10/04/21
MP

No.

21-573

IN THE

Supreme Court of the United States

JOHN L. ROSEMAN, Sr.

Petitioner

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA ("UAW INT'L"); UAW LOCAL 140 ("Local 140"); UAW LOCAL 1700 ("Local 1700"); and FCA US LLC ("FCA")

Respondents

On Petition For Writ Of Certiorari

To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

John L. Roseman, Sr.
In pro se
24823 Cobblestone Court
Farmington Hills, MI 48336
313-815-0119

QUESTIONS PRESENTED

Whether, in contravention to collateral estoppel doctrine, courts below relitigated, *inter alia*, issues of: (1) whether pro se litigant Roseman was disabled at the time of employer FCA's November 21, 2018 termination of his employment; (2) whether FCA's November 21, 2018 termination of Roseman was legitimate; and (3) whether Roseman's continued absence, in the purview of applicable laws, adequately buttressed by medical advice when FCA terminated him on or about November 21, 2018 – such that this Supreme Court should exercise its supervisory role to correct error.

Whether federal ruling below is contrary to Second Amendment right to keep and bear arms because district court below ruled that image depicting Roseman, the Petitioner in this writ, in possession of a

firearm was sufficient grounds for his employer to, among other things, terminate him?

Whether, in the aggregate, proceedings of federal courts below upheld "less stringent standards" tradition pertaining to pro se litigants? *Haines v. Kerner*, 404 U.S. 520 (1971).

Whether, particularly given the rulings of Michigan judges, Roseman showed a strong likelihood of success on the merits of his claims such that injunctive relief Roseman sought was meritorious but erroneously denied?

Whether, in contemplations of all pertinent and reasonably available facts, it may be found: that, in this case the outcomes of the proceedings of federal courts below are of adequate importance to persons not party to this case; and, that, rendered outcomes are so far out

of bounds that this Supreme Court should exercise its supervisory role?

LIST OF PARTIES AND RELATED CASES

[X] All parties appear in the caption of the case on the cover page.

RELATED CASES

- *John L. Roseman v. FCA US LLC,* Michigan Department of Civil Rights, Equal Opportunity Employment Commission (EEOC), Agencies Charge No. 471-2018-04269. Judgment entered **September 17, 2018**. (App. PA Pages 427,428.) This charge (*Id.*) was also amended on **August 13, 2018** to include more evidence and amend the charge to include discrimination claims base on retaliation and race.

- *John L. Roseman v. UAW Int'l,* Michigan Department of Civil Rights, EEOC, Agencies Charge No. 471-2018-04259. Judgment entered **September 18, 2018**. (App. PA Pages 424,425) This charge (*Id.*) was also amended on **August 13, 2018** to include more evidence and amend the charge to include discrimination claims base on retaliation and race.
- *John L. Roseman v. FCA US LLC,* Appeal No. 19-002020-25866, Case No. 13785026, Michigan Compensation Appellate Commission. Judgment entered **February 15, 2019**. (App. PA Pages 412-13.)
- *John L. Roseman v. FCA US LLC,* Case No. 13785025, Michigan Administrative Hearing System ("MAHS"), Unemployment Insurance

Agency ("UIA"), ALJ Wheaton. Judgment entered **March 8, 2019**. (App. PA Pages 397-411)

- *John L. Roseman v. FCA US LLC,* Case No. 13365780, MAHS, UIA, ALJ Bondar. Judgment entered **April 4, 2019**. (App. Pa Pages 416-423)
- *John L. Roseman v. UAW Int'l; UAW Local 140; UAW Local 1700; and FCA US LLC,* No. 18-cv-13042, U.S. District Court for the Eastern District of Michigan Southeastern Division. Judgment entered **November 17, 2020**.
- *John L. Roseman v. UAW Int'l; UAW Local 140; UAW Local 1700; and FCA US LLC,* No. 20-2151 United States Court of Appeals for the Sixth Circuit. Judgment entered **July 14, 2021**.
- *John L. Roseman v. FCA US LLC,* SSN: XXX-XX-7583 Case 1, DOI's: 7/26/2018Workers

Compensation Agency ("WCA"). Judgment is

pending.

OPINIONS BELOW

[X] For cases from federal courts:

The July 14, 2021 opinion of the three-judge U.S. Court of Appeals for the Sixth Circuit is not published. The text of the decision is set out in the Appendix to the petition, *infra* at App. PA Pages 80-111.

The opinion of the U. S. district court appears at Appendix to the petition, infra App. PA Pages 115-155.

The opinions of the highest court to review the merits appear at Appendix PA to the petition at PA 80-111; PA Pages 397-411; and PA Pages 416-423, and are unpublished.

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JURISDICTION

The United States Court of Appeals for the Sixth Circuit issued its opinion on **July 14, 2021**. *See* App. PA Pages 80-111. This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment to the U.S. Constitution provides in relevant part:

"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

The Fifth Amendment to the U.S. Constitution provides in relevant part:

"No person . . . shall be . . . deprived of life, liberty, or property, without due process of law.";

"No person shall ... be subject for the same offense to be twice put in jeopardy of life or limb ..." whereof guarantee against double jeopardy is embodied.

The Sixth Amendment to the U.S. Constitution provides in relevant part:

" In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial ... to be confronted with the witnesses against him ..."

The Seventh Amendment to the U.S. Constitution provides in relevant part:

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved ..."

U.S. Code § 556 (d) provides in relevant part:

"Any oral or documentary evidence may be received... [i]n rule making or determining claims for money or

benefits ... an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form."

U.S. Code § 706 (1) provides in relevant part:

"compel agency action unlawfully withheld or unreasonably delayed and hold unlawful and set aside agency action findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, not in accordance with law; contrary to constitutional right, power, or immunity ..."

U.S. Code §556 (d) which provides in relevant part:

("Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof ... [a] party is entitled to present his case or defense by oral or documentary evidence ... as may be required for a full and true disclosure of the facts. [i]n rule making or

determining claims for money ... an agency may when a party will not be prejudiced thereby adopt procedures for the submission of all or part of the evidence in written form.") *See also* U.S. Code §557 (a).

Civil Rights Act of 1964 which in relevant part prohibits discrimination in employment.

Americans with Disabilities Act of 1990 (ADA) 42 U.S.C.§ 12101 which in relevant part makes it unlawful for an employer to "discriminate against a qualified individual on the basis of a disability" and pursuant to a request for accommodation, provides "employers have a duty to locate [a] suitable position *Kleiber v Honda of Am. Mfg.*, 485 F.3d 862, 870 (6th Cir. 2007.)

Labor and Management Relations Act Section 301, "a judicially developed concept implied from the NLRA . . ..[i]n *Del Costello v. Teamsters,*[27] the Supreme Court characterized these two claims as

'inextricably interdependent. The Court held that to prevail against either his union or employer, the employee must prove that the union breached its duty and that the employer violated the collective bargaining agreement.". Murray, Apportionment Section 301Duty of Fair Representation Action @ pages 746-747.

National Labor Relations Act (NLRA)§ 7,8(a)(1) which holds that employees have the right to unionize, to join together to advance their interest as employees, and to refrain from such activity and that it is unlawful for an employer to interfere with, restrain, or coerce employees in the exercise of their rights.

29 USC 215(a)(3) (Fair Labor Standards Act (FLSA)) MIOSHA Michigan Occupational Safety and Health Act, 1974 P.A. 154 as Amended which relevant part provides that "[f]urnish to each employee

employment and a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to the employee".

STATEMENT OF THE CASE

1. This dispute, a 'Hybrid Action' under Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, arises out of *pro se* Petitioner John L. Roseman, Sr's ("Roseman"), (the undersigned) employment with respondent FCA US LLC ("FCA") and his membership in unions which at relevant times entered into agreements covering employment terms and conditions (the "CBA's"), namely: parent union respondent UAW Int'l; respondent UAW Local 140 ("Local 140"); and respondent UAW Local 1700("Local 1700"). Pursuant to Charge(s) of Discrimination, and upon receipt of, from U.S. Equal Employment

Opportunity Commission ("EEOC"), Notice(s) of Suit Rights (App. PA Pages 424-427), Roseman timely filed suit on September 28, 2018 against FCA *et al.* putting forth claims of *inter alia,* breach of the duty of fair representation; unlawful bias, intentional infliction of emotional distress ("IIED"); civil conspiracy; negligent retention; negligent supervision; constructive discharge; wrongful discharge; false imprisonment; libel; and pursuant to 42 U.S. Code, Section 1983, infringement perpetrated by FCA, as a person, acting under the color of law. Roseman's employment with FCA commenced in 1998, he worked at two of FCA's assembly plants: Warren Truck Assembly Plant ("WTAP") (1998-2018) and Sterling Heights Assembly Plant ("SHAP") (2018).

2. District court states: "Roseman also contends that this is not the first time Chrysler has failed to take corrective action regarding one of its coworkers, as he

was harassed by another employee Darlene Ark ["Ark"], for over a year beginning in 2015." (*District judge Order* R. ECF No. 72, PageID.1429; App. PA Page 274)

3. In about July of 2015 Roseman applied for a promotion to a position FCA calls "Team Leader" ("TL"). FCA combined two of its "teams" in WTAP's paint shop. Two persons formally holding TL positions for the respective teams declined offers to become TL of the new team, later informing Roseman that they believed it to be too much work for one TL. Another person contemporaneously applied for subject TL position was awarded the position, but soon thereafter quit, also complaining to Roseman about it being too much work. TL position was then offered to Roseman, who accepted the promotion. At about the same time, Roseman was also asked by FCA human resource staff persons to work on a temporary charity fundraising assignment:

Roseman accepted this assignment which was a full-time position that lasted until about December of 2015 when he returned to TL position. This is about the time Roseman began having issues with a coworker, Ark. The undersigned found coworker Ark's animus and corresponding behavior towards him at about this time to be extreme, severe, pervasive and without precedence in the context of his nearly fifteen years of employment at WTAP. Fearing for his personal safety, fearing the risk Ark's behavior posed to his employment and not wanting Ark's behavior towards him to put him in a position wherein he may feel forced to do something he did not want to do, on or about December 21, 2015, Roseman sought to avail himself of FCA's protective protocols and apparatuses by composing a written complaint about coworker Ark's behavior towards him, proffering said complaint to: Local 140 union steward Kalu Jones and then to FCA labor relations supervisor

Jo'Lena Brown ("Brown"). On or about December 21, 2015, Roseman, endeavoring to establish evidence of his appeal to FCA and the UAW for mitigating responses, Roseman caused sealed copy of complaint about Ark to be mailed via United State Postal Service to his home address: said sealed letter has been proffered as evidence in this case (Pl's Am. Compl. R. ECF No. 40, PageID.608 ¶62 and ECF No 40-1 PageID.661.) FCA acknowledged it was in receipt of Roseman's 2015 complaint about Ark, however, it remains undisputed, neither FCA nor Local 140 demonstrates it responded to Roseman's December 21, 2015 complaint. Roseman avers that Ark therefore continued the challenged conduct complained of, regularly sabotaging his work, preventing him from doing his job, maliciously exploiting the fact that the newly formed single team Roseman's TL position obligated him to was separated, in that it consisted of four distinct, partitioned work

areas. Roseman simply could not be in two places at one time. He avers that Ark's challenged conduct was unrelenting in the months following 2015 complaint, subjecting him to harassments, threats, and coercion having the effect of preventing and thwarting his work; all this Ark did presumably because of sex-based animus and to cause Roseman to quit his job which he did in January of 2018, transferring to SHAP suffering a reduction in pay. *See e.g.,* Appellant Opening Br. Case: 20-2151 Document: 11 Page: 6-12; see also email Pl. ['s] Am. Compl. ECF No. 40-1 PageID.651-653. Court states:

> "Roseman also points to no evidence rebutting the magistrate judge's conclusion, based on Roseman's own deposition testimony, that he expressed his satisfaction with the handling of his

complaints about Ark by the Unions and FCA." District judge's Op. and Order R. ECF No. 107 PageID. 2794 and herein App. *PA* @ Page 136.

"On December 1, 2016, attorney Sandra Hanshaw Burink sent a demand letter to FCA, on Roseman's behalf, requesting further investigation of Ark's behavior. FCA retained outside counsel, Deborah Brouwer ("Brouwer"), to investigate Roseman's complaints. Brouwer did not recommend any further discipline as a result of her investigation, and Roseman indicated he was satisfied with FCA's actions." (citations omitted) (R&R R. ECF No 102, PageID.2879 and herein App. PA Page 163.

4. But at Pl. ['s] Dep., FCA asked Roseman if he transferred to SHAP in because of Ark related incidents: Roseman replied in the affirmative explaining that incidents involving, among others FCA supervisors Herbert Wright ("Wright"), Thom Thornton ("Thornton"), Richard Henderson ("Henderson"), Brown; and coworker Ark continued to render work environment hostile and intolerable insomuch that Roseman quit the TL position at WTAP he was promoted to in 2015 transferring to Sterling Height Assembly Plant where Roseman received comparatively less pay.

5. At Pl. ['s] Dep.:

FCA Queried, "· · All right. · At some point you went over to SHAP?"

Roseman answered "Correct" - - -

FCA Queried, "And why did you request the move to a different plant? - - - What are those reasons?"

> Roseman answered: "I would generally categorize it as hostility, hostile work environment issues I'd had at that plant.11 - - - Those issues were with a lot of people, actually. And I don't think -- none of which have not been named in this action and this case. And the particulars of the people and the incidents have pretty much been voiced through the complaint and other documents that I've given" *See Pl. ['s] Dep.* R. ECF No. 87-2, PageID.2326 @ pages 35-40.

6. Roseman declares as may be clearly inferred from his deposition testimony (*Id.*) and *Am. Compl.* that he was at NOT at any time satisfied with neither defendant FCA's nor Local 140's handling of his 2015/2016

complaints of incidents involving Ark *et al.* occurring at WTAP.

> "FCA retained outside counsel, Brouwer, to investigate Roseman's complaints. Brouwer did not recommend any further discipline as a result of her investigation, and Roseman indicated he was satisfied with FCA's actions." (citations omitted) R&R R. ECF 102 PageID.2879 and herein App. PA Page 163.)

7. Courts' below judgment concerning WTAP incidents are arguably entirely founded on conjecture and misconstrued deposition response presumably deem a valid waiver without setting forth the governing laws or properly stating the rules applying to valid waivers. Disputed "satisfied" evidence defendants rely upon is arguably far from conclusive, is arguably incongruent with all other pertinent facts and evidence on record (R.

ECF No. 87-2, PageID.2329). Furthermore, at Pl.['s] Dep. (*Id.*), Roseman understood FCA to be inquiring as to whether he desired at meeting with Brouwer to take additional employment actions against coworker Ark specifically at that time or thereafter. Roseman was simply stating that he neither at the time of Brouwer meeting nor at the time of deposition, (*Id.*) sought of FCA additional or more severe disciplinary employment actions to be taken against Ark. Understandably FCA having in this case proposed additional sanctions against coworkers to settle claims in this action, its questions (*Id.*) regarding acceptable punishment for Ark might have been misunderstood by Roseman.

> **FCA Queried**: "All right. So you disagree with the way it was handled with Ms. Ark?"
>
> **Roseman Answered**: "Correct."

FCA Queried: "For the other people, the names you provided – Kalu Jones, Herb Wright, Chris Kabecki, and Jo'Lena Brown -- did you have any issues with them specifically other than just that you disagreed with how the Ms. Ark situation was handled?"

Roseman answered "Yeah. I would say that fairly sums it up." (*Pl. ['s] Dep.* R. ECF No., PageID.2327, page 40 @ ¶¶1-10.)

8. Moreover, Roseman indicated at *Pl. ['s] Dep.* (*Id.*) that he was summarily dissatisfied with, disapproved of and disagreed with defendants FCA's and Local 140's handling of incidents involving Ark and others. (*Id.*)

9. Roseman informed the Local 140 and FCA that he would quit his position as TL at FCA's Warren Truck Assembly Plant due to hostile work environment citing

that he suffered from related mental duress and emotional distress. Contemporaneously, Roseman applied with FCA for a transfer of departments and subsequently requested to be transferred to SHAP. Consistent with the aforementioned Roseman quit TL position in 2018, and transferred to SHAP, suffering a demotion and reduced pay.

10. Roseman informed FCA and Local 140 that he was sickened due to stress related to actual incidents occurring at work involving FCA supervisors, Local 140 chief steward and coworker Ark advising both FCA and Local 140 of his failed attempts to reach an Employee Assistance Program (EAP) representative to avail himself of FCA provided treatment for mental health issues: Roseman's brother Ronald bearing witness to Roseman's mental state during this time. *See emails* Pl. ['s] Am. Compl. R. ECF No 40-1 PageID.654;

PageID.647-48. Notably, here (Id.) FCA and Local 140 seemed to ignore Roseman's mental health issues and did not help him get the treatment he sought. In direct relationship to the foregoing, Roseman believes that he suffered a post-traumatic stress disorder that was triggered around the time he encountered what he believed to be a similarly pugilistic and violent coworker (Amond) at about the time he transferred to SHAP. (*See e.g.*, Appellant's Opening Br. U.S. 6th Cir. COA Case: 20-2151 Document: 11, Page: 6-13 ¶¶'s 1-13.) "Plaintiff believes that he has legitimate reasons for preferring not to return to work as FCA proposed and Michigan Court appears to agree. *See* (ECF No. 82: Exhibit A. (ECF No. 92, PageID.2669)." R&R R. ECF No. 102, PageID.2898, and herein App. PA Page 207)

11. On or about November 8, 2018 FCA *et al.* was in receipt of a doctor's letter dated November 6, 2018 from

Roseman's family doctor and primary care physician – Dr. Rima Abbas, MD ("Dr. Abbas") – recommending that Roseman not return to work in the facility wherein his ***current*** mental health issued developed: *see* (T.R.O. Hr'g Transcript R. ECF No. 32 filed 11/19/18 PageID.448 @ ¶10-2). Roseman contends ALJs' Wheaton's and Bondar's rulings infer FCA failed, in opposition to applicable law, accommodate Roseman's disability (*see* ALJ Wheaton ruling App. PA @ Pages 416-423 and ALJ Bondar ruling App. PA 397-411). Furthermore, Roseman contends that said discharge is: *inter alia*, (1) in breach of operative CBA's; (2) motivated by unlawful discriminatory animus; (3) violates requisite "interactive process" pursuant to (ADA) *See Kleiber v. Honda of Am. Mfg.*, 485 F.3d 862, 868 (6th Cir. 2007). Roseman contends that FCA has not shown that it made a good faith effort to "identify the precise limitations resulting from the disability and potential

reasonable accommodations that could overcome those limitations." *Kleiber*, 485 F.3d at 871. "Although mandatory, failure to engage in the interactive process is only an independent violation of the ADA if the plaintiff establishes *prima facie* showing that he proposed a reasonable accommodation." *Rorrer*, 743 F.3d at1041 (emphasis added); *see also Keith v. Cnty. of Oakland*, 703 F.3d 918, 923 (6th Cir. 2013) ("individualized inquiry" is "threshold matter," discussed prior to the "otherwise qualified" element of a *prima facie* case). "[T]he interactive process is mandatory, and both parties have a duty to participate in good faith." *Kleiber*, 485 F.3d at 871 (emphasis added). "If this process fails to lead to reasonable accommodation of the disabled employee's limitations, responsibility will lie with the party that caused the breakdown." (*Id.*). Moreover, Roseman contends that courts below relitigated precise issues relating to

defendant FCA's termination of him, said issues being determined prior to federal courts' below judgments in valid proceedings of Michigan administrative law judges – thereby contradicting well-established law, collateral estoppel doctrine and the Fifth Amendment guarantees against double jeopardy from which said doctrine derives. *See N.A.A.C.P., Detroit Branch v. Detroit Police Officers Ass'n*, 821 F.2d 328, 330 (6th Cir. 1987).

12. On or about July 27, 2018 Roseman called FCA to report illness related absence – events occurring at work in the factum.

13. On or about July 30, 2018, FCA's third-party administrator Sedgwick contacted Roseman by email and phone with claim details (claim no. 30180661880-0001; date of injury: 07/26/2018) informing that pursuant to entitlement to benefits under Worker's

Compensation Law, "[i]t is our intent to facilitate the delivery of these benefits ..."

14. Pursuant to worker's compensation claim (*Id.*), On or about August 10, 2018 Roseman received a notice of dispute from FCA, its reason cited: "injury not related to work". Roseman, on or about August 27, 2018, submitted to Worker's Compensation Agency (WCA) an application for mediation or hearing on subject claim. Resulting Department of Licensing and Regulatory Affairs, WCA action, *John L. Roseman v. FCA US LLC*, SSN: XXX-XX-7583, Case No. 1, is at the time of this writing is pending.

15. On or about August 1, 2018, Roseman filed charges of discrimination with the Equal Employment Opportunity Commission (EEOC) against FCA US LLC and UAW Int'l: charges Nos. 471-2018-04268, and 471-2018-04259 respectively. Said EEOC charges were

amended on August 13, 2018 to include charges discrimination based on retaliation and race.

16. In directly related case (App. PA Pages 416-423), administrative law judge ("ALJ") Winston A. Wheaton ("Wheaton") presiding, decision date: **February 11, 2019**, ruling makes findings, determinations, and judgments pertaining to, *inter alia*, issues of FCA's discharge of Roseman as it related to his disability, whether Roseman voluntarily quit, and Roseman's ability to perform "his last job" with defendant-employer FCA. Here, ALJ Wheaton found that:

> Roseman "was separated from the Employer in November 2018. Prior to that time, his physician, Dr. Abbas, recommended that he not return to work to the facility where he had worked due to his associated anxiety. ... Because of anxiety

> associated with the plant, where he [Roseman] worked for the Employer [FCA], he is not able to work at that plant."

ALJ Winston also reasoned and concluded that: Roseman "testified that at all times he has been able to perform manufacturing work – just not at the plant where he last worked. ... I have been given no reason to challenge Claimant's [Roseman's] veracity. I accept his testimony as true." *See* ALJ Winston ruling App. PA @ page 438. Parties to this case (*Id.*) had the right to request rehearing/reopening and had to do so before April 8, 2019. Notably, FCA did not appeal this ruling (*Id.*).

17. In another directly related case (App. PA Pages 399-411) ALJ judge Nancy L. Bondar presiding, decision date **April 4, 2019**, ruling makes determinations and judgments pertaining to *inter alia*, issues of FCA's

discharge of Roseman, whether Roseman voluntarily quit, and if Roseman's separation was involuntary, whether FCA met its burden to establish misconduct sufficient to warrant its termination of Roseman's employment and if Roseman left work involuntarily for medical reasons. *See Order* (*Id.*) pursuant to ALJ Bondar ruling, App. PA @ Pages 399-411 and also @ R. ECF No. 82, PageID.2224-2231.

18. In related hearing (*Id.*) occurring on or about April 02, 2019, participants: Roseman; FCA through its representative Ellen Wolff ("Wolff"), and FCA witness Aaron Kopitz were sworn in.

19. Parties litigated matter (*Id.*) presenting oral arguments and FCA also produced a witness who proffered testimony in support of FCA's positions. FCA also proffered the following argument Wolf through its

attorney Ellen which the undersigned transcribed from a recording of hearing.

> "Uh. Yes. I want to make a brief argument if I may. - - The employer would argue that the Claimant has not, uh established either good cause for not reporting to work or for quitting his job as indicated on the notice of this hearing. However, I would argue that the more reasonable interpretation of the law would be under 29 (1) (b) discharge. Uh. The Claimant has not provided any relevant [sic] or proffered evidence that he was not able to report to work as require after the end of his approved medical leave of absence despite the clear instructions. On the notice of this hearing the Claimant did not provide the document which he

> alleges that he was not told to report to work and as such we do not believe he has established good cause for his absence. Therefore, the employer was appropriate in the decision to discharge. We would ask for redetermination of this matter be affirmed and the Claimant disqualified from receiving benefits. Thank you."

20. FCA had the opportunity to appeal Michigan Ct. judgement (App. PA @ Pages 399-411; R.ECF No. 82, PageID.2224-2231.), having to do so before May 6, 2019 (*Id.*) but declined to do so, thus judgment became final.

21. In this Order (*Id.*), pursuant to Michigan ALJ Nancy Bondar adjudicating matters relevant and directly related to this instant case found pursuant to FCA's termination of Roseman's employment on or about November 21, 2018, that: (1) Roseman had not left

work voluntarily; and (2) that Plaintiff was on approved leave prior to said discharge and FCA did not demonstrate a number of absences from work that were so excessive as to constitute misconduct within the meaning of applicable law and that "employer [FCA] did not carry its burden of proof".

> "The 'Administrative Judge Order' to which Roseman refers arose in connection with his application for unemployment benefits. (ECF No. 82, PageID.224-2231.) FCA had argued in that matter that Roseman left work voluntarily, and was therefore disqualified from receiving benefits under Section 29(a)(1) of Michigan's Employment Security Act, MCL § 421.29(a)(1). Roseman is correct that the matter was adjudicated in his favor, however ALJ's ruling was based on the fact that '[n]o documents were

> admitted into evidence, and that the 'burden of proof never shifted to [Roseman] to provide a legitimate explanation for any absences from work.'" (R&R R. ECF 102, PageID.2898 and herein PA @ page 209)

22. Here, this Court should find palpable error, the above summed up as incognizable conjecture because explanation is consistent with but not deducible as reasonable inference from known facts or conditions which would support proper application of governing laws required to make a judgment relating to issue of collateral estoppel raised by Roseman's *pro se* pleadings. Here, Roseman argues, court fails to demonstrate how "no documents" issue (*Id.*) renders "ALJ's" ruling (*Id.*) invalid. Furthermore, while there may have been "no documents" admitted, Roseman did indeed present oral arguments at subject MAHS hearing wherein he made attestations declaring, *inter alia*, that he had in fact

secured a statement from his physician, Dr. Abbas, that continuing in his current job would be harmful to his mental health. Court was, as the following demonstrates, aware such a medical statement was proffered to FCA prior to FCA's November 21, 2018 termination of Roseman:

> "All right. Well, I do have --I believe I know what you're referring to, which is you had filed a reply brief and exhibit, I think it's D to the reply brief, is a very short couple-sentence letter from a Dr. Rima Abbas. [w]hich simply says, '[i]t is not recommended that he returns to the facility where he was working, which caused his current mental health issues to develop.' So I --I am familiar with that, but, frankly, that doesn't give me much insight into --into, number one, the reasons why that recommendation is being made or why --what harm is believed to --to be likely to

happen if you do return" (T.R.O. Hr'g Transcript: R. ECF No. 32 filed **11/19/18** PageID.448 @ ¶10-25). *See also*, R. ECF No. 20 PageID.357.

23. To be actually litigated, a question must be put into issue by the pleadings, submitted to the trier of fact, and determined by the trier. *VanDeventer v. Michigan Nat'l Bank*, 172 Mich App 456, 463; 432 NW2d 338 (1988).

24. This Court should thus find that FCA has in bad faith maintained frivolous defenses in this instant action and should sanction FCA's.

A. Roseman Has Not at Any Time Been Employed by FCA as a Supervisor or Manager.

25. Federal courts below are mistaken, Roseman was never a supervisor or manager of Ark, Amond or any FCA employee during employment with FCA nor has his duties with FCA ever been to supervise or manage any

aspect of FCA's operations. Therefore, any and all rulings of courts' founded upon Roseman being a manager, supervisor, or relating to a "management-style" should by Supreme Court be found invalid. Moreover, Roseman's testimony explained that the challenged conduct complained of relating to coworker Amond consisted of far more than the text messages decisions below were based on (T.R.O.: Hr'g Tr. R. ECF No. 32 PageID. 453-457) "[t]hat's like the tip of the iceberg. . . he's [Amond] is preventing me from doing my job").

26. In 2015 FCA promoted Roseman to a TL. Pursuant to promotion, FCA proffered Roseman a document with the heading, "Position Title – New Team Leader Roles & Responsibilities": none of the roles or responsibilities include making rules; directing FCA employees; or supervising FCA employees. While the

term "Team Leader" may perhaps be a misnomer because conceivably one might, from said terminology infer position to be one of a manager or supervisor as defined by Black's Law Dictionary (herein cited). As TL Roseman was obligated to perform a variety of operations supporting initiatives such as: stocking production materials; relaying safety communications; relieving persons from duty stations for, *inter alia*, restroom breaks; filling in to do any production job on team if manpower issues dictated.

27. Rhetoric of Amond's text messages: "I guess we got a new [team leader] for this week[,] it comes with new rules and micro management" (Pl. ['s] Am. Compl. R. ECF No. 40-1 PageID.665), should arguably not take precedence over relevant law or pursuant to a proper legal analysis, establish Roseman to be a FCA manager/supervisor.

28. District Court rulings used the term "management" in ten (10) instances to characterize Roseman's relationship with coworkers (R&R, R. ECF No. 102, PageID's.2882, 2887, 2890, 2892, 2895, 2903, 2904, 2906, 2911: App. PA Pages 156-245) and to describe the nature of his work/duties: here, court seems intent upon coloring Roseman as a supervisor/manager presumably to be specious, dishonest, to distort facts, divert proper legal analysis and ultimately render unprincipled outcomes. Court states: "Roseman's IIED claims fails to clear this high bar. He complaints that after Amond was openly critical of his management style and decisions..." *R&R,* R. ECF No. 102, PageID.2904, and herein App. PA @ Page 220. Accordingly, the 6th Circuit appeals court also characterizes Roseman as FCA management. 6th Cir. Case No. 20-2151, Doc. 19-2, Pages 3,8, and herein App. PA Pages 86,87. District judge Lawson not only erroneously characterizes

Roseman as an FCA manager in his *Op. and Order* R. ECF 107, PageID 2967, but also: in three instances erroneously founds rulings on guise that Local 1700 union steward Keith Hall ("Hall") was at relevant times a FCA "supervisor" (*Id.* @ PageID.2967,2973) to which Roseman was subordinate and likewise court ruled based on false notion that Local 1700 "UAW [Int'l]" committeeman, Michael Spencer ("Spencer"), is a FCA "supervisor" to Roseman. (*Id.* @ PageID2974.)

29. Roseman contends Amond ventured to organized a work stoppage and production slow down, (*Pl ['s] Am. Compl.* R. ECF No. 40, PageID.601 ¶¶ 26,27). That, Roseman was in opposition to Amond's strike efforts in that Roseman elected to work as instructed to by FCA supervisors. Contemporaneously, FCA expressed its dissatisfaction with Roseman and his assigned teams'

production output stressing said output was causing cascading plantwide stoppage. (*Id.* ¶¶27-28.)

30. A manager is defined as "[o]ne who has charge of a corporation and control of its business . . . and who is vested with a certain amount of discretion and independent judgment. *Brandon v. McPherren*, 177 Okl. 292, 58 P.2d 871, 872. [a] person chosen or appointed to manage, direct . . .." Black's Law Dictionary Fifth Edition (1979). Roseman averred, coworker Amond prevented him from doing work assignments; none of said assignments included being to Amond or any of FCA's chattel, a manager. Court states: "According to Roseman, Amond criticized Roseman's decision to follow management's orders to allocate additional manpower to the line that Roseman and Amond were working on. Roseman alleges that Amond 'intimidated and prevented Roseman from performing his duty' because

Amond would not allow other employees to work in his space." (citations omitted). (R&R R. ECF No 102, PageID.2882.) But, Roseman's contention is that Amond, in this referenced instance (*Id.*) prevented him from completing right side masking operation per FCA directives. Amond expelled Roseman from duty station. (*See* TRO Hr'g R. ECF No. 32 PageID.455): "he [Amond] would not allow me to help him [complete masking operation] as they [FCA supervisors Jana Hines ("Hines") *et al.*] told me to do. . . . They [Hines *et al.*] said you got to help [perform masking operation] because these two-tone [units] are backing up. It is going to shut down production in the whole plant. Help him [Amond] out." (*Id.*).

B. *Judge Lawson – in final judgment only – misconstrues Local 1700 representatives Roseman*

accuses of wrongful acts to be FCA supervisors then grants Local 1700 et al. summary judgment.

31. The identities, roles, titles, and affiliations of union representatives Eddie Smith ("Smith"), Spencer and Hall are – prior to Lawson's final judgment (Op. & Order R. ECF No. 107), well established fact issues distinguished with particularity. *See generally*, R&R, R. ECF No. 66, PageID.1351-1360 and herein *infra* App. PA Page 293. In relation to said facts, this Court should therefore find Lawson's Op. & Order R. (R. ECF No. 107) palpably erroneous, specious, and suspicious having in contradiction to district court's prior determinations of fact issues (*Id.*) misstates in final judgment, that Spencer and Hall are "supervisor[s]"/management when they are in this case, union/Labor representatives.

32. In four instances Lawson supports final ruling on Roseman's claims against Local 1700 *et al.*, by incorrectly attributing employment actions taken by Local 1700 union steward Hall as having been the actions of a FCA supervisor. Judge Lawson's ruling dismissing Roseman's claims against defendants Local 1700 *et al.* should arguably be found invalid, being founded on patently false notions that union representatives are FCA supervisors? Lawson construed:

> "Roseman met with his ***supervisor*** again at 1:00 a.m., who explained that he had spoken with Amond about the impropriety of his texts and statement to Roseman, warning Amond that his behavior was inappropriate and could result in termination. The ***supervisor*** also

> commented to Roseman that he told Amond, 'John's an OLD HEAD. However, the supervisor told Roseman that Amond would not be disciplined." (Op. & Order R. ECF No. 107, PageID.2967-68); "In his third objection, Roseman insists that his ***supervisor's*** description of him as an 'Old Head' ... indication of age-related animus." (emphasis added). *See* Op.& Order R. ECF No. 107 PageID. 2973.

33. Lawson, who articulates in his Op. & Order (*Id.*) exhaustive arguments decrying the inadequacy of Roseman's *pro se* pleadings, fails, after two years, one-month and nineteen days of presiding over this case, to accurately assimilate important fact issue and distinguish in final ruling, Hall as defendant Local 1700's union steward and not Roseman's supervisor.

Here Roseman would argue that the honesty, impartiality, and integrity of the court is severely questionable.

34. As with Hall, Lawson misconstrues Spencer to be an FCA supervisor, stating: "In his fifth and sixth objections, Roseman disputes the factual account of the 'election flyers incident,' contending that he never was told to remove the flyers by his ***supervisor***, and that he did remove them after the HR meeting on March 8, 2018, where FCA's Labor Relations representative told him to do so." (emphasis added) Op. & Order R. ECF No. 107 PageID. 2974) It is Local 1700's and Spencer's account in dispute here (*Id.*). *See* Spencer Aff. R. ECF No. 90-16 PageID.2574 @ ¶ 4, *Id.* PageID.2575-2576 @ ¶¶ 11-12.

35. The record demonstrates Lawson did in fact know that it was not a FCA *supervisor* Roseman alleged called him an "old head". Court states:

> "Later in his shift, the plaintiff was summoned to a conference room with and UAW representative ***Keith Hall***. ... Roseman was then summoned to the union office, where, he alleges, ***Hall*** described him as an "old head." ECF No. 1, PageID.12." (emphasis added). *See* Lawson's Order R. ECF No. 72, PageID.1432-33, and herein PA @ Page 276)

36. Roseman thus contends court fails to conduct proceedings with integrity insomuch that, in an objective contemplation of all relevant facts, the publics' confidence in this court is undoubtedly discouraged; that Op. & Order (R. ECF No 107) is intended to harass,

humiliate and punish Roseman for bringing this suit, and interposed to unjustly foreclose appellate review.

37. Regarding "dispute[ed" "communications" Court states – without citing governing law:

> "In his seventh and eight objections, Roseman disputes the magistrate judge's recital of follow up communications with union representatives [Smith] and [Spencer] after the March 8, 2018 HR meeting about the election flyers incident. Roseman insists that Smith never told him that 'this was the best the union would be able to do' about the outcome of the meeting being a verbal warning, and Spencer never told him that the matter was 'resolved' based on any representation. But those disputes over immaterial aspects of the communications between the plaintiff and his union

representatives do not implicate any error in the magistrate judge's finding that the record does not demonstrate any arbitrary or irrational refusal by the union to pursue further any grievance claimed by the plaintiff about his working conditions." *Id.* at PageID.2981.

38. Court deems communications concerning grievance request "immaterial", but also founds its rulings on disputed accounts of Local 1700, that Roseman was told "this was the best the union would be able to do". Roseman would expect Supreme Court to find tradition in opposition to courts conclusion that communications (*Id.*) are "immaterial" because "If the union decides not to process the grievance, the employee should be promptly informed of the union's decision and the reasons for that decision." B. FELDACKER, LABOR GUIDE TO LABOR LAW *supra note* I, at 383(2d ed.

1983). *See also Farmer v. ARA Servs. Inc.*, 660 F.2d 1096, 1107 (6th Cir. 1981) (the union participated in the breach of collective bargaining agreement...); *Richardson v. Communications Workers of Am.*, 443 F.2d 974, 982 (8th Cir. 1971), cert. denied, 414 U.S. 818 (1973) (the union... wrongfully inducing the employer to discharge the grievant and acting in bad faith in refusing to process the Appellant's grievance).

C. Trampled Settlement Privilege?

> "Roseman also argues that the district court erred by considering certain 'private settlement communications between' him and FCA. Rule 408 of the Federal Rules of Evidence precludes, among other things, "conduct or a statement made during compromise negotiations about the claim" to "prove or disprove the validity or amount

of a disputed claim." But the communication that Roseman cites in his brief—the November 9, 2018, email that FCA sent asking him to return to work and informing him that Amond would be transferred to a different department—was made neither in the course of compromise negotiations, nor with the intent of reaching a compromise. *See, e.g., 23 Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure* § 5310 (2d ed. Apr. 2021 update). The district court therefore did not abuse its discretion by considering the November 9, 2018, email in the proceedings below." 6th Cir. COA ruling, Case No. 20-2151, Doc.19-2 Page: 11.

39. On or about July 28, 2018, Hines declared that Amond could not be removed from team: this decision is reversed approximately one hundred and four days (104) later on or about November 9, 2018; approximately one day after telephone conference parties to this lawsuit had with magistrate judge who, in said conference attempted to engendered settlement between adversaries FCA *et al.* and Roseman. *See* R. T.R.O Hr'g Tr. ECF 32 PageID. 447:

> (**Magistrate**: "We had a phone call, just for the record, late last week in which I encourage parties to . . .*possible resolutions of this matter*" . . .**Ms. Van Dyke**: "We did make an *offer* to the plaintiff, but he rejected it").

40. FCA, on November 9, 2018, in exchange for a cessation of Roseman's claims, through its counsel,

Katherine Van Dyke proffered "offer" – arguably illusory in that "offer" would not likely be enforced by court – to remove Amond from Roseman's department, stipulating that court be notified of agreement, informing court that pending hearing scheduled for November 13, 2018 would not be necessary.

41. Alternatively, Roseman would argue, FCA's November 9, 2018 eleventh-hour decision to remove Amond from his work group comports to an inference that on or about concerning his complaint on or about July 26, 2018, that, Amond's conduct was indeed severe enough to warrant his removal from "team"; that, FCA and Local 1700 failed to respond reasonably; and that, FCA negligently retained Amond causing Roseman's injuries, damages and losses complained of in this action and that Roseman is entitled to relief. (R. Pl ['s] Am. Compl. ECF No. 40, Count VII). "Yes John I [Hines] did

say that ... Keith [Hall] said let me handle him [Amond]. I couldn't even remove him [Amond] off the team." (Pl. ['s] Am. Compl. R. ECF 40-1, PageID.675.) "[Ms. Van Dyke/FCA] Just briefly, your Honor, a couple of points. One, the text messages from Jana Hines accurately depict the conversation ...." (TRO Hr'g Tr. R. ECF No. 32, PageID460 ¶¶ 23-25 and Id. PageID 461 at ¶ 1.)

> "FCA even offered to return Roseman to his old position with the assurance that Amond would be transferred to a different position so the two would not be working together." (R&R R. 102, PageID.2897; App. PA Page 205)
>
> Roseman replied, stating: 'Thank you, but sorry, I can't do that.' It is undisputed that to date Roseman has not returned to work

at FCA in any position." Op. & Order R. ECF No. 107 Page ID 2968 and *herein also* at App. PA Page 123.

"Roseman was placed on medical leave. About three months later, on October 30, 2018, Dr. Neil S. Talon, M.D. completed an independent medical examination ('IME') of Roseman to assess his ability to return to work. Dr. Talon concluded that Roseman could return to work Dr. Talon did note that Roseman's 'problem with the other coworker' was 'more of a legal or human resource issue.' Consequently, on November 1, 2018, FCA sent Roseman a letter instructing him to return to work by November 21, 2018. Roseman took issue with Dr. Talon's assessment, principally

because he 'would have been going right back to work with Amond in the same work area.' But FCA was willing to address that concern; on November 9, 2018 FCA sent Roseman an email stating. 'The plant would like you to return to work to your same job – same department and position. They will be moving Mr. Amond to [a] different department, so that you will not have to work with him.' Roseman simply responded, 'Thank you, but sorry, I can't do that.' ... Thus, Roseman did not return to work. Roseman continued to refuse this offer. Because of his refusal to return to work, on December 3, 2018, FCA terminated Roseman's employment." (citations omitted) R&R R. ECF No. 102, PageID.2884)

42. FCA was, prior to "offer", in receipt of letter from Dr. Abbas, recommending that Roseman not return to SHAP facility, which explains Roseman's response to FCA's "offer".

43. Magistrate obliged to settlement fix he advocated for and engendered to bring "resolutions to this matter", based rulings favoring defendants, on Roseman's response to FCA's "good job" "offer" (Order R. ECF No. 81, PageID.2217)

D. Oral arguments: due process, equal protection under the law, due process, right to trial by jury

> "Having reviewed the pleadings and other papers on file, the Court finds that the facts and legal issues are adequately presented in the parties' brief and on the record, and it declines to order a

hearing at this time." (R&R, R. ECF No. 102 PageID.2877.)

44. On or about 12/03/2018 Roseman received a Notice of Determination of Motion Without Oral Argument (ECF No. 37) on motions which were filed *prior* to said notice. Magistrate stating motions would be determined by himself "without oral argument" Pursuant to E. D. Mich. LR 7.1(f)(2). Citing Fed R. App. P. 34(a), homogenized panel: judges Suton, Chief Judge Siler and Roger - all appointed to the 6th Circuit in the same year, 2001, by "tort-reform" advocate President George W. Bush – "unanimously agrees that oral argument is not needed."

45. Roseman made nine requests to district court and two request to appeals court to present oral arguments (District Ct., ECFs No.'s: 65, 72, 77, 78, 80, 92, 93, 94, 95 and Appeals Ct., Doc. No.'s 11, 15). Courts declined

request to present oral arguments. Thus, Roseman argues: to any extent rules courts relied upon to decline oral arguments in this case are inherently – or misappropriated to be – artifice of usurpation of constitutional rights to, *inter alia,* to equal protection under the law, due process, and trial by jury; said rules should be found "repugnant to the constitution" and "void" (E.D. of MI LR 7.1(f)(2); Fed.R. App. P. 34(a)). *Marbury v Madison*, 5 U.S. 137, 180 (1803). *See also, Norton v. Shelby* ("An unconstitutional act is not a law; in confers no rights; it imposes no duties; if affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed."). *See also* U.S. Code 556 (d) which states in relevant part:

> ("Except as otherwise provided by statute, the proponent of a rule or order has the burden of

proof . . . [a] party is entitled to present his case or defense by oral or documentary evidence . . . as may be required for a full and true disclosure of the facts. [i]n rule making or determining claims for money . . . an agency may when a party ***will not be prejudiced thereby*** adopt procedures for the submission of all or part of the evidence in written form.") (emphasis added).

L.R. 7.1(f)(2) states: "[t]he court will hold a hearing on all other motions unless the judge orders submission and determination without hearing".

46. Interpreting E.D. Mich.L.R. 7.1(f)(2) (Id.) using the ordinary meaning of words, Roseman contends rule was not properly applied in that court would have necessarily provided notice in advance of motion submissions to parties. In other words, it seems the rule is constructed so that parties are informed prior to

submission of motions, that determination of said submissions will be without a hearing. Moreover, demonstrating the vital nature of hearings to fairness and due process, E.D. Mich.L.R. 7.1(f)(1) addressing civil cases state that a person would have to be in *custody* for there not to be a hearing held on a motion. Such was not the case here, and arguably, court had no legitimate reason for not holding hearings FCA and union defendants' motions for summary judgment [R. ECF Nos. 87, 89, 90, 91] and Roseman's motions for summary judgment [R. ECF. Nos. 77,78]

47. The Seventh Amendment to the U.S. Constitution provides in relevant part: "[i]n Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . ."

48. In the aggregate, Roseman contends that in consideration of all facts which may be reasonably

assimilated, an objective observer would conclude that substantive justice was not facilitated, that the courts below were rigged to produce unlawful and unprincipled outcomes because, *inter alia*, "whether harassment was so severe and pervasive as to constitute a hostile work environment [is] 'quintessentially a question of fact' that' that a jury should decide." *Smith v. Rock-Tenn Services, Inc.*, 813 F.3d 298, 310-11 (6th Cir. 2016).

> Moreover, "[w]hen a federal court reviews the sufficiency of a complaint, before the reception of any evidence ... its task is necessarily a limited one. The issue is not whether a plaintiff will ultimately prevail but whether the plaintiff is **entitled to offer evidence to support the claims**. Indeed, it may appear on the face of the pleadings that a recovery is very remote

and unlikely but that is not the test." (emphasis added): *Quoting Miller v. Currie* *Miller v. Currie*, 50 F.3d 377 (6thCir. 1995).

E. *Pl. ['s] Objections: Pro Se Plead; Miller and Thomas Standard*

49. Citing *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995) and *Thomas v. Arn*, 474 U.S. 140, 142 (1985) appeals court ruled that Roseman "forfeited further review" of claims stating "Although Roseman filed timely objections, the district court correctly noted that his objections relating to his claims for IIED(Claim 9), negligent retention of an unfit employee (Claim 10), libel (Claim 11), and infringement of his Second Amendment rights (Claim 13)consisted 'mainly of unelaborated expressions ...'" (6th Cir COA Case No. 20-2151 Doc. 19-2, Page: 5.)

50. *"[P]ro se* pleadings are construed liberally and *pro se* litigants are granted greater latitude in hearings and trials." (*Johnson v. Board of County Comm'rs*, 868 F.Supp. 1226 (D. Colo. 1994); *see also Puckett v. Cox*, 456 F. 2d 233 (1972) (6th Cir. USCA) It was held that a *pro se* complaint requires a less stringent reading than one drafted by a lawyer per Justice Black in *Conley v. Gibson*. "The Federal Rules rejects the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." According to Rule 8(f) FRCP and the state court rule which holds that all pleadings shall be construed to do substantive justice. *See also Haines v. Kerner*, 404, U.S 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). "Pleadings filed by *pro se* litigants are entitled to a more liberal reading than would be afforded to formal

pleadings drafted by lawyers. *Thomas v. Eby*, 481 F.3d 434, 437 (6th Cir. 2008)."

51. Moreover, "All of the allegations contained in the complaint are accepted as true, and the complaint is construed liberally in favor of plaintiff." *Westlake v. Lucas,* 537 F.2d 857, 858 (6th Cir. 1976.)

52. Roseman drafted all his pleadings in this case without the assistance of counsel including his objections (R. ECF No. 103) to magistrate R&R (R. ECF No. 102); there has been no undisclosed ghostwriting (*In re Fengling Liu*, 664 F.3d 367; *see also Ostevoll v. Ostevoll*, 2000 WL 1611123 (S.D. Ohio)).

53. However, in *Miller v. Currie*, 50 F.3d 377 (6thCir. 1995) objections, deemed deficient, consisted of formal pleadings drafted by lawyers. If arguendo, Roseman's objections were on par with *Miller*'s, *pro se* litigant Roseman is "entitled to a more liberal reading" and

conceivably not an onerous or unduly rigorous construction. Moreover, Roseman would contend that it is simply untrue that his objections (R. ECF 103) were not specific or particular. Roseman hereby contends that his objections were in the context of this case adequate in preserving all of his claims for further review. *Thomas,* a homicide case, wherein, according to ruling petitioner failed altogether to file objections after receiving an extension and on appeal provided no explanation for her failure to object; arguably, *Thomas* is not meaningfully compatible.

F. Collateral Estoppel

54. There being no legally cognizable theory by which FCA can assert that in this case, it relitigated precise issues previously adjudicated by ALJs' Wheaton and Bondar, Roseman thus contends that FCA in bad faith, maintained frivolous defenses in this case

unconscionably exasperating his damages and hardships.

> "Based on his refusal to return to work on December 3, 2018, FCA terminated Roseman's employment." Per November 17, 2020 decision by district court. *Op. & Order* R. ECF No. 107 Page ID 2968 and herein at App. PA Page 124.
>
> "Roseman contends that he was "constructively discharged" when he refused to *return to work* under conditions that he believed were intolerable. But for an employer's action '[t]o constitute constructive discharge, the employer must deliberately create intolerable working conditions., as perceived by a reasonable person, with the intentions of forcing the

employee to *quit* and the employee must actually *quit.' Nothing like that has been shown here,* where the plaintiff merely *attempted to dictate arbitrary changes* to his work assignment as conditions for his return and FCA declined to grant his requests, instead offering to allow a return to work under the same conditions, a*t the same place,* while transferring a problematic co-worker elsewhere. . . . Roseman also has cited no legal authority supporting his apparent position that his employment was "constructively terminated" by FCA's mere refusal to accede to an arbitrary demand for a change in work assignment." Citation omitted [emphasis added]. *Id.* @ PageID.2977 and herein App: PA @ Page 144.

55. In the interest of protecting the public and the integrity of the court, Roseman would recommend for judge Lawson that which he deemed "*appropriate*" and befitting to Roseman in this case (*Id.* @ R. ECF. 107, PageID.2972 and herein App. PA @ page 133); and would expect Supreme Court to address this aspect of ruling (*Id.*) as it may unduly influence similar cases. *See Macintosh v. Clous et al.* 1: 21-cv-00309 U.S. W.D. Mich.

56. FCA acknowledged that Roseman complained of racial discrimination prior to commencing this lawsuit (R.ECF No. 39 PageID.590); but appeal court's ruling states:

> "While Roseman alleged that he engaged in protected activity by complaining of racial discrimination following the campaign flyer incident in March 2018, Roseman made no clear mention of unlawful race

discrimination prior to commencing this lawsuit." (6th Cir. Case No. 20-2151 Doc. 19-2 Page 9.)

57. To be clear, Roseman believes that the genesis of the flyer incident had its roots in racial discrimination, partially because union steward Eddie Smith implied to Roseman in brief discussion prior to escorting Roseman to meeting with FCA labor relations representatives that the complaint came from hypocritical white person(s) who "probably" have homes full of guns (Pl.['s] Dep. R. ECF No. 87-2, PageID.2347 at page 118 ¶14,15) Roseman accepted Smith's said inferences to be based in fact; generally that if there were actual complaints about campaign bulletin that said complaints were made by white persons and that racial bias being the motivation. Indeed, Roseman promptly raised that issue of racial bias with FCA labor relations

representatives Cynthia Johnson, and Corey Scott, arguing to labor representatives that FCA's actions against him advanced on the currency of racial bias, protesting also at this time that FCA's harassment of Roseman about the photo infringed upon his Second Amendment rights. (*Id.* PageID.2331, pages 53-55.)

58. Here, principally, Smith introduces racial bias premise to Roseman, and when meeting with FCA labor relations representatives Scott and Johnson commenced, in a haste Roseman vigorously protested disciplinary actions that stemmed from racial bias, violated his Second Amendment rights and were otherwise irrational and unfounded pointing to among other things his exemplary work record. See therefore how one might plausibly infer, that Local 1700 willfully and intentionally created a hostile work environment, the

expected and intended result being Roseman's separation from his employer FCA.

> "Finally, Roseman challenges the district court's denial of his motion for TRO or preliminary injunction. For the reasons already discussed, Roseman cannot show a strong likelihood of success on the merits of the claims that he has preserved for appellate review, which is generally a prerequisite for obtaining injunctive relief. *See Gonzales v. Nat'l Bd. Of Med. Exam'rs*, 225 F.3d 620, 625 (6th Cir) (explaining that "a finding that there is simply no likelihood of success on the merits is usually fatal")."

59. Here (*Id.*), Roseman would argue that: "*success*" "show[s] a strong likelihood of success". Indeed, speaking of ALJ Bondar's ruling magistrate

acknowledged "Roseman is correct that the matter was adjudicated in his favor" (Magistrate's R&R R. ECF 102, PageID.2898 and herein App. PA @ page209.)

> "But even taking Roseman's termination into account, Defendants are entitled to summary judgment. ... FCA has presented legitimate, non-discriminatory reasons for terminating Roseman, and he proffered no evidence that those reasons were pretext . . .." (Magistrate R&R R. ECF No 102, PageID.2897.)

60. Arguably, ALJs' Bondar and Winston's ruling establish a lawful foundation and evidence sufficient to infer pretext in that Wheaton found veracity in Roseman's testimony regarding his disability and Bondar determined that November 21, 2018 discharge

could not be attributed to the absence-based misconduct FCA alleged.

61. In the context of civil litigation, a four-part test has been used in determining whether collateral estoppel precludes re-litigation of an issue. Under the doctrine of collateral estoppel, "once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude re-litigation of the issue in a suit on a different cause of action involving a party to the first case." *Allen v. McCurry*, 449 U.S. 90, 94, 101 S.Ct. 411, 66 L.Ed.2d 308 (1980). *See Bies v. Bagley*, 519 F.3d 324, 332 (6th Cir. 2008)

62. Not particularly borne out of the collective bargaining agreement, FCA had a duty to Roseman to "[f]urnish to each employee employment and a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious

physical harm to the employee" but Roseman contends, ignored its own mandate "[n]o one should have to work like this". (MIOSHA Michigan Occupational Safety and Health Act, 1974 P.A. 154 as Amended). Allegations being that union-defendants (Local 140, Local 1700) conspired with FCA to intentionally subject plaintiff to known workplace hazards, this, *inter alia*, is arguably a separate actionable common law tort for which unions may be found liable in this case. *See* Appellant Reply Br. 6th Cir. COA Case No. 20-2151 Doc.17 Page 13-14 ¶ 11.

Smoke & Mirrors, Trap Doors, Bait & Switch

> "[T]he Court cautioned him [Roseman]...that in continuing to pursue the case he risked losing a good job that he had for many years, and that he should seriously consider accepting FCA's offer... I

> [Magistrate judge Grand] recognize that you have been with FCA for a very long time. That speaks very well to your - - you know, your dedication and your perseverance and things like that, I don't want to see that...become tarnished or taken. ... consider further FCA's offer. Again, I really encourage you to do so. ... Roseman did not accept FCA's offer, and this Court's recommendation that his motion for temporary restraining order be denied was upheld over his objections." (emphasis added) District Ct. Order R. ECF No. 81, PageID.2217, and herein PA at Pages 265-67.

63. Roseman contends: evidentiary record supports an objective conclusion that courts below willfully and

intentionally infringed upon his right to life, a fair trial, and due process unlawfully "take[ing]" from Roseman; imposing damages to reputation, health, and defrauding him of consideration connected to labor he traded with employer FCA pursuant to (CBA's); that, courts below unjustly penalized Roseman, subjecting him to drudge of exhaustive re-litigation of previously decided issues, imposing upon him injustice and cruelty because, *inter alia*, Roseman refused FCA's "offer"; that, unlike the rulings of ALJs' Wheaton and Bondar, federal courts below appear to dismiss Dr. Abbas's prognosis, harassing, chiding and ridiculing Roseman for declining FCA's illusory "offer"; that, Lawson specifically and particularly infringed upon Roseman's Second Amendment rights to keep and bear arms, advocating for and sanctioning all of the employment actions taken against Roseman.

REASONS FOR GRANTING THE WRIT

Petitioner expects Supreme Court will find the foregoing lucid, and adequate in putting forth merit for review, demonstrating obvious and momentous implications case has for: employed persons; union-represented persons; citizens per Second Amendment right to keep and bear arms; *pro se* litigants; Americans with disabilities, and *stare decisis*.

CONCLUSION

In the aggregate, it is not surprising that the courts below have in this case shown FCA and its hired "hit"-man Amond deference because courts below cannot, in the opinion of the undersigned, be distinguished from such persons who either hire out or avail themselves to be hired to effectuate the immoral.

Rein in the folly of the courts below, declare Petitioner's entitlement to recovery under all of his

claims put forth in this action, and sanction FCA for putting forth its frivolous defenses in this case is the earnest pleas and key expectations of the undersigned.

Prepared and submitted by: John L. Roseman, Sr.

Respectfully Submitted,

Date: October 3, 2021

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