

APPENDICES

APPENDIX A Opinions of the United States Court of Appeals, 5th Circuit

United States Court of Appeals for the Fifth Circuit

No. 20-40045
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
November 6, 2020

Lyle W. Cayce
Clerk

IMEH U. AFFIAH,

Plaintiff—Appellant,

versus

TEXAS SOUTHMOST COLLEGE; LISSA FRAUSTO; MIKE
SHANNON,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:18-CV-196

Before CLEMENT, HIGGINSON, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:

Imeh Affiah sued Texas Southmost College under Title VII, alleging racial discrimination, hostile work environment, and retaliation. The district court granted summary judgment for the College on all counts. We affirm.

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

It is illegal under Title VII for an employer to discharge an employee because of “race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2(a). Under the familiar *McDonnell Douglas* burden shifting analysis, the plaintiff must first make a *prima facie* case of discrimination. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). If he can, the burden shifts to the defendant to “articulate a legitimate non-discriminatory reason for the adverse employment action.” *E.E.O.C. v. Chevron Phillips Chem. Co.*, 570 F.3d 606, 615 (5th Cir. 2009). Then the burden shifts back to the plaintiff to show the stated reason is “pretextual.” *Burton v. Freescale Semiconductor, Inc.*, 798 F.3d 222, 227 (5th Cir. 2015).

Affiah points to no evidence that can support his claims. Meanwhile, Texas Southmost College’s evidence is uncontested and insurmountable. The College hired Affiah as a dean for the 2016–17 school year. Within months, nine students and employees filed complaints documenting “detailed instances of unprofessional behavior and harassment.”

Affiah told one female student her voice was “sexy,” placed his hand on her shoulder, and asked her on a date. He searched the Internet about a professor, then asked if she had a boyfriend and told her he was looking for a Latina woman. He threatened to “call immigration” on a fellow employee. These are on top of staff complaints about Affiah’s intimidating and unprofessional conduct. At the district court, Affiah made “no attempt to controvert this evidence, other than conclusory statements that the evidence is fabricated.” His appeal here follows the same baseless tack. The College was well justified to place Affiah on administrative leave and decline his contract.

AFFIRMED.

APPENDIX B Opinions of the United Southern District Court, Brownsville

ENTERED

January 10, 2020

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

IMEH U. AFFIAH,

§

Plaintiff,

§

VS.

§

TEXAS SOUTHMOST COLLEGE, *et al.*,

§

Defendants.

§

§

§

§

CIVIL ACTION NO. 1:18-CV-196

OPINION AND ORDER

After Defendant Texas Southmost College (TSC) did not renew Plaintiff Imeh U. Affiah's employment contract with the institution, he filed this Title VII lawsuit alleging race-based discrimination, hostile work environment, and retaliation. TSC moves for summary judgment as to all causes of action. (Motion, Doc. 55) For the following reasons, the Court finds the Motion well taken.

I. Allegations and Procedural History¹

Affiah is "Nigerian by birth and [an] American citizen." (Am. Compl., Doc. 10, ¶ 5)

On September 1, 2016, TSC hired Affiah as Dean of Health Care, Career & Technical Education. (Frausto Aff., Doc. 55-1, ¶ 2; Am. Compl., Doc. 10, ¶ 32) Beginning almost immediately, concerns arose regarding Affiah's behavior. TSC submits summary judgment evidence detailing numerous complaints that TSC employees and students filed against Affiah for acting inappropriately and unprofessionally, including complaints of sexual harassment. (See, e.g., Frausto Aff., Doc. 55-1, ¶ 3 (providing details of nine complaints filed against Affiah); Boeta Aff., Doc. 55-14 (recounting her complaint against Affiah for sexual harassment); Cavazos Aff., Doc. 55-15 (describing her complaint against Affiah for sexual harassment); Frausto Memorandum to Interim TSC President Mike Shannon, Doc. 55-6 (summarizing student

¹ In his Amended Complaint, Affiah adds Lissa Frausto and Mike Shannon as defendants. But the record does not indicate that he ever served them, and they have not appeared in this lawsuit. Under Federal Rule of Civil Procedure 4(m), the Court gives notice to Affiah that if he fails to serve Frausto and Shannon by January 24, 2020, the Court will dismiss his claims against these defendants.

complaint against Affiah for harassment, the investigation, and the factual finding that the student and Affiah “were equally inappropriate in their behavior toward one another”)).

In February 2017, five months after hiring him, TSC placed Affiah on administrative leave with pay. (Frausto Aff., Doc. 55-1, ¶ 2; Notice, Doc. 55-13) His contract expired on August 31 of that year. (Frausto Aff., Doc. 55-1, ¶ 2) TSC did not renew his contract, “due to the number of complaints against him and conflicts with staff, faculty and students which led to multiple investigations and some findings of inappropriate conduct on his part.” (*Id.*)

In his Amended Complaint, Affiah alleges that during his employment with the college, TSC subjected him to racial discrimination. For example, he alleges that TSC paid him less than two other deans employed at TSC who were of a different race. (Am. Compl., Doc. 10, ¶¶ 16, 25) And he alleges that Frausto, in her role as TSC’s Chief Human Resources Officer, “provided false information on salary . . . once she [knew] that Plaintiff [was] of a different race and not Hispanic.” (*Id.* at ¶ 28)

Affiah also alleges that he received disparate treatment by Frausto and TSC Interim President Mike Shannon. For example, he alleges a number of personality and employment-related disputes between himself and Frausto, all allegedly motivated by Frausto’s racial bias. (*Id.* at ¶¶ 34–40, 64–71, 73–79, 83–85) Affiah continues by alleging that Shannon treated him disparately by refusing to meet with him to discuss departmental issues and potential complaints of bias against Affiah by other staff members. (*Id.* at ¶¶ 41–44, 53, 70, 72, 77, 81) He alleges that TSC’s handling of various complaints about him was unfair and further evidence of Shannon and Frausto’s “consistent discrimination against Plaintiff because of his race and color.” (*Id.* at ¶ 71) He also claims that Frausto altered records, created documents, and solicited “fabricated sexual harassment charges” to justify his wrongful termination. (*Id.* at ¶¶ 82–85)

Affiah brought suit under Title VII after receiving a notice of right to sue from the Equal Employment Opportunity Commission. (EEOC Dismissal and Notice of Rights, Doc. 1-2)

In October 2019, TSC filed its Motion for Summary Judgment. (Motion, Doc. 55) Affiah filed no response within the applicable deadline, although it is unclear whether Affiah received service of the Motion. (See TSC's Notice regarding Re-Issuance of Service of Motion, Doc. 59) On November 21, 2019, the Court ordered Affiah to file a response by no later than December 5, 2019, and indicated that Affiah's failure to file a response would lead the Court to treat the Motion as unopposed. (Order, Doc. 60)

On December 2 and 4, 2019, Affiah filed four letters, which in part detail his objections to the Motion. (Pl.'s Letters, Docs. 62-65) In the letters, Affiah challenges some of TSC's contentions regarding the complaints against him, but he does not submit any summary judgment evidence of his own. The Court considers Affiah's letters as his response to the Motion.²

II. Analysis

Title VII makes it unlawful for an employer to discharge an employee because of his "race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a), *et seq.* Based on Section 703 of Title VII, Affiah advances claims of race-based discrimination, hostile work environment, and retaliation. (Am. Compl., Doc. 10, ¶ 2) TSC argues that each claim fails as a matter of law because Affiah cannot establish a *prima facie* case as to any cause of action. (Motion, Doc. 55, ¶ 2) TSC also contends that, even if Affiah could establish a *prima facie* case of discrimination under any theory, the summary judgment evidence demonstrates non-discriminatory, non-pretextual reasons for TSC's decision to not renew Affiah's contract. (*Id.*) This evidence, according to TSC, precludes any genuine issue of a material fact and warrants summary dismissal of Affiah's causes of action.

² Affiah also requested additional time to file another response. (Pl.'s Dec. 3rd Letter, Doc. 63) The Court denied the request. (Order Denying Plaintiff's Request for Additional Time to Respond, Doc. 66)

A. Standard of Review

Summary judgment is proper if the evidence, viewed in the light most favorable to the nonmoving party, shows that no genuine dispute of material fact exists, and that the movant is entitled to judgment as a matter of law. FED. R. CIV. P. 56(a); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). A genuine dispute over material facts exists if the evidence presents an issue “that properly can be resolved only by a finder of fact because [it] may reasonably be resolved in favor of either party,” and the fact at issue might affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.* 47 U.S. 242, 248, 250 (1986). The moving party “bears the burden of identifying those portions of the record it believes demonstrate the absence of a genuine issue of material fact.” *Triple Tee Golf, Inc. v. Nike, Inc.*, 485 F.3d 253, 261 (5th Cir. 2007) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–25 (1986)). All facts and inferences drawn from those facts must be viewed in the light most favorable to the nonmovant. *Scott v. Harris*, 550 U.S. 372, 378 (2007).

If this evidence is provided, the burden then shifts to the responding party to present affirmative evidence to defeat the motion. *Anderson*, 477 U.S. at 257. “[T]he nonmoving party must set forth specific facts showing the existence of a ‘genuine’ issue concerning every essential component of its case.” *Morris v. Covan Worldwide Moving, Inc.*, 144 F.3d 377, 380 (5th Cir. 1998) (citing *Anderson*, 477 U.S. at 255–57). “Unsubstantiated assertions, improbable inferences, and unsupported speculation, however, are not sufficient to defeat a motion for summary judgment.” *Brown v. City of Houston*, 337 F.3d 539, 541 (5th Cir. 2003) (internal quotation marks omitted).

B. Discrimination and Hostile Work Environment

Title VII prohibits discrimination “against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2(a)(1). Generally, to maintain a

claim under Title VII, a plaintiff must demonstrate a *prima facie* case of discrimination. *See Laxton v. Gap, Inc.*, 333 F.3d 572, 578 (5th Cir. 2003); *see also McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). To meet this initial burden, “the plaintiff must either present direct evidence of discrimination or, in the absence of direct evidence, rely on circumstantial evidence using the *McDonnell Douglas* burden shifting analysis.” *Wittmer v. Phillips 66 Co.*, 915 F.3d 328, 332 (5th Cir. 2019). When the plaintiff alleges that he was discharged or otherwise treated discriminatorily by his employer, the plaintiff must show that (1) he is a member of a protected class, (2) he was qualified for his position, (3) he suffered an adverse employment action, and (4) others similarly situated were more favorably treated or that the plaintiff was replaced by someone outside the protected class. *See Willis v. Coca Cola Enters., Inc.*, 445 F.3d 413, 420 (5th Cir. 2006).

If a plaintiff establishes a *prima facie* case, an inference of discrimination arises, and the burden shifts to the defendant to present evidence that the adverse employment action was taken for a legitimate, non-discriminatory reason. *Rutherford v. Harris Cty., Tex.*, 197 F.3d 173, 180 (5th Cir. 1999). Once an employer articulates a legitimate, non-discriminatory reason and produces competent summary judgment evidence in support of that stated reason, the inference of discrimination disappears, and the burden of proof shifts back to the plaintiff to demonstrate that the employer’s articulated reason for the adverse employment action was merely a pretext. *Rutherford*, 197 F.3d at 180.

Similarly, to support a hostile work environment claim, the plaintiff must initially establish a *prima facie* case demonstrating that the alleged harassment was tied to a protected characteristic or activity. The elements of a *prima facie* case include that: “(1) the employee belongs to a protected group; (2) the employee was subjected to unwelcome harassment; (3) the harassment complained of was based on race; (4) the harassment complained of affected a term, condition or privilege of employment; [and] (5) the employer knew or should have known of the

harassment in question and failed to take prompt remedial action.” *Brew v. Weyerhaeuser NR Co.*, 537 Fed.Appx. 309, 313 (5th Cir. 2013) (citing *Celestine v. Petroleos de Venezuela SA*, 266 F.3d 343, 353 (5th Cir. 2001) *abrogated on other grounds by Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 110–115 (2002)); *Jones v. Flagship Int'l*, 793 F.2d 714, 719 (5th Cir. 1986) (adopting the Eleventh Circuit’s “hostile work environment” paradigm).

In the current matter, as to both the claims of discrimination and a hostile work environment, Affiah fails to establish a *prima facie* case of discrimination. Affiah alleges that the adverse employment actions he endured include his “unlawful termination” and his subjection to a hostile work environment. (Am. Compl., Doc. 10, ¶¶ 92–96; Pl.’s Nov. 25th Letter, Doc. 64, 3; Pl.’s Dec. 3rd Letter, Doc. 63, 5) But he presents no summary judgment evidence to support these allegations. As a result, the summary judgment record, even when viewed in the light most favorable to Affiah, does not demonstrate that TSC engaged in an adverse employment decision based on Affiah’s race or any other protected category.

On the contrary, TSC presents ample summary judgment evidence regarding numerous complaints that TSC employees and students filed against Affiah, and supporting TSC’s position that it chose to not renew Affiah’s contract due to these complaints. This evidence remains uncontested. As a result, even if Affiah had satisfied his burden to demonstrate a *prima facie* case of discrimination, TSC has established that its decision regarding Affiah’s contract was based on a legitimate, non-discriminatory reason. Affiah makes no attempt to show that this reason was pretextual and no genuine issue of material fact exists on the matter.³

C. Retaliation

In order to pursue a retaliation claim under Title VII, a plaintiff must establish a *prima facie* case showing: (1) that he engaged in activity protected by Title VII, (2) that an adverse employment action occurred, and (3) that a causal link existed between the protected activity

³ Affiah’s conclusory argument that TSC’s summary judgment evidence is fabricated finds no support in the record.

and the adverse action. *Ackel v. Nat'l Communications, Inc.*, 339 F.3d 376, 385 (5th Cir. 2003). With respect to the third element, the claimant “must establish that [his] protected activity was a but-for cause of the alleged adverse action.” *Zamora v. City Of Houston*, 798 F.3d 326, 331 (5th Cir. 2015) (quoting *Univ. of Texas Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 360 (2013)). “Protected activity” is defined as opposition to any practice made unlawful by Title VII, including making a charge, testifying, assisting, or participating in any investigation, proceeding, or hearing under Title VII. *Green v. Administrators of Tulane Educ. Fund*, 284 F.3d 642, 657 (5th Cir. 2002), *as amended on denial of reh'g and reh'g en banc* (Apr. 26, 2002) (citing 42 U.S.C. § 2000e-3(a)).

If the plaintiff satisfies his initial burden, an inference of discrimination arises, and the burden of proof shifts to the defendant to articulate a legitimate, non-discriminatory reason for the challenged employment action. *See, e.g., Shackelford v. Deloitte & Touche, LLP*, 190 F.3d 398, 408 (5th Cir. 1999) (citing *McDonnell*, 411 U.S. at 801–803). “If the defendant satisfies this burden, the plaintiff must prove that the proffered reasons are pretextual.” *Shackelford*, 190 F.3d at 404.

In the present case, Affiah alleges that TSC retaliated against him after he made “informal and formal complaints to Defendant . . . opposing Defendants’ unlawful, discriminatory employment practices based on race and color.” (Am. Compl., Doc. 10, ¶ 101) Affiah contends that his complaints led TSC to take “materially adverse actions against Plaintiff . . . [by] failing to evaluate the plaintiff’s performance, subject[ing] plaintiff’s complaints to ridicule and initiat[ing] termination of Plaintiff’s employment.” (*Id.* at ¶ 102) But Affiah offers no competent summary judgment evidence even suggesting that his complaints were a but-for cause of TSC’s decision to not renew his contract.⁴ As a result, he fails to meet his burden to

⁴ Affiah also alleges that Defendants engaged in “retaliatory workplace harassment” by failing to meet with him, allowing employees to make disparaging remarks about him, defaming him, and failing to evaluate his performance. (Am. Compl., Doc. 10, ¶¶ 79–82, 102) But these allegations do not constitute “adverse employment actions” within the meaning of Title VII. *See Stewart v. Miss. Transp. Comm'n*, 586 F.3d 321, 332 (5th Cir. 2009) (concluding that

establish a *prima facia* case of retaliation. Even if he had, TSC has articulated legitimate, non-discriminatory reasons for not renewing Affiah's employment contract. The summary judgment evidence demonstrates that during Affiah's brief employment at TSC, co-workers and students filed nine formal complaints against him. (Frausto Aff., Doc. 55-1, (summarizing each complaint)) These complaints include detailed instances of unprofessional behavior and harassment by Affiah, who makes no attempt to controvert this evidence, other than conclusory statements that the evidence is fabricated. (See Pl.'s Dec. 3rd Letter, Doc. 63) No genuine issue of material fact exists on the matter.

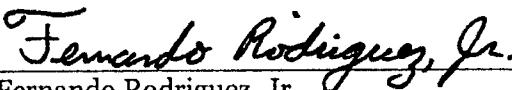
III. Conclusion

For these reasons, it is:

ORDERED that Defendant Texas Southmost College's Motion for Summary Judgement (Doc. 55) is **GRANTED**; and

ORDERED that Plaintiff Imeh U. Affiah's causes of action against Defendant Texas Southmost College are **DISMISSED WITH PREJUDICE**.

SIGNED this 10th day of January, 2020.



Fernando Rodriguez, Jr.
United States District Judge

ostracism is a minor annoyance, not a materially adverse employment action); *Aryain v. Wal-Mart Stores Tex. LP*, 534 F.3d 473, 484-85 (5th Cir. 2008) (explaining that rude treatment by a supervisor is not a materially adverse action under Title VII). In any event, Affiah offers no summary judgment evidence as to these allegations.

APPENDIX C Briefs submitted by Plaintiff to the US Court of Appeals, 5th Circuit

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 20-40045

Imeh U. Affiah

Plaintiff-Appellant,

v.

Texas Southmost College, Lissa Frausto, Mike Shannon,
Defendants-Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

INITIAL BRIEF OF APPELLANT
CRIMINAL APPEAL

Imeh U. Affiah, Appellant

(Currently on Pro-Se Filing Status)

10001 Club Creek Drive, # 207

Houston, Texas 77036

337-962-8224 (Tel)

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CERTIFICATE OF INTERESTED PERSONS

I certify that the following individuals may have an interest in the outcome of this case. I. make these representations in order that the members of this Court may evaluate possible disqualifications or recusal.

- a. Appellant: Imeh U. Affiah
- b. Defendants: Defendants Attorney, Mr. Garza
- c. The U.S. Southern District court, Brownsville Division, Texas

STATEMENT REGARDING ORAL ARGUMENT

This case involves some questions meriting argument:

Why?

- (a) The District Court relied solely on a two-page summary judgement of Defendants without reviewing documents and concerns raised by Plaintiff prior to summary judgement by Defendants (Plaintiff notified the Court that most of the documents were full of fabrications, inconsistencies and contradictions as well as false representations of the facts. Defendants summary judgement under oath contradicts and inconsistent with their under oath supporting documents)
- (b) The District Court failed to verify the validity of the documents provided by Defendants even after Plaintiff brought this to their attention. Also, why the **District Court failed to give Plaintiff any opportunity to refute Defendants' summary judgement with the understanding of Plaintiff filing status** (Why District court relied on one sided argument)
- (c) The District court failed to review all the so-called nine complaints, most of them seen for the first time by Plaintiff and asked the same questions that the EEOC asked. Some of the Defendants fabricated complaints do not make any sense. Most of the complaints based on Defendants documents lack of direct written statements from the accusers other than Lissa Frausto's opinions and hearsay. In some of the complaints, Lissa Frausto claimed they were filed through phone calls. If these complaints existed, what did Defendants do even after one or two complaints to address the issues.
- (d) The District Court failed to question why Lissa Frausto (then HR director and after Plaintiff was fired promoted to Executive HR director) was solely the accuser, committee, investigator and judge of Plaintiff. Lissa Frausto had a motive from the onset.
- (e) The District Court and Defendants accepted amended complaints by Plaintiff and waited for one year to raise objection. As a Pro se Appellant, why did Defendants not file any motion within the 120 days and now the court is arguing for them.

If the District Court had considered some or all of the information indicated above, the ruling by the Court would have been reversed.

Oral arguments are very necessary to address volumes of contradicting and fabricated documents produced by Defendant, Lissa Frausto.

	PAGE
TABLE OF CONTENTS	
CERTIFICATE OF INTERESTED PERSONS.....	i
STATEMENT REGARDING ORAL ARGUMENT	ii
TABLE OF AUTHORITIES.....	iv
STATEMENT OF JURISDICTION	1
STATEMENT OF ISSUES PRESENTED FOR REVIEW	2
STATEMENT OF THE CASE	3
I. Facts and Proceedings Below.....	3
II. Summary of the Argument.	15
CONCLUSION.	20
CERTIFICATE OF SERVICE	21
CERTIFICATE OF COMPLIANCE	22

TABLE OF AUTHORITIES

Appellant has no legal background and is incapable of providing Legal citations, Authorities, Statutes, Rules, United States guidelines manual, and Miscellaneous. The information provided by Appellant is based on facts as the incidents occurred rather than fiction and fabrications after two to three years of filing the law suit.

STATEMENT OF JURISDICTION

1. Subject Matter and Jurisdiction in the District Court. This case arose from the prosecution of an offense against Texas Southmost College, Lissa Frausto and Mike Shannon (collectively Defendants) against the laws of the United States of America.

The Southern District Court, Brownsville division had jurisdiction of this case.

2. Jurisdiction in the Court of Appeals. This is a direct appeal from a final decision of the U.S. District Court for the Southern District of Texas, Brownsville Division, entering judgment of dismissal.

This Court has jurisdiction of the appeal

The district court entered written judgment of Dismissal on January 28, 2020, after Appellant had already initiated the appeal process on January 27, 2020. Appellant filed notice of appeal after a series of inconsistencies and discrepancies by the Southern District Court, Brownsville Division in this case. Documents from the docket filed by Appellant support these claims.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. **Whether the district court committed reversible factual or legal error as it pertains to the case in question?**

STATEMENT OF THE CASE

I. Facts and Proceedings Below

My (Plaintiff) understanding of “Race or Color Discrimination in the workplace” is based on the following descriptions by the Federal Government:

“Workplace discrimination can extend beyond hiring, firing, or limiting wages and opportunities for advancement. It also occurs when other employees or even the employer ridicule or make fun of an employee because of that employee's race or treat the employee with obvious anger or hostility. This is harassment, and workplace harassment is against the law. Employers are legally responsible for the behavior of their other workers in this situation.

Racial discrimination exists any time an employer singles someone out and treats that employee differently based on skin color and physical characteristics associated with race”

This case meets the criteria above.

The offense

This is a case of **Racial Discrimination** resulting in **Job Harassment and Defamation of Character** initiated and carried out by Lissa Frausto culminating in the **Unlawful termination of Imeh U. Affiah employment** at Texas Southmost College (TSC). Lissa Frausto singled out Dean Affiah and treated him differently compared to other deans and employees. Imeh U. Affiah is referred to in this document as “Dean Affiah or Plaintiff or Dr. Affiah.

Dr. Affiah outlines a series of events to support his case of racial discrimination resulting in job harassment and defamation of character that culminated in the unlawful termination of his appointment.

FACTUAL ALLEGATIONS

At all times material to this action, Plaintiff was employed as Dean of Health Care, Career & Technical Education at TSC. As part of his jobs, Plaintiff was responsible for Complete Supervision and Coordination of all activities in the division, including and not limited to Instruction, Budgets, Faculty and Staff and their professional developments.

Plaintiff was more qualified in terms of credentials and years of experience pertinent to this position compared to the previous employees that held the position and compared to the other two Deans at the time. Plaintiff did not work under the supervision of HR director, Frausto.

Plaintiff was employed by Dr. Lily Tecero. At the time of Plaintiff's final interview with Dr. Tecero, Plaintiff was told by Dr. Tecero that the initial salary will be consistent with his credentials and years of experience at initial annual rate of \$90,000.00. This amount is consistent with the information provided to the EEOC at the preliminary hearing. (see **Exhibit A, page 2 paragraph 5**)

On or about August 2, 2016, Lissa Frausto, the Human Resources director called Plaintiff and asked him when he can report for work. Lissa Frausto then told Plaintiff that Dr. Tecero's employment was terminated and Mike Shannon was named interim president. During that phone conversation and before discussing salary, Lissa Frausto specifically asked Dr. Affiah "Where are you from originally and how do you describe yourself?", which he responded accordingly without any reservation.

Defendant Lissa Frausto then told Plaintiff that the offer for his employment as the dean will be \$72,920.00. This amount was much less than the initial fixed rate of \$90,000.00 as stated by Dr. Tecero at the final interview. (see **Exhibit A, page 1, 2 paragraph 5**). **In retrospect, Dr. Affiah believes that was the beginning of the racial hatred and bias by Lissa Frausto and as the documents she provided depict that she was knowledgeable of the offer for this position.**

Plaintiff immediately rejected the offer and requested to discuss his counter offer with the interim president, Defendant Mike Shannon because Dr. Tecero had told him differently. Defendant Lissa Frausto refused the request and stated that the Interim President was too busy and she will discuss Plaintiff's request with Defendant Mike Shannon.

On August 03, 2016, Defendant Lissa Frausto sent Plaintiff an email stating that she spoke with the President and that the President needed couple of days to see whether they could increase the current offer. (**Exhibit A, page 1**). On August 05, 2018, Defendant Lissa Frausto called and indicated that the interim President placed the offer at \$88, 999.00, which she said was the same salary for each of the current deans. On the August 05, 2016, Plaintiff accepted the employment and requested documentation of the employment and the starting salary.

On August 08, 2016, Defendant Lissa Frausto e-mailed the letter of employment to Plaintiff and

requested for Plaintiff to sign and accept employment. (see **Exhibit B**)

At that time of negotiating employment, Defendant Lissa Frausto deliberately provided false information on salary to the Plaintiff once she knew that Plaintiff is black. A stereotype by some people like Lissa Frausto (Hispanic) that blacks have no class and standards and will settle for anything less. This notion is clearly seen in the treatments and accusations of Plaintiff by Defendants.

As a normal policy, it is the President and not the director of Human Resources that has the authority to negotiate the salary and benefit for a position as a dean. In other institutions that Plaintiff had worked, a dean reports directly to the president. The other deans at TSC reported directly to Mike Shannon. The fact that Lissa Frausto treated a new dean like Plaintiff as her subordinate was discrimination. Plaintiff being from a different race from Lissa Frausto is racial discrimination.

On or about September 1, 2016, Plaintiff resumed his position as the Dean of the Health Care, Career & Technical Education. On or about September 05, 2016, Plaintiff discussed with Defendant Lissa Frausto about his reimbursement for relocation to Brownsville. Defendant Lissa Frausto became belligerent and hostile and tried to intimidate Plaintiff. Defendant Lissa Frausto mocks the Plaintiff that TSC is not a private institution (probably because Plaintiff had worked at 2-year private institution before) and does not offer any payment for relocation.

On September 20, 2016, Plaintiff received a notice from the Texas Retirement System (TRS) questioning Plaintiff's social security number. Plaintiff called the TRS immediately and was advised to contact Defendant's Human Resources to ensure that Plaintiff's records reflect the correct social security because the error may affect his other benefits). TRS also requested Plaintiff to ask Defendant to inform the TRS of the correction immediately.

On September 21, 2016, Plaintiff called the TSC Human Resources and related the information from the TRS. On September 30, 2016, Plaintiff called the TRS and was told that they did not

receive any correction from the TSC Human Resources. Plaintiff called the TSC Human Resources immediately to request the correction again. Defendant Lissa Frausto was on the line with Plaintiff during this call Lissa Frausto immediately without checking, became irate and indicated to Plaintiff that he had provided the wrong social security number on his employment application form. Plaintiff asked Lissa Frausto whether criminal background check was performed on him. Lissa Frausto answered "of course yes" Plaintiff indicated Lissa Frausto that criminal background check on anyone is impossible without the correct social security number.

Defendant Lissa Frausto was very rude in her approach and angrily informed Plaintiff not to call the Human Resources' office on that issue again and hung up the phone abruptly. Defendant Lissa Frausto's behavior contravened the treatment Plaintiff had seen her expressed to other deans in the school. **This disparage and unprofessional treatments evidenced in the discriminatory action by Defendant Lissa Frausto.**

After this interaction between Plaintiff and Defendant Lissa Frausto, Plaintiff was concerned with Defendant Lissa Frausto treatments so far and decided to discuss the matter with the Interim President, Defendant, Mike Shannon, about the first week of October, 2016. Every attempt by Plaintiff to schedule a meeting was unsuccessful.

Plaintiff discovered that Defendant Mike Shannon had avoided any meeting with Plaintiff despite the fact he had scheduled meetings with other deans. **This differential treatment of Plaintiff by the Defendant Mike Shannon continues throughout Plaintiff's employment.**

Plaintiff decided to appear at a Tuesday, 11th October, 2016, meeting which Defendant Mike Shannon arranged with the other Deans and some employees including Lissa Frausto but was not allowed into meeting. In retrospect, this reaction by the other deans made Plaintiff to believe that **the racial discriminatory treatments** against him were not isolated but coordinated by Lissa Frausto. The subsequent incidents confirm the claim by Plaintiff.

Approximately, within the same week of October 2016, Ms. Diaz of Early Childhood program

in the division Plaintiff supervised requested two rooms from Plaintiff. Plaintiff denied Ms. Diaz's request after found out that Plaintiff's predecessor denied Ms. Diaz's the same request because Ms. Diaz was trying to avoid interacting with other members of the Daycare center. Plaintiff called a meeting of the Early Childhood program faculty and staff to discuss the need for all of them to get along for the sake of the students. Everyone in the program attended the meeting except Ms. Diaz. Plaintiff tried through his secretary to get in touch with Ms. Diaz but there was no response. The following day, Plaintiff talked with Ms. Diaz in her office. Ms. Diaz explicitly indicated to Plaintiff that she was afraid of Plaintiff because she had never worked under someone of his culture/color before. Plaintiff later discovered that Ms. Diaz had made a similar and racially charged statement concerning Plaintiff to Dr. Ronilda Henson (instructor in Early Childcare program as Ms. Diaz). **This also confirmed Plaintiff's belief that his race/color played a key role to the discriminatory treatments he was experiencing and was not isolated.** Records show that Ms. Diaz did not take any action against Plaintiff's predecessor who denied her the same request. However, approximately two days later, Ms. Castillo (a close friend to Ms. Diaz), Business Information Technology Chairperson, a staff under Plaintiff requested a meeting with Plaintiff. Ms. Castillo indicated to Plaintiff during the meeting that Ms. Diaz had requested her company to see Defendant Lissa Frausto to file a complaint because Ms. Diaz was afraid of Plaintiff, but Ms. Castillo refused.

Furthermore, Ms. Castillo stated to Plaintiff that she just had a meeting with Defendant Mike Shannon because she was unhappy with the unfair treatments given to Plaintiff. Ms. Castillo indicated to Plaintiff that she told Defendant Mike Shannon that Plaintiff had done so much improvements to the division in a short amount of time and that she believed that other employees are treating Plaintiff unfairly to get him fired. Plaintiff indicated to Ms. Castillo that he had not done anything in violation of the TSC policies and he was not worried. Plaintiff noticed that Defendant Mike Shannon had the time to meet with other people except Plaintiff who had made numerous attempts of a meeting with Defendant Shannon. **This clearly shows**

the differential treatment of Plaintiff by Defendant Mike Shannon. Defendant Mike Shannon consistently undermined Plaintiff's authorities as the Dean and violated normal policies and procedures of the institution. This undermining of Dean Affiah authorities by Defendant Mike Shannon was not extended to other deans. This is evidence of racial discrimination. In one of his meetings, Defendant Mike Shannon discussed and removed a section from Plaintiff's division and added it to STEM (Science, Technology, Engineering, Mathematics) division to create a position for another individual (Abusalin, a Pakistani American) without Plaintiff involvement in or knowledge of the discussion. Plaintiff found out of this decision during the Board of Trustees meeting that he is required to attend.

Defendant Mike Shannon continued to undermine Plaintiff's position by requesting Plaintiff's subordinate to arrange meetings of the division with outside professionals without Plaintiff's prior knowledge and Plaintiff was never invited to such meetings.

This Plaintiff's subordinate (Scot Nelson, white) was named interim Dean by Defendant Mike Shannon two days after Plaintiff was terminated.

One of the conditions Plaintiff was employed by previous President, Dr. Lily Tecero was to resolve the Probation issues regarding the Associate Degree Nursing (ADN) program. The interim president, Defendant Mike Shannon side stepped the Plaintiff and directed all enquiries regarding the Associate Degree Nursing program to Ms. Melinda Rodriguez (Institutional Advancement) without Plaintiff's prior knowledge or input. Ms. Melinda Rodriguez had no credential or experience in technical careers, sciences, healthcare and her department was not related to Plaintiff. Plaintiff heard of the decision by Mike Shannon through the news media. **These actions by Mike Shannon's actions reinforces Plaintiff's belief of racial discrimination and disparate treatment by Defendant, Mike Shannon**

In mid-October 2016, Plaintiff was approached by Christopher Green (a black Veteran student) in the parking lot about his interest in the Respiratory Therapy Assistant Program.

Plaintiff advised Mr. Green to contact the program director of the Respiratory Therapy Assistant Program (Mr. Ramos) directly to express his interest in the program. Ms. Joanna Cervantes (Administrative Assistant assigned to the Respiratory Therapy Assistant program) denied Mr. Green opportunity to meet with the program director (Mr. Ramos) citing that Mr. Green was not qualified despite his good grades and without knowledge of Mr. Green's background besides the color of his skin. Mr. Green notified Plaintiff of the action of Ms. Joanna Cervantes and Mr. Green believed that the only reason he could think of was his race and skin color because it was his understanding that another black veteran (a lady) was treated similarly in the past.

Plaintiff, in his capacity as the dean, met with Mr. Rene Valdez, the Director of Veteran Upward Bound for TSC and University of Texas Rio Grande Valley, (UTRGV) at the time, to facilitate a meeting between Mr. Green and the director of the Respiratory Therapy Assistant Program, Mr. Ramos that Ms. Joanna Cervantes denied Mr. Green. **This is contrary to fabricated document provided by Defendant, Lissa Frausto that Plaintiff called Mr. Ramos to set up the meeting for Mr. Green.**

In early November 2016, the same Ms. Joanna Cervantes sent an open e-mail to some program directors correcting them on issues without Plaintiff's authorization and only copied Plaintiff. Plaintiff responded to Ms. Joanna Cervantes e-mail and indicated that that was the second time in a few weeks that Ms. Joanna Cervantes had gone outside the scope of her job responsibilities without discussing the matter with Plaintiff or her immediate supervisor.

Approximately a week after that incident, Ms. Joanna Cervantes started showing attitude and disrespect towards Plaintiff for a matter not related to her but direct e-mail requesting a document from Ms. Joanna Cervantes supervisor. Plaintiff's administrative assistant indicated that she was surprised because Ms. Joanna Cervantes never treated the previous Dean in the same manner. Plaintiff considered Ms. Joanna Cervantes' behavior plus the incident with Mr. Green (student) as race related issues and requested a meeting with Ms. Joanna Cervantes, Defendant Lissa Frausto (HR director, EEOC representative for TSC to handle race issues) and

Mr. Rene Valdez (then Veterans Upward Bound) as a witness.

At that meeting, Defendant Lissa Frausto did not allow Ms. Joanna Cervantes to respond to the allegations that Plaintiff raised and requested to have private meeting with Ms. Joanna Cervantes in her office. This move by Defendant Lissa Frausto was suspicious. The following day, Defendant Lissa Frausto requested Mr. Green's (student) contact information from Plaintiff who referred her to Veterans Upward Bound representative, Mr. Rene Valdez for that information. Information she that Lissa Frausto could have accessed from the student's records.

Two days later, Defendant Lissa Frausto sent a memo indicating that she completed her investigations and found Ms. Joanna Cervantes not in violation of any wrongdoing even though all evidence showed otherwise. (see **Exhibit C**) Plaintiff called and asked Defendant Lissa Frausto whether she discussed the issue with Mr. Green and Defendant Lissa Frausto said "yes" to Plaintiff. However, Plaintiff learned from Mr. Green that Defendant Frausto did not talk to Mr. Green nor did she talk to Mr. Rene Valdez. Just of a sudden in 2019 when Mr. Valdez is working for TSC exclusively, Lissa Frausto produced a document that she interviewed him. This is another evidence of fabrication of document by Lissa Frausto.

Plaintiff also learned from Mr. Green (after he called Lissa Frausto upon hearing of her conclusions) that Defendant Lissa Frausto told Mr. Green that it was not necessary for her to contact him because Ms. Joanna Cervantes was no longer working for the college. This was a false assertion and Ms. Joanna Cervantes still works for TSC and always worked at TSC at those periods. Upon knowing of the false statement from Ms. Frausto, Mr. Green requested a meeting with Defendant Mike Shannon as the supervisor to Defendant Lissa Frausto but was systematically denied a meeting with Defendant Mike Shannon as it has been done on many occasions to the Plaintiff. Mike Shannon's office told Mr. Green whether Plaintiff advised him to talk to Mike Shannon and advised Mr. Green to go to student services instead. The actions by Defendant Mike Shannon and Defendant Lissa Frausto on this issue were consistent discrimination against Plaintiff because of his race and color compared to other races.

Lissa Frausto sent a memo through Donald Crouse citing that e-mail to Ms. Joanna Cervantes (Administrative assist) was a public reprimand (**see Exhibit D**). (Note: **This was about four days after I had reported Ms. Joanna Cervantes. This contradicts the time Lissa Frausto claimed that Ms. Cervantes filed complaint against Plaintiff. This action is consistent with Lissa Frausto continuous thirst and quest to find any allegation or complaint against Plaintiff. This action also confirms that Lissa Frausto motive all along.**

Defendant Mike Shannon as Interim President and head of the institution had meetings, and found time to have meetings with other employees and outsiders while denying Plaintiff any meeting for an extended period even with Plaintiff's several requests for a meeting.

On or about late November 2016, Plaintiff noticed an overload in course schedules which resulted in excessive payments to some faculty members. This action of overload constitutes fraud and unlawful conduct against the Texas Board of Education. Plaintiff met privately with those involved and sent e-mails to only all the faculty members under his supervision to refrain from such acts and that if such actions were repeated, he would not approve the payments.

Defendant Lissa Frausto was never sent a copy of that e-mail.

Approximately two days later, Defendant Lissa Frausto sent an e-mail to counter the instructions of Plaintiff indicating that overloads would always be paid without contacting Plaintiff, undermining Plaintiff's authority. Lissa Frausto also copied faculty members in Plaintiff's division in her e-mail. This is not only undermining Plaintiff authorities but deliberate racial discrimination as there is no evidence that she treated others (all of other races) similarly. Once again, Lissa Frausto was never Plaintiff's supervisor.

On or about first week in December 2016, Defendant Mike Shannon had a meeting with Mr. Feist (a person of interest to TSC and a regular attendee of the Board of Trustees TSC meetings) and discussed some damaging allegations about Plaintiff from Defendant Lissa Frausto.

Mr. Feist communicated without specifying any allegation to Plaintiff who immediately and

again requested a meeting with Defendant Mike Shannon. Mr. Feist also tried to facilitate the meeting between Defendant Mike Shannon and Plaintiff but to no avail.

On or about January 12, 2017, while Plaintiff was participating in the selection process of the Vice President of Instruction interview, Ms. Amaral (who explicitly had voiced her racial hatred towards Plaintiff) raised false allegation to the committee members (a student included) that Plaintiff was sued previously by another entity and said that "*Plaintiff was unfit to work for TSC.*" Although Plaintiff was angry, he did not respond and tried to schedule a meeting with Defendant Mike Shannon to report the incident but was unsuccessful.

At the end of the interview process, Ms. Amaral repeated the exact allegations in the presence of Defendant Lissa Frausto and Defendant Mike Shannon. Defendant Mike Shannon specifically condoned the allegation made by Ms. Amaral by indicating to her that he will look into her allegation. This action shows his racial bias against Plaintiff as well as indicating that Defendants were receptive of any allegation against Plaintiff to cover up their racial bias and discrimination

Plaintiff raised his objection to the behavior and request for a meeting with Defendant Mike Shannon just before he left the meeting. Defendant Mike Shannon rushed out before the end of the meeting and promised to get back with Plaintiff but never did.

The lack of action by Defendant Mike Shannon emboldened Ms. Amaral. A week after this incident, Ms. Amaral continued her disparage remarks of Plaintiff. Ms. Amaral began to spread unsubstantiated damaging sexual harassment information about Plaintiff to other faculty members in order to defame Plaintiff's character. This is contrary to the fabricated documents filed by Lissa Frausto (Defendant) that Ms. Amaral only told the appropriate authorities. One of the faculty members is Black and was threatened not to provide a statement or be deposed by my attorney then.

Plaintiff filed a defamation lawsuit against Ms. Amaral at the District Court, Brownsville. The legal counsel for Ms. Amaral (**who is now representing TSC, Lissa Frausto and Mike**

Shannon) filed a motion prohibiting Ms. Amaral and the two young ladies she used in the defamation law suit from cross examination and depositions. The Court did not deny or grant this motion, rather refused to listen to both Plaintiff and Defendants legal counsels and dismissed the case citing “ANTISLAPP” law.

I must point out because of this ruling by the State Court that Defendants decided to get rid of their attorney and hire the current attorney, Mr. Garza for this case. **This also evidence that Defendant Lissa Frausto was soliciting complaints from her friends as she did not have the so-called series of complaints to justify her argument.**

On February 22, 2017, Defendant Lissa Frausto presented a letter of employment termination signed by Defendant Mike Shannon citing that many complaints were filed against Plaintiff as the main reason for the termination.

Defendant Lissa Frausto failed to provide evidence of complaints filed, when filed, who filed, how they were resolved to Plaintiff attorney and to the EEOC when requested. (see **Exhibit E, bottom page 2 of Defendant, Lissa Frausto response; page 5, question # 6 of Plaintiff response**). It took Defendant Lissa Frausto with the help of her new attorney over two years to fabricate documents and dates of complaints to present to the Southern District court. Plaintiff consistently pointed this out to the District court but to no avail. Please a thorough review of the EEOC responses in **Exhibit E** by Defendant Lissa Frausto and rebuttal by Plaintiff clearly show how Defendant deliberately provided false information to deceive and cover up illegal actions. On September 14, 2019, Plaintiff received a flash drive from Defendants attorney with documents that Defendants planned to use in their defense. These documents did not include the so-called investigations and interviewing people known and unknown to Plaintiff.

On Wednesday, November 20, 2019, Plaintiff receive a large envelop with tons of document containing interviews with Plaintiff by Lissa Frausto that never happened; cut and paste e-mails, fabricated dates; fabricated phone calls between Lissa Frausto and other employers on matters

concerning Plaintiff. Plaintiff just saw these documents for the first time. These are documents Defendants claimed to use in their defense. The inconsistencies and the volumes of information in these two sets of documents depicts the time and energy that Lissa Frausto and her attorney have put in fabricating these documents. Once again, these are documents that never existed in 2017, 2018 but suddenly appear at the end of 2019 that Plaintiff is seeing for the first time.

Most importantly, in these documents, Lissa Frausto exposed herself of deep racial hatred and defamation of Plaintiff character by discussing sexual harassment allegation against Plaintiff with other employees without ever determining the merits of the allegation. To Defendants and the Southern court if this is not unprofessional behavior far worse than what Defendants are accusing Plaintiff, Plaintiff does not know what else is. Lissa Frausto also discussed with other employees how she was going to garnish Plaintiff wages because he had been out sick according to doctors orders. Once again, Lissa Frausto was never Plaintiff supervisor but had a motive that Mike Shannon failed to intervene and the other employees do not work at the human resources department and had no right to personnel matters. The Southern court failed to review or ignored these documents.

Defendant Lissa Frausto claimed that she investigated the fabricated sexual harassment charges and concluded that there was NOT enough evidence to warrant sexual harassment claim.

Evidence shows that Defendant Lissa Frausto was so determined to carry out the racial discriminatory actions, defamation of character and job harassment culminating in the termination of Plaintiff employment. A thorough review of following exhibits with notes (**F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V**) demonstrate these claims without further explanations. A comparison of the information from these exhibits with the information that Lissa Frausto has recreated with Defendants new attorney clearly show discrepancies that the District Court failed to see. In the meantime, Plaintiff's life has been damaged completely and he remains unemployed because of the cloud created by Defendants racial discriminatory treatments and defamation of character. Plaintiff was forced to move from Brownsville without any

employment offer because of rumors in the community that he was fired from TSC due to sexual harassment of a student without any proof.

II. Summary of the Argument

The Southern District court in its opinion and order dated January 10, 2020 based its decisions solely on the information in the summary judgement provided by Defendants. Unfortunately, the court failed to reconcile the inconsistencies and discrepancies of the supporting documents to the summary judgement provided by Defendants. If this was done, the court's opinion might have been different. The Southern court cited nine complaints filed against Dr. Affiah in Defendants summary judgement. This information is false. Defendants failed to indicate to the court that they did have these complaints and supporting documents when requested by Dr. Affiah's attorney (on defamation case). Defendant failed to indicate to the court that they did not have any document when the EEOC was very specific in requesting for the details of these complaints. I can only refer the Southern court to Defendants response to the EEOC on these questions (**Exhibit E, page 2**). Defendants did not have anything to show except at this time, Defendants replaced their attorney for this new attorney. This new attorney brought new documents on sexual harassment that he used in his client defamation case. Defendants failed to inform the EEOC that these sexual harassment documents (fabricated) provided by their new attorney were not verified or cross examined to be true and that they had concluded this particular investigation. I refer the Southern court to thoroughly review exhibits with notes (**F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V**). **The court should compare the dates Defendants responded to the EEOC and the dates they claimed to have created these documents.** This information proves that Defendants lied under oath by producing false document to deceive and cover up their racial discrimination act. At the same time, Dr. Affiah character is defamed by Defendant actions. What actions did Defendants take to stop? complaints? None, but fabricate a performance improvement form never seen by Plaintiff till the summary judgement report by Defendants.

Southern court cited sexual harassment complaint provided by Defendants in its opinion but the information provided in the exhibits above proves factual error in that opinion.

Southern court also cited comments made by a security officer in its opinion without knowing that Defendants provided fabricated and false information. The security officer was brought into the scene by Mr. Tony Cortez just before Dr. Affiah left the scene. The security officer did not have any communication with Dr. Affiah. This is another example of fabrication by Lissa Frausto. Mr. Cortez was the only one who had a direct knowledge of what happened besides Dr. Affiah. In the documents Defendants provided on this issue, they ignored Mr. Cortez (Hispanic) testimony. Southern court did not know that Dr. Affiah reported a student bad behavior to the appropriate authority, the student services. Two days later, Lissa Frausto jumped out of her area and fabricate a student's harassment complaint against Dr. Affiah. The incident report was not even filed yet at that time. Lissa Frausto started the so-called investigation and arrived at "No merit" to the student complaint. What happened to the student complaint filed with the student services? Nothing. There are the facts that Southern court was unaware probably because of the tons of conflicting and fabricated documents provided by Defendants.

The most important thing here is that Southern court, Brownsville did not have a good knowledge of this case to ask the basic questions that the EEOC asked:

The Organization Chart (Exhibit E): To determine whether Lissa had the authority or was TSC designated authority to prosecute, investigate and judge Dr. Affiah except her racial discrimination motive? To determine whether Lissa Frausto was Dr. Affiah's supervisor? **No information was provided to the EEOC.**

Southern court admitted that its opinions footnote, that it denied Dr. Affiah opportunity to respond to the summary judgement by Defendants but cited that Dr. Affiah did not refute the summary judgment by Defendants. Plaintiff in this case without any legal background is confused how an important decision like this can be made from a one-sided information. Southern court dismissed any involvement by Lissa Frausto and Mike Shannon in this case in late January 2020. The court provided its opinion on this issue as Plaintiff (pro se) not separately serving Lissa Frausto and Mike Shannon. The court claimed as a foot note to its decision that Plaintiff was notified on this issue in a letter received on January 17, 2020. The court failed to

provide any evidence of this notice whether it was sent or received by Plaintiff. The court and Defendants received and accepted the amended complaints in January 2019. Records show that Defendants responded to the complaints without raising any concern at that time. The court never raised its concern on this issue not until a full year later and approximately four days before rendering its decision. I will refer the Southern Court, to Exhibit E (response by Defendants to the EEOC). In my opinion, this Exhibit E makes the decision by the Southern court as a factual error. I also refer the Southern Court to Defendants headings of cover letters of documents to Plaintiff and filed with the court on or around **September 14, 2019** and **Wednesday, November 20, 2019**. These two documents speak louder than words in the Southern court ruling of excluding Lissa Frausto and Mike Shannon as Defendants in this case. In the first set documents filed on September 14, 2019 Defendant, Lissa Frausto did not have the so-called interviews, investigations and letters to Mike Shannon. Lissa Frausto claimed that she was the Custodian of employee's personnel files? If these documents were present in Plaintiff file

before he was fired, when did Lissa Frausto not provide these documents then? This is a clear evidence that she did not complete her fabrications not until November 20, 2019 Moreover, Lissa Frausto, her attorney and the Southern District court should understand that it is illegal to flood any employee's personnel file with derogatory documents or any document at all without the employee's knowledge. Lissa Frausto has provided her attorney and Southern District court with these documents (that she claimed were in Plaintiff's personnel file) without Plaintiff prior knowledge.

Pertaining to the fabricated documents after the facts, I refer Southern court and Appeals court, 5th Circuit to the documents provided by Defendants in their summary judgement. Evidence shows that these documents were created by one person, Lissa Frausto and she was the accuser, the investigator, the jury and the judge.

As outlined in this brief, there are no direct written statements from the complainants which is the normal procedure. All the statements are accounts of Lissa Frausto from what she claimed were from the complainants and hearsay. In some documents, she claimed that she got the statements from individuals who got the information from complainants. In one or two

of the so-called complaints, Lissa Frausto claimed that she got from a phone conversation. Lissa Frausto had an intention based on her racial bias against Plaintiff as indicated from the onset and was determined to carry out by herself with no regards to her institution's and Department of Labor's policies and guidelines. Records show that Lissa Frausto was promoted from the Director of Human Resources to higher salaried position of the executive Director of Human Resources along with the other deans by Mike Shannon after Plaintiff was fired

(Discrimination). Her new title is clearly seen in these documents. A clear evidence that these documents did not exist not until 2019 and were not a part of Plaintiff's personnel file.

The time lines are false and fabricated. In Lissa Frausto's so-called interviews and investigations (if at all they took place) especially in her handwritten documents, it can be clearly seen that she was leading the selected people on what she wanted use in implicating Plaintiff. Plaintiff saw these fabricated documents for the first time in 2019 in the summary judgement. These facts confirm that these documents were fabricated by Lissa Frausto justify her scheme and as indicated previously, the documents were not there in 2016, 2017, 2018 but just suddenly appear in 2019. I strongly hope the Southern court takes the time to review these documents and verify these facts to realize it made factual errors in reaching its rulings. Plaintiff with no legal representative, had no opportunity to depose or crossed examined Defendants but careful review of the documents filed by them provide valuable information. If the Southern District court had reviewed or did not ignore these documents, it might have arrived at a different opinion.

Discussion: This is a case where Defendant Lissa Frausto (then HR director) from the onset established her racial bias towards Plaintiff. Defendant Lissa Frausto's racial bias progressed to racial hate when she went outside her scope of responsibility to consistently discriminate and harassed Plaintiff. Defendant Lissa Frausto then initiated two to three fabricated complaints against Plaintiff. These complaints did not have direct or written statements by the so called complainants. Defendant Frausto claimed that complainants gave her the information and one was telephone conversation with complainant. Plaintiff was never given any opportunity to face his accusers. Plaintiff was never interviewed contrary to fabricated documents provided by Lissa Frausto that she interviewed Plaintiff. In two of the complaints, Defendants claimed the

complainants were simply afraid of Plaintiff because he refused to approve requests. There was no TSC policy to support any of these as wrong doing by Plaintiff and Lissa Frausto unilaterally determined that there was “no merit” in either complaint. But these are part of Defendants nine complaints. Lissa Frausto recommended Plaintiff’s termination, which Plaintiff just realized in the summary judgement filed in 2019. Lissa Frausto used ‘series of complaints’ as a cover up for her racial bias, hate and discrimination. Lissa Frausto was never Plaintiff supervisor to make any recommendation. The Southern court failed to recognize that there is a chain of command in any academic institution.

When the details of series of complaints were requested even by the EEOC, Lissa Frausto did have any documentation. Defendants got rid of their legal representative because he refused to support her dirty scheme and hired Mr. Garza who immediately advised Defendant Lissa Frausto to create complaint documents that never existed. In the process, Defendants fabricated documents and defamed Plaintiff. Lissa Frausto came up with nine complaints as the records show. Defendants attorney argued in the summary judgement that Plaintiff did not seek remedy when these complaints were brought against him. This is false. There is no single evidence that Plaintiff did not make series of attempts to have a meeting with Mike Shannon. There is no evidence that Mike Shannon heard Plaintiff version before terminating his appointment. Moreover, Plaintiff made attempts to resolve this case through mediation first suggested by the EEOC, Lissa Frausto refused to settle against her attorney advice. This led to that attorney being replaced. A thorough review of the documents of each complaint provided by Defendant, Lissa Frausto depict that she used each of them as a cover up for her racial bias, racial hate and racial discrimination.

These are the facts that the Southern District court failed to investigate or ignored before rushing to factual error in judgement. The sequence of Defendant, Lissa Frausto motive, actions and results are clearly shown in this brief and the documents provided by Defendants support these claims and it is up to the Appeals Court of the 5th circuit, an independent body to reverse wrong ruling by the Southern District court, Brownsville, Texas.

CONCLUSION

Appellant (with Pro se filing status) hopes and prays that this Appeals Court will accept this brief, review it for the facts in this case. Appellant also hopes and prays that this Appeals Court will review the fabricated (both written and typed) documents provided by Defendants in their summary judgement. These documents which speak louder than words will enable the Appeals Court, 5th circuit to arrive at the appropriate decision and relief justly entitled to Plaintiff.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Imeh U. Affiah, the undersigned hereby certifies that I will notify and serve Defendants' attorney and the Southern District court, Brownsville, Texas as soon as the Courts of Appeals approves and accepts this Brief.

Imeh U. Affiah

CERTIFICATE OF COMPLIANCE

To the best of my knowledge, I, Imeh U. Affiah believes to be in compliance with the guidelines set forth by The United States Court of Appeals for the fifth circuit in terms of:

1. The number of words allowed
2. Typing

Imeh U. Affiah

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 20-40045

Imeh U. Affiah,

Plaintiff-Appellant

v.

Texas Southmost College; Lissa Frausto; Mike Shannon,
Defendants-Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

REPLY BRIEF FOR APPELLANT

Imeh U. Affiah, Appellant

(Currently on Pro-Se Filing Status)



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<u>TABLE OF CONTENTS</u>	<u>Page</u>
---------------------------------	--------------------

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	ii
STATEMENT OF ISSUES PRESENTED FOR REVIEW.....	1
SUMMARY OF THE ARGUMENT.....	2
ARGUMENT.....	5
Issue 1: <u>Defendants and the Southern District Court, Brownsville division miss the point:</u>	
As clearly outlines in the Initial brief, Amended Complaints by Plaintiff, this case is an established racial bias and hate of Plaintiff by Defendant, Lissa Frausto resulting in Discrimination, Job harassment and Hostile work environment and Retaliation.	
Defendant, Lissa Frausto in her attempts to justify her actions and cover up her racial bias defamed Plaintiff's character and threw Plaintiff into abject poverty.....	5
Issue 2: <u>Defendants and the Southern District Court, Brownsville division miss the point.</u>	
This case is not about incompetence and or lack of knowledge and skills to resolve complaints in the workplace by Defendants. Instead, this case is about a racial bias and hate exhibited by one individual, Lissa Frausto who went outside her job responsibility in terrorizing Plaintiff as outlined in the Initial brief, Amended Complaints by Plaintiff. Defendants have consistently failed to explain in detail how they resolved the so called and fabricated complaints they claimed were the main reasons that led to unlawful termination of Plaintiff's employment.....	5
CONCLUSION.....	6
CERTIFICATE OF SERVICE.....	7
CERTIFICATE OF COMPLIANCE WITH RULE 32(A).....	8

TABLE OF AUTHORITIES

Appellant filing status is Pro Se with no legal background and is unable to provide legal citations and authorities.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

Issue 1: Whether there are fact issues in Defendant, Lissa Frausto as the Director Human Resources treatments and actions against Plaintiff who was not under her supervision.

Issue 2: Whether there are fact issues in the nature of complaints and how these complaints (most of them fabricated and seen by Plaintiff for the first time in Defendants summary reports) were handled by Defendants.

SUMMARY OF THE ARGUMENT

This case is about racial bias and hate of Plaintiff by Defendant, Lissa Frausto resulting in Discrimination, Job harassment and Hostile work environment and Retaliation

Defendants contend that Plaintiff 's Initial Brief was exactly as the Amended Complaints. Plaintiff strongly disagrees. Defendants in their response to the Plaintiff's Initial Brief, once again, failed to address how and why Defendant, Lissa Frausto (Hispanic) in her capacity as the Director of Human Resources singled out Plaintiff (black) as the Dean of Health Care, Career& Technical Education. The EEOC requested the TSC Organizational chart to determine whether Lissa Frausto had the authority or was the designated authority to prosecute, investigate and judge Plaintiff except her racial discrimination motive but Defendants failed to provide one. Defendants in their response brief decided to outline more fabricated complaints.

Defendants have consistently failed to address the normal procedure for handling a complaint in any workplace which was utilized by the EEOC as the records show. Specifically:

- a. Written and direct statement(s) by complainant with details of his/her complaint
(NOT HEARSAY OR THIRD-PARTY ACCOUNT)
- b. Determination by Grievance Committee whether the complaint meets specific guidelines for the particular complaint to warrant investigation
- c. If 'b' is /are met, the accused or respondent is notified for a written response
- d. Depending on the discrepancies of the case's accounts of the both the complainant and the respondent, both parties face questioning by the committee. If there are witnesses to the incident, they will be questioned
- e. Based on the information the committee have at this step, the committee will make a decision and file a report signed by every member.

Plaintiff has worked in a post- secondary education setting for over 25 years and has been an active member of Grievance and other committees as required by the Accrediting Agencies such Southern Association of Colleges and Schools Commission on Colleges

(SACSOC). The steps outlined are basically the same in any institution. None of these steps was followed by Defendants but rushed to judgement in employment termination of Plaintiff. Rather and evidence shows that these documents were created by one person, Lissa Frausto and she was the accuser, the investigator, the jury and the judge.

In all the so called and fabricated complaints, evidence show Plaintiff was never notified of any complaint filed except one. In that particular complaint, Defendant, Lissa Frausto once again injected herself and insisted on being the investigator despite the fact the TSC guidelines explicitly indicated Kim Sanchez. Most importantly, this complaint reported by Lissa Frausto never met the TSC AND their DOA LOCAL standard and guidelines. Records show in all the unilateral investigations by Defendant, Lissa Frausto, there is no account of Plaintiff of any complaint. Defendants initially outlined five of the so-called complaints to the Southern District Court, Brownsville division. These initial complaints lacked details but with “blanket” heading as “unprofessional behavior”. These documents lacked information on what and how investigations to these complaints were conducted. The Southern District Court, Brownsville failed to detect these inconsistencies. Plaintiff recognizing these inconsistencies, immediately brought them to the attention of the Southern District Court, Brownsville. Miraculously, after two months, Defendants submitted additional documents with Four additional fabricated complaints and tons of documents supposed to be investigations. Most of these documents Plaintiff as he has indicated several times already saw them for the first time. Dates on these investigative documents are inconsistent with the dates on Defendants’ complaints. Defendants after convincing the Lower Court, Brownsville to believe their false information wants the Higher Court to uphold the decision of the Lower Court despite the series of factual errors clearly outlined in the Appellant Initial Brief. These facts strengthen the need for Oral argument. Records show there is no evidence of Discovery demands and deposition of Defendants by Plaintiff because of his lack of Legal representation to determine the validity of the information Defendants provided and to address the discrepancies. This may involve answers

to simple questions and clarification of the discrepancies in the Defendants' documents.

Oral argument will create a means to get these answers from Defendants in real time without any time for fabrication. In all the documents provided by Defendants, there is not a single response or comment by Defendant, Mike Shannon except a letter of termination of Plaintiff's employment supposedly sent by him to Plaintiff through Defendant, Lissa Frausto flanked by security guards. Contrary to what Defendants indicated in their documents, Mike Shannon never had a meeting with Plaintiff prior to sending the letter of termination. Mike Shannon never discussed any complaint with Plaintiff. Records show Mike Shannon was meeting with other employees but refused any meeting with Plaintiff despite multiple attempts made by Plaintiff for a meeting. Defendant, Mike Shannon will have opportunity respond to simple basic question during Oral argument. Mike Shannon silence up till this stage is a clear evidence that Plaintiff employment termination was planned and predetermined and Defendants who used fabricated complaints and investigations as cover ups for the real reason, which is Racial Discrimination from the onset. Plaintiff is prepared to prove without any doubts in a matter of two to three minutes that these documents and complaints by Defendants are fabrications. Plaintiff strongly supports Oral argument, which he feels will give Defendants opportunity to defend the information and inconsistent documents they have provided so far. Defendants oppose Oral Argument and afraid that the truth will come to light but they forget the main goal of bringing this case to the Higher and neutral Court is for the determination of the TRUTH AND JUSTICE. Plaintiff hopes and prays for the sake of truth and justice, the Higher Court will approve a Hearing and Oral Argument in this case.

ARGUMENT

Issue 1: Defendants and the Southern District Court, Brownsville division miss the point:

As clearly outlines in the Initial brief, Amended Complaints by Plaintiff, this case is an established racial bias and hate of Plaintiff by Defendant, Lissa Frausto resulting in Discrimination, Job harassment and Hostile work environment and Retaliation. Defendant, Lissa Frausto in attempts to justify her actions and cover up her racial bias defamed Plaintiff's character and threw Plaintiff into abject poverty.

Issue 2: Defendants and the Southern District Court, Brownsville division miss the point.

This case is not about incompetence and or lack of knowledge and skills to resolve complaints in the workplace by Defendants. Instead, this case is about a racial bias and hate exhibited by one individual, Lissa Frausto who went outside her job responsibility in terrorizing Plaintiff as outlined in the Initial brief, Amended Complaints by Plaintiff. Defendants have consistently failed to explain in detail how they resolved the so called and fabricated complaints they claimed were the main reasons that led to unlawful termination of Plaintiff's employment.

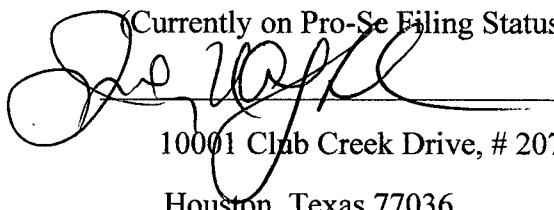
Appellant has previously provided the relevant facts in this case in the Amended Complaints, Initial Brief and in the Summary above. Appellant has no additional argument at this time other than hoping and praying that the United States Court of Appeals, 5th Circuit in its wisdom will review the facts in this case for the sake of the truth and justice that a neutral court such as this is known for.

CONCLUSION

For reasons presented above and for the reasons stated in Appellant's amended complaints and Initial brief, Appellant respectfully hopes and prays that this Court reverses the judgement by the Southern District Court, Brownsville division and provide justifiable relief to Appellant for the complete destruction of Appellant's life by Defendants' actions.

Respectfully submitted,

Imeh U. Affiah, Appellant

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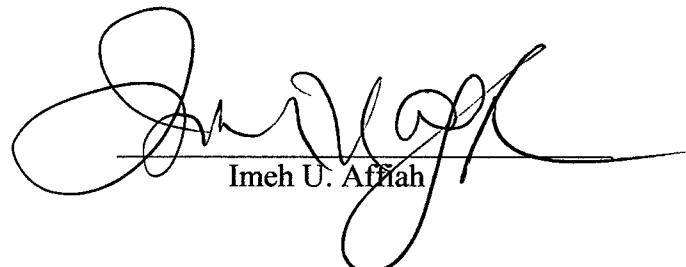
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CERTIFICATE OF SERVICE

1. Appellant certifies that this reply brief for appellant is sent to the United States Court of Appeals, 5th Circuit, New Orleans through Certified mail for filing. Appellees and interested Parties will have access to this document as soon as it is filed.

CERTIFICATE OF COMPLIANCE

1. To the best of Appellant knowledge, he believes to be in compliance with the guidelines set forth by the United States court of Appeals, 5th Circuit in this Reply brief in terms of type-volume limitations.
2. This reply brief contains less than 6500 words allowable for a Reply brief. Specifically, 2099 words.
3. This reply brief is sent to the Clerk of Court, United States Court of Appeals, 5th Circuit, New Orleans through Certified mail for filing.



A handwritten signature in black ink, appearing to read "Imeh U. Affiah", is positioned above a horizontal line. The signature is fluid and cursive, with a large, stylized 'I' on the left and a 'K' on the right.

**Additional material
from this filing is
available in the
Clerk's Office.**