UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No: 20-2151

Filed: August 05, 2021

JOHN L. ROSEMAN, SR.

Plaintiff - Appellant

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA; FCA US LLC; UAW LOCAL 1700; UAW LOCAL 140

Defendants - Appellees

MANDATE

Pursuant to the court's disposition that was filed 07/14/2021 the mandate for this case hereby issues today.

COSTS: None

NOT RECOMMENDED FOR PUBLICATION

No. 20-2151

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOHN L. ROSEMAN, SR.,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	ON APPEAL FROM THE UNITED
	)	STATES DISTRICT COURT FOR
INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, et al.,	)	THE EASTERN DISTRICT OF MICHIGAN
	)	
Defendants-Appellees.	)	

O R D E R

Before: SUTTON, Chief Judge; SILER and ROGERS, Circuit Judges.

John L. Roseman, Sr., a Michigan resident proceeding pro se, appeals the district court's order denying his motions for partial summary judgment and awarding summary judgment to the defendants on his various employment-related claims. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

I. Facts & Procedural History

FCA US LLC ("FCA") hired Roseman in 1998 as an assembler at its Warren Truck Assembly Plant ("WTAP"). Around January 2018, Roseman—by then a team leader at WTAP—transferred to FCA's Sterling Heights Assembly Plant ("SHAP"). UAW Local 140 represented Roseman when he worked at WTAP, whereas UAW Local 1700 represented him when he worked

at SHAP. This case arises out of three separate incidents that occurred during Roseman's tenure at these two plants, and the manner in which FCA and the unions handled his complaints.

First Incident. While working as a team leader at WTAP on November 4, 2016, Roseman had a confrontation with a coworker, Darlene Ark, after she failed to properly execute an operation on the assembly line. When a supervisor asked Ark to explain the failure, Ark allegedly responded by swearing at Roseman and telling Roseman that he "needs to get some balls." FCA suspended Ark for one week for her comments. Believing that FCA's disciplinary action against Ark was inadequate, Roseman complained to his supervisor and to an FCA labor relations representative, filed a grievance, and hired an attorney. Roseman's attorney then sent a demand letter to FCA, requesting further investigation into Ark's conduct. This prompted FCA to retain outside counsel to investigate Roseman's complaint. However, outside counsel did not recommend any further discipline against Ark following her investigation into the matter.

Second Incident. In March 2018, following his transfer to SHAP, UAW Local 1700 held an internal union election in which Roseman ran for the position of union steward. As a part of his campaign, Roseman posted flyers throughout the plant that depicted him holding a rifle and asking, "Is it time for a new sheriff[?]" When Roseman reported to work on March 7, 2018, he found that his access badge did not work and that he could not enter the plant. The following day, UAW Local 1700 Stewards Eddie Smith and Michael Caldwell escorted Roseman to an investigatory meeting with two FCA labor relations representatives. FCA's labor relations representatives informed Roseman that his flyers violated work rules against threatening, intimidating, coercing, or harassing conduct and, after contemplating various disciplinary measures (including suspension and termination), they issued him a verbal warning. Roseman was dissatisfied with the verbal warning, alleging in his operative complaint that FCA's conduct was racially motivated and infringed upon his Second Amendment right to bear arms. However, Smith told Roseman "that the union would not be able to get him a better deal" and that "this was the best the union would be able to do and that the matter was resolved." Roseman subsequently asked UAW Local 1700 Shop Committeeman Michael Spencer to grieve his verbal warning and

demanded that FCA and UAW officials issue him a public apology. Because "Smith had already explained to Mr. Roseman that the matter was resolved," Spencer declined to pursue a grievance.

Third Incident. On July 25, 2018, while Roseman was filling in as an interim team leader, Keith Hall, who was a coworker and UAW Local 1700 steward, reported a workplace dispute between two union members. During that shift, an employee, Dominic Amond, took issue with Roseman's leadership and sent text messages to various coworkers that were highly critical of Roseman's management style. When Roseman complained to Hall and FCA Supervisor Jana Hines about Amond's actions, they allegedly assured him that Amond would be removed from the work area and disciplined. Roseman then returned to work but alleged that he was "traumatized and immensely distressed" later that day when he saw Amond still working there and staring at him with a "grim, unflinching and negative look on his face." Hall explained to Roseman that he had warned Amond that his behavior was inappropriate and could result in termination. Hall also told Roseman that he had told Amond that "John's an old head"—presumably so Amond would better understand Roseman's management style. However, Hall informed Roseman that Amond would not be disciplined. Roseman did not return to work after his shift ended, alleging that the situation was too stressful.

Roseman subsequently went on medical leave. Approximately three months later, a psychiatrist examined Roseman and concluded that he could return to work without restrictions. On November 1, 2018, FCA sent Roseman a letter instructing him to return to work by November 21, 2018. Roseman conveyed to FCA his disagreement with the medical assessment based on his concern that he "would have been going right back to work with Amond in the same work area." On November 9, 2018, FCA emailed Roseman, stating that "[t]he plant would like to return you 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 replied, "Thank you, but sorry, I can't do that." FCA terminated Roseman's employment on December 3, 2018, based on his refusal to return to work.

Meanwhile, in September 2018, Roseman filed this lawsuit against FCA, the two local UAW unions, and International Union United Automobile, Aerospace and Agricultural Implement

Workers of America ("International Union"), which he amended on two occasions. In his operative second amended complaint, Roseman—an African American over the age of forty—asserted the following thirteen causes of action: (1) age discrimination and hostile-work-environment harassment in violation of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621, et seq.; (2) gender discrimination and hostile-work-environment harassment in violation of Michigan's Elliott-Larsen Civil Rights Act ("ELCRA"), Mich. Comp. Laws § 37.2101, et seq.; (3) retaliation in violation of the ELCRA; (4) race discrimination in violation of the ELCRA; (5) civil conspiracy, combined with a freestanding claim of hostile work environment; (6-8) breach of the duty of fair representation; (9) intentional infliction of emotional distress ("IIED"); (10) negligent retention of an unfit employee; (11) libel; (12) breach of contract; and (13) infringement of his Second Amendment right to bear arms. He sought damages, declaratory and injunctive relief, and costs and fees. He also filed an unsuccessful motion for a temporary restraining order ("TRO") or preliminary injunction requiring FCA to immediately cease its allegedly threatening, harassing, outrageous, and negligent behavior.

In November 2019, Roseman moved for partial summary judgment as to his breach-of-duty-of-fair-representation claim against UAW Local 1700, and also as to his IIED claim against FCA. The defendants opposed Roseman's motion and subsequently cross-moved for summary judgment, arguing that they were entitled to judgment as a matter of law on all of Roseman's claims. On the magistrate judge's recommendation, the district court granted the defendants' summary judgment motions, denied Roseman's motions for partial summary judgment, and dismissed the operative complaint with prejudice.

On appeal, Roseman challenges the district court's denial of his motion for a TRO or preliminary injunction, as well as its grant of summary judgment in favor of the defendants.

II. Law & Analysis

As a preliminary matter, by failing to specifically object to the magistrate judge's report and recommendation, a party waives further review of his claims by the district court and this court "[a]s long as [he] was properly informed of the consequences of failing to object." *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995); *see Thomas v. Arn*, 474 U.S. 140, 142 (1985). Here, the

report and recommendation gave Roseman an opportunity to file objections and warned him that any failure to object could result in a waiver of his appeal rights. 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 of [Roseman's] 'belief' that his proofs satisf[ied] the elements of his claims and that a jury could find in his favor, or unsupported statements of generalized disagreements with the magistrate judge's conclusions." Because "a general objection to a magistrate's report, which fails to specify the issues of contention, does not satisfy the requirement that an objection be filed," *Miller*, 50 F.3d at 380, Roseman has forfeited further review of those claims.

Turning to the merits of his remaining claims, we review a district court's grant of summary judgment de novo, viewing the facts in the light most favorable to the non-moving party. *Flagg v. City of Detroit*, 715 F.3d 165, 178 (6th Cir. 2013). Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see Est. of Smithers ex rel. Norris v. City of Flint*, 602 F.3d 758, 761 (6th Cir. 2010).

a. Hostile Work Environment (Claims 1, 2, & 5)

Roseman alleged that he suffered harassment due to his age, gender, and race, in violation of the ADEA and ELCRA. For both statutes, a plaintiff must show that (1) he belonged to a protected class; (2) he was subjected to harassment on the basis of his protected status; (3) the harassment had the effect of unreasonably interfering with his work performance and creating an objectively intimidating, hostile, or offensive work environment; and (4) there exists some basis for liability on the part of the employer. *Crawford v. Medina Gen. Hosp.*, 96 F.3d 830, 834-35 (6th Cir. 1996) (ADEA); *Betts v. Costco Wholesale Corp.*, 558 F.3d 461, 468 (6th Cir. 2009) (ELCRA).

This case turns on the third and fourth elements. Alleged harassment in the context of a hostile-work environment-claim must be sufficiently "pervasive" or "severe" to alter the conditions of employment. *See Williams v. CSX Transp. Co.*, 643 F.3d 502, 512-13 (6th Cir.

2011). "This standard sets a high bar for plaintiffs in order to distinguish meaningful instances of discrimination from instances of simple disrespect." *Khalaf v. Ford Motor Co.*, 973 F.3d 469, 485 (6th Cir. 2020). In deciding whether a defendant's conduct clears that bar, we consider "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23 (1993).

The three incidents detailed in Roseman's operative complaint—which occurred at two different production plants over the course of nearly two years—were neither severe nor pervasive enough to create a triable age-, gender-, or race-based harassment claim. Although Roseman alleged that Ark, Amond, and Hall made offensive comments to or about him—including swearing at him, telling him "to get some balls," and calling him an "old head"—harsh, rude, or offensive offhand comments, without more, cannot constitute severe harassment. *See Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998); *see also Crawford*, 96 F.3d at 832, 835-36.

Nor did FCA's handling of these incidents constitute severe or pervasive harassment. First, Roseman himself acknowledged in his deposition testimony that he was "satisfied" with the way that FCA handled his dispute with Ark. With respect to the final two incidents, Roseman presented no evidence showing that he suffered an adverse change in his employment conditions. *See Williams*, 643 F.3d at 512. It is undisputed that Roseman continued working at SHAP following both incidents with no negative change in his grade, hours, salary, or benefits. Although FCA declined to discipline Amond for his inappropriate text messages, the company did offer to transfer Amond to a completely different department upon Roseman's return from medical leave. Considering the foregoing, the district court correctly determined that Roseman failed to introduce sufficient proof for a reasonable jury to find either the requisite "severe and pervasive" element or employer liability for his hostile-work-environment claims.

b. Discrimination (Claims 1, 2, & 4)

The same facts that Roseman used to support his harassment claims were also used to support his claims of age, gender, and race discrimination claims under the ADEA and ELCRA. We analyze discrimination claims under both statutes using the same framework. *Tilley v.*

Kalamazoo Cnty. Rd. Comm'n, 777 F.3d 303, 307 (6th Cir. 2015). When, as here, a discrimination claim is based on circumstantial evidence, we apply the *McDonnell Douglas* burden-shifting framework. *Geiger v. Tower Auto.*, 579 F.3d 614, 622 (6th Cir. 2009); s*ee generally McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-05, (1973). First, Roseman must establish a prima facie case of discrimination. *Browning v. Dep't of the Army*, 436 F.3d 692, 695 (6th Cir. 2006). If he does so, the defendants must "articulate some legitimate, nondiscriminatory reason" for taking an adverse employment action against Roseman. *Blizzard v. Marion Tech. Coll.*, 698 F.3d 275, 283 (6th Cir. 2012) (quoting *McDonnell Douglas*, 411 U.S. at 802). Roseman must then produce evidence that could allow a jury to find that the proffered reason is a pretext designed to mask discrimination. *Chen v. Dow Chem. Co.*, 580 F.3d 394, 400 & n.4 (6th Cir. 2009).

We need not decide whether Roseman made a prima facie case of age, sex, or race discrimination. Even assuming that he did so, the defendants provided legitimate reasons for the adverse actions that they took against Roseman, and Roseman failed to create a genuine dispute on the issue of pretext. To that end, FCA explained that it had issued Roseman a verbal warning because he posted flyers that violated the company's policy forbidding threatening and intimidating workplace messages. And UAW Local 1700 Shop Committeeman Michael Spencer explained that the union declined to grieve the matter on Roseman's behalf given UAW Local 1700 Steward Eddie Smith's determination that a verbal warning "was the best the union would be able to do." FCA and UAW Local 1700 Steward Keith Hall also explained that Amond's text messages did not warrant discipline because they were not threatening or aggressive in nature. Hall further explained to Roseman that the union refused to pursue any disciplinary action against Amond out of fear that the incident would be used by FCA as precedent to discipline other union members. Lastly, FCA stated that it terminated Roseman because he refused to return to work under reasonable terms even after a psychiatrist had cleared him to do so without restrictions.

The analysis thus turns on whether Roseman has shown that the defendants' reasons for taking these adverse actions were pretextual. To make such a showing, he needed to demonstrate that the proffered reasons (1) had no basis in fact; (2) did not actually motivate the decisions; or (3) were insufficient to warrant the decisions. *Drews v. Berrien County*, 839 F. App'x 1010, 1012

(6th Cir. 2021) (citing *Chen*, 580 F.3d at 400). Roseman made no such showing with respect to the incident involving Amond. As to the campaign-flyer incident, Roseman went the third route, which requires evidence that employees outside the protected class engaged in "substantially identical conduct" and fared better than he did. *Manzer v. Diamond Shamrock Chems. Co.*, 29 F.3d 1078, 1084 (6th Cir. 1994) *overruled on other grounds by Gross* v. *FBL Fin. Servs., Inc.*, 557 U.S. 167, 180 (2009). Roseman claimed that FCA treated him differently than a female employee, Kayanne Gaddis, who had filed a complaint against Amond following a confrontation in March 2018. According to Roseman, FCA investigated Gaddis's complaint immediately and promptly suspended Amond for his behavior. But Roseman failed to show that he was similarly situated to Gaddis in all material respects, especially since Gaddis's complaint—which concerned Amond threatening to hire a hitman to "come visit" her—was far more serious and threatening than his complaint about Amond criticizing his management style. Because Roseman failed to provide an appropriate comparator, he failed to show that the defendants' proffered reasons for taking the adverse employment actions against him were pretextual. The district court therefore properly granted the defendants summary judgment on Roseman's discrimination claims.

c. Retaliation (Claim 3)

Roseman next alleged that after he "complained of racial discrimination in Defendants['] behavior in March of 2018 [as to the campaign flyer incident]," the defendants retaliated against him by "failing to take all reasonable steps necessary to prevent [future] harassment." A plaintiff must demonstrate four elements to establish a prima facie case of retaliation under the ELCRA: (1) he engaged in protected activity, (2) the defendant was aware of the protected activity, (3) the defendant took a materially adverse employment action against the plaintiff, and (4) there is a causal connection between the plaintiff's protected activity and the defendant's adverse action. *El-Khalil v. Oakwood Healthcare, Inc.*, 934 N.W.2d 665, 670-71 (Mich. 2019) (per curiam). Once a plaintiff establishes a prima facie case of retaliation, the *McDonnell Douglas* burden-shifting framework is employed. *Redlin v. Grosse Pointe Pub. Sch. Sys.*, 921 F.3d 599, 613 (6th Cir. 2019).

The district court properly concluded that Roseman failed to create a genuine issue of material fact as to the first element. Protected activity includes charging a violation of ELCRA,

Mich. Comp. L. § 37.2701(a), and although the charge need not cite the statute at issue, it "must clearly convey to an objective employer that the employee is raising the specter of a claim of unlawful discrimination" under the statute. *Barrett v. Kirtland Cmty. Coll.*, 628 N.W.2d 63, 72 (Mich. Ct. App. 2001). 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. Rather, in his email to UAW Local 1700 Shop Committeeman Michael Spencer asking that the union grieve his verbal warning, Roseman solely claimed that "[i]t is reasonable to deduce from the context of this FCA [Disciplinary] Action that the motivation is and was political." The district court properly granted summary judgment in favor of the defendants on Roseman's retaliation claim.

d. Breach of Duty of Fair Representation (Claims 6, 7, & 8)

Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a), gives federal courts jurisdiction to hear "[s]uits for violation of contracts between an employer and a labor organization representing employees." That statute encompasses "suits by and against individual employees as well as between unions and employers." *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 562 (1976). Suits by employees are referred to as "hybrid claims" in which the employee(s) "must prove both (1) that the employer breached the collective bargaining agreement and (2) that the union breached its duty of fair representation." *Garrish v. Int'l Union United Auto., Aerospace, & Agric. Implement Workers of Am.*, 417 F.3d 590, 594 (6th Cir. 2005) (citation omitted). If an employee cannot satisfy both prongs of that test, he "cannot succeed against any Defendant." *Id.*

Roseman alleged that the two local unions violated their duty of fair representation by: (1) handling his complaint about Amond differently than it had handled Gaddis's complaint; (2) "arbitrarily discriminating against [him,] deciding that his rights would be violated to protect other UAW union members/co-workers of [his] from discipline"; and (3) refusing to file a grievance on his behalf concerning the verbal warning that he received for posting his campaign flyers. The duty of fair representation ensures that unions represent employees "adequately . . .

honestly and in good faith." *Air Line Pilots Ass'n Int'l v. O'Neill*, 499 U.S. 65, 75 (1991). To establish a breach of this duty, a plaintiff must show that the union's "conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." *Vaca v. Sipes*, 386 U.S. 171, 190 (1967). "[A] union's actions are arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a wide range of reasonableness as to be irrational." *Air Line Pilots*, 499 U.S. at 67 (internal citations omitted). "[S]imple negligence or mere errors in judgment will not suffice." *Walk v. P*I*E Nationwide, Inc.*, 958 F.2d 1323, 1326 (6th Cir. 1992). Our review of the union's performance is highly deferential. *See Blesedell v. Chillicothe Tel. Co.*, 811 F.3d 211, 223 (6th Cir. 2016).

The defendants were entitled to summary judgment because Roseman did not present any evidence showing that either local union breached its duty of fair representation. First, Roseman presented no evidence that the local unions protected either Ark's or Amond's rights to the detriment of his own rights. Moreover, as discussed above, Roseman failed to show that he was similarly situated to Gaddis in all material respects. Roseman therefore cannot show that UAW Local 1700 acted discriminatorily or irrationally by treating Gaddis' complaint with greater urgency than his complaint. Nor did Roseman show that UAW Local 1700 acted arbitrarily or in bad faith by refusing to grieve the verbal warning that FCA had issued him for posting the inappropriate campaign flyers. Roseman's union representative decided not to file a grievance on Roseman's behalf upon concluding that "the union would not be able to get him a better deal" and that a verbal warning "was the best the union would be able to do." The district court rightly noted that the union representative's decision on this point was "eminently rational" given that the union had successfully lobbied FCA's labor relations representatives to reduce Roseman's punishment from suspension or possible termination to a verbal warning. *See Williams v. Molpus*, 171 F.3d 360, 366-67 (6th Cir. 1999) ("[A] union does not have to process a grievance that it deems lacks merit, as long as it makes that determination in good faith."), *overruled on other grounds by Chapman v. United Auto Workers Local 1005*, 670 F.3d 677, 685 (6th Cir. 2012).

Lastly, Roseman asserted a breach-of-contract claim against the International Union (Claim 12), alleging that it "disregarded" its legal obligation as UAW Local 1700's parent union

"to address the ongoing failure to process [his] grievance [that] its affiliate Local 1700 refused to process." But Roseman's failure to prevail on his breach-of-duty-of-fair-representation claim against UAW Local 1700 necessarily precludes him from succeeding on his breach-of-contract claim against the International Union.

e. Civil Conspiracy (Claim 5)

The district court also properly granted summary judgment in favor of the defendants on Roseman's civil-conspiracy claim. In Michigan, "[a]n essential element of a claim for . . . civil conspiracy is that the alleged tortious conduct be wrongful." *United Rentals (N.A.), Inc. v. Keizer*, 355 F.3d 399, (6th Cir. 2004) (citing *Feaheny v. Caldwell*, 437 N.W.2d 358, 365 (Mich. Ct. App. 1989)). Roseman's civil-conspiracy claim is based on the defendants' alleged violations of law as discussed above. However, because Roseman has no remaining actionable claim, his civil-conspiracy claim against the defendants cannot survive as a matter of law. *See id.*

f. Remaining Matters

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. To the extent that Roseman contends that consideration of the November 9, 2018, email prejudiced the district court against him, the record does not support such an assertion. *See Liteky v. United States*, 510 U.S. 540, 555 (1994).

Finally, Roseman challenges the district court's denial of his motion for a 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. 2000) (explaining that "a finding that there is simply no likelihood of success on the merits is usually fatal"). Because "the proof required for [a] plaintiff to obtain a preliminary injunction is much more stringent than the proof required to survive a summary judgment motion," *Leary v. Daeschner*, 228 F.3d 729, 739 (6th Cir. 2000), the district court did not err by denying Roseman injunctive relief.

III. Conclusion

Accordingly, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN L. ROSEMAN,

Plaintiff,

v.

Case Number 18-13042
Honorable David M. Lawson

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), FCA US, LLC, UAW LOCAL 1700, and UAW LOCAL 140,

Defendants.
_____/

ORDER GRANTING APPLICATION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* ON APPEAL

This matter is before the Court on the plaintiff-appellant's application to proceed *in forma pauperis* on appeal from the Court's judgment dismissing his complaint. The docket indicates that the petitioner paid the required filing fee when he filed his complaint initially. Therefore, he is not automatically authorized to appeal *in forma pauperis* under Federal Rule of Appellate Procedure 24(a)(3) and must show that he qualifies for such status. The plaintiff has submitted the required information, and the Court finds he qualifies for *in forma pauperis* status. Therefore, the plaintiff's application will be granted.

Accordingly, it is **ORDERED** that the plaintiff-appellant's application to proceed *in forma pauperis* on appeal (ECF No. 110) is **GRANTED**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: November 25, 2020

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN L. ROSEMAN,

Plaintiff,

v.

Case Number 18-13042
Honorable David M. Lawson
Magistrate Judge David R. Grand

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), FCA US, LLC, UAW LOCAL 1700, and UAW LOCAL 140,

Defendants.
_____/

JUDGMENT

In accordance with the opinion entered on this date, it is **ORDERED AND ADJUDGED** that the amended complaint in its entirety is **DISMISSED WITH PREJUDICE**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Date: November 17, 2020

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN L. ROSEMAN,

Plaintiff,

v.

Case Number 18-13042
Honorable David M. Lawson
Magistrate Judge David R. Grand

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), FCA US, LLC, UAW LOCAL 1700, and UAW LOCAL 140,

Defendants.
_____/

OPINION AND ORDER ADOPTING REPORT AND RECOMMENDATION, OVERRULING PLAINTIFF'S OBJECTIONS, DENYING PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT, GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT, AND DISMISSING THE SECOND AMENDED COMPLAINT

Plaintiff John Roseman filed a complaint alleging that various rights of his were violated by his employer, FCA US, LLC, several fellow employees with whom he had disputes, and labor unions that represented him through a collective bargaining agreement. The case was referred to Magistrate Judge David R. Grand to conduct all pretrial proceedings. Roseman filed several motions for dispositive rulings on his claims and a motion for a temporary restraining order and preliminary injunction, all of which were denied. After Roseman was permitted to file a first and then a second amended complaint, the defendants severally filed motions for summary judgment. Roseman filed two motions of his own for judgment as a matter of law in his favor on certain claims. Magistrate Judge David R. Grand issued a report recommending that the Court deny Roseman's motions, grant the defendants' motions, and dismiss all of the claims against the defendants with prejudice. Roseman filed timely objections to the report and recommendation.

I.

Roseman raises the following claims in his second amended complaint: (1) age discrimination and hostile work environment harassment in violation of the federal Age Discrimination in Employment Act (ADEA) (Count I); (2) gender discrimination and hostile work environment harassment in violation of Michigan's Elliott-Larsen Civil Rights Act (ELCRA) (Count II); (3) retaliation in violation of the ELCRA (Count III); (4) race discrimination in violation of the ELCRA (Count IV); (5) civil conspiracy, combined with another apparently freestanding claim of "hostile work environment" (Count V); (6) breach of the duty of fair representation (Counts VI, VII, VIII); (7) intentional infliction of emotional distress (IIED) (Count IX); (8) negligent retention of an unfit employee (Count X); (9) libel (Count XI); (10) breach of contract (Count XII); and (11) infringement of the plaintiff's Second Amendment "right to bear arms" (Count XIII).

The magistrate judge thoroughly discussed the facts that the plaintiff put forth to support these claims, and there is no need to recite them here. It is sufficient to note that Roseman was employed by FCA US, LLC as an assembly line worker beginning in July 1998 at the Warren Truck Assembly Plant and was represented by UAW Local 140. He transferred to FCA's Sterling Heights Assembly Plant in January 2018, where he was represented by Local 1800. His claims in this case are based on three incidents.

The first — the Darlene Ark Incident — occurred when Roseman was a Team Leader supervising Ark in 2016, who responded to Roseman's direction with cursing and invective and told the plaintiff that he needed "to get some balls." FCA suspended Ark on November 5, 2016, but she returned to work on November 15, 2016. Roseman was dissatisfied with FCA's disciplinary action, complained to a supervisor and an FCA Labor Representative, filed a

grievance, and hired an attorney. FCA retained outside counsel to investigate Roseman's complaints, who did not recommend any further discipline as a result of her investigation, and Roseman eventually indicated that he was satisfied with FCA's actions.

The magistrate judge referred to the second incident as the Union Election Flyers Incident, which occurred in March 2018 when Roseman ran for Local 1700 union steward. To support his campaign, he posted flyers throughout the plant that depicted him holding a rifle and asking, "Is it time for a new sheriff[?]" Those photos caused concern with FCA's Labor Relations department and eventually led to an investigation and a written warning that the flyers were not appropriate in the workplace. Roseman demanded that his union pursue a grievance over the discipline, and that FCA and UAW officials convey to him a "public apology" and remove the record of discipline from his employee file. However, his Shop Committeeman and Union Steward explained to him that the matter was resolved and no grievance would be filed.

The third incident was provoked by co-worker Dominic Amond in late July 2018 when Roseman was filling in as a Team Leader. Amond was displeased with Roseman's management style and sent nettlesome text messages to various co-workers criticizing him. Roseman complained to supervisors and was told that Amond would be disciplined and removed from the team. Roseman then returned to work but alleged that he was "traumatized and immensely distressed" later that day when he saw Amond still working and staring at him with a "grim, unflinching and negative look on his face." 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 statements 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. Roseman did not

return to work after his shift ended that morning, because he felt that the work situation was too stressful.

Roseman subsequently went on medical leave. About three months later, a company psychiatrist completed a medical examination and concluded that Roseman could return to work without restrictions. On November 1, 2018, FCA sent Roseman a letter instructing him to return to work by November 21, 2018. The letter advised Roseman that the applicable provisions of FCA's health benefits program provided that the medical evaluation was "final and binding," that sick leave benefits would not be paid beyond the date of the evaluation, and that if Roseman wanted to dispute the medical opinion then he could seek review of the determination by submitting a request to the FCA Service Center within 60 days after receipt of the return-to-work letter.

Roseman subsequently conveyed to FCA his disagreement with the medical assessment, based on his concern that he "would have been going right back to work with Amond in the same work area," and FCA responded that it was willing to address that concern. On November 9, 2018, FCA sent Roseman an e-mail stating, "The plant would like to return you 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." Email dated Nov. 9, 2018, ECF 87-6, PageID.2359. 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.

During this litigation, at a November 13, 2018 hearing before the magistrate judge on Roseman's motion for a temporary restraining order, FCA again offered to allow Roseman to return to work, on the same terms previously proposed. Roseman refused that offer on the record. Based on his refusal to return to work, on December 3, 2018, FCA terminated Roseman's employment.

On January 12, 2019, Roseman e-mailed his union representatives, asking that the union file a grievance on his behalf related to his termination. He wrote that he disputed the psychiatrist's findings. Roseman's union representative immediately responded via email, stating that a grievance would be filed, but that Roseman had waited too long to seek review of the medical exam results, because the 60-day window had expired. Roseman's UAW Local 1700 representative later filed a grievance on Roseman's behalf challenging FCA's termination of his employment; when UAW Local 1700 filed its motion for summary judgment that grievance was still pending.

On November 14, 2019, Roseman filed a motion for partial summary judgment on his claim against UAW Local 1700 for breach of the duty of fair representation. On November 26, 2019, Roseman filed a motion for partial summary judgment on his IIED claim against FCA US, LLC. On December 13, 2019, he filed yet another motion for partial summary judgment, which was stricken as procedurally improper. The defendants later filed their respective motions for summary judgment. The magistrate judge issued his report recommending that the plaintiff's motions be denied, the defendants' motions granted, and the case be dismissed. Following Roseman's timely objections, the matter now is before the Court for a fresh review.

II.

The filing of timely objections to a report and recommendation requires the court to "make a *de novo* determination of those portions of the report or specified findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1); *see also United States v. Raddatz*, 447 U.S. 667 (1980); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). This fresh review requires the court to re-examine all of the relevant evidence previously reviewed by the magistrate judge in

order to determine whether the recommendation should be accepted, rejected, or modified in whole or in part. 28 U.S.C. § 636(b)(1).

This review is not plenary, however. "The filing of objections provides the district court with the opportunity to consider the specific contentions of the parties and to correct any errors immediately," *Walters*, 638 F.2d at 950, enabling the court "to focus attention on those issues-factual and legal-that are at the heart of the parties' dispute," *Thomas v. Arn*, 474 U.S. 140, 147 (1985). As a result, "'[o]nly those specific objections to the magistrate's report made to the district court will be preserved for appellate review; making some objections but failing to raise others will not preserve all the objections a party may have.'" *McClanahan v. Comm'r of Soc. Sec.*, 474 F.3d 830, 837 (6th Cir. 2006) (quoting *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987)).

As an initial matter, many of the positions stated in the plaintiff's objections are unsupported by any citations of pertinent record evidence or legal authority on point, and instead consist mainly of unelaborated expressions of the plaintiff's "belief" that his proofs satisfy the elements of his claims and that a jury could find in his favor, or unsupported statements of generalized disagreements with the magistrate judge's conclusions. It is well settled that "'[a] general objection to the entirety of the magistrate [judge's] report has the same effect as would a failure to object,' and an objection that does nothing more than state a disagreement with a magistrate's suggested resolution, or simply summarizes what has been presented before, is not an 'objection' as that term is used in the context of Federal Rule of Civil Procedure 72." *Brown v. City of Grand Rapids*, No. 16-2433, 2017 WL 4712064, at *2 (6th Cir. June 16, 2017) (order) (quoting *Howard v. Secretary of Health & Human Servs.*, 932 F.2d 505, 509 (6th Cir. 1991)). Many of the plaintiff's purported "objections" advance little more than generalized disagreement

with the magistrate judge's conclusions, unsupported by any specific factual basis or legal authority on point calling into question the magistrate judge's application of the law to the record facts. Those insubstantial arguments do not forestall adoption of the recommendation.

Moreover, mere reiterations of previously pleaded factual assertions and disconnected citations of legal authority, devoid of any substantive legal argument against specific findings or conclusions by the magistrate judge, are insufficient to preserve objections for review by this Court. *Cowans v. Abioto*, No. 20-2024, 2020 WL 3086562, at *2 (W.D. Tenn. June 10, 2020) ("Plaintiff's objections merely repeat the allegations in his Complaint and Amended Complaint. . . . Plaintiff has also attached several hundred pages of documents, which are largely incomprehensible, and which appear to be copies of documents previously filed with his Complaint and Amended Complaint or filed in response to the Magistrate Judge's show cause order directing Plaintiff to respond to the Motion to Dismiss. In sum, Plaintiff's repetitious arguments and incomprehensible documents do not constitute objections."); *Givens v. Loeffler*, No. 19-617, 2019 WL 4419980, at *2 (S.D. Ohio Sept. 11, 2019) ("Plaintiff's objections simply repeat a recitation of the elements of this claim and make additional conclusory allegations. He does not demonstrate why the magistrate judge's recommendation was erroneous."); *McDougald v. Erdos*, No. 17-00464, 2018 WL 4573287, at *2 (S.D. Ohio Sept. 25, 2018) ("In his objections, Plaintiff summarily states, for each claim, that 'it was error in the context of the entire record' for the Magistrate Judge to recommend dismissal of that claim. He then, for each claim, largely repeats the facts and arguments set forth in his Amendment Complaint and his Response to Defendants' Motion to Dismiss, and the case law and portions of analysis found in Defendants' Motion to Dismiss and the Magistrate Judge's R&R. A review of his objections also reveals that his arguments are comprised almost entirely of general disagreements with the Magistrate Judge's

recommendation without any additional or new support for those disagreements.") (citations omitted). Substantial portions of the plaintiff's objections also run along that vein, and therefore those parts also present no meaningful rebuttal to the magistrate judge's conclusions.

Those points on which the plaintiff raised more specific arguments that were supported by at least some factual and legal basis are discussed further below.

A. Hostile Work Environment Claims

The magistrate judge concluded that the claims of age-, sex-, and race-related hostile work environment harassment must be dismissed because none of the evidence advanced by the plaintiff was sufficient to support a jury finding that any mistreatment he suffered objectively would be perceived as either "severe" or "pervasive." The magistrate judge noted that the incident with Darlene Ark occurred more than a year before and at a separate workplace from the other events, and, moreover, the plaintiff conceded at his deposition that he was "satisfied" by FCA's resolution of his complaints about Ark. The magistrate judge also found that a mere verbal reprimand for posting flyers depicting the defendant holding a gun and declaring himself the "new sheriff" would not be perceived by any reasonable employee as hostile; in fact much more severe (and arguably entirely appropriate) sanctions were considered and discarded before the mild (and nevertheless unacknowledged) verbal reprimand was issued. The magistrate judge also concluded that no reasonable employee would perceive the "Old Head" remark as overtly hostile or offensive, and, even if it could be construed as such, all of the incidents taken together amounted to nothing more than isolated slights and indignities that did not demonstrate objectively severe and continual harassment. Finally, the magistrate judge found that the mocking text messages and "staring" by Amond also did not qualify, even along with all the other incidents, as rising to the level of creating an objectively intolerable working environment.

It is well established that, in order to prevail on a hostile work environment claim, the plaintiff must prove "both that the harassing behavior was 'severe or pervasive' enough to create an environment that a reasonable person would find objectively hostile or abusive, and that he or she subjectively regarded the environment as abusive." *Hawkins v. Anheuser-Busch, Inc.*, 517 F.3d 321, 333 (6th Cir. 2008). "Conduct that is merely offensive" does not suffice; to be "actionable, the harassment must consist of more than words that simply have sexual [or ageist or racist] content or connotations." *Knox v. Neaton Auto Prod. Mfg., Inc.*, 375 F.3d 451, 459-60 (6th Cir. 2004). Instead, the plaintiff must show that he was forced to endure a workplace permeated with "discriminatory intimidation, ridicule or insult" that was sufficiently severe or pervasive to alter the conditions of employment. *Meritor Sav. Bank FSB v. Vinson*, 477 U.S. 57, 65-67 (1986). Factors that courts consider include "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Jordan v. City of Cleveland*, 464 F.3d 584, 597 (6th Cir. 2006). The entire record, read in the most generous light, does not allow the plaintiff to clear, or even approach, that substantial evidentiary hurdle, and his objections do not identify any errors of fact or law in the findings and conclusions of the magistrate judge on this point.

In his first objection, Roseman criticizes the magistrate judge's characterization of the case as "arising out of relatively minor disputes." In his third objection, Roseman insists that his supervisor's description of him as an "Old Head" was not flattering, and he perceived the remark as being an indication of age-related animus. Neither of those arguments demonstrates any error in the magistrate judge's conclusion that all of the conduct taken together simply could not support

a jury finding that Roseman's work environment was rendered objectively intolerable by any of the incidents that he described.

Roseman's fourth objection consists entirely of a lengthy diatribe on his belief that Darlene Ark was "out to get him," and his suspicions that she engaged in many nefarious deeds to that end (most of which are described only in the vaguest terms). However, Roseman's rant about Ark is not supported by any citations of actual record evidence that Roseman contends the magistrate judge overlooked in assessing the significance of the plaintiff's grievances. 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.

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. However, Roseman does not point to any evidence calling into question the magistrate judge's depiction of the substantive content of the flyers, or the assertion by FCA that the flyers' content violated company policies forbidding "intimidating" and "threatening" workplace messages. Nothing in Roseman's presentation calls into question the magistrate judge's main conclusion that the issuance of a verbal warning as an admonishment for the posting of the flyers simply does not suggest that the work environment was rendered pervasively intolerable.

Roseman's ninth objection consists of unsupported assertions that Dominic Amond's behavior was "particularly provocative and emotionally distressing," and that Roseman endured many other minor incidents of harassment without complaint. This objection is not supported by

any reference to evidence that the magistrate judge purportedly overlooked in assessing the seriousness of Amond's behavior. And Roseman's mere assertion of his personal belief that Amond's behavior was "intolerable" does not aid his presentation.

In his tenth objection, Roseman offers a list of "anecdotes" purportedly drawn from news accounts of shootings or other violent incidents at automobile factories, which he believes show that the magistrate judge underestimated the seriousness of harassment that Roseman was subjected to by his co-workers Ark and Amond. However, he does not explain how any of those incidents have any relation to the facts in this case, and all of them apparently involved persons and events entirely disconnected from the facts presented by this record.

Finally, in his eleventh objection, Roseman asserts that the magistrate judge displayed "bias" against him by relying on "extrajudicial sources" for a factual assertion that Roseman was told by FCA Supervisor Jana Hines to "go to human resources" with his complaints about text messages that were sent by Amond. The magistrate judge cited the second amended complaint as supporting that assertion, in which Roseman alleged, in response to the plaintiff's emails about Amond's conduct, that "[Hines] assured Plaintiff that swift action would be taken and that she would engage the FCA Labor Relations representative in about an hour." Am. Compl., ECF No. 40, PageID.602. The magistrate judge's characterization is a fair reading of the facts pleaded. Moreover, even if that reading was inaccurate in some respect, Roseman has not explained how the misreading of such a peripheral fact has any bearing on the pertinent legal question, which is whether any of the conduct evidenced in the record demonstrates pervasive hostility in the workplace. The charge of "judicial bias" is without any foundation in the record of the proceedings, and this objection offers no factual or legal rebuttal to the conclusion that the record cannot sustain the workplace harassment claims.

B. Discrimination Claims

The magistrate judge concluded that the claims of age, race, and gender discrimination must be dismissed because the plaintiff had not presented sufficient evidence to raise any triable questions of fact about whether he suffered an adverse employment action, was treated differently than a similarly situated employee, or was discharged on mere pretext. Roseman has not offered any persuasive rebuttal to any of those findings.

Roseman's objections principally attack the magistrate judge's finding that he had failed to show he suffered any "adverse action." In the context of discrimination claims, "typically [an adverse action] takes the form of an ultimate employment decision, such as 'a termination in employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices that might be unique to a particular situation.'" *Pena v. Ingham County Road Commission*, 255 Mich. App. 299, 312, 660 N.W.2d 351, 358 (2003) (quoting *White v. Burlington Northern & Santa Fe Railway Co.*, 310 F.3d 443, 450 (6th Cir. 2002)). Roseman has not offered any evidence that he suffered any such consequences during his employment any time before his termination. Moreover, none of the purported affronts to his dignity that Roseman says he endured in the workplace suffice to demonstrate that he suffered any cognizable adverse change in working conditions. *See Howard v. Board of Education of Memphis City Schools*, 70 F. App'x 272, 280 (6th Cir. 2003); *Magyar v. United States Postal Service*, No. 18-13447, 2019 WL 1989207, at *6 (E.D. Mich. May 6, 2019); *Fandakly v. Thunder Techs., LLC*, No. 17- 11256, 2018 WL 1965082, at *5 (E.D. Mich. Apr. 26, 2018); *see also Wilcoxon v. Minnesota Mining & Mfg. Co.*, 235 Mich. App. 347, 597 N.W.2d 250 (1999).

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 intention of forcing the employee to quit and the employee must actually quit." *Moore v. KUKA Welding Sys. & Robot Corp.*, 171 F.3d 1073, 1080 (6th Cir. 1999). 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, at the same place, while transferring a problematic co-worker elsewhere.

In his second objection, Roseman contends that he did not "refuse to return to work" but was terminated improperly after he invoked the "appeal process" on Dr. Talon's medical fitness determination. However, he has pointed to no evidence calling into question the defendants' position that any such "appeal" was commenced long after the time for it had expired under applicable provisions of the sick leave policy. Roseman also insists that he only refused to return to "the same facility," and instead requested a transfer to another plant so he would not have to deal with Amond. But he has not pointed to any provision of the collective bargaining agreement or any other work rule that might obligate FCA to accede to the demand for a transfer to another workplace, rather than offering to transfer the plaintiff's co-worker to another assignment to avoid future conflicts. 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.

Moreover, Roseman has offered no evidence to demonstrate that the termination for refusal to return to work was pretextual. In his thirteenth objection, Roseman asserts without elaboration

that "[c]onsidering the averments, acts complained of and basis of liability, incorporating by reference the entire record in this case, [he] believe[s] that an objective trier-of-fact would disagree with court" that he failed to advance any evidence demonstrating that the stated reason for his termination (refusal to return to work) was merely pretextual. "There are generally three methods of showing pretext: "(1) that the proffered reasons had no basis in fact, (2) that the proffered reasons did not actually motivate [plaintiff's] discharge, or (3) that they were insufficient to motivate discharge.'" *George v. Youngstown State Univ.*, 966 F.3d 446, 473 (6th Cir. 2020) (Rogers, J., concurring in part (quoting *Manzer v. Diamond Shamrock Chemicals Co.*, 29 F.3d 1078, 1084 (6th Cir. 1994)). The plaintiff here admits that he refused to return to his prior position and work assignment when FCA offered multiple times to allow him to return, and to transfer Amond to another location to avoid future conflicts. No rational jury could find any semblance of pretext in the employer's decision to terminate the plaintiff when he refused to accept those eminently reasonable terms.

C. Retaliation Claims

The magistrate judge found that none of the retaliation claims could proceed because the plaintiff had not produced any evidence suggesting that he had engaged in any "protected activity" prior to any of the allegedly improper responses by the defendants, since none of his complaints mentioned or even alluded in any way to any unlawful age-, race-, or gender-based discrimination. The magistrate judge observed that the evidence suggested only that Roseman had submitted various complaints about treatment he received from the defendants and co-workers, which were not related in any apparent way to his membership in any protected class.

In his twelfth objection, Roseman contends that he presented proof of his engagement in protected activity because after the March 8, 2018 HR meeting he sent an email to FCA's Labor

Relations Staff Lead, Gerard Perez; UAW Shop Committeeman Michael Spencer; and UAW Local 1700 Chief Steward Eddie Smith, in which he "complained of racial stereotyping." Roseman cited as support for that assertion an email that was attached to the amended complaint. The exhibit is a March 25, 2018 email from Roseman to Perez and others, where Roseman wrote the following: "Since you say that this matter was properly handled and resolved, you represent on behalf of FCA that [among other things] . . . Labor representative Cynthia Johnson suggested that she was judging me in the context of recent news or 'what's going on in the World today,' so FCA supports stereotyping in labor disciplinary actions." Am. Compl., Exhibit B, Email dated Mar. 25, 2018, ECF No. 40-1, PageID.644. Nothing else in the email even remotely alludes to racial discrimination, and the allusion to "stereotyping" is devoid of any indication that Roseman was complaining about retaliatory conduct based on sex-, race-, or age-related hostility. It is well settled that such vague and unsubstantiated allusions to improper activity, devoid of any specific assertions of conduct prompted by racial or other unlawful animus, do not constitute "protected activity" for the purposes of Title VII or ELCRA retaliation claims. *Booker v. Brown & Williamson Tobacco Co.*, 879 F.2d 1304, 1313 (6th Cir. 1989) ("[A] vague charge of discrimination in an internal letter or memorandum is insufficient to constitute opposition to an unlawful employment practice."); *see also Brown v. VHS of Mich., Inc.*, 545 F. App'x 368, 374 (6th Cir. 2013); *Smith v. Campbell*, 250 F.3d 1032, 1037 (6th Cir. 2001).

D. Fair Representation Claims

The magistrate judge concluded that the breach of duty of representation claims must be dismissed because Roseman had not proffered any substantial evidence suggesting that the efforts by Union advocates on Roseman's behalf, or any decision not to pursue a grievance, were so devoid of any factual justification as to be "wholly irrational" on the Union's part. As the

magistrate judge noted, a union's refusal to pursue a grievance is not actionable unless the plaintiff demonstrates that its decision was "wholly irrational." *Danton v. Brighton Hosp.*, 533 F. Supp. 2d 724, 728 (E.D. Mich. 2008) (citing *Garrison v. Cassens Transport*, 334 F.3d 528, 538 (6th Cir. 2003); *Vaca v. Sipes*, 386 U.S. 171, 190 (1967)). In making the required showing, the plaintiff "cannot rely on conclusory statements." *Danton*, 533 F.Supp.2d at 728. The union's "decision on how to pursue a grievance and, ultimately, not pursue a grievance are entitled to deference from [the] Court, and are not actionable if done in good faith." *Ibid.* Union decisions "in these matters are not considered arbitrary unless they are 'so far outside a wide range of reasonableness as to be irrational.'" *Ibid.* (quoting *Driver v. United States Postal Service*, 328 F.3d 863, 869 (6th Cir. 2003)). The decision by union representatives not to further pursue any grievance relating to the workplace flyers incident was eminently rational, particularly because Roseman's representative had succeeded through his effective advocacy in reducing the punishment to an unacknowledged and benign verbal admonishment for an alarming violation of work rules prohibiting intimidating messages in the workplace. The union did in fact file a grievance relating to the medical fitness determination, despite advising Roseman that there was no hope of success since (in mid-January 2019) Roseman had waited too long to appeal the finding. And Roseman has not pointed to any admissible evidence contradicting his own admission that he expressed satisfaction with the union's handling of his complaints about Darlene Ark.

In his seventh and eighth objections, Roseman disputes the magistrate judge's recital of follow up communications with union representatives Eddie Smith and Michael 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

such 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.

E. Conspiracy

The magistrate judge concluded that the conspiracy claims could not proceed because, for all the reasons noted above, the record does not demonstrate the commission of any actionable intentional tort by any of the named defendants. There was no error in that conclusion. "A civil conspiracy is an agreement between two or more persons to injure another by unlawful action." *Hooks v. Hooks*, 771 F.2d 935, 943-44 (6th Cir. 1985). Consequently, Roseman cannot succeed on a civil conspiracy claim where there is no proof of any underlying intentional tort by a conspirator. *Wiley v. Oberlin Police Dept.*, 330 F. App'x 524, 530 (6th Cir. 2009). The magistrate judge also concluded that the conspiracy claims against the unions and their representatives that were premised on dereliction in the duty of representation under a collective bargaining agreement are preempted by Section 301 of the Labor Management Relations Act, 29 U.S.C. 185(a) (citing *Teamsters v. Lucas Flour Co.*, 369 U.S. 95 (1962)). Roseman has not cited any legal authority holding to the contrary.

In his fourteenth objection, Roseman asserts, based on statements allegedly made by FCA supervisor Herbert Wright and UAW Local 140 union steward Kalu Jones during a November 2016 meeting to discuss Roseman's complaints about Darlene Ark, that he "believe[s] that an objective trier-of-fact would find that Jones and [Brown] conspired to obstruct the protective and preventative apparatuses that I tried to avail myself of" to seek action from the union and FCA in response to Ark's harassment. However, Roseman offers no cogent rebuttal to the magistrate

judge's conclusion that he has failed to point to any evidence that demonstrates the commission of any actionable intentional tort by any of the defendants implicated in the conspiracy claims.

F. Other Claims

The magistrate judge also addressed other claims that were pleaded in the second amended complaint, and Roseman has not advanced any substantial arguments against dismissal of those claims. The magistrate judge concluded that (1) the claim for intentional infliction of emotional distress must be dismissed because nothing in the record demonstrated the sort of "extreme and outrageous" conduct by any defendant or co-worker required to sustain that cause of action under Michigan law; (2) the plaintiff could not proceed to a jury on his negligent retention claim because there was no evidence in the record suggesting that Dominic Amond committed, or had any predilection to commit, any intentional tort against the plaintiff, or that FCA US, LLC had any reason to suspect that Amond was likely to commit any actionable tort; (3) the libel claims must be dismissed because (a) nothing in the written acknowledgment of a verbal warning that Roseman was prompted to sign was either false or defamatory, since it merely memorialized the content of the campaign flyers that Roseman admitted he posted (an example of which was attached to the amended pleading), and (b) even if the communication somehow could be construed as false and harmful to Roseman's reputation, it was privileged as a matter of law because it was an internal communication between management and labor representatives about the plaintiff's conduct within the scope of his employment; and (4) the Second Amendment claim must be dismissed because it is axiomatic that the Second Amendment only restrains government invasions of the right to bear arms, and none of the circumstances described in the amended complaint involved any official conduct. Roseman has not mounted any valid legal or factual challenge to any of those conclusions, and all of those remaining claims therefore will be dismissed.

III.

The magistrate judge properly considered the record and correctly applied the governing law in reaching his decision to recommend denying the plaintiff's motions and granting the defendants' motions.

Accordingly, it is **ORDERED** that the plaintiff's objections (ECF No. 103) are **OVERRULED**, the report and recommendation (ECF No. 102) is **ADOPTED**, the plaintiff's motions for summary judgment (ECF No. 77, 78) are **DENIED**, the defendants' motions for summary judgment (ECF No. 87, 89, 90, 91) are **GRANTED**, and all of the plaintiff's claims against the defendants are **DISMISSED WITH PREJUDICE**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Date: November 17, 2020

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN L. ROSEMAN

Plaintiff,

Civil Action No. 18-cv-13042
Honorable David M. Lawson
Magistrate Judge David R. Grand

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), FCA US, LLC, UAW LOCAL 1700, and UAW LOCAL 140,

Defendants.
_____/

REPORT AND RECOMMENDATION TO GRANT FCA AND UNION DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT [87, 89, 90, 91] AND TO DENY PLAINTIFF JOHN ROSEMAN'S MOTIONS FOR SUMMARY JUDGMENT [77, 78]

Plaintiff John Roseman ("Roseman") brings this action against his (now) former employer FCA US LLC ("FCA"), as well as the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "International Union") and two local UAW unions, UAW Local 140 and UAW Local 1700 (collectively, the "Union Defendants"). The case arises out of relatively minor disputes Roseman had with certain of his coworkers and the manner in which FCA and union representatives handled those disputes. Roseman took a lengthy medical leave as a result of the stress these incidents allegedly caused him. While he was on leave, Roseman commenced this action. Eventually, a physician conducted an independent medical examination and approved Roseman to return to work without restrictions. FCA even offered to transfer the co-worker with whom Roseman had the most significant and most recent disputes to a different department so that Roseman would not need to work with him. When Roseman still

refused to return to work, FCA terminated his employment.

In his operative second amended complaint, which Roseman filed after his termination, he asserts the following claims: 1) age discrimination and hostile work environment in violation of the Age Discrimination in Employment Act ("ADEA") (Count I); 2) gender discrimination and hostile work environment in violation of Michigan's Elliott-Larsen Civil Rights Act ("ECLRA") (Count II); 3) retaliation in violation of the ELCRA (Count III); 4) race discrimination in violation of the ELCRA (Count IV); 5) civil conspiracy, hostile work environment (Count V); 6) breach of duty of fair representation (Counts VI, VII, VIII); 7) intentional infliction of emotional distress (Count IX); 8) negligent retention of an unfit employee (Count X); 9) libel (Count XI); 10) breach of contract (Count XII); and 11) infringement upon his Second Amendment right to bear arms (Count XIII). (ECF No. 40.)

On November 14, 2019, Roseman filed a motion for partial summary judgment against UAW Local 1700 as to his breach of the duty of fair representation claim. (ECF No. 77.) On November 26, 2019, Roseman filed a motion for partial summary judgment against FCA as to his intentional infliction of emotional distress claim. (ECF No. 78.) On December 13, 2019, Roseman filed a third motion for partial summary judgment, which was stricken pursuant to court order. (ECF Nos. 85, 86.) The Defendants then filed their respective motions for summary judgment. (ECF Nos. 87, 89, 90, 91.) Roseman has filed several responses and Defendants have likewise replied. (ECF Nos. 88, 92, 93, 94, 95, 96, 99, 100, 101.) This case was referred to the undersigned for all pretrial matters under 28 U.S.C. § 636(b). (ECF No. 12.) Having reviewed the pleadings and other papers on file, the Court finds that the facts and legal issues are adequately presented in the parties' briefs and on the record, and it declines to order a hearing at this time.

For the reasons set forth below, it is **RECOMMENDED** that the Defendants' motions for

summary judgment **(ECF Nos. 87, 89, 90, 91)** be **GRANTED** and that Roseman's motions for summary judgment **(ECF Nos. 77, 78)** be **DENIED**.

I. REPORT

A. Facts

Roseman began working at FCA in July 1998 as an assembler at the Warren Truck Assembly Plant ("WTAP"). (ECF No. 40, PageID.600; ECF No. 87-2, PageID.2325.) He subsequently held the position of Team Lead. (ECF No. 87-2, PageID.2329.) UAW Local 140 represented him at WTAP. (*Id.*) Around January 2018, Roseman transferred to FCA's Sterling Heights Assembly Plant ("SHAP"), where he worked as a team member in assembly and at the paint shop. (ECF No. 40, PageID.600.) UAW Local 1700 represented him at SHAP. Roseman's allegations arise from three incidents that occurred during his tenure in these positions.

1. Co-Worker Darlene Ark Incident

In November 2016, Roseman complained of harassment and hostility by co-worker Darlene Ark. (ECF No. 40, PageID.600.) At the time, Roseman was a Team Leader. (ECF No. 87-2, PageID.2329.) According to Roseman, Ark failed to properly execute an operation on the assembly line. (ECF No. 40-1, PageID.651.) Supervisor Herbert Wright asked Ark and Roseman to explain the failure. (*See id.*) Ark answered by swearing at Roseman, and stating that he needed "to get some balls." (ECF 40-1, PageID.652.) Wright took over Roseman's Team Leader responsibilities, and Roseman resumed his duties on a separate line from Ark. (*Id.* at PageID.656.)

FCA investigated this incident and suspended Ark on November 5, 2016. (*Id.* at PageID.652.) Ark returned to work on November 15, 2016. (*Id.*) Dissatisfied with FCA's disciplinary action, Roseman made several complaints to Wright and FCA Labor Representative, Cynthia Jones. (*Id.*) He also filed a grievance on November 25, 2016 (*Id.* at PageID.652-53), and

hired an attorney. (*Id.* at PageID.649.)

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. (*Id.* at PageID.649.) FCA retained outside counsel, Deborah Brouwer ("Brouwer"), to investigate Roseman's complaints. (ECF No. 87-2, PageID.2329.) Brouwer did not recommend any further discipline as a result of her investigation, and Roseman indicated he was satisfied with FCA's actions. (*Id.*)

2. The Union Election Flyers Incident

In March 2018, Roseman ran for UAW Local 1700 union steward. (ECF No. 87-2, PageID.2330.) As a part of his campaign, he posted flyers throughout the plant that depicted him holding a rifle and asking, "Is it time for a new sheriff[?]" (ECF No. 40-1, PageID.734-35.) FCA Labor Relations contacted UAW Local 1700 Shop Committeeman Michael Spencer ("Spencer") regarding these flyers and requested that they be removed. (ECF No. 90-16, PageID.2575-76.) Spencer subsequently advised Roseman to remove the flyers, and Roseman claims he did so. (ECF No. 87-2, PageID.2332.)

On March 7, 2018, when Roseman reported to work, he found that his access badge did not work, and he could not enter the plant. (ECF No. 87-2, PageID.2330.) The next day, Local 1700 Union Stewards Eddie Smith ("Smith") and Michael Caldwell ("Caldwell") met Roseman in the lobby and escorted him to an investigatory meeting with FCA management regarding the flyers. (*Id.; see also*, ECF No. 90-15, PageID.2564.)

Roseman, Smith, Caldwell, and FCA Labor Relations Representatives Cynthia Johnson ("Johnson") and Corey Scott ("Scott") attended the meeting. (ECF No. 90-15, PageID.2564.) Johnson and Scott told Roseman that FCA determined that his flyers violated work rules against threatening, intimidating, coercing or harassing conduct. (*Id*; *see also*, ECF 40-1, PageID.641.)

Johnson and Scott proposed a wide range of disciplinary actions for Roseman's refusal to remove the flyers, including termination and suspension. (*Id.* at PageID.2565.) Smith and Caldwell argued that termination and suspension would be disproportionate to Roseman's conduct. (*Id.*) Smith argued that a reasonable resolution would be a verbal warning. FCA ultimately agreed, and asked Roseman to sign the verbal warning. (*Id.* at PageID.2565.) The verbal warning stated:

> John Roseman, CID 1041863, displayed a bulletin in various work locations that displayed him with a rifle, with the notation on the bulletin, "new sheriff in town. [sic] The bulletin is considered to be inappropriate for the workplace.

(ECF No. 40-1, PageID.641.)

Roseman refused to sign this warning, which resulted in Johnson indicating she was going to complete a Notice of Suspension, Disciplinary Layoff or Discharge for Roseman. (*Id;* ECF 90-3, PageID.2512; ECF No. 90-15, PageID.2565.) Smith again argued that suspending Roseman would be inappropriate. (ECF No. 90-15, PageID.2565.) Johnson agreed to forgo suspending Roseman and instead simply gave him the unsigned verbal warning. (*Id.*) Roseman was still dissatisfied with the verbal warning, but Smith "told [him] this was the best the union would be able to do and that the matter was resolved." (ECF No. 90-15, PageID.2565.)

On March 9, 2018, Roseman sent Spencer an e-mail complaining about his treatment on the previous day when he could not initially enter the building, stating that he was "detained by FCA human resources, security, and labor relations at 4:20 P.M. without access to water or restroom." (ECF No. 40-1, PageID.634-35.) Spencer responded by e-mail, asking whether Roseman actually asked for water or a restroom. (*Id.*) Roseman stated he did not because there was nobody in the lobby to ask, but he did not complain about lack of access to water or a restroom at the meeting that occurred shortly after this alleged incident. (*Id.*; ECF No. 90-15, PageID.2565).

On March 11, 2018, Roseman sent Spencer another e-mail requesting that his verbal

warning be grieved and demanding a public apology:

Factual Background

1. John Roseman posted flyers/printed material in a campaign to run for the position of UAW UNION STEWARD, District 21 of Local 1700.
2. No flyer, "bulletin", or any other printed material Employee John Roseman (1041863) posted in Sterling Heights Assembly Plant a FCA facilaty [sic] contained the declaration or phrase or declaration "new sheriff in town" alleged in the verbal warning.
3. The signatures of FCA and UAW officials on this document constitute fraud and is [sic] a material misrepresentation.
4. The signature of the Union Official represents a breach of duty and a failure to represent Mr. John Roseman an FCA employee of 20 years fairly.
5. Mr. John Roseman [sic] rights have been violated.
6. It is reasonable to deduce from the context of this FCA Displinary [sic] Action that the motivation is and was political.
7. Mr. John Roseman feels he was being harassed, coerced and intimidated by FCA and UAW officials to accept and sign off on what he believed to be unjust Disciplinary Action.
8. The "VIOLATION TYPE" that FCA alleges is a false acusation. [sic] No ACTIONS or WORDS in any printed material, bulletin or flyer posted or produced by John Roseman can REASONBLY [sic] be deduced to being: THREATENING, INTIMIDATING, COERCING, or HARASSING
9. It is reckless, extreme and outrageous for FCA and UAW officials to collude in this damaging act of defamation and material misrepresentation.

Relief Sought

Mr. John Roseman request [sic] that his UAW steward grieves the Disciplinary Action (below/next page).

A public apology from FCA and UAW officials. Disciplinary Action removed from Mr. John Roseman's work record.

(ECF No. 40-1, PageID.639-640.)

On March 17, 2018, Roseman sent Spencer another e-mail asking about this grievance. (ECF No. 40-1, PageID.643.) Because "Smith had explained to Mr. Roseman that the matter was resolved," Spencer declined to pursue a grievance. (ECF No. 90-16, PageID.2576-77.) Despite

these disputes, Roseman continued working in his position.

3. The Dominic Amond Dispute

In late July 2018, Roseman began having issues with co-worker Dominic Amond ("Amond") while Roseman was filling in as Team Leader for Keith Hall ("Hall"), a co-worker and union steward. (ECF No. 40, PageID.601; ECF No. 90-15, PageID.2567.) On July 25, 2018, Amond sent a text message to various co-workers, saying, "I guess since we got a new [team leader] for this week it comes with new rules and micro management [sic]." (ECF No. 40-1, PageID.665.) 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. (ECF No. 40, PageID.601.) Roseman alleges that Amond "intimidated and prevented Roseman from performing his duty" because Amond would not allow other employees to work in his space. (*Id.*) Lastly, according to Roseman, Amond "unintelligibly rant[ed] about Roseman" and "commence[ed] to lash out at Roseman." (*Id.*)

On July 26, 2018, Amond continued to criticize Roseman on the same group text, saying, "[s]tay woke everyone john [sic] the reason we all having a meeting and finna get watched masking," and "[r]emember every [sic] be on time y'all kno [sic] who made it hot up there so stay woke." (ECF No. 40-1, PageID.669-671.) Roseman sent an e-mail to FCA Supervisors Julian Brunson ("Brunson") and Jana Hines ("Hines") attaching screenshots of these messages. (ECF No. 40-1, PageID.630.) Hines told Roseman to go to human resources with his complaints and said, "[n]o one should have to work like this." (ECF No. 40, PageID.602.) Later in his shift, Roseman met with Hines and Hall. (ECF No. 87-2, PageID.2336.) Hines expressed her displeasure with Amond and suggested Amond would be immediately removed from the area and disciplined. (ECF No. 40, PageID.604.) According to Roseman, Hall expressed reservations about

disciplining Amond, stating that he did not want to deal with Cynthia Johnson because he had recently lost a battle with her over another employee. (*Id.*) According to Roseman, Hall ultimately relented and agreed that Amond should be disciplined and removed from the "team." (*Id.*) Roseman then returned to work.

Later that day, Roseman was allegedly "traumatized and immensely distressed" to see Amond still working, and allegedly staring at Roseman with a "grim, unflinching and negative look on his face." (*Id.* at PageID.605-06.) Roseman met with Hall again at 1:00 a.m. (*Id.*; ECF No. 87-2, PageID.2348.) Hall explained to Roseman that he had spoken with Amond about Amond's texts and statements to Roseman, and told him they were serious issues that could result in his termination. (ECF No. 40, PageID.606.) Hall also said that he told Amond, "John's an OLD HEAD." (*Id.*) Hall also told Roseman that Amond would not be disciplined. (*Id.*) Roseman did not return to work after his shift ended that morning, alleging it was too stressful. (*Id.*)

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. (ECF No. 40-1, Page.ID.701-704.) Dr. Talon concluded that Roseman could return to work without restrictions. (*Id.*) Dr. Talon found that Roseman was "able to go back to work psychiatrically on full work duty," though Dr. Talon did note that Roseman's "problem with the other coworker" was "more of a legal or human resources issue." (*Id.*, PageID.704). Consequently, on November 1, 2018, FCA sent Roseman a letter instructing him to return to work by November 21, 2018. (ECF 87-5, PageID.2357.)[1] Roseman took issue with Dr.

[1] Roseman was also advised that FCA's "insurance program provides that the results of the evaluation are final and binding. Therefore Sickness and Accident (S&A) benefits, if otherwise payable, will not be paid beyond the date of your evaluation. . . . You are entitled to a review of this benefit determination if you do not agree. A request for review must be made to the FCA Service Center within 60 days following receipt of this letter. Provide any additional material and

Talon's assessment, principally because he "would have been going right back to work with Amond in the same work area." (ECF No. 87-2, PageID.2339-40). But FCA was willing to address that concern; on November 9, 2018, FCA sent Roseman an e-mail stating, "The plant would like to return you 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." (ECF 87-6, PageID.2359.) Roseman simply responded, "Thank you, but sorry, I can't do that." (*Id.*).

Thus, Roseman did not return to work. (*Id.*; ECF No. 87-2, PageID.2338). On November 13, 2018, at a hearing before this Court on Roseman's motion for temporary restraining order, FCA again offered Roseman his job back. (ECF No. 32, Page.ID.461.) Roseman continued to refuse this offer. (*Id.*) Because of his refusal to return to work, on December 3, 2018, FCA terminated Roseman's employment. (ECF No. 87-3, PageID.2351.)

On January 12, 2019, Roseman e-mailed his union representatives, asking that the union file a grievance on his behalf related to his termination. (ECF No. 92-6, PageID.2728-29). Specifically, he wrote that he "did not agree with the findings of Dr. Neil Talon . . . I want the exam challenged because exam did not conform to standards for such examinations . . . Namely, Dr. Talon refused to review additional relevant medical information that I brought to exam . . . In essence, I feel the IME was flawed, biased and negligent in that its recommendation for me to immediately report back to work put my health in undue risk." (*Id.*, PageID.2729.)[2] Roseman's

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information you would like to have considered." (ECF 87-5, PageID.2357) Roseman e-mailed FCA's insurance benefits administrator, Sedgwick, on November 2 and 3, 2018, complaining about the manner in which Dr. Talon conducted the IME. (ECF No. 40-1, PageID.699-700).

[2] Roseman relies on a nurse practitioner note dated August 3, 2018 – almost three whole months before the IME – which simply states, "It is my medical opinion that John Roseman will be unable to return to work due [sic] acute anxiety caused by a hostile work environment." (ECF No. 92, PageID.2667; No. 9-1, PageID.218). However, the record also includes two notes from his doctor: in the first, dated September 14, 2018, the doctor wrote that Roseman "needs to be off until 10/5/18

union representative wrote back immediately, explaining to him that while a grievance would be filed, Roseman had acted too late, as the sixty-day window had "expired." (*Id.*, PageID.2728 (". . . you never indicated to me that you disagreed with the [IME] . . . A certified letter was sent out to [you] [] informing you to report back to work at which point if you had any concerns or disagreements with the evaluation you could have made them known once you reported and we would have requested a appeal to a IME . . . .) Nevertheless, the evidence before the Court is that Michael Spencer, a UAW Local 1700 representative, filed a grievance on Roseman's behalf challenging FCA's termination of his employment. (ECF No. 90-16, PageID.2578). As of the filing of UAW Local 1700's summary judgment motion, that grievance remained pending. (*Id.*).

B. Applicable Legal Standards

Pursuant to Rule 56, the Court will grant summary judgment if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see also Pittman v. Cuyahoga County Dep't of Children & Family Servs.*, 640 F.3d 716, 723 (6th Cir. 2011). A fact is material if it might affect the outcome of the case under governing law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In determining whether a genuine issue of material fact exists, the Court assumes the truth of the non-moving party's evidence and construes all reasonable inferences from that evidence in the light most favorable to the non-moving party. *See Ciminillo v. Streicher*, 434 F.3d 461, 464 (6th Cir. 2006).

The party seeking summary judgment bears the initial burden of informing the court of the

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or until further notice," and in the second one, dated November 6, 2018, the doctor wrote, "It is not recommended that he return to the facility where he was working, which caused his current Mental health issues to develop." (ECF No. 40-1, PageID.731-32). Roseman presents no evidence that he supplied these notes to FCA prior to its decision to terminate him.

basis for its motion, and must identify particular portions of the record that demonstrate the absence of a genuine dispute as to any material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986); *Alexander v. CareSource*, 576 F.3d 551, 558 (6th Cir. 2009). "Once the moving party satisfies its burden, 'the burden shifts to the nonmoving party to set forth specific facts showing a triable issue.'" *Wrench LLC v. Taco Bell Corp.*, 256 F.3d 446, 453 (6th Cir. 2001) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)). In response to a summary judgment motion, the opposing party may not rest on its pleadings, nor "'rely on the hope that the trier of fact will disbelieve the movant's denial of a disputed fact' but must make an affirmative showing with proper evidence in order to defeat the motion." *Alexander*, 576 F.3d at 558 (quoting *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1479 (6th Cir. 1989)). Indeed, "'[t]he failure to present any evidence to counter a well-supported motion for summary judgment alone is grounds for granting the motion.'" *Id.* (quoting *Everson v. Leis*, 556 F.3d 484, 496 (6th Cir. 2009)). "Conclusory statements unadorned with supporting facts are insufficient to establish a factual dispute that will defeat summary judgment." *Id.* at 560 (citing *Lewis v. Philip Morris, Inc.*, 355 F.3d 515, 533 (6th Cir. 2004)).

Additionally, a moving party with the burden of persuasion who seeks summary judgment – here, Roseman – faces a "substantially higher hurdle." *Arnett v. Myers*, 281 F.3d 552, 561 (6th Cir. 2002). The evidentiary showing must be so strong as to convince the Court that "no reasonable trier of fact could find other than for [the moving party]." *Calderone v. United States*, 799 F.2d 254, 259 (6th Cir. 1986). The party with the burden of proof "must show that the record contains evidence satisfying the burden of persuasion and that the evidence is so powerful that no reasonable jury would be free to disbelieve it." *Arnett*, 281 F.3d at 561. "Accordingly, summary judgment in favor of the party with the burden of persuasion 'is inappropriate when the evidence

is susceptible to different interpretations or inferences by the trier of fact.'" *Green v. Tudor*, 685 F. Supp. 2d 678, 685 (W.D. Mich. 2010) (quoting *Hunt v. Cromartie*, 526 U.S. 541, 553 (1999)).

C. Analysis

1. Defendants are Entitled to Summary Judgment on Roseman's Hostile Work Environment Claims under the ELCRA and ADEA

Roseman alleges that he was subjected to a hostile work environment based on his age, sex, and race as a result of the three incidents described above, and FCA's and the Union Defendants' responses thereto: (1) Darlene Ark's comment to Roseman in 2016 that he needed "to get some balls"; (2) Roseman's posting of a union steward campaign flyer showing him holding a shotgun; and (3) Amond's texts and statements regarding Roseman's management, and Union Steward Hall's "old head" remark that followed.

To prevail on a hostile work environment claim, Roseman must show: (1) he belonged to a protected group; (2) was subject to communication or conduct on the basis of his protected status; (3) was subject to unwelcome conduct or communication involving his protected status; (4) the unwelcome conduct was intended to or did substantially interfere with his employment or created an intimidating, hostile, or offensive work environment; and (5) *respondeat superior*. *Hester v. Department of Corrections*, No. 314572, 2014 WL 2536994, at *2 (Mich. Ct. App. June 5, 2014). "To determine whether a work environment is 'hostile' or 'abusive,' courts look at the totality of the circumstances." *Hawkins v. Anheuser-Busch, Inc.*, 517 F.3d 321, 333 (6th Cir. 2008) (citations omitted). "The factfinder must evaluate the conduct at issue by both an objective and subjective standard," and that "requires a plaintiff to establish both that the harassing behavior was 'severe or pervasive' enough to create an environment that a reasonable person would find objectively hostile or abusive, and that he or she subjectively regarded the environment as abusive." *Id.* The Sixth Circuit has explained, "[c]onduct that is merely offensive is not actionable. [] To be

actionable, the harassment must consist of more than words that simply have sexual [or ageist or racist] content or connotations." *Knox v. Neaton Auto Prod. Mfg., Inc.*, 375 F.3d 451, 459- 60 (holding that various comments and foul language were not severe or pervasive). *See also, e.g.*, *Phillips v. UAW Int'l*, 854 F.3d 323, 328 (6th Cir. 2017) (granting defendants summary judgment where several racially offensive statements were made over two years). Rather, the workplace must be permeated with "discriminatory intimidation, ridicule or insult" sufficiently severe or pervasive to alter the conditions of employment. *Meritor Sav. Bank FSB v. Vinson*, 477 U.S. 57, 65–67 (1986). Factors that courts consider include "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Jordan v. City of Cleveland*, 464 F.3d 584, 597 (6th Cir. 2006).

Defendants challenge Roseman's ability to meet multiple elements of his hostile work environment claims, but the Court will focus on the one most central to these claims – the "objective" element, which requires him to show that the challenged conduct was sufficiently "severe or pervasive" such that a "reasonable person" would say it created a hostile or abusive work environment. While Roseman may subjectively feel differently, there is no question that viewed objectively, the incidents about which Roseman complains simply do not, individually or collectively[3], show "severe or pervasive" harassment.

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[3] In *Williams v. General Motors*, 187 F.3d 553, 562 (6th Cir. 1999), the Sixth Circuit explained that courts must not divide and categorize "the reported incidents [of harassment], divorcing them from their context and depriving them of their full force." At the same time, the "totality of the circumstances" test described in *Williams* necessarily includes consideration of the temporal proximity and other connections (or disconnects) between the various incidents. Roseman's dispute with Ark occurred in 2016, more than a year before the next incident about which he complained. It also occurred at a different facility. And, when asked at his deposition whether "the situation had been handled [by FCA] to [his] satisfaction," Roseman answered in the affirmative. (ECF No. 87-2, PageID.2329.) Thus, it is highly questionable whether the Ark

Here, the totality of the circumstances are that over a period of about two years, Roseman was subjected to a few isolated instances of conduct that no objective observer would deem to be "severe or pervasive" harassment. First, Ark made a stray comment to Roseman in late 2016 telling him to "get some balls." But, a mere offensive remark like this, even if discriminatory, does not give rise to a "hostile work environment" as that term is defined under the law. *Knox*, 375 F.3d at 459–60; *Stone v. West*, 133 F. Supp. 2d 972, 987 (E.D. Mich. 2001) (plaintiff's complaints about colleague calling her "bitch" and saying she had to review plaintiff's work each night to see what she had done wrong were "nothing more than a handful of more-or-less petty quarrels . . . [and were] not the sort of 'extreme' or 'pervasive' conduct needed to establish a hostile work environment claim . . ."); *Hunter v. Gen. Motors LLC*, No. 19-1884, 2020 WL 1845871, at *4 (6th Cir. Apr. 13, 2020) (holding that "discriminatory" statements in question not "sufficiently severe"). Ark's comment also was made well before the other incidents about which Roseman complains, and he agrees FCA handled the matter satisfactorily. (ECF No. 87-2, PageID.2329.)[4]

Next, Roseman complains about being issued a verbal reprimand related to his posting election flyers that depicted him with a firearm and a slogan about him being a "new sheriff." Specifically, the reprimand stated:

> John Roseman [] displayed a bulletin in various work locations that displayed him with a rifle, with the notation on the bulletin, "new sheriff in town. [sic][5] The bulletin is considered to be inappropriate for the workplace.

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incident should be analyzed in conjunction with the other incidents. As discussed herein, however, even doing so shows that Roseman's hostile work environment claims fail.

[4] Roseman does not identify any specific earlier problems he had with Ark ("I'm referring to none in particular"), but to the extent any existed, they do not rise to the level of actionable harassment; Roseman characterized them as mere "friction." (ECF No. 87-2, PageID.2328.)

[5] Any dispute about whether the flyer in question merely said "new sheriff" or "new sheriff in town" is immaterial, and hardly presents "the same difference between rape and consensual sex," as Roseman asserts. (ECF No. 92, PageID.2677).

(ECF No. 40-1, PageID.641.) (footnote added).

An objective person would not find this mild reprimand to be "severe" or disproportionate to the circumstances; indeed, far more serious consequences were considered and rejected. (ECF No. 90-15, PageID.2565.) Moreover, Roseman, after refusing to sign an acknowledgement of the reprimand, continued working in his position. Again, this shows that while the entire incident, including Roseman having to wait a few hours in the lobby for the reprimand meeting to start, may have displeased him, from an objective point of view, it was short-lived and not "severe."[6]

Finally, the Court turns to Roseman's complaints that arose in late July 2018 when he had been filling in as Team Leader for Hall. Amond circulated group text messages to co-workers that were critical of Roseman's management style. In one, Amond wrote, "I guess since we got a new [team leader] for this week it comes with new rules and micro management [sic]." (ECF No. 40-1, PageID.665.) In another, Amond wrote "[s]tay woke everyone john the reason we all having a meeting and finna get watched masking," and "[r]emember every be on time y'all kno [sic] who made it hot up there so stay woke [sic]." (ECF No. 40-1, PageID.669-671.)

Roseman notes that upon showing the text messages to his supervisor, Jana Hines, Hines

[6] Indeed, while Roseman now tries to debate the definition of the word "sheriff," and did not think he deserved any reprimand for posting the flyers, he "agreed [] [to] remove all offending bulletins" and told FCA, "You may offer my most sincere apologies to the 'anonymous' person or persons finding the bulletin unagreeable. We all want to work in as safe and respectable environment as possible and no effort in that regard is futile. I apologize for any [] problems this may have caused . . . People have varying reaction to all advertisements . . . When putting together an add [sic] or campaign bulletin, one cannot predict what opinions or biases, reasonable or unreasonable will ensue." (ECF No. 9, PageID.164). Accordingly, FCA's rejection of Roseman's demand for a public apology was reasonable and not "harassment." (ECF No. 40-1, PageID.639-40.) Finally, while Roseman now raises this issue in connection with a claim of racial harassment, at the time, he himself alleged that the decision to issue him a reprimand was "political." (compare ECF No. 40, PageID.625 ("FCA's infringement upon Plaintiff's right to bear arms was racially motivated by the premise: A black man in possession of a firearm is latently illicit and illegitimate.") with ECF No. 40-1, PageID.640 (asserting FCA's "motivation is and was political.")).

told him, "No one should have to work like that." (ECF No. 40-1, PageID.675). But Hines' subjective opinion does not supplant the law. She may be correct that no employee should have to work with others who make insubordinate or insulting remarks; however, the law requires far more to establish a "hostile environment" under the ELCRA. As the Sixth Circuit has explained, "we are to distinguish between harassment and harassment that is based on a plaintiff's protected status. Therefore, only those incidents that occurred because of [plaintiff's protected status] are properly considered in the context of her hostile work environment claim." *Howard v. Bd. of Educ. of Memphis City Sch.*, 70 F. App'x 272, 282 (6th Cir. 2003). Accordingly, Amond's text messages, which relate solely to Roseman's managerial style, and his alleged staring at Roseman, do not even implicate the ELCRA. *Id.* Moreover, the various factors that the Court must consider all favor finding that Amond's texts and conduct were not sufficiently "severe or pervasive" to create a hostile work environment under the ELCRA. While perhaps unprofessional and disrespectful to Roseman, no threats of physical violence were made, and the entire dispute took place over a brief period of time. *See Jordan*, 464 F.3d at 597; *Knox*, 375 F.3d at 459–60; *Stone*, 133 F. Supp. 2d at 987; *McDaniel v. Wilkie*, No. 19-3304, 2020 WL 1066007, at *2 (6th Cir. Jan. 31, 2020) (isolated incidents of allegedly "inappropriate" staring not sufficiently severe for hostile environment).

The Defendants' handling of the dispute also does not constitute "severe or pervasive" harassment. Roseman seems to allege that in refusing to discipline Amond for his conduct, Defendants engaged in harassment based on gender and age. But Roseman has failed to raise a material question of fact on either of these claims. First, he claims that FCA treated him differently than a similarly situated female employee, Kayanne Gaddis ("Gaddis"), who had also complained about Amond. In March 2018, Amond told Gaddis he was going to hire a hitman to visit her. (ECF No. 90-15, PageID.2566.) FCA suspended Amond and Gaddis pending an investigation.

(*Id.*) Both returned to work a few days later, and continued to work together without incident. (*Id.*) Roseman now argues that Gaddis's complaint was investigated immediately, and Amond was promptly suspended, because Gaddis was a woman. (ECF No. 40.)

This incident does not support Roseman's hostile workplace claim. Amond's threat to hire a hitman to visit Gaddis is far more serious and threatening than his criticism of Roseman's management style. And, FCA reasonably determined that Amond's texts did not merit investigation or discipline because they were not "aggressive." (ECF No. 40-1, PageID.676.) In short, while Roseman wished FCA would have taken immediate action against Amond, its failure to do so cannot objectively be characterized as having created a "severe or pervasive" hostile work environment based on sex. *Knox*, 375 F.3d at 459–60; *Stone*, 133 F. Supp. 2d at 987.

Second, Roseman relies on a conversation he had with Hall after the two discussed Amond's conduct. Hall agreed to discuss Roseman's concerns with Amond. In doing so, Hall told Amond, "John's an OLD HEAD." (ECF No. 40, PageID.606.) Hall then reported this conversation back to Roseman and told Roseman that Amond would not be further disciplined. (*Id.*) Again, this isolated comment does not give rise to a "severe or pervasive" hostile work environment.[7] *Knox*, 375 F.3d at 459–60; *Stone*, 133 F. Supp. 2d at 987.

In sum, even viewing all of the above disputes collectively, no objective, reasonable person would say that Roseman was subjected to "severe or pervasive" harassment because of his membership in a protected class. At most, he has shown a few isolated instances over a few years

[7] While immaterial to the above analysis, the Court notes Roseman's admission that Hall may not have used this term in a derogatory manner. While Roseman presents certain potential negative meanings of the phrase "old head," he also wrote, "Wiktionary defines oldhead as follows: noun 1. (African American Vernacular) An older person, especially one who acts as a leader or mentor. Hall, the Local 1700 alternate chief steward and delegate/agent of FCA, who referred to Plaintiff as an "oldhead" is African-American." (ECF No. 92, PageID.2670.)

where he was treated unprofessionally by co-workers, and then did not get the type of management support he thought was warranted. Accordingly, Defendants are entitled to summary judgment on Roseman's hostile work environment claims.

2. Defendants are Entitled to Summary Judgment on Roseman's Age, Gender, and Race Discrimination Claims (Counts I, II, IV)

The same facts that Roseman used to support his harassment claims are used to support his disparate treatment discrimination claims under the ELCRA and ADEA. In order to prove a prima facie case of discrimination under the ELCRA and/or the ADEA, Roseman must prove that he: 1) belongs to a protected class, 2) suffered an adverse employment action, 3) was qualified for the position, and 4) was replaced by someone outside the protected class or treated differently than similarly situated employees from outside the class. *See Sniecinski v. Blue Cross & Blue Shield of Mich.*, 469 Mich. 124, 134 (2003); *Williams v. Dearborn Motors 1, LLC*, No. 17-12724, 2020 WL 1242821, at *4 (E.D. Mich. Mar. 16, 2020).

Roseman must also show causation, although different standards apply to his ADEA and ELCRA discrimination claims. Under the ADEA, a plaintiff "must offer evidence that the employer's adverse action would not have been taken against him but for his age . . . '[I]t is not sufficient for the plaintiff to show that age was a motivating factor in the adverse action; rather the ADEA's 'because of' language requires that the plaintiff prove by a preponderance of the evidence ... that age was the 'but-for' cause of the challenged employer decision.'" *Sicuso v. Carrington Golf Club, LLC*, No. 17-13938, 2019 WL 296703, at *5 (E.D. Mich. Jan. 23, 2019) (internal citations omitted). "In contrast to the ADEA's 'but-for' causation burden, under the ELCRA, a plaintiff must ultimately prove that the defendant's discriminatory animus was a 'substantial' or 'motivating factor' in the decision." *Id.*, at *7 (internal citations omitted).

Under the burden-shifting framework that applies to Roseman's discrimination claims,[8] if he can make a *prima facie* showing, the burden shifts to the Defendants to articulate a legitimate, non-discriminatory/non-retaliatory reason for the alleged adverse action. *See Hunter v. Gen. Motors LLC*, No. 17-10314, 2019 WL 1436847, at *6 (E.D. Mich. Mar. 31, 2019), *aff'd*, No. 19-1884, 2020 WL 1845871 (6th Cir. Apr. 13, 2020). If the Defendants do so, the burden shifts back to Roseman to show, by a preponderance of the evidence that the Defendants' proffered reasons were pretextual. *Id.* "A plaintiff may establish that the defendant's proffered reasons is mere pretext by establishing that it: (1) has no basis in fact; (2) did not actually motivate plaintiff's termination; or (3) was insufficient to warrant plaintiff's termination." *Id.*

Roseman fails to raise a material question of fact that he suffered an adverse employment action, that he was treated differently than a similarly situated employee outside of his protected class, and that FCA's stated reasons for his ultimate termination were pretextual.

a. Prima Facie Case

"What constitutes an adverse employment action has received considerable attention by both state and federal courts applying either the [EL]CRA or its federal counterpart, Title VII of

[8] Discrimination claims like the Roseman's may be established through either direct or circumstantial evidence. Direct evidence is evidence that, if believed, "requires the conclusion that unlawful discrimination was at least a motivating factor in the employer's actions." *Wexler v. White's Fine Furniture*, 317 F.3d 564, 570 (6th Cir. 2003); *see also Willard v. Huntington Ford, Inc.*, 952 F.3d 795, 806 (6th Cir. 2020) ("Direct evidence is 'evidence that proves the existence of a fact without requiring any inferences.'" Such evidence 'requires the conclusion that [the protected status in question] was the 'but for' cause of the employment decision.' In other words, direct evidence must 'include[ ] both a predisposition to discriminate and that the employer acted on that predisposition.'") (internal citations omitted). "Only the most blatant remarks, whose intent could be nothing other than to discriminate on the basis of [race, gender, or age]" constitute direct evidence. *Scott v. Potter*, 182 F. App'x 521, 526 (6th Cir. 2006) (internal quotation omitted). None of Roseman's evidence regarding the Defendants' conduct can be characterized as such "direct" evidence of discrimination, so he must prove his *prima facie* case of discrimination through circumstantial evidence.

the Civil Rights Act." *See Pena v. Ingham Co. Rd. Comm'n*, 255 Mich. App. 299, 311-12 (2003). In *Wilcoxon v. Minnesota Mining & Mfg. Co.*, 235 Mich. App. 347 (1999), the Michigan Court of Appeals defined an adverse employment action as an employment decision that is "materially adverse" or more than a "mere inconvenience or an alteration of job responsibilities. *Id.* at 364 (citations omitted). There must be some objective basis for demonstrating that the change is adverse. *Id.* A plaintiff's "subjective impressions" as to the desirability of an action is not controlling. *Id.* "Although there is no exhaustive list of adverse employment actions, typically it takes the form of an ultimate employment decision, such as 'a termination in employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices that might be unique to a particular situation.'" *See Pena,* 255 Mich. App. at 312. "In determining the existence of an adverse employment action, courts must keep in mind the fact that '[w]ork places are rarely idyllic retreats, and the mere fact that an employee is displeased by an employer's act or omission does not elevate that act or omission to the level of a materially adverse employment action.'" *Id.*

The Court begins with Roseman's sex discrimination claim, which is based on his contention that a female employee, Gaddis, was treated better when she complained about Amond than Roseman was treated when he complained about Amond in 2016. But Gaddis was suspended along with Amond, and FCA's mere failure to discipline Amond when Roseman complained does not constitute an adverse employment action vis-à-vis Roseman. *Pena,* 255 Mich. App. at 312.[9]

[9] Moreover, the two incidents in question cannot reasonably be characterized as sufficiently similar such that one could infer FCA's refusal to discipline Amond when Roseman complained suggests a sex-based discriminatory intent. Gaddis alleged that Amond threated to hire a hit man to kill her, whereas Roseman merely alleged that Amond sent a few text messages that were critical of his management style. (ECF No. 87, PageID.2306.) Because of the significant difference in severity in Amond's conduct, Gaddis and Roseman are not similarly situated.

Moreover, it is undisputed that after Roseman lodged his complaint, he was not terminated, demoted, docked pay or hours, or disciplined in any way. Rather, he continued working at FCA for almost two more years. In sum, Gaddis was not a "similarly situated" employee, and Roseman suffered no "adverse employment action."

Roseman's age discrimination claim fares no better. He focuses on Hall's isolated comment to Amond in which Hall referred to Roseman as an "old head." But being subjected to (or, here, the subject of) such a comment does not constitute an adverse employment action. *See Howard v. Bd. of Educ. of Memphis City Sch.*, 70 F. App'x 272, 280 (6th Cir. 2003) (holding that "racially insensitive comments may have been offensive" but did not constitute "an adverse employment action."); *Pena,* 255 Mich. App. at 312; *Fandakly v. Thunder Techs.*, LLC, No. 17-11256, 2018 WL 1965082, at *5 (E.D. Mich. Apr. 26, 2018).

Roseman's race discrimination claim relates to FCA's handling of the election flyers he posted at the plant with a photo of himself holding a rifle and referencing a "new sheriff." But Roseman received only a verbal warning as a result of this disputed incident, which does not rise to the level of an adverse employment action. *See, e.g.*, *Magyar v. United States Postal Serv.*, No. 18-13447, 2019 WL 1989207, at *6 (E.D. Mich. May 6, 2019) ("Formal criticisms or reprimands that are not accompanied by additional disciplinary action such as a negative change in grade, salary or other benefits, do not constitute adverse employment actions."); *Sensabaugh v. Halliburton*, 937 F.3d 621, 629 (6th Cir. 2019) (letter of reprimand along with a paid suspension from work did not constitute an adverse employment action); *Finley v. City of Trotwood*, No. 11-4277, 503 Fed.Appx. 449, 454 (6th Cir. Nov. 1, 2012) (holding that "verbal warnings" did not constitute adverse employment action).

For the above reasons, Roseman failed to raise a material question of fact that any of the

incidents of alleged sex, age, or race discrimination resulted in an adverse employment action against him or that he was treated differently than a similarly situated employee outside of his protected class.

b. Causation

The fact that FCA ultimately terminated Roseman's employment does not change the result. Certainly, in general, a termination of employment is an adverse employment action. But even taking Roseman's termination into account, Defendants are entitled to summary judgment. First, when Roseman commenced this action asserting his discrimination claims, he was still employed by FCA. Thus, his termination about five months after the last incident he complained about cannot reasonably be characterized as an "adverse employment action" that was caused by those incidents. Second, FCA has presented legitimate, non-discriminatory reasons for terminating Roseman, and he proffered no evidence that those reasons were pretext for sex, age, or race discrimination. The undisputed evidence is that after FCA declined to discipline Amond for the text messages he sent about Roseman, Roseman immediately chose to take a leave and remained on leave for months. He was ordered back to work only after a physician deemed him capable of returning without accommodation after performing an IME. And, FCA even offered to return to 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. FCA proffers evidence that Roseman was terminated only because, notwithstanding all of that, he refused to return to work. (ECF No. 8-3.) Roseman presents no evidence that FCA terminated him for any other reason.[10] Thus,

[10] Roseman's contention that Dr. Talon refused to accept information during the IME that bore on Roseman's ability to return to the FCA plant does not create a material question of fact. (ECF No. 92, PageID.2667; ECF No. 92-6; ECF No. 40-1, PageID.699-700.) Roseman makes only unsupported, speculative assertions about that matter without specifying what information he would have shared, or how it would have showed he was unable to return to the plant given FCA's

Roseman failed to raise a material question of fact that FCA's non-discriminatory reason for his termination is pretext for discrimination based on his sex, age, or race. *Hunter*, 2019 WL 1436847, at *6.

Roseman has two counters, neither of which is availing. First, in his response to FCA's summary judgment motion, he argues, "Defendant FCA initially tried to force Plaintiff to return to work with Amond, having not removed him from work area and department Plaintiff is assigned to [] and only offered to remove Amond after telephone conference with court on November 8, 2018 [] a few days before hearing on Plaintiff's TRO motion []. Plaintiff believes that he has legitimate reasons for preferring not to return to work as FCA propose and Michigan Court appears to agree. *See* Administrative Judge Order (ECF No. 82: Exhibit A)." (ECF No. 92, PageID.2669).

Any issue about the timing of FCA's offer to remove Amond lacks merit as it still came well before it terminated Roseman's employment. The "Administrative Judge Order" to which Roseman refers arose in connection with his application for unemployment benefits. (ECF No. 82, PageID.2224-2231.) 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 that matter was adjudicated in his favor, however, the 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

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offer to transfer Amond. (*Id.*) Moreover, Roseman's real contention is that the order for him to return to work does not properly take into account the stress such a return would have allegedly put him under. But he brings only sex, age, and race discrimination claims, and does not assert a claim of disability discrimination. (ECF No. 40.) Roseman cannot assert a disability claim by vaguely alluding to the Americans with Disabilities Act in his response to FCA's summary judgment motion. (ECF No. 92, PageID.2680.) *Cox v. Blue Cross Blue Shield of Michigan*, No. 1:12-CV-320, 2013 WL 1838314, at *4 (W.D. Mich. May 1, 2013) ("A plaintiff cannot raise a new claim in response to a summary judgment motion . . .").

a legitimate explanation for any absences from work." (*Id.*, PageID.2228). Here, in contrast, the undisputed evidence before this Court is that FCA terminated Roseman because he refused to return to work after Dr. Talon said he could do so and FCA agreed to transfer Amond to a different position, and the burden shifted to Roseman to show FCA's reason was pretextual. *Hunter*, 2019 WL 1436847, at *6. Roseman presents no evidence that FCA terminated him due to any discriminatory reason. He thus failed to raise a material question of fact on this required element of his discrimination claims.

Second, Roseman argues that the stress he endured from the alleged discrimination forced him to take a leave of absence and then made him unable to return to work, and, thus, he was constructively discharged. (ECF No. 40, PageID.607.) While a constructive discharge could constitute an "adverse employment action," Roseman fails to raise a material question of fact on that issue. "To constitute constructive discharge, the employer must deliberately create intolerable working conditions, as perceived by a reasonable person, with the intention of forcing the employee to quit and the employee must actually quit." *See Moore v. KUKA Welding Sys. & Robot Corp.*, 171 F.3d 1073, 1080 (6th Cir. 1999). Roseman has produced no evidence from which a reasonable person would conclude that FCA and/or the other Defendants deliberately created intolerable working conditions with the intention of forcing him to quit. (ECF No. 40-1.) Indeed, Roseman's own evidence shows FCA and union officials attempting to work with him over his dispute with Amond. While Hall did not remove Amond from work as Roseman wanted, Hall met with Amond, and then with Roseman to discuss the matter. (ECF No. 40, PageID.606.) Hines offered to go to labor with Roseman to follow-up on his concerns. (*Id.* at PageID.608.) And, ultimately, FCA offered Roseman his position back with Amond being transferred to a different department so that the two would not be working together. Again, even if Roseman subjectively

believes Defendants' actions were inadequate, no reasonable person would view their conduct as an attempt to create intolerable working conditions for Roseman.[11]

For all of the above reasons, Defendants are entitled to summary judgment on Roseman's sex, age, and race discrimination claims.

3. Defendants are Entitled to Summary Judgment on Roseman's ELCRA Retaliation Claim (Count III)

Roseman's ELCRA retaliation claim is quite amorphous. Roseman alleges that after he "complained of racial discrimination in Defendants [sic] behavior in March of 2018 [as to the flyer incident]," Defendants "had sufficient motive to retaliate" and that their "fail[re] to take all reasonable steps necessary to prevent [future] harassment" was unlawful retaliation. (ECF No. 40, PageID.611.)

The "ELCRA prohibit[s] retaliation based on an individual's opposition to discriminatory conduct." *Gaines v. FCA US LLC*, No. CV 18-11879, 2020 WL 1502010, at *11 (E.D. Mich. Mar. 30, 2020). To establish a prima facie case of retaliation, a plaintiff must demonstrate: "(1) that the plaintiff engaged in a protected activity; (2) that this was known by the defendant; (3) that the defendant took an employment action adverse to the plaintiff; and (4) that there was a causal connection between the protected activity and the adverse employment action." *Id.* Under the ELCRA, the protected activity must be a "significant factor" in the adverse employment action.

[11] The Court has considered Roseman's contention "that this Court overlooked circumstances for which a reasonable, average, or otherwise qualified worker would give up his employment like direct evidence that Defendant-employer FCA on more than one occasion colluded with Plaintiff's union representatives to usurp FCA's protection policies and procedures when Plaintiff complained of co-workers harassment and threatening behavior." (ECF No. 82, PageID.2221; ECF No. 92, PageID.2680.) The Court previously recognized Roseman's longstanding employment with FCA, but explained that his subjective beliefs are immaterial to the salient issue: whether he can present sufficient *evidence* to meet the burdens that apply under the law. (*See* ECF No. 81, PageID.2216-17; ECF No. 32, PageID.461, 470-72.) For the reasons stated herein, Roseman failed to do so.

Id. (citing *Mickey v. Zeidler Tool and Die Co.*, 516 F.3d 516, 523 n. 2 (6th Cir. 2008)). "Retaliatory harassment by a supervisor or a supervisor's failure to act to stop retaliatory harassment by co-workers can constitute an adverse employment action for purposes of a retaliation claim." *Id.* (citing *Morris v. Oldham Cty. Fiscal Ct.*, 201 F.3d 784, 791 (6th Cir. 2000) and *Meyer v. City of Ctr. Line*, 242 Mich.App. 560, 619 N.W.2d 182, 188-89 (Mich. Ct. App. 2000)).

Roseman's ELCRA retaliation claim fails because he cannot satisfy even the first element. For a plaintiff's conduct to be "protected activity," it must clearly convey that the employee is raising the specter of a claim of unlawful discrimination ***under the ELCRA***. Making a complaint about matters not protected by the ELCRA is not engaging in "protected activity." As the court explained in *Barrett v. Kirkland Cmt. Coll.*, 245 Mich. App. 306, 319 (2001):

> Plaintiff cannot prevail on a claim of retaliation in violation of the CRA without establishing that he engaged in activity protected under the act. [] MCL 37.2701(a); MSA 3.548(701)(a) specifically defines the type of activity protected under the CRA. As it relates to this action, the CRA specifically prohibits retaliation or discrimination because "the person has opposed a violation of this act, or because the person has made a charge ... under this act." Applying M.C.L. § 37.2701(a); MSA 3.548(701)(a) to the facts of this case, we must determine whether plaintiff's oral complaint to [his supervisor] amounted to a charge made under the CRA or opposition to a violation of the CRA. We conclude that it did not.
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> * * *
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> Plaintiff did not take any action that could be construed as a "charge" under the act. An employee need not specifically cite the CRA when making a charge under the act. However, the employee must do more than generally assert unfair treatment. [] The employee's charge must clearly convey to an objective employer that the employee is raising the specter of a claim of unlawful discrimination pursuant to the CRA. [] Plaintiff's oral complaint to [his supervisor] failed to meet this standard. Plaintiff alleges unlawful discrimination because of sex. . . . Plaintiff never complained that he was subjected to any physical or verbal conduct of a sexual nature []. Nor did plaintiff complain that he was treated differently because of his gender. Under these circumstances, an objective employer could not conclude that plaintiff was raising the specter of a claim pursuant to the CRA. Rather, the evidence merely established that plaintiff was asserting generic, non-sex-

> based complaints regarding his working conditions and that those complaints were not based on sex.

Id., at 319-20. *See also Booker v. Brown & Williamson Tobacco Co.*, 879 F.2d 1304, 1313 (6th Cir. 1989) ("a vague charge of discrimination in an internal letter or memorandum is insufficient to constitute opposition to an unlawful employment practice."); *Brown v. VHS of Mich., Inc.*, 545 F. App'x 368, 374 (6th Cir. 2013); *Smith v. Campbell*, 250 F.3d 1032, 1037 (6th Cir. 2001).

Roseman claims that he "engaged in protective activity, having complained of racial discrimination" following the March 2018 flyer incident in which he (1) received a verbal warning and (2) had his request for a grievance rejected by the union. (ECF No. 40, PageID.611.) But Roseman's own evidence shows his underlying allegation to be untrue. Indeed, in Roseman's grievance/complaint, he made no mention whatsoever of racial discrimination, and instead claimed, "It is reasonable to deduce from the context of this FACA Displinary [sic] Action that the motivation is and was political." (ECF No. 40-1, PageID.640). Because Roseman's complaint contained no assertion of unlawful race discrimination, his submission of that complaint cannot be the "protected activity" required for him to succeed on his ELCRA retaliation claim. *Barrett*, 245 Mich. App. at 319. As such, Roseman's retaliation claim fails.

Moreover, as discussed above, *see supra* at 19-25, Roseman also fails to raise a material question of fact as to whether he suffered an "adverse employment action."

For all of these reasons, Defendants are entitled to summary judgment on Roseman's ELCRA retaliation claim.

4. Defendants are Entitled to Summary Judgment on Roseman's Intentional Infliction of Emotional Distress Claim (Count IX)

Roseman claims that the Defendants intentionally inflicted emotional distress by failing to discipline Amond for the text messages he sent criticizing Roseman's management style. (ECF

No. 40, PageID.616.) Specifically, Roseman notes that after he showed Amond's texts to Hines, she told him "no one should have to work like this," but that Amond was nevertheless allowed to continue working at FCA without any repercussions. (*Id.* PageID.616-17.) Roseman equates Amond's texts and statements to a "hazard," stating Hines and Hall, "appraised the hazard, advised Plaintiff, that he was in fact dangerously and unreasonably proximate to hazard, and then willfully and recklessly subjected Plaintiff to said hazard, fully anticipating that Plaintiff would suffer injury from the hazard." (*Id.*, PageID.617.)

A claim of intentional infliction of emotional distress ("IIED") under Michigan law requires a plaintiff to establish four elements: "(1) extreme and outrageous conduct, (2) intent or recklessness, (3) causation, and (4) severe emotional distress." *See Sperle v. Mich. Dep't of Corr.*, 297 F.3d 483, 496 (6th Cir. 2002) (*citing Roberts v. Auto-Owners Ins. Co.*, 422 Mich. 594 (1985)). IIED claims have an extremely high standard of proof. "Liability does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities," and "[i]t is not enough that the defendant has acted with an intent that is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by "malice," or a degree of aggravation that would entitle the plaintiff to punitive damages for another tort." *Graham v. Ford*, 237 Mich. App. 670, 674 (1999). To be considered "extreme and outrageous," the conduct in question must have been "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Sperle*, 297 F.3d at 496 (internal quotations omitted). In ruling on an IIED claim, "it is initially for the [trial] court to determine whether the defendant's conduct reasonably may be regarded as so extreme and outrageous as to permit recovery." *Doe v. Mills*, 212 Mich. App. 73, 92 (1995).

Roseman's IIED claim fails to clear this high bar. He complains that after Amond was openly critical of his management style and decisions, FCA did not discipline Amond, and the Union Defendants did not advocate for him. This challenged conduct falls well short of the "extreme and outrageous" threshold necessary to sustain Roseman's IIED claim. Courts have found that far more severe conduct did not constitute the "extreme and outrageous" conduct required to state an IIED claim. For example, in *Hilden v. Hurley Med. Ctr.*, 831 F. Supp. 2d 1024, 1047 (E.D. Mich. 2011), *aff'd*, 504 F. App'x 408 (6th Cir. 2012), the court dismissed an IIED claim brought against an employer who allegedly chased an employee through the halls of a hospital while shouting and yelling. *Id.* In *Meek v. Michigan Bell Tel. Co.*, 193 Mich. App. 340, 342-343 (1991), the court dismissed an IIED claim arising from workplace bullying that allegedly involved extensive sexual and religious harassment, in addition to persistent threats of discipline, insults about the quality of the plaintiff's work, and slurs relating to her physical stature. And, in *Burton v. Kroger Corp.*, No. 11-CV-12783, 2012 WL 1392084, at *9 (E.D. Mich. Apr. 20, 2012), the court found that the plaintiff employee's complaints of "harassment" by coworkers – walking by her "in an offensive way," gossiping about her, and laughing at her – did not rise "to the level of atrociousness required to maintain an intentional infliction of emotional distress claim."

Roseman counters that Hines's opinion was that "no one should have to work like this." But, again, Hines's subjective opinion does not take precedence over the relevant law. And, Roseman's contention in his own summary judgment motion that FCA "failed to promptly investigate [his] complaint," and that its "response was atrocious, unreasonable, and not calibrated to the severity of the conduct in light of the circumstances of the case at the time the allegations were made," grossly mischaracterizes the evidence. (ECF No. 26, PageID.387). Again, the reality is that Hines raised Amond's texts with FCA representatives shortly after she learned of them, and

that FCA promptly considered them, and reasonably found they were not aggressive or threatening.

In sum, while FCA, certain of its employees, and the Union Defendants' representatives might have acted in a manner Roseman disapproved of, none of their actions went "beyond all possible bounds of decency" such that they could "be regarded as atrocious, and utterly intolerable in a civilized community." Defendants are therefore entitled to summary judgment on Roseman's IIED claim, and Roseman's summary judgment motion as to that claim should be denied.

5. FCA is Entitled to Summary Judgment on Roseman's Negligent Retention of an Unfit Employee Claim (Count X)

Roseman alleges that "Defendant FCA negligently retained unfit employee Dominick Amond, to Plaintiff's detriment, economic loss and personal injury." (ECF No. 40, PageID.621.) He also claims that Amond "has now colluded with Defendants FCA and Local 1700 to drive Plaintiff from his job with threats and animus causing Plaintiff injury and causing Plaintiff, to lose over $50,000.00 in wages." (*Id.* at PageID.623.) FCA argues that this claim fails because, "[u]nder the common-law claim of negligent retention of an employee, an employer 'may be held liable for an intentional tort committed by one of its employees if the employer 'knew or should have known of his employee's propensities and criminal record before commission of an intentional tort.'"" (ECF No. 87, PageID.2310)(quoting *Hersh v. Kentfield Builders, Inc.*, 385 Mich. 410, 412 (1971)).

Roseman's claim fails because (1) he has shown no "intentional tort" that Amond committed against him, and (2) he presented no evidence that would reasonably have put FCA on notice that Amond would commit such an intentional tort in the future. Indeed, the Michigan Supreme Court has held that for an employee's comments to put an employer on such notice, those comments must have "clearly and unmistakably threaten[ed] particular criminal activity that would have put a reasonable employer on notice of an imminent risk of harm to a specific victim. Comments of a sexual nature do not inexorably lead to criminal sexual conduct any more than an

exasperated, angry comment inexorably results in a violent criminal assault." *Brown v. Brown*, 478 Mich. 545, 555 (2007). "As a general rule, an employer cannot accurately predict an employee's future criminal behavior solely on the basis of the employee's workplace speech." *Id.*, at 557. Amond's text messages that merely criticized Roseman's management style clearly did not rise to a level that would have allowed FCA to expect that Amond would commit an intentional tort against Roseman. Thus, FCA is entitled to summary judgment on this claim.

6. Defendants are Entitled to Summary Judgment on Roseman's Libel Claim (Count XI)

In Count XI of his second amended complaint, Roseman asserts a libel claim against the Defendants related to the manner in which they dealt with the election flyers Roseman posted of himself holding a rifle. Roseman claims that "[w]ith no specificity or reasonableness, Johnson, falsely accused [him] in a written statement of making criminal threats." (ECF No. 40, PageID.623.) Roseman seems to be referencing Johnson's "Supervisor's Report" in which she issued him a "verbal warning" because she found he had "displayed a bulletin in various work locations that displayed him with a rifle, with the notation on the bulletin, 'new sheriff in town. [sic][12] The bulletin is considered to be inappropriate for the workplace." (ECF No. 40-1, PageID.641.) (footnote added).

"To establish a claim of libel or slander, a plaintiff must show: (1) that the defendant made a statement about the plaintiff that was false and defamatory in some material respect; (2) that the statement was communicated to a third person without privilege; (3) fault amounting to at least negligence; and (4) that the statement is actionable regardless of special harm or had a tendency to cause special harm to the reputation of the plaintiff." *Allen v. Mach*, No. 245049, 2004 WL

[12] Johnson omitted the closing quotation mark, so it is not clear precisely what verbiage she was purporting to quote from Roseman's flyer.

895868, at *1 (Mich. Ct. App. Apr. 27, 2004) "A communication is defamatory if, under all the circumstances, it tends to so harm the reputation of an individual that it lowers the individual's reputation in the community or deters others from associating or dealing with the individual." *Id.* (quoting *Kefgen v. Davidson*, 241 Mich. App 611, 617 (2000)).

Roseman clearly cannot carry this burden of proof. First, Johnson's challenged statement is not false, at least not in any material respect. Roseman admits that in connection with his 2018 campaign, he posted flyers of himself holding a rifle with the words "new sheriff." (*See* ECF No. 40-1, PageID.734-735.) Although the flyers actually say, "Is it time for a new sheriff" [sic] rather than "new sheriff in town," this minor difference hardly makes Johnson's statement untrue or misleading in any material respect. Indeed, that difference is completely inconsequential to FCA's concern that Roseman had posted a flyer with a photo of himself holding a rifle.

Second, Roseman fails to show that the disputed aspect of Johnson's statement was "defamatory." Again, there is no dispute that Roseman's flyer contained a photo of himself with a rifle, with a reference to him being a "new sheriff." The phrase "new sheriff in town" is hardly an alteration that would give Roseman a reputation different than the one his own words warranted. Moreover, nothing in Johnson's Supervisor's Report claims Roseman made "criminal threats." Rather, it simply reported, accurately, FCA's determination that his flyers were merely "inappropriate for the workplace." (ECF No. 40-1, PageID.645.)

Third, Johnson's communication was privileged. An employer's internal employment communication enjoys a qualified privilege provided there is (1) good faith; (2) an interest to be upheld; (3) a statement limited in scope to this purpose; (4) a proper occasion; and (5) publication in a proper manner and to proper parties only. *Ryniewicz v. Clarivate Analytics*, No. 19-1161, 2020 WL 1131666, at *6 (6th Cir. Mar. 9, 2020). Under this doctrine, "[a]n employer has the

qualified privilege to defame an employee by publishing statements to other employees whose duties interest them in the subject matter." *Id.* (quoting *Tumbarella v. The Kroger Co.*, 85 Mich.App. 482, 494 (1978). Here, the record shows that FCA addressed Roseman's flyers after other employees complained they felt intimidating, and Johnson's verbal warning was published only to Roseman, Union Steward Smith, and another of Roseman's supervisors. Thus, Johnson's challenged communication clearly satisfies the qualified privilege requirements. *Id.*

For all of the above reasons, Defendants are entitled to summary judgment on Roseman's libel claim.

7. FCA is Entitled to Summary Judgment on Roseman's Second Amendment Claim (Count XIII)

Roseman claims FCA infringed upon his right to bear arms by disciplining him for posting his campaign flyer. (ECF No. 40, PageID.625.) FCA correctly argues that this claim should be dismissed because the Second Amendment protects an individual only from the *government's* infringement on an individual's right to bear arms, and FCA is a private corporation, not a governmental entity. *See* U.S.C.A. Const. Amend. 2. *See also Fla. Retail Fed'n, Inc. v. Attorney Gen. of Fla.*, 576 F. Supp. 2d 1281, 1295 (N.D. Fla. 2008) (rejecting as "radical and totally unprecedented" the argument that "the right to bear arms operates against private property owners, at least so long as they are corporations," and holding "that the Bill of Rights and Declaration of Rights restrict only government, not private, action is too well settled for argument."). Thus, FCA is entitled to summary judgment on Roseman's Second Amendment claim.

8. The Union Defendants are Entitled to Summary Judgment on Roseman's Breach of Duty of Fair Representation Claims (Counts VI, VII and VIII)

Roseman also brings claims against the Union Defendants for breach of the duty of fair representation under section 301 of the Labor Management Relations Act, 29 U.S.C. 185(a)

("Section 301"). (ECF No. 40, PageID.613-15.)[13] In Count VI, he claims that the "UAW and UAW Local 1700" breached their duty of fair representation by treating him differently than a "similarly situated" colleague, Gaddis. Specifically, Roseman asserts that when Gaddis complained about Amond's "hit man" threat, Amond was promptly suspended, but when Roseman complained about Amond's text messages, Amond was not investigated or disciplined. (ECF No. 40, PageID.614.) In Count VII, Roseman claims that the UAW, Local 140 and Local 1700 "breached the duty of fair representation when its agents/employees, within the clear scope of their employment arbitrarily discriminated against Plaintiff deciding that his rights would be violated to protect other UAW union members/co-workers of Plaintiff from discipline." (*Id.*) Roseman does not specify what events this claim relates to, but Local 140 seems to have interpreted it as challenging its handling of the 2016 incident in which Roseman's colleague, Ark, told him to "get some balls," and Local 1700 seems to have interpreted it as challenging the handling of Roseman's complaints about Amond. Lastly, in Count VII, Roseman alleges that the UAW and Local 1700 beached their duty of fair representation in March 2018 when they refused to file a grievance on his behalf about the verbal warning he received regarding his election flyers. (*Id.*, PageID.615.) Local 1700 and 140 argue that they did not breach their duty of fair representation because they acted in good faith with legitimate, non-discriminatory, non-arbitrary reasons for their actions. (ECF No. 89, PageID.2428-29; ECF No. 90, PageID.2492-99.) The International Union joins in

[13] Roseman also asserts in these same Counts a violation of the ELCRA; however, the Court has already explained why his ELCRA claims fail. *See supra* at 12-27. Roseman also vaguely references the National Labor Relations Act, "29 U.S.C. § 151 *et seq*" (ECF No. 40, PageID.598, 613-15) in his complaint, but because he has sued FCA as a defendant and alleges breaches of the CBA, this Court lacks jurisdiction over his NLRA claim. *See San Diego Bldg. Trades Council, Millmen's Union, Local 2020 v. Garmon,* 359 U.S. 236, 242 (1959); *White v. Anchor Motor Freight, Inc.*, 899 F.2d 555, 560-61 (6th Cir.1990). Thus, the Court will limit its analysis to Roseman's claims under Section 301.

these arguments. (ECF No. 91, PageID.2601.)

A Section 301 action includes two elements: "(1) that the employer breached a collective bargaining agreement ["CBA"], and (2) that the union breached its duty of fair representation." *See Vencl. v. International Union of Operating Engineers*, 137 F3d. 420, 423 (6th Cir. 1998). In order to prove that one of the unions breached its duty of fair representation, Roseman "must present specific facts that support a finding 'that the union's actions or omissions during the grievance process were arbitrary, discriminatory, or in bad faith.'" *See Danton v. Brighton Hosp.*, 533 F.Supp.2d 724, 728 (E.D. Mich. 2008) (*citing Garrison v. Cassens Transport*, 334 F.3d 528, 538 (6th Cir. 2003); *Vaca v. Sipes*, 386 U.S. 171, 190 (1967)). He "cannot rely on conclusory statements." *Danton*, 533 F.Supp.2d at 728. Moreover, a union's "decision on how to pursue a grievance and, ultimately, *not pursue a grievance* are entitled to deference from this Court, and are not actionable if done in good faith." *Id.* (emphasis added). Union decisions "in these matters are not considered arbitrary unless they are 'so far outside a wide range of reasonableness as to be irrational.'" *Id.* (*citing Driver v. United States Postal Service*, 328 F.3d 863, 869 (6th Cir. 2003)). As this Court stated in *Danton*:

> Mere negligence, error or flaws in logic and judgment cannot sustain a showing of arbitrary action by the Union. An unwise or even an unconsidered decision by the union is not necessarily irrational. Instead, Plaintiff must present to this Court material facts that show the Union's actions were "wholly irrational."

Id. (*citing Garrison, supra*). *See also Millner v. DTE Energy Co.*, 285 F. Supp. 2d 950, 962 (E.D. Mich. 2003) ("to meet his burden of proof as to the union's breach of its duty of fair representation, a plaintiff must establish by *substantial evidence* that the union acted arbitrarily, discriminatorily or with bad faith.") (emphasis in original).

Applying this law to the case at bar, Roseman cannot show any action by any of the Union Defendants that was "wholly irrational." First, with respect to Roseman's grievance regarding Local 140 and Darlene Ark, Ark received a one-week suspension for her statement to Roseman. (ECF No. 87-2, PageID.2329.) There is no evidence to show that Local 140 acted in a wholly irrational way with respect to Ark. Nor is there any evidence that Ark's rights were protected to the detriment of Roseman's rights. Moreover, Roseman admits that the investigation and remedy were sufficient. (*Id.*) As such, it is undisputed that Local 140 did not breach its duty of fair representation to Roseman with respect to the Ark incident. It is also undisputed that Local 140 only represented Roseman while he was at WTAP, and the only incident about which Roseman complains from his tenure there was the Ark incident. Thus, Local 140 has no liability for decisions any other union body made after Roseman left WTAP.

Roseman's claim related to his dispute with Amond similarly fails. First, Roseman suggests that Local 1700 discriminated against him because it did not assist him in his dispute with Amond whereas it assisted a female employee, Gaddis, after Amond threatened her. To show that a union breached its duty of fair representation by engaging in discrimination, a plaintiff must "adduce substantial evidence of discrimination that is intentional, severe, and unrelated to legitimate union objectives." *Amalgamated Ass'n v. Lockridge,* 403 U.S. 274, 301 (1971). Roseman's evidence does not satisfy that standard; as discussed above, Amond's threat to Gaddis was significantly more severe than the text messages he sent that were critical of Roseman's management style. *See supra* at 16-17. Thus, it makes sense that the former would be dealt with more swiftly. Second, Roseman cannot show that Local 1700's actions were "wholly irrational." According to Roseman, Hall expressed reservations about disciplining Amond, stating that he did not want to deal with Cynthia Johnson because he had recently lost a battle with her over another

employee. (ECF No. 40, PageID.604.) Moreover, Hall believed he could handle the matter by speaking directly with Amond to – in Roseman's own words – "explain[] away [his] approach to work." (*Id.*, PageID.606.) While Hall perhaps should have chosen a term other than "old head" to describe Roseman's approach, given the non-threatening nature of Amond's text messages, this was not a "wholly irrational" way for Hall to handle the situation.

Nor can Roseman show that Local 1700 acted wholly irrationally in its handling of the incident in which Roseman was disciplined for his election flyers. On March 8, 2018, Local 1700 Union Stewards Smith and Caldwell vigorously negotiated for Roseman's benefit. (ECF No. 87-2, PageID.2330; ECF No. 90-15, PageID.2564-65.) FCA Labor Representatives Johnson and Scott had proposed either suspending or terminating Roseman, but Smith and Caldwell argued that such punishments would be disproportionate to Roseman's conduct. (*Id.*) Smith instead advocated for a verbal warning, which he thought was "a reasonable resolution," and FCA ultimately agreed. (*Id.*) FCA prepared a verbal warning and asked Roseman to sign it. (*Id.* at PageID.2565.) Roseman refused to do so, which led to Johnson again suggesting that Roseman was subject to suspension or termination. (*Id; see also* ECF 90-3, PageID.2512; ECF No. 90-15, PageID.2565.) Smith again spoke to Johnson on Roseman's behalf, and argued that suspension or termination would be inappropriate. (ECF No. 90-15, PageID.2565.) Once again, Smith's advocacy was effective; Johnson agreed to forgo suspending or terminating Roseman, and instead gave him a verbal warning. (*Id.*) Roseman continued to disagree with this outcome, but Smith told him that "the union would not be able to get him a better deal . . . this was the best the union would be able to do and that the matter was resolved." (*Id.*). Roseman nevertheless asked Spencer to file a grievance on his behalf. (ECF No. 87-2, PageID.2332; ECF No. 40-1, PageID.643.) Spencer did not do so "because Mr. Smith had already explained to Mr. Roseman that the matter was resolved."

(*Id.*; ECF No. 90-16; PageID.2577.)

The foregoing makes clear that Roseman received not only reasonable, but effective representation from Local 1700. FCA was seeking his suspension and/or termination due to his conduct, which it deemed to be "inappropriate for the workplace." Yet through his Local 1700 representatives, Roseman received only a verbal warning that did not impact his employment status in any material way. Having achieved this success for Roseman, and particularly considering Roseman's refusal to even acknowledge the verbal warning, Smith and Spencer's decision not to pursue a grievance was not "irrational."[14] *Millner*, 285 F. Supp. 2d at 963 ("Unions may lawfully elect not to arbitrate grievances that they determine lack merit."); *Danton*, 533 F.Supp.2d 728; *Driver*, 328 F.3d at 869.

For all of these reasons, the Union defendants are entitled to summary judgment on Roseman's breach of duty of fair representation claims.

9. Defendants are Entitled to Summary Judgment on Roseman's Civil Conspiracy Claim (Count V)

Roseman alleges a vast civil conspiracy between FCA and the Union Defendants to violate his civil rights and "breach relevant employment contract(s)/collective bargaining agreements and public policy." (ECF No. 40, PageID.612.) FCA argues the claim must be dismissed because he fails to establish a separate actionable tort. (ECF No. 87, PageID.2312.) The Union Defendants argue that any such claim against them must be dismissed as preempted by Section 301. (ECF No.

[14] For all of these same reasons, Roseman's motion for summary judgment on this particular claim (ECF No. 77) necessarily fails. Similarly, Roseman's breach of contract claim against the International Union (Count XII) fails. Roseman alleges that the International Union "was legally obligated to address the ongoing failure to process [Roseman's] grievance [that] its affiliate Local 1700 refused to process . . ." but "disregarded" that failure. (ECF No. 40, PageID.624.) Since Local 1700's refusal to advance that grievance is not actionable, the International Union's alleged "disregard" of that failure cannot be actionable.

89, PageID.2433; ECF No. 90, PageID.2499; ECF No. 91, PageID.2602.)

"A civil conspiracy is an agreement between two or more persons to injure another by unlawful action." *See Hooks v. Hooks*, 771 F.2d 935, 943-44 (6th Cir. 1985). A plaintiff cannot succeed on a conspiracy claim where there is no underlying violation. *See Wiley v. Oberlin Police Dept.*, 330 F. App'x 524, 530 (6th Cir. 2009). Because, for the reasons explained above, Roseman's ELCRA, ADEA, and other underlying statutory and common law claims fail, so too does his civil conspiracy claim fail. *Id.*

Moreover, to the extent Roseman's civil conspiracy claim rests on an alleged intent to breach one or more of "employment contract(s)/collective bargaining agreements," the Union Defendants are correct that such claim is barred by Section 301, which states:

> Suits for violation of contracts between an employer and a labor organization representing employees is an industry affecting commerce . . . may be brought in any district court of the United States having jurisdiction of the parties.

See 29 U.S.C. § 185(a).

This statute's preemptive effect on state law claims was first analyzed in *Teamsters v. Lucas Flour Co.*, 369 U.S. 95 (1962). In *Teamsters*, the U.S. Supreme Court held that "in enacting § 301 Congress intended doctrines of federal labor law uniformly to prevail over inconsistent local rules." *See id.* at 104. This preemptive effect has gone beyond suits alleging contract violations and has been extended to defamation claims and civil conspiracy claims arising out of collective bargaining agreements. *See Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985); *DeCoe v. General Motors Corp.*, 32 F.3d 212, 217 (6th Cir. 1994).

The Sixth Circuit has developed a two-step approach for determining whether Section 301 preemption applies. *See DeCoe,* 32 F.3d at 216. "First, the district court must examine whether proof of the state law claim requires interpretation of collective bargaining agreement terms." *Id.*

(citations omitted). "Second, the court must ascertain whether the right claimed by the plaintiff is created by the collective bargaining agreement or by state law." *Id.* "If the right both is borne of state law and does not invoke contract interpretation, then there is no preemption." *Id.*

Roseman's civil conspiracy claims are borne out of his collective bargaining agreement; indeed, he specifically alleges that the Defendants "illegally colluded and conspired to breach relevant employment contract(s)/collective bargaining agreements." (ECF No. 40, PageID.612.) As stated by the Union Defendants, this is not a case where "Plaintiff has attempted to artfully plead his state law claims without asserting or without reference to" the CBA. (ECF No. 89, PageID.2434.) Based on Roseman's own civil conspiracy allegations, the Court would need to interpret terms of the CBA to determine the claim's validity. Moreover, the rights and obligations at issue in Roseman's breach of contract claim are ones created by, and arising under the CBA, not state law. Thus, both parts of the *DeCoe* test are satisfied, and Roseman's civil conspiracy claim is barred by Section 301.

For all of these reasons, Defendants are entitled to summary judgment on Roseman's civil conspiracy claim.

II. RECOMMENDATION

For the reasons set forth above, it is **RECOMMENDED** that the Defendants' motions for summary judgment **(ECF Nos. 87, 89, 90, 91)** be **GRANTED** and Roseman's motions for summary judgment **(ECF Nos. 77, 78)** be **DENIED.**

Dated: April 21, 2020
Ann Arbor, Michigan

s/David R. Grand
DAVID R. GRAND
United States Magistrate Judge

NOTICE TO THE PARTIES REGARDING OBJECTIONS

Within 14 days after being served with a copy of this Report and Recommendation and Order, any party may serve and file specific written objections to the proposed findings and recommendations and the order set forth above. *See* 28 U.S.C. §636(b)(1); Fed. R. Civ. P. 72(b)(2); E.D. Mich. LR 72.1(d)(1). Failure to timely file objections constitutes a waiver of any further right of appeal. *See Thomas v. Arn*, 474 U.S. 140, (1985); *United States v. Sullivan,* 431 F.3d 976, 984 (6th Cir. 2005). Only specific objections to this Report and Recommendation will be preserved for the Court's appellate review; raising some objections but not others will not preserve all objections a party may have. *See Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987); *see also Frontier Ins. Co. v. Blaty*, 454 F.3d 590, 596-97 (6th Cir. 2006). Copies of any objections must be served upon the Magistrate Judge. *See* E.D. Mich. LR 72.1(d)(2).

A party may respond to another party's objections within 14 days after being served with a copy. *See* Fed. R. Civ. P. 72(b)(2); 28 U.S.C. §636(b)(1). Any such response should be concise, and should address specifically, and in the same order raised, each issue presented in the objections.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on April 21, 2020.

s/Eddrey O. Butts
EDDREY O. BUTTS
Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN L. ROSEMAN,

Plaintiff,

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), et al, and FCA US LLC, et al,

Defendants.

CASE NO. 18-cv-13042

HON. DAVID M. LAWSON

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STIPULATED ORDER FOR WITHDRAWAL OF ATTORNEY KRISTYN R. MATTERN

This matter having come before the Court upon the stipulation of the parties, and the Court being otherwise advised of the premises;

IT IS HEREBY ORDERED that Kristyn R. Mattern is granted leave to withdraw as counsel for Defendant FCA US LLC as she is no longer with the firm of Jackson Lewis P.C. The Clerk of Court shall terminate Kristyn R. Mattern's appearance on the docket as counsel for Defendant.

IT IS SO ORDERED:

Dated: 1/7/20

s/David R. Grand
United States Magistrate Judge

AGREED AND STIPULATED TO
AS TO SUBSTANCE AND FORM:

/s/ John L Roseman, Sr. (with Consent)
John L. Roseman, Sr.
Plaintiff *In Pro Per*
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN L. ROSEMAN,

Plaintiff,

Civil Action No. 18-cv-13042
Honorable David M. Lawson
Magistrate Judge David R. Grand

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), FCA US, LLC, UAW LOCAL 1700, and UAW LOCAL 140,

Defendants.
_____/

ORDER STRIKING PLAINTIFF'S THIRD MOTION FOR PARTIAL SUMMARY JUDGMENT [85]

This is an employment discrimination action brought by plaintiff John Roseman ("Roseman") against his former employer FCA US LLC ("FCA") and various international and local UAW unions (the "UAW Defendants"). Roseman's operative second amended complaint asserts a total of thirteen causes of action against the various defendants. (ECF No. 40.)

On November 14, 2019, Roseman filed a motion for partial summary judgment as to his breach of the duty of fair representation claim against one of the local UAW unions, UAW Local 1700 (Count VIII of the second amended complaint). (ECF No. 77.) On November 26, 2019, Roseman filed a "second motion for partial summary judgment" – which addresses his intentional infliction of emotional distress claim against FCA (Count IX of the second amended complaint). (ECF No. 78.) On December 11, 2019, Roseman filed a "third motion for partial summary judgment," which addresses his age discrimination claim against FCA (Count I of the amended

complaint). (ECF No. 85.)

Pursuant to Federal Rule of Civil Procedure 56, "[a] party may move for summary judgment, identifying each claim or defense – or the part of each claim or defense – on which summary judgment is sought. *See* Fed.R.Civ.P. 56(a). In addition, pursuant to the Eastern District of Michigan's Local Rule 7.1(b)(2), "[a] party must obtain leave of court to file more than one motion for summary judgment. For example, a challenge to several counts of a complaint generally must be in a single motion." *See* E.D. Mich. LR 7.1(b)(2). Moreover, a party's summary judgment brief may not exceed 25 pages. *See* L.R. 7.1(d)(3)(A).

Roseman's second motion for partial summary judgment violates Local Rule 7.1(b)(2), as he had already filed a summary judgment motion. However, because of Roseman's *pro se* status and because his first and second summary judgment motions related to different defendants, the Court did not strike his second motion. With the filing today of his third motion for partial summary judgment, however, it appears that Roseman may intend to file multiple successive summary judgment motions. That clearly violates Local Rule 7.1(b)(2), clutters the docket, and is extremely inefficient. Although Roseman is proceeding *pro se*, those who proceed without counsel must still comply with the procedural rules that govern civil cases. *McNeil v. United States*, 508 U.S. 106, 113 (1993); *Frame v. Superior Fireplace*, 74 Fed. Appx 601, 603 (6th Cir. 2003).

Accordingly, the Court **STRIKES** Roseman's Third Motion for Partial Summary Judgment from the record. **(ECF No. 85.)** If Roseman wishes to file a *single* additional summary judgment motion, that motion must be accompanied by a motion seeking leave. *See* E.D. Mich. LR 7.1(b)(2).

IT IS SO ORDERED.

Dated: December 11, 2019
Ann Arbor, Michigan

s/David R. Grand
DAVID R. GRAND
United States Magistrate Judge

NOTICE

The parties' attention is drawn to Fed. R. Civ. P. 72(a), which provides a period of fourteen (14) days from the date of receipt of a copy of this order within which to file objections for consideration by the district judge under 28 U.S. C. §636(b)(1).

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on December 11, 2019.

s/Eddrey O. Butts
EDDREY O. BUTTS
Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN L. ROSEMAN,

Plaintiff,

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), FCA US, LLC, UAW LOCAL 1700, and UAW LOCAL 140,

Defendants.
_____/

Case Number 18-13042
Honorable David M. Lawson
Magistrate Judge David R. Grand

ORDER OVERRULING OBJECTIONS TO MAGISTRATE JUDGE'S ORDER EXTENDING BRIEFING SCHEDULE

On December 2, 2019, the magistrate judge issued an order granting the defendants' motion to extend the time to file their opposition to the plaintiff's recently filed motions for summary judgment. The magistrate judge concluded that good cause was shown for the requested extension because the motions raised numerous issues and were supported by voluminous exhibits that in the magistrate judge's view would take considerable time for counsel fully to review and consider. On December 2, 2019, the plaintiff filed an "objection" to the order. However, in his objection the plaintiff does not raise any discernible challenge to the scheduling adjustment, but instead merely evangelizes his views on the merits of his claims and the supposed "bias" of the magistrate judge against his cause. The plaintiff later filed a similar affidavit reiterating the charges of "bias" in the handling of the case. The Court finds that the plaintiff has not identified any clear error in the magistrate judge's determination that good cause was shown for the requested adjustment of the briefing schedule, and the charge of "bias" is not supported by any good grounds.

Under 28 U.S.C. § 636(b)(1), a magistrate judge has the authority "to hear and determine any pretrial matter pending before the court," with the exception of certain dispositive motions. 28 U.S.C. § 636(b)(1)(A). Federal Rule of Civil Procedure 72 allows parties fourteen days after service of an order entered by a magistrate judge to file their objections to the order. Fed. R. Civ. P. 72(a). The act of filing objections, however, does not stay the force of the magistrate judge's order, which "remains in full force and effect." E.D. Mich. LR 72.2. Upon receiving objections, the Court reviews an order by a magistrate judge on a nondispositive matter to determine whether the decision is "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A); *see also* Fed. R. Civ. P. 72(a) (stating that upon receipt of timely objections, "[t]he district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or contrary to law"); *United States v. Curtis*, 237 F.3d 598, 603 (6th Cir. 2001). A decision is "clearly erroneous" when, "although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed." *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948). Where there are two plausible views, a decision cannot be "clearly erroneous." *Anderson v. City of Bessemer*, 470 U.S. 564, 573 (1985).

The plaintiff has not identified any clear error in the magistrate judge's assessment that a modest extension of the briefing schedule was warranted to allow defendants' counsel the needed time fully and properly to respond to the plaintiff's motions for summary judgment. The "objections" are in substance merely commentary by the plaintiff about the perceived merits of his claims, and the plaintiff does not even mention the scheduling adjustment which was the subject of the order to which the objection was raised. Moreover, the purportedly unfavorable rulings and views expressed by the magistrate judge about the merits of the plaintiff's claims do not suffice to

support an allegation of judicial "bias" against a party. First, it is well settled that "judicial rulings alone almost never constitute a valid basis for [a finding] of judicial bias." *In re Nicole Energy Servs., Inc.*, 423 B.R. 840, 845 (Bankr. S.D. Ohio 2010) (citing *United States v. Grinnell Corp.*, 384 U.S. 563, 583 (1966)). "In and of themselves (i.e., apart from surrounding comments or accompanying opinion), they cannot possibly show reliance upon an extrajudicial source; and can only in the rarest circumstances evidence the degree of favoritism or antagonism required . . . when no extrajudicial source is involved. Almost invariably, they are proper grounds for appeal, not for [a finding of bias]." *Ibid.* "Second, opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks made during the course of a [litigation] that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge." *Ibid.* The plaintiff has not put forth any persuasive basis either for a finding that the magistrate judge is biased against him, or that there was any error in the scheduling ruling.

Accordingly, it is **ORDERED** that the plaintiff's objections to the magistrate judge's scheduling order (ECF No. 82, 83) are **OVERRULED**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Date: December 10, 2019

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first-class U.S. mail on December 10, 2019.

s/Susan K. Pinkowski
SUSAN K. PINKOWSKI

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN L. ROSEMAN

Plaintiff,

Civil Action No. 18-cv-13042
Honorable David M. Lawson
Magistrate Judge David R. Grand

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), FCA US, LLC, UAW LOCAL 1700, and UAW LOCAL 140,

Defendants.
_____/

ORDER GRANTING UAW DEFENDANTS' MOTION FOR UNIFORM BRIEFING SCHEDULE AND TO EXTEND TIME TO FILE RESPONSES TO PLAINTIFF'S MOTIONS FOR PARTIAL SUMMARY JUDGMENT [ECF No. 79]

This is an employment discrimination action brought by plaintiff John Roseman ("Roseman") against his former employer FCA US LLC ("FCA") and various international and local UAW unions (the "UAW Defendants"). Discovery has recently concluded in this case, and the present dispositive motion cut-off deadline is December 13, 2019. (ECF No. 70, PageID.1424.)

On November 14, 2019, Roseman filed a motion for partial summary judgment against one of the local UAW unions, UAW Local 1700, as to his breach of the duty of fair representation claim. (ECF No. 77.) On November 26, 2019, Roseman filed a motion for partial summary judgment against FCA as to his intentional infliction of emotional distress claim. (ECF No. 78.) On November 27, 2019, the UAW Defendants filed the instant Motion for Uniform Briefing Schedule and to Extend Time to File Responses to Plaintiff's Motions for Partial Summary

Judgement. (ECF No. 79.) Roseman filed a response on December 2, 2019. (ECF No. 80.) This case was previously referred to the undersigned for all pretrial matters under 28 U.S.C. § 636(b). (ECF No. 12.)

Pursuant to Federal Rule of Civil Procedure 16(b)(4), a scheduling order may be modified for "good cause and with the judge's consent." *See* Fed.R.Civ.P. 16(b)(4). The Court finds that the UAW Defendants have shown good cause for a uniform briefing schedule with extensions for all parties, and that granting the instant motion will not prejudice Roseman.

Although Roseman's two summary judgment motions are concise, the basis for the relief he seeks is somewhat difficult to follow, and he supports his motions with voluminous exhibits that will take a considerable amount of time for the responding parties to digest. The Court also notes that the Thanksgiving holiday fell two weeks after Roseman's first motion and immediately after his second motion, and the dispositive motion cut-off clock – with a deadline of December 13, 2019 – has been ticking all the while.

The brief adjournment requested by the UAW Defendants will not materially delay the resolution of this case or cause Roseman to suffer any appreciable prejudice. In his response, Roseman asserts that "Defendants have in bad faith, persistently used unscrupulous delay tactics in litigation to thwart recovery and principled outcomes for the Plaintiff in this case." (ECF No. 80, PageID.2206.) The Court is unaware of any such improper conduct by the Defendants. Indeed, the docket reflects that this case has proceeded through pretrial motion practice and discovery in an orderly fashion. Moreover, while the Court is sensitive to the significant financial concerns Roseman raises in his response brief, his predicament is of his own making. Very early in this case, at the hearing on Roseman's emergency motion for temporary restraining order, the Court cautioned him that the principal evidence on which he was relying did not seem to support his

claims, that in continuing to pursue the case he risked losing a good job that he had held for many years, and that he should seriously consider accepting FCA's offer to return to work with the person he was complaining about – Dominick Amond – being transferred to a "completely different department so they wouldn't have to interact with each other":

> it seems to me like your principal concerns that you have identified, at least through evidence in your motion, relate to this Mr. Amond and why you believe he is, you know, disruptive to your ability to do your job, why you view him as harassing to you, and even a threat to you, which frankly is -- that's your subjective – subjective view. I'm not sure that I at all see evidence in the record to suggest a -- threats of that level. But even if you subjectively do view Mr. Amond as that type of threat, FCA has offered to remove that threat by having you come back to your position and transferring Mr. Amond out. And so I would highly encourage you to reconsider FCA's offer to do that, for all the reasons I have indicated today. . . . I 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, and I don't want to see that, you know, become tarnished or taken. . . . And so, as I said, I'll issue a written ruling on this matter in the next couple of days. That will give you at least a couple of days to consider further FCA's offer. Again, I really encourage you to do so.

(ECF No. 32, PageID.461, 470-72.)

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. (ECF No. 72.) Indeed, Judge Lawson found that Roseman had "not shown a likelihood of success on the merits of any of his claims. . . . One thing is certain []: the sum of the incidents described by Roseman do not establish 'the workplace is permeated with discriminatory intimidation, ridicule, and insult,' or that there was 'an abusive working environment.'" (*Id.*, PageID.1436, 1439.) Again, Roseman has not shown that the brief adjournment of briefing deadlines requested by the UAW Defendants will cause him any prejudice.[1]

[1] The Court notes Roseman's representation that FCA has made him a settlement offer in

For the foregoing reasons, the Court **GRANTS** the UAW Defendants' Motion **(ECF No. 79)** and enters the following dispositive motion briefing schedule:

Dispositive Motion Cut-off: **December 13, 2019**

Response Brief Deadline: **January 10, 2020**[2]

Reply Brief Deadline: **January 28, 2020**

IT IS SO ORDERED.

Dated: December 2, 2019
Ann Arbor, Michigan

s/David R. Grand
DAVID R. GRAND
United States Magistrate Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on December 2, 2019.

s/Eddrey O. Butts
EDDREY O. BUTTS
Case Manager

connection with his ongoing Workers' Compensation action, and that he has a hearing in that matter two days from now. (ECF No. 80, PageID.2204). That would seem to be an opportune time to again discuss a possible resolution of this action, and the Court encourages the parties to make a good-faith effort in that regard.

[2] This deadline shall apply to dispositive motions filed before December 13, 2019.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN L. ROSEMAN,

Plaintiff,

v.

Case Number 18-13042
Honorable David M. Lawson
Magistrate Judge David R. Grand

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), FCA US, LLC, UAW LOCAL 1700, and UAW LOCAL 140,

Defendants.
_____/

ORDER ADOPTING REPORT AND RECOMMENDATION, OVERRULING PLAINTIFF'S OBJECTIONS, AND DENYING MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Plaintiff John Roseman, employed at the Sterling Heights, Michigan Chrysler (FCA US, LLC) assembly plant, crossed paths with a difficult co-worker, which caused him such stress that he took a worker's compensation leave and declined to return to work when a company doctor pronounced him fit. Believing that the company's and his union's response to the perceived harassment was insufficient, Roseman brought suit for discrimination and retaliation under federal law and also asserted a variety of state law claims. He also filed a motion for a temporary restraining order and preliminary injunction, which brings that matter before the Court presently. The case was referred to Magistrate Judge David Grand for general case management. Judge Grand filed a report recommending that the motion be denied. Roseman, acting *pro se*, filed a motion for reconsideration, which the Court will construe as objections to the report and recommendation, arguing that the magistrate incorrectly addressed one of the four factors bearing on issuance of a preliminary injunction: irreparable harm. He did not object to the discussion of

the other factors, including perhaps the most important one, namely, that he likely would not succeed on the merits. The four factors, considered together, do not favor the issuance of injunctive relief. Therefore, the Court will overrule Roseman's objections, adopt Judge Grand's report and recommendation, and deny the motion for an injunction.

I.

Roseman seeks an injunction that requires Chrysler, "it's [sic] agents, and or employees to immediately cease harassment of Plaintiff and interference with his prescribed medical treatment . . ., immediately cease it's [sic] outrageous, perfunctory, and unusually negligent behavior in trying to induce Plaintiff to return to a hostile work environment . . ., [and r]equire Defendant FCA US LLC and its employees and/or agents to discontinue threatening to discharge Plaintiff for not returning to a hostile work environment cultivated by Defendants FCA US LLC and UAW." ECF No. 15, Page.ID.231. The magistrate judge recommended denial of the motion mainly because he believed that Roseman could not show irreparable injury, but he also found no likelihood of success on the merits.

According to the complaint and motion papers, Roseman is an African-American man over the age of forty, who has been employed by Chrysler for twenty years. Almost immediately upon being transferred to Chrysler's Sterling Heights assembly plant, Roseman alleges, he witnessed another employee at the plant, Dominik Amond, engage in a "constant campaign of harassment, coercion, intimidation, and threating behavior toward co-workers and supervisors alike . . ." Am. Compl. ECF No. 1, PageID.4. Roseman contends that he eventually became the focus of Amond's harassment, resulting in the plaintiff developing acute anxiety and experiencing severe emotional distress. Roseman subsequently filed this employment case *pro se* against Chrysler and his union,

the International United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and two Locals, alleging that the defendants declined to take any action against Amond because of plaintiff's age, race and gender. Additionally, Roseman pleaded various other claims against his employer and union, including intentional infliction of emotional distress, retaliation, negligent retention of an employee, and defamation.

In his complaint, Roseman alleges that this is not Amond's first time exhibiting inappropriate behavior towards other employees. Around the same time the plaintiff was transferred to the Sterling Heights plant, a Chrysler employee by the name of Kyanne Gaddis "advised FCA management that Dominik Amond threatened her and that she 'feared for her life.'" ECF No. 1, PageID.6. Security personnel were called to the scene and after investigating the alleged threat, Amond was disciplined and Gaddis was transferred to a different shift "for her protection." *Ibid.* Similarly, 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, for over a year beginning in 2015.

Roseman identifies late July as the turning point in his relationship with Amond. The plaintiff states that he was filling in as team leader on July 25, 2018, which Amond immediately took issue with, sending a message in a work group text saying, "I guess since we got a new [team leader] for this week it comes with new rules and micro management." ECF No. 1, PageID.74. The plaintiff also states that Amond was angered by his decision to follow Chrysler supervisor's orders to allocate additional manpower to a specific area in the plant by "mak[ing] it clear to plaintiff through hostility, coercion, intimidation, and threatening behavior that he is not going to allow plaintiff to do his job as ordered . . ." ECF No. 1, PageID.7. The plaintiff states that he was prevented from doing his job because Amond would not allow other employees to work in his

space. ECF No.1, PageID.8. Chrysler supervisors subsequently confronted Amond, and when the plaintiff joined the conversation, he alleges, Amond "became visually agitated and commenced to lash out at plaintiff directly but retreated." *Ibid.*

The following day, July 26, 2018, Amond continued to express his displeasure with Roseman, texting "[s]tay woke everyone john the reason we all having a meeting and finna get watched masking" and "[r]ember every be on time y'all kno who made it hot up there so stay woke." Additionally, the plaintiff contends that Amond showed "physical aggression and hostility" when he "rushe[d] up from about 20 yards away . . . yelling 'what's going on?'" Roseman sent an email to Chrysler supervisor Jana Hines asking her to intervene the in situation, attaching screenshots of the text messages identified above. Hines later responded to the plaintiff assuring him that action would be taken and stating "[n]o one should have to work like this." ECF No. 1, PageID.84.

Later in his shift, the plaintiff was summoned to a conference room with Hines and UAW representative Keith Hall. During the meeting Roseman further explained his concerns about Amond's "campaign of harassment," and he alleges, Hines agreed that Amond would be immediately removed from the area and disciplined. Hall expressed more reservations, stating that he did not want to deal with Chrysler Labor Relations representative Cynthia Johnson because he had recently lost a battle with her over a previous employee, but nonetheless agreed with Hines's conclusion that action needed to be taken. Roseman was then asked to send Amond to the union office, which he did. However, hours later, Roseman observed Amond still working in the plant and in an area even closer to Roseman than before. Upon realizing that Amond had not been removed from the area as promised by Hines and Hall, Roseman says he became "traumatized and immensely distressed." ECF No. 1, PageID.11.

Roseman was then summoned to the union office, where, he alleges, Hall described him as an "old head." ECF No. 1, PageID.12. In the meeting, Hall also told him that the plan to remove and discipline Amond was rejected by the UAW Chief Eddie Smith. Roseman contends that the UAW did not want to pursue action against Amond because the only Chrysler labor representative available was Cynthia Johnson, and because the union was worried that Chrysler supervisors would use disciplinary action taken against Amond as a precedent for disciplining other union members. Based on this theory, Roseman concluded that the UAW had breached its duty to him by "decid[ing] . . . that plaintiff would be collateral damage." ECF No. 1, PageID.13. Roseman contends that the stress caused by the dispute was so great that he decided to take leave and did not return to work after July 26. He did, however, reach out to Chrysler supervisor Hines on July 28, 2018, still confused about why Amond was not removed from his area. Hines told Roseman that Hall and Johnson thought Amond was not aggressive enough to remove and that "[t]hey need more." ECF No. 1, PageID.85.

Roseman originally was placed on workers compensation following his leave of absence, but was notified on October 22, 2018 by Sedgwick, Chrylser's third party administrator, that he would have to undergo an independent medical examination to determine his eligibility for disability benefits. Mot. TRO, ECF No. 15, PageID.252. Roseman reported to Dr. Neil Talon on October 30, 2018, who ultimately concluded that Roseman's mental state would not affect his ability to work. Dr. Talon characterized the plaintiff's issue as "more of a legal or human resources issues" and "not an active psychiatric problem." Am. Compl., ECF No. 40-1, PageID.704. Subsequently, Roseman received notice from Sedgewick on November 1, 2018 that Dr. Talon had cleared him to return to work, and that if he failed to do so his healthcare benefits would be terminated. In response, Roseman asserted that Dr. Talon "had no intentions of rendering an

objective, ethical or 'appropriate' decision" because Dr. Talon refused to review additional medical documents that plaintiff brought to his examination and was allegedly rude to the plaintiff. Roseman never returned to work at the Sterling Heights plant, stating that he fears for his personal safety and is in imminent danger of physical and mental problems due to the hostile work environment. ECF No. 15, PageID.230. However, the magistrate judge notes that at oral argument on the motion, Roseman acknowledged that Chrysler offered to return him to his duty station with Amond transferred elsewhere so they would not be working together.

In his complaint, Roseman alleges that the defendants violated the Employment Act of 1967 and Title VII of the Civil Rights Act of 1964 by subjecting him to age and sex discrimination, as well as retaliation and a hostile work environment. He also stated claims for negligent retention of an employee, breach of duty of fair representation, libel, vicarious liability, and intentional infliction of emotion distress. As noted, the Court issued an order referring the case to Magistrate Judge Grand for general case management under 28 U.S.C. § 636(b).

On November 2, 2018 the plaintiff filed a motion for a temporary restraining order. The defendants responded, and the magistrate judge held a hearing on the motion on November 13, 2018, and subsequently issued a report and recommendation three days later. The plaintiff did not file objections, but he did file a motion for reconsideration, which will be taken as his objections to Judge Grand's recommendation that the motion be denied.

II.

As noted above, the Court takes the plaintiff's motion for reconsideration as timely objections to Judge Grand's report. When timely objections are filed, the Court must "make a de novo determination of those portions of the report or specified findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1); *see also United States v. Raddatz*, 447 U.S. 667

(1980); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). This *de novo* review requires the Court to re-examine all of the relevant evidence previously reviewed by the magistrate judge in order to determine whether the recommendation should be accepted, rejected, or modified in whole or in part. 28 U.S.C. § 636(b)(1).

"The filing of objections provides the district court with the opportunity to consider the specific contentions of the parties and to correct any errors immediately," *Walters*, 638 F.2d at 950, enabling the court "to focus attention on those issues — factual and legal — that are at the heart of the parties' dispute," *Thomas v. Arn*, 474 U.S. 140, 147 (1985). As noted above, Roseman's only challenge is to Judge Grand's determination that irreparable harm has not been shown. He did not lodge any objections to the suggestions that he failed to show a likelihood of success on the merits of his claims for intentional infliction of emotional distress, discrimination, retaliation, or libel claims. The Court can accept the magistrate judge's conclusions on those issues without further review or comment, since "'[o]nly those specific objections to the magistrate's report made to the district court will be preserved for appellate review; making some objections but failing to raise others will not preserve all the objections a party may have.'" *McClanahan v. Comm'r of Soc. Sec.*, 474 F.3d 830, 837 (6th Cir. 2006) (quoting *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987)).

Rule 65 of the Federal Rules of Civil Procedure authorizes the issuance of preliminary injunctions and temporary restraining orders. When considering whether to issue a preliminary injunction, the court weighs four factors: (1) whether the movant has demonstrated a substantial likelihood of success on the merits; (2) whether the movant will suffer irreparable injury without the injunction; (3) whether the preliminary injunction would cause substantial harm to others; and (4) the public interest, if any, that would be served if the injunction issues. *Overstreet v. Lexington–*

Fayette Urban Cnty. Gov't, 305 F.3d 566, 573 (6th Cir. 2002). Although these factors are to be balanced, the failure to show a likelihood of success on the merits is generally fatal. *Ibid.*; *see also Gonzales v. Nat'l Bd. of Med. Exam'rs*, 225 F.3d 620, 625 (6th Cir. 2000). An inadequate showing of irreparable harm also will preclude such relief. *Patio Enclosures, Inc. v. Herbst*, 39 F. App'x 964, 967 (6th Cir. 2002) (observing that "the demonstration of some irreparable injury is a *sine qua non* for issuance of an injunction") (citing *Friendship Materials, Inc. v. Michigan Brick, Inc.*, 679 F.2d 100, 105 (6th Cir. 1982)).

For the reasons discussed by the magistrate judge, the Court agrees that the plaintiff has not shown a likelihood of success on the merits of any of his claims. One of those claims is especially pertinent in the context of the present motion, namely, the allegations of a hostile work environment, because Roseman seeks an order preventing the defendants from forcing him back into that milieu under pain of otherwise losing his job.

Roseman alleges that the defendants created a hostile work environment when they "effectively support[ed] coworker Dominick Amond's formation of an unlawful combination . . . of coworkers designed to harass, intimidate and penalize plaintiff for complying with FCA management orders to him." ECF No. 9, PageID.135. He states that Amond's conduct "interfered with [his] ability to do his work and contributed to a hostile work environment." *Id.* To establish a hostile work environment claim, the plaintiff must satisfy the following elements under Michigan law:

> (1) the employee belonged to a protected group; (2) the employee was subjected to communication or conduct on the basis of the protected status; (3) the employee was subjected to unwelcome conduct or communication on the basis of the protected status; (4) the unwelcome conduct or communication was intended to, or in fact did, interfere substantially with the employee's employment or created an intimidating, hostile, or offensive work environment; and (5) respondeat superior.

Betts v. Costco Wholesale Corp., 558 F.3d 461, 468 (6th Cir. 2009) (citing *Downey v. Charlevoix Cty. Bd. of Rd. Comm'rs*, 227 Mich. App. 621, 629, 576 N.W.2d 712, 716 (1998)).

The Sixth Circuit has expounded on the third element, explaining that "[a] hostile work environment occurs '[w]hen the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.'" *Randolph v. Ohio Dep't of Youth Servs.*, 453 F.3d 724, 733 (6th Cir. 2006) (quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993)). Courts frequently consider "the frequency of the discriminatory conduct; its severity; whether it [was] physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interfere[d] with an employee's performance." *Harris*, 510 U.S. at 23.

Here, the plaintiff was never physically threatened, the tension between Amond and the plaintiff did not span longer than a few days, and a reasonable person would not view the two text messages the plaintiff cites as abusive. Chrysler was correct to characterize the situation as "a personality difference or conflict between the two parties" in its brief. ECF No. 19, PageID.330. Therefore, the plaintiff's hostile work environment claim, and consequently his vicarious liability claim, must fail. *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998) ("[S]imple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the terms and conditions of employment.").

The failure of that claim fatally undermines the plaintiff's request for injunctive relief. The Supreme Court has described a preliminary injunction as "an extraordinary and drastic remedy," *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008), one that should "only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). The plaintiff attempts to meet this high bar by stating he "fears for his personal

safety due to a hostile work environment and is in imminent danger of physical, mental, and medical problems" should he be forced to return to work. ECF No. 15, PageID.230. But the plaintiff has not satisfied the basic premise of his claim.

Roseman cites a string of text messages sent by Amond, recited earlier, as proof of impending danger. Additionally he contends that Amond has "repeatedly ma[de] offer to another co-worker, Jacques Burell, to put a 'hit' out on [another individual] . . ." ECF No. 9, PageID.144. The plaintiff also described an incident where Amond showed "physical aggression and hostility" when he "rushe[d] up from about 20 yards away . . . yelling 'what's going on?'"

Based on these allegations, the magistrate judge concluded that the plaintiff had not demonstrated that he was threatened with physical violence. In his first "objection" and at the hearing for the TRO motion, the plaintiff attempted to rebut the magistrate judge's conclusions by stating that the "Court endeavors to differentiate actual physical 'harm' or injury from emotional distress when as a matter of present U.S. and Michigan law, both are equally actionable" followed by a citation to a Michigan case. ECF No. 33, PageID.477.

The plaintiff is correct in stating that courts in this circuit have recognized that emotional harm can be irreparable, as "the hallmark of irreparable injury is unavailability of money damages to redress the injury," *Caspar v. Snyder*, 77 F. Supp. 3d 616, 640 (E.D. Mich. 2015) (citing cases), and "dignitary injuries and distress from assault are often irreparable because they are not readily translatable to dollars," *Berryman v. Haas*, No. 18-10833, 2018 WL 6715826, at *3 (E.D. Mich. Dec. 21, 2018).

Although emotional distress can constitute irreparable injury in some circumstances, the plaintiff has not demonstrated that he will suffer emotional injuries in the first place. Roseman includes multiple letters from a doctor and a nurse practitioner stating that he should not return to

work. Rima A Abbas, M.D. saw Roseman on two separate occasions and wrote "[i]t is not recommended that [Roseman] returns to the facility where he was working, which caused his current Mental health issues to develop," ECF No. 20, PageID.357 and "John L. Roseman was seen in my clinic. He needs to be off until 10/5/18 or until further notice," ECF No. 9-1, PageID.217. Similarly, the plaintiff saw nurse practitioner Jamie L. Fineran twice who wrote "[Roseman] was seen in my office today. He was diagnosed with anxiety," ECF No. 9-1, PageID.215 and "[i]t is my medical opinion that John Roseman will be unable to return to work due to acute anxiety caused by a hostile work environment," ECF No. 9-1, PageID.218.

But those letters provide no details or reasons for the stated conclusions. Instead they simply state that a diagnosis was made or assert a recommendation, presumably based on the history related to the doctors by Roseman himself. The information before the Court may or may not be the same as that related to the medical personnel. And although the medical reports address Roseman's reaction to his work situation, they say very little about the work environment itself. One thing is certain, though: the sum of the incidents described by Roseman do not establish that "the workplace is permeated with discriminatory intimidation, ridicule, and insult," or that there was "an abusive working environment." *Randolph*, 453 F.3d at 733. The magistrate judge correctly concluded that the plaintiff was not in danger of imminent harm, psychological or otherwise.

In his second "objection" the plaintiff disagrees with this conclusion stating that he "is at risk of immediate and irreparable harm in returning to work under the terms proposed by the FCA." ECF No. 33, PageID. 475. However, the terms proposed by Chrysler include allowing the plaintiff to resume his previous duties and physically removing the alleged imminent danger — Dominik

Amond — from the plaintiff's work area. It is unclear how the plaintiff would continue to be threatened when Amond is taken out of the picture.

Roseman has not shown that he will face irreparable injury if he returns to work at Chrysler's Sterling Heights plant. The fact that the plaintiff was diagnosed with acute anxiety does nothing to further his claim, and the text messages he cites from Amond do not show any threat of violence towards the plaintiff. Therefore, the plaintiff is not entitled to injunctive relief. *Michigan Coal. of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 154 (6th Cir. 1991) ("the harm alleged must be both certain and immediate, rather than speculative or theoretical"); *Crawford v. Prison Health Servs.*, No. 12-409, 2013 WL 6254331, at *2 (W.D. Mich. Dec. 4, 2013) ("Injunctive relief will not be granted 'against something merely feared as liable to occur at some indefinite time in the future'") (quoting *Connecticut v. Massachusetts*, 282 U.S. 660, 674 (1931).

III.

The magistrate judge properly considered the record and correctly applied the governing law in reaching his decision to recommend denial of the plaintiff's motion for injunction relief.

Accordingly, it is **ORDERED** that the plaintiff's motion for reconsideration, construed as objections to the report and recommendation (ECF No. 33) are **OVERRULED**, the report and recommendation (ECF No. 31) is **ADOPTED**, and the motion for a temporary restraining order or preliminary injunction (ECF No. 15) is **DENIED**.

The case is returned to Magistrate Judge Grand for further case management under the previous order of reference.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Date: September 17, 2019

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first-class U.S. mail on September 17, 2019.

s/Susan K. Pinkowski
SUSAN K. PINKOWSKI

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN ROSEMAN,

Plaintiff,

v.

Civil Action No. 18-cv-13042
Honorable David M. Lawson
Magistrate Judge David R. Grand

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), FCA US LLC,

Defendants.
_____/

REPORT AND RECOMMENDATION TO DENY DEFENDANT UAW'S MOTION TO DISMISS, AND TO DENY PLAINTIFF JOHN ROSEMAN'S MOTION FOR JUDGMENT AS A MATTER OF LAW [58, 62]

This employment case is brought by *pro se* Plaintiff John Roseman ("Roseman") against his employer, Defendant FCA US LLC ("FCA"), and his union, Defendant International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW"). Roseman filed his complaint on September 28, 2018, filed an amended complaint on October 15, 2018, and filed a second amended complaint on December 26, 2018. (Docs. #1, #9, #40). In his second amended complaint Roseman names UAW Local 140 ("Local 140") and UAW Local 1700 ("Local 1700") as additional defendants. He brings forth multiple employment-related claims against the Defendants, including violations of the Age Discrimination in Employment Act of 1967, the Civil Rights Act of 1964, breach of the duty of fair representation, and intentional infliction of emotional distress, among others. (Doc. #40). Presently before the Court for a Report

and Recommendation[1] is UAW's Motion to Dismiss, which it filed on March 25, 2019. (Doc. #58). Roseman filed a response on March 26, 2019, and the UAW filed a reply on April 8, 2019. (Docs. #61, #63). Also before the Court is Roseman's Motion for Judgment as a Matter of Law, which he filed on March 29, 2019. (Doc. #62). The UAW filed a response on April 18, 2019, and Roseman filed a reply on April 19, 2019. (Docs. #64 and #65). Having reviewed the pleadings and other papers on file, the Court finds that the facts and legal issues are adequately presented in the parties' briefs and on the record, and it declines to order a hearing at this time. *See* E.D. Mich. L.R. 7.1(f). For the reasons discussed below, both the UAW's Motion to Dismiss and Roseman's Motion for Judgment as a Matter of Law should be denied.

I. REPORT

a. Background

As this Court previously has noted, Roseman is a twenty-year employee of FCA, and during the relevant period was assigned to its Sterling Heights Assembly Plant location. Starting on July 27, 2018, he went on paid leave from FCA, having stopped work on that date as a result of an incident with a co-worker named Dominick Amond ("Amond"). More specifically, Roseman alleges that Amond harassed him by making various remarks about him, sending various text messages to other work colleagues about him, and by interfering with his ability to perform his work functions. For instance, Roseman complains that "Amond once told [him], your pay rate is higher than mine and 'I seriously have a problem with that.'" (Doc. #40 at 6, ¶23). The crux of the lengthy allegations surrounding Amond's conduct and the events of July 2018 is that defendants failed to appropriately discipline Amond. (*Id.* at 7-14, ¶¶24-59).

[1] The undersigned was previously referred all pretrial matters pursuant to 28 U.S.C. § 636(b) (Doc. #12).

Beyond the allegations relating to Amond, Roseman's second amended complaint contains numerous additional allegations. For example, Roseman also alleges a similar failure to address threatening and harassing conduct of another co-worker in December 2015, and makes passing reference to presumably similar incidents in 2016. (*Id.* at 6, ¶¶18-21 and 15, ¶¶63-64). He further alleges harassment and discrimination in 2018 based on his race and retaliation based on his complaints of that discrimination (*Id.* at 17, ¶¶78-80 and ¶¶82-84).

b. Legal Standard

A motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) tests a complaint's legal sufficiency. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556). The plausibility standard "does not impose a probability requirement at the pleading stage; it simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of illegal [conduct]." *Twombly*, 550 U.S. at 556. Put another way, the complaint's allegations "must do more than create speculation or suspicion of a legally cognizable cause of action; they must show *entitlement* to relief." *League of United Latin Am. Citizens v. Bredesen*, 500 F.3d 523, 527 (6th Cir. 2007) (emphasis in original) (citing *Twombly*, 550 U.S. at 555-56).

In deciding whether a plaintiff has set forth a "plausible" claim, the court must accept the factual allegations in the complaint as true. *Id.; see also Erickson v. Pardus*, 551 U.S. 89, 94, 127 S.Ct. 2197, 167 L.Ed.2d 1081 (2007). That tenet, however, "is inapplicable to legal conclusions.

Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice," to prevent a complaint from being dismissed on grounds that it fails to sufficiently comport with basic pleading requirements. *Iqbal*, 556 U.S. at 678, 129 S.Ct. 1937; *see also Twombly*, 550 U.S. at 555,; *Howard v. City of Girard, Ohio*, 346 Fed.Appx. 49, 51 (6th Cir. 2009). Furthermore, a court is not required to "create a claim which [a plaintiff] has not spelled out in his pleading." *Clark v. Nat'l Travelers Life Ins. Co.*, 518 F.2d 1167, 1169 (6th Cir. 1975) (internal quotations omitted). Ultimately, "[d]etermining whether a complaint states a plausible claim for relief will ... be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 679.

When a court is presented with a Rule 12(b)(6) motion testing the sufficiency of a complaint, "it may consider the Complaint and any exhibits attached thereto, public records, items appearing in the record of the case and exhibits attached to defendant's motion to dismiss so long as they are referred to in the Complaint and are central to the claims contained therein." *Bassett v. National Collegiate Athletic Ass'n*, 528 F.3d 426, 430 (6th Cir. 2008). 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. 2007). Nonetheless, "[t]he leniency granted to pro se [litigants] ... is not boundless," *Martin v. Overton*, 391 F.3d 710, 714 (6th Cir. 2004), and their "complaints still must plead sufficient facts to show a redressable legal wrong has been committed." *Baker v. Salvation Army*, No. 09-11424, 2011 WL 1233200, at *3 (E.D. Mich. Mar. 30, 2011).

c. Analysis

i. UAW's Motion to Dismiss

UAW has moved to dismiss the second amended complaint asserting that Roseman has not stated a plausible claim against it because he has failed to allege any facts demonstrating that the individuals he identifies as wrongdoers are UAW representatives or that the UAW is otherwise responsible for their actions. Specifically, the UAW contends that Roseman has sued the wrong party because the allegations of his second amended complaint address the conduct of representatives from Locals 140 and 1700. UAW's motion is directed to Roseman's allegations relating to four individuals identified in the operative complaint: Keith Hall; Eddie Smith; Kalu Jones; and Michael Spencer.

Roseman's response does not address directly the distinctions raised by UAW's motion but does, more or less, reiterate Roseman's view of the UAW's liability. In reply, UAW notes Roseman's failure to address the distinction between UAW and local union representatives, and construes his reply as attempting to create a duty where none exists for purposes of establishing vicarious liability. UAW characterizes these efforts as stemming from his EEOC charge or the allegations made during oral argument on his TRO motion. With respect to the latter, UAW contends that Roseman cannot raise new issues in his reply brief.

For context, the Court's analysis will begin with a review of the allegations of the second amended complaint relevant to the UAW's motion to dismiss.

In the section of his complaint captioned as "Factual Background," Roseman initially identifies Keith Hall as being "the team leader for team 11, Paint Shop" and "also the alternate UAW Chief Steward for department 9130." (Doc. #40 at 10, ¶42). Later in that section, he refers to "Local 1700 union alternate steward Keith Hall" (*Id.* at 14, ¶58). In Count IX, alleging the

intentional infliction of emotional distress, Roseman refers to Hall as "union alternate chief steward." (*Id.* at 23, ¶112).

With respect to Eddie Smith, in his "Factual Background" section, Roseman refers to Smith as "Local 1700 Union Steward, Eddie Smith." (Doc. #40 at 12, ¶ 53). Later, in Count X alleging negligent retention of an employee, Roseman identifies Smith as "union chief steward, Smith." (*Id.* at 28-29, ¶140). However, in the context of Count VI, a claim identified as "Breach of the Duty of Fair Representation in Violation of ELCRA Article 37.2204(a)(c)(d); NRLA, 29 U.S.C. § 151 *et seq.*; LMRA 29 U.S.C. § 141 et seq., "Hybrid Action" under Section 301," Roseman states:

> 95. Within the scope of his duty, UAW and Local 1700 union chief steward, Smith, acknowledged Gaddis's complaint against Amond and assisted in pursuing remedies on her behalf.

(*Id.* at 20, ¶95).

Similarly, in Count VII, an additional breach of the duty of fair representation claim, Roseman refers to both Hall and Smith as follows:

> 100. Furthermore, Defendant UAW's, and Local 1700's Chief and Alternate Chief Stewards, Smith's and Hall's, respectively, and Local 140 Chief Steward Jones, misconduct was intentional. ...

(*Id.* at 20-21, ¶100). In Count IX, alleging the intentional infliction of emotional distress, Roseman refers to "union stewards Hall, and Smith." (*Id.* at 22, ¶111).

Roseman makes fewer allegations directed to the conduct of Kalu Jones and Michael Spencer. With respect to Jones, in addition to the brief reference in the second amended complaint at ¶100, Roseman refers to him in the "Factual Background" section as "Local 140 union chief steward Kalu Jones ("Jones")." (Doc. # 40 at 6, ¶19). With respect to Spencer, Roseman asserts in Count VIII, an additional breach of the duty of fair representation claim, that:

> 103. Plaintiff made a grievance request in writing to UAW Committeeman Michael Spencer, via emails....

(*Id.* at 21, ¶103).

Further, in Count XI, a libel claim, Roseman alleges:

> 146. Further, breeching his duty to plaintiff, UAW Union Committeeman Michael Spencer refused to file a grievance on Plaintiff's behalf in this matter when Plaintiff so requested....

(Id. at 29-30, ¶146).

The above allegations are made against the backdrop of Roseman's introductory paragraphs. In those paragraphs Roseman identifies the International Union as the "UAW" and distinguishes it from the local unions which he refers to as "Local 140" and "Local 1700." (Doc. #40 at 2).

UAW contends that the above allegations confirm the status of these individuals as "local," but not "international," union representatives. In making this argument, UAW draws a distinction between what it characterizes as Roseman's general allegations, and his more specific allegations, relating to these individuals. For example, it asserts that Roseman's allegations relating to Hall generally identify him as a "UAW" or "Union" representative but specifically refer to him as a "Local 1700 representative." Likewise, it asserts that Roseman refers specifically to Smith as "Local 1700 Union Steward." Similarly, it cites Roseman's reference to Chief Steward Kalu Jones as a "Local 140 union chief steward." It also points to Roseman's characterization of Michael Spencer as a "Shop Committeeperson." In addition to noting Roseman's alleged imprecision in referring to these individuals by title, UAW cites a sampling of the "numerous cases" it contends "reflect that stewards, and committeepersons are local union representatives." (Doc. #58 at 11).

UAW explains that the distinction between the roles of international union representatives and local union representatives is central here because well-established case law holds that an international union and its local are separate legal entities responsible only for their own acts and

omissions. Because the UAW cannot be found liable for the acts or omissions of representatives of Local 140 or 1700, and Roseman has not otherwise established its liability, UAW contends that Roseman's claims against it must be dismissed.

As a preliminary matter, as UAW asserts, there is no question that an international union and its affiliated local unions are legally distinct entities and should not be treated the same for liability purposes. *Coronado Coal v. United Mine Workers of America*, 268 U.S. 295, 304-05, 45 S.Ct. 551, 69 L.Ed. 963 (1925). "'The International Union is a separate body from the local. The acts of the local and its agents cannot automatically be imputed to the International.'" *Clark v. Teamsters Local Union 651*, 349 F. Supp. 3d 605, 621 (E.D. Ky. 2018), quoting *Shimman v. Frank*, 625 F.2d 80, 95 (6th Cir. 1980), *overruled on other grounds by Shimman v. Int'l Union of Operating Eng'rs, Local 18*, 744 F.2d 1226 (6th Cir. 1984) *see also Kendel v. Local 17AUnited Food &, Commercial Workers,* 748 F. Supp. 2d 732, 742 (N.D. Ohio 2010), citing *EEOC v. Int'l Bro. of Elec. Workers,* Case No. 3: 02 CV 7374, 2005 WL 469600, at *2 (N.D. Ohio Feb. 28, 2005) ("As a general rule, an international union and its affiliated locals are deemed to be separate legal entities.").

While the unremarkable principle advanced by the UAW may be true as a general matter, at the same time, a union may have liability if it authorized, instigated, participated in, or ratified the actions of its agents. *North American Coal Corp. v. U.M.W.*, 497 F.2d 459, 466-67 (6th Cir. 1974); *see also Carbon Fuel Co. v. Mine Workers,* 444 U.S. 212, 216, 100 S.Ct. 410, 62 L.Ed.2d 394 (1979) (An international union may be liable for the actions of a local chapter or its officers only when the union may be found responsible according to common-law principles of agency.). That is, "[c]ommon law theories of vicarious liability may apply to render an international union liable for the tortious acts of its local union." *Blesedell v. Chillicothe Tel. Co.*, 2013 WL 6096329

at *4, 2013 U.S. Dist. LEXIS 166076 at *11 (S.D. Ohio 2013), citing *Alexander v. Local 496, Laborers' Int'l Union of North America*, 177 F.3d 394, 409 (6th Cir. 1999). The question before the Court, as UAW has framed it, is whether Roseman sufficiently has alleged in the second amended complain that Hall, Smith, Jones, or Spencer are UAW representatives.

To be sure, Roseman's description of particular individual titles is limited and reasonably may be characterized as lacking consistency and, read narrowly, may be construed as suggesting that these individuals serve only as local union representatives. On the other hand, a fair reading of the allegations set forth above also reveals that Roseman recognized the distinction between the international and local unions, yet still alleged a relationship between the above-referenced individuals and the UAW. (*See e.g.*, Doc. #40 at ¶¶42, ¶95, ¶100, ¶103, and ¶146) (referring to Hall, Smith, and Spencer as UAW representatives).

UAW has provided no authority for its position that the Court is required to accept what UAW characterizes as Roseman's more specific descriptions and disregard an interpretation of the second amended complaint more favorable to Roseman. Moreover, such a suggestion is contrary to the Court's responsibility to liberally construe the factual allegations contained in a *pro se* litigant's complaint. *Price v. Edwards*, No. 17-10601, 2018 WL 1316161, at *2 (E.D. Mich. Mar. 14, 2018) ("The Sixth Circuit liberally construes pleadings of a *pro se* litigant.").

UAW's assertion that numerous cases "reflect" that stewards and committeemen are understood to be local union representatives is not dispositive. (Doc. #58 at 11). The cases upon which UAW relies generally involved summary judgment motions or at least a posture permitting evidentiary submissions. That is not the situation here, where the UAW's argument is based on the allegations in Roseman's operative complaint, and not on any affidavits or other evidence that might establish the veracity of the UAW's contentions about its lack of a relationship with the

individuals in question. Further, a quick reading of the cases on which the UAW relies reveals that the idea that stewards and committeemen are local union representatives is not express or some sort of absolute. Rather, making UAW's suggested leap seems to require reference to the UAW Constitution setting forth the appeal procedure, and that document, while part of the evidentiary record in the cited cases, is not presently before the Court.[2]

Moreover, UAW is asking the Court to hold Roseman to a "very parsed" and "isolated" reading of the second amended complaint. *Mac v. Blue Cross Blue Shield of Michigan*, No. 16-CV-13532, 2017 WL 2450290, at *9 (E.D. Mich. June 6, 2017). However, "[t]he allegations of the Complaint must be read as a whole and harmonized to determine whether a plausible claim has been suggested." *Id.* Reading Roseman's complaint as a whole suggests his recognition of the

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[2] By way of example, one of the cases UAW cites for this proposition is *Lemons v. United Auto., Aerospace, Agr. Implement Workers of Am., Int'l Union, UAW,* No. CIV.A.89-CV-60042-CA, 1990 WL 114771 (E.D. Mich. Feb. 14, 1990), *aff'd sub nom. Lemons v. United Auto., Aerospace & Agr. Imp. Workers of Am., Int'l Union, U.A.W., & Local Union 78, U.A.W.*, 917 F.2d 1304 (6th Cir. 1990). In that case, the court, in addressing the issue of exhaustion, quoted the following language from the UAW Constitution:

> "Section 2. The normal route of appeal is: First, to the membership or delegate body immediately responsible for the decision under challenge; Second, to the International Executive Board, unless the appeal begins there; and Third, to the Convention Appeals Committee or Public Review Board, as may be appropriate. For purposes of illustration, in following common cases the normal route of appeal is as follows:
>
> In any challenge to the handling or disposition of a grievance: Where the challenge is against *a Local Union committee-person, steward,* Bargaining Committee, officer *or other Local Union Official*—the levels of appeal are first to the unit of an Amalgamated Local Union, then to the Union, then to the International Executive Board and then to the Convention Appeals Committee, or where appropriate the Public Review Board."

(*Id.* at *2) (emphasis added). As the Court understands UAW's argument here, UAW is relying on the italicized language to support its argument that stewards and committeepersons are understood to be local union representatives.

principles of agency and vicarious liability and his attempt to allege his claims in a way consistent with those theories. (*See, e.g.*, Doc. #40 at ¶¶2, 88, 98, 131, 152, and 153).

In sum, while the Court recognizes that UAW may be correct that the stewards and committeemen identified in Roseman's complaint are, in fact, local union representatives whose actions would not result in liability against the UAW, that appears to be a matter more appropriately addressed in a future summary judgment motion.[3] At this juncture, however, construing Roseman's *pro se* complaint liberally and accepting as true his allegations that certain individuals are UAW representatives, the motion to dismiss should be denied; even if the Court believed that these individuals are not international union representatives, "[t]he Court may not grant a Rule 12(b)(6) motion merely because it may not believe the plaintiff's factual allegations." *Mantell v. Health Professionals Ltd.*, No. 5:11CV1034, 2012 WL 28469, at *2 (N.D. Ohio Jan. 5, 2012); *see also Twombly*, 550 U.S. at 556 ("a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable"); *Neitzke v. Williams*, 490 U.S. 319, 327, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989) ("Rule 12(b)(6) does not countenance ... dismissals based on a judge's disbelief of a complaint's factual allegations").

For all of these reasons, UAW's Motion to Dismiss (Doc. #58) should be denied.

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[3] Notably, several of the courts in the Sixth Circuit cases cited by UAW as recognizing a distinction between international and local unions did so in the context of proceedings involving an evidentiary record. *See, e.g., Hines v. Local*, 366, 506 F.2d 1153, 1157 (6th Cir. 1974), *reversed on other grounds sub nom Hines v. Anchor Motor Freight*, 424 U.S. 554 (1976) (motion for summary judgment); *Ruzicka v General Motors Corp.*, 523 F.3d 306 (6th Cir. 1975) (hearing on limited question of unfair representation; and *Ryan v. General Motors Corp.*, 929 F.2d 1105 (6th Cir. 1989) (motion for summary judgment). To the extent that UAW relies on *Lemons*, 1990 WL 114771, at *1, in that case, the court granted UAW's motion to dismiss because "the plaintiff had failed to raise any allegations against the International Union." *Id.* That case is readily distinguishable, however, because, as discussed above, read liberally, Roseman's second amended complaint does raise allegations against UAW.

ii. Roseman's Motion for Judgment as a Matter of Law

Roseman has filed a document captioned as a "motion for judgment as a matter of law under Fed. R. Civ. P 50(a)" relating to his claims for "breach of the duty of fair representation for union officials failure to file a grievance." (Doc. #62). His argument, set forth here verbatim, states:

1. Plaintiff made requests to Michael Spencer, who at the relevant time identified himself only as "UAW COMMITITEEMAN" (See Second Amended Complaint ECF Doc. #40, at 101 et seq.) and to UAW Local chief union steward Eddie Smith, to file a grievance on his behalf of an adverse disciplinary action taken on March 8, 2018, by defendant-employer FCA US LLS against Plaintiff.

2. Plaintiff complained at the aforementioned March 8th, 2018 disciplinary action taken among other things, violated his rights and was motivated by racial stereotyping. See generally (ECF No. 40, and Doc. #38 at 10, 11, 17 and 18).

3. In the definitive scope of their employment, UAW COMMITTEEMAN Michael Spencer and UAW Local 1700 chief union steward Eddie Smith refused to file grievance per Plaintiff's request. Defendants, parent union International UAW and Local 1700 are liable in Plaintiff's claims of breach of the duty of fair representation and for union officials refusal to file a grievance on Plaintiff's behalf. See generally (ECF Doc. #40 and#61).

UAW and Locals 140 and 1700 have filed a joint response. Simply stated, they contend that Fed.R.Civ.P. 50(a) has no applicability here and that Roseman's motion should be denied. In his reply, Roseman asks the Court to consider his motion as a motion for judgment on the pleadings under Rule 12(c) and to grant a declaratory judgment in his favor.

Initially, the Court agrees that Fed.R.Civ.P. 50(a) has no applicability here. The plain language of Rule 50(a) states:

(a) Judgment as a Matter of Law

(1) *In General.* If a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may:

(A) resolve the issue against the party; and

> (B) grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.

Roseman apparently concedes the rule's fundamental inapplicability in requesting that the Court consider his motion as one for judgment on the pleadings under Fed.R.Civ.P.12(c). This request, however, is similarly misguided. Fed.R.Civ.P. 12(c) provides that, "[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c).

As explained in *XXX Int'l Amusements, Inc. v. Gulf Coast Visuals Mgmt. Co., LLC,* No. 15-14156, 2018 WL 1570335 at *12 (E.D. Mich. Mar. 30, 2018):

> Under Rule 12(c), a motion for judgment on the pleadings cannot be filed until the pleadings are "closed." Although it does not appear that the Sixth Circuit has directly addressed this issue, a number of district courts in this and other circuits addressing this issue have held that pleadings are not "closed" until every defendant has filed an answer.... [t]he undersigned recognizes that courts maintain discretion in certain circumstances to consider a Rule 12(c) motion even when one of the defendants has not filed an answer. However, this is generally true in only limited circumstances, such as when a plaintiff fails to serve one of the defendants.

Because UAW has not yet filed its answer to the second amended Complaint, Roseman's motion is premature. Further, this case does not present circumstances warranting the Court's consideration of a 12(c) motion prior to the close of the pleadings.

Moreover, based on the current record, Roseman's motion would be unlikely to prevail. "For purposes of a motion for judgment on the pleadings, all well-pleaded material allegations of the pleadings ***of the opposing party*** must be taken as true, and the motion may be granted only if the moving party is nevertheless clearly entitled to judgment." *JPMorgan Chase Bank, N.A. v. Winget*, 510 F.3d 577, 581 (6th Cir. 2007) (internal quotes and citation omitted) (emphasis added). When, as here, "a plaintiff moves for judgment on the pleadings,

the motion should be granted if, 'on the *undenied* facts alleged in the complaint and assuming as true all the material allegations of fact in the answer, the plaintiff is entitled to judgment as a matter of law.'" *Local 109 Bd. of Trustees of The Operative Plasterers And Cement Masons Pension Fund v. All Am. Acoustic & Drywall, Inc.*, No. 5:15-CV-2361, 2016 WL 5232828, at *5 (N.D. Ohio Sept. 22, 2016), quoting *Forgues v. Select Portfolio Servicing, Inc.*, No. 1:15-CV-1670, 2016 WL 543186, at *1 (N.D. Ohio Feb. 10, 2016) (additional citations omitted) (emphasis in original)). "In other words, if a defendant's answer admits, alleges, or fails to deny facts which, taken as true, would entitle a plaintiff to relief on one or more claims supported by the complaint, then the plaintiff's Rule 12(c) motion should be granted." *Id.* quoting *Lowden v. County of Clare*, 709 F. Supp. 2d 540, 546 E.D. Mich. 2010) (citing *Nat'l Metro. Bank v. United States*, 323 U.S. 454, 456-57, 65 S. Ct. 354, 89 L. Ed. 383 (1945) (where, for purposes of plaintiff's motion for judgment on the pleadings, negligence was established where the answer alleged facts which, if true, showed negligence)). That does not appear to be the situation here. Rather, both local unions have answered the amended complaint, denied multiple allegations relating to Roseman's claims for breach of the duty of fair representation, and asserted affirmative defenses. (Docs. #59, #60). And, although the UAW has not yet filed an answer, based on the assertions contained in its instant Motion to Dismiss, it clearly intends to oppose Roseman's factual assertions against it.

For all of these reasons, Roseman's motion for judgment as a matter of law (Doc. #62) should be denied.

II. RECOMMENDATION

For the foregoing reasons, **IT IS RECOMMENDED** that UAW's Motion to Dismiss **(Doc. #58)** be **DENIED**, and that Roseman's Motion for Judgment as a Matter of Law **(Doc. #62)** also be **DENIED**.

Dated: June 5, 2019
Ann Arbor, Michigan

s/David R. Grand
DAVID R. GRAND
United States Magistrate Judge

NOTICE TO THE PARTIES REGARDING OBJECTIONS

Within 14 days after being served with a copy of this Report and Recommendation and Order, any party may serve and file specific written objections to the proposed findings and recommendations and the order set forth above. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2); E.D. Mich. LR 72.1(d)(1). Failure to timely file objections constitutes a waiver of any further right of appeal. *See Thomas v. Arn*, 474 U.S. 140, (1985); *United States v. Sullivan,* 431 F.3d 976, 984 (6th Cir. 2005). Only specific objections to this Report and Recommendation will be preserved for the Court's appellate review; raising some objections but not others will not preserve all objections a party may have. *See Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987); *see also Frontier Ins. Co. v. Blaty*, 454 F.3d 590, 596-97 (6th Cir. 2006). Copies of any objections must be served upon the Magistrate Judge. *See* E.D. Mich. LR 72.1(d)(2).

A party may respond to another party's objections within 14 days after being served with a copy. *See* Fed. R. Civ. P. 72(b)(2); 28 U.S.C. § 636(b)(1). Any such response should be concise, and should address specifically, and in the same order raised, each issue presented in the objections.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on June 5, 2019.

s/Eddrey O. Butts
EDDREY O. BUTTS
Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN L. ROSEMAN,

Plaintiff,

v.

Case Number 18-13042
Honorable David M. Lawson
Magistrate Judge David R. Grand

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), FCA US, LLC, UAW LOCAL 1700, and UAW LOCAL 140,

Defendants.
_____/

ORDER ADOPTING REPORT AND RECOMMENDATION, DENYING DEFENDANT UAW'S MOTION TO DISMISS, AND DENYING PLAINTIFF'S MOTION FOR DIRECTED VERDICT

Presently before the Court is the report issued on June 5, 2019 by Magistrate Judge David R. Grand pursuant to 28 U.S.C. § 636(b), recommending that the Court deny defendant UAW's motion to dismiss and the plaintiff's motion for a directed verdict on his claims against the union. Although the report stated that the parties to this action could object to and seek review of the recommendation within fourteen days of service of the report, no objections have been filed thus far. The parties' failure to file objections to the report and recommendation waives any further right to appeal. *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the matter. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). However, the Court agrees with the findings and conclusions of the magistrate judge.

Accordingly, it is **ORDERED** that the report and recommendation (ECF No. 66) is **ADOPTED**. The plaintiff's motion for directed verdict (ECF No. 62) and defendant UAW's motion to dismiss (ECF No. 58) are **DENIED**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Date: June 25, 2019

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on June 25, 2019.

s/Susan K. Pinkowski
SUSAN K. PINKOWSKI

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN L. ROSEMAN,

Plaintiff,

v.

Civil Action No. 18-13042
Honorable David M. Lawson
Magistrate Judge David R. Grand

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), FCA US, LLC, UAW LOCAL 1700, and UAW LOCAL 140,

Defendants.
_____/

SCHEDULING ORDER

INITIAL DISCLOSURES:	August 9, 2019
WITNESS LIST	September 30, 2019
DISCOVERY CUTOFF: (All Discovery Responses Due)	November 8, 2019
DISPOSITIVE MOTION CUTOFF:	December 13, 2019
JOINT FINAL PRETRIAL STATEMENTS:	TO BE SCHEDULED
TRIAL BRIEFS, MOTIONS IN LIMINE:	TO BE SCHEDULED
FINAL PRETRIAL CONFERENCE:	TO BE SCHEDULED
TRIAL DATE TO BE SET AT TIME OF FINAL PRETRIAL CONFERENCE:	TO BE SCHEDULED

PRIOR TO EXCHANGING THEIR INITIAL DISCLOSURES, THE PARTIES SHALL ENGAGE IN GOOD FAITH SETTLEMENT DISCUSSIONS AS DISCUSSED DURING THE SCHEDULING CONFERENCE

THERE WILL BE NO ADJOURNMENTS OF THESE DATES, OTHER THAN UPON MOTION SHOWING OF GOOD CAUSE.

IT IS SO ORDERED.

Dated: July 12, 2019

s/David R. Grand
DAVID R. GRAND
UNITED STATES MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on July 12, 2019.

s/Eddrey O. Butts
EDDREY O. BUTTS
Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN L. ROSEMAN,

Plaintiff,

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), FCA US, LLC, UAW LOCAL 1700, and UAW LOCAL 140,

Defendants.
_____/

Case Number 18-13042
Honorable David M. Lawson
Magistrate Judge David R. Grand

ORDER ADOPTING REPORT AND RECOMMENDATION AND DISMISSING MOTIONS AS MOOT

Presently before the Court is the report issued on January 29, 2019 by Magistrate Judge David R. Grand pursuant to 28 U.S.C. § 636(b), recommending that the Court dismiss the parties' earlier filed dispositive motions as moot, because the magistrate judge recently issued an order granting the plaintiff's motion for leave to file an amended complaint. Although the report stated that the parties to this action could object to and seek review of the recommendation within fourteen days of service of the report, no objections have been filed thus far. The parties' failure to file objections to the report and recommendation waives any further right to appeal. *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the matter. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). However, the Court agrees with the findings and conclusions of the magistrate judge.

Accordingly, it is **ORDERED** that the report and recommendation (ECF No. 52) is **ADOPTED**, and the parties' pending dispositive motions (ECF No. 25, 26, 36, 48) are

DISMISSED as moot, without prejudice to the parties' rights to seek further relief at an appropriate time.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Date: February 21, 2019

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on February 21, 2019.

s/Susan K. Pinkowski
SUSAN K. PINKOWSKI

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN L. ROSEMAN,

Plaintiff,

Civil Action No. 18-cv-13042
Honorable David M. Lawson
Magistrate Judge David R. Grand

v.

INTERNATIONAL UNION, et al,

Defendant.
_____/

ORDER STRIKING PLAINTIFF'S RESPONSE TO DEFENDANT FCA'S ANSWER [55]

Pro se Plaintiff John L. Roseman ("Roseman") filed suit in this matter on September 28, 2018. (Doc. #1). He alleges numerous violations of his rights, including violations of the Age Discrimination in Employment Act of 1967, the Civil Rights Act of 1964, and intentional infliction of emotional distress, among others, all arising from his employment with Defendant FCA ("FCA"), and his membership in Defendant International Union, United Automobile Aerospace and Agricultural Implement Workers of America ("UAW"). (Doc. #1). The undersigned was previously referred all pretrial matters pursuant to 28 U.S.C. § 636(b). (Doc. #12).

On January 29, 2019, the Court issued an order allowing Roseman's second amended complaint (Doc. #40) to be the operative complaint in this case. (Doc. #53). On February 13, 2019, FCA filed an answer to Roseman's second amended complaint. (Doc. #54). Then, on February 18, 2019, Roseman filed a "Response" to FCA's answer. (Doc. #55). Roseman's filing, including all attached exhibits, totals 256 pages. (Docs. #55, #55-1, #55-2).

While *pro se* litigants are entitled to some leniency when it comes to procedural matters, they still must follow the rules of civil procedure, and they assume the risks and hazards that accompany self-representation. *See Graham-Humphreys v. Memphis Brooks Museum of Art, Inc.*,

209 F.3d 552, 561 (6th Cir. 2000). Roseman's lengthy "Response," which contains numerous factual assertions and legal arguments, is well outside the bounds of any leniency to which he might otherwise be entitled.

Fed. R. Civ. P. 7(a), which outlines all allowable pleadings, provides,

> Only these pleadings are allowed:
>
> (1) a complaint;
> (2) an answer to a complaint;
> (3) an answer to a counterclaim designated as a counterclaim;
> (4) an answer to a crossclaim;
> (5) a third-party complaint;
> (6) an answer to a third-party complaint; and
> (7) if the court orders one, a reply to an answer.

Fed. R. Civ. P. 7(a).

Roseman's filing is essentially a reply to FCA's answer to his amended complaint. However, "[a] reply to an answer to a complaint is allowed only when a court orders one." *Anderson v. Furst*, No. 17-12676, 2018 WL 1898460, at *3 (E.D. Mich. Apr. 20, 2018); *see also Stewart v. Barcklay-Dodson*, No. CV-12-719-PHX-RCB, 2013 WL 221505, at *1 (D. Ariz. Jan. 18, 2013) ("A reply to an answer is not permitted under the Federal Rules of Civil Procedure, unless the Court orders that one be filed."). Here, the Court did not order Roseman to file such a reply, or in any way to respond to FCA's answer. As such, his "Response" (Doc. #55) was improperly filed, in violation of Fed. R. Civ. P. 7(a) and established law. *Anderson v. Furst, supra* ("The Court did not order a reply; the Court made no error in striking Anderson's reply, and Anderson's objection fails."). The Court will therefore strike Roseman's "Response". *See, e.g.*, *Anderson v. Furst, supra*; *Mayer v. Weiner*, No. 2:17-CV-12333, 2017 WL 5885666, at *1 (E.D. Mich. Nov. 29, 2017) (striking a reply to defendant's answer, as it was not ordered by the court, and therefore impermissible); *Stewart v. Barcklay, supra.*

Accordingly, **IT IS ORDERED** that Roseman's "Response" to Defendant FCA's answer **(Doc. #55)** be **STRICKEN** from the docket in this action.

IT IS SO ORDERED.

Dated: February 21, 2019
Ann Arbor, Michigan

s/David R. Grand
DAVID R. GRAND
United States Magistrate Judge

NOTICE TO THE PARTIES REGARDING OBJECTIONS

The parties' attention is drawn to Fed. R. Civ. P. 72(a), which provides a period of fourteen (14) days from the date of receipt of a copy of this Order within which to file objections for consideration by the district judge under 28 U.S.C. § 636(b)(1).

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on February 21, 2019.

s/Richard Loury
Acting in the Absence of Eddrey O. Butts
Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN L. ROSEMAN,

Plaintiff,

Civil Action No. 18-cv-13042
Honorable David M. Lawson
Magistrate Judge David R. Grand

v.

INTERNATIONAL UNION, et al,

Defendant.
_____/

ORDER ON MOTIONS [30, 46], ALLOWING SECOND AMENDED COMPLAINT [40], AND SETTING DEADLINE FOR DEFENDANTS TO ANSWER OR OTHERWISE RESPOND TO THE SECOND AMENDED COMPLAINT

Pro se Plaintiff John L. Roseman ("Roseman") filed suit in this matter on September 28, 2018. (Doc. #1). He alleges numerous violations of his rights, including violations of the Age Discrimination in Employment Act of 1967, the Civil Rights Act of 1964, and intentional infliction of emotional distress, among others, all arising from his employment with Defendant FCA, and his membership in Defendant International Union, United Automobile Aerospace and Agricultural Implement Workers of America ("UAW"). (Doc. #1).

Presently, there are numerous procedural issues in this case, which the Court has addressed in its Report and Recommendation of today's date. (Doc. #52) (the "R&R"). Those issues are encompassed in numerous pending motions, including

Roseman's Motion for Joinder of Additional Defendants (Doc. #30), and UAW's Motion to Strike Amended Complaint (Doc. #46). For the reasons stated in the R&R,

IT IS ORDERED that:

- Roseman's Motion for Joinder of Additional Defendants **(Doc. #30)** shall be construed as a motion for leave to file his Second Amended Complaint **(Doc. #40)**, and the Court will accept the Second Amended Complaint **(Doc. #40)** as the operative complaint in this case.[1]

- Defendants **SHALL HAVE UNTIL MARCH 25, 2019**, to answer or otherwise respond to the Second Amended Complaint.

- Defendant UAW's Motion to Strike Amended Complaint **(Doc. #46)** is **DENIED AS MOOT.**

IT IS SO ORDERED.

Dated: January 29, 2019
Ann Arbor, Michigan

s/David R. Grand
DAVID R. GRAND
United States Magistrate Judge

NOTICE TO THE PARTIES REGARDING OBJECTIONS

The parties' attention is drawn to Fed. R. Civ. P. 72(a), which provides a period of fourteen (14) days from the date of receipt of a copy of this Order within which to file objections for consideration by the district judge under 28 U.S.C. § 636(b)(1).

[1] Roseman is advised that before he can file any additional amended complaint, he must first successfully move the Court for leave to do so pursuant to Fed. R. Civ. P. 15(a)(2).

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on January 29, 2019.

s/Eddrey O. Butts
EDDREY O. BUTTS
Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN L. ROSEMAN,

Plaintiff,

Civil Action No. 18-cv-13042
Honorable David M. Lawson
Magistrate Judge David R. Grand

v.

INTERNATIONAL UNION, et al,

Defendant.
_____/

REPORT AND RECOMMENDATION ON MOTIONS [25, 26, 36, 48]

Pro se Plaintiff John L. Roseman ("Roseman") filed suit in this matter on September 28, 2018. (Doc. #1). He alleges numerous violations of his rights, including violations of the Age Discrimination in Employment Act of 1967, the Civil Rights Act of 1964, and intentional infliction of emotional distress, among others, all arising from his employment with Defendant FCA, and his membership in Defendant International Union, United Automobile Aerospace and Agricultural Implement Workers of America ("UAW"). (Doc. #1). Roseman filed a first amended complaint on October 15, 2018. (Doc. #9). That one, like his original complaint, asserted claims only against FCA and the UAW.

On November 9, 2018, Roseman filed a motion for partial summary judgment as to certain claims he asserted against FCA in his first amended complaint. (Doc.

#26). On November 30, 2018, FCA filed a document entitled, "Defendant FCA US LLC's Response to Plaintiff's Motion for Partial Summary Judgment and Its Cross-Motion for Summary Judgment." (Doc. #36). Thus, FCA's motion for partial summary judgment addresses claims in Roseman's first amended complaint.

On November 9, 2018, the UAW filed a motion to dismiss, asserting that Roseman "has sued the wrong party," and suggesting that, to the extent Roseman believes he has claims against any union entities, those claims would be against the "local" unions, not the UAW. (Doc. #25). On November 16, 2018, apparently in response to the UAW's motion, Roseman filed a "Motion for Joinder of Additional Defendants," in which he explains that he wished to *add* UAW Local 140 and UAW Local 1700 as defendants in this action, but also wished to maintain claims against the UAW. (Doc. #30). Particularly in light of Roseman's *pro se* status, this motion is more properly construed as a motion for leave to file an amended complaint. *See Thomas v. Eby*, 481 F.3d 434, 437 (6th Cir. 2007). *See also* Doc. #35 at 3 ("What Plaintiff is apparently attempting is to amend to add new parties, i.e., UAW Local 140 and UAW Local 1700.").

In its response to Roseman's motion, UAW suggested that Roseman should simply file an amended complaint, asserting (incorrectly, as UAW now recognizes) that Roseman did not need leave of court to do so. (Docs. #35 at 3-4; #46 at 11 n.1). Roseman took the UAW up on its suggestion, and, on December 16, 2018, without

moving for or obtaining leave of court, he filed a second amended complaint which included claims against FCA, UAW, and two local unions with which Roseman was allegedly affiliated, UAW Local 140 and UAW Local 1700 (the "Local Unions"). (Doc. #40) (the "Second Amended Complaint").

On January 4, 2019, UAW filed a motion to strike Roseman's Second Amended Complaint, arguing that he improperly filed it without obtaining leave of court. (Doc. #46). On January 8, 2019, the Local Unions filed a motion to dismiss the Second Amended Complaint, arguing that Roseman did not obtain leave of court to file it, and that they were not properly served with that pleading. (Doc. #48).

On January 22 and 24, 2019, the Court held informal telephone conferences with Roseman and counsel to the Defendants to discuss the above-referenced motions, including ways in which they could be resolved expeditiously, while allowing this action to proceed in an efficient manner.[1] It was agreed that the Court would treat Roseman's Motion for Joinder of Additional Defendants **(Doc. #30)** as a motion for leave to file a second amended complaint, and accept Roseman's subsequently-filed Second Amended Complaint **(Doc. #40)** as the operative complaint in this case, provided that all Defendants would have until March 25, 2019, to answer or otherwise respond to the Second Amended Complaint.

[1] The undersigned was previously referred all pretrial matters pursuant to 28 U.S.C. § 636(b). (Doc. #12).

Accordingly, on today's date the Court has issued a separate order: (1) construing Roseman's Motion for Joinder of Additional Defendants **(Doc. #30)** as a motion for leave to file his Second Amended Complaint **(Doc. #40)**; (2) accepting the Second Amended Complaint **(Doc. #40)** as the operative complaint in this case; (3) allowing Defendants until March 25, 2019, to answer or otherwise respond to the Second Amended Complaint; and (4) denying as moot Defendant UAW's Motion to Strike Amended Complaint **(Doc. #46)**. (Doc. #53).

In light of those rulings, the Court **RECOMMENDS** that the following motions be **DENIED AS MOOT WITHOUT PREJUDICE:** Defendant UAW's Motion to Dismiss **(Doc. #25)**; Roseman's Motion for Partial Summary Judgment **(Doc. #26)**[2]; Defendant FCA's Motion for Partial Summary Judgment **(Doc. #36)**[3];

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[2] Although Roseman's motion for partial summary judgment should be denied as moot because it pertains to a complaint that has been superseded, the Court notes that his motion fundamentally fails to show his entitlement to summary judgment on the claims in question – intentional infliction of emotional distress ("IIED") and "vicarious liability" against FCA. As this Court previously explained in its Report and Recommendation on Roseman's motion for temporary restraining order (Doc. #31 at 12-13), to prevail on his IIED claim, Roseman must prove: (1) extreme or outrageous conduct, (2) intent or recklessness, (3) causation, and (4) severe emotional distress. *Hayley v. Allstate Ins. Co.*, 262 Mich. App. 571, 577 (2004). This Court analyzed the very evidence on which Roseman's motion for partial summary judgment rests, and found that it fell far short of showing "extreme or outrageous conduct." (Doc. #31 at 13). Because the Court found that Roseman's IIED claim was unlikely to succeed on the merits (*id.*), it follows that he is not entitled to summary judgment on that claim at this early stage of the litigation. *Arnett v. Myers*, 281 F.3d 552, 561 (6th Cir. 2002); *Calderone v. U.S.*, 799 F.2d 254, 259 (6th Cir. 1986). Moreover, "vicarious liability" is merely "a means to impose [] liability on an employer for the acts of an employee, not a standalone cause of action." *Wright v. N. Am. Terrazo*, No. C12-2065JLR, 2013 WL 441517, at *2 (W.D. Wash. Feb. 5, 2013) (citing Restatement (Third) of Agency § 2.04). Thus, Roseman is not entitled to summary judgment as to that "claim."

[3] Because FCA's motion for partial summary judgment was filed prior to the filing of Roseman's Second Amended Complaint, even if that motion addresses verbatim allegations contained in a

and Defendants UAW Local 140 and UAW Local 1700's Motion to Dismiss **(Doc. #48)**.

Dated: January 29, 2019
Ann Arbor, Michigan

s/David R. Grand
DAVID R. GRAND
United States Magistrate Judge

NOTICE TO THE PARTIES REGARDING OBJECTIONS

The parties' attention is drawn to Fed. R. Civ. P. 72(a), which provides a period of fourteen (14) days from the date of receipt of a copy of this Report and Recommendation within which to file objections for consideration by the district judge under 28 U.S.C. § 636(b)(1).

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on January 29, 2019.

s/Eddrey O. Butts
EDDREY O. BUTTS
Case Manager

prior complaint, the Court finds that it must, at a minimum, be re-filed and addressed specifically to the Second Amended Complaint. FCA remains free to file any motion in response to the Second Amended Complaint that it deems appropriate.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

John L. Roseman [E-Filer], Sr,

Plaintiff(s),

v.

Case No. 2:18-cv-13042-DML-DRG
Hon. David M. Lawson

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), et al.,

Defendant(s),

NOTICE OF DETERMINATION OF MOTION WITHOUT ORAL ARGUMENT

The following motion(s) have been filed:

Motion to Dismiss - #25
Motion for Partial Summary Judgment - #26
Motion - #30

Pursuant to Eastern District of Michigan LR 7.1(f)(2), the motion(s) will be determined by Magistrate Judge David R. Grand ***without*** oral argument.

Certificate of Service

I hereby certify that this Notice was electronically filed, and the parties and/or counsel of record were served.

By: s/E. Butts
Case Manager

Dated: December 3, 2018

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN ROSEMAN,

Plaintiff,

v.

Civil Action No. 18-cv-13042
Honorable David M. Lawson
Magistrate Judge David R. Grand

INTERNATIONAL UNION,
UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA
(UAW), FCA US LLC,

Defendants.
_____/

REPORT AND RECOMMENDATION TO DENY PLAINTIFF'S MOTION FOR EMERGENCY INJUNCTIVE RELIEF AND TEMPORARY RESTRAINING ORDER [15]

This employment case is brought by *pro se* Plaintiff John Roseman ("Roseman") against his employer, Defendant FCA US LLC ("FCA"), and his union, Defendant International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW"). Roseman filed his complaint on September 28, 2018, and filed an amended complaint on October 15, 2018. (Docs. #1, #9). He brings forth multiple employment-related claims against Defendants, including violations of the Age Discrimination in Employment Act of 1967, the Civil Rights Act of 1964, and intentional infliction of emotional distress, among others. (Doc. #9). Presently before the Court for a Report and

Recommendation[1] is Roseman's Motion for Emergency Injunctive Relief and Temporary Restraining Order ("TRO Motion"), which he filed on November 2, 2018. (Doc. #15). FCA filed a response on November 5, 2018, and Roseman filed a reply on November 7, 2018. (Docs. #19, #20). The Court held oral argument on this matter on November 13, 2018. For the reasons discussed below, Roseman's TRO Motion should be denied.

I. REPORT

a. Background

Roseman is a twenty-year employee of FCA, and is currently assigned to its Sterling Heights Assembly Plant location. Starting on July 26, 2018, he went on paid leave from FCA, having stopped work on that date as a result of an incident with a co-worker named Dominick Amond ("Amond"). More specifically, Roseman alleges that Amond harassed him by making various remarks about him, sending various text messages to other work colleagues about Roseman, and by interfering with Roseman's ability to perform his work functions.[2] For instance, Roseman

[1] On October 18, 2018, this case was referred to the undersigned for management, hearing, and determination of all pretrial matters pursuant to 28 U.S.C. § 636(b)(1)(A), and for any reports and recommendations on dispositive matters that may be necessary pursuant to 28 U.S.C. § 636(b)(1)(B). (Doc. #12).

[2] Although Roseman alleges, for example, that Amond's conduct "interfered with his ability to do his work" (Doc. #9 at 22), at the hearing, Roseman admitted that his supervisors have not complained about his work.

complains that "Amond once told Plaintiff, your pay rate is higher than mine and 'I have a serious problem with that.'" (Doc. #9 at 4, ¶ 9). The following are a few examples of Amond's allegedly "threatening" text messages: "Stay woke everyone john [Roseman, presumably] the reason we all having a meeting and finna [sic] get watched masking. By Jana."; "Remember every be on time y'all kno [sic] who made it hot up there so stay woke." (Doc. #9 at 80, 82). Roseman complained about Amond to an FCA superior, Jana Hall, and while she did initially express some concern for Roseman, ultimately, she indicated that FCA investigated the dispute and determined that Amond's conduct was not "aggressive" and did not warrant further action. (Doc. #15 at 8-9). Roseman contends that the dispute between he and Amond caused him to suffer so much stress that he had to stop working.

On October 22, 2018, Sedgwick, the "third-party administrator" of FCA's Disability Evaluation Program ("DEP"), advised Roseman that he would be required to undergo an independent medical examination, performed by Neil Talon, M.D., to determine his fitness to work. (Doc. #15 at 25). Sedgwick advised that, pursuant to FCA's DEP, Dr. Talon's decision would be "final and binding." (*Id.*). Roseman underwent that examination on October 30, 2018, and Dr. Talon determined that he could return to work without restrictions. On November 1, 2018, Sedgwick wrote to Roseman, advised him of Dr. Talon's decision, and instructed him to report to his "local Human Resource/Employment office for an evaluation prior to [his] next

scheduled shift." (Doc. #23 at 3). Roseman was also advised that if he failed to report as instructed, "[his] eligibility for HealthCare will cease the first of the month following the month of the date of this exam." (*Id.*).

Roseman disputes the validity of Dr. Talon's determination, and asserts that Dr. Talon was rude to him and refused to review records that Roseman brought with him to the IME, and had "no intentions on rendering an objective, ethical, or 'appropriate' decision." (Doc. #20 at 2, 15). In his TRO Motion, Roseman asserts that it would subject him to "imminent danger of physical, mental and medical problems" if he were required to return – as FCA has instructed – to the allegedly "hostile work environment" that awaits him at his FCA duty location. (Doc. #15 at ¶¶ 9-10, 16).[3] Roseman asks the Court to enter an order requiring FCA and its agents and employees to (1) "immediately cease harassment of [him] and interference with his prescribed medical treatment"; (2) "immediately cease it's [sic] outrageous, perfunctory, and unusually negligent behavior in trying to induce [him] to return to

[3] At the hearing, Roseman noted that his complaints against FCA relate not only to the situation with Amond, but how FCA has allegedly allowed a hostile work environment to exist over the years. While it is true that Roseman's amended complaint includes allegations of workplace disputes (which he characterizes as "harassment") dating back years (*see, e.g.*, Doc. #9 at 60-69), the crux of his amended complaint, and certainly of his claimed need for immediate injunctive relief, relates to his recent dispute with Amond. (*See, e.g., id.* at 3-10, ¶¶ 7-24, 28-30). In the days leading up to the hearing in this matter, FCA offered for Roseman to return to his duty station with Amond being transferred elsewhere so the two would no longer work together. Roseman declined that offer.

a hostile work environment"; and (3) "discontinue threatening to discharge [him] for not returning to a hostile work environment cultivated by Defendants FCA [] and UAW." (Doc. #15 at ¶¶ 14-16).

In its response brief, FCA characterizes Roseman's TRO Motion as an attempt to "extend his workers' compensation leave when FCA[]'s third-party administrator, Sedgwick, has concluded that Roseman should return to work after an independent medical examination." (Doc. #19 at 7). In his reply brief, Roseman disputes FCA's assertion that he is on a "workers' compensation leave." (Doc. #20 at 2). Indeed, Roseman seems to blame FCA for the fact that he is not on a workers' compensation leave, asserting, "Plaintiff is not on a workers' compensation leave because Defendant FCA Disputed Plaintiff's claim with the Michigan Department of Licensing and Regulatory Affairs Workers' Compensation Agency, asserting that 'injury not work related' . . ." (*Id.*).[4] Attached to Roseman's reply is a letter dated November 6, 2018, from his own doctor, Rima Abbas, M.D., in which she writes that she saw Roseman that day, and that "It is not recommended that he returns to

[4] At oral argument, it was clarified that Roseman initially was on a worker's compensation leave, but that presently he is on a "sickness and accident leave." Regardless, there is no dispute that Roseman has been on paid leave virtually the entire time since he stopped working on July 26, 2018. Moreover, Roseman remains an employee of FCA, though, at this point, if he fails to report as directed, he risks being issued a "five-day" letter, giving him five days to return to work after which time FCA could terminate his employment.

the facility where he was working, which caused his current Mental health issues to develop." (*Id.* at 17).

b. Legal Standards

"Temporary restraining orders and preliminary injunctions are extraordinary remedies designed to preserve the relative positions of the parties until further proceedings on the merits can be held." *Koetje v. Norton*, 2013 WL 8475802, at *2 (E.D. Mich. Oct. 23, 2013). Whether to grant such relief is a matter within the discretion of the district court. *See Certified Restoration Dry Cleaning Network, L.L.C. v. Tenke Corp.*, 511 F.3d 535, 540 (6th Cir. 2007). The movant bears a substantial burden of demonstrating entitlement to preliminary injunctive relief. *See Leary v. Daeschner*, 228 F.3d 729, 739 (6th Cir. 2000). Such relief should be granted only if "the movant carries his or her burden of proving that the circumstances clearly demand it." *Overstreet v. Lexington-Fayette Urban County Gov't*, 305 F.3d 566, 573 (6th Cir. 2002).

The same factors are considered in determining whether to grant a request for a temporary restraining order ("TRO") or a preliminary injunction. *See Ohio Republican Party v. Brunner*, 543 F.3d 357, 361 (6th Cir. 2008). Those factors are: (1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant will suffer irreparable harm without the injunction; (3) whether issuance of the injunction will cause substantial harm to others; and (4) whether the public

interest is served by issuance of the injunction. *See Overstreet, supra* at 573.

c. Analysis

i. Roseman Failed to Show He Will Suffer Irreparable Injury Absent the Requested Injunction

An analysis of the above-mentioned factors shows that Roseman is not entitled to a temporary restraining order, or emergency injunctive relief. Most significantly, Roseman fails to show that he will suffer any irreparable harm if his TRO Motion is denied. "[T]he moving party must show that irreparable harm is 'both certain and immediate, rather than speculative or theoretical.'" *Contech Casting, LLC v. ZF Steering Sys., LLC*, 931 F. Supp. 2d 809, 818 (E.D. Mich. 2013) (citing *Mich. Coal. of Radioactive Material Users, Inc. v. Griepentrog,* 945 F.2d 150, 154 (6th Cir. 1991)). Roseman has failed to meet this high standard, as he has not explained what specific harm he faces if he were to return to work as requested by FCA, and why any alleged harm is both certain and immediate.

In his TRO Motion, Roseman alleges that he "fears for his personal safety due to a hostile work environment and is in imminent danger of physical, mental, and medical problems." (Doc. #15 at 3). However, these allegations fail to satisfy Roseman's heavy burden because he does not explain in any detail what specific "imminent" physical, mental, or medical harm will befall him without emergency relief. First, in neither Roseman's TRO Motion nor his amended complaint does he identify any specific physical danger he faces, let alone any facts providing a basis

for that belief. Roseman argues that certain of his conversations with, and text messages from, Amond show the harm and harassment he may face. But, a review of the allegations and text messages does not support Roseman's subjective view.[5] Most of the allegations Roseman levels at Amond can be described as Amond simply making remarks critical of Roseman. For example, Roseman alleges that "Amond once told [him], your pay rate is higher than mine and 'I seriously have a problem with that.'" (Doc. #9 at 4, ¶ 9). Roseman also alleges that Amond texted other workers: "Stay woke everyone john [Roseman, presumably] the reason we all having a meeting and finna [sic] get watched masking . . ." and "Remember every be on time y'all kno [sic] who made it hot up there so stay woke." (Doc. #9 at 80, 82). While these allegations reflect a dispute between Amond and Roseman, or even perhaps Amond's dislike of Roseman or his work style, the messages do not threaten any violence against Roseman.

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[5] At the hearing, Roseman argued that his subjective view (*i.e.*, that he honestly feels threatened) should be sufficient to establish irreparable harm. That argument lacks merit as it would turn the high standard for securing a temporary restraining order on its head, and require one to issue any time a plaintiff simply claimed to feel "threatened." As discussed above, Roseman was required to make a strong showing "that irreparable harm is 'both certain and immediate, rather than speculative or theoretical.'" *Contech*, 931 F. Supp. 2d at 818). *See also Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 675–76 (9th Cir. 1988) ("Subjective apprehensions and unsupported predictions of revenue loss are not sufficient to satisfy a plaintiff's burden of demonstrating an immediate threat of irreparable harm."); *Enyart v. Ohio Dep't of Rehab. & Correction*, No. 2:16-CV-00161, 2016 WL 5266476, at *3 (S.D. Ohio Sept. 22, 2016) (upholding denial of TRO motion where "Plaintiff failed to offer any *objective evidence* of a specific threat to his safety . . .") (emphasis added).

Roseman does allege that in February 2018, there was a "well publicized arrangement [for Amond] to fight a co-worker," and that at some prior point in time, Roseman witnessed Amond "repeatedly make offers to another co-worker, Jacques Burrell, to put a 'hit' out on [another individual] . . ." (Doc. #9 at 4, ¶ 9; *id.* at 30-31, ¶ 48). While the second allegation, in particular, is alarming, neither one changes the analysis here. As to the first, Roseman does not allege that a fight ever took place, and it was to have been between Amond and another individual, at any rate. As to the second, far more serious allegation, Roseman admits that, despite having voiced numerous less significant concerns about Amond to FCA, he never raised this issue. (Doc. #9 at 30-31, ¶ 48) ("Plaintiff could have advised FCA . . ."). Moreover, he offers no corroborating proof of Amond's alleged statement. Finally, as noted above, *supra* at 4 n.3, FCA has offered to remove Amond from Roseman's duty station, yet Roseman still refuses to return to work.

The Court recognizes that on November 6, 2018, Roseman saw his treating physician, Dr. Rima A. Abbas, M.D., who provided a letter stating, "This is to certify that John L. Roseman was seen in my clinic on 11/6/2018. It is not recommended that he returns to the facility where he was working, which caused his current Mental health issues to develop." (Doc. #20 at 17). Yet this is only a recommendation, and Dr. Abbas provides no details whatsoever as to its basis, duration, or whether it is absolute or subject to change if circumstances at Roseman's duty station changed,

such as FCA's transferring of Amond elsewhere. Accordingly, Dr. Abbas' recent letter does not establish that Roseman will face irreparable injury if he were to return to his duty station.[6]

Further, "of critical importance, the irreparable harm requirement contemplates the inadequacy of alternate remedies available to the plaintiff." *Contech*, 931 F. Supp. 2d at 818 (internal citations omitted). Roseman neglects to mention any attempt to utilize alternate remedies to address these workplace issues, or why they would be inadequate. As FCA persuasively argues, alternative remedies are already in place, as it "has policies and procedures to address those threats and protect [Roseman]." (Doc. #19 at 27).[7] And, if Roseman chooses not to avail

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[6] The few other medical records attached to Roseman's complaint similarly do not show that he would face imminent, irreparable medical harm if he were to return to work. (Doc. #9-1). The first letter, dated July 30, 2018, and signed by "Jamie L Fineran, NP" states merely, "[Roseman] was seen in the office today. He was diagnosed with anxiety." (*Id.* at 2). But, the mere diagnosis of a medical condition says nothing about any particular restrictions on Roseman's activities, employment or otherwise. The second letter, dated September 14, 2018, and signed by Dr. Abbas merely states, "[] Roseman was seen in my clinic. He needs to be off until 10/5/18 or until further notice." (*Id.* at 4). The third letter, dated August 3, 2018, and signed by "Jamie L Fineran, NP," states, "It is my medical opinion that John Roseman will be unable to return to work due acute anxiety caused by a hostile work environment." (*Id.* at 5). But Fineran is a nurse practitioner who is subordinate to Dr. Abbas at Beaumont, and Fineran's now three-month-old note contains no details whatsoever as to the cause of Roseman's "acute anxiety" or his need for an indefinite work restriction.

[7] While Roseman may dispute the efficacy of these procedures, he cannot deny their availability to him. Indeed, his filings contain numerous references to his making "EthicsPoint" and other informal complaints and grievances about work-related

himself of those procedures and prevails on his claims, he can be made whole through monetary damages. This, too, weighs heavily against his claim of irreparable harm. *See Contech*, 931 F. Supp. 2d at 817 ("The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm."); *Overstreet*, 305 F.3d at 573 (finding that if money damages can compensate a plaintiff's harm, then the harm is not irreparable and a preliminary injunction is not warranted).

In sum, Roseman failed to show that returning to work in the same setting as Amond would subject him to physical danger or other injury. *Capital for Merchants, L.L.C. v. Wealth Creating Investments*, No. 16-13610, 2016 WL 9280075, at *2 (E.D. Mich. Oct. 13, 2016) (denying motion for temporary injunctive relief where plaintiff's "claims of irreparable harm are [] too conclusory to grant any type of injunctive relief"); *Kensu v. Rapelje*, No. 12-11877, 2014 WL 1028948, at *4 (E.D. Mich. Mar. 14, 2014) ("This Court cannot grant a preliminary injunction based on conclusory statements alone and needs evidence" that the plaintiff will suffer irreparable harm absent an injunction). Moreover, if this were truly Roseman's concern, FCA gave him the opportunity to remedy it by offering to transfer Amond

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issues, and them being considered and investigated by FCA. (*See e.g.*, Doc. #15 at 8-9, 17-23).

to a different duty station. Indeed, given the nature of Roseman's TRO Motion, it is not clear what other concrete action he would want FCA to take. Finally, if Roseman does not return to work and prevails on his claims (an outcome which seems unlikely for the reasons discussed below), his losses could be adequately compensated with money damages. Because Roseman cannot show that he will suffer irreparable injury in the absence of the requested TRO, his TRO Motion should be denied.

ii. Roseman Failed to Show a Strong Likelihood of Success on the Merits of His Claims

Because Roseman cannot show irreparable injury in the absence of the requested temporary restraining order, the Court need not delve too deeply into the merits of his claims. However, even a cursory review of Roseman's allegations suggests that his likelihood of success on the merits is weak. For instance, whereas Roseman stakes his intentional infliction of emotional distress ("IIED") claim on the conversations and text messages described above, the law seems clear that much more is required. Under Michigan law, the elements of a claim for IIED are (1) extreme or outrageous conduct, (2) intent or recklessness, (3) causation, and (4) severe emotional distress. *Hayley v. Allstate Ins. Co.*, 262 Mich. App. 571, 577 (2004). In order to sustain a claim of IIED, a plaintiff must complain of conduct that meets a particularly high standard:

> It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized

> by "malice," or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous."

Ross v. Burns, 612 F.2d 271, 273 (6th Cir. 1980). Importantly, "[i]nsults, indignities, threats, annoyances, or petty oppressions are insufficient as a matter of law to be considered extreme and outrageous conduct." *Graham v. Ford*, 237 Mich. App. 670, 675. Courts have found that conduct far more severe than that complained about by Roseman did not support an IIED claim. For example, in *Hilden v. Hurley Med. Ctr.*, 831 F. Supp. 2d 1024, 1047 (E.D. Mich. 2011), aff'd, 504 F. App'x 408 (6th Cir. 2012), the court dismissed an IIED claim brought against an employer who allegedly chased an employee through the halls of a hospital while shouting and yelling. *Id.* In *Meek v. Michigan Bell Tel. Co.*, 193 Mich. App. 340, 342-343 (1991), the court dismissed an IIED claim arising from workplace bullying that allegedly involved extensive sexual and religious harassment, in addition to persistent threats of discipline, insults about the quality of the plaintiff's work, and slurs relating to her physical stature. Because Roseman has not alleged conduct which reasonably

can be characterized as "extreme and outrageous" under the law, his IIED claim seems likely to fail on the merits.[8]

Roseman's discrimination claims seem to face an equally uphill battle. Because Roseman proffers no direct evidence of discrimination, he must prove each element of his *prima facie* case for discrimination claims pursuant to Title VII and the Age Discrimination in Employment Act as follows: (1) he is a member of a protected group; (2) he was subjected to an adverse employment action; (3) he was qualified for the position; and (4) circumstances giving rise to an inference of discrimination (*i.e.*, he was replaced by a person outside the protected class or similarly situated employees outside the protected category were treated more

[8] For essentially the same reasons, Roseman has not shown a strong likelihood of success on the merits of his claims for hostile work environment or negligent retention of Amond. As to the former claim, while it is unclear whether Roseman ties his claim to race, gender, age, or some other protected class discrimination, he must show, in any case, unwelcome conduct that was "sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment." *See e.g.*, *Williams v. CSX Trans. Co.*, 643 F.3d 502, 511 (6th Cir.2011). Factors to consider include "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993). Similarly, to succeed on a negligent retention claim, Roseman must show that he suffered actual or threatened harm as a result of an intentional tort that FCA knew or should have known was likely to occur. *Brown v. Brown*, 478 Mich. 545, 555-57 (2007). While Roseman's interactions with Amond perhaps suggest a strained work relationship between the two, Roseman admits that he has been able to do his work to his supervisors' satisfaction, and he does not allege that Amond ever threatened to, or did, assault him. In short, Roseman's allegations simply do not appear to rise to the level required for him to succeed on these claims.

favorably). *Vincent v. Brewer Company*, 514 F.3d 489, 494 (6th Cir. 2007) (citing *Peltier v. United States*, 388 F.3d 984, 987 (6th Cir. 2004). Roseman seems unlikely to satisfy these requirements.

First, Roseman was still employed at FCA when he commenced this action (and indeed, remains employed there even today). It is therefore unclear what cognizable adverse employment action he has allegedly suffered. Second, Roseman seems unable to show an inference of discrimination by FCA. Although he alleges he is a member of various protected classes, such as his race (African American), sex (male), and age (40), in most all respects he fails to make allegations as to how others from different protected classes were treated differently than he was. The sole exception is with respect to his allegation that a female employee, Kyanne Gaddis, was treated differently than him because, after she complained about Amond allegedly threatening her, she was transferred "from 'B' shift to 'C' for her protection," whereas Roseman was required to continue working with Amond. (Doc. #9 at 6, ¶ 17). However, even as to this issue, Roseman offers only his own uncorroborated allegations, and fails to provide details from which the Court could conclude that he and Gaddis were similarly situated with respect to their experiences at FCA. Accordingly, he has not shown a strong likelihood of success on these claims.

Nor has Roseman shown a strong likelihood of success on his retaliation claim. It is unclear whether Roseman intends to base that claim on the "discipline" he received for posting flyers in the workplace that FCA deemed to be threatening because they apparently included a picture of himself holding a rifle (*see* Doc. #19 at 9), or if he is alleging retaliation due to his allegedly having reported racial discrimination (*see* Doc. #9 at 19, ¶ 82). Regardless, Roseman will be required to show that he suffered an adverse action that was motivated, at least in part, by his protected conduct. *Smith v. Campbell*, 250 F.3d 1032, 1037 (6th Cir. 2001); *Thaddeus–X v. Blatter*, 175 F.3d 378, 395–99 (6th Cir.1999) (*en banc*). However, in addition to not having suffered any adverse action, Roseman has presented no evidence (or even specific allegation) suggesting a causal connection between his protected activity and the alleged retaliation. Accordingly, he has not shown a strong likelihood of success on his retaliation claim.

Finally, Roseman has not shown a likelihood of success on his libel claim, which he appears to plead as a defamation claim. (Doc. #9 at 31-32). To succeed on such a claim, Roseman must prove: 1) a false and defamatory statement concerning him; 2) an unprivileged communication to a third party; 3) fault amounting to at least negligence on the part of the publisher; and 4) either actionability of the statement irrespective of special harm or the existence of special harm caused by publication. *Burden v. Elias Bros. Big Boy Restaurants*, 240

Mich.App. 723, 726 (2000). Roseman's claim relates to the written discipline he received in connection with the flyer he posted in the workplace which included a picture of him with a rifle. (Doc. #9 at 31, 42-58). However, Roseman has not shown that the discipline he received was unwarranted, or that anything written in the discipline record was untrue, defamatory, or negligently authored. Nor has Roseman shown that he suffered any injury as a result of the discipline. For all of these reasons, he has not shown a strong likelihood of success on this claim.

In sum, Roseman has not shown that he will suffer irreparable injury in the absence of the requested injunctive relief. Nor has he shown that he has a strong likelihood of success on the merits. This sufficiently establishes that Roseman is not entitled to the extreme injunctive relief he requests, and that his instant TRO Motion should be denied.[9]

II. RECOMMENDATION

For the foregoing reasons, **IT IS RECOMMENDED** that Roseman's Motion for Emergency Injunctive Relief and Temporary Restraining Order **(Doc. #15)** be **DENIED**.

Dated: November 16, 2018
Ann Arbor, Michigan

s/David R. Grand
DAVID R. GRAND
United States Magistrate Judge

[9] Accordingly, the Court declines to consider the other *Overstreet* factors discussed above.

NOTICE TO THE PARTIES REGARDING OBJECTIONS

Within 14 days after being served with a copy of this Report and Recommendation and Order, any party may serve and file specific written objections to the proposed findings and recommendations and the order set forth above. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2); E.D. Mich. LR 72.1(d)(1). Failure to timely file objections constitutes a waiver of any further right of appeal. *See Thomas v. Arn*, 474 U.S. 140, (1985); *United States v. Sullivan,* 431 F.3d 976, 984 (6th Cir. 2005). Only specific objections to this Report and Recommendation will be preserved for the Court's appellate review; raising some objections but not others will not preserve all objections a party may have. *See Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987); *see also Frontier Ins. Co. v. Blaty*, 454 F.3d 590, 596-97 (6th Cir. 2006). Copies of any objections must be served upon the Magistrate Judge. *See* E.D. Mich. LR 72.1(d)(2).

A party may respond to another party's objections within 14 days after being served with a copy. *See* Fed. R. Civ. P. 72(b)(2); 28 U.S.C. § 636(b)(1). Any such response should be concise, and should address specifically, and in the same order raised, each issue presented in the objections.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on November 16, 2018.

s/Eddrey O. Butts
EDDREY O. BUTTS
Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN L. ROSEMAN,

Plaintiff,

v.

Civil Action No. 18-cv-13042
Honorable David M. Lawson
Magistrate Judge David R. Grand

INTERNATIONAL UNION,
UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA
(UAW),
FCA US LLC,

Defendants.
_____/

ORDER REQUIRING RESPONSE

Before the Court is a Motion for Emergency Injunctive Relief and Temporary Restraining Order filed by *pro se* plaintiff John L. Roseman ("Roseman") on November 2, 2018. (Doc. #15). Roseman filed his complaint on September 28, 2018, and filed an amended complaint on October 15, 2018. (Docs. #1, #9). Roseman brings forth multiple employment-related claims against defendants, including violations of the Age Discrimination in Employment Act of 1967, the Civil Rights Act of 1964, and intentional infliction of emotional distress, among others. (Doc. # 9).

In his instant motion, Roseman requests the following emergency injunctive relief: "Require Defendant FCA US LLC, and it's [sic] agents, and or [sic] employees to immediately cease harassment of Plaintiff and interference with his prescribed medical treatment"; "That Defendant FCA US LLC will immediately cease it's [sic] outrageous, perfunctory, and unusually negligent behavior in trying to induce Plaintiff to return to a hostile work environment"; "Require Defendant FCA US LLC and its employees and/or agents to discontinue threatening to discharge Plaintiff for not returning to a hostile work environment cultivated by Defendants FCA US LLCand UAW." (Doc. #15 at 4).

Having reviewed Roseman's motion, **IT IS ORDERED** that by **close of business on Monday, November 5, 2018,** defendants shall file a response to Roseman's motion (Doc. #15).

IT IS SO ORDERED.

Dated: November 2, 2018
Ann Arbor, Michigan

s/David R. Grand
DAVID R. GRAND
United States Magistrate Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on November 2, 2018.

s/Eddrey O. Butts
EDDREY O. BUTTS
Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN L. ROSEMAN, SR.,

Plaintiff,

v.

Civil Case No: 18-13042
Honorable David M. Lawson
Magistrate Judge David R. Grand

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), and FCA US LLC,

Defendants.
_____/

ORDER OF REFERENCE TO MAGISTRATE JUDGE FOR GENERAL CASE MANAGEMENT

The Court has reviewed the file in this matter, including the papers filed by the plaintiff. The Court finds that the just, speedy and inexpensive determination of this action, *see* Fed. R. Civ. P. 1, would best be served by referring the matter to Magistrate Judge David R. Grand for general case management in accordance with the authority conferred in 28 U.S.C. § 636(b).

Accordingly, it is **ORDERED** that this case is referred to United States Magistrate Judge David R. Grand for the following purposes:

A. Hearing and determination of any pretrial matter, including, but not limited to:

i) the determination of *in forma pauperis* status, as appropriate;
ii) matters relating to the service of process,
iii) matters relating to the clarification of pleadings,
iv) matters related to the review of *in forma pauperis* cases provided for in 28 U.S.C. §1915(e)(2);
v) disputes concerning discovery, and
vi) other duties as designated in 28 U.S.C. § 636(b)(1)(A).

B. Organizing and implementing a discovery schedule, motion deadlines and any other case management procedures which in his judgment are needed, and

C. Submitting reports and recommendations as may be necessary and other duties as designated in 28 U.S.C. § 636(b)(1)(B).

It is further **ORDERED** that the Magistrate Judge shall inform the parties of their rights and options to consent to the Magistrate Judge conducting all proceedings, including trial, under 28 U.S.C. § 636(c). The Magistrate Judge shall inform the parties that they are free to withhold consent without adverse substantive consequences. *See* 28 U.S.C. § 636(c)(2).

It is further **ORDERED** that, in the event the parties withhold consent under 28 U.S.C. § 636(c), upon completion of all pretrial proceedings as set forth herein (including the issuance of a Report and Recommendation on dispositive motions, if any are filed), the Magistrate Judge shall certify in writing to the Court that the matter is ready for trial, if such is the case.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: October 18, 2018

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on October 18, 2018.

s/Susan Pinkowski
SUSAN PINKOWSKI

ACKNOWLEDGMENT & NOTICE OF HEARING

Department of Licensing and Regulatory Affairs

Workers' Compensation Agency

*JOHN L. ROSEMAN
24823 COBBLESTONE CT
FARMINGTON HILLS MI 48336

SSN: XXX-XX-7583 CASE: 1

* NOTICE TO EMPLOYEE: YOU ARE NOT REQUIRED TO BE PRESENT AT THESE PROCEEDINGS UNLESS YOU ARE CONTACTED BY YOUR ATTORNEY. IF YOU DO NOT HAVE AN ATTORNEY, YOU MUST ATTEND.

NOTICE TO EMPLOYER: PLEASE CONTACT YOUR INSURANCE CARRIER REGARDING YOUR PRESENCE AT THESE PROCEEDINGS. IF YOU ARE NOT INSURED, YOU MUST ATTEND.

FCA US LLC
1000 CHRYSLER DRIVE
CIMS 485-07-26
AUBURN HILLS MI 48326
DOI'S: 07/26/2018

SEDGWICK CLAIMS MANAGEMENT SERVICES, I
PO BOX 14574
LEXINGTON KY 40512

Notice is given that the attached application has been filed with our agency. Failure of either party to appear may result in agency action as provided by R792.1103. A party to this claim may request a mediation conference from the assigned magistrate at any time on or after the pre-trial date.

HEARING OFFICER: DAVID P. GRUNEWALD
HEARING SITE: CADILLAC PLACE
3026 WEST GRAND BOULEVARD
SUITE 3-700
DETROIT MI 48202
HEARING TYPE: PRETRIAL

DATE: 11/26/2018
TIME: 09:00 AM

If there are any questions regarding attendance at these proceedings, please contact the DETROIT office at (313) 456-3650.

Dated at Lansing, Michigan on this 22nd day of October, 2018

STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF TALENT AND ECONOMIC DEVELOPMENT
LANSING

STEPHANIE BECKHORN
ACTING DIRECTOR

CERTIFICATE OF RECORDS CUSTODIAN / PROOF OF SERVICE

Julia Mielke, the undersigned, after being sworn, states the following:
(name)

1. That I am a UIE 8 with the Michigan Unemployment Insurance Agency and, in such capacity, I am in possession of the business records for this organization.
(title)

2. To submit a hearing packet to this tribunal, I reviewed the original and/or electronic records and made a true and exact copy of each original and/or electronic record; I certify that the attached copies of the original and/or electronic record are true.

3. I certify that on 05-21-2019, the attached hearing packet was mailed to each interested party, and address, listed in the record at the time of mailing as indicated below:
(date)

John Roseman 24823 Cobblestone Ct Farmington Hills, MI 48336-1913

FCA US LLC PO Box 1180 Londonderry, NH 03053-1180

Sent electronically to MOAHR

Signature Julia Mielke Date: 05-20-2019

Sworn and signed on this 20 day of May, 2019.

Michigan Administrative Hearing System
P.O. Box 30695
Lansing, MI 48909-8195

Form 1850

LARA
LICENSING AND REGULATORY AFFAIRS
CUSTOMER DRIVEN. BUSINESS MINDED.

Docket No.: 19-004202
Case No.: 13785025
Employer: FCA US LLC
Claimant: JOHN ROSEMAN
SSN: XXX-XX-7583

JOHN ROSEMAN
24823 COBBLESTONE CT
FARMINGTON HILLS, MI 483361913

This is an important legal document. Please have someone translate the document.
هذه وثيقة قانونية مهمة. يرجى أن يترجم هذه شخص ما يترجم لك.
এটি একটি গুরুত্বপূর্ণ আইনি দস্তাবেজ। দয়া করে কেউ দস্তাবেজ অনুবাদ করুন।
Este es un documento legal importante. Por favor, que alguien traduzca el documento.
这是一份重要的法律文件。请让别人翻译文件。
Ky është një dokument ligjor i rëndësishëm. Ju lutem, kini dikë të përkthejë dokumentin.

ORDER

The Agency's March 1, 2019 Adjudication is modified.

The Claimant is not disqualified from receiving benefits pursuant to Section 29(1)(a) of the Michigan Employment Security Act (Act).

The Claimant is not disqualified from receiving benefits pursuant to Action 29(1)(b) of the Act.

The Claimant is entitled to benefits for each claimed week following the filing for benefits, if otherwise eligible and qualified.

Decision Date: April 4, 2019

NANCY L. BONDAR
ADMINISTRATIVE LAW JUDGE

PARTICIPANTS

		04-02-19					
		Sworn		Sworn		Sworn	
Claimant	JOHN ROSEMAN	X	X				
Representative							
Witness							
Witness							
Witness							
Witness							
Employer	FCA US LLC						
Representative	ELLEN WOLFF	X					
Witness	AARON KOPITZ	X	X				
Witness							
Witness							
Witness							
Witness							
Witness							

EXHIBITS

NO	SUBMITTED BY UIA	E	C	DOCUMENT DATED	FORM NO	DOCUMENT DESCRIPTION

JURISDICTION

On March 01, 2019, the Claimant timely appealed a March 01, 2019 Unemployment Insurance Agency (Agency) Adjudication which held the Claimant disqualified for benefits under Section 29(1)(a) of the Michigan Employment Security Act (Act).

ISSUE

Is the Claimant disqualified for voluntarily leaving work pursuant to Section 29(1)(a) of the Act? Is the Claimant disqualified for unemployment benefits because of a discharge for misconduct connected with work, pursuant to Section 29(1)(b) of the Act?

APPLICABLE LAW

MCL 421.29 provides:

Sec. 29. (1) Except as provided in subsection (5), an individual is disqualified from receiving benefits if he or she:

> (a) Left work voluntarily without good cause attributable to the employer or employing unit. An individual who left work is presumed to have left work voluntarily without good cause attributable to the employer or employing unit. An individual who is absent from work for a period of 3 consecutive work days or more without contacting the employer in a manner acceptable to the employer and of which the individual was informed at the time of hire shall be considered to have voluntarily left work without good cause attributable to the employer. An individual who becomes unemployed as a result of negligently losing a requirement for the job of which he or she was informed at the time of hire shall be considered to have voluntarily left work without good cause attributable to the employer. An individual claiming benefits under this act has the burden of proof to establish that he or she left work involuntarily or for good cause that was attributable to the employer or employing unit. An individual claiming to have left work involuntarily for medical reasons must have done all of the following before the leaving: secured a statement from a medical professional that continuing in the individual's current job would be harmful to the individual's physical or mental health; unsuccessfully attempted to secure alternative work with the employer; and unsuccessfully attempted to be placed on a leave of absence with the employer to last until the individual's mental or physical health would no longer be harmed by the current job. However, if any of the following conditions is met, the leaving does not disqualify the individual:
>
> > (i) The individual has an established benefit year in effect and during that benefit year leaves unsuitable work within 60 days after the beginning of that work. Benefits paid after a leaving under this subparagraph shall not be charged to the experience account of the employer the individual left but shall be charged instead to the nonchargeable benefits account.

(ii) The individual is the spouse of a full-time member of the United States armed forces, and the leaving is due to the military duty reassignment of that member of the United States armed forces to a different geographic location. Benefits paid after a leaving under this subparagraph shall not be charged to the experience account of the employer the individual left but shall be charged instead to the nonchargeable benefits account.

(iii) The individual is concurrently working part-time for an employer or employing unit and for another employer or employing unit and voluntarily leaves the part-time work while continuing work with the other employer. The portion of the benefits paid in accordance with this subparagraph that would otherwise be charged to the experience account of the part-time employer that the individual left shall not be charged to the account of that employer but shall be charged instead to the nonchargeable benefits account.

The burden of establishing that the leaving was involuntary or was voluntary, but with good cause attributable to the employer, is on the claimant. *Carswell v Share House, Inc*, 151 Mich App 392, 397 (1986); *Cooper v University of Michigan*, 100 Mich App 99, 103 (1980).

The term "'voluntary' connotes a choice between alternatives which ordinary persons would find reasonable." *Clarke v North Detroit General Hospital*, 179 Mich App 511, 515-16 (1989) *aff'd* 437 Mich 280 (1991). A voluntary action is an "unrestrained, volitional, freely chosen, or willful action on the part of the claimant." *Id.* at 516.

The standard used in determining whether a leaving is with good cause attributable to the Employer is that of a reasonable individual.

> Under that standard, 'Good cause' compelling an employee to terminate his or her employment should be found where the employer's actions would cause a reasonable, average, or otherwise qualified worker to give up his or her employment. *Carswell, supra*, 396-97.

"[A] good personal reason does not equate with good cause under the statute." *Leeseberg v Smith-Jamieson Nursing, Inc.*, 149 Mich App 463, 466 (1986) *citing Saginaw v Lindquist*, 139 Mich App 515, 523 (1984).

Section 29 of the Act provides:

> (1) Except as provided in subsection (5), an individual is disqualified from receiving benefits if he or she:
>
> > (b) Was suspended or discharged for misconduct connected with the individual's work or for intoxication while at work.

"Misconduct" is not defined in the statute, but Courts have defined the term. In *Carter v Michigan Employment Security Commission*, 364 Mich 538 (1961), the Supreme Court adopted the definition of misconduct in *Boynton Cab Company v Neubeck*, 296 NW 636, 640 (Wis 1941) which states as follows:

> The term 'misconduct'... is limited to conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer. On the other hand, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good-faith errors in judgment or discretion are not to be deemed 'misconduct' within the meaning of the statute. *Carter, supra,* at 541.

The employer has the burden of demonstrating misconduct by a preponderance of the evidence. *Fresta v Miller*, 7 Mich App 58, 63-64 (1967). However, once the employer submits evidence of a number of absences which, if unsupported by sufficient reasons, are so excessive as to constitute misconduct within the meaning of Section 29(1)(b), then the burden shifts to the claimant to provide a legitimate explanation for the absences. *Veterans Thrift Stores, Inc. v Krause*, 146 Mich App 366, 368 (1985). As a matter of law, absences resulting from events beyond the employee's control or which are otherwise with good cause cannot be considered conduct in willful or wanton disregard of the employer's interest. *Washington v Amway Grand Plaza*, 135 Mich App 652, 658 (1984) *citing Carter, supra.*

FINDINGS OF FACT

The Claimant was discharged from employment by letter. He did not quit his job. Prior to discharge he was on approved leave. The Employer sent him a letter dated November 14, 2018 instructing him to appear at an employment office at a plant by November 21, 2018.

REASONING AND CONCLUSIONS OF LAW

The Employer did not demonstrate a number of absences from work, without sufficient reasons, that were so excessive as to constitute misconduct within the meaning of the Act. The Claimant was on approved leave until a return to work date to be established by a physician's report. No documents were admitted into evidence. The burden of proof never shifted to the Claimant to provide a legitimate explanation for any absences from work. The Claimant is not disqualified. The Employer did not carry its burden of proof.

IMPORTANT: TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME

This Order will become final unless an interested party takes ONE of the following actions: (1) files a written, signed, request for rehearing/reopening to the Administrative Law Judge, or by an office or agent office of the agency OR (2) files a written, signed, appeal to the Michigan Compensation Appellate Commission at P.O. Box 30475, Lansing, MI 48909-7975 (Facsimile: 517-241-7326); OR (3) files a direct appeal, upon stipulation, to the Circuit Court on or before:

May 6, 2019

I, C. Casale, certify a copy of this order has been sent on the day it was signed, to each of the parties at their respective addresses on record.

(SEE ATTACHED SHEET)

English

IMPORTANT! This document(s) contains important information about your unemployment compensation rights, responsibilities and/or benefits. It is critical that you understand the information in this document.

IMMEDIATELY: If needed, call 1-866-500-0017 for assistance in the translation and understanding of the information in the document(s) you have received.

Arabic

[illegible]

Bengali

"গুরুত্বপূর্ণ! এই ডকুমেন্টে আপনার বেকার ভাতা অধিকার, দায়িত্ব এবং/অথবা সুবিধাদি সম্পর্কে গুরুত্বপূর্ণ তথ্য রয়েছে। এটা গুরুত্বপূর্ণ যে, এই ডকুমেন্টে থাকা তথ্যগুলি আপনি ভালো করে বুঝে নেবেন।
অবিলম্বে: আপনি যে ডকুমেন্ট(গুলি) পেয়েছেন এতে থাকা তথ্যগুলি বুঝা এবং অনুবাদকল্পে কোন সাহায্য পেতে 1-866-500-0017 নম্বরে ফোন করুন।"

Spanish

¡IMPORTANTE! Esta documento(s) contiene información importante sobre sus derechos, obligaciones y/o beneficios de compensación por desempleo. Es muy importante que usted entienda la información contenida en este documento.

INMEDIATAMENTE: Si necesita asistencia para traducir y entender la información contenida en el documento(s) que recibió, llame al 1-866-500-0017.

Mandarin

[illegible]

Albanian

1. "E RËNDËSISHME! Ky dokument (dokumente) përmban informacion të rëndësishëm mbi të drejtat, përgjegjësitë dhe/ose përfitimet tuaja nga kompensimi i papunësisë. Është shumë e rëndësishme që ta kuptoni informacionin në këtë dokument.
2. MENJËHERË: Nëse është e nevojshme, telefononi në numrin 1-866-500-0017 për t'ju ndihmuar me përkthimin dhe kuptimin e informacionit të dokumentës (dokumenteve) që keni marrë."

UIA 1302
(Rev. 05-18)
Gretchen Whitmer
GOVERNOR

State of Michigan
DEPARTMENT OF TALENT AND ECONOMIC DEVELOPMENT
Unemployment Insurance

Authorized By
MCL 421.1 et seq.
Stephanie Beckhorn
Acting Director

Sent via Go Green

JOHN ROSEMAN
24823 COBBLESTONE CT
FARMINGTON HILLS MI 48336-1913

Mail Date: March 1, 2019
Letter ID: L0051710228
CLM: C5296175-0
Name: JOHN ROSEMAN

Notice of Redetermination

Case Number:	0-013-785-025	BYB:	January 21, 2018
Claimant:	JOHN ROSEMAN	SSN:	###-##-7583
Involved Employer:	FCA US LLC	EAN:	1592130-000
Issue:	Voluntary Quit	Section of the Act:	29(1)(a)

Issues and Sections of Michigan Employment Security (MES) Act involved: Voluntary Quit and 29(1)(a).

You protested a determination issued on February 15, 2019 regarding Medical Reasons holding you disqualified for benefits. You quit your job with FCA US LLC on November 21, 2018 for medical reasons.

No new or additional evidence has been provided to warrant a reversal in the prior determination. Therefore, the previous determination is affirmed. You failed to provide medical documentation to establish that your doctor advised you to leave. Your leaving was without good cause attributable to your employer.

You are disqualified for benefits under MES Act, Sec. 29(1)(a). Rework begins with week ending December 01, 2018. You will not receive benefits until you satisfy the rework requirement.

Rework Requirements: Claimant is disqualified until completion of a $4,344.00 earnings rework requirement which has not been satisfied.

If applicable, principal and penalty amounts are shown on Form UIA 1301, Weeks of Overpayments. If you disagree with this Redetermination, refer to "Appeal Rights" on the reverse side of this form. The appeal must be received no later than April 01, 2019.

GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TALENT AND ECONOMIC DEVELOPMENT
LANSING

STEPHANIE BECKHORN
ACTING DIRECTOR

CERTIFICATE OF RECORDS CUSTODIAN / PROOF OF SERVICE

I Lionel V. Rodriguez (name), the undersigned, after being sworn, states the following:

1. That I am a claims examiner (title) with the Michigan Unemployment Insurance Agency and, in such capacity, I am in possession of the business records for this organization.
2. To submit a hearing packet to this tribunal, I reviewed the original and/or electronic records and made a true and exact copy of each original and/or electronic record; I certify that the attached copies of the original and/or electronic record are true.
3. I certify that on 03/06/19 (date), the attached hearing packet was mailed to each interested party, and address, listed in the record at the time of mailing as indicated below:

John Roseman
24823 Cobblestone Ct.
Farmington Hills, MI. 48336

FCA US LLC
1000 Chrysler Dr.
Auburn Hills, MI. 48326-2766

Signature Lionel V. Rodriguez Date: 03/06/19

Sworn and signed on
this 6 day of March, 2019.

Michigan Administrative Hearing System
P.O. Box 30695
Lansing, MI 48909-8195

Form 1850

LARA
LICENSING AND REGULATORY AFFAIRS
CUSTOMER DRIVEN. BUSINESS MINDED.

Docket No.: 19-003241
Case No.: 13365780
Employer: FCA US LLC
Claimant: JOHN ROSEMAN
SSN: XXX-XX-7583

JOHN ROSEMAN
24823 COBBLESTONE CT
FARMINGTON HILLS, MI 483361913

This is an important legal document. Please have someone translate the document.
هذه وثيقة قانونية مهمة. يرجى أن يكون هناك شخص ما يترجم المستند.
এটি একটি গুরুত্বপূর্ণ আইনি ডকুমেন্ট। দয়া করে কেউ দস্তাবেজ অনুবাদ করুন।
Este es un documento legal importante. Por favor, que alguien traduzca el documento.
这是一份重要的法律文件，请让别人翻译文件。
Ky është një dokument ligjor i rëndësishëm. Ju lutem, kini dikë ta përkthejë dokumentin.

ORDER

The Unemployment Insurance Agency's (Agency) February 11, 2019 Redetermination is reversed.

Claimant is not ineligible for benefits from January 6, 2019 and continuing under the ability to work provisions of Section 28(1)(c) of the Michigan Employment Security Act (Act).

Claimant is entitled to benefits for each claimed week following the date of filing for benefits, if he is otherwise eligible and qualified.

Decision Date: March 8, 2019

WINSTON A. WHEATON
ADMINISTRATIVE LAW JUDGE

PARTICIPANTS

		03-07-19					
		Sworn		Sworn		Sworn	
Claimant	JOHN ROSEMAN	X	X				
Representative							
Witness							
Witness							
Witness							
Witness							
Employer	DID NOT APPEAR						
Representative							
Witness							
Witness							
Witness							
Witness							
Witness							
Witness							

EXHIBITS

NO	SUBMITTED BY UIA	E	C	DOCUMENT DATED	FORM NO	DOCUMENT DESCRIPTION

JURISDICTION

On February 16, 2019, Claimant timely appealed a February 11, 2019 Unemployment Insurance Agency (Agency) Redetermination, which held him ineligible for benefits from January 6, 2019 and continuing under the ability to work provisions of Section 28(1)(c) of the Act.

ISSUE

Whether Claimant is ineligible for benefits from January 6, 2019 and continuing under the ability to work provisions of Section 28(1)(c) of the Act.

APPLICABLE LAW

Section 28 of the Act provides:

> (1) An unemployed individual is eligible to receive benefits with respect to any week only if the unemployment agency finds all of the following:
>
> > (c) The individual is able and available to appear at a location of the unemployment agency's choosing for evaluation of eligibility for benefits, if required, and to perform suitable full-time work of a character that the individual is qualified to perform by past experience or training, which is of a character generally similar to work for which the individual has previously received wages, and for which the individual is available, full time, either at a locality at which the individual earned wages for insured work during his or her base period or at a locality where it is found by the unemployment agency that such work is available. An individual is considered unavailable for work under any of the following circumstances:
> >
> > > (i) The individual fails during a benefit year to notify or update a chargeable Employer with telephone, electronic mail, or other information sufficient to allow the Employer to contact the individual about available work.
> > >
> > > (ii) The individual fails, without good cause, to respond to the unemployment agency within 14 calendar days of the later of the mailing of a notice to the address of record requiring the individual to contact the unemployment agency or of the leaving of a telephone message requesting a return call and providing a return name and telephone number on an automated answering device or with an individual answering the telephone number of record.
> > >
> > > (iii) Unless the Claimant shows good cause for failure to respond, mail sent to the individual's address of record is returned as undeliverable and the telephone number of record has been

disconnected or changed or is otherwise no longer associated with the individual.

The Claimant has the burden of proving eligibility for unemployment benefits. *Dwyer* v *UCC*, 321 Mich 178 (1948).

FINDINGS OF FACT

Claimant was separated from the Employer in November 2018. Prior to that time, his physician, Rima Abbas, MD, recommended that he not return to work to the facility where he had worked due to his associated anxiety. Claimant had worked an assembly job since 1998.

Claimant says that at all relevant times, he has been able to perform manufacturing work. Because of anxiety associated with the plant where he last worked for the Employer, he is not able to work at that plant. Claimant is a licensed barber and has performed some fill-in work as a barber when it has been available. He is able to do that work.

REASONING AND CONCLUSIONS OF LAW

Claimant has the burden of establishing that he is able to perform suitable work at all relevant times. He has met his burden of proof.

Claimant is not required to be able to perform his last job, but only that he is able to perform full-time work for which he has previously received wages. *McKentry v. Employment Security Commission,* 99 Mich App 277 (1980).

Claimant testified that at all relevant times he has been able to perform manufacturing work—just not at the plant where he last worked. He also is a qualified, licensed barber and has performed that work when it has been available. I have been given no reason to challenge Claimant's veracity. I accept his testimony as true.

Based on the record established in this matter, and the applicable law, the Agency's Redetermination is reversed.

IMPORTANT: TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME

This Order will become final unless an interested party takes ONE of the following actions: (1) files a written, signed, request for rehearing/reopening to the Administrative Law Judge, or by an office or agent office of the agency OR (2) files a written, signed, appeal to the Michigan Compensation Appellate Commission at P.O. Box 30475, Lansing, MI 48909-7975 (Facsimile: 517-241-7326); OR (3) files a direct appeal, upon stipulation, to the Circuit Court on or before:

April 8, 2019

I, T. Barlow, certify a copy of this order has been sent on the day it was signed, to each of the parties at their respective addresses on record.

(SEE ATTACHED SHEET)

EEOC Form 161 (11/16) U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: John L. Roseman, Sr.
24823 Cobblestone Court
Farmington Hills, MI 48336

From: Louisville Area Office
600 Dr Martin Luther King Jr Pl
Suite 268
Louisville, KY 40202

☐ *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.	EEOC Representative	Telephone No.
471-2018-04259	Lora Bentley, Investigator	(502) 582-5692

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐ Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

☒ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐ Other *(briefly state)*

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

Lora Bentley /jm

Richard T. Burgamy
Area Office Director

9/18/2018
(Date Mailed)

Enclosures(s)

cc: Cynthia Harris
International Rep
UAW
8000 E. Jefferson Ave.
Detroit, MI 48214

EEOC Form 161 (11/16)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **John L. Roseman, Sr.**
24823 Cobblestone Court
Farmington, MI 48336

From: **Louisville Area Office**
600 Dr Martin Luther King Jr Pl
Suite 268
Louisville, KY 40202

☐ *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.	EEOC Representative	Telephone No.
471-2018-04269	**Eric M. Baez, Investigator**	**(502) 582-5823**

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐ Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

☒ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐ Other *(briefly state)*

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

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Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

for CS

Richard T. Burgamy,
Area Office Director

September 17,2018
(Date Mailed)

Enclosures(s)

cc:

Howard Weisel
1000 Chrysler Drive
Auburn Hills, MI 48326

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

John L. Roseman, Sr. — PETITIONER

VS.

UAW Int'l *et al.* — RESPONDENTS

PROOF OF SERVICE

I, John L. Roseman, Sr. do declare that on this date, **October 4, 2021**, as required by Supreme Court Rule 29 I have served the enclosed PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within three calendar days.

The names and addresses of those served are as follows:

FOR THE UAW DEFENDANTS:

John R. Canzano
Benjamin Louis King
McKnight, Canzano, Smith, Radtke and Brault, P.C.
423 North Main Street, Suite 200
Royal Oak, MI 48067

FOR THE FCA DEFENDANT:

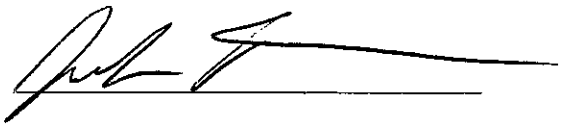
Katherine J. Van Dyke
Jackson Lewis P.C.
2000 Town Center,
Suite 1650
Southfield, Michigan 48075

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on **October 4, 2021**

Respectfully Submitted,

Date: October 4, 2021



John L. Roseman, in *pro se*
24823 Cobblestone Court
Farmington Hills, MI 48336
(313) 815-0119

CERTIFICATE OF COMPLIANCE

No.

John L. Roseman,

Petitioner

v.

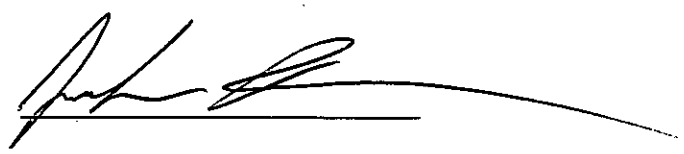
UAW Int'l *et al.*

Respondents

As required by Supreme Court Rule 33.1(h), I certify that the petition for writ of certiorari contains **8,898** words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 3, 2021



John L. Roseman, *in pro se*