FILED: October 13, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-1208
(4:19-cv-00056-MSD-LRL)

ANTHONY LONNIE FORBES

Plaintiff - Appellant

v.

SEAWORLD ENTERTAINMENT, INC.; THE BLACKSTONE GROUP, L.P.

Defendants - Appellees

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Agee, Judge Wynn, and Judge Floyd.

For the Court

/s/ Patricia S. Connor, Clerk

Appendix C

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-1208

ANTHONY LONNIE FORBES,

Plaintiff - Appellant,

v.

SEAWORLD ENTERTAINMENT, INC.; THE BLACKSTONE GROUP, L.P.,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Newport News. Mark S. Davis, Chief District Judge. (4:19-cv-00056-MSD-LRL)

Submitted: July 20, 2020 Decided: August 18, 2020

Before AGEE, WYNN, and FLOYD, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Anthony Lonnie Forbes, Appellant Pro Se. Jimmy F. Robinson, Jr., Scott Andrew Siegner, OGLETREE DEAKINS NASH SMOAK & STEWART, PC, Richmond, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

Appendix A

PER CURIAM:

Anthony Lonnie Forbes appeals the district court's order dismissing his complaint and denying his motions for sanctions. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Forbes v. SeaWorld Parks & Entm't*, No. 4:19-cv-00056-MSD-LRL (E.D. Va. Feb. 14, 2020). We deny Forbes' motions for injunctive relief and sanctions. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

PER CURIAM:

Anthony Lonnie Forbes appeals the district court's order dismissing his complaint and denying his motions for sanctions. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. Forbes v. Sheriff of Pr. George's, No. 4:19-cv-00055-MSD-LRL (E.D. Va. Feb. 14, 2020). We deny Forbes' motions for injunctive relief and sanctions. We dispense with oral argument because the facts and legal contention are adequately presented in the materials and this court and argument would not aid the decisional process.

AFFIRMED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Newport News Division

ANTHONY LONNIE FORBES,

Plaintiff,

v.

ACTION NO. 4:19cv56

SEAWORLD ENTERTAINMENT, INC., *et al.*,

Defendants.

DISMISSAL ORDER

This matter is before the Court on the following motions filed by *pro se* Plaintiff Anthony Lonnie Forbes ("Plaintiff"), and Defendants SeaWorld Entertainment, Inc. ("SeaWorld")[1] and the Blackstone Group, L.P. ("Blackstone") (collectively "Defendants"):

(i) Defendants' Motion to Dismiss, ECF No. 5;

(ii) Plaintiff's "Motion for Sanctions Pursuant to Fed. R. Civ. P. 11" ("First Motion for Sanctions"), ECF No. 15;

(iii) Plaintiff's "Motion for Extension of Time to File a Response to [Defendants'] Memorandum in Further Support of its Motion to Dismiss" ("Motion to File Surreply"), ECF No. 19;

(iv) Defendants' Motion to Schedule Hearing, ECF No. 20;

(v) Plaintiff's "Motion for Supplemental Pleadings Pursuant to Fed. R. Civ. P. 15(d)" ("Motion to File Supplemental Pleadings"), ECF No. 22;

(vi) Plaintiff's "Motion for Further Sanctions Pursuant to Fed. R. Civ. P. 11" ("Second Motion for Sanctions"), ECF No. 23;

(vii) Plaintiff's "Motion for Extension of Time to File a Motion for More Sanctions Pursuant to Fed. R. Civ. P. 11" ("Motion for Extension"), ECF No. 25; and

[1] In their Motion to Dismiss, Defendants explain that SeaWorld does business as "Busch Gardens Williamsburg." Mot. Dismiss at 1, ECF No. 5.

Appendix B

(viii) Plaintiff's "Motion for More Sanctions Pursuant to Fed. R. Civ. P. 11") ("Third Motion for Sanctions"), ECF No. 26.

The Court concludes that oral argument is unnecessary because the facts and legal arguments are adequately presented in the parties' briefs. As a result, Defendants' Motion to Schedule Hearing, ECF No. 20, is **DENIED**. Additionally, for the reasons set forth below, Plaintiff's Motion for Extension, ECF No. 25, is **DISMISSED** as unnecessary; Plaintiff's First Motion for Sanctions, ECF No. 15, is **DENIED**; Plaintiff's Second Motion for Sanctions, ECF No. 23, is **DENIED**; Plaintiff's Third Motion for Sanctions, ECF No. 26, is **DENIED**; Plaintiff's Motion to File Surreply, ECF No. 19, is **GRANTED**, and the Clerk is **DIRECTED** to remove the "subject to defect" notation listed on Plaintiff's Surreply at ECF No. 27; Plaintiff's Motion to File Supplemental Pleadings, ECF No. 22, is **DENIED**; and Defendants' Motion to Dismiss, ECF No. 5, is **GRANTED**.

I. Background

On June 5, 2019, Plaintiff, an African American male who was formerly employed as a facility supervisor at Busch Gardens in Williamsburg, Virginia, initiated this action by filing a "Complaint for Employment Discrimination" ("Complaint") against Defendants pursuant to Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 1981, and the Virginia Human Rights Act. Compl. at 3, 5, 29, ECF No. 1.

Plaintiff previously filed a lawsuit against SeaWorld in this Court in 2016, Action No. 4:16cv172 ("*Forbes I*"), in which Plaintiff asserted claims under Title VII, § 1981, and the Virginia Human Rights Act, as well as state law claims for assault and battery and intentional infliction of emotional distress. *See Forbes v. SeaWorld Parks & Entm't*, No. 4:16cv172, 2017 U.S. Dist. LEXIS 86926, at *3 (E.D. Va. June 2, 2017).

A. *Forbes I*

In *Forbes I*, Plaintiff alleged that he was sexually harassed by two assistant managers at work at Busch Gardens. *Id.* at *2. Plaintiff alleged that when he "showed no interest" in the assistant managers, he was yelled at and his hours were cut. *Id.* Plaintiff alleged that he reported the inappropriate conduct to a manager, but the manager simply laughed and "allowed [the assistant manager] to do whatever she wanted." *Id.* Plaintiff further alleged that the manager "made inappropriate racial comments and jokes," "constantly screamed and yelled at only [b]lack employees," and retaliated against Plaintiff by instructing supervisors to "write up" Plaintiff for various disciplinary issues that Plaintiff considered to be unwarranted. *Id.* Plaintiff alleged that he reported his concerns to the Human Resources Department, and was subsequently "transferred to an unwelcoming environment." *Id.* Plaintiff alleged that he was "isolated," assaulted, and subjected to racial comments without consequence. *Id.* at *3.

Plaintiff further alleged that he met with "high ranking officials," who initiated an investigation. *Id.* Following the investigation, Plaintiff alleged that he was notified that the officials "found evidence that [Plaintiff] was sexually [h]arassed." *Id.* Plaintiff alleged that the Senior Director of Human Resources asked Plaintiff to provide input on potential resolutions. *Id.* However, Plaintiff alleged that when he requested copies of the investigation findings, his request was denied, and he "was later fired after stating he would go to the authorities." *Id.*

SeaWorld moved to dismiss *Forbes I* based on Plaintiff's prior agreement to arbitrate all employment-related claims. *Id.* at *3-4. To support its argument, SeaWorld highlighted the specific language of its Dispute Resolution Program ("DRP"), to which Plaintiff had agreed to be bound. *Id.* at *4. The DRP stated:

SPECIAL NOTICE TO EMPLOYEES

THIS POLICY CONSTITUTES A BINDING AGREEMENT BETWEEN YOU AND THE COMPANY FOR THE RESOLUTION OF EMPLOYMENT DISPUTES.

By continuing your employment with SeaWorld Parks & Entertainment, Inc., and/or any of its subsidiaries, divisions or affiliated companies ("Company"), you and the Company are agreeing as a condition of your employment to submit all covered claims to the SeaWorld Parks & Entertainment Dispute Resolution Program ("DRP"), to waive all rights to a trial before a jury on such claims, and to accept an arbitrator's decision as the final, binding and exclusive determination of all covered claims. This program does not change the employment-at-will relationship between you and the Company.

Id. SeaWorld explained that "[c]overed claims" were defined under the DRP, and included:

> [C]laims relating to or arising out of the employment relationship that: . . .
>
> B. the Employee may have against the Company and/or any individual employee who is acting within the scope of his or her employment with the Company, where the Employee alleges unlawful termination and/or unlawful or illegal conduct on the part of the Company, including, but not limited to the following:
>
> (1) Claims relating to involuntary terminations, such as layoffs and discharges (including constructive discharges) when those terminations are alleged to be discriminatory or otherwise unlawful under applicable federal or state law;
>
> (2) Employment discrimination and harassment claims based on, for example, age, race, sex, religion, national origin, veteran status, citizenship, disability, or other characteristics protected by applicable laws;
>
> (3) Retaliation claims for legally protected activity and/or for whistle-blowing under federal or state law; [and]
>
> . . .
>
> (7) Tort claims, such as negligence, defamation, invasion of privacy, and infliction of emotional distress. . . .

Id. at *5-6.

SeaWorld further explained that the DRP contained three procedural levels for dispute resolution. At Level 1, the "Employee and the management team attempt to resolve the Employee's dispute locally." *Id.* at *6. At Level 2, "an independent mediator helps the

Employee and the Company open lines of communication in an attempt to facilitate a resolution." *Id.* Level 3 is "Binding Arbitration" whereby "an independent arbitrator provides the Employee and the Company with a ruling on the merits of the Employee's covered claim(s)." *Id.* The DRP explained that "[t]he arbitrator's decision is the final, binding and exclusive remedy for the Employee's covered claim(s) and is equally final and binding upon the Company." *Id.* The DRP further explained: "This program constitutes a written agreement to arbitrate pursuant to the Federal Arbitration Act, 9 U.S.C.A. Sections 1-14." *Id.* at *7.

On June 2, 2017, the Court issued a Memorandum Dismissal Order in *Forbes I*, in which it explained:

> Congress passed the Federal Arbitration Act ("FAA") "to reverse the longstanding judicial hostility to arbitration agreements," and to reflect a new "liberal federal policy favoring arbitration agreements." *Adkins v. Labor Ready, Inc.*, 303 F.3d 496, 500 (4th Cir. 2002); *Murray v. UFCW Int'l, Local 400*, 289 F.3d 297, 301 (4th Cir. 2002); *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983); *Hawthorne v. BJ's Wholesale Club*, No. 3:15cv572, 2016 U.S. Dist. LEXIS 114969, at *9 (E.D. Va. Aug. 26, 2016). Pursuant to the FAA, "[w]hen parties have entered into a valid and enforceable agreement to arbitrate their disputes and the dispute at issue falls within the scope of that agreement, . . . federal courts [must] stay judicial proceedings, *see* 9 U.S.C.A. § 3, and compel arbitration in accordance with the agreement's terms." *Murray*, 289 F.3d at 301. "[I]f a court determines 'that all of the issues presented are arbitrable, then it may dismiss the case.'" *Hawthorne*, 2016 U.S. Dist. LEXIS 114969, at *19 (quoting *Greenville Hosp. Sys. v. Emp. Welfare Ben. Plan for Emps. of Hazelhurst Mgmt. Co.*, 628 F. App'x 842, 845-46 (4th Cir. 2015)); *see also Choice Hotels Int'l, Inc. v. BSR Tropicana Resort, Inc.*, 252 F.3d 707, 709-10 (4th Cir. 2001). "[A]ny doubts concerning the scope of arbitral issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability." *Murray*, 289 F.3d at 301 (internal citations omitted).

Id. at *9-10. The Court also noted that, as explained by the United States Court of Appeals for the Fourth Circuit, "the provisions of the FAA, and its policy favoring the resolution of disputes through arbitration, apply to employment agreements to arbitrate discrimination claims brought

pursuant to federal statutes, including Title VII of the Civil Rights Act." *Id.* at *10 (quoting *Murray*, 289 F.3d at 301).

In *Forbes I*, the Court ultimately concluded that "the arbitration provision of the DRP [was] valid, enforceable, and applie[d] to all of the claims asserted by Plaintiff." *Id.* at *17. Accordingly, the Court granted SeaWorld's Motion to Dismiss, and dismissed *Forbes I* in its entirety. *Id.* Plaintiff appealed the dismissal of *Forbes I* to the Fourth Circuit. *See Forbes v. Seaworld Parks & Entm't*, 707 F. App'x 168, 169 (4th Cir. 2017). Finding "no reversible error," the Fourth Circuit affirmed the dismissal of *Forbes I* "for the reasons stated by the district court." *Id.*

B. Plaintiff's Instant Action

Plaintiff filed his Complaint in the instant action on June 5, 2019. Compl., ECF No. 1. Plaintiff's Complaint, like his Complaint in *Forbes I*, asserts claims under Title VII, § 1981, and the Virginia Human Rights Act in connection with his past employment with SeaWorld. *Id.* at 3, 28-33. Plaintiff alleges that he was sexually harassed by an assistant manager and a female supervisor at work, and after he "show[ed] no interest," Plaintiff "found that he was in a hostile work environment." *Id.* at 5. Plaintiff alleges that he "contacted a manager" about the harassment, but that the situation was not "appropriately handled." *Id.* Plaintiff claims that he was subjected to retaliation, additional harassment, "[i]nappropriate racial comments and jokes," and unwarranted write-ups. *Id.* Plaintiff also claims that he was "transferred to an unwelcoming environment," "isolated," and assaulted. *Id.* Plaintiff alleges that he met with "high ranking officials," who initiated an investigation. *Id.* at 7. Following the investigation, Plaintiff alleges that he was notified that the officials "found evidence that [Plaintiff] was sexually [h]arassed." *Id.* Plaintiff alleges that the Senior Director of Human Resources asked Plaintiff to provide input on potential resolutions. *Id.* at 8. However, Plaintiff alleges that when he requested copies of the

investigation findings, his request was denied. *Id.* at 8-9. Plaintiff alleges that his employment was terminated on March 6, 2016.[2] *Id.* at 9.

Plaintiff alleges five specific employment-related causes of action against Defendants. *Id.* at 28-33. In Count I, Plaintiff claims that Defendants discriminated against him "on the basis of his race, and/or color," in violation of § 1981, by "denying him the same terms and conditions of employment available to employees who are White," and "subjecting him to disparate working conditions and unfair discipline, denying him terms and conditions of employment equal to that of employees who are White, and unlawfully terminating his employment." *Id.* at 28-29. Plaintiff also claims that Defendants "foster[ed], condon[ed], accept[ed], ratif[ied], and/or otherwise fail[ed] to prevent or remedy a hostile work environment that has included, among other things, severe and pervasive discrimination and harassment." *Id.* at 29. In Count II, Plaintiff claims that Defendants engaged in "unlawful retaliatory conduct and harassment in violation of [§] 1981." *Id.* at 30. In Count III, Plaintiff claims that Defendants discriminated against and harassed Plaintiff because of his race and/or color in violation of the Virginia Human Rights Act. *Id.* at 31. In Count IV, Plaintiff claims that Defendants' "unlawful retaliatory conduct and harassment"

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[2] Plaintiff's Complaint also contains allegations regarding events that allegedly occurred after Plaintiff's employment was terminated. Compl. at 10-28, ECF No. 1. For example, Plaintiff alleges, among other things, that he contacted certain management officials of Blackstone and SeaWorld regarding his complaints of discrimination, and received no responses. *Id.* at 10-11. Plaintiff further alleges that counsel for SeaWorld acted inappropriately in his handling of *Forbes I*. *Id.* at 11-14. Additionally, Plaintiff alleges that he filed lawsuits in state court against an employee of SeaWorld, and an attorney who represented the employee, and believes that he was threatened during the course of the state court proceedings. *Id.* at 15-20. Specifically, Plaintiff states that during the state court proceedings, certain individuals wore royal blue and green clothing items – colors which Plaintiff believes are connected to the Las Vegas shooting in October 2017 – and intended for their clothing items to serve as some form of symbolic threat against Plaintiff. *Id.* at 17-18. Plaintiff also claims that he received threats from Lieutenant Governor Justin Fairfax and Senator Kamala Harris. *Id.* at 20-21. Plaintiff's Complaint does not include any causes of action related to these additional allegations. The Complaint only asserts five specific employment-related causes of action against SeaWorld and Blackstone, as summarized herein. *Id.* at 28-33.

violates the Virginia Human Rights Act. *Id.* at 32. In Count V, Plaintiff claims that Defendants' "unlawful retaliatory conduct and harassment" also violates Title VII. *Id.* at 33.

Defendants filed a Motion to Dismiss on August 13, 2019, and provided *pro se* Plaintiff with a *Roseboro* Notice pursuant to Rule 7(K) of the Local Civil Rules of the United States District Court for the Eastern District of Virginia. Mot. Dismiss at 1-7, ECF No. 5; E.D. Va. Loc. Civ. R. 7(K). In response, Plaintiff filed a First Motion for Sanctions, in which he claims that Defendants' Motion to Dismiss is "deceitful," and that the arguments asserted therein warrant sanctions under Rule 11 of the Federal Rule of Civil Procedure. First Mot. Sanctions at 1-7, ECF No. 15. Plaintiff subsequently filed an Opposition to Defendants' Motion to Dismiss, and Defendants filed a Reply. Opp'n, ECF No. 16; Reply, ECF No. 17.

After the briefing closed on Defendants' Motion to Dismiss, Plaintiff filed a Motion to File Surreply and a Surreply. Mot. File Surreply, ECF No. 19; Surreply, ECF No. 27. Defendants filed a Motion to Schedule Hearing, and Plaintiff filed additional motions, including (i) a Second Motion for Sanctions; (ii) a Motion for Extension, in which Plaintiff seeks an extension of time to file a motion for additional sanctions; (iii) a Third Motion for Sanctions; and (iv) a Motion to File Supplemental Pleadings. Mot. Schedule Hearing, ECF No. 20; Second Mot. Sanctions, ECF No. 23; Mot. Extension, ECF No. 25; Third Mot. Sanctions, ECF No. 26; Mot. File Suppl. Pleadings, ECF No. 22. All pending motions are ripe for decision.

II. Plaintiff's Sanction-Related Motions

Plaintiff filed a number of sanction-related motions against Defendants in this action. In his First Motion for Sanctions, Plaintiff claims that Defendants' Motion to Dismiss is "deceitful," and that the arguments asserted therein warrant sanctions under Federal Rule 11. First Mot. Sanctions at 1-7, ECF No. 15. In his Second Motion for Sanctions, Plaintiff claims that Defendants' Reply, filed in support of their initial Motion to Dismiss, contains frivolous claims

that warrant sanctions. Second Mot. Sanctions at 1-12. Thereafter, Plaintiff filed a Motion for Extension, in which Plaintiff asks the Court for an extension of time to file a motion for additional sanctions (presumably Plaintiff's Third Motion for Sanctions), based on the content of Defendants' Motion to Schedule Hearing. Mot. Extension at 1, ECF No. 25. Plaintiff subsequently filed a Third Motion for Sanctions, in which Plaintiff claims that Defendants' Motion to Schedule Hearing contains frivolous claims that warrant sanctions. Third Mot. Sanctions at 1-10, ECF No. 26.

The Court finds that there was no need for Plaintiff to seek an extension of time to file his Third Motion for Sanctions. Accordingly, Plaintiff's Motion for Extension, ECF No. 25, is **DISMISSED** as unnecessary. Additionally, the Court finds that although Plaintiff disagrees with the content of Defendants' various filings, Plaintiff has not established a sufficient basis for the imposition of sanctions. Accordingly, Plaintiff's First Motion for Sanctions, ECF No. 15, is **DENIED**; Plaintiff's Second Motion for Sanctions, ECF No. 23, is **DENIED**; and Plaintiff's Third Motion for Sanctions, ECF No. 26, is **DENIED**.

III. Plaintiff's Motion to File Surreply and Motion to File Supplemental Pleadings

After the briefing closed on Defendants' Motion to Dismiss, Plaintiff filed a Motion to File Surreply, and subsequently filed a Surreply. Mot. File Surreply, ECF No. 19; Surreply, ECF No. 27. Because the Court had not authorized the filing of Plaintiff's Surreply, it was filed "subject to defect." Pursuant to Local Rule 7(F)(1), after the party opposing a motion files a response brief, the moving party may file a reply brief with six calendar days. E.D. Va. Loc. Civ. R. 7(F)(1). "No further briefs or written communications may be filed without first obtaining leave of Court." *Id.* In deference to Plaintiff's *pro se* status, the Court will authorize the filing of Plaintiff's Surreply. Accordingly, Plaintiff's Motion to File Surreply, ECF No. 19, is **GRANTED**, and the Clerk is **DIRECTED** to remove the "subject to defect"

notation listed on Plaintiff's Surreply at ECF No. 27. The Court has considered Plaintiff's Surreply in its analysis of Defendants' Motion to Dismiss.

On November 20, 2019, Plaintiff filed a Motion to File Supplemental Pleadings. Mot. File Suppl. Pleadings, ECF No. 22. In his motion, Plaintiff claims that the arguments made by Defendants and their counsel in certain motions filed with the Court are frivolous and "a form of retaliation." *Id.* at 1. Plaintiff asks the Court for permission to "add [t]hree [n]ew [c]ounts of retaliation" to his Complaint, based on the contents of Defendants' filings. *Id.* at 2.

The Court finds that Plaintiff's disagreement with the factual assertions and arguments made by Defendants in their filings does not justify Plaintiff's request to amend his Complaint. Because Plaintiff has not established an adequate basis for the relief requested therein, Plaintiff's Motion to File Supplemental Pleadings, ECF No. 22, is **DENIED**.

IV. Defendants' Motion to Dismiss

A. Standard of Review under Federal Rule 12(b)(6)

Defendants seek dismissal of this action pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. A motion to dismiss under Federal Rule 12(b)(6) should be granted if a complaint fails to "allege 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 Rule 12(b)(6) motion "tests the sufficiency of a complaint and 'does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses.'" *Johnson v. Portfolio Recovery Assocs., LLC*, 682 F. Supp. 2d 560, 567 (E.D. Va. 2009) (quoting *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992)). As such, the Court must accept all factual allegations contained in Plaintiff's Complaint as true and draw all reasonable inferences in favor of Plaintiff. *Id.* "Although the truth of the facts alleged is assumed, courts are not bound by the 'legal conclusions drawn from

the facts' and 'need not accept as true unwarranted inferences, unreasonable conclusions, or arguments.'" *Id.* (citations omitted).

Additionally, when analyzing the pleadings of a *pro se* plaintiff, courts are required to construe such pleadings liberally, especially in a civil rights case. *See Brown v. N.C. Dep't of Corr.*, 612 F.3d 720, 722 (4th Cir. 2010); *Conyers v. Va. Hous. Dev. Auth.*, No. 3:12cv458, 2012 U.S. Dist. LEXIS 134908, at *7-8 (E.D. Va. Sept. 19, 2012).

B. Discussion

In their Motion to Dismiss, Defendants argue that "[r]es judicata bars Plaintiff's attempt to relitigate the claims against [SeaWorld]" that were dismissed in *Forbes I*. Mem. Supp. Mot. Dismiss at 2-3, ECF No. 6. Defendants claim that Plaintiff "cannot escape the preclusive effect of res judicata by merely changing the formatting and including additional irrelevant factual allegations." *Id.* at 2. In response, Plaintiff argues that the claims asserted in this action are "not identical" to those asserted in *Forbes I*, "arise from different conduct and occurrences," and are the "result of ongoing harassment." Opp'n at 1, ECF No. 16.

Under the doctrine of res judicata, "a prior judgment between the same parties precludes subsequent litigation of matters resolved in the first adjudication." *Lewin v. Cooke*, 95 F. Supp. 2d 513, 522 (E.D. Va. 2000). As this Court has explained:

> "The doctrine encompasses two concepts: claim preclusion and issue preclusion." These related doctrines "seek to relieve parties of the cost of multiple lawsuits, prevent inconsistent verdicts, conserve judicial resources and encourage reliance on adjudications." Rules of claim preclusion provide that, if the later litigation arises from the same cause of action as the first, then the judgment bars litigation of every matter that was or might have been adjudicated in the earlier suit. Subsequent litigation will be barred by claim preclusion where there is: (1) a final judgment on the merits in an earlier suit; (2) an identity of the cause of action in both the earlier and the later suit; and (3) an identity of the parties or their privies to the two suits.

> Issue preclusion forecloses "the relitigation of issues of fact or law that are identical to issues which have been actually determined and necessarily decided in prior litigation in which the party against whom [issue preclusion] is asserted had a full and fair opportunity to litigate." Issue preclusion will apply where: (1) the issue sought to be precluded is identical to an issue previously litigated; (2) the issue was actually determined in the prior proceeding; (3) the determination of the issue was a critical and necessary part of the decision in the prior proceeding; (4) the prior judgment is final and valid; and (5) the party against whom estoppel is asserted has had a full and fair opportunity to litigate the issue in the previous forum.

Id. (alteration in original) (internal citations omitted).

Here, the Court finds that although Plaintiff's Complaint in this action contains certain allegations of misconduct that were not asserted in *Forbes I*, as summarized above, the causes of action asserted in this action (*i.e.*, for discrimination, harassment, and retaliation under Title VII, § 1981, and the Virginia Human Rights Act), were previously asserted in *Forbes I*, involved the same parties or their privies, and resulted in a final judgment on the merits. Additionally, the Court finds that the issues that necessarily arise in this action (*i.e.*, the applicability and validity of the agreement to arbitrate employment-related claims), are the same critical issues that were actually determined in *Forbes I*, during which time Plaintiff had a full and fair opportunity to argue his position. As a result, the Court finds that this action is barred by the doctrine of res judicata.[3] Accordingly, Defendants' Motion to Dismiss, ECF No. 5, is **GRANTED**.

[3] In addition to their res judicata arguments, Defendants also argue in their Motion to Dismiss that Plaintiff's Complaint fails to state a claim against Blackstone because "Blackstone never employed [Plaintiff]." Mem. Supp. Mot. Dismiss at 3, ECF No. 6. In his Complaint, Plaintiff appears to name Blackstone as a Defendant because, at some point, Blackstone "[o]wned the largest stake in SeaWorld." Compl. at 10, ECF No. 1. In subsequent submissions, Plaintiff argues that Blackstone owned SeaWorld, and that the CEO of Blackstone was the supervisor of Plaintiff's supervisor. First Mot. Sanctions at 3, ECF No. 15; Second Mot. Sanctions at 4, ECF No. 23. Upon review of the allegations of Plaintiff's Complaint, the Court finds that the claims asserted in Counts I through V of Plaintiff's Complaint do not state plausible claims for relief against Blackstone. Compl. at 10-11, 20, 28-33.

V. Conclusion

For the reasons set forth above, Defendants' Motion to Schedule Hearing, ECF No. 20, is **DENIED**; Plaintiff's Motion for Extension, ECF No. 25, is **DISMISSED** as unnecessary; Plaintiff's First Motion for Sanctions, ECF No. 15, is **DENIED**; Plaintiff's Second Motion for Sanctions, ECF No. 23, is **DENIED**; Plaintiff's Third Motion for Sanctions, ECF No. 26, is **DENIED**; Plaintiff's Motion to File Surreply, ECF No. 19, is **GRANTED**, and the Clerk is **DIRECTED** to remove the "subject to defect" notation listed on Plaintiff's Surreply at ECF No. 27; Plaintiff's Motion to File Supplemental Pleadings, ECF No. 22, is **DENIED**; and Defendants' Motion to Dismiss, ECF No. 5, is **GRANTED**.

Plaintiff may appeal this Dismissal Order by forwarding a written notice of appeal to the Clerk of the United States District Court, Newport News Division, 2400 West Avenue, Newport News, Virginia 23607. The written notice must be received by the Clerk within thirty days from the date of the entry of this Dismissal Order. If Plaintiff wishes to proceed *in forma pauperis* on appeal, the application to proceed *in forma pauperis* shall be submitted to the Clerk of the United States District Court, Newport News Division, 2400 West Avenue, Newport News, Virginia 23607.

The Clerk is **DIRECTED** to send a copy of this Dismissal Order to Plaintiff and counsel for Defendants.

IT IS SO **ORDERED**.

/s/

Mark S. Davis
CHIEF UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
February 14, 2020