from the burdens of discrimination in our society. To deny job opportunities to these individuals because of some conduct which may have been remote in time or does not significantly bear upon the particular job requirements is an unnecessarily harsh and unjust burden. Green v. Missouri Pacific Railroad Company, 523 F. 2d 1290, 1972 U.S. LEXIS 3007.

Respectfully submitted this 23rd day of July, 2020,

Re submitted Sept. 21, 2020 Nancy D Massenburg

Nancy D Massenburg

Petitioner, Pro Se

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919.400.2033

City/County of Campbell Commonwealth/State of Virginia

Sworn to and subscribed before me this 21st day of September, 2020 Witness my hand and official seal.

Kayla Emon Donigan Notary Public

KAYLA EMON DONIGAN
Notary Public
Commonwealth of Virginia
Registration No. 7751223
My Commission Expires Jan 31, 2021